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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Honorable George M. McFaddin, Circuit Court Judge

JOSHUA WILLIAM PORCH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000058

APPENDIX

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1 put in the statements were drafted or typed by either you or
2 Investigator McDaniels?

3 A. We actually put into the paper, that's correct.

4 Q. Right.

5 A. The words came from both Mr. Porch and then me or Mr.
6 McDaniels, yes.

7 Q. But you are the one that put it down on the paper?

8 A. As he said it, I'm the one that pushed the keys. That
9 would be correct, on the second statement.

10 Q. And if anything missed that paper, because, I mean, you
11 are human, right?

12 A. Yes.

13 Q. You not perfect.

14 A. I'm human. I agree with that.

15 Q. If any conversation was missed that could have been
16 picked up here but didn't make it to that paper, we are not
17 getting that?

18 A. That's what -- that's the purpose of signing it twenty
19 times and us signing it, to make sure we didn't leave
20 anything out, or there wasn't anything else that needed to
21 to be put in.

22 Q. And you would agree that important conversations needed
23 to be recorded?

24 A. I don't have any problem with recording.

25 I don't have any problems with the way this was done

1 either. This has been tested time and time again. I have
2 no issue with what was done in California.

3 Q. But you would agree that the thing that matter, like a
4 trial, or an important charge, things of significance, it
5 would be important to all the context, and, therefore, be
6 recorded. You would agree with that?

7 A. The context is right there. I don't know what other
8 way to answer the question. I have zero problem with the
9 way that the interview and interrogation was done any of the
10 times that we were interviewing and interrogating.

11 Q. Okay. I mean, you would agree that this trial and this
12 conversation we are having is important, right?

13 A. It's extremely important.

14 Q. That's why you have the gentleman right to your left
15 taking it down as we speak, because that's important, right?
16 You don't disagree with that?

17 A. That's their policy. I'm fine if he takes it or
18 doesn't take it. The only people I care to hear it are to
19 my right.

20 Q. Okay. But -- and I'm talking about cold case and you
21 agreed about your vast training and your experience and that
22 you are a -- you know how to interrogate. You are a part,
23 an investigator, right?

24 A. I'm a part of an investigator?

25 Q. That's your title. I know it's sergeant, but you are

1 an investigator.

2 A. I'm a lot of things. I'm a father. I'm a husband.

3 Q. Okay. But in the context of what you are doing in this
4 courtroom, you're an investigator.

5 A. I investigate crimes. I do.

6 Q. Okay. Now, I like to get out the old dictionary and I
7 like to look up things from time to time. You would agree
8 with me that -- and I just looked up the term investigate --

9 A. Okay.

10 Q. -- which means to inquire into a matter systematically.
11 That sounds fair?

12 A. To inquire into a matter systematically?

13 Q. Uh-huh, the definition of investigate?

14 A. It sounds good to me.

15 Q. That seems fair?

16 A. Yes, sir.

17 Q. That doesn't mean to conclude into a matter
18 systematically; conclusion. It's to inquire, right? That's
19 the part of the job of being an investigator?

20 A. To gather facts?

21 Q. Sure.

22 A. That's correct.

23 Q. To inquire into a matter systematically?

24 A. Yes, sir, gather facts, I agree.

25 Q. As an investigator, it might be improper to just jump

1 to conclusion, to make a conclusion, before you have
2 actually looked into the matter or talked to the subject,
3 right?

4 A. Yeah, I think you should remain neutral. I think you
5 should look at every aspect of it. I agree.

6 Q. But you went out there before you talked to Mr. Porch
7 armed with this, this murder warrant?

8 A. Yes.

9 Q. Which you have testified in a previous matter that you
10 got this because you believed he did it?

11 A. Okay, I do believe he did it. I still believe he did
12 it.

13 Q. So before you talked to him, you had made conclusions,
14 right?

15 A. It's impossible to conduct an interview and
16 interrogation without making some type of conclusion.

17 Q. But you had this before you did the interrogation.

18 A. That's because I needed that before going out there.

19 Q. Did you?

20 A. Yes, sir.

21 Q. Why was that?

22 A. To bring him in.

23 Q. Well, I was confused. Investigator McDaniels said that
24 maybe -- I think you just testified he could have walked
25 away. He wasn't walking away anywhere, right?

1 A. I never said he could walk away.

2 Q. Didn't you just testify if he asserted his rights to a

3 lawyer --

4 A. I said I would walk away.

5 Q. You walk away, okay. He is coming back with you?

6 A. Yeah, he's coming.

7 Q. Okay.

8 A. That interview and interrogation would stop, though.

9 Q. We are clear. We are clear.

10 A. Okay.

11 Q. But y'all came out there armed with this?

12 A. Yes, sir.

13 Q. There is no bones about that?

14 A. A copy of that, yeah. He was actually in NCIC, but we

15 had a copy of this person. He knew we had a warrant.

16 Q. And you have been here throughout the entire trial. In

17 fact, when you -- your understanding is as a lead

18 investigator that Investigator McDaniels was actually

19 pressed it on him and said -- you know, pressed his badge on

20 him and said "you thought you got away with it. You almost

21 got away with it," something like that, right?

22 A. That's what he testified. I was not present, but I

23 believe --

24 Q. That's what you understand about the facts when contact

25 was made?

1 A. Yes, sir.

2 Q. And that's an initial confrontation, right?

3 A. I agree.

4 Q. Okay. Now, we have established this is interrogation
5 and we have established that y'all went out there with a
6 murder warrant in hand to go interrogate, right?

7 That was a goal. I think -- I believe Chief Wilson
8 said that was one of the main objectives was to go ahead and
9 interrogate Mr. Porch?

10 A. That's what an investigator would do.

11 Q. Right.

12 Now, y'all got out there on the 8th of July in 2009?

13 A. Yes, sir.

14 Q. And you had reviewed the case, gotten ahold of Chief
15 Wilson. I think you testified that you looked at some
16 transcripts, right?

17 A. Yes, sir.

18 Q. You looked at some of the evidence in the case, the
19 crime scene pictures, right?

20 A. I did.

21 Q. You looked at some of the reports, medical reports,
22 statements from witnesses. I mean, you had a good
23 understanding. You didn't want to be misinformed when you
24 got there. You wanted a basis to start with your
25 interrogation?

1 A. I agree.

2 Q. Okay. You got out there and you secured lodging,
3 proper lodging, right?

4 A. Yes, sir. When I say proper, it was a little further
5 away than we wanted. We didn't realize the town was going
6 to be so big.

7 Q. You wanted a hotel room where you could be comfortable
8 when you were trying to do your job?

9 A. Yes, sir.

10 Q. Okay. Now, you became a little bit ill, right?

11 A. I did.

12 Q. Got a little queazy or sick, I think?

13 A. I had a significant migraine, which in turn made my
14 stomach upset.

15 Q. Okay. So you weren't at that point really able to do
16 your job properly?

17 A. I wanted to recover. I would agree. I was not feeling
18 well.

19 Q. And you were ill. You weren't feeling well enough to
20 do what you went out there to do, right?

21 A. I could have did it. If push came to shove, I could
22 have did whatever I had to. We hadn't intended to really do
23 nothing that night, so I went to sleep.

24 Q. But you weren't at your best, right?

25 A. Was I at my best?

1 Q. When you were ill, that's fair, right? You are not at
2 your best to --

3 A. I wasn't feeling, I agree.

4 Q. Now, in your situation, something that made you feel
5 not at your best was illness, right?

6 A. Uh-huh.

7 Q. So you would agree that someone could not feel well and
8 not be at their best do a lot of things, right?

9 A. Sitting in court all week.

10 Q. I agree.

11 A. Uh-huh.

12 Q. Lack of sleep could be one of them. Tired, maybe you
13 are not at your best?

14 A. Sure.

15 Q. Potentially physical distress? If McDaniels driving
16 and y'all got in a wreck and you hurt your arm or leg, then
17 maybe you're not at your best, right?

18 A. Okay.

19 Q. For example, physical distress, you agree with that?

20 A. If I broke my leg?

21 Q. I'm saying that's an example of some way that you, or
22 anyone, could potentially not be at their best.

23 A. With a broken leg, yeah, probably not run any
24 marathons --

25 Q. Sure.

1 A. -- with a broken leg.

2 Q. Sure. So lack of sleep, physical distress, emotional
3 distress. If something bad happened to you personally and
4 you weren't feeling very well mentally, you are not at your
5 best?

6 A. Sure.

7 Q. Okay. And you would also agree that, and maybe not me,
8 per say, about if someone threatened you and you perceived
9 that threat to be credible, you may not feel at your best?

10 A. Are we speaking hypothetically?

11 Q. Sure. Talking about people, folks, general.

12 A. Probably depended upon the person.

13 Q. Threats to a family member, certainly you may not feel
14 at your best?

15 A. It may depend on the family member threatened.

16 Q. Maybe a family member you didn't like, huh?

17 A. Yeah.

18 Q. But if someone you cared for, like your wife --

19 A. Uh-huh.

20 Q. -- that may not make you feel too well, right?

21 A. Make you feel too well?

22 Q. Sure, not at your best.

23 A. I don't agree I'm not at my best. I probably wouldn't
24 be happy about that.

25 Q. Anybody wouldn't be happy if someone was threatening

1 their wife, right? You would agree with that?

2 A. Probably depends on the wife.

3 Q. Could be.

4 A. Depends on the individual.

5 Q. Okay.

6 A. Yeah.

7 Q. Okay. Now, after you -- I think in your report says
8 that you got some rest, you felt much better and you were
9 able to join Investigator McDaniels, correct?

10 A. I did feel better.

11 Q. And this is still -- well, actually contact was made,
12 as you understand, at Walgreen's maybe around 10:30, 11:00,
13 something like that?

