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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Jasper County

Honorable Kristi F. Curtis, Circuit Court Judge

TARA WEBER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001228

APPENDIX

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1 State of South Carolina) In the Court
2 County of Aiken) Of General Sessions

3
4 Indictment No.: 2011GS2700378
5

6 State of South Carolina,)
7 Plaintiff,)
8 vs.) Transcript of Record
9)
10 Tara M. Weber,)
Defendant.)

11
12
13 September 12-14, 2011
14 Ridgeland, South Carolina
15

16 B E F O R E:

17 The Honorable Michael G. Nettles, Judge and a jury.
18

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

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JURY VOIR DIRE

1
2 THE COURT: Ladies and gentlemen of the jury panel,
3 each of you are qualified to serve as a juror. I'm going
4 to be conducting what is called voir dire to determine
5 whether or not there is some reason why you could not be
6 fair and impartial with regards to the trial of this
7 particular case. And before we do that I'm going to
8 recognize the solicitor's office for them to call their
9 first case.

10 MS. LEGETTE: Your Honor, State calls Tara Marie
11 Weber, Indictment 2011GS27378.

12 THE COURT: Thank you very much.

13 All right. Ladies and gentlemen of the jury panel,
14 I hold in my hand an indictment and it's entitled the State
15 of South Carolina versus Tara Marie Weber. And ladies and
16 gentlemen of the jury, this document is merely an
17 accusation. It has absolutely no evidentiary value
18 whatsoever. This is simply the document that starts the
19 judicial proceeding. As Ms. Weber is seated at the defense
20 table, she's presumed to be just as innocent as me or you.
21 That's the frame of reference from which we're starting.
22 She's pled not guilty to this offense and we are conducting
23 a jury trial as a result thereof.

24 Ladies and gentlemen of the jury, this allegation
25 of criminal activity allegedly took place on December 31,

1 2010; and I want to tell you a little bit about where these
2 allegations arise from in order for you to determine
3 whether or not you know anything about it.

4 But it took place in the Great Swamp Area of Jasper
5 County, in sort of in the general area of Lowther Lane,
6 which is a road or street, and Tarboro Road. So those of
7 you who are familiar with the county kind of know the area
8 this took place. It took place at a home, a manufactured
9 home, a trailer.

10 And having been armed with that basic information,
11 is there any member of the jury panel who knows anything
12 about this case whatsoever? If so, please stand.

13 (WHEREUPON there was no response from the jury
14 panel.)

15 THE COURT: Has anyone witnessed any events which
16 gave rise to this allegation? If so, please stand.

17 (WHEREUPON there was no response from the jury
18 panel.)

19 THE COURT: All right. I'm going to ask if -- if
20 Ms. Weber can stand and face the jury panel.

21 Mr. Hughes, if you could -- very good.

22 You may be seated.

23 Ms. Tara Marie Weber is the defendant in this
24 action. Is anyone related by blood or marriage, do you
25 have close social, business, or personal relationship with

1 her? If so, please stand.

2 All right. Hang on just one second.

3 All right. I'll speak with each of you up front.

4 If you could come forward.

5 (WHEREUPON the jurors came forward one at a time
6 and a bench conference was held out of the hearing of the
7 jury pool.)

8 THE BAILIFF: No. 9.

9 THE CLERK: Sheila Battiste.

10 THE COURT: Juror No. 9.

11 If you could keep your voice down.

12 THE JUROR: I know her. I was in jail with her for
13 about two months. I got to know her. We got to be
14 friends.

15 THE COURT: Okay. What were you in jail for?

16 THE JUROR: Child support. But I know her. We
17 talked about the case and the incident.

18 THE COURT: Okay. Based on the fact that you have
19 developed a friendship with her, and that y'all discussed
20 this case, I am going to excuse you for the purposes of
21 this trial.

22 THE JUROR: Okay.

23 THE COURT: Thank you very much.

24 THE CLERK: No. 149.

25 THE COURT: She's excused --

1 THE CLERK: From just this trial?

2 THE COURT: Right.

3 THE CLERK: Phyllis Sutler.

4 THE COURT: Your full name?

5 THE JUROR: Phyllis Sutler.

6 THE COURT: Again what do you know about the
7 defendant?

8 THE JUROR: My son used to live with her mother.
9 He used to live with her mother.

10 THE COURT: How do you know her personally? Do you
11 see her on a daily basis?

12 THE JUROR: I have not seen her in about a year or
13 more.

14 THE COURT: This is the essential question: If
15 called upon to serve on this jury, could you give both the
16 State and the defendant a fair and impartial trial and base
17 your decision on the evidence presented in this case, or
18 the lack thereof, and the law as I charge it to you?

19 THE JUROR: I can. I just feel y'all needed to
20 know if I am called.

21 THE COURT: Okay. But you feel like you could give
22 both the State and the defendant a fair and impartial
23 trial?

24 THE JUROR: Yes.

25 THE COURT: All right. And just by virtue of the

1 fact that you have a relationship with people who know her,
2 you feel like you will give anything that might be
3 presented on her behalf more weight than what the State
4 would have to say? Could you listen to the evidence and
5 give a fair and impartial decision?

6 THE JUROR: I would listen very carefully.

7 THE COURT: Very good. You're qualified to serve.
8 Thank you.

9 (WHEREUPON the Court spoke to the entire pool
10 again.)

11 THE COURT: Ladies and gentlemen, I'm going to give
12 you the names of the potential witnesses in the case. Pay
13 very close attention, and as you're listening to the names,
14 once again, are you related by blood or marriage to any of
15 these witnesses; do you have a close social, business or
16 personal relationship with any of these witnesses. Pay
17 very close attention.

18 Roy Thompson, Kevin Smith, Raymond Moran, John
19 Croft, Stephan Ashby, Gary Morris, Jeff Crosby. All of
20 those named are members of the Jasper County Sheriff's
21 Office.

22 Lee Marie Tormos, T-o-r-m-o-s, MUSC Pathology; Erin
23 Presnell, MUSC Pathology; Kim Nettles, Jasper County
24 Dispatch; Lynn Shuman or Shuman, Jasper County Dispatch;
25 Joshua Ayers, Ridgeland, South Carolina; Kimberly Powell,

1 Ridgeland, South Carolina; Melissa Deloach, Ridgeland,
2 South Carolina; Dustin Roberts, Ridgeland, South Carolina.
3 Once again, if you're related by blood or marriage,
4 do you have a close social, business, or personal
5 relationship with any of these witnesses? If so, please
6 stand.
7 Yes, sir, if you could come forward.
8 (WHEREUPON the Court spoke to the entire pool
9 again.)
10 THE BAILIFF: Brian Cleland.
11 THE CLERK: No. 33.
12 THE COURT: This is Juror No. 33.
13 Yes, sir, if you could come stand right here. Your
14 full name?
15 THE JUROR: Brian Lamar Cleland.
16 THE COURT: Brian Lamar Cleland. Tell me who you
17 know.
18 THE JUROR: Just about everybody you named.
19 THE COURT: Okay. And what is your relationship
20 with them?
21 THE JUROR: My brother-in-law is a deputy with the
22 Jasper County Sheriff's Office.
23 THE COURT: Okay.
24 THE JUROR: I do work on all the patrol vehicles,
25 redo the lights and sirens. And Kim Nettles, her husband

1 works for my -- part time business with my father.

2 THE COURT: All right. If -- you have -- actually
3 have a business relationship with all of these because you
4 do their work?

5 THE JUROR: Yes, sir.

6 THE COURT: I think that if you're that, I'm going
7 to excuse you out of an abundance of caution.

8 THE JUROR: Okay.

9 THE COURT: Very good. Thank you.

10 He's excused.

11 (WHEREUPON the Court spoke to the entire pool
12 again.)

13 THE COURT: I'm going to recognize attorneys for
14 the Solicitor's office, Ms. Legette, if you could stand and
15 identify yourself and the members of your office.

16 MS. LEGETTE: Good afternoon. I am Tameka Legette.
17 I am an assistant solicitor in the 14th Judicial Circuit.
18 I will be assisting Mr. Robert Ferguson this week in this
19 matter.

20 MR. FERGUSON: Good afternoon.

21 THE COURT: All right. And could you list all of
22 the lawyers in your office?

23 MS. LEGETTE: The lawyers in our office are
24 Solicitor Duffy Stone, III. He works out of our Bluffton
25 office. He is the solicitor. Deputy Solicitor, Sean P.

1 Thornton; we also have we also Bill Shipley, Ms. Merideth
2 Bannon with the Beaufort office; Mr. Jim Bannon in the
3 Beaufort Office; Ms. Erin Gentry, who works in the Jasper
4 County Office; Ms. Dawn Burke who is here in the Jasper
5 Office. Standing over here -- Mr. Steve Knight, who is
6 also in the Jasper County Office -- who is somewhere about.
7 Okay. Tom Johnson, in the Jasper office, who is sitting
8 right here. We also have Ms. Ashley Hudson in the Colleton
9 Office, Mr. Chaz Ellis in the Colleton Office. We also
10 have Ms. Hazel Rankin in the Bluffton Office. We have
11 Ms. Mary Jordan Lempesis in the Bluffton Office, Mr. Bill
12 Shipley in the Bluffton Office, we have Mr. Patrick Hall in
13 the Bluffton Office. Additionally we have -- Cara
14 Henderson in the Bluffton Office, whose father is with the
15 Murdaugh Law Firm here in the Jasper Office; Mr. Randolph
16 Murdaugh, III, who was solicitor and assistant part-time
17 solicitor with our office; Mr. Paul Detrick is also an
18 assistant solicitor with our office; Mr. Reed Evans, who is
19 in our office in the Bluffton area; and Ms. Hunter Swanson
20 is also in the Bluffton Office; and I believe that's about
21 all.

22 THE COURT: Very good. One thing we have concluded
23 is that your office has a pile of lawyers and this is a big
24 circuit.

25 MS. LEGETTE: Yes, Your Honor.

1 THE COURT: I've made that determination.

2 All right. Is anybody related by blood or
3 marriage, have a close social, business or personal
4 relation with any of these lawyers? Some of these lawyers
5 are part-time lawyers and it might be that you have an
6 ongoing case with them or they've represented you in the
7 past in civil matters or criminal matters. If that be the
8 case, please stand.

9 Yes, sir, if you could come forward.

10 (WHEREUPON the Court spoke to the entire pool
11 again.)

12 THE CLERK: 119.

13 THE JUROR: Yes, sir.

14 THE COURT: Juror 119, Douglas Perry.

15 THE JUROR: I just wanted to let you know Tom
16 Johnson is a member of the church where I am pastor. I
17 think he works part time with the solicitor's office. I'm
18 okay with it.

19 THE COURT: Do you frequently have dinner with him
20 or does he come over to your house.

21 THE JUROR: No.

22 THE COURT: You don't have any regular contact with
23 him?

24 THE JUROR: No.

25 THE COURT: You're just in the same church?

1 THE JUROR: Yes.

2 THE COURT: Does he come very often.

3 THE JUROR: He does. He's done my real estate
4 transaction, 20 years or so.

5 THE COURT: Is that ongoing?

6 THE JUROR: No.

7 THE COURT: Okay. Very good. If called upon to
8 serve on this jury could you make your decision on the
9 evidence that's presented in this case and the law as I
10 charge it to you and give both the State and defendant a
11 fair and impartial trial?

12 THE JUROR: Yes, sir. I do note that this is a
13 murder charge?

14 THE COURT: It's a manslaughter charge.

15 THE JUROR: Can I ask who the -- who's the other
16 party? Because I think I may know something about the
17 case. I'm not sure.

18 THE COURT: Okay.

19 THE JUROR: I don't know.

20 THE COURT: Very good question. Hang on --

21 THE JUROR: The reason why I ask is I think I know
22 who it is but I can't --

23 THE COURT: Kyle Way.

24 THE JUROR: Yes, sir. I did his funeral, but I do
25 not know anything about the case other than what his father

1 told me.

2 THE COURT: You said you did his funeral?

3 THE JUROR: Yes, sir.

4 THE COURT: Are you a mortician?

5 THE JUROR: No. I was his pastor.

6 THE COURT: Okay.

7 THE JUROR: I don't know the details of the case,
8 but I did do his funeral. I wanted you to be aware of
9 that.

10 THE COURT: How do you do a funeral if you don't
11 know them.

12 THE JUROR: It was one of those members who hardly
13 come to church. I knew him, but I didn't know -- I don't
14 know the details of the case. I don't know how it
15 happened.

16 THE COURT: All right. If you could stand right
17 over there for just one moment. If you could stand right
18 over there.

19 (WHEREUPON the juror moved away and a bench
20 conference was held out of the hearing of the jury pool.)

21 THE COURT: What's the defense's position on that?

22 MR. HUGHES: Your Honor, he knew him well enough to
23 preside over it.

24 MR. FERGUSON: He conducted it.

25 THE COURT: What's the State's position?

1 MR. FERGUSON: I mean, he said he was close with
2 the father. So I think probably at the least he may be too
3 close.

4 (WHEREUPON the juror returned to talk with the
5 Court.)

6 THE COURT: Mr. Perry, based on your -- on the fact
7 that you presided over the victim's funeral and the fact
8 that -- the ancillary fact that one of the assistant
9 solicitor's has done work for you way back, I think out of
10 an abundance of caution -- this is a very important case --
11 we're going to excuse you for the purposes of this trial
12 only.

13 THE JUROR: Sure. Do I need to stay right here in
14 the courtroom?

15 THE COURT: You can stay right here with us.

16 THE JUROR: Thank you.

17 THE CLERK: We have another one.

18 THE BAILIFF: No. 10.

19 THE CLERK: No. 10 is Walter Baxter, Jr.

20 THE COURT: Yes, sir?

21 THE JUROR: My family is good friends of the
22 solicitor, and he actually handled most of the cases in my
23 career.

24 THE COURT: All right. You do not have a power of
25 arrest?

1 THE JUROR: No, sir, I don't.

2 THE COURT: Do you have a particular personal
3 relationship with any of those officers from Jasper County
4 at the sheriff's office or Ridgeland Police Department?

5 THE JUROR: Officer Crosby who was here, I've
6 worked with him. That's the only one.

7 THE COURT: Jeff Crosby?

8 THE JUROR: Yes, sir.

9 THE COURT: If called upon to serve on this jury,
10 if he were to testify, would you give greater weight to
11 something he said by virtue of the fact that you worked
12 with him?

13 THE JUROR: No, sir.

14 THE COURT: All right. When did you retire?

15 THE JUROR: '03.

16 THE COURT: Okay. You know, at one point -- even
17 though you retired in '03, the fact that you were involved
18 in law enforcement and there was some obligation to assist
19 as a law enforcement officer, I just think that this is
20 such an important matter it would probably be a good idea
21 to excuse you for the purposes of this trial. I'm going to
22 excuse you from participating in this trial and ask that
23 you call back to the clerk's office as instructed. Thank
24 you so much for being here.

25 (WHEREUPON the Court spoke to the entire pool

1 again.)

2 THE COURT: Has any member of the jury panel formed
3 or expressed an opinion about any issue or matter involved
4 in this case? If so, please stand.

5 (WHEREUPON there was no response.)

6 THE COURT: The alleged victim in this case is Kyle
7 Way. Is anyone related by blood or marriage; do you have a
8 close social or personal relationship -- did you have a
9 relationship with him in the past? If so, please stand.

10 No response.

11 Is any member of the jury panel aware of any bias
12 or prejudice towards either the State or the defendant in
13 this case? If so, please stand.

14 No response.

15 Is any member of the jury panel a former law
16 enforcement officer other than the gentleman we just spoke
17 with, or have a family member who is a law enforcement
18 officer or former law enforcement officer? If so, please
19 stand.

20 If each of you could come forward.

21 (WHEREUPON the jurors came forward one at a time
22 and a bench conference was held out of the hearing of the
23 jury pool.)

24 THE BAILIFF: 158.

25 THE CLERK: Christy Wade, 258.

1 THE COURT: Your name?

2 THE JUROR: I'm 158, Christy Wade.

3 THE COURT: Yes, ma'am?

4 THE JUROR: My husband is a former highway patrol.

5 THE COURT: Okay. In order to serve on this jury,
6 could you listen to the evidence presented in this case,
7 and listen to the law as I charge it to you, and give both
8 the State and the defendant a fair and impartial trial?

9 THE JUROR: Yes, I could.

10 THE COURT: All right. Just by virtue that you are
11 married to someone who was at one time involved in law
12 enforcement, would you give greater weight to the State's
13 position or the fact that a person is involved in law
14 enforcement; or would you give every witness proper
15 consideration?

16 THE JUROR: I would.

17 THE COURT: You're qualified to serve. Thank you.

18 THE JUROR: Okay.

19 THE BAILIFF: James Simmons.

20 THE CLERK: No. 141.

21 THE JUROR: Juror 141, James Simmons.

22 THE COURT: Who do you know?

23 THE JUROR: My brother-in-law Ricky Cooper is a
24 policeman.

25 THE COURT: Okay. Just by virtue of the fact that

1 your brother-in-law is a police officer, if called upon to
2 serve on this case, could you listen to the evidence
3 presented in this case or the lack of evidence, and the law
4 as I charge it to you and give both the State and the
5 defendant a fair and impartial trial?

6 THE JUROR: I don't really know what it's about.

7 THE COURT: That was my point. Clearly my question
8 to you is not what it's about, but whether you could be
9 fair to both the State and the defendant. By your
10 response, just by virtue of the fact that you're related to
11 a law enforcement officer, could you still be fair.

12 THE JUROR: Well, as long as it ain't something
13 against him. I don't think they -- what they do is
14 dangerous and they don't get paid enough and, you know --

15 THE COURT: So based on what you're saying, you
16 would have a tendency to lean towards law enforcement, is
17 that what you're saying.

18 THE JUROR: Yes.

19 THE COURT: Well, based on that, I'll excuse you
20 for purposes of this trial only. Stay with us. Thank you
21 very much.

22 THE BAILIFF: Gary Mazzanna.

23 THE CLERK: 101.

24 THE COURT: Yes, sir, how you doing.

25 THE JUROR: My brother's a retired law enforcement

1 officer.

2 THE COURT: Okay. If called upon to serve on this
3 jury, could you listen to the evidence presented in this
4 case or the lack thereof and the law as I charge it to you
5 and give both the State and defendant a fair and impartial
6 trial?

7 THE JUROR: I could.

8 THE COURT: You're qualified to serve. Thank you.

9 THE BAILIFF: Leon Langford.

10 THE CLERK: No. 87.

11 THE COURT: Yes, sir?

12 THE JUROR: I have a son who's in the Marines and
13 also a police officer in Ridgeland.

14 THE COURT: Okay. If called upon to serve on this
15 jury, could you give the State and the defendant a fair and
16 impartial trial?

17 THE JUROR: Yes, sir.

18 THE COURT: If -- just by virtue of the fact that
19 your son is involved in law enforcement, would you give
20 greater weight to the testimony of the law enforcement?
21 Would you weigh their testimony just like you would any
22 other?

23 THE JUROR: Yes, sir.

24 THE COURT: All right. You're qualified to serve.
25 Thank you.

1 (WHEREUPON the Court spoke to the entire pool
2 again.)

3 THE COURT: Ladies and gentlemen of the jury panel,
4 is there anyone -- I don't anticipate that there was any
5 media coverage with regard to this case, but nonetheless,
6 has anybody heard, seen, or read anything about this
7 matter? If so, please stand.

8 No response.

9 Is there any member of the jury panel who is a
10 member of, contributor to, any group which has as its
11 primary concern, the promotion of law enforcement or
12 victim's rights? Examples of that would be Mothers Against
13 Drunk Driving, Students Against Drunk Driving, Citizens
14 Against Violent Crime. Is there anybody who is a member of
15 any of these organizations? I think that every sheriff's
16 department has an association, the highway patrol does as
17 well.

18 My question to you is, are you a member of any of
19 these law enforcement organizations or do you contribute to
20 them? If so, please stand.

21 Yes, sir, if you could come forward.

22 (WHEREUPON the jurors came forward one at a time
23 and a bench conference was held out of the hearing of the
24 jury pool.)

25 THE BAILIFF: No. 81.

1 THE CLERK: Calvin Jones.

2 THE COURT: All right. Mr. Jones, how you doing.

3 THE JUROR: Good.

4 THE COURT: All right. Who do you contribute to?

5 THE JUROR: Mother's Against Drunk Driving.

6 THE COURT: This doesn't involve drunk driving or
7 allegations thereof and if called upon to serve on this
8 jury, could you listen to the evidence presented in this
9 case, or the lack thereof, and the law as I charge it to
10 you and give both the State and the defendant a fair and
11 impartial trial?

12 THE JUROR: Yes, sir.

13 THE COURT: You're qualified to serve. Thank you.

14 THE CLERK: No. 101.

15 THE COURT: Yes, sir?

16 THE JUROR: Where do you want the start? Mothers
17 Against Drunk Drivers, Hospice House, South Carolina
18 Highway Patrol.

19 THE COURT: Hospice House is not law enforcement.

20 THE JUROR: They deal with victim's rights. They
21 deal with rape victims and such as that.

22 South Carolina Law Enforcement Association, Jasper
23 County Law Enforcement Association, and I think that's
24 about it.

25 THE COURT: Okay. By virtue of the fact that you

1 belong to those organizations can you set that --

2 THE JUROR: Well I contribute.

3 THE COURT: Yeah, contribute. Could you set that
4 aside and if called upon the serve on this jury, give both
5 the State and the defendant a fair and impartial?

6 THE JUROR: Yeah.

7 THE COURT: You're qualified to serve. Thank you.

8 (WHEREUPON, there was a bench conference out of the
9 hearing of the jury and the Court Reporter.)

10 (WHEREUPON the Court spoke to the entire pool
11 again.)

12 THE COURT: Does any member of the jury panel know
13 of any reason whatsoever why you could not serve as a juror
14 in this case with particular emphasis being placed on your
15 ability to be fair and impartial to both the State and the
16 defendant? If so, please stand.

17 No response.

18 Mr. Hughes, I'm going to ask if you can stand and
19 identify the members of your office. Identify yourself and
20 the members of your office.

21 MR. HUGHES: Good afternoon. My name the Robert
22 Hughes, and I am Assistant Public Defender assigned to
23 Jasper County. My boss is Mr. Gene Hood. He is over in
24 Beaufort. With me in my office in this section of the 14th
25 Circuit is Mr. Steve Plexico.

1 MR. PLEXICO: Good afternoon.

2 MR. HUGHES: And Ms. Stephanie Smart Giddings.

3 Those are the members of the Western section of the 14th
4 Circuit Public Defender's Office.

5 THE COURT: Very good. Is anyone related by blood
6 or marriage, do you have a close social, business, or
7 personal relationship with any of these lawyers or have any
8 of them represented you in this past or present? If so,
9 please stand.

10 No response.

11 Any additional query posed by the State?

12 MR. FERGUSON: No, sir, Your Honor.

13 THE COURT: Any from defense?

14 MR. HUGHES: Yes, Your Honor. May we approach?

15 THE COURT: Yes.

16 (WHEREUPON, there was a bench conference out of the
17 hearing of the jury pool and the Court Reporter.)

18 THE COURT: Is there any member of the jury panel
19 who has been a victim of a violent crime or someone in your
20 immediate family has been a victim of the violent crime?
21 If so, please stand.

22 (WHEREUPON there was no response from the jury
23 panel.)

24 THE COURT: All right. Any additional query from
25 the defense?

1 MR. HUGHES: No, Your Honor.

2 THE COURT: Any additional query from the State?

3 MR. FERGUSON: No, sir, Your Honor.

4 THE COURT: All right.

5 Madame Clerk, if you could give us a jury. The
6 strikes are five and ten, five and ten.

7 THE CLERK: Alternate, Your Honor?

8 THE COURT: Two alternates. I have no objection to
9 counsel receiving the list.

10 Any objection from the State in that regard?

11 MR. FERGUSON: No, sir, Your Honor.

12 THE COURT: Any from defense?

13 MR. HUGHES: No, Your Honor.

14 THE COURT: Ladies and gentlemen of the jury panel,
15 it used to be years ago that the names of the jurors were
16 put in a box, and it was turned and rotated around and
17 mixed up and a physically disabled person or a small child
18 would be required to select tablets out of that barrel.
19 But with the advent of computer, they're randomly selected
20 from the computer, and we're in the process of printing it
21 off of the computer right now.

22 Computers are wonderful things when they work;
23 isn't that right, Madame Clerk?

24 THE CLERK: Yes, sir. We still have our barrel.
25 We just haven't used it in years.

1 THE COURT: Madame Clerk, you may give us a jury.
2 When your name is called, we're going to ask that you come
3 and stand right in front of the bench here and turn around
4 and face the back of the courtroom if you would. And bring
5 your personal belongings with you as well.

6 JURY SELECTION

7 THE CLERK: Juror No. 3, Odelia Anguiano. (White
8 Female.)

9 How says the State?

10 MR. FERGUSON: Please excuse Ms. Anguiano.

11 THE CLERK: Thank you, ma'am, have a seat back in
12 the audience.

13 No. 7, Jose Baltazar. (Hispanic male.)

14 How says the State?

15 MR. FERGUSON: Please present Mr. Balthazar.

16 THE CLERK: How says defense?

17 MR. HUGHES: Please seat the juror.

18 THE CLERK: Have a seat in the jury box, sir.

19 No. 738 Koreshia Jenkins. (Black female.)

20 How says the State?

21 MR. FERGUSON: Please present Ms. Jenkins.

22 THE CLERK: How says the defense?

23 MR. HUGHES: Please seat the juror.

24 THE CLERK: Have a seat in the jury box, ma'am.

25 Number 101, Gary Mazzanna. (White male.)

1 How says the State?

2 MR. FERGUSON: Please present Mr. Mazzanna.

3 THE CLERK: How says the defense?

4 MR. HUGHES: Please excuse the juror from the trial
5 of this case.

6 THE CLERK: Thank you, sir, please have a seat back
7 in the audience.

8 Number 5, Steven Bahlmann. (White male.)

9 How says the State?

10 MR. FERGUSON: Please present Mr. Bahlmann.

11 THE CLERK: How says the defense?

12 MR. HUGHES: Please excuse the juror from the trial
13 of this case.

14 THE CLERK: Thank you, sir. Please have a seat
15 back in the audience.

16 No. 86, Steven Lambertsen. (White male.)

17 How says the State?

18 MR. FERGUSON: Please present Mr. Lambertsen.

19 THE CLERK: How says the defense?

20 MR. HUGHES: Please seat the juror.

21 THE CLERK: Have a seat in the jury box, sir.

22 No. 140, Don Self. (White male.)

23 How says the State?

24 MR. FERGUSON: Please present Mr. Self.

25 THE CLERK: How says the defense?

1 MR. HUGHES: Please seat the juror.

2 THE CLERK: Have a seat in the jury box, sir.

3 No. 158 Christy Wade. (White female.)

4 How says the State?

5 MR. FERGUSON: Please present Ms. Wade.

6 THE CLERK: How says the defense?

7 MR. HUGHES: Please excuse the juror from the trial
8 of this case.

9 THE CLERK: Thank you, ma'am. Have a seat back in
10 the audience.

11 No. 138 Steven Schramm. (White male.)

12 How says the State?

13 MR. FERGUSON: Please present Mr. Schramm.

14 THE CLERK: How says the defense?

15 MR. HUGHES: Please seat the juror.

16 THE CLERK: Have a seat in the jury box, sir.

17 No. 166, Scott Weiland. (White male.)

18 How says the State?

19 MR. FERGUSON: Please excuse Mr. Weiland.

20 THE CLERK: Thank you, sir, have a seat back in the
21 audience.

22 No. 97, Franklin Malphrus. (White male.)

23 How says the State?

24 MR. FERGUSON: Please present Mr. Malphrus.

25 THE CLERK: How says the defense?

1 MR. HUGHES: Please seat the juror.

2 THE CLERK: Have a seat in the jury box, sir.

3 No. 94, William long. (White male.)

4 How says the State?

5 MR. FERGUSON: Please excuse Mr. Long.

6 THE CLERK: Thank you, sir, have a seat back in the
7 audience.

8 No. 167, Wayne White. (Black male.)

9 How says the State?

10 MR. FERGUSON: Please present Mr. White.

11 THE CLERK: How says the defense?

12 MR. HUGHES: Please seat the juror.

13 THE CLERK: Have a seat in the jury box, sir.

14 State three, defense three.

15 No. 11, Aldridge Beaton. (Black male.)

16 How says the State?

17 MR. FERGUSON: Please present Mr. Beaton.

18 THE CLERK: How says the defense?

19 MR. HUGHES: Please seat the juror.

20 THE CLERK: Have a seat in the jury box, sir.

21 No. 160 Armond Walker. (Black male.)

22 How says the State?

23 MR. FERGUSON: Please excuse Mr. Walker.

24 THE CLERK: Thank you, sir.

25 No. 92 Leslie -- I'm sorry Lenora Leslie. (Black

1 female.)

2 How says the State?

3 MR. FERGUSON: Please present Ms. Leslie.

4 THE CLERK: How says the defense?

5 MR. HUGHES: Please seat the juror.

6 THE CLERK: Have a seat in the jury box, ma'am.

7 No. 45, Barbara Exley. (Black female.)

8 How says the State?

9 MR. FERGUSON: Please present Ms. Exley.

10 THE CLERK: How says the defense?

11 MR. HUGHES: Please seat the juror.

12 THE CLERK: Have a seat in the jury box, ma'am.

13 No. 156, Omega Turner. (Black male.)

14 How says the State?

15 MR. FERGUSON: Please present Mr. Turner.

16 THE CLERK: How says the defense?

17 MR. HUGHES: Please excuse the juror from the trial
18 of this case.

19 THE CLERK: Thank you, sir. Have a seat back in
20 the audience.

21 No. 55, James Frazier. (Black male.)

22 How says the State?

23 MR. FERGUSON: Please accept Mr. Frazier.

24 THE CLERK: How says the defense?

25 MR. HUGHES: Please seat the juror.

1 THE CLERK: Have a seat in the jury box, sir.
2 No. 157, Willie Mae Tyler. (Black female.)
3 How says the State?
4 MR. FERGUSON: Please present Ms. Tyler.
5 THE CLERK: How says the defense?
6 MR. HUGHES: Please seat the juror.
7 THE CLERK: Have a seat in the jury box, ma'am.
8 Alternate No. 1: No. 6, Antonio Baker. (Black
9 male.)
10 How says the State?
11 MR. FERGUSON: Please present Mr. Baker.
12 THE CLERK: How says the defense?
13 MR. HUGHES: Please seat the juror.
14 THE CLERK: Have a seat in alternate chair one,
15 sir.
16 No. 149, Phyllis Sutler. (White female.)
17 How says the State?
18 MR. FERGUSON: Please excuse Ms. Sutler. Thank
19 you.
20 THE CLERK: Thank you, ma'am.
21 No. 29, Lorraine Carmody. (White female.)
22 How says the State?
23 MR. FERGUSON: Please present Ms. Carmody.
24 THE CLERK: How says the defense?
25 MR. HUGHES: Please excuse the juror from the trial

1 of this case.

2 THE CLERK: Thank you, ma'am.

3 No. 18, Arthur Bostick. (Black male.)

4 How says the State?

5 MR. FERGUSON: Please present Mr. Bostick.

6 THE CLERK: How says the defense?

7 MR. HUGHES: Please seat the juror.

8 THE CLERK: Take a seat in alternate chair number
9 two, sir.

10 THE COURT: Any motions with regard to the jury
11 selection process from the State?

12 MR. FERGUSON: No, sir, Your Honor.

13 THE COURT: Any from defense?

14 MR. HUGHES: No, Your Honor.

15 THE COURT: Very good. I want to excuse the
16 balance of the jury panel. I'm going to re-emphasize,
17 it's absolutely impossible to predict with absolute
18 certainty what's going to transpire and how long it's going
19 to take, so I'm going to ask that you report -- call back
20 every afternoon starting this evening at six o'clock and
21 follow the instructions to determine whether or not you
22 need to be back the following morning.

23 So that's going to take place every night this
24 week. So starting tonight, call to determine whether or
25 not you need to be here, when and if you need to be here.

1 Everyone remain seated as the jury panel exits the
2 courtroom.

3 (WHEREUPON the jury pool left the courtroom.)

4 THE COURT: Ladies and gentlemen of the jury panel,
5 I'm going the ask that you stand and the clerk administers
6 the oath.

7 (WHEREUPON the jury panel was sworn at 4:02 p.m.)

8 THE CLERK: Thank you.

9 **OPENING REMARKS BY THE COURT**

10 THE COURT: Ms. Willie Mae Tyler?

11 THE JUROR: Yes, sir.

12 THE COURT: I'm going to ask that you serve as the
13 forelady of the jury. And I think the time that I've been
14 on the bench, you're the only one who has randomly been
15 seated in the forelady's spot. So you're going to be right
16 there. You have an assigned seat. You're to be there
17 every time. That's where you're supposed to sit.

18 The alternates, you're required to stay there as
19 well. So logistically, it would probably be best if y'all
20 three come in last out of the jury room so nobody would
21 have to climb over you. But y'all are to be in those seats
22 the entire time.

23 Madame Forelady, you, like everyone else when it
24 comes time to deliberate are going to have one vote. But
25 you're also going to be charged with the responsibility of

1 | presiding over the deliberation process. Also throughout
2 | the trial of this case, if there are questions or concerns
3 | that develop amongst the jury panel, I'm going to ask that
4 | they communicate those concerns to you. You can reduce it
5 | to writing. Give it to the bailiff and they will provide
6 | it to me and if it's something I can help you with, I'll be
7 | happy to do so.

8 | You're also going to be charged with the
9 | responsibility of ensuring that there be no discussions
10 | about the case during the trial of this case. There are
11 | going to be times where you're excused to go back in the
12 | jury room where we take up matters outside of your presence
13 | and it's incumbent upon you to make sure that the jury does
14 | not talk about what the lawyers have said, what the
15 | witnesses have said. You can't talk about the case
16 | whatsoever. I'm going to ask that you enforce that rule.
17 | You can only begin discussing this case after you have
18 | heard all of the evidence, after I charge you the law, the
19 | closing arguments are given. You can talk about the
20 | weather, you can talk about Gamecock football. You can
21 | talk about anything you want to talk about, but you can't
22 | talk about this case.

23 | Do you understand me, Madame Forelady?

24 | THE JUROR: I do.

25 | THE COURT: All right. Very good.

1 There are also some other admonitions I want to
2 make. I'm sure that you're significant other when you show
3 back up at home tonight or you go back to your place of
4 work, they're going to say, Well, tell me what happened on
5 the jury service. I'm going to order and instruct -- this
6 is one time you don't have to answer your spouse. I'm
7 going to order and instruct and demand that you not talk
8 about this case. Don't talk about what type of case it is,
9 what the allegations are or anything. The reason for that
10 is that your spouse or your co-worker or your significant
11 other might have some opinion about this type of
12 litigation. You are the only ones who are going to hear
13 all the of the evidence in this case and the law, and you
14 need to base your decision on what transpires here in the
15 courtroom, not on what other people say.

16 I don't anticipate -- I'm not very familiar with
17 Jasper County. I don't know whether there's a local paper
18 or whether or not journalists are here and might report on
19 some of the proceedings that transpire this week. I'm
20 going to order and instruct and demand that if you see
21 anything in the paper, if you hear anything on the news
22 about this matter, reverse your attention from that because
23 once again, you're to base your decision on what transpires
24 here in this courtroom.

25 I'll share a little secret with you too, quite

1 often journalists get it wrong. So y'all will be the ones
2 hearing the evidence straight from the horse's mouth and
3 the law as I charge it to you. That's what you need to
4 base your decision on.

5 In addition to that, I'm going to order, instruct
6 and demand that you not do any independent investigation.
7 You haven't heard anything about the case other than the
8 basic allegations and accusations. I've told you a little
9 bit about where this thing transpired. I'm going to order
10 and instruct and demand that you not do any independent
11 investigation. There is not anything in the entire world
12 that you can't look up on the computer.

13 I think -- every time you talk to these young
14 people -- I have those young clerks that follow me around.
15 If you ever ask a question, they've got a phone and they
16 look it up on Google. But you are not to do any internet
17 investigation about the law of this case, about the facts
18 of this case, or anything. Base your decision on what
19 transpires here in this courtroom.

20 In addition to that, with the advent of computers,
21 it's kind of discouraging. I'm convinced that FaceBook is
22 going to be the downfall of the world. I've talked to my
23 children about the dangers of FaceBook. But you're not to
24 do anything on FaceBook, if any of y'all participate in
25 that. Don't put anything in your status about what you're

1 | doing, the fact that you're participating in jury duty.

2 | There's a new thing, I have absolutely no idea what
3 | it's about, it's called Twitter, and it's where people tell
4 | what they're doing in the day. And I can't imagine why
5 | anybody would want to know what other people are doing to
6 | that extent, but you're not to report anything about this
7 | case on Twitter. And with those admonitions, I'm going to
8 | ask that you -- we're going to take care of some legal
9 | matters outside of your presence. We're going to dismiss
10 | you and ask that you return promptly at 9:30 sharp. We're
11 | going to start at 9:30. I'm going to ask that you be here
12 | and that you be here on time.

13 | I'm going to also -- the bailiff is going to give
14 | you instructions on how to enter the courthouse and what
15 | you need to do. Do not dillydally and lollygag around the
16 | courthouse because some litigants or witnesses might be in
17 | this courthouse. They might inadvertently be talking about
18 | this case. Once again that would cause a conflict. We'd
19 | have to investigate what you heard, whether or not it
20 | influences your ability to make a decision. So when you do
21 | what the bailiff tells you to do. When you come, come
22 | early and come directly to the bailiff, and you go on to
23 | the jury room so we can alleviate any problems in that
24 | regard.

25 | Also, I'm going to instruct you if anybody were to

1 try to contact you about this case, obviously, that's
2 illegal. If someone were to do that, your one obligation
3 is to determine the best you can who that is that's trying
4 to contact you and I will deal with them accordingly.
5 That's inappropriate. I don't anticipate that it would
6 happen, but if anyone were to try the contact you about
7 this case, inform me and I'll deal with the them
8 accordingly.

9 I can't think of anything else we need to go over
10 at this time. We're going to stay behind. We're going to
11 take care of some legal matters outside of your presence.
12 I'm going to ask that you be back at 9:30, 9:30, sharp.

13 Everyone remain seated as the jury exits the
14 courtroom.

15 (WHEREUPON the jury left the courtroom at 4:09
16 p.m.)

17 **JACKSON V DENNO HEARING**

18 THE COURT: Based on my in-camera discussion, I
19 understand that there's a Jackson v. Denno matter that
20 needs to be addressed.

21 Mr. Ferguson, you're recognized.

22 MR. FERGUSON: Thank you, Your Honor. We have two
23 statements that were given to law enforcement. I'm going
24 to take them out of order because one of our witnesses is
25 at the table. So the State would call Detective Jeff

1 Crosby.

2 THE COURT: Yes, sir. If you could come forward
3 and place your left hand on the Bible -- and I'm not sure
4 where they put it here. There it is. Place your left hand
5 on the Bible and raise your right hand as the clerk
6 administers the oath.

7 THEREUPON,

8 DETECTIVE JEFF CROSBY,
9 after being duly sworn, testified as follows:

10 THE COURT: I'm going to ask that you come forward
11 and have a seat in the witness chair. I'm going to ask
12 that you speak loudly, clearly, and slowly.

13 THE WITNESS: There's not a chair in here.

14 THE CLERK: There it is.

15 THE COURT: You know years ago, in London, they
16 actually did that. They asked that you stand up when you
17 answer questions. That's why they call it is witness
18 stand. But for whatever reason we allow them to sit.

19 MR. HUGHES: Your Honor, before we start, I
20 understand that Detective Crosby will be the primary
21 witness for the State and will be seated at the table. I'm
22 going to move to sequester all other witnesses and if there
23 are any other witnesses in this courtroom, I'd ask that
24 they leave at this time.

25 THE COURT: Mr. Ferguson, what is your position in

1 that regard?

2 MR. FERGUSON: No objection, Your Honor.

3 Mr. Crosby is our case officer, so we would ask that he be
4 exempt from sequestration. I do not see any other
5 witnesses in the courtroom.

6 THE COURT: All right. Well, Let's look and see --

7 Is there any other witness that's involved in this
8 case mere in the courtroom.

9 All right. Mr. Ferguson, I'm going to ask that you
10 enforce that rule, that you speak to all of your witnesses,
11 not only to determine that they not be in court when the
12 witnesses are testifying, but the sequestration order also
13 goes to the point that witnesses are not to discuss the
14 substance of their testimony with other witnesses. You
15 follow me in that regard?

16 MR. FERGUSON: Yes, sir, I do.

17 THE COURT: All right. Mr. Hughes, with regard to
18 any defense witnesses, or -- you understand that they're
19 not to be in the courtroom, and that if any witnesses are
20 called, they're not to discuss this testimony, the
21 substance of their testimony with other witnesses?

22 MR. HUGHES: Yes, Your Honor, and I will assure --
23 as I do not have any witnesses I plan to call, I don't see
24 that would be a problem. If there are, I'll make sure
25 they're not in this courtroom during testimony.

1 THE COURT: Very good. Mr. Ferguson, you're
2 recognized.

3 DIRECT EXAMINATION - IN CAMERA

4 By Mr. Ferguson:

5 Q Detective Crosby, who do you work for?

6 A Jasper County Sheriff's Office.

7 Q And what are your duties as an employee there?

8 A I'm an investigator with the sheriff's office.

9 Q Okay. Now, Detective Crosby, how did you become
10 involved in the case we're here to try this week?

11 A I was the investigator on call the night this
12 incident occurred.

13 Q Did you respond to the incident location?

14 A Yes, I did.

15 Q And what was that location?

16 A [REDACTED] Lowther Lane, if I'm not mistaken.

17 Q Did you make contact with the defendant, Ms. Tara
18 Weber that evening at the location?

19 A I did not see her at the location.

20 Q And when did you first make contact with her?

21 A At the sheriff's office after I processed the
22 scene.

23 Q Now, could you explain for the Court where your
24 contact with her took place?

25 A It took place at the detective's division, which is

Jeff Crosby - Direct Examination - In Camera by Mr. Ferguson

1 on Carter's Mill Road. We have two interview rooms set up
2 there. That's where I met with her.

3 Q Now, was Ms. Weber in custody at the time of your
4 interview?

5 A She was not.

6 Q Was she free to leave?

7 A Yes, she was.

8 Q Now, Detective Crosby, did you go over the
9 defendant's rights with her before asking her any
10 questions?

11 A Yes, I did.

12 Q And, Your Honor, if I may approach?

13 THE COURT: Yes.

14 (WHEREUPON State's Exhibit No.'s 1 and 3 were
15 marked for identification.)

16 By Mr. Ferguson:

17 Q Detective Crosby, I'm going to show you two things,
18 the first being marked as State's Exhibit 1 and the second
19 marked as State's Exhibit 3 for identification purposes and
20 ask if you can identify these two things.

21 A Yes, I can.

22 Q And what are they?

23 A State's Exhibit 1 is the Miranda Rights form that I
24 read to Ms. Weber before I interviewed her and State's
25 Exhibit No. 3 is an audio recording of the interview that I

Jeff Crosby - Direct Examination - In Camera by Mr. Ferguson

1 | conducted with Ms. Weber.

2 | Q And have you and I previously gone over that audio
3 | recording together?

4 | A No, we have not.

5 | Q Was there an opportunity where we listened to a
6 | portion of it in my office and you then initialled that
7 | disk?

8 | A Yes there was.

9 | Q And do you see your initials on that disk?

10 | A Yes, I do.

11 | Q Okay. Now, the Advisement of Rights form -- what
12 | rights did you advise Ms. Weber of?

13 | A I advised her that she had the right to remain
14 | silent, anything she said could and will be used against
15 | her in a court of law. She has a right to talk to a lawyer
16 | and have him present with her while she was being
17 | questioned. If she could not afford a lawyer, one would be
18 | appointed to represent her without any -- one would be
19 | appointed to represent her before any questioning if she
20 | wished if she decided at any time to exercise her rights
21 | and not answer any questions or make any statements.

22 | Q Did she initial or sign after those rights,
23 | indicating that she understood what they were?

24 | A She did, and then I read her the waiver of rights
25 | section below that, which she also signed.

Jeff Crosby - Direct Examination - In Camera by Mr. Ferguson

1 Q And what does it say?

2 A It says, I'm willing to make a statement and answer
3 questions. I do not want a lawyer at this time. I
4 understand and know what I'm doing. No promises or threats
5 have been made to me. No pressure or coercions of any kind
6 have been used against me.

7 Q Detective Crosby, other than yourself, who all was
8 present during the questioning of Ms. Weber?

9 A Detective Morris.

10 Q And you said this occurred at your office?

11 A Yes, sir, in an interview room at our office.

12 Q Now, did you threaten or coerce the defendant in
13 any way, shape, or form in exchange for her cooperation of
14 her statement?

15 A No, I did not.

16 Q Did you promise her anything in exchange for her
17 statement?

18 A No, I did not.

19 MR. FERGUSON: May I approach the witness, Your
20 Honor.

21 THE COURT: You may.

22 By Mr. Ferguson:

23 Q If I could get State's Exhibit 3 back from you.

24 MR. FERGUSON: Your Honor, this is an audio
25 recording of that particular interview. My intention is

Jeff Crosby - Direct Examination - In Camera by Mr. Ferguson

1 just to play the portion relative to this hearing, not the
2 substantive portion. I don't know if Mr. Hughes has any
3 objection to playing the beginning part or not, but that's
4 what I would like to do at this point, Your Honor.

5 THE COURT: Okay. This is your case, and actually
6 it's your job to establish issues with regard to advisement
7 of rights and voluntariness of it and you can publish
8 whatever part you want. And, obviously, he can respond as
9 well.

10 MR. FERGUSON: Thank you, Your Honor.

11 (WHEREUPON the CD was played by the State.)

12 By Mr. Ferguson:

13 Q Detective Crosby, do you recognize the voices on
14 that tape?

15 A Yes, I do.

16 Q And is that your voice on that tape?

17 A Yes, it is.

18 Q And is that the defendant's voice on that tape?

19 A Yes, it is.

20 Q And is that a fair and accurate depiction as that
21 conversation occurred?

22 A Yes, it is.

23 Q All right. Did you, in fact, get a statement from
24 the defendant?

25 A Yes, she gave me a statement.

Jeff Crosby - Direct Examination - In Camera by Mr. Ferguson

1 Q And is the statement recorded on that disk?

2 A Yes, it is.

3 Q At any point did the defendant change her mind and
4 wish to stop speaking to you or request for an attorney?

5 A No, she did not.

6 Q What was the defendant's emotional state during
7 this interview?

8 A She was upset on and off. Other times she wasn't.

9 Q Did she ever ask to go to the bathroom or for food
10 or drink?

11 A At the end of the interview she asked to use the
12 restroom.

13 Q Was she ever -- did she appear to have any trouble
14 understanding her rights?

15 A No, she did not.

16 Q Did she appear to be under the influence of drugs
17 or alcohol when you interviewed her?

18 A No, she did not.

19 Q Did she say anything -- you know, it was early in
20 the morning, was it not?

21 A Yes, it was.

22 Q About what time was it?

23 A 8:05 a.m., which I indicated on the bottom of the
24 rights form.

25 Q And did she say anything about being up all night?

Jeff Crosby - Cross-Examination - In Camera by Mr. Hughes

1 A No, she did not.

2 Q And then what -- was she able to have a
3 conversation with you and understand your questions and
4 what you were looking to ask her about?

5 A Yes, she did.

6 Q Okay.

7 MR. FERGUSON: And, Your Honor, for purposes of
8 this hearing, I have no further questions for Detective
9 Crosby.

10 THE COURT: Cross-examination, Mr. Hughes.

11 **CROSS-EXAMINATION - IN CAMERA**

12 By Mr. Hughes:

13 Q Detective Crosby, what was Ms. Weber wearing?

14 A If I remember correctly she was wearing a jacket
15 and a pair of silver type pants.

16 Q What did she have on her feet?

17 A I don't recall. I think she might have been
18 barefooted.

19 Q Did you take pictures of her?

20 A Yes, I did. After the interview. I did not
21 myself, Detective Morris did.

22 Q The pictures were taken there?

23 A Yes, sir.

24 Q On the tape we just heard, Ms. Weber asked if she
25 could ask some questions. What were those questions she

Jeff Crosby - Cross-Examination - In Camera by Mr. Hughes

1 | was going to ask you?

2 | A I don't recall her asking any questions. She asked
3 | me if she could ask questions, and I told her she could,
4 | but I had to complete the rights form first.

5 | Q You did not even bother to find out if she didn't
6 | understand -- if she understood the rights form, didn't
7 | you?

8 | A As I went through it, I explained it to her.

9 | Q But she did ask, May I ask questions?

10 | A And I explained to her --

11 | Q But then you wouldn't -- you wouldn't let her ask
12 | questions, would you?

13 | A I told her she could, but I had to complete the
14 | form before I could talk to her.

15 | Q So basically, you told her she had to give up her
16 | right to remain silent before she could even ask you
17 | questions about whether or not she could or should or what
18 | you meant when you say give up her right to -- her rights?

19 | A No, sir. If she'd asked me questions before I
20 | finished that rights form, I'd have violated her rights.

21 | Q She asked you questions, sir. She wanted to get
22 | information. Why can't you explain her rights to her?

23 | A If she would have asked me a question that I had to
24 | answer with a question, I would have violated her rights
25 | and I told her that we needed to complete the rights form

Jeff Crosby - Cross-Examination - In Camera by Mr. Hughes

1 first so I did not violate any of her rights. I didn't
2 tell her to violate any of her rights, but I told her I
3 needed to complete the rights form before we got into that.

4 Q No, sir, you told her she had to complete that
5 form. You didn't say the rights form, you said the form?

6 A Yes, sir, I did.

7 Q Okay. So she gave -- she asked you could she ask
8 questions?

9 A Yes, sir.

10 Q Okay. And you don't know what questions she had?

11 A No, sir, I'd have to go back and listen to the
12 tape.

13 Q You have no idea whether or not she wanted to ask
14 you questions about giving up her rights or not? You have
15 no idea if she wanted to know how long it would take for an
16 attorney to get there?

17 A No, sir.

18 Q But you didn't give her a chance to ask those
19 questions, even after she signed the form?

20 A After she signed the form, she had plenty of
21 opportunity to ask me anything she wanted.

22 Q You had Detective Morris sign the thing and then
23 you proceeded to interrogate her; isn't that correct?

24 A I proceeded to ask her questions about the night
25 before.

Jeff Crosby - Cross-Examination - In Camera by Mr. Hughes

1 Q Is it customary to interview a woman wearing only a
2 jacket and thin pants without a female officer present?

3 A Yes, sir.

4 Q Okay. Did she ever ask if she could wash her
5 hands?

6 A No, she did not.

7 Q Did she ever ask anything at all?

8 A She asked about Mr. Way, and I'll back up, she did
9 ask if she could wash her hands at the conclusion of the
10 interview.

11 Q Okay. But you had a woman sitting in there wanting
12 to ask questions with -- what was her hands like?

13 A She had blood all over them.

14 Q Okay. And you said her mental state during this
15 interview was what?

16 A Sometimes she was upset, sometimes she wasn't.

17 Q Okay. Well, did she ever cry?

18 A Sometimes she did and sometimes she didn't.

19 Q Okay.

20 MR. HUGHES: May I approach, Your Honor.

21 THE COURT: You may.

22 By Mr. Hughes:

23 Q I want to show you a picture that's provided to me
24 by the solicitor's office. I do not know whether they want
25 to enter this into evidence or not and I just ask -- this

Jeff Crosby - Cross-Examination - In Camera by Mr. Hughes

1 is for identification. This is the way she looked on that
2 morning?

3 A Yes, sir.

4 Q Okay. She had no shoes on, she's got thin pants on
5 and a jacket; is that correct?

6 A That's correct. I have no idea what she had on
7 underneath the jacket.

8 Q Okay. And she has blood on her pants, on her feet,
9 on her hands?

10 A That's correct.

11 Q And you have no idea what questions she wanted to
12 ask you after you -- before you forced her to sign that
13 form?

14 A No, sir. I didn't force her to sign the form.

15 Q You told her you could not talk to her until she
16 signed the form; is that correct?

17 A That's correct.

18 Q Okay. What was the weather like that day?

19 A It was dark. I have no idea what the weather was
20 like at that time because I was inside.

21 Q Okay. This was December 31st?

22 A Yes, it was.

23 Q Would you dispute the National Weather Service
24 saying between the hours of four and six it did not get
25 over 41 degrees?

Jeff Crosby - Cross-Examination - In Camera by Mr. Hughes

1 A I can't answer that. I have no idea, I don't
2 remember.

3 MR. HUGHES: No further questions, Your Honor.

4 THE COURT: Any redirect?

5 MR. FERGUSON: No, sir, Your Honor.

6 THE COURT: All right. You may step down.

7 You may call your next witness.

8 MR. FERGUSON: Thank you, Your Honor. The State
9 calls Deputy Raymond Moran.

10 THE COURT: Yes, sir, please come forward and I'm
11 going to ask you to please place your left hand on the
12 Bible and raise your right hand as the clerk administers
13 the oath.

14 THEREUPON,

15 DEPUTY RAYMOND MORAN,
16 after being duly sworn, testified as follows:

17 THE CLERK: Have a seat right over here.

18 THE COURT: Have a seat in the witness chair. I'm
19 going to ask you to speak loudly, clearly, and slowly in
20 order for us to hear everything that you've to say.

21 THE WITNESS: Okay.

22 THE COURT: Let's start with your full name.

23 THE WITNESS: Raymond Leroy Moran.

24 THE COURT: Very good.

25 ///

Raymond Moran - Direct Examination - In Camera by Mr. Ferguson

DIRECT EXAMINATION - IN CAMERA

1
2 By Mr. Ferguson:

3 Q Detective Moran, who do you work for?

4 A The Jasper County Sheriff's Office.

5 Q And what do you do for them?

6 A I'm a deputy sheriff.

7 Q And were you working back on December 31st of 2010?

8 A Yes, I was.

9 Q And what were you doing that night?

10 A I was on patrol.

11 Q Did you respond to a call out to [REDACTED] Lowther Lane?

12 A That's correct.

13 Q And could you describe for the Court what you saw
14 when you got there?

15 A When I pulled up, I met Ms. Weber in the front
16 yard. She was standing, barefooted, she had a jacket on,
17 some tights. Her pants had blood on them and the jacket
18 had blood on it and her hands had blood on them.

19 Q What was the call that you were sent there to
20 respond to?

21 A I believe it was a stabbing, an accidental
22 stabbing.

23 Q And then did you make contact with the defendant,
24 Ms. Weber?

25 A Yes, I did.

Raymond Moran - Direct Examination - In Camera by Mr. Ferguson

1 Q And could you explain to the Court that contact
2 that you had with one another?

3 A We spoke in the front yard. She seemed to be very
4 upset. She was telling me how she was telling her
5 boyfriend she was going to kill herself and she had a
6 knife in her hand, and when he approached her, she turned
7 around. She said -- the way she explained it to me as he
8 was reaching for the knife, she was handing him the knife
9 and the knife stabbed him in the shoulder.

10 Q Now, was Ms. Weber in custody when y'all talked to
11 her?

12 A No.

13 Q Was she a suspect in the crime when you talked to
14 her?

15 A Well, actually, as far as I knew, I really believed
16 it was still an accidental stabbing, so she wasn't.

17 Q At some point, did you start to question her about
18 the specific incident and about her involvement?

19 A Yes.

20 Q And who was with you when you did your questioning
21 at this time?

22 A There was two of other officers responding,
23 Corporal Wilbur and Deputy Croft.

24 Q And at some point when the defendant started
25 volunteering information about this, did you stop and give

Raymond Moran - Direct Examination - In Camera by Mr. Ferguson

1 her her Miranda warnings?

2 A Yes, I did.

3 Q All right. Detective Moran --

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

6 THE COURT: You may.

7 By Mr. Ferguson:

8 Q I want to show you what's been previously marked as
9 State's Exhibit 2 for identification purposes and ask you
10 if you recognize this item?

11 A Yes, I do.

12 Q Deputy Moran, is that a disk that you and I went
13 over sometime back in trial preparation?

14 A Yes, it is.

15 Q And is that a recording of your conversation with
16 the defendant that night?

17 A Yes, it is.

18 Q Did you indicate on that disk in any way saying
19 that that's indeed what you and I talked about and listened
20 to?

21 A Yes, I initialled it.

22 MR. FERGUSON: May I approach the witness, Your
23 Honor.

24 THE COURT: You may.

25 MR. FERGUSON: Your Honor, at this point, I would

Raymond Moran - Direct Examination - In Camera by Mr. Ferguson

1 | wish to introduce the relevant portion of that report.

2 | (WHEREUPON the CD was played for the Court.)

3 | By Mr. Ferguson:

4 | Q Now Deputy Moran, at the conclusion of your
5 | advisement of rights, who is it we hear on the tape talking
6 | to the defendant, Ms. Weber?

7 | A That was Deputy Croft.

8 | Q At any point, did a member of EMS come inquiring
9 | about the knife used in this incident?

10 | A I believe so.

11 | Q Okay. But you're not sure whether that questioning
12 | there, about the knife and where it is, was Officer Croft
13 | or EMS?

14 | A It sounded like Croft.

15 | Q Okay. Did you ever promise or threaten Ms. Weber
16 | in exchange for her cooperation that evening?

17 | A No, never.

18 | Q Did she ever say that she wished to speak to an
19 | attorney before answering your questions?

20 | A No, sir.

21 | Q What was the defendant's mental state during your
22 | questioning of her?

23 | A She just seemed to be upset. The whole time,
24 | throughout the conversation she wasn't shedding any tears.
25 | She kept looking at her hands where she had blood on them

Raymond Moran - Direct Examination - In Camera by Mr. Ferguson

1 and kept wiping her forehead, spreading it on her face.

2 Q What was the weather like that night?

3 A It was chilly, quite chilly.

4 Q Did the defendant ever ask for additional clothing
5 or to sit in the squad car or anything?

6 A No.

7 Q Was she free to leave when you were talking to her?

8 A Yes.

9 Q Okay. When we listened to that portion of the
10 audio tape, is that a fair and accurate depiction of the
11 recitation of the rights that you gave Ms. Weber that
12 evening?

13 A Yes.

14 MR. FERGUSON: I beg the Court's indulgence just
15 one moment.

16 By Mr. Ferguson:

17 Q Just briefly, Deputy Moran, did the defendant
18 appear to be under the influence of any alcohol or drugs
19 when you spoke to her?

20 A No.

21 Q Okay.

22 MR. FERGUSON: For purposes of this hearing, Your
23 Honor, I have no further questions for Deputy Moran.

24 THE COURT: All right. Was there a Miranda form
25 filled out?

Raymond Moran - Cross-Examination - In Camera by Mr. Hughes

1 By Mr. Ferguson:

2 Q Deputy Moran, did you fill out a Miranda form
3 during this first questioning?

4 A I believe in the report itself.

5 Q Okay.

6 A Not an actual form.

7 Q Okay. So not a separate form like the one your
8 looking at in front of you?

9 A No.

10 Q But you did record, or memorialize in your report?

11 A Yes, sir.

12 THE COURT: Cross-examination, Mr. Hughes?

13 MR. HUGHES: Yes, sir.

14 **CROSS-EXAMINATION - IN CAMERA**

15 By Mr. Hughes:

16 Q Deputy Moran, did you ask Tara Weber that night if
17 she gave up her rights?

18 A How -- what do you mean? Before or after I read
19 her her Miranda Rights.

20 Q You read her her Miranda Rights.

21 A Yes, sir.

22 Q The second part of that is, Do you wish to give up
23 your rights and speak to me at this time. Did you ever ask
24 her that?

25 A I read everything off the card.

Raymond Moran - Cross-Examination - In Camera by Mr. Hughes

1 Q Okay. But you never -- she never voluntarily gave
2 up her right to remain silent? You never --

3 A She agreed to continue to speak with me.

4 Q What were the questions she wanted to ask you?

5 A That she wanted to ask me?

6 Q Yes.

7 A I can -- I would have to listen to the audio
8 because I don't actually remember everything she was trying
9 to ask me.

10 Q Well, right after you read her her rights before --
11 she asked, may I ask some questions. What were those
12 questions?

13 A I couldn't tell you off the top of my head right
14 now.

15 Q Who was the officer that interrupted her even
16 asking for clarification or whatever she was going to ask
17 for?

18 A I believe that was Deputy Croft.

19 Q Okay. So basically -- Deputy Croft?

20 A Yes.

21 Q So basically Deputy Croft started the interrogation
22 before she even consented to any waiver of rights; is that
23 correct?

24 A I asked her questions prior to reading her her
25 Miranda.

Raymond Moran - Cross-Examination - In Camera by Mr. Hughes

- 1 Q Okay. But that's not on the tape, is it?
- 2 A That I started asking her questions?
- 3 Q The tape starts with you reading Miranda, right?
- 4 A That's correct.
- 5 Q So what's on tape is you reading her Miranda.
- 6 A Uh-huh.
- 7 Q She asked if she could ask some questions, then
- 8 Deputy Croft starts immediately the interrogation?
- 9 A No, Deputy Croft asked her one question.
- 10 Q I believe he asked her two questions?
- 11 A Well I'm not sure, it was quite a while ago.
- 12 Q Okay. And after those questions, did you confirm
- 13 that she wished to give up her right to remain silent and
- 14 speak to you?
- 15 A Yes, as you heard, she agreed.
- 16 Q I think we need to listen to that again. I didn't
- 17 hear her agree to any --
- 18 A Okay.
- 19 Q I think I heard her say that she understood her
- 20 rights, then Deputy Croft started interrogating her after
- 21 she asked if she could ask some questions. But that's
- 22 neither here nor there.
- 23 Where was she when this interview took place?
- 24 A In the front yard at the residence.
- 25 Q Okay. Were you inside or outside of the patrol

Raymond Moran - Cross-Examination - In Camera by Mr. Hughes

1 car?

