

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Petition for Certiorari from Richland County
Deadra L. Jefferson, Circuit Court Judge

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S.C. SUPREME COURT

Hank E. Hawes, Petitioner,

v.

State of South Carolina, Respondent

Appellate Case No. 2023-001759

APPENDIX

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BRADLEY MARCUS DIRECT BY MS. CAMPBELL

1 And the next wound is number 11 to the posterior
2 right back. Depth of approximately 2.5 inches. And
3 that one goes through the skin and subcutaneous tissue
4 of the right back, the posterior right intercostal
5 space number 11 and it goes into the liver, where the
6 wound track ends. And that one, also, can be
7 considered -- that could have been a fatal wound.

8 Q. Finally, the last stab wound?

9 A. The last stab wound is stab wound number 12 to the
10 posterior right back. It goes to a depth of
11 approximately three inches. Again, skin and
12 subcutaneous tissue disruption with associated
13 hemorrhage and liver perforation. So that one, also,
14 could have been a fatal wound, also. The liver has
15 another vascular organ and you tend to bleed from that
16 type of injury.

17 Q. And in addition to the 12 stab wounds, there were a
18 number of your incised wounds or your cuts?

19 A. Yeah, multiple incised wounds over the entire body.

20 Q. And without going over again where all those were,
21 approximately how many of those were there?

22 A. Approximately 11, from my report.

23 Q. And that doesn't count the small abrasions, the
24 contusions or the bruising?

25 A. No, it does not include anything else. These are just

BRADLEY MARCUS DIRECT BY MS. CAMPBELL

1 what I consider sharp force injuries.

2 Q. And in this case, did you collect blood from the body
3 for testing?

4 A. Yes. Ms. Wilson had a significant amount of blood
5 loss. I collected blood from her leg, from her femoral
6 vessels down here at her thigh (indicating). I was
7 able to get some blood for toxicology testing.

8 Q. Why did you have to take it from the femoral artery?

9 A. Generally, I like to take blood -- I, generally, take
10 subclavian blood. I only do femoral blood when one --
11 where toxicology on a prior case comes in, where you
12 have a drug death. Where someone's on drugs, femoral
13 blood is the best. So I took it in this case from her.
14 I couldn't get any blood up here because all that blood
15 had been gone from bleeding, so I had to go down into
16 the legs and kind of push the muscles down and get
17 blood out of the femoral region.

18 Q. And could you tell in this case from these stab wounds
19 and incised wounds approximately how much blood she
20 lost?

21 A. She lost a significant amount of blood because she had
22 significant injury to her neck and her lungs and so
23 forth like that. Ms. Wilson was a very small
24 individual, so her blood volume calculated out is about
25 3.5 liters of blood. 150 kilogram man has got

BRADLEY MARCUS DIRECT BY MS. CAMPBELL

1 approximately five. So I would say more than half of
2 her blood volume was gone from her body.

3 Q. Was toxicology sent off for testing for the presence of
4 drugs and/or alcohol?

5 A. Yes, that was done?

6 Q. What were the results of that, sir?

7 A. I collected femoral blood and I collected vitreous
8 fluid, which is up in the eye. She had -- femoral
9 blood ethanol was 0.044 percent. The vitreous fluid
10 ethanol is 0.055 percent.

11 Q. So 0.04?

12 A. 0.044.

13 Q. Which is half of the legal limit?

14 A. Yeah, just a little more than half the legal limit
15 there.

16 Q. Under?

17 A. She's under the legal limit, yes?

18 Q. And as far as any presence of any drugs, was that
19 tested?

20 A. Yes, that was also tested, drugs of recreational use,
21 including prescription and pain medicine. That was all
22 negative.

23 Q. And the fact that the blood wasn't drawn until the
24 autopsy the next day, does that askew how it was at the
25 time of death in any way?

BRADLEY MARCUS DIRECT BY MS. CAMPBELL

1 A. No.

2 Q. And can you tell this jury exactly what time she died?

3 A. I can't say exactly what time she died.

4 Q. Was it consistent with the history you received,
5 though?

6 A. It is.

7 Q. Have you heard -- you mentioned before that the neck
8 one, specifically, would have been pumping blood out,
9 squirting blood out. And the other wounds, I believe
10 the ones that hit her lungs, she may have been spitting
11 out blood as well.

12 A. That's possible, yes.

13 Q. And then the other wounds would tend to just ooze blood
14 or drip blood; is that correct?

15 A. Right, that's correct.

16 Q. The stab wounds to the back, is part of your training
17 as far as how wounds can be inflicted and that nature?

18 A. Yes.

19 Q. And do you have any opinion as to the stab wounds to
20 the back and how those would have been delivered?

21 A. There's several ways they could have been delivered.
22 She could have been -- the assailant could have been
23 behind her and stabbed her. She could have been on the
24 ground crawling away, stabbing her. Another way I've
25 seen in the past, they grab them (indicating) and from

BRADLEY MARCUS DIRECT BY MS. CAMPBELL

1 the back, they can stab them. Those are some of the
2 ways that these wounds could have been inflicted.

3 Q. Did you come up with a cause of death in this case?

4 A. I did.

5 Q. Again, let me ask you this, those multiple fatal
6 wounds, six, I believe, you mentioned that could have
7 been fatal?

8 A. Yes.

9 Q. And the overall affect of all these wounds contributed
10 to her death?

11 A. Yes.

12 Q. How long could she have survived with these wounds?

13 A. My opinion is, you know, about two minutes.

14 Q. At the most?

15 A. Where she's conscious. Again, depending on the order
16 of where she received them and so forth. But about two
17 minutes with that neck wound, you're going to become
18 unconscious and then your heart will go into arrhythmia
19 and you will die.

20 Q. So this is quickly?

21 A. Yes, it's very quick.

22 Q. What was the cause of death in your opinion, sir?

23 A. I put the cause of death as exsanguination, which
24 means --

25 Q. What does that mean?

BRADLEY MARCUS DIRECT BY MS. CAMPBELL

1 A. Which means blood loss due to a stab wound to the right
2 neck. And then I put as contributory multiple stab and
3 incised wounds to the body.

4 Q. But any number of those wounds you mentioned could have
5 been fatal?

6 A. Could have been fatal, that's right. Any one could
7 have been fatal, but my medical opinion is that the
8 neck wound, for sure, is fatal.

9 Q. She could not have survived that?

10 A. No, no, again, like I said, she could have not survived
11 that neck wound.

12 Q. And that would have been the first thing that killed
13 her?

14 A. In my opinion, out of all those wounds that she had
15 sustained.

16 Q. You've done a number of autopsies in homicide cases?

17 A. Yes.

18 Q. How would you characterize this one?

19 A. This was a brutal --

20 MR. STRICKLER: I object, Your Honor.

21 THE COURT: What's your legal objection?

22 MR. STRICKLER: It's -- it's not --

23 THE COURT: What's your legal objection? I will
24 listen to your oral arguments, but what's your legal
25 objection?

BRADLEY MARCUS CROSS BY MR. STRICKLER

1 MR. STRICKLER: Calls for a conclusion outside the
2 scope of his expertise.

3 THE COURT: Overruled.

4 Go ahead.

5 BY MS. CAMPBELL:

6 Q. I'm sorry. Can you continue?

7 A. Can you repeat the question?

8 THE COURT: I think he's already answered it.

9 BY MS. CAMPBELL::

10 Q. Can you repeat your answer?

11 THE COURT: He's already answered it. He doesn't
12 need to repeat it.

13 MS. CAMPBELL: Okay.

14 THE COURT: Any other questions?

15 MS. CAMPBELL: No, sir.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MR. STRICKLER:

19 Q. Sir, you're required to render an opinion as to the
20 cause of death, correct?

21 A. Yes, sir.

22 Q. And you've just described that. And in your opinion,
23 the stab wound to the neck, in all likelihood, was the
24 cause of death, though there were a number of other
25 possible fatal stab wounds, correct?

BRADLEY MARCUS CROSS BY MR. STRICKLER

1 A. That's correct.

2 Q. And that's cause of death. The other thing that you're
3 asked to do is render an opinion as to manner of death,
4 correct?

5 A. That's correct.

6 Q. All right. This death -- the manner of death is
7 homicide, correct?

8 A. That's correct.

9 Q. Now, that conclusion on your part is a medical legal
10 conclusion. And the definition of homicide in that
11 context is the killing of a person by another person,
12 correct?

13 A. Yes, sir.

14 Q. Okay. That's the opinion your entitled to render,
15 right?

16 A. Yes, sir.

17 Q. Okay. Anything beyond that is why we're here? Any
18 other conclusion --

19 MS. CAMPBELL: Objection, Your Honor.

20 THE COURT: What's your legal objection?

21 MS. CAMPBELL: Objection to he's not asking a
22 question.

23 THE COURT: Well, he hadn't got around to the
24 question.

25 Ask the question, please, sir. Don't testify,

BRADLEY MARCUS CROSS BY MR. STRICKLER

1 just ask the question.

2 MR. STRICKLER: Yes, sir.

3 BY MR. STRICKLER:

4 Q. That is the conclusion that you're asked to render,
5 correct?

6 A. A cause of death statement, yes.

7 Q. Right.

8 A. On the victim, yes.

9 Q. And that's a homicide? That differentiates it from a
10 suicide, which is the killing of a human being by him
11 or herself, correct?

12 A. That's correct.

13 Q. All right. That differentiates it from accident,
14 correct?

15 A. That's correct.

16 Q. All right. And that differentiates from an
17 undetermined cause of death, correct?

18 A. That's correct, sir. Yes.

19 Q. Okay. So that's the determination you're here to make,
20 that's the determination that you're here to tell this
21 jury about, right?

22 A. Yes, sir.

23 Q. It's a homicide.

24 A. Correct.

25 Q. All right. Just a couple of things, please. You

BRADLEY MARCUS CROSS BY MR. STRICKLER

1 conducted a full examination. There is no indication
2 that there was any sexual assault involved in this
3 case, correct?

4 A. I didn't see any type of bruising in her vulvar or anal
5 regions, that's correct.

6 Q. Nothing consistent with the findings that you would
7 expect to find in a sexual assault?

8 A. That's correct.

9 Q. Okay. And you've already testified you can't say what
10 the sequence of wounds were in this case, correct?

11 A. I cannot tell you which one happened first or last.

12 Q. Okay. And you -- the injury to the head that you
13 termed blunt force trauma, they resulted from -- or
14 they ended up causing some bruising, correct?

15 A. Bruising around the head area, yes.

16 Q. No fracture to the skull?

17 A. No fracture to the skull.

18 Q. No subdural hematoma, no bleeding inside the brain?

19 A. No, sir, no intracranial hemorrhage identified.

20 Q. So superficial bruising associated with it?

21 A. Yes, superficial scalp bruising.

22 Q. And, I guess, given the sequence of events or the time
23 frame that you give for death, those bruises would have
24 to have been immediately about the time that she
25 expired, correct?

BRADLEY MARCUS CROSS BY MR. STRICKLER

1 A. That's correct, sir.

2 Q. And you talked about potential from the lung -- stab
3 wounds to the lung for there being -- her blood coming
4 out of her mouth. If you checked her mouth, did you
5 find any evidence of blood in her mouth?

6 A. No, sir.

7 MR. STRICKLER: Thank you.

8 THE COURT: Any redirect?

9 MS. CAMPBELL: No, sir.

10 THE COURT: All right. Doctor, you may step down.
11 Thank you very much.

12 Let me see the attorneys up here just a second,
13 please.

14 (Whereupon, a bench conference was held
15 off the record, in the presence of the
16 jury, but out of the hearing of the
17 jury.)

18 THE COURT: Mr. Foreman, ladies and gentlemen of
19 the jury, if you will leave your note pads in the chair.
20 The bailiff will escort you or, at least, show you how to
21 get out the courthouse since it's a little after five.
22 Please don't discuss the case amongst yourselves or with
23 anyone at home or read anything in the paper or watch
24 anything on television. The case will continue next week.
25 If you will be in the jury room Monday morning at 9:30,

RACHEL LABERRIE DIRECT BY MS. GARFIELD

1 we'll continue at that time. For your planning purposes, I
2 would say plan on being here through Wednesday at the very
3 earliest. I told you I would give you an estimate and
4 that's the best estimate, probably be here until Wednesday.
5 I'll see you Monday. Have a good weekend.

6 (Whereupon, the jury left the courtroom
7 at 5:04 p.m.)

8 THE COURT: Anything from the State before we
9 adjourn?

10 MS. CAMPBELL: No, sir.

11 THE COURT: Anything from the Defense?

12 MR. STRICKLER: No, sir.

13 THE COURT: All right. We will adjourn until 9:30
14 Monday morning. Y'all have a good weekend.

15 (Whereupon, court was adjourned for the
16 day, October 10, 2014, to reconvene on
17 Monday, October 13, 2014.)

18 THE COURT: Anything from the State before we
19 bring the jury in?

20 MS. GARFIELD: No, sir.

21 THE COURT: Anything from the Defense?

22 MR. STRICKLER: No, Your Honor.

23 THE COURT: All right. Bring us the jury, please.

24 (Whereupon, the jury returned to the
25 courtroom at 9:41 a.m.)

RACHEL LABERRIE DIRECT BY MS. GARFIELD

1 BAILIFF: The jury is seated, Your Honor.

2 THE COURT: Thank you very much.

3 Call your next witness, please.

4 MS. GARFIELD: Thank you, Your Honor. The State
5 call Rachel Labarrie.

6 THE CLERK: Raise your right hand.

7 THEREUPON,

8 RACHEL LABERRIE,
9 after having been duly sworn, testified as follows:

10 THE CLERK: Have a seat in the witness box, state
11 your name for the record and spell it, please.

12 THE WITNESS: My name is Rachel Labarrie. And
13 that's R-A -- excuse me, R-A-C-H-E-L, L-A-B-A-R-R-I-E.

14 DIRECT EXAMINATION

15 BY MS. GARFIELD::

16 Q. Ms. Labarrie, where do you live?

17 A. In Greenville, South Carolina.

18 Q. What did you live back in August of 2011?

19 A. Charlotte, North Carolina.

20 Q. Ms. Labarrie, back in that time period, did you have
21 any contact or participation with the E-Harmony
22 website?

23 A. I did.

24 Q. Can you explain to the jury what E-Harmony is?

25 A. It's a dating website. So you go online and you get

RACHEL LABERRIE DIRECT BY MS. GARFIELD

1 matched with other people that have your similar
2 interest or backgrounds.

3 Q. Do you search for people on E-Harmony?

4 A. No, you get e-mail updates on who might be a possible
5 match.

6 Q. And did you get an e-mail update concerning the
7 Defendant, Hank Hawes, during this time period?

8 A. I did.

9 Q. That would be because E-Harmony thought the two of you
10 were a match?

11 A. Yes.

12 Q. Based on the contact you got from E-Harmony, was any
13 contact made with Mr. Hawes?

14 A. Yes.

15 Q. And do you recall if Mr. Hawes contacted you?

16 A. I think he did. I usually would wait for someone to
17 reach out to me, so.

18 Q. How would he have contacted you, what method?

19 A. Via -- first, E-Harmony would be the first method. It
20 would be a message on E-Harmony.

21 Q. And that would be an e-mail from E-Harmony?

22 A. Or a messaging service through E-Harmony.

23 Q. And that is something the Defendant would have made
24 contact with you through?

25 A. Yes.

RACHEL LABERRIE DIRECT BY MS. GARFIELD

1 Q. Did he subsequently make further contact with you?

2 A. Yes.

3 Q. And can you explain to the jury what kind of contact
4 that was?

5 A. Text message.

6 Q. What was the nature of the text messages?

7 A. He first brought up sky diving because I think he saw
8 my profile that I sky dived.

9 Q. I want to ask you, when E-Harmony tells you that you
10 have a match, is the other person able to read things
11 about you?

12 A. Yes.

13 Q. And what sort of things would a person read about you
14 at the time on your E-Harmony profile?

15 A. Similar interest -- it doesn't have to be similar, but
16 interests that you have, what your background, whatever
17 you want to mention about yourself on the site.

18 Q. Was one of your interests sky diving?

19 A. Yes.

20 Q. Is that something that you participate in frequently?

21 A. Yes.

22 Q. If you could just share with the jury a little bit
23 about your experience with sky diving?

24 A. Well, I've been sky diving since '96, an instructor at
25 Drop Zone in Chester, South Carolina. And so I just

RACHEL LABERRIE DIRECT BY MS. GARFIELD

1 mentioned that on my profile.

2 Q. And that's what you were doing back in August of 2011?

3 A. Yes.

4 Q. And in Chester, South Carolina, about how far is that
5 from Columbia?

6 A. It's about an hour.

7 Q. And did Mr. Hawes make contact with you through
8 E-Harmony?

9 A. Yes.

10 Q. Specifically, was he text messaging you on August 27th,
11 2011?

12 A. Yes.

13 Q. And what was the nature of those e-mails?

14 A. The first contact was about sky diving.

15 Q. And --

16 A. Asking about sky diving, just saying something about
17 sky diving terms.

18 Q. And based on his --

19 MS. PRINGLE: Your Honor, objection.

20 THE COURT: What's your legal objection?

21 MS. PRINGLE: Cumulative. This has all been read
22 into the record already.

23 THE COURT: Pardon?

24 MS. PRINGLE: This has all been read into the
25 record already. The objection is cumulative.

RACHEL LABERRIE DIRECT BY MS. GARFIELD

1 THE COURT: Overruled.

2 Go ahead.

3 MS. GARFIELD: Thank you, Your Honor.

4 BY MS. GARFIELD:

5 Q. And Ms. Labarrie, based on his -- the nature of his
6 responses to you concerning sky diving, what did you
7 think?

8 A. I thought it was a little awkward and weird the terms
9 that were used.

10 Q. And why is that?

11 A. One was mentioning cascade and something about lines,
12 we don't really use that word. And then another was
13 frapping, which we don't really use either.

14 Q. So based on those, what did you think?

15 A. It was just kind of weird --

16 MS. PRINGLE: Objection to relevance, Your Honor.

17 THE COURT: Overruled.

18 MS. GARFIELD: Thank you, Your Honor.

19 BY MS. GARFIELD:

20 Q. Ms. Labarrie, did you have any communication with
21 Mr. Hawes about meeting?

22 A. At one point, I think we did talk on the phone because
23 we did plan -- or he had mentioned might come by the
24 Drop Zone.

25 Q. And the Drop Zone, what's that again?

RACHEL LABERRIE CROSS BY MS. PRINGLE

1 A. The sky diving operation.

2 Q. And when did he mention that he may come by the Drop
3 Zone?

4 A. It was that Sunday.

5 Q. August 28th?

6 A. Yeah -- if that's the Sunday, yes.

7 Q. The Sunday after the text messages?

8 A. Yes.

9 Q. Did you have any further contact with Mr. Hawes after
10 that?

11 A. No.

12 Q. Did you ever meet him in person?

13 A. No.

14 Q. Did you ever have any phone conversations with
15 Mr. Hawes?

16 A. Just that one.

17 MS. GARFIELD: Beg the Court's indulgence.

18 BY MS. GARFIELD:

19 Q. Do you know if he was planning to come by and take a
20 sky diving lesson?

21 A. Not that I'm aware of.

22 MS. GARFIELD: Thank you, Ms. Labarrie. Please
23 answer any questions Defense may have.

24 THE COURT: Cross-examination?

25 CROSS-EXAMINATION

RACHEL LABERRIE CROSS BY MS. PRINGLE

1 BY MS. PRINGLE:

2 Q. Good morning, Ms. Labarrie. How are you?

3 A. I'm good.

4 Q. The way this E-Harmony operates, the company or the
5 website, they go through and they try to match people
6 up?

7 A. Yes.

8 Q. Then they will send information or e-mails unsolicited
9 if you're on there to you letting you know hey, we
10 think this person might be somebody you have common
11 interests with?

12 A. Yes.

13 Q. And in this case, that common interest was sky diving?

14 A. I wouldn't say that.

15 Q. Do you always end up dating or becoming involved with
16 people you get matched with or communicate with on
17 E-Harmony?

18 A. No.

19 Q. And the extent of -- the extent of your entire
20 communications with him was just those text messages
21 that day?

22 A. And the phone -- the one phone call we had.

23 Q. So there was a mention that he might come by the Drop
24 Zone, but that was the extent of your communications
25 with him?

AARON WILSON DIRECT BY MS. GARFIELD

1 A. Yes.

2 MS. PRINGLE: Thank you.

3 THE COURT: Any redirect?

4 MS. GARFIELD: No, sir.

5 THE COURT: You may step down. Thank you very
6 much.

7 THE WITNESS: Thank you.

8 MS. GARFIELD: May Ms. Labarrie be excused?

9 THE COURT: Any objection?

10 MS. PRINGLE: No, sir.

11 THE COURT: The witness is welcome to stay, but
12 she may be excused if she so chooses. Thank you very much.

13 Call your next witness.

14 MS. GARFIELD: The State call Aaron on Wilson.

15 THEREUPON,

16 AARON WILSON,

17 after having been duly sworn, testified as follows:

18 THE CLERK: Have a seat in the witness box, state
19 your name for the record, and spell it, please.

20 THE WITNESS: Aaron Wilson, A-A-R-O-N,
21 W-I-L-S-O-N.

22 DIRECT EXAMINATION

23 BY MS. GARFIELD:

24 Q. Mr. Wilson, good morning?

25 A. Good morning.

AARON WILSON DIRECT BY MS. GARFIELD

- 1 Q. Where do you live, Mr. Wilson?
- 2 A. Lexington.
- 3 Q. Do you know the Defendant in this case, Hank Hawes?
- 4 A. Yes.
- 5 Q. If you will just, please, share with the jury how you
- 6 know Mr. Hank Hawes?
- 7 A. My wife bartended at a restaurant on Divine Street that
- 8 he went to a lot. I'd go in after work and he'd be in
- 9 there and we'd just talk and stuff sometime when he was
- 10 in there.
- 11 Q. Mr. Wilson, are you nervous today?
- 12 A. Yeah.
- 13 Q. If you would pull the microphone closer to you. You're
- 14 very soft-spoken.
- 15 A. All right.
- 16 Q. This restaurant that you refer to that your wife worked
- 17 at, what restaurant was that?
- 18 A. Cantina 76.
- 19 Q. What type of restaurant is that?
- 20 A. It's a Mexican, kind of taco, burrito.
- 21 Q. What's your wife's name?
- 22 A. Jordan.
- 23 Q. And she was a bartender there?
- 24 A. Yes.
- 25 Q. You just testified you would go there after you got off

AARON WILSON DIRECT BY MS. GARFIELD

1 work?

2 A. Yes.

3 Q. And stayed there for what reason?

4 A. I would just go in the evening just sometime, 7:30,
5 8:00 until she got off. She wanted me to stay up there
6 with her to walk her to her and go home.

7 Q. Were you going to Cantina 76 when you got to know Ms.
8 Hawes?

9 A. Yes.

10 Q. Were you there on Saturday, August 27th?

11 A. Yes.

12 Q. 2011?

13 A. Yes.

14 Q. Was the Defendant, Hank Hawes, there as well?

15 A. Yes.

16 Q. And explain to the jury what kind of mood Mr. Hawes was
17 in that night?

18 A. He was in a pretty happy mood. He was buying drinks
19 and some shots for some other people at the bar.
20 Throughout talking to him, he said he was -- he was in
21 a good mood. He was happy because he had gotten back
22 together with his girlfriend at that time, so he said
23 he was -- he just seemed pretty happy.

24 Q. Did he, also, make any conversation to you about other
25 women?

AARON WILSON DIRECT BY MS. GARFIELD

1 A. Not to me, but was talking to the other girls.

2 MS. PRINGLE: Objection to hearsay.

3 THE WITNESS: Okay.

4 THE COURT: Overruled.

5 BY MS. GARFIELD:

6 Q. You can continue.

7 A. He would talk to another girl when I was sitting right
8 next to him about if she had a -- someone he could be
9 hooked up with, girlfriend or something. He was
10 looking -- said he was looking for someone to go out
11 with.

12 Q. What did you think about that?

13 A. He was single and just wanted to do what he wanted to
14 do, I guess.

15 Q. Now, this girlfriend that he referred to, did you know
16 her name?

17 A. No.

18 Q. Since then, you're aware that that would be Jennifer
19 Wilson; is that correct?

20 A. Yes.

21 Q. And just for purposes of the record, Mr. Wilson, are
22 you any relation to Jennifer Wilson?

23 A. No, we're not.

24 Q. Did you ever meet Jennifer Wilson?

25 A. No.

AARON WILSON DIRECT BY MS. GARFIELD

- 1 Q. And you never knew her name?
- 2 A. No.
- 3 Q. Did you know anything about her?
- 4 A. No.
- 5 Q. Now, specifically, Mr. Hawes, you indicated he was
- 6 drinking that night?
- 7 A. Yes.
- 8 Q. What did you observe him drink?
- 9 A. His drink was called Prickly Pear. It was the
- 10 restaurant's feature drink that they always serve.
- 11 Q. What kind of drink?
- 12 A. It's tequila -- it's like a fruity drink, raspberry.
- 13 Q. Okay. And this was what Mr. Hawes was drinking that
- 14 evening?
- 15 A. Yes.
- 16 Q. Do you know how many of these fruity drinks he had that
- 17 night?
- 18 A. Approximately three that I know of, just sitting there
- 19 talking to him throughout the night.
- 20 Q. As well as you observed him --
- 21 A. Yeah.
- 22 Q. -- buying --
- 23 A. Some shots.
- 24 Q. And who all was he buying the shots for?
- 25 A. People that were sitting at the bar. It's just a small

AARON WILSON DIRECT BY MS. GARFIELD

1 bar, so there was just -- if they were up there, he
2 would buy some shots of tequila.

3 Q. Mr. Wilson, about what time did you get to Cantina 76?

4 A. 8:00, probably, that day, 8:00 or 8:30.

5 Q. Was Mr. Hawes already there?

6 A. Yes.

7 Q. How long did he stay there?

8 A. I was the last one to walk him out the door. It was
9 probably between 11:30 and 12:00 somewhere in there.

10 And I locked the door behind him.

11 Q. He was the last one to leave?

12 A. Yes, as far as customers.

13 Q. When he left, did he make any requests?

14 A. Well, my wife and a couple other restaurant workers
15 were out on the back porch smoking and he rolled down
16 the window as he was leaving and just -- rolled down
17 the window and kind of laughed and said, Can I get a
18 Prickly Pear to go? Just kind of laughing and then
19 went on down the street.

20 Q. Did he indicate where he was going?

21 A. One of the cooks had a bicycle. I guess he had a flat
22 tire. And he lived at Harbison and he offered to take
23 him there and he already had made other plans, so we
24 assumed we assumed he was going --

25 Q. And what was his mood that night?

AARON WILSON DIRECT BY MS. GARFIELD

1 A. Good. I mean, he was pretty happy, talking, just
2 drinking, buying shots. Seemed awfully happy and
3 pleasant.

4 Q. Was he outgoing?

5 A. Oh, yeah, very outgoing.

6 Q. And were you drinking that night, Mr. Wilson?

7 A. I had one of the shots that he brought. I did not
8 drink a lot when I was up there.

9 Q. Why was that?

10 A. I had shoulder surgery, so I was on some pain pills and
11 I just didn't want to drink.

12 MS. GARFIELD: Beg the Court's indulgence.

13 BY MS. GARFIELD:

14 Q. Mr. Wilson, do you see the man in the courtroom that
15 you were with at Cantina 76 on August 27th, 2011?

16 A. Yes.

17 Q. You can please point him out for the record?

18 A. (indicating).

19 Q. And can you just indicate what he's wearing for the
20 record?

21 A. Gray suit, blue shirt, black and blue tie.

22 MS. GARFIELD: Your Honor, may the record reflect
23 that Mr. Aaron Wilson has identified Hank Hawes.

24 THE COURT: Yes, ma'am.

25 MS. GARFIELD: Thank you, Mr. Wilson. Thank you

AARON WILSON DIRECT BY MS. GARFIELD

1 so much. Please answer any questions Defense may have.

2 THE COURT: Cross-examination.

3 CROSS-EXAMINATION

4 BY MS. PRINGLE:

5 Q. Good morning, Mr. Wilson. I just have a couple of
6 questions. You said you were there from about 8:00 to
7 11:30 or midnight?

8 A. Yes, ma'am.

9 Q. What you recall is him drinking three drinks while you
10 were there?

11 A. Yes.

12 Q. That you saw?

13 A. (The witness nodded.)

14 Q. And he was in a happy mood?

15 A. Yeah.

16 Q. A real good mood?

17 A. Yeah.

18 Q. And the reason he was in a good mood was because he was
19 getting back together with his girlfriend?

20 A. Yes, ma'am.

21 Q. With Jen? You didn't know her name?

22 A. He just said girlfriend. I didn't know her name, no.

23 Q. And he wasn't acting strange?

24 A. No.

25 Q. Or angry?

WILLIAM PEGRAM DIRECT BY MR. MATTHEWS

1 A. (The witness shakes head.)

2 Q. Or aggravated?

3 A. No.

4 Q. And when he left, you said he was laughing and he was
5 happy and that was because he was getting back together
6 with his girlfriend?

7 A. Yes, ma'am.

8 Q. Is that right?

9 A. Yes, ma'am.

10 MS. PRINGLE: Thank you.

11 THE COURT: Redirect?

12 MS. GARFIELD: No, sir.

13 THE COURT: You may step down. Thank you very
14 much.

15 MS. GARFIELD: May Mr. Wilson be excused?

16 THE COURT: Yes, ma'am.

17 Call your next witness.

18 MR. MATHEWS: The State calls Sergeant William
19 Pegram.

20 THEREUPON,

21 WILLIAM PEGRAM,

22 after having been duly sworn, testified as follows:

23 THE CLERK: Have a seat in the witness box, state
24 your full name for the record, and spell you last name,
25 please.

WILLIAM PEGRAM DIRECT BY MR. MATTHEWS

1 THE WITNESS: William Pegram, P-E-G-R-A-M.

2 DIRECT EXAMINATION

3 BY MR. MATHEWS:

4 Q. Sergeant Pegram, where are you employed?

5 A. The Columbia Police Department.

6 Q. What do you do at the Columbia Police Department?

7 A. I supervise the violent crimes unit.

8 Q. So you're in investigations?

9 A. Yes.

10 Q. Did you have an occasion -- or how long have you been
11 in law enforcement?

12 A. Thirty-one years.

13 Q. How long have you been in investigations?

14 A. At Columbia, 14.

15 Q. Did you have occasion to participate in the
16 investigation of Hank Hawes?

17 A. Yes.

18 Q. First, did you go to the crime scene?

19 A. I did.

20 Q. Did you, also, go to where Mr. Hank Hawes lived at the
21 time?

22 A. I did.

23 Q. And you're familiar with both of those locations?

24 A. Yes.

25 Q. I'm showing you what's been marked as State's Exhibit

WILLIAM PEGRAM DIRECT BY MR. MATTHEWS

1 441, do you recognize this?

2 A. I the.

3 Q. What is that?

4 A. That's an aerial photograph of the portion of Columbia
5 that has pins on the map showing the residence of
6 Jennifer Wilson and the residence of Hank Hawes.

7 MR. MATHEWS: Your Honor, at this time, the State
8 offers Exhibit 441.

9 MR. STRICKLER: That's without objection, sir.

10 THE COURT: All right. 441 admitted without
11 objection.

12 (State's Exhibit No. 441 was admitted
13 into evidence.)

14 BY MS. GARFIELD:

15 Q. Sergeant Pegram, approximately what's the distance
16 between these two locations?

17 A. By GPS, it's two miles and travel time of five minutes.

18 Q. It would take about five minutes to go from his house
19 to her house?

20 A. Yes.

21 Q. Thank you. And you were in court when a large portion
22 of text messages were read aloud last week, weren't
23 you?

24 A. Yes.

25 Q. And were you present for the portions where Mr. Hall's

WILLIAM PEGRAM DIRECT BY MR. MATTHEWS

1 reference being pulled over on Rosewood?

2 A. I did.

3 Q. Did you further look up any information about that
4 incident?

5 A. Yeah. I had a search conducted for records with the
6 City of Columbia through our violations department,
7 referenced what was said in court, date and location.
8 We input Mr. Hawes's name to see if he had been stopped
9 or there was any record of him having police contact
10 and there were none.

11 Q. So if he would have been pulled over, there would have
12 been a record of that?

13 A. There would -- well, let me back up. There may have
14 been a record. But what he said that was important was
15 that as result of that stop, he had a court appearance.
16 Now, if you have a court appearance that means some
17 documentation was generated from the stop, a citation
18 or something of that nature which would get him into
19 court, that would have been documented. And we have no
20 record of that.

21 Q. Did you, also, have occasion to review the Defendant's
22 cell phone records that were gotten from AT&T?

23 A. Yes.

24 Q. And what is contained in those records just briefly?

25 A. The portion that I would review deals with cell ID,

WILLIAM PEGRAM DIRECT BY MR. MATTHEWS

1 LAC, which is local area code, GPS coordinates for
2 actual location or physical location and tower, and the
3 cell that is transmitting or receiving a signal for the
4 cell phone.

5 Q. So what are able to kind of figure out from these
6 records?

7 A. The records show that, number one, the cell phone that
8 was making communication or contacting the tower, the
9 physical location of that tower and the cell on that
10 tower that is receiving that call, also, provides
11 the azimuth off of a tower, which give you what is
12 referred to a telemetry. And telemetry will give you a
13 sector.

14 There are three main sectors of a tower. It goes
15 from 000 to 120 degrees, 120 degrees to 240 degrees,
16 and 240 degrees to 360 degrees. And it will tell you
17 if that phone that's transmitting is within or close to
18 that sector that it's transmitting through.

19 Q. So, basically, can you determine the general location
20 of a person from the cell phone records?

21 A. You can get it a general area, yes.

22 Q. And did you do that after reviewing these records?

23 A. I did.

24 Q. I'm going show you what's been marked as State's
25 Exhibit 442 and 443. Do you recognize these?

WILLIAM PEGRAM DIRECT BY MR. MATTHEWS

1 A. I do.

2 Q. What is 442?

3 A. 442 is a detailed call log that includes phone entry
4 and cell ID.

5 Q. And that's just a blow-up of pages already in evidence?

6 A. Yes.

7 Q. And what is 443?

8 A. That's showing the telemetry from the two towers that
9 were handing off the call from Hank Hawes.

10 Q. And did you create this?

11 A. That was created by the fusion center at the State Law
12 Enforcement Division.

13 Q. And can you tell me how this is created?

14 A. Yeah, you input the information off of the phone
15 records into a software program that is supplied to the
16 State Law Enforcement Division, and the information
17 that's been imported into this system will generate a
18 graph and show you --

19 MR. MATHEWS: Your Honor, I want to offer first
20 State's 442 and 443 into evidence.

21 THE COURT: Any objection?

22 MR. STRICKLER: No, sir.

23 THE COURT: Without objection.

24 (State's Exhibit Nos. 442 and 443 were
25 admitted into evidence.)

WILLIAM PEGRAM DIRECT BY MR. MATTHEWS

1 BY MR. MATHEWS:

2 Q. First, I want to show you the call log. What is
3 significant about this?

4 A. For me, the time, date, telephone number, also, the
5 coordinates that transmit off of the tower.

6 Q. And now explain to me a little bit about this map that
7 was created?

8 A. Can I stand up?

9 Q. Certainly.

10 MR. MATHEWS: Your Honor, may the witness step
11 down?

12 THE COURT: Yes, sir.

13 (The witness steps off the witness stand.)

14 THE WITNESS: These two indicators here are,
15 actually, cell phone towers. The cell phone tower
16 information is here (indicating). This -- I don't know if
17 you can see this, but it says the LACCID is the local area
18 code and the cell identification. The first four numbers
19 here indicate the carrier's system. The next three, the
20 304, is the tower itself. And the last numbers are nine.
21 In nine represents the cell that is on the tower that's
22 receiving signal.

23 In the call records, they clearly identify these
24 two towers as communicating with Hank Hawes's cell phone.

25 Q. Communicating when with Hank Hawes's cell phone?

WILLIAM PEGRAM DIRECT BY MR. MATTHEWS

- 1 A. Um.
- 2 Q. You can pick that up as well.
- 3 A. If you look to -- over here (indicating), here's the
4 date, 08/28/11 at 0212 in the morning. What that tells
5 me is at 2:12, if you go all the way to the right, it
6 puts him at 240, these two tower, (indicating). And
7 240, what's significant about is that her residence is
8 within seconds of it.
- 9 Q. So at 2:12 a.m., from the telephone records, where can
10 you tell that he is in general?
- 11 A. In general, he is in sector 240, which is this area
12 outlined in red.
- 13 Q. Which contains?
- 14 A. Jennifer Wilson's address.
- 15 Q. Okay. Thank you. And, also, during your
16 investigation, did you have time to observe a Range
17 Rover?
- 18 A. I did.
- 19 Q. And what did you find out about that Range Rover?
- 20 A. The Range Rover was registered to a Ms. Dalheimer. It
21 was the vehicle that was in the possession and under
22 the control of Hank Hawes. That was the vehicle that
23 was recovered and taken to headquarters for processing.
- 24 Q. It was processed at the scene?
- 25 A. It was processed at headquarters.

WILLIAM PEGRAM DIRECT BY MR. MATTHEWS

1 Q. At headquarters?

2 A. Right.

3 Q. Are you aware that certain items were recovered from
4 the vehicle?

5 A. Yes.

6 Q. Were swabs taken from the vehicle?

7 A. Yes.

8 Q. Let me show you what's been marked as State's 255
9 through 275. If you can tell me if you recognize
10 those, please, sir.

11 A. I do.

12 Q. What are those photographs of?

13 A. Photographs of a black Range Rover, the vehicle that
14 was seized and processed.

15 Q. And are those an accurate representation of what the
16 vehicle looked as it was processed?

17 A. Yes.

18 MR. MATHEWS: Your Honor, at this time, I would
19 offer State's 255 through 275.

20 THE COURT: Any objection?

21 MR. STRICKLER: No, sir.

22 THE COURT: All right. Without objection.

23 (State's Exhibit Nos. 255 through 275
24 were admitted into evidence.)

25 BY MR. MATHEWS::

WILLIAM PEGRAM CROSS BY MR. STRICKLER

1 Q. And, specifically, in photograph 257, do you see
2 anything in there that stands out?

3 A. This is a watch in the cup holder.

4 Q. A watch in the cup holder of the vehicle (indicating).
5 And I'm showing you State's Exhibit No. 384, which is
6 already in evidence. Is this that watch?

7 A. Yes.

8 Q. That was located in the vehicle?

9 A. Uh-huh.

10 Q. And what other items do you know were removed from the
11 vehicle by law enforcement?

12 A. Well, there were two items that I specifically
13 requested that should have been removed and I believe
14 they were removed. That would be the floor mat and the
15 brake pedal.

16 The reason we do that is when you think you're
17 going to collect DNA or swab something for DNA,
18 something like a vehicle, we're required to maintain
19 that in evidence for a significant period of time. So
20 instead of seizing and maintaining the entire vehicle,
21 we'll take removable portions from that vehicle that,
22 actually, contains the DNA or what we believe DNA
23 evidence. In this case, we took a floor mat and a
24 pedal.

25 Q. Is that what's pictured in State's Exhibit 264?

WILLIAM PEGRAM CROSS BY MR. STRICKLER

1 A. Yes.

2 Q. And were those taken and were those processed?

3 A. They were.

4 MR. MATHEWS: Beg the Court's indulgence.

5 Thank you, Sergeant Pegram. I have no further
6 questions.

7 THE COURT: Cross-examination.

8 MR. STRICKLER: Thank you, Your Honor. May it
9 please the Court.

10 CROSS-EXAMINATION

11 BY MR. STRICKLER:

12 Q. Morning, Sergeant?

13 A. Good morning, sir.

14 Q. I have a few questions, I guess.

15 A. Okay.

16 Q. Referencing what's marked as State's 442?

17 A. Yes, sir.

18 Q. Okay. You've talked about the call at 2:12 in the
19 morning coming from sector 240, correct?

20 A. Yes.

21 Q. Can you reference a call from 2:02, is numbered 768,
22 2:02 a.m.?

23 A. Yes, sir.

24 Q. Where was that call -- what sector was that call coming
25 from?

WILLIAM PEGRAM CROSS BY MR. STRICKLER

- 1 A. Well, this is what you would call a hand-off.
- 2 Q. Okay.
- 3 A. May I stand?
- 4 Q. Sure.
- 5 A. At 2:02, if you look at the far right, you see two
- 6 different towers. If you're mobile in a -- say, you're
- 7 in a car and you're on the cell phone. If you're
- 8 within one sector and you leave that sector, then the
- 9 towers hand off to the next closest tower with the
- 10 strongest signal. So what you have here is sector 350
- 11 and during the travel hands off to tower at sector 240.
- 12 Q. Okay. Then if you go to the immediately proceeding
- 13 phone call?
- 14 A. Okay. That's -- that would be at two o'clock?
- 15 Q. Two o'clock?
- 16 A. Two o'clock is in sector 350.
- 17 Q. And where is that in relation to where Ms. Wilson was?
- 18 If you know?
- 19 A. It's azimuth 350. She's not within that sector. That
- 20 just tells me that -- that mobile device is in a
- 21 different sector.
- 22 Q. Okay. And so at what point in time did the mobile
- 23 device get in the same sector as Ms. Wilson's house?
- 24 A. I would have to look at the charts, but it's either
- 25 between 2:02 or 2:14 in the morning. At 2:12, it was

WILLIAM PEGRAM CROSS BY MR. STRICKLER

- 1 within sector 2:40.
- 2 Q. 2:12 in the morning?
- 3 A. Yes, sir. If I may, on the last question --
- 4 Q. Yes, sir.
- 5 A. -- last answer.
- 6 Q. Yes, sir.
- 7 A. When I say it was in 240, that is correct, but it,
- 8 also, at 2:02 was traveling, too, and at some point
- 9 between 2:02 and 2:12 was at sector 240.
- 10 Q. Okay.
- 11 A. So you have your hand-off at 2:02.
- 12 Q. Okay. Now, you also reviewed records from later in the
- 13 morning, phone records?
- 14 A. Yes.
- 15 Q. Correct? Specifically, you're aware that one Stacey
- 16 Newsom has a telephone with the number (803)374-5776?
- 17 A. I'm really not off the top of my head that familiar
- 18 with the telephone number. Okay. I'm looking at it.
- 19 Q. Take your time. Did you look at it?
- 20 A. I'm looking at it.
- 21 Q. In fact, your investigative notes on Page 2 indicate
- 22 that at 2:37 hours, it appears the victim was already
- 23 dead and Hawes was on the phone with Stacey Newsom; is
- 24 that correct?
- 25 A. Yes.

WILLIAM PEGRAM CROSS BY MR. STRICKLER

- 1 Q. Okay. If I could show you this page from another
2 portion of the call records, the phone records, does
3 that reflect that 2:37 in the morning call? That
4 reflects that call to Stacey Newsom, correct?
- 5 A. That's correct.
- 6 Q. What's the duration of that call?
- 7 A. It shows the time lapse is 10 minutes, 34 seconds.
- 8 Q. Do you have that record that I'm looking at, also?
- 9 A. Yes, I have it.
- 10 Q. Okay. 10 minutes and what, 34 seconds?
- 11 A. That's what it appears.
- 12 Q. That was at 2:37 in the morning?
- 13 A. Yes, sir.
- 14 Q. Okay. The record reflects another call to Ms. Newsom
15 at 2:53 in the morning?
- 16 A. That's correct.
- 17 Q. And the duration of that call was six minutes and 52
18 seconds?
- 19 A. Yes.
- 20 Q. Okay. Reflects another call at 3:08, but only for some
21 three seconds; is that right?
- 22 A. Point 03, yes, sir.
- 23 Q. Then a call -- pardon me, that was a call from her --
24 no -- then there -- there was a call from her to his
25 number that's four seconds in duration at 3:09 a.m.,

WILLIAM PEGRAM CROSS BY MR. STRICKLER

- 1 right?
- 2 A. That's correct.
- 3 Q. Then at 3:19, there's a call to her that last 18
- 4 minutes and 27 seconds?
- 5 A. That's correct.
- 6 Q. Then there's a call at 3:52 a.m. from him to her that
- 7 last seven minutes and 33 seconds?
- 8 A. Yes, sir.
- 9 Q. Then another call at 4:31 a.m. to her from him that
- 10 last eight seconds?
- 11 A. Yeah, that's actually at 2:21 -- I'm sorry, 4:21.
- 12 Q. I apologize.
- 13 A. Yeah, eight seconds.
- 14 Q. Okay. Then another call at 4:21 a.m. from his number
- 15 to hers that last 22 minutes and 44 seconds?
- 16 A. Yes, sir.
- 17 Q. All right. And all of those calls would be coming from
- 18 the same telemetry information that you just testified
- 19 about, right?
- 20 A. Yes, sir.
- 21 Q. Sector 240?
- 22 A. Yes, sir.
- 23 Q. Okay. Did you have occasion -- turning away from the
- 24 telephone for a moment. Did you have occasion to go to
- 25 Mr. Hawes's residence on Woodrow Street?

WILLIAM PEGRAM CROSS BY MR. STRICKLER

1 A. I did.

2 Q. When was that, on the 28th, also?

3 A. Yes, sir.

4 Q. Okay. Let me show you a series of pictures that
5 haven't been marked yet and ask if you recognize them.

6 A. Yes, sir.

7 Q. And what do those depict?

8 A. Hank Hawes's residence.

9 Q. On August 28th, the way it appeared when you were
10 there?

11 A. I believe so, yes, sir.

12 Q. Yes, sir.

13 (Defendant's Exhibit Nos. 61 through 69
14 were marked for identification.)

15 MR. STRICKLER: Your Honor, we would move what's
16 been marked as 61 through 69 into evidence.

17 MR. MATHEWS: No objection, Your Honor.

18 THE COURT: Exhibits 61 through 69 admitted
19 without objection.

20 (Defendant's Exhibit Nos. 61 through 69
21 admitted into evidence.)

22 BY MR. STRICKLER::

23 Q. I want to show you what's marked as State's [sic] 62
24 and ask you if you can explain what that depicts?

25 A. All I can tell you is some type of substance on what

WILLIAM PEGRAM CROSS BY MR. STRICKLER

- 1 looks like a pillow case.
- 2 Q. A pillow case?
- 3 A. Yes.
- 4 Q. All right. And then Defendant's 63, I ask what that
- 5 depicts?
- 6 A. It appears to be vomit.
- 7 Q. Okay. Whereabouts?
- 8 A. Beside the bed.
- 9 Q. On the floor?
- 10 A. I can't tell which side of the bed, but on the floor.
- 11 Q. Yes, sir. Then State's -- or Defendant's 64, rather.
- 12 A. Substance appears to be blood.
- 13 Q. Okay. Again, can you tell what's that on or not?
- 14 A. I can't -- I couldn't tell you for sure what's that on.
- 15 Q. Okay. And 65?
- 16 A. There again, it appears to be a bloodstain on some sort
- 17 of comforter or blanket.
- 18 Q. Okay. And, perhaps, Defendant's 67 puts things in
- 19 context just a little bit?
- 20 A. Yeah. General area.
- 21 Q. Of bed?
- 22 A. A bed.
- 23 Q. Comforter?
- 24 A. Yes, sir.
- 25 Q. And Defendant's 66?

WILLIAM PEGRAM CROSS BY MR. STRICKLER

- 1 A. Appears to be a pair of jeans laying on the floor.
- 2 Q. Okay. You know if a pair of jeans were taken into
3 evidence?
- 4 A. There was a pair of jeans taken.
- 5 Q. That would reflect the jeans as they were when y'all
6 arrived on scene?
- 7 A. Yes, sir, that's correct.
- 8 Q. Okay. Now, you also responded to the scene on Monroe
9 Street, correct?
- 10 A. I did.
- 11 Q. You had the opportunity to walk through that scene?
- 12 A. Yes, sir.
- 13 Q. Okay. Do you remember, and I, certainly, understand if
14 you don't, whether you saw dishes stacked in or around
15 the scene in the picture?
- 16 A. I don't recall.
- 17 Q. It's been awhile?
- 18 A. Right.
- 19 MR. STRICKLER: Thank you, sir.
- 20 THE COURT: Redirect?
- 21 MR. MATHEWS: No, Your Honor.
- 22 THE COURT: All right. You may step down. Thank
23 you so much.
- 24 Call your next witness.
- 25 MS. GARFIELD: Your Honor, may we approach?

WILLIAM PEGRAM CROSS BY MR. STRICKLER

1 THE COURT: I'm sorry, what?

2 MS. GARFIELD: May we approach?

3 THE COURT: Yes, ma'am.

4 (Whereupon, a bench conference was held
5 off the record, in the presence of the
6 jury, but out of the hearing of the
7 jury.)

8 THE COURT: Ladies and gentlemen of the jury, let
9 me say something very briefly. There's three ways evidence
10 is generally presented to you. It can be presented in the
11 courtroom from testimony from the witness stand as we've
12 heard in the last week and, again, this morning. It can
13 also be presented by depositions or sworn statements, which
14 we have not heard any of that in this case, which,
15 generally, you don't have in a criminal case. And the third
16 way is by stipulation between the parties.

17 Now, normally, in a criminal case whenever there's
18 a fungible item, fungible item that can be destroyed or
19 changed and tested done on those items, the State has to
20 establish a chain of custody. Chain of custody is when that
21 particular item is collected. In this case, we're talking
22 about DNA, when that item is collected, everybody that
23 handled that item, until the testing was done and returned
24 back to the evidence closet after testifying. In this
25 particular case, the parties have stipulated that the chain

WILLIAM PEGRAM CROSS BY MR. STRICKLER

1 of custody was proper, therefore, we will not be calling
2 those two, or three, or four, or five witnesses, or how many
3 there are that established that chain of custody. So the
4 parties have stipulated in this case that the chain of
5 custody is appropriate as to the DNA. And the parties have
6 agreed to that.

7 Is that correct from the State?

8 MS. GARFIELD: Yes, sir.

9 THE COURT: Is this correct from the Defendant?

10 MR. STRICKLER: Yes, sir.

11 THE COURT: All right. Thank you so very much.

12 You want a very brief break?

13 MS. GARFIELD: Yes, please.

14 THE COURT: All right. Mr. Foreman, ladies and
15 gentlemen of the jury, leave your note pads in the chair.
16 We're going to take a very short break.

17 (Whereupon, the jury left the courtroom
18 at 10:32 a.m.)

19 (Whereupon, a short recess was held.)

20 THE COURT: Ready?

21 MS. CAMPBELL: Yes, sir.

22 THE COURT: All right. Is the State ready to
23 rest?

24 MS. GARFIELD: Yes, sir.

25 THE COURT: The State rest?

WILLIAM PEGRAM CROSS BY MR. STRICKLER

1 MS. CAMPBELL: Yes, sir.

2 MS. GARFIELD: Yes, sir.

3 THE COURT: The jury's out on a break, so I'll
4 hear any motions at this time since it's the end of the
5 State's case. When the jury comes back, I'll let the State
6 rest and then we'll start with the Defendant's case.

7 I'll be glad to hear you on any motions from the
8 State?

9 MS. CAMPBELL: None, Your Honor.

10 THE COURT: Any motions from the Defendant?

11 MR. STRICKLER: Your Honor, very briefly, of
12 course, at this point in time, we make a directed verdict
13 motion in regards to murder submitting that the evidence
14 taken in the light most favorable to the State fails to
15 support putting this case to the jury on the issue of
16 malice. So that will be the motion for directed verdict.

17 We would, also, renew our previously made motions,
18 specifically, renewing motion for a mistrial that was made
19 at the time the State claiming we opened the door to some
20 testimony -- the missing of time at this point, Your Honor,
21 but we moved for a mistrial at that point. We,
22 specifically, Your Honor, to review your ruling in that
23 regard and revert yourself and grant a mistrial at this
24 time. We would renew any other objections that we made in
25 the course of the trial, no new grounds.

WILLIAM PEGRAM CROSS BY MR. STRICKLER

1 THE COURT: Okay. Your motion for directed is
2 denied and the motion for the -- the renewed motion for the
3 mistrial is, also, denied.

4 MR. STRICKLER: Thank you.

5 THE COURT: Anything else you want to put on the
6 record?

7 MS. PRINGLE: I just have a number of exhibits I
8 need to enter.

9 THE COURT: How much time -- I'm not trying to
10 hurry you, I'll give you as much time as you need to get
11 ready, okay? How much time do you need to get ready? We
12 can take a break.

13 MS. PRINGLE: No, I just need to enter them. I
14 just need to call out the number. They're without
15 objection. This would be for exhibits that I referred to
16 throughout Mr. Vanhouten's testimony. Ms. Garfield and I
17 was okay with me --

18 MS. GARFIELD: In the interest of time, Judge, we
19 didn't have any problem.

20 THE COURT: Okay.

21 MS. PRINGLE: Defendant's Exhibit 2, 3, 4, 6, 7,
22 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 16 --

23 THE COURT: 18 and what?

24 MS. PRINGLE: I had 18 and 16 out of order, yes.

25 THE COURT: Okay.

WILLIAM PEGRAM CROSS BY MR. STRICKLER

1 MS. GARFIELD: 16, 17, 18, 19, 20, 21, 22, 23, 24,
2 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 41, 42, 43,
3 44, 46, 48, 49, 52, 53, 54, 55, 56, 57, 58, 59.

4 THE COURT: I'm not going to call every one out
5 again, but all of the Defendant's exhibits that were called
6 out by defense counsel, does the State have any objection to
7 those exhibits?

8 MS. CAMPBELL: No, sir.

9 THE COURT: All right. Those exhibits are
10 admitted without objection.

11 (Defendant's Exhibit Nos. 2, 3, 4, 6
12 through 34, 36, 37, 41 through 44, 46,
13 48, 49, and 52 through 59 were admitted
14 into evidence.)

15 THE COURT: All right. Anything else?

16 MR. STRICKLER: Would Your Honor care to have
17 colloquy with Mr. Hawes regarding his decision whether to
18 testify?

19 THE COURT: Well, I was going to ask you, is he
20 going to be one of your first witnesses?

21 MR. STRICKLER: Yes, sir.

22 THE COURT: Oh, he is?

23 MR. STRICKLER: Yes, sir.

24 THE COURT: Okay. I was going to do that later, I
25 didn't know he was going to be your first witness.

WILLIAM PEGRAM CROSS BY MR. STRICKLER

1 Mr. Hawes, raise your right hand.

2 THEREUPON,

3 HANK HAWES,

4 after having been duly sworn, testified as follows:

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Hawes, I'm going to ask you
7 certain questions. During this process, if would you like
8 to talk -- before you answer the questions, if you would
9 like to talk to your attorney about the questions, I will be
10 glad to stop and allow you to talk to your attorney. Do you
11 understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: If you don't understand a question,
14 please, tell me, okay?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. I'm going to explain to
17 you your Fifth amendment right to remain silent. Have you
18 had an opportunity to talk to your attorney about your Fifth
19 amendment right to remain silent?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you understood the conversations
22 you have had with your attorney?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand under your Fifth
25 amendment constitution, whether it's State's constitution

WILLIAM PEGRAM CROSS BY MR. STRICKLER

1 and the South Carolina, no one can compel you to testify in
2 a criminal trial? Do you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: The State's required to prove you
5 guilty beyond a reasonable doubt. You do not have to prove
6 your innocence, you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, this is a personal right and
9 personal privilege that you have, do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Only you can waive that privilege.
12 Your attorney can't waive it for you. No one else can waive
13 it for you, you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You have the right to testify, you
16 have the right to not testify, you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: As I asked you earlier, have you
19 talked to your attorney and you said you have. Have you
20 spoken to your attorney long enough and enough frequency
21 about your right to testify?

22 THE DEFENDANT: I believe so, yes, sir.

23 THE COURT: Do you need to discuss any further
24 with your attorneys?

25 THE DEFENDANT: No, sir.

WILLIAM PEGRAM CROSS BY MR. STRICKLER

1 THE COURT: Do you understand that if you elect
2 not to testify, that cannot be used by the State as evidence
3 and I will instruct the jury they are not to assert any
4 value whatsoever in deliberating your innocence or guilt,
5 you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you, also, understand that you
8 assume the rule of a witness, in other words, if you decide
9 to testify, you will be a witness in the trial, do you
10 understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: When you take the witness stand, you
13 will be required to answer the question as long as it's
14 relevant or it doesn't violate any rules of evidence or any
15 rules of the court, you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: In other words, it's not like we see
18 on television, somebody takes the stand and they say -- they
19 pick and choose which questions they want to answer. Either
20 you take the stand and answer all of the questions or you
21 don't testify period, you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have any questions about that?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you understand that your decision

WILLIAM PEGRAM CROSS BY MR. STRICKLER

1 must be freely, voluntarily and intelligently given?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Has anybody forced you to testify?

4 THE DEFENDANT: No, sir.

5 THE COURT: Has anybody forced or threaten you not
6 to testify?

7 THE DEFENDANT: No, sir.

8 THE COURT: Has anybody put any pressure on you
9 whatsoever about your right to testify or your right not to
10 testify?

11 THE DEFENDANT: No, sir.

12 THE COURT: Have you -- excuse me, do you
13 understand what I have explained to you?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you have any questions about what I
16 have explained to you?

17 THE DEFENDANT: No, sir.

18 THE COURT: You have any questions about your
19 Fifth amendment right to remain silent?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. Do you wish to testify?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Thank you so very much.

24 Anything -- y'all need some time to get ready?

25 MR. STRICKLER: I'm going to need just a few

WILLIAM PEGRAM CROSS BY MR. STRICKLER

1 minutes if they're done shuffling through the photographs,
2 I'm going to have to shuffle through them myself to select
3 the ones I need to use.

4 THE COURT: Start shuffling.

5 MR. STRICKLER: One other thing, Your Honor, we
6 need to bring up first, I think.

7 THE COURT: Okay.

8 MR. STRICKLER: Mr. Hawes is not handcuffed at
9 this point in time, however --

10 THE COURT: Well put him up there before the jury
11 comes?

12 MR. STRICKLER: Well --

13 THE COURT: I don't think they can see his
14 shackles from the witness stand. When he comes down, I'll
15 send the jury out.

16 MR. STRICKLER: Your Honor --

17 THE COURT: As long as he'll keep his feet under
18 the table, you can't see them (indicating). I mean, you may
19 instruct him to keep his feet under the table and you won't
20 be able to see them. He can pull his chair up to the table,
21 keep his feet under the table and nobody can see the
22 shackles, leg irons.

23 MR. STRICKLER: I don't intend to call him down
24 off the stand myself. If the State intends to do that,
25 we'll need to address it at that point in time, Your Honor.

WILLIAM PEGRAM CROSS BY MR. STRICKLER

1 THE COURT: Well, I don't know what the State's
2 planning on doing.

3 Are you planning on calling him off the stand?

4 MS. CAMPBELL: At this point, I don't plan on --

5 THE COURT: Pardon?

6 MS. CAMPBELL: No, if I --

7 THE COURT: If you do, then we'll just have to
8 deal with that -- approach, and we'll deal with it at that
9 time.

10 THE CLERK: Will he be sworn prior to getting up
11 or told that he's sworn or will I --

12 THE COURT: I'll just let you swear him while he's
13 sitting.

14 THE CLERK: While he's sitting?

15 THE COURT: Yes.

16 THE CLERK: Okay.

17 MS. CAMPBELL: Thank you.

18 MR. STRICKLER: And, Your Honor, there won't be
19 any one up there with him? There's not going to be a deputy
20 up there, is there?

21 THE COURT: I don't know. That's a security
22 issue. I don't deal with security. Security does.

23 Where are you going to sit?

24 BAILIFF: We'll just stand right beside him.

25 MR. STRICKLER: I'd object that.

WILLIAM PEGRAM CROSS BY MR. STRICKLER

1 THE COURT: Just he can -- the deputy can sit
2 where the bailiff's been sitting. The bailiff can sit
3 somewhere else.

4 MR. STRICKLER: That's all right with me, yes,
5 sir.

6 THE COURT: Okay. The bailiff can sit somewhere
7 else and the deputy can sit right in that black chair where
8 it's been the whole trial. Okay?

9 MR. STRICKLER: Yes, sir.

10 If I may have just a few minutes to go through the
11 pictures to get them in order and I'll be ready.

12 THE COURT: Okay.

13 (Pause.)

14 THE COURT: Let me see the officer of security up
15 here just a second.

16 (Pause.)

17 THE COURT: Who wants to put a microphone up from
18 the news media, come up here and talk to me.

19 (Whereupon, members of the news media came up to
20 have a conference with the Court.)

21 THE COURT: Is the Defense ready to proceed?

22 MR. STRICKLER: Yes, sir. Thank you for letting
23 me have that time.

24 THE COURT: Okay.

25 Anything else before we bring the jury in from the

WILLIAM PEGRAM CROSS BY MR. STRICKLER

1 State?

2 MS. CAMPBELL: No, sir.

3 THE COURT: Anything from the Defense?

4 MR. STRICKLER: No, Your Honor.

5 THE COURT: All right.

6 Mr. Hawes, if you will come around and take the
7 witness stand, please.

8 (The defendant was seated in the witness
9 stand.)

10 THE COURT: All right. Mr. Hawes, if you will
11 pull your chair up, keep your feet under the table. As long
12 as you keep your feet under the table, the jury will not see
13 the leg irons. You understand?

14 THE DEFENDANT: (The witness nodded head.)

15 THE COURT: All right. Pull your chair up so
16 everybody can hear you on the microphone.

17 THE DEFENDANT: All right.

18 THE COURT: All right.

19 Madam Clerk, if you will swear him, please. You
20 can swear him while he's seated, please, ma'am.

21 THEREUPON,

22 HANK HAWES,

23 after having been duly sworn, testified as follows:

24 THE CLERK: State your name for the record.

25 THE DEFENDANT: Hank Hawes.

HANK HAWES DIRECT BY MR. STRICKLER

1 THE COURT: All right. Let me direct my attention
2 to the people in the audience. I want your portable phones
3 off. If I hear anything ring or if you're doing any
4 recording with them, I'm going to confiscate them and you'll
5 have to buy another one. They are to be turned off. So
6 does everybody understand?

7 (Members of the audience nodded head.)

8 THE COURT: I heard one go off a while ago, I
9 didn't say anything, but if another one goes off, the
10 bailiff is going to confiscate it and you'll have to go buy
11 another one.

12 Is there anybody that does not understand that?

13 (There was no response.)

14 THE COURT: Bring us the jury, please.

15 (Whereupon, the jury returned to the
16 courtroom at 11:18 a.m.)

17 BAILIFF: The jury panel is present, Your Honor.

18 THE COURT: Thank you very much.

19 Does the State have any further witnesses?

20 MS. GARFIELD: Your Honor, at this time, the State
21 of South Carolina rest its case.

22 THE COURT: All right. Thank you so very much.

23 Ladies and gentlemen of the jury, the State has
24 rested, which means they don't have any further witnesses at
25 this time. We're going to start the Defendant's case. As I

HANK HAWES DIRECT BY MR. STRICKLER

1 told you at the beginning of the trial, the roles will
2 reverse. The Defense will have the witnesses on direct
3 examination, the State will have the witness on
4 cross-examination.

5 Yes, sir.

6 MR. STRICKLER: Thank you, Your Honor. May it
7 please the Court. Let the record reflect Mr. Hawes has
8 already been sworn.

9 THE COURT: Yes, sir.

10 Mr. Hawes was sworn before you came into the
11 courtroom.

12 Please proceed.

13 MR. STRICKLER: Thank you, sir.

14 DIRECT EXAMINATION

15 BY MR. STRICKLER:

16 Q. Good morning.

17 A. Good morning.

18 Q. You are Hank Hawes?

19 A. Correct.

20 Q. You go by Hank?

21 A. Yes, sir.

22 Q. All right if I refer to you as that?

23 A. Yes, sir.

24 Q. You a little nervous up there this morning?

25 A. Little.

HANK HAWES DIRECT BY MR. STRICKLER

1 Q. Okay. I'm going to talk with you a little bit about
2 your relationship with Ms. Wilson.

3 A. (The witness nodded head.)

4 Q. And, specifically, about the incident and the events of
5 August 27th, August 28th, 2011, all right?

6 A. Okay.

7 Q. On August 28th, 2011, did you go to 3721 Monroe Street
8 to kill Jennifer Wilson?

9 A. Absolutely not.

10 Q. Why did you go?

11 A. Basically, I saw the relationship wasn't going
12 anywhere, so I went there just to have a clean break of
13 it.

14 Q. A clean break of it?

15 A. (The witness nodded head.)

16 Q. Okay. Hank, how old are you now?

17 A. Forty.

18 Q. Forty. And where were you born?

19 A. Leesburg, Florida.

20 Q. Whereabouts in Florida is that?

21 A. It's northwest of Orlando.

22 Q. Okay. And where did you grow up?

23 A. Between Plant City, Florida, and Tampa, Florida.

24 Q. Okay. And how far did you go in school?

25 A. I had a year of technical college and then I had some

HANK HAWES DIRECT BY MR. STRICKLER

1 other college classes as well.

2 Q. Okay. And at some point in time, did you have occasion
3 to move to South Carolina?

4 A. I did.

5 Q. And when was that, do you remember?

6 A. I believe that was sometime in 2009 -- well, yeah,
7 2009, 2010. I don't know exact dates.

8 Q. Did you move here by yourself or did you move here with
9 someone else?

10 A. No, sir. I moved here with someone else.

11 Q. What would that be?

12 A. Stacey Newsom.

13 Q. So were you and Stacey at that point in time living
14 together?

15 A. Yes, sir.

16 Q. Okay. And that had started down in Florida?

17 A. Yes, sir.

18 Q. Okay. And where in South Carolina did you all move to?

19 A. It's Simpsonville, South Carolina, just outside of
20 Greenville.

21 Q. Just outside of Greenville?

22 A. Yes, sir.

23 Q. Okay. When to the best of your knowledge did you first
24 come in contact with Ms. Wilson?

25 A. On or about February of 2011.

HANK HAWES DIRECT BY MR. STRICKLER

- 1 Q. Okay. And how did that contact come about?
- 2 A. We met on E-Harmony, an online dating service.
- 3 Q. Okay. Did you contact her or did she contact you?
- 4 A. I don't recall. I know that the service kind of
- 5 matches you up based on similarities, likes, dislikes,
- 6 things of that nature.
- 7 Q. I have no idea how the thing works. After your matched
- 8 up, would one of the other of you contact the other
- 9 one?
- 10 A. Typically.
- 11 Q. Okay. And that was when to the best of your knowledge?
- 12 A. I think it was somewhere around February --
- 13 Q. Okay.
- 14 A. -- March, 2011.
- 15 Q. And did you start seeing her?
- 16 A. I did.
- 17 Q. And, roughly, when was that?
- 18 A. That would have been right about the same time.
- 19 Q. Okay. So y'all, actually, physically met each other
- 20 shortly after you met on E-Harmony?
- 21 A. Yes, sir, correct.
- 22 Q. Okay. At some point in time, did you move to Columbia
- 23 from Simpsonville?
- 24 A. I did.
- 25 Q. And, roughly, when was that?

HANK HAWES DIRECT BY MR. STRICKLER

- 1 A. That would have been June of 2011.
- 2 Q. Okay. Prior to that time, did you travel back and
3 fourth to Columbia?
- 4 A. I traveled all over the state.
- 5 Q. Right.
- 6 A. Yes.
- 7 Q. So you had occasion to see Ms. Wilson down here?
- 8 A. Yes, sir.
- 9 Q. When you did that, where did you stay?
- 10 A. It would vary. Sometimes I would stay with her,
11 sometimes, I would stay at Claussens downtown. It just
12 varied.
- 13 Q. Okay. When you moved to Columbia, you said June, 2011?
- 14 A. Yes, sir.
- 15 Q. Where did you locate?
- 16 A. 1420 Woodrow Street.
- 17 Q. Okay. And where is 1420 Woodrow in relation to 3721
18 Monroe?
- 19 A. It's, roughly, about five minutes away.
- 20 Q. Okay.
- 21 A. Five-minute drive away.
- 22 Q. Can you place 1420 Woodrow in relation to any major
23 street in Columbia?
- 24 A. It's -- my house was right behind the Tripp's Cleaners.
25 It intersects with Gervais.

HANK HAWES DIRECT BY MR. STRICKLER

1 Q. Okay. And 3721 Monroe, can you place that in relation
2 to any major street in Columbia?

3 A. It's off of -- it's right at the tail end of, I believe
4 that's South Kilborn and it's almost to, I believe,
5 that's Rosewood.

6 Q. Okay. Turning to the time frame of June, 2011, can you
7 characterize for the jury what your relationship with
8 Ms. Wilson was like at that point in time?

9 A. I mean, we had a lot of ups and downs. We had some
10 good days, we had some bad days.

11 Q. Okay. Did she ever act like she needed some space from
12 you?

13 A. Not to my knowledge. I mean.

14 Q. Okay. We heard, my guess, about one day worth of
15 reading of various text messages between you and Ms.
16 Wilson?

17 A. Yes, sir.

18 Q. And we had an opportunity to observe how you texted?

19 A. (The witness nodded head.)

20 Q. Let me ask you this, have you been diagnosed with any
21 particular condition?

22 A. Severe combined ADHD.

23 Q. Say that again.

24 A. Severe combined ADHD.

25 Q. ADHD is what?

HANK HAWES DIRECT BY MR. STRICKLER

- 1 A. Attention deficit hyperactivity disorder.
- 2 Q. What does severe combined mean?
- 3 A. It means instead of being just on one side of the head,
- 4 it's on both. It affects --
- 5 Q. Both what?
- 6 A. Both sides of the brain.
- 7 Q. Okay. Can you describe some of the symptoms that you
- 8 would have as a result of this condition?
- 9 A. I lose my car keys. I could put my cell phone down and
- 10 walk past it a hundred times looking for it. Failure
- 11 to follow through on projects, late. Sometimes -- I
- 12 don't know, I guess, you know, sometimes no filter.
- 13 Q. No filter?
- 14 A. No filter on my mouth.
- 15 Q. Okay.
- 16 A. On my words.
- 17 Q. And as far as you text, the -- would you text rapidly?
- 18 A. Yes, sir.
- 19 Q. Okay. Sometimes just a couple of words at a time and
- 20 immediately follow up with additional texting?
- 21 A. Yes, sir.
- 22 Q. Okay. Now, just so we're clear, are you saying that
- 23 ADHD is responsible for this incident?
- 24 A. I am not.
- 25 Q. Okay. At some point in time during the texting, we

HANK HAWES DIRECT BY MR. STRICKLER

- 1 heard references to you telling Ms. Wilson that you had
2 been pulled over?
- 3 A. Yes, sir.
- 4 Q. Okay. You remember when that was?
- 5 A. I don't.
- 6 Q. Okay. Was it on the 27th?
- 7 A. I don't believe so.
- 8 Q. Okay. And you remember what the text said about having
9 a court date?
- 10 A. I do.
- 11 Q. Okay. Is that correct or not?
- 12 A. That part isn't correct.
- 13 Q. Okay. You were pulled over?
- 14 A. I was pulled over, yes, sir.
- 15 Q. At some point in time, could you feel -- did you feel
16 the nature of your relationship or your relationship
17 with Ms. Wilson was changing?
- 18 A. I did.
- 19 Q. And can you pinpoint when you think that was?
- 20 A. As I mentioned before, we had our ups and downs, but it
21 really -- in my opinion, it really started to change
22 once she went to Bali.
- 23 Q. When she went to Bali?
- 24 A. Bali, uh-huh.
- 25 Q. That was when, if you remember?

HANK HAWES DIRECT BY MR. STRICKLER

1 A. I think that was the tail end of July and the beginning
2 of August.

3 Q. Okay. When you say started to change then, can you let
4 us know -- I mean, what your impression of the change
5 was, what changed for you?

