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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable R. Kirk Griffin, Circuit Court Judge

JAKE ANTONIO WILSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000498

APPENDIX

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2007-GS-10-12312, 12313

3 STATE OF SOUTH CAROLINA)

4 Plaintiff)

5 V.)

6 JAKE ANTONIO WILSON,)

7 Defendant.)

TRANSCRIPT OF RECORD

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9 NOVEMBER 17, 2008
10 CHARLESTON, SOUTH CAROLINA
11 VOLUME 1

12
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14 THE HONORABLE DEADRA L. JEFFERSON, JUDGE
15
16
17

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20 MR. NATHAN WILLIAMS, ASSISTANT SOLICITOR
21 REPRESENTING THE STATE

22 MR. ANDREW GRIME, ASSISTANT PUBLIC DEFENDER
23 MS. MARYBETH MULLANEY, ASSISTANT PUBLIC DEFENDER
24 REPRESENTING THE DEFENDANT

25 ANNE BOULEY MEYER, RPR

CIRCUIT COURT REPORTER

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1 THE COURT: Does the defendant wish to have a
2 formal arraignment?

3 MR. GRIMES: No, ma'am.

4 THE COURT: Let the record reflect that the
5 formal arraignment is being waived.

6 Is the State going forward on all indictments?

7 MS. CARDILLO: Yes, we are, Your Honor.

8 THE COURT: That would be 07 --

9 MS. CARDILLO: 2007 --

10 THE COURT: Wait a second. That would be
11 07-GS-10-12312, murder; 07-12313, possession of a
12 firearm during commission of a violent crime; and
13 12314, burglary in the first degree; is that correct?

14 MS. CARDILLO: That is correct, Your Honor.

15 THE COURT: Is that your understanding, Mr.
16 Grimes?

17 MR. GRIMES: Yes, Your Honor.

18 THE COURT: Anything else we need to take up
19 before we bring in the jury for selection?

20 MS. CARDILLO: Nothing from the State, Your
21 Honor.

22 THE COURT: Is it correct that the State
23 offered the defendant a negotiated plea of 40 years?

24 MS. CARDILLO: We did, Your Honor.

25 THE COURT: Is that offer still on the table

1 or has it been withdrawn?

2 MS. CARDILLO: Your Honor, if he is still
3 willing to take that we can keep that on the table.

4 THE COURT: Mr. Grimes, have you fully
5 explained to your client the State's offer of a
6 negotiated plea of 40 years?

7 MR. GRIMES: Yes, Your Honor. I thought it
8 may have been a cap of 40 years.

9 THE COURT: Okay.

10 MS. CARDILLO: I'm sorry, there was never a
11 cap of 40 years.

12 THE COURT: It was a negotiated 40 years.

13 MS. CARDILLO: It was a negotiated 40.

14 THE COURT: Okay. Do you understand that that
15 is the State's offer, a negotiated plea of 40 years?

16 MR. GRIMES: Yes, Your Honor.

17 THE COURT: Okay. Have you fully gone through
18 that and explained that to your client?

19 MR. GRIMES: Probably didn't go over the
20 negotiated part, but I can do that real quickly.

21 THE COURT: Why don't you do that for me right
22 quick. I just want to make an inquiry for PCR
23 purposes.

24 MR. GRIMES: Thank you, Your Honor.

25 THE COURT: You're welcome.

1 MR. GRIMES: Thank you, Your Honor. I have
2 explained that he could plea straight up and hope for
3 less than 40. And he said he still wants to go to
4 trial.

5 THE COURT: Sir, please stand up for me and
6 raise your right hand to be sworn.

7 (Whereupon, the Judge places the defendant
8 under oath.)

9 THE COURT: Sir, state your full name for the
10 record.

11 THE DEFENDANT: Jake Antonio Wilson.

12 THE COURT: Mr. Wilson, you are represented by
13 Mr. Grimes; is that correct?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And is it correct that the State
16 has offered you a negotiated plea of 40 years?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: You understand what a negotiated
19 plea is?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And has Mr. Grimes fully explained
22 that offer to you?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Is it correct that you wish to
25 reject that offer?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Mr. Grimes, is that against your
3 advice or with your advice?

4 MR. GRIMES: My opinion 40 is probably --

5 THE COURT: I'm sorry?

6 MR. GRIMES: In my opinion 40 is probably the
7 equivalent of a life sentence for someone his age.

8 THE COURT: So that is without recommendation,
9 well not without recommendation but you're telling me
10 that it is not either against or with your advice; is
11 that correct?

12 MR. GRIMES: Yes, ma'am.

13 THE COURT: Sir, do you understand that once
14 we begin the jury selection process that the State
15 will withdraw that offer?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: You understand it will no longer
18 be available to you?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Sir, you are doing this freely,
21 voluntarily and of your own will?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you believe this is in your
24 best interest?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And you're doing this with the
2 full advice of your lawyer; is that correct?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Okay, you may take your seat.
5 Please bring in the panel.

6 MR. GRIMES: Your Honor, one brief thing.

7 THE COURT: Wait one second for me before you
8 bring in the panel.

9 Yes, sir.

10 MR. GRIMES: Downstairs, two judges and two
11 court reporters, I just want to make sure this is on
12 the record.

13 THE COURT: Now I can't take up anything that
14 you have --

15 MR. GRIMES: I'm not asking to reargue, Your
16 Honor, I just want to make sure it's on the record.

17 THE COURT: Well, it will go on the record
18 with the court reporter downstairs. I cannot rule on
19 it.

20 MR. GRIMES: I'm not asking you to rule on it.
21 I know you can't overrule Judge Young. Juror I
22 believe 248, the State said had a prior conviction
23 for pointing and presenting a weapon. When he came
24 up to the bench Judge Young inquired of him, the
25 juror said no that he didn't have a conviction, and I

1 objected, and Judge Young excused him. Judge Young
2 said the wrap sheet is not enough evidence --

3 THE COURT: Well, I'm not going to re-go over
4 it. He put it on the record downstairs. I don't
5 know if he is on our panel. I don't know if it's
6 germane to this proceeding.

7 MR. GRIMES: I believe it could affect Mr.
8 Wilson's right to --

9 THE COURT: We randomly pick 45 jurors. I
10 don't think that he's in the 45, so I don't think
11 it's relevant or that he would have been in the 45.

12 MS. CARDILLO: Your Honor.

13 THE COURT: Yes.

14 MS. CARDILLO: Your Honor, just a couple
15 issue's on the defendant's requested voir dire. The
16 State would object to the questions --

17 THE COURT: Well, why don't you hear what I'm
18 going to do and then -- well, go ahead and tell me
19 your objections.

20 MS. CARDILLO: Your Honor, State objects to
21 number 10, 11, 12 --

22 THE COURT: Wait. Wait.

23 MR. GRIMES: I have another copy for Your
24 Honor.

25 THE COURT: I have mine.

1 MR. GRIMES: I think the one I e-mailed maybe
2 the numbers may be different.

3 THE COURT: This is the one you gave Chanda
4 downstairs, correct?

5 MR. GRIMES: I e-mailed it to Chanda and I
6 have a hard copy where the numbers are a little
7 better.

8 THE COURT: Why would you object to that? I'm
9 not going to make any of these statements about the
10 facts, that would be very inappropriate. I might ask
11 a very general question if anyone has owned a Smith
12 and Wesson, or if anyone owned a handgun, period.
13 That's probably how I'll sanitize it.

14 MS. CARDILLO: That's fine. Number 11 goes
15 more to --

16 THE COURT: I would never ask that, that's
17 about the facts.

18 MS. CARDILLO: And then of course Number 12.

19 THE COURT: I may ask has the jury had any
20 experience involving firing of a weapon or the
21 accidental firing of a weapon, something like that,
22 or an incident involving firing a weapon. I will
23 probably sanitize it and make it extremely neutral
24 and not fact specific.

25 MS. CARDILLO: Again, Your Honor, Number 13

1 those are the facts as well and 14 is facts as well.

2 THE COURT: I think I put an X through both of
3 those and say they were cumulative and I would
4 probably modify them.

5 MS. CARDILLO: And also, Your Honor, Number 14
6 regarding --

7 THE COURT: I wouldn't ask any portion of that
8 first part. And I wouldn't ask any of that, that's
9 factual, that's for the Court.

10 And Number 15?

11 MS. CARDILLO: Yes.

12 THE COURT: Why would you object to any if
13 they have read anything in the paper --

14 MS. CARDILLO: I'm sorry, that must be the
15 wrong -- I was looking at, has any member of the jury
16 panel had such strong feelings about the allegations
17 that Mr. Wilson murdered and there were children
18 present.

19 MR. GRIMES: It would be Number 18. I messed
20 up on the e-mail.

21 THE COURT: I don't have 18.

22 MR. GRIMES: If I may approach.

23 THE COURT: Is this defendant's witness list?

24 MS. CARDILLO: No, ma'am. I was looking at
25 the witness list.

1 MR. GRIMES: I think numbering this morning I
2 messed up. I went back and fixed it before I printed
3 it out.

4 THE COURT: I have five witnesses. Do you
5 have more than five witnesses?

6 MR. GRIMES: There should be six

7 THE COURT: Okay. What number was it again?

8 MR. GRIMES: I think it was 18.

9 THE COURT: I wouldn't ask that, that's
10 factual.

11 MS. CARDILLO: I have voir dire Number 16.
12 Maybe the numbers are wrong

13 THE COURT: Okay.

14 MS. CARDILLO: Thank you.

15 THE COURT: You're welcome.

16 Is there anything else before we bring in the
17 panel?

18 MS. CARDILLO: Nothing from the State, Your
19 Honor.

20 THE COURT: Anything from the defense?

21 MR. GRIMES: No, ma'am.

22 THE COURT: Please bring in the panel.

23 (Whereupon, the prospective jurors enter the
24 courtroom.)

25 THE COURT: Ladies and gentlemen, bear with us

1 one moment, please.

2 Do we have any Rule 404's that are out there?

3 THE BAILIFF: No.

4 THE COURT: Good morning, ladies and
5 gentlemen. I'm Deadra Jefferson, I'm one of your
6 resident circuit judges for the Ninth circuit.

7 This morning you are here with us for a term
8 of general sessions court. We are going to select a
9 jury for the State of South Carolina versus Jake
10 Antonio Wilson.

11 And we are going to try three indictments this
12 morning. We will try three indictments in this case.
13 And those indictments are as follows:

14 2007-GS-10-12312, the State versus Jake Antonio
15 Wilson, an indictment for murder. And that
16 indictment alleges as follows: In Charleston County
17 on or about July 8th, 2007, with malice aforethought,
18 Jake Antonio Wilson did kill and murder Latoya
19 Pendergrass, by means of shooting the victim in the
20 head. And that Latoya Pendergrass did die in
21 Charleston County as a proximate result thereof on
22 July 8th, 2007, alleging a violation of code section
23 16-3-10 of the code of laws as amended.

24 And 2007-GS-10-12313, an indictment for
25 possession of a firearm during the commission of a

1 violent crime. And that indictment alleges that in
2 Charleston County, South Carolina on or about July
3 8th, 2007, the defendant Jake Antonio Wilson did
4 possess a firearm, or did visibly display what
5 appeared to be a firearm, or did visibly display a
6 firearm during the commission of or attempted
7 commission of a violent crime, to wit, murder,
8 alleging a violation of code section 16-23-490 of the
9 code of laws as amended.

10 And indictment 2007-GS-10-12314, an indictment
11 for burglary in the first degree. And that
12 indictment alleges that in Charleston County, South
13 Carolina on or about July 8th, 2007 the defendant,
14 Jake Antonio Wilson, did enter the dwelling of Latoya
15 Pendergrass, located at [REDACTED] Harris Street, without
16 consent and with the intent to commit a crime
17 therein. That in addition, entry occurred in the
18 nighttime and the defendant was armed with a deadly
19 weapon, alleging a violation of code section
20 16-11-311 of the code of laws as amended.

21 We are going to go through a process that is
22 called voir dire, which is simply a fancy way of
23 saying that I'm going to ask you a series of
24 questions in order for the attorneys to more
25 effectively exercise their preemptory challenges

1 during jury selection.

2 If a question applies to you, please stand and
3 in a loud, clear voice give us your name and your
4 juror number and answer to the question if applicable
5 and remain standing until the Court has completed its
6 questioning.

7 Before we begin that process, I'm going to ask
8 counsel for the State to introduce herself and
9 publish the names of the members of her office. And
10 also ask counsel for the defense to provide us with
11 the same information and introduce his client to the
12 panel.

13 You may proceed.

14 MS. CARDILLO: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 MS. CARDILLO: Good morning, my name is Julie
17 Cardillo and I'm assistant solicitor for Charleston
18 County. To my right is also assistant solicitor
19 Nathan Williams, also Jessica who is a paralegal in
20 our office.

21 The other people who also work in the office,
22 there are several of them so I had to write them
23 down. Scarlet Wilson is the solicitor in our office,
24 Bruce DuRant is the Deputy Solicitor. Trip Lawton.
25 Stephanie Bianco. Adam Young. Chad Simpson. Greg

1 Voight. Michael Nelson. Kevin Hales. Jennifer
2 Shealy. Amy Harrell. Burns Wetmore. Brian Byrd.
3 Trip Reason. Rutledge DuRant. Nick Bianco.
4 Peter McCoy. Culver Kidd. Jim Stack. Chris Neely.
5 Henry Leventis. Mike DeWaay. Tyler
6 Schachte-Whitaker. Dale Savage. Debbie
7 Herring-Lash. Elizabeth Gordon. Ellen Steinberg.
8 Michael Sahn. And the investigator who's working on
9 this case, Ms. Wopner.

10 Thank you.

11 THE COURT: You're welcome.

12 Mr. Grimes.

13 MR. GRIMES: Thank you, Your Honor, may it
14 please the court.

15 THE COURT: Yes, sir.

16 MR. GRIMES: My name is Andrew Grimes. I'm an
17 assistant public defender in Charleston County. This
18 is Jake Antonio Wilson. He goes by Tony. He is from
19 Summerville. And Marybeth Mullaney will be assisting
20 me in the case.

21 The other attorneys in our office are Ashley
22 Pennington ,who's Chief Public Defender for
23 Charleston and Berkeley Counties. Karen Barker.
24 Beattie Butler. Rodney Davis. Martha Dicus. Rhett
25 Dunaway. Megan Ehrlich, works for family court.

1 Mary Ford. Cody Graber. Herbert Hoefer. Martha
2 Kent Jenkinson.

3 Jason King. Benjamin Lewis. Jason Mikell.
4 Lori Proctor. Maryellen Rankin. Cameron Blazer.
5 Ted Smith. Kelly Kassis. Reese Stidham. Michelle
6 Suggs. Tim Taylor. And Sandra Winslow.

7 THE COURT: Thank you very much.

8 Is there any member of the panel related by
9 blood or marriage to either Jake Antonio Wilson or
10 any member of the descendant's family, Latoya
11 Pendergrass, if so please stand at this time.

12 Does any member of the panel have a close
13 personal or social relationship with Jake Antonio
14 Wilson or anyone related to the descendant, Latoya
15 Pendergrass, if so please stand at this time.

16 The following are a list of potential
17 witnesses in this case, I would ask that you all
18 listen very carefully.

19 Myisha Danielle Ray. Jasmine Ray. Eleese M.
20 James. Tianai Lee. Tisha Williams. Mr. Bob Boyd of
21 the CPD communications, that's Charleston County
22 Police Department. Jakayla Pendergrass. Dr. Don
23 Elsey of the Low Country Children's Center.
24 Christina Gadsden. Latasha Pendergrass.

25 Corporal Larry Brown. Sergeant Brian Ambrose.

1 Officer Robert Feeders, all of the Charleston Police
2 Department. Gigi Leggett. John Collier. Michael
3 Saxston, all of Charleston County EMS.

4 Anita Maestas. Sergeant Mike Sherman. Randy
5 Unterbrink. Jennifer Wooley. Kalisha Gill.
6 Sergeant Barry Goldstein. Sergeant Mike Gordon, all
7 of the Charleston Police Department.

8 Manual John Ortuno. Michael R. Moskal. David
9 Black. Ken Bogan. Corrandia Williams. Suzanne
10 Comer. Salina Kinard. Kenneth Whipper. Amy
11 Stevens. Betty Butler. Shari Brown. All of the
12 South Carolina Law Enforcement Division.

13 Dr. Cynthia Schandl, of the Medical
14 University, the medical examiner. Detecitve Rodney
15 Van Horn, Charleston Police Department. Bobby
16 O'Neill, Charleston County corner.

17 Lavania Sally. Samuel Sally. Denita Watson.
18 Robert Babba Tilman. Jeff Hollifield, of
19 Microanalytical. And Ron Owstrosky.

20 Is there any member of the panel related by
21 any -- related to any of the people that I've just
22 listed, or does anyone have a close personal or
23 social relationship with any of these individuals, if
24 so please stand at this time.

25 Has any member of the panel ever been

1 represented by any of the attorneys involved in this
2 case or anyone with whom they practice law, if so
3 please stand at this time.

4 Is there any member of the panel related by
5 blood or marriage to, or had a close personal or
6 social relationship with any of the attorneys
7 involved in this case or anyone with whom they
8 practice law, if so please stand at this time.

9 If you would tell me your name and your juror
10 number and remain standing.

11 PROSPECTIVE JUROR: 139, Janet Jackson.

12 THE COURT: And who is it that you have a
13 social relationship with?

14 PROSPECTIVE JUROR: My husband and I are good
15 friends with Chad Simpson and Leah.

16 THE COURT: And how would you characterize
17 that friendship?

18 PROSPECTIVE JUROR: Good hang-out buddies on
19 the weekends, watch football.

20 THE COURT: Yes, sir.

21 PROSPECTIVE JUROR: Juror 314, George
22 Leventis. Henry Leventis is my cousin.

23 THE COURT: And behind you. Yes, ma'am.

24 PROSPECTIVE JUROR: Ronail Dowling, 81. I
25 think they said Ted Smith as an attorney.

1 THE COURT: Yes, ma'am.

2 PROSPECTIVE JUROR: He had trial with my son.

3 THE COURT: Sir, if you could remain standing
4 for me please.

5 As a result of these experiences, do you all
6 feel that you can remain fair and impartial and
7 render a fair and impartial decision in this case
8 based solely on the evidence as it will be presented
9 and on the law as the Court will instruct?

10 If your answer is yes, please take your seat.

11 Let the record reflect that all answered yes
12 with the exception of number 139. Do you have
13 something you want to say?

14 I need you to stand. Yes.

15 PROSPECTIVE JUROR: No. I was just thinking
16 about it I guess.

17 THE COURT: Okay. So by seating you are
18 telling me you feel you can be fair and impartial?

19 PROSPECTIVE JUROR: Yeah.

20 THE COURT: Okay. Let the record reflect that
21 all answered yes.

22 Has any member of the panel formed or
23 expressed an opinion about any issue or matter
24 involved in this case, if so please stand.

25 Is there any member of the panel aware of any

1 bias or prejudice for either the State or the defense
2 in this case, if so please stand.

3 Is there any member of the panel who was a
4 member of the grand jury which issued the indictments
5 in this case, if so please stand at this time.

6 Is there any member of the panel who's a
7 member or contributor to any group which has as its
8 primary concern the promotion of law enforcement or
9 victim's rights? These groups would include but
10 certainly are not limited to Mother's Against Drunk
11 Driving; Student's Against Drunk Driving; Citizens
12 Against violent Crime; People Against Rape; or the
13 Sheriff's Association. If so please stand at this
14 time.

15 Is there any member of the panel, has any
16 member of the panel heard, seen or read anything
17 about this case on the radio, television, Internet or
18 newspaper, if so please stand at this time.

19 Is there any member of the panel who has been
20 the victim of a violent crime, if so please stand at
21 this time.

22 PROSPECTIVE JUROR: What do you mean by
23 violent? Like assault? Braking and entering?

24 THE COURT: Anything that by its nature would
25 be considered an offense against a person or their

1 property.

2 Yes, ma'am. If you would tell me your name
3 and your juror number.

4 PROSPECTIVE JUROR: 317, my name is Mary
5 Berchman.

6 THE COURT: As a result of this experience do
7 you feel that you can remain fair and impartial, and
8 render a fair and impartial decision in this case
9 based solely on the evidence as it will be presented
10 and on the law as the Court will instruct?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Thank you, ma'am, you make take
13 your seat.

14 Yes, ma'am.

15 PROSPECTIVE JUROR: Teresa Waters, 291.

16 THE COURT: And It was you, ma'am, that
17 experienced this.

18 PROSPECTIVE JUROR: Yeah, purse snatching.

19 THE COURT: Ma'am, as a result of this
20 experience do you feel that you can remain fair and
21 impartial, and render a fair and impartial decision
22 in this case based solely on the evidence as it will
23 be presented and on the law as the Court will
24 instruct?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Thank you, ma'am, you may take
2 your seat.

3 Is there any member of the panel who has ever
4 been accused of a crime, if so please stand at this
5 time.

6 Is there any member of the panel who's ever
7 been involved in a dispute which required that the
8 police be called, if so please stand.

9 Is there any member of the panel who has ever
10 been the victim -- if you can remain standing for me,
11 ma'am, and I will -- let me finish this question then
12 I'll do all of them.

13 Have you or any member of your family ever
14 been the victim of criminal domestic violence, if so
15 please stand.

16 Ma'am, if you'd give me your name and your
17 juror number?

18 PROSPECTIVE JUROR: Sue Meecher, 316.

19 THE COURT: And you stood in response to being
20 accused of a crime? Oh, a dispute where the police
21 were called, I'm sorry.

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: If you would remain standing for
24 me.

25 Yes, ma'am.

1 PROSPECTIVE JUROR: Kristen Green, juror 110.

2 THE COURT: You said Kristen Green?

3 PROSPECTIVE JUROR: Yes, ma'am.

4 THE COURT: You said your number was 110?

5 PROSPECTIVE JUROR: 110.

6 THE COURT: As a result of these experiences
7 do you both feel that you can remain fair and
8 impartial, and render a fair and impartial decision
9 in this case based solely on the evidence as it will
10 be presented and on the law as the Court will
11 instruct. If your answer is yes, please take your
12 seat.

13 Thank you, let the record reflect that both
14 answered yes.

15 MR. GRIMES: Your Honor, may we approach?

16 THE COURT: You can.

17 (Whereupon, a discussion was held at the bench
18 off the record.)

19 THE COURT: Is there any member of the panel
20 or a member of your family ever been accused of
21 criminal domestic violence, if so please stand at
22 this time.

23 Okay, if you would tell me your name and your
24 juror number and remain standing. Yes, ma'am.

25 PROSPECTIVE JUROR: Sue Meecher, 316.

1 THE COURT: Yes, sir.

2 PROSPECTIVE JUROR: Dwayne Bingley, Number 24.

3 THE COURT: And, Sir, was it you or a family
4 member?

5 PROSPECTIVE JUROR: Family member.

6 THE COURT: And Number 316 was it you or a
7 family member?

8 PROSPECTIVE JUROR: Ex-husband.

9 THE COURT: As a result of these experiences
10 do you both feel that you can remain fair and
11 impartial, and render a fair and impartial decision
12 in this case based solely on the evidence as it will
13 be presented and on the law as the Court will
14 instruct. If your answer is yes please take your
15 seat.

16 Thank you. Let the record reflect that both
17 answered yes.

18 Is there any member of the panel who has a
19 family member who is in prison, if so please stand at
20 this time.

21 Yes, ma'am, tell me your name and your juror
22 number and remain standing.

23 PROSPECTIVE JUROR: Ronail Dowling, 81.

24 THE COURT: Yes, ma'am.

25 PROSPECTIVE JUROR: Roxanne Manning, 181.

1 THE COURT: Yes, sir.

2 PROSPECTIVE JUROR: Randy Greenhill, 112.

3 THE COURT: And yes, ma'am.

4 PROSPECTIVE JUROR: Susan England Fisher, 84.

5 THE COURT: As a result of these experiences,
6 do you all feel that you can remain fair and
7 impartial and render a fair and impartial decision in
8 this case based solely on the evidence as it will be
9 presented and on the law as the Court will instruct.
10 If your answer is yes, please take your seat.

11 Let the record reflect that all answered yes
12 with the exception of Number 84. Ma'am, you will be
13 excused from this panel only, but I need you to
14 remain with us. I need you to remain with us, ma'am.
15 Thank you.

16 Is there any member of the panel who for moral
17 or philosophical or religious reasons feels they are
18 prohibited from sitting in judgment of another
19 person, if so please stand at this time.

20 Is there any member of the panel or member of
21 your family ever worked for law enforcement, if so
22 please stand at this time.

23 Yes, ma'am. If you would give us your name
24 and juror number, whether it was you or a relative.
25 And we will start and work our way back.

1 Yes, sir.

2 PROSPECTIVE JUROR: 128, Deondre Holmes. I
3 have an aunt that works for law enforcement.

4 THE COURT: And, yes, ma'am.

5 PROSPECTIVE JUROR: Sue Meecher, 316. My
6 father, who has passed away, was a SLED agent.

7 THE COURT: And next to you. Yes, ma'am, in
8 the green.

9 PROSPECTIVE JUROR: Sherrill Almes, Juror
10 Number 7, relative.

11 THE COURT: And what type of relation?

12 PROSPECTIVE JUROR: My brother is a state
13 trooper.

14 THE COURT: Yes, ma'am.

15 PROSPECTIVE JUROR: Carol Kelly, 313. I have
16 two stepsons who are both New York State Troopers.

17 THE COURT: Yes, sir.

18 PROSPECTIVE JUROR: Johnny Robinson, 242. My
19 daughter is a federal parole officer at this time.

20 THE COURT: As a result of these experiences
21 do you all feel you can remain fair and impartial,
22 and render a fair and impartial decision in this case
23 based solely on the evidence as it will be presented
24 and on the law as the Court will instruct.

25 If your answer is yes please take your seat.

1 Let the record reflect that all answered yes.

2 Is there any member of the panel who was a
3 former employee of the Low Country Children's Center,
4 if so please stand at this time.

5 Is there any member of the panel who has a
6 family member who was employed with Low Country
7 Children's Center, if so please stand at this time.

8 Is there any member of the panel who has any
9 family members employed with the Medical University
10 of South Carolina, if so please stand at this time.

11 If you would tell me your name and your juror
12 number and remain standing and tell me what
13 relationship to you it is.

14 PROSPECTIVE JUROR: Sue Meecher, 316. I have
15 two sisters-in-law that are employed at Medical
16 University. One is a nurse and one in
17 administration.

18 THE COURT: Yes, ma'am.

19 PROSPECTIVE JUROR: 317, Mary Merchant. I'm
20 employed by the Medical University, I'm a registered
21 nurse.

22 THE COURT: You said you are employed.

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: And starting on the other side.

25 Yes, sir.

1 PROSPECTIVE JUROR: 166, Scott Laird. I'm
2 employed by the Medical University and my wife is
3 also.

4 THE COURT: And behind you. Yes, sir.

5 PROSPECTIVE JUROR: 301, Christopher Down. I
6 have a cousin who's a housekeeper.

7 THE COURT: You said who was employed?

8 PROSPECTIVE JUROR: Cousin.

9 THE COURT: Yes, ma'am.

10 PROSPECTIVE JUROR: Sharon Palmer, Number 319.
11 I'm a registered nurse with the Medical University.

12 THE COURT: Yes, ma'am.

13 PROSPECTIVE JUROR: Number 306 and I'm
14 employed with the Medical University.

15 THE COURT: And, yes, ma'am.

16 PROSPECTIVE JUROR: Colleen Alcott, Number 4.
17 I'm a registered nurse with the Medical University.

18 THE COURT: As a result of these experiences
19 do you all feel you can remain fair and impartial,
20 and render a fair and impartial decision in this case
21 based solely on the evidence as it will be presented
22 and on the law as the Court will instruct, if so
23 please take your seats.

24 Let the record reflect that all answered yes.

25 Is there any member of the panel who's ever

1 volunteered for an organization such as My Sister's
2 House, or any other type of domestic abuse shelter,
3 if so please stand at this time.

4 Yes, ma'am.

5 PROSPECTIVE JUROR: Sue Meecher, 316. I
6 volunteer to keep family pets for people that enter,
7 free of charge, I keep them.

8 THE COURT: Okay. Ma'am, as a result of this
9 experience do you feel that you can remain fair and
10 impartial, and render a fair and impartial decision
11 in this case based solely on the evidence as it will
12 be presented and on the law as the Court will
13 instruct.

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Thank you, ma'am, you may take
16 your seat.

17 Is there any member of the panel who's ever
18 been employed in an emergency room trauma center, if
19 so please stand at this time.

20 Yes, ma'am. If you would tell me your name
21 and number and remain standing.

22 PROSPECTIVE JUROR: Colleen Alcott, Number 4.

23 THE COURT: Yes, ma'am.

24 PROSPECTIVE JUROR: 124, Debbie Hoffman.

25 THE COURT: Okay. As a result of these

1 experiences do you both feel that you can remain fair
2 and impartial, and render a fair and impartial
3 decision in this case based solely on the evidence as
4 it will be presented and on the law as the Court will
5 instruct? If your answer is yes please take your
6 seat.

7 Let the record reflect that both answered yes.

8 Is there any member of the panel who owns a
9 firearm, if so please stand at this time.

10 If you would tell me your name and juror
11 number and remain standing. I will start and work my
12 way all the way over.

13 Yes, sir.

14 PROSPECTIVE JUROR: 314, George Leventis.

15 THE COURT: Yes, sir.

16 PROSPECTIVE JUROR: 134, Richard Howells.

17 THE COURT: Yes, sir.

18 PROSPECTIVE JUROR: 105, Kerry Goeden.

19 THE COURT: Yes, ma'am.

20 PROSPECTIVE JUROR: 104, Deanna Glover.

21 THE COURT: Yes, sir.

22 PROSPECTIVE JUROR: 298, Matt Williams.

23 THE COURT: And starting on the next row, Ms.
24 Meecham.

25 PROSPECTIVE JUROR: Meecher.

1 THE COURT: Meecher, I'm sorry.

2 PROSPECTIVE JUROR: Sue Meecher, 316.

3 PROSPECTIVE JUROR: Jody Hayden, 310.

4 PROSPECTIVE JUROR: Sherrill Almes, Number 7.

5 PROSPECTIVE JUROR: Michael Veronee, 282.

6 PROSPECTIVE JUROR: David Peterson, 222.

7 PROSPECTIVE JUROR: Bob Lewis, 315.

8 PROSPECTIVE JUROR: Tracy Ellis, 306.

9 PROSPECTIVE JUROR: Randy Greenhill, 112.

10 PROSPECTIVE JUROR: Crandall Meredith, 199.

11 THE COURT: Did I get everyone?

12 Yes, ma'am.

13 PROSPECTIVE JUROR: 317, Mary Merchant.

14 THE COURT: As a result of these experiences
15 do you all feel that you can remain fair and
16 impartial, and render a fair and impartial decision
17 in this case based solely on the evidence as it will
18 be presented and on the law as the Court will
19 instruct?

20 If your answer is yes, please take your seat.

21 Let the record reflect that all answered yes.

22 Is there any member of the panel who has any
23 experience as a result of firing of a weapon where
24 someone was injured, if so please stand at this time.

25 Yes, sir.

1 PROSPECTIVE JUROR: Michael Veronee, 282.

2 THE COURT: Sir, as a result of this
3 experience do you feel you can remain fair and
4 impartial, and render a fair and impartial decision
5 in this case based solely on the evidence as it will
6 be presented and on the law as the Court will
7 instruct?

8 PROSPECTIVE JUROR: Yes, ma'am.

9 THE COURT: Thank you, sir, you may take your
10 seat.

11 Is there any member of the panel who has a
12 child or grandchildren under the age of 11, if so
13 please stand at this time.

14 Okay, if you give me your name and juror
15 number and remain standing.

16 Yes, sir.

17 PROSPECTIVE JUROR: Jury 134, Richard Howells.

18 THE COURT: And starting on the next row.

19 Yes, ma'am.

20 PROSPECTIVE JUROR: Ronail Dowling, 81.

21 THE COURT: And next to you.

22 PROSPECTIVE JUROR: Sue Meecher, 316.

23 PROSPECTIVE JUROR: Jody Hayden, 310.

24 PROSPECTIVE JUROR: Sherrill Almes, Number 7.

25 PROSPECTIVE JUROR: Dwayne Bingley, 24.

1 PROSPECTIVE JUROR: Carol Kelly, 313.

2 PROSPECTIVE JUROR: Michael Veronee, 282.

3 PROSPECTIVE JUROR: David Peterson, 222.

4 THE COURT: Yes, sir.

5 PROSPECTIVE JUROR: Coy Watson, 324.

6 PROSPECTIVE JUROR: Jacqueline Lewis, 172.

7 PROSPECTIVE JUROR: Randy Greenhill, 112.

8 PROSPECTIVE JUROR: Robinson, 242.

9 PROSPECTIVE JUROR: Kristen Green, 110.

10 THE COURT: Starting on the back row, from the
11 corner working the way back out.

12 Yes, sir.

13 PROSPECTIVE JUROR: Paul Capps, 44.

14 PROSPECTIVE JUROR: Michael Grant, 109.

15 PROSPECTIVE JUROR: Todd Simonis, 252.

16 PROSPECTIVE JUROR: Thomas Demurral, 305.

17 THE COURT: Starting in the back, yes, ma'am.

18 PROSPECTIVE JUROR: Janette Shuffler, 249.

19 PROSPECTIVE JUROR: Delores Wolfe, 325.

20 THE COURT: Did I get everyone?

21 Yes, sir.

22 PROSPECTIVE JUROR: John Poteet, 228.

23 THE COURT: As a result -- yes, ma'am.

24 PROSPECTIVE JUROR: Dora Henry, 119.

25 THE COURT: As a result of these experiences

1 do you all feel that you can remain fair and
2 impartial, and render a fair and impartial decision
3 in this case based solely on the evidence as it will
4 be presented and on the law as the Court will
5 instruct.

6 If your answer is yes please take your seat.

7 Let the record reflect that all answered yes.

8 Does any member of the panel know of any
9 reason whatsoever why he or she should not serve as a
10 juror in this case, with particular emphasis being
11 placed on your ability to be fair and impartial to
12 both the State and the defendant, if so please stand
13 at this time.

14 Yes, sir.

15 PROSPECTIVE JUROR: My name is Kevin
16 Livingston.

17 THE COURT: Yes, sir.

18 PROSPECTIVE JUROR: I don't want to be here.

19 THE COURT: Okay, that's not a valid basis. I
20 need to know why you feel you would not be fair and
21 impartial.

22 That's the question, is there some impediment
23 to your being able to listen to the case and render a
24 decision based upon the facts and circumstances of
25 what is presented, and listen to the law as the Court

1 instructs.

2 PROSPECTIVE JUROR: No.

3 THE COURT: The Court assume that nobody wants
4 to be here, and that everybody would rather be at
5 work or do something else that would be more
6 profitable.

7 PROSPECTIVE JUROR: I just don't want to be
8 here.

9 THE COURT: Tell me your name again, sir.

10 PROSPECTIVE JUROR: Kevin Livingston.

11 THE COURT: And your number?

12 PROSPECTIVE JUROR: I don't know my number.

13 THE COURT: Sir, as I have indicated that
14 would not form a valid basis for you being excused
15 from the panel. Thank you, you may take your seat.

16 Now ladies and gentlemen in all candour you
17 heard the list, we have a fairly lengthy list of
18 witnesses some which may actually go forward, some
19 may not actually go forward. We anticipate that we
20 will conclude this case by the end of the week, but
21 there is some potential that this case may go into
22 Monday and I have to look at worse case scenario.
23 And I feel that people can only be prepared when
24 you're honest with them.

25 Is there anyone that would have some problem

1 if these case were to go over into Monday, some
2 scheduling problem with work or otherwise if you
3 would stand for me.

4 We'll start and I'll work my way back over.
5 And by a problem I mean vacation, going out of town,
6 something of that nature.

7 Yes, sir?

8 PROSPECTIVE JUROR: Jury 314, Leventis.

9 THE COURT: And what was your --

10 PROSPECTIVE JUROR: Vacation beginning Monday.

11 THE COURT: It is Thanksgiving, isn't it.

12 Yes, ma'am.

13 PROSPECTIVE JUROR: Sue Meecher, 316. My
14 business next week is very busy.

15 THE COURT: Unfortunately, ma'am, I would not
16 be able to excuse for that basis. I anticipate
17 however that we will finish on Friday. But I'm
18 trying to find out people who bought tickets,
19 non-refundable, things like that.

20 PROSPECTIVE JUROR: I have clients that bring
21 their animals to me, they're all scheduled next week
22 to come in for Thanksgiving.

23 THE COURT: Do you have employees?

24 PROSPECTIVE JUROR: No, ma'am.

25 THE COURT: How are you handling it this week?

1 PROSPECTIVE JUROR: I just told everybody that
2 they're on hold until I let them know if I serve or
3 not.

4 THE COURT: I would only anticipate that if we
5 go over it would only be Monday. So why don't you
6 stick with us and let's see how things go. Thank
7 you.

8 Ma'am, you can take your seat. Yes, ma'am.

9 PROSPECTIVE JUROR: Carol Kelly, 313. I have
10 company coming in next week while I'm on vacation.

11 THE COURT: Again, ma'am, I'm going to ask you
12 stick with us since you are going to be in town. I
13 anticipate if it goes over it will only be Monday.

14 Yes, sir.

15 PROSPECTIVE JUROR: Michael Veronee, 282. I
16 have an appointment at the VA Hospital on Monday
17 morning. It's very hard to get.

18 THE COURT: I know, sir. Do you know what
19 time your appointment is?

20 THE COURT: 8:20. I have one Thursday morning
21 at 8:20.

22 THE COURT: Do you think you will be here in
23 time to report or --

24 PROSPECTIVE JUROR: It's just blood work on
25 Thursday.

1 THE COURT: I think we'll deal with that. I
2 would not interfere with your doctor's appointment.
3 If we need to start later or something if you're
4 selected to accommodate you we will do that. Thank
5 you, sir.

6 PROSPECTIVE JUROR: David Peterson 222.
7 Leaving to go to Florida this coming up weekend.

8 THE COURT: What day are you leaving, sir?

9 PROSPECTIVE JUROR: Monday.

10 THE COURT: Thank you, sir.

11 Yes, sir.

12 PROSPECTIVE JUROR: 166, Scott Laird. Leaving
13 Sunday to go to Europe.

14 THE COURT: You may take your seat, sir. And
15 you can take your seat, sir.

16 PROSPECTIVE JUROR: Cory Watson, 324. I have
17 a business partner that's covering for me this
18 weekend, leaves Monday for all of next week.

19 THE COURT: What is the nature of your
20 business, sir?

21 PROSPECTIVE JUROR: I own a restaurant.

22 THE COURT: Do you have a manager at your
23 restaurant, do you have employees.

24 PROSPECTIVE JUROR: I have one manager, my
25 sister and I are the owners. The manager works my

1 half shift, myself and my sister works the other
2 half. She is covering for me this week, and then
3 she's out next week.

4 THE COURT: I think we will be able to work
5 around your schedule. As I've indicated, if we go
6 over I'm anticipating it will only be Monday. Thank
7 you.

8 Yes, sir.

9 PROSPECTIVE JUROR: Paul Capps, 44. I'm going
10 to Greenville for a trip Friday afternoon, returning
11 Sunday evening.

12 THE COURT: What time Friday did you plan to
13 leave? After you got out of court?

14 PROSPECTIVE JUROR: I was kind of needing to
15 leave around lunchtime, but as long as we don't stay
16 too late, I wanted to mention it.

17 THE COURT: Do you have an appointment, a set
18 time you have to be in Greenville?

19 PROSPECTIVE JUROR: Yes, Your Honor.

20 THE COURT: Tell me what time that is.

21 PROSPECTIVE JUROR: 8:00 p.m.

22 THE COURT: Okay. Thank you, sir.

23 Due to vacation plans we will excuse 314, 222,
24 166 only from this panel. You're not excused from
25 jury duty you are simply excused from this panel.

1 Again that being 314, 222 and 166.

2 Are there any additional questions from the
3 state?

4 MS. CARDILLO: No, Your Honor, thank you.

5 THE COURT: From the defense?

6 MR. GRIMES: I'd like to ask one follow-up
7 question.

8 THE COURT: Approach, please.

9 (Whereupon, a discussion was held at the bench
10 off the record.)

11 THE COURT: All right, ladies and gentlemen,
12 we are going to begin jury selection. If your name
13 is called, Mr. Major, if you could demonstrate for
14 me, please.

15 If your name is called please come forward as
16 Mr. Major is doing. Please bring all of your
17 personal belongings, and turn back forward in the
18 exact spot where he is, back facing the panel until
19 such time as we either seat or excuse you as a juror.

20 Ladies and gentlemen, because of the compacted
21 nature of this courtroom, I would ask that you
22 accommodate the bailiffs, and if someone has to get
23 up to come forward, please slide down on your row so
24 that person doesn't have to climb over you when they
25 come back to their seat if they're not selected.

1 Strikes are 10 and 5. Madam Clerk, you may
2 proceed.

3 THE CLERK: Jury number 228, John Poteet.
4 What say you for the State?

5 MS. CARDILLO: Please present this juror.

6 THE CLERK: What say you for the defendant?

7 MR. GRIMES: One moment, please.

8 Please seat the juror.

9 THE CLERK: Please have a seat in the jury
10 box, you have been selected for the trial in this
11 case.

12 Juror 109, Michael Grant.

13 What say you for the State?

14 MS. CARDILLO: Please excuse this juror.

15 THE CLERK: Sir, you may have a seat in the
16 audience, you have been excused from this trial.

17 Jury number 298, Mathew Williams.

18 What say you for the State?

19 MS. CARDILLO: Please present this juror.

20 THE CLERK: What say you for the defendant?

21 MR. GRIMES: Please excuse this juror.

22 THE CLERK: Mr. Williams, please have a seat
23 back in the audience, you have been excused from the
24 trial in this case.

25 Juror Number 302, Alison Childress.

1 What say you for the State?

2 MS. CARDILLO: Please present this juror.

3 THE CLERK: What say you for the defendant?

4 MR. GRIMES: Please excuse the juror.

5 THE CLERK: Jury number 319, Shari Palmer.

6 What say you for the State?

7 MS. CARDILLO: Please present this juror.

8 THE CLERK: What say you for the defendant?

9 MR. GRIMES: Please excuse the juror.

10 THE CLERK: Ma'am, please have a seat in the
11 audience, you have been excused from the trial of
12 this case.

13 Jury number 301, Christopher Brown.

14 What say you for the State?

15 MS. CARDILLO: Please present this juror.

16 THE CLERK: What say you for the defendant?

17 MR. GRIMES: Please seat Mr. Brown.

18 THE CLERK: Please have a seat in the jury
19 box, you have been selected for the trial in this
20 case.

21 Juror number 4, Colleen Alcott.

22 What say you for the State?

23 MS. CARDILLO: Please present this juror.

24 THE CLERK: What say you for the defendant?

25 MR. GRIMES: Please seat Ms. Alcott.

1 THE CLERK: Ma'am, have a seat in the jury
2 box, you have been selected for the trial of this
3 case.

4 Juror Number 128, Deondre Holmes.
5 What say you for the State?

6 MS. CARDILLO: Please excuse this juror.

7 THE CLERK: Please have a seat back in the
8 audience, sir, you have been excused from the trial
9 of this case.

10 Juror Number 180, Veronica Magwood.

11 What say you for the State?

12 MS. CARDILLO: Please present this juror.

13 THE CLERK: What say you for the defendant?

14 MR. GRIMES: Please seat Ms. Magwood.

15 THE CLERK: Please have a seat in the jury
16 box, you have been selected for the trial of this
17 case, ma'am.

18 Jury 252, Todd Simonis.

19 What say you for the State?

20 MS. CARDILLO: Please present this juror.

21 THE CLERK: What say you for the defendant?

22 MR. GRIMES: Please seat Mr. Simonis.

23 THE CLERK: Please have a seat in the jury
24 box, you have been selected for the trial in this
25 case.

1 Juror 317, Mary Merchant.

2 What say you for the State?

3 MS. CARDILLO: Please present this juror.

4 THE CLERK: What say you for the defendant?

5 MR. GRIMES: Please excuse the juror.

6 THE CLERK: Please have a seat back in the
7 panel, you have been excused from the trial in this
8 case.

9 Juror 282, Michael Veronee.

10 What say you for the State?

11 MS. CARDILLO: Please present this juror.

12 THE CLERK: What say you for the defendant?

13 MR. GRIMES: Please seat Mr. Veronee.

14 THE CLERK: Please have a seat in the jury
15 box, you have been selected for the trial in this
16 case.

17 Juror Number 105, Kerry Goeden.

18 What say you for the State?

19 MS. CARDILLO: Please present this juror.

20 THE CLERK: What say you for the defendant?

21 MR. GRIMES: Please excuse the juror.

22 THE CLERK: Please have a seat out in the
23 audience, you have been excused from the trial in
24 this case.

25 Juror Number 119, Dora Henry.

1 What say you for the State?

2 MS. CARDILLO: Please present this juror.

3 THE CLERK: What say you for the defendant?

4 MR. GRIMES: Please excuse the juror.

5 THE CLERK: Please have a seat out in the
6 audience, ma'am, you have been excused from the trial
7 in this case.

8 THE COURT: Defendant has exercised six
9 strikes.

10 THE CLERK: Juror Number 112, Randy Greenhill.
11 What say you for the State?

12 MS. CARDILLO: Please present this juror.

13 THE CLERK: What say you for the defendant?

14 MR. GRIMES: One moment, please.

15 Please seat THE juror.

16 THE CLERK: Sir, please have a seat in the
17 jury box, you have been selected for the trial in
18 this case.

19 Juror Number 87, William Felder.

20 What say you for the State?

21 MS. CARDILLO: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 MR. GRIMES: Please excuse the juror.

24 THE CLERK: Please have a seat back in the
25 audience, you have been excused from the trial in

1 this case.

2 Juror Number 81, Ronail Dowling.

3 What say you for the State?

4 MS. CARDILLO: Please excuse this juror.

5 THE CLERK: Please have a seat back in the
6 audience, you have been excused from the trial in
7 this case.

8 THE COURT: State has exercised three strikes.

9 THE CLERK: Juror Number 242, Johnny Robison.

10 What say you for the State?

11 MS. CARDILLO: Please excuse this juror.

12 THE CLERK: Please have a seat back in the
13 audience, sir, you have been excused from the trial
14 in this case.

15 Juror 258, Angela Smith.

16 What say you for the State?

17 MS. CARDILLO: Please present this juror.

18 THE CLERK: What say you for the defendant?

19 MR. GRIMES: Please seat the juror.

20 THE CLERK: Ma'am, have a seat in the jury
21 box. You have been selected for the trial in this
22 case.

23 Jury 325 Delores Wolfe.

24 What say you for the State?

25 MS. CARDILLO: Please present this juror.

1 THE CLERK: What say you for the defendant?

2 MR. GRIMES: Please seat the juror.

3 THE CLERK: Ma'am, have a seat in the jury
4 box. You have been selected for the trial of this
5 case.

6 Juror Number 172, Jacqueline Lewis.

7 What say you for the State?

8 MS. CARDILLO: Please present this juror.

9 THE CLERK: What say you for the defendant?

10 MR. GRIMES: Please excuse the juror.

11 THE CLERK: Please have a seat back in the
12 audience, ma'am, you have been excused from the trial
13 in this case.

14 Juror Number 241, James Robinson.

15 What say you for the State?

16 MS. CARDILLO: Please present this juror.

17 THE CLERK: What say you for the defendant?

18 MR. GRIMES: Please seat the juror.

19 THE CLERK: Please have a seat in the jury
20 box, you have been selected for the trial of this
21 case.

22 Juror 83, Veronica Dyke.

23 What say you for the State?

24 MS. CARDILLO: Please present this juror.

25 THE CLERK: What say you for the defendant?

1 MR. GRIMES: Please excuse the juror.

2 THE CLERK: Please have a seat in the
3 audience, ma'am, you have been excused from the trial
4 in this case.

5 Juror 44 Paul Capps.

6 What say you for the State?

7 MS. CARDILLO: Please present this juror.

8 THE CLERK: What say you for the defendant?

9 MR. GRIMES: Please excuse the juror.

10 THE COURT: Please have a seat out in the
11 audience, you have been excused from the trial in
12 this case.

13 THE COURT: Defense has exercised his strikes.

14 THE CLERK: Juror Number 303, Elijah Cohen.

15 What say you for the State?

16 MS. CARDILLO: Please present this juror.

17 THE CLERK: Any challenge from the defendant?

18 MR. GRIMES: Please present Mr. Cohen.

19 THE CLERK: Please have a seat in the jury
20 box, sir, you have been selected for the trial of
21 this case.

22 Juror Number 7, Sherrill Almes.

23 What say you for the State?

24 MS. CARDILLO: Please present this juror.

25 THE CLERK: Any challenges from the defendant?

1 MR. GRIMES: Please present Ms. Almes.

2 THE CLERK: Please have a seat in the jury
3 box, you have been selected for the trial of this
4 case.

5 THE COURT: Two alternates, strikes are one
6 and two. I would assume there's no exception from
7 the State?

8 MS. CARDILLO: No exception, Your Honor.

9 THE COURT: From the defense?

10 MR. GRIMES: No, Your Honor.

11 THE COURT: Please proceed.

12 THE CLERK: Juror Number 249, Janet Shuffler.
13 What say you for the State?

14 MS. CARDILLO: Please present this juror.

15 THE CLERK: What say you for the defendant?

16 MR. GRIMES: Please excuse the juror.

17 THE CLERK: Please have a seat in the
18 audience, you have been excused from the trial in
19 this case.

20 Juror Number 124, Debbie Hoffman.

21 What say you for the State?

22 MS. CARDILLO: Please present this juror.

23 THE CLERK: What say you for the defendant?

24 MR. GRIMES: Please present Ms. Hoffman.

25 THE CLERK: Please, ma'am, have a seat in the

1 jury box, you have been selected for the trial of
2 this case.

3 Juror Number 108, Denise Grandin.

4 What say you for the State?

5 MS. CARDILLO: Please present this juror.

6 THE CLERK: What say you for the defendant?

7 MR. GRIMES: Please excuse the juror.

8 THE CLERK: Please have a seat back in the
9 audience, you have been excused from the trial in
10 this case.

11 Juror Number 306, Theresa Ellis.

12 What say you for the State?

13 MS. CARDILLO: Please present this juror.

14 THE COURT: What say you for the defendant?

15 MR. GRIMES: Please excuse the juror.

16 THE COURT: Please have a seat out in the
17 audience, you have been excused from the trial in
18 this case.

19 Juror Number 315, Robert Lewis.

20 What say you for the State?

21 MS. CARDILLO: Please excuse this juror.

22 THE CLERK: Please have a seat out in the
23 audience, sir, you have been excused from the trial
24 in this case.

25 Juror Number 291, Teresa Waters.

1 Any challenge from the State?

2 MS. CARDILLO: None from the State.

3 THE CLERK: Any challenge from the defendant?

4 MR. GRIMES: Please seat Ms. Waters.

5 THE COURT: Please have a seat in the jury
6 box, ma'am, you have been selected for the trial of
7 this case.

8 THE COURT: Are there any motions regarding
9 selection of the jury from the State?

10 MS. CARDILLO: None from the State, Your
11 Honor.

12 THE COURT: From the defense?

13 MR. GRIMES: Yes, ma'am.

14 THE COURT: You may approach.

15 (Whereupon, a discussion was held at the bench
16 off the record.)

17 THE COURT: Motion is withdrawn.

18 Any further motions from the defense regarding
19 the selection of the jury?

20 MR. GRIMES: No, ma'am.

21 THE COURT: To the balance of the panel, we
22 thank you for your time and your attention this
23 morning. You're excused with the court's profound
24 thanks. I would ask that you call after six o'clock
25 this evening for further instructions regarding your

1 service. Again, please call the jury information
2 line after six o'clock and there will be instructions
3 regarding your service. Have a great day. You're
4 excused.

5 (Whereupon, the prospective jurors exit the
6 courtroom.)

7 THE COURT: Ladies and gentlemen, you have
8 been selected for the case of State versus Jake
9 Antonio Wilson. I'm going to send you to the jury
10 room. During this break, please do not discuss this
11 case, please don't speculate about what you think it
12 may or could be about.

13 We are going to break for lunch but I need to
14 speak to the attorneys about how we will be
15 proceeding this afternoon. I anticipate that we may
16 have some matters of law that we need to take up
17 prior to resuming after lunch and I need to get a
18 schedule.

19 I appreciate your indulgence. Again please do
20 not discuss the case or speculate about what you
21 think it may or could be about. If you would go with
22 the bailiffs for me, please.

23 (Whereupon, the jurors exit the courtroom.)

24 THE COURT: Okay. As I understand it we have,
25 other than the Jackson versus Denno, there is a

1 motion to suppress fingerprint evidence; is that
2 correct?

3 MR. GRIMES: Yes, Your Honor.

4 THE COURT: Let me ask a question, that wasn't
5 Mr. Harris's residence, is that correct, 76 Harris
6 Street?

7 MR. GRIMES: Wasn't a permanent but he --

8 THE COURT: What constitutional protection
9 would he have if he wasn't on the lease?

10 MR. GRIMES: No, overnight guests.

11 THE COURT: I have lots of people stay at my
12 house overnight.

13 MR. GRIMES: We believe it's more than that.

14 THE COURT: Well, I don't have lots of people,
15 but I just use that as -- I actually don't have
16 anybody spend the night at my house. I'm not a very
17 good hostess in that regard.

18 But nevertheless, unless you live there,
19 you're on the lease, there's strict sorts of case law
20 regarding that. I'm trying to figure out what your
21 theory is.

22 MR. GRIMES: I don't have any, I think it's
23 sort of broader --

24 THE COURT: You have to have some expectation
25 of privacy in your residence.

1 MR. GRIMES: He was invited in that night.

2 THE COURT: Pardon me?

3 MR. GRIMES: He was invited in, stayed the
4 night there that night. He lived there on and off
5 beforehand, had clothes there. We believe he had an
6 expectation of cause to go over there.

7 THE COURT: All right. I'm going to do
8 research on this, but preliminarily I'm trying to see
9 -- I can't imagine he would have any expectation of
10 privacy at another house. He is not on the lease and
11 he didn't live there. It's the victim's residence,
12 it's a crime scene. But I will do some research.

13 Is there any problem with us taking this up
14 prior to the time the witness will testify?

15 That does not in any way forfeit the State's
16 right to appeal if the Court excludes the evidence.

17 MS. CARDILLO: That's fine, Your Honor.

18 THE COURT: Any exception from the defense?

19 MR. GRIMES: No, ma'am.

20 THE COURT: When do we anticipate that witness
21 would testify? Or those witnesses. How many
22 witnesses are there?

23 MS. CARDILLO: Your Honor, it will be Kalisha
24 Gill would be the person that would be testifying
25 regarding the taking of the fingerprints that were

1 found on the outside and/or inside the second floor
2 windows. And there is also other testimony in regard
3 to the burglary from the victim's mother, who's
4 present.

5 THE COURT: That's not about fingerprints, is
6 it?

7 MS. CARDILLO: No, Your Honor, it more goes
8 towards his lack of having permission to enter. I
9 can talk about that as well.

10 THE COURT: I need to know how many witnesses
11 you have that we are going to deal with that issue?

12 MS. CARDILLO: Would be?

13 THE COURT: Fingerprint suppression?

14 MS. CARDILLO: Kalish Gill and the mother.

15 THE COURT: So there would be two witnesses,
16 correct?

17 MS. CARDILLO: Yes, Your Honor.

18 THE COURT: How long lengthy will those
19 witnesses be?

20 MS. CARDILLO: Your Honor, the crime scene
21 technician maybe an hour, hour and a half of
22 testimony. She did a lot of retrieval of evidence.

23 THE COURT: Well, she is going to be
24 testifying about fingerprints and how he could -- she
25 will be very limited.

1 MS. CARDILLO: I'm sorry, she was the one that
2 lifted -- she was the initial crime scene officer who
3 lifted the prints, and she has a lot of other
4 testimony about --

5 THE COURT: About what?

6 MS. CARDILLO: Just the crime scene itself.

7 THE COURT: Why would she testify about that
8 in camera?

9 MS. CARDILLO: I'm sorry, she wouldn't.

10 THE COURT: That's what I'm talking about.

11 MS. CARDILLO: I misunderstood.

12 THE COURT: Limited issue of whether the
13 fingerprints are --

14 MS. CARDILLO: I apologize.

15 THE COURT: That's okay. How lengthy will
16 that be?

17 MS. CARDILLO: That should be Fairly quick,
18 Your Honor, five minutes tops.

19 THE COURT: And then the other witness?

20 MS. CARDILLO: Kalisha Gill, anywhere -- same
21 thing, pretty quick.

22 THE COURT: Now my other question is how quick
23 in their line-up -- how soon -- or when should we
24 anticipate dealing with that? When do you plan to
25 call those witnesses?

1 MS. CARDILLO: Your Honor, Anita Maestas,
2 she's number --

3 THE COURT: I thought you said Kalish Gills.

4 MS. CARDILLO: I'm sorry, Kalisha Gill is the
5 latent print examiner, she's number 15, halfway
6 through the witnesses. And Anita Maestas, who lifted
7 the print, she is number 14 in our witness lineup.

8 THE COURT: I thought you said you had two,
9 then we have three?

10 MS. CARDILLO: Just two, Your Honor. I
11 thought I mentioned Anita Maestas who was the crime
12 scene who lifted the fingerprints and then Kalisha
13 Gill --

14 THE COURT: You said there was somebody who
15 was going to testify about whether he had a right to
16 have access to the house.

17 MS. CARDILLO: Well, I do have the mother,
18 Your Honor, who testified -- she will testify she was
19 present when the locks were changed, and he did not
20 have permission to --

21 THE COURT: Now you have three witnesses then,
22 correct?

23 MS. CARDILLO: Yes, Your Honor.

24 THE COURT: What is her name?

25 MS. CARDILLO: Her name is Christina Gadsden,

1 she's the victim's mother.

2 THE COURT: Are you going to call them all
3 together?

4 MS. CARDILLO: Actually, Your Honor, Ms
5 Gadsden is number seven or eight on the witness list.

6 THE COURT: You might have to change that
7 lineup to accommodate these fingerprint witnesses so
8 that we can have a consistent record about -- well
9 maybe not.

10 You can leave them as you have them and we
11 will just figure it out.

12 I don't have a Jackson versus Denno motion, is
13 there one?

14 MR. GRIMES: Yes, ma'am.

15 I did not provide the written suppression.

16 THE COURT: Which statements would the State
17 be seeking to present against the defendant?

18 MS. CARDILLO: Your Honor, there are three
19 officers that will be here to testify. Sgt. Ambrose,
20 he was the first responding officer on scene. He was
21 basically instructed to go into the home and when he
22 arrived the defendant was inside saying, oh my God my
23 baby is dead, those types of statements.

