

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Chesterfield County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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Sep 07 2022

SC Court of Appeals

THOMAS JEFFREY STEWART,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-002005

APPENDIX

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THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHESTERFIELD	)	FOURTH JUDICIAL CIRCUIT
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	2010-GS-13-0192
PLAINTIFF	)	
	)	
VERSUS	)	NOVEMBER 5, 2012
	)	
THOMAS JEFFREY STEWART	)	
	)	
DEFENDANT	)	
_____	)	

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

APPEARANCES

ADAM M. FOARD, ESQUIRE
ATTORNEYS FOR THE STATE

S. BOYD YOUNG, ESQUIRE
ATTORNEY FOR THE DEFENDANT

Pamela Ozment-Cartee
Circuit Court Reporter

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WITNESSES

NAME	DIRECT	CROSS	REDIRECT	RE-CROSS
Joseph Carnes	09	16	23	None
Mekos Newman	24	34	None	None
Chief Larry Brown	37	46	None	None
Kristina Brown-Gainey	54	None	None	None
Thomas Jeffrey Stewart	60	68	None	None

STATE EXHIBITS

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THE STATE V THOMAS JEFFREY STEWART

3

1 (Whereupon, this hearing began on
2 Monday, November 5, 2012 at 3:37 p.m.)

3 THE COURT: All right. Please call your case, Mr.
4 Solicitor.

5 MR. FOARD: Your Honor, we are here regarding The
6 State versus Thomas Jeffrey Stewart, 2010-GS-13-0192,
7 indictment for murder, and 2010-GS-13-0264, indictment for
8 possession of a weapon during the commission of a violent
9 crime. This case was scheduled for trial this week,
10 however due to scheduling issues, we have had to move this
11 to the December term of court. However, I believe we are
12 here at this time to take up the matter of pretrial motion
13 for Jackson v Denno.

14 Mr. Stewart is represented by Mr. Boyd Young of the
15 Capital Limitation Team with Indigent Defense.

16 I believe we are prepared to go forward.

17 THE COURT: Very good. Now, do you wish to make an
18 opening statement or comment on the issues for Jackson v
19 Denno?

20 MR. FOARD: Briefly, yes, Your Honor.

21 THE COURT: All right. Go ahead.

22 MR. FOARD: Your Honor, this incident is regarding
23 obviously the statement of Thomas Jeffrey Stewart; the
24 accused in this incident. The State would present evidence
25 that Mr. Stewart gave multiple statements shortly after the

THE STATE V THOMAS JEFFREY STEWART

4

1 time period that the State alleges that Mr. Stewart murdered
2 his girlfriend, Ms. Bellanie Cliburn, this would also be the
3 mother of one of his children.

4 Your Honor, we would present evidence from one law
5 enforcement officer who actually apprehended him shortly
6 after the crime occurred. He would testify that he provided
7 oral Miranda and listened to what the defendant had to say
8 at that time. Subsequent to that, another officer provided
9 an oral Miranda prior to any interrogation. There was a
10 third Miranda done shortly thereafter. This was all in the
11 span of just a few hours, maybe not even hours, Your Honor.
12 The third Miranda was accomplished at the Pageland Police
13 Department, it was produced to writing, which the State is
14 prepared to offer to the Court for its consideration, and
15 the statement itself given after that written Miranda was
16 captured on video monitoring equipment, which we have if the
17 Court sees fit for viewing of that.

18 The Miranda itself is not located on the video. It was
19 done prior to the video being turned on. But, we do have a
20 written record of that Miranda Waiver, and I do have both of
21 the witnessing parties prepared to testify if necessary.

22 THE COURT: All right. Let me ask you this, it is a
23 little unusual. Typically a Miranda is recorded. Why would
24 there not be a statement videoing of the Miranda?

25 MR. FOARD: Your Honor, I would have to question the

THE STATE V THOMAS JEFFREY STEWART

5

1 witness about that on the stand.

2 THE COURT: Very good. And, can you distinguish for
3 me what admission if any, were made in the first statements
4 as opposed to the one that we are viewing today?

5 MR. FOARD: Your Honor, my understanding is, and let
6 me clarify it for the Court, if I seem like I am dancing
7 around some of this. Kernard Redmond --- Deputy Solicitor
8 Redmond is the lead prosecutor in this case. I am stepping
9 in at the last minute on this. So, I am not as in tune with
10 the exact facts as Solicitor Redmond is. But my
11 understanding is that both statements do have a lot of the
12 same information; however, the second statement --- a few of
13 the minor facts may change in the second statement. But, in
14 both of them he does admit to the incident with Bellanie
15 Clyburn, resulting in her death.

16 THE COURT: All right. Thank you. Now, for the
17 defense.

18 MR. YOUNG: Your Honor, at this time, just for the
19 record, the defense would move to suppress any and all
20 statements attributed to Mr. Stewart as being violations of
21 both Miranda and his Fifth Amendment Rights, and we will put
22 the State to their burden on those two issues.

23 THE COURT: Very good. And, do you wish to --- Of
24 course, I would need to hear the testimony before I could
25 rule, but do you have anything you wish to say in opening

THE STATE V THOMAS JEFFREY STEWART

6

1 with regard to the Miranda issue?

2 MR. YOUNG: No, Your Honor.

3 THE COURT: All right. Then we will go the
4 Solicitor.

5 MR. YOUNG: At this time, the defense would request
6 that the witnesses be sequestered.

7 THE COURT: And, on what basis?

8 MR. YOUNG: On the basis of overhearing each other's
9 testimony regarding the Miranda issues, and the issues of
10 the statements in this case could influence their future
11 testimony.

12 THE COURT: And, what precedent do you have that
13 hearing the testimony would be sufficient to sequester the
14 witnesses. Do you have some direct precedence on that?

15 MR. YOUNG: No, Your Honor. I do not.

16 THE COURT: All right, very good. Does the State
17 want to be heard on the sequestration issue?

18 MR. FOARD: Your Honor, just in light of the fact
19 that we have no knowledge of any --- of any precedent on
20 that either. We would oppose such a request.

21 THE COURT: All right. You are going to have to walk
22 me through this again, so that I can fully grasp the
23 implications of sequestering the witnesses. Tell me again
24 please; how many statements were taken, under what
25 circumstances, and who took the statement.

THE STATE V THOMAS JEFFREY STEWART

7

1 MR. FOARD: Okay, Your Honor, and some of these are
2 inextricatabally tied to the facts. But, I am not going to
3 get very deep into those unless I have to.

4 The State is alleging that Mr. Stewart committed this
5 killing, fled the scene, and within a reasonably short
6 period of time, that there were witnesses that saw him flee
7 the scene, made a report to law enforcement as to the
8 vehicle that he was driving. A be on the lookout, or a BOLO
9 was issued, at which time the first officer the State would
10 call, saw the vehicle and Mr. Stewart in it. He stopped the
11 vehicle. At that time, that would be Deputy Joey Carnes.
12 Deputy Carnes provided Miranda. Mr. Stewart made some
13 statements. Subsequent to that, Sergeant Newman from the
14 Pageland Police Department arrived as backup, and I say as
15 backup, because Deputy Carnes was already there, but
16 actually this occurred within Pageland Police Department
17 jurisdictions. So, Pageland Police Department would be the
18 lead investigating agency. He arrived. He indicates that
19 he gave oral Miranda as well at that time. Mr. Stewart was
20 subsequently transferred to Pageland Police Department, and
21 at some point on the same day at a later time, was again
22 interviewed more in-depth, with video, in the presence of
23 Chief Larry Brown, Sergeant Mekos Newman, and SLED Agent
24 Gainey, who is present as well, Your Honor. And all of them
25 witnessed the final Miranda and the subsequent statement

THE STATE V THOMAS JEFFREY STEWART

8

1 that was captured on video.

2 THE COURT: Very good. And tell me, in what order do
3 you intend to call your witnesses?

4 MR. FOARD: I would intend to call Deputy Carnes,
5 Sergeant Newman, Chief Brown, and then SLED Agent Gainey.

6 THE COURT: All right. I am going to respectfully
7 grant the Motion to Sequester the Witnesses, because two of
8 the State's witness who are going to testify here are not
9 reduced to writing by the person who made the statement, and
10 thus, if you would please explain that to your witnesses.

11 Now, once the testimony is given, I have no objection
12 to those witnesses coming back for this preliminary hearing
13 in regard to a trial. What say you to that, counsel?

14 MR. YOUNG: No objection, Your Honor.

15 THE COURT: All right. Before the witnesses testify,
16 they will be sequestered. Once they testify they may
17 remain, they are not required to, but they certainly may
18 remain with us.

19 MR. FOARD: Thank you, Your Honor.

20 THE COURT: Thank you. And please call your first
21 witness.

22 MR. FOARD: Your Honor, the State would call Deputy
23 Joey Carnes.

24 THE COURT: Please come forward and take the oath of
25 a witness.

JOSEPH CARNES - DIRECT EXAMINATION

9

1 How are you, sir. Good afternoon.

2 DEPUTY CARNES: Good afternoon.

3 **WHEREUPON, JOSEPH CARNES**

4 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

5 DEPUTY CARNES: I do.

6 THE COURT: All right, counsel, go ahead.

7 **DIRECT EXAMINATION BY MR. FOARD**

8 Q. Good afternoon, sir.

9 A. Good afternoon.

10 Q. Could you please state for the Court your full name?

11 A. Joseph Carnes.

12 Q. And by whom are you employed?

13 A. Chesterfield County Sheriff's Office.

14 Q. And were you employed with the Sheriff's Office on
15 January 1, 2010?

16 A. Yes, sir, I was.

17 Q. Okay. And, was it your occasion that day to have some
18 involvement with Thomas Jeffrey Stewart?

19 A. Yes, sir.

20 Q. On that day in question, did you have the opportunity
21 to talk directly with Mr. Stewart?

22 A. Yes, sir, I did.

23 Q. Where did that interaction first occur?

24 A. On the back side of Pig's Park, off of Griggs Street,
25 in Pageland, South Carolina.

JOSEPH CARNES - DIRECT EXAMINATION

10

1 Q. All right. Pig Park is a public park like a ballfield?

2 A. Yes, sir.

3 Q. And when you first saw Mr. Stewart, what was he doing?

4 A. When I first saw the vehicle or when I first saw?

5 Q. First the saw vehicle. I'm sorry, the vehicle.

6 A. I seen the vehicle pulling into Pig's Park off of Grigg
7 Street.

8 Q. And why did you have the occasion to pull in behind
9 that vehicle?

10 A. Because shortly before there, I had heard a call come
11 out on the Pageland channel about a stabbing incident
12 at the apartments in Pageland.

13 Q. Okay. And so upon pulling in, what happened when you
14 pulled in behind the vehicle?

15 A. I noticed a person inside climbing from the driver's
16 seat into the rear seat, and then exit out the rear
17 passenger side door.

18 Q. Okay. Did you chase him, or what happened when he
19 exited?

20 A. No, sir. Me and him exited the vehicles approximately
21 about the same time. I drew my service weapon, and
22 ordered him to the ground. I noticed that he was
23 covered in blood, so given the call that was given out,
24 I figured that was probably the one that I was looking
25 for.

JOSEPH CARNES - DIRECT EXAMINATION

11

1 Q. So, the blood was visible on him at that time?

2 A. Yes, sir.

3 Q. Okay. Did he stop when you drew your service weapon?

4 A. Yes, sir.

5 Q. Okay. Just so I can just kind of cut to the chase
6 here. What point did you --- did you begin speaking
7 with him, or questioning him? Specifically, when did
8 you give him any Miranda warnings?

9 A. After I confronted him, I ordered him to the ground and
10 handcuffed him at the rear of the vehicle. I then
11 cleared the vehicle to make sure there was nobody else
12 inside the vehicle. And then after that --- that was a
13 matter of maybe three to five seconds, I returned back
14 to him, advised him he was under arrest, and advised
15 him of his Miranda rights.

16 Q. Okay. So, he was under arrest at that time?

17 A. Yes, sir.

18 Q. And just the two of you were present, there was no one
19 else there at that time?

20 A. That's correct.

21 Q. And when you say you gave him the Miranda rights, did
22 you do that from memory, or from a card, how did you do
23 that?

24 A. From memory.

25 Q. Okay. And can you please tell the Court what the

JOSEPH CARNES - DIRECT EXAMINATION

12

1 rights were that you would have given him that day?

2 A. You have the right to remain silent. Anything you say
3 can and will be used against you in a court of law.
4 You have a right to an attorney before any question.
5 If you cannot afford an attorney one will be appointed
6 to you before --- excuse me --- before any questioning.
7 You have the right to stop answering questions at any
8 time. Do you understand these rights as I have read
9 them to you?

10 Q. Okay. So, he would have been in handcuffs, in custody,
11 at the time you gave him those rights?

12 A. Yes, sir.

13 Q. Okay. Out in the outside open, still at Pig's Park?

14 A. Yes, sir. In between my vehicle and his vehicle.

15 Q. Okay, then. And did you ask him questions at that
16 time, or did he make a spontaneous statement?

17 A. I didn't ask him any questions at that time. He just
18 started talking.

19 Q. And, can you please tell the Court what it is that he
20 was saying?

21 A. All right. Directly after I advised him of his rights,
22 he told me that he understood them. But, told me ---
23 was complaining about his eyes burning, and that the
24 victim had pepper sprayed him.

25 Q. Okay. And, so what did you do at that point?

JOSEPH CARNES - DIRECT EXAMINATION

13

1 A. I went to the back of my patrol car and retrieved a
2 gallon of water, and flushed the defendant's eye,
3 because it was apparent that he had been pepper
4 sprayed.

5 Q. Okay. And, did he continue to make any further
6 statements from that? What did he tell you at that
7 time?

8 A. He asked me how much time was he looking at, and I
9 said, I don't know.

10 Q. Time meaning jail time?

11 A. Yes, sir.

12 Q. Okay.

13 A. I said, it depends on how bad the victim was. And, I
14 said, how many times did you stab her? And he said, I
15 don't know, I just lost it--- I just kept going.

16 Q. Did he ever refer to Bellanie Clyburn by name?

17 A. I don't recall that.

18 Q. Okay. Is there anything else about anything that he
19 may have said at that time period that you can recall
20 for the Court?

21 A. He made the statement that his --- that he only
22 received two years probation for assaulting his wife,
23 and wanted to know if he could get probation as well.

24 Q. Okay. Other than him stating to you that he had mace
25 in his eyes, did he ask for anything in that time

JOSEPH CARNES - DIRECT EXAMINATION

14

1 period? Did he ask for food, or drink, or water, or
2 anything at anytime?

3 A. Just water on his face, which I think I applied water
4 maybe two more times after the first initial time.

5 Q. Okay. And, as he was in custody, and in handcuffs at
6 the time, did you do anything to mistreat him, or harm
7 him in any way in order to get him to make the
8 statements that he made?

9 A. No, sir.

10 Q. All right. Did you place him under any threats or
11 coercions?

12 A. No, sir.

13 Q. Did you do anything to him that may have been
14 interpreted as to place him in any duress in order to
15 get him to make his statement?

16 A. No, sir.

17 Q. All right. And, at any time did he say that he wanted
18 to speak with an attorney?

19 A. No, sir.

20 Q. At any time did he say anything that made you think
21 that he lacked any capacity, or that he was under the
22 influence of any drugs or alcohol?

23 A. No, sir.

24 Q. All right. Before or after he -- you gave him Miranda
25 and he waived that Miranda; at any time?

JOSEPH CARNES - DIRECT EXAMINATION

15

1 A. No, sir.

2 MR. FOARD: All right. Beg court's indulgence, Your
3 Honor.

4 (PAUSE.)

5 Q. Did Mr. Stewart have any trouble understanding his
6 rights?

7 A. No, sir. He specifically said that he understood his
8 rights.

9 Q. And never at any time did he ask for an attorney?

10 A. No, sir.

11 Q. Was this statement reduced to writing by Mr. Stewart?

12 A. No, sir, not to me.

13 MR. FOARD: Okay. Your Honor, I have no further
14 questions for Mr. Carnes.

15 THE COURT: All right. Officer Carnes, we are not
16 going to have cross examination.

17 CROSS EXAMINATION BY MR. YOUNG

18 Q. Officer Carnes, just a couple of questions. Can you
19 tell me a little bit about the time line. Do you know
20 what time the call went out on the Pageland channel?

21 A. According to my incident report, I have that it went
22 out at 09:33 in the morning.

23 Q. Do you know what time you spotted Mr. Stewart?

24 A. According to my incident report, it says 09:36.

25 Q. Okay. And, then --- So, about three minutes after the

JOSEPH CARNES - DIRECT EXAMINATION

16

1 call went out you first saw him?

2 A. That's correct.

3 Q. And then y'all both pulled into Pig's Park?

4 A. Yes, sir.

5 Q. When he got out, he climbed over the seat of the car
6 and came out of the backdoor?

7 A. Yes, sir.

8 Q. You now know that the front door of the car was tied
9 shut and was inoperable?

10 A. At that time I didn't know, but now I know that, yes,
11 sir.

12 Q. When he got out, he came around to the front of his
13 vehicle?

14 A. No, sir. He stopped where he was whenever he got out,
15 because I met him as he was getting out.

16 Q. Okay. And that was --- I am trying to figure out, was
17 your vehicle parked directly behind his?

18 A. Roughly, yes, sir.

19 Q. Okay. And he came out the passenger side, or the
20 driver's side?

21 A. The rear passenger side.

22 Q. Rear passenger side?

23 A. Yes, sir.

24 Q. So, you had crossed between your vehicle and his
25 vehicle to come around to the passenger side where you

JOSEPH CARNES - DIRECT EXAMINATION

17

1 met him coming out of the car?

2 A. Yes, sir.

3 Q. And then you took him to the rear of his car?

4 A. Yes, sir.

5 Q. And you cuffed him?

6 A. Yes, sir.

7 Q. Was he on the ground when you cuffed him, or was he
8 standing up, or was he?

9 A. He was on the ground.

10 Q. Laying down, and you put both of his hands behind his
11 back?

12 A. Yes, sir.

13 Q. And you secured both hands?

14 A. Yes, sir.

15 Q. And you noticed that he had injuries on one hand?

16 A. Yes, sir.

17 Q. And he had injuries to the side of his head?

18 A. I believe it was his ear.

19 Q. His ear?

20 A. I believe, that is what I noted. It was one hand and -
21 -- yeah, I noted that he had no weapons on his person,
22 and he only had minor scratches to one hand and left
23 ear.

24 Q. You said that he was covered in blood?

25 A. Yes, sir.

JOSEPH CARNES - DIRECT EXAMINATION

18

1 Q. Can you tell me what you mean by covered in blood?

2 A. Not like a horror movie covered in blood, but he had a
3 substantial amount of blood on him.

4 Q. And, where was the blood on him?

5 A. I remember --- I definitely remember some on his pants.
6 But, I didn't take any photographs or anything.

7 Q. Other than covered in blood, he had other physical
8 conditions going on, right?

9 A. (No response.)

10 Q. For instance, he could --- He was having trouble
11 keeping his eyes open?

12 A. Oh, yes, sir. His eyes were watering and had mucus
13 coming out of his nose.

14 Q. And he was spitting?

15 A. Yes, sir. He was --- When the mucus and stuff would
16 come down, he would spit it out.

17 Q. Right. And all of this was while his hands were cuffed
18 behind his back?

19 A. Yes, sir.

20 Q. And, while he was --- Was he on his knees at that
21 point, or was he laying on his stomach?

22 A. When I come back to him, I rolled him back up on ---
23 he was sitting upright. He wasn't standing. I can't
24 remember if I sat him on his knees, or if I just sit
25 him up on his butt with his legs out straight.

JOSEPH CARNES - DIRECT EXAMINATION

19

1 Q. Okay. So, you at him up?

2 A. Yes, sir.

3 Q. And that is when you Mirandized him?

4 A. Yes, sir.

5 Q. And, you noted that your car was not equipped with a
6 video camera?

7 A. Yes, sir. We had just recently got it, and it didn't
8 have an in-car camera system at that time.

9 Q. But if I understand your testimony correctly, your
10 opinion is that he understood what you were saying?

11 A. Yes, sir.

12 Q. And, followed your directions?

13 A. Yes, sir.

14 Q. And answered you that he understood his rights as you
15 had read them?

16 A. Yes, sir.

17 Q. And then started making statements?

18 A. Yes, sir.

19 Q. You never asked him with regards to these rights in
20 mind, do you want to talk to me?

21 A. No, sir, I didn't.

22 Q. He just started talking?

23 A. Yes, sir.

24 Q. The first think he said to you, I believe according to
25 your report was, that he had lost it over love?

JOSEPH CARNES - DIRECT EXAMINATION

20

1 A. Yes, sir.

2 Q. Is that right?

3 A. Yes, sir.

4 Q. Were these statements before or after you flushed out
5 his eyes with water?

6 A. This was after I flushed his eyes out with water.

7 Q. Was there --- Were you on the radio talking to Chief
8 Brown regarding stopping Mr. Stewart?

9 A. Whenever this first incident first occurred, I was out
10 attempting to serve a warrant, and I just so happened
11 to have my radio on scan and I heard the call come out
12 over Pageland channel. Now once I got Mr. Stewart
13 secured, I advised dispatch to let Pageland units know
14 that I had him in custody.

15 Q. And did anybody tell you not to flush his eyes out, or
16 not to wash anything off of him?

17 A. Yes, sir. Chief Brown asked me not to flush his ---
18 put water on him.

19 Q. Do you know why he did that?

20 A. I would imagine it is about the preservance [sic] of
21 evidence maybe? But, with the amount of blood, I felt
22 it was fine to wash at least that small amount. I
23 didn't dump the water on him as to give him a bath.
24 But I had to at least try to give him a little bit of
25 relief.

JOSEPH CARNES - DIRECT EXAMINATION

21

1 Q. How were you doing this? Were you cupping your hand
2 and pouring water in your hand and splash it in his
3 eye?

4 A. No, sir. I have --- I don't still have it. But, the
5 jug I use to have was like a round one gallon jug.

6 Q. Yes, sir.

7 A. With a small lid, and he was leaning forward onto the
8 side, and I would just pour it across his face.

9 Q. Were you using his shirt to wipe his face at all?

10 A. I can't remember. I didn't personally take it upon
11 myself to wipe him, but I can't remember if he asked me
12 to wipe his face or not.

13 Q. And he couldn't have wiped his face could he? His
14 hands were cuffed behind his back?

15 A. That's correct.

16 Q. At that point in time, Officer Newman arrived?

17 A. Yes, sir. After I had dispatch to notify Pageland that
18 I had him in custody, I asked for them to send a unit
19 to me, and Officer Newman arrived.

20 Q. And when Officer Newman arrived, you took Mr. Stewart
21 over to his vehicle?

22 A. He came to me initially, and I told Officer Newman that
23 I had read him his rights, but I don't have a camera.
24 So, Officer Newman --- We both walked him over there,
25 and Officer Newman read him his rights. I watched

JOSEPH CARNES - REDIRECT EXAMINATION

22

1 Officer Newman read him his rights again.

2 Q. Did Officer Newman tell you he had a camera in his car?

3 A. No. I --- Honestly, I can't remember. I think he did.
4 Most Pageland units did have cameras at that time, if I
5 am not mistaken. I use to work for Pageland before I
6 become a deputy.

7 Q. And you wrote a report on January 3, 2010, that you
8 have in front of you; right?

9 A. Yes, sir.

10 Q. And on page three of that report, you talk about going
11 --- taking Mr. Stewart over to Officer Newman's car,
12 because he had video equipment to be able to videotape
13 him being Mirandized?

14 A. Right.

15 Q. Is that correct?

16 A. Yes, sir.

17 MR. YOUNG: Thank you, Officer Carnes, that is all
18 the questions I have at this time.

19 THE COURT: Anything further for the witness?

20 MR. FOARD: Just briefly, Your Honor.

21 REDIRECT EXAMINATION BY MR. FORD

22 Q. Your belief that there may have been a camera in Mr.
23 Newman's car, was that based on assumption, or based on
24 something that Sergeant Newman had told you there that
25 day?

MEKOS NEWMAN - DIRECT EXAMINATION

23

1 A. My prior knowledge as a Pageland police officer was
2 that most of their cars had cameras, and I just assumed
3 that Officer Newman's car did have a camera in it as
4 well.

5 MR. FOARD: No further questions, Your Honor.

6 THE COURT: All right, sir. You may step down, and
7 you are free to leave if you wish.

8 OFFICER CARNES: Thank you.

9 THE COURT: All right. Please call your next
10 witness.

11 MR. FOARD: Thank you, Your Honor. I call Sergeant
12 Mekos Newman.

13 THE COURT: Please come forward and take the oath of
14 a witness.

15 **WHEREUPON, MEKOS NEWMAN**

16 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

17 OFFICER NEWMAN: So, help me, God.

18 MR. FOARD: Thank you, Your Honor.

19 **DIRECT EXAMINATION BY MR. FORD**

20 Q. Good afternoon. Can you please state for the record
21 your full name?

22 A. Mekos Newman.

23 Q. And by whom are you employed?

24 A. Lee County Sheriff's Office.

25 Q. All right. And where were you employed on January 1,

MEKOS NEWMAN - DIRECT EXAMINATION

24

1 2010?

2 A. Pageland Police Department.

3 Q. And what were your duties at Pageland Police
4 Department?

5 A. I was a patrol Sergeant, and I assisted in
6 investigations.

7 Q. All right. And on that day, did you have the occasion
8 to encounter Mr. Thomas Stewart?

9 A. Yes, I did.

10 Q. Where did you first encounter Mr. Stewart?

11 A. Pig's Park.

12 Q. Okay. And that is located in the Town of Pageland?

13 A. Yes, sir, it is.

14 Q. Was he alone or was he with anyone at that time?

15 A. He was with Deputy Joey Carnes.

16 Q. Okay. And, when you got there, tell the Court what was
17 occurring when you arrived at Pig Park?

18 A. Um, he was standing outside of Deputy Carnes' patrol
19 vehicle.

20 Q. What was his appearance? How did he appear at that
21 time?

22 A. Uh, he appeared to be fine. Uh --

23 Q. When you say fine, what do you mean?

24 A. Well, like as far as his attitude and everything, he
25 was just standing there.

MEKOS NEWMAN - DIRECT EXAMINATION

25

1 Q. Was he speaking, or was he quiet, what?

2 A. He was saying some things, but I --- my focus was going
3 ahead and talking with Deputy Carnes, make sure
4 everything was okay to go ahead and do the transport.
5 I then --

6 Q. Transport him to where?

7 A. Pageland Police Department. I then Mirandized him,
8 placed him inside the vehicle, looked at the vehicle
9 again which he was driving, which was a white in color
10 Chevy Suburban, I believe, or a GMC. It was a SUV type
11 vehicle. Spoke with Deputy Carnes. He walked around
12 the vehicle. And we talked bout the situation, the
13 case at hand, and then I took him to the police
14 department.

15 Q. All right. So, let's go back before you gave him
16 Miranda yourself. Did you notice that he had blood on
17 his person?

18 A. Yes, sir.

19 Q. Okay, then. And did he appear to be struggling with
20 anything regarding his eyes or anything of that nature?

21 A. Noticed that they were probably like red but that was
22 it.

23 Q. Did he indicate while you were there and hearing what
24 he was saying, did he indicate that he was in any pain
25 or discomfort at that time?

MEKOS NEWMAN - DIRECT EXAMINATION

26

- 1 A. Not to me.
- 2 Q. Was he handcuffed when you saw him?
- 3 A. Yes, sir. Handcuffed to the rear.
- 4 Q. Okay, then. But, he was outside of vehicles, he was in
- 5 the open space?
- 6 A. Yes, sir.
- 7 Q. Okay, then. And while you were there, did you witness
- 8 him suffer anything as far as any strikes or blows, or
- 9 any abuse at the hands of you or Deputy Carnes?
- 10 A. No, sir.
- 11 Q. Okay. Did you yourself do anything to him, place him
- 12 in any harm or hurt him in anyway?
- 13 A. No, sir.
- 14 Q. Okay. When you say you gave him Miranda, let's talk
- 15 more about that. Where were you when you gave this
- 16 Miranda?
- 17 A. Uh, we were outside. I believe we were outside of
- 18 Deputy Carnes vehicle and a patrol vehicle that I was
- 19 driving.
- 20 Q. What kind of patrol vehicle were you driving that day?
- 21 A. It was a marked unit, which is a Crown Victoria.
- 22 Unspecified as of the number I was driving, but --
- 23 Q. -- Did you say marked or unmarked?
- 24 A. Marked.
- 25 Q. It was a marked unit.

MEKOS NEWMAN - DIRECT EXAMINATION

27

- 1 A. Pageland police unit.
- 2 Q. Okay. Was this your normal car?
- 3 A. Uh, I want to say yes, it was.
- 4 Q. And was that unit equipped with a camera surveillance
- 5 system?
- 6 A. It was.
- 7 Q. It was. Okay. And was the camera surveillance system
- 8 functioning in that automobile, or was it turned on at
- 9 the time of this incident?
- 10 A. I believe it was.
- 11 Q. Okay. So, you gave Miranda?
- 12 A. Yes.
- 13 Q. All right. Would that Miranda had been captured on
- 14 this videotape, or by the surveillance system?
- 15 A. I believe it would have been.
- 16 Q. Okay. Do you know whether any such tape has been
- 17 provided to the Solicitor's Office as part of this
- 18 prosecution?
- 19 A. I'm not sure. I been gone --
- 20 Q. -- Have you ever reviewed such a tape?
- 21 A. Ah, at this point I can't recall.
- 22 Q. Okay. So, you testified that you did give him Miranda
- 23 at Pig Park?
- 24 A. Yes, sir, verbally.
- 25 Q. All right. So, you did this verbally. Did you do

MEKOS NEWMAN - DIRECT EXAMINATION

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1 this from memory, or from some sort of card, how was
2 that accomplished?

3 A. Um, I want to say memory. Not sure. Not sure. At
4 this time I'm not sure.

5 Q. So, you are not --

6 A. -- It has been three years --

7 Q. -- All right --

8 A. -- I haven't reviewed nothing.

9 Q. Assuming that it was done from memory, can you give us
10 what you would give a defendant as far as their Miranda
11 rights, if you were giving them from memory?

12 A. Let me see? You have the right to remain silent.
13 Anything you say can and will be used against you in a
14 court of law. You have a right to have an attorney
15 present. If you cannot afford one, the Court will
16 provide one to you without cost if you wish. If you
17 decide now to start --- to make a statement without a
18 lawyer present you still at anytime have a right to
19 stop answering at anytime until you speak with a
20 lawyer.

21 Q. All right. And do you believe, while it may not be
22 verbatim, do you believe that is basically what you
23 told Mr. Stewart that day?

24 A. Yes, sir. Give or take, you know, a word here or
25 there.

MEKOS NEWMAN - DIRECT EXAMINATION

29

1 Q. All right. And did he respond when you gave that
2 Miranda warning?

3 A. Yes, he said he understood.

4 Q. He indicated that he did understand his rights?

5 A. Yes, sir.

6 Q. Okay. And at anytime did you place him under any
7 duress in order to get him to state that he understood
8 those rights?

9 A. No, sir.

10 Q. Did you threaten or coerce him?

11 A. No, sir.

12 Q. Did you promise him any hope or reward?

13 A. No, sir.

14 Q. Okay. And, once he had been informed of his rights and
15 indicated that he understood them, did he make any
16 statements there prior to going to Pageland Police
17 Department regarding the incidents of that day?

18 A. Um, I believe he said it didn't happen the way
19 everybody said it happened or something. Not really
20 sure. He was talking, but I didn't want to question
21 him, or lead anything, or say anything to him regarding
22 the case. So.

23 Q. Okay.

24 A. I heard him saying things, but as far as taking down
25 notes, or truly, truly paying attention, no I didn't

MEKOS NEWMAN - DIRECT EXAMINATION

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1 til the appropriate time.

2 Q. All right. And what time of the day did this occur?

3 A. I received the call from Chief Brown to report to work
4 around -- between I want to say, 08:30 or nine,
5 somewhere along in there. Not sure. And it took place
6 somewhere between I want to say, 08:30 and 9:15 maybe,
7 I'm not sure exactly the time.

8 Q. All right.

9 A. At this time.

10 Q. Now, did you transport --- Was there anything else that
11 occurred at the scene that we need to know about here
12 at this point?

13 A. No, sir.

14 Q. Okay. Did you transport Mr. Stewart anywhere?

15 A. I transport him to the Pageland Police Department
16 booking area.

17 Q. Okay, then. And he was under arrest at that time?

18 A. Yes, sir, he was.

19 Q. Okay. Arrest for what?

20 A. For the murder of --- For the murder of Bellanie
21 Clyburn.

22 Q. And, I presume you went through standard booking
23 procedures at Police Department?

24 A. Yes, sir.

25 Q. Okay. Were you present at any point when Mr. Stewart

MEKOS NEWMAN - DIRECT EXAMINATION

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1 gave another statement regarding the incident with
2 Bellanie Clyburn?

3 A. Uh, far as when he was being interviewed or --

4 Q. -- yes --

5 A. -- just in general?

6 Q. Yes, anytime he was being questioned or gave a
7 statement?

8 A. Um --

9 Q. -- In interviews such as that, yes.

10 A. The most statement he made while in booking area was he
11 was just talking. Nobody asked him any questions. He
12 stated that she'll forgive me. She'll forgive me
13 again. That's all he said.

14 Q. Okay. And were you present at any further interview by
15 any other law enforcement officers?

16 A. Uh'huh, with the SLED agent and Chief Brown.

17 Q. Okay. Was this the same day, was this a different day?

18 A. Same day.

19 Q. Same day. Do you recall, was this in the morning or
20 was this in the afternoon?

21 A. Around in the afternoon.

22 Q. Afternoon. All right. And, did you witness Mr.
23 Stewart receiving any additional Miranda warnings as
24 part of that interview procedure?

25 A. Yes.

MEKOS NEWMAN - DIRECT EXAMINATION

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1 Q. Okay. And, did you perform that, or did someone else
2 perform that?

3 A. I want to say Chief Brown and the SLED agent performed
4 that.

5 Q. Okay. But, were you present in the room when that
6 happened?

7 A. I was.

8 Q. Okay. And, so, Chief Brown gave the Miranda warnings
9 to the defendant?

10 A. Uh, yes, he did.

11 Q. Okay. Did you see the defendant execute any type of
12 written waiver with regard to these Miranda forms?

13 A. Yes, sir.

14 Q. With these Miranda warnings?

15 A. Yes, sir.

16 Q. Okay, then. Do you recall --- did you witness --- you
17 were just there witnessing, and just present in the
18 room?

19 A. I had took part in the initial videotape interview.

20 Q. All right, then. Videotape. This interview was
21 captured on audio and video monitoring equipment?

22 A. Yes.

23 MR. FOARD: All right, then. Your Honor, I have no
24 further questions at this time.

25 THE COURT: All right. Please answer any cross

MEKOS NEWMAN - CROSS EXAMINATION

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1 examination questions.

2 OFFICER NEWMAN: Yes, sir.

3 CROSS EXAMINATION BY MR. YOUNG

4 Q. Is it Deputy Newman?

5 A. At this time it is Deputy Newman.

6 Q. Okay. I just want to make sure I get it right.

7 A. That's fine.

8 Q. Deputy Newman, you responded out to the Pig's Park with
9 Officer Carnes, who had Mr. Stewart detained at that
10 time?

11 A. Yes, sir.

12 Q. Correct?

13 A. Yes, sir.

14 Q. You said that Mr. Stewart was handcuffed to the grill?

15 A. To the rear.

16 Q. Handcuffed to the rear?

17 A. Yes, sir.

18 Q. To the rear of --

19 A. I mean, being handcuffed --- If I can demonstrate.

20 Like this, hands behind your back. Standard handcuff
21 procedure.

22 Q. Okay. So, both of his hands were cuffed to each other?

23 A. Yes, sir, behind his back.

24 Q. Okay. Did you notice any injuries to Mr. Stewart at
25 that time?

MEKOS NEWMAN - CROSS EXAMINATION

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1 A. Um, no, not at that time.

2 Q. You didn't notice any cuts on his hand?

3 A. Ah, no, not at that time. I noticed them when he got
4 in the booking area and we were doing the booking form.

5 Q. Okay.

6 A. Which we do, which is standard procedure when I was at
7 the Pageland Police Department.

8 Q. All right. Did you notice any blood coming from his
9 ear?

10 A. Where on the road, out there at Pig's Park, or --

11 Q. -- Yes, sir --

12 A. -- at the booking area?

13 Q. On the road first.

14 A. No.

15 Q. But you did notice it in the booking area?

16 A. Yes, sir.

17 Q. At the time you made contact with Mr. Stewart, you said
18 he was under arrest for murder. Did you know Ms.
19 Clyburn was deceased at that time?

20 A. At that time I did.

21 Q. So, before you got to Pig's Park you knew that she had
22 expired at the scene?

23 A. No, she did --- I don't believe --- I don't know
24 exactly --- she was expired at the scene, because I got
25 the call after things had done taken place.

LARRY BROWN - DIRECT EXAMINATION

35

1 Q. Okay. But, the time that you made contact with Mr.
2 Stewart at Pig's Park, you knew she was dead?

3 A. Yes, sir.

4 Q. And that he was going to be charged with murder?

5 A. Yes, sir.

6 MR. YOUNG: Beg court's indulgence, Your Honor.

7 Thank you, Deputy Newman. That's all the questions I have
8 at this time.

9 THE COURT: Is there redirect?

10 MR. FOARD: No, Your Honor.

11 THE COURT: All right. Sir, you are free to leave.

12 OFFICER NEWMAN: Thank you, sir.

13 THE COURT: Yes, sir. Please call your next witness.

14 I would call the Chief of Police, Larry Brown.

15 THE COURT: Please come forward and take the oath of
16 a witness.

17 **WHEREUPON, LARRY BROWN**

18 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

19 CHIEF BROWN: Yes, I do.

20 MR. FOARD: Thank you, Your Honor.

21 **DIRECT EXAMINATION BY MR. FOARD**

22 Q. Chief, if you could give your name for the record,
23 please?

24 A. Larry Brown.

25 Q. And you are Chief of Police for Pageland?

LARRY BROWN - DIRECT EXAMINATION

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1 A. Yes, I am.

2 Q. And have served in that capacity on January 1, 2010?

3 A. Yes, sir. I was Assistant Chief at the time.

4 Q. You were Assistant Chief at the time, I'm sorry.

5 A. Yes, sir.

6 Q. Did you have the occasion to be involved in the
7 investigation of Bellanie Clyburn's murder?

8 A. Yes, sir.

9 Q. And, on January 1, 2010, did you take part in an
10 interview where Mr. Thomas Stewart gave a statement
11 regarding his actions in Bellanie Clyburn's death?

12 A. Yes, sir.

13 Q. Okay. And can you tell us where that interrogation
14 occur?

15 A. In The Pageland Police Department squad room.

16 Q. Okay. And when you say the squad room, is that a small
17 space, or is it a larger room; what kind of room is
18 this?

19 A. It is a room with police lockers in it, and little
20 desk, holes where memos and stuff like that, and it's
21 got like a table in there, and on the table will sit
22 about six chairs. There is a desk in there that will
23 sit another chair, and we have another chair for a
24 person giving us a complaint or something for officer
25 to take a statement.

LARRY BROWN - DIRECT EXAMINATION

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1 Q. All right. So, in order to accommodate all of that, it
2 must be a good size room?

3 A. Yes.

4 Q. Okay, then. And what time of the day was it when you
5 had the opportunity to speak with Mr. Thomas Stewart?

6 A. Around twoish o'clock, and then we talked to him again
7 sometime after three, because we did talk to him first
8 about the statement --- about the Miranda warning, and
9 then the kids outside were getting rested, cause it had
10 been all morning, so we decide to interview them first,
11 and bring Thomas back in later.

12 Q. Okay. So, you actually Mirandized Mr. Stewart, and
13 then performed another interview, and then came back to
14 him; did I understand that correctly?

15 A. Right.

16 Q. Okay.

17 A. We didn't interview him at first. We wasn't interview
18 him, but they want us to do the kids first, so we stop,
19 and then we got the kids, then we got him later.

20 Q. Okay. So, it wasn't planned that you did a Miranda,
21 and then did something else and came back?

22 A. No.

23 Q. That was due to --- When you say kids, what kids are
24 you talking about?

25 A. The deceased's children.

LARRY BROWN - DIRECT EXAMINATION

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1 Q. Okay. How old were these children?

2 A. At the time I think one was about maybe, five and seven
3 maybe, or seven, and five, and eight maybe.

4 Q. These were small children? These were not adolescent
5 children?

6 A. No.

7 Q. Okay. And how long had they been at Pageland Police
8 Department?

9 A. Every since the incident took place.

10 Q. And when did the incident take place?

11 A. Around, started like, nine o'clock that morning.

12 Q. Okay. All right, then. All right. So, you state that
13 you had the opportunity to give a Miranda Warning to
14 Mr. Stewart; is that correct?

15 A. Yes, sir.

16 Q. Okay. And can you please tell the Court what was the
17 means by which you did this. Was this done in writing,
18 or was this done orally?

19 A. It was --- We read it to him from the paper. From the
20 Miranda Warning paper, the formality of the police
21 department, it is a standardized form. And read him
22 his rights and he signed it, and in the second part he
23 waived the right to talk to us without attorney
24 present, and he signed that part.

25 MR. FOARD: Your Honor, may I approach?

LARRY BROWN - DIRECT EXAMINATION

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1 THE COURT: You may.

2 MR. FOARD: Thank you.

3 Q. Chief Brown, I am handing you what has been marked as
4 State's Exhibit Number 1. Can you please identify that
5 for the Court?

6 A. It is a rights form that we use the day of questioning,
7 January 1, 2010, from Mr. Thomas Stewart.

8 Q. Okay, then. This is your standard waiver of rights
9 form that you use?

10 A. Yes, sir.

11 Q. And, can you please tell us what is the date and time
12 associated with the execution of this form?

13 A. January 1, 2010, at 2:09 p.m.

14 Q. 2:09 p.m. And if you could please, tell the Court what
15 are the specific rights that this form covers?

16 A. It say before we ask you any questions you must
17 understand your right. You have the right to remain
18 silent. Anything you say can and be use against you in
19 a court of law. You have a right to talk to a lawyer
20 for advice before we ask you any questions, and to have
21 him or her present with you during questioning. If you
22 have no money for lawyer fees, the Court will appoint
23 you one to represent you without cost to you if you
24 wish. If you decide to answer question now without a
25 lawyer present, you still have the right to stop

LARRY BROWN - DIRECT EXAMINATION

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1 answering question at any time. You also have the
2 right to stop answering question anytime until you talk
3 with a lawyer. I have read these right. And I read
4 the statement and my right, and I understand what my
5 rights are. Signed, Thomas Stewart.

6 Q. So, Mr. Stewart actually signed this in his own hand?

7 A. Yes.

8 Q. And that is the actual rights portion of the form. Is
9 there a waiver of rights?

10 A. Waiver of right is the second form, and reads as
11 follows. I am willing to make a statement and answer
12 questions. I do not want a lawyer at this time. I
13 understand and know what I am doing. No promises or
14 threats have been made to me. And no pressure or
15 coercion of any kind have been used against me. And he
16 signed it also waiving his rights in that matter. And
17 Agent Gainey from SLED signed it, and I signed it also
18 witnessing his signature.

19 Q. All right. So, Mr. Stewart actually signed this form
20 twice; is that correct?

21 A. Yes, he did.

22 Q. And you witnessed at the bottom, indicating that you
23 saw him personally execute this form?

24 A. Yes.

25 Q. And what is the time in which you witnessed this form?

LARRY BROWN - DIRECT EXAMINATION

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- 1 A. 2:11 p.m.
- 2 Q. And you say the execution of this form occurred at
- 3 Pageland Police Department in the squad room?
- 4 A. Yes.
- 5 Q. At that time was Mr. Stewart under arrest?
- 6 A. Yes, he was.
- 7 Q. Okay. Being charged with murder in the case of
- 8 Bellanie Clyburn?
- 9 A. Yes, he was.
- 10 Q. All right, then. Had he been at Pageland Police
- 11 Department since earlier in the morning when the ---
- 12 shortly after the incident occurred?
- 13 A. Yeah.
- 14 Q. So, he had been there for a number of hours at that
- 15 point; correct?
- 16 A. Yes.
- 17 Q. At any point in time, during that time period that he
- 18 was at Pageland Police Department, did you or anyone
- 19 else that you may have witnessed take any action
- 20 towards him that could be deemed threatening or
- 21 coercive?
- 22 A. No.
- 23 Q. Did anybody put him under duress, or promise him any
- 24 hope or reward if he gave a statement or waived his
- 25 rights?

LARRY BROWN - DIRECT EXAMINATION

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1 A. No.

2 Q. All right. Was he denied any access to restroom
3 facilities or anything of that nature?

4 A. No.

5 Q. Had he requested food or drink or anything of that
6 nature, would that have provided for?

7 A. Yes.

8 Q. Did that occur?

9 A. I'm not sure, but they offered him food during that
10 time, or he ate some or denied it, cause at the time he
11 should have been offered some food.

12 Q. But, if he wanted it, it would have been granted to
13 him?

14 A. Yes.

15 Q. Okay. Do you believe that Mr. Stewart understood what
16 he was doing when he executed the waiver of rights form
17 that we have just gone over?

18 A. Yes.

19 Q. Okay. Did you notice anything about him physically or
20 emotionally that you think would have prevented him
21 from understanding his rights?

22 A. No.

23 Q. Did he appear to be intoxicated or under the influence
24 of any drugs?

25 A. No.

LARRY BROWN - DIRECT EXAMINATION

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1 Q. Did he ever ask to speak with an attorney?

2 A. No.

3 Q. Never at the time of the execution of the rights form
4 or subsequently during the interview?

5 A. He made some reference that --- I don't know he worded
6 it. Some reference that if he needed a lawyer, he
7 would stop answering questions.

8 Q. I didn't understand that. Can you say that again?

9 A. He made reference to the effect that if he need an
10 attorney, or he would stop answering questions, or stop
11 talking.

12 Q. All right. So, he said if he thought that he needed an
13 attorney he would end his answering?

14 A. Right.

15 Q. Okay. All right, then. And the interview that was
16 subsequently performed after the waiving of the rights,
17 was that captured with video and audio monitoring
18 equipment?

19 A. No, it was not.

20 Q. Is there a video?

21 A. Yes.

22 Q. Is there a video of an interview at Pageland Police
23 Department?

24 A. Yes.

25 Q. Was that interview taken after these Miranda rights

LARRY BROWN - DIRECT EXAMINATION

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1 were given?

2 A. After, correct.

3 Q. After these Miranda rights were given. All right.

4 MR. FOARD: Your Honor, we have the tape cued up
5 prepared to show. However, in the interest of things, my
6 final witness will be very, very short. It maybe that since
7 you are the only person viewing it, you might would want to
8 view it at the end. I don't know. We can do it now or
9 then.

10 THE COURT: Let's go ahead and take the testimony, so
11 we won't hold up the witnesses.

12 And is there anything further for the Chief?

13 MR. FOARD: Nothing on direct, Your Honor. Other
14 than just getting the actual videotape in through him, Your
15 Honor.

16 We would move to admit State's Exhibit Number 1 into
17 evidence, and then at the appropriate time move to admit the
18 accompanying statement into evidence. That has not been
19 presently marked, but I assume it will be State's Exhibit
20 Number 2 at the appropriate time.

21 THE COURT: All right. Let's start with State's
22 Exhibit Number 1. Is there an objection to the Miranda
23 form?

24 MR. YOUNG: No, Your Honor.

25 THE COURT: All right. State's 1, in evidence

LARRY BROWN - CROSS EXAMINATION

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1 without objection.

2 **WHEREUPON, STATE'S EXHIBIT**

3 **NUMBER 1 WAS ADMITTED INTO**

4 **EVIDENCE WITHOUT OBJECTION.**

5 THE COURT: And, then we will take up after you cross
6 examine, State's 2. Go ahead.

7 MR. YOUNG: Thank you, Your Honor.

8 **CROSS EXAMINATION BY MR. YOUNG**

9 Q. Chief Brown, real quick. Were you present at the
10 police station when Mr. Stewart was brought in?

11 A. When he actually came into the building?

12 Q. Yes, sir.

13 A. I'm not sure. I could have still been on the scene.
14 I'm not sure. I could be crime -- I'm not sure. I
15 could still be on the crime scene then.

16 Q. Okay.

17 A. I'm not exactly sure. I'm not sure I was there or not
18 at that point.

19 Q. When you first saw Mr. Stewart, what was he wearing?

20 A. I'm not remember. Something like --- like shirt and
21 pants. I know he had jeans on, he had blood on his
22 hands.

23 Q. So, you saw him in his street clothes prior to him
24 being put into a jail?

25 A. Yeah.

LARRY BROWN - CROSS EXAMINATION

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1 Q. Jumpsuit?

2 A. Yes.

3 Q. Were you present for him being put into a jail
4 jumpsuit?

5 A. Yes.

6 Q. Prior to him being put into that jumpsuit, there were a
7 number of pictures taken of him?

8 A. Yes.

9 Q. And they documented his injuries?

10 A. Yes.

11 Q. His injuries to his hands?

12 A. Right.

13 Q. And his injuries to his ear?

14 A. Right.

15 Q. And the blood on his clothes?

16 A. Yeah, blood.

17 Q. Right.

18 A. On his clothes --- on his hands and on wherever. I
19 can't remembered exactly where the blood was at. But
20 the blood all over him at some point, I mean, I can't
21 tell you exactly where the blood was at on the shirt or
22 his pants, but there was blood on him.

23 Q. Was this prior to --- Were these injuries documented
24 prior to him filing out the Miranda form?

25 A. Yeah. As to prior to that yeah. Prior to that form

LARRY BROWN - CROSS EXAMINATION

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1 there.

2 Q. Prior to State's 1?

3 A. Yeah.

4 MR. YOUNG: Your Honor, for the purpose of this
5 hearing, I need to show Chief Brown here if he recognizes
6 these pictures real quick.

7 THE COURT: Certainly.

8 A. Yes, sir.

9 Q. Did you take these pictures?

10 A. Um, I don't recall who took um, but I was present. I
11 don't recall who took them.

12 Q. Do these accurately reflect how Mr. Stewart looked at
13 the time of his arrest, or at the time he came into the
14 Pageland Police Department?

15 A. Yes.

16 MR. YOUNG: Your Honor, I would just move these in
17 as Defendant's 1 for purposes of this hearing.

18 THE COURT: Very good. Have you seen them, Mr.
19 Foard?

20 MR. FOARD: I'm sorry, Your Honor.

21 THE COURT: Have you seen the pictures?

22 MR. FOARD: I have. I have just reviewed them, and
23 no objection.

24 THE COURT: All right. Then as a group, let's take a
25 moment and let our court reporter mark them as Defendant's

LARRY BROWN - CROSS EXAMINATION

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1 1.

2 WHEREUPON, DEFENDANT'S EXHIBIT
3 NUMBER 1 WAS ADMITTED INTO
4 EVIDENCE WITHOUT OBJECTION.

5 MR. YOUNG: Your Honor, I would like to pass these
6 up to the Court.

7 THE COURT: Thank you.

8 MR. YOUNG: Thank you.

9 Q. Now, Chief, after you documented those injuries to Mr.
10 Stewart, was he seen by any medical personnel?

11 A. I can't recall.

12 Q. Did you have a doctor present at the police department?

13 A. We don't have a doctor on staff, no we do not.

14 Q. Did you have any EMS there?

15 A. We had EMS next door, but I'm not sure that they came
16 over or not. I can't recall that.

17 Q. Okay. Were any pictures taken after Mr. Stewart was
18 cleaned up from his injuries?

19 A. Um, I can't recall.

20 Q. So, if Mr. Stewart was detained at Pig's Park at 9:36,
21 I believe was Officer Carnes testimony, and then he was
22 transported by Officer Newman to the Pageland Police
23 Department, he didn't go anywhere else. Is it safe to
24 say he was in the Pageland Police Department before
25 ten?

LARRY BROWN - CROSS EXAMINATION

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- 1 A. Should have been.
- 2 Q. About ten?
- 3 A. Uh'hum.
- 4 Q. So, then he sits there, y'all take pictures of him,
5 nobody talks to him during that period of time?
- 6 A. Talk to him --- I don't recall asking him question
7 about the crime itself. He was probably placed in a
8 jail, because we had so many people in that lobby with
9 interview and interact with, cause they were irrate
10 people in the Town of Pageland that day, and we had to
11 tend to a lot of other businesses instead of watching
12 Thomas Stewart in a jail cell.
- 13 Q. Okay. The Pageland Police Department is fairly small?
- 14 A. Uh'huh.
- 15 Q. There is really no other room to interview people other
16 than the squad room that you talked about?
- 17 A. Basically, yes.
- 18 Q. And that is the same room that I first met you in when
19 we were doing the physical evidence --
- 20 A. -- same room --
- 21 Q. -- a couple of weeks ago; right? You said there were a
22 lot of witnesses there. Do you know how many witnesses
23 were there?
- 24 A. During what time?
- 25 Q. In the morning. Witnesses from the incident who came

LARRY BROWN - CROSS EXAMINATION

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1 to Pageland to be questioned. How many witness came to
2 police station?

3 A. I can't recall exact how many.

4 Q. Were they each Mirandized on a similar form?

5 A. No. If you are not under arrest, your statement form -
6 -- on your --- it is partially Mirandizing your
7 statement on top of you. You not under arrest, you are
8 not liable to make any statements. It is a different
9 form.

10 Q. It is a different form?

11 A. Yes, people that not under arrest, yes.

12 Q. Right. Were you present for the first videotape
13 interview was a elderly woman named Carrie Day; is that
14 correct?

15 A. Carry Day?

16 Q. Yes.

17 A. I talked to Carrie Day, but I don't remember --- I
18 don't remember we videotape her statement or not.

19 Q. And you had the video with you today; correct?

20 A. Yeah.

21 Q. The original VHS?

22 A. Right.

23 Q. So, if the video starts with an interview of an elderly
24 woman who says her name is Carrie Day, you don't have
25 any reason to --

LARRY BROWN - CROSS EXAMINATION

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- 1 A. -- No --
- 2 Q. -- to disagree with that; right?
- 3 A. Right.
- 4 Q. That wasn't taken at a later time and substituted in or
- 5 anything?
- 6 A. No.
- 7 Q. And Officer Newman did that interview; is that correct?
- 8 A. I see he was the lead investigator on that case at the
- 9 time.
- 10 Q. Okay. Was Officer Newman the one who was working the
- 11 camera when you interviewed Mr. Stewart?
- 12 A. I think it was Sergeant Melton.
- 13 Q. You think it was Sergeant Melton?
- 14 A. Melton. M-E-L-T-ON. Sergeant Melton.
- 15 Q. Did you purposely elect not to videotape the Miranda of
- 16 Mr. Stewart?
- 17 A. No, I did not.
- 18 Q. Do you have any reason to understand why that was not
- 19 videotaped?
- 20 A. Actually I don't think the camera was going at that
- 21 time. We thought it was recording, but it wasn't
- 22 recording.
- 23 Q. Okay. And that happened --- Just so that I understand
- 24 and your memory correctly, there was a interview taken
- 25 of Carrie Day that is chronologically on the tape;

LARRY BROWN - CROSS EXAMINATION

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1 right?

2 A. Yeah.

3 Q. And then the tape cuts off, and then you have Mr.
4 Stewart in there, you read him his rights, is that
5 correct so far?

6 A. I don't think we read Stewart his right before --- the
7 first time we read Mr. Stewart's rights before even the
8 camera even got there.

9 Q. Before the camera arrived?

10 A. Yes. Then we wanted to interview the kids first,
11 because they was getting impatient and worn down. We
12 take him back out and placed him back in jail, and got
13 him later. Then on the tape I asked him, you know, you
14 been Mirandized and acknowledge you Mirandized, and he
15 say yes. And I say, you understand your rights? Yes.
16 Do you still want to talk to us, and he say yes.

17 Q. So, that was like a refresher on Miranda after he had
18 spent some time in the jail cell and then came back
19 out?

20 A. Correct.

21 Q. And in between those two interviews were the interviews
22 of the children?

23 A. Right.

24 Q. And those were J.D. and K.S. --

25 A. -- K.S. --

LARRY BROWN - CROSS EXAMINATION

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1 Q. Stewart?

2 A. Yes.

3 Q. Right. And, K.S. --- If I say K.S. was age six at the
4 time and J.D. was age ten, does that sound about
5 right?

6 A. J.D. , I just --- the --- K.S. is the baby, he is
7 youngest.

8 Q. Thomas and Bellanie's child?

9 A. Right.

10 Q. All right. And if I tell you he was about six at the
11 time, does that sound about right?

12 A. About right, yeah. Five or six.

13 Q. And if I tell you J.D. was about ten at the time,
14 does that sound about right?

15 A. Eight, nine, or ten, something like that.

16 MR. YOUNG: Thank you, that is all the questions I
17 have at this time.

18 THE COURT: Is there redirect?

19 MR. FOARD: No, Your Honor.

20 THE COURT: All right, sir. You may step down. You
21 are free to remain or you are free to leave.

22 Please call your next witness.

23 MR. FOARD: Thank you, Your Honor. I would call
24 SLED Agent Gainey.

25 And then after Ms. Gainey, that is when I will address

KRISTINA BROWN-GAINEY - DIRECT EXAMINATION

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1 the videotape.

2 THE COURT: All right, very good. Please come
3 forward and take the oath of a witness.

4 WHEREUPON, KRISTINA BROWN-GAINEY

5 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

6 AGENT GAINEY: I do.

7 DIRECT EXAMINATION BY MR. FOARD

8 Q. Good afternoon, ma'am. Would you please state your
9 name for the record?

10 A. Kristina Brown-Gainey.

11 Q. And, by whom are you employed?

12 A. State Law Enforcement Division.

13 Q. And what is your role at SLED?

14 A. I am a Field Agent in the Pee Dee Region.

15 Q. All right. That means you go out to scenes when you
16 are called by local law enforcement?

17 A. SLED is an assisting agency, so when a local or city,
18 county agency calls and ask for our request, we
19 respond.

20 Q. Okay. And, do you recall being involved in the case at
21 all of Mr. Thomas Stewart, who is present in the
22 courtroom today?

23 A. I do.

24 Q. And do you have knowledge of your role in appearing at
25 the time Mr. Stewart gave an interview at Pageland

KRISTINA BROWN-GAINEY - DIRECT EXAMINATION

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1 Police Department on January 1, 2010?

2 A. Yes. Chief Brown called and asked for me to respond in
3 an assisting capacity.

4 Q. Okay.

5 MR. FOARD: Your Honor, may I approach the witness?

6 THE COURT: You may.

7 Q. Agent Gainey, I am handing you what has previously been
8 marked and admitted as State's Exhibit Number 1. Do
9 you recognize a form of this nature?

10 A. It is Pageland Police Department Miranda rights.

11 Q. Okay. And, is your name or your signature, does it
12 appear on this form anywhere?

13 A. It does, under waiver of rights, for the first witness
14 name has my initials.

15 Q. Okay. And that indicates that you would have been
16 present when this form would have been executed?

17 A. Correct.

18 Q. And, so having reviewed this form, would I be correct
19 in stating that you were present when Mr. Thomas
20 Stewart, the defendant, read this form and signed
21 indicating that he waived his Miranda rights as well as
22 waiving his right to an attorney at that time?

23 A. That would be correct.

24 Q. All right, then. At the time that this occurred, do
25 you recall Mr. Stewart being under any type of duress,

KRISTINA BROWN-GAINEY - DIRECT EXAMINATION

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1 or being threatened or coerced in any way?

2 A. No, sir.

3 Q. You would have had no role in any behavior of that
4 nature would you?

5 A. No, sir.

6 Q. All right, then. And to the best of your recollection,
7 do you recall anything that would have given you reason
8 to think that he was not able to competently understand
9 the nature of what he was signing or the rights that he
10 was giving up by continuing with that interview?

11 A. No.

12 Q. Okay, then. Nothing about him physically or
13 emotionally that would have given you any pause about
14 going forward with the interview?

15 A. Not to my recollection.

16 Q. And do you recall being present during that interview?

17 A. Yes.

18 Q. And to the best of your recollection, did he ever
19 indicate that he wished to speak with an attorney, or
20 want to stop the interview process in order to consult
21 with an attorney?

22 A. I can't recall.

23 Q. Fair enough.

24 MR. FOARD: Your Honor, I don't have any further
25 questions.

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1 THE COURT: All right. Cross examination.

2 MR. YOUNG: Your Honor, we don't have any questions
3 at this time. Thank you, Agent Gainey.

4 THE COURT: Then ma'am, you are free to step down.
5 You are free to leave if you wish, or you may remain if you
6 wish.

7 AGENT GAINNEY: Thank you, Your Honor.

8 THE COURT: Thank you. All right. Counsel, do you
9 have the tape in question?

10 MR. FOARD: Yes, Your Honor. I have it cued up on
11 my laptop and can bring it to the bench, if Your Honor so
12 desires.

13 THE COURT: How long is it?

14 MR. FOARD: It is about forty or forty-five minutes.

15 THE COURT: And how long is the Miranda portion.

16 MR. FOARD: Well, the Miranda is actually on the
17 front of the video from my understanding. But, I think that
18 is what you would like to watch.

19 THE COURT: All right. And, counsel do you wish for
20 me to just stand down and review this for a moment or two,
21 and come back and take closing comments?

22 MR. JONES: Yes, Your Honor. I don't see that you
23 need more than a couple of minutes.

24 THE COURT: Let's do that. I am actually going to
25 review it in chambers so that you all can organize your

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1 thoughts, and I will be back in just a moment.

2 MR. FOARD: Thank you, Your Honor.

3 (Whereupon, a recess was taken from 4:37 p.m.
4 until 4:46 p.m.)

5 THE COURT: All right. Counsel, I have had a
6 opportunity to view the tape. Of course, not in its
7 entirety, but the intro of it, and then a portion of the
8 statement itself. Let me hear from you now in closing, if
9 you wish to make a closing statement as to why you believe
10 the statement should either be suppressed in the part of the
11 defense, or it should be offered or admitted into testimony
12 for the State.

13 MR. YOUNG: Your Honor, we would like to call Mr.
14 Stewart in relation to --- for the limited purpose of
15 testifying about his Fifth Amendment and Miranda rights.

16 THE COURT: Very good. Please come forward and take
17 the oath of a witness, sir.

18 **WHEREUPON, THOMAS JEFFREY STEWART**

19 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

20 MR. STEWART: I do.

21 THE COURT: Before you do that, let me speak with Mr.
22 Stewart about his rights if I may.

23 Mr. Stewart, of course, you realize that you have been
24 called here for the limited purpose of this Jackson v Denno
25 Hearing, which is to determine whether or not the statements

THE STATE V THOMAS JEFFREY STEWART

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1 that you gave were voluntary and are admissible in evidence;
2 do you understand that, sir?

3 MR. STEWART: Yes, sir.

4 THE COURT: All right. Now, you have just taken the
5 stand. You are under oath. A record is being made of what
6 you say. And do you understand that?

7 MR. STEWART: Yes, sir.

8 THE COURT: All right. The purpose of this hearing
9 is limited to the Jackson v Denno issues, because if you
10 make some admission concerning the charge which is pending
11 against you, then that may be used against you at a later
12 time by the Solicitor in your trial. Do you understand
13 that, sir?

14 MR. STEWART: Yes, sir.

15 THE COURT: All right, very good. Now, do you have
16 any questions about your rights with regards to testifying
17 in this hearing?

18 MR. STEWART: I think you just explained them to me,
19 Your Honor.

20 THE COURT: All right. Now, you have to come way up
21 on volume, because for one thing the tape is extremely hard
22 to understand because of you being soft-spoken, but I will
23 need you to speak up a little bit.

24 Do you understand though that you have the right to
25 remain silent, and you don't have to testify at this

THOMAS JEFFREY STEWART - DIRECT EXAMINATION

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1 proceeding in the first place if you don't wish to. Do you
2 understand that?