6 A. She just became more distant. Just our normal
7 conversations had changed, just the -- it just felt
8 different.

9 Q. Okay. Were you aware that she was either seeing other
10 people or making plans to see other people as we've
11 heard testimony here in court, were you aware of those?

12 A. I knew that she had done it in the past, but at that
13 particular time, I -- I wasn't aware that she was
14 involved seeing anyone.

15 Q. Okay. After the return from Bali where this change was
16 taking, were y'all still trying to work on the
17 relationship?

18 A. Yes, sir.

19 Q. We've heard about her going to therapy. Did y'all,
20 actually, go to couple's therapy?

21 A. We went one time, yes, sir.

22 Q. When was that?

23 A. I believe it was the Friday before. I'm not sure of
24 the date.

25 Q. Twenty-six?

HANK HAWES DIRECT BY MR. STRICKLER

- 1 A. Twenty-six.
- 2 Q. Do know who you went see then?
- 3 A. Michelle Trask, I believe was her name.
- 4 Q. And y'all went the one time?
- 5 A. Yes.
- 6 Q. And we heard testimony yesterday that for -- excuse me,
- 7 last week on text exchanges you had with a number of
- 8 other woman?
- 9 A. Yes, sir.
- 10 Q. Okay. We've heard today from one of them who's come in
- 11 and testified?
- 12 A. (The witness nodded head.)
- 13 Q. Did you ever, actually, physically meet these women?
- 14 A. I did not.
- 15 Q. You did not. On the 27th -- well, let's turn if we can
- 16 to the 27th, when did you first have contact with Ms.
- 17 Wilson on the 27th?
- 18 A. I believe it was that morning. I was feeling under the
- 19 weather and she brought me breakfast, if I remember
- 20 correctly.
- 21 Q. Okay. Brought it to your house?
- 22 A. Yes, sir.
- 23 Q. Okay. And did you have additional contact with her
- 24 during the course of that day?
- 25 A. I did, yes, sir.

HANK HAWES DIRECT BY MR. STRICKLER

1 Q. Okay. When was that to the best of your recollection?

2 A. It was a little later that afternoon. I think we --
3 she had something about lunch or I had something about
4 lunch. I ended up going over for lunch and we had
5 lunch together at her house.

6 Q. And that's reflected in the text exchanges that were
7 read into the record?

8 A. I believe so, yes, sir.

9 Q. I'm not going to dig through them and locate all that
10 stuff. And when you were there in the afternoon and
11 had lunch, were y'all intimate during that point in
12 time?

13 A. Yes, sir.

14 Q. So things had not broken off completely between y'all
15 during that point in time?

16 A. No, sir, it had not.

17 Q. When, if you remember, did you leave that house on the
18 27th?

19 A. If I remember correctly, it was sometime before 5:00 or
20 6:00 in the afternoon.

21 Q. Okay. Did y'all have any plans?

22 A. We did.

23 Q. What plans did y'all have?

24 A. She had said that she wanted to meet some people that I
25 hung out and I had arranged to -- we were going to go

HANK HAWES DIRECT BY MR. STRICKLER

1 to Cantina 76 and have dinner and just hang out,
2 socialize.

3 Q. Okay. And Cantina 76, that restaurant is located on
4 Divine Street?

5 A. It.

6 Q. Which is in close proximate to both her place and your
7 place, right?

8 A. Yes, sir.

9 Q. Okay. And when do you think you were going to be
10 meeting up? What was your understanding?

11 A. I thought somewhere around 7:00, 8:00.

12 Q. So tell me -- tell me what happened.

13 A. Well, essentially, she said she had a birthday party to
14 go to. It was for a coworker. And we said our
15 goodbyes. I ran a few errands. I got ready for that
16 evening and I went ahead and went to Cantina 76 and she
17 was supposed to meet me there. And by and large,
18 throughout the night, it was one text after the other.
19 It was just getting later and later. And, more or
20 less, by the end of the evening, I was just -- it
21 didn't happen.

22 Q. Okay. And as things kept getting delayed, how were you
23 feeling in that respect?

24 A. Frustrated, blown off, jerked around.

25 Q. Okay. And you left Cantina, roughly, when?

HANK HAWES DIRECT BY MR. STRICKLER

- 1 A. I think it might have been somewhere around 10:30.
- 2 Q. Okay. While you were there, were you texting with
- 3 Rachel, who we just heard testify?
- 4 A. I believe I was.
- 5 Q. Okay. So sitting around waiting and you were texting,
- 6 among other things?
- 7 A. Correct.
- 8 Q. When you left Cantina, where did you go?
- 9 A. I went home.
- 10 Q. Okay. Your -- did you continue to try to contact
- 11 Ms. Wilson?
- 12 A. I did.
- 13 Q. Did y'all ever make contact with each other -- let me
- 14 back up. When you texted her, did she respond to some
- 15 of your text, any of your text?
- 16 A. Yes, sir, she did.
- 17 Q. And what were the nature of her responses?
- 18 A. Anything from we're waiting on the check to it's taking
- 19 them forever, you know, it was just one thing after
- 20 another.
- 21 Q. Okay. Did she ever tell you she was not going to come
- 22 see you that night?
- 23 A. No, sir. Actually, in fact, she told me several times
- 24 that she -- you know, she was going to come, it was
- 25 just going to be later.

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1 Q. Okay. And did you continue to try to have contact with
2 her after you got home?

3 A. Yes, sir, I did.

4 Q. Okay. Were you ever successful in setting up a time
5 for y'all to get together?

6 A. No, sir. It -- it just kind of fizzled out, I think,
7 somewhere around two or three o'clock.

8 Q. Okay. How were feeling at that point in time?

9 A. At that particular point in time, I was -- I guess, I
10 was feeling upset, still feeling kind of blown off.
11 And I just really realized that the relationship wasn't
12 going anywhere and I just needed to end it.

13 Q. Just needed to end it?

14 A. Yes, sir.

15 Q. Okay. So what did you decide to do?

16 A. We had sort of a -- I can't remember if she called me
17 and I called back, but we had some sort of
18 miscommunication. At that point, I just decided to go
19 over. I knew she would be up. I decided to go ahead
20 and go over there and just go ahead and tell her that,
21 you know, I didn't want to do this anymore. I didn't
22 want to be in this relationship anymore.

23 Q. Was it unusual for you to go over to her house in the
24 early morning hours? Had that happened before?

25 A. Yes, sir, it had.

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- 1 Q. How about her coming over to your place in the early
2 morning?
- 3 A. Yes, sir.
- 4 Q. Okay. So that wasn't out of the ordinary?
- 5 A. No, sir.
- 6 Q. Okay. Did you have a key to her place at that point in
7 time?
- 8 A. I did not.
- 9 Q. So you go to her house?
- 10 A. (The witness nodded head.)
- 11 Q. Tell us -- what part of her house did you go to?
- 12 A. Um --
- 13 Q. What part -- let's just start here, where did you park
14 your car?
- 15 A. In the back, all of the parking is in the back.
- 16 Q. That's normally where people -- all cars are parked?
- 17 A. Yes, sir.
- 18 Q. What did you do then?
- 19 A. I, essentially, knocked on the door. She came to the
20 door.
- 21 Q. Okay.
- 22 A. And --
- 23 Q. Let me ask you this, let me show you what's marked as
24 State's Exhibit No. 165. Do you recognize what that
25 shows?

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- 1 A. Yes, sir.
- 2 Q. Okay. Do you recognize the pair of shoes there?
- 3 A. I do.
- 4 Q. Whose shoes are those?
- 5 A. Those are my shoe.
- 6 Q. Why are they sitting on her back porch?
- 7 A. Because she had this rule not to wear your shoes in the
- 8 house, so just trying to be respectful.
- 9 Q. Okay. The other shoes there are shoes of hers?
- 10 A. I believe they're all hers, yes, sir.
- 11 Q. Okay. So she didn't have shoes in the house?
- 12 A. No.
- 13 Q. This was her rule?
- 14 A. Right.
- 15 Q. Okay. All right. Let me just stop for a second and
- 16 back up just a little bit and just to try address a
- 17 couple of things. You heard testimony regarding you
- 18 texting her that you knew she was on Skype. Remember
- 19 that testimony?
- 20 A. Yes, sir.
- 21 Q. Okay. How would you know that she was on Skype --
- 22 first of all, what's Skype?
- 23 A. Skype is a voice over IP communication --
- 24 Q. You need to speak English here, okay?
- 25 A. It's an internet telephone --

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1 Q. Okay.

2 A. -- if you will. You can video chat, voice chat, send
3 text over it.

4 Q. Okay. And have you used Skype yourself?

5 A. I have.

6 Q. Have you used Skype with her?

7 A. Yes.

8 Q. Okay. Tell us how is that set up. How -- would you
9 know when someone's on Skype, what's the situation?

10 A. Typically, you -- if your Skype is open, anyone that
11 you've contacted or anyone in your contacts list,
12 there's a small icon that will pop up and it will let
13 you know if they're available or if they're busy or if
14 they're out. They can set it to be out or busy
15 normally if they haven't changed anything.

16 Q. Okay. So if you're on and you've dealt with people on
17 Skype before and they're on, you'll get a notification
18 or a visual notification that they're on the service?

19 A. Typically.

20 Q. Okay. Do you get any information about what they're
21 saying or anything like that?

22 A. No, sir.

23 Q. Okay. You, also, heard testimony about you having the
24 ability to track her iPhone because it's synced to the
25 computer somehow. Let me ask you this, have you ever

HANK HAWES DIRECT BY MR. STRICKLER

- 1 tracked her iPhone?
- 2 A. Absolutely not.
- 3 Q. We heard testimony of you asking on a number of
- 4 occasions where she was?
- 5 A. (The witness nodded head.)
- 6 Q. Correct.
- 7 A. Right.
- 8 Q. Did you know where she was?
- 9 A. I had no idea.
- 10 Q. And we'll turn back to the sequence of events. So you
- 11 go to the back door, you knock, and I believe you said
- 12 she answered?
- 13 A. Yes, sir.
- 14 Q. Okay. What happens then?
- 15 A. Basically, I walked in and I stopped right about where
- 16 her washer and dryers are.
- 17 Q. Right.
- 18 A. She shut the door behind me.
- 19 Q. Did she have to use her keys to open the door?
- 20 A. It's a double-sided deadbolt so if it would have been
- 21 locked, she would have had to have unlocked it, yes,
- 22 sir.
- 23 Q. Okay. Go ahead.
- 24 A. Essentially, we stopped there. She walked past me.
- 25 She threw her keys in her purse.

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- 1 Q. Okay.
- 2 A. And she turned around and looked at me and said, What
3 are you doing? I guess she assumed I was going to
4 follow her back.
- 5 Q. Follow her back where?
- 6 A. To the bedroom.
- 7 Q. To the bedroom, okay.
- 8 A. Basically, what ended up happening was is I told her
9 that I didn't want to do the relationship anymore. I
10 felt blown off. I didn't know what she was doing. I
11 just had enough of it. You know, we just -- we should
12 have ended this a long time ago, we just didn't. She
13 got semi-angry with me and then asked me, you know, she
14 said is this -- she kind of came out with are you
15 talking to Stacey, which is my ex.
- 16 Q. So she knew about Stacey? She knew of Stacey?
- 17 A. She did.
- 18 Q. Had she ever met Stacey?
- 19 A. She had.
- 20 Q. When was that?
- 21 A. She met her at the crawfish festival.
- 22 Q. Okay.
- 23 A. Here in Columbia.
- 24 Q. In 2011, that year?
- 25 A. Yes, sir.

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- 1 Q. So she asked you if you were still talking to Stacey?
- 2 A. Correct.
- 3 Q. Now, what was the conversation like at that point in
- 4 time?
- 5 A. It was becoming a little more tense. She asked me
- 6 that -- you know, had I -- if I was still talking to
- 7 Stacey and I told her yes.
- 8 Q. Okay.
- 9 A. And right after that, she asked me if I had at any time
- 10 slept with Stacey.
- 11 Q. Okay.
- 12 A. And I said yes.
- 13 Q. What was her reaction to that?
- 14 A. I had never seen that face before. I mean, she was --
- 15 it was rage.
- 16 Q. Did she speak at that point?
- 17 A. She didn't really speak. She just had this look on her
- 18 face. And at this point, like I said, I kind of stuck
- 19 my hand out in exasperation and --
- 20 Q. How close were the two of you at that point in time?
- 21 A. Two, three feet, probably three feet, maybe, maybe two
- 22 feet or closer. Probably like this (indicating).
- 23 Q. Okay. You stuck your hand out?
- 24 A. I stuck my hand out when she asked me and I said yes
- 25 (indicating). And I had started to turn -- at this

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1 point, I'm just thinking to myself, you know, I just
2 need to go ahead and go.

3 Q. Okay.

4 A. And the next thing I felt, she bit down on my index
5 finger.

6 (Defendant's Exhibit No. 70 was marked
7 for identification.)

8 BY MR. STRICKLER:

9 Q. Let me show you what's marked as Defendant's 70 and ask
10 if you recognize that?

11 THE COURT: What number?

12 MR. STRICKLER: Seventy, Your Honor.

13 THE COURT: All right.

14 BY MR. STRICKLER:

15 Q. Okay. And what's the mark?

16 A. It's a bite mark.

17 Q. That's the bite mark?

18 A. It is.

19 Q. Okay. Whereabouts in the kitchen are you at this point
20 in time?

21 A. Right -- she's got a washer and dryer stacked in front
22 of -- beside each other.

23 Q. Okay.

24 A. And we were standing right about -- I want to say a
25 little bit further back and closer to the door.

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- 1 Q. Okay.
- 2 A. She's possibly standing right in front of them.
- 3 Q. Standing right in front of where?
- 4 A. The washer and dryer.
- 5 Q. Okay. I show you what's marked as State's 390. First
- 6 of all, can you point to where the kitchen is in that?
- 7 A. The kitchen is here (indicating).
- 8 Q. Right here?
- 9 A. (Indicating).
- 10 Q. Right there?
- 11 A. Yes.
- 12 Q. And using the end of my pen, show where you all were
- 13 standing. Just point to it, please. Roughly.
- 14 A. It's going to be like right in this area (indicating).
- 15 I think the door is in the wrong -- well --
- 16 Q. So this is the door here?
- 17 A. But, basically, it's right in this area here
- 18 (indicating).
- 19 Q. Okay. So you put your hand out, you see her. What
- 20 would you describe the expression you saw on her face?
- 21 A. Rage.
- 22 Q. Rage. You put your hand out?
- 23 A. Yes.
- 24 Q. And she bites your finger?
- 25 A. Correct.

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- 1 Q. As you described. What happened then?
- 2 A. It kind of took me a second because I couldn't believe
3 she was biting me. So it kind of took me a second. I
4 reached over with my other hand, grabbed my wrist and I
5 snatched down and I tried to go back to the door. At
6 this point, I'm really wanting out of there. I tried
7 to open the door --
- 8 Q. This is the door to the kitchen that you come in
9 through?
- 10 A. Correct.
- 11 Q. Okay. Tried to open the door and?
- 12 A. And it wouldn't open. I guess she had locked it
13 whenever she had -- or whenever she opened it, she shut
14 it and locked it.
- 15 Q. Okay. So what happened next?
- 16 A. Well, I'm fumbling with the door and I'm still -- I
17 guess I still didn't realize I couldn't get it open.
18 I'm still trying to get it open.
- 19 Q. Were the keys in it at that point in time?
- 20 A. No, sir.
- 21 Q. Okay.
- 22 A. And I just remember looking back at her. She put her
23 hands in her hair, like fistfuls of hair like she was
24 going to pull her hair out.
- 25 Q. Can you demonstrate it?

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- 1 A. She ran it up into her curls and had (indicating) two
2 fistfuls of hair.
- 3 Q. Okay.
- 4 A. And she was pulling on it.
- 5 Q. Was she screaming at that point?
- 6 A. She did scream. She did scream at me.
- 7 Q. Uh-huh.
- 8 A. And I turned back around and I started jiggling the
9 door. You know, I still couldn't get out of there.
- 10 Q. Right.
- 11 A. And I turned back around. And when I turned back
12 around, she was a little closer to me and my eyes just
13 kind of rolled over and in her right hand, she had one
14 of the knives.
- 15 Q. Okay. What happened then?
- 16 A. I don't -- I don't even know the feeling, I just -- I
17 can't even describe it. I mean, I was just -- I was --
18 I didn't know what her intentions were. I thought she
19 was going to try and stab me with it. I thought she
20 was going to try and kill me with it. I reached -- I
21 like looked over. I reached over and there was a
22 butcher block, a knife block, and it had a bunch of
23 knives in it and I grabbed the closest thing that I
24 could. And I kind of put it out (indicating). And I'm
25 still hoping that this door is going to open. And, I

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1 mean -- then in a blink of an eye, she was on top of
2 me. I mean, she was just up on top of me.

3 Q. What happened?

4 A. Um --

5 Q. Let me stop you just one second. From the time you
6 come in through the door, okay?

7 A. Right.

8 Q. To the time where this point in your confrontation, do
9 you have any idea how long that took?

10 A. From the time I walked in the front door?

11 Q. Back door?

12 A. Or the back door.

13 Q. Yeah.

14 A. Maybe, maybe, a total of three minutes, maybe.

15 Q. Not a long period of time --

16 A. No, sir.

17 Q. -- at all. Okay. So she has a knife, you've got the
18 knife, what happens then?

19 A. The next thing --

20 Q. She's on you?

21 A. The next thing I know, she's kind of up against me.
22 And I tried to have my hand down, my left hand down
23 because that's where I knew the knife was at. And
24 we -- we kind of went back and forth. Like I said,
25 everything happened incredibly fast. She was pulling

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- 1 me back down towards the floor.
- 2 Q. All right.
- 3 A. At that point, we were backing up.
- 4 Q. Backing up into the kitchen?
- 5 A. Yes, sir.
- 6 Q. Okay.
- 7 A. And I just remember thinking I've just got to get her
- 8 off of me. I've just got to get her off of me.
- 9 Q. Okay. Do you have a conscious memory of striking any
- 10 particular blows yourself?
- 11 A. I don't.
- 12 Q. Do you even know whether you had your eyes opened at
- 13 that point in time?
- 14 A. All I had was that thought, I just had to get her off
- 15 of me.
- 16 Q. Okay. What's the next thing you consciously remember
- 17 seeing?
- 18 A. I remember like she had me almost in the floor. And I
- 19 was able to finally just push away (indicating). And
- 20 when I pushed away and I started to back up, I mean, I
- 21 saw blood everywhere. There was blood all over the
- 22 floor, her. I believe there was blood on me.
- 23 Q. What did you do?
- 24 A. I just -- I think I just sat there for a second. I was
- 25 just in shock. I was in -- I don't know what was going

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- 1 through my mind. I --
- 2 Q. Was she moving at that point in time?
- 3 A. No, sir.
- 4 Q. Okay. What action did you take?
- 5 A. I stood there for a second and then I thought, you
- 6 know, my God, I need to check and make sure that she's
- 7 okay. And I bent over and I took her pulse and I
- 8 didn't feel a pulse. And I just -- from that
- 9 particular point, I had walked backwards.
- 10 Q. Okay.
- 11 A. I walked backwards. I guess I was pretty close to the
- 12 door, maybe I was back by the washer and dryer. And I
- 13 just had this overwhelming sense of grief. Again, I --
- 14 I don't know. And I had a knife in my hand and I just
- 15 remember going cross my left wrist with it.
- 16 Q. Your right-handed?
- 17 A. I am.
- 18 Q. Okay. So you had the knife and brought it across your
- 19 left wrist?
- 20 A. I did.
- 21 Q. Okay. Let me show you what's marked as State's Exhibit
- 22 328.
- 23 A. Yes.
- 24 Q. You recognize that?
- 25 A. Yeah.

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- 1 Q. Can you tell us what this arc of blood at that position
2 on the floor in the kitchen is?
- 3 A. I believe it's from my left wrist.
- 4 Q. That's about the location you were in?
- 5 A. Yes, sir.
- 6 Q. The time you cut your wrist?
- 7 A. Yes, sir.
- 8 Q. Okay. Do you know why you cut your wrist?
- 9 A. I have no idea. I mean, I was overwhelmed.
- 10 Q. Okay. What happened then?
- 11 A. At this point, I -- I think I walked back forward. I
12 just stood there for a second and I was just -- just
13 trying to figure out what to do next. At some point, I
14 was looking at her down there on the floor and I
15 just -- I thought I have to get her up off this floor.
16 I mean, she keeps the extremely clean, but it's still a
17 floor.
- 18 Q. Were you thinking rationally at that point in time?
- 19 A. Most likely not.
- 20 Q. So you decided you needed to get her off the floor?
- 21 A. Yes, sir.
- 22 Q. What did do you?
- 23 A. I can't remember exactly how I got -- at this point, I
24 mean, there's blood. I can't remember exactly how I
25 got her into the bedroom, but somehow I got her into

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- 1 the bedroom and put her up on her side of the bed.
- 2 Q. Let me show you State's 162. This is blood on a light
- 3 switch next to the door. Do you know whose blood that
- 4 would be?
- 5 A. That would be mine.
- 6 Q. Okay. Let me show you State's -- let me show you
- 7 State's 144, blood in the kitchen on the side of the
- 8 appliances?
- 9 A. Yes, sir.
- 10 Q. Do you have any idea whose blood that is?
- 11 A. That, I don't.
- 12 Q. Okay. Blood on the kitchen floor?
- 13 A. That's probably a mix of both.
- 14 Q. Of both yours and hers?
- 15 A. Yes, sir.
- 16 Q. Again, 142, you can see blood marking on some surfaces
- 17 there. Do you whose blood that might be?
- 18 A. That, I can't be sure.
- 19 Q. 140, which shows the arc of blood that you testified
- 20 about before?
- 21 A. Yes, sir.
- 22 Q. It shows footprints from there back to the large pool
- 23 of blood?
- 24 A. Yes, sir.
- 25 Q. Whose footprints would those be?

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- 1 A. Those would be mine.
- 2 Q. And 137, which shows a large pool of blood
3 (indicating). I believe you testified that's probably
4 a mixture of hers and yours; is this correct?
- 5 A. Yes.
- 6 Q. And you indicate that you somehow got her back to the
7 bedroom?
- 8 A. I believe so, yes, sir.
- 9 Q. Okay. Do you have a clear memory as to how you got her
10 back there?
- 11 A. At this point, it's -- I can't be sure.
- 12 Q. When you got her to the bedroom, did you do anything as
13 far as her clothing goes?
- 14 A. She was there for -- she was there for a little bit.
15 And at one point, I did -- I did realize that I wanted
16 to get the blood off of her and get the blood off of
17 me.
- 18 Q. Okay. Let me show you what's marked as State's 108 and
19 ask if you recognize that (indicating)?
- 20 A. Yes, sir.
- 21 Q. And what is that?
- 22 A. That's her side of the bed, pajama bottoms.
- 23 Q. Would you point out her pajama bottoms for the jury?
- 24 A. Right here (indicating).
- 25 Q. Okay. What's the items above the pajama bottoms?

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1 A. The blue is my shirt.

2 Q. That's your shirt?

3 A. Yes, sir.

4 Q. Okay. Can you point out any other article of clothing
5 there?

6 A. There's a tank top that she had on. And I don't -- I'm
7 not sure what that is.

8 Q. Okay. So this article right by this pillow here is the
9 tank top she was wearing at the time she came to the
10 door?

11 A. Yes, sir.

12 Q. And that tank top, pajama bottoms, and panties on when
13 she came to the door?

14 A. Yes, sir.

15 MS. CAMPBELL: I'm sorry, what number was that? I
16 apologize.

17 MR. STRICKLER: 108.

18 MS. CAMPBELL: Thank you.

19 BY MR. STRICKLER:

20 Q. And how did your shirt get there?

21 A. I took it off and --

22 Q. Okay.

23 A. -- put it there.

24 Q. How about her panties or her pajama bottoms and the
25 tank top?

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- 1 A. Well, the bottoms, I just grabbed everything and pulled
2 off. I was standing on the side of the bed. I pulled
3 off and dropped them to my left. And then the tank
4 top, I pulled off and dropped it to the right.
- 5 Q. Okay. And then you moved her to the bed you said?
- 6 A. She was already on the bed.
- 7 Q. She was already on the bed when you removed the
8 clothing?
- 9 A. Yes, sir.
- 10 Q. Okay. Let me show you State's 100 and ask if you
11 recognize that?
- 12 A. Yes, sir.
- 13 Q. What's that? What's that show?
- 14 A. That's her side of the bed.
- 15 Q. Okay. And this blood that you see on this side of the
16 bed, whose blood would that be?
- 17 A. That would be hers.
- 18 Q. Okay. Were you ever physically on that part of the
19 bed?
- 20 A. There may be a little bit of mine, but not really.
- 21 Q. Okay. Now, during the time you were there, did you
22 have contact with anyone by phone?
- 23 A. I did.
- 24 Q. Okay. And before we go to that. You testified about
25 cutting your wrist in the kitchen. Was that the only

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1 blood that came out of your wrist from the cut that you
2 delivered in the kitchen?

3 A. It was not.

4 Q. During the time you were moving her from the kitchen to
5 the bedroom, was that wrist continuing to bleed?

6 A. Yes, sir.

7 Q. Okay. During the time you were removing her clothes
8 from her and your clothes, was that wrist continuing to
9 bleed?

10 A. Yes, sir.

11 Q. Okay. Now, do you remember when you first had
12 telephone contact with anyone?

13 A. I don't remember the time. I don't remember the time
14 frame exactly.

15 Q. Okay. Who did you have telephonic contact with?

16 A. Stacey Newsom.

17 Q. Stacey Newsom?

18 A. Yes, sir.

19 Q. Okay. And where were you when you first spoke with Dr.
20 Newsom, if you remember?

21 A. I don't remember the exact first time I spoke with her
22 where I was at.

23 Q. Okay. Let's continue then, sir. After you got
24 Ms. Wilson on the bed and removed the clothing, what
25 did you do then?

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- 1 A. If I remember correctly -- and like I said, I'm losing
2 blood at this point. I went over to the other side and
3 I believe that -- I believe that this was before I
4 removed the clothing. I went over to the other side
5 and I don't -- I mean, I don't know where I got it
6 from, but I had another knife and I cut the -- the left
7 wrist again and the right wrist at that point.
- 8 Q. Do you know whether this was before or after you
9 removed her clothing?
- 10 A. I think it was -- I think it was before.
- 11 Q. Okay. Let me show you what's marked as State's 96
12 right here. Do you recognize that?
- 13 A. Yes, sir.
- 14 Q. What does that show?
- 15 A. Blood stains on the wall and on the bed.
- 16 Q. Okay. And was Ms. Wilson ever over in that area?
- 17 A. No, sir.
- 18 Q. So whose blood would that be?
- 19 A. That would be mine.
- 20 Q. And then State's 98, ask if you recognize that?
- 21 A. Foot of the bed, yes, sir.
- 22 Q. What do you see on the floor there and the baseboard?
- 23 A. Blood.
- 24 Q. I'm sorry?
- 25 A. Blood.

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- 1 Q. Was Ms. Wilson ever over there?
- 2 A. No, sir.
- 3 Q. So whose blood was that?
- 4 A. Mine.
- 5 Q. Is it possible that you still had some blood of hers on
- 6 you?
- 7 A. It's possible.
- 8 Q. Likely even?
- 9 A. Probably.
- 10 Q. Okay. Now, let's stop one moment. Prior to you moving
- 11 over to that other side of the bed, had you been in
- 12 that bedroom that night?
- 13 A. No, sir.
- 14 Q. Okay. When you got to the other side of the bed, what
- 15 did you do?
- 16 A. I sat down on the other side of the bed.
- 17 Q. Okay.
- 18 A. I sat down and I put my feet up on the -- there's a
- 19 bottom, I guess, a running board that holds in the box
- 20 spring.
- 21 Q. Let me show you what's marked as State's 112. Does
- 22 that depict the area where you were on the bed?
- 23 A. Yes, sir.
- 24 Q. Can you point to where the runner is that you've just
- 25 been referring to?

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- 1 A. Right here (indicating).
- 2 Q. So you put your feet up on that?
- 3 A. Yes, sir.
- 4 Q. Okay. Had Ms. Wilson ever been over in this area after
- 5 the confrontation in the kitchen?
- 6 A. No, sir.
- 7 Q. Okay. Who's blood is that on the sheets on this side
- 8 of the bed?
- 9 A. Mine.
- 10 Q. This large pool of blood on the floor, whose blood is
- 11 that?
- 12 A. That's mine.
- 13 Q. A better view of the sheets, State's 105. Is your
- 14 testimony that all of the blood on the sheets in this
- 15 picture is yours on that side of the bed?
- 16 A. Yes, sir.
- 17 Q. And this is where you were when you say you cut your
- 18 wrists again?
- 19 A. Yes, sir.
- 20 Q. Do you have any memory of where you got the knife from
- 21 that you used to cut your wrists?
- 22 A. I don't.
- 23 Q. Could you have picked it up from the kitchen floor?
- 24 A. I could have.
- 25 Q. Okay. Let me show you what's marked as State's 111 and

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- 1 ask if you recognize that?
- 2 A. Yes, sir.
- 3 Q. What is that?
- 4 A. It's the side of the bed that I was normally on.
- 5 Q. Can you point out for the jury where the knife was that
- 6 you referred to?
- 7 A. It's a little hard to see, but it's just below there
- 8 (indicating).
- 9 Q. Okay. Right on the night stand next to the bed where
- 10 you were sitting?
- 11 A. Yes, sir.
- 12 Q. Okay. State's 113, do you recognize that?
- 13 A. Yes, sir.
- 14 Q. Do you see a phone in that picture?
- 15 A. Yes, sir.
- 16 Q. Okay. Whose phone would that be?
- 17 A. I would assume it's hers.
- 18 Q. Okay. Do you know have any idea how it got on the
- 19 floor?
- 20 A. I do not.
- 21 Q. There is a water pitcher, a water jug on the night
- 22 table?
- 23 A. (The witness nodded head.)
- 24 Q. There's a knife on the night table?
- 25 A. (The witness nodded head.)

HANK HAWES DIRECT BY MR. STRICKLER

- 1 Q. How well are you thinking at this point in time?
- 2 A. I'm really not. I'm in shock at this point. I'm
- 3 losing a lot of blood.
- 4 Q. Again, 113, that blood on that floor is whose?
- 5 A. Mine.
- 6 Q. And State's 116, which shows what?
- 7 A. That would be my blood as well.
- 8 Q. Where is it located?
- 9 A. Just past that big pool on some hangers and the
- 10 baseboard.
- 11 Q. Okay. How about on the nightstand?
- 12 A. Yes, sir.
- 13 Q. Facing the nightstand?
- 14 A. Yes, sir.
- 15 Q. Now, you were continuing to bleed at this point in
- 16 time, right?
- 17 A. Yes, sir.
- 18 Q. Okay. Let me ask you this, State's 128. Let's back up
- 19 for just a second. Do you see this object right here
- 20 (indicating) in 128?
- 21 A. Yes, sir.
- 22 Q. The dark object, the black object?
- 23 A. I see a black object.
- 24 Q. That's been entered into evidence as one of your
- 25 shirts. Was that involved in this incident at all?

HANK HAWES DIRECT BY MR. STRICKLER

- 1 A. That's not the shirt I remember having on.
- 2 Q. You took that off, correct?
- 3 A. Correct.
- 4 Q. That's the one you pointed out to the jury earlier in
- 5 the bedroom?
- 6 A. Correct.
- 7 Q. Okay. All right. Now, any idea how long you sat there
- 8 at the bed? I mean, are you keeping track of time at
- 9 that point?
- 10 A. No, sir.
- 11 Q. We talked earlier with Sergeant Pegram. He says the
- 12 first phone call to Stacey Newsom was at 2:37 a.m. and
- 13 it lasted for 10 minutes and 34 seconds. You have any
- 14 idea where that call was made from?
- 15 A. I would say I was probably sitting in that spot.
- 16 Q. Okay. Next call was at 2:53 a.m. and lasted for six
- 17 minutes and 52 seconds. Where would you have been
- 18 sitting while that call was made?
- 19 A. Again --
- 20 Q. Excuse me, where would you have been when that call was
- 21 made?
- 22 A. I was still on the side of the bed.
- 23 Q. Okay. Then at 3:08, three seconds, 3:09, four seconds,
- 24 then at 3:19, phone call between your phone and Dr.
- 25 Newsom for 18 minutes and 27 seconds. Where were you

HANK HAWES DIRECT BY MR. STRICKLER

1 located when that phone call was made?

2 A. I believe I was still on the side of the bed.

3 Q. Okay. Then 3:52, phone call to her, 733, same question
4 to you, sir, where were you when you made that phone
5 call?

6 A. At around that time, I don't know. I don't know if I
7 was still on the bed. I'm not sure.

8 Q. Okay. Phone call at 4:21 for eight seconds, do you
9 know where you were when you made that?

10 A. No, sir.

11 Q. Again, phone call again at 4:21, 22 minutes and 44
12 seconds. Do you know where you were when you made that
13 phone call?

14 A. No, sir.

15 Q. Could you have been sitting on the bed at that time?

16 A. I could have.

17 Q. Okay. Were you bleeding while you were sitting on the
18 bed?

19 A. I was.

20 Q. What was your mental state as far as consciousness goes
21 in that period of time?

22 A. Just -- I was really -- I was really tired. I just --
23 things were kind of in and out. I just remember being
24 really tired and just -- I mean, I was -- I was so
25 overwhelmed. I mean, I don't know what to say.

HANK HAWES DIRECT BY MR. STRICKLER

1 Q. Okay. Do you remember your conversations with Dr.
2 Newsom, parts of your conversations with her?

3 A. I remember bits and pieces.

4 Q. Okay. Why were you calling her?

5 A. Outside of -- outside of Jennifer, I mean, she was -- I
6 mean, I knew her. I was the closest with her.

7 Q. So y'all remained close?

8 A. Yes, sir.

9 Q. You had relations with her earlier that summer?

10 A. Yes, sir.

11 Q. What did you tell her? What do you remember telling
12 her when you're on the phone with her for over an hour
13 off and on with the phone calls.

14 A. I think I remember telling her -- I just remember being
15 upset. I remember crying. And I know she was -- she
16 sounded like she was kind of half out of it. I just
17 remember telling her that, you know, Jen and I had had
18 a, you know, a fight or -- I don't remember if I told
19 her it was over her or what. You know, that we had --
20 she attacked me and that there was just -- I mean,
21 there was blood everywhere.

22 Q. So you told her that she had attacked you?

23 A. Yes.

24 Q. What did you tell her about the status of Jennifer
25 Wilson?

HANK HAWES DIRECT BY MR. STRICKLER

- 1 A. I told her that, you know, I checked her pulse and she
2 didn't have a pulse, that she hadn't had a pulse for a
3 little while and I thought she was gone.
- 4 Q. Now, at some point in time, did you get up from the
5 bed?
- 6 A. Yes.
- 7 Q. Okay. Why did you get up from the bed?
- 8 A. Because I was -- I was back on my -- my way of thinking
9 of I got to -- I've got blood all over me. She's got
10 blood all over her. I just wanted to get it off of us.
- 11 Q. Okay. So what did you do?
- 12 A. At that point, I got her clothes off. And I don't know
13 how I was able to get her in there. I think I carried
14 her in there at that point.
- 15 Q. In where?
- 16 A. Into the bathroom.
- 17 Q. All right. Let me show you what's marked as State's
18 81. You know what that shows?
- 19 A. Yes, sir, that's the bathroom.
- 20 Q. That's the bathroom, the entrance to the bathroom?
- 21 A. Yes, sir.
- 22 Q. I direct your attention to the door jam and the wall
23 next to the door jam.
- 24 A. Yes, sir.
- 25 Q. What do you see on those surfaces?

HANK HAWES DIRECT BY MR. STRICKLER

- 1 A. Blood.
- 2 Q. And who's blood would that be?
- 3 A. I would assume it would be mine.
- 4 Q. Okay. Do you remember how you got her into the
- 5 bathroom?
- 6 A. I believe I carried her. I'm not a hundred percent
- 7 sure.
- 8 Q. We need to back up just a second. Let me go back to
- 9 the side of the bed where you were sitting.
- 10 A. Okay.
- 11 Q. State's 122, do you recognize what that depicts?
- 12 A. Looks like mini blinds with blood.
- 13 Q. Blood. Do you know where those blinds were located?
- 14 A. May I see that again? That would be on the side that I
- 15 was usually on, yes, sir.
- 16 Q. And the side you were on that early morning hours?
- 17 A. Yes, sir.
- 18 Q. Okay. Testimony is that the DNA came back as a mixture
- 19 of yours and her blood on this device that operates the
- 20 blinds.
- 21 A. Okay.
- 22 Q. Did you have occasion to touch the blinds or that part,
- 23 the mechanism?
- 24 A. That night or ever?
- 25 Q. Well, first of all, that night?

HANK HAWES DIRECT BY MR. STRICKLER

- 1 A. I'm not sure.
- 2 Q. Okay. The blood on the casing around the window, the
3 drops you see here?
- 4 A. Right.
- 5 Q. Whose blood would that be?
- 6 A. I would assume since I was the only one on that side of
7 the bed that it would be mine.
- 8 Q. And I referred earlier to an iPhone of Ms. Wilson's,
9 State's 118, a close-up.
- 10 A. Okay.
- 11 Q. And it shows blood on the iPhone?
- 12 A. Yes, sir.
- 13 Q. Who's blood should that be?
- 14 A. Should be mine.
- 15 Q. 119, close-up of the knife on the bedside table?
- 16 A. Yes, sir.
- 17 Q. All right. You carried her -- you believe you carried
18 her to the bathroom, correct?
- 19 A. Yes, sir.
- 20 Q. In the bathroom, let me show you State's 86?
- 21 A. (The witness nodded head.)
- 22 Q. You know what this is?
- 23 A. I believe that's vomit.
- 24 Q. Vomit in the toilet?
- 25 A. Yes, sir.

HANK HAWES DIRECT BY MR. STRICKLER

- 1 Q. And who's would that be?
- 2 A. Mine.
- 3 Q. And when you were in the bathroom, what did you do?
- 4 A. Somehow I got her -- somehow I meant to get her in the
- 5 tub. I went ahead and got my clothes, the bloody
- 6 clothes that I had on. I heated up the water and,
- 7 basically, just started, you know, using my hand, and I
- 8 think there was a cloth there, and I just kind of wiped
- 9 the blood away from her, get it off of her, get it off
- 10 of me.
- 11 Q. You cleaned both her and yourself?
- 12 A. Yes, sir.
- 13 Q. Okay. What did you do then?
- 14 A. At some point, I got out. I seem to remember walking
- 15 into the living room. She had a trunk or a box or
- 16 something like that that had comforters and pillows and
- 17 blankets and stuff in it right inside of her living
- 18 room.
- 19 Q. Right.
- 20 A. And I just remember putting down -- I think I put down
- 21 a blanket and arranged some pillows and stuff like that
- 22 and just tried to make it -- I guess I just tried to
- 23 make it comfortable.
- 24 Q. Do you think that's a rational thought on your part at
- 25 that point?

HANK HAWES DIRECT BY MR. STRICKLER

- 1 A. No, sir.
- 2 Q. Let me show you -- again, I apologize having to back up
3 again. State's 129, do you recognize that?
- 4 A. Look like the kitchen going into the hallway.
- 5 Q. At some point in time, did you have occasion to use any
6 towels on the blood in the kitchen and area towards the
7 bedroom?
- 8 A. I may have. I just remember there being blood
9 everywhere and just -- just the smell of it and just
10 trying to get it up.
- 11 Q. Okay. Do you know when in this sequence of events that
12 exactly occurred?
- 13 A. I don't.
- 14 Q. Okay. So you got a comforter on the couch --
- 15 A. Yes, sir.
- 16 Q. -- in the living room? And what then?
- 17 A. I managed to -- I think I managed to get her out of the
18 tub, get her over onto the couch and just -- I think I
19 -- I think I covered her up.
- 20 Q. What did you do?
- 21 A. If I remember correctly, I sat there for a couple of
22 minutes and I just -- I was just looking down at the
23 rug. And I remember looking at the rug and thinking
24 I'm getting blood everywhere on this rug. And I just
25 didn't want to get blood on the rug. And so I walked

HANK HAWES DIRECT BY MR. STRICKLER

1 back to the kitchen and grabbed a cooler, soft-sided
2 cooler and brought it back in there with me and I hung
3 my wrist over that so I wouldn't get blood all over the
4 carpet.

5 Q. Okay. We'll get to that in a second. Let me show you
6 State's 77. Do you know what area of the house that
7 is?

8 A. That looks like the hallway.

9 Q. Okay. And blood, footprints, drops, drips?

10 A. Yes, sir.

11 Q. Should be whose?

12 A. They should be mine.

13 Q. And 78, same question?

14 A. Should be mine.

15 Q. Was she actively bleeding badly at that point in time?

16 A. Not that I remember. I think most of the blood was
17 probably on the mattress.

18 Q. Let me show you what's marked as State's 29, do you
19 recognize that?

20 A. One of the knives, yes.

21 Q. What is that located?

22 A. That looks like the edge of the cooler, so that was
23 probably in the living room.

24 Q. When did you get your hand on this knife -- or how did
25 that knife get there?

HANK HAWES DIRECT BY MR. STRICKLER

- 1 A. I don't recall.
- 2 Q. I'm sorry, you don't recall?
- 3 A. I don't know how it got there.
- 4 Q. Okay. Did you cut yourself again?
- 5 A. I cut myself a total of three times that I remember.
- 6 Q. At some point in time, did you cut your right wrist in
7 addition to cutting your left wrist?
- 8 A. Yes.
- 9 Q. Do you remember where that was -- whereabouts you were
10 when that happened?
- 11 A. I think I was in the bedroom at that point.
- 12 Q. Okay. So you sat on the sofa?
- 13 A. I did.
- 14 Q. Now, I'm showing you State's, looks like, 31?
- 15 A. Yes, sir.
- 16 Q. When you were sitting there, was the comforter pulled
17 down or was it over Ms. Wilson's face?
- 18 A. It was -- it was up -- I believe it was up near her
19 neck or something like that and at some point, I pulled
20 it over her head.
- 21 Q. Okay. And where -- in this picture, where were you
22 sitting?
- 23 A. Approximately here (indicating).
- 24 Q. Right in this area here (indicating)?
- 25 A. Yes, sir.

HANK HAWES DIRECT BY MR. STRICKLER

1 Q. And from that area, you hung which wrist over the
2 cooler?

3 A. My left. I think my left hand was banging around in
4 the bag.

5 Q. Okay. Would you characterize your concern for bleeding
6 on the carpet as a rational thought at that point in
7 time?

8 A. No, sir.

9 Q. And this is State's 25, what's that depict?

10 A. That's the cooler.

11 Q. The cooler? So the blood inside that cooler should be
12 whose blood.

13 A. Mine.

14 Q. Let me show you State's 24, and ask if you recognize
15 that?

16 A. That looks like the rug.

17 Q. Do you see any substance on the rug?

18 A. I see looks like vomit.

19 Q. Can you point to where it is?

20 A. Looks like it's --

21 Q. Right here (indicating)?

22 A. Yes.

23 Q. So it looks like vomit.

24 (There was no response.)

25 Q. Whose vomit would that be?

HANK HAWES DIRECT BY MR. STRICKLER

- 1 A. Probably mine.
- 2 Q. Do you remember being ill, physically ill?
- 3 A. Yes, sir.
- 4 Q. Okay. How long, if you remember, did you sit on the
5 sofa there next to Ms. Wilson's body?
- 6 A. I have no idea.
- 7 Q. You have no idea. And at some point in time, what did
8 you do?
- 9 A. Um --
- 10 Q. Did you stay there or did you eventually leave that
11 house?
- 12 A. I eventually -- I did eventually leave.
- 13 Q. Can you tell us why you decided to leave?
- 14 A. I remember opening my eyes and I just -- I looked
15 around and I just -- I didn't know what to do next.
16 Then the next thing I thought of was I thought about my
17 dog being trapped in the house. If something were to
18 happen to me there, nobody would ever know where he
19 was, you know, what would happen to him.
- 20 Q. Okay. Let me show you -- so what did you do?
- 21 A. Somehow I made my way out to the -- made my way out to
22 the car.
- 23 Q. Let me ask you this, let me show you State's 159?
- 24 A. Yes, sir.
- 25 Q. What does that show?

HANK HAWES DIRECT BY MR. STRICKLER

- 1 A. The car keys, her car keys.
- 2 Q. Can you see a substance on those car keys?
- 3 A. There's blood.
- 4 Q. Whose blood would that be?
- 5 A. Mine.
- 6 Q. Okay. So you got her keys from where?
- 7 A. Her purse.
- 8 Q. Unlocked the door?
- 9 A. Yes, sir.
- 10 Q. You got to your car?
- 11 A. Yes.
- 12 Q. You have a good memory of those events?
- 13 A. I don't have a great memory of those events.
- 14 Q. When you get to your car, what do you do?
- 15 A. I guess I got in the car. I don't really -- all I
- 16 remember is I remember starting it and I remember
- 17 being -- I don't even remember moving, I just remember
- 18 being at the edge of the driveway and when I turned
- 19 out, I guess the sun was up because all I saw was a
- 20 blinding light. And the next thing I know, I woke up
- 21 at home.
- 22 Q. Were you dressed when you drove the car?
- 23 A. I think I -- I think I did have something on. I
- 24 couldn't -- shorts maybe.
- 25 Q. Okay. Let me show you State's 130 here, okay. You

HANK HAWES DIRECT BY MR. STRICKLER

1 recognize that?

2 A. Yes, sir.

3 Q. Blood on the kitchen floor?

4 A. Yes, sir.

5 Q. Do you have a clear memory as to how you got Ms. Wilson
6 from the area in the kitchen where the incident took
7 place back to the bedroom?

8 A. I think I carried her, but I can't be sure.

9 Q. Is it possible you dragged her?

10 A. I suppose it's possible.

11 Q. Okay. All right. When you get to your house, what
12 happens?

13 A. I just remember waking up, my dog was, actually,
14 licking me. I was laying there on the floor and I just
15 remember I opened the door and he ran outside, came
16 back in. And I went to stand up and I couldn't stand
17 up without starting to pass out.

18 Q. Okay.

19 A. And I crawled into my bedroom and crawled up into the
20 bed. And I think I was there for a couple of minutes
21 and I got nauseous and threw up again.

22 (Defendant's Exhibit No. 71 was marked
23 for identification.)

24 BY MR. STRICKLER:

25 Q. Let me show you what's marked as Defendant's 71, do you

HANK HAWES DIRECT BY MR. STRICKLER

1 recognize that?

2 A. Yes, sir.

3 Q. What is this?

4 A. It's vomit on the side of the bed.

5 Q. That's your bed?

6 A. Yes, sir.

7 MR. STRICKLER: Move to introduce this, Your
8 Honor, I believe, without objection?

9 THE COURT: Any objection?

10 MS. CAMPBELL: No, sir.

11 THE COURT: Defendant's 71 admitted without
12 objection.

13 (Defendant's Exhibit No. 71 admitted
14 into evidence.)

15 BY MR. STRICKLER:

16 Q. Okay. Could you point to it, please sir?

17 A. (The witness complies.)

18 Q. Right there?

19 A. Yes, sir.

20 Q. So that would be the third time you got physically ill
21 during this event?

22 A. I believe so.

23 Q. In addition to the injuries that you caused yourself
24 and Ms. Wilson, correct?

25 A. Correct.

HANK HAWES CROSS BY MS. CAMPBELL

1 Q. During one of your -- during the time you were
2 telephoning with Stacey Newsom, did you have occasion
3 to send her something you had titled your Last Will?

4 A. I believe I did. They said that I did.

5 Q. You what?

6 A. They said that I did.

7 Q. You have any independent memory of that?

8 A. Not really.

9 Q. Okay.

10 MR. STRICKLER: Beg the Court's indulgence, Your
11 Honor, one moment.

12 BY MR. STRICKLER:

13 Q. All right. You were at your house. At some point in
14 time, do you reach out to an attorney?

15 A. I believe later that morning.

16 Q. Okay. You have conversations with him?

17 A. A couple, I believe, yes.

18 Q. Now, did you eventually contact EMS?

19 A. I did.

20 Q. Why did you do that?

21 A. I vaguely remember Stacey -- I think I was on the phone
22 with Stacey again at some point that morning.

23 Q. Okay.

24 A. And her saying, you know, you need to contact EMS. If
25 you don't, I will. And I just remember pleading with

HANK HAWES CROSS BY MS. CAMPBELL

1 her because I -- I was just exhausted.

2 Q. Okay. So you called EMS?

3 A. Finally, I did.

4 Q. Did they take you to hospital?

5 A. Yes, sir.

6 Q. And the police arrested you at the hospital?

7 A. Yes, sir.

8 Q. Now, Hank, I will return to my first question. Did you
9 go to 3721 Monroe Street on August 28th, 2011, to kill
10 Jennifer Wilson?

11 A. Absolutely not.

12 Q. Why did you go there?

13 A. I went there to call off the relationship finally.

14 MR. STRICKLER: Thank you. Answer any questions
15 the prosecution may have.

16 THE COURT: Cross-examination?

17 MS. CAMPBELL: Yes, sir.

18 CROSS-EXAMINATION

19 BY MS. CAMPBELL:

20 Q. So your testimony is on this occasion, you're the one
21 that wanted to break it off?

22 A. Yes, ma'am.

23 Q. But on every prior occasion, as we've seen from the
24 text, you're the one that's constantly begging her for
25 one more chance, one more chance, one more chance.

HANK HAWES CROSS BY MS. CAMPBELL

- 1 What made it different?
- 2 A. I think that went both ways, actually, in the texts.
- 3 Q. Don't let me mischaracterize.
- 4 A. (The witness nodded head.)
- 5 Q. When you said Jen, one more chance. Come back to me.
- 6 You were begging her to go to counseling. You set up
- 7 the counseling. What was different that night?
- 8 A. I just finally realized the relationship wasn't going
- 9 anywhere.
- 10 Q. You went to Cantina that night?
- 11 A. I did, yes, ma'am.
- 12 Q. You were drinking?
- 13 A. I believe I had a couple of drinks.
- 14 Q. And at that point, you were telling everybody there how
- 15 happy you were about your girlfriend, getting back
- 16 together with her. Do you remember that?
- 17 A. I don't remember specifically saying that, but I don't
- 18 remember being upset.
- 19 Q. Well, did you remember talking to Aaron Wilson?
- 20 A. Vaguely.
- 21 Q. Vaguely? So your memory is vague about that as well?
- 22 A. Yes, ma'am.
- 23 Q. Okay. And you say you left Cantina around 10:30?
- 24 A. Approximately.
- 25 Q. More like midnight, but you say it's 10:30?

HANK HAWES CROSS BY MS. CAMPBELL

- 1 A. From the text that I can see, it's 10:30. I'm not
2 sure.
- 3 Q. Then you go where?
- 4 A. I went home.
- 5 Q. What woke you up?
- 6 A. What you mean?
- 7 Q. Did you stay up?
- 8 A. Yes, ma'am, for a good several hours, if I remember
9 correctly.
- 10 Q. For several hours. And, in fact, were you there when
11 Jen left you a message?
- 12 A. I was -- I mean, I was at home. I didn't go anywhere
13 else between Cantina and her house.
- 14 Q. What didn't you answer her call?
- 15 A. There were frequent times that I may have missed her
16 call.
- 17 Q. What were you doing when you missed her call?
- 18 A. Could have been in the bathroom.
- 19 Q. At what point did you realize she called you?
- 20 A. I guess when I saw her missed call.
- 21 Q. And at that point, what time was it?
- 22 A. I'm not sure.
- 23 Q. At this point, you just decide that the relationship
24 isn't going anywhere and you've had enough?
- 25 A. Yes, ma'am.

HANK HAWES CROSS BY MS. CAMPBELL

- 1 Q. So --
- 2 A. Actually, I decided that earlier, but.
- 3 Q. And there are additional phone calls we'll get back to
- 4 between the two of you.
- 5 A. Okay.
- 6 Q. And you didn't want to tell her over the phone that you
- 7 were done?
- 8 A. No, ma'am. I thought it was better done face-to-face.
- 9 Q. You wanted to do the right thing?
- 10 A. I wanted to tell her face-to-face.
- 11 Q. Because you weren't angry or anything?
- 12 A. I was upset.
- 13 Q. You were upset?
- 14 A. I was upset.
- 15 Q. What were you upset about?
- 16 A. I felt like I was being jerked around.
- 17 Q. Did you think she was out with somebody else?
- 18 A. I didn't -- I didn't know. I didn't know. All I knew
- 19 was that she said she was at, I guess, at another
- 20 party. She went from one party to the next or went to
- 21 have a drink with someone.
- 22 Q. She, actually, told you those things through the text,
- 23 didn't she?
- 24 A. She did.
- 25 Q. So did you check to see where she was?

HANK HAWES CROSS BY MS. CAMPBELL

1 A. I had no way to check to see where she was.

2 Q. You had her phone synced to your computer?

3 A. I had it set up through Itunes, but not synced. I
4 mean, there was no way for me to track her.

5 Q. Let me ask you this about your background. You're
6 pretty tech savvy, aren't you?

7 A. To a certain extent.

8 Q. In fact, in all your relationships, that's been
9 something you've been able to help people with?

10 A. To a certain extent.

11 Q. In fact, you were the one that helped --

12 MR. STRICKLER: Your Honor, may we approach?

13 THE COURT: What's your legal objection?

14 MR. STRICKLER: May we approach, please?

15 THE COURT: Yes, sir. Yes, sir. That's fine.

16 Come on up. Be glad to see you again.

17 (Whereupon, a bench conference was held
18 off the record, in the presence of the
19 jury, but out of the hearing of the
20 jury.)

21 THE COURT: Thank you.

22 MS. CAMPBELL: Thank you, sir.

23 BY MS. CAMPBELL:

24 Q. You're tech savvy?

25 A. To a certain extent.

HANK HAWES CROSS BY MS. CAMPBELL

- 1 Q. To a certain extent?
- 2 A. Yes, ma'am.
- 3 Q. Well, did you know the iPhone has the ability to locate
4 where the phone is?
- 5 A. If it's set up in your name, yes.
- 6 Q. Well, it was set up on your computer and you had her
7 password. That's what we know from the testimony?
- 8 A. Just because you sync a computer or you set it up
9 doesn't mean you have the ability to track it.
- 10 Q. Did you know she had been at 700 Whaley Street?
- 11 A. I did not.
- 12 Q. But you hadn't gotten up set about Chandra on a
13 previous occasion, had you not?
- 14 A. I believe I did.
- 15 Q. And, in fact, on that date, you, actually, ran his
16 license plate to find out who was in the car?
- 17 A. I believe I did.
- 18 Q. The license plate, once you ran it, will come back to
19 700 Whaley Street, which was his address?
- 20 A. You're asking me if I knew the address or if I knew she
21 was there? I did not know she was there.
- 22 Q. Okay. What did you do from the time you left Cantina
23 until the time you came over to her house to give her
24 the news that you were breaking it off?
- 25 A. I was at my house.

HANK HAWES CROSS BY MS. CAMPBELL

- 1 Q. What were you doing?
- 2 A. I think I was moving some stuff around. I think I laid
3 down for a little bit. I was, basically, waiting on
4 her to contact me back.
- 5 Q. Okay.
- 6 A. She kept pushing me off.
- 7 Q. Then for whatever reason, you missed her call?
- 8 A. True.
- 9 Q. Then you called her back?
- 10 A. I believe I did.
- 11 Q. And you, also, texted her about the time, right?
- 12 A. I'm sorry?
- 13 Q. At some point that evening you texted her about how
14 late it was being?
- 15 A. I believe I did.
- 16 Q. And your memory here today, you've got big gaping holes
17 it in, right?
- 18 A. Blood loss will do that to you.
- 19 Q. Well, what about prior to the blood loss when you were
20 stabbing her over and over?
- 21 A. I don't recall stabbing her. I don't remember that.
- 22 Q. Let's get one thing straight. Did she hurt you, other
23 than biting your finger as you're now testifying?
- 24 A. She approached me with a knife.
- 25 Q. Did she stab you?

HANK HAWES CROSS BY MS. CAMPBELL

- 1 A. I was under the distinct impression that she was going
2 to, yes.
- 3 Q. Okay. You can explain it, but you have to answer my
4 question. Did she stab you?
- 5 A. No, ma'am.
- 6 Q. Did she slice you in any way?
- 7 A. No, ma'am.
- 8 Q. And you said you don't have any memory -- and this is
9 before your blood loss, right?
- 10 A. Correct.
- 11 Q. Of what actually happened when you stabbed her?
- 12 (There was no response.)
- 13 Q. Is that correct?
- 14 A. Well, what memory are you referencing, like before I
15 arrived or when I arrived?
- 16 Q. No, I said specifically, you have no memory as to when
17 you were stabbing her?
- 18 A. I didn't realize that she was being stabbed.
- 19 Q. Well, was anybody else there that night?
- 20 A. No, ma'am.
- 21 Q. Did anybody else stab her other than you?
- 22 A. No, ma'am.
- 23 Q. Did anyone else slice her other than you?
- 24 A. I didn't realize that's what was happening. I was just
25 trying to get her off of me.

HANK HAWES CROSS BY MS. CAMPBELL

- 1 Q. What do you remember about the stabbing that you did
2 that night?
- 3 A. I remember what happened after I saw her on the floor.
4 I remember what happened when she approached me with a
5 knife. I remember why I was there.
- 6 Q. You remember all -- her moves of aggression towards you
7 are clear in your memory; is this correct?
- 8 A. Yeah, I mean, they were -- they were right after for
9 why I was there.
- 10 Q. While you were there, but while you were there, too,
11 you remember her coming at you when you thought she was
12 going to stab you with this knife?
- 13 A. Correct.
- 14 Q. Which knife did she have?
- 15 A. All I remember it was a large knife.
- 16 Q. It was the large knife. And at that point, there's a
17 struggle, right? You said she was pulling you down to
18 the floor?
- 19 A. Correct.
- 20 Q. And at the time, how much did you weigh?
- 21 A. 175, 180, maybe.
- 22 Q. At one point, you were over 205; is this correct?
- 23 A. At one point, I guess I was.
- 24 Q. While 105 pounds of her was dragging you down to the
25 ground, you managed to get your own knife?

HANK HAWES CROSS BY MS. CAMPBELL

- 1 A. I'm sorry?
- 2 Q. You managed to get your own knife?
- 3 A. Before she drug me to the ground.
- 4 Q. So she's coming at you, she's got a big knife, where
5 did that knife end up?
- 6 A. I have no idea.
- 7 Q. And at that point, you get your own knife from the
8 knife block, right, but you just get a little knife is
9 your testimony, right?
- 10 A. I grabbed the first thing I could grab.
- 11 Q. And then there is a physical altercation?
- 12 A. Correct.
- 13 Q. Did she throw you into the wall?
- 14 A. No, ma'am.
- 15 Q. Did she throw you down on the ground so it would have
16 been a resounding bomb?
- 17 A. No, ma'am, she just pulled me down.
- 18 Q. She just pulled you down?
- 19 A. (The witness nodded head.)
- 20 Q. At any point, did you throw her into the wall?
- 21 A. No, ma'am.
- 22 Q. Did you hit her with your fist?
- 23 A. No, ma'am.
- 24 Q. Did you hit her head into the floor?
- 25 A. Her head might have hit the floor, but I don't recall

HANK HAWES CROSS BY MS. CAMPBELL

- 1 doing that to her. She just went down.
- 2 Q. Well, do you recall hitting it not once, but twice,
3 three times, four times into the floor so she can get
4 all those bruises?
- 5 A. No.
- 6 Q. And then you stab her, but you don't remember that?
- 7 A. I -- there was no -- there was no blows exchange before
8 she came over with the knife.
- 9 Q. And let's get one thing straight. She's coming at you
10 and you arm yourself to defend yourself from her, as
11 you should, right?
- 12 A. Correct.
- 13 Q. And then when you're stabbing her, are you stabbing her
14 in the front?
- 15 A. Oh, you're asking -- I don't even realize that she's
16 being stabbed. I'm just trying to get her off of me.
- 17 Q. So you're just doing defense wounds?
- 18 A. What do mean defensive wounds?
- 19 Q. And during this whole time, she's got this big knife
20 and y'all are in close proximity and you don't even get
21 a nick. Is that your testimony?
- 22 A. That's correct.
- 23 Q. And yet, you manage to stab her five, six times in the
24 front?
- 25 A. I don't know. I mean, if that's what.

HANK HAWES CROSS BY MS. CAMPBELL

- 1 Q. Five or six times in the back? You don't remember?
- 2 A. All I said is I was trying to get her off of me. I
- 3 don't remember -- I don't -- I know she was stabbed.
- 4 Once I stood back and looked down, she was bleeding,
- 5 but before that, I don't remember physically stabbing
- 6 her, sticking a knife in her, anything like that.
- 7 Q. At what point do you remember blood spirting up on your
- 8 from her neck?
- 9 A. I don't ever remember that.
- 10 Q. Do you remember twisting the knife in her neck in an
- 11 attempt to get away?
- 12 A. No, ma'am.
- 13 Q. Do you remember her spewing blood on you from the
- 14 month?
- 15 A. No, ma'am.
- 16 Q. From any one of five potential fatal wounds?
- 17 A. No, ma'am.
- 18 Q. But you remember specifically her acts of aggression?
- 19 (There was no response.)
- 20 Q. Let me go through -- you're from Florida?
- 21 A. Originally, yes, ma'am.
- 22 Q. And he asked you about your education?
- 23 A. Yes, ma'am.
- 24 Q. What field did you get your training in?
- 25 A. Medical.

HANK HAWES CROSS BY MS. CAMPBELL

- 1 Q. Medical?
- 2 A. Initially.
- 3 Q. Because you were initially what?
- 4 A. A med tech.
- 5 Q. A med tech?
- 6 A. Right.
- 7 Q. How long were you a med tech?
- 8 A. Approximately seven years full time, and then off and
- 9 on like for insurance physicals, stuff like that.
- 10 Q. Do you remember being a phlebotomist?
- 11 A. Yes.
- 12 Q. And what does a phlebotomist do? What does it deal
- 13 with?
- 14 A. Drawing of blood.
- 15 Q. So you're familiar with veins?
- 16 A. To some extent, yes.
- 17 Q. The arteries?
- 18 A. Yes.
- 19 Q. And, in fact, you've been trained to understand how the
- 20 blood flow works and things of that nature, that's your
- 21 training?
- 22 A. To some extent, yes.
- 23 Q. Your mother was a nurse?
- 24 A. Yes, ma'am.
- 25 Q. And you remember as a child even, you were so

HANK HAWES CROSS BY MS. CAMPBELL

- 1 interested in it, you would read her books?
- 2 A. Yes, ma'am.
- 3 Q. What were you doing that summer for a living?
- 4 A. The summer of -- what summer?
- 5 Q. 2001, why we're here?
- 6 A. 2011. I had a life health and variable annuities
- 7 license.
- 8 Q. You had a license. Do you remember telling Jennifer
- 9 you were a trust fund baby?
- 10 A. I never told her that.
- 11 Q. Sometimes that morning, you sent a Will to Stacey, is
- 12 that correct, at five something in the morning?
- 13 A. That's what they tell me, yes, ma'am.
- 14 Q. And I think that's been published to the jury?
- 15 A. I believe so.
- 16 Q. Why did you send it to Stacey?
- 17 A. She was the closest person that I knew. I mean, that
- 18 was -- that was my best friend.
- 19 Q. Well, she's, actually -- I think you wrote her a letter
- 20 and said she was the actual love of your life; is that
- 21 correct?
- 22 A. I probably did. At that point, I was emotionally in
- 23 distress. I was reaching out for anyone.
- 24 Q. Are we talking about that night you told her that?
- 25 A. I don't remember telling her that that night. I think

HANK HAWES CROSS BY MS. CAMPBELL

1 you're referencing a letter.

2 Q. The letter you wrote her after you were arrested?

3 A. Probably.

4 Q. And in your Last Will and Testament -- and you're in
5 and out at this point, right?

6 A. Yes, ma'am.

7 Q. You don't know what really you're doing? You don't
8 really have any real memory of it?

9 A. I mean, I have blocks of memory.

10 Q. I'm aware. But --

11 MR. STRICKLER: Objection to her comment, Your
12 Honor.

13 THE COURT: Overruled.

14 Go ahead.

15 BY MS. CAMPBELL:

16 Q. In your Will, you, specifically, say I'm leaving
17 everything to Stacey and don't let my family have
18 anything to do with anything what happens to me. You
19 would agree with me that's in your Will?

20 A. From what I read, yes.

21 Q. This is as you're losing blood, you're weak?

22 A. (The witness nodded head.)

23 Q. You have memory lapses?

24 A. (The witness nodded head.)

25 Q. Why did you put that in there?

HANK HAWES CROSS BY MS. CAMPBELL

- 1 A. I couldn't tell you.
- 2 Q. Who is Lisa?
- 3 A. Do you have a last name?
- 4 Q. No. In your text, you refer Lisa coming in to comfort
5 you?
- 6 A. Lisa was an old friend of mind when I lived down in
7 Tampa. And, essentially, the whole text thing or me
8 telling Jennifer that I was texting, that was one of
9 her fake therapist that she never had.
- 10 Q. Her fake therapist that she never had?
- 11 A. Right.
- 12 Q. Wait a minute. I'm not getting this. Could you
13 explain this to me?
- 14 A. She said she had a therapist that she was seeing that
15 was telling her to do all these things. And somehow,
16 it came out that this therapist never existed.
- 17 Q. Who is telling you this?
- 18 A. Jennifer.
- 19 Q. Told you this?
- 20 A. Right.
- 21 Q. Right before all this happened?
- 22 A. This was probably -- I don't know, maybe a month,
23 couple weeks before.
- 24 Q. A month, couple weeks before?
- 25 A. From what I remember.

HANK HAWES CROSS BY MS. CAMPBELL

- 1 Q. Did ever met Jemme Stewart?
- 2 A. Who?
- 3 Q. Jemme Stewart?
- 4 A. No. She said she had a real therapist, which was Jemme
- 5 Stewart, the City Yoga lady. And then she had another
- 6 one that she said she had that she was seeing.
- 7 Q. So how does that equate to Lisa? Explain that to me.
- 8 A. Because, basically, we -- the bottom line was we were
- 9 both too insecure people and we, from time to time,
- 10 were not completely honest with each other.
- 11 Q. Okay. So you admit you lied to her on occasions?
- 12 A. As she did with me.
- 13 Q. Like with the traffic ticket?
- 14 A. I was pulled over that night.
- 15 Q. And you talked with her and, basically, blamed her
- 16 because you were going to have to go to court because
- 17 she wasn't there for you. You would use lies to
- 18 manipulate her, is that correct?
- 19 A. I did try to make her feel bad in that particular
- 20 instance.
- 21 Q. The Defense, specifically, asked you about the women
- 22 you were texting?
- 23 A. Okay.
- 24 Q. There was Rachel?
- 25 A. I believe so.

HANK HAWES CROSS BY MS. CAMPBELL

- 1 Q. And how did you meet Rachel?
- 2 A. E-Harmony.
- 3 Q. E-Harmony?
- 4 A. Yes, ma'am.
- 5 Q. And you were supposed to go see her that Sunday; is
- 6 that correct?
- 7 A. I had no definitive plans, we talked about.
- 8 Q. And that was before you left the restaurant that you
- 9 made those plans?
- 10 A. We had talked about it.
- 11 Q. And that was while you were still very happy with your
- 12 relationship with Jennifer?
- 13 (There was no response.)
- 14 Q. Is that correct?
- 15 A. I wouldn't call it happy, but.
- 16 Q. Well, why would you tell Aaron Wilson that you were
- 17 very exited about getting back together with your
- 18 girlfriend if you didn't mean it? Is that another lie?
- 19 A. Basically, I was -- we saw each other as the best
- 20 chance for family, to have a family. I guess she was
- 21 seeing whoever she was seeing and I was talking to
- 22 whoever I was talking to.
- 23 Q. So you knew she was seeing other men that night?
- 24 A. I didn't know that night. I knew that she had done it
- 25 in the past.

HANK HAWES CROSS BY MS. CAMPBELL

- 1 Q. In the past?
- 2 A. Correct.
- 3 Q. But you had forgiven her?
- 4 A. I had forgiven her, but she continued to do things that
- 5 were questionable.
- 6 Q. What things?
- 7 A. Just like with Chandra or, you know, the whole carpet
- 8 cleaning thing. She had on a couple of occasions -- it
- 9 was a guy that showed up a hundred gatherer one night.
- 10 He walked over and introduced himself to me and was
- 11 like well, who are you, and oh, well, I went out with
- 12 Jen. And we kind of starting talking back and forth
- 13 and realized she had been going out with him.
- 14 Q. Would you characterize yourself as jealous? And we've
- 15 read the text messages.
- 16 A. I would probably not jealous, but not a fool either.
- 17 Q. Okay. Was Jen a fool?
- 18 A. I'm sorry?
- 19 Q. Was Jennifer a fool?
- 20 A. I don't believe she was.
- 21 Q. Did she know about Rachel?
- 22 A. I don't think so.
- 23 Q. Did she know about Antoinette?
- 24 A. I don't think so.
- 25 Q. Did she know about Amy?

HANK HAWES CROSS BY MS. CAMPBELL

- 1 A. I'm not even sure who that is.
- 2 Q. Well, she's in your text. You were texting her, not
3 me?
- 4 A. Again, I'm never met any of these women, so.
- 5 Q. And Monica?
- 6 A. I mean, I think she knew -- I think she knew about
7 Monica as my guide, yeah.
- 8 Q. As your guide, so you had met one of these women
9 before?
- 10 A. Yes, she was my tour guide.
- 11 Q. She's the one that specifically texted you about
12 sending you a --
- 13 A. Correct.
- 14 Q. And then the next text was I miss you.
- 15 A. (The witness nodded head.)
- 16 Q. Do you remember when you first started dating Jennifer
17 telling her that she was self-centered?
- 18 A. I don't remember exactly if it was those words, but I
19 think I may have used passive aggressive.
- 20 Q. That she was narcissistic?
- 21 A. I do remember that.
- 22 Q. And that she didn't treat you correctly?
- 23 A. I believe, yes, we did have a conversation.
- 24 Q. Do you know why Jennifer wanted to protect her male
25 friends from you?

HANK HAWES CROSS BY MS. CAMPBELL

- 1 A. I don't think it was so much an issue of protecting
2 them as it was she wouldn't be able to maneuver between
3 us all.
- 4 Q. That Friday night, the 26th, you were sick that night?
- 5 A. I believe I was. I believe I had a kidney stone.
- 6 Q. That night, too, you vomited as you wrote the text?
- 7 A. Yes.
- 8 Q. And in fact, I believe you were on the phone with
9 Stacey that night, which you told Jen about?
- 10 A. Yes.
- 11 Q. And that she thought you had a gallbladder problem?
- 12 A. Potentially.
- 13 Q. And then as you're texting Jen because she's not there
14 for you, you're talking to her about how you had to go
15 to the ER?
- 16 A. Correct.
- 17 Q. Did you go?
- 18 A. I did not.
- 19 Q. Not on that night?
- 20 A. No, ma'am.
- 21 Q. And, in fact, the next morning when she texted you, you
22 texted her that you had passed a kidney stone and even
23 described it; is that what happened?
- 24 A. Yes, ma'am.
- 25 Q. Why did you have to --

HANK HAWES CROSS BY MS. CAMPBELL

- 1 A. Actually, I didn't have to -- she came over that night.
2 She, actually, was there that night.
- 3 Q. Oh, this is new test -- she was, actually, there that
4 night?
- 5 A. She came over on the night of the -- let's see. I
6 think it was -- whatever night, the night before I
7 passed it, she had come over.
- 8 Q. She had come over?
- 9 A. Right.
- 10 Q. And was she there when you passed the stone?
- 11 A. No, that was the next morning.
- 12 Q. Kidney stones are excruciating?
- 13 A. They are.
- 14 Q. So at what point did she decide that you needed to go
15 to the ER because you were in so much pain if she was
16 there?
- 17 A. She never decided that I need go to the ER.
- 18 Q. Well, did you?
- 19 A. I was very close.
- 20 Q. Why did you have to Google about kidney stones?
- 21 A. I was trying to find out if there was some sort of
22 remedy that I could take or something to help ease it.
- 23 Q. It wasn't so you could describe it and make sure you
24 were right?
- 25 A. No, ma'am, I've had kidney stones before.