24 The officer basically was trying to ascertain
25 the situation at hand. Did not know -- basically he

1 asked the defendant, is there anybody else in the
2 home. He also asked -- and the defendant said no.

3 He asked the defendant, were there any other
4 weapons than the one found on the floor, he said no.
5 He kept saying, Oh my God, oh my God, she is up here,
6 meaning the victim. That's pretty much the extent of
7 his conversation or his testimony of what the
8 defendant said.

9 Officer Feeders, Robert Feeders, Your Honor,
10 this officer arrived and he found the defendant
11 running outside of the residence holding the two
12 children saying, don't take my baby, oh my God don't
13 take my baby, over and over again.

14 The defendant -- the officer asked him what
15 happened here, what's going on because he was asked
16 by Officer Sgt. Ambrose to detain the defendant for
17 questioning. But Officer Feeders indicated that he
18 did not know that the defendant was a witness,
19 suspect, had not assumed that, but basically asking
20 who did this, the defendant kept saying, don't think
21 it's me, don't think it's me.

22 THE COURT: Once you start asking who did this
23 you pretty much -- Uh-hum. I think getting into
24 interrogation, you pretty much know at that point.
25 Especially once you know nobody else is in the

1 residence, and you know that's the only weapon that's
2 there.

3 MS. CARDILLO: Well, Your Honor, Officer
4 Feeders never actually made it inside. According to
5 officer Feeders his statement to me was, he arrived
6 on the scene, immediately saw the defendant coming
7 out holding the kids screaming oh my God, oh my God.

8 THE COURT: What purpose would it be offered
9 anyway?

10 MS. CARDILLO: Your Honor, it's offered -- he
11 has inconsistent statements he said to several
12 different people including just lay witnesses, party
13 opponent admissions, for that purpose.

14 In addition, Sgt. Goldstein, the lead
15 investigator at the scene who did Mirandized him
16 going through the statement, he talked to him for
17 roughly 20 minutes, the extent of that conversation
18 was he didn't know -- the defendant stated he did not
19 know who shot the victim. He was asked how he got to
20 the scene. The defendant said he got a ride but
21 would not give the name of the person.

22 He said he was also the only adult other than
23 the descendants two children that were present in the
24 home. And that there were no other weapons either in
25 the home. And that would be the extent of Sgt.

1 Goldstein's --

2 THE COURT: He Mirandized him, correct?

3 MS. CARDILLO: He did, we have the card. He
4 also asked for police officers. The defendant did
5 get agitated at one point, that's when Sgt. Goldstein
6 asked who did this or were you involved and he said
7 he got agitated and stated the defendant said he did
8 not kill her and that's when the interview ended.
9 The defendant asked for an attorney at that point.

10 THE COURT: Is there any objection to taking
11 up the statements at the time that they're offered,
12 in camera, from the State?

13 MS. CARDILLO: None from the State, Your
14 Honor.

15 THE COURT: From the defense?

16 MR. GRIMES: No, ma'am.

17 THE COURT: Are there any other pretrial
18 motions or any other motions? Is there any Neil
19 versus Biggers issue? Anything like that?

20 MR. GRIMES: I don't believe there are Neil
21 versus Biggers. I think the main issues are going to
22 be the 404(B) issues. I don't know.

23 THE COURT: Those will be taken up at the time
24 that the testimony is offered. I expect you to make
25 contemporaneous objections.

1 MR. GRIMES: Thank you, Your Honor.

2 I believe there is an issue of the competency
3 of the child.

4 THE COURT: We will deal with that prior to
5 the child testifying. As long as she can tell right
6 from wrong and the consequences of lying her
7 testimony will be admitted.

8 Is there anything else before we bring in the
9 jury and adjourn for lunch from the State?

10 MS. CARDILLO: Nothing from the State, Your
11 Honor. Thank you.

12 THE COURT: From the defense?

13 MR. GRIMES: No, ma'am.

14 THE COURT: Did we have confrontation issues
15 in this case with witnesses?

16 MR. GRIMES: We believe so, Your Honor.

17 THE COURT: What are they?

18 MR. GRIMES: I think the State is going to try
19 to introduce prior bad acts. A lot of the basis for
20 getting those statements in, because I have read the
21 reports of what the victim said to the police
22 officers, and I believe that could raise a
23 confrontation clause issue if they were going through
24 lay witnesses such as the mother or sister. I don't
25 think the confrontation clause would have apply

1 there.

2 THE COURT: They would have been present and
3 you have the ability for cross-examination of them.

4 MR. GRIMES: Yes.

5 THE COURT: Statement against interest.

6 MR. GRIMES: It's stated by the victim, not
7 Mr. Wilson.

8 THE COURT: I see. There are many exceptions
9 that might fall into. Okay, we will take that up as
10 it comes up but I expect you to make a
11 contemporaneous objection.

12 Okay. 2:30, is that acceptable to everybody,
13 we will start with swearing the jury and opening
14 arguments?

15 Is that acceptable to the State?

16 MS. CARDILLO: It is, Your Honor, thank you.

17 THE COURT: To the defense?

18 MR. GRIMES: Yes, ma'am.

19 THE COURT: Please bring in the panel.

20 (Whereupon, the jurors enter the courtroom.)

21 THE COURT: Ladies and gentlemen, please stand
22 for me and raise your right hand for the clerk to
23 administer the oath.

24 (Whereupon, the Clerk administers the oath to
25 the jury panel.)

1 THE COURT: Ladies and gentlemen, we are going
2 to take our luncheon recess until 2:30. During this
3 break please do not discuss this case among
4 yourselves or with anyone else. Please don't
5 speculate about what you think this case may or could
6 be about.

7 Please don't allow yourselves to be exposed to
8 any media coverage about this case; that is anything
9 that could be on the radio, television, Internet or
10 otherwise. Please don't do any independent research
11 such as Googling something or ASK.com regarding any
12 issue or matter or doing any sort of archive search
13 on the Internet for the paper or otherwise to seek
14 information outside of the evidence of this case.

15 That would be improper and I'm strictly
16 instructing you to avoid that and not to do it.

17 We are again breaking until 2:30. You will
18 return directly to your jury room, and the bailiffs
19 will show you how to do that. When you return to the
20 courthouse, please don't have any contact with anyone
21 in or about the courthouse. People look very
22 different and as you know there is a lengthy and
23 extensive list of witnesses in this case, many of
24 whom you would not know.

25 And I would hate for you to have an innocent

1 conversation with someone, and that be observed by a
2 third party who cannot hear the content of that
3 conversation, and for them to assume that you are
4 having an improper conversation about the facts of
5 this case.

6 I think I covered everything. You all have a
7 good lunch, we will see you at 2:30.

8 (Whereupon, the jurors exit the courtroom.)

9 THE COURT: Anything else before we break for
10 lunch from the State?

11 MS. CARDILLO: No, Your Honor.

12 THE COURT: From the defense?

13 MR. GRIMES: No, ma'am.

14 THE COURT: Thank you very much. See you at
15 2:30.

16 (Whereupon, a recess was taken.)

17 (Whereupon, State's Exhibits 1 through 58 are
18 marked for identification.)

19 MS. CARDILLO: Your Honor, one of the
20 witnesses recognize one the jurors as they were
21 leaving the courthouse.

22 THE COURT: He indicated he recognized her,
23 there is no reason for me to voir dire. If it comes
24 up during the trial and the juror indicates that they
25 recognize the witness, I will take it from there and

1 do additional voir dire. I had that too many times
2 somebody thought they recognized somebody and they
3 actually didn't.

4 MS. CARDILLO: I wanted to bring it to the
5 Court's attention.

6 The second issue, the third witness, Kianna
7 Reeves, or the fourth witness, she will be here this
8 afternoon. I've already sent over the deputy, she
9 has an active warrant from family court out for her
10 arrest and I wanted to inform the Court of that
11 before -- she's supposed to be allowed to testify and
12 then --

13 THE COURT: Then they'll take her into
14 custody.

15 MS. CARDILLO: Yes, Your Honor. Nothing
16 further, Your Honor.

17 THE COURT: Anything further from the defense
18 before we proceed?

19 MR. GRIMES: I don't want to argue with the
20 Court.

21 THE COURT: Pardon me?

22 MR. GRIMES: I wasn't sure on your ruling. I
23 think Mr. Wilson has been concerned how this juror
24 knew --

25 THE COURT: Here's the Court's position on it.

1 what a potential witness thinks or does not think is
2 not germane at this moment. If when this witness
3 testifies the juror indicates that they recognize the
4 witness -- which always happens, I have never had a
5 situation where it did not happen, the juror always
6 brings it to the Court's attention.

7 At that time I will voir dire that juror as to
8 whether -- because if the juror does not raise it,
9 she may in her mind think it's someone, but -- and
10 she is not here. So I really don't even know who
11 they're speaking about.

12 MR. GRIMES: I guess out of an abundance of
13 caution maybe there should be a preliminary
14 instruction that during the course of trial if a
15 juror recognizes a witness --

16 THE COURT: I'm not going to do that.
17 Generally I have never had a problem with a juror
18 bringing it to my attention if the juror recognizes
19 someone. Jurors take their responsibilities very
20 seriously. And I have never had a situation where a
21 juror has not -- even when they really don't think
22 it's the person, brought it to the Court's attention
23 and indicate, I don't know this person's name but
24 just out of an abundance of caution I want to let you
25 know I think I recognize them.

1 And then I can conduct additional voir dire at
2 that point. But right now it's speculative. I don't
3 even know who they're talking about. And so that
4 leaves the Court at a bit of a deficit.

5 The Court read out the witness list very
6 slowly, very carefully, and we had several people
7 stand up. I can't imagine this juror did not have a
8 recollection of the witness they would not have made
9 the Court aware of.

10 Do you have any idea who you are speaking
11 about or are you speculating at this point?

12 MS. CARDILLO: Your Honor, the only thing I
13 know in speaking with the victim's advocate, the
14 witness indicated that he waved at her.

15 THE COURT: Now that's a little more specific
16 than what you told me originally.

17 Why don't you talk to your victim advocate,
18 find out everything, tell me everything instead of
19 piecemeal.

20 MS. CARDILLO: I apologize, Your Honor.
21 According to the victim advocate the witness stated
22 that when the jury was coming in to all be seated in
23 the back of the courtroom, that he waved at her. It
24 is the juror --

25 THE COURT: When did the jury come in?

1 MS. CARDILLO: When they first came in, all to
2 be seated to go over the jury selection.

3 THE COURT: When did he wave to her?

4 MS. CARDILLO: When he was coming in, she was
5 outside sitting and he waved at her. He is one that
6 has been sat.

7 THE COURT: What is her name?

8 MS. CARDILLO: Christina Gadsden. He is an
9 African-American male, he is in a black jacket.

10 THE COURT: Who is Ms. Gadsden?

11 MS. CARDILLO: That is the victim's mother,
12 Your Honor.

13 THE COURT: All right. And she indicated that
14 he waved to her?

15 MS. CARDILLO: Yes, Your Honor.

16 THE COURT: And who is it that we believe did
17 the waving?

18 MS. CARDILLO: I'm not sure what number he is.
19 But I know he was described as African-American male,
20 he had a black jacket on and had a goatee.

21 THE COURT: Is she here?

22 MS. CARDILLO: Your Honor, it may be number
23 301, Christopher Brown.

24 THE COURT: We have two black males on the
25 jury. And they're are both similarly dressed and

1 similarly apportioned.

2 MR. GRIMES: We may have an issue too.
3 Talking to Mr. Wilson, after jury selection it came
4 to him too that Juror Number 301 works at the Citadel
5 College with the victim's mother. And --

6 THE COURT: So we are of consensus that it's
7 Juror 301?

8 MS. CARDILLO: I believe so, Your Honor.

9 MR. GRIMES: Based upon what Ms. Cardillo said
10 about the statement and Mr. Wilson's comments about
11 them working together, we believe we have sufficient
12 basis for further voir dire.

13 THE COURT: You both can take your seats.

14 MS. CARDILLO: Thank you.

15 THE COURT: Does this witness go by any
16 nicknames, any name other than Christina Gadsden?

17 MS. CARDILLO: I'm not sure of her maiden
18 name.

19 THE COURT: Can we find out if she goes by any
20 other names.

21 MS. CARDILLO: Another name she goes by is
22 Christy. Your Honor, Ms. Gadsden is present in the
23 courtroom at this time.

24 THE COURT: Please bring in Juror Number 301.

25 (Whereupon, the juror enters the courtroom.)

1 THE COURT: Sir, are you acquainted with an
2 individual named Christina Gadsden?

3 A JUROR: Yes, ma'am.

4 THE COURT: Okay. Sir, during voir dire when
5 the Court asked if you knew or had any relationship
6 with any of the proposed witnesses, Ms. Gadsden was
7 listed as one of those witnesses. Was there any
8 reason you did not tell us that?

9 Did you not think about it, did you not hear
10 the question or what happened?

11 A JUROR: I didn't think about it

12 THE COURT: Okay. Sir, how would you
13 characterize your relationship with Ms. Gadsden?

14 A JUROR: We knew each other from working at
15 the Citadel.

16 THE COURT: Do you all work in the same
17 department.

18 A JUROR: Uh-uh.

19 THE COURT: Do you all work in different
20 departments?

21 A JUROR: Yes, ma'am.

22 THE COURT: How often would you say you come
23 in contact with her?

24 A JUROR: Every morning.

25 THE COURT: Every morning just passing by and

1 saying hello, or every morning actually working
2 together?

3 A JUROR: Passing by and saying hello.

4 THE COURT: Would you consider her a friend?

5 A JUROR: Yeah.

6 THE COURT: I'm sorry, I cannot hear you.

7 A JUROR: Yes, ma'am.

8 THE COURT: Okay. Characterize that
9 friendship for me please. Do you see her every day,
10 do you go to one another's homes?

11 A JUROR: No, ma'am.

12 THE COURT: Do you see each other outside of
13 work?

14 A JUROR: No, ma'am.

15 THE COURT: Sir, as a result of your contact
16 with Ms. Gadsden, do you feel that you can be fair
17 and impartial in this trial?

18 A JUROR: Yes, ma'am.

19 THE COURT: Do you feel that you can listen to
20 the evidence as it is presented and render a decision
21 based solely on that evidence and the law as the
22 Court will instruct?

23 A JUROR: Yes, ma'am.

24 THE COURT: Do you have any concerns about
25 your ability to be fair and impartial toward the

1 State and the defense?

2 A JUROR: No, ma'am.

3 THE COURT: Sir, if you would stand right
4 outside the door for me with the bailiff. Do not
5 take him back to the jury room yet, please.

6 (Whereupon, the juror exits the courtroom.)

7 THE COURT: Anything further from the State?

8 MS. CARDILLO: No, Your Honor.

9 THE COURT: Anything further from the defense?

10 MR. GRIMES: Yes, Your Honor. We would ask
11 the Court to inquire whether or not he has had any
12 conversations with Ms. Gadsden about Ms.
13 Pendergrass's relationship.

14 THE COURT: Any exception from the State?

15 MS. CARDILLO: None, Your Honor.

16 THE COURT: Please bring in the juror.

17 (Whereupon, the juror enters the courtroom.)

18 THE COURT: Sir, have you had any
19 conversations with Ms. Gadsden about this case or
20 about the defendant or about her daughter?

21 A JUROR: No, ma'am.

22 THE COURT: Okay. Have you had anything more
23 than incidental contact with her in passing, saying
24 hello and good-bye to her at work?

25 A JUROR: No, ma'am.

1 THE COURT: You may step back out with the
2 bailiff. Do not take him back into the jury room.

3 (Whereupon, the juror exits the courtroom.)

4 THE COURT: Anything further from the State?

5 MS. CARDILLO: No, Your Honor.

6 THE COURT: Anything further from the defense?

7 MR. GRIMES: No further questions of the
8 juror.

9 THE COURT: Anything further from the State?

10 MS. CARDILLO: None, Your Honor.

11 THE COURT: Anything further from the defense?

12 MR. GRIMES: Yes, Your Honor. We would ask
13 you to excuse the juror. I believe he wasn't
14 completely honest in the initial voir dire. If we
15 had known of this relationship we would have struck
16 him under our preemptory strikes.

17 Given his answer, I don't know if we have
18 grounds to ask for good cause, but apart from him not
19 being totally honest up front with the Court.

20 Thank you, Your Honor.

21 THE COURT: Anything further from the State in
22 response?

23 MS. CARDILLO: Judge, Your Honor, he did state
24 that he would be fair and impartial, listening to all
25 of the evidence. He did say it was incidental

1 contact with Ms. Gadsden and nothing further.

2 THE COURT: Upon further inquiry of the juror,
3 he indicated that he could be fair and impartial;
4 that he could render a fair and impartial verdict
5 based solely on the facts and the law as the Court
6 would instruct.

7 He indicated that his contact with the witness
8 is incidental, in essence they pass and wave as they
9 come into work in the morning; that he, although
10 called her a friend, really based on his answers is
11 not friends with her, they do not socialize at work
12 or outside of work.

13 He indicated, and the Court finds credible,
14 that he has not had any discussions about the facts
15 or circumstances of this case or the defendant or the
16 decedent with Ms. Gadsden. While I am always
17 troubled when jurors don't disclose things, I have
18 done this long enough to know, that it is -- I have
19 never had a situation where a juror was deliberately
20 non-responsive or was surreptitious in their
21 responses to an answer.

22 In other words, the Court would find no basis
23 in the record that this juror deliberately did not
24 disclose the information. I find him credible and on
25 his responses when I asked him very directly why he

1 did not respond in voir dire, he said he just wasn't
2 paying attention.

3 And, frankly, with as much as jurors deal with
4 every morning, this system is very familiar to us, it
5 is very unfamiliar to them. And I find sometimes
6 that jurors do zone out so to speak, or they are just
7 inattentive during the voir dire process for whatever
8 reason, whether it has just been a long morning or
9 whether -- frankly there were 38 names just on the
10 state's witness list, and then another 6 on the
11 defense's proposed witness list. He may simply not
12 have not been paying attention and the court finds
13 that response credible, does not find any basis that
14 he was being deceptive or deceitful or that he was
15 not being forthcoming in not disclosing it during
16 voir dire.

17 Even the law is very clear that even if he did
18 not disclose it in voir dire, the crucial inquiry
19 becomes whether he can be fair and impartial, and
20 whether he can render a fair and impartial decision
21 in the case based solely on the evidence as it is
22 presented and on the law as the court will instruct.
23 And he has answered affirmatively to both of those
24 questions. The court has no reason to believe that
25 he will not act as a fair and impartial juror.

1 And as it regards the defendant's contention
2 that they may or may not have exercised their
3 preemptory challenges differently, I find no basis in
4 the record -- I can't know what you would or wouldn't
5 have done, you may well have kept him. I don't know
6 that that is in the fact the case. Hindsight is
7 always 20/20.

8 But even if that were the case, I don't
9 believe there is any basis in the case law for the
10 Court to strike a juror for that reason. Therefore
11 he will remain on the panel subject to your
12 exception. The Court has noted it and you've argued
13 it that is the conclusion of the matter.

14 Is there anything before we begin with opening
15 instructions and opening arguments other than that
16 issue from the State?

17 MS. CARDILLO: No, Your Honor.

18 THE COURT: From the defense?

19 MR. GRIMES: Just that the juror be instructed
20 not to discuss --

21 THE COURT: I'm going to take care of that.

22 MR. GRIMES: Thank you.

23 THE COURT: Please bring in the juror.

24 (Whereupon, the juror enters the courtroom.)

25 THE COURT: Sir, you are strictly instructed

1 not to discuss any portion or any -- you are not to
2 discuss in any manner the colloquy the Court has had
3 with you regarding your knowledge of Ms. Gadsden. Do
4 you understand?

5 A JUROR: (Affirmative head shake.)

6 THE COURT: I need you to tell me yes or no.

7 A JUROR: Yes.

8 THE COURT: I know you're nervous. It will be
9 okay.

10 And also that this is not to be discussed in
11 any manner during jury deliberations either. Do you
12 understand?

13 A JUROR: Yes, ma'am.

14 THE COURT: Okay, thank you, sir.

15 (Whereupon, the juror exits the courtroom.)

16 THE COURT: Is the Stare ready to proceed?

17 MS. CARDILLO: Yes, Your Honor.

18 THE COURT: Defense ready to proceed?

19 MR. GRIMES: Yes, ma'am.

20 THE COURT: Please bring in the panel.

21 (Whereupon, the jurors enter the courtroom.)

22 THE COURT: Thank you very much, ladies and
23 gentlemen, we appreciate your patience. We had an
24 administrative matter we needed to deal with prior to
25 us beginning the trial of this case.

1 Now, ladies and gentlemen, the case that we
2 are about to try is the State of South Carolina
3 versus Jake Antonio Wilson. What I will now say is
4 intended to serve as an introduction to the trial of
5 this case.

6 These remarks, ladies and gentlemen, are not
7 an instruction on the law, they are simply remarks to
8 instruct you as to how we will be proceeding during
9 the course of this case, and to explain to you the
10 procedures that we will follow in the trial so that
11 you may better understand what is happening.

12 I'll instruct on you the law applicable to
13 this case at the end of the trial before you retire
14 to consider your verdict.

15 The defendant is charged by three indictments
16 with the offenses of murder, possession of a weapon
17 during the commission of a violent crime, and
18 burglary in the first degree. The elements of which
19 I will explain to you at the conclusion of the trial.

20 Ladies and gentlemen, the indictment is simply
21 the charge by which the cases are brought into court.
22 They are not in any sense evidence of any of the
23 allegations they contain. The defendant has pled not
24 guilty to the indictments. The State, therefore, has
25 the burden of proving each of the elements of the

1 indictments beyond a reasonable doubt. It will be
2 your duty, ladies and gentlemen, to decide whether
3 the State has met that burden or not.

4 Your purpose as jurors is to find and
5 determine the facts. You are the sole judges of the
6 facts in this case. If at any time I make any
7 comment regarding the facts, you must disregard it.
8 You are to determine the facts only from the
9 testimony you hear and the other evidence introduced
10 into court. It is up to you to determine the
11 inferences which you feel may be properly drawn from
12 the evidence.

13 It is especially important that you perform
14 your duty of determining the facts diligently and
15 conscientiously because ordinarily there is no way to
16 correct an erroneous determination of fact made by a
17 trial jury.

18 On the other hand, and with equal emphasis,
19 the same law that makes you the judges of the facts
20 makes me the judge of the law. The law as given by
21 the Court is the only law you may consider. You must
22 accept and follow it even though you may disagree
23 with me about what it is. I cannot tell you what the
24 facts are, and you cannot disagree with the Court
25 about what the law is or what the law should be.

1 Your responsibility is to take the law as I
2 instruct it and apply it to the facts as you find
3 them from the testimony of the witnesses and other
4 evidence that will be introduced into the record.
5 After doing that, ladies and gentlemen, you will
6 render a true and just verdict under the oath that
7 you've taken as jurors in this case.

8 Until I advise you to begin your
9 deliberations, you must not discuss this case with
10 anyone, including your fellow jurors, friends, family
11 members, or anyone else involved in the case. After
12 the case is submitted to you, you must discuss it
13 only in the jury room with your fellow jurors.

14 The attorneys and the parties have been
15 advised that they're not to speak with you at all.
16 So if you should see them in the parking garage or a
17 restaurant or the lobby of the courthouse and they
18 don't speak with you, please don't think they're
19 being unfriendly or offensive, they're simply
20 following the Court's instruction.

21 During the trial do not read, listen to or
22 watch any news reports about the case; this includes
23 anything that may be in the newspapers on the
24 Internet, radio or television. You must not consider
25 anything you may have heard or read about this case

1 outside the courtroom whether before or during the
2 course of this trial.

3 And as I always instruct, you are not to do
4 any independent research of any type on the Internet.
5 It is important and essential that you keep an open
6 mind and not decide any issue in this case until all
7 of the evidence has been presented, the parties have
8 made their closing arguments, and I have instructed
9 you on the law applicable to this case.

10 It is your solemn responsibility to determine
11 the guilt or innocence of the defendant. And your
12 verdict must be based solely on the evidence as it is
13 presented to you in this trial, and on the law as I
14 will instruct you during and at the close of the
15 trial.

16 Now in just a moment the solicitor will make
17 what is called an opening statement, in which she'll
18 explain to you the issues in the case or at least
19 what she believes the issues to be in the case. I'm
20 assume it's Ms. Cardillo, it may well be Mr.
21 Williams.

22 Ladies and gentlemen, keep in mind that what
23 the solicitor says during the course of that argument
24 is not evidence. And likewise, the attorney for the
25 defendant may also make an opening statement,

1 although he is not required to do so. I would remind
2 you again that what the attorneys tell you during
3 their opening statements is not evidence in this
4 case. It is only their contention as to what they
5 believe the issues to be.

6 The evidence in this case will be presented to
7 you by the testimony of sworn witnesses from the
8 witness stand and/or by exhibits that may be
9 introduced into evidence. From time to time during
10 the trial you may hear one of the attorneys say
11 something like, Your Honor, I believe we have a
12 question of law, or Your Honor may we approach the
13 bench or sometimes I may ask them to approach the
14 bench, or it may be necessary that we excuse from the
15 courtroom for a short while while we discuss matters
16 of law.

17 The reason we do this is because you are the
18 finders of the facts. And sometimes when I'm
19 discussing matters of law with the attorneys it may
20 be necessary for me to make some comment about the
21 facts in connection with ruling whether a particular
22 law or evidentiary rule or procedural rule applies.
23 And for that this reason we exclude you from the
24 courtroom so that in no way will you be influenced by
25 anything that the Court may say or do in connection

1 with the facts of this case.

2 Also from time to time you may hear the
3 attorneys say something like, Your Honor, I object.
4 Just as in sports, business or any other structured
5 activity, there are certain rules that we must obey
6 in the presentation of evidence. These rules ensure
7 that you receive the most trustworthy and reliable
8 evidence available.

9 An objection is a procedure that an attorney
10 uses to call a possible violation of these rules to
11 my attention as the Judge of this court. And for
12 this reason, you should not hold an attorney's
13 objection against him or her, nor should you conclude
14 from the Court overruling or sustaining an objection
15 that I favor one side or the other.

16 Ladies and gentlemen, in determining what the
17 true facts are in this case you must decide whether
18 or not the testimony of a witness or witnesses is
19 believable. It will be my responsibility to rule as
20 a matter of law as to whether certain testimony is
21 admissible at all or not. But once it is admitted,
22 whether or not you believe it is a matter solely for
23 you to determine.

24 In deciding whether to believe a witness you
25 have the right to consider the interest of any

1 witness, the bias of any witness, the prejudice of
2 any witness, the opportunity for the witness to have
3 seen the matters and things about which the witness
4 may testify, and the way the witness acts on the
5 witness stand, something we call demeanor.

6 You have a right to consider anything that is
7 in the record that will help you evaluate the
8 testimony of the witnesses. That means, ladies and
9 gentlemen, that it is your duty to pay close
10 attention to the witnesses, to observe them, to
11 listen to them, and to pay close attention to the
12 attorneys and to the Court.

13 We know that it is difficult, but please do
14 not allow your thoughts to wander, but give strict
15 attention to the testimony so that at the end of the
16 testimony, after the arguments of counsel and the
17 charge on the law given by the Court, you will then
18 be in a position to determine what the true facts are
19 and apply the law to those facts and thus render a
20 truth and just verdict.

21 During the course of this trial you will be
22 given the opportunity to take notes. If you could
23 pass those out for me. And if you desire to take
24 notes I would ask that you take a pad and a pen.
25 There is a sticker on the front of every notebook,

1 you should write your juror number on that sticker so
2 that you will be able to identify your notes.

3 Ladies and gentlemen, note taking is a
4 privilege that you may choose to exercise or choose
5 not to exercise. Please don't feel compelled to take
6 notes. Not everyone finds note taking helpful to
7 them. Please do not allow note taking to become a
8 distraction to you. Your powers of observation are
9 essential in your position as fact finders.

10 Again, you must observe the demeanor of
11 witnesses so that you can judge their credibility.
12 So Don't allow note taking to become a distraction to
13 you such that you are not able to observe the
14 witnesses as they testify.

15 Please do not take down -- try to take down
16 everything that is said, it's impossible. I know
17 when you are talking it doesn't seem to you like you
18 are talking that fast, and I'm probably a relatively
19 slow talker, but if I asked Anne, my court reporter,
20 she'll probably tell you I speak about 250 words a
21 minute, that's about the average of an average person
22 speaking at a regular rate speaks.

23 So keeping that in mind, it's physically
24 impossible for you to do it. And the only reason the
25 court reporter can do it is because she is trained in

1 a very specialized form of shorthand, she has a very
2 complicated computer that helps her do that. So we
3 would ask that you not allow it to become a
4 distraction to you.

5 You may want to keep an outline of the main
6 points that are being made. Once you're sent to your
7 jury room to deliberate, you may want to take a few
8 minutes to review your notes and allow them to
9 refresh your memory of the trial evidence and the
10 general arguments that have been presented to you.

11 During the break and recesses your notes will
12 have to be left in your seats. We do that so that
13 you are not tempted to have any premature
14 deliberations in the case and to discuss the case.

15 Please rest assured, however, that your notes
16 will be secured. We do not read them, and they are
17 kept in a secure place and they will be destroyed
18 after the trial.

19 Finally, I remind you that your notes are not
20 to be shared with anyone else. They're for your
21 specific and individual purposes. Please use them
22 only for the purpose of refreshing your own
23 recollection.

24 And I would remind you that notes -- your
25 notes should not be considered any more reliable than

1 the recollections of your fellow jurors. Their
2 recollections should be considered just as reliable
3 as the notes that you may have taken during the
4 course of the trial.

5 It is your added duty, Mr. Foreman, to preside
6 in the jury room and be the jury spokesperson here in
7 court during jury deliberations. It will also be
8 your duty to write the verdict, but I will give you
9 additional instructions regarding that at the
10 conclusion of the trial.

11 Ladies and gentlemen, your foreperson does not
12 have any greater vote or voice than you do. It's
13 simply an administrative function, someone who fills
14 out the verdict. If you have a question during
15 deliberations that person writes it down those
16 questions for the Court so that they can be processed
17 as we are required, and so that Court and the
18 attorneys can answer those questions for you if you
19 were to have any.

20 In order to preserve everyone's rights, I'm
21 going to give each party a chance to take exception
22 to anything that the Court has said by way of opening
23 instructions.

24 Are there any exceptions from the State?

25 MS. CARDILLO: No, Your Honor

1 THE COURT: From the defense?

2 MR. GRIMES: No, ma'am.

3 THE COURT: Okay. State may proceed.

4 MS. CARDILLO: Thank you, Your Honor. May it
5 please the Court.

6 THE COURT: Yes, ma'am. You may proceed.

7 MS. CARDILLO: Good afternoon, ladies and
8 gentlemen. Again, my name is Julie Cardillo. I work
9 for the State of South Carolina, and I have been
10 assigned to prosecute Jake Antonio Wilson in the
11 murder of Latoya Pendergrass.

12 This is a case about control. This is a case
13 about possession of another human being, the
14 mentality if I can't have you, no one else can.

15 On July 8th, 2007 in the early morning hours
16 on a warm and humid, overcast and rainy Sunday
17 morning, a single gunshot rang out through the area
18 of Harris and Johnson Street located in Charleston
19 County. That single gunshot split open the silence
20 of that humid morning and awoke neighbors and friends
21 of Latoya Pendergrass who lived at [REDACTED] Harris Street
22 in the town homes there, there is a town home
23 community.

24 That single gunshot woke up residents of that
25 town home community, was followed by the voice of a

1 man yelling, my baby's dead, my baby's dead, my
2 baby's dead.

3 This case is about Latoya Pendergrass, or as
4 she was known to her family and friends as Toya. She
5 was 24 years old at the time of her death. She was a
6 single mother of two small children. She had just
7 recently started a job with the City of Charleston,
8 and she was doing her best to raise her daughter
9 **Minor 1**, who four years old at the time of her death,
10 and her son **Minor 2**, who was one year old at the time of
11 her death.

12 Toya and the defendant, Jake Antonio Wilson,
13 shared these children. They had them during their
14 relationship. The evidence in this case will come to
15 you from family, family members of Toya's; friends
16 and neighbors of Toya; people who knew of Toya and
17 who knew of Tony or the defendant; law enforcement
18 personnel who conducted the investigation of Toya's
19 death; and medical personnel who were also involved.

20 The evidence will show that the defendant
21 murdered the mother of his two children by shooting
22 her one time in the top of the head.

23 Toya and the defendant had been in a
24 relationship for a few years, and again they had
25 their two small children. However, at the time of

1 Toya's death, they were not in a relationship. That
2 had ended a few weeks prior to July 8th, 2007.

3 The only people who lived at Toya's home was
4 her and her two children. You will hear from the
5 evidence again that the relationship ended, and you
6 will hear the evidence from the witness stand, from
7 the testimony of family and friends, that Toya had
8 ended the relationship by changing the locks on her
9 home and by putting all of Tony's, or the
10 defendant's, belongings outside on the curb.

11 On Saturday July 7th, 2007, the defendant was
12 seen sitting in a chair across the courtyard all day
13 just sitting there and watching Toya's home. And
14 you'll hear testimony from witnesses who saw him
15 there.

16 During the course of this trial you will hear
17 evidence about him, his actions before and after the
18 shooting, and what went on that night before and the
19 morning of July 8th.

20 Again on July 8th around 5:00 a.m. when that
21 single gunshot was heard, neighbors started coming
22 out of their homes and they heard the defendant run
23 outside of Toya's front door yelling, my baby is
24 dead.

25 Neighbors saw Minor 1, the four years old

1 daughter, standing inside the doorway looking out.
2 911 was quickly called by several people. Neighbors
3 asked the defendant what was wrong, and his demeanor
4 changed from crying to screaming, to what the F do
5 you think is wrong, Toya is dead. And then went back
6 into Toya's front door.

7 The neighbors, once the police arrived,
8 pointed to Toya's home. Again, the police arrived at
9 about 5:17 a.m., pretty quickly after the 911 was
10 call rang out. The first officer to respond was
11 directed again to Toya's home by the neighbor, Sgt.
12 Ambrose from the Charleston Police Department. He
13 went in the door, he saw that it was slightly open,
14 and heard a man yelling over and over, oh my God. He
15 called out to the man and he said, she's up here.

16 Once upstairs Sgt. Ambrose saw the gun lying
17 on the floor just inside the back bedroom of the
18 door. This was Toya's bedroom. There was no other
19 adults in the home, no other weapons in the home,
20 again you'll hear that from the evidence.

21 Once inside the bedroom, Sgt. Ambrose saw Toya
22 lying across the bed, not the normal way you sleep,
23 but sideways, non-responsive. Toya's two small
24 children, [Minor 1] and [Minor 2], were sitting on either
25 side of the body. Sgt. Ambrose had the defendant

1 take his children, Toya's children, outside so that
2 he could determine the extent of her injuries.

3 The evidence again will show that Toya was
4 laying on her back with one arm up to her head, and
5 her left arm stretched out to her left. Sgt. Ambrose
6 saw a bloody white sheet near her head, and he saw
7 blood on her forehead. But Toya had a turban style
8 head-wrap on, a lot of ladies will wrap their hair up
9 so it does not get messed up while they sleep, that's
10 what she had, a turban stye head-wrap.

11 So he didn't know the extent of her injuries,
12 but he knew that she had a very, very weak pulse. He
13 contacted EMS. The EMS and the Fire Department, as
14 you will hear, were en route and were there within
15 minutes.

16 The evidence will show that when EMS arrived
17 they immediately went up there to treat Toya. They
18 removed the head-wrap and discovered a single gunshot
19 wound to the top of her head. They also discovered
20 brain matter coming out that same bullet hole.
21 You'll hear testimony from the EMS that they took
22 Toya on a stretcher and by the time they got to the
23 first floor of her town home that she had lost her
24 pulse. EMS nor the hospital were ever able to revive
25 her. She was pronounced dead at 5:44 a.m., a mere 28

1 minutes after the police arrived at her town home.

2 Other police officers and crime scene
3 technicians had responded to the scene by this point,
4 and you will hear from the testified what they did to
5 investigate the events of that fateful morning. They
6 spoke with witnesses, they canvassed the
7 neighborhood, and they complied physical evidence
8 that was found at the scene.

9 The gun that was found at the scene was a mere
10 three feet from where Toya's body was found. It was
11 a .32 revolver Smith & Wesson. It had five live
12 rounds in the revolver with one being expelled. That
13 one bullet was later recovered inside of Toya's brain
14 where it went through and settled at the bottom of
15 her skull.

16 You will hear from the Charleston Police
17 Department who processed the scene inside and out.
18 You'll also see photographs of the scene to give you
19 a better understanding of what actually transpired
20 there that morning. You'll get a better feel and
21 understanding to what Toya and her children and the
22 witnesses saw and observed.

23 Other evidence that you will hear about
24 throughout this trial is that again the defendant did
25 not live at the home, but he had her cell phone on --

1 in his pocket, and his own cell phone, after he was
2 arrested and charged with murder.

3 A question that you may ask yourself during
4 the trial and through the evidence is why would he
5 have her cell phone? Does this amount to control?

6 You'll hear testimony from expert witnesses
7 about the firearms, about the gunshot residue, or
8 lack therefore, the DNA analysis that was conducted
9 in this case by state law enforcement division. And
10 finally you will hear from the medical examiner who
11 performed the autopsy on Toya and deemed this death a
12 homicide.

13 And you will hear a lot of physical evidence
14 about a lot of physical evidence, and you will hear
15 from a lot of witnesses. But the bottom line in this
16 case is very simple. The defendant entered his
17 former girlfriend's home, the mother of his two
18 children, while armed with a .32 Smith & Wesson
19 revolver and in the darkness of night. The defendant
20 has watched her home the day before, and once she
21 entered her home without her knowing, without any
22 permission, he shot her once in the head causing her
23 death while their two children were present in the
24 home.

25 This case is not about who done it, it's about

1 all the evidence shows who did it and that he
2 committed murder on the mother of his two children.

3 As the Judge indicated, the defendant is
4 charged with murder, burglary in the first degree and
5 possession of a firearm during a crime of violence.

6 Murder simply is this, is that the defendant
7 killed another person with malice aforethought. I
8 won't go into all the details of what malice
9 aforethought means, but very quickly malice is the
10 intentional doing of a wrongful act without just
11 cause or excuse. And there are forms of malice;
12 express malice and inferred malice.

13 Express malice means the person speaks words
14 that express hatred or ill will for another, or when
15 a person prepared beforehand to do an act that was
16 later accomplished. For example, lying in wait or
17 any other act in preparation.

18 And ask yourself, is this anywhere shown in
19 the evidence in this case? And the State believes it
20 will show that. Malice can also be inferred from the
21 conduct on the part of a person that shows a total
22 disregard for human life. Inferred malice may also
23 arise when the act is accomplished with a deadly
24 weapon.

25 Again the defendant was also charged with

1 burglary of Toya's home. That burglary is simply
2 that he entered her home without permission, without
3 her consent with the intent to commit a crime
4 therein. Does the evidence show that this is what he
5 did? The State believes that we will show you that
6 he committed this crime as well.

7 The bottom line is, ladies and gentlemen, that
8 we believe the overwhelming evidence will show that
9 this defendant killed Toya Pendergrass on July 8th,
10 with a weapon, intended to murder her, committed a
11 burglary in the first degree to get in to commit that
12 act, and possessed a firearm at the same time.

13 We would ask after all the evidence that you
14 return a guilty verdict on all counts. Thank you.

15 THE COURT: Mr. Grimes.

16 MR. GRIMES: Thank you, Your Honor, may it
17 please the Court.

18 THE COURT: You're welcome, you may proceed.

19 MR. GRIMES: Good afternoon, ladies and
20 gentlemen of the jury. I'm not going to get up here
21 and insult your intelligence today or any time here
22 this week. During this case you are going to hear
23 from Jake, he is going to testify. And what he's
24 going to testify to is such that he's going to agree
25 with a lot of what Ms. Cardillo just said.

1 Bottom line is fairly simple. He did enter
2 Ms. Pendergrass's town house, he did have a gun when
3 he entered. He entered at nighttime. He did shoot
4 her. That shot killed her. He went and called 911.
5 As the State mentioned many times, you heard he was
6 upset, crying, oh my baby.

7 what we disagree at is how did this happen.
8 The State is going to try to show this was an
9 intentional act, he did it with malice aforethought.

10 Jake is going to tell you, he goes by Tony, it
11 was an accident. That he certainly is guilty of
12 being stupid and foolish. You look at all the
13 evidence, he may be guilty of manslaughter. But what
14 he is not guilty of is murder.

15 The Judge will tell you what malice is, it's
16 acting with a wicked mind, intend to kill somebody.
17 But if there is someone who was a wicked mind, intend
18 to kill somebody, are they going to call 911 to try
19 to get help first? Ms. Cardillo said, why did he
20 have her cell phone? It's control. But Tony is
21 going to tell you why he had her cell phone. He was
22 trying to call Ms. Pendergrass's mother. He didn't
23 have the best relationship with her, did not have her
24 number on his cell phone. He used her cell phone to
25 try to call her.

1 Unfortunately the evidence will show he was
2 not able to get through with everything that was
3 going on that night. If someone was trying to kill
4 somebody, why would they stay there? Why not run and
5 flee? He stayed there waiting for the police. You
6 heard how Sgt. Ambrose came and told him to go
7 downstairs. They did not arrest him upstairs. He
8 could have went downstairs and tried to get away at
9 that point.

10 If this really was about control and trying to
11 kill somebody, why would he be sitting out there all
12 day? We do dispute that and we accept that
13 testimony. It's just stupid for someone to do that.

14 I mean if that's the case might as well have a
15 sign on him that says, I'm getting ready to kill
16 somebody. You don't advertise when you are trying to
17 kill somebody.

18 We have Barnwell County, we have some cases
19 out there. If you want to kill somebody they take
20 them out in the country, get rid of them out there;
21 no witnesses, burn the car, leave no evidence.

22 That's not what happened here. Everything is
23 consistent with this being an accident. Tony will
24 tell you that he got up that morning, not unlike any
25 other 24-year-old, and he met his friend who goes by

1 Bubba. He lived almost right across the path from
2 Ms. Pendergrass.

3 He went to Bubba's friend's house in
4 Peppertree off of Dorchester Road. Hung out there,
5 was drinking some beers, probably a lot of beers,
6 watched a movie.

7 And they went to a little club and really
8 wasn't much going on at the club so they left, so
9 they go back downtown, Bubba's place. At Bubba's
10 place they play some more cards, play Mad football.
11 It was the same thing me and my brother did in the
12 old days.

13 After they finished, Tony walked across the
14 street, knocked on the door, Latoya opened the door
15 and let him in. He played with his son Jaquez,
16 Jakayla was sleeping. Eventually they went upstairs,
17 slept on and off, had to feed Jaquez. About 5:00
18 o'clock is when this tragedy happened.

19 I don't know what caused Tony to take the gun
20 in there. He'll tell you he had a gun for protection
21 because he had been robbed recently.

22 Ms. Cardillo describes this as a nice
23 town home community, but it's called the Johnson Soup
24 Project, and they're town house is not in the best
25 area of town. So he had a gun for personal

1 protection.

2 And for whatever reason he took the gun out
3 and was playing with it. I don't know if he was
4 trying to show off or what he was doing. He may not
5 even know that because he had been drinking that
6 night.

7 Obviously Ms. Pendergrass didn't want him
8 playing with the gun. She got up off the bed, sat
9 up, put that gun away, hit his hand, the trigger went
10 off. Now obviously when I first got this case I see
11 a gunshot to the forehead, that doesn't sound like an
12 accident. That almost sounds like an execution to be
13 honest.

14 But if someone is that cold-blooded to execute
15 the mother of his children, why would they call 911?
16 why wouldn't they leave? why would they be upset and
17 crying? I can't say whether you can accept his
18 version it was an accident, it may be a manslaughter
19 in this case, but it is not murder. He had no malice
20 toward her, wasn't planning this out.

21 He was over there drinking and made a very
22 stupid decision and the gun went off by accident.

23 I wish we had a slow motion camera we could go
24 back and see what happened, but we don't have that.
25 The only person who was there who can testify is

1 Tony. He is not going to hide behind the Fifth
2 Amendment. He is going to get up here and look you
3 in the eye and tell you what happened.

4 This is a very simple case. It's going to be
5 hard for you to go back and deliberate, you have to
6 decide whether he is telling the truth. Is he a
7 credible witness?

8 Everybody on both sides has things to gain or
9 loose. Ms. Gadsden also is very upset. She lost her
10 daughter, the children have lost their mother. Mr.
11 Wilson if he is found guilty is going to go away for
12 a long time. That's where your job comes in. The 12
13 of you have to go back there and use your common
14 sense and try to find out whether the State has
15 proved beyond a reasonable that Tony committed
16 murder, or whether it was manslaughter, or whether it
17 may have been an accident.

18 Now it's the State's job to convince you of
19 that, each and every one of you. The State has
20 immense resources to do that. You've heard the
21 witnesses list. They probably have the entire
22 resource of the Charleston Police Department at their
23 disposal. They have all the scientists from SLED
24 going to come and testify. Their investigators
25 talked to all the neighbors.

1 In this case they're going to rely upon
2 emotion, speculation to do their job. They are going
3 call his own 5-year-old daughter to testify.

4 Is this an emotional case? It's a tragic
5 case. You took an oath, there is nothing in there
6 about emotion or tragedy. Cases were decided upon
7 that, we wouldn't be here. He is certainly guilty of
8 causing a tragedy.

9 The question is whether the State will
10 convince each and every one of you beyond a
11 reasonable doubt that he acted with malice. And the
12 evidence simply does not show that.

13 That's why you should find him not guilty of
14 murder. Thank you.

15 THE COURT: You may proceed.

16 MS. CARDILLO: Thank you, Your Honor.

17 State calls Jasmine Rey.

18 MS. JASMINE REY,
19 after having first been duly sworn to state the
20 truth, the whole truth and nothing but the truth,
21 testified on her oath as follows:

22 THE COURT: You may proceed.

23 MS. CARDILLO: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. CARDILLO:

1 Q Good morning, Jasmine, how are you today?

2 A Fine.

3 Q Let me start, where do you live now?

4 A Downtown.

5 Q What is your address?

6 A [REDACTED] Johnson Street.

7 Q Now is that the Johnson Street Housing Project
8 essentially?

9 A Yes.

10 Q How long have you lived?

11 A Three years.

12 Q Three years. Same address?

13 A Yes.

14 Q Now you said you were living at the same
15 address on July 7th, of 2007?

16 A Yes.

17 Q Who lived there with you?

18 A It was me, my mother and my sister and my son.

19 Q Now were you there with your sister that
20 evening, were you walking through that area outside
21 about 11:00?

22 A Yes.

23 Q Is it well lit through there where you live?

24 A Yes.

25 Q Now you said you were walking through there

1 around 11:00 on July 7th, 2007?

2 A Yes, something like that.

3 Q Was there anybody else with you other than
4 your sister?

5 A No.

6 Q Now did you see anyone outside -- are you
7 familiar with Latoya Pendergrass?

8 A No, I never saw her before. Since I was
9 living there I never saw her.

10 Q Do you know of her?

11 A No.

12 Q Did you know Tony Wilson?

13 A Yes, I saw him a couple of times.

14 Q How did you know him?

15 A Saw him around the neighborhood.

16 Q Did you see him on July 7th, of '07?

17 A Yes, I saw him sitting across the street from
18 her.

19 Q I'm sorry, where?

20 A I saw him sitting across the street. But I
21 really like pay no attention to it, like, you know.

22 Q Where was he sitting?

23 A Sitting across from the house.

24 Q Which house?

25 A From Toya's house.

1 Q I'm going to show you a photograph, State's
2 proposed Exhibit 1.

3 MS. CARDILLO: May I approach, Your Honor?

4 THE COURT: You may. Any objection?

5 MR. GRIMES: Not to showing her the exhibit.

6 THE COURT: I need to know if there is any
7 objection to the exhibit.

8 MR. GRIMES: I don't believe she is moving to
9 introduce it at this time. As long as she lays
10 foundation I have no objection.

11 THE COURT: Are you seeking to introduce it?

12 MS. CARDILLO: I'm going to ask her.

13 THE COURT: Then are you seeking? Is there
14 any exception?

15 MR. GRIMES: No, Your Honor.

16 THE COURT: Marked and admitted without
17 objection.

18 (Whereupon, State's Exhibit 1 is admitted into
19 evidence.)

20 Q (By Ms. Cardillo) Jasmine, I'm going to show
21 you State's Exhibit 1. Do you recognize that?

22 A Yes.

23 Q How do you recognize that?

24 A Because I walk past it from the --

25 THE COURT: Ma'am, I need you to speak into

1 the microphone for me, otherwise you sound muffled.

2 A Because I live like horizontal around right
3 there. I walk past it all the time.

4 Q Does this accurately depict the area where you
5 live?

6 A Yes.

7 Q Was that Toya's apartment?

8 A Yes.

9 Q I'm going to -- Jasmine, I'm going to ask you
10 to look behind you. Can you describe what that
11 picture is of?

12 A Is that a TV on?

13 Q Yes. That was the picture I just showed you
14 and asked you if that was Toya's apartment. Is that
15 the picture I just showed you?

16 A Yes.

17 Q And this accurately depicts the area on July
18 7th of '07?

19 A Yes.

20 Q Now you said you were walking in that area
21 that night. I'm going to show you State's proposed
22 Exhibit 3 --

23 THE COURT: Show them all to Ms. Grimes and
24 see if he has any objection to any them.

25 MR. GRIMES: No objection, Your Honor.

1 THE COURT: What numbers are those?

2 MS. CARDILLO: Your Honor, this is State's
3 Exhibits 3, 4, 5 and 7.

4 THE COURT: There are no objections, correct?

5 MR. GRIMES: Correct.

6 THE COURT: Marked and admitted without
7 objection.

8 (Whereupon, State's Exhibits 3, 4, 5 and 7 are
9 admitted into evidence.)

10 Q (By Ms. Cardillo) I'm going to show you these
11 on the overhead so that you can get a better -- now
12 Jasmine, that's taken from the front porch of the
13 picture of what you just identified as Toya's
14 apartment. What is that area across the courtyard?
15 Can you describe it, please?

16 A I guess it's right across the street from her
17 house.

18 Q Where do you live in relation to this next
19 picture? Do you live on that side?

20 A No, I live on this side.

21 Q Okay. You said that you saw Tony that
22 evening, where did you see him?

23 A He was sitting right there.

24 Q Was he alone?

25 A Yes.

1 Q What was he doing?

2 A Just sitting right there, just watching.

3 Q Watching what?

4 A I guess the house there.

5 MR. GRIMES: Objection, speculation.

6 Q (By Ms. Cardillo) Now --

7 THE COURT: Wait, there's an objection.

8 MS. CARDILLO: I'll move on, Your Honor.

9 THE COURT: Question is withdrawn. You may
10 proceed.

11 Q (By Ms. Cardillo) Now is that a better
12 picture? What chair was he located in?

13 A I think it was the first one.

14 Q And when you observed him, did you observe,
15 did he have anything with him?

16 MR. GRIMES: Objection, leading.

17 THE COURT: Sustained, leading.

18 A Personally I really didn't -- I really
19 didn't --

20 THE COURT: Question is sustained, leading.
21 You may rephrase the question.

22 MS. CARDILLO: Thank you, Your honor.

23 A Personally, I really wasn't --

24 Q (By Ms. Cardillo) Let me stop you for a
25 second. When you said you saw him sitting there,

1 what was he doing?

2 A Just sitting in the chair, just, you know.

3 Q You said no one else was with him?

4 A No.

5 Q Now when you saw him sitting there, how close
6 were you when you saw him?

7 MR. GRIMES: Objection, leading.

8 THE COURT: Sustained, leading.

9 A I was walking right there. He --

10 THE COURT: Ma'am, when there is an objection
11 I need you not to answer.

12 THE WITNESS: Oh, I didn't know that.

13 THE COURT: That's all right, you have no way
14 of knowing.

15 Rephrase the question.

16 Q (By Ms. Cardillo) Where were you walking that
17 evening?

18 A I was going to the store.

19 Q And you said you were walking on the sidewalk,
20 which sidewalk were you walking on?

21 A The same sidewalk that he was sitting in a
22 chair.

23 Q Is that the sidewalk you are referencing then
24 as sitting right back there?

25 A Yes, the sidewalk right there.

1 Q Did he have anything with him if anything?

2 A Personally I didn't really see. I mean I saw
3 him, I only took like a quick glance at him and told
4 him, what's up. My sister was the one that saw him,
5 I really wasn't paying no attention.

6 MR. GRIMES: Objection, calls for hearsay.

7 THE COURT: Basis.

8 MR. GRIMES: Hearsay.

9 THE COURT: There is no hearsay, overruled.

10 Q (By Ms. Cardillo) Jasmine, do you see the
11 person in court today that you saw sitting -- do you
12 recognize anybody in court today that you saw sitting
13 in that chair?

14 A No.

15 THE COURT: Your Honor, may I have just a
16 moment?

17 THE COURT: Uh-hum.

18 Q (By Ms. Cardillo) Now, Jasmine, you mentioned
19 earlier you said that it was Tony?

20 MR. GRIMES: Objection, Your Honor, leading.

21 THE COURT: Sustained, leading.

22 A I guess that's what his name is.

23 THE COURT: Ma'am, there is no question
24 pending. Rephrase the question.

25 MR. GRIMES: I ask it be stricken.

1 THE COURT: There is no need for it to be
2 struck.

3 Q (By Ms. Cardillo) Did you recognize the
4 person that was sitting in that chair that evening?

5 A Yeah, I recognize him then but.

6 Q Was it --

7 A I don't know if I recognize him now.

8 Q I'm just asking you for that evening. Who did
9 you recognize that was sitting in that chair that
10 evening on July 7th of '07?

11 MR. GRIMES: Objection, asked and answered.

12 THE COURT: Overruled, you may answer the
13 question.

14 Q (By Ms. Cardillo) Do you want me to ask you
15 again?

16 A Yes, ma'am.

17 Q Who was sitting in the chair that night on
18 July 7th?

19 A I guess his name is Tony I'm pretty sure.

20 MS. CARDILLO: Thank you, Your Honor, I have
21 nothing further.

22 THE COURT: Any questions for the witness?

23 MR. GRIMES: No, ma'am.

24 THE COURT: Any objection to the witness being
25 excused from the State?

1 MS. CARDILLO: None from the State, Your
2 Honor.

3 THE COURT: From the defense?

4 MR. GRIMES: No, ma'am.

5 THE COURT: Ma'am, you are excused. You may
6 call your next witness.

7 MS. CARDILLO: Your Honor, State calls Ellesse
8 James.

9 MS. ELLESSE JAMES,
10 after having first been duly sworn to state the
11 truth, the whole truth and nothing but the truth,
12 testified on her oath as follows:

13 THE COURT: You may proceed.

14 MS. CARDILLO: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MS. CARDILLO:

17 Q Good afternoon, Ellesse, how are you?

18 A Fine.

19 Q I'm going to need you to speak up loud enough
20 for us today, okay?

21 A Okay.

22 Q Now did you know Toya Pendergrass?

23 A Yes, ma'am.

24 Q How did you know her?

25 A My sister and her were best friends, and my

1 sister and her were best friends.

2 Q How long did you know her?

3 A Like a year or two.

4 Q where -- did you live beside her?

5 A Yes, ma'am. I was in the middle.

6 Q what was your address?

7 A [REDACTED] Harris.

8 Q where did Toya live?

9 A [REDACTED] Harris.

10 Q Is that located in Charleston County, South
11 Carolina?

12 A Yes, ma'am.

13 Q Now how long did you live beside Toya at [REDACTED]
14 and [REDACTED]?

15 A Like, oh my gosh, I moved in the beginning of
16 2006 because I was pregnant.

17 Q Now did Toya have any children?

18 A Yes, ma'am.

19 Q And what were the names and ages of the
20 children?

21 A Name was [REDACTED] Minor 2 and [REDACTED] Minor 1 . [REDACTED] Minor 1 was three and
22 -- well she's four now, and [REDACTED] Minor 2 is like two.

23 Q who was their father?

24 A Tony.

25 Q Could you say his full name?

1 A Jake Antonio Wilson. Him over there.
2 Q Did you all hang out a lot together?
3 A Not him, but his girlfriend, yeah.
4 Q You hung out with who?
5 A The girlfriend.
6 Q Toya?
7 A Yes, ma'am.
8 Q Is that what she went by or did she go by
9 Latoya or did she go by Toya?
10 A She went by -- I called her Toya, but, so.
11 Q Now how did you know Tony?
12 A Acquaintance with her.
13 Q With Toya?
14 A Yes, ma'am.
15 Q And did he and Toya live together?
16 A Yes, ma'am.
17 Q Where?
18 A At [REDACTED] Harris.
19 Q Was he living there on July 8th of '07?
20 A No, ma'am.
21 MR. GRIMES: Objection.
22 THE COURT: Basis?
23 MR. GRIMES: Lack of personal knowledge.
24 THE COURT: Overruled, foundation has been
25 laid.

1 Q (By Ms. Cardillo) Now I'm going to turn your
2 attention to July 8th of '07 around 5:00 a.m.

3 A Okay.

4 Q Where were you at this time?

5 A I was downstairs sleeping on my couch.

6 Q And did anything -- what if anything woke you
7 up that morning?

8 A A bang.

9 Q What did you do when you heard this?

10 A First my sister came downstairs because she
11 asked for the phone because my baby was sleeping on
12 my chest. So I just looked around for it. Then I
13 heard somebody screaming outside.

14 Q And did you go outside?

15 A I opened my door.

16 Q And what did you see?

17 A I seen Tony outside screaming.

18 Q Let me ask you this, do you see this person in
19 court today that was outside screaming?

20 A Yes, ma'am, I do.

21 Q Can you please for the record and the Court
22 show where this person is located and what they're
23 wearing?

24 A He is right there wearing a blue jacket. I
25 can't see.

1 Q Whatever you can describe.

2 A He has a navy blue shirt on and a tie and a
3 black jacket, if that's black right there.

4 Q And that's the person you saw that morning?

5 A Yes, ma'am.

6 MS. CARDILLO: Let the reflect --

7 THE COURT: Let the record so indicate.

8 MS. CARDILLO: Thank you.

9 Q (By Ms. Cardillo) Now again you looked out,
10 did you open your door?

11 A I opened my door because -- I opened it and he
12 was screaming, my screen door was closed and my big
13 door was open.