3 MR. STEWART: Yes, Your Honor, I do.

4 THE COURT: All right, very good. Now, please
5 proceed.

6 **DIRECT EXAMINATION BY MR. YOUNG**

7 Q. Mr. Stewart, I am going to stand back here so that when
8 you talk to me, you have to make sure that I can hear
9 you; okay, Thomas?

10 A. Yes, sir.

11 Q. Okay, Thomas?

12 A. Yes, sir.

13 Q. A little louder.

14 A. Yes, sir.

15 Q. Thank you.

16 THE COURT: Thank you.

17 Q. Mr. Stewart, we are just talking about what happened
18 after you were taken into custody at Pig's Park. We
19 are not talking about anything that lead up to you
20 being taken into custody. Are you clear about that?

21 A. Yes, sir.

22 Q. All right. When you got to Pig's Park, you were
23 driving a Chevy Tahoe?

24 A. Yes, sir.

25 Q. What condition were you in?

THOMAS JEFFREY STEWART - DIRECT EXAMINATION

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1 A. I was --- I was knocked out before then, and I had
2 swelling on the left side of my head, and I was stabbed
3 in my hearing. I was stabbed in my hearing, in my ear
4 two times, and I was cut like halfway through it. And
5 I was --- I was not in my right state of mind at that
6 time.

7 Q. Did you recognize Officer Carnes?

8 A. Yes, in the green.

9 Q. Did you recognize him as being law enforcement when he
10 pulled up behind you at Pig's Park?

11 A. No, sir, I didn't.

12 Q. Tell me what happened?

13 A. I was just driving, and I was knocking people --- I
14 almost hit people and knocked people off the road, and
15 I was just trying to get to a safe spot. When I pulled
16 into Pig's Park, because I coach baseball, and I was
17 familiar with the Parks, both of them, Jefferson and
18 Pageland. I use to do a lot of coaching baseball and
19 umpiring. And I just thought it was a ditch out there,
20 because it rained a day before. I thought it was a
21 ditch out there that had some water, and I was just
22 going to wash my --- wash my eyes out.

23 Q. When you got out of the car, Officer Carnes was
24 pointing a gun at you?

25 A. No --- No, he wasn't pointing a gun at me. He ordered

THOMAS JEFFREY STEWART - DIRECT EXAMINATION

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1 me to get down in front of his car, because he had ---
2 he says it's a camera in front of his car. He says get
3 in front of my car, because I have a camera to watch
4 you while I go check your vehicle.

5 Q. Did you?

6 A. Yes, sir, I got down.

7 Q. Did he put you in handcuffs?

8 A. Not at that time he did not put me in handcuffs.

9 Q. Did he read you your rights?

10 A. No, sir, he didn't read me my rights.

11 Q. Did he ask you any questions?

12 A. Yes, he did.

13 Q. Like what?

14 A. Larry Brown, when the Chief --- Assistant Chief came on
15 the radio said, do not decon him, bring him in, bring
16 and hook him to the rails. He said Larry Brown is a
17 dirty cop and we want him anyway. And he proceeded to
18 question me about what happened.

19 Q. Did you respond to his questions?

20 A. He --- he asked me --- he told me she's not dead yet,
21 so I don't know what to charge you with, so I can't
22 read you any rights at that time. And then when
23 Sergeant --- when the other officer pulled up, because
24 he got on the radio and he said I got the subject in
25 custody. I think I'm remember right. He said, I got

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1 subject in custody. He is full of blood. But the only
2 blood I had on my shirt was the one where he washed my
3 face with my shirt, because I had a stab in my chest,
4 and he pulled my shirt up and looked at it and said,
5 yeah, you been stabbed. And he washed my face as he
6 poured water from the top of my head and it ran down on
7 my clothes.

8 Q. Did you get in the car with Officer Newman?

9 A. Yes, sir, I did.

10 Q. And where did he take you?

11 A. He took me to Pageland Police Department.

12 Q. And what did he do when you got there?

13 A. He said that --- He didn't say anything when he pulled
14 in. He asked me if I was alright. He just kept asking
15 me if I was alright. He just asking me if I was
16 alright. I don't seem like I'm alright. And he stayed
17 there with me and talked to me a while. And as I was
18 bending down and he was just questioning me about are
19 you alright? Are you alright? And so two minutes
20 later he get the camera and he take picture --- he
21 start taking --- he told me to take my clothes off and
22 he start taking pictures of me. And he was taking
23 pictures of my chest, and my arm, and my hand, and he
24 took pictures of my ear. And Larry Brown came in and
25 took the camera from him, and said get out of the way,

THOMAS JEFFREY STEWART - DIRECT EXAMINATION

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1 let me have the camera. And Larry Brown start taking
2 pictures of me. And then by that time the SLED woman
3 came in, and she asked me for my clothes. And then I
4 think what --- well, she didn't come in and get my
5 clothes actually. I think Larry Brown bagged my
6 clothes in a bag, him and Mekos. And the SLED lady was
7 at the door, and she got the clothes from them. And
8 Larry Brown and Mekos went out of the room. And Bobby
9 came back there to get me and he walked me to the room.
10 And when I was sitting in the room he said, you better
11 give a statement, because if that my sister, I kill you
12 myself. So, I said, what you mean? And he said just
13 what I said. I kill you myself. He said, if you don't
14 give a statement, I kill you myself. That what he told
15 me.

16 Q. That is what Officer Melton told you?

17 A. The big fat one --- the big fat one. I don't --- I
18 can't recall his --- I think his name is Melton.

19 Q. Prior to that, did Officer Newman read you your Miranda
20 rights at Pig's Park?

21 A. No, nobody read me my rights. They didn't know what I
22 was charged with.

23 Q. Let me show you what has been introduced as State's
24 Exhibit Number 1. Do you recognize that document?

25 A. No, I don't.

THOMAS JEFFREY STEWART - DIRECT EXAMINATION

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1 Q. Is that your signature on the document?

2 A. No, it is not.

3 Q. Your testimony is this is not your signature?

4 A. No, it is not.

5 Q. And this is not your signature?

6 A. No, it is not.

7 (PAUSE.)

8 Q. Mr. Stewart, I want to show you what has been marked as
9 Defense Exhibit Number 2, which is the Pageland Police
10 Department Medical Screening Form. Do you recognize
11 that document?

12 A. Yes, I do.

13 Q. Is that document have something at the bottom of it
14 that purports to be your signature?

15 A. Yes, it is.

16 Q. Is that your signature on that document?

17 A. Yes, it is.

18 Q. I draw your attention to one of the questions.
19 Question number seventeen. Can you read that for the
20 Court?

21 A. Have you fainted recently or had a recent head injury?

22 Q. And what was your response?

23 A. Yes, it was. Yes.

24 MR. YOUNG: Your Honor, at this time I would offer
25 Defense Exhibit Number 2 into evidence for purposes of the

THOMAS JEFFREY STEWART - DIRECT EXAMINATION

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1 Jackson v Denno hearing.

2 MR. FOARD: Without objection.

3 THE COURT: Without objection. Defense 2 in
4 evidence.

5 **WHEREUPON, DEFENSE EXHIBIT**

6 **NUMBER 2 WAS ADMITTED INTO**

7 **EVIDENCE WITHOUT OBJECTION.**

8 Q. Mr. Stewart, on the video statement for about forty-
9 five minutes where you talk with Chief Brown, and Agent
10 Gainey, and Officer Newman were all present? And you
11 have watched that video; right?

12 A. And Bobby, and Bobby was present, because he was
13 running the camera. The big fat one.

14 Q. Officer Melton.

15 A. Yeah. Yeah, Melton.

16 Q. Is that correct?

17 A. Yes, it is.

18 Q. And you have reviewed that statement; right?

19 A. Yes, I have.

20 Q. After that interview was completed, you were returned
21 to your cell?

22 A. I wasn't in a cell.

23 Q. Where were you taken?

24 A. I was in the first part of it, before you go to the
25 cells. I was right there at the desk where you can use

THOMAS JEFFREY STEWART - DIRECT EXAMINATION

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1 the phone and all of that stuff.

2 Q. Okay. Were you asking for medical attention? Did you
3 have anything wrong with you?

4 A. Yes, I was asking for medical attention. All the time.
5 I asked when I first got there. And I asked to take
6 out a warrant on her. But, he said --- Larry Brown
7 told me, we don't care nothing about you. She's dead.
8 We don't care nothing about you. So, he said give him
9 a band-aid, and he laughed and walked away.

10 Q. At some point later were you taken to see a doctor?

11 A. Yes, I was.

12 Q. Why were you taken to see a doctor?

13 A. Because I had a concussion. I was throwing up in the
14 cell. And the woman came back there and checked on me.
15 She asked me what I was doing, and I said, I've been
16 trying to tell them all day I have heads injury. You
17 know, I was knocked out. And she said, what's wrong?
18 And I said, I don't know. I said, I need to go to the
19 hospital. And the Officer said well, they don't want
20 you to go to the hospital, but I am going to call
21 somebody, and then I am going to take you.

22 Q. And did they?

23 A. Yeah, he took me to the hospital.

24 Q. Okay. When did they take you to the hospital?

25 A. Oh, about twenty hours later. Eighteen, nineteen,

THOMAS JEFFREY STEWART - DIRECT EXAMINATION

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1 something like that hours later.

2 Q. Was it about 04:30 in the morning?

3 A. Yeah, it was before the break of dawn, yes, sir. I
4 think --- I don't know what time it was, but.

5 MR. YOUNG: Your Honor, for the record, and for Your
6 Honor's purposes, I would introduce --- or offer Defense
7 Exhibit Number 3, the police report indicating that Mr.
8 Stewart was taken to the ER at approximately 04:30 in the
9 morning, complaining of a headache and a migraine, and the
10 prescription log sheet showing that he was given eight
11 hundred milligrams of ibuprofen at that time.

12 MR. FOARD: No objection.

13 THE COURT: Very good. In evidence without
14 objection.

15 **WHEREUPON, DEFENSE EXHIBIT**
16 **NUMBER 3 WAS ADMITTED INTO**
17 **EVIDENCE WITHOUT OBJECTION.**

18 MR. YOUNG: Mr. Stewart, please answer any questions
19 that Mr. Foard may have.

20 MR. STEWART: I will.

21 THE COURT: Cross examination.

22 **CROSS EXAMINATION BY MR. FOARD**

23 Q. Mr. Stewart, how old are you?

24 A. Forty-three.

25 Q. Okay. And what was your employment up until the time

THOMAS JEFFREY STEWART - DIRECT EXAMINATION

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1 that you were arrested for this?

2 A. I coach baseball for Pageland --- I coach baseball for
3 Jefferson and Pageland, and I umpire for both.

4 Q. Okay. And, did you --- did you ever partake in any
5 form of gambling on a regular basis as a means of
6 generating income?

7 A. Yes, I gamble.

8 Q. Okay. Was that done locally like at your local
9 backroom game, or were you going to casino's for that
10 type of activity?

11 A. I did it in houses, and I did it --- I did a little ---
12 When they sent me invitations in the mail to come, I
13 had to bring a couple of thousand dollars to
14 participate in gambling. I did a lot of, you know,
15 sportsman gambling.

16 Q. And did you derive a significant amount of income from
17 that?

18 A. No. No. There's no income in that period.

19 Q. Okay. All right, then. Let's just touch on a couple
20 of things real quick. Have you ever had any
21 involvement in the criminal justice system prior to
22 being charged with this incident?

23 A. What you mean, like years ago?

24 Q. At any time in your life?

25 A. Yeah, when I was seventeen, eighteen years old, I

THOMAS JEFFREY STEWART - DIRECT EXAMINATION

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1 committed robbery.

2 Q. Okay, then. Have you ever been in your adult years,
3 have you ever been charged with a crime?

4 A. Yeah, driving my license revoke.

5 Q. I'm sorry?

6 A. Driving my license revoke.

7 Q. Okay, then. Did --- Where did that occur at?

8 A. Everywhere.

9 Q. Everywhere. Okay.

10 A. Yes.

11 Q. Were you ever charged in Chesterfield County with any
12 significant crimes?

13 A. Just driving my license revoke.

14 Q. Okay. So, you were never charged with kidnaping here
15 in Chesterfield County?

16 A. I was --- I was --- I was charged, but I wasn't
17 charged, because I have proof where I was. She told a
18 lie, because she caught me and my wife at the movies.

19 Q. Were you arrested for kidnaping?

20 A. Yeah, because she had took out a warrant.

21 Q. Okay. And, were you arrested for criminal domestic
22 violence of a high and aggravated nature at the same
23 time?

24 A. That when she told the lie to get me locked up.

25 Q. Okay. In fact, you have been charged with a major

THOMAS JEFFREY STEWART - DIRECT EXAMINATION

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1 offense during your adult life here in Chesterfield
2 County?

3 A. I want to --

4 Q. -- Not convicted, charged, Mr. Stewart?

5 A. She took out a fake warrant on me, because she was
6 jealous, and that is what she did. She took out
7 warrants every time she caught me with my wife.

8 Q. Who is she?

9 A. Bellanie Clyburn.

10 Q. Okay, then. All right.

11 A. But she was charged, not me. She was charged for the
12 crime, not me.

13 Q. You were never charged with a crime here in
14 Chesterfield County?

15 A. No, I was --- I have never been in no courtroom for a
16 charge in Chesterfield County. I have never been in
17 general sessions. I just want to make that clear. I
18 never been in the courtroom period in front of a judge
19 in Chesterfield County. She was charged for it for
20 taking out a lie on me.

21 MR. FOARD: Beg court's indulgence, Your Honor.

22 (PAUSE.)

23 MR. FOARD: May we approach, Your Honor?

24 THE COURT: You may.

25 WHEREUPON, STATE'S EXHIBIT

THOMAS JEFFREY STEWART - DIRECT EXAMINATION

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NUMBER 3 WAS ADMITTED INTO

EVIDENCE.

(PAUSE.)

Q. Mr. Stewart, I am handing you what I have just had marked as State's Exhibit Number 3. Does your name appear on either of these documents?

A. Yes.

Q. And what appears immediately before your name on these documents?

A. The State versus Thomas Stewart.

Q. The State versus Thomas Stewart?

A. Yes, sir.

Q. And, can you please read above where it says The State versus Thomas Stewart, what does the document say?

A. It says Court of General Sessions, term November 2005.

Q. Okay. So, these documents would actually indicate that you have in fact been charged with some sort of general sessions crime here in Chesterfield County?

A. Um, what I'm trying to explain to you is, I don't know how to get it --

Q. I'm just asking. Have you been charged with a crime in Chesterfield County?

A. I was falsely accused. She was the one charged.

Q. Okay.

A. She was the one charged for it. He come to arrest her

THOMAS JEFFREY STEWART - DIRECT EXAMINATION

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1 not me. I got arrested because she took out a warrant
2 on me that day. But she was the one convicted of lying
3 to the Judge, because I had evidence as to where I was
4 at.

5 Q. With regard to the incident at hand here.

6 A. Yes, sir.

7 Q. So, it is your testimony that on the date of January 1,
8 2010, you did not receive any of the Miranda that you
9 heard law enforcement testify to here today?

10 A. I --- I didn't never hear any Miranda. I never heard
11 it. I -- I -- I -- they never read it to me. I never
12 heard it. And I don't know why they are saying they
13 did, because they didn't. But what I do know. What I
14 do know is, they read Ms. Carrie her's, and she wasn't
15 the one charged, but I was charged. And they didn't
16 read me mine. They didn't read --

17 Q. -- Respectfully sir, we are not here about Ms. Carrie,
18 we are here about you.

19 A. I understand. I understand. I understand.

20 Q. So, you never heard Joey Carnes give you your Miranda
21 rights?

22 A. Joey Carnes never gave me my Miranda. I know he
23 didn't. No, sir.

24 Q. And you never heard Mekos Newman give you any Miranda
25 rights?

THOMAS JEFFREY STEWART - DIRECT EXAMINATION

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1 A. No, sir. He has never --

2 Q. -- And you never received any Miranda rights at the
3 Pageland Police Department?

4 A. No, I haven't.

5 Q. And you never executed a form that you waived your
6 Miranda rights at the Pageland Police Department?

7 A. No, I didn't. No, I didn't.

8 Q. And, the SLED agent who isn't employed by Pageland
9 Police Department, isn't even employed by a agency
10 within Chesterfield County who testified that she saw
11 you waive your Miranda rights; you are saying that is
12 simply not true?

13 MR. YOUNG: I am going to object to that question.
14 It is pitting.

15 THE COURT: Counsel, I am going to sustain that. The
16 Court is listened to the evidence, and I realize the
17 distinctions in the evidence.

18 So, sustained. Please move to your next question.

19 MR. FOARD: Thank you, Your Honor.

20 Q. Basically, you --- You admit obviously to the statement
21 that is contained within the video?

22 A. Um, the video is missing minutes. And, I --- I --- I
23 know that --

24 Q. -- But, you gave a statement that was captured on
25 video?

THOMAS JEFFREY STEWART - DIRECT EXAMINATION

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1 A. Ah, not --- not --- I gave it capture on video. But, I
2 am saying if he had told me my rights, I wouldn't have
3 never said anything.

4 Q. Okay. Were you beaten, or physically harmed at any
5 point in time by officers from the time you were
6 apprehended at Pig Park up through the time in which
7 you participated in that video interview?

8 A. I didn't participate. Mr. --- The big fat officer, I
9 think his name is Mr. Melton, he told --- he told me --
10 - he threatened me to make a statement.

11 Q. Okay. So, let's take participate out of it. Were you
12 threatened or harmed by law enforcement between the
13 time you were apprehended and when a video was made of
14 you?

15 A. Yes, I was.

16 Q. Okay. So, did that leave marks or how were you harmed?

17 A. He threaten -- He stopped beside me in the room and he
18 threatened me.

19 Q. Did anyone put their hands on you?

20 A. Naw, he didn't put his hand on me. He verbal threat
21 me.

22 Q. When you say threaten, what do you mean by threaten?

23 A. He told me I'd better make a statement.

24 Q. Or what?

25 A. He was going to do something to me. He said, kill.

CLOSING STATEMENT

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1 Q. Okay.

2 A. He said he would have kill me if that be his sister, so
3 I guess that is the verbally threatened.

4 Q. Okay.

5 MR. FOARD: Your Honor, I don't have anything
6 further for this witness.

7 THE COURT: All right. Is there redirect?

8 MR. YOUNG: No, Your Honor.

9 THE COURT: All right, sir. I am going to let you
10 stand down, and watch your step. Please return to your
11 seat.

12 Are there further witnesses for the defense?

13 MR. YOUNG: No, Your Honor.

14 THE COURT: All right. Do either of you wish to make
15 a brief statement in closing. It is not necessary for the
16 Court's purposes. But, if you have something that you want
17 to place on the record.

18 First, from the State?

19 CLOSING STATEMENT BY THE STATE

20 MR. FOARD: Just briefly, Your Honor. I think the
21 evidence speaks for itself. I think we have numerous
22 seasoned law enforcement officers who have testified that
23 Mr. Stewart received Miranda at numerous points and time on
24 January 1, 2012. I think most importantly and telling is
25 the fact that SLED Agent Gainey testified as to what she

CLOSING STATEMENT

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1 saw. That he was not under duress. That he had not been
2 harmed. That he freely and voluntarily waived his right to
3 an attorney when he conducted the video interview that Your
4 Honor has witnessed a portion of. We would just -- The
5 State would just conclude by saying that we believe that we
6 have met our burden as far as demonstrating that the
7 statements given both at Pig Park and at Pageland Police
8 Department were freely and voluntarily given. That he was
9 advised of his rights, and his right to counsel. That he
10 had waived those various rights. With specific regard to
11 any statements made at Pig Park, Your Honor, we would point
12 out to the Court that it is the State's position that
13 anything that he said there; he was under Miranda at the
14 time, however he was not being interrogated. That anything
15 that he said was a spontaneous admission, Your Honor. That
16 he was not under any form of interrogation. So, therefore,
17 Your Honor, we believe that the State has met its burden.

18 THE COURT: All right. And now from defense.

CLOSING STATEMENT BY THE DEFENSE

19
20 MR. YOUNG: Your Honor, briefly. Obviously, this is
21 not a 404 credibility determination or the decision making
22 on the outcome of this trial. This is a forum to determine
23 whether or not the State has met its burden by proving
24 beyond a preponderance of the evidence that Mr. Stewart was
25 properly Mirandized, and made a knowing and intelligent

CLOSING STATEMENT

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1 voluntary waiver of those rights.

2 Obviously, Mr. Stewart was suffering from injuries,
3 from being pepper sprayed, and from a head injury. The head
4 injury was severe enough for him to be taken to ER the next
5 day and treated. I think based upon the injuries he was
6 suffering and his medical condition, any waiver that he may
7 have given could not be considered voluntary.

8 THE COURT: All right. Just a moment.

9 MR. YOUNG: And, Your Honor, if I may just add one
10 thing. I just need to make sure for the record that I say
11 intelligent and voluntary, knowing and intelligent voluntary
12 waiver I don't think could have been made in light of his
13 injuries. Just to make sure that all of the words are said
14 for the record's purposes.

15 THE COURT: All right. And tell me, what evidence do
16 I have other than his statement that he was under or
17 suffering from some sort of post-concussive syndrome that
18 would prevent him from knowing or understanding what he was
19 doing?

20 MR. YOUNG: Other than the police report where he
21 was taken to the Emergency Room on the early morning of the
22 second. That's it.

23 THE COURT: Very good.

24 MR. FOARD: Which, as I will point out, Your Honor,
25 specifically only says that he had some sort of migraine

THE STATE VERSUS THOMAS JEFFERY STEWART

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1 headache.

2 THE COURT: Thank you. All right. Just a moment,
3 please.

4 (PAUSE.)

5 **RULING BY THE COURT**

6 THE COURT: All right. While I think it is, of
7 course, a better course of procedure to have a Miranda
8 statement when there is a videotape being made for that
9 particular signing of it, and discussion of it to be
10 conducted on the tape. And I am also in the opinion that
11 when you are in the field it is difficult sometime to have a
12 Miranda form that is signed. The individual may make a
13 spontaneous comment even after being in custody. But, it is
14 a better course to have a Miranda form signed under those
15 circumstances, even if it is done immediately after the
16 fact. But, again, in saying that, the Court is aware that
17 in the field conditions are sometimes do not permit everyone
18 to stop, discuss rights, sign a form, and have that done on
19 video so that it is preserved.

20 Basically, called upon here to make what really is a
21 credibility determination. Because, I have officers
22 testifying to one thing, and the defendant testifying to
23 another.

24 I had the opportunity to review all of the evidence. I
25 have also reviewed the videotape, not in its entirety, but

THE STATE VERSUS THOMAS JEFFERY STEWART

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1 in the beginning minutes of it, which is where there is a
2 discussion with the defendant about his rights. And he
3 comments that he has the knowledge that he is able to stop
4 if he wishes to do so at any time. So, clearly he had some
5 knowledge of his Miranda rights.

6 After considering all of this evidence, I find that all
7 the statements given by the defendant were within Miranda,
8 because he was in custody, and also within the Fifth and
9 Sixth Amendments of the Constitution.

10 He was advised that he had the right to remain silent.
11 And that he could waive the right and make a statement.
12 But, if he did such, it would be used against him in a court
13 of law. That he was also advised that he had the right to
14 select an attorney, and if he could not afford one that one
15 would be appointed for him at no cost. And that he would
16 even have the right to consult that attorney, and to stop if
17 he wished to stop at any time after beginning a statement.
18 I also find that he was questioned as to whether he
19 understood these rights. And all of that happened, the
20 Court finds by a preponderance of the evidence before the
21 video statement was taken, which was an interrogation.

22 On the other issues, the statements what I am going to
23 call number one, which is the one made to Deputy Carnes, as
24 well as number two, which would be the statement that was
25 made to Sergeant Newman.

THE STATE VERSUS THOMAS JEFFERY STEWART

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1 I find that those were spontaneous utterances that were
2 not under the course of an interrogation. And thus they are
3 admissible.

4 I find that the statements made by the defendant were
5 free and voluntarily made without duress, or coercion, or
6 hope of reward, or promise of leniency. And that these are
7 admissible statements. And that these are admissible
8 statements.

9 All of these findings I make by the preponderance of
10 the evidence.

11 And, I should further say, that in considering this
12 issue I find the defendant's testimony not only self-
13 contradictory, manifestly not credible on the issues of
14 whether that is his signature on the document. Whether he
15 was given his rights, and whether he understood those
16 rights.

17 For all of those reasons, the Court makes those
18 findings.

19 Any questions now from the State?

20 MR. FOARD: No, Your Honor.

21 THE COURT: And from defense?

22 MR. YOUNG: No, Your Honor.

23 THE COURT: All right. Then, that concludes this
24 matter, and this Court will stand in recess.

25 Anything further?

THE STATE VERSUS THOMAS JEFFERY STEWART

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1 MR. FOARD: We had mentioned the bond issue that Mr.
2 Young wanted to take up.

3 THE COURT: All right. Let's do this. Ladies and
4 gentlemen, rather than everyone having to travel again,
5 let's just stay in session a moment longer and discuss
6 briefly the bond.

7 Tell me what it is you wish to do about the bond, and
8 on what basis you believe you are entitled to some change in
9 bond status?

10 MR. YOUNG: Your Honor, the change of circumstances
11 from any prior bond request would be the withdrawal of the
12 State's notice of intent to seek the death penalty for Mr.
13 Stewart.

14 This of course was made fairly recently, in the past
15 couple of months, prior to studying this case for this term
16 of court. I think it was about two months ago.

17 Mr. Stewart has been held without bond since January 1,
18 2010. He has been before a number of judges on the issue of
19 bond. That was usually set upon the conditions with trying
20 him within a hundred and twenty days, or I will allow you to
21 come back and see me for a bond. I believe that is an order
22 specifically signed by Judge King. Of course, Mr. Stewart
23 was served with notice of intent to seek the death penalty
24 after that, and was never returned to the Court.

25 Obviously, this case is set for trial the week of

THE STATE VERSUS THOMAS JEFFERY STEWART

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1 December third in front of Your Honor. But, at this time we
2 would request that a reasonable bond be set for Mr. Stewart.

3 THE COURT: All right. Without taking argument from
4 the State, I am simply going to deny that request for the
5 following reasons.

6 Number one. This case is set is for trial. It is set
7 within thirty days.

8 Secondly. The Court does not find that the withdrawal
9 of the death penalty is sufficient change in condition, and
10 certainly not a change of condition on the defendant's part
11 that would entitle him to bond.

12 So, that Motion and request is respectfully denied.
13 And this matter again set for trial in December. The
14 defendant will be held until that time without bond.

15 MR. YOUNG: Thank you, Your Honor.

16 THE COURT: Very good.

17 MR. FOARD: Thank you, Your Honor.

18 THE COURT: Court is in recess until ten o'clock
19 tomorrow morning.

20 (Whereupon, this hearing was concluded at
21 5:15 p.m. on Monday, November 5, 2012.)

22 -- END OF TRANSCRIPT --

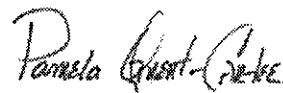
CERTIFICATE OF REPORTER

84

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the above captioned case, relative to appeal, in The Court of General Sessions in Chesterfield County, South Carolina, on the 5th day of November 2012.

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

November 15, 2012



Pamela Ozment-Cartee
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
COUNTY OF CHESTERFIELD	)	2010-GS-13-0192
	)	2010-GS-13-0263

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
THOMAS J. STEWART	)	
DEFENDANT	)	

December 3-6, 2012
 Chesterfield, South Carolina
VOLUME NUMBER 01 OF 04

B E F O R E:

THE HONORABLE J. MICHAEL BAXLEY, JUDGE; and a jury.

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CASEY SECOR, DEPUTY ATTORNEY
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S. BOYD YOUNG, DEPUTY ATTORNEY
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A P P E A R A N C E S:

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MARTY HORTON,

JOSEPH CARNES, CHESTERFIELD CTY SHERIFF'S OFF.

MIKKOS NEWMAN, LANCASTER CTY SHERIFF'S OFF.

VICKI HALLMAN, S.C. LAW ENFORCEMENT DIVISION

BRADLEY MARCUS, M.D., NEWBERRY PATHOLOGY

LARRY BROWN, PAGELAND POLICE DEPARTMENT

VERONICA GIBSON, S.C. LAW ENFORCEMENT DIVISION

MARYANNE BOEHM, S.C. LAW ENFORCEMENT DIVISION

PIERRE KIRBY,

CRYSTAL CLYBURN,

CARRIE DAY,

KIM DANZEY,

SHARON RIVERS,

MELISSA STEWART,

SHERRY MACLAMORE,

RANDALL MULLIS,

KIMBERLY LITTLE,

HATTIE O. GORDON
Circuit Court Reporter

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1	STATE'S EXHIBITS			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	1	Knife.	121	183
4	2	Knife With Bent Blade.	121	271
5	3	Pepper Spray.	121	271
6	4	CD of Photos.	121	
7	5	CD of Reports.	121	
8	6	Waiver of Rights/Stewart.	121	149
9	7	CD of Statement (2 Disks)	121	149
10	8	Crime Scene Report.	121	277
11	9	Buccal Swab/Stewart.	121	439
12	10	Blood Standard/Victim.	121	439
13	11	Boots.	121	
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19	17	Swabs and Cuttings.	121	439
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10	33	Photo.	121	284
11	34	Photo.	121	284
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20	43	Photo.	121	284
21	44	Photo.	121	284
22	45	Photo.	121	284
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10	83	Photo.	121	284
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21	94	Photo	211	
22	95	Photo	211	235
23	96	Photo	211	235
24	97	Photo	211	235
25	98	Photo	211	235

1	99	Photo	211	235
2	100	Photo	211	235
3	101	Photo	211	236
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5	103	Photo	211	236
6	104	Photo	211	236
7	105	Photo	211	236
8	106	Warrant Number I-271755	358	415
9	107	Warrant No. I-271754.	413	
10	108	Vol. Stmt.-K. Little	538	540

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1	DEFENDANT'S EXHIBITS			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	1	Inet Art/070511/Prog. Jour.	18	
4	2	News Art/070511/Prog. Jour.	18	
5	3	Inet Art/112612/Prog. Jour.	18	
6	4	News Art/111612/Prog. Jour.	18	
7	5	News Art/070511/Link.	18	
8	6	News Art/011210/Prog. Jour.	18	
9	7	News Art/070510/Link.	18	
10	8	News Art/010510/Prog. Jour.	18	
11	9	Inet Art/112912/Cheraw Chron.	18	
12	10	Inet Art/011012/Cheraw Chron.	18	
13	11	Inet Art/011012/Cheraw Chron.	18	
14	12	Photo	211	311
15	13	Photo	211	311
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17	65	Photo	211	323
18	66	Photo	211	323
19	67	Photo	211	323
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16	89	Order of Protection	410	410
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20	93	Pageland PD Radio Log 12/17	507	532
21	94	Photo	507	521
22	95	Photo	507	521
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24	97	Photo	507	521
25				

COURT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Voir Dire - Defense.	75	75
2	Voir Dire/Defense	111	111
3	Jury Question No. 01	675	675
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1 (WHEREUPON, Defendant's Exhibit Nos. 1 THROUGH 11
2 were marked for identification only.)

3 VOIR DIRE OF THE JURY

4 THE COURT: All right, ladies and gentlemen, so just
5 to avoid confusion I noticed we gave you all juror badges.
6 If you will kindly wear your badge while you're with us
7 this morning so that we can always make sure we
8 distinguish between jurors who are present and individuals
9 who may be witnesses in cases or parties in cases. And
10 thank you for that courtesy.

11 All right. Now, what we're going to do is we're
12 going to call our first case for trial and proceed to pick
13 a jury in that case. And in the criminal court the judge
14 does not set the priority and the rotation of the cases
15 that are called. That is the prerogative of the Solicitor
16 who is the elected individual who is in charge of law
17 enforcement in this four county circuit. And, so
18 Mr. Solicitor, please call your first case for trial.

19 MR. FOARD: Thank you, Your Honor. The State calls
20 the case of State v. Thomas Jeffery Stewart. Docket
21 Number 2010-GS-13-0192. Indicted for murder by the Grand
22 Jury of Chesterfield County and true billed March the 23rd
23 of 2010. And Docket Number 2010-GS-13-0263, indicted for
24 possession of a weapon during the commission of a violent
25 crime. Again, true billed by the Grand Jury of

1 Chesterfield County on March 23rd of 2010.

2 THE COURT: All right. Now, Mr. young, do you
3 represent the Defendant, Mr. Stewart, with regard to both
4 of those charges?

5 MR. YOUNG: Yes, Your Honor.

6 THE COURT: And how does he plead?

7 MR. YOUNG: He pleads not guilty, Your Honor.

8 CLERK OF COURT: All right. Very good. You may be
9 seated. Ladies and gentlemen, you heard the charge called
10 by the Solicitor. You heard that plea entered by the
11 defendant. Thus, the case is issues are joined for trial.
12 And we will now proceed to pick a jury in this case. Now,
13 let me just simply say to you a word or two about this
14 process.

15 Having been a juror myself and having worked in the
16 courtroom for many years I'm aware they just
17 psychologically speaking many times when you're sitting as
18 you are in a group and you hear a question and you think,
19 'well, gosh, that may not apply to me. I don't want to
20 stand up and embarrass myself. I'm just going to sit here
21 and be quiet'. I'm going to ask you to do just the
22 opposite of that. If you have some inkling that you
23 should respond to a question, please, stand up and respond
24 to the question.

25 There are no wrong answers in jury qualifications.

1 The purpose of this process is to make sure that whatever
2 jury we choose is a disinterested jury. When I say that I
3 don't mean that you don't care. What I mean is that you
4 don't have some connection to a case that might make you
5 an inappropriate juror for this particular case. Let's
6 look out the door and see if there are any other jurors
7 that are here. Make sure that when we start this process
8 that we are all back together. All right thank you.

9 Ladies and gentlemen, we are going to start this
10 process by again reintroducing the principals who are in
11 the case. We're going to start with the lawyers. I'm
12 going to let the Solicitors; that's the prosecutors,
13 introduce themselves to you. Also, if you have a
14 representative of the family of the complaining witness
15 then you may introduce that individual at the same time.
16 Just that one individual whoever the spokesperson or
17 whoever will be seated with you if there is someone during
18 the trial.

19 And start, please, by introducing yourself, and Mr.
20 Redmond, we'll begin with you, sir.

21 MR. REDMOND: Thank you, Your Honor. May it please
22 the Court. Again, ladies and gentlemen, my name is
23 Kernard Redmond. I'm Deputy Solicitor here in the Fourth
24 Circuit. Of course, including Chesterfield County. And I
25 do have several members of the family here, and there are

1 several representatives of the victims family ---

2 THE COURT: Excuse me, Mr. Redmond. How about angle
3 so our court reporter can be sure to hear you. Your back
4 is turned to us.

5 MR. REDMOND: Oh, I'm sorry. And I'll just repeat
6 the last portion that I said. As I indicated there are
7 several representatives of the victim's family. And
8 Pastor, David Tyson, that I spoke with here earlier in
9 this case probably will be sitting with us as
10 representative of the family. And I'll let the other
11 lawyers, my colleagues, introduce themselves.

12 MR. JONES: I'm Chris Jones, Assistant Solicitor here
13 in Chesterfield County.

14 MR. FOARD: Again, I'm Adam Foard, Assistant
15 Solicitor as well.

16 THE COURT: And now let's switch to the Defense side
17 of the case.

18 MR. YOUNG: Thank you, Your Honor. Good afternoon.
19 I'm Boyd Young out of Columbia, South Carolina. Myself
20 along with Casey Secor and Bill McGuire manages our office
21 out of Columbia. This is -- Your Honor, would you like me
22 to introduce Mr. Stewart?

23 THE COURT: Yes. Please introduce Mr. Stewart as
24 well.

25 MR. YOUNG: This is Thomas Stewart. His wife,

1 Melissa Stewart, is here. And Sharon Rivers and her
2 brother in law are also here -- his brother in law. Thank
3 you.

4 THE COURT: All right. Thank you. You may be
5 seated. And, Mr. Redmond, again your back was turned to
6 me a little bit. You said Pastor Tyson?

7 MR. REDMOND: Tyson.

8 THE COURT: Please, can you give us a full name?

9 MR. REDMOND: David Tyson.

10 THE COURT: Thank you. All right. Now, ladies and
11 gentlemen, first of all we're going to talk about the
12 lawyers. Again, we have prosecution and we have defense.
13 You were introduced to the lawyers for the State who are
14 here as prosecutors, and the lawyers for the Defense who
15 are here for the Defendant.

16 What I want to ask you is is there any member of this
17 jury panel related by blood or marriage to any of these
18 fine lawyers who have introduced themselves or have some
19 close business, professional or social connection to any
20 of these lawyers. Or either now or in the past been
21 represented by any of these lawyers in some other capacity
22 in another case such as a private matter or maybe you were
23 a victim or perhaps involved somehow in another case in
24 which these lawyers were involved. So if any of that
25 applies to you with regard to any of these lawyers or

1 either side of the case please stand.

2 All right. And, ma'am, please give me your name and
3 juror number.

4 PROSPECTIVE JUROR: My name is Kathy Ford. I am
5 Juror Number 41.

6 THE COURT: Okay, Ms. Ford, I asked a multi-part
7 question so tell me, ma'am, why are you standing.

8 PROSPECTIVE JUROR: I am related to Adam Foard.

9 THE COURT: I see. All right. And what is that
10 relationship?

11 PROSPECTIVE JUROR: Cousin.

12 THE COURT: All right. Let's do this, Ms. Ford,
13 based upon the fact that there may be others who would
14 review this case I don't want there to be some question
15 that someone who had a close connection to one side other
16 the other in the case is actually a blood relation would
17 be somehow involved in making the decision in the case.

18 And so I'm going to stand you aside in this case,
19 ma'am, because of your blood relationship to one of th
20 attorneys all right. It's not -- please, don't
21 misunderstand. It's not that you're not capable, but I
22 don't want to raise some question that any member of the
23 jury, either way, may be impartial, all right. Or may be
24 partial, actually, would be what I would say, okay.

25 PROSPECTIVE JUROR: Okay.

1 THE COURT: Now, you are -- all right. Just one
2 moment, please. Madam Clerk. Mr. Solicitor, is there any
3 further need of jurors this week?

4 MR. REDMOND: No, sir.

5 THE COURT: Very good. Then, Ms. Ford, I'm going to
6 release you for the week, ma'am, because we will not have
7 any further jury draws this week, and thus, you are done
8 for the week. You're free to go. You have a good day.
9 I'm going to let you go this way if you would so we can
10 keep our traffic flow going in the right direction. Thank
11 you, Ms. Ford.

12 All right, ladies and gentlemen, is there someone
13 else who would stand and say that they have some
14 connection to our -- to the lawyers? Again, I just ask
15 about the lawyers at this point.

16 All right. Now, the Solicitor's Office is part of
17 the prosecution office in the four county area which I've
18 already mentioned is Chesterfield, Dillon, Darlington and
19 Marlboro. I'm asking now whether there is any member of
20 this jury panel who has some connection to that
21 Solicitor's Office, whether it may be as a -- because they
22 actually are an office and a business located here or
23 whether you may be a vendor or a contractor or some way
24 may have worked with the Solicitor's Office here in the
25 Fourth Judicial Circuit not just in Chesterfield County.

1 If that applies to you. If you have some business
2 connection to the Solicitor's Office please stand. All
3 right, ma'am, please tell me your name and juror number.

4 PROSPECTIVE JUROR: Elise McIntosh, Number 87.

5 THE COURT: All right, Ms. McIntosh, and tell me,
6 ma'am, why are you standing.

7 PROSPECTIVE JUROR: I (inaudible) reports for the
8 Solicitor's Office.

9 THE COURT: Tell me again. You worked in one of the
10 local police departments, ma'am?

11 PROSPECTIVE JUROR: Sheriff's Office.

12 THE COURT: All right. And you do those reports in
13 connection with Cheraw cases; is that correct?

14 PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: All right. Now, this case, of course,
16 not a Cheraw case.

17 PROSPECTIVE JUROR: All right.

18 THE COURT: And I ask you, ma'am, would the fact that
19 you work in law enforcement in the capacity you just told
20 us would that prevent you from being fair and impartial in
21 this case in your opinion?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: I want to make sure I heard you. Did you
24 say that you would be fair.

25 PROSPECTIVE JUROR: Um hum.

1 THE COURT: All right. Well, let me ask you a
2 different way. Would the fact that you work in law
3 enforcement prevent you from putting out of your mind that
4 connection you have to law enforcement and being
5 completely fair and impartial with regard to the facts of
6 this case. Could you follow the law as the Court gives it
7 to you, apply it to the facts as you find them and be fair
8 and impartial in doing that, ma'am? Can you do that?

9 PROSPECTIVE JUROR: I will.

10 THE COURT: All right. And are you certain of that,
11 ma'am.

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: All right. Then based on that I find
14 that you're qualified, and thank you for your response.
15 All right. Is anyone else now who would stand and say
16 that they have some business connection, whatever that
17 connection may be, to the Solicitor's Office? Let's let
18 the record reflect that no one has stood further in
19 response to the Court's question.

20 All right. Ladies and gentlemen, I want to talk to
21 you now a little bit about the parties to the case. We
22 just talked about the lawyers. Now, let's talk about the
23 partes; that is the people involved in the case. And as
24 you know this is a murder charge. You heard the client --
25 excuse me. You heard the Solicitor use the term 'victim'.

1 I want to discuss that word with you just a moment.

2 First of all sometimes the word 'victim' has a
3 connection it to that would make one believe that a crime
4 has occurred and that someone was injured by that crime.
5 Well, that's for the jury to determine. It's not -- when
6 the term 'victim' is used here by the Solicitor that's not
7 intended as some definition. It's just simply a term
8 employed by the Solicitor to identify an individual.

9 I use the term 'complaining witness'. I don't want
10 to get caught up in semantics. But I just want us all to
11 understand that in the course of this trial when you hear
12 the words 'complaining witness' or you hear the word
13 'victim' that's not intended to be some comment upon the
14 facts or the findings that will ultimately have to be made
15 by the jury.

16 This case is divided into two parties, obviously. We
17 have the family of Bellany Clyburn and you heard the name
18 of Pastor David Tyson who is acting somewhat as the
19 spokesperson for the family. And then we have the
20 Defendant who you were introduced to here in the courtroom
21 a moment ago, Thomas Jeffery Stewart.

22 Now, what I'm asking you is whether there is any
23 member of this jury panel who is related by blood or
24 marriage to either of those groups that are before the
25 Court today; that is on the State's side of the case, the

1 prosecution, or on the Defense side of the case. Or
2 whether you have some close connection to -- or had some
3 close connection to Bellany; that's Bellany with a B.
4 Bellany Clyburn or to Mr. Thomas Jeffery Stewart. Or you
5 think you even knew or know those individuals. If that
6 applies to you, any of that, please stand.

7 All right. Now, let me preface my questions to you
8 with this comment.. I'm going to ask each of you about the
9 connection that you're getting ready to tell me, and
10 the -- what I would call the depth of that connection. I
11 will say to you that it's just like I'm from Darlington
12 County as we discussed earlier which is a small county
13 where everybody knows everybody, pretty much. And that
14 doesn't automatically knock you off the jury if you know
15 someone who is a party or a witness to a trial.

16 The question is whether your connection is so close
17 that it would prevent you from being fair and impartial if
18 you're summoned as a juror. So these are the questions
19 that we are going to be talking about. And let's go with
20 ladies first. So, ma'am, on the front if you would please
21 give us your name and juror number.

22 PROSPECTIVE JUROR: Annie Brown Pegues, Juror 109.

23 THE COURT: And, Miss Pegues, which of the family
24 members or for whom is it that you are standing saying
25 that you know someone?

1 PROSPECTIVE JUROR: Bellany.

2 THE COURT: You said for Bellany?

3 PROSPECTIVE JUROR: Bellany.

4 THE COURT: All right. Very good. And what is your
5 connection, please?

6 PROSPECTIVE JUROR: I taught her first grade.

7 THE COURT: I see. All right. And, ma'am, would the
8 fact that you know the deceased in that fashion would that
9 prevent you from being fair and impartial in this case in
10 your opinion?

11 PROSPECTIVE JUROR: No.

12 THE COURT: All right. And what I'm looking for is
13 certainty because these are important matters. And I ask
14 you, ma'am, could you follow the law given to you by the
15 Court, apply it to the facts as you find them, and do that
16 in a fair and impartial way and put out of your mind any
17 connection you may have to either side of the case. Can
18 you do that?

19 PROSPECTIVE JUROR: I'm not sure. No.

20 THE COURT: All right. Based upon that, ma'am, I'm
21 going to remove you from consideration in this case. I do
22 that because -- it's not because I think you're not
23 capable, but it is because you have expressed some concern
24 that you may not be able to be fair and impartial. And
25 that's not based on a quality that you have. It's based

1 on your connection in the community. And so let's do
2 this. I'm going let you remain with us and just be
3 seated. We may have to revisit some of these decisions.
4 We'll see, but if you would there is no need for you to
5 respond to any further questions with regard to this case
6 until or unless we call on you, ma'am. All right. Just
7 make yourself comfortable. Now, still with the ladies.
8 Ma'am, please give me your name and juror number.

9 PROSPECTIVE JUROR: Tiffany Reid, 117.

10 THE COURT: Just one moment please. All right. And
11 you're Ms. Reid?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: All right. And tell me, ma'am, what is
14 your connection to the parties in this case?

15 PROSPECTIVE JUROR: I went to school with her.

16 THE COURT: One more time.

17 PROSPECTIVE JUROR: I went to school with her.

18 THE COURT: Okay. You went to school then with Ms.
19 Bellany Clyburn?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Well, now, I'm just curious. Were you in
22 Ms. Pegues class as well?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: All right. Very good. Now, let me ask
25 you, ma'am. And when was the last time you saw her before

1 today?

2 PROSPECTIVE JUROR: I don't know.

3 THE COURT: Been some time?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: And would the fact that you know this
6 deceased in this case would that prevent you from being
7 fair and impartial in this case somehow?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: All right, then. And are you certain of
10 that.

11 PROSPECTIVE JUROR: Um hum.

12 THE COURT: Then I find that you're qualified by your
13 response, ma'am. You may be seated. Thank you. And next
14 to her, please, tell me your name and juror number.

15 PROSPECTIVE JUROR: Jennifer Sullivan, Number 128.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR: I know Bellany's family.

18 CLERK OF COURT: All right. You said that you know
19 Bellany's family was your comment?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: All right. And, ma'am, how do you know
22 them, ma'am?

23 PROSPECTIVE JUROR: They come to where I work all the
24 time.

25 THE COURT: All right. Now, would the fact that you

1 know members of the family prevent you from being fair and
2 impartial in this case there is you been.

3 PROSPECTIVE JUROR: No.

4 THE COURT: All right, ma'am. Are you certain of
5 that?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: Then based on your response I find that
8 you're qualified and you may be seated. Thank you. And,
9 ma'am, please tell me your name and juror number.

10 PROSPECTIVE JUROR: Alveria Miller, Number 94.

11 THE COURT: Okay. And, Miss Miller, tell me which
12 party is it that you know?

13 PROSPECTIVE JUROR: Bellany.

14 THE COURT: And, ma'am, how do you know her?

15 PROSPECTIVE JUROR: From my oldest daughter.

16 THE COURT: Is a friend -- she's a friend of your
17 oldest daughter?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: And before today how long would it have
20 been since you would have seen Miss Bellany Clyburn?

21 PROSPECTIVE JUROR: I haven't seen her since she was
22 young.

23 THE COURT: Okay. Would the fact that you know her
24 prevent you from being fair and impartial in this case,
25 ma'am?

1 PROSPECTIVE JUROR: I probably couldn't be fair and
2 impartial. My daughter is real, real unset.

3 THE COURT: All right. Well, let's do this then,
4 ma'am. Based upon what you're telling me I'm going to
5 remove you from this case. What I'm going to do is just
6 as we did with Miss Pegues. I'm going to let you be
7 seated. You don't need to answer any further questions in
8 this case unless we call on you. And we may have to
9 revisit these issues, so just make yourself comfortable.
10 Thank you for the candor of your response.

11 Sir, tell please tell me your name and juror number.

12 PROSPECTIVE JUROR: Don Wright, Number 149.

13 THE COURT: All right. And, Mr. Wright, tell me
14 which side of the case are you standing for that you know?

15 PROSPECTIVE JUROR: Mr. Thomas and I used to coach
16 Little League baseball together. My niece is his wife's
17 aunt.

18 THE COURT: All right. Let me think that through,
19 now. His wife is your niece's aunt. All right. So you
20 would have a distant relation by marriage.

21 PROSPECTIVE JUROR: Right.

22 THE COURT: All right. When is the last time that
23 you saw Mr. Stewart before today.

24 PROSPECTIVE JUROR: Been a couple of years.

25 THE COURT: All right. Would the fact that you know

1 him in that way prevent you from being fair and impartial
2 in your opinion?

3 PROSPECTIVE JUROR: It would.

4 THE COURT: All right, sir. Let's do this then, sir.
5 And, Mr. Wright, just as I said to others, thank you for
6 your candor. I'm going to let you be seated and we will
7 exclude you from this jury panel. No need to answer any
8 further questions, but please remain with us until we
9 reach the end of this process, okay. All right. Thank
10 you. And, sir, tell me your name and juror number.

11 PROSPECTIVE JUROR: Marcus Quick, Juror Number 115.

12 THE COURT: Okay. And, Mr. Quick, tell me why you're
13 standing, sir.

14 PROSPECTIVE JUROR: I have a distant knowledge of the
15 Mr. Stewart from baseball and church services.

16 THE COURT: Okay. And how long has it been since
17 you've seen Mr. Stewart before today?

18 PROSPECTIVE JUROR: Around two or three weeks.

19 THE COURT: Okay. Now, would the fact that you know
20 Mrt. Stewart in that capacity that you just described
21 would it prevent you from being fair and impartial in this
22 case somehow?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: All right. Then I find that you're
25 qualified by your response, Mr. Quick. Thank you. You

1 may be seated. Now, anyone else who would stand and say
2 that they are related by blood or marriage to either of
3 the parties in this case or have some close business,
4 professional, social connection to either party or think
5 they even know Ms. Bellany Clyburn who is, of course, now
6 deceased or Mr. Thomas Jeffery Stewart, the Defendant? If
7 that applies to and you've not already stood please stand.
8 Let the record reflect that no one further has stood.

9 Now, please, listen while the Solicitor calls out the
10 names of potential witnesses who may appear in the case.
11 And, ladies and gentlemen, if you're in the courtroom
12 please stand when your name is called, face the jury panel
13 so that they might see you.

14 MR. FOARD: Clarence Francis of Pageland Police
15 Department, Bobby Melton with the Pageland Police
16 Department; Mikkos Newman, formerly of the Pageland Police
17 Department; Chief Larry Brown of the Pageland Police
18 Department, Ethan Foard, E.M.S, formerly of Pageland
19 Police Department; Joseph Carnes with the Chesterfield
20 County Sheriff's Office; Michael Horton, First Health
21 E.M.S. or from Pageland E.M.S; Amber Champagne from E.M.S;
22 Johnnie Gaskins with E.M.S, David Helms with E.M.S; Dr.
23 Bradley Marcus of Newberry Pathology, Kristina Gainey with
24 S.L.E.D; Vicki Hallman with S.L.E.D, Toni Broome from
25 S.L.E.D, Verone Gibson from S.L.E.D; Maryann Boehn from

1 S.L.E.D, Carrie Day, Mark Blakeney, Dalisha Little, Manita
2 Little, Kimberly Little, Andria Pierre Kirby, Charles
3 Little, Crystal Clyburn, Tony Little, Randall Mullis.

4 THE COURT: All right. Thank you. May be seated.
5 These are the name of the potential witnesses who may
6 appear for the State. Now, I ask you, ladies and
7 gentlemen. When I was talking with you about the parties
8 I even asked you if you knew them. My question about
9 witnesses is not so close. What I'm looking for is to see
10 whether or not you are related by blood or marriage or you
11 have some close business, social or professional
12 connection to any of these witnesses. If any of that
13 applies to you, ladies and gentlemen of the jury, please
14 stand. All right. Tell me your name and juror number.

15 PROSPECTIVE JUROR: John Outen, Number 104.

16 THE COURT: Mr. Outen, tell me which witness are you
17 standing for.

18 PROSPECTIVE JUROR: Several.

19 THE COURT: All right.

20 PROSPECTIVE JUROR: I know Chief Brown, Larry Brown.
21 I know Randall Mullis.

22 THE COURT: All right. And would the fact that you
23 know these witnesses, which again is not uncommon in a
24 small county in which we all live, would that prevent you
25 from being fair and impartial if you are a juror and those

1 individuals were called as witnesses in the case?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: All right, sir. I find that you're
4 qualified by your response, and thank you for your
5 response, sir. Now ---

6 MR. REDMOND: And, Your Honor, out of an abundance of
7 precaution, even though they're not going to appear live
8 in Court to testify, through stipulation there are going
9 to be videotapes played of Ms. Clyburn two minor children.
10 And out of an abundance of precaution probably need to ask
11 about those as well. The gentlemen's names are K.S.

12 and J.D.

13 CLERK OF COURT: All right.

14 MR. REDMOND: K.S. and J.D.

15 THE COURT: And, ladies and gentlemen, let me repeat
16 what the Solicitor said because he was turned away from
17 you. You may have not been able to hear some of it. Two
18 witnesses will appear, two witnesses who are minors, who
19 are children, will appear by videotape in this case. And
20 they are J.D. and K.S.

21 I ask you now, ladies and gentlemen, is there any
22 member of this jury panel who would respond because you
23 have some close connection to either J.D. or K.S.

24 . These are the minor children of Miss Bellany
25 Clyburn. If that applies to you please stand. Let the

1 record reflect that no one has stood in response to the
2 Court's question.

3 Now, back to where we were a moment ago which is
4 this. It is a -- just a very basic foundational function
5 of our justice system that the Solicitor, the prosecutor
6 door has the burden of proof. The burden of proof never
7 shifts to a Defendant in these proceedings to prove
8 himself or herself innocent. The burden is on the State
9 to prove an individual guilty beyond all reasonable doubt,
10 which is a high standard. And that burden doesn't shift.

11 For that reason the Defendant is not required to call
12 witnesses, not required to put up a case, not required to
13 sound any sort of defense, not required to testify. And
14 again, that's because no burden rests upon the Defendant,
15 no burden of proof whatsoever. But I ask you at this
16 point, Mr. Young, whether there are additional individuals
17 who may appear in this case for whom I need to query this
18 jury at this time? If there are additional witnesses
19 please sound their names to the jury.

20 MR. YOUNG: Kim Danzey. If their present you would
21 ask them to stand up?

22 THE COURT: Yes, please stand when your name is
23 called.

24 MR. YOUNG: Sharon Rivers, Melissa Stewart and
25 Bridget Dixon of the Chesterfield County Sheriff's Office.

1 THE COURT: Thank you. These are potential
2 additional witnesses for Defendant. I ask you now, ladies
3 and gentlemen, whether there is any member of this jury
4 panel related by blood or marriage to these individuals or
5 have some close connection to these individuals. If so,
6 please stand. Let the record reflect that no one has
7 stood in response to the Court's questions.

8 All right. I want to ask now whether there is any
9 member of this jury panel who is a member of an
10 organization that has as its purpose either the protection
11 of and advocacy for the rights of victims of crime or,
12 conversely, the rights and protections of law enforcement
13 officers.

14 Let me just immediately say that there is nothing
15 wrong with being a member of such an organization. But
16 there are many organizations that support law enforcement.
17 For example the South Carolina Law Enforcement Officers
18 Association. Certain auxiliary associations, also there
19 are organizations that advocate for the rights of the
20 victims of crime such as Mother's Against Drunk Driving or
21 Citizens Against Spousal Abuse called CASA or CAVE,
22 Citizens Against Violent Crimes. These are similar
23 organizations.

24 I'm asking now if there is a member of the jury panel
25 who is a member of any of these organizations, these

1 advocacy organizations, and if you are please stand.
2 Let's let the record reflect that no one has stood. I say
3 to you again, ladies and gentlemen, that is not a reason
4 for disqualification. It's simply the Court attempting to
5 determine whether you are a member of a similar
6 organization. All right.

7 Now, I have in my hand two pieces of paper, and these
8 are the indictments by which these charges are brought
9 against the Defendant. And as I say to you an indictment
10 is simply -- that's what it is. It's a piece of paper.
11 It's the document by which a criminal charge is commenced
12 against an individual. Now, what's in these indictments
13 is allegations. They are not to be accepted automatically
14 as the truth, but ultimately, it's for the jury to
15 determine what the truth of the matter is. Not because is
16 says something on a piece of paper, but because the
17 evidence proves it in the trial of the case.

18 And so please understand that these indictments are
19 allegations. You heard the Defendant enter a plea of not
20 guilty. Thus, the Defendant has denied the allegations.
21 But even if the Defendant was silent that Defendant is
22 presumed innocent, and the State bears the burden of proof
23 to prove these allegations beyond a reasonable doubt.

24 I'm going to publish to you; that is read to you what
25 these allegations are because I want to ask you if y ou

1 have some knowledge of this incident from whatever sort
2 said maybe. The indictment for murder alleges that the
3 Defendant, Thomas Jeffery Stewart, did in Chesterfield
4 County on or about January 1st of 2010; that's the
5 operative date, January 1st 2010, willfully, feloniously
6 and intentionally kill the victim, Bellany Clyburn, we
7 malice aforethought either express or implied by means of
8 stabbing and the victim did dies as a result therefore in
9 Chesterfield County.

10 The other charge of possession of a weapon during the
11 commission of a violent crime alleges that the Defendant,
12 Thomas Jeffery Stewart, did in Chesterfield County on the
13 same date, January 1st 2010, possess or visibly display
14 place what appeared to be a knife, a weapon, during the
15 commission or attempted commission of a violent crime.
16 These are the allegations.

17 Now, what I will ask you, ladies and gentlemen, is
18 whether there is anybody who knows anything about these
19 charges, this prosecution, this case, from whatever
20 source. In you know something about this case please
21 stand, and I'm going to ask you at the same time as part
22 of my question; this case may have been reported in the
23 local media, because, of course, the local media reports
24 what occurs in the Court system as well as what may occur
25 in the community. And if you have seen some report or

1 media report concerning this matter I'm going to ask you
2 to stand in addition with this question. Now, those two
3 questions please stand.

4 Again, the question was if you know anything about
5 this case from whatever source it may be or if you've seen
6 media reports about this case please stand. Now, let's do
7 this. I'm going to ask each of you a little bit of
8 background information without expressing an opinion. I'm
9 simply going to try to get a little bit of information
10 from you. And let's begin on the left. Ma'am, please
11 tell me your name again?

12 PROSPECTIVE JUROR: Alveria Miller, 94.

13 THE COURT: All right. And, Miss Miller, tell me
14 were you standing because you had knowledge of this case
15 or you had seen media reports about the case?

16 PROSPECTIVE JUROR: Well, the night it happened I
17 seen the news.

18 THE COURT: Already. Very good. I'll let you be
19 seated then, ma'am. I'll be right back to you. And then,
20 sir.

21 PROSPECTIVE JUROR: John Outen, 104.

22 THE COURT: And, Mr. Outen, my question to you is the
23 same. Do you have knowledge from some source or have you
24 seen media reports.

25 PROSPECTIVE JUROR: Just saw it in the paper.

1 THE COURT: Okay. Very good. Thank you. I'm going
2 to let you be seated. And then, ma'am, please tell us
3 your name again.

4 PROSPECTIVE JUROR: Jennifer Sullivan, 128.

5 THE COURT: And, Miss Sullivan, tell me have you seen
6 media reports or do you have other information?

7 PROSPECTIVE JUROR: Just the paper.

8 THE COURT: Newspaper. All right. Very good. Thank
9 you. I'm going to let you be seated, too. Now, that was
10 three individuals, ladies and gentlemen. I ask is there
11 anyone else who has seen a media report about this case?
12 If you've scene some media report about this case please
13 stand.

14 PROSPECTIVE JUROR: Charles Sellers, 122. I read it
15 in the paper.

16 THE COURT: All right, sir. Very good. Just -- all
17 right. I'll let you be seated. Just one moment, please,
18 and thank you for that. Anyone else who would stand and
19 say that they have seen a media report about this case or
20 heard a media report, either one. Let the record reflect
21 that no one further has stood. And, now, I want to, just
22 to make sure we're all on the same wave length, I'm asking
23 now about information other than what might have been in
24 the media through whatever source that may come from. If
25 you know something else about this case that you got from

1 some source other than media, and we already have Ms.
2 Miller who has stood and said that she is in that
3 category, please stand. All right.

4 Now, I'm going to ask the four of you if you would,
5 please -- and, ladies and gentlemen, just remain
6 comfortably seated for the others of you. But if the four
7 of your would come around to the side. I'm going to speak
8 with the four individuals just individually for a minute.
9 Counsel, you may join me up at the court reporter's table.

10 THE BAILIFF: Juror Number 94.

11 THE COURT: Thank you. Miss Miller, come forward,
12 please. How are you, ma'am? Ms. Miller, tell me what is
13 it you know about this case.

14 PROSPECTIVE JUROR: Well, when my daughter came home
15 real upset -- I forget the guy's name. He just killed and
16 ---

17 THE COURT: Well, let me ask this way. Is there
18 something you heard or know about this case that would --
19 just one moment. Did we exclude her already?
20 Miss Miller, it just occurred to me earlier in the
21 qualifications we excused you. And I'm going to just let
22 you return to your seat, ma'am. And you don't need to
23 respond to any further questions. We're going to excuse
24 you from this case. You can go back to your seat. Thank
25 you.

1 THE BAILIFF: Juror Number 104.

2 THE COURT: Good to see you. Tell me what it is
3 that -- you told me you had seen this in this paper. What
4 is it you remember from media reports that you've seen?

5 PROSPECTIVE JUROR: The only thing I remember is a
6 picture of this young man on the front page of the paper.

7 THE COURT: And would the fact that you've seen media
8 reports prevent you from being fair and impartial in this
9 case?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: If something in your memory that was
12 jogged by the testimony in this case and you're a member
13 of the jury would you be able to follow the law that is
14 given by the Court and find the facts as they are
15 appropriately brought forward in Court and put out of your
16 mind any recollection you may have of media or newspaper
17 reports?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: All right. Are you sure of that?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Based on that I find you qualified and
22 I'll let you return to your seat.

23 THE BAILIFF: Juror Number 128.

24 THE COURT: Ms. Sullivan, come around here. How are
25 you, ma'am.

1 PROSPECTIVE JUROR: Good.

2 THE COURT: Tell me what you remember from the media
3 reports that you've seen.

4 PROSPECTIVE JUROR: Where I work at I seen the
5 newspaper in the office there, and I just read in the
6 newspaper they were going to try him.

7 THE COURT: Is there anything in those reports that
8 had caused you to form an opinion about the guilt or the
9 innocence of the defendant?

10 PROSPECTIVE JUROR: No.

11 THE COURT: All right. And would you be able to, if
12 you're chosen as a juror, make your decision as a juror
13 based on what the Court gives you as the facts as you find
14 them from this courtroom and put out of your mind any
15 recollection or references you may have to newspaper
16 stories.

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Can you do that?

19 PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: Are you certain of that?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: All right. Then I find you qualified.
23 Thank you, Miss Sullivan.

24 THE BAILIFF: Juror Number 122.

25 THE COURT: How are you, Mr. Sellers?

1 A.

2 PROSPECTIVE JUROR: Fine.

3 THE COURT: Mr. Sellers, please come forward if you
4 will. First of all, Mr. Sellers, thank you for setting
5 aside your exemption because I believe you're over 85
6 years old.

7 PROSPECTIVE JUROR: I'm 87.

8 THE COURT: Well, thank you for being willing to
9 remain with us. You said you've seen reports in the
10 newspaper about this case.

11 PROSPECTIVE JUROR: If this is the case I'm thinking
12 about it happened around Jefferson where someone, a girl,
13 out of a grocery store and somebody attacked her. If
14 that's not the case then I don't know anything about it.

15 THE COURT: I think that's a different case you're
16 talking about.

17 PROSPECTIVE JUROR: I wasn't sure about if that was
18 the one I was thinking about. I don't know anything about
19 the case.