2 A I was outside.

3 Q Was she inside or outside the patrol car?

4 A Outside.

5 Q How was she dressed?

6 A As I said, she was wearing -- she was barefoot.

7 She had on some tights, a shirt and her jacket on.

8 Q She had a shirt on?

9 A I believe so. I'm sure she did.

10 Q Okay. Would it surprise you to find out she did

11 not? The only thing she had on her top was a jacket?

12 A The jacket was zipped down so I'm sure she had a

13 shirt on underneath it.

14 Q Okay. What condition were her hands, feet and

15 clothing?

16 A Well the clothing, the tights she had on had blood

17 on them. Her hands had blood on them. The jacket I

18 couldn't tell, it was a dark colored jacket so I couldn't

19 tell whether or not it had blood on it at the time.

20 Q What did she have on her feet?

21 A She was barefoot.

22 Q What was the weather like?

23 A It was very chilly.

24 Q Would you dispute the National Weather Service

25 saying it was between 40 and 42 degrees between four and

Raymond Moran - Redirect Examination - In Camera by Mr. Ferguson

1 six o'clock that morning?

2 A That was chilly to me.

3 Q Okay.

4 MR. HUGHES: No further questions, Your Honor.

5 THE COURT: Any redirect?

6 **REDIRECT EXAMINATION - IN CAMERA**

7 By Mr. Ferguson:

8 Q Deputy Moran, how did the defendant leave the
9 incident location?

10 A She left in the patrol car.

11 Q And did you handcuff her?

12 A I can't -- yes, I believe I did.

13 Q Where did you take her?

14 A To the office.

15 Q Okay. But she was not in custody at the time you
16 gave her her Miranda Rights; is that correct?

17 A No.

18 Q Okay.

19 MR. FERGUSON: That's all I have, Your Honor.

20 THE COURT: Very good. Anything --

21 MR. HUGHES: Just one quick question.

22 THE COURT: Actually, we're going to strictly
23 adhere to direct and cross and there is no recross. You
24 have an obligation to object to anything new that he brings
25 up in redirect. That's going to prevail throughout the

1 trial of the case. I'll be glad to -- is there any
2 other --

3 You may step down.

4 Is there any other witnesses?

5 MR. FERGUSON: Your Honor, there is one more
6 witness, who was the first responder. Their only purpose
7 was to clear the scene for EMS. The defendant did make
8 unsolicited voluntary statements to that officer. We have
9 not prepared that witness for today because quite frankly I
10 don't believe that it's -- that a question of voluntariness
11 would arise. However, I just want to let the Court know
12 that we intend on asking that officer if she made any
13 statements and --

14 THE COURT: Okay. Well, if there are to be any
15 statements introduced into evidence, we are going to have
16 an in-camera Jackson v Denno type hearing.

17 MR. FERGUSON: Yes, sir.

18 THE COURT: But, do you intend on offering those
19 statements in your case in chief.

20 MR. FERGUSON: Potentially, Your Honor. He's
21 number two on our witness list. We can do it very first
22 thing in the morning and it will be extremely very brief.

23 THE COURT: Well, we will be here at 9 o'clock.

24 I'll ask the court reporter if -- would that prove
25 to be a hardship for you?

1 THE COURT REPORTER: No, sir.

2 THE COURT: All right. Everyone else be here at
3 nine. Very good. We'll be here at nine o'clock, and we'll
4 tend to that.

5 Any other evidence with regard to these statements
6 that you're attempting to introduce?

7 MR. FERGUSON: No, sir, Your Honor.

8 THE COURT: Any evidence from defense with regard
9 to whether or not she was read her Miranda Rights and
10 whether or not it applies and issues with regard to
11 voluntariness, Mr. Hughes?

12 MR. HUGHES: Beg the court's indulgence one second.

13 (WHEREUPON Mr. Hughes was conferring with the
14 defendant.)

15 MR. HUGHES: Defense calls Tara Weber, Your Honor.

16 THE COURT: Ms. Weber if you could come forward,
17 place your left hand on the Bible and raise your right hand
18 as the clerk administers the oath.

19 THEREUPON,

20 TARA MARIE WEBER,
21 after being duly sworn, testified as follows:

22 THE COURT: Ms. Weber, please come forward, and I'm
23 going to ask if you could to have a seat in the witness
24 chair. I'm going to ask that you pull up real close to
25 that microphone and speak loudly, clearly, and slowly; and

Tara M. Weber - Direct Examination - In Camera by Mr. Hughes

1 let's start with your full name.

2 THE WITNESS: Tara Marie Weber.

3 THE COURT: All right. With regard to her
4 testimony, it's going to be restricted to the issues of
5 Miranda and voluntariness. There will be no discussion
6 about the merits of the case.

7 **DIRECT EXAMINATION - IN CAMERA**

8 By Mr. Hughes:

9 Q Tara, do you remember Deputy Moran reading you your
10 rights?

11 A A little bit, yes, sir, a little bit.

12 Q Okay. Do you remember Detective Crosby reading
13 your rights?

14 A Yes, sir.

15 Q Did you understand what he was asking for when he
16 asked -- gave you a waiver of rights?

17 A No, sir.

18 Q Okay. Did Detective -- I mean Deputy Moran ever
19 ask if you wanted to waive your rights?

20 A I don't remember.

21 Q Okay. What were you wearing that night?

22 A I was wearing black -- black jacket, silver tight
23 pants, no shoes, no bra, no shirt.

24 Q Okay.

25 MR. HUGHES: No further questions, Your Honor.

Tara M. Weber - Cross-Examination - In Camera by Mr. Ferguson

1 THE COURT: Cross-examination?

2 **CROSS-EXAMINATION - IN CAMERA**

3 By Mr. Ferguson:

4 Q Ms. Weber, did you ever say to either Deputy Moran
5 or Detective Crosby that you did not wish to speak to them?

6 A No, sir, I wanted to speak with them.

7 Q Okay. Did you ever say that you didn't want to
8 speak to them without the presence of an attorney?

9 A Yes, sir.

10 Q When did you say that?

11 A Oh, that I did?

12 Q Right.

13 A No.

14 Q So at no point did you stop and say, I want to
15 speak to my attorney?

16 A No, sir.

17 Q Okay.

18 MR. FERGUSON: I have no further questions, Your
19 Honor.

20 THE COURT: Any redirect?

21 MR. HUGHES: No, Your Honor.

22 THE COURT: You may step down. Thank you, ma'am.
23 Any further evidence, Mr. Hughes?

24 MR. HUGHES: No, Your Honor.

25 THE COURT: All right. Anything further from the

1 State?

2 MR. FERGUSON: No, sir, Your Honor.

3 THE COURT: All right. I'll be glad to hear the
4 position of the State with regard to admissibility of the
5 statements.

6 MR. FERGUSON: Your Honor, we have two statements,
7 both of which are precursored by the recitation of Miranda.
8 Both officers testified that they did not do anything to
9 threaten this defendant or coerce her to change her
10 testimony. I believe she actually said she wanted to talk
11 with them. I think it's good in this case as we actually
12 have an audio recording instead of just our officers memory
13 and their reports. I think that you don't usually get that
14 clear of a picture of what transpired before any
15 questioning took place.

16 The defendant herself just said at no point did she
17 ever stop and say that she did not want to speak to these
18 officers and at no point did she invoke her right to
19 counsel, which is in the rights.

20 Therefore, Your Honor, I believe that the law has
21 established it appears in Miranda and under -- her Fourth
22 Amendment has been complied with. These statements are
23 voluntary and the substance of these statements should be
24 deemed admissible in this trial, Your Honor.

25 THE COURT: All right. Well let me ask you about,

1 of course, it's sort of irrelevant, but you asked one of
2 the officers whether or not she was in custody and free to
3 leave, but I heard testimony that she was actually
4 handcuffed and taken to the sheriff's department. It's
5 kind of hard to believe that when you're handcuffed in the
6 back of the car that --

7 MR. FERGUSON: Indeed, Your Honor. I believe
8 Deputy Moran's testimony was that at the conclusion of his
9 conversation with the defendant that she was then placed in
10 handcuffs and placed under arrest and transported to --

11 THE COURT: Oh, so the handcuffing took place after
12 the questioning. I was unclear.

13 MR. FERGUSON: We took them out of order, Your
14 Honor, just because Deputy Moran was a little bit late he's
15 a patrolman. But Deputy Moran's statement occurred first
16 and then she was placed in custody and delivered to the
17 jail and transported over to the detective's office.

18 THE COURT: Okay. So those statements took place
19 before she was handcuffed?

20 MR. FERGUSON: No, sir, she was handcuffed at the
21 conclusion of Deputy Moran's statements.

22 THE COURT: Okay.

23 MR. FERGUSON: At some point -- she's not booked
24 into the jail at this point, she's delivered to the
25 detectives, which is a separate office, where she was

1 interviewed again and those deputies stated that she was
2 still not booked into the jail. It was part of their
3 investigation, they were questioning her. I believe
4 Detective Crosby said she was free to leave. So those are
5 the chains of events as I understand them.

6 THE COURT: You think if she had stood up and --

7 MR. FERGUSON: No, sir.

8 THE COURT: -- walked out of the sheriff's office
9 they would have let her go?

10 MR. FERGUSON: I probably think they would have
11 followed her pretty close.

12 THE COURT: Okay. So she probably was in custody
13 for the second interview?

14 MR. FERGUSON: Yes, sir, I believe so.

15 THE COURT: Okay. Is that the position of the
16 State?

17 MR. FERGUSON: Well, my position is that she has
18 been previously handcuffed and delivered to the jail and my
19 understanding is that, I guess Detective Crosby --

20 Requested that she brought over to your office?

21 DETECTIVE CROSBY: Yes.

22 MR. FERGUSON: And she was delivered by another
23 deputy, so yes, sir, I believe she was in custody at the
24 time of that statement.

25 THE COURT: Very good. All right. I'll be glad to

1 | hear the defense's position.

2 | MR. HUGHES: Your Honor, starting with Deputy
3 | Moran's questioning, yes, he read her her Miranda. She
4 | then has questions. We don't know what those questions
5 | were because before she could even waive her right to
6 | testify or waive her right to answer questions, she was
7 | immediately starting to -- the interrogation started.
8 | Where is the knife? What did you do with it? I need to
9 | know now.

10 | That set the tone for the entire interview, Your
11 | Honor, and any subsequent interviews. She never waived her
12 | right to any statement on that first one. We have no idea
13 | what questions she was going to ask because she never got a
14 | chance to ask them. It would have been a simple matter of
15 | after Deputy Moran had read her her rights to ask if she
16 | wanted to waive her rights. She never waived her rights on
17 | that first -- on the Deputy Moran's questioning. Her
18 | rights to waive -- the right to waive the right was
19 | trampled on by Deputy Croft coming in and demanding answers
20 | to questions before she had a chance to find out anything
21 | at all.

22 | We don't know what she was going to ask. We don't
23 | know -- she doesn't remember what she was going to ask.
24 | All -- we hear on the tape, very politely, May I ask some
25 | questions. May I ask -- and then she's cut off. She tries

1 it again, May I -- again, cut off. Deputy Croft and Deputy
2 Moran then proceeded to interrogate her on the scene, a
3 young woman wearing pants and a jacket, no bra, no shirt,
4 no shoes, with the blood of the victim on her hands, pants
5 and feet.

6 Your Honor, obviously, the first statement needs to
7 be suppressed simply because they didn't follow procedure.
8 They did not allow her to waive her rights to be questioned
9 before they began to question her. There is no waiver of
10 rights on that first statement that Deputy Moran got.

11 As far as the second, Detective Crosby reads the
12 waiver of rights form, she has questions. She is told that
13 he cannot talk to her until she signs the form, not the
14 waiver of rights form, but the form. We don't know what
15 she -- she does not know what was going on there.

16 Detective Crosby has her sign and instead of going what are
17 your questions, he immediately starts with the interview,
18 slash interrogation. Again, she is a young woman dressed
19 only in a jacket and pants and no bra, no underwear, no
20 shoes, still with blood on her, and this is only a short
21 time after she had been delivered to the detective's office
22 in handcuffs.

23 Still, I'd consider this a continuation of the
24 detective -- of Deputy Moran's interview, which I think
25 should be suppressed and I move to suppress both the first

1 and second interviews in this matter, Your Honor.
2 Obviously, her rights to try to understand and to waive any
3 potential rights were trodded upon by both of the deputies
4 on the scene and the detectives at the sheriff's
5 department.

6 THE COURT: All right. Mr. Ferguson, what is your
7 position with regard to whether or not she's even subject
8 to Miranda at the scene. The first interview, I understand
9 takes place before the handcuffs are put on; and what is
10 your understanding and what is the State's position as to
11 whether or not they have to give Miranda, that they have an
12 obligation and a right to sort of investigate the matter
13 before they do anything, just to sort of find out what's
14 going on.

15 MR. FERGUSON: Yes, sir, and I believe custody is
16 not the end all, be all. That's one element, I guess, used
17 to determine whether there's coercion or whether the
18 statement is somehow involuntary. But you're right. These
19 two deputies arrived at the call for an accidental
20 stabbing. It's not until the suspects or Ms. Weber's
21 responses and explanation of that accident are a little bit
22 questionable that they say wait a minute, let's take the
23 careful route. Let's stop before you make any
24 incriminating statements while we're talking to you, and
25 we're going to Mirandize you so that you fully understand

1 | it and we're going to do it on tape.

2 | You know, it's unfortunate that Deputy Moran does
3 | not recall the incidents that occurred. The statement
4 | that's immediately following her rights being read by
5 | Deputy Moran is actually Roy Thompson who is on our witness
6 | list. Mr. Thompson is EMS. His point in doing so is that
7 | he needed to know the extent of the injury in order to save
8 | the victim's life. That is not police questioning. He is
9 | determining -- he is trying to make a medical decision
10 | about whether he should be air lifted, whether they should
11 | attempt to do certain resuscitation procedures. So he will
12 | be able to clear that up, I guess over the course of the
13 | trial.

14 | THE COURT: Once again, I'll ask you the question.
15 | Do you think the first questioning by the deputy is subject
16 | to Miranda?

17 | MR. FERGUSON: No, sir.

18 | THE COURT: That was my question.

19 | What is the defense's position were regard to
20 | Miranda and whether or not the circumstances triggered
21 | Miranda under the circumstances by the first deputy?

22 | MR. HUGHES: Your Honor, since I only have the
23 | deputy's testimony, if he felt the need to give Miranda, he
24 | must have been planning on something and to plan on using
25 | this said statement against her and realizing that he

1 needed to Mirandize her. I think that basically once
2 you -- he Mirandized my client and then placed her in
3 handcuffs and placed her in --

4 THE COURT: After the statement.

5 MR. HUGHES: After the statement. I think once he
6 made the statement -- read her her rights, Your Honor, that
7 she was basically in custody, just minus the handcuffs. He
8 wanted to interview her, he wanted to get everything --
9 because they don't start the tape until Miranda. So she --
10 he was hearing something that he wanted on tape and I think
11 he basically Mirandized her and she was in custody even
12 though she wasn't handcuffed at that time, Your Honor.

13 THE COURT: All right. Very good. With regards to
14 the first statement, I specifically find that given the
15 circumstances, the State has the responsibility to do an
16 investigation and I find that she -- with regard to the
17 first statement, she was not in custody. However, in the
18 event -- alternatively, in the event she was, the Miranda
19 warnings were indeed given to her. There has been a point
20 made by the defense that there was no actual waiver. Of
21 course, she did not sign any kind of waiver.

22 In a perfect world that would have probably been
23 the best way to do it, but I specifically find and I
24 rule -- and I'm -- I stand to be corrected on it, but I
25 think that the rights were given to her and I find that

1 they were given to her on that first interview, and I also
2 believe that she understood them given -- listening to all
3 of the evidence, nothing prevented her from understanding
4 what was going on, and that she has an obligation to assert
5 her right to remain silent or to ask for a lawyer and she
6 didn't do that.

7 That's my ruling in that regard, with regard to the
8 first statement. You're protected on the record in that
9 regard.

10 I believe, number one, that the questioning that
11 took place by the initial deputy was not subject to
12 Miranda. I don't find that she was put in custody until
13 after the first statement. However, Miranda was given out
14 of an abundance of caution and just by virtue of the fact
15 there's not a waiver form that's signed or a verbal waiver
16 given, I think it's incumbent upon a defendant to assert
17 the right, and she was given the rights and she understood
18 them and she did not assert her right to remain silent, nor
19 did she ask for a lawyer.

20 With regard to the second statement, I do indeed
21 find that she was in custody, which triggered the Miranda
22 warnings. I find that they were given to her in a
23 comprehensive fashion. I do specifically find that based
24 on her responses in my listening to the audio, that she
25 understood what transpired. I also specifically find that

1 | there was no threats, there was no promise of reward. It's
2 | clear that she's not intoxicated. There were only two
3 | officers there. It wasn't as if she was surrounded by an
4 | army of officers putting pressure on her.

5 | Not only do I find that she was not coerced, I
6 | think they specifically asked the question whether or not
7 | she was being coerced and she responded in the negative. I
8 | specifically find that based on what I've heard on the tape
9 | and what the defendant has testified to in court that she's
10 | not mentally impaired. I've heard no testimony with regard
11 | to defense putting forth any kind of evidence concerning
12 | inferior IQ she appears to have plenty of sense and has
13 | testified as such here today. There was no denial of
14 | bathroom privileges. There was no denial of food or drink,
15 | there was certainly no physical threats made to her. I
16 | specifically find that the statement was indeed voluntary.
17 | I don't think that given what I've been provided that the
18 | interrogations took that long.

19 | There's been no absolute testimony in that regard
20 | that's been offered by the State or from the defendant that
21 | would seem to indicate it was too long of an interrogation.
22 | I think it was very appropriate given the circumstances and
23 | the statements are admissible in court.

24 | That is my ruling and the defense is protected on
25 | the record in all respects.

1 Anything further from the State?

2 MR. FERGUSON: No, sir, Your Honor.

3 THE COURT: Anything further from defense?

4 MR. HUGHES: No, Your Honor. Will we still be
5 having the continuation hearing in the morning with the
6 third statement?

7 THE COURT: That's what was indicated.

8 MR. HUGHES: Okay.

9 THE COURT: Nine o'clock sharp and we will have the
10 witnesses available, and we will be able to handle that and
11 be ready to go at 9:30. We'll have the jury start at 9:30
12 and we'll have to conclude that before then.

13 Okay. We'll start with opening statements in the
14 morning at 9:30.

15 Is there anything I can help you with? Anything
16 from the State?

17 MR. FERGUSON: No, sir, Your Honor.

18 THE COURT: Anything from defense?

19 MR. HUGHES: No, Your Honor.

20 THE COURT: Any additional motions or anything?

21 MR. HUGHES: Not at this time, Your Honor.

22 THE COURT: Okay. We'll revisit that matter in the
23 morning. We'll stand at ease until nine o'clock, nine
24 o'clock, sharp.

25 MR. HUGHES: Thank you, Your Honor.

1 (WHEREUPON this case was continued the following
2 morning at 9 o'clock.)

3 TUESDAY, SEPTEMBER 25, 2011

4 THE COURT: Mr. Ferguson, your recognized.

5 MR. FERGUSON: Thank you, Your Honor. If I could
6 have two seconds to grab Ms. Legette. She's going to be
7 doing the proffer of Mr. Smith.

8 MR. HUGHES: Your Honor, my client is still not
9 here. The sheriff's department is bringing her.

10 THE COURT: Oh. Okay. We'll certainly wait.

11 Mr. Ferguson?

12 MR. FERGUSON: Yes, sir?

13 THE COURT: Why don't y'all -- won't counsel
14 approach the bench.

15 MR. FERGUSON: Yes, sir.

16 (WHEREUPON, there was a bench conference out of the
17 hearing of the Court Reporter.)

18 (WHEREUPON the defendant arrived and the trial
19 resumed.)

20 MR. FERGUSON: Your Honor, I believe we're ready to
21 proceed.

22 THE COURT: Mr. Ferguson, before we start, I did
23 want to mention something to the people who are here on
24 behalf of the defendant. I want to acknowledge this is
25 indeed a public forum and certainly y'all are welcome to be

1 here, but my job is to assure that both the State and the
2 defendant get a fair trial and I sympathize with your
3 situation and I appreciate your cooperation with regard to
4 the rules. Thank you so much.

5 One of the things that I'm sure the solicitor will
6 explain to you is, if there is not a fair trial there are
7 things that can cause procedural problems, we're just back
8 here doing it again. So we want to have a fair trial for
9 everybody and that's what my job is.

10 Very good. All right. Mr. Ferguson, you're
11 recognized.

12 MR. FERGUSON: Thank you, Your Honor.

13 MS. LEGETTE: May it please the Court, Your Honor,
14 the State calls Mr. PFC Kevin Smith.

15 THE COURT: Officer Smith?

16 THE WITNESS: Yes, sir.

17 THE COURT: Please come forward. I'm going to ask
18 if you could to place your left hand on the Bible and raise
19 your right hand as the clerk administers the oath.

20 THEREUPON,

21 PFC KEVIN SMITH,
22 after being duly sworn, testified as follows:

23 THE COURT: Yes, sir, if you could come forward and
24 have a seat in the witness stand and I'm going to ask that
25 you pull up close to that microphone. Speak loudly,

Kevin Smith - Direct Examination - In Camera by Ms. Legette

1 clearly, and slowly in order that we can hear everything
2 that you've got the say and let's start with your full
3 name, Officer.

4 THE WITNESS: Kevin Scott Smith.

5 THE COURT: Very good.

6 MS. LEGETTE: Thank you, Your Honor.

7 **DIRECT EXAMINATION - IN CAMERA**

8 By Ms. Legette:

9 Q Good morning PFC Smith.

10 A Yes, ma'am.

11 Q Where do you work, sir?

12 A The Ridgeland Police Department.

13 Q And how long have you worked there?

14 A I've been a full-time employee for about three
15 years, and before that I was reserve for about two and a
16 half, three years.

17 Q Okay. Were you working at the Ridgeland Police
18 Department on or about December 31st, 2010?

19 A Yes, ma'am.

20 Q Did you have occasion to respond to a call for
21 assistance at [REDACTED] or -- Lowther Lane in Jasper County?

22 A Yes, ma'am.

23 Q Please tell us what you found when you arrived?

24 A Once I got on scene, I got out of my patrol
25 vehicle. At that time the female, Tara Weber came outside

Kevin Smith - Direct Examination - In Camera by Ms. Legette

1 of the trailer. She was wearing a black jacket and silver
2 pants and she had blood on her hands, on her hands. I
3 remember that. She was excited. She walked up to me and
4 she began to tell me that she had accidentally stabbed a
5 male subject and she was explaining that to me. I informed
6 her not to give me any statements because I was not there
7 working as a deputy, I was just to secure the scene for
8 EMS, and then she kept on asking me to make sure that, you
9 know, we got help for Mr. Way.

10 So I told her that's what I was there for to make
11 sure EMS could get there to help him, but until she would
12 stop talking and let me go inside that that wasn't going to
13 happen. So I was then able to get inside and to secure the
14 scene. Once I walked inside the door, I saw Mr. Way. He
15 was leaned against the couch. There was another male and
16 another female that were trying to aid by holding a rag to
17 his chest and it was covered in blood.

18 Mr. Way was unresponsive at that time. He was
19 slumped over.

20 Q Let me stop you right there.

21 A Yes, ma'am.

22 Q Let's go back, PFC Smith.

23 A Yes, ma'am.

24 Q So you arrived at the house?

25 A Yes, ma'am.

Kevin Smith - Direct Examination - In Camera by Ms. Legette

1 Q And you say that Ms. Weber approached you?

2 A Yes, ma'am.

3 Q Did she begin talking at that time?

4 A Yes, ma'am.

5 Q Question: Was she in custody when she began

6 talking to you?

7 A No, ma'am.

8 Q Did you ask her any questions?

9 A No, ma'am.

10 Q Did she appear -- did she smell like alcohol to

11 you?

12 A I don't recall.

13 Q You don't recall. Okay. Did at any point when she

14 was talking to you, did you force her to give you a

15 statement?

16 A No, ma'am.

17 Q Did you ever threaten her in order for her to give

18 you a statement?

19 A No, ma'am.

20 Q Did you ever pressure her or coerce her or make her

21 any promises in order for her to give you a statement?

22 A No, ma'am.

23 Q So it's your testimony here today that her

24 statement to you when you got to Lowther Lane was freely

25 and voluntarily given?

Kevin Smith - Direct Examination - In Camera by Ms. Legette

1 A Yes, ma'am.

2 Q PFC Smith, was Ms. Weber free to leave at any time?

3 A Yes, ma'am.

4 Q Was she free to stop talking to you at any time?

5 A Yes, ma'am.

6 Q Did you also tell this Court that you had to tell

7 her to stop talking to you?

8 A Yes, ma'am.

9 Q At any point did you give her Miranda warnings?

10 A No, ma'am.

11 Q But you did tell us that she was not in custody at

12 the time?

13 A I didn't directly tell her she was not in custody,

14 I just explained that I was not there to work the case, I

15 was there to secure the scene.

16 Q But you didn't put her in custody?

17 A No, ma'am.

18 Q Okay.

19 MS. LEGETTE: Begging the Court's indulgence.

20 Your Honor, I have no further questions.

21 Answer any questions Mr. Hughes would have.

22 THE COURT: Cross-examination, Mr. Hughes?

23 MR. HUGHES: No questions.

24 THE COURT: Very good. You may step down.

25 Any redirect?

1 MS. LEGETTE: No, Your Honor.

2 THE COURT: I'll be glad to hear defense's position
3 with regard to the admissibility of this statement.

4 MR. HUGHES: I have no qualms about the
5 admissibility of that statement, Your Honor.

6 THE COURT: Very good. All right.

7 Anything from the State before we proceed forward
8 with opening statements?

9 MR. FERGUSON: No, sir, Your Honor.

10 THE COURT: Anything from defense?

11 MR. HUGHES: No, Your Honor.

12 THE COURT: All right. We'll stand at ease until
13 9:30.

14 Do we have a count with regard to the jury?

15 THE CLERK: I think they're downstairs. They're
16 gathering downstairs.

17 THE COURT: All right. We'll stand at ease until
18 9:30. We'll reconvene at 9:30.

19 (WHEREUPON court was in recess awaiting the jury to
20 arrive.)

21 THE COURT: Mr. Hughes, the name of the
22 investigator who was in question, what's his name.

23 MR. HUGHES: Detective Morris, his first name is --

24 THE COURT: Gary.

25 MR. HUGHES: -- Gary.

1 THE COURT: I understand we still have one juror
2 who is not here. Mr. Balthazar, I believe. But while
3 we're doing that, if I could have Mr. Self come out, I want
4 to talk with him for a moment.

5 (WHEREUPON the juror came into open court.)

6 THE COURT: Mr. Self, how you doing this morning?

7 THE JUROR: I'm fine, sir.

8 THE COURT: Good. I'm going to ask you, if I
9 could, about something that's been called to my attention.
10 Out of an abundance of caution, I just want to ask you some
11 questions if I could. I'm going to ask if you could come
12 forward and the clerk's going to swear you in.

13 (WHEREUPON the juror was sworn.)

14 THE COURT: All right. Mr. Self, thank you so much
15 for being here and being here on time. As the lawyers were
16 preparing this case, I think Detective Morris has called it
17 to the Court's attention that he perhaps is a neighbor of
18 yours; is that correct.

19 THE JUROR: Right.

20 THE COURT: Tell me, are y'all close personal
21 friends?

22 THE JUROR: I presume so, yes, sir.

23 THE COURT: Okay. Do you have contact with him on
24 a daily or weekly basis.

25 THE JUROR: Just weekly.

1 THE COURT: Okay. And does he ever come over to
2 your house.

3 THE JUROR: Yes, sir.

4 THE COURT: And do you ever go over to his house?

5 THE JUROR: Occasionally, yes, sir.

6 THE COURT: All right. Do you recall when we were
7 going over the voir dire, I was asking about whether or not
8 you had a close personal relationship with any of the
9 jurors, do you recall that question?

10 THE JUROR: Yes, sir.

11 THE COURT: I mean with any of the witnesses?

12 THE JUROR: Yes, sir.

13 THE COURT: Why didn't you respond when we listed
14 these names?

15 THE JUROR: I didn't remember it, sir.

16 THE COURT: Okay. Well, that does cause us some
17 problems. Let me ask you this question.

18 THE JUROR: Yes, sir.

19 THE COURT: If called upon to serve on this jury,
20 could you set aside your relationship with Detective Morris
21 and base your decision on the evidence that's been
22 presented in this courtroom or the lack of evidence, the
23 law as I charge it to you and give both the State and the
24 defendant a fair and impartial trial?

25 THE JUROR: Yes, sir.

1 THE COURT: All right. In view of the fact that
2 you are friends with Detective Morris, if he were to say
3 something, would you give greater weight to something he
4 says than other witnesses by virtue of the fact that you
5 know him?

6 THE JUROR: No, sir.

7 THE COURT: All right. Very good. I'm going to
8 ask if you could return to the jury room, and do not
9 discuss our conversation with the jury.

10 THE JUROR: All right, sir.

11 THE COURT: Thank you so much.

12 (WHEREUPON the juror left the courtroom.)

13 THE COURT: All right. What's the defense's
14 position?

15 MR. HUGHES: Your Honor, he was the seventh juror
16 called. When he was called I could only use two strikes.
17 I would never put Detective Morris' neighbor on that jury
18 if I'd known that. I think we need to go with an alternate
19 on this.

20 THE COURT: Okay. What's the State's position?

21 MR. FERGUSON: You know, Your Honor, I understand
22 the defense's concern. I feel like the voir dire of this
23 juror showed that he would not be biassed towards any one
24 side and that it was more of a casual acquaintance or a
25 neighborly acquaintance as opposed to a close personal

1 friend, but we just defer to Your Honor's discretion.

2 THE COURT: Out of an abundance of caution, I'm
3 going to excuse him from service. It concerns me a little
4 bit that he didn't respond to the question. It was very
5 clear what we were asking.

6 And if we could have Mr. Self back.

7 (WHEREUPON the juror entered the courtroom.)

8 THE COURT: Mr. Self, in view of the fact that you
9 are a neighbor of Detective Gary Morris and the fact that
10 y'all have daily contact, I'm going to excuse you for the
11 purposes of this trial.

12 But Mr. Self, I'm going to encourage you in the
13 future, these are important matters. There's a lot at
14 stake. There's a lot of money that's going to be expended
15 in regard to the trial of this case, and more important
16 than that, in is an important case to the State of South
17 Carolina, it's an important case to the defendant. Had we
18 not made that discovery and if Detective Morris had not
19 called that to our attention and the case would have gone
20 forward and that would have been discovered later, we would
21 have had to do the trial all over again.

22 THE JUROR: Yes, sir.

23 THE COURT: So I'm -- I admonish you, pay very
24 close attention to the questions that are asked. They're
25 asked under oath, and these are important matters; and I'm

1 going to excuse you from service with regard to this case,
2 and ask that you call the clerk's office this afternoon
3 after six and follow the instructions.

4 THE JUROR: All right, sir. Thank you.

5 THE COURT: You can leave that jury pin with us as
6 well.

7 THE BAILIFF: Jury pin, please sir.

8 THE CLERK: Mr. Self, do you still have the number
9 to call.

10 THE BAILIFF: He's got a card.

11 THE JUROR: The card?

12 THE CLERK: Yes, sir.

13 THE JUROR: Yes, ma'am, I have it.

14 THE CLERK: Thank you.

15 (WHEREUPON the juror left the courtroom.)

16 THE CLERK: Our last juror is here.

17 THE BAILIFF: Yeah, he's here.

18 THE COURT: Before we do that. I believe, Madame
19 Clerk, that the alternate is Antonio Baker and Arthur
20 Bostick; is that correct.

21 THE CLERK: Yes, sir.

22 THE COURT: All right. You know there is a split
23 of authority. There is no definitive rule with regard to
24 how to promote alternate jurors. Some people take the
25 position that you take the first one on the list. I

1 | personally believe that the law requires that it be done
2 | randomly.

3 | What is the State's position?

4 | MR. FERGUSON: No objection, Your Honor.

5 | THE COURT: What is defense's position?

6 | MR. HUGHES: Your Honor, I've always done it first
7 | come first seated, but I have no objection to flip of the
8 | coin.

9 | THE COURT: Very good. Why don't we place both the
10 | names in a hat and have a random drawing, the old fashioned
11 | way.

12 | (WHEREUPON the alternate jurors' names were placed
13 | in a bowl for a random drawing.)

14 | THE CLERK: Antonio Baker.

15 | THE COURT: All right. As it turns out Antonio
16 | Baker was the first in and randomly selected, so clearly
17 | destiny has Antonio Baker.

18 | MR. FERGUSON: And, Your Honor, I do have one more
19 | issue that Mr. Morris brought to my attention. He's
20 | apparently a very popular fellow and he sits out in front
21 | of the courthouse smoking cigarettes, and another juror, he
22 | told me, approached him as they walked in and said good
23 | morning and called him Gary, which is his first name. He
24 | says it's an individual in a white shirt with a beard. He
25 | did not know the fellow, but the fellow seemed to know him.

1 THE COURT: All right. Is --

2 MR. FERGUSON: I don't know if we're going to
3 invite him back to participate any time soon, Your Honor.

4 THE COURT: Pardon?

5 MR. FERGUSON: I said I don't know if we're going
6 to invite Detective Morris to participate anymore.

7 THE COURT: All right. Any -- with that
8 disclosure, is there any request on behalf of the defendant
9 to have a query in that regard?

10 MR. HUGHES: Your Honor, out of an abundance of
11 caution --

12 THE COURT: We will indeed do that. Do we know who
13 the juror is?

14 MR. FERGUSON: I do not, Your Honor.

15 THE COURT: I tell you what, I'm going to ask if
16 she can look for a heavy set gentleman with a beard and
17 call him out. Is that who it is?

18 MR. FERGUSON: Yes, sir.

19 THE COURT: Very good. Just point to him and say
20 sir.

21 (WHEREUPON the bailiff retrieves a juror.)

22 THE BAILIFF: I think this may be the gentleman.

23 THE COURT: Yes, sir, your full name?

24 THE JUROR: Steven Anton Schramm.

25 THE COURT: All right. Very good. Let me locate

1 your name.

2 All right. Mr. Schramm, I'm going to ask if you
3 could come forward. I'm just going to ask you a few
4 questions. If you could come forward and place your left
5 hand on the Bible and raise your right.

6 (WHEREUPON the juror was sworn.)

7 THE COURT: Thank you. Mr. Schramm, it's been
8 called to the Court's attention, as you were entering the
9 courtroom, you spoke to a gentleman by a name of Morris --
10 Gary Morris and that you simply shook his hand and said,
11 Good morning, Gary, and came in. Is that correct?

12 THE JUROR: No, sir.

13 THE COURT: You did not?

14 THE JUROR: Shook hands?

15 THE COURT: All right. Did you speak to him.

16 THE JUROR: I don't -- I didn't shake hands. I
17 just walked through the metal detector. It beeped. I
18 showed what I had, and they asked me to go to the other
19 room.

20 THE COURT: Okay. But you didn't -- do you know
21 Gary Morris?

22 THE JUROR: No.

23 THE COURT: Oh, okay. Very good.

24 THE BAILIFF: We've got one more in there but --

25 THE COURT: All right. Very good. We didn't

1 know -- Gary Morris did not know who the gentleman was, but
2 they said he had a beard and apparently you're the only one
3 that has a beard.

4 THE JUROR: I'm the bearded culprit.

5 THE COURT: So thank you so much.

6 THE JUROR: Okay.

7 THE COURT: Thank you for your cooperation.

8 THE JUROR: All right.

9 (WHEREUPON the juror returned to jury room and the
10 bailiff could not locate another juror with a beard.)

11 THE COURT: Let's bring Mr. Morris in. And Let's
12 give him instructions not to stand at the door.

13 MR. FERGUSON: Yes, sir, Your Honor.

14 (WHEREUPON Detective Morris was brought into the
15 courtroom.)

16 THE COURT: Mr. Morris, please come forward and
17 place your left hand on the Bible and raise your right as
18 the clerk administers the oath.

19 THEREUPON,

20 DETECTIVE GARY MORRIS,
21 after being duly sworn, testified as follows:

22 THE COURT: Mr. Morris, it's been called to my
23 attention that there was some gentleman who came in the
24 courthouse this morning that you thought was on the jury.
25 He's a heavy set gentleman with a beard and we have spoken

1 to the two individuals (verbatim) on the jury panel that
2 have facial hair and none of them acknowledge that they
3 spoke with you or know you.

4 THE WITNESS: There was one that was wearing a
5 white shirt, Your Honor, he came up here after he came in
6 and spoke with Ms. Bostick.

7 THE CLERK: He's not on the jury.

8 THE WITNESS: He's not on the jury?

9 THE CLERK: No.

10 THE WITNESS: And then one of them told me he was
11 here for jury duty is my next door neighbor.

12 THE COURT: Right. We have addressed that issue.
13 All right. Is the defense satisfied in that
14 regard?

15 MR. HUGHES: Yes, Your Honor.

16 THE COURT: Very good. Thank you so much for your
17 cooperation.

18 THE WITNESS: Yes, sir.

19 THE COURT: And Detective Morris, it might be a
20 good idea not to be in the common areas where the jury is
21 coming in and out. Apparently it's a small County, a lot
22 of people speak to everybody. Just to avoid the appearance
23 of impropriety, if you could just avoid being in the common
24 areas during the period of time when the jury is coming in
25 and out of the courtroom.

1 THE WITNESS: Yes, sir.

2 THE COURT: Very good. Anything from the State
3 before we proceed?

4 MR. FERGUSON: No, sir, Your Honor.

5 THE COURT: Anything from defense?

6 MR. HUGHES: No, Your Honor.

7 THE COURT: All right. Very good. We're ready for
8 the jury.

9 (WHEREUPON the jury entered the courtroom at 9:48
10 a.m.)

11 **OPENING REMARKS BY THE COURT**

12 THE COURT: Mr. Antonio Baker, you have been
13 promoted to an active member of the jury. I'm going to ask
14 that you switch chairs if you could. You can have a seat
15 up here in this chair as well. It's a better vantage
16 point. Very good.

17 Madame Forelady, and ladies and gentlemen of the
18 jury, I want to thank you so much for being here and being
19 here on time. There were some legal matters that we had to
20 take part in outside of your presence, but we acknowledge
21 that y'all were here, and we're very sensitive to the fact
22 that y'all were here and we'll try to make the most
23 efficient use of your time. Thank you so much.

24 **OPENING REMARKS BY THE COURT - CONTINUED**

25 THE COURT: We're about to begin the trial of this

1 case and as I mentioned to you in voir dire, this case is
2 the State of South Carolina versus Tara Marie Weber. She
3 has been indicted for voluntary manslaughter. And as I
4 mentioned to you, the fact that she has been indicted is --
5 has no evidentiary value whatsoever. Any time anybody in
6 the United States of America is accused of a crime, they
7 are presumed to be innocent. In our American judicial
8 system, when the criminal procedure starts, there's certain
9 constitutional safeguards that come into play, the first of
10 which, as I indicated is the presumption of innocence. As
11 Ms. Weber sits at the defense table, she's presumed to be
12 just as innocent as me or you. That's the frame of
13 reference that we start from.

14 The second constitutional safeguard in the United
15 States of America is that when someone is accused of a
16 crime, the burden of proof is on the State. There's some
17 practical reasons for that. Our forefathers found that,
18 you know, we live in the free and democratic society and if
19 the government accuses you of a crime, they're going to be
20 required to bear the burden of proof. There's a practical
21 reason behind that in that the law enforcement, the
22 sheriff's department, police department, SLED, they have
23 the resources to gather that evidence and the burden is
24 placed on them to prove each and every element of the
25 offense beyond a reasonable doubt.

1 And in the United States of America, a defendant
2 need not testify, he need not present any evidence. We all
3 know that there are times in everyday life where you can be
4 accused of something and it's absolutely impossible to
5 prove your innocence. In the United States of America,
6 you're not required to do that. The State has the burden
7 of proof.

8 In addition to that there's a constitutional
9 safeguard that comes into play that the State has the
10 highest burden of proof known to our judicial system. Many
11 of you have probably served on a civil jury before, and in
12 a civil case, if you were -- if we were sitting up here and
13 we were debating about an issue involving a car accident,
14 medical malpractice, contract dispute, if you sit as a
15 juror in a civil case, imagine with me if you will, the
16 scales of justice, where the lady is blindfolded from all
17 bias and all prejudice. With the scales of justice, when
18 the trial starts, the scales are even. In a civil case,
19 the plaintiff need only tilt the scales ever so slightly in
20 their favor and they would prevail because after all in a
21 civil case, all you're talking about is money. So they
22 only have to prove their case more likely than not.

23 But this is a different situation. We're dealing
24 with criminal court, criminal charges are very important
25 civil liberties. And for that reason, the State is going

1 to be required to meet the highest burden of proof known to
2 our judicial system, proof beyond a reasonable doubt. I
3 envision that as if you imagine the scales, the State's
4 going to be required to lock up the scales. They don't
5 have to prove the case beyond every doubt because you can
6 have a doubt about anything. But it's a real substantial
7 doubt. A reasonable doubt is a type doubt to cause a
8 reasonable juror to hesitate to act. I will charge you in
9 great detail more the definition of reasonable doubt at the
10 conclusion of the case.

11 We're about to begin the trial of the case and
12 we'll start with opening statements. The State goes first.
13 Mr. Ferguson is going to have an opportunity to stand up
14 before you and sort of outline what this case is all about.
15 He might talk about what voluntary manslaughter is, the
16 elements and what he intends to prove. After that, the
17 defendant -- Mr. Hughes will have an opportunity to stand
18 up before you and make a statement. Obviously, as I
19 mentioned to you, the law doesn't require the defendant to
20 do anything, to present any evidence, to present an opening
21 statement or anything. But they're going to be given an
22 opportunity to do that if they choose to do so. And they
23 will have an opportunity to address you in summary fashion
24 in opening statement.

25 After the opening statements, we will begin the

1 taking of evidence. Evidence takes a number of different
2 forms. The primary form of which is oral testimony where
3 witnesses get up on the witness stand and they testify and
4 tell what they know, what they've seen, heard, felt with
5 regard to this case. There are other forms of evidence,
6 like documentary evidence. Sometimes the lawyers enter
7 into stipulations in certain situations. There're
8 affidavits and depositions that can be introduced. But you
9 will be given all of the evidence throughout the trial of
10 this case.

11 Ladies and gentlemen, with regard to the
12 presentation of evidence, the State goes first. After the
13 State concludes, likewise, the defendant is given an
14 opportunity to present evidence if they choose to do so.
15 They aren't required to do so under any set of
16 circumstances.

17 Ladies and gentlemen of the jury, you are the sole
18 and exclusive triers of the facts. You're the ones that
19 listen to the evidence and determine what the truth is.
20 Necessarily in your job as being the triers of fact, you'll
21 be called upon to determine the believability of witnesses.
22 When a witness takes the witness stand, you need to ask
23 yourself what opportunity did this individual have to see,
24 hear, and feel the things that they're testifying to. Ask
25 yourself whether or not they had any interest, bias or

1 prejudice with regard to their testimony.

2 I'll tell you from the very outset that you can
3 believe all of what one witness says, none of what one
4 witness says, or a part of what a witness says. That's
5 completely within your collective wisdom as a jury to make
6 those types of decisions. You are the sole and exclusive
7 judges of the facts as it transpires in this case.

8 Ladies and gentlemen of the jury, it's a very
9 important responsibility that you have in this regard. You
10 have taken a very solemn oath that you will try the facts
11 of this case and apply it to the law as I charge it to you.
12 Just like y'all are the sole and exclusive triers of the
13 fact, I'm the sole and exclusive trier of the law. My job
14 is to determine what evidence you get to hear, preside over
15 this trial and charge you the law. You have to accept and
16 apply the law just as I charge it to you. In our
17 respective roles, ladies and gentlemen of the jury, I want
18 to admonish you from the very beginning that if I make an
19 error with regard to the law, if I charge you the law wrong
20 or if some of the evidence goes in that's inappropriate,
21 those areas quite often are easily corrected. However, if
22 there's an error with regard to findings of fact, quite
23 often they can't be corrected. So I tell you that for you
24 to know that this is a very important case. It's an
25 important case to the State of South Carolina, it's an

1 important case to the defendant. It's an important case to
2 you because you've taken a very solemn oath that you will
3 sit here, and you'll pay very close attention; and you will
4 fulfill your job as the triers of fact, apply it to the
5 law, render a verdict that speaks the truth.

6 Ladies and gentlemen of the jury, during the trial
7 of this case, you will quite often hear the lawyers say, I
8 object, I have an objection, I'd like to take up a matter
9 of law. And those things have to take place outside of
10 your presence because as I said, it's my job to determine
11 what evidence you get to hear, and I wanted to explain that
12 from the beginning because it appears that we're doing
13 things outside of your presence. There's a reason for that
14 because in ruling on those evidentiary matters, sometimes
15 it requires that I make a statement with regard to facts.
16 Of course, the law doesn't allow me to have an opinion with
17 regard to the facts. So because of that, those discussions
18 have to take place outside of your presence.

19 If at the conclusion of this trial there's a
20 particular point of law that you have some interest in, I
21 can -- after there's a rendering of a verdict, if you can
22 remember what the particular motion was or what the
23 objection was, if I can remember what it was we were
24 talking about, I'll be happy to share it with you at that
25 time. But until that time, it would be inappropriate for

1 you to hear those type things.

2 After the taking of testimony in this case, the
3 lawyers will have an opportunity to present closing
4 arguments. They're very similar in form to the opening
5 statements, but they'll be truly argumentative in nature
6 because at that time, you will have heard all of the
7 evidence in the case and the lawyers will be able to point
8 to the evidence or the lack of evidence that supports their
9 relative position. What they say is not evidence, but it
10 will aid you immensely in your deliberation process. So
11 I'm going to ask that you pay very close attention in that
12 regard. After the closing arguments, I'll charge you the
13 law in the case. As I mentioned to you, you must accept
14 and apply the law just as I charge it to you.

15 Throughout the trial of this case, Madame Forelady,
16 I'm going to ask that you enforce the rule there be no
17 discussion about this case whatsoever. You don't talk
18 about the evidence, you don't talk about the witnesses, you
19 don't talk about the subject matter of this case. You'll
20 be given an opportunity to begin deliberation, but you
21 can't do that until I give you instructions to do that.
22 Will you do that for me, Madame Forelady?

23 THE FORELADY: Yes, sir.

24 THE COURT: Very good. All right.

25 Ladies and gentlemen of the jury, I'm going to ask

1 that you not take notes in this case. Given the nature of
2 the case and the length of the case, I'm going to ask that
3 you not take notes. So I'm going to re-emphasize that you
4 need to pay very close attention to the facts as they come
5 from the witness stand.

6 Ladies and gentlemen of the jury, you're taking
7 part in a time-tested system. You've taken a very solemn
8 oath that you will listen to the evidence that comes from
9 the witness stand and find out what the truth is and apply
10 it to the law as I charge it to you. It's a very solemn
11 oath. It's a very important case to the State of South
12 Carolina, to the defendant, and it's an important case to
13 you. I'm convinced that you will fulfill your duty in that
14 regard.

15 Mr. Ferguson, you're recognized.

16 MR. FERGUSON: May it please the Court?

17 THE COURT: Yes.

18 OPENING STATEMENTS

19 MR. FERGUSON: This is a case about a father's
20 enduring love who was trying to keep his family from
21 falling apart. Tell my kids I love them.

22 Kyle Way had been stabbed in the chest, had lost
23 almost every drop of blood in his body and those were his
24 last words on this earth. Tell my kids I love them.

25 Now, Kyle was home that night, on December 31st, of

1 2010. His two kids were asleep in the back bedroom.
2 Joshua Ayers and Kimberly Powell were asleep in this back
3 bedroom. But where was the defendant? She wasn't on the
4 couch with Kyle. She wasn't in the back bedroom with the
5 children. And she wasn't in the bedroom with Josh and
6 Kimberly. No, the defendant was in a vacant trailer,
7 having sex with Dustin Roberts, less than a stone's throw
8 away from where Kyle and her children were asleep.

9 Now, Kyle woke up, noticed she wasn't there, but he
10 knew where to find her. He went to that vacant trailer.
11 He confronted Tara. They started to argue. The argument
12 spilled outside the trailer, so much that Josh and Kim
13 heard them arguing, heard the argument carry on into the
14 kitchen of the trailer, where the defendant Tara Marie
15 Weber picked up a stainless steel serrated kitchen knife
16 and in the sudden heat of passion, stabbed Kyle Way, right
17 below his left collarbone, severing the subclavian artery,
18 puncturing his lung, a wound that was fatal. A wound that
19 would be determined to be 3.2 inches deep, almost straight
20 down.

21 Now, when an artery is severed, there's an
22 immediate loss of a lot of blood and there's something
23 called arterial spray. There was blood all over the
24 trailer, everywhere that Kyle went after he was stabbed.
25 There was blood on the floor. There was blood on the

1 walls. There was blood on the furniture. Tara Marie Weber
2 intentionally stabbed Kyle Way and the State has charged
3 her with voluntary manslaughter.

4 Now, at the end of this case, I'm going to stand
5 back up before you, and I'm going to ask you to find her
6 guilty as charged of voluntary manslaughter.

7 Tell my kids I love them. This is a case about a
8 father's enduring love who was trying to keep his family
9 from falling apart. Thank you.

10 THE COURT: Thank you Mr. Ferguson.

11 Mr. Hughes, you're recognized.

12 MR. HUGHES: May it please the Court. Good
13 morning. My name is Bob Hughes. I'm the public defender
14 for Jasper County. I represent Tara in this matter. When
15 you walked in that door, sat over there and stood up in
16 front of us, and you walked back in there selected as a
17 juror, you didn't give up your common sense, you didn't
18 give up a lifetime of experience. I'm going to ask you to
19 use both of those. Sit there. Listen. Look. And use
20 that common sense and that lifetime of experience. You
21 know when a person's hedging, you know when a person's
22 lying. You know.

23 Now, after this is over, I'm going to come back in
24 front of you and I'm going to point out one thing, and I'm
25 going to tell you right now what it's going to be. This

1 | isn't like anything you've seen on television. This isn't
2 | going to be Law and Order. This isn't going to be Perry
3 | Mason, although I might be the size Raymond Burr was in
4 | life, but nobody's going to stand up in back and say I did
5 | it, I did it. No. It's all going to come from that chair
6 | over there, or from exhibits, pictures from audio tapes.
7 | From all sorts of evidence. But use that lifetime
8 | experience. Use that common sense. Listen. Look. And I
9 | also want you to be comfortable. These are actually very
10 | nice chairs in this courthouse, but if you get hot or if
11 | you want something to drink, let Joan know, she'll let the
12 | judge know and he'll let y'all take a break.

13 | You have the most important job here. Your job is
14 | to listen, to look, to use your common sense, to use that
15 | lifetime of knowledge that y'all have gathered. I mean, I
16 | can tell you something, Mr. Ferguson, Ms. Legette can tell
17 | you something, but y'all don't need someone else to tell
18 | y'all what y'all hear and see. Thank y'all. I will see
19 | y'all at the end of the trial.

20 | MS. LEGETTE: Thank you, Your Honor. The State
21 | calls Roy Thompson.

22 | (WHEREUPON Mr. Thompson entered the courtroom.)

23 | THE COURT: Mr. Thompson, please come forward. I'm
24 | going to ask if you could to place your left hand on the
25 | Bible and raise your right hand as the clerk administers

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1 the oath.

2 THEREUPON,

3 ROY THOMPSON, JR.,

4 after being duly sworn, testified as follows:

5 THE CLERK: Have a seat right around here.

6 THE COURT: Please come forward and have a seat in
7 the witness chair. I'm going to ask that you pull up real
8 close to that microphone. Speak loudly, clearly, and
9 slowly in order that we can hear everything that you've got
10 to say. Let's start with your full name.

11 THE WITNESS: My name is Roy Thompson, Jr.

12 THE COURT: Very good, Mr. Thompson.

13 MS. LEGETTE: Thank you, Your Honor.

14 THE COURT: You're recognized.

15 MS. LEGETTE: Thank you, Your Honor.

16 **DIRECT EXAMINATION**

17 By Ms. Legette:

18 Q Good morning, Mr. Thompson.

19 A Good morning.

20 Q Mr. Thompson, where do you work?

21 A Jasper County Fire and Rescue.

22 Q And how long have you worked at Jasper County Fire
23 and Rescue?

24 A Four years this October.

25 Q Now, what is your position? What do you do at

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1 Jasper County Fire and Rescue?

2 A I'm a paramedic, firefighter.

3 Q Okay. So you're a paramedic firefighter. Tell us
4 what exactly is a paramedic?

5 A A paramedic is a training level that we've acquired
6 nationwide. We start out as basic EMTs which allow you to
7 treat and transport basically injured patients. It allows
8 you to take vitals and such like that and get a patient to
9 the hospital. Once you've completed that training, which
10 usually takes about a year, you can move up into other
11 levels. An intermediate level allows you to start IVs on
12 patients who need them and then you move into a paramedic
13 level which allows us to monitor cardiac activity, push
14 medications needed for patients and provide other life
15 saving things that need to be done before you can get to an
16 actual physician.

17 Q So are you telling us that there are three levels
18 of a person who works on an ambulance; is that what you're
19 telling us?

20 A Correct.

21 Q Okay. And as a paramedic are you at the top of
22 that level?

23 A Yes.

24 Q Now, you said that there is training involved in
25 becoming an basic EMT and an intermediate EMT. What other

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1 training or experience or education is necessary to become
2 a paramedic?

3 A You must have at least a high school education
4 before you can even be accepted. There are classes in
5 anatomy and physiology you must take. There's yearly
6 upgrades, and they keep you up on the newest and greatest
7 inventions for the medical field that have come out.

8 Q So in your words, is there a lot of education and
9 experience that go into becoming a paramedic?

10 A Yes, thousands of hours.

11 Q And you've been a paramedic for four years?

12 A With Jasper. I actually received my paramedic
13 certificate in 1991.

14 Q Okay. So tell us how long have you been involved
15 in emergency medical services.

16 A I actually started as a lifeguard in high school in
17 the late 80's. I got my EMT in 1988, paramedic in 1991.

18 Q So you've been a paramedic since 1991, roughly
19 twenty years?

20 A Twenty years.

21 Q As a paramedic and EMT for the last three, almost
22 three decades, how many injuries or patients would you say
23 you've seen?

24 A Thousands.

25 Q And of those thousands of injuries that you've

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1 treated and patients you've seen, were any of these
2 patients and injuries traumatic injuries?

3 A Quite a few.

4 MS. LEGETTE: Your Honor, at this time I would
5 offer Mr. Thompson as an expert in the field of emergency
6 medical services.

7 THE COURT: Any query with regard to his
8 qualifications?

9 MR. HUGHES: No, Your Honor.

10 THE COURT: All right.

11 Madame Forelady, ladies and gentlemen of the jury,
12 ordinarily a witness is only able to testify as to what
13 they see, hear, and feel, but there's an exception to that
14 for witnesses that are qualified as an expert, and if they
15 are qualified as an expert they're allowed to render
16 opinions in their particular field of expertise. And he
17 has been qualified as an expert in the area of a paramedic.

18 Yes, ma'am, you're recognized.

19 MS. LEGETTE: Thank you, Your Honor.

20 By Ms. Legette:

21 Q Mr. Thompson, I want to direct your attention to
22 December 31st, 2010. Were you working as a paramedic for
23 Jasper County Fire and Rescue on December 31st, 2010?

24 A Yes, ma'am.

25 Q And in regards to that position, did you have

Roy Thompson, Jr. - Direct Examination by Ms. Legette

1 occasion to respond to [REDACTED] or [REDACTED] Lowther Lane in Jasper
2 County?

3 A Yes, ma'am.

4 Q For a call for assistance?

5 A Yes, ma'am.

6 Q And that was in Jasper County, correct?

7 A Correct.

8 Q Please tell us what you found when you arrived at
9 the location?

10 A We were actually dispatched to a laceration from a
11 possible assault. On our arrival, the scene had been
12 secured by law enforcement. They advised us that our
13 patient, victim was right behind the door of a trailer and
14 that only one of us could fit through the door because of
15 the way he was wedged, to check him, the patient. Being
16 the lead, I entered the house, found exactly what the
17 officer had said.

18 A gentleman was laying with another man pretty much
19 holding him up. He was covered from, pretty much head to
20 toe, in bright red blood. There was blood throughout the
21 house that you could see. They had a wound on his left
22 shoulder area covered with a rag or a shirt that was
23 saturated in blood, and at the time we were able to speak
24 to him. He wouldn't move his head to see who was talking
25 to him.

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1 I quickly removed can rag, checked the wound, saw
2 that it was a definite arterial bleed and that he had lost
3 a lot of blood. Physically his skin was pale and clammy
4 indicating that he was already in shock. His heart rate
5 was high, also indicating he was in shock, and I
6 immediately replaced the rag on his chest, exited the home,
7 had my two partners, ordered them to get him out of the
8 house in the back of the truck where we could work on him,
9 and immediately called for Lifestar, Lifestar being our
10 immediate air transport unit and it's dispatched out of
11 Savannah, Georgia.

12 Q Now, Mr. Thompson, let's go back. You said that
13 you noticed an arterial bleed?

14 A Yes, ma'am.

15 Q Please educate us about what an arterial bleed
16 means.

17 A An arterial bleed -- you have multiple veins and
18 arteries in your body. An artery is coming directly from
19 the heart with oxygen going to the tissues of the body. It
20 is noticeable because every time your heartbeats, it will
21 actually, this cut or laceration will actually pump blood
22 directly from your heart, directly out where the hole is.
23 We knew it was arterial because it was bright red and
24 because it had a pressure to it when his heart pumped.

25 Beneath the large arteries, your body carries about

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1 six liters of blood. In the large arteries, it normally
2 takes two to three minutes, your body totally runs it's
3 blood volume through those arteries. So this gentleman had
4 bled quite a bit out of that artery.

5 Q So, Mr. Thompson, if I understand you correctly,
6 what you're saying is that an arterial bleed is life
7 threatening?

8 A Correct.

9 Q And within two to three minutes a person will
10 completely bleed out?

11 A They can completely bleed out.

12 Q Let's go back. You talked about Mr. Way being in
13 shock. Tell us, what is shock?

14 A Shock is your body trying to maintain an oxygenated
15 blood to the brain and the vital organs, being the heart or
16 the lungs. It will cause your body to actually -- the
17 veins in your legs and your extremities will slowly start
18 shutting down to try and keep all the blood to the center
19 of your core. When that happens, your heart rate picks up
20 pace to try and pump the blood. Your -- when your blood
21 shuts away from your extremities you can do things -- like
22 your pulses will go lower. Your body kicks in a metabolic
23 response and your skin turns bright white. You sweat. You
24 begin having trouble breathing and shock is what is
25 referred to as the first sign of death.

Roy Thompson, Jr. - Direct Examination by Ms. Legette

1 Q So Mr. Thompson, if I understand you correctly,
2 when you arrived at Lowther Lane and met with Mr. Kyle Way,
3 the victim in this case, he was under the first stage of
4 death?

5 A Yes, ma'am.

6 Q Were you able to make a determination as to what
7 caused Mr. Way's injury?

8 A Somehow during the call we had either, through
9 dispatch or from going on scene, had received a report that
10 this was caused by a knife.

11 Q At some point, Mr. Thompson, did you attempt to
12 figure out what kind of knife this was?

13 A Yes, ma'am.

14 Q Did you speak to someone, Ms. Weber, in fact, to
15 find out what kind of knife it was?

16 A Yes, ma'am.

17 Q What did you say to her?

18 MR. HUGHES: Your Honor --

19 By Ms. Legette:

20 Q -- not what you said --

21 MR. HUGHES: I think she's sort of leading the
22 witness.

23 THE COURT: I'll sustain. All of those questions
24 have been leading. You need to ask a direct questions.
25 Ask him what happened.

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1 MS. LEGETTE: Absolutely, Your Honor.

2 By Ms. Legette:

3 Q Mr. Thompson, tell us what happened when you
4 attempted to find the knife?

5 A We, myself, once I had the unit ready and they were
6 packaging Mr. Way, I proceeded to speak with both of the
7 officers, and the lady that they were speaking to outside
8 of the home that we believed to be the person who stabbed
9 Mr. Way, asking where the potential knife may be. The
10 reason for that is it shows us the level of depth and the
11 things that may have been lacerated inside of his body that
12 we can't see directly.

13 And also too, for our safety, where is the
14 potential weapon, and number three, we need to know if the
15 knife is still intact or if there is a small sliver of it
16 still floating around like a razor blade in this
17 gentleman's chest.