HANK HAWES CROSS BY MS. CAMPBELL

- 1 Q. You, also, in your text talk about how you had talked
2 to your doctor that morning, Connie?
- 3 A. Right.
- 4 Q. And that you had talked to her about your dehydration
5 issue?
- 6 A. Yes.
- 7 Q. And she said you were good to go on your medicine, you
8 just needed to drink some more water?
- 9 A. Right.
- 10 Q. Why isn't that call on your phone records?
- 11 A. Because it never happened.
- 12 Q. So why did you tell her that?
- 13 A. What I had experienced with Jennifer is once she got
14 something stuck in her craw, she would on some
15 occasions, not all, but on some occasions, she could be
16 a bit of a nag or hound you about something.
- 17 Q. You and Jennifer would have arguments?
- 18 A. Yes, ma'am.
- 19 Q. Why did you secretly record them?
- 20 A. I can't answer that. I don't -- I mean.
- 21 Q. How many --
- 22 A. I don't know.
- 23 Q. How many times did you do that?
- 24 A. I don't know.
- 25 Q. At least three?

HANK HAWES CROSS BY MS. CAMPBELL

- 1 A. It's possible.
- 2 Q. Your testimony today is that you cut your wrist three
3 times?
- 4 A. Yes, ma'am.
- 5 Q. And I will get back to that. Which knife did you use
6 the first time?
- 7 A. It was a small knife. The one I had in my hand.
- 8 Q. In the kitchen?
- 9 A. Yes, ma'am.
- 10 Q. And then the second time, where were you when you cut
11 yourself?
- 12 A. In the bedroom.
- 13 Q. And that's when you cut both your wrists; is that
14 correct?
- 15 A. Yes, ma'am.
- 16 Q. Which knife did you use on that occasion?
- 17 A. I don't recall the particular knife. I mean, that's
18 the one in the picture, I guess, the one on the bedside
19 stand.
- 20 Q. And at that point is when you said you lost all that
21 blood?
- 22 A. I started losing blood in the kitchen.
- 23 Q. And it was dripping everywhere; is that correct?
- 24 A. I'm assuming it was.
- 25 Q. Well, do you remember that part?

HANK HAWES CROSS BY MS. CAMPBELL

- 1 A. Like I said, I mean, I was in shock, I was in dismay.
2 I had a lot of things going on. I don't remember every
3 detail.
- 4 Q. So the second time that you say you cut yourself, you
5 were in the bedroom?
- 6 A. Yes, ma'am.
- 7 Q. And it oozed more, correct?
- 8 A. Um --
- 9 Q. Did you cut it deeper?
- 10 A. I don't remember if it was deeper or just again. And
11 the -- and the right.
- 12 Q. And the right, too?
- 13 A. Yes, ma'am.
- 14 Q. Then where were you -- I didn't catch that, where were
15 you the third time you cut your wrist?
- 16 A. I believe I was in the living room.
- 17 Q. And at what point did you go and get the bag?
- 18 A. I went and got the bag -- I was sitting on the side of
19 the sofa and I was looking at the carpet --
- 20 Q. Carpet.
- 21 A. And I just remember for whatever reason I was looking
22 at this carpet and I was just thinking, you know, I
23 don't want to get blood all over this carpet. It
24 wasn't a very rational thought.
- 25 Q. When was the cooler before that?

HANK HAWES CROSS BY MS. CAMPBELL

- 1 A. Somewhere in the kitchen.
- 2 Q. And then you brought it in there and you made sure that
- 3 you were very careful, too, to keep all the blood right
- 4 there in the cooler; is that correct?
- 5 A. I wouldn't say I was careful. I put my arm in it.
- 6 Q. Because you didn't want to get any on the rug?
- 7 A. Correct.
- 8 Q. But you couldn't bleed on the rug, but you were
- 9 vomiting on it?
- 10 A. Like I said, it wasn't a rational thought.
- 11 Q. In your texts to Jen, did you threaten to expose her,
- 12 make up things about her friends?
- 13 A. You said make up things?
- 14 Q. Uh-huh.
- 15 A. I didn't threaten to make up anything.
- 16 Q. Well, didn't you always try to talk to her about drug
- 17 use?
- 18 A. I didn't have to talk to her about it, she spoke to me
- 19 about it.
- 20 Q. About her drug use?
- 21 A. Correct, and her friends.
- 22 Q. And I believe in a letter you wrote to your mother, you
- 23 even talk about how you went there that night to talk
- 24 about your differences and one of big things was
- 25 boundaries and her drug use; is that right?

HANK HAWES CROSS BY MS. CAMPBELL

- 1 A. Correct.
- 2 Q. You mention that that's what the therapist said that
3 y'all should focus on?
- 4 A. I don't remember that.
- 5 Q. I'll get back to the letter. The therapist, you never
6 told her about Jen's drug use. When y'all went to
7 couple's counseling, this drug use that had you so
8 concerned never came up?
- 9 A. Actually, I did.
- 10 Q. Well, it's not in her notes?
- 11 A. Well, that doesn't mean I didn't tell her.
- 12 Q. In one of your e-mails on August the 26th, which has
13 been entered, at 2055, you e-mailed Jennifer, Don't be
14 like the rest. What does that mean?
- 15 A. I have no idea. It could have been just a random
16 comment. It could have been -- I have no idea.
- 17 Q. That night when you're there, after you kill Jennifer
18 in the kitchen, and according to you, you immediately
19 cut our wrist, right?
- 20 A. I cut my wrist after -- probably after a couple of
21 minutes, I guess.
- 22 Q. Why didn't you answer the door when the police came?
- 23 A. I never heard anybody knock.
- 24 Q. Did you see them outside?
- 25 A. I did not.

HANK HAWES CROSS BY MS. CAMPBELL

- 1 Q. Why did you have to put a towel over the back window?
- 2 A. I didn't put a towel over the back window, if I
- 3 remember correctly.
- 4 Q. You're saying you didn't put that towel with the blood
- 5 on it over the back window?
- 6 A. I may have touched a towel that was over the back
- 7 window, but Jen had been doing that lately.
- 8 Q. She had just started on this occasion to put a towel
- 9 over the back window?
- 10 A. I wouldn't say it was that occasion. She had done it a
- 11 couple of times.
- 12 Q. So your testimony is you didn't pull up that towel?
- 13 A. I don't remember putting that towel up, no, ma'am.
- 14 Q. You were wearing the blue shirt?
- 15 A. A light blue shirt, yes, ma'am.
- 16 Q. And the entire struggle happened right there?
- 17 A. In the kitchen.
- 18 Q. In the kitchen?
- 19 A. Yes, ma'am.
- 20 Q. And did any part of your clothing get hurt or torn
- 21 during the struggle?
- 22 A. It may have. I mean, like I said, I remember her
- 23 having me. It may have been torn, I don't know.
- 24 Q. When you went over there, I mean, nothing was torn on
- 25 your clothing?

HANK HAWES CROSS BY MS. CAMPBELL

- 1 A. No, ma'am.
- 2 Q. Prior to you getting there, you had like all the
3 buttons and your shirt wasn't ripped?
- 4 A. No, ma'am.
- 5 Q. So that would have had to have happened during the
6 struggle, right?
- 7 A. I would assume, yes.
- 8 Q. And you agree with me, it's torn on one side, then
9 there buttons missing? Those buttons were there when
10 you got there?
- 11 A. Yes, ma'am.
- 12 Q. And the struggled happened in the kitchen?
- 13 A. Yes, ma'am.
- 14 Q. Like you just testified to. Where did the buttons go?
- 15 A. I have no idea.
- 16 Q. At what point did you bite her?
- 17 A. I don't recall biting her. I don't recall biting her.
- 18 Q. You don't recall biting her on the arm during the
19 struggle?
- 20 A. Like I said, it happened in the blink of an eye. I
21 don't remember biting her. I don't recall biting her.
- 22 Q. Do you know what happened to her second earring?
- 23 A. I don't.
- 24 Q. At what point did you decide to try to clean up the
25 scene with towels?

HANK HAWES CROSS BY MS. CAMPBELL

- 1 A. I don't think I really thought I was going to clean up
2 the scene. There was just blood everywhere and I think
3 I may have dropped a towel to absorb some of the blood.
- 4 Q. Towels there in the kitchen?
- 5 A. I think they were -- I think there was like a -- maybe,
6 a black amber or something in the photos. I mean, I
7 guess that's where they were.
- 8 Q. There was towels next to the cooler. There was towels
9 in the bathroom. You aren't testifying these were all
10 distributed before you got there?
- 11 A. No, ma'am, I'm just saying that I don't recall where I
12 grabbed the towels to drop on the blood to absorb it.
- 13 Q. Why did you go to the back window and open and close
14 the blinds?
- 15 A. I don't recall doing that.
- 16 Q. Your testimony here today is that you called Stacey and
17 you talked to her on all of those occasions? At least,
18 the ones that she answered, right?
- 19 A. Basically, from what my phone records show, yes.
- 20 Q. And so -- you have a good memory of what you told her?
- 21 A. I know bits and pieces of what I told her.
- 22 Q. And you told her that you had killed Jennifer Wilson?
- 23 A. I don't ever recall saying anything like that, at
24 least, not that way.
- 25 Q. Okay. Well, tell me what you told her like you

HANK HAWES CROSS BY MS. CAMPBELL

1 testified to a little earlier?

2 A. I think when I did talk to Stacey, I told her that she
3 had attacked me. She had attacked me and that I
4 checked her pulse and that she was done. Something
5 along those lines.

6 Q. Well, Stacey Newsom is a doctor, so she would
7 understand what you meant by that, right?

8 A. I would hope so.

9 Q. And your testimony is you told her that and she did
10 nothing to call the police?

11 A. I think during her testimony she said she was half
12 awake.

13 THE COURT: Solicitor, we need to take a break at
14 this time.

15 MS. CAMPBELL: Yes, sir.

16 THE COURT: Mr. Foreman, ladies and gentlemen of
17 the jury, leave your notepad in your chair. The clerk says
18 your orders are here. So if you would let the bailiffs know
19 when y'all have finished that. Take your time. Anybody
20 needs to take a break or anything, let me know. Please
21 don't discuss the case amongst yourselves.

22 BAILIFF: Remain seated.

23 (Whereupon, the jury left the courtroom
24 at 1:06 p.m.)

25 THE COURT: All right. Mr. Hawes, you may step

HANK HAWES CROSS BY MS. CAMPBELL

1 down.

2 All right. Anything from the State before we
3 break?

4 MS. CAMPBELL: No, sir.

5 THE COURT: From the Defense?

6 MR. STRICKLER: No, sir.

7 THE COURT: I don't know how long it's going to
8 take, plan on 45 minutes to an hour, okay?

9 MR. STRICKLER: When do we need to be back?

10 THE COURT: Why don't you plan on being back at
11 two o'clock.

12 MR. STRICKLER: Yes, sir. Thank you.

13 (Whereupon, a short recess was held.)

14 THE COURT: Anything from the State before we
15 bring the jury?

16 MS. CAMPBELL: No, sir.

17 THE COURT: From the Defense?

18 MR. STRICKLER: No, sir.

19 THE COURT: Bring us the jury, please.

20 BAILIFF: Make sure those cell phones are off.

21 (Whereupon, the jury returned to the
22 courtroom at 2:12 p.m.)

23 BAILIFF: The jury panel is seated, Your Honor.

24 THE COURT: Thank you very much.

25 You may continue cross.

HANK HAWES CROSS BY MS. CAMPBELL

1 MS. CAMPBELL: Thank you.

2 BY MS. CAMPBELL:

3 Q. You were testifying about the fact that you called
4 Stacey that night and, basically, told her what had
5 happened; is that correct?

6 A. To a certain degree.

7 Q. To a certain degree? What you can remember?

8 A. Yes.

9 Q. Then you mentioned that you were able to get your pants
10 on, I guess? Do you remember putting on your jeans?

11 A. I never said I put on my jeans.

12 Q. Okay. What did you say, I'm sorry?

13 A. I said I recall leaving and when I looked down, I had
14 on shorts.

15 Q. You looked down and you had on shorts?

16 A. Yes.

17 Q. Do you know how your jeans got back to your house with
18 blood on them?

19 A. I can't remember.

20 Q. And in addition to that, in order to get out the back
21 door, your testimony was the night before you weren't
22 able to get out the back door because it was locked; is
23 that correct?

24 A. Correct.

25 Q. That she had put her keys in her purse?

HANK HAWES CROSS BY MS. CAMPBELL

- 1 A. That's correct.
- 2 Q. And you've had an opportunity to review all the
3 discovery in this case, haven't you?
- 4 A. I suppose I have, yes.
- 5 Q. Including the photographs?
- 6 A. I suppose I have, yes.
- 7 Q. And would you agree with me that the keys to the back
8 door would have been put in the lock that you would
9 have had to have, which you've testified to, to get out
10 the back door are covered in blood?
- 11 A. They are covered in blood, yes.
- 12 Q. And you mentioned in your direct testimony that she had
13 put the keys into her purse?
- 14 A. Yes, ma'am.
- 15 Q. And so I assume you had to go into her purse to get
16 them back out?
- 17 A. That's the way I remember it.
- 18 Q. Why were her keys covered in blood, but there wasn't a
19 drop of blood on her purse?
- 20 A. I can't answer that.
- 21 Q. Do you remember at one point you were dragging her body
22 through the house?
- 23 A. I don't remember that.
- 24 Q. Would you agree with me that there are drag marks into
25 the bedroom area?

HANK HAWES CROSS BY MS. CAMPBELL

- 1 A. I'm not an expert, I don't know what I would call
2 those.
- 3 Q. You mentioned that you remember calling Stacey that
4 night and telling her about what happened, but do you
5 remember when you called Kimberly Wilson?
- 6 A. I vaguely remember. It's hard to remember what I said,
7 but I think I vaguely remember being on the phone
8 sometime that next morning maybe.
- 9 Q. That next morning?
- 10 A. Yes, ma'am.
- 11 Q. Once you had gotten back to your house?
- 12 A. I guess so, yes, several hours later.
- 13 Q. And you mentioned that you got in your car and you
14 remember getting in your car and, basically, turning it
15 on. And after that, the next thing you knew, you were
16 at your house?
- 17 A. I was laying on my floor.
- 18 Q. Laying on your floor?
- 19 A. Uh-huh.
- 20 Q. At what point were you able to make Google searches for
21 criminal defense attorneys in this weakened state?
- 22 A. I -- I think I remember doing that from my bed at some
23 point.
- 24 Q. At some point that morning? And you had lost a lot of
25 blood according your testimony; is that correct?

HANK HAWES CROSS BY MS. CAMPBELL

- 1 A. Yes, ma'am.
- 2 Q. And so you were having a hard time coming in and out
3 and things of that nature?
- 4 A. I mean, I don't know if I was blacked out or -- I don't
5 -- I don't remember, so I guess I must have been.
- 6 Q. Well, as the morning progressed and you called up
7 Kimberly Wilson at some point, didn't you? Williams is
8 her name, I think?
- 9 A. Williams.
- 10 Q. Yeah.
- 11 A. (The witness nodded head.) I guess I did, yes.
- 12 Q. And, basically, what you told her was that you had
13 killed somebody?
- 14 A. I don't ever remember saying anything like that.
- 15 Q. You never told her her name?
- 16 A. I don't remember.
- 17 Q. Because she didn't know about Jennifer, did she?
- 18 A. I don't think so.
- 19 Q. You told her that it was in self-defense, but no one
20 would believe you?
- 21 A. Okay.
- 22 Q. So you had cut your wrists?
- 23 A. I don't remember if I said it like that or not.
- 24 Q. Do you remember asking her for money for a lawyer?
- 25 A. I don't.

HANK HAWES CROSS BY MS. CAMPBELL

- 1 Q. And at this point, had you called 911 on Jennifer's
2 behalf?
- 3 A. No, I don't think I did.
- 4 Q. In fact, you never called 911 for Jennifer?
- 5 A. To my understanding and my knowledge, it was well past
6 that point.
- 7 Q. In fact, the only person you called 911 for was you?
- 8 A. After someone had requested that I do it or they would
9 do it for me.
- 10 Q. One of your friends that was concerned about you?
- 11 A. I suppose, yes.
- 12 Q. During that 911 call, you talked about slitting your
13 wrists?
- 14 A. Okay.
- 15 Q. Well, did you?
- 16 A. I'm trying to recall events from three years and three
17 months ago that I would just as soon forget, so I'm
18 trying very hard to recall the events.
- 19 Q. This doesn't stand out in your memory, the night that
20 you killed somebody?
- 21 A. I lost a ton of blood. I don't remember a lot of it.
22 I mean.
- 23 Q. You told the 911 operator that you had slit your
24 wrists, I believe you said with a steak knife. So you
25 were specific about that at that time?

HANK HAWES CROSS BY MS. CAMPBELL

- 1 A. I could have been, yes.
- 2 Q. Now, today, you're saying with three different knives?
- 3 A. Correct.
- 4 Q. And then you were taken to the ER, I believe?
- 5 A. Yes, ma'am.
- 6 Q. You were in and out there as well?
- 7 A. I think I got there, I was kind of in and out. They
- 8 gave me an IV and some other stuff.
- 9 Q. Yes, they did give you an IV because you were slightly
- 10 dehydrated; is that correct?
- 11 A. I guess that's why they gave it to me, yes.
- 12 Q. Well, you've got the medical background, not me.
- 13 A. I'm not that advanced.
- 14 Q. Okay. Did they ever give you a blood transfusion for
- 15 all this blood you lost at the scene?
- 16 A. No, ma'am.
- 17 Q. And, in fact, when EMS got there, your wrists had quit
- 18 bleeding?
- 19 A. That's what they stated.
- 20 Q. And there are photographs of a couple of spots of
- 21 blood. I show you Defense Exhibit No. 61. So at this
- 22 point, it wasn't necessary for you to still have a
- 23 cooler there for you to bleed into?
- 24 A. A cooler?
- 25 Q. In order not to get any blood on the floor, you don't

HANK HAWES CROSS BY MS. CAMPBELL

- 1 want to get blood on the floor?
- 2 A. That looks like that was from my house. That's not --
- 3 Q. Yes, it's in your house?
- 4 A. Okay.
- 5 Q. And, in fact, there were photographs of the interior of
- 6 the car, right? Have you seen those?
- 7 A. Yes, ma'am.
- 8 Q. And the only trace amounts of blood is from the bottoms
- 9 of your feet where you were stepping through all the
- 10 blood.
- 11 A. Okay.
- 12 Q. When you left, you don't remember taking your jeans.
- 13 This is your watch, is it not?
- 14 A. Turn it around, please. I believe it is.
- 15 Q. It has blood on it. How did it get broken?
- 16 A. I have no idea. I guess in the struggle, I don't know.
- 17 Q. But you managed to remember to take that and put it
- 18 into your car to take it with you?
- 19 A. I was in shock.
- 20 Q. There's, also, been some testimony about how you never
- 21 met Jennifer's parents?
- 22 A. I never met her father or anybody else. I did meet her
- 23 mother.
- 24 Q. Okay. So that's not true, you did meet her mother?
- 25 A. I did meet her mother on one occasion.

HANK HAWES CROSS BY MS. CAMPBELL

- 1 Q. In fact, Jennifer had given you her information. It's
2 in your phone?
- 3 A. I'm sorry?
- 4 Q. It's in your phone. Her information is in your phone?
- 5 A. Information as to what?
- 6 Q. You tell me?
- 7 A. I mean, her phone number may be in there.
- 8 Q. You were arrested and then a few days later, you go and
9 meet with Mr. Julius Jones?
- 10 A. I don't recall ever meeting with him. The gentleman
11 that met with me, his name is Drew.
- 12 Q. Drew?
- 13 A. Drew.
- 14 Q. He works at the Alvin S. Glenn Detention Center?
- 15 A. Yes, ma'am.
- 16 Q. And when he asked you about whether or not you had ever
17 committed suicide, you told him no, and, in fact, the
18 cuts on your arms were defensive wounds?
- 19 A. I don't ever remember telling him that. I remember him
20 presenting a contract saying the only way I could get
21 out of SHU was to sign this.
- 22 Q. Well, just to be clear, you don't have to -- Mr. Jones,
23 you never have had any animosity with him, do you?
- 24 A. Any?
- 25 Q. Ill will?

HANK HAWES CROSS BY MS. CAMPBELL

1 A. No, no.

2 Q. He doesn't have any reason to make that up and write it
3 down back in September of 2011, does he?

4 A. No, I don't have any --

5 MR. STRICKLER: Objection, Your Honor.

6 THE COURT: What's your legal objection?

7 MR. STRICKLER: She's asking him to characterize
8 the testimony of another witness.

9 THE COURT: All right. I will sustain the
10 objection.

11 Don't pit the witnesses.

12 BY MS. CAMPBELL:

13 Q. You wrote a number of letters to your mother, which
14 she's provided to us?

15 A. Possibly, yes.

16 Q. And in the first letter on January the 24th of 2012,
17 you tell her the Lord put me in a situation of
18 self-defense?

19 A. Okay.

20 Q. And then in another letter on February 10th, 2012, you
21 talk about praying for Jennifer's family?

22 A. I do.

23 Q. My heart goes out to them and I beg for their
24 forgiveness as this tragedy was in no way an act of
25 aggression on my part. I believe we were both the

HANK HAWES CROSS BY MS. CAMPBELL

1 victims of a psychotic episode caused by an overdose of
2 the amphetamines I was prescribed for ADHD. Do you
3 remember writing that?

4 A. Vaguely.

5 Q. Your testimony here today, however, is that your ADHD,
6 the Adderall, had nothing do with the events. It was
7 caused by Jennifer's aggression; is that correct?

8 A. That's correct.

9 Q. You talk about how y'all went into a week before to
10 establish boundaries and your dislike of her use of
11 drugs?

12 A. Most likely, yes.

13 Q. What drugs did you think she used?

14 A. She had -- I mean, basically, she had told me she used
15 marijuana and, on occasion, some other stuff, but she
16 never really specified the other stuff.

17 Q. Okay. Marijuana, you know how long it stays in your
18 system?

19 A. Should stay in your system for a good little while, at
20 least, 30 days.

21 Q. Okay. And know at the time of death when she was out
22 with her drug friends, her toxicology came back
23 negative?

24 A. I, also, know that she detoxed quite often.

25 Q. And in that same letter, you, also, wrote to your

HANK HAWES CROSS BY MS. CAMPBELL

1 mother, My prayers to the Lord is to make a way that
2 doesn't seem to exist, to free me and allow me to go
3 back to school?

4 A. Okay.

5 Q. Did you write that?

6 A. I'm sure if you have it, I probably did.

7 Q. And you, also, wrote to her that you -- that you had --
8 your life had been spared a severed artery and no
9 medical attention for over five hours and he's given
10 you back to your mother whom you hadn't seen. Is that
11 what you wrote?

12 A. I'm assuming it is.

13 Q. In the same letter at the end, you talk about you would
14 like for her to find any information you can find
15 online about amphetamine recalls from Sandoz and Teva
16 Pharmaceuticals -- actually, any recalls of recommended
17 dosages?

18 A. Okay.

19 Q. And then on February 16th of 2012, you wrote her
20 another letter talking about how you inherited your
21 ADHD --

22 MR. STRICKLER: I would object, Your Honor.

23 THE COURT: What's your legal objection?

24 MR. STRICKLER: Not in the form of a question.

25 THE COURT: Well, she's laying -- overruled.

HANK HAWES CROSS BY MS. CAMPBELL

1 Go ahead.

2 MS. CAMPBELL: Thank you, sir.

3 BY MS. CAMPBELL:

4 Q. Do you recall writing that you had inherited this
5 disease from your parents?

6 A. It is --

7 Q. The only negative trait and the down side was
8 disorganization and that you had mostly positive things
9 from it, including creativity and a high IQ?

10 A. Correct.

11 Q. You wrote that. Then you wrote another letter on
12 March 1, 2012, to your mother. You said that you
13 prayed that you receive a breakthrough in my case. And
14 send me anything you can find on amphetamine recalls
15 and episodes, acceptable doing, et cetera. Did you
16 write that?

17 A. I probably did as I had a batch of amphetamines
18 recalled on me once before.

19 Q. Then on March 12th, 2012, you wrote her another letter.
20 And in that letter, you wrote her, I've been praying
21 for a breakthrough or miracle in my case before my
22 birthday?

23 A. Okay.

24 Q. Do you remember that?

25 A. I don't remember it, but.

HANK HAWES CROSS BY MS. CAMPBELL

1 Q. You recall writing her in that same letter, Maybe you
2 can send me the research material I asked about on the
3 amphetamines?

4 A. Possibly, yes.

5 Q. Do you remember writing on April the 4th of 2012, that
6 you wanted her to look up the address of The Citadel
7 and College of Charleston so that you could go to the
8 school of law.

9 A. I may have written that, yes.

10 Q. You remember writing on April the 9th of 2012, I've
11 really been praying for a miracle so I can fulfill my
12 dreams?

13 A. I wouldn't say that's unreasonable, sure.

14 Q. Do you remember writing her on April 17th of 2012 and
15 asking her to let your dad know what's going on or
16 maybe he --

17 A. I --

18 Q. You could let him know, maybe he can think of something
19 to help my case?

20 A. I mean, I may have.

21 Q. May 15th, 2012, you wrote her again, Beginning to feel
22 like God has no miracles left for me. And those are
23 some of the letters you wrote?

24 A. That's possible, yes.

25 Q. You testified on direct that there was a shirt at the

HANK HAWES CROSS BY MS. CAMPBELL

- 1 scene that she was wearing that night; is this correct?
- 2 A. Yes, ma'am.
- 3 Q. What was she wearing when you got there?
- 4 A. What looked like pajama pants, blue pajama pants and a
- 5 tank top.
- 6 Q. What kind of tank top?
- 7 A. Kind of like little straps.
- 8 Q. Okay. I show you what's been marked as State's 108, is
- 9 that the picture that Mr. Strickler showed you?
- 10 A. Yes.
- 11 Q. Where are these -- this tank top?
- 12 A. I believe that's the tank top (indicating).
- 13 Q. Right here (indicating)?
- 14 A. That white area right there and then these are the --
- 15 these are the pants.
- 16 Q. Over next to your shirt?
- 17 A. Yes.
- 18 Q. So this is the tank -- this is what you're saying was
- 19 the tank top?
- 20 A. Yes, ma'am.
- 21 Q. So this is different from the tank top that was found
- 22 in the hallway?
- 23 A. It may have been.
- 24 Q. Because I'm going show you what's been marked as
- 25 State's Exhibit No. 354, which was the tank top in the

HANK HAWES CROSS BY MS. CAMPBELL

1 hallway. There's a photograph of that. Do you
2 recognize that (indicating)?

3 A. I don't recognize that as what she was wearing.

4 Q. So your testimony here today is this is not what she
5 was wearing (indicating)?

6 A. I don't think so.

7 Q. Because there's no stab wounds, are there? You want to
8 look?

9 A. That would make sense.

10 Q. And this just happened to be the tank top that was
11 found out in the hallway with everything else,
12 including the towels?

13 A. I don't know what was found out in the hallway. I
14 guess that might have been it.

15 Q. Then your Defense counsel put in some photographs,
16 which are Defendant Exhibits 38, 39, and 40, which are
17 kind of small. They show that same area of the room
18 with that tank top you're saying?

19 A. Yes, ma'am, that's what it looks like. Yes, ma'am.

20 Q. And would you agree those same photographs with blood
21 up here in State's Exhibits 444, 445, and 446?

22 A. Yes, ma'am.

23 Q. But that's just a little larger?

24 A. Yes, ma'am.

25 MS. CAMPBELL: Your Honor, at this time, we would

HANK HAWES CROSS BY MS. CAMPBELL

1 offer these into evidence.

2 THE COURT: What number?

3 MS. CAMPBELL: 444, 445, and 446.

4 MR. STRICKLER: Without objection, sir.

5 THE COURT: 444, 445, and 446 without objection.

6 (State's Exhibit Nos. 444, 445, and 446
7 were admitted into evidence.)

8 BY MS. CAMPBELL:

9 Q. Specifically, 446, that shows that item a little
10 better, doesn't it?

11 A. Yes, ma'am.

12 Q. And would you agree with me that's a towel?

13 A. Doesn't look like a towel to me, but.

14 Q. You can see it better in the larger photograph than in
15 the small one. Because if this was the tank top she
16 was wearing, it doesn't work with your story?

17 A. Because that's not the tank top.

18 Q. The wounds to her chin and to her neck, postmortem
19 wounds, how did she get those?

20 A. I have no idea.

21 Q. And the wounds to her chest, one in each breast, do you
22 remember when you did those?

23 A. I'm assuming it happened when I was trying to push her
24 away from me, push her off of me.

25 Q. State's Exhibit 38, do you remember when you just bit

HANK HAWES CROSS BY MS. CAMPBELL

- 1 her?
- 2 A. I don't remember that.
- 3 Q. But you remember her biting your finger?
- 4 A. It's fresh in my mind.
- 5 Q. Let me show what's been mark as State's Exhibit No.
- 6 298, would you agree that's a close-up of the wound
- 7 you're referring to as a bite mark?
- 8 A. Could be, yes.
- 9 Q. So there's no bruising around that, is there?
- 10 A. Not in that particular photo.
- 11 Q. This photo was taken within day or two of this
- 12 happening. So did she just get you with one tooth?
- 13 A. My finger was in her mouth.
- 14 Q. Was there any bruising to the back of that finger
- 15 that's not shown here?
- 16 A. It may be on the ones that the police took, the
- 17 close-ups the police took.
- 18 Q. Who took the photos of every bruise on you.
- 19 (There was no response.)
- 20 Q. And I'm not going back through the text messages. So
- 21 your testimony here today is you're just the victim of
- 22 Jennifer Wilson?
- 23 A. The event happened. I don't know that I would call
- 24 myself the victim, but the event happened.
- 25 Q. Was she the aggressor?

HANK HAWES CROSS BY MS. CAMPBELL

1 A. Yes.

2 MS. CAMPBELL: Your Honor, we do have a matter of
3 law to take up.

4 THE COURT: All right. Mr. Foreman, ladies and
5 gentlemen of the jury, please leave your notepad in the
6 chair. Don't discuss the case amongst yourselves. We'll
7 get you back out very shortly.

8 (Whereupon, the jury left the courtroom
9 at 2:34 p.m.)

10 THE COURT: Yes, ma'am.

11 MS. CAMPBELL: May it please the Court, Your
12 Honor. Your Honor, in his testimony, the Defendant has
13 gotten up here and, basically, said that Jennifer Wilson was
14 the aggressor in this case. He just agreed with me that
15 that's what happen in this case. And Your Honor, and I'm
16 limiting this to only prior instances where he was
17 aggressive towards other women in his life, starting with
18 Andrea Frazier. He was physically abusive. He would hold
19 her down by her wrists. He busted her lip. Erin Dougherty,
20 which is one of his former wives, she, actually, reported, I
21 believe he was charged with criminal domestic violence on
22 her. That he grabbed her arms, pulled them behind her
23 back --

24 THE COURT: Well, what's the time frame of all
25 this?

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1 MS. CAMPBELL: That's 1998.

2 THE COURT: And what's the similarity of it all?

3 MS. CAMPBELL: Do you want me to do the most
4 recent ones then?

5 THE COURT: Yeah. I mean, tell me.

6 MS. CAMPBELL: The most recent ones, Your Honor,
7 would be Christine Dalheimer would be dated from August to
8 November of 2010.

9 THE COURT: August when?

10 MS. GARFIELD: August of 2010 to November of 2010,
11 so shortly before he met Ms. Wilson.

12 THE COURT: All right. And what happened to her?

13 MS. CAMPBELL: He pulled a knife on her in her
14 kitchen out of the kitchen drawer. In addition to that, he
15 would put a thumb on her neck and act like he was going to
16 strangle her.

17 THE COURT: Okay. And that's who now?

18 MS. CAMPBELL: That would be Christine Dalheimer.

19 THE COURT: Okay. I believe she testified, right?

20 MS. CAMPBELL: Yes, but at that point, Your Honor,
21 of course, it wasn't allowable.

22 THE COURT: Okay. All right. What's next?

23 MS. CAMPBELL: The next one would be Stacey
24 Newsom. He would butt her in the head. He wrapped himself
25 around her and pulled her down --

HANK HAWES CROSS BY MS. CAMPBELL

1 THE COURT: What's the time frame?

2 MS. CAMPBELL: He dated her from 2008 to the
3 summer of 2010.

4 THE COURT: When did this occur, the incident
5 you're telling me about?

6 MS. CAMPBELL: I would have to check with her. It
7 was towards the end. She had him evicted out of her house
8 in July of 2010.

9 THE COURT: Okay.

10 MS. CAMPBELL: I can get a better date --

11 THE COURT: What did he do with her?

12 MS. CAMPBELL: He head butted her, spit on her and
13 then wrapped her up and pulled her down to the floor in a
14 manner similar to what he just testified Jennifer Wilson did
15 to him.

16 THE COURT: Head butted her and threw her on the
17 floor?

18 MS. CAMPBELL: Uh-huh. And he, also, told her if
19 she ever filed a domestic violence report, he would make
20 sure she looked like the aggressor.

21 THE COURT: Okay.

22 MS. CAMPBELL: And you want me to keep it to --

23 THE COURT: I'm just trying to figure out what
24 you're trying to go into, when, where, and who, and what
25 circumstances so I'll know the facts when I listen to your

HANK HAWES CROSS BY MS. CAMPBELL

1 arguments.

2 MS. CAMPBELL: And then, Your Honor, all the rest
3 of them go back before 2007 and earlier when he was,
4 actually, charged or convicted on those charges.

5 THE COURT: 2007, convicted of what?

6 MS. CAMPBELL: 2007 on Amy Hate. He grabbed her
7 neck and choked her. Lifted her up off the floor until she
8 blacked out.

9 THE COURT: He was convicted of what?

10 MR. STRICKLER: No.

11 MS. CAMPBELL: That wasn't that one, Your Honor.

12 MR. STRICKLER: Convicted in 1998.

13 MS. CAMPBELL: The older ones were the
14 convictions, Your Honor. I don't know that that was a
15 conviction. I would have to double check that.

16 THE COURT: Okay. All right.

17 MS. CAMPBELL: Then the other ones are all more
18 remote in time.

19 THE COURT: Okay. So tell me why you think you're
20 entitled to go into that?

21 MS. CAMPBELL: Your Honor, specifically, the one
22 that I feel -- the two that I feel like are most prevalent
23 would be Christine Dalheimer and Stacey Newsom. Those were
24 the most recent in time. The fact that he pulled a knife on
25 Christine Dalheimer in the same manner he's alleging a knife

HANK HAWES CROSS BY MS. CAMPBELL

1 was pulled on him and that he had to pull a knife.

2 And in addition to that, Your Honor, specifically,
3 as to Stacey Newsom, as far as the physical aggression,
4 which he's -- and it's in the text messages that's in
5 evidence that he says he was never aggressive with Stacey.
6 Our information is that she would refute that. And, more
7 specifically, he told her he would make sure she looked like
8 the aggressor if she ever reported him.

9 THE COURT: Okay.

10 MS. CAMPBELL: Which is exactly what he's doing
11 here.

12 THE COURT: Well, I understand, but under what
13 theory do you think it should be allowed? I mean, it's not
14 like close in time and circumstances. I'm having trouble
15 with connecting the cause and effect of -- unless you think
16 it goes to his self-defense argument.

17 MS. CAMPBELL: I --

18 THE COURT: Why you think it should come in?

19 MS. CAMPBELL: I --

20 THE COURT: Legally.

21 MS. CAMPBELL: I think it should come in under a
22 404(b) analysis. At this point, he's made it relevant. We
23 weren't allowed to go into before, Your Honor.

24 THE COURT: I understand.

25 MS. CAMPBELL: The case law that I handed up

HANK HAWES CROSS BY MS. CAMPBELL

1 earlier, the only way it comes in is that he testifies he
2 was the victim, she was the aggressor, which is something
3 that he's threatened in the past to do with another woman
4 that reported him for anything.

5 THE COURT: So you think it comes under 404(b)?

6 MS. CAMPBELL: For motive and --

7 THE COURT: Because he's testified as the
8 aggressor?

9 MS. CAMPBELL: He's testified that Jennifer Wilson
10 was the aggressor. And that was on his direct testimony.
11 And the fact on Christine Dalheimer that he pulled a knife
12 on her, which is the exact same situation that we have here.

13 THE COURT: I know you handed up several cases,
14 which one are you referring to in particular? Which one in
15 particular are you referring to?

16 MS. CAMPBELL: I believe it was -- hang on, Your
17 Honor. State v. Sweat, and the cases I attached to those,
18 Your Honor.

19 THE COURT: State v. Sweat?

20 MS. CAMPBELL: Yes, sir.

21 THE COURT: That goes directly, especially to the
22 threats. And I handed up some other cases, Your Honor, as
23 well.

24 (Pause.)

25 THE COURT: All right. Let me hear from -- I'm

HANK HAWES CROSS BY MS. CAMPBELL

1 sorry, Solicitor, are you through?

2 MS. CAMPBELL: Yes, sir.

3 THE COURT: Let me hear from the Defense.

4 MR. STRICKLER: She indicates she's relying on
5 State v. Sweat. My memory of that is that there was an act
6 of violence against the victim. The defendant was arrested,
7 he's released. And some 10 days later, the same victim is
8 assaulted giving rise to the charges for which he is brought
9 to trial on. And in that situation, the earlier charge was
10 permitted. There you have a deputy with the current victim
11 from the previously incident and you have an incident that
12 is all of 10 days previous as opposed to your list. The
13 closest thing here a year, over a year earlier and different
14 -- different alleged victims.

15 THE COURT: Okay.

16 MR. STRICKLER: I think it fails on both those
17 bases.

18 THE COURT: Sorry?

19 MR. STRICKLER: I think it fails on both those
20 bases. I think you need to have them both.

21 THE COURT: Yes, ma'am.

22 MS. CAMPBELL: Your Honor, to the specific threat
23 that he would make her out to be an aggressor, Your Honor, I
24 think State v. Beck would, also, apply there. That's a case
25 where the defendant in that case made an allegation -- it

HANK HAWES CROSS BY MS. CAMPBELL

1 involved a call girl, that made an allegation some several
2 months earlier how he was going to rob or do something to a
3 person like that. And the court allowed it in under State
4 v. Beck to show, basically, that the defendant followed
5 through with what he said he would do earlier.

6 THE COURT: Only thing he said, if I remember
7 correctly, is -- I forget the exact terminology, in a text
8 you're talking about?

9 MS. CAMPBELL: No.

10 THE COURT: Take her block by block or something
11 like that?

12 MS. CAMPBELL: No, that's in. I mean, that's I
13 think --

14 THE COURT: Is that what you're talking about?

15 MS. CAMPBELL: No, sir.

16 THE COURT: What text are you talking about?

17 MS. CAMPBELL: I'm not talking about a text at
18 this point. I'm talking about what he said to Stacey Newsom
19 about if she ever reported this to law enforcement that he
20 would make her out to be the aggressor. And that is what,
21 in fact, he has come here in court and done today.

22 THE COURT: Okay. All right. I'm not going -- I
23 think these cases are too remote in time and I think you've
24 got -- circumstances. Under Lyle, prior bad acts are not
25 admissible, except for motive and intent and some other

HANK HAWES CROSS BY MS. CAMPBELL

1 elements, but they have to be closely related in time.
2 There's no connection between the cause and effect and
3 between the evidence and the crime that you want to present
4 at this time. So I'm not going to allow you to go into
5 those at this point in time in the trial based upon this
6 testimony. Okay.

7 Now, I'm not saying that some other witness may
8 not open the door. At this point in time, I don't think he
9 has opened the door and I don't think it's admissible under
10 Lyle as a prior bad act. All right.

11 Do you have any further cross --

12 MS. CAMPBELL: Just a moment.

13 THE COURT: -- of this witness?

14 MS. CAMPBELL: No, sir.

15 THE COURT: Any other questions of this witness?

16 MS. CAMPBELL: No, sir.

17 THE COURT: All right.

18 Mr. Strickler, do you have any questions in reply?

19 MR. STRICKLER: No, Your Honor.

20 THE COURT: All right. I suppose this is the time
21 to ask him to come down before we bring the jury back in.

22 MR. STRICKLER: That's what I thought, Your Honor.
23 And we would have no reply.

24 THE COURT: You have on reply?

25 MR. STRICKLER: No reply.

HANK HAWES CROSS BY MS. CAMPBELL

1 THE COURT: All right. If you would step down and
2 come back to the Defense counsel table for me.

3 (The Defendant complies.)

4 THE COURT: All right. Do you have in anymore
5 witnesses you're going to call?

6 MR. STRICKLER: Not at this time, Your Honor. We
7 have the one witness scheduled for first thing Wednesday
8 morning.

9 THE COURT: All right. Let me see the lawyers up
10 her.

11 (Whereupon, a bench conference was held
12 off the record.)

13 MS. CAMPBELL: Your Honor, if we could have about
14 15 minutes?

15 THE COURT: Yes, ma'am.

16 MS. CAMPBELL: Okay. Thank you.

17 THE COURT: We'll take about a 15 or 20-minute
18 break.

19 (Whereupon, a short recess was held.)

20 THE COURT: Bring the jury, please.

21 BAILIFF: Yes, sir.

22 (Whereupon, the jury returned to the
23 courtroom at 3:14 p.m.)

24 BAILIFF: The jury panel is present, Your Honor.

25 THE COURT: Thank you very much.

HANK HAWES CROSS BY MS. CAMPBELL

1 Ladies and gentlemen of the jury, I know you've
2 been here now, I guess, for a week, five days, and the day
3 is the sixth day. We've done everything we can try to
4 precipitate and expedite this trial. Every now and then you
5 run into snags and we have sort of run into a snag at this
6 point in time.

7 As I told you earlier, sometime when I'm ruling on
8 decisions I have to listen to some of the facts and evaluate
9 the facts before I can make a decision whether that evidence
10 is admissible or not admissible. We've reached that point.
11 And I'm not going to be able to do it this afternoon. The
12 witness is not available this afternoon. They will be
13 available first thing in the morning. So in the morning,
14 I'm going to listen to his testimony and make a decision
15 whether it's admissible or not admissible.

16 So what I'm going to ask you to do if you will
17 call in to the clerk's office at 10:30 in the morning. At
18 that time, you will receive a message to either report
19 tomorrow at 12 o'clock or Wednesday morning at 9:30.

20 The reason we have to wait until Wednesday morning
21 is there was an expert that was available last week, but we
22 just never -- we tried to get to him, wasn't available.
23 He's not available today or tomorrow, but he will be here
24 Wednesday morning. So we've got to take that testimony
25 Wednesday morning.

HANK HAWES CROSS BY MS. CAMPBELL

1 So bear with me. We're going to get through the
2 testimony, we're going to get the trial over with. I
3 appreciate your patience and your courtesies, but sometimes
4 things come up and there's no way I can work around them
5 because of the law and the situation. When you're dealing
6 with a lot of people, there's always problems.

7 But I apologize again. We're not trying to waste
8 your time, but I just have to do certain things and we can't
9 finish it up tomorrow. But, hopefully, we'll finish it up
10 Wednesday, if not, first thing Thursday morning.

11 So I caution you again, please don't discuss the
12 case amongst yourselves. Please don't talk to anybody about
13 the case. And I will see you either tomorrow at 12 o'clock
14 or I'll see you Wednesday morning at 9:30. Y'all have a
15 good evening and, hopefully, a good day tomorrow.

16 (Whereupon, the jury left the courtroom
17 at 3:18 p.m.)

18 THE COURT: All right. Let me make sure one thing
19 is clear on the record for the State. If it's going to be
20 any reply testimony as to the Defendant, Mr. Hawes's,
21 testimony, direct and cross-examination, today, that's going
22 to be tomorrow.

23 MS. CAMPBELL: Uh-huh.

24 THE COURT: Any reply to the blood expert the
25 Defendant's going to call Wednesday will be done after that

MATTHEW CRONIN EXAMINATION BY THE COURT

1 testimony.

2 Does the State understand?

3 MS. CAMPBELL: Yes, sir.

4 THE COURT: All right.

5 Does the Defense understand?

6 MR. STRICKLER: Yes, sir.

7 THE COURT: All right. Is there anything from
8 the -- and I understand you will have your witnesses
9 tomorrow to proffer the testimony on the admissibility of
10 prior bad acts, I believe, Newsom and Dalheimer, is that
11 correct?

12 MS. CAMPBELL: Yes, sir.

13 THE COURT: All right. You're going to start that
14 at 9:30; is that correct?

15 MS. CAMPBELL: Yes, sir.

16 THE COURT: And after I listen to that testimony
17 listen to arguments, I'll make a decision. Okay?

18 MS. CAMPBELL: Okay.

19 THE COURT: I've already made one, but I will be
20 glad to revisit it after I listen to testimony.

21 Does the State understand?

22 MS. CAMPBELL: Yes, sir.

23 THE COURT: Does the Defense understand?

24 MR. STRICKLER: Yes, sir.

25 THE COURT: All right. Is there anything else

MATTHEW CRONIN EXAMINATION BY THE COURT

1 from the State before we adjourn this trial?

2 MS. GARFIELD: No, sir.

3 THE COURT: Anything from the Defense?

4 MR. STRICKLER: No, sir.

5 THE COURT: All right.

6 (Whereupon, Court was adjourned for the
7 day to be reconvened on Tuesday, October
8 14, 2014.)

9 THE COURT: Mr. Postin, you want to come around,
10 please?

11 MR. POSTIN: Yes, sir.

12 THE COURT: Mr. Cronin, you're here?

13 DEFENDANT CORNIN: Yes, sir.

14 THE COURT: Okay.

15 Be glad to hear you.

16 MR. POSTIN: Thank you, Your Honor. I
17 appreciate -- first of all, I appreciate the Court allowing
18 us to come before you today. It's a motion, I guess, to
19 reconsider the six months you imposed on Thursday for
20 contempt. I've been retained by Mr. Cronin to represent him
21 in that regard as over the whole encompassing matter of
22 contempt.

23 I've been able to spend a lot of time with him on
24 the phone and in person. I can tell that you the actions in
25 your courtroom were aberrant to this man's personality.

MATTHEW CRONIN EXAMINATION BY THE COURT

1 He's an honorably discharged veteran of the United States
2 Army. And her served in Iraq in military intelligence. He
3 is from Wisconsin. He went to college there and graduated.
4 He has a real estate company in Chicago and he's, also, a
5 bond trader in New York City. Your Honor, he's engaged and
6 his fiance is in the courtroom (indicating). She's right
7 here. Her name is --

8 THE COURT: You're welcome to come around and
9 speak on his behalf if you so choose.

10 MR. POSTIN: I should have warned her of that,
11 Your Honor, I'm sorry.

12 THE COURT: Okay.

13 MR. POSTIN: She did this of own volition. I
14 didn't ask her to do this. Matt didn't ask her to do this.
15 She -- it just -- and I think it just goes to show what kind
16 of person he is.

17 THE COURT: Be glad to hear you.

18 MR. CRONIN'S FIANCE: Oh. Do I come --

19 MR. POSTIN: No, just from right there. Sorry.

20 MR. CRONIN'S FIANCE: I'd really like him to come
21 home. No, he's a really good guy. He's really worked up
22 about the whole situation. Ms. Wilson meant a lot to him
23 and I know he loved her very much. And I advised him not to
24 come to the trial because I thought he would, you know, get
25 worked up and, obviously, he did. But he's a really good

MATTHEW CRONIN EXAMINATION BY THE COURT

1 guy and definitely out of character. And that's it. I
2 didn't really prepare anything.

3 THE COURT: That's fine.

4 MR. POSTIN: Thank you so much.

5 THE COURT: Okay. Thank you so very much for
6 being here.

7 Okay. Yes, sir.

8 MR. POSTIN: Your Honor, I know Matt does want to
9 address the Court. He, obviously, has spent now four days
10 in jail.

11 DEFENDANT CORNIN: (The witness nodded head.)

12 MR. POSTIN: He has had a lot of time to reflect
13 on his actions. And I know that he does want to address
14 Your Honor at the appropriate time.

15 THE COURT: Will be glad to hear you.

16 DEFENDANT CORNIN: Yes, Your Honor. Obviously,
17 this is a very sensational case and I'm extremely sorry for
18 adding to that. It was sensational enough already. And I
19 was very emotional. It was the wrong thing to do. I know
20 it wasn't going to change anything. And I'm extremely sorry
21 for breaking the decorum of this court, your court. And I
22 know the prosecution and Defense have spent three years
23 working on this case and I put that in jeopardy and I would
24 like to apologize to them as well. It was definitely out of
25 character and I'm sorry.

MATTHEW CRONIN EXAMINATION BY THE COURT

1 THE COURT: Okay. Yes, sir.

2 MR. POSTIN: Your Honor, I just ask you reconsider
3 the contempt matter, you know, and making it effective as
4 time served, if possible, and just allowing him to -- of
5 course, he would agree never to walk into 1701 Main Street
6 Columbia, South Carolina, courthouse.

7 THE COURT: Well, if I do what your attorney wants
8 me to do, what are your plans? Because I'm going to
9 restrain you from entering this courthouse, period, and I'm
10 going to ask the officers to get a mug shot and put it
11 downstairs so you don't get back in the building. Do you
12 understand?

13 DEFENDANT CORNIN: Yes, sir.

14 THE COURT: What are your plans, at least, not in
15 the middle or during the pendency of this trial? After the
16 trial, you can do whatever you want.

17 DEFENDANT CORNIN: Of course, Your Honor. My
18 plans are to never have any contact whatsoever with the
19 penal system in the great State of South Carolina again. I
20 don't want to see this courtroom. I don't want to see the
21 facilities. I don't want to see the detention center.

22 THE COURT: Well, you think you learned anything?

23 DEFENDANT CORNIN: (The witness nodded head.)

24 THE COURT: The courts just can't put up with that
25 conduct.

MATTHEW CRONIN EXAMINATION BY THE COURT

1 DEFENDANT CORNIN: I understand.

2 THE COURT: We got to have a civil operation and
3 that's not civil.

4 DEFENDANT CORNIN: It wasn't at all, Your Honor.
5 I let my emotions get the best of me. It doesn't change
6 anything. It just put a lot of things in jeopardy, so it
7 was a stupid thing to do.

8 THE COURT: All right. I will reduce the sentence
9 of six months to four days and release him in your custody.
10 What do I need to get signed to get the jail to
11 release him?

12 MR. POSTIN: Thank you, Your Honor.

13 THE COURT: All right. And I am, also, going to
14 restrain you from entering the Richland County Courthouse
15 for any reason whatsoever during the pendency of this trial.
16 You understand?

17 DEFENDANT CORNIN: Absolutely, Your Honor. Yes.

18 THE COURT: So if you want to hang around
19 Columbia, that's fine, but, otherwise, I would advise you to
20 take the -- your girlfriend or your fiance and go on back to
21 New York. That's your choice. I can't make you go to New
22 York, but I can keep you out of this courthouse.

23 DEFENDANT CORNIN: Absolutely.

24 THE COURT: All right.

25 DEFENDANT CORNIN: I probably shouldn't have been

CHRISTINE DALHEIMER PROFFER DIRECT BY MS. CAMPBELL
IN CAMERA

1 here in the first place.

2 THE COURT: If you can't control your emotions,
3 you probably shouldn't have.

4 DEFENDANT CORNIN: I thought I could. Just
5 Thursday was, obviously, very forensic and very graphic, so.

6 THE COURT: All right.

7 MR. POSTIN: Thank you so much, Your Honor.

8 THE COURT: All right. Thank you.

9 (Whereupon, court was adjourned for the
10 day, October 13, 2014, to reconvene on
11 Monday, October 14, 2014.)

12 THE COURT: All right. I believe you're going to
13 proffer some testimony?

14 MS. CAMPBELL: Yes, sir.

15 THE COURT: Previous girlfriends of the Defendant,
16 is that correct?

17 MS. CAMPBELL: Yes, sir.

18 THE COURT: I will be glad to listen.

19 MS. CAMPBELL: The State would call Christine
20 Dalheimer.

21 Your Honor, the witnesses have already testified
22 previously, would they still need to be sequestered?

23 THE COURT: No.

24 MS. CAMPBELL: Okay. Thank you.

25 MS. PRINGLE: I would ask that they be

CHRISTINE DALHEIMER PROFFER DIRECT BY MS. CAMPBELL
IN CAMERA

1 sequestered, Your Honor. I don't know exactly what she's
2 going into. They were --

3 THE COURT: We're proffering. I'm not going to
4 sequester them during a proffer, okay?

5 MS. PRINGLE: Yes, sir.

6 THE COURT: If it's live testimony, I'll grant
7 your request.

8 THEREUPON,

9 CHRISTINE DALHEIMER,
10 after having been duly sworn, testified as follows:

11 THE CLERK: Have a seat in the witness box, state
12 your name for the record, please.

13 THE WITNESS: My name is Christine Dalheimer.

14 PROFFER DIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q. Ms. Dalheimer, you testified before that you met Hank
17 Hawes. When did you, actually, meet Hank Hawes?

18 A. We met in August of 2010.

19 Q. In August of 2010?

20 A. Correct.

21 Q. And over the next several months, did y'all have a
22 relationship?

23 A. We did.

24 Q. And during that time period, did he have an occasion to
25 become violent or show some violence towards you?

CHRISTINE DALHEIMER PROFFER DIRECT BY MS. CAMPBELL
IN CAMERA

- 1 A. He did. He, actually, pulled a knife on me one night
2 in the kitchen when we were cooking. We were arguing
3 and he pointed a knife to my throat and I was backed up
4 against the counter. And the dogs were barking
5 frantically, which he then kind of laughed it off.
- 6 Q. And this took place in your kitchen?
- 7 A. It took place in my kitchen, correct.
- 8 Q. And he's the one that, actually, pulled the knife?
- 9 A. Correct.
- 10 Q. Do you remember where he got the knife from?
- 11 A. The knife was on the actual bar. We were cooking and
12 there was a cutting board and the knife.
- 13 Q. And when he pulled the knife, what did he do with it?
- 14 A. He pointed it right at my throat (indicating).
- 15 Q. And then he laughed it off later?
- 16 A. Yes.
- 17 Q. On another occasion, did he become violent with you as
18 well?
- 19 A. I mean, a lot of times when he was talking, he always
20 put his thumb (indicating) right here in the crook of
21 my neck and kind of force it a little bit.
- 22 Q. In a choking manner?
- 23 A. In a chocking manner, yes.
- 24 Q. The time that he -- specifically, the one we're here
25 for today, when he pulled the knife on you in your

CHRISTINE DALHEIMER PROFFER CROSS BY MS. EIGENBROT
IN CAMERA

1 kitchen, do you know approximately when that was?

2 A. I would say October, November.

3 Q. October, November of 2010?

4 A. 2010, yes.

5 Q. And when did you terminate your relationship with him?

6 A. It was at the end of December of 2010.

7 Q. And that's the last time you ever saw him?

8 A. Correct.

9 Q. At any point did he ever threatened to expose you to
10 other people or to threat your livelihood?

11 A. Not that I recall. I know he was kind of controlling,
12 took me to work and kind of stayed there at my
13 workplace, but.

14 Q. Okay.

15 MS. CAMPBELL: Your Honor, that would be the
16 extent of what we have for Ms. Dalheimer.

17 THE COURT: Cross-examination?

18 MS. EIGENBROT: Yes, Your Honor. May it please
19 the Court.

20 PROFFER CROSS-EXAMINATION

21 BY MS. EIGENBROT:

22 Q. Good morning, Ms. Dalheimer.

23 A. Good morning.

24 Q. All right. So you testified that Hank pulled a knife
25 on you in October of 2010?

CHRISTINE DALHEIMER PROFFER CROSS BY MS. EIGENBROT
IN CAMERA

- 1 A. October, November, yes.
- 2 Q. At that time, you were arguing?
- 3 A. Correct.
- 4 Q. And he pointed it at your throat?
- 5 A. Yes.
- 6 Q. At that time, you had no knowledge of Jennifer Wilson?
- 7 A. No.
- 8 Q. And he was dating you and you exclusively at the time?
- 9 A. That was my understanding, but.
- 10 Q. And he did not, actually, stab you at that time?
- 11 A. He laughed it off. I mean, he didn't stab me. He just
- 12 pointed the knife at me.
- 13 Q. But he didn't cut you or slice you or anything like
- 14 that, right?
- 15 A. No.
- 16 Q. And you did not report this to the police?
- 17 A. I did not realize until after I talked to Judge Edmunds
- 18 in March of 2011 that any kind of incident like this
- 19 you're supposed to report so you can get on record.
- 20 Q. But you did not report it?
- 21 A. I did not.
- 22 Q. And this was the only time he ever pulled a knife or
- 23 any other weapon on you, right?
- 24 A. He pulled a gun on me in December of 2010 when we were
- 25 backing out or pulling out of my driveway.

STACEY NEWSOM DIRECT BY MS. CAMPBELL IN CAMERA

1 Q. And, again, you did not report that?

2 A. No.

3 Q. Again, to your knowledge, Jennifer Wilson was not a
4 part of the picture in December of 2010?

5 A. I had no knowledge of Jennifer, no.

6 MS. EIGENBROT: Beg the Court's indulgence. I
7 have no further questions.

8 Thank you, Ms. Dalheimer.

9 THE COURT: Any redirect?

10 MS. CAMPBELL: No, sir.

11 THE COURT: Okay. You may step down. Thank you
12 very much.

13 THE WITNESS: Thank you.

14 THE COURT: Call your next witness.

15 MS. CAMPBELL: Okay. The State would call Stacey
16 Newsom. She's now Galloway, Your Honor.

17 THE COURT: Is she Galloway now or Newsom now?

18 MS. CAMPBELL: She's Galloway now.

19 THEREUPON,

20 STACEY NEWSOM,
21 after having been duly sworn, testified as follows:

22 CLERK: Have a seat in the witness box and state
23 your name for the record, please.

24 THE WITNESS: My name is Stacey Newsom.

25 DIRECT EXAMINATION

STACEY NEWSOM DIRECT BY MS. CAMPBELL IN CAMERA

1 BY MS. CAMPBELL:

2 Q. Ma'am, when did you have a relationship with Hank
3 Hawes?

4 A. From April 2008 until July 2010.

5 Q. And in July of 2010, what kind of efforts were you
6 making to cut it off with the Defendant?

7 A. I told him I no longer wanted to be in a relationship
8 with him and I asked him to move out.

9 Q. Did he move out immediately?

10 A. No.

11 Q. In fact, what action did you have to take to get him to
12 move out?

13 A. I had to go through the eviction process.

14 Q. And, eventually, when were you able to evict him?

15 A. First part of October.

16 Q. From the time period of July until October of 2010, did
17 things get -- how would you characterize the
18 relationship at that point?

19 A. We had a lot of intense fights going on. We were not
20 communicating at all.

21 MS. PRINGLE: I'm sorry, Judge, I cannot hear her.

22 THE COURT: Speak up. I can hardly hear you.

23 THE WITNESS: I apologize.

24 During that time, during the eviction process,
25 from July until October, we had some intense fights. We

STACEY NEWSOM DIRECT BY MS. CAMPBELL IN CAMERA

1 were not communicating in any friendly way at that point.

2 BY MS. CAMPBELL::

3 Q. And at any point, did you have a conversation with him
4 about if you called law enforcement?

5 A. During some of those intense fights, there were several
6 incidents where I felt threatened. Hank let me know
7 that if I were to ever phone the police regarding any
8 violence that -- the words that I recall are you will
9 be the one to go to jail.

10 Q. You will be the one to go to jail?

11 A. Correct.

12 Q. So it will be your fault?

13 A. I felt that something would be said or done to make it
14 look like my fault.

15 Q. And at any point, did he ever become physical with you?

16 A. He did.

17 Q. Can you describe that to the judge?

18 A. Yes. At some point between July and October, we were
19 having a fight and he came at me as if he were going to
20 head butt me forcefully, although he stopped short, he
21 did not make contact. And he spit on me.

22 In the second incident, we were having an intense
23 argument and he turned me around and wrapped his arms
24 around me and pulled me to the ground.

25 THE COURT: Did what?

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 THE WITNESS: Wrapped his arms around me from
2 behind and pulled me to the ground.

3 BY MS. CAMPBELL::

4 Q. At any point, did he ever show you any type of weapon?

5 A. Throughout our relationship, I had seen the various
6 weapons that he had.

7 Q. Specifically, did he ever show you a knife?

8 A. Yes, he had some knives.

9 Q. Do you remember what time period that was?

10 A. It would have been shortly after I met him.

11 Q. So that would have been more remote?

12 A. Yeah, uh-huh, remote.

13 Q. But the time period we're talking about when he talked
14 to you about he would make sure you were the one that
15 went to jail that was at what time period?

16 A. That would have been sometime between July and October
17 of 2010.

18 Q. And after that, y'all continued to remain on a
19 friendship basis somewhat?

20 A. After Hank was evicted and we had separation between
21 us, we were able to communicate on more friendly terms
22 and did keep in contact.

23 Q. Okay. Thank you, ma'am.

24 MS. CAMPBELL: For this hearing, that's all I
25 have, Your Honor.

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 THE COURT: Okay.

2 Cross-examination?

3 MS. PRINGLE: Yes, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. PRINGLE:

6 Q. Good morning, Dr. Galloway?

7 A. Newsom, Galloway, whichever is more convenient.

8 Q. The two incidents that you've mentioned here today, the
9 head butt, he came at you like he was going to head
10 butt you, but didn't?

11 A. Correct.

12 Q. He spit on you?

13 A. Correct.

14 Q. And the second time, wrapped his arms around from
15 behind you and pulled you to the floor?

16 A. That's right.

17 Q. You both were on the floor?

18 A. Correct.

19 Q. And that was between July of 2010 and October of 2010?

20 A. Correct.

21 Q. And Jennifer Wilson was nowhere in the picture at this
22 point, correct?

23 A. Not that I'm aware of.

24 Q. You had -- there was absolutely no connection between
25 Jennifer Wilson and these arguments or Jennifer Wilson

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 and the troubles you were having in July of 2010 to
2 October of 2010?

3 A. That's correct.

4 Q. And my understanding of what you said is that this
5 statement, if you ever call the police, you will be the
6 one to go to jail is connected to these physical
7 episodes?

8 A. Correct.

9 Q. That would be the context of that statement that you
10 said he made?

11 A. It was -- the statement was made during some arguments
12 that we had, yes.

13 Q. And you said you had seen knives?

14 A. In the past, yes.

15 Q. And you were interviewed on September 2nd of 2011,
16 regarding this incident with Ms. Wilson?

17 A. Yes. Was that with the investigator?

18 Q. Yes.

19 A. Okay. Yes.

20 Q. They, actually, came to Greenville, right?

21 A. Correct.

22 Q. And you had come down to get the dog Sunday, August
23 28th?

24 A. Yes.

25 Q. You recall coming there and seeing Investigator

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 McCracken?

2 A. Correct.

3 Q. Or an investigator?

4 A. Correct.

5 Q. And they told you at that time what happened?

6 A. They did not. I asked what had -- I asked is it okay
7 if you tell me what happened. And the answer was, Hank
8 has been arrested. That's all I can tell you now. You
9 know, you can see it later in the paper. And that's
10 what I understood at that point.

11 Q. So you subsequently did find out that happened?

12 A. Correct.

13 Q. And were interviewed even after that on September 2nd?

14 A. Yes.

15 Q. Did you ever make -- did you ever tell any of the
16 investigators or any of people that interviewed you
17 these two incidents you just described?

18 A. I did.

19 Q. Who did you tell?

20 A. I told Investigator Ida Menendez and she made me
21 demonstrate to her how it happened.

22 Q. And when that was?

23 A. During my interview on the second when they came to
24 Greenville.

25 Q. All right. Do you still have the dog?

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

- 1 A. I do not.
- 2 Q. And you said that you and Mr. Hawes would talk on
3 occasion?
- 4 A. Yes.
- 5 Q. In a friendly manner after things settled down?
- 6 A. After things settled down.
- 7 Q. You, actually, talked to him really regularly, didn't
8 you?
- 9 A. I haven't reviewed the records, so I cannot give you an
10 exact answer to that in terms of how often.
- 11 Q. Did you and Mr. Hawes have a nickname you used for each
12 other?
- 13 A. Yes.
- 14 Q. What was it?
- 15 A. Rubby.
- 16 Q. R-U --
- 17 A. B-B-Y.
- 18 Q. And different variations on that?
- 19 A. A silly thing that had morphed over time.
- 20 Q. And you had a special language that the two of you
21 talked with each other?
- 22 A. It was pretty much whoever could make the most
23 unintelligible text, that was the goal.
- 24 Q. And that continued in July and August?
- 25 A. It did, yes.

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 Q. You would agree that y'all had an affectionate,
2 friendly, loving friendship?

3 A. We were on good terms during those times, once things
4 settled down.

5 Q. And you would tell him you loved him?

6 A. I don't recall.

7 Q. Love you, too, Ruvvy, sound like something you would
8 have said?

9 A. In a friendly way, yes.

10 Q. Sure. In May, And I wuv you, too, Rubby, wish you was
11 close enough for hugs?

12 A. Could have.

13 Q. In May?

14 A. I don't have it in front of me, but if you're reading
15 it there, then --

16 Q. Does that sound familiar enough to you?

17 A. Those would be the types of --

18 THE COURT: Ms. Pringle, we're getting far afield
19 of what we're here for this morning. Anything else as far
20 as the incidents she testified to?

21 MS. PRINGLE: No, sir, I'm just trying to
22 establish how things transferred afterwards.

23 THE COURT: I understand, but that's far afield
24 from what -- the purpose of the proffer.

25 MS. PRINGLE: I understand.

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 THE COURT: Anything on redirect?

2 MS. CAMPBELL: No, sir.

3 THE COURT: All right. You may step down. Thank
4 you so very much.

5 Yes, ma'am.

6 MS. CAMPBELL: Your Honor --

7 THE COURT: Be glad to hear your argument.

8 MS. CAMPBELL: And we would be limiting it -- we
9 went a little further than what we would, actually, want to
10 put in front of the jury. But, specifically, with Ms.
11 Newsom, we would be wanting to put in front of the jury the
12 conversation when they were arguing when he talked about
13 what he would do if she called the police that would make it
14 to her fault.

15 And, specifically, we would limit Christine
16 Dalheimer -- because I believe some of the other stuff was
17 more remote. Christine Dalheimer would be the incident,
18 which was, also, that fall when he pulled the knife on her
19 in the kitchen.

20 Those would be the two things we would be seeking
21 to introduce with these two witnesses. I would limit it so
22 you don't have to rule out anything else. We did the other
23 just for a little background.

24 THE COURT: Okay. What basis do you think it
25 should be allowed?

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 MS. CAMPBELL: Your Honor, under State v. Beck,
2 and then State v. Meshaw. In that case, Your Honor, Meshaw
3 is quoting Beck and it talks about that this would not,
4 actually, qualify as a prior bad act, the statement, at
5 least, that a threatening statement is not a bad act. A
6 statement of intent to commit a crime is not a bad act. A
7 statement of intent, we would say, is not a bad act.

8 Basically, we would just say that this would go to
9 show as far as what is at issue in this case, because the
10 Defense is claiming self-defense, is who was the aggressor.
11 This directly goes -- these are words from his mouth on a
12 prior occasion and it's not that remote. These happened in
13 the fall of 2010. He starts a relationship with Ms. Wilson
14 in this case in January, and this is culminating in August
15 of that year.

16 We would say under State v. Beck, specifically,
17 Your Honor, they talked about a several-month lapse, I
18 believe, it was a four-month lapse between the Defendant's
19 statement. In that case, the defendant was talking about
20 how he was planning to go rob escort girls. Your Honor, in
21 this case, we were talking about what he said he would do if
22 someone called the police on him, that he would make it
23 their fault. That's directly on point here, Your Honor,
24 because that's exactly what he's testified to. So as far as
25 that goes, we would think that would come in.

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 Your Honor, as far as Ms. Dalheimer, that's not an
2 actual -- that was an actual action, you know, that may not
3 fall under the Beck exception.

4 THE COURT: What statements would you want from
5 Dr. Newsom?

6 MS. CAMPBELL: Just what I would want from Dr.
7 Newsom is the fact that they were in an argument and he told
8 her that if she ever called the police and whatever --

9 THE COURT: Basically, the same thing both
10 witnesses --

11 MS. CAMPBELL: Christine Dalheimer --

12 THE COURT: -- as far as the statement?

13 MS. CAMPBELL: He never said that to Christine
14 Dalheimer. The only thing that we would be offering Ms.
15 Dalheimer for is to show that he had pulled a kitchen knife
16 on someone on a prior occasion, which he claims he did not
17 do in this case. So that would be refuting his claim that
18 the knife was pulled on him and he only acted in
19 self-defense. However, the only statement from Ms. Newsom
20 we would want is the fact that they were in an argument and
21 at that point told her if she ever called the police, he
22 would make it look like it was her fault.

23 THE COURT: Ms. Dalheimer?

24 MS. CAMPBELL: Ms. Newsom.

25 THE COURT: Okay. All right.

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 Be glad to hear from Defense counsel.

2 MS. PRINGLE: This is just --

3 THE COURT: As far as the statements are
4 concerned.

5 MS. PRINGLE: Just the statements?

6 THE COURT: Yeah.

7 MS. PRINGLE: Your Honor, regarding the State v.
8 Meshaw case, the statement in that case that she's talking
9 about, I don't understand why I was attracted to him. I
10 think I was attracted to him because he looked like he was
11 15. When I found out he was older, it seemed perfect.
12 Well, you can understand why they were saying that that was
13 not an act of bad character, didn't --
14 What you are dealing with here, specifically, with
15 Dr. Newsom is acts directly related to a statement, which is
16 a statement that would be a bad act, right. A threat to
17 another person who has absolutely nothing to do with this
18 case, a threat to that person that if you do -- if you call
19 the police, I'm going to make you out to be the aggressor
20 because you claim that I head butted you and spit on you and
21 pulled you to the ground.

22 First of all, you can't pull those things apart
23 and just offer the one statement. They are directly related
24 to each other. It's straight 404. It's straight
25 propensity. It's a different victim. It has absolutely

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 nobody to do with this case. I see no grounds for
2 admissibility.

3 I would cite to the Court State v. Clinkscales,
4 which is an older case from 1957, 99 S.E.2d 663; the State
5 vs. Braxton, which is 541 S.E.2d 833. Those are the cases
6 that arguably would deal with this sort of thing. What
7 they're wanting to do is bring in prior animosity or
8 difficulties or acts of hostility or acts of violence.
9 Those all deals with situations in which it's the actual
10 victim at issue in the case. And even in those cases, in
11 Clinkscales, for instance, Clinkscales said, you know, while
12 that can be brought up, you can't get into the details of
13 it. It's something that can be possibly asked about, but
14 not with details. And in those cases, a year or two years
15 was remote with the same victim.

16 So we're dealing with August 2011, a year later.
17 And I think that the frame work here is getting -- we're
18 getting pulled out of the proper analysis. This is a 404(b)
19 issue. There is absolutely no grounds for admissibility.
20 And I would submit to you that these cases don't stand for
21 that at all. You can't pull those statements apart from
22 those acts.