14 A. Yes, sir.

15 Q. McDaniels was doing it on his own and had a
16 confrontation at that point with Mr. Porch at Walgreen's,
17 right?

18 A. Yes, sir.

19 Q. Local police were involved. There were a lot of people
20 out there to help secure?

21 A. That's my understanding.

22 Q. And brought him back to a place where he could be
23 properly interrogated, right?

24 A. Yes, sir.

25 Q. Okay. Now, this was late, per your report. You know,

1 you are getting there around one o'clock?

2 A. Yes, sir.

3 Q. Per McDaniels testimony he had gotten there roughly
4 around 12:30?

5 A. Yes, sir.

6 Q. He was the guy that went there and made contact and had
7 them set up in that interrogation room and he released the
8 shackles. He released his handcuffs or what was keeping him
9 to the table?

10 A. Yes, sir.

11 Q. About thirty minutes he was there and you weren't there
12 with Investigator McDaniels?

13 A. That's correct.

14 Q. So you have no personal knowledge of anything that was
15 said or done at that point in time, other than what you have
16 been told, right?

17 A. That's correct.

18 Q. Thirty minutes, roughly?

19 A. Roughly.

20 Q. Okay. Now, you got three days of interrogation, right?
21 You got -- contact was made the 8th. You got the 9th, and
22 then we have got the 10th we are talking about here?

23 A. Three days of interrogation?

24 Q. Three separate days, 8th, 9th and 10th, that we are
25 talking about here in July?

1 A. I don't think any interrogation was done on the 8th.
2 Seeings how I didn't get there until the 9th, and that was
3 the very first one.

4 Q. That's fair, but contact is made and this process
5 lasts, at least as far as your involvement, basically over
6 the course of three days, 8th, 9th, and 10th?

7 A. Are you including the time that we weren't together?

8 Q. I'm just including you and --

9 A. The entire time we were there in California?

10 Q. I'm including the time that you or either Investigator
11 McDaniels made contact and had contact with Mr. Porch.

12 A. No, we did not contact him for two days straight. We
13 were not with him for two days straight.

14 Q. Investigator McDaniels --

15 A. No.

16 Q. Investigator McDaniels made contact with him on the
17 8th? That's fair?

18 A. He did make contact with him on the 8th.

19 Q. And then y'all were with him twice on occasion on the
20 9th?

21 A. We were.

22 Q. And then the 10th?

23 A. That's correct.

24 Q. You watched the whole video about the 10th, right?

25 A. That's correct.

1 Q. And that was at the end of six and a half hours of
2 talking to another investigator from Los Angeles too?

3 A. That's correct.

4 Q. Okay. So that was at the end of that?

5 A. That's correct.

6 Q. So we got the 8th, as far as the point of contact; the
7 9th and the 10th?

8 A. Uh-huh.

9 Q. Okay. So we are clear.

10 Now, you testified to this, but just so we are all
11 certain, as far as the times, you get there a little after
12 one, but you testified that the entire point of contact
13 where you and Investigator McDaniels are with Mr. Porch is
14 from about one to five, I think. I think Shawn testified
15 one to six?

16 A. Right.

17 Q. One to five, one to six, something like that?

18 A. Somewhere around there.

19 Q. Okay. You are dealing with a four or five hour period
20 of time there, right? The initial statement is generated,
21 right?

22 A. That's not what occurred during that entire time, no.

23 Q. At the end of that time there is a statement?

24 A. Correct, and there was also some period of coordinating
25 his movement, breaks. And there is a lot of things that

1 went into that period of time. This was just not a sitting
2 in a room talking to him for four or five hours straight. I
3 disagree with that.

4 Q. We definitely know that this was on him, exactly how
5 many breaks occurred or what happened, right?

6 A. Yeah.

7 Q. But you would agree with me that that's basically the
8 amount of time that -- to complete everything; your contact,
9 the breaks, the interviews, interrogations, you know?

10 A. Lodging.

11 Q. Writing up, all that kind of stiff?

12 A. Yes, I agree.

13 Q. And this was late. I mean, you must have been really
14 tired, with the time change and everything else. You are
15 feeling ill. This was late, right? And you got there at
16 one a.m. Pacific Time?

17 A. I have never been tired -- and I have worked a lot of
18 murders, a lot of long hours longer than that, and I have
19 never felt tired in the course of an interview with someone
20 related to a murder. I can't think of one time that I felt
21 sleepy during the course of that.

22 Q. All right. But we have already established you are in
23 cold case, and that you are a good interrogator, and you are
24 obviously a superior investigator?

25 A. Training stage. I have more stamina, is that what you

1 are saying?

2 Q. Well, you are obviously well trained.

3 A. Thank you.

4 Q. But your average citizen is probably not, you would
5 agree, right?

6 A. I don't agree. We all have different jobs. We all
7 have different -- some people are night people. Some people
8 are morning people. I don't know the habits of anybody.

9 Q. I'm kind of tired right now. So you are saying it's
10 not fair to the average person who could be tired starting
11 at one o'clock in the morning and ending at six a.m.?

12 A. Are you saying you are the average person?

13 Q. I'm pretty average, yeah.

14 A. Yeah.

15 Q. And you testified that he did not appear sleepy, right?

16 A. I -- I know he wasn't sleepy. He did not appear to be
17 sleepy.

18 Q. Well, we have already heard Investigator McDaniels, and
19 you have been sitting here. That wouldn't have mattered to
20 you if he did appear sleepy. Y'all wouldn't have stopped
21 the interrogation. I mean, Shawn was pretty clear right
22 here.

23 A. I'm going to disagree with you on that, because I have
24 at times terminated -- in my history of interviewing and
25 interrogating people, I have at times terminated, depending

1 on the circumstances.

2 Q. So you are sitting here saying that -- Shawn is saying
3 "why would I? Why would we stop? We are here with the
4 murder warrant. We are here to interrogate somebody about
5 murder. We have got someone to question. Why would we stop
6 then," was his response.

7 A. He didn't -- that wasn't the question, though. You are
8 twisting it a little bit. He is saying "no, we did not --
9 because we arrested him at 12:30, he said he did not appear
10 sleepy.

11 No, we didn't say "let's go take a nap before we do
12 this." I have never taken a nap either. However, I have
13 stopped.

14 Q. Let me ask you this. Were you offering Mr. Porch a nap
15 due to the late hour?

16 A. I have never offered anyone a nap.

17 Q. Okay. But throughout this process of that period of
18 time that contact is made late, late into the early morning
19 hours, a statement was taken, right?

20 A. That's correct.

21 Q. And you have reviewed that statement and you are
22 familiar with it, right?

23 A. Yes, sir.

24 Q. Okay.

25 A. Are we talking about the first one?

1 Q. Yes, sir.

2 A. Yes, sir.

3 Q. Then you know that basically the first thing he is
4 saying about it --

5 MR. BRIAN SHEALEY: May I approach?

6 THE COURT: Yes, sir.

7 BY MR. BRIAN SHEALEY:

8 Q. I don't want to hover, but so you have got your initial
9 question and answer.

10 A. Yes, sir.

11 Q. And question by Shawn McDaniels and answer Joshua
12 Porch. These are going to be the setup for it.

13 And the first question is "what can you tell me," right?

14 A. It says "what can you tell me about the incident that
15 took place at [REDACTED] Pinelane Road, Apartment [REDACTED], on
16 May 15th, 2006?"

17 Q. And the -- the first word that comes out of his mouth
18 is someone's name?

19 A. That's correct.

20 Q. Who is that?

21 A. She said -- he said -- excuse me?

22 Q. Whose name is that?

23 A. Persia.

24 Q. Okay. But y'all hadn't made any kinds of threats to
25 Persia about potentially getting her in trouble or seeking

1 warrants against her? Y'all hadn't done that?

2 A. No, sir.

3 Q. And you testified about that.

4 And y'all hadn't made any kind of threats or perceived
5 threats about his brother-in-law either?

6 A. Absolutely not.

7 Q. You wouldn't do that?

8 A. No, sir.

9 Q. Okay. But -- I mean, that would be for certain? We
10 would know, right, if this was on?

11 A. Yeah.

12 Q. But first --

13 A. Of course, I'm highly skilled as well, so I would know
14 not to do that.

15 Q. Okay. I mean, maybe. That would tell us for sure.

16 A. You told me I was highly skilled.

17 Q. You are highly skilled. I agree with you.

18 A. Thank you.

19 Q. But the first person's name that comes out of his mouth
20 is Persia, right? On that statement, at least?

21 A. On this statement, yes, sir.

22 Q. And we don't know what else had been talked about
23 before you got there, and we don't know what else is
24 discussed, scenarios, before that statement gets boiled
25 down, but you would agree the first name on that paper is

1 his wife's name?

2 A. Yes, sir.

3 Q. Okay. So that interrogation and that whole process at
4 that point in contact is five hours.

5 Now, that same day y'all have occasion to talk to him
6 again, right?

7 A. Yes, sir.

8 Q. Now, your lodgings are a little bit further away than
9 you would like, but you had a bed to sleep in, right?

10 A. I did.

11 Q. Now, do you have any information what kind of bed Mr.
12 Porch slept in, or if he slept at all?

13 A. Do I have any information about --

14 Q. Do you have any first-hand knowledge about that?

15 A. I was not present in his cell at the time, no, sir.

16 Q. Okay. But you report back your findings to Chief
17 Wilson at that first statement, right?

18 A. Yes, sir.

19 Q. Okay. And I think -- I'm looking at your followup on
20 page three. Go to your followup, please.

21 At the very top of the page where it says that date
22 entry is 7-9-09.

23 A. Yes, sir.

24 Q. "My purpose was to interview Porch about
25 inconsistencies with the statement he provided us today

1 prior and the forensic evidence recovered at the scene."