14 Q What did you hear him saying?

15 A My baby was dead. And he kept screaming it
16 repeatedly, oh, oh my gosh, oh my gosh my baby was
17 dead. Then I ask him, what is wrong, what are you
18 talking about? And he kept saying it over and over.
19 And then he snapped back and said, what the F did you
20 think, is what he said. And then my sister heard it,
21 she came outside.

22 And so we -- she went ran out the back door
23 and I went out the front door I think, that's what it
24 was, and we called the police.

25 Q Now when you said he was screaming, was he

1 crying, were tears coming down his face?

2 A I did not see -- it was dark but I didn't see
3 no tears.

4 Q So you went out the front door, what did you
5 do at this point?

6 A I was still on my porch.

7 Q And what were you looking at, what were you
8 watching?

9 A I was -- he was -- it's like the rail right
10 here is the porch and like the post, so.

11 Q Let me ask you this, let me have you look at
12 this photo. I'm going to show you --

13 A This screen?

14 Q Yes. It's already been marked as State's
15 Exhibit 1. Now where did you live?

16 A I live right here.

17 Q So you were next-door neighbors?

18 A Yes, ma'am.

19 Q Where were you, if you can from that picture,
20 where were you when you heard the bang, where were
21 you?

22 A When I heard the bang the first time my door
23 was open, I was on the screen door.

24 Q So you were on the first floor?

25 A Yes, ma'am. This is first floor, this is the

1 second floor. I was downstairs.

2 Q Okay, thank you.

3 A You're welcome.

4 Q Now let me show you another photo that has
5 already been marked as Exhibit 3.

6 A Okay.

7 Q You said Tony ran out, where did he run out
8 from? Did you see that?

9 A No. I was in the house, he came out, I see
10 him come out, too use the door, he was screaming, he
11 came walking out. And when I came outside to the
12 door he was standing -- because my door is right here
13 in front of this post -- he was standing like right
14 here in front of the field, like a couple ways from
15 the sidewalk, the sidewalk is right here. So he was
16 in the grass.

17 Q Did he go anywhere else while you were hearing
18 him screaming?

19 A He was talking, then I closed the door at
20 first, and then he went in and then I came back out
21 and he was out talking again because everybody else
22 started coming outside.

23 Q You were -- was he talking to anyone?

24 A No, he was -- we were talking and I went back
25 in the house because my sister said, girl, you better

1 get in the house before he shoots you.

2 MR. GRIMES: Objection, Your Honor.

3 THE COURT: Sustained, hearsay.

4 Ladies and gentlemen, you will disregard the
5 witness's last remarks. You will give it absolutely
6 no consideration in your deliberations.

7 You may be seated, Mr. Grimes.

8 MR. GRIMES: Matter of law, Your Honor.

9 THE COURT: You may be seated. Your objection
10 is noted contemporaneously for the record. I will
11 take it up in camera at the appropriate time.

12 THE WITNESS: I apologize for saying that.

13 THE COURT: That's okay. You may proceed.

14 Q (By Ms. Cardillo) Just answer what I'm
15 asking.

16 A Yes, ma'am.

17 Q Now you said that -- did he go back inside
18 Toya's home?

19 A Yes, ma'am, he did.

20 Q Then what happened?

21 A Then he came back outside with the baby.
22 Because when he was saying his baby was dead he was
23 saying -- I was thinking he was saying Toya and the
24 baby. But then he came out with **Minor 2**, because he did
25 not have nobody the first time, he came back out and

1 he had the baby in his hands.

2 Q where was -- he had Minor 2 in his arms?

3 A Yes, ma'am.

4 Q Did he have Minor 1 in his arms?

5 A No, ma'am, he did not.

6 Q Did you see Minor 1 ?

7 A Yes, I did.

8 Q where was she?

9 A She was standing in the house but at the
10 screen door.

11 Q what was she doing?

12 A She was looking and I was asking her what
13 happened.

14 MR. GRIMES: Objection, speculation.

15 THE COURT: Please approach.

16 (Whereupon, a discussion was held at the bench
17 off the record.)

18 THE COURT: Overruled. You may proceed.

19 MS. CARDILLO: Thank you, Your Honor.

20 Q (By Ms. Cardillo) You said you saw Minor 1
21 in the front door?

22 A Yes, ma'am.

23 Q was she upset? Could you tell?

24 A I don't know, she was just looking at me. And
25 I asked her, I was talking to her.

1 Q Before you go into that, what was she acting
2 like when you saw her?

3 A She was just looking, just looking outside.
4 The door was open so she was just looking.

5 Q At this point were there a lot of neighbors
6 outside?

7 A They were coming outside.

8 Q Is that unusual for that many people to be
9 outside at this hour?

10 A No, ma'am.

11 Q So there's usually a lot of people out?

12 A At five o'clock in the morning nobody is
13 outside.

14 Q I misunderstood you.

15 A Okay.

16 Q Where did **Minor 1** go at this point?

17 A Well --

18 Q Only if you know, what you observed.

19 A She came outside.

20 Q And where were you at this point?

21 A I was on my porch still.

22 Q Now **Minor 1** was on the front porch?

23 A Yes, ma'am.

24 Q Where did she go from there?

25 A She was talking to me.

1 Q Okay. Where is your -- you said your sister
2 went out the back porch. Did you see where she went?

3 A Yes, I do.

4 Q Where did she go?

5 A She went across the street, she ran around the
6 apartment building across the street to the apartment
7 right there.

8 Q Let me -- so was 911 called?

9 A Yes, ma'am.

10 Q Do the police arrive pretty quickly?

11 A Yes, ma'am. Because she was calling while we
12 was in the house.

13 Q What happens once the police arrive?

14 A They started asking questions.

15 Q Do you speak with the police?

16 A I don't talk to the police until he started
17 asking people questions and then he asked me what
18 happened and I tell him. And then I was like, well,
19 I don't know.

20 Q Did you tell him what you had observed?

21 A I told him that I was sleeping and I heard the
22 bang. And he asked me what did it sound like. I
23 heard like a bang. And he was like, I don't honestly
24 remember, I'm not going to say hearsay I do, because
25 I don't remember the conversation.

1 Q Did there come a point where you gave a
2 written statement?

3 A Yes, I did give a written statement.

4 Q Did you review that of what you told the
5 officer at the time?

6 A The beginning, yes.

7 Q Did you see the defendant again once after the
8 police arrive?

9 A Yes, he is still sitting in the same spot when
10 he come back outside.

11 Q And he had **Minor 2** in his arms?

12 A Yes, ma'am.

13 Q What happens at that point? Once the police
14 arrive, Tony is standing in the courtyard with --

15 A Everybody is outside of course. And then
16 that's when me and then that's when a girl like, one,
17 two, three, I think she's three doors down, and we
18 were all on her approach and she called her over
19 there and she asked what's happened and she starts
20 stating what happened.

21 Q Don't say --

22 MR. GRIMES: Objection.

23 THE COURT: Sustained, hearsay. Ma'am, you
24 can only say what you saw of your own personal
25 knowledge. Don't repeat what anyone else says.

1 THE WITNESS: I wasn't going to repeat it.

2 Q (By Ms. Cardillo) Now are you with the
3 children at any point?

4 A I'm with Minor 1 .

5 Q Are you taking care of her?

6 A No. Her mom was taking care of her.

7 Q No, I'm talking about on July 8th.

8 A Oh, okay, I'm confused. Yeah, she was
9 outside, we was all outside still, everybody was
10 outside.

11 Q How was Minor 1 or Minor 1 when she was with you
12 when you were taking care of her?

13 A She's still -- honestly I don't know she knows
14 what's going on.

15 Q Is she quiet or is she talking?

16 A She is quite and just still, like just.

17 Q Did she see if she was under the shock or
18 excitement of the event?

19 A I can't remember.

20 Q Now you said the police arrived, do the EMS or
21 medical personnel arrive as well?

22 A Yes, ma'am.

23 Q What's going on at this point?

24 A They're in the house checking on Toya or
25 whatever. And some people are outside questioning

1 people to see what's going on. Some people are in
2 the house and they're trying to figure out, put two
3 and three together what's going on.

4 Q Okay. Where are you at this point?

5 A I'm two, three doors down from where I was at.

6 Q Now does Tony still have Minor 2?

7 A Yes, ma'am.

8 Q Does it come a point where they, the police
9 speak with Tony, do you see this?

10 A Yes, ma'am.

11 Q Where were you when the police were speaking
12 with Tony?

13 A I was outside still.

14 Q Did you hear anything that the defendant was
15 saying?

16 A The defendant, him? No, I couldn't. Honestly
17 I wasn't paying attention.

18 Q Let me turn your attention to the night
19 before.

20 A Okay.

21 Q Saturday, July 7th.

22 A Okay.

23 MR. GRIMES: Your Honor, I think we are going
24 to have a matter of law about this line of
25 questioning.

1 THE COURT: Mr. Foreman, ladies and gentleman
2 I have a matter of law I need to take up with the
3 attorneys, it will be fairly brief. During the break
4 please do not discuss case and please leave your
5 notepads in your seats.

6 If you need anything, please let the bailiffs
7 know.

8 (Whereupon, the jurors exit the courtroom.)

9 THE WITNESS: Can I go outside?

10 THE COURT: Do you need to use the restroom.

11 THE WITNESS: Yeah, I do too, but I need to
12 stand up.

13 THE COURT: You can stand.

14 THE WITNESS: And I've got use the bathroom.

15 THE COURT: Okay. The witness has indicated
16 she needs to go to the restroom. I'll ask one of the
17 bailiffs to please escort her to the restroom.

18 Ma'am, please don't have any discussion about
19 your testimony with anyone, don't have any contact
20 with anyone. She can go out in the hallway but I
21 need her to be escorted, I need to make sure no one
22 else has any contact with her. Thank you very much.

23 MR. GRIMES: Your Honor --

24 THE COURT: I need to do something right
25 quick. During the course of Ms. James's testimony

1 she made a statement, I may not be completely
2 accurate, that when she was outside on her steps her
3 sister told her, you better come back in here before
4 he shoots you too.

5 Mr. Grimes rose to object, and before he could
6 really -- I had already determined that I was going
7 to sustain the objection on hearsay -- sustained the
8 object on hearsay, struck the witness's comment from
9 the record and gave a curative instruction to the
10 jury.

11 You indicated there is something else you want
12 to say, Mr. Grimes?

13 MR. GRIMES: Yes, Your Honor. At this point
14 we would move for a mistrial based upon the comment.

15 THE COURT: What would be the basis of the
16 mistrial?

17 MR. GRIMES: Basis, it's so prejudicial Mr.
18 Wilson the first thing that -- killed --

19 THE COURT: Well she kind of already said that
20 already, didn't she? She said she heard a bang.
21 Circumstantially she says that basically the
22 inference is that your client shot -- I would imagine
23 the reason why the state called her as a witness.
24 She is not an eyewitness but she certainly close as
25 it comes. A circumstantial witness in the chain of a

1 continuum event.

2 MR. GRIMES: And then she waffled off saying
3 and the sister said he's going to kill you too,
4 paints this horrible picture of Mr. Wilson going from
5 someone drinking and --

6 THE COURT: I'm sorry.

7 MR. GRIMES: Based on our opening statement we
8 are talking about he did admit he shot her, that it
9 was a horrible accident or manslaughter, being
10 careless with the gun.

11 Here she paints a totally opposite picture of
12 him shooting anybody that gets in the way. And based
13 upon that --

14 THE COURT: I think that's a -- I think that's
15 quite -- I think that's quite a stretch of exactly
16 what she said. That your inference of what she said.

17 MR. GRIMES: Yes, ma'am.

18 THE COURT: Anything further, Mr. Grimes?

19 MR. GRIMES: Also I think bringing in improper
20 character witness about what her sister was thinking
21 about Mr. Wilson. We can't talk to the witness, she
22 has not been called.

23 THE COURT: You probably would call her as a
24 witness if you thought you needed her, although I
25 don't know that you really need that. I have struck

1 that testimony and I have given the jury very strict
2 instructions that they're not to discuss it in any
3 manner in deliberations.

4 MR. GRIMES: I believe something like that is
5 inflammatory, I don't believe any curative
6 instruction would be positive and I believe a
7 mistrial would be the only remedy.

8 THE COURT: Anything from the State?

9 MS. CARDILLO: No, Your Honor. The curative
10 instructions regarding for them to disregard her
11 statement is I guess essentially good enough for them
12 to disregard it. I'm going to ask that we continue.

13 THE COURT: The power to grant or refuse a
14 mistrial is within the Court's discretion, however
15 our Supreme Court has said many times, and it is of
16 course what we are bound by -- that the power ought
17 to go used with the greatest of caution and only
18 under the most urgent circumstances and for a very
19 plain and obvious statement.

20 A mistrial should not be granted unless
21 absolutely necessary, and frankly should be the last
22 alternative of the Court. The Supreme Court has been
23 very clear that Court should exhaust other methods to
24 cure possible prejudice before aborting the trial,
25 and that being State versus Council (phonetic), State

1 versus Prinner (phonetic), as well as State versus
2 Watson.

3 In order to -- for the Court to justify
4 granting a mistrial, the defendant must show error
5 and resulting prejudice, based on State versus
6 Harris. Among those factors the Court is to consider
7 are the character of the testimony, the circumstances
8 under which it is offered, the nature of the case and
9 other testimony in the case, based on State versus
10 Howard.

11 In this incident the hearsay response was
12 spontaneously uttered by the witness, it was not
13 elicited by the State. The Court finds for the
14 record that this is not one of the situations that --
15 where it is plain and obvious, nor should a mistrial
16 be granted where the Court can exhaust other methods
17 to cure the possible prejudice, that being a curative
18 instruction which the Court did employ.

19 The Court would find that while the defendant
20 has shown error in the admission of the hearsay
21 evidence, the hearsay testimony was not elicited by
22 the State. And in addition to that the Court would
23 find that the defendant has failed to show any
24 resulting prejudice.

25 There is actually a case on point, almost very

1 similar, State versus Simpson, where in a murder
2 prosecution our Supreme Court found it is not an
3 abuse of discretion where the Court did not order a
4 mistrial where it was almost something very similar
5 was said. A person said to the statement being read
6 by the police, and the witness's statement was that
7 the defendant would come back and shoot them too.

8 And the Court gave a curative instruction to
9 disregard the incompetent evidence, and our Court
10 found that an instruction to disregard objectionable
11 evidence is usually deemed to have cured the error in
12 its admission.

13 The Court will find for purposes of this
14 record that the curative instruction was sufficient
15 to cure any possible prejudice the defendant may have
16 suffered. And that would be a grant of a mistrial is
17 not warranted, it would be an extreme remedy where
18 the Court has sought to exercise another remedy.
19 Motion is denied.

20 MR. GRIMES: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 Ma'am, you may step down. Please don't
23 discuss your testimony with anyone. Please stay in
24 the courtroom.

25 (Whereupon, a recess was taken.).

1 THE COURT: Is the State ready to proceed?

2 MS. CARDILLO: Yes, ma'am.

3 THE COURT: Defense ready to proceed?

4 MR. GRIMES: Yes, Your Honor. When we took
5 our break I had a 404(B) concern about the next line
6 of questioning.

7 THE COURT: What is the next question going to
8 be?

9 MS. CARDILLO: Your Honor, essentially I'm
10 going to turn the attention to the night before the
11 incident and ask about just things about locking the
12 door so on and so forth.

13 THE COURT: I'm sorry I can't hear you.

14 MS. CARDILLO: About the victim locking the
15 door, was Tony allowed -- was Tony living there.

16 THE COURT: What do you mean locking the
17 doors? I need you to be more specific on that.

18 MS. CARDILLO: It is my understanding that the
19 witness will testify that she watched the defendant
20 go in the front door --

21 THE COURT: Tell you what, why don't you just
22 ask the questions that you plan to ask. That would
23 be better for me.

24 You may proceed.

25 MS. CARDILLO: Thank you.

1 THE COURT: You're welcome.

2 IN-CAMERA DIRECT EXAMINATION

3 BY MS. CARDILLO:

4 Q I'm going to turn your attention to July 7th.
5 Did you see Toya the night before?

6 A Yes, ma'am.

7 Q Did you all hang out?

8 A No. We didn't.

9 Q Where did you see her the night before?

10 A She was in her door and I was in my door.

11 Q And about what time was that?

12 A I couldn't remember. I know it was late.

13 Q That's fine. Did you tell her goodnight? Did
14 you say goodnight to each other?

15 A Yes, ma'am.

16 Q Did you see Toya go into her or close her
17 front door?

18 A Yes, ma'am.

19 MR. GRIMES: Your Honor, leading.

20 THE COURT: We're in camera, but I would
21 imagine you would not lead.

22 Q (By Ms. Cardillo) Did you see Toya go
23 inside?

24 A Yes, ma'am.

25 Q And did she lock her door?

1 A Yes, ma'am.

2 Q Did she -- does she have a screen door?

3 A Uh-hum.

4 Q And what did she do if anything with the
5 screen door?

6 A The screen door was already locked, we locked
7 it. We was taking through the screen door so she
8 locked it, and made sure the door was locked and then
9 she closed the door. And when you turn the door it
10 makes a clicking sound so the door was locked.

11 Q Was Tony present inside of her home at that
12 hour?

13 A No, ma'am.

14 Q Was he living with Toya at that time on July
15 8th?

16 A No, ma'am.

17 MS. CARDILLO: Your Honor, there are several
18 other questions that go into other 404(B) incidents.

19 THE COURT: Go ahead and ask them all.

20 Q (By Ms. Cardillo) The day before on July 7th,
21 did you see Tony that day? The day before?

22 A I seen him for a period, but walking through.

23 Q Who was walking through?

24 A He was walking past.

25 Q Where did this happen?

1 A Outside of the complex.

2 Q Did he walk by Toya's residence?

3 A It's on the sidewalk, so, it's like two
4 sidewalks.

5 Q Did you speak to him?

6 A No, I don't talk to him.

7 Q Now did it come a point a few -- did you ever
8 have a conversation with Tony about guns?

9 A Yes, we did.

10 Q When?

11 A On July -- I want to say July 4th. I think it
12 was July 4th because we was all sitting on our porch
13 that day.

14 Q Where did this happen?

15 A On our porch.

16 Q When you say our porch?

17 A Like our porch, like everybody that lives in
18 the unit has a porch together. So it was on our
19 porch.

20 Q Toya's porch as well?

21 A Yes.

22 Q Who was present during this conversation?

23 A It was me, her, her sister and him. And some
24 other people.

25 Q What did this conversation consist of?

1 A It consisted was, we were just talking and we
2 was just rambling about a bunch of stuff. And then
3 the topic got on -- one of the topics was about guns
4 which I don't know nothing about guns.

5 Anyways, so we were just talking and he was
6 like, you know, that if you ever shoot somebody if
7 gunpowder gets on your hands, you take it off with
8 gasoline.

9 MS. CARDILLO: Your Honor, that's all the
10 questions that I have.

11 THE COURT: Mr. Grimes.

12 MR. GRIMES: Thank you, Your Honor.

13 THE COURT: Actually, Ms. Cardillo, you need
14 to lay the appropriate foundation for her knowledge
15 of him not living there.

16 MS. CARDILLO: Thank, you Your Honor.

17 Q (By Ms. Cardillo) Ellesse?

18 A Ma'am.

19 Q I'm going to ask you a few follow-up
20 questions. Essentially, how did you know that Tony
21 didn't live there?

22 A Because how did I know, Toya put him out,
23 okay.

24 Q What do you mean?

25 A He -- like she packed a garbage bag and put

1 him out.

2 Q When did that happen?

3 A It happened around July 4th when all that
4 time. It happened right prior to that. Like the
5 beginning of July -- the end of June, beginning of
6 July.

7 How I know that because when she put him out
8 one night they were fussing, Toya was inside the
9 house, he was outside on the air conditioning unit.
10 They had been fussing. I came outside, which me and
11 the defendant don't talk but it was raining, it was
12 raining. And he had his -- what is it, I'm trying to
13 think of the name of it, give me a second -- it was a
14 black trash bag full of clothes and stereo equipment
15 like the DVD surround system, that's what it was.

16 And I put it in my closet, that's how -- and
17 she said she was through and that she was done and
18 she put him out. That was the night that she put him
19 out. I put the stuff in my closet.

20 Q You put his belongings in your closet?

21 A Yes.

22 Q For safekeeping?

23 A No, just because he didn't have nowhere -- he
24 was outside at night and it was raining. And he was
25 going to leave it on the porch and I told him that I

1 would put it in the closet since he was going I would
2 put it in the close and he left.

3 Q Did you have a conversation with him about
4 these items being put outside?

5 A We was all outside. She was inside, I was
6 outside, and the conversation I offered, do you want
7 me to put it in the house and I put the surround
8 sound system in the house in a bag because his -- it
9 was a game in there too.

10 Q Let me ask you this. Since you were there
11 when this happened?

12 A Uh-hum.

13 Q You were present when she put him out?

14 A Uh-hum.

15 Q Kicked him out?

16 A She did. She didn't want him to do nothing
17 with him no more and he needed to go. And he was
18 outside on the other side of the window, because his
19 stuff was on the back porch, but he carry through out
20 around the house to the front porch and they were
21 fussing. And she was like she's done, she don't want
22 nothing to do with him no more.

23 Q So you observed and saw and heard this?

24 A Yes, ma'am, I did. This was at nighttime.
25 Yes, it was.

1 Q And this was end of June, first of July?

2 A Yes, ma'am.

3 MS. CARDILLO: I have nothing further, Your
4 Honor.

5 THE COURT: Any argument?

6 MR. GRIMES: I'd like to question the witness
7 to show it's not clear and convincing evidence.

8 THE COURT: I'm sorry?

9 MR. GRIMES: I think I would be entitled to
10 cross-examine the witness to show she is not
11 credible, it's not clear and convince evidence some
12 of the acts she was saying about the washing his
13 hands with gasoline to get off gunpowder.

14 THE COURT: You may proceed.

15 MR. GRIMES: Thank you, Your Honor.

16 IN-CAMERA CROSS-EXAMINATION

17 BY MR. GRIMES:

18 Q Ms. James?

19 A Yes, sir.

20 Q You gave a statement to the police, didn't
21 you?

22 A Yes, sir, I did.

23 Q And you know when they're investigating a
24 murder case it's important to give all the
25 information you could?

1 A Uh-hum.

2 THE COURT: Ma'am, I need you to say yes or
3 no.

4 THE WITNESS: Oh, yes, ma'am. I mean yes,
5 sir, I'm sorry.

6 THE COURT: That's okay.

7 Q (By Mr. Grimes) Did you give them all the
8 truthful information in this case?

9 A Yes, sir.

10 Q And do you have a copy of your statement?

11 A Do I have it on me?

12 Q Yes, ma'am.

13 A No, I don't.

14 MR. GRIMES: May I approach the witness, Your
15 Honor?

16 THE COURT: You may.

17 MR. GRIMES: Mark this as Defendant's 1 for
18 identification

19 THE COURT: It's not going to be marked, it
20 would be marked as a Court's Exhibit, this is an
21 in-camera hearing.

22 (Whereupon, Court's Exhibit No. 1 is marked
23 for identification.)

24 Q (By Mr. Grimes) Showing you what has been
25 marked as Court's Exhibit No. 1.

1 A Okay.

2 Q Is that your statement?

3 A Yes, sir. Well, yeah.

4 Q You signed it, both pages?

5 A Yes, sir.

6 Q Did you have an opportunity to read the
7 statement?

8 A You want me to read it?

9 Q No. Have you had an opportunity to read it?

10 A Yes, I have read this statement before, sir.

11 Q Have you had an opportunity to make any
12 corrections to it?

13 A Yes.

14 Q When you were -- the State was preparing this
15 case for trial, did you meet with the solicitor in
16 this case?

17 A At the beginning.

18 Q Did you go over your statement with the
19 solicitor?

20 A Uh-hum.

21 Q You got a chance to make corrections then?

22 A Yes, sir.

23 Q You did not make any corrections?

24 A Yes, sir.

25 Q Now on your direct testimony you stated that

1 and he made a statement about washing gunpowder off
2 with gasoline, that was in July of 2007?

3 A Yes, sir.

4 Q What date -- isn't it true that your statement
5 you said it was around March of 2007?

6 A No. March?

7 Q Yes, ma'am. I direct your attention to page
8 two, second line.

9 A Let's see. Okay. I see it now.

10 Q It does say March 2007?

11 A Yes, it does say March of 2007.

12 Q And on your direct testimony you stated that
13 Toya's sister was out there?

14 A Yes, sir.

15 Q But that's not in your written statement, is
16 it?

17 A I cannot read what it says in the written
18 statement to tell you the truth.

19 Q You signed the statement without reading it?
20 Not being able to read it?

21 A I can't read the handwriting.

22 Q Was the statement written for you or did you
23 write the statement?

24 A This is not my handwriting.

25 Q You got me confused, you said a couple minutes

1 ago you read it.

2 A I did read it.

3 Q Now you are saying you can't read it?

4 A No, I cannot read it. That's what I said.

5 Q I heard you.

6 A Okay.

7 Q Did you tell the police that Toya's sister was
8 out there?

9 A When?

10 Q When Mr. Wilson made the comment about the
11 gasoline and the gunpowder?

12 A I didn't have that statement -- this is the
13 statement of the day of the murder? I'm confused.

14 Q This is the statement you gave on July 8th.

15 A Okay. Restate that question. No, I did not
16 tell him that. I'm confused. Can you break it down,
17 please.

18 Q I will do my best.

19 A Okay.

20 Q Now when Ms. Cardillo.

21 A Okay.

22 Q The solicitor.

23 A Yes.

24 Q Asked you on your direct testimony.

25 A Uh-hum.

1 Q And we were talking to Judge Jefferson.

2 A Yes.

3 Q You testified, speaking to the Judge?

4 A Okay.

5 Q That Toya's sister was out there when these
6 comments were made.

7 A We were all outside for the 4th of July. Yes,
8 I did say that.

9 Q And I'm asking you now.

10 A Okay.

11 Q Did you tell Detective Goldstein over here in
12 the front row.

13 A Who?

14 Q Detective Goldstein.

15 A Okay, him. All right.

16 Q He is the one who take your statement?

17 A Yes, he did.

18 Q Did you tell him or write in the statement
19 that Toya's sister was out there when this comment
20 was made?

21 A I told him. The man right there.

22 Q You told him that?

23 A And I told you what I just said. Yes, I did
24 tell him that.

25 Q And was that --

1 A It's not on the paper. No, it's not on the
2 paper.

3 Q And you signed this paper saying this is true
4 and correct to the best of your knowledge?

5 A Yes. But it could have been -- it was six
6 o'clock in the morning, to tell you the truth,
7 honestly.

8 Q I understand.

9 A Okay.

10 Q And you have had a couple -- it's been over a
11 year ago?

12 A Uh-hum.

13 Q And you met with the solicitor?

14 A Uh-hum.

15 Q I assume it wasn't six o'clock in the morning
16 when you met with the solicitor?

17 A I can't tell you what time it was, but it had
18 been so long ago.

19 Q Did you think it was six o'clock in the
20 morning?

21 A No, it wasn't six o'clock in the morning.

22 Q You knew it was important in your meeting with
23 the solicitor?

24 A Yeah, I knew it was important.

25 Q And were you awake at that time?

1 A Yes, I was awake.

2 Q You weren't hung over or anything?

3 A Sir?

4 Q I assume you weren't hung over or anything
5 like that?

6 A I don't drink I'm seven months pregnant so
7 where does the drinking come from? I'm just asking.

8 THE COURT: Ma'am please answer the question
9 yes or no and then you may explain your answer.

10 A No, I did tell him, I don't know why it's not
11 on this paper, probably I forgot but I did tell him
12 and her that we were on the porch, it was 4th of July
13 and we was all outside.

14 So, I don't know -- not going to say nothing
15 else.

16 Q (By Mr. Grimes) Are you refusing to testify,
17 now?

18 A No.

19 Q You also -- there is nothing in your statement
20 about her telling him out in July, around July 4th of
21 2007, is there?

22 A Sir? Can you speak up because I can't hear
23 you.

24 Q I'm sorry. There's nothing in your statement
25 about Ms. Pendergrass throwing Mr. Wilson out around

1 July 4th, 2007, is there?

2 A Because he didn't ask.

3 Q So the answer to my question is, no, there was
4 nothing in your statement?

5 A If you don't ask am I supposed to tell you?

6 Q So again there is nothing in your statement?

7 A No, sir.

8 Q And you volunteered to keep his stuff in your
9 apartment?

10 A Yes.

11 Q Even though you don't talk to him?

12 A No, I don't talk to him. But it was raining
13 and I have a heart.

14 MR. GRIMES: One moment, Your Honor.

15 THE COURT: Uh-hum.

16 MR. GRIMES: Thank you, Your Honor, I have no
17 further questions.

18 THE COURT: Any redirect of the witness?

19 MS. CARDILLO: Just very briefly, Your Honor.

20 IN-CAMERA REDIRECT EXAMINATION

21 BY MS. CARDILLO:

22 Q Ellesse?

23 A Ma'am.

24 Q When you said you saw Tony on July 7th, was he
25 sitting in those chairs across the way?

1 A When I seen him? Hold on, I'm not going
2 answer too fast. Give me a second

3 THE COURT: Now this about in-camera
4 testimony, how is this related to what you asked
5 about in-camera?

6 MS. CARDILLO: She wrote in the statement
7 that --

8 THE COURT: Okay, well you need to make
9 reference to that tangential to.

10 MS. CARDILLO: I apologize, Your Honor.

11 Q (By Ms. Cardillo) Ellesse, you gave a written
12 statement to the police?

13 A Yes, ma'am.

14 Q Did you put everything in the statement that
15 had happened that you had seen about Toya and Tony
16 over time in that one statement? Or was it just
17 about that morning?

18 A It was just about basically that morning
19 because he really didn't ask the questions that way.

20 Q Now did you also give information to the
21 police about July 7th in that statement?

22 A He just asked one question, that's all.

23 Q Did you give an answer? Did you tell the
24 police you had seen Tony the day before in your
25 statement?

1 A Yes, I did tell him that.

2 Q And where had you seen Tony the day before in
3 that statement?

4 A Okay. Well, technically he was -- cause,
5 okay, from my porch, this is my porch -- well this is
6 our porch, and this is where they're at is a long
7 porch.

8 Q You say they. Where is that?

9 A I'm about to explain, okay. This is our unit,
10 it's two units that face each other. It's like my
11 door, a girl next-door and Toya's door. Across the
12 way is like, you can see out my house, it's a porch,
13 two porches over there on the front of it.

14 Q Is that across the courtyard?

15 A Is that the courtyard? Yeah, okay, the
16 courtyard.

17 Q That's what I call it. A grassy area.

18 A Yes, ma'am, that's what it is.

19 Q So you saw, you're talking about across the
20 grassy area?

21 A Yes, ma'am.

22 Q What are you referencing?

23 A Two chairs, you know how like the lawn chairs
24 with the little Coca-Cola little thing that folds up
25 the chairs.

1 Q Okay.

2 A He was sitting in that chair. I did put that
3 in my statement, yes, I did say that.

4 Q And do you recall when you saw him sitting in
5 those chairs?

6 A It was daytime.

7 Q Was there anyone else around him when he was
8 sitting in that chair?

9 A No, ma'am.

10 Q What was he doing from your observations?

11 A He was just sitting there looking.

12 MS. CARDILLO: Thank you, Your Honor, I have
13 nothing further.

14 THE COURT: Any argument? What is the basis
15 of your objection, Mr. Grimes?

16 MR. GRIMES: 404(B) and 404 evidence being
17 unduly prejudicial has to --

18 THE COURT: I thought that this -- you know,
19 the only reason I had this in-camera hearing is I
20 thought it was going to be testimony of prior bad
21 acts.

22 MR. GRIMES: I think the prior bad act that we
23 are concerned about --

24 THE COURT: I have not heard any prior bad
25 act.

1 MR. GRIMES: The statement he says about you
2 get the gunshot powder on your hands you get --

3 THE COURT: Oh, that's a prior bad act. Is
4 that a crime to wash gunpowder off your hands?

5 MR. GRIMES: No, it's not.

6 THE COURT: The way the case law is worded,
7 it's prior bad acts, conviction on prior bad act not
8 the subject of a conviction, contemplating however
9 some criminal activity for which he could have been
10 prosecuted, or something that would be in the lines
11 of Lyle evidence. But I have not heard anything. I
12 haven't heard anything. I heard things she observed
13 contemporaneously.

14 MR. GRIMES: The stuff about him being kicked
15 out of the apartment, we weren't going to argue that
16 part, that is based on personal observations.

17 But then -- also said I move under rule 403
18 it's not being relevant this happened either March or
19 July of 2007.

20 THE COURT: Was there no GSR found on his
21 hands?

22 MS. CARDILLO: Your Honor, the GSR results
23 were negative on the defendant.

24 MR. GRIMES: It may be relevant in reply
25 testimony if he gets up there to --

1 THE COURT: I don't think they have to wait to
2 prove their case whether your client testifies or
3 not. He doesn't have to testify. They have the
4 burden of proof. He can sit there and say absolutely
5 nothing. He doesn't have any burden of proof.

6 The State has the burden of proving each and
7 every element of what they charged him with.

8 MR. GRIMES: There is no relevance to him
9 saying, if you get gunpowder on your hands, get it
10 off with gasoline.

11 THE COURT: Wouldn't that be a matter of
12 weight for you to argue to the jury and sufficiency
13 of the evidence?

14 MR. GRIMES: No, ma'am, not when it's -- I
15 think the Court is the innkeeper and has to look at
16 that.

17 THE COURT: As to relevance. And if you know
18 where you all will go, if there is no GSR on his
19 hands you are going to argue that there is no
20 evidence that he fired a weapon.

21 MR. GRIMES: No, I have admitted that he fired
22 a weapon. So we are arguing identification.

23 THE COURT: Why are we even --

24 MR. GRIMES: It's not relevant.

25 THE COURT: Why is the GSR relevant, or him

1 washing it off? He admits he fired the gun.

2 MS. CARDILLO: Well, Your Honor, the State is
3 trying to show that it goes toward malice, it goes
4 toward his intent to commit the murder of the victim.
5 This wasn't just an accident.

6 THE COURT: Why wouldn't this just be his
7 general knowledge about guns?

8 MS. CARDILLO: Your Honor --

9 THE COURT: Or what he thought he knew about
10 guns. I realize, I thought it was before GSR was --
11 perspiration, water.

12 MS. CARDILLO: That too, Your Honor. The
13 defendant said on the day of the incident that he did
14 not know who shot her. He didn't do it, those
15 statements will come out if the Court --

16 THE COURT: It becomes a non-issue if he said
17 he did shoot her, doesn't it?

18 MS. CARDILLO: Your Honor, I really think it
19 goes to show his motive and his intent to plan
20 beforehand this crime; that he had thought about it
21 and was saying it in front of the victim in front of
22 her family and friends in a threatening manner so
23 much that they got into an argument later.

24 THE COURT: Now she didn't say he said it
25 threatening, she said he said it sort of matter of

1 fact, that they were having a general conversation
2 about guns, as I understand it. That they were on
3 the porch, they were all talking.

4 And as I understand her testimony she said
5 they were all on the porch, she was on the porch,
6 Latoya, Latoya's sister, the defendant, and other
7 persons, it was 4th of July. And the topic came
8 around to guns. And the defendant said, if you ever
9 shoot someone you take gunpowder off with gasoline.

10 She didn't say he had any particular affect,
11 she was agitated with the defendant. She said he
12 said it sort of matter of fact and that they were
13 talking about guns.

14 MS. CARDILLO: Your Honor, again I think that
15 given all of the evidence that the State will show
16 that it goes toward his motive and it goes towards
17 his malice. He planned beforehand his shooting of
18 the victim.

19 He didn't just walk in there that night, that
20 there is other evidence that will show that go in
21 relation --

22 THE COURT: Is there any evidence he had time
23 to go and wash his hands off? The evidence is that
24 the police arrived immediately. Well he was outside,
25 what's the evidence that he was outside and then he

1 was inside -- he was outside. There is no evidence
2 there is gasoline in the house, is there?

3 MS. CARDILLO: No, Your Honor. But, Your
4 Honor, it is a prior statement, it's a party opponent
5 admission and again I think --

6 THE COURT: Why is it an admission?

7 MS. CARDILLO: Your Honor, the defendant never
8 told anybody that he shot the victim, only Mr. Grimes
9 has said that in theory.

10 THE COURT: I think he is bound now, he got in
11 front of a jury and said he shot him. It was an
12 accident, but he said he shot her. I don't think he
13 can backtrack from that now.

14 MS. CARDILLO: I think her being able to
15 testify to this goes against his theory that it was
16 an accident. It goes more toward the expressed
17 malice that he planned beforehand, that he knew how
18 to get away with it.

19 THE COURT: Expressed malice is preparing
20 beforehand to do the act which possibly -- like lying
21 in wait, buying a gun, buying ammunition. If he's
22 going to poisoning somebody, going online, looking up
23 poison, buying books on poison. Buying poison. An
24 act which contemplates the shooting.

25 Now if you told me he bought a book on GSR, he

1 went online to research how to wash off GSR. To make
2 a general statement that you can wash off GSR with
3 gasoline, where her testimony said that they were
4 having a discussion about guns in general and he just
5 said it I think falls a little short.

6 Now if he gets on the stand and says something
7 different than that, I will reserve your right to
8 call her in rebuttal on that topic. But the rest of
9 it clearly comes in. Not -- everything else she
10 testified to is not -- they're not prior bad acts,
11 they certainly are not convictions, they are matters
12 that she observed contemporaneously.

13 And they go directly to the issue of whether
14 he lived in the residence, whether he had any
15 expectation of privacy in the residence. And any
16 objection regarding the admissibility of that
17 evidence is overruled. The Court would find that it
18 is relevant, and that it's probative value is not
19 outweighed by any possible prejudice to the
20 defendant.

21 Is there anything further?

22 MR. GRIMES: Just to clarify. I haven't made
23 any hearsay objections because we were in-camera,
24 but --

25 THE COURT: Hearsay, where would the hearsay

1 be?

2 MR. GRIMES: If she -- the witness testified
3 that Toya said I'm throwing him out, that would be
4 hearsay I think.

5 THE COURT: Ms. Cardillo?

6 MS. CARDILLO: Your Honor, I don't believe
7 that what the defendant said, I may be --

8 THE COURT: He is talking about what the
9 descendant said. She said she was tired of him and
10 she ready for him to go, she's putting him out.

11 MS. CARDILLO: Your Honor, under that scenario
12 she observed it as it was happening, I would say it's
13 a present sense impression as she was observing the
14 incident at hand.

15 If I could ask further to see if the victim
16 was upset and to see if it would fall under the
17 excited utterance.

18 THE COURT: It wasn't an excited utterance.
19 You look at the line of cases from the Supreme Court
20 and the reasoning and I think you will find that that
21 would not hold water. It would not be an excited
22 utterance.

23 MS. CARDILLO: Your Honor, I think from her
24 testimony falls under present sense impression. The
25 victim made the statement while Ellesse was observing

1 the event, while she was perceiving the event or
2 condition immediately thereafter.

3 She was actually privy to the conversation,
4 had kind of the conversation while he was outside and
5 she was inside and the victim stating that he is out,
6 he is no longer allowed in the residence, all his
7 stuff is outside because she was perceiving the event
8 while it was taking place. And I would state that
9 that would fall under the present sense impression.

10 THE COURT: Mr. Grimes, why would it not be a
11 present sentence impression?

12 MR. GRIMES: It may be if that's how the
13 testimony comes across.

14 THE COURT: I'm sorry, I can't hear you.

15 MR. GRIMES: It may be if that's how the
16 testimony comes across. But the three prongs, I
17 guess I'll listen to the testimony and make the
18 objection at the time. If Ms. Pendergrass at the
19 time the bag gets thrown out says --

20 THE COURT: Well, that's her testimony. That
21 she had said goodnight to her, and that she locked
22 the door. And then after that was when she heard
23 them having a conversation, he was sitting on the air
24 conditioner.

25 MS. CARDILLO: Your Honor, I believe he's

1 referring to the July 4th incident when Ellesse's
2 testimony --

3 THE COURT: At the time.

4 MS. CARDILLO: Yes.

5 THE COURT: Actually she said it the end of
6 June beginning of July.

7 MS. CARDILLO: Yes, Your Honor.

8 THE COURT: She observed --

9 THE WITNESS: That's what I said.

10 THE COURT: Well that was a different
11 incident. I'm sorry, my writing ran together.

12 But, are you conceding then, Mr. Grimes, if in
13 fact she observed him being placed -- observed the
14 conversation between the two of them that it would
15 fall under present sense impression?

16 MR. GRIMES: Yes, ma'am.

17 THE COURT: Okay. Then we have this resolved.
18 She will testify about the door being locked, about
19 the defendant not being present the night before, and
20 that him not living there, his bags were placed by
21 the witness in the closet, et cetera. But nothing
22 about the gunpowder or gasoline.

23 I'm going to allow the State, if it becomes
24 germane during the course of the trial, I'm going to
25 allow them to recall her. I reserve the right to

1 allow them to recall her in rebuttal on that issue.

2 MR. GRIMES: Thank you, Your Honor.

3 THE COURT: Anything further, Ms. Cardillo?

4 MS. CARDILLO: No, Your Honor.

5 THE COURT: Please bring in the jury.

6 (Whereupon, the jurors enter the courtroom.)

7 THE COURT: We appreciate your indulgence,
8 ladies and gentlemen, bear with me just one moment.

9 Mr. Foreman, ladies and gentlemen, we will now
10 resume the witness's testimony.

11 You may proceed, Ms. Cardillo.

12 MS. CARDILLO: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 CONTINUED DIRECT EXAMINATION

15 BY MS. CARDILLO:

16 Q Ellesse?

17 A Ma'am.

18 Q Did you give a statement to the police?

19 A Yes.

20 Q Did you give a statement to the police?

21 A Yes, ma'am.

22 Q And when did you give the statement to the
23 police?

24 A The morning after everybody left when he came
25 around. So the 8th.

1 Q Did you give the statement the morning of --

2 A The shooting.

3 Q Okay. Was it early in the morning?

4 A Yes, ma'am, it was early in the morning.

5 Q And this statement that you gave, was it about
6 what happened that morning?

7 A What happened prior to the morning. What
8 happened prior to the morning, like from the night
9 until about five or six o'clock what happened, yeah.

10 Q Did you tell the police -- well, did you see
11 Tony the day before?

12 A I seen him sitting on the porch and walking.
13 And I seen him twice because -- I seen him because I
14 was behind my house at a friend's house.

15 Q Where did you see him the day before?

16 A I seen him on the porch and he was walking.
17 He was walking, and then I seen him sitting down on
18 the chair.

19 Q Okay. Let me show you a picture, okay?

20 A Okay.

21 Q It already been put into evidence, but it's
22 going to be up behind you.

23 A All right.

24 Q There you go.

25 A Okay.

1 Q I'm figuring out how to work this thing.

2 A It's okay, I can see.

3 Q Where is that beam?

4 A This tree is in front of my door, like in
5 front of my door right here. And that's where he was
6 sitting, where the chair as at, the two chairs.

7 Q Was there anybody with him?

8 A I can't remember, I don't think so. I seen
9 him sitting in a chair.

10 Q Do you remember what time of day?

11 A It was daytime.

12 Q And did you see what he was doing?

13 A He was just sitting there.

14 Q Thank you.

15 A I'm not saying nothing.

16 Q Now, Ellesse, I'm going to turn your attention
17 to the night before July 7th, okay?

18 A Okay.

19 Q Did you see Toya that night on July 7th?

20 A She wasn't home until around -- she didn't
21 come home. I did not go in the house until 10:00 or
22 11:00. She didn't come home until around 11:00 or
23 something because she was out washing clothes and
24 stuff prior that day.

25 Q Now but did you see her that night?

1 A Uh-hum.

2 Q Where did you see her?

3 A She was -- once again we was both talking.

4 Q Let me stop you. Where were you talking,
5 where were you when you were talking?

6 A I was in my door, she was in her door.

7 Q Okay. She was inside of her door?

8 A Yes, ma'am. Okay, once again this is the
9 screen door I'm in behind my screen door and she is
10 behind her screen door and we are just talking,
11 chit-chatting, that's it.

12 Q Now did she go into her home, did you say
13 goodnight?

14 A Yes, I said goodnight.

15 Q Now did she close her door?

16 A Yes she did close her door.

17 MR. GRIMES: Objection, leading, Your Honor.

18 THE COURT: Sustained, leading.

19 Q (By Ms. Cardillo) After you said goodnight,
20 what did Toya do?

21 A She closed the door and locked it.

22 Q And how do you know she locked it?

23 A Because once again, when you lock the project
24 doors you just turn it and it's like a noise and you
25 know the door is locked.

1 Q Now was Tony living with Toya at her apartment
2 at this time?

3 A No, he was not.

4 Q Okay. When was the last time that you knew of
5 that he lived there?

6 A The last time I knew he lived there, I got to
7 give you a date?

8 Q You don't have to give a specific date, was it
9 a couple weeks before, was it a month before?

10 A It was -- I know like this happened July 8th,
11 let's see.

12 Q Take your time.

13 A I am -- I am just trying to figure out. She
14 put him out between -- so I haven't seen him around
15 since the last time like living, being in the house
16 or whatever since the time she put him out the last
17 time with the bags and stuff.

18 Q Okay, you talked about a time --

19 MR. GRIMES: Objection, Your Honor, not being
20 -- improper foundation at this time.

21 THE COURT: Overruled, but clarify the
22 question. Do not lead, restate.

23 MS. CARDILLO: Thank you, Your Honor.

24 Q (By Ms. Cardillo) You stated he put her out,
25 what did you mean?

1 A I said he? What did you say, ma'am? Repeat
2 yourself.

3 Q You said just now that she put him out?

4 A Yes.

5 Q What do you mean?

6 A Like I'm saying like the question was when was
7 the last time I know that he was living there. Now I
8 was saying that the last time I can remember him
9 seeing him actually there or whatever it was, when
10 she put him out and I took the stiff in. That's the
11 last time I seen for myself.

12 Q Please explain what happened?

13 A She put him out. She was - okay, it was
14 nighttime. She just came in the house doing
15 something or whatever. He tried to come in. She had
16 her keys changed that day, whatever.

17 MR. GRIMES: Objection.

18 THE COURT: Basis.

19 MR. GRIMES: Lack of foundation, hearsay.

20 THE COURT: Please approach.

21 (Whereupon, a discussion was held at the bench
22 off the record.)

23 THE COURT: Any reference to the keys being
24 changed is stricken from the record.

25 You may proceed, Ms. Cardillo.

1 MS. CARDILLO: Thank you, Your Honor.

2 Q (By Ms. Cardillo) Ellesse, I'm going to
3 direct your attention to the end of June, July?

4 A Okay.

5 Q Was the defendant put out by the victim?

6 A Yes. Yes, ma'am.

7 Q Okay. Now did you see this?

8 A Once again, his bags were on back porch, he
9 was sitting on the air conditioner, she was at the
10 living room window, she was talking.

11 Q What did you observe and hear?

12 A That she was done and he couldn't come in no
13 more. She was done.

14 Q So you saw his -- where was his stuff?

15 A His stuff was on the back porch.

16 Q Can you explain what his stuff was?

17 A What's his stuff, it was in a black trash bag
18 what I guess clothes. I know it was a trash bag. I
19 know there was a black game with a green circle in
20 it, I don't know what the game is called. Okay. And
21 then it was a surround system.

22 Q Okay. So you saw these items?

23 A Yes, ma'am.

24 Q Then what happened?

25 A And he brought it around to the front. Of

1 course then he came back and he was like, can we talk
2 about it, he was talking to her, she said no, she's
3 done, it's over, there is no more. And so I was -- I
4 came outside and it was raining and I was okay.

5 Do you want me to put the stuff in the closet?
6 And he was like, yes. So I just put it in the closet
7 and he left.

8 Q You put all of his belongings in your closet?

9 A It was a bag, a game and the surround system
10 that I put it in my downstairs closet.

11 Q Now, Ellesse.

12 A Ma'am.

13 Q Were there any other observations that you saw
14 that Toya put the defendant out?

15 A Yeah. Yeah.

16 MS. CARDILLO: I have the Court's indulgence
17 just one moment?

18 THE COURT: You may.

19 Q (By Ms. Cardillo) Now, Ellesse, let me go
20 back just a second. You said that you and Toya were
21 talking through your screen doors?

22 A Yes, ma'am.

23 Q Do you know if Toya's screen door was locked?

24 A She locked it.

25 Q Was that before she locked the main door?

1 A Yes, ma'am.

2 Q Okay.

3 MS. CARDILLO: Thank you, I have nothing
4 further. Please answer any questions that Mr. Grimes
5 may have for you.

6 THE COURT: Mr. Grimes, you may proceed.

7 MR. GRIMES: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 CROSS-EXAMINATION

10 BY MR. GRIMES:

11 Q Hey, Ms. James.

12 A Hi.

13 Q How are you doing today?

14 A I'm doing good, how are you?

15 Q I'm doing all right.

16 A That's good.

17 Q Thank you.

18 A You're welcome.

19 Q I believe you have a copy of your statement up
20 there?

21 A Yes, the one you gave me?

22 Q Yes, ma'am. It's been marked as Court's
23 Exhibit 1?

24 A Uh-hum.

25 Q You gave that statement to Detective

1 Goldstein?

2 A Yes.

3 Q And Detective Goldstein is right here?

4 A Yes.

5 Q You gave him this on the morning of the
6 shooting?

7 A Uh-hum.

8 THE COURT: Ma'am, please say yes or no for
9 me.

10 THE WITNESS: Yes, ma'am. I'm sorry.

11 THE COURT: That's okay.

12 Q (By Mr. Grimes) I'm going to ask you a few
13 questions about the circumstances of that statement,
14 all right?

15 A I will answer to the best of my ability.

16 Q That's all I can ask. It's about six o'clock
17 in the morning when you gave the statement?

18 A It says 6:10.

19 Q It was about 6:10?

20 A Yes, sir.

21 Q And you gave Detective Goldstein a statement,
22 you knew it was a pretty serious matter?

23 A Uh-hum. Yes, sir.

24 Q And one thing I was a little confused about,
25 did you write the statement or did Detective

1 Goldstein write the statement?

2 A I cannot remember.

3 Q And after the statement was written out, did
4 you have a chance to read it?

5 A Uh-hum.

6 Q And did you read it?

7 A Uh-.

8 Q And is there a place for you to sign at the
9 bottom?

10 A Yes, sir.

11 Q There's a little statement above that
12 signature line where it says you either had it read
13 to you or you've read it and it's true and correct to
14 the best of your knowledge?

15 A Yes, sir.

16 Q I think on direct you testified that you just
17 kind of answered the questions Detective Goldstein
18 asked you?

19 A Yes, sir.

20 Q Talking about what you saw that morning?

21 A I just answered the questions that he asked
22 me.

23 Q Okay. And when you read that statement you
24 wanted to make sure it was accurate?

25 A Uh-hum. Yes, sir.

1 Q And complete?

2 A Yes.

3 Q And truthful?

4 A Yes, sir.

5 Q Now I think on your direct testimony today you
6 said Mr. Wilson was not crying after the shooting?

7 A I said that it was dark and I could not see
8 his face. So I don't know. It was nighttime, it was
9 like breaking dawn. It was dark.

10 Q Okay. And isn't it true you told Detective
11 Goldstein that he was crying?

12 A Yes, he was making noise. He was emotionally
13 like -- I don't know if I can do it or not -- but he
14 was like, it was like emotionally, like whatever you
15 want to call it.

16 Q Upset?

17 A If that's what you want to call it.

18 Q We weren't there, I wasn't there. Did it seem
19 like he was upset when this happened?

20 A I don't know what it was honestly. It was
21 just like he was making a bunch of noise.

22 Q And in your statement you did use the word
23 crying, though?

24 A Yes. I can say that, okay, you don't have to
25 be crying to have tears coming, do you?

1 Q No, ma'am.

2 A Okay. Just asking a question.

3 Q A lot of people cry for joy.

4 A Oh, okay.

5 Q But your statement about the fourth line, you
6 said he talking and crying?

7 A Yes, at the same time.

8 Q Okay.

9 A Making -- okay, go ahead.

10 Q And then you later on you said you heard him
11 on the phone?

12 A Yes, sir.

13 Q Giving the address [REDACTED]?

14 A Yes, sir.

15 Q And is it possible he was calling 911 at that
16 time?

17 A I don't know who he was on the phone with.

18 Q But it's possible he could have been calling
19 911, correct?

20 A I can't answer that.

21 Q Now I was little confused on your direct
22 testimony, seemed like at the beginning you said that
23 you saw Mr. Wilson kind of walking, never saw him
24 sitting down. After we took the break you saw him
25 sitting down?

1 A No, I clarified myself. I said I seen him, he
2 was walking, and then I seen him sitting down.

3 Q Okay. You said he was out there the whole
4 day?

5 A I don't know because I wasn't outside the
6 whole entire day. My statement doesn't say that. I
7 said I don't know where he was during that because I
8 wasn't outside the whole entire day.

9 Q Well, if you go about the last three lines of
10 your statement.

11 A Okay.

12 Q Is that true you said, he sat in the chair
13 across the way the whole day?

14 A Did you see him with -- again, I did not see
15 him at all prior to hearing the loud gunshot. That's
16 what it says. You said the last three.

17 Q On page one of your statement?

18 A Oh, I'm on page two.

19 Q I'm sorry.

20 A You said page two.

21 Q Read the -- on page one the last three lines,
22 you told Detective Goldstein, he sat in those chairs
23 across the way the whole day.

24 A I did not say that. That's what on this paper
25 but I did not see him all day because I wasn't

1 outside the whole entire day.

2 Q You signed this statement, correct?

3 A Yes.

4 Q You read it?

5 A Once again, at the time, yes.

6 Q And you actually made a little correction,
7 someone made a correction right here; is that
8 correct? Where it says [REDACTED]?

9 A Yes, I probably was. Okay. But I did not say
10 this. Actually I made a correction, okay, I
11 apologize.

12 Q So you corrected part of your statement but
13 you didn't correct that part?

14 A That's right.

15 Q And you live next door to Ms. Pendergrass?

16 A I used to live next door to her.

17 Q On July 8th you did?

18 A Yes, sir.

19 Q And that night?

20 A Uh-hum.

21 Q You heard, did you hear the gunshot?

22 A It wasn't nighttime when I heard it.

23 Q In the morning did you hear the gunshot?

24 A I heard a bang.

25 Q And after that Mr. Wilson came out?

1 A Yes.

2 Q And he didn't run, did he?

3 A No.

4 Q He stayed there?

5 A Yeah.

6 Q He was upset?

7 A Don't know what he was. I just heard him
8 making noises and screaming.

9 Q All right. Now you have a pending charge,
10 don't you?

11 A This ain't got nothing to do with it.

12 MS. CARDILLO: Objection, Your Honor.

13 THE COURT: Ma'am, there is a pending
14 objection. Please approach.

15 (Whereupon, a discussion was held at the bench
16 off the record.)

17 THE COURT: You may ask the question.

18 THE WITNESS: I have to answer the question?

19 THE COURT: Yes, ma'am.

20 A Yeah, I do.

21 Q (By Mr. Grimes) You have been charged with
22 forgery?

23 A Oh, yes. Well, yeah, as of right now.

24 Q For writing a bad check?

25 A Uh-hum.

1 Q And that carries up to five years in prison?

2 A Yeah, I know.

3 Q And the State issued a bench warrant for your
4 arrest because you did not appear for court, correct?

5 MS. CARDILLO: Objection, Your Honor.

6 A No, I don't have a bench --

7 THE COURT: Please approach.

8 THE WITNESS: Can I answer that?

9 THE COURT: No, ma'am, there's an objection
10 pending.

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

13 THE COURT: Object is overruled.

14 THE WITNESS: Do I have to answer that, ma'am?

15 THE COURT: He is going to restate the
16 question for you, ma'am. Then answer yes or no and
17 then you may explain your answer.

18 THE WITNESS: All right.

19 THE COURT: You may proceed, Mr. Grimes.

20 Q (By Mr. Grimes) There was a bench warranted
21 issued for your arrest, right?

22 A Yeah, there was.

23 Q In May of 2008?

24 A Uh-hum.

25 Q And the State, through Ms. Steale, is

1 prosecuting this?

2 A Repeat yourself, I cannot hear you. Your
3 words are collecting together.

4 Q I'm sorry. And the State consented to have
5 that bench warranted lifted?

6 A Uh-hum.

7 Q Is that kept you out of jail?

8 A Uh-hum.

9 Q You would not want to be in jail, would you?

10 A No.

11 Q Jail is not a nice place?

12 A No.

13 Q And so you're glad that the State helped you
14 out with that, aren't you?

15 A Yeah, okay. Can I explain now?

16 THE COURT: Yes, ma'am, you may explain your
17 answer.

18 A The only reason why they lifted my bench
19 warrant because I moved and I told them I moved and
20 they didn't send it to the right place. And when I
21 came I had a doctor's excuse and I'm pregnant, I'm
22 seven months pregnant, so that's why it was lifted.
23 It was not because of the State helping me out, it
24 was because of the excuse I had. So wasn't the State
25 helping me out.

1 Q You -- can I see a copy of that excuse?

2 A You can call my doctor and you can get it.
3 You want me to give you the number?

4 Q Just answer the question, ma'am.

5 A I just gave you the answer. You want me to
6 give you the number?

7 Q No, ma'am.

8 A Okay.

9 Q But the State consented to lift that bench
10 warrant --

11 A Because I was seven months pregnant. I had a
12 doctor's appointment.

13 Q You were seven months pregnant in May?

14 A I'm seven months pregnant now. I'm pregnant
15 that mean I was prior pregnant I'm still pregnant
16 about to have my baby.

17 A All right. And you wouldn't want the baby to
18 be born in jail?

19 A No.

20 Q These charges are still pending, correct?

21 A Where are you getting to?

22 THE COURT: Ma'am, answer yes or no and then
23 you can explain your answer.

24 A No.

25 Q (By Mr. Grimes) Your charges are still

1 pending, correct?

2 A No. Oh, yes. I'm supposed to be taking a PTI
3 class.

4 Q But the charges are still pending against you
5 right now?

6 A If that's what you want to call it.

7 A Have you completed PTI?

8 A Not yet.

9 Q If you complete PTI the charges --

10 A It's going to be expunged, yes I know.

11 Q Get's off your record.

12 A Yes, sir.

13 Q That will help you try to get jobs.

14 A I already have a job.

15 Q If someone did a background check it won't
16 come up at all if you complete PTI, correct?

17 A Yes.

18 Q The charge is still pending, bench warrant had
19 to be lifted, you would still be in jail, right?

20 A I was never in jail.

21 Q If the bench warrant had been served on you,
22 and the bench warrant never been lifted, you would
23 still be in jail?