20 THE COURT: In the course of being a juror you hear
21 something that may remind you of a media report you've
22 seen can you put that out of your mind and make your
23 ruling decision as a juror based on the Court's
24 instructions and the law and the facts that as you find
25 them here in this courtroom?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Can you do that?

3 PROSPECTIVE JUROR: I can do that.

4 THE COURT: And are you sure of that?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: All right. And so you're telling me that
7 you have no opinion based on anything you've seen as to
8 the guilt or innocence of the defendant?

9 PROSPECTIVE JUROR: No.

10 THE COURT: All right, sir. Well, I look forward to
11 working with you. Thank you, sir. You can go right this
12 way and take a left turn. All right. Counsel, tells me I
13 did not ask Mr. Outen whether he formed an opinion of the
14 guilt or the innocence of the defendant. Bring him back
15 and let me cover that. I didn't ask him that specific
16 question.

17 MR. FOARD: Your dealing with one thing, maybe that
18 will solve this issue.

19 THE COURT: Okay, is that Mr. Outen?

20 MR. FOARD: Yes, sir.

21 THE COURT: He was a reserve law enforcement officer?

22 MR. FOARD: He has been at some time or another.
23 Whether he is now, I don't know.

24 THE COURT: You wanted me to bring him up.

25 Mr. Outen, I failed to ask you a question. Would you come

1 back and join us for a moment, please. Thank you for that
2 courtesy. Come right up and join us, please. This goes
3 to a question that I was getting ready to ask. I note
4 from the juror manuscript that you are a reserved law
5 enforcement officer, is that correct?

6 PROSPECTIVE JUROR: I haven't been active for about
7 two years.

8 THE COURT: Okay. And would the fact that you --
9 first of all, were you involved in this case at all?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: Okay. Would the fact that you have
12 previously been in a position as a reserve law enforcement
13 officer, would that prevent you from being fair and
14 impartial in this case?

15 PROSPECTIVE JUROR: No, sir.

16 THE COURT: All right. I asked you earlier about
17 media reports you may have seen. I meant to ask you have
18 those caused you to form an opinion about the guilt or
19 innocence of the defendant in this case?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: All right. Based on that I find you're
22 fully qualified, and thank you for coming back. Did you
23 have a question?

24 PROSPECTIVE JUROR: I've got a question for you.

25 THE COURT: Go ahead.

1 PROSPECTIVE JUROR: You asked earlier if we ever
2 worked with or been defended by the lawyers. Mr. Foard
3 there has represented me in real estate transactions. You
4 know, just do paperwork.

5 THE COURT: Very good. In private practice?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: And would that fact that you worked with
8 him previously prevent you from being fair and impartial
9 as it relates to this case.

10 PROSPECTIVE JUROR: No.

11 THE COURT: Then I find that you are very qualified.
12 Thank you for that response, sir. Have a good day. All
13 right. Thank you for your patience, ladies and gentlemen,
14 while I took a few moments to talk with some of your
15 colleague individually. Let me question you now, ladies
16 and gentlemen, a little bit more about yourselves as
17 jurors today.

18 I want to know whether there is any member on this
19 jury panel; that is you, yourself, the juror, have either
20 worked full time as a paid individual or full time as a
21 volunteer or part time as a volunteer in some law
22 enforcement capacity. And, Mr. Outen, you just responded
23 and there is no need for you to stand. We just talked
24 about it, but I want to ask if there are any other jurors
25 who have worked in the past for law enforcement, either

1 for pay or for volunteer. If that applies to you please
2 stand. All right. And, sir, please tell me your name and
3 juror number?

4 PROSPECTIVE JUROR: Richard Smith, Juror 125.

5 THE COURT: All right, sir. In what capacity were
6 you with law enforcement?

7 PROSPECTIVE JUROR: I was a South Carolina State
8 Parks Ranger for 30 years.

9 THE COURT: Okay. And as a ranger you had law
10 enforcement authority as well?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: And would the fact that you had that in
13 your past prevent you from being fair and impartial in
14 this case somehow?

15 PROSPECTIVE JUROR: No, sir.

16 THE COURT: All right. Then in find that you're
17 qualified by your response. Thank you. All right. And,
18 again, Ms. McIntoch, let me revisit this issue with you.
19 You stood as Juror Number 87, ma'am? If you would stand
20 again. I asked you about the fact that you send some
21 documents to the Solicitor's Office as part of your
22 responsibilities. But, obviously, that's because you work
23 in law enforcement. And I want to ask you again would
24 that prevent you from being fair and impartial in this
25 case? And another way to say that is would you lean

1 closer to law enforcement just based upon you employment
2 in this case in your opinion?

3 PROSPECTIVE JUROR: I will.

4 THE COURT: All right. Ma'am, and just to be sure I
5 tell you what I'm going to do, then, just based upon your
6 response, and maybe that my question actually prompted
7 your response, but I want to be fair to all sides of this
8 case. And so what I'm going to do, ma'am, is I'm going to
9 remove you as a juror from this case, and you don't need
10 to respond to any further questions.

11 And, again, it's not because I don't think you're
12 capable or competent. I believe that you would be an
13 excellent juror, but I also realize that there are two
14 parties with distinctly different positions and rights in
15 front of me and to avoid a conflict I'm going to stand you
16 aside, please. All right. Please be seated. I'm going
17 to let you be seated.

18 Again, when I get to the end of this I don't know
19 whether we have to revisit these decisions. So just
20 remain with us if you would. All right. I asked you
21 about whether you've been in law enforcement before, but
22 now I want to ask whether any of you have an immediate
23 family member currently in law enforcement, and the way we
24 define immediate family member is this: It's your spouse
25 and your children regardless of where they live, and

1 anyone living in your household. So spouse and children,
2 regardless of their residence and anyone who lives in your
3 residence. I'm asking if any of you have people who are
4 presently employed in law enforcement; that is right now
5 employed in law enforcement in your immediate family. If
6 so please stand. All right. And then, ma'am, Miss Juror
7 Number 87, I'm going to get you to be seated cause we're
8 going to remove you from this case.

9 And let's go to the -- we have someone in the back.
10 I believe there is a lady standing in the back. Ma'am,
11 we'll go to you first. And tell me your name and juror
12 number, please?

13 PROSPECTIVE JUROR: Bonnie Knight, Number 77.

14 THE COURT: Miss Knight, tell me for whom are you
15 standing?

16 PROSPECTIVE JUROR: My son, he works for the
17 Chesterfield County Detention Center.

18 THE COURT: Okay. And, of course, not involved in --
19 the Detention Center not involved in this case, ma'am, but
20 let me ask you would that prevent you from being fair and
21 impartial in the case somehow in your opinion?

22 PROSPECTIVE JUROR: No.

23 THE COURT: All right. Then I find that you're
24 qualified by your response. Thank you, ma'am. Now, let's
25 go to the front. Sir, tell me your name and juror number.

1 PROSPECTIVE JUROR: Nicholas Griffin, Number 57.

2 THE COURT: Okay. And Mr. Griffin, what's your
3 family member connection?

4 PROSPECTIVE JUROR: My dad works at the Detention
5 Center.

6 THE COURT: All right, sir. And would the fact that
7 your father works at the Detention Center prevent you from
8 being fair and impartial here in this case?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: It would?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: So you're telling that you could not be
13 fair and impartial because of your father's employment?

14 PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: All right. Then based on what you're
16 telling me then, Mr. Griffin, I'm going to stand you aside
17 for this case. I'm going to let you be seated and remain
18 with us during the jury draw because, again, we're going
19 to have to revisit that decision. But I'm going to let
20 you be seated. You don't need to answer any further
21 questions with regard to this case. Thank you, sir, for
22 your candor.

23 And, now, in the front. Sir, tell me your name and
24 juror number.

25 PROSPECTIVE JUROR: George Witczak, Number 146. My

1 son is a detective up in Laurinburg, North Carolina.

2 THE COURT: Of course, Laurinburg is not involved in
3 this case. But I ask you would that connection for a
4 family member prevent you from being fair and impartial
5 here in this case?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: All right. Then I find that you're
8 qualified by your response. Thank you, Mr. Witczak. And,
9 sir, in the back tell me your name and juror number.

10 PROSPECTIVE JUROR: Gene Turner, 131. My son-in-law
11 is a Highway Patrol.

12 THE COURT: All right. And where is that, sir?

13 PROSPECTIVE JUROR: Chesterfield County, Lancaster
14 County.

15 THE COURT: Okay. And what is his name?

16 PROSPECTIVE JUROR: Stacy Griggs.

17 THE COURT: All right. And would the fact that you
18 have that connection to your son-in-law would that prevent
19 you from being fair and impartial in this case here in
20 your opinion?

21 PROSPECTIVE JUROR: No, sir.

22 THE COURT: All right. I find that you're qualified,
23 Mr. Turner, by your response. Thank you, sir.

24 All right. Ladies and gentlemen, this case involves
25 the allegations of what we call a violent crime, and when

1 I say a violent crime what I really mean by that in terms
2 of this discussion is that it involves an interpersonal
3 violence and injury to another party. So I want to ask
4 you now if there is any member of this jury you, yourself
5 have you ever been victim of a violent crime; that is an
6 attack or some crime in which you were injured or
7 potentially injured. If that applies to you, if you've
8 been the victim of a violent crime please stand.

9 All right, ma'am, please tell me your name and juror
10 number.

11 PROSPECTIVE JUROR: Deborah Owens, Number 105.

12 THE COURT: All right. Miss Owens, ma'am, tell me
13 how long ago was this, please.

14 A. Two separate accidents. One was 20 something years
15 ago.

16 THE COURT: One was 20 something years ago for one
17 incident. When was the other one?

18 PROSPECTIVE JUROR: Probably about 18 years ago.

19 THE COURT: All right. And, ma'am, were there
20 prosecutions that arose out of those incidents, either one
21 of them?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: There were?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Were you involved in that prosecution,

1 ma'am? Were you a witness?

2 PROSPECTIVE JUROR: I was the victim.

3 THE COURT: I understand, but did you appear and were
4 you a witness and went to Court.

5 PROSPECTIVE JUROR: I believe. Yes, sir.

6 THE COURT: All right. Very good. Now, thank you.
7 Now, would the fact that you have that experience in your
8 history would that prevent you from being fair and
9 impartial in a case with these allegations?

10 PROSPECTIVE JUROR: I don't think.

11 THE COURT: Then I -- are you certain of that, ma'am?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: All right. Then I find that you're
14 qualified by your response. Thank you, ma'am. Anyone
15 else now who would say that they've been the victim of a
16 violent crime?

17 And, now, there are two sides to every question in
18 this courtroom, and I ask you this. Is there anyone who
19 has been accused of being a perpetrator of a violent
20 criminal? That is whether or not they was a criminal
21 charge that resulted or some other prosecution resulted,
22 but I'm asking you this if there is anyone who believes
23 you have been the victim -- excuse me. That you have been
24 accused of being the perpetrator of a violent crime. If
25 so, please stand. All right. Please, sir, tell me your

1 name again.

2 PROSPECTIVE JUROR: George Witczak.

3 THE COURT: And, Mr. Witczak, tell me how long ago
4 this has been.

5 PROSPECTIVE JUROR: October 19, 1974.

6 THE COURT: Okay. And can you just briefly tell me
7 something of that incident.

8 PROSPECTIVE JUROR: My brother-in-law was trying to
9 kill my sister, and I killed my brother-in-law.

10 THE COURT: All right, sir. First of all, Mr.
11 Witczak, thank you for the candor of your response, sir,
12 and I ask you would that prevent you, given these
13 allegations, from being fair and impartial in this case?

14 PROSPECTIVE JUROR: It might, sir.

15 THE COURT: All right. Well, let's do this, Mr.
16 Witczak, just to avoid you having to be put in a
17 compromised position, and I know this is difficult for
18 you, I'm going to remove you from this case and if you
19 wish you may leave at this moment. You wish to go? You
20 have a good day, sir. Thank you again, Mr. Witczak, for
21 being here today.

22 All right. Now, sir, please tell me your name and
23 juror number.

24 PROSPECTIVE JUROR: Marcus Quick, Juror Number 115.

25 THE COURT: All right, sir. And tell me ---

1 THE BAILIFF: He neglected to stand a minute ago.

2 THE COURT: Tell me why your standing, please.

3 PROSPECTIVE JUROR: You asked a few minutes ago if
4 you have spouses or children who work in law enforcement.

5 THE COURT: Sure.

6 PROSPECTIVE JUROR: I do have a brother and uncle.
7 My brother employed by the Pageland Police Department. My
8 uncle is employed by the Chesterfield County Sheriff's
9 Office.

10 THE COURT: Very good. And thank you, and actually,
11 technically, those folks would be outside my question
12 unless they reside with you, but I appreciate you standing
13 up and giving us that information. Let me ask you would
14 that, the fact that you have those two individuals,
15 neither of whom are in this prosecution, but would that
16 prevent from being fair if you're called as a juror in
17 this case?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: All right, sir. Then I find that you're
20 qualified by your response. Thank you again for your --
21 making sure we knew that information. You may be seated.
22 All right. Ladies and gentlemen, we really know nothing
23 about this case. We don't know anything about the
24 allegations or the facts or any further details other than
25 just some scant information given to you. But based on

1 what you heard today is, for whatever reason personal to
2 you; it may be a religious reason. It may be a personal,
3 philosophical reason. It may be a moral reason.. Is there
4 any member of this jury panel who believes you would not
5 be an appropriate juror in this case for any reason
6 personal to you, if that applies to you or you believe
7 that it may please stand.

8 All right. Now, Miss Miller, we have removed you
9 from this case, so you may be seated. And, then sir, you
10 father works at the Detention Center so we have removed
11 you as well. So you may be seated. Thank you. And,
12 ma'am, please tell me your name and juror number.

13 PROSPECTIVE JUROR: Ninety-six, Torekia Miller.

14 THE COURT: Just one moment, please. And,
15 Miss Miller, are you related to the Miss Miller who is
16 seated right behind you?

17 PROSPECTIVE JUROR: No, sir.

18 THE COURT: You're not. All right. And you're
19 telling me and the reason you're stand is you believe you
20 could not be fair and impartial in this case?

21 PROSPECTIVE JUROR: No, sir.

22 THE COURT: All right. Well then I accept what you
23 tell me, ma'am. Thank you for the honesty of your
24 response, ma'am. We're going to remove you from this case
25 as well, and you're Juror Number 96, Miss Torekia Miller?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: All right, ma'am. You don't need to
3 answer any further questions about this case. I'm going
4 to let you be seated, ma'am. What one moment, please.

5 All right. Ladies and gentlemen, let counsel step up
6 and talk about at the bench here one moment.

7 (WHEREUPON, a bench conference was held off the
8 record in the presence of the jury, but out of the
9 hearing of the jury.)

10 CLERK OF COURT: All right, ladies and gentlemen,
11 talk I was talking to them about scheduling, and we
12 have -- it's not escaped our attention that it is lunch
13 hour. We're just got a few more minutes here and then
14 we're going to break and come back and conclude the jury
15 selection after lunch. So don't worry. We're not trying
16 to take your lunch away from you. I've got just two more
17 questions I want to ask you about.

18 I ask about whether any of you have ever been the
19 victim of or accused of being the perpetrator of a violent
20 crime. And I defined that for you, but I did not
21 specifically ask you about a crime which has the same
22 terms in its name which is criminal domestic violence.
23 That is a violent crime that occurred within members of a
24 household.

25 I'm asking now where there is any member of this jury

1 panel who has ever been a victim of criminal domestic
2 violence or accused of perpetrating an incident or
3 incidents of criminal domestic violence who has not stood
4 earlier in response to my questions. If that applies to
5 you please stand. All right. And then let's begin,
6 ma'am, tell me your name and juror number, please.

7 PROSPECTIVE JUROR: Tonya Jones, 75.

8 THE COURT: All right. Okay, and Ms. Jones, tell me,
9 ma'am, how long ago was this.

10 PROSPECTIVE JUROR: A year ago.

11 THE COURT: And I asked a questions both ways. I'm
12 assuming that you're standing because you were at one time
13 the victim of and incident of criminal domestic violence?

14 PROSPECTIVE JUROR: No. My first husband.

15 THE COURT: Okay. And would the fact that you've had
16 that incident, if there are allegations in this case, and
17 I'm not even certain what the evidence will be, of
18 criminal domestic violence would that prevent you from
19 being fair and impartial in this case.

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: Are you certain of that?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: All right. Then I find you qualified,
24 ma'am. Thank you for your responses. Sir, please tell me
25 your name and juror number.

1 PROSPECTIVE JUROR: David Boan, Number 18.

2 THE COURT: Okay. And, sir, and tell me are you
3 standing because you were accused at one time of
4 perpetrating, Mr. Boan, or you were a victim of criminal
5 domestic violence?

6 PROSPECTIVE JUROR: Both.

7 THE COURT: Both.

8 PROSPECTIVE JUROR: Yes, sir. My girlfriend attacked
9 me, and I got off a charge.

10 THE COURT: All right. Well, let me ask you this,
11 sir. How long ago was this?

12 PROSPECTIVE JUROR: Three years ago.

13 THE COURT: All right. Would the fact that you had
14 that incident prevent from being fair and impartial in
15 this case, if there are allegations, and I don't know if
16 there are or not. But if there are allegations of
17 criminal domestic violence would that prevent you from
18 being fair and impartial somehow?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Then I find that you're qualified by your
21 answer, sir. Thank you. Miss. Miller, I've already
22 removed you from this case so there is no need for you to
23 respond. You may be seated. Thank you.

24 All right. Now, the last question I have for you is
25 this, and it goes along with something I asked earlier

1 which is this: Is there anyone who believes for whatever
2 reason personal to you you could not be a fair and
3 impartial juror. But I just want to point out to you
4 which is obvious this case involves a homicide; that is an
5 allegation of homicide which is the death of an individual
6 arising out of the charges. And I'm asking you if there
7 is anybody on this jury panel who believes that because
8 this involves homicide, allegations of homicide, that you
9 could not be fair and impartial; that is these allegations
10 are such that they would prevent you from being fair and
11 impartial. If that applies to you please stand.. Let the
12 record reflect that no one has stood.

13 Now, ladies and gentlemen, if I have excused you from
14 this case but asked you to remain with us until we reach
15 the end of the jury draw please stand at this time and
16 let's confirm who we have and who we believe has been
17 excused. Please stand if I have excused you from this
18 case. All right.

19 Now let's go back in the record and let's make sure
20 we have everyone listed. Just one moment. Madam Clerk,
21 how many do have. I have six as well as six people
22 standing. That's what I got.

23 Okay. The last thing that we're going to do is going
24 to ask each of you to give us your name and juror number
25 one last time. We'll start on the front with you, Miss

1 Pegues, so that we can just confirm in our records who we
2 are releasing at this time.

3 PROSPECTIVE JUROR: Annie Brown Pegues, Number 109.

4 THE COURT: And, Ms. Pegues, you are free to go at
5 this time, and you do not need to return after lunch. All
6 right. We're done for the week with jury duty. Have a
7 good day, ma'am.

8 Now, to the back, Juror 87.

9 PROSPECTIVE JUROR: Elise McIntosh, 87.

10 THE COURT: All right, Ms. McIntosh. We're going to
11 release you at this time. And you don't need to return
12 after lunch. You're done for the week with jury duty.

13 Now, let's go to the ladies. Ms. Miller, in the
14 front please give us your name and juror number.

15 PROSPECTIVE JUROR: Alveria Miller, Number 94.

16 THE COURT: All right. Just one moment, please. All
17 right, ma'am. We have released you as well and you're
18 free to go. You do not need to return after lunch.
19 You're free to go. And then in the front, Miss Miller.

20 PROSPECTIVE JUROR: Juror Number 96.

21 THE COURT: All right, ma'am. You are also free to
22 leave at this time. You don't have any further
23 responsibility as a juror. And you're done for the week.
24 And now, sir, in the front row, please tell me your name
25 and juror number.

1 PROSPECTIVE JUROR: Nicholas Griffin, Number 57.

2 THE COURT: Mr. Griffin, you're free to go as well.

3 You don't have any further responsibility this week as a
4 juror. And then in the back, last but not least.

5 PROSPECTIVE JUROR: Don Wright, Juror Number 149.

6 THE COURT: All right, sir. Mr. Wright, you are free
7 to go as well, and you don't have any further
8 responsibility as a juror this week.

9 All right. Now, ladies and gentlemen, the rest of
10 you, I'm going to -- rather than us go through the process
11 of actually drawing the jury now cause it may take a
12 little while, we're going to come back after lunch and do
13 this. But this is very important. We have basically
14 finished our qualifications, and when we come back we're
15 going to draw the jury.

16 So I wouldn't want something to happen over lunch
17 that might disqualify you from being a juror that we don't
18 know about. So this is what I'm going ask. Whomever you
19 have lunch with today, whether it's a fellow juror or a
20 stranger on the street, family member, please do not
21 discuss these allegations and what this case is we're talk
22 about today because I don't want someone with whom you're
23 dining with to say something that would somehow influence
24 how you feel about this case.

25 And so along that same line do not undertake any

1 investigation whatever that may be of your own into
2 this -- these allegations. Do not look at any media
3 reports over lunch whether it be an old newspaper or
4 whatever it maybe if there are any. Do not do that. I
5 will ask you when we return if anyone has done that. I
6 just want you to go and have a good lunch, relax your
7 mind, enjoy yourself, and come back and we're actually
8 going to take an hour and a half lunch which will assist
9 the lawyers and the Court in preparing for the jury
10 strikes which will begin at 2:30. So, please, be back in
11 your seat at 2:30. We're all going to remain where we are
12 right now while you depart the courtroom, if you would
13 please depart to your right and have a good day, ladies
14 and gentlemen. See you at 2:30.

15 That's our jurors. Family, please remain while our
16 jurors depart. Thank you.

17 (WHEREUPON, the jury panel was excused from the
18 courtroom at 1:58 p.m.)

19 THE COURT: Counsel, come join us if you will. Tell
20 us your name and juror number.

21 PROSPECTIVE JUROR: Alonzo Adams, Juror Number One.

22 THE COURT: How are you doing? Tell me why you're
23 coming forward, sir.

24 PROSPECTIVE JUROR: My brother in law, he can go at
25 any time, and my wife takes him. I would love to be

1 excused and come back at another time.

2 THE COURT: All right. Where is your brother in law?
3 In the hospital?

4 PROSPECTIVE JUROR: Yes, sir. Intensive care.

5 THE COURT: What hospital?

6 PROSPECTIVE JUROR: McLeod.

7 THE COURT: What's his name?

8 PROSPECTIVE JUROR: Curtis Brown.

9 THE COURT: All right. First of all, I'm sorry to
10 hear that, and based on what you're telling me I'm going
11 to release you to go to be with your family. We'll remove
12 Mr. Adams. And what we'll do is we'll summon you again,
13 probably about September. Good luck to your family, sir.
14 You don't need to come back.

15 All right. Now, I'll let you and we'll all return to
16 our seats and pick -- take up jury issues right now. All
17 right.

18 Mr. Stewart, I was talking with Mr. Redmond up here
19 because he had a family member who passed away during the
20 holidays and that was our conversation. It was not about
21 this case. I just want you to be aware of what we were
22 talking about here at the court reporter's stand. Thank
23 you.

24 COLLOQUY

25 All right. Before the Court staff -- well, first of

1 all, now, ladies and gentlemen, you've been kind enough to
2 wait. If you wish to go you may. What we're going to
3 talk about the jury draw process and some issues on the
4 record, but we don't hold you here any longer. We just
5 wanted the jurors to get out before they intermingling.
6 Excuse me, Mr. Young. May I help you?

7 MR. YOUNG: Your Honor, may I ask the Court to just
8 instruct witnesses. I don't know who, but our witnesses,
9 they're seated here in Court, on telephone standby. If
10 the Court would assist me in just instructing them as to
11 that process; that if they don't show up they're
12 effectively under subpoena. After they're released we
13 will call them with more than an hour or so notice.

14 THE COURT: In other words they can go for the day?

15 MR. SECOR: Yes, let them go until they're called as
16 needed.

17 THE COURT: All right. Both sides of this case, what
18 Mr. Young is talking about is his witnesses, but we're not
19 going to take testimony in this case today. It's going to
20 take all day to draw the jury and get everything else
21 done. We're going to stop and start testimony tomorrow.

22 Your lawyer tells us that you're under subpoena
23 and -- not your lawyer, but Mr. Young tells me that you're
24 under subpoena and that he's willing to release you if you
25 give him telephone information and be available within an

1 hour so that once you get your call you can be here when
2 it's time to testify and not have to sit with us.

3 Now, you can remain with us. We don't demand that
4 you leave, but we give you the option to go and be on
5 telephone standby. But that your subpoena remains intact.
6 any questions about that from this side? All right. If
7 you wish to go you're free to go. Do you have the
8 information you need, Mr. Young, on telephone numbers?

9 MR. YOUNG: Yes, sir.

10 THE COURT: Very good. Anything for your witnesses,
11 Mr. Redmond?

12 MR. REDMOND: I would actually ask if they -- I see a
13 few of them here that if they can remain at this time.
14 They actually came in after we did the introductions, but
15 if they could just remain for just a few minutes.

16 THE COURT: All right. Very good. Now, are there
17 objections to the jury draw -- well, the jury questioning
18 process, the voir dire process, that we have engaged in
19 thus far?

20 MR. YOUNG: Yes, Your Honor. First of all, the first
21 juror excused was Juror Number 41. I didn't object, and
22 I'm not objecting now. I wanted to make sure the record
23 was complete in that in addition to being the Court's
24 cousin she was also represented by the Chesterfield County
25 Public Defender's Office on some check charge at this

1 time. And I know that we didn't get a chance for her to
2 get that far in the process, but I want the record to be
3 complete. And I would just ask the Solicitor's Office to
4 confirm that.

5 MR. REDMOND: He is correct. He is actually being
6 prosecuted by our office for some check charges in a case
7 that I'm handling. We didn't even get that far, so Mr.
8 Young is correct.

9 THE COURT: Thank you.

10 MR. YOUNG: I think and I just repeat some of the
11 stuff that I said up at the bench. I'm sorry Your Honor
12 has to go through it again. But with regards to Juror
13 Number 87, was the woman who worked at the Sheriff's
14 Office and puts together files for the Solicitor's Office,
15 and Your Honor initially asked her a few questions, "Would
16 that -- is that going to affect your ability to be fair
17 and impartial." She said, "No." At a later time you
18 asked her, "Does it cause you to lean law enforcement when
19 you start talking about law enforcement," and of course,
20 she said, "Yes."

21 I would object to that question not being posed in
22 that format to Juror Number 104, and Juror Number 125,
23 Mr. Smith, the retired park ranger. But objection to 109
24 was cured.

25 THE COURT: All right. Just a moment. Let's take

1 them while we go. The two other individuals who were --
2 who had law enforcement connections were not current,
3 active law enforcement. Mr. Outen told us that he had
4 left being a reserve officer two years ago, and our park
5 ranger had retired. Neither were active, current law
6 enforcement. That was the distinction between them and
7 Juror 87.

8 I went beyond what I asked the other jurors, really
9 out of courtesy to the Defense, because I knew that
10 Defense would most likely in the exercise of their
11 peremptory strikes strike that juror. And I just simply
12 felt that it would be best to question her directly on a
13 point whether she would lean towards law enforcement. So
14 I would decline to give you that relief of the two other
15 individuals who are not active law enforcement. Go ahead.

16 MR. YOUNG: And, specifically, I think the question
17 is not does it affect your ability to be fair and
18 impartial. I think the question is much more nuance than
19 that in that it is when you have to judge the credibility
20 of testimony between a law enforcement officer and a lay
21 witness do you automatically tend to believe law
22 enforcement officers simply because of their status as law
23 enforcement.

24 THE COURT: I understand your position, but when I
25 started asking jurors -- again, this was a courtesy to the

1 Defense. About their leanings. we would be here all day
2 and everyone would be disqualified at some point because
3 everyone leans one way or the other on any given number of
4 issues. And so I just simply felt it was important
5 because she was active law enforcement and she was
6 somewhat hesitant in her responses, perhaps because I
7 couldn't hear her well because she just wasn't forthcoming
8 and projecting. But something in her demeanor also gave
9 the Court the impression that she had what I'm going to
10 call just a hesitancy about being fair and impartial.

11 She simply told me, 'I could follow the law'. That's
12 an unusual response. Usually people say, "I can be very
13 impartial." A lot of people say that. I felt like I
14 needed to ask her the question in the way that I did. So
15 I do not extend that same belief nor procedure to our
16 other two witnesses. I belabored the point. Go ahead.

17 MR. YOUNG: Your Honor, you -- Your Honor asked about
18 being a member of any organization like M.A.D.D. or
19 victim's rights organization or pro law enforcement
20 organizations, I would just like to note for the record
21 that I asked the Court to extend that question to
22 contribute to or otherwise support any of those
23 organizations, and the Court declined to ask it in that
24 more broad fashion.

25 THE COURT: I did.

1 MR. YOUNG: Your Honor, ask whether or not people had
2 immediate family who are law enforcement. I would ask the
3 Court to extend that question to friends or family or any
4 people you know in law enforcement.

5 THE COURT: That's far too broad, Mr. Young, and such
6 a universal in business, and again, we would be here all
7 day.

8 MR. YOUNG: I think we went back and added the
9 criminal domestic violence. We appreciate that. Thank
10 you very much. With regard to the other question I
11 believe Your Honor told me that I could make the Defense
12 Request for Voir Dire an exhibit. I believe I
13 specifically requested the Court revisit questions Nine
14 and Ten with regard to whether or not a person takes the
15 stand in their own defense and would you hold it against
16 somebody who didn't testify.

17 I think a lot of jurors understand the law, but
18 personally feel that if somebody doesn't take the stand in
19 their own defense that they must have done something. I'd
20 like Your Honor to ask further about that.

21 THE COURT: And my perception was that as that
22 question actually goes into the issue and allows the
23 Defense to sample the jurors as to whether they have a
24 position on whether someone 'defends themselves' without
25 an explanation of the right to remain silent I felt that

1 the question as it was posed was too broad and
2 unnecessary. So the Court declined to ask it.

3 MR. YOUNG: I believe, Your Honor, pretty much
4 covered Question Number 38 which is specifically asked
5 about the grieving process. I would specifically, again,
6 renew my request for Question Number 43 with regards to
7 are you familiar with pepper spray. Have you ever been
8 pepper sprayed? Have you ever had pepper sprayed on your
9 body. And Question Number 46, "Has anybody ever been in a
10 situation where they had to defend themselves."

11 THE COURT: All right. And let me just respond to
12 you broadly that the Court has asked extensive voir dire.
13 We have examined this jury substantially. I believe that
14 the questions and answers we've obtained are sufficient to
15 draw a jury which is fair and impartial and I will decline
16 any further questioning. And would intend, when they
17 return at 2:30, to directly enter the jury draw.

18 MR. YOUNG: Thank you, Your Honor.

19 THE COURT: Of course, Exhibit One, Madam Court
20 Reporter. We'll wait for you to mark that.

21 (WHEREUPON, Court's Exhibit No. 1 was marked for
22 identification and received into evidence.)

23 THE COURT: All right. Now, I would intend to draw
24 two alternates. It is my belief, based on previous
25 discussions, that the strikes are five for the State and

1 ten for the Defense. I don't know whether you want to go
2 ahead now and take up challenges for cause. We don't have
3 a jury here, of course, and I realize you wouldn't have
4 the best list to begin with. The alternative is go ahead
5 and take it up when the juror's name is called. What's
6 your preference, State?

7 MR. FOARD: We prefer to take it up when they're
8 called, Your Honor.

9 THE COURT: Okay. What says Defense?

10 MR. YOUNG: I prefer to take it up now. I only have
11 one.

12 THE COURT: Well, if there is only one let's take the
13 one now and avoid the issue. All right. Tell us the one
14 juror.

15 MR. YOUNG: Your Honor, I would like to call Juror
16 Number 104, John Outen. Mr. Outen initially indicated
17 that he knew most of law enforcement officers in this
18 case. And he indicated he would set that aside, that
19 knowledge. But what he didn't disclose at that time was
20 that he had been a reserve law enforcement and was no
21 longer.

22 He was asked about business dealings with the
23 attorneys, and he did not disclose that Mr. Foard had
24 represented him in real estate matters. He did disclose
25 that when he came up to talk about the publicity and was

1 asked about the law enforcement aspect. He has knowledge
2 of the case from publicity. I think, quite frankly, Your
3 Honor I'm completely surprised by the lack of juror
4 knowledge and grateful for the lack of publicity that has
5 not appropriated the jury pool. He is one of the few
6 people who have actually had some publicity knowledge.

7 The other gentlemen, Mr. Sellers, came up actually
8 was talking about a different case. Not this case. Based
9 on his latest in the response, the prior law enforcement,
10 the fact that he knows all the law enforcement officers we
11 would challenge for cause on Mr. Outen.

12 THE COURT: All right. Without taking argument from
13 the other side I'm going to respectfully deny that request
14 for a juror being removed for cause because each of these
15 issues that you've discussed I specifically questioned him
16 on that issue and said he can be fair and impartial. I
17 find that Mr. Outen was forthcoming. He was honest and
18 open. I didn't believe that he did anything that would
19 have made it appear that he was hiding something from the
20 Court. It may have been that my question was inartful
21 about prior professional connections to Mr. Foard and the
22 preparation of a deed.

23 But I certainly don't believe, I have no evidence
24 that Mr. Outen was being dishonest. He finally came up
25 with that while we were talking up here at the stand.

1 Because when he came up here to the stand he told us about
2 it, and for all these those reasons I'm going to deny that
3 motion and require you to use a peremptory strike if you
4 want to remove him from the jury.

5 MR. YOUNG: One final thing, Your Honor. Thank you.
6 Please note my exceptions.

7 THE COURT: So noted.

8 MR. YOUNG: Did -- early on in the processing of the
9 panel it was explained through the Solicitor's Office that
10 the victim's family was being representative by a
11 reverend, Reverend Tyson. And I'm assuming and I believe
12 that Mr. Tyson is a blood relation to the family and it is
13 not in any capacity as a religious figure in the community
14 that he's here representing them and he's their
15 spokesperson who happens to also be a reverend.

16 And I don't have any exception to that or take any
17 title from that. And I don't want to move to quash the
18 whole panel. I don't know that -- have any other way to
19 do it I guess other than request that the Court or the
20 Solicitor's Office offer some sort of further way of
21 explanation to the venire that he is, but the family
22 member of Miss Clyburn and not here in his capacity as a
23 religious leader in the community.

24 MR. REDMOND: And, Your Honor, I think -- and I don't
25 have a problem clarifying out of an abundance of

1 precaution. I think I did make it clear that he the uncle
2 of the victim. I actually think I repeated it twice
3 because I had to restate it because my back was turned.
4 So I think they twice heard that she was the niece of --
5 or he was the uncle of Bellany Clyburn. But out of an
6 abundance of precaution I have no problem whatsoever just
7 stating that he is here in his capacity as her uncle. I
8 think that's pretty much an -- but I can make it
9 succinctly clear if the Court so desires.

10 THE COURT: I don't require it. Mr. Young, I'm going
11 to overrule any objection that you've made. First of all,
12 I don't think there is any reason to highlight what one
13 individual may or may not be in a relation. I didn't find
14 that there was anything objectionable. I asked Mr.
15 Redmond just off the top of his head. He was not ready
16 for my question, who was the spokesperson. Probably there
17 are 25 people sitting there in the family section.

18 I put him in a difficult choice, and he chose an
19 individual who may have, for all I know, been the
20 spokesperson through the various phases of this
21 prosecution. So I simply decline because I don't believe
22 it's in our best interest to go back and revisit that one
23 point before we go and draw a jury. I'm going to note
24 your objection for the record and your exception, thereto.

25 MR. YOUNG: Thank you.

1 MR. FOARD: Your Honor, the State does have one
2 challenge for cause if you want to take that up at this
3 time.

4 THE COURT: Please.

5 MR. FOARD: Number 18, David S. Boan, indicated
6 during voir dire that he had been both accused and the
7 victim of a C.D.V. If I heard him wrong I apologize, but
8 I believe he said three years ago. Your Honor, his
9 criminal record actually reflects he's been charged with
10 harassment, stalking and C.D.V. of a high and aggravated
11 nature, specifically the C.D.V. of a high and aggravated
12 nature happened in the year 2000, Your Honor.

13 The State has concerns that he was not more candid
14 about that. That is much more than three years ago, Your
15 Honor. We would ask that he be struck for cause.

16 THE COURT: Does he have convictions?

17 MR. FOARD: He does not have convictions. It's a
18 charge, but the question was ---

19 THE COURT: The question was, "have you ever been
20 accused or perpetrator." He stood and he answered the
21 question. He gave us a what may have been a layman's
22 version of what happened. You may look at it differently
23 as a prosecutor, but the Court finds that he candidly
24 responded. I would decline to remove him for cause, and
25 that is the decision with regard to that juror.

1 All right. Ladies and gentlemen, we're going to
2 stand down. We'll be in recess until 2:30 at which time
3 we'll draw the jury.

4 SPEAKER 1:

5 MR. REDMOND: Thank you, Your Honor.

6 (WHEREUPON, Court was in recess at 1:18 p.m. and
7 reconvened at 2:33 p.m.)

8 THE COURT: Good afternoon. Welcome back to the
9 courtroom. We are now ready to draw the jury in our case
10 for trial, and let me ask. Is the State ready?

11 MR. FOARD: Yes, sir, Your Honor.

12 THE COURT: And is the Defense ready?

13 MR. YOUNG: Yes, Your Honor.

14 THE COURT: Okay. Just one moment. All right,
15 ladies and gentlemen, let me talk a little bit about the
16 process and what we're going to do. Our Clerk has used a
17 computer system and using it right now to randomly draw
18 a -- just in no order particularly of prior, jurors from
19 the list of all those that remain qualified. And when
20 your name is called what we'd just ask you to do is just
21 to stand where you are and each side is going to have an
22 opportunity either to accept you or to excuse you.

23 Now, that sounds not so complicated, but what
24 actually is going to happen is it's a little bit
25 psychologically uncomfortable for you because you're going

1 to stand up. People at one table are going to be talking,
2 and you know they're talking about you and we'll know
3 they're talking about you as well. And then they will
4 make a decision as to whether to seat you or to excuse
5 you. Now, I would say that in some Courts you have to get
6 up out of your seat to come all the way around up here up
7 front and join us for that conversation.

8 It's a little bit uncomfortable for jurors so we
9 let -- in this Court we just let you remain where you are
10 and stand. And so if you are chose what we're going to
11 ask you to do is to come forward and be seated in the jury
12 box. Bring your belongings not because you're going to be
13 sequestered somewhere, but just because you're changing
14 seats in the courtroom.

15 And if you're not chosen we will ask you just to be
16 seated, just sit back there where you are and remain with
17 us cause we may have to revisit some of the strikes that
18 may or may not be employed in the case. Now, if you are
19 not chose; that is if you are excused, don't be offended
20 by that. Of course, actually, that may suit you fine.
21 That may be your purpose, but I will tell you that it may
22 be because of some response made today here in the
23 courtroom on a jury question.

24 It may be because of something that was written on a
25 jury response form. It may be because of some strategy or

1 tactic that only the lawyers know. But I tell you what
2 it's not. It's not because of your sex, and it's not
3 because of your race. It is against the law to strike for
4 those reasons, and each side can object to the other
5 side's strikes. So please understand that that is why I
6 need you to stay with us until we reach the end of the
7 draw and make sure there is no challenges to the various
8 strikes that are before me.

9 Ready? All right. Then, ladies and gentlemen,
10 please just please take just one moment and follow our
11 Clerk's instructions. Counsel, if you want to turn your
12 backs to me that's fine, and go ahead and face the jury
13 panel.

14 SELECTION OF THE JURY

15 CLERK OF COURT: When I call your name please stand.
16 Number 128, Jennifer J. Sullivan. What says the State.

17 SPEAKER 1: P Sr.

18 MR. REDMOND: Beg the Court's indulgence.

19 MR. FOARD: Please present Miss Sullivan.

20 CLERK OF COURT: What says the Defense.

21 MR. YOUNG: Please excuse Ms. Sullivan from the trial
22 of this case.

23 CLERK OF COURT: You may have a seat. Number 110,
24 Slone L. Perdue. What says the State.

25 MR. FOARD: Please present Ms. Perdue.

1 CLERK OF COURT: Defense.

2 MR. YOUNG: Please swear Miss Perdue.

3 CLERK OF COURT: Please come have a seat in the jury
4 box. Number 89, Danny R. McManus. What says the State.

5 MR. FOARD: Please present Mr. McManus.

6 CLERK OF COURT: Defense.

7 MR. YOUNG: Please swear Mr. McManus.

8 CLERK OF COURT: Please come have a seat in the jury
9 box. Number 75, Tonya R. Jones. What says the State.

10 MR. FOARD: Please present Miss Jones.

11 CLERK OF COURT: Defense.

12 MR. YOUNG: Please excuse this juror from the trial
13 of this case.

14 CLERK OF COURT: Thank you. Number 104, John D.
15 Outen. What says the State.

16 MR. FOARD: Please present Mr. Outen.

17 CLERK OF COURT: Defense.

18 MR. YOUNG: Excuse Mr. Outen from the trial of this
19 case.

20 CLERK OF COURT: Number 101, Calvin C. Myers. What
21 says the state.

22 MR. FOARD: Please excuse Mr. Myers from the trial of
23 this case.

24 CLERK OF COURT: You may be seated, sir. Number 115
25 Marcus D. Quick. What says the State.

1 MR. REDMOND: Beg the Court's indulgence.

2 CLERK OF COURT: Okay.

3 MR. FOARD: Please present Mr. Quick for the trial of
4 this case.

5 CLERK OF COURT: Defense.

6 MR. YOUNG: Please excuse Mr. Quick from the trial of
7 this case.

8 CLERK OF COURT: Number 113 is Jacqueline Purvis.
9 What says the State.

10 MR. FOARD: Please present Ms. Purvis.

11 CLERK OF COURT: Defense.

12 MR. YOUNG: Please excuse Ms. Purvis from the trial
13 of this case.

14 CLERK OF COURT: Okay, ma'am, have a seat. Number
15 126, Tammy A. Stover. What says the State.

16 MR. REDMOND: Beg the Court's indulgence.

17 MR. FOARD: Please excuse Ms. Stover from the trial
18 of this case.

19 CLERK OF COURT: You may have a seat. Number 105 is
20 Deborah D. Owens. What says the State.

21 MR. FOARD: Please beg the Court's indulgence.
22 Please present Ms. Owens.

23 CLERK OF COURT: Defense.

24 MR. YOUNG: Please excuse Ms. Owens from the trial of
25 this case.

1 CLERK OF COURT: Have a seat. Number 147 is Joshua
2 C. Wood. What says the State.

3 MR. FOARD: Please present Mr. Wood.

4 CLERK OF COURT: Defense.

5 MR. YOUNG: Please swear Mr. Wood.

6 CLERK OF COURT: Please come forward. Number 46 is
7 Alvin S. Gainey, Jr. What says the State.

8 MR. FOARD: Please present Mr. Gainey.

9 CLERK OF COURT: Defense.

10 MR. YOUNG: Please swear Mr. Gainey.

11 CLERK OF COURT: Please come forward. Number 131 is
12 Barney G. Turner. What says the State.

13 MR. REDMOND: Beg the Court's indulgence.

14 MR. FOARD: Please present Mr. Turner.

15 CLERK OF COURT: Defense.

16 MR. YOUNG: Please excuse Mr. Turner from the trial
17 of this case.

18 CLERK OF COURT: Number 117 is Tiffany Reid. What
19 says the State.

20 MR. REDMOND: Beg the Court's indulgence.

21 MR. FOARD: Please excuse Ms. Reid from the trial of
22 this case.

23 CLERK OF COURT: You may have a seat. Number 82 is
24 Tammy A. Lowery. What says the State.

25 MR. REDMOND: Beg the Court's indulgence.

1 MR. FOARD: Please present Ms. Lowery.

2 CLERK OF COURT: What says the Defense.

3 MR. YOUNG: Please swear Miss Lowery.

4 CLERK OF COURT: Please come forward and have a seat
5 in the box. Number 18 is David S. Boan. What says the
6 State.

7 MR. FOARD: Please excuse Mr. Boan from the trial of
8 this case.

9 CLERK OF COURT: You ---

10 THE COURT: State has one strike remaining.

11 CLERK OF COURT: Number 95, Freddie M. Miller. What
12 says the State.

13 MR. FOARD: Please present Mr. Miller.

14 CLERK OF COURT: Defense.

15 MR. YOUNG: Please swear Mr. Miller.

16 CLERK OF COURT: Please come forward, sir. Number 29
17 is Mary L. Davis. What says the State.

18 MR. FOARD: Please present Ms. Davis.

19 CLERK OF COURT: Defense.

20 MR. YOUNG: Please excuse Ms. Davis from the trial of
21 this case.

22 CLERK OF COURT: Number 133, Tammy H. Usher. What
23 says the State.

24 MR. FOARD: Please present Ms. Usher.

25 CLERK OF COURT: Defense.

1 MR. YOUNG: Please swear Ms. Usher.

2 CLERK OF COURT: Please come forward. Number 59,
3 Sandra H. Haggins. What says the State.

4 MR. FOARD: Please present Miss Haggins.

5 CLERK OF COURT: Defense.

6 MR. YOUNG: Please swear Ms. Haggins.

7 CLERK OF COURT: Please come forward. Number Two,
8 Michele L. Adams. What says the State.

9 MR. FOARD: Please present Ms. Adams.

10 CLERK OF COURT: Defense.

11 MR. YOUNG: Please excuse Miss Adams from the trial
12 of this case.

13 THE COURT: Defense has one strike remaining.

14 CLERK OF COURT: Number 76, Michelle Kennedy. What
15 says the State.

16 MR. FOARD: Please present Ms. Kennedy.

17 CLERK OF COURT: Defense.

18 MR. YOUNG: Please swear Ms. Kennedy.

19 CLERK OF COURT: Please come forward. Number 33,
20 Cleveland G. Dunlap. What says the State.

21 MR. REDMOND: Beg the Court's indulgence.

22 MR. FOARD: Please excuse Mr. Dunlap from the trial
23 of this case.

24 THE COURT: All right. State has only challenges for
25 cause remaining.

1 CLERK OF COURT: Ronnie Register, Number 116. Any
2 cause.

3 MR. FOARD: Beg the Court's indulgence. We have no
4 cause.

5 CLERK OF COURT: Defense.

6 MR. YOUNG: Please swear Mr. Register.

7 CLERK OF COURT: Please come forward. Number 70,
8 Randy L. Jewart. What says the State.

9 MR. FOARD: No challenge for cause.

10 CLERK OF COURT: What says Defense.

11 MR. YOUNG: Please excuse Mr. Jewart from the trial
12 of this case.

13 THE COURT: Now, the Defense has only challenge for
14 cause remaining.

15 CLERK OF COURT: Number 88 is David R. McLain. Is
16 there any cause.

17 MR. FOARD: No cause.

18 CLERK OF COURT: Defense.

19 MR. YOUNG: Please swear Mr. McLain.

20 CLERK OF COURT: Number 80 is Keith A. Lowe.

21 MR. FOARD: No cause from the State.

22 CLERK OF COURT: Any cause from Defense.

23 MR. YOUNG: Please swear Mr. Lowe.

24 CLERK OF COURT: Please step forward. Number 49 is
25 Thomas F. Gainey.

1 THE COURT: And, Madam Clerk, we're drawing alternate
2 jurors right now. Let's draw two alternate jurors and the
3 strikes -- we have 12 jurors in the box now. So for our
4 alternates the strikes will be one for the State and two
5 for the Defense as to each juror.

6 CLERK OF COURT: Thomas F. Gainey, 49.

7 MR. FOARD: Please present Mr. Gainey.

8 CLERK OF COURT: Defense.

9 MR. YOUNG: Please swear Mr. Gainey.

10 CLERK OF COURT: Please come forward. Number 77,
11 Bonnie S. Knight. What says the State.

12 MR. FOARD: Please present Miss Knight.

13 CLERK OF COURT: Defense.

14 MR. YOUNG: Please excuse Miss Knight from the trial
15 of this case.

16 CLERK OF COURT: Number 125, Richard W. Smith. What
17 says the State.

18 MR. FOARD: Please present Mr. Smith.

19 CLERK OF COURT: Defense.

20 MR. YOUNG: Please excuse Mr. Smith from the trial of
21 this case.

22 THE COURT: All right. Now, the State -- the Defense
23 has exhausted their challenges. For the second alternate
24 juror you have only challenges for cause remaining. So
25 please call the next name.

1 CLERK OF COURT: There are no other names. We've got
2 to go back to the computer. There are five people left.

3 THE COURT: You have five remaining jurors..

4 CLERK OF COURT: That haven't been called.

5 THE COURT: Don't you -- can you just pull the list
6 of what you have first just call that name and a random
7 list of alternates. That's the easiest way to do that.
8 All right, ladies and gentlemen, we just we had a list of
9 30 jurors and we actually have to pull one more. So we
10 need to run the list one more time.

11 MR. YOUNG: May we approach.

12 THE COURT: You may.

13 (WHEREUPON, a bench conference was held off the
14 record in the presence of the jury, but out of the
15 hearing of the jury.)

16 CLERK OF COURT: Number 122, Charles Sellers. What
17 says the State.

18 MR. FOARD: Please present Mr. Sellers.

19 CLERK OF COURT: Defense.

20 MR. YOUNG: Please seat Mr. Sellers.

21 CLERK OF COURT: Please come forward, sir.

22 COLLOQUY

23 THE COURT: All right, ladies and gentlemen, welcome
24 to the jury box. I know you started with some faith in
25 numbers out there, and then we had to draw and you and to

1 sit in the jury box. But let me ask you this, through,
2 how many of you have served before on a jury whether it's
3 criminal or civil. Raise your hand please if you've been
4 on a jury before. All right. Well, we have some
5 experience on the jury panel. But let me say to you that
6 find yourself sitting where you are for the first time
7 don't be uncomfortable about where you find yourself.

8 Jurors need two tools to serve well and you've got
9 them both. The first is your ability to listen, and the
10 second is your collective common sense. Armed with those
11 two things you're going to find yourself in good stead.
12 Now, counsel, let me ask is there objection to the
13 procedure used by this jury -- by this Court to draw this
14 jury as well as the strikes employed by the other side.
15 What says the State?

16 MR. FOARD: No objection from the State, Your Honor.

17 THE COURT: And what says the Defense?

18 MR. YOUNG: We have objection, Your Honor.

19 THE COURT: All right. Very good. And then you will
20 be our jury. And, Madam Clerk, for our remaining jurors
21 do you have any other information you wish to convey to
22 our group that's not chosen?

23 MR. YOUNG: Your Honor, I may have misspoke. I do
24 have an objection.

25 THE COURT: Oh, I may have misheard. I thought you

1 said you had no objection. Excuse me. Am I the only one
2 who misunderstood that? My apologies. Counsel, come up
3 to the front if you will. Just one moment, ladies and
4 gentlemen.

5 (Bench conference held off the record but in the
6 presence of the jury.)

7 THE COURT: Ladies and gentlemen of the jury, the
8 lawyers are going to step back and discuss an issue among
9 themselves for a moment to see if they can resolve an
10 issue that's in discussion, and we'll just be at ease
11 right here where we are while that occurs. So both sides,
12 both of our juries, if you will remain with us. We'll
13 have some more instructions for you in just a moment.

14 Also I will say during the break our Clerk was kind
15 enough to see what we could do with the thermostat in the
16 courtroom cause it was a little bit warm this morning.
17 Touch warm on this December day, but certainly not a
18 wintery day, but still a little bit warm. We're still
19 working on that for you. Okay. So just be as comfortable
20 as you can.

21 (WHEREUPON, a short break was taken.)

22 THE COURT: Let me also say to you, ladies and
23 gentlemen, we are not going to actually being the
24 testimonial phase of this case today. We're going to draw
25 the jury, stop there and come back tomorrow for opening

1 arguments. I will tell all of our jurors here, just so in
2 case your loved ones wish to know, this is not a case that
3 you sometimes see on television in California where cases
4 go for weeks at a time. That's not anticipated here. Not
5 that this case is any less important than a California
6 case, but the fact that the duration of the case is not
7 really an indicator of 'importance'. All cases are
8 important.

9 This is a one week term of Court, and we have every
10 belief that this case will be concluded probably no later
11 than Thursday of this week. We operate this Court on a --
12 pretty much on business hours. We start at 9:30 which
13 gives the lawyers and the witnesses, parties, the ability
14 to prepare a little bit in the morning before we begin.
15 We usually end about five o'clock. No one is going to be
16 sequestered, meaning no one is going to a hotel or staying
17 away from home. Not in these cases. Everyone goes home
18 where they're supposed to be each and every night.

19 One other thing I would mention to you. I will just
20 tell you now. I ask our jurors when we are in the middle
21 of a case not to discuss the case with loved ones at home.
22 And the reason for that is that I don't want someone who
23 is of influence in your life to say something that somehow
24 would alter your view of the case. Whatever decision you
25 make should be based upon the evidence that is brought

1 forth right here from this witness stand, and that is why
2 you sit where you do and they sit where they will and not
3 on some outside, even though innocent and not
4 intentionally damaging, but nevertheless possibly
5 damaging, be a person of influence in your life. So
6 please tell your loved ones at home the Court has
7 instructed you not to discuss the facts of the case. The
8 Court, for that reason, don't know enough about the facts
9 to even have a discussion.

10 But every morning when we begin I'll ask you if you
11 had a discussion about the facts with anyone that evening.
12 I do that just for the sanctity of this proceeding to make
13 sure that each day that we go forward that all is fair and
14 all the appropriate as it should be. So, again, we'll
15 wait a moment while the lawyers talk. Just be at ease,
16 and we'll have instructions for both sets of jurors in a
17 moment.

18 All right. We have attempted to wait to resolve an
19 issue that apparently has arisen among counsel that
20 relates to the jury draw, and what I need to do is to have
21 some discussion with counsel now about whatever the issue
22 may be. So what I'd like to do is I'm going to ask our
23 jurors seated in the box to go back in the jury room and
24 enjoy a break while we resolve this issue. And for our
25 jurors who are out in the courtroom I'm going to ask you

1 not to leave the courthouse.

2 But I will ask you to leave the courtroom so that we
3 can discuss this matter on the record outside of your
4 presence. So if you would kindly step from the courtroom,
5 ladies and gentlemen who are juror and to the jurors who
6 are in the box, and enjoy your break.

7 (WHEREUPON, the jury panel was excused from the
8 courtroom at 3:15 p.m.)

9 (WHEREUPON, the jury pool was excused from the
10 courtroom at 3:15 p.m.)

11 THE COURT: All right. Mr. Young, I believe you have
12 an objection.

13 MR. YOUNG: Yes, Your Honor. The State exercised
14 four of it's peremptory strikes against African American
15 jurors. Juror Number 101, and the reason offered by the
16 State that he has -- was on the rap sheet in the Clerk of
17 Court's office there could be found the fact that he was
18 at one time charged with possession of cocaine. That
19 charge was nolle proded. I believe I'm correct.

20 MR. FOARD: That is correct.

21 MR. YOUNG: Juror Number 126, an African American
22 female. The State's proffered reason from striking her
23 was that she was late returning to Court after a break.
24 And that she, I forget how they put it, she sauntered, she
25 walked funny.

1 MR. REDMOND: It's demeanor, Your Honor, basically.
2 No offense. I don't have time for this. It was her
3 demeanor. Basically, when she came in, and interestingly,
4 it's the same reason on one of the ones that we may
5 contest that Defense raised is the fact that she had the
6 appearance of being somewhat disinterested by demeanor.
7 And then putting in the fact that I would think it's not
8 disputed that she was late after one of the breaks. That
9 was the concern of the State.

10 THE COURT: Let's do it this way. Mr. Young, you
11 give me the four juror whom you object. I first determine
12 whether they are cognitive as a group, whether that be a
13 racial group, gender group, whatever it and which I think
14 that will determine if they're acceptable. Then I'll hear
15 from the State as to what their purpose or reason is for
16 striking and then hear from you as to why you believe that
17 would be invalid reason. That fair enough reason?

18 MR. YOUNG: Sure.

19 THE COURT: All right. So we already have 101 and
20 126. Tell me the other two, please.

21 MR. YOUNG: 117 and 33.

22 THE COURT: All right.

23 MR. YOUNG: All members of the African American race.

24 THE COURT: I also note the State struck Juror Number
25 18 who is a Caucasian individual, and those were the five

1 strikes. Now, let's go back and start at the first. If
2 you will give me the reason that you struck Juror Number
3 101, Mr. Redmond.

4 MR. REDMOND: Your Honor, if it please the Court.
5 Juror Number 101, as I think Mr. Young indicated it was --
6 it came to our attention that in fact he had been arrested
7 for a prior -- I believe it was a possession of a cocaine
8 charge that was nolle prossed, but it was prior arrest.
9 And it was prosecuted by the Solicitor's Office.

10 So I don't know the reason for the dismissal, but
11 again, he actually had been charged with the possession of
12 cocaine charge even though, again, it was dismissed. But
13 based on that interaction with law enforcement, especially
14 with this being a drug charge, we feel that gives enough
15 to race concerns on behalf of the State that we did not
16 feel he was suitable to serve on this jury.

17 THE COURT: All right. Do you know when that
18 occurred, roughly?

19 MR. REDMOND: 2009, Your Honor.

20 THE COURT: All right. And let's move forward to
21 Juror Number 126.

22 MR. REDMOND: Juror Number 126, was the one that I
23 just addressed. That was the juror that was both late and
24 as a matter of fact at one -- after one of the breaks, and
25 there was concern about her demeanor appearing somewhat

1 disinterested. When we put the fact that she was late
2 getting back from one of the breaks that raises some
3 concerns as do that juror's possible ability to be
4 conscience and such in a serious matter as a murder trial.

5 THE COURT: And Juror 117?

6 MR. REDMOND: Juror 117 was unemployed, Your Honor.
7 And that was and have been upheld as a grounds to -- as a
8 grounds to have someone struck from the jury, but also
9 interestingly in our discussions while we were huddled up
10 I remember it took quite some time, she knew the victim.
11 And sometimes I know that works both ways, and
12 interestingly, there was a juror that the Defense struck
13 that knew the Defendant.

14 So, obviously, the fact that she knew her, we didn't
15 know in what context, that raised a concern. But the main
16 reason, obviously, was the fact that he was unemployed,
17 and actually, that was in our discussions. That's the
18 first thing that was brought to our attention the fact
19 that he was unemployed.

20 THE COURT: And ---

21 MR. REDMOND: And she was -- I'm sorry.

22 THE COURT: And Juror 33.

23 MR. REDMOND: And finally, Juror Number 33, we didn't
24 have any independent information but, of course, we do
25 have law enforcement here. They often are during the

1 selection of a jury, and we were down to our last strike.
2 And at that point we were made aware of the fact that this
3 particular juror has had prior incidents involving his, I
4 think, girlfriend who is now his wife.

5 That did involve -- I cannot tell you that they
6 resulted in charges, but the incidents are know to law
7 enforcement that they do engage in somewhat a tumultuous
8 relationship which given the nature of this case before
9 us, obviously, raises concern related as to whether or not
10 the State would see a fair trial. So that was based on
11 information provided by us -- by Chief of Police of the
12 Town of Pageland.

13 THE COURT: All right. Just one moment, please. All
14 right. Now, we go to the movement to give us your
15 argument as to why -- the reason given by the State are
16 pretextural.

17 MR. YOUNG: Sure. Judge, with regards to Juror
18 Number 101, the nolle prosequi possession of cocaine which
19 in the Clerk's Office, I have no way of knowing. I
20 reviewed the rap sheet from the Solicitor's Office. I
21 appreciate them letting me look at that. I have no way of
22 knowing if there are some other nolle prosequi charges in
23 some clerks office. So I would trust them to tell the
24 Court that they didn't see any other similarly situated
25 jurors.

1 I will tell the Court that's Juror Number 131 was
2 struck by me because his son is in law enforcement.
3 However, on his rap sheet he had an assault and battery
4 with intent to kill that was nolle prosequere. He was
5 presented to the Defense by the State. He is a similarly
6 situated juror that they did not strike. And his record
7 or his nolle prosequere charges are for violent crimes as
8 opposed to drug possession.

9 THE COURT: All right.

10 MR. YOUNG: Juror Number 117, they said that she was
11 unemployed and knew the victim, went to school with the
12 victim. And the first juror called was Juror Number 128,
13 struck by the Defense because the victim's family comes in
14 and out of her store all the time. The State did not
15 strike her for knowing the victim's family. I would
16 allege that she is a similarly situated juror that was
17 passed over to us. And that their strike was not race
18 neutral.

19 As Your Honor knows the State gives multiple reasons
20 for a strike. They all independently had to be race
21 neutral.

22 Juror Number 33, I mean, I think that there is case
23 on point that says what someone told me he wasn't going to
24 be a good juror. I don't know. I mean I'll leave that
25 one up to Your Honor. I don't have a law enforcement

1 officer sitting here. You asked him about criminal
2 domestic violence. You asked him about accused, charged
3 or victim of and he didn't answer. I don't know if Chief
4 Brown has any reports of any other documentation that he
5 would like to share with us. I'll be glad to see it. I
6 don't know.

7 THE COURT: All right. Let's go back to Number 126,
8 please. Juror say apparently was among other things late,
9 and may have had something of an attitude according to the
10 State. What do you way to that, Mr. Young?

11 MR. YOUNG: Your Honor, I was not informed. I wasn't
12 aware that any juror was late for anything. I didn't know
13 that we were waiting for a juror. I don't recall the
14 Court ever admonishing a juror for being late. I stayed
15 facing the jury pretty much the whole time that I was up
16 here and the jury was behind me. I don't know what they
17 are talking about.

18 THE COURT: All right. Well, whether it's a valid
19 issue for which a strike is a separate question, but I
20 will confirm to you having sitting here looking at the
21 jury, there were two jurors who were approximately ten
22 minutes late after we took our break and they were
23 supposed to be back at a quarter till. Actually, myself,
24 was maybe two or three minutes late. Two of our jurors
25 came in at five to 12:00 and that was when I asked to

1 please make sure, at least based on my recollection, that
2 there weren't any other jurors out in the room because I
3 felt that, obviously, some folks were late and we were
4 missing some folks.

5 So that was one of your jurors, Juror Number 126, was
6 one of those two. Now, just one moment, and let me step
7 back from the bench a moment while we're considering that.
8 And let me ask Mr. Redmond, one of the first things you
9 said when you went to the bench you withheld a Batson
10 motion. Do you have a Batson motion as well?

11 MR. REDMOND: I also do, Your Honor. And I did have
12 the opportunity to talk with Mr. Young about that. Felt
13 satisfied with the; and I'll just briefly say out of ten
14 strikes nine were against white individuals. I felt
15 satisfied with his reasoning behind all but three of them,
16 and for the record that would be the State contesting
17 Number 29, white female; Number Two, a white female; and
18 Number 70 would be a white male.

19 Those would be the only three that we contest. Like
20 I said the other strikes that he used I'm satisfied that
21 they meet the statutory and the legal requirements to be
22 able to be proper strikes. So we are only contesting
23 those three. The other ones I'm satisfied with the
24 reasons for striking them. Probably would have struck
25 them myself if I was in his shoes. I'm okay with that,

1 but those would be the three we contest.

2 THE COURT: One moment, please. And, Mr. Redmond, so
3 I'll be certain of our status here if the Court rules on
4 Mr. Young's motion, a Batson motion, and denies it do you
5 wish to proceed with your motion?

6 MR. REDMOND: No, sir.

7 THE COURT: You wish to withdraw it?

8 MR. REDMOND: No, sir. We withdraw it.

9 THE COURT: All right. Just a moment. All right.
10 The Court is prepared to rule at this time, and what I
11 have before me is four jurors that the Defense complains
12 about. They are Juror 101, 126, 117 and 33.

13 With regards to 101 the reason given for the strike
14 is that this juror had a nolle prossed cocaine charge; that
15 there had been previous, obviously, from that negative
16 relationship with law enforcement, that that has been
17 found by our Court in the case of the State v. Johnson at
18 302 SC 243, to be a permissible reason for a strike.