2 That's what you wrote on your followup, right?

3 A. That's exactly what I wrote.

4 Q. Okay. Okay. And that video -- and we all know this
5 from watching it, and you are telling Porch on that video
6 "listen, we showed you. We showed you the evidence. We
7 have shown. We are not trying to hide anything. We have
8 showed you."

9 A. Yes.

10 Q. I mean, you -- you recall that, right?

11 A. Yes, sir.

12 Q. I mean, that's in evidence and the jury has got that.

13 And your report regarding that second statement, you
14 know, in regards to your interests in the forensic side of
15 this, right?

16 A. Yes, sir. Forensics is always important.

17 Q. Okay. In this case you showed Joshua pictures of her
18 body, right?

19 A. I don't remember the exact pictures that were shown,
20 but there were some pictures shown to her, yes.

21 Q. Injuries and that kind of stuff?

22 A. Yes, sir.

23 Q. All right. And the first statement was kind of a
24 self-defense type statement, right? He's -- it boils down
25 to, you know, we were becoming intimate, something happened,

1 there was an argument about, you know, who was going -- if
2 she was going to stop or not, whatever, and she comes at me
3 with a knife and basically -- she comes at me. It's an
4 accident and kind of maybe falls over the couch, or
5 something like that. Is that the summary of the first
6 statement?

7 A. His first statement was he cut an apple, the first
8 statement, and --

9 Q. I'm talking about the California statement.

10 A. California?

11 Q. Your involvement, right?

12 A. Right.

13 Q. Because you are not on the ground on this case.

14 A. Okay. You said the first statement and that was his
15 first statement.

16 Q. Your first statement.

17 A. Okay, my first statement.

18 Q. The body of your testimony is regarding the statements
19 in California, right?

20 A. Okay.

21 Q. I'm not talking about the investigators that actually
22 were there, you know, talking to witnesses and developing
23 evidence of that nature. We are talking about California.
24 I'm not going to bring you back through all that stuff, all
25 right?

1 A. You said Porch's first statement.

2 Q. And I apologize if I was confusing, but that first
3 statement is basically about her getting a knife and coming
4 at you -- excuse me, coming at Mr. Porch, and, you know,
5 he's trying to get the knife and they fall over a couch.
6 It's kind of an accident scenario, right?

7 A. I would agree.

8 Q. You would agree with that.

9 So then per your report you have a conversation with
10 Chief Wilson and y'all are wanting to get more about the
11 forensic aspect, make things kind of be more consistent.
12 Let's look at some inconsistencies, make things, therefore,
13 more consistent, right?

14 A. Yeah, we didn't believe his story.

15 Q. Okay. But you are showing him evidence. You are
16 showing him pictures, injuries, that kind of stuff, right?

17 A. Yeah, this was unique -- you know, this was particular
18 one was unique.

19 We have to go back to understand the uniqueness. This
20 gentleman, Mr. Porch, had already been interviewed and
21 interrogated in the past about this same case by different
22 investigators. He had already been privy to two previous
23 trials preps.

24 Generally when we interview individuals that we believe
25 to be involved in a crime, they don't have that much access

1 to what we know, so this was unique in that situation. He's
2 had a lot of lot of preps, so we did -- I agree.

3 Q. Is that what you did?

4 A. We did show him some pictures, yes.

5 Q. We are not perfect, right?

6 A. I agree.

7 Q. Okay. Well, I think what we were agreeing about was
8 that you showed him pictures and that you wanted to deal
9 with some of the injuries and that kind of stuff and talked
10 to him about inconsistencies, right?

11 A. Yes, sir.

12 Q. Okay. And in that second statement, that -- and
13 just -- let's get -- and I don't want to beat it over and
14 over again, but basically you testified that y'all made
15 contact at two p.m. and you're done with him by about five,
16 and that includes -- and I'll give you that, bathroom breaks
17 and other breaks and listening to him and talking to him,
18 range of his movement and all that kind of stuff that's not
19 recorded on something like this, but I'll give that to you,
20 two to five, three hours.

21 A. Thank you.

22 Q. Okay. And you were able to match up some of your
23 evidence a little better, correct? You were able to get him
24 to describe palm strikes, right?

25 A. Yes, sir.

1 Q. To the head.

2 You were able to -- and he had mentioned anything other
3 than kind of a self-defense/accident on your first
4 California statement you got from him, but after one you
5 confront him with some of the physical evidence and he's
6 giving you some more, right?

7 A. Yes, sir.

8 Q. Palm strikes, he mentions three, right?

9 A. Yes, sir.

10 Q. He mentions a slice to her eyebrow?

11 A. Yes, sir.

12 Q. Right.

13 He's describing -- and I -- maybe this is the third,
14 but -- and I remember watching that video, and I assume this
15 may have happened some on the second interview as well, that
16 you are wanting to know about the stab wound and -- I just
17 recall you talking about the -- there was bleeding. There
18 was blood and how did that look, and he's talking about it,
19 right?

20 A. I believe so. Yeah, he's talking about that, yes, sir.

21 Q. Okay. And y'all -- in your report, in your followup,
22 you agree that at the end of that statement he's telling you
23 some stuff about things that you feel are consistent, you
24 feel are consistent, right?

25 A. Yes, sir.

1 Q. Okay. And you reviewed this file. You testified to
2 that. You know what the injuries are?

3 A. Yes, sir.

4 Q. Okay. And you were with him for three hours at that
5 point on that same day still, the night, but that three-hour
6 period, right?

7 A. Yes, sir.

8 Q. Without this, but he tells you some more things in a
9 statement that actually you type up, right?

10 A. That's correct.

11 Q. Okay. Now, you are not -- you are not a pathologist.
12 You already established that you are a very good
13 interrogator, but you are not a pathologist, right?

14 A. I thought you said I was an investigator, but I will go
15 with interrogator.

16 Q. Well, being a good interrogator is part and parcel of
17 being a good investigator.

18 A. I'm not a pathologist.

19 Q. You are not a pathologist, but you did look at some of
20 these reports and you know about the injuries, right?

21 A. Yes, sir.

22 Q. So he does talk about very specifically three palm
23 strikes to the head, right?

24 A. Yes, sir, he demonstrated it.

25 Q. Right.

1 In that video he's discussing -- he is saying something
2 to the effect of, and they have it in evidence and they will
3 look at it, but you mean contusions, right? He's talking
4 about that? You were here to watch that part?

5 A. Yes, sir.

6 Q. Look with me, if you would, at State's Exhibit 44,
7 which is the pathologist's report. I'm on page two. Do you
8 agree with me that right there it says, regarding these
9 contusions, "multiple contusions are seen in the
10 subcutaneous scalp. Three are in the midline in the front
11 mid parietal and vertex"?

12 A. It does say that.

13 Q. Okay. When we watched on that video, he's talking
14 about "you mean the three palm strikes to the head", and
15 that's in that statement that he gave you that you typed up,
16 the second statement?

17 A. Are you asking me did I read that document?

18 Q. I'm just saying you are aware of the injuries. You
19 have already testified to that.

20 A. I know I'm aware of the injuries. I don't know that I
21 ever saw that document.

22 Q. Sure. Okay. I'm just -- this is in evidence and the
23 jury can have it, but you were aware of the injuries?

24 A. I am aware of the injuries.

25 Q. And he gave you a statement that's consistent with what

1 you were aware of?

2 A. Well, as it pertains to injuries?

3 Q. Yes, sir.

4 A. I still think he's lying. I don't think he's
5 completely honest.

6 Q. Okay. But you do agree that when it talks about the
7 contusions here, it's saying there was three?

8 A. He said three.

9 Q. In the front?

10 A. Yeah.

11 Q. Okay. And you have already testified, and it's on that
12 video, that "we provided you with the information. We
13 showed you the pictures, all that kind of stuff," right?

14 A. Yes, sir.

15 Q. Okay. And obviously she got a slice to her eyebrow,
16 right?

17 A. She does.

18 Q. I mean, I don't have to show you the picture of that?
19 You are aware of that?

20 A. I will never forget it.

21 Q. And that's in that second statement, the slice to the
22 eyebrow?

23 A. Yes, sir.

24 Q. Now, exactly when he told you that, I don't know, it's
25 probably not exactly -- it's lots of scenarios or

1 conversations going on within those three hours, right?

2 A. Well, you are wrong on that. The actual conversation
3 took place from 2:19 to 3:39, and then reduced to the
4 writing, so about an hour and quarter.

5 Q. But when the discussion about the eyebrow cut occurred,
6 I mean, I don't -- I can't tell from -- and I just don't
7 know about when it occurred exactly in that three-hour
8 period of time, right?

9 A. I'm telling you.

10 Q. Okay. But there's lots of scenarios going on at that
11 point in time during that second three-hour period, right?

12 A. A lot of scenarios going on in that --

13 Q. Sure. And you are probably running a lot of
14 information past him?

15 A. Asking him questions.

16 Q. Sure.

17 And trying to get information back to him?

18 A. And he's giving us a lot of information.

19 Q. Okay. But we have already established that you and I
20 are not perfect, right? We are good at some things and not
21 so good at other things --

22 A. Yes.

23 Q. -- so it could have -- the order that was typed into
24 your statement isn't necessarily the exact chronological
25 order that he would have given you that information, right?

1 A. The way that it's typed in that statement is how he
2 gave it to me when I typed the statement.

3 Q. Okay. And in that statement there is nowhere about you
4 showing him the pictures, or the evidence, or anything, is
5 it? That may be in your followup, but not in the actual
6 statement that he signs off on, right?