18 Q Now, Mr. Thompson, though Mr. Way was in the first
19 stage of death, did you attempt to save his life?

20 A Yes, ma'am.

21 Q What did you do? You and whomever accompanied you?
22 What did you do to try to save his life?

23 A He was placed in the ambulance. He was immediately
24 placed on oxygen. We attempted to start IVs on him to
25 begin replacing some of the fluid that he was losing from

Roy Thompson, Jr. - Direct Examination by Ms. Legette

1 | bleeding. We packed the wound to try and cause cessation
2 | of the bleeding. We placed what we refer to as loose
3 | dressings. These are dressings that prevent air from
4 | escaping and being sucked also into the chest over the
5 | wound.

6 | Due to the extreme shock he was in, he had already
7 | began a vascular compromise, meaning that the veins in his
8 | arms with no longer visible or being able to be felt for us
9 | to establish IVs on him. We placed him on a cardiac
10 | monitor to see what condition his heart was in and if it
11 | was going to be able to continue pumping if it had any
12 | electrical activity still available and we were able to
13 | monitor his vitals.

14 | Q Mr. Thompson, you talked about a vascular
15 | compromise and what it means. Since you weren't able to
16 | find his veins, were you able to do an IV?

17 | A We were not able to do an IV.

18 | Q What did you do in response to not being able to do
19 | an IV?

20 | A As I stated, we had called Lifestar in and
21 | immediately when we got him into the unit, we began moving
22 | from the home to Ridgeland airport, which was our landing
23 | zone for the helicopter. Lifestar carries other devices,
24 | including what we used on this call, was an intraosseous
25 | infuser referred to as a bone drill. It allows us to drill

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1 directly into a person's bone, into their bone marrow and
2 directly infuse fluid that way.

3 Q So you actually, physically drilled into Mr. Way's
4 bone in order to start an IV of sorts?

5 A Yes, ma'am.

6 Q Were you able to give him blood at that point?

7 A Not able to give him blood.

8 Q What exactly -- and you said fluids, what were the
9 fluids supposed to do for Mr. Way?

10 A The fluids that most EMS agencies carry, Lifestar
11 and such, are a volume replacer. We use normal saline
12 which is a saltwater fluid and it's closest to your body's
13 own plasma. But not being actual blood, it doesn't carry
14 oxygen, it doesn't carry the platelets and things needed to
15 clot and stop bleeding. So all it is, is a temporary
16 replacement until we can get to higher care.

17 Q Did you do anything else to try to save Mr. Way's
18 life?

19 A Yes, ma'am, our protocols call for anyone who has a
20 severe chest injury, we introduce needles into a space in
21 their chest that will assist in reinflating a deflated
22 lung. The vital signs and such on Mr. Way and the position
23 of the hole in his chest showed that his left lung had
24 deflated. It had more than likely been lacerated, and so
25 we entered these needles into his chest and we received

Roy Thompson, Jr. - Direct Examination by Ms. Legette

1 positive confirmation that he had air where it should not
2 be in his chest cavity and also a large quantity of blood.

3 Q So explain to us what you mean by positive
4 confirmation that he had air where it should not be and
5 blood in his chest cavity?

6 A Between where your lung actually sits in your chest
7 wall is a small space that allows your lung to inflate and
8 deflate. Should your -- there be an opening to the
9 outside, the ambient pressure of outside air will fill that
10 space and it causes your lung to collapse, thus introducing
11 this needle releases that pressure and allows the lung and
12 the patient to inhale and reinflate their own lung. His
13 was under some pressure, meaning that that lung itself had
14 actually been cut and not only was the outside air coming
15 in, but every time he inhaled, air was escaping from his
16 lung into that small cavity until it became under pressure
17 that it would actually totally collapse his lung.

18 Q Was he drowning in his own blood or could you say
19 that?

20 A I wouldn't use that terminology, no, ma'am.

21 Q What would you say?

22 A His lung on the left-hand side was compromised to
23 where his left chest was not allowing him to breathe or his
24 heart to beat properly.

25 Q Was there any other evidence of Mr. Way having

Roy Thompson, Jr. - Direct Examination by Ms. Legette

1 blood in his lung? Did you notice any blood on his face or
2 his lips?

3 A There was blood everywhere.

4 Q Tell us, what is Lifestar exactly, and what are
5 they supposed to do?

6 A Lifestar is an air medical transport service. They
7 are tied to, usually a trauma center. This one's tied to
8 Savannah Memorial. They come equipped with a lot of
9 equipment and specialized equipment than what we can carry
10 on an ambulance. They come equipped with a paramedic,
11 minimal, a nurse, minimal and a pilot.

12 We use them for their specialized equipment in
13 trauma situations, and also because it gives us the most
14 rapid transport to a trauma center.

15 Q Okay. Now, Mr. Thompson, describe for us, if you
16 will, Mr. Way's demeanor and the way he was acting.

17 A Mr. Way's was in the unit, combative. That can be
18 due to the lack of oxygen where he is not getting the
19 amount of blood necessary to his brain. He was fighting
20 the crews in the back of the truck, making it very
21 difficult for us to hold him down and attempt IVs, keep
22 oxygen on him and such. He did verbalize at one time, I am
23 dying. Tell my kids I love them, and those were the last
24 words that we ever heard from him.

25 Q Mr. Thompson, you did all these things to try to

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1 save Mr. Kyle Way's life. Were you successful?

2 A No, ma'am.

3 Q Was he dead in your truck?

4 A Yes.

5 Q Mr. Thompson, you talked about the intervals of
6 minutes it takes to bleed out, that Mr. Way was in shock.

7 Is it your opinion that he bled out in your truck? I'm
8 sorry, what is your opinion about --

9 A My opinion, actually the radio call to the hospital
10 as we were transporting him because once a patient has lost
11 pulses and is no longer breathing Lifestar will not fly
12 that patient. They cannot work that without a doctor. One
13 of the Lifestar crew rode with us to the hospital and all
14 of our opinions in the back of the truck was that Mr. Way
15 had passed en route to the landing zone due to the loss --
16 extreme loss of blood.

17 Q At some point, did you -- after Mr. Way was removed
18 from your truck, did you have a chance to take note of how
19 much blood was in the truck?

20 A We have -- our stretchers are actually set up to
21 try and retain blood on the stretcher instead of it getting
22 throughout the truck and contaminating the whole unit. We
23 have about a half to three quarter inch lip that the
24 patient actually lays in. When he was moved from out
25 stretcher to the hospital bed, that lip and that little

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1 valley was absolutely covered in blood. It was pooled.

2 Q Thank you, Mr. Thompson. Mr. Thompson, I'm going
3 to hand you --

4 MR. HUGHES: We have a matter of law, I believe,
5 Your Honor.

6 THE COURT: Madame Forelady, and ladies and
7 gentlemen of the jury, I'm going to ask that you retire to
8 the jury room and do not discuss the case. Do not discuss
9 the case.

10 (WHEREUPON the jury left the courtroom at 10:27
11 p.m.)

12 MR. HUGHES: I believe Ms. Legette is about to try
13 to introduce pictures of the deceased in the ambulance,
14 Your Honor. I think that's extremely prejudicial,
15 especially how shocking the pictures are in this matter. I
16 have no objection of photographs of the wound, but the
17 deceased in the ambulance, I believe is too shocking.

18 THE COURT: Might I see the pictures?

19 MS. LEGETTE: Yes, Your Honor.

20 THE COURT: Ms. Legette?

21 MS. LEGETTE: Yes, Your Honor.

22 THE COURT: I'm sure you've read the most recent
23 South Carolina Supreme Court case that talks about this
24 very issue that where -- I think it was Chief Justice Toal
25 specifically admonished the State from attempting to enter

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1 in evidence that -- such as this, photographs that are
2 unnecessary in order to establish the elements of the
3 offense. And in the event they do reach the jury, it
4 causes problems and quite often causes the case to be
5 reversed. What's your position on this?

6 MS. LEGETTE: Your Honor, we were simply attempting
7 to show the jury where the actual wound itself was.

8 THE COURT: Okay.

9 MS. LEGETTE: We don't have to admit or ask for all
10 of them to be admitted, Your Honor, we're simply trying to
11 educate the trier of fact to show them where the injury was
12 on Mr. Way. We're not trying to inflame their passions or
13 unduly prejudice the defendant, Your Honor. We're also
14 trying to show the resuscitation attempts that the
15 paramedic, Mr. Thompson has talked about previously in his
16 attempt to save Mr. Way's life. We don't have to admit
17 them all, Your Honor --

18 THE COURT: How is that relevant?

19 MS. LEGETTE: I'm sorry, Your Honor?

20 THE COURT: How is that relevant?

21 MS. LEGETTE: Well, Your Honor, the wound itself is
22 relevant as far as --

23 THE COURT: Pardon?

24 MS. LEGETTE: The wound itself --

25 THE COURT: No, I'm -- the resuscitation. Clearly

Roy Thompson, Jr. - Direct Examination by Ms. Legette

1 he's testified to that. How does that add to the elements
2 of the offense?

3 MS. LEGETTE: Well, Your Honor, I can't say that it
4 does, and we'll withdraw those photographs that try to show
5 those resuscitation attempts. However, the wound itself
6 tends to prove the case as far as the inflamed passion,
7 heat of passion that we're trying to prove in this matter
8 regarding voluntary manslaughter, Your Honor. The wound
9 itself and its placement, Ms. -- I believe that there's
10 going to be some conflicting testimony about where the
11 wound should have been or how the wound should have gotten
12 there, Your Honor. And as far as the wound's placement
13 itself, it goes to the weight of our case proving the
14 voluntary manslaughter aspect of the heat of passion
15 element, Your Honor.

16 THE COURT: All right. What I'm going to do is I'm
17 going to have -- we've talked about it. I'm going to ask
18 you to take a look at the photographs once again and see
19 which ones you'll tender, and then we'll let the defense
20 state their position with regard to which ones they object
21 to.

22 MS. LEGETTE: Yes, Your Honor.

23 (WHEREUPON the attorneys were conferring.)

24 THE COURT: Which ones do you intend to tender, Ms.
25 Legette.

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1 MS. LEGETTE: Your Honor, they are 37, 39 and 35.
2 Those are the photographs that actually show a measurement,
3 where the wound is itself, and where it's located
4 underneath his collarbone. Additionally, State's Exhibit
5 39 shows the plasma basically in the photograph where it's
6 basically leaking out from the wound itself where Mr.
7 Thompson testified earlier about the plasma itself and the
8 bleeding out basically of the defendant -- I'm sorry of the
9 victim itself. And really, it just those two -- we don't
10 really need State's Exhibit 35.

11 THE COURT: Okay. All right. Apparently we are
12 down to two photographs. What's the defense's position
13 with regard to those and if you would refer to them by
14 number.

15 MR. HUGHES: Okay. Your Honor, State's Exhibit No.
16 39 has no indication whatsoever of where it is located on
17 its on. You cannot tell which part of the body that is.
18 You see hair and a tube and a wound. I would object to
19 that since it basically shows a gaping wound. That's just
20 obviously inflammatory and would be disturbing to anyone to
21 see.

22 State's Exhibit No. 37 does show the location of
23 the wound, Your Honor. You can see his neck, his shoulder
24 and all that, but again, Your Honor, I would object to this
25 also. That's what the pathologist is for to show where the

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1 wound was. They're going to call a pathologist who's
2 going to be testifying where the wound was. This does not
3 need to be shown to a jury. I would even object to State's
4 Exhibit No. 37.

5 THE COURT: All right. Let me see the two that
6 you're offering.

7 (WHEREUPON the Court was looking at the
8 photographs.)

9 THE COURT: I sustain the objection with regard to
10 39, which is really sort of duplicative and is actually
11 just a closer up of this and I find that to be more
12 relevant because it does indeed show that there is a gaping
13 wound, it shows the location of the wound and it shows --
14 goes towards the elements of the offense and the fact that
15 he was indeed stabbed.

16 I will indeed allow State's Exhibit 37 into
17 evidence. No. 39 is duplicative, and I will not allow that
18 to go into evidence.

19 MS. LEGETTE: Thank you, Your Honor.

20 THE COURT: Anything further before we bring the
21 jury out?

22 MR. HUGHES: Your Honor, we talked about this in
23 chambers. This is probably a good time to bring it up. I
24 did not object when he testified to what the deceased said.
25 As we talked about in chambers, it is my feeling that

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1 anything Mr. Way said after he was stabbed would constitute
2 a dying declaration, especially based upon the testimony of
3 this witness that arterial blood was going everywhere. I
4 would object to any statements that Mr. Way made prior to
5 the stabbing as being hearsay.

6 THE COURT: All right. Prior to the stabbing,
7 obviously, he wouldn't have heard anything.

8 MR. HUGHES: I understand that, but this is for all
9 witnesses, Your Honor.

10 THE COURT: Okay. What is the State's position?
11 Do you intend to tender statements made by Mr. Way before
12 he was stabbed?

13 MR. FERGUSON: No, sir, Your Honor. And if there's
14 a particular statement of interest to the defense they're
15 concerned about, it might be beneficial for them to let us
16 know and we could tell them definitively whether we were
17 going to talk about that or not.

18 THE COURT: Okay. Do you know?

19 MR. HUGHES: I don't know anything that he said,
20 Your Honor, it's just out of an abundance of caution
21 because there are statements after the stabbing which I
22 probably will be eliciting but statements before the
23 stabbing, I think definitely come under the hearsay rule.

24 THE COURT: Well, I have a tendency to agree with
25 you, but it's kind of hard for me to rule in a vacuum, but

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1 I generally agree with your position. However, you're
2 going to be obligated to object to it. Of course, the
3 State knows that they aren't to do that. If there are any
4 statements that fall within that objection, I'm going to
5 ask that you bring them up outside of the jury's presence
6 before you do so.

7 MR. FERGUSON: Yes, sir, Your Honor.

8 THE COURT: Very good. All right.

9 MR. HUGHES: Thank you, Your Honor.

10 THE COURT: We're ready for the jury.

11 (WHEREUPON the jury entered the courtroom at 10:37
12 a.m.)

13 THE COURT: Ms. Legette, you're recognized.

14 MS. LEGETTE: Thank you, Your Honor.

15 By Ms. Legette:

16 Q Mr. Thompson, tell us again, briefly, where was the
17 location of Mr. Way's wound?

18 A It was his left chest right below his left
19 clavicle.

20 MS. LEGETTE: May I approach, Your Honor?

21 THE COURT: You may.

22 By Ms. Legette:

23 Q Mr. Thompson, I hand you now what has been
24 previously marked as State's Exhibit No. 37. I want you to
25 take a moment and tell me if you recognize this, please.

Roy Thompson, Jr. - Direct Examination by Ms. Legette

1 A Yes, ma'am.

2 Q And, Mr. Thompson, what is that a picture of?

3 A That is a picture of our patient with the wound to
4 his left chest. He also has the tube in his chest that I
5 spoke about to relieve the air and blood and also had the
6 needle in his left humorous upper arm where we were giving
7 him fluids.

8 Q Mr. Thompson, is State's Exhibit No. 37 a fair and
9 accurate representation of the way Mr. Kyle Way's wound
10 looked on December 31st 2010?

11 A Yes, ma'am.

12 MS. LEGETTE: Your Honor, at this time, the State
13 would offer for admission into evidence State's Exhibit 37.

14 THE COURT: Any objection?

15 MR. HUGHES: No objection, Your Honor.

16 THE COURT: Very good. It's entered into evidence
17 and denominated State's Exhibit --

18 MS. LEGETTE: Thirty-seven, Your Honor.

19 THE COURT: Thirty-seven is into evidence without
20 objection from the defense.

21 (WHEREUPON State's Exhibit 37 was entered into
22 evidence.)

23 MS. LEGETTE: Your Honor, may we publish this
24 exhibit now?

25 THE COURT: You may.

Roy Thompson, Jr. - Direct Examination by Ms. Legette

1 MS. LEGETTE: May I approach the witness, Your
2 Honor?

3 THE COURT: You may.

4 By Ms. Legette:

5 Q Mr. Way (sic), if you could step down.

6 (WHEREUPON the witness stepped down from the
7 witness stand.)

8 By Ms. Legette:

9 Q Mr. Way (sic), I need you to speak up please
10 because Ms. Court reporter is taking everything down and
11 our jury needs to hear everything you say, okay?

12 A Okay.

13 Q I want you to --

14 MS. LEGETTE: If we could have some lighting
15 please, adjustments.

16 (WHEREUPON the clerk and solicitor were adjusting
17 the light on the projector.)

18 By Ms. Legette:

19 Q Okay. Mr. Thompson, if you would, please explain
20 for us what we are looking at here?

21 A This is the patient, Mr. Way, this being his neck,
22 this being his clavicle or the bone that runs right
23 underneath the skin, your collarbone; this being the wound
24 that we found. This would be the tube going into his lung
25 to reinflate it. This needle over here was to replace the

Roy Thompson, Jr. - Cross-Examination by Mr. Hughes

1 fluids. These are electrodes that monitor his heart and
2 potentially would have to shock or restart his heart if
3 necessary.

4 This photograph is actually taken at the pathology
5 lab, and they were taking accurate measurements of the size
6 of the wound, and where it was located.

7 Q Thank you. I have no further questions -- well,
8 retake the stand, please. Thank you.

9 MS. LEGETTE: Beg the Court's indulgence.

10 Okay. Mr. Thompson, I thank you for your patience
11 in answering my questions. Answer any questions for Mr.
12 Hughes, please.

13 THE COURT: Mr. Hughes, you're recognized.

14 MR. HUGHES: Thank you, Your Honor.

15 **CROSS-EXAMINATION**

16 By Mr. Hughes:

17 Q Mr. Thompson, what is your title? I don't know --
18 I feel like I should call you doctor. Is it just Mister
19 or --

20 A Just mister.

21 Q Okay. I -- now, you've been doing this for a long
22 time. Y'all got the call at 4:33 that morning, correct?

23 A Do you have a copy of my report? I actually have a
24 copy with me. I can be very accurate for you.

25 Q Yes, sir, please.

Roy Thompson, Jr. - Cross-Examination by Mr. Hughes

1 A The call was received at our dispatch at 4:30 a.m.
2 We were actually sent to the call at 4:33.

3 Q Okay. And you were informed that it was an
4 accidental stabbing, correct?

5 A According to our report, it said it was a
6 laceration to the arm.

7 Q Okay. I believe that the call to the EMTs en route
8 at 4:36 was that it was an accidental stabbing. Is there
9 any way that you could confirm that?

10 A No. We just received report that it was possibly
11 an assault.

12 Q Okay. Did Mr. Way say anything to you other than,
13 Tell my kids I love them?

14 A He told us, I am dying.

15 Q Was there anything else?

16 A No, sir.

17 Q Okay. You said earlier that you talked to him and
18 that he didn't turn his head to talk to you?

19 A He did turn his head to acknowledge who was
20 speaking to him, and that was inside the house.

21 Q Okay. And he had one lung that was working,
22 correct?

23 A Yes, sir.

24 Q So he could talk? Obviously, he did since he said
25 something as he was dying.

Roy Thompson, Jr. - Cross-Examination by Mr. Hughes

1 A Yes, sir.

2 Q About what time did y'all get him on the ambulance
3 and he make that statement?

4 A We were in the ambulance and en route to the
5 landing zone at 04:57.

6 Q Okay. And -- but you got the call at 4:33.
7 Obviously, with a wound like this it's imperative that you
8 get him -- get him to a hospital and get treatment started
9 as fast as possible, correct?

10 A Correct.

11 Q Where did you leave from? Where is your -- where
12 were you when you got the call?

13 A At our station at headquarters right next to
14 Ridgeland airport.

15 Q Okay. That's -- let me get directions. It's right
16 up the road?

17 A Right up Gray's Highway.

18 Q And this was at Great Swamp just past the Baptist
19 church, within a mile of the Baptist church?

20 A It was off of Tarboro Road.

21 Q Okay. And y'all left at about 4:36?

22 A We were en route at 4:37. We had arrived on scene
23 by 4:46.

24 Q Okay. You arrived there at 4:46, and got him on
25 the ambulance and en route in 11 minutes?

Roy Thompson, Jr. - Cross-Examination by Mr. Hughes

1 A Yes, sir.

2 Q Good job. If you'd gotten there sooner -- and I'm
3 not trying to cast dispersions on you and what you did, but
4 if you'd gotten there sooner, would Mr. Way be here today?

5 A No, sir.

6 Q There's no chance Mr. -- as soon as the knife went
7 in he was dead; is that what you're saying?

8 A Yes, sir. His arteries were damaged in such a way
9 that we were not going to be able to control the bleeding,
10 and he had mostly bled out prior to our arrival, and would
11 have still done so if it had been three minutes.

12 Q Okay. But the primary question I have for you is
13 when you got there he was alive?

14 A Yes, sir.

15 Q And he talked to you?

16 A Yes, sir.

17 Q And he was strong enough to fight y'all in the
18 ambulance?

19 A Yes, sir.

20 MR. HUGHES: No further questions, Your Honor.

21 THE COURT: Any redirect?

22 MS. LEGETTE: No, Your Honor.

23 THE COURT: All right. You may step down. Thank
24 you, sir.

25 Any objection to this witness being excused?

Roy Thompson, Jr. - Cross-Examination by Mr. Hughes

1 MR. HUGHES: None, Your Honor.

2 THE COURT: All right. You're free to leave.

3 Thank you, sir.

4 State may call your next witness.

5 MS. LEGETTE: Thank you, Your Honor, State would
6 call PFC Kevin Smith.

7 (WHEREUPON PFC Smith entered the courtroom.)

8 THE COURT: Officer Smith, please come forward.

9 I'm going to ask if you could place your left hand on the
10 Bible and raise your right hand as the clerk administers
11 the oath.

12 THEREUPON,

13 PFC KEVIN SMITH,

14 after being duly sworn, testified as follows:

15 THE COURT: Officer Smith, please come forward and
16 have a seat in the witness chair. I'm going to ask that
17 you speak loudly, clearly, and slowly in order for
18 everybody TO hear what you've got to say.

19 THE WITNESS: Yes, sir.

20 THE COURT: Let's start with your full name,
21 please, sir.

22 THE WITNESS: Kevin Scott Smith.

23 THE COURT: Very good.

24 ///

25 ///

Kevin Smith - Direct Examination by Ms. Legette

DIRECT EXAMINATION

1
2 By Ms. Legette:

3 Q Good morning, Mr. Smith.

4 A Good morning.

5 Q Sir, where do you work?

6 A I currently work for the Ridgeland Police
7 Department.

8 Q And what is your rank at the Ridgeland Police
9 Department?

10 A I'm a private first class.

11 Q And would that be PFC?

12 A Yes, ma'am.

13 Q Now, PFC Smith, how long have you worked at the
14 Ridgeland Police Department?

15 A I've been employed full time for about three years,
16 and before that I was a reserve for about two half, three
17 years.

18 Q And what are your duties at the Ridgeland Police
19 Department?

20 A I'm a patrolman.

21 Q So what does a patrolman do?

22 A I take time and do patrol of the town to make sure
23 that the property is safe, the citizens are safe. Any
24 calls for service, I respond to and handle appropriately,
25 investigating small incidents that need to be further

Kevin Smith - Direct Examination by Ms. Legette

1 followed up on.

2 Q So, PFC Smith, were you working for the Ridgeland
3 Police Department on December 31st, 2010?

4 A Yes, ma'am.

5 Q On that day did you have occasion to respond to a
6 call for assistance out on Lowther Lane in Jasper County?

7 A Yes, ma'am.

8 Q Okay. And is Lowther Lane in Jasper County?

9 A Yes, ma'am.

10 Q PFC Smith, are you familiar with an aerial view of
11 the area you responded to on December 31st, 2010?

12 A Yes, ma'am.

13 MS. LEGETTE: Begging the Court's indulgence.

14 MR. HUGHES: Your Honor, may I walk around and see
15 what --

16 THE COURT: Certainly.

17 (WHEREUPON Ms. Legette was setting up an exhibit.)

18 By Ms. Legette:

19 Q PFC Smith, I'm going to attempt to hand you what
20 has been previously marked as State's Exhibit No. 4.

21 MS. LEGETTE: Your Honor may I approach?

22 THE COURT: You may.

23 By Ms. Legette:

24 Q I want you to take a moment and tell me if you
25 recognize this, please?

Kevin Smith - Direct Examination by Ms. Legette

1 A Yes, ma'am, I do.

2 Q And PFC Smith, is State's Exhibit No. 4 a fair and
3 accurate representation of the aerial view of Lowther Lane
4 on or about December 31st, 2010?

5 A Yes, ma'am.

6 MS. LEGETTE: At this time, Your Honor, I would
7 offer for admission into evidence, State's Exhibit No. 4.

8 THE COURT: Any objection from defense?

9 MR. HUGHES: No objection, Your Honor.

10 THE COURT: State's Exhibit 4 is into evidence
11 without objection from defense.

12 (WHEREUPON State's Exhibit No. 4 was entered into
13 evidence.)

14 MS. LEGETTE: Your Honor, may I approach?

15 THE COURT: You may.

16 MS. LEGETTE: May I publish, Your Honor?

17 THE COURT: You may.

18 By Ms. Legette:

19 Q PFC Smith, if you would step down, please and bring
20 that exhibit with you, please. We're just going to pin it
21 up here.

22 A Yes, ma'am.

23 Q Okay. All right. Well, I don't think they can all
24 see. Let's move it up a little bit.

25 (WHEREUPON the exhibit was moved around for best

Kevin Smith - Direct Examination by Ms. Legette

1 viewing by the jury.)

2 MS. LEGETTE: Can everybody see?

3 (WHEREUPON the jurors nodded their heads in the
4 affirmative.)

5 By Ms. Legette:

6 Q All right. PFC Smith, please tell us what we are
7 looking at and point out, if you will, please, the area
8 that you responded to on December 31st, 2010.

9 A Okay. This road right here, this is Tarboro Road.
10 Lowther Lane runs this way right here. It runs off of
11 Tarboro.

12 Q Okay.

13 A The area I responded to would be this trailer that
14 sits right here.

15 Q Okay. So you responded to this area right here?

16 A Yes.

17 Q If you would mark that area, please. Put your
18 initials.

19 Now, if you would, have a seat back on the witness
20 stand.

21 A Yes, ma'am.

22 Q PFC Smith, you responded to Lowther Lane. Tell us,
23 what did you find when you responded?

24 A Once I got on scene I was approached by a white
25 female that came outside. She was wearing black pants --

Kevin Smith - Direct Examination by Ms. Legette

1 I'm sorry, correction, a black jacket and also some silver
2 pants. She had blood on her pants and on her arms and
3 hands I noticed, and she came -- as she approached me she
4 started telling me what was going on. At that point I
5 explained that she needed to not explain what happened that
6 I was there to secure the scene for EMS; and so I then
7 proceeded inside the trailer. Once I got inside the
8 trailer, you know, I went around the door and I saw a male
9 subject sitting on the floor, leaning up against a couch
10 and there was another man with another female that was in
11 there and they were holding a rag to his chest, which was
12 soaked with blood, and there was blood about the trailer.

13 Q Okay. So let's go back a few moments. You work
14 for the Ridgeland Police Department?

15 A Yes, ma'am.

16 Q Okay. Is Lowther Lane inside the city limits?

17 A No, ma'am.

18 Q Okay. So how did you come to respond to Lowther
19 Lane?

20 A Well, I heard the -- I monitor the radio, and so I
21 was listening to the county calls as well as the Ridgeland
22 fire and EMS, and I heard the sheriff's office received a
23 call about an accidental stabbing. When I heard that, we
24 back each other up routinely, so I started kind of heading
25 that way. I was in the area, awaiting for deputies to get

Kevin Smith - Direct Examination by Ms. Legette

1 on scene and then dispatch advised that the victim was
2 unconscious and Deputy Croft then acknowledged over the
3 radio he was going to be responding running code from about
4 the twelve mile marker on I-95. So in my mind, I was
5 thinking that the subject is already unconscious and he's
6 at the twelve mile marker, he's got quite a ways to go, and
7 I knew EMS would not go on scene until an officer had
8 secured the scene. So I had requested permission from
9 officer -- Deputy Croft to go on scene to make sure that
10 EMS would be able to treat the patient.

11 Q So who was first on the scene?

12 A I was.

13 Q Now, let's talk about the person that you met when
14 you got there.

15 A Yes, ma'am.

16 Q Is she present in court today?

17 A Yes, ma'am.

18 Q Would you point her out, please?

19 A It would be Ms. Weber who is sitting over at the
20 defense table.

21 MS. LEGETTE: Let the record reflect that Mr. --
22 that Mr. -- PFC Smith has indicated the defendant, Ms. Tara
23 Weber.

24 By Ms. Legette:

25 Q So, PFC Smith, you said that she approached you?

Kevin Smith - Direct Examination by Ms. Legette

- 1 A Yes, ma'am.
- 2 Q Okay. When she approached you, did she say
- 3 anything?
- 4 A Yes, ma'am.
- 5 Q Did -- when she began -- she began talking to you?
- 6 A Yes, ma'am.
- 7 Q Did you ask her any questions?
- 8 A No, ma'am.
- 9 Q Was she in custody when she began talking to you?
- 10 A No, ma'am.
- 11 Q When she began talking to you, did you -- were you
- 12 forcing her to talk to you?
- 13 A No, ma'am.
- 14 Q Did you ever promise her anything to get her to
- 15 talk to you?
- 16 A No, ma'am.
- 17 Q Did you threaten her in any way to get her to talk
- 18 to you?
- 19 A No, ma'am.
- 20 Q Did she appear to have the smell of alcohol about
- 21 her person?
- 22 A I don't recall.
- 23 Q So PFC Smith, what did Ms. Weber tell you?
- 24 A She said that she was in the kitchen, and she'd
- 25 been holding a knife, and she was planning to cut herself

Kevin Smith - Direct Examination by Ms. Legette

1 with the knife; and Mr. Way had come behind her to get the
2 knife, and she turned around; and in the process of turning
3 around, she said that she had accidentally stabbed him.

4 Q So in response to this, what did you say?

5 A I informed her I was not the deputy, I was there to
6 secure the scene for EMS, and that she needed to not make
7 any statements to me; and to wait until a deputy got on
8 scene, and, you know, that I needed to go inside and secure
9 the scene for EMS.

10 Q Tell us in relationship to where you were -- you
11 said she approached you?

12 A Yes.

13 Q Explain to us where you were when she approached
14 you.

15 A I parked my patrol vehicle in the -- on Lowther
16 Lane just in front of the trailer. She came out of the
17 house, and started going down the steps, and I approached
18 her. We met about halfway between where my patrol car was
19 parked, and this door to the trailer.

20 Q What was her demeanor? How did she act?

21 A She was pretty hyped up. She was excited. She was
22 using her hands a lot to explain that, you know, she was
23 holding the knife, and that she had turned around and
24 stabbed Mr. Way. She was just explaining that to me, and I
25 was just trying to get her to stop, you know, giving me a

Kevin Smith - Direct Examination by Ms. Legette

1 statement, that I needed to secure the scene.

2 Q So did you finally get into the house?

3 A Yes, ma'am.

4 Q Okay. Did you get a chance to secure the scene?

5 A Yes, ma'am.

6 Q At some point, did any other deputies arrive?

7 A Yes, ma'am.

8 Q And what was your job when they arrived?

9 A Once Deputy Croft and Deputy Moran were on the
10 scene, Deputy Croft located the weapon, and he asked if I
11 would stay in the kitchen.

12 MR. HUGHES: Your Honor, I believe this comes under
13 the hearsay.

14 MS. LEGETTE: I'm sorry.

15 THE COURT: I'll sustain.

16 By Ms. Legette:

17 Q Don't tell me what anyone told you. Just tell me
18 what you did as a result of being at Lowther Lane that
19 evening.

20 A I ended up staying in the kitchen to make sure that
21 evidence wasn't messed with and tampered.

22 Q And what evidence are you referring to?

23 A The weapon that was used.

24 Q Okay. Where was this weapon? Do you remember?

25 A It was in the sink, the kitchen sink.

Kevin Smith - Direct Examination by Ms. Legette

1 Q Did you notice anything else while you were in this
2 kitchen?

3 A There was a large amount of blood that was on the
4 floor. That's about it.

5 Q Let's see -- describe the kitchen for us and what
6 other doors there are in that kitchen.

7 A When you walk into the kitchen from the living
8 room, across the kitchen to the right, there was a door
9 that exited the kitchen, and went to the back porch and
10 just beyond that door there was another bedroom door that
11 was closed that had a large hole in it, and that was like,
12 maybe the master bedroom, bath combination.

13 Q Was anyone in that room?

14 A Yes, ma'am.

15 Q Who was in that room?

16 A There was two children that, from my understanding,
17 are the children of Ms. Weber and Mr. Way.

18 Q Did you have a chance to see those children?

19 A Yes, ma'am.

20 Q Tell us how you came to see them.

21 A We were informed that they were in this room and
22 then I know that -- I believe the older of the children
23 woke up and was moving around asking, you know, to come
24 out, you know asking for his mother. There was a large
25 hole in the door to the bedroom, so I didn't want to open

Kevin Smith - Cross-Examination by Mr. Hughes

1 the door and let him come out and see the blood on the
2 floor and walk in it. So I stayed at the door and was
3 trying to tell him, you know, everything was okay, go back
4 and lay down.

5 They were -- if they were wearing clothes it was a
6 very minimal. I want to say they were just wearing diapers
7 and the diaper on at least one of the children really
8 needed to be changed. It was in rough shape.

9 MS. LEGETTE: Begging the Court's indulgence.

10 PFC Smith, I have no further questions. Please
11 answer any questions from Mr. Hughes.

12 THE COURT: Cross-examination.

13 MR. HUGHES: Thank you, Your Honor.

14 **CROSS-EXAMINATION**

15 By Mr. Hughes:

16 Q PFC Smith, you're assigned to Ridgeland, you're a
17 Ridgeland police officer, correct?

18 A Yes, I am.

19 Q You went to the scene of what was told to you was
20 an accidental stabbing because the other officer was just
21 above Hardeeville, correct?

22 A Correct. When I heard the call, I started to go
23 that way just because of the nature of the call.

24 Q And a little later, you said he was at mile marker
25 twelve?

Kevin Smith - Cross-Examination by Mr. Hughes

1 A Correct.

2 Q And you got permission to be the one to secure the
3 scene?

4 A Yes, sir.

5 Q And Ms. Weber told you it was an accidental
6 stabbing?

7 A Correct.

8 Q Did you have a chance to talk to Mr. Way?

9 A When I was on scene, Mr. Way was pretty much
10 unresponsive. He was slumped over and making a moaning
11 sound coming from him.

12 Q Okay. But you -- he never said anything?

13 A No, sir, not that I recall.

14 Q Okay. So you went outside of your jurisdiction in
15 order to help law enforcement and most importantly EMS do
16 their job?

17 A Correct.

18 Q Thank you.

19 MR. HUGHES: No further questions, Your Honor.

20 THE COURT: Any redirect?

21 MS. LEGETTE: No, Your Honor.

22 THE COURT: You may step down.

23 Any objection to this witness being excused?

24 MS. LEGETTE: No, Your Honor.

25 THE COURT: You're free to leave.

1 MR. HUGHES: No objection.

2 THE COURT: You may call your next witness.

3 MR. FERGUSON: Your Honor, if we may take up a
4 brief matter of law before the next witness.

5 THE COURT: Madame Forelady, and ladies and
6 gentlemen of the jury, I'm going to ask that you retire to
7 the jury room. Do not discuss the case.

8 (WHEREUPON the jury left the courtroom at 11:01
9 a.m.)

10 MR. FERGUSON: Thank you, Your Honor. My next two
11 witnesses are the witnesses that were in the trailer. They
12 both gave written statements on the night of this, and
13 subsequent in my office my investigator met with those two
14 witnesses and obtained, basically additional information
15 that was not recorded in their written statements. We then
16 conveyed that information to Mr. Hughes. Specifically a
17 statement that was overheard that we basically were given
18 that this defendant said, If you don't stop I'm going to
19 kill you. This is during the course of --

20 THE COURT: Say that again, now.

21 MR. FERGUSON: If you don't stop I'm going to kill
22 you, is what the two people in the bedroom heard. Now, I
23 spoke to them this morning --

24 THE COURT: Who said that?

25 MR. FERGUSON: That the defendant said that. That

1 they heard the defendant say that during the course of an
2 argument that was inside the kitchen of the trailer before
3 they both burst into the room.

4 When I talked to these witnesses this morning, it
5 was more of, If you don't stop I'm going to stab you. And
6 so having been given that information from a witness, I
7 feel compelled to let Mr. Hughes know before I solicit that
8 it is a bit different than the information I gave him to go
9 over discovery beforehand. And so just to avoid any
10 discovery violations, I want to bring it to the Court's
11 attention before we solicit it from the stand.

12 THE COURT: All right. What's the defense's
13 position in that regard?

14 MR. HUGHES: That's less conflicting statements,
15 Your Honor.

16 THE COURT: Well, I think -- he is to be commended
17 because really he wasn't -- he's really not obligated to
18 give you anything other than what's in the statement, and
19 he's really not obligated to give you the statement until
20 after they take the witness stand. So it appears as if the
21 State is sort of conducting themselves in a
22 super-open-file-policy, which is good for everybody and I
23 take that disclosure for what it's worth, and we're ready
24 to proceed.

25 Before we do that, I think the court reporter needs

1 a break. We'll stand at ease for five minutes.

2 MR. FERGUSON: Yes, sir.

3 (WHEREUPON a recess was observed.)

4 THE COURT: Anything from the State before we bring
5 the jury out?

6 MR. FERGUSON: No, sir, Your Honor.

7 THE COURT: Anything from defense?

8 MR. HUGHES: No, Your Honor.

9 THE COURT: Very good.

10 (WHEREUPON the jury entered the courtroom at 11:21
11 a.m.)

12 THE COURT: State is recognized, Mr. Ferguson.

13 MR. HUGHES: Your Honor, we're missing a juror.

14 THE COURT: We certainly are. Thank you very much.

15 (WHEREUPON court was at ease waiting for the juror
16 to enter the courtroom.)

17 THE COURT: Your recognized, Mr. Ferguson.

18 MR. FERGUSON: Thank you, Your Honor. State calls
19 Joshua Ayers.

20 (WHEREUPON Mr. Ayers entered the courtroom.)

21 THE COURT: Yes, sir, please come forward. I'm
22 going to ask if you could to approach the clerk. Place
23 your left hand on the Bible and raise your right hand as
24 the clerk administers the oath.

25 THE WITNESS: Yes, sir.

Joshua Ayers - Direct Examination by Mr. Ferguson

1 THEREUPON,

2 JOSHUA AYERS,

3 after being duly sworn, testified as follows:

4 THE CLERK: Have a seat right there.

5 THE COURT: Please come forward, and I'm going to
6 ask you to have a seat in the witness chair there and pull
7 up real close to that microphone and speak loudly and
8 clearly and slowly in order that we can hear everything
9 that you've got to say. Let's start with your full name,
10 please, sir.

11 THE WITNESS: I'm Joshua Ayers.

12 THE COURT: Very good, Mr. Ayers.

13 Mr. Ferguson, you're recognized.

14 MR. FERGUSON: Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 By Mr. Ferguson:

17 Q Good morning, Mr. Ayers, how are you?

18 A I'm doing fine. You?

19 Q Doing well. Do you remember back on December 31st
20 of 2010?

21 A Yes, sir.

22 Q Okay. Where were you that day?

23 A I was out on Lowther Lane.

24 Q And do you remember the specific address?

25 A I couldn't tell you.

Joshua Ayers - Direct Examination by Mr. Ferguson

1 Q Well, could you tell us kind of physically where it
2 is, or what it was you were at?

3 A I was at a single-wide trailer down on the
4 right-hand side.

5 Q And who lived there?

6 A Tara, Kyle, and Kim.

7 Q And who's Kim?

8 A That was the girl I was talking to.

9 Q And did you stay there that night?

10 A Yes, sir, I did.

11 Q Okay. Can you tell us about that night?

12 A Well, starting from earlier that night, we were all
13 hanging out, went uptown and got something to eat. We came
14 back, and everybody kind of went their separate ways and me
15 and Kim went to the room and everybody was in the room and
16 whatnot, and went to sleep, and then woke up.

17 Q Do you remember about what time it was you went to
18 sleep?

19 A Not really.

20 Q Was it late?

21 A Yeah, it was late.

22 Q Okay. Were you ever woken up?

23 A Yeah.

24 Q And what were you awakened by?

25 A Arguing.

Joshua Ayers - Direct Examination by Mr. Ferguson

1 Q And where did you hear an argument occur?

2 A In the house like on the other end.

3 Q Okay. Was that -- would that be where the kitchen
4 is?

5 A Yeah, possibly.

6 Q Okay.

7 A Because the kitchen and the living room are
8 together at the end there.

9 Q And who did you hear arguing?

10 A Tara and Kyle.

11 Q Now, about how long did you hear them arguing?

12 A Wasn't very long because like I had woken up from
13 them arguing, so maybe a minute or two.

14 Q And at any point did somebody come into your room?

15 A Yeah, after probably about a minute and a half, two
16 minutes after I woke up, Tara come in, and Kyle was right
17 behind her just yelling, Call 911.

18 Q And without saying what Kyle said, if anything,
19 what was his condition?

20 A Well, when he come in, he was holding himself and
21 all I could see was blood, so my first instincts was to get
22 up and help the guy.

23 Q And is that what you did?

24 A Yeah, I got up and put something around his wound.

25 Q Do you remember what it was you put on his wound?

Joshua Ayers - Direct Examination by Mr. Ferguson

1 A If I'm not mistaken, I think it was a white shirt
2 maybe or something. I know it's cloth, so...

3 Q Now, did you ever talk to 911 operators?

4 A I do believe so. I think I did briefly for a
5 second or two just to tell them to come on. That's about
6 it.

7 Q And what did you do before they showed up or while
8 y'all were waiting on them to show up.

9 A Kyle was in the living room by the couch and I was
10 helping Kyle, sitting there talking to him telling him
11 everything's going to be all right, an ambulance was on the
12 way, and I was holding his wound for him and that was about
13 it. Keeping pressure on it.

14 Q Did he, in fact, ever say anything to you?

15 A He said that, you know, he wanted a cigarette but
16 other than that, no he didn't say much more.

17 Q Now, when you were awoken, did you ever hear the
18 defendant, Ms. Tara Marie Weber say anything?

19 A I did. I heard a few things from what Kyle was
20 saying and from what she was saying, you know.

21 Q And what did the defendant say?

22 A She said if you don't leave me alone I'm going to
23 stab you, and so...

24 Q Now, did you give a written statement that night?

25 A Yes, sir, I did.

Joshua Ayers - Cross-Examination by Mr. Hughes

1 Q And did you put that in your written statement?

2 A No, I didn't.

3 Q Where were you when you were giving the written
4 statement?

5 A I was in the back of the police car.

6 Q Were you in custody or that's where you were
7 sitting.

8 A That's where I was at.

9 Q Is there any particular reason why you didn't put
10 that in your written statement?

11 A Well, I didn't -- at that time -- period of time, I
12 was just more worried about what was going on there and
13 really trying to get away to go to work, honestly.

14 Q Did you see Kyle get stabbed?

15 A No, I did not.

16 Q Thank you, Josh, I have no further questions for
17 you. Please answer any questions Mr. Hughes might have.

18 THE COURT: Cross-examination, Mr. Hughes.

19 MR. HUGHES: Thank you, Your Honor.

20 **CROSS-EXAMINATION**

21 By Mr. Hughes:

22 Q Mr. Ayers, I've heard the 911 tape and you seem to
23 be doing a very good job of giving a description of what
24 was going on. Did you talk to the 911 operator say for
25 about three or four minutes?

Joshua Ayers - Cross-Examination by Mr. Hughes

1 A Yes, sir, I did.

2 Q Told the 911 operator where the wound was?

3 A Yeah, he was there with me.

4 Q And why did you tell the 911 operator everything

5 that you could?

6 A Because they needed to get out there to help the

7 boy.

8 Q So you think the 911 operator needed to know

9 everything possible, as soon as possible, and as accurate

10 as possible?

11 A Yes, sir. They needed to bring the help.

12 Q So everything you told the 911 operator was true?

13 A Yes, sir.

14 Q Okay. When the 911 operator asked you what

15 happened, do you remember what you said?

16 A Vaguely, no, not really, but I do remember telling

17 them they needed to hurry up because he's bleeding.

18 Q Could you have told the 911 operator, I don't know

19 what happened, I was asleep?

20 A Yes, sir, I possibly could have.

21 Q Okay. Tara and Kyle came in the bedroom where you

22 and Kim were at, correct?

23 A Yes, sir.

24 Q And they woke you up, right?

25 A Yes, sir.

Joshua Ayers - Cross-Examination by Mr. Hughes

1 Q Okay. You saw the wound on Kyle, and what
2 happened?

3 A Well, when they came in I seen blood and like I
4 said my first instinct was to get up and help the boy, so
5 that's what I did.

6 Q And did Kyle say anything to you?

7 A No.

8 Q Did he tell you to call 911?

9 A The girls were already doing that, so...

10 Q Did Kyle ever -- did you ever hear Kyle say
11 anything?

12 A Yeah, he wanted a cigarette, that was it. That was
13 after I had already had the wound -- or the rag on his
14 wound.

15 Q Okay. I apologize for laughing. I think that
16 would probably be my last request too. You gave -- he
17 asked you for a cigarette?

18 A Yeah, he did.

19 Q He knew what he was doing and asked you for a
20 cigarette?

21 A Yes, sir.

22 Q Did he say anything to you about what happened?

23 A No, sir, he did not.

24 Q Okay. He was in pain?

25 A Yes.

Joshua Ayers - Cross-Examination by Mr. Hughes

1 Q And he was bleeding?

2 A Yes.

3 Q And you were pretty sure Kyle was dying, weren't
4 you?

5 A Well, I didn't know at that time he was dying, but
6 I knew he was hurt seriously bad, so...

7 Q Okay. And Kyle did not say to you that Tara
8 stabbed him, did he?

9 A No, sir, he did not.

10 Q He asked for a cigarette?

11 A That's what he asked for.

12 Q And you lit a cigarette and put it to his lips?

13 A Sure thing.

14 Q And when Tara and Kyle came in the bedroom, that's
15 what woke you up?

16 A No, they woke me up arguing in the other room, sir.

17 Q Why did you tell 911 a lie.

18 A I vaguely don't remember exactly what I told 911.

19 Q Okay. You did not put that in your statement that
20 you made that morning, did you? When it was fresh on your
21 mind, you did not tell them that, I heard Tara say she was
22 going to stab him. You didn't put that in, did you?

23 A No, sir, I did not.

24 Q You lied to 911, you lied on your report, and now
25 you expect the jury to believe you?

Joshua Ayers - Redirect Examination by Mr. Ferguson

1 MR. HUGHES: No further questions, Your Honor.

2 THE COURT: Any redirect?

3 MR. FERGUSON: Just briefly.

4 **REDIRECT EXAMINATION**

5 By Mr. Ferguson:

6 Q Mr. Ayers, have you told the truth today?

7 A Yes, sir, I have.

8 Q Has anybody promised you any hope of reward or
9 anything in exchange for your testimony?

10 A No, sir, nobody has.

11 Q Has what you told the Court today what you remember
12 that happened?

13 A Yes, sir, I told everything I knew.

14 Q Thank you, Mr. Ayers.

15 A You're welcome.

16 THE COURT: You may step down.

17 Any objection to this witness being excused?

18 MR. FERGUSON: No, sir.

19 MR. HUGHES: No, Your Honor.

20 THE COURT: Thank you, sir.

21 MR. HUGHES: I would ask that he be admonished not
22 to talk to anyone outside.

23 THE COURT: Sir, you aren't to discuss the
24 substance of your testimony with anyone. Thank you, sir.

25 You may call your next witness.

Kimberly Powell - Direct Examination by Mr. Ferguson

1 MR. FERGUSON: State calls Kimberly Powell.

2 (WHEREUPON Kimberly Powell entered the courtroom.)

3 THE COURT: Yes, ma'am, please come forward. I'm
4 going to ask if you could approach the clerk and place your
5 left hand on the Bible and raise your right hand as the
6 clerk administers the oath.

7 THEREUPON,

8 KIMBERLY POWELL,
9 after being duly sworn, testified as follows:

10 THE CLERK: Have a seat right there.

11 THE COURT: Yes, ma'am, please come forward. I'm
12 going to ask if you could to have a seat in the witness
13 chair. Pull up real close to that mic for me and speak
14 loudly and clearly and slowly in order that we can hear
15 everything you've got to say.

16 THE WITNESS: Yes, sir.

17 THE COURT: Let's start with your full name.

18 THE WITNESS: Kimberly Michelle Powell.

19 THE COURT: Thank you, Ms. Powell.

20 **DIRECT EXAMINATION**

21 By Mr. Ferguson:

22 Q Good morning Ms. Powell, how are you?

23 A I'm doing well, how are you?

24 Q Doing fine, thank you. Do you remember back on
25 December 31st, 2010?

Kimberly Powell - Direct Examination by Mr. Ferguson

- 1 A Yes, sir.
- 2 Q And where were you?
- 3 A I was at Tara and Kyle's house.
- 4 Q Now, were you staying there?
- 5 A Yes, sir. I had been living with them for a little
- 6 while.
- 7 Q Now, was Mr. Ayers staying with you that night?
- 8 A Yes, sir.
- 9 Q And do you remember what time y'all went to bed?
- 10 A Probably around twelve, one o'clock, something like
- 11 that. I'm not too sure.
- 12 Q Now, were you ever woken up that night?
- 13 A Whenever I heard Tara and Kyle fighting, that's
- 14 when I got woke up.
- 15 Q And where did you hear them fighting?
- 16 A I guess they were somewhere in the house. I'd say
- 17 in like in the kitchen or where ever. I heard them, like,
- 18 in the yard screaming and yelling, and I didn't pay it no
- 19 attention.
- 20 Q And -- okay. About how long would you say you
- 21 heard them arguing?
- 22 A Five, ten minutes.
- 23 Q Now, did you ever hear the defendant say anything?
- 24 A Well, I heard them in there arguing whenever they
- 25 were screaming and yelling at each other. I did hear a

Kimberly Powell - Direct Examination by Mr. Ferguson

1 couple of times her saying that if he didn't leave her
2 alone that she was going to stab him.

3 Q Now, did anybody ever come into your room?

4 A Afterwards she come running in there.

5 Q And did Kyle come into your room?

6 A He did. After she came running in there, a couple
7 of seconds later, he had came running in there.

8 Q And what did you do when you they came in there?

9 A She came in there, and said to call the cops and
10 everything and it scared me, and I jumped up; and I was
11 thinking, you know, what's going on, and I saw Kyle run in
12 there and he was pouring blood and everything like that,
13 and then --

14 Q Did you call 911?

15 A Yes, sir.

16 Q Did you talk to them?

17 A (Crying.)

18 Q It's okay.

19 A I grabbed him, and then I just called them.

20 THE COURT: Just take a moment and gather yourself.

21 By Mr. Ferguson:

22 Q Ms. Powell, did you give law enforcement a written
23 statement?

24 A Yes, sir.

25 Q In that written statement, did you say anything

Kimberly Powell - Direct Examination by Mr. Ferguson

1 about what the defendant said?

2 A No, sir, I wasn't -- I was watching their kids and
3 everything like that, and I was trying to hurry up and
4 write it as fast as I could. It was hard trying to watch
5 them, and then write everything down at the same time,
6 everything that was going on that night.

7 Q Now, where were the kids?

8 A In the bedroom asleep.

9 Q And do you remember how old the kids were?

10 A I have no idea. I think --

11 Q Were they in diapers?

12 A Yes.

13 Q So tell me about -- how did you come to be watching
14 the kids after this occurred?

15 A One of the cops came out there, and got me out of
16 the car and asked me if the kids needed me to go inside
17 because I needed to change their diapers.

18 Q And did you do that?

19 A Yes, sir.

20 Q Now, Ms. Powell, after this evening, did you ever
21 talk to the defendant about this incident?

22 A Yes, sir.

23 Q And what did you talk to her about?

24 A We talked -- I mean we talked about all kinds of
25 stuff. I remember her sitting there coming to me and

Kimberly Powell - Cross-Examination by Mr. Hughes

1 | telling me about my statement. She said that she had read
2 | it, and asked me why did I put in there that they were
3 | arguing, that I should have put that they were having a
4 | discussion.

5 | Q Did she say why you wanted her to write --

6 | A She said it had got -- it would get her in a lot
7 | more trouble because I put argue, that they were arguing.

8 | MR. FERGUSON: Beg the Court's indulgence for just
9 | one moment, Your Honor.

10 | Thank you, Ms. Powell, I have no further questions
11 | for you. Please answer any questions Mr. Hughes may have.

12 | THE WITNESS: Okay.

13 | THE COURT: Mr. Hughes, you're recognized for
14 | cross-examination.

15 | MR. HUGHES: Thank you, Your Honor.

16 | **CROSS-EXAMINATION**

17 | By Mr. Hughes:

18 | Q Ms. Powell, you called 911 that night, didn't you?

19 | A Yes, sir.

20 | Q And you talked to a 911 operator?

21 | A Yes, sir.

22 | Q And your demeanor was a little different than it
23 | is -- on that phone than it is today, correct?

24 | A I don't understand your question.

25 | Q When you called 911, you were not in panic, you

Kimberly Powell - Cross-Examination by Mr. Hughes

1 | were not upset, you were not sad, correct?

2 | A | I was. Yes, sir. I didn't know what to think, I
3 | mean....

4 | Q | Isn't it true that when you were talking to the 911
5 | operator you actually giggled?

6 | A | No, sir.

7 | Q | So you are telling this Court and this jury that
8 | you were adamant to get 911 to get the ambulance there,
9 | tried to hurry them?

10 | A | I had hurried up and got on the phone to call 911,
11 | yes, sir, I did. I didn't know what to tell them, just
12 | that he was pouring a lot of blood, and we needed an
13 | ambulance there right away.

14 | Q | Why didn't you tell them that?

15 | A | What was that?

16 | Q | Why didn't you say that to the 911 operator instead
17 | of saying he just got -- the guy here got cut?

18 | A | I told them that he had got cut, and that he needed
19 | somebody to get there as soon as possible. I didn't --
20 | they asked me how did it happen and all this stuff. I
21 | didn't know what to tell them, I didn't know what had
22 | happened.

23 | Q | But, when you talked to the 911 operator, you were
24 | trying to get them to come as quick as possible and they
25 | asked you some questions, didn't they?

Kimberly Powell - Redirect Examination by Mr. Ferguson

1 A They were asking -- they were trying to ask
2 questions, but I had Tara behind me trying to get the phone
3 because she wanted to talk to them.

4 Q Okay. Do you remember the 911 operator asking you,
5 Do you know what happened?

6 A Yes, sir, I remember I told them I didn't know, I
7 was in my room, I didn't know what exactly had happened.

8 Q Didn't you tell them you didn't know what happened
9 because you were in your room asleep?

10 A Did I tell them that?

11 Q Yes.

12 A I just told them that I didn't know what had
13 happened.

14 Q That you were in your room asleep; isn't that true?

15 A I was in my room asleep, yes, sir.

16 Q Okay. And you got woke up when Tara and Kyle came
17 in?

18 A Yes, sir.

19 MR. HUGHES: No further questions.

20 THE COURT: Any redirect?

21 MR. FERGUSON: Yes, sir.

22 **REDIRECT EXAMINATION**

23 By Mr. Ferguson:

24 Q Ms. Powell?

25 A Yes, sir.

Kimberly Powell - Redirect Examination by Mr. Ferguson

1 Q When the defendant and Mr. Way came into your room,
2 is that the first time that you woke up that night?

3 A I heard them in there screaming, yelling and
4 fighting and arguing with each other. I had woke up and I
5 heard all that, but I didn't pay it no mind. So I just
6 laid in my bed and was going to go back to sleep.

7 Q Thank you, Ms. Powell.

8 THE COURT: You may step down. Any objection to
9 this witness being excused?

10 MR. FERGUSON: No, sir, Your Honor.

11 MR. HUGHES: No, Your Honor.

12 THE COURT: You may call your next witness.

13 MR. FERGUSON: The State calls Dustin Roberts.

14 THE COURT: Very good.

15 (WHEREUPON Mr. Roberts entered the courtroom.)

16 THE COURT: Mr. Roberts, place your left hand on
17 the Bible and raise your right hand as the clerk
18 administers the oath.

19 THEREUPON,

20 DUSTIN ROBERTS,

21 after being duly sworn, testified as follows:

22 THE CLERK: Thank you, have a seat right up there.

23 THE COURT: I'm going to ask you to pull up real
24 close to that microphone and speak up loudly, clearly, and
25 slowly in order that we can hear everything that you've got

Dustin Roberts - Direct Examination by Mr. Ferguson

1 to say, and start with your full name, please sir.

2 THE WITNESS: Dustin Haskell Roberts.

3 **DIRECT EXAMINATION**

4 By Mr. Ferguson:

5 Q Thank you, Mr. Roberts. Where are you currently
6 being housed?

7 A Jasper County Detention Center.

8 Q And you got pending charges?

9 A Yes, sir.

10 Q Has anybody promised you anything in exchange for
11 your testimony today?

12 A No, sir.

13 Q Has anybody from my office promised you any
14 leniency on your pending charges?

15 A No, sir.

16 Q Are you here today by your own free will and
17 accord?

18 A Yes, sir.

19 Q Mr. Roberts, do you remember back on December the
20 31st, 2010?

21 A Yes, sir.

22 Q Did you ever come in contact with the defendant,
23 Ms. Tara Marie Weber?

24 A Yes, sir.

25 Q And could you tell us about that. When did you

Dustin Roberts - Direct Examination by Mr. Ferguson

1 | come in contact with her?

2 | A Just earlier that day we had -- we had a
3 | relationship going and that night was -- we were in the
4 | other trailer, sleeping together.

5 | Q Now, you say the trailer, what trailer was that?

6 | A It was Lowther Lane.

7 | Q Is it where she and Kyle lived?

8 | A No, it was a different one.

9 | Q Okay. Who lived in that trailer?

10 | A Nobody.

11 | Q How did y'all get inside?

12 | A It was unlocked.

13 | Q Okay. And you said that y'all were together?

14 | A Yes, sir.

15 | Q And that y'all had a relationship?

16 | A On and off, yes, sir.

17 | Q What kind of relationship did y'all have?

18 | A I mean...

19 | Q Was it sexual?

20 | A Yes, sir.

21 | Q That night did y'all have sex?

22 | A Yes, sir.

23 | Q And where did that take place?

24 | A In the trailer that was vacant.

25 | Q Do you remember about what time it was? Was it

Dustin Roberts - Direct Examination by Mr. Ferguson

1 late?

2 A It with was after dark, yes.

3 Q Now, did you ever see the victim, Mr. Kyle Way,
4 that night?

5 A Yes, sir.

6 Q And I don't want you to say anything that he may
7 have said to you, but could you explain when you saw him?

8 A He didn't say anything to me. He came into the
9 trailer we were in and he grabbed Ms. Weber and drug her
10 out.

11 Q Did you hear them arguing?

12 A Yes, sir.

13 Q Did Mr. Way ever argue with you?

14 A No.

15 Q What were you wearing when he came into that
16 trailer?

17 A Close to nothing. I might have had boxers on.

18 Q What was the defendant, Ms. Weber wearing?

19 A I don't remember exactly, but it was not much.

20 Q Now, did you ever see the two of them physically
21 fight?

22 A No, no, sir.

23 Q Okay. But you just heard them arguing?

24 A Yes.

25 Q And what did you do after that?

Dustin Roberts - Direct Examination by Mr. Ferguson

1 A I went to sleep because they were arguing, and I've
2 heard that before.

3 Q Did you ever get woken up that night?

4 A No, sir.

5 Q What did you do the next morning?

6 A I went and knocked on their door. I didn't see any
7 crime scene tape or anything and nobody was there, so I
8 went and walked down to my step mom's house and she told me
9 what happened.

10 Q Okay. Now, when you said they were arguing, who
11 was yelling at who?

12 A He started yelling and you know, they were just
13 arguing back and forth just bickering.

14 Q And did you ever hear them outside of the trailer?

15 A No, sir.

16 Q Okay. Did you see either one of them with a knife?

17 A No, sir.

18 Q Okay. Do you have any children, Mr. Roberts?

19 A No, sir.

20 Q Do you know for sure if you have any children?

21 A No, sir.

22 Q Okay. Can you tell me a little bit about your
23 relationship with the victim? Were y'all friends?

24 A We never fought. I wouldn't say friends, but...

25 Q Did he know you had a relationship with the

Dustin Roberts - Direct Examination by Mr. Ferguson

1 defendant?

2 A Yes, sir.

3 Q Now, again, has anybody promised you anything in
4 exchange for your testimony today?

5 A No, sir.

6 Q Is it -- have you told the jury and this Court the
7 truth as the what you remember?

8 A Yes, sir.

9 MR. FERGUSON: I beg the Court's indulgence just
10 one moment, Your Honor.

11 By Mr. Ferguson:

12 Q Mr. Roberts, just briefly, how far was this vacant
13 trailer from the trailer that Kyle and Tara lived in?

14 A I'd have to say fifty feet, I guess.

15 Q Could you throw a rock from one to the other?

16 A Yes.

17 Q Now, what kind of relationship did Kyle and Tara
18 have?

19 A They had a son together and from what she told us
20 that's as far as it went. He was just taking care of her
21 and the kids.