19 This same reason will apply to Juror 33. With
20 regards to the juror who may have been late or who may
21 have a demeanor that is -- seems to be disinterested, the
22 Court finds that has been previously permitted by our
23 Supreme Court in the case of the State v. Casey, 325 SC
24 447. Specifically on the issue of being late, in the case
25 of State v. Wilder, 306 SC 535 our Supreme Court has

1 permitted a strike and found that to be a valid reason.

2 In regard to Juror 117, the Court finds that the
3 State ran's reason that this witness had known the victim
4 and had been to school with the victim is a valid and
5 non-racial reason for the strike. Court does not accept
6 the fact that the juror may be "unemployed" particularly
7 in this environment. That is not, in this Court's
8 opinion, and in this local a valid reason to impose a
9 strike.

10 And I do find that reason that the victim was known
11 to the juror. Also, I do not find that there is a pattern
12 here of jurors being treated distinctly and separately
13 among the races, one decision for one and another decision
14 for the other. That would be opposite or inappropriate.

15 And the Court finds that the Batson motion should be
16 denied for these reason. State says they will withdraw
17 their motion having received that ruling, and thus, we
18 will impanel and tomorrow morning we will swear the jury
19 that we have dawn. Anything further for the record before
20 we conclude with the jury today by bringing them back in
21 the courtroom? From the State?

22 MR. REDMOND: Nothing from the State other than
23 housekeeping matters. We will ultimately need to get some
24 evidence here today to start premarking. However, that
25 ain't going to be able to happen until tomorrow morning.

1 And I was going to see if the Defense wouldn't mind being
2 here at 8:30 so that way that will give us plenty of time
3 to premark our exhibits and then be prepared to go forward
4 at whatever time the Court says.

5 THE COURT: I usually start at 9:30, but would you
6 rather start at 10:00?

7 MR. REDMOND: 9:30 should be fine. We don't have a
8 whole lot of exhibits. We've had a chance to look through
9 all the State's evidence, the Defense and the State. So
10 we should be prepared to go forward at 9:30 as long as we
11 can get here at 8:30.

12 THE COURT: Are you coming from Columbia, Mr. Young?

13 MR. YOUNG: No, Your Honor. We're staying in Cheraw.
14 I understand the Court's ruling and I just want to make
15 sure that my records are complete. On -- and just on the
16 rap sheet I was provided, I don't know what's in the
17 Clerk's Office, but Juror Number 131 was passed over by
18 the State with this assault and battery with intent to
19 kill that was nolle prossed. And Juror Number 105, Deborah
20 Owens, according to her rap sheet, and I don't know if it
21 was a conviction or an arrest, something about bad checks
22 and simple assault. Just want to make sure those are on
23 the report.

24 THE COURT: The record is clear. And I may have
25 failed to mention that. You, State, accepts the

1 Solicitor's argument that this incident for which we're
2 trying arises from a criminal domestic violence situation
3 which is the issue over which there was nolle pros for the
4 specific juror in question. The Court finds that that is
5 a valid reason unless I misunderstood the application of
6 the argument.

7 MR. YOUNG: Your Honor, the nolle pros charge was a
8 possession of cocaine.

9 THE COURT: Anything else? Go ahead. Anything else
10 for the record.

11 MR. YOUNG: The juror who had issues with regard to a
12 contentious relationship with his wife as reported by law
13 enforcement with Mr. Dunlap Juror Number 33.

14 THE COURT: Very good. I have Juror 33 is a prior
15 C.D.V. incident. And anything else, now, for the record.

16 MR. YOUNG: No, sir I don't understand. I just don't
17 have -- I don't think he was ever charged with C.D.V.
18 There is no report of any C.D.V. Law enforcement reported
19 to the State that he had a contentious relationship with
20 his wife.

21 THE COURT: Yes, sir. And I didn't mean to imply
22 that he had been arrested and taken down to the jail.
23 What I said was while I've got both of these jurors out
24 waiting on us is that there were apparently C.D.V.
25 incidents and a tumultuous relationship. If I misstated I

1 believe the record will reflect we both have an
2 understanding although we may use different terms.
3 Anything further before I bring this jury out.

4 MR. YOUNG: No, Your Honor.

5 THE COURT: Thank you. Hearing nothing, please bring
6 in our jury panel from outside and from the jury room.

7 (WHEREUPON, the jury panel enters the courtroom at
8 3:38 p.m.)

9 (WHEREUPON, the jury pool enters the courtroom at
10 3:38 p.m.)

11 THE COURT: All right. Welcome back, ladies and
12 gentlemen, both our jury panel out in the audience as well
13 as those in the jury box. Let me just say that typically
14 when you think about work or a job you work at a plant and
15 have to produce X amount of an items in a certain amount
16 of time. Everybody has to rush in order to do that. But
17 here we're about some very important business, and so it's
18 liberty interest, and for that reason sometimes we have to
19 stop, take our time and make sure that what we do to the
20 best of our ability is appropriate and fair.

21 Thank you for your patience in understanding that. I
22 will tell you our jury that was drawn is the jury that
23 will be impaneled in this case. Ladies and gentlemen in
24 the remaining jury panel, I'm going to release you at this
25 time. You are done for the week. You have no further

1 responsibility as juror. Madam Clerk, anything you wish
2 to tell our jury panel.

3 CLERK OF COURT: I do notice that some of you did not
4 return your juror form for your address change. Please
5 stop by the Clerk's Office and make an address change.
6 And thank you for being willing to serve and we'll mail
7 your checks as soon as possible. Thank you.

8 THE COURT: Have a good day, ladies and gentlemen.
9 You're free to go.

10 (WHEREUPON, the jury panel was excused from the
11 courtroom at 3:40 p.m.)

12 THE COURT: And while they leave we'll wait just one
13 moment, and then we'll reconvene. Counsel, step up if you
14 will for just one moment, please.

15 (WHEREUPON, a bench conference was held off the
16 record in the presence of the jury, but out of the
17 hearing of the jury.)

18 THE COURT: All right. Thank you, ladies and
19 gentlemen. We just -- there is a slight schedule change.
20 We are actually going to start tomorrow morning at ten
21 o'clock which will give us an opportunity to make sure
22 that the evidence is in order; that we're ready to go, and
23 you won't be delayed sitting here while all that's done.
24 So if you will be back in the jury room at ten o'clock
25 tomorrow morning then well will begin at that time.

1 And I plan to begin promptly at 10:00 so please be on
2 time. Come a little early and visit with your colleagues.
3 Now, again, we discussed earlier when you go home to your
4 loved ones their going to be curious, they're going to
5 what to know what happened in Court today. Please tell
6 them that the Judge has instructed you not to discuss the
7 case, and you really don't even know enough about it to
8 discuss it, but you've been asked not to do that.

9 And we will see you tomorrow morning at 10:00. Now,
10 any questions from our jury about scheduling? Any
11 questions about scheduling? All right. So you may leave
12 now. We're done for the day, and we will see you at
13 ten o'clock tomorrow morning. And out of respect for all
14 of you all of us will remain where we are while you depart
15 the courtroom. Have a nice date, ladies and gentlemen.

16 (WHEREUPON, the jury panel was excused from the
17 courtroom at 3:43 p.m.)

18 THE COURT: All right. Counsel, any pre-trial issues
19 that we need to resolve now so that we can promptly start
20 at ten o'clock in the morning? If so tell us what they
21 are.

22 MR. FOARD: None from the State, Your Honor.

23 THE COURT: All right. State has none. Defense, you
24 have some?

25 MR. YOUNG: Yes, Your Honor. The first issue for the

1 record is the Court reviewed the motion for attorney
2 conducted voir dire with me I did not file that with the
3 Clerk's Office. I didn't know if I could file it here or
4 put it in a Court's exhibit here.

5 THE COURT: Exhibit is fine. Let's make it Court's
6 Exhibit Two [sic], I believe.

7 (WHEREUPON, Court's Exhibit No. 1 was marked for
8 identification and received into evidence.)

9 THE COURT: Let the record reflect that Mr. Young has
10 asked that he be able to conduct attorney conducted voir
11 dire. The State objected to this. This was back in
12 chambers. We actually stood down and gave the parties a
13 little bit of time to think about it. After some
14 consideration the State came back and said that they did
15 not consent.

16 The Court felt that rather than, even though our
17 Supreme Court has said perhaps as recently as 1930, that
18 the attorney conducted voir dire was not prohibited. This
19 Court, based upon the importance of these charges and the
20 difficulties already inherit in this case, we would not
21 add another and have the attorneys direct the voir dire.
22 So that motion was denied. But all of that is protected
23 and preserved as Court's Exhibit Two.

24 Now, Mr. Young, you also filed a motion in limine
25 concerning a taped statement. There may be ours as well

1 that I'm not aware of.

2 MR. YOUNG: One other thing with regards to exhibits.
3 I asked Ms. Gordon to premark the newspaper articles in
4 anticipation of a lot of publicity from voir dire
5 questioning. Of course, that didn't happen. Those
6 exhibits are still up there premarked. I don't know if he
7 wants me to move those in the record or he's okay with me
8 taking them back.

9 THE COURT: All right. Why don't we do this. We'll
10 mark these as State's Exhibit Three -- excuse me Court's
11 Exhibit Three just in the event -- who knows what will
12 arise during the trial. There may be some question about
13 pre-trial publicity. Is that satisfactory to you? You
14 want to have One through 11 Court's Exhibits marked?
15 Well, of course, these would not go back to the jury.

16 So you have listed 11 news articles, and we'll take
17 these then as Court's Exhibit Number Three. Eleven
18 separate articles.

19 MR. YOUNG: Thank you, Your Honor.

20 THE COURT: All right. Thank you, Mr. Young.

21 MR. YOUNG: Your Honor, the State -- the Defense
22 filed a motion. We have filed and served it on the State
23 and gave the Court a copy of the motion in limine
24 regarding Thomas Stewart's videotaped statement that I
25 have viewed the original VHS tapes a couple of times. I

1 have a digital copy of the VHS tape information. There
2 was, obviously, a video recording taken of Mr. Stewart's
3 statement. Your Honor saw the beginning of that at the
4 Denno hearing.

5 That videotape contained four separate interviews all
6 in one videotape. Sent that videotape to S.L.E.D. for it
7 to be digitalized so that it is easier to provide to me.
8 And I appreciate that. The only reason I bring this up is
9 because of timing issue. On the digital copy that I have
10 at 47 minutes to 45 seconds into this Disk One Mr. Stewart
11 makes comments regarding a previous assaults on him versus
12 Miss Clyburn and on Ms. Clyburn versus him.

13 The State has told me that they did not intend to
14 offer any 404(b) or Lyle evidence unless and until the
15 defense puts character at issue. These statements would
16 qualify as character evidence under 404(b) evidence, and I
17 would ask that they be redacted before the videotape is
18 shown to the jury.

19 The statements at issue run from 47 minutes, 45
20 seconds into the video until 48 minutes and 9 seconds into
21 the video. Now, normally, if this was a WAV file or any
22 type of file that I could convert I would be happy to
23 provide the Court an edited version. It just cuts out
24 that part. It would be similar to when the tape cuts off
25 where they had to switch over to Disk Two. There is like

1 a 20 second gap there. S.L.E.D. uses some sort of
2 proprietary software that I can't get around. So I can't
3 convert it to something that I can digitally just snip it
4 out so it would just be played to the jury. I don't
5 know -- I mean, surely we can monitor how it's played to
6 the jury. I don't know how the State wants to just
7 present it. Whether it's on VHS or digital copy, but we
8 would just have to figure out some way to stop it at 47
9 minutes and 45 second. And then start it 48 minutes and 9
10 seconds in.

11 THE COURT: All right. First of all what's the
12 State's position about this evidence.

13 MR. REDMOND: Well, just to clarify it wasn't just --
14 I didn't say that we didn't intend on putting Lyle
15 evidence in unless character was put in. What I said was
16 that the door was open for me to have to respond. My
17 understanding is that the Defense might possible, based on
18 the comments that the Defendant made in the video, that
19 their position to a large degree was going to be
20 self-defense.

21 Well, the State would argue, depending on how that's
22 proffered by the Defense, either through cross-examination
23 or however, that that in and of itself might open the door
24 for this and other some other evidence which the Defense
25 does have in its possession of other incidents. We can

1 contend that may open the door wide.

2 I want to be clear that we are restricting ourselves
3 saying that we're not going to try to get into it unless
4 character comes up because the State is of the position
5 that depending on the nature of the Defense's case, either
6 through their own case or through cross-examination of the
7 State's case in chief, that may open the door for us to
8 get into some of those circumstances that are described.

9 So simply put, Your Honor, at this point having not
10 started the trial I can tell the Court that we don't have
11 any intention on initiating any discussion of any prior
12 incidents. But we also want to reserve the right,
13 depending on the nature of their defense, to be able to
14 respond in kind.

15 And when you're thinking about a defense like
16 self-defense given the prongs involved the State contends
17 that some of those prior incidents may actually be
18 relevant in the overall issues of self-defense.

19 So I guess it's a hard question to answer at this
20 point. The only thing I can say is we don't intend on
21 initiating it, but we can definitely anticipate needing to
22 utilize some of that evidence in response to whatever the
23 Defense may decide to get into.

24 THE COURT: All right. But the State goes first. If
25 you're going to put the statement in evidence what do you

1 intend to do about that portion of the tape during the
2 State's case in chief?

3 MR. REDMOND: I can tell the Court that if we were
4 going to start right now and play the tape right now in
5 front of the jury would have no problem with trying to
6 somehow stop at the particular part of the tape and then
7 restart. I don't have a problem with that. But based on
8 the way that we anticipate the case being presented that
9 there may be circumstances that by the time we get to
10 where we actually are playing the tape in front of the
11 jury my answer might be a little different.

12 THE COURT: All right. Well, we'll have to take that
13 up, I assume, at the time the State offers it.

14 MR. YOUNG: Well, Your Honor, and this just occurred
15 to me. I might have to do some maneuvering to get it, but
16 if we start at 10:00 tomorrow I can probably get it done.
17 If the State were to give me access to their original VHS
18 tape I could convert that on my own to a D.V.D. myself and
19 cut it out. I'm just offering up suggestions so.

20 THE COURT: I'll let y'all work that out amongst
21 yourselves if you can. If not then the Court will rule at
22 the appropriate time when the tape is offered. Are there
23 any further issues that we need to resolve prior to the
24 trial?

25 MR. YOUNG: No, Your Honor.

1 THE COURT: All right. Then the status of the
2 defendant, is the defendant to remain in custody?

3 MR. YOUNG: Yes, Your Honor.

4 THE COURT: All right. Very good. Then, Mr.
5 Stewart, we'll return you to the detention center, and
6 ladies and gentlemen, we will start this trial at ten
7 o'clock tomorrow morning and this trial will be in recess.
8 I think there are some probation matters that we want to
9 take up at this time, but this trial will be in recess.

10 MR. FOARD: Thank you, Your Honor.

11 MR. REDMOND: Thank you, Your Honor.

12 MR. YOUNG: Your Honor, if I may approach real quick.

13 (WHEREUPON, a bench conference was held off the
14 record outside the presence of the jury.)

15 END OF TRANSCRIPT OF RECORD

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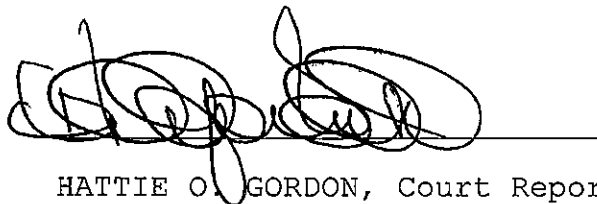
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Chesterfield County, South Carolina, on the 3rd day of
December, 2012.

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

March 27, 2013

A handwritten signature in black ink, appearing to read 'Hattie O. Gordon', is written over a horizontal line.

HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF CHESTERFIELD) 2010-GS-13-0192
) 2010-GS-13-0263

STATE OF SOUTH CAROLINA)
) PLAINTIFF
) vs.) TRANSCRIPT OF RECORD
) THOMAS J. STEWART
) DEFENDANT

December 3-6, 2012
 Chesterfield, South Carolina
VOLUME NUMBER 02 OF 04

B E F O R E:

THE HONORABLE J. MICHAEL BAXLEY, JUDGE; and a jury.

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

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 Attorney for the State

ADAM FOARD, ASSISTANT SOLICITOR
 Attorney for the State

CASEY SECOR, DEPUTY ATTORNEY
 Attorney for the Defendant

S. BOYD YOUNG, DEPUTY ATTORNEY
 Attorney for the Defendant

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

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MARTY HORTON,
JOSEPH CARNES, CHESTERFIELD CTY SHERIFF'S OFF.
MIKKOS NEWMAN, LANCASTER CTY SHERIFF'S OFF.
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KIM DANZEY,
SHARON RIVERS,
MELISSA STEWART,
SHERRY MACLAMORE,
RANDALL MULLIS,
KIMBERLY LITTLE,

HATTIE O. GORDON
Circuit Court Reporter

1 (WHEREUPON, State's Exhibit Nos. 1 THROUGH 86 were
2 marked for identification only.)

3 COLLOQUY

4 THE COURT: Are we ready?

5 MR. REDMOND: Yes, we're ready.

6 THE COURT: The jury is present and we have all of
7 our lawyers are here now, and is there anything for the
8 record before we bring in the jury, swear the jury and
9 proceed to charge?

10 MR. REDMOND: Nothing from the State, Your Honor.

11 THE COURT: Nothing from the Defense, Your Honor.

12 CLERK OF COURT: All right. Hearing nothing, let's
13 bring in the jury, please.

14 (WHEREUPON, the jury enters the courtroom at 10:08
15 a.m.)

16 THE COURT: All right. And good morning, ladies and
17 gentlemen. How are you. We'll wait for everyone to get
18 settled. Everyone please be seated. All right. We want
19 to welcome you back to the courtroom this morning. We're
20 going to begin the trial with you accepting the oath as
21 jurors in this specific case. And please follow our
22 Clerk's instructions.

23 (WHEREUPON, the jury panel was sworn in at 10:09
24 a.m.)

25 THE COURT: All right. And let me ask is there any

1 juror that did not take the oath for any reason that was
2 just given to you? If you did not take the oath please
3 raise your hand, and let's let the record reflect that no
4 one has raised their hand, and thus all of our jurors are
5 sworn. And let me ask can you hear me, ladies and
6 gentlemen? Can all of you hear me in the box? Can you
7 hear me on the end? All right. Very good. If for some
8 reason you cannot in this proceeding at any time please
9 let us know that so that we can make sure that you're able
10 to hear these proceedings.

11 Now, since we were together yesterday, ladies and
12 gentlemen, let me ask is there any member of this jury
13 panel who has had a discussion about the facts of this
14 case. If so please raise your hand, and let the record
15 reflect that no one has raised their hand. Thank you for
16 complying with the Court's request of you yesterday.

17 And what I wish to do now is talk with you about what
18 I call the introduction to the trial of a criminal case.
19 This is not intended to take the place of a more detailed
20 charge on the law that I'll give you at the end of the
21 case. But these are a few things I think you need to need
22 going into the case. Now, as you know this is a criminal
23 case, and the State which I will often refer to as the
24 Prosecution has commenced these charges against the
25 Defendant.

1 Now, I will tell you that yesterday I mentioned to
2 you that these cases are based on an indictment. And that
3 the State has indicted the Defendant, Mr. Thomas Jeffery
4 Stewart for two charges. One is the charge of murder, and
5 the other is the possession of a weapon during the
6 violent -- during the commission of a violent crime. You
7 heard an entry of the plea yesterday of not guilty by the
8 defendant. And please understand that the indictments are
9 simply a set of allegations. They are accusations brought
10 by the State.

11 Now, one of the traditions in our courtroom is, and I
12 will tell you this that the party with the burden of proof
13 sits closest to the jury. If you will look out in the
14 courtroom arena you will see that that State is seated at
15 the table closest to you. And at no time during this
16 trial are they going to switch seat.

17 So remember that at all times the State has the
18 burden of proof. The Defendant entered a plea of not
19 guilty which means the Defendant denies these charges, but
20 he has no burden of proof on that denial. He's presumed
21 innocent even if he did not enter a plea because the State
22 has the burden of proving each of the essential elements
23 of both of these charges beyond all reasonable doubt. The
24 purpose of this trial is to determine whether or not the
25 State can meet this high burden, and I will tell you that

1 it is a high burden. And the Defendant is presumed to be
2 innocent and is to be found innocent unless and until the
3 State is able to meet the burden of proof to prove to you
4 beyond a reasonable doubt that the Defendant is guilty of
5 the charges which are levied against him.

6 Now, with that understanding let's talk a little bit
7 about what your role is in this proceeding and what my
8 role is. Let me start with mine if I may. I'm the judge
9 of the law here which means that I will give you a
10 detailed charge on the law at the end of the case. And
11 during the proceeding if there is some dispute about a
12 procedural issue or substantive matter the Court will
13 resolve those as the judge of law.

14 But your role is more important in my opinion. You
15 are the judges of the fact. What that means is in a
16 nutshell is that you will listen to the testimony here in
17 this courtroom, you will decide what the facts. You apply
18 those facts to the law that I give you, and that's how
19 working together we will reach a verdict in this case.

20 Now, one of the things that I will tell you as the
21 judges of the facts you will have to do is you're going to
22 have to determine the credibility and the believability of
23 the witnesses in this case in order to determine what the
24 facts are. Now, just like you I have not heard the
25 evidence in this case, but I know from experience that

1 many times in cases, whether it be a criminal case such as
2 this one or civil, witnesses will come in and testify to
3 thing that seems sometimes different or inconsistent and
4 sometimes absolutely mutually exclusive. Cannot be
5 reconciled.

6 Now, I'm no here to say that someone is going to be
7 dishonest with you: This is for you to decide, but it
8 think we all know from human experience that people will
9 observe an event. They will later recount that event.
10 And you will list to varied descriptions that are so
11 different you wonder is this the same event everyone is
12 talking about because people's perceptions are different.

13 If you hear testimony in this trial which seems to be
14 inconsistent or mutually exclusive you must decide which
15 of the witnesses is more credible and believable in order
16 to determine what are the facts of the case.

17 Now, if you think about this it's something we do
18 every date all day. With everyone we speak we gauge them
19 for credibility and believability whether it's a child or
20 whether it's an adult. And you should not check your
21 common sense at the door when you arrived here to be a
22 juror. You should apply those factors that you use in
23 everyday life to determine credibility and believability.

24 Some of the things that you may also wish to look at
25 here in the courtroom, and I tell you in advance so you

1 can do this while the witnesses are testifying, and again,
2 this is why you sit where you do and they will sit where
3 they will. First of all what is demeanor of that witness
4 when they testified. Are they hesitant. Are they
5 straight forward. What is their ability to know what
6 they're in here testifying about.

7 And is their testimony consistent -- well, is it
8 weakened or strengthened by other evidence in the case, is
9 it consistent with its own testimony, and then further, in
10 light of the global evidence in the case, how reasonable
11 is what the witness is saying. And finally, might there
12 be a reason that a witness would want to hurt or help one
13 side or the other in a case. And might that witness have
14 a bias or a prejudice.

15 I tell you these things so that you can consider
16 these things while the witnesses are testifying before
17 you.

18 Now, let's talk a little bit about our process. In
19 just a moment when I conclude these initial comments to
20 you the lawyers will come before you in what we call
21 opening statement. Opening statement is not some big
22 persuasive event where they come in and attempt to argue
23 to you various facts or vary points of law. It's just an
24 opportunity for the lawyers to tell you what they believe
25 the evidence will show or perhaps what the evidence won't

1 show.

2 And then after the opening statements are concluded
3 we move to the State first because they have the burden of
4 proof. And they will call their witnesses one after
5 another, and every time the State calls a witness that
6 witness will be subject to direct examination by State's
7 counsel and cross-examination by Defense counsel. I tell;
8 you that because the rules are a little different for
9 direct examination and cross-examination. You may see
10 that during the course of this trial.

11 And then after the State has called all of their
12 witnesses and we've gone through that process the State
13 rests. And if the Defense wishes they're given the
14 opportunity to put up witnesses, but they're not required
15 to do this. I discussed with you yesterday they have no
16 burden of proof. The Defendant is not required to
17 testify. Defendant has nothing to prove, but if they wish
18 to call witnesses they do so after the State rests one
19 after another in the same fashion. And the Defense
20 counsel has direct examination and then the State's
21 counsel has cross-examination.

22 Then all the testimony closes. The lawyers come
23 before you in closing argument which is an opportunity for
24 them to argue persuasively to you what they believe the
25 evidence has or has not shown. I give you the charge on

1 the law, and you retire to deliberate. In a nutshell
2 that's how this process is going to work.

3 Now, a couple more points I want to say to you, we
4 normally go, at least I do, in Court about an hour and a
5 half or so before we take a break. I don't want you to
6 worry about that watching the clock. Of course, in this
7 courtroom it's hard for you to watch the clock because
8 it's actually on the wall back behind you. But it always
9 depends to the moment when we stop based on our testimony.
10 We just don't cut right in the middle of things. We try
11 to finish a point and then take a break.

12 But if you need to take a break before we reach a
13 break point please raise your hand. I'll understand what
14 that means. We'll stop immediately so you can take a
15 break. We'll all take a break. That's fine. I do that
16 for two reasons. Number One, you are giving your time or
17 just about giving it for a very important civic duty and
18 high public purpose. And I want you to be comfortable in
19 what you're doing.

20 Secondly, I don't want you worried about something
21 else. I want you to be able to listen to the testimony so
22 that you can decide what the facts are at the end of this
23 case. So please don't hesitate to stop us and tell us
24 that you need to take a break if you need to do so.

25 Secondly, when you do take a break please do not go

1 back in the jury room and discuss this case. You should
2 not discuss the case until it's given to you at the end of
3 the case for deliberation. And the reason for that is
4 this: If we took one witness or half a witness and then
5 took a break, the jury went back and made some preliminary
6 decision during a break that drove the rest of the case,
7 that would be unfair because you haven't heard all the
8 testimony. You haven't heard the arguments of counsel nor
9 the charge on the law. So please don't discuss it among
10 yourselves until it's given to you at the end of the case
11 for deliberation.

12 Now, we operate this courtroom on a system of rules
13 we call the Rules of Evidence and the Rules of Criminal
14 Procedure, and when the other -- one side or the other
15 believes the other side is either breaking those rules or
16 about to they call that to my attention by an objection.
17 So just like you're sitting over there minding your
18 business I'm doing the same up here, and I don't know what
19 the objections are, when they're going to come or what
20 they will be when they do come.

21 But when they do come I will rule on them based on my
22 training as a Judge, my understanding of both procedural
23 and substantive law of South Carolina, my experience for
24 many years in the courtroom as both a judge and a
25 practicing lawyer before becoming a judge, but never do I

1 rule somehow that -- those are the factors for which I
2 rule. But never do I rule somehow to send you a message
3 about how I feel about an issue or how I feel about the
4 fact -- I want you to understand now you are the judge of
5 the facts. Not me. I have no position on the facts. If
6 I did I would be invading your province. So take no
7 inference from any rulings that the Court may make other
8 than the fact that an issue was brought to us and it had
9 to be ruled upon at the time the objections were made.

10 And then the last thing I would say to you is this:
11 The lawyers when they come before you in opening statement
12 and closing argument will have an opportunity to address
13 you directly. It's on only time in the case that they can
14 to that, but please appreciate the fact, the lawyers, what
15 they tell you is not evidence.

16 The lawyers are not under oath, and lawyers are not
17 under direct and cross examination like the witnesses are.
18 The evidence in the case is what the witnesses say, what
19 the testimony is in the case and what the exhibits show
20 that you will have with you the exhibits that are in the
21 record when you retire to deliberate.

22 Now, I said that. I'm not telling you that the
23 lawyers are going to be dishonest with you. I'm just
24 simply saying this: Your role as jurors is to find what
25 the facts are and determine what the evidence means.

1 Evidence is not an argument from an attorney. That's just
2 simply an advocate's position on what the evidence will
3 say. So with that distinction then we now will move
4 forward. I look forward to working with you, ladies and
5 gentlemen, and at this time the Court recognizes State's
6 counsel for opening statements.

7 MR. YOUNG: Your Honor.

8 THE COURT: Just one moment.

9 MR. YOUNG: May we approach briefly?

10 THE COURT: You may.

11 (WHEREUPON, a bench conference was held off the
12 record in the presence of the jury, but out of the
13 hearing of the jury.)

14 THE COURT: Mr. Young, has pointed out that I did not
15 discuss one thing with you that I typically do, and that
16 is this: Jurors often perceive things in different ways
17 and have different ways of committing different things to
18 memory or keeping something refreshed in their mind. I
19 have no objection if you as members of the jury or some of
20 you as members of the jury wish to take note. I don't
21 require it and I don't demand it. But if you want the
22 opportunity to take notes then we'll give you that
23 opportunity.

24 But let me just discuss this process with you for a
25 moment. What we will do is give each of you a pad and

1 pencil or pen, whatever your preference may be. And your
2 notes are confidential and they are not to be invaded by
3 anyone else. So at the end of the day we take those notes
4 up and we secure them without looking at them and then we
5 give them back to you at the beginning of the next day.
6 And at the end of the day we destroy the notes, and we do
7 that because the deliberations of the jury are strictly
8 confidential. And we protect that by destroying the
9 notes.

10 Is there any juror who wishes to take notes or have
11 the capable of taking notes in the trial? If so please
12 raise your hand. All right. If -- no one initially
13 responded that they do, but if you decide as you get in
14 this process you want to please let our bailiff know and
15 they will make paper, pen, pencil, whatever you need
16 available to you.

17 And thank you for calling that to my attention,
18 counsel. But we had not discussed that. Now we recognize
19 the State for opening statements.

20 OPENING STATEMENT BY MR. JONES

21 MR. JONES: Thank you, Your Honor.

22 THE COURT: Yes, sir, Mr. Jones.

23 MR. JONES: Ladies and gentlemen, we are here today
24 because Thomas Stewart murdered the victim. What we're
25 going to present to you this week is a sorted tale. The

1 victim is the Defendant's mistress. Not just some weekend
2 fling. Not the beginning of a new relationship, but an
3 eight year long love affair. All the while the Defendant
4 was married. The victim and the Defendant also had a
5 child together. And during this eight year long love
6 affair they had their ups and downs. But in December of
7 2009 the victim wanted to end the relationship.

8 She was tired of being the second woman. And when
9 the Defendant heard this he couldn't take it. He just
10 could not let her go. And on December 31st 2009 the
11 Defendant went to a friend and asked to borrow his car.
12 He took that car and parked it in the victim's apartment
13 complex and there he laid in wait. He made a decision to
14 borrow someone else's car and park it in the victim's
15 apartment complex and there he waited.

16 And then she waited, and waited until the morning of
17 January 1st 2010 when the victim and her two sons were
18 walking out of their apartment. Then the Defendant
19 approached the victim carrying a knife, went back into her
20 apartment complex and attacked her.

21 The victim defended herself using mace and ran out of
22 the house, ran out of the apartment. The Defendant chased
23 her where he continued and completed the murder. All the
24 while the victim's 10 year old and six year old sons were
25 there to witnessing the attack. One son went to a

1 neighbor's apartment asking for help, and the victim was
2 able to walk herself over to that neighbor's doorstep
3 where she was laying when law enforcement arrived.

4 That's the story you're going to hear from all the
5 State's witnesses. Some are going to tell you what
6 happened before the murder. Some are going to tell you
7 what happened after the murder, and some are going to tell
8 you what happened after. But after all our testimony
9 you're going to get a complete picture of what happened.

10 And all of the witnesses are important. The one
11 witness that's very important is the pathologist; that's
12 the doctor that performed the autopsy, and that doctor
13 basically determined what the cause of death was. He's
14 going to tell you the cause of death was the victim was
15 stabbed dozens of times. And you can look to the
16 pathologist's report and describe every single wound.

17 And when you deliberate you're going to have that
18 with you, and you can count every single stab wound.
19 You're also going to hear testimony from her two sons, one
20 of which was also the son of the Defendant. And, finally,
21 our victim was not a saint. She made mistakes in her
22 life. One mistake that she made was in 2009 she got in an
23 altercation with the Defendant's wife. Not hard to
24 imagine.

25 But he pled guilty to an assault, and she was

1 actually on probation at the time of this incident. But
2 Bellany deserves justice and her family deserves justice.
3 And those two boys who watched their mother be slaughtered
4 deserve justice. Thank you.

5 THE COURT: And for the Defense. Mr. Secor.

6 OPENING STATEMENT BY MR. SECOR

7 MR. SECOR: Thank you, Your Honor. Good morning,
8 everybody. I thought I was fixing to die. I was scared,
9 and I wanted to get away. I lost it over love. I didn't
10 mean to do it. I didn't try to do it. I was just trying
11 to get away. Those are all things that Thomas Stewart
12 told the police after he killed Bellany. That's what the
13 State's evidence will show to these are the things he said
14 to police officers after this happened. And no one is
15 going to trial to tell you he did not kill Bellany
16 Clyburn.

17 The question is going to be is whether it was murder,
18 whether it was manslaughter, whether it was self-defense.
19 I want to clear the air on that. That's not one of the
20 decisions you're going to have to make is whether or not
21 he killed her. He did kill her. He did. You're going to
22 have to make the decision about what the crime was.
23 Whether it was murder or manslaughter or whether it was
24 self-defense.

25 When I was preparing for this trial a couple of

1 months ago my sister had a baby, and when the baby was
2 born it had to go in the hospital, the ICU. They call it
3 the NICU for babies. And I went up there to be with them
4 just to do whatever I could to help. I was at the
5 hospital at all time. Every day, in and out to the
6 hospital five, ten times a day just doing what I could to
7 be helpful. And every time I went to the front door of
8 the NICU where my sister was and the baby I had to sign in
9 and show my driver's license and my I.D. that I had been
10 given by the hospital that I needed to go to the NICU.

11 And I went there so many times that over the course
12 of two weeks the nurses knew me by my name. And they
13 would spend time together and every time I went back there
14 to the door to go back there to see my sister I had to
15 show them my I.D. and my pass. Even through they knew who
16 I was, and so just out of curiosity one day I asked them I
17 said, "Why do I have to show you my I.D. cause you know
18 who I am?" The woman behind the counter stated to me you
19 never know what's going to happen. We have to know who is
20 coming in and out.

21 Bellany and Thomas has problems for a long, long
22 time. They were trying to carry on an impossible
23 relationship. You can't carry on a relationship when
24 you're married. You know a person -- and you can't carry
25 on a relationship with a married person. It just doesn't

1 work. It's impossible, and the consequences of trying to
2 carry on this impossible relationship; they were jealous
3 or one another. They were suspicious of each other. They
4 were dishonest with each other. They were dishonest with
5 their own families about their relationship and had to
6 hide their relationship. They had very good reason to try
7 to hide it.

8 As the State told you Thomas was married throughout
9 the entire eight year olds that he was seeing Bellany.
10 And I don't know exactly how things are going to play out
11 here. I'm not trying to tell you I know what the State is
12 going to say, but based on what I heard so far my
13 assumption is going to be that they will try to tell you
14 that Thomas is the jealous one and that's why we're here.

15 And I'm not going to try to tell you he's not
16 jealous. I mean that didn't contribute to this, but as
17 your hearing the evidence in this case I encourage you to
18 keep in mind that he was married to Melissa Stewart.
19 She's sitting right over there, the entire time that he
20 was seeing Bellany. Thomas and Melissa have children.
21 Thomas lives with Melissa and their kids. And Bellany
22 knew that. She knew that he was married and he had kids
23 with Melissa.

24 And even though she knew that she got Thomas' name
25 tattooed on her body six different times. And as the

1 State told you in April of 2009 she attacked Melissa
2 Stewart with a lug wrench. You think if stuff like that
3 happens between two people they stay away from each other,
4 but they didn't. You think that they would stay away from
5 each other after Bellany was sent to jail for attacking
6 Melissa, but they didn't. And they didn't stay away from
7 each other when Bellany got out of jail for attacking
8 Melissa Stewart. Bellany got out of jail two weeks before
9 she died. And right when she got out of jail Melissa
10 Stewart got a call from a friend, "Hey, your car is in
11 front of Bellany Clyburn's apartment."

12 Melissa went over there. Ms. Clyburn and Thomas were
13 together in the apartment. Melissa brought the police.
14 She didn't want there to be any problems. And after
15 Thomas and Bellany spent a few day after she had got out
16 of jail and the police had already come with Melissa
17 Thomas went home to his family. His other family. His
18 wife and their kids for Christmas. He spent Christmas
19 with Melissa and their children. He did not spend
20 Christmas with Bellany.

21 But right after Christmas Thomas was right back at it
22 again. Same old stuff except this time, now, they had to
23 be very, very quiet. They had been very secretive about
24 it before, but now they had to be extra secret because
25 Bellany was on probation for attacking Melissa. What

1 would her family say if they knew she was hanging about
2 Thomas still. What would her probation agent say to her
3 about doing that.

4 And during the presentation of the State's case
5 you're going to hear that Bellany and Thomas were together
6 on New Year's Eve. The night of New Years Eve. And as
7 almost always happen when they were together they were
8 arguing about something. Dishonesty and jealousy between
9 the two of them. It was happening again on New Years Eve.
10 And they almost got caught again.

11 Thomas was upstairs in Bellanie's apartment, and he
12 heard a knock on the front door. He looked out the
13 window, and Bellanie's cousin, Crystal was there. Said
14 she was just coming by. Bellany didn't want her family to
15 know she was still seeing Thomas. Of course, she didn't.

16 And Thomas hid in the closet, and Crystal came to the
17 door talked to Bellany. He had to hide in the closet when
18 he heard Crystal leaving. Looked out the window and saw
19 two police cars out in front of Bellanie's apartment. He
20 had no idea why they were there. But because of the
21 jealousy and dishonesty that existed between him and
22 Bellany he thought maybe she was trying to get him in
23 trouble for something.

24 He snuck out the back door of her house and he left.
25 And they talked on the phone later that night. He called

1 her later that night. She told him don't come back until
2 you divorce your wife which is something she said to him
3 before. Thomas went back. Another stupid -- went back to
4 Bellany and continued that stupid argument that they had
5 been having the night before and try to clear things up.

6 When he got back there it was New Years Day morning,
7 but still dark. And Bellany with her boys were still
8 sleep. Door was locked. And he just waited. Waited so
9 he could talk to Bellany. State will say that he was
10 lying in wait. He was just waiting to talk to her when
11 she woke up and came outside. And she did come outside.
12 She came outside with the boys in broad daylight right in
13 front of the apartment. Anybody could see them. He said
14 he wanted to talk to her. She told him don't come back
15 here any more. They went inside and they talked.

16 More like an argument, around jealousy and
17 dishonesty, the same problems that they had always had
18 came up. And they were arguing, and Thomas did something
19 really, really stupid. He wanted to see her phone. And I
20 tell you these days people's phones, it's unbelievable.
21 He wanted to see her phone to see who she had been talking
22 to cause he didn't trust her. She said no.

23 And then he did something really stupid. He picked
24 up a knife that was in her apartment and told her, "I want
25 to see your phone." She said, "No." He reached in her

1 purse and she grabbed his hand. Pepper spray, mace, and
2 sprayed him in the face. And then they struggled over the
3 knife. Bellany wanted to get it away from him, and she
4 reached out and she grabbed the knife to get it away from
5 Thomas and the hand she grabbed the knife with got cut up
6 badly.

7 She was trying to get that knife away from Thomas.
8 But she did get it away from him, and he was blinded by
9 the pepper spray. And she got the knife away from him,
10 and he was doing whatever he could, cause he could barely
11 see, to defend himself because now she had the knife. And
12 she swung the knife at him and cut his ear. You will see
13 the photographs, and his hands were cut, too. He was
14 trying to hold them up to try to defend himself.

15 Bellany had ran outside, and Thomas blinded, injured,
16 bleeding, in the house trying to wipe the pepper spray out
17 of the eyes, trying to make it to the kitchen to wash his
18 eyes out. And then he heard, and you will hear this from
19 what the State presents to you, he heard Bellany outside
20 yelling to him, yelling to other people, saying, "Get him
21 out of my house." And she heard him yelling -- and Thomas
22 heard her yelling, "Come outside." He heard her yell,
23 "When you come outside you're going to get it."

24 And Thomas could barely see. He's inside and he
25 looks towards the door. And in the door he sees a man

1 standing there who he can barely make out. He don't know
2 who it is, but he can tell that that man has got something
3 in his hands after he's just heard Bellany say, "When you
4 come outside you're going to get it."

5 And it was at the point inside, blinded, bleeding,
6 injured inside that house that Thomas felt like he was
7 fixing to die; that he saw somebody with something in
8 their hands he didn't know, and he was scared at that time
9 for his life. And he wanted to get away. He thought he
10 was fixing to die, and he grabbed another knife that was
11 in Bellanie's apartment and he decided the only thing he
12 could do was try to get away.

13 Try to get away, and he ran out the door with the
14 knife to try to get away to his car that was parked right
15 in front of the apartment. And when he got outside
16 running for his car, again, half blind from the pepper
17 spray, Bellany was between him and his car. And she still
18 had a knife, too. And you will see there are two knives
19 that are found outside.

20 And in that moment of fear and agony from the pepper
21 spray Thomas reacted, and he stabbed her and he ran for
22 his car and he got -- he was getting in his car when the
23 window on his car exploded. Something came through and
24 glass went everywhere. And he drove off. Pulled over,
25 you know, a mile or so away. Cops eventually came and he

1 was there. And he told them things that I told you at the
2 beginning. As I said earlier Thomas killed Bellany
3 Clyburn, but you're going to have to decide whether it was
4 murder or manslaughter or self-defense.

5 And it's going to be unpleasant at times. And
6 Bellany did not deserve to die. She didn't deserve to die
7 in this way. But Thomas Stewart doesn't deserve to be
8 branded a murderer.

9 COLLOQUY

10 THE COURT: All right. Ladies and gentlemen, we're
11 going to -- we've been in here for just a little while.
12 We're going to take a break at this point, but before we
13 break I want to say something to you. There was a flash
14 camera that went off during the -- counsel's opening
15 statement. I did not react to that, but we do not permit
16 flash cameras in this courtroom but they're distracting.

17 But also I want you to understand that as jurors you
18 actually make your decision in anonymity. There is not to
19 be a photograph taken of your likeness or of you sitting
20 in the jury box. If there is a photograph taken in this
21 courtroom which would be with a non-click camera so that,
22 again, it's not distracting. It will not portray the jury
23 cause, again, you act confidentially and we protect that
24 confidentiality.

25 I'm getting ready to deal with that situation. We're

1 going to let you go back to the jury room for a moment or
2 two. But let me also say this to you. Counsel on both
3 sides discussed some of the -- what they alleged to be or
4 what they believed the evidence in the case may show. I
5 want to remind you that what the lawyers say is not
6 evidence in both opening and closing.

7 Evidence is what the witnesses say and what the
8 exhibits show that are put into the record. Please
9 remember that distinction. All right. With that
10 understanding we're going to take a break at this time and
11 let the jury return to the jury room.

12 (WHEREUPON, the jury panel was excused from the
13 courtroom at 10:46 a.m.)

14 THE COURT: All right. Who took the flash? Who took
15 the picture?

16 MR. PHILLIPS: Your Honor, it was me.

17 THE COURT: All right, sir. Stand up, please. Tell
18 me your name, sir.

19 MR. PHILLIPS: Gary Phillips.

20 THE COURT: And, Mr. Phillips, with whom do you work?

21 MR. PHILLIPS: The Progressive Journal, the newspaper
22 from Pageland.

23 THE COURT: All right, sir, we do not permit a flash
24 in this courtroom. That's extremely distracting not only
25 counsel but to everyone who is here and also from the

1 angle you took, if you took it coming forward, you would
2 have the likeness of the jury in your picture.

3 MR. PHILLIPS: No, Your Honor. I was focused in on
4 the counsel. I understand. I certainly respect the
5 jury's privacy and all that. I understood that before I
6 came in, and I apologize for the flash, sir. The camera
7 was set on automatic where it flash. I can set it where
8 it won't flash, with your permission.

9 THE COURT: Well, absolutely, it's to be set on
10 non-flash, but also it's got to be non-click because it --
11 when it clicks it draws everyone's attention away from the
12 real purpose of this trial.

13 MR. PHILLIPS: Yes, sir.

14 THE COURT: And to that picture, sir, and so I'm
15 going to, rather than confiscate your camera and
16 confiscate that picture just to make sure that the jury is
17 not it, I'm going to confirm to this jury when they come
18 out that they're not in the photograph. And that their
19 picture has not and will not be taken. But don't let that
20 happen again.

21 MR. PHILLIPS: I'll be glad to show it to you if you
22 like.

23 THE COURT: That's not necessary, but please don't
24 let that happen again, sir.

25 MR. PHILLIPS: Yes, sir.

1 THE COURT: All right. Very good. I'll let you be
2 seated. Now, let's move to another issue. Do you want to
3 respond on this, Mr. Young?

4 MR. YOUNG: Yes, sir.

5 THE COURT: Go ahead.

6 MR. YOUNG: Your Honor, I'm not aware of any Court
7 order authorizing the use of cameras of any kind during
8 this trial.

9 THE COURT: I've signed a Rule 605 allowing camera,
10 digital camera. I did that yesterday. Here it is right
11 here if you want to see the order.

12 MR. YOUNG: Can I get a copy just for my file
13 purpose, Your Honor?

14 THE COURT: You may.

15 MR. YOUNG: Usually, when Your Honor is approached
16 about cameras -- I didn't inquire about, you know, the
17 family is involved. This is really a situation -- I
18 respect the jurors. I would just like for Your Honor to
19 make clear on the record who was photographed, when
20 photographs can be taken. And I don't want a camera
21 trained on Mr. Stewart during the whole trial. Like
22 sitting too close to the Defense table. Might say
23 something they shouldn't. General safeguards.

24 THE COURT: Very good. We'll work that out as we go
25 forward, but again, my first protection, cause this is a

1 public forum. This is a public courtroom. The press is
2 allowed to work here. Again, not in such a destructive
3 fashion. Now, let's move to another issue. Does Mr.
4 Stewart intend to take the stand during this trial, Mr.
5 Young?

6 MR. YOUNG: Your Honor, that decision hasn't been
7 made.

8 THE COURT: Well, how then does your side get up and
9 argument to this jury impressions of incidents that
10 occurred that only Mr. Stewart, most likely, would have
11 known as well as his presence since impression without
12 grossly violating the rules of this Court?

13 MR. YOUNG: Your Honor, all -- everything that Mr.
14 Secor referred to was in a videotaped statement taken from
15 Mr. Stewart.

16 THE COURT: The impression that he was blinded and
17 someone had something in their hand and he had to react to
18 and rushed out the door because all he wanted to do was
19 escape?

20 MR. YOUNG: Yes, sir.

21 THE COURT: All of that is in the video?

22 MR. REDMOND: That is in the video, and actually,
23 Your Honor, if you kind of put the cart before the horse,
24 and you notice that we didn't object. Quite frankly, I
25 enjoyed hearing it for strategic reasons, but at this

1 point if there is no Defense objection other than to the
2 typical Jackson v. Denno objections -- normally we would
3 have moved it into evidence once the jury got sworn, and
4 quite frankly, that was an oversight. We got started
5 before we could do that.

6 But at this time, I think it's State's Exhibit Number
7 Six and Number Seven. State's Exhibit Six is the waiver
8 of rights form that was eluded to in the Jackson v. Denno
9 hearing. I was not present for that for other family
10 emergency reasons, but also State's Exhibit Number Seven
11 which is a C.D. of the statement that was actually
12 referred to almost in its entirety in the Defense opening
13 statement.

14 THE COURT: All right. Is there objection to Six and
15 Seven coming into evidence?

16 MR. YOUNG: Nothing other than our -- preserve Denno
17 grounds and our request pursuant to Lyle that
18 approximately 40 seconds be redacted.

19 THE COURT: All right. Then without objection Six
20 and Seven. Madam Court Reporter, I assume you have a
21 premarked list and premarked exhibits for the State in
22 evidence with only the limited objection that a 40 second
23 section is objected to.

24 (WHEREUPON, State's Exhibit Nos. 6 and 7 were
25 admitted into evidence.)

1 MR. YOUNG: And we're preserved on Denno. Your
2 Honor, the ruling that the statement was voluntarily and
3 pursuant to Miranda ---

4 THE COURT: Well, my goodness, Mr. Young, did I not
5 just hear him publish the thing? Now, you tell me you
6 maintain your Denno objection after giving it to the jury
7 in opening statement. Am I confused? Have you not waived
8 any Denno objection ---

9 MR. YOUNG: I don't believe.

10 THE COURT: --- by the factual argument that was
11 given to the jury?

12 MR. YOUNG: I don't believe so.

13 THE COURT: Well, we'll see, but the Court ruled in
14 Jackson v. Denno that it was admissible. We not that you
15 have an objection, but again, this is for the appellate
16 court to determine. But it seem to be a little
17 inconsistent to use it as a weapon and then deprive the
18 admission of it as being unfair. But, nevertheless, we'll
19 see how that works out.

20 MR. YOUNG: Your Honor, can I -- I'm still on the
21 record. Your Honor told me that that we waived any
22 standing objection pursuant to Denno or Miranda because of
23 opening argument.

24 THE COURT: No, sir. My position is that we've
25 already had the Jackson v. Denno hearing, and I permitted

1 it in.

2 MR. YOUNG: Yes, sir.

3 THE COURT: You then, having realized that I said it
4 was coming in, use it as a sword and discussed it in
5 opening to the jury. Whether or not Jackson v. Denno
6 ultimately my decision was erroneous and it was an issue
7 for the appellate courts. I don't weigh in on that. But
8 I just note that I couldn't help but be struck by what I
9 perceived to be inconsistency of your position.

10 MR. YOUNG: Yes, sir.

11 THE COURT: All right. Very good. Now, ladies and
12 gentlemen, we're going to take -- we're going to stand
13 down ourselves and take a break. And let me say this.
14 When our jury -- we're going to give them the opportunity
15 to go outside and take a break if they wish to do so.
16 When they come through, logistically, they must come
17 through and step outside the confines of this courtroom
18 before the bar. So they're going to come through. Please
19 do not speak to them. No photographs will be taken. Just
20 simply ignore their presence if you will, and that is,
21 voluntarily, if they wish to leave.

22 MR. REDMOND: Your Honor, I might have a suggestion
23 if it's possible. One of the things is if we can take the
24 jury out this way there is an area right here where they
25 can go smoke and relax.

1 THE COURT: Well, if we do that then let's let
2 everyone kind of shift away. Without being obvious about
3 it let's just move away, and would you let the jurors, if
4 they wish to go out, they may go out and take a smoke
5 break. Okay, and we're going to stand down approximately
6 ten minutes.

7 (WHEREUPON, Court was in recess at 10:54 a.m. and
8 reconvened at 11:05 a.m.)

9 THE COURT: All right. Please bring in the jury.

10 MR. YOUNG: Can we approach about two things before
11 the jury enters?

12 THE COURT: Please, briefly, so we don't delay
13 proceedings.

14 (WHEREUPON, a bench conference was held off the
15 record, but out of the presence of the jury.)

16 (WHEREUPON, the jury panel enters the courtroom at
17 11:06 a.m.)

18 THE COURT: All right, ladies and gentlemen, welcome
19 back. I want to confirm to you as I say not only are your
20 proceeding confidential but you work unanimously, and you
21 anonymity is protected by the Court. And after looking
22 into the matter, now, we have confirmed that the angle in
23 which that photograph was taken did not include the jury,
24 and thus, your picture was not taken during the course of
25 the opening statement. It will not be taken at any time

1 during the course of these proceedings. And I just simply
2 tell you that because I want you to be comfortable in what
3 you're doing and in the task we've asked you to
4 accomplish.

5 Also, along that same line, as you go and come from
6 the courtroom the confines here are a little bit close in
7 the courtroom, and so I've instructed the families as well
8 as the lawyers that they should not speak to you. I don't
9 want people to think that they're being rude to one
10 another, but I don't want there to be some question of
11 someone looks across the room or across an open space and
12 see some type of interaction occurring to raise questions
13 from the other side of the case.

14 Please don't be offended if you find yourself
15 walking by attorneys or walking by family members and they
16 don't speak to you because I've instructed them not to. I
17 just wanted you to be aware of that at the same time. All
18 right. Now, we have concluded the opening statements. We
19 now move to the testimonial phase of the case, and the
20 State please call your first witness.

21 MR. JONES: State calls Clarence Francis.

22 THE COURT: Mr. Francis, please come forward and take
23 the oath of a witness. .

24 CLARENCE FRANCIS, after being duly sworn,
25 testified as follows:

1 THE COURT: Go ahead.

2 DIRECT EXAMINATION

3 BY MR. JONES:

4 Q. How you doing, Mr. Francis?

5 A. Fine, sir.

6 Q. Where are you currently employed?

7 A. Pageland Police Department.

8 Q. And what is your rank?

9 A. Currently, captain.

10 Q. Say that again?

11 A. Currently captain.

12 Q. Captain. Okay. And how long have you been employed
13 with the Pageland Police Department?

14 A. At this time approximately five years. Seven years
15 prior to that.

16 Q. And where were you employed prior to that?

17 A. I worked seven years in Pageland. Came to the
18 Chesterfield County Sheriff's Office for about five years,
19 and went back for about -- been back about four years I
20 believe. Almost five.

21 Q. So what is your total number of years in law
22 enforcement?

23 A. Civilian or military or combined? Civilian, about 15
24 years, plus six years in the military. So 21 years total.

25 Q. Okay. And where were you employed on January the 1st

1 2010?

2 A. With Pageland Police Department.

3 Q. And what was your capacity at that time?

4 A. At that time I was acting as a patrolman, and I was
5 on day shift that date.

6 Q. And what were some of your duties as a patrolman?

7 A. Answer calls for service, patrol the Town area.

8 Q. Okay. And on that particular day can you tell us
9 what happened?

10 A. Yes, sir. On that particular day, I think it was
11 9:27 in the morning, we received a call from the 2400
12 Dispatch Center stating there had been a stabbing at
13 Pageland Place Apartments in the vicinity of Apartment [REDACTED].

14 Also Officer Bobby Melton was riding with me. We
15 were on double patrol unit. We ran emergency traffic and
16 blue lights and siren for the call. And as we were
17 approaching the call we received information the suspect
18 had possibly left in white and gold sport utility vehicle.

19 I requested E.M.S. stage outside the area until we
20 secured the scene, and we signed off in the area, and
21 originally once we got down to Apartment [REDACTED] we find 23
22 arriving on scene.

23 Q. Could you say that last part again and kind of break
24 that down for everybody?

25 A. We signed our scene which for us is 1023. What it

1 means is we're telling the Dispatch Center that we're
2 arriving officially on the scene.

3 Q. Okay. I'm sorry. Could you pull the microphone
4 towards your mouth a little bit so we can hear you good.

5 A. How is that? Better?

6 Q. Yeah, cause when you talk just lean up.

7 A. Okay.

8 Q. That will be fine. Won't you describe for the jury
9 what you saw when you arrived on the scene?

10 A. Okay. We pulled up [REDACTED]. It sort of sits up on a
11 hill. We saw several people outside the H Building. We
12 saw one person lying on the ground in front of the H
13 Building on the cement pad in front of the door which
14 turned out to be the victim, Bellany Clyburn.

15 Our immediate prior when we arrived on the scene was
16 to secure the scene. We immediately tried to ascertain
17 was the suspect still there, was it safe for E.M.S. to
18 come in. Officer Melton started securing the scene while
19 I proceeded to check on the victim. I verify at that time
20 that she had a pulse and was breathing. We requested
21 E.M.S. come in and advised that the scene was secured.

22 We asked for an ETA, and I also advised them to run
23 emergency traffic because it was obvious by what I had
24 seen or heard that she was grievously injured. And they
25 gave me an ETA of about ten minutes. I requested any

1 Pageland Rescue Squad personnel in the area come and
2 assist us because it was a ten minute ETA. And then we
3 were just in the process of securing the scene and the
4 victim until E.M.S. got there.

5 Q. And why did you request the Pageland Rescue Squad
6 after the E.M.S. said it was going to be a ten minute?

7 A. Because of her condition and when I initially took a
8 corroid pulse it was rapid and bounding and I observed
9 several wounds on the body. A pretty nice sized on to her
10 left arm. There was blood on her clothes, and she was
11 having trouble. And I was fearful we were going to lose
12 her.

13 Q. Can you tell us about that pulse again. You said it
14 was rapidly what?

15 A. Rapidly bounding when I got a corroid pulse.

16 Q. And what does that mean?

17 A. It means, with the little bit of medical training
18 that I've got, it means the heart rate speeded up and it
19 was trying to compensate.

20 Q. Trying to compensate for what?

21 A. Loss of blood in this case.

22 Q. Okay. And describe for us the victim's body. What
23 was she wearing and what was on her body?

24 A. She was wearing sweat pants, a shirt. I remember
25 specifically she was sort of laying on her right side, and

1 she was almost at a 45 degree angle on a concrete slab in
2 front of the door. And like I said there was blood on her
3 pants. Blood on her shirt.

4 Q. Were you able to ask her any questions?

5 A. No.

6 Q. Why not?

7 A. She was total unconscious. She was not responsive.

8 Q. Can you tell us about how many people that had
9 gathered around the victim?

10 A. Not specifically. There were several people there,
11 and I remember the lady that lives at the residence
12 brought a blanket, put over her. I specifically remember
13 Officer Melton was securing the evidence in the yard. And
14 then somewhere during that time I went to check on her and
15 realized that she had quit breathing, and I lose the
16 pulse.

17 And I remember yelling over my shoulder calling
18 Officer Melton by his first name, "Bobby, you've got to
19 help me roll her over cause we've got to start C.P.R." at
20 that time, luckily, Pageland Rescue Squad member showed up
21 on scene and they initiated C.P.R. and were able to
22 proceed and secure the crime scene.

23 Q. So after you performed the other check you said you
24 realized she lost her pulse. Take us through the steps
25 that you took to attempt to save the victim?

1 A. Well, my first priority was keeping her breathing and
2 verifying that she got a pulse. And I kept checking back
3 with her in the process of two of us trying to secure the
4 crime scene. And then she just stopped breathing. I
5 veri -- I looked, listened and feel like she wasn't
6 breathing and she didn't have a pulse.

7 So I roller her over on her back and started, with
8 Officer Melton's assistance, and was in the process of
9 starting C.P.R. At that time three or four Rescue Squad
10 members signed off on scene and they initiated C.P.R.

11 Q. And after -- or you say the Rescue Squad got there?

12 THE COURT: All right. Just one moment. Excuse me.
13 That's the second time that flash has gone. I'm going to
14 ask you to take the camera, please.

15 MR. PHILLIPS: Your Honor, I apologize.

16 THE COURT: Yes. Please keep the camera if you will.
17 And rather than have further disruptions we'll just move
18 on with what we're doing, but I already ordered there is
19 no more flash photography in this courtroom because of the
20 distraction that we just had happen for the second time.
21 Go ahead. Re-ask your question or go to the next
22 question.

23 MR. JONES: Yes, sir. Thank you, Your Honor.

24 BY MR. JONES:

25 Q. When the Pageland Rescue Squad got there, I think

1 that's where we left off?

2 A. Yes, sir.

3 Q. Tell us what you did when the Pageland Rescue Squad
4 got there?

5 A. I immediately was talking to Bobby. We were trying
6 to secure the crime scene, get crime scene tape up and
7 make sure no one was in and out on the scene. We were
8 also in the process of calling out more personnel and
9 contacting the County for their assistance and trying to
10 get everything rolling and locking down the crime scene.

11 MR. JONES: Beg the Court's indulgence.

12 BY MR. JONES:

13 Q. Can you tell us what else you did when you say secure
14 the crime scene' and when you talk make sure you lean up
15 to the mic and talk a little bit slower and little bit
16 louder?

17 A. All right. What you want to know? Secure the crime
18 scene?

19 Q. Yes, sir?

20 A. Basically, once we got the victim out of there we put
21 up crime scene tape and tried to rope it off and keep
22 everybody out of it. Is that loud enough?

23 Q. Yes.

24 A. Okay.

25 Q. And you said Mr -- Officer Bobby Melton was also

1 there with you?

2 A. Yes, we were riding double.

3 Q. And you had mentioned he had secured evidence, you
4 said?

5 A. Yes, there were several items in the yard. He
6 noticed the items first; that being large patches of blood
7 throughout the yard. There were two knives and candle.
8 There was also a small can of pepper mace in the yard.
9 And he secured them, and basically, trying to keep an eye
10 on them while dealing with the victim until we got the
11 victim off the scene.

12 Q. Okay. And when the Pageland Rescue Squad got there
13 did you assist them at all?

14 A. Yes. Initially, with C.P.R, I did assist them.
15 Initially, and I was just getting her in position to get
16 C.P.R. started. Helping them put together bags out and
17 masking them. I transferred back to assisting Officer
18 Melton with the crime scene.

19 Q. And from the time you initially arrived and came upon
20 the victim to the time the Pageland Rescue Squad got there
21 about how much time elapsed, if you can remember. I know
22 it was a long time ago?

23 A. I would say right around, probably 15 minutes, maybe.

24 Q. All right. And after the Pageland Rescue Squad got
25 there who else arrived on the scene?

1 A. First Health E.M.S.

2 Q. First Health E.M.S.?

3 A. Yes.

4 Q. And can you again give us an estimation of time from
5 when you got there?

6 A. Probably seven minutes. Somewhere around six to
7 seven minutes after Pageland Rescue Squad arrived would be
8 a good approximation.

9 Q. So Pageland First Responders -- excuse me. What are
10 they called?

11 A. Pageland Rescue Squad.

12 Q. Pageland Rescue Squad. Six to seven minutes later
13 E.M.S. arrived?

14 A. Yes, sir.

15 MR. JONES: Beg the Court's indulgence. Your Honor,
16 if I could get a few pictures out of the Court's exhibits
17 for a second. Your Honor, may I approach the witness?

18 THE COURT: You may.

19 BY MR. JONES:

20 Q. Handing you Court's Exhibit or State's Exhibit 23 and
21 22. And can you take a look at those for me, please, sir.
22 Do you recognize those photographs?

23 A. Yes, sir, I do.

24 Q. And can you tell the Court what they depicts.

25 A. Exhibit 23 depicts Apartment ■ where the victim was

1 found laying. Still see part of the clothing in the front
2 of the door. And the patrol car you see depicted there is
3 the patrol car that we drove that day.

4 And Exhibit 22 depicts the entire ■ Building, all the
5 apartments located in the H Building. Again, the patrol
6 car and again the front of Apartment ■ where the victim
7 was found. And you can still see the crime scene tape out
8 there.

9 Q. Are those pictures a true and accurate reflection of
10 the crime scene that day?

11 A. Yes, sir.

12 MR. JONES: Your Honor, at this time I move State's
13 Exhibit 22 and 22 in evidence.

14 THE COURT: Is there an objection?

15 MR. SECOR: No, sir.

16 THE COURT: Hearing none, 22 and 23 for the State in
17 evidence without objection.

18 (WHEREUPON, State's Exhibit Nos. 22 and 23 were
19 admitted into evidence.)

20 MR. JONES: Your Honor, at this time I'd like to
21 publish these to the jury.

22 THE COURT: You may hand them to the jury, and if you
23 wish to pass those around among yourselves you may, but
24 you're not required to but you may.

25 MR. JONES: No further questions, Your Honor.

1 THE COURT: All right. Cross-examination.

2 CROSS-EXAMINATION

3 BY MR. SECOR:

4 Q. Morning Captain?

5 A. Good morning, sir. How are you doing?

6 Q. I'm all right. I admire the work you do.

7 A. Thank you, sir.

8 Q. It must be pretty difficult sometimes.

9 A. There are times. There are times. Yeah.

10 Q. I don't think I'll keep you for very long. I just
11 wanted to ask you a couple questions?

12 A. Yes, sir.

13 Q. Just to help the jury out. One thing that you do in
14 law enforcement for investigating, responding, all the
15 various things you do is you document what you find,
16 right?