7 A. I'm with you on that.

8 Q. Okay. Now, we know this is a bloody crime scene,
9 right?

10 A. It is.

11 Q. And we know from the pictures that there was blood at
12 various places, and there is blood on the walls, there is
13 blood on the Play Station, the TV, right?

14 I want to show you Defense Exhibit 8. That represents
15 what you understand about part of that house, right?

16 A. I believe so.

17 Q. Okay.

18 A. It looks consistent, yes, sir.

19 Q. All right. And you have already testified that you
20 were showing him pictures of stuff like this, right?

21 Talking about the evidence, right?

22 A. Yes, sir.

23 Q. Okay. But do you recall the pathologist's testimony?

24 A. I do.

25 Q. Okay. Now, his testimony was that it was the jugular

1 vein that was cut, right? It's on the right side of her
2 neck?

3 A. That's correct.

4 Q. I think Investigator McDaniels says it was an artery in
5 his conversations that are recorded, but it's actually a
6 vein, right?

7 A. He is not perfect on that one.

8 Q. All right. And we have already established that you
9 are not a pathologist?

10 A. I am not.

11 Q. Okay. But the testimony as you recall from the stand
12 from Dr. Bradley Marcus is that this is not the type of
13 injury that necessarily would be squirting. It's an oozing
14 because of the vein. It's more of a quickly oozing, but
15 it's not an artery that's pumping blood, like in some
16 horrific movie where you actually it's graphically pumping
17 or squirting. Do you recall that? It's oozing.

18 A. He said there may be some aspiration from the mouth
19 that would be --

20 Q. Sure, as far as the wound itself?

21 A. It would be oozing.

22 Q. Okay. But certainly she was -- she had blood in her
23 lungs and she was coughing and aspirating it, and that, I
24 believe, is, you know, what the discussions were about how
25 the kind of splattering the blood occurred, but certainly

1 you recall it's not a wound that's squirting? It's a wound
2 that's oozing very fast.

3 A. He also said that she was dying pretty quickly. That
4 would -- that would -- that would make me seem that blood is
5 coming out of there pretty fast.

6 Q. But you are not a pathologist, right?

7 A. I'm not.

8 Q. And you are there on that video with Investigator
9 McDaniels, right?

10 A. I am.

11 Q. At that point I recall on the video -- you're right
12 there. You are very close to him and you are trying to get
13 information about what the blood looked like that was coming
14 out of her neck, and you are real close, and then that's
15 when he's -- he said, "all right, well, yeah, it was going
16 like this, right?"

17 And you say "it's squirting."

18 Do you recall that?

19 A. Was that me or McDaniels?

20 Q. It was you. Do you recall that?

21 A. I don't specifically -- I remember some of that
22 conversation.

23 Q. Okay.

24 A. It could have been me.

25 Q. Okay. And you are showing him some evidence in this

1 case during this second interrogation, right?

2 A. I would agree.

3 Q. There is also discussion -- and, again, I keep on
4 thinking back to this video, because it stands out in my
5 mind, about a discussion about what kind of knife it was,
6 what it looks like and how long it was, right?

7 A. Yes, sir.

8 Q. And he describes the knife that's four to five inches,
9 right?

10 A. Yes, sir.

11 Q. I mean, you -- you would agree with what's in evidence
12 here that the depth from the penetration is two and a half
13 to three inches, right?

14 A. That's what it says, yes, sir.

15 Q. That's what the pathologist says, right?

16 A. That's correct.

17 Q. Okay.

18 A. Which -- is that the deceased pathologist or the alive
19 one?

20 Q. It says Dr. Bradley Marcus, who adapted his opinions
21 based on reviewing the initial autopsy report by Dr.
22 Kessler, as well as the transcripts and the photographs.

23 A. My question is when was that report done? I just have
24 never seen that document. I'm just wondering when it was
25 made.

1 Q. It's -- it's on here. It was done by Dr. Bradley
2 Marcus in preparation for trial.

3 A. I'm just wondering if he had it after the interview or
4 before, when he actually made that before or after we
5 interviewed Mr. Porch.

6 Q. That's fine. It's the exact same thing as Mr. Kessler.
7 It is in evidence, so, I mean, we can all look at it.

8 A. Okay.

9 Q. So basically you are able to get a good bit of
10 consistencies for your investigation, based on this second
11 interview, right, interrogation?

12 A. We learned more.

13 Q. Okay. Now, once you are done with him, you take him
14 back to, I presume, where he was left the previous night,
15 right?

16 A. I would presume.

17 Q. You don't have any firsthand knowledge of his lodgings?

18 A. I never visited him.

19 Q. Okay. You are not knowing if he's getting any rest or
20 anything like that? All you know is what you personally
21 observed, right?

22 A. That's correct.

23 Q. But on the 10th, at around eleven, is the testimony
24 that he is handed over to an L.A. sheriff investigator for a
25 period of six and a half hours, or so, right?

1 A. The day prior we asked him could we come back and pick
2 him up the next day and what time and he agreed. So we did
3 show up to pick him up, that's correct.

4 Q. But he's given to this investigator for six and a half
5 hours, right, on the third day?

6 A. Roughly.

7 Q. Okay. And then after that six and a half hours, that's
8 at the end of this three-day process, that's what is the
9 culmination of the video, right?

10 A. That's correct.

11 Q. Okay. And you would agree with me that six and a half,
12 plus roughly one, even though it's a little bit more than
13 that -- I will just say it's seven and a half hours, okay?

14 A. Okay. Are we including the restroom breaks and all
15 that in there?

16 Q. Yeah, that's included -- these are these general time
17 frames.

18 A. I just want to make sure, but we don't know --

19 Q. We don't know how many.

20 A. No.

21 Q. So we got fifteen and a half hours total over three
22 days.

23 Now, his second statement is more consistent with what
24 you know of the evidence, even though you're not a trained
25 pathologist.

1 The statement goes from accident to more of a
2 self-defense, where, you know, he's -- you know, I think the
3 first statement is an accident. The second statement is
4 second more self-defense, and the jury has it so they will
5 look at it and decide for themselves, but after the seven
6 and a half hours of that third day it's more of a standing
7 up situation, right? At the end of the statement he is
8 saying that he was --

9 A. Standing up first.

10 Q. She's coming at him with a knife. They are standing
11 up, right?

12 A. That's correct.

13 Q. Okay. And, again, the video is clear and he's acting
14 it out with you at the end of that seven and a half hour
15 period and says it kind of just goes and gets stuck in her
16 neck, right?

17 A. Yes, it was kind of self-defense accidental.

18 Q. Right.

19 A. Yeah.

20 Q. And I clearly hear your voice and you are saying -- or
21 actually your face is close -- close to you there, but you
22 are pretty close to him and you are saying "you don't want
23 to let go of that knife. Let go of that knife," right? Do
24 you remember that in talking about the knife?

25 A. "Let go of that knife?" No, I said "you didn't want to

1 put that knife in your hand."

2 Q. That's it. That's right. That's right. That's right.
3 Exactly, because, I mean, you don't -- you don't want the
4 knife in her hand when it goes in her neck. You want -- you
5 are suggesting that needs to be in his hand, right?

6 A. I believe it was in his hand, if you are asking.

7 Q. And that's what you were suggesting to him. It's
8 pretty clear, right?

9 A. I'm telling him.

10 Q. You are telling him. You are telling him that the
11 knife needs to be in his hand.

12 A. I'm not saying it needs to be in his hand.

13 Q. Well --

14 A. I don't believe his story.

15 Q. Okay. I mean, it's -- it's up there. It's recorded
16 and it will be back there.

17 Now, three days and fifteen and a half hours of
18 interrogation by a skilled interrogator?

19 A. With restroom breaks, and lunch, and transporting,
20 sure.

21 Q. Sure. Sure.

22 That's what we are dealing with.

23 And we are dealing with evidence that's presented to
24 him, but you are not a pathologist, but he does go over the
25 exact three contusions, which the pathologist describes,

1 right?

2 A. We still haven't confirmed the date on that report.

3 You are assuming that -- if you are saying that I had that
4 report in my possession --

5 Q. No, I'm not saying that you have it, but --

6 A. That's what it sounded like.

7 Q. Well, the pathologist's report would have been done, in
8 your experience, shortly after the murder, right?

9 A. Not that one. I -- I don't remember reading the first
10 one, but --

11 Q. You were here for Bradley Marcus', his testimony,
12 right?

13 A. That would have been his, right?

14 Q. Sure, this was used for trial.

15 A. Right, and I believe that the original pathologist, and
16 it's just my understanding, testified in the first trial,
17 not Mr. Bradley Marcus.

18 Q. Let me just -- let me just -- let me just show you
19 something, if you are confused about that issue.

20 A. I just have never seen that document that you are
21 showing me.

22 Q. And you are one of the lead investigators on this case,
23 right?

24 A. Okay.

25 Q. And this pathology report establishes the cause of

1 death, medically speaking, okay?

2 A. My question is when is the report made?

3 Q. Okay.

4 A. I may have not seen that document.

5 Q. You haven't -- you are saying you may have not seen it,
6 but you are the lead investigator.

7 A. I'm one of the --

8 Q. Co-lead.

9 A. I'm co-lead, that's right.

10 Q. This medical document is from someone that establishes
11 a cause of death.

12 A. Okay. And he was here to testify.

13 Q. Right.

14 And you would want to know the cause of death, and you
15 do know the cause of death?

16 A. I know she got stabbed in the neck. I know why she got
17 killed.

18 Q. But back to your question. I think you are a little
19 confused. That says "I confer with Dr. Kessler's autopsy
20 findings," right?

21 A. That wasn't my question.

22 My question was when the document was made.

23 Q. So you do have a question about if an autopsy was
24 done --

25 A. No, my question is why you are showing me a document

1 that I haven't seen? I just didn't know -- I have never
2 seen that document and you are asking me to answer questions
3 off a document that I have never seen before.