22 Q Now, she had two kids, isn't that right?

23 A Yes, sir.

24 Q Was one of those kids yours?

25 A It might be. It's a good possibility, yes, sir.

Dustin Roberts - Cross-Examination by Mr. Hughes

1 Q Did Kyle -- did you help raise those kids?

2 A No, sir.

3 Q Thank you, Mr. Roberts, I have no further questions
4 for you.

5 THE COURT: Mr. Hughes, you're recognized for
6 cross-examination.

7 MR. HUGHES: Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 By Mr. Hughes:

10 Q Mr. Roberts, do you know who I am?

11 A Yes, sir.

12 Q The case you're currently in jail for, did I not at
13 one time represent you?

14 A Yes, sir.

15 Q I don't represent you anymore?

16 A No, sir.

17 Q Have I ever talked to you about the case against
18 Tara Weber?

19 A No, sir.

20 Q Did you ever see, that night, Tara and Kyle
21 fighting?

22 A Not physically, no, sir.

23 Q How loud would you say the argument you heard was?

24 A I mean, they were yelling. I could hear them from
25 the time they got where we were to the front door and after

Dustin Roberts - Cross-Examination by Mr. Hughes

1 | that I couldn't hear anything.

2 | Q Now, was Tara your girlfriend?

3 | A Yes, sir.

4 | Q The mother -- probably or probably the mother of
5 | one of your children?

6 | A Yes, sir.

7 | Q And yet a person comes in to where you and she are
8 | sleeping, drags her out while the people are yelling and
9 | hollering with each other. The mother of your child, the
10 | person you had just made love to and you do what?

11 | A Went to sleep and...

12 | Q No further questions, Your Honor?

13 | THE COURT: Any redirect?

14 | MR. FERGUSON: Beg the Court's indulgence just one
15 | moment, please.

16 | No further questions, Your Honor.

17 | THE COURT: All right. You may step down.

18 | You may call your next witness.

19 | MS. LEGETTE: State calls Raymond Moran.

20 | THE COURT: Officer Moran, please come forward and
21 | place your left hand on the Bible and raise your right hand
22 | as the clerk administers the oath.

23 | THEREUPON,

24 | RAYMOND MORAN,

25 | after being duly sworn, testified as follows:

Raymond Moran - Direct Examination by Ms. Legette

1 THE CLERK: Thank you.

2 THE COURT: Yes, sir, please come forward. I'm
3 going to ask that you have a seat in the witness chair.
4 Pull up real close to that microphone. Speak loudly,
5 clearly, and slowly in order that we can hear everything
6 that you've got to say and let's start with your full name,
7 please, sir.

8 THE WITNESS: Raymond Leroy Moran.

9 THE COURT: Very good.

10 **DIRECT EXAMINATION**

11 By Ms. Legette:

12 Q Good morning.

13 A Good morning.

14 Q Deputy Moran, where do you work, sir?

15 A Jasper County Sheriff's Office.

16 Q And how long have you worked at the Jasper County
17 Sheriff's Office?

18 A Since March 9, 2009.

19 Q And as a deputy at the Jasper County Sheriff's
20 Office, what are your duties?

21 A Well, my primary duty is patrol to protect and
22 serve the citizens of Jasper County.

23 Q Now, were you working for the Jasper County
24 Sheriff's Office on December 31st, 2010?

25 A Yes, I was.

Raymond Moran - Direct Examination by Ms. Legette

1 Q And while working that evening, did you respond to
2 a call for assistance at [REDACTED] -- or Lowther Lane?

3 A Yes, I did.

4 Q And what County is that in, sir?

5 A Jasper County.

6 Q Now, Deputy Weber (sic), you responded to this
7 particular location. What did you find when you arrived?

8 A When I arrived on scene, Ms. Weber was standing in
9 front of the house. She was standing barefooted. She had
10 some tights on and a dark color jacket.

11 Q And what did you do when you arrived and saw
12 Ms. Weber standing outside?

13 A When I approached Ms. Weber -- if my memory serves
14 me correctly, I believe there was another officer there.
15 I'm not quite sure, but I started asking her questions,
16 what's going on, what took place inside the home. And it
17 went on from there.

18 Q Okay. So you began asking her questions. At some
19 point did you stop asking her questions?

20 A At one point I did. I was handed a recording
21 device, Miranda card, and I read her her Miranda Rights as
22 I recorded it, and then I continued asking her questions.

23 Q Okay. So these Miranda warnings, tell us, how did
24 you advise her of her Miranda warnings?

25 A Well, I read her everything that was on the card.

Raymond Moran - Direct Examination by Ms. Legette

1 I read it verbatim from off the card.

2 Q Okay. Could you tell us a little bit about what
3 you said?

4 A Would you like for me to read it for you?

5 Q That's fine.

6 A I said, You have the right to remain silent,
7 anything you say can and will be used against you in a
8 court of law; you have the right to speak to an attorney
9 and have an attorney present during my questioning; if you
10 can't afford a lawyer, one will be provided to you at
11 government expense; knowing and understanding your rights
12 as I've explained them to you, are you willing to answer my
13 questions without an attorney present.

14 Q And, Deputy Moran, after advising Ms. Weber of her
15 Miranda rights, did she waive her rights and give a
16 statement to you?

17 A She continued to speak. She said she understood
18 what I was saying and she continued answering my questions.

19 Q Okay. So she gave a statement?

20 A Yes.

21 Q Can you tell us -- well, before she gave you a
22 statement, let me ask you this, did you at any time
23 threaten Ms. Weber?

24 A No.

25 Q Did you at any time try to force her to give you a

Raymond Moran - Direct Examination by Ms. Legette

1 statement?

2 A No.

3 Q Did you at any time promise her anything in
4 exchange for her statement?

5 A No.

6 Q Tell us, did Ms. Weber appear to be under the
7 influence of any alcohol or drugs?

8 A No, she didn't.

9 Q Did she appear to understand her rights when you
10 read them to her from the card?

11 A Yes.

12 Q She told you that she understood her rights?

13 A Yes.

14 Q When she was speaking with you, was her speech --
15 could you understand what she was saying?

16 A Yes, I understood what she was saying, but she did
17 seem nervous, scared.

18 Q Okay. Now, while she was speaking with you, did
19 she ever decide to stop speaking with you and ask for an
20 attorney?

21 A No.

22 Q Did she ever tell you that she wanted to stop
23 talking to you?

24 A No.

25 Q And did she freely and voluntarily give you a

Raymond Moran - Direct Examination by Ms. Legette

1 statement; is that right?

2 A Yes.

3 Q Now, Deputy Moran, if you don't mind, please tell
4 us, what did Ms. Weber tell you?

5 A She said quite a few things.

6 Q Take your time.

7 A Okay. She expressed how much she loved Kyle, that
8 they had kids together.

9 Q Uh-huh.

10 A That everything she had, that they possessed, was
11 because of him. She also expressed that she loved him to
12 death. But one thing that stands out in my mind was she
13 said sometimes she feels like hurting herself.

14 Q Okay.

15 A A few other things but those are the main things
16 that stood out in my mind.

17 Q Did she ever tell you how this happened to Kyle?

18 A Yes, she did.

19 Q What did she say happened?

20 A Well, as she was explaining to me, she was showing
21 me what she done, she said she went in the kitchen, she got
22 a knife and she was saying that she was going to hurt
23 herself, and that Kyle came up behind her telling her to
24 give him the knife. So she finally turned around and
25 said -- stated that she was trying to hand him the knife

Raymond Moran - Direct Examination by Ms. Legette

1 and as he reached for the knife, the knife got -- stabbed
2 him in the shoulder.

3 Q So, Deputy Moran, did she -- when she was telling
4 you how Kyle Way was stabbed, did she kind of show you?

5 A Yes, she was showing me as she was talking to me.

6 Q Did she explain to you how close they were?

7 A No. She just -- she just showed me her actions,
8 and said that he reached towards her as she was handing him
9 the knife. So she never told me the distance between them.

10 Q Okay. Could you demonstrate how she said she was
11 handing him the knife?

12 A Yes.

13 Q Can you step down.

14 MS. LEGETTE: Your Honor may he step down?

15 THE COURT: Yes, ma'am.

16 By Ms. Legette:

17 Q I need you to continue the speak up, Deputy Moran,
18 so the court reporter can hear what you're saying.

19 A No problem.

20 Q And our jury can as well, okay?

21 A No problem.

22 Q All right. If you will demonstrate -- if I am you
23 and you are Ms. Weber --

24 A Okay. She said she had a knife in her hand. I'm
25 assuming she had it in her right hand, and she said Kyle

Raymond Moran - Direct Examination by Ms. Legette

1 | was asking her for the knife. So she -- as she turned
2 | around and tried to hand him the knife, he reached for the
3 | knife and the knife stabbed him as he reached for it.

4 | Q Okay.

5 | A As he reached out towards the knife.

6 | Q Okay. So she had the knife down here in her hand?

7 | A She said it was approximately this level right
8 | here.

9 | Q Okay. So approximately how tall would you say Tara
10 | Weber is?

11 | A She's short.

12 | Q She's shorter than you?

13 | A Yeah.

14 | Q So I'd be about her height or shorter if I took off
15 | my shoes, would you say she's shorter than this?

16 | A Maybe a little, about the same height.

17 | Q Okay. A little shorter, about the same right?

18 | A Or a little shorter.

19 | Q Okay. So did she have her hand at her waist?

20 | A She had it about this level right here.

21 | Q So her waist level?

22 | A Yeah.

23 | Q Her waist level when she was showing it to you?

24 | A Yes.

25 | Q Okay. So if I were Tara Weber and I'm showing you

Raymond Moran - Direct Examination by Ms. Legette

1 | what I did, I have it about right here?

2 | A A little higher.

3 | Q A little higher, right here?

4 | A Yes.

5 | Q Okay. That's fine. So the knife is here?

6 | A Yes.

7 | Q So I am here?

8 | A Right. As she reached to hand him the knife --

9 | Q Okay.

10 | A Forward.

11 | Q Forward?

12 | A Yes, he reached over toward the knife.

13 | Q Okay. He reached about here for the knife?

14 | A Yes.

15 | Q Okay. But she didn't explain to you how close he

16 | was to her?

17 | A No.

18 | Q Okay. All right. You can have a seat back up on

19 | the stand while I put my shoes back on.

20 | Okay. So you talked to Ms. Weber. She tells you,

21 | she explains to you what has happened?

22 | A Yes.

23 | Q Okay. And after she explains this to you, what do

24 | you do?

25 | A After I read her her Miranda warnings, I asked her

Raymond Moran - Direct Examination by Ms. Legette

1 more questions. Then after that, I placed her -- I placed
2 handcuffs on her, placed her in my car for my safety and
3 took her over -- transported her over to the sheriff's
4 office.

5 Q Okay. Now, before she -- let's go back a little
6 bit. Before she gave you the statement when you first
7 arrived, was Mr. Weber in custody at that time?

8 A No.

9 Q Okay. She was free to leave before giving you any
10 statement at all?

11 A Yes.

12 Q Okay. Now, before you took Ms. Weber to the Jasper
13 County Sheriff's Office in your patrol car, did you collect
14 any evidence or did you see any evidence?

15 A Yes. Before I went inside, I took pictures of the
16 interior of the kitchen, the living room area, everything
17 that had signs of blood.

18 Q At some point, did you see the weapon used to stab
19 and kill Kyle Way?

20 A Yes, I did.

21 Q And at some point, what did you do with that knife?

22 A The knife was collected and placed in an evidence
23 bag.

24 Q Okay.

25 MS. LEGETTE: Begging the Court's indulgence.

Raymond Moran - Direct Examination by Ms. Legette

1 By Ms. Legette:

2 Q Deputy Moran, do you recall where the knife was
3 collected from?

4 A The kitchen sink.

5 Q Okay. Deputy Moran, I'm going to hand you now
6 what's been previously marked for identification as State's
7 Exhibit No. 5. I want you to take a moment and tell me if
8 you recognize this.

9 MS. LEGETTE: May I approach, Your Honor?

10 THE COURT: You may.

11 THE WITNESS: Yes, I do recognize this.

12 By Ms. Legette:

13 Q And what do you recognize that to be?

14 A This is a kitchen knife.

15 Q Okay. Is that the kitchen knife that you collected
16 and placed into evidence?

17 A Yes, it is.

18 Q And is State's Exhibit No. 5 in fairly the same
19 condition today as it was when you collected it originally?

20 A Yes.

21 MS. LEGETTE: At this time, Your Honor, I would
22 offer for admission into evidence State's Exhibit No. 5.

23 MR. HUGHES: No objection.

24 THE COURT: State's Exhibit No. 5 is into evidence
25 without objection from defense.

Raymond Moran - Cross-Examination by Mr. Hughes

1 (WHEREUPON State's Exhibit No. 5 was entered into
2 evidence.)

3 By Ms. Legette:

4 Q Deputy Moran, does there appear to be anything on
5 that kitchen knife?

6 A Yes, there's a red stain substance on that knife.

7 Q Okay. What does that appear to be?

8 A Blood.

9 MS. LEGETTE: Begging the Court's indulgence.

10 By Ms. Legette:

11 Q Deputy Moran, did you have opportunity to see the
12 victim at the house that night?

13 A No, I didn't.

14 Q You did not. Okay. I have no further questions.
15 Answer any questions from Mr. Hughes.

16 THE COURT: Mr. Hughes, you're recognized for
17 cross-examination.

18 MR. HUGHES: Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 By Mr. Hughes:

21 Q How tall are you, deputy?

22 A Five, eight.

23 MR. HUGHES: May I approach, Your Honor?

24 THE COURT: You may.

25 MR. HUGHES: Can you hand me State's Exhibit No. 5,

Raymond Moran - Cross-Examination by Mr. Hughes

1 | please.

2 | By Mr. Hughes:

3 | Q You did not state that that was actually blood on
4 | the knife, it just appeared to be blood on the knife,
5 | correct?

6 | A Yes, I did.

7 | Q It could be pizza sauce, could be spaghetti sauce,
8 | could be tomato sauce?

9 | A I know it wasn't a sauce.

10 | Q Okay. Did Ms. Weber ever say that what happened
11 | was not an accident?

12 | A No, she didn't.

13 | Q The entire time that you talked to her, she kept
14 | saying that it was an accident?

15 | A Yes.

16 | Q Did she say that they were arguing?

17 | A No.

18 | Q Did she say that Mr. Way had attacked her?

19 | A No, she didn't.

20 | Q Did -- what did you do with the recording that you
21 | made that night?

22 | A It was submitted into evidence and placed in an
23 | evidence bag.

24 | Q Okay. What did you use to record? I mean are we
25 | talking --

Raymond Moran - Redirect Examination by Ms. Legette

1 A It was a digital recording.

2 Q Okay. How did you get to that location on Lowther
3 Lane?

4 A My patrol car.

5 Q And that is a sheriff's department patrol car?

6 A Yes, it is.

7 Q Does it have video capabilities?

8 A The particular vehicle I was driving that night
9 didn't.

10 Q It did?

11 A Did not.

12 Q Okay. Do you know if any vehicle that night that
13 was on the scene did have video capabilities?

14 A No, I don't.

15 Q Okay.

16 MR. HUGHES: No further questions, Your Honor.

17 THE COURT: Any redirect?

18 MS. LEGETTE: Briefly, Your Honor.

19 **REDIRECT EXAMINATION**

20 By Ms. Legette:

21 Q Deputy Moran, you testified about this knife and
22 that you recognized whether or not it was blood or pizza
23 sauce.

24 MS. LEGETTE: At this point, I'd like to publish
25 the knife to the jury.

Raymond Moran - Redirect Examination by Ms. Legette

1 THE COURT: Yes, ma'am.

2 By Ms. Legette:

3 Q Deputy Moran, if you can step down. Step right
4 here. Stand right here beside me. I want to ask you --

5 MS. LEGETTE: Madame Clerk, if I could get the ELMO
6 I need the screen to come up.

7 THE COURT: You might just show them the knife.

8 By Ms. Legette:

9 Q Okay. If you'll step over here, Deputy Moran.
10 Exactly here, where are we referring to the actual -- what
11 appears to be blood? Where are we looking at?

12 A The very tip of it.

13 Q So right in here?

14 A Yes.

15 Q Okay. So right in here is what we're talking
16 about?

17 A Yes.

18 Q And that is -- in your opinion that appears to be
19 blood?

20 A Yes.

21 Q Okay. I have no further questions. You may step
22 down or answer any questions from Mr. Hughes.

23 THE COURT: There are no questions after that, that
24 was redirect. Very good.

25 MS. LEGETTE: Thank you, Your Honor.

1 THE COURT: You're free to leave.

2 Any objection from defense in that regard?

3 MR. HUGHES: No, Your Honor.

4 THE COURT: Thank you, sir.

5 Madame Forelady, ladies and gentlemen of the jury,
6 we're going to recess for lunch. I need you to be back at
7 1:30, 1:30 sharp. Do not discuss the case, do not do any
8 independent investigation, and we'll see you back at 1:30.
9 1:30.

10 Everyone remain seated as the jury exits the
11 courtroom.

12 (WHEREUPON the jury left the courtroom at 12:07
13 p.m.)

14 THE COURT: Anything from the State before we
15 recess for lunch?

16 MR. FERGUSON: No, sir, Your Honor.

17 THE COURT: Anything from defense?

18 MR. HUGHES: No, Your Honor.

19 THE COURT: All right. Might counsel approach the
20 bench for just one moment.

21 (WHEREUPON, there was a bench conference out of the
22 hearing of the Court Reporter.)

23 THE COURT: We'll stand at ease until 1:30.

24 MR. HUGHES: Thank you.

25 (WHEREUPON a recess was observed for lunch.)

1 THE COURT: Anything from the State?

2 MR. FERGUSON: No, sir, Your Honor.

3 THE COURT: Anything from defense?

4 MR. HUGHES: No, Your Honor.

5 THE COURT: We're ready to proceed.

6 THE CLERK: They're not back. I just checked.

7 THE COURT: Oh, they're not back?

8 (WHEREUPON we were at ease waiting on the jury to
9 return from lunch.)

10 MS. LEGETTE: Your Honor?

11 THE COURT: Yes, ma'am?

12 MS. LEGETTE: I believe we have a matter of law
13 that we could take up at this time.

14 THE COURT: Now would be a very appropriate time to
15 do that.

16 MS. LEGETTE: Your Honor, Mr. Hughes has brought to
17 our attention that a piece of evidence that we're going to
18 offer into evidence, State's Exhibit No. 40, we purport
19 that it is the purse of Ms. Tara Weber, located several
20 days after the incident we're here at trial for in a vacant
21 trailer where she was supposedly in with Dustin Roberts.
22 Mr. Hughes brings to our attention that his client claims
23 there are marijuana seeds in the bag and he objects to the
24 bag's admission into evidence.

25 We're not trying to elicit that it has marijuana

1 seeds in it. We're simply offering it for the purposes of
2 showing that indeed Ms. Weber was in that trailer with
3 Mr. Roberts. It corroborates his testimony. Additionally
4 her identification is in the purse. It is found in that
5 trailer. And, Your Honor, Officer Croft tells us that some
6 underwear are in the purse as well. We were not planning
7 on opening it up. We were going to offer the bag itself
8 intact as it is and just have Deputy Croft describe what
9 was inside. And he was not going to describe any marijuana
10 seeds. We didn't know that they were in there, Your Honor.
11 And only until Mr. Hughes tells us that Ms. Weber has
12 claimed they're in there were we made even aware of it at
13 all.

14 THE COURT: All right. What does the State have to
15 say -- I mean defense have to say about that?

16 MR. HUGHES: Well, Your Honor, if they're going to
17 enter the bag into evidence and it will go to the jury, the
18 jury will want to see -- would probably want to see what's
19 inside the bag. We think we need to find out before it is
20 presented in court as to what exactly is inside that purse
21 before we allow it to go to the jury. Especially if there
22 is evidence of any other illicit activities.

23 THE COURT: Well, might Counsel approach the bench
24 for a moment.

25 (WHEREUPON, there was a bench conference out of the

1 | hearing of the Court Reporter.)

2 | THE COURT: Are all the jurors here?

3 | THE BAILIFF: Yes, sir.

4 | THE COURT: All right. I understand that the jury
5 | is back. Is that going to be introduced through the next
6 | witness?

7 | MS. LEGETTE: Yes, Your Honor.

8 | THE COURT: Very good. I believe y'all have had an
9 | opportunity to look at it. What's the State's position?

10 | MS. LEGETTE: Your Honor, we've looked at it, and
11 | we don't see any obvious signs of marijuana seeds or --
12 | there are some Philly blunts in the bag itself. Your
13 | Honor, for purposes of establishing that she was in the
14 | trailer, her identification, we were only giving it for
15 | that purpose, Your Honor, along with the panties that were
16 | in it. Deputy Croft can testify about what he found in it
17 | that was relevant to him. We were not -- we're not sending
18 | it into the jury room if Mr. Hughes will have his
19 | objection -- if he will not object to that, we could --

20 | THE COURT: Essentially you're saying you're not
21 | going to offer that?

22 | MS. LEGETTE: Your Honor, we're going to offer it
23 | itself. We were going to offer it into evidence, Your
24 | Honor. We were going to offer it, we were just going to
25 | talk about the identification and the underwear that were

1 found inside the pocketbook itself, what we feel would be
2 relevant items that were found inside the purse in that
3 home. We were not going to discuss any Philly blunts
4 inside the purse itself, nor were --

5 Begging the Court's indulgence.

6 THE COURT: All right. We need to get
7 clarification on that. If your just going to testify that
8 there was a bag that was found and it had her
9 identification and underwear in it, that's one thing, you
10 can do that. I think that's relevant. You can do that.
11 You had mentioned in your first presentation that you were
12 going to offer it into evidence but not let it go back to
13 the jury room. That's not going to happen. If it's in
14 evidence the jury is entitled to see it. My question to
15 you is, do you want to offer it into evidence.

16 MS. LEGETTE: Your Honor, at this time what we're
17 looking at doing is just offering it to Officer Croft just
18 to say -- identify what he found, not offer it into
19 evidence and have him identify the purse as being the one
20 that he found and identify what he found inside the purse
21 and not offer it into evidence. That would be the easiest
22 way to get by his objection.

23 THE COURT: Is that your -- do you have an
24 objection to that?

25 MR. HUGHES: Let me make sure I understand.

1 Nothing in that purse is going to go to the jury, they're
2 just going the use the purse to identify that ID was found
3 and underwear was found.

4 MS. LEGETTE: Yes.

5 MR. HUGHES: Judging from the condition and the way
6 the underwear is still labeled and has price tags on it, I
7 would probably have to be allowed to present that to the
8 jury if they're going the --

9 THE COURT: Okay. So you want to introduce it into
10 evidence.

11 MR. HUGHES: Your Honor, I really don't because one
12 of the things in there is a letter which has been in that
13 bag, sealed from one of the witnesses to my client. I have
14 not even had a chance to look at that letter, so I'm not
15 exactly sure how we're going to handle this, Your Honor. I
16 am willing to stipulate that her ID and purse were found in
17 the trailer.

18 THE COURT: All right. Is there a letter in there?

19 MS. LEGETTE: Your Honor, there appears to be a
20 letter in the purse. It appears to be from Dustin Roberts.

21 THE COURT: All right. I'm not going to allow the
22 letter to be introduced unless we have the author of the
23 letter to be introduced. That's inadmissible. I'm not
24 going to allow that. You can take that out, do whatever
25 you want with it. That's not going in.

1 MS. LEGETTE: Your Honor, we were not going to
2 offer -- this is what we're -- we're not going to offer the
3 purse into evidence. We're simply going to offer the purse
4 for identification to Officer Croft, Deputy Croft, to have
5 him identify it as being the one that was found in the
6 house and what he found inside the purse itself.

7 THE COURT: All right. And you're absolutely
8 entitled to do that. You can cross-examine then and say
9 well isn't it true that the underwear had tags on it or you
10 can introduce it into evidence, understanding the
11 ramifications therefrom.

12 MR. HUGHES: I'm not planning to introduce anything
13 into evidence.

14 THE COURT: Okay. Well, very good. Well, you're
15 going to be entitled to do that. And do you have any
16 objection to them making reference -- typically something
17 that's not in evidence can't be published to the jury.

18 MR. HUGHES: I would have an objection to that,
19 Your Honor, because once the jury sees that they have the
20 purse, they're going to want to know about the purse,
21 they're going the want to see the purse.

22 THE COURT: Okay. Well, you can handle it this way
23 because what he's saying is right. You can't refer to an
24 item and publish it to the jury and not introduce it into
25 evidence. It would be inappropriate to do that. You can

1 do it one of two ways. You can testify as to what it was,
2 what they saw, and that sort of thing; or you can offer it
3 into evidence and I will allow it into evidence if you
4 offer that, but we aren't going to allow any letter. But
5 the letter needs to be made available to defense counsel
6 and he can do whatever he wishes.

7 MS. LEGETTE: Yes, Your Honor and what we're
8 planning on doing, we're just going to refer to the purse
9 itself and what was found inside the purse as far as the
10 identification and the underwear. However -- and for the
11 record, Your Honor, Mr. Hughes knew about this purse being
12 in the custody of the Jasper County Sheriff's Office and
13 the State has done nothing to try to keep him from having
14 evidence in his discovery motion. He was aware of this
15 purse being in evidence. Whether or not he chose to
16 exercise the right to go over and look at the evidence
17 itself, that is not our bad, Your Honor, we have made it
18 available. It has been in their custody. It was in the
19 report.

20 THE COURT: All right. Let's cut to the chase.
21 Are you going to offer it into evidence or not?

22 MS. LEGETTE: We're not, Your Honor. We're going
23 to refer to it by Deputy Croft.

24 THE COURT: Okay. Well it can't be shown to the
25 jury.

1 MS. LEGETTE: It will not be shown to the jury,
2 Your Honor.

3 THE COURT: Okay. But then it -- then it will be
4 left up to you as to whether or not you introduce it into
5 evidence.

6 MR. HUGHES: Right.

7 THE COURT: Very good. Well that clears that up
8 and we're ready for the jury.

9 (WHEREUPON the jury entered the courtroom at 1:44
10 p.m.)

11 THE COURT: Madame Forelady, ladies and gentlemen
12 of the jury, thank you for being here. Once again I'm
13 mindful that we're a little late getting started. I think
14 one of the jurors was running a little bit behind and then
15 while we were waiting for one juror, a legal issue came up
16 so that held us up for a while.

17 Nonetheless, we were able to get that tended to
18 while we were waiting. I apologize for the delay.

19 Mr. Ferguson, you're recognized.

20 MS. LEGETTE: Thank you, Your Honor. The State
21 calls deputy John Croft.

22 THE COURT: Deputy Croft, if you could please come
23 forward. I'm going to ask you to approach the clerk.
24 Place your left hand on the Bible and raise your right hand
25 as the clerk administers the oath.

John Croft - Direct Examination by Ms. Legette

1 THEREUPON,

2 JOHN CROFT,

3 after being duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 THE COURT: Yes, sir, come around and have a seat
6 in the witness chair. I'd ask that you pull up real close
7 to that microphone. Speak loudly, clearly, and slowly in
8 order we can hear everything you've got to say and we'll
9 start with your full name, please, sir.

10 THE WITNESS: John Croft.

11 THE COURT: Very good.

12 **DIRECT EXAMINATION**

13 By Ms. Legette:

14 Q Good afternoon, sir.

15 A Ma'am.

16 Q You need some water?

17 A No, ma'am, I'm good.

18 Q All right. Deputy Croft, where do you work, sir?

19 A Jasper County Sheriff's Office.

20 Q And how long have you worked at the Jasper County
21 Sheriff's Office?

22 A Four years.

23 Q And are you a deputy? What is your rank?

24 A Deputy.

25 Q Now, as deputy of the Jasper County Sheriff's

John Croft - Direct Examination by Ms. Legette

1 Office, what are your duties?

2 A I'm a patrol deputy. Answer calls, patrol
3 neighborhoods.

4 Q Okay. Were you working at the Jasper County
5 Sheriff's Office on December 31st, 2010?

6 A Yes, ma'am.

7 Q And as a deputy, did you respond to a call for
8 assistance on Lowther Lane in the County of Jasper?

9 A Yes, ma'am.

10 Q Now, tell us, what did you do when you arrived?
11 What did you find when you arrived at that location?

12 A When I got on the scene, I observed Deputy Moran
13 speaking to a white female. I believe she had blond hair.
14 She had blood on her person and her clothing. It didn't
15 appear to be her own. At that time I stopped Deputy Moran
16 and advised him to use my voice recorder because I knew he
17 didn't have one. He didn't have any kind of recording
18 device. I advised him to use my recorder and to read her
19 her Miranda warning rights from the card that I carry in my
20 wallet.

21 Q Okay. Now, Deputy Moran (sic), are you familiar
22 with an aerial view of this area of the area at Lowther
23 Lane in Jasper County?

24 A Yes, ma'am, I am.

25 Q Deputy Moran (sic), I'm handing you now what's been

John Croft - Direct Examination by Ms. Legette

1 | previously admitted into evidence as State's Exhibit No. 4.
2 | I want you to take a moment and tell me if you recognize
3 | this.

4 | MS. LEGETTE: May I approach the witness, Your
5 | Honor?

6 | THE COURT: You may.

7 | THE WITNESS: Yes, ma'am, I recognize it.

8 | By Ms. Legette:

9 | Q Okay. And what is this aerial photo of?

10 | A It's the Lowther Lane area.

11 | Q Okay. Is it a fair and accurate representation of
12 | that area?

13 | A Yes.

14 | MS. LEGETTE: Your Honor, can he step down?

15 | THE COURT: Yes.

16 | (WHEREUPON the witness steps down in front of the
17 | jury box.)

18 | By Ms. Legette:

19 | Q If you would step down, please, Deputy Croft. All
20 | right. Deputy Croft, now, I want you to stand over here so
21 | the jury can all see.

22 | MS. LEGETTE: Can we get the ELMO, I'm sorry.

23 | Begging the Court's indulgence.

24 | (WHEREUPON the clerk was turning on the ELMO.)

25 | ///

John Croft - Direct Examination by Ms. Legette

1 By Ms. Legette:

2 Q Now, Deputy Croft, tell us where exactly did you
3 respond on the night of December 31st, 2010?

4 A It would be this trailer here.

5 Q Okay. And is that where you found Deputy Moran
6 talking with Ms. Tara Weber or a white female?

7 A Yes, ma'am.

8 Q Okay. Now, at some point after December 31st,
9 2010, did you come back to this area?

10 A Yes, ma'am.

11 Q And what date did you come back to this area?

12 A I believe it was a 3rd of January.

13 Q So that was 2011?

14 A Yes, ma'am.

15 Q And why did you come back to this area on that day?

16 A We got called for a possible squatter in a
17 residence on Lowther Lane, a female caller saying she saw a
18 flashlight or some light in a trailer that was abandoned,
19 that nobody should be in that trailer at that time.

20 Q And as a result of getting that phone call, what
21 did you do?

22 A We responded out there and made contact with the
23 claimant who lived just up the road. She was the
24 responsible party for the property. Myself and another
25 deputy went down there and tried to make entry into the

John Croft - Direct Examination by Ms. Legette

1 residence. We actually had to get keys from the
2 responsible party for the property. We made entry into the
3 house and searched it.

4 We didn't make any contact with anybody in the
5 house, but we did find a purse in, I believe it was a
6 master bedroom area of the house, in a closet.

7 Q And what was in that purse?

8 A It was a South Carolina ID belonging to Ms. Weber,
9 a small amount of cash and other personal items.

10 Q Okay. So you found this purse that had Ms. Weber's
11 identification in it. Is that purse -- is that house that
12 you found that purse in on this map?

13 A Yes, ma'am.

14 Q Can you point it out, please.

15 A This one here.

16 Q Okay. If you don't mind, circling it and putting
17 your initials on it. Now -- thank you, sir.

18 If you don't mind -- you responded to the location
19 on Lowther Lane on December 31st 2010, and came back on
20 January 3rd, 2011. How close are these two locations that
21 you responded to?

22 A They're walking -- obviously, walking distance away
23 from each other. Probably about 10, 15 yards something
24 like that.

25 Q Okay. Could you give us -- I'm sorry. Have a seat

John Croft - Direct Examination by Ms. Legette

1 back up on the witness stand and we'll continue our
2 discussion.

3 Deputy Croft, using this room as a reference, can
4 you explain or describe for us how far those two trailers
5 are?

6 A Probably from where I'm sitting to maybe where the
7 door is, end of the courtroom, maybe a little bit further.

8 Q Okay. So from where you're sitting to that door is
9 where those two trailers are apart?

10 A Yes, ma'am.

11 Q Okay. So if you could describe -- the night you
12 responded to Lowther Lane on December 31st, 2010, where is
13 the back door of that trailer in relationship to the
14 trailer you responded to on January 3, 2011?

15 A Diagonal from it. Not too much of an angle from
16 it, but still pretty much back to each other.

17 Q I'm sorry --

18 A The front door is here and the back door is here on
19 the house that -- the doors on the -- they were staggered
20 front to back.

21 Q Okay. So if I may make it plainer, the back door
22 of the residence you responded to on December 31st, 2010,
23 is -- where does it sit in relationship to the front door
24 of the other trailer?

25 A They're almost straight ahead, maybe a little bit

John Croft - Direct Examination by Ms. Legette

1 of an angle to each other if I remember correctly.

2 Q Okay. Now, Let's go back to December 31st of 2010.
3 After you spoke to Deputy Moran and gave him your card,
4 told him to read Ms. Weber her rights, what did you do
5 next?

6 A I made entrance -- tried to make entrance to the
7 front door of the house. I had to go around to the back of
8 the house because EMS was in the doorway of the front door.
9 I made entrance into the back of the house. That's when I
10 made contact with two other subjects on the scene. They
11 were removed from the residence to keep the scene secure
12 and placed in the back of my patrol car at the time. You
13 could see what appeared to be a large quantity of blood in
14 the kitchen area of the house. When I came through the
15 back door and took a left to where the kitchen was, the
16 master bedroom would have been to my right. I went through
17 there, that's when I found a male and female subject in the
18 house that were removed to the car.

19 I couldn't make contact with the victim. The
20 paramedics, EMS were working on him. I came back out of
21 the house and made contact with Deputy Moran again. I
22 started making phone calls, calling my senior supervisors,
23 advised them of what we had. My senior supervisor, I think
24 was Sargent Scott Nelson. I was advised to call the
25 on-call detective that evening, which was Sargent Crosby

John Croft - Direct Examination by Ms. Legette

1 and advise both of them what I had at the time.

2 Q Did you go throughout the house and see what was in
3 the house?

4 A Yes, ma'am.

5 Q And describe for us -- what did you see in the
6 house?

7 A Which room?

8 Q Well, you can describe the house itself. Just room
9 by room, if you remember.

10 A Like I said when I went through the back door, the
11 master bedroom was to the right. That door was closed at
12 the time. There was no blood evidence or anything that
13 appeared to be going that direction, so my focus went
14 forwards where I could see where the evidence was. I went
15 in the kitchen. Like I said, there was a large quantity of
16 blood on the floor. The sink was straight ahead. The
17 stove was to the right. To the left of the kitchen was the
18 living room area where the paramedics and the victim were
19 laying, close to the front door. They were just to the
20 right of the front door, if you're inside the house.

21 There's another bedroom to the far end of the
22 mobile home, which, from what I understand was the two
23 subjects that were there on the scene that were moved to
24 the patrol car, that was their bedroom.

25 Q Now, Deputy Croft, at some point, did you find

John Croft - Direct Examination by Ms. Legette

1 | what -- did you find any weapons in the house?

2 | A Yes, ma'am.

3 | Q Okay. Explain to us where you found the weapon --
4 | or a weapon?

5 | A There was a -- what appeared to be a steak knife in
6 | the sink. It's a double-bay sink, left and right. It was
7 | divided to the middle. The left-hand side of the sink
8 | there were several dishes, plates and so forth. I'm
9 | picking them up one at the time. I picked up three plates
10 | and found a steak knife. It looked like a solid stainless
11 | steel steak knife with a fully serrated edge to it, and it
12 | had a quantity of blood on about two and a half to three
13 | inches on the blade.

14 | Q And upon finding this knife that appeared to have
15 | blood on it, what did you do?

16 | A I had officer Smith with the Ridgeland Police
17 | Department that was there with us at my request, I had him
18 | to standby there to secure it and make sure nobody messed
19 | with that knife until it could be properly processed and
20 | collected into evidence.

21 | Q Now at some point, did you come back and collect
22 | the knife as evidence or have it collected?

23 | A Yes, ma'am.

24 | Q And what happened when that was collected?

25 | A Myself and Deputy Moran collected that -- the

John Croft - Direct Examination by Ms. Legette

1 weapon and placed it into an evidence bag and he properly
2 tagged it. He was the one that actually collected it. I
3 just basically held the knife for him at the time.

4 Q Okay.

5 MS. LEGETTE: May I approach the witness, Your
6 Honor.

7 THE COURT: You may.

8 By Ms. Legette:

9 Q At this time, Deputy Croft, I'm going to hand you
10 what has been previously entered into evidence as State's
11 Exhibit No. 5. Take a moment and tell me if you recognize
12 this, please.

13 A Yes, ma'am, that's the weapon that I found in the
14 sink.

15 Q Okay. Now, you can give it back to me.

16 Deputy Croft, you said that you went through the
17 scene itself and saw what was -- what had happened inside
18 the house.

19 A Yes, ma'am.

20 Q I'm going to hand you now what have been previously
21 marked as State's Exhibits 6 through 32. I want you to
22 take a moment and tell me if you recognize these, please.

23 A Yes, ma'am.

24 MR. HUGHES: Without objection, Your Honor.

25 THE COURT: They're into evidence. They're

John Croft - Direct Examination by Ms. Legette

1 | denominated as what?

2 | MS. LEGETTE: Six through thirty-two.

3 | THE COURT: Six through thirty-two are into
4 | evidence without objection from the defense.

5 | (WHEREUPON State's Exhibits 6-32 were entered into
6 | evidence.)

7 | MS. LEGETTE: He can step down, Your Honor?

8 | THE COURT: Yes.

9 | By Ms. Legette:

10 | Q Deputy Croft, if you will step down, please.

11 | MS. LEGETTE: Madame Clerk, if I could have the
12 | ELMO, please.

13 | By Ms. Legette:

14 | Q Deputy Croft, I want to now go through these
15 | photographs, State's Exhibit's 6 through 32, one by one,
16 | okay?

17 | A Yes, ma'am.

18 | Q I want you to tell me what you see in these
19 | photographs.

20 | A Yes, ma'am.

21 | Q And State's Exhibit 30 -- I'm sorry State's Exhibit
22 | No. 6, what are we -- what are we seeing in this
23 | photograph?

24 | A That's the mailbox to the residence we were
25 | responding to, and obviously, one of our patrol cars.

John Croft - Direct Examination by Ms. Legette

- 1 Q Okay. And where is Lowther Lane in relationship to
2 this mailbox?
- 3 A Just in front of that mailbox.
- 4 Q So right here?
- 5 A Yes, ma'am.
- 6 Q Okay. Now, in State's Exhibit No. 7, what are we
7 seeing in that particular photograph?
- 8 A That is the residence we responded to. That's the
9 front of the residence.
- 10 Q Okay. And State's Exhibit No. 8, what are we
11 looking at here?
- 12 A That's the right side, front of the same residence,
13 the residence we responded to.
- 14 Q Okay. State's Exhibit No. 9, what are we seeing in
15 that particular photograph?
- 16 A That's the back door of the residence.
- 17 Q Okay. Now --
- 18 A Excuse me back side of the residence.
- 19 Q The back side of the residence. And what is this
20 particular thing right here?
- 21 A That's the back door of the residence.
- 22 Q Okay. Now, let's refer back to January 3rd, 2011.
- 23 A Yes, ma'am.
- 24 Q In relationship to this back door, where is the
25 trailer you found Tara Weber's identification in?

John Croft - Direct Examination by Ms. Legette

1 A It's -- I want to say it's back towards this
2 direction here.

3 Q Back this way?

4 A Yes, ma'am.

5 Q Okay. And State's Exhibit No. 10, what are we
6 seeing in this photograph?

7 A The front doorway to the residence.

8 Q Okay. And what does this appear to be in this
9 area?

10 A Blood.

11 Q State's Exhibit No. 11, what are we looking at in
12 that photograph?

13 A That's another picture from the front door of the
14 residence with a section of a sectional sofa that's flipped
15 over.

16 Q Okay. And do you know why it was flipped over?

17 A I was later advised by EMS they did it so they
18 could treat their patient.

19 Q Okay. State's Exhibit No. 12, is that a different
20 angle?

21 A Yes, ma'am.

22 Q Okay. State's Exhibit No. 13, what are we seeing
23 in that photograph?

24 A That's the -- on the right side is the sectional
25 that was flipped over and the left-hand side of the couch

John Croft - Direct Examination by Ms. Legette

1 | that was connected to it.

2 | Q And what does this appear to be at this
3 | particular --

4 | A Blood evidence on the top and the back side of the
5 | sofa.

6 | Q State's Exhibit No. 14, what are we seeing in that
7 | photograph?

8 | A Looks like a front door with blood evidence on it
9 | and on the far right corner, bottom right corner is the
10 | sectional sofa again.

11 | Q Okay. Now, State's Exhibit No. 15, what are we
12 | seeing in that particular exhibit?

13 | A That's a window to the right of the doorway if
14 | you're standing inside of the house, to the front doorway.
15 | I believe that's around about the area the patient was.

16 | Q Okay. So he was seated in here?

17 | A Somewhere in there, yes, ma'am.

18 | Q State's Exhibit No. 16 --

19 | A Same area, just a different angle of it.

20 | Q Okay. You know what this particular thing right
21 | here is?

22 | A I believe that was a white t-shirt that had been
23 | stained with blood.

24 | Q State's Exhibit No. 17?

25 | A A closer up of the same shirt.

John Croft - Direct Examination by Ms. Legette

1 Q Okay. And in State's Exhibit's No. 18, what are we
2 seeing in that photograph?

3 A That's the sectional couch with blood spray on it.

4 Q Okay. State's Exhibit No. 19, what are we looking
5 at here?

6 A I believe that's the bedroom -- yes, ma'am, that's
7 the bedroom to the right of the doorway when you come in
8 the door, which was the bedroom that was occupied by the
9 two subjects that were removed and placed in the back of
10 the patrol car.

11 Q Two adults?

12 A Yes, ma'am.

13 Q State's Exhibit No. 20, what are we seeing in that
14 photograph?

15 A That's the master bedroom, I do believe.

16 Q And can you tell us in relationship to the kitchen
17 where this particular room is?

18 A If you're in the kitchen, it's to the left if
19 you're looking towards the back door.

20 Q Was anyone in this room that you recall?

21 A There were two children in there. We later found
22 that out. They were still sleeping when we responded
23 there.

24 Q And that's all from the kitchen?

25 A Yes, ma'am.

John Croft - Direct Examination by Ms. Legette

1 Q And State's Exhibit No. 21, what are we seeing
2 here?

3 A That's the kitchen from the living room area.

4 Q Okay. And what are we seeing in this particular
5 area right here? What is that?

6 A That's a large amount of blood.

7 Q Okay. And that's the blood in the kitchen?

8 A Yes, ma'am.

9 Q Okay. Now, State's Exhibit No. 22 -- let me turn
10 it around some. What are we seeing here?

11 A That's a knee wall that separates the kitchen from
12 the living room area.

13 Q Okay. And what is this right here?

14 A That's the linoleum leading into the kitchen with
15 blood all over it.

16 Q And can you tell me what, if anything, these blood
17 drops tell you?

18 A From my experience it appeared to be an arterial
19 spray.

20 Q State's Exhibit No. 23, what are we seeing in that
21 photograph?

22 A That's the kitchen again from just an upward angle
23 looking into the floor. The stove, the far top of it, the
24 refrigerator, left. Between the refrigerator and the
25 stove, there's a sink that you can -- you can tell it's

John Croft - Direct Examination by Ms. Legette

1 | there but I mean it's kind of hard to see from the picture
2 | there.

3 | Q And what's on the floor here?

4 | A That's blood.

5 | Q Okay. Now, in relationship to this particular
6 | picture, where is the master bedroom where those children
7 | were?

8 | A To the top right corner of the picture, there's a
9 | doorway there. There's a little hallway, probably about
10 | four or five feet to the master bedroom door.

11 | Q So it's the area right here where I'm pointing to?

12 | A Yes, ma'am.

13 | Q Now, in relationship to this photograph, where is
14 | the back door?

15 | A Basically where you had -- to the top right corner.

16 | Q So the back door's in here?

17 | A Yes, ma'am, it's right there.

18 | Q Okay.

19 | MS. LEGETTE: Begging the Court's indulgence.

20 | By Ms. Legette:

21 | Q State's Exhibit No. 24, what are we seeing in that
22 | photograph, Deputy Croft?

23 | A The kitchen floor, the blood on it.

24 | Q Okay. Is there anything noticeable about this
25 | blood?

John Croft - Direct Examination by Ms. Legette

1 A Yes, ma'am, it appears to be a couple of tracks
2 through it, feet print, maybe shoe prints, and there's
3 arterial spray on it as well.

4 Q Okay. And State's Exhibit No. 25?

5 A That's the same area of the kitchen and just a
6 closer up of the arterial spray of the blood and bare feet
7 print.

8 Q State's Exhibit No. 26, what are we seeing in that
9 photograph?

10 A That's, again, the kitchen floor, with the bloody
11 barefoot print.

12 Q State's Exhibit No. 27, what are we seeing in that
13 photograph?

14 A The kitchen floor again. And it appears to be
15 another bloody footprint.

16 Q State's Exhibit No. 28, what are we seeing in that
17 photograph?

18 A Kitchen floor, looks like two or three bloody feet
19 print.

20 Q Okay. State's Exhibit No. 29, what are we seeing
21 in that photograph?

22 A The kitchen floor again, pretty much the overlay of
23 the kitchen from the back of the kitchen where the back
24 door would be to the residence and the master led room
25 would be to your right.

John Croft - Direct Examination by Ms. Legette

1 Q Okay. And State's Exhibit No. 30, what are we
2 seeing in that photograph?

3 A It's the blood evidence on the floor on the
4 linoleum in the kitchen again.

5 Q State's Exhibit No. 31, what are we seeing here?

6 A That's the left sink basin where the knife was
7 recovered from.

8 Q And -- I'm sorry, go ahead?

9 A And the weapon, obviously that was in there.

10 Q So now, let me ask you a question, this knife right
11 here --

12 A Yes, ma'am.

13 Q -- did you collect this knife?

14 A Myself and Deputy Moran did.

15 Q Okay. Now, did you put this knife here?

16 A No, ma'am.

17 Q Okay. Is that where you found it?

18 A Yes, ma'am.

19 Q Okay. Now, tell us again how you managed to find
20 this particular knife?

21 A We were -- at the request of EMS we were trying to
22 locate a weapon that caused the puncture wound to their
23 victim, their patient. I saw a pizza box on top of the
24 stove, flipped that open. There was no knife or anything
25 to cut the pizza in it. I noticed in the sink there were

John Croft - Direct Examination by Ms. Legette

1 | several dirty dishes. The right side, if I remember
2 | correctly, didn't have but a few things in it. The left
3 | side was pretty much full. There were several plates in
4 | it. Those plates were one by one removed from the sink and
5 | on the third plate, that knife was located underneath it.

6 | Q So were you able to see this knife without moving
7 | those plates?

8 | A No, ma'am.

9 | Q So you had to remove the plates to be able to see
10 | the knives?

11 | A Yes, ma'am.

12 | Q Okay. And what does this appear to be on the
13 | knife?

14 | A Blood.

15 | Q And State's Exhibit No. 32, what are we seeing in
16 | that photograph?

17 | A It's the view to the back door from the kitchen.

18 | Q Okay. And in relationship to this particular
19 | photograph, where is the trailer that you found Ms. Tara
20 | Weber's identification and purse?

21 | A It's right here.

22 | Q So that's it right there?

23 | A Yeah.

24 | Q All right. Thank you. Please take the stand.

25 | (WHEREUPON the witness returned to the stand.)

John Croft - Cross-Examination by Mr. Hughes

1 | By Ms. Legette:

2 | Q Deputy Croft, I want to just go back just briefly,
3 | when you first arrived at Lowther Lane, did you see the
4 | defendant?

5 | A Yes, ma'am.

6 | Q Did she have on shoes?

7 | A I don't believe so.

8 | MS. LEGETTE: Begging the Court's indulgence.

9 | Thank you Deputy Croft. I have no further
10 | questions. Answer any questions from Mr. Hughes, please.

11 | THE WITNESS: Yes, ma'am.

12 | THE COURT: Cross-examination, Mr. Hughes.

13 | MR. HUGHES: Thank you, Your Honor.

14 | **CROSS-EXAMINATION**

15 | By Mr. Hughes:

16 | Q Deputy Croft, when was the purse found?

17 | A The 3rd of January, if I remember correctly.

18 | Q And when was it put in the trailer?

19 | A I have no knowledge of when it was put in the
20 | trailer.

21 | Q So it could have been in there from December 25th
22 | or November 25th, you have no idea when that purse was
23 | placed in that trailer?

24 | A No, sir, I have no idea when it was placed in
25 | there.

John Croft - Cross-Examination by Mr. Hughes

1 Q Okay. And who collected the knife?

2 A Deputy Moran and myself.

3 Q Okay. And you're the one that gave your recorder
4 to who?

5 A Deputy Moran.

6 MR. HUGHES: No further questions, Your Honor.

7 THE COURT: Any redirect?

8 MS. LEGETTE: No, Your Honor.

9 THE COURT: All right. You may step down. Any
10 objection to this witness being excused?

11 MR. HUGHES: No, Your Honor.

12 THE COURT: All right. You're free to leave, thank
13 you, sir.

14 THE WITNESS: Thank you, sir.

15 THE COURT: The State's recognized. You may call
16 your next witness.

17 MR. FERGUSON: The State calls Detective Jeff
18 Crosby.

19 THE COURT: Yes, sir. Place your left hand on the
20 Bible and raise your right hand so the clerk can administer
21 the oath, please.

22 THEREUPON,

23 JEFF CROSBY,

24 after being duly sworn, testified as follows:

25 THE COURT: Please come around and have a seat in

Jeff Crosby - Direct Examination by Mr. Ferguson

1 the witness chair. I'm going to ask you to speak loudly,
2 clearly, and slowly in order we can hear everything you've
3 got to say; and let's start with your full name.

4 THE WITNESS: My name is Jeff Crosby, C-r-o-s-b-y.

5 THE COURT: Mr. Ferguson.

6 **DIRECT EXAMINATION**

7 By Mr. Ferguson:

8 Q Deputy Crosby, who do you work for?

9 A I'm sorry?

10 Q Who do you work for?

11 A Jasper County Sheriff's Office.

12 Q And how long have you worked for them?

13 A Twenty-three years.

14 Q And what are your duties with the Jasper County
15 Sheriff's Office?

16 A I am a sargent in the detective's office. I
17 investigate crimes that the road units cannot handle,
18 basically like rape, robberies, murders, things of that
19 nature.

20 Q And what kind of training experience and education
21 did you have to go through to become a detective?

22 A First of all you have to attend the basic training
23 at the Criminal Justice Academy of South Carolina to become
24 a police officer. I have since returned for detective
25 school, crime scene processing, crime scene photography.

Jeff Crosby - Direct Examination by Mr. Ferguson

1 I'm an instructor with the sheriff's office, a firearms
2 instructor with the sheriff's office.

3 Q How did you get involved in this case that we're
4 here for this week?

5 A I was the investigator that was on call that week.

6 Q And do you remember who called you?

7 A Jasper County dispatch called me.

8 Q And what did you do after they called you?

9 A I made contact with Deputy Croft, I think it was,
10 that was on the scene.

11 Q And what -- did you physically go out to the scene?

12 A Yes, I did.

13 Q And what did you do once you got there?

14 A The first thing I did when I arrived on scene was I
15 received word that Mr. Way had passed away from his
16 injuries. I made contact with the coroner, Mark Sauls to
17 confirm that and then I spoke with Kyle Way's father, James
18 Way.

19 Q And what did you do next?

20 A I informed Mr. Way that his son had passed away,
21 that he had succumbed to his injuries; and I was told that
22 there were two small children in the residence. I turned
23 those children over to James Way.

24 Q Okay. And what happened next?

25 A I was assisted by Detective Morris. Deputy Croft

Jeff Crosby - Direct Examination by Mr. Ferguson

1 | took me through the crime scene, showed me what he had
2 | discovered. I had Detective Morris start photographing the
3 | residence, the blood and stuff in the residence, and I
4 | measured, took measurements, throughout the house.

5 | Q And why did you do that?

6 | A Just to note it in the report in case I needed to
7 | come back and do a crime scene diagram on it.

8 | Q Okay. What did you do next?

9 | A After that, I met with Ms. Weber at the detective's
10 | division where I conducted an interview with her.

11 | Q And do you remember who brought her to the
12 | detective division?

13 | A I believe it was Deputy Moran. I'm not sure of
14 | that. She was there when I arrived.

15 | Q Okay. And now, did you ever see a knife that was
16 | removed from the tailer?

17 | A Yes, I did.

18 | Q Okay. And who provided you with that knife?

19 | A Corporal Ashby with the sheriff's office.

20 | Q And do you know who Corporal Ashby got it from?

21 | A Deputy Moran.

22 | Q Okay. And so you had the defendant, Ms. Weber, in
23 | your office. Did you -- can you describe that for us?

24 | A Yes, sir. In our -- the detective's office is
25 | separate from the main sheriff's office. In the

Jeff Crosby - Direct Examination by Mr. Ferguson

1 | detective's office we have two interview rooms set up. I
2 | met with her, myself and Detective Morris met with Tara
3 | Weber in one of the interview rooms, where I conducted a
4 | tape-recorded interview with her.

5 | Q Did you Mirandize the defendant--

6 | A Yes, I did.

7 | Q -- before you asked her any questions?

8 | A Yes, I did. And I even filled out a Miranda form
9 | that we use when we interview someone.

10 | Q Okay. And what were those rights that you read to
11 | her?

12 | A They're printed out on that form. I advised her
13 | that she had the right to remain silent and anything she
14 | said could and would be used against you in a court of law.
15 | She has a right for an attorney to be present before and
16 | during questioning. Your basic rights.

17 | Q Okay.

18 | MR. FERGUSON: Your Honor, may I approach the
19 | witness?

20 | THE COURT: You may.

21 | By Mr. Ferguson:

22 | Q Detective Crosby, I'm going to show you what's been
23 | previously marked for identification as State's Exhibit 1
24 | and ask if you can identify that for us.

25 | A Yes, I can.

Jeff Crosby - Direct Examination by Mr. Ferguson

1 Q Did you sign that form?

2 A Yes, I did.

3 Q Did the defendant, Tara Marie Weber sign that form?

4 A Yes, she did.

5 Q And did anybody witness that form?

6 A Detective Morris witnessed it, and I did not sign
7 it. My name is printed at the bottom of it.

8 Q Okay. And in addition to being advised of her
9 rights, did she then waive those rights?

10 A Yes, she did. On the bottom part of this form at
11 the top, it said, Your rights, and it goes through the
12 rights and at the bottom of it, it has a waiver of rights
13 section.

14 MR. FERGUSON: All right, Your Honor, at this
15 point, I would move that State's Exhibit No. 1 be admitted
16 into evidence.

17 THE COURT: Any objection from defense?

18 MR. HUGHES: Is it a copy of what I've seen?

19 MR. FERGUSON: It is.

20 MR. HUGHES: No objection, Your Honor.

21 THE COURT: All right. This is denominated as
22 State's Exhibit --

23 MR. FERGUSON: No. 1, Your Honor.

24 THE COURT: No. 1 is into evidence without
25 objection. All right. Thank you.

Jeff Crosby - Direct Examination by Mr. Ferguson

1 (WHEREUPON State's Exhibit No. 1 was entered into
2 evidence.)

3 By Mr. Ferguson:

4 Q Now, Detective Crosby, was your interview room
5 equipped with audio recording capabilities?

6 A Our audio and video recording from the county
7 system is not functioning. I used a digital micro-
8 recorder.

9 Q Okay.

10 MR. FERGUSON: And may I approach the witness, Your
11 Honor.

12 THE COURT: You may.

13 By Mr. Ferguson:

14 Q Detective Crosby, I'm going to show you what's been
15 previously marked as State's Exhibit No. 3, for
16 identification purposes and ask if you can recognize the
17 item.

18 A Yes, I do.

19 Q And what is it?

20 A That's a copy of the interview that I conducted,
21 myself and Detective Morris conducted, with Ms. Weber on
22 the same day that these rights were read to her on December
23 31st, 2010.

24 Q And before this trial, did you and I have an
25 opportunity to review a portion of that to make sure that

Jeff Crosby - Direct Examination by Mr. Ferguson

1 | it was, in fact, a copy of that interview?

2 | A Yes, we did, and I initialled the disk when we did
3 | that.

4 | Q And is that a fair and accurate depiction or
5 | recording of the conversation that you had with Ms. Weber
6 | that night?

7 | A Yes, it is.

8 | MR. FERGUSON: Your Honor, at this point, I would
9 | move to have State's Exhibit No. 3 admitted into evidence.

10 | MR. HUGHES: No objection.

11 | THE COURT: State's Exhibit No. 3 is into evidence
12 | without objection from defense.

13 | (WHEREUPON State's Exhibit No. 3 was entered into
14 | evidence.)

15 | MR. FERGUSON: And, Your Honor. I wish to publish
16 | it at this time.

17 | THE COURT: Very good.

18 | (WHEREUPON the CD was playing for the jury.)

19 | MR. FERGUSON: Now, Detective Crosby, if you could
20 | come off the stand in there and show us how she described
21 | this event taking place.

22 | (WHEREUPON the witness left the stand.)

23 | THE WITNESS: When she described to me that she cut
24 | herself in the past, she actually pulled up her left
25 | sleeve. I didn't see any scarring or anything on her left

Jeff Crosby - Direct Examination by Mr. Ferguson

1 arm, on her foreman. She had her arm up like that and she
2 was holding it up like that.

3 When she described how she was holding the knife
4 when she threatened to cut herself, she said that she was
5 holding it in this hand and that when she turned around,
6 Kyle was right there. And she said that she told him, as
7 she turned around like this -- she actually stood up and
8 demonstrated that to me.

9 By Mr. Ferguson:

10 Q And, you know -- so when she was talking about
11 placement of the wound, could you describe that. She said
12 that it was up here, not down there?

13 A She said it was up here, not down in the
14 midsection, it was up near his shoulder.

15 Q Okay. And did that make sense to you?

16 A No, it did not.

17 Q Did you ask her how the wound ended up up here?

18 A No, I did not.

19 Q Was she able to ever describe to you how the wound
20 ended up on his left shoulder?

21 A No, she did not.

22 Q Okay. And if I'm the victim in this case and
23 you're the defendant, Ms. Weber, could you interact on me
24 how she said it occurred?

25 A She said that she had the knife in her -- in her

Jeff Crosby - Direct Examination by Mr. Ferguson

1 | hand, in her left hand and when she turned around, she said
2 | she turned around like that, and he was right there.

3 | Q Was it her left or her right hand?

4 | A She was seated in the interview room facing me and
5 | she used this hand, this left hand to describe that she had
6 | the knife in that hand.

7 | Q Okay. If you'd have a seat back up there. Thank
8 | you Detective Crosby.

9 | (WHEREUPON the witness returned to the stand.)

10 | By Mr. Ferguson:

11 | Q Now, in addition to your interview with the
12 | defendant, what else did you do to investigate this case?

13 | A After I conducted my interview with Ms. Weber, I
14 | went back to my office. I spoke to left turn hip about the
15 | interview and then I called the solicitor, Duffy Stone and
16 | the deputy solicitor, Sean Thornton and explained to them
17 | the case that I had and asked them if --

18 | Q Well -- and let's not get into what anybody else
19 | told you.

20 | A Okay.

21 | Q You know, I'm more so asking about your actions
22 | that you did after the interview?

23 | A After the interview, I met with Corporal Crosby,
24 | collected the knife from him. The knife was in a paper
25 | bag. You don't put knives in paper bags because they poke

Jeff Crosby - Direct Examination by Mr. Ferguson

1 | a hole through the bag, and you've got the chance of
2 | spreading bloodborne pathogens and stuff like that. So I
3 | boxed it up in a proper evidence box and sealed it. Later
4 | on, I met with the Beaufort County Sheriff's Office. We
5 | fingerprinted the knife at the Beaufort County Sheriff's
6 | Office because they have what is called an AFIS lab. It's
7 | automated fingerprint identification system. There was no
8 | fingerprints recovered off of the knife. It was boxed back
9 | up, sealed back and I returned it to my office. And then
10 | later on I sat down and conducted an interview with Dustin
11 | Roberts.

12 | Q Now, Detective Crosby, were there no fingerprints
13 | found or no usable fingerprints found?

14 | A There were no usable fingerprints found on the
15 | knife.

16 | Q Okay. And there's a difference there, is there
17 | not?

18 | A Yes, there is.

19 | Q Okay. And now, do -- what was this case?

20 | A I'm sorry?

21 | Q In this case, what were the findings after they
22 | attempted to dust this knife?

23 | A There was no usable fingerprints found on the
24 | knife.

25 | Q Do you know if there were fingerprints found on the

Jeff Crosby - Direct Examination by Mr. Ferguson

1 knife?