17 A. Yes, sir.

18 Q. And that's a pretty important part of law enforcement

19 ---

20 A. Yes, sir.

21 Q. --- is it not? And as a matter of fact the various
22 law enforcement departments have forms for officers such
23 as yourself, right; to fill out?

24 A. Yes, sir. It's call -- are you referring to an
25 incident report?

1 Q. That's one of them, right?

2 A. Yes, sir.

3 Q. Yeah, incident reports which is sort of gives you a
4 form to fill out tons of information on people's
5 identifies, addresses, things like that; right?

6 A. Yes, sir.

7 Q. And then there is evidence log sheets where you list
8 evidence that is recovered from the scene?

9 A. Yes, sir.

10 Q. There is witness statement forms where you can
11 document what somebody said, right?

12 A. Yes, sir.

13 Q. And that's a really a key part of what you do in law
14 enforcement?

15 A. There is a lot of paperwork. Yes, sir.

16 Q. And correct me if I'm wrong, but my assumption is the
17 reason it's so important is because you want to document
18 what you discovered at the time you discovered as best as
19 you can?

20 A. Yes, sir.

21 Q. That's cause you work lots of cases, right?

22 A. A good many, yes, sir.

23 Q. And lots of times -- lots of times the period that
24 passes between when you arrive at a scene and then end up
25 here that can be a long time, right?

1 A. Yes, sir. That is a fact.

2 Q. And you might not remember exactly every little
3 detail that happened, like in this case three years ago,
4 right?

5 A. I can't sit up here and say I remember every detail
6 that happened.

7 Q. Yeah. Of course you couldn't. Nobody could. But
8 that's why you have your documentation, right, cause you
9 can go back and look at it, right?

10 A. Yes, sir.

11 Q. And reminds you, 'oh, I remember when I wrote that
12 down'?

13 A. Yes, sir.

14 Q. And you can even rely on reports throughout your
15 investigation that are written by other officers, right?

16 A. Yes, sir.

17 Q. And, of course, you did that in this case? You
18 documented?

19 A. Yes, sir, I did the initial incident report and quite
20 a few of the supplementals also.

21 Q. That's right. I think it's at least a total of five
22 pages that you filled out, and there is a great deal of
23 detail in it. And, obviously, like this case and I'm sure
24 other cases you're not there often times when the actual
25 incident occurs, right? You usually arrive after

1 something has happened?

2 A. A lot of times it's after something. Yes, sir.

3 Q. And so a lot of what you document is what you find on
4 your own, right, at the scene?

5 A. Yes, sir.

6 Q. And also the best information you can get from people
7 that worked -- either saw it or saw a part of it?

8 A. Yes, sir.

9 Q. Okay. And that's the best information you have and
10 that's the best information that you put in your reports,
11 right?

12 A. Yes, sir.

13 Q. Do you recall in one of the documents you created in
14 this case stating that what occurred there that morning,
15 New Years morning, 2009, do you recalling putting in one
16 of your reports that there was an altercation?

17 A. Sir, I would have to ask for my copy of the incident
18 report I brought with me to verify that.

19 Q. Okay. I'll show you what I'm talking about. We're
20 going to use these just to jog your memory.

21 A. Okay.

22 Q. They're not in evidence so just do me a favor and
23 don't read out loud what's on them.

24 A. Okay. You said you used the word, 'altercation',
25 sir?

1 Q. Yes, sir. I believe it's on that back page, the
2 loose leaf page.

3 A. Can I ask one more indulgence?

4 Q. Yes, sir.

5 A. Is there any chance that I can get my reading glasses
6 back there.

7 Q. Oh, sorry.

8 A. They're right back there by him. Makes it a little
9 easier. Thank you, sir. I appreciate it.

10 Q. No problem.

11 MR. JONES: Objection, Your Honor.

12 THE COURT: On what basis?

13 MR. JONES: I believe what he's testifying to would
14 be hearsay.

15 THE COURT: The question is whether or not he used
16 the word 'altercation'.

17 MR. JONES: That's not -- the question is whether or
18 not a witness told him what they saw. That's what I
19 believe counsel is referring to.

20 THE COURT: Well, first of all let me discuss with
21 the jury what we're talking about here. Obviously,
22 typically in Court a person cannot come in and testify
23 about what someone else told them because we refer to that
24 as hearsay. You hear it and you say it. We've probably
25 all played games -- a game as a child where you sit in a

1 circle and someone starts something and whispers and it
2 comes back around in a whisper. And by the time it gets
3 to the other side of the circle it's completely changed.

4 The purpose of the hearsay rule is to prevent someone
5 from saying what other people said. The best evidence of
6 that is bring that other person in here and let them say
7 what they said rather than what someone heard someone say.

8 If the question has to do with what someone told this
9 officer then I'm going to sustain the objection. I'm not
10 aware of what's in the document, but if that is correct
11 then the objection is sustained. If it is the impression
12 of the officer then the objection is overruled. I'll have
13 to ask you, counsel, whether or not this is recounting
14 what someone told him.

15 MR. SECOR: The document that I'm referring to was
16 one created by Captain Francis where it does not at all
17 say that it is quoting somebody.

18 THE WITNESS: Sir, could you show me where it is?
19 That will save a little bit of time?

20 BY MR. SECOR:

21 Q. Sure.

22 A. I've been through it once and can't find the word,
23 'altercation'. Oh, on this one. Okay.

24 Q. Again, those aren't in evidence so don't read them
25 out loud.

1 A. Yes, sir. I can explain this easily. This is ---

2 THE COURT: All right. I'm sorry. Go ahead and tell
3 us what it is.

4 THE WITNESS: This is called, you see at the top on
5 our incident report, it's a Witness Information Sheet and
6 basically put the witness' information there. And at the
7 bottom put the investigator's -- we write a little note in
8 there. Okay, why is this person associated with this
9 case.

10 BY MR. SECOR:

11 Q. Right.

12 A. And then the investigator picks it up and
13 investigates this.

14 Q. Okay.

15 A. That's what we do. This isn't -- it's hard to
16 explain the way our incident reports are set up. This is
17 in the body of the incident report. This is a separate
18 box on another page.

19 THE COURT: I'm going to sustain the objection based
20 upon that explanation. Please, move to your next
21 question.

22 MR. SECOR: Okay.

23 BY MR. SECOR:

24 Q. Thank you, sir.

25 A. Thank you.

1 Q. Appreciate it. Just one other question about the
2 actual incident report?

3 MR. SECOR: May I approach again, Your Honor?

4 THE COURT: You may.

5 MR. SECOR: Thank you.

6 BY MR. SECOR:

7 Q. And what -- obviously, when I'm asking a question do
8 your best to answer without looking at the documentation.
9 We're all supposed to try to remember. If you can't feel
10 free to look at it.

11 A. Okay.

12 Q. But only January 1st 2009 when you responded to this
13 scene?

14 A. Um hum.

15 Q. You documented that there had been two crimes that
16 occurred at the scene; is that correct?

17 A. I document on the incident report it was assault, and
18 it was listed as murder and aggravated assault because we
19 didn't know the status of the victim until later.

20 Q. Okay. But you did document two distinct offenses,
21 correct?

22 A. Yes, sir.

23 Q. Okay. And I believe the only other thing, Captain,
24 I'd like to ask you about relates to a incident -- yeah,
25 I'll grab that back from you if you don't mind. Relates

1 to an incident on the 2nd of January 2010. I was saying
2 2009, but it's 2010. Were you -- it's called Sick Inmate
3 Report. Do you remember doing that?

4 A. Yes, sir, I do.

5 Q. And can you just tell the jury what Sick Inmate
6 Report is?

7 A. Any time an inmate is sick or basically any time
8 someone in our custody and they're in need of medical
9 assistance we document it for liability reasons. Also for
10 their protection and ours. And we did one on Mr. Stewart,
11 and he was transported to the hospital to get a cut on his
12 ear looked at and treated. And he was also given some
13 medicine by the doctor.

14 Q. Okay. Do you have any recollection about what
15 actually was the problem was with him?

16 A. Vaguely, sir, I remember a cut ear and I think he had
17 an extreme headache as well.

18 Q. Okay?

19 A. And that's the best of my recollection on that, sir.

20 Q. Okay. May?

21 MR. SECOR: I have just a second, Your Honor?

22 THE COURT: Yes, sir.

23 BY MR. SECOR:

24 Q. Captain, do you recall specifically what medications
25 were given to Mr. Stewart at the E.R.?

1 A. Yes, sir. I remember one. I actually -- I recollect
2 them, sir, but I would, before I'd answer that, go back
3 and look at the incident report. Based just on my
4 recollection he was given Torodol and also some
5 prescription for Motrin but that's ---

6 Q. Okay. I'm going to show you your report just to
7 remind you of what you wrote in it. Okay?

8 A. Yes, sir. Torodol, 800 milligrams of Motrin.

9 Q. Okay. The first thing you said, "Torodol," what?

10 A. Torodol, yes, sir.

11 Q. Do you have any idea what that is?

12 A. No, sir, I'm -- none of my training involves the
13 administering of drugs, and my pronunciation is of drug
14 names, I'll be honest, is horrid. I mean it is, but
15 that's what our ---

16 MR. JONES: Objection, Your Honor.

17 THE COURT: Sustained. This is really not -- the
18 witness would not be the best witness to answer that
19 question for the jury.

20 BY MR. SECOR:

21 Q. Okay, but you were there when it was given to him?

22 A. No, sir.

23 Q. Oh, you weren't?

24 A. I just did the incident report. I wasn't the
25 transporting officer.

1 Q. Okay. All right.

2 A. I just was the senior person there so I wanted it
3 documented that he had been there, and what they relayed
4 to me when they got him back.

5 Q. Okay. Thank you, sir.

6 A. Yes, sir.

7 Q. Thank you, Captain.

8 A. Thank you, sir.

9 THE COURT: All right, ladies and gentlemen, when a
10 witness is presented you have direct examination and then
11 cross. If new issues are brought up in cross we allow the
12 proponent of the witness to address those in what we call
13 redirect. Is there redirect?

14 MR. JONES: None, Your Honor.

15 THE COURT: Very good, sir. You may step down.

16 THE WITNESS: Thank you, sir.

17 THE COURT: Thank you. Please call your next
18 witness.

19 MR. JONES: State Calls Mr. Marty Horton.

20 THE COURT: Please come forward and take the oath of
21 a witness.

22 MR. SECOR: Your Honor, may I just make one quick
23 request? Just that Captain be subject to recall if
24 necessary.

25 THE COURT: Very good. Is he under your subpoena?

1 MR. SECOR: I believe he is under the State's.

2 MR. JONES: No objection, Your Honor.

3 THE COURT: Very good. Captain, I don't know if you
4 followed that. I don't know if you heard what was said.
5 You're free to leave. You're under your subpoena, but
6 you've come and testified. But counsel says please
7 remember that you may be subject to recall in some other
8 part of the case just for your information. All right,
9 sir.

10 THE WITNESS: Thank you, Your Honor. I appreciate
11 it.

12 THE COURT: And thank you. And please follow our
13 Clerk's instructions, sir.

14 MARTY HORTON, after being duly sworn, testified
15 follows as:

16 DIRECT EXAMINATION

17 BY MR JONES:

18 Q. Mr. Horton, how you doing today?

19 A. Fine, sir.

20 Q. I need you, when you answer, to lean up and make sure
21 you can talk in that microphone so everybody can hear you.

22 A. Okay. Is that better?

23 Q. How you doing?

24 A. I'm good.

25 Q. Okay. That is better. Can you tell us where you

1 work, Mr. Horton?

2 A. I work for First Health E.M.S. in Chesterfield
3 County.

4 Q. And how long have you worked there?

5 A. Since 1999.

6 Q. All right. So you were working there on January 1st
7 2010?

8 A. Yes, sir, I was.

9 Q. Can you --

10 MR. JONES: Beg the Court's indulgence?

11 THE COURT: Yes, sir.

12 MR. REDMOND: Your Honor, I'm not sure that that the
13 microphone is on cause I'm even having some trouble.

14 THE COURT: How about check that. How about check
15 that switch to see if the switch is on. Not tap it.

16 MR. REDMOND: There we go. I'm sorry, Your Honor.

17 THE COURT: All right. Go ahead, Mr. Jones.

18 MR. JONES: Yes, sir.

19 BY MR. JONES:

20 Q. And on January 1st 2010 where were you working?

21 A. I was working at Base Four in Jefferson, South
22 Carolina.

23 Q. You're still employed by E.M.S?

24 A. Yes, sir.

25 Q. And tell us what happened that day?

1 A. We received a call for emergency traffic from -- to
2 Pageland Place Apartments in Pageland, South Carolina for
3 an assault and stabbing.

4 Q. All right. And you said 'Pageland, South Carolina'.
5 What county is that?

6 A. Chesterfield County.

7 Q. All right. Thank you. When you received the call
8 what did you do?

9 A. We immediately went in route with the ambulance from
10 Jefferson which is about nine miles. We got in the
11 ambulance and proceeded to answer the call, lights and
12 siren.

13 Q. Okay. And when you arrived at the apartment complex
14 tell us what you did next?

15 A. We arrived at the apartment complex to find law
16 enforcement on the scene and ---

17 Q. How many law enforcement were there, do you remember?

18 A. I saw -- I only recall seeing two.

19 Q. Do you remember what particular law enforcement you
20 saw? Their names?

21 A. It was all Pageland Police Department.

22 Q. Right. And you remember who they were?

23 A. One was Captain Clarence Francis, and the other one
24 was Officer Melton.

25 Q. So Captain Francis was already on the scene when you

1 arrived?

2 A. Yes, sir.

3 Q. All right. Now take us through the steps next of
4 what you did?

5 A. We arrived on the scene to find black female with
6 aphonic and pulseless with C.P.R. being performed.

7 Q. And who was performing the C P.R. when you got there?

8 A. Members of Pageland Rescue Squad and High Point Fire
9 District.

10 Q. Okay. Continue on with that.

11 A. We assumed care of the victim. Placed her on a long
12 spine board. Placed her on the stretcher, all the time
13 C.P.R. being done.

14 Q. When you say, 'you assumed control' you mean y'all
15 took over the situation?

16 A. We took over patient care. Yes, sir.

17 Q. Right. Okay.

18 A. I was the highest -- I was the highest certified
19 person there so I assumed care.

20 Q. Yes, sir. And how many health care personnels
21 arrived with you?

22 A. It was only me and my partner.

23 Q. So you and your partner arrived and you took over.
24 Tell us what happened next?

25 A. We continued C.P.R. We placed the victim in the

1 ambulance. And we transported her to Union. I'm sorry.
2 To C.M.C. Union Hospital in Monroe, North Carolina with
3 C.P.R. still being done and A.C.L.S. procedures.
4 Q. Tell us the status of the victim when you arrived?
5 A. She was unresponsive, aphonic and pulseless.
6 Q. And what does that mean?
7 A. She was not breathing and she did not have a pulse.
8 Q. So when you arrived she wasn't breathing and she had
9 no pulse?
10 A. Right.
11 Q. And when you put her in the ambulance were you -- did
12 you continue care? Did you take any other steps?
13 A. We continued care. Captain Francis, I told --
14 Captain Francis stepped to the back of the ambulance when
15 we were about to leave, and he said -- I said, "Clarence,
16 I need to see the weapon that she was, you know, that was
17 used on her."
18 Q. And why did you want to see the weapon that was used?
19 A. She, obviously, had stab wounds in the -- on her
20 body.
21 Q. Now, you now say, 'obviously had stab wounds'. Can
22 you describe what you saw?
23 A. She had penetrating trauma from a sharp object which
24 ---
25 Q. About how many? Were you able to count?

1 A. I was not. I did not. The only wound that I recall
2 being a very, very significant wound was a sucking chest
3 wound.

4 Q. Was a what?

5 A. I'm sorry. A sucking chest wound. A penetrating
6 chest wound. When you breathe in there is negative
7 pressure on the inside of the chest that causes you to
8 breathe. When you breathe out you have positive pressure
9 on the inside of your chest and that causes you to exhale.
10 A second chest wound is a wound that causes air to rush in
11 that wound.

12 Q. Okay.

13 A. And not through your nose and mouth the way air is
14 supposed to do.

15 Q. And you said you asked Captain Francis if you could
16 see the weapon that was used to stab the victim?

17 A. Right.

18 Q. And were you able to locate that weapon?

19 A. Yes, I was.

20 Q. Okay. And can you describe that for us?

21 A. I was directed to a knife sticking in the ground that
22 was near the victim. It was a black handled knife
23 sticking in the ground. I took my gloved hand and removed
24 the knife from the ground to approximate the length of the
25 blade and to see if there was any place or any markings on

1 the blade as to what kind of damage it would have done to
2 or approximate damage it would have done on the inside of
3 the body.

4 Q. And after looking at that blade and evaluating what
5 was the potential damage that could have been done with
6 that knife?

7 A. I really -- the organs in the chest are very, very
8 close to the surface of the chest, and the knife that was
9 used could have hit the heart. Could have easily hit the
10 lungs and easily lacerated the great vessels above the
11 heart.

12 Q. And after looking at that knife did you -- did the
13 type of care you gave her or the seriousness of it change?

14 A. No, sir, it did not. The patient was cardiac arrest.
15 We were doing all we could do any way.

16 Q. About what time -- could you give us an estimation of
17 time from when you got there until you put there victim in
18 the ambulance and left?

19 A. All that's in my call report which I don't have
20 access to.

21 Q. Okay. All right.

22 MR. JONES: Beg the Court's indulgence, Your Honor.
23 Your Honor, may I approach the witness?

24 THE COURT: You may.

25 BY MR. JONES:

1 Q. Sir, I'm handing you State's Exhibits 41, 39, and 26.
2 Take a look at that for me, sir. Do you recognize those
3 photographs?

4 A. Yes, sir, I do.

5 Q. And can you go through each one and tell the jury
6 what they depict?

7 A. State's Exhibit Number 41 depicts the bloodstains on
8 the grass and a black handled knife sticking in the
9 ground. Twenty-six shows the same knife in the ground.
10 And 39 shows a closer picture of the same knife sticking
11 in the ground.

12 Q. Okay. And are those the true and accurate
13 representation of the knife as you saw it that day?

14 A. Yes, sir, it is.

15 Q. Thank you?

16 MR. JONES: Your Honor, at this time I move to have
17 these State's Exhibits inn evidence?

18 THE COURT: Is there objection.

19 MR. YOUNG: No, Your Honor.

20 THE COURT: All right. Forty-one, 39 and 26 for the
21 State in evidence without objection.

22 MR. JONES: Thank you, Your Honor.

23 (WHEREUPON, State's Exhibit Nos. 26, 39 and 41 were
24 admitted into evidence.)
25

1 MR. JONES: At this time I would like to publish the
2 photographs to the jury.

3 THE COURT: You may hand them to the jury.

4 MR. JONES: Your Honor, at this time if I could get
5 State's Exhibit One from the court reporter?

6 THE COURT: You may.

7 BY MR. JONES:

8 Q. Take a look at that for me, sir. Mr. Horton, can you
9 tell the jury what that is?

10 A. I'm sorry.

11 Q. Can you tell the jury what State's Exhibit One is?

12 A. That is the knife that's depicted in the picture.

13 Q. All right.

14 MR. JONES: Your Honor, at this time I would move
15 State's Exhibit One be in evidence?

16 THE COURT: Is there objection?

17 MR. YOUNG: Your Honor, I don't think that this
18 witness is the proper person to admit this piece of
19 evidence that was collected by somebody else.

20 THE COURT: That is the objection?

21 MR. YOUNG: Yes, Your Honor.

22 THE COURT: And, sir, let me ask you is that the
23 knife that you saw that day? Is it the same knife?

24 THE WITNESS: Yes, sir.

25 THE COURT: Are you able to identify it as the same

1 knife?

2 THE WITNESS: Yes, sir, it's the same knife that was
3 in that picture.

4 THE COURT: Very good. Objection is overruled.
5 State's Evidence Number One in evidence. State's Exhibit
6 One in evidence over objection.

7 (WHEREUPON, State's Exhibit No. 1 was admitted into
8 evidence.)

9 MR. JONES: Thank you, Your Honor.

10 BY MR. JONES:

11 Q. And you said you did pick up the knife?

12 A. Yes, sir.

13 Q. In order to see the length of the blade?

14 A. Yes, sir.

15 Q. And what did you do after you picked the knife up?

16 A. I looked at blade. I estimated the length of the
17 blade, and with my gloved hand I put it right back in the
18 ground where it was at where -- and I told the -- Officer
19 Francis.

20 Q. Right.

21 A. I said, "Francis, I'm putting this knife right back
22 in the ground where I found it where it was at when you
23 told me to pick it up."

24 Q. Do you remember about how far from the victim the
25 knife was?

1 A. No, sir, I do not.

2 Q. Okay.

3 MR. JONES: Beg the Court's indulgence. No further
4 questions, Your Honor.

5 THE COURT: All right. Cross-examination.

6 CROSS-EXAMINATION

7 BY MR. YOUNG:

8 Q. Good morning, Mr. Horton.

9 A. Good morning.

10 Q. Just really briefly. Today, my understanding of your
11 testimony today, and please correct me if I'm wrong, is
12 that while you were loading Miss Clyburn into the back of
13 the ambulance you stopped, asked Officer Francis if you
14 could see the knife that was on the scene and he took you
15 over, you picked the knife up, put it back in the ground?

16 A. No, sir, no while we were laying her in the
17 ambulance.

18 Q. Okay.

19 A. While we were loading her in the ambulance I was too
20 busy providing care.

21 Q. Okay.

22 A. Once we got her in the ambulance and C.P.R. was being
23 administered and I made sure the patient was being taken
24 care of then is when I spoke with Clarence Francis about
25 the murder weapon -- or about the weapon.

1 Q. Okay. That's prior to the ambulance departing the
2 scene?

3 A. Right. Right.

4 Q. Okay. And you described her -- the wound under her
5 left arm as a sucking chest wound?

6 A. Yes, sir.

7 Q. You knew that her lung had been punctured?

8 A. I -- she had all the indications of a punctured lung.
9 Yes, sir.

10 Q. And did you try to treat that condition?

11 A. Yes, sir did.

12 Q. How? What -- can you tell the jury what you do to
13 treat that?

14 A. You put an inclusive dressing over the skin surface
15 to keep air from entering the chest cavity.

16 Q. Did you put in a chest tube?

17 A. No, sir, I'm not certified to put in a chest tube.

18 Q. Did you see anybody else put in a chest tube?

19 A. No, sir.

20 Q. Okay. Mr. Horton, after you took Miss Clyburn to the
21 hospital you turned her over to the care of the doctors;
22 is that correct?

23 A. Yes, sir.

24 Q. And you went back to the Pageland Police Department?

25 A. Yes, sir, we went back to our base in Pageland which

- 1 is right behind the police department.
- 2 Q. Okay. And you were asked to come into the Pageland
3 Police Department and give a statement?
- 4 A. Yes, sir, I was.
- 5 Q. And you gave a written statement on the 1st of
6 January 2010?
- 7 A. Yes, sir, I did.
- 8 Q. And you went to the Pageland Police Department to
9 give that statement?
- 10 A. Yes, sir, I did.
- 11 Q. That statement was given on the same date that these
12 events transpired?
- 13 A. Yes, sir, it was.
- 14 Q. You understand that you may remember things better
15 right when they happen than you do later on?
- 16 A. Yes, sir, I know.
- 17 Q. And that's why it was important for you to get the
18 information down through your statement?
- 19 A. Right.
- 20 Q. You reviewed your statement ---
- 21 A. Yes, sir, I have.
- 22 Q. --- in preparation?
- 23 A. I did review my statement, yeah.
- 24 Q. And your statement does not talk about being directed
25 by Officer Francis to the knife, does it?

1 A. I need to look at my statement.

2 Q. Sure. Mr. Horton, I'm just going to direct your
3 attention to a quarter way down the page and ask you to
4 review that or review it in its entirety. Take as long as
5 you need.

6 A. Okay.

7 Q. Did -- you've reviewed your statement?

8 A. Yes, sir.

9 Q. Your statement doesn't talk about discussing with
10 Officer Francis directing you to a knife?

11 A. It says in my statement, "Knife was identified by law
12 enforcement as one of the weapons used."

13 Q. Okay. The sentence before that. Could you read that
14 to the jury, too?

15 A. "While on the scene I did observe a knife
16 approximately eight to 12 inches the length sticking in
17 the ground. This knife was identified by law enforcement
18 as one of the weapons used."

19 Q. And you put that in quotes, right?

20 A. Yes, sir.

21 Q. One of the weapons used?

22 A. One of the weapons used.

23 Q. And you did mention Officer Francis?

24 A. Yes, sir.

25 Q. You did or did not?

1 A. No. I did not mention him in my statement. I just
2 put law enforcement.

3 Q. Okay. In your statement you just said, "I, while on
4 the scene I saw a knife."

5 A. Right.

6 Q. "And went to it to see what type of injuries it could
7 have cause."

8 A. Right. I observed a knife sticking in the ground,
9 and I asked Clarence, I said, "Is." He said, "Yes, that's
10 one of the weapons that was used."

11 Q. Okay. All right. Thank you, Mr. Horton. I don't
12 have any further questions.

13 THE COURT: Is there redirect?

14 MR. JONES: No, Your Honor.

15 THE COURT: All right. Any objection to releasing
16 the witness?

17 MR. YOUNG: No, Your Honor.

18 THE COURT: Hear none. Sir, you are not required to
19 leave, but you're free to leave if you wish.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you. Yes, sir. Please call your
22 next witness.

23 MR. FOARD: Thank you, Your Honor. State calls
24 Joseph Carnes.

25 THE COURT: Please come forward and take the oath of

1 a witness.

2 JOSEPH CARNES, after being duly sworn, testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MR. FOARD:

6 Q. Morning, sir.

7 A. Good morning, sir.

8 Q. How you doing today?

9 A. Good.

10 Q. If you could please state your full name for the
11 record?

12 A. Joseph Carnes.

13 Q. And, Mr. Carnes, by whom are you employed?

14 A. Chesterfield County Sheriff's Office.

15 Q. And what is your rank?

16 A. Corporal.

17 Q. Corporal. And by who were you employed on January
18 the 1st of 2010?

19 A. Chesterfield County Sheriff's Office.

20 Q. And were you a corporal then as well?

21 A. No. Deputy first call.

22 Q. All right. And were working that day of January 1st
23 2010?

24 A. Yes, sir.

25 Q. What area of the county were you working that day?

1 A. The Pageland area.

2 Q. All right. And that is in Chesterfield County, of
3 course?

4 A. Yes, sir.

5 Q. All right. What were you doing that morning leading
6 up to your involvement in the matter that's before us
7 today?

8 A. I was at West Side Estates.

9 Q. What were you doing at West Side Estates?

10 A. Attempting to serve a warrant I had on an individual.

11 Q. Okay. And where is West Side Estates located in
12 Pageland?

13 A. I'm trying to think of the name of the road. Arant
14 Street. That would be South Arant Street off of Number
15 Nine.

16 Q. And while doing that did you become involved in the
17 incident with Thomas Stewart, the Defendant?

18 A. Yes, sir.

19 Q. Explain to us how that came about?

20 A. I was at West Side fixing to knock on the door, and I
21 had my walkie talkie on scanning. I heard the call come
22 out over the Pageland channel about a stabbing at the
23 apartment complex. So I stopped service on the warrant to
24 go try to assist them.

25 Q. Okay. And when you say, 'apartment complex' you know

1 the name of that apartment complex? If you don't it's
2 okay?

3 A. There were two different ones or a couple different
4 ones. I don't remember if this was Pageland Place or
5 which one.

6 Q. So you left what you were doing at West Side Estates
7 and go assist?

8 A. Yes, sir.

9 Q. All right. And tell us what happened from there?

10 A. As I was leaving I heard another call come out said
11 that the suspect left the vehicle, and they gave a vehicle
12 description. And when I was coming down Griggs Street I
13 seen a vehicle that matched that description turn in
14 behind Piggs Park.

15 Q. And what is Piggs Park?

16 A. It's a softball/baseball field with a soccer field
17 beside it and all.

18 Q. Okay. The vehicle in question that you heard the
19 description and saw, can you describe that for the jury,
20 please?

21 A. It was a two toned white with gold trim. I believe
22 it was like a Chevy Surburban Tahoe S.U.V.

23 Q. So a large S.U.V.

24 A. Yes, sir.

25 Q. And after you saw that pull in behind Piggs Park what

1 did you do from there?

2 A. I followed in behind it and initiated my blue lights
3 as we come to a stop. And I advised my dispatch that I
4 would be out with the vehicle. As we both come to a stop
5 I could see him -- I could see an individual climbing from
6 the driver's seat into the back seat and then exit through
7 the rear passenger door.

8 Q. All right. And at some point were you able to
9 identify the person who was climbing through the vehicle
10 and out of it?

11 A. Yes, sir.

12 Q. And who was that person?

13 A. The Defendant, Thomas Stewart.

14 Q. Okay. And upon him exiting the vehicle what
15 happened?

16 A. I ordered him to the ground and handcuffed him. I
17 noticed he was covered in blood so I assumed that this was
18 the guy they were looking for. So I ordered him to the
19 ground and handcuffed him and then I cleared the vehicle
20 to make sure that nobody else was in the vehicle.

21 Q. All right. So he was in your custody at that time?

22 A. Yes, sir.

23 Q. All right. And what did you do from that point?

24 A. After I cleared the vehicle, make sure nobody else
25 was there, I advised him that he was under arrest. I read

1 him his Miranda rights, and I advised my dispatch to let
2 the Pageland units know that I had the suspect in custody.

3 Q. All right. Let's talk about Miranda rights for just
4 a minute. Could you please -- I'm sure the jury has heard
5 of it before, but explain to the jury what Miranda rights
6 are exactly?

7 A. Miranda rights are individual rights that everybody
8 has.

9 Q. Okay, and you read these to them upon arrest or upon
10 being charged with a crime?

11 A. Yes, sir, before any questions.

12 Q. All right. Did you perform that recitation of rights
13 orally or did you do so with the help of some writing or
14 paper that you had with you that day?

15 A. Orally from memory.

16 Q. From memory. And could you please tell the jury,
17 from memory, what were the rights that you would have
18 given to Mr. Stewart that day?

19 A. You have right the right to remain silent. Anything
20 you say can or will be used against you in a court of law.
21 You have the right to an attorney before any questioning.
22 If you cannot afford an attorney one will be appointed to
23 you. You have the right to stop answering questions at
24 any time. Do you understand these rights as I've read
25 them to you.

1 Q. And did he respond to that?

2 A. Yes, sir. He said he understood his rights.

3 Q. Okay. I presume that we're still outside of the
4 vehicle out in the open outdoor area?

5 A. Yes, sir. We are behind his vehicle and in front of
6 my vehicle. There is probably about a 10 foot gap between
7 our vehicles, and we're in that 10 foot gap.

8 Q. Is the Defendant on the ground or is he up at this
9 time?

10 A. He's on the ground at this time.

11 Q. Okay. Well, at some point did you get him up off of
12 the ground?

13 A. I sat him up like on his rear end, and where he
14 sitting up with his legs out, I believe.

15 Q. Okay. And did you threaten him or abuse him in any
16 way either before or after giving him his rights in order
17 to get him to make any statements?

18 A. No, sir.

19 Q. Okay. Did you deny him anything that he asked for?

20 A. No, sir.

21 Q. Did he ask to speak with an attorney?

22 A. No, sir.

23 Q. Did the Defendant state anything to you regarding the
24 things that happened on January 1st 2010?

25 MR. SECOR: Your Honor, just renew our previous

1 objections.

2 THE COURT: All right. Objection is overruled.

3 BY MR. FOARD:

4 Q. You can answer that?

5 A. He stated several things. I believe his first
6 statement was that he just lost it over love, and he
7 wanted to know how many time he was looking at.

8 Q. Okay. And let's just talk about his -- let's talk
9 about his appearance for just a minute. What were your
10 observations that day?

11 A. Initially, you know as I stated he was -- I said
12 covered in blood. He had blood on his pants and stuff.
13 And he had a lot of stuff going on around his face like
14 his eyes were watering and he had mucous and all. And
15 after I read him his rights he advised that he understood
16 his rights and just needed something. He said he had been
17 pepper sprayed, and when I seen that he was spitting, had
18 a lot of mucous coming out and all it was pretty obvious
19 that he had been pepper sprayed.

20 Q. Did you take any action knowing that he said he had
21 been pepper sprayed?

22 A. I did. I believes that's when I had set him up on
23 his rear end and then observed him. And then I went to
24 the rear of my vehicle and got my gallon of water and
25 treated his eyes for the pepper spray.

1 Q. Okay. So he then began to tell the story about or
2 his version of the story about the incident at that point,
3 correct?

4 A. Yes, sir.

5 Q. Okay. And you testified that he first said he lost
6 it over love; is that correct?

7 A. Yes, sir.

8 Q. Okay. But at the same time you testified that he was
9 asking how much time he could get for this?

10 A. Yes, sir.

11 Q. What else did he say? Was -- did he go on to say
12 anything else?

13 A. When he asked about how much time he was going to get
14 over this I advised him that I didn't know cause all
15 depend on how the victim was. And I asked him how many
16 times did he stab her, and he said -- for his exact words
17 I would have to look back in my incident report if that's
18 okay.

19 Q. Okay. What?

20 MR. FOARD: Your Honor, if I could approach with my
21 copy.

22 BY MR. FOARD:

23 Q. If you could just review your notes to make sure that
24 you provide an accurate answer.

25 A. When I asked him he said, "I don't know. After I

1 started I lost it and just kept on."

2 Q. Did he want to talk at all about how the incident
3 began or what happened immediately before the attack?

4 A. He stated that he entered the house with a knife.

5 Q. He entered the house with a knife?

6 A. Yes, sir, that's what he stated to me. And stated
7 that the victim pepper sprayed him after they had an
8 argument -- they started arguing. And she actually
9 managed to get the knife from him and ran outside. And so
10 that after a couple of minutes he ran outside after her
11 and started attacking her again.

12 Q. Okay. But he specifically said he carried the knife
13 into the apartment?

14 MR. SECOR: Objection. Asked and answered.

15 THE COURT: Overruled. You may answer, sir.

16 THE WITNESS: Yes, sir.

17 BY MR. FOARD:

18 Q. Okay.

19 MR. FOARD: Beg the Court's indulgence just a moment.

20 BY MR. FOARD:

21 Q. Did he specifically discuss what happened outside of
22 the residence after being inside?

23 A. Yes, sir. He states that there was several men
24 yelling at him to stop, and that's the only reason why he
25 stopped cause he felt threatened by them; that he got in

1 the car and drove off.

2 Q. Okay. And by stop you mean he was performing an
3 action outside? He was stabbing her outside of the
4 apartment?

5 MR. SECOR: Objection, leading.

6 THE COURT: I'm going to sustain that, counsel. You
7 can't suggest and lead the answer. You may ask it in such
8 a way for the witness to answer. Go ahead. Please
9 rephrase or move forward.

10 BY MR. FOARD:

11 Q. Did he make any statements regarding his actions --
12 his further actions outside?

13 A. Give me one second. In my incident report I just
14 wrote that he began attacking her. I think he stated he
15 attacked her again.

16 Q. All right. And from your memory or in the incident
17 report do you have knowledge of him saying to you anything
18 regarding any claims of self-defense?

19 A. No, sir.

20 Q. Now, after speaking with him I presume you were alone
21 with him this entire time?

22 A. Yes, sir.

23 Q. Okay. And at any point did you -- were you not alone
24 with him in this process?

25 A. Yes, sir. After I initially handcuffed the subject I

1 advised dispatch to let the Pageland units know that I had
2 him in custody. And it was several minutes later when
3 Officer Newman arrived.

4 Q. Officer Newman?

5 A. Officer Mikkos Newman.

6 Q. Okay. And who was he employed with?

7 A. At that point Pageland Police Department.

8 Q. Okay.. And once Officer Newman arrived did anything
9 more occur regarding the Defendant or did he just take him
10 somewhere?

11 A. I advised Officer Newman that my vehicle wasn't
12 equipped with a camera system, and then -- so we proceeded
13 to read him -- or Officer Newman proceeded to read him his
14 Miranda Rights again before transporting him to the
15 Pageland Police Department.

16 Q. And so you witnessed Office Newman give him his
17 Miranda Rights for a second time?

18 A. Yes, sir.

19 Q. And having witnessed that would you say that the
20 rights that Office Newman gave him were basically the same
21 that you've given us a few minutes ago?

22 A. Yes, sir.

23 Q. Okay. So it was -- you were under some impression
24 that there may have been a video camera in Officer
25 Newman's car?

1 A. Ye, sir.

2 Q. But there was not a video camera in your car?

3 A. That is correct.

4 Q. Okay. Your vehicle just wasn't equipped with one?

5 A. Yes, sir. I had about a month or two prior to that
6 received that patrol vehicle, and at that time it hadn't
7 been equipped with the in car video camera system.

8 Q. So just so we're clear the statement that you told
9 the jury that Mr. Stewart made, these were made directly
10 to you?

11 A. Yes, sir.

12 Q. And these were made prior to the arrival of Officer
13 Newman?

14 A. Yes, sir.

15 Q. Okay. Had Mr. Newman been called at that point?

16 A. Yes, sir, he was called over the radio.

17 Q. So he was in route?

18 A. Yes, sir.

19 Q. All right.

20 MR. FOARD: No further questions, Your Honor.

21 THE COURT: All right. Cross-examination.

22 MR. SECOR: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. SECOR:

25 Q. Good afternoon, sir. Corporal, is that right?

1 A. Yes, sir.

2 Q. Corporal, do you, as an officer, do you carry pepper
3 spray?

4 A. We have it equipped with us, yes.

5 Q. Do you yourself carry it when you're on duty?

6 A. Not any more. I used to.

7 Q. Okay. In order to carry something like that as a
8 police officer do you have to be subjected to it? Does
9 somebody have to spray you so that -- before you can carry
10 it so you know what it does to people?

11 A. I believe it all depends on your department policy,
12 but that's, for the most part, yes, sir, that's true.

13 Q. Okay. So would you prior to you carrying it on duty
14 did you get sprayed?

15 A. Not with pepper spray, no, sir.

16 Q. And anything like paper spray?

17 A. I was subjected to chemical agents in the military.
18 They kind of let me by get by without being sprayed in the
19 face with pepper spray.

20 Q. Okay. So you have any idea whether what you
21 experience is similar to somebody?

22 A. Yes, sir.

23 Q. It would be similar, you think?

24 A. I believe mine was a little bit worse.

25 Q. Okay. But police carry pepper spray?

1 A. That's correct.

2 Q. And they carry pepper spray because it's effective?

3 A. Yes, sir.

4 Q. And they carry pepper spray because it's effective in
5 subduing people, right?

6 A. Most people, yes.

7 Q. And at least partially blinding people?

8 A. That is correct.

9 Q. The idea is for it to be painful?

10 A. Yes, sir.

11 Q. Okay. When you were talking to the prosecutor and
12 you were relaying some of the things you remember Mr.
13 Thomas Stewart saying to you at Piggs Park, right?

14 A. Excuse me.

15 Q. When you were talking to the prosecutor do -- you
16 testified to some things you remember Thomas saying,
17 right?

18 A. Yes, sir.

19 Q. At that time that you arrested him?

20 A. Yes, sir.

21 Q. But one thing that's on your report that I don't
22 think the State brought up is that Thomas did ask you if
23 Bellany was okay, did he not?

24 A. Yes, sir. Give me just one second. After he stated
25 that the victim only got two years probation enter

1 assaulting his wife he said, 'oh, is she all right'.

2 Q. Okay. So he did ask you that?

3 A. Yes, sir.

4 Q. Okay. And he also did tell you that what happened
5 between him and Bellany began inside of her apartment,
6 correct?

7 A. Yes, sir.

8 Q. And then he said it also occurred outside, right?

9 A. Yes.

10 Q. And in his conversation or whatever it was him
11 telling you these things, at the time you took or had him
12 handcuffed he did also tell you that from the altercation
13 that occurred inside the apartment and what occurred
14 outside the apartment that there was at least a couple of
15 minutes that went by; isn't that right?

16 A. Yes, sir.

17 Q. Didn't he tell you that?

18 A. Yes, sir.

19 Q. That would have been when he was inside the
20 apartment?

21 A. Yes, sir.

22 Q. And Miss Clyburn would have been outside the
23 apartment during that period of time?

24 A. Yes.

25 Q. Regarding the dash cam, that's what it's called? The

1 video camera under the dashboard of a police car?

2 A. Yes.

3 Q. You said that you brought Thomas up in front of
4 another vehicle?

5 A. Yes, sir. The vehicle that he was to be transported
6 in.

7 Q. I'm sorry. That was officer?

8 A. That was Officer Mikkos Newman?

9 Q. Mikkos Newman?

10 A. That is correct.

11 Q. Okay, the purpose of that was to record whatever was
12 said on video, correct?

13 A. Yes, sir.

14 Q. And do you have any idea where that video wound up?

15 A. I'm not sure that there was in fact a video. I used
16 to work with Pageland Police Department, and I knew that
17 from my experience with them that most of their vehicles
18 did have in car camera systems. I just -- I assumed that
19 that one was being recorded.

20 Q. That's why you put him up in front of the car, right?

21 A. Yes, sir.

22 Q. Cause the dash cam points out to the front of the
23 car?

24 A. That's correct.

25 Q. Okay.

1 MR. SECOR: Just one second, Your Honor.

2 BY MR. SECOR:

3 Q. Corporal, I just have one last question for you.
4 Before I say that let me just tell you. I'm not trying to
5 give you a hard time. And I know that y'all work very
6 hard and work a lot of different cases. But the incident
7 report that you wrote in this case, the one that you've
8 got up there that you've been looking at that was written
9 on the 3rd of January 2010, right?

10 A. I believe so. Yes.

11 Q. And the interaction that you had with Thomas was on
12 the morning of the 1st?

13 A. Yes.

14 Q. So that was a two day period of time between when you
15 had your interaction with Mr. Stewart and when you put
16 your report together?

17 A. Yes.

18 Q. And I know that just happened. I mean sometimes you
19 just don't have time to put everything down at the time
20 that it happens, right?

21 A. Yes, sir.

22 Q. Thank you, sir. I appreciate it.

23 THE COURT: Is there redirect?

24 MR. FOARD: Briefly, Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. FOARD:

2 Q. Detective Carnes, I just want to make sure we have
3 got the sequence of a couple of Mr. Stewart's statements
4 correct, and if you need to refer to your incident report
5 please do. I believe you stated that he said he lost it
6 over love, correct?

7 A. Yes, sir.

8 Q. And what is his -- what is the next statement he
9 stated to you?

10 A. That he wanted to know how much time he was looking
11 at.

12 Q. Okay. So he lost it over love. Then he wants to
13 know how much time he's going to get, and then what's
14 after that?

15 A. Well, I told him I didn't know because it all depends
16 on how she was, and then he said that she -- that the
17 victim only got two years probation for assaulting his
18 wife.

19 Q. Okay. So lost it other love. How much time he was
20 going to get?

21 MR. SECOR: Objection. Leading.

22 THE COURT: I'll overrule.

23 BY MR. FOARD:

24 Q. Then asks how much time he's going to get. Then
25 complaining about how much time the victim in this case

1 got for an incident. And then what does he say after
2 that?

3 A. "Oh, is she all right."

4 Q. And that's a -- per your report that's in quotation
5 marks, "Oh, is she ---

6 MR. SECOR: Objection, Your Honor. That's leading.

7 THE COURT: I'm going to sustain. That is leading,
8 counsel.

9 MR. FOARD: Okay.

10 THE COURT: But you have to rephrase or move to
11 somewhere where you do not lead your witness.

12 BY MR. FOARD:

13 Q. So the fourth statement was what?

14 A. "Oh, is she all right."

15 MR. FOARD: No further questions, Your Honor.

16 COLLOQUY

17 THE COURT: All right. Very good. Ladies and
18 gentlemen, just a comment about what you just observed.
19 When you have your own witness; that is you called the
20 witness, you cannot lead the witness. And a typical
21 example is a question that contains the answer.

22 So if this was a car wreck case, for example, and you
23 had your own witness on the stand, and you asked what
24 color was the car. That's appropriate, but if you said,
25 "Was the car blue" that's not appropriate because you have

1 lead that witness to answering that question within the
2 question. So you can't lead your witness when you have
3 your own witness on the stand. But when you take cross
4 examination you can lead that witness to see if that
5 witness holds to what they testified to during direct
6 examination.

7 Sir, you may step down. Thank you. Counsel, come up
8 and let's talk about scheduling for a moment.

9 (WHEREUPON, a bench conference was held off the
10 record in the presence of the jury, but out of the
11 hearing of the jury.)

12 THE COURT: All right, ladies and gentlemen; we were
13 discussing scheduling, and counsel tells me that the next
14 witness is going to be potentially lengthy, and thus we're
15 going to stop now and take our lunch break. And lunch is
16 on your own. And whomever you have lunch with, please,
17 don't discuss the case. Just talk about the weather or
18 what have you, and be back at two o'clock. We're going to
19 start back at two o'clock.

20 Now, does anyone need to go back in the jury room to
21 retain -- well, we'll let you go back. Those of you that
22 don't want to go back in can go that way and have a nice
23 lunch. And we'll see you back at two o'clock. Let's
24 everyone else remain where we are while our jury departs
25 the courtroom.

1 (WHEREUPON, the jury panel was excused from the
2 courtroom at 12:21 p.m.)

3 THE COURT: All right. Counsel, step back up one
4 more time and let's talk about scheduling and other
5 issues.

6 (WHEREUPON, a bench conference was held off the
7 record, but out of the presence of the jury.)

8 THE COURT: All right. Sir, I'm going to get you --
9 would you please come forward and stand in the well here
10 and let's talk for a moment. And if you would just stand
11 there at the microphone.

12 MR. YOUNG: I apologize for interrupting. May Mr.
13 Stewart be excused?

14 THE COURT: You may. Please follow our Clerk's
15 instructions. We're going to place you under oath, sir.

16 GARY PHILLIPS, after being duly sworn, testified
17 as follows:

18 EXAMINATION BY THE COURT

19 BY THE COURT:

20 Q. Mr. Phillips, what happened that caused the camera to
21 flash again, sir?

22 A. Well, sir, that was a different camera from the first
23 incident to the second. I went and got another camera
24 from my vehicle. The first camera I left out there. I
25 brought it back inside, and I went to the men's restroom

1 to test it. I turned off the sound, and I also turned off
2 the flash.

3 Now, what I believe happened, and if I had the
4 cameras in my hands I could test this, that turning off
5 the flash I took a couple of pictures of the bathroom sink
6 and it didn't flash. I turned it off, and when I came
7 back in here I can only presume when I turned it back on
8 it defaulted back to the flash being on.

9 I would never intentionally disregard your
10 instructions and flash a camera at you, you know, 30
11 minutes after you admonish me not to.

12 Q. All right, sir. Mr. Phillips, obviously this is, as
13 I said earlier a public forum?

14 A. Absolutely.

15 Q. And we want the press to be part of our proceedings,
16 but not to become the proceedings or the focus of it.
17 Your job is to report without disruption what happens
18 here. We're obviously here about some very important
19 business. And, respectfully, sir, we're going to
20 confiscate your camera. It will be in the Clerk's Office.

21 If you wish to retrieve your camera I'm going to
22 impose a \$50 fine for doing so. But I'm also going to
23 revoke the right to have a camera in the courtroom.
24 You're welcomed to remain here yourself, and I will not
25 permit you to have a camera in the courtroom for the

1 remainder of these proceedings.

2 Thank you for understanding the Court's response to
3 what happened. And you have anything further you wish to
4 say, sir?

5 A. Only I do apologize, sir. As I said I would never
6 intentionally disregard your wishes.

7 Q. All right. Very good. Then that is the ruling of
8 the Court.

9 COLLOQUY

10 THE COURT: Now, we will stand down until two o'clock
11 for recess and again you may retrieve your camera from the
12 Clerk's Office with the payment of a \$50 fine. Thank you.

13 (WHEREUPON, Court was in recess at 12:25 p.m.)

14 (WHEREUPON, State's Exhibit Nos. 87 THROUGH 105 were
15 marked for identification only.)

16 (WHEREUPON, Defendant's Exhibit Nos. 12 THROUGH 69
17 were marked for identification only.)

18 (WHEREUPON, Court reconvened at 2:03 p.m.)

19 THE COURT: All right. Counsel, I am -- I learned
20 when I came back there is some issue you wish to take up
21 concerning some Lyle evidence.

22 MR. REDMOND: Yes, sir, Your Honor. Yes, sir. And I
23 actually -- I think I'm speaking a bit out of turn because
24 the Defense had actually filed an objection to the
25 portions of the tape from -- of the first C.D. with the

1 Defendant's statement from 47 minutes, 45 seconds to 48
2 minutes and nine asking that it be redacted due to some --
3 and we've got it queued up to that portion. It's a short
4 portion, but there was discussion about the fact that the
5 victim and the Defendant had engaged in physical
6 altercations in the past.

7 And as you recall yesterday, Your Honor, I indicated
8 that I wanted to reserve consenting to redacting that
9 portion until I saw how the case was going to proceed.
10 Well, interestingly, in the State's opinion the opening
11 statement I think pretty much opens the door based on the
12 discussions of -- and there were -- there was mention,
13 too, about the way they were toward each other and things
14 along those lines.

15 So we are prepared to make a proffer of that brief
16 portion of the statement, and the State would contend that
17 based on the Defense's opening that in essence the door
18 was opened, and we should be entitled to play that part of
19 the tape.

20 Now, I will also add that ---

21 THE COURT: Mr. Redmond, excuse me. Let me break in.
22 Is this your next witness that you put the tape up?

23 MR. REDMOND: Yes, sir. That is why we wanted to go
24 ahead. This is our next witness. And I apologize, Judge.
25 It really came to mind during lunch that based on what was

1 stated in the opening statement we feel that the door has
2 been opened to that portion. And we can play it. It's a
3 real brief portion. Just a few seconds. And then, unless
4 the Defense wants to address something now.

5 THE COURT: Let me at least see it, and then I'll be
6 in better a position to understand the arguments from the
7 other side.

8 (WHEREUPON, State's Exhibit Number 7 was played for
9 the Court in open Court.)

10 THE COURT: Is that what the Defense asked to be
11 redacted talks about?

12 MR. REDMOND: They did not ask the part where he
13 talks about her beating up on him to be redacted. And
14 because it is perfectly admissible under the rules we're
15 not contesting that. But there are two reasons. Once
16 again the Defense opened and they made elusion to the way
17 they were toward each other.

18 But also within context of their self-defense
19 argument, and unless there is some contesting from the
20 Defense there is no question that this occurred at her
21 apartment complex in her apartment.

22 Simply put, Your Honor, we feel that the door has
23 been opened based on the Defense that was proffered in
24 opening. And I would just finally say that opening
25 statement, even though it's not evidence through the

1 exhibits or testimony, but opening statements they can
2 open the door in opening or in any other statement during
3 the course of the trial, and the State would contend that
4 that door has in fact been opened. And that that whole
5 portion of the tape should be played.

6 THE COURT: All right. Defense, do you want to
7 respond to that?

8 MR. SECOR: Yes, sir. First, I'd like to say that
9 the State mentioned Miss Clyburn's assault and battery of
10 a high and aggravated nature in their opening statement.
11 They said that she was charged with it. They said that
12 she was on probation for it. And it sounds to me like
13 they're trying to say that I opened the door by
14 referencing the same event in my opening.

15 So if I'm saying just what they said and they said it
16 first doesn't seem to me that the door has been opened.

17 THE COURT: All right. Just one moment, please.
18 Such with that tape I could not hear the gauged prejudice.
19 What is the -- I heard about she was being mean. What is
20 the issue that was trying to be excluded, and now you're
21 trying to get in because the door opened. What did he say
22 on the tape which is the point of this exercise?

23 MR. REDMOND: The gist of it is, if I'm correct and
24 I'll be brief, he says that, you know, yeah, I beat up on
25 her within the last -- he said sometimes, well, within the

1 last nine months. He said, "Yeah, I used to beat up on
2 her and she would beat up on me." And the part when she
3 beats up on him and all they aren't asking that that be
4 excluded and neither are we.

5 We understand it's fair game, but based on the
6 assertions made in the Defense opening, and again, based
7 on the Defense in the context of the defense that they
8 have proffered, that being self-defense, we would indicate
9 and ask the Court to consider allowing us to play that
10 entire portion of the tape because I think it goes to that
11 issue to rebut what the assertions of the Defense are in
12 that self-defense.

13 So, in essence, there are two reasons. The fact that
14 the door was opened, but also with the Defense that they
15 have proffered as indicated in their opening I think this
16 goes directly to the heart of that.

17 And the last thing I'll say, keeping in mind that
18 this happened it started in her home. So that being the
19 case, and the fact that he has indicated violence towards
20 her in the past that will give her reason to feel
21 apprehension which, of course, goes right into the heart
22 of possible self-defense issues.

23 THE COURT: Just one moment. All right. The Court
24 is prepared to rule and this is the ruling. First of all
25 we cannot view what happened on the date of this incident

1 was in some isolation. This is a tragic culmination of a
2 history of interaction between the two of which there is a
3 disputed fact about that history, if I follow correctly
4 the argument of counsel in the opening statement.

5 I am aware, Mr. Secor, as you mentioned that the
6 State said it first, if you want to put it that way. They
7 were, in their opening statement, they mentioned the fact
8 that there had been a charge against the victim. I
9 believe their mention of it was in such a way to perhaps
10 sensitize the jury to what may not been a comment on
11 character. I'm not certain. The inference may be one way
12 or the other.

13 But I was letting the jury know that this event was
14 going to come out in the evidence. But based upon the
15 fact that some of this happened inside the apartment,
16 based upon the fact that, of course, we have a deceased
17 individual who is not here to testify about the specifics
18 of what happened in that incident. We will get at least
19 one side of it.

20 The Court believes that a better course of action is
21 to permit the evidence in. It goes to the core, the heart
22 of this case. And while the State did mention it first
23 the Defense argued on the point sufficiently, and I
24 believe the door is open to permit the -- has been opened
25 to permit this evidence in the State's case in chief.

1 And, therefore, I refuse to redact that portion of the
2 video and grant the State's motion to play it.

3 MR. REDMOND: Thank you, Your Honor.

4 MR. SECOR: If I may put a few things on the record,
5 if that's okay?

6 THE COURT: Go ahead.

7 MR. SECOR: Based on Mr. Kernard's explanation of why
8 the State wants the evidence in I would say the
9 explanation is not satisfy Rule 404 or Lyle because I
10 think it is being offered specifically for propensity
11 purposes and to try to demonstrate because Mr. Stewart's
12 been violent in the past and in the video, therefore, he
13 inevitably, this incident.

14 THE COURT: Well, can we just -- excuse me. Let's
15 just take this a little bit at a time. Tell me which
16 portion of Rule 404 do you say is evidence is admissible
17 under so we can hear the response to it?

18 MR. REDMOND: Your Honor, I would say that, one, the
19 door has been opened. That's the first thing, but if the
20 Court would indulge me it goes to, and in essence, kind of
21 when we talk about 404 I'm talking about in terms of her
22 state of mind specifically as it relates to that incident
23 because in opening statement they were talking about
24 self-defense and how he felt that he was in danger.

25 But our argument is since it occurred in the home

1 that in fact she has a opportunity under Castle Doctrine
2 to protect herself. And because of that and because of
3 what's been indicated this is a reason where she would
4 reasonably believe she was in fear. And when Your Honor
5 says that in context of allowing the jury to hear
6 everything I think it is important that the jury be
7 allowed to hear everything.

8 She's not here, but they are entitled to at least get
9 a gauge of what her state of mind was at that time. She
10 knew, based on what he said, knew that he had a propensity
11 to be violent. He was in her home, and as a result we
12 would argue that the evidence should be allowed in for the
13 purpose of rebutting what has already been put out there
14 on self-defense. Specifically, if the Court can indulge
15 me on Rule 404(B).

16 THE COURT: Well, if I understood what you just said
17 you don't believe it's Lyle evidence.

18 MR. REDMOND: Well, exactly. Let me say that's
19 exactly correct, Your Honor, because again, I'm saying
20 that this is going to the heart of the story to rebut the
21 self-defense. Even though I haven't put up anything yet,
22 but the characterizations that he made in opening
23 statement are allowed to be taken into consideration as it
24 relates to the evidence.

25 THE COURT: Well, then, Mr. Secor, we'll let you just

1 go ahead and finish your argument. Please go ahead, sir.

2 MR. SECOR: Thank you. I appreciate it, sir. One
3 thing I'd like to mention in terms of the whole concept of
4 rebuttal Mr. Redmond just mentioned. They're entitled to
5 offer rebuttal evidence if we do something that tries to
6 insinuate to the jury good character or peace on behalf of
7 Mr. Stewart. Eliciting information about an A.B.H.A.N. by
8 Miss Clyburn on Melissa Stewart doesn't call Mr. Stewart's
9 character into question in any way whatsoever.

10 He wasn't even present for it. And so what -- I'm
11 missing the legitimacy arguments that they're now entitled
12 to rebut it with bad character evidence of Mr. Stewart
13 when we were discussing an incident that involved Miss
14 Clyburn and Mrs. Stewart.

15 Additionally, when it comes to the threshold of
16 admissibility, which I understand is entirely in Your
17 Honor's hands, but it would be our position that I think
18 that factor of the law that they have to be able to
19 establish by clear and convincing evidence whatever
20 evidence it is that they're offering which I don't know
21 they can do by a statement on video.

22 There is no evidence of exactly what Mr. Stewart is
23 talking about. Meaning there is no corpus dalecti of the
24 events other than an admission by him. And so part of my
25 argument is I don't think they have met the threshold

1 requirement admitting that evidence.

2 Also I think that the assault of Miss Stewart by
3 Bellany Clyburn is admissible under Rule 405 which permits
4 specific instances of conduct.

5 Your Honor, that the conduct is relevant to charge or
6 claim or a defense. But that rule doesn't say that they
7 get to then -- just bring in whatever they want without
8 meeting the threshold requirement on the legitimacy of the
9 evidence they're offering.

10 And supporting that argument that the A.B.H.A.N. is
11 admissible 405(B) as I said, and supporting cases of State
12 341 SC 410. State v. Williams is a Court of Appeals case
13 2012, and it's cited at 368 SC 1 which is from 2005. And
14 regarding the State's argument about self-defense, as Your
15 Honor I'm sure knows better than I, it's the imminence is
16 the issue. It's a key part of the Defendant's
17 self-defense analysis is the imminence of whatever threat
18 is occurring to whomever that we're talking about.

19 And that's saying that Miss Clyburn had the right to
20 judge him -- judge Mr. Stewart out I'm sure under these
21 circumstances. But Miss Clyburn is not claiming
22 self-defense. She doesn't have the burden to establish
23 that it was an imminent threat.

24 THE COURT: All right. Very good. Anything further?
25 Briefly, counsel, please.

1 MR. SECOR: May I speak?

2 THE COURT: Go ahead.

3 MR. SECOR: The similarities of the conduct between
4 the conduct alleged, the bad act conduct that is now being
5 offered and the conduct charge, certainly increases the
6 prejudice under 403 analysis. I believe the case is ---

7 THE COURT: Okay. That's 403. First response -- I
8 heard on 403. So what do you say to that Mr. Redmond?

9 MR. REDMOND: And, Your Honor, I apologize. It's
10 obviously relevant, and two words. And I should have said
11 it in the beginning, res genti. We were entitled to get
12 into -- when you talk about res genti in the context of
13 the case they're saying that this is self-defense.

14 And real quickly as it relates to it being relevant,
15 it's absolutely relevant because it goes to the part of
16 part of what you consider which is self-defense is whether
17 or not a person reasonably perceived a certain danger.

18 Well, here he's talking about the fact that, yes, he
19 had assaulted her before. We would argue in the context
20 of their six self-defense assertions that allows us to
21 rebut and say, no, she had reason to believe that she may
22 be in some danger. So, again, I think when you look at it
23 a res genti standpoint I think under 403 is absolutely
24 relevant.

25 Of course, when you talk about prejudicial, of

1 course, it's prejudicial but it's not more prejudicial
2 than probative based on what they have put forward as
3 their defense. We are entitled to answer that. We are
4 entitled to present evidence based on whatever they may
5 say or proffer. That's what we're doing, Your Honor.

6 THE COURT: Very good. The Court's ruling is the
7 same. We're going to permit the evidence in. I find that
8 under Rule 403 it is not more prejudicial than probative.
9 Just one moment. All right. Let's bring the jurist, and
10 the Court's ruling is as it is. Please bring in the jury.

11 (WHEREUPON, the jury panel enters the courtroom at
12 the 2:20 p.m.)

13 THE COURT: Welcome back, ladies and gentlemen. I
14 trust you had a nice lunch. Let me begin by apology to
15 you. Your time is valuable. I'm well aware of that.
16 When we came back from lunch there were certain issues
17 that were raised that the Court needed to resolve, and now
18 we're 25 minutes beyond where I told you we would start.
19 I regret that you waited -- or had to wait back in the
20 jury room while we resolved that issue even though I told
21 you we would begin at two o'clock.

22 We try not to do that. From time to time things like
23 they happen. Thank you for your patience. As you will
24 recall we ended the morning hour in the State's case. We
25 are still in the State's case. Please call your next

1 witness.

2 MR. FOARD: Thank you, Your Honor. State calls
3 Mikkos Newman.

4 THE COURT: Please come forward take the oath of a
5 witness.

6 MIKKOS NEWMAN, after being duly sworn, testified
7 as follows:

8 MR. FOARD: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. FOARD:

12 Q. Good morning, sir, or good afternoon, sir. Losing
13 track of my day. Would you please state your name for the
14 record?

15 A. Mikkos Newman.

16 Q. And by whom are you currently employed?

17 A. The Lee County Sheriff's Office.

18 Q. In what capacity?

19 A. As an investigator.

20 Q. All right. And on January 1st by whom were you
21 employed?

22 A. Pageland Police Department.

23 Q. And in what capacity were you employed there?

24 A. Patrol sergeant at that time.

25 Q. All right. And you recall the date of January 1st

1 2010?

2 A. I do.

3 Q. Okay. And did you have the occasion to be involved
4 with the incident that we're here today about?

5 A. I was.

6 Q. Okay. If you could please tell us how you became
7 involved in the incident regarding the Defendant?

8 A. On that day I received a call from Assistant Chief
9 Brown. Told me that an incident had occurred at Pageland
10 Place Apartments. The suspect was at Piggs Park. Go and
11 pick him up and transport him to the police department.
12 And that's what I done.

13 Q. All right. And tell me again where were you when you
14 received the call?

15 A. I was at home.

16 Q. At home. And did you travel to that call in your
17 personal vehicle or in a patrol vehicle?

18 A. Patrol vehicle, marked unit.

19 Q. What kind of vehicle did you drive?

20 A. It was a Crown Vic. I'm not sure what year.

21 Q. Okay. And so you go to Piggs Park?

22 A. Yes.

23 Q. What do you find when you arrive at Piggs Park?

24 A. Oh, when I arrived at Piggs Park see a County vehicle
25 which was Deputy Joe Carnes with the suspect which was

1 Thomas Stewart.

2 Q. All right. And what was their positioning? What
3 were they doing? Were they up? Were they down?

4 A. I believe at that time both of them were standing.
5 Thomas Stewart was in handcuffs and Deputy Carnes was
6 standing right there beside him.

7 Q. All right. What happened when you arrived and got
8 out of your car?

9 A. Soon as I got out the car just briefly speak to
10 Deputy Carnes. After that bring the suspect, Thomas
11 Stewart to the front of my vehicle and I read him his
12 Miranda rights. And there I just put him in the car and
13 transported back to the police department.

14 Q. All right. And let's talk about Miranda rights real
15 quick. Were you in the courtroom this morning when Deputy
16 Carnes testified?