24 A It wasn't supposed to be a bench warrant,
25 that's what I'm trying to say. That bench warrant

1 was never supposed to be there.

2 Q But it was there?

3 A Yes, but it wasn't supposed to be there. It
4 wasn't by fault that it was there.

5 Q I understand. But I'm just saying, for some
6 reason the State had not consented to have that bench
7 warrant lifted, you would still be in jail right now,
8 wouldn't you?

9 A I wasn't in jail so what are you getting at?
10 I wasn't in jail. I was out. You keep saying if
11 they got lifted would I be in jail, I wasn't in jail
12 to stay in jail. I was out. I was never locked up.
13 I was never incarcerated. I was here, outside.

14 Q But a bench warrant will put you in jail?

15 A Yes, it will put me in jail but I was never in
16 jail. So why do you keep saying, I wasn't in jail
17 from the first time. I got locked up in November and
18 then got served and whatever, that doesn't have --
19 okay.

20 MR. GRIMES: One moment, Your Honor.

21 THE COURT: Uh-hum.

22 Q (By Mr. Grimes) I'm sorry, let me ask you a
23 couple more questions about your statement.

24 A Take your time, go ahead.

25 Q Thank you.

1 A You're welcome.

2 Q In your statement you didn't say anything
3 about Ms. Pendergrass throwing Mr. Wilson out, did
4 you?

5 A Because I'm going to rephrase it like you
6 asked me. He asked me the questions what happened.
7 He didn't ask me -- he didn't ask me a bunch of
8 questions, I answered what he asked me.

9 He didn't ask for a bunch of questions or go
10 into detail so I did not give him a bunch of detail,
11 didn't.

12 Q You didn't tell Detective Goldstein that Ms.
13 Pendergrass had thrown Mr. Wilson out?

14 A He didn't ask that question. If he would have
15 asked that question I would have told him. But he
16 didn't ask it.

17 Q And you didn't tell him anything about her
18 locking the doors the night before?

19 A He didn't ask that question. He didn't even
20 ask that question.

21 Q When did he ask you about Mr. Wilson sitting
22 on the chairs?

23 A We were outside and we were just going and he
24 was just asking typical questions, typical questions,
25 and I answered the questions. He didn't pull out the

1 bag about locking the door. He didn't pull out the
2 bag about this. He didn't pull out the bag about
3 that. He just pulling random questions, I just
4 answered the questions he asked for.

5 MR. GRIMES: Thank you.

6 THE WITNESS: You're welcome, have a nice day.

7 THE COURT: Any further questions, Mr. Grimes?

8 MR. GRIMES: No, ma'am.

9 THE COURT: Any redirect of the witness?

10 MS. CARDILLO: Just one, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. CARDILLO:

13 Q Ellesse.

14 A Ma'am.

15 Q In regard to your pending charge?

16 A Go ahead.

17 Q Were there any plea deals between my office,
18 myself and you, in exchange for your testimony here
19 today?

20 A You had nothing to do with my charge prior to
21 this.

22 Q And you're just testifying to what happened?

23 A Yes. This ain't got nothing to do with it.

24 MS. CARDILLO: Thank you, I have no further
25 questions.

1 THE WITNESS: You're welcome, sweetie.

2 THE COURT: Any objection to the witness being
3 excused from the State?

4 MS. CARDILLO: None from the State.

5 THE COURT: From the defense, subject to
6 recall?

7 MR. GRIMES: No, ma'am.

8 THE COURT: Ma'am, you're excused, subject to
9 being recalled.

10 THE WITNESS: Thank you. What did you say,
11 ma'am?

12 THE COURT: You're excused subject to being
13 recalled as a witness.

14 THE WITNESS: Okay.

15 THE COURT: Mr. Foreman, ladies and gentlemen,
16 we have reached a break in the testimony and we are
17 going to take our evening recess. During this break
18 please do not discuss this case among yourselves or
19 with anyone else. Please do not do any independent
20 research of any type on the Internet or otherwise.
21 And please do not allow yourself to be exposed to any
22 media coverage about this case; and that includes
23 anything that may be on the radio, television. There
24 may very well be an article in the newspaper in the
25 morning, I don't know that for sure, but in the event

1 that there is, I would ask that you especially guard
2 yourselves against coming in contact, reading or
3 being exposed, to any media coverage of any type in
4 this case.

5 When you return to the courthouse in the
6 morning, please don't have any contact or
7 conversations with anyone. Please come directly to
8 your jury room as you did after lunch today. Again
9 we will resume at 9:30.

10 I have a status conference unrelated to this
11 case at 9:15. I anticipate it will take about 15
12 minutes, but if it takes 20, please don't hold it
13 against me. I hope you have restful evening. Please
14 leave your notepads in your seats and we will see you
15 in the morning at 9:30.

16 Also, one other thing, I apologize, I just
17 thought about it. We probably will be going a little
18 -- I usually try to break as close to 5:00 as
19 possible, but we probably will be going after 5:00
20 most days this week, and that is to attempt to finish
21 the case this week. So I'm trying to avoid us going
22 into next week.

23 But to the extent that you all can indulge me,
24 I appreciate it. If you have any conflicts let me
25 know so that we can try to work around them. Have a

1 good evening.

2 (Whereupon, the jurors exit the courtroom.)

3 THE COURT: Is there anything before we break
4 for the evening from the State?

5 MS. CARDILLO: No, Your Honor.

6 THE COURT: From the defense?

7 MR. GRIMES: Just to inquire about a
8 scheduling matter.

9 THE COURT: Go ahead, Mr. Grimes.

10 MR. GRIMES: Thank you, Your Honor.

11 THE COURT: I'm sorry, you all are going to
12 have to speak up, I'm going to tell you why. Where
13 you are sitting there is a vent that runs around our
14 heads. So it is constantly blowing. And when I say
15 us I mean me, the court reporter and the witness. So
16 when you don't speak up your voice drones out, we
17 can't hear you, which means the backup tape isn't
18 getting it either.

19 So I need you all to speak up a little more.
20 I know it's difficult, I don't want you to feel like
21 you're screaming, but you may want to reposition
22 yourself at the microphone, or move the podium so
23 that it is close to the microphone so that you all
24 don't hear us saying the same thing, we can't hear
25 you. It's not that we're deaf, it really is the

1 noise over our heads all day. I'm sorry.

2 MR. GRIMES: I have a bad habit of mumbling
3 too. I have two out of town experts, one is from
4 Greenville, one is from Charlotte. I think the
5 State's witness lineup, I think I'll have them come
6 down Thursday morning.

7 THE COURT: Is that a good estimate, Ms.
8 Cardillo?

9 MS. CARDILLO: Well, Your Honor, if today is
10 any indication I'm not really sure.

11 THE COURT: Well, you all said you would
12 finish it this week. Generally that means closing
13 and charging on Friday. Usually that means the State
14 anticipates concluding their case on Wednesday or
15 Thursday morning.

16 While Greenville and Charlotte are not
17 particularly long drives, they're driving
18 nonetheless. I think he needs to know for purposes
19 of telling them, because every hour they sit here
20 they charge. That's not very efficient either.

21 Give us your best estimate.

22 MS. CARDILLO: Your Honor, I think the latest
23 Thursday afternoon. I mean the State would be
24 finished I think the latest Thursday morning.

25 THE COURT: How long are your experts?

1 MR. GRIMES: Judge, fairly brief.

2 THE COURT: What subject matter are they
3 testifying about?

4 MR. GRIMES: Mr. Holifield is a GSR expert.
5 And I think basically will testify Mr. Wilson didn't
6 wash his hands that night.

7 THE COURT: He doesn't deny shooting the gun,
8 correct?

9 MR. GRIMES: No. Just got into the argument
10 of malice.

11 THE COURT: What's the other witness
12 testifying about?

13 MR. GRIMES: That Ms. Pendergrass's DNA was
14 found on the gun.

15 THE COURT: Okay. I would imagine that SLED
16 is going testify to that, aren't they?

17 MR. GRIMES: I think they rule her out,
18 inconclusive as to Mr. Wilson.

19 THE COURT: I see what you are saying, okay.
20 I would suggest that the State review its witness
21 list. I would never tell you how to try your case.
22 As a lawyer I never liked anybody to try to tell me
23 how to try my case. I'll stay out of your business,
24 let you do what you want to do.

25 However, the timeliness with which we conduct

1 the proceedings is my business. I'm going to ask you
2 to look at your witness list and determine how many
3 of these witnesses you really actually are going to
4 call. And that you really, if we are going to finish
5 this case as you've indicated, you really need to,
6 with some certainty, know you will be finished by
7 lunch on Thursday so that Mr. Grimes will have
8 adequate time.

9 Really I would prefer that you be done
10 wednesday at the close of business with maybe one
11 witness left over on Thursday morning. Mr. Grimes
12 has indicated he has six witnesses and that does not
13 include his client.

14 MS. CARDILLO: Your Honor, I can say that the
15 State does have 21 witnesses.

16 THE COURT: Why don't you tell us who you do
17 not plan to call, that might help us. You can simply
18 tell me the numbers that is next to each person's
19 name.

20 Have you all been able to stipulate to
21 anything to maybe eliminate some of these witnesses?

22 MS. CARDILLO: Your Honor, the State asked
23 about the chain, that's one of those big thing, there
24 are seven or eight SLED chain witnesses.

25 THE COURT: Are you contesting the chain at

1 SLED?

2 MR. GRIMES: We have no reason we couldn't
3 stipulate, Your Honor.

4 MS. CARDILLO: There are seven or eight chain
5 witnesses alone.

6 THE COURT: Tell me who you don't plan to
7 call. What are the numbers by each witness, tell me
8 the numbers.

9 MS. CARDILLO: Your Honor, the State is not
10 calling number 5. State is not calling number 15 or
11 16. State is not calling number 18 unless there is
12 some sort of objection or issue with the video.

13 State is not planning on calling number 23
14 unless there are some issues with the Miranda, who's
15 present during the defendant's Miranda statement.
16 State is not calling number 36 or 37.

17 And I know that doesn't seem that it cuts down
18 a lot, but as I said seven or eight are specifically
19 chain.

20 THE COURT: So that's 30 witnesses, not 20.

21 MS. CARDILLO: There are 21 that will be more
22 than a five-minute testimony. The other eight or
23 nine are all chain that will be very quick.

24 THE COURT: Any problem with the SLED
25 witnesses? What are they establishing to chain for,

1 what percent of evidence?

2 MS. CARDILLO: Your Honor, SLED witnesses are
3 the chain on the handgun, the swabs from the handgun,
4 the blood standards from the victim, and the
5 defendant. I believe that's all regarding the -- the
6 projectile, of course, recovered from the victim,
7 cartridge casing, fired shell casing, that is all
8 leading to the SLED chain witnesses.

9 THE COURT: Do you have some objection to the
10 chain of this evidence, Mr. Grimes?

11 MR. GRIMES: It's not the chain, we just have
12 other reasons why we weren't going to consent to the
13 chain. There are two reasons we had.

14 THE COURT: You said you don't -- I
15 misunderstood you. Are you saying you -- I asked a
16 very direct question, do you object to the chain of
17 this evidence?

18 MR. GRIMES: I wasn't -- I don't have an issue
19 with the chain, but I wasn't going to stipulate to
20 the chain for two reasons. Those are trial strategy.

21 THE COURT: I'm sorry. I'm -- I would suggest
22 you all prepare your witnesses to be here because we
23 probably will be going late every evening so that we
24 can conclude this trial, okay.

25 MS. CARDILLO: Thank you, Your Honor.

C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, in the General Sessions Court for the session week of November 17th through 21st, 2008.

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

-----*Anne Bouley Meyer*-----

Anne Bouley Meyer, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2007-GS-10-12312, 12313

STATE OF SOUTH CAROLINA

Plaintiff

v.

JAKE ANTONIO WILSON,

Defendant.

TRANSCRIPT OF RECORD

NOVEMBER 18, 2008
CHARLESTON, SOUTH CAROLINA
VOLUME 2

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

MS. JULIE CARDILLO, ASSISTANT SOLICITOR
MR. NATHAN WILLIAMS, ASSISTANT SOLICITOR
REPRESENTING THE STATE

MR. ANDREW GRIME, ASSISTANT PUBLIC DEFENDER
MS. MARYBETH MULLANEY, ASSISTANT PUBLIC DEFENDER
REPRESENTING THE DEFENDANT

ANNE BOULEY MEYER, RPR

CIRCUIT COURT REPORTER

1 (Whereupon, State's Exhibit Nos. 59 through 65
2 were marked for identification.)

3 THE COURT: Good morning, everyone.
4 Appreciate your patience.

5 We have an issue with a juror we need to be
6 aware of before we get started this morning.

7 All right. As I came in this morning, one of
8 the jurors was coming in at the same time. I don't
9 mean out in the main lobby, as they were coming into
10 the jury room. He indicated to me that he had some
11 information disclosed to him last night. He said he
12 had information disclosed to him that he felt he
13 needed to tell me about. I told him to wait so that
14 he could tell me in the presence of everyone.

15 Could you get juror 282 for me, please?

16 (Whereupon, the juror enters the courtroom.)

17 THE COURT: Good morning, sir.

18 A JUROR: Good morning.

19 THE COURT: How are you?

20 A JUROR: I'm fine. How are you?

21 THE COURT: Doing fine. Could you state your
22 name for record?

23 A JUROR: Michael Maroney.

24 THE COURT: Okay. Mr. Maroney, you indicated
25 to me in the hallway this morning that you had --

1 tell me exactly what you said to me.

2 A JUROR: I came into some information last
3 night I was not aware of yesterday.

4 THE COURT: Tell me what that information is.

5 A JUROR: My son-in-law graduated from law
6 school this year. And he worked during the summer,
7 last year, for the solicitor's office. Don't know
8 anything about it, you know, but he told me I should
9 just clear that up so that there would be no
10 misunderstanding later on.

11 THE COURT: Sir, as a result of what you
12 learned last night, do you feel you can be fair and
13 impartial?

14 A JUROR: Yes, ma'am, I do.

15 THE COURT: Do you feel that you can render a
16 fair and impartial verdict in this case?

17 A JUROR: Yes, ma'am, I do.

18 THE COURT: Do you believe that you can render
19 a verdict based solely on the evidence as it will be
20 presented and on the law as the Court will instruct?

21 A JUROR: Yes, ma'am.

22 THE COURT: I need you to go in the hallway
23 with my for bailiff just a few moments.

24 A JUROR: Yes, ma'am.

25 THE COURT: Thank you, sir.

1 (Whereupon, the juror exits the courtroom.)

2 THE COURT: Anything from the State?

3 MS. CARDILLO: No, Your Honor. He divulged
4 the information once he realized what it was. He did
5 indicate he would still be fair and impartial. We
6 would ask that he remain on the jury.

7 THE COURT: Mr. Grimes, anything from the
8 defense?

9 MR. GRIMES: I think we need to do a further
10 inquiry about who his son-in-law was, which attorney
11 he worked for, any connection with Ms. Cardillo,
12 Mr. Williams, or any investigators who were involved
13 in the case.

14 THE COURT: I don't know that I need --

15 MR. GRIMES: This case is over a year old.

16 THE COURT: He didn't indicate his son-in-law
17 discussed anything. Said that he worked there
18 previously. His son-in-law, quite frankly, I think
19 ethically told him to disclose it.

20 He has not indicated he had any discussion
21 about what his son-in-law did or didn't do in the
22 solicitor's office.

23 MR. GRIMES: That was going to be my next
24 question.

25 THE COURT: I'm going to ask him if he and his

1 son-in-law discussed anything that he may have worked
2 on in the solicitor's office. But I believe beyond
3 that, any additional inquiry is not necessary.

4 Now if it were his son-in-law, that would be
5 different, then you're talking about him having some
6 knowledge of this case. He indicated that his
7 son-in-law disclosed to him that he previously worked
8 in the solicitor's office.

9 MR. GRIMES: I think the third question we
10 have is why -- how come he did not bring it to the
11 Court's attention.

12 THE COURT: He said it very clearly that he
13 didn't know until last night when he talked to his
14 son-in-law. He had no knowledge that he worked in
15 the solicitor's office until then. I don't think he
16 was surreptitious in any way in not reporting it to
17 the Court. He said, I came into knowledge last night
18 that I did not know at the time of jury selection is
19 what he said. He did not find out until last night
20 that his son-in-law had previously worked for the
21 solicitor's office.

22 Please bring in the juror.

23 (Whereupon, the juror enters the courtroom.)

24 THE COURT: Sir, what is your son-in-law's
25 name?

1 A JUROR: Marshall Milligan.

2 THE COURT: Did you and he have any
3 discussions regarding this case?

4 A JUROR: No, ma'am. I just told him I would
5 not -- could not discuss it. He informed me that I
6 should tell -- disclose that to the Court. He is
7 working for a real estate lawyer now, which I don't
8 know who that is.

9 THE COURT: And again, you and he had no
10 discussion about the facts and circumstances of this
11 case?

12 A JUROR: No, ma'am.

13 THE COURT: Did he make any disclosure to you
14 about having any personal knowledge regarding this
15 case?

16 A JUROR: No, ma'am.

17 THE COURT: Thank you, sir. If you would go
18 with the bailiff for me and still stand out in the
19 hall for me.

20 (Whereupon the juror exits the courtroom.)

21 THE COURT: Anything further from the State?

22 MS. CARDILLO: No, Your Honor.

23 THE COURT: Anything further from the defense?

24 MR. GRIMES: May it please the Court, Your
25 Honor.

1 THE COURT: Yes, sir.

2 MR. GRIMES: Out of an abundance of caution we
3 would ask the Court excuse him. Had we had known he
4 had a connection with the solicitor's office, we
5 would have exercised a peremptory strike with him. I
6 think where we were, when he came up me and Ms.
7 Mullaney had a long debate about him. He was one of
8 the longer ones we talked about.

9 THE COURT: You all talked about everybody
10 long.

11 MR. GRIMES: Yes, ma'am.

12 THE COURT: No reflection on you, but you
13 debated every juror and discussed it with your
14 client. So I don't know that you had any particular
15 protracted discussion about him. Although I was not
16 privy to your discussions, but I can say that I was
17 very observant, and you all totally discussed every
18 juror.

19 MR. GRIMES: We had a longer discussions was
20 about him is he had experience with guns, one went
21 off, was an injury involved with one that went off,
22 that was one of the things we did discuss in detail.

23 I think I know Mr. Milligan. I think I
24 coached one of his mock trials when he was in the law
25 school, worked for Ed Eisley a lot.

1 My opinion, Mr. Milligan is a pretty fair guy,
2 and if I would have known that, I would have struck
3 this juror.

4 Thank you, Your Honor.

5 THE COURT: You're welcome.

6 The request to dismiss the juror is denied.
7 There is no basis in the record to dismiss Juror 282.
8 He has indicated to the Court that he did not have
9 knowledge that his son-in-law worked in the
10 solicitor's office, I would imagine as an intern
11 because he was in law school at the time, and is
12 still in law school as I extrapolate from what he
13 indicated to us he now is working for a real estate
14 lawyer.

15 He indicated that they have not discussed the
16 case; that he specifically told his son-in-law he
17 could not discuss the case; that his son-in-law did
18 not make any disclosures to him regarding the facts
19 and circumstances of the case; And upon inquiry, he
20 indicated that he could be fair and impartial; that
21 he could render a fair and impartial decision in this
22 case based on the evidence and the law as the court
23 would instruct.

24 It is speculative at this point to anticipate
25 how strikes would or would not have been exercised,

1 and for whatever strategic reasons because hindsight
2 is always 20/20.

3 And quite frankly, during voir dire, you would
4 not have known who Mr. Milligan's son-in-law was
5 since he would have disclosed he had a relative that
6 had previously worked in the solicitor's office.

7 There is no reason basis for the Court to
8 question his impartiality pursuant to statute or case
9 law, and therefore he will remain as a juror.

10 Please bring him back in here.

11 (Whereupon the juror enters the courtroom.)

12 THE COURT: Yes, sir. Sir, I would instruct
13 you not to have any discussion about this
14 conversation you and I have had with your fellow
15 jurors. It is not to be discussed in any manner
16 during jury deliberations, and it's not to be
17 disclosed with them in any way.

18 A JUROR: Yes, ma'am.

19 THE COURT: Thank you. We appreciate your
20 candour.

21 A JUROR: Yes, ma'am.

22 THE COURT: Thank you. If you'd go with the
23 bailiff for me.

24 (Whereupon, the juror exited the courtroom.)

25 THE COURT: Anything before -- anything

1 further before we proceed with the trial from the
2 state?

3 MS. CARDILLO: No, Your Honor.

4 THE COURT: From the defense?

5 MR. GRIMES: I think in the interest to save
6 time, I think pictures -- we have seen pictures they
7 want to introduce --

8 THE COURT: Why don't you tell me which ones
9 you are referring to. Are they already numbered?

10 MS. CARDILLO: They are, Your Honor.

11 THE COURT: I need to get them so I know which
12 numbers Mr. Grimes is speaking of and so that the
13 record will be clear.

14 MR. GRIMES: Yes. In reviewing pictures 1
15 through 58, we have no objection to those pictures
16 coming into evidence.

17 THE COURT: Why don't we put 1 through 58. I
18 thought we had some numbered, and some I thought were
19 already admitted.

20 MS. CARDILLO: The ones that were already
21 admitted in, Your Honor, were 1, 3, 4 and 5.

22 THE COURT: Okay. So with the exception of
23 those, the others in the numbers that you just
24 incorporated will be marked and admitted without
25 objection.

1 (Whereupon, State's Exhibit Nos. 2 and 6
2 through 58 were admitted into evidence.)

3 THE COURT: Is there anything else we need to
4 take up before we proceed?

5 MR. GRIMES: We'd also be willing to stipulate
6 to Minor 1's testimony to prevent her from having to
7 testify that she was sleeping downstairs, heard a
8 boom, went upstairs, saw Mr. Wilson standing in the
9 bedroom with a gun, or some version the State would
10 like to propose something.

11 We would stipulate to save her from the trauma
12 of having to testify in a courtroom.

13 THE COURT: Ms. Cardillo.

14 MS. CARDILLO: Well, Your Honor, there is --
15 unfortunately I think we do have to move to have
16 Minor 1 testify. There are different versions. She
17 stated in a video to Dr. Elsey when she was
18 interviewed at the Low County Children's Center
19 indicated that she saw it.

20 When speaking to me she said that she was
21 downstairs, heard a boom, went upstairs, saw daddy
22 standing over mommy with a gun. Daddy was not in the
23 house before she heard the boom. Daddy started
24 saying -- daddy shot -- daddy then ran outside or
25 started saying, oh my God, my baby's dead.

1 She also described a gun and where he threw
2 it. And described where Minor 2, the one-year-old was
3 at the time, that he was laying on her chest.

4 So there are different versions of what may
5 come out through testimony. Dr. Elsey is also
6 present to testify as well.

7 THE COURT: Dr. Elsey can't testify to what
8 she said.

9 MS. CARDILLO: Right. But he is here to
10 testify in case there is any attack of coaching or
11 things of that nature and also to --

12 THE COURT: How old is she now?

13 MS. CARDILLO: She's five.

14 THE COURT: How old was she at the time?

15 MS. CARDILLO: She was four, Your Honor.

16 THE COURT: What are you willing to stipulate
17 to? I think you need to be more clear with Ms.
18 Cardillo.

19 MR. GRIMES: The version basically what Sgt.
20 Goldstein testified at the preliminary hearing that
21 there was some discrepancy on the videotape is that
22 she was downstairs sleeping, she heard a boom, that
23 she went upstairs, saw Mr. Wilson in the bedroom, saw
24 Ms. Pendergrass on the bed bleeding, and the gun was
25 in close proximity to Mr. Wilson.

1 MS. CARDILLO: Your Honor, if Mr. Grimes wants
2 to let Dr. Elsey play the video of [Minor 1] telling
3 him what happened, through his testimony, the state
4 would be fine without having [Minor 1] testify.

5 THE COURT: Mr. Grimes.

6 MR. GRIMES: On the video there are some other
7 issues on there that --

8 THE COURT: Can't we redact them?

9 MR. GRIMES: Probably could.

10 THE COURT: Can you all look at it and see
11 what you all can agree to? That seems to me to be a
12 middle-of-the-road position to get what the State
13 wants and to get what you want, which is to spare
14 this five-year-old from testifying against her
15 father.

16 It's up to you all. I don't take a position
17 one way or the other. If you all can work out a
18 stipulation that's fine, that's suitable to you all,
19 if you all can agree to what portions of the video to
20 show, that's fine. If you can't, she has to testify
21 and I have to determine her competence, that's fine.

22 You all -- when did you all plan to call her
23 as a witness?

24 MS. CARDILLO: Actually, Your Honor, we have
25 one more eyewitness, the 911 operator, then we were

1 going to call Minor 1 at that point.

2 THE COURT: Do you have the tape? Have you
3 shown it to Mr. Grimes?

4 MS. CARDILLO: We have, Your Honor.

5 THE COURT: What portions of the tape are
6 objectionable to you, Mr. Grimes?

7 MR. GRIMES: Portions saying that Mr. Wilson
8 climbed in through the window, had a history of
9 climbing through the window.

10 THE COURT: The child says that on the video?
11 Is that what you are seeking to admit? Are you just
12 seeking to admit the portion about what she says she
13 saw that night?

14 MS. CARDILLO: From our indication and our
15 review of the video, I thought it was that night is
16 what she was talking about, that she heard a boom, he
17 had come through the window.

18 THE COURT: Well, the video is what it is.
19 I'm not going to sit here and go back and forth
20 about what you all interpret on this video. Where is
21 the video?

22 MR. GRIMES: We have a copy up here.

23 THE COURT: I'm going watch it by myself. How
24 long is it?

25 MS. CARDILLO: Roughly 15, 20 minutes, Your

1 Honor.

2 THE COURT: Would the State be seeking to play
3 the entire DVD of the child's testimony?

4 MS. CARDILLO: We can redact the prior acts,
5 if that's what Mr. Grimes is referring to. But we
6 would like -- other than that --

7 THE COURT: Is that acceptable, Mr. Grimes?

8 MR. GRIMES: Do you believe -- as long as
9 there is no allegation of anything that anybody
10 climbed through the window that night, we are fine
11 with it.

12 THE COURT: I'm sorry, I didn't understand.

13 MR. GRIMES: As long as there is no -- no
14 statement on the video about Mr. Wilson coming in
15 through a window that night.

16 THE COURT: Well, the child's testimony, if
17 it's going to be played, it's going to be actually
18 what she said she saw that night. We're not going to
19 pick and choose what she saw that night. It will be
20 played despite what she saw that night.

21 Now if there are any prior acts on there, I
22 agree, it should be redacted. But what he did
23 before, what he may have done before, what his common
24 practice was before, I agree that should be redacted.

25 But if there is video, if it's on here what

1 she saw that night, then I'm not going to have the
2 jury misled. It's going to be played in its entirety
3 of what she saw or she can testify. Now we all know
4 five year olds get very finicky. I don't know what
5 she is going to testify to today. I have no clue.

6 Now I don't know, and I can't make this
7 decision, you can. Children are different, they all
8 have different personalities, they all have different
9 coping mechanisms. All children are different. Some
10 are stronger than others. Some are more mature than
11 others. I don't know if she can understand the
12 stress of being in the courtroom to testify, I have
13 no idea. Only you all can make that decision.

14 I don't know what the doctor has indicated to
15 you all whether it can be damaging to her. I don't
16 know. That's something you all have to think about.
17 Make that decision with her guardian. Okay? All
18 right.

19 Are we ready to proceed? We can deal with
20 that at a break.

21 MS. CARDILLO: Yes, Your Honor.

22 THE COURT: Please bring in the panel.

23 (Whereupon, the jurors enter the courtroom.)

24 THE COURT: Thank you, ladies and gentlemen.
25 I hope you had a restful evening. We appreciate your

1 patience. We had a matter of law we had to deal with
2 this morning so that we could start without having to
3 be interrupted. Again, we appreciate your time.

4 As your notebooks are passed out, go ahead and
5 pass those down if they don't belong to you so that
6 everybody can go ahead and start filtering through
7 them. If the top one doesn't belong to you, you can
8 go ahead and pass them down the line.

9 You may call your next witness.

10 MS. CARDILLO: Thank you, Your Honor. State
11 calls Tianai Lee.

12 MS. TIANAI LEE,
13 after having first been duly sworn to state the
14 truth, the whole truth and nothing but the truth,
15 testified on her oath as follows:

16 THE COURT: You may proceed.

17 MS. CARDILLO: Thank you, Your Honor, may it
18 please the Court.

19 DIRECT EXAMINATION

20 BY MS. CARDILLO:

21 Q Is it Tianai?

22 A Uh-hum.

23 Q I want to make sure I'm saying it correctly.
24 Tianai, where -- do you live in Charleston?

25 A Yeah.

1 Q Do you know Toya Pendergrass?

2 A Yes.

3 Q How did you know Toya?

4 A I knew her since we were in elementary school,
5 because she was my sister's best friend as we were
6 growing up. But she was my neighbor next to me when
7 she passed away.

8 Q Now I'm going to turn your attention to July
9 8th of 2007. Where did you live or what was your
10 address at that time?

11 A [REDACTED] Harris.

12 Q And your neighbor was?

13 A Latoya Pendergrass.

14 Q Who did you live with at your apartment?

15 A My sister Ellesse James.

16 Q Now, Tianai, have you ever been in trouble
17 with the law in Charleston County, shoplifting once
18 or twice?

19 A Yes, uh-hum.

20 Q You have been convicted of those?

21 A Yes.

22 Q Let me turn your attention back to July 8th of
23 2007 around 5 a.m. Were you awake that morning?

24 A I was -- I had a newborn baby at the time, he
25 was only one-month old. He was just waking up, and I

1 heard a racket and a boom from the next door. But I
2 didn't thought that it was anything like until I
3 heard crying on my doorstep.

4 Q Well, after you heard this boom, what did you
5 do?

6 A I got up, because the baby was getting up too.
7 I got up. Then I heard crying on the doorstep. And
8 I went to the -- I put the baby down, and I went down
9 the steps and I saw Tony at the door. He was saying,
10 help, help me please, my baby's been shot.

11 And I was like, what's going on. I didn't
12 have no clothes. So I ran in the house and grabbed
13 my cell phone. And then I came back to the porch and
14 that's when I had the phone in my hand. And he was
15 telling me to help, Toya was dead, and the baby was
16 -- he was saying, my baby was dead. I wasn't getting
17 to understand. I did not know who he was talking
18 about, his son or Toya. I just grabbed the phone.

19 Q When you saw Tony on the front porch, is it a
20 combined front porch?

21 A Yes.

22 Q Was anybody with him?

23 A Uh-uh.

24 Q I'm sorry, you have to say yes or no.

25 A No, ma'am.

1 Q Did he have his children with him at that
2 point?

3 A I saw Minor 1 standing in the doorway.

4 Q Did you see Minor 2?

5 A No, I did not.

6 Q So let me -- so you hear somebody -- I guess
7 you went so fast I want to make sure I understand it.

8 A Uh-hum.

9 Q You heard a boom, and then you heard what?

10 A I heard a boom. Then a second later, probably
11 about 30 seconds later, I heard him crying. I heard
12 -- I didn't know it was him at first. I heard crying
13 and mourning on the steps and that's when I opened
14 the door and I saw him. He was rearing down like
15 this and crying saying, help, you all please help me.
16 My baby is dead.

17 Q And do you see the person that was on the
18 front porch saying that in court today?

19 A Yes.

20 Q Where is he?

21 A No, I don't see him.

22 Q Do you see that person anywhere in the
23 courtroom today?

24 A Oh, yeah.

25 Q Could you please, for the record, point out

1 where the person is located and what they're wearing.

2 A On the left. He has on a --

3 Q Is this the person you saw that morning?

4 A Uh-hum.

5 Q The defendant Tony Wilson?

6 A Uh-hum.

7 THE COURT: Ma'am, can you please say yes or
8 no.

9 THE WITNESS: I'm sorry, Your Honor. Yes,
10 ma'am.

11 THE COURT: Thank you.

12 Q (By Ms. Cardillo) Now, you saw him. What at
13 this point did you do when you looked outside? What
14 happened?

15 A I went out there and spoke with him.

16 Q What did you say to him?

17 A I said, what's wrong? He said, Toya's dead,
18 Toya's dead. And then my sister came behind me. And
19 she was like, well, what's going on?

20 And he was crying at first, and then they
21 started -- right after him crying, when he's been
22 crying they got into an argument.

23 MR. GRIMES: Objection, hearsay.

24 THE COURT: She hasn't said what was said.

25 Ma'am, please don't say what someone said.

1 THE WITNESS: Okay. Okay.

2 Q (By Ms. Cardillo) So, when you first came
3 down, you were asking him what was going on. What
4 was his -- how was he acting? What was his demeanor?
5 was he upset?

6 A He was upset and crying.

7 Q And did you observe him and your sister argue?

8 A Yes.

9 MR. GRIMES: Objection, leading.

10 THE COURT: Sustained, leading.

11 Q (By Ms. Cardillo) How was he acting at that
12 point?

13 MR. GRIMES: Objection, asked and answered.

14 THE COURT: Overruled.

15 Q (By Ms. Cardillo) After you said you saw him
16 upset, then what happened?

17 A Then they started arguing. I just grabbed the
18 phone, and I called the police.

19 Q You just said you saw them arguing?

20 A Uh-hum.

21 Q How was he acting?

22 A Oh, he was fussing like -- fussing like
23 argument like back and forth. He wasn't crying no
24 more.

25 Q So did you -- then what did you do after that?

1 You said you went and got your phone?

2 A Uh-hum. And I told my sister --

3 THE COURT: I need you to say yes or no.

4 THE WITNESS: Yes, ma'am, I'm sorry.

5 I grabbed the phone and she -- I pushed her
6 back towards the house. I told her to go in, because
7 there is no use in that and I went across the street
8 and I was using -- on my phone.

9 Q (By Ms. Cardillo:) Who were you using your
10 phone to call?

11 A 911.

12 Q Now what did you do after you called 911?

13 A I was standing outside, standing right there
14 in the doorway.

15 Q Of your residence?

16 A Uh-hum.

17 Q Was Tony still outside at this point?

18 A Yes.

19 Q What did he do?

20 A He was walking towards -- going towards the
21 roadway like from my other neighbors were at, he was
22 going down that way. While I was on the phone, he
23 walked off. He was on the phone too.

24 Q Did you hear him, anything of what he was
25 saying when he was on the phone?

1 A Yes. He was on the phone with the police
2 officers too.

3 Q After -- did you -- how long did he stay on
4 the phone?

5 A Me?

6 Q Him.

7 A I'm not sure, because he walked off.

8 Q Did you see where he went?

9 A Yes. He went -- he didn't went far. He went
10 right -- he went -- he turned right off the porch and
11 He was right by -- standing by the big tree by like
12 our neighboring porch, the next porch over.

13 Q And what did you do at that point?

14 A Nothing. I stayed right there and waited for
15 the cops to come.

16 Q Did Tony stay outside?

17 A Uh-hum.

18 Q Now you gave a written statement to the
19 police?

20 A Yes, ma'am.

21 Q Do you recall giving that statement?

22 A Yes, ma'am.

23 Q And did you have a chance to review that
24 statement once -- when you gave it to the police?

25 A Yes, ma'am.

1 Q Now did you see Minor 1 ?

2 A Uh-hum.

3 Q I need you to say yes or no.

4 A Yes, ma'am.

5 Q Thank you. Where did you see her, at what
6 point?

7 A She was at -- at the point when all the
8 conversation was going on, when Tony walked off the
9 porch and I was still standing on the porch, she was
10 right in the doorway. Like the door was opening,
11 like she was standing in the crack right there.

12 Q And did you see how she was acting?

13 A She was fidgeting, like fidgeting. She did
14 not come talk to me. She went and talked to my other
15 neighbor because I was going the opposite way.

16 Q Now did you stay outside until the police
17 arrived?

18 A Uh-hum.

19 Q I need you to say yes or no.

20 A I'm sorry. Yes, ma'am.

21 Q It's okay. And how soon after you called the
22 police did the police arrive?

23 A They did not take long. It was probably about
24 five minutes at the most.

25 Q And what did they do upon their arrival, did

1 you see them?

2 A Yes.

3 Q What happened?

4 A They went to Tony. I guess they asked him
5 what happened and told him that he was being placed
6 under arrest.

7 Q Did you see Minor 2 or Minor 1 at this point?

8 A Minor 1 was outside. Never really saw Minor 2
9 until they got there. And Minor 1 was outside at the
10 time.

11 Q Did Tony go back into Toya's house?

12 A I'm not sure.

13 MS. CARDILLO: Court's indulgence for one
14 moment, please.

15 Q Tianai, I'm going show you your statement you
16 gave to the police.

17 A Yes, ma'am.

18 Q Would you please review that, please.

19 A Uh-hum.

20 Q Did you tell the police that Tony went back
21 inside Toya's residence?

22 MR. GRIMES: Objection, leading.

23 THE COURT: Sustained, leading.

24 Q (By Ms. Cardillo) When you gave -- you gave a
25 written statement to the police?

1 A Uh-hum. Yes, ma'am.

2 Q Did you discuss with the police anything else
3 about Tony?

4 A No, ma'am.

5 Q Were you anywhere where Tony could hear you
6 when you were calling the police?

7 MR. GRIMES: Objection, leading.

8 THE COURT: Sustained, leading.

9 Q (By Ms. Cardillo) Where were you when you
10 called the police?

11 A Standing on the front porch walking towards
12 the left side while Tony was going the right way.
13 Both of us were on the phone.

14 Q And how close to you were he?

15 A About -- I was standing like by F. He was
16 going toward H.

17 MS. CARDILLO: Thank you. I have nothing
18 further.

19 THE COURT: Any questions for the witness?

20 MR. GRIMES: Briefly, Your Honor.

21 THE COURT: You may proceed.

22 CROSS-EXAMINATION

23 BY MR. GRIMES:

24 Q Good morning, Ms. Lee.

25 A Good morning.

1 Q I want to ask you a few questions about your
2 testimony.

3 You said that your sister Ellesse is best
4 friends with Latoya?

5 A Yes.

6 Q And you have been friends from elementary
7 school?

8 A No. My other sister was her best friend in
9 elementary school.

10 Q And on the morning of this incident, you said
11 you heard a boom?

12 A Yes, sir.

13 Q After that, you saw Tony come out?

14 A I did not see him. I heard his voice.

15 Q And he was crying when he came out?

16 A Yes.

17 Q And he appeared to be upset?

18 A Yes, sir.

19 Q And he waited there for the police to come?

20 A Yes, sir. He was like walking back and forth
21 on the porch.

22 Q But he didn't try to run and hide any?

23 A He didn't leave the scene.

24 MR. GRIMES: One moment, please.

25 Q (By Mr. Grimes) And you said he was on the

1 phone?

2 A Yes, sir.

3 Q And he was -- did you say he was calling the
4 police?

5 A Yes, sir.

6 MR. GRIMES: Thank you, Ms. Lee. I have no
7 further questions.

8 THE COURT: Any redirect of the witness?

9 MS. CARDILLO: No, Your Honor.

10 THE COURT: Any objection to the witness being
11 excused from the State?

12 MS. CARDILLO: None from the State, Your
13 Honor.

14 THE COURT: From the defense?

15 MR. GRIMES: No, ma'am.

16 THE COURT: Ma'am, you are excused. Please
17 approach.

18 (Whereupon, a discussion was held at the bench
19 off the record.)

20 THE COURT: You may call your next witness.

21 MR. WILLIAMS: State calls Bob Boyd.

22 MR. BOB BOYD,

23 after having first been duly sworn to state the
24 truth, the whole truth and nothing but the truth,
25 testified on her oath as follows:

1 MR. WILLIAMS: May we approach, Your Honor?

2 (Whereupon, a discussion was held at the bench
3 off the record.)

4 THE COURT: The original recording will be
5 mark and admitted. It will be substituted to the
6 current copy will be marked for ID only.

7 (Whereupon, State's Exhibit No. 66 is marked
8 for identification.)

9 MR. WILLIAMS: Thank you, Your Honor. Did he
10 give his name?

11 THE COURT: He did. Sir, can you say your
12 name again for us, spell your last name for the
13 record.

14 THE WITNESS: Bob Boyd. Last name B-O-Y-D.

15 THE COURT: You may proceed.

16 DIRECT EXAMINATION

17 BY MR. WILLIAMS:

18 Q Sir, where do you work?

19 A Charleston Police Department.

20 Q What do you do for the police department?

21 A I'm the communications supervisor.

22 Q What does that mean?

23 A I'm over the telephone operators and the 911
24 dispatchers, 30 people.

25 Q What are the 911 dispatchers?

1 A They're the people that answer the phone and
2 actually dispatch police units to calls.

3 Q When you say you are over them, what do you
4 mean?

5 A I'm the supervisor, make the schedule for
6 them, solve their problems.

7 Q Are tape recordings made of 911 calls?

8 A They are.

9 Q How does that happen?

10 A I'm the one that makes them. I get a request,
11 a subpoena. A police officer will request one, an
12 attorney will request one. It's by subpoena or
13 freedom of information.

14 Q Solicitor's office does that?

15 A Right.

16 Q Did that happen in this case?

17 A Yes.

18 Q You actually would have created the copy of
19 the 911 tape?

20 A I did.

21 Q How are they initially recorded before you
22 make a copy?

23 A I have got a 24-hour tape machine. It records
24 all incoming/outgoing phone calls and radio
25 transmissions in and out. And everything is recorded

1 there.

2 Q And when that is recorded, is there a computer
3 record made as well?

4 A It's on what is called the CADS,
5 Computer-aided Dispatch. We keep a copy of that.

6 Q You would recognize that if you saw one?

7 A Yes.

8 Q I'm going hand you this document. Is that
9 that CAD, so to speak, document that's created?

10 A It is. This is the CADS report related to
11 this case.

12 THE COURT: Can you spell that acronym for the
13 record?

14 MR. WILLIAMS: How do you spell --

15 THE COURT: The acronym for the record.

16 THE WITNESS: It's C-A-D-S. It's called
17 Computer-aided Dispatch.

18 Q (By Mr. Williams:) CADS?

19 A Right, C-A-D-S.

20 Q Who inputs that information?

21 A Our dispatchers that take the initial call
22 inputs this.

23 Q So they do more than one thing when a call
24 comes in?

25 A Exactly.

1 Q It's inputting information as well as talking?

2 A Right.

3 Q That information contains times, dates, things
4 like that?

5 A It does.

6 Q And for the call that you are here on today
7 that you copied the tape for, what was the date and
8 time of that phone call?

9 A 8th of July at 05:16 in the morning.

10 Q And you said you created a copy of that phone
11 call?

12 A I did.

13 Q How did you do that?

14 A I have -- I have since went to a CD, but at
15 the time I did this, I did it with a cassette, use a
16 mic and go straight to the tape machine and record it
17 from a speaker there.

18 Q And all of these records, I'm going to call
19 them, are kept in the ordinary course of business?

20 A They are.

21 Q And they are made by people, meaning the ones
22 that actually input that data have personal knowledge
23 or firsthand knowledge of the information as it comes
24 in?

25 A They do.

1 Q And like you said, you're responsible for the
2 maintenance of those records as well?

3 A Right.

4 Q I want to talk to you about the first 911 call
5 that came in. What was the record of that 911 call?
6 What was detailed by the operator at the time?

7 A It says a male party was screaming and crying
8 that a female party was down and had a shot to the
9 head.

10 Q And then you subsequently, at our request or
11 State's request, copied the contents of that call
12 onto a tape?

13 A I did.

14 Q Showing you what has been marked for ID
15 purposes as State's 66. Do you recognize, first of
16 all, the information on that, as well as the tape
17 inside the case?

18 A I do. I made that tape myself.

19 Q So that's the 911 call that you copied?

20 A Yes.

21 MR. WILLIAMS: With the Court's permission,
22 I'm going to publish that to the jury by playing it.

23 THE COURT: Any objection?

24 MR. GRIMES: No, ma'am.

25 THE COURT: You may proceed.

1 MR. WILLIAMS: Thank you.

2 (Whereupon, the audiotape is played in open
3 court.)

4 MR. WILLIAMS: Your Honor, I'm going to play
5 that again. Is it okay if I play that again? It was
6 kind of distorted.

7 THE COURT: Yes. You probably need to take it
8 off that table and set it on the ledge. You may need
9 to bring it over to the court reporter's microphone.
10 Turn it down and play it at a normal level and let it
11 play.

12 You have a microphone right there. You can
13 use that and simply turn it down.

14 (Whereupon the audiotape is played in open
15 court.)

16 Q (By Mr. Williams) Mr. Boyd, I want to ask
17 you, you don't have control over the quality of how
18 the tapes come out?

19 A Right.

20 Q Just listening to that, that is basically as
21 good quality as comes off of the equipment that you
22 all have?

23 A The quality has improved now since I went to a
24 CD. The quality was -- was poor doing it that way
25 with the cassette, but it was all I had at the time.

1 Q And as you said, that call came in on the 8th,
2 I believe at 5:16?

3 A 5:16 in the morning.

4 Q Does it indicate an officer was dispatched as
5 a result of that call?

6 A It was. Seven officers were dispatched to the
7 scene of that call.

8 Q Does it show initially which first officer was
9 at the top part of the page?

10 A Appears that Officer Bailey -- Sergeant --
11 Sergeant Burn was the first dispatched by this.

12 Q If you could hand that back to me for one
13 second.

14 A Yes.

15 Q And at the top part when one refers to
16 Sergeant Ambrose, what does that showing?

17 A The case number is -- was dedicated to him, so
18 he was one of the first there.

19 Q And when a dispatch goes out, it goes out to
20 all officers in the area?

21 A It does. Something like that will go over all
22 channels.

23 MR. WILLIAMS: Okay. No further questions,
24 Your Honor.

25 THE COURT: Any questions for the witness?

1 MR. GRIMES: Just a few questions.

2 THE COURT: You may proceed.

3 You need to get that to the court reporter to
4 have it marked for ID, and then have the original
5 substituted as State's next in line without
6 objection.

7 You may proceed, Mr. Grimes.

8 MR. GRIMES: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. GRIMES:

11 Q Good morning, Mr. Boyd.

12 A Good morning.

13 Q You said there were seven officer dispatched?

14 A Seven officers responded, yes, sir.

15 Q Responded. Officer Feeders was one?

16 A I don't have the report in front of me now.

17 MR. GRIMES: May I approach, Your Honor?

18 THE COURT: You may.

19 A This document here does not reflect Feeders.

20 Q (By Mr. Grimes) Does it reflect Officer
21 Applebee?

22 A Sir?

23 Q Does it reflect officer Applebee?

24 A Yes, sir.

25 Q Does it reflect officer Inabinett?

1 A Yes.

2 Q And what were the other officers that were
3 there?

4 A Sergeant Burn, Inabinett, Sergeant Lamont,
5 Applebee, Lieutenant Hill, Sergeant Goldstein, crime
6 scene technician Maestas, Lieutenant Craven --

7 Q I'm sorry. Can you slow down a little bit?
8 Sergeant Burn, Sergeant Lamont?

9 A Yep. Lieutenant Hill, Sergeant Goldstein,
10 Crime Scene Technician Maestas, Lieutenant Craven,
11 Lieutenant -- Sergeant Gordon, Captain Tillman,
12 Sergeant Sherman, Officer Bryant and crime scene
13 technician Unterbrink. And Officer Bailey.

14 Q Thank you. Were you able to determine the
15 location of the call, the 911 call, where it came
16 from?

17 A Yes. It came from [REDACTED] Harris Street.

18 Q Were you able to determine who made the call?

19 A The party didn't identify themselves. It came
20 up on our 911 as coming from a cell phone, but the
21 party didn't identify themselves.

22 MR. GRIMES: Thank you. May I have one
23 moment, please?

24 Thank you, Mr. Boyd. I have no further
25 questions.

1 THE COURT: Any redirect?

2 MR. WILLIAMS: Just briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. WILLIAMS:

5 Q Mr. Boyd, that list of officers you read, is
6 that based on their radio transmission?

7 A Well, that -- that was -- when they put out
8 that call there, that's the officers that advised
9 that they were en route to the scene.

10 Q So other officers could have been there --

11 A Yes.

12 Q -- came with those officers or --

13 A Absolutely. That was what was listed, but it
14 could have been more officers than that.

15 Q Like if Inabinett was driving with somebody
16 else in his car, that other person would not
17 generally respond if the vehicle was going there?

18 A Very possible.

19 MR. GRIMES: Leading.

20 THE COURT: Sustained, leading.

21 Q (By Mr. Williams) Is that an exhaustive list?

22 A Pardon?

23 Q Is that an exhaustive list of all the people
24 that respond to a scene?

25 A It is usually pretty accurate. If there is a

1 large number that respond some may be missed, but
2 it's usually fairly accurate.

3 MR. WILLIAMS: Thank you. Nothing else, Your
4 Honor.

5 THE COURT: Any objection to the witness being
6 excused from the State?

7 MR. WILLIAMS: No, Your Honor.

8 THE COURT: From the defense?

9 MR. GRIMES: No, ma'am.

10 THE COURT: Sir, you are excused.

11 MS. CARDILLO: Your Honor, may we approach?

12 (Whereupon a discussion was held at the bench
13 off the record.)

14 THE COURT: Ladies and gentlemen, we are going
15 to take advantage of this break in testimony to give
16 you a short morning recess. During this break,
17 please do not discuss this case among yourselves.
18 Please leave your notepads in your seat.

19 If you need anything, please let the bailiff
20 know. You can go with your caretakers.

21 (Whereupon, the jurors exit the courtroom.)

22 THE COURT: My clerk has watched the DVD. I
23 have a synopsis of what it -- certainly everything
24 you all say is in it. You all have different
25 interpretations of it than me. I'm objective.

1 There is some portion that indicates that he
2 climbed in the window all the time and hurt mom.
3 That needs to be redacted. However, both of your
4 versions is in this child's statement.

5 Just to give a synopsis of that statement, it
6 indicates information about her age, who she lives
7 with. That dad is in jail. That daddy killed my
8 momma, killed her with a gun. Basically she has --
9 she had -- she is an eyewitness.

10 She indicates that she heard a boom. She saw
11 then fussing. He shot my mom. And she indicates she
12 was downstairs sleeping when she heard the boom,
13 heard the fussing. Then Tony shoot her, indicates he
14 put the gun on the floor upstairs and said he didn't
15 do it, he didn't do it.

16 And then she indicates he must have got the
17 gun from somebody, that he shot mom in the head.
18 After he shot her, he was smoking a cigarette. That
19 her brother was downstairs sleeping on the sofa with
20 her.

21 And then that's the part where she indicates
22 that he was in the window. She heard it. He does
23 that in the dark. Other times saw someone -- saw him
24 climbing in the window lots. Now that part I think
25 would need to be redacted, that's referencing him

1 coming in the windows before.

2 Then she is doing some drawing, and then she
3 goes on to say that when she heard the sound what did
4 she do. And then she said that daddy came in the
5 upstairs window. Mommy was upstairs sleeping.

6 And then she says she went upstairs under the
7 pillow. Her eyes were cracked open, and she saw a
8 lot of blood.

9 So I think it's accurate based on both of your
10 all's version. You can't redact it, except prior --
11 you know, him coming in windows before is not
12 relevant. would be -- but certainly she indicates
13 both versions. She was downstairs, she heard a boom,
14 and she saw him shoot her mother.

15 So, I have indicated to you all how it needs
16 to be redacted. You all can talk for a moment, let
17 me know what you want to do and we will go from
18 there. I will give you 10 minutes.

19 (Whereupon, a recess was taken.)

20 THE COURT: All right. Have you decided what
21 you want to do?

22 MR. GRIMES: Yes. Your Honor, after
23 discussing the pros and cons issue with Mr. Wilson,
24 we decided we have been unable --

25 THE COURT: I'm sorry, I can't hear you.

1 MR. GRIMES: We decided not to use the video.

2 THE COURT: Then we will have the child
3 testify.

4 MS. CARDILLO: Your Honor, we are going to do
5 it in camera?

6 THE COURT: I will. Is that -- did you want
7 to call her next?

8 MS. CARDILLO: I can, Your Honor.

9 THE COURT: Do you have another witness you
10 can call next so that I can deal with that over the
11 lunch recess?

12 MS. CARDILLO: We have two other witnesses we
13 can call.

14 THE COURT: Why don't we do that since the
15 jury has been waiting.

16 MS. CARDILLO: Okay.

17 THE COURT: Please bring in the panel.

18 MS. CARDILLO: Your Honor, she is present.

19 THE COURT: Okay.

20 (Whereupon, the jurors enter the courtroom.)

21 THE COURT: Thank you. Ladies and gentlemen,
22 we appreciate your patience. We are now going to
23 resume the trial of the case.

24 You may call your next witness.

25 MS. CARDILLO: Thank you, Your Honor. The

1 State calls Christina Gadsden.

2 MS. CHRISTINA GADSDEN,
3 after having first been duly sworn to state the
4 truth, the whole truth and nothing but the truth,
5 testified on her oath as follows:

6 THE COURT: Thank you, ma'am. You may
7 proceed.

8 DIRECT EXAMINATION

9 BY MS. CARDILLO:

10 Q Good morning, Ms. Gadsden.

11 A Good morning.

12 Q Are you from Charleston?

13 A Yes.

14 Q How long have you lived here?

15 A I lived here all my life.

16 Q Do you have any children?

17 A Yes.

18 Q What are their names?

19 A Latoya Denise Pendergrass, Latasha Monique
20 Pendergrass, Leroy Noland Pendergrass.

21 Q So were you close with Latoya or did she go by
22 Toya?

23 A We call her Toya for short.

24 Q Where was she living in July of '07?

25 A She was living on Harris Street downtown.

1 Q Was she working anywhere at that time?

2 A Yes.

3 Q Where was she working?

4 A She was working at Checkers, and then she --
5 she was working at Checkers for a about a year. And
6 then she was -- tried -- was looking for employment
7 somewhere else. So she got hired at the City of
8 Charleston.

9 THE COURT: I'm sorry. Can you repeat that,
10 ma'am? She got hired where?

11 THE WITNESS: She got hired for the City of
12 Charleston, and she worked -- was working at the --
13 for the City of Charleston.

14 Q (By Ms. Cardillo) Was that in July of '07
15 when she worked for the city?

16 A For the city, yes.

17 Q Are you familiar with Jake Antonio Wilson?

18 A Well, yes. He used -- they were going
19 together.

20 Q How did you know him?

21 A I know him through her.

22 Q Were they in a relationship?

23 A Yes.

24 Q And for how long?

25 A For about nine years.

1 Q Did they ever live together?

2 A Yes.

3 Q Do you know where?

4 A On [REDACTED] Harris Street.

5 Q Did they have any children together?

6 A Yes.

7 Q What are their names and ages?

8 A [REDACTED] Minor 1, she was five. And [REDACTED]

9 [REDACTED] Minor 2, he was two.

10 Q Were Toya and the defendant living together in
11 July of '07?

12 MR. GRIMES: Objection. Lack of foundation.

13 THE COURT: Basis? You need to lay some
14 foundation.

15 Q (By Ms. Cardillo) In July -- I'm going to
16 turn your attention to July 8th of 2007. Where were
17 you that day -- actually I'm sorry. Let me back up a
18 minute.

19 Did you see Toya on July 7th of 2007?

20 A Yes.

21 Q And where?

22 A At her residence.

23 Q Did you go to her residence?

24 A Yes.

25 Q And why did you go over there that day?

1 A Well, I went over that day because I had some
2 dishes I wanted to give to her that somebody had gave
3 me. And I wanted to split it between her and my
4 other daughter. And I told her I was coming that
5 Saturday.

6 But she called me and asked me that evening,
7 that middle of the day if I was still coming. And I
8 told her yes I was still coming, but it was raining
9 heavily up in the north area where I live. And I
10 told her, I said, as soon as the rain slack up, I
11 will be on my way downtown.

12 Q And what time did you go to over to Toya's
13 that day?

14 A When I went down there, it was like 6:30.

15 Q And how long did you stay?

16 A I stayed until about 11 o'clock.

17 Q Who was there at Toya's when you were there?

18 A It was me, Latoya and her two kids. And also
19 my other granddaughter that came with me to her
20 house.

21 Q Was Tony there?

22 A No.

23 Q Was he living there at that time?

24 A During that time he wasn't --

25 MR. GRIMES: Objection.

1 THE COURT: Ma'am, there is an objection
2 pending.

3 Basis of the objection?

4 MR. GRIMES: Lack of foundation.

5 THE COURT: Sustained. You need to lay the
6 appropriate foundation.

7 Q (By Ms. Cardillo) To your knowledge -- may I
8 have a moment, Your Honor?

9 THE COURT: Yes.

10 MS. CARDILLO: Thank you, Your Honor.

11 Q (By Ms. Cardillo) Do you know if Tony was
12 living there at the time, on July 8th?

13 MR. GRIMES: Objection, leading.

14 THE COURT: Sustained, leading.

15 Q (By Ms. Cardillo) You talked about Toya and
16 the defendant being in a relationship?

17 A Yes.

18 Q Was that relationship continuous?

19 MR. GRIMES: Objection.

20 THE COURT: Basis?

21 MR. GRIMES: Lack of foundation and leading.

22 THE COURT: Leading, sustained.

23 You may rephrase.

24 MS. CARDILLO: Thank you, Your Honor.

25 Q (By Ms. Cardillo) Were Tony and Toya, the

1 defendant and Toya in a relationship in July of '08?

2 MR. GRIMES: Leading.

3 THE COURT: Sustained, leading. Rephrase.

4 Q (By Ms. Cardillo) Were they dating?

5 MR. GRIMES: Objection, leading.

6 THE COURT: Sustained, leading.

7 Q (By Ms. Cardillo) When -- when were the
8 defendant and Toya dating?

9 MR. GRIMES: Leading, Your Honor.

10 THE COURT: I'm going to give her a little
11 latitude. Overruled.

12 MR. GRIMES: Thank you.

13 A When they started dating?

14 Q (By Ms. Cardillo) Yes.

15 A They started dating around about '98 or '99,
16 because we were living downtown at the time.

17 Q And did it come a point where they stopped
18 dating?

19 MR. GRIMES: Objection, foundation.

20 THE COURT: Sustained, foundation.

21 Q (By Ms. Cardillo) Christina, how often did
22 you go to Toya's when she lived at [REDACTED] Harris
23 Street?

24 A I used to go there pretty -- pretty often.
25 When I get the chance I usually go by. Really I used

1 to be to her house more than I would go to my other
2 daughter's.

3 Q And what kind stuff did Toya have there?

4 A What kind of stuff?

5 Q Yeah, belongings?

6 A I can't understand you.

7 Q Did Tony have any belongings there?

8 MR. GRIMES: Objection, leading.

9 THE COURT: Leading, sustained.

10 Q (By Ms. Cardillo) Who all lived there when
11 you went to see Toya on your occasions when you went?

12 A He was living there -- well --

13 Q When was that?

14 A When I started going there he was living
15 there, that was like 2002, 2003. He was living there
16 during them times. But when he -- could I say
17 something?