2 A It didn't appear to be.

3 Q Okay. Would it help refresh your recollection if I
4 were able to show you the report that was generated as a
5 result of that?

6 A Yes, it would.

7 MR. FERGUSON: May I approach the witness, Your
8 Honor?

9 THE COURT: You may.

10 By Mr Ferguson:

11 Q And if you would review this and attempt to refresh
12 your recollection.

13 A Yes, sir.

14 Q And what were the results in this case?

15 A Sargent Chapman with the Beaufort County Sheriff's
16 Office is the investigator that actually processed it. He
17 is an AFIS -- certified AFIS operator from Beaufort County.
18 He pulled two, what we would consider partial prints off of
19 it and put them on latent print cards, but there was no
20 ridge detail to them or anything like that so they could
21 not be read. They were of no value is what they consider
22 them.

23 Q Thank you, Detective Crosby.

24 MR. FERGUSON: My I approach the witness, Your
25 Honor?

Jeff Crosby - Direct Examination by Mr. Ferguson

1 THE COURT: You may.

2 MR. FERGUSON: Thank you.

3 I beg the court's indulgence just one moment, Your
4 Honor.

5 THE COURT: Take your time.

6 By Mr. Ferguson:

7 Q Now, Detective Crosby, we just listened to that
8 tape, could you describe the defendant's demeanor during
9 that interview?

10 A Sometimes she was upset and sometimes she was calm.
11 It swapped back and forth during the entire interview.
12 After I completed the interview and I spoke with Lieutenant
13 Hip, I went back in there and advised her that Kyle had
14 passed away from his injuries.

15 Q So during that interview, she did not know that
16 Kyle was deceased?

17 A No, she did not.

18 Q Okay.

19 MR. FERGUSON: I have no further questions for
20 Detective Crosby, Your Honor.

21 Please answer any questions Mr. Hughes may have.

22 THE COURT: Mr. Hughes, you're recognized for
23 cross-examination.

24 MR. HUGHES: Thank you, Your Honor.

25 ///

Jeff Crosby - Cross-Examination by Mr. Hughes

CROSS-EXAMINATION

1

2 By Mr. Hughes:

3

Q Detective Crosby, when you were first introduced,
4 you said that for the sheriff's department you investigate
5 rapes, robberies and murders; isn't that what you said?

6

A Violent crimes, yes, sir. That's what I said, but
7 it's all violent crimes.

8

Q Okay. This is not a rape case?

9

A No, it's not.

10

Q This is not a robbery case?

11

A No, it's not.

12

Q This is not a murder case?

13

A No, sir, it's a manslaughter case.

14

Q Okay. You went in the trailer?

15

A Yes, I did.

16

Q Do you know which bedroom the children were asleep
17 in?

18

A No, I do not.

19

Q Do you know which bedroom the -- has the green
20 walls, the green and blue walls?

21

A I'd have to look at the crime-scene photos.

22

MR. HUGHES: May I approach him, Your Honor?

23

THE COURT: You may.

24

MR. HUGHES: Begging the Court's indulgence for a

25

minute while I try to find this.

Jeff Crosby - Cross-Examination by Mr. Hughes

1 By Mr. Hughes:

2 Q I show you what's been previously labeled State's
3 Exhibit 20, and ask if that refreshes your memory?

4 A Yes, sir. When I went into the residence, I
5 went -- when I went through the front door the first time,
6 there's a bedroom down a little hallway to the right, which
7 has a bathroom in it. I labeled that as hallway number one
8 and bedroom number one. When you go through the living
9 room, through the kitchen, there's another small hallway
10 and then there is what I consider to be the master bedroom,
11 with a bathroom attached to it. I labeled that in my
12 incident report as bedroom number two and bathroom number
13 two.

14 Q Okay. Which is the children's room? The blue and
15 green one, is that bedroom one or bedroom two?

16 A This appears to be bedroom number two. It appears
17 to be the master bedroom of the residence. I can't tell
18 you if the children slept in this bedroom. I'm not -- I
19 don't know where the children slept in the house, but it
20 appears to be some type of child's toy in the floor there.

21 Q Okay. But there are only two bedrooms in the
22 trailer?

23 A Yes, sir.

24 Q Okay. And how far is bedroom number two from the
25 kitchen sink?

Jeff Crosby - Cross-Examination by Mr. Hughes

1 A I would have to look back at my incident report to
2 give you the length of the hallway number two, which is the
3 hallway leading into the master bedroom.

4 Q Did you bring your incident report with you?

5 A Yes, I did.

6 MR. HUGHES: May I approach the witness, Your
7 Honor?

8 THE COURT: You may.

9 By Mr. Hughes:

10 Q Okay. Please look through that and see if you can
11 find something that would aid in your recollection of the
12 distance?

13 A Yes, sir, I have hallway number two listed as
14 approximately two feet, zero inches wide and approximately
15 four feet, zero inches in length. This hallway extends
16 from the kitchen to the doorway of bedroom number two. The
17 rear entrance of the residence is located in hallway number
18 two at the rear exterior or east wall of the residence.

19 Q How far is -- would you say the bed is from the
20 door?

21 A I did not measure the distance the furniture in the
22 residence from points on the walls or doors or anything
23 like that.

24 Q Okay. Approximately though, since this is a
25 single-wide trailer, we're not talking fifty to sixty feet

Jeff Crosby - Cross-Examination by Mr. Hughes

1 from the bed to the door, are we?

2 A No, sir. I have bedroom two measures approximately
3 fourteen feet and zero inches in length and approximately
4 twelve feet, zero inches is width.

5 Q And if you look at that picture, that is a queen or
6 king size bed?

7 A It appears to be, yes, sir.

8 Q Okay. So the bed is probably within twenty feet
9 from the kitchen?

10 A Roughly.

11 Q Since the bedroom itself is fourteen feet wide and
12 the hallway is two feet -- or four feet long?

13 A Yes, sir.

14 Q Okay. Whose blood is on that knife?

15 A Don't know.

16 Q Y'all did not do any tests on it?

17 A No, sir. I consulted with the solicitor's office
18 on that and we were told --

19 Q That's okay. You do not know who he has blood is
20 on that knife?

21 A No, I do not.

22 Q And no useable fingerprints were recovered from the
23 knife?

24 A No, there was not.

25 Q I am concerned that you said that the video

Jeff Crosby - Cross-Examination by Mr. Hughes

- 1 | equipment at the detective's office wasn't working?
- 2 | A That's correct.
- 3 | Q Is it working now?
- 4 | A No, sir, it's not.
- 5 | Q Budget?
- 6 | A That's one of the main reasons.
- 7 | Q Okay. And you were using an audio device. Was it
- 8 | hooked up to the audio system at the sheriff's office or is
- 9 | this one of these little digital recorders also?
- 10 | A It's a digital recorder similar to the one that's
- 11 | sitting right there in front of the court reporter. Except
- 12 | mine is red in color.
- 13 | Q Again, budget?
- 14 | A Budget.
- 15 | Q What time of day did you interview Tara Weber?
- 16 | A It was exactly 8:05 a.m.
- 17 | Q And at the end she asked to go to the restroom?
- 18 | A Yes, she did.
- 19 | Q And at the start of the interview, she said may I
- 20 | ask some questions.
- 21 | A Yes, she did.
- 22 | Q Do you know what those questions were?
- 23 | A No, I do not. She never asked any during the
- 24 | interview.
- 25 | Q Was she under arrest at the time of the interview?

Jeff Crosby - Cross-Examination by Mr. Hughes

1 A No, she was not.

2 Q Could she have gotten up and walked out the door?

3 A Yes, she could have. I did not place her under
4 arrest. She was not handcuffed during my interview. There
5 were no handcuffs on her when I met her in the interview
6 room. I even had to call the solicitor and the deputy
7 solicitor to see if I could charge her and what to charge
8 her with.

9 Q Okay. She was dressed, if I'm not mistaken,
10 wearing only a jacket top, thin pants, no shoes, on
11 December 31st, at eight o'clock in the morning?

12 A She was wearing a dark-colored jacket that was
13 zipped up. I don't know if she had a shirt on or what was
14 underneath the jacket; and she was wearing a pair of thin
15 pants that appeared to be a pair of tights or something
16 like that.

17 Q And this was located -- where were y'all?

18 A We were at the detective's division.

19 Q And where is that?

20 A It's on Carter's Mill Road next to the animal
21 shelter.

22 Q Basically the old jail.

23 A Yes, sir.

24 Q Okay. We all hear about the one phone call that
25 you're supposed to be able to have. Had she made any phone

Jeff Crosby - Redirect Examination by Mr. Ferguson

1 | calls?

2 | A Not while she -- not while we were in the interview
3 | room, she did not. She didn't ask if she could make any
4 | phone calls prior to me meeting with her, I don't know if
5 | she made any phone calls or not.

6 | Q And you were the on-duty detective that night?

7 | A Yes, sir.

8 | Q And you got there about what time?

9 | A I'd have to look at the dispatch log, but I think I
10 | got there around five o'clock in the morning.

11 | Q And Ms. Weber was already gone from the scene at
12 | that time?

13 | A I believe she was. I did not speak to her at the
14 | scene. I did not speak with Ms. Powell at the scene or the
15 | other individual that was in the residence. I did not
16 | speak to either one of them.

17 | Q Okay.

18 | MR. HUGHES: No further questions, Your Honor.

19 | THE COURT: Any redirect?

20 | MR. FERGUSON: Yes, sir, briefly.

21 | **REDIRECT EXAMINATION**

22 | By Mr. Ferguson:

23 | Q Detective Crosby, Mr. Hughes asked you about whose
24 | blood was on the knife. To your knowledge was anybody else
25 | injured in that trailer?

Jeff Crosby - Redirect Examination by Mr. Ferguson

1 A No, there was not. We didn't do any DNA testing
2 because we only had one individual that was injured in the
3 incident.

4 Q And who was that?

5 A And that was Mr. Way. And we had statements saying
6 that he was stabbed with that knife. We had no other
7 reports of any other victims in the residence. Nobody else
8 with stab wounds or was shot, nobody bleeding, anything
9 like that.

10 Q During your interview with the defendant in your
11 office, were you able to observe her arms and legs?

12 A Yes, I was.

13 Q Did she have any injuries to her?

14 A She did not appear to have any injuries.

15 Q Did she have blood on her?

16 A She had blood on her, on her clothes, on her feet
17 and her hands.

18 Q Did she tell you whose blood that was?

19 A I don't think I asked her in the interview.

20 Q Did you know whose blood that was?

21 A I assumed it was Mr. Way's blood.

22 MR. FERGUSON: I have no further questions for him,
23 Your Honor. Thank you.

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

Jeff Crosby - Redirect Examination by Mr. Ferguson

1 MR. FERGUSON: State calls Dr. Erin Presnell.

2 THE COURT: You know, we've been going for about an
3 hour and a half. Let's take about a five minute recess.

4 Madame Forelady and ladies and gentlemen of the
5 jury, if you could take a break in the jury room. Do not
6 discuss the case in any way, shape, or form.

7 Everyone remain seated at the jury exits the
8 courtroom.

9 (WHEREUPON the jury left the courtroom at 2:58
10 p.m.)

11 (WHEREUPON a recess was observed.)

12 THE COURT: All right. We're ready for the jury.

13 MR. FERGUSON: Yes, sir, Your Honor.

14 (WHEREUPON the jury entered the courtroom at 3:07
15 p.m.)

16 THE COURT: Mr. Ferguson, you're recognized.

17 MR. FERGUSON: Thank you, Your Honor. The State
18 calls Dr. Erin Presnell.

19 THE COURT: Dr. Presnell, if you could please come
20 forward. Please come forward and approach the clerk and
21 place your left hand on the Bible and raise your right hand
22 as the clerk administers the oath.

23 THE WITNESS: Yes, sir.

24 ///

25 ///

Erin Presnell - Direct Examination by Mr. Ferguson

1 THEREUPON,

2 DR. ERIN PRESNELL,

3 after being duly sworn, testified as follows:

4 THE COURT: If you could come forward, I'm going to
5 ask you to have a seat in this witness chair here. I ask
6 you to pull up real close to that microphone, speak loudly,
7 clearly, and slowly in order that we can hear everything
8 that you've got to say. And let's start with your full
9 name.

10 THE WITNESS: My full name is Susan Erin Presnell,
11 P-r-e-s-n-e-l-l.

12 MR. FERGUSON: Thank you, Your Honor.

13 **DIRECT EXAMINATION**

14 By Mr. Ferguson:

15 Q Dr. Presnell, who do you work for?

16 A I'm a forensic pathologist at the Medical
17 University of South Carolina up in Charleston.

18 Q And could you explain what a pathologist is,
19 please.

20 A Well, everybody's more familiar with what
21 pathologists do with all the TV shows and all, but to kind
22 of break it down, pathology itself is a big field. It's
23 the study of disease. So if you're a pathologist, you
24 receive, say tissues or fluids or whatnot taken off of a
25 patient by a physician, like clinician. The pathologist

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1 | deals with it with a microscope and diagnose disease, like
2 | a cancer or infection or whatnot.

3 | I'm trained as a general pathologist, but then a
4 | subspecialty as a forensic pathologist and in forensic
5 | pathology, we're not just looking at maybe tissues or body
6 | fluids, we're looking at a whole individual person, who is
7 | deceased and the process, of course, is an autopsy. We're
8 | definitely looking for a disease, but the other thing is
9 | trauma and ultimately coming up with a cause and manner of
10 | death for that individual.

11 | Q Dr. Presnell, can you explain to the jury your
12 | education that you're required in order to become a
13 | pathologist?

14 | A Well, for forensic pathology, they're physicians,
15 | M.D.'s, so you go the college, four years of college, four
16 | years of medical school; and after that, you receive your
17 | M.D. and decide which specialty of medicine you want to go
18 | in, like surgery or pediatrics, and I chose pathology,
19 | which was five years training at that time and then an
20 | additional year for forensic pathology. So fourteen years
21 | after high school and then I've also taken the boards, the
22 | national boards for general pathology and forensic
23 | pathology, so I'm board certified in both of those areas.

24 | Q And what training would you say you've had
25 | specifically in forensic pathology?

Erin Presnell - Direct Examination by Mr. Ferguson

1 A Well, I did a forensic pathology fellowship which
2 is an accredited program to learn forensic pathology.

3 Q And Dr. Presnell, how many autopsies would you say
4 you've performed?

5 A I'd have to estimate around 2,000.

6 Q And have you attended more than you've performed?

7 A Yeah, I've certainly observed more, but usually if
8 you're in the autopsy room, you're an active part of the
9 process.

10 Q Thank you. How many times -- have you ever
11 testified as an expert before?

12 A Yes.

13 Q And do you know how many times?

14 A Again, an estimate, maybe eighty, eighty-five.

15 MR. FERGUSON: Your Honor, at this point, I would
16 move to have Dr. Presnell qualified as an expert in
17 forensic pathology.

18 THE COURT: Any query with regard to her
19 qualifications?

20 MR. HUGHES: None, Your Honor.

21 THE COURT: Madame Forelady, ladies and gentlemen
22 of the jury, once again, normally, a person cannot give
23 opinion testimony. Normally when a person testifies, they
24 must testify as to what they saw, heard, or sense by smell;
25 however, there's an exception when someone is qualified

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1 | because of education or experience. They're allowed to
2 | give their opinions in certain areas if the Court qualifies
3 | them that way. This witness will be qualified in the area
4 | of general pathology and forensic pathology and give
5 | opinions in that area.

6 | That does not mean that you must except that
7 | opinion. It is evidence for you to use in any way you see
8 | fit, evaluate it like you would any other eyewitness.

9 | MR. FERGUSON: Thank you.

10 | THE COURT: Mr. Ferguson.

11 | By Mr. Ferguson:

12 | Q Dr. Presnell, could you describe for the jury the
13 | procedure of an autopsy?

14 | A Well, South Carolina is a coroner state, so the
15 | coroners who are elected to the county in which the death
16 | occurred will attend the death or the person's transfer to
17 | the hospital and decide who they want -- if they want to
18 | have an postmortem exam and decide where they would like to
19 | send that person. And when that happens and the deceased
20 | gets sent to MUSC, the autopsy begins. It's, basically a
21 | full external exam. We do ancillary studies as needed, but
22 | after the external, we do diagrams of the external. We do
23 | the full internal exam from head to toe internal, looking
24 | at all to organs.

25 | We may sample some of the tissues, look under the

Erin Presnell - Direct Examination by Mr. Ferguson

1 | microscope. We usually collect blood and fluids for drug
2 | and alcohol testing and then after that we put it all
3 | together in an autopsy report. And again, once all the
4 | studies -- there's some ancillary studies that come
5 | back -- we'll assemble everything and come up with a cause
6 | and manner of the death.

7 | Q And now, you talked about internal versus external.
8 | What is an internal examination comprised of?

9 | A Well, the external, we're just looking at the
10 | outside of the body. The internal means you do a Y-shaped
11 | incision. You may have heard about the incision down the
12 | chest and down the abdomen and open the skin up so that we
13 | can get inside and look at all the organs. We take the
14 | plate off so we can look at the heart and lungs. Also, we
15 | make an incision into the scalp. We take the skull cap off
16 | so that we can look at the brain.

17 | Q And what is the purpose of doing that?

18 | A We are documenting any disease or injury that we
19 | come across.

20 | Q Thank you. Now, Dr. Presnell, in this case here,
21 | who requested that an autopsy be performed?

22 | A This was the deputy coroner of Jasper County,
23 | Mr. Vaigneur.

24 | Q And when was this autopsy performed?

25 | A January 3rd of this year.

Erin Presnell - Direct Examination by Mr. Ferguson

1 Q Okay. And where was it performed?

2 A At MUSC, Charleston.

3 Q Okay. And could you describe your findings of your
4 external examination of your autopsy in this case.

5 A Yes, we did this -- the autopsy on Mr. Way. He had
6 one major and fatal injury and then some minor injuries.
7 His major fatal injury was a stab wound that was to the
8 left side of his chest. He had a number of nonspecific
9 injuries as well, including an abrasion, which is a
10 scratch. It was pretty nonspecific. He had a scratch on
11 the bridge of his nose, two on the side of his right cheek,
12 two on his neck and one on the bottom of his foot. He also
13 had a -- he also had a number of bruises, one on each upper
14 arm and several on the lower legs and one on each hip -- or
15 two on one hip and two on the other.

16 So, again, they're relatively nonspecific and
17 didn't have a pattern that you could really match to
18 anything. Some of the bruises had kind of a yellow, brown
19 color, so they might have actually been older than the
20 injury that had -- that occurred at the time of his death.
21 So that was basically his external findings: The major
22 stab wound, the minor abrasions and the bruises on most of
23 the extremities.

24 Q And Dr. Presnell, I want to talk about the findings
25 from your external examination. And could you describe the

Erin Presnell - Direct Examination by Mr. Ferguson

1 stab wound that you said you observed?

2 A Well, it was what we call oblique, meaning it's not
3 straight up and down and it's not exactly horizontal. It
4 was angled a little bit this way and I believe we can
5 demonstrate that in a moment. And when somebody -- when
6 there's a stab wound to the skin, depending on how it is
7 across the skin, the wound can actually gape open. And
8 because the skin's elastic and can pull different ways, so
9 once we reapproximated it, meaning pushed the sides back
10 together, we produced what the true wound actually is. It
11 was a 1.7 inches in length.

12 Q Okay. And were you able to determine the pathway
13 of that wound from your external examination?

14 A No, the path way -- our determination of the path
15 way is when we look inside.

16 Q Okay. And so then could tell us your findings of
17 your internal examination?

18 A Okay. So, internal, we go inside the body and we
19 reflect up the skin and looking at the pathway of the stab
20 wound, it goes in through the tissues right here. It goes
21 through the tissues of the chest, it goes through the left
22 subclavian artery -- and I'll kind of explain that one a
23 little bit more -- through the chest wall, into the left
24 chest cavity and into the left lung. With that, there is
25 also about 800 milliliters, which a liter is a milliliter

Erin Presnell - Direct Examination by Mr. Ferguson

1 so 800 milliliters that was in the left chest cavity. The
2 left subclavian -- if you can think of your heart rate in
3 the middle of your chest and the aorta, which is the vessel
4 that takes the blood to the rest of your body -- takes all
5 the blood to the rest of your body.

6 The aorta comes -- if this is your heart, the aorta
7 comes off your heart and down toward your legs. That arch
8 right there at the very top, right after it comes off the
9 heart, there's three main vessels to take blood to the top
10 part of your body. One goes to the right side, the second
11 is the left carotid, goes up to your head; and the third is
12 the left subclavian that goes over to your arm. So it's
13 one of the three main vessels of what they call the great
14 vessels in the arch of the aorta, hence is the reason for
15 the fatalness of that injury.

16 Q Dr. Presnell, again, I'm sorry, back to the actual
17 wound itself, I want to show you what's been previously
18 admitted into evidence as State's Exhibit No. 37 and ask
19 you if you can recognize what's being pictured in this
20 photograph.

21 A Well, this is not a picture that I have taken, but
22 it appears to be the stab wound, but it's in the gaping
23 position. It's not reapproximated.

24 Q And now, I've noticed on your report, it says blunt
25 edge superior. What does that mean?

Erin Presnell - Direct Examination by Mr. Ferguson

1 A Well, when a knife is used, sometimes the knife can
2 have one single sharp edge, sometimes it can have two sharp
3 edges. Most of the ones we see of the knife is a single
4 sharp edge. If that's the case, then when the knife goes
5 in, the -- not the sharp edge, but the blunt edge of the
6 knife can make the appearance of the stab wound have a
7 blunt edge on one side and a sharp edge on the other.

8 So in this case, the blunt edge or the more
9 squared-off edge, not the pointy edge of the stab wound, is
10 at the top of the wound.

11 Q And so what does that tell you about the position
12 of the knife? Could you describe from having the blunt
13 edge here, what can you infer from that?

14 A Well, it suggests the orientation of the knife,
15 that the -- the way that it's held, that the blunt edge is
16 on the top and the sharp edge is on the bottom.

17 Q Dr. Presnell, were you provided with any type of
18 weapon for a comparison in this case?

19 A No.

20 Q Okay.

21 MR. FERGUSON: Your Honor, may I approach the
22 witness?

23 THE COURT: You may.

24 By Mr. Ferguson:

25 Q Dr. Presnell, I want to show you what's been

Erin Presnell - Direct Examination by Mr. Ferguson

1 entered into evidence as State's Exhibit No. 5 and ask you
2 to take a look at this item. Now, to a reasonable degree
3 of medical certainty in your field of forensic pathology,
4 can you give an opinion as to the consistency of that wound
5 with that knife?

6 A Well, stab wounds aren't like gunshot wounds,
7 necessarily where you can match up with ballistics per se.
8 The stab wound itself -- in this case there's no remnants
9 of the knife left in the person, so nothing to recover.
10 Certainly this knife is consistent with being able to
11 create the injury.

12 Q Does that knife have one blunt edge and one sharp
13 edge?

14 A It does.

15 Q Okay. Thank you. Now, Dr. Presnell, what do we
16 mean by cause of death?

17 A What actually caused the death.

18 Q Would that be a medical reason for the death?

19 A Well, a medical -- yes, like a cut subclavian
20 artery, yes.

21 Q Okay. And that was my next question. What is the
22 cause of death in this case?

23 A The knife that cut the left subclavian artery.

24 Q And then -- what is a terminal mechanism?

25 A Excuse me?

Erin Presnell - Direct Examination by Mr. Ferguson

1 Q What is a terminal mechanism?

2 A Well, the actual -- well, I guess I didn't go into
3 this. Once the subclavian artery is cut, that is the
4 reason that they actually died, the reason is because of
5 all the blood loss. Of course, blood take it is oxygen to
6 all parts of your body. Once you don't get that delivered,
7 then that's incompatible with life. So the terminal
8 mechanism in this case is exsanguination or blood loss.

9 Q Thank you. Now, what is manner of death?

10 A Manner of death for us as forensic pathologists is
11 a classification system on -- and there's four types.
12 Maybe this will explain it. There's an accidental death,
13 suicide, natural, and homicide. And our definition for us,
14 as forensic pathologists, homicide means death at the hands
15 of another. And this case, we classified it as a homicide.

16 Q Thank you. Now, Dr. Presnell, I would ask if you
17 could step off to stand and if we could use this
18 demonstrative exhibit to kind of show the jury the pathway
19 of this wound.

20 MR. FERGUSON: Your Honor, may she step down?

21 THE COURT: She may.

22 MR. FERGUSON: Thank you.

23 By Mr. Ferguson:

24 Q Now, Dr. Presnell, I have basically a metal rod
25 that can be inserted into this demonstrative exhibit. If

Erin Presnell - Direct Examination by Mr. Ferguson

1 | you could insert this -- where you observe the wound and in
2 | a consistent way with the pathway that you discovered from
3 | your internal examination?

4 | A Okay. Here's a ledge right here. That's the
5 | collarbone. The stab wound actually entered right under
6 | the collarbone and it's going down, slightly back and
7 | slightly to his right. Actually it went right over here.

8 | Q Now, Dr. Presnell in your expert opinion, is that
9 | wound consistent with an individual who was shorter,
10 | stabbing an individual who was taller in an overhand
11 | motion?

12 | A It's consistent with overhead motion. Keep in mind
13 | that when I see the person at autopsy, he's not in -- he's
14 | in a position of lying on the table. Depending on the
15 | orientation of this person as well as the perpetrator, it
16 | depends on what position they're in as to actually how the
17 | knife went in. Certainly if he's standing up straight,
18 | that could certainly be another person standing on the
19 | front side of him and stabbing downward.

20 | Q And would it be consistent with a right-handed
21 | person stabbing overhead into a person who's facing them?

22 | A Yes, it could be right handed.

23 | Q Okay. Dr. Presnell, if I were to tell you that I
24 | had the knife in my hand, my right hand, held with the
25 | sharp edge down, like this, how would this body have to be

Erin Presnell - Direct Examination by Mr. Ferguson

1 placed to result in that injury?

2 A Say that again.

3 Q If I am holding a knife in my hand and the sharp
4 edge is down, blunt edge is up. I'm holding it
5 horizontally, how would that body have to be positioned in
6 order for that injury to occur?

7 A Remember this blunt edge is at the top. So if the
8 blunt of the knife is at the top here -- and again the
9 blunt edge is suggesting that the orientation of the
10 knife -- then that person would have to be in this angle.

11 (WHEREUPON the witness was demonstrating.)

12 By Mr. Ferguson:

13 Q It will come off that base if you need it to.

14 A I just didn't know if they could see it well.

15 Q And maybe we can turn.

16 (WHEREUPON the witness and solicitor were
17 demonstrating.)

18 By Mr. Ferguson:

19 Q So if this is my knife --

20 A And you're standing that way.

21 Q Yes, ma'am. Thank you, Dr. Presnell, if you could
22 have a seat.

23 MR. FERGUSON: Your Honor, may we approach the
24 bench?

25 THE COURT: You may.

Erin Presnell - Direct Examination by Mr. Ferguson

1 (WHEREUPON, there was a bench conference out of the
2 hearing of the jury and the Court Reporter.)

3 By Mr. Ferguson:

4 Q And thank you for your patience, Dr. Presnell. I
5 want to show you what's been previously marked for
6 identification purposes only as State's Exhibit 41, 42, and
7 43, and ask if you can identify what's being shown in these
8 pictures.

9 A These are the photographs of the stab wound taken
10 at the time of autopsy.

11 Q And do those show the wound that we've talked about
12 here today?

13 A Yes.

14 Q Are they a fair and accurate depiction of that
15 wound as you saw it during that autopsy?

16 A Yes, they were.

17 MR. FERGUSON: And, Your Honor, at this point, I
18 would move to have State's Exhibit 41, 42, and 43 admitted
19 into evidence.

20 THE COURT: Any objection from defense?

21 MR. HUGHES: No objection, Your Honor.

22 THE COURT: All right. These items are denominated
23 State's Exhibits --

24 MR. FERGUSON: 41, 42, and 43, Your Honor.

25 THE COURT: 41, 42, and 43 are into evidence

Erin Presnell - Direct Examination by Mr. Ferguson

1 without objection from defense.

2 MR. FERGUSON: And may the witness step down again?

3 THE COURT: She may.

4 By Mr. Ferguson:

5 Q Dr. Presnell, would you bring those exhibits with
6 you?

7 A Yes, sir.

8 Q Now, if we can, the first one being 41, they're
9 marked on the back. If you could take 41 and show it to
10 the jury and kind of get them oriented with our
11 demonstrative evidence here?

12 A It would actually be a lot -- more helpful if --

13 Q Any way that's more helpful for you.

14 A Well, I'll try -- I'll show everyone on this side
15 and then move over so the other side -- so y'all can see.

16 This Exhibit No. 42 is a picture of this stab
17 wound. Here's the decedent's head and neck and his left
18 shoulder. Here's the stab wound, but again, that's the
19 gaping nature. We hadn't reapproximated it, but just for
20 our notations and what you're looking at -- again, here's
21 his chest, left shoulder, neck, and chin, and the stab
22 wound.

23 Q And Dr. Presnell, if I can interrupt you for just
24 one second, when you say gaping, is that how the injury
25 would have been as a result of the stabbing or is that due

Erin Presnell - Direct Examination by Mr. Ferguson

1 to any manipulation by EMT or a doctor or is that how the
2 wound would appear?

3 A Yeah, this is the stab wound. This is the way it
4 appeared. And again, it gapes because of the way it's cut
5 against the elastic tissue of the skin.

6 Q Thank you.

7 A And 41, we have -- this is the same orientation.
8 Notice the tag -- the tag always points to the top of the
9 head. So here we've reapproximated it. We put it back
10 together. So this would be actually what the knife would
11 have made and then once it's released, then it gapes open.
12 So that's the appearance of the wound, this being the top
13 and this being the bottom, this way. Again, the wound is
14 reapproximated so that it more replicates the weapon. And
15 then the last one is -- we let off the tension just a
16 little bit to show the top of the injury, showing you that
17 that's a little -- that's more blunted than the sharper
18 edge at the bottom on the -- right here, so that the top of
19 the stab wound shows more blunt as opposed to the bottom of
20 the stab wound.

21 Q Thank you. Dr. Presnell in your report, did you
22 note how tall Mr. Way was?

23 A Yes. He is sixty-nine inches, which is five, nine.

24 MR. FERGUSON: I beg the Court's indulgence for
25 just one moment, Your Honor.

Erin Presnell - Cross-Examination by Mr. Hughes

1 THE COURT: Yes, sir.

2 MR. FERGUSON: Dr. Presnell, thank you, I have no
3 further questions for you, if you'd please answer any
4 questions Mr. Hughes may have.

5 THE COURT: Mr. Hughes, you're recognized for
6 cross-examination.

7 MR. HUGHES: Thank you, Your Honor. Can we have
8 that out of the way, please.

9 (WHEREUPON the attorneys were moving demonstrative
10 exhibits.)

11 **CROSS-EXAMINATION**

12 By Mr. Hughes:

13 Q Doctor, have you done any autopsies -- any other
14 autopsies on stabbing victims?

15 A Yes, sir, I have.

16 Q Any from the front like that?

17 A Yes.

18 Q What do you mean when a pathologist refers to
19 defensive wounds?

20 A Well defensive wounds, especially in an incident
21 where a sharp instrument is involved, like a knife, means
22 some injuries in some characteristic locations. For
23 example, if somebody is approached with a -- by somebody
24 else with a knife, if they put their arms up, sometimes
25 you'll see cut marks on the sides of the arms, or if you

Erin Presnell - Cross-Examination by Mr. Hughes

1 put your hands up, you'll see cut marks on the hands. So
2 that would be a classic defensive injury.

3 Q And did Mr. Way have any defensive injuries?

4 A No, he does not.

5 Q The other injuries that you found on Mr. Way, do
6 you have any way of knowing when those injuries were --
7 occurred to Mr. Way?

8 A No, like I mentioned before, some of them even
9 showed some age so they could have happened prior to the
10 time of his death. But, again, they were pretty
11 nonspecific.

12 Q Okay. Would they be say -- would they be of a
13 similar injury to say if he had wrecked a moped?

14 MR. FERGUSON: Objection, Your Honor. I just don't
15 see the relevance of that question to our proceedings
16 today.

17 THE COURT: I will allow him to ask it.

18 MR. FERGUSON: Thank you.

19 THE COURT: If she knows if it's consistent with
20 that type injury, she can answer it. If not, she can say
21 she don't know.

22 THE WITNESS: Well the moped accidents I see are
23 usually a little bit more severe.

24 By Mr. Hughes:

25 Q I understand that.

Erin Presnell - Cross-Examination by Mr. Hughes

1 A But, yes, certainly -- well, yes, any kind of blunt
2 trauma can cause the contusions that we saw and again, very
3 minor abrasions. So if there was a moped accident, it was
4 probably minor.

5 Q How tall are you, Doctor?

6 A About five, four.

7 Q Okay.

8 MR. HUGHES: Could she step down, please?

9 THE COURT: Certainly.

10 THE WITNESS: I have heels on.

11 By Mr. Hughes:

12 Q That's even better because I'm six, four. Would
13 you turn around, please. When I ask you to, would you turn
14 around to your left, please.

15 Okay. Please do so at this time.

16 Now, if you had a knife in your right hand, where
17 would that knife have gone into me when I was in this
18 position if it was -- if you were holding the knife like
19 you normally hold a knife?

20 A In a similar location.

21 (WHEREUPON the witness demonstrated.)

22 By Mr. Hughes:

23 Q Okay. And if a person's holding the knife with the
24 flat spot up, it would have made a wound similar to that?

25 A Yes.

Erin Presnell - Cross-Examination by Mr. Hughes

1 Q Okay. Thank you, you may be seated up there.

2 Is there any physical evidence that Mr. Way was
3 standing upright when the knife went in him? I mean, does
4 the body react the certain way if you're standing -- say
5 I'm standing like this as opposed to standing like this?

6 A No. I cannot tell from autopsy or
7 anatomically-wise what position he was in at the time of
8 the incident.

9 Q Okay. I mean there's no special muscle damage that
10 would say --

11 A No.

12 Q I'm sorry, I --

13 A No, no, that's good to know that there's nothing to
14 indicate...

15 Q And there were no defensive wounds?

16 A No classic defensive wounds.

17 Q Would you expect to find defensive wounds on a
18 person who was facing a person coming at them with a knife
19 in the psycho -- what I would call the Psycho position from
20 the movie Psycho?

21 A I have seen them with defense injuries and I have
22 seen them without.

23 Q Okay. On the whole though, you do see them with
24 defensive injuries?

25 A I -- well, it's kind of hard to come up with a --

Erin Presnell - Cross-Examination by Mr. Hughes

1 Q I understand --

2 A Well, on -- I mean on more than one occasion
3 without defensive and then on multiple occasions where
4 there were defensive injuries.

5 Q And there was only one injury?

6 A Yes, the one stab wound.

7 Q And how deep did it go?

8 A Three point two inches.

9 Q Okay. And that's -- you know -- I don't know if
10 this is getting out of your field or not and I hope it's
11 not, could you have saved Kyle Way's life had you been on
12 the scene? Was he --

13 A Was he salvageable? It's possible. You know,
14 again, it's pretty quick transport, so -- I mean, it's
15 still a major artery. Again I've received multiple cases
16 that are similar to this where it's just one of the
17 arteries that have been cut. That person got immediate
18 attention and still didn't survive. Of course, I don't see
19 the ones that do survive, but it potentially could happen.

20 Q Most stabbings that you see, are they single stab
21 wounds or multiple stab wounds?

22 A It depends. I mean, we -- we see a whole variety,
23 from, like counting in the hundreds to one or two.

24 Q Okay. But did the knife hit any bone going in?

25 A No, it did not.

Erin Presnell - Cross-Examination by Mr. Hughes

1 Q So it just hit soft tissue?

2 A Yes.

3 Q And if State's Exhibit 5, the knife in front of you
4 is the knife used and you say it is consistent with the
5 autopsy you did?

6 A Yes. I mean there's nothing -- there's nothing
7 unique about the stab wound to really define what type of
8 single-edge blade over another and that's a single-edge
9 blade, so I guess it is consistent.

10 Q And could you have told from the wounds if it was a
11 straight blade as opposed to a serrated blade?

12 A Oh, occasionally you can, most of the time you
13 cannot. In this case, I could not tell whether it was a
14 straight-edge blade or straight just by looking at the
15 injury.

16 Q Okay. Just to make sure I've got everything
17 straight, you cannot tell whether or not Kyle Way was up
18 right or bent over?

19 A Correct.

20 Q If he was upright, the knife would have come in in
21 this position.

22 A In a downward position, yes.

23 Q Okay. And if he was bent over the knife would have
24 come in in this position?

25 A In a more forward position for the person with the

Erin Presnell - Redirect Examination by Mr. Ferguson

1 knife.

2 Q And the height difference between you and I is at
3 least ten inches? You're five, four, I'm six, four?

4 A Okay. Yes.

5 Q And you have heels?

6 A That's a foot, yeah.

7 Q Okay. But you're wearing heels and I generally
8 tend not to. So your approach to me, when we were
9 demonstrating, would it have been possible for a person
10 your height compared to a person my height to have placed a
11 knife in the same position with me bent over?

12 A It's certainly possible.

13 Q Okay. Thank you.

14 MR. HUGHES: No further questions, Your Honor.

15 THE COURT: Any redirect?

16 MR. FERGUSON: Yes, sir, Your Honor.

17 **REDIRECT EXAMINATION**

18 By Mr. Ferguson:

19 Q Dr. Presnell, your last statement, you said the
20 injury would have been more forward. When Mr. Hughes
21 described his scenario of a bent over person. Now, are you
22 talking about the actual pathway of the wound?

23 A No, and I apologize. The pathway in Mr. Way's body
24 stays the same no matter what. It is what it is. It's
25 going down in his body, a little bit to his right side and

Erin Presnell - Redirect Examination by Mr. Ferguson

1 a little bit backwards.

2 Now, when I was saying downward and forward just a
3 little while ago, I'm talking about if he's standing up and
4 the perpetrator has a knife coming in a downward position,
5 if he's bent over and trying to reproduce that same pathway
6 to his body, then the perpetrator with the knife has got
7 the knife moving in the forward position. Straight out is
8 what I'm trying to get across.

9 Q Okay. And just for further clarification, if you
10 could just step down and show us, one more time, please
11 ma'am. And I'll actually present our demonstrative exhibit
12 in a way -- I believe Mr. Hughes had the knife about like
13 that. Okay. Now, we're going to move this fellow until
14 that trajectory lines up.

15 (WHEREUPON the solicitor was demonstrating.)

16 THE WITNESS: Okay.

17 By Mr. Ferguson:

18 Q And is that the trajectory that lines up?

19 A Yes.

20 Q All right. Thank you.

21 MR. FERGUSON: I have no further questions for Dr.
22 Presnell.

23 THE COURT: Very good. All right. You may step
24 down.

25 THE WITNESS: Thank you.

1 THE COURT: Any objection to Dr. Presnell being
2 excused?

3 MR. FERGUSON: No, sir, Your Honor.

4 MR. HUGHES: No, Your Honor.

5 THE COURT: You're free to leave. Thank you,
6 ma'am.

7 THE WITNESS: Yes, sir.

8 THE COURT: You may call your next witness.

9 MR. FERGUSON: Your Honor, at this point, the State
10 rests.

11 THE COURT: All right. Madame Forelady, and ladies
12 and gentlemen of the jury, at this time I'm required to
13 take up matters of law. I'm going to ask that you retire
14 to the jury room. Once again, do not discuss the case in
15 any way, shape, or form.

16 Everyone remain seated as the jury exits the
17 courtroom.

18 (WHEREUPON the jury left the courtroom at 3:40
19 p.m.)

20 **MIDTRIAL MOTIONS**

21 THE COURT: I'm in a position to hear motions at
22 this time.

23 MR. HUGHES: Your Honor, I move for a directed
24 verdict. The State has not met all of the elements of
25 voluntary manslaughter in this matter. They have not shown

1 any passion, any spontaneity, any of -- matter of fact, I
2 don't know if they've even -- other than my client actually
3 admitting that she accidentally stabbed Kyle Way, anything
4 other than that.

5 THE COURT: What's -- let me ask you this, the way
6 I recall the testimony, there was argument, the witnesses
7 testified there was argument between the -- Ms. Weber and
8 the deceased, Mr. Way, in the front yard. They were
9 fussing and carrying on. And there was also something with
10 regard to fussing and carrying on in the mobile home
11 itself. Do you recall that testimony?

12 MR. HUGHES: Yes, sir.

13 THE COURT: Would that excited talk, argument,
14 fussing, would that at least go towards the issue of heat
15 of passion?

16 MR. HUGHES: I don't know if fussing constitutes
17 heat of passion, Your Honor. I don't know if anybody
18 really testified of loud shouts and things like that.

19 THE COURT: All right. What do you recall the
20 testimony as being.

21 MR. HUGHES: The only people that mentioned raised
22 voices was Dustin Roberts, who I believe testified that
23 there was some raised voice. I don't know if either Kim
24 Powell or Josh Ayers mentioned the voices being raised, but
25 they could have discussion going on in the kitchen.

1 THE COURT: All right. What do you think about the
2 general factual scenario that we've got here? There's been
3 testimony from Ms. Weber's paramour that they were in bed,
4 scantily clothed, Mr. Way goes over and retrieves her from
5 the mobile home and gets her out of bed as she's laying
6 next to her lover and drags her out of the mobile home. I
7 don't think that can be done in a way that would not -- at
8 least follow some heat of passion.

9 MR. HUGHES: Well, Mr. Roberts was so concerned
10 about that, Your Honor, he went to sleep.

11 THE COURT: Well, Mr. Roberts -- his reaction is
12 really not the litmus test here.

13 MR. HUGHES: He's the only one we can really judge
14 as to the seriousness of what was going on there, Your
15 Honor. He's the only one that's testified to that. He's
16 the only one that can -- his actions, I think speak for
17 themselves.

18 THE COURT: All right. Can you imagine it being
19 anything other than a passionate situation?

20 MR. HUGHES: I don't know, Your Honor, we've not
21 had any testimony about the home life there as far as
22 relationship between Ms. Weber, Mr. Kyle, Mr. Roberts,
23 Ms. Powell. We don't know if this was out of the ordinary
24 or what.

25 THE COURT: Mr. Ferguson, I'll be glad to hear from

1 | you with regard to the element of heat of passion.

2 | MR. FERGUSON: Yes, sir, Your Honor. I would cite
3 | several cases, both being from the Supreme Court of South
4 | Carolina, the first being State v Davis, and it's found at
5 | 278 SC 544 and testimony that the defendant and victim had
6 | been fighting without a definition of fighting, was found
7 | sufficient circumstance of provocation and heat of passion,
8 | in order to find the defendant guilty of voluntary
9 | manslaughter.

10 | The second case, Your Honor, would be State v.
11 | Kahan that's found at 268, SC 240. In that case, Your
12 | Honor, there was a husband and wife that were arguing at
13 | the Christmas party earlier in the day. There's no --
14 | there was no testimony about physical encounter, however
15 | later that night, the woman died of a gunshot. They said
16 | that the previous fight at that Christmas party was
17 | circumstantial evidence of legal provocation to reduce it
18 | from murder to manslaughter against the husband and the
19 | wife because words alone are never sufficient, but we don't
20 | have words alone here. I disagree with Mr. Hughes and his
21 | memory of the testimony.

22 | We have three people who testified that there was
23 | yelling and screaming. We have Dustin Roberts testifying
24 | that the victim grabbed the victim -- I mean the defendant
25 | and tried to get her to come back to the trailer. Your

1 Honor, that is angry words coupled with an overt act of an
2 assault, which is what makes sufficient legal provocation
3 enough for heat of passion.

4 THE COURT: I'd imagine in both of those cases -- I
5 don't know that, but I imagine in both of those cases, the
6 individual perhaps was charged with murder, and the
7 question was whether or not it was a lesser included
8 offense.

9 Mr. Hughes, that presents a very interesting
10 question because the facts in this case would substantiate
11 not only a voluntary manslaughter charge, but it would also
12 substantiate a murder charge because you have the use of
13 the deadly weapon, which would infer malice. And my
14 question to you is in the event the State elected to
15 prosecute and indict on murder, would you be standing
16 before me asking for a charge of voluntary manslaughter?
17 Hypothetically.

18 MR. HUGHES: Hypothetically, Your Honor, more than
19 likely.

20 THE COURT: All right. So I think that their --
21 and I imagine that your argument would be very similar to
22 what Mr. Ferguson's was in the event they had elected to
23 over indict this case for murder, which they could have
24 done and some might argue probably should have done. What
25 do you think about that?

1 MR. HUGHES: Again, Your Honor, hypothetically
2 speaking, if Ms. Weber had been charged with murder, I
3 would more than likely, would be asking you for a voluntary
4 manslaughter charge.

5 THE COURT: All right. I think we have sort of
6 fleshed this issue out. I think you're protected on the
7 record in that regard. But I am going to deny your motion
8 with regard to there being insufficient evidence to -- for
9 the jury, a reasonable jury to conclude that Ms. Weber is
10 guilty of voluntary manslaughter.

11 Any further motions?

12 MR. HUGHES: Just to renew my previous motions,
13 Your Honor.

14 THE COURT: Okay. All right. I'm going to ask
15 Ms. Weber, if you could stand right where you are, please,
16 ma'am. Raise your right hand as the clerk administers the
17 oath.

18 THEREUPON,

19 TARA MARIE WEBER,
20 after being duly sworn, testified as follows:

21 THE CLERK: Thank you.

22 **QUESTIONING OF THE DEFENDANT**

23 THE COURT: Ms. Tara Marie Weber, at this time I'm
24 going to explain to you certain of your rights. If you do
25 not understand anything I say, please let me know. If you

1 want me to explain anything in more detail, please let me
2 know. You understand what I'm saying?

3 MS. WEBER: Yes, sir.

4 THE COURT: All right. We have now reached the
5 stage in the trial where you may present your defense. You
6 have the right to claim the protections given to you by the
7 Fifth Amendment of the Constitution of the United States of
8 America, which provides in relevant part, no person shall
9 be compelled in any criminal case to be a witness against
10 herself.

11 MS. WEBER: Yes, sir.

12 THE COURT: This means that you would not be
13 required to testify in this case. You have the right to
14 testify in your own behalf, however, no one can make you
15 testify. This is a personal right and no one can waive
16 this right except you. If you decide to testify, you would
17 be subject to the same rules that govern other witnesses.
18 You may be examined and cross-examined on any relevant
19 issue in the case. In addition, if you have any
20 convictions involving dishonesty or false statements,
21 crimes -- or for crimes punishable by imprisonment for more
22 than one year and this Court determines that the probative
23 value of admitting the evidence outweighs its prejudicial
24 effect to you, the solicitor will be able to introduce your
25 record to attack your credibility.

1 If you decide to testify, this decision on your
2 part must be freely, voluntarily, and intelligently made,
3 with the knowledge of the protection given you by the Fifth
4 Amendment of the United States constitution and the
5 consequences of your decision to testify. If you decide
6 not to testify, I will instruct the jurors that they cannot
7 give the fact that you did not testify any consideration
8 whatsoever that there is to be absolutely no prejudice to
9 you because you did not testify. It is left entirely up to
10 you whether or not to testify. You may talk to your
11 attorney, your family members and friends or anyone else,
12 but the final decision will be left entirely up to you.

13 Ms. Weber, do you understand what I've explained to
14 you?

15 MS. WEBER: Yes, sir.

16 THE COURT: All right. Do you have any questions
17 about what I've explained to you?

18 MS. WEBER: No, sir.

19 THE COURT: All right. Have you discussed this
20 matter with your lawyer about the issue about whether or
21 not you should testify?

22 MS. WEBER: Yes, sir.

23 THE COURT: You need to answer up so I can hear
24 you.

25 MS. WEBER: Yes, sir.

1 THE COURT: All right. Do you wish to talk to your
2 lawyer any further in this regard?

3 MS. WEBER: Yes, sir.

4 THE COURT: Okay. Feel free to do so.

5 (WHEREUPON the defendant was conferring with her
6 attorney.)

7 THE COURT: While they're discussing that, Mr.
8 Ferguson, does Ms. Weber have a criminal record?

9 MS. LEGETTE: No, sir, Your Honor.

10 THE COURT: All right. Mr. Ferguson, Mr. Hughes --
11 we have made a determination -- of course, you need to
12 explain to Ms. Weber there is no record that would be used
13 to impeach her testimony.

14 (WHEREUPON Mr. Hughes was conferring further with
15 Ms. Weber.)

16 THE COURT: Ms. Weber, have you had the additional
17 time that you feel is necessary to discuss this matter with
18 your lawyer?

19 MS. WEBER: No, sir.

20 THE COURT: Pardon?

21 MS. WEBER: No, sir.

22 THE COURT: Do you need additional time?

23 MS. WEBER: No, sir.

24 THE COURT: Okay. Do you wish to testify or not?

25 MS. WEBER: Yes, sir.

1 THE COURT: You do wish to testify?

2 MS. WEBER: Yes, sir.

3 THE COURT: Very good. All right. Anything
4 further from the State?

5 MR. FERGUSON: No, sir, Your Honor.

6 THE COURT: Anything further from defense?

7 MR. HUGHES: Well, Your Honor, it's five minutes to
8 four. I would like to have an opportunity to go over her
9 testimony with her before she takes the stand. I would
10 like to have this continued until tomorrow morning.

11 THE COURT: What is the State's position in that
12 regard?

13 MR. FERGUSON: Well, Your Honor, we're ready to
14 move forward.

15 THE COURT: All right. Well, these are very
16 important matters, and we do have the luxury of time. We
17 have -- I think both sides have done a very good job in
18 presenting the case and sticking to the relevant matters.
19 We have gone through this case very efficiently and I think
20 it's important that you have appropriate time to discuss
21 this matter with your client; and I will indeed -- we'll
22 adjourn for the evening and we'll reconvene at 9:30 in the
23 morning, and you'll be recognized to present your defense.

24 Obviously, you can call Ms. Weber and anybody else
25 you would like in her defense. And we will reconvene at

1 9:30 in the morning. And you aren't to the be he would to
2 this, but, Mr. Hughes, do you anticipate any other
3 witnesses other than the defendant?

4 MR. HUGHES: Not at this time, Your Honor.

5 THE COURT: Okay. Very good. We'll bring the jury
6 back in and we'll stand adjourned here momentarily.

7 (WHEREUPON the jury entered the courtroom at 3:56
8 p.m.)

9 THE COURT: Madame Forelady, ladies and gentlemen
10 of the jury, we have concluded the State's case and we're
11 going to adjourn for the evening. We're going to reconvene
12 at 9:30 in the morning. I want to once again reiterate
13 that there is to be no independent investigation. Many of
14 you know -- are familiar with Jasper County, know this
15 general area. Don't go out to the scene where this took
16 place and do any independent investigation. Do not look up
17 anything on the internet, you're not to post anything on
18 any web sites or FaceBook or Twitter or anything concerning
19 this matter. Do not discuss it amongst yourselves or with
20 anyone else. I'm also -- many of you are not going to
21 be -- are obviously not going to be working tomorrow and
22 you may stay up a little bit later tonight, but these are
23 very important matters. I want you to get a good night's
24 rest so we can come forward and proceed forward with an
25 alert and serious mind. And we'll stand adjourned. Do not

1 discuss the case with anyone.

2 Everyone remain seated as a jury exits the
3 courtroom.

4 (WHEREUPON the jury left the courtroom at 3:58
5 p.m.)

6 THE COURT: Anything further from the State?

7 MR. FERGUSON: No, sir, Your Honor.

8 THE COURT: Anything from defense?

9 MR. HUGHES: No, Your Honor.

10 THE COURT: All right. I will be here a little bit
11 earlier, but we'll start at 9:30. If y'all need my -- if
12 you need help with anything, I'll be here a little bit
13 early.

14 MR. FERGUSON: Thank you, Your Honor.

15 THE COURT: Very good. We'll stand adjourned.

16 **WEDNESDAY, SEPTEMBER 14, 2011**

17 THE COURT: Ms. Weber, I'm going to ask if you
18 could to stand and I'll remind you that you're still under
19 oath. Last evening, we talked in great detail about your
20 right to present evidence and particularly your right to
21 take the witness stand.

22 MS. WEBER: Yes, sir.

23 THE COURT: And your right to remain silent
24 pursuant to the Fifth Amendment of the United States
25 constitution. Did you understand our conversation in that

1 regard?

2 MS. WEBER: Yes, sir.

3 THE COURT: All right. When we talked about that
4 last night, you had -- you took the additional opportunity
5 to discuss it further with your lawyer and at the
6 conclusion of that discussion, your lawyer indicated and
7 you indicated that you wanted to take the witness stand.
8 And your lawyer asked that we take a recess over last night
9 and give you the opportunity to present testimony and
10 defense here today.

11 MS. WEBER: Yes, sir.

12 THE COURT: I have since -- the solicitor and your
13 lawyer have been in chambers and indicated that you have
14 elected not to take the witness stand. Is that correct?

15 MS. WEBER: Yes, sir.

16 THE COURT: I need to ask you in great detail, is
17 that indeed your decision?

18 MS. WEBER: Yes, sir.

19 THE COURT: Has anyone promised you anything or
20 threatened you, pressured you, mistreated you in any way,
21 shape, or form in an effort to get you to make this
22 decision?

23 MS. WEBER: No, sir.

24 THE COURT: All right. And you understand the
25 rights that I explained to you in great detail yesterday.

1 MS. WEBER: Yes, sir.

2 THE COURT: And you talked in great detail with
3 your lawyer about your Fifth Amendment right --

4 MS. WEBER: Yes, sir.

5 THE COURT: -- and no one can force you to take the
6 witness stand, but you can take the witness stand if you
7 want to. That has to be your decision.

8 MS. WEBER: Yes, sir.

9 THE COURT: You need any additional time to confer
10 with your lawyer?

11 MS. WEBER: No, sir.

12 THE COURT: All right. What is your decision with
13 regard to whether or not you want to take witness stand.

14 MS. WEBER: I do not.

15 THE COURT: Okay. Very good.

16 Anything further, Mr. Hughes?

17 MR. HUGHES: Not as far as her testimony is
18 concerned, Your Honor. When the jury comes back, I will
19 rest for the defense. My question is, do you want me to
20 renew my motions as if I had rested in front of the jury at
21 this time or wait until the jury comes back, me rest and
22 have the jury go back and me renew my motions?

23 THE COURT: I am going to allow you to do that now,
24 unless the State has an objection in that regard.

25 MR. FERGUSON: No, sir, Your Honor, I have no

1 objection.

2 THE COURT: All right. Well, you certainly can
3 renew your motions and you're protected on the record in
4 that regard. You need to add anything to that?

5 MR. HUGHES: No, Your Honor.

6 THE COURT: All right. Very good. Anything
7 further from the State?

8 MR. FERGUSON: No, sir, Your Honor.

9 THE COURT: All right. Very good. We're ready for
10 the jury.

11 (WHEREUPON there was a bench conference with the
12 judge and the clerk.)

13 THE COURT: I understand that some of the jurors
14 are not here. We'll wait until they are.

15 (WHEREUPON court was at ease while awaiting the
16 arrival of jurors.)

17 THE COURT: All right. We're ready for the jury.

18 (WHEREUPON the jury entered the courtroom at 9:32
19 a.m.)

20 THE COURT: Good morning.

21 The Jury: Good morning.

22 THE COURT: Madame Forelady, ladies and gentlemen
23 of the jury, thank you for being here and thank you for
24 being here on time.

25 As you recall, yesterday, the State has rested and

1 at this time the defense is recognized. Mr. Hughes?

2 MR. HUGHES: Your Honor, the defense rests.

3 THE COURT: Thank you, Mr. Hughes.

4 Madame Forelady, ladies and gentlemen of the jury,
5 you have heard all of the evidence that's going to be
6 presented in this case, and at this juncture as I had
7 mentioned in the earlier parts of this proceeding, the
8 lawyers are going to have an opportunity to present closing
9 arguments. They're very similar in form to opening
10 statements, however, at this time, all of the evidence is
11 in and the presentation can be truly argumentative because
12 they can point to the evidence that's been presented, or
13 the lack thereof, that supports their relative position.
14 What they say is not evidence; however it will aid you
15 immensely in your deliberation process. Pay very close
16 attention. Under these circumstances, the State goes
17 first.

18 MR. FERGUSON: Thank you, Your Honor.

19 THE COURT: So Mr. Ferguson, you're recognized.

20 **CLOSING ARGUMENTS**

21 MR. FERGUSON: Thank you, Your Honor, may it please
22 the Court. Ladies and gentlemen, this is a case about a
23 father's enduring love who was trying to keep his family
24 from falling apart. The defendant, Tara Marie Weber,
25 intentionally stabbed Kyle Way in the chest, a wound that

1 caused his death. And the State has charged her with
2 involuntary manslaughter -- with voluntary manslaughter and
3 that's what I've charted out here for you.

4 Now, the judge is going to charge you on the law.
5 So if there's anything different that he says, you're to go
6 on what Your Honor says. But I want to talk about
7 voluntary manslaughter and what that is.

8 Voluntary manslaughter is an unlawful killing of a
9 human being without malice. Now Roy Thompson was one of
10 the first witnesses to testify. He said at one glance at
11 Kyle's stab wound, he knew he wasn't going to make it. It
12 was a mortal wound. It had hit an artery, the blood was
13 bright red. Every beat of Kyle's heart, more blood pumped
14 out. Every breath he took, air was coming out of his
15 collapsed lung.

16 Now, Dr. Presnell also testified about that wound,
17 about the severed artery that had punctured the lung that
18 was at a downward trajectory, that it was consistent with a
19 shorter person stabbing in an overhead motion to a taller
20 person with a single-edge blade, a wound that was
21 consistent with the knife that was found concealed in the
22 sink underneath plates. Consistent with this very knife
23 that still has Kyle's blood on it today.

24 So I'm going to go ahead and check this one off.
25 Unlawful killing of a human being.

1 Now, sudden heat of passion: That is the
2 uncontrollable urge to do violence. Now, Dustin Roberts
3 said that he and the defendant were having sex in a vacant
4 trailer in the middle of the night, less than a stone's
5 throw away from the trailer where Kyle and their kids,
6 maybe one of Dustin's kids, were asleep. And then Kyle
7 came in there, he knew where to find her, and he confronted
8 Tara. He grabbed her, and he was taking her back to her
9 children, back to reality. Back to the responsibility of
10 being a mother. Tara Weber wanted to be doing what she
11 wanted to do. She wanted to be with Dustin, having sex in
12 that vacant trailer instead of sleeping up there with her
13 children, instead of on the couch with Kyle. She didn't
14 want to go back with Kyle. She didn't want to go back to
15 the responsibility of those children.

16 The heat of passion must be such that would
17 naturally disturb the sway of reason and render the mind of
18 an ordinary person incapable of cool reflection. What did
19 Kimberly Powell and Joshua Ayers say that they heard her
20 say? If you don't stop, I'm going would stab you. If you
21 don't stop, I'm going would stab you. That sounds an awful
22 lot like the uncontrollable urge to do violence. If you
23 don't stop, I'm going to stab you. And think about the
24 scene in your head. You've just been, basically busted,
25 next to nothing on, and the father of your children comes

1 into that trailer. Think of the emotions that were
2 occurring at that point. He wanted her back into the
3 trailer with the children. That's heat of passion. That's
4 the inability to have cool reflection. If you don't stop,
5 I'm going to kill you, I'm going to stab you.

6 Now, upon sufficient legal provocation -- so we've
7 checked number one and I think we've checked number two.
8 So that brings us down to number three. Upon sufficient
9 legal provocation.

10 Now, this is a lot of writing, but the key points
11 are that words are not enough. They must be accompanied by
12 the appearance of an assault. When Kyle grabbed Tara, half
13 naked on the floor with Dustin, I see the appearance of an
14 assault. That causing her to be in the sudden heat of
15 passion. She's legally provoked at that point. She's
16 upset. She has an uncontrollable urge to do violence. So
17 we have that. We have sufficient legal provocation.

18 Now, the State has the burden of proving each of
19 these elements beyond a reasonable doubt and I feel like
20 we've done so.

21 Now, there's other law that the judge is going to
22 charge you and that is involuntary manslaughter. Now, as
23 opposed to voluntary manslaughter, involuntary manslaughter
24 is the unintentional killing, and ladies and gentlemen, I'm
25 going to stop right there. This isn't an unintentional

1 act. If you don't stop, I'm going to stab you and then
2 Kyle gets stabbed? That's an intentional act. So if you
3 find that she did it intentionally, this is not an
4 applicable charge. But we'll go through it anyway.

5 Engaged in unlawful activity that is not a felony
6 and does not naturally tend to cause death or great bodily
7 injury, or lawful activity with reckless disregard for the
8 safety of others. Don't get confused with reckless
9 disregard for the safety of others and unlawful killing of
10 a human being in a sudden heat of passion. They're two
11 different things.

12 She wasn't swinging that knife in a reckless
13 disregard. No, she was bringing it down into his shoulder
14 through his artery and into his lung. That's an
15 intentional act.