23 THE COURT: Okay. Thank you very much.

24 Yes, ma'am.

25 MS. CAMPBELL: Respectfully, Your Honor, in State

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 v. Beck, it addresses the issue she just talked about. In
2 that case, the witness testified that the defendant had
3 asked in July of 1996 to participate in a plan to call
4 escort services for dates and then rob them and to have sex
5 with the employees.

6 Then they talk about how it shouldn't have been
7 admitted under Lyle, which they agreed with. And then it
8 says, specifically, Lyle concerns bad acts and other crimes
9 of the defendant, not statements of even in this case intent
10 to commit a crime. In this case, we're aren't even talking
11 about intent to commit a crime. We're talking about what he
12 would do if the police were called. Therefore, it would be
13 admissible. They talk about whether or not it would be
14 relevant. They talk about how it was very relevant in this
15 case, just that statement.

16 We would not be intending to offer, unless they
17 want us to, the context of how he's, you know, rough housing
18 or anything like that. Just, basically, if you ever call
19 the police on me, this is what's going to happen. That
20 would be the extent of what we're talking about from Ms.
21 Newsom.

22 In addition to that, under Stokes, Your Honor, in
23 order to be admissible under 613 argument, we would, also,
24 ask to have the opportunity just to confront him with that
25 statement. Of course, if he admits that he made that

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 statement, we would not be allowed to offer extrinsic
2 evidence.

3 THE COURT: Okay. Thank y'all very much.

4 Let me see the lawyers up her just a second.

5 (Whereupon, a bench conference was held
6 off the record.)

7 THE COURT: All right. We going to take a short
8 break and let me read these cases.

9 MS. PRINGLE: Judge, I have two copies of
10 Clinkscales -- I have a copy of Clinkscales and Braxton.

11 THE COURT: I will be glad to receive them.

12 MS. PRINGLE: They're marked up.

13 THE COURT: That's fine. I don't need to read the
14 whole case.

15 Let me take a short break and read them. I'll
16 give you a ruling very shortly. Let's take about a 10 or
17 15-minute recess.

18 (Whereupon, a short recess was held.)

19 THE COURT: All right. I reviewed the cases and I
20 just think it's too remote in time. I am not going to allow
21 the proffer and all before the Court this morning. And the
22 jury will be here at 12 o'clock. So we'll be adjourned
23 until 12 o'clock to listen to the reply testimony the
24 State's going to offer at that time.

25 How long do you think it's going to last?

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 MS. GARFIELD: Thirty minutes to an hour at the
2 absolute most.

3 THE COURT: What time is your blood man going be
4 here tomorrow?

5 MR. STRICKLER: First thing in the morning, Your
6 Honor. He is going to be in town tonight, so he'll be
7 available at whatever time the Court wants to start.

8 THE COURT: Okay.

9 MS. CAMPBELL: Your Honor, we did have the one
10 witness that will be very short in the morning that I
11 e-mailed you about if possible. We just found her. She had
12 a conflict today. Her testimony will be very limited.

13 THE COURT: Okay.

14 MS. CAMPBELL: If we can put her up just really
15 quickly in the morning and that will take care of us.

16 THE COURT: Okay. All right.

17 MS. CAMPBELL: Thank you.

18 THE COURT: You think she will be short?

19 MS. CAMPBELL: Yes, very short.

20 THE COURT: What's she going to testify to that
21 the emergency room doctor hasn't already testified to?

22 MS. CAMPBELL: The Defendant has testified about
23 his state of mind during the day, what he said and didn't
24 say. We're not eliciting any medical testimony, Your Honor,
25 just her interaction with him that afternoon.

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 THE COURT: Okay.

2 MR. STRICKLER: I asked him not a word about his
3 situation at the hospital. To the hospital, the next
4 question was the police arrested you there. So I didn't go
5 into anything at all regarding his state of mind or actions,
6 this, that or the other while he was at the hospital. So
7 that's improper rely testimony.

8 THE COURT: I understand. You may be right, but
9 only thing I know to do is listen to it and make a decision.

10 MS. CAMPBELL: Thank you.

11 THE COURT: I just have to listen to it and make a
12 decision.

13 MR. STRICKLER: Can -- we can do that in-camera?

14 THE COURT: Yeah, we'll do that in-camera.

15 MS. CAMPBELL: Thank you, sir.

16 THE COURT: I will listen to what she has to say
17 and I listen to arguments about proper reply.

18 MR. STRICKLER: All right. Thank you, sir.

19 THE COURT: Anything before we break for 12
20 o'clock?

21 MS. GARFIELD: No, sir.

22 MS. CAMPBELL: No, sir.

23 THE COURT: All right. See you at 12 o'clock.
24 Thank very much.

25 (Whereupon, a short recess was held.)

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 THE COURT: All right. We still waiting on one
2 juror, but is there anything from the State before we --

3 MS. CAMPBELL: Yes, Your Honor, pursuant to your
4 earlier rulings, I would just like to put on the record that
5 the only thing we would have been pursuing at this point in
6 asking -- the Defendant is technically, I guess, still on
7 the stand.

8 THE COURT: I'm sorry, what now?

9 MS. CAMPBELL: The Defendant is technically still
10 on the stand. We've never -- you took up this matter. I'm
11 just trying to make a record for the Court. We would have
12 just been asking him -- you told us not to ask him any
13 questions about any other matters, prior matters, so that's
14 when we stopped and said we have a matter of law.

15 At this point, all we would be seeking to ask him
16 is that if in the meeting with Stacey Newsom --

17 THE COURT: Let me back up for a minute.

18 MS. CAMPBELL: I'm just making --

19 THE COURT: I thought you had -- you wanted to
20 take up a matter of law on the issue of prior bad acts.

21 MS. CAMPBELL: On the two --

22 THE COURT: So you haven't rested as far as your
23 cross is what you're telling me?

24 MS. CAMPBELL: Yes, sir.

25 THE COURT: What's the Defense position on that?

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 Because I'm trying to remember. If I remember correctly, he
2 was on the witness stand. We needed to take up a matter of
3 law, so I sent the jury out. He stepped down while the jury
4 was out and then the jury came back in --

5 MR. STRICKLER: Your Honor --

6 THE COURT: I think I ruled on those --

7 MS. CAMPBELL: You didn't till this morning.

8 THE COURT: And I said I would give you the
9 opportunity to revisit it this morning, is that correct?

10 MS. CAMPBELL: Yes, sir.

11 THE COURT: Okay.

12 MR. STRICKLER: Your Honor, my memory is that you
13 ruled yesterday afternoon.

14 THE COURT: I did say yesterday afternoon I would
15 let her revisit with live testimony so I could hear exactly
16 what they were going to say.

17 MR. STRICKLER: Your Honor --

18 THE COURT: Yes, sir.

19 MR. STRICKLER: You ruled yesterday afternoon.

20 She had no more questions and I said to Mr. -- to the Court
21 no questions. That will be last statement from me on the
22 record. Then you brought him down before the jury came back
23 in.

24 THE COURT: So you're saying the State said no
25 more questions?

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 MR. STRICKLER: Yes, sir.

2 THE COURT: And I asked you if you had any reply
3 and you said no?

4 MR. STRICKLER: That's correct. That's my memory.

5 THE COURT: What's your memory from the State?

6 MS. CAMPBELL: Your Honor, I think you made a
7 preliminary ruling. At that point, you did ask a series of
8 questions, but then later, you said that I could revisit it
9 and it may be something we could go back into. And all I'm
10 doing is making a record of that to make sure I'm clear on
11 your ruling. I mean, I'm not disagreeing with him saying
12 that he didn't have any reply.

13 THE COURT: Okay. All right.

14 MS. CAMPBELL: Your Honor, the extent of what we
15 would have been asking --

16 THE COURT: Well, what you want to do is ask him
17 about the question, use it for impeachment purposes?

18 MS. CAMPBELL: Yes, sir. The one question about,
19 specifically, to Stacey Newsom when he was meeting with her
20 in the fall of 2010, didn't he tell her if she ever called
21 law enforcement, he would make it look like it was her
22 fault.

23 THE COURT: All right. Under the process of what
24 I did, and I told you I would revisit this morning. I took
25 additional testimony, I ruled a second time. I guess he's

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 still on cross -- technically on cross-examination.

2 So come down and have a seat in the witness stand,
3 please.

4 MR. STRICKLER: Your Honor, may I ask that the
5 court reporter review whether she said she was done and I
6 said I had no reply.

7 THE COURT: I think you did. What I'm saying is I
8 reopened it for the State and I said I will listen to the
9 testimony this morning in-camera and make a decision. So I
10 revisited that issue at the hearing. And I'm saying from
11 that standpoint the procedure that was not concluded. I'm
12 taking that position, okay, regardless of what's on the
13 record.

14 MR. STRICKLER: All right, Judge.

15 THE COURT: You understand the ruling?

16 MR. STRICKLER: Yes, sir, I understand your
17 ruling. I'm not arguing --

18 THE COURT: I know you're not. I'm just trying to
19 clarify the ruling so we will be on the same page.

20 MR. STRICKLER: Yes, sir. I would just like the
21 record to reflect strenuously, we take exception, with all
22 due respect, to your ruling.

23 THE COURT: I understand that. I appreciate you
24 doing that. Thank you so very much.

25 MR. STRICKLER: Can I have one moment?

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 THE COURT: Have your client come take the witness
2 stand.

3 MS. PRINGLE: I'm sorry, I'm confused, Your Honor.

4 THE COURT: Come have a seat.

5 MS. PRINGLE: I thought you ruled this morning
6 that you weren't letting any of that come in, on the second
7 ruling this morning.

8 THE COURT: I'm not letting it come in in her case
9 in chief. She wants to ask the question, lay the foundation
10 on cross, then impeach him is what she wants to do. And I
11 think she can do that on prior statements he made.

12 MS. PRINGLE: We would object and renew our
13 objection as not understanding what the ruling was this
14 morning, I would like to respond again, Your Honor.

15 THE COURT: I just said I wasn't going to let her
16 offer those witnesses on her case in chief. Now, she's
17 wants to ask the question, lay the foundation for
18 impeachment is the way I understand that.

19 Correct?

20 MS. CAMPBELL: Yes, sir.

21 MS. PRINGLE: Her case in chief is over. I don't
22 know what --

23 THE COURT: That's what I just ruled, it's not
24 over.

25 MS. PRINGLE: Well, this is --

STACEY NEWSOM CROSS BY MS. PRINGLE IN CAMERA

1 THE COURT: I'm sorry, excuse me, her cross is not
2 over.

3 MS. PRINGLE: Well, we do object. It was over.
4 Mr. Strickler said that he had --

5 THE COURT: I understand that. I've already
6 ruled. Any new material?

7 MS. PRINGLE: I want to respond to Beck. In that
8 case, there was a statement -- the way it was distinguished
9 from a bad act, there was, actually, a statement --

10 THE COURT: There was a statement that he was
11 going to rape and kill a stripper and five months later, he
12 did it. I'm familiar with that, I read it.

13 MS. PRINGLE: And I --

14 THE COURT: I'm not going to allow it in on their
15 case in chief. I'm going to give the charge to the jury
16 this is jus taken for impeachment purposes, not for their
17 case in chief if you want me to do that. If you don't, I
18 won't.

19 MS. PRINGLE: I don't know what she's going to
20 ask. And may I ask, what is she -- she's going to then
21 offer Dr. Newsom to come in and testify that he did these
22 things to her?

23 THE COURT: I think she's going to offer the other
24 lady, not Dr. Newsom.

25 What's the other lady --

HANK HAWES CROSS CONTINUED BY MS. CAMPBELL

1 MS. PRINGLE: It's Dr. Newsom.

2 THE COURT: Pardon?

3 MS. CAMPBELL: It's Dr. Newsom.

4 THE COURT: Oh, Dr. Newsom.

5 MS. CAMPBELL: Not the other lady.

6 THE COURT: Okay. I'm sorry.

7 MS. CAMPBELL: I don't think I can get into the --

8 THE COURT: Okay. I --

9 MS. PRINGLE: There is no way for them to put Dr.
10 Newsom on the witness stand and her to offer testimony that
11 doesn't go into the prior acts of violence that she alleges
12 took place between her and Mr. Hawes. That is absolutely
13 404.

14 THE COURT: You make the objection at the time she
15 offers Dr. Newsom, okay?

16 MS. PRINGLE: And may we --

17 THE COURT: Thank you very much. Have a seat.

18 Anything else before we bring the jury?

19 MS. CAMPBELL: No, Your Honor. We would agree if
20 he admits to the statement, we aren't allowed to offer
21 extrinsic evidence.

22 THE COURT: I understand.

23 MS. PRINGLE: Okay.

24 THE COURT: Bring us the jury, please.

25 Are you ready to proceed with the other witnesses?

HANK HAWES CROSS CONTINUED BY MS. CAMPBELL

1 MS. CAMPBELL: Yes, sir.

2 THE COURT: Okay. So we won't have to send the
3 jury back out?

4 MS. CAMPBELL: Correct.

5 THE COURT: Okay.

6 (Whereupon, the jury returned to the
7 courtroom at 12:11 p.m.)

8 BAILIFF: The jury is seated, Your Honor.

9 THE COURT: Thank you very much.

10 Solicitor, I believe you want to continue your
11 cross?

12 MS. CAMPBELL: Yes, sir.

13 CONTINUED CROSS-EXAMINATION

14 BY MS. CAMPBELL:

15 Q. Just one other area. I want to turn your attention, do
16 you remember making a statement to Stacey Newsom --

17 MR. STRICKLER: Your Honor, of course, for the
18 record, I object to this.

19 THE COURT: I understand. Overruled.

20 MR. STRICKLER: Thank you.

21 BY MS. CAMPBELL::

22 Q. In the fall of 2010, specifically, in October,
23 November, that area, do you remember making a statement
24 to Stacey Newsom at her home, I believe, that's in
25 Simpsonville, stating that if she ever called law

QUINTUS YOUNG REPLY BY MS. CAMPBELL

1 enforcement, you would make it look like it was her
2 fault?

3 A. No, I do not.

4 MS. CAMPBELL: Thank you.

5 THE COURT: All right. Do you have any other
6 cross?

7 MS. CAMPBELL: No, sir.

8 THE COURT: Any redirect on this issue?

9 MR. STRICKLER: No, Your Honor.

10 THE COURT: All right. Mr. Foreman, ladies and
11 gentlemen, if y'all would just step to the jury room, I'll
12 get you back very shortly, please.

13 (Whereupon, the jury left the courtroom
14 at 12:12 p.m.)

15 THE COURT: All right. Mr. Hawes, you may step
16 down.

17 You can let them stand in the hall, just shut the
18 door, please.

19 Bring the jury, please.

20 (Whereupon, the jury returned to the
21 courtroom at 12:14 p.m.)

22 BAILIFF: The jury is seated, Your Honor.

23 THE COURT: Thank you very much.

24 Solicitor, you may call your witnesses in reply.

25 MS. CAMPBELL: May it please the Court. The State

QUINTUS YOUNG REPLY BY MS. CAMPBELL

1 would call Quintus Young.

2 THEREUPON,

3 QUINTUS YOUNG,

4 after having been duly sworn, testified as follows:

5 THE CLERK: Have a seat in the witness box, state
6 your name for the record, and spell it, please.

7 THE WITNESS: My name is Quintus Young, II,
8 Q-U-I-N-T-U-S.

9 REPLY

10 BY MS. CAMPBELL:

11 Q. Agent Young, where are you employed?

12 A. I am employed with South Carolina Law Enforcement
13 Division, commonly known as SLED.

14 Q. What do you do there, sir?

15 A. I am a forensic toxicologist.

16 Q. Forensic toxicologist?

17 A. Yes.

18 Q. What is a forensic toxicologist?

19 A. As a toxicologist, we're responsible for analyzing
20 biological specimen, blood, urine, brain, liver tissue
21 to determine the absence or presence of drugs, alcohol,
22 poisons and interpret those findings for coroners,
23 pathologists and courts of law.

24 Q. Can you tell the jury a little bit about your education
25 and training in that field?

QUINTUS YOUNG REPLY BY MS. CAMPBELL

1 A. I have my Bachelor of Science in chemistry from
2 University of south Carolina. And once hired on at
3 SLED, I began in-house training with consist of written
4 and oral exams. We're competency tested and every
5 year, we're proficiency tested anywhere from two to
6 four times a year. But it's a year-long training where
7 you go through blood alcohol and then your drug
8 analysis.

9 Q. Are you -- is your laboratory accredited in any way?

10 A. Yes.

11 Q. Who is your accreditation for your laboratory?

12 A. International Standards of Operation.

13 Q. And have you testified before in the area of toxicology
14 as an expert?

15 A. Yes.

16 Q. And approximately how many times have you been
17 qualified as an expert in that area?

18 A. Thirteen, 14.

19 MS. CAMPBELL: Your Honor, at this time, we would
20 offer him as an expert in toxicology?

21 THE COURT: Any objection or questions?

22 MS. EIGENBROT: No objection, Your Honor.

23 THE COURT: Thank you so very much. The Court so
24 finds.

25

QUINTUS YOUNG REPLY BY MS. CAMPBELL

1 BY MS. CAMPBELL:

2 Q. Sir, basically, you get blood samples from either
3 living or people from autopsy, blood samples from those
4 people, and the you test it?

5 A. Correct.

6 Q. And if a person -- say, if the blood is drawn at
7 autopsy, what levels is it going to reflect, at the
8 time of autopsy or at the time of death?

9 A. At the time of death.

10 Q. So the fact that the autopsy doesn't take place for
11 several hours or even a day or so doesn't affect your
12 findings?

13 A. That's correct.

14 Q. And, specifically, in this case, who did you, actually,
15 receive samples from?

16 A. Jennifer Wilson.

17 Q. Jennifer Wilson?

18 A. Yes.

19 Q. Tell the jury what testing you did in this case?

20 A. Routinely -- either DUI or death cases, it's routine to
21 run blood alcohol analysis. And, depending on the
22 case, it might -- it might be drug screened, it might
23 not. And depending on the results of that drug screen,
24 we can go even further to confirm and quantitate
25 anything that we find present. Or if there's a

QUINTUS YOUNG REPLY BY MS. CAMPBELL

1 history, we go look for that. But that's normally how
2 it runs.

3 Q. In this case, did you do any testing of any samples
4 that were submitted to you for the presence of alcohol?

5 A. Yes.

6 Q. Or ethanol?

7 A. Ethanol is the alcohol that's consumed.

8 Q. And we've heard about breathalyzers, but can you, also,
9 test blood to see the levels of alcohol that may be
10 present in a person's blood at the time of death?

11 A. Yes, ma'am.

12 Q. And what were your findings in this case, sir?

13 A. In this case, the blood sample was a 0.044.

14 Q. What type of blood sample was that that was submitted
15 to you?

16 A. That is a femoral blood.

17 Q. Is that unusual for you to get that sample?

18 A. It is not.

19 Q. And when you tested that, it was point 044?

20 A. Correct.

21 Q. So if the legal limit is point 08, is that less than
22 that?

23 A. Yes.

24 Q. And it's significantly less. And is that consistent
25 with a person -- what would that be consistent with a

QUINTUS YOUNG REPLY BY MS. CAMPBELL

1 person ingesting?

2 A. Well, using the example of 150-pound male, that would
3 be the equivalent of about two drinks.

4 Q. And if the person weighs 105 pounds, could it be less
5 than that?

6 A. It could be.

7 Q. Did you, also, do additional testing for alcohol in the
8 -- excuse me, ocular fluid?

9 A. Yes, ma'am.

10 Q. What's ocular fluid?

11 A. That is eye fluid.

12 Q. Why did you do that testing, sir?

13 A. That's routine. When we do death cases, we analyze
14 both the blood and the ocular.

15 Q. What was the result?

16 A. The result in that case was 0.055.

17 Q. 055?

18 A. Yes.

19 Q. Why would that be different from 044 on the other test?

20 A. If you think about the eye, the eye socket is closed
21 off from the rest of the body, so when you ingest
22 alcohol, it takes a little longer for the alcohol to
23 absorb in the eye fluid versus the blood. In this
24 case, with the eye fluid being greater than the value
25 in the blood, we can determine that she was in the

QUINTUS YOUNG REPLY BY MS. CAMPBELL

1 elimination phase of alcohol elimination.

2 Q. So the point 044 would be an accurate reflection of her
3 blood alcohol?

4 A. Yes.

5 Q. Because you, also, did the eye fluid, you determined
6 she was, actually, going down, not moving up --

7 A. Correct.

8 Q. -- as far as intoxication?

9 A. Correct.

10 Q. Did you, also, do any testing for the presence of any
11 drugs in this case?

12 A. Yes. Yes, I did.

13 Q. And what testing did you do, sir?

14 A. We -- we do a routine drug screen of drugs commonly
15 abused. And that would include amphetamine,
16 benzodiazepines, which is the drug class where Xanax
17 would fall under, methamphetamine, oxycodone,
18 cannabinoid, which is marijuana, cocaine and opiates.

19 Q. And in this case, when you did all that testing, what
20 were your results?

21 A. All were negative.

22 Q. Specifically, moving first to the marijuana that you
23 tested for, if someone had smoked or ingested
24 marijuana, say within a few hours of her death, would
25 it be present in the testing you did?

QUINTUS YOUNG REPLY BY MS. CAMPBELL

1 A. It would.

2 Q. How long does the marijuana, actually, stay in a
3 person's system, can you even say?

4 A. The parent -- parent portion of marijuana, which is
5 often referred to as parent THC, that -- after the
6 initial dosage, you could maybe 30 minutes into it, or
7 you reach your peak concentration of parent THC. At
8 that point, your body is going to want to break that
9 down to get rid of that THC -- to get the THC out of
10 your system. So what would be detectable would be a
11 metabolite, which is the carboxy form of THC.

12 Q. Uh-huh.

13 A. And that's what would have been present.

14 Q. Did you -- hours after?

15 A. (The witness nodded head.)

16 Q. Did you find the presence of either the parent or the
17 metabolite in her blood?

18 A. No, ma'am.

19 Q. For marijuana? And if a person has used marijuana on
20 just one occasion, typically, how long would it stay
21 within the system?

22 A. Anywhere from 20 to 57 hours.

23 Q. Twenty to 57 hours?

24 A. Yes.

25 Q. If a person was a chronic user of marijuana?

REPLY CROSS BY MS. EIGENBROT

- 1 A. It can be anywhere from three to 13 days or greater.
- 2 Q. Three to 13 days or greater?
- 3 A. (The witness nodded head.)
- 4 Q. And, again, the results of your testing for marijuana
- 5 in Ms. Wilson's blood was what?
- 6 A. Negative.
- 7 Q. Nothing?
- 8 A. Correct.
- 9 Q. As far as the presence for any cocaine, what was the
- 10 result?
- 11 A. Non.
- 12 Q. Amphetamines?
- 13 A. Negative.
- 14 Q. Benzodiazepine?
- 15 A. That is negative.
- 16 Q. Methamphetamine?
- 17 A. Negative.
- 18 Q. Oxycodone.
- 19 A. Negative.
- 20 Q. And opiates?
- 21 A. Negative.
- 22 Q. And if she had ingested any of those other drugs within
- 23 a few hours of her death, would they have shown up in
- 24 your toxicology?
- 25 A. You would expect to -- it would depend on the initial

REPLY CROSS BY MS. EIGENBROT

1 dose, but you would expect to.

2 Q. And there was nothing?

3 A. Correct.

4 MS. CAMPBELL: Thank you, sir. I don't have
5 anything further.

6 THE COURT: Cross-examination?

7 MS. EIGENBROT: Yes, Your Honor. May it please
8 the Court.

9 REPLY CROSS-EXAMINATION

10 BY MS. EIGENBROT:

11 Q. Good afternoon, Mr. Young.

12 A. Hello.

13 Q. So you were talking a little bit about marijuana and
14 how it stays in your system, right?

15 A. Correct.

16 Q. And you testified that within about 30 minutes, your
17 body start breaking it down into what you call
18 metabolites?

19 A. Well, you reach your peak in about 30 minutes.

20 Q. Okay. And at that point, though, it starts breaking
21 down into what you call metabolites?

22 A. Correct.

23 Q. And metabolites are, generally, released from your body
24 through urine or other --

25 A. They can, yes.

REPLY REDIRECT BY MS. CAMPBELL

1 Q. Which, generally, why when testing for marijuana, you
2 use a urine analysis is usually the best way to test
3 for it, correct?

4 A. Not necessarily. The reason we prefer blood on most
5 samples is because blood gives you an idea -- well,
6 it's a snapshot of what's going on at that time of
7 collection. Urine -- with urine samples, and more so
8 in DUI cases, because urine is a waste product, the
9 drug -- any drug would be inactive. But in blood, the
10 drugs are active on the body and the brain. And yeah,
11 we prefer blood.

12 Q. But even with a blood test, if someone has smoked
13 marijuana say two or three weeks before the test,
14 you're less likely to see the THC present in the blood
15 because of the quick metallization, correct?

16 A. Well, not so much because of the quick metallization,
17 but because -- depends on frequency of use more so.

18 Q. Correct. And my understanding from THC, too, is that
19 it finds your fat cells, correct?

20 A. It does.

21 Q. So, generally, hypothetically speaking, if someone were
22 heavier and had more fat, they could maintain THC
23 levels longer, correct?

24 A. Correct. It would transfer between the blood and the
25 fat tissue back and forth, so it could linger for a

REPLY REDIRECT BY MS. CAMPBELL

1 little bit longer.

2 Q. So, hypothetically speaking, somebody that's 105 pounds
3 could not show the presence of marijuana -- let me see
4 how to phrase this. Somebody 105 pounds would not test
5 positive for marijuana usage -- the possibility, it
6 wouldn't test positive within a few weeks after usage,
7 depending on the amount they're using as well?

8 A. If I understand you correct, you're saying if someone
9 105 pounds weeks after --

10 Q. Yes.

11 A. -- only smoked once a few weeks ago?

12 Q. Right.

13 A. You won't expect to see that.

14 Q. And because a test is negative when you test, that does
15 not mean they've never used the substance?

16 A. There is no way for me to tell.

17 MS. EIGENBROT: Thank you, Mr. Young.

18 THE COURT: Any redirect?

19 REPLY REDIRECT EXAMINATION

20 Q. If you had been using drugs that night before, it
21 definitely would have shown in the urine?

22 A. Yes.

23 Q. Testing?

24 A. Yes.

25 Q. No doubt?

MICHELLE TRASK DIRECT BY MS. GARFIELD

1 A. Yes.

2 Q. Up to, I believe, you said 30 to 13 days, depending on
3 usage?

4 A. Right.

5 MS. CAMPBELL: Thank you.

6 THE COURT: Any recross?

7 MS. EIGENBROT: No, Your Honor.

8 THE COURT: Okay. You may step down. Thank you
9 very much.

10 Call your next witness.

11 MS. GARFIELD: Thank you, Your Honor. The State
12 calls Michelle Trask.

13 THEREUPON,

14 MICHELLE TRASK,

15 after having been duly sworn, testified as follows:

16 THE CLERK: Have a seat in the witness box, state
17 your name for the record, and spell it, please.

18 THE WITNESS: My name is Michelle Trask,
19 M-I-C-H-E-L-L-E, T-R-A-S-K.

20 DIRECT EXAMINATION

21 BY MS. GARFIELD:

22 Q. Ms. Trask, would you, please, share with the jury your
23 professional background?

24 A. I am a therapist, clinical social worker.

25 Q. And is your practice in Columbia?

MICHELLE TRASK DIRECT BY MS. GARFIELD

- 1 A. It is.
- 2 Q. And do you routinely work in the area of counseling as
3 far as couple's counsel?
- 4 A. Couple's and families, yes, as well as individual
5 therapy.
- 6 Q. Back in August of 2011, did you have the occasion to
7 conduct a counseling session with the Defendant in this
8 case, Hank Hawes, and the victim in this case, Jennifer
9 Wilson?
- 10 A. Yes, I did.
- 11 Q. How did that counseling session come about?
- 12 A. Mr. Hawes contacted me and said that he was hoping to
13 meet.
- 14 Q. Before I go any further, Ms. Trask, you are here today
15 under court subpoena; is that correct?
- 16 A. That is correct.
- 17 Q. You are, also, under a court order to compel this
18 testimony, correct?
- 19 A. That's correct.
- 20 Q. And you said that Mr. Hawes made that appointment?
- 21 A. Yes, ma'am.
- 22 Q. Did you, in fact, meet with Mr. Hawes and Ms. Wilson?
- 23 A. Together, yes.
- 24 Q. Do you recall the date that you met?
- 25 A. I would have to look at the record again. It was late

MICHELLE TRASK CROSS BY MS. PRINGLE

1 August.

2 Q. Do you have your records with you?

3 A. I do. It was August 26th, 2011.

4 Q. How long would this session have been?

5 A. Fifty to 60 minutes standard.

6 Q. And in the course of this counseling session between
7 Mr. Hawes and Ms. Wilson, was there any mention of drug
8 activity?

9 A. Not that I recall.

10 Q. If there had been, would there have been something in
11 your notes that you would have put in your notes?

12 A. Yes, usually, I would put that in my notes.

13 Q. Is there any entry in your notes concerning drug
14 activity?

15 A. There's none.

16 Q. And in the course of this counseling session between
17 this couple, did you encourage either of them to
18 terminate the relationship?

19 A. No, I would not do that, especially in the first
20 meeting.

21 Q. Was there any advice that you did give them?

22 A. We did discuss possibly decreasing the amount of time
23 spent together over the next few days because that was
24 one of the complaints, that they were spending too much
25 time together.

KELLY SMITH REDIRECT BY MS. GARFIELD

1 MS. GARFIELD: Thank you, Ms. Trask. Please
2 answer any questions the Defense counsel may have for you.

3 THE COURT: Cross-examination.

4 CROSS-EXAMINATION

5 BY MS. PRINGLE::

6 Q. You said that you discussed with them decreasing the
7 amount of time together over the next couple of days?

8 A. Uh-huh.

9 Q. So if they spent almost the entire day the next day
10 together that would have been inconsistent with what
11 you suggested?

12 A. Honestly, I don't recall the exact plan they came up
13 with because these sorts of things get negotiated with
14 couples and families all the time. So I can't be exact
15 as to the amount of time or the particular days. But
16 it was simply a discussion about decreasing the
17 frequency.

18 MS. PRINGLE: Thank you very much.

19 THE COURT: Any redirect?

20 MS. GARFIELD: No, sir.

21 THE COURT: You may step down. Thank you so very
22 much.

23 Any reason she can't be excused?

24 MS. GARFIELD: No, sir.

25 THE COURT: From the Defense?

KELLY SMITH REDIRECT BY MS. GARFIELD

1 MS. PRINGLE: No, sir.

2 THE COURT: Okay. Thank you very much.

3 Ms. Trask, you may be excused.

4 Call your next witness.

5 MS. GARFIELD: Thank you, Your Honor. The State
6 recalls Kelly Smith.

7 THEREUPON,

8 KELLY SMITH,

9 after having been duly sworn, testified as follows:

10 THE CLERK: Have a seat in the witness box, state
11 your name for the record, please.

12 THE WITNESS: My name is Kelly Smith, K-E-L-L-Y,
13 S-M-I-T-H.

14 REDIRECT EXAMINATION

15 BY MS. GARFIELD:

16 Q. Mr. Smith, you were the victim's neighbor; is that
17 correct?

18 A. That is correct.

19 Q. And there has been mention in testimony that there was
20 a towel hanging up on Ms. Wilson's door?

21 A. Correct.

22 Q. On the back door?

23 A. (The witness nodded head.)

24 Q. Have you ever seen that towel?

25 A. I have not.

KELLY SMITH REDIRECT BY MS. GARFIELD

1 Q. Did you ever see that towel?

2 A. I did not.

3 Q. When's the first time you saw that towel?

4 A. When the officers and I approached the back of the
5 house around 11:44ish when they showed up at my house.
6 That was the first time I had seen that towel on the
7 back door.

8 Q. And that would be on Sunday?

9 A. That was on Sunday.

10 Q. August 28th?

11 A. That is correct.

12 MS. GARFIELD: Thank you. Nothing further.

13 THE COURT: Any cross?

14 MR. STRICKLER: No, sir.

15 THE COURT: You may step down. Thank you very
16 much.

17 MS. GARFIELD: May we approach, Judge?

18 THE COURT: Yes, ma'am.

19 (Whereupon, a bench conference was held
20 off the record, in the presence of the
21 jury, but out of the hearing of the
22 jury.)

23 THE COURT: Mr. Foreman, ladies and gentlemen of
24 the jury, I'm going to have to ask you to go to the jury
25 room. The next witness is supposed to be here in about 15,

KELLY SMITH REDIRECT BY MS. GARFIELD

1 20 minutes. As soon as the witness gets her, we'll call you
2 back in the courtroom. Please don't discuss the case
3 amongst yourselves.

4 (Whereupon, the jury left the courtroom
5 at 12:34 p.m.)

6 THE COURT: All right. I understand Stacey Newsom
7 is going to be your next witness --

8 MS. GARFIELD: Yes, sir.

9 THE COURT: -- in reply to the issue about the
10 statement that the Defendant allegedly made; is this
11 correct?

12 MS. GARFIELD: That's correct.

13 THE COURT: All right. And as I told you at the
14 bench at the bench conference, the only thing I'm going to
15 allow her to testify to is the statement itself, not what
16 led up to the statement.

17 MS. GARFIELD: That's correct.

18 THE COURT: You understand?

19 MS. GARFIELD: Yes, sir.

20 THE COURT: Not going into threats or any violence
21 or anything else. No pushing and shoving or anything.

22 MS. GARFIELD: Absolutely.

23 THE COURT: All right. Now, the Defense has a
24 problem with cross-examination. Will be glad to hear you.

25 MS. PRINGLE: Well, we just renew our objection

KELLY SMITH REDIRECT BY MS. GARFIELD

1 under 403, 404 -- the crux of my initial objection was how
2 could she testify to this with absolutely no context. The
3 only reason they want to put this in is not to impeach in,
4 they want to put this in to imply that he's been violent
5 with Stacey Newsom in the past. So they're going to now put
6 her on the stand to ask one single, sterilized, isolated
7 question, which leads to an implication to the jury and
8 hamstring me completely in my cross-examination.

9 But I -- so we object on those grounds. I intend
10 to cross-examine her about their loving, friendly, extensive
11 communications a year after that, well after that. She
12 continuously tells him she loves him. She tells him he has
13 a big heart. She tells him to get in touch with her son on
14 his birthday. All things inconsistent with that, but I
15 think I would be entitled to cross-examine her on. But I
16 don't want them standing up and saying, when I'm sitting
17 here hamstrung, that I've opened the door to something. I
18 think I have every right to go through and ask her about her
19 loving talk to him.

20 THE COURT: I don't have any problem with you
21 doing that, okay?

22 MS. PRINGLE: I just know them and I do not want
23 them saying that I'm opening the door when I'm hamstrung in
24 this situation.

25 THE COURT: Okay. I understand.

KELLY SMITH REDIRECT BY MS. GARFIELD

1 What the State's position?

2 MS. CAMPBELL: Your Honor, I think if she limits
3 it to what she's just said she's going to cross her on, I
4 don't think that opens the door to anything other than their
5 loving relationship after that period of time. If she's
6 going to say that there was a loving relationship leading up
7 to that period of time, which I don't think she's going to
8 do, then I think that would open the door, but that's not I
9 don't think where she's going.

10 THE COURT: I mean, I don't know what transpired
11 over, I think she said sometime between August and October.
12 She never, actually, narrowed it down. But I -- I don't
13 think that opens the door for you to go into the violent --
14 what led up to the statement is what I'm saying. I'm not
15 going to allow you to do that, okay?

16 MS. CAMPBELL: Correct. And I don't think what
17 she's going to cross her on as far as their loving
18 relationship after that would in any way open that door.

19 THE COURT: Anything else from the Defendant?

20 MS. PRINGLE: No, sir.

21 THE COURT: Okay. All right.

22 I guess -- you say she'll be here in what, about
23 15, 20 minutes?

24 MS. GARFIELD: Yes, sir.

25 THE COURT: All right. Let me know when she gets

KELLY SMITH REDIRECT BY MS. GARFIELD

1 here, we'll call her as a witness.

2 Solicitor, at some point in time, or the Defense,
3 we need to sort of narrow this down. We're talking about a
4 two-month period. I don't know if she can narrow it down.

5 MS. PRINGLE: Me?

6 THE COURT: No, I'm talking about the State.

7 MS. CAMPBELL: Judge, I'll ask her when she gets
8 here.

9 THE COURT: I mean, at least, narrow it down to a
10 month. At least, then you know where the conduct after that
11 time period began.

12 MS. CAMPBELL: Yes, sir, I'll do that.

13 THE COURT: Okay. Anything else?

14 MS. PRINGLE: Does she know? I mean, she --

15 THE COURT: I don't know. I wasn't asking the
16 questions, okay. I kept sitting here thinking somebody's
17 going to narrow the date down a little closer than three
18 months, but it didn't happen.

19 MS. PRINGLE: Would you find out if she knows.

20 THE COURT: Was it August or October? I think
21 that's what she said.

22 MS. PRINGLE: My impression was that she didn't
23 really know.

24 THE COURT: Yeah, she said it happened sometime
25 between August and October, so that's -- that's three and

KELLY SMITH REDIRECT BY MS. GARFIELD

1 half, four months, so we're talking about a broad period of
2 time. And we're talking about narrowing it down to a
3 question, so somebody needs to distinguish what time period
4 we're talking about. If not, I will arbitrarily do it,
5 okay?

6 MS. PRINGLE: I'm sorry, I'm just not following.

7 THE COURT: The State is taking the position that
8 once you cross, and that's fine, from whenever the statement
9 was made, you're going to bring up the loving relationship
10 before and after, they're entitled to cross about any
11 nonloving relationship after that time is what they're
12 saying. My problem is that I don't know when that occurred,
13 so I don't know when to limit their cross -- excuse me,
14 their reply. You follow me?

15 MS. PRINGLE: My understanding was that she didn't
16 know, that she just -- I don't know if it happened. She's
17 saying the one time she didn't remember, she was vague about
18 it. And I object on that basis, too. You know, we have a
19 time problem. We have a remoteness problem. We have a
20 different victim problem. It's been morphed into an
21 impeachment issue, which I don't think it is. I mean,
22 there's a lot of problems with this testimony.

23 THE COURT: I understand.

24 MS. PRINGLE: Okay.

25 MS. CAMPBELL: We'll advise the Court before we

KELLY SMITH REDIRECT BY MS. GARFIELD

1 put her up.

2 THE COURT: Pardon?

3 MS. CAMPBELL: We'll find out from her when in
4 context to the behavior when that statement was made.

5 THE COURT: Well, if she can't narrow it down, I'm
6 going to limit you to October, October only.

7 MS. CAMPBELL: That's fine. We'll do that.

8 THE COURT: November, December, and forward if she
9 can't narrow it down.

10 MS. CAMPBELL: That's fine. We can abide by that.

11 THE COURT: You understand?

12 MS. CAMPBELL: Yes, sir.

13 THE COURT: All right.

14 MS. CAMPBELL: Thank you.

15 THE COURT: All right. We'll take a break until
16 she gets here.

17 (Whereupon, a short recess was held.)

18 THE COURT: All right. I understand the witness
19 is here; is that correct?

20 MS. CAMPBELL: Yes, sir.

21 THE COURT: Anything before we bring the jury?

22 MS. CAMPBELL: Your Honor, we did inquire of her.
23 She knows that --

24 THE COURT: I'm sorry, what?

25 MS. CAMPBELL: We're advising the witness she

REPLY REDIRECT BY MS. CAMPBELL

1 cannot mention any type of violence, any violent acts he
2 did. We're limiting it just to that statement.

3 THE COURT: Okay.

4 MS. CAMPBELL: Okay. And we're just going to tell
5 her to make sure we don't violate any court rules.

6 THE COURT: Okay. All right.

7 Anything from the Defendant before we bring the
8 jury?

9 MS. PRINGLE: No, sir.

10 THE COURT: Bring the jury, please.

11 BAILIFF: Thank you.

12 (Whereupon, the jury returned to the
13 courtroom at 1:12 p.m.)

14 BAILIFF: The jury is seated, Your Honor.

15 THE COURT: Thank you very much.

16 Call your next witness, please.

17 MS. CAMPBELL: May it please the Court. The State
18 calls Stacey Newsom.

19 THEREUPON,

20 STACEY NEWSOM,

21 after having been duly sworn, testified as follows:

22 THE CLERK: Have a seat in the witness box and
23 state your name for the record.

24 THE WITNESS: Stacey Newsom.

25 REPLY REDIRECT EXAMINATION

STACEY NEWSOM REPLY CROSS BY MS. PRINGLE

1 BY MS. CAMPBELL:

2 Q. Ms. Newsom, I'm going to direct your attention to the
3 fall of 2010, do you recall having a conversation with
4 Hank Hawes, I believe, at your house, I believe, you
5 were living in Simpsonville at the time?

6 A. Correct.

7 Q. About what would happen if you called law enforcement?

8 A. Yes.

9 Q. And what did he say to you about that?

10 A. He told me that --

11 Q. Could you can speak up?

12 A. I'm sorry. He told me that if I were to call law
13 enforcement about --

14 Q. Just what would happen --

15 A. Law enforcement, that I would be the one to go to jail.

16 Q. That who would be the one to go to jail?

17 A. Me.

18 Q. And did he indicate who would not be going to jail?

19 A. The words are --

20 MS. PRINGLE: I have a matter of law, Your Honor.

21 A. You will be the one to go to jail.

22 THE COURT: Do you have an objection?

23 MS. PRINGLE: I do have an objection, leading.

24 THE COURT: All right. I will sustain the
25 objection to leading the witness.

STACEY NEWSOM REPLY CROSS BY MS. PRINGLE

1 Just ask the question.

2 BY MS. CAMPBELL::

3 Q. Is that what he said to you?

4 A. The words I recall are, You will be the one to go to
5 jail.

6 MS. CAMPBELL: Thank you, ma'am.

7 I don't have anything further.

8 THE COURT: Cross-examination.

9 REPLY CROSS-EXAMINATION

10 BY MS. PRINGLE:

11 Q. In the spring and summer of 2011, by that time, you and
12 Mr. Hawes were very close friends; would you agree?

13 A. I would not agree that we were very close friend. We
14 were on friendly terms.

15 Q. Okay. And you and Mr. Hawes had nicknames for each
16 other; did you not?

17 A. We did.

18 Q. Affectionate nicknames for one another?

19 A. Just nicknames, names that stuck around.

20 Q. What was that name?

21 A. Rubby.

22 Q. You would call each other Rubby?

23 A. Just like you would call someone man or baby or
24 whatever, it was just a name.

25 Q. Rubby and Roberson?

STACEY NEWSOM REPLY CROSS BY MS. PRINGLE

1 A. Correct.

2 Q. And in your text messages, I don't know about in your
3 talking, but in your texting, you sort of had your own
4 special language between the two of you?

5 A. A running joke whoever's text message was the most
6 unintelligible. We had all kinds of odd spellings that
7 would go back and forth.

8 Q. And that banter and that friendliness and that
9 friendship went on through the spring of 2011 and
10 summer of 2011?

11 A. The friendly text did, yes.

12 Q. You recall inviting Mr. Hawes up to your home in April
13 of 2011 to grill steaks at your home?

14 A. I may have. I don't have a recollection or a record of
15 it.

16 Q. But that's possible?

17 A. It's possible.

18 Q. You recall saying in April of 2011, Where you go,
19 Rubby? Rubby, if C you, I will make rescue?

20 A. I apologize, I don't recall that. I don't know what
21 that was in reference to.

22 Q. C would be she?

23 A. She.

24 Q. You recall in May of 2011 inviting him to go to lunch
25 with you at the Columbian Place on White Horse?

STACEY NEWSOM REPLY CROSS BY MS. PRINGLE

- 1 A. I don't recall it, but if you say it's there.
- 2 Q. What does, Night, Rubby, wiss on a star?
- 3 A. I don't know.
- 4 Q. Recall asking him to call you because you needed to
- 5 hear his voice in May, May 3rd of 2011?
- 6 A. I don't recall, but you may have it there.
- 7 Q. What does frixy mean in y'all language?
- 8 A. Frixy would be frisky.
- 9 Q. In May of 2011, I love you. Thanks, Ruberson. I love
- 10 you, too, Rubby. Sound like something you would have
- 11 said?
- 12 A. It sounds like something I would have said back and
- 13 forth.
- 14 Q. In your ongoing, affectionate, friendly relationship?
- 15 A. Yes.
- 16 Q. Remember telling him in May, I rub you, too, Rubby,
- 17 wish you was close enough for hugs?
- 18 A. I don't recall that.
- 19 Q. You recall asking him to come see you in July, but him
- 20 declining. Offering to help with gas expenses and cook
- 21 something for him.
- 22 A. I don't recall.
- 23 Q. From July, you don't recall?
- 24 A. I don't, but if you're telling me that you're reading
- 25 that there, then I don't disagree. I just don't recall

STACEY NEWSOM REPLY REDIRECT BY MS. CAMPBELL

1 doing it.

2 Q. Do you recall asking him to be sure -- in the middle of
3 the summer to remind -- asking him to be sure to
4 contact your son and wish him happy birthday?

5 A. I don't recall.

6 Q. Sound like something you would have done?

7 A. I may have, yes.

8 Q. You remember telling Hank in July, I was telling S that
9 you spoil me and everyone else is boring?

10 A. I don't recall and I don't know what I was referring
11 to.

12 Q. Do you recall telling him when he said he was at
13 Wal-Mart, you asking, What you shop for? Being August
14 of 2011. Him saying, A new cart. And you saying, They
15 don't carry um big like yours?

16 A. I'm sorry, I don't recall the specific message.

17 Q. Do you recall in late August right around when this
18 happened, asking if he would come up in December and
19 help care for you during a medical procedure in
20 December?

21 A. I don't recall.

22 Q. And, finally, Dr. Newsom, you don't deny that you and
23 Mr. Hawes were sexually intimate sometime in the summer
24 or spring of 2011?

25 A. In the spring, maybe a couple of times. I don't recall

STACEY NEWSOM REPLY REDIRECT BY MS. CAMPBELL

1 any specific dates.

2 THE COURT: Redirect?

3 MS. CAMPBELL: Just one question.

4 REPLY REDIRECT EXAMINATION

5 BY MS. CAMPBELL::

6 Q. In August of 2011, were y'all planning on getting back
7 together?

8 A. Absolutely not.

9 MS. CAMPBELL: Thank you. Nothing further.

10 THE COURT: You may step down.

11 I'm sorry, any recross?

12 MS. PRINGLE: No, sir.

13 THE COURT: You may step down. Thank you very
14 much.

15 All right. Solicitor, do you have any further
16 testimony?

17 MS. CAMPBELL: That's all we have for today, Your
18 Honor.

19 THE COURT: Okay. All right.

20 Mr. Foreman, ladies and gentlemen of the jury, as
21 I told you yesterday, the expert cannot be here until in the
22 morning. And if you will be here at 9:30 in the morning,
23 we'll continue with the trial at that time.

24 Please leave your notepads in your chairs. Please
25 don't discuss the case among yourselves. Please don't read

1 or watch anything on television about the case. I want you
2 to make your decision on what you hear in the courtroom, not
3 what you hear on the television or read in the newspaper, or
4 on the internet. Don't get on the internet and do any
5 research about the crime or what's going on during this
6 trial. Thank you so very much. See you in the morning at
7 9:30. Have a good day.

8 (Whereupon, the jury left the courtroom
9 at 1:20 p.m.)

10 THE COURT: Okay. Yes, ma'am.

11 MS. GARFIELD: Your Honor, our prior witness,
12 she's concerned that she may have been videotaped by the
13 news media previously, you ordered them not to.

14 THE COURT: I can't help that, okay. It's open
15 court, public courtroom.

16 MS. GARFIELD: Can we inquire if she was filmed by
17 them?

18 THE COURT: No, that's their prerogative. I know
19 the first time she testified, I asked them not to, but I'm
20 not going to get into that.

21 MS. GARFIELD: Thank you.

22 THE COURT: Yes, ma'am.

23 MS. PRINGLE: If I could please just for the
24 record note a couple of things for issues of preservation of
25 error. Nothing happened between the time that you ruled

1 that this could be admitted and she took the stand and there
2 were no changes. Nothing new had happened. She did end up
3 saying he told me if I were to call law enforcement about,
4 and then Ms. Campbell sort of interrupted her. I would
5 renew our previous objection, request a mistrial on those
6 grounds, Your Honor.

7 THE COURT: Okay. Denied. Anything else?

8 (There was no response.)

9 THE COURT: Anything else from either party?

10 MR. STRICKLER: Your Honor, I just wondered if you
11 -- the Court wanted to discuss charges at this point?

12 THE COURT: I'm getting ready to just as soon as
13 y'all finish what you need on the record. We're going to
14 have an informal charge conference.

15 MR. STRICKLER: Yes, sir.

16 THE COURT: Once y'all finish putting whatever you
17 want to put on the record.

18 MS. PRINGLE: The only other thing is I thought
19 there was an additional witness or is it just the nurse
20 tomorrow and no one else?

21 MS. GARFIELD: That's correct.

22 THE COURT: I think the nurse tomorrow and your
23 blood SLED expert.

24 MS. PRINGLE: But that's it?

25 THE COURT: They, also, may have a blood expert in

1 reply to your blood expert. I don't know, okay?

2 MS. PRINGLE: Yes, sir.

3 THE COURT: We'll just have to wait on that, okay.

4 I don't --

5 I think that's it, correct, Solicitor?

6 MS. GARFIELD: Yes, sir.

7 THE COURT: All right. Anything else? If I can
8 see the attorneys up here, please.

9 The Court will recess until 9:30 in the morning.

10 (Whereupon, Court was adjourned for the
11 day, October of 4, 2014, to be
12 reconvened on Wednesday, October 15,
13 2014.)

14 THE COURT: We're still waiting on the clerk to
15 take orders from the jury, so we'll wait.

16 Anything from the State before we bring the jury.

17 Anything from the Defense?

18 MR. STRICKLER: No, sir, just that we will need a
19 very short break. The jury won't even need to leave the
20 courtroom, just need to get some equipment out after the
21 State's witness testifies for me to use during our witness's
22 testimony.

23 THE COURT: Okay.

24 MR. STRICKLER: It's in the courtroom, just need
25 to position it correctly.

1 THE COURT: All right. Let me see the attorneys
2 up here just second while we're waiting.

3 (Whereupon, a bench conference was held
4 off the record.)

5 THE COURT: All right. You want to go ahead and
6 get set up while we're waiting on the first witness?

7 MS. CAMPBELL: We're set up. If he wants to set
8 up for his witness, I don't think it will interfere. Our
9 witness is very short and we can maneuver around anything.

10 THE COURT: You want to go ahead and get set up
11 for your witness or would you rather wait?

12 MR. STRICKLER: We'll wait because we're going to
13 have to raise the screen up right here.

14 THE COURT: Okay.

15 MR. STRICKLER: And it will take three minutes.

16 THE COURT: All right. No problem.

17 COURT: Okay. Bring us the jury.

18 (Whereupon, the jury returned to the
19 courtroom at 9:40 a.m.)

20 BAILIFF: The jury is seated, Your Honor.

21 THE COURT: Thank you very much.

22 Call your next witness.

23 MS. GARFIELD: Thank you, Your Honor. The State
24 calls Hannah Brearly.

25 THEREUPON,

HANNAH BREARY DIRECT BY MS. GARFIELD

1 HANNAH BREARLY,

2 after having been duly sworn, testified as follows:

3 THE CLERK: Have a seat in the witness box, state
4 your name for the record, and spell it, please.

5 THE WITNESS: My name is Hannah Brearly. It's
6 H-A-N-N-A-H, last name is B-R-E-A-R-L-Y.

7 DIRECT EXAMINATION

8 BY MS. GARFIELD:

9 Q. Ms. Brearly, will you please share with the jury your
10 professional background?

11 A. I started out as a registered nurse. I worked at
12 Palmetto Baptist. I am now a nurse practitioner.

13 Q. And where are you a nurse presently?

14 A. I'm a nurse practitioner in Greenville Orthopedic
15 Trauma.

16 Q. Ms. Brearly, are you nervous today?

17 A. Just a little.

18 Q. Ms. Brearly, share with the jury where you worked back
19 in August of 2011?

20 A. I worked at Palmetto Baptist in the emergency
21 department.

22 Q. Specifically, on August 28th, 2011, Ms. Brearly, did
23 you have the occasion to treat the Defendant in this
24 case, Hank Hawes?

25 A. I did. I was the primary nurse taking care of him.

HANNAH BREARY CROSS BY MS. PRINGLE

1 Q. And being the primary nurse taking care of Mr. Hawes,
2 what were your duties?

3 A. He was brought in by EMS and I had to triage him. And
4 then, any orders carried out by the ER physician, it
5 was my job to implement those as well as he was in our
6 psychiatric section of the emergency department. We
7 are required to hourly round on these patients to make
8 sure they are safe and do no harm.

9 Q. And, obviously, he was in the psychiatric unit based on
10 the nature of his injuries?

11 A. Correct.

12 Q. Did he share with you how he received those injuries?

13 A. He did not. He was not forthcoming in any information
14 with regards to his injuries.

15 Q. Was he forthcoming in any other information?

16 A. He was. I had him for several hours on that day and he
17 was on and off the floor for a CAT scan, various
18 things. I had to carry out orders. I had to hourly
19 round. He had told me that he was from Florida and
20 that he worked for a financial firm.

21 Q. Did he share with you any of his other medical history?

22 A. When he came in, the only information I could get from
23 him was that he had ADHD.

24 Q. Was he cooperative?

25 A. He was cooperative. He followed all commands. He

HANNAH BREARY CROSS BY MS. PRINGLE

1 answered questions appropriately throughout the day.

2 Again, at first, he wouldn't answer anything in regard
3 to his injuries.

4 Q. Was he coherent?

5 A. He was.

6 Q. Was he in any way disruptive?

7 A. No, ma'am. There's a guard that sits outside and we
8 never had to call the guard. He never acted out of
9 hand.

10 Q. Did he request anything from you?

11 A. He did. He, specifically, I recall, asked for his
12 phone charger.

13 MS. GARFIELD: Thank you, Ms. Brearly. Please
14 answer in questions the Defense counsel may have.

15 THE COURT: Cross-examination.

16 CROSS-EXAMINATION

17 BY MS. PRINGLE:

18 Q. Good morning, Ms. Brearly. No need to be nervous, just
19 a couple of questions. You, actually, saw him upon
20 arrival, correct?

21 A. Correct.

22 Q. At that point, he had already -- were you aware he had
23 already been treated or begun treatment by EMS?

24 A. Right, which is standard.

25 Q. They had begun an IV line?

HANNAH BREARY CROSS BY MS. PRINGLE

1 A. That's standard.

2 Q. Which is, also, standard?

3 A. (The witness nodded head.)

4 Q. I believe in your initial notes, you noted that he
5 follows commands, but that he was lethargic?

6 A. Correct.

7 Q. His neurological symptoms, you said there was weakness?

8 A. Correct.

9 Q. And left pupil and right pupil reaction sluggish, is
10 that correct?

11 A. Correct.

12 Q. And the treating physician, I guess whose orders you
13 were carrying out, that would be Dr. John Robinson?

14 A. Correct.

15 MS. PRINGLE: Thank you so much.

16 THE COURT: Any redirect?

17 MS. GARFIELD: No, sir.

18 THE COURT: Okay. You may step down. Thank you
19 very much.

20 Any further witnesses from the State?

21 MS. CAMPBELL: Not at this time, Your Honor.

22 THE COURT: That's all the witnesses you have at
23 this time; is that correct?

24 MS. GARFIELD: Yes, sir.

25 THE COURT: All right. How much time you think

JEFF GURVIS DIRECT BY MR. STRICKLER

1 you need?

2 MR. STRICKLER: Five minutes tops.

3 THE COURT: All right. Mr. Foreman, ladies and
4 gentlemen of the jury, the next witness we, actually, have
5 taken out of order. It's going to be a Defense witness as
6 the expert. And he wants to get set up, so I'm going to
7 give him about five minutes to get set up. I'll get you
8 back in the courtroom and we'll listen to that testimony on
9 direct and cross-examination. It will be a Defense witness.
10 And the reason we're calling him out of order is because the
11 expert could not be here until today, as I explained to you
12 earlier this week.

13 Please don't discuss the case amongst yourselves.
14 I'll get you back as soon as he gets set up and ready for
15 testimony.

16 (Whereupon, the jury left the courtroom
17 at 9:50 a.m.)

18 THE COURT: All right. We'll stand at ease. Let
19 me know when you're ready to bring the jury back in.

20 MR. STRICKLER: Yes, sir. Yes, sir. Thank you.

21 THE COURT: If anybody needs to take a short
22 break, you can take it, okay.

23 (Whereupon, a short recess was held.)

24 THE COURT: All right. Anything else? Are you
25 ready for the next witness?

JEFF GURVIS DIRECT BY MR. STRICKLER

1 MR. STRICKLER: Yes, sir.

2 THE COURT: All right. Bring us the jury, please.

3 BAILIFF: Yes, Your Honor.

4 (Whereupon, the jury returned to the
5 courtroom at 10:00 a.m.)

6 BAILIFF: The jury is seated, Your Honor.

7 THE COURT: All right.

8 If the Defense will call the witness, please.

9 MR. STRICKLER: Thank you. The Defense calls Jeff
10 Gurvis.

11 THEREUPON,

12 JEFF GURVIS,

13 after having been duly sworn, testified as follows:

14 THE CLERK: Have a seat in the witness box, state
15 your name for the record, and spell it, please.

16 THE WITNESS: My name is Jeff Gurvis. Jeff,
17 J-E-F-F, last name Gurvis, G-U-R-V-I-S.

18 DIRECT EXAMINATION

19 BY MR. STRICKLER:

20 Q. Good morning, Mr. Gurvis.

21 A. Morning.

22 Q. What is your profession, sir?

23 A. I'm a bloodstain pattern analyst and a latent print
24 examiner.

25 Q. Okay. For the purposes of this case, could you tell

JEFF GURVIS DIRECT BY MR. STRICKLER

1 the jury what bloodstain pattern analysis is?

2 A. Sure. Bloodstain pattern analysis is the study of the
3 size, shape, distribution and appearance of bloodstains
4 found at crime scenes as resulting from blood shedding
5 events. Bloodstains, depending on their distribution,
6 may be grouped together to form patterns. And it's the
7 study of these patterns that may help determine the
8 mechanism of how those patterns are created and,
9 potentially, helping in reconstructing the events that
10 have unfolded at a crime scene.

11 Q. And what training and experience do you have in the
12 field of bloodstain pattern analysis?

13 A. I received my Bachelor of Science degree from Michigan
14 State University in forensic science. Subsequent to
15 that, I gained employment at the Northern Illinois
16 Police Crime Laboratory, which is a laboratory just
17 north of Chicago, where we serve all of the population
18 of the northern suburbs from Chicago all the way up to
19 Wisconsin border, approximately 1.2 million in
20 population. And my duties there included being a
21 latent print examiner, the crime scene coordinator.
22 And we went out on major scenes throughout that
23 population -- populated area, that geographic region
24 and I was the bloodstain pattern analyst.

25 For training for that, I took several courses that

JEFF GURVIS DIRECT BY MR. STRICKLER

1 are both basic and advanced as well as several
2 workshops throughout the early part of my career,
3 which, also, included a thorough review of literature,
4 independent research, and, also, culminated in
5 obtaining certification as a bloodstain pattern analyst
6 from the International Association for Identification.

7 Q. And when did you begin your career in that field?

8 A. My career as pertains to the bloodstain pattern was
9 '97, 1997.

10 Q. 1997. And are you a member of any particular
11 organizations relating to bloodstain pattern analysis?

12 A. Yes. I am a member of the International Association of
13 Bloodstain Pattern Analysts as well as a member of the
14 International Association for Identification, where I,
15 also, serve as the chair of the bloodstain pattern
16 certification board. I am, also, a member of SWGSTAIN,
17 which is a scientific working group on bloodstain
18 pattern analysis, which is -- up until now was an
19 international body of bloodstain pattern analysts from
20 around the world to help standardize and set best
21 practices.

22 Q. Okay. And have you ever taught in the field of
23 bloodstain pattern analysis?

24 A. Yes. I taught at the FBI for five or six years for
25 that 40-hour courses on basic bloodstain pattern

JEFF GURVIS DIRECT BY MR. STRICKLER

1 analysis. I still currently teach since 2001 -- 2002,
2 forgive me, at the University of Tennessee's national
3 forensic lab, where I also teach 40-hour classes. I've
4 taught several workshops throughout the past 15 years
5 at the International Association for Identification.
6 I've, also, taught in-service training at police
7 departments around the country, to include Baltimore
8 Police Department, the entire Illinois State Police,
9 and just most recently, at Washington, D.C. combination
10 training for D.C. metro as well as Baltimore County and
11 the consolidated forensic laboratories in Washington,
12 D.C.

13 Q. And have you ever been qualified in court as an expert
14 in bloodstain pattern analysis?

15 A. Yes, I have.

16 Q. Okay.

17 MR. STRICKLER: Your Honor, at this point in time,
18 we'd offer Mr. Gurvis as an expert in the field of
19 bloodstain pattern analysis.

20 THE COURT: Does the State have any questions?

21 MS. GARFIELD: No, sir.

22 THE COURT: On the qualifications?

23 MS. GARFIELD: No, sir.

24 THE COURT: State would stipulate he's qualified?

25 MS. GARFIELD: For purpose of this, yes.

JEFF GURVIS DIRECT BY MR. STRICKLER

1 THE COURT: The Court so finds.

2 BY MR. STRICKLER:

3 Q. And if you could, please, could you tell us when you
4 were contacted by the Defense in this particular
5 matter?

6 A. I was first contacted about this case in the last week
7 of August and met John Larson from Larson Forensics on
8 August 30th, where he, actually, wanted to consult me
9 -- or with me on some photographs pertaining to this
10 case. Subsequent to that, I was then put in contact
11 with yourself and Defense counsel later the following
12 week.

13 Q. Okay. And were you provided materials to aid you in
14 your evaluation of this case?

15 A. Yes, I received a series of -- a large stack of
16 reports, various reports, from crime scene reports to
17 include SLED DNA reports, autopsy reports, a list of
18 hard copy reports as well as images of the photographs
19 that were taken at the crime scene, at autopsy and by
20 the South Carolina Law Enforcement Division.

21 Q. Okay. You think you've had an opportunity to review a
22 pretty complete sample of the photographs taken in this
23 case?

24 A. Yes, I reviewed all of the photographs and the reports
25 in this case.

JEFF GURVIS DIRECT BY MR. STRICKLER

1 Q. Additionally, you were up here Friday of last week?

2 A. Yes, I was.

3 Q. Did you have an opportunity to be in the courtroom and,
4 actually, listen to the testimony of Ms. Stanley, the
5 DNA expert from SLED?

6 A. Yes, I did.

7 Q. Okay. If I could, could -- just briefly, could you
8 explain a little of the terminology that you'll be
9 using as you discuss bloodstain patterns? For example,
10 what's drip stain?

11 A. A drip stain is a singular stain that results from a
12 drop that's created from gravity alone. So if you were
13 to stick your finger into a cup of blood, the blood
14 drops that will come off would be considered drip
15 stains. And, typically, they result in circular stains
16 on floors and surfaces that are horizontal.

17 MR. STRICKLER: May the witness step down, Your
18 Honor, please?

19 THE COURT: Yes, sir.

20 BY MR. STRICKLER:

21 Q. And if you could position yourself over here
22 (indicating), please. Rather than having you talk
23 about it why don't we just walk you through the scene.

24 A. Sure.

25 Q. And just briefly -- first of all, did we ask you to

JEFF GURVIS DIRECT BY MR. STRICKLER

1 look at any area in particular?

2 A. Yes.

3 Q. In this case?

4 A. For this case, the area of concentration for my
5 analysis was in the bedroom. To the north side of the
6 bed, there was a large concentration of blood on the
7 floor. And it was this area I was asked about.

8 Q. Okay. We'll walk to that area. If you can explain
9 what you see as you begin to walk. And this is a
10 shot -- this is State's 140 I'm referring to. Coming
11 through the back door into the kitchen, what do you see
12 by way of bloodstain pattern in this photograph?

13 A. Well, we have several different patterns. When we were
14 just talking about drip stains, those stains that just
15 fall due to gravity, these are the circular stains we
16 see throughout -- pretty much throughout the scene,
17 actually.

18 We, also, have a lot of transfer stains, where you
19 have blood that's on a surface that comes in contact
20 with another surface resulting in an exchange of that
21 blood and deposited onto that surface. So these foot
22 impressions would be considered transfer patterns as
23 they're categorized within the field of bloodstain
24 pattern analysis.

25 So here, largely, we have drip stains and a little

JEFF GURVIS DIRECT BY MR. STRICKLER

1 bit of a drip trail, which would indicate a series of
2 drip stains in one direction or another. The balance
3 of this, what we see here, is pretty much transfer
4 trail.

5 Q. Are you able to determine say, a series of drip stains
6 moving in one direction or another? Can you determine
7 which direction the movement is?

8 A. Not -- not for this particular drip pattern or drip
9 trail.

10 Q. Okay. Let me show you what's marked as State's 139, a
11 little further into the kitchen.

12 A. Uh-huh.

13 Q. Can you identify anything on that?

14 A. Well, we have some pooling of blood, a large
15 concentration of blood, more transfer impressions as
16 well as several swipes. And swipes are patterns that
17 are created when you have an object that has blood on
18 it that comes across, laterally across the surface and
19 deposits blood, indicating some motion. So that's what
20 a swipe is. We have a lot of swipes throughout the
21 kitchen floor. Up on the side here (indicating) on
22 the, I believe that's a dryer, there's some cast off
23 stains. And cast off would indicate an object that has
24 blood on it that releases that blood due to motion. So
25 this could -- where this comes from could be any number

JEFF GURVIS DIRECT BY MR. STRICKLER

1 of sources, but some examples would be a hand, a
2 weapon, hair, anything that's moving that has blood on
3 it can cast off. That's why the name of the pattern is
4 called cast off.

5 Q. But you can't determine in this particular instance
6 what cast the blood off that you're referring to,
7 correct?

8 A. That's correct.

9 Q. Okay. Let me show you what's marked as State's 144.
10 And what can you tell us about that?

11 A. We have a lot of spatter. And spatter is a generic
12 term for any airborne stain that's four millimeters or
13 less in width when we're measuring the stains. This is
14 -- it's not possible for me based on the photos to
15 determine whether this is the result of an impact or
16 cast off or some other mechanism. So we do have quite
17 a bit of staining on the lower half of this door -- of
18 this refrigerator, which largely is predominantly less
19 than four millimeters in size.

20 Q. Okay. And what's marked as State's 143?

21 A. Again, we -- we are --

22 Q. Can you describe what you see in that picture?

23 A. Yes. So here, we're further down into the kitchen and
24 we're still looking at the refrigerator here and these
25 other stains I was just referring to. We have more

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1 transfer and swipes all on the floor. We have some
2 additional spatter up on the tablecloth as well as
3 swipes coming down the -- the refrigerator door.

4 Q. And, again, what's a swipe?

5 A. A swipe is when you have an object that has blood on it
6 that moves across a surface depositing more blood,
7 indicating motion.

8 Q. You indicated there's more spatter. How about the
9 cloth on the table, what is on the surface of that?

10 A. This right here (indicating)?

11 Q. Yes.

12 A. Yes, this is some more spatter.

13 Q. Is there any way to determine the mechanism that
14 deposited the spatter?

15 A. There is not a way to determine the mechanism. There's
16 several possible mechanisms.

17 Q. Okay. Do you, also, see drips in this picture?

18 A. Yes. We have several drip stains right here
19 (indicating), just adjacent to that end table. We have
20 drip stains throughout. These are the circular ones
21 that you see.

22 Q. And drip stains are consistent with what mechanism?

23 A. A drip stain is gravity is creating those drops, which,
24 ultimately, fall to the floor.

25 Q. Okay.

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1 A. So it could be from a bleeding source. It could be
2 from an object. It could be from a number of things.

3 Q. Okay. Let me show you 135 and ask you if you recognize
4 that?

5 A. Yes. Here, we're looking back towards the direction we
6 were coming in, towards the back door. And, again, we
7 have a large here (indicating) with some pooling at the
8 base of the refrigerator, a large area. Again, there's
9 transfer patterns, swipe patterns, drip stains here
10 (indicating).

11 Q. Okay. Turning to State's 129, can you describe what
12 you see in this photograph?

13 A. So here, we're a little bit, you know, towards the end
14 of the kitchen, entrance to the hallway. And we have
15 some swipes and transfer impressions and some drip
16 stains. So it's really more of the same.

17 Q. Okay. What could swipes be consistent with as far as
18 how they can -- they make the deposit?

19 A. They can be consistent with a lot of things.

20 Q. Okay.

21 A. With swipes, we really have to have the object. We
22 have to know what the object is that created it to,
23 actually, put those together. And we have a lot of
24 blood in the scene and a lot of objects that have blood
25 on them in this scene. So it's very difficult to

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1 relate exactly what those swipes were created by.

2 However, we do have a large swipe that comes down
3 (indicating). And in this area right here
4 (indicating), we have a towel at the end and it does
5 appear that this is the disruptive area (indicating)
6 from the continuous swipe that we see from the floor
7 extending from the kitchen out into the hallway. We do
8 have some disruption there.

9 Q. Just to be clear, did we ask you to do an in-depth
10 analysis of this entire scene?

11 A. No.

12 Q. Do you have any estimate on how long it would take to
13 do an in-depth analysis of this entire scene?

14 A. Yes. There's -- because we have, potentially, two
15 bleeding sources and we have attempts at clean up and
16 we have blood in nearly every room, it would probably
17 take me a couple of months to get an analysis.

18 Q. State's 177, what do you see in this picture?

19 A. So here, we're at the threshold between the kitchen and
20 the hallway and we have a couple of towels resting over
21 that area. We see the swipes leading up to this area,
22 and we see a more concentrated, higher volume swipes
23 leading out from the kitchen into the hallway and
24 towards the bedroom.

25 Q. You also see drips -- drip stains?

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1 A. Yes. We have several drip stains here and we,
2 actually, have some drip stains on -- I don't want to
3 say on top of it, but they are transposed.
4 Determination as to what came first is very difficult,
5 especially since I have not had an opportunity to go to
6 the scene. But you do have drip stains throughout,
7 even within this pattern on over here as well we have
8 some drip stains all over the floor.

9 Q. All right. And then what's marked as State's 107?

10 A. So we have some transfer, some more transfer, swipe and
11 more drip staining and a lot of transfer (indicating)
12 on this mat (indicating), this floor mat as well as we
13 have staining on -- I believe this is clothing and,
14 obviously, staining on the side of the bed.

15 Q. Do you know what room that is?

16 A. This is the bedroom, the north bedroom.

17 Q. And I show you what's marked as State's Exhibit No. 96.
18 Just one second. What do you see there?

19 A. So we have more drip staining down here (indicating) on
20 the floor. We have several stains that are up on the
21 wall (indicating) as well as some transfer. This is
22 transfer (indicating). So something came in contact
23 with these areas here (indicating). We do have some
24 airborne stains here that could have been resulted from
25 cast off or projected. And so projection pattern --

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1 projected pattern is, basically, blood that is ejected
2 from a blood source under pressure. So there are a
3 number of mechanisms or common mechanisms to, actually,
4 create that. But it is -- I am not able to determine
5 if this is the result of a projected or cast off.

6 Q. And, again, if it were cast off, you couldn't determine
7 what it was cast off from?

8 A. That is correct.

9 Q. All right. State's 98. Please describe what you see
10 here?

11 A. So here, we're further in the bedroom. We're looking
12 at -- this is the wall from the previous photo. We
13 have some drip stains that are on the window sill,
14 interior window sill. We have drip stains throughout
15 as well as transfer patterns on the floor.