4 Q. But you do recall Bradley Marcus saying that he adopted
5 his beliefs based off reviewing Dr. Kessler's report and
6 transcripts?

7 A. He also said that Dr. Kessler believes that she could
8 have lasted fifteen. He thought it was more than five. I
9 mean --

10 Q. And you agree that in your experience with homicides --
11 you have done a lot, right?

12 A. I have.

13 Q. That these things usually get done pretty quickly,
14 right? The autopsies get done pretty quickly?

15 A. It's done. The report is not necessarily so quickly,
16 and there is always -- and you got to wait for a lot of
17 different things, like toxicology and --

18 Q. Sure, but -- now, you understand the incident date is
19 May 14th, 2006?

20 A. I agree.

21 Q. And you understand that you got involved in 2009?

22 A. I agree.

23 Q. So you understand that the report would have been done?

24 A. That report, no. Maybe a report, yes.

25 Q. A report.

1 A. You show me that report and I tell you if I recognize
2 that one.

3 Q. But you are -- you are calling into question what's an
4 exhibit, State's 44, that the State put in about the cause
5 of death?

6 A. I'm calling into question anything that you hand me.

7 Q. Okay. State's 44?

8 A. Okay.

9 Q. What does State mean?

10 A. That means the state, State of South Carolina.

11 Q. Are you a witness?

12 A. You are handing -- I said anything that you hand me I'm
13 questioning.

14 Q. Okay. And I'm not perfect.

15 A. Well then --

16 Q. But this a State's Exhibit?

17 A. Okay.

18 Q. Are you a State witness?

19 A. Yeah, but you are handing it to me. That's the
20 difference.

21 Q. Well, I didn't generate this, right? You know I didn't
22 generate this.

23 A. Okay.

24 Q. Because it's been sitting on this evidence table.

25 A. But you are questioning me as if I had that document.

1 Q. Are you -- let me ask you this. Are you calling into
2 question any other evidence in this case here?

3 A. Whether or not --

4 Q. Anything else? Maybe this box, or this picture?

5 A. Evidence-wise?

6 Q. Sure.

7 A. Whether or not these are the truth?

8 Q. Okay. But you are not sure this is the truth here?

9 A. No, I believe that. The way you are going at it is,
10 number one, I just have never seen that document, so --

11 Q. You do believe this?

12 A. The doctor was here to testify to that.

13 Q. Okay. Well --

14 A. The way that you are going with it is if I had that
15 document --

16 Q. I'm not --

17 A. The day that I interviewed Mr. Porch --

18 Q. I'm not trying to make you upset. I'm not trying
19 to get you upset --

20 A. -- in my case.

21 Q. -- but you are questioning as a lead investigator that
22 document, okay?

23 A. No, that's not true.

24 I'm telling you I don't -- I'm not -- you are making
25 this sound as if I had that document on the date that I went

1 to see Mr. Porch.

2 Q. I'm not trying to argue with you about it. It's in
3 evidence, so the jury can consider it. Let's move on, all
4 right?

5 A. Great.

6 Q. Okay. Now, if you or Mr. McDaniels made a threat to
7 Joshua's wife or her brother-in-law, it would be on
8 something like this, if it was used, right?

9 A. You said if?

10 Q. Uh-huh.

11 A. It didn't happen.

12 Q. But if it did, it would be on here?

13 A. Not even a probability.

14 Q. Would it -- if it happened, would it be on a report?

15 A. Not even a possibility of it happening.

16 Q. But you would agree if this was used, it would be
17 verified?

18 A. I'm just telling you that it didn't happen. That's
19 verification.

20 Q. Okay.

21 A. He verified it when he signed all these documents
22 saying "I made this foregoing statement freely and
23 voluntarily without fear, or threat, promise, or reward, or
24 hope of any kind." He signed it two times on each page for
25 a total of -- I don't know how many pages. To me that's

1 verification.

2 Q. I mean, you don't know if he's thinking about Persia,
3 or his brother-in-law, or not, do you?

4 A. I know he said that we respected him the entire --
5 since we are referring to the video, that we treated him
6 with nothing with respect the entire time.

7 Q. And y'all developed a great rapport?

8 A. We did.

9 Q. Okay. But 2713 on this transcript refuted that it was
10 in evidence --

11 Let me ask you if you agree with this.

12 A. Okay.

13 Q. And this is concerning this car situation that we have
14 all heard testimony about, right?

15 A. Yes, sir.

16 Q. This is part of this video. It's been transcribed.

17 And this is McDaniels. "Okay. What else? What else
18 are you missing as far as telling us? Let's talk about the
19 car."

20 You agree that y'all wanted to talk more about that
21 car, right?

22 A. We did.

23 Q. Okay. "You cleaned that car?"

24 And Porch says "no."

25 You would agree with that initially saying that, right?

1 You would agree that initially saying "I didn't clean that
2 car." I mean, it's on the video. I'm just reading you a
3 transcript from it.

4 A. If that's the -- if that is an accurate transcript.

5 Q. Okay. Let me see if you agree with this. Mr.
6 McDaniels was saying "you are telling me exactly what
7 happened with your brother-in-law or your wife does not
8 necessarily mean that they will have to pay for what you
9 involved them in, but you do realize at some point a lot of
10 that is going to come into place?"

11 Porch. "Yes."

12 And eh said to Porch "you are to be honest now."

13 Porch. "Yes, I cleaned the car."

14 So -- I mean, you do agree that first he is saying he
15 didn't clean that car, right?

16 A. Yes.

17 Q. Then he confronted him with in this paragraph both his
18 wife and his brother-in-law, two sentences later he is
19 saying "yes, I did clean that car."

20 A. It's pretty consistent with his character, changing his
21 story. I would agree.

22 Q. And you would agree that was right after discussion was
23 made about his wife, who is the first name on that first
24 statement, and his brother-in-law? You would agree with
25 that? I mean, it's in evidence.

1 A. Say that one more time.

2 Q. You would agree that he did change his story --

3 A. Multiple times, I agree.

4 Q. -- after the slightest mention was made of his wife and
5 his brother-in-law?

6 A. Oh --

7 Q. Do you disagree with the video?

8 A. I think you are twisting it a little bit.

9 Q. Okay. That's why I wrote it on the board.

10 A. He changed his statement multiple times throughout the
11 entirety.

12 Q. At 2713?

13 A. Okay. At that particular moment in time, yes.

14 Q. Okay. I mean, you would agree that at that particular
15 point in time, especially towards the end of that video, you
16 are pretty, pretty close with Mr. Porch. And I give it that
17 the video is very zoomed in, right? This was a zoomed in
18 video, right?

19 A. I don't know.

20 Q. Do you recall that video sitting over there?

21 A. I saw the video. I don't know if it was zoomed in or
22 not.

23 Q. It was pretty close. I mean, for most of the video you
24 can only see Mr. Porch.

25 A. Okay.

1 Q. Do you agree with that?

2 A. It was pointed at him.

3 Q. But then towards later at the end of the video you can
4 see Mr. McDaniels leave for a little while?

5 A. Uh-huh.

6 Q. You kind of slide up on your chair?

7 A. That's correct.

8 Q. Right.

9 And your face was very close to his face?

10 A. I was --

11 Q. You are talking to him. Do you remember this, "momma's
12 love," do you remember that? "Momma's love"?

13 A. "Nothing like a mother's love."

14 Q. That's what it was.

15 A. Uh-huh.

16 Q. But do you remember how close your face was?

17 When you saw it again, and I know y'all don't normally
18 record stuff, but you saw that again, right?

19 A. That wouldn't have been caught right there.

20 Q. But it would have been heard?

21 A. Right. Not my face being close to his, but, yeah.

22 Q. Right, but your face was very close to his face. Do
23 you remember that?

24 A. I was in front of him.

25 Q. And do you remember when he put his hands on his face

1 and you grabbed his hand and said "look at me. Look at me."

2 A. Uh-huh.

3 Q. Do you remember that?

4 A. Yes, I did.

5 Q. I mean, this was closer than we are, but you wanted him
6 to look at you. He put his head down and you grabbed his
7 hand and you said "look at me," right? Do you remember
8 that?

9 A. I did.

10 Q. Okay.

11 MR. BRIAN SHEALEY: Beg the court's indulgence.

12 (Off the record)

13 (Back on the record)

14 BY MR. BRIAN SHEALEY:

15 Q. Thank you.

16 MR. BRIAN SHEALEY: Nothing further, judge.

17 THE COURT: Any redirect?

18 MR. GOINGS: Just briefly, Your Honor.

19 REDIRECT EXAMINATION BY MR. GOINGS:

20 Q. Investigator Godfrey, this was not an interrogation
21 that lasted three days?

22 A. I couldn't hear you, sir.

23 Q. It's not an interrogation that lasted a full three
24 days?

25 A. No, sir.

1 Q. In effect, the number up there is fifteen and a half
2 hours over a three day -- or actually a two-day period,
3 correct?

4 A. That's correct, sir.

5 Q. Okay. No interrogation was done on July 8th?

6 A. No, sir.

7 Q. In fact, y'all didn't find him until what time?

8 A. McDaniels -- Sergeant McDaniels didn't find him until
9 late that evening.

10 Q. I think your report said 10:30 p.m.?

11 MR. BRIAN SHEALEY: Objection to the leading.

12 BY MR. GOINGS:

13 Q. What did your report say about what time he was found?

14 A. It was around 10:30, yes, sir.

15 Q. You were also asked questions about you -- about how
16 you showed him photographs and that you were familiar with
17 the injuries, correct?