16 Now, what was said? Deputy Moran said he talked to
17 Tara at the scene. What did she tell him? She said, I
18 love Kyle to death. Poor choice of words. She didn't know
19 he was dead. I don't know how the knife got into his
20 shoulder. Sometimes I cut myself. Well, we know there's
21 more to the story than that. So what did she tell
22 Detective Crosby? Well, I was sitting on the couch -- not
23 that I was sitting in the trailer having sex with Dustin.
24 I was sitting on the couch. He looked up out of the blue,
25 not he busted in and found us having sex. He just woke up

1 out of the blue and started talking to me. Not grabbing
2 her and dragging her back to reality, back to those kids.
3 He was just talking.

4 We were not arguing. Well, Dustin Roberts says
5 they were arguing, Joshua Ayers says they were arguing,
6 Kimberly Powell says they were arguing. They said they
7 were arguing back and forth to the point where they woke
8 up. Not just that they woke up to them busting into the
9 room saying, Call the ambulance, Kyle's been stabbed. No,
10 they heard them fighting and they testified to it on the
11 stand right there. All they woke up to was me screaming
12 for help. No, they woke up to her saying if you don't
13 stop, I'm going to stab you. We weren't arguing about
14 anything that serious for me to hurt him. So we go from
15 we're not arguing to we were arguing, but we weren't
16 arguing about anything serious. It's not serious that I
17 was in this vacant trailer having sex with Dustin Roberts
18 while my kids were in here unattended to. That's not
19 serious enough for me to hurt him. So we weren't arguing.
20 We were arguing, but nothing serious. It was not about me
21 hurting him or anybody around me. If you don't stop, I'm
22 going to stab you.

23 It sounds like that's about hurting him.

24 Now, the explanations -- we got it from Deputy
25 Moran, we got it from Detective Crosby, the demonstrations,

1 I had the knife like this. I turned around, I grabbed the
2 knife, I had it in my right hand. I told him I was going
3 to get the knife. I was holding it down. When I grabbed
4 the knife away -- and then it trails off.

5 Kyle said give me that knife. He wasn't behind me
6 because when he said that it echoed from the living room.
7 Then he was right behind me. He wasn't behind me, he was
8 right behind me. He was that close. That close. I turned
9 and he was right there. Not like this. Not like this.
10 Right there. Kyle snatched the knife from me. This ain't
11 the first time he's taken a knife from me. When I turned
12 around I thought I had the knife because of the way it was
13 taken from me. Ladies and gentlemen, is that consistent
14 with the injuries that Kyle suffered? Could he have taken
15 the knife and stabbed himself in the shoulder? Does that
16 make sense to you? Or does it make sense that she turned
17 around and she stabbed him? Think about the testimony of
18 the pathologist and the trajectory of the wound and how her
19 explanation -- it doesn't make sense. The knife was not
20 down here where you would expect it to be if you were
21 holding it down and just turned around. It's not down
22 here. She told him it was up here. It was in the
23 shoulder. It came out, pointed straight up. She knew that
24 didn't make sense.

25 All I remember is that it went into his shoulder.

1 But I know exactly what happened. All I remember is it
2 went into his shoulder, but I know exactly what happened.
3 I can't explain it word for word. It is in my head, it is
4 stuck in my head. I don't doubt that statement. When she
5 was in that heat of passion and she was being drug back to
6 reality, back to those children, it was a short distance.
7 You could see the front door of the vacant trailer they
8 were in from the back door of the trailer where Kyle was
9 stabbed. She walked into that kitchen, they continued to
10 fight. She turned into that kitchen, she grabbed that
11 serrated knife. When he was behind her, she turned and she
12 stabbed him. And it was demonstrated out like that.

13 Now, there's other things that I want you to think
14 about. Kyle's focus was on his children. His last words
15 were, tell my children I love them. He had just lost
16 almost every drop of blood in his body and that was his
17 concern, was his children. He said, I know I'm going to
18 die. Just tell my kids I love them.

19 Ladies and gentlemen, two things can happen in the
20 sudden heat of passion and the second one is a killing.
21 And that's what happened in this case. I'm asking you to
22 consider the evidence and the testimony and to find her
23 guilty as charged of voluntary manslaughter. The unlawful
24 killing of a human being in the sudden heat of passion,
25 upon sufficient legal provocation. Find a verdict that is

1 true to what you heard. Find her guilty of voluntary
2 manslaughter. Thank you.

3 THE COURT: Thank you, Mr. Ferguson.

4 Mr. Hughes, you're recognized.

5 MR. HUGHES: May it please the Court?

6 THE COURT: Yes, sir.

7 MR. HUGHES: Good morning.

8 THE JURY: Good morning.

9 MR. HUGHES: I told you yesterday that I'd come
10 back in front of you and tell you it's nothing like you saw
11 on television, and it's not. This is real life. I
12 represent Tara Weber. And I don't have to prove anything.
13 The State has the burden of proof. The State has the power
14 and the money and the resources. Y'all heard Ms. Legette
15 yesterday when she was introducing -- when she was -- I'm
16 sorry Monday, when she was introduced to you and the judge
17 asked her to name the attorneys in her office. It took
18 forever. I get up, I name what I got. They've got the
19 resource, they've got the manpower, they've got four people
20 sitting at their table.

21 I have Tara Weber and myself. But, that being
22 said, I'm going to prove something to you. Tara Weber did
23 not kill Kyle Way in a heat of passion like the solicitor
24 said. Let's do look at the evidence.

25 Kyle Way, obviously a loving father. His last

1 words were, I'm dying, tell my children I love them. He
2 says to Josh and Kim, Call 911, get an ambulance. He asked
3 Josh for a cigarette, and as a smoker, I appreciate that
4 very much. He talks to the EMTs, he talks to Kimberly
5 Powell, he talks to Josh Ayers. He talks to everybody, but
6 what doesn't he say? You've heard what he said. The
7 mother of his child has just stabbed him and he does not
8 say, she stabbed me? I find that hard to believe. I mean
9 if it had been an argument between two of them, he's mad
10 because she's over next door with Dustin, and he drags her
11 back, they get into an argument, she turns around and stabs
12 him like the solicitor says, don't you think sometime in
13 the remaining time he had in his life, he would say, excuse
14 the expression, The bitch stabbed me, or something like
15 that. But he doesn't. Why? Maybe because he knew it was
16 an accident.

17 Now, at the time of the stabbing, there were six
18 people in that trailer. We've heard from Kyle Way, Call
19 911; Can I get a cigarette; Tell my children I love them.

20 You heard the tape where Tara told the cops at
21 eight o'clock in the morning when this happened, what she
22 tried to remember what happened. You heard Josh Ayers and
23 Kimberly Powell tell a remarkably similar story of a loud
24 argument that woke them up. They heard, If you don't stop,
25 I'm going to stab you. And isn't it amazing that at the

1 time of the incident, they didn't bother to tell law
2 enforcement this? But there were two other people in that
3 trailer, sleeping within twenty-five feet of this so called
4 loud, screaming argument that woke up two adults. A
5 one-year-old and a three-year-old child slept through mommy
6 and daddy screaming and hollering. That's what the
7 solicitor's office wants you to believe. One of them even
8 had a diaper, they said was full, so he was uncomfortable
9 to begin with.

10 Children wake up to the slightest thing. A one
11 year old is going to wake up screaming and hollering if a
12 mouse coughs five feet -- fifty feet away. But they're
13 asleep. When everybody gets there, they're still asleep.
14 Why? Because there was no argument going on. There was a
15 discussion going on. Mommy and daddy did not raise their
16 voice because the children would overhear. No parent
17 intentionally wakes up the second child.

18 Now, so we've heard from everybody in the trailer,
19 Josh Ayers and Kimberly Powell's story has changed
20 constantly to fit whatever facts they want it to fit at the
21 day -- or for the day. Kimberly Powell, I don't know what
22 was wrong with her, but I was worried she was going to pass
23 out on the stand. I don't know if it was nerves or what,
24 but that was not a well woman. Josh Ayers told the same
25 story that she told, but it was a different one than they

1 told previously.

2 Now, they sort of tripped themselves up a couple of
3 times when I asked, you were asleep until they woke you up,
4 right? Coming in. Yeah, nope, I think they told the truth
5 back on December 31st. They were asleep until Tara and
6 Kyle came in, Call 911.

7 Now, Josh Ayers and Kimberly Powell lied. I don't
8 know when they lied, but they lied. They basically
9 admitted to lying on the stand. The children didn't wake
10 up. Kyle Way had a knife sticking in him like this. Tara
11 Weber admitted that she had the knife, she turned around,
12 the knife got in his chest and she has no idea how it got
13 there or how it got out of her hand. I don't know, but if
14 Kyle was picking something up, if he was trying to tackle
15 her or what, but somehow or another she turns around, the
16 knife goes in.

17 Now, if she turns around and the knife went in him
18 and he stood up, the knife could have come out of her hand.
19 Did that happen? I don't know. I do know that if a guy
20 five foot nine is confronted by a woman five foot tall with
21 a knife going like this and the classic Psycho position --
22 everybody's seen the Psycho -- womp, womp, womp -- he's
23 going to hold up his hands. He was going the try to stop
24 that knife. He's not going to stand there and go --
25 (demonstrating) -- and have her stab him. There were no

1 | defensive wounds. There was nothing that indicated that
2 | Kyle saw this coming.

3 | Now, if he had bent down to pick it up, Kyle would
4 | not have been seeing something coming. So we have a
5 | pathologist who testified that, yes, this could have gone
6 | in with Kyle leaning over.

7 | Now, this knife is that long, the blade is. It
8 | only went that far in. Now, I asked the pathologist if it
9 | hit any bone. It hadn't. The only thing this nice sharp
10 | knife hit was skin. And according to the solicitor's
11 | office, Tara came at him like this, and don't you think the
12 | knife coming at him like this would go in a lot deeper than
13 | that? But if Kyle was leaning over and Tara turns around,
14 | the knife goes in him, his first move is going to jerk
15 | back. The knife is in him, he's standing upright now, and
16 | that matches exactly what Tara told Detective Crosby. I
17 | turned around, the knife was in him, I don't know how it
18 | got there.

19 | So we have an argument that may have started over
20 | at the trailer with Dustin Roberts, but wasn't serious
21 | enough that Dustin Roberts didn't do anything when his
22 | paramour or the woman he'd been sleeping with is supposedly
23 | dragged out of the trailer, yelling and hollering, go back
24 | to sleep. This is a man who may be the mother of one of
25 | his children in an argument that the solicitor's office

1 | says is so bad that the woman stabbed the guy, and he goes
2 | back the sleep. This is an argument that's supposed to be
3 | so loud that it woke two adults that had been who knows
4 | doing what the day before, but at three something in the
5 | morning wakes them up from the bedroom farthest from the
6 | kitchen, but doesn't wake up a one- and three-year-old
7 | child sleeping 25 feet away? This is an argument that the
8 | passion's so deep that a woman takes a knife and jabs it in
9 | a man's chest, but -- what's the passion?

10 | There is no argument. There is simply a
11 | discussion. She is upset. She says she wants to cut
12 | herself, and he tries to take the knife away from her like
13 | he's done plenty of times, he takes the knife. We don't
14 | know what happened, we don't know if she turned around
15 | while he was bent over. I don't know how many -- if you
16 | look at the sink, there's a number of knives. There's a
17 | black handled knife, their's a silver knife. What knife
18 | are they talking about? The silver knife? The black
19 | handled knife? We know that somebody had the silver knife.
20 | Tara had the silver knife because Kyle didn't stab himself
21 | in the chest. But he tries to take it from her a number of
22 | times. Does he -- is he picking something up when he gets
23 | stabbed? We don't know.

24 | And that, ladies and gentlemen is reasonable doubt.
25 | I told you I didn't have to prove anything. They have to

1 | prove it beyond a reasonable doubt. We don't know what
2 | happened in that trailer. They want you to believe an
3 | argument happened loud enough and violent enough and
4 | passionate enough that in a heat of passion she stabs him.
5 | But they haven't proved that beyond a reasonable doubt. I
6 | have shown y'all why it couldn't have been that way.
7 | That's reasonable doubt. It was an accident.

8 | Kimberly Powell calls 911. She tells them it's an
9 | accident. Law enforcement, thank God the Ridgeland Police
10 | Department got there on the scene in time to secure the
11 | scene, which is what they have to do, in time that the EMTs
12 | could get there and know that Kyle Way was talking and that
13 | his children will get to know that his last words were of
14 | them. But, he was going to an accidental stabbing.
15 | Remember, it went from an accident that Kim Powell told 911
16 | about to if you don't stop, I'm going to stab you in ten
17 | months, nine months. So when was Kim Powell telling the
18 | truth? When she was on the phone with 911 or on the stand?
19 | Aren't you going to tell the truth to the 911 operator so
20 | they know what they're -- so they know to hurry because the
21 | man's life is in danger? EMTs go to an accidental
22 | stabbing, law enforcement goes to an accidental stabbing.
23 | Everybody's gone to an accidental stabbing because it was
24 | an accidental stabbing. The truth is said in the heat of
25 | passion and nothing can be more in the heat of passion than

1 trying to save someone's life and that's what they were
2 doing.

3 I don't know why they got on the stand and lied,
4 but believe them when they didn't have a reason to lie back
5 on December 31st. Yes, Tara Weber had the knife in her
6 hand and it went in Kyle Way's chest. It was an accident.
7 If it had been in the heat of passion, Kyle Way would have
8 told either law enforcement or the EMTs or Josh Ayers or
9 Kim Powell, that she stabbed me and he didn't. He wanted a
10 cigarette and he wanted an ambulance and he wanted his kids
11 to know that he loved them.

12 If he had -- had it not been an accident, one other
13 person in that kitchen would have spoke to you and said she
14 stabbed me, but he didn't. So it was an accident and
15 that's what you have to say it was an accident. You have
16 to find her not guilty of voluntary manslaughter. You have
17 to find her not guilty of involuntary manslaughter. You
18 have to say if Kyle had wanted us to know, he would have
19 told us and he didn't. So it was an accident.

20 Thank you, ladies and gentlemen.

21 THE COURT: Thank you. Mr. Hughes.

22 Madame Forelady, ladies and gentlemen of the jury,
23 that concludes the closing arguments. I'm going to ask
24 that you retire to the jury room for one moment. We will
25 come back momentarily for a charge on the law. Do not

1 discuss the case in any way, shape, or form.

2 (WHEREUPON the jury left the courtroom at ten
3 o'clock a.m.)

4 THE COURT: Yesterday we concluded fairly early. I
5 think it was maybe a quarter after four. We had a charge
6 conference in chambers with the solicitor and the defense
7 counsel. The -- as a result of that, the subject of the
8 charge conference was the substantive law to be charged and
9 we all agreed, obviously, that being charged voluntary
10 manslaughter, that would be charged, but given the facts
11 and circumstances I felt as though, and Counsel agreed that
12 involuntary manslaughter will be appropriate, and accident.

13 There is a -- was a snibbit of testimony that
14 was -- seemed to indicate that -- just a bare snibbit of
15 testimony that would -- might could substantiate a
16 self-defense charge. That was discussed in chambers and we
17 came to the conclusion that it was not a theory of the
18 defendant that it was self-defense, that it was an
19 accidental incident that took place. And more importantly,
20 it's not consistent with what the defendant said, who was
21 the only witness to the altercation. And as a result of
22 that, although it had been discussed, the charge of
23 self-defense is not in the charge. It is -- although it
24 was discussed based on this snibbit of testimony, is that
25 the defense's position?

1 MR. HUGHES: Yes, Your Honor.

2 THE COURT: Very good. Is that your understanding
3 of the charge conference?

4 MR. FERGUSON: Yes, sir, Your Honor.

5 THE COURT: Very good. All right. Since we've --
6 you know, that was really the essence of the charge
7 conference. Before we charge -- I thought we would just
8 put on the record what I intend to charge and if there were
9 any omissions or any additional charges, I'm glad to hear
10 from you now.

11 I'm going to charge the law pertaining to arrest
12 and the indictment is not evidence. I'm going to charge
13 the general law with regard to the duties of the jury and
14 the trial judge. I'm going to charge reasonable doubt.
15 I'm going to charge the basic law about how to evaluate the
16 credibility of the witnesses. I'm going to charge the law
17 concerning prior inconsistent statements. I'm going to
18 charge the law with regard to how to evaluate expert
19 witness testimony. I'm going to charge direct and
20 circumstantial evidence.

21 I'm going to charge the statement of the defendant
22 and what the jury has to determine in order to consider the
23 statement of the defendant. There was discussion about
24 Miranda warnings and we're all in favor of that charge.
25 I'm going to charge the failure of the defendant to testify

1 and how that can't be used against her. I'm going to
2 charge voluntary manslaughter, involuntary manslaughter and
3 the defense of accident.

4 Is there any objections or additional requests from
5 the State, Mr. Ferguson?

6 MR. FERGUSON: No, sir, Your Honor.

7 THE COURT: Anything from the defense, Mr. Hughes?

8 MR. HUGHES: No, Your Honor.

9 THE COURT: Very good. All right. We'll take
10 about a five minute recess and then we'll come back for the
11 charge to give the jury time to refresh themselves.

12 (WHEREUPON a recess was observed.)

13 THE COURT: Anything from the State before we bring
14 the jury in?

15 MR. FERGUSON: No, sir, Your Honor.

16 THE COURT: Anything from defense?

17 We're ready for the jury.

18 THE BAILIFF: All right.

19 (WHEREUPON the jury entered the courtroom at 10:31
20 a.m.)

21 **JURY CHARGE**

22 THE COURT: Madame Forelady, ladies and gentlemen
23 of the jury, at the very outset of this trial, you recall
24 the clerk made you stand and raise your right hand and take
25 an oath. And that oath involved your obligation to listen

1 to the evidence that comes from this witness stand and
2 apply it to the law. I've watched you throughout this
3 trial and when the lawyers were asking questions, you were
4 looking at them, and when the witnesses were testifying,
5 you were looking at them. It's clear that you have paid
6 attention to the facts of this case, and y'all have the
7 tools necessary to go back into the jury room and determine
8 what the truth is.

9 But that's only half of it because what you have to
10 do is determine what the truth is and apply it to the law.
11 There's absolutely no easy way to go through the elements
12 of the law. It's sort of like taking medicine. You've
13 got -- there's no easy way to do it, but I'm going to ask
14 you to pay very close attention, perk up and listen to the
15 law as I charge it to you.

16 Madame Forelady, ladies and gentlemen of the jury,
17 the indictment charges the defendant with voluntary
18 manslaughter. I remind you that the fact that the
19 defendant was arrested and charged and indicted is not
20 evidence and cannot be considered by you as evidence of
21 guilt; nor does it create any presumption of inference of
22 guilt. This document is simply the formal written
23 instrument which contains the charges made against the
24 defendant. It is the formal document by which this case is
25 brought into court.

1 Ladies and gentlemen of the jury, I remind you that
2 during this trial, you and I had had certain duties to
3 perform. As the trial judge, it's my responsibility to
4 preside over the trial of this case and I also have the
5 duty to rule on the admissibility of the evidence offered
6 during this trial. You are to consider only the competent
7 evidence before you. You're to consider only the testimony
8 which has been presented from the witness stand, any
9 exhibits which have been made a part of the record and any
10 stipulations of counsel.

11 I have the additional duty to charge you the law
12 applicable to this case. As the presiding judge, I am the
13 sole judge of the law in this case and it's your duty as
14 jurors to accept and apply the law as I now state it to
15 you. If you already have an idea as to what the law is and
16 what the law ought to be and it does not agree with what I
17 now tell you the law is, you must abandon this idea because
18 you were sworn to accept and apply the law exactly as I
19 state it to you.

20 In every case tried in this court before a jury,
21 the jury becomes the sole, exclusive judge of the facts in
22 the case. A trial judge cannot intimate, state, comment
23 on, or make any statement to a trial jury about the facts
24 in a case. Since you the jury are the sole judges of the
25 facts in this case, you're not to infer from what I have

1 said during the progress of this trial and ruling upon the
2 admissibility of evidence or otherwise or anything that I
3 say now during the course of this instruction to you that I
4 have any opinion about the facts of this case. The law
5 simply does not allow me to have an opinion about the facts
6 in this case. This is a matter solely for you, the jury,
7 to determine. And as jurors it is your duty to determine
8 the effect, value, weight, and the truth of the evidence
9 presented during this trial.

10 Ladies and gentlemen of the jury panel, what is
11 reasonable doubt? A reasonable doubt is the kind of doubt
12 that would cause a reasonable person to hesitate to act.
13 The State has the burden of proving the defendant guilty
14 beyond a reasonable doubt. Some of you may have served as
15 jurors in a civil case, where you were told that it is only
16 necessary to prove the fact is more likely true than not
17 true, such as by a greater weight or a preponderance of the
18 evidence. In criminal cases, the State's proof must be
19 more powerful than that. It must be beyond a reasonable
20 doubt. Proof beyond a reasonable doubt is proof that
21 leaves you firmly convinced of the defendant's guilt.

22 There are very few things in this world that we
23 know with salute certainty and in criminal cases, the law
24 does not require proof that overcomes every possible doubt.
25 If based on your consideration of the evidence you are

1 | firmly convinced the defendant is guilty of the crime
2 | charged, you must find the defendant guilty. If, on the
3 | other hand, you think there's a real possibility that the
4 | defendant is not guilty, you must give the defendant the
5 | benefit of the doubt and find the defendant not guilty.

6 | Necessarily, you must determine the credibility of
7 | the witnesses who have testified in this case. Credibility
8 | simply means believability. It becomes your duty as jurors
9 | to analyze and evaluate the evidence and determine which
10 | evidence convinces you of its truth. In determining the
11 | believability of witnesses who have testified in this case,
12 | you must believe one witness -- you may believe one witness
13 | over several witnesses or several witnesses over one
14 | witness. You may believe a part of the testimony of a
15 | witness and reject the remaining part of the demeanor of
16 | the same witness. You may believe the testimony of a
17 | witness in its entirety or reject the testimony of a
18 | witness in its entirety. You may consider whether any
19 | witness has exhibited to you any interest, bias, prejudice,
20 | or other motive in this case. You may also consider the
21 | appearance, the manner of the witness while on the witness
22 | stand, their demeanor.

23 | Bear with me just one moment.

24 | Ladies and gentlemen of the jury, the defendant has
25 | pled not guilty to this indictment. Now, that plea puts

1 the burden on the State to prove the defendant guilty. A
2 person charged with committing a criminal offense in South
3 Carolina is never required to prove himself innocent. I
4 charge you that it is an important rule of law that the
5 defendant in a criminal trial, no matter what the
6 seriousness of the charges may be, will always be presumed
7 to be innocent of the crime for which the indictment is
8 issued unless guilt has been proven by evidence satisfying
9 you of that guilt beyond a reasonable doubt.

10 The presumption of innocence does not end when you
11 begin your deliberation, but it accompanies the defendant
12 throughout the trial until you reach a verdict of guilt,
13 based on evidence satisfying you of that guilt beyond a
14 reasonable doubt. Presumption of innocence is like a robe
15 of righteousness placed about the shoulders of the
16 defendant which remains with the defendant until it has
17 been stripped from the defendant by evidence satisfying you
18 of the defendant's guilt beyond a reasonable doubt.

19 The presumption of innocence is not a mere legal
20 theory. It is not just a legal phrase. This is a
21 substantial right to which every defendant is entitled
22 unless you, the jury, are satisfied by evidence of the
23 defendant's guilt beyond a reasonable doubt.

24 Ladies and gentlemen of the jury, there has been
25 evidence presented that witnesses have made prior

1 statements which are not consistent with the witness's
2 present testimony. You may use this evidence to decide
3 whether to believe the witness. You may also use evidence
4 of the earlier contradictory statement to determine the
5 truth of those statements. It is up to you to decide
6 whether to believe the earlier statement or the testimony
7 given at trial. If a witness is shown to have knowingly
8 testified untruthfully concerning any material matter, you
9 may consider this to determine whether to trust a witness's
10 testimony as to other matters. You may reject all of the
11 testimony of that witness or give all or part of the
12 testimony the weight you think it deserves.

13 Ladies and gentlemen of the jury, the rules of
14 evidence ordinarily do not permit witnesses to testify to
15 opinions or conclusions. An exception to this rule exists
16 with witnesses we call expert witnesses. A witness who by
17 education or experience has become an expert in some art,
18 science, profession or calling, who has stated an opinion
19 as to relevant, material matter to which the witness claims
20 to be an expert and may also state the reasons for the
21 opinion. You should consider any expert opinion received
22 into evidence in this case like any other evidence, give it
23 the weight you think it deserves. If you decide that the
24 opinion of an expert witness is not based on sufficient
25 education and experience, if you conclude that the reasons

1 given in support of the opinion are not sound, that the
2 opinion is outweighed by other evidence, you may disregard
3 the opinion entirely. An expert witness's testimony is to
4 be given no greater weight than that of another witness
5 simply because the witness is an expert. Further, you're
6 not required to accept an expert's opinion even though it
7 is not contradicted.

8 There are two types of evidence which are generally
9 presented during a trial: Direct evidence and
10 circumstantial evidence. Direct evidence is the testimony
11 of a person who claims to have actual knowledge of a fact
12 such as an eyewitness. It is evidence which immediately
13 establishes the main fact to be proven.

14 Circumstantial evidence is proof of a chain of
15 facts and circumstances indicating the existence of a fact.
16 It is evidence which immediately establishes collateral
17 facts in which the main fact can be inferred.
18 Circumstantial evidence is based on inference and not on
19 personal knowledge or observation. The law makes
20 absolutely no distinction between the weight or value to be
21 given to either direct or circumstantial evidence, nor is a
22 greater degree of certainty required for circumstantial
23 evidence than of direct evidence.

24 You should weigh all of the evidence in the case.
25 After weighing all of the evidence, if you are not

1 convinced of the guilt of the defendant beyond a reasonable
2 doubt, you must find the defendant not guilty.

3 A statement alleged to have been made by the
4 defendant has been admitted into evidence in this case.
5 While the Court has determined that the statement is
6 admissible, I instruct that -- I instruct you that you make
7 the ultimate decision on whether or not the defendant made
8 this statement. If the defendant did not make the
9 statement, you must determine -- if the defendant did make
10 a statement, you must determine whether the statement was
11 made by the defendant voluntarily and of her own free will.
12 This means that the statement was not caused by pressure,
13 force, fear, threats, coercions, or intimidation, by hope
14 or promise of reward of any kind.

15 In determining whether the statement was voluntary,
16 you should consider both the characteristics of the
17 defendant and the details of the questions. Some of the
18 factors that you must consider are the age of the
19 defendant, the defendant's lack of education or the degree
20 of education which the defendant has; the defendant's
21 mental ability or capacity, the defendant's IQ or
22 intelligence, the defendant's background and environment,
23 the place and length of detention, the nature of
24 questioning, the advice or lack thereof to the defendant of
25 her constitutional rights, including, but not limited to

1 the right to remain silent, that any statement could be
2 used against her in a court of law, the right to have a
3 lawyer present and if she could not afford a lawyer, a
4 lawyer would be appointed to represent her without any
5 cost. She can stop making a statement at any time. You
6 must carefully consider all of the surrounding
7 circumstances before you give any weight to an alleged
8 statement.

9 The State has the burden of proving beyond a
10 reasonable doubt that the alleged statement was voluntary.
11 If you determine it was, you may give the statement any
12 further consideration that you deem proper. You must
13 decide what weight, if any, should be given to the alleged
14 statement. If you determine the alleged statement was not
15 a free and voluntary statement of the defendant, you should
16 not consider the statement at all.

17 Ladies and gentlemen of the jury, I instruct you
18 and emphasize that the fact that the defendant did not
19 testify is not a fact to be considered by you in any way in
20 your deliberations and in your consideration on the
21 question of the guilt or innocence of the defendant. It
22 must not be considered by you in any manner whatsoever. A
23 defendant has a constitutional right to remain silent. The
24 assertion of this right must not be considered by you in
25 your deliberations. I repeat: Under your oath, you are to

1 draw no conclusion whatsoever from the fact that the
2 defendant in this case did not testify. The fact this the
3 defendant did not testify should not even be discussed in
4 the jury room.

5 Madame Forelady, I'm going to ask that you enforce
6 that rule. There will be no discussion about the fact that
7 the defendant did not testify.

8 The burden of proof, as I stated to you, is on the
9 State. The defendant is not required to prove her
10 innocence. The burden of proof remains on the State to
11 prove guilt beyond a reasonable doubt.

12 Ladies and gentlemen of the jury, I'm going to
13 charge you the substantive law with regard to voluntary
14 manslaughter. The defendant is charged with voluntary
15 manslaughter. To prove voluntary manslaughter, the State
16 must prove beyond a reasonable doubt that the defendant
17 took the life of another in the sudden heat of passion
18 based on sufficient legal provocation. Both heat of
19 passion and sufficient legal provocation must be present at
20 the time of the killing to constitute voluntary
21 manslaughter.

22 A sudden heat of passion may for a time affect a
23 person's self-control and temporarily disturb a person's
24 reasoning. A sudden heat of passion must be the type to
25 make an ordinary person unable to coolly reflect on her

1 | actions and would produce uncontrollable impulse to do
2 | violence. Sufficient legal provocation must be the type
3 | that would make a person of ordinary reason or caution
4 | become enraged or lose control temporarily.

5 | Provocation needed for voluntary manslaughter must
6 | come from some act of or related to the victim. Words
7 | alone, however vulgar or insulting, are not enough to be
8 | legal provocation. Where death is caused by the use of a
9 | deadly weapon, words must be accompanied by some overt,
10 | threatening act which could have produced heat of passion.

11 | The exercise of a legal right, no matter how
12 | offensive it is to another, is never sufficient legal
13 | provocation for voluntary manslaughter.

14 | In the heat of passion -- if the heat of passion
15 | had cooled or if there was sufficient time between the
16 | provocation and of the killing for the person of -- the
17 | person of a reasonable nature to cool, the killing would
18 | not be voluntary manslaughter. In deciding whether a
19 | reasonable person would have enough time to cool off, you
20 | should consider all of the circumstances surrounding the
21 | killing. You may consider the nature of the provocation in
22 | any defendant's mental and physical state, the
23 | circumstances and relationship between the parties.

24 | Ladies and gentlemen of the jury, if you find that
25 | the State has failed to prove beyond a reasonable doubt the

1 defendant committed voluntary manslaughter, you may
2 consider whether the State has proven beyond a reasonable
3 doubt that the defendant committed involuntary
4 manslaughter, which is a lesser included offense.

5 To prove involuntary manslaughter, the State must
6 prove beyond a reasonable doubt that the defendant
7 unintentionally killed the victim without malice, but while
8 engaged in unlawful activity, not naturally tending to
9 cause death or great bodily harm or that the defendant
10 unintentionally killed the victim without malice while
11 engaged in a lawful activity with reckless disregard for
12 the safety of others. Unintentional means that the
13 defendant did not intend for anyone to be killed or
14 seriously injured. Reckless disregard for the safety of
15 others is more than mere negligence or carelessness.
16 Negligence or carelessness is the failure to use the care
17 that a person of ordinary reason would use under the same
18 circumstances. Recklessness is a conscious failure to use
19 ordinary care. Reckless disregard for the safety of others
20 means that you are not interested in the consequences of
21 your act or the rights and safety of others. A person who
22 knows or should know that ordinary care requires that
23 certain precautions be taken for the safety of others when
24 using a dangerous instrument such as a gun, a knife, a car,
25 but that the person fails to use those precautions without

1 | concern, the person's actions are considered reckless.

2 | The State must also prove beyond a reasonable doubt
3 | that the defendant's act was the probable cause of death.
4 | Probable cause is the direct cause. It is the immediate
5 | cause. It is the official cause. It is that cause without
6 | which the death of the victim would not have resulted.
7 | There must be a chain of causation from the time of the
8 | injury inflicted by the defendant until the time of the
9 | victim's death. Probable cause does not necessarily mean
10 | that it occurred immediately prior to death. There may be
11 | more than one probable cause. The acts of two or more
12 | persons when combined together could be a probable cause of
13 | the death of a person. The defendant's acts may be
14 | regarded as the probable cause if it is a contributing
15 | cause of the death of the victim. The fact that other
16 | causes also contributed to the death of the victim does not
17 | relieve the defendant from responsibility. The defendant's
18 | acts may not be the sole cause of death. It must be the
19 | probable cause that contributed to the death of the victim.
20 | It is not a defense to show that the victim might have
21 | recovered had he been treated according to the most
22 | approved medical standards, whereas a reasonable prudent
23 | doctor would have treated him in the case or even by
24 | showing that the treatment was negligent.

25 | If, however, the death was caused not by a wound or

1 the injury that the victim had was caused by the gross and
2 erroneous willful deliberate treatment, the defendant would
3 not be liable. In other words, negligence on the part of
4 someone else would not relieve the length of time from
5 liability if the injury was the probable cause of the
6 victim's death. However, gross negligence or intentional
7 activity on the part of the practitioners would relieve the
8 defendant of liability. Propriety of a medical procedure
9 is an integral question in determining causation.

10 Ladies and gentlemen of the jury, the defendant has
11 raised the defense of accident. An act may be excluded --
12 maybe excused on the grounds of an accident if it is shown
13 that the act was unintentional, that the defendant was
14 acting lawfully or reasonable care was used by the
15 defendant in handling a dangerous instrumentality such as a
16 knife. For example, a person is lawfully armed in
17 self-defense and the weapon accidentally causes the death,
18 the defense of accident would apply. The burden is on the
19 State to prove beyond a reasonable doubt that act was not
20 an accident and was caused by the negligence or
21 carelessness on the part of the defendant and the handling
22 of a dangerous instrumentality.

23 Ladies and gentlemen, I'm going to come forward and
24 share with you the verdict form.

25 Madame Forelady, I'm going to ask if you can stand

1 up as I go over this verdict form with you. This is just a
2 form, it's very simple, it's self-explanatory. Obviously,
3 in the State of South Carolina, County of Jasper, the State
4 of South Carolina versus Tara Marie Weber. It's got the
5 fact that we're in General Sessions Court, 14th Circuit and
6 this is an indictment. It's entitled verdict form. And
7 Ms. Weber was indicted for voluntary manslaughter and
8 there's a place for a verdict. It says, we, the jury, by
9 unanimous consent find the defendant as to voluntary
10 manslaughter, not guilty or guilty. It goes onto say that
11 if you find the defendant guilty of voluntary manslaughter,
12 discontinue deliberations because if you find an individual
13 guilty of voluntary manslaughter, they cannot also be
14 guilty of involuntary manslaughter.

15 However, if you find the defendant not guilty of
16 voluntary manslaughter, it says right here, and it's
17 spelled out: If you find the defendant not guilty of
18 voluntary manslaughter, you may consider the lesser
19 included offense of involuntary manslaughter, which I've
20 explained the law to you. Then it goes onto say at Roman
21 numeral two if you reach that point: We the jury by
22 unanimous consent find the defendant as to involuntary
23 manslaughter not guilty or guilty; and there's a place on
24 here for you to sign, Madame Forelady, place, and date it.

25 This verdict -- the verdict must be unanimous. It

1 | can't be eleven to one, six to six, or eight to four.
2 | Everyone has to agree, and I'm going to ask that you notify
3 | the bailiff upon reaching a verdict.

4 | THE FOREMAN: Yes, sir.

5 | THE COURT: Have a seat. Madame Forelady, you are
6 | to preside over deliberations, and that simply means that
7 | you're to make sure that everybody's voice is heard, that
8 | once you've reached a verdict, it's unanimous. I want to
9 | mention to you that during the deliberation process, if
10 | someone were to get up and use the restroom, stop
11 | deliberations because everybody has to participate in all
12 | the deliberation process. Throughout the deliberations, it
13 | might be that a question comes up. I don't really
14 | anticipate there's going to be a question because the hard
15 | answers -- I mean the harder questions in this case you're
16 | going to have to answer are factual questions. And the law
17 | as I've explained the law. I can't help you in that
18 | regard. That's solely your job as jurors to determine what
19 | the facts are and render a verdict that speaks the truth.

20 | If there's a question with regard to the law, I can
21 | answer that. And if a question comes up and you can't make
22 | a determination as to whether or not it's a legal question
23 | or factual question, write it down. If it's something I
24 | can answer, I'll do it. I don't anticipate that there is
25 | going to be a question because you paid attention to the

1 facts, you paid attention as I charged you the law. So I
2 don't anticipate there are going to be any questions. If
3 there are, do some writing, knock on the door and the
4 bailiff will take the question.

5 Madame Forelady, as we've taken breaks throughout
6 this trial, I've asked you not to begin deliberations. I'm
7 going to send you back to the jury room. Once again, I'm
8 going to ask that you not begin deliberations because I'm
9 going to have to talk to these very fine lawyers to
10 determine whether or not the manner in which I've charged
11 the law, whether they have any objections to it or whether
12 I've inadvertently left something out, put something in
13 there that was inappropriate or incorrect. I have to talk
14 to them about that.

15 In addition to that, there's documentary evidence
16 that you're going to be able to consider, and we're going
17 to have to gather up that evidence and provide it to you.
18 In the event I do not have to bring you back in after I
19 have this discussion outside of your presence with these
20 lawyers, and if it's not necessary for me to bring you
21 back, I'm going to have the bailiff provide to you the
22 documentary evidence, along with a sheet of paper and
23 pencil to aid you in your deliberation process and tell you
24 to begin deliberations.

25 Once again, Madame Forelady, do not begin

1 deliberations until you have received notice from the
2 bailiff to begin deliberations. All right. I'm going to
3 ask that you retire to the jury room.

4 I'm going to ask the alternate if you could stay
5 with us. You're Mr. Bostick?

6 THE JUROR: Yes, sir.

7 THE COURT: Very good, if you can stay with us.

8 (WHEREUPON the jury left the courtroom at 10:48
9 a.m.)

10 THE COURT: Mr. Arthur Bostick, thank you so much
11 for your time. Have you ever served on a jury before?

12 THE JUROR: Yes, Your Honor.

13 THE COURT: Okay. Well, you're probably an old hat
14 at this. I know you sort of feel like you've been invited
15 to a dance and didn't get to dance. Nonetheless, you're
16 our insurance policy. You see that we had to activate one
17 of the alternates in this case. If we did not have
18 alternates, we would have had to start all over again. And
19 there are a lot of -- there was a lot of time and resources
20 that have been dedicated to the trial of this case. It's a
21 very important matter. It's important to the State, it's
22 important to the defendant and you were sort of like our
23 spare tire, our insurance policy. Thank you so much for
24 being here.

25 I told you from the beginning if you had any

1 questions I'd be happy to answer. Any questions that --

2 THE JUROR: No, Your Honor.

3 THE COURT: All right. I wish that I could release
4 you for the day, but I believe the jury is coming back at
5 two --

6 Is that right, Madame Clerk?

7 THE CLERK: Yes, sir.

8 THE COURT: So you're welcome to stay with us,
9 you're welcome to spend -- it's an open public forum.
10 You're welcome to stay here and observe the jurors if they
11 have any questions or if they come back with a verdict.
12 You're happy to do that. If you decide to leave,
13 obviously, the clerk will -- if you're interested will tell
14 you what the result was. I have told you throughout the
15 trial of this case not to discuss the case with anyone, but
16 I'm going to relieve you from that obligation and release
17 you from that order and if your wife or significant other
18 would like to find out what you've talked about, what
19 you've been dealing with, I'll allow you to talk with them
20 about that.

21 Anything I can help you with?

22 THE JUROR: No, Your Honor, I'm good.

23 THE COURT: Very good. We'll see you back at two
24 o'clock, and feel free to hang around with us if you would
25 like. Thank you so much. Two o'clock, sharp.

1 THE JUROR: Two o'clock.

2 THE COURT: All right. Very good.

3 All right. Any objections with regard to the jury
4 charge from the State, Mr. Ferguson?

5 MR. FERGUSON: No, sir, Your Honor.

6 THE COURT: Anything from defense?

7 MR. HUGHES: No, Your Honor.

8 THE COURT: Very good. All right. Well let's come
9 forward, and I'm going to ask, where's the most convenient
10 place for us to pile all of the evidence?

11 THE CLERK: It's all right here.

12 THE COURT: Oh, we've got them all right here.

13 All right. Mr. Ferguson, I'm going to ask you
14 first to go through these documents and determine that
15 everything in that pile is into evidence. I'm going to ask
16 if you can do that.

17 MR. FERGUSON: Yes, sir, Your Honor.

18 (WHEREUPON Mr. Ferguson and Mr. Hughes was looking
19 through the evidence.)

20 MR. FERGUSON: Your Honor, we've gone through it
21 and everything that I have listed as being in evidence is
22 situated right here including the map and then everything
23 that was entered for ID purposes is being retained by the
24 Madame Court Reporter.

25 THE COURT: All right. Mr. Ferguson, is there

1 anything in this pile on this podium here that's not into
2 evidence?

3 MR. FERGUSON: No, sir, Your Honor.

4 THE COURT: Mr. Hughes, is everything in that pile
5 into evidence?

6 MR. HUGHES: Yes, sir, Your Honor.

7 THE COURT: Is there anything in that pile that's
8 not in evidence?

9 MR. HUGHES: No, sir.

10 THE COURT: All right. I'm going to ask the
11 bailiff if you could take the documentary evidence to the
12 jury, and give them some paper and some pencils to aid them
13 in the deliberation process, and you may tell them to begin
14 deliberations. And it is five minutes until eleven.

15 (WHEREUPON the jury began deliberations at 10:55
16 a.m.)

17 THE COURT: All right. We'll stand at ease and if
18 the State has any pleas or anything we'll be glad to do
19 that.

20 (WHEREUPON a recess was observed.)

21 (WHEREUPON it was reported to the Court that the
22 jury had a question.)

23 THE COURT: All right. I have a piece of paper and
24 it's got voluntary manslaughter, involuntary manslaughter.
25 The forelady must be an experienced texter because I assume

1 | what they want is for me to charge them the law on these
2 | two offenses. And I will call them back in and I'll
3 | clarify that that's what they're requesting that I do. Any
4 | objection to my charging those two provisions alone?

5 | MR. FERGUSON: No, sir, Your Honor.

6 | MR. HUGHES: No, Your Honor.

7 | THE COURT: Very good.

8 | (WHEREUPON the jury entered the courtroom at 11:22
9 | a.m.)

10 | THE COURT: Madame Forelady, I assume from the note
11 | that the jury is requesting that I charge -- recharge you
12 | the law with regard to voluntary manslaughter and
13 | involuntary manslaughter?

14 | THE FOREPERSON: There was a question of the
15 | difference, Your Honor.

16 | THE COURT: Okay. Well, I think the appropriate
17 | thing to do would be to charge you the substantive law with
18 | regard to each. Pay very close attention.

19 | **RECHARGE ON THE LAW**

20 | THE COURT: The defendant is charged with voluntary
21 | manslaughter. To prove voluntary manslaughter, the State
22 | must prove beyond a reasonable doubt that the defendant
23 | took the life of another in the sudden heat of passion,
24 | based on sufficient legal provocation. Both heat of
25 | passion and sufficient legal provocation must be present at

1 the time of the killing to constitute voluntary
2 manslaughter. Sudden heat of passion may for a time affect
3 a person's self control and temporarily disturb a person's
4 reason. Sudden heat of passion must be the type that would
5 make an ordinary person unable to coolly reflect on his
6 actions and would produce an uncontrollable impulse to do
7 violence. Sufficient legal provocation must be the type
8 that would make a person of ordinary reason and caution
9 become enraged and to lose control, temporarily.

10 Provocation needed for voluntary manslaughter must
11 come from some act of or related to the victim. Words
12 alone, however vulgar or insulting are not enough to be
13 legal provocation. Where death is caused by the use of a
14 deadly weapon the words must be accompanied by some overt
15 act, threatening act which could be -- which could have
16 produced heat of passion. The exercise of a legal right,
17 no matter how offensive it is to another is never
18 sufficient legal provocation for voluntary manslaughter.

19 If the heat of passion had cooled or if there was
20 enough time between the time of the provocation, if any,
21 and the killing, for the passion of the reasonable person
22 to cool, the killing could not be voluntary manslaughter.
23 In deciding whether or not a reasonable person would have
24 enough time to cool off, you should consider all of the
25 circumstances surrounding the killing. You may consider

1 the nature of the provocation if any, the defendant's
2 mental and physical state, the circumstances and
3 relationship between the parties.

4 If you find that the State failed to prove beyond a
5 reasonable doubt the defendant committed voluntary
6 manslaughter, you may consider whether the State has proven
7 beyond a reasonable doubt that the defendant committed
8 involuntary manslaughter. To prove involuntary
9 manslaughter, the State must prove beyond a reasonable
10 doubt that the defendant unintentionally killed the victim
11 without malice but while engaged in an unlawful activity
12 not actually tending to cause death or great bodily harm or
13 the defendant unintentionally killed the victim without
14 malice while engaged in a lawful activity with reckless
15 disregard for the safety of others. Unintentional means
16 that the defendant did not mean for anyone to be killed or
17 seriously injured. Reckless disregard for the safety of
18 others, more than mere negligence or carelessness, is the
19 failure to use the care that a person of ordinary reason
20 would use under the same circumstances. Recklessness is a
21 conscious failure to use ordinary care. Reckless disregard
22 for the safety of others means that you are not interested
23 in the consequences of your acts or the rights and safety
24 of others.

25 If a person that knows or should know that ordinary

1 care requires certain cautions be taken for the sake of
2 others when using a dangerous instrumentality such as a
3 gun, knife, or car, but that the person fails to use those
4 precautions without concern, the person's actions are
5 considered reckless.

6 The State must also prove beyond a reasonable doubt
7 that the defendant's act was the probable cause of death.

8 You may retire to the jury room.

9 (WHEREUPON the jury left the courtroom at 11:28
10 a.m.)

11 THE COURT: Any objections to the instructions I
12 gave the jury?

13 MR. FERGUSON: Your Honor, I just have one concern
14 with the way it's worded. I'm trying to anticipate the
15 question that they have between to two. The language of
16 the voluntary manslaughter charge, I believe it's, If you
17 find that the sudden heat of passion has ceased or has
18 cooled then it's not voluntary manslaughter. Ordinarily
19 that implies that it's murder.

20 THE COURT: Right.

21 MR. FERGUSON: And I don't want that to be taken --
22 if the sudden heat of passion is cooled, then it can't be
23 voluntary, it is therefore involuntary. That's the State's
24 concern is that that issue might be confused as the way
25 it's worded.

1 THE COURT: Well, I'm not real sure that I'm really
2 in a position to do that because that's an element --

3 MR. FERGUSON: Yes, sir. I understand. Thank you,
4 Your Honor.

5 THE COURT: What would you suggest that I do?

6 MR. FERGUSON: I don't think that it would be
7 proper to say that if the sudden heat of passion had cooled
8 then it would have been murder.

9 THE COURT: Right.

10 MR. FERGUSON: It would have to be some variance
11 from that. I guess it would be that that doesn't trigger
12 the lesser included, it just triggers not guilty on the
13 voluntary portion, and it may be that we're putting undue
14 influence on it. I just wanted to express my concern to
15 the Court before it left my brain.

16 THE COURT: All right. I think that would probably
17 be invading their province to say that -- I think that's
18 the law and the law speaks for itself. I think that
19 they're to make a logical conclusion that if that element
20 is not met, then they're not guilty of it.

21 MR. FERGUSON: Yes, sir, Your Honor.

22 THE COURT: That they have to look at other
23 options.

24 What is your position on that, Mr. Hughes?

25 MR. HUGHES: As far as this case is concerned, Your

1 argued in my closing, was that the passion had to -- there
2 was no passion, therefore, it could not be voluntary. So I
3 would agree with you.

4 THE COURT: Very good. All right. Anything
5 further?

6 MR. FERGUSON: No, sir, Your Honor.

7 THE COURT: All right. We'll stand at ease.

8 (WHEREUPON court was at ease while the jury
9 continued their deliberations.)

10 (WHEREUPON it was reported to the Court that a
11 verdict was reached at 11:54 a.m.)

12 THE COURT: I understand they've reached a verdict.
13 Is everyone prepared to receive the verdict?

14 MR. FERGUSON: Yes, sir, Your Honor.

15 MR. HUGHES: Yes, Your Honor.

16 THE COURT: All right. I notice that there are
17 people here on behalf of the defendant and people here on
18 behalf of the victim. And not only is it my job to preside
19 over the trial of the case, it's also my responsibility to
20 maintain order in the Court. I know that regardless of
21 what the verdict is, it's probably going to upset somebody.
22 There will be no outbursts; and in the event there are any
23 outbursts, any statements, any show of reaction whatsoever,
24 I'm going to ask the deputies to take you into custody and
25 we'll deal with you accordingly. But I'm certain there

1 will not be. Everybody has a right to be here, but we will
2 maintain order.

3 All right. We're ready for the jury.

4 (WHEREUPON the jury entered the courtroom at 11:58
5 a.m.)

6 **VERDICT**

7 THE COURT: Madame Forelady, have you reached a
8 verdict?

9 THE FOREPERSON: Yes, sir.

10 THE COURT: Is it indeed unanimous?

11 THE FOREPERSON: It is, sir.

12 THE COURT: I'm going to ask that you give the
13 verdict form to the bailiff or to the clerk and let me
14 inspect that and then I'll give it back to the clerk for
15 publishing.

16 (WHEREUPON the verdict was examined by the judge.)

17 THE COURT: The verdict seems to be in order. I'll
18 allow you to publish it, Madame Clerk.

19 THE CLERK: Thank you.

20 State of South Carolina, County of Jasper, the
21 State versus Tara Marie Weber, Indictment 2011GS270378,
22 charge of -- verdict form, charge of voluntary
23 manslaughter, We the jury by unanimous consent find the
24 defendant as to voluntary manslaughter, guilty. Signed by
25 the foreperson September 14, 2011.

1 THE COURT: All right. I'm going -- Mr. Hughes, if
2 you could bring the defendant forward.

3 MR. HUGHES: May I have the jury polled?

4 THE COURT: Yes.

5 Madame Clerk, the defendant has asked that the jury
6 be polled, and I'll ask that you do so.

7 **POLLING OF THE JURY**

8 THE CLERK: As I call your name will you please
9 raise your right hand.

10 Jose Baltazar, was this your verdict, is it still
11 your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Thank you.

14 Koreshia Jenkins, was this your verdict, is it
15 still your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Thank you.

18 Steven Lambertsen, was this your verdict, is it
19 still your verdict?

20 THE JUROR: Yes, ma'am.

21 THE CLERK: Thank you.

22 Stephen Schramm, is this your verdict, is it still
23 your verdict?

24 THE JUROR: Yes, ma'am.

25 THE CLERK: Thank you.

1 Franklin Malphrus, was this your verdict, is it
2 still your verdict?
3 THE JUROR: Yes, ma'am.
4 THE CLERK: Thank you.
5 Wayne White, was this your verdict, is it still
6 your verdict?
7 THE JUROR: Yes, ma'am.
8 THE CLERK: Thank you.
9 Aldridge Beaton, was this your verdict, is it still
10 your verdict?
11 THE JUROR: Yes, ma'am.
12 THE CLERK: Thank you.
13 THE JUROR: Lenora Leslie, was this your verdict,
14 is it still your verdict?
15 THE JUROR: Yes.
16 THE CLERK: Thank you.
17 Barbara Exley --
18 THE JUROR: Yes, ma'am.
19 THE CLERK: Raise your hand, please ma'am. Was
20 this your verdict, is it still your verdict?
21 THE JUROR: Yes, ma'am.
22 THE CLERK: Thank you.
23 James Frazier, was this your verdict, is it still
24 your verdict?
25 THE JUROR: Yes, ma'am.

1 THE CLERK: Thank you.

2 Willie Mae Tyler, was this your verdict, is it
3 still your verdict?

4 THE JUROR: Yes, ma'am.

5 THE CLERK: Thank you.

6 Antonio Baker, was this your verdict, is it still
7 your verdict?

8 THE JUROR: Yes, ma'am.

9 THE COURT: All right.

10 **SENTENCE**

11 THE COURT: I'll be glad to hear from the State
12 with regard to sentencing.

13 MR. FERGUSON: Yes, sir, Your Honor. You're very
14 familiar with the facts of this case. You've even pointed
15 out what was a big issue for our office in terms of what
16 charges to indict Ms. Weber with. We believe that we
17 showed her a great deal of mercy in not charging her with
18 murder and charging her with voluntary manslaughter and we
19 would ask that you sentence her accordingly.

20 We would ask, Your Honor, that you hear from the
21 family. They have expressed an interest, but Your Honor,
22 we would be asking you to sentence her to somewhere around
23 a twenty year sentence.

24 THE COURT: Very good. I'll be glad to hear from
25 anybody who would like to speak on behalf of the victim.

1 Yes, ma'am, if you can come forward, I'll be glad
2 to hear from you.

3 Ms. Way: Your Honor, my name the Debby way. I --
4 I'm sorry.

5 THE COURT: Take your time. We've got plenty of
6 time.

7 MS. WAY: My name the Debby Way. I am the aunt of
8 Kyle Way. I'm here today to speak for him. He was our
9 nephew, he was a father, he was a son, he was a cousin, he
10 was a father, and he was only 24 years old. He was still a
11 very young man who had a long life in front of him. He'd
12 already been through so many challenges, among them the
13 death of his own mother when he was only three years old, a
14 brother who's mentally challenged, the death of his beloved
15 MawMaw only two days prior to his own killing. Kyle was
16 the pride of his father, James. James was so proud to see
17 Kyle in his ROTC uniform and his Boy Scout uniform. Kyle
18 was also the eyeballs of sons Malachi and JJ. They were in
19 this home when Tara stabbed Kyle. How could she do this to
20 them?

21 Kyle's extended family has been horrified by the
22 outrageous behavior Tara has displayed. We have all asked
23 how on earth she could reach a point that she would take
24 the life of her two small children's father. How egregious
25 to stab him to death with a knife, to take Kyle's life, to

1 steal the future of a 24-year-old father. Kyle will now
2 forever be 24. He will never grow old.

3 Kyle will not see his two beautiful sons grow up.
4 He will never be there to take them fishing, one of Kyle's
5 favorite pastimes, teach them how to bait a hook, catch
6 that first fish, clean it and cook it. Kyle won't be there
7 on the first day of school or to watch them cross the stage
8 at graduation. He won't be there to watch them leave on
9 their first dates or to tell them how to treat their dates
10 like ladies. No senior proms, no weddings, no
11 grandchildren of his own. He's gone. He's gone and
12 nothing can bring him back.

13 Tara, you have killed him. And in doing so, you
14 have deprived his children, Malachi and JJ as well as his
15 father -- as well as Kyle's father, James, of his comfort
16 and love at an age when most parents look to their children
17 for support and care. Tara stole the future from James.
18 No parent should ever have to bury their child, especially
19 under these circumstances, but James was forced to do just
20 that, bury his son. And when Kyle's children, asked where
21 their daddy was, James had to, in the best way that he knew
22 how, explain that their daddy wasn't coming home.

23 James is heartbroken over this and we just can't
24 think of anything that can be much worse than that. How
25 can Tara do this.

1 Since the night of December 31st, 2010, our family
2 has watched as Kyle's father, James, has struggled with his
3 pain, tried to understand how in the world Tara could have
4 done this to his son and the father of her children. But
5 we were even in more of a state of disbelief that Tara had
6 killed Kyle only two days after he had lost his beloved
7 MawMaw on the 29th of December. Kyle was to have been a
8 pal bearer at his MawMaw's funeral, but instead we had to
9 plan his own funeral. How could she do this. Tara could
10 have walked away from any argument, but instead, she took a
11 knife and killed Kyle. How could she do this.

12 Now, Tara has been found guilty of the crime of
13 killing Kyle Mitchel Way. Your Honor, James, Malachi and
14 JJ, indeed the entire Way family have been sentenced to a
15 lifetime of sadness and pain. Tara deserves whatever
16 punishment is given to her. We, the family of Kyle Mitchel
17 Way respectfully plead that you sentence her to the maximum
18 the law will allow. We pray that we are long in your grace
19 and that Malachi and JJ are grown men before she's allowed
20 out of prison. We will always struggle to understand how
21 Tara could do this evil thing. We would never be able to
22 understand any explanation she could give.

23 We also want to thank the prosecutors, Tameka
24 Legette and Robbie Ferguson, the victim's advocates, Rhoda
25 and Kimberly, the Jasper County Sheriff's Office, the

1 Ridgeland Police Department, and we thank you, the jury.

2 THE COURT: Very good. Thank you.

3 Anything further? I'll be glad to hear from anyone
4 from the victim's family. It's not necessary that anybody
5 speak, but I'd be glad to hear from anybody who would like
6 to speak.

7 (WHEREUPON there was no response.)

8 THE COURT: Mr. Ferguson, anything further?

9 MR. FERGUSON: No, sir, Your Honor.

10 THE COURT: Mr. Hughes, you're recognized.

11 MR. HUGHES: Your Honor, I'm in a unique position
12 here. The State has proven to the satisfaction of the jury
13 that this was a heat of passion, heat of the moment with
14 provocation matter and I ask that you take that into
15 consideration. She is a young lady, she's the mother of
16 two children. Her -- to her, her life is over. We're
17 asking for a minimal sentence, a probationary period and
18 hopefully one day -- I don't think she'll ever be able to
19 put this behind her, but I hope one day she'll be able to
20 live with it. As I said, the State has shown this was a
21 heat of the moment matter, this was not a premeditated,
22 this was not a planned matter, this was something that we
23 don't know what dial did, but she reacted to and Kyle's
24 life is gone and Tara's is in a sense almost over also,
25 Your Honor.

1 This is -- there are no winners today, Your Honor.
2 We ask, like I said, for a minimal sentence. Let her do
3 her time, let her pay the debt that the Way family wants
4 or -- but at the same time Let's don't destroy a second
5 life in this matter.

6 THE COURT: Anything further?

7 MR. HUGHES: No, Your Honor.

8 THE COURT: We have a sentencing sheet?

9 MR. FERGUSON: Yes, sir, Your Honor.

10 MR. HUGHES: I won't sign that.

11 THE COURT: How long has she spent in the detention
12 center?

13 MR. HUGHES: Two hundred, fifty-eight days, Your
14 Honor.

15 THE COURT: As a circuit court judge, obviously,
16 one of the most difficult things that I'm called upon to do
17 is to sentence people who have been convicted of a crime or
18 plead guilty to a crime, and it's an awesome responsibility
19 because it's kind of easy after a period of time to look at
20 it like it's just a number and you sort of become callous
21 to it. But this is a very, very, very serious situation, a
22 terrible tragedy; and this offense to which you've been
23 convicted is a violent crime, which adversely affects your
24 custody status.

25 She won't be able to enjoy as many privileges in

1 the department of corrections as other people. It's a most
2 serious offense, which means if she gets two most serious
3 offenses, another one, then she would be subject to life
4 without parole, and there are a number of different most
5 serious offenses. When and if she is released from the
6 department of corrections, that's something that would be
7 an additional punishment for her.

8 I've been doing this a long time. I practiced law
9 for over twenty years and been on the bench for about six
10 and there's something very unusual about this set of
11 circumstances, the marital infidelity that was involved in
12 it, the lack of -- it just doesn't add up the way things
13 happened. And it puzzles me how someone's moral compass
14 can become so out of wack that they would choose to engage
15 in this type of activity. I just don't understand it. It
16 doesn't appear there was a tremendous amount of drinking or
17 drugs going on, no testimony to that effect. I just -- I
18 actually don't understand it. It just really doesn't make
19 sense to me. It certainly was a gargantuan lack of
20 discretion and presents a very difficult situation for
21 everyone.

22 I have sympathy for everybody. I sympathize with
23 the victim's family. I have a child who is 23 years old,
24 very close to the age of the victim in this case and my
25 heart goes out for you. It sort of defies the natural

1 | order of the thing to have to bury a child. I can't
2 | imagine the pain that you've experienced in that regard. I
3 | can do nothing but hope that Ms. Weber during her period of
4 | incarceration will learn from her mistake and she's --
5 | there is a certain amount of retribution that has to come
6 | for the harm that you've done. It's a very, very difficult
7 | situation.

8 | Ms. Weber, on Indictment 2011GS2700378, voluntary
9 | manslaughter, the sentence of the Court is that you be
10 | committed to the state Department of Corrections for a
11 | period of 23 years and you're given credit for 258 days.

12 | Good luck to you.

13 | MR. FERGUSON: Thank you, Your Honor.

14 | (WHEREUPON the defendant was removed from the
15 | courtroom.)

16 | THE COURT: Madame Forelady, ladies and gentlemen
17 | of the jury, thank you so much for your service. I wish
18 | that I could excuse you for the week, but we're going to
19 | select another jury at two o'clock. Thank you so much. I
20 | know it was a very difficult situation, but y'all certainly
21 | have taken your job very seriously and for that we're
22 | appreciative. I would ask that you be back at two o'clock,
23 | two o'clock sharp. Thank you.

24 | I'll be happy to entertain motions.

25 | For the purposes of the family, of course the

1 lawyers in the courtroom understand that this is an offense
2 that is subject to the 85 percent rule, which is a
3 non-parolable offense, so she will serve -- for all
4 practical purposes, she will serve this sentence day for
5 day, subject to the 85 percent rule.

6 I'll be glad to hear from anybody with regard to
7 motions.

8 MR. HUGHES: Your Honor, I have no motions at this
9 time, but I'd like to leave it open while I think about it
10 if I could.

11 THE COURT: Certainly. You'll be afforded that
12 opportunity, and we'll revisit it before we adjourn sine
13 die. We'll stand at ease.

14 (WHEREUPON this case was at ease until Friday,
15 September 16th when the defense was afforded opportunity
16 for post trial motions.)