18 THE COURT: You may explain your answer,
19 ma'am.

20 A But when he was living there with her, I never
21 used to go there too often. But I normally go there
22 sometimes when he is not there.

23 MR. GRIMES: Objection. I think it's going to
24 the character.

25 THE COURT: Overruled. It's goes to her

1 frequency at the residence and foundation.

2 Q (By Ms. Cardillo) Now, did Tony have any
3 stuff there, his belongings, clothes?

4 MR. GRIMES: Leading.

5 THE COURT: Sustained, leading.

6 Q (By Ms. Cardillo) Did Tony have any
7 belongings at this residence?

8 MR. GRIMES: Leading.

9 THE COURT: Sustained, leading.

10 THE WITNESS: Did he have any belongings?

11 THE COURT: Ma'am, question needs to be
12 rephrased.

13 Rephrase the question.

14 Q (By Ms. Cardillo) What, if anything, was at
15 Toya's that didn't belong to her?

16 A His clothes.

17 Q Whose clothes?

18 A The defendant's clothes.

19 Q Now you said that he -- how long did he live
20 there?

21 A With her?

22 Q Yes.

23 MR. GRIMES: Objection. Still improper
24 foundation.

25 THE COURT: Please approach.

1 (Whereupon, a discussion was held at the bench
2 off the record.)

3 THE COURT: You may proceed and rephrase.

4 Q (By Ms. Cardillo) Christina, again, how often
5 did you go to Toya's house -- well, [REDACTED] Harris
6 street leading up to July of '07?

7 A Well, I was going there kind of regularly,
8 because she doesn't have a baby-sitter. And I would
9 go -- normally go there and keep the kids while she
10 would go to work. Because she was trying to make her
11 last days working at Checkers soon to start another
12 job at the city.

13 Q And when -- how long was she at Checkers?
14 when did she leave Checkers?

15 A How long?

16 Q You said she was -- until she was leaving
17 Checkers.

18 A Yeah. She was working, but she already got
19 hired, but she was trying to work those last days.

20 Q When was that?

21 A At Checkers?

22 Q Yes.

23 A That was in May.

24 Q Of what year?

25 A 2007. No, two -- 2008.

1 Q 2007?

2 A 2007. 2007, yes, ma'am.

3 Q 2007. So you went over there you said a lot.

4 How much is a lot to you?

5 A I was going like every day.

6 Q Were you taking care of your grandchildren?

7 A Yes.

8 Q And what about after that, how often did you
9 go once she left working at Checkers?

10 A Well, after she went there and got the job at
11 the city, she was bringing them to my house.

12 Q When you were taking care of the children, did
13 anybody else come and go from Toya's?

14 A No.

15 Q When you were taking care of the
16 grandchildren, was anybody else -- well who was
17 living there when you were taking care of the
18 grandchildren?

19 A Latoya. Latoya.

20 Q And anybody else?

21 A No.

22 Q Was Toya dating anybody --

23 MR. GRIMES: Leading.

24 THE COURT: Let her finish the question,
25 please.

1 You may finish the question.

2 Q (By Ms. Cardillo) was Toya dating anybody at
3 this time?

4 A No.

5 Q Was Toya dating Tony at this time?

6 A No.

7 MR. GRIMES: Leading.

8 THE COURT: Sustained, leading.

9 MS. CARDILLO: May I have a moment, Your
10 Honor?

11 Q (By Ms. Cardillo) Christina, how do you know
12 no one else was living there?

13 A Because I knew nobody else was living there
14 during the time that I was coming around, when I was
15 being there --

16 Q Uh-hum.

17 A -- nobody was living there.

18 Q With your frequency of being at Toya's, had
19 her and Tony broken up at that time?

20 MR. GRIMES: Objection.

21 THE COURT: Basis?

22 MR. GRIMES: Lack of foundation.

23 THE COURT: Overruled.

24 A Broke up at that time? Yes.

25 Q (By Ms. Cardillo) And how do you know this?

1 A Because she would frequently come around, be
2 telling me that you know --

3 MR. GRIMES: Objection, hearsay.

4 THE COURT: Sustained, hearsay.

5 Q (By Ms. Cardillo) What did you observe, if
6 anything?

7 A I observed that they weren't getting along.
8 They weren't getting along at all.

9 MR. GRIMES: Object 404(B) and hearsay.

10 THE COURT: Please approach.

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

13 THE COURT: All right. You may proceed.
14 Rephrase.

15 Ma'am, please don't say what anyone else said
16 to you.

17 THE WITNESS: I'm sorry, Your Honor.

18 THE COURT: That's all right, ma'am.

19 Q (By Ms. Cardillo) Christina, I asked you from
20 -- how many times that you went to Toya's place that
21 you were there at that time, did you see any of
22 Tony's belongings, his clothing, things of that
23 nature at Toya's?

24 A No.

25 Q Do you know what happened to his belongings?

1 A well, she put his clothes out.

2 MR. GRIMES: Objection. I think that's lack
3 of foundation.

4 THE COURT: I'm going to give her some
5 latitude. I think foundation has been established
6 regarding her knowledge, her frequency at the
7 residence. Overruled.

8 Q (By Ms. Cardillo) Did you observe his clothes
9 out?

10 A well, not -- that Friday when I was there, me
11 and my brother, she --

12 Q what --

13 A Huh?

14 Q what did you observe about Tony --

15 A I observed that she had bagged up all his
16 clothes and put it out to the front of her door on
17 the step, where she normally live at, outside her
18 screen door of her front porch.

19 Q When you say she, who do you mean?

20 A Latoya.

21 Q If you could explain what this stuff was.

22 A Clothes, shoes, games.

23 Q And who did they belong to?

24 A To the defendant.

25 Q And you were present when she put them in a

1 bag?

2 A I was present.

3 MR. GRIMES: Objection, leading

4 THE COURT: Sustained, leading.

5 Q (By Ms. Cardillo) What did you observe her do
6 with this bag?

7 A What do I observe that she did?

8 Q Yes.

9 A I observed that she bag up all his stuff and
10 -- it was clothes, and put it out to the front of the
11 door on the sidewalk.

12 Q Do you recall when this occurred?

13 A This occurred around the ending part of May.

14 Q Did you observe anything else to where Tony no
15 longer lived there?

16 A I observed that he no longer lived there. She
17 had put out all his stuff, everything.

18 Q Did you have a key to Toya's place?

19 A Yes.

20 Q Did she give you this key?

21 A She give me a key because one morning when I
22 came there, she had the maintenance from housing came
23 and changed her locks from her front door to her back
24 door.

25 MR. GRIMES: Objection.

1 THE COURT: Basis?

2 MR. GRIMES: Foundation on changing the lock.

3 THE COURT: Overruled.

4 MR. GRIMES: I believe --

5 THE COURT: Overruled. Unless I elicit
6 further argument. Your objection has been stated for
7 the record.

8 MR. GRIMES: And 404(B), for the record.

9 THE COURT: It is noted, overruled.

10 You may proceed.

11 Q (By Ms. Cardillo) Were you present?

12 A Yes. I was present when the maintenance man
13 came and changed the locks on her front door and her
14 back door.

15 Q And did you receive a key?

16 A Yes. She gave me a spare key to keep for her.

17 MS. CARDILLO: One moment, Your Honor.

18 Thank you, Christina. Please answer any
19 questions Mr. Grimes may have for you.

20 THE COURT: Mr. Grimes, you may proceed.

21 MR. GRIMES: Thank you, Your Honor.

22 THE COURT: You're welcome.

23 CROSS-EXAMINATION

24 BY MR. GRIMES:

25 Q Good morning, Ms. Gadsden.

1 A Good morning.

2 Q Apologize for your loss.

3 Just a little confused on at least the timing
4 of when you said Latoya put Mr. Wilson out. Was it
5 in May or was it in June?

6 A It was in May.

7 Q Do you know what part of May, early May or
8 late May?

9 A It was like the ending or middle part of May.

10 Q And who else was there when Latoya put his
11 clothes out?

12 A It was me and my oldest brother.

13 Q And no one else?

14 A No.

15 Q What was your oldest brother's name?

16 A James Pendergrass.

17 Q And is he from Charleston too?

18 A Yes.

19 Q Is it fair to say according to your testimony
20 here today, that Tony lived with Toya from about
21 2002, 2003 until May of 2007?

22 A Yeah.

23 Q And you said the maintenance man came out and
24 changed the locks?

25 A Yes.

1 Q Was that also in May of 2007?

2 A Yes.

3 MR. GRIMES: May I have one moment, Your
4 Honor?

5 THE COURT: Uh-hum.

6 MR. GRIMES: Thank you, Ms. Gadsden. No
7 further questions.

8 THE COURT: Any redirect of the witness?

9 MS. CARDILLO: No, Your Honor.

10 THE COURT: Any objection to the witness being
11 excused from the State?

12 MS. CARDILLO: No, Your Honor.

13 THE COURT: From the defense?

14 MR. GRIMES: No, ma'am.

15 THE COURT: Thank you, ma'am. You are
16 excused.

17 You may call your next witness.

18 MR. WILLIAMS: State calls Sergeant Brian
19 Ambrose.

20 SGT. BRIAN AMBROSE,
21 after having first been duly sworn to state the
22 truth, the whole truth and nothing but the truth,
23 testified on her oath as follows:

24 THE COURT: You may proceed.

25 MR. WILLIAMS: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. WILLIAMS:

3 Q Sir, where do you work?

4 A City of Charleston Police Department.

5 Q What do you do for the police department?

6 A I'm currently a detective in the central
7 detective division.8 Q What does that mean, being a detective in the
9 central detective division?10 A When officers take reports, certain classes of
11 crime are referred to our central detective division;
12 burglaries, homicides, armed robberies, sexual
13 assault, stolen autos.

14 Q Are you currently a sergeant, as well?

15 A Yes.

16 Q Does that give you some supervisory
17 authorities?

18 A Yes.

19 Q And who do you supervise at this point in
20 time?

21 A I'm in charge of the violent crime unit.

22 Q So you essentially supervise homicides and
23 armed robberies, that type of crime?24 A Not armed robberies, but homicides, aggravated
25 assault. Anything with severe injury to a person.

1 Q How many detectives are in the violent crime
2 unit?

3 MR. GRIMES: Objection, Your Honor.

4 THE COURT: Basis?

5 MR. GRIMES: Relevance.

6 THE COURT: Goes to his experience.
7 Overruled.

8 THE WITNESS: Currently I have five.

9 Q (By Mr. Williams) How many years total do you
10 have in law enforcement?

11 A Total, about 12 and a half.

12 Q Prior to -- let me ask you, how long have you
13 been a sergeant over the violent crime unit?

14 A That has been since June of this year.

15 Q What did you do before that?

16 A Before that I was in of charge of the auto
17 theft and white collar from January to June. And
18 then from September of last year until January of
19 this year, I was in charge of burglaries.

20 Q And just prior to you said September you went
21 to being supervisor of burglaries?

22 A Yes.

23 Q Immediately prior to being a supervisor for
24 burglaries and going back to July of last year, what
25 was your job then?

1 A I was a street supervisor in uniform patrol.

2 Q When you were a street supervisor in uniform
3 patrol, what do you do? What's your job?

4 A I have a squad, normally can range anywhere
5 from three to five officers that I will direct over
6 the course of their shift.

7 Q Did you wear a uniform?

8 A Yes.

9 Q You don't now as a detective, but you used to?

10 A That's correct.

11 Q Do you recall responding to a case or a
12 dispatch on July 8 of 2007?

13 A I do.

14 Q What were your duties at the time or what were
15 you were doing when that call went out?

16 A Well, at that time I had three or four
17 officers who were working for me, and I directed them
18 in the course of their duties over their shift.

19 Q Were you on the road so to speak?

20 A Yes, I was out patrolling.

21 Q Do you recall the dispatch call going out?

22 A Yes, I do.

23 Q What did it go out as? What was it radioed to
24 you as?

25 A Officers were sent to [REDACTED] Harris in reference

1 to a shooting that had just occurred.

2 Q Where were you when you heard that call?

3 A I believe I was at Columbus and East Bay.

4 Q Where is that relative to Harris Street?

5 A A couple blocks.

6 Q What did you do when you heard that call?

7 A I activated my blue lights and responded to
8 the location.

9 Q Do you know how long it took you to get there
10 approximately?

11 A One minute.

12 Q What was the dispatch for, what was it
13 described as?

14 A Shooting that had just occurred.

15 Q As a sergeant or as a police officer, what
16 goes through your mind or what is your initial
17 reaction upon showing up to a scene where there has
18 been a call of shooting?

19 A Trying to establish if there has actually been
20 a shooting, if we have a victim their status, trying
21 to control a crime scene so that we don't lose any
22 physical evidence. Trying to identify any witnesses.
23 Basically just controlling the scene and directing
24 officers as needed.

25 Q When you got there, were there any other

1 officers there yet?

2 A No. I was first one on the scene.

3 Q What do you do when you are the first one on
4 the scene, what was your usual response?

5 A I'm still trying to locate a victim, one of
6 police officer's first job is to render aid if at all
7 possible.

8 Q What did you find in this case when you first
9 pulled up got out of your car?

10 A When I arrived on Harris Street, there were
11 several citizens out in a common area between two of
12 the buildings. As I was approaching, you know, I
13 asked what was going on, is somebody hurt. I was
14 directed by the citizens to the apartment [REDACTED].

15 I was informed that somebody had been
16 screaming inside the apartment about somebody being
17 dead or hurt.

18 As I approached the apartment, I found the
19 door ajar. So being the only officer on scene, I was
20 little more cautious also for safety reasons.

21 Q At this point you were dispatched that there
22 was a shooting, somebody told you that there was
23 somebody inside this apartment, and then the door was
24 ajar. What do you mean by that?

25 A It was slightly open, maybe an inch or two.

1 Q When we talk about the door, is it one door or
2 two doors, what type of doors?

3 A There is a screen door that opened outward and
4 then an inner door.

5 Q Which door was ajar?

6 A The inner door.

7 Q As you approached the door that was ajar, what
8 did you do next?

9 A When I approached the door, I heard somebody
10 inside screaming, yelling. I opened the door,
11 scanned the lower part of the apartment I could see.
12 I heard someone upstairs, a male voice was screaming,
13 you know, oh my God, oh my God.

14 I called out to that person. I did not want
15 to enter the apartment by myself without a second
16 officer. So I asked for him, you know, identified
17 myself, police, and instructed that party to come
18 downstairs to me.

19 Q I'm going put up on the overhead right behind
20 you, this is State's 2. Do you recognize the door
21 there?

22 A Yes.

23 Q That's door you were talking about? Let me
24 give you laser pointer, too, if that helps.

25 Now, you say that you went in the front door.

1 what is the layout of the residence there. Give the
2 jury a basic idea of what it looked like inside, at
3 least when you walked in through the front door where
4 you went in?

5 A Well, I say the front door. They had doors on
6 each side. The door I went in, I opened the door
7 handle here. This door was slightly ajar, a couple
8 inches from the frame. And when I first entered
9 immediately to my left is a stairwell going up to the
10 second floor.

11 Q I'm going to put up State's 21. Is that the
12 stairwell?

13 A That is it.

14 Q You walked in, where did you go? Is this
15 showing the picture where you went approximately?

16 A No. I stayed pretty much at the doorway until
17 I tried to -- to see if there were any threats.

18 Q And you say as you were in that stairway or at
19 the bottom there, you hear something, voices?

20 A I heard a male voice coming from the upstairs
21 that was saying, oh my God, oh my God. I called out,
22 identified myself, police, police, you know, come
23 down to me. So I am trying to scan visually the
24 whole area for any threat that might be a harm to me.

25 Q Were you able to see well enough in there to

1 tell if there's any kind of threat at that time?

2 A The lights were on. I had a good idea, unless
3 somebody was hiding, you know, behind some furniture
4 or something the bottom section was fairly clear.

5 Q What happened after you called out upstairs?

6 A A black male, who was later identified as --
7 as Jake Wilson came down the stairs, probably about
8 halfway. He looks at me and says, she's up here, and
9 turns around and starts to go back up the stairs.

10 A I'm going to show -- put up State's 22. Does
11 that show that same stairwell?

12 A Yes.

13 Q Where does he come down to?

14 A Well, it's probably actually about -- it's
15 about midway. I mean I had enough I could see him
16 leaning down here. But he goes back upstairs, and at
17 that point, you know, he's telling me apparently
18 somebody is upstairs hurt. And then not knowing who
19 he is or what's going on, I went ahead and followed
20 him.

21 Q What is the layout like upstairs as you get up
22 there?

23 A As you come to this second floor landing, this
24 was the -- the bathroom. And then immediately to the
25 right is -- there is a bedroom here. And then if you

1 took a right hand, it leads into another doorway,
2 another bedroom.

3 Q I'm going to put up State's 23. Does that
4 show that area?

5 A Yes. That would be the bathroom at the head
6 of the stairs. This is the doorway immediately to
7 the right of that. And then there would be another
8 doorway to another bedroom here.

9 Q Look at these two exhibits. This door here,
10 is the same as this one?

11 A That's correct.

12 Q So coming up the stairs, where is the
13 defendant or what's he doing at this point in time?

14 A He was running to this bedroom here. I kind
15 of scan, you know, as I am coming up the stairwell,
16 scanning because I still don't know exactly what's
17 going on. When I get to the top of stairwell, I look
18 to my right, and just on the floor inside this
19 doorway there is a small black-in-color revolver on
20 the bedroom floor.

21 Q Let me put up State's 32. Does that show what
22 you saw?

23 A Yes.

24 Q And if you could tell the jury progressively
25 what you saw first. You talked about the gun.

1 A That was first thing I saw, so I'm a little
2 more cautious. He, the defendant, at that time was
3 in the room away from the gun. I went ahead and kind
4 of stepped over the gun, and I observed a black
5 female that was Latoya Pendergrass laying here on the
6 bed. On either side of her are two -- two infants
7 that were later identified as Minor 1 and Minor 2

8 [REDACTED].
9 Q Did you figure out how old they were at that
10 time, approximately?

11 A I -- I knew they were toddlers. I knew they
12 had to be less than five years of age.

13 Q And when you saw who you said was Latoya
14 Pendergrass, what was her posture when you first
15 walked in?

16 A At the point that I walked in, she was laying
17 on her back on the bed here. I believe it was her
18 right hand was up near her head, and her left arm was
19 kind of straight out to her side.

20 Q Where were her feet, do you recall?

21 A I believe her -- her knees were almost to the
22 edge of the bed. But she was -- she was back a
23 little ways. It was like maybe mid calf to knee
24 range. So her legs were kind of hanging off of the
25 side of the bed.

1 Q Where would you say the edge of the bed would
2 have been on her leg, the edge goes to the 90-degree
3 angle?

4 A I believe probably about mid calf to knee.

5 Q Could you tell if her feet were on the ground?

6 A I don't believe they were.

7 Q And you said that her children were there.
8 Where were they relative -- or the two children were
9 there. Where were they relative to her?

10 A They were on each side of her.

11 Q Were they further than the reach of her arms
12 that were extended?

13 A I would say they were about waist level, waist
14 level, mid torso range.

15 Q How far or close to her body?

16 A Very close, within maybe a foot.

17 Q Tell me when you saw the woman lying on the
18 bed, what was her condition when you first came in?

19 A When I first came in, she was unresponsive.
20 She was just laying there. I noticed that there was
21 a white sheet near the top her head that had what
22 appeared to be blood. So I, at that point, assumed
23 she's my injured party.

24 My concern was the children did not need to be
25 right next to this lady during that time. So I

1 directed Mr. Wilson -- you know, I said to him
2 several things. I was like, you know, is there
3 anybody else hurt, is there anybody else in the
4 house. He responded no. I asked were there any
5 other weapons in the house, he said no.

6 I said how about take the kids and go
7 downstairs. They don't need to be here. Take the
8 kids downstairs out of here.

9 Q Was -- we have been talking about
10 Ms. Pendergrass as well as the two children. As you
11 are observing this and seeing this, you said the
12 defendant was off to the right, what was he doing
13 over there? Was he saying anything?

14 A During the whole time he was very distraught,
15 but he kept repeating: Oh my God; baby, please don't
16 leave me; why did you do that; and just kept kind of
17 going on and on.

18 And at that point I wanted to try and assess,
19 you know, her injury and control it. And being he
20 was so emotional and not wanting the kids right there
21 next to her, that's when I said, you know, take --
22 take the kids and go downstairs.

23 Q You said -- do you remember him saying, oh my
24 God; baby, don't leave me; why did you do that?

25 A Yes.

1 Q So at that point the defendant takes the two
2 children, I assume. What happens?

3 A Well, I had him take them downstairs. I knew
4 from radio traffic other officers were arriving on
5 scene. I believe it was Officer Feeders that I
6 directed. I said, you know, there should be a male
7 party coming down the stairs, make sure he doesn't
8 leave, because at that time we did not know if he was
9 a witness, involved, anything. I mean, we just had
10 no idea.

11 Q You were more concerned with the person --

12 A Our first responsibility is trying to render
13 aid.

14 When I noticed the blood, I believe it's going
15 to be this white sheet right here. I couldn't tell
16 if she was injured. She had on a like turban-type
17 head wrap that was either burgundy or maroon in
18 color. So I donned a pair of latex gloves, climbed
19 onto the bed, tried to get her to respond to me at
20 first by touching her. She wouldn't respond.

21 Q What -- when you said earlier non-responsive,
22 can you give the jury more detail what her condition
23 was?

24 A At that point I knew she wouldn't respond to
25 me vocally. She was not moving. Her eyes were open

1 and staring into space.

2 Q When you say non-responsive, did you do
3 anything to try to get her attention apart from
4 saying things?

5 A Yeah. I tried touching her, moving her legs.
6 Got up in front of her, you know, tried touching her
7 shoulders. Could look at her, could tell her eyes
8 were not following me. At that point, you know, I
9 went ahead and took -- I took the sheet here, noticed
10 the turban had what appeared to be a wet area or
11 stain that I assumed was blood. So I went ahead and
12 took the sheet, held pressure to her head.

13 Q I'm going to show you State's 37. Do you
14 recognize that?

15 A Yes. This would be the sheet. This was a
16 pillow. And I believe that's going to be the -- what
17 I'm describing as the turban.

18 Q Does that look like what you saw was the head
19 wrap?

20 A Yes.

21 Q I want to ask you quickly, these placards,
22 what are those?

23 A Those are crime scene markers that one of our
24 crime scene technicians would place to indicate
25 evidence in its original position. They have ruler

1 markings so that size can be documented. And it lets
2 us track in a three dimensional space for diagraming
3 purposes where evidence was recovered from.

4 Q Same thing with the gun in the other photo?

5 A Absolutely.

6 Q So you didn't put -- did you put those down?

7 A No.

8 Q When would these picture have been taken?

9 A After one of the crime scene technicians
10 responded.

11 Q Do they fairly and accurately represent the
12 way it was when you first went in?

13 A It's close. The only thing would be -- I know
14 other emergency services responded, EMS and fire. I
15 mention to them specifically about the gun, not to
16 hit it while we are trying to move her in and out of
17 the bedroom. The turban would not have been right
18 there, it would have been on top of her head. I
19 believe it would be more in this area. I know EMS
20 removed it once they got there and started assisting
21 me.

22 Q Let's go back to where I believe you said you
23 stepped over her and were checking on her safety.
24 What did you find or what happened at that point?

25 A I just knew she was unresponsive. I knew that

1 there was some type of injury to the head.

2 Held the sheet against her head to where I
3 believed the wound was, trying to staunch the flow.
4 And then EMS and fire responded.

5 Q Approximately, to the best you can tell or
6 best of your recollection, where was that wound?

7 A When EMS removed it, it was to the top of the
8 head.

9 Q So you said you used a sheet?

10 A Yes.

11 Q What did you do with the sheet?

12 A Left it there.

13 Q Let me ask you, did you apply it to the wound?

14 A Yes.

15 Q How long did you do that for?

16 A I would guess five to ten minutes at the most.

17 Q Did you stay with her?

18 A I stayed with her until the EMS and fire took
19 over trying to render aid.

20 Q Why would you stay with her?

21 A I was the only one there at that point in
22 time.

23 Q Did you -- was that care important to you at
24 the time?

25 A Yes. I mean, that's part of why I do -- why I

1 do what I do. I like helping people.

2 Q Did she appear to you at that point to need
3 help?

4 A Absolutely.

5 Q Now, you say that other officers were there
6 and you were in radio contact with them?

7 A Yes.

8 Q As -- as far as that radio contact, what did
9 you radio down?

10 A I believe I told Officer Feeders that, you
11 know, that there was a gentleman coming downstairs
12 with two juveniles. We just needed to make sure he
13 didn't leave, you know, because we needed to figure
14 out what he knew about the incident.

15 Q As you stayed there with Ms. Pendergrass, what
16 was the next thing that happened?

17 A Fire and EMS arrived. They came in, again, to
18 render aid. At that point I went ahead, let them
19 take over because their training is much more
20 specialized than ours as far as that. And then I
21 went ahead and did a protective sweep of the rest of
22 the apartment to make sure we had no other injured
23 parties, no other weapons, or no -- no obvious
24 evidence or signs of struggle.

25 Q Now you had mentioned earlier in your

1 testimony you had told EMS and fire not to disturb
2 anything?

3 A As much as we could.

4 Q What in particular did you tell them?

5 A To watch the gun. I was very concerned about
6 the gun being moved or displaced.

7 Q Does it appear in State's Exhibit 32 to be in
8 the same place it was when you came up there or
9 fairly close to it?

10 A Yes.

11 Q Now you said that you then did a protective
12 sweep. Why did you do a protective sweep of the
13 residence?

14 A Normally, whenever we go into a situation like
15 that, we want to make sure one, that we don't have
16 anybody else injured, nobody is hiding in the house,
17 if there is any other evidence that can be located.
18 It's an officer safety issue and then a crime scene
19 control issue.

20 Q What did you find as you did the protective
21 sweep?

22 A Nothing that jumped out to me as being out of
23 place. I didn't see any obvious signs of struggle,
24 no furniture turned over, anything like that.

25 Q You also talked about the role of securing the

1 crime scene. Did you ensure that that was done?

2 A I did. Once EMS and fire removed the victim
3 from the scene, I went down, let the -- I believe it
4 was Lieutenant Hill was our command duty and Sergeant
5 Burn, who was the team one supervisor, which the
6 city's geographical team one was his area I just
7 happened to be first one there.

8 I explained to him there is nobody else in the
9 apartment. I've got the crime scene. Nobody else is
10 coming in until crime scene gets there, our crime
11 scene technicians get there.

12 Q Now, as a sergeant and a supervisor, you
13 obviously have experience with assigning people
14 duties and how a crime scene or a case is processed?

15 A Yes.

16 Q Was crime scene involved here?

17 A Yes.

18 Q Do you recall who came out?

19 A I believe Anita Maetas was the first one.

20 Q And are other investigators utilized besides
21 yourself?

22 A Yes. Yes.

23 Q How does it work if you are the first
24 responding officer? How does the assignment of the
25 case work for purposes of investigation?

1 A Well, normally being on our nightshift we had
2 -- at that point in time we had on duty -- I'm sorry,
3 we had on-call detectives. It would depend upon the
4 nature of the call. If it was shooting or a
5 homicide, we would call out somebody from the
6 homicide unit. If it was an armed robbery, we might
7 call somebody from the robberies unit. It just
8 depends on what the officer finds at the time.

9 Normally on major crime scene, the supervisor
10 would direct the patrolman, and then would request
11 the on-call crime scene officer or central detective.

12 Q Was there a central detective that showed up?

13 A Yes, several.

14 Q Which detectives, homicide detectives, violent
15 crime detective?

16 A Sergeant Goldstein, and I believe Sergeant
17 Gordon were the two that came from homicide.

18 Q You saw Sergeant Goldstein there?

19 A Yes.

20 Q So crime scene was Anita Maestas, Detective
21 Goldstein?

22 A Yes.

23 Q Did you have any other role there once they
24 were in place?

25 A No. Once they come -- once crime scene

1 arrives on an incident like this, the crime scene
2 technicians take over control once we relinquish it
3 to them. They are the ones that control the access
4 who gets in and how that scene is handled. And then
5 the detectives also, after they're done processing
6 the physical evidence, are the next to have access to
7 it.

8 Q Once that was done, did you go somewhere else?

9 A Yes.

10 Q Where did you go?

11 A I went to MUSC emergency room to check on the
12 condition of the victim.

13 Q Was that at anybody's direction?

14 A I think I took that upon myself because we had
15 everything still kind of going on right there.
16 Lieutenant Hill I knew, who was our commander duty
17 officer, wanted a status.

18 Q When you say status, what do you mean?

19 A With shooting incident like that, if it's --
20 we want to know how -- the condition of the victim,
21 what her status was.

22 Q And you did that?

23 A Yes, I did.

24 Q What did you find? Where did you go first of
25 all?

1 A I left from Harris Street. I went to MUSC
2 the trauma emergency room, which is off Jonathon
3 Lucas. I met with Dr. Ramsey, who was one of the
4 attending physicians at the emergency room, and he
5 informed me that she had passed or been pronounced
6 deceased at 05:44, which would be 5:44 a.m.

7 Q Did you do anything else there or see that
8 anything else was done at your direction?

9 A The one other thing I asked them to do was to
10 bag the victim's hands. We do that a lot of times
11 with shootings because we want to ensure there is no
12 contamination of the hands. And then that way if we
13 decide to do what's called a GSR or gunshot residue
14 kit, that the kit -- the test can be done without the
15 hands being contaminated.

16 Q You made sure that was done in this case?

17 A I did.

18 Q And that was on Ms. Pendergrass?

19 A Yes.

20 Q The firearm, the gun, as well the two items
21 that we referred to before, would you recognize them
22 if you saw them again?

23 A I believe so, yes.

24 Q I'm going to show State's proposed 60. Do you
25 recognize that?

1 A I do.

2 Q What is it?

3 A This is the small, black-in-color revolver
4 that was on the floor just inside the bedroom.

5 Q Is it the same or substantially the same
6 condition as it was when you saw it there that day?

7 A Yes.

8 Q You didn't pick it up or take it or anything?

9 A I did not collect it or remove it.

10 Q But you got a good look at it?

11 A I got a good look at it.

12 MR. WILLIAMS: Your Honor, I move to admit
13 State's proposed 60.

14 THE COURT: Any objection?

15 MR. GRIMES: One moment, please.

16 No objection.

17 THE COURT: Mark and admitted without
18 objection.

19 (Whereupon State's Exhibit No. 60 is admitted
20 into evidence.)

21 MR. WILLIAMS: Your Honor, I'm having these
22 two items marked as well.

23 THE COURT: Any objection, Mr. Grimes?

24 MR. GRIMES: No, Your Honor.

25 THE COURT: Marked and admitted State's next

1 in line without objection.

2 (Whereupon, State's Exhibit Nos. 67 and 68 are
3 admitted into evidence.)

4 Q (By Mr. Williams) Detective, I'm going to
5 show you what has been marked and admitted now I
6 think as State's 67 and 68. I want to first ask you
7 about how evidence is collected. There's all kinds
8 of tape and initials on these things. Does that mean
9 anything to you?

10 A It does. When evidence is collected we have
11 to establish what's called a chain of custody. That
12 means that any person that handles evidence from the
13 time it's collected to the time that it's submitted
14 to our property custodian to a detective, or to an
15 investigator, each person has to be responsible and
16 part of the chain showing that we do not lose control
17 of that evidence at any time.

18 The evidence seals are to indicate that the
19 packaging has not been tampered with. And we use
20 paper bags for anything that might contain any type
21 of biological blood, urine, semen, any type of
22 biological samples, so that sample is not
23 contaminated and it can air dry.

24 Q And items are often sent for testing, as well?

25 A That's correct.

1 Q And there's -- for instance with the firearm,
2 there is a separate label from different agencies
3 that may take a look at it for the same type of
4 purpose?

5 A That's correct. Everyone who's touched those
6 items should have marked it and been a part of that
7 established chain of custody.

8 Q I'm going to open State's 68. Do you
9 recognize that item, Detective?

10 A That's the sheet that I used that was near her
11 head.

12 Q And that's got the blood stain on it that you
13 would have -- she would have had when you were
14 applying it?

15 A Yes.

16 Q Does that appear to be the same condition as
17 it was then?

18 A It does. It was just balled up. It was a
19 much lighter package when I was handing it.

20 Q That explain the pattern on it?

21 A Yes.

22 Q Detective, I'm going to show you the contents
23 State's 67. Do you recognize that as well?

24 A That would be what I described as the
25 turban-style head wrap that she had around her head.

1 Q Does that appear to be in the same condition?

2 A It does.

3 Q It has substance on it?

4 A That is correct. It did have -- when she had
5 it around her head, it was layered a little bit, but
6 I could tell that one -- one side of her head
7 appeared damp, as I said, what I assumed to be blood.

8 Q Showing that on the overhead. There is hole
9 in the fabric. Did you see the hole in it when you
10 were looking at it?

11 A Not at that time, no.

12 Q It appears that there is a hole with the dry
13 substance around it?

14 A Yes.

15 Q Okay. Detective -- go by detective or
16 sergeant, what do you prefer?

17 A Either way.

18 Q Detective, after you went to the hospital and
19 made sure that the bag was placed over the victim's
20 hand for purposes of preserving evidence, did you do
21 anything else in the case?

22 A Just went and started paperwork so that we
23 could get -- get the reports and stuff done.

24 Q So when we talk about paperwork, you said
25 report. Is that part of the paperwork you complete

1 in the case?

2 A Yes.

3 Q What's the purposes of writing a report as a
4 supervisor or as an officer that is working a case?

5 A Part of how police work happens is through
6 police reports. We document basically the stories
7 that we -- we are told by victims or by what we see
8 and witness ourselves.

9 So we'll keep notes or try to recall mentally
10 what has happened and then try to convey it onto
11 writing so that it can be used at a later time if
12 need be, or so that other people can know what we saw
13 what we heard, what we did.

14 Q Where does that report go after it's written?

15 A It's submitted normally in four copies. There
16 is an original that is handled through our department
17 and forwarded to the state law enforcement division.
18 There is a records copy for our own person stuff.
19 You know, a detective copy, he gets one. And then
20 there is a miscellaneous copy.

21 Q And those reports go to the prosecutor?

22 A Yes. They -- if an arrest is made, they would
23 get copies.

24 Q They go to other detective, for instance,
25 Detective Goldstein would have access to your records

1 in-house?

2 A Yes.

3 Q Your supervisor could look at it?

4 A Yes.

5 Q Approximately how long was the report you
6 wrote in this case?

7 A My supplemental report was about two-thirds of
8 a page.

9 Q We have been here for a good 45 minutes with
10 your testimony. Certainly is it fair to say every
11 single thing you talked about today got put in
12 writing?

13 A No.

14 Q Some things maybe I asked about you didn't
15 think were important at the time?

16 A Probably.

17 Q Would you say that you -- let me ask you, did
18 you put all of the defendant's statements in your
19 report?

20 A I'm sure I didn't. He was very verbal, going
21 on and on. I was trying to recall a number of things
22 that he said.

23 Q But so it's fair to say you put down what you
24 remembered at the time?

25 A Yes.

1 Q As far as significance of cases goes, do you
2 have a better recollection of some cases than others?

3 A Absolutely.

4 Q What about this case makes it more memorable
5 to you or less memorable than other cases you might
6 see?

7 A I'm a father. I have two sons.

8 MR. GRIMES: Objection.

9 THE COURT: Basis?

10 MR. GRIMES: Relevance.

11 THE COURT: Goes to credibility and recall.

12 MR. GRIMES: Unduly prejudicial.

13 THE COURT: Overruled. You may proceed, but
14 do so gingerly.

15 Q (By Mr. Williams) Go ahead, detective.

16 A I'm a father. I have two sons. And any case
17 where I encounter young children tends to stand out
18 to me more.

19 Q You referred to your report a couple of times
20 here during this testimony. Most of what you've
21 said, does it come from reading that report or what
22 you remember?

23 A Both.

24 Q Is it fair to say most from the report or more
25 from recollection?

1 A The report is much more detailed than my
2 recollection.

3 Q Is there anything that you remember that
4 wasn't in the report that you can recall?

5 A The one thing would be the one statement that
6 I know he said about, you know, why would you do this
7 or how could you do this.

8 MR. WILLIAMS: Thank you. Nothing else for
9 this witness, Your Honor.

10 THE COURT: Cross-examination.

11 MR. GRIMES: Thank you, Your Honor.

12 THE COURT: You may proceed.

13 CROSS-EXAMINATION

14 BY MR. GRIMES:

15 Q Good afternoon, Sergeant Ambrose.

16 A Good afternoon.

17 Q I want to ask you a few questions about your
18 interactions with Mr. Wilson on July 8th.

19 A Yes, sir.

20 Q First thing, you arrived at the scene and
21 Mr. Wilson was the only adult there?

22 A Yes.

23 Q And as you were coming upstairs, he asked you
24 to come up?

25 A He -- he motioned to me to follow him, but he

1 was already going up the stairs.

2 Q And he was very emotional?

3 A Very emotional.

4 Q He went in the bedroom where Ms. Pendergrass
5 was?

6 A That's correct.

7 Q And he was still emotional in the bedroom?

8 A That is correct.

9 Q That's when you saw the gun?

10 A Yes.

11 Q I believe you told Officer Feeders not to let
12 him leave; is that fair?

13 A I said we did not want him to leave until we
14 figured out what was going on, correct.

15 Q Because he may have been a suspect in the
16 case?

17 A At that point in time, I did not know what his
18 involvement was.

19 Q He may have been a suspect?

20 A He might have been.

21 Q Only adult there?

22 A Yeah.

23 Q Or he may have been a witness?

24 A He might have been a witness, might have been
25 a suspect, might have been a neighbor. I had no

1 idea.

2 Q And you let him take the children down?

3 A Right.

4 Q And you didn't think he was a risk to the
5 children, did you?

6 A At that point in time, no.

7 Q And when you got there, you said he was
8 screaming about someone being dead inside?

9 A That was from a citizen outside.

10 Q Okay. Citizen was screaming?

11 A No. As I was approaching, there were citizens
12 out in the courtyard area.

13 Q I'm sorry, I misunderstood. The citizen told
14 you that Mr. Wilson was screaming?

15 A Well, they said somebody was inside screaming.
16 They didn't identify them.

17 Q And he was the only one inside?

18 A Yes.

19 Q When you found him inside, their version of
20 what they told you is consistent with him being the
21 one screaming?

22 A Yes.

23 Q And you said he was screaming -- also
24 screaming, oh my God, oh my God?

25 A Yes.

1 Q And he was saying, please don't leave me,
2 baby?

3 A Right.

4 Q And you said he was visibly distraught?

5 A That's correct.

6 Q Kept screaming. Kept screaming, oh my God.
7 And then you also said something about why would you
8 do this, made a statement to that effect?

9 A He made an utterances that I recall him
10 saying, why would you do this or how could you do
11 this, something in those lines.

12 Q All right. And you weren't there when the
13 shooting happened?

14 A No, I was not.

15 Q You don't know what happened up there?

16 A No, I do not.

17 Q This could have been a murder?

18 A At the point in time, I mean, you treat any
19 scene, you try and figure out what happened. At that
20 point in time, I didn't know. I knew I had somebody
21 who apparently had a gunshot wound.

22 Q But it's possible when you got there, a
23 gunshot wound to the head, that that person may have
24 been murdered?

25 A That's a possibility, yes.

1 Q Or it may have been heat of passion, what they
2 call manslaughter?

3 A It might have been. I don't know.

4 Q Or it might have been sort of reckless --
5 another form of manslaughter?

6 A It's possible.

7 Q It's possibly could have been an accident?

8 A Anything is possible.

9 Q And when he said, why did you do this, it's
10 possible he may have been talking about her hitting
11 the gun, causing it to go off?

12 A Possibly.

13 Q And you said you saw no signs of a visible
14 struggle?

15 A No.

16 Q And you said you prepared a sort of short
17 supplemental report?

18 A I did.

19 Q And you -- when you prepared the report, was
20 this on July 8?

21 A Yes. It would have been that morning.

22 Q And you had time to think about, reflect about
23 what you would put in your report?

24 A Yes.

25 Q You weren't in a rush or anything at that

1 time?

2 A Well, it was -- we were on midnight shift and
3 would have been going home 7:00, 8:00 in the morning.
4 So trying to get out of there, ready to go. Not
5 forced, I should say, but, you know --

6 Q Just want to go back to your family?

7 A -- just want to go home.

8 Q Go to sleep? Had a rough night that incident,
9 correct?

10 A Well, that's part of what we do.

11 Q You could have come back the next day and
12 finished the report?

13 A No.

14 Q Or prepared a supplemental report?

15 A No.

16 Q You can't prepare a supplemental report?

17 A I can prepare a supplemental report, but our
18 policy for the department, is from a patrol function,
19 is all original reports and supplemental reports
20 should be finished prior to securing for a shift. So
21 at that point, my policy standard, my paperwork
22 should have been done before I was able to go home.

23 Q And in your report, you didn't put anything in
24 there about Mr. Wilson saying, why did you do this?

25 A No. I was trying to recall everything he

1 said.

2 Q You did not come back and prepare any other
3 supplemental report to say that?

4 A No, I did not.

5 MR. GRIMES: One moment, please.

6 Thank you, Your Honor. I have no further
7 questions.

8 THE COURT: Any redirect?

9 MR. WILLIAMS: Yes, Your Honor.

10 THE COURT: You may proceed.

11 REDIRECT EXAMINATION

12 BY MR. WILLIAMS:

13 Q Detective, on cross-examination, Mr. Grimes
14 asked you about whole bunch of different
15 possibilities. Do you remember that just a few
16 minutes ago?

17 A Yes.

18 Q I want to ask you about what the defendant
19 told you as you were there and the likelihood --

20 MR. GRIMES: Objection.

21 THE COURT: Basis?

22 MR. GRIMES: Comment upon -- I'll withdraw the
23 objection.

24 THE COURT: Okay, rephrase the question.

25 MR. GRIMES: I will, Your Honor.

1 Q (By Mr. Williams) Detective, I want to ask
2 you about what you had immediately before you, what
3 the defendant said and what your opinion was at that
4 very moment about what those possibilities are.

5 MR. GRIMES: Object to the opinion, Your
6 Honor. It's irrelevant and more of a legal question.

7 THE COURT: Goes to whether he was -- it is
8 appropriate redirect. It has been explored on cross
9 and direct. Overruled. And it goes to whether he
10 was in custody or what his status was, whether he was
11 free to leave or not.

12 Proceed carefully. Rephrase the question.

13 Q (By Mr. Williams) Detective, I simply want to
14 ask you about the same possibilities Mr. Grimes did.

15 Now you had at least three different things
16 said by this defendant, right?

17 A Correct.

18 Q What were they?

19 A He was screaming repeatedly, oh my God; don't
20 leave me, baby. And I heard him say, why did you do
21 it or how could you do this.

22 Q Now Mr. Grimes asked you about an accident.
23 The defendant didn't give you any indication that
24 this was an accident by him, did he, from what he
25 said?

1 A No, he did not.

2 Q He didn't say anything about heat of passion
3 or reckless handling of a gun, did he?

4 A No.

5 Q He didn't say anything about shooting anybody,
6 did he?

7 A No.

8 Q The one thing he said was how could you do
9 this?

10 A Yes.

11 Q Just on that little information, what was your
12 belief about that statement as far as the several
13 possibilities Mr. Grimes wanted to ask about?

14 MR. GRIMES: Objection.

15 THE COURT: Basis?

16 MR. GRIMES: Relevance, lack of foundation.

17 THE COURT: Please approach.

18 (Whereupon, a discussion was held at the bench
19 off the record.)

20 THE COURT: Rephrase.

21 Q (By Mr. Williams) Detective, I want to ask
22 you about two other possibilities that Mr. Grimes
23 didn't mention. One is that the defendant shot and
24 killed her, that's possible, right?

25 A Certainly.

1 Q And you heard the defendant say, oh my God, I
2 can't believe -- I think you said why did you do this
3 to yourself?

4 MR. GRIMES: Objection. Mischaracterizes the
5 evidence.

6 THE COURT: Sustained.

7 Q (By Mr. Williams) I believe that -- tell me
8 what the statement was that he said.

9 A I heard the defendant say, why did you do it
10 or how could you do this.

11 Q It's just as possible that the defendant
12 killed her and was trying to pretend that she killed
13 herself?

14 A That's possible as well.

15 MR. WILLIAMS: Thank you. Nothing else, Your
16 Honor.

17 THE COURT: Any objection to the witness being
18 excused from the State?

19 MR. WILLIAMS: No, Your Honor.

20 THE COURT: From the defense?

21 MR. GRIMES: Yes, ma'am. I'd like to follow
22 up briefly.

23 THE COURT: Very briefly. You may proceed.

24 RECROSS-EXAMINATION

25 BY MR. GRIMES:

1 Q You never interviewed Mr. Wilson, did you?

2 A No, I did not.

3 Q You let him go downstairs?

4 A Yes, I did.

5 Q And I did ask you about one possibility

6 whether there was a murder, didn't I?

7 A Yes, you did.

8 Q And at that point you hadn't read Mr. Wilson

9 his rights yet, had you?

10 A I'm sorry?

11 Q You had not read Mr. Wilson his rights?

12 A No.

13 Q He wasn't a suspect?

14 A I didn't say that. I said I'd never read him

15 his rights, but as a course --

16 Q You said before you did not know if he was a

17 suspect, a neighbor --

18 A Well, I said he could be, he could be any of

19 those things. It wasn't that he was excluded from

20 being one.

21 Q I understand that.

22 A Okay.

23 Q But you let him go downstairs with two young

24 children?

25 A Yes. At that point in time, my first priority

1 was to render aid to the victim. I could not do that
2 with two infants on either side of her body and with
3 him screaming in the bedroom, either way.

4 Q And another priority was to make sure no harm
5 comes to those two young children?

6 A That's true. But at that point in time, I
7 know where the immediate threat was was the pistol
8 that was on the floor in my plain view.

9 Q And Mr. Wilson never tried to run from you or
10 anything, did he?

11 A No, he did not.

12 MR. GRIMES: Thank you.

13 THE COURT: Thank you. Any further questions
14 from the State?

15 MR. WILLIAMS: No, Your Honor.

16 THE COURT: Any objection to the witness being
17 excused from the State?

18 MR. WILLIAMS: No, Your Honor.

19 THE COURT: From the defense?

20 MR. GRIMES: No, ma'am.

21 THE COURT: Sir, you are excused.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Counsel, please approach.

24 (Whereupon, a discussion was held at the bench
25 off the record.)

1 THE COURT: You may call your next witness.

2 MR. WILLIAMS: Thank you, Your Honor. State
3 calls officer Feeders.

4 MR. ROBERT FEEDERS,
5 after having first been duly sworn to state the
6 truth, the whole truth and nothing but the truth,
7 testified on her oath as follows:

8 THE COURT: You may proceed.

9 MR. WILLIAMS: Thank you.

10 THE COURT: You're welcome.

11 DIRECT EXAMINATION

12 BY MR. WILLIAMS:

13 Q Sir, where do you work?

14 A I work for the Charleston City Police
15 Department.

16 Q What do you do for the city police department?

17 A I'm a senior police officer and also a patrol
18 training officer.

19 Q What do you do on your job every day? What
20 does your job consist of?

21 A Patrol division.

22 Q What does that mean?

23 A Answers calls for service.

24 Q Do you drive around in a car?

25 A Yes, we do.

1 Q Marked car?

2 A Black and white.

3 Q And when you say answer calls, how do you all
4 receive calls?

5 A We receive calls through our dispatch on the
6 radio.

7 Q How long have you worked in law enforcement?

8 A Ten years now.

9 Q And you say you are a training officer, what
10 does that mean?

11 A We train new recruits that graduate from the
12 academy that come to our department and follow
13 department policy and procedure, officer safety,
14 paperwork, basic investigation.

15 Q How long have you been responsible for
16 training other officers?

17 A I have been with the department for three
18 years. I was a training officer here for two years.
19 I was also a training officer in the Mount Pleasant
20 Police Department across the river for four years.

21 Q You said you had a total of 10 years in law
22 enforcement?

23 A Yes, sir.

24 Q Do you remember a case back on July 8th of
25 last year, 2007?

1 A Yes, sir.

2 Q How did you first respond to the call? How
3 did you get involved in the case?

4 A I had a trainee with me, we were on King
5 street. I was working shift in the morning when the
6 call came out. We responded. We were the second
7 unit there to back up Sergeant Ambrose.

8 Q When you say back up Sergeant Ambrose, did he
9 get there before you?

10 A Yes.

11 MR. GRIMES: Leading.

12 THE COURT: Sustained, leading.

13 Q (By Mr. Williams) Was there anybody else
14 there when you got there?

15 A When I arrived on the scene, Sergeant Ambrose
16 was inside.

17 Q How did you know that he was there?

18 A He advised that he was upstairs, he had
19 someone with a gunshot wound.

20 Q When you say he advised, how did he do that,
21 did he yell it?

22 A Over the radio transmission or the
23 microphones.

24 Q So when you get to the scene, was that with
25 officer Applebee?

1 A Yes, sir.

2 Q What happens when you get there, what do you
3 do?

4 A We usually check in on the scene. I believe
5 on that day and time in question we used her call
6 sign. It was toward the end of the training process.
7 And she was the primary officer, and I am the backup
8 officer.

9 Q So somebody called it in?

10 A Yes. In some instances where it's an
11 emergency call, where it's -- we don't want a lot of
12 traffic radio when officers have come to the scene,
13 several officers, we don't want to tie up the radio.
14 But as soon as possible you get a radio check on
15 scene, so dispatch patrol knows you are there.

16 Q Where did you go to?

17 A We went to [REDACTED] Harris Street.

18 Q Do you know about how long it took for you to
19 get there?

20 A About a minute to two minutes. We were just
21 on King Street.

22 Q What did you find when you got there?

23 A When we first got there, we were -- we were
24 looking for the exact apartment. We were directed by
25 several citizens pointing to the apartment in

1 question.

2 When I got there, I observed the black male,
3 later identified as this defendant, come out the
4 front door carrying two small children.

5 Q And you say that you had been radioed by
6 Sergeant Ambrose?

7 A Yes, sir.

8 Q When did that occur?

9 A Just when he came out, almost instantaneously
10 when he came out, you know, I made contact with him.
11 He said we got to hold on to him. You know, I took
12 that as, you know, identify him as a possible
13 witness, see what happened, if he was a victim or
14 whatnot.

15 Q So you said you saw the defendant come out and
16 he had kids with him?

17 A Yes, sir.

18 Q When you say he had kids with him, what do you
19 mean?

20 A He was holding two small children in each arm,
21 yelling and screaming.

22 Q What was he yelling and screaming?

23 A He said, no, no, no, don't take my baby, oh my
24 gosh, she's dead.

25 Q What did you do at that point?

1 A It's our job first to render aid, identify
2 witnesses and secure the crime scene. I did not know
3 what was happening. It was very chaotic. I was
4 trying to identify see if he was okay, if he was
5 shot.

6 I did not know his interaction with Sergeant
7 Ambrose. I wanted to see what happened, you know,
8 were you hurt, is anybody else in there, what is
9 going on.

10 Q Did you talk to him about that at all?

11 A Yes.

12 Q What --

13 A I asked him, are you okay. I said, are you
14 hurt. He said no. He kept on repeating those three
15 statements I said.

16 Q That was, my baby, oh my God. After you
17 ascertained that he wasn't hurt or injured, what did
18 you do?

19 A I asked about the children. I asked him about
20 the small children first, see if the kids were okay
21 and he had the kids. He was, during the questioning,
22 we were just asking -- ascertaining was he okay. He
23 was yelling to my answers. I said, just calm down.

24 And he would calm down real quick to answer my
25 questions. And then he would look around and start

1 yelling again.

2 Q So did you ascertain if the children were
3 okay?

4 A Yes, they did appear fine.

5 Q And once you ascertained that the children
6 were okay, what was the next thing that you did?

7 A Try to get information on what happened to see
8 if the suspect was still inside, or if he can add any
9 information to the initial investigation that could
10 be broadcast to -- if there was a suspect if he had
11 fled, broadcast it to other officers in the area
12 stating the suspect was involved, what he was
13 wearing, you know, gather some information.

14 Q So at that point you were gathering
15 information?

16 A Yes.

17 Q At that point who else, if anybody, is there
18 from law enforcement?

19 A I was focused on him and the children.
20 Officer Applebee was next to me. I believe Officer
21 Inabinett arrived on scene a short time later,
22 Sergeant Burn a short time later. But I was more
23 focused on the defendant and the two children to make
24 sure they were okay.

25 Q What were they doing when you focused on them,

1 if anything?

2 A Just his behavior, just yelling and screaming
3 and trying to calm him down. Another thing we do
4 when we arrive on the scene is we separate witnesses.
5 I established a relationship and make sure the kids
6 were okay, no one needed EMS. We were going to
7 separate and talk since we had crime scene there, a
8 serious crime scene, we wanted to separate all the
9 witnesses involved and get their stories so there is
10 no confusion.

11 Q Did that happen at that point?

12 A Yes. After I found out no one was injured or
13 the children weren't injured, you know, I had Officer
14 Applebee take the children and keep them away so that
15 we could see them, and just make sure they were okay.
16 I can start talking to him and try to gather
17 information.

18 Q Without getting into what anybody said, did
19 you talk to people that there were out there?

20 A During the course of the initial
21 investigation, after I got to talk to him, I was
22 looking around. I seen witnesses -- not witnesses,
23 sorry, some of the neighbors had directed Officer
24 Applebee, saying you need to talk to him. You need
25 to talk to him. And it aroused our suspicion, what

1 is going on? Why are we talking to him?

2 Q Did they mean the defendant?

3 A Yes.

4 Q Were there other people out there that you
5 talked to sort of try to figure out what the
6 situation was?

7 A Yes. I spoke with two residents in that area.

8 Q And that was -- who were those people?

9 A Latisha Williams and Tianai Lee.

10 Q Was there somebody else you talked to?

11 A Yes, Ellesse James.

12 Q Would you have gotten written statements from
13 them?

14 A At that point investigators would go on scene,
15 because it was a major scene. They investigators
16 will get the detailed statements. They are more
17 trained and they have more time. My job is just to
18 gather preliminary information for the report and
19 disseminate it to whoever needed it.

20 Right now though it was a crime scene, an open
21 crime scene and we wanted to establish there were no
22 other suspects.

23 Q And you would relay that information to those
24 other people?

25 A Via radio, yes.

1 Q Or if they were on the scene?

2 A Yes.

3 Q So you talked to three individuals, Ms. Lee,
4 Ms. Williams and Ms. James?

5 MR. GRIMES: Leading.

6 THE COURT: Sustained, leading.

7 Q (By Mr. Williams) How many people did you
8 talk to?

9 A I talked to three, three subjects. They were
10 all -- after I spoke with them, they had given me
11 some information, I had them all separated in
12 different parts of the housing complex, told to stay
13 there.

14 Q And there was the two children were there,
15 too, right?

16 A Yes.

17 Q Without getting into anything they may or may
18 not have said, did you try to talk to them?

19 A Yes. They appeared calm. A little nervous
20 about what had happened. They were kind of scared,
21 but they weren't crying. They were very articulate
22 what they told me.

23 Q Were they responsive to you, meaning you could
24 ask them questions?

25 A Yes.

1 Q Which of the two children did you speak to
2 without getting into what they said?

3 A I spoke to both of them. But I more or less
4 talked to [Minor 1]. I questioned her if was she okay.
5 And who was that upstairs, and she told me she was
6 and told me what happened in her words.

7 Q After you spoke with those individuals out
8 there, was there any other role you had in the case
9 at that point?

10 A At that point, after I talked to [Minor 1],
11 Lieutenant Hill and some more officers arrived on
12 scene. I showed them each witness or each person
13 that needed to be talked to. They gathered their
14 information. I just stood by with the juveniles
15 while Officer Inabinett stood by with Mr. Wilson.

16 Q What was your role in the case after that?

17 A I gathered all the information, spoke with
18 sergeant Ambrose, spoke with Lieutenant Hill,
19 gathered the witness information, and I completed the
20 initial report.

21 Q Who was the investigation turned over to -- as
22 the patrol officer, who does it go to from you?

23 A Whatever detective that arrives at the scene
24 is assigned to it. It would be Sergeant Goldstein.
25 We advise him of the situation.

1 Q You told him the things you had heard from
2 those individuals?

3 A Yes.

4 MR. WILLIAMS: Nothing else of this witness.
5 Thank you, Your Honor.

6 THE COURT: Any cross-examination of the
7 witness?

8 MR. GRIMES: Yes, ma'am.

9 THE COURT: You may proceed.

10 CROSS-EXAMINATION

11 BY MR. GRIMES:

12 Q Good afternoon, Officer Feeder.

13 A Hi.

14 Q You said when you arrived that you saw Mr.
15 Wilson?

16 A Yes, sir.

17 Q And he was upset?

18 A He appeared to be so.

19 Q Distraught?

20 A He was being very loud, and in my opinion
21 dramatic.

22 Q Dramatic?

23 A Yes. He was being very vocal. He was -- kept
24 repeating the same things, same statements.

25 Q And you said those statements he was saying,

1 he was yelling very loudly, no, no, no, don't take my
2 baby?

3 A And also, oh my gosh, she is dead.

4 Q And do you recall how many times he said that
5 while you were with him?

6 A It was kind of a chaotic situation. He kept
7 on repeating it. I cannot give you a number of how
8 many times he said it. It stuck in my mind for me to
9 put it in my report.

10 Q Was it a lot?

11 A Yes.

12 Q And when you saw him, he had two children in
13 his arms?

14 A Yes.

15 Q When he came down, he did not try to run from
16 you, did he?

17 A No, he did not.

18 Q And I believe in the past maybe you've
19 investigated some cases at the city projects?

20 A Yes.

21 Q Sometimes when you sort of drive by, people
22 just run for no reason?

23 A Sometimes.

24 Q And that arouses your suspicion?

25 A It would arouse my suspicion.

1 Q Flight, evidence of guilt?

2 A Not necessarily. Not always.

3 Q But you use that sometimes when you testify in
4 a preliminary hearing if someone runs from you?

5 A Based on the circumstances, and there are
6 other variables.

7 Q But it can be evidence of guilt?

8 A It can be.

9 Q And Mr. Wilson did not run from you?

10 A No, he did not.

11 Q Do you know who called 911?

12 A I do not know.

13 Q Do you know what happened in that apartment
14 that night?

15 A I do not know what happened in that apartment
16 that night.

17 Q Now you prepared an incident report in this
18 case?

19 A Yes.

20 Q Let me ask you a few questions about that.

21 A Sure.

22 Q How important are incident reports?

23 A Incident reports are very important.

24 Q Why is that?

25 A Because it documents or dates our times of

1 arrival, who was at the scene, who the complainants,
2 the victims, the suspects are, if there are any
3 suspects on scene. It's very important we be as
4 detailed as possible on the reports.