16 Q. Transfer patterns could be consistent with footprints?

17 A. Yes. There are transfer patterns that are easily
18 determined to be foot impressions.

19 Q. Okay. Let me show you what's marked as State's 105
20 here. And ask you what you know about that photograph?

21 A. So this is the north side of the bed. We have a wall
22 immediately adjacent here. We have a nightstand right
23 next to the bed. So we have a lot of staining on the
24 floor. So here's a large concentration of blood here
25 on the floor, which are drip stains and drip patterns

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1 intermixed.

2 So drip pattern is different from a drip stain in
3 that they are drip stains that are falling on top of
4 each other kind of a pool effect. And so when blood
5 hits blood, it, actually, creates satellite that are
6 small stains that are emanating from a parent center
7 stain. So around this entire area (indicating), we
8 have small stains around this center mass. We might
9 have a better photograph.

10 Q. We do.

11 A. Coming up? But we have circular drip stains and a
12 large area right here (indicating) away from the bed.

13 Q. What do you see on the bed?

14 A. So on the bed, we have a lot of different things. Now,
15 when you're talking about clothing and cloth and fabric
16 absorbent material, it becomes much more difficult
17 because cloth can absorb and wick the stains and create
18 very odd-shaped stains. But sometimes it is very easy
19 to tell some directionality. So we do have probably
20 some transfer patterns here, these large areas, and
21 flow where blood is, basically, running onto the bed
22 (indicating). And we have absorption and saturation
23 stains throughout the bed. And we, also, have some
24 smaller stains in this area (indicating) that have
25 been -- that are airborne and do exhibit some

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1 directionality here. And I would say that that would
2 be consistent with projected matter.

3 Q. Okay. Let me show you State's 113 and ask you what you
4 can tell us. Is that a better shot of the pattern on
5 the floor?

6 A. I think so.

7 Q. Okay. Could you describe what you see there, sir?

8 A. So we have -- here is our center area, our center mass
9 where we have, basically, drip stains and drip pattern,
10 potentially, a little bit of splashing all in this
11 center area. We have drip stains, as you can see,
12 around the periphery of this as well as small stains
13 (indicating) throughout -- around the edges of this
14 pattern. We, also -- if you notice here, we have some
15 linear stains -- or linear patterns -- that's perfect,
16 thank you.

17 Q. Okay.

18 A. Going and extending up onto the wall. And this would
19 be a classic projected pattern where you have a stream
20 that is ejected under pressure and it comes and lands
21 on whatever surface it makes it to. And we know it's
22 projected because it is a linear pattern that has
23 similar-sized stains throughout the pattern. And it's
24 very similar to -- you can make the analogy of a squirt
25 gun. If you're squirting a stream of water or blood,

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1 when it comes to rest, it does result in a linear
2 pattern where all the stains are roughly the same size.

3 Q. Okay. From this, do you see any other projected
4 patterns in this?

5 A. Yes. We have some projected patterns here on the
6 nightstand. As we see them, the linear pattern is
7 extending along the floor because not everything --
8 when you have the ejection of blood, not everything
9 will make it to a wall. So gravity takes hold and it
10 naturally falls down to the floor, resulting in that
11 linear pattern.

12 So we have some projected, these (indicating) as
13 up here on the wall, you'll see, I believe, some more
14 staining that would have that. So we have -- these are
15 -- all these right here (indicating) are projected
16 patterns.

17 Q. Okay. As to the -- with the projected patterns, are
18 you able to tell from what height they were projected,
19 at least, in this particular instance?

20 A. No. Because the nature of how projected patterns are
21 created, we don't know if the projection is straight,
22 if it's up and then arcing and coming down, or if it's
23 going straight down. We don't have that ability at the
24 moment. So we have no way to know how high above this
25 area the projection is, actually, originating from.

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1 Q. As opposed to height, can you make any estimates as far
2 as directionality of the projected pattern?

3 A. Yes. So projected pattern, this is definitely going --
4 this is north. This is going eastward onto the east
5 wall and -- you know, if a linear pattern emanates from
6 this area (indicating) here. So whatever the source is
7 that created the projection is directly above this
8 center area.

9 Q. Okay. And turning back to State's 105, do you know
10 notice projected patterns on the bed sheets?

11 A. Yes. So in -- in looking at the sheet, we have several
12 small stains here (indicating) that exhibit
13 directionality in a southeasterly direction towards the
14 opposite corner of the bed. They are smaller in size
15 than you see in these transfers and they do -- because
16 they show directionality, we know that they're
17 airborne. And since these stains exhibit similar sizes
18 as we see on the nightstand and on the wall, I'm able
19 to make the determination that that would be consistent
20 with being more projected pattern than we see -- likely
21 see on the wall.

22 Q. Okay. Now, once again, back to State's 113, do you see
23 an object at the foot of the nightstand, not the towel,
24 the other object?

25 A. This object here (indicating)?

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1 Q. Yes.

2 A. That appears to be a cell phone.

3 Q. A cell phone?

4 A. (The witness nodded head.)

5 Q. Do you remember seeing pictures of the cell phone?

6 A. I do.

7 Q. Okay. Did that have any blood on it?

8 A. It did.

9 Q. It did. Okay. Do you remember what the nature of the
10 stain was on it? I'll pull the picture.

11 A. I believe it's a combination of transfer and I believe
12 we do have a drip stain on there.

13 Q. Okay. All right. Now, as result of what you found at
14 this particular area and in consultation with
15 Ms. Pringle and myself, did you advise us to do
16 anything?

17 A. Yes. So when the question comes up as to what is
18 causing these projections, one of the important things
19 with bloodstain pattern analysis is that we rely on
20 information outside of just the patterns themselves.
21 So it would be important to know whose blood that could
22 be to help, potentially, reconstruct events.

23 So the next question is, is there any way to
24 determine whose blood any of this is. And,
25 unfortunately, we didn't have the samples taken from

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1 the forensic personnel, but we did have this sheet. So
2 what I asked for was for those stains on the top
3 portion of that that exhibit that airborne and
4 directionality that was consistent with these stains
5 (indicating) and these stains (indicating) to be tested
6 by the laboratory because that was the best shot we had
7 in, potentially, correlating the stains here
8 (indicating) with the stains here (indicating).

9 Q. Let me show you State's 200 and ask if you can -- this
10 is black and white. You see a couple of areas marked
11 with circles?

12 A. Yes.

13 Q. Okay. Do you know what those are?

14 A. Those -- I believe those were done and requested before
15 I pointed out the stains.

16 Q. Okay.

17 A. So these are just saturation stains that were within
18 the sheet and mattress that were circled to test.

19 Q. Then show you what's marked as 201, is that additional
20 examples of that?

21 A. Yes, correct. There is more saturation stains that,
22 apparently, were circled for testing.

23 Q. And then after you consulted with us, let me show you
24 State's 402. And can you identify a couple of areas --

25 A. Yes.

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1 Q. -- on that.

2 A. So this is a photo that I, actually, annotated to
3 circle the stains myself. Because here are the stains
4 (indicating) that were showing and exhibiting
5 directionality in that southeasterly direction. Again,
6 the sizes of these stains were consistent with the
7 stains that we saw on the nightstand. And so, these
8 stains, if we had an opportunity to find out what the
9 source of these stains -- these are, actually,
10 traveling across the bed, and these are, actually,
11 running down the side of the bed (indicating). If we,
12 potentially, determine whose blood that is, we can then
13 correlate those to the ones on the nightstand and on
14 the floor.

15 Q. Okay. And you were here on Friday?

16 A. I was.

17 Q. During the testimony of Ms. Stanley. Do you know to
18 whom all the stains on the sheet we've been talking
19 about are identified through DNA analysis?

20 A. Yes. The stains that were tested from the sheet, I
21 believe they came back to the Defendant.

22 Q. The Defendant. Those stains (indicating) and,
23 specifically, the two that you suggested we look at?

24 A. Correct.

25 Q. Okay. All right. While we're still at this point, can

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1 you tell us -- let me ask you this, is it easy to
2 determine the volume of blood on any scene through
3 visual observation?

4 A. No, it's not.

5 Q. It is hard to determine?

6 A. It is hard and there are -- actually, it's beyond the
7 limits currently of bloodstain pattern analysis to
8 estimate the volume of blood. There is new research
9 coming out and we're getting there, but current time,
10 we're not able to determine that.

11 Q. Okay. You wouldn't disagree that there's a large
12 volume of blood on the scene?

13 A. There is a large volume of blood on the scene.

14 Q. Is there any way -- let me ask you this, as to the pool
15 of blood on the floor next to the bed that you've been
16 describing, is that consistent with someone being in
17 that area for a period of time?

18 A. Yes. Because we have that center -- and if we can go
19 back.

20 Q. I'll go back.

21 A. That will be great. Because we have satellite all the
22 way around and drip stains all the way around in a very
23 large area, this indicates that the source had to have
24 been directly above this area for a period of time to,
25 actually, create that pattern and the various stains

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1 around it.

2 Q. Is there any way to determine with any precision how
3 long a period of time that would be?

4 A. No, there's no -- no way. The rate to which that blood
5 source is releasing that blood is not determined.

6 Q. Okay. And do you see examples -- and you may have
7 already testified to this, I'm sorry -- of satellite
8 stains in this particular picture that would be
9 indicative of blood falling into an already-existing
10 pool of blood?

11 A. Yes, so we see -- we see that all along the periphery
12 of that.

13 Q. Those are the smaller stains?

14 A. Those are the smaller stains.

15 Q. These --

16 A. So these are drip stains, these larger stains, but
17 intermixed in here are very small stains that are less
18 than four millimeters.

19 Q. What characteristics do they have that leads you to
20 believe that they are satellite stains?

21 A. Their size and presence around that lead drip.

22 Q. Okay. Moving on to -- this is the area that we asked
23 you to go ahead and concentrate on?

24 A. Correct.

25 Q. Okay. Just finishing the walk-through of the State's

JEFF GURVIS DIRECT BY MR. STRICKLER

1 122, can you describe what you see in that picture?

2 A. So this is the window sill and we have some more drip
3 stains and we have what I would say are cast off stains
4 here (indicating). I believe there's a handle on the
5 window.

6 Q. I will show you State's 123?

7 A. So we have a handle on the window, the twisting handle
8 to close the blinds. And so this is a transfer pattern
9 because blood is transferred, contact transfer with
10 this -- with the handle here. And these stains that
11 are immediately adjacent to the left here would be
12 indicative and consistent with someone who had blood on
13 their hand reaching up and turning the blind shut
14 (indicating).

15 Q. Okay. Showing you State's 71, let's see, can you
16 identify where that is?

17 A. This is the main hallway. This is the bedroom here
18 (indicating), and to the right, we have the kitchen
19 (indicating), and to the left, we have the bathroom
20 (indicating). So this is the hallway here
21 (indicating).

22 Q. And what do you see on the hallway?

23 A. In the hallway, we see more drip stains and drip trails
24 as well as transfer patterns, foot impressions
25 throughout there.

JEFF GURVIS CROSS BY MS. CAMPBELL

1 Q. And, lastly, show you State's 70. What do you see on
2 this photograph?

3 A. So here, we have some more spatter. And these are two
4 distinct areas here (indicating). I didn't spend a lot
5 of time on this, but there are a couple potential
6 mechanisms that could have created these, one being
7 cast off and the other being projected. Both of those
8 are linear-type patterns and these are linear in
9 nature. When we say linear, it's not single-file
10 stains, it's just the overall distribution is in a
11 linear pattern.

12 Q. Okay. You can go ahead and resume the stand.

13 A. (The witness complies.)

14 THE COURT: Why don't you leave it up if you would
15 because the State will use it on cross, if you don't mind,
16 please.

17 MR. STRICKLER: My apologies.

18 THE COURT: Okay. I don't know.

19 Solicitor, you think you want to use it or you
20 want it removed?

21 MS. CAMPBELL: I may use it, Your Honor.

22 THE COURT: Just leave it if you don't mind,
23 please.

24 MR. STRICKLER: Thank you very much, sir. Answer
25 any questions the prosecution may have.

JEFF GURVIS CROSS BY MS. CAMPBELL

1 THE COURT: Cross-examination.

2 MS. CAMPBELL: Yes, sir.

3 CROSS-EXAMINATION

4 BY MS. CAMPBELL:

5 Q. Morning.

6 A. Morning.

7 Q. I don't think we're ever met?

8 A. No.

9 Q. And just so I can go back on some things. Basically,
10 you talked about your training in this field as far
11 as -- and we're going to stick to bloodstain patters
12 for this purpose?

13 A. Uh-huh.

14 Q. When was the last time you, actually, went to a crime
15 scene and processed it?

16 A. I believe about three years ago.

17 Q. About three years ago. And when you go to a crime
18 scene and process it, would it then be proper to make a
19 report about what you've done?

20 A. Yes.

21 Q. And in this case, I believe that you were retained by
22 the Defense on August the 30th is when you first met
23 with somebody?

24 A. That was when I first met with someone, correct.

25 Q. And then, since then they've sent you a number of --

JEFF GURVIS CROSS BY MS. CAMPBELL

1 what you've said was pretty exhaustive, all the photos,
2 some of the reports?

3 A. (The witness nodded head.)

4 Q. Some of the incident reports, the crime scene analyst
5 reports and things of that nature?

6 A. Yes. I received many materials.

7 Q. Okay. And in this case, you, also, became aware, I
8 guess, at some point that there were two people
9 bleeding at the scene, or eventually became aware
10 through DNA testing?

11 A. Yes.

12 Q. And then you looked at everything and you've come up to
13 some conclusions that you've testified to here today?

14 A. Correct.

15 Q. And at what point -- or I guess I didn't -- I never got
16 your report?

17 A. (The witness nodded head.)

18 Q. Did you make one?

19 A. I did not. It wasn't until last week where it was
20 understood what kind of blood evidence was going to be
21 presented.

22 Q. So it wasn't until last week that you knew about what
23 blood evidence was going to be presented?

24 A. That's correct. Usually, I write a report based on
25 specific request about what kind of analysis was going

JEFF GURVIS CROSS BY MS. CAMPBELL

1 to be requested, and from there, generating a report.

2 It wasn't until last week until we knew what -- because
3 it's a very extensive scene, a lot of photographs. As
4 I said and testified earlier, it could take two months
5 to do a complete analysis. And it wasn't really known
6 as to what the question was for presentation here
7 today.

8 Q. But you were directed by the Defense as to what area to
9 concentrate on, weren't you?

10 A. They asked me about that.

11 Q. They're the ones that asked you to concentrate on that
12 pool next to the bed and this sheet right there, right?

13 A. They did.

14 Q. And then you're the one that suggested that they send
15 off those photographs to SLED to request certain
16 testing on the sheets?

17 A. That's correct.

18 Q. And that was done -- the first testing was done on
19 September 12th, so, at least, by September 12th, you
20 knew you wanted that area tested or they wanted that
21 area tested; is that correct?

22 A. Correct. We were in the fact finding, gather
23 information stage of just trying to get our bearings as
24 to what the analysis needed to be.

25 Q. And at that point, you were concentrating on that. Did

JEFF GURVIS CROSS BY MS. CAMPBELL

1 you ever -- prior to knowing what the DNA, you still
2 had examined those photographs, didn't you?

3 A. The DNA, I knew -- the original DNA reports, I had when
4 I had the initial examination.

5 Q. And as far as what you can testify to today, you can't
6 tell this jury whose DNA was there or not, right?

7 A. Correct.

8 Q. But you are able to analyze and talk about what kind of
9 patterns. So prior to September 12th, you knew what
10 kind of patterns were in the area where they asked you
11 to focus, right?

12 A. That's correct.

13 Q. But you didn't do a report?

14 A. That's correct.

15 Q. And are you being paid to be here today?

16 A. I am.

17 Q. And, in fact, how many hours have you put in so far in
18 this case?

19 A. Total hours for the analytical portion of this is
20 roughly about 20 hours.

21 Q. Roughly about 20 hours. Does that include your
22 testimony here today?

23 A. It does not.

24 Q. Is that a different rate from what you're getting paid
25 for the other?

JEFF GURVIS CROSS BY MS. CAMPBELL

- 1 A. No.
- 2 Q. What is your rate?
- 3 A. My rate is \$200 per hour.
- 4 Q. \$200 dollars per hour, so 20 hours so far. Does that
- 5 include travel?
- 6 A. No, travel is, obviously, reimbursed as well.
- 7 Q. Are you paid for your travel time, too?
- 8 A. I am.
- 9 Q. And you came last Friday?
- 10 A. I did.
- 11 Q. And that's at \$200 an hour?
- 12 A. That is correct.
- 13 Q. And then you did what the Defense asked you to do,
- 14 which was just to concentrate on this one area in this
- 15 crime scene, right?
- 16 A. That is correct.
- 17 Q. And you already said this, but you never went to the
- 18 crime scene, of course, you didn't have the opportunity
- 19 to do that?
- 20 A. That is correct.
- 21 Q. And they provided you pictures and some reports. Did
- 22 you ever get a copy of the Baptist records where the
- 23 Defendant was treated for the injuries to his wrists?
- 24 A. Yes.
- 25 Q. You did? This was provided to me this morning as to

JEFF GURVIS CROSS BY MS. CAMPBELL

1 what was provided to you. It includes the EMS reports.

2 Is that all that was provided to you?

3 (Pause.)

4 A. So this EMS patient record, is that what you're
5 referring to?

6 Q. No, that's what was provided to you. I'm talking about
7 the emergency room treatment records?

8 A. I would have to go through the stack again.

9 Q. But you would agree they aren't listed here?

10 A. That would be correct.

11 Q. Did you ever met with Dr. Robinson to talk about the
12 nature of his injuries?

13 A. I did not.

14 Q. Did you ever meet with any witnesses from the scene?

15 A. I did not.

16 Q. Did you ever consult with Columbia Police Department as
17 far as their observations and what they saw?

18 A. I did not.

19 Q. And, in fact, all that you had was what was provided to
20 you by the Defense; is that correct?

21 A. That is correct.

22 Q. And you narrowed -- they narrowed it down for you for
23 this one area they were interested in?

24 A. That was the request that was made.

25 Q. And, specifically, we've talked about some terms and

JEFF GURVIS CROSS BY MS. CAMPBELL

1 I'm not good at this stuff, so can I go over some of
2 the terms you've used in your analysis?

3 You mentioned cast off. Is that the correct term?

4 A. That is a correct term.

5 Q. A correct term. And what is that, sir?

6 A. So cast off pattern is a pattern that's created when
7 blood is cast off from an object that's in motion.

8 Q. That has blood on it?

9 A. That has blood on it.

10 Q. And that could be part of the body (indicating)?

11 A. Part of the body.

12 Q. It could be a weapon being held by somebody?

13 A. Yes.

14 Q. And you even said earlier when you were talking about
15 drip, and you used an example of how you can drip your
16 hand in blood, then hold it up and gravity makes it go
17 straight down, right?

18 A. Correct.

19 Q. And you've mentioned there's a bunch of drips in this
20 scene; is that correct?

21 A. That's correct.

22 Q. And drip just goes straight down, but cast off goes
23 more like this (indicating); is this correct, or is
24 that possible?

25 A. That is --

JEFF GURVIS CROSS BY MS. CAMPBELL

1 Q. I don't mean to --

2 A. No.

3 Q. I don't want to put words in your mouth.

4 A. Sure. So cast out of is different than drip stains
5 because the drip stains, when gravity is forming them,
6 they tend to be larger than four millimeters. They,
7 actually, can be as large as 21 millimeters in size.
8 Cast off, because there's a little more force than
9 gravity, those stains, actually, tend to be smaller,
10 and they're, also, linear. There are a series of
11 stains --

12 Q. They're, actually, cast off, so there's some projection
13 towards this?

14 A. Well, anything that travels through air is projected
15 through the air. But we, actually, define projected
16 patterns as a specific type of mechanism.

17 Q. And let me go back to that. You testified earlier that
18 it's hard to tell between cast off and projected
19 patterns. You said that about the hallway that you
20 looked at?

21 A. Yes, on the hallway to the bathroom as well as the
22 inside of the bedroom on the -- would be the west wall.
23 That would be difficult to tell whether they were
24 projected or cast off based on the photographs that I
25 have.

JEFF GURVIS CROSS BY MS. CAMPBELL

- 1 Q. Okay. Let me go back to drip for a minute. Those are
2 generally circular?
- 3 A. Correct.
- 4 Q. Generally, they're kind of a round shape?
- 5 A. Correct.
- 6 Q. And cast off has more of a direction to it, doesn't it?
- 7 A. It does.
- 8 Q. What do those look like?
- 9 A. What do they -- so, depending upon the angle in which
10 they strike the surface, they may be more elliptical,
11 more acutely angular.
- 12 Q. Depending -- and that's an exaggeration, but is that
13 correct?
- 14 A. Correct.
- 15 Q. And then with projection -- and correct me any time I
16 say something wrong because I'm not good at this.
17 Again, you talked about directionality and things of
18 that nature?
- 19 A. (The witness nodded head.)
- 20 Q. And you said it's difficult to say between cast off and
21 projection. And is that because the patterns can be
22 similar?
- 23 A. It may be difficult to tell the difference, but there
24 are times when it is clearly obvious what pattern.
- 25 Q. And, again, those are more elliptical, typically?

JEFF GURVIS CROSS BY MS. CAMPBELL

- 1 A. It's all depending upon how those stains strike a
2 surface.
- 3 Q. And you say you have a projection pattern if it hits
4 something, even if it hits it square on or at an angle,
5 depending on the volume of blood, it may then drip?
- 6 A. Correct. If there had been any sufficient volume there
7 that runs off and exhibits flow.
- 8 Q. Down a wall?
- 9 A. Correct.
- 10 Q. Say?
- 11 A. Uh-huh.
- 12 Q. And what were the -- some of the other terms you used?
- 13 A. Swipe pattern, transfer.
- 14 Q. Swipe pattern, transfer?
- 15 A. Right.
- 16 Q. Thank you. And a swipe is what?
- 17 A. A swipe is when you have an object that has blood on it
18 and it moves laterally across a clean surface
19 depositing blood and it indicates motion.
- 20 Q. And in this crime scene, just from what you're able to
21 tell right off the bat, there were a number of swipes
22 in the kitchen area?
- 23 A. Correct.
- 24 Q. And in the hallway into the bedroom?
- 25 A. Correct.

JEFF GURVIS CROSS BY MS. CAMPBELL

1 Q. And those kind of go hand in hand transfer, too, don't
2 they, or can?

3 A. Yes.

4 Q. And transfer is what?

5 A. So transfer is when you don't have any motion between
6 those two objects. The blood on an object comes in
7 contact and is released off, which may exhibit the
8 pattern of that original object, such as a foot --

9 Q. Footprint, that's what I was getting ready to get to.
10 Thank you.

11 And there's some other terms that can be used that
12 you didn't mention, say in the case where someone has
13 been stabbed in the lung and they start spewing blood
14 from their mouth, what do you call that?

15 A. Those are aspirated patterns.

16 Q. And how do those manifest themselves?

17 A. They can also exhibit very small stains that are
18 directly and focused in a given area. They're
19 frequently intermixed with air bubbles because the air
20 gets into the lungs. So that is, actually, some of the
21 consideration that I had when looking at some of these
22 patterns because we do have some injuries to the lungs.
23 However, we, also, heard that we don't have any
24 blood -- when they did the autopsy, there wasn't any
25 blood in the mouth.

JEFF GURVIS CROSS BY MS. CAMPBELL

- 1 Q. And you aren't a pathologist, are you?
- 2 A. I am not.
- 3 Q. Thank you. And, finally, there is what we call
- 4 arterial?
- 5 A. That, actually, is an example of projected.
- 6 Q. Okay. So that goes right back to this projection?
- 7 A. Right.
- 8 Q. And when an artery is breached or cut or gouged, blood
- 9 comes squirting out, doesn't it?
- 10 A. It can, yes.
- 11 Q. Like when the heart beats, because -- arteries are big
- 12 veins; is this correct?
- 13 A. Arteries are big blood vessels that are under pressure
- 14 from the heart. So the blood is coming from the heart
- 15 through the arteries to the various areas of the body.
- 16 Q. And were you here when the pathologist testified on
- 17 Friday?
- 18 A. I was.
- 19 Q. Okay. And every time her heart beat, it could be
- 20 projected; is this correct?
- 21 A. That's correct.
- 22 Q. These are all terms that people say that are familiar
- 23 with the medical field or with blood work, these are
- 24 all mechanisms that that person would be familiar with?
- 25 A. Yes.

JEFF GURVIS CROSS BY MS. CAMPBELL

1 Q. And you, also, mentioned that -- you said in your
2 observation of the autopsy there was no blood in her
3 mouth. Were you aware she was bathed at the scene?

4 A. I was.

5 Q. He asked you specifically about, I believe, in State's
6 96, the wall in the bedroom, the green with the picture
7 on it next to the double windows. And what did you say
8 about those patterns that you could tell?

9 A. There's a couple different things going on. We have
10 some transfer towards the bottom portion of the wall,
11 but we, also, have some larger stains. And those
12 larger stains, typically, indicate to me projected, but
13 we only have single stains that are kind of distributed
14 a little farther apart from each other. So it was
15 difficult for me to make a determination whether those
16 were result of projected or cast off. But, certainly,
17 those stains were far enough apart that a breached
18 artery probably would not create something like that.

19 Q. That's your testimony?

20 A. That is my testimony.

21 Q. Well, let's look at these pictures that are classic in
22 textbooks of arterial stains?

23 A. Uh-huh.

24 Q. Does that look like what's on the wall?

25 A. No.

JEFF GURVIS CROSS BY MS. CAMPBELL

1 Q. That's your testimony?

2 A. Yeah. Those stains -- if I may see.

3 Q. You can see it all day.

4 A. These stains here, the stains are very close to one
5 another. As I mentioned with the stream, when you have
6 a projection of blood, that stream separates through
7 the air. And so if you were to have an ejection from
8 an artery, you would expect to see series of stains
9 very close to one another.

10 Here, we have those within these photographs that
11 are taken from a book. These photos -- these stains,
12 we have four stains that are not very close, do not
13 exhibit a stream breaking up and just creating stains
14 that are far apart. So these stains would not be
15 indicative of a breached artery.

16 MS. CAMPBELL: Beg the Court's indulgence.

17 BY MS. CAMPBELL:

18 Q. So in the kitchen on the, I believe, the washer and
19 dryer?

20 A. Yes.

21 Q. There are stains similar to what's in the bedroom, they
22 run down?

23 A. There are stains that have some volume that run down.

24 Q. Okay.

25 A. Not every stain that has flow patterns coming off of it

JEFF GURVIS CROSS BY MS. CAMPBELL

1 are a result of projection. They're all based on
2 volume of that stain that strikes. So if there's a
3 larger stain, regardless of the mechanism, it's going
4 to have flow to it because the stain can't retain the
5 gravity pull.

6 Q. And that's what I wanted to get to.

7 A. Right.

8 Q. The larger the stain, the more significant the blood
9 amount being projected?

10 A. Correct. The larger the stain, the larger the blood
11 drop.

12 Q. When talking about cast off and stuff, too, say if
13 somebody dips their hand into a bucket and goes up
14 against the wall like that (indicating), is that what's
15 going to be a classic cast off example?

16 A. That will be cast off.

17 Q. And then projection is when it's, actually, being
18 squirted from the body?

19 A. That is an example, yes.

20 Q. And your testimony is it's very difficult to tell
21 between the two?

22 A. It can be difficult to tell between the two based upon
23 the pattern itself.

24 Q. And, again, when you're talking about this, you're
25 talking about this bloodstain next to the bed. And you

JEFF GURVIS REDIRECT BY MR. STRICKLER

1 said that there's satellites and that means blood drips
2 on blood?

3 A. Correct.

4 Q. And you can't tell this jury how that blood was dripped
5 onto that blood?

6 A. I thought that it came directly above.

7 Q. Directly above?

8 A. Yeah.

9 Q. We agree on that?

10 A. Yeah.

11 Q. Have you looked at the physical evidence in this case?

12 A. I have not.

13 Q. And you aren't here to tell this jury how much blood
14 anybody lost at that scene?

15 A. That is correct.

16 Q. He asked you specifically about the phone there in the
17 area where you were told to concentrate. Did you
18 request that the blood on the phone be tested?

19 A. No.

20 Q. And, again, as far as your expert -- the reason you
21 couldn't do a report was because you needed more
22 information, your expert opinion is limited, basically,
23 to that area next to the bed?

24 A. That is correct.

25 MS. CAMPBELL: Thank you, Doctor. I have no

JEFF GURVIS REDIRECT BY MR. STRICKLER

1 further questions.

2 THE COURT: Any redirect?

3 MR. STRICKLER: Yes, sir.

4 REDIRECT EXAMINATION

5 BY MR. STRICKLER:

6 Q. First of all, let me show you this document and ask you
7 to take a look at it.

8 A. Yes.

9 Q. You recognize that document?

10 A. Yes.

11 Q. What is that?

12 A. That is an e-mail that was sent to me after I received
13 all the material.

14 Q. Okay. And from whom did that e-mail come?

15 A. That come from Fielding Pringle.

16 Q. Okay. And you know what date you were sent the e-mail?

17 A. That was on September 17th.

18 Q. And was there an attachment to the e-mail?

19 A. There was.

20 Q. What was that attachment?

21 A. That was the Palmetto records.

22 Q. Okay. Those didn't come to you in the initial?

23 A. They did not come to me in the initial.

24 Q. Didn't come to you until September?

25 A. Seventeenth.

JEFF GURVIS RECROSS BY MS. CAMPBELL

1 Q. Seventeenth? And Ms. Campbell asked you about making a
2 report, was there any report whatsoever submitted by
3 any agency of the State in this case regarding
4 bloodstain pattern analysis?

5 A. Not that I'm aware of.

6 Q. Could you characterize how prominent bloodstains were
7 at the scene in this particular case?

8 A. Prominent as in the number of stains?

9 Q. Yes, sir.

10 A. Yeah, there are hundreds -- probably close to a hundred
11 patterns because you have blood in every single room
12 within the house.

13 Q. Okay. And yet, no report from the State?

14 A. That is correct.

15 Q. And --

16 A. To my knowledge.

17 Q. You were informed that Dr. Robinson on his testimony
18 here testified that there are many minor veins and
19 arteries in the wrists, correct?

20 A. Correct.

21 Q. And that Mr. Hawes could have lost a lot of blood,
22 correct?

23 A. He could have.

24 MR. STRICKLER: That's all I have.

25 THE COURT: Any recross?

JEFF GURVIS RECROSS BY MS. CAMPBELL

1 RECROSS-EXAMINATION

2 BY MS. CAMPBELL::

3 Q. You were present for Dr. Robinson's testimony. At no
4 time did Dr. Robinson ever testify that he would have
5 spewing blood from those arteries?

6 A. I heard no testimony to that effect.

7 THE COURT: You may step down. Thank you very
8 much.

9 Would you take the screen down, please, sir?

10 MR. STRICKLER: Your Honor, may he be excused?

11 THE COURT: Solicitor, any reason he cannot be
12 excused?

13 MS. CAMPBELL: No, sir.

14 THE COURT: Thank you very much. You're welcome
15 to stay, but have a safe trip back.

16 THE WITNESS: Thank you.

17 THE COURT: No further witnesses on behalf of the
18 Defense?

19 MR. STRICKLER: That's correct, the Defense rests.

20 THE COURT: All right.

21 Does the State plan on having any reply testimony
22 to the blood expert?

23 MS. CAMPBELL: No, sir.

24 THE COURT: Pardon?

25 MS. CAMPBELL: No, sir.

1 THE COURT: Okay. All right.

2 Mr. Foreman, ladies and gentlemen of the jury,
3 leave your note pads in the chairs, please. Don't discuss
4 the case amongst yourselves. We will take a break at this
5 time. If the smokers need to smoke, let the bailiff know
6 that. Anything you need, let the bailiffs know. We'll take
7 a morning break at this time.

8 (Whereupon, the jury left the courtroom
9 at 10:58 a.m.)

10 THE COURT: How much time y'all need to get ready
11 for the closing arguments? First of all, I've got to hear
12 motions, I understand. I will in a second. I guess I might
13 as well hear the motions.

14 Any motions from the State?

15 MS. CAMPBELL: No, sir.

16 THE COURT: Any motion from the Defense?

17 MR. STRICKLER: Your Honor, I will make -- I'm
18 just trying to get myself sequenced here.

19 THE COURT: You want to renew all the motions you
20 made at the end of the State's case?

21 MR. STRICKLER: That's the first thing I want to
22 do.

23 THE COURT: Okay. I will accept those.

24 MR. STRICKLER: All right. Then, Your Honor, in
25 addition to renewing the motions at the end of the State's

1 case, we need to go ahead and ask that Your Honor declare a
2 mistrial at this point. Referencing back to the recall of
3 Mr. Hawes to the stand, which was, actually, during the
4 Defense case, so I'm speaking as if I'm talking at the end
5 of the Defense case at this point. We objected at that
6 point in time. We asked that Your Honor revisit your ruling
7 in that regard. And we submit that that subjected undue
8 prejudice in this matter for the basis that we enunciated at
9 that point in time, and that you should declare a mistrial.
10 So that's an additional basis in that regard.

11 And then, of course, Your Honor, if I need to
12 renew my objections, previous objections at the end of the
13 State's reply testimony, and I'm not sure whether I do or
14 not, but out of an abundance of caution, I renew all
15 previous motions, including those from the end of the
16 State's case, during the State's case, during the Defense
17 case, at the end of the Defense case, and at the end of the
18 reply testimony. So I renew all motions at that stage of
19 the trial. I think that's it.

20 THE COURT: All right. Thank you so very much.

21 MR. STRICKLER: Yes, sir.

22 THE COURT: All motions for a mistrial is denied.
23 All motions for the directed verdict are denied. And I
24 understand what you're saying because there was -- we sort
25 of had everything out of sequence and the Court never really

1 gave you an opportunity to readdress those motions at the
2 end of the State's reply.

3 MR. STRICKLER: Yes, sir.

4 THE COURT: And I will accept those motions at
5 this time and they are denied.

6 MR. STRICKLER: Thank you, sir.

7 THE COURT: All right. Anything else? Is there
8 anything else y'all need to discuss with the Court, informal
9 charge conference before we go the closing arguments? I'll
10 be glad to do it very briefly at this time, if you so
11 choose.

12 Does the State need to do that? The State ready
13 to close?

14 MS. CAMPBELL: The State's ready -- Your Honor,
15 can I have 10 minutes to get some stuff together?

16 THE COURT: Yeah, I'm going to give you some time.
17 Do y'all want to talk to me about the charge at this point
18 in time?

19 MR. STRICKLER: I don't need to talk with you any
20 more regarding the charge, Your Honor.

21 THE COURT: Okay. All right. We'll take about --
22 how much time you need, about 10 minutes?

23 MS. CAMPBELL: 10 to 15 minutes.

24 THE COURT: Well, they'll probably take longer
25 than that because the smokers take a long time to get

1 downstairs. We'll take about a 15, 20-minute recess.

2 MS. CAMPBELL: Perfect.

3 THE COURT: I understand you're going to open on
4 the law and then reply, is that correct?

5 MS. CAMPBELL: Yes, sir.

6 MR. STRICKLER: Your Honor, I'm not sure what
7 she's going to do in opening on the law. I may need a brief
8 recess myself just to line up whatever I have to physically
9 deal with.

10 THE COURT: I'll give you what you need, okay?
11 Just let me know.

12 MR. STRICKLER: Yes, sir.

13 THE COURT: Let me know and I will situate you any
14 way I can.

15 MR. STRICKLER: Thank you, sir.

16 THE COURT: All right. Thank you very much.

17 (Whereupon, a short recess was held.)

18 THE COURT: Is the State ready for closing?

19 MS. CAMPBELL: Yes, sir.

20 THE COURT: Is the Defense ready?

21 MR. STRICKLER: Yes, sir.

22 THE COURT: All right. Bring us the jury, please.

23 BAILIFF: Yes, Your Honor.

24 (Whereupon, the jury returned to the
25 courtroom at 11:25 a.m.)

1 BAILIFF: The jury's seated, Your Honor.

2 THE COURT: Thank you very much.

3 Solicitor.

4 MS. CAMPBELL: May it please the Court.

5 Good morning. First thing I want to do on behalf
6 of the State of South Carolina, the citizens of Richland
7 County, and the family of Jennifer Wilson is to thank you
8 for your service in this case. I know when you came to
9 court over a week ago, about a week and a half ago, you
10 might have wondered what type of case you would be asked to
11 serve on. And I doubt very many of you thought it would be
12 one that was quite as awful, as gory, and as gruesome as
13 this. We have subjected you to looking at photographs of
14 volumes of blood, of dead bodies, of stab wounds, of
15 splashes. And for that, I apologize. But I think as you
16 have seen as this case has developed, unfortunately, it was
17 necessary.

18 Right now, everybody in this courtroom has a role.
19 The State's role is to present all of the admissible,
20 relevant evidence that can come before you in this case.
21 The Defense role is to defend their client. The Judge's
22 role is to rule on the admissibility to determine what
23 you're allowed to hear, and, ultimately, after you hear from
24 both of us, to instruct you on what the law is that you have
25 to apply to the facts as you find them. But the most

1 important role in this courtroom, ladies and gentlemen, is
2 yours, each of you individually and, ultimately,
3 collectively once you go back there. Because you must
4 determine what happened back on August 28th. You must
5 determine if Jennifer Wilson was killed with malice or if
6 Hank Hawes was just the victim.

7 Now, I'm going get to talk to you a little bit on
8 this front end about the law in this case. Then you will
9 here from Mr. Strickler, and he will get up and argue before
10 you. Then, ultimately, I will have the opportunity to come
11 back and talk about the facts a little more. And as I am
12 talking about the law, if I say anything different from what
13 the Judge (indicating) says, it's not intentional, but,
14 please, take the law as the Judge gives it to you, the law
15 that you are to use in this case. And in that same vein, if
16 either side mischaracterizes the testimony or the evidence,
17 you remember because you are the ultimate trier of the facts
18 in this case as our constitution dictated over 200 years
19 ago.

20 Now, you've heard all of the evidence that you can
21 consider in the case. And the Judge will instruct you -- or
22 as already instructed you, what is evidence? It is the
23 sworn testimony. It is the physical evidence that has,
24 actually, been entered, it's any stipulation that you may
25 have heard. What's not evidence? Questions by the

1 attorneys, fishing expeditions, innuendos, speculation,
2 conjecture or just plain wishful thinking, that's not
3 evidence.

4 I want to apologize right now if during the course
5 of this if we have done anything to offend you. At times,
6 our questions have been unartful, clumsy. At times, it's
7 been difficult because evidence that wasn't initially
8 admissible later became admissible and we had to go back
9 over things. You have been sent out time and time again to
10 sit back there (indicating). There's been legal rambling
11 going on. And I want to apologize. Please don't hold that
12 against the State. I, also, apologize for my voice. I'm
13 sorry. I have allergies today, so if I sound off, that's
14 it.

15 Criminal cases are unique. In a criminal case,
16 the defendant, as he should, has the right to confront each
17 and every witness that comes before him. You have heard
18 references to statements that were given. You have heard
19 references to reports, such as the pathologist, the DNA
20 report, all things of that nature. That is not admissible
21 because the Defendant has a right to confront every witness
22 so that you, the jury, can see them (indicating), look at
23 them, judge their demeanor, judge their credibility because,
24 ultimately, ladies and gentlemen, that's what this case
25 boils down to, credibility. Because either it happened the

1 way Hank Hawes said it did and it was self-defense or this
2 is murder. Credibility.

3 Now, the burden is on the State of South Carolina
4 to prove this Defendant guilty beyond a reasonable doubt.
5 That is his constitutional right and that's the way it
6 should be. It is the highest burden of proof in the country
7 in criminal cases, proof beyond a reasonable doubt. And I
8 submit, ladies and gentlemen, in this case, with this
9 evidence, in this courtroom, that is a burden the State
10 welcomes because the evidence in this case is overwhelming.
11 You have one indictment to decide and that indictment is
12 murder.

13 Now, the Judge is going to instruct you, what is
14 reasonable doubt. In our laws are cases set out, some
15 parameters. The easiest definition of reasonable doubt is
16 the type of doubt who makes a reasonable person to hesitate
17 to act, proof beyond a reasonable doubt. But our courts
18 have gone a little further in defining that. And reasonable
19 doubt, they have said, proof beyond a reasonable doubt is
20 proof that leaves you firmly convinced of the Defendant's
21 guilt.

22 There are very few things in this world that we
23 know with absolute certainty, and in criminal cases, the law
24 does not require proof that overcomes every possible doubt.
25 Let me repeat that. In criminal cases, the law does not

1 require proof that overcomes every possible doubt. If based
2 on your consideration of the evidence, you are firmly
3 convinced that the Defendant is guilty of the crime charged,
4 you must find him guilty. If on the other hand, you think
5 there's a real possibility he's not guilty, you must give
6 him the benefit and find him not guilty. Proof that leaves
7 you firmly convinced. The law even recognizes we don't have
8 to overcome every possible doubt, although, I submit, ladies
9 and gentlemen, in this case, we have.

10 Now, there are two types of evidence that you can
11 consider. It's known as direct evidence and circumstantial
12 evidence. And, basically, the difference between those,
13 direct evidence is, typically, eyewitness evidence, evidence
14 that is perceived through the senses, taste, hear, smell,
15 see, sight, things of that nature. Circumstantial evidence
16 has been defined as proof of a chain of facts and
17 circumstances indicating the existence of a fact, such as
18 DNA testimony is the easiest way to use an example. DNA,
19 the blood at the scene came back, therefore, it's reasonable
20 to infer that that person's blood was left there at the
21 scene from the DNA testimony. Circumstantial evidence.

22 In this case, ladies and gentlemen, you don't have
23 all circumstantial evidence. You don't have all direct
24 evidence. You have both. And it's very important because
25 in this case, the direct evidence is totally corroborated by

1 the circumstantial evidence. The Judge will instruct you
2 the law makes no distinction or weight or value to be given
3 to either direct or circumstantial evidence. Only to the
4 extent the State relies on circumstantial evidence that
5 circumstances must be consistent or should be consistent
6 with each other when taken together and point conclusively
7 to the guilt of the accused when taken in context with the
8 direct evidence. The burden rest with the State regardless
9 of whether the State relies on direct evidence or
10 circumstantial evidence and acknowledges or some combination
11 of the two.

12 Now, the indictment in this case is murder. And
13 to be the most heinous crime that could be committed, that's
14 probably the shortest definition in our code of laws. Very
15 simply, ladies and gentlemen, 16-3-10, murder is defined --
16 and you've seen it on TV where you murder in the first
17 degree, second degree, third degree. In South Carolina, we
18 have murder. There's the less included, voluntary
19 manslaughter, which I'll get to in a minute. Murder
20 encompasses the killing of any person with malice
21 aforethought either expressed or inferred. Sometimes the
22 Judge may use the term implied, that means the same as
23 inferred.

24 What is murder? The killing of any person with
25 malice aforethought. The cases have gone and they've

1 defined what is malice and how can that be defined to help
2 you. And the Judge will instruct you that malice is very
3 simply the unlawful doing of an act to another person
4 without just cause. That's the simplest definition. Our
5 courts have gone further.

6 In its popular sense, malice means hatred, ill
7 will, or hostility towards another. In its legal sense,
8 however, malice does not necessarily mean ill will towards
9 the individual injured, but signifies a general malignant
10 recklessness of the lives and the safety of others, or a
11 condition of the mind which shows a heart regardless of
12 social duty and fatally bent on mischief. If this case
13 doesn't show a heart regardless of social duty and fatally
14 bent on mischief.

15 The word malice -- the easiest way for me to
16 define it is a malicious act. It doesn't get any more
17 malicious than this. This case reeks of malice. A
18 malicious killing is where the act is done without legal
19 justification, excuse or extenuation. And malice has been
20 frequently substantially so defined as consisting of the
21 intentional doing of a wrongful act towards another without
22 just -- without legal justification or excuse.

23 You will also hear that malice can be conveyed in
24 two ways. It can be expressed malice or inferred malice.
25 It doesn't mean that the malice itself changes, it's just

1 the way in which it's expressed. The Judge will instruct
2 you expressed malice is shown -- or he may instruct you on
3 this -- when a person speaks words which express hatred or
4 ill will for another person. Or an example, lying in wait
5 for a person. Malice indicates a wicked or depraved spirit
6 intent on doing wrong.

7 Now, listen carefully when the Judge instructs
8 you, because in murder, the State does not have to prove
9 premeditation. The State does not have to prove motive,
10 although that's obvious in this case. And listen to that,
11 he will not tell you that we have to prove motive. He will
12 not tell you that we have to prove premeditation. Listen to
13 his definition of malice aforethought. And I'll get back to
14 that in a minute. Malice indicates a wicked or depraved
15 spirit intent on doing wrong. The Judge will further
16 instruct you malice may be inferred from conduct showing a
17 total disregard for human life. His actions that night, 12
18 stab wounds, 11 slashes, trauma to the head. Is that
19 malice?

20 The Judge will further instruct you, in addition
21 to not telling you that you have to have motive or
22 premeditation, malice does not require expressed or direct
23 evidence of intent to kill. Although, I submit, ladies and
24 gentlemen, 12 stab wounds, it doesn't get much more intent
25 to kill.

1 The Judge will further instruct you malice may be
2 inferred from brutal conduct on the part of the person
3 committing the crime. You heard from the pathologist.

4 Now, as I talk to you about premeditation, the
5 Judge will also instruct you that malice aforethought does
6 not require that malice exist for any particular time before
7 the act is committed. But malice must be exist in the mind
8 of the Defendant just before and at the time the act is
9 committed. Therefore, there must be a combination of
10 previous evil intent and the act. At the moment he got the
11 knife, with the first stab wound, the first slash, the next
12 stab wound, what was in his mind? He didn't stop with one.
13 He didn't stop with two. He made sure that Jennifer Wilson
14 suffered, died a death that took a while. And she fought
15 for her life. Malice.

16 The Judge will instruct you that if you don't
17 think that there was malice, and I submit the evidence in
18 this case of malice is overwhelming, then you can consider
19 the lesser included. The lesser included of murder is
20 voluntary manslaughter. And, please, listen carefully to
21 the definition of this. The State must prove beyond a
22 reasonable doubt the Defendant took the life of another.
23 That's not contested in this case. In the sudden heat of
24 passion based upon sufficient legal provocation. Both heat
25 of passion and sufficient legal provocation must be present

1 at the time of the killing to constitute voluntary
2 manslaughter. The Judge will further instruct you that the
3 law does not reduce from murder to manslaughter in every
4 homicide committed in the heat of passion. Every murder is
5 in the heat of passion. It must be passion justly excited
6 by legal provocation.

7 The Defense, in their opening, talked about
8 passion. Passion does not mean that it's just a lesser
9 included. The fact that the victim and the Defendant knew
10 each other and had a relationship does not give him a by.
11 Sudden heat of passion may for a time affect a person's self
12 control and temporarily disturb a person's reasoning. The
13 sudden heat of passion must be the type that would make an
14 ordinary person unable to fully reflect on his actions and
15 would produce an uncontrolled impulse to do that. Listen to
16 the Defendant's own story, his own version (indicating).
17 Even he says he wasn't acting in the heat of passion.

18 The Defense will get up here and argue this is
19 just voluntary manslaughter. By his own version, it's not
20 voluntary manslaughter because he says it's self-defense.
21 He says he was cool and calm. He went over there that night
22 to coolly and calmly break up. She was the aggressor. She
23 was the one enraged. She was one with the big knife
24 (indicating) that suddenly disappeared. That's his story.
25 His story doesn't even fit voluntary manslaughter.

1 Beyond that, sufficient legal provocation, must be
2 the type that would make a person of ordinary reason and
3 caution become enraged and to lose control. By his own
4 testimony, that didn't happen. The provocation needed for
5 voluntary manslaughter must come from some act related to
6 the victim. Words alone, however bold or insulting, are not
7 enough to be legal provocation. Where death is caused by
8 the use of a deadly weapon, the words must be accompanied by
9 some overt threatening act. The exercise of a legal
10 right -- and remember, she's in her own home. Even if she's
11 telling him to leave, she's in her own home. No matter how
12 offensive it is to another, it's never sufficient legal
13 provocation for voluntary manslaughter. If the heat of
14 passion had cooled or there was enough time between the
15 provocation, if any, and the killing, for the passion of a
16 reasonable person to cool, the killing would not be
17 voluntary manslaughter.

18 In deciding whether they had enough time to cool
19 off, you should consider all circumstances surrounding the
20 killing. You may consider the nature of the provocation, if
21 any, the Defendant's mental and physical state, the
22 circumstance and relationships between the parties.

23 His own testimony is not -- because he testified,
24 remember, he was afraid for his life? He was defending
25 himself. In this state, there is self-defense. That's what

1 he's claiming. That's why you're hearing this. In order to
2 prove self-defense, first -- but we'll get back to
3 credibility. The first element of self-defense is the
4 defense without fault in bringing on the difficulty. If the
5 Defendant's conduct is the type reasonably calculated to and
6 did provoke a deadly assault, he would be at fault for
7 bringing on the difficulty and would not be entitled to an
8 acquittal based on self-defense. He must be without any
9 fault in this case. And if you think he really went over
10 there that night cool, calm and collected and suddenly,
11 after begging her for months, getting a therapist that it
12 was time to turn in the towel, and he was calmly and coolly
13 when he went there, then acquit him. Let him go.

14 The second element of self-defense is that the
15 Defendant must have, actually, believed he was in imminent
16 danger of losing his life or sustaining serious bodily
17 injury, or that he was, actually in imminent danger. I
18 submit a whole 105 pounds even, even if she had a knife, his
19 only recourse then was to stab her 12 times and slash her 11
20 and smash her head against four different blunt objects and
21 split her lip.

22 Further, the third element -- excuse me. In
23 deciding whether he was in imminent danger, even if you take
24 his story, you should consider all the facts and
25 circumstances, including the physical condition and

1 characteristics of the Defendant and the victim. Even if
2 you take him at his story, it's not self-defense. And
3 remember this, the Judge is going to instruct you, there are
4 four elements. In order to be entitled to an acquittal of
5 self-defense, he has to meet all four. One doesn't do it.
6 He has to be without fault, that he was either in danger or
7 believed he was in danger, and that if he did base it on
8 actual belief of imminent danger, a reasonable prudent man
9 of ordinary firmness and courage would have entertained the
10 same belief. If the Defendant, actually, was in imminent
11 danger and the circumstances were such that would warrant a
12 man of ordinary prudence, firmness and courage to strike the
13 fatal blow. This wasn't one fatal blow. This wasn't two
14 fatal blows. This wasn't three fatal blows, and it wasn't
15 four fatal blows. I can't remember if he said it was five
16 or six fatal blows along with all of the other injuries.

17 And, finally, the Defendant has what we call the
18 duty to retreat. Again, without fault, believed in imminent
19 danger, and an ordinary person would have reacted the same
20 way. And, finally, the duty to retreat, had no other
21 probable means of avoiding the danger of losing his life.
22 You judge this crime scene. You judge these injuries.

23 The Judge is further going to instruct you, you
24 heard about how he has ADHD. You heard a lot about that.
25 That he was drinking that night and he may have been taking

1 drugs for his ADHD. The law is voluntary intoxication is
2 never an excuse or defense to a crime. A person who
3 voluntarily renders himself intoxicated is no less
4 responsible for his acts while in such a condition. If a
5 person voluntarily drinks intoxicating liquors and becomes
6 intoxicated, and if while in that condition, an act which
7 would be a crime if it had been committed by a sober person,
8 the fact of drunkenness would not relieve the intoxicated
9 person from responsibility. Voluntary intoxication is not
10 an excuse for or a defense to a crime. This will, also,
11 extend to the voluntary ingestion of drugs. And taking
12 that, ladies and gentlemen, or is it a combination therein.
13 Voluntary intoxication does not include one's ability to act
14 malice aforethought.

15 Now, the Judge is, also, going to instruct you
16 that in this case certain witnesses have been able to get up
17 here and give an opinion if they have certain training. If
18 you have training in a field, you're allowed to be qualified
19 as an expert. But he will, also, tell you, and this is very
20 important, when you listen to those experts, you judge their
21 credibility the same way you do any other witness. Be an
22 expert for the State, be a lay witness, be a neighbor, be it
23 a friend, you judge their credibility. Do they have a bias
24 or prejudice?

25 And on that note, I want to talk to you a little

1 bit about credibility where this case is concerned. Because
2 either Jennifer Wilson was murdered or Hank Hawes is a
3 victim. Credibility, believability. Do they have something
4 to gain or lose? Do they have bias or prejudice? You can
5 believe all of a witness, none of a witness, part of a
6 witness. You can believe many against one, one against
7 many. Listen carefully to the Judge. You can look at their
8 demeanor on the stand. Did they have something to gain or
9 to lose? I beg you, judge credibility.

10 The Defense has gotten up here and brought forth
11 every sordid piece of Jennifer Wilson's life. I beg you to
12 judge her credibility. Because looking beyond that, she was
13 an educator, a professor. She founded a foundation to help
14 third world countries' children get educated. I beg you to
15 judge Jennifer Wilson's life.

16 And in that same vein, the Defense has absolutely
17 no obligation to put up a defense. The burden is on the
18 State, as we talked about. But once they choose to put up
19 evidence, you judge it the same way that you judge each and
20 every witness that's come before you.

21 All the State ask is that, ultimately, once you've
22 heard from the Judge as to what the law is is that you
23 render a verdict that speaks the truth, and that you find
24 him guilty for his choices and his actions, what he did
25 before, what he did during, and what he did after and hold

1 him responsible for, as in their words, this tragedy. Thank
2 you.

3 THE COURT: Mr. Strickler, whenever you get set
4 up, you may proceed with your closing.

5 MR. STRICKLER: Mr. Foreman, ladies and gentlemen
6 of the jury, as we said at the beginning of this trial, this
7 is a case about passion. Passion over a period of time
8 between two people, not one-sided, between two people. And
9 I'd submit passion at a particular point on the morning of
10 August 28th, 2011.

11 We spent a lot of time, a solid day, reading
12 exchanges changes between people. You got all of that
13 stuff. I'm not going to wade through all of it. I hope
14 it's abundantly clear that what you had in Jennifer Wilson
15 and Hank Hawes was a couple of people who felt very strongly
16 about each other, sometimes good strong, sometimes not so
17 good strong, and kept coming back to each other. Not Hank
18 Hawes just coming back to her, her coming back to him. You,
19 also, had a pair of people who -- I believe Hank said this,
20 who were less than completely honest with each other about
21 the relationship. Not just Hank, but both of them. And
22 that ends up August 28th, 2011. So their history was what
23 was passionate. And I submit the crime scene as opposed to
24 showing malice, as opposed to showing a cold, calculated
25 killing shows passion in itself. It shows extreme passion.

1 Ms. Campbell just said that every murder is a
2 crime of passion. Well, that's simply not the case. That's
3 simply not the case. Lie in wait for someone, lying outside
4 a door waiting for them to come home at night and jump them
5 and kill them, that's not a crime of passion. That's
6 premeditation. And she's right, you don't have to show
7 premeditation in murder. You have to show malice existed at
8 the time of the offense, that's what you have to show. But
9 every killing is not a crime of passion.

10 You have Hank Hawes trying to contact her over the
11 course of the evening, trying to contact her. Leaving his
12 house, which is a good several minutes away from hers,
13 several-minute drive away from hers, and coming over there
14 after she got home to break up with her. Not lying in wait,
15 coming over to break up with her. And being allowed into
16 the house by her. Didn't have a key. There's no
17 testimony -- that's his testimony. There's no testimony he
18 did have a key. There's no sign of forced entry. That's
19 the testimony from the officers on the scene. He was let
20 into the house by Ms. Wilson. So there's no lying in wait.
21 And every crime -- every murder is not a crime of passion.
22 Every manslaughter is, and, I submit, every self-defense is.
23 Self-defense and manslaughter are mutually exclusive
24 concepts. We'll talk about that in a little bit.

25 So the State's theory is this was a cold-blooded

1 crime, I guess. And if you don't have lying in wait, how do
2 you commit a cold-blooded murder in this situation? Walk in
3 the door and just kill a person. I mean, step through the
4 door and kill a person, rather than engage in some free for
5 all around the house. You go over there with that purpose.
6 You arm yourself before you get there, rather than grabbing
7 the first thing available. You've got the photos
8 (indicating). I'm not going to wade through. You've got
9 the photos of where the knives came from. So you arm
10 yourself and you come in prepared to go in to do the deed.

11 We spent a fair amount of time talking about the
12 scene itself, concluding with today, for a good reason. The
13 State would have you believe that this was -- best I can
14 figure, that this was a cold-blooded killing and that Hank
15 Hawes, using his wide medical experience, managed to cut
16 both his wrists in a fake suicide attempt, for what reason,
17 I'm not sure, and that the incident that occurred began back
18 in the bedroom. Okay. So that's why we spent a lot of time
19 talking about the scene because the scene does not agree
20 with that.

21 You've got all of the pictures. No objection from
22 the Defense in putting anything in as far the pictures of
23 the blood at the scene. Not good to look at, not easy to
24 look at, but has to be looked at. But the scene does not
25 agree with that. If you look at the large pool of blood in

1 the bedroom -- and had we not gone and done what we did and
2 tested the sheets there and established that the blood on
3 the sheets on that bed was Hank Hawes's blood. You heard
4 Ms. Stanley, the DNA expert, testify, no question about it.
5 That's him. That's the big stains, that's the little stains
6 that our expert testified about today that are consistent
7 with projected stains. The projected stains are consistent
8 with the projected stains against the -- against the clothes
9 hanger, wall -- and the wall behind the close hanger, and on
10 the cabinet next to the bed. And the large pool of blood
11 next to the bed, which is immediately underneath where the
12 stains on the sheets are, is consistent with someone being
13 there for a long period of time, which is precisely what
14 Hank Hawes described as his location for a long period of
15 time. Remember? I started writing down all the numbers as
16 he was speaking on multiple occasions with Stacey Newsom.

17 He spoke with her between 2:37 and six something,
18 I think. For over 67 minutes, like half the time he was
19 there during that period of time. He didn't leave until
20 about 8:30, but during that period of time, between the
21 first call with her and the last call with her, he spent
22 over half that period of time on the phone with her. She
23 would have you believe that he didn't tell her what had
24 happened. He described him as being -- she described him as
25 being upset, crying, obviously, distraught, coming and going

1 in and out of the conversation. Never told her what
2 happened.

3 Now, you saw Ms. Newsom on a couple of occasions.
4 She had a long-term relationship with Mr. Hawes, which broke
5 up, however, they didn't break up quite the way she talked
6 about it because they were intimate, I believe, during the
7 spring of that year. And, evidently, she was the focus of
8 some problems as far as Mr. Hawes and Ms. Wilson were
9 concerned. If you remember his description of what
10 happened, are you still seeing her? Are you still talking
11 to her? Are you having sex with her? That precipitated --
12 his response to that precipitated the incident.

13 So I felt like we had to go ahead and address
14 whether or not the incident began in the bedroom. If it
15 began in the bedroom, all of that blood, which as far as I'm
16 concerned, the State would have us own as being from
17 Ms. Wilson, we don't go ahead and test what we can, that's
18 what they'd be up here telling you. And they may come up
19 here and tell you that anyway. You know what, you don't
20 know. You do have some pretty good circumstantial evidence
21 that it's from Mr. Hawes. You know the blood on the bed
22 immediately adjacent to it was his. You know the projected
23 pattern on the bed is his. You've got projected patterns
24 right next to -- or onto the nightstand. And the hanger and
25 the walls, couldn't test those, didn't have those to test.

1 Same sort of projection as on the bed. It's reasonable to
2 infer that's him. It's reasonable to infer that he was
3 there for several hours. And it's reasonable to infer that
4 the blood on the floor is his, not someone else's.

5 Because you see, the State welcomes their burden
6 of proof. You know what, it doesn't much matter. They
7 don't get a chance to welcome it. It is their burden.
8 Welcome it or not, it's their burden. It's their burden.
9 So we've shown you reasonable explanation to believe that
10 the blood in that area is all Hank Hawes's.

11 You know what they didn't do? I went through
12 this, I believe, with Ms. Stanley. Took a DNA swab -- this
13 was Mr. Wise, I believe, that testified about this. DNA
14 swab from the vomit by the living room couch. Did they send
15 that to SLED to test? The answer is no. And I asked
16 Ms. Stanley, how can you make sure you don't get a result on
17 DNA? We don't test it, that's how. Took the DNA swab from
18 the cell phone that I spoke with our expert about this
19 morning, lying on the floor, okay. They, actually, swabbed
20 that. He said he thought it had blood on it, looked like it
21 was drips on it, maybe some transfer, but drips. They swab
22 it and then proceeded not to send it to SLED. So whose
23 blood is on that phone? Well, I submit that if you don't
24 test, you don't know. And they didn't bother to test that.

25 They took a DNA swab -- remember, early on with

1 Mr. Hawes, I asked him what his reaction was after
2 Ms. Wilson had been stabbed, when he realized what had
3 happened. He backed up, went over, checked and saw she had
4 no pulse, backed away towards the door and then cut his
5 right wrist. He showed you the spots on the floor. This is
6 the very first picture I started off with our expert this
7 morning. The trail of spots on the floor. Is that where
8 that happened? Yeah, I think so. That should be my blood.
9 That's where that happened. That's marked in some other
10 pictures here as evidence, marked with 33, which was where a
11 DNA swab was taken from the kitchen and not sent to SLED for
12 analysis.

13 See, Hank Hawes, as you've heard before, is
14 presumed to be innocent. He was presumed to be innocent
15 when this trial started. He is, under your oath, presumed
16 to be innocent at this point in time. He is presumed to be
17 innocent as you go back to the room later on today to start
18 considering this case. And he remains presumed innocent
19 until y'all are convinced otherwise. The law will tell you
20 that the presumption of innocence is not some fancy, legal
21 term, it's a substantial legal right. The presumption of
22 innocence is legal proof of innocence unless or until you
23 all are convinced otherwise. So that's what puts the burden
24 on the State.

25 You know, they collect evidence, they don't send

1 it in, then they don't collect evidence. They don't collect
2 evidence from this huge pool of blood beside the bed. They
3 don't collect evidence from the huge pool of blood in the
4 kitchen. They don't sample any of the areas of blood other
5 than that one spot as you enter the kitchen and the handle
6 on the blind adjuster, and, I believe, one spot on the
7 kitchen couch [sic]. But they, also, don't collect
8 evidence.

9 Now, you heard Hank testify that he ended up
10 getting Ms. Wilson's body from the kitchen to the bedroom.
11 He said I think I carried her, that's how I remembered it.
12 I would submit his memory was probably bad in that regard.
13 It looks like she was dragged somehow and that may be the
14 source of some bruises. I don't know. We don't know. But
15 I then got her on the bed. I was over there in the area of
16 the bed, the part we've just been talking about, bleeding,
17 talking with Stacey Newsom, kind of fading in and fading
18 out, losing blood. And we know from the testimony of Dr.
19 Robinson that he didn't have to slice an artery, a major
20 artery, the radial or the ulnar artery, to bleed a lot. Dr.
21 Robinson said lots of minor arteries and minor veins are in
22 the wrist area, and you can lose a lot of blood from injury
23 to those.

24 I submit he's sitting there talking with Stacey,
25 standing there, sitting, standing, leaning, bleeding. And

1 he says eventually, he just thinks he better -- because he's
2 not thinking rational because he's in shock -- clean her up.
3 Clean her up and him up. And he says he took her pajamas
4 off, her panties off, which they hit the floor where they
5 were found. I took my shirt off, it hit the floor. I took
6 her top off and threw it down.

7 And I asked him to identify something, okay, the
8 top. It's not in evidence because it was never collected.
9 They collected a top with thin straps on it. It's, I guess,
10 from the door right as you're exiting the kitchen, I
11 believe. It's kind of stacked up with towels there.
12 There's not a mark on that shirt. There are no stab marks
13 on that shirt. There's no blood that I could discern on
14 that shirt. The shirt they didn't collect was the one the
15 State would have you believe -- there's a towel and that's
16 from just where Hank said it was, took the PJ's off, threw
17 them down there, shirt off, threw them down there
18 (indicating). And that shown in State's -- no, Defense 40,
19 which the State claims is a towel, okay. That shows again
20 (indicating) in 39, shows again in 38 (indicating).

21 Now, this sequence of pictures, these were taken,
22 if you will remember, August 29th, okay. The scene was
23 processed first on the 28th, then came back and processed it
24 on the 29th. There's pictures of this on the 28th, okay.
25 There's several of them, because there's several of

1 everything that they took pictures of. I don't feel like
2 arguing over whether they're cumulative or not. There's
3 several of everything. Just put them in. I don't care. I
4 want you to look at them. It's, also, on the video from the
5 28th. All right.

6 The position of the shirt, the shirt it is in this
7 photograph from the 29th is in the same position it was in
8 on the video. It's the same position it was in on the
9 photographs taken on the 28th, okay. This shirt, the shirt
10 it is, is probably full of holes, should be, I'm sure it is,
11 was never touched by the police in working their scene
12 because it's in the same place on August 29th that it was in
13 on August 28th. Have not so much as picked it up. On the
14 29th, they're throwing stuff off the bed right here
15 (indicating) under the pillows. They didn't touch the
16 shirt. That's the shirt.

17 Now, the law is that the Defendant does not have
18 to prove self-defense. The law is the State must disprove
19 the existence of self-defense. That's because the burden of
20 proof is on the State and they welcome it so much. They
21 have to prove that self-defense did not occur. They have to
22 prove that he didn't come over -- that he was at fault in
23 bringing the situation about, or that he wasn't in danger of
24 death or serious bodily injury, or that he didn't believe
25 that was in danger of death or serious bodily injury, or

1 that he -- if he believed that, it was not a reasonable
2 belief, or that he had a way to escape without exercising
3 self-defense.

4 Had the door locked behind him. You heard from
5 him as to how it came about when he came over there. He was
6 admitted into the house by Ms. Wilson. His testimony,
7 uncontroverted, was that she came at him with a knife. The
8 State had every opportunity to put up whatever witnesses
9 they wanted to speak to her peacefulness, to speak to his
10 character for peacefulness. And you heard nothing in that
11 regard. Well, she's 105 and he's 170. Yeah, may be true.
12 170 with a knife is not to be toyed with. 105 with a knife
13 is not to be toyed with.

14 So what was his state of mind when he arrived?
15 Not in the heat of passion. Upset, intending to break this
16 off. They have an argument culminating in the statement
17 that he had been intimate with Stacey Newsom, to which she
18 reacted loudly. And as he's looking for a way out, she has
19 picked up a knife from somewhere. Pictures of the kitchen,
20 there are some dishes by the sink. Who knows what was in
21 the sink or with those dishes. No one knows where the
22 knives were. There are a couple of other -- there's three
23 empty slots in the butcher block. Okay. Nothing to say
24 that all three of them were there at that point in time.
25 She could have gotten them from anywhere. And he sees her

1 coming at him with a knife and he reacts.

2 What did he say? First, she bit his hand. He
3 pulled that away. Then he sees her coming with a knife, he
4 reacts. And one, it all happened so fast, I was just trying
5 to get her off of me. Just trying to get her off of me.
6 Not even sure if he had his eyes opened the entire time.
7 Not taking detailed notes as to what he was doing. And yes,
8 he killed her. Yes, he killed her.

9 That number of stab wounds, the State would
10 portray as cold-blooded. I would say that that number of
11 stab wounds, the wounds to her body are consistent with
12 someone that is overcome by passion, overcome by the moment.
13 So if it's not self-defense, it's looking to me not like a
14 cold-blooded killing, but a passionate killing. Passionate
15 killing, voluntary manslaughter doesn't excuse the killing,
16 just views it in a different light than a cold-blooded
17 murder.

18 Now, as further evidence of heat and passion, you
19 should look at the circumstances surrounding that incident.
20 He came over there upset. Ms. Newsom described how he was
21 on the phone to her after the incident, in tears, in and out
22 of the conversation. You heard from Jennifer Williams
23 getting a call wanting money later in the day, okay, from
24 someone who said that he had acted in self-defense, but no
25 one will believe him. Probably for just the reasons she

1 said, 105 pounds, 170, whatever.

2 Now, trying to kill himself should reflect, I
3 submit, passion on his part. That's an example of acting on
4 something he has out of passion. Sitting in the room for
5 hours crying, talking with someone, that reflects a hugely
6 emotional state. Unclothing her and picking her body up
7 from the bed and taking it into the bathroom and cleaning
8 her and himself reflects cold-bloodedness or passion?
9 Laying her out on the sofa in the living room after first
10 putting a comforter down and some other stuff down. Laying
11 her out, covering her up, and then sitting with her after he
12 cuts his wrist for the third time.

13 Remember, there's a knife in the living room
14 marked with, Ms. Stanley said from SLED, DNA. DNA on the
15 blade of the knife in the living room right by where he says
16 he was sitting, right by that little bag that had blood in
17 it. The blood on that knife was his. The blood on the
18 blade of that knife is his. He cut his wrists with that
19 knife. I left out the knife in the bedroom where he cut his
20 wrists, which the blood on the blade is his.

21 So he washes her, he sets up a place to put her on
22 the sofa, carries her there, drags her there or whatever,
23 puts her on the sofa and cuts his wrist, hangs his wrist
24 over the bag, the cooler bag, and bleeds into it. That is
25 something straight out of Romeo and Juliet. That's all that

1 scenario is. And that does not reflect a cold-bloodedness,
2 it reflects passion. He killed her, now he will kill
3 himself. That doesn't reflect cold-bloodedness. That is
4 straight out of Romeo and Juliet.

5 Now, we tested the sheet, I told you, because I
6 was worried about some kind of claims we might get from the
7 State about who was present on a particular spot. You got
8 examples of that. We spent a lot of time -- the State spent
9 a lot of time talking with their witness who did the drug
10 analysis, you know, the gentleman from SLED. A lot of talk
11 about whether marijuana would show up in Ms. Wilson's blood
12 had she ingested it within the last day or so. I think he
13 ended up saying 13 days. Well, the implication is that Hank
14 Hawes said she was smoking dope that day or week preceding
15 it. He made no such statement. He talked about her having
16 -- her having engaged in that, but no particular time in the
17 past.

18 The State started talking about -- they did it
19 with our expert today and did it with Mr. Hawes about
20 Ms. Wilson spewing blood from this wound to her lungs.
21 Well, there's no testimony that she did. In fact, I asked
22 the doctor who did the autopsy who said could have been
23 spewing blood. Any blood in her mouth? No. Okay. No.

24 I go way out and I guess you could postulate that
25 Mr. Hawes cleaned the inside of her mouth when he was

1 cleaning her in the bathtub. Short of that, there is no
2 evidence whatsoever that she was, their term, sorry, spewing
3 blood. She bled a lot. There's no question about that.
4 But whether there's any evidence -- or there is no evidence
5 that she was spewing blood. They have to prove that.
6 That's their burden. They want to advance that as their
7 theory. We've got theories all over the place. That
8 doesn't make them fact. They have to prove that. And they
9 can't. They just want to throw it out there and see if
10 somebody might bite on it.

11 Now, I guess on the -- they're raising this issue
12 of voluntary intoxication being a defense. I hope I was
13 clear when Mr. Hawes testified. It went something like, Are
14 you saying that ADHD had anything to with what happened that
15 night.

16 No. Absolutely not. No.

17 Adderall?

18 He's not blaming anything on what happened that
19 night other than the events he testified about. They want
20 to address that, spend as much time as they want addressing
21 that. That's just not an issue.