18 A. Yes, sir.

19 Q. Would the killer also be familiar with the injuries?

20 MR. BRIAN SHEALEY: Objection. Speculation.

21 THE COURT: Overruled.

22 A. The killer would absolutely be -- absolutely be
23 familiar with the injuries.

24 MR. GOINGS: No further questions, Your Honor.

25 THE COURT: Anything further?

1 MR. BRIAN SHEALEY: No, judge, not from this
2 witness.

3 THE COURT: You may step down.

4 THE WITNESS: Thank you.

5 THE COURT: Any further witnesses from the State?

6 MR. GOINGS: No, ma'am, the State rests.

7 THE COURT: Ladies and gentlemen, you have heard
8 that there was a witness in the Los Angeles Sheriff's
9 Department that interviewed the defendant on July the 10th
10 of 2009. There was a subpoena sent from the State to
11 California to that particular witness. Because that witness
12 does not live in South Carolina, when you send a subpoena
13 for someone who is out of state, they have the opportunity
14 to go before a court to determine whether they must comply
15 with that subpoena. That was done in this particular case
16 in California and the California court determined that the
17 witness did not have to appear in South Carolina pursuant to
18 that subpoena, so there will be no testimony from that
19 witness as to what occurred in any conversations or
20 discussions that that witness had with the defendant in this
21 matter.

22 At this time, ladies and gentlemen, we do have
23 some legal issues which we need to take up outside of your
24 presence. I'm going to ask that you retire to the jury room
25 so that we can discuss those matters. And upon completion

1 of those issues we will bring you back into court, hopefully
2 very quickly, so that we can continue on with the trial in
3 this matter.

4 I ask that you not discuss this matter among
5 yourselves. You still haven't heard all the evidence that
6 has to be presented in this matter and it would be premature
7 for you to begin to have any discussions about the evidence
8 that you have heard so far in this case.

9 I'll ask that you retire to the jury room at this
10 time.

11 (The following takes place outside the presence of
12 the jury panel)

13 THE COURT: Are there any motions at this time?

14 MR. LUKE SHEALEY: Yes, ma'am.

15 Your Honor, at this time the defense would be
16 moving for a directed verdict.

17 As Your Honor knows --

18 May I approach?

19 I'll hand up State v. Dickey, but the standard for
20 directed verdict is it should not be submitted to the jury
21 if there is any direct evidence or any substantial
22 circumstantial evidence; and when there is evidence
23 presented of self-defense, the State is required to disprove
24 the elements of self-defense beyond a reasonable doubt;
25 State v. Williams.

1 I cite Dickey, and I ask that Dickey, which
2 involves Mr. Jason Dickey, who in 2004 worked as a security
3 guard at Cornell Arms here in Columbia. He, in the process
4 of being a security guard, came amongst a couple gentlemen
5 who were getting drunk and disorderly and was forced to
6 escort them out. The gentlemen didn't agree with that. A
7 gentleman by the name of Mr. Boot, with his other accomplice
8 in tow, confronted Mr. Dickey, approached him and reached
9 into his pocket. Mr. Dickey, who was licensed with his
10 concealed weapons permit as a security guard shot and killed
11 Mr. Boot.

12 Mr. Dickey was convicted at trial of voluntary
13 manslaughter. His lawyers making and not being granted
14 directed verdict motions, because the evidence from the
15 State that was presented that had such offense in it.

16 What the --

17 THE COURT: I'm sorry, say that again.

18 MR. LUKE SHEALEY: That the evidence in the case
19 at directed verdict, there had been evidence of
20 self-defense, and those motions were denied and Mr. Dickey
21 was obviously convicted.

22 The Supreme Court and Chief Justice Toal writes
23 that in order for the case to be sent to the jury, once
24 evidence of self-defense is in the case and it is presented,
25 whether it's by the State or whether it's by the defense, it

1 must be disproved. Every element of self-defense must be
2 disproved beyond a reasonable doubt to get to a jury. And
3 that's from Chief Justice Toal.

4 So here in this case, although we spent a lot of
5 the time discussing the past prosecution and we have heard a
6 lot of that evidence and inconsistent statements and a lot
7 of evidence pointing towards Mr. Mallory from the old case,
8 the only thing that we have in the new case, and this is a
9 murder trial against Joshua Porch, the only evidence that we
10 have implicating him is his statements out in California.
11 The statements provided are that there is basically three
12 slightly different versions.

13 The first statement, which there has been multiple
14 testimony evidence in evidence is essentially one where Mr.
15 Porch went over to the Mallory residence. Mr. Mallory
16 wasn't home. Inexplicably Ms. Mallory begins to come onto
17 him and make out for a little bit. He stops her. She then
18 gets mad and goes into the kitchen, gets a knife, approaches
19 him, there is a struggle, they fall on the couch. It's an
20 accidental.

21 The second statement is slightly different, in
22 that now he's coming onto her and she stops him and he says
23 some things like, "well, why are we stopping? You know,
24 your man is probably I think out cheating too." She then
25 gets angry, goes in the kitchen, confronts him with a knife,

1 comes at him with a knife. There is a struggle, in which
2 the knife goes into her neck during that confrontation.

3 The third statement is just slightly different,
4 which is this video statement, and it's more describing the
5 struggle. It's not -- they do -- they fall on the couch,
6 but it's kind of after she attacks him in the same way,
7 after being mad about him calling her out for stopping the
8 intimacy, that he gets attacked and then there is a struggle
9 and it goes into her neck while they are standing.

10 So all of that is some version of self-defense,
11 number one. Every -- every scenario has her going in the
12 kitchen, for whatever reason, coming back with a knife
13 armed, coming towards him, which a struggle ensues where he
14 claims in his statements he's worried about the knife.
15 She's swinging at him. He, you know, tries to prevent her
16 from -- or anybody getting hurt, and eventually the knife
17 goes into her neck.

18 So, as you know, murder is the unlawful killing of
19 another with malice aforethought. This case, so far, every
20 statement the State has presented, there hasn't been any
21 evidence presented by the defense at this point about what
22 happened that night, other than that, you know, through
23 insinuation through cross-examination, that obviously the
24 defense says Mr. Mallory did it, but the only other evidence
25 there is that Mr. Joshua Porch did it are these three

1 statements in California that all say she got the knife,
2 came at him, and through some variation of that struggle she
3 got the results.

4 So all those, in our opinion, are self-defense and
5 the State has not disproved any of those beyond a reasonable
6 doubt. They can say "well, he's a liar. We don't even
7 believe this version," but that's not the standard. The
8 standard is what evidence is presented at this time and has
9 it disproved every element of self-defense beyond a
10 reasonable doubt.

11 They haven't said that he has brought on the
12 difficulty.

13 He wasn't acting unlawfully in any of these
14 statements.

15 No one has said that he was committing a crime or
16 anything like that.

17 There hasn't been any testimony that he wasn't in
18 danger of potentially losing his life when she attacked him
19 with that knife. There is no evidence to the contrary on
20 that.

21 There isn't any evidence that he didn't actually
22 believe he was in imminent danger when he thought, you know,
23 "I wanted to stop her potentially hurting me, hurting her."
24 She was swinging the knife. That's reasonable.

25 And there isn't any testimony that he should have

1 had some other opportunity to potentially flee, leave the
2 scene. This was a quick confrontation where he was in the
3 living room and she came at him with the knife, per the
4 State's evidence.

5 So legally speaking I don't understand how it gets
6 to a jury. I don't think it should get to a jury under
7 State v. Dickey and I would ask that it not go to a jury at
8 this time.

9 In addition to the directed motion, I would also
10 renew all of our prior pretrial motions, whether it was from
11 March, Franks v. Delaware Hearing, all of the pretrial
12 motions from Monday of this week, and all of our objections
13 throughout the course of the trial, specifically to -- I
14 think we also made two mistrial motions regarding the drug
15 use evidence. I can't remember what the other one was at
16 this point, but those as well, for the record. Thank you.

17 THE COURT: And help me understand. If I
18 understand what you are saying Dickey states is that Dickey
19 states that at the directed verdict stage the State has to
20 disprove the elements of a self-defense beyond a reasonable
21 doubt?

22 MR. LUKE SHEALEY: That's what it says, yes,
23 ma'am.

24 THE COURT: And --

25 MR. LUKE SHEALEY: And in order for the case to

1 get to a jury they have to disprove all the elements of
2 self-defense.

3 THE COURT: Can you -- since we -- I assume we
4 have the same copy. Can you tell me what page you're at --

5 MR. LUKE SHEALEY: Yes, ma'am.

6 THE COURT: -- where it says that.

7 I understand that as a general rule in order to
8 defeat self-defense, the State has to prove -- has to
9 disprove self-defense beyond a reasonable doubt, and that
10 that evidence can be viewed in its entirety at some
11 particular point in time. I'm just trying to get to the
12 point where it has to be at the directed verdict stage.

13 MR. LUKE SHEALEY: Well, at the conclusion,
14 obviously it says "for the reasons set forth above, we find
15 the State failed to disprove the elements of self-defense
16 beyond a reasonable doubt."

17 And a reference -- and I got to look for exactly
18 how it should not have survived directed verdict. Let's
19 see.

20 And this was actually the second directed verdict
21 motion, judge, after the defense had put up a case, but it
22 still stands for the same principle that it still should not
23 get to a jury.

24 And what we are telling you is that, you know, it
25 shouldn't get to a jury at this point, not that we have to

1 necessarily put up a case, because that's what in play right
2 here. That's the evidence is self-defense, even from the
3 State's perspective, but let me read -- let me go through it
4 again.