5 Q And you want to be fair in the reports?

6 A Yes. You need to be objective in the report.

7 Q And accurate?

8 A Yes.

9 Q And complete?

10 A Complete.

11 Q Truthful?

12 A Truthful.

13 Q And it's like a lot of boxes on your report
14 and stuff; is that correct?

15 A Yes, there is.

16 Q And is it important to put down the type of
17 offense that someone is charged with or you are
18 investigating?

19 A Yes, sir, it is.

20 Q Let me ask you couple questions about this
21 homicide. Now as I understand in South Carolina law,
22 there is no law against homicide you have murder,
23 manslaughter; is that correct?

24 A That's correct.

25 Q Homicide would cover both of those?

1 A On the title of the report, there's a
2 difference between the title on the report and the
3 charge. They are two different incidents.

4 Q And on your report you put the title of
5 homicide?

6 A Yes, that's the title.

7 Q And there's nothing in there about burglary,
8 is there?

9 A No.

10 Q And there is no kind of forced entry to this
11 apartment, is there?

12 A At that time, no.

13 Q And you gave this report to Sergeant Burns for
14 his approval?

15 A Yes, I did. Sergeant Burns signed off on it.

16 Q He did not ask you to go back and make any
17 corrections or additions?

18 A Possibly, maybe spelling or grammar errors
19 where he would correct that, point that out to me.

20 Q Nothing of significance though?

21 A No. We went over all the information prior to
22 writing the report and met with everybody involved
23 with this incident, gathered their information and
24 put it in the report. No one was left out in the
25 initial call.

1 Q And would you have met with Sergeant Ambrose?

2 A Yes, I spoke with Detective Ambrose.

3 Q And in your report, you don't have anything
4 about Mr. Wilson saying, why did you do this?

5 A Sergeant Ambrose did not tell me that at the
6 time of the incident.

7 Q Officer Feeders, in your report, after you met
8 with everybody, put all the details in there, you
9 don't have anything in your report about Mr. Wilson
10 saying, why did you do this?

11 A I was not advised of that.

12 Q And Sergeant Burns signed off on this?

13 A Yes.

14 MR. GRIMES: One moment, please, Your Honor.

15 THE COURT: Uh-hum.

16 MR. GRIMES: Thank you, Your Honor. We have
17 no further questions.

18 THE COURT: Any redirect of the witness?

19 MR. WILLIAMS: Briefly, Your Honor.

20 THE COURT: You may proceed.

21 REDIRECT EXAMINATION

22 BY MR. WILLIAMS:

23 Q Officer, I want to ask you about what Mr.
24 Grimes said, how it is labeled a homicide. Do you
25 have your report with you?

1 A Yes, I do.

2 Q That is under incident type?

3 A Yes.

4 Q How is that different than a charge?

5 A Because there is different incident types.

6 It's a way the report is labeled for purposes of the
7 specifics or whatnot. You could have an incident
8 type that does not match with a specific charge.

9 Q Whose responsibility in this case was it to
10 make a determination as to charges?

11 A We spoke with Lieutenant Hill and Sergeant
12 Burns, and the decision was made. Because --

13 Q Well, I just want to know whose decision was
14 it?

15 A Oh, ultimately, it's the supervisor.

16 Q Did you have any role in that decision?

17 MR. GRIMES: Could you repeat that? I did not
18 hear you.

19 THE WITNESS: Ultimately the supervisor has
20 the decision.

21 Q (By Mr. Williams) Would you have any role --
22 at least in your role in this case, did you have any
23 role in making that charging decision?

24 A No.

25 Q Would it be normal for you to write that

1 charge in your report if you didn't have authority on
2 it?

3 A No. Normally the supervisor would have caught
4 it. If there was an issue, it didn't match up, the
5 supervisor would have caught it and possibly changed
6 it.

7 Q And if you were the one that had to make the
8 decision as to charges, say you are the detective,
9 you are somebody else in this case, you would have
10 done more than what you did?

11 A Yes. Based on what the facts are gathered on
12 scene from the witnesses and the juveniles, there was
13 not any evidence after he was detained or prior to
14 being detained that would lead up to the title of the
15 report.

16 Q Mr. Grimes asked you about a burglary, did you
17 even go inside?

18 A No, I was not. I was never inside.

19 Q Whose job was that?

20 A To go inside and to investigate was Sergeant
21 Ambrose, the crime scene or detectives to make the
22 determination. My job was just to speak with him and
23 determine if they are okay, gather evidence and
24 information.

25 Q So you would not have known about anything

1 inside?

2 A No.

3 Q You would not have known about anything around
4 back?

5 A We walked the area, we checked the area. I
6 did not see any kind of forced entry. And in the
7 back, we inspected the whole apartment to make sure
8 there is anything we are missing.

9 Q Other officers would have made a final
10 assessment?

11 A Yes.

12 Q Crime scene officers do those kind of things?

13 A Yes, along with detectives and supervisors.

14 Q I want to ask you finally about what
15 Mr. Grimes asked you on cross-examination about
16 flight. And I think his question was flight is
17 evidence of guilt.

18 Approximately how many people have you
19 arrested in your career as a law enforcement officer?

20 A Approximately several hundred.

21 Q Did they all run?

22 A No.

23 MR. WILLIAMS: Thank you. Nothing else, Your
24 Honor.

25 THE COURT: Any further questions of the

1 witness?

2 MR. GRIMES: No, ma'am.

3 THE COURT: Any objection to the witness being
4 excused from the State?

5 MR. WILLIAMS: None, Your Honor.

6 THE COURT: From the defense?

7 MR. GRIMES: No, ma'am.

8 THE COURT: Sir, you are excused.

9 Counsel, please approach.

10 (Whereupon, a discussion was held at the bench
11 off the record.)

12 THE COURT: Ladies and gentlemen, we are going
13 to take advantage of this break in testimony to take
14 our luncheon recess. However, we will have an
15 extended luncheon recess today because the Court has
16 a matter of law to take up with the attorneys. That
17 will probably take us another 30 or 40 minutes before
18 we break.

19 So I don't want you all waiting while we are
20 still working. In addition to that, I have to give
21 the staff as well the attorneys an opportunity to eat
22 lunch as well. So we will resume at 2:30.

23 During this break, please do not discuss the
24 case among yourselves or with anyone else. Please do
25 not allow yourself to be exposed to any media reports

1 about this case. Please don't do any independent
2 research on the Internet. And again, please don't
3 have any contact with anyone in or about the
4 courthouse. It is very easy for an innocent
5 conversation to be observed by someone and
6 misconstrued.

7 Hope that you all have a good lunch, and we
8 will see you at 2:30. Return directly to your jury
9 room, and please leave your notepads in your seats.

10 (Whereupon, the jurors exit the courtroom.)

11 THE COURT: Are we ready to proceed with the
12 competency hearing with the child?

13 MS. CARDILLO: Yes, Your Honor.

14 THE COURT: Let's proceed.

15 You may proceed.

16 MS. CARDILLO: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 VOIR DIRE EXAMINATION

19 BY MS. CARDILLO:

20 Q Hey, Minor 1.

21 A Hi.

22 Q Can you talk into this microphone so that we
23 can all hear you? Why don't you try it out.

24 A Hi.

25 Q There you go. Good job. Now I'm going to ask

1 you some questions, okay?

2 A (Affirmative head shake.)

3 Q I'm going to need you to say yes or no to my
4 questions, okay?

5 A (Affirmative head shake.)

6 Q Can you do that? You're nodding your head.
7 Can you say yes or no?

8 A Yes.

9 Q Thank you. Now, what is your name?

10 A Minor 1 .

11 Q What is your last name?

12 A Minor 1 .

13 Q How old are you?

14 A Five.

15 Q Now, Minor 1 , do you go by Minor 1 or Minor 1 ?

16 A Minor 1 .

17 Q There we go. I just wanted to make sure I'm
18 saying your name right, okay? Now, you tell me if I
19 say something wrong, okay?

20 A (No response.)

21 Q Is that a yes?

22 A Yes.

23 Q Thank you. Now, Minor 1 , is it okay to tell
24 the truth or not?

25 A Tell the truth.

1 Q Is it good to tell the truth?

2 A Yes.

3 Q Do you know, is it bad to tell a lie?

4 A Yes, it's bad.

5 Q What happens to you if you tell a lie?

6 A You'll get a beating.

7 Q Now do you know -- do you know that it's
8 always important to tell the truth?

9 A Yes.

10 Q Now I'm going to ask you some questions. If I
11 said my hair -- well, what's your favorite color?

12 A Pink.

13 Q I can tell. You got a pretty pink shirt on
14 now.

15 A Pink and red.

16 Q Okay, there you go. Now if I said my hair was
17 pink, is that a truth or a lie?

18 A A lie.

19 Q Okay. Now, if I said I had on bright red
20 shoes -- can you see my shoes?

21 A No.

22 Q Okay. If I said had on bright red pants, red
23 pants on, would that be a truth or a lie?

24 A A lie.

25 Q Okay. Now, if I told you it was storming and

1 raining inside right now, it was raining?

2 A That would be a lie.

3 Q That would be a lie too, you're right.

4 Well, Minor 1, do you have any brothers or
5 sisters?

6 A My brother Minor 2.

7 Q How old is he?

8 A Two.

9 Q Two. Do you all get along?

10 A No. He likes to hit me.

11 Q Okay. Well, are you in school, Minor 1?

12 A Yes.

13 Q What's your teacher's name?

14 A Ms. Beck and Ms. Brown.

15 Q Do you have more than one teacher?

16 A I have two teachers.

17 Q Two teachers, okay. Do you have any -- where
18 do you go to school?

19 A Elementary.

20 Q What grade are you in?

21 A First grade.

22 Q Very good. Are you liking it this year?

23 A (Affirmative head shake.)

24 Q Are you learning a lot?

25 A Yes.

1 Q Okay. Do you have any favorite TV shows?

2 A (Affirmative head shake.)

3 Q What are they?

4 A Darwin and Hannah Montana.

5 Q You like Hannah Montana?

6 A (Affirmative head shake.)

7 Q Do you sing with her?

8 A (Affirmative head shake.)

9 Q Is that a yes?

10 A (Affirmative head shake.) Yes.

11 Q Thank you. Who do you live with?

12 A My granny and my daddy.

13 Q What's his name?

14 A Carl Lee. Carl Lee.

15 Q Okay. Well, what's your mommy's name? Do you
16 know your mommy's name?

17 A (No response.)

18 Q I will stop there. That's okay. Can I have
19 just a moment, your Honor?

20 A Christina.

21 Q Is that your granny?

22 A Uh-huh.

23 MS. CARDILLO: Okay. May I have just a
24 moment, Your Honor?

25 Your Honor, I have no further questions as far

1 as competency.

2 THE COURT: Mr. Grimes, do you have any
3 questions regarding competency?

4 MR. GRIMES: I'll defer to Ms. Mullaney.

5 THE COURT: Ms. Mullaney, do you have any
6 questions regarding competency?

7 MS. MULLANEY: Yes, just one second.

8 MR. GRIMES: I'm sorry, Your Honor. I have a
9 couple questions.

10 THE COURT: Okay.

11 VOIR DIRE EXAMINATION

12 BY MR. GRIMES:

13 Q Good morning, Minor 1.

14 A Good morning.

15 Q Do you know where you are at today?

16 A Uh-hum.

17 Q Do you know where you are at today?

18 A (Affirmative head shake.)

19 Q where are you at?

20 A In a courtroom.

21 Q Is it important to tell the truth in a
22 courtroom?

23 A Yes.

24 Q And why is that?

25 A Because that's good to do.

1 Q And do you know that you have to take an oath?

2 A Yes.

3 Q Do you know what an oath is?

4 A (Negative head shake.)

5 Q Do you understand the difference between
6 pretend and make-believe and the truth?

7 A (Affirmative head shake.) Yes.

8 Q Is that yes?

9 A (Affirmative head shake.)

10 MR. GRIMES: One moment, Your Honor.

11 I have no further questions, Your Honor.

12 THE COURT: Any questions from the state?

13 MS. CARDILLO: No, Your Honor.

14 THE COURT: Minor 1, you can step down for me.
15 Can you get down by yourself? Okay. You can go back
16 to your grandma.

17 Okay. I will be glad to hear any argument.

18 MS. CARDILLO: Your Honor, Minor 1 answered
19 age-appropriate questions. She knew the difference
20 between a truth and a lie. She knew the difference
21 between what happened to her and that it was bad to
22 tell a lie, and that it was wrong and what would
23 happen to her.

24 She knew her brother's name and how old he
25 was. She knew where she went to school, and gave all

1 the appropriate detailed information regarding where
2 she is at the age of five years old.

3 We believe she is competent to testify. I
4 would ask she be allowed to do so.

5 THE COURT: Anything, Mr. Grimes?

6 MR. GRIMES: Yes, ma'am. Under Rule 601, rule
7 waives for the presumption that some children aren't
8 competent, says every person is competent to be a
9 witness unless otherwise provided by statute and
10 these rules.

11 And then what happened in this book by Danny
12 Collins, State versus Needs, every witness who's
13 called to testify must be able to understand and take
14 an oath to tell the truth. The witness must believe
15 that the oath binds him or her to tell the truth.

16 When I asked Minor 1 if she understood what an
17 oath was, she did not know what an oath was.

18 THE COURT: She did say she knew what an oath
19 was. She answered your question unequivocally, and
20 quite frankly surprised me.

21 MR. GRIMES: I thought she said no.

22 THE COURT: That's really not what the burden
23 in this case law to establish, but I will entertain
24 your argument.

25 MR. GRIMES: Thank you, Your Honor. I hope

1 not too entertaining. That's essentially our
2 position, that as I understand her testimony, I may
3 have missed it, she said she did not understand what
4 an oath was and therefore would not be competent
5 under Rule 601.

6 THE COURT: Anything further from the State?

7 MS. CARDILLO: Your Honor, I think the State
8 has established the burden of proof and I would ask
9 again that she be allowed to testify.

10 THE COURT: Our case law mirrors 601, the
11 record should be clear rule 601 does not have
12 anything referring to an oath. 601 is very clear in
13 its wording. It says, A, general rule, every person
14 is competent to be a witness, except as otherwise
15 provided by statute or these rules.

16 Subsection B, disqualification of a witness.
17 A person is disqualified to be a witness if the Court
18 determines that; one, the proposed witnesses is
19 incapable of expressing himself concerning the matter
20 as to be understood by the Judge and the jury, either
21 directly or through interpretation by one who can
22 understand that; or two, the proposed witness is
23 incapable of understanding the duty of a witness to
24 tell the truth, which is substantially different from
25 the way it was worded for the record.

1 The Court would find for the record that the
2 child is competent to testify; that I have observed
3 her; that it is the duty of the trial judge to
4 preside over a hearing to determine if the witness is
5 competent.

6 We deferred by agreement, I guess, to some
7 extent because no one objected to the attorneys
8 asking questions of the minor. Those questions
9 reflected pretty much the questions that the Court
10 would have asked, which is her name, her age, how old
11 is she, what school she is attending, her teachers,
12 things regarding her ability to understand where she
13 is located, for what purpose she is here, and what
14 would be considered generally age-appropriate
15 questions.

16 I would note that we have two cases on point
17 that are very clear regarding the Court's
18 responsibility in determining the competency of the
19 child witness, those being State versus Hudnell
20 (phonetic) and South Carolina Department of Social
21 Services versus Dunn; one being a Supreme Court case
22 from 1987, the other being a Court of Appeal case
23 from 1987. Both of them, as I understand, are still
24 good law.

25 Those cases are very clear that a child's

1 competency to testify depends on showing to the
2 satisfaction of the trial judge that the child is
3 substantially rational and responsive to the
4 questions asked, and is sufficiently aware of the
5 moral duty to tell the truth and the probability of
6 punishment if he lies.

7 A child is competent to testify if he is
8 mature enough to understand questions and narrate
9 answers, to perceive facts accurately through the
10 medium of the senses, to recall them correctly, to
11 relate a true version of the facts received, to know
12 the difference between right and wrong, good and bad,
13 to understand that it is right or good to tell the
14 truth and wrong or bad to lie. To be willing to tell
15 the truth and to fear punishment if he lies.

16 Again, the Court has been very clear to
17 articulate that the question of competency of the
18 child witness is to be determined by the trial judge
19 after personal observation of the child's demeanor
20 and response to inquiry on voir dire examination,
21 that we have just completed.

22 And our courts have also been very clear to
23 articulate a child in tender years is not, per se,
24 incompetent because of age and may be qualified to
25 give evidence.

1 Clearly this child is qualified to give
2 evidence. I have had the opportunity observe her.
3 she is inordinately mature for a five year old. She
4 is able clearly to articulate, respond to
5 age-appropriate questions. She understands the
6 difference between the truth and a lie. And she also
7 understands the consequence of telling a lie.

8 And again, these cases very appropriately
9 mirror Rule 601, which is subsection A. Every person
10 is competent to be a witness, except as otherwise
11 provided by statute or these rules.

12 And subsection B, a person is disqualified if
13 they meet one or two or both criteria. The proposed
14 witness is incapable of expressing himself in terms
15 of matters to be understood by the judge or jury,
16 either directly or through interpretation by one who
17 can understand it.

18 Clearly she is capable of expressing herself
19 and is articulate and able to be understood certainly
20 by me. And I can extrapolate that she will be able
21 to articulate well enough for the jury to understand
22 her.

23 Or that the proposed witness is incapable of
24 understanding the duty of a witness to tell the
25 truth. Clearly she is capable of understanding the

1 duty to tell the truth. In response to those
2 questions, she was very clear that she understood
3 what the truth was. She understood what a lie was.

4 She was given age-appropriate examples of
5 those two things and was able to articulate that for
6 the Court. And in addition to that, understood very
7 clearly the consequences of telling a lie.

8 In addition to that, at five, she is already
9 in the first grade, which also tells me a good bit
10 about her intellectual capacity. She knew the names
11 of her teachers, she knew who she lives with.

12 Very clearly, I think she is capable of
13 understanding what she is -- the consequences, again,
14 of telling the truth or a lie.

15 And I am satisfied that the appropriate
16 showing has been made. And that she is aware of the
17 moral duties to tell truth and the possibility of
18 punishment if she lies.

19 She is clearly able to understand questions
20 and narrate answers. She knows the difference
21 between right and wrong, good and bad. And she
22 understands it is right or good to tell a truth and
23 wrong or bad to tell a lie. And she fears punishment
24 if she lies, fear of punishment if she lies.

25 Therefore, I find that she is competent,

1 consistent with our rules of evidence and prevailing
2 case law.

3 We will break for lunch. I will see you all
4 at 2:30.

5 MS. CARDILLO: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 (Whereupon, a recess was taken.)

8 THE COURT: Is the state ready to proceed?

9 MS. CARDILLO: Yes, Your Honor.

10 THE COURT: Is the defense ready to proceed?

11 MR. GRIMES: Yes, Your Honor.

12 THE COURT: Please bring in the panel.

13 (Whereupon, the jurors enter the courtroom.)

14 THE COURT: Ladies and gentlemen, I hope you
15 all had a good lunch. We will now resume the trial.
16 You may proceed.

17 MS. CARDILLO: Thank you, Your Honor. The
18 State calls Minor 1.

19 THE COURT: Mr. Robinson, can you walk her up
20 for me. You can walk her up.

21 MS. Minor 1,
22 after having first been duly sworn to state the
23 truth, the whole truth and nothing but the truth,
24 testified on her oath as follows.

25 THE COURT: Let the record reflect she nodded

1 yes.

2 DIRECT EXAMINATION

3 BY MS. CARDILLO:

4 Q Hey [Minor 1].

5 A Hey.

6 Q How are you?

7 A All right.

8 Q Are you okay?

9 A (Affirmative head shake.)

10 Q So let me ask you, what's your favorite color?

11 A Red.

12 Q Got any other favorite colors?

13 A Pink.

14 Q I see you like pink. Is that your favorite
15 color, the pink on your shirt? And who's on your
16 shirt, what's that lady?

17 A Princess.

18 Q Princess? Well, I like your necklace. What
19 kind of necklace is that?

20 A Starbrite.

21 Q Okay. Well, let me -- I'm going to ask you a
22 few questions, okay?

23 A (Affirmative head shake.)

24 Q Is that okay with you?

25 A (Affirmative head shake.)

1 Q Can you say yes or no into the microphone for
2 me?

3 A Yes.

4 Q Thank you. It gets loud, doesn't it?

5 A (Affirmative head shake.)

6 Q You are doing a good job, okay? Now, how --
7 what's your name, [Minor 1] ? What's your full name?

8 A [Minor 1].

9 Q So do you go by [Minor 1] or [Minor 1] ?

10 A [Minor 1].

11 Q Okay, that's what you like? Going by [Minor 1] ?

12 A (Affirmative head shake.)

13 Q How old are you, [Minor 1] ?

14 A Five.

15 Q Now, I'm going ask you A few questions. Is it
16 good to tell the truth?

17 A Yes.

18 Q And is it -- is it bad to tell a lie?

19 A No.

20 Q Is it wrong to tell a lie?

21 A (Affirmative head shake.)

22 Q Is that yes?

23 A Yes.

24 Q Okay. What happens to you if you tell a lie?

25 A You'll get a beating.

1 Q Now you know it's always important to only
2 tell the truth, right?

3 A (Affirmative head shake.)

4 Q Is that a yes for me?

5 A Yes.

6 Q Okay. Now if I said my hair was your favorite
7 color pink, would that be a truth or a lie?

8 A A lie.

9 Q Is my hair pink?

10 A No.

11 Q So my -- what color's my hair?

12 A Brown.

13 Q Okay. Now if I told you that I had on a -- a
14 red shirt, a red jacket, would that be the truth or a
15 lie?

16 A A lie.

17 Q So what color is my jacket?

18 A Black.

19 Q Pretty close. You're pretty close. Now do
20 you have any brothers or sisters?

21 A (Affirmative head shake.)

22 Q What's their names?

23 A **Minor 2**.

24 Q How old is he?

25 A Two.

1 Q And do you guys play together?

2 A Yes.

3 Q Do you get along?

4 A Yes.

5 Q What do you play together?

6 A We play with my castle thing.

7 Q Okay. Now are you in school?

8 A Yes.

9 Q Where do you go to school, [REDACTED] Minor 1 [REDACTED]?

10 A [REDACTED] Elementary.

11 Q And do you have any -- what's your teachers'
12 names?

13 A Ms. Beck and Ms. Brown.

14 Q Do you like them?

15 A (Affirmative head shake.) Yes.

16 Q Okay. Do you have any favorite TV shows?

17 A (Affirmative head shake.)

18 Q What are they?

19 A Darwin and Hannah Montana.

20 Q Now do you sing along with Hannah Montana?

21 A (Affirmative head shake.)

22 Q Did you like her songs?

23 A (Affirmative head shake.)

24 Q Yes?

25 A Yes.

1 Q Okay. Now who did you live with, [Minor 1]? Do
2 you live with -- who did you live with?

3 A My granny.

4 Q Okay. And what is your -- where is your
5 mommy?

6 A Dead.

7 Q Okay. Well, where -- what is your daddy --
8 daddy's name? Do you know your daddy's name?

9 A (Affirmative head shake.)

10 Q Can you tell me what daddy's name is?

11 A Tony.

12 Q Okay. Well, you said your mommy's dead. What
13 happened to your mommy?

14 A I was sleeping, and I went upstairs and then
15 -- I went upstairs and, no. I was sleeping, and I
16 wake up. And I went in the bathroom and went to the
17 bathroom. And I was in the room, and I tried to wake
18 up my momma, but she wouldn't wake up.

19 And then me and [Minor 2] went under the pillow.
20 And after that, I mean, Tony had went outside and
21 said somebody shoot my baby.

22 Q Okay. Well, when you said you went upstairs
23 to -- and you tried to wake your mommy, where was
24 your daddy?

25 A Outside saying somebody shoot my baby.

1 Q Okay.

2 A But the police, they take him in a car.

3 Q Okay. Well, what did you see or what did you
4 hear that made you go upstairs?

5 A A gunshot.

6 Q Okay. And when you heard this, where did you
7 go?

8 A Upstairs.

9 Q Where upstairs?

10 A In my momma room.

11 Q Was your daddy there then?

12 A Yes.

13 Q What was he doing?

14 A He done put the gun under the bed.

15 Q And then what happened?

16 A After that, Ellesse -- Ellesse --

17 Q Well --

18 A Me and Ellesse and Minor 2 was sitting down. And
19 then my grandma thought Minor 2 was dead, but my momma
20 was. When I see Minor 2, we -- that's when we know my
21 momma dead.

22 MS. MULLANEY: Objection.

23 THE COURT: Basis?

24 MS. MULLANEY: I'm sorry.

25 THE COURT: Withdrawn.

1 Q (By Ms. Cardillo) well, when you went
2 upstairs and saw your daddy and -- well, saw your
3 mommy, where was your mommy?

4 A In the bed. But the ambulance got her in the
5 chair and tried to wake her up, but she didn't wake
6 up. And then they put her in another car.

7 Q well, before that, when you went upstairs and
8 you saw your mommy, where was -- where was **Minor 2?**

9 A On top of her sleeping.

10 Q On top of her? where was that, right here?

11 A Uh-huh.

12 Q Okay. Now, did you see your daddy before you
13 heard the gunshot?

14 A Yes.

15 Q where did you see him?

16 A In her room.

17 Q Can you hold on for me one second? I might
18 have another question for you, but I don't know. Can
19 you wait just one second for me?

20 A (Affirmative head shake.)

21 MS. CARDILLO: Okay. Thank you, **Minor 1**, for
22 answering my questions. I really appreciate it. Now
23 this nice young lady, Ms. Marybeth Mullaney, she is
24 going to ask you some questions, too, okay?

25 THE WITNESS: (Affirmative head shake.)

1 MS. CARDILLO: She will be right up here, all
2 right?

3 THE COURT: Any questions in cross-examination
4 of the witness?

5 MR. GRIMES: May we have one moment, Your
6 Honor?

7 MS. MULLANEY: Your Honor, we don't have any
8 questions.

9 THE COURT: Any exception to the witness being
10 excused from the State?

11 MS. CARDILLO: None from the State, Your
12 Honor.

13 THE COURT: From the defense?

14 MR. GRIMES: No, ma'am.

15 THE COURT: Minor 1, you can go down with
16 Mr. Robinson for me, okay? Thank you.

17 You may call your next witness.

18 MS. CARDILLO: Thank you, Your Honor. The
19 state calls Dr. Don Elsey.

20 MR. DONALD ELSEY,
21 after having first been duly sworn to state the
22 truth, the whole truth and nothing but the truth,
23 testified on her oath as follows:

24 THE COURT: You may proceed.

25 MS. CARDILLO: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MS. CARDILLO:

3 Q Dr. Elsey, where are you employed?

4 A D. Norton Low Country Children's Center.

5 Q And what is D. Norton Low County Children's
6 Center?7 A We are a child advocacy center. Children are
8 referred to us if there's a concern about something
9 they may have experienced.

10 Q And for how long have you been employed there?

11 A Thirteen years.

12 Q What is your role there?

13 A I am the clinical director, which means I
14 supervise all the therapists who conduct forensic
15 interviews and treatment. I also see children myself
16 for forensic interviews.17 Q Are those essentially what your
18 responsibilities at the Low Country Children Center
19 are, or is there something more?20 A Those are essentially my duties there. I do a
21 lot of also training of not only staff at our place,
22 but training around the local area and the state.23 Q. I'm sorry. Can you say again how long have
24 you have been employed at the Low County Children's
25 Center?

1 A Thirteen years.

2 Q And where were you employed prior to -- I'm
3 going to shorten -- what's the short terminology for
4 the Low Country Children's Center?

5 A I'm sorry?

6 Q Is there -- is there an acronym for the Low
7 Country Children's Center?

8 A DNLCC.

9 Q Do you mind if I just call it LCC for short?

10 A That's fine.

11 Q I might trip over my words a few times saying
12 it otherwise.

13 where were you employed prior to the LCC?

14 A Palmetto Behavioral Health, which is the
15 psychiatric hospital here in Charleston.

16 Q And how long were you employed there?

17 A Approximately 12 years.

18 Q what is your professional experience, doctor?

19 A My professional experience?

20 Q Yes, sir.

21 A I again, in my 13 years at the Low Country
22 Children's Center, I supervise the clinical staff in
23 addition to doing forensic interviews and treating
24 children when there has been concerns about abuse and
25 trauma in their life.

1 I have been working with children, adolescents
2 and adults in psychiatric settings, which means
3 making sure they get proper treatment and follow the
4 treatment plan, that sort OF thing. In addition, I
5 have done quite a bit OF training, as I mentioned
6 earlier.

7 I'm a licensed professional counselor and a
8 licensed professional counselor supervisor. So I
9 supervise other therapists towards their licensure as
10 licensed professionals.

11 Q This may be a redundant question, but are you
12 licensed as a professional counselor?

13 A I am.

14 Q And in what areas specifically?

15 A The license really isn't particular to that.

16 Q Okay.

17 A It's a licensed professional counselor in
18 counseling.

19 Q Okay. What is your educational background?

20 A I have a graduate degree in clinical
21 counseling. I have a doctorate in childhood
22 development.

23 Q And could you please explain your specialized
24 training in the field of forensic interviews of
25 children?

1 A Yes. I have been trained nationally, as well
2 as statewide in forensic interviewing. In South
3 Carolina, to do forensic interviews, you do a course
4 called finding words, which is taught in Columbia.
5 It's a weeklong course. It teaches you methodology
6 of interviewing children.

7 I've also conducted trainings myself to
8 Department of Social Services, other therapists on
9 forensic interviewing.

10 Q Have you ever spoken or -- I think you
11 answered this a little bit -- but have you spoken or
12 been a presenter at any training events, specialized
13 training events?

14 A Yes. I'm the past president of the South
15 Carolina Chapter of the American Professional Society
16 on the Abuse of Children. In that regard, I've
17 presented on the statewide and local level on a
18 variety of topics on child abuse and child
19 maltreatment with families and children.

20 Q Have you ever met -- have you ever testified
21 in court before as an expert in the forensic
22 interviewing of children?

23 A Yes, ma'am.

24 Q And how many times approximately?

25 A Approximately 75.

1 Q Have you ever testified in this court in this
2 circuit?

3 A Yes, ma'am.

4 Q And how many times have you done that?

5 A Approximately 15 to 20.

6 MS. CARDILLO: At this time, Your Honor, the
7 State would offer Dr. Don Elsey as an expert in the
8 field of forensic interviewing of child abuse and
9 child development.

10 THE COURT: Okay. Any question or objections
11 as to his qualifications?

12 MR. GRIMES: Not as to his qualification. We
13 have -- may we approach the bench?

14 THE COURT: You may.

15 (Whereupon, the following discussion was held
16 at the bench.)

17 THE COURT: Mr. Foreman, ladies and gentlemen,
18 I have a matter of law I need to take up with the
19 attorneys. It should be very brief.

20 During this break, please do not discuss the
21 case. Please leave your notepads in your seats.

22 (Whereupon, the jurors exit the courtroom.)

23 THE COURT: For what purposes is the witness
24 being offered, Ms. Cardillo?

25 MS. CARDILLO: Your Honor, the witness is

1 being offered as an expert in the field of forensic
2 interviewing with children, that he met with Minor 1
3 through the course of the investigation. And it goes
4 towards the fact that we're also trying to present to
5 the jury that she wasn't coached. Even if the
6 defense technically is stipulating, we still have to
7 put that towards the jury --

8 THE COURT: You would put something before the
9 jury that's an issue with the State. How is her
10 being coached an issue, if that's not been raised?
11 How is that -- how is that --

12 MS. CARDILLO: I still think that these are
13 facts that need to go towards the jury for a clear,
14 precise picture of the overall case itself. This was
15 during the course of the investigation. It's the
16 credibility of Minor 1.

17 THE COURT: Give me a synopsis of what --
18 well, he can't -- he can't --

19 MS. CARDILLO: Brief questioning, Your Honor?

20 MR. GRIMES: Goes to bolster or vouch.

21 THE COURT: Yes. He can't bolster or vouch
22 for her credibility. He is not going to be able to
23 say anything she said. I'm just trying to figure out
24 how it's relevant. That's Mr. Grimes' objection.

25 I need to know what facts or consequences in

1 this case does it make more or less probable?

2 MS. CARDILLO: Your Honor, it makes it more or
3 less probable that she's a credible witness. It goes
4 towards the fact of essentially her credibility. Him
5 testifying --

6 THE COURT: Give me a synopsis of what he is
7 going to say.

8 MS. CARDILLO: Your Honor, essentially he's
9 going to say is he's going to go through -- he was
10 asked by law enforcement --

11 THE COURT: I'm sorry, I can't hear you.

12 MS. CARDILLO: If you were asked by law
13 enforcement to interview children as a part of the
14 investigation; why is it important to do this; turn
15 your attention to when he met Minor 1; were you asked
16 by the police to interview Minor 1; did he meet with
17 her; during this interview did you document --
18 document your findings; did you determine that she
19 was competent; age-specific questions; without going
20 into what she told him, was she articulate; did she
21 understand the difference between a truth and lie
22 scenario.

23 THE COURT: I've already determined she is
24 competent. I'm going to instruct the jury she is
25 competent. Whatever weight they give her testimony

1 is for them to determine.

2 MS. CARDILLO: I think also, Your Honor, it
3 goes toward the entire picture of the jury, and what,
4 as through the course of the investigation, it goes
5 toward the relevant fact that the police, the
6 investigation all went through the proper channels to
7 get to this point.

8 I see that it is being very relevant to the
9 fact in case that defense may very well come up and
10 argue.

11 THE COURT: Which is? They have indicated
12 they're going to stipulate she wasn't coached.
13 They're not going to argue that.

14 MS. CARDILLO: Your Honor, I still think that
15 the State has the opportunity and should have the
16 opportunity to argue to the jury the credibility of
17 her, that she met with someone to -- through the
18 course of the investigation, she met with a
19 professional, that this just wasn't a year and a half
20 later that she just came up with it, we just all of a
21 sudden talk to her.

22 And she was seeing somebody. And she was
23 deemed articulate right after the incident. She was
24 deemed very competent by himself and the reasons why
25 he met with her.

1 And it also can go towards how adults can
2 remember things differently than children can.

3 THE COURT: Mr. Grimes, what is your
4 objection?

5 MR. GRIMES: It's relevance. Every time you
6 asked the solicitor why they're offering it, it goes
7 back to credibility issue, goes back in a way to try
8 to bolster or vouch for her credibility.

9 Sergeant Goldstein talked to her that night.
10 He can testify that she was articulate. We are not
11 saying she was coached. The only issue in this case
12 was whether it was accidental or not. She does not
13 testify to anything to make that probative of that
14 fact one way or the other.

15 THE COURT: Anything further from the State?

16 MS. CARDILLO: No, Your Honor.

17 THE COURT: I want to hear his testimony in
18 camera. You may proceed.

19 You don't have to ask every question, but I
20 need a clearer picture exactly what you are going ask
21 him.

22 IN-CAMERA EXAMINATION

23 BY MS. CARDILLO:

24 Q Dr. Elsey, are you often asked by law
25 enforcement to interview children as a part of an

1 investigation?

2 A Yes, ma'am, we are.

3 Q And why is it important to do this?

4 A It's important that someone who interviews
5 children, particularly young children, is aware of
6 the developmental differences that young children
7 need when they're asked question.

8 It's important they're asked questions in a
9 way that it's open versus any type of leading or
10 suggestible-type question. And we -- part of our
11 agreement is with all the local law enforcement, we
12 would provide that service to them as necessary.

13 Q I'm going to kind of go through these
14 questions very quickly. You, of course, are familiar
15 with [Minor 1]. Were you asked by law enforcement to
16 interview [Minor 1]?

17 A I was.

18 Q How soon after July 8th of '07, did you
19 interview [Minor 1]?

20 A I saw her on July 26th, and I saw her August
21 13th.

22 THE COURT: Naturally -- let me interrupt you,
23 Dr. Elsey. Go through the questions -- I need to
24 hear the questions is all I want.

25 MS. CARDILLO: Yes, ma'am.

1 BY MS. CARDILLO:

2 Q I'm going to turn your attention to July of
3 '07. Are you familiar with [Minor 1]?

4 THE COURT: No, no. You tell me the
5 questions. I don't want him to answer.

6 MS. CARDILLO: I'm sorry.

7 THE COURT: I have determined what I need to
8 hear are the questions, not the answers.

9 MS. CARDILLO: Okay.

10 THE COURT: I can pretty much anticipate what
11 the answers are going to be.

12 MS. CARDILLO: Did you meet with [Minor 1]; when
13 did you meet with her; during an interview with the
14 child, are these interviews documented; how are they
15 documented; why is this done.

16 When you meet with a child, do you try to
17 determine if they are competent; what does it mean to
18 determine if a child is competent; is this age
19 specific to determine if the child is competent; was
20 [Minor 1] deemed competent by herself; how do you
21 determine this.

22 Did you talk with her about the investigation
23 of what happened; did she tell you what happened;
24 without going into what she said, was she articulate,
25 and did she explain what happened; did she understand

1 what it meant between -- the difference between a
2 truth and a lie or wrong versus right.

3 Do children remember events differently than
4 how an adult would remember an event; is there
5 anything else in your experience to determine how a
6 child would remember an event; and does it make a
7 difference on how a child would remember or recall an
8 event if the event was traumatic, and how so.

9 THE COURT: Now, I need to know as a threshold
10 matter, because you never answered my question,
11 Mr. Grimes, are there any objections or questions
12 regarding Dr. Elsey's standing as an expert in the
13 area for which the State has proffered him?

14 MR. GRIMES: No, ma'am.

15 THE COURT: Now that having been determined,
16 the Court finds that his testimony is relevant; that
17 any probative value is outweighed by any potential
18 prejudice. It is admissible. The issue of the
19 child's competency is an issue for the jury to
20 determine. So be very, very careful in the way you
21 ask the question.

22 As an expert he can render an opinion, so your
23 objection would go to weight. It would be up to you
24 to cross-examine him regarding those issues.

25 MR. GRIMES: I would make a brief motion in

1 limine regarding any question about whether the truth
2 versus lie, wrong versus right.

3 THE COURT: I think he can go through the
4 criteria he used in examining her. He cannot say
5 what she said. As an expert, he can testify as to
6 any opinions our conclusions he drew.

7 MR. GRIMES: I don't think he can testify his
8 opinion is that it's truthful.

9 THE COURT: No, but he can testify he sensed
10 she is competent.

11 MR. GRIMES: It's a matter of law.

12 THE COURT: No, it's not a matter of law, it's
13 a factual issue for the jury. As a threshold, as the
14 gatekeeper I decide if she is competent to proffer
15 coming before the jury. Once I make that decision,
16 it's the jury who decides who to believe, who not to
17 believe.

18 And in the Court's jury instruction on a
19 child's competence to testify, they will be given a
20 whole litany of things, and they decide for
21 themselves whether her testimony is competent.

22 MR. GRIMES: Thank you.

23 THE COURT: Your objection is noted and
24 overruled. Bring in the panel.

25 (Whereupon, the jurors enter the courtroom.)

1 THE COURT: Thank you, ladies and gentlemen.
2 We will now resume with the witness's testimony. Are
3 there any objection or questions regarding the
4 witness's admission as an expert -- what area are you
5 offering him?

6 MS. CARDILLO: Your Honor, State is offering
7 Dr. Elsey as an expert in the field of forensic
8 interviewing of child abuse and child development.

9 THE COURT: Any objection or questions
10 regarding his qualifications, Mr. Grimes?

11 MR. GRIMES: No, ma'am.

12 THE COURT: Any objection to him being
13 admitted as an expert for that limited purpose?

14 MR. GRIMES: No, ma'am.

15 THE COURT: So admitted, you may proceed.

16 MS. CARDILLO: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 Q (By Ms. Cardillo) Dr. Elsey, are you often
19 asked by law enforcement to interview children as
20 part of an ongoing investigation?

21 A Yes, ma'am.

22 Q Why is it important to do so?

23 A Because those of us at the Low Country
24 Children's Center are typically in a developmentally
25 appropriate area. Interviewing a 3 year old is very

1 different than an 8 year old, than a 16 year old. We
2 have the ability at our place to have an interview
3 while law enforcement and any other agency observes
4 and can observe so the child does not have to go
5 through a sequence of interviews.

6 Q So you are trying to -- please correct me if
7 I'm wrong -- interview a child once versus by several
8 different people?

9 A That's correct. Yes, ma'am.

10 Q I'm going to turn your attention to July of
11 2007. And are you familiar with Minor 1 ?

12 A I am.

13 Q And how are you familiar with Minor 1 ?

14 A She was referred to our center for an
15 interview because there were concerns about what she
16 may or may not have experienced.

17 Q Were you asked to interview Minor 1 by law
18 enforcement?

19 A I was.

20 Q Did you meet with her?

21 A I did.

22 Q And when did you meet with her?

23 A July 26 of 2007. And I met with her again on
24 August 13, 2007.

25 Q During these interviews with children, are

1 they documented?

2 A They are.

3 Q How so?

4 A We have two ways to document. One we do a DVD
5 of the interview. It can be kept in the record, held
6 compatible to that. The other is written form called
7 our child family trauma assessment form. That's
8 where we have the information about what the child
9 said and opinions about what the child said.

10 Q And when you -- let me ask you this. what
11 does it mean for a child to be competent? what does
12 that mean?

13 A In our setting, it's determined if a child can
14 answer the questions.

15 Q If I'm using the wrong terminology, competent
16 versus answering questions, let me know.

17 A They can provide information that we know is
18 accurate. For example, can they articulate, can they
19 say their age, can they say who they live with, can
20 they tell their school information. Can this child
21 answer questions in an accurate manner and has the
22 ability to do that in this manner.

23 Q Did you do this with Minor 1 ?

24 A I did.

25 Q Without you going into her response, what type

1 of questions did you ask Minor 1 to determine whether
2 she accurately or competently answered the questions?

3 A Name, age, with whom she lives, school, that
4 type of information.

5 Q And from this information, what was your
6 opinion regarding her?

7 A I felt she could actually answer those
8 questions in an accurate manner.

9 Q Now do children remember events differently
10 than how an adult -- you mentioned this earlier, how
11 an adult would remember an event?

12 A They do.

13 Q Can you explain that, please?

14 A Children remember very different than an adult
15 because their world they feel like their world is the
16 only world. Adult can see things quite often from
17 different points of view. Adults see things from
18 there own world, children tend to be more concrete.

19 Q What is concrete?

20 A Concrete means it is what it is. Mom says
21 it's going to rain today, mom walks outside, mom
22 predicts the future. That what it is with children.
23 As we get older, adults think about things more,
24 ponder things more. Children take things more black
25 and white at face value.

1 Q Is there anything else in your experience that
2 would determine how a child would remember an event?

3 A Certainly, if there was any type of trauma
4 itself. Quite a bit of children we see are involved
5 with trauma, there may be a piece of this and that.
6 There very much, very specifically may be pieces they
7 have no memory of. Also, a lot of children we see
8 tend to almost have a dual side about a trauma
9 because it has been so horrific to survive that they
10 have to not go there in their brain what exactly it
11 is.

12 Q Now did you discuss with Minor 1 the traumatic
13 events without going into what she said?

14 A I did.

15 Q Was she able to articulate to you what had
16 occurred?

17 A She was.

18 MS. CARDILLO: One moment, Your Honor.

19 Dr. Elsey, thank you for your time. I don't
20 have any further questions for you, but opposing
21 counsel may have some questions.

22 THE COURT: Any cross-examination of the
23 witness?

24 MR. GRIMES: Briefly, your Honor.

25 THE COURT: You may proceed.

CROSS-EXAMINATION

BY MR. GRIMES:

Q You said you met with Minor 1 twice?

A Yes, sir.

Q Once was July 26?

A That's correct.

Q Another was August 13th?

A That's correct.

Q I might have missed something. Do you have a report from August 13th?

A I did not do a forensic interview on August 13th. That was to see how she was doing, how the grandmother was doing and the treatment recommendation.

Q You did not prepare any report from August 13th?

A I did a progress note from that, yes, I did.

Q Are you aware she met with someone from the National Crime Victim Association last week?

A Last week?

Q Yes.

A I was not aware of that, no.

Q Have you seen any report from them?

A No, sir.

Q And finally, Dr. Elsey, you weren't there on

1 the night this happened, were you?

2 A No, sir.

3 Q You don't know what happened in that
4 apartment, do you?

5 A No, sir.

6 MR. GRIMES: Thank you.

7 THE COURT: Any redirect?

8 MS. CARDILLO: No, Your Honor.

9 THE COURT: Any objection to the witness being
10 excused from the state?

11 MS. CARDILLO: None from the state, Your
12 Honor.

13 THE COURT: From the defense?

14 MR. GRIMES: No, ma'am.

15 THE COURT: Sir, you are excused. Thank you.
16 You may call your next witness.

17 MR. WILLIAMS: State calls Georgeann Leggett.

18 MS. GEORGEANN LEGGETT,
19 after having first been duly sworn to state the
20 truth, the whole truth and nothing but the truth,
21 testified on her oath as follows:

22 THE COURT: You may proceed.

23 MR. WILLIAMS: Thank you, Your Honor.

24 BY MR. WILLIAMS:

25 Q Ma'am, where do you work?

1 A Charleston County EMS.

2 Q What do you do for EMS?

3 A I'm a paramedic crew chief. I work on the
4 ambulance.

5 Q When you say you work on the ambulance, what
6 does that mean?

7 A I respond to 911 calls involving medical or
8 trauma needs.

9 Q So what do you do when you respond to those
10 calls?

11 A I take care of patients. I determine the
12 extent of their need of care, whether it is an
13 advanced care situation, or what we refer to as basic
14 support situation.

15 Q How long have you been doing that job, working
16 for EMS?

17 A Eleven years.

18 Q Do you have any special training to do that?

19 A Yes.

20 Q What is that training?

21 A You have to go to school for paramedic, and we
22 have ongoing training throughout the year.

23 Q You do all those things?

24 A Yes.

25 Q You say you were a crew chief?

1 A Yes.

2 Q What does that mean?

3 A A crew chief means that I'm in charge of my
4 particular ambulance. It's usually me and one other
5 crew member or sometimes two other crew members.

6 Q And when you go out on a call, what is that
7 process? Do you get some kind of information before
8 you go out?

9 A Yes. We are dispatched either by our walkie
10 talkies, and also by our paging system. They usually
11 give us the location of the call, the nature of the
12 call and what the response code, whether it's with
13 lights and sirens or without.

14 Q You got subpoenaed to be here in court today?

15 A I did.

16 Q You've reviewed some information, talked with
17 the prosecutors about the case?

18 A I have.

19 Q What was the day that you went out that you
20 are here in court for now?

21 A That was July 8, 2007.

22 Q When that call went out, what type of call was
23 it?

24 A Came out as a stab or gunshot wound.

25 Q What is your initial response when you get

1 that call, or what was your response in this case?

2 A We respond with lights and siren.

3 Q How many people are with you?

4 A I had two other crew members with me.

5 Q Were you supervising them at the time?

6 A Yes.

7 Q How long or how far were you from the area you
8 were going to?

9 A I don't recall where we were. According to
10 our response time, it took us five minutes to get
11 there, so I assume we were relatively close to the
12 location.

13 Q Do you have a copy of your report with you?

14 A Yes, I do.

15 Q What happened or what did you find when you
16 got there?

17 A I was greeted by a police officer when I got
18 there. I don't recall which one in particular it
19 was, and I was directed upstairs to the bedroom where
20 we found the patient. And was also directed to be
21 careful of the gun that was laying on the floor, not
22 to tamper with it or move it or anything.

23 Q What is your usual process when you enter what
24 I'm going to call a crime scene, or where the
25 patients are?

1 A During our training, we are asked to please
2 take care of a crime scene, not to mess with any
3 unnecessary items. So we usually just try to take
4 care of our patient, nothing else.

5 If we, in the event of having to take care of
6 a patient, have to cut say their clothes off, we
7 usually try to do it avoiding any bullet holes or
8 stab wounds or anything like that where evidence is
9 possible.

10 Q Were able to do that in this case?

11 A Yes, we were.

12 Q What did you notice?

13 A The patient had a head wrap on her head, and
14 that was the only thing we removed at that time on
15 the scene.

16 Q When you came in, did you see anybody in
17 custody or anybody talking to the police?

18 A I really don't recall. I know that there were
19 people there, but I do not recall. The only person I
20 in particular remember seeing was one of the
21 children.

22 Q When you went inside, you say you saw the gun?

23 A Yes.

24 Q Did you manage to hit that or touch it or
25 anything?

1 A No.

2 Q Now, you say that there was a patient inside.
3 Tell the jury what the condition of the patient was,
4 where she was at?

5 A The patient was laying on the bed on her back.
6 She did not appear to be responding on our initial
7 walking into the bedroom. The officer was there. I
8 believe he was holding compression on her head. And
9 he said that she was not responding.

10 We -- I went up and checked for a pulse in her
11 neck, and she had a very, very weak pulse. She was
12 not breathing at the time. So we -- my -- one of my
13 crew members had taken the head wrap off her head and
14 found the bullet hole. We did not see -- it was one
15 single bullet hole. We did not see any exit wound.
16 We tried to determine if there is one.

17 And at that point we began basic support care
18 for her, making sure that she had a -- a patent
19 airway, and that we could start assisting her
20 ventilation. She was not breathing.

21 Q So when you say she had a head scarf on, what
22 did it look like?

23 A From my memory, I don't recall, but after
24 seeing the pictures earlier, it was the burgundy one.

25 Q Okay, burgundy head wrap. You said there was

1 a hole. What did you mean, in the victim or in
2 the --

3 A In her head, yes. And there was also through
4 the head wrap.

5 Q So was the head wrap covering the wound?

6 A Yes.

7 Q If you could, can you tell the jury
8 approximately where the injury was?

9 A I did not specifically remember where it was,
10 but according to this report, it said right along the
11 hairline on the victim's head.

12 Q And you said that the officer was applying
13 pressure. What -- what did you see? What he was
14 using or --

15 A His hand and a -- some type of -- I don't
16 remember if it was a towel. Some kind of cloth or
17 something on her head, holding pressure.

18 Q You said that you all wanted to check for
19 responsiveness, what do you do in that situation?

20 A Generally to check responsiveness, you start
21 by talking to them. Hey, are you okay, something
22 along those lines, shaking them a little bit to see
23 if they respond.

24 In that case, the officer had already told us
25 she was not responding. So we kind of skipped those

1 two little steps, and I immediately just checked for
2 a pulse. See if she was -- did have a pulse, and to
3 check to see if she was breathing.

4 Q You said she had a weak pulse, what's that?

5 A It means that it's not very strong. I
6 couldn't feel a pulse at her wrist, which means her
7 blood pressure is already very low. And you kind of
8 work your way up to the pulses, and the neck is the
9 last place you check.

10 Q Did you check the carotid artery of the neck?

11 A Yes.

12 Q Did you feel a pulse there?

13 A Yes, very weak.

14 Q And after you made that determination, you
15 said you began some processes, what were those?

16 A We began getting her what's called packets,
17 that's putting her on a hard board with some straps
18 and a collar around her neck, because we don't have
19 any determination of where the actual bullet is in
20 her body. So we don't want to cause any further
21 damage once we start moving her around or the patient
22 around. We did that, and we also started assisting
23 ventilation using what's called a bag mask.

24 Q Did you do those things?

25 A I was -- I was helping with putting her on the

1 long board, and one of my crew members was doing the
2 assisting ventilation.

3 Q How long did it take for you all to get her on
4 the board and get ventilation things set?
5 Approximately?

6 A Probably about -- we would -- assisting the
7 ventilation would start first. We always start with
8 that first because we always try to maintain an
9 airway, that's the most important thing. And then
10 the rest of it kind of follows through that. While
11 one crew member is doing the ventilation, the others
12 are getting the other stuff ready.

13 Q As you were going through these processes, did
14 her condition change?

15 A Not while we were in the bedroom. When se
16 moved her from upstairs to downstairs and rechecked
17 her pulse, she was at that point did not have a
18 pulse.

19 Q About how long did it take for you to get her
20 from upstairs on the board to downstairs where you
21 noticed she no longer had a pulse?

22 A I would say approximately seven to eight
23 minutes.

24 Q And how did you determine that she no longer
25 had a pulse?

1 A Checked her carotid artery.

2 Q Is that something you do consistency?

3 A Yes, with patients that are unstable.

4 Q Where was it that you were when that
5 determination was made?

6 A Downstairs. Once we got her downstairs.

7 Q What happened after you got her downstairs?

8 A We began CPR and loaded her in the ambulance.

9 Q Was there any successes with the CPR to bring
10 back a pulse?

11 A No, no.

12 Q What happened after you had her loaded in the
13 ambulance --

14 A Once we were in the ambulance, we would apply
15 the cardiac monitor to determine her actual cardiac
16 rhythm and establish an IV, and push any appropriate
17 medications.

18 Q Did you do that?

19 A Yes.

20 Q Were you ever able to regain any kind of --

21 A No. She never had any spontaneous pulses or
22 breathing.

23 Q She would have been taken to the hospital?

24 A MUSC.

25 Q Did you do a full examination?

1 A Yes.

2 Q Did you notice any other sign of injuries
3 besides the gunshot wound?

4 A No, no other trauma noted.

5 MR. WILLIAMS: Thank you. No further
6 questions.

7 THE COURT: Cross-examination of the witness?

8 MR. GRIMES: Just a couple questions.

9 THE COURT: You may proceed.

10 CROSS-EXAMINATION

11 BY MR. GRIMES:

12 Q Ms. Leggett, you don't know what happened that
13 night, do you?

14 A No.

15 Q You saw no other signs of trauma?

16 A No, sir.

17 Q You saw no signs of a struggle in the
18 apartment?

19 A No, sir.

20 Q Thank you. Do you know who called 911?

21 A No, sir, I do not.

22 MR. GRIMES: I have no further questions, Your
23 Honor.

24 THE COURT: Any redirect?

25 MR. WILLIAMS: No, Your Honor.

1 THE COURT: Any objection to the witness being
2 excused?

3 MR. WILLIAMS: Not by the State, Your Honor.

4 THE COURT: Any objection from the defense?

5 MR. GRIMES: No, ma'am.

6 THE COURT: Ma'am, you are excused. You may
7 call your next witness.

8 MR. GRIMES: May we approach?

9 THE COURT: Yes.

10 (Whereupon, a discussion was held at the bench
11 off the record.)

12 THE COURT: Ladies and gentlemen, I have a
13 matter of law I need to take up with the attorneys.
14 It will be very brief. Please leave your notepads in
15 your seat, and please don't discuss the case.

16 (Whereupon, the jurors exit the courtroom.)

17 THE COURT: As I understand it, there is an
18 exception or an objection on fingerprint evidence.
19 The next witness is Anita Maestas, is that how it's
20 pronounced? M-A-E-S-T-A-S?

21 MS. CARDILLO: I think so, Your Honor.

22 THE COURT: Are you seeking to introduce
23 fingerprints through the witness?

24 MR. WILLIAMS: Your Honor, I'm going to argue
25 the motion, but essentially --

1 THE COURT: The question is are you seeking to
2 introduce fingerprints through the witness?

3 MR. WILLIAMS: Yes. She is going to testify
4 that she lifted the fingerprints. I believe that
5 photograph shows where she put the actual tape onto
6 the window.

7 We'll certainly bring in the fact that the
8 prints were lifted and admitted for analysis, but we
9 are not going to bring in the analysis.

10 THE COURT: Well, there is no other testimony
11 that's going to be submitted by you all to establish
12 any of his expectation of privacy or lack of
13 expectation of privacy?

14 MR. WILLIAMS: I don't think so, Your Honor.
15 I believe the main witnesses that were saying he was
16 kicked out, so the privacy expectation will be moot.

17 THE COURT: Okay, then I think it's ripe to be
18 argued. There is no point in starting and stopping.

19 Mr. Grimes, you have the burden. You may
20 proceed.

21 MR. GRIMES: Thank you, Your Honor. At this
22 time we call Jake Wilson.

23 THE COURT: Well, I guess we do need to do
24 that, don't we? Any objection as to proceeding in
25 that manner from the State?

1 MR. WILLIAMS: No, Your Honor.

2 THE COURT: You may proceed, Mr. Grimes.

3 MR. JAKE ANTONIO WILSON,
4 after having first been duly sworn to state the
5 truth, the whole truth and nothing but the truth,
6 testified on his oath as follows:

7 VOIR DIRE EXAMINATION

8 BY MR. GRIMES:

9 Q Good afternoon, Mr. Wilson. For purpose of
10 this hearing to determine whether we have standing or
11 you have an expectation of privacy as to [REDACTED] Harris
12 street, okay? It's not about the merits of the case
13 at this time.

14 I want to ask you a few questions about how
15 often you lived there, okay?

16 A Yes, sir.

17 Q When did you last live at [REDACTED] Harris Street?

18 A I last lived at [REDACTED] Harris Street was around
19 the end of June.

20 Q of what year?

21 A of 2007.

22 Q And at the end of June of 2007, where were you
23 living?

24 A I was living at Summerville with my mother.

25 Q Why did you leave [REDACTED] Harris Street?

1 A I left [REDACTED] Harris because I got kicked out by
2 Latoya.

3 Q Now between the end of June 2007 until July
4 8th, 2007, did you ever go back to [REDACTED] Harris?

5 A Yes, sir.

6 Q And who invited you back there?

7 A Latoya Pendergrass.

8 Q And did you ever spend the night there?

9 A Yes, sir.

10 Q Do you recall what dates you spent the night
11 there?

12 A I'm not sure to be exact.

13 Q And who allowed you to spend the night at [REDACTED]
14 Harris Street?

15 A Latoya Pendergrass.

16 Q Did you have any clothes there?

17 A I'm not sure.

18 Q Did you have any personal items there?

19 A I'm not sure right now.

20 Q Well now is the time to be sure.

21 THE COURT: No editorial comments. Ask the
22 questions.

23 MR. GRIMES: Sorry, Your Honor.

24 Q (By Mr. Grimes) On July 8th, on the morning
25 of this incident, how did you get in [REDACTED] Harris

1 Street?

2 A On the morning, I got into [REDACTED] Harris Street,
3 Latoya Pendergrass had let me in.

4 Q Did you have her permission to go in there?

5 A Yes, sir.

6 Q And were you spending the night there at that
7 time?

8 A Yes, sir.

9 MR. GRIMES: Thank you, Mr. Wilson. Please
10 answers any questions Mr. Williams may have for you.

11 VOIR DIRE EXAMINATION

12 BY MR. WILLIAMS:

13 Q You were, for lack of a better term, a guest
14 at the apartment. You had been kicked out, right?

15 A Yes, sir.

16 Q You had to be invited back?

17 A Yes, sir.

18 Q You couldn't go back without her permission?

19 A Yes, sir.

20 Q So you did not have any property there at all?

21 A I'm not sure.

22 MR. WILLIAMS: Your Honor, I don't have any
23 other questions.

24 THE COURT: Any redirect?

25 MR. GRIMES: No, ma'am.

1 THE COURT: Sir, you may step down. Anything
2 further, Mr. Grimes?

3 MR. GRIMES: No, ma'am.

4 THE COURT: You may proceed.

5 MR. GRIMES: I believe I had e-mailed you or
6 your law clerk and Ms. Cardillo that we would rely on
7 State versus Missouri 603 se2d 594, before the court
8 in 2004. In that case the court found --

9 THE COURT: It's very factually different,
10 isn't it, than this situation?

11 MR. GRIMES: Maybe factually different, but
12 the principles would still apply here.

13 THE COURT: But aren't these fact-specific
14 determinations?

15 MR. GRIMES: No, ma'am. He is an overnight
16 guest, has been there in a relationship --

17 THE COURT: That's not what it says. Is that
18 what State versus Missouri says?

19 MR. GRIMES: Says overnight guests have an
20 expectation of privacy --

21 THE COURT: He had clothes there too, didn't
22 he?

23 MR. GRIMES: Ma'am?

24 THE COURT: He had clothes there, too, didn't
25 he? He had their permission to come and go. He was

1 not restricted, correct?