22 Mr. Hawes talked about that in some letters to his
23 mother six months after the incident, I guess, or excerpts
24 were read to you. And you will see them. As he's trying to
25 work his way through and make sense out of what happened

1 that night still, also, two and half years later, trying to
2 make sense. Well, the fact is, at the time, he told Ms.
3 Williams, Jennifer Williams, he acted in self-defense. I
4 submit he told Stacey Newsom he acted in self-defense.
5 Believe otherwise is just to say they had this wuv you,
6 baby, baby, call, relationship even after they'd broken up
7 and he spends an hour -- 67 minutes, by my count, talking
8 with her on the phone immediately after and doesn't say
9 anything to her about what had happened. You know, that
10 gives rise to disbelief.

11 So proof beyond a reasonable doubt. I've talked
12 with you about presumption of innocence. We've spoken about
13 the burden of proof in the case, what has to be proven, how
14 facts could be proven. And then proof beyond a reasonable
15 doubt. You will hear charges. I don't take exception to
16 anything Ms. Campbell read to you about what the definition
17 is and His Honor is, certainly, going to charge you. Let's
18 talk about what that is. That is the single highest
19 standard of proof that exist in our system of law. Nothing
20 has to be proven more strongly than that in our courts. If
21 you have a car wreck and someone gets killed in the car
22 wreck, you know, the burden of proof on something like that
23 is by preponderance of the evidence, which is something just
24 by a little bit. That's enough. You can decide in their
25 favor. There's some intermediate levels of proof. Clear

1 and convincing evidence. Clear and convincing evidence is a
2 term. Clear and convincing evidence. That's not proof
3 beyond a reasonable doubt. That's far lower than proof
4 beyond a reasonable doubt. Okay. And if you have a doubt,
5 it needs to be resolved in favor of the Defendant
6 (indicating). That's how we work. That's how our system
7 works.

8 So Mr. Hawes says he acted in self-defense. I
9 submit that there's nothing to contradict that he did act in
10 self-defense. I'm willing to agree that reasonable minds
11 can disagree on their interpretation of the same set of
12 facts. So I would submit to you if you find in considering
13 the evidence that self-defense is not proven to you -- or
14 not -- has been negated to your satisfaction, which is what
15 has to happen, the State has to prove it didn't happen. If
16 you decide they've proven self-defense didn't happen, then
17 voluntary manslaughter fits what happened.

18 It fits Hank's state of mind prior to the
19 incident. It fits his state of mind and actions during the
20 incident. It fits his state of mind as testified to by
21 other people immediately after the incident. It fits his
22 actions in washing the body, sitting with the body, and just
23 not acting rationally, acting grief-stricken, if anything,
24 after the incident. It fits his statements to other people.
25 It fits completely. What doesn't fit is an action that was

1 cold-blooded and was calculated, that's not passion. This
2 was a crime of passion. The relationship was a relationship
3 of passion. So if self-defense doesn't fit, I submit
4 voluntary manslaughter does.

5 Now, lastly, the law says that y'all have no
6 friends to reward and you have no enemies to punish. You're
7 not here to punish anyone. You're here to listen to the
8 evidence, take the law as His Honor charges it, apply it to
9 the facts as you find them to be, and arrive at a verdict.
10 So whether or not you think someone needs punishing, that's
11 not part of the equation. The equation is what do the facts
12 state? What law supports the facts? And you have no
13 friends to reward and no enemies to punish. You're here to
14 speak the truth. You're here to return a verdict that
15 speaks the truth. That's what the word means, two Latin
16 words, vere is truth, dicto is to speak. Veredicto,
17 verdict, to speak the truth. That's what I ask you to do.

18 Go back, look at what you have to look at,
19 consider the evidence, and return a verdict that speaks the
20 truth. If you do that, your verdict will be not guilty of
21 murder. That's what I ask that you do. Thank you.

22 THE COURT: All right. Mr. Foreman, ladies and
23 gentlemen of the jury, why don't you stand and stretch. As
24 they say, stretch it out, shake it out. Relax for a few
25 minutes. And we'll continue with closing arguments in just

1 a few minutes after you move around a little bit. I'm not
2 going to take a break. I'm going to let you stand and relax
3 for a few minutes and we'll continue with the closing
4 arguments.

5 (Pause.)

6 MR. FOREMAN: May we have five minutes?

7 THE COURT: You need five minutes? Okay. We'll
8 take five minutes.

9 (Whereupon, the jury left the courtroom
10 at 12:35 p.m.)

11 (Whereupon, a short recess was held.)

12 THE COURT: You ready? Solicitor, you ready?

13 MS. CAMPBELL: Yes, sir.

14 THE COURT: All right. Bring us the jury, please.

15 BAILIFF: Yes, Your Honor.

16 (Whereupon, the jury returned to the
17 courtroom at 12:45 p.m.)

18 BAILIFF: The jury is seated, Your Honor.

19 THE COURT: Thank you very much.

20 Solicitor.

21 MS. CAMPBELL: May it please the Court.

22 In preparing for trial, we try to anticipate what
23 the defense may be. In a murder case, there may be three or
24 four. Number one, you've got the wrong guy. It's an ID
25 case. Or maybe the defense side it's really not murder,

1 it's just voluntary manslaughter. It's just a drug deal
2 that went bad or self-defense.

3 This case, though, was a little unique because
4 it's kind of a combination of defenses. Because the defense
5 is going to get up here and the Defendant is going to get on
6 the stand and claim self-defense. No one else was there.
7 Who's going to dispute him? But when that doesn't really
8 work, then they get up here, just like they just did, and
9 argue oh, well, it's only voluntary manslaughter. Because
10 even if the Defendant's story is not only just untrue, but
11 impossible -- and we'll get back to that in a minute --
12 we'll just to create that little bit of doubt, that
13 reasonable doubt to reduce it from the murder it is.

14 And if that doesn't work, we'll go ahead and just
15 trash the victim. Let's talk about every time she said
16 anything sexual in a text message. Let's talk about the men
17 she was speaking to that night, although there's no evidence
18 she was doing anything other than having an evening with
19 friends. The DNA evidence speaks to that. Let's try and
20 make her look as bad as possible. Accuse her of drug use,
21 call her a whore, his words (indicating), not mine.

22 And if that doesn't work, go back to the oldest
23 defense in the book, just talking about what the police
24 didn't do. As they pointed out, there are three swabs that
25 they didn't test. There was blood at the scene that they

1 didn't collect because no one knew, but Hank Hawes, that he
2 cut his wrists there. And just try to throw this all up and
3 see what sticks. Confuse the jury. Blame Jennifer Wilson.
4 Because that's what Hank Hawes has done since the day they
5 met. Evil, cunning, manipulating Jennifer Wilson. It's her
6 fault. They talk about the presumption of innocence. His
7 own attorneys have gotten up here and argued that at the
8 very least, he's guilty of voluntary manslaughter, but that
9 doesn't stop them from trashing the victim.

10 In opening statement, Ms. Pringle got up here --
11 and I, actually, made sure I got the correct verbiage out of
12 the transcript. And she said -- the word passion has been
13 heard over and over and over again. And by the way, listen
14 carefully to the Judge because he is not going to charge you
15 that it has to be a cold-blooded murder. Listen carefully
16 to that. Mr. Strickler said cold-blooded, at least, 15
17 times. We don't have to prove it's cold-blooded. In fact,
18 all we have suggested is that it's brutal.

19 In opening, a case of passion. Passion that
20 resulted in tragedy. What happened was a tragic turn of
21 events. Their words. That these two people had a passion
22 for each other, that they should have moved on away from
23 each other, but they didn't. It wasn't one-sided. From the
24 moment this case started, pointing to the victim. I can't
25 tell you what this is right now, just not murder. She then

1 said malice murder is the worst kind of murder. Ladies and
2 gentlemen, I submit every murder by definition is a malice
3 murder. And that you are not here to send a cry out for
4 justice. Listen carefully to the Judge. Your job is to
5 evaluate the evidence, judge the credibility of the
6 witnesses, apply the law, and come to a verdict that speaks
7 the truth. You're only job, ladies and gentlemen, is to
8 seek justice. Because what this case boils down to is Hank
9 Hawes telling the truth? Because the only reason he
10 wouldn't be telling the truth is because what happened that
11 night, what really happened was murder. Why else would he
12 have to make up a story?

13 Now, ladies and gentlemen, this was a violent and
14 vicious, and I submit, from the infliction of the wounds, I
15 don't know if passion is the right word, but it doesn't get
16 any more brutal. Ms. Pringle got up here and talked about
17 in opening, too, about every week real murders come into
18 this courthouse. Kind of inferred that Hank Hawes is
19 different (indicating). I'm not sure if she meant that he
20 looks different. And I asked myself, what does a burglar
21 look like? For that matter, what does a rapist, a robber, a
22 child molester look like? Unfortunately, he can be the
23 priest, soccer coach, teacher. Hank Hawes may think he is
24 above the law, that the law doesn't apply to him, that he
25 can just talk his way out of anything. I submit, ladies and

1 gentlemen, Hank Hawes drinks from the same cup of justice as
2 every other defendant that comes in this courtroom. He is
3 not above the law.

4 Now, I want to take this opportunity to talk about
5 the facts, the facts and the evidence that's been presented
6 to you. And in doing that, we're going to talk a little bit
7 about what the witnesses showed you or were able to testify
8 to.

9 The first witness you heard from was Jack
10 Swerling. He was the defense attorney. He called 911. You
11 have the 911 tape. He calls around 11 o'clock -- and if I'm
12 misstating the times or anything, it's not intentional.
13 There's just a lot of times in this case. So y'all remember
14 because that's important. In that vein, he said he knew
15 about a murder, gave them directions where to go, that he
16 had been contacted by Hank Hawes.

17 The next person you heard from was Kelly Smith.
18 And Mr. Smith, they didn't mention in their closing
19 argument. Kelly Smith's testimony is important. What did
20 Kelly Smith tell you? And remember, consider his bias or
21 prejudice. What does he have to gain or lose? What
22 Mr. Smith told you is that was he home that night. He had
23 been under the weather. He had gone to bed early. He was
24 awakened sometime after two in the morning by noise. Noise
25 that he had heard, similar noise earlier in the summer

1 between Hank Hawes and Jennifer Wilson where she yelled out
2 no. This time, the noise came from the bedroom area.

3 And let me be the first to say, was there a
4 struggle in the bedroom? Do we have to prove that he
5 stabbed her all in the bedroom? No. The State doesn't
6 submit that. And I'll get back to that. Was there a
7 struggle in the bedroom that alerted Mr. Smith? Remember,
8 it went on for a while and then it was quiet, and then he
9 heard more sounds. Remember how he described what happened?
10 He could feel it like hitting the walls. Is that consistent
11 with the head trauma we're talking about? Because, ladies
12 and gentlemen, this wasn't a quick, over-like-that murder.
13 This was one where Jennifer Wilson fought hard for her life.
14 Twelve stab wounds to the front and to the back.

15 Started in the bedroom. The next thing he hears
16 is in the kitchen. What's significant about that? That's
17 where the knives are. That's where the pool of blood is,
18 where the drag marks are coming back into the bedroom. Is
19 it corroborated by the crime scene we heard? Completely.

20 What else did he tell you? That towel that was
21 shown, the towel that had never been on that back door
22 before (indicating), as you can see clearly from the back
23 porch, which he would have seen every day if he had gone to
24 his car, was up when he got back there the next morning when
25 the police were there. He called 911. He told them that

1 his neighbor was being beaten. You have that tape. He did
2 what he thought he should, even though he was scared.

3 What happens next? And think about this when you
4 consider the Defendant's version of what happened
5 (indicating). The police respond. They check the house.
6 At that point, they see nothing inside. So he's in shock,
7 out of control, yet he never testified that this whole fight
8 happened in the dark. That's absolutely ludicrous. The
9 first thing he did, look at the light switch in the kitchen,
10 was go over and turn out the lights because he knew the
11 police were coming. It had been loud. He puts a towel over
12 the window that has blood on it, and the keys in the door
13 lock, which he said were in her purse and that he retrieved
14 right before he left. And remember, that's after he's had
15 his shower, too, after he's cleaned up. And we know he's
16 not bleeding profusing at that point because there's no real
17 blood in his car which he immediately gets into. Look at
18 the photographs of the keys and the door, they're covered in
19 blood. Because the first thing he did after murdering
20 somebody was make sure the police didn't get there. Knew to
21 keep quiet while they were outside. All the lights were
22 off. No movement inside. Kelly Smith heard them out there.
23 They approached the front door to check. No one went to the
24 door. Are those the actions of a person who has just been
25 victimized by evil Jennifer Wilson? Why did he not want the

1 police to come in? And we'll get back to that. Because he
2 wasn't ready. He hadn't thought it through what he was
3 going to do.

4 You heard from Eric Ashton. He saw the Defendant
5 leaving the next morning around eight. He's driving funny.
6 He's still not sure quite where he's going with everything.
7 So he's working on the self-defense, so he doesn't want to
8 get blood in his car.

9 You heard from Janelle Bondr, who was Skyping with
10 Jennifer that day. David Virtue, she was at his house that
11 night. He was concerned for her safety. From Steven
12 Harrod, dinner that night. We did the entire timeline of
13 what she did that night. She liked to bake. She liked to
14 can, too. You can see the cans in the pictures. She took a
15 cake over to Chandra at the party that night, stayed about
16 an hour. And we'll get back to all the texts, and I know
17 you're sick of them, but they do show what happened that
18 night.

19 On her way home, at 1:36 a.m., right before that,
20 look on the timeline. She calls the Defendant, If you want
21 me to come over, I will. No answer. He's been waiting on
22 her all night. He's ready to break up with her. Why didn't
23 he answer his phone? Because he's doing other things.

24 Tasha Laman, told her, I will destroy your life
25 brick by brick. It's even in the texts. And she told him

1 to go see a therapist. Dr. Bruce Hill, one night that
2 summer, she was scared. He had to stay in the building with
3 her. You heard how the police responded that night. No one
4 was there. No one came to the odor. Certainly, no one was
5 calling 911 or reporting having been a victim of Jennifer
6 Wilson.

7 Instead, what does he do? He calls Stacey Newsom.
8 And the Defense has gotten up here and said he told Stacey
9 everything that happened. But that's kind of funny because
10 when he, actually, calls 911 for himself sometime around 11,
11 something like that, so he can get help because he's dizzy,
12 he talks about how he needs an ambulance.

13 What's wrong, sir?

14 I'm cut. I'm bleeding.

15 Okay, what happened that you got cut?

16 I've cut my wrists -- excuse me, my wrists got
17 cut.

18 Then finally, did you cut your own wrists?

19 Yes.

20 He's committed to that at that point.

21 Then he gives them details on how to get in the
22 back. There's a gate on the side that's fake locked. Told
23 them to open the lock, come in the back of the deck.

24 Stay on the phone. What's your name?

25 Hank.

1 You still have a weapon?

2 Do I have what?

3 Do you still have a weapon or did you cut yourself
4 with a knife?

5 Yeah, like a steak knife. I don't have it, I'm
6 outside.

7 Doesn't say, it's bad where I killed my
8 girlfriend.

9 Then, you're outside? Again, he gives them
10 direction on how to get back in the gate.

11 And keep you on the phone. How long ago did you
12 do this?

13 I don't remember.

14 He doesn't remember a lot when he doesn't want to
15 talk about it.

16 What's your last name? Anybody live with you?

17 No, my dog.

18 And his dog is important to him. Remember, he had
19 to leave Jennifer's that morning to go check on his dog.

20 I called my ex, that would be Stacey, and I told
21 her that she needed to come pick up my dog. So she knows
22 how to get in, but she doesn't really know what's going on.
23 That's what he told them before he changed his story. She
24 doesn't know what's going on.

25 And the pair of shorts. You heard from other

1 officers that processed the crime scene. You heard from
2 Paul Nelson and George Wise. You, also, heard from Zach
3 Jackson, who was the hospital guy that went in to check on
4 the Defendant. He was there and how he got back with
5 Investigator -- Officer Hudson and they figured out that
6 this was the person they were looking for. And you heard
7 from Julius Jones, who some seven days after this occurred,
8 eight days, maybe, he's confronted about the wounds to his
9 wrists, all Hank Hawes tells him is that they're defensive
10 wounds. Because at that point, that's his defense.

11 Who else did you hear from before I get back to
12 the crime scene? Aaron Wilson. And he was important
13 because he talked about how Hank Hawes contradicted some of
14 what he said. He stayed there until midnight, 11:30 to 12.
15 While he was there, he was buying shots for everybody,
16 drinking, having a good time, happy about getting back with
17 his girlfriend. That was his state of mind.

18 You heard from Stacey Newsom. And what did Stacey
19 Newsom tell you? That she got a phone call, that he was in
20 and out of it. He wanted her to stay on the phone because
21 he didn't feel well. And with Hank Hawes, look at the
22 texts, every time he wants attention, he just starts talking
23 about how he doesn't feel well. And he throws up whenever
24 he doesn't want to feel well. That's a common theme.

25 You, also, heard from Kimberly Williams, who he

1 calls -- and we'll get to the timeline in a minute, after
2 he's already done his research on his defense attorneys,
3 after he's phoned Jack Swerling. And he calls her up, and
4 it's interesting what he says. And remember her testimony
5 and don't let me misquote it. He, basically, tells her I've
6 killed someone. It was in self-defense, but no one will
7 believe me. Even he knew (indicating) no one would believe
8 his story. So I cut my wrists. And, by the way, I need
9 25,000, 30,000 for a lawyer.

10 You heard about the text messages. And I just
11 want to go over those briefly before we talk about the crime
12 scene and what some of those show as far as that day or even
13 weeks before that. Because that is like they said, it goes
14 back and forth. Look at all the text messages. Y'all will
15 have everything back there. Who was always the one begging,
16 obsessed with getting back together? Who was the only one
17 that ever says no. I'm scared. I don't know what you will
18 do to me. And these are just a few of these things. And
19 these are just in the 10 days before this happened.

20 On the 18th, 8:07, basically, they're fighting
21 over the Stanley Steamer thing where he thought Chandra was
22 in the house. His reaction. He didn't have any problem
23 with giving her up. Whore. Again, liar, whore. You will
24 both get what you deserve, comma, I do deserve happiness
25 from a truthful person.

1 That same day, still fighting. 10:50 or earlier,
2 talking about how he secretly tapes her. I reviewed the
3 videos and spoke to my attorney. I was clear to tape.

4 August 20th. Remember the ones in white -- all
5 the yellows are him reacting. I didn't want sex tapes out
6 on me. Remember the threats. If you break up with me, I'll
7 expose you, I'll expose your friends. This is a man who
8 went there calmly to break up?

9 Starting not to care. I got the message. No
10 worries. Don't screw with me. And you will have all the
11 pages. These are just a few.

12 08/20, 1:35, please don't, you scare me. If I
13 felt safer, I would come over. I probably shouldn't have
14 texted you, I'm sorry.

15 I won't beg. Your choice. You have nothing to
16 fear.

17 No, you might video everything and that worries
18 me.

19 The 20th, get in your car. I miss you. Come on,
20 Curly Q.

21 I can't. I can't risk it. I'm still too
22 frightened. And God, I love you.

23 And yeah, fault her for loving him.

24 Lay beside me tonight if you love me.

25 Her answer, not when someone tells you they will

1 ruin your life brick by brick. In this case, it was stab by
2 stab. I have to be a bit more careful.

3 But give him credit, he's persistent in his texts.
4 He talks about how that's his MO, persistence.

5 Later, after they'd been together, I wish you were
6 always like you were this afternoon.

7 Baby, I'm not saying it will never work, just not
8 now. Get good at being the man you like and I being the
9 woman I like and then maybe we can try again. And it's goes
10 on.

11 Hank, don't push it. This is on the 21st, the
12 next day. This was my first night without nightmares. And
13 that was because you were really nice yesterday.

14 They, also, talked about how he went over that
15 night and she confronted him about Stacey because she was
16 obsessed with Stacey, and that's what set her off. When
17 that rage came over her, remember, she pulling her hair out,
18 according to him, because he mentioned Stacey. She asked
19 him if he had been in touch with her and he said yes, and
20 that's what sent her over the edge. Does that even make
21 sense?

22 On 08/26, to Jennifer Wilson from him, I need your
23 help. This is when he was trying to get her to come over,
24 which she does. When he had the gallbladder issue, which
25 ended up being a kidney stone. I'm on the phone with Stacey

1 and she thinks it's my gallbladder. Where are you when I
2 need you? Well, if Stacey is what set her off, it doesn't
3 even make sense.

4 And the timeline from those two days, the 27th and
5 the 28th. And these will be back there with you as well.
6 He wakes up that morning after having googled, yet again,
7 what does passing a kidney stone feel like so he can make
8 sure when he tells Jen he's passed a kidney stone, he knows
9 what it's supposed to feel like. And remember, earlier,
10 he's asked her if she can watch Lad, that's how he gets her
11 over to the house. Then he goes into the kidney stone
12 thing. Then they talk about getting together. She brings
13 him a biscuit.

14 Thank you, it was sweet.

15 How are you feeling? And that's at 12:25 on that
16 Saturday, the 27th.

17 Little sore, but better. I'm bored and hungry
18 now. What are you up to? Can we get together?

19 He talks about how he's talked to Connie that
20 morning. He admits he didn't do that, I guess he just made
21 that up, too. He's got quite an obsession with medical
22 issues. Connie was his doctor. She said he needs to drink
23 three liters a day. He said the meds are eating up my
24 water. I would like you to stop by. The oven is beeping,
25 do I need to do anything? That afternoon when he was over

1 there.

2 Then that evening, 1519, later that afternoon, he
3 starts talking to Jennifer. Where are you? Probably going
4 to Cantina. And his story was when he got up here that they
5 had plans to get together. Well, then why are they texting
6 back and forth about what he's doing that afternoon, where
7 he's been. She doesn't even know. If she was supposed to
8 meet him there, why is he texting her?

9 Aaron's on the way, things of that nature. That's
10 when he starts texting Rachel. And remember, even at the
11 bar that night, he's trying to find out from Aaron who he
12 can hit on. All these to Rachel (indicating) that he said
13 was teaching him how to jump.

14 Rachel, Monica, Stacey, Rachel. He says he's
15 telling everybody he's happy he's getting back with his
16 girlfriend. And these don't even include like Antoinette
17 and Amy and all those. Stacey, Rachel, Stacey, Rachel,
18 Stacey, Rachel.

19 And then it gets to be about 2129. Are you with
20 someone? Are you on one as a date? I won't be here in an
21 hour. No worries. Maybe something is up.

22 No. No one is a date. She's desperate because
23 she knows him. And if he thinks she's on a date, it's not
24 going to go well for her. She doesn't want him to show up.

25 Some more to Rachel.

1 I won't make it tonight to 76, but I will come by
2 your place. This is to her. And that's at 2211, which
3 would be 10:11.

4 We're still waiting on the check. It's taking
5 forever.

6 I'm tired. I want to curl up with you right now.

7 Back to Jennifer, let me know when you walk out
8 and I'll see you at my place. That's at 2218.

9 Then to Jennifer, to Jennifer, to Jennifer. Are
10 you out yet, babe?

11 Yes, we just left. Taking forever to get the
12 check. I'm sorry.

13 No worries.

14 I'm headed home.

15 To Jennifer. Are you coming? Is it better there
16 than with me?

17 She writes back never.

18 Then come on.

19 To her, early night? Babe? Really? Then good
20 night, party girl. That's at 2329, 30 minutes before
21 midnight.

22 Then one to Kim Williams. Then he texted her, the
23 door's unlocked if you decide to show up. Then it gets to
24 be, Don't do this, please.

25 Do what?

1 Because it's all about control. That's Hank
2 Hawes, he's got to be in control.

3 Then it goes on after the text. Are you coming or
4 not? Jen, make your choice tonight. I don't want this
5 life.

6 Then on the 27th, outgoing text to Jennifer
7 Wilson, Please, are you coming, yes or no?

8 She texted back. I said I would come, sorry it is
9 later than you had hoped.

10 Then on the 28th at 1:36 from Jennifer to him. So
11 I didn't hear back from you. I left a message. I am home
12 and in bed, goodnight.

13 Then you see calls to Jennifer Wilson, then
14 outgoing text at 2:03:17. And remember what Investigator
15 Pegram testified to about a time period when he crosses into
16 her zone. He's going to her house.

17 Outgoing to Jennifer, I'm still waiting on you and
18 I never said anything about three a.m. Outgoing call to
19 Jennifer Wilson, 2:13; outgoing call to Jennifer Wilson,
20 2:14.

21 And sometime between that last call and 2:37 when
22 he calls the love of his life, Stacey Newsom, these events
23 transpired. And I submit in between that time that he's
24 done his best to cut off the lights, put up the towel, and
25 he's calling Stacey, but he doesn't tell her what he did

1 because he knows Stacey will call the police. But he just
2 needs somebody to be there and to hold his hand while he
3 figures out what to do.

4 2:37, 2:53, 3:08, 3:19, 3:52, Stacey. Phone call,
5 outgoing call, Stacey Newsom, 4:21, 4:21. Then an e-mail at
6 5:22, his Last Will.

7 At that point -- and the State doesn't -- we don't
8 have to prove whether he faked his suicide or attempted it.
9 I submit he's a phlebotomist. He'd been a medical tech for
10 10 years. He was obsessed with medical things. He was,
11 certainly, able to kill Jennifer Wilson, three-inch deep
12 wounds to her. So was he able to kill himself? That's for
13 you to decide. It doesn't affect whether or not he
14 committed murder. He sends her a Last Will. I wish to
15 leave everything, all possessions, including Lad to Stacey
16 Newsom. I wish for her to handle all my final arrangements,
17 exclusively, according to my wishes. My family is to have
18 no say in my arrangements. This is what they describe as in
19 and out, unable to function, not knowing what's going on.
20 Just sat there and bled into a cooler, which I'll get to in
21 a minute.

22 Then he goes home. Last call to Stacey Newsom is
23 at 8:48. He's on the internet. He's come back to a little.
24 He's able to look up the Strong Law Firm, South Carolina
25 criminal defense lawyer, Jack Swerling, contact Dave

1 Farrell, attorney at law, South Carolina defense attorney,
2 Randolph Huff, Victor Lee Law. Then the phone calls to
3 Swerling, Swerling, one back to Stacey, Kim, Kim, money,
4 Kim, Stacey. Because he needs help with his defense.

5 That day, Kim, 10:25; Stacey, 10:54. 11:11 is his
6 call to 911. And what's telling? He calls 911. Did he
7 ever call anybody for Jennifer Wilson? No, but he's able to
8 call for himself. He's on the phone with Stacey when they
9 come. Right there (indicating) 11:21. Incoming call from
10 Kim. Outgoing call back to Stacey. He's at the hospital.
11 He won't tell them what he's done because he's not sure how
12 he's going to go with it yet. And I will get back to that.

13 Phone call to Stacey, Kim, Stacey -- excuse me,
14 Stacey, Stacey, throughout the whole afternoon to the point
15 where he has to ask the nurse, who, by the way, he wanted to
16 know that he's from Florida and he's in finance, for a
17 charger. He's just killed someone in self-defense or
18 voluntary manslaughter and that's how he reacts?

19 The crime scene, the Defense has gotten up here
20 and talked to you about we can't prove exactly where she was
21 stabbed. We don't have to prove exactly where each stab
22 wound occurred. We don't have to prove exactly where each
23 slash happened. We don't have to prove exactly which wall
24 or bedpost he banged her head into. We don't have to prove
25 at what point he punches her in the mouth and causes a slit

1 on her lip. Is that where he got the little dot on his
2 finger? The tooth mark.

3 And by the way, the police photographed him. They
4 searched him, every and any inch of him. He says that she
5 bit his finger. There's no bruise. There's one mark
6 (indicating). Did he get that in this violent attack where
7 his shirt is ripped -- and I'll get back to that -- where
8 he's fighting for his life and she has a big knife?
9 Remember, not any of the ones he used, a big knife that
10 miraculously isn't anywhere to be found. It's not next to
11 supposedly where her body ended up. And we submit, yeah,
12 she did bleed in that kitchen. Did it end up there? Yes.
13 That's consistent with what Mr. Kelly Smith told you, where
14 she was screaming no, no, as she fought for her life.
15 Where's the big knife? Where are the buttons from his
16 shirt?

17 What do we know about the crime scene? We
18 submitted multiple items to be tested. And when these
19 investigators were processing the crime scene, no one had
20 the information about Hank Hawes slitting his wrists there
21 at the crime scene. And let me say one thing right now,
22 even if all that blood on the side of the bed is his, I
23 submit that doesn't prove this was self-defense. It proves
24 it was murder. Because what does he do afterwards?

25 According to him, he gets her body and dragged --

1 he didn't say dragged, he said he didn't know how he got her
2 into the bedroom. And they're drag marks there. Is it
3 consistent? She layed in that pool of blood until he
4 decided he was going to stage the scene. And what do we
5 have to prove that? By his own admission, he puts the body
6 on the bed, for whatever reason, he never really said. And
7 then according to him, at some point, he decides to wash
8 her, which he does. And he's able to take off her
9 clothes -- and we'll get back to the tank top -- and able to
10 get her into the bathtub. And he washes both of them. And
11 we know this because when he leaves, he gets into his car
12 and then he goes to his home. And the most we see is a
13 small swipe in his home of blood. And in his car, there's
14 nothing, except some specs from the bottom of his feet
15 because he's been tromping through the blood all night doing
16 stuff.

17 And look at the crime scene. Why is he pacing
18 back and forth so much? They brought in this expert, but
19 limited him to testify to this one space they wanted to be.
20 Ladies and gentlemen, assume that's his blood there, and we
21 submit it is, but what the expert wasn't able to tell you is
22 how did it get there.

23 And when this case first came in, you look at the
24 crime scene and there's this cooler. And there are many
25 photographs of it, this cooler (indicating), and it's got

1 blood. But what's unusual, it's not just blood on the
2 outside, it's blood on the inside. And we tested that blood
3 and it's Hank Hawes's blood. And his explanation is is that
4 he was putting his hand so he wouldn't get blood on the rug
5 that he threw up on. Yet, if you look at this crime scene,
6 there is blood everywhere, everywhere. Why would he need
7 this cooler to collect his blood? He's a phlebotomist.
8 He's a medic. He needs blood to make it into a crime scene
9 that could support self-defense. So in order to put it
10 where he wanted it, he had to collect it.

11 And look at this (indicating), because these
12 straps are cut. Were they in the way? And they're photos.
13 Look at the top, what appears to be a pour pattern and the
14 drips down the side. And this doesn't take reconstruction
15 of the scene. This is common sense. Hold it up to the area
16 of the sheets (indicating), where he wanted the cuttings
17 taken from, and you'll see these. That's his blood
18 (indicating). And remember, there's a knife right next to
19 that, in case he needs to go to self-defense. Is the pour
20 pattern consistent? And they talk about how this pool of
21 blood down there. And I submit some of it probably is his
22 blood because it got poured in there, remember the stains
23 around, so that he could go with self-defense. The crime
24 scene itself suggest this.

25 And then I thought well, why did he wash the body?

1 Why do he move into the living room? And remember, all this
2 takes time. He's having to wait to make sure the police
3 aren't outside in the dark before he can start doing things
4 and moving things by his own admission. And we, also, don't
5 have to prove at what point he cut his wrists. But he
6 needed the blood, so he cut his wrists and he collects it.
7 And then he washes the body and he wraps it up. Remember,
8 how it appears at the scene? In a comforter or a blanket.
9 You'll have the photographs. Why clean it? Why put it
10 there?

11 You have photographs from his car, State's Exhibit
12 No. 262. Here's the only even presence of blood in that car
13 other than some miniscule drops on one of the foot pedals.
14 But what's in the trunk? These items (indicating), the
15 Playtex gloves, paper towels, the tarp. Those were in his
16 car we know when he left because they're still there when
17 the police arrived. So the clear inference is were those in
18 his car when he went there? And why did he need paper
19 towels, latex gloves and a tarp?

20 Was the plan to clean the body and move it because
21 he thought he could get it out to the car after he put his
22 blood at the crime scene? He miscalculated because he did
23 get weak from the blood loss and he couldn't finish
24 executing the plan. And are those the acts of someone
25 acting in self-defense or someone who's a victim? Is that

1 what happened? Common sense. And they're so worried about
2 having her blood in that bedroom. There's a mixture of the
3 blood where he looked through the shades. I submit he went
4 back and forth on multiple occasions to check and see who
5 was out in the yard.

6 He did get weak, so he decided he had to get out
7 of there. He'd figure it out when he got home. And that's
8 when he started calling defense attorneys.

9 Put blood on the blades of all the knives, his
10 blood. What was the whole story about how he cut himself
11 multiple times with different knives, why was that?

12 The shirt. And I submit, ladies and gentlemen, if
13 that had been the shirt, to say the Columbia Police
14 Department wouldn't have collected, the shirt with stab
15 wounds in it, it's ludicrous. But he had to find something
16 that looked like a shirt because that's a problem because
17 the black tank top -- remember, he's the one who said it was
18 a black tank top she was wearing -- was down the hallway.
19 So it wouldn't support his story. It wouldn't support his
20 story either if he had gotten her to take off that top prior
21 to stabbing her. That wouldn't work so well for his defense
22 if I went over there to break up. That's her piece of
23 clothing found there. The tank top that he described, but,
24 oh, that's not it. It's this other one. And they put in
25 those little pictures, we put in the big ones. Because

1 there is no tank top with stab wounds. So that in and of
2 itself disproves what he did. Left his shirt at the scene,
3 and yet, more of his blood, ripped. The buttons missing.
4 Did he throw those out, stick them in his pocket?

5 You heard from the pathologist about her wounds.
6 Stab wound number one, that's not just one that went in. He
7 twisted it. And he knew from his training where the carotid
8 and the jugular were, so he made sure he got that one.
9 Because then, she would only be able to fight for about two
10 more minutes. Stab wound two to the left breast, three
11 inches deep -- on the floor, that's the entire length of
12 that knife. It perforates the left lung. And when you look
13 at it in terms of perforate or penetrate. Penetrate means
14 it went into the lung, but not all the way through.
15 Perforate, all the way through the lung. Stab wound three,
16 the right breast, two inches deep. Perforates the right
17 lung. Multiple stab wounds to the back of the arm, the back
18 of the right arm -- excuse me, the left arm, the left arm,
19 the back of the right forearm, the upper left chest. And
20 these are just the stab wounds. I'm not talking about all
21 the other defensive wounds. And you'll have those
22 photographs. Upper back. She fought. Jennifer Wilson
23 wanted to live.

24 And in his scenario where she's coming at him, and
25 he just reacts and defends her off for his life, how did she

1 get all these wounds to the front, the back, the back of the
2 arm? Stab wounds, not just slices. Was she crawling away
3 there in the kitchen when he finished her off and she bled
4 out?

5 Upper left chest, upper left back. Stab wound
6 number nine, left back, three inches deep, perforates left
7 lung. Stab wound 10, posterior left back, 2.3 inches deep.
8 Stab wound number 11, posterior right back, 2.5 inches deep,
9 penetrates the liver. Stab wound number 12, right back,
10 perforates, all the way through, the liver.

11 And then when he testified, he got some letters
12 from his mother. They were provided. And his first words
13 to Kimberly Williams, self-defense. Seven or eight days
14 later, to Julius Jones, these were defensive wounds. First
15 letter to his mother, January 24th, 2012, the Lord has put
16 me in a situation of self-defense. February 10th, pray for
17 me. Pray for Jennifer's family through this horrible event.
18 My heart goes out to them. I beg for their forgiveness
19 because this tragedy was in no way an act of aggression on
20 my part. I believe we were both victims of a psychotic
21 episode. Even he knows his self-defense isn't standing up
22 real well. He's moving on to psychotic defenses.

23 He tells his mother, We'd seen a counselor the
24 week before to establish boundaries and my dislike of her
25 use of drugs.

1 The only person that ever says that Jennifer
2 Wilson and the only evidence is Hank Hawes. Because, again,
3 he's the victim.

4 The counselor had given me the courage not to
5 settle and I was at her house to part company as friends.

6 So at this point, it's the counselor's idea, not
7 what he testified to, that it just came to me sometime after
8 he left Cantina.

9 My prayer is to make a way that does not seem to
10 exist to free me.

11 Even he acknowledges.

12 To allow me to go back to school.

13 And then he talks about how he spared my life,
14 severed artery. There was no severed artery. But once
15 again, that whole medical thing. Guilt. No medical
16 attention for over five hours and he's given back to his
17 mother.

18 By the way, any information you can find online
19 about amphetamine recalls from Sandoz and Teva.

20 So he's going for option number two at this point.
21 He's moving on to a new defense.

22 February 16, writes her about ADHD. He says he
23 has positive traits, creativity and his IQ is very high.
24 His only negative is disorganization. He had almost all
25 positive traits.

1 Other letters, Pray that I receive a break in my
2 case and send me anything you can find on amphetamine
3 recalls, acceptable dosing. I've been praying for a miracle
4 --

5 He knows he needs a miracle.

6 -- in my case before my birthday. Please send me
7 the research material I asked about the amphetamines.

8 He's still on the amphetamine thing at that point.
9 And, remember, these were letters sent to his mother, not to
10 us.

11 April 4th, 2012, if you could look up and send me
12 the address to the Citadel and College of Charleston and
13 Charleston School of Law, information on admission to each.

14 April 9th, I've really been praying for a miracle
15 so I can pursue my dreams.

16 April 17th, Let dad know I'm in here. Maybe he
17 can think of something to help with my case.

18 The Defense has gotten up here and talked about
19 the blood spatter at the scene and put up an expert. You
20 heard from Dr. Robinson, yes, he could have bled a lot with
21 those because he did hit the veins. No arteries. That was
22 Dr. Robinson's testimony. Also, Dr. Robinson never
23 testified that he was spewing this blood. So listening to
24 their crime scene expert today, I'm like what more was he
25 doing? Because, you know, they're frantic, they don't want

1 that blood on the wall next to the picture in the corner of
2 the bedroom to be arterial blood, like Dr. Marcus testified.
3 No, it's not that because that then again refutes his story.
4 Because then she was stabbed while in the bedroom.

5 And you look at. We've described it. He told you
6 that you really can't tell the difference between cast off,
7 but that arterial is thicker, more of an amount. And look
8 at the drips down that wall. Is that consistent with cast
9 off? And what is he doing? He's collecting this blood in a
10 bag, according to him, so then he's going around and spewing
11 his arms around. That's what you have to believe. And if
12 he is doing that, what is he doing other than trying to
13 create a crime scene to help him? And there are many more.

14 You, also, heard from Dr. Trask, who said she
15 would never advise someone to break it off on the first
16 thing. Then you heard from Jemme Stewart. And what did she
17 tell you? That in her two session with Jennifer, classic
18 red flags of domestic abuse. And she didn't mean by
19 Jennifer Wilson.

20 You heard from DNA who did the testing. And there
21 is both of their blood present. And, ladies and gentlemen,
22 the six hours when he remained at the scene, no one could
23 control where he chose to put his blood to try to create his
24 story. Why else would he stay there that long?

25 She testified, but now it's not even in play, that

1 the only semen, what was there was consistent with just the
2 Defendant. The only other was a female fraction. There was
3 no one else's. But it didn't really matter. And the
4 Defendant can't get up here and testify about his anger and
5 going over there because then that would be murder. The day
6 before, Michelle Trask told them they both needed space.
7 Look at the text. Look at the interaction. He's always the
8 one pushing to control for them to be together.

9 I listened to the Defense talk about passion. And
10 listen carefully to the Judge. The brutality of the actual
11 crime itself is a factor in considering whether or not
12 malice was present. In this case, with this evidence, if
13 this is not murder, then what is? Does he get a by or a
14 lesser included because it's domestic? That Jennifer Wilson
15 kind of just, you know, assumed the risk when she chose to
16 date, chose to love that man (indicating). She had it
17 coming.

18 That night, she went out with friends. She had a
19 good time. Her last night. She went over and saw David
20 Virtue. He told her to be careful. She said she would call
21 911.

22 And let me get back to her phone on the ground.
23 Was she trying to get to it to call 911 like she told her
24 friend while they struggled? Had he stabbed her at that
25 point? It doesn't matter. They talk about how we didn't

1 test that. They didn't ask for it to be tested. The phone
2 on the ground had been dropped with blood on it. Was she
3 trying to get there? Did she run into the kitchen trying to
4 get away? Her last minutes on this earth were with him.
5 The last face she saw was Hank Hawes as he stabbed her over
6 and over and over and over and again and again and again.
7 It wasn't -- and it wasn't pretty, and it was painful and
8 she fought.

9 He doesn't have a -- he can't even substantiate a
10 bite mark. But isn't it ironic that he bit her? Haha, I
11 bit her, I'll just say she bit me.

12 On August 28th, this was Jennifer Wilson
13 (indicating). Lucky for her, she went out that night with
14 friends and she had a good time. She even went to a second
15 party for Chandra, her new friend. Maybe she wanted to get
16 romantically involved with him. Remember, she was scared.
17 She told him she wanted to protect him -- Jennifer thought
18 she could control it, the rage. The Defense in this case
19 says because he's gotten up here and said self-defense,
20 which if you don't believe that, voluntary manslaughter
21 because he may have been angry. How many murders happen
22 because people are angry? I submit unless it's a murder --
23 even a person hiring is angry to murder for hire. It's not
24 an act of friendship.

25 After he finished with her and left her there --

1 by the way, even when he left that morning, he still didn't
2 call 911. This is what was left (indicating), and the two
3 stab wounds, one to each breast, one the length of the
4 knife, one almost. Was that kind of just symbolic for him?
5 Ha ha, I can't have her, no one else will. Up close and
6 personal, this murder. His own way of still being in
7 control.

8 Hank Hawes counted on the fact that he could just
9 get away with it, get away from the scene, try to get a by
10 maybe. He'd cover it up as he staged the scene. And if
11 that didn't work, he's going to do what he just does best,
12 just get up here and testify (indicating), talk his way out
13 of it. That's what he does, and just blame the victim.

14 Ladies and gentlemen, I submit Hank Hawes
15 miscalculated. All we ask is that you reach a verdict that
16 supports the cold, brutal facts of this case. Thank you.

17 THE COURT: Mr. Foreman, ladies and gentlemen of
18 the jury, I will give you a copy of these instructions in
19 written form. During your deliberations, you may refer to
20 the instructions to guide your decision-making. You must
21 consider the instructions as a whole and not follow some and
22 ignore others. After you've reached a decision, please,
23 return the written charges to the Court.

24 I have allowed you to take notes during the course
25 of this trial. However, please remember that some people

1 are better note takers than others. Juror notes should not
2 be given any greater weight than the recollection of other
3 jurors. The recollections of individual jurors should be
4 considered reliable as notes taken by any other jurors. I,
5 also, warn you that when you are taking notes, you may not
6 have noticed the body language of a witness which could be
7 used by you in deciding the witness's credibility.

8 The Defendant has pled not guilty to these
9 indictments, which places the burden on the State to prove
10 the Defendant guilty. A person charged with committing a
11 criminal offense in South Carolina is never required to
12 prove himself innocent.

13 I charge you that it is a vital, important rule of
14 law that the Defendant in a criminal trial, no matter what
15 the seriousness of the charge may be, must always be
16 presumed to be innocent until his guilt has been proven
17 beyond a reasonable doubt. This presumption of innocence
18 remains with the Defendant at all times, from the moment he
19 appears in this court, throughout the trial, until you, the
20 jury, reach a verdict of guilty beyond a reasonable doubt
21 based on the testimony and evidence presented.

22 The presumption of innocence is a substantial
23 right to which every defendant is entitled, unless and
24 until, you reach a verdict of guilt beyond a reasonable
25 doubt. If you, the jury, do not find the Defendant guilty

1 beyond a reasonable doubt, it is your duty to acquit the
2 Defendant.

3 What is reasonable doubt? A reasonable doubt is
4 the kind of doubt that would cause a reasonable person to
5 hesitate to act. The State has the burden of proving the
6 Defendant guilty beyond a reasonable doubt. Some of you may
7 have served on juries in civil cases where you were told it
8 is only necessary to prove that a fact is more likely true
9 than not true, such as the greater weight or the ponderance
10 of the evidence. In criminal cases, the State's proof must
11 be more powerful than that. It must be beyond a reasonable
12 doubt.

13 Proof beyond a reasonable doubt is proof that
14 leaves you firmly convinced of the Defendant's guilt. There
15 are very few things in this world that we know with absolute
16 certainty, and criminal cases, the law does not require
17 proof that overcomes every possible doubt. If based on your
18 consideration of the evidence, you are firmly convinced that
19 the Defendant is guilty of the crime charged, you must find
20 the Defendant guilty. On the other hand, if you think there
21 is a real possibility that the Defendant is not guilty, you
22 must give the Defendant the benefit of the doubt and find
23 the Defendant not guilty.

24 The same constitutional laws which designate and
25 make you the finders of fact make me the sole instructor of

1 the law. It is my duty to charge you the law applicable to
2 this case, and it is your duty as jurors to accept and apply
3 the law as I now state it to you. The lawyers are not
4 instructors of the law. You must accept the law and apply
5 the law exactly as I stated it to you. You must not base
6 your decision-making on your idea of what the law is or what
7 you think the law should be.

8 Under our constitution and code of laws of South
9 Carolina, only you the jury can make findings of facts in
10 this case. I'm not permitted to indicate to you how I may
11 feel about the testimony and evidence which has been
12 presented. Throughout this trial, it has been my intention
13 to be fair and impartial toward each of the parties
14 involved.

15 Necessarily, you must determine the credibility of
16 the witnesses who have testified in this case. Credibility
17 simply means believability. It is your duty as jurors to
18 analyze and evaluate the evidence and determine which
19 evidence convinces you of its truth.

20 As you decide whether or not to believe a
21 witness's testimony about a particular matter, you may
22 consider the following: The matter and appearance of the
23 witness while on the witness stand. Was he or she
24 straightforward or hesitant in answering? The testimony of
25 the witness, was it consistent or inconsistent? How the

1 witness came to know the facts that he or she testified to.
2 Was the witness present during the incident or did the
3 witness happen on the scene after the incident occurred?
4 The reason the witness would want to give testimony, which
5 could help or hurt one side or the other. Has the witness
6 exhibited to you any interest, bias, prejudice, or other
7 motive in this case? Thus, you may consider whether a
8 particular witness may gain some reward, payment, personal
9 advantage, or vindication through his or her testimony. The
10 strength of the testimony of the witness. Was the testimony
11 of the witness strengthened or weakened by other testimony
12 or evidence? The duration and length of time between the
13 incident and when they were reported. Would the duration
14 and length of tie weaken or strengthen the witness's memory
15 of the incident? All prior statements. Were prior
16 statements made by the witness consistent or inconsistent
17 with the witness's testimony?

18 In determining the believability of the witnesses
19 who have testified in this case, you may believe one witness
20 over several or several witnesses over one. You may believe
21 a part of the testimony of a witness and reject the
22 remaining part of the testimony of that same witness. You
23 may believe the testimony of a witness in its entirety or
24 reject the testimony of a witness in its entirety.

25 Of course, you do not determine the truth by

1 merely counting the number of witnesses presented by each
2 side.

3 The rules of evidence generally and ordinarily do
4 not permit a witness to testify to opinions or conclusions.
5 An exception to this rule exist for what is called expert
6 witnesses. Witnesses by education or experience that have
7 become an expert in some art, science or profession are
8 permitted to give their opinions in certain areas if the
9 Court qualifies them as expert witnesses. An expert witness
10 may also give a reason for their opinion. An expert opinion
11 is that for you to use any way you see fit. You should give
12 the evidence the weight and credibility you deem
13 appropriate. If you decide the expert opinion is not based
14 on sufficient education or experience, if you decide that
15 the reasons given in support of the opinion are not sound,
16 or the opinion is outweighed by the other evidence, you may
17 disregard the opinion entirely.

18 The evidence or lack of evidence in which you are
19 to decide the facts include the following: The sworn
20 testimony of the witness, both on direct and
21 cross-examination, regardless of which side called the
22 witness; the exhibits that have been received into evidence
23 by the Court and any facts agreed to or stipulated to by the
24 lawyers. The followings are not evidence and you may not
25 consider them when deciding the facts: Arguments and

1 statements made by the lawyers are not evidence. The
2 lawyers are not witness. Their opening statements, closing
3 arguments and other statements are intended to help you
4 interpret the evidence, but are not evidence. If the facts,
5 as you remember them, differ from the lawyers' statements,
6 your memory controls. Questions and objections by the
7 lawyers are not evidence. Lawyers have a duty to their
8 client to make objections when they believe a question is
9 improper under the rules of evidence. You should not allow
10 any objections or the Court's ruling on the objections to
11 influence you. Testimony that has been stricken, or that
12 you have been instructed to disregard, is not evidence and
13 must not be considered. Anything that you may have seen on
14 television, read in the newspaper or on the interest, or
15 heard from others when court is not in session is not
16 evidence. You should base your decision solely on the sworn
17 testimony of the witnesses, exhibits received into evidence
18 by the Court, and any facts agreed or stipulated to by all
19 the parties.

20 The fact that the Defendant was arrested, charged
21 and indicted in this case is not evidence and cannot be
22 considered as evidence of guilt, nor does it create any
23 presumption or inference of guilt. The indictment is merely
24 the written form which contains the charges made against the
25 Defendant.

1 There are two types of evidence which are
2 generally presented during a trial, direct evidence and
3 circumstantial evidence. Direct evidence directly proves
4 the existence of a fact and does not require deduction.
5 Circumstantial evidence is proof of a chain of facts and
6 circumstances indicating the existence of a fact.

7 Crimes may be proven by circumstantial evidence.
8 The law makes no distinction between the weight or value to
9 be given to either direct or circumstantial evidence.
10 However, to the extent the State relies on circumstantial
11 evidence, all of the circumstances must be consistent with
12 each other, and when taken together, point conclusively to
13 the guilt of the accused beyond a reasonable doubt. If
14 circumstances merely portray the Defendant's behavior as
15 suspicious, the proof has failed.

16 The State has the burden of proving the Defendant
17 guilty beyond a reasonable doubt. This burden rests with
18 the State regardless of whether the State relies on direct
19 evidence, circumstantial evidence or some combination of the
20 two.

21 Murder. The Defendant is charged with murder.
22 The State must prove beyond a reasonable doubt that the
23 Defendant killed another person with malice aforethought.
24 In its popular sense, the term malice conveys the meaning of
25 hatred, ill will or hostility towards another. In its legal

1 sense, however, malice does not necessarily mean ill will
2 towards the individual injury, but signifies a malignant
3 recklessness for the lives and safety of others or a
4 condition of the mind which shows a heart fatally bent on
5 mischief. Malice has been defined as the intentional doing
6 of a wrongful act toward another without legal justification
7 or excuse where the circumstances attending a killing show
8 an abandoned heart or malignant heart.

9 Malice aforethought does not require that malice
10 exist for any particular time before the act is committed,
11 but malice must exist in the mind of the Defendant just
12 before and at the time the act is committed. In other
13 words, malice may be conceived at the very moment the fatal
14 blow is given. Therefore, there must be a combination of
15 the evil intent and the act.

16 Malice aforethought may be expressed or inferred.
17 These terms, "expressed" and "inferred" do not mean
18 different kinds of malice, but merely the manner in which
19 malice may be shown to exist. That is either by direct
20 evidence or by inference from the facts and circumstances
21 which are proved. Expressed malice is shown when a person
22 prepared beforehand to do the act which was later
23 accomplished. For example, lying in wait for a person or
24 any other acts of preparation going to show that the deed
25 was within the Defendant's mind would be expressed malice.

1 Malice is said to be expressed where there is manifestation
2 of a violent deliberate intention to unlawfully take away
3 the life of another human being.

4 Malice may be inferred from conduct showing a
5 total disregard for human life. Malice may be inferred
6 where there is no excuse or legal provocation for the
7 killing. Malice may be inferred from the brutal conduct on
8 the part of the person committing the crime. The jury may
9 also conclude by deductive reasoning that under certain
10 circumstances, malice arises even though there is no
11 expressed or direct evidence of an intent to kill. If facts
12 proved are sufficient to raise an inference of malice, this
13 inference would be simply an evidentiary fact to be taken
14 into consideration by you, the jury.

15 The Defendant is not required to prove the absence
16 of malice, rather, the State is required to prove the
17 existence of malice beyond a reasonable doubt.

18 If you find that the State has failed to prove
19 beyond a reasonable doubt that the Defendant committed
20 murder, you may consider whether the State has proved beyond
21 a reasonable doubt that the Defendant committed voluntary
22 manslaughter.

23 To prove voluntary manslaughter, the State must
24 prove beyond a reasonable doubt that the Defendant took the
25 life of another in the sudden heat of passion based on

1 sufficient legal provocation. Both heat of passion and
2 sufficient legal provocation must be present at the time of
3 the killing to constitute voluntary manslaughter.

4 Sudden heat of passion may for a time affect a
5 person's self-control and temporarily disturb a person's
6 reason. The sudden heat of passion must be the type that
7 would make an ordinary person unable to coolly reflect on his
8 actions and would produce an uncontrollable impulse to do
9 violence. The law does not reduce murder to voluntary
10 manslaughter in every homicide committed in the heat of
11 passion. There must be passion justified, excited by legal
12 provocation. Sufficient legal provocation must be the type
13 that would make a person of ordinary reason and caution
14 become enraged and to lose control temporarily. The
15 provocation needed for voluntary manslaughter must come from
16 some act of or related to the victim.

17 Words alone, however vulgar or insulting, are not
18 enough to be legal provocation. Where death is caused by
19 the use of a deadly weapon, the words must be accompanied by
20 some overt, threatening act, which could have produced the
21 heat of passion.

22 The exercise of a legal right, no matter how
23 offensive it is to another is never sufficient legal
24 provocation for voluntary manslaughter.

25 If the heat of passion had cooled or if there was

1 enough time between the provocation, if any, and the killing
2 for the passion of a reasonable person to cool, the killing
3 would not be voluntary manslaughter. In deciding whether a
4 reasonable person would have had enough time to cool off,
5 you should consider all the circumstances surrounding the
6 killing. You may consider the nature of the provocation, if
7 any, the Defendant's mental and physical state, and the
8 circumstances and relationships between the parties.

9 The Defendant has raised a defense of
10 self-defense. Self-defense is a complete defense to murder
11 and voluntary manslaughter, and if not disproved by the
12 State, you must find the Defendant not guilty.

13 The State has the burden of disproving
14 self-defense by proof beyond a reasonable doubt. If you
15 have a reasonable doubt of the Defendant's guilt after
16 considering all the evidence, including the evidence of
17 self-defense, then you must find the Defendant not guilty.
18 On the other hand, if you have no reasonable doubt of the
19 Defendant's guilt after considering all the evidence,
20 including the evidence of self-defense, then you must find
21 the Defendant guilty.

22 The State has the burden of disproving one of the
23 following elements of self-defense: The first element, the
24 Defendant was without fault in bringing on the difficulty;
25 two, the Defendant believed he was in imminent danger or

1 actually was in such imminent danger of losing his life or
2 sustaining serious bodily injury, or he actually was in such
3 imminent danger; if the Defendant believed he was in
4 imminent danger and a reasonably prudent man of ordinary
5 firmness and courage would have entertained the same belief;
6 four, and the Defendant had no other probable means of
7 avoiding the danger.

8 Without fault. The Defendant must be without
9 fault in bringing on the difficulty. If the Defendant's
10 conduct was the type which was reasonably calculated to, and
11 did provoke an assault, the Defendant would be at fault in
12 bringing on the difficulty and would not be entitled to an
13 acquittal based on self-defense.

14 The Defendant must have been in actual imminent
15 danger of death or serious bodily injury or Defendant must
16 have actually believed that he was in imminent danger of
17 death or serious bodily injury.

18 If the Defendant was actually in imminent danger,
19 it must be shown that the circumstances would have warranted
20 a person of ordinary firmness and courage to strike the blow
21 to prevent death or serious bodily injury.

22 If the Defendant's defense of self-defense is
23 based upon his belief of imminent danger, it must be shown
24 that a reasonable and prudent man of ordinary firmness and
25 courage would have entertained the same belief.

1 The Defendant does not have to show that he was
2 actually in danger of loss of life or serious bodily injury,
3 but only that he believed he was in imminent danger because
4 the Defendant has the right to act on appearances. The
5 Defendant has the right to act on appearances even though
6 the Defendant's believes may have been wrong or mistaken.
7 It is for you to decide whether the Defendant's fear of
8 imminent danger or death or serious bodily harm would have
9 been felt by an ordinary person in the same situation. In
10 the final analysis, you are not to decide whether the
11 Defendant made the wisest or best choice, but whether he
12 made a reasonable choice under the circumstances as they
13 appeared to him.

14 If the Defendant's belief that he is in imminent
15 danger of attack is reasonable, he need not wait until
16 actual attack or injury before exercising his right to use
17 non-deadly force.

18 In deciding whether the Defendant actually was or
19 believed that he was in imminent danger of death or serious
20 bodily injury, you should consider all the facts and
21 circumstances surrounding the crime, including the physical
22 condition and characteristics of the Defendant and the
23 victim. The relative sizes, ages and weights of the
24 Defendant and the victim may be considered in deciding the
25 apparent or actual need for force in self-defense and the

1 amount of force needed.

2 The fourth element of self-defense is that the
3 Defendant had no other probable way to avoid the danger of
4 death or serious bodily injury than to act as the Defendant
5 did in this particular case. In other words, a man may not
6 act in self-defense if he had other probable means of
7 avoiding the danger. This requirement is sometimes called
8 "the duty to retreat." This requirement is subject to the
9 limitation that a man need not retreat before acting on
10 self-defense if doing so would apparently increase his risk
11 of danger.

12 Voluntary intoxication. I charge you that
13 voluntary intoxication is never an excuse or a defense to a
14 crime. A person who voluntarily renders himself intoxicated
15 is no less responsible for his acts while in such condition.
16 If a person voluntarily drinks intoxicating liquors and
17 becomes intoxicated and if while in that condition commits
18 an act which would be a crime if it had been committed by a
19 sober person, the fact of drunkenness would not relieve the
20 intoxicated person from responsibility. Voluntary
21 intoxication is not an excuse or a defense to a crime. This
22 rule also extends to the voluntary ingestion of drugs.
23 Voluntary intoxication does not preclude one's ability to
24 act with malice aforethought and is not a defense to a
25 crime.

1 In determining the guilt or innocence of the
2 Defendant, you cannot consider any possible penalty for any
3 particular crime. The punishment for the crime is a matter
4 for me to determine and should never be considered by you in
5 any way whatsoever in arriving at an impartial verdict as to
6 the guilt or innocence of the Defendant.

7 You have been selected as fair and impartial
8 jurors, sworn to impartially try and determine the facts of
9 this case. And when you comply with your oath to do so,
10 then no one will have a right to criticize your verdict and
11 you will have fully discharged your duty as jurors. You are
12 to decide this case according to the testimony that you have
13 heard from the sworn witnesses along with other evidence
14 introduced.

15 I charge you that as jurors, you must make your
16 decision in this case without bias and without prejudice to
17 any party. You cannot allow yourself to be governed by
18 sympathy, prejudice, passion, public opinion or any other
19 arbitrary factor.

20 Both the State and the Defendant have the right to
21 expect that each one of you will carefully and impartially
22 consider all of the evidence in this case and that you will
23 follow the law as I have explained it to you.

24 Nothing that I may have said or done during the
25 course of this trial has been in any way intended to express

1 or suggest a view of this case or any opinion as to the
2 facts, the weight of the evidence, or the credibility of the
3 witnesses. If you believe any of my actions or words have
4 indicated otherwise, you must disregard such and form your
5 own view of this case or your own opinion as to the facts,
6 the weight of the evidence, or the credibility of the
7 witnesses.

8 Mr. Foreman, ladies and gentlemen of the jury, I
9 have prepared a verdict form. It has the name of the case,
10 the case number and it says, number one, as to the charge of
11 murder, we, the jury, on the charge of murder by unanimous
12 consent find the Defendant, Hank Hawes, guilty or not
13 guilty. If you find the Defendant not guilty of murder,
14 proceed to question two.

15 Question two, on the charge of voluntary
16 manslaughter, we, the jury, on the charge of voluntary
17 manslaughter by unanimous consent find the Defendant, Hank
18 Hawes, guilty or not guilty. There's a place for the
19 foreperson to sign and date.

20 Ladies and gentlemen, I will tell you that your
21 decision has to be unanimous, all 12 of you have to agree.
22 And I would, also, ask using the collective reasoning
23 process on your part, I would ask you to respect each
24 other's opinions, review the evidence, talk about the
25 evidence, and reach a unanimous decision after you have

1 reviewed the evidence and talked about the case.

2 I don't want you to start deliberating. I have to
3 take the charge up with the jury -- excuse me, with the
4 lawyers. I may have to bring you back and correct something
5 or add something to it. So don't begin your deliberations
6 until the bailiffs has brought you the charge book and
7 verdict form, and all the exhibits, plus we have to review
8 to make sure we've got all the exhibits. It will take us a
9 while to do that and get it back to your jury room. I think
10 your lunch will be waiting for you in the jury room.

11 So if you will take your notes in the jury room,
12 don't begin deliberations at this point until we get all of
13 the exhibits back to you. You may follow the bailiffs to
14 the jury remember.

15 (Whereupon, the jury left the courtroom
16 at 2:13 p.m.)

17 THE COURT: Any exceptions to the charge from the
18 State?

19 MS. GARFIELD: No, sir.

20 THE COURT: Any from the Defendant?

21 MR. STRICKLER: Your Honor, only in that Your
22 Honor did not charge my request for charge of exfoliation of
23 evidence on the part of the State. I need to locate a copy
24 of that --

25 THE COURT: I've got it. I'll mark it as a

1 Court's Exhibit No. 4.

2 MR. STRICKLER: Thank you very much.

3 (Court's Exhibit No. 4 was marked for
4 identification.)

5 THE COURT: All right. If you all would come
6 forward --

7 MR. STRICKLER: Can we deal with one thing prior
8 to that?

9 THE COURT: I want you to look at all the evidence
10 and make sure it's here.

11 MR. STRICKLER: Yes, sir. We just need to get one
12 thing on the record prior to that.

13 MS. PRINGLE: We have an issue, I believe, with
14 respect to the photographs shown by Ms. Campbell to the
15 jury, but I need to see them so I can identify them for the
16 record and make my objection.

17 THE COURT: What photographs are you talking
18 about?

19 MS. PRINGLE: There were two photos or three that
20 she showed to the jury at the end of her closing argument
21 where she said this is how he found her and this is how he
22 left her, before and after. I think what she held up was
23 the picture of her at the birthday party with Mr. Harrod at
24 10:00, and then put up an autopsy picture --

25 THE COURT: If it's in evidence, she can show

1 them.

2 MS. PRINGLE: Well, I would just like to make my
3 objection -- renew our objections to the photographs for the
4 record if I could, please.

5 THE COURT: Well, you've already made them. If
6 she showed something that's not in evidence, that's a
7 different story.

8 MS. PRINGLE: May I just place my grounds on the
9 record, Your Honor?

10 THE COURT: Yeah, please do.

11 MS. PRINGLE: Thank you. The photograph at the
12 birthday party, I objected to. It went in through Steven
13 Harrod. The objection that I made at the time was to 403
14 relevance and prejudice. The stated reason for entering
15 that photograph by the State was for state of mind. That
16 was a photograph taken four or five hours before this
17 incident. The autopsy pictures were claimed to be offered
18 to assist the pathologist in explaining his findings. But I
19 just want to state for the record the two autopsy pictures
20 used --

21 MS. CAMPBELL: They're not autopsy.

22 MS. PRINGLE: I'm sorry, the two -- they were not
23 autopsy, they were on the couch, State's Exhibit 202,
24 State's Exhibit 46, showing the gaping wound to the jugular,
25 her breast, her naked upper body. The stated reasons for

1 entering these photos is not the reason why these photos are
2 being used. I understand they're in evidence, but the
3 solicitors, and this is an ongoing issue in the appellate
4 courts, as you know, are offering this photos for stated
5 reasons and then using them in this dramatic, inflammatory
6 fashion. And I think there is no way you can say that that
7 does not elicit an emotional and inflammatory reaction.
8 That's why we have those rules. So I just want to state for
9 the record what the jury was shown. These photos --

10 THE COURT: How about identifying them, if you
11 would, please.

12 MS. PRINGLE: I did. They are State's Exhibit
13 202, State's Exhibit 46. I don't know about the birthday
14 party picture.

15 MS. CAMPBELL: 322 is the birthday party.

16 THE COURT: 322. Okay. Those are three or four
17 exhibits?

18 MS. PRINGLE: Three that she showed them.

19 These photographs, the jurors cried when they saw
20 them, so they're eliciting an emotional reaction. I think
21 they're inflammatory. I know you're going to deny it, but I
22 would renew our motion for a mistrial and renew our previous
23 objections.

24 THE COURT: All right. Your motion for a new
25 trial is denied.

1 All right. Will y'all please make sure all the
2 exhibits are in the court reporters's hands so we can send
3 them back to the jury, please?

4 (Whereupon, a short recess was held.)

5 THE COURT: All the alternates are in the hallway.

6 (Whereupon, a short recess was held.)

7 THE COURT: All right. I believe it will be
8 Court's Exhibit No. 5 will be the note from the jury to stop
9 deliberations and come back in the morning. And both
10 parties agree to that.

11 Is that correct, Ms. Campbell?

12 MS. CAMPBELL: Yes, sir.

13 THE COURT: That's, also, correct from the
14 Defendant?

15 MR. STRICKLER: Yes, sir.

16 THE COURT: And I have just notified that on the
17 note and I'll mark it Court's Exhibit No. 5.

18 (Court's Exhibit No. 5 was marked for
19 identification.)

20 THE COURT: Bring the jury, please.

21 (Whereupon, the jury returned to the
22 courtroom at 5:33 p.m.)

23 BAILIFF: The jury is seated, Your Honor.

24 THE COURT: Thank you very much.

25 Mr. Foreman, I got your request to stop

1 deliberations this afternoon and return in the morning at
2 9:30. I'm going to grant the request. Only thing I would
3 ask is to make sure you leave all the exhibits in the jury
4 room. The jury room will be locked and the exhibits will be
5 locked up tonight. Be back in the jury room at 9:30 in the
6 morning to continue deliberations.

7 Please don't discuss the case with anyone else and
8 don't read anything in the paper or anything on TV about it.
9 Same instruction I've been giving you for a week and a half.
10 See you in the morning at 9:30. Come straight to the jury
11 room. When all 12 of you are in the jury room, y'all can
12 continue your deliberations. Have a good evening. Thank
13 you very much.

14 (Whereupon, the jury left the courtroom
15 at 5:34 p.m.)

16 THE COURT: All right. If everybody will keep
17 their place and give the jury an opportunity to exit the
18 courthouse, then everybody else, the public can leave at
19 that time.

20 MR. STRICKLER: Your Honor, may we approach
21 briefly?

22 THE COURT: Yes, sir.

23 (Whereupon, a bench conference was held
24 off the record.)

25 THE COURT: All right. How long does it take the

1 jury to get out of the courthouse so I can let everybody go?

2 BAILIFF: About eight minutes -- eight to ten
3 minutes.

4 THE COURT: Okay. All right. We're going to
5 adjourn, but not let anybody out of the courtroom for about
6 10 minutes to give the jury a chance to get out the
7 courthouse and parking area, please.

8 BAILIFF: Yes, sir.

9 THE COURT: All right. We'll adjourn until 9:30
10 in the morning. And everybody leave the courtroom in about
11 10 minutes. Thank you very much.

12 MR. STRICKLER: Thank you.

13 (Whereupon, Court was adjourned for the
14 day, October 15, 2014, to be reconvened
15 on Thursday, October 16, 2014.)

16 THE COURT: Anything from the State before we
17 bring the jury in? They said we have a verdict.

18 MS. GARFIELD: No, sir.

19 THE COURT: Anything from the Defense?

20 MR. STRICKLER: No, sir.

21 THE COURT: All right. Bring the jury, please.

22 BAILIFF: Yes, sir.

23 (Whereupon, the jury returned to the
24 courtroom at 10:19 a.m.)

25 THE COURT: Mr. Foreman, I understand the jury has

1 reached a verdict; is that correct?

2 PROSPECTIVE JUROR: Yes, Your Honor.

3 THE COURT: Would you mind giving the verdict form
4 to the bailiff, please?

5 Mr. Foreman, I have typed on the indictment your
6 verdict, and have I a place for you to sign for the
7 foreperson, if you would, please.

8 Madame Clerk, would you get that signed where it
9 says foreperson, please?

10 Thank you so very much.

11 Madame Clerk, you may publish the verdict.

12 THE CLERK: In the State of South Carolina, County
13 of Richland V. Hank Hawes, in case number 2011-GS-40-5012,
14 on the charge of murder, we, the jury, on the charge of
15 murder by unanimous consent find the Defendant, Hank Hawes,
16 guilty, signed by the foreperson, No. 212, on October 16th,
17 2014.

18 Mr. Foreman, is this your verdict and the verdict
19 of entire jury?

20 THE FOREPERSON: Yes, ma'am.

21 THE CLERK: Thank you.

22 THE COURT: Any motions as far as polling the jury
23 from either party?

24 MR. STRICKLER: The Defense would request polling?

25 THE COURT: You want the jury polled?

1 MR. STRICKLER: Yes, sir.

2 THE COURT: Okay.

3 Madame Clerk, would you poll the jury, please?

4 THE CLERK: Ladies and gentlemen of the jury
5 panel, I'm going to call your juror number and ask you two
6 questions relating to your verdict. Just answer yes or no,
7 please.

8 No. 212, was this your verdict?

9 JUROR #212: Yes, ma'am.

10 THE CLERK: Is it still your verdict?

11 JUROR #212: Yes, ma'am.

12 THE CLERK: 302, was this your verdict?

13 JUROR #302: Yes, ma'am.

14 THE CLERK: Is it still your verdict?

15 JUROR #302: Yes, ma'am.

16 THE CLERK: 108, was this your verdict?

17 JUROR #108: Yes, ma'am.

18 THE CLERK: Is it still your verdict?

19 JUROR #108: Yes, ma'am.

20 THE CLERK: 278, was this your verdict?

21 JUROR #278: Yes, ma'am.

22 THE CLERK: Is it still your verdict?

23 JUROR #278: Yes, ma'am.

24 THE CLERK: 25, was this your verdict?

25 JUROR #25: Yes, ma'am.

1 THE CLERK: Is it still your verdict?
2 JUROR #25: Yes, ma'am.
3 THE CLERK: 282, was this your verdict?
4 JUROR #282: Yes, ma'am.
5 THE CLERK: Is it still your verdict?
6 JUROR #282: Yes, ma'am.
7 THE CLERK: 95, was this your verdict?
8 JUROR #95: Yes, ma'am.
9 THE CLERK: Is it still your verdict?
10 JUROR #95: Yes, ma'am.
11 THE CLERK: 265, was this your verdict?
12 JUROR #265: Yes, ma'am.
13 THE CLERK: Is it still your verdict?
14 JUROR #265: Yes, ma'am.
15 THE CLERK: No. 7, was this your verdict?
16 JUROR #7: Yes, ma'am.
17 THE CLERK: Is it still your verdict?
18 JUROR #7: Yes, ma'am.
19 THE CLERK: 206, was this your verdict?
20 JUROR #206: Yes, ma'am.
21 THE CLERK: Is it still your verdict?
22 JUROR #206: Yes, ma'am.
23 THE CLERK: 46, was this your verdict?
24 JUROR #46: Yes, ma'am.
25 THE CLERK: Is it still your verdict?

1 JUROR #46: Yes, ma'am.

2 THE COURT: 112, was this your verdict?

3 JUROR #112: Yes, ma'am.

4 THE CLERK: Is it still your verdict?

5 JUROR #112: Yes, ma'am.

6 THE CLERK: The jury has been polled, Your Honor.

7 THE COURT: Thank you so very much.

8 Do you have a sentencing sheet?

9 MS. GARFIELD: I do not, Judge.

10 THE COURT: You do or you don't?

11 MS. GARFIELD: I do not.

12 THE COURT: Well, are you going to give me one?

13 MS. GARFIELD: Yes, sir.

14 THE COURT: How long is it going to take you to

15 get me one?