5 MR. GOINGS: And, Your Honor, our -- the State's
6 position is honestly we don't think we have to prove this
7 case. However, the evidence even in the light most
8 favorable to the State, which is the standard on directed
9 verdict, and unless the rules have changed, Your Honor, it's
10 my understanding that self-defense you only have to disprove
11 beyond a reasonable doubt one of the elements contained
12 within the self-defense argument. And if you do so, it
13 destroys the whole self-defense argument because of the word
14 "and" at the bottom.

15 If you look at his statement, and I will just pick
16 one, Your Honor, which I think is sufficient for this
17 grounds in this motion, just looking at three, the defense
18 based the defendant's actual belief of imminent danger a
19 reasonable prudent man of ordinary fitness and courage would
20 have.

21 If you go to his first statement, Your Honor, he
22 admits to law enforcement "I do not think that she was
23 trying to kill me or anything. She had the knife and came
24 walking towards me."

25 He will go on to say in the second statement,

1 going to the fourth element, that when she came back in with
2 the knife he walked toward her, instead of exiting the
3 apartment, which he had the opportunity to do. He had the
4 opportunity to do it when she went to the kitchen and come
5 back.

6 Let's see, I thought there was another part in the
7 statement that I wanted to indicate to Your Honor.

8 "Do you believe that she coming after you with a
9 knife?

10 "No. I think it was more of her trying to scare
11 me. That is what I think looking back on it."

12 Then in the second statement it says, "she was
13 coming into the living room and I was coming towards her and
14 I struck her three times in the forehead."

15 I think the statements alone, not even getting
16 into the fact that the jury can draw inferences from his so
17 many changed statements over a seven-year period is
18 sufficient to put it forth to a jury.

19 MR. LUKE SHEALEY: Oh, and I did find that, judge.
20 It's literally at the very front right where it says, you
21 know, Chief Justice Toal is giving the opinion.

22 "Jason Michael Dickey, Petitioner, appeals the
23 Court of Appeals' decision affirming his conviction of
24 voluntary manslaughter. We find petitioner was entitled to
25 a directed verdict on the issue of self-defense. Therefore,

1 we reverse."

2 And then it goes on to describe what the issue was
3 in detail and how because there wasn't anything other than
4 just self-defense, and the State had not disapproved it, the
5 jury should not even have that for consideration of the
6 case.

7 So this is my favorite case in the world and this
8 is why I cite it when I have self-defense cases, especially
9 in such unique situations like this, where -- you know,
10 sometimes I don't cite it any murder case where it's not a
11 clear cut self-defense. It might be something else, or it
12 may be I'm lucky if I even get that charge, but here the
13 State -- the only evidence they have of what happened, per
14 their theory of prosecution, are those three statements.

15 Now, they are going to say we are here because he
16 lied, and, though, his credibility isn't good, that's not
17 the analysis. It's what have they presented that allows
18 them to get to a jury, and it's just three statements of
19 self-defense, so I think we are left with State v. Dickey.

20 MR. GOINGS: The State would totally disagree with
21 that argument. The jury is allowed to draw inferences from
22 the conduct of the defendant, and they can draw as many
23 inferences as they want from his multiple changed
24 statements; the fact that he testified twice against Mr.
25 Mallory, who, if the jury so chooses, to believe his last

1 confession; and even further or believes his actions prove
2 that, in fact, it was not self-defense and accident, as he
3 claimed, which now he's retracting, from what I understand
4 the false confession testimony is.

5 I think the jury is allowed to draw inferences
6 based on the conduct of the defendant. There has been
7 evidence that he has changed his statement multiple times to
8 cover up his actions that night. And, therefore, it was
9 not, particularly self-defense or accident, and it should go
10 forward to the jury.

11 MR. LUKE SHEALEY: But they don't get to draw
12 those inferences, unless you make a legal determination the
13 State has disproved self-defense beyond a reasonable doubt.
14 They don't get to do that, unless you make that call at
15 directed verdict. And I don't know how anybody can make
16 that call. You do have a lot of credibility issues, but
17 that doesn't -- I don't see how that makes for a call the
18 State has now somehow risen to a burden of disproving all
19 the four elements of self-defense beyond a reasonable doubt.

20 MR. GOINGS: And, Your Honor, I agree that you
21 have to have all four to have self-defense. You don't have
22 to disprove all four.

23 THE COURT: True, you don't have to disprove all
24 four. All you need to do is disprove one of those.

25 MR. LUKE SHEALEY: The language from Dickey in

1 discussing that is "the State certainly did not rebut these
2 elements of self-defense beyond a reasonable doubt, as the
3 law requires. Therefore, we find that as matter of law,
4 Petitioner actually believed he was in imminent danger of
5 losing his life, or sustaining serious bodily injury, and
6 that a reasonable person would have entertained the same
7 belief."

8 THE COURT: And what page is that on?

9 MR. LUKE SHEALEY: This would be under Section B,
10 Subjective and Objective --

11 THE COURT: What page? What page?

12 MR. LUKE SHEALEY: My brother handed me --

13 THE COURT: Look at the copy.

14 MR. LUKE SHEALEY: 502. 502.

15 THE COURT: Page one, two, three, four, five?

16 MR. LUKE SHEALEY: This is a different copy. I'll
17 find it.

18 THE COURT: Okay. Never mind, I'll look for it.

19 MR. LUKE SHEALEY: That would be page six, at the
20 very bottom, right before you get to the duties to retreat
21 sections. "Therefore", that paragraph.

22 THE COURT: Based upon the evidence that's been
23 presented I'm going to deny the motion on the basis that the
24 statement from Mr. Porch, and I'll take the one on July the
25 9th of 2009, the first statement it clearly states "I do not

1 think she was trying to kill me or nothing. When she had
2 the knife she came walking towards me. I was sitting on the
3 couch in the living room. I was closer to the TV when she
4 first came in the living room." And as we have seen from
5 the photographs, the couch is right next to the door.

6 "I stood up when she was walking towards me with
7 the knife. She was real upset and she was kind of swinging
8 the knife. And as I walked towards her I was just trying to
9 get her to calm down and put the knife down and that's when
10 I came up to her and got nicked on my hand."

11 And then it goes further, then he grabbed it and
12 he tried to get the knife from her.

13 So one of the elements of self-defense is that
14 there is a duty to retreat. I think that certainly he
15 doesn't just say that he did not have the opportunity to get
16 away. The fact that he indicated in his statement that he
17 walked towards her, and that he also did not think that she
18 was trying to kill him, so he obviously didn't believe that
19 his life was in danger, or imminent danger, of great bodily
20 harm. While he may have felt -- while he could have felt
21 threatened by her actions, apparently he did not, in fact.
22 And so I think that that evidence establishes beyond a
23 reasonable doubt that self-defense has been disproved at
24 this particular point at the trial.

25 I will also note for the record that State v.

1 Dickey also discusses clearly Mr. Dickey's testimony, so,
2 therefore, Mr. Dickey's testimony was used in making the
3 determination as to whether or not self-defense was
4 defeated.

5 And so I think certainly at this particular point
6 the evidence -- in viewing the evidence in the light most
7 favorable to the State, as I'm required to do in a directed
8 verdict motion, that that has been established, in that
9 there is a basis to defeat self-defense at this particular
10 point, and so I'll deny the motion on that request.

11 Any other motions?

12 MR. LUKE SHEALEY: Just the other motions that I
13 made and renewed, which I imagine would be denied.

14 THE COURT: Certainly any other motions that have
15 been made during the course of the trial that I have ruled
16 upon at this particular point, in the absence of any
17 additional information or evidence that would warrant me to
18 change that decision, I think it goes without saying that to
19 the extent that you are renewing them without any further
20 additional grounds to be considered, I will deny those as
21 well.

22 Anything else at this particular point?

23 MR. LUKE SHEALEY: No, ma'am.

24 THE COURT: Mr. Porch, at this time I am required
25 to advise you of certain rights.

1 At this particular point the State has now rested
2 its case and you have the opportunity to be able to put up a
3 defense.

4 In conjunction with that defense -- and we have
5 already heard some testimony from a witness in your defense.
6 So as part of any defense that you may put up, you also have
7 the right yourself to be able to take the witness stand and
8 testify in this matter.

9 In conjunction with that, Mr. Porch, that means
10 that you have the opportunity to discuss whether or not you
11 wish to testify in this matter with your attorneys, with
12 your friends, or with your family. Ultimately the decision
13 as to whether or not you take the witness stand to testify
14 in your behalf is up to you and it's your decision, and your
15 decision alone to make.

16 If by chance you have been convicted of a crime
17 which involves dishonesty or if you have been convicted of a
18 crime that carries a penalty of more than one year, that
19 crime can be used to impeach you, to impeach your testimony,
20 in the event that you decide that you wish to testify.

21 If by chance you decide that you do not wish to
22 testify in this particular matter, then the jury would be
23 specifically instructed to the fact that you have the right
24 to remain silent and not testify. And the fact that you did
25 not take the witness stand and testify to your behalf should

1 not be considered in any way by them in their deliberations
2 as to your guilt on innocence as to this particular charge.
3 They would be instructed specifically that they are to draw
4 no conclusion whatsoever from the fact that you did not take
5 the witness stand and testify, that that's your decision in
6 this matter, and that they could not even discuss that
7 matter or discuss that particular fact in the jury room in
8 the course of their deliberations.

9 I will give you an opportunity to have one last
10 discussion with your attorneys about whether or not you
11 would wish to take the witness stand and testify in your
12 behalf in this particular matter. And, again, after we take
13 this break I will ask you about your intentions as it
14 relates to this particular case.

15 Do you understand what I have explained to you?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you have any questions about what I
18 have explained?