2 MR. GRIMES: Yes, ma'am.

3 THE COURT: Little factually different.

4 MR. GRIMES: It's true. It's like, you know,
5 also like a hotel room. I can't come and go in a
6 hotel room unless I had a lease or --

7 THE COURT: Unless you have a key.

8 MR. GRIMES: -- or rent a room, you know. I'm
9 allowed to go in a hotel room --

10 THE COURT: Since you have a key, you pay
11 consideration to have the room.

12 MR. GRIMES: And here he probably can't come
13 and go anytime he wanted, but he had her permission
14 that night. There's no evidence to contradict that
15 in the record, and --

16 THE COURT: Here's my question, Mr. Grimes,
17 what's the objection to his fingerprints coming in
18 when you all have already admitted in opening he was
19 there?

20 MR. GRIMES: The key is how he got in there.
21 If the State is going to argue that he got in there
22 by climbing up to the window, which fingerprints may
23 corroborate, that will hurt the case. If he came in
24 through the front door, the State will stipulate that
25 he was allowed in, no problem.

1 THE COURT: Anything further, Mr. Grimes?

2 MR. GRIMES: No, ma'am.

3 THE COURT: Anything from the State?

4 MR. WILLIAMS: No, Your Honor. But I think
5 that there are prints that are found outside the
6 window, which are probably are our stronger evidence.
7 I think the ones inside the window certainly are
8 consistent with the defendant's theory, but there's a
9 palm print taken off the outside of the window. And
10 there's also a screen that is pulled off the window
11 found in the backyard, that's corroborated by the
12 presence of that palm print.

13 I do want to say that there is some prints
14 that we intend to introduce that are found outside
15 the residence as far as the crime scene.

16 THE COURT: Which raises a very interesting
17 issue, Mr. Grimes, when you have an expectation of
18 privacy with something which is clearly public which
19 is the outside of the window.

20 MR. GRIMES: Yeah. First of all, it's not
21 part of the apartment, it's part of the curtilage.
22 Clearly --

23 THE COURT: Outside the window?

24 MR. GRIMES: Yes, ma'am. It's outside my
25 porch, I'm outside the house, I'm still on my

1 property. Outside the window, it's a fixture of the
2 apartment. I'm not real good at property laws, I
3 have not done it in a while. As I recall fixtures
4 are part of the property, you have an expectation of
5 privacy, the window was chipped on the outside.

6 THE COURT: The window was what now?

7 MR. GRIMES: Say for example somebody chipped
8 the window from outside the property line, they would
9 be responsible for it, for paying for repairs. It's
10 not some public incident. If you know it was a
11 common area, it would be a different story.

12 But someone was up there peeping in on
13 somebody, they would be charged as a Peeping Tom by
14 violating Ms. Pendergrass's privacy.

15 THE COURT: Well, you would admit palm prints
16 on the outside of the window would contradict your
17 client's position that he was voluntarily in the
18 residence. And that is a factual issue for
19 contention.

20 MR. GRIMES: It certainly doesn't help our
21 case, but the problem is you cannot date a
22 fingerprint, we don't know --

23 THE COURT: That's a weight issue. It's not
24 an admissability issue.

25 MR. GRIMES: I mean, if the fingerprint was

1 inside, we would have a strong argument of
2 expectation of privacy. On the outside it's still
3 part of the property, it's still part of the
4 privilege, there is no evidence at all that any
5 consent was given for those, there is no search
6 warrant. Of course it's clear that any search done
7 by a search warrant, or with the exception of the
8 search warrant. Is an unreasonable search.

9 And here the search was unreasonable. He does
10 have an expectation of privacy in that window.

11 THE COURT: Anything further from the State?

12 MR. WILLIAMS: Your Honor, I did not throw
13 that out there to be our best argument, I think it
14 simply goes more to the defendant's --

15 THE COURT: I did not know that there were
16 prints on the outside of the window. I thought it
17 was interesting, it's the first time I've heard it.
18 I thought the prints were taken from inside of the
19 residence which doesn't change any factual perception
20 of the fingerprint.

21 MR. WILLIAMS: I think it does and that's why
22 I mentioned it. But I do think if the prints were
23 inside the window, he hasn't establish standing
24 necessary to object under the Fourth Amendment to the
25 search and seizure.

1 Your Honor, he simply was, by his own
2 statement, not allowed to come in without her
3 specific permission.

4 I haven't looked closely at the Missouri case,
5 Your Honor, but just looking at it closely, it sounds
6 like the defendant in that case actually had a key
7 and was free to come and go as he left, as opposed to
8 -- in terms of certainly gives him dominion and
9 control over the property is why he ended up being
10 charged with the crime to begin with.

11 I suspect if drugs were found inside this
12 house, the defendant would not be up here saying,
13 those drugs he had dominion and control over.
14 I certainly think with the facts we have in this case
15 there is not enough there to give him the requisite
16 standing for the objection he is trying to make.

17 THE COURT: The Missouri case is very
18 different from this case. In Missouri, this
19 gentleman indicated that he went to this house very
20 frequently, that he found it a place to get away, a
21 place of comfort.

22 In addition to that, he was not simply a
23 nightly guest, he had a key to this residence. It's
24 very different, which implies continued consent to
25 come into a house unfettered without any

1 restrictions, which was very different from this
2 situation.

3 without belaboring the hour or the point, the
4 decedent's mother testified that she was there on the
5 day that her daughter placed the defendant's items in
6 a bag and put them out, which indicates -- I don't
7 know how more plainly someone can say you are no
8 longer welcome in my residence when they put all your
9 things in a garbage bag.

10 In addition to that, not only did her mother
11 witness that, but also Ms. Ellesse James, I believe,
12 was the second young lady that testified on
13 yesterday, and indicated that she also witnessed that
14 event. And that she offered to put the defendant's
15 items in her closet because it was raining -- some
16 electronic equipment and other things involved.

17 And I believe her words were, I do have a
18 heart, and that is why she assisted him even though
19 they were not what she would consider close friends,
20 because she indicated that she did not talk with him.

21 Case law is very clear that in order to -- for
22 there to be -- can't have any kind of search or
23 seizure without -- you have to protect the person's
24 Fourth Amendment right when they have a legitimate
25 expectation of privacy of the place to be searched.

1 And if they have a legitimate expectation of privacy,
2 the police should always employ the use of a warrant.

3 The analysis for these purposes is twofold.
4 It is both subjective and objective. The defendant
5 has the burden of establishing legitimate expectation
6 of privacy in challenging the search. The Court
7 would find he has not met his burden in that regard.

8 Even if I were to ignore the testimony both of
9 Ms. Gadsden and as to Ms. James, in his own testimony
10 he indicated that he had been kicked out by Latoya;
11 that he had, at the end of June, which was consistent
12 with the other witnesses' testimony; that he last
13 lived with her at that time; that he left [REDACTED] Harris
14 Street because she kicked him out; he was living in
15 Summerville with his mother.

16 That he did spend nights there, and was not
17 sure of the nights, not sure if he had clothes there,
18 and not sure if he had anything there at the time,
19 which I think -- not think, I perceive, at least
20 based on his testimony, is dispositive of this issue.

21 I certainly would know if I had things at
22 someone's house that belonged to me. I certainly
23 would know if I had personal belongings there. And
24 his indication that he does not recall leads me to
25 believe that that testimony is consistent with that

1 of Ms. Gadsden and Ms. James in that he did not have
2 anything there.

3 And in the alternative, I find both of them to
4 be completely credible on that point; and that she
5 had put him out; that she had removed all of his
6 belongings. And by his own admission on
7 cross-examination, he indicated that he had, in order
8 to gain entry to the residence, he had to be invited
9 by her, which indicates that he was not free to
10 access the residence.

11 And I think that the case law really
12 contemplates you being almost -- to have an
13 expectation of privacy, you almost have to be in a
14 situation where even though you are a guest, you
15 still have all the benefits of being a resident of
16 that place.

17 In other words, you have a legitimate
18 expectation that once you take occupancy in that
19 place -- when I say place I mean residence,
20 apartment, hotel room, they're all interchangeable --
21 that you would have some expectation of privacy in
22 your person or in your belongings.

23 I think in Missouri what was searched was -- I
24 don't believe the apartment itself was searched. I
25 don't want to misstate it. It was an apartment

1 actually. I -- really does not specify now that I am
2 looking again, except they did search Mr. Seibert's
3 (phonetic) apartment which was Mr. Missouri's friend.

4 And actually they were in the kitchen when
5 they entered the apartment. They made entry into the
6 apartment is what happened. And apparently there
7 were drugs present while Curtis and Lauer (phonetic)
8 sat on the couch watching TV.

9 And they also took a black bag belonging
10 to Mr. Missouri, as well as keys that belonged to
11 him. And the bag contained scales and packaging
12 paper.

13 But clearly, factually this case is quite
14 different. Mr. Missouri frequently visited the
15 apartment. He saw it as a place to get away and find
16 comfort. He had a key to the apartment at the time
17 of this incident.

18 He kept a change of clothes there. And on
19 this -- at this particular time he did, as I recall,
20 have a change of clothes with him when he was -- at
21 the time of the search.

22 But factually, again, as I have indicated,
23 this situation is quite different. He had been
24 removed from the residence by his own admission. He
25 had been kicked out by Latoya. He did not have any

1 clothing there. He did not have personal belongings
2 there.

3 And again, as I indicated, there's a two-part
4 test articulated in Missouri, that being in order for
5 a legitimate expectation of privacy, at least when
6 the Court is considering that issue, the Court
7 articulated a legitimate expectation of privacy as
8 both subjective and objective in nature. The
9 defendant must show that he had a subjective
10 expectation of not being discovered; and two, that
11 the expectation was one that society recognizes as
12 reasonable.

13 I think if you talked to someone -- and I'm
14 taking them in opposite order or in reverse order --
15 if you talked to someone, and they put someone out of
16 their house, but they had invited them back in to
17 spend one night, I think when you look at what the
18 expectation is, when you look at the society and what
19 they recognize as reasonable, I don't think anybody
20 would think it reasonable because I allowed you to
21 stay at my house one night after I put you out that
22 you now have access to my residence and that you have
23 some expectation of privacy. You are simply a guest
24 for a very limited amount time.

25 Although Missouri does go through a great

1 discussion about what a guest is, it also indicates
2 the Supreme Court have not clarify that issue. And I
3 don't that it's really dispositive on whether he had
4 an expectation of privacy.

5 But the other subjective prong, which is he
6 had a subjective expectation of not being discovered.
7 I don't think that he can meet that burden in that
8 regard, because clearly -- and it's inherent in his
9 testimony -- he knew that at any given time she would
10 not let him in, I mean, that he knew he was not
11 living there. He knew that he was not free to live
12 there. He knew that in order to be in the residence,
13 she had to invite him in.

14 So I think clearly -- and really, it's an
15 interesting issue. If this had taken place a few
16 months earlier, while he still lived there, clearly
17 he would have had an expectation of privacy in that
18 residence, and they would have had to get a search
19 warrant to conduct any type search of it, or it would
20 have been a legitimate violation of his Fourth
21 Amendment expectation or his rights.

22 But clearly, if he was still living there, had
23 clothes there, still had a key, still had the ability
24 to come and go as he pleased, and he by his own
25 admission and those who testified, they lived

1 together at that time.

2 But at some point there was a demarkation
3 where that situation was terminated. And I think
4 once someone terminates your ability to live in their
5 residence, you cannot have a good-faith argument that
6 you have a legitimate expectation of privacy in that
7 residence.

8 So I would find, for the record, that he has
9 failed to meet his burden of proof regarding any
10 legitimate expectation of privacy in the residence,
11 that he has failed in establishing both prongs, that
12 being subjective or objective expectations as
13 articulated in the Missouri case. And that the
14 motion to suppress the fingerprint evidence is
15 denied.

16 Is there anything further for record from the
17 state?

18 MR. WILLIAMS: No, Your Honor.

19 THE COURT: From the defense?

20 MR. GRIMES: Just for the record, I think a
21 couple people --

22 THE COURT: I'm sorry, I can't hear you.

23 MR. GRIMES: I'm sorry. A couple of attorneys
24 at the appellate defenders asked to make our motion
25 be a court exhibit and I want to make sure they were

1 marked.

2 THE COURT: It's already in the record. I'm
3 going to make sure they get filed. I like a good
4 record. You can make sure mine will be. I don't
5 like messy records. That's why I ask your motions
6 give me, whether they're originals or not, because at
7 the end of day I make sure they all are filed in the
8 clerk's file, so that they're a part of the record.
9 So that once it goes up on appeal that everybody is
10 clear on about was argued and what wasn't argued. I
11 like a nice, clean record.

12 MR. GRIMES: Thank you, Your Honor.

13 THE COURT: You're welcome. So just make
14 sure, is this your original motion that you've given
15 to me?

16 MR. GRIMES: I believe the original is here.

17 THE COURT: I don't have one that's signed.
18 Do you have one that's signed?

19 I think those were the only motions that you
20 did -- you didn't make one in writing regarding
21 the --

22 MR. GRIMES: Competent?

23 THE COURT: Well, we haven't had the Jackson v
24 Denno yet. That will be in the clerk's file. All
25 right.

1 MS. CARDILLO: Your Honor, would it be all
2 right if we took a brief bathroom break?

3 THE COURT: Yes, be quick. The jury has been
4 waiting.

5 (Whereupon, a recess was taken.)

6 THE COURT: Ready to proceed?

7 MS. CARDILLO: Yes, Your Honor.

8 THE COURT: Defense ready to proceed?

9 MR. GRIMES: Yes, ma'am.

10 THE COURT: Please bring in the jury.

11 Could you close that door for me, please?
12 Yeah, close that for me for a second.

13 Also -- I just thought about it. I found --
14 while we are at the break -- I found a section of CJS
15 that indicates that common areas in apartments are
16 not privileged, that that theory has been dispelled
17 by the U.S. Supreme Court.

18 where there are common areas like in apartment
19 complexes -- how else did it put it -- common areas
20 generally there is no expectation of privacy -- says
21 generally only a home or dwelling house has
22 curtilage.

23 And it uses the example of a hotel/motel room,
24 residential apartment, a larger apartment houses are
25 not typically -- are not considered to have curtilage

1 for purposes of Fourth Amendment.

2 And it has limited applicability. The
3 curtilage consent has limited applicability with
4 respect to multi-occupancy premises, because none of
5 the occupants can have a reasonable expectation of
6 privacy in areas that are also used by other
7 occupants.

8 And I assume they are talking about common
9 areas and other things, but they lump it all in there
10 together. I thought it was interesting.

11 Okay, please bring in the panel.

12 (Whereupon, the jurors enter the courtroom.)

13 THE COURT: Thank you. We appreciate your
14 patience. For the juror who is taking the bus, we
15 will make sure you get home. You don't have to worry
16 about that. And if you need transportation for the
17 remainder of the week, please let us know. Jury duty
18 should not become a burden to you. We will make sure
19 that you get home. You may call your next witness.

20 MS. CARDILLO: Thank you. The State calls
21 Anita Maestas.

22 MS. ANITA MAESTAS,
23 after having first been duly sworn to state the
24 truth, the whole truth and nothing but the truth,
25 testified on her oath as follows.

1 THE COURT: You may proceed.

2 MS. CARDILLO: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 DIRECT EXAMINATION

5 BY MS. CARDILLO:

6 Q Good afternoon.

7 A Hi.

8 Q Anita, where are you employed?

9 A The Charleston Police Department.

10 Q And how long have you been employed by the
11 Charleston Police Department?

12 A It will be eight years in December.

13 Q And what are your duties as of now?

14 A I'm a crime scene technician. Therefore, I go
15 out to crime scenes and process for evidence.

16 Q And how long have you been a crime scene
17 technician?

18 A Will be going on five -- five years.

19 Q And before the five years, what did you do
20 with the Charleston Police Department prior to being
21 a crime scene technician?

22 A I worked in our crime lab as a laboratory
23 technician.

24 Q Now what are your main duties as a crime scene
25 technician?

1 A My main duty is to arrive at a scene and to
2 document and collect any physical evidence that's
3 left behind, including photographs, fingerprints,
4 sketches, and collect any evidence that's there.

5 Q I am going turn your attention to July 8th of
6 2007. Were you working that date?

7 A Yes, ma'am. I got called out that morning.

8 Q Were you working night shift, morning shift or
9 do you recall?

10 A I was working morning shift, and I was the
11 on-call crime scene technician. So I got called out
12 to come in early.

13 Q And where did you get called out to?

14 A [REDACTED] Harris.

15 Q And what did you find upon your arrival?
16 First of all, let me back up just a minute. What
17 time did you arrive?

18 A Approximately 6:03 in the morning.

19 Q And do you recall what the weather was like?

20 A It was overcast, a lot of condensation. I
21 know at some point it was drizzling on and off.

22 Q And again, what did -- what did you find upon
23 your arrival? Or what was your reason for being
24 dispatched out to [REDACTED] Harris Street?

25 A When I'm first initially called out, all I'm

1 notified is that I'm called out to a shooting. When
2 I arrive on the scene, the first officer that I
3 approach gives me a basic information before I enter
4 the actual scene. And then from there I take my own
5 observations and go from there.

6 Q And was that the case in the arrival at [REDACTED]
7 Harris Street?

8 A Yes, ma'am.

9 Q What did you do when you first got there?

10 A The first thing that we did, like I said, I
11 speak with the on-scene officer. And they informed
12 me that a female subject had been shot and had
13 already been transported to the hospital.

14 They informed me that EMS had gone in to
15 render aid. Once I go -- they said that the door was
16 already partially open. So when I'm there, the door
17 is already open. I go in and do a walk-through just
18 to see what is there, where I don't touch anything,
19 don't disturb anything, just get a general idea of
20 what is present.

21 Then the next thing I do is we document it,
22 write any notes that we need to do, and then
23 photograph anything at this point.

24 Q Did you photograph -- take photographs in this
25 case?

1 A Yes, ma'am, I did.

2 Q And approximately how many photographs did you
3 take in this case?

4 A I don't remember off the top of my head how
5 many photographs. We take a lot photographs, and of
6 course, we also do the video as well.

7 Q I'm going to show you what's already been
8 marked as -- I'm going put this up behind you. I'm
9 going to ask you to explain to the jury what your
10 process was when you first entered. And I'm going to
11 ask if you can use this if you like. It's a pointer,
12 if you like.

13 Now, is this where you proceeded on the
14 morning of July 8, 2007?

15 A Yes, ma'am.

16 Q And what did you find when you first got to
17 this area or what did you do?

18 A Like the very first thing we do is take
19 overall photos. And this is the approach to the
20 initial building where I take a photograph of the
21 door itself and the number. And you can see where
22 this door is open. You can see the TV in there, as
23 well.

24 So we take a picture as we progress through
25 the scene, the first one as we walk up and then

1 throughout the residence.

2 Q Is that what you were talking about to get a
3 general look around?

4 A Yes, ma'am.

5 Q Are you taking photographs at that time or are
6 you just checking out the scene, if you will?

7 A Well, the very first walk-through is just a
8 walk-through to see what is on scene. And then you
9 orient yourself to what you -- what type of scene and
10 case that you have. Then I will grab my camera, and
11 then we'll actually take photos. I will go back
12 through, and I will photograph as I progress through
13 the scene itself.

14 Q Let me show you what has been already admitted
15 as State's 17. What room is this?

16 A That is the living room as you walk in through
17 the front door.

18 Q Where is the front door in this picture?

19 A I'm basically standing in the front door. So
20 the first picture was me walking up to the front
21 door, and this picture as I am standing in the front
22 door facing straight into residence.

23 Q And on State's Exhibit 18, is that a better
24 picture of the same view, or if you could explain
25 where the front door is in this picture.

1 A Basically I'm still standing in the front
2 door. When we take photos of a room, you want to
3 take different angles because the one picture or the
4 one photograph we take doesn't cover the whole room.
5 So you want to take almost like a panoramic
6 eventually of the whole room. You'll take one coming
7 in, and then one from different areas so you can have
8 a view of the whole room.

9 So this one is, I guess you would say almost
10 like a 45 degree angle from where I was from the very
11 first picture.

12 Q And how many rooms from your observation was
13 in the downstairs?

14 A It was the living room and then kitchen behind
15 the living room. You can see where it's the dining
16 room, the dining room and then kitchen portion.

17 Q Is that a different angle than into the
18 kitchen?

19 A Yes, ma'am. As I walk through the living
20 room, this was picture as I'm approaching the
21 kitchen/dining room area.

22 Q And if you can explain the next photo, as
23 well, from your observation and what you found.

24 A It's a close-up picture of the back door that
25 leads out of the residence. And there is a chair

1 that has been wedged up underneath the back door.

2 Q Was that in that condition when you were
3 processing the scene?

4 A Yes, ma'am. It was that way when I arrived.

5 Q From your processing of the scene, were -- was
6 back door locked?

7 A I recall that it was. The main thing that
8 stood out for us was that the chair was wedged up
9 underneath the doorknob.

10 Q And so at this point did you proceed to go
11 upstairs?

12 A Yes, ma'am.

13 Q And I guess where I am pointing, is that where
14 the kitchen was?

15 A Right. Once I'm finished taking the
16 photographs of the downstairs area, I have to
17 backtrack. So I'm coming back, and I'm standing in
18 the living room, and I'm taking photos as I approach
19 the stairs and go up to the top of the staircase.

20 Q If you could give a rough description of what
21 you -- of the stairs leading to the upstairs layout
22 of the upstairs of Toya's home.

23 A When you -- like I said, when you first come
24 into the front door, you are coming into the living
25 room, and then to your -- a left is the staircase.

1 And when you come up the staircase, the first thing
2 you are going to see is the bathroom. From there you
3 have a back bedroom, and then you have a front
4 bedroom.

5 Q And is this another version of going up the
6 stairs?

7 A Yes, ma'am. Again, we -- we take photos as we
8 progress, and this is just a photo going further up
9 the stairs going toward the top of the landing.

10 Q And Exhibit 23, is that closer photograph of
11 the top of the stairs?

12 A Yes, ma'am. I am standing at the top of the
13 landing and taking photographs straight to where it's
14 showing the bathroom is right there at the top of
15 stairs.

16 Q And that is the bathroom right there?

17 A Yes. This is the bathroom, and this doorway
18 right here is the back right bedroom.

19 Q On Exhibit No. 24, what room is that?

20 A That is going to be the back right bedroom.
21 It's the one next to the bathroom in the back of the
22 residence. And this is basically standing -- if I am
23 standing straight, looking into the bedroom and
24 taking one photograph.

25 Q Show you what has been marked -- well, what

1 did you find, if anything, when you proceeded up the
2 stairs?

3 A Once I proceeded up the staircase, and I took
4 a photograph facing the bathroom, and I turned to my
5 right, the first thing that you notice is a weapon
6 that's in the doorway of this back bedroom. So I
7 take a photograph of that bedroom, and then we -- we
8 continue to photograph the bedroom in detail. And
9 then you notice other evidence that was also in
10 there, as well.

11 Q I'm going to show you Exhibit No. 9. Is that
12 photo depicted of when you first observed the weapon?

13 A Yes, ma'am, that's in its unaltered state from
14 when I arrived, yes.

15 Q And Exhibit No. 10 and then 11 are the
16 exhibits, just more close-up photos of the same
17 weapon when you first observed it?

18 A Yes, ma'am. And we try to take, especially
19 with evidence, we take overall to orientate where it
20 is in the crime scene itself. Then we take close-up
21 photos to document it, as well. So those are
22 continuous close-up photos.

23 Q What's the reason for that again?

24 A It's to show the state that the gun was in or
25 the weapon is in when I arrive.

1 Q Then again, State's Exhibit 12, is that just a
2 different angle or different view?

3 A It is, ma'am. When we take the photograph --
4 like I said, the first one that showed, you couldn't
5 see the bottom half because I'm standing at my
6 height, and I'm taking a photograph as I see going
7 into that room.

8 Obviously you couldn't see the weapon on the
9 ground, so I'm having to take different-angled shots.
10 So with this way I'm having to point the camera down
11 just a little bit to get an overall view of as you
12 enter the doorway to see the weapon on the ground.

13 Q And Exhibit No. 13, that's pretty much the
14 same picture?

15 A Yes, ma'am. We take -- we take a lot of
16 photos.

17 Q I'm going to ask you more about the bedroom.
18 Why did you focus on this bedroom?

19 A When I first arrived on the scene, the officer
20 on the scene did inform me that the incident did
21 occur in the back bedroom. When I arrived, after I
22 started taking my photographs, that's where I located
23 the weapon and also other evidence. And that's where
24 the incident did occur, and we want to focus most of
25 our attention where the incident occurred in addition

1 to the whole house. But that's where it happened, so
2 we want to make sure we collect everything we can
3 from there.

4 Q Now, was there any other evidence in this room
5 that drew your attention?

6 A Yes, ma'am. If you all can see the bed is on
7 your left when you walk into the room. There was two
8 pieces of evidence that was collected from the top of
9 the mattress, a -- at the time it was a red cloth
10 that we noticed and a sheet that had blood on it.

11 Q Let me show you what is Exhibit No. 14. Is
12 that what you observed?

13 A Yes, ma'am.

14 Q If you could, for the jury, point out what
15 you're describing.

16 A This area right here, this is a sheet and --
17 you can barely see it in this photo, but there is a
18 red cloth behind it.

19 Q And Exhibit No. 16, is that a better
20 photograph?

21 A Yes, ma'am. It's close-up photograph from a
22 different angle, so you can see that this is the
23 sheet containing the blood. And over here is going
24 to be the red -- red cloth that we later determined
25 was a handkerchief.

1 Q And is that how the sheet and the handkerchief
2 was found when you arrived?

3 A Yes. When I arrived this is in the position
4 unaltered from when I got there, yes.

5 Q What else did you do or as far as evidence
6 processing did you go and do in this room, particular
7 room?

8 A Once everything has been photographed, we're
9 going to collect evidence, as well, which is the
10 weapon and the sheet and the head scarf. We're also
11 going to, what we call, process the room for
12 fingerprints.

13 Q Well, let me ask you, could you please explain
14 what in No. 32 -- it's Exhibit No. 32 we have these
15 yellow placards, I guess, if you will. If you would
16 explain.

17 A The first set of photographs that we take is
18 depicting the crime scene in its unaltered state from
19 when I arrive. That means I don't put anything into
20 the scene, hopefully it's the way it was exactly as
21 it happened and as I observed it.

22 Once that has been documented, I'm going to go
23 back through the scene and I'm going to put markers
24 down to where I feel that there is any evidentiary
25 value. So the weapon, of course, is going to have to

1 be marked numbered so we can have some way to track
2 it.

3 Therefore, I'm going to photograph it with a
4 marker in place with a number. And you'll also be
5 able to see at the top, there's numbers on the sheet
6 and on the handkerchief as well.

7 MS. CARDILLO: Let me -- may I approach, Your
8 Honor?

9 THE COURT: You may.

10 Q (By Ms. Cardillo) I'm go to show you what
11 I've previously admitted as State's 60.

12 A Thank you.

13 Q Is that the same weapon that you collected
14 from the scene on July 8th that is depicted in the
15 photograph?

16 A Yes, ma'am, it is.

17 Q And how do you know that?

18 A I have inscribed on the bottom of the grip
19 with the case number and my initials.

20 Q And what did you do with the gun once you
21 collected it?

22 A Once I collect the gun, what I'm going to do
23 is take it back to our office. I'm going to render
24 it safe, which includes taking out any ammo, any
25 rounds or shell casings that are left in the

1 cylinder. Then I'm going to box it up, and this one
2 we sent to our latent recovery unit.

3 Q And you said you boxed it up.

4 A Yes, ma'am.

5 Q If you wouldn't mind, would this be the box
6 that you --

7 A Yes, ma'am.

8 Q And how do you know it's the box -- same box?

9 A It has the case number on it, and it also has
10 my initials on it as well, and my seal with my
11 initials.

12 Q And what date is on that?

13 A It's showing a date of 7/8/07.

14 Q Thank you. Now, did you get anything else
15 from this firearm of evidentiary value?

16 A Once I collect it and I turn it over to the
17 latent recovery unit, I don't have any more contact
18 with it. So, other evidence would have been from
19 latent recovery or further analysis.

20 Q Were there any bullets in the gun?

21 A Yes, ma'am.

22 Q Let me show you what's been marked State's
23 proposed Exhibit No. 65.

24 A Okay.

25 Q Do you recognize that?

1 A Yes, ma'am.

2 Q And how do you recognize that?

3 A Again, I've got listed the case number and my
4 initials on the box that I placed the rounds from the
5 cylinder into. It's got five rounds and one spent
6 shell casing.

7 MS. CARDILLO: Your Honor, at this time the
8 State would move for the admission of State's
9 proposed Exhibit No. 65, I think it is. And I'm
10 sorry, I did not show it to defense counsel before.

11 THE COURT: Please do. Any objection?

12 MR. GRIMES: No, ma'am.

13 THE COURT: Marked and admitted without
14 objection.

15 (Whereupon, State's Exhibit No. 65 is admitted
16 into evidence.)

17 Q (By Ms. Cardillo) So you said these were five
18 rounds and one spent shell casing?

19 A Yes, ma'am.

20 Q What does that mean? When you recovered that
21 from the gun, what does that mean according to this
22 gun?

23 A It means that one shot had been fired from
24 this weapon at this time.

25 Q Okay. I'm going to next show you what's

1 already been admitted as State's Exhibit No. 37.

2 what are those placards and why did you place those
3 there?

4 A This is of the sheet that had the blood on it,
5 and then the handkerchief as well. Again, we wanted
6 to mark evidence before we collect it, so they can be
7 numbered and tracked.

8 Q Is this Exhibit No. 38, is that closer photo
9 of the --

10 A Yeah, that's going to be -- at the time I just
11 thought it was a red cloth, later determined it was a
12 handkerchief. This is a close-up photo of that to
13 show it.

14 Q And did you collect that and place it in
15 evidence?

16 A Yes, ma'am, I did.

17 Q And did you determine any characteristics from
18 that handkerchief?

19 A Once I realize -- once we got it back to the
20 office I was able to take a closer look at it. And
21 it was a handkerchief that was knotted that appeared
22 to be worn. And it did have a -- a hole in the top
23 of the handkerchief.

24 Q I'm going to show you what's already been
25 admitted as State's 77. Did you collect that piece

1 of evidence?

2 A Yes, ma'am.

3 Q And is that what you just previously
4 described?

5 A Yes, ma'am, it is.

6 Q Thank you. And the sheet, as well, what did
7 you do with the sheet?

8 A It was obviously checked for any evidentiary
9 value with it, and then it was also bagged for
10 storage.

11 Q And let me show you, again, what's already
12 been marked as State's Exhibit 67 and 68. Why did
13 you place -- were you involved in the bagging of this
14 evidence?

15 A Yes. I took custody of the evidence because I
16 was the primary on scene. So therefore I collect all
17 the evidence. I take it back. I mark the evidence.
18 And then I also go ahead and bag it and seal it so I
19 know I've had custody of the evidence.

20 Q And did you yourself do that on the bloody
21 handkerchief and the bloody sheet?

22 A Yes, ma'am. These are my packages.

23 Q And I won't go into the bloody sheet, but what
24 is in this package?

25 A This one states that it is a sheet with blood,

1 and it has the evidence number on it, as well as my
2 initials and case number.

3 Q Thank you. And State's Exhibit No. 41, is
4 that just a closer-up picture of the bloody sheet
5 that you just referenced?

6 A Yes, ma'am.

7 Q Now, going into another part of well, the same
8 room, I'm going to ask you about State's Exhibit No.
9 26. What is this?

10 A This is a photograph of the window that was
11 right above where the bed was.

12 Q And again, State's Exhibit No. 27, what
13 photograph is this?

14 A That's behind -- I moved the blinds away so
15 you can see the window. When we check a residence we
16 always check to make sure the windows, if they are
17 open, shut, locked, unlocked. And when I checked the
18 window I noticed with this particular window you can
19 see that it was open just a little bit. So it was a
20 close-up photograph to show that location, that that
21 window was open.

22 Q Was that the right or left window in that
23 bedroom?

24 A That's going to be the right side window.

25 Q State's Proposed Exhibit 28, is that just a

1 closer photo of the same window?

2 A Yes, ma'am.

3 Q I'm going to ask you about State's Exhibit No.
4 29. What is that of, and why did you take that
5 photograph?

6 A That is the same window that was open just a
7 little bit. And its close-up view of the lock. You
8 can see where it's damaged, and it's to show that the
9 lock was broken.

10 Q Now, once you took the photos of the inside,
11 did you also take photos of the outside, as well?

12 A Yes, ma'am, we do. We take photos of the
13 surrounding area as well.

14 Q And do you take the photos of -- I guess you
15 just answered that -- the front and back of the
16 residence?

17 A Yes, ma'am.

18 Q I'm going to show you what's been marked and
19 admitted as Exhibit No. 30. Could you explain what
20 that photograph is for the jury?

21 A This is going to be in the back of the
22 residence, the back door that leads out. This is the
23 sidewalk. And this is just right outside the back
24 door. And it was odd that the screens were laying
25 there for no reason, so we wanted to make sure we

1 documented them. They were wet at the time,
2 therefore we put a marker on them and collected them
3 as evidence as well.

4 Q I guess I don't understand they were wet at
5 the time. What did that mean to you, significantly
6 for evidence-wise?

7 A The screen itself you couldn't do anything
8 with, but the screen is -- the outside of the screen
9 is a metal frame. And to process those, we can't do
10 them when they're wet. So we have to make sure that
11 they're dry. So we had to collect them to dry them
12 out to process them for fingerprints.

13 Q And did you collect these screens?

14 A Yes, ma'am, we did.

15 Q What did you do with those screens after you
16 collected them?

17 A We turned them in to our latent recovery unit.

18 Q You said this was the back of the residence?

19 A Yes, ma'am. The way the residence was, if you
20 recall the first photo, when I walked in and you go
21 through kitchen, that back door leads out to this
22 area. So it's on the backside of the apartment.

23 Q Let me show you what's been marked as State's
24 Exhibit 31. Is that what you are referring to?

25 A Yes, ma'am, it is. That's the backside of the

1 apartment. There is the electrical boxes. Does not
2 look much different from the front, but you can tell
3 because they would have numbers on the front of the
4 screen. But the electrical boxes are located on the
5 back of residence.

6 Q And State's Exhibit 44, is this a broader
7 picture?

8 A Yes, ma'am, it is. It's to get that overview.

9 Q I'm going to show you what's State's 45.
10 Please explain this picture, and why did you take
11 this photograph?

12 A There is a little bit of damage up here which,
13 through our -- through the investigation it was
14 determined that that might have been a way that
15 entrance was made into the residence. So we wanted a
16 close-up to show --

17 MR. GRIMES: Objection, foundation.

18 THE COURT: Basis.

19 MR. GRIMES: Foundation.

20 THE COURT: Overruled.

21 Q (By Ms. Cardillo) I'm sorry, please
22 continue.

23 A Okay. So we took a close-up to show that
24 there was damage to the meter box.

25 Q And in regards to State's Exhibit 46, what is

1 that of? What is that a photograph of?

2 A It's hard to see, but this is the downstairs
3 window, those are the upstairs window. And it is
4 very difficult to see in the photo, but they were
5 pulled away slightly and that's why the photograph
6 was taken. And again, through the investigation we
7 -- that's why it seemed significant enough for us to
8 photograph it, because it was pulled away from the
9 building.

10 Q I think you took a broader picture of the
11 back.

12 MS. CARDILLO: Court's indulgence for one
13 moment.

14 THE COURT: Uh-hum.

15 Q (By Ms. Cardillo) State's Exhibit No. 49, if
16 you could explain this photograph and what you were
17 doing? And who is it?

18 A That -- that is me. This is the back of the
19 building. Again, there is the meter boxes. And this
20 was that pole -- or the -- in the previous photo
21 right there. Like we determined -- or that the
22 entrance through the second-story window might have
23 been the point of entry, what we call point of entry,
24 how somebody gained entrance into the apartment.

25 Obviously I couldn't reach it from the inside,

1 so we had to get a ladder to come out, and I had to
2 climb up to process the outside of the windows for
3 fingerprints.

4 Q Could you explain a little bit, what do you
5 mean process the window for fingerprints? What does
6 that entail?

7 A Fingerprints are left behind in a lot times
8 what are called latent fingerprints. And you can't
9 obviously see them readily by looking at something.
10 And we call it processing, because we put some type
11 of powder or chemical. In this instance, since it
12 was a nonporous surface, we could use black powder to
13 put on there to be able to get those fingerprints to
14 show up so we can lift them and turn them in for
15 identification.

16 Q Did you do that in this case?

17 A Yes, ma'am, we did.

18 Q And what was the process you used in this
19 case, and were you able to lift any latent
20 fingerprints?

21 A Yes, ma'am, we used -- I use black powder.
22 And once we do the black powder, we'll lay tape down
23 over any area we feel might have any ridge detail.
24 And then we'll lift them up and put them on backing
25 cards, and then those get turned in. And I do recall

1 that we did lift several prints from the outside of
2 that window.

3 Q Let me show you what has been marked State's
4 Exhibit 54.

5 A That's a close-up of the window.

6 Q I'm not sure if it's sideways or right side
7 up?

8 A I believe that's straight, because the numbers
9 are straight. I try to mark them to where they're
10 easy to read.

11 These are areas where I placed tape, that I
12 feel there might be significant detail that can be
13 matched. We try to lift -- if there is anything
14 there at all, we try lift it for comparison. And
15 these ones are numbered, that's four, five, six,
16 seven and eight. So we mark them, that way we can
17 lift them and keep track of where they came from.

18 Q And what -- how do you lift them from the
19 surface? I mean, what do you do with them at that
20 point? I see the tape, but if you could explain the
21 next step in your process.

22 A What -- if you can see like these little --
23 has like a little ledge or little lip right there
24 with the tape? This section right here is adhesive,
25 and it's sticking to the window. We leave ourselves

1 a little lift area.

2 And all I'm going to do is hold onto that.
3 I'm going to pull it off the window. And because the
4 tape is clear, the powder that's on the window is
5 black, I can lay it onto a three by five white glossy
6 card. And when I lay the tape down, the prints are
7 visible through the tape.

8 Q And did you do that in this case?

9 A Yes, ma'am, we did.

10 Q On each one of these that you say that are
11 numbered?

12 A Right. Each piece of tape is pulled
13 individually and put onto a card.

14 Q And is that on the inside or the outside of
15 the window?

16 A I believe that's the outside. Let me just
17 double check if you don't mind. Latent lift number
18 four, five, six, seven and eight are on the exterior
19 of the upstairs right window.

20 Q And is that indicated from these photographs?

21 A Yes, ma'am, it is.

22 Q I'm going to show you what has been marked as
23 State's -- admitted State's Exhibit 51. Can you
24 please explain that photograph, where is that
25 photograph taken, what is it of?

1 A This is going to be the interior right
2 windows, and these are three different pieces of tape
3 that I have laid down that I can collect. Numbers 10
4 and 11, and I believe that's going to be number 12 up
5 on the top.

6 Q And what room was this done in?

7 A This was same back bedroom, back right bedroom
8 where the incident occurred, and it's the right
9 window on the interior side.

10 Q And State's Admitted Exhibit 50, is that --
11 you just mentioned number 12, what is that of?

12 A That is a picture -- when you have a window,
13 the ledge, when you go to push down the window, that
14 is that ledge right there by the lock. And that's on
15 the interior side of the window as well.

16 Q And is that the same lock you discussed
17 earlier that was broken?

18 A Yes, ma'am, it is.

19 Q Thank you. I'm going to show you what's been
20 marked and admitted as Exhibit 52. What is that a
21 photograph of? Is that the same window?

22 A I believe it is. Yes, because there is the
23 damaged lock. It's just close-up of number 9.
24 Apparently it wasn't shown very well. So we try to
25 do a close-up.

1 overall -- again, we do overalls of everything
2 and then close-ups of it as well.

3 Q And State's Exhibit 53, is that more of a
4 bigger picture of the inside window of the --

5 A Yes, ma'am, that I made. Yes, ma'am.

6 Q Were there any screens on these windows when
7 you climbed up to do the fingerprint processing?

8 A No, ma'am, there were not.

9 Q What did you do with these lifts, if I'm
10 calling -- am I using the right terminology?

11 A We call them lifts, yes.

12 Q What did you do with these lifts that you did
13 once you were done with it?

14 A Once I place them on the backing cards, they
15 have information on the back that I can document the
16 case number and date, where I've lifted them from,
17 usually draw a little picture of it so I can know.

18 Then I take them -- seal them, because they're
19 evidence, in a plastic bag with my initials and the
20 date on it. And then they get turned over to the
21 identification specialist for them to do the
22 comparisons.

23 Q I had -- what division would that be?

24 A The would be the identification office, AFIS
25 division.

1 Q And did you do that in this case?

2 A Yes, ma'am, we did.

3 Q Now, were any other fingerprints -- or were
4 any other fingerprints attempted to be processed in
5 this scene of the town home?

6 A Yes, ma'am. The downstairs kitchen window was
7 processed as well by my sergeant, Sergeant Sherman,
8 who assisted me. They were collected and turned in
9 as well.

10 Q Were you the lead crime scene technician on
11 scene in this case?

12 A Yes, ma'am.

13 Q Now, are there any other ways that you
14 document a crime scene other than photographs?

15 A Major crime scenes we also do a video to go
16 along with the photographs in its unaltered state
17 before I do any processing or evidence marking.

18 Q And was that done in this case?

19 A Yes, ma'am.

20 Q And when was that done? When was the video
21 taken?

22 A It was done that morning. And I don't
23 remember if I did it right before I took my still
24 photographs or right after. It's done -- it doesn't
25 matter which succession that we do it in, as long as

1 it's done in its unaltered state of the residence.

2 Q And did it -- does this video accurately
3 depict what you observed on the scene when you
4 arrived that morning?

5 A Yes, it does.

6 MS. CARDILLO: Your Honor, may I approach?

7 THE COURT: Uh-huh.

8 (Whereupon, State's Exhibit No. 69 is marked
9 for identification.)

10 Q (By Ms. Cardillo) Now, Anita, how are those
11 videos taken? Are they old-school video camera
12 cassette tapes or more high-tech these days?

13 A They are a little bit more high-tech. They're
14 actual -- I believe it was a Sony. We just got new
15 ones, so I apologize. They're on a CD, they're DVD.
16 It's a camcorder. We -- once we take the DVD, we
17 finalize it, and it's ready to go.

18 Q I'm going to show you what has been marked
19 state's proposed Exhibit 69, what is that?

20 A It's a DVD, or call them CD's, but it's a DVD,
21 disc showing it for videos.

22 Q And you were present when this was taken?

23 A Yes.

24 MS. CARDILLO: Your Honor, the State would
25 move for the admission of the video at this time and

1 ask it be published to the jury.

2 THE COURT: Any objection?

3 MR. GRIMES: Yes, cumulative to the pictures.

4 THE COURT: Please approach.

5 (Whereupon, a discussion was held at the bench
6 off the record.)

7 THE COURT: Overruled. You may proceed.

8 Q (By Ms. Cardillo) Anita, would it -- can she
9 slide over?

10 THE COURT: You can slide your chair over,
11 ma'am.

12 (Whereupon the videotape is played in open
13 court.)

14 Q (By Ms. Cardillo) Now, does that accurately
15 depict the scene as you found it or as you processed
16 it on July 8, 2007?

17 A Yes, ma'am.

18 Q Now, did you retrieve or attempt to retrieve
19 any other evidence outside for part of your
20 investigation?

21 A Yes, ma'am. We did take two shoe castings
22 from the side of the building. Again, the weather
23 conditions, the dirt was a little bit more pliable.
24 And there appeared to be some type of shoe
25 impressions at the -- one end of the building, and we

1 took these as well.

2 Q What did you do with those?

3 A I don't believe anything came of them. They
4 did not come not very -- not a lot of detail with
5 them. I don't believe they ended up being of any
6 evidentiary value.

7 Q Again, you mentioned it was overcast and
8 raining that morning. Do you recall what the
9 temperature was?

10 A I believe the -- let me just check. I believe
11 it was 76, 78 degrees out. The outside temperature
12 was 76 degrees. The inside with the thermometer read
13 around 78 degrees.

14 Q Now, do you do diagrams of crime scenes?

15 A Yes, ma'am. We would -- that's another form
16 of documentation of the scene. We do do a diagram of
17 what we see there as well.

18 A And did you do one in this case?

19 A Yes, ma'am.

20 Q And what did you do it of, the whole
21 residence?

22 A No, ma'am. When we do a diagram, we just do
23 it at the immediate scene where the incident actually
24 occurred, and that was going to be in the main back
25 right bedroom.

1 Q Now, Ms. Maestas, for identification purposes,
2 what is that?

3 A That is the diagram that I drew for that back
4 bedroom.

5 Q And you did this yourself?

6 A Yes, ma'am. It's on one of our supplemental
7 sheets, and it's got my name on the bottom. And I do
8 recall doing the diagram.

9 Q Do you have your pointer still?

10 A Yes, ma'am.

11 Q Now I'm not sure, what's the reasoning for --

12 MR. GRIMES: Can we approach, Your Honor?

13 THE COURT: You may.

14 (Whereupon, a discussion was held at the bench
15 off the record.)

16 THE COURT: You may proceed.

17 MS. CARDILLO: Would you like me to have that
18 marked first?

19 THE COURT: You should, uh-hum.

20 (Whereupon, State's Exhibit No. 70 is marked
21 for identification.)

22 Q (By Ms. Cardillo) Ms. Maestas, this is
23 state's for ID only Exhibit 70. Can you please
24 explain what this is?

25 A This is a two-dimensional drawing of the scene

1 as I depicted it when I was there. It gives us --
2 when you take the photographs, you get bits and
3 pieces. When we see the whole things -- but you
4 don't have any dimensions to go by. With a drawing,
5 we take measurements of all the evidence and of the
6 room itself.

7 So when we do the sketch, we can actually
8 measure you know, this wall was seven feet ten
9 inches. You know, all the dimensions of the wall
10 where the evidence is in relation to the rest of the
11 room.

12 Q And from -- where was the gun located?

13 A The gun is -- it's kind of hard to see with
14 these little rounds that have evidence numbers on
15 them, and that's going to be A-1. And that is where
16 the gun was located, right inside the doorway.

17 Q Approximately how close to the bed was the
18 gun?

19 A I believe it was three feet. Yes, ma'am, it
20 was three feet west of the bed.

21 Q Thank you. Now, was there any other evidence
22 that you collected in regards to this case?

23 A Yes, ma'am. I also collected the evidence
24 from the autopsy as well.

25 Q And where did you go to collect this evidence?

1 A MUSC.

2 Q Do you recall when you went?

3 A It was that same morning, or I believe it was
4 afternoon. The correct time is going to be 12:30.

5 (Whereupon, State's Exhibit No. 71 is marked
6 for identification.)

7 Q (By Ms. Cardillo) Anita, I'm going to show
8 you what has been marked State's proposed Exhibit 71.
9 Do you recognize that?

10 A Yes, ma'am, I do.

11 Q And how do you recognize it?

12 A Inside you can see where the manila envelope
13 is with the evidence tape on there. You can see
14 through here it's got my evidence sticker that has,
15 again, my case number and my initials on it.

16 Q You initialed these?

17 A Yes, ma'am, I did.

18 Q And what's the date on that?

19 A That also has 7/8/07.

20 Q And where did you collect this evidence from?

21 A This was collected from the MUSC autopsy.

22 Q And what is that evidence?

23 A This states that it's two tubes of blood,
24 purple-topped tubes of blood.

25 Q Belonging to whom?

1 A To the victim.

2 Q Thank you. I'm going to show you what's been
3 marked as State's proposed Exhibit 72. Do you
4 recognize that package?

5 A Yes, ma'am, I do.

6 Q And how do you recognize this package?

7 A It has the evidence sticker on there with the
8 date, case number, and my initials, as well.

9 Q And what's the date on that package?

10 A 7/16/07.

11 Q Where did you obtain this evidence from?

12 A This was, I believe, brought to me. I'd have
13 to check the actual paperwork from Sergeant
14 Goldstein, I believe.

15 Q And what is that listed as?

16 A Its a sealed suspect kit.

17 Q Belonging to whom?

18 A To Jake Wilson.

19 Q Thank you. What items did you collect from
20 the autopsy?

21 A Anything that was on the victim which was
22 brought into the autopsy I collect. We also collect
23 the purple-topped tubes of blood. We also collect
24 fingernail clippings, pulled head hair and any
25 evidentiary value that was on the body. And I

1 believe in this instance there was a spent projectile
2 as well.

3 MS. CARDILLO: May I have a moment?

4 THE COURT: You may.

5 MS. CARDILLO: May I have a moment?

6 THE COURT: (Affirmative head shake.)

7 Q (By Ms. Cardillo) Do you label each piece of
8 evidence?

9 A Yes, ma'am.

10 Q And why do you do that?

11 A It's to keep track of what piece of evidence
12 it is, where we collected it from so we can give a
13 description to it as well.

14 Q Anita, I'm going to show you what's already
15 been admitted as State's Exhibit No. 65. Did you
16 collect any of that from the autopsy?

17 A No, ma'am, that was from the weapon. That's
18 the shell casing and the rounds.

19 Q Okay. And what's the box for?

20 A That was what they -- when they went for
21 further analysis, they pulled them out of the box. I
22 usually put them in a box for safekeeping. They
23 pulled them out for further analysis.

24 Q What did you do with the projectile that was
25 recovered from the autopsy? What did you do with it,

1 or how did you collect it?

2 A It was given to us from the pathologist.
3 They're the ones that actually collect it from the
4 body at the autopsy. They generally put it in some
5 type of container. I believe it's like a little
6 plastic flip-top container and wrap it. It is a
7 biohazard at this point.

8 Once I receive it back and I get it to the
9 office, I usually take measurements of the
10 projectile. Just a standard investigative, helping
11 for our detectives. State what the diameter of the
12 spent projectile was and the weight of it.

13 Q And what did you do with it after you did
14 that?

15 A It gets packaged up and sent for any further
16 analysis, if the detectives decide they want any
17 further analysis done for it.

18 Q Once you collect all of this evidence and take
19 it back to your facility?

20 A Yes, ma'am.

21 Q What's facility is that just to be sure?

22 A The crime scene office is a suboffice, it's a
23 substation. It's a temporary housing. Anything that
24 we're working on presently, any type of cases, we
25 have secured locked lockers that we store our

1 evidence in.

2 Once it has been bagged, we put our evidence
3 stickers on it, and we seal it, and we initial it.
4 we put it into a secure locker. Then we have one
5 person who does take care of our evidence tracking.
6 Once they track it, they take it to the permanent
7 storage facility if it doesn't need to go to any
8 further analysis, which is at 180 Lockport, which is
9 downtown.

10 Q Do you document where the evidence goes who
11 signs it in and who signs it out?

12 A Yes, ma'am. We have a chain of custody sheet,
13 300 form, what we call 300 form, that will list
14 anybody who's handled the evidence. Once it goes
15 from me, I put it into my locker, it's a locked
16 cabinet or locker.

17 Then the evidence custodian, when he takes
18 custody of it to transport it or the other crime
19 scene technician if they transport it to SLED, they
20 will sign the evidence itself or the -- and the
21 tracking sheet for that piece of evidence so it shows
22 everywhere it's going.

23 Q And did you do that in this case for the
24 handgun?

25 A Yes, ma'am.

1 Q And for the fired shell casings that you found
2 in the revolver?

3 A Yes, ma'am.

4 Q Also for the projectile recovered from the
5 victim in the autopsy?

6 A Yes, ma'am.

7 Q And the spent shell casing found in the
8 revolver?

9 A Yes, ma'am, that was with the other rounds,
10 yes.

11 Q Did you do this the for blood standard that
12 was given to you by Goldstein of the defendant?

13 A Yes, ma'am. That has tracking form as well.

14 Q And for the blood standard of the victim as
15 well, Latoya Pendergrass?

16 A Yes, ma'am.

17 Q This was all secured in a tamper-resistant
18 type environment?

19 A Yes, ma'am. We have an alarm system. Anybody
20 who comes into the area has to sign in. If they're
21 not a part of our division. They're locked. We have
22 combination locks to our own individual lockers, and
23 to the general lockers where the evidence is stored
24 they're locked with keys and then that key box is
25 locked as well.

1 MS. CARDILLO: Court's indulgence for one
2 brief moment.

3 THE COURT: Uh-hum.

4 MS. CARDILLO: Thank you, Ms. Maestas, I
5 appreciate you answering my questions. Please answer
6 any questions from Mr. Grimes.

7 THE COURT: Mr. Grimes, you may proceed.

8 MR. GRIMES: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. GRIMES:

11 Q Good afternoon, Ms. Maestas.

12 A Hi.

13 Q Good to see you again.

14 A Nice to see you.

15 Q I want to ask you a few questions about
16 fingerprints.

17 A Okay.

18 Q What's a better surface to pull a fingerprint
19 from, metal or plastic?

20 A The ideal surface for fingerprints if we could
21 have our way is a controlled, clean, nonporous
22 surface similar to glass, yes.

23 Q And where does metal rank on the hierarchy of
24 surfaces to pull fingerprints from?

25 A Well, there is really no -- to give a number

1 to it, there is no way to tell. Some surfaces are
2 better than others. If it's a nice clean piece of
3 metal that has not been in the elements, you can get
4 a nice print off of it. A lot of things interfere
5 with the conditions. We also prefer a nice, clean
6 surface.

7 Q Obviously rain can interfere?

8 A Yes.

9 Q And it had been raining that day sounded like?

10 A Yes.

11 Q But you were able to pull prints off the
12 window, not the exterior of the window?

13 A Yes, we were.

14 Q I don't remember you testifying about trying
15 to pull prints off -- I guess you said there's a
16 little metal pipe you thought that had been pulled
17 away?

18 A Right. It was a painted surface, it was not
19 the ideal surface to try to get a lift off of.

20 Q Now, is it fair to say that the window outside
21 that is exposed to the elements is not an ideal
22 surface?

23 A It's still a nonporous surface, which is a
24 good surface to try to get prints off of in those
25 conditions. Being in the elements and outside, you

1 have less of a chance than if it was inside and
2 clean. But you can have an inside window that hasn't
3 been cleaned in forever, and you have an outside
4 window that was cleaned and you get better prints.

5 So it's hard to judge. It's hard to put yes
6 or no under certain circumstances. Every one has to
7 be judged individually.

8 Q I think my question was, a window that's
9 outside exposed to the elements is not an ideal
10 surface, is it?

11 A It's -- I cannot say that it's not an ideal
12 surface. A window outside can give you very good
13 prints. The elements does decrease what you can get,
14 but it's not necessarily that -- I can't say that
15 it's not an ideal surface.

16 Q All right.

17 A Sorry.

18 Q No problem. But even though it may be exposed
19 to the elements, you still try to get fingerprints
20 from there?

21 A We are going to try. That's all we can do.
22 We won't know what's a perfect surface, not a perfect
23 surface. We always have ideals of what we would like
24 in perfect situations, but unless we try we don't
25 know.

1 Q That's what I am getting at. You did not even
2 try on that pipe, did you?

3 A I don't -- honestly I can't remember off the
4 top of my head if I powdered it or not. I might
5 have. If we didn't get any prints off it, I did not
6 take any photos of the prints off of it. I mean
7 right at this moment I couldn't honestly tell you if
8 I put powder on it or not.

9 We do a lot of powder sometimes. And if we
10 don't get anything off of it, we don't lift anything.

11 Q Do you have a copy of your report?

12 A Yes, I do.

13 Q Is there anything in there about saying that
14 you try to get powder on the pipes?

15 A No, sir. I do not have it documented that I
16 did or did not.

17 Q Let's talk a little bit on the inside of the
18 house now. Sounds like you testified that you did
19 the upstairs window where the incident scene was; is
20 that correct?

21 A Yes.

22 Q Then you did downstairs kitchen window; is
23 that correct?

24 A Yes.

25 Q And how many other windows were in the house?

1 A There was two in the living room, two in the
2 upstairs bedroom, two in the kitchen and two in the
3 back bedroom and one in the bathroom.

4 Q And is it fair, I don't know if my math is
5 good there, 10 windows, 12 windows?

6 A 2, 4, 6, 8, 10 -- 9 windows, something like
7 that.

8 Q Out of the 9 windows you put powder on two of
9 them?

10 A I did the upstairs two windows in the incident
11 location, then we did the downstairs window because
12 it was unlocked.

13 Q Three windows?

14 A Uh-hum. The other windows were shot and
15 locked.

16 Q Let me ask you, this may be a stupid question,
17 is it easier -- well, first let me back up. You said
18 you were paying so much attention to the upstairs
19 window because you received information that was the
20 point of entry?

21 A Obviously we are going to process the interior
22 window from where the incident occurred. Through the
23 investigation it was determined that the point of
24 entry might have been through the upstairs window.

25 And that's not normally something I would

1 process a second story window when there is no
2 balcony. That's where we obtain the ladder so I
3 could process that window because through the
4 investigation we thought that might be the point of
5 entry.

6 Q And this is the question I was going to ask
7 you, is it easier for someone to sneak in an upstairs
8 window or downstairs unlocked window?