17 **POST-TRIAL MOTIONS**

18 THE COURT: Mr. Hughes?

19 MR. HUGHES: Your Honor, on Wednesday morning, you
20 sentenced Tara Weber. You asked if I had any motions. I
21 did not have any at that time. There are no motions in
22 this matter, Your Honor.

23 THE COURT: Very good. All right. Thank you.

24

25 * * * * * END OF TRANSCRIPT * * * * *

1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

3
4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Fifth Judicial Circuit of the State
8 of South Carolina, do hereby certify that I reported the
9 proceedings in the captioned case in the Court of General
10 Sessions in and for the State of South Carolina on the 12th
11 through the 14th days of September 2011.

12 I FURTHER CERTIFY that the foregoing pages,
13 numbered 3 through 340 constitute a true, accurate and
14 complete transcript of said hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 3rd day of March 2012.

19

20

21

22

23

24

25

Brenda J. Sigwald
Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TARA WEBER,

APPELLANT

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

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<u>State v. Turner</u> , 117 S.C. 470, 109 S.E. 119, 120 (1921)	6
<u>United States v. Ortiz</u> , 445 F.2d 1100, 1103 (10 th Cir. 1971).....	6
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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to grant a directed verdict to the charge of voluntary manslaughter when the facts only showed an accidental stabbing?

STATEMENT OF THE CASE

Appellant was tried for voluntary manslaughter before a jury and the Honorable Michael G. Nettles on September 12-14, 2011, in Aiken County. She was found guilty as charged and was sentenced to twenty-three (23) years imprisonment.

This appeal follows.

ARGUMENT

The trial court erred in refusing to grant a directed verdict to the charge of voluntary manslaughter because the facts only showed an accidental stabbing.

On December 31, 2010, the police were dispatched to the victim's mobile home for what they believed was an accidental stabbing. Deputy Moran with the Jasper County Sheriff's Office responded to the scene he found appellant, the victim's wife, standing outside. She was barefooted and had some tights on and a dark color jacket. (Tr. p. 177, line 14 – p. 178, line 10). She seemed nervous and scared. (Tr. p. 180, lines 16-17). She talked about how much she loved the victim. Then she said sometimes she tries to hurt herself. That night she went into the kitchen and got a knife and said she was going to hurt herself. The victim came up behind her and told her to give him the knife. She turned around and was trying to hand him the knife and accidentally stabbed the victim in the shoulder. (Tr. p. 181, line 7 – p. 182, line 2).

At the conclusion of the State's case defense counsel moved for a directed verdict because the State failed to make out a case for voluntary manslaughter. The trial court denied the motion. (Tr. p. 267, line 23 – p. 272, line 10). That ruling was in error.

Due process as guaranteed by the Fourteenth Amendment requires "that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979).

Our Court has held:

[T]he trial judge is concerned with the existence or non-existence of evidence, not with its weight; and,

although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. [Emphasis added].

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955); State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied, 493 U.S. 895, 110 S.Ct. 246 (1989).

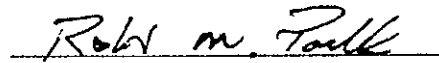
In applying this standard, our Court has held that evidence which is “sufficient to raise a strong suspicion of the guilt of the accused” is not sufficient to constitute “any evidence from which the guilt of the accused may be fairly and logically deduced.” State v. Totherow, 263 S.C. 275, 210 S.E.2d 228, 230 (1974). See, also, State v. Turner, 117 S.C. 470, 109 S.E. 119, 120 (1921). The motion for a directed verdict should be granted, therefore, “where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused’s guilt.” State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974). “If the evidence is consistent with both innocence and guilt it cannot support a conviction.” United States v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10th Cir. 1971). Guilt is only to be found when there is a “rationally supportable state of near certitude.” Evans-Smith v. Taylor, 19 F.3d 899, 906 (4th Cir. 1994).

In this case the State only set forth facts of an accidental stabbing not voluntary manslaughter.

CONCLUSION

A directed verdict should be granted to the charge of voluntary manslaughter.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of May, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TARA WEBER,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tara Weber states:

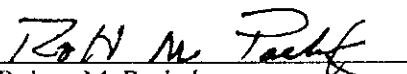
1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge Michael G. Nettles, which was held on September 14, 2011, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Tara Weber.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of May, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TARA WEBER,

APPELLANT

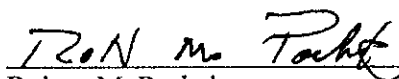
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire trial transcript.

I certify that this designation contains no matter which is irrelevant to this appeal.

May 7th, 2012



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

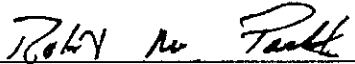
V.

TARA WEBER,

APPELLANT

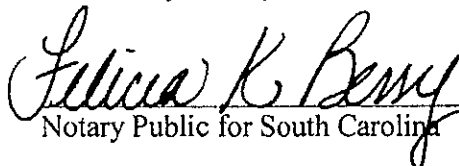
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Tara Weber, #347905 at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210; this 7th day of May, 2012.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of May, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Tara Weber, Appellant.

Appellate Case No. 2011-200726

Appeal From Jasper County
Michael G. Nettles, Circuit Court Judge

Unpublished Opinion No. 2013-UP-042
Submitted January 2, 2013 – Filed January 30, 2013

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, and Senior
Assistant Deputy Attorney General Salley W. Elliott, all
of Columbia; and Solicitor Isaac McDuffie Stone, III, of
Bluffton, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT, KONDUROS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

☒ ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF Jasper)Tara Weber 347905)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-27-246APPLICATION FOR
POST-CONVICTION RELIEF**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Leath Correctional Institute
2. Name and location of Court which imposed sentence Jasper / Aikew, Ridgeland, SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011GS2700378
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) September 12-14, 2011 23 years
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Aiken SC _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. dismissed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 5, 2013 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) insufficient counsel
- (b) False information
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) attorney Miss lead me
- (b) witness lied on stand.
- (c) false statements

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? UN appeal
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. appeal by attorney did it in
 - ii. 30 days.
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Aiken SC
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. dismissed
 - ii. _____
 - iii. _____

iv. _____

(d) the date of each such disposition:

i. 8/24/11

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. dismissed

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) ineffective counsel

(b) false information

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? dismissed
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Robert Hughes
 - ii. Robert M Pack AK (PO Box 11589
 - iii. Columbia SC 29211-1589
- (b) the proceedings at which each such attorney represented you:
 - i. Hughes, trial
 - ii. Pack AK, appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

Reduce sentence

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

N/A

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Lucia Wilcz

SWORN to and subscribed before me this 12th
day of March, 2013.

Subill (L.S.)
Notary Public

My Commission Expires: Jan. 8, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	
	)	
	)	2013-CP-27-0246
	)	
Tara Weber, #347905,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed May 6, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Jasper County Clerk of Court. The Applicant was indicted at the August 2011 term of the Jasper County Grand Jury for voluntary manslaughter. The Applicant was represented by Robert Hughes, Esquire.

On September 12-14, 2011, the Applicant proceeded to trial and was convicted. The Applicant was sentenced by the Honorable Michael Nettles to confinement for a period of twenty-three years.

The Applicant filed a timely Notice of Appeal. Her appeal was perfected by Robert Pachak, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Weber, No. 2013-UP-42 (S.C. Ct. App. January 30, 2013). The Remittitur was issued on February 21, 2013.

Attached herewith and incorporated herein are the records of the Jasper County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Correction, and the appellate court records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Insufficient counsel."
 - a. Attorney mislead me.
2. "False information."
 - a. Witness lied on the stand.

III.

The Respondent construes the Applicant first allegation as a claim of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent construes the Applicant's second allegation of "false information" a challenge to the sufficiency of evidence presented by the State at trial. The Respondent submits this claim challenging the sufficiency of the evidence presented at trial is not proper for post-conviction relief. The post-conviction relief court cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. ' 17-27-20(a)(6) (1985). The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before and during the original trial or by review on motion for a new trial or on appeal. Irick v. State, 264 S.C. 632, 216 S.E.2d 545 (1975); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). Therefore, the Court should summarily dismiss this ground for relief.

V.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the Applicant's claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: Al R. Wilson
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Al R. Wilson, 2014.
June 5

1 STATE OF SOUTH CAROLINA

2 COUNTY OF JASPER

CIRCUIT COURT
2013-CP-27-00246

3
4 TARA MARIE WEBER,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6
7 STATE OF SOUTH CAROLINA,
Respondent.

8
9 Post-Conviction Relief Hearing

10 Heard on Wednesday, July 30, 2014

11 Beaufort, South Carolina

12
13 BEFORE:

14 THE HONORABLE J. CORDELL MADDOX, JR.

15
16
17 APPEARANCES:

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EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

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1 ON WEDNESDAY, JULY 30, 2014 AT 11:03 A.M.:

2 THE COURT: We got Tara Weber; is that right? You
3 want to tell me a little bit about this one?

4 MS. WILSON: I can, Your Honor.

5 May it please the Court. This is Tara Weber versus
6 State of South Carolina, Docket Number 2013-CP-27-0426.
7 This is Ashleigh Wilson for the State of South Carolina.

8 Ms. Weber was indicted in August of 2011 for
9 voluntary manslaughter. She proceeded to trial September
10 12th through the 14th, 2011, where she was represented by
11 Mr. Robert Hughes. She was found guilty by a jury and
12 sentenced by Judge Michael Nettles for 23 years for
13 voluntary manslaughter.

14 She filed a timely notice of appeal and her
15 appeal -- she was represented by Robert Paschak from the
16 Office of Appellate Defense and he filed an Anders brief
17 on her behalf. The matter was dismissed by the appellate
18 court on January 30th, 2013. A remittitur was issued on
19 February 21st, 2013.

20 She filed an application for post-conviction relief
21 on May 6, 2013. In her application she alleges
22 insufficient counsel, that her attorney misled her and
23 that -- false information, a witness lied on the stand.
24 And she asked for a reduction in her sentence. And today
25 she's here and represented by Mr. Tristan Shaffer.

1 THE COURT: All right. Do you agree with that?

2 MR. SHAFFER: Yes, Your Honor. That's the
3 procedural history. The State in their return and
4 basically construed one of her claims as an allegation of
5 ineffective assistance of counsel which is basically what
6 we're proceeding on today.

7 Your Honor, factually, this case occurred and
8 essentially what happened was the alleged victim in this
9 case was in -- was her -- is it husband or --

10 THE APPLICANT: Boyfriend.

11 MR. SHAFFER: Okay. -- boyfriend, Your Honor.

12 Back -- they had kids. They were living in one
13 mobile home. He awoke one night, went to the next mobile
14 home and apparently found her with another man. At that
15 point he began to grab her and try to get her out of the
16 mobile home. There's varying stories about what happened
17 next but apparently he got stabbed.

18 At trial they basically put up a {sic} accident
19 defense to voluntary manslaughter which was the original
20 charge. It was not a murder charge. They put up an
21 accident defense and the judge charged accident. He
22 charged voluntary, obviously, and lesser included of
23 involuntary.

24 There's some evidence about a possible struggle
25 over a knife. She, she had said something -- where one of

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1 the witnesses had heard her saying, Stop that, Stop that
2 or I'll stab you. The judge -- there was some evidence, I
3 believe, to support a self-defense charge. The judge
4 actually found that there was evidence to support the
5 self-defense charge. The defense counsel waived that
6 objection, Your Honor.

7 And that's a primary issue we're going forward on
8 today is the fact that he waived the self-defense jury
9 instruction. As a result the jury didn't hear that and
10 she was convicted voluntary, Your Honor.

11 THE COURT: Okay. All right. You can call your
12 first witness. I understand it.

13 MR. SHAFFER: The Applicant calls Robert Hughes.

14 ROBERT M. HUGHES, having been duly sworn, was
15 examined and testified as follows:

16 THE CLERK: Please be seated.

17 THE COURT: All right, sir. If you would just give
18 us your full name and spell your last.

19 THE WITNESS: Robert M. Hughes, H-U-G-H-E-S.

20 THE COURT: Yes, sir. Go ahead.

21 DIRECT EXAMINATION

22 BY MR. SHAFFER:

23 Q. Mr. Hughes, you represented Tara Weber, correct?

24 A. Correct.

25 Q. Okay. Were you appointed or retained?

ROBERT M. HUGHES - DIRECT BY SHAFFER

1 A. I was appointed.

2 Q. When did you get appointed approximately?

3 A. 12-31 of 2010.

4 Q. And were you -- well, tell us this. Are you a
5 public defender here --

6 A. Yes, sir.

7 Q. -- in the 14th Circuit? And how long have you been
8 a public defender?

9 A. Since 2008.

10 Q. Okay. What did you do that before that?

11 A. Before then I worked for a year as the house
12 counselor for the Citizens Opposed to Domestic Abuse and
13 before that from 2004 until 2006 I was an assistant
14 solicitor.

15 Q. Okay. And you've been a part of, I imagine, many
16 trials, correct?

17 A. Correct.

18 Q. Okay. And how did you go about preparing this case
19 for trial?

20 A. I got a copy of the discovery, I talked with my
21 client, I reviewed the discovery with my client. I tried
22 to match the -- what she was saying with what the evidence
23 was saying to assist with the defense.

24 Q. Okay. How many times did you meet with her; do you
25 recall?

ROBERT M. HUGHES - DIRECT BY SHAFFER

1 A. I do not know. It would have probably been at
2 least once a month from when I was appointed before trial
3 and a lot more often right before trial.

4 Q. Okay. Now, do you know -- tell us about the
5 allegations against her.

6 A. The allegations were basically that she was in a
7 argument with the deceased and took a knife and stabbed
8 him.

9 Q. Okay. And were there witnesses?

10 A. No. There were audio -- auditory witnesses but no
11 visual witnesses.

12 Q. Okay. Whenever the altercation began, it began
13 over her having a relationship with another man, correct?

14 A. She was found in the company of another person in
15 another out building.

16 Q. Okay. Now, did he -- what statement did he give
17 about what occurred?

18 A. I will have to look at my notes.

19 Q. Okay.

20 A. I apologize. I believe that was an auditory
21 statement that he gave. I do not know if I have a
22 transcript. At court he basically said that he was in a
23 relationship with her, that the guy, the decedent, woke
24 her up and they left together.

25 Q. Okay.

ROBERT M. HUGHES - DIRECT BY SHAFFER

1 A. And he went back to sleep.

2 Q. Did he say anything about her wanting to leave?

3 A. I don't recall. I don't think he did.

4 Q. Okay. Did he say anything about them arguing at
5 that point?

6 A. I apologize. I don't remember.

7 Q. It's okay. But whatever the transcript said, safe
8 to say --

9 A. Yes.

10 Q. Okay. Have you had a chance to review the
11 transcript?

12 A. No, I've not.

13 Q. Okay. You don't have a copy of the transcript?

14 A. No, I do not have a copy of the trial transcript.

15 Q. What was your trial strategy going into this case?

16 A. Tara had always told me that this was an accident,
17 that she did not know how he got stabbed. She had her
18 back to him, she turned around with a knife in her hand
19 held about chest level, and the next thing she knew he was
20 stabbed.

21 Q. Okay.

22 A. So I had to go with an accident because she would
23 never ever tell me other than it was an accident.

24 Q. Okay. And did the -- there were witnesses outside
25 that heard this, heard the argument when they --

ROBERT M. HUGHES - DIRECT BY SHAFFER

1 A. I think they were actually asleep in another room.

2 Q. Okay. But did he actually -- they were outside the
3 room where he was stabbed, correct?

4 A. He was stabbed in the kitchen. They were in a
5 bedroom.

6 Q. They heard it though; is that right?

7 A. They awoke to arguing, I believe is the way it was
8 put.

9 Q. Okay. Did one of them testify that essentially she
10 said, Stop doing that or I'm going to stab you?

11 A. I do not recall. If the transcript says that, I'm
12 sure that it did.

13 Q. Now, she gave a statement to police, correct?

14 A. Yes. She gave three statements to police.

15 Q. Okay. The first statement she gave you tried to
16 keep out, right.

17 A. I --

18 Q. Actually you tried to keep them all out; is that
19 right?

20 A. Correct.

21 Q. What were the substances of the statements?

22 A. Basically they were her story, that this was an
23 accident and that she didn't mean for him to be stabbed.

24 Q. So -- Court's indulgence. (Conferring with
25 Applicant.)

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1 You have a copy of the discovery; is that correct?

2 A. Yes.

3 Q. And we'll actually -- now, you had a charge
4 conference in chambers; is that correct?

5 A. Yes.

6 Q. And during that charge conference the judge
7 basically stated that he was willing to charge or that
8 there was evidence that would support self-defense,
9 correct?

10 A. Correct.

11 Q. And he stated that on the record again whenever
12 y'all came out, right?

13 A. Yes.

14 Q. And you had agreed with the solicitor not to charge
15 the law of self-defense, correct?

16 A. Correct.

17 Q. Why did you do that?

18 A. Because I was going for an accident defense, and
19 the hardest thing to explain to a jury is it was an
20 accident but if it wasn't an accident she did it in self-
21 defense. I was trying to not -- I did not want the jury
22 to have the idea that she did it on purpose. There was
23 not enough, including her testimony, that was in self-
24 defense. So, having a self-defense charge in there,
25 especially if I tried to argue it in closing, would have

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1 basically admitted to the jury that it wasn't an accident
2 and I was going for an accident defense which is what she
3 told me.

4 Q. How many cases have you tried?

5 A. I generally average maybe six to eight a year in
6 general sessions.

7 Q. So several a year?

8 A. Yes, for a number of years.

9 Q. Okay. And do you always argue every charge that's
10 given by the judge?

11 A. No.

12 Q. And you don't have to argue a charge, correct?

13 A. Correct.

14 Q. Just because the judge gives it doesn't mean you
15 have to argue it, correct?

16 A. Correct.

17 Q. Okay. And I imagine there's many times -- this is
18 sort of an easy question, but there's many times where
19 juries don't believe the defendant's side of it, right?

20 A. Unfortunately that happens a number of times.

21 Q. Okay. But if they didn't believe there was an
22 accident, that there was at least evidence that would say
23 that it was self-defense, right? There was at least some
24 evidence on the record that if you wanted a self-defense
25 charge the judge would have given it to you, right?

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1 A. Yes.

2 Q. And, Your Honor, I actually don't have a complete
3 printed copy of the transcript but I might cite to --

4 THE COURT: Yeah, that would be fine. If you can
5 cite to the page and line number.

6 MS. WILSON: I have an extra copy.

7 THE COURT: That would be great.

8 All right. Are y'all agreeing that this is a
9 correct transcript just for the record?

10 MR. SHAFFER: Yes, Your Honor.

11 MS. WILSON: Yes.

12 THE COURT: Okay. Why don't you ask him questions
13 and then I'll let him review that and then answer.

14 BY MR. SHAFFER:

15 Q. Now the solicitor in this case basically appealed
16 to the emotions of the jury, right?

17 A. Yes.

18 Q. Do you recall that? Okay. If you could look at
19 page 106 and review lines 18 through 25.

20 A. Eighteen through?

21 Q. Twenty-five.

22 A. Yes.

23 Q. That's the beginning of the State's opening
24 statement, correct?

25 A. Correct.

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1 Q. Okay. And in that she's basically appealing to the
2 emotions of the jury, right?

3 A. Correct.

4 Q. Okay. And if you could flip to page 108 and review
5 seven through 10.

6 A. Yes.

7 Q. Okay. And that's another spot where she's
8 appealing to the emotions of the jury, right?

9 MS. WILSON: Your Honor, I'm going to object. I'm
10 not really sure how this has any relevance to his
11 allegation that Mr. Hughes should have -- should not have
12 waived a self-defense jury instruction.

13 MR. SHAFFER: And, Your Honor, I guess I didn't
14 make myself 100 percent clear in the beginning. In the
15 return they had said -- they had said there was
16 ineffective assistance of counsel. And I said the main
17 issue or the primary issue we were preceding on was the
18 self-defense issue.

19 I also think there's an issue involving failure to
20 object to the opening and closing statements by the
21 solicitor.

22 THE COURT: Just to get it -- continue it moving,
23 I'll over the objection admit it but you're protected on
24 the record.

25 MS. WILSON: Thank you, Your Honor. And if I could

ROBERT M. HUGHES - DIRECT BY SHAFFER

1 just ask Mr. Shaffer to state for the record the
2 allegations he plans to allege under that umbrella.

3 MR. SHAFFER: And I apologize. There's the failure
4 to object based off of passion and prejudice for the jury,
5 the self-defense, obviously, and then failure to
6 investigate as well.

7 THE COURT: Okay.

8 MS. WILSON: Thank you.

9 THE COURT: Thank you.

10 BY MR. SHAFFER:

11 Q. And if you could, flip to page 282. And the part
12 you just read at 108, that was another appeal to the
13 passion and prejudice of the jury?

14 A. Yes.

15 Q. Okay. And on page 282, if you could look at line
16 20 through 24.

17 A. After I get there. Twenty to 24. Yes.

18 Q. That's another appeal to the passion and prejudice
19 of the jury, correct?

20 A. Correct.

21 Q. And if you could -- and that's actually the
22 beginning of the closing argument, correct?

23 A. Correct.

24 Q. Okay. And if you could then turn to page 283, it
25 would be line eight through 15. It begins with voluntary

ROBERT M. HUGHES - DIRECT BY SHAFFER

1 manslaughter is unlawful killing of another.

2 Now Lorrie Commons was one of the first people that
3 testified and essentially she goes into very vivid detail
4 about what happened when the heart stopped pumping, right?

5 A. Goes into detail.

6 Q. Okay. Do you think that that was objectionable?

7 A. Potentially, but...

8 Q. And if you could turn to page 289, it's 13 through
9 18. Begins with: Now there are other things that I would
10 want you to think about. Kyle's focus was on his
11 children. His last words were, tell the children I love
12 them. That section right there all the way to line 18, do
13 you think that that was another appeal to the passion and
14 prejudice of the jury?

15 A. It was also stating that the facts brought out by
16 the witnesses in the case but that also served to appeal
17 to the passions of the jury.

18 Q. Okay. And you actually tried to rebut that in your
19 closing argument, correct, at page 291 lines one through
20 10?

21 A. Yes.

22 Q. Okay. So you were trying to mitigate the fact that
23 she had previously made those arguments about the last
24 words being about the kids?

25 A. Actually, I was trying in that part to point out

ROBERT M. HUGHES - DIRECT BY SHAFFER

1 what was not said.

2 Q. Okay.

3 A. That was my primary reason for bringing up the
4 dying declarations was to point out that sometimes what's
5 not said is sometimes the most important thing.

6 Q. Okay. But those several passages from the opening
7 and closing arguments that you just read, the State's
8 opening and closing arguments that is, do you believe that
9 they were objectionable?

10 A. Potentially.

11 Q. Okay. And it's safe to say that you did not make
12 objections to them?

13 A. Of course not.

14 Q. Why didn't you make objection to it?

15 A. Simply because I knew that I was going to be able
16 to answer them and because during an opening and closing
17 if you object to something you have just screamed to the
18 jury, Pay attention to that, That is very important,
19 Listen closely.

20 Q. Okay. And what parts did you say you would be able
21 to answer those, and where did you answer them?

22 A. In the part you just read.

23 Q. Okay.

24 A. Basically the solicitor was arguing that it was a
25 matter of love. And I was pointing out the fact that it

ROBERT M. HUGHES - DIRECT BY SHAFFER

1 was also he was conscious, he was talking, and the one
2 thing he was not doing was blaming my client for his
3 death.

4 Q. Okay. Now tell us a little bit about the
5 investigation you performed in this case.

6 A. The investigation primarily consisted of going over
7 the statements with Ms. Weber, going over the evidence
8 with her. None of the statements given by anybody hurt
9 us. She gave me no witness other than the people that
10 were there to talk to.

11 So, the investigation was just that; primarily
12 preparing Ms. Weber and knowing that if any statements
13 given were not consistent with previous, that was
14 definitely an impeachable aspect of it. Like I said,
15 nothing that they said hurt us.

16 Q. Now did you get an autopsy in this case?

17 A. Yes, I did.

18 Q. They sent you a copy of it, right?

19 A. Yes.

20 Q. Did they send you a copy of the toxicology
21 evidence?

22 A. I do not remember. I have it here and, yes, I have
23 the toxicology report.

24 Q. And the toxicology report indicated what?

25 A. That there was atropine caffeine. I do not know

ROBERT M. HUGHES - CROSS BY WILSON

1 how to pronounce this. C-O-T-I-N-I-N-E nicotine,
2 Delta-9-THC and Delta-9-carbox-THC.

3 Q. Okay. That would indicate that he possibly was
4 under the influence of THC?

5 A. That indicated that sometime in the past, not that
6 long, he had consumed THC.

7 Q. Okay.

8 Your Honor, and I guess my failure to investigate
9 dealt more with whether or not he introduced that. We
10 were under the impression that that had not been
11 introduced.

12 THE COURT: Okay. All right.

13 BY MR. SHAFFER:

14 Q. Did you ever consider calling anyone to introduce
15 that?

16 A. No.

17 Q. Did you think the fact he was under THC would have
18 made it more plausible that it was an accident?

19 A. No.

20 Q. In your cases as a defense attorney or a
21 prosecutor, have you ever dealt with a DUI based off of
22 drugs, THC?

23 A. I don't recall one.

24 Q. There is -- but there -- would it be safe to say
25 that there's some evidence that at least, you know, THC

ROBERT M. HUGHES - CROSS BY WILSON

1 could impair your ability, your fine motor skills,
2 correct?

3 A. Oh, yes.

4 MR. SHAFFER: No further questions.

5 THE COURT: Yes, ma'am. Any questions?

6 MS. WILSON: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. WILSON:

9 Q. Mr. Hughes, can you recount first again how long
10 you have been practicing law?

11 A. I was sworn in in April of 2004.

12 Q. Okay. Now about how long -- how many years all
13 together have you been practicing criminal law?

14 A. With the exception of the one year I was with the
15 Citizens for Domestic Abuse the entire time. Nine years.

16 Q. And did you file the Brady and Rule Five motions on
17 Ms. Weber's behalf?

18 A. Oh, yes.

19 Q. And it's your testimony you reviewed that material
20 with her; is that correct?

21 A. A number of times.

22 Q. And prior to trial, did you talk with her about the
23 elements of the charges that she was facing and what the
24 State had to prove?

25 A. Oh, yes.

ROBERT M. HUGHES - CROSS BY WILSON

1 Q. Okay. And did you talk to her about her version of
2 the facts?

3 A. A number of times.

4 Q. And did her version of the facts seem to indicate
5 self-defense?

6 A. No.

7 Q. And prior to going to trial did you talk to her
8 about the possible defenses you could present for her and
9 what you had decided on?

10 A. Oh, yes. We talked a lot of times about what we
11 were going to have to prove and what we were going to have
12 to show because, like I said, she never varied from her
13 story of that she turned around and it's -- he got
14 stabbed.

15 Q. And it's your testimony that she didn't give you
16 any witnesses to investigate or leads to look into other
17 than the persons who had already given statements; is that
18 correct?

19 A. Correct.

20 Q. And you -- did you feel like you had ample time to
21 prepare for trial?

22 A. Oh, yes.

23 Q. Could you just recount for the Court again what
24 your trial strategy was in this case?

25 A. My trial strategy was to use the State's witnesses

ROBERT M. HUGHES - CROSS BY WILSON

1 to introduce the possibility that this could have been an
2 accident and then her statements, if possible, since I
3 knew that they were going to come in, that it was an
4 accident. To lay the groundwork that this was an
5 accident, a tragic accident but still one that was
6 nobody's fault.

7 Q. Okay. And you would agree today that understanding
8 the facts of the case that a self-defense jury instruction
9 or just you presenting -- pursuing that defense at trial
10 would have been contrary to Ms. Weber's statements to the
11 police; is that correct?

12 A. Correct.

13 Q. But was there any evidence presented by the State
14 that the victim was armed or had showed any aggression
15 towards Ms. Weber before she stabbed him?

16 A. No. Other than -- I don't remember if it was
17 actually forcing her to leave the other place, but
18 basically escorting her from the other place where she had
19 been sleeping with the third party. But that was the only
20 thing that could have even been considered aggressive.

21 Q. Okay. Did you -- Mr. Shaffer -- when you were
22 talking to Mr. Shaffer just a second ago, you talked about
23 how it's possible for you, for the Court to give a jury
24 instruction and you not argue that in your closing. Did
25 you want the jury to hear a self-defense jury instruction

ROBERT M. HUGHES - CROSS BY WILSON

1 if you weren't arguing that to the jury?

2 A. No, I don't want to give them an idea that she
3 actually meant to do it because that's the whole point of
4 an accident argument is there was no intent whatsoever.

5 Q. We also -- Mr. Shaffer referenced several
6 statements made by the solicitor in opening and closing
7 about the Defendant's last words. Could you recount for
8 the Court -- do you recall what the Defendant's last --
9 the victim's last words were?

10 A. Basically, Tell my children that I love them.

11 Q. Okay. And so when the solicitor made those
12 statements in her closing she was or he was basically
13 commenting on the evidence; is that correct?

14 A. Correct. And since I knew it was coming in --
15 actually I wanted the dying declarations in because that
16 helped with my accident. That's the reason I would not
17 have objected when he basically introduced them in his
18 opening.

19 Q. Also, Mr. Shaffer pointed to a portion of the, I
20 think it was the solicitor's closing where -- I'm not sure
21 if it was he or she.

22 A. Mister. It is a he.

23 Q. It was a he, Mr. Ferguson. Okay. -- when he
24 talked about the Defendant's injuries and the stabbing and
25 we would agree that the extent of the Defendant's {sic}

ROBERT M. HUGHES - CROSS BY WILSON

1 injuries was something presented to the jury in the
2 evidence; is that correct?

3 A. Yes. I managed to keep a lot of the pictures out,
4 but there was -- the wound was entered into evidence.

5 Q. And, the last thing on that. You also gave as a
6 reason for not objecting that you didn't want to highlight
7 for the jury something -- you didn't want to object and
8 then highlight to the jury what was said?

9 A. That's exactly it. If you object to something,
10 even if they're instructed they can't pay attention to it,
11 they hear it and it stays with them. It's human nature
12 that, you know, if I'm standing up going, Objection, the
13 jury is going to wake up and go, Oh, what did he say.

14 Q. Okay. Thank you. And lastly, Mr. Shaffer
15 questioned you about the toxicology report. And, just to
16 confirm, it's your testimony that presenting to the jury
17 that the Defendant {sic} had THC in his system was not
18 something that you wanted to do and that would not have
19 supported Ms. Weber's claim of accident; is that correct?

20 A. I did not see how it could. In hindsight maybe he
21 was stoned and bent over to get the knife, but I didn't
22 think it was that major.

23 Q. And you didn't feel like you needed that in order
24 to prove your defense?

25 A. No.

ROBERT M. HUGHES - REDIRECT BY SHAFFER

1 MS. WILSON: Beg the Court's indulgence one
2 second.

3 THE COURT: Okay.

4 BY MS. WILSON:

5 Q. Mr. Hughes, can you refer in the trial transcript
6 to page 298?

7 A. Give me one second, please.

8 Q. No problem.

9 A. Okay.

10 Q. And I'm on page -- I mean, on line 13. Starting at
11 line 13, just read to line 25.

12 A. There is a -- was a snippet of testimony that was,
13 seemed to indicate that, just a bare snippet of testimony
14 that would, might could substantiate a self-defense
15 charge. That was discussed in chambers and we came to the
16 conclusion that it was not a theory of the Defendant that
17 it was self-defense, that it was an accidental incident
18 that took place. And, more importantly, it was not
19 consistent with what the Defendant said who was the only
20 witness to the altercation. As a result of that, although
21 it has been discussed, the charge of self-defense is not
22 in the charge. It is -- although it was discussed based
23 on this snippet of testimony. Is that the defense's
24 position. I responded, Yes, Your Honor.

25 Q. And so you would agree that that's what, the

ROBERT M. HUGHES - REDIRECT BY SHAFFER

1 discussion that took place in chambers and that was from
2 the Court?

3 A. Correct.

4 MS. WILSON: Okay. Nothing further from the State,
5 Your Honor.

6 THE COURT: Anything on redirect?

7 MR. SHAFFER: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. SHAFFER:

10 Q. If you could, sir, turn to page 163. And --

11 A. One second. I'm still getting there.

12 Q. Okay.

13 A. Okay.

14 Q. Okay. And 163, if you could refer to seven through
15 19 -- or actually, if you could just look all the way
16 until the next page at line two.

17 A. Line one and two, I think you mean.

18 Q. Huh?

19 A. Line one and two.

20 Q. Yeah.

21 A. Okay.

22 Q. And that is one -- is it correct to say that's one
23 of the witnesses that identified or stated to her that
24 the -- or stated to the jury that she had made a statement
25 about leaving her alone otherwise she was going to stab,

ROBERT M. HUGHES - REDIRECT BY SHAFER

1 stab him?

2 A. Yes.

3 Q. Okay. And that -- and another witness also
4 testified to that, correct?

5 A. I could not --

6 Q. Is that your recollection?

7 A. I do not recall if a second witness testified.

8 Q. I apologize. My papers are not in order. I have
9 an electronic copy that I actually went off of. But it's
10 safe to say that there was some evidence that would
11 support --

12 A. That someone heard her threaten to stab him, yes.

13 Q. Okay. And also, you know, you had previously
14 testified on direct that there was some evidence that
15 would support a self-defense charge; is that correct?

16 A. Yes.

17 Q. Okay. And you had mentioned that you were unsure
18 whether it was a physical argument between her and the
19 alleged victim or if it was a verbal argument, or him
20 escorting her versus him pulling her back to the other
21 trailer; is that correct?

22 A. Correct.

23 Q. Okay. They actually use the physical altercation
24 as the basis for provocation for voluntary, correct?

25 A. Yes.

TARA MARIE WEBER - DIRECT BY SHAFFER

1 Q. Okay. So the State's contention was that he
2 Actually physically got her to move back to the trailer;
3 is that safe to say?

4 A. Yes.

5 MR. SHAFFER: No further questions.

6 THE COURT: Okay. You can step down. Thank you.

7 MR. SHAFFER: The Applicant calls Tara Weber.

8 THE COURT: All right. Come on up, ma'am.

9 TARA MARIE WEBER, having been duly sworn, was
10 examined and testified as follows:

11 THE CLERK: Be seated.

12 THE COURT: Okay. Ms. Weber, when you get seated,
13 just give us your full name and spell your last for the
14 court reporter.

15 THE WITNESS: Okay. Tara Marie Weber, W-E-B-E-R.

16 DIRECT EXAMINATION

17 BY MR. SHAFFER:

18 Q. Ms. Weber, you're currently doing how many years?

19 A. Twenty-three.

20 Q. Okay. And where are you housed at currently?

21 A. Lieber Correctional Institution.

22 Q. Okay. And you were represented by Mr. Hughes at
23 trial?

24 A. Yes, sir.

25 Q. When was the first time you met Mr. Hughes?

TARA MARIE WEBER - DIRECT BY SHAFFER

1 A. A couple days before my trial.

2 Q. Okay.

3 A. Wait. I met him when I first got in. I don't
4 remember the date, but I remember I talked to him in the
5 beginning, like, when I first got incarcerated. And then,
6 then I seen him again for the second time before my trial.

7 Q. Okay. How long were you incarcerated?

8 A. Nine months.

9 Q. Pretrial. Nine months. And you said you saw him
10 twice; is that right --

11 A. Yeah.

12 Q. -- at the jail? Okay. What did y'all talk about
13 whenever he came to see you?

14 A. He asked me what happened. He asked me what
15 happened. What -- with my crime and everything and I
16 told him exactly what happened.

17 And then the second time he came in he was telling
18 me about what was about to happen and everything, and that
19 I was about to go to trial. And, and then the last time
20 before I got sentenced with my trial, he came back and
21 seen me.

22 Q. And the last time was that, was that --

23 A. That was before they --

24 Q. -- before the trial?

25 A. That was before they sentenced me.

TARA MARIE WEBER - DIRECT BY SHAFFER

1 Q. Okay. But that was after the trial before they
2 sentenced you, or was it before the trial?

3 A. It was in the middle of the trial.

4 Q. Okay. Did he ever make any plea offer to you?

5 A. No.

6 Q. Okay. Did they ever tell you about any possibility
7 of a plea?

8 A. No.

9 Q. Okay. Did he ever tell you about what he planned
10 on arguing at trial?

11 A. Yes.

12 Q. Did you give him any witnesses to follow up on?

13 A. Yes.

14 Q. Okay. What did he say about what he was planning
15 on arguing at trial?

16 A. About trying to -- for an accident. I can't really
17 remember word for word.

18 Q. Okay.

19 A. I do remember it, but I don't remember word for
20 word what he was saying to me.

21 Q. Okay. Now I told you that if you get a new
22 trial -- if you win this hearing basically you get a new
23 trial?

24 A. Yes.

25 Q. All right. Is that what you want to do?

1 A. Yes.

2 Q. Okay. Now the statements you gave to police, you
3 gave several statements to police, right?

4 A. Yes, sir.

5 Q. What did those statements entail? What did you
6 tell them?

7 A. I didn't really write a hand statement. I told
8 them, told them what happened or how I remembered it
9 happening because I was, I wasn't, like, really in the
10 right state of mind because I had no sleep that night.

11 They started questioning -- they held me and I
12 didn't understand why they were holding me. They didn't
13 even ask me no questions. They didn't ask if they were
14 going to let me write a statement. They held me. And
15 then they did this video-audio. And then after that
16 video-audio they had told me that my boyfriend was dead
17 but at that time I really was not -- I didn't understand
18 what was happening or, you know, my mind was wandering.
19 And I don't remember exactly words that I said to them.

20 Q. Okay. But they ended up playing that video and
21 audio during the trial, right?

22 A. Yes, sir.

23 MR. SHAFFER: Okay. No further questions.

24 THE COURT: All right. Yes, ma'am?

25 MS. WILSON: Briefly, Your Honor.

CROSS-EXAMINATION

BY MS. WILSON:

Q. Ms. Weber, now you said you only met with Mr. Hughes three times before you went to trial or two times before you went to trial and one time in the middle of trial?

A. Yes.

Q. And did you go over -- did he review with you discovery materials that he received from the State? Like, your statements from the witnesses and police reports and that type of thing, did he review that with you?

A. The police reports, no. He asked me about what happened to me, but, the other I don't recall.

Q. Okay. Thank you.

THE COURT: Anything on redirect?

MR. SHAFFER: No, Your Honor.

THE COURT: All right. You can step down.

Well, first, is there anything else you want me to know about this case? You've heard all the testimony. Is there anything else?

THE APPLICANT: Uh, the only thing, I guess I got it all covered except the autopsy, when they did the autopsy the only question I wanted to know -- find out was if they had found the alcohol in his system.

ROBERT M. HUGHES - DIRECT BY WILSON

1 THE COURT: Okay. Okay. All right. Thank you,
2 ma'am. You can step down.

3 All right. Any other witnesses?

4 MR. SHAFFER: No, Your Honor. Applicant rests.

5 MS. WILSON: The State would recall Mr. Robert
6 Hughes.

7 THE COURT: Okay.

8 ROBERT M. HUGHES, testified further under oath as
9 follows:

10 DIRECT EXAMINATION

11 BY MS. WILSON:

12 Q. Mr. Hughes, just a few questions. Did you -- you
13 testified earlier that you met with her monthly. Do you
14 have an approximate number of times that you met with her
15 before trial?

16 A. It would have been six to seven on the monthly
17 visits. And before trial I probably was there, probably
18 two, maybe three times a week in the couple weeks before.

19 Q. Okay. And also I just glazed over this, but did
20 you enter into any plea negotiations on -- with the State
21 on behalf of Ms. Weber before trial?

22 A. The State offered basically a 10 year on a
23 voluntary. I actually had them at one time lean toward an
24 involuntary. She did not want to do any pleas. She
25 wanted to go to trial.

ROBERT M. HUGHES - CROSS BY SHAFFER

1 Q. And you heard Ms. Weber's testimony about her state
2 when she gave her statement. Did she tell you that she
3 was incoherent, and did you use any of that as a basis to
4 challenge her statement at trial?

5 A. This is why I challenged her statement at trial was
6 the lack of sleep and the lateness.

7 Q. And, lastly, did the statement that she gave to
8 police match what she told you during your representation
9 of her that it was an accident?

10 A. With some variations, but, yes.

11 MS. WILSON: Okay. Thank you.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. SHAFFER:

15 Q. Mr. Hughes, you -- do you take notes from your
16 visits?

17 A. Sometimes. Most of the time I'm there trying to
18 get a rapport with the client.

19 Q. Okay. And you have a file, right?

20 A. Yes, sir.

21 Q. Do you know any of the specific dates that -- well,
22 let me ask you this first. How do you decide which one
23 you do? Do you -- whether you take notes or not, when do
24 you take notes and when don't you?

25 A. I had the file with me. I have pencil in hand. I

ROBERT M. HUGHES - CROSS BY SHAFFER

1 did not write down the dates for some reason but if
2 there's anything new, any witnesses, any new evidence,
3 anything that I need to check on, I will note that.

4 Q. Okay. Basically the important stuff --

5 A. Yes.

6 Q. -- would that be safe to say? Would you consider
7 the -- her rejecting a plea offer as being an important
8 part to that?

9 A. Yes.

10 Q. Okay. Do you have a notation of when she rejected
11 the plea offer?

12 A. I have to look in my file.

13 For some reason or another I do not have that in my
14 file. Mr. Ferguson would generally give us the offer
15 sheets. I would carry them with me to the jail to talk
16 over with the client the offer. And for some reason or
17 another, I do not have the offer sheet in my file.

18 Q. Okay. How many cases do you generally have at any
19 given time as a public defender, just a rough estimation?

20 A. Anywhere from 80 to 110.

21 Q. Okay. And one of the reasons I imagine it's
22 important to keep notes is so that you can remember and
23 distinguish them?

24 A. Yes.

25 Q. And, but you're sure there was an offer made in

1 this case?

2 A. Yes.

3 Q. Okay.

4 A. And, like I said, I do remember Mr. Ferguson did
5 not want to try this case. He did not think it was a good
6 case because of the dying declaration or the lack thereof.
7 He was wanting to dispose of it and was offering a minimum
8 voluntary manslaughter.

9 And, like I said, I had him leaning strongly toward
10 an involuntary but his boss basically nixed that.

11 MR. SHAFFER: Okay. No further questions.

12 THE COURT: Anything else?

13 MS. WILSON: Nothing from the State.

14 THE COURT: Okay. You can step down. Thanks.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Anything else from the State?

17 MS. WILSON: Nothing further from the State.

18 THE COURT: Anything else from the defense or from
19 the Applicant?

20 MR. SHAFFER: Brief argument. There's also, I
21 guess -- I was unaware of it, but there might have been an
22 offer of failing to convey a plea agreement --

23 MS. WILSON: Your Honor, I'm going to object to him
24 proceeding on that because this is the middle of the
25 hearing and if I had known that was an issue I would have

1 subpoenaed the solicitor to be here. So I object to him

2 --

3 THE COURT: Yeah, I'm going to grant that. Look,
4 I've got to do this non-jury so I'll take everything into
5 account that I can.

6 MR. SHAFFER: Okay. And, Your Honor, I guess --
7 just a basis I -- just for appeal purposes that I'd be
8 citing to the rule that would of allow me to orally amend
9 based off testimony.

10 THE COURT: And that's taking into account Rule 15.

11 MR. SHAFFER: Thank you, Your Honor. I appreciate
12 it.

13 The only argument that I would give related to this
14 is -- or the argument I would like to put forth is related
15 to our primary issue involving the self-defense claim,
16 Your Honor.

17 I don't believe it's a reasonable trial strategy to
18 say that we're not -- well, I'm not going to give the jury
19 another out to not convict the client. You know,
20 basically you can argue -- I mean, clearly you cannot --
21 you don't have to argue everything that's charged by the
22 judge but the law requires that if there's evidence of an
23 offense, any evidence to support it which clearly, I mean,
24 Judge Nettles even found and put on the record that there
25 was some evidence to support it, based off of that, you

1 know, it should have been charged to the jury.

2 There's no reasonable basis for saying, Well, let's
3 not give her another possible defense. You know, the
4 State has to disprove self-defense beyond a reasonable
5 doubt if there's any evidence to support it.

6 Your Honor, I guess I would cite to -- it's not
7 directly on point, but I would like to cite to Matthews V
8 State and I can hand up --

9 THE COURT: No, I've got that actually but you can
10 refer to it.

11 MR. SHAFFER: Thank you. And what I was going to
12 refer to is, you know, basically the rule and trial
13 strategy is that if asserted valid trial strategy that is
14 objectively reasonable trial strategy then it's not going
15 to effective assistance of counsel.

16 But essentially saying that a trial strategy based
17 off of an error of law, the holding in this case is that
18 the trial strategy based off an error of law is not
19 objectively reasonable. In this situation failing to
20 request a charge or basically waiving a charge is not
21 reasonable because there's no -- you know, clearly the
22 standard for whether or not you should charge is whether
23 there's any evidence.

24 Your Honor, I do believe that she was prejudiced by
25 this or at least there's a reasonable possibility that

1 some juror could find that the State failed to disprove
2 self-defense beyond a reasonable doubt.

3 Based off of that I think there's, I mean, there is
4 a level of prejudice to it even though he didn't argue it
5 in his closing argument. It certainly was deficient
6 performance to waive a possible defense for your client.

7 THE COURT: Yes, ma'am?

8 MS. WILSON: Briefly, Your Honor.

9 May it please the Court. The State would just ask
10 that you deny and dismiss this application for post-
11 conviction relief with prejudice.

12 With regard to Ms. Weber's allegation about the
13 solicitor's opening and closing statements, the State
14 would argue that the solicitor's statements were not
15 improper or objectionable. They were statements based on
16 the evidence solicited at trial. The State solicited
17 testimony about Mr. Way's last words which were, I love my
18 kids.

19 They also solicited testimony from the paramedic
20 who treated Mr. Way about the severity of the stabbing
21 wound injuries.

22 Also, Your Honor, the Court should consider
23 Mr. Hughes' testimony that he didn't object for a
24 strategic basis because he didn't want to highlight for
25 the jury the testimony that, you know, was presented. And

1 also he wanted to later be able to use that testimony in
2 his own opening and closing statements.

3 Also, Your Honor, with regard to Ms. Weber's
4 allegation that counsel should have investigated the THC
5 in the victim's system and presented that to the jury.
6 Mr. Hughes provided credible testimony that he didn't need
7 to prove that the Defendant -- I mean, that the victim may
8 have been under the influence to prove accident.

9 Lastly, Your Honor, with regard to the main issue
10 about counsel's waiver of the self-defense claim, page 181
11 to 182 of the transcript, which doesn't support its
12 claim. And the State submits that Mr. Hughes provided a
13 very credible and reasonable trial strategy; that he
14 didn't want to pursue self-defense when he was trying to
15 pursue an accident. And it would have been -- he didn't
16 want to give the jury a second out. That either she
17 didn't do it, she had no intent, it was an accident, but
18 in the alternative she was defending herself, Your Honor.

19 And so the State would submit that that's a
20 reasonable claim and that a self-defense claim would have
21 been contradictory to the accident claim that Mr. Hughes
22 was presenting at trial and also contradictory to the
23 Defendant's statements in which she says it was an
24 accident.

25 Also, Your Honor, the State would just submit that

1 in order to be successful and prove that Mr. Hughes was
2 ineffective in this regard, Ms. Weber has to prove not
3 only deficiency but prejudice. And in order to prove
4 prejudice she has to show that, you know, one, self-
5 defense might have been something considered by the jury.

6 And, Your Honor, there's not proof that a self-
7 defense claim would have been successful here. To
8 establish self-defense in South Carolina, as the Court is
9 aware, four elements has to be present. One, the
10 Defendant has to prove that they were without fault in
11 bringing on the difficulty; two, the Defendant has to have
12 been in actual imminent danger of losing his or her life
13 or sustaining serious bodily injury; third, the defense
14 has to be based on a belief of imminent danger and the
15 Defendant has to show that a reasonably-prudent person
16 would have entertained the belief that they were, you
17 know, under risk of passing away; and lastly that the
18 Defendant had no other probable means of avoiding the
19 danger.

20 And the record is void of any other -- any type of
21 danger, any -- that the Defendant -- I mean, that the
22 victim was armed in any way or any aggression other than
23 him going to get her from the trailer across the street
24 where she was engaging in some other things.

25 So we just ask that you deny this application for

1 post-conviction relief with prejudice.

2 MR. SHAFFER: Your Honor, I would like to make one
3 brief rebuttal.

4 THE COURT: Okay.

5 MR. SHAFFER: First of all, Judge Nettles found
6 that there was evidence of all four prongs otherwise he
7 wouldn't have said that there's evidence of self-defense.

8 MS. WILSON: Your Honor, I can point to the record
9 on that and he did not find that all four prongs were
10 met. On page 298, the portion of the transcript that
11 Mr. Hughes raised when he took the stand. On page 298,
12 it's lines 13 through 25. The Court says: There is, was
13 a snippet of testimony that seemed to indicate, just a
14 bare snippet of testimony that might could substantiate a
15 self-defense charge. That was discussed in chambers and
16 we came to the conclusion that it was not a theory of the
17 Defendant that it was self-defense, that it was accidental
18 incident that took place. And more importantly it's not
19 consistent with what the Defendant said who's the only
20 witness to the altercation.

21 So that's what the Court said. They didn't say
22 that all four elements had been --

23 MR. SHAFFER: Your Honor, by saying there's a
24 snippet of evidence that would support a self-defense
25 charge, it's saying that there's some evidence of all

1 four, therefore it should have been charged. The second
2 out that the State's referring to in this case, the second
3 out is a) out against her for not guilty.

4 Your Honor, there's no reasonable trial strategy to
5 say, Well, I don't want the jury to consider this possible
6 defense that if they don't believe my client couldn't wind
7 up with a not guilty. There's just no reasonable trial
8 strategy for not allowing the judge to at least charge it.

9 THE COURT: Okay. I'll review the transcript which
10 I'm going to take your copy with me because I don't have a
11 copy.

12 MS. WILSON: That's fine, Your Honor.

13 THE COURT: I'll let you know something within 10
14 days.

15 MS. WILSON: Thank you. Your Honor, is there not a
16 copy in your packet, envelope?

17 THE COURT: Nope.

18 MS. WILSON: Oh really? I'm sorry.

19 THE COURT: That's okay.

20 MR. SHAFFER: I don't have a complete copy.

21 MS. WILSON: You have the scanned copy?

22 MR. SHAFFER: No, I have electronic.

23 MS. WILSON: I don't have a paper copy. Do you
24 want me to e-mail you a copy?

25 MR. SHAFFER: No, I have an electronic.

1 MS. WILSON: He can have that one. That's fine.

2 END OF CASE: 12:02 P.M.

3 ***

4 CERTIFICATE OF REPORTER

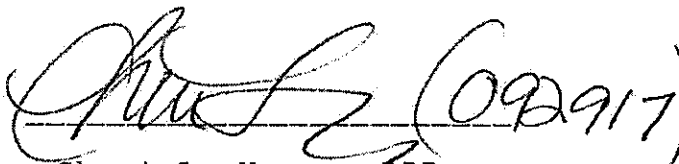
5 STATE OF SOUTH CAROLINA)

6 COUNTY OF AIKEN)

7
8 I, Cheri L. Young, Registered Professional Reporter
9 and Official Court Reporter for the State of South
10 Carolina, Second Circuit-At Large, do hereby certify that
11 the foregoing proceedings were written stenographically by
12 me using computer-aided translation; further, that the
13 foregoing is a true, accurate and complete record, to the
14 best of my skill and ability, of all the proceedings had
15 and evidence introduced in the hearing of the captioned
16 case, relative to appeal, in the Court of Common Pleas for
17 Beaufort County, on the 30th day of July, 2014.

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

20 I have hereunder set my hand this Monday, the 1st day
21 of June, 2015.

22
23 
24 Cheri L. Young, RPR
25 Official Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
	)	Case No. 2013-CP-27-0246
Tara Marie Weber, #347905,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This Court convened an evidentiary hearing into the matter on July 30, 2014, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by Tristan Shaffer, Esquire. Ashleigh Wilson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel, Robert Hughes, Esquire (hereinafter "trial counsel") was present and testified. This Court considered the testimony of Applicant and trial counsel, the trial transcript, the records of the Jasper County Clerk of Court regarding the conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. This Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was indicted at the August 2011 term of the Jasper County Grand Jury for voluntary manslaughter (2011-GS-27-0378). Applicant was represented by Robert Hughes, Esquire.

On September 12-14, 2011, the Applicant proceeded to trial and was convicted. The Applicant was sentenced by the Honorable Michael Nettles to confinement for a period of twenty-three years.

Applicant filed a timely Notice of Appeal. Her appeal was perfected by Robert Pachak, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Weber, No. 2013-UP-42 (S.C. Ct. App. January 30, 2013). The Remittitur was issued on February 21, 2013.

II. ALLEGATIONS

Applicant alleged the following grounds in her original application:

1. "Insufficient counsel."
 - a. Attorney mislead me.
2. "False information."
 - a. Witness lied on the stand.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. General

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id.

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this first prong, the proper measure of performance is whether plea counsel

provided representation within the range of competence required in criminal cases. Id. The Court strongly presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). Second, any deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 688.

This Court finds trial counsel’s testimony credible and persuasive. This Court finds Applicant’s testimony lacks credibility. This Court finds Applicant has failed to satisfy his burden of proving the alleged deficiencies. This Court also finds that Applicant has failed to prove she was prejudiced by trial counsel’s actions. This Court dismisses Applicant’s application for the reasons set out below:

B. Ineffective Assistance of Counsel

1. Self-Defense Jury Instruction

Applicant consistently told law enforcement and trial counsel that the incident was an accident. PCR p. 8. App. p. 84. Trial counsel testified Applicant’s account of the incident relied solely on the fact that the stabbing of her husband was an accident. PCR p. 10. Applicant gave three statements to law enforcement. Applicant stated that she retrieved a knife to hurt herself and the decedent attempted to take the knife away from her. App. p. 182. As decedent attempted to take the knife away, Applicant attempted to hand the knife to decedent and the knife went into his shoulder. App p. 183. Applicant had no apparent injuries. App. p. 241. Witnesses heard Applicant say, “If you don’t leave me alone I’m going to stab you.” App. p. 156.

Trial counsel testified it was trial strategy to avoid a self-defense jury instruction. PCR p. 11. He reasoned it would be difficult for a jury to understand two conflicting theories of how the incident took place. PCR p. 11. Trial counsel sought to avoid the conflicting theories of: Applicant killed him on purpose to defend herself and she didn't mean to kill him; it was an accident. This Court agrees and finds trial counsel used reasonable professional judgement and articulated a valid trial strategy for not requesting a self-defense instruction. "Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court also finds self-defense was not applicable in Applicant's case. There was no evidence that supported a self-defense instruction. Self-defense requires a defendant to meet each of four separate elements:

- A person is justified in using deadly force in self-defense when:
- (1) The defendant was without fault in bringing on the difficulty;
 - (2) The defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
 - (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief ...; and
 - (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011)

(1). The evidence at trial did not warrant a self-defense jury instruction. Applicant stated she retrieved the knife and, after retrieving it, accidentally stabbed decedent. App. p. 181. "Slater approached an altercation that was already underway with a loaded weapon by his side, and that such activity could be reasonably calculated to bring on the difficulty that arose." State v. Wigington, 375 S.C. 25, 32, 649 S.E.2d 185, 188 (Ct. App. 2007).

(2). Applicant's testimony directly contradicts the subjective belief that she was in danger from decedent. She testified there was no struggle and the incident was an accident. There was no apparent injury to Applicant, nor was an injury asserted or part of Applicant's story. App. p. 241.

(3). A prudent and reasonable person could not have had fear of imminent danger in the situation as described by Applicant. Where she has a knife to inflict self-harm and the stabbing is an accident. Applicant's testimony directly contradicts the objective belief that she was in danger from decedent.

(4). Applicant failed to prove she was prejudiced by alleged deficiency of trial counsel because her statements and the defense theory of the case relied on accident, which runs counter to the theory of self-defense.

This Court finds that Applicant has failed to satisfy her burden to prove that trial counsel erred by failing to ask for a self-defense instruction or that Applicant was prejudiced by the lack of self-defense instruction. Accordingly, Applicant has failed to satisfy her burden to prove ineffective assistance of counsel with regard to this allegation and it is denied and dismissed.

2. Decedent's Toxicology Report

Applicant failed to demonstrate she was prejudiced by trial counsel's failure to introduce the decedent's toxicology report. Trial counsel testified that the decedent's toxicology report did help to prove Applicant's assertion that the incident was an accident. PCR p. 18. Applicant presented no evidence that she was prejudiced by the failure of trial counsel to introduce the decedent's toxicology report.

This Court finds that Applicant has failed to satisfy her burden to prove that trial counsel erred by failing to the decedent's toxicology report or that Applicant was prejudiced by its failure to be introduced. Accordingly, Applicant has failed to satisfy his burden to prove ineffective assistance of counsel with regard to this allegation and it is therefore denied and dismissed.

3. Solicitor's Opening and Closing Statements

The State's opening and closing remarks appropriately utilized decedent's final words, "Tell my children I love them." App. p. 291. Applicant's argument is without merit. "A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony." Smith v. State, 375 S.C. 507, 523, 654 S.E.2d 523, 531-32 (2007). The comments made by the State in this case were the decedent's dying words as testified to by witnesses. App. p. 289. Here, any impropriety in the State's closing argument was not sufficient to warrant the grant of a new trial.

Trial counsel strategically used the same words in the dying declaration, in defense of Applicant's case. App. p. 291. Trial counsel testified his strategy was to point out what the decedent didn't say during his dying declaration. PCR p. 15. Decedent never accused Applicant of perpetrating a crime or expressed ill will toward her, which would haven logical if Applicant had murdered decedent. App. p. 291. Trial counsel testified he wanted the declaration to come in because he thought it strengthened Applicant's version of the incident. PCR. p. 22.

This Court finds that Applicant has failed to satisfy her burden to prove that trial counsel erred by failing to object to the Solicitor's open and closing arguments or that Applicant was prejudiced by the lack of objection. Accordingly, Applicant has failed to satisfy his burden to prove ineffective assistance of counsel with regard to this allegation and it is therefore denied and dismissed.

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 25 day of April, 2017.



J. CORDELL MADDOX JR.
Presiding Judge
14th Judicial Circuit

Anderson, South Carolina

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Jasper County

Honorable J. Cordell Maddox, Circuit Court Judge

TARA MARIE WEBER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001677

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
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South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

ORIGINAL

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S.C. SUPREME COURT

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ISSUE PRESENTED

Trial counsel erred in waiving the offer of a self-defense charge, which the trial judge ruled was applicable and supported by the facts in the case, per the strategy that the defense theory of accident was the only defense in the case, and that a self-defense claim would have been contradictory and in effect nullified petitioner's accident argument, because the deceased's decision to drag petitioner out of another man's bedroom and argue with her led petitioner to respond by stabbing back in self-defense.

STATEMENT

Petitioner Tara Marie Weber was convicted of voluntary manslaughter during the September 2011 term of the Jasper County General Sessions Court before Judge Michael G. Nettles. Robert Hughes represented petitioner at trial, and Assistant Solicitors Robert Ferguson and Tameka Legette appeared on behalf of the state. Judge Nettles sentenced petitioner to imprisonment for a period of twenty three years. App. 1-339. Petitioner appealed, but her conviction and sentence were affirmed by the South Carolina Court of Appeals. See State v. Weber, Unpublished Opinion No. 2013-UP-42 (S.C. Ct. App. January 30, 2013). Robert M. Pachak, Esquire, of the South Carolina Office of Appellate Defense represented petitioner on direct appeal.

On May 6, 2013, petitioner filed a PCR application with the Jasper County Office of the Clerk of Court. App. 341-347. The respondent filed a return dated June 5, 2014, requesting that a PCR hearing be held in response to petitioner's PCR action. App. 348-351.

A PCR hearing was convened on July 30, 2014, at the Jasper County Courthouse before Judge J. Cordell Maddox, Junior. App. 353-395. Petitioner was present at the hearing and represented by Tristan M. Shaffer, and Assistant Attorney General Ashleigh R. Wilson appeared at the hearing on behalf of the state. On April 25, 2017, Judge Maddox issued an Order of Dismissal in response to petitioner's PCR allegations of ineffective assistance of counsel in the case. App. 396-403.

Petitioner appealed Judge Maddox's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in waiving the offer of a self-defense charge, which the trial judge ruled was applicable and supported by the facts in the case, per the strategy that the defense theory of accident was the only defense in the case, and that a self-defense claim would have been contradictory and in effect nullified petitioner's accident argument, because the deceased's decision to drag petitioner out of another man's bedroom and argue with her led petitioner to respond by stabbing back in self-defense.

Kyle Way died from a stab wound to his chest on December 31, 2010, when petitioner reacted after Way dragged her away from another man's bedroom and argued with her.

At trial, Officer Kevin Smith stated he was dispatched to the mobile home park crime scene on the night of December 31, 2010, after hearing over the radio that "the sheriff's office received a call about an accidental stabbing." App. 142, l. 20 – App. 143, l. 10. Officer Smith stated that petitioner approached him after he arrived at the trailer where the deceased lay and received a voluntary summary from her (petitioner) as to what happened as follows:

She said that she was in the kitchen, and she'd been holding a knife, and she was planning to cut herself with the knife; and [the deceased] has come behind her to get the knife, and she turned around; and in the process of turning around, she said that she had accidentally stabbed him. App. 144, l. 24 – App. 145, l. 3.