16 MS. GARFIELD: The paralegal has gone to get one

17 right now.

18 THE COURT: Okay. All right. How long before

19 they get here?

20 MS. GARFIELD: She just goes next door to get it.

21 She'll be right back.

22 THE COURT: Okay. All right. I'll be glad to

23 hear from the State on sentencing and I'll be glad to hear

24 from anyone that would like to speak on sentencing. I'll be

25 glad to hear from you at this time. And I'll hear from the

1 Defendant if he has anything.

2 Before we get to that, I'll give you the 10 days
3 to submit motions unless you want to make them today.

4 MR. STRICKLER: No, sir, I think at this point in
5 time, we must -- we'll go ahead and move that Your Honor
6 grant a new trial in this matter and reference our motions
7 for directed verdict and mistrial entered at the end of the
8 State's case, renewed at the end of the Defense case with
9 the additional bases from Your Honor's ruling regarding
10 Mr. Hawes retaking the stand was during the Defense case.
11 And so under those bases, we ask that you reconsider your
12 ruling in that regard -- or in those regards and reverse
13 yourself in granting a new trial in this matter.

14 THE COURT: All right. Those motions are denied.

15 Now, I will -- I would also extend you 10 days if
16 you so choose. If you want to raise any other issues, I
17 would extend that to you.

18 MR. STRICKLER: Thank you, sir.

19 THE COURT: To produce them in writing.

20 MR. STRICKLER: Thank you.

21 THE COURT: All right. Anything from the State on
22 sentencing while we're waiting on the sentencing sheet?

23 MS. GARFIELD: Yes, Your Honor, Mr. Hawes had, we
24 believe, two prior domestic violence arrests in the State of
25 Florida in 1999. One, we believe was a no contest

1 conviction. The other one was that he went through some
2 sort of --

3 THE COURT: Do you know the facts of those cases
4 at all?

5 MS. GARFIELD: Judge, those were subject to the
6 prior bad acts that we tried to get in.

7 THE COURT: I understand. I want to hear about
8 them now for sentencing.

9 MS. GARFIELD: Yes, sir. Just give me one moment.

10 MR. STRICKLER: Of course, Your Honor, I object to
11 these regarding -- information regarding arrest for the
12 purpose --

13 THE COURT: I understand, we're talking about
14 sentencing.

15 MR. STRICKLER: Yes, sir.

16 THE COURT: And I'll hear anything they want to
17 tell me and I will listen to what you want to tell me.

18 MR. STRICKLER: Thank you, sir.

19 THE COURT: Okay.

20 MS. GARFIELD: Judge, I can't put my hands on it,
21 but from my recollection, there was a woman that he was
22 involved with and she -- they got into some sort of
23 altercation. She goes into the bathroom to try to dry her
24 eyes and he goes in and grabs her from behind, struggling
25 her to the floor. A child came down to check on mom and I

1 want to say he hit the child, I believe, if my memory serves
2 me correctly. She then persuades him to take her to her
3 mother's house trying to get away. Once she gets to her
4 mother's house, she reports it to law enforcement. While
5 law enforcement is interviewing her, Mr. Hawes calls law
6 enforcement and reports that the woman he was involved had,
7 actually, begun the altercation and that she was taking
8 Adderall that was not prescribed to her.

9 That was one of the incidents we were trying to
10 get in previously, obviously, because we believe it was the
11 same set of facts. Those are the facts that I recall.
12 There are multiple other acts of violence. We interviewed
13 several women in the past, to include former wives that he
14 has assaulted as well. They were prepared to come forward
15 and testify if Your Honor had ruled in our favor. Several
16 of them -- one particular girlfriend, however, refused to
17 come because she said that she didn't want anything to do
18 with Mr. Hawes and all he would try to do is make her look
19 like a drug addict.

20 THE COURT: All right. Anything else on
21 sentencing or victim impact?

22 MS. GARFIELD: Beg the Court's indulgence. Your
23 Honor, if you would, please, hear from Ms. Wilson's mother,
24 Pat Wilson.

25 THE COURT: Ms. Wilson, I will be glad to hear

1 you. Can you speak up so everybody can hear you?

2 MS. PAT WILSON: I will try.

3 THE COURT: What's your full name?

4 MS. PAT WILSON: I'm Pat Wilson.

5 THE COURT: Yes, ma'am.

6 MS. PAT WILSON: And Jennifer's mother. I don't
7 know how a parent can described the broken heart when
8 someone takes your child from you. There's always a dark
9 cloud over your head. No matter what happy holiday or
10 family event that you have, it's -- it invades. Your first
11 thought in the morning, it always is, and your last thought
12 at night that you have is about Jennifer. Jennifer was so
13 lively, brought so much life to our family. She was an
14 excellent daughter. She was a fantastic sister. And she
15 always wanted to be the world's best aunt to our grandson
16 and accomplished that.

17 She's a friend. Everybody here has been so
18 supportive of us and we appreciate it. But Jen was really
19 big smiles, curls, high heel shoes clicking across the floor
20 90 miles an hour. It was a challenge to keep up with her, a
21 challenge we enjoyed every minute of. She liked to read.
22 Really, she loved to read. When she was small, not too
23 small, but her room was on the second floor and she would
24 climb out of the bedroom window. If you were looking for
25 her, you always looked up because she was laying on the roof

1 reading. Or she had a favorite tree in our yard and you
2 could go and find her up in the branches reading. She was
3 an avid reader, but she, also, loved to travel. She loved
4 snow skiing. She loved yoga. Any sport or challenge you
5 put in front of her, she just went for it with gusto. Her
6 real passion was teaching.

7 THE COURT: Her real passion was what?

8 MS. PAT WILSON: Teaching.

9 THE COURT: Okay.

10 MS. PAT WILSON: She loved to be in the classroom
11 and she loved to be in with the kids more than she ever
12 loved research, but she did both of them with excellence
13 here at the University.

14 Now, I guess if I wasn't so nervous, I could tell
15 you Jen stories all day. There's so many memories that we
16 have of her, but, really, here, I'm here, Your Honor, to say
17 that Mr. Hawes did not passionately love our daughter. If
18 you would let me just part of a quote from a well-known and
19 very respected source.

20 Love is patient, love is kind. It does not envy,
21 it does not boast. It is not proud, it is not rude. It is
22 not self-seeking. And I could read further, but if you read
23 all of it, you will not find anywhere in there that love is
24 murder.

25 But I ask you, Your Honor, to please remove

1 Mr. Hawes from society. Do not let him free for the rest of
2 his life. Your Honor, it's too late for Jennifer, but not
3 for Kimberly, Karen, Stacey, Christine, Amy, Antoinette,
4 Joy, Rachel, Monica. And these are only the ones mentioned
5 this week. And, sir, I worry about his daughters.

6 Your Honor, only you can make this decision. You
7 have the power to free these woman from living lives of
8 fear, fear of Mr. Hawes.

9 Jennifer had this thing she'd do when she came
10 home. She'd come in the house and she'd wrap her arms
11 around you and she'd squeeze so tight, you'd thought the air
12 was going to be just squeezed out of you. She called them
13 squishies. And squishes made everything better. They were
14 hi, I'm glad to be home. It meant gee, mom, that's a great
15 dinner you made tonight, or if I was tired, it was you need
16 a squishy, mom, it will be better. Sir, I need a squishy
17 right now.

18 THE COURT: I'm awfully sorry for your loss.
19 Thank you very much.

20 Solicitor, anybody else you would like me to hear
21 from?

22 MS. GARFIELD: Your Honor, I believe that's the
23 only person that would like to address the Court. And I do
24 have my hands on the materials I was trying to find, Judge.
25 So I won't mislead the Court, the incident that I described

1 to you involved a victim named Amy Hiight, H-I-I-G-H-T. Law
2 enforcement did not, actually, make an arrest in that case.
3 They were not able to determine if Mr. Hawes was the primary
4 aggressor because there were no fresh markings found on Ms.
5 Hiight. Obviously, Judge, our domestic violence laws have
6 changed drastically since the late 90's.

7 The incident where the Defendant was convicted
8 involved another woman by the name of Marsha Hance. And in
9 that incident, also, happening in 1999 in the State of
10 Florida, they were dating. And they got involved in a
11 verbal argument concerning the victim wanting to leave the
12 residence to meet a friend. At that point, they began an
13 altercation during which the Defendant covered her mouth
14 with her hand, holding her on the floor. She tried to free
15 herself, but he bit her on her left hand. She was able to
16 flee and summon law enforcement. That's the one that we
17 believe he went to pretrial diversion. This is the victim
18 that refused to come. She was scared of the Defendant,
19 wanted nothing do with him and was afraid he would try to
20 make her into some sort of drug addict.

21 THE COURT: Okay. Thank you so very much.
22 Anything else from the State?

23 MS. GARFIELD: Nothing further, Judge.

24 THE COURT: Mr. Strickler, I will be glad to hear
25 from you or anyone you would like me to hear from.

1 MR. STRICKLER: Your Honor, just very briefly. As
2 you just heard from the State, Mr. Hawes has no prior
3 criminal history. Just that one charge that they alluded to
4 initially, which was not a charge, never charged. And one
5 charge, which he went to court for and received a pretrial
6 diversion sentence, which should be expunged from his
7 record.

8 Beyond that, Your Honor, of course, our hearts go
9 out to the Wilson family. We will pursue appropriate --
10 subject to sentencing.

11 THE COURT: All right. Anything else you would
12 like to tell me?

13 MR. STRICKLER: No, sir.

14 THE COURT: All right, Ms. Pringle, anything you
15 would like to add?

16 MS. PRINGLE: No, sir.

17 THE COURT: Pardon?

18 MS. PRINGLE: No, Your Honor.

19 THE COURT: Mr. Hawes, is there anything you would
20 like to say to the Court prior to sentencing?

21 THE DEFENDANT: No, sir, Your Honor.

22 MS. EIGENBROT: No, Your Honor.

23 THE COURT: Thank you so very much.

24 All right. Mr. Hawes, indictment number 5012, the
25 sentence -- excuse me, the charge of murder, you're

1 sentenced to the State Department for Corrections for a
2 period of life. Thank you very much.

3 All right. Mr. Foreman, ladies and gentlemen, you
4 may retire to the jury room. Thank you so very much. The
5 Court is adjourn.

6 *****END OF PROCEEDINGS*****
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1 COUNTY OF RICHLAND)

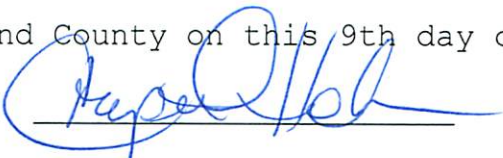
2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported
4 the preceding case entitled State of SC V. Hank Hawes Case
5 No. 2011-GS-40-05012, at the Richland County Courthouse,
6 October 6 - 16, 2014.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 1390 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 9th day of March, 2015.

15 
16 Crystal Holmes, Official Court Reporter

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2011-GS-32-1255
Appellate Case No. 2014-002288

RECEIVED
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SC Court of Appeals

The State of South Carolina,..... Respondent,

v.

Hank Eric Hawes,..... Appellant.

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STATEMENT OF ISSUES

1. Did the Trial Court err by permitting the State to introduce numerous graphic photographs of the decedent's body where the probative value, if any, of those photographs was outweighed by the resulting unfair prejudice, and where the State successfully, though improperly, employed those photographs in closing argument by juxtaposing them with smiling photos of the decedent to elicit an emotional response from the jury?
2. Did the Trial Court err by permitting the State, a day after it concluded its cross examination of Mr. Hawes, to recall him to the stand for a single question intended solely to elicit testimony from him that would permit the State to then call "impeachment" witnesses to testify about Mr. Hawes' prior acts that would otherwise be inadmissible?
3. Did the Trial Court err by permitting testimony regarding a prior argument between Mr. Hawes and the decedent?
4. Did the Trial Court err by refusing to recuse the Fifth Circuit Solicitor's office from prosecuting a case in which two fact witnesses were an assistant solicitor and her husband?

STATEMENT OF THE CASE

This appeal arises from the errors of law committed during the prosecution and conviction of Hank Eric Hawes. On October 5, 2011, the State of South Carolina indicted Mr. Hawes for murder. (R. 1145.) Prior to trial, Mr. Hawes' counsel moved to recuse the Fifth Circuit Solicitor's office from prosecuting the case in light of the fact that two material fact witnesses in the case were an assistant solicitor and her husband. (*See* Def. Motion to Recuse, R. 1.) Judge DeAndrea Benjamin held a hearing on the motion on December 19, 2012 (*see* Transcript of Pre-Trial Hearing, R. 2), and, in an Order filed February 8, 2013, denied the motion (*see* Order Denying Motion to Recuse, R. 14.)

The action was tried before Judge J.C. Nicholson, Jr. on October 6–16, 2014. The Fifth Circuit Solicitor's office—represented by Dolly Garfield, Luck Campbell, and Foster Matthews—prosecuted the case. Mr. Hawes was represented by public defenders Doug Strickler, E. Fielding Pringle, and Megan Eigenbrot. During the ten-day trial, the State relied on the testimony of 35 witnesses, including the decedent's neighbors and coworkers, the police officers who responded to the scene, SLED evidence analysts, and several of Mr. Hawes' acquaintances. Mr. Hawes testified in his own defense and called one expert witness to present testimony regarding bloodstain pattern analysis at the scene. After the State concluded its cross examination of Mr. Hawes, the trial court permitted the State to recall him to the stand the following day in an effort to elicit "impeachable" testimony from him that would then permit the State to call witnesses to testify about prior bad acts—testimony that would otherwise be inadmissible.

At the close of the State's case, at the close of all evidence, and after the jury returned its verdict, the trial court orally denied Mr. Hawes' motions for directed verdict.

(R. 791, 1039, and 1135.) The court instructed the jury on the elements of murder, voluntary manslaughter, and self-defense. (R. 1114 – 1118.) After deliberating for several hours on October 15 and several more hours on October 16, the jury returned a verdict finding Mr. Hawes guilty of murder. (R. 1130:25 to 1131:20; *see also* Verdict Form, R. 1147.) The trial court sentenced Mr. Hawes to life in prison. (R. 1142:24 to 1143:2; *see also* Sentence Sheet, R. 1148.) This appeal followed.

STATEMENT OF THE FACTS

Mr. Hawes and Jennifer Wilson met in February 2011 through the online dating site E-harmony. (R. 805:23 to 806:2.) The two began dating shortly thereafter, though neither of them treated their relationship as an exclusive one. (R. 805:15-21; *see also* R. 153:3 to 155:1; R. 165:21 to 169:2; R. 575:6 to 581:22.) In June 2011, Mr. Hawes, who had previously resided in Simpsonville, South Carolina, moved to Columbia to be nearer to Ms. Wilson. (R. 805:22 to 806:1.) Mr. Hawes moved into a home on Woodrow Street in Columbia. (R. 806:13–16.) Ms. Wilson, a professor at the University of South Carolina, lived nearby at 3721 Monroe Street in the Shandon neighborhood. (Supp. R. 1:9–13.)

The relationship, like many romances, was passionate and, at times, turbulent, leading some to classify it as an “off and on” relationship. (R. 79:8–9; Supp. R. 2:3–5.) Indeed, Mr. Hawes and Ms. Wilson themselves recognized their relationship was sometimes “stormy.” (R. 409:25 to 319:4; R. 599:13–17; *see also* R. 807:6–10 (“[W]e had a lot of ups and downs. We had some good days, we had some bad days.”).)

During the final week of July and the first week of August 2011, Ms. Wilson—an avid yogi—travelled to Bali, Indonesia on a two-week group yoga trip. (R. 83:15–23.)

Over the course of the trip, she met a fellow USC professor named MVS Chandrashekhar, colloquially known as “Chandra.” (R. 158: 21–25.) Upon returning from Bali, Ms. Wilson and Chandra communicated frequently and met for several meals at Chandra’s home, around town, and at Ms. Wilson’s home.¹ (R. 165:21 to 169:2.) Though Chandra and Ms. Wilson were not dating (R. 167:4), their text message exchanges indicated mutual interest in a romantic relationship. (See R. 167:15–19;² R. 168:12–17.³) In addition, shortly after her return from Bali, Ms. Wilson met for dinner with a former boyfriend, Steven Harrod. (R. 140:22 to 142:4.) Mr. Hawes noticed that, upon her return from Bali, Ms. Wilson “became more distant” from him. (R. 810:6.) Accordingly, Mr. Hawes set up and paid for a couples counseling session that Ms. Wilson, at his behest, attended with him on August 26, 2011. (R. 538:21–24; R. 810:19–25.)

On Saturday, August 27, 2011, Ms. Wilson texted Mr. Hawes, who was not feeling well, and offered to bring him breakfast on her way to yoga. (R. 453:19–24; R. 811:15–22.) After bringing him breakfast and attending her yoga class, Ms. Wilson again texted with Mr. Hawes to inquire how he was feeling and whether she could bring him

¹ On one occasion on August 18, 2011, Ms. Wilson and Mr. Hawes had been “sexting” and Mr. Hawes—in a somewhat excited state—arrived at Ms. Wilson’s home, only to discover to his surprise and dismay that Chandra was there. (See R. 419:1–23; R. 540:7 to 541:17.)

² On cross-examination, Chandra testified as follows regarding text messages he exchanged with Ms. Wilson: “Q. Do you recall after she left that night sending her a text message that says, You drive me wild? A. I said that, yeah, I did. I said that to her. Q. And her saying the feeling is mutual? A. That may have happened.”

³ On cross-examination, Chandra testified as follows regarding text messages he exchanged with Ms. Wilson: “Q. [Do you recall] telling her, Can I come by and get a hug, but I promise no funny business? A. Yes. Q. And her saying, Between you and me, there’s always funny business, do you recall that?”

anything. (R. 454:11–22.) She subsequently invited him to stop by her house for lunch. (R. 455:1–4.) He did so, and the two were sexually intimate that afternoon. (R. 455:7–8; R. 812:2–7.) Around 5:30 p.m., the two departed for their respective evening plans. (R. 812:17–20.) Mr. Hawes went to Cantina 76, a restaurant on Devine Street in Columbia, for dinner and to socialize with a friend, Mr. Aaron Wilson. (R. 455:9–19; R. 812:23 to 813:5.) It was Mr. Hawes’ impression that Ms. Wilson was going to attend a birthday party for a coworker and then join him around 8:00 p.m. (R. 813:9–17.) Over the course of the evening, the two exchanged texts in which Ms. Wilson’s itinerary kept “getting later and later.” (R. 813:17–21.) Mr. Hawes left Cantina 76 around 10:30 p.m. and headed home. (R. 813:25 to 814:9.)

Meanwhile, while Mr. Hawes had been having dinner at Cantina 76, Ms. Wilson had joined her former boyfriend, Mr. Harrod, to attend a birthday party held at Cowboy Steakhouse downtown Columbia. (R. 141:12–21.) The two met at Mr. Harrod’s house at 7:15 p.m. and traveled to the steakhouse, where they remained until shortly after 10:00 p.m. (R. 142:5–16.) While at the steakhouse, Ms. Wilson exchanged text messages with Mr. Hawes in which she lied about the nature of the party and who else was present. (*Compare* R. 455:13 to 456:10 *with* R. 150:5–7.⁴) Ms. Wilson and Mr. Harrod subsequently traveled to a friend’s house to continue the birthday party until they departed around midnight. (R. 143:3–16.) From there, they traveled together back to Mr. Harrod’s house, where they arrived around 12:20 a.m. (R. 143:17–23.) At his house, she

⁴ Ms. Wilson texted Mr. Hawes that the party was in the Vista area of Columbia and that she was “with 12 black people,” was “the only white person” in the group, and was *not* on a date. (R. 455:13 to 456:10). However, Mr. Harrod—a Caucasian—testified that he and other white people were with Ms. Wilson at the birthday party that evening on Main Street. (R. 150:5–7.)

and Mr. Harrod spent some time leaning against the car and hugging and kissing one another before Ms. Wilson departed. (R. 153:21–25.) Ms. Wilson next traveled to Chandra’s to attend *his* birthday party, where she stayed until around 1:30 a.m.. (R. 160:24 to 161:17.) Upon her departure, Chandra walked Ms. Wilson to her car and also gave her a kiss. (R. 161:18–24.)

Over the course of the evening, Mr. Hawes and Ms. Wilson had exchanged text messages regarding when that evening she would return home. (*See* R. 813:17–21.) Ms. Wilson repeatedly indicated she would soon join Mr. Hawes, but then repeatedly delayed and postponed doing so. (*See, e.g.*, R. 455:23 to 456:24; R. 457:4–12; R. 457:23 to 458:4; R. 564:5 to 565:22.) As the evening got later and Ms. Wilson continued to delay her return, Mr. Hawes began feeling “[f]rustrated, blown off, [and] jerked around.” (R. 913:22–24.) Their final text message exchanged was at 2:03 a.m. on August 28, 2011, and Mr. Hawes telephoned Ms. Wilson at 2:13 a.m. and 2:14 a.m. (R. 458:11–13; R. 459:23 to 460:15.)

By that time, Mr. Hawes “was feeling upset” and “kind of blown off” by Ms. Wilson, and he “really realized that the relationship wasn’t going anywhere and [he] just needed to end it.” (R. 815:9–12.) Accordingly, Mr. Hawes “decided to go ahead and go over there and just go ahead and tell her that . . . I didn’t want to be in this relationship anymore.” (R. 815:19–22.⁵) Mr. Hawes drove to Ms. Wilson’s duplex, parked in the normal spot in the back, knocked on the door, and was admitted by Ms. Wilson. (R. 816:9–20.) He left his shoes on the back porch, which was in keeping with Ms. Wilson’s

⁵ *See also* R. 803:10–13 (“Q. Why did you go? A. Basically, I saw the relationship wasn’t going anywhere, so I went there just to have a clean break of it.”); R. 856:8–13 (same).

rule of not wearing shoes in her home. (R. 817:2–14.) Upon entering the house, Mr. Hawes testified that he told Ms. Wilson that he wished to end their dating relationship. (R. 820:8–12.) He testified that Ms. Wilson became angry, inquired if he'd been in communication with his former girlfriend, Dr. Stacey Newsom, and became enraged to hear that Mr. Hawes had been in touch with her. (R. 820:12 to 821:15.) Mr. Hawes extended a hand toward Ms. Wilson in an explanatory gesture, and Ms. Wilson reacted by biting down on his index finger. (R. 821:17 to 822:5; R. 823:19–25.)

Mr. Hawes attempted to flee from the duplex, but the door was locked. (R. 824:1–20.) Meanwhile, he testified, Ms. Wilson began screaming at him and pulling her hair. (R. 824:22 to 825:6.) The next thing he knew, Ms. Wilson had a knife and was advancing on him. (R. 825:8–20.) Mr. Hawes grabbed a nearby kitchen knife in hopes of defending himself, when suddenly, “in a blink of an eye, she was on top of me.” (R. 825:20 to 1072:2.) In the shock and chaos of the resulting tussle, Mr. Hawes had no conscious memory of striking any particular blow. (R. 827:7–16.) He testified that when he was finally able to extricate himself from her grasp, he “saw blood everywhere” and was in shock. (R. 827:15–25.) He checked Ms. Wilson for a pulse and, when he found none, was overcome with an “overwhelming sense of grief” that compelled him to slash his own wrists. (R. 828:2–20.) Mr. Hawes, who admits he was not at that time thinking rationally, then moved Ms. Wilson's body to the bedroom where he laid her on the bed. (R. 829:10 to 830:1.) Mr. Hawes then sat on the other side of the bed for some time, where he again cut his wrists and bled profusely. (R. 836:14 to 837:19.) At some point thereafter, Mr. Hawes—irrational from loss of blood—carried Ms. Wilson's body to the bathroom where he cleaned the blood off himself and her body. (R. 843:4–14; R. 846:3–12.) He then

placed the body on the living room couch on a blanket and some pillows. (R. 846:13–25.) Mr. Hawes, who was still bleeding profusely, retrieved a soft-sided cooler from the kitchen to contain the blood pouring from his wrists as he sat next to the body for some time. (R. 847:21 to 848:4.) Mr. Hawes again cut his wrists in an attempt at suicide. (R. 849:4–8.)

Ms. Wilson's neighbor in the duplex, Mr. Kelly Smith, had been awakened at 2:29 a.m. by the sounds of the struggle next door. (R. 85:5–18.) Mr. Smith called the police to report the disturbance. (R. 88:1.) The police arrived but observed no lights, sounds, or signs of any struggle, and thus did not enter the residence. (R. 112:17 to 116:25.) Over the next few hours, Mr. Hawes placed several calls to Dr. Stacey Newsom, a former girlfriend with whom he remained friends. (R. 840:11 to 841:16.) During these conversations, he was crying, upset, said he felt dizzy and weak, vomited several times, and there were long lapses of silence on the line (*Id.*; R. 303:5–25.) In addition, Mr. Hawes sent Dr. Newsom an email at 5:22 a.m. with the subject "Last Will," in which he left all his assets, including his dog, to Dr. Newsom. (R. 566:17–25.)

At 8:48 a.m., Mr. Hawes searched the internet for "criminal attorney in Columbia, South Carolina" (R. 462:15–25), and shortly thereafter called criminal defense attorney Jack Swerling and authorized him to call 911 to report Ms. Wilson's death. (R. 50:23 to 51:13; R. 463:4–13.) One of Ms. Wilson's neighbors—Mr. Eric Ashton—subsequently observed Mr. Hawes backing his vehicle out of Ms. Wilson's driveway and departing the scene. (R. 124:15 to 125:8.) Upon arriving at his own house, Mr. Hawes called EMS to request medical assistance for the injuries to his wrists. (R. 855:18 to 856:3.) EMS responded and took him to Baptist Hospital downtown Columbia where his wrists were

treated. (R. 319:9–10.) Meanwhile, after the police received Mr. Swerling’s 911 call, officers responded to 3721 Monroe Street, where they found Ms. Wilson’s body on the living room couch. (R. 54:20; R. 57:9 to 59:8.) Later that day, when law enforcement realized Mr. Hawes’ involvement, officers traveled to the hospital, arrested him, and subsequently charged him with murder. (R. 309:23 to 310:23; R. 856:4–7.)

STANDARD OF REVIEW

This appeal raises issues regarding the admissibility of evidence and testimony at trial and the recusal of a Solicitor’s office. The admissibility of evidence “‘is within the discretion of the trial court and will not be reversed absent an abuse of discretion.’” *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011). Similarly, whether a defendant has “opened the door” to otherwise inadmissible evidence is addressed to the circuit court’s discretion. *State v. McCray*, 413 S.C. 76, 92–93, 773 S.E.2d 914, 923 (Ct. App. 2015). South Carolina’s courts have not previously established what standard of review governs a trial court’s refusal to disqualify a solicitor’s office where an assistant solicitor was a witness to a crime being prosecuted by that office. In other factual settings, however, the decision to disqualify a solicitor’s office is subject to the trial court’s discretion. *See, e.g., State v. Bell*, 374 S.C. 136, 646 S.E.2d 888 (Ct. App. 2007).

ARGUMENT

I. The Trial Court erred by allowing the introduction of unnecessary and prejudicial photographic evidence used by the prosecution in closing arguments to arouse the passion and prejudice of the jury.

At trial, over defense counsel’s objection, the Trial Court permitted the introduction of photographs of Ms. Wilson, including photographs of her smiling in happier times and graphic photographs of her uncovered body at the scene. These photos

were used to arouse the jury's emotion. Indeed, the State relied on both types of photographs in its closing argument, inducing jurors to cry. (*See* R. 1126–1127.) As explained below, the admission of these photographs, none of which were necessary to substantiate material facts or conditions, were unfairly prejudicial because they suggesting to the jury an improper, emotional basis upon which to make its decision.

A. The Trial Court wrongly allowed the introduction of unnecessary, gruesome photographs and video.

During the testimony of the Crime Scene Investigator (“CSI”), the State sought to introduce nearly 100 photos of the scene and the decedent’s body. Defense counsel objected to 70 of the photos, arguing their graphic nature meant the danger of unfair prejudice outweighed their probative value. (*See* R. 192–193 and 195–196.) Defense counsel also argued that the cases upon which the State relied—*State v. Collins*, 409 S.C. 524, 763 S.E.2d 22 (2014) and *State v. Gray*, 408 S.C. 601, 759 S.E.2d 160 (Ct. App. 2014)—were distinguishable because those cases involved autopsy photos needed to corroborate testimony and rebut opposing testimony, whereas here, the photos were *not* needed to corroborate the uncontested testimony of CSI witness regarding the wounds and the scene. (*See* R. 200.) The trial court excluded 10 of the photos but allowed the rest into evidence (R. 200–201), including:

- State’s Exhibit 33 (photo of the victim’s naked body lying on the living room couch with a cooler partially filled with blood on the floor);
- State’s Exhibit 38 (photo of a bite mark on the victim’s arm);
- State’s Exhibit 41 (photo of neck and chest wounds);
- State’s Exhibits 45 and 46 (photos of the wounds to the left and right sides of the victim’s neck, respectively);
- State’s Exhibit 54 (photo of a bruise on the victim’s left leg);
- State’s Exhibit 60 (close-up photo of a wound);

- State's Exhibit 62 (photo of back wounds); and
- State's Exhibit 142 (photo of stab wound to victim's left breast).

(See R. 194.) Later, over Defense counsel's objection, the State introduced a video of the crime scene depicting the victim's exposed body on the couch.⁶ (See R. 358–361.) In addition, during the State's direct examination of the DNA analyst from SLED and the chief medical examiner who performed the autopsy, the State introduced even more graphic photos taken from the victim's autopsy. Defense counsel objected that (1) the resulting unfair prejudice outweighed the photos' probative value, and (2) the photos were cumulative. (See R. 645–646 and 715–717.)

The prejudicial effect of these many graphic photographs was clearly demonstrated when the State used some of them (namely Exhibits 46 and 202 (On file with this Court) to conclude its closing argument to draw a contrast with a photo of the victim smiling in happier times (Exhibit 322 (On file)), which elicited an emotional response from jurors, causing at least one to cry. (See R. 1126–1127.)

B. Photographs that invoke the jury's emotion, passion, or prejudice should be excluded, particularly where, as here, they are not needed to corroborate contested testimony or to rebut opposing testimony.

“Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions.” *State v. Brazell*, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997) (citations omitted). A photograph is considered prejudicial if it creates “an undue tendency to

⁶ The graphic and sensational nature of the video footage was demonstrated by the fact it prompted a trial attendee to lunge at Mr. Hawes in an attempted assault. (See R. 923:4–5 (statement by Mr. Cronin that his disruptive actions on Thursday, October 9, 2014 were prompted by the fact that “Thursday was, obviously, very forensic and very graphic”).)

suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.” *State v. Alexander*, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991). For example, the Supreme Court has reversed and remanded for new trial in a case where the prosecution introduced graphic autopsy photographs that were not needed to corroborate the pathologist’s testimony regarding the victims’ undisputed wounds:

[I]t is well-established that photographs calculated to arouse the sympathies and prejudices of the jury are to be excluded if they are irrelevant or unnecessary to the issues at trial. [] Appellant’s counsel offered to stipulate to any relevant information contained in the photographs, and it is clear the information was not really at issue. Furthermore, the testimony of the forensic pathologist negated any arguable evidentiary value of the photographs. The prejudice created by the photographs clearly outweighed any evidentiary value.

State v. Middleton, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986) (citations omitted).

Similarly here, the photos were “not necessary to substantiate material facts.” *Brazell*, 325 S.C. at 78, 480 S.E.2d at 72 (citations omitted). The nature and extent of Ms. Wilson’s injuries was thoroughly established by the undisputed testimony of the State’s witnesses. (*See, e.g.*, R. 58–59, 61–62, 709–714, 720–724.) Rather, the State’s true motivation in introducing the photograph was made plain by its use in closing arguments, not to prove the existence of any fact, but rather to introduce an improper prejudice in the minds of the jury. Whatever minimal and redundant probative effect the photo may have had was outweighed by the danger—and demonstrated reality—of unfair prejudice. Accordingly, the photograph was unnecessary and irrelevant and should have been excluded. *Brazell*, 325 S.C. at 78, 480 S.E.2d at 72.

The erroneous admission of the unnecessary graphic images was compounded by the fact that the photos were contrasted with an irrelevant photograph of Ms. Wilson

smiling in happier times. The Supreme Court has previously recognized that such photographs are irrelevant, inflammatory, and prejudicial, and that their erroneous admission warrants reversal. *State v. Langley*, 334 S.C. 643, 515 S.E.2d 98 (1999); *State v. Livingston*, 327 S.C. 17, 488 S.E.2d 313 (1997). Here, just as in *Langley* and *Livingston*, the smiling photo of Ms. Wilson was “not relevant to proving the guilt of appellant.” *Langley*, 334 S.C. at 648, 515 S.E.2d at 100. In addition, *Langley* noted that “[b]ecause the evidence of appellant’s guilt was not overwhelming, we cannot find this irrelevant evidence did not affect the outcome of the trial under a harmless error analysis.” *Id.* Similarly here, evidence that Mr. Hawes was guilty of murder was far from overwhelming—it was very heavily disputed whether he had the requisite malice. Accordingly, just like in *Langley*, the erroneous admission and use of the prejudicial photographs was no harmless error, and Mr. Hawes is entitled to a new, fair trial.

II. The Trial Court erred by permitting the State to recall Mr. Hawes to the stand solely to elicit “impeachable” testimony that would permit the State to call witnesses to testify about prior acts that would otherwise be inadmissible.

At trial, over defense counsel’s objection, the trial judge permitted the State to circumvent both the clear prohibition of Rule 404(b), SCRE and the trial judge’s prior ruling prohibiting testimony of Mr. Hawes’ purported past wrongs. As explained below, after finishing its cross examination of Mr. Hawes, the State concocted a scheme to recall him to the stand for a single question—a question designed solely to implicitly inform the jury of his past bad acts—and to then call “impeachment” witnesses to further paint Mr. Hawes with the guilt of his past wrongs. This scheme violated Rule 404(b), SCRE and constitutes reversible error.

A. The Trial Court permitted the State to introduce testimony that obliquely—yet unquestionably—informed the jury of Mr. Hawes’ prior bad acts.

At the conclusion of the State’s cross-examination of Mr. Hawes, the State argued he had opened the door to testimony about his prior acts of domestic violence. (See R. 905–912.) The trial judge disagreed, stating:

I’m not going to allow you to go into those at this point in time in the trial based upon this testimony. . . . At this point in time, I don’t think he has opened the door and I don’t think it’s admissible under *Lyle* as a prior bad act.

(R. 913:4–10.) The trial judge then asked the State if it had any further cross-examination of Mr. Hawes, to which the prosecutor replied, “No, sir.” (R. 913:4.) The trial judge made doubly sure the State was finished by again asking, “Any other questions of this witness?,” to which the prosecutor again replied, “No, sir.” (R. 913:15–16.) Defense counsel then indicated he had no redirect examination (R. 913:18–19), and the judge allowed Mr. Hawes to exit the witness box and return to the defense table (R. 913:20 to 914:3).

The following morning, notwithstanding its prior ruling excluding discussion of prior domestic violence, and notwithstanding the fact that testimony of such incidents was barred by Rule 404(b), SCRE, the trial court allowed the State to proffer the testimony of two of Mr. Hawes’ former girlfriends regarding alleged abusive or violent incidents. (See R. 924:9 to 937:5.) The State argued that some of this testimony should be admitted to rebut Mr. Hawes’ account of the killing. (R. 937:8 to 939:25.⁷) Defense counsel responded that under Rule 404, the proffered testimony regarding Mr. Hawes’ prior bad

⁷ The State relied on *State v. Beck*, 342 S.C. 129, 536 S.E.2d 679 (2000) and *State v. Michau*, 355 S.C. 73, 583 S.E.2d 756 (2003). (See R. 937:24 to 938:7.)

acts should be excluded. (R. 940:1 to 941:22.) The trial court agreed with the defense and again refused to allow the proffered testimony to be introduced. (R. 943:19–24.) The court then took a recess for lunch. (R. 943:19–24.)

During the lunch break, the State—apparently dissatisfied with the trial court’s ruling—thought up yet another avenue by which to seek to introduce the otherwise inadmissible testimony. Accordingly, when the trial court resumed the proceeding after lunch, the State incorrectly asserted that Mr. Hawes was still on the stand and that the State could ask him one more question “for impeachment purposes,” namely whether he had on one occasion told Dr. Stacey Newsom (his former girlfriend) that if she called the police, he’d make it look like it was her fault. (R. 946:1 to 948:22.) When the trial judge indicated he would permit further the State to question Mr. Hawes further, Defense counsel “strenuously” objected. (R. 949:20–22.) Defense counsel raised the seeming inconsistency between the judge’s ruling earlier that morning (excluding testimony regarding Mr. Hawes’ prior domestic incidents) and the judge’s plan to allow the State to re-open cross examination for the purpose of eliciting testimony that would permit the State to then introduce that very testimony in the guise of “impeachment” testimony. (R. 950:3 to 951:6.)

The trial court replied: “I’m not letting it come in in [the prosecutor’s] case in chief. She wants to ask the question, lay the foundation on cross, then impeach him is what she wants to do. And I think she can do that on prior statements he made.” (R. 950:8–11.) Defense counsel continued to object, noting that the “impeachment” testimony from Mr. Hawes’ former girlfriend was inseparable from Mr. Hawes’ prior bad acts, which were inadmissible. (*See* R. 952:9–13 (“There is no way for them to put Dr. Newsom on

the witness stand and her to offer testimony that doesn't go into the prior acts of violence that she alleges took place between her and Mr. Hawes. That is absolutely 404.”.) The trial court, however, allowed the State to proceed. (R. 952:14–17 and 953:17–19.)

The State then recalled Mr. Hawes to the stand and asked him one question, namely if he remembered telling Stacey Newsom that if she called the police, he would make it look like it was her fault. (R. 953:22 to 954:2.) Mr. Hawes could not remember saying that. (R. 954:3.) The State then recalled Stacey Newsome to the stand. Defense counsel again objected, noting that even the isolated question of what Mr. Hawes did or did not once say “leads to an implication to the jury and hamstrings me completely in my cross-examination.” (R. 973:6–8.) Ms. Newsom subsequently testified as follows:

Q. Ms. Newsom, I'm going to direct your attention to the fall of 2010, do you recall having a conversation with Hank Hawes, I believe, at your house, I believe, you were living in Simpsonville at the time?

A. Correct.

Q. About what would happen if you called law enforcement?

A. Yes.

Q. And what did he say to you about that?

A. . . . He told me that if I were to call law enforcement about --

Q. Just what would happen --

A. Law enforcement, that I would be the one to go to jail.

(R. 979:2–15.) At the conclusion of Ms. Newsom's testimony, cross examination, and redirect examination, Defense counsel renewed its motion for a mistrial on the basis of her testimony. (R. 985:23 to 986:6.) The motion was denied. (R. 986:7.) Defense counsel renewed the motion yet again at the conclusion of all evidence, and it was again denied. (R. 1038:24 to 1039:23.)

B. The introduction of testimony regarding Mr. Hawes' past wrongs violated Rule 404(b), SCRE and South Carolina precedent.

The Rules of Evidence are clear: “Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith” unless it is admitted “to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.” Rule 404(b), SCRE.

This prohibition bars testimony that expressly states or even *implies* the defendant engaged in past wrongs or crimes. *See State v. Traylor*, 360 S.C. 74, 84 n. 12, 600 S.E.2d 523, 528 n.12 (2004) (stating that certain types of evidence are inadmissible and their admission is prejudicial if they merely “*imply* a defendant’s prior bad acts”) (emphasis added); *State v. Nelson*, 331 S.C. 1, 13, 501 S.E.2d 716, 722 (1998) (noting that to be admissible under Rule 404(b), evidence ““must tend to prove or disprove an issue actually in dispute, without relying upon forbidden *inferences* of predisposition, character, or propensity””) (quoting *State v. Melcher*, 678 A.2d 146 (N.H. 1996)) (emphasis added); *State v. Tate*, 288 S.C. 104, 105, 341 S.E.2d 380, 381 (1986) (holding admission of photographic lineup which included a “mug shot” of defendant constituted reversible error because it “would clearly *infer* to the jury that appellant had a prior criminal record”) (emphasis added); *see also United States v. Scott*, 677 F.3d 72 (2nd Cir. 2012) (reversing because trial court violated Rule 404(b), Fed. R. Evid. by allowing two detectives to testify they were familiar with the defendant and had spoken to him on occasion, which could imply or lead a jury to infer the defendant had engaged in past bad acts or was of unsavory character).

Here, the trial court permitted exactly what Rule 404(b) and binding precedent forbid, allowing testimony that clearly and unmistakably implied Mr. Hawes was guilty

of prior bad acts. The forbidden nature of this testimony is evidenced by the fact that the State was forced to concoct and rely on a peculiar procedural device—the reopening of Mr. Hawes’ cross-examination solely to bait Mr. Hawes into supposedly “opening the door” to this otherwise impermissible testimony—to circumvent the normal safeguard afforded by the Rules. The trial court’s ruling permitting this testimony was error—an error that prejudiced the jury against Mr. Hawes and which warrants reversal for a new and fair trial.

III. The Trial Court erred by permitting the State to introduce other impermissible testimony of Mr. Hawes’ purported prior bad acts.

The Trial Court also erred by permitting a witness—the decedent’s duplex neighbor, Mr. Kelly Smith—to present speculative and prejudicial testimony regarding a prior argument he had overheard between Mr. Hawes and Ms. Wilson. This erroneous ruling was based on the legally incorrect belief that the Defense counsel had “opened the door” to this inadmissible evidence of purported prior bad acts. As explained below, however, the door had *not* been opened, and the admission of this unduly prejudicial testimony was intended to—and did—inflame the jury’s passion and prejudices against Mr. Hawes.

The morning the police responded to Ms. Wilson’s apartment and discovered her body, Mr. Smith gave a written statement to law enforcement. Before trial, Defense counsel was given a copy of that statement, in which Mr. Smith stated he had on one previous occasion overheard an argument between Mr. Hawes and Ms. Wilson in which it sounded “like he was hurting her.” (*See* R. 70:9–15, 71:15–18.) Prior to Mr. Smith’s testimony, the trial judge ruled Mr. Smith could testify that he had overheard that prior argument but that he could *not* testify that it sounded “like he was hurting her” during

that argument. (See R. 70:9 to 72:19.) During the State's direct examination, the assistant solicitor asked Mr. Smith about his recollection of the prior argument he had overheard and about his written statement to the police. (R. 81:23 to 82:19; R. 84:3–17.) On cross-examination, Mr. Hawes' counsel likewise asked Mr. Smith about his statement to the police about the argument he had overheard. (R. 104:4 to 105:2.) The questions Defense counsel asked about this topic on cross-examination went no further than the scope of what had already been brought up during Mr. Smith's direct examination. (*Compare* R. 81:23 to 82:19 *with* R. 104:4 to 105:2.) Nevertheless, the State subsequently argued that Defense counsel had "opened the door" to the previously excluded portion of Mr. Smith's testimony. (See R. 108–109.) Defense counsel objected, but was overruled. (See R. 109–111.) Mr. Smith then proceeded to testify on re-direct examination that during the prior argument he had overheard, "I heard her screaming like he was hurting her and Jen saying no." (R. 108:11–12.)

Contrary to the Trial Court's ruling, however, Defense counsel's cross-examination of Mr. Smith did *not* "open the door" to this otherwise impermissible testimony. The relevant portion of the cross-examination is as follows:

Q. . . . Now, you also testified -- and I may have misunderstand you, and I apologize if that's the case, when you talked about previous arguments --

A. Sure.

Q. -- between -- between them in the summertime?

A. Uh-huh.

Q. In your statement, you described -- well, the question is to you in the statement, Have you ever heard or seen Hank and Jen arguing or fighting before? Do you remember that?

A. I do.

Q. And your response is, Yes, one time before.

A. Correct.

Q. Correct?

A. Uh-huh.

Q. So when you describe prior difficulties between Ms. Wilson and Hank in that summer and you're asked whether you ever remember it, you mentioned yes, one time before?

A. One time.

Q. That's your testimony here today?

Q. One time?

A. Yeah.

A. Correct. One time that stood out.

(R. 104:4 to 105:2.) Nothing in this colloquy between defense counsel and Mr. Smith opened the door to his prejudicial and speculative statement regarding what might have been the nature of a dispute next door. Rather, defense counsel's questioning was clearly focused on the *quantity* of prior disputes, not the *quality* of that dispute.

As explained in Part II, *supra*, Rule 404(b) excludes evidence or testimony that states or implies the defendant engaged in past wrongs or crimes. Such evidence may, however, be admissible if a defendant himself specifically introduces that topic, evidence, or an argument that "opens the door" to that evidence or topic and entitles the opposing party to rely on otherwise inadmissible evidence to rebut the defendant's argument or evidence. *See State v. McEachern*, 399 S.C. 125, 137, 731 S.E.2d 604, 610 (Ct. App. 2012) ("When a party introduces evidence about a particular matter, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even if the latter evidence would have been incompetent or irrelevant had it been offered initially.") (citations omitted).

Here, the defense did *not* open the door to the impermissible evidence. Defense counsel did not introduce Mr. Smith's police statement into evidence (the *State* introduced that evidence), did not initiate the discussion of the argument he overheard (the *State* first brought up that topic), and did not make any argument to discredit Mr. Smith's account of the event. Instead, every aspect of the cross-examination that touched on the topic of the prior argument overheard by Mr. Smith relied on the same evidence introduced by the State. Stated differently, Defense counsel did not bring up any new evidence or argument that "opened the door" and entitled the State to rely on evidence prohibited by Rule 404(b). The Trial Court's erroneous and prejudicial ruling otherwise warrants reversal.

IV. The Trial Court erred by refusing to recuse the Fifth Circuit Solicitor's office from prosecuting a case in which two material witnesses of the alleged crime were an assistant solicitor and her husband.

South Carolina's courts have not previously confronted the question of whether recusal of a solicitor's office is required when an assistant solicitor and her husband were witnesses of the crime to be prosecuted by her office. As explained below, however, other jurisdictions to analyze this issue have concluded that recusal of the entire office is necessary to avoid the appearance of bias and to maintain the public's confidence and the defendant's confidence in the integrity and impartiality of the judicial system. Accordingly, the court's refusal to recuse the solicitor's office was reversible error.

A. The pre-trial hearing judge refused to recuse the solicitor's office and transfer the case to the Attorney General's office for prosecution.

Prior to trial, Mr. Hawes' counsel moved to recuse the Fifth Circuit Solicitor's office from prosecuting the case in light of the fact that two material fact witnesses in the case were an assistant solicitor (Kathryn Cavanaugh Ashton) and her husband (Eric

Ashton). (*See* Def. Motion to Recuse, R. 1.) Judge DeAndrea Benjamin held a hearing on the motion, during which Mr. Hawes' counsel explained that the Ashtons were next-door neighbors to the decedent, had provided statements to law enforcement, and "would be material to prove, amongst other things, that he was at the crime scene." (R. 4:15 to 5:14.) Because this situation would, at minimum, give rise to an appearance of impropriety or partiality (and would, at worst, result in demonstrable unfairness or prejudice), the Defense sought to have the Fifth Circuit Solicitor's office recused and the case transferred to the Attorney General's office to prosecute. (*Id.* at 5:19 to 6:5.) In response, the Solicitor's office argued that a "Chinese wall" had been built around Ms. Ashton to prevent her involvement with the case. (*Id.* at 8:14–18.) Judge Benjamin subsequently denied the motion in a written order, stating, "[t]here is no inherent right to disqualification when a member of the Solicitor's Office is called as a witness in a case prosecuted by an attorney in the same office" and that "[t]o successfully recuse the Fifth Circuit Solicitor's Office, Defendant must demonstrate actual prejudice." *See* Order Denying Motion to Recuse, R. 14–15. As explained below, the trial court's failure to recuse the solicitor's office was error.

The State subsequently called Mr. Ashton to testify at trial, where he testified as the sole witness to observe Mr. Hawes at the scene. Mr. Ashton testified in dramatic terms of "the thing that I will never forget," namely Mr. Hawes' departure from the scene on the morning of August 28, 2011:

And the thing that was very unique because he was driving very slowly, the windows were down and he had no shirt on and it looked like he was driving with his forearms. And I'll never forget that as long as I live. It was so odd and unique. That was, you know, something that stays with me to this day.

(R. 124:19 to 125:8.)

B. *Although this is a novel issue in South Carolina, persuasive authority indicates the solicitor's office should have been recused, and the failure to do so was a prejudicial, reversible error.*

There is no South Carolina authority addressing the precise scenario raised by Mr. Hawes' prosecution. The case that is the nearest to being on point—*State v. Inman*—held in part that “if a prosecutor is called as a witness *by the defense*, it is not always necessary for a trial judge to recuse the prosecutor or the prosecuting office in its entirety.” 395 S.C. 539, 558, 720 S.E.2d 31, 41 (2011) (emphasis added). *Inman*, of course, is distinguishable from the case at bar in two significant regards: (1) it involved the question of whether the solicitor's office should be recused when a prosecutor was to be called as *defense* witnesses, and (2) the matter about which the witnesses in *Inman* would testify involved their own prosecutorial misconduct of intimidating a defense witness during Mr. Inman's sentencing hearing. *Id.* at 557–61, 720 S.E.2d at 41–43. Here, in contrast, Mr. Hawes' trial involved an assistant solicitor and her husband who could be (and one of whom actually was) called by the *prosecution* to testify regarding facts that were material to proving the charges against the defendant.

The distinction between *Inman* and the case at bar is further demonstrated by the authority upon which *Inman* relied. Specifically, the *Inman* Court relied on a California Court of Appeals opinion for the “general rule . . . that a district attorney's office should not be recused from a case merely because one or more of its attorneys will be called as witnesses *for the defense*.” See *id.* at 558, 720 S.E.2d at 41 (quoting *People v. Superior Court of San Luis Obispo*, 84 Cal. App. 3d 491 (Cal. Ct. App. 1978)) (emphasis added). California statutory law and case law, however, recognize a *different* rule where a prosecutor will be called as a *prosecution* witness. See *People v. Conner*, 666 P.2d 5

(Cal. 1983) (holding the trial court properly ordered the recusal of the entire district attorney's office because a member of the district attorney's staff was a material witness to the crime); *People v. Jenan*, 140 Cal. App. 4th 782 (Cal. Ct. App. 2006) (holding the trial court properly ordered the recusal of the entire district attorney's office because a district attorney's investigator would likely be a witness); *Lewis v. Superior Court*, 53 Cal. App. 4th 1277 (Cal. Ct. App. 1997) (reversing trial court's refusal to recuse district attorney's office where the effect of the defendant's conduct on the district attorney and his staff gave rise to an appearance of impropriety); *see also* Cal. Penal Code § 1424(a)(1) (stating that a motion to disqualify a district attorney from prosecuting a case may be granted if "the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial").⁸ The Tenth Circuit has likewise noted that the recusal of a DA's office and the appointment of a special

⁸ Other jurisdictions have likewise recused an entire district attorney's ("DA") office when a DA or assistant DA had a personal interest or prior involvement in the matter. *See, e.g., State v. Cooper*, 409 N.E.2d 1070 (Ohio Ct. Com. Pl. 1980) (holding entire DA's office should have been recused in light of the assistant DA's former representation of the defendant); *State v. Latigue*, 502 P.2d 1340 (Ariz. 1972) (holding entire DA's office should be recused to avoid even the appearance of partiality because an assistant DA had previously served at the public defender's office defending the accused); *see also State v. Gonzalez*, 119 P.3d 151 (N.M. 2005) (affirming trial court's order recusing entire DA's office where the DA's prior personal and professional animosity toward the defendants gave rise to an appearance of impropriety); *State v. Tate*, 925 S.W.2d 548 (Tenn. Ct. App. 1995) (holding trial court should have recused entire DA's office in light of DA's prior involvement as the county criminal judge who signed the indictment and participated in pre-trial proceedings); *State v. Stenger*, 760 P.2d 357 (Wash. 1988) (holding entire DA's office should be recused from prosecution where DA had previously defended the accused); *Banton v. State*, 475 N.E.2d 1160 (Ind. Ct. App. 1985) (holding entire DA's office should have been recused from case in which the prosecutor had previously worked as a public defender defending a co-defendant); *State v. Tippecanoe Cnty. Ct.*, 432 N.E.2d 1377 (Ind. 1982) (holding entire DA's office should have been recused from case in which the DA had previously represented the accused as a public defender in two matters several years earlier).

prosecutor were warranted where employees of the DA's office were likely to be called as prosecution witnesses. *Thorpe v. Ancell*, 367 Fed. Appx. 914, 916 and n.5 (10th Cir. 2010) ("Special Prosecutor David Waite was assigned to the case" because defendants "had filed a motion to appoint a special prosecutor and to recuse the Mesa County District Attorney's Office because some of its employees were potential witnesses.").

Yet another jurisdiction has held that a so-called Chinese Wall such as that erected around Ms. Ashton in the case at bar is an insufficient safeguard, and that instead the entire solicitor's office should have been recused. *People v. Shinkle*, 415 N.E.2d 909 (N.Y. 1980) (holding the extensive "Chinese wall" erected around assistant DA who had previously assisted in the accused defense was insufficient to resolve the appearance of a conflict, and that instead the entire DA's office should have been recused).

The reasoning supporting the recusal of a solicitor's entire office when an employee and/or her spouse⁹ are material witnesses to the alleged crime is that the recusal will "assure fairness to the accused and to sustain public confidence in the integrity and impartiality of the criminal justice system." *Conner*, 666 P.2d at 7 (citations omitted); *see also People v. Stevens*, 642 P.2d 39 (Colo. Ct. App. 1981) (holding entire DA's office should have been recused from case in which an assistant DA had formerly represented the defendant, noting "a defendant should not have to demonstrate prejudice or lack of integrity. The most compelling rationale for requiring appointment of a special prosecutor

⁹ Recusal is warranted not only where a prosecutor herself has a real or perceived conflict or bias but also where the prosecutor's family members have a real or perceived conflict or bias. *See, e.g., State v. Wilson*, 387 S.C. 597, 693 S.E.2d 923 (2010) (noting the trial court had disqualified the assistant solicitor because her husband had previously represented the defendant in a Family Court matter and because her brother-in-law had represented the defendant at his bond hearing).

is avoidance of the appearance of impropriety.”). In *Conner*, for example, the California Supreme Court held that recusal of an entire District Attorney’s (“DA”) office was proper where an assistant DA had witnessed the defendant’s courtroom escape from custody and had narrowly avoided being shot by the defendant during the escape. *Conner*, 666 P.2d at 6–7. The court noted that because the assistant DA was a witness to, and arguably a victim of, the alleged crime, his recusal was required. *Id.* at 8 (“[A] conflict of interest disqualifies a DA from prosecuting a case if the conflict either affects or appears to affect his ability faithfully to perform the discretionary function of his office.”) In addition, the *Conner* court held the disqualification extended to the *entire* DA’s office in light of its modest size—the felony division was composed of “about 25 attorneys”—and the media coverage of the “dramatic and gripping nature” of the alleged crime. *Id.* at 9.

This reasoning applies to the case at bar with equal force. Here, the Fifth Circuit Solicitor’s office’s prosecution of a case involving one of their own was no mere harmless error. The appearance of partiality and bias and the resulting doubt cast over the fairness and integrity of the proceeding were a sufficient basis upon which the trial court should have recused the Solicitor’s office.¹⁰ Although South Carolina’s courts have not previously considered a suit in which the prosecuting attorney’s colleague or her spouse were witnesses to the alleged crime, they have in other contexts noted the vital

¹⁰ The situation presented by this suit is distinguishable from precedent holding that prosecutorial *misconduct* does not warrant reversal absent a showing of resulting prejudice. See *State v. Chisolm*, 312 S.C. 235, 238, 439 S.E.2d 850, 852 (1994) (holding the assistant solicitor’s improper private conversation with the accused did not warrant reversal because the defendant could not show actual prejudice resulting from that misconduct) (citing *State v. Smart*, 278 S.C. 515, 299 S.E.2d 686 (1982)). Here, the need for recusal arose not from any misconduct but from the inescapable appearance of bias and the resulting diminution in the public’s and Mr. Hawes’ confidence in the impartiality of the judicial system.

importance of maintaining the parties' confidence and the public's confidence in the judicial process by avoiding even the appearance of partiality or bias. *See, e.g., Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 475 n.7, 609 S.E.2d 286, 296 n.7 (2005) (noting the reversal of the trial court's ruling was necessitated in part by the fact that "such rulings may undermine the public's confidence in our judicial system"); *In re Evans*, 390 S.C. 404, 405, 702 S.E.2d 557, 557 (2010) (noting that when municipal court judge shared hotel accommodations with a person facing charges in his jurisdiction, "he created an appearance of impropriety that could undermine public confidence in the judiciary"); *Christy v. Christy*, 317 S.C. 145, 149, 452 S.E.2d 1, 3 (Ct. App. 1994) (noting that because the judge's "impartiality might reasonably be questioned . . . he judiciously chose to avoid the appearance of impropriety" and recused himself).

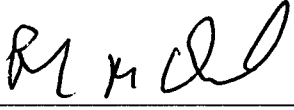
In sum, the appearance of partiality undercut the integrity of the proceeding and the public's confidence in the process. A simple preventative measure was available, namely transferring the case to the Attorney General's office. The trial court erred by failing to recuse the Fifth Circuit Solicitor's office and transfer the case, and this Court should reverse and remand for a new and fair trial.

CONCLUSION

In sum, the trial court erred by allowing the introduction of unnecessary and prejudicial photographs, by permitting the State to recall Mr. Hawes to the stand to elicit testimony that would permit the State to call witnesses to testify about prior acts that would otherwise be inadmissible, by permitting other testimony of purported prior bad acts, and by failing to recuse the Fifth Circuit Solicitor's office. For the foregoing reasons, Appellant requests this court reverse and remand for a new trial.

Respectfully submitted,

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Columbia, South Carolina
August 23, 2016

ORIGINAL

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions
J.C. Nicholson, Jr., Circuit Court Judge

RECEIVED

AUG 19 2016

SC Court of Appeals

The State,

Respondent,

v.

Hank Eric Hawes,

Appellant.

Appellate Case No. 2014-002288

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Did the Trial Court err by permitting the State to introduce numerous graphic photographs of the decedent's body where the probative value, if any, of those photographs was outweighed by the resulting unfair prejudice, and where the State successfully, though improperly, employed those photographs in closing argument by juxtaposing them with smiling photos of the decedent to elicit an emotional response from the jury?
2. Did the Trial Court err by permitting the State, a day after it concluded its cross examination of Mr. Hawes, to recall him to the stand for a single question intended solely to elicit testimony from him that would permit the State to then call "impeachment" witnesses to testify about Mr. Hawes' prior acts that would otherwise be inadmissible?
3. Did the Trial Court err by permitting testimony regarding a prior argument between Mr. Hawes and the decedent?
4. Did the Trial Court err by refusing to recuse the Fifth Circuit Solicitor's office from prosecuting a case in which two fact witnesses were an assistant solicitor and her husband?

(FBOA, p. 1).

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

1. Whether the trial judge abused his discretion in admitting photographs offered to prove malice beyond a reasonable doubt by demonstration of the details of the bloody murder in the multiple and varied wounds suffered by the victim, including twelve stab wounds (three to the back), eleven slashes, multiple bruises and one clear bite mark, when Appellant admitted the killing, but a critical issue at trial was the presence or absence of malice?
2. Whether the trial judge abused his discretion in allowing the State a complete opportunity to cross-examine and impeach the defendant who chose to take the stand in his defense?
3. Whether the trial judge abused his discretion in admitting the specifics from the written statement offered in redirect describing a prior argument between Appellant and Ms. Wilson when defense counsel opened the door to the specifics of statement that he omitted from the cross-examination that would bear on the witness's recall and ability to perceive the events described?
4. Whether the circuit court judge in pre-trial abused her discretion in declining to order the entire Fifth Circuit Solicitor's Office be recused from the trial of this case where one assistant solicitor and her husband lived next to the murder victim, the assistant did not participate in trial nor was called as a witness, and her husband testified only to seeing Appellant leave the home which was not contested?

STATEMENT OF THE CASE

A Richland County grand jury indicted Appellant, Hank Eric Hawes, in October 2011, charging him with the murder of Jennifer Lee Wilson. (R. pp. 1145-1146 [indictment]). Public Defenders Doug Strickler, Fielding Pringle, and Megan Eigenbrot represented him on the charge. A jury trial was held October 6-16, 2014, before the Honorable J.C. Nicholson, Jr. The jury convicted as charged. (R. p. 1131, lines 12-20). Judge Nicholson sentenced Appellant to life imprisonment. (R. p. 1142, line 24 – p. 1143, line 2). This appeal follows.

RESPONDENT'S STATEMENT OF FACTS

Appellant admitted at trial that he killed Jennifer Wilson in her home in Richland County in the early morning hours of August 28, 2011. Appellant testified he acted in self-defense. (R. p. 819, line 10 – p.828, line 9; p. 904, line 20 – p. 905, line 1). Defense counsel argued the evidence demonstrated self-defense and/or the evidence supported the lesser offense of voluntary manslaughter. (R. p. 1068, lines 9-17). The jury, finding the State had shown malice beyond a reasonable doubt, convicted Appellant of murder upon hearing the following evidence:

Ms. Wilson's neighbor Kelly Smith testified that he woke up at approximately 2:29 am to the sounds of screaming and physical violence coming from the bedroom area of the victim's home. He testified that he "heard screaming and physical violence" and he "recognized Jen's voice immediately" but did not hear another voice. (R. p. 85, line 5 – p. 86, line 4). He testified he could feel the energy of the attack, "it literally, was a violent situation. Her scream was she was being harmed." (R. p. 86, lines 9-11). He then noticed a pause, movement to the hallway progressing into the kitchen area, then:

... there was a second wave of more aggressive, just brutal, carnal instant violence. And I could physically feel the vibration in my bedroom from what was coming from the other room. ... I could hear what sounded like a table slamming against the wall, like her body being thrown against the wall.

(R. p. 86, lines 13-22).

He then heard Ms. Wilson for the last time, yelling "no, no, no" and pleading for her life. (R. p. 86, line 24 – p. 87, line 1). Mr. Smith knew Appellant from Appellant's romantic relationship with Ms. Wilson. He also knew the relationship had turned "rocky." (R. p. 79, line 8). Mr. Smith testified he called 911. (R. p. 88, lines 1-9). Though he did not become involved at that time, Mr. Smith had assumed the officers talked to "Jen and Hank." (R. p. 91, lines 4-11).

Later that morning, at approximately 7:45 am, Mr. Smith left his home and noticed Appellant's vehicle, a Range Rover, in the driveway along with Ms. Wilson's car and his own car. (R. p. 91, lines 21-25).

An officer had responded having been called at 2:41 am. He arrived at approximately 2:47 am and backup arrived a few minutes later. (R. p. 112, line 17 – p. 113, line 5; p. 114, lines 20-21). However, the lights in Ms. Wilson's home were off, and after hearing and seeing nothing out of the ordinary, and having no cause to enter the home, the officers only stayed outside briefly, then left. (R. p. 113, line 11 – p. 116, line 25). They noted a Range Rover in the back with two other cars. (R. p. 115, lines 5-12).

Inside the darkened home, Appellant had unclothed the victim, washed her body, and placed her body on the couch in the living area. (R. p. 831, lines 12-17; p. 843, line 7 – p. 846, line 23). He cut his own wrists yet collected blood in a bag. (R. p. 879, line 2 – p. 881, line 7). He stayed in the home for hours, calling an ex-girlfriend, Stacy Newsom. The first call was at 2:37 am. (R. p. 294, lines 10-12). He was crying and upset, and sometimes would keep the connection eventhough nothing was said. (R. p. 293, line 11 – p. 294, line 21). He eventually left and drove a short distance to his own home. Another one of Ms. Wilson's neighbor's, Mr. Ashton, testified that he saw Appellant leave that morning, driving his automobile in an odd way – with his forearms instead of hands. (R. p. 124, line 15 – p. 125, line 8). Starting at 8:48 that morning, Appellant searched the internet for defense attorneys. (R. p. 462, line 15 – p. 463, line 3).

Around 10:00 he called another ex-girlfriend, Kimberly Williams, and confided that he could be charged with murder. He stated he had been in contact with an attorney and needed \$25,000.00 for representation. She advised she did not have such money. Further, he stated he

had acted in self-defense though no one was going to believe him. He also stated that he had tried to commit suicide by slitting his own wrists. She advised him to seek medical attention. (R. p. 267, line 2 – p. 268, line 1).

Appellant called Ms. Newsom again later in the morning, and she advised he needed to call EMS if he was not feeling well. (R. p. 294, line 18 – p. 295, line 6).

Eventually, Appellant spoke to well-known defense attorney Jack Swerling. Mr. Swerling testified that, with Appellant's permission, Mr. Swerling placed a 911 call to the City of Columbia Police Department reporting a possible murder. (R. p. 50, line 23 – p. 52, line 22).

During the time Mr. Swerling was reporting the murder, Appellant had called 911 for help, reporting he had cut his wrists. An officer was dispatched at 11:45 am to meet EMS at the scene. (R. p. 311, lines 7-12). Robin Haselden with Richland County EMS testified Appellant's clothes were wet, his cuts were not bleeding, and there "was no blood noted on him anywhere." (R. p. 316, line 21 – p. 317, line 10). An emergency room doctor, Dr. John Robinson, treated Appellant. Appellant would not answer questions. The doctor noted a concern that Appellant "was being deceptive" about self-inflicted wounds, or had some type of amnesia from trauma, however, that "was inconsistent with the fact that he was alert and oriented with everything else." He determined the wounds were self-inflicted, not life threatening, and nothing accounted for "amnesia" he appeared to present. He released Appellant into the custody of officers who had arrived at the hospital. (R. p. 328, line 16 – p. 334, line 21).

Officer Hudson testified the Police Department had responded to Ms. Wilson's home at approximately 11:30 am as a result of Mr. Swerling's report. (R. p. 60, lines 15-23). The officers noted blood on the rear entry. Ms. Wilson's neighbor was out and also advised of the sounds of violence he had reported earlier that morning. (R. p. 54, lines 18 – 25). The officers

entered the home at the back and were met with a bloody scene in the kitchen. (R. p. 55, lines 1-4). Upon further investigation, the officers found Ms. Wilson's body, on the living room couch, covered, with the exception of one portion of one arm, by a "blanket" (later described as a comforter). (R. p. 57, line 9 – p. 58, line 25; p. 61, lines 2-4). Officer Hudson testified that upon moving the "blanket":

I observed the victim with multiple stab wounds, the front area (indicating) over her body, and she was unclothed, naked. And her hair seemed to be like it was wet, but sort of dry. ... No signs of life.

(R. p. 59, lines 3-8).

EMS was called at 11:33 and arrived at 11:51 am. (R. p. 68, lines 4-5). EMS pronounced Ms. Wilson dead at the scene. (R. p. 59, lines 18-22; p. 61, line 2 – p. 67, line 16). Though the scene was exceptionally bloody, there was little blood on the comforter that had covered the body. (R. p. 61, lines 11-24). In fact, the body appeared to have been cleaned, showered, apart from one smear of blood near the neck that had "a curved angle to it like the body had been wiped." (R. p. 62, lines 8-19). However, EMS noted multiple "straight cuts stab wounds," and bruising along the neck wound. (R. p. 62, line 19 – p. 63, line 17).

The pathologist who performed the autopsy would note multiple defense wounds on Ms. Wilson's hands; blunt force trauma to her head ("at least three blows"); cuts, bruises on arms and legs, lip and chin injury; twelve stab wounds; eleven slashes; and, one bite mark. The cause of death was blood loss from the stab wound, with the neck wound most likely being the fatal wound. However, the sum total of her wounds was fatal. The pathologist opined she would have died within approximately two minutes. (R. p. 711, lines 5 – 23; p. 713, line 14 – p. 714, line 6; p. 720, line 22 – p. 747, line 23). He testified it was a brutal homicide. (R. p. 748, lines 16-19).

As noted, the hospital examination for Appellant, as discussed above, noted only his self-inflicted wounds. While in custody, officers found only one small mark on one of Appellant's fingers. (R. p. 388, line 5 – p. 389, line 20; p. vii [State's Exhibits 297, 298, 300, 301, 302, 303, and 304]; see also p. 904, lines 9-17).

Appellant opted to testify in his defense that Ms. Wilson was the aggressor, and, though he remembered little else, it was clearly her fault. (See R. p. 819, line 10 – p. 828, line 9; p. 904, line 20 – p. 905, line 1). The cross-examination uncovered a series of implausible assertions by Appellant when considering the forensic evidence and other testimony. For example, he claimed she had a large knife, but no large knife was found. He claimed his shirt “may have been damaged” during the fight, and buttons pulled off, but there were no buttons to be found. He claimed she had on a top at the time of the violence but no top was recovered with any stab wound tears. He had collected his blood in an insulated bag to not get it on the carpet, and yet his blood was on the scene. (See R. p. 856, line 20 – p. 904, line 24).

In addition to her neighbor, Mr. Smith, several friends testified to the rocky relationship Ms. Wilson shared with Appellant, and the fact that she was frightened. Ms. Wilson's friend, Janelle Bondr, testified that she knew about the relationship from the start in February 2011. She further testified that she saw a change in her friend. Ms. Wilson had become anxious, her health seem to be poor, “she had been terrified” during the months before her murder, and demonstrated becoming upset during a SKYPE call when Appellant “arrived at the house.” (See R. p. 132, line 11 – p. 134, line 24).

At a dinner party at another friend's home on August 14, 2011, that friend, David Virtue, testified the two were together but “seldom on the same side of the room or part of the house during that evening.” He also testified that Ms. Wilson had confided in him over the summer

that she was attempting to withdraw from Appellant and end the relationship. (R. p. 135, line 18 – p.138, line 2).

Ms. Wilson had remained friends with a former boyfriend, Drew Kabbe, and they had been communicating fairly frequently. He testified that he spoke to her the night of August 27, 2011/early morning of August 28, 2011. She was in a good mood and happy at that time, returning home from a birthday party. However, she had previously told Mr. Kabbe about Appellant, though they normally did not, by agreement, discuss their romantic relationships. She told Mr. Kabbe “[s]he was frightened of him.” He heard her arrive safely home the night of the party before their telephone conversation ended. (R. p. 171, line 14 – p. 174, line 15).

Other friends testified consistent with his testimony that on the night before the early morning hour murder, Ms. Wilson attended two birthday parties and appeared to be in a happy mood, enjoying herself. (See R. p. 141, line 12 – p. 144, line 18; p. 151, lines 1-7).

Another friend, Tasha Laman also heard Ms. Wilson express and/or demonstrate distress over the relationship. Ms. Laman advised Ms. Wilson to go to a counselor. (R. p. 269, line 15 – p. 272, line 4). Ms. Laman also testified that Ms. Wilson had confided that Appellant had threatened to “ruin her life.” (R. p. 273, line 23 – p. 274, line 1; p. 275, lines 5-18). Ms. Laman, like Ms. Bondr, similarly noticed a loss of weight and an anxiousness in Ms. Wilson. (R. p. 274, lines 9-19). Ms. Laman testified that Ms. Wilson did go to counseling and went to couple’s counseling on at least one occasion. (R. p. 277, lines 7-12). Ms. Laman testified that Ms. Wilson “was very nervous after talking with Ms. Stewart and Ms. Stewart telling her this was a classic case of domestic violence,” and, further, that Ms. Wilson intended to break the relationship with Appellant. (R. p. 276, lines 1-7).