9 A Than downstairs?

10 Q You said there was a downstairs window that
11 was unlocked?

12 A It was unlocked, but it was not able to be
13 opened. That's why we processed it because we
14 noticed it was unlocked. Once we processed it we
15 realized we couldn't open it, it was not a
16 functioning window, it was stuck.

17 Q And you understand Mr. Wilson was charged with
18 burglary, right?

19 A I'm not familiar with the charges.

20 Q Did you process anything else in the house
21 such as a TV or any of the kitchen cabinets?

22 A No, sir, we did not.

23 Q And if his fingerprints had been there, that
24 might be evidence he had goods there or was living
25 there for a while?

1 A I can't tell you. We had no indication to
2 process the kitchen, the cabinets I should say.

3 Q Okay. And did you process the TV upstairs?

4 A No, sir.

5 Q And on the sort of bedsheets, did you do any
6 type of testing there for hair samples or other type
7 of DNA?

8 A I collected the evidence. I secured it,
9 bagged it, initialed it. I have no control over what
10 evidence gets sent for analysis or what they do with
11 the evidence once it has been collected.

12 Q Did you collect pillowcases?

13 A No, I did not.

14 Q Did you collect the sheet that was on the bed?

15 A The comforter? No, we did not.

16 Q I keep losing my hair. Did you go in the
17 shower and maybe look for any type of hair samples
18 that maybe fell out?

19 A No, sir.

20 MR. GRIMES: One moment, Your Honor.

21 THE COURT: Uh-hum.

22 Q (By Mr. Grimes) Let me ask a couple more
23 questions. You checked the gun?

24 A Yes, I did.

25 Q The gun doesn't have a safety on it, does it?

1 A I don't recall that it does, no.

2 Q And from your pictures, were you able to
3 determine how long the damage had been to like the
4 window lock had been broken?

5 A I have no way to determine when the damage was
6 done.

7 Q And on the electrical box, any way to
8 determine how long that box had been damaged?

9 A No, sir.

10 Q Or on the screen that's been pulled away, any
11 way to determine that?

12 A There is no way for me to determine.

13 Q Did you go around to any other complex
14 apartments in that area, look at their electrical
15 boxes, see if they had any damage?

16 A No, sir.

17 Q Look at pipes of theirs to see if there was
18 any damage, pulling away?

19 A No, sir.

20 Q You can testify it was pulled away or could it
21 have been wear and tear or maintenance?

22 A All I can do is photograph what I see. It was
23 not flush along the wall as it normally would be. I
24 cannot tell you how or why it happened, it would be
25 speculation.

1 MR. GRIMES: Okay. Thank you for your
2 honesty.

3 Thank you, Your Honor. No further questions.

4 THE COURT: Any redirect of the witness?

5 MS. CARDILLO: No, Your Honor.

6 THE COURT: Any objection to the witness being
7 excused from the State?

8 MS. CARDILLO: None from the State.

9 THE COURT: From the defense?

10 MR. GRIMES: No, ma'am.

11 THE COURT: Ma'am, you are excused. Counsel
12 approach, please.

13 (Whereupon, a discussion was held at the bench
14 off the record.)

15 THE COURT: Ladies and gentlemen, we are going
16 to take advantage of this break in testimony to take
17 our evening recess. We appreciate you allowing us to
18 go beyond 5:00. Please, the juror who needs a ride
19 home, you please let the bailiff know so we can
20 arrange that for you.

21 During this break, please did not discuss this
22 case among yourselves or with anyone else. I know it
23 may seem silly, I know I have to catch myself when
24 people tell me they have jury duty, the natural
25 question to ask is, what kind of case are you

1 hearing? That's a natural human instinct to say,
2 well, let me tell you about that.

3 But to do that by its very nature is
4 deliberation because for you to talk about it
5 requires you to process what you have heard and draw
6 conclusions based upon it.

7 It is essential that you not discuss in any
8 manner anything you've heard thus far with anyone,
9 and that includes your fellow jurors or with your
10 family members and your friends.

11 I would ask that you -- we are going to start
12 earlier in the morning. I don't have any status
13 conferences or anything. We are going to start at
14 9:00. I would ask that you -- when you come to the
15 courthouse, again please don't have any contact with
16 anyone. I don't want an innocent conversation to be
17 observed and misconstrued.

18 Please leave your notepads in your seats.
19 When you return in the morning, please return
20 directly to your jury room. I don't know, no rain,
21 just cold. I was just trying to think through the
22 weather. Sometimes if it rains we have all those
23 accidents that invariably cause people to be delayed.
24 We don't want to have any delays in the morning.

25 So we will see you all in the morning. Hope

1 you have a good evening. See you then. Please leave
2 your notepads in your seats.

3 (Whereupon, the jurors exit the courtroom.)

4 THE COURT: Is there anything before we break
5 for the evening from the State?

6 MS. CARDILLO: No, Your Honor.

7 THE COURT: From the defense?

8 MR. GRIMES: No, ma'am.

9 THE COURT: You all have a good evening. See
10 you all in the morning at 9:00.

11 (Whereupon, the proceedings in the matter
12 before the Court were adjourned for the evening.)

13 * * * * *

C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, in the General Sessions Court for the session week of November 17th through 21st, 2008.

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

Anne Bouley Meyer

Anne Bouley Meyer, RPR
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2007-GS-10-12312, 12313

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Plaintiff

v.

TRANSCRIPT OF RECORD

JAKE ANTONIO WILSON,

Defendant.

NOVEMBER 19, 2008
CHARLESTON, SOUTH CAROLINA
VOLUME 3

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

MS. JULIE CARDILLO, ASSISTANT SOLICITOR
MR. NATHAN WILLIAMS, ASSISTANT SOLICITOR
REPRESENTING THE STATE

MR. ANDREW GRIME, ASSISTANT PUBLIC DEFENDER
MS. MARYBETH MULLANEY, ASSISTANT PUBLIC DEFENDER
REPRESENTING THE DEFENDANT

ANNE BOULEY MEYER, RPR

CIRCUIT COURT REPORTER

1 THE COURT: We are missing a juror. It's
2 Number 301, Chris Brown, the gentleman that works at
3 the Citadel. But we advised him -- we called and
4 left a message. We advised him to appear this
5 morning so that we could do what we need to do, but
6 he has not come to court yet. We have his cell phone
7 number and also his home number, so we are calling
8 both and we will see where we are in the next few
9 minutes. I apologize to you all for any delay. We
10 need to figure out where he is and what's going on.

11 MR. GRIMES: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (Whereupon, a recess was taken.)

14 THE COURT: Okay. We have now Mr. Brown. He
15 was walking.

16 Okay. We now have Mr. Brown, 301. We are
17 going to send a deputy to pick him up, but we found
18 he was actually closer than we anticipated. Calhoun
19 and King. So by the time we were going to dispatch
20 someone for him, he was about to walk into the
21 courthouse. So he is now present and accounted for.
22 It is my understanding that he was ill. He is no
23 longer requesting to be excused for illness, correct?

24 Okay. He indicated he had medication he
25 needed to take and now he is felling better. So

1 absent him making the request to be excused, based on
2 his assurance to the Court that he is now feeling
3 better, I will not pursue that any further.

4 Anything from the State before we proceed?

5 MS. CARDILLO: No, Your Honor.

6 THE COURT: From the defense?

7 MR. GRIMES: No, ma'am.

8 THE COURT: Okay, bring in the jury please,
9 Mr. Robinson.

10 (Whereupon, the jurors enter the courtroom.)

11 THE COURT: Ladies and gentlemen, I hope that
12 you all had a restful evening. We are now prepared
13 to resume the trial. If you would pass the notebooks
14 around, Mr. Foreman. Mr. Robinson, with your
15 assistance.

16 Thank you so much.

17 You may call your next witness.

18 MR. WILLIAMS: Thank you, Your Honor. State
19 calls Kalisha Gill.

20 MS. KALISHA GILL,
21 after having first been duly sworn to state the
22 truth, the whole truth and nothing but the truth,
23 testified on her oath as follows:

24 THE COURT: You may proceed.

25 MR. WILLIAMS: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. WILLIAMS:

3 Q Ma'am, where do you work?

4 A I work for the Charleston Police Department in
5 the latent print division.6 Q What does that mean, working for the police
7 department in that division?8 A I analyze, compare and evaluate latent
9 fingerprints that are collected from a crime scene to
10 a known individual for identification as well as
11 illumination purposes.12 I also operate the Automated Fingerprint
13 Identification System known as AFIS. And I also
14 verify other latent examiners' findings.

15 Q How long have you been doing that job for?

16 A It will be seven years this coming January.

17 Q Did you have any special training to do that
18 job?

19 A Yes.

20 Q What is it?

21 A In May of 2000, I graduated from the
22 University of Arizona with a bachelors of science
23 degree. After that, I enrolled in a course through
24 the United States Department of Justice which dealt
25 with recognizing fingerprints patterns and also

1 classification of fingerprints.

2 After I got hired at the police department,
3 they sent me to a basic fingerprint course through
4 the South Carolina Criminal Justice Academy. I've
5 also been to a ridgeology science workshop, palm
6 print symposium, basic crime scene techniques for
7 investigators, advanced forensic fingerprint
8 identification and testimony course.

9 And my most recent accomplishment is becoming
10 a certified latent print examiner through the
11 International Association for Identification, as well
12 as a certified crime scene investigator.

13 Q You say you have been doing this for seven
14 years?

15 A Yes.

16 Q Approximately how many cases would you say you
17 worked that involved fingerprints analysis?

18 A Cases? I would estimate probably more than
19 10,000.

20 Q And you've testified as an expert before?

21 A Yes.

22 Q Been qualified as an expert?

23 A Yes.

24 Q In what area?

25 A In latent prints.

1 Q Latent prints analysis or identifications?

2 A Identification, yes.

3 Q You've testified in trials in this courtroom?

4 A Yes.

5 Q Trials that I have had before?

6 A Yes.

7 MR. WILLIAMS: Your Honor, I move to qualify

8 Ms. Gill as an expert in fingerprint identification.

9 MR. GRIMES: If I can ask a brief question.

10 THE COURT: About her qualifications.

11 VOIR DIRE EXAMINATION

12 BY MR. GRIMES:

13 Q Ms. Gill, have you ever been published?

14 A No.

15 Q Have you ever given any lectures on
16 fingerprints?

17 A I've given a lecture at the Citadel for a
18 class in forensics.

19 Q And when was that?

20 A I believe that was 2006 sometime.

21 Q Have you ever given any lectures anywhere
22 else?

23 A No.

24 MR. GRIMES: No further questions, Your Honor.

25 THE COURT: Any objection to her admission as

1 a latent print examiner?

2 MR. GRIMES: No, ma'am.

3 THE COURT: So admitted. That is the area of
4 expertise, correct, latent print examination?

5 MR. WILLIAMS: Yeah, that's fine.

6 THE COURT: You may proceed.

7 Q (By Mr. Williams) Ms. Gill, if you could just
8 tell the jury how you go about examining latent
9 prints, what that process is?

10 A When you compare a latent fingerprint to a
11 known fingerprint, what we use are three levels of
12 detail. The first level is being the most general
13 and the third level the most specific.

14 You always start with the latent fingerprint
15 first. You have the latent fingerprints and the
16 known fingerprints side by side. We use a magnifier
17 and pointers with additional light.

18 The first level of detail that you look for is
19 called pattern types. And the -- well, in
20 fingerprints, you have three pattern types, you have
21 loops, arches and whirls.

22 If you can determine the pattern type in the
23 latent fingerprints, you then look at the known
24 fingerprint or ten-print card, which has all ten
25 fingers, and look for that same pattern type. If you

1 find that pattern type, then all other pattern types
2 can be eliminated.

3 Once you have agreement in pattern type, you
4 can move to the second level of detail which includes
5 the minutia, or the points. You start with the
6 latent fingerprint again and look for a target group
7 of points, which is just a cluster of points. Then
8 you move to the known fingerprint and look for that
9 same cluster of points in the same relative position.

10 If you find that, then you move back to the
11 latent fingerprints and it's a continuous process of
12 going back and forth from the latent to the known
13 print looking for more ridges and counting ridges.

14 At that same time you're looking at the second
15 level of detail you also look for the third level of
16 detail, which is the most specific and it deals with
17 the actual size and shape of each individual ridge.
18 You also look for the space in between the ridges,
19 which is called the furrows -- excuse me, there is a
20 pores that you can find in the ridges, so you look
21 for that.

22 And then once you feel like you have enough
23 information to make an identification, you call it an
24 identification. And then the same steps are repeated
25 by a second examiner in the verification.

1 Q And you do that in every case?

2 A Yes.

3 Q Now, you mentioned latent prints and a known
4 print. What did you mean by those two things or what
5 is the difference?

6 A A known print is taken from controlled -- in a
7 controlled environment. If you look at the tip of
8 your fingers, you can see ridges, which are called
9 friction ridges. If you place a layer of ink on your
10 fingers and roll it on a standard fingerprint card,
11 it leaves behind a visible impression. That's called
12 a known fingerprint or inked fingerprint. The same
13 can be said for your palm print and even the soles of
14 your feet.

15 Latent fingerprints, latent means hidden, so a
16 latent fingerprint is something that you can't see
17 with the naked eye. You have to -- it's up to the
18 crime scene officer to look -- I should say a latent
19 fingerprint is positive on certain objects in the
20 form of dirt or perspiration or other contaminants
21 that's left behind on your fingers.

22 So if an object is touched, you have that
23 possibility of leaving a latent fingerprint. And
24 then a crime scene officer can visualize that
25 fingerprint using fingerprint powder or chemicals.

1 And once it's visible, then you can use it for
2 comparison purposes.

3 Q Are you familiar with how crime scene officers
4 do their job with the city police department?

5 A Yes.

6 Q How do they generally take a latent print,
7 generally? I know there are multiple ways.

8 A The most common way is through fingerprint
9 powder dusting.

10 Q Are you familiar with the way that they also
11 number or label the prints in order to submit them
12 for, I guess, corresponding identification?

13 A Yes.

14 Q I am going to show you what has been admitted
15 as State's 54, I believe. If you could look behind
16 you.

17 Does that look familiar, at least how -- are
18 you familiar with that process?

19 A This, to me, looks like -- like the dusting at
20 the scene, at a particular scene. I don't know what
21 this is specifically. But each one of those numbers
22 that says LFP, which means latent fingerprint. This
23 one's LFP-6, which means latent fingerprint 6. That
24 is a piece of tape put on an object that they further
25 lift and put on a card for us to compare.

1 Q You don't go out and do that though?

2 A No.

3 Q When something is submitted to you, how is a
4 latent print submitted? What is the form that it
5 comes in?

6 A Usually if it's a dusted fingerprint, they
7 will put it on a 3x5 card or bigger with the tape and
8 they label the backside with the case number and
9 where the latent print came from and they stick it in
10 an envelope and submit the envelope to us. They seal
11 it first.

12 Q And you were given several of those for this
13 case?

14 A We were given two envelopes, two different
15 envelopes with several latents inside.

16 Q Now, when you get those latents, there is a
17 quality or quantity that you assign or at least
18 relatively assign to a particular print or a latent
19 print; is that fair?

20 A Yes.

21 Q Tell the jury about that or what that means.

22 A The process that we use when comparing
23 fingerprints is called ACEV, so -- the A stands for
24 analysis; C, comparison; evaluation; and then
25 verification.

1 In the analysis phase, what we do is look at
2 the latent fingerprints and try to determine to the
3 best of our abilities if that fingerprint contains
4 enough information for identification. If it has
5 eight points or more, then we mark it as AFIS
6 quality, which means we can search against the
7 database.

8 If it has eight points or less but it still
9 has enough detail to identify, then we call it
10 comparable. If we feel there is not enough detail to
11 identify that suspect -- or to identify that latent,
12 then we mark it as being not comparable.

13 Q Now, if you had -- you talk about a database.
14 If you had a known print that came directly from a
15 person, would that be different in terms of comparing
16 quality and quantity of the print?

17 A If we had a known person that we were supposed
18 to analyze?

19 Q Right. A separate print that was given
20 directly from a person?

21 A We don't analyze them. If it was a known
22 print or an ink print that was taken from, say, an
23 autopsy, then we analyze that as far as being AFIS
24 quality, and we can enter that in the database.

25 Q Let me make sure I verify. You are talking

1 about a database. There's also known prints when
2 somebody is booked for instance?

3 A Right.

4 Q There are certainly different processes that
5 may contain different information or more information
6 or less information?

7 A I'm not sure I'm following you.

8 Q Let me ask you about this case. You were
9 submitted prints in this case, you said in two
10 different envelopes?

11 A Yes.

12 Q What was the total number of prints that were
13 submitted to you?

14 A I'd have to look.

15 Q Do have your report?

16 A Yes.

17 Q Good ahead.

18 A There were 12 latent prints submitted.

19 Q And they came, you said, in two different
20 envelopes?

21 A Yes, that's correct.

22 Q One was from looks like Sergeant Sherman?

23 A Yes.

24 Q And the other was from --

25 MR. GRIMES: Leading.

1 THE COURT: Sustained, leading.

2 Q (By Mr. Williams) who were they from?

3 A Three latent prints were collected and turned
4 into me by Sergeant Sherman, which is in our crime
5 scene office, and nine latent prints were collected
6 from Anita Maestas.

7 Q And when those prints are submitted to you,
8 are they designated as coming from a particular
9 place?

10 A Yes.

11 Q Let's start with the prints submitted to you
12 by Sergeant Sherman. What were those designated as
13 coming from?

14 A Latent fingerprint Number 1 or 1-A was
15 collected from a downstairs kitchen window exterior;
16 latent fingerprint Number 2-A was collected from
17 downstairs kitchen window exterior, and then in
18 parentheses he wrote, window by sink.

19 And latent fingerprint 3-A was collected from
20 kitchen interior window by sink.

21 Q Did you make a determination as to the quality
22 and quantity of those prints at the time you looked
23 at them?

24 A Yes, sir.

25 Q What was that determination?

1 A All three of those prints lacked the quality
2 to identify.

3 Q You said you were -- can you explain to the
4 jury again what that means, at least in that context
5 with this case, those three prints?

6 A In this case we compared a suspect and nothing
7 was identified. On these three particular latents
8 they did not have enough quality or quantity. There
9 was not enough ridge detail to identify them to
10 anybody.

11 Q Now I want to then ask you about the nine
12 latent prints that were taken by Ms. Maestas. You
13 performed two tests on these prints, right?

14 A Correct.

15 Q Tell the jury about the first process that you
16 conducted on the print card.

17 A On --

18 Q Why don't you go through and say what they
19 were identified as?

20 A On August 8th, 2007, I was -- I compared a
21 Mr. Jake Antonio Wilson and found one print that was
22 identified, which is latent lift number 12. It was
23 taken from the interior of rear upstairs right
24 window. And it was identified to the number four
25 finger, which is the right ring finger.

1 MR. GRIMES: Your Honor, we have an objection.
2 May we approach?

3 THE COURT: Yes.

4 (Whereupon, a discussion was held at the bench
5 off the record.)

6 MR. GRIMES: Renew our previous objection.

7 THE COURT: Your objection is preserved for
8 the record.

9 MR. GRIMES: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 You may proceed, Mr. Williams.

12 MR. WILLIAMS: Thank you, Your Honor.

13 Q (By Mr. Williams) Ms. Gill, I think you were
14 talking about the examination on August 7 -- I'm
15 sorry, August 8, 2007.

16 A Yes.

17 Q And you had nine prints from Ms. Maestas and
18 you made one match?

19 A Yes, that's right.

20 Q Which one was that?

21 A That was latent lift number 12, which was
22 identified to the right ring finger of the card
23 bearing the name Jake Antonio Wilson.

24 Q Now, you had talked earlier about comparing
25 latents with what you called AFIS or a database?

1 A AFIS, that's correct.

2 Q Was there other prints that you later used to
3 compare those submitted to you by Ms. Maestas?

4 MR. GRIMES: Leading, Your Honor.

5 THE COURT: Sustained, leading.

6 Q (By Mr. Williams) Did you do anything else
7 with these fingerprints?

8 A Yes. Once I was aware that this case was
9 going to trial, I pulled the case again and
10 re-examined it. And at -- the first time the case
11 was examined, we did not have palm prints on
12 Mr. Wilson. And the second time, palm prints were
13 available to us. So at that time, I re-examined the
14 case with the palm print.

15 Q If you could for the jury, go through the
16 description of the prints that Ms. Maestas provided
17 to you. I know we covered number 12, but there were
18 seven or eight others.

19 A Right. She started off with latent lift
20 number four since Sergeant Sherman started off with
21 one, two, and three. So latent lift number four was
22 collected from the exterior of the upstairs rear
23 bedroom window. Actually, latent lift number four
24 and number five were both from the exterior of the
25 upstairs rear bedroom window. And both of them

1 lacked the quality and quantity to identify to
2 anybody.

3 Latent lift number six was taken from the
4 exterior of upstairs rear right bedroom window, and
5 that print was identified to the left palm of the
6 card bearing the name Jake Antonio Wilson.

7 Q I want to stop you there. That was what
8 number?

9 A That was latent lift number six.

10 Q You said that the -- earlier that the numbers
11 get made on the actual window?

12 MR. GRIMES: Objection, Your Honor. She said
13 she did not know what this picture was from.

14 THE COURT: Rephrase the question.

15 Q (By Mr. Williams) You said earlier you are
16 familiar with the process by which prints are
17 generally lifted, is that right?

18 A Correct.

19 Q And that was shown in State's 54, behind you?

20 A Right.

21 Q We are talking about number six --

22 MR. GRIMES: Leading.

23 THE COURT: Sustained, leading. I'm going to
24 give him a little latitude to walk her through it.

25 Q (By Mr. Williams) What number did you say

1 had the match?

2 A Latent lift number six was identified to the
3 left palm.

4 Q When you say left palm, can you tell the jury
5 exactly what you are talking about? What do you mean
6 by left palm?

7 A I believe in this case, it was -- this was
8 from the part where the fingers meet the palm, the
9 upper region is considered the fingers and the palm
10 -- from where the fingers meet the palm down to the
11 wrist is considered the palm.

12 So this print was identified to somewhere on
13 the left palm. I don't remember exactly where.

14 Q Going through the rest of the lifts, can you
15 tell the jury what seven, eight, nine and eleven -- I
16 think we already talked about the 12 -- the remaining
17 ones?

18 A Latent lift number seven was taken from the
19 exterior of the upstairs rear right bedroom window,
20 and it also lacked the quality to be identified.

21 Latent lift number eight was taken from
22 exterior rear upstairs bedroom window, it also lacked
23 the quality.

24 Latent lift number nine was developed on an
25 interior of rear upstairs right window and it lacked

1 the quality to be identified.

2 Latent lift number 10 was taken from the
3 interior of rear upstairs right window and that print
4 was identified to the right palm of the card bearing
5 the name Jake Antonio Wilson.

6 Latent lift number 11 developed from the
7 interior of rear upstairs right window, also lacked
8 the quality to be identified.

9 Q Number 12 you already talked about was the
10 interior.

11 A Right ring finger, yes.

12 Q Good. So of all the 12, you had three
13 matches?

14 A Yes, that's right.

15 Q You said that there is -- is basically quality
16 control or review of this case as well by peers?

17 A Yes, we call it verification.

18 Q Was that done in this case?

19 A Yes, sir.

20 MR. GRIMES: Objection, called for hearsay.

21 THE COURT: It's about peer review.

22 Overruled. You may proceed.

23 MR. WILSON: Thank you, Your Honor.

24 THE COURT: Stay within the acceptable
25 parameters.

1 Q (By Mr. Williams) Ms. Gill, I also want to go
2 over some of those things as part of peer review and
3 just how you all have quality control.

4 How many prints would you say you've examined,
5 or cases would you say you've handled, in your
6 career?

7 A I would say at least 10,000.

8 Q What happens if you run into some kind of
9 procedure or something that needs to be remedied?

10 A In our division, we would bring it to our
11 forensic services director.

12 Q How many times in those cases in your career
13 has that happened in a case you have been on?

14 A It's happened once for me.

15 Q And in that situation, can you explain whether
16 that was procedural or substantive?

17 A In that particular incident, we had an error
18 in our system, our procedures, and it was addressed
19 with our forensic services director.

20 Q Did the error result in anybody being arrested
21 or not arrested?

22 A I'm not sure. I don't know if they were
23 arrested or not.

24 Q And when did that occur?

25 A I don't remember.

1 Q Was it -- do you have a general idea?

2 A It was early -- I would say within the first
3 couple years that I started.

4 Q And you've been there seven?

5 A Seven, almost seven.

6 MR. WILLIAMS: Thank you. I have no further
7 questions, Your Honor.

8 THE COURT: Any questions for the witness?

9 MR. GRIMES: Yes, ma'am, a few questions.

10 THE COURT: You may proceed.

11 MR. GRIMES: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. GRIMES:

14 Q Good morning, Ms. Gill.

15 A Good morning.

16 Q What are some types of good surfaces that you
17 can get fingerprints from?

18 A The best type of surface is a clean, shiny,
19 smooth surface such as a piece of glass, something
20 that doesn't have a rough exterior to it.

21 Q And how does -- what about metal?

22 A If it's clean and shiny and smooth I would say
23 it would be a good surface.

24 Q What about if it has been out in the elements?

25 A It might have a factor to deal with it, but it

1 depends on the specific surface.

2 Q Now, are you able to date the fingerprint?

3 A As far as when it was --

4 Q -- placed on the object?

5 A No.

6 Q Now are you able to tell how a fingerprint got
7 on there?

8 A How it got on there?

9 Q Well, for example, perhaps if in this case
10 someone was climbing through the window or maybe
11 trying to fix a window because it has been broken?

12 A No. All we can tell is that a fingerprint was
13 left because the object was touched.

14 Q One follow-up question on the two tests in
15 this case. Do you have your report from August 8 of
16 2007?

17 A Yes, sir, I do.

18 Q Latent print number six was on the exterior of
19 the window. You said that lacked quality -- quantity
20 to affect identification?

21 A On that report, yes.

22 Q And drawing your attention to latent print
23 number 10. There you say that possesses the quality
24 to affect identification.

25 A Yes.

1 Q So if someone left a good palm print on the
2 window, that would possess the quality or quantity to
3 affect identification, correct?

4 A Doesn't necessarily have to be a good print,
5 just enough information to identify.

6 Q But if it was a good print, that would have
7 enough information, right?

8 A You would think so.

9 Q If all you had to compare was the
10 fingerprints, though, you couldn't make a match?

11 A Right, not on the palm.

12 Q I guess you are saying that's what happened in
13 this case?

14 A Yes, sir.

15 Q But rather than saying -- in your report,
16 rather than saying number six had the quality and
17 quantity to affect identification, you said it
18 didn't?

19 A Right. In the initial analysis of latent lift
20 number six was actually done by my supervisor. And
21 when we first analyzed the fingerprint, we look and
22 try to make our best judgment call as to whether or
23 not it has enough information.

24 Later on when we have a suspect to compare,
25 then we also compare those prints that we called

1 having lacked the quality. And in this case, the
2 print that we said lacked the quality actually has
3 enough information in it to compare and it was
4 identified.

5 Q On that report, you said it was done by your
6 supervisor?

7 A No, the report was done by myself.

8 Q You signed off on it?

9 A Well, I did the analysis -- I did the
10 comparison. My supervisor did the analysis.

11 Q Do you have worksheets of these prints?

12 A Worksheets?

13 MR. GRIMES: May I approach the witness?

14 THE COURT: You may.

15 Q (By Mr. Grimes) Do you have copies of those
16 documents?

17 A These are photocopies of the backside of the
18 latent print card. I don't have -- oh, it has the
19 front also. But I don't have the actual latent
20 print. I don't have the photocopies.

21 Q Okay. On number six, you put this not a
22 comparable print, right?

23 A My supervisor did, yes.

24 Q And your initials are on here, though, right?

25 A Right. Every time we look at a case, we have

1 to initial the back of every single latent in that
2 case.

3 Q So this case came up for trial, that's when
4 you found out that this print was a good print?

5 A When I re-examined the case with a palm print
6 available, then I identified the palm print.

7 Q And palm prints were available at the original
8 time of this incident, correct?

9 A No, they were not.

10 Q When were the palm prints taken?

11 A I would have to look. The palm prints were
12 taken August 16th, 2007.

13 Q Your report is done about a week before that?

14 A Right. The initial report was done on August
15 8th.

16 Q Thank you for clearing that up for me. I was
17 a little confused on that. Thank you.

18 MR. GRIMES: No further questions, Your Honor.

19 THE COURT: Any redirect of the witness?

20 MR. WILLIAMS: No, Your Honor.

21 THE COURT: Any objection to the witness being
22 excused from the State?

23 MR. WILLIAMS: No, Your Honor.

24 THE COURT: From the defense?

25 MR. GRIMES: No, ma'am.

1 THE COURT: Ma'am, you are excused.

2 You may call your next witness.

3 MS. CARDILLO: Your Honor, may we approach?

4 THE COURT: Yes, you may.

5 (Whereupon, a discussion was held at the bench
6 off the record.)

7 THE COURT: Mr. Foreman, ladies and gentlemen,
8 I have a matter of law I need to take up with the
9 attorneys. It should be very brief. During the
10 break, please don't discuss the case. We appreciate
11 your patience. Please leave your notepads in your
12 seats.

13 (Whereupon, the jurors exit the courtroom.)

14 THE COURT: Who would be the next witness,
15 Ms. Cardillo?

16 MS. CARDILLO: Latasha Pendergrass.

17 THE COURT: What will she be testifying to?

18 MS. CARDILLO: Your Honor, there are three
19 situations. Basically about her relationship with
20 her sister and the defendant. There was an incident
21 in May of '06 where the victim -- the defendant had
22 allegedly held a knife to the victim's throat
23 threatening to kill her.

24 She was so scared, she hid in the closet with
25 her children at [REDACTED] Harris Street, was able to call

1 her sister on the phone, whispering to her to please
2 come over, please come over and told her what
3 happened.

4 Latasha showed up and she will testify to what
5 -- essentially what the victim told her through
6 excited utterance.

7 THE COURT: Did she witness anything herself?

8 MS. CARDILLO: She did not witness anything
9 herself, Your Honor.

10 THE COURT: What did she do when she came
11 over?

12 MS. CARDILLO: When she came over, the
13 defendant was sitting basically in the living room
14 playing a video game. They had words. The victim
15 came done the stairs crying, carrying the children.
16 At that point an argument ensued between the --
17 essentially the sister and the defendant got into a
18 sort of scuffle. He threw an object at the sister
19 that struck her. There was some fighting between
20 them. He left. Came back. The police were called.
21 And that was end of that incident.

22 That was the incident that was pending and
23 that defendant had a no contact order after he was
24 arrested on that incident.

25 THE COURT: But they remained living together,

1 correct?

2 MS. CARDILLO: I cannot really --

3 THE COURT: The testimony -- uncontroverted
4 testimony is she did not put him out until the end of
5 June, beginning of July.

6 MS. CARDILLO: I know she went to stay with
7 her sister that night. So after that --

8 THE COURT: They got back together.

9 MS. CARDILLO: Those pending charges were a
10 CV-HAN and possession of a knife during --

11 THE COURT: Are they still pending? What
12 happened?

13 MS. CARDILLO: They are still pending, Your
14 Honor. Interestingly enough, that was my case as
15 well. He was scheduled to be in court for a plea.
16 There had been -- other than dismissing the
17 possession of a knife, that was the only plea offer.
18 He was scheduled to be in court a week after the
19 murder took place. The notices had gone out --

20 THE COURT: That was what day?

21 MS. CARDILLO: The notice for the plea date,
22 Your Honor, I want to say it was July 17. This
23 happened on that Sunday. That would have been July
24 9, so the following Monday of July, and I'm not sure,
25 would that be the 15th or 16th of July when he was

1 scheduled to be in the next term of court.

2 July 16th, Your Honor, was when he was
3 scheduled to be in court.

4 In addition, one of our victim advocates had
5 spoken to the victim the week --

6 THE COURT: July 16th would have been a week
7 away.

8 MS. CARDILLO: Yes, Your Honor.

9 THE COURT: Is that the week it was scheduled?

10 MS. CARDILLO: It was, Your Honor. And the
11 victim actually -- Latoya had called my office the
12 week before she was murdered. I'm thinking it was
13 maybe that Wednesday or Thursday, July 5th or 6th,
14 just inquiring about the status of it. And we had
15 indicated that it was moving forward, he was
16 scheduled to be in court but wasn't sure if he was
17 going to plead or not at that point.

18 I did not directly speak to her, but a victim
19 advocate in my office did.

20 THE COURT: Next.

21 MS. CARDILLO: The next incident actually
22 occurred, it was June 5th of 2007, there was a police
23 report also on this. Latasha indicated that she
24 spoke to the victim about this incident. The victim
25 told her what had happened, that she had woke up in

1 the middle of the night with the defendant basically
2 had put duct tape on her arm, her right arm, and that
3 he had been threatening to kill her.

4 Police had been called at this point and they
5 came and fled. She did not see that incident but she
6 did talk to the victim, victim told her what had
7 happened in that situation.

8 THE COURT: How would that be admissible?

9 MS. CARDILLO: Well, Your Honor, based on the
10 -- him threatening her, I think --

11 THE COURT: How would the hearsay come in?

12 MS. CARDILLO: I'm sorry?

13 THE COURT: How would the hearsay come in?
14 When exactly in the point in time did she tell her?
15 Why didn't you just call the police officer? Why
16 would you try -- it was not an excited utterance,
17 wasn't a present sense impression, she wasn't there,
18 has to be an expectation.

19 It's now a statement offered for its truth.

20 MS. CARDILLO: I was going to go into that
21 with Latasha regarding her emotional status, was she
22 still under stress or excitement of the event.

23 THE COURT: Considering the recent cases that
24 have come out of the Supreme Court, unless she was
25 right there, saw it within a minute, it's not an

1 excited utterance. Of course, it's contradiction of
2 their prior presence, but nevertheless it's just what
3 it is.

4 MS. CARDILLO: The final is not a prior bad
5 act per se. I know defense counsel will object to
6 it.

7 Two days before the murder on July 6, Latasha
8 and Toya were together. They were hanging out that
9 Friday night for some time. Toya allegedly started
10 receiving a lot of phone calls on her cell phone.
11 She would not answer them. Latasha finally answered
12 the phone.

13 Recognized the defendant's voice because --
14 she recognized it because they had been around each
15 other for so many years. She also recognized his
16 voice because Toya and the defendant had resided with
17 Latasha a few years before, so she recognized it that
18 way.

19 Essentially the defendant threatened -- told
20 Latasha that -- on the phone, he was tired of playing
21 games. She doesn't take me back, I'm going to kill
22 her. If I cannot have you, nobody will. I will kill
23 you. I will kill you. I will call you.

24 THE COURT: That's probably admissible of the
25 two.

1 MS. CARDILLO: But I wanted to bring that up
2 just for the --

3 THE COURT: This one is closer in time. She
4 witnessed it herself. He said it to her. Her
5 talking about what happened in June of 2007, what her
6 sister said to her, I don't think falls under any
7 exception, Lyle or otherwise.

8 The police officer would be another story. He
9 came at the time the police were called.

10 Did the charges come about as a result of the
11 June incident?

12 MS. CARDILLO: Your Honor, there was a police
13 report taken. The only charges that came, there is
14 another incident that a police officer -- might as
15 well bring it up now, he'll be here this afternoon --
16 that happened on June 17 where there was a pending
17 CDV --

18 THE COURT: June 17th of what year?

19 MS. CARDILLO: Of 2007, I apologize, Your
20 Honor. It happened -- it's Corporal Larry Brown. He
21 was -- on June 17th of '07, there was a domestic
22 disturbance, a police report was taken.

23 The defendant was charged but he was on the
24 run. They hadn't been able to serve him with that
25 warrant. It was subject to the first -- Corporal

1 Larry Brown with the Charleston Police Department
2 signed the warrant. He will be here.

3 He won't necessarily talk about the specifics
4 of the incident itself, but he was looking for the
5 defendant and actually had given the defendant's
6 mother his cell phone number. And actually about two
7 or three days before the murder, the defendant called
8 Corporal Brown. Corporal Brown informed him of the
9 pending CDV warrant, that it was against the victim
10 Latoya Pendergrass and that he was wanted.

11 Jake Wilson told the defendant -- I'm sorry,
12 Corporal Brown -- on two occasions that he would turn
13 himself in, set up a place, afternoon to set meeting
14 on two different occasions and the defendant never
15 showed.

16 These were actually on July 2nd and 3rd, or
17 3rd and 4th. It was July 3rd and July 5th that the
18 defendant on both occasions told the officer he would
19 turn himself in on that pending CDV warrant.

20 THE COURT: We will deal with that when he
21 comes to testify.

22 MS. CARDILLO: Just want to get it all out
23 there, Your Honor.

24 THE COURT: Mr. Grimes, anything you'd like to
25 say in response to the testimony as has been

1 proffered that would be offered by the decedent's
2 sister, Latasha Pendergrass?

3 I will tell you you really only need to
4 address the third incident, the July 6th, 2007, where
5 it's purported your client makes threats over the
6 telephone to the decedent's sister. I'm not inclined
7 to let the June 5th, 2007, incident in. It's
8 hearsay. It does not come within any exception.

9 And the May, 2006, incident I think probably
10 would be appropriate if your client takes the stand
11 in cross-examination. But I'm not certain it would
12 be appropriate for the sister to testify about. So
13 you basically need to address the July 6th, 2007.

14 MR. GRIMES: I think the first issue I have
15 with July 6th, I apologize to the solicitor if I
16 state this wrong, but I don't remember receiving any
17 documents or anything Rule 5 about these phone calls.

18 THE COURT: Does she have a duty to disclose
19 that to you?

20 MR. GRIMES: Any statement by the defendant.
21 Rule 5 covers statements by the defendant. And if he
22 is making statements to a client -- the victim's
23 sister --

24 THE COURT: Well the remedy would be to give
25 you access to the witness that she wants to call. I

1 don't think a remedy would be to exclude it.

2 MR. GRIMES: At this late juncture?

3 THE COURT: It's unlikely she would have
4 spoken to you in any event.

5 MR. GRIMES: I know.

6 THE COURT: So I don't know that you can
7 really show any prejudice. I cannot imagine any
8 circumstances.

9 MR. GRIMES: We could have obtained cell phone
10 records to contradict this.

11 THE COURT: There is nothing that precludes
12 you from getting cell phone records now.

13 MR. GRIMES: I think there are.

14 THE COURT: What would preclude you from
15 getting records now?

16 MR. GRIMES: We need to get the telephone
17 number. I don't know if the cell phone companies
18 hold them that long.

19 THE COURT: They keep them longer. For a
20 year, they probably still have those records. That
21 still would go to weight.

22 MR. GRIMES: Each company is a little
23 different. Some of those prepaid things are
24 dissolved right away.

25 THE COURT: That's speculation. What kind of

1 cell phone did she have, Ms. Cardillo? Actually,
2 decedent's cell phone, which is no longer on.

3 MS. CARDILLO: It's in evidence, Your Honor.

4 THE COURT: What is in evidence?

5 MS. CARDILLO: That it was analyzed by CPD.

6 THE COURT: What are you referring to?

7 MS. CARDILLO: Her cell phone was analyzed by
8 CPD --

9 THE COURT: Do you have her cell phone
10 records?

11 MS. CARDILLO: No, Your Honor. It was just
12 analyzed to see if we could get any voicemail or
13 anything of that. We couldn't get any voicemails.

14 THE COURT: I mean, who gave her cell phone
15 number? What number event -- you should be able to
16 get your client's cell phone records because he
17 called -- they say it came from him to her.

18 MR. GRIMES: Had we known about the call, we
19 would have.

20 THE COURT: Still can.

21 MR. GRIMES: I don't believe so. I would have
22 Mr. Ganney (phonetic) testify that --

23 THE COURT: You don't know that until you try.
24 You cannot tell me what a cell phone company can or
25 cannot do until you call them to find out. Your word

1 is not going to be sufficient to satisfy the Court.

2 MR. GRIMES: I have Mr. Ganney try to get cell
3 phone records in our office.

4 THE COURT: It's still speculative until you
5 find out what company your client has a cell phone
6 with, and the phone number and try to get the
7 records.

8 MR. GRIMES: I understand that, Your Honor.

9 THE COURT: Until a cell phone company tells
10 me they no longer exist, you cannot get them, that's
11 speculative.

12 MR. GRIMES: I see.

13 THE COURT: You still would not be prejudiced
14 because you still would have ample opportunity to
15 cross-examine the witness regarding those very
16 issues, which he cannot corroborate if this happened.
17 He cannot get the cell phone records.

18 It really goes to the weight of the
19 credibility of the testimony, not its admissability.
20 There are many ways you can successfully impeach that
21 testimony if you so desire.

22 MR. GRIMES: I think the second argument we
23 have at this point is the State hasn't shown by clear
24 and convincing evidence that this act occurred. The
25 argument by the solicitor does not amount to that. I

1 think we need to call the witness and have her
2 testify and subject to cross-examination.

3 THE COURT: Did you all make him aware of the
4 statement, Ms. Cardillo, and that you intended to
5 offer?

6 And did you request it, Mr. Grimes, in
7 discovery?

8 MR. GRIMES: We sent out a general Rule 5
9 request. I followed up with a specific Brady request
10 on a lot of stuff.

11 MS. CARDILLO: Your Honor, I did not
12 specifically tell him.

13 THE COURT: Don't the rules require you to do
14 that?

15 MS. CARDILLO: Well, Your Honor, I did tell
16 him she would be testifying about prior incidents and
17 that they had known each other. I did not go into
18 the details of this particular conversation, no, Your
19 Honor.

20 As far as the cell phone, the records, the
21 computer forensic analysis of Charleston Police
22 Department did analyze this. This was turned in for
23 discovery. It does have a call history.

24 The defendant's phone was a pay-as-you-go
25 phone.

1 THE COURT: Does it have his call history
2 showing that he called her cell phone on the 6th?

3 MS. CARDILLO: That's not what I have, Your
4 Honor. They were unable to process his because it
5 was a pay-as-you-go type phone.

6 THE COURT: They will be able to tell every
7 call that came into her phone.

8 MS. CARDILLO: They could, yes. They have a
9 call history of her phonebook entries, images,
10 several missed.

11 THE COURT: They don't have the call history?

12 MS. CARDILLO: They don't. Not in the report.

13 THE COURT: Who was her cell phone with?

14 MS. CARDILLO: It was a Motorola Razor phone.
15 I'm not sure who the provider was, though.

16 According to the family, Your Honor, she had
17 the cell phone. The call history should include,
18 even though it's not listed out in this report, it
19 would be activated on the phone if the battery -- we
20 have also provided in additional all of this
21 information to Andrew Grimes as well, which listed
22 out all of this information.

23 THE COURT: You're saying on July 6th, he made
24 these calls?

25 MS. CARDILLO: On July 6th.

1 THE COURT: She was killed on July 7th?

2 MS. CARDILLO: Early morning of July 8th, yes.
3 He made these phone calls to the victim --

4 THE COURT: Have you all attempted to turn on
5 the phone? I used to have a Motorola Razor, and it
6 tells you all the phone calls that come in, all the
7 phone calls that go out. Was the phone damaged?

8 MS. CARDILLO: I have not, Your Honor. I
9 attempted -- I don't believe it was damaged. But I
10 have not attempted myself.

11 THE COURT: If you turn it on it will show you
12 every call that came in, every call that went out
13 within a certain time frame. But it will show the
14 ones that came in July 6th, July 7th, July 8th. May
15 not tell you the exact number, may have an
16 unidentified block. It will show you a call came in.

17 MS. CARDILLO: I just also realized, or just
18 recalled, that Latasha did indicate that it kept
19 coming up blocked or restricted.

20 THE COURT: It will still show. Unless she
21 deleted it, which we wouldn't know that either. That
22 is possible. You do have the capacity to delete
23 names. So that is not a process. We still need the
24 cell phone records because you can delete numbers as
25 they come in. You can delete them as you make them.

1 MS. CARDILLO: I do have the CD. I have to go
2 back and look at the CD from the crime scene from the
3 computer unit pulled up. I have to go back and look
4 at that.

5 THE COURT: Maybe you all need to do that to
6 see if it reflects the phone calls. That may put
7 this entire issue to bed.

8 MR. GRIMES: Your Honor, would you like to see
9 the --

10 THE COURT: Uh-uh.

11 MS. CARDILLO: Your Honor, we have a call
12 history of calls being sent out and calls received,
13 but we don't have the date time on the computer.

14 THE COURT: It would seem to -- they would be
15 the last calls. The phone would not have been used
16 after she died.

17 MS. CARDILLO: Well, Your Honor, according to
18 how many phone calls she made on that Saturday, July
19 7th, or may have done after there is only nine
20 received -- nine or ten.

21 THE COURT: It's not showing the actual call,
22 it's showing the number?

23 MS. CARDILLO: Yes, Your Honor. It doesn't
24 even show the duration, Your Honor. It's got one
25 listed as dialed to her mother.

1 THE COURT: No one in her family has her cell
2 phone bills or her records after she died?

3 MS. CARDILLO: Her mother may have some of
4 them.

5 THE COURT: I would imagine she would have the
6 last one. Did they open an estate for her?

7 MS. GADSDEN: I think I have one, her last
8 one.

9 THE COURT: Do you know if the battery in the
10 phone is very small? Every phone has one.

11 MR. GRIMES: I can get mine.

12 THE COURT: Do you have a Motorola Razor? If
13 you can find a Motorola Razor phone charger, that
14 would be wonderful.

15 They didn't do anything when they analyzed it
16 to prevent the phone from being turned on?

17 MS. CARDILLO: I wouldn't imagine. They did
18 get images went through memory, I guess, if you will,
19 of the phones.

20 THE COURT: I wonder why they wouldn't have
21 the recorded the calls. Or just the number. Can we
22 call another witness in the interim, move the case
23 along while we figure this out?

24 MS. CARDILLO: Yes, Your Honor. We have two
25 chain witnesses.

1 THE COURT: Why don't we do that, come back to
2 this.

3 Actually, there seems to be case law that says
4 the state is only required to turn over to you an
5 oral statement made in response to interrogation,
6 which is my interpretation of the rule. If it is not
7 in response to interrogation, they have no duty to
8 turn it over to you. But I'm going to research it
9 some more and we will go from there.

10 But I would like to move along. We are sort
11 of wasting time at this moment.

12 We're ready to proceed?

13 MS. CARDILLO: Yes, Your Honor.

14 THE COURT: Defense?

15 MR. GRIMES: Yes, ma'am.

16 THE COURT: Please bring in the panel.

17 MS. CARDILLO: Would you like us to proceed to
18 the chain witnesses?

19 THE COURT: Uh-hum. Thank you.

20 MS. CARDILLO: Your Honor, I think we will
21 deal with --

22 THE COURT: We will turn the phone on and we
23 will be able to at least see if she did not delete
24 the calls, which is possible.

25 (Whereupon, the jurors enter the courtroom.)

1 THE COURT: Ladies and gentlemen, we
2 appreciate your patience. We will now resume the
3 trial. I explained to them on yesterday, and I will
4 reinforce it that unlike them, over us, we have these
5 vents and they run all day long and they impair your
6 ability to -- make things drown in and out. So I
7 need you all to speak loudly and clearly so that the
8 jury can understand and hear you.

9 If you all have any more difficulty, let me
10 know.

11 You may proceed, Ms. Cardillo.

12 MS. CARDILLO: Thank you, Your Honor.

13 State calls Jennifer Wooley.

14 MS. JENNIFER WOOLEY,
15 after having first been duly sworn to state the
16 truth, the whole truth and nothing but the truth,
17 testified on her oath as follows:

18 THE COURT: You may proceed.

19 MS. CARDILLO: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MS. CARDILLO:

22 Q Jennifer, where are you employed?

23 A Charleston Police Department.

24 Q What do you do there?

25 A I work in the crime scene unit as a latent

1 recovery specialist.

2 Q How long have you done that with the police
3 department?

4 A I've worked in the crime scene unit for four
5 years and specifically in the labs as a latent
6 recovery specialist for almost two years now.

7 Q I'm sorry, how long have you worked for the
8 Charleston Police Department?

9 A Six years for the department.

10 Q What did you do before you were with the crime
11 scene?

12 A Patrol officer.

13 Q Now, were you -- were you involved in evidence
14 collection or processing in the case against Jake
15 Antonio Wilson?

16 A Yes, ma'am.

17 Q What was your involvement?

18 A I processed the handgun for fingerprints.

19 Q Now, where did you receive this handgun from?

20 A We have transfer lockers in the crime scene
21 unit for evidence that is going to me. So it's a
22 storage locker.

23 MS. CARDILLO: Your Honor, may I approach?

24 THE COURT: You may.

25 Q (By Ms. Cardillo) I am going to show you

1 what's already been admitted, but it's State's
2 Exhibit 60 and 65. What are those?

3 A This is the box that contained the handgun.

4 Q Where did you get that from?

5 A I got it from locker L-7.

6 Q How do you know that?

7 A It's here on the chain of evidence.

8 Q And what did you do with that once you
9 received it?

10 A I processed it for fingerprints. I did a
11 visual examination seeing if I see any visual
12 fingerprints on it. I looked at it through an
13 ott-lite. I then placed the gun in a super glue
14 fuming chamber. I again looked at it with the
15 ott-lite after that and then placed a powder on it to
16 process for prints.

17 Q Again, what were the results of your
18 examination?

19 A No fingerprints were recovered.

20 Q Did you receive -- well, if you'll look at
21 Exhibit 65, what is that?

22 A This is ammunition.

23 Q And where did you recover that from?

24 A It was actually inside the box.

25 Q What did you do with those once you received?

1 A They went through the exact same process.
2 They were visually examined. They were looked at
3 with the ott-lite, placed in a fuming chamber, and
4 used powder on them for processing prints.

5 Q What were your results?

6 A Negative results on that also.

7 Q What did you do with each of these items once
8 you were finished processing the gun and bullets?

9 A I marked the evidence with my initials and
10 resealed the box, and I placed the box into a gun
11 safe at that point.

12 Q Gun safe?

13 A It's another storage locker. It's probably a
14 G locker.

15 Q To whom did you transfer -- you transferred
16 the evidence to the gun safe?

17 A To the gun safe.

18 Q How was it secured in there?

19 A It is, as I understand, it's a safe. There is
20 a code and only those people who are working in the
21 crime scene office know that combination.

22 Q Now, while the item was in your custody and
23 control, did you change or alter the items at all?

24 A No, ma'am.

25 Q Or deform the content of it?

1 A No, ma'am.

2 Q Did you maintain the integrity of the gun and
3 the bullets that you examined?

4 A Absolutely.

5 MS. CARDILLO: One moment, Your Honor.

6 THE COURT: Uh-hum.

7 MS. CARDILLO: I have no further questions for
8 you. Thank you.

9 THE COURT: Any questions for this witness?

10 MR. GRIMES: Yes, ma'am.

11 THE COURT: You may proceed.

12 CROSS-EXAMINATION

13 BY MR. GRIMES:

14 Q Good morning, Officer Wooley. Officer, I'm
15 not speaking very loud. I'm going to try a little
16 better.

17 Now you weren't there at the scene when the
18 shooting happened, were you?

19 A No, sir, I was not.

20 Q You don't know if it was a murder, do you?

21 A It is on my paperwork that I received that it
22 was a homicide.

23 Q I mean, it has been charged as a murder?

24 A Yes.

25 Q But you don't know if it was an actual murder

1 or not?

2 A No, sir. I know it was being investigated at
3 that point as a homicide.

4 Q You don't know if it was a manslaughter case?

5 A I normally do not know a great deal of
6 details.

7 MS. CARDILLO: Objection, Your Honor,
8 relevance.

9 THE COURT: I'm going to give him a little
10 latitude. You need to move along, Mr. Grimes.

11 Q (By Mr. Grimes) You don't know if it was an
12 accident, do you?

13 A No, sir, I do not.

14 Q Thank you.

15 THE COURT: Any redirect of the witness?

16 MS. CARDILLO: No, Your Honor.

17 THE COURT: Any objection to the witness being
18 excused from the State?

19 MS. CARDILLO: No, Your Honor.

20 THE COURT: From the defense?

21 MR. GRIMES: No, ma'am.

22 THE COURT: Ma'am, you are excused. Have a
23 good day.

24 You may call your next witness.

25 MS. CARDILLO: State calls officer Randy

1 Unterbrink.

2 MR. RANDY UNTERBRINK,
3 after having first been duly sworn to state the
4 truth, the whole truth and nothing but the truth,
5 testified on her oath as follows:

6 THE COURT: You may proceed.

7 MS. CARDILLO: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MS. CARDILLO:

10 Q Officer Unterbrink, where are you employed?

11 A Charleston Police Department.

12 Q And how long have you been employed there?

13 A Little over 18 years.

14 Q What are your current duties?

15 A I'm currently assigned to the crime scene
16 unit. I have been there since -- for the past almost
17 six years now there. And I respond to scenes where
18 evidence needs to be collected and then put into
19 storage for future reference.

20 Q And what were -- what did you do before the
21 six years that you were in crime scene?

22 A Prior to that, I worked in the ID unit for a
23 number of years. In the ID unit, that's where you
24 deal a lot with fingerprints, background checks, and
25 that type of thing.

1 Q Well were you involved in the evidence
2 collection of Jake Antonio Wilson, the defendant Jake
3 Antonio Wilson?

4 A Yes.

5 Q And what was your involvement in that
6 investigation?

7 A I was just coming on shift at that point. And
8 I was told to initially go to the police station at
9 180 Lockwood Boulevard to collect some items from the
10 person that was under the arrest at that point and
11 also to do a GSR on that particular individual.

12 Q And who was that individual?

13 A I do not have his name in front of me.

14 Q Well, did you proceed to 180 Lockwood?

15 A Yes.

16 Q Is that CPD, or Charleston Police Department
17 headquarters?

18 A That's correct, yes.

19 Q What did you do upon your arrival?

20 A When I first arrived I was told to collect
21 difficult items that came from that particular
22 individual. I believe -- I would have to see the
23 paperwork to identify each item, but I believe there
24 were some cell phones, some clothing items, and the
25 GSR.

1 MS. CARDILLO: May I approach, Your Honor?

2 THE COURT: You may.

3 Q (By Ms. Cardillo) I am going to show you
4 what's previously been marked as State's proposed
5 Exhibit 61 and ask you to open that.

6 A Go ahead and opened it?

7 Q Please.

8 Do you recognize those items?

9 A I do.

10 Q How do you recognize them?

11 A I recognize them by my name being on them, and
12 also recognizing the envelopes that we use for GSR.

13 Q So you initialed or signed that?

14 A Yes, ma'am.

15 Q What are those two packages?

16 A One is a GSR with the suspect's name of Jake
17 Wilson on one; the second GSR has the victim's name
18 of Pendergrass on that.

19 Q Let me ask you, you said you conducted -- what
20 is GSR? What does this involve?

21 A GSR really is gunshot residue, that's what it
22 stands for. And the whole purpose of a GSR kit is to
23 make an attempt at collecting that GSR, gunshot
24 residue, trying to collect it.

25 Q And did you do that in this case?

1 A I performed the examination, yes.

2 Q Can you explain to the jury a little bit of
3 what the examination entails and what you did with
4 Mr. Wilson?

5 A GSR is something that you can't --

6 MR. GRIMES: Objection, Your Honor.

7 THE COURT: Basis?

8 MR. GRIMES: Improper foundation for Mr.
9 Wilson.

10 THE COURT: Pardon me?

11 MR. GRIMES: Improper foundation to say he
12 dealt with Mr. Wilson.

13 THE COURT: Overruled. You may proceed.

14 Q (By Ms. Cardillo) Please continue.

15 A When you are attempting to collect GSR, this
16 is something that you really cannot see necessarily
17 on the hands. This is something that has to be
18 examined under a microscope.

19 So with the GSR, there are really two
20 performances that you do. The first one involves a
21 little round cylinder that has a sticky side to it,
22 really like tape. And you are applying that to the
23 hand of the individual. You do one round cylinder on
24 one side of the hand, and then the second cylinder
25 you are using that on the other side of the hand and

1 you repeat that performance for the second hand.
2 After you have done that, you include those items
3 inside of a bag like this.

4 The second performance that you do is you use
5 a cotton swab and you have liquid that moistens the
6 cotton swab. You then take the cotton swab and you
7 rub it over the hand that you have just attempted to
8 collect GSR earlier, but now it's a cotton swab.
9 Once you have done that, you also put that inside of
10 a envelope that it came out initially.

11 So you have a cotton swab one for front and a
12 cotton swab one for the back.

13 Q And that's on both hands?

14 A That's correct.

15 Q And did you do that on Jake Antonio Wilson?

16 A I did.

17 Q And what did you do with the items or the kit
18 once you completed this examination on the defendant?

19 A The procedure in all cases such as that is you
20 then take it to the crime scene office, which is
21 located on Wappoo Road in West Ashley. Then it is
22 documented as far as what you have collected, then
23 it's put in storage.

24 Q And did you do that in this case?

25 A I did.

1 Q To whom did you transfer this particular item,
2 this GSR kit? Did you just leave it in the evidence
3 locker or --

4 A After it's brought to the crime scene unit, we
5 then put it under lock and key so that it's secure.
6 And then there is another officer who works there at
7 the crime scene office who at a later date will take
8 that item and possibly store it in another location.
9 But if not, it will stay there. But it's always
10 under lock and key.

11 Q Did you -- were you involved with or did you
12 go to the autopsy of the victim?

13 A I did.

14 Q And where was that?

15 A That would have been at MUSC.

16 Q What did you do upon your arrival? Or what
17 was your role when you went there?

18 A My role there is to take photographs. We need
19 to document as best we can the scene. If a person
20 has tatoos, we will take photographs of that; the
21 injuries, whatever kind, we take photographs of that;
22 clothing, we will collect the clothing.

23 Q And did you do that in this case?

24 A I did.

25 Q Did you do anything else in regards to the

1 victim?

2 A Also a GSR, which is what we referred to here.
3 I did a GSR on her as well.

4 Q And does that involve the same examination as
5 what you previously explained to the jury?

6 A The process is the same.

7 Q And what did you do with that GSR kit?

8 A Same thing. It was taken to the crime scene
9 office on Wappoo Road where it was, again, documented
10 and put under lock and key.

11 Q Did you have to document this as well on the
12 GSR kit of the victim?

13 A Everything that we collect is documented.

14 Q Did you do that in this case?

15 A Yes, ma'am.

16 Q Is it dated as well?

17 A Yes, ma'am.

18 Q Now, were you involved in the transfer of
19 evidence in this case?

20 A Yes, ma'am.

21 Q To SLED?

22 A Yes, ma'am.

23 Q I am going to -- well, you've already got the
24 two GSR kits. Did you transfer those items to SLED?
25 Would reviewing your documentation help you recall?