17 A. I was.

18 Q. Did he hear his recitation of rights?

19 A. I did.

20 Q. Is that significantly the same as what you would have
21 said?

22 A. Yes.

23 Q. Okay. And so you -- did Deputy Carnes tell you that
24 he had previously Mirandised Mr. Stewart?

25 A. Yes, he did.

1 Q. Okay. So to your knowledge this was the second?

2 A. Yes, sir.

3 Q. All right. Tell us more about this happening in
4 front of your car. What was the purpose of that?

5 A. The purpose behind that was just, you know, let him
6 know his rights. Let him know he didn't have to make any
7 statements. He didn't have to tell me anything without a
8 lawyer present, and that was it. And I read him his
9 rights, put him in the vehicle and transported him to the
10 police department.

11 Q. Now, was your vehicle equipped with a video
12 monitoring device?

13 A. I believe it was.

14 Q. Okay. And do you recall whether or not this vide
15 monitoring device was turned on at the time of your giving
16 of the Miranda rights?

17 A. I don't want to say yes, and I don't want to say no.
18 At this time I'm basically unsure, but it more than likely
19 was on, but I'm basically not sure.

20 Q. Okay. And have you ever reviewed a videotape of that
21 day to see if there was Miranda rights captured on video?

22 A. I haven't, and one of the reasons was because he
23 never made any statement to me after he was read his
24 rights or anything, so.

25 Q. So you didn't question him at all when he was in your

1 person and prior to him being transported?

2 A. No, sir, I did not.

3 Q. Okay. That tape that was in the video recording
4 device would that tape have been reused if you had not
5 removed it from your automobile?

6 A. That was the general practice to reuse if there was
7 no significant evidence on it.

8 Q. Okay. What would have happened if you had questioned
9 him and something had been captured on that videotape?
10 What would your procedure have been?

11 A. Then I would have removed it from the supervisor's
12 key which was I want to said First Sergeant Dean Mackey at
13 that time or Captain Mackey. I'm not sure of his title.
14 He had the keys to those boxes that would remove the
15 videotape as I recall and would have removed it, marked it
16 with the case number and put the date and time on it and
17 submitted it to Assistant Chief Brown at that time.

18 Q. But that didn't occur?

19 A. No, it did not.

20 Q. And the reasoning?

21 A. Because he never made any statements saying he wasn't
22 questioned.

23 Q. All right. So let's turn our attention -- now, you
24 said you transported him to Pageland P.D.?

25 A. Yes, sir.

1 Q. And while at Pageland P.D. what was going on at
2 Pageland P.D. subsequent to transporting him?

3 A. I got the suspect, Thomas Stewart, out. Took him to
4 the booking area. Then we go through that booking
5 procedure. Pretty much of a health screen, and just you
6 know basically photographing him. Due to the incident
7 photograph ago and not asking any questions but just
8 getting him ready so he can go into the jail cell.

9 Q. Okay. At any time subsequent to these booking
10 procedures or at any point that day did you have the
11 opportunity to take part in questioning or interviewing of
12 Mr. Thomas Stewart?

13 A. I did spoke with Chief Brown. He thought it would be
14 a good idea to videotape his statement in which we did.

15 Q. Okay.

16 MR. FOARD: And may I approach, Your Honor?

17 THE COURT: You may.

18 MR. FOARD: Thank you, Your Honor.

19 BY MR. FOARD:

20 Q. Officer Newman, I'm handing you what's been
21 previously marked and entered as State's Exhibit Six. Do
22 you recognize that document?

23 A. I do.

24 Q. And can you tell the Court what kind of document that
25 is?

1 A. Your Miranda rights.

2 Q. Okay. Is that form -- I take it that form looks
3 familiar to you?

4 A. It does.

5 Q. Okay. Did you use that routinely at Pageland P.D.?

6 A. We did.

7 Q. Okay. And if you could tell the jury what does that
8 form say.

9 A. Would you like for me to read it?

10 Q. Yes, please.

11 A. State, "Before we ask you any questions you must
12 understand your rights. You have the right to remain
13 silent. Anything you say can and will be used against you
14 in a Court of law. You have right to talk to a lawyer for
15 advice before we ask you any questions and to have him or
16 her present with you during questioning.

17 If you have no money for lawyer fees the Court will
18 appoint one to represent you without cost to you if you
19 wish. If you decide to answer questions now without a
20 lawyer present you will still have the right to stop
21 answering questions at any time. You also have the right
22 to stop answering questions at any time until you talk to
23 a - excuse me; talk with a lawyer.

24 This states I have read this statement of my rights,
25 and I understand what my rights are."

1 Q. And is there a signature on that line?

2 A. Yes, there is.

3 Q. And who signed that document?

4 A. Thomas Stewart.

5 Q. Okay. And down at the bottom I believe there are
6 some witness lines. Now, your name is not on either one
7 of those, are they?

8 A. No. Cause there were only two slots and the
9 investigator from S.L.E.D. that was assisting that day and
10 Assistant Chief Brown signed.

11 Q. But did you in fact witness this?

12 A. Yes, I witnessed it.

13 Q. Okay. You just didn't sign because there wasn't a
14 line for you. Now, the waiver of rights portion at the
15 bottom, if you could publish that to the jury, please?

16 A. It states that, "I am willing to make a statement and
17 answer questions. I do not want a lawyer at this time. I
18 understand and know what I am doing. No promises or
19 threats have been made to me. And no pressure or coercion
20 of any kind has been used against me."

21 Q. And is there a second signature line on that for the
22 Defendant?

23 A. Yes, there is.

24 Q. And did he sign that?

25 A. Yes, sir, he did.

1 Q. Thank you?

2 MR. FOARD: Your Honor, may I publish this to the
3 jury?

4 THE COURT: You may.

5 MR. FOARD: Thank you.

6 THE COURT: What exhibit was that?

7 MR. FOARD: That's Number Six. State's Six, Your
8 Honor.

9 BY MR. FOARD:

10 Q. Officer Newman ---

11 THE COURT: Has there been objection to State's Six?

12 MR. FOARD: It's already been moved in evidence, Your
13 Honor.

14 THE COURT: All right. Very good. Thank you.
15 Excuse me.

16 MR. SECOR: May I see it.

17 THE COURT: You may proceed.

18 MR. SECOR: Sorry about that.

19 MR. FOARD: May I republish?

20 THE COURT: Yes.

21 BY MR. FOARD:

22 Q. Officer Newman, the Miranda waiver form was that
23 executed prior to any statement that was given by Mr.
24 Stewart?

25 A. It was.

1 Q. And where would you have been located in Pageland
2 P.D. when the Miranda was discussed?

3 A. In the area which is known as the squad room which is
4 facing the room towards the west side of the building.

5 Q. All right. Can you describe the squad room for us?
6 Is it a large? Medium? What kind of size room is it?

7 A. About a medium size room. Kind of a round table that
8 can sit anywhere from six to eight chairs. Also has a
9 desk in there. The officer has their cubbie hole where
10 they get memos and assignments. Also officer lockers
11 where they can keep personal items and duty items.

12 Q. Okay. And are there adequate restroom facilities
13 located nearby?

14 A. Yes, there are, basically, pretty much a private
15 restroom. That restroom has like a type of shower and a
16 sink and a toilet area. And we commonly usually use it
17 for officers, but if we are questioning people and do have
18 people in that area when I was there at that time they
19 were allowed to use it.

20 Q. All right. And do you recall whether Mr. Stewart at
21 any time asked for anything such as food, water, use the
22 restroom or anything like that?

23 A. I want to say that he might have asked for water, and
24 if he asked for it he got it.

25 Q. Okay. Well, that's my follow up question. If he had

1 asked for any of those would they have been provided to
2 him?

3 A. Yes, they would have.

4 Q. Okay. So you did not deny him any of his basic needs
5 in order to put him in a state of duress to waive his
6 Miranda rights?

7 A. No, sir.

8 Q. And the room that we're talking about, I mean you
9 described a conference room table that sits six or eight.
10 It seems to be a pretty big size room?

11 A. No.

12 Q. So it's not like a small cell or anything?

13 A. No, sir.

14 Q. Has windows and doors?

15 A. Yes, sir.

16 Q. Okay. Were you present when any actual interrogation
17 of statements given by Mr. Stewart were performed?

18 A. I was.

19 MR. FOARD: Beg the Court's indulgence.

20 BY MR. FOARD:

21 Q. All right, then. We're going to come back to that
22 video in just a few minutes, but there are a couple of
23 things that I want to touch on first. Prior to or --
24 prior to, after, at any time do you know whether or not
25 any photographs were made of the Defendant there at the

1 Pageland Police Department?

2 A. There was.

3 Q. There was.

4 MR. FOARD: May I approach, Your Honor.

5 THE COURT: You may.

6 BY MR. FOARD:

7 Q. I'm handing you what's been previously mark for
8 identification purposes as State's 87, 88, 89, 90, 91, 92,
9 93, 95, 96, 97, 98, and 99 and 100. Will you please
10 review those, and when you've had a chance tell me if
11 you're ready. Do you recognize those photographs?

12 A. I do.

13 Q. Can you, and obviously, there are many of them, but
14 kind of as a group can you give us a rough identification
15 of what these represent?

16 A. These represent the clothes that Thomas Stewart was
17 wearing on the day in question. Represent blood from the
18 victim, Miss Bellany Clyburn. Injury to his hands, and he
19 had injuries to his ear. Photographs of him and
20 photograph of him, basically, in all that. And also in
21 the handcuffs that we took him in custody in.

22 Q. All right. And when you say the clothes that Mr.
23 Stewart was wearing do you mean clothes, just photographs
24 of clothes, or do you mean clothes on his body?

25 A. Clothes on his body.

1 Q. Okay. All right, then. And do you believe that
2 these photographs are a true and accurate representation
3 of what you observed these clothings and these various
4 other items that you described for us as they were on
5 January the 1st of 2010?

6 A. I do.

7 MR. FOARD: Your Honor, at this time we would ask to
8 move all the exhibit numbers that I had previously called
9 out in this group into evidence and publish them to the
10 jury.

11 MR. SECOR: Without objection.

12 THE COURT: Without objection, then, in evidence.

13 MR. FOARD: Thank you, Your Honor.

14 (WHEREUPON, State's Exhibit Nos. 87 through 93 and 95
15 through 100 were admitted into evidence.)

16 BY MR. FOARD:

17 Q. Along the same lines did you observe any children at
18 Pageland P.D.?

19 A. I did.

20 Q. Okay. Can you tell us who these children were?

21 A. Children of the deceased.

22 Q. Okay.

23 A. Bellany Clyburn's two sons.

24 Q. Okay. I'm handing you what's previously been marked
25 for identification purposes as State's 101, 102, 103, 104

1 and 105. Will you look at those, please. Tell me when
2 you're ready. Officer Newman, do you recognize what is
3 depicted in these photographs?

4 A. I do.

5 Q. And can you please tell us what is depicted?

6 A. Those were the clothes of Bellany Clyburn's son,
7 oldest son, J.D. . We took photographs because he -- I
8 notices his Timberland boots had blood stains on them.
9 The blood on his shirt, which was a gray hooded
10 sweatshirt, and blood around the jeans that he had on.

11 Q. All right, then. To the best of your recollection
12 and knowledge do you believe those photographs are a true
13 and accurate depiction of what is contained within them?

14 A. I do.

15 MR. FOARD: Your Honor, I would at this time move to
16 have State's 101 through 105 admitted in evidence.

17 THE COURT: Is there objection?

18 MR. SECOR: No, sir.

19 THE COURT: Without objection in evidence. You may
20 publish.

21 MR. FOARD: Thank you, Your Honor.

22 (WHEREUPON, State's Exhibit Nos. 101 through 105 were
23 admitted into evidence.)

24 MR. FOARD: Beg the Court's indulgence for just one
25 moment.

1 BY MR. FOARD:

2 Q. And I know I'm kind of going out of order here
3 because we're going to come back to the video, but I want
4 to skip ahead. Do you recall at any time being part of
5 the transportation of evidence to or from S.L.E.D?

6 A. I believe I picked up.

7 Q. You believe you picked up. All right.

8 MR. FOARD: Your Honor, I'm handing the witness
9 what's been previously marked for identification purposes
10 as State's Exhibit Nine.

11 BY MR. FOARD:

12 Q. Do you recognize that?

13 A. Yes, sir. I believe I picked up this from S.L.E.D.

14 Q. You believe you picked that up from S.L.E.D.

15 A. Yes.

16 Q. And could you please read for us the identification
17 number beginning with an L that is located on that bag?

18 A. L10-00022, a number symbol and 23.

19 Q. All right?

20 A. Pageland Police Department Case Number 1001006.

21 Q. All right. And you retrieved this item from
22 S.L.E.D.?

23 A. Yes, sir.

24 Q. And the packaging as you see it here do you believe
25 that is the true and correct packaging as it was the day

1 that you retrieved it from S.L.E.D. and returned it to
2 Pageland P.D.

3 A. I do.

4 MR. FOARD: Your Honor, I would move to admit State's
5 Exhibit Nine in evidence?

6 THE COURT: Is there objection?

7 MR. FOARD: Actually, Your Honor, if we've identified
8 it right now we won't move it into evidence.

9 THE COURT: Very good. State's Nine marked for
10 identification only at this point.

11 MR. FOARD: Your Honor, at this time if we could have
12 just a moment to get set up. We would move to play
13 State's Exhibit Number 7 which is the video statement of
14 the Defendant.

15 THE COURT: All right. And Seven, all right. Very
16 good. You may.

17 MR. FOARD: Thank you, Your Honor.

18 MR. SECOR: Your Honor, we renew our objection
19 pursuant to Jackson v. Denno, as well as objection
20 pursuant to 404, 405 and 403.

21 THE COURT: So noted.

22 MR. SECOR: Thank you.

23 THE COURT: Let me ask the ladies and gentlemen on
24 this end can you see the screen? Is there anything
25 blocking your view? All right. Very good. All right.

1 Now, let's just make sure we all understand. The
2 acoustics are not always the best in the courtroom. It
3 may be difficult to hear or understand word for word
4 what's being said. This is in evidence meaning you will
5 have access to it when you are back in your deliberations.
6 So if there is some point that you may not specifically
7 see you will have an opportunity to see it later if you
8 wish. But if it turns out you wish to stop any of you, go
9 back, play something or didn't hear what was said let's us
10 know that and we will attempt to accommodate you.

11 MR. FOARD: And, Your Honor, just for the Court's
12 knowledge this is a lengthy video.

13 THE COURT: What is the length of the video?

14 MR. FOARD: Upwards of 45 minutes, Your Honor.

15 MR. REDMOND: Your Honor, just so you will know there
16 is going to be a spot there I think in about 30, 35
17 minutes in which we have to switch because it continued on
18 another C.D, and at that time depending on where everyone
19 stands.

20 THE COURT: So that's 30 minutes or so away. Does
21 anyone need to take a break now? Hearing none then go
22 ahead and you may play the tape.

23 MR. FOARD: Thank you, Your Honor.

24 (WHEREUPON, State's Exhibit Seven was played in open
25 Court for the jury.)

1 THE COURT: How long would it take to change the
2 tape?

3 MR. FOARD: About five minutes.

4 THE COURT: Does anyone need to take a break?

5 MR. REDMOND: It's only about nine minutes left.

6 THE COURT: Go ahead and change the tape.

7 (WHEREUPON, State's Exhibit Seven Disk 02 was played
8 in open Court for the jury.)

9 MR. REDMOND: That's it for the exhibit.

10 THE COURT: Are there further questions for the
11 witness?

12 MR. FOARD: No questions, Your Honor.

13 THE COURT: All right. Let's take a break at this
14 time, ladies and gentlemen. I'll let you return to your
15 jury room, and if you wish to go outside to take a break
16 we will make that available to you as well. We will
17 remain where we are while you depart the jury room.

18 (WHEREUPON, the jury panel was excused from the
19 courtroom at 3:33 p.m.)

20 THE COURT: You're welcomed to step down and take a
21 break as well. Ask you not to speak to either side.

22 THE WITNESS: Not a problem.

23 THE COURT: All right. We'll be in recess for 15
24 minutes.

25 (WHEREUPON, Court was in recess at 3:34 p.m.)

1 (WHEREUPON, Defendant's Exhibit Nos. 70 THROUGH 79
2 were marked for identification only.)

3 (WHEREUPON, Court reconvened at 3:50 p.m.)

4 THE COURT: I believe our jury is back so please
5 bring in the jury.

6 (WHEREUPON, the jury panel enters the courtroom at
7 3:50 p.m.)

8 THE COURT: All right. Welcome back, ladies and
9 gentlemen. We now have cross-examination, and you may
10 proceed.

11 MR. SECOR: Thank you, Your Honor.

12 THE COURT: Yes, sir. Mr. Secor.

13 CROSS-EXAMINATION

14 BY MR. SECOR:

15 Q. Good afternoon, Detective.

16 A. Yes, sir. How are you doing?

17 Q. I'm all right. How are you?

18 A. Good.

19 Q. It is detective, right?

20 A. Investigator now.

21 Q. Investigator. I'm sorry.

22 MR. SECOR: Your Honor, may I approach?

23 THE COURT: You may.

24 BY MR. SECOR:

25 Q. Investigator, I'm just going to show you what's been

1 marked for I.D. purposes as Defense Exhibits 30 through
2 75. If you will just tell me yes or no whether you
3 recognize them?

4 A. Yes, I do.

5 Q. You do. Just tell me what they are. You don't have
6 to go through them individually just what are they?

7 A. Pictures of Thomas Stewart. Several more of his ear
8 and on his hands and back area.

9 Q. And were those photographs taken by you?

10 A. Some of them were taken by me. I want to say these
11 were, but maybe not all of them.

12 Q. Okay?

13 A. But I did take pictures.

14 Q. Would you say that they accurately represent the way
15 that Mr. Stewart looked on the 1st of January 2010?

16 A. Yes, sir.

17 Q. Okay. Thank you, sir.

18 MR. SECOR: May I move these into evidence, Your
19 Honor?

20 THE COURT: You may. And give us the numbers again,
21 please.

22 MR. SECOR: This is Defense, which has been marked
23 for I.D., Defense 70 through 75.

24 THE COURT: All right. Is there objection?

25 MR. FOARD: No objection.

1 THE COURT: All right, then, 70 through 75 for the
2 Defendant in evidence without objection.

3 (WHEREUPON, Defendant's Exhibit Nos. 70 through 75
4 were admitted into evidence.)

5 THE COURT: You may publish to the jury if you wish.

6 MR. SECOR: Thank you, Your Honor.

7 BY MR. SECOR:

8 Q. Investigator, I also show you what's been marked for
9 I.D. as Defense 76 and 77. If you can just tell me, yes
10 or no, whether you recognize those?

11 A. Yes, I do.

12 Q. Tell us what they are?

13 A. These are knives from Bellany Clyburn's residence at
14 that time at the apartment complex, Pageland Place. And
15 this would be a picture in front of her apartment building
16 by a door I believe.

17 Q. Okay. And did you take these pictures?

18 A. No, sir, I didn't take these pictures.

19 Q. Okay. But were you present when they were taken?

20 A. No, sir, I was not.

21 Q. Okay. But are recognize them from the evidence in
22 this case?

23 A. Yes, sir.

24 Q. Okay. And based on your knowledge you said that the
25 represent the way that the outside of the apartment

1 complex looked like on that morning and what these knives
2 that were recovered from inside looked like?

3 A. I can't say what it looked like at that place that
4 morning because I wasn't there. I responded to transport
5 Mr. Stewart and take him to the police department. I was
6 there for hours. I didn't leave there.

7 Q. Okay. That's fine. Just two last pictures I'd like
8 to ask you about. These have been marked Defense 78 and
9 79 for I.D. And if you could just tell me if you
10 recognize those?

11 A. Sir, I can't say that I recognize these because at
12 that apartment complex just about by behind the building,
13 the real large buildings, are basically the same. So I
14 can't said whether that is somebody else's apartment or
15 her apartment or something. I can say that those are
16 apartments that belong to that complex, but which
17 apartment it is I can't tell you.

18 Q. Okay. That's fine. But all the building there, I
19 think what you were saying, are all identical?

20 A. Basically.

21 Q. So the rear of one would be identical to the rear of
22 the other?

23 A. Yes, sir.

24 Q. Okay. And you're certain about that?

25 A. Yes, sir. All of them are the same unless somebody

1 might have patio furniture or not. They usually don't
2 have patio furniture out there.

3 MR. SECOR: Court's indulgence for just a moment.
4 Please. Your Honor, I'd like to offer Defense 76, 77, 78
5 and 79 in evidence. I don't believe the State has an
6 objection.

7 MR. FOARD: No objection.

8 THE COURT: Without objection they are in evidence.
9 (WHEREUPON, Defendant's Exhibit Nos. 76 through 79
10 were admitted into evidence.)

11 THE COURT: You play publish if you wish.

12 BY MR. SECOR:

13 Q. Investigator, when you were talking with the
14 prosecutor did you -- you were discussing the issue of the
15 dash board cam in your vehicle, right?

16 A. Yes, sir, because usually a lot of times its working.
17 It just depends.

18 Q. Okay. But you arrived on the scene where Mr. Stewart
19 was?

20 A. Um hum.

21 Q. And he was there with Corporal Carnes, I believe?

22 A. At this time Corporal Carnes, yes, sir.

23 Q. Right. Okay. And the purpose of bringing Mr.
24 Stewart in front of your vehicle was to record it?

25 A. Yes, sir.

1 Q. Okay. And the -- what you wanted to record was?

2 A. Just, you know, Mirandise him just in case on the way
3 to the police department he made a statement or wanted you
4 know just start saying things about the incident which at
5 that time he never did so.

6 Q. Okay. So cause one thing that concerned me is that
7 when you were talking to the prosecutor you said that
8 there -- whether the tape existed or not didn't really
9 matter because there was nothing significant on the type.
10 Isn't that what you said?

11 A. Yes, sir.

12 Q. Is the reason that you're saying that there was
13 nothing significant on the tape is because he did not make
14 a statement?

15 A. No, because I didn't ask him any questions. He
16 didn't make any statements. We got in the vehicle. We
17 drove straight to the police department. I took him in
18 the booking area. We went in the booking area. I then
19 waited for Chief Brown. I got the instructions. Starting
20 booking him, processing him, photographing him. Those are
21 the -- things of that nature.

22 But I never questioned him and I never made a
23 statement to him at that time. It was like when I was
24 walking through the door he may have said one utterance
25 that I never asked him a question about, but he said, "She

1 will forgive me."

2 Q. And you were the lead investigator on this case?

3 A. No. I was assisting Chief Brown at that time.

4 Q. So Chief Brown was the lead investigator?

5 A. Yes, sir.

6 Q. In terms of the conducting the interviews of
7 witnesses and of Mr. Stewart at the police station you
8 were there?

9 A. Correct.

10 Q. Were you conducting that interview process?

11 A. I was just a -- I sat in. I listened. If I had a
12 question me and Chief Brown, we regularly -- he will allow
13 me to ask questions before taking the lead on. I never
14 would -- we try to do things in a consoling manner. If I
15 had questions he would let me ask it.

16 Q. Okay.

17 A. But as far as me being the lead, no. He was the
18 lead.

19 Q. Okay. Do you recall who was present in that room
20 while that interview was conducted?

21 A. The agent from S.L.E.D, Assistant Chief Brown,
22 myself, and the recording officer, Bobby Melton.

23 Q. Okay. What about the other witnesses?

24 A. The other witnesses, during their interview, would be
25 the same.

1 Q. They were all in the same room at the same time?

2 A. No, they were never in the same room at the same
3 time.

4 Q. Okay.

5 A. We always do interviews separate. Bring this witness
6 for this case about that witness and they give us their
7 statement away from everybody else. If we have any
8 questions they were asked. If not after they gave their
9 statement they could leave.

10 Q. And why do you separate them?

11 A. That way you separate them so everybody's story or
12 version is, you know, pretty much going to be different.
13 It's their account, and you know, go back through and read
14 them and you kind of draw a conclusion.

15 Q. Okay. And, obviously, correct me if I'm wrong. I
16 don't want to put words in your mouth. You're saying you
17 separate them. You don't want them to be influenced by
18 what everybody else says, isn't that right?

19 A. Correct.

20 Q. Okay.. Now, you were obviously present for the video
21 we just saw?

22 A. Yes, sir.

23 Q. Mr. Stewart's taped statement?

24 A. Yes, sir.

25 Q. And throughout the course of that statement he

1 provided you all being law enforcement a lot of
2 information, right?

3 A. Yes, sir.

4 Q. Okay. And obviously, part of law enforcement is when
5 you get information from somebody part of the
6 investigation or sort of the whole essence of the
7 investigation is that you go out and try to validate what
8 people tell you, right?

9 A. Yes.

10 Q. I mean you don't just take information from somebody
11 that just claims that it's fact, do you?

12 A. No, sir.

13 Q. And with all the information you got from Mr. Stewart
14 during his statement did you participate in going out to
15 investigate that information to the find out if that
16 information that he gave to you was credible?

17 A. What do you mean by that, sir?

18 Q. Well, I'll just give you some examples?

19 A. Cause I wasn't the lead. I did what Assistant Chief
20 Brown needed me to do. If he told me I need to run down
21 something or I'm checking in on certain things we did
22 that. And we were also a man down so I might not have
23 been with him during everything he did in preparation for
24 this case.

25 Q. Okay. So anything that you did you were taking your

1 orders from Chief Brown?

2 A. Yes, sir.

3 Q. Okay. And in regards to a couple things that Mr.
4 Stewart told you during his videotaped statement he told
5 you that he had been to the gym on the 28th of December,
6 right?

7 A. Yes, sir.

8 Q. And he said that Bellany was there, right?

9 A. Yes, sir.

10 Q. Right. And he said that Melissa, his wife, was
11 there, too?

12 A. Never saw her. I was one of the responding officers
13 that night. Never saw his wife.

14 Q. But he told you that she was there in his statement,
15 right?

16 A. Yes, sir.

17 Q. Okay. Did you all ever go out and try do confirm any
18 of that information about whether Mrs. Stewart was there?

19 A. No, sir. There was basically no need at that time
20 because this incident had taken place, and it was kind of
21 like just a little dispute is what we would call it. And
22 he was there and Miss Clyburn was there along with several
23 other people.

24 Q. Okay. And you were there?

25 A. Yes, sir.

1 Q. All right. And the consequence of that was that no
2 one was arrested, right?

3 A. No, sir.

4 Q. And he also told you during the course of the
5 videotaped statement that he left the gym and went to
6 Brenda. It's either Myers or Miles. I can't -- it's
7 written down different ways in different reports. Went
8 there from the gym and got some information about a threat
9 that was relayed to him, right? I mean he says that in
10 the video. Wouldn't you agree with that, right?

11 A. Yes, sir.

12 Q. You have any idea -- did you investigate that, go out
13 and talk to other people and find out whether those things
14 that he said were true?

15 A. No, sir. It was a dead issue. Both parties left and
16 when on their separate way. The incident report -- an
17 incident report which we are required to do was done
18 because it was a call. No bodily harm. That was not a
19 concern of his at that time, so he didn't want to make a
20 report of anything at that time. So, no, it was not
21 followed up on.

22 Q. Okay. And regards to him telling you that he -- New
23 Year's Eve that he was with Bellany in her apartment, and
24 than they got pizza. You remember that from the
25 statement, right?

- 1 A. Yes. He said that in the statement. Yes, sir.
- 2 Q. Did you or anybody else that you know of try to
- 3 validate whether or not that was true?
- 4 A. About going to Pizza Hut?
- 5 Q. Yes.
- 6 A. No, sir.
- 7 Q. Okay. Is that funny?
- 8 A. I do my own expressions. I mean, no, sir.
- 9 Q. Cause I mean that is something you could validate,
- 10 right?
- 11 A. Yes, that he went to Pizza Hut?
- 12 Q. Yeah.
- 13 A. He never said he went to Pizza Hut.
- 14 Q. No. I know. He said that Bellany went there and got
- 15 pizza, right?
- 16 A. Yes, sir.
- 17 Q. Okay. But that's something that you could have tried
- 18 to confirm, right?
- 19 A. Yes, sir, but like I told you I was not the lead
- 20 investigator on it, so.
- 21 Q. I understand that you aren't. I understand, but
- 22 that's something that could have been confirmed?
- 23 A. Yes, sir.
- 24 Q. Okay. And you never went in the crime scene?
- 25 A. No, sir. Not during that day.

1 Q. But you were there at some point?

2 A. Yes, sir.

3 Q. Okay. Have you seen in the photographs that were
4 taken that there is a Pizza Hut box inside the house?

5 A. No, sir.

6 Q. In the videotape statement Thomas told you he was
7 inside the house that night and Crystal Clyburn came by,
8 right?

9 A. Yes, sir, that was in the statement. But I'm not
10 sure if that was the exact same night or not.

11 Q. You're not sure?

12 A. No, sir because he went on I believe it was week
13 worth of events before this incident ever took place.
14 Because as you notice if you watch the video just like I
15 said he for several days she come -- his wife came with
16 police and then left so I need you to be particularly, you
17 know, what day are you talking about because he went
18 through several days of events up till the event where
19 this incident took place.

20 Q. I agree. I'm sorry if I wasn't clear. I'm talking
21 about New Year's eve, the night New Year's eve.

22 A. Yes. Yes, sir.

23 Q. He said he was there in the videotape statement?

24 A. Yes, sir.

25 Q. And he said that he saw Crystal come to the door?

1 A. I believe he said New Year's eve he went to the Cyber
2 Center and that he got there around 4:00 and left because
3 of air in his tire.

4 Q. Yeah, but that was on the morning of the 1st. I'm
5 talking about the night before?

6 A. Which would be New Year's eve.

7 Q. New Year's eve. The next morning would be New Year's
8 eve day, right?

9 A. Right. But he said he went to the Cyber Center I
10 believe at 11:30 and then come back around 4:00 that
11 morning.

12 Q. Okay. Well, we can watch the tape and come to our
13 conclusions about what night was what. But he told you he
14 saw Crystal at Bellanie's apartment, right?

15 A. But what day is unclear for me.

16 Q. Okay. For you, okay. That's fine. But he also told
17 you at that same time that Crystal was there. You recall
18 him telling you that he looked out the window of
19 Bellanie's apartment and saw police cars, right?

20 A. Yes.

21 Q. Did you or anybody else that you're aware of in your
22 department in law enforcement try to confirm whether there
23 was any law enforcement there that night around that time?

24 A. I didn't. I was out of town and I didn't.

25 Q. So you don't know if anybody else did?

1 A. No, sir.

2 Q. Did y'all do anything to find out whether -- to be
3 able to confirm that he was at the Cyber Center in
4 Marshville?

5 A. I'm not sure. You have to speak to Assist Chief
6 Brown on that matter.

7 Q. Okay. At one point in the video I see what I believe
8 is you with a pen in your hand when Thomas was being asked
9 the street that he was on when he made a phone call to
10 Bellany. Do you remember that?

11 A. Looks like he had something in my hand, yes, sir.

12 Q. That's because you would be wanting to find out where
13 he was and whether you could confirm that, right?

14 A. Probably could have been writing something else down.

15 Q. But it could have been that you wanted to know ---

16 A. It's possible.

17 Q. --- where he was so you could confirm that, right?

18 A. It's possible.

19 Q. Okay. And he also told you he went to the car wash
20 in Pageland, right?

21 A. Yes, sir.

22 Q. And he told you with some specificity it was the one
23 near the Wendy's, right?

24 A. Yes, sir.

25 Q. Okay. Did you or anybody else do anything to confirm

1 that?

2 A. No, sir. You have to speak with Chief Brown.

3 Q. Okay. And Thomas also said to you that he saw
4 somebody outside Bellanie's apartment after he had been
5 pepper sprayed, right?

6 A. Yes.

7 Q. And the person had something in their hand, right?

8 A. Yes, sir.

9 Q. And Thomas said that when he got to his cr he heard a
10 loud boom, correct?

11 A. Yes, sir.

12 Q. Okay. Did you try -- were you able to confirm
13 whether there was anybody there that either fired a gun or
14 threw something or anything like that?

15 A. I believe one of the other witness' statement which
16 was taken mentioned that somebody might have threw a piece
17 of a brick or something at the window when he was leaving.

18 Q. But you don't know who that person was?

19 A. No, sir.

20 Q. Do you know if anybody from the Department talked to
21 the person who may have done that?

22 A. No, I don't. Like I told you I was not the lead
23 investigator or detective.

24 Q. Were you involved at all in trying to obtain phone
25 records in this case?

1 A. No, sir, I was not.

2 Q. Okay. If you will just tell the jury why law
3 enforcement sometimes looks into phone reports?

4 A. Law enforcement looks into phone records for several
5 reasons. One, to see who was the last person the victim
6 may have talked to if their missing. Two, to kind of see
7 if you can recover a pattern of harassing phone calls.
8 Maybe recover text messages or pictures to draw clues to
9 an investigation or trying to pinpoint some idea or
10 different direction you can go in looking into the matter
11 of a case.

12 It all just depends on what the case is, what are you
13 looking for within that phone records so what you have to
14 more than likely obtain a search warrant or subpoena for.

15 Q. And phone records can even be used to locate a
16 person?

17 A. Yes, sir. Well, basically, yes, if it's a missing
18 person and their telephone is on. Depends on the company
19 you can see what tower they are at. I have an I-Phone so
20 I can find my I-Phone now and I can find exactly where my
21 phone is. Yeah, you can do certain things, but two year's
22 ago I don't think that technology was available as to just
23 seeing what tower they were on at that time.

24 Q. All right. But as you stated law enforcement
25 sometimes uses subpoena to get those phone records?

1 A. Right.

2 Q. Be those phone records can verify whether or not
3 somebody made a call when they said they made it, right?

4 A. Yes.

5 Q. Or they can verify whether somebody received a call
6 when somebody said that they received a call?

7 A. Yes, sir.

8 Q. Just independent evidence that helps you determine
9 that to believe?

10 A. Yes, sir.

11 Q. Okay. Do you know if you or anybody else in law
12 enforcement subpoenaed records, phone records, in this
13 case?

14 A. I know did not.

15 Q. Okay. And in terms of evidence collection in this
16 case were you involved at all in collecting evidence from
17 Bellanie's apartment or from outside?

18 A. For her apartment or outside, no, sir.

19 Q. Not at all?

20 A. No, sir. What I did was I helped in obtaining Mr.
21 Stewart's clothing.

22 Q. Okay.

23 A. Other than that that was it as far as evidence
24 collection.

25 Q. And you obtained it or assisting in obtaining these

1 clothes, and what was the process of -- what happened to
2 those clothes after that point?

3 A. I believe they were labeled and sent to S.L.E.D. for
4 processing.

5 Q. Okay. Do you have any idea what happens once they
6 get to S.L.E.D? Are you involved in the process of
7 determining what was going to be tested and what was not
8 going to be tested?

9 A. No, sir, I was not in that determination.

10 Q. Whose decision would that have been?

11 A. It would have been Chief Brown at that time.
12 Assistant Chief Brown.

13 MR. SECOR: If I can have just a moment, Your Honor.

14 BY MR. SECOR:

15 Q. Thank you, Mr. Investigator. I appreciate it.

16 THE COURT: Is there redirect?

17 MR. FOARD: Briefly Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. FOARD:

20 Q. Briefly talking about the 28th, the incident of the
21 28th. You said you responded to that, correct?

22 A. Yes, sir.

23 Q. And where did that occur?

24 A. The Pageland Community Center.

25 Q. Okay. And just to make sure I got this right I think

1 you said -- was anybody charged as a result of that
2 incident?

3 A. No, sir.

4 Q. And can you briefly give us a little bit more
5 information about exactly what went on or what allegedly
6 went on?

7 A. What allegedly went on was there was a disturbance at
8 the Community Center. No names were basically given to
9 us. It was like a kind of verbal dispute.

10 Q. Between who?

11 A. Mr. Stewart and Miss Clyburn, the victim, Bellany
12 Clyburn.

13 Q. And so did Miss Clyburn speak with you?

14 A. She spoke with me and another officer. Unsure who I
15 was working with that evening. We spoke, you know, and
16 everything was fine. And, you know, he said he just
17 wanted to leave. He left. She left. They were told not
18 to have any more contact with each other at that time, and
19 an incident report was done to document it.

20 Q. Okay. And do you know if anything was done after
21 that night? Did Miss Clyburn take any steps about what
22 happened that evening?

23 MR. SECOR: Objection, Your Honor.

24 THE COURT: On what basis?

25 MR. SECOR: Hearsay, speculation.

1 THE COURT: Sustained. Counsel, you have to lay a
2 foundation that there would be personal knowledge of that
3 as opposed to hearsay.

4 MR. FOARD: Okay. Beg the Court's indulgence.

5 THE COURT: All right.

6 MR. FOARD: No further questions, Your Honor.

7 THE COURT: All right. Is there objection to the
8 release of the witness from either side?

9 MR. SECOR: Your Honor, we'd like the investigator
10 subject to recall.

11 THE COURT: Well, of course, you no longer work in
12 Chesterfield County, so we're going to release you at this
13 time with the understanding that if later in the case if
14 there is some recall you will be back in Chesterfield
15 County. All right.

16 THE WITNESS: Yes, sir.

17 THE COURT: Thank you. Have a good day. Please call
18 your next witness.

19 MR. REDMOND: Thank you, Your Honor. State next
20 calls Vicki Hallman.

21 THE COURT: Please come forward and take the oath of
22 a witness.

23 VICKI HALLMAN, after being duly sworn, testified
24 as follows:

25 DIRECT EXAMINATION

1 BY MR. REDMOND:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. Agent Hallman, by whom are you employed, ma'am?

5 A. I'm employed we the South Carolina Law Enforcement
6 Division which is also known as S.L.E.D.

7 Q. And how long have you been employed with S.L.E.D?

8 A. I've been employed with S.L.E.D. a little over eight
9 and a half years.

10 Q. And before that where were you employed in law
11 enforcement?

12 A. I was employed with the Lexington County Sheriff's
13 Office. I started there in 1991 as a role patrol officer.
14 My last year on the road -- excuse me. I was an
15 Assistance Shift Supervisor. I spent my last four years
16 there in the Crime Scene Unit before coming to S.L.E.D. in
17 2004.

18 Q. And I didn't ask you this. What is your role at
19 S.L.E.D? What's your job title?

20 A. Actually, now, I'm a Senior Agent, and I am employed
21 in the Latent Print Crime Scene Unit.

22 Q. Well, congratulations. And in the Crime Scene Unit
23 could you give a rudimentary I gues outline of what you do
24 in the Crime Scene Unit with S.L.E.D?

25 A. The Crime Scene Unit is set up mainly -- S.L.E.D. is

1 always an assisting agency. We respond to local agencies
2 at their request. My specific duty is to assist in the
3 possessing of crime scenes and collection of evidence.
4 Part of my duties include processing evidence for latent
5 fingerprints. I also do footwear and tire tread
6 examinations and blood stain pattern analysis.

7 Q. Okay. And, excuse me. Let's talk about your
8 training. Could you tell the ladies and gentlemen of the
9 jury what training, what education have you had in order
10 to execute your duties?

11 A. I'm a certified law enforcement officer in the State
12 of South Carolina. I have a Bachelor of Arts degree in
13 history with a minor in criminal justice from the
14 University of South Carolina. I have a Master's of
15 Criminal Justice from the University of South Carolina.
16 I've completed numerous training courses in all the
17 disciplines that we just discussed; the crime scene, the
18 footwear and tire tread, the latent print examination and
19 the blood stain pattern analysis.

20 I am a member of the South Carolina Division of the
21 International Association for Identification where I am
22 the secretary/treasurer. I am a member of the
23 International Association for Identification, and also a
24 member of the International Association of Blood Stain
25 Pattern Analysts. And I recently received three of the

1 International -- it's -- the I.A.I. is the International
2 Association of Identification.

3 And I was recently certified as a senior -- certified
4 Senior Crime Scene Analyst. It's a nice little
5 abbreviation.

6 Q. Well, what. Well, let me ask you this. Let's talk
7 about the times that you testified in Court. If you had
8 to estimate how many times have you been qualified as an
9 expert in the fields of latent print analysis and crime
10 seen investigation?

11 A. Roughly, ten times and I've also been qualified in
12 Federal Court.

13 Q. Okay. And in both of those areas?

14 A. Yes, sir.

15 Q. Okay.

16 MR. REDMOND: At this time I would offer Sr. Agent
17 Hallman as an expert in the fields of latent print
18 analysis and crime scene analysis.

19 MR. YOUNG: Your Honor, I join in motion. I just ask
20 that she also be qualified in blood pattern analysis as
21 well?

22 THE COURT: All right. Ladies and gentlemen of the
23 jury, the purpose of the motion and the request to
24 identify the witness as an expert is this. The witnesses
25 who have testified before have been lay witnesses. Lay

1 witnesses typically come in and testify about what they'd
2 saw or heard or did.

3 A witness who by reason of particular expertise in an
4 area or knowledge or experience and training may be
5 permitted to come in as an expert witness and testify
6 about what they saw or heard or did. But because of their
7 additional knowledge within that technical area may also
8 testify as what opinion they derive from what they saw,
9 heard or did. And that's the difference between an expert
10 witness and a lay witness.

11 There is no objection. There is an offer of the
12 witness as an expert in a particular area. There is no
13 objection to that, so the Court is going to permit the
14 witness to so testify. Please understand that an expert
15 witness' testimony is not given for the purpose of
16 controlling your judgment, but is given for the purpose of
17 assisting you if you find it helpful in finding matters of
18 fact that are before you that are within the witness'
19 purview.

20 You could give it the weight and credibility that you
21 believe it to be entitled to based upon the testimony and
22 the bases given for that testimony. With that
23 understanding you made proceed. Witness is so qualified.

24 MR. REDMOND: Thank you, Your Honor. If it please
25 the Court.

1 BY MR. REDMOND:

2 Q. Were you dispatched to Pageland, South Carolina on
3 New Year's Day, 2010?

4 A. Yes, sir, I was.

5 Q. Okay. Now you aren't located in the Pageland. You
6 had to come from the Midlands?

7 A. Yes, sir.

8 Q. And is that normally what you do? Y'all get a call
9 to come, really, all around the state to assist local
10 agencies?

11 A. Yes, sir, that's correct.

12 Q. Okay. And the call from Pageland was that in line
13 with your normal duties in crime scene investigation?

14 A. Yes, sir it was.

15 Q. Okay. So you got the call. Do you recall about what
16 time you arrived in Pageland?

17 A. I received the call at approximately 10:00 a.m. and I
18 believe I arrived on the scene at approximately 11:45.

19 Q. And do you normally, as a crime scene analyst, do you
20 normally operate alone or do you have a team or partner
21 that works with you?

22 A. In most cases there are usually at least two crime
23 scene agents. There are some cases where there are only
24 one, and there are some cases where we actually have more
25 than two people involved.

1 Q. Okay. And, now, in this particular case do you
2 recall who the agents were that came with you to assist
3 in this investigation?

4 A. Yes.

5 Q. Okay. And who were they?

6 A. Sabrina Zahnheiser, whose last name is now Fellers
7 assisted with the crime portion of it, and Special Agent
8 Christina Gainey responded for investigative support from
9 what we call the Pee Dee Region.

10 Q. All right. Now, let's talk about once you arrived in
11 Pageland. Could you tell the ladies and gentlemen of the
12 jury what were your observations upon arriving in Pageland?

13 A. I had had some phone contact with the Assistant Chief
14 Larry Brown, so I had briefed on what they knew of the
15 situation before we got there. Once I arrived on the
16 scene I did note that there were crime scene tape that was
17 up and securing the majority of the area where the crime
18 scene actually occurred.

19 And I just went through and made initial observations
20 and documentation.

21 Q. And is that what you normally do when investigating a
22 crime scene?

23 A. Yes. We get a briefing once we arrive on the scene,
24 and usually I'll do what's called a walk through with
25 somebody who's on the scene who can give me details of

1 what occurred. At that point I usually start taking my
2 notes, and one of the two of us out of the pair will
3 usually begin to take the photographs.

4 Q. Now, and all that occurred in this case, photograph
5 and collection of evidence. Did you operate with the --
6 pursuant to your standard operating procedures?

7 A. Yes, sir, we did.

8 Q. Okay. Now, let's get more specifically into what
9 your observations were and what you did in Pageland. Did
10 you respond to Pageland Place Apartments?

11 A. Yes.

12 Q. In Pageland?

13 A. Yes.

14 Q. And at the time when you indicated the crime scene
15 same and what not, would you tell the ladies and gentlemen
16 of the jury at this point what did you do in your
17 investigation, in your collection of evidence in this
18 particular matter?

19 A. Like I said generally we start out with general crime
20 scene photographs. Those are taken before we do anything
21 in the scene so that we can represent the scene to you as
22 we saw it when we arrived. We would walk through or I
23 would walk through this case after taking the photographs
24 and made notes of items of interest that I saw within the
25 scene.

1 In most of those cases I would go back and put an
2 evidence marker down for those items. Specifically those
3 items that I'm going to collect for further examination.
4 The scene would have been re-photographed with the markers
5 in place, and at that point we would have begun te
6 collection of evidence and further examination of the
7 scene.

8 Q. And did you take photos of all this?

9 A. Yes, sir.

10 Q. Okay. And we will get to those when we get to the
11 photographs. Now, let's talk about the collection of
12 evidence. In this particular case -- well, let me just
13 ask you. Did you observe, again, certain photos, but did
14 you observe certain blood in certain places that were
15 photographed and in some situations swabbed?

16 A. Yes, I did.

17 Q. Okay. And also in this particular case did you
18 actually have the opportunity to pick up physical items of
19 evidence in the crime scene?

20 A. You, I did.

21 Q. Okay. Now, and let me just ---

22 MR. REDMOND: If I could with the Court's permission,
23 approach with State's Exhibits One, Two and Three,
24 initially. And with the Court's permission may I approach
25 the witness?

1 THE COURT: You may. Certainly.

2 BY MR. REDMOND:

3 Q. Agent Hallman, would you take the moment to look over
4 those items and just let me know when you're ready to
5 answer a few questions?

6 A. Yes, sir.

7 Q. Do you recognize these items from the scene at
8 Pageland Place Apartments?

9 A. Yes, I do.

10 Q. And were those items that you collected?

11 A. Yes, they were.

12 Q. And do they appear to be in the same or substantially
13 similar condition as it was when you collected it?

14 A. I've since processed all these items for latent
15 fingerprints, but yes, it is. And the reason I know that
16 is that these are my initials and my date where I've
17 sealed the items in what's called K Pack Bags after
18 processing.

19 Q. And when you talk about processing would that explain
20 the smudges and the different colors? I think the black
21 color on the knives and those?

22 A. Yes, sir. Because I use a technique called Amino
23 Black which is a stain that reacts with the protein in
24 blood.

25 Q. Now, and again, you do recognize those items? Are

1 those the items that you collected?

2 A. Yes, sir, they are.

3 Q. At this -- since they are non-plungable items, Your
4 Honor, we would move those particular three exhibits in
5 evidence at this time.

6 MR. SECOR: I think one of them is already in, but no
7 objection to the other two.

8 THE COURT: All right. One, Two and Three, then. I
9 believe there is Number One already in.

10 MR. REDMOND: One is already in, yes, sir.

11 THE COURT: Two and Three in evidence without
12 objection.

13 (WHEREUPON, State's Exhibit Nos. 2 and 3 were
14 admitted into evidence.)

15 MR. REDMOND: Thank you, Your Honor.

16 BY MR. REDMOND:

17 Q. Now, at the scene I guess would it be fair to say
18 that most of -- in addition to those items most of the
19 items you collected are reflected in the photographs?

20 A. Yes.

21 Q. Okay. Let me move on then since we'll see the
22 photographs in just a few minutes to what you did once you
23 cleared the crime scene. Do you recall about how long you
24 were at Pageland Place Apartments?

25 A. If I'm not mistaken I believe we cleared Pageland

1 approximately a 1:45.

2 Q. And I didn't ask you this, but did your crime scene
3 analysis restrict itself just to Apartment ■, Bellany
4 Clyburn's apartment, or did you collect things in or
5 around other apartments in there?

6 A. It look like some portion of the incident had
7 occurred inside her apartment which was ■. Most of those
8 items that I have in front of me, Exhibit's One, Two and
9 Three, were actually collected outside of the apartment.
10 There is basically like a path in the upper level that
11 goes from in between each apartment.

12 Most of these were collected on that path, and then
13 there were items that I was informed were part of what
14 Miss Bellany was wearing in front of ■ that we also
15 examined.

16 Q. Okay. Now, when you left Pageland Place Apartments
17 did you leave and go back to Columbia or did you remain in
18 Pageland and conduct other duties in Pageland?

19 A. We stayed in Pageland and executed a search warrant
20 on a vehicle that Mr. Stewart had been located in.

21 Q. And did you also -- well, what did you do to the
22 vehicle? Did you take pictures of the vehicle or did you
23 actually conduct examinations of that vehicle?

24 A. We did both. We always document whatever items or
25 whatever areas we are going to be examining. So we

1 documented the vehicle. The vehicle was photographed and
2 then we began an examination.

3 Q. Okay. Where was the vehicle located again?

4 A. It had been towed to the Pageland Police Department.

5 Q. Okay. And is that where you conducted this
6 examination?

7 A. Yes, sir, it was.

8 Q. All right. Now, did you have the opportunity to
9 collect any fingerprint cards or any of the Defendant's?

10 A. We call them major case prints.

11 Q. Major case prints. I'm sorry.

12 A. That's okay. Yes, we did. After we had completed
13 the search of the vehicle we actually, with his consent,
14 basically collected what we call the roll prints of his
15 fingers and palms. He also consented and gave me what we
16 call a buccal swab which is a D.N.A. sample.

17 Q. Now, and I didn't ask you this. Where did you take
18 to major case prints and the buccal swabs from the
19 Defendant? Where was he located when you did that?

20 A. He was in the police department.

21 Q. In Pageland?

22 A. Yes.

23 Q. Now, let's talk about the major case prints. Let me
24 show you, with the Court's permission if I may approach,
25 what's been marked as State's Exhibit Number 8. And could

1 you look over that and I'll have a few questions for you?

2 A. Okay.

3 Q. Is that an accurate, true copy of the report you
4 generated in this case of the -- on the print analysis and
5 swab analysis?

6 A. Yes, sir, it is.

7 Q. Okay.

8 MR. REDMOND: Beg the Court's indulgence.

9 BY MR. REDMOND:

10 Q. Now, is that a report that you generate after you
11 have done your analysis back at the lab at S.L.E.D. in
12 Columbia?

13 A. Yes, it is.

14 Q. Now, could you tell the ladies and gentlemen of the
15 jury -- you talk about the major case prints. Could you
16 tell the ladies and gentlemen of the jury what you did as
17 far as trying to do a print analysis in this case?

18 A. Well, in this case the exhibit items I have before me
19 were logged into evidence at S.L.E.D. One of them was
20 listed as Item Three and that would be State's Exhibit
21 Number One, I believe. It is a -- I listed it as a bloody
22 black handled knife collected from Marker One.

23 My Item Four would be a black handled knife with a
24 bent blade which is State's Exhibit Number Two that I
25 collected from Marker Two.

1 And then my Item Five I listed as a bloody canister
2 of self-defense pepper spray collected from Marker Three.
3 Usually, what we do in the lab is we do -- basically,
4 first, I look at all my items of evidence in that
5 controlled environment and I see if there is any
6 indication despite holding it at different angles if I see
7 any type of ridge detail which is what your fingerprints
8 are made up of. And in this case can I did not.

9 So I went through a couple of processing techniques.
10 I would have basically did the visual examination. I
11 would have used a super glue technique, possible, and
12 actually, if you give me just a second I'll tell you
13 specifically ---

14 Q. No problem.

15 A. --- because I do have my examination worksheet with
16 me. Cause depending on what the surface is sometimes we
17 use different techniques. Specifically in this case I did
18 the visual examination because there was what appeared to
19 be blood on each one of those items. I actually collected
20 swabs from the next before I did any further examination.

21 I actually did use super glue which is also known as
22 cyanoacrylate. Basically, what it does is if there is a
23 fingerprint present on an item it actually will harden the
24 fingerprint because a fingerprint is basically made up of
25 like 99 percent moisture. So by adding the super glue to

1 it it basically hardens the print and makes it easier of
2 us to use different types of techniques for lifting.

3 After that I actually used black fingerprint powder
4 which is what you normally see people do a lot on
5 television. At that point I did not have any ridge detail
6 show up, so I used the protein die stain that I was
7 talking about called amino black that reacts with protein
8 in blood.

9 Q. Now, and you used the same process on each of these
10 exhibits, I think State's One, Two and Three, actually?

11 A. Yes, sir, I did.

12 Q. Okay. Now, looking at your report in your analysis
13 were you able to determine whether or not -- well, were
14 you able to get any fingerprints?

15 A. No, sir.

16 Q. Okay. So assuming somebody held those knives and the
17 mace is it unusual not to get fingerprints off of items
18 such as those, State's One, Two and Three?

19 A. I would say in this case it's not because you have
20 blood or some type of fluid which we are assuming by
21 physical appearance, and when you have the blood
22 interacting with your hands a lot of times your hand
23 doesn't stay steady on whatever item you're holding.

24 So I would have been surprised to find an
25 identifiable latent. I would not have been surprised to

1 find some type of ridge detail or something that indicated
2 that somebody had held it but with not enough
3 characteristics for an identification.

4 Q. And so in essence State's One, State's Two and
5 State's Three; that being the two knives and the mace
6 bottle, there was no value in anything that you could pull
7 for identification?

8 A. That is correct.

9 Q. Okay.

10 MR. REDMOND: At this time we would like to introduce
11 State's Eight, I believe that is, the report, into
12 evidence.

13 THE COURT: Is there objection?

14 MR. SECOR: No, Your Honor.

15 THE COURT: All right. Without objection. State's
16 Eight in evidence.

17 (WHEREUPON, State's Exhibit No. 8 was admitted into
18 evidence.)

19

20 BY MR. REDMOND:

21 Q. Now, you also -- did you also take swabs from the
22 knife?

23 A. Yes.

24 Q. Okay. And in your -- are you in a position to test
25 those swabs and determine D.N.A. or issues like that?

1 A. No, sir. That's not part of my duties at S.L.E.D.

2 Q. Okay. So what is the normal standard operating
3 procedure in a situation where you take swabs off a
4 particular item? Where does it go from you?

5 A. It would normally, go to our D.N.A. Department.

6 Q. Now, and is that what happened in this case to the
7 best of your knowledge?

8 A. Actually I think I had marked them as a whole type
9 evidence because at that time S.L.E.D. had come out with a
10 policy, basically, saying that they would only test five
11 items at a time on a major case because we had a backlog.
12 So I collected them so they would be there if they needed
13 to be tested, but that decision wasn't ultimately mine as
14 to whether or not they would be tested.

15 Q. And would that decision rest with the local agency?

16 A. Yes.

17 Q. Okay. And just to be clear so the understand what we
18 just discussed, when you send out items such as the swabs
19 and what not to D.N.A. or any other part of the laboratory
20 do they automatically, at that time, did they
21 automatically get tested?

22 A. No.

23 Q. And, again, could you repeat the reasons why? Let's
24 say you send 15 swabs, and there are other items already
25 submitted. Would those 15 -- does that -- would those 15

1 swabs all automatically be tested?

2 A. No. It's basically S.L.E.D's policy, because of the
3 number of cases that we receive because we are the State
4 Lab, that they're a little bit more selective about how
5 many items they will actually test. My understanding of
6 the D.N.A. policy is that they will initially start with
7 five items and that does not include any type of standards
8 that you submit if you have people that you know you want
9 to be compared to.

10 If those five items are tested and they don't get a
11 result once that report is issued to the local agency the
12 local agency has the option to have another five items
13 tested until they're all exhausted if they don't get a
14 result or until some type of result is obtained.

15 Q. Now -- thank you very much for explaining that for
16 us. Now, let's go back -- well, let's go forward actually
17 a little bit to the 5th of January. Did you have the
18 opportunity to go to Newberry Pathology to collect some
19 more evidence in this case?

20 A. Yes, I did.

21 Q. Okay. And could you explain that to the ladies and
22 gentlemen on the jury?

23 A. Assistant Chief Brown called me that day and told me
24 that he had received a letter from our case coordinator in
25 the D.N.A. Department whose name is Jennifer Clayton.

1 That letter basically stated that they could not conduct
2 any type of comparison because the standard had not been
3 submitted on Miss Clyburn. We had a discussion about when
4 the autopsy had occurred, and it was discovered that
5 nobody had brought the -- excuse me, the autopsy evidence
6 to S.L.E.D. And because of S.L.E.D's proximity to
7 Newberry I offered to drive to Newberry and bring the
8 evidence back and log it into the laboratory.

9 Q. Okay. And among that evidence was there a standard
10 of the victim, Bellany Clyburn?

11 A. Yes.

12 Q. Okay. Now, at this point if I may, with the Court's
13 permission, of course, hand you what has been marked as
14 State's Exhibit Number Nine and State's Exhibit Number
15 Ten. I'm sorry. Yes, State's Nine and Ten. And I would
16 ask you to look over those items and let me know when
17 you're ready to answer a couple of questions.

18 A. Okay.

19 Q. Let's talk about State's Nine. Do you recognize what
20 State's Nine is?

21 A. Yes, sir, I to.

22 Q. And what -- could you tell the jury what that item
23 is.

24 A. It actually -- there is a little box inside where I
25 would have put the swabs. In my handwriting on the side

1 of the box it says, Standard Form Thomas Jeffery Stewart,"
2 and I have his date of birth on there. And I actually
3 have the date, [REDACTED] of '10, and my initials on it.

4 Q. Okay.

5 A. And also included inside this envelope is the heat
6 sealed pouch that I submitted to the laboratory in.

7 Q. Okay. Now, let me, and I'm only presenting it for
8 I.D. I'm not seeking to introduce it yet, but let me ask
9 you, and I think you've answered it already, but did you
10 take the buccal swab in the same time frame as you took
11 the major case prints from the defendant?

12 A. Yes, sir, I did.

13 Q. And I believe you indicated that the voluntarily gave
14 the print. Did you voluntarily give the buccal swab?

15 A. Yes.

16 Q. Any question in your mind based on your law
17 enforcement experience that he was not free and voluntary
18 in taking the buccal swab?

19 A. He was very willingly opened his mouth for me to
20 collect the buccal swab.

21 Q. And if you would explain this, and I apologized
22 already, but we've been talking about buccal swabs and
23 throwing terms out. Could you explain to the ladies and
24 gentlemen of the jury what the buccal swab is?

25 A. Usually what we do with a buccal swab is we carry a

1 two pack of swabs that are in a sealed container. If
2 somebody voluntarily will give me a buccal swab what I
3 usually do is have them open their mouths. Of course, I'm
4 wearing gloves, and a lot of times what I will do is to
5 hand them the two swabs, and basically just have them swab
6 the interior of the cheek because you have epithelial or
7 skin cells inside that will basically come off on to the
8 swab. And then they are put in a container and that's
9 what we use for D.N.A. standard. It's a lot easier than
10 trying to collect blood.

11 Q. Now, before I have you step down and go through some
12 physical evidence and, well, actually, I'm going to go
13 through some pictures with you first. Well, let me ask
14 you. About what time did y'all finally clear or leave
15 Pageland that day?

16 A. I believe it was about 5:45 in the afternoon.

17 Q. Okay.

18 MR. REDMOND: Now, if I may at this time, Your Honor,
19 with the Court's permission.

20 BY MR. REDMOND:

21 Q. Is that what's been marked as State's Exhibit 22
22 through 86 to the witness. Now, I'm going to actually ask
23 you to take a cursory view of those items because let me
24 ask you this: Did you have the opportunity to view those
25 exhibits as they sat at the rail that I just picked them

1 up from?

2 A. Yes, sir, I did.

3 Q. Okay. And I believe -- did you have the opportunity
4 to do that during the break?

5 A. Yes, sir, I did.

6 Q. Okay. And to save time, given the lateness of the
7 hour, I'm just going to ask you a catch-all question if
8 there is no objection. Having viewed Items 22 through 86
9 do those pictures -- are those pictures that were taken by
10 you and S.L.E.D?

11 A. Yes.

12 Q. Okay. And are those picture -- do those pictures
13 accurately represent what is depicted in them?

14 A. Yes, they do.

15 MR. REDMOND: At this time, Your Honor, we would move
16 to introduce State's 22 through 26 into evidence.

17 MR. YOUNG: Eighty-six?

18 THE COURT: That's 22 through 86?

19 MR. REDMOND: Oh, I said, "22 through 26."

20 THE COURT: Is there objection?

21 MR. YOUNG: No, Your Honor.

22 MR. REDMOND: No, Your Honor.

23 THE COURT: All right, then, please note, Madam Court
24 Reporter, 22 through 86 for the State in evidence without
25 objection.

1 MR. REDMOND: Thank you, Your Honor.

2 (WHEREUPON, State's Exhibit Nos. 22 through 86 were
3 admitted into evidence.)

4 MR. REDMOND: Now, I would ask, with the Court's
5 permission, that Senior Agent Hallman could step down.

6 THE COURT: Very good. You may.

7 THE WITNESS: Thank you.

8 BY MR. REDMOND:

9 Q. And I'm going to need you to don the gloves.

10 A. Okay.

11 Q. All right. I'm going to start at State's Exhibit
12 Number 11 that's marked for identification at this point.
13 Could you take a look at that item and tell us what is it?

14 A. They are a pair of tan Timberland boots, size 11
15 medium.

16 Q. Okay. And I did not ask you this as background, but
17 did you take certain clothing items? I think I did, but
18 just to reiterate, did you take certain clothing items
19 belonging to the Defendant to S.L.E.D?

20 A. Yes, I did.

21 Q. For further testing?

22 A. Yes.

23 Q. Okay. State's Exhibit Number 12.

24 A. Okay.

25 Q. Based on your examination is that one of the items,

1 that along with State's Exhibit 11, are those items that
2 you took to S.L.E.D. for further testing that were
3 collected on January the 1st?

4 A. Yes.

5 Q. Okay. State's Exhibit 13. And is State's 13 among
6 the items that were sent or that were carried by you to
7 S.L.E.D. for further analysis?

8 A. Yes.

9 Q. Okay. And State's 14. State's 14 and 15, actually.
10 I believe that's State's Exhibit 14 that you're holding
11 now. The blue jeans. Is that one of the items that was
12 taken to S.L.E.D. by you for further analysis?

13 A. Yes.

14 Q. And State's 15. I'll just hold this up.

15 A. Yes.

16 Q. Is that one of the items that was sent or carried by
17 you to S.L.E.D. for further analysis?

18 A. Yes, it was.

19 Q. And I did not ask you that. Thank you. You can
20 place that back in the box. I did not ask you this, but
21 did you retrieve -- who did you retrieve those items from
22 to the best of your recollection?

23 A. I took those from Assistant Chief Brown.

24 Q. Okay. All right. And that was here in Pageland?

25 A. Yes, at the Police department.

1 Q. Okay. Now, these items that were taken back to
2 S.L.E.D. did you conduct any examination of those items?

3 A. No, sir, I did not.

4 Q. Okay. Could you briefly tell the ladies and
5 gentlemen of the jury once you take items such as these
6 exhibits to S.L.E.D. that you don't personally test could
7 you tell us the normal protocol for those items?

8 A. Usually I package them up. In this case they
9 probably would have been put in a cardboard box, and I
10 would have sealed the top and the bottom of the box and it
11 would have been forwarded to our Evidence Processing
12 Department for them to do a visual examination and take
13 cuttings or swabs or whatever was needed for the D.N.A.
14 Department to do analysis.

15 Q. Thank you.

16 MR. REDMOND: Now, at this point I'm going to ask you
17 to remain standing because I want to start going through
18 the pictures at this point, with the Court's permission?

19 THE COURT: Absolutely.

20 MR. REDMOND: If the Court would indulge us for just
21 a minute. I think the computer is already up.

22 BY MR. REDMOND:

23 Q. Agent Hallman, given the lateness of the hour,
24 obviously, this is an important case so I want us to be
25 thorough. But I'm also going to try to go through it as

1 expeditiously as I can. This is a picture of State's
2 Exhibit 22. Could you briefly tell us what that picture
3 represents?

4 A. This is a photograph of the building. As I first
5 approached I would have parked my truck already. Of
6 course, I would have gotten everything out. Okay. But
7 you can see that there is actually crime scene tape around
8 most of the steps and blocking off the area. It's
9 actually Building H. And that's just a general photograph
10 of what I saw when I arrived.