Ms. Wilson's counselor, Ms. Stewart, testified that she was very concerned about a new relationship that had so quickly turned to "constant contact," and that Appellant had "threatened to expose something embarrassing about her" should she break the relationship. (R. p. 278, lines 8-14). She responded that she did have reservations about domestic violence. (R. p. 279, line 25 – p. 280, line 12). Ms. Stewart testified that Ms. Wilson did not want to stay in the relationship but had difficulty with making the break. She noted Ms. Wilson was concerned about Appellant's constant contact and jealousy. (R. p. 281, line 12-24). She was killed just four days later. (R. p. 282, lines 13-17).

A series of text messages between Appellant and Ms. Wilson showed a back and forth relationship between the two, turning accusatory and threatening toward Ms. Wilson. (See, for example, R. p. 420, line 1 – p. 421, line 25; p. 604, line 25 – p. 605, line 3). Her messages reflect both a fear of him and her confusion about him. (See, for example, R. p. 548, line 4 – p. 549, line 10). The last call to Ms. Wilson from Appellant was at 2:14 am. The next call was at 2:37 to Stacey Newsom. (R. p. 460, lines 7-23). The murder occurred in that brief time. (R. p. 85, line 5 – p. 87, line 1).

Appellant's phone records also reflected contacts with multiple other women. (See R. p. 573, line 3 – p. 592, line 25; p. 608, line 10 – p. 609, line 25). In fact, he was making plans to meet a woman matched to him through a dating website on August 28th according to a text message sent August 27th. (R. p. 755, line 20 – p. 760, line 7). Also, the night of the murder, he was happy, outgoing and expressed that he was excited about "getting back together with his girlfriend." (R. p. 767, line 3 – p. 770, line 7).

In sum, the jury was asked to consider the varied stories and a variety of evidence. As noted above, after due consideration, the jury found Appellant guilty of murder.

ARGUMENT

I.

The trial judge did not abuse his discretion in admitting photographs offered to prove malice beyond a reasonable doubt by demonstration of the details of the bloody murder in the multiple and varied wounds suffered by the victim, including twelve stab wounds (three to the back), eleven slashes, multiple bruises and one clear bite mark, when Appellant admitted the killing, but a critical issue at trial was the presence or absence of malice.

Relevant Facts:

Upon objection to several of the photographs showing the home and Ms. Wilson's body in the home, the trial judge took an overnight break in the proceedings and had counsel review all the photographs at one time. (See R. p. 192, line 1 – p. 193, line 12). The next morning, the trial judge, having considered counsel's arguments during the break, first announced that he would not admit State's Exhibits 32, 34, 35, 36, 37, 39, 43, 44, 50 and 61. (R. p. 193, lines 19-25). The trial judge later marked these as Court Exhibit 3 to ensure the photographs would not be submitted to the jury in error. (R. p. 155, lines 14-23). The remaining objections were to State's Exhibits 31, 33, 38, 41, 42, 45, 46, 54, 60 and 62. (R. p. 194, lines 1-19). Each of these photographs showed a specific scene of the crime area along with the wounds and/or angle of wounds, bruise, and bite mark. (R. p. 194, lines 5-19). The ten (10) photographs were offered to show evidence of malice – a highly contested issue. (R. p. 196, lines 7-15).

The defense did not contest the photographs were relevant; rather, the defense argued “under 403 due to the fact that these photographs would be unfairly prejudicial and that unfair prejudice would substantially outweigh the probative value of these photos.” (R. p. 194, line 24 – p. 195, line 2). However, the defense only tied the relevancy of the photographs to “corroborat[ion of] CSI Nelson's observations when he first walked through the house and took the photographs.” (R. p. 195, lines 3-6). The defense offered that the testimonial description

would suffice. The defense further argued “the wounds on the nude body” were “gruesome” and would only work to “elicit an emotional response” where the defense was not “contesting how the body was found” or that CSI photographed and did not disturb the body on discovery. (R. p. 195, line 6 – p. 196, line 4).

The State, relying on *State v. Collins*, 409 S.C. 524, 535–36, 763 S.E.2d 22, 28 (2014), and this Court’s opinion in *State v. Gray*, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014), argued the photographs were “necessary to substantiate material facts” regarding the “nature of the crime” which included not only the wounds but the treatment of the body. The State argued the jury should “see the nature of these wounds in determining how they were inflicted in order to make a determination in this case.” (R. p. 197, line 23 – p. 199, line 15).

The defense argued the case law relied upon was distinguishable from the instant matter as the case law only referenced autopsy photographs where the instant photographs were made at the crime scene. (R. p. 199, line 20 – p. 200, line 18). Defense counsel noted the CSI officer was “not a doctor, he’s not qualified to talk about the injuries specifically,” and his verbal description of the injuries he observed was sufficient without “illustration” by photograph. (R. p. 200, lines 5-13).

The trial judge ruled:

... Having reviewed all of the pictures earlier, the Court has ruled out the pictures that the Court felt would elicit a strong emotional response because of the amount of blood in the pictures ... The Court finds that the probative value of the pictures in question, the Court just enumerated on the record, the probative value outweighs any prejudicial value. It, basically, depicts the scene as it occurred. It depicts the scene as to where the body was found in the house. It, also, depicts the wounds that were inflicted upon the victim, which would go to the issue of malice, and that’s a requirement.

I don’t know how else the State could prove it other than with the extent of the wounds, the positions of the wounds and position of the body as well as the extraordinary fact in this case that the body was cleaned up, washed, placed on the

sofa flat on the back covered by a a comforter with the head placed on a pillow and, apparently, according to the testimony, the hair appeared to be washed. So the Court finds the probative value outweighs any prejudicial value as to these picture[s]. ...

(R. p. 200, line 19 – p. 201, line 15).

Appellant complains to this Court that the trial judge erred in admitting Exhibits 33, 38, 41, 42, 45, 46, 54, 60 and 62.¹ (FBOA, p. 11). Consequently, Appellant appears to have abandoned his objection to State's Exhibit 31, but contests the ruling as to the remaining photographs. Appellant argues the photographs were "not necessary to substantiate material facts," that the State intended to use the photographs for an improper purpose, *i.e.* for an emotional appeal, and that the fact of the wounds could be adequately established with testimony. (FBOA, p. 12).

Discussion:

"The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). "If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it." *Id.* "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 207 (Ct.App.2008) (internal quotation marks omitted).

The murder was gruesome. The photographs offered captured the victim's ferocious fight to live and the multiple and various types of wounds she suffered in doing so. Appellant admitted the fight and stabbing in the victim's home; he testified, though, that he acted only in self-

¹ In his brief, Appellant references Exhibit 142 instead of 42. The transcript does reflect number 142, (see R. p. 194, lines 10-12); however, it appears to be either an inadvertent misstatement at trial or a scrivener's error in the transcript. State's Exhibit 42 shows the victim and several of the wounds while Exhibit 142 reflects the kitchen area in the victim's home.

defense. (R. p. 819, line 10 – p. 828, line 9; p. 904 line 20 – p. 905, line 1). The details of the murder – especially the three stab wounds to the victim’s back, (see R. p. 194, lines 16-19; p. vii [State’s Exhibits 60 and 62]), the wound to the neck evidencing a twisting effect, (see R. p. 194, lines 13-16; p. 728, lines 17-22; p. vii [State’s Exhibits 45 and 46]); the pronounced and vicious bite mark, (see R. p. 194, lines 8-10; p. vii [State’s Exhibit 38]), in particular – together work to disprove beyond a reasonable doubt the testimony of self-defense. In this case, it is especially important not to limit the proof of malice that is reflected by the victim’s own body.

As this Court has previously noted: “[T]he more essential the evidence, the greater its probative value.” *State v. Gray*, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014) (quoting *United States v. Stout*, 509 F.3d 796, 804 (6th Cir.2007) (internal quotation marks omitted)). In fact, contrary to the position taken on appeal, defense counsel did not contest the critical relevance of the information in the photographs; rather, defense counsel asserted defendant would suffer unfair prejudice in admission of the photographs due to their graphic nature. Thus, to the extent Appellant argues a lack of relevance, (see FBOA, p. 12), such argument is barred from review. See, e.g., *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) (“A party may not argue one ground at trial and an alternate ground on appeal.”). Even so, the record not only supports the concession of relevance, it also supports that the trial judge’s ruling the relevant evidence did not raise a danger of unfair prejudice sufficient to block admissibility.

“To constitute *unfair* prejudice, the photographs must create a ‘tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.’” *State v. Kelley*, 319 S.C. 173, 178, 460 S.E.2d 368, 370-71 (1995) (quoting *State v. Alexander*, 303 S.C. 377, 377, 401 S.E.2d 146, 149 (1991))(emphasis added).“The evaluation of probative value

cannot be made in the abstract, but should be made in the practical context of the issues at stake in the trial of each case.” *State v. Gray*, 408 S.C. at 610, 795 S.E.2d at 165.

Here, the photographs were used to specifically demonstrate, explain, and corroborate the location, extent, and order of individual wounds which, in turn, gave evidence of malice. Appellant incorrectly asserts the admission was “not necessary to substantiate material facts or condition,” (FBOA, p. 10), when malice was the key issue in the case. In *State v. Kelly*, 319 S.C. 173, 460 S.E.2d 368 (1995), our Supreme Court found photographs showing blood patterns on the victim and area around the victim were probative as to the element of malice. The Court noted the defense position that the defendant should only be convicted of voluntary manslaughter, and reasoned the evidence reflecting “the entire crime scene,” which included “charts, photographs, and video [that] also were relevant to establish malice.” *Id.*, 319 S.C. at 178, 460 S.E.2d at 370. In particular, the Court reasoned:

... The charts, photographs, and video here depicted the excess nature of the killing. The relevance of ... these items and their probative value on the issue of malice was great enough to negate the risk of the jury’s basing its decision on an improper passion.

Id., 319 S.C. at 178, 460 S.E.2d at 371.

In discussing similar evidentiary rulings in their cases, the Pennsylvania courts have oft quoted:

A criminal homicide trial is, by its very nature, unpleasant, and the photographic images of the injuries inflicted are merely consonant with the brutality of the subject of inquiry. To permit the disturbing nature of the images of the victim to rule the question of admissibility would result in exclusion of all photographs of the homicide victim, and would defeat one of the essential functions of a criminal trial, inquiry into the intent of the actor. There is no need to so overextend an attempt to sanitize the evidence of the condition of the body as to deprive the Commonwealth of opportunities of proof in support of the onerous burden of proof beyond a reasonable doubt. Further, the condition of the victim’s body provides evidence of the assailant’s intent, and, even where the body’s condition

can be described through testimony from a medical examiner, such testimony does not obviate the admissibility of photographs.

Com. v. Robinson, 864 A.2d 460, 502 (Pa. 2004) (quoting *Com. v. Rush*, 646 A.2d 557, 560 (Pa. 1994)). The Georgia courts have concisely rejected such an argument on unfair prejudice on the basis of its own paradox: "...a defendant cannot complain about photographs that simply 'portray the havoc wreaked by [his] own hand.'" *McKibbins v. State*, 750 S.E.2d 314, 322 (Ga. 2013) (quoting *Null v. State*, 402 S.E.2d 721 (Ga. 1991)). Appellant's malice in the killing is aptly demonstrated by the work of Appellant's hands. It is critical evidence where Appellant admits the killing but claims self-defense. See generally *Kelly, supra*. See also *State v. Durand*, 963 So. 2d 1028, 1036-38 (La. App. 5 Cir. 2007) (finding that graphic photographs were more probative than unfairly prejudice "[g]iven defendant's claim he did not intend to kill the victim and instead had acted in self-defense"). In fact, the jury was charged that the brutality of the crime was a fact to consider in determining malice. (R. p. 1116, lines 4-14). See *State v. Jones*, 86 S.C. 17, 19-20, 67 S.E. 160, 162 (1910) (approving charge that "[m]alice ... may be implied from brutal conduct on the part of the person committing the crime...."). See also 40 C.J.S. Homicide § 46 (April 2016 Update) ("The fact that cruelty or brutality was manifested in the killing will raise an inference of malice....").

Appellant's assertion the photographs were not needed to corroborate the testimony of the responding officers and pathologist, (see FBOA, p. 12), misses the point. The State was not tasked with proving beyond a reasonable doubt that the crime scene photographs were taken, or the autopsy was performed²; rather, the value of the evidence is in *how* Ms. Wilson was stabbed, where and how many times, along with the evidence of cuts on extremities and bruising all over

² In fact, the pathologist identified and testified according to separate photographs that were admitted over defense counsel's objection. (See R. p. 715, line 14-p. 716, line 6). Appellant does not contest that ruling on appeal.

her body and the one clearly visible and shockingly pronounced bite mark. In complement to this relevant evidence, the State presented two photographs of Ms. Wilson just hours before her murder. These photographs show Ms. Wilson in sleeveless attire and her arms and shoulders do not have the bite mark and bruises that are on her body at death several hours later. (Compare R. p. vii [State's 38] with R. p. vii [State's 322 and 325]).³ Appellant's complaints that the in-life photographs were "irrelevant" and used merely to inflame the emotions, (see FBOA, pp. 12-13), ring hollow in light of the specific and substantial probative value in the instant case – proof that Appellant not only killed her, but did so with great malice as evidenced by the multiple stabs, bruises, cuts, and the vivid bite mark.

Further, the photographs corroborated not just the investigator's testimony on how the scene presented, the photographs also tended to corroborate the testimony from the neighbor who heard the violence from one end of the home to the other. Consequently, there were discrete and necessary reasons to submit the photographs. The photographs would similarly be admissible under this rule. *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226, 229 (2010) ("If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.") (quoting *Nance*, 320 S.C. at 508, 466 S.E.2d at 353); *State v. Martucci*, 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct.App. 2008) ("Admitting photographs which serve to corroborate testimony is not an abuse of discretion."). See also *State v. Kelsey*, 331 S.C. 50, 76, 502 S.E.2d 63, 76 (1998) (photographs of various bone and bomb fragments and clothing found at crime scene were admissible in murder prosecution to corroborate testimony concerning condition of victim's

³ While Appellant later complained the photos were admitted for "state of mind," (see R. p. 1126, line 11 – p. 1127, line 9), the photographs were obviously in evidence and the solicitor referenced the bite mark directly before making the contrast, (see R. p. 1106, lines 9-13). The contrast is plain. Moreover, as the judge indicated, the State is allowed to make persuasive arguments on the evidence already admitted. (See R. p. 1125, line 25 – p. 1126, line 1).

body as first discovered by police at crime scene, and location of bone and bomb fragments supported testimony that bomb had been detonated in victim's mouth); *State v. Edwards*, 10 S.E.2d 587, 588 (1940) ("In our opinion the trial Judge did not abuse his discretion in admitting the photograph [depicting head, torso, neck wound, decomposition and maggots] as being relevant, nor can we attach any importance, in view of the facts of this case, to the contention that the photograph prejudiced the jury against the defendant. Everything depicted by the photograph was, subsequent to its introduction, testified to in detail by the witnesses.").

Additionally, Respondent asserts there is no merit to Appellant's argument that the photographs were not needed to prove malice. (See FBOA, p. 12, "not necessary to substantiate material facts"). As an initial point, that is not the appropriate inquiry. Rather, the proper question for determining relevance was whether the photographs had "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "[A] defendant cannot dictate the manner in which the prosecution tries its case by stipulating to certain facts or by not challenging an element of the offense" and "the prosecution's burden to prove every element of the crime is not relieved by a defendant's tactical decision not to contest an essential element of the offense." See *Estelle v. McGuire*, 502 U.S. 62, 69 (1991); *State v. Martucci*, 380 S.C. at 249, 669 S.E.2d at 607 (citing *State v. Johnson*, 338 S.C. 114, 122, 525 S.E.2d 519, 523 (2000)) ("The State has the right to prove every element of the crime charged and is not obligated to rely upon a defendant's stipulation.").

Respondent also submits that Appellant's argument the photographs were too gruesome to allow, (see FBOA, pp. 11-12), does not rely on the proper test for admissibility. It has long been established that "[a] trial judge is not required to exclude relevant evidence merely because

it is unpleasant or offensive.” *Martucci*, 380 S.C. at 250, 669 S.E.2d at 607. *See also Farris v. State*, 328 So.2d 640, 641 (Ala.Crim.App. 1976) (“The colored photograph in question is clearly ghastly; but, gruesomeness is not grounds for excluding this type of evidence, if relevant. ... This photograph was properly admitted into evidence notwithstanding the unpleasant subject matter. We cannot, and should not, gloss over the fact that violent death is itself loathsome.”). Simply, gruesomeness alone does not render the photograph inadmissible. *State v. Collins*, 409 S.C. 524, 535–36, 763 S.E.2d 22, 28 (2014).

Finally, any error in the introduction of these photographs must be viewed as non-prejudicial and harmless beyond a reasonable doubt, since it could not reasonably have affected the result of the trial. *See State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991) (“Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial”); *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (“When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result”). At worst, the photographs were cumulative to the other evidence, *i.e.* the testimony on the wounds, condition of the body, and the crime scene. *State v. Robinson*, 201 S.C. 230, 22 S.E.2d 587; 588 -589 (1942) (“The photographs, it is true, were only corroborative of the spoken word, and proved to be unnecessary in this particular case, but they were no more than harmless surplusage. They showed material conditions which existed, and were not inflammable fuel to be consumed by the minds of the jurors, nor do we think that they were calculated to arouse the prejudices of the jury.”). *See also State v. Haselden*, 353 S.C. 190, 577 S.E.2d 445 (2003) (improper evidence harmless where merely cumulative to other evidence); *State v. Evans*, 378 S.C. 296, 299, 662 S.E.2d 489, 491 (Ct. App. 2008) (evidence “merely cumulative,

insubstantial” did not affect the result of trial and considered harmless). This is especially so in light of the crime scene video that was also admitted. Defense counsel objected to the video on the same grounds of showing the body, but he has not raised an issue on the admission of the video in this appeal. (See R. p. 359, line 4 – p. 361, line 6). However, the record supports the basis for the trial judge’s ruling admitting the photographs over Appellant’s objection. His ruling should not be disturbed on appeal.

Appellant’s argument to the contrary should be rejected.

II.

The trial judge did not abuse his discretion in allowing the State a complete opportunity to cross-examine and impeach a defendant who chose to take the stand in his defense.

Relevant Facts:

Appellant opted to take the stand in his defense case. Appellant admitted the killing but claimed self-defense. (R. p. 819, line 10 – p.828, line 9; p. 904, line 20 – p. 905, line 1). The State asked to take up a matter of law after Appellant firmly testified that Ms. Wilson was the aggressor. (R. p. 904, line 20 – p. 905, line 1).

The State then asked permission to present Rule 404(b), SCRE evidence, specifically physical abuse against Andrea Frazier; physical abuse upon Erin Dougherty; physical abuse and threatened use of a kitchen knife against Christine Dalheimer; and physical abuse against Stacey Newsom. The State noted also in regard to Ms. Newsom, Appellant had threatened that if she made a domestic violence report, “he would make sure she looked like the aggressor.” (R. p. 905, line 11 – p. 907, line 20; p. 909, lines 21-23). The State further noted evidence of physical violence against Amy Hate and actual former convictions for some of the violence. (R. p. 908, lines 2-15). The State offered to pare down the proffer to the two, most recent and similar events:

... the two that I feel like are most prevalent would be Christine Dalheimer and Stacey Newsom. Those were the most recent in time. The fact that he pulled a knife on Christine Dalheimer in the same manner he’s alleging a knife was pulled on him and that he had to pull a knife.

And in addition to that, Your Honor, specifically, as to Stacey Newsom, as far as the physical aggression, which he’s - - and it’s in the text messages that’s in evidence that that he stays he was never aggressive with Stacey. Our information would refute that. And, more specifically, he told her he would make sure she looked like the aggressor if she ever reported him. ... Which is exactly what he’s doing here.

(R. p. 908, line 22 – p. 909, line 11).

The State argued these events “should come in under a 404(b) analysis” and it was Appellant’s testimony that made the events relevant. The State noted that in Ms. Dalheimer’s case, Appellant “pulled a knife on her, which is the exact same situation that we have here.” (R. p. 909, lines 21-23; 910, lines 9-12). The State relied upon *State v. Sweat*, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004), for admissibility of the prior acts and threats. (R. p. 910, lines 16-19). The defense argued *Sweat* could be distinguished as the act of former act of violence was tied to the victim.⁴ (R. p. 911, lines 4-20).

The State then added as “to the specific threat that he would make her out to be an aggressor ... I think *State v. Beck* would, also, apply there,” noting in that case there was a threat “several months earlier” to “rob or do something to a person like that” and he later followed through with the crime. (R. p. 911, line 22- p. 912, line 5).

The trial judge ruled that “these cases are too remote in time” to support the exceptions for motive and intent under Rule 404(b). (R. p. 912, line 22 – p. 913, line 6). The trial judge did not find that Appellant had opened the door to the prior bad acts testimony. (R. p. 913, lines 7-10).

After the ruling, the trial judge asked if there was anything further from the State for the witness, and if the defense would “have any questions in reply?” Both parties answered in the negative. (R. p. 913, lines 11-19). The defense also advised it would have only one other witness. (R. p. 914, lines 4-8). The trial judge then adjourned the proceedings for the day. (R. p. 914, line 20 – p. 916, line 17).

⁴ In *Sweat*, the prior act of domestic abuse admitted was one inflicted by Sweat on his girlfriend/wife approximately eleven days before the burglary and assault charges where girlfriend/wife’s romantic interest was involved. *State v. Sweat*, 362 S.C. 117, 121, 606 S.E.2d 508, 510 (Ct. App. 2004)

For clarity in the record, the trial judge set out that reply as to Appellant's testimony would be the next day, and reply to Appellant's other witness would be addressed after that witness testified. Further, the trial judge specifically allowed the proffer from Ms. Newsom and Ms. Dalheimer and stated he would "listen to that testimony listen to arguments" after which he would "make a decision." (R. p. 917, lines 7-17). The trial judge clarified, "I've already made one, but I will be glad to revisit it after I listen to testimony." (R. p. 917, lines 19-20). Both the State and defense expressed they understood the Court's position. (R. p. 917, lines 21-24).

The following day, outside the presence of the jury, Ms. Dalheimer testified that around the end of 2010, Appellant "pulled a knife on me one night in the kitchen when we were cooking," and on another occasion placed his thumb on her neck "[i]n a choking manner." (R. p. 925, line 1- p. 926, line 8). Ms. Newsom testified that around "July and October 2010," she and Appellant had "intense fights," and Appellant had threatened that should Ms. Newsom "ever phone the police regarding any violence that - - the words that I recall are you will be the one to go to jail" essentially that "something would be said or done to make it look like my fault." (R. p. 929, line 2 - p. 930, line 14). She also testified that Appellant attempted to head butt her, though he stopped short of doing so, and "wrapped his arms around [her] and pulled [her] to the ground." (R. p. 930, lines 15-24). She recalled that Appellant had at one point shown her "some knives," perhaps shortly after they met, prior to the events of violence she suffered. (R. p. 931, lines 4-12).

The State requested to limit the testimony even further, offering only "the conversation when they were arguing when he talked about what he would do if she called the police that would make it to her fault" as to Ms. Newsom, (R. p. 937, lines 8-14), and the incident where Appellant pulled the knife on Ms. Dalheimer in her kitchen, (R. p. 937, lines 15-19). The State

relied primarily upon *State v. Beck* for admission of the statement, and noted the act would not be admissible under the same logic. (R. p. 938, line 1 – p. 939, line 3; p. 941, line 25 – p. 942, line 21).

The defense argued the statements could not be “pulled apart” from the bad act, which was not admissible. (R. p. 940, line 7 – p. 941, line 22).

In reply, and in addition to relying on *Beck*, the State also submitted that in order for the statement to be admissible under Rule 613, SCRE, the State would have to have the opportunity to ask Appellant if he made the statement, and conceded that if he admitted the statement, then they could not offer the extrinsic evidence of same. (R. p. 942, line 22 – p. 943, line 2). The trial judge again found the proffer evidence was “too remote in time” and would not be admitted. (R. p. 943, lines 19-24).

After a short break in the proceedings, the State again narrowed the evidence only to Ms. Newsom’s evidence and offered that Appellant was technically still on the stand. (R. p. 946, lines 1-16). Over defense counsel’s objection, the trial judge, recalling his own statement that he would revisit the cross-examination issue upon hearing the testimony, allowed the State to pose one question about the statement to Ms. Newsom that “he would make it look like it was her fault.” (R. p. 948, line 18 – p. 949, line 19). Upon further objection to the testimony, the trial court clarified for the defense that it was not coming in as 404(b) evidence but he would allow the State to “lay the foundation on cross, then impeach him” on his prior statement. (R. p. 950, lines 5-19). Upon further complaint by the defense, the trial judge again noted he was not allowing prior bad acts in but was allowing opportunity for impeachment with the prior

statement. He also offered “to give a charge to the jury” that such evidence would only be for impeachment. (R. p. 951, lines 14-18).⁵

On continuation of the cross-examination, the State asked:

In the fall of 2010, specifically, in October, November, that area, do you remember making a statement to Stacey Newsom at her home, I believe, that’s in Simpsonville, stating that if she ever called law enforcement, you would make it look like it was her fault?”

(R. p. 953, line 22 – p. 954, line 2).

Appellant’s response was, “No, I do not.” (R. p. 954, line 3). No other questions were asked and the cross concluded. (R. p. 954, lines 5-7).

Before the State’s reply, the trial court noted the limitation that the evidence could only reference the statement, “not ... threats or any violence or anything else. No pushing and shoving or anything.” (R. p. 972, lines 13-22).

In the State’s reply, Ms. Newsom gave narrowly tailored testimony reflecting her conversation with Appellant and his statement that if she ever “were to call law enforcement about,” and the State actually interjected to confine the testimony to the narrow limits of the statement alone, “that I would be the one to go to jail.” (R. p. 979, lines 2-17).

Appellant asserts on appeal that “the State concocted a scheme to recall him to the stand for a single question – a question designed solely to implicitly inform the jury of his past bad acts” for impeachment purposes. (FBOA, p. 13). He also complains that the testimony inferred a bad act which should not have been admitted. (FBOA, p. 17-18). Appellant submits the re-opening of cross-examination and allowing the testimony constituted reversible error. (FBOA, p. 18).

⁵ Such a charge was given, referencing credibility determinations by consideration of whether prior statement made by the witness were consistent or inconsistent with the testimony. (R. p. 1111, lines 15-17).

Discussion:

Appellate courts in this State “will not disturb a trial court’s ruling concerning the scope of cross-examination of a witness to test his or her credibility, or to show possible bias or self-interest in testifying, absent a manifest abuse of discretion.” *State v. Gracely*, 399 S.C. 363, 371, 731 S.E.2d 880, 884 (2012). Here, Appellant argues the manifest abuse of discretion in allowing the cross-examination is dependent upon finding the admission of the testimony was error. However, the trial judge correctly found the question posed was a necessary pre-step to impeachment under 613(b), SCRE. Thus, there was no error in allowing the question. In short, because this was a matter of impeachment, it is not the posing of the question that allowed the evidence to become admissible, but Appellant’s answer. Where a witness admits such a statement, no extrinsic evidence may be offered. Here, Appellant unequivocally denied the properly identified statement (*i.e.*, the substance of the statement, the person to whom the statement was made, and the time and place of statement). Thus, his answer allowed the State to offer extrinsic evidence of the prior inconsistent statement and impeachment was proper under Rule 613(b).⁶

“When an accused takes the stand, he becomes subject to impeachment, like any other witness.” *State v. Major*, 301 S.C. 181, 183, 391 S.E.2d 235, 237 (1990). Specifically, “an accused who takes the stand may be cross-examined about ‘past transactions tending to affect his credibility.’” *Id.* (quoting *State v. Allen*, 266 S.C. 468, 482, 224 S.E.2d 881, 886 (1976)).

⁶ Defense counsel did not question the actual impeachment value of the statement; consequently, that issue is not before the Court in the appeal. Defense counsel only questioned whether the cross-examination could continue and whether the extrinsic evidence constituted forbidden propensity evidence under Rule 404(a), *i.e.* did not fit the exceptions of 404(b). (See R. p. 940, line 22 – p. 941, line 2). As the trial judge noted, he ruled the prior bad *acts* could not come in as substantive evidence, but Appellant’s own prior *statement*, not covered by Rule 404(b), was admissible for its impeachment value. (R. p. 950, lines 15-18).

Appellant submits that the cross-examination at issue offended the prohibitions of Rule 404(b), SCRE. (FBOA, pp. 17-18). However, a prior statement of bad intent is not a prior bad act. *State v. Beck*, 342 S.C. 129, 134, 536 S.E.2d 679, 682 (2000) (“statements of intent to commit crimes” are not prior bad acts). Rule 404(b) is inapplicable to the evidence at issue. Even so, as the trial judge correctly found, at issue was impeachment by the statement, not evidence of intent under Rule 404 (b), SCRE. (R. p. 950, lines 8-18).

As noted above, whether extrinsic evidence of the statement could be admitted was controlled by whether Appellant admitted the statement. Rule 613, SCRE. Indeed, the State agreed that if a defendant admits to the statement referenced, the State would not be able to offer extrinsic evidence to show the contrary. (R. p. 952, lines 19-21). Further, in limitation to any possible prejudice, the circumstances in which the statement was made were not allowed before the jury. (See R. p. 972, lines 13-21).

Additionally, the impeachment value of the statement is exceedingly strong in context of this case.⁷ Appellant’s credibility as to his statements that Ms. Wilson, his victim, was the aggressor was critical evidence for the jury’s consideration. The prior statement that, if ever the legal need arose, he would make it appear his girlfriend was at fault, bears directly on the credibility of testimony regarding his intent and actions against his then girlfriend, Ms. Wilson. Thus, it was sound impeachment evidence. Further, the admissibility of the statement is relevant and proper.

⁷ Again, Appellant has not contested the relevance of the statement for impeachment value. At any rate, there is little doubt that any “witness under cross-examination may be asked whether he has made any former statement relative to the subject matter of the action and inconsistent with his present testimony.” *Aakjer v. Spagnoli*, 291 S.C. 165, 170, 352 S.E.2d 503, 507 (Ct. App. 1987).

In *State v. Galloway*, 263 S.C. 585, 593, 211 S.E.2d 885, 889 (1975), our Supreme Court, relying on *State v. Brock*, 130 S.C. 252, 126 S.E.2d 885 (1925), found that the question of relevance is key to admissibility and may be resolved by considering whether “the testimony sought to be impugned is material, while the impugning testimony, except for that purpose, is not.” *See also State v. Bailey*, 279 S.C. 437, 440, 308 S.E.2d 795, 797 (1983) (matter collateral where it “did not go to any material issue at trial”). Further, *State v. Beck*, 342 S.C. 129, 536 S.E.2d 679 (2000), establishes the basis for the relevance as to statements of intent and distinguishes the matter from evidence of a pattern of prior bad acts as anticipated under Rule 404(b), *i.e.* what was ruled inadmissible below.

In *Beck*, our Supreme Court found that a statement of intent by “one accused of a crime” may be admitted if relevant to the crime at bar. In particular, the Court found a statement made by the defendant regarding his intent “to call escort services for dates and then rob and have sex with the employees” made some four months before the murder of a victim from an escort service was admissible in the defendant’s trial for the murder. 342 S.C. at 134-35, 536 S.E.2d at 682. Similarly here, the statement bears on the credibility of Appellant’s assertion that the victim was the aggressor – a material matter at trial. The trial judge did not abuse his discretion in admitting the statement for purpose of impeachment on a relevant matter. *See State v. Williams*, 263 S.C. 290, 302, 210 S.E.2d 298, 304 (1974) (“The difficulty in applying this rule lies in determining what are collateral matters. Because of such difficulty, *Brock* recognized that considerable latitude and discretion should be allowed the trial judge in determining the admissibility of impeaching testimony.”).

The intent with which Appellant acted was of critical relevance in his trial for murder thus impeachment was proper. “While it is true that threats against a third party are normally not

admitted to show malice against the deceased, the rule is not an inflexible one.” *State v. Alford*, 264 S.C. 26, 32, 212 S.E.2d 252, 254 (1975), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009). Here, the statement shows, contrary to Appellant’s testimony of his intent that he had actually expressed that he would make his girlfriend appear at fault in a serious situation where police would investigate. These details, like the specific details in *Beck* as to a specific type of crime and type of victim, compel the finding that the statement, which *Beck* would support could have been substantive evidence, is certainly relevant for impeachment purposes. See *United States v. Queen*, 132 F.3d 991, 996 (4th Cir. 1997) (“The more similar the extrinsic act or state of mind is to the act involved in committing the charged offense, the more relevance it acquires toward proving the element of intent.”); cf. *People v. Cruz*, 187 P.3d 970, 998 (Cal. 2008) (“The prior threat to kill a deputy by shooting him in the back of the head was ‘manifestly admissible [under state evidentiary law] to show defendant’s state of mind’ at the time he fatally shot Deputy Perrigo in the back of the head.”); *People v. Rodriguez*, 726 P.2d 113, 129 (Cal. 1986) (upholding admission of a threat to third party under state evidentiary rule finding “a generic threat is admissible to show the defendant’s homicidal intent where other evidence brings the actual victim within the scope of the threat”). At any rate, any possible error could only be harmless.

Appellant courts “[i]n determining harmless error regarding any issue of witness credibility, ...will consider the importance of the witness’s testimony ... whether the ... testimony was cumulative, whether other evidence corroborates or contradicts the ... testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State’s case.” *State v. Fossick*, 333 S.C. 66, 70, 508 S.E.2d 32, 34 (1998). Respondent submits the importance of any testimony on intent is clear where the only issue is whether there was malice

aforethought. This in turn also heavily supports the importance and necessity of full cross-examination and impeachment. Even so, the overall strength of the case would still have been prodigious – the neighbor’s recounting of the waves of violence, (R. p. 85, line 17 – p. 87, line 24), undermines Appellant’s story, as does the blood evidence in the home, and the victim’s own body reflecting bruising, stabs to the back, knife twisting to the throat, and a bite mark to the upper arm, the unresponsiveness to police inquiry at the home, the treatment of the body after the attack – all weigh heavily against Appellant’s story. Further, the remaining cross-examination shows Appellant merely relied upon a purported failure to remember the attack – except, of course, that he was only acting in self-defense during the entirety of his vicious attack –and offered attacks on the victim’s character. (See, for example, R. p. 882, line 17 – p. 883, line 23; p. 897, lines 9-24). Further, the impeachment statement was skeletal and did not involve concomitant collateral evidence of prior bad acts, rather the allowed evidence was limited to the prior statement alone. The evidence neither showed a pattern of bad acts or *res gestae*. At any rate, should one extract the short statement, such extraction does not reasonably push the scales away from proof beyond a reasonable doubt. However, the trial judge did not abuse his discretion in allowing impeachment based on the inconsistent statement. There is no error.

Appellant’s argument to the contrary should be rejected.

III.

The trial judge did not abuse his discretion in admitting the specifics from the written statement offered in redirect describing a prior argument between Appellant and Ms. Wilson when defense counsel opened the door to the specifics of statement that he omitted from the cross-examination that would bear on the witness's recall and ability to perceive the events described.

Relevant Facts:

Outside the presence of the jury, the State advised the Court that Mr. Kelly Smith, the victim's neighbor, informed officers in his initial statement not only that he had heard the vicious fighting the night of the murder, but had heard victim and defendant fighting June or July before the August murder. In particular, the State advised his testimony would be he heard the victim "yell out no, again, in fear." (R. p. 70, lines 9-15). The defense moved to exclude the "characterization 'like he was hurting her,'" which the Court granted. (R. p. 72, lines 12-13). The Court allowed the State to question the witness about what he actually heard. (R. p. 72, lines 7-8).

The State thereafter called the witness. Mr. Smith testified that he had heard a prior argument, through the walls of the duplex. He explained the duplex residences were "mirrored" and he could "hear everything that they said in the living room," could hear telephone calls, essentially, "[i]f it was above speaking volume, I heard it." (R. p. 82, lines 1-9). He testified he recalled hearing an argument between Appellant and Ms. Wilson around the "end of May, beginning of June." (R. p. 82, lines 12-13). Specifically, he testified he "heard mumbling and then it lead to her saying no very loudly. Like, No. No." (R. p. 82, lines 16-17). He recalled that this alarmed him and Ms. Wilson later approached him in their backyard and he stated in their discussion that "sometimes relationships get heated and" he advised Ms. Wilson she could call on him "if she needed anything." (R. p. 83, lines 7-12). He noted at that point that her

relationship with Appellant “was on the mend.” (R. p. 80 line 14). Mr. Smith noted that Ms. Wilson was absent a great deal of the time over the summer with trips to Bali and to see her parents. (R. p. 83, line 15 – p. 3). In August of 2011, he noted Appellant at Ms. Wilson’s home. (R. p. 84, line 7-15). He testified he was alarmed at that point and talked to her about the situation as at that point in time he understood them to be “on the outs” and she was not seeing him anymore. (R. p. 84, line 17- p. 85, line 4). He thereafter described the sounds of violence that he heard as Ms. Wilson was murdered, her screams of “no, no, no” and “pleading for her life,” that the violence began in the bedroom area and the “second wave” sounded from the the kitchen. (R. p. 85, line 17 – p. 87, line 24).

On cross-examination, Appellant questioned Mr. Smith as to whether he could actually hear where the violence occurred, pointing out neither the bedroom or the kitchen were referencing in his original statement describing the violence. (R. p. 102, line 11 – p. 103, line 7). Appellant also asked about the “one time before” that he heard Appellant and Ms. Wilson fighting. He asked:

So when you describe prior difficulties between Ms. Wilson and Hank in that summer and you’re asked whether you ever remember it, you mentioned yes, one time before.

(R. p. 104, lines 19-22).

Mr. Smith confirmed “one time” and added, “[o]ne time that stood out.” (R. p. 104, line 23-25). Appellant suggested that the relationship was not rocky, but they had been in “constant contact.” (R. p. 105, lines 16-17). He noted Mr. Smith’s direct testimony that Appellant and Ms. Wilson “had been involved with each other one way or another for about eight or nine months prior to the incident,” and that Mr. Smith had been living in the duplex for “that entire period of time” as had Ms. Wilson. (R. p. 106, lines 1-5).

On re-direct, the solicitor noted that the statement did, in fact, reflect that the last struggle was at the back door. (R. p. 107, line 22 – p. 108, line 5). Further, the solicitor asked about him to continue his answer from cross-examination to explain what was also in his statement about the prior difficulties. Mr. Smith testified he “heard her screaming like he was hurting her and Jen saying no.” (R. p. 108, lines 11-12). The defense thereafter objected and the Court, after a bench conference, overruled the objection. (R. p. 108, lines 6-20). Mr. Smith then confirmed that the description of the prior fight was in his statement. (R. p. 108, lines 23-24).

Outside the presence of the jury the defense placed its objection on the record:

... Ms. Campbell went through the statement and elicited his testimony that I heard her screaming like he was hurting her. Specifically, like he was hurting her, which was the portion of the statement that we dealt with earlier and had been excluded earlier.

I submit I did not open the door to that in my examination of him. My questioning of him was whether or not he had told the police one time before, that he heard them arguing one item [sic] before. And he responded yes. And he responded that’s what I testified to today.

So I don’t see how that opens the door to her then elaborating on what she had just been ruled as inadmissible. So the objection is on that basis and I move for a mistrial on that basis.

(R. p. 109, line 24 – p. 110, line 13).

The trial judge summarily denied the motion for mistrial but requested the solicitor place her argument on the objection on the record. (R. p. 110, lines 14-15). The solicitor noted the defense inferred Mr. Smith gave incomplete information in his statement and admission of the rest of the statement showed there was more complete information which the defense failed to publish or acknowledge, citing Rule 106, SCRE. (R. p. 110, lines 16-21).

The trial judge ruled:

... I overrule the objection based upon opening the door on cross-examination. It was insinuated directly towards that the man did not hear properly through the

walls and he heard properly enough to realize or, at least, thinking that she was in danger of being hurt. Therefore, I think the door was opened. And your motion is denied....

(R. p. 110, line 22 – p. 111, line 3).

Discussion:

“The scope of redirect rests in the discretion of the trial court.” *State v. Stroman*, 281 S.C. 508, 513, 316 S.E.2d 395, 399 (1984). *See also State v. Colf*, 337 S.C. 622, 625, 525 S.E.2d 246, 247-48 (2000) (The “[a]dmission of evidence falls within the trial court’s discretion and will not be disturbed on appeal absent abuse of that discretion.”). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law,” *State v. Cope*, 405 S.C. 317, 335, 748 S.E.2d 194, 203 (2013), or when the ruling lacks factual support in the record, *Wilder v. State*, 388 S.C. 282, 285, 696 S.E.2d 587, 588 (2010). *See also State v. McEachern*, 399 S.C. 125, 137, 731 S.E.2d 604, 609 (Ct. App. 2012) (same). Appellant submits that the ruling lacks factual support for finding the statement admissible, *i.e.* lacks factual support for finding defense counsel opened the door. (FBOA, pp. 18-21). However, the record lends significant support to the trial judge’s ruling.

First, it cannot be contested that defense counsel questioned the witness’ specifically about the lack of detail in his written statement. (See R. p. 101, line 24 – p. 102, line 1, specifically referencing statement given at 12:45 on August 28, 2011). Defense counsel questioned the witness’ testimony on hearing the violence from the confrontation and murder and placing the violence in various locations. Defense counsel directly questioned the witness about the absence of the location detail in his written statement. (R. p. 102, line 8 – p. 103, line

7).⁸ Defense counsel also directly questioned the witness's knowledge of any difficulties or state of the relationship as referenced in the statement. (R. p. 275, line 10 – p. 276, line 2). This, in turn, logically brings into question whether the testimony on direct regarding a prior confrontation was a product of *post hoc* reasoning, or if there was some reason to have express recollection of the prior argument. The State was able to dispel the defense suggestion of *post hoc* reasoning by relying on the detail in the statement given at 12:45 on August 28, 2011.

In short, defense counsel posed questions on the basis of the sufficiency and correctness of the written statement. The redirect was narrowly tailed to the details in the statement supporting the testimony – the very statement defense counsel repeatedly challenged. (See R. p. 107, line 11 – p. 108, line 24). There is no error as the redirect was proper pursuant to Rule 106, SCRE. The matter is settled by reference to *State v. Patterson*, 367 S.C. 219, 625 S.E.2d 239 (Ct. App. 2006).

In *Patterson*, the trial judge allowed the admission of an entire statement under nearly identical circumstances:

After eliciting testimony from Richardson regarding how careful she was in giving police a correct depiction of the events that led to Clark's murder, defense counsel in essence insinuated Richardson's statement to police was incomplete. The defense put Richardson's statement to police at issue, and fundamental fairness required the entire statement be admitted into evidence. Patterson would have us construe Rule 106 in such a way that inquiries that probed at alleged omissions from a statement would not open the door to the admission of the statement. The purpose behind Rule 106 would be frustrated if the rule's application in a given case depended upon whether an alleged oral assertion was or was not in a written statement. We find the rule of completeness applies to insinuations, innuendos, and omissions. Thus, the trial judge properly admitted Richardson's statement.

⁸ It is rather telling that defense counsel did not object to the remainder of the redirect when the redirect was based on the extensive questioning about the written statement. His position appears to concede the response, as a whole, was proper. Again, the response was based on the questions posed about the written statement and a fair presentation of the evidence by admission of the statement as a whole.

Patterson, 367 S.C. at 227-28, 625 S.E.2d at 243.

The trial judge reasonably and logically found that the defense had opened the door to response by its “insinuations, innuendos, and omissions” in its examination of the witness concerning the witness’ written statement. There is no error. However, should this Court find error in these discrete circumstances, such error could only be harmless given the wealth of evidence of malice and Appellant’s concession that he inflicted the fatal wounds. *See State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991) (“Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial”); *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (“When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result”). This is so for several reasons.

Initially, Respondent notes the reference to “screaming like he was hurting her and Jen saying no,” without evidence that Appellant hurt Ms. Wilson at that time, does not show an actual bad act of significance. Further, there was ample, un-objected to evidence of a tumultuous relationship between the two so the evidence was harmlessly cumulative. *See State v. Haselden*, 353 S.C. 190, 577 S.E.2d 445 (2003) (improper evidence harmless where merely cumulative to other evidence); *State v. Evans*, 378 S.C. 296, 299, 662 S.E.2d 489, 491 (Ct. App. 2008) (evidence “merely cumulative, insubstantial” did not affect the result of trial and considered harmless). However, and critically, Applicant admitted inflicting the fatal wounds, and the number and position of the wounds is an artful articulation of malice proven by the victim’s own body. The evidence well supports the jury’s murder verdict such that the admission of the minor statement, if considered error, could only be harmless on this record. *Bailey, supra*.

Appellant’s argument to the contrary should be rejected.

IV.

The circuit court judge in pre-trial did not abuse her discretion in declining to order the entire Fifth Circuit Solicitor's Office be recused from the trial of this case where one assistant solicitor and her husband lived next to the murder victim, the assistant did not participate in trial nor was called as a witness, and her husband testified only to seeing Appellant leave the home which was not contested. She correctly found Appellant failed to show prejudice in this set of circumstances.

Relevant Facts:

On December 12, 2012, defense counsel moved to recuse the Fifth Circuit Solicitor's Office based upon the following assertion:

Through the production of discovery materials by the Fifth Circuit Solicitor's office, it has been revealed to defense counsel that an assistant solicitor with the Fifth Circuit Solicitor's office is a material witness in this case. In order to avoid the appearance of impropriety and to allow the Defendant to receive a fair trial, defense counsel respectfully requests the Court to recuse the Fifth Circuit Solicitor's office.

(R. p. 1 [Motion to Recuse the Fifth Circuit Solicitor's Office]).

On December 19, 2012, the Honorable DeAndrea G. Benjamin heard the defense motion. (R. p. 2 [December 19, 2012 Transcript]). The defense asserted Ms. Ashton, an assistant solicitor in the circuit, was "a material witness" as she was "the next-door neighbor to the alleged victim, Ms. Jennifer Wilson." (R. p. 4, lines 20-24). The defense asserted "Ms. Ashton was interviewed, provided a statement" and that both she and her husband ... saw my client leaving the crime scene, driving from the scene away in a car that they claimed to recognize" and identified Appellant in a photographic lineup. (R. p. 4, line 25 – p. 5, line 8). Defense counsel also asserted that the couple "would be material to prove, amongst other things, that he was at the crime scene." (R. p. 5, lines 12-14). The defense did not claim bias or any unfair treatment, "but for appellate things down the road, it is really the appearance of impropriety." (R. p. 5, lines 20-25).

The State first noted Ms. Ashton was not in the courtroom, and that Ms. Ashton immediately informed the solicitor's office when law enforcement identified her as a witness.

According to the State:

From that moment on, there has been no contact with Ms. Ashton in our office. We have built a Chinese wall around her. Nothing has been discussed with her from me or any member of law enforcement that is involved in this case with her, other than when she went to - - I don't even know if she went to CP or they took a statement from her at her home....

She is not going to have anything to do with this case, as well as certainly - - honestly, I mean, from what she sees, she is obviously an important witness, but strategically, Judge, I don't even know if I would call her to the stand at this time. I may just call her husband.

(R. p. 8, line 2- p. 9, line 3).

The State also offered that her testimony could be restricted and/or heard in limine to avoid any hint of impropriety. (R. p. 9, lines 4-10). After hearing additional argument, the judge took the matter under advisement. (R. p. 12, lines 3-5).

On February 1, 2013, Judge Benjamin issued an Order Denying Defendant's Motion to Recuse the Fifth Circuit Solicitor's Office. The motions judge found that there was no right to recusal, a defendant must show actual prejudice, and Appellant had failed to show how Ms. Ashton's position "prejudices him or impedes his right to a fair trial." (R. pp. 14-15 [Order Denying Defendant's Motion to Recuse the Fifth Circuit Solicitor's Office, p. 2]).

Ms. Ashton did not testify at trial. Mr. Ashton testified to seeing Appellant leave Ms. Wilson's home. (R. p. 124, line 15—p. 127, line 13). Appellant testified not only that he was at the home, but also admitted the killing, though he maintained Ms. Wilson was the aggressor. (See R. p. 819, line 10 –p.828, line 9; p. 904, line 20 – p. 905, line 1).

In this appeal, though asserting no precedent in this State directly addresses a similar fact pattern on recusal, Appellant nonetheless complains the motions judge erred in failing to order

recusal of the entire office “to avoid the appearance of bias and to maintain the public’s confidence and the defendant’s confidence in the integrity and impartiality of the judicial system.” (FBOA, p. 21).

Discussion:

As a first matter, it is not disputed that Ms. Ashton did not participate in the prosecution. She did not, in fact, even testify. Her husband testified but only to a fact that was not contested by Appellant. It is difficult to see any legitimate claim of prejudice in light of this record. Yet, Appellant claims he is entitled to a new trial as the proceedings may have presented an appearance of impropriety by the Fifth Circuit Solicitor’s office having prosecuted in these circumstances. This claim is not well-supported by legal principles.

As Judge Benjamin found: “Recusal of an entire ... office is an extreme step, and the threshold necessary for recusing an entire office is higher than that for an individual prosecutor.” 81 Am.Jur. 2d Witnesses § 229. (R. pp. 14-15 [Order Denying Defendant’s Motion to Recuse the Fifth Circuit Solicitor’s Office, p. 2]). *See also State v. Inman*, 395 S.C. 539, 558, 720 S.E.2d 31, 41 (2011) (“[t]here is no inherent right to disqualification when a member of the state attorney’s office is called as a witness in a case prosecuted by a state attorney in the same office, unless actual prejudice can be shown.”)(quoting 81 Am.Jur.2d Witnesses § 229 (2004 & Supp.2011)).⁹

South Carolina law “places upon the moving party the burden of showing actual prejudice from the failure to disqualify.” *State v. Patterson*, 324 S.C. 5, 19, 482 S.E.2d 760, 767

⁹ Respondent agrees with Appellant that the nub of the issue in *Inman* was whether the prosecutor would be called by the defense, but the authority does not rest on that narrow distinction. The argument for disqualification of the office must be based upon whether there are facts or circumstances where the disqualifying fact is imputed to the entire office. That does not depend upon which party calls the witness. Respondent submits Appellant’s offered distinction is a distinction without a difference.

(1997). “Appellant must show actual prejudice from the failure to disqualify the solicitor’s office.” *State v. Chisolm*, 312 S.C. 235, 238, 439 S.E.2d 850, 852 (1994). Our State Supreme Court has rejected both a constitutional aspect to the claim and a presumption of prejudice upon showing of potential conflicts. *State v. Smart*, 278 S.C. 515, 518-19, 299 S.E.2d 686, 688 (1982), *overruled by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). Disqualification, however, has occurred.

Our Supreme Court found the necessity of disqualification of a solicitor’s office based upon significant misconduct, in particular a showing that “a deputy solicitor of the Eleventh Circuit Solicitor’s Office eavesdropped on a privileged conversation between appellant and his attorney....” *State v. Quattlebaum*, 338 S.C. 441, 449, 527 S.E.2d 105, 109 (2000). *Accord State v. Cooper*, 386 S.C. 210, 214, 687 S.E.2d 62 (2009) (trial court granted solicitor’s motion to be excused from prosecution for a re-trial where the deputy solicitor had been a law clerk to the prior trial judge and had knowledge of attorney-client matters). However, our courts have found the failure to show “such deliberate prosecutorial misconduct” is a failure to show cause for disqualification of the office. *State v. Bell*, 374 S.C. 136, 143-44, 646 S.E.2d 888, 892 (Ct. App. 2007). *See also State v. Chisolm*, 312 S.C. at 238, 439 S.E.2d at 852 (“We find that the assistant solicitor acted inappropriately by communicating with a party known to be represented by counsel and by surreptitiously tape recording the conversation. However, in view of the full record before the Court, we do not find any prejudice.”); *State v. Smart*, 278 S.C. at 519, 299 S.E.2d at 688 (“We hold that the appellant was properly required to do more than allege a violation of ethical canons.”).

In his argument to this Court, Appellant relies heavily on the California case *People v. Conner*, 666 P.2d 5 (Cal. 1983), and the suggestion that an “appearance of impropriety” is

enough to support disqualification. (See FBOA, pp. 25-26). His reliance on the California case is misplaced as *Conner* is distinguishable on many points, but, critically, it does not even support disqualification based merely on the “appearance of impropriety.”

In *Conner*, the prosecutor was not only a witness but a “potential victim” of defendant’s rampage in the courthouse while waiting trial on the very charges at issue. 666 P.2d at 6. The stabbing of an officer and discharge of a weapon while awaiting trial culminated in escape, for which the defendant was thereafter charged with additional crimes as a result of the escape. The prosecutor “reported the incident to his immediate supervisor, made a written report to the district attorney, and subsequently discussed his experience directly with approximately 10 of the 25 deputy felony prosecutors in his office” and also gave media interviews “describing the event [and he] characterized defendant both as a dangerous felon and as an escape risk.” 666 P.2d at 7. The case was reassigned, but to one within the felony unit. The trial judge did not order recusal on the original charges, but did order recusal of the entire office on the charges stemming from the escape finding that the prosecutor “was a witness to the event and a potential victim.” *Id.* Given the prosecutor’s involvement, the discussion of his experiences with other prosecutors in his section, and with a liberal dose of deference to the trial judge’s exercise of discretion, the appellate court upheld the ruling. *Id.*, at 9.

In contrast factually, here, the witness was not a witness to the crime. The most the assistant solicitor witnessed was the admitted fact that Appellant left Ms. Wilson’s home after the murder. However, the assistant did not testify. Nor did the assistant solicitor participate in the litigation.

Further, as asserted above, the *Conner* court did not depend on the “appearance of impropriety” that Appellant wishes to rely upon. Rather, interpreting its own state statute, the *Conner* court found:

... the legislative history of section 1424 reflects concern about the effects of the elimination of the “appearance of conflict” standard. While it is conceivable that an “appearance” of conflict could signal the existence of an “actual” conflict which, although prejudicial to the defendant, might be extremely difficult to prove, we think that the additional statutory requirement (that a conflict exist such as would render it unlikely that the defendant would receive a fair trial) renders the distinction between “actual” and “appearance” of conflict less crucial.

Conner, 666 P.2d at 8.

Another California court noted the state statute “does not allow disqualification merely because the district attorney’s further participation in the prosecution would be unseemly, would *appear* improper, or would tend to reduce public confidence in the impartiality and integrity of the criminal justice system,” rather disqualification must be shown to be necessary based upon a showing of conflict “so grave as to render it unlikely that defendant will receive fair treatment during all portions of the criminal proceedings.” *People v. Eubanks*, 927 P.2d 310, 317 (1996) (quoting *Conner*). Appellant is not incorrect that there have been cases where the courts have found disqualification of the prosecutor’s office was warranted, or, at least, upheld under the deferential standards of review afforded discretionary rulings. However, he can point to no one fact or one circumstance that would inevitably lead to disqualification as it must necessarily be a case specific consideration.

Moreover, the majority of cases cited in n. 8 of the Final Brief of Appellant (*Cooper*, *Latigue*, *Stenger*, *Banton*, *Tippecanoe County Court*), present situations where a prosecutor had

formerly represented the defendant. That is not the case here.¹⁰ The *Gonzales* case cited alleged a personal animosity toward a defendant who had previously been employed by the office, and rested disqualification of the office on the fact the office failed to screen the prosecutor from the litigation. *State v. Gonzales*, 119 P.3d 151, 163 (N.M. 2005). Lastly, Appellant cites to *Tate* case; however, the *Tate* case has an unusual factual background of having a former judge who presided over the defendant's case become a prosecutor in the office. Like *Gonzales*, the office failed to screen the former judge from the matter; thus, the state court found disqualification of the office was warranted. *State v. Tate*, 925 S.W.2d 548, 557-58 (Tenn. Crim. App. 1995).¹¹

Appellant also cites to *People v. Shinkle*, 415 N.E.2d 909 (N.Y. 1980), to assert a separation barrier is ineffective. (FBOA, p. 25). However, the attorney at issue was a Chief Assistant District Attorney and he had personally initially represented the defendant in the very case at issue. Moreover, "the People circuitously resorted to an affirmation from Leopold himself" to show the barrier was effective. *People v. Shinkle*, 51 N.Y.2d 417, 421, 415 N.E.2d 909, 910 (1980). In *People v. Stevens*, 642 P.2d 39 (Colo.Ct.App. 1981), the attorney at issue similarly has actively represented the defendant in the same case. In fact, the state court followed *Shinkle*. *Id.*, at 41. However, as more cases have been considered, these *per se*

¹⁰ At any rate, we need not look to these out of jurisdiction cases to inform the appropriate test. In *State v. Bell*, 374 S.C. 136, 646 S.E.2d 888 (Ct.App. 2007), this Court consider the implications of an investigator who interviewed the defendant while at the Public Defender's Office who then "switched sides" to the solicitor's office. This Court applied the test in *State v. Smart* and *State v. Chisolm* which required a showing of actual prejudice, and cited with favor the evidence that the investigator only had "minimal" involvement and then only with "ministerial acts." *Id.*, at 142, 646 S.E.2d at 892. This Court concluded: "There is simply no evidence investigator Penn was involved with any substantive or strategic prosecution work suggestive of betrayal of any secrets or confidences." *Id.*

¹¹ Appellant also cites to *Thorpe v. Ancell*, 367 Fed.Appx. 914, 916 n. 5 (10th Cir.). However, that is simply a reference to a footnote notation that a special prosecutor was appointed, and that the defendant had filed a motion to recuse because "some employees were potential witnesses." That does not guide the instant analysis at all.

disqualification cases have been rejected as “unpersuasive.” *State v. Camacho*, 329 N.C. 589, 598, 406 S.E.2d 868, 873 (1991) (collecting cases).

In *Camacho*, the Supreme Court of North Carolina summarized: “Rather than apply an all-encompassing draconian rule automatically disqualifying a prosecutor’s staff from performing the duties of public office, those courts consider whether the prosecutor who formerly represented the defendant obtained any confidential information as a result of that representation and, if so, whether it has been or is likely to be used to the detriment of the defendant.” *Id.*, (collecting cases). Many jurisdictions have found a simple witness issue did not support automatic disqualification of the prosecutor’s office. *See, for example, State v. Edwards*, 837 N.W.2d 81, 90 (Neb. 2013) (defendant sought to have Attorney General’s office disqualified and have the appointment of a special prosecutor on possibility the chief of the criminal division could be a witness; the state supreme court found no error in disallowing chief’s appearing as advocate but allowing the office to prosecute noting it was not a matter of confidences given, but separate roles of advocate and witness); *State v. Clausell*, 474 So. 2d 1189, 1191 (Fla. 1985) (“We realize that if actual prejudice can be shown, a motion for disqualification should be granted. We find, however, there is no inherent right to disqualification when a member of the state attorney’s office is called as a witness in a case prosecuted by a state attorney in the same office.”); *State v. Johnson*, 702 S.W.2d 65, 71 (Mo. 1985) (“The mere fortuity that a nonparticipating assistant prosecutor is to appear as a witness in a particular case does not by itself lodge in an entire prosecutor’s staff an impermissible personal interest in the outcome of the case.”). The Tenth Circuit has noted that “because disqualifying government attorneys implicates separation of powers issues, the generally accepted remedy is to disqualify ‘a specific Assistant United States Attorney ..., not all the attorneys in’ the office. In light of these

principles, every circuit court that has considered the disqualification of an entire United States Attorney's office has reversed the disqualification." *United States v. Bolden*, 353 F.3d 870, 879 (10th Cir. 2003) (reversing disqualification order concluding the order lacked specific factual findings of misconduct or conflicts for the office as a whole) (internal citations omitted).

At bottom, however, is that our jurisdiction already has a test for determining disqualification – a showing of actual prejudice. *State v. Patterson*. Petitioner failed to show actual prejudice in his pre-trial motion. Further, the lack of participation in the trial as either advocate or witness simply affirms the lack of prejudice in this case. The motions judge did not abuse her discretion in denying the motion to recuse.

Appellant's argument to the contrary should be denied.

CONCLUSION

For all the foregoing reasons, Respondent, the State, submits that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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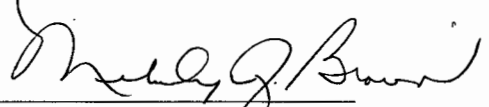
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August 19, 2016.
Columbia, South Carolina.

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2011-GS-32-1255
Appellate Case No. 2014-002288

RECEIVED

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SC Court of Appeals

The State of South Carolina,..... Respondent,

v.

Hank Eric Hawes,..... Appellant.

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INTRODUCTION

Appellant's primary brief challenged numerous errors of law that occurred during the prosecution and conviction of Hank Hawes. The State's responsive brief, filed on April 29, 2016, does little to dispel these concerns or to justify the errors committed by the trial court. This reply brief rebuts the State's arguments and clarifies the legal issues and governing authorities.

ARGUMENT

I. The Trial Court abused its discretion by admitting unnecessary and prejudicial photographs and video into evidence.

As explained in Mr. Hawes' primary brief, the Trial Court erred by admitting into evidence photographs of Ms. Wilson in happier times as well as graphic photos and video of her naked body at the crime scene and during autopsy. (*See* Brief of Appellant at 9–13.) None of this evidence was necessary to prove any fact in dispute but was instead used by the prosecution to arouse the emotions of the jury, including by displaying the photographs during an emotionally charged closing argument that reduced some jurors to tears. (*See* R. 1126–1127.) As explained below, the State's sole responsive argument—that this evidence was necessary to prove malice—misses the mark.

A. Mr. Hawes has not abandoned his argument regarding photographs or video specifically discussed and described in his primary brief.

As an initial matter, the State is mistaken in its assertion that Mr. Hawes has abandoned any challenge to the Trial Court's erroneous admission of State's Exhibit 31 (a particular photo from the scene), the graphic autopsy photographs, and the video taken at the scene. (*See* Brief of Respondent at 13, 16 n.2, and 20). Contrary to the State's assertion, Mr. Hawes' primary brief makes clear in its outline headings and its argument text that the evidence he challenges on appeal includes *all* the still photographs from the scene admitted over trial counsel's objection,

the still photographs from the autopsy, and the video taken at the scene. (*See* Brief of Appellant at 10 (“The Trial Court wrongly allowed the introduction of unnecessary, gruesome photographs *and videos*.”) (emphasis added); *id.* at 11 (discussing the admission of the video and the graphic autopsy photographs, all of which were objected to by trial counsel, and describing the “prejudicial effect of these many graphic photographs”).

The fact that Mr. Hawes’ brief lists several descriptive exemplars of the objectionable photographs (*id.* at 10–11) does not mean he has abandoned his argument as to the scores of other objectionable photographs discussed and described in his brief. Similarly, the fact that the prejudicial effect of this evidence was most clearly and egregiously demonstrated by the State’s use of (and the jury’s response to) specific photographs in its closing argument does not mean the prejudicial effect of the evidence was limited to those particular exhibits or that Mr. Hawes’ argument on appeal is limited to those specific exhibits. Rather, his argument on appeal—like his objections at trial—challenges *all* of the unnecessary and unfairly prejudicial photographs and video to which his trial counsel objected.

B. The admission of the prejudicial photographs and videos was an abuse of discretion and a violation of Rule 403, SCRE.

As explained in Mr. Hawes’ primary brief, the video and the scores of graphic photos of Ms. Wilson’s body at the scene and during the autopsy were not necessary to prove material facts or conditions, and thus the failure to exclude them was reversible error. *See State v. Middleton*, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986). Similarly, the photos of Ms. Wilson smiling in happier times were not necessary (other than for the State’s illicit purpose of drawing an emotional contrast between these photos and the gruesome images of her body) to prove any disputed fact, and thus the Trial Court’s failure to exclude them was reversible error. *See, e.g.,*

State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999); *State v. Livingston*, 327 S.C. 17, 488 S.E.2d 313 (1997).

The State asserts only one substantive argument in response, namely that the photographs and video were “necessary” and “essential” to prove malice, and thus it was not an abuse of discretion to admit them into evidence. However, the information these Exhibits supposedly convey—the type, number, location, and nature of Ms. Wilson’s injuries and the fact that she previously did not have cuts or bruises on her arms and shoulders¹—was neither necessary nor essential because these facts were thoroughly established by the undisputed testimony of multiple witnesses and would have been equally well established without the shocking illustrative photographs. (*See, e.g.*, R. 58–59, 61–62, 709–714, 720–724.)

Indeed, the State grudgingly concedes in its fallback position that “[a]t worst, the photographs were cumulative to the other evidence, *i.e.* the testimony on the wounds, condition of the body, and crime scene.” (*See* Brief of Respondent at 19.) Stated differently, the photographs and video are duplicative of other evidence, and because the jury already had all the information it needed to infer malice, the danger of unfair prejudice far outweighed the probative value, if any, of the photographs and video.² In short, these photographs and video present the quintessential example of photographs that should be excluded by the Supreme Court’s rule articulated in *Middleton*. *See also State v. Johnson*, 293 S.C. 321, 325, 360 S.E.2d 317, 320 (1987) (noting that where the victim’s cause of death was not contested at trial, the introduction

¹ The State argues “the value of the evidence is in *how* Ms. Wilson was stabbed, where and how many times, along with the evidence of cuts on extremities and bruising . . . [and a] bite mark.” Brief of Respondent at 16–17 (emphasis in original).

² The cumulative and duplicative nature of this evidence does not render it harmless. Such a holding would vitiate the protection of Rule 403 and render it largely meaningless. Furthermore, as explained above and in Mr. Hawes’ primary brief, the prejudicial effect of the objectionable photographs and video were demonstrably shown in the State’s closing argument.

of a photograph of the victim's body was "irrelevant as introduced to show motive and intent, and their admission constituted error"); *State v. Jones*, 201 S.C. 403, 23 S.E.2d 387, 390 (1942) (holding "photographs of the body of the deceased showing his ghastly wounds" were erroneously admitted because it was "quite clear from reading the testimony of this doctor, who explained the location and nature of the fatal wounds, that the photographs had no probative value whatever, and really added nothing to the oral testimony, although their influence would naturally be prejudicial to the defendant").

The State's argument to the contrary relies on several South Carolina cases in which our appellate courts affirmed the admission of graphic photographs. (*See* Brief of Respondent at 15, 17–18.³) These cases, however, are distinguishable from the case at bar in that none of them involve the impermissible juxtaposition of gruesome photographs with smiling photos of the decedent in happier times. In contrast, the error in Mr. Hawes' trial was not solely the admission of the gruesome photos and video but also the admission and juxtaposition of photos of Ms. Wilson in happier times. The graphic photos and video are only half of Mr. Hawes' argument on appeal, and even assuming *arguendo* that such images are in some cases admissible,⁴ the

³ The relevant cases cited by the state are *State v. Torres*, 390 S.C. 618, 703 S.E.2d 226 (2010); *State v. Martucci*, 380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008); *State v. Kelsey*, 331 S.C. 50, 502 S.E.2d 63 (1998); *State v. Kelley*, 319 S.C. 173, 460 S.E.2d 368 (1995); *State v. Edwards*, 194 S.C. 410, 10 S.E.2d 587 (1940). The other South Carolina cases cited in this section of the State's brief support only ancillary propositions such as the standard of review (*see* Brief of Respondent at 13), the harmless error rule (*id.* at 19–20), or the rule that malice may be inferred from facts (*id.* at 16). Others are distinguishable cases involving photographs directly rebutting opposing testimony (*id.* at 14–15), while others predate the adoption of the SCRE (*id.* at 16, 18).

⁴ The fact that the use of graphic photographs has in some instances been affirmed does not absolve a reviewing court of the duty to evaluate the probative value and prejudicial effect in the context of *this* trial. *See State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008) ("When juxtaposing the prejudicial effect against the probative value, the determination must be based on the entire record and will turn on the facts of each case."). Here, the photographs were unnecessary to make any fact at issue more or less probable and instead were exploited by the

admission of the photos of Ms. Wilson and the use of both types of photographs in the prosecution's closing argument compounds the unfair and prejudicial effect. Notably, the State's brief does not mention or discuss the cases upon which Mr. Hawes's argument relies—*State v. Langley*, 334 S.C. 643, 515 S.E.2d 98 (1999) and *State v. Livingston*, 327 S.C. 17, 488 S.E.2d 313 (1997)—and thus fails to rebut his argument or respond to this weight of authority.

Finally, the State relies on numerous out-of-jurisdiction cases in support of its argument that a defendant can never object to photographs that depict “the work of [his] hands.” (See Brief of Respondent at 15–16.) This argument would impose a condition on Rule 403, SCRE that is not found in that rule or in South Carolina case law, and which would render Rule 403 an almost entirely dead letter in criminal cases. In sum, the Trial Court erred by admitting and then allowing the prosecution to prejudicially use the photographs of Ms. Wilson in happier times as well as graphic photos and video of her body. These errors constitute an abuse of discretion and were not harmless and, accordingly, warrant reversal and remand for a new trial.

II. The Trial Court abused its discretion by admitting testimony of Mr. Hawes' past bad acts.

As explained in Mr. Hawes' primary brief, the Trial Court erred and abused its discretion in violation of Rule 404(b), SCRE by permitting the State to introduce testimony of Mr. Hawes' past bad acts under the guise of “impeachment” testimony. (See Brief of Appellant at 13–18.) Specifically, after the Trial Court reopened the cross-examination of Mr. Hawes, the prosecution asked questions of him (ostensibly to “lay the foundation”) and Ms. Newsom (purportedly to impeach Mr. Hawes) that unquestionably implied Mr. Hawes' prior bad acts to the jury. This is impermissible under Rule 404(b), SCRE, which states evidence of a defendant's past bad acts is

prosecution, particularly in closing, to stir the jury's emotions and suggest to them an improper basis for their verdict.

inadmissible. *See* Rule 404(b), SCRE (“Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith.”); *State v. Johnson*, 293 S.C. 321, 324, 360 S.E.2d 317, 319 (1987) (“It is well established that evidence of other crimes or prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad individual. [] Evidence of other crimes is never admissible unless necessary to establish a material fact or element of the crime charged.”).

The State, however, argues the testimony was permissible *impeachment* and that “Rule 404(b) is inapplicable” because “a prior statement of bad intent is not a prior bad act.” (*See* Brief of Respondent at 26–30.⁵) The State’s argument, however, misses the thrust of Mr. Hawes’ argument, which is focused not on whether Mr. Hawes once said he would turn the tables on Ms. Newsom (*i.e.*, impeachment) but on the fact that the prosecutor’s subsequent colloquies with Mr. Hawes and Ms. Newsom indubitably revealed to the jurors facts from which they would infer Mr. Hawes’ prior bad acts. As Mr. Hawes’ counsel argued to the Trial Court, and as Mr. Hawes’

⁵ The State seems to have some difficulty making up its mind whether Rule 404(b) is relevant or not. (*Compare* Brief of Respondent at 24 (conceding the Trial Court admitted the objectionable questions and testimony without conducting a Rule 404(b) analysis) and *id.* at 27 (“Rule 404(b) is inapplicable to the evidence at issue. . . . [A]t issue was impeachment by the statement, not evidence of intent under Rule 404(b), SCRE.”) with *id.* at 28–29 (relying on cases interpreting Rule 404(b) to argue that the evidence of Mr. Hawes’ past bad acts was admissible to show intent).)

Contrary to the State’s tentative argument, however, Rule 404(b)’s exceptions do not justify the admission of this prejudicial testimony. The showing of motivation or intent refers to the motive or intent *to commit the crime*, not the motivation or intent to assert a particular defense afterward. *See, e.g., Johnson*, 293 S.C. at 324–25, 360 S.E.2d at 319 (noting the exception permitted evidence of past bad acts that “establish some element, *i.e.*, intent or motive, *of the crime* charged.”) (emphasis added). Similarly, this evidence was not admissible to show a “common scheme or plan” because it was so remote in time. *See State v. Pierce*, 326 S.C. 176, 179, 485 S.E.2d 913, 914 (1997) (holding evidence of prior bad act was inadmissible under the common scheme or plan exception where the acts were not sufficiently similar and where the acts occurred more than a year apart).