Also, petitioner gave a statement recorded on audio video restating this explanation of how the stabbing occurred. See state's exhibit #3. App. 227, l. 14 – p. 230, l. 6.

Joshua Ayers and Kimberly Powell were present at the crime scene and testified that they overheard petitioner and the deceased talking and that they heard petitioner say "if you don't leave me alone I'm going to stab you." App. 153, l. 15 – App. 156, l. 23; App. 162, l. 20 – App. 166, l. 7.

On the night of the stabbing, the deceased found petitioner in an abandoned trailer with Dustin Roberts. Roberts testified at trial and admitted that he and petitioner were engaged in sexual relations in the vacant trailer on that night, and also that the deceased “came into the trailer [they] were in and he grabbed [petitioner] and drug (sic) her our and [that he] heard them arguing. App. 170, l. 2 – App. 172, l. 19. Roberts stated that petitioner and the deceased had a son and that petitioner had another child that might have belonged to him. App. 173, l. 18 – App. 175, l. 2.

The defense theory was that petitioner accidentally stabbed the deceased. However, petitioner did not testify at trial. Although self-defense was not charged by the trial judge; nonetheless, the trial judge was willing to charge self-defense based on what the trial judge stated was a “snippet of testimony that was – seemed to indicate that – just a bare snippet of testimony that would --- might could substantiate a self-defense charge.” App. 13-15. The trial judge’s remarks in reference to self-defense follow:

There is a.....was a snippet of testimony that was....just a bare snippet of testimony that would might could substantiate a self-defense charge...[but] in chambers...we (counsel) came to the conclusion that it was not a theory of the defendant that it was self-defense....that it was an accidental incident that took place...and more importantly, it’s not consistent with what the defendant said, who was the only witness to the altercation....and self-defense [will not be charged]...although it was discussed based on this snibbit of testimony. App. 298, lines 13-25.

During the PCR hearing held in the case, petitioner testified that counsel informed her that he would argue the defense of accident at trial. App. 381, l. 9-18. Trial counsel testified at the PCR hearing and stated that the altercation began after petitioner was found by the deceased in the company of another man and that she “took a knife and stabbed him,” and that appellant stated consistently that it was an accident. App. 359, l. 6-24; App. 360, l. 16-23; App. 361, l. 22-

23. Counsel added that he did not agree to the offer of a self-defense charge because that would have been admitting that “it wasn’t an accident” and that he “did not want the jury to have the idea that [petitioner] did it on purpose.” App. 362, l. 6 – App. 363, l. 3; App. 374, l. 2-4. However, counsel admitted that dragging petitioner away from another man’s embrace was aggression in terms of self-defense. App. 373, l. 13-20; App. 378, l. 13 – App. 379, l. 4.

PCR counsel’s argument regarding counsel’s error in not accepting a self-defense charge follows:

I don’t believe it’s a reasonable trial strategy to say that we’re not – well, I’m not going to give the jury another out to not convict the client. You know, basically you can argue -- I mean, clearly you cannot – you don’t have to argue everything that’s charged by the judge but the law requires that if there’s evidence of an offense, any evidence to support it which clearly, I mean, Judge Nettles even found and put on the record that there was some evidence to support it, based off of that, you know, it should have been charged to the jury. There’s not reasonable basis for saying, Well, let’s not give her another possible defense. You know, the State has to disprove self-defense beyond a reasonable doubt if there’s any evidence to support it. App. 388, l. 17 – App. 389, l. 5. Your Honor, I do believe that she was prejudiced by this or at least there’s a reasonable possibility that some juror could find that the state failed to disprove self-defense beyond a reasonable doubt. App. 389, l. 24 – App. 390, l. 2.

PCR counsel advised the PCR judge that the “primary issue..is the fact that [trial counsel] waived the self-defense jury instruction.” App. 357, l. 7-10. The PCR judge ruled that petitioner failed to satisfy her burden of proving that counsel erred in failing to accept a self-defense instruction or that petitioner was prejudiced by not receiving a self-defense instruction. App. 398-400.

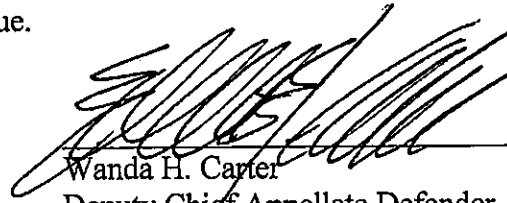
To establish self-defense, one must show that the defendant was without fault in bringing on the difficulty and that he believed he was in actual imminent danger of losing his life or

sustaining serious bodily injury, which under the circumstances a reasonably prudent person would also have believed, and that the defendant had no other means of avoiding the danger. State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984). Here, the deceased was angry after finding petitioner with another man and he dragged petitioner away from the other man and argued with her to the extent that petitioner felt he was harassing her because she asked him to leave her alone; and then the deceased came behind her and said give me the knife, and when she turned around the stabbing occurred. The deceased had been aggressive the entire time and she then used a knife; and furthermore, note that according to the record there was evidence that the deceased reached towards petitioner as he asked for the knife and thereafter the stabbing happened. App. 181, l. 20 – App. 182, l. 9; App. 144, l. 24 – App. 145, l. 3; App. 181, l. 20 – App. 182, l. 9; App. 172, l. 3-12.

In the case at bar, the evidence supported a self-defense charge. If there is any evidence of record from which it can be reasonably inferred that an accused justifiably inflicted a wound in self-defense, then the accused is entitled to a charge on the law of self-defense. State v. Wigington, 375 S.C. 25, 649 S.E.2d 185 (S.C. Ct. App. 2007). In addition, the state has the burden of disproving self-defense. State v. Burkhardt, 350 S.C. 252, 565 S.E.2d 248 (2002). Trial counsel's denial of the trial judge's offer to charge self-defense constituted deficient representation in violation of the Sixth Amendment (see Strickland v. Washington, 466 U.S. 668 (1984)), and but for the error, a reasonable probability exists that the outcome of petitioner's trial would have been different. A jury may believe or disbelieve evidence in whole or in part. State v. Johnson, 236 S.C. 207, 113 S.E.2d 540 (1960). Thus, if the jury disbelieved the defense of accident, petitioner might have received an acquittal on the self-defense claim.

CONCLUSION

Based on the foregoing argument, petitioner requests that this Court grant the petition and allow full briefing on the above raised issue.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of March, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Jasper County

Honorable J. Cordell Maddox, Circuit Court Judge

TARA MARIE WEBER,

PETITIONER

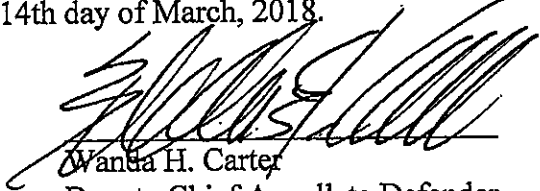
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

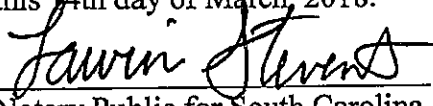
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Christian Saville, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Tara Marie Weber, #347905, at Camille Griffin Graham Correctional Center, 4450 Broad River Road, Columbia, SC 29210, this 14th day of March, 2018.


Wanda H. Carter

Deputy Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 14th day of March, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.

RECEIVED

JUL 30 2018

STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

CERTIORARI TO JASPER COUNTY
Court of Common Pleas
Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2017-001677

TARA MARIE WEBER,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENTS'S ISSUE PRESENTED

Did the PCR court properly find Petitioner failed to satisfy her burden of proving ineffective assistance of counsel where Trial Counsel properly did not request a jury instruction on self-defense because Petitioner's entire defense was premised on the theory that the victim's death was an accident, where Petitioner herself consistently asserted the death was an accident, and where the facts of the case in which Petitioner stabbed an unarmed man after she threatened to harm herself fall well short of supporting a claim of self-defense?

STATEMENT OF THE CASE

Procedural History

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Jasper County Clerk of Court. During its August 2011 term, the Jasper County Grand Jury indicted Petitioner for voluntary manslaughter (2011-GS-27-0378). On September 12, 2011, Petitioner proceeded to a jury trial before the Honorable Michael G. Nettles. Robert M. Hughes, Esquire ("Trial Counsel"), represented Petitioner at trial. Assistant Solicitors Robert Ferguson and Tameaka Legette prosecuted the case. The jury found Petitioner guilty as indicted of voluntary manslaughter. On September 14, 2011, Judge Nettles sentenced Petitioner to imprisonment for twenty-three years for voluntary manslaughter.

A timely notice of appeal was filed and an appeal was perfected on Petitioner's behalf. Robert M. Pachak, Esquire, of the Office of Appellate Defense, perfected the appeal. On January 30, 2013, the South Carolina Court of Appeals affirmed Petitioner's conviction and sentence. State v. Weber, Op. No. 2013-UP-42 (Ct. App. 2013). The remittitur was issued on February 21, 2013.

On May 6, 2013, Petitioner filed an application for post-conviction relief. The State made its return on June 5, 2014. An evidentiary hearing into the matter was convened on July 30, 2014, before the Honorable J. Cordell Maddox, Jr. Petitioner was present at the hearing and represented by Tristan M. Shaffer, Esquire. Assistant Attorney General Ashleigh R. Wilson represented the State. Judge Maddox denied and dismissed the application with prejudice by an order of dismissal filed May 1, 2017.

Subsequently, Petitioner filed a timely notice of appeal on August 7, 2017. Petitioner then filed a petition for writ of certiorari on March 14, 2018. This return follows.

STATEMENT OF THE FACTS

Petitioner's charges resulted from an incident on December 31, 2010, in which Petitioner fatally stabbed her boyfriend Kyle Way ("Victim") in the kitchen of a mobile home she shared with the victim and two children. When Victim awoke in the middle of the night and noticed Petitioner was not there, he went to a nearby vacant mobile home where he found Petitioner in the company of a man with whom she had a sexual relationship. App. p. 107, ll. 6-10; p. 171, ll. 2-24. This man testified at trial he understood Victim knew about this sexual relationship but continued to take care of Petitioner and the children. App. p. 173, l. 25 – p. 174, l. 2; p. 174, ll. 17-21. The man testified Petitioner "grabbed Victim and drug her out" of the trailer but explained he never saw them physically fight, but Victim and Petitioner argued. App. p. 172, ll. 8-22. This argument continued outside that mobile home. App. p. 107, ll. 9-12. The verbal argument continued as the two of them entered Victim's mobile home. App. p. 107, ll. 12-14. Petitioner retrieved a knife from the kitchen, and according to multiple statements Petitioner gave to law enforcement, then told Victim that she was going to cut herself with the knife.¹ App. p. 144, ll. 24 – p. 145, l. 1; p. 185, ll. 20-24; p. 229, ll. 2-6. According to Petitioner's own statements, Victim then approached Petitioner from behind in an effort to retrieve the knife from her, at which point he was stabbed under his collarbone, fatally severing his subclavian artery and puncturing his lung. App. p. 107, ll. 16-20.

Petitioner consistently told law enforcement the stabbing was an accident and never indicated Victim tried to attack her. She told responding officer Kevin Smith she accidentally stabbed Victim in the process of turning around when he had approached her for the knife when she was threatening to hurt herself. App. p. 144, l. 24 – p. 145, l. 1. 3. Petitioner also consistently

¹ Petitioner also told law enforcement that sometimes she feels like hurting herself and has intentionally cut herself in the past. App. p. 181, ll. 10-13; p. 228, l. 23 – p. 229, l. 2.

told responding officer Detective Raymond Moran the stabbing was an accident, never indicated that Victim attacked her, and never indicated the stabbing was anything but an accident. App. p. 188, ll. 10-19. Petitioner also described an accidental stabbing to Detective Jeff Crosby. App. p. 229, l. 22 – p. 230, l. 6.

There were two other adults sleeping at Victim's mobile home that night, who both testified they were awakened when Petitioner and Victim came in arguing. App. p. 154, ll. 17-25; p. 163, ll. 13-22. Neither saw the stabbing, but both testified to hearing an argument Petitioner remark that if Petitioner did not leave her alone she was going to stab him. App. p. 156, ll. 21-23; p. 163, l. 24 – p. 164, l. 2. Both also testified Petitioner and the injured Victim came running into their room instructing them to call 911 after the stabbing. App. p. 164, ll. 3-13; p.

Detective Crosby testified Petitioner did not appear to have any injuries that night. App. p. 241, 10-14. Regarding the Victim's fatal injury, the forensic pathologist who performed the autopsy testified the knife wound was 3.2 inches deep and consistent with an overheard motion. App. p. 254, ll. 12-19; p. 263, ll. 5-8. There was no testimony or evidence presented to indicate Petitioner was injured or threatened by Victim.

Jury Charge Conference

A charge conference was held in chambers with Judge Nettles, Trial Counsel, and the Solicitor. Judge Nettles explained on the record that as a result of the charge conference, all agreed that voluntary manslaughter, involuntary manslaughter, and accident would be charged to the jury. App. p. 298, ll. 4-12. Regarding a potential charge on self-defense, Judge Nettles said the following:

There is a – was a snibbit of testimony that was – seemed to indicate that – just a bare snibbit of testimony that would – might could substantiate a self-defense charge. That was discussed in chambers and we came to the conclusion that it was not a theory of the defendant that it was self-defense, that it was an accidental

incident that took place. And more importantly, it's not consistent with what the defendant said, who was the only witness to the altercation. And as a result of that, although it had been discussed, the charge of self-defense is not in the charge. It is – although it was discussed based on this snibbit of testimony, is that the defense's position? App. p. 298, ll. 13-25.

Trial Counsel subsequently affirmed that was the defense's position. App. p. 299, l. 1. Pursuant to this decision, Judge Nettles charged the jury on the defense of accident, and not self-defense.

RELEVANT PCR HEARING TESTIMONY

Trial Counsel

At the PCR hearing convened on July 30, 2014, Trial Counsel testified he did not want the Trial Judge to charge on self-defense because he was pursuing an accident defense, and a self-defense theory would have been contrary not only to their defense strategy of accident, but also contrary to what Petitioner had told Trial Counsel and police, which was to say the stabbing was an accident. App. p. 362, l. 18 – p. 363, l. 3; p. 372, ll. 1-14; p. 373, ll. 7-12. Moreover, Trial Counsel explained he did not feel she had a valid self-defense claim. Specifically, Trial Counsel explained the following when asked why he did not request a self-defense charge:

Because I was going for an accident defense, and the hardest thing to explain to a jury is it was an accident but if it wasn't an accident she did it in self-defense. I was trying to not – I did not want the jury to have the idea that she did it on purpose. There was not enough, including her testimony, that was in self-defense. So, having a self-defense charge in there, especially if I tried to argue it in closing, would have basically admitted to the jury that it wasn't an accident and I was going for an accident defense which is what she told me." App. p. 362, l. 18 – p. 363, l. 3.

Trial Counsel testified he met with Petitioner on about six or seven monthly visits, then two or three times a week in the couple weeks leading up to trial. App. p. 384, ll. 12-18. Throughout this extensive representation and discussions of possible defenses, Petitioner would never tell Trial Counsel the incident was anything other than an accident. App. p. 360, ll. 16-23. Trial Counsel recalled all three statements Petitioner gave to law enforcement claimed the incident to be an

accident. App. p. 361, ll. 21-23. Furthermore, Trial Counsel testified he spoke with Petitioner about her version of the facts multiple times, and the facts did not seem to indicate self-defense. App. p. 372, ll. 1-6. When questioned as to whether there was any evidence presented that Victim was armed or had shown any aggression toward Petitioner before the stabbing, Trial Counsel recalled, “No. Other than – I don’t remember if it was actually forcing her to leave the other place, but basically escorting her from the other place where she had been sleeping with the third party. But that was the only thing that could have even been considered aggressive.” App. p. 373, ll. 13-20. Trial Counsel explained he did not want the jury to hear the self-defense charge and get the idea she actually meant to stab Victim because the whole point of his accident argument was there was no intent whatsoever. App. p. 374, ll. 2-4.

Petitioner

Petitioner also testified at the PCR hearing and recalled she told Trial Counsel exactly what happened and Trial Counsel informed her before trial he was planning to argue the incident was an accident. App. p. 380, ll. 12-16; p. 381, ll. 14-17.

STANDARD OF REVIEW

This Court must affirm the PCR court's factual findings if there is any evidence of probative value in the record to support them. Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005) (citing Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989)). This Court should reverse the PCR court only where there is no probative evidence to support the decision or the decision was controlled by an error of law. Kolle v. State, 386 S.C. 578, 589, 690 S.E.2d 73, 79 (2010). This Court "gives great deference to the [PCR] court's findings of fact and conclusions of law." Id. (quoting Dempsey, 363 S.C. at 368).

In a PCR action, the applicant bears the burden of proving the allegations in his application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry, 300 S.C. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at

690). An applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

ARGUMENT

The PCR court properly found Petitioner failed to satisfy her burden of proving ineffective assistance of counsel where Trial Counsel properly did not request a jury instruction on self-defense because Petitioner's entire defense was premised on the theory that the victim's death was an accident, where Petitioner herself consistently asserted the death was an accident, and where the facts of the case in which Petitioner stabbed an unarmed man after she threatened to harm herself fall well short of supporting a claim of self-defense.

Petitioner argues Trial Counsel was ineffective for waiving an offer of a self-defense jury charge. However, Trial Counsel had numerous compelling reasons to request self-defense not be charged to the jury, and notwithstanding, the facts of this case did not amount to a viable claim of self-defense. Therefore, the PCR court correctly found Petitioner failed to carry her burden of proof as to both deficiency and prejudice from Trial Counsel's strategic decision.

At the PCR hearing, Trial Counsel repeatedly asserted his trial strategy was an accident defense, and therefore did not want the jury to hear a charge on self-defense, which would have conflicted with the accident theory. App. p. 362, l. 18; p. 372, l. 25 – p. 373, l. 6. "Courts must be wary of second guessing counsel's trial tactics; and where trial counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel." Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). It should also be recognized the PCR court found the testimony of Trial Counsel to be credible and persuasive. The PCR court was in the best position to determine credibility and, as such, his findings must be given great deference.

See Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993). In the present case, Trial Counsel explained he did not want the jury to have any idea that Petitioner stabbed Victim on purpose since he was pursuing an accident defense and elaborated, “The hardest thing to explain to a jury is it was an accident but if it wasn’t an accident she did it in self-defense ... I was going for an accident defense which is what she told me.” App. p. 362, l. 18 – p. 363, l. 3. Clearly, a claim of self-defense would have contradicted the defense’s theory that the incident was an accident. Indeed, Trial Counsel testified he did not want the jury to get the idea Petitioner actually meant to do it because “the whole point of an accident argument is there was no intent whatsoever.” App. p. 374, ll. 2-4. Trial Counsel’s strategy is further evidenced by his closing argument at trial in which he explicitly argued at length that the stabbing was an accident and Petitioner therefore must be found not guilty. App. p. 296, l. 7 – p. 297, l. 19. Trial Counsel certainly made a reasonable and valid strategic decision in avoiding a jury charge that would have been in direct conflict with the crux of the defense strategy and theory.

Furthermore, the defense’s accident strategy was reasonably based upon the consistent representations made by Petitioner. At the PCR hearing, Trial Counsel testified to meeting with Petitioner on six or seven monthly visits and then two to three times a week in the couple weeks leading up to trial. App. p. 384, ll. 16-18. Throughout this extensive representation, Petitioner consistently maintained that the stabbing was an accident. Trial Counsel testified Petitioner “would never tell me [anything] other than it was an accident.” App. p. 360, l. 22. Trial Counsel recalled discussing possible defenses with Petitioner and she never wavered from her claim the stabbing was accidental. App. p. 372, ll. 7-14. This is also consistent with *all* three statements Petitioner gave to law enforcement in which she claimed the stabbing was an accident and at no time indicated the stabbing was anything other than an accident. App. p. 144, l. 24 – p. 145, l. 3;

p. 188, ll. 10-15; p. 228, l. 23 – p. 229, l. 2. All the information available to Trial Counsel, therefore, dictated a defense of accident in this case, which would have been ill-served by a conflicting self-defense jury charge.

Notwithstanding the fact that a self-defense charge would have undermined Petitioner's defense theory that the incident was an accident, the PCR court properly found self-defense is not applicable to this case. Self-defense requires a defendant to meet each of four separate elements to be justified in using deadly force:

- (1) The defendant was without fault in bringing on the difficulty;
- (2) The defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger.
- (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief ...; and
- (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). App. p. 399.

The PCR court properly observed Petitioner's statements directly contradict a belief she was in imminent danger from decedent. Petitioner gave multiple statements to law enforcement in which she claimed to have threatened to hurt *herself* with the knife, when Victim then tried to retrieve the knife from her hand and was accidentally stabbed. App. p. 144, l. 24 – p. 145, l. 3; p. 181, l. 20 – p. 182, l. 2; p. 228, l. 23 – p. 229, l. 2. Trial Counsel testified he spoke with Petitioner about her version of the facts multiple times and her story did not indicate self-defense. App. p. 372, ll. 1-6. None of Petitioner's statements, nor does any testimony indicate a struggle or physical altercation. Furthermore, there is no evidence or testimony to bring into doubt Petitioner's own claims that it was she who initially retrieved the knife from the kitchen.

Petitioner's reliance on the Trial Judge's comments that there *might* have been enough

testimony to justify a self-defense jury charge is misplaced. Pet. p. 4. The Trial Judge's mere suggestion of a "bare snippet of testimony that might would substantiate a self-defense charge" in itself demonstrates the scarcity of testimony to suggest self-defense. App. p. 298, ll. 13-25 (emphasis added). In fact, the "bare snippet" of testimony the Trial Judge alluded to was from Dustin Roberts, the man who was caught with Petitioner in the vacant trailer. Mr. Roberts did testify, "[Victim] didn't say anything to me. He came into the trailer we were in and he grabbed Ms. Weber and drug her out." App. p. 172, ll. 8-10. Mr. Roberts then proceeded to describe a scene in which Victim did not literally "drag" Petitioner out of the vacant trailer, but rather testified the two were arguing back and forth. App. p. 172, l. 11 – p. 173, l. 13. Mr. Roberts testified he never saw them physically fight, but just heard them arguing. App. p. 172, ll. 20-24. The testimony from Mr. Roberts therefore indicated there was just a verbal argument rather than a physical altercation. Furthermore, Mr. Roberts the fatal stabbing occurred after the argument had spilled over into Victim's nearby trailer, not where Petitioner was found in the company of Mr. Roberts. For these reasons, the "bare snippet" of testimony alluded to at the charge conference would have been of little use to evidence self-defense. The absence of physical aggression is further corroborated by Detective Crosby's testimony that Victim was the only individual injured and Petitioner did not appear to have any injuries from the incident. App. p. 241, ll. 1-14. For these reasons, the record supports the PCR court's finding that self-defense was not applicable in this case, and there is no reasonable probability the result of the proceedings would have been different had the self-defense charge been given.

Therefore, there is ample probative evidence to support the PCR court's finding that Petitioner has not met her burden of proving Trial Counsel was deficient when Trial Counsel used reasonable professional judgment and articulated a valid trial strategy of not requesting a

self-defense instruction to prevent harm to his accident defense. App. pp. 399-400. Notwithstanding, ample probative evidence also supports the PCR court's finding that self-defense was not applicable to the facts of this case, and Petitioner therefore has not met her burden of proving prejudice from Trial Counsel's decision to avoid a jury charge that would have contradicted her entire defense theory.

CONCLUSION

For the foregoing reasons, this Court should deny the Petitioner's petition for writ of certiorari. However, if this Court grants certiorari, Respondent respectfully requests the opportunity to more fully brief the issues discussed herein.

Respectfully submitted,

ALAN WILSON
Attorney General

CHRISTIAN SAVILLE
Assistant Attorney General

By: *Christian Saville*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

07/31, 2018

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

JUL 30 2018

CERTIORARI TO JASPER COUNTY

Court of Common Pleas

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2017-001677

TARA MARIE WEBER,

Petitioner,

v.

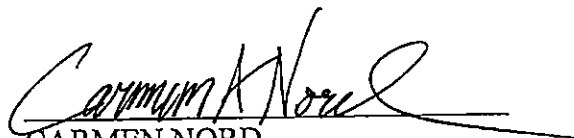
STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petition for Writ of Certiorari, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Mrs. Wanda H. Carter
S.C. Commission on Indigent Defense
Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

This 30th day of July, 2018
CARMEN NORD
Legal Assistant

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

CERTIORARI TO JASPER COUNTY
Court of Common Pleas
J. Cordell Maddox, Jr., Circuit Court Judge

JUL 30 2013

S.C. SUPREME COURT

Appellate Case No. 2017-001677

TARA MARIE WEBER,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

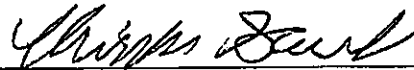
PROOF OF SERVICE

I, Christian Saville, certify that I have served the within **Return to Petition for Writ of Certiorari** on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter
South Carolina Commission on Indigent Defense—Division of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 31 day of July, 2018.


CHRISTIAN SAVILLE
Assistant Attorney General
S.C. Bar No. 103272
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

The Supreme Court of South Carolina

Tara Marie Weber, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001677

ORDER

Pursuant to Rule 243(l) of the South Carolina Appellate Court Rules, this post-conviction relief appeal is hereby transferred to the South Carolina Court of Appeals.

FOR THE COURT

BY



CLERK

Columbia, South Carolina
August 13, 2018

cc:

Wanda H. Carter, Esquire
Christian Aaron Saville, Esquire
The Honorable Jenny A. Kitchings

The South Carolina Court of Appeals

Tara Marie Weber, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001677

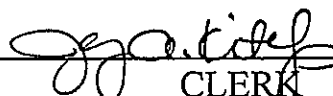
The Honorable J. Cordell Maddox, Jr.
Jasper County
Trial Court Case No. 2013CP2700246

ORDER

Petitioner has failed to timely serve the notice of appeal, as required by Rule 243 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY


CLERK

Columbia, South Carolina

cc:

Wanda H. Carter, Esquire
Christian Aaron Saville, Esquire
Tara Weber, 347905
The Honorable J. Cordell Maddox, Jr.

FILED

July 2, 2019

STATE OF SOUTH CAROLINA

County of JasperTara Weber 347905

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2019-CP-27-0434

APPLICATION FOR
POST-CONVICTION RELIEFFILED
JASPER COUNTY
CLERK OF COURT
2019 MAR -6 AM 9:55**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Camille Griffin Graham
2. Name and location of Court which imposed sentence Aiken/Ridgeland SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011GS 2700378
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) September 12-14, 2011 23 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty guilty
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Aiken SC
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 5, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) insufficient counsel
- (b) false information
- (c) belated Austin PCR Appeal 7-5-2019
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Attorney miss lead me
- (b) Wittness lied on the stand
- (c) false statements
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? unappeal
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. appeal by attorney did it in 10 days
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Aiken SC
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. dismissed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. 8/24/11
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. dismissed
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective Counsel
 (b) false information
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? dismissed
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Robert Hughes
 ii. Robert M Packak (PO Box 11589 Columbia SC 29211-1589)
 iii. Mr Shaffer
Wanda Carter
 (b) the proceedings at which each such attorney represented you:
 i. Hughes, trial
Packak, appeal
 ii. Mr, Shaffer, ap PCR
 iii. Wanda Carter PCR Appeal

19. State clearly the relief you seek in filing this application:

Reduce Sentence / lesser Charge

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

No

STATE OF SOUTH CAROLINA)

County of Ridgland)

VERIFICATION

I, Lola Williams, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Lola Williams

SWORN to and subscribed before me this 23rd
day of October, 2019.

Kanzena Robinson (L.S.)
Notary Public

My Commission Expires: 8/5/2024

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Tara Weber, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this
23rd day of July, 2019



Notary Public

My Commission Expires: 8/5/2024

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

Tara Weber, SCDC# 347905,
Applicant,

v.

State of South Carolina,
Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-27-0436

**RETURN AND PARTIAL MOTION
TO DISMISS**
(Counsel Already Appointed)

In response to the post-conviction relief application filed August 6, 2019 by Applicant Tara Weber, Respondent the State of South Carolina would show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. During its August 2011 term, the Jasper County Grand Jury indicted Applicant for voluntary manslaughter (2011-GS-27-0378) for the stabbing death of her live-in boyfriend during a heated altercation. On September 12, 2011, Applicant proceeded to a jury trial before the Honorable Michael G. Nettles, circuit court judge. Robert M. Hughes, Esquire represented Applicant. Assistant Solicitors Robert Ferguson and Tameaka Legette of the Fourteenth Circuit Solicitor's Office prosecuted the case. The jury convicted Applicant as indicted. Judge Nettles sentenced Applicant to imprisonment for twenty-three years.

Applicant filed a timely notice of appeal and was represented on appeal by Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense-Office of Appellate Defense, who submitted a Brief of Appellant pursuant to Anders v. California, 386 U.S. 738 (1967), along with a petition to be relieved as counsel. On January 30, 2013, the South Carolina Court of Appeals dismissed the appeal and granted appellate counsel's petition to be

relieved. State v. Weber, Op. No. 2013-UP-42 (Ct. App. 2013). The remittitur was issued on February 21, 2013.

On May 6, 2013, Applicant filed an application for post-conviction relief, asserting

(a) insufficient counsel: "attorney mis[led] me."

(b) false information: wit[ne]ss lied on the stand."

Respondent made its return on June 5, 2014, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on July 30, 2014, before the Honorable J. Cordell Maddox, Jr. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. At the hearing, Applicant proceeded forward on claims counsel was ineffective for: failing to request a jury instruction on self-defense, failing to introduce decedent's toxicology report; and failing to object to the State's opening and closing arguments. Judge Maddox denied and dismissed the application with prejudice by an order of dismissal filed May 1, 2017.

Applicant filed a notice of appeal on August 7, 2017. Petitioner then filed a petition for writ of certiorari and appendix on March 14, 2018. On July 30, 2018, Respondent filed its return to the petition for writ of certiorari. Thereafter, the matter was transferred to the South Carolina Court of Appeals pursuant to Rule 243(l), SCACR. On July 2, 2019, the Court of Appeals dismissed the appeal based on Applicant's failure to timely file the notice of appeal under Rule 243, SCACR. The remittitur was issued on July 18, 2019. Applicant then initiated this current action.

II. Statement of the Facts

Applicant's charges resulted from an incident on December 31, 2010, in which Applicant fatally stabbed her boyfriend Kyle Way ("Victim") in the kitchen of a mobile home she shared with the victim and two children. When Victim awoke in the middle of the night and noticed

Applicant was not there, he went to a nearby vacant mobile home where he found Applicant in the company of a man with whom she had a sexual relationship. App. p. 107, ll. 6-10; p. 171, ll. 2-24. This man testified at trial he understood Victim knew about this sexual relationship but continued to take care of Applicant and the children. App. p. 173, l. 25 – p. 174, l. 2; p. 174, ll. 17-21. The man testified Applicant “grabbed Victim and drug her out” of the trailer but explained he never saw them physically fight, but Victim and Applicant argued. App. p. 172, ll. 8-22. This argument continued outside that mobile home. App. p. 107, ll. 9-12. The verbal argument continued as the two of them entered Victim’s mobile home. App. p. 107, ll. 12-14. Applicant retrieved a knife from the kitchen, and according to multiple statements Applicant gave to law enforcement, then told Victim that she was going to cut herself with the knife.¹ App. p. 144, ll. 24 – p. 145, l. 1; p. 185, ll. 20-24; p. 229, ll. 2-6. According to Applicant’s own statements, Victim then approached Applicant from behind in an effort to retrieve the knife from her, at which point he was stabbed under his collarbone, fatally severing his subclavian artery and puncturing his lung. App. p. 107, ll. 16-20.

Applicant consistently told law enforcement the stabbing was an accident and never indicated Victim tried to attack her. She told responding officer Kevin Smith she accidentally stabbed Victim in the process of turning around when he had approached her for the knife when she was threatening to hurt herself. App. p. 144, l. 24 – p. 145, l. 1. 3. Applicant also consistently told responding officer Detective Raymond Moran the stabbing was an accident, never indicated that Victim attacked her, and never indicated the stabbing was anything but an accident. App. p. 188, ll. 10-19. Applicant also described an accidental stabbing to Detective Jeff Crosby. App. p. 229, l. 22 – p. 230, l. 6.

¹ Petitioner also told law enforcement that sometimes she feels like hurting herself and has intentionally cut herself in the past. App. p. 181, ll. 10-13; p. 228, l. 23 – p. 229, l. 2.

There were two other adults sleeping at Victim's mobile home that night, who both testified they were awakened when Applicant and Victim came in arguing. App. p. 154, ll. 17-25; p. 163, ll. 13-22. Neither saw the stabbing, but both testified to hearing an argument Applicant remark that if Applicant did not leave her alone she was going to stab him. App. p. 156, ll. 21-23; p. 163, l. 24 – p. 164, l. 2. Both also testified Applicant and the injured Victim came running into their room instructing them to call 911 after the stabbing. App. p. 164, ll. 3-13.

Detective Crosby testified Applicant did not appear to have any injuries that night. App. p. 241, 10-14. Regarding the Victim's fatal injury, the forensic pathologist who performed the autopsy testified the knife wound was 3.2 inches deep and consistent with an overheard motion. App. p. 254, ll. 12-19; p. 263, ll. 5-8. There was no testimony or evidence presented to indicate Applicant was injured or threatened by Victim.

During trial, a charge conference was held in chambers. Judge Nettles explained on the record that as a result of the charge conference, all agreed that voluntary manslaughter, involuntary manslaughter, and accident would be charged to the jury. App. p. 298, ll. 4-12. Regarding a potential charge on self-defense, Judge Nettles said the following:

There is a – was a snibbit of testimony that was – seemed to indicate that – just a bare snibbit of testimony that would – might could substantiate a self-defense charge. That was discussed in chambers and we came to the conclusion that it was not a theory of the defendant that it was self-defense, that it was an accidental incident that took place. And more importantly, it's not consistent with what the defendant said, who was the only witness to the altercation. And as a result of that, although it had been discussed, the charge of self-defense is not in the charge. It is – although it was discussed based on this snibbit of testimony, is that the defense's position? App. p. 298, ll. 13-25.

Trial Counsel subsequently affirmed that was the defense's position. App. p. 299, l. 1. Pursuant to this decision, Judge Nettles charged the jury on the defense of accident, and not self-defense.

III. Current Application

In her second and current application for post-conviction relief, Applicant alleges she is being held in custody unlawfully based on the following grounds:

- (a) insufficient counsel: "attorney mis[led] me."
- (b) false information: wit[ne]ss lied on the stand."
- (c) belated Austin PCR appeal

As relief requested, Applicant states she is seeking "reduced sentence/lesser charge."

Attached to this Return and incorporated by reference are the records of the Jasper County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's trial, Applicant's appellate records (including briefs and the record on appeal), the records from Applicant's first post-conviction relief matter and the subsequent appeal, and this current application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Belated Appellate Review of Prior PCR Action

Applicant alleges she was denied the right to an appeal from the denial of her first post-conviction relief action application. The record establishes that although prior PCR counsel filed a notice of appeal, it was untimely, and as a result, the Court of Appeals dismissed the appeal without reaching the merits of the issue raised.

"The right to seek appellate review of the denial of PCR is expressly authorized by state law." Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991); S.C. Code Ann. § 17-27-100 (2014). A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently

waived. Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999). However, an applicant may waive the right to appeal by making a "knowing and intelligent decision not to pursue the appeal." Simuel v. State, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010). "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981). Even if the PCR court determines the applicant did not freely and voluntarily waive his or her appellate rights, the applicant must still petition the South Carolina Supreme Court to determine whether he was prejudiced by his failure to obtain review of a meritorious issue. Odom, 337 S.C. at 263, 523 S.E.2d at 756.

Respondent submits this allegation raises questions of fact which cannot be conclusively refuted by the record, and, therefore, requires an evidentiary hearing be held to determine if Applicant is entitled to belated appellate review pursuant to Austin. Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

V. Request for Summary Dismissal of All Other Allegations

Respondent submits any further claims should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

The remittitur from Applicant's direct appeal was issued on February 21, 2013, and this application was filed more than a year following the remittitur. Therefore, Respondent moves to summarily dismiss any claims in this application beyond the belated appeal claim for Applicant's failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

Further, Respondent submits any other claims Applicant raises claims must be summarily dismissed as successive to Applicant's previous application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were

not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Here, Applicant not only could have raised these additional grounds for relief in her prior post-conviction relief application, she did raise these allegations in her initial PCR action. Any allegation beyond Applicant's belated appeal claim would have to be supported by sufficient reasons why it could not have been raised in the previous post-conviction relief Application. Applicant has presented no such reason. Therefore any additional claims Applicant may present are barred as successive.

Additionally, the application is barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.; see also Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

Here, Applicant had a full opportunity to litigate all her allegations in her prior action. Applicant's present allegations are indistinguishable from those offered in her prior application for post-conviction relief. The prior PCR Court issued a final judgement on the merits on very same issues that Applicant now raises in his present action. The finality of the previous Court

rulings should be respected, and the application should be summarily dismissed as barred by the doctrine of *res judicata*.

VI. Response to All Other Allegations

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VII. Request for an Evidentiary Hearing and Partial Summary Dismissal

WHEREFORE, Respondent requests an evidentiary hearing solely to address the issue of whether counsel was ineffective in failing to appeal the order denying Applicant's initial application for post-conviction relief; Respondent further moves to summarily dismiss any additional claim for being successive to Applicant's previous PCR application, for failure to file within the Statute of Limitations and is barred by the doctrine of *res judicata*.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: s/Megan Harrigan Jameson
ATTORNEYS FOR RESPONDENT

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December 3, 2020

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Tara Weber, # 347905

Case No.: 2019-CP-27-00436

Applicant,

v.

Certificate of Service

State of South Carolina

Respondent,

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion To Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Kristian Falk
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402

DATED this 3rd day of December, 2020.


Katie Wade, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA
2 IN THE COURT OF COMMON PLEAS
3 COUNTY OF JASPER

4 Tara M. Weber,
5 Petitioner,

6 vs. Transcript of Record
2019-CP-27-0436

7 The State of South Carolina,
8 Respondent.

9

10

11 July 20, 2022
12 Jasper, South Carolina

13 B E F O R E:

14 The HONORABLE KRISTI F. CURTIS

15

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

17 Lauren Mims, Representing the Petitioner

18 James Falk, Representing the Respondent

19

20

21 SHARON G. HARDOON, CSR
22 Official Circuit Court Reporter, III

23

24

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1 THE COURT: Tara Weber. Is this you,
2 Miss Mims?

3 MS. MIMS: Yes.

4 THE COURT: You want to start us off?

5 MS. MIMS: Yes. May it please the Court?

6 THE COURT: Yes, ma'am.

7 MS. MIMS: Your Honor, Lauren Mims on
8 behalf of the State of South Carolina.

9 This is the post-conviction relief matter
10 of Tara Weber pursuant to *Austin v. State*. That
11 is docket number 2019-CP-27-0436.

12 During the August 2011 term, the Jasper
13 County Grand Jury indicted Applicant of voluntary
14 manslaughter for the stabbing death of her live-in
15 boyfriend during a heated altercation. On
16 September 12th, 2011, Applicant proceeded to a
17 jury trial before the Honorable Michael G.
18 Nettles, Circuit Court judge. Robert Hughes,
19 Esquire represented Applicant. Assistant
20 Solicitor Robert Ferguson and Tameaka Legette of
21 the Fourteenth Circuit Solicitor's Office
22 prosecuted the case. The jury convicted Applicant
23 as indicted. Judge Nettles sentenced Applicant to
24 imprisonment for 23 years.

25 Applicant filed a timely notice of appeal

1 and was represented on appeal by Appellate
2 Defender Robert M. Pachak of the South Carolina
3 Commission on Indigent Defense-Office of the
4 Appellate Defense, who submitted a brief pursuant
5 *Anders v. California*, along with a petition to be
6 relieved as counsel.

7 On January 30th of 2013, the
8 South Carolina Court of Appeals dismissed the
9 appeal and granted Appellate Counsel petition to
10 be relieved.

11 The Remittitur was issued on February 21,
12 2013.

13 On May 6, 2013, Applicant filed for an
14 application of post-conviction relief, asserting
15 the following issues; insufficient counsel and
16 false information.

17 Respondent made its return on June 5,
18 2014, requesting an evidentiary hearing. An
19 evidentiary hearing into this matter was convened
20 on July 30, 2014, before the Honorable J. Cordell
21 Maddox, Jr. Applicant was present at the hearing
22 and represented by the Tristan Shaffer. At the
23 hearing, Applicant proceeded forward on claims
24 that counsel was ineffective for failing to
25 request a jury instruction on self-defense,

1 failing to introduce decedent's toxicology report,
2 and failing to object to the State's opening and
3 closing arguments. Judge Maddox denied and
4 dismissed the application with prejudice by an
5 order of dismissal filed May 1, 2017.

6 Applicant filed a notice of appeal on
7 August 7th of 2017. Petitioner then filed a
8 petition for writ of certiorari and appendix on
9 March 14, 2018.

10 On July 30, 2018, Respondent filed its
11 return to the petition for writ of certiorari.
12 Thereafter, the matter was transferred to the
13 South Carolina Court of Appeals.

14 On July 2nd, 2019, the Court of Appeals
15 dismissed the appeal based on Applicant's failure
16 to timely file the notice of appeal under
17 Rule 243, and the remittitur was issued on
18 July 18, 2018.

19 Applicant then initiated this current
20 action alleging insufficient counsel, false
21 information, and a belated Austin appeal, and it
22 is our understanding that we will only be going
23 forward on the Austin claim.

24 THE COURT: Okay. Mr. Falk?

25 MR. FALK: Your Honor, we can't have two

1 bites at the apple on a PCR hearing. You only get
2 one chance at a PCR hearing.

3 And, actually, I think that Mr. Shaffer
4 did a good job and framed up a very good issue at
5 the PCR hearing, and I think it's a very good
6 issue on appeal that was raised. And it's just
7 unfortunate that the Court took it under our
8 motion to deny this appeal when this case was
9 ready for oral argument.

10 Do you know what the issue was?

11 The judge at the trial was going to
12 let -- was going to allow a charge on self-defense
13 in addition. You know -- and Mr. Hughes at the
14 PCR hearing was saying, well, I didn't want to do
15 that because, you know, I don't want to try and
16 argue accident and several-defense at the same
17 time.

18 And Mr. Shaffer at the hearing raised a
19 point, is that, you know, defense counsel doesn't
20 have to necessarily include self-defense in his
21 closing argument, but it would still give the jury
22 that outlet. If they didn't find accident, they
23 would still have the opportunity to go to
24 self-defense, and that's the issue up on appeal.

25 So I think, you know, anything that we

1 can do today that would get this case back in the
2 appellate posture is what we need to do. That's
3 why we're just going to go forward on the Austin
4 claims.

5 THE COURT: You talked with Miss -- is it
6 Weber? Am I pronouncing that correctly?

7 MS. WEBER: Yes, ma'am.

8 THE COURT: You've talked with her about
9 going forward with the PCR action?

10 MR. FALK: Let me go talk to her again.
11 There was just a misunderstanding from
12 when we were talking before.

13 What I advised her is that, if she
14 were -- first of all, I'm not sure she can going
15 forward on any other claims. But if she were, and
16 if this Court were to grant relief, the State
17 would most certainly appeal that decision, and
18 then that would just prolong her ability to go
19 back to the appellate court for good if she go
20 even further.

21 So that's why, if you were to say that
22 something else happened, if you were to grant some
23 relief, they would appeal it and then keep going
24 on and on.

25 THE COURT: Well, I guess the -- and then

1 ultimately, if it does goes up to on appeal, if I
2 grant this -- if I grant you an appeal of the
3 denial of the PCR, and I'm sure Judge -- was it
4 McIntosh or Maddox? Whoever heard your PCR --

5 MR. FALK: Maddox.

6 THE COURT: -- I'm sure went over this
7 with you, but you understand, I can't -- it looks
8 like in your PCR application, you asked that your
9 sentence be reduced. And you understand, that's
10 not something that I can do, or any judge can do
11 in a PCR action.

12 If the PCR is granted, you go back to as
13 is if the trial never happened. And the
14 voluntarily manslaughter is zero to 30; is that
15 correct?

16 MS. WEBER: Yes.

17 THE COURT: So you understand it would go
18 back as if the trial never happened. It's
19 possible that you could get a longer sentence than
20 the 23 years. It's possible you could get a
21 lesser sentence. Nobody can look in a crystal
22 ball and tell you what would happen in the future.
23 But I don't want you to end up down the road, you
24 get what you wished for, and then you get a trial
25 and have that longer sentence. I mean, that's a

1 possibility. So I just want to make sure that
2 you're aware of that.

3 MR. FALK: I think she's aware of that.
4 My client wants to take the path that's going to
5 get her back to where she was for Court of Appeals
6 to dismiss their appeal.

7 THE COURT: I understand. So you want to
8 go forward today on the appellate issues.

9 MR. FALK: Yes.

10 THE COURT: And not any new grounds for a
11 PCR.

12 MR. FALK: That's correct.

13 THE COURT: Over and above what were
14 raised in the previous PCR hearing.

15 Okay. I'll certainly let you go forward.

16 MR. FALK: I'll call Tristan to the
17 stand. Tristan Shaffer. I'm sorry.

18 THE CLERK: Can you raise your right
19 hand, please, sir? Do you solemnly swear or
20 affirm the testimony you give to this court will
21 be the truth so help you God?

22 THE WITNESS: I do.

23 THE CLERK: If you can please speak
24 directly into the microphone, state your name, and
25 spell your last name for the record?

1 THE WITNESS: Tristan Shaffer. It's
2 S-h-a-f-f-e-r.

3 WHEREUPON:

4 TRISTAN SHAFFER,
5 after having been sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FALK:

8 Q Mr. Shaffer, you represented Miss Weber at her PCR
9 hearing; is that correct?

10 A I did.

11 Q And you had filed a notice of appeal in this case;
12 is that correct?

13 A Yes.

14 Q And then somewhere down the line, you found out
15 that your notice of appeal was filed five days late?

16 A That's correct. I think it was actually -- I
17 think it should have been filed on the Friday, and
18 I filed it on a Monday.

19 Q Did they give you credit for the mailbox rule or
20 whatever?

21 A No, they didn't. I think that the issue was,
22 I got it July 5th, and it would have been due in
23 the -- August 4th because of that. I think I had
24 it calendared for the following Monday based off
25 of thinking that there was a wrong number of days

1 in July. I'm thinking that's probably what
2 happened. And then I mailed it off on a Monday.

3 And, you know, obviously, I get a call
4 two years later or so saying that it's incorrect.
5 I think I offered to do an affidavit, or something
6 like that, and try to get it heard.

7 Q But that was no issue about whether or not my
8 client wanted an appeal from her PCR hearing.

9 A Oh, absolutely. And it was a good issue.
10 You're right. You know, it was a strong issue, in
11 my opinion.

12 MR. FALK: No further questions.

13 THE COURT: Anything from the State?

14 MS. MIMS: Beg the Court's indulgence.

15 No further questions.

16 THE COURT: Thank you, sir. You can step
17 down.

18 And what's the State's position on the
19 Applicant's right to a belated appeal of the
20 denial of the PCR?

21 MS. MIMS: After hearing the testimony of
22 Mr. Shaffer, we consent to Miss Weber getting a
23 belated appeal pursuant to *Austin v. State* for her
24 PCR.

25 THE COURT: Okay. So you-all will

1 prepare an order to that effect or you need
2 Mr. Falk to do that?

3 MS. MIMS: Yes, we can prepare an order.
4 The State will prepare an order.

5 MR. FALK: Thank you.

6 THE COURT: Okay. So the State is going
7 to prepare an order to that effect.

8 Anything else, Mr. Falk?

9 MR. FALK: No, Your Honor.

10 THE COURT: All right. Thank you-all.

11 (The hearing was concluded at ** a.m. p.m.)

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CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Jasper County, South Carolina.

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

August 10, 2023



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

Tara Weber, SCDC# 347905,
Applicant,

v.

State of South Carolina,
Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
)

) Case No.: 2019-CP-27-0436
)

) **ORDER GRANTING RELIEF**
) **PURSUANT TO *AUSTIN V. STATE*¹**
)

FILED
JASPER COUNTY
CLERK OF COURT
23 JUL -6 A 9:10

This matter comes before the Court by way of an application of post-conviction relief filed by Tara Weber (Applicant) on August 6, 2019. The State (Respondent) made its Return and Partial Motion to Dismiss on December 3, 2020. An evidentiary hearing convened on Wednesday July 20, 2022, at the Beaufort County Courthouse before the Honorable Kristi F. Curtis, circuit court judge.

Applicant was present at the hearing and was represented by James K. Falk, Esquire. Assistant Attorney General Lauren Mims of South Carolina Attorney General's Office represented the State. Applicant called Applicant's post-conviction relief counsel, Tristan M. Shaffer.

This court had before it a copy of the Jasper County Clerk of Court's records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's former post-conviction relief records, the current post-conviction relief application, Respondent's return, the trial transcript and appellate records. After a review of the evidence presented and State's decision not to oppose relief, this Court grants Applicant the relief pursuant to *Austin*.

¹ *Austin v. State*, 305 S.C. 453, 409 S.E. 2d 395 (1991)

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its August 2011 term, the Jasper County Grand Jury indicted Applicant for voluntary manslaughter (2011-GS-27-0378) for the stabbing death of her live-in boyfriend during a heated altercation. On September 12, 2011, Applicant proceeded to a jury trial before the Honorable Michael G. Nettles, circuit court judge. Robert M. Hughes, Esquire represented Applicant Assistant Solicitors Robert Ferguson and Tameaka Legette of the Fourteenth Circuit Solicitor's Office prosecuted the case. The jury convicted Applicant as indicted. Judge Nettles sentenced Applicant to imprisonment for twenty-three years.

Applicant filed a timely notice of appeal and was represented on appeal by Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense-Office of Appellate Defense, who submitted a Brief of Appellant pursuant to *Anders v. California*, 386 U.S. 738 (1967), along with a petition to be relieved as counsel. On January 30, 2013, the South Carolina Court of Appeals dismissed the appeal and granted appellate counsel's petition to be relieved. *State v. Weber*, Op. No. 2013-UP-42 (Ct. App. 2013). The remittitur was issued on February 21, 2013.

On May 6, 2013, Applicant filed an application for post-conviction relief, asserting

(a) insufficient counsel: "attorney mis[led] me."

(b) false information: wit[ne]ss lied on the stand."

Respondent made its return on June 5, 2014, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on July 30, 2014, before the Honorable J. Cordell Maddox, Jr. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. At the hearing, Applicant proceeded forward on claims counsel was ineffective for: failing to request a

jury instruction on self-defense, failing to introduce decedent's toxicology report; and failing to object to the State's opening and closing arguments. Judge Maddox denied and dismissed the application with prejudice by an order of dismissal filed May 1, 2017.

Applicant filed a notice of appeal on August 7, 2017. Petitioner then filed a petition for writ of certiorari and appendix on March 14, 2018. On July 30, 2018, Respondent filed its return to the petition for writ of certiorari. Thereafter, the matter was transferred to the South Carolina Court of Appeals pursuant to Rule 243(l), SCACR. On July 2, 2019, the Court of Appeals dismissed the appeal based on Applicant's failure to timely file the notice of appeal under Rule 243, SCACR. The remittitur was issued on July 18, 2019. Applicant then initiated this current action.

II. FACTS GIVING RISE TO THE CHARGES

Applicant's charges resulted from an incident on December 31, 2010, in which Applicant fatally stabbed her boyfriend Kyle Way ("Victim") in the kitchen of a mobile home she shared with the victim and two children. When Victim awoke in the middle of the night and noticed Applicant was not there, he went to a nearby vacant mobile home where he found Applicant in the company of a man with whom she had a sexual relationship. Tr. p. 107, ll. 6-10; p. 171, ll. 2-24. This man testified at trial he understood Victim knew about this sexual relationship but continued to take care of Applicant and the children. Tr. p. 173, l. 25 – p. 174, l. 2; p. 174, ll. 17-21. The man testified Applicant "grabbed Victim and drug her out" of the trailer but explained he never saw them physically fight, but Victim and Applicant argued. Tr. p. 172, ll. 8-22. This argument continued outside that mobile home. Tr. p. 107, ll. 9-12. The verbal argument continued as the two of them entered Victim's mobile home. Tr. p. 107, ll. 12-14. Applicant retrieved a knife from the kitchen, and according to multiple statements Applicant gave to law enforcement, then told Victim

that she was going to cut herself with the knife.² Tr. p. 144, ll. 24 – p. 145, l. 1; p. 185, ll. 20-24; p. 229, ll. 2-6. According to Applicant's own statements, Victim then approached Applicant from behind in an effort to retrieve the knife from her, at which point he was stabbed under his collarbone, fatally severing his subclavian artery and puncturing his lung. Tr. p. 107, ll. 16-20.

Applicant consistently told law enforcement the stabbing was an accident and never indicated Victim tried to attack her. She told responding officer Kevin Smith she accidentally stabbed Victim in the process of turning around when he had approached her for the knife when she was threatening to hurt herself. Tr. p. 144, l. 24 – p. 145, l. 1. 3. Applicant also consistently told responding officer Detective Raymond Moran the stabbing was an accident, never indicated that Victim attacked her, and never indicated the stabbing was anything but an accident. Tr. p. 188, ll. 10-19. Applicant also described an accidental stabbing to Detective Jeff Crosby. Tr. p. 229, l. 22 – p. 230, l. 6.

There were two other adults sleeping at Victim's mobile home that night, who both testified they were awakened when Applicant and Victim came in arguing. Tr. p. 154, ll. 17-25; p. 163, ll. 13-22. Neither saw the stabbing, but both testified to hearing an argument Applicant remark that if Applicant did not leave her alone she was going to stab him. Tr. p. 156, ll. 21-23; p. 163, l. 24 – p. 164, l. 2. Both also testified Applicant and the injured Victim came running into their room instructing them to call 911 after the stabbing. Tr. p. 164, ll. 3-13.

Detective Crosby testified Applicant did not appear to have any injuries that night. Tr. p. 241, 10-14. Regarding the Victim's fatal injury, the forensic pathologist who performed the

² Applicant also told law enforcement that sometimes she feels like hurting herself and has intentionally cut herself in the past. Tr. p. 181, ll. 10-13; p. 228, l. 23 – p. 229, l. 2.

autopsy testified the knife wound was 3.2 inches deep. Tr. p. 254, ll. 12-19; p. 263, ll. 5-8. There was no testimony or evidence presented to indicate Applicant was injured or threatened by Victim.

During trial, a charge conference was held in chambers. Judge Nettles explained on the record that as a result of the charge conference, all agreed that voluntary manslaughter, involuntary manslaughter, and accident would be charged to the jury. Tr. p. 298, ll. 4-12. Regarding a potential charge on self-defense, Judge Nettles said the following:

There is a – was a snibbit of testimony that was – seemed to indicate that – just a bare snibbit of testimony that would – might could substantiate a self-defense charge. That was discussed in chambers and we came to the conclusion that it was not a theory of the defendant that it was self-defense, that it was an accidental incident that took place. And more importantly, it's not consistent with what the defendant said, who was the only witness to the altercation. And as a result of that, although it had been discussed, the charge of self-defense is not in the charge. It is – although it was discussed based on this snibbit of testimony, is that the defense's position? App. p. 298, ll. 13-25.

Trial Counsel subsequently affirmed that was the defense's position. Tr. p. 299, l. 1. Pursuant to this decision, Judge Nettles charged the jury on the defense of accident, and not self-defense.

III. CURRENT APPLICATION

In her second and current application for post-conviction relief, Applicant alleges she is being held in custody unlawfully based on the following grounds:

- (a) insufficient counsel: "attorney mis[led] me."
- (b) false information: wit[ne]ss lied on the stand."
- (c) belated Austin PCR appeal

As relief requested, Applicant states she is seeking "reduced sentence/lesser charge." Before the hearing, Counsel for Applicant indicated that he would only be going forward on the claim of Applicant's entitlement to a belated *Austin* appeal.

IV. FINDING OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Successive applications such as the one before this Court are disfavored. S.C. Code Ann. § 17-27-90. However, Applicant alleges she was denied the right to appeal the dismissal of her previous post-conviction relief application. Inherent in this allegation is a claim that former post-conviction relief counsel was ineffective. The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. *Coleman v. Thompson*, 501 U.S. 722, (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under [S.C. Code Ann.]§ 17-27-90." *Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in *Austin v. State*, 305 S.C. 453, 454, 409 S.E. 2d 395, 396 (1991). *Austin* provides for a belated appeal where prior post-conviction relief counsel fails to timely appeal the denial of the application. *Id.* at 454, 409 S.E.2d at 396; see S.C. Code Ann. § 17-27-100 (right to appeal final judgment by post-conviction relief court). But *Austin* "is limited to its particular factual situation." *Aice*, 305 S.C. at 452, 409 S.E.2d at 394.³ Pursuant to *Austin*, an evidentiary hearing may be conducted in regards to a successive post-conviction relief application "on the issue of whether in fact the petitioner requested and was denied an opportunity

³ *Aice* was issued in conjunction with *Austin*, limiting the reach of *Austin* and holding "that once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel." 305 S.C. at 454 n.1, 409 S.E.2d at 396 n.1.

to seek appellate review.” *Austin*, 305 S.C. at 454, 409 S.E.2d at 396. “If the circuit court finds that the petitioner never in fact sought discretionary review, the petitioner may appeal that finding.” *Id.* at 455, 409 S.E.2d at 396. *Austin*, therefore, allows an applicant to petition the Supreme Court of South Carolina for discretionary review of the dismissal of his initial post-conviction relief application, and may do so outside of the ordinary time limits for bringing such an appeal.

In the present case, it is apparent from the record before this Court that Applicant desired appellate review from the denial of her initial post-conviction relief action as an untimely notice of appeal was filed on Applicant’s behalf by counsel and was dismissed based on his ineffectiveness. Accordingly, this Court finds Applicant is entitled to file a notice of appeal seeking belated appellate review of the denial of his initial post-conviction relief action pursuant to *Austin*.

V. CONCLUSION

Based on all the foregoing, this Court finds Applicant is entitled to seek belated appellate review of the denial of his initial post-conviction relief action pursuant to *Austin*. Applicant's current PCR counsel is instructed to file a Notice of Appeal with the South Carolina Supreme Court pursuant to Rule 243, SCACR.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Applicant remain in the custody of the South Carolina Department of Corrections; and
2. Applicant is granted the right to seek a belated appellate review of the denial of his initial post-conviction relief action (2013-CP-27-00246) pursuant to *Austin*.

AND IT IS SO ORDERED this 27th day of June, 202~~2~~³

Kristi F. Curtis
KRISTI F. CURTIS
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina

WITNESSES

Crosby - JC SO

ARREST WARRANT NUMBER

JAS0163

ACTION OF GRAND JURY

TRUE BILL ✓

NO BILL

FOREMAN

DATE

August 3, 2011

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS2700378

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

August Term 2011

THE STATE

vs.

Tara Marie Weber

Indictment for

Manslaughter / Voluntary manslaughter

SC Code: 16-03-0050

CDR Code:0217

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: *[Signature]*
DATE: 11/15/11
C.C.C. PLS. and CDR

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

INDICTMENT
2011GS2700378

At a Court of General Sessions, convened on August 23, 2011, the Grand Jurors of Jasper County present upon their oath:

Manslaughter / Voluntary manslaughter

That in Jasper County, South Carolina, on or about December 31, 2010, the Defendant, Tara Marie Weber, did upon legal provocation and in the sudden heat of passion unlawfully kill Kyle Way by means of stabbing him in the upper chest, and that Kyle Way did die in Jasper County as a proximate result thereof on December 31, 2010¹⁴; All in violation of Section 16-3-60, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Jasper
 STATE VS.
Tara Weber
 AKA:
 Race: W Sex: F Age: 22
 DOB: [REDACTED] SS#: [REDACTED]
 Address:
 City, State, Zip:
 DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Manslaughter / Voluntary manslaughter

IN THE COURT OF GENERAL SESSIONS

**Not more than 30 years*

INDICTMENT/CASE#: 2011GS2700378
 A/W#: JAS0163
 Date of Offense: 16-00-0050
 S.C. Code § 16-00-0050
 CDR Code #: 0217

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
 The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 74889
Ferguson, Robert E SC Bar# [REDACTED] Defendant Attorney for Defendant SC Bar# [REDACTED]

WHEREFORE, the Defendant is committed to the: ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 23 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended probation for

with months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 258 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	<u>5</u>
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	<u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	<u>100</u>
§ 56-5-2995 (DUI Assessment)	\$12	<u>12</u>
§ 56-1-286 (DUI Breath Test)	\$25	<u>25</u>
Proviso 47.9 (Public Def Prob)	\$500	<u>500</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	<u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	<u>150</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	<u>50</u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	<u>40</u>
Proviso 90.5 (SCCJA Surcharge)	\$5	<u>5</u>
3% to County (if paid in installments)	\$	<u>3.90</u>
TOTAL	\$	<u>133.90</u>

Clerk of Court/ Deputy Clerk

Margaret Boshack
Brenda Sigwald

Presiding Judge

Judge Code: 2140

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code: 2140

9-14-2011