11 Q. Okay. State's 23?

12 A. That's, basically, just the one end of the building
13 of the photograph that you just saw previously.

14 Q. And just to the best of your recollection, and I
15 didn't ask you this the first one, but is a apartment --
16 is that Apartment ■ depicted in that particular picture?

17 A. Yes, this is Apartment ■, and then it would be ■, ■
18 and ■.

19 Q. Okay. State's 24?

20 A. This is almost basically the same as the first one we
21 just saw. You can see that the building is marked as ■.
22 There is a four here, a three, a two and then one would be
23 down on the end.

24 Q. And State's 25, briefly, and I think you just eluded
25 to it?

1 A. Basically, it is just the opposite end of the
2 building so that when you put those photographs together
3 you actually have a full view of what the building looks
4 like.

5 Q. State's 26 now?

6 A. That is -- that is a lower area like the vehicles
7 would be parked here, and then there is a lower sidewalk.
8 There is a set of steps and then there is an upper trail.
9 This is down close to the vehicle, and I just noted that
10 there is a pool of what appears to be blood and there is
11 also a knife in that area.

12 Q. Okay. And was that knife -- was that knife
13 collected?

14 A. Yes.

15 Q. Okay. And State's 27?

16 A. This is basically just a more close up photograph of
17 the entrance to Apartments ■ and ■.

18 Q. State's 28?

19 A. This is the upper trail area that I was talking about
20 earlier. You can see that this tricycle thing that sits
21 close to ■. I just noted that there was a flip flop and
22 there is another knife close by. This one is actually the
23 one that has the bent blade on it.

24 Q. That would be State's Exhibit Two?

25 A. That is correct.

1 MR. REDMOND: And beg the Court's indulgence, if I
2 may. While we're doing that, since it's in evidence,
3 State's One and Two, could I publish to the jury at this
4 time?

5 THE COURT: You may hand those to the jury.

6 MR. REDMOND: Again, Your Honor, that was State's 28.

7 BY MR. REDMOND:

8 Q. Next is State's 29?

9 A. Basically, if you were standing closer to Apartment ■
10 which is on the end of the building this is just a
11 photograph, basically, that goes back back towards
12 Apartment ■ and ■ from the other end of the trail. The
13 flip flop is there, the knife is there, and then the
14 pepper spray is going to be down here.

15 Q. State's 30?

16 A. That, basically, is the view from the side of the
17 building at Apartment ■, and if you will note there is
18 a -- what I call 'E.M.S. debris' because there is gloves
19 and other items there. There is a pillow and some bloody
20 clothing and other items in front of that door.

21 Q. State's 31?

22 A. That's basically just a close up or a more close up
23 photograph of the items that I was talking about that are
24 actually in front of ■.

25 Q. Now, State's 32? State's 32, on his face looks like

1 pretty much the same thing, but is there something -- I
2 apologize for it being in that condition. I downloaded it
3 myself, but could you tell us what else is of significance
4 on State's 32?

5 A. The big thing for me that was significant are the
6 blood stains that are here close to the doorknob. What it
7 indicated to me that somebody was at that location and was
8 bleeding. And one thing that you could speculate is they
9 were trying to gain entry in the apartment, but somebody
10 was bleeding at that door.

11 Q. State's 33?

12 A. That's basically just a more close up photograph of
13 that bloody area, and there is actually some volume in the
14 blood because it's actually flowing downward. And these
15 are basically what just what we would call transfer stains
16 with blood stains.

17 Q. State's 34?

18 A. This is closer to the bottom of the door. You can
19 tell that somebody was here for a period of time because
20 you've got a little bit of a pool here. This blood -- and
21 the thing with blood stain is the direction of the drops
22 can tell me what direction the blood is travelling in.
23 And in this case the blood is traveling this way. It's
24 traveling down and out, and I can tell that because of the
25 shape of the stains.

1 Q. State's 35?

2 A. That's basically just another photograph of that
3 blood.

4 Q. State's 36?

5 A. That's just a little bit of a distant shot. A little
6 bit farther over by ■. So you can actually see the whole
7 thing with the blood here and the blood down here.

8 Q. State's 36?

9 A. The canister of self-defense spray is actually in
10 that photograph.

11 Q. And State's 37? That's actually -- I'm sorry,
12 State's 38?

13 A. That is a close up of the canister as I found it in
14 the scene.

15 Q. State's 39?

16 A. That's the knife, the upper knife that we were
17 talking about with the bent blade, this is actually a
18 close up photograph of it.

19 Q. A State's ---

20 A. What ---

21 Q. I'm sorry?

22 A. Actually, I think that one is actually the one down
23 at Marker Number One which is the one on the lower level.
24 I'm sorry. It was actually in the dirt itself.

25 Q. Okay. That will be State's 40?

1 A. This one -- those items that we just talked about,
2 what I had done at this point is I had gone out and put my
3 markers down. Marker One is the knife on the lower level.
4 Marker Two is the knife on the upper level and the Marker
5 Three is that can of pepper spray that we just saw?

6 Q. State's 41?

7 A. That's basically what we call a mid-range photograph
8 of the -- what's depicted at Marker One.

9 Q. State's 42?

10 A. Also another mid-range photograph so you can actually
11 see what I've got at Marker Two.

12 Q. State's 43.

13 A. Same thing, but this is at Marker Three with the
14 pepper spray.

15 Q. State's 44?

16 A. I believe that is the entrance to ■. One of the
17 things if you will see the tape that we added on is
18 basically what we call scale tape. And that -- I put
19 those there because there are actually drops of what
20 appeared to be blood. So I wanted you to be able to see
21 them a little bit better and -- so you can kind of figure
22 out where they were at.

23 Q. And then State's 45?

24 A. This is basically, and actually, it is ■. This is
25 actually a close up photograph of that same stain, and you

1 can see -- the tail basically tells you the direction of
2 travel for a drop of blood. So it's actually traveling in
3 this direction.

4 THE COURT: All right. Counsel, come up and let's
5 take about scheduling just a moment, if you would please.

6 MR. REDMOND: Yes, sir.

7 THE COURT: If you don't mind me interrupting.

8 MR. REDMOND: Oh, not at all, Your Honor.

9 THE COURT: Just one moment, please.

10 (WHEREUPON, a bench conference was held off the
11 record in the presence of the jury, but out of the
12 hearing of the jury.)

13 THE COURT: All right, Madam Witness and ladies and
14 gentlemen, what we propose to do is probably take about 15
15 minutes. Counsel is going to finish going through the
16 photographs. Then direct testimony will end. We'll stop
17 for the day and take up cross-examination tomorrow. And,
18 now, that will be 15 more minutes. Does anyone on the
19 jury who has someone waiting for them at five o'clock or
20 waiting for some communication that you need to respond
21 to? All right. Very good. Don't want you to be worrying
22 about something else if that was the case, and you may
23 proceed.

24 MR. REDMOND: Thank you, Your Honor.

25 THE COURT: Thank you.

1 BY MR. REDMOND:

2 Q. I think we were at State's 47. And let me stop right
3 there. I was going to ask you real quickly. When you
4 talk about the direction of the pattern what is the
5 significance of being able to tell that?

6 A. A lot of times -- the nice thing about blood stain
7 pattern analysis is you can -- a lot of times you can tell
8 where somebody is standing. You can tell if they're
9 standing, kneeling or sitting when they receive an injury.
10 It can tell us if there were multiple people involved.
11 There's a lot of different things it can tell us. A lot
12 of times, like in a beating or a stabbing, we would have
13 what's called cast off.

14 And in some of those cases you can actually estimate
15 the number of times somebody is stabbed or beaten. But
16 it's a really good investigative tool that we use to help
17 piece together what happens in a crime scene.

18 Q. All right. And I think just briefly there are
19 several different locations within that complex that we
20 found blood; is that correct?

21 A. Yes, that is correct.

22 Q. All right. I think we are at State's -- this is
23 State's 46?

24 A. It's just a drop on the lower portion of the door
25 from, and I think that was going straight down.

1 Q. State's 47?

2 A. Basically, what I wanted to show here is that you've
3 got the door to 2 and you've got the door to 3, but if you
4 will notate there are several areas. I think there are at
5 least three or four that we marked that are closer to Door
6 3, so this actually indicates that something happened
7 outside, also.

8 Q. State's 48?

9 A. This is at ■, and it's basically that the drop is
10 just flowing straight down.

11 Q. State's 49?

12 A. These are just the two that's on the door jam of ■,
13 and you can basically -- I don't know if you can see here,
14 but they're basically also flowing straight down.

15 Q. State's 50?

16 A. This is just a close up of one of those two drops
17 that we just saw in the other photograph?

18 Q. State's 51?

19 A. This is the entrance and the interior floor at ■,
20 and I just -- we took this photograph before we walked in
21 because there appears to be numerous drops of what appears
22 to be blood in the entryway to the apartment.

23 Q. State's 51?

24 A. Basically, when we start taking photographs of the
25 inside of a house usually the first thing I'll do is open

1 the door, and I'll take a series of photographs that go
2 all the way around the room so I can actually lay them
3 together and put the room together. So this would be the
4 start of those photographs.

5 Q. And I misspoke. That's State's 52 you've got. Next
6 is State's 53?

7 A. Basically if you open the door there is a set of
8 stairs that go up to the second floor. there is more
9 closet door here and then the living room is in this way.

10 Q. State's 54?

11 A. That's just a more close up or a different angle of
12 the photograph from the door showing you the living room
13 area.

14 Q. State's 55?

15 A. That basically just shows this way up the stairs.

16 Q. Just kind of showing how the apartment is configured?

17 A. Absolutely. And we document -- when I work a crime
18 scene I actually photograph every room in the house in
19 case something else comes up in the investigation. But
20 normally the majority of photographs I concentrate in the
21 room that we think the incident occurred in or we know the
22 incident occurred in. But I always document the entire
23 residence was photographs.

24 Q. State's 56?

25 A. This was just interesting when we walked in. There

1 appears to be some possible blood stains on the carpet.
2 And this is like a red with a flower, almost like a head
3 scarf. And it just liked out of place laying on the
4 floor. And then there was a flip flop that matched the
5 one that's outside lying on the floor also.

6 Q. State's 57?

7 A. This is the kitchen area of the residence, and like I
8 said we document every room in the house whether or not we
9 now anything occurred there, and this is just a
10 photograph. I would have stepped in and actually turn to
11 the left and taken this photograph.

12 Q. State's 58. I'm going to say State's 58 and then we
13 can skip to State's 59.

14 A. Basically, I'm just turning a little bit further.
15 I'm starting on the left side and just kind of moving
16 around and taking photographs. And this is another
17 photograph from the kitchen.

18 Q. And I'll actually skip to State's 60?

19 A. This is a, if you're standing in the entrance to the
20 kitchen from the living room, this is going to be to the
21 right side. It's a small table. There is a coat there,
22 but that's basically the right side of the kitchen.

23 Q. State's 61?

24 A. The stairs that we saw earlier that go upstairs, when
25 we did further examination we noticed that there were a

1 few blood drops or what appeared to be blood drops on the
2 side of that wall where the steps are.

3 Q. State's 62?

4 A. This is just a little bit better photograph of those.
5 The first one didn't take real well. You couldn't see it
6 real well so we took another photograph just so you could
7 see it better.

8 Q. State's 63?

9 A. This is the side wall before you go out of the
10 residence. It actually goes around and then out.
11 Basically we had noticed several drops of what appeared to
12 be blood on the swabs so I want a good overall photograph
13 of it before we started marking anything.

14 Q. State's 64?

15 A. That's -- it's that same wall. We just saw, if you
16 will note, there is another drop of blood in the
17 photograph that's actually in the photograph.

18 Q. State's 65?

19 A. That's basically just another view or another
20 photograph of that same wall that we talked about.

21 Q. State's 66?

22 A. This one is a little bit closer to the interior, her
23 Christmas tree, and the photographs are actually set up in
24 the center window. And I just noted that there were some
25 blood drops that showed up here.

1 Q. State's 67?

2 A. This is a little bit lower, and you can't really
3 actually see them. They're kind of blurry, but there is
4 actually some blood drops kind of behind the couch.

5 Q. State's 68?

6 A. If you turn it it's actually the -- when we first --
7 when you first walked into the apartment where the rug was
8 I actually put scale tape down on the drops so that we
9 could photograph them individually. And I could also go
10 back and try to determine an angle of impact if that was
11 needed in the case.

12 By scaling them I can measure the length and the
13 width and do some calculations and figure out where it
14 came from.

15 Q. State's 69?

16 A. This is the interior. If you close the front door we
17 just notated that there appears to be a transfer stain in
18 that corner. It's basically where, probably something
19 bloody came in contact with something that was not bloody.

20 Q. State's 70?

21 A. That is just a more close up photograph of the stain
22 we saw in the last lot.

23 Q. State's 71?

24 A. The staircase is here. This is the wall beside the
25 staircase that leads into the kitchen. And the main thing

1 I took this photograph for is to notate that there is no
2 blood in this area.

3 Q. And then State's 72?

4 A. Well, actually, apparently there was one small drop
5 past that first door, but past that first door there is no
6 blood anywhere.

7 Q. And then State's 73?

8 A. There were items that we talked about inside that
9 interested me because it appears that they were out of
10 place. So we put the markers down. That headscarf that
11 we talked about previously, I put Marker Five on it. And
12 there was a stock had that, to me, did not seem typical of
13 what a woman would wear. And it appeared a little bit
14 larger than either one of the boys would wear since I was
15 told they were both young.

16 So I marked it to collect it. And there were some
17 stain on the carpet that we marked with a scale tape in
18 order to document them further.

19 Q. And skip 74 and go into 75? Tell us what that is,
20 State's 75?

21 A. That is the vehicle that we processed at Pageland
22 Police Department.

23 Q. State's 76. We can skip to 77.

24 A. And, basically, when we process a vehicle u usually
25 do the -- basically, I go around every side of the vehicle

1 and take at least one picture so you can see what
2 condition the vehicle was in before we start processing.

3 Q. And, interestingly, look at the top between the
4 driver's and -- driver's door and the rear driver's side
5 door, what's that appear to be in between those doors?

6 A. It's a nylon rope that is tying the driver's door
7 closed.

8 Q. Okay. And State's 78?

9 A. This is the front passenger door, and when we arrived
10 to process it had been busted in the area closer to the
11 handle as depicted in the photographer.

12 Q. State's 79.

13 A. One of the things of interest before we even started
14 processing I have faint traces of what appears to be blood
15 on this door handle and actually back here in this area
16 also.

17 Q. Skip State's 80 and go to State's 81. It brings back
18 memories. You can explain?

19 A. This is the rear of the vehicle, and the thing that
20 we're laugh about is my partner took a photograph. When
21 we went to get in this vehicle the only way to get in it
22 was for me to actually climb in and reach over all that.
23 So she took a picture of me with my boots hanging up in
24 the air.

25 You could not gain any access through any of the four

1 doors, and basically, like I said before when I -- before
2 we start processing inside we would open all those doors
3 and photograph. So this is just a photograph of the rear
4 of the vehicle after we opened the two back doors.

5 Q. State's 82.

6 A. That is a photograph when we opened the rear
7 passenger side door and we notated that there appeared to
8 be stains similar with blood.

9 Q. And State's 83?

10 A. That is just a more close up of the previous
11 photograph.

12 Q. State's 84?

13 A. This is the photograph of the back seat. And once we
14 got in here in the very center there appears to be an area
15 with a transfer stain of blood. After looking at it
16 closer it actually appears to be a palm print. We
17 photographed it as it was.

18 We also applied a chemical called L.C.V. which is
19 leuco crystal violet which reacts with the hemoglobin in
20 your blood in order to enhance the prints. It did enhance
21 it, and in order to try to do some type of comparison I
22 actually cut that portion of the back seat out and took it
23 back to the lab.

24 Q. Skip I'm going to skip State's 85 and go to State's
25 86?

1 A. Basically just ---

2 Q. Well, we can go back to 85 real quick and then 86?

3 A. Eighty-five is just a photograph of the floorboard at
4 the driver's seat. Just I was trying to show whether or
5 not there was any blood present, and I don't recall that
6 there was any blood present there. And then the next
7 photograph is the floorboard in the rear compartment area
8 or in the rear seat area. You can see the front or the
9 area I was talking about on the back seat.

10 MR. REDMOND: Beg the Court's indulgence.

11 BY MR. REDMOND:

12 Q. You may take your seat?

13 MR. REDMOND: Beg the Court's indulgence for just one
14 moment, please?

15 THE COURT: Yes, sir.

16 MR. REDMOND: Your Honor, at this time, I guess in
17 the morning we can begin with cross-examination. That
18 would conclude the State's examination.

19 THE COURT: Very good. That's the end of direct.
20 Ma'am, if you would return at 9:30 tomorrow morning and
21 begin at that time. and I would ask you over the evening
22 break please not to have any discussions with lawyer on
23 either side of this case since you're a witness under
24 testimony.

25 THE WITNESS: Yes, sir.

1 THE COURT: All right. Yes sir, Mr. Young.

2 MR. YOUNG: Your Honor, I would like to excuse her.

3 I have one request of Agent Hallman to look at over the
4 break. He has something that I'd like to look at and it
5 would violate the Court's order.

6 THE COURT: Well, let's do this then. First of all,
7 you wish to be present for that, Mr. Redmond?

8 MR. REDMOND: I would, yes, sir.

9 THE COURT: All right. Then we'll permit you to do
10 that. Simply, again, because this witness is under
11 testimony that not usually occurs but we were in the
12 morning hour or the early in the afternoon hour. All
13 right, ladies and gentlemen, please remember I'm asking
14 you not to speak with your loved ones at home about the
15 facts of the case. And we'll ask you about that in the
16 morning when you return.

17 So let's be back at 9:30, and at that time we will
18 resume. Ma'am, we will take your notes for the evening
19 and everyone have a good day. If you need to return to
20 the jury room you may, but if you wish to just exit the
21 box and leave you may do so. We'll remain where we are
22 while you do that. Have a good evening, ladies and
23 gentlemen.

24 (WHEREUPON, the jury panel was excused from the
25 courtroom at 5:13 p.m.)

1 THE COURT: All right, ladies and gentlemen, we'll be
2 in recess until 9:30 in the morning. Court is now in
3 recess.

4 END OF TRANSCRIPT OF RECORD
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the 4th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Chesterfield County, South Carolina, on the 4th day of December, 2012.

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

April 20, 2013

[Handwritten signature]

HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF CHESTERFIELD) 2010-GS-13-0192
) 2010-GS-13-0263

STATE OF SOUTH CAROLINA)
) PLAINTIFF
) vs.) TRANSCRIPT OF RECORD
) THOMAS J. STEWART
) DEFENDANT

December 3-6, 2012
 Chesterfield, South Carolina
VOLUME NUMBER 03 OF 04

B E F O R E:

THE HONORABLE J. MICHAEL BAXLEY, JUDGE; and a jury.

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

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 Attorney for the State

ADAM FOARD, ASSISTANT SOLICITOR
 Attorney for the State

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 Attorney for the Defendant

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MARTY HORTON,
JOSEPH CARNES, CHESTERFIELD CTY SHERIFF'S OFF.
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SHARON RIVERS,
MELISSA STEWART,
SHERRY MACLAMORE,
RANDALL MULLIS,
KIMBERLY LITTLE,

HATTIÖE O. GORDON
Circuit Court Reporter

COLLOQUY

THE COURT: Miss Hallman, come on back. You may return to the stand. Welcome back.

THE WITNESS: Thank you sir.

THE COURT: And, please, bring in the jury.

(WHEREUPON, the jury panel enters the courtroom at 9:33 a.m.)

THE COURT: All right. Welcome back to the courtroom. I trust you had a nice evening. Let me ask since we were last together is there any member of the jury who has had a discussion about the facts of the case with anyone or if anyone attempted to have discussion with you. If that applies please raise your hands. Let's let the record reflect that no one had raised their hand. Thank you for again complying with the Court's request.

You will recall at the end day we closed the direct examination of Ms. Hallman. We're now go to cross-examination. Ms. Hallman, let me ask you, ma'am. Do you remember that you remain under oath?

THE WITNESS: Yes, sir, I do.

THE COURT: All right. Very good. Counsel, you may proceed.

MR. YOUNG: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. YOUNG:

1 Q. Good morning, Ms. Hallman?

2 A. Good morning.

3 Q. Agent Hallman, I'm going to start with introducing a
4 couple more of your photographs. Do you recall how many
5 pictures you took?

6 A. Not right off hand I don't. If I need to give you a
7 number I can, but I don't recall.

8 Q. If I told you it was about 290 according to this
9 report, does that sound about right?

10 A. That is correct.

11 BY SPEAKER 1:

12 Q. I'm going to show you what has been marked as
13 Defendant's 12 through 23. Some of these are duplications
14 of what the State has already introduced, but because of
15 the way we number them and each side doesn't know what the
16 other side is going to do, I want to make sure we keep
17 them in order.

18 A. Okay.

19 Q. Ask if you recognize those?

20 (WHEREUPON, Defendant's Exhibit No. 80 was marked for
21 identification only.)

22 A. Yes, sir, I do.

23 Q. All all of those picture of the outside and
24 surrounding areas of the ■ Building of Pageland Place
25 Apartments?

1 A. Yes, they are.

2 Q. Do they fairly and accurately represent the scene as
3 you observed it on January the 1st 2010?

4 A. Yes.

5 MR. YOUNG: Your Honor, at this time I would offer
6 State's -- Defense Exhibits 12 through 23 into evidence.

7 MR. REDMOND: Without objection.

8 THE COURT: Twelve through 23 in evidence for
9 Defense.

10 (WHEREUPON, Defendant's Exhibit Nos. 12 through 23
11 were admitted into evidence.)

12 BY MR. YOUNG:

13 Q. Agent Hallman, I'm going to show you what's been
14 entered into evidence as Defense Exhibit Number 18. Can
15 you tell the jury a little bit about this picture before I
16 publish it?

17 A. It is a photograph of what I marked as Marker Two.
18 This includes the bent night -- excuse me. The bent knife
19 that was picked up, and there is also a brown flip flop
20 right on the same general area.

21 Q. The brown flip flop was that a similar flip flop to
22 the one that was recovered inside?

23 A. Yes, it was.

24 Q. Was it the other flip of the flip flop that was
25 recovered inside?

1 A. I don't recall right off hand. I don't recall if
2 they made a set, but they were similar.

3 Q. Okay. I guess we would ask the jury to look at the
4 pictures and draw their own conclusion about that?

5 A. Yes, sir.

6 MR. YOUNG: Your Honor, I'd like to publish Defense
7 Exhibit Number 18?

8 THE COURT: You may hand that to the jury.

9 BY MR. YOUNG:

10 Q. Agent Hallman, while the jury is taking a look at
11 Defense Exhibit Number 18 I'm going to hand you what's
12 been marked as Defense Exhibit Numbers 24 through 39 and
13 ask you if you recognize those.

14 A. Yes, I to.

15 Q. And what are all those pictures of?

16 A. Those would be photographs taken inside of the
17 residence at ■.

18 Q. I refer to those pictures as the living room. Is
19 that the main room at the front entrance of the ■
20 Apartment?

21 A. Yes, it is.

22 MR. YOUNG: Your Honor, at this time Defense would
23 offered Defense 24 through 39 into evidence?

24 MR. REDMOND: Without objection, Your Honor.

25 THE COURT: Without objection then 24 through 39 in

1 evidence for the Defendant.

2 (WHEREUPON, Defendant's Exhibit Nos. 24 through 39
3 were admitted into evidence.)

4 BY MR. YOUNG:

5 Q. Agent Hallman, on Defense Exhibit Number 24 I think
6 this -- covered this with the State, but are these the
7 close up of the blood in the entry way?

8 A. Yes, it is.

9 Q. Defense Number 26, is that the flip flop that was
10 inside the house that is very similar to the one that's
11 outside the house?

12 A. Yes, and the one inside is the right, if that helps.

13 Q. You recall what the one from the outside looks like?

14 A. That's a left. They probably are a matching set.

15 Q. Thank you. Agent Hallman, this is a picture of the
16 blood with your tape down in the entry hallway; is that
17 correct?

18 A. Yes, it is.

19 Q. Now, yesterday you talked about doing some
20 calculations and figuring out where the blood came from,
21 possibly how many people were involved, what position
22 people where involved in; is that correct?

23 A. That's one thing that is possible to do with blood
24 stain patterns.

25 Q. Was that done in this case?

1 A. No, it was not.

2 Q. Why not?

3 A. At that time there was only one known suspect. In
4 order to do further analysis of it I would have needed the
5 results to see whose blood was actually deposited in those
6 drops.

7 Q. Did you collect those drops?

8 A. I believe I collected some of those. I'm not real
9 sure without looking at the evidence, but some was
10 definitely collected from inside the residence.

11 Q. You have?

12 MR. REDMOND: Beg the Court's indulgence.

13 MR. YOUNG: I apologize.

14 (WHEREUPON, Defendant's Exhibit Nos. 81 THROUGH 84
15 were marked for identification only.)

16 BY MR. YOUNG:

17 Q. I'm going to show you what's been marked as Defense
18 Exhibit Numbers 81, 82 and 83 and ask if you recognize
19 that?

20 A. Yes, I do.

21 Q. And could you tell the jury what those are?

22 A. What's been marked as Defense 81 is a set of ten
23 swabs that were collected from inside the residence.
24 What's been marked as Defense 82 is six sets of swabs that
25 were collected from the Suburban that we processed. And

1 what's been marked has Defense 83 is five sets of swabs
2 that I collected from the two knives and the pepper spray
3 when I processed them in the laboratory?

4 MR. YOUNG: Your Honor, at this time the Defense
5 offers 82, 83 and 84 into evidence.

6 MR. REDMOND: Without objection, Your Honor.

7 THE COURT: All right. So ordered 82, 83, 84 in
8 evidence for the Defense.

9 MR. YOUNG: Your Honor, I need to correct the record.
10 It's 81, 82 and 83.

11 THE COURT: Okay.

12 MR. REDMOND: No objection.

13 (WHEREUPON, Defendant's Exhibit Nos. 81 through 83
14 were admitted into evidence.)

15 BY MR. YOUNG:

16 Q. In order to make things more convenient, I'm going to
17 show you what's been marked as Defense Exhibit Number 84
18 and ask you if you recognize that?

19 A. Yes, I do.

20 Q. And what is that?

21 A. When we log items into the laboratory at S.L.E.D. an
22 actual -- a laboratory request sheet is completely and it
23 actually has signatures on the back as to who submitted
24 and who received it along with the items of evidence and
25 the request that they were put on or that was requested on

1 a specific item, and that is what this is.

2 Q. All right. Does that document have each swab listed
3 as whether or not anything happened to it or whether or
4 not further analysis was done on it?

5 A. It has a listing of every specific item of evidence,
6 and if a lab request has been put on it it tells you what
7 department the item would go to.

8 MR. YOUNG: Your Honor, at this time I would offer
9 Defense Exhibit Number 84 into evidence.

10 MR. REDMOND: No objection.

11 THE COURT: Again, without objection in evidence for
12 the Defendant.

13 (WHEREUPON, Defendant's Exhibit No. 84 was admitted
14 into evidence.)

15 BY MR. YOUNG:

16 Q. Agent Hallman, you have a copy of this?

17 A. Let me check. Yes, I do.

18 Q. Agent Hallman, I believe what I was asking about was
19 the blood stain pattern analysis. You said one of the
20 things that you needed to know was whose blood it was?

21 A. That is correct.

22 Q. And in this case you indicated that there was only
23 one perpetrator so nobody tested whose blood that was
24 inside?

25 A. Well, it's used more as an investigative tool. The

1 blood stain pattern is, and no one at that point requested
2 that a blood stain pattern analysis be conducted other
3 than the swabs actually being collected and the blood
4 being documented.

5 Q. Okay. So if we wanted to we could find out whose
6 blood that was inside?

7 A. Yes.

8 Q. If we wanted to or the State wanted to they could try
9 to make some calculations about who was in what position
10 or make estimates?

11 A. That's is a possibility, yes.

12 Q. There were transfer stains on the floor in the living
13 room; is that correct?

14 A. That's what it appeared to be, yes, sir.

15 Q. And you put a stain on those transfer stains?

16 A. We used a chemical called L.C.V. which is leuco
17 crystal violet.

18 Q. And does that cause them to show up and be more
19 visible?

20 A. Yes. It actually, as I said yesterday, it actually
21 reacts with the hemoglobin in the blood. And a lot of
22 times the blood itself could be so faint that it wouldn't
23 show up and by adding the L.C.V. you can actually get a
24 little bit more of a reaction. So in some cases if you're
25 looking for footware it would actually enhance the

1 footwear impression.

2 Q. Can you tell the ladies and gentlemen a little bit
3 more about what a transfer stain is?

4 A. Basically, a transfer stain comes about when an item
5 that is bloody comes in contact with another item that is
6 not bloody.

7 Q. And then that ---

8 A. And there is movement within the stain itself. So
9 like if you were looking for fingerprints you would not be
10 able to find an identifiable fingerprint because it's
11 basically like you're wiping off a counter with a rag
12 except the rag would have blood on it. So it's just
13 movement within a blood stain.

14 Q. If somebody had a cut on their hand and their hand
15 was on the floor and they're moving around would that
16 leave a transfer stain?

17 A. That is possible. Yes.

18 Q. I'm going to show you what's been entered as Defense
19 38 and 39. Are those the transfer stains we were talking
20 about?

21 A. Yes, sir, they are.

22 MR. YOUNG: And, Your Honor, may I publish?

23 THE COURT: You may.

24 BY MR. YOUNG:

25 Q. Agent Hallman, while the jury takes a look at those

1 pictures. I'm going to show you what's been marked as
2 Defense Exhibit Numbers 40 through 44 and ask you if you
3 recognize those?

4 A. Yes, I do.

5 Q. And can you tell me what these pictures are of?

6 A. These were a series of photographs that we took in the
7 kitchen in Apartment [REDACTED].

8 MR. YOUNG: Your Honor, at this time I would offer 40
9 through 44 into evidence.

10 MR. REDMOND: Without objection, Your Honor.

11 THE COURT: All right. Forty, 41, 42, 43 and 44 in
12 evidence without objection for the Defendant.

13 (WHEREUPON, Defendant's Exhibit Nos. 40 through 44
14 were admitted into evidence.)

15 MR. YOUNG: Agent Hallman, I'm going to show you
16 what's been marked as -- or what's been entered as Defense
17 Exhibit Number 40. Do you recognize the pizza box on the
18 counter?

19 A. Yes, sir. There is a pizza box on the counter.

20 Q. Is it a Pizza Hut box?

21 A. From this specific photograph I couldn't tell you for
22 sure. Actually, it says Pizza Hut on the side. And in
23 State's Exhibit 44, you can definitely read that it says
24 Pizza Hut.

25 MR. YOUNG: Your Honor, may I approach?

1 THE COURT: You may.

2 BY MR. YOUNG:

3 Q. Agent Hallman, this is Defense Exhibit Number 42. Do
4 you know that that iron laying next to the trash can on
5 the floor is?

6 A. It appears to be a pair of gloves.

7 Q. Did you collect those gloves?

8 A. No, I did not.

9 Q. I know earlier that you had documented a hat that
10 seemed to be out of place; is that correct?

11 A. Yes.

12 Q. And you collected that hat?

13 A. Yes.

14 Q. But the gloves are right there between the living
15 room and the kitchen; is that right?

16 A. Yes.

17 Q. But those weren't collected by you?

18 A. No, sir, they weren't.

19 Q. Do you know if they were later collected?

20 A. I wouldn't have any idea. If I didn't collect them,
21 unless they were submitted to the lab, I would not know
22 whether or not they were collected.

23 Q. Thank you.

24 MR. YOUNG: Your Honor, may I publish?

25 THE COURT: You may.

1 BY MR. YOUNG:

2 Q. Agent Hallman, I'm going to, while the jury takes a
3 look at those pictures, I'm going to show you what's been
4 marked as Defense Exhibit Numbers 45 through 50 and ask if
5 you recognize those?

6 A. Yes, I do.

7 Q. And what are those pictures of?

8 A. They are photographs that were taken in the master
9 bedroom at Apartment [REDACTED].

10 MR. YOUNG: Your Honor, at this time I would officer
11 Defense Exhibit Numbers 45 through 50 in evidence?

12 MR. REDMOND: No objection, and just to cover it. I
13 have no objection to any of the pictures that have been
14 taken by Agent -- Senior Agent Hallman that you may have.

15 THE COURT: All right. Forty-five through 50
16 inclusive in evidence for the Defendant without objection.

17 (WHEREUPON, Defendant's Exhibit Nos. 45 through 50
18 were admitted into evidence.)

19 BY MR. YOUNG:

20 Q. Agent Hallman, like you said yesterday you documented
21 every room in the house?

22 A. That is correct.

23 Q. As far as your expertise as a crime scene expert did
24 you note any forensic evidence in the upstairs master
25 bedroom?

1 A. No, I did not.

2 Q. There were, however, clothes on the bed?

3 A. That's correct.

4 Q. And there were clothes in the closet?

5 A. Yes.

6 Q. You didn't collect those clothes?

7 A. No, I did not.

8 Q. You didn't go through those clothes try to determine
9 who they belonged to?

10 A. We just took general photographs of that room.

11 Q. You took a close up of the clothes that were on the
12 bed?

13 A. Yes, sir..

14 Q. And that's Defense Exhibit 45?

15 A. Yes.

16 Q. But no effort was made to determine whose clothes
17 these might be?

18 A. No. Not by me.

19 MR. YOUNG: Your Honor, may I publish?

20 THE COURT: You may.

21 MR. YOUNG: Your Honor, based on the State's earlier
22 statement at this time I would offer Defense Exhibits 51
23 through 69 into evidence.

24 THE COURT: All right, 51 through 69 for Defendant in
25 evidence without objection.

1 (WHEREUPON, Defendant's Exhibit Nos. 51 through 69
2 were admitted into evidence.)

3 BY MR. YOUNG:

4 Q. Agent Hallman, would you tell the jury what Defense
5 Exhibits 51 through 69 are?

6 A. Those would be photographs of the Suburban that we
7 processed at Pageland Police Department.

8 Q. And I think you referred to the Suburban in your
9 report as the second crime scene?

10 A. Well, what we have to do for documentation purposes
11 is any location that we change, if we leave one location
12 and go to another location we have specific paperwork we
13 have to fill out. So in this case this would have been
14 considered a secondary scene.

15 Q. What's been entered as Defense Exhibit Number 55,
16 that appears to be the front passenger seat floorboard?

17 A. That is correct.

18 Q. And is there glass in the floor?

19 A. Yes, there is.

20 Q. Is that appear to be glass from the passenger side
21 window that was broken?

22 A. Considering that there was a hole in the window, then
23 I would say, yes. Probably say yes.

24 Q. Defense Exhibit Number 56, is that the driver's side
25 floorboard?

- 1 A. Yes, it is.
- 2 Q. And is there glass in the driver's seat?
- 3 A. Yes.
- 4 Q. And is there glass on the drive's side floorboard?
- 5 A. Yes.
- 6 Q. All right. Thank you. Number 57, is that the rear
- 7 floorboard?
- 8 A. Yes, it is.
- 9 Q. Is there glass in the rear floorboard?
- 10 A. Yes.
- 11 Q. Defense 61, is that a picture of the back seat?
- 12 A. Yes, it is.
- 13 Q. Does there appear to be a candle in the back
- 14 passenger seat?
- 15 A. I believe that's what that is. Yes.
- 16 Q. Did you collect that?
- 17 A. No, I did not.
- 18 Q. Why not?
- 19 A. It did not seem to fit any of the elements that we
- 20 were given of this crime.
- 21 Q. Can you tell me what you mean by that?
- 22 A. There was no indication that a candle had been used
- 23 as any keep of weapon or a candle had been involved at all
- 24 in this crime. So it was not collected. It was just
- 25 documented with photographs.

1 Q. You know if that candle would appear to fit through
2 the hole in the passenger side window?

3 A. That's a possibility. It could have, yes.

4 Q. And for the record that was Defense Exhibit 66 that
5 had the hole in the window?

6 A. Yes.

7 Q. And 67?

8 A. Yes.

9 Q. This is Defense Exhibit Number 62 and 63. And what
10 I'd like for you to focus on is the driver's side rear
11 tire in those picture. And in what condition does it
12 appear?

13 A. It's a flat tire.

14 Q. Is it all the way flat or going flat?

15 A. Well, in one photograph it looks like it's all the
16 way flat. And then the other one, because of the angle,
17 it looks like it's partially flat.

18 Q. Okay. Did you -- do you know how long that leak was
19 on that tire? Did you do any analysis on the tire at all?

20 A. No, I did not.

21 MR. YOUNG: Your Honor, at this time I'd like to
22 publish the pictures that we have been discussing
23 regarding the vehicle.

24 THE COURT: You may. Anything further?

25 MR. YOUNG: Yes, sir.

1 THE COURT: Go ahead.

2 BY MR. YOUNG:

3 Q. Agent Hallman, you took some major case prints I
4 believe is what you and Mr. Redmond referred to them as?

5 A. Yes, I did.

6 Q. And can you tell the ladies and gentlemen what that
7 involves?

8 A. Basically, what we're trying to do is capture all of
9 the ridge details that you have on your fingers and your
10 palms, both. Because a lot of times if we're processing
11 items for evidence we'll find palm prints or different
12 digits of your finger besides that top print. So we roll
13 them and they are called major case prints because we try
14 to be inclusive with all the ridge details on your hands.

15 Q. Was there an impediment to getting a full palm print
16 of Mr. Stewart palms?

17 A. Yes, there was.

18 Q. What was that?

19 A. He had a cut. I believe it was on his right hand,
20 and he was not as flexible and as cooperative with the
21 right hand as with the left.

22 Q. So you weren't able to put the whole right hand down?

23 A. That's correct.

24 Q. You have those prints with you?

25 A. I believe they're here already. I did not bring

1 them. They were returned to the agency.

2 Q. Okay. Agent Hallman, I'm going to show you what has
3 been marked as Defense Exhibit Number 80 and ask if you
4 recognize that?

5 A. Yes, sir.

6 Q. And what is that?

7 A. It is the crime scene sketch that did for the crime
8 scene.

9 MR. YOUNG: Your Honor, at this time I offer Defense
10 Exhibit 80 into evidence?

11 MR. REDMOND: No objection.

12 THE COURT: Without objection, 80 for Defendant into
13 evidence.

14 (WHEREUPON, Defendant's Exhibit No. 80 was
15 admitted into evidence.)

16 BY MR. YOUNG:

17 Q. Can you just tell us a little bit more about the
18 diagram. What's listed on the diagram?

19 A. Well, basically, our diagram includes the location,
20 what kind of case it is, who the victim is. When I put
21 markers down I actually put a little legend on the side
22 and list what each marker stands for. Like in this case
23 Marker One was the knife with the blood pool. Marker Two
24 was the bent knife. Marker Three was the pepper spray.
25 And Marker Four would be the victim's clothing, and that

1 would actually coincide with the marker numbers that you
2 see in the photographs. So you can look back and forth
3 between to two and figure out where it was and what it
4 actually looked like.

5 Q. And Marker Two was also where the flip flop was as
6 well?

7 A. Yes, that's correct.

8 Q. Thank you.

9 MR. YOUNG: Your Honor, made I publish?

10 THE COURT: You may.

11 BY MR. YOUNG:

12 Q. Agent Hallman; in your experience as a crime scene
13 expert you took and collected swabs from the handles of
14 both knives?

15 A. Let me double check just to make sure. Can I look
16 back at one of the exhibits?

17 Q. Yes.

18 A. And I can tell you specifically.

19 Q. You want the swabs or you want this?

20 A. The swabs. I believe I need 83. In the case or in
21 the item that was -- the knife that was at Marker One I
22 collected two stabs from the blade and two swabs from the
23 handle. From the knife that was collected at Marker Two I
24 did the same thing. I collected two swabs from the handle
25 and two swabs from the blade. And with the pepper spray

1 which is my Item Number Five and was collected at Marker
2 Three I also collected two swabs from that item.

3 Q. Were those swabs ever tested?

4 A. No, they were not.

5 Q. The swabs from the knife handle, if somebody holds a
6 knife and then drops it or puts it down or has it pulled
7 away from them, could you tell, possibly, who the knife
8 had been held by?

9 A. That would be more of a question to ask a D.N.A.
10 person when it comes from getting D.N.A. from the handle
11 if you're talking about skin cells versus blood.

12 Q. Okay. Have you seen cases where skin cells were
13 collected from the knife handle?

14 A. Yes.

15 Q. And those would be the skin cells of the person,
16 presumably, who had recently held the knife?

17 A. That is correct.

18 Q. And have you been part of cases where blood was
19 collected off the blade of a knife?

20 A. Yes.

21 Q. And the blade can be tested to determine, possibly,
22 who had been cut with the knife?

23 A. That is correct.

24 Q. None of that was done on either of the knives in this
25 case?

1 A. No, sir.

2 Q. Nor was it done on any of the blood that was inside
3 the residence?

4 A. No, sir, it was not.

5 Q. And it was not done on any of the blood that was
6 outside the residence?

7 A. That's correct.

8 Q. I believe, when you were going through the pictures
9 with the State yesterday, you certainly recognized that
10 something happened in the house that left blood in and
11 around the living room and the house?

12 A. That's correct.

13 Q. And you said based on the blood outside around the
14 doorway to Apartments ■ and something happened outside as
15 well?

16 A. There was something that occurred that allowed blood
17 to be deposited, yes.

18 Q. And then there was another pool of blood that was
19 down at the sidewalk right where the cars were parked,
20 right?

21 A. Yes.

22 Q. Where the State's Number One was collected?

23 A. Yes.

24 MR. YOUNG: Beg the Court's indulgence a moment.

25 BY MR. YOUNG:

1 Q. Thank you, Agent Hallman.

2 MR. YOUNG: That's all we have.

3 THE COURT: Is there re-direct?

4 MR. REDMOND: Briefly, Your Honor. May it please the
5 Court.

6 THE COURT: Go ahead.

7 REDIRECT EXAMINATION

8 BY MR. REDMOND:

9 Q. Are you always ask to do blood splatter analysis?

10 A. No, sir, we're not.

11 Q. And let me ask you this since you've been qualified as
12 an expert and the rules would allow me to ask hypothetical
13 questions. I'm just going to be brief ask you
14 hypothetically. If the situation on a case that you've
15 held the investigation where there are eyewitnesses that
16 saw the acts perpetrated, and the Defendant himself has
17 admitted and given a detailed statement of what was
18 perpetrated is that a situation that sometime results in
19 you not being asked to perform those additional tests?

20 A. Absolutely.

21 Q. And, finally, based on your investigation who was the
22 resident at Apartment [REDACTED]?

23 A. The victim, who was Bellany Clyburn.

24 Q. Not the Defendant?

25 A. That is correct.

1 MR. REDMOND: Nothing further, Your Honor.

2 THE COURT: All right.

3 MR. YOUNG: Your Honor, I have one follow up.

4 THE COURT: What new issue was brought up in
5 redirect?

6 MR. YOUNG: Her opinion about the analysis of the
7 crime scene where certain pieces of evidence.

8 THE COURT: You may address that issue. Go ahead.

9 RECROSS-EXAMINATION

10 BY MR. YOUNG:

11 Q. Agent Hallman, have you ever been a part of a case
12 where additional testing would be requested to verify
13 somebody's version of events?

14 A. That is possible. Yes, sir.

15 Q. Thank you.

16 THE COURT: And this is your witness. You wish to
17 follow on that point?

18 MR. REDMOND: Nothing further.

19 THE COURT: Any objection to the release of this
20 witness from either side?

21 MR. REDMOND: None from the State, Your Honor.

22 MR. YOUNG: No, Your Honor.

23 THE COURT: All right, ma'am, you are free to leave.

24 THE WITNESS: Thank you.

25 THE COURT: Thank you, ma'am. State, please call

1 your next witness.

2 MR. FOARD: Your Honor, our next witness is Dr.
3 Bradley Marcus. And I believe that he stepped outside.

4 MR. REDMOND: I'll go get him, Your Honor.

5 THE COURT: Very good.

6 BRADLEY MARCUS, after being duly sworn,
7 testified as follows:

8 MR. FOARD: Thank you, Your Honor.

9

10 DIRECT EXAMINATION

11 BY MR. FOARD:

12 Q. Morning, sir?

13 A. Good morning.

14 Q. Will you please state your name for the record?

15 A. My name is Dr. Bradley J. Marcus, M.A.R.C.U.S.

16 Q. And by whom are you employed?

17 A. I'm employed at Professional Pathology Services which
18 is located in Columbia, South Carolina. It's a private
19 pathology group.

20 Q. Okay. And you say that's a private pathology group.
21 You're not affiliated with any law enforcement agent or
22 anything of that nature?

23 A. No.

24 Q. But you routinely perform examinations for law
25 enforcement?

1 A. I do, yes.

2 Q. Okay. And could you just give us a little bit more
3 information about your background as far as education and
4 training?

5 A. Yes. I am a medical doctor. I went to the American
6 University School of Medicine. After I graduated there
7 with an M.B. degree. After that, which was in 2001, I
8 started a residency training at the Medical University of
9 South Carolina. I spent four years at M.U.S.C. training
10 an anatomic and clinical pathology where I learned
11 everything there is to know about anatomic and clinical
12 pathology which pathology is the study of disease in the
13 human body.

14 Okay. And then after that I continued on my
15 training. I did some fellowships. One, I did one in
16 forensic pathology which is doing autopsies, cause of
17 death and determining cause of death. And in addition to
18 that I did another fellowship in pseudo pathology which is
19 the study of cancer cells, individual cancer cells,
20 looking a pap smears and so forth. So I'm also trained in
21 that.

22 So after doing all my training at the Medical
23 University of South Carolina I had to sit and take my
24 board exams. So I sat for four board exams. I'm board
25 certified by the American Board of Pathology in anatomic

1 pathology, clinical pathology, forensic pathology and
2 pseudo pathology. I'm actually maxed out my boards. I'm
3 not allowed to get any more boards exams. Most doctors
4 get one or two boards, but I have four. So I'm maxed out.
5 I can't get any more boards.

6 So basically, now I work as an anatomical
7 pathologist, clinical pathologist, forensic pathologist
8 and as a pseudo pathologist in my practice. I do many
9 different things.

10 Q. And on your day to day basis with your job is there
11 any one area that you focus on more than the rest?

12 A. Basically, I split things up. I do pretty much
13 everything cause I'm boarded in everything, so I can do
14 everything. And one of the things that I do do a lot of
15 is I do a lot of forensic pathology. I do approximately
16 250 autopsies a year I perform on my own.

17 Q. And have you appeared in a Court such as this before
18 and been certified as an expert in any of your areas of
19 expertise?

20 A. Yes, I have.

21 Q. And how many times would you estimate that to be?

22 A. Between 15 and 20 times.

23 Q. Okay?

24 MR. FOARD: Your Honor, at this time we would offer
25 Dr. Marcus as an expert in forensic pathology as well as

1 any of the other areas that he's spoken of, but I'm
2 specifically focusing on forensic pathology.

3 THE COURT: Is there objection or questions for the
4 witness only on expertise.

5 MR. SECOR: Not regarding expertise as a forensic
6 pathologist.

7 THE COURT: Without objection it is so ordered. You
8 made proceed.

9 MR. FOARD: Thank you, Your Honor.

10 BY MR. FOARD:

11 Q. Before we get into the meat of this if you could just
12 give us a brief explanation -- I think everyone's heard of
13 an autopsy before, but what is an autopsy and how do you
14 perform an autopsy?

15 A. Okay. So basically an autopsy, somebody that dies
16 suddenly and unexpectedly, okay. Every State is
17 different. In South Carolina it's the Coroner's System.
18 The Coroner is in charge of investigating anybody that
19 suddenly and expectedly dies. The Coroner notified if
20 there is a sudden, unexpected death that occurs in the
21 County. And he or she decides whether an autopsy is to be
22 ordered or not.

23 And -- so they, therefore -- there are several
24 pathology groups in the State that are all private.
25 Everything is private in the State that performs the

1 autopsies. So and autopsy, basically, is the pathologist
2 does -- performs a dissection of the body to determine the
3 cause of death, okay. A cause of death is defined as the
4 disease or injury that brings about death. So for
5 example, death, complications of metastatic breast cancer.
6 Someone dies with breast cancer. That's the cause of
7 death statement that I would write.

8 Or for instance, gunshot wound to head. That's a
9 cause of death statement. That's an injury that brings
10 about death. That's a -- basically something you would
11 see on a death certificate. Those are cause of death
12 statements.

13 In addition to that on a death certificate the
14 forensic pathology is able to determine the manner of
15 death. The manner of death is defined as the circumstance
16 surrounding death.

17 And in South Carolina there are five manners of
18 death: Homicide, death at the hands of another person;
19 Suicide, taking of one's own life; Accident, you know, car
20 wrecks, unintentional; Nature, which are deaths through --
21 exclusively due to disease. I gave you that example.
22 Complications of metastatic breast cancer or sometimes you
23 just don't know, undetermined.

24 A body is found decomposing out in the woods with
25 partial skeletonized remains. And you just don't know.

1 You don't know the cause of death because the body
2 decomposed and you just don't know how they got there.
3 You don't know who it is, undetermined.

4 And about a couple percentage -- about 2 percent of
5 cases fall in that category. You just don't know. So
6 that's my job, determine cause and manner of death. Okay,
7 that's my job, and I do that by examining the body.
8 Examining the body, looking at the fluids, sending the
9 toxicology testing off, having toxicology run. Sometimes
10 death is from drug overdoses and so forth. Like that.

11 So that is my job. And I report my finding back to
12 the Coroner in a report.

13 Q. All right. And let's turn our attention, now, to the
14 case at hand. Did you have the opportunity to somehow
15 become involved in the examination Bellany Clyburn?

16 A. I did. I did have the opportunity to examine Ms.
17 Clyburn. Yes.

18 Q. All right.

19 MR. FOARD: Your Honor, may I approach?

20 THE COURT: You may.

21 BY MR. FOARD:

22 Q. Dr. Marcus, I've handed you what been previously mark
23 for identification purposes as State's Exhibit 16. Can
24 you review that and tell the jury what this is?

25 A. Okay. This is an autopsy report. This autopsy

1 report was performed in Newberry Pathology Associates back
2 in 2010. Dr. Ross is the owner of Newberry Pathology, out
3 of Newberry, South Carolina. She needed some help with
4 doing forensic cases, and at the time I had worked there
5 doing moonlighting when I was a resident at M.U.S.C.
6 helping Dr. Joel Sexton out.

7 And since I moved to Columbia I was eager and I
8 wanted to help her out on weekends and so forth doing
9 autopsies. So at that time I was working for both
10 practices. I was working mainly at my, Professional
11 Pathology Services, but also working out at Newberry
12 helping her out when she couldn't work and she needed some
13 time off.

14 Q. So this was like a contract position?

15 A. That's exactly what it was, a contract position and I
16 was just helping her out.

17 Q. And did you prepare this report?

18 A. I did.

19 Q. All right.

20 MR. FOARD: Your Honor, at this time we would move to
21 have State's Exhibit 16 entered into evidence.

22 MR. SECOR: No objection, Your Honor.

23 THE COURT: Without objection 16 in evidence for the
24 State.

25 MR. FOARD: Thank you.

1 (WHEREUPON, State's Exhibit No. 16 was admitted into
2 evidence.)

3 BY MR. FOARD:

4 Q. I believe that you have a copy of this as well for
5 your reference?

6 A. I do.

7 Q. Okay. All right. If you could please tell the jury
8 what your findings and your diagnoses were regarding the
9 death of Bellany Clyburn?

10 A. Okay. So I'm notified of this autopsy, and I
11 performed the autopsy on January 2nd 2010. Started the
12 autopsy at 8:30 in the morning at Newberry County Memorial
13 Hospital. Chesterfield County Coroner ordered the
14 autopsy.

15 So Miss Clyburn was brought to us, and basically,
16 what we do when an autopsy the first thing we do is
17 examine the external body, the way the body arrives. So
18 immediately I noticed on her external body that she had
19 multiple injuries that looked like stab wounds to her
20 body. So what we did then was we x-rayed her body. We
21 x-rayed her body from head to toe from where I saw her
22 injuries. Her injuries, from her head down to, I believe,
23 her torso area.

24 I x-rayed her body because sometimes stab wounds can
25 look like bullet wounds and so forth. And sometimes when

1 you have stab wounds and so forth the blade of the knife
2 can sometimes break off in the body. So that's a metal
3 object that will be picked up on in x-rays. So that why I
4 always x-ray the body to know where, if there is evidence
5 in the body, I don't miss it at autopsy.

6 Q. Was there any evidence in the body in this case?

7 A. No, there was not. There was not. I did not find
8 anything. So, again, I x-rayed the body. Then we just
9 basically, myself and my autopsy assistant, we basically
10 went through the whole entire body and we did an entire
11 external exam documenting all the injuries, diagraming
12 them, taking some photos of them.

13 And examined the entire external body of all the
14 injuries, labeling all of the sharp force injuries that we
15 found in the body on her. We did all that. That took
16 some time. And then from that point onward, after we did
17 all that then we did an internal examination of the body
18 and traced out all the wounds internally before we, you
19 know what I mean. Just after the external we went inside
20 to see where all the wounds went and so forth like that.
21 And what organs where perforated and so forth like that.

22 Q. All right. And I hate to interrupt you, but there is
23 one thing that I'd like to address with you quickly. If I
24 could draw your attention on the exhibit. Up near the top
25 of the page there is a date noted for injury and a date

1 noted for death.

2 A. Oh, that's just a typographical error.

3 Q. If you could tell the jury what the injured date is
4 listed on the report?

5 A. It should be 10/10/2010. That should be 01/01/2010.

6 Q. So that's just an inversion of numbers.

7 A. Yes, that's an inversion of numbers.

8 Q. All right. That's all I wanted to address. If you
9 could continue with your examination and what your
10 findings were?

11 A. So my autopsy findings, what I found on Miss Clyburn
12 was that she had at least 39 sharp force injuries that
13 were identified in the body. And sharp force injuries I
14 define them as stab wounds or an incise wound. A stab
15 wound is a wound in the body that is -- that is deeper
16 than it is long, okay. That's what I define as a stab
17 wound.

18 An incise would think of that as being like a cut.
19 Longer than is it deep, okay. All caused by something
20 sharp such as a knife.

21 Q. And you say there were 39 of these wounds?

22 A. At least.

23 Q. At least.

24 A. At least 39.

25 Q. And where are they located throughout the body? Not

1 specifically per wound, but if you could tell us
2 generally?

3 A. Ms. Clyburn has wounds from the top of her head, to
4 her face, to her chest, on her back. She has them on her
5 right forearm, her right -- some of her right fingers.
6 Excuse me. Yes, some of her left fingers, her left
7 fingers. Not her right fingers, but left fingers, her
8 right arm, the back of her right arm, one on the back of
9 her left arm. That's pretty much. None on her abdomen at
10 all. And some on her neck. Two on her neck.

11 Q. So it's a fair characterization that all of the
12 wounds are from the waist up with the exception of the
13 ones on the upper extremities?

14 A. That's a fair characterization, yes.

15 Q. And specifically speaking to your diagnosis of death
16 can you tell the jury what is the manner of death? What
17 is your finding of manner of death in this case?

18 A. The manner of death in this one based on the
19 information that I got and the autopsy findings is that
20 she died of a homicide.

21 Q. And what specifically would the cause of death be?

22 A. She basically sustains multiple stab wounds, but one
23 stab wound actually went into her heart, went into her
24 heart and she bled to death. Bled into her heart and her
25 heart opened up, and the blood keeps the heart pumping.

1 The blood came out of her heart and she bled to death.

2 Q. And let's talk specifically about that wound for just
3 a moment. Is that specific wound noted in your report?

4 A. It is. It is:

5 Q. Can you tell us where that would be in the autopsy
6 report?

7 A. That wound I put as being right around in this area
8 right here. I listed it as Wound Number 19. Again,
9 that's labeled for descriptive purposes only. Not in the
10 order in which it was received. Just descriptive purposes
11 only it's in this region right around here.

12 Q. Okay. And earlier you talked about stab wound versus
13 incise wound. I believe you said a stab wound is deeper
14 than it is wide?

15 A. Long.

16 Q. Long, excuse me?

17 A. Long.

18 Q. So is this characterized as a stab or an incise
19 wound?

20 A. Wound Number 19, that one I characterized as a stab
21 wound.

22 Q. Okay. And so I take it that you took measurements
23 of this specific wound?

24 A. I did. I did. Yes.

25 Q. As well as all the wounds ---

1 A. That's correct.

2 Q. --- on the body. Okay. So you're -- again, your
3 findings would be that what you labeled as Wound Number
4 19, not order just for identification purposes, would
5 actually be a fatal wound?

6 A. That's correct.

7 Q. All right. Are there anything -- is there anything
8 else about any of these wounds in particular that gives
9 meaning to you as a forensic pathology as to what was
10 going on at the time of this attack?

11 A. I believe that Ms. Clyburn in this case was involved
12 in some sort of a struggle because of on her forearm, on
13 her right forearm and on left hand, she had a very
14 characteristic what I call or any forensic pathologist
15 calls defensive wounds.

16 Q. Defensive wounds?

17 A. Defensive wounds.

18 Q. And if you would just go through those wounds and be
19 a little bit more specific about it.

20 A. Well, if on her thumb area right around here she's
21 got a wound, and then on her fingers right around here she
22 has several incise wounds here. And to me that could be
23 from -- those wounds could be from if a knife was coming
24 at you trying to grab the knife. If a knife was coming at
25 you or some sort of sharp object was coming at you you

1 grabbed it. That wound would be consistent with that in
2 my opinion.

3 In addition to that on her right forearm she had
4 several sharp force injuries which again if something is
5 coming at somebody and they're conscious you try to block
6 the blow and so forth like that.

7 If you're conscious, in general, most people would
8 put an arm up or something to block somethings. And she
9 had some wounds right here on her arm, and those are
10 considered defense wounds.

11 Q. Regarding the total amount of wounds on her body, and
12 if you don't know the answer and need to review your
13 report please take your time and do it. Can you tell us
14 how many you identified as stab wounds versus how many you
15 identified as incise wounds?

16 A. I can. I counted them all, and I have 18 incise
17 wound, and 21 stab wounds.

18 Q. All right. But from a -- from a non -- from a
19 layman's standpoint, I'm not a medical professional, the
20 only real difference then would be basically the depth of
21 the wound. That's the major difference between the two?

22 A. Yeah. Pretty much. Some went -- yeah, the
23 difference is a sharp object went into the body whereas in
24 the incise wound a sharp object was scraped across the
25 body. That's the difference, okay. That's the difference

1 here in the wound.

2 Q. All right.

3 MR. FOARD: Beg the Court's indulgence just one
4 moment.

5 BY MR. FOARD:

6 Q. Dr. Marcus, I'm handing you what's been previously
7 entered into evidence as State's Exhibits One and Two.
8 Would you look at those, please.

9 A. Okay. I'm looking at them.

10 Q. All right. And those have previously been entered as
11 weapons in this case. Can you tell us whether the wounds
12 that you noticed and identified on Bellany Clyburn's body
13 are consistent we those two weapons?

14 A. The wounds inflicted on her body can be consistent
15 with either of these weapons in my opinion. Either of
16 these weapons.

17 Q. You've never reviewed those until just now; is that
18 correct?

19 A. I haven't looked at them, no, until right now.

20 Q. All right. And is it normal that you don't get a
21 weapon as part of an autopsy procedure?

22 A. I usually never get one because it goes to the crime
23 scene people. It doesn't come with the body to the
24 autopsy. It just goes to S.L.E.D. or wherever cause it
25 gets processed for fingerprints and so forth.

1 Q. All right. And if could draw your attention back to
2 the autopsy report for just a minute. On Page One I
3 believe you covered Item Number One in final neuropathic
4 diagnosis, cardiac perforation. If you could discuss
5 Number Two for us?

6 A. Okay. So she's also got, again; upper left lung lobe
7 perforation due to a stab wound to the left chest. So the
8 lung is perforated also, so she's been bleeding from that
9 also. So you know she's got those things. Those are two
10 major injuries, but in my opinion the heart perforation is
11 what really killed her. You know, certainly, that's
12 Number Two contributed.

13 Q. Okay?

14 A. But in addition the other wounds also contributed.

15 Q. But either one of them could have been fatal?

16 A. Either of them could have been fatal, but in my
17 opinion because the heart and you're under high pressure in
18 the heart, the heart is pumping blood every time that
19 heart beats. And if she was in a struggle that heart
20 would be racing cause the epinephrine pumping through her
21 body that heart is going to be pouring blood out of it.
22 Every time it pumps that wound is going to open and blood
23 dumps out of it.

24 You know, think of a garden hose. It literally dumps
25 right out of it.

1 MR. FOARD: Beg the Court's indulgence. Thank you,
2 Your Honor. No further questions at this time.

3 THE COURT: Cross-examination.

4 MR. SECOR: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. SECOR:

7 Q. How are you doing, Doctor?

8 A. Good.. How are you, sir.

9 Q. I'm doing well. Did you drive the King Ranch up here
10 today?

11 A. Yes, sir.

12 Q. That was a nicer ride than I was in. All right. I
13 don't have too much to ask you, but I want to see if you
14 can help me out with a couple of things?

15 A. No problem, sir.

16 Q. You were sort of describing the process that occurs
17 in South Carolina when somebody dies. I think the terms
18 you used were 'suddenly' and 'unexpectedly'; is that
19 right?

20 A. Yes.

21 Q. Am I right in assuming that when the body of somebody
22 that's died in that manner is brought to you it's brought
23 to you because there is some possibility that they were
24 involved in the crime or a crime was committed upon them;
25 is that right?

- 1 A. That's possible. Again, yeah, that's up to the
2 coroner. Yeah, that's absolutely true. Yes.
- 3 Q. But that's sort of the whole essence of what you're
4 doing, right, is trying to determine the cause of death?
- 5 A. That is correct.
- 6 Q. And rule out or run in nature death, right?
- 7 A. That's correct.
- 8 Q. Rule in or rule out homicide, right?
- 9 A. Yes.
- 10 Q. And it's a pretty lengthy process it seems like that
11 you go through in order to look after everything that you
12 possible can; is that right?
- 13 A. Yes.
- 14 Q. And how much pages is the report that you put
15 together, all together? Do you know?
- 16 A. Yes, I do. Our report -- this report was -- looks
17 like it was 11 -- my written report was 11 pages.
- 18 Q. Okay. And then you've got some pages with diagrams,
19 correct?
- 20 A. I've have pages of diagrams that are also in here.
21 Yes.
- 22 Q. Okay. And then there are some charts as well that
23 itemize the different wounds; is that correct?
- 24 A. That's right. There are some charts in here. Yes,
25 there are charts that we do.

- 1 Q. So there were 20 pages, correct, all total?
- 2 A. I would guess so, yes, if I counted everything up.
- 3 Q. And the 11 page written report, I mean these are
- 4 single spaced, full pages of type?
- 5 A. Yes, they're single spaced. Yes.
- 6 Q. I mean it's a great deal of information?
- 7 A. Yes, it's a great deal. Yes.
- 8 Q. And the diagrams that you put together of Ms.
- 9 Clyburn's body that show every single injury that she has
- 10 on her body, don't they?
- 11 A. They should detect every injury, yes.
- 12 Q. To the best that you possible could on a diagram?
- 13 A. That is correct, yes.
- 14 Q. And then in your written report you have a detailed
- 15 explanation of every single injury that she had on her
- 16 body, correct?
- 17 A. That's true. Yes.
- 18 Q. And you also detailed other significant marks on her
- 19 body including tattoos, correct?
- 20 A. That is correct.
- 21 Q. And you even detailed what those tattoos said or were
- 22 of, correct?
- 23 A. That is correct.
- 24 Q. And then on the diagrams of her body you showed where
- 25 those tattoos were, right?

1 A. It looks like I did, yes.

2 Q. Yeah. And then you showed where they were on her
3 body. Then you drew and line out to the side of her body
4 and said what that tattoo said, right?

5 A. That is correct.

6 Q. And that's because you wanted to do an extremely
7 thorough job of this investigation that you were doing,
8 right?

9 A. That is correct.

10 Q. And that's because in order to make a determination
11 that you could rely on and that the police could rely on
12 and that we as a society could rely on you have to do a
13 thorough investigation so that when you come forward with
14 your opinion you can be comforted in it, right?

15 A. Yes.

16 Q. And we can be comforted in it?

17 A. Yes?

18 Q. And people who have to make decision based on your
19 investigation can be comforted in the decision that they
20 make, right?

21 A. Yes.

22 Q. And you did that in this case, right, thoroughly?

23 A. Yes.

24 Q. And you're proud of the job you did, right?

25 A. I am.

1 Q. Okay. I think that when you were talking to the
2 prosecutor you mentioned that Ms. Clyburn had several
3 injuries to her left hand, right?

4 A. Yes, sir.

5 Q. And you were talking about how those wounds in your
6 estimation were consistent with somebody grabbing a knife
7 blade, correct?

8 A. That's true, yes.

9 Q. And grabbing a knife blade that was potentially
10 coming at them in a homicidal assault, right?

11 A. That's correct.

12 Q. But those wounds that you described in that manner
13 wouldn't be any different from the wounds that were
14 inflicted upon somebody who was trying to get a knife away
15 any somebody else, right?

16 A. No, it would be very similar.

17 Q. Because it could be, basically, the same situation,
18 right? It could be an attack or it could be somebody
19 trying to take a knife away from somebody?

20 A. It could be; that's correct.

21 Q. And the examination that you did there is no way that
22 your expertise can tell the difference between those two
23 things, right.

24 A. There is no way I can tell. That's absolutely
25 correct. I would not be able to tell that.

1 Q. And when you do an examination you were not given a
2 great deal of information about what apparently occurred
3 to this person, right?

4 A. No. No, I'm not. No, I'm not. I'm given --
5 sometimes I'm not. Sometimes I am. Sometimes I'm not.

6 Q. Right.

7 A. It's just the way the system is.

8 Q. I understand. I understand. But you're left to our
9 own devices to sort of come up with what happened?

10 A. The body tells the story in my experience. I've been
11 doing this -- you know, I've done 2,000 autopsies or so.
12 The body speaks in my opinion.

13 Q. I was actually thinking about that when you were
14 talking. I don't know where it came from, but there's
15 that -- maybe it's from a movie. Something that phrase,
16 'Dead men tell to tales'. Have you heard that before?

17 A. I have heard that.

18 Q. But it's ridiculous, right?

19 A. Um hum.

20 Q. Because from your perspective somebody the body of
21 somebody whose died can tell a lot of information about
22 what happened?

23 A. It can. It's amazing that I know, and I say a nature
24 death comes in, and I know -- I can tell right away -- I
25 can tell right away and say I'm not going to find a cause

1 of death in this person. There is going to be a problem.
2 It's going to be a problem in this case. I can tell. I
3 just know. You know, like I said I just know. It's a
4 feeling that I get.

5 Q. But you can? A lot of times you can?

6 A. Yes.

7 Q. And you can through thorough, in depth investigation

8 ---

9 A. Yes.

10 Q. --- that you conduct?

11 A. Yes, sir.

12 Q. For instance, in this case, and that is just
13 observe -- a sort of hypothetical. But in this case if
14 Miss Clyburn's body was brought to you you would have
15 said, "She was shot to death". After your examination you
16 will be able to say, "Oh, well, that's not true, right?"

17 A. Absolutely.

18 Q. Very confidently?

19 A. Absolutely.

20 Q. Because of the thoroughness of the investigation that
21 you did -- that you did of this woman's body, right?

22 A. Yes.

23 Q. And I think when Boyd and I came by to see you
24 several months ago we were talking about wounds on
25 people's hands, right? And I believe my recollection

1 would be that you said that in your professional expert
2 opinion that wounds on people's hand are categorically
3 defensive wounds, correct?

4 A. Correct.

5 Q. Okay.

6 MR. SECOR: If I can have just a second, Your Honor.

7 BY MR. SECOR:

8 Q. Just one last question. Do you have any familiarity
9 with the drug Toradol?

10 A. No, I don't. I'm not familiar with that.

11 Q. Okay. No big deal. Thank you, Doctor. I appreciate
12 it.

13 THE COURT: Is there redirect.

14 MR. FOARD: Beg the Court's indulgence just a moment,
15 Your Honor. Yes, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. FOARD:

18 Q. Doctor, briefly, in this case did you have the
19 opportunity to review any toxicology reports related to
20 the victim?

21 A. Yes, I did.

22 Q. Okay. And were those samples that were analyzed,
23 were they taken by you?

24 A. They were, yes.

25 Q. As part of the autopsy process?

1 A. Yes, they were.

2 Q. All right. And upon your review of that report can
3 you tell us what the finding were regarding any toxicology
4 reports that were done?

5 A. Yes. We procured iliac vein blood from Ms. Clyburn,
6 and we sent it to S.L.E.D. for toxicology analysis and it
7 came back completely negative for alcohol, all drugs
8 recreational abuse, zero, nothing, no drugs on their panel
9 they test for.

10 Q. So Ms. Clyburn, to put it in layman's terms, was
11 completely and totally clean, free of anything in her
12 system?

13 A. Yes, sir.

14 Q. Alcohol, illicit drugs or prescription drugs?

15 A. Yes.

16 Q. Thank you.

17 MR. FOARD: No further questions.

18 THE COURT: All right. Do you want to address that
19 issue?

20 MR. SECOR: No, sir.

21 COLLOQUY

22 THE COURT: Very good. Any objection to the release
23 of the witness? Hearing none, sir, you're free to leave.
24 Have a good day. All right, ladies and gentlemen, let's
25 take our morning break now before we take our next

1 witness, and we'll let you return to the room. And if you
2 wish to go outside and take your break we'll give you that
3 opportunity, and we'll remain where we are while you
4 return to the jury room. Please enjoy your break

5 (WHEREUPON, the jury panel was excused from the
6 courtroom at 10:41 a.m.)

7 THE COURT: All right. Ladies and gentlemen, Court
8 in recess approximately 15 minutes.

9 (WHEREUPON, Court was in recess at 10:41 a.m. and
10 reconvened at 11:01 a.m.)

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

13 THE COURT: Counsel, I'm told there maybe an issue in
14 the next witness' testimony that would involve either
15 potential for Lyle evidence or a extrinsic evidence.
16 Counsel, tell me what it is that you propose to do with
17 the next witness.

18 MR. REDMOND: Yes, Your Honor. May it please the
19 Court. There was a -- there was two documents. One I
20 think I gave the Defense the copy of the restraining order
21 that has been marked as -- I think that's State's Exhibit
22 20.

23 MR. SECOR: It is.

24 MR. REDMOND: That has been marked, and we just
25 marked State's Exhibit 106. State's Exhibit 20 is the

1 actual copy -- certified true copy from the Clerk of Court
2 that was filed in Family Court regarding the petition
3 and the summons for an order of protection signed by the
4 victim, Miss Clyburn, on the 29th of December. And then
5 State's Exhibit 106 is a copy of a warrant for trespassing
6 that was taken out by the victim with the Town of Pageland
7 on the 29th of -- oh, I'm sorry. On the 27th of December
8 of 2009.

9 The trespassing was actually referenced in the
10 Defendant's statement, in the video statement, in the
11 context of paper that that he supposedly found out about,
12 I think through his wife, they were looking for him. So
13 he was using that to explain to his activity or his
14 actions when the police arrived at the complex in Pageland
15 that night while he was at the location, so he says. So
16 that would be the issue on the trespassing.

17 The order of protection, Your Honor, we would contend
18 is admissible because of the fact that the Defense, again,
19 and not going to go through the whole argument I made
20 yesterday, but self-defense has been put out there where
21 the defendant was acting in self-defense.

22 This incident occurred in the victim's apartment.
23 Our argument is it goes to her state of mind, part of the
24 res gestae of this entire incident goes to the victim's
25 state of mind as it relates to assuming that what the

1 Defendant says in this statement is true it would explain
2 why there was trepidation on the part of the victim with
3 the Defendant showing up at her residence in the fashion
4 that he described on that morning.

5 THE COURT: All right. Thank you. Is there -- will
6 there be objection if those documents are offered?

7 MR. SECOR: Yes, Your Honor. And, specifically, my
8 understanding of Mr. Redmond's argument is that it's being
9 offered in rebuttal, but again, I would just point out
10 that the video recording of Mr. Stewart's statement to law
11 enforcement was State's evidence. It's not evidence
12 offered by us, and the suggestion that they are allowed to
13 admit evidence and then admit further evidence to rebut
14 their own evidence I think doesn't make a lot of logical
15 sense.

16 I mean the whole concept of rebuttal is you get to do
17 something in response to the other side's admission of a
18 document. And, I mean, I'm having a hard time
19 understanding, pursuant to Rule 404, how it could come in
20 because the question to be answered by 404 and Lyle is
21 what does the prior conduct the State is seeking to
22 introduce, what does it prove. And there has to be a
23 delineated what I call deceptions to allow that in.

24 And I have not heard one that in my reading of the
25 rule on Lyle is permissible under rule 404.

1 THE COURT: All right. Anything further? Just one
2 moment. This is the Court's ruling in regard to the
3 issue. I'm going to permit into evidence the fact that
4 there was existence of these documents in place at the
5 time that this event occurred.

6 Now, what actions brought them about or who may have
7 been involved in causing the issuance of an order of
8 protection or the issuance of a warrant or what the
9 incident that happened was the Court is not going to
10 permit that because I believe that goes beyond the --
11 first of all, beyond what's necessary if you wish to have
12 it in evidence for the state of mind of the Defendant.

13 But, also, that evidence would be more appropriately
14 rebuttal after we hear if there is a self-defense position
15 taken in the case. I find that, really, the existence of
16 those documents goes not only to the state of mind of the
17 Defendant, but the state of mind and intent of the
18 Defendant is a necessary part of the State's proof. And
19 for those reasons the Court will permit the -- in -- the
20 only the existence of those documents in evidence through
21 this next witness. That's the ruling, and are we ready
22 now to bring the jury?

23 MR. REDMOND: Yes, Your Honor. Just I wanted to say
24 that we are going to do it to just not introduce it. I've
25 got them marked for identification purposes. I show it to

1 the witness. We're not moving to admit them in evidence
2 at this time depending on what he says.

3 THE COURT: Very good.

4 MR. REDMOND: Thank you, Your Honor.

5 THE COURT: Then you may proceed in that fashion.
6 Please bring in the jury.

7 MR. SECOR: Your Honor, could you please note my
8 exception to the ruling?

9 THE COURT: Exception noted.

10 (WHEREUPON, the jury panel enters the courtroom at
11 11:07 a.m.)

12 THE COURT: All right. Welcome back, ladies and
13 gentlemen, and please call your next witness.

14 MR. REDMOND: Thank you, Your Honor. May it please
15 the Court. The State next calls Chief Brown Larry.

16 LARRY BROWN, after being duly sworn, testified
17 as follows:

18 MR. REDMOND: May it please the Court, Your Honor?

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION

21 BY MR. REDMOND:

22 Q. Chief Brown?

23 A. Yes, sir.

24 Q. I gave it away, but by whom are you employed?

25 A. By the Town of Pageland in the capacity of the Police

1 Department?

2 Q. Okay. And what is your position with the chief --
3 with the Police Department?

4 A. Chief of Police.

5 Q. Chief of Police. And how long have you been in that
6 capacity?

7 A. Approximately three Years in April.

8 Q. Okay. And could I ask you if you could go into -- if
9 you either speak into the microphone so we can hear you
10 right here where the jury can hear you right here. This
11 juror right here at the end can hear what you're saying,
12 please. And at the time of this incident, January 1st
13 2010, were you employed with the Pageland Police
14 Department?

15 A. Yes, I was.

16 Q. And in what capacity?

17 A. As the Assistant Chief at that time.

18 Q. You were Assistant Chief at that time. And were you
19 involved in the investigation -- of the investigation of
20 Bellany Clyburn?

21 A. Yes, I was.

22 Q. Okay. Now, and on that particular day, January 1st
23 2010, tell the ladies and gentlemen of the jury how you
24 became aware of the incident occurring at the Pageland
25 Place Apartments?

1 A. I was off at home. I got a phone call from dispatch
2 saying that they needed my assistance. Captain at the
3 time was Officer Francis, Sergeant Francis, at the time to
4 assist him. And Officer Melton with a stabbing that just
5 occurred at Pageland Apartments on Bellany Clyburn.

6 Q. Okay. And did you in fact go to the scene?

7 A. Yes, I did.

8 Q. Okay. And once you got to the scene just briefly
9 tell us your observations of the scene?

10 A. When I got there E.M.S. was performing some medical
11 tests on Ms. Clyburn and ---

12 Q. Take your time.

13 A. She was barely breathing at that time. And I
14 assisted Captain Francis at the time with taping of the
15 crime scene and all that stuff. And there were a lot of
16 people out there. And E.M.S. with the trucks, and we had
17 called Sergeant Newman to assist us out. And she was
18 laying on the ground.

19 Q. Could I get you to speak up?

20 A. I know she was laying on the ground, and they were
21 performing medical attention to her and ---

22 Q. Okay. Could you repeat the last thing, please?

23 A. Performing medical testing on her. Medical testing
24 to the victim, Ms. Bellany Clyburn. And we immediately
25 tried to get the people back cause they were trying to

1 talk to us. And we were trying to get things under
2 control. And they were telling us about Mr. Thomas
3 Stewart and he got a white Suburban and took off. And one
4 of the guys threw a rock at his window and his window
5 busted. And we were looking for him, and they put her on
6 the stretcher and put her on the ambulance. And by that
7 time her grandmother pulled up.

8 Q. You know this family?

9 A. Yes.

10 Q. Bellany and her family, don't you?

11 A. Yes.

12 Q. Pageland is a small town. And in fact you've lived
13 in Pageland your whole life I believe; is that correct?

14 A. Yes. Any way, then Joe Carnes came on the radio
15 saying that he had the suspect in Piggs Park. At that
16 time I called Mikkos Newman on the radio to go to Piggs
17 Park to see Joe Carnes because he didn't know what kind of
18 weapon he had in his possession.

19 And Joe Carnes said he was a suspect was coughing or
20 something. He was pepper sprayed, and he said he was
21 going to wash them of something to that effect. And I
22 told him not to wash them -- don't wash his face cause we
23 have to preserve everything. I didn't know what condition
24 he was in at the time. And Mikkos said he had in custody.
25 Said he was going to transport him to the police.state.

1 After I left the scene i called S.L.E.D. headquarters
2 for assistance for criminal investigator and crime scene
3 to preserve the scene because I had the feeling she wasn't
4 going to make it.

5 Q. Now, let me ask you this. And if you need to take
6 some time, please do. But, you said that you called
7 S.L.E.D. Were you present when S.L.E.D. arrived to the
8 scene?

9 A. Well, yeah, cause the police department -- I went to
10 the police department first and then when and we had
11 communication contact with cell phones. And I met them
12 back down to the scene when they arrived.

13 Q. Okay. So you went back to the police department and
14 then at some point back out to the scene?

15 A. Yes.

16 Q. Now, let's actually talk about the police department.
17 Did you have the opportunity to encounter and question the
18 Defendant with regards to the events leading to the death
19 of Bellany Clyburn?

20 A. Yes.

21 Q. Okay. Was that reflected in the videotape that we
22 saw yesterday?

23 A. Yes.

24 Q. Now, when you were at the police department, we see
25 it on the video, you had the chance to question him. Did,

1 in your words, what would you say the demeanor of Mr.
2 Stewart was during the time that he was at the police
3 department leading up to and during his interview?

4 MR. SECOR: Objection.

5 BY MR. REDMOND:

6 Q. Just the demeanor.

7 THE COURT: On what basis?

8 MR. SECOR: Relevance, speculative, 403.

9 THE COURT: Just a moment. Overruled.

10 MR. REDMOND: Thank you, Your Honor.

11 THE COURT: You may proceed.

12 BY MR. REDMOND:

13 Q. And, again, we've already heard what he said, but I'm
14 asking you the demeanor as you observed? What was the
15 Defendant's demeanor?

16 A. A typical day. No shame. Like another day. No
17 remorse. Like another day. Like nothing really had
18 happened except more like maybe an assault or something.

19 Q. Okay. Now, you had the chance to, of course,
20 interview him you said, and not getting into the
21 interview. We've already heard, but did you also have the
22 opportunity to talk with other witnesses who saw
23 Miss Clyburn stabbed to death?

24 A. Yes.

25 Q. And were statements taken and in some cases videos

1 done of those particular witnesses?

2 A. Yes.

3 Q. Okay. Did you collect clothes from the Defendant?

4 A. Yes.

5 Q. Okay. And have you had did the opportunity, and I'm
6 not going to approach. I'll just show them from right
7 here to save time, but have you had the opportunity to
8 view State's Exhibit 11, 12, 13, 14 and 15 that are in
9 evidence? That being the tee shirt, the boots, the
10 undershirt, the belt and the jeans?

11 A. Yes.

12 Q. From the Defendant?

13 A. Yes.

14 Q. And you were present in Court yesterday?

15 A. Yes.

16 Q. When those items -- were those the items that you
17 collected off of the Defendant, Thomas Stewart?

18 A. Yes, they were.

19 Q. Okay. And were those transferred or given to Vicki
20 Hallman with S.L.E.D. to take there for further testing?

21 A. Yes. Done the same date.

22 Q. Okay. If I may approach the witness at this time
23 with what's been marked as State's Exhibit Number Nine.
24 Did you take a buccal swab from the Defendant at the
25 police department that day? Let me back up? Were you

1 present when the buccal swab was taken? That's what I
2 meant to say?

3 A. Yes.

4 Q. Okay. And was that taken by Agent Vicki Hallman --
5 Senior Agent Vicki Hallman?

6 A. Yes, it was.

7 Q. Okay. Last thing for right now. If I could approach
8 with what's been marked as State's Exhibit Number Seven.
9 Have you had the chance to see the video -- specifically,
10 I'm asking you about the video statements of J.D. ,
11 the son of Bellany Clyburn and K.S. , son of
12 Bellany Clyburn and the Defendant. Have you had the
13 chance to review that particular statement that they gave?

14 A. Yes.

15 Q. And were you present at the time that those
16 statements were given?

17 A. No.

18 Q. Were you present at the time their statements were
19 given? I'm sorry.

20 A. No. I was with the S.L.E.D. agent then.

21 Q. But, you have had the chance to view them?

22 A. Yes.

23 Q. And they were kept in accordance with Pageland Police
24 Department policy?

25 A. Yes.

1 Q. Okay.

2 MR. REDMOND: And it's already been stipulated to, so
3 at the appropriate time, not right now, I'd like to
4 publish the video interview of K.S. and J.D.

5 later during the course of the day?

6 THE COURT: So noted.

7 MR. REDMOND: Thank you.

8 BY MR. REDMOND:

9 Q. And just out of an abandon of precaution I would like
10 actually move to introduce State's Seven, the portions
11 regarding the statements of the victim -- of the
12 witnesses, K.S. and J.D. ?

13 MR. SECOR: Your Honor, I would.

14 MR. REDMOND: Pursuant to stipulation that was ---

15 MR. SECOR: Correct, and at some point in time I
16 would ask the Court to inform, ladies and gentlemen of the
17 jury, you may have heard the stipulation.

18 THE COURT: All right. We'll do that, and we believe
19 Seven is already in evidence according to the our records.

20 MR. REDMOND: I apologize, Your Honor.

21 THE COURT: Seven in evidence already.

22 MR. SECOR: Seven is -- there are a number of videos
23 on Seven, and I didn't know if they were introducing.

24 MR. REDMOND: No, just the two.

25 THE COURT: Very good.

1 BY MR. REDMOND:

2 Q. Now, I showed you State's Exhibit. I forgot to ask
3 you but I showed you the buccal swabs, State's Exhibit
4 Number Nine, I believe that was. In February of 2011 did
5 you return that exhibit to S.L.E.D? In other words you
6 heard testimony it was brought back from S.L.E.D. Were
7 you asked to return that exhibit to S.L.E.D. for further
8 tests?

9 A. Yes.

10 Q. And that was the swab from the Defendant?

11 A. Yes.

12 Q. And did you when you got to S.L.E.D. deposit it
13 pursuant to standard operating procedures?

14 A. Yes, sir.

15 Q. Now, with permission to approach the witness, I'm
16 going to show you what's been marked as State's Exhibits
17 Number 20 and 106. And ask you if you recognize those
18 particular exhibits. And these are for I.D. only. We are
19 not seeking to admit those?

20 A. Yes.

21 Q. Okay. Had you -- well, let me just ask you. What
22 are those items? Don't -- just what are those items that
23 I presented to you? State's Exhibit 106, what is that?

24 A. One is an arrest warrant.

25 Q. On what charge?

1 A. Trespassing signed by the deceased, Bellany Clyburn.

2 Q. On what day?

3 A. On December -- the offense occurred on December 27th.

4 Q. Okay.

5 A. She signed the warrant the December 29th on Thomas
6 Stewart.

7 Q. Okay, and ---

8 MR. SECOR: Renew my objection?

9 THE COURT: Objection noted. Overruled.

10 BY MR. REDMOND:

11 Q. State's Exhibit Number 20, what is that?

12 A. This is the Fourth Judicial Circuit Court Order of
13 Protection signed by Bellany Clyburn against Thomas
14 Stewart on December 28th at 2:30 p.m.

15 Q. And were you aware of both of those documents at the
16 time of Ms. Clyburn's death?

17 A. Yes, sir. May I correct myself. It was signed on
18 December 29th. The Court hearing would have been
19 January 6th.

20 MR. SECOR: Your Honor, I renew my objection to that
21 document as well.

22 THE COURT: So noted. Overruled.

23 BY MR. REDMOND:

24 Q. And, again, were you aware of the existence of those
25 documents at the time?

1 A. Yes, I was aware because she brought the order of
2 protection copy by the Police Department. Of course, I
3 knew he had the warrant on him so we could have a chance
4 to serve him.

5 Q. And I think we heard in his statement that he filled
6 some paper. So when there was an elusion made that y'all
7 were attempting to find him on some papers were y'all
8 attempting to find him to serve some papers?

9 A. Yes, sir.

10 Q. And where those the papers that he was actually
11 served?

12 A. Yes.

13 Q. I have nothing further. Please answer any questions
14 the Defense may have.

15 THE COURT: And cross-examination?

16 MR. SECOR: Yes.

17 CROSS-EXAMINATION

18 BY MR. SECOR:

19 Q. Good morning?

20 A. Good morning.

21 (WHEREUPON, Defendant's Exhibit Nos. 85 THROUGH 88
22 were marked for identification only.)

23 BY MR. SECOR:

24 Q. Chief, you were the lead investigating officer on the
25 case?

1 A. Yes.

2 Q. So all of the decisions about how this investigation
3 progressed were ultimately yours?

4 A. It falls on me, but not all made by me.

5 Q. I'm sorry?

6 A. I would fall upon me, but all was not made by me.

7 Q. Okay. But you were directing this investigation?
8 And you were present when various witnesses and when
9 Thomas gave statements at the Pageland Police Department,
10 correct.

11 A. I was there when Thomas gave his statement, correct.

12 Q. Were you there when any of the other witnesses gave
13 their statement?

14 A. Some of them I were.

15 Q. I'm sorry?

16 A. Some of them I were.

17 Q. Okay. Do you remember which ones?

18 A. Not off the top of my head. Not any one of them.

19 Q. Do you remember whether you were there for the other
20 witnesses video statements or written statements?

21 A. I was there for most of the written statements. I
22 was only one video and that was Thomas Stewart.

23 Q. All right. When the witnesses were giving their
24 statements, the ones that you were there for, were all of
25 those witnesses all in the same room when they were giving

1 their statements?

2 A. No, sir.

3 Q. They were separated?

4 A. Right.

5 Q. Okay. And why was what?

6 A. They went in the same.

7 Q. I'm sorry?

8 A. They ultimately went to the same room to give the
9 statement, but prior to giving that written statement they
10 were all separated.

11 Q. So when they gave their statements they were all in
12 the same room?

13 A. No. Not what I said. Ultimately they might have
14 been in the same room. Like we use the same room to give
15 statements. Not in the same room at the same time.

16 Q. Okay. So you're saying that none of the witnesses
17 were ever in the same room together while giving a
18 statement?

19 A. No.

20 Q. That you're in agreement with what I just said?

21 A. Yeah.

22 Q. Okay. And why would you not do that? Why would you
23 not have them in the same room giving statements together?

24 A. Normally, you want to put -- you don't want to put
25 two people in the same room that seen something, and they

1 might feed off of what they said or feed off of what they
2 didn't see.

3 Q. Right. The information gets more reliable if the
4 person gives the statement by themselves, right?

5 A. Yes.

6 Q. Because they're not influenced by what somebody else
7 says, right?

8 A. Correct.

9 Q. Influenced by what they hear other people say?

10 A. Correct.

11 Q. Now, you said you were present when the video
12 recording was made of Mr. Stewart's statement, correct?

13 A. Yes, sir.

14 Q. And I assumed throughout the course of your career
15 that you've taken a lot of statements from people,
16 correct?

17 A. Yes, sir.

18 Q. From witnesses?

19 A. Yes, sir.

20 Q. From victims?

21 A. Yes, sir.

22 Q. From people charged with crimes, right?

23 A. Yes, sir.

24 Q. But when you get the statement from somebody in a
25 case you don't just take their word for it, right?

1 A. Depending on what they said.

2 Q. But I mean generally speaking when you're
3 investigating, somebody tells you something you just don't
4 say, "Well, that's definitely the truth?" You investigate
5 it, right?

6 A. Depends on what they said. What they tell you.

7 Q. So you're disagreeing with me that the whole essence
8 of police work that if you hear that there is something
9 happening or that something has happened that you go to it
10 and investigate to determine whether or not it actually
11 happened?

12 A. Some accounts,

13 Q. I mean that's a big part of what you do, right?

14 A. Some accounts we do.

15 Q. And when somebody tells you something if you want to
16 verify whether or not it's true there are a variety of
17 things that you have available to you to help you
18 determine whether or not what they told you is true,
19 right?

20 A. Sometimes.

21 Q. Because physical evidence can tell you whether
22 somebody told you the truth, right? Sometimes?

23 A. Most of the times.

24 Q. I mean if somebody accused me of holding this pen,
25 and you wanted to find out if it was true and you've got

1 this pen processed for fingerprints, my fingerprints were
2 on it. That's a pretty indication that what that other
3 person told you is true, right?

4 A. Sometimes.

5 Q. Yeah, physical evidence can tell a story, right?

6 A. Most of the times.

7 Q. Yeah, a lot of the times. That's why you collect it.
8 You don't just collect it cause you like to have a bunch
9 of stuff around?

10 A. Most of the -- a lot of time.

11 Q. Okay. And other things you can do to verify what
12 somebody tells you or even be able to disprove what
13 somebody told you cause you can look at things like phone
14 record, right?

15 A. Yes.

16 Q. If I say, well, I called Chief Brown at this time
17 somebody wants to find out if it's true they can get my
18 phone records and see if your phone number is on my call
19 log, right?

20 A. Yes.

21 Q. And that's something that you do as part of your
22 police work, is it not?

23 A. We do that.

24 Q. Right. And in this case when you took a statement
25 from Mr. Stewart he gave you a great deal of information,

1 did he not?

2 A. He said a lot in the statement.

3 Q. About the 31st of December 2009, right, that evening?

4 A. Yes.

5 Q. And he gave you a lot of information about the
6 morning of January 1st 2010, correct?

7 A. Yes.

8 Q. And if you wanted to know whether the information
9 that he gave to you about those timeframes was true or not
10 it would require you to go out and do some things, right,
11 to try to validate what he said, isn't that true?

12 A. Yes.

13 Q. Because you don't want to just take somebody's word
14 for it, right?

15 A. Yes. I think we established that already.

16 Q. Excuse me?

17 A. I think we established that already.

18 Q. But you agree with me, right?

19 A. Yeah.

20 Q. If you wanted to know whether -- what Thomas told you
21 is true you would have to go out and take some steps to go
22 out to try to validate what he told you, right, or confirm
23 it?

24 A. Yes and no. Depending on what he told me.

25 Q. All right. Well, let's talk about a couple of

1 examples then?

2 A. Okay.

3 Q. Thomas told you that on the night of December 31st
4 2009 he was at Bellany's apartment. And that he gave her
5 some money and she went to Pizza Hut, right?

6 A. Yes.

7 Q. That's something that you could have tried to
8 confirm, right.

9 A. Could have.

10 Q. Right. You could have gone to Pizza Hut and found
11 out whether or not they had a surveillance camera to see
12 if she had been there, right? That's something you do in
13 police work?

14 A. Could have.

15 Q. Right. But you didn't?

16 A. No.

17 Q. Okay. But you do know there was a Pizza Hut box
18 inside Bellany's apartment, right?

19 A. Yes.

20 Q. Okay. Thomas also told you that on that night,
21 December 31st 2009 that he was inside Bellany's apartment,
22 and that he was upstairs in the bedroom and that Bellany's
23 cousin, Crystal, came to the door, right?

24 A. Yes.

25 Q. And that's something you could have gone out to try

1 to confirm, right?

2 A. On Crystal?

3 Q. Yeah.

4 A. We did.

5 Q. I know you did, and she told you what?

6 MR. REDMOND: Your Honor, I would object. Ms.

7 Clyburn will be testifying shortly. He can't elicit.

8 THE COURT: Would be hearsay, counsel. Sustain the
9 objection.

10 BY MR. SECOR:

11 Q. So that's a step you took, right?

12 A. Yes.

13 Q. Okay. At the same time Thomas told you that there
14 were police officers in the parking lot outside Bellany's
15 apartment at the same time that Crystal was there. Did he
16 not tell you that?

17 A. Yes.

18 Q. He did. That's something that you could have
19 confirmed, right?

20 A. Yes. When he make that statement about police
21 officers could have been there that don't mean he was
22 inside her apartment.

23 Q. He didn't say they were inside her were?

24 A. That don't mean that he was inside the apartment
25 because he saw the police officers there.

1 Q. I understand that, but he said that he saw police
2 from the upstairs window, right? And if you wanted to
3 know if that was true, if you're able to confirm that the
4 police were there at that time that could give some
5 credibility to what told you, wouldn't it?

6 A. Yes and no.

7 Q. Okay. Did you do anything to find out whether or not
8 the police were outside Bellany's apartment around that
9 same timeframe?

10 A. Yeah, the police were out there to another unit,
11 another apartment.

12 Q. They were?

13 A. Yes, sir.

14 Q. Okay. When you were talking to Thomas there was long
15 conversation about where he was during sort of the very
16 early part of January 1st 2010, right? Very early
17 morning? I mean around midnight to 4:00, right?

18 A. January the 1st?

19 Q. Yeah.

20 A. Yeah.

21 Q. And he told you that he went up to North Carolina?

22 A. Right.

23 Q. And he told you exactly where he went, right?

24 A. Right.

25 Q. And what steps did you take to confirm whether or not

1 what he told you about that was true?

2 A. I didn't take any steps to try to or not because it
3 still didn't change the fact that he killed Ms. Clyburn.

4 Q. I'm sorry?

5 A. I didn't take any steps to confirm he was said that
6 day. It didn't change the fact of what he did that night
7 between 9:30 on January 1st.

8 Q. I'm not suggesting that it changes anything. I'm
9 saying, if you want to know if what somebody was telling
10 you the true you go out and investigate it, okay. Because
11 you were asking him on the tape as if you didn't believe
12 him?

13 A. As to where he was at?

14 Q. Yeah. Because he said that he made a call, and you
15 said, 'where'. And he said, 'from a pay phone,' and you
16 said, 'what pay phone? What street'. Do you remember
17 that?

18 A. Yeah.

19 Q. But you didn't go to find out whether or not any of
20 that was true?

21 A. We couldn't get a record from the pay phone.

22 Q. I'm sorry?

23 A. We couldn't get a phone record from a pay phone.

24 Q. He said that he called Bellany?

25 A. Yes. We subpoenaed her phone.

1 Q. You could have subpoenaed her phone report?

2 A. Yes, sir, we did.

3 Q. You did?

4 A. Um hum.

5 Q. Did you turn them over to the Solicitor?

6 A. We never got them from Verizon Wireless.

7 Q. So you sent a subpoena, and you never got anything
8 back and you just ignored it?

9 A. Well, we called and they said they will sent it out
10 and they never did.

11 Q. He also told you that that morning he went to the car
12 wash in Pageland, right?

13 A. Yes, he did.

14 Q. And he told you what car wash, right?

15 A. Yeah.

16 Q. Did you know the car wash he was talking about?

17 A. The one near Wendy's.

18 Q. Right. And there is one right near Wendy's, right?

19 A. Past Wendy's, yes.

20 Q. Did you do anything to find out whether or not that
21 was true?

22 A. No, I did not.

23 Q. Thomas also told you that after he had been pepper
24 sprayed when he was inside Bellany's apartment that he saw
25 somebody, a man, a black man, standing in Bellany's door

1 with something in his hands, right?

2 A. Correct.

3 Q. Did you take any steps to confirm who that person
4 was?

5 A. No. None of the witnesses seen everything. There
6 were witnesses that was at the police station said that at
7 the time they heard Bellany Clyburn screaming for her
8 life. Nobody said they seen a man trying to help Bellany
9 or fight Thomas or anything of that nature.

10 Q. Okay. You did look at the evidence that existed in
11 the white Surburban in this case that Mr. Stewart was
12 driving, did you not?

13 A. Yes.

14 Q. Okay. And you also remember when he was talking to
15 you in his videotaped statement. He said that he was
16 trying to get to his car as he was scrambling in the back
17 seat; that he heard a loud boom, right? Thought he
18 thought could have been a gunshot?

19 A. Yes.

20 Q. And when you looked at the car you saw that the
21 window of the car was smashed, did you not?

22 A. Correct.

23 Q. Okay. And you also saw inside the car that there was
24 a large yellow candle with a glass thing around it, right?

25 A. Correct.

1 Q. But you didn't collect that for evidence?

2 A. No, I did not. We had a witness to state who threw
3 the item at Thomas Stewart's vehicle.

4 Q. You just told me that you talked to a bunch of
5 witnesses and that nobody said anything about it?

6 A. No, I did not.

7 Q. Yeah, you did?

8 A. About the window?

9 Q. About anybody doing anybody to Thomas. Fighting him,
10 trying to stop him or anything?

11 A. No. During the incident -- during the incident that
12 when he stabbed Ms. Clyburn. No man approached him as far
13 as witnesses. When he was leaving the complex in the
14 Suburban that he borrowed from his friend that's when he
15 was driving off. That's when somebody threw something at
16 the window.

17 Q. Okay. But if somebody throws something at him,
18 right, by definition of throwing they have got to have it
19 in their hand, right?

20 A. Correct.

21 Q. So that would be a person with something in their
22 hand, right?

23 A. Yeah, but Thomas Stewart in the video said he was in
24 fear for his life like prior to stabbing Ms. Clyburn. He
25 started stabbing to that affect, but you asked the

1 question about the window. That was after Ms. Clyburn was
2 laying on the ground praying for her life to be saved by
3 E.M.S, probably. That's when he drove off the property.
4 As he was driving off and there was people yelling at him
5 that's when they threw something at his vehicle.

6 Q. Okay. But you would agree with me, I think, that in
7 order for something to be thrown through his window,
8 right, it would have had to have been thrown by a person?

9 A. Yes.

10 Q. Who would have had to have had the item in their hand
11 beforehand, correct?

12 A. Prior to throwing it, yes, they would have.

13 Q. Okay.

14 A. But not necessarily prior to the killing of Ms.
15 Bellany Clyburn.

16 Q. I understand what you're saying. And you understand
17 what I'm saying, too, don't you?

18 A. Somewhat.

19 Q. Okay. You said that you did issue a subpoena in this
20 case, right?

21 A. Yes.

22 Q. And just to make sure we're all on the same page just
23 tell us real briefly what a subpoena is?

24 A. A subpoena is a document stating to any entity about
25 records or photographs or anything that you request on

1 that subpoenaed document to an entity.

2 Q. Okay. And the Judge can correct me if I'm wrong
3 about this, but I think a subpoena carries the authority
4 of law with it, does it not?

5 A. Carries what now?

6 Q. Carries the authority of law with it, does it not?

7 A. Yes, it does.

8 Q. I means it's an order by the Law to turn over certain
9 documents, right?

10 A. Yes. .

11 Q. And do you remember the phone number -- well, let me
12 ask you this first. What did you issue a subpoena for?

13 A. Phone records.

14 Q. Whose phone records?

15 A. Bellany Clyburn.

16 Q. Okay. And you did that because Thomas told you that
17 he talked to her, right?

18 A. Correct.

19 Q. And you wanted to find out whether or not that was
20 true?

21 A. Correct.

22 Q. Because you wanted to try to confirm what he said was
23 true or not, right?

24 A. Correct.

25 Q. Do you remember the phone number that you issued the

1 subpoena for?

2 A. No.. I know it was Verizon Wireless.

3 Q. Okay.

4 MR. SECOR: May I approach?

5 THE COURT: You may.

6 BY MR. SECOR:

7 Q. Tell me if you recognize that?

8 A. Yes.

9 Q. And just tell the jury what it is, please?

10 A. The subpoena or read it?

11 Q. Just tell them what it is. You don't have to read
12 it?

13 A. It's a subpoena from the police department for myself
14 requesting the phone records from Bellany Clyburn's phone
15 number through January 1st 2010.

16 Q. Thank you. When Thomas was talking to you he said
17 that he called Bellany, correct, from North Carolina,
18 right? And because you were trying to find out whether or
19 not what he was telling you was true or not you asked him
20 what the phone number was that he called, right?

21 A. Yes.

22 Q. And he said he couldn't remember, and you said,
23 "Well, do you remember the first three digits?"

24 A. Yes.

25 Q. And he told you, "680," right?

1 A. I can't recall.

2 Q. Well, we can watch the video all over again and find
3 that out, but will you take my word for it that it was
4 680?

5 A. I assume so.

6 MR. REDMOND: Your Honor, I don't have any objection.

7 BY MR. SECOR:

8 Q. Just for purposes of this, people can watch the video
9 to decide whether or not I'm right or wrong about that.
10 Thomas said to you the number that he called Bellany on
11 was 680, started with 680. Those are the first three
12 digits, right?

13 A. Um hum.

14 Q. Okay. But the subpoena that you issued was not for a
15 number that started with 680, right?

16 A. No, it's not.

17 Q. Did you know that she did have a phone number that
18 started with 680?

19 A. I'm not sure.

20 Q. If she did have a number that started with 680 that
21 probably would have been the right one to subpoena, right?

22 A. More than likely, but if my memory serves me
23 correctly I think she changed her phone number during that
24 time.

25 Q. Okay. Regardless, if he said, "I called her at a

1 number that started with 602," and if she had a phone
2 number that started with 680, and you did not subpoena the
3 records for the number that started with 680?

4 A. If I had the complete number I could have subpoenaed
5 that number.

6 Q. I'm sorry?

7 A. If I would have had the complete phone number that he
8 didn't give me I could have subpoenaed that phone number.

9 Q. But if there were records in your police department
10 showing information about Bellany Clyburn, address, phone
11 number, and if there was a phone number listed in that
12 information that started with 680 would that not have been
13 probably the right number to subpoena records for?

14 A. Not sure. Like I remember some fact that she did
15 change her phone number to another number, the current
16 number.

17 Q. So what's the answer to my question? Would it not
18 have been better to subpoena records for her number
19 starting with 680 than a number that didn't start with
20 680?

21 A. Not necessarily. It depends on what was -- where I
22 determine my basis on. Change the phone number two days
23 prior to her murder I wouldn't have subpoenaed that phone
24 number.

25 Q. But you don't know if that's what happened, do you?

1 You don't know that?

2 A. Not necessarily.

3 Q. You don't know that, right?

4 A. No.

5 Q. Okay. Chief, I'm just going to show you some
6 photographs. These have been marked for identification
7 purposed as Defendant's 85, 86, 87 and 88. If you could
8 just look at them and tell me yes or no whether you
9 recognize them.

10 A. Laser Car Wash.

11 Q. I'm sorry?

12 A. The Laser Car Wash on the Bypass in Pageland. 151
13 Bypass and picture of the Wendy's sign. It's about two
14 blocks by the car wash.

15 Q. So that's the car wash in Pageland near the Wendy's,
16 right?

17 A. Yes.

18 Q. And do those pictures, based on you driving by there
19 frequently I would imagine, do they accurately reflect the
20 way that car wash looks?

21 A. Yes, sir.

22 Q. Okay.

23 MR. REDMOND: Your Honor, I probably won't have an
24 objection, but I had seen Agent Hallman -- I have not
25 seen.

1 MR. SECOR: Oh, I'm sorry. I thought you had seen
2 these. I apologize.

3 MR. REDMOND: I definitely recognize the car wash.
4 We have no objection, Your Honor.

5 MR. SECOR: I offer these in evidence, Your Honor.

6 THE COURT: Okay. All rights. That's 85, 86, 87?

7 MR. SECOR: Eighty-five, 86, 86 and 88.

8 THE COURT: Eighty-eight as well. All in evidence
9 for the Defendant without objection.

10 MR. SECOR: Thank you, sir.

11 (WHEREUPON, Defendant's Exhibit No. 85 through 88
12 were admitted into evidence.)

13 MR. SECOR: May I publish, Your Honor?

14 THE COURT: You may.

15 BY MR. SECOR:

16 Q. Chief, throughout the course of this investigation
17 there was a lot of evidence collected, correct?

18 A. Yes.

19 Q. Okay. I think all along there were 43 total pieces
20 of evidence. Does that make sense to you?

21 A. Not exact on the number.

22 Q. Okay. All the evidence that was collected was taken
23 into custody by the State Law Enforcement Division,
24 correct?

25 A. Yes.

1 Q. Okay. And then how does the -- how does S.L.E.D.
2 determine what tests to perform on what evidence?

3 A. How they determine?

4 Q. Um hum.

5 A. S.L.E.D. determines evidence based on requests forms
6 for evidence that you agent request to be done on the
7 evidence.

8 Q. That agent would be you, right?

9 A. Right. And sometimes the S.L.E.D. all on the scene
10 collect evidence immediately from us. They test whatever
11 evidence that they need to test ---

12 Q. What evidence ---

13 A. --- in this case. In this case we didn't have to
14 submit a lot to S.L.E.D. to a degree because they took it
15 with them when they left. S.L.E.D. submitted their own
16 database cause he was on the scene. Now, in a case
17 scenario like we investigate the case ourselves then we
18 would actually submit a request form for evidence we need
19 to be tested.

20 Q. I understand. So all the evidence goes to S.L.E.D.
21 and it sits there until you tell them what you want
22 tested, correct?

23 A. Not necessary.

24 Q. Okay. But that's what happened in this case?

25 A. I'm not sure about that either.

1 Q. I'll let you look at it in a second. But there was a
2 great deal of evidence collected from inside Bellany's
3 apartment, right?

4 A. Yes.

5 Q. Because there was several locations inside her
6 apartment where blood was, right?

7 A. Right.

8 Q. There was blood on the floor, right?

9 A. Yes, sir.

10 Q. There was blood on the carpet, right?

11 A. Yes.

12 Q. There was blood on the wall, right?

13 A. Yes.

14 Q. There was blood on the window sill?

15 A. Right.

16 Q. There was blood on the doorframe?

17 A. Yes.

18 Q. There was a spot of blood six and a half feet off the
19 ground above the light switch by the front door, correct?

20 A. Blood everywhere.

21 Q. I'm sorry?

22 A. A lot of blood everywhere.

23 Q. Right. And S.L.E.D. came in and took swabs of that
24 blood, correct?

25 A. Yes.

1 Q. I mean most of the time whenever they find blood they
2 take two swabs from each spot, right?

3 A. Correct.

4 Q. Just to make sure that they've got enough of the
5 evidence to test, correct?

6 A. Yes.

7 Q. And then they collected evidence outside Bellany's
8 apartment, too, right?

9 A. Yes.

10 Q. They collected two knives, right?

11 A. Right.

12 Q. And they collected swabs of blood from the ground,
13 correct?

14 A. Yes.

15 Q. And they took swabs of the knife, too, right, or both
16 knives rather, right?

17 A. Yes.

18 Q. They swabbed the handles of both knives, right?

19 A. Yes.

20 Q. And the blades of both knives, right?

21 A. I assume that's correct. they swabbed everything that
22 needed to be swabbed by Vicki Hallman. That's her
23 expertise, and she did the crime scene.

24 Q. I understand. And there was the car. The Suburban
25 was taken into evidence?

- 1 A. Yes, sir.
- 2 Q. Temporarily at least, right?
- 3 A. Yes.
- 4 Q. And swabs were taken inside the car, correct?
- 5 A. Correct.
- 6 Q. And outside the car, right?
- 7 A. Right.
- 8 Q. And all that evidence that was collected was
- 9 collected in order to find out what happened in this case,
- 10 right?
- 11 A. Correct.
- 12 Q. That's part of the reason you collect it, right?
- 13 A. Yes.
- 14 Q. And the reason you collect it is because you can't
- 15 always rely on what people tell you, right?
- 16 A. Correct.
- 17 Q. And sometimes when you collect physical evidence it
- 18 tells a story that is different from what you heard from
- 19 people that were at the scene, right?
- 20 A. Correct.
- 21 Q. And that's why it's such an important tool in your
- 22 line of work?
- 23 A. Yes, sir.
- 24 Q. Collection of physical evidence, right?
- 25 A. Yes, sir.

1 Q. And then properly maintaining the integrity of it,
2 right?

3 A. Yes, sir.

4 Q. And then providing it to somebody to be tested,
5 right?

6 A. Yes.

7 Q. And then getting the results so you know from the
8 perspective of physical evidence what happened?

9 A. Yes, sir.

10 Q. That's a big part of what you do, right?

11 A. Yes.

12 Q. Let me show you what's been marked as Defendant's
13 Exhibit 84, and just ask if you look through it and tell
14 me if you recognize it?

15 A. Yes, sir.

16 Q. You do recognize it?

17 A. Yes, sir.

18 Q. And correct me if I'm wrong, but that's a form that
19 shows all the evidence that was collected inside Bellany's
20 apartment and outside her apartment, correct?

21 A. Yes.

22 Q. Okay. And I think there are, in terms of physical
23 evidence collected, there are 34 items; is that correct?

24 A. Yes, sir.

25 Q. Okay. And on that form there is a column where you

1 can write what type of analysis, testing or whatever you
2 want done on each piece of evidence, right?

3 A. Yes.

4 Q. Okay. And of the 34 pieces of physical evidence that
5 were collected in this case how many pieces of evidence
6 did you, as the lead investigator, ask S.L.E.D. to conduct
7 testing?

8 A. Six.

9 Q. Six of the 34?

10 A. Seven, eight, nine, ten, 11.

11 Q. Okay. Tell us which ones those are?

12 A. Two, latent prints for fingerprints and palm prints
13 from Thomas Stewart. Fingerprints from the black handled
14 knife which is Number Three.

15 Q. Number Four?

16 A. Number Four is latent prints from -- latent prints
17 from -- that was taken from a blade of the black handled
18 knife. And latent prints on a canister of pepper spray.
19 Latent prints on the back seat of Surburban. Cuttings
20 from back seat of Surburban. D.N.A. tests conducted on a
21 buccal swab of Thomas Stewart. D.N.A. testing on a blue
22 short sleeve shirt -- tee shirt collected from Thomas
23 Stewart. And a blue long sleeved undershirt from Thomas
24 Stewart. And a pair of blue jeans from Thomas Stewart.
25 And a pair of socks from Thomas Stewart and a pair of

1 Timberland boots collected from Thomas Stewart.

2 Q. Okay. Did you ask S.L.E.D. to conduct any D.N.A.
3 testing from the two knives recovered from the scene?

4 A. I don't see it marked on here. It says, "Latent
5 prints" .

6 Q. So you're saying the knives were tested for
7 fingerprints?

8 A. Yes.

9 Q. Especially it seems Sr. Agent Hallman already said?

10 A. Yes.

11 Q. But you never asked S.L.E.D. to do any D.N.A. tests
12 on either knife recovered from the scene, correct?

13 A. No.

14 Q. And you also never asked S.L.E.D. to conduct any
15 testing on this blood found inside Bellany's apartment,
16 correct?

17 A. No.

18 Q. In order to get the that was given to S.L.E.D. you
19 got a search warrant, correct?

20 A. Correct.

21 Q. Okay. And a search warrant is just a legal document
22 signed by a judge that gives you a right to go into a
23 place and look for something, correct?

24 A. Correct.

25 Q. And in order to get a judge to sign a piece of paper,

1 I mean they don't just sign it, right? I mean you have to
2 come and tell them why you want it, right?

3 A. Correct.

4 Q. And in order to get a warrant from a judge you have
5 to fill out what's called a Warrant Affidavit, correct?

6 A. Correct.

7 Q. And just quickly as -- tell the jury what a warrant
8 affidavit is?

9 A. A warrant affidavit is a search warrant for a --
10 anything in the house, car, boat, anything you need there
11 you have to have a legal right to be there and going into
12 personal property or premises and you look for certain
13 items you requested to be looking for -- searching for.

14 Q. I'm sorry. Did I cut you off?

15 A. Because by law you cannot -- like he's standing there
16 now telling you about the law now you can't do that
17 without a search warrant because you will be standing here
18 and throw your case out of Court cause we got to do it by
19 law. Got to get a search warrant for anything you need in
20 a crime scene to cover your bases because they can come
21 back to hurt you.

22 Q. And you know when you're going to try to convince a
23 judge to give you a warrant you have to provide them
24 information in order to convince them that the warrant
25 would be legitimate, right?

1 A. Either have an affidavit or a verbal swearing in.

2 Q. Right. You don't just say, "Judge, I want a
3 warrant," and they give it to you, right?

4 A. Correct.

5 Q. You have to explain to them why you want it, right?

6 A. Correct.

7 Q. And why you think you need it, right?

8 A. Correct.

9 Q. And the information that you have received in order
10 to make you think that you need it, right?

11 A. Correct.

12 Q. And the law, as I'm sure you know, requires that you
13 put in those warrant affidavits particular and specific
14 information, right?

15 A. Yes.

16 Q. As specific and particular as you possibly can,
17 right?

18 A. Yes.

19 Q. And you also have to corroborate that information
20 because a judge is going to want to know, well, here is
21 this information in your warrant affidavit. How do I know
22 it's true. You want to be able to say, "Well, I've
23 corroborated it," right?

24 A. Correct.

25 Q. And I've corroborated it by talking to other people

1 who told me the same thing, right?

2 A. Correct.

3 Q. Or I found physical evidence that tells me that what
4 I heard the true, right?

5 A. Correct.

6 Q. And then you take that information, and when you go
7 to the judge to try to get your warrant you have to swear
8 to it that it is true; that the information in it is true
9 to the best of your knowledge, correct?

10 A. Correct.

11 Q. Just like we did today. You put your hand on the
12 Bible, correct?

13 A. Correct.

14 Q. And you did search warrant affidavits in this case,
15 right?

16 A. Yes, sir.

17 Q. And you did a search warrant affidavit for Bellany's
18 apartment, correct?

19 A. Yes, sir. Yes, sir.

20 Q. And you did a search warrant for Thomas Stewart's
21 body, correct?

22 A. Correct.

23 Q. And in your warrant affidavit in order to search
24 Thomas Stewart's body you wrote and sworn to the judge was
25 true that what happened was fight or a struggle, correct?

1 A. On the search warrant?

2 Q. Yes, sir.

3 A. I'm not sure about that. I have to see it. That's
4 correct.

5 Q. Thank you. And in the search warrant for Bellany's
6 apartment you said that what had happened was a struggle,
7 correct?

8 A. With Bellany's search warrant?

9 Q. The search warrant for Apartment ■■■, yes, sir.

10 A. Yes, sir.

11 Q. And those search warrants were done on the 1st of
12 January 2010?

13 A. Yes.

14 Q. The day that Bellany died?

15 A. Yes.

16 Q. So at the time that you made these search warrant
17 affidavits the information that you had received was very
18 fresh in your mind, right?

19 A. Yes.

20 Q. And the information that you were providing to the
21 judge that you were swearing is true was the information
22 you had gotten from other people and corroborated,
23 correct?

24 A. May be the time of the search warrant because I don't
25 know how many witnesses I talked to prior to getting the

1 search warrant.

2 Q. I understand that, but you certainly talked to
3 somebody cause you wouldn't go to a judge and say, "I
4 haven't talked to anybody, but I'd like to have a warrant"
5 cause they wouldn't give you one?

6 A. Well, apparently, there was a struggle at the scene.
7 Yes.

8 Q. Okay, but that was information you had through
9 investigation at that point?

10 A. Right.

11 Q. Okay. When Mr. Redmond was talking to you you said
12 that there was a -- that Bellany had requested a
13 protective order; is that correct?

14 A. Yes.

15 Q. Where she had asked for a hearing for a protective
16 order; is that correct?

17 A. Yes.

18 Q. And the basis of that I think you said was an
19 allegation of trespassing?

20 A. I believe it was something about approaching her --
21 he approached her at the Community Center and pulled her
22 on her arm and wrists.

23 Q. Okay. What day did she report the trespassing?

24 A. On the 29th.

25 Q. The 29th. What day did she say the trespass

1 happened?

2 A. What day did the trespass happen? On the 27th.

3 Q. The 27th, okay. So she reported it two days after it
4 happened, correct?

5 A. Yes.

6 Q. And then on the 28th, the day between the 27th and
7 the 29th, she's at the gym, correct?

8 A. Correct.

9 Q. With three law enforcement officers and Thomas
10 Stewart, correct?

11 A. Correct.

12 Q. And she didn't tell anybody about a trespassing that
13 happened the day before, did she?

14 A. Not according to the incident report.

15 Q. So the answer would be no, she did not, right?

16 A. I couldn't swear to that.

17 Q. To your knowledge as the Chief of the Police
18 Department ---

19 A. To my knowledge.

20 Q. --- she said nothing about it on the 28th, right?

21 A. To my knowledge.

22 Q. Okay. And then the 29th, the day after, she went to
23 the police and said, "Oh, two days ago, the 27th, he
24 trespassed at my house," right?

25 A. That is correct.

1 Q. And what evidence was there other than she said he
2 trespass?

3 A. Her statement.

4 Q. Other than that?

5 A. Nothing.

6 Q. Nothing, right?

7 A. Right.

8 Q. Okay. And that wasn't the first time that she told
9 you something or reported something to the police that was
10 a little bit problematic about whether or not it was true;
11 isn't that right?

12 A. Somewhat.

13 Q. I'm sorry?

14 A. Somewhat.

15 Q. Somewhat. In fact her allegations of things that
16 Thomas Stewart apparently did to her go back to 2005 in
17 your experience, do they not?

18 A. Probably longer than that.

19 Q. Okay. But they definitely go back to 2005, right?

20 A. Yes.

21 Q. Because you were an officer at that point, right?

22 A. Um hum.

23 Q. And she came up to you and told you that she been
24 beaten and kidnapped, isn't that right?

25 A. That's correct.

1 Q. Okay. And you filled out an incident report, did you
2 not?

3 A. Yes, I did.

4 Q. And those charges were eventually dismissed, right?

5 A. Yes. Correct.

6 Q. Okay. And that's because she told you they happened
7 in one place, right?

8 A. Right.

9 Q. And then she came back and said they happened in a
10 different place?

11 A. She changed her story about a different jurisdiction.

12 Q. Right. And I think if I recall correctly in your
13 report you said that you'd taken some photographs of her
14 when she came and talked to you?

15 A. Yes, sir.

16 Q. You have any idea where those photographs are?

17 A. They're probably still at the police station. I'm
18 not sure.

19 Q. Well, if I told you that I asked for information from
20 the police department on that incident and couldn't get
21 any pictures would you believe me?

22 A. Yeah.

23 Q. Are you aware -- I'm sorry?

24 A. I was the second officer investigating that case
25 anyway.

1 Q. Okay. Are you aware that this order of protection
2 that she requested to have on the 29th of December 2009,
3 are you aware that's not the first time that she asked for
4 a protective order against Thomas Stewart?

5 A. I'm not aware of that.

6 Q. Okay. Would you believe me if I told you that she
7 had gotten one before?

8 A. Yeah, I believe that.

9 Q. Okay. And that it was in September of 2008?

10 A. I mean if you say you have knowledge of that I
11 believe that.

12 Q. Okay. And she did get a protection order out against
13 Mr. Stewart in September of 2008 that would have been
14 before he split Melissa Stewart's head open with a lug
15 wrench, correct?

16 MR. REDMOND: Your Honor, I'm going to object.

17 THE COURT: I'm going to sustain that, counsel.
18 First of all what evidence of there of that? Your
19 question has testimonial base to it. I'm going to strike
20 that, sir. Now, you know you're not supposed to do that.
21 Now, tell me -- actually, rephrase your question in an
22 appropriate way.

23 MR. SECOR: Okay.

24 MR. REDMOND: No objection once this is marked, and
25 move to introduce. I think that's a copy of the '08 order

1 of protection. We have no objection.

2 THE COURT: Very good.

3 (WHEREUPON, Defendant's Exhibit No. 89 was marked for
4 identification only.)

5 BY MR. SECOR:

6 Q. Now, I'm going to show you what's been marked as
7 Defendant's Exhibit 89.

8 A. Thank you.

9 MR. SECOR: And I don't think there is any objection
10 from the State so.

11 (WHEREUPON, Defendant's Exhibit No. 89 was admitted
12 into evidence.)

13 BY MR. SECOR:

14 Q. Look at other and tell me if you agree with me that
15 it is what it is?

16 A. It's an order of protection.

17 Q. It's an order of protection?

18 A. Yeah.

19 Q. For?

20 A. For Thomas Stewart. She was kind of being nice about
21 it.

22 Q. Is it's on order of protection?

23 A. Um hum.

24 Q. Requested by Bellany, correct?

25 A. Correct.

1 Q. Saying that she wanted -- needed protection from
2 Thomas Stewart, right?

3 A. No communication and no child support and his wife
4 would be the mediator for the child visitation.

5 Q. Okay. Would you agree with me that that request was
6 made before Miss Clyburn committed an assault and battery
7 of a high and aggravated nature against Melissa Stewart,
8 correct?

9 A. Yes.

10 MR. SECOR: If I could have just a minute, Your
11 Honor.

12 BY MR. SECOR:

13 Q. Chief, the 1st of January 2010 there was a lot of
14 people at the police department, right?

15 A. Yes.

16 Q. And K.S. and J.D. were there, right?

17 A. Yes.

18 Q. Those are Bellany's two young boys, right?

19 A. The kids.

20 Q. And one is Thomas' boy, too, right?

21 A. Correct.

22 Q. And they were there with other family members?

23 A. Correct.

24 Q. And they were there with other witnesses?

25 A. Yes.

1 Q. Okay. And y'all were there almost the entire day,
2 weren't you?

3 A. Pretty much.

4 Q. Okay.

5 A. New Years Day.

6 Q. During the course of your questioning of various
7 witnesses at least one witness told you that Thomas
8 Stewart forced his way into Bellany's apartment with a
9 knife, correct?

10 MR. REDMOND: Your Honor, I'm going to object.

11 THE COURT: Sustained. It's hearsay. Sustained for
12 that reason.

13 MR. REDMOND: Thank you.

14 BY MR. SECOR:

15 Q. You did not charge Thomas Stewart with burglary,
16 correct?

17 A. No, I did not.

18 Q. And you didn't charge him with any crime about
19 holding people against their will, right?

20 A. No, I didn't.

21 Q. And you didn't charge him we anything about home
22 invasion or anything like that, right?

23 A. No, I did not.

24 Q. Thank you, Chief.

25 THE COURT: All right. Ladies and gentlemen, during

1 the questioning there was a reference to an alleged injury
2 and some other incident that counsel referred to as
3 splitting someone's open. Of course, that alone would be
4 fatal event, literally, if that occurred.

5 I'm going to ask you to disregard that language
6 because there is no evidence of the degree of what
7 actually happened in that incident. So, please, disregard
8 that portion of that question. Counsel, tell me how long
9 do you believe your redirect will be?

10 MR. REDMOND: Not even ten minutes if that long.

11 THE COURT: All right. You may proceed.

12 MR. REDMOND: Thank you, Your Honor. May it please
13 the Court. Before I begin I'm going to mark an item. I
14 think it's going to be State's Exhibit 107.

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

17 REDIRECT EXAMINATION

18 BY MR. REDMOND:

19 Q. Please, I have a few questions for you. I want to
20 start off with the fact that you spent, obviously, quite a
21 bit of time on cross talking about Pizza Hut and phone
22 records. After having been asked that by the Defense the
23 fact that y'all did not get the Pizza Hut to verify when
24 the victim got her pizza the night before this murder does
25 that change your opinion of the fact that the Defendant is

1 the person that physically stabbed Miss Bellany Clyburn to
2 death?

3 A. No, it does not.

4 Q. Does it have any impact whatsoever into the fact that
5 the Defendant stabbed Bellany Clyburn?

6 A. No, it would not.

7 Q. The phone records, now that you've had a chance to
8 answer some Defense questions about that, I guess did that
9 change your mind about the fact that Thomas Stewart, the
10 Defendant, stabbed Bellany Clyburn over three dozen times?

11 A. No, it does not.

12 Q. Okay. So does the lack of those phone records in any
13 way impact whether or not the Defendant, based on your
14 investigation, committed this act of stabbing Miss Bellany
15 Clyburn more than three dozen times?

16 A. No, it does not.

17 Q. Okay. Now, I just wanted to put it in its proper
18 context. Now, this incident, and just to be clear,
19 happened ■ in Pageland Place Apartments. Who did that
20 apartment belong to?

21 A. Bellany Clyburn.

22 Q. And did she reside there with her kids?

23 A. Yes, sir.

24 Q. Did this incident, based on your investigation,
25 witness statements, the Defendant's statements, did this

1 incident occur -- at least some part of this incident
2 occur inside her apartment?

3 A. Yes, ■.

4 Q. And I'm going to show you what's been marked as
5 State's Exhibit Number 107.

6 MR. REDMOND: But before I do that, based on
7 cross-examination, ask the Court to admit State's 106;
8 that being the order of protection that she took out on
9 December 28th 2009.

10 THE COURT: All right. Is there objection.

11 MR. SECOR: We made our prior objections.

12 THE COURT: Objection is overruled based on the
13 opening of the door on cross-examination as to these
14 issues. And 106 now in evidence for the State.

15 MR. REDMOND: Thank you, Your Honor. And may I
16 approach the witness with Exhibit 107?

17 THE COURT: You may.

18 (WHEREUPON, State's Exhibit No. 106 was admitted into
19 evidence.)

20 BY MR. REDMOND:

21 Q. This is for identification only. Do you recognize
22 that particular document?

23 A. Yes. It's a warrant signed by Bellany Clyburn.

24 Q. Now, let me ask you this first. I'll ask you about
25 the trespass warrant initially, but based on

1 cross-examination I want to ask you about that, Exhibit
2 107. What is that warrant for?

3 A. It's an assault and battery warrant that on
4 December the 28th that Thomas Stewart did commit the
5 offense of assault and battery in that he grabbed Bellany
6 Clyburn by the shoulder and he continued to assault her by
7 holding her by the wrist. This offense occurred at the
8 parking lot of Pageland Place Apartments in Pageland,
9 South Carolina. Signed by Bellany Clyburn on
10 December 29th of 2009. Signed by Judge Barbara Lisenby.

11 Q. And, again, was that signed -- was that warrant taken
12 out by the victim, Bellany Clyburn?

13 A. Yes.

14 Q. Okay. Was that warrant taken out the day before she
15 went and got the order of protection that is now in
16 evidence, State's 106?

17 A. She got the warrant first the same morning of
18 December 29th. And went to Chesterfield and got an order
19 of protection on the same date.

20 Q. Okay. Now, we've heard the Defense. They talk about
21 the fact that there were previous orders of protection
22 taken out. Was that order of protection ever served on
23 Thomas Stewart?

24 A. I'm not sure. First time I ever ---

25 Q. Let me back up. Let me be clear with my question.