19 THE DEFENDANT: No.

20 THE COURT: Then let's take a brief break and then
21 we will come back.

22 MR. LUKE SHEALEY: Your Honor, may we approach for
23 scheduling?

24 THE COURT: I'm sorry?

25 MR. LUKE SHEALEY: May Mr. Goings and I approach?

1 MR. GOINGS: Yes.

2 (Whereupon, the lawyers approached the bench for
3 an off-the-record discussion)

4 (Whereupon, proceedings were recessed)

5 (Whereupon, proceedings were reconvened)

6 THE COURT: Mr. Porch, one of your attorneys had
7 indicated to me that he had not had time to discuss the
8 matter with you, so I told him -- I didn't have to know
9 immediately, that, you know, at the conclusion of -- we can
10 talk about it again, once we finish the next witness, okay?
11 So I understand there are additional defense witnesses. He
12 says that we will take those up before we get to your
13 ultimate decision.

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Aiken, I understand that you have
16 the responsibility for the next witness, is that right?

17 MR. AIKEN: I do, Your Honor.

18 THE COURT: I just have a juror who wanted to know
19 if we were going to be here past seven o'clock, because they
20 need to make a phone call.

21 MR. AIKEN: Seven o'clock? I don't imagine my
22 examination is going to take more than twenty-five or thirty
23 minutes.

24 THE COURT: Okay.

25 MR. AIKEN: I mean, hopefully I can get him to

1 answer the questions. I only run long when people don't
2 answer the questions.

3 THE COURT: And I assume that the State may be
4 brief.

5 MR. UNDERWOOD: Yes, Your Honor.

6 THE COURT: And then the second question, "will a
7 reading transcript be made available for the video from
8 California? I had a lot of trouble understanding the
9 dialogue."

10 And it's my understanding that any transcript that
11 was prepared was prepared by the defense. And so my -- I
12 wouldn't tell them that, but my response would be no, they
13 won't have a transcript, that they would -- they will have
14 the actual video and they can watch it again, if they would
15 like, if they need to watch it.

16 MR. AIKEN: Our transcript is not verbatim anyway,
17 so it wouldn't be -- it wouldn't be suitable for the jury.

18 THE COURT: Unless it's an official transcript, I
19 wouldn't give it to the jury.

20 MR. AIKEN: I understand, Your Honor.

21 MR. LUKE SHEALEY: Our I.T. guy and transcript guy
22 are one in the same.

23 MR. GOINGS: Your Honor, it's still the ruling
24 that you want me to redact that last portion?

25 THE COURT: Yes.

1 MR. GOINGS: I will try to get with defense
2 counsel before we leave today to see if we can find an
3 appropriate time.

4 THE COURT: That's your job over the weekend,
5 along with everything else.

6 MR. GOINGS: Everything else.

7 THE COURT: And, of course, we have not received
8 any requests to charge. I'm sure that there will be some,
9 and so it would be nice to kind of have an idea, even though
10 I won't give an actual charge that you would like for me to
11 consider, but at least the subject matter of an instruction
12 and just so that I can begin to prepare as well, because,
13 depending on where we are, I'm hoping -- I'm hoping -- I'm
14 really hoping that we may get it to the jury on Monday
15 afternoon, and that may be finest time for me but, I'm
16 hoping.

17 MR. LUKE SHEALEY: We will -- we will give you the
18 majority of our charges by tomorrow, if that's all right.

19 THE COURT: I guess you are going to come up at
20 the office, that's fine.

21 MR. LUKE SHEALEY: You know, it will go to your
22 clerk's e-mail. I'm sure that she's constantly in touch
23 with you.

24 THE COURT: That's fine. That's fine. We will
25 make a way to make sure that we the opportunity to review

1 them.

2 Anything else we need to take up before the jury
3 comes in?

4 MR. AIKEN: Nothing from the defense.

5 MR. GOINGS: Nothing from the State, Your Honor.

6 THE COURT: You may ask the jury to come in,
7 please.

8 (The following takes place in the presence of the
9 jury panel)

10 THE BAILIFF: The jury is seated, Your Honor.

11 THE COURT: Thank you.

12 Ladies and gentlemen, I received a couple of notes
13 from you.

14 One, I hope that we will not be here past seven.
15 I'm hoping that we will be done before that time.

16 And the other question about a written transcript.
17 The transcript is not evidence, but the video will be
18 available, because it is an exhibit, and all the exhibits
19 will be sent to you into the jury room. And if you need to,
20 you can listen to or watch the video, then you will have the
21 opportunity to do that.

22 At this time we are ready to proceed with the
23 defense. You have already hear one witness who was taken
24 out of order.

25 You may call your next witness.

1 MR. AIKEN: Thank you, Your Honor.

2 The defense calls Charles Ivan Neddo.

3 CHARLES IVAN NEDDO, having been first duly sworn,
4 testified as follows:

5 THE CLERK: State your name for the record.

6 THE WITNESS: Charles Ivan Neddo.

7 THE COURT: Would you please spell your last name,
8 please?

9 THE WITNESS: N, like November, E-D-D-O.

10 THE COURT: Thank you.

11 Yes, sir.

12 MR. AIKEN: Thank you, Your Honor.

13 May it please the court?

14 DIRECT EXAMINATION BY MR. AIKEN:

15 Q. How old are you, Mr. Neddo?

16 A. 59. I'll be 60 in two weeks.

17 Q. And where do you live?

18 A. Woodruff, South Carolina.

19 Q. That's up around Spartanburg?

20 A. It's in Spartanburg County.

21 Q. Spartanburg County.

22 And what do you do for a living?

23 A. I'm retired and disabled.

24 Q. Have you been in the military?

25 A. Yes.

1 Q. And what branch of the military were you in?

2 A. I was in the U.S. Navy.

3 Q. Okay. And what was your MOS in the U.S. Navy?

4 A. I was a hospital corpsman during Viet Nam. And then
5 after Viet Nam I became a pharmacy tech in the Navy.

6 Q. Okay. What does a hospital corpsman do?

7 A. In the movies if you have heard of someone in battle
8 yell for medic, a lot of times you will hear them yell for
9 corpsman. Medic is Army. Corpsman goes out with the
10 Marines. So we were trained with the Marines, so went with
11 them.

12 Q. And did you subsequently get out of the Navy?

13 A. Yes, I did, in 1977.

14 Q. And what did you do after you got out of the Navy?

15 A. I came back to Columbia. I worked as a volunteer with
16 the Richland County Sheriff's Department from '78 until '84.

17 I was an emergency medical technician in the state
18 during that time, and I worked for the Department of
19 Defense.

20 Q. What did you do for the Department of Defense?

21 A. I was an investigator.

22 Q. Investigating what?

23 A. White collar crime.

24 Q. And what did you do after that, after working for the
25 Department of Defense?

1 A. Actually I worked for them 26 years and traveled all
2 over the world; Korea, Germany. I lived in Hawaii. My
3 daughter was born in Alaska.

4 They encouraged us at my rank to volunteer with the
5 community, so I became a volunteer firefighter and certified
6 as an actual firefighter for eight years in Virginia.

7 Q. Did you have any connection with emergency services
8 when you were a firefighter?

9 A. Yes, all -- in Virginia all ambulances are stationed
10 within the fire departments and firefighters were the
11 drivers.

12 Q. Okay. And you are retired from the job with the
13 Department of Defense?

14 A. Yes, in 2003.

15 Q. Now, after you retired with the Department of Defense,
16 where did you go to work?

17 A. Providence Hospital Northeast.

18 Q. And what were you doing there?

19 A. I was a watchman for the daytime, but it ended up our
20 nighttime watchman resigned. We couldn't get a replacement,
21 so out of a year and -- almost two years I worked nights.

22 Q. And were you sort of a security guard?

23 A. Yeah, that was the official title was security guard.

24 Q. I see. Did you carry a gun?

25 A. Yes. We had to go through SLED training, and we also

1 had to pass a SLED gun course. And on the back of our
2 license we had the same powers as a deputy sheriff, only on
3 the property that we worked on.

4 Q. Only on the property of the -- in that case Providence
5 Northeast?

6 A. Right.

7 Q. And that's out in the northeast area and I believe the
8 road that goes in is Gateway?

9 A. Yes, sir, correct.

10 Q. That's the road that goes into Providence Northeast?

11 A. Yes, sir, Gateway.

12 Q. It's the newer Providence Hospital, right?

13 A. Right.

14 Q. Okay. Now, let's talk about May the 14th of 2006, on
15 that morning. Was there an emergency situation on that
16 morning?

17 A. Yes. It was early or mid-morning, I don't remember the
18 exact time. I was training a new security officer to work
19 nights and I had showed him -- there is only one road that
20 comes in and out of the hospital, Gateway Boulevard, and to
21 keep the outside camera trained on there so you can see what
22 comes in and out.

23 We had noticed that a van was coming in the road at an
24 extremely high speed, so I had notified the E.R. staff we
25 possibly had a true emergency coming in.

1 And the van pulled right up to the walk-in entrance,
2 almost under it, and a man, later identified as Justin
3 Mallory, got out and started yelling immediately for help at
4 the top of his lungs, opened the sliding door on the
5 passenger side and he picked up a limp body and carried her
6 in, and there was blood dripping from the body all over the
7 ground, entrance, the floor. And he kept continuing to yell
8 for help, and the staff opened up what we call the triage
9 room and brought her straight in.

10 Q. Mr. Neddo, I'm showing you what's in evidence now as
11 Defendant's Exhibit 5. Does that look like a picture of the
12 van you were discussing?

13 A. Yes, sir.

14 Q. Pretty distinctive?

15 A. Yes.

16 Q. Thank you.

17 And what happened next?

18 A. Once they got in the triage room the staff immediately
19 started to work with Mrs. Mallory, and Justin went against
20 the wall and collapsed down on the floor. And they were
21 trying to ask him questions, but he wouldn't answer. And
22 the staff determined that she had no heartbeat. She wasn't
23 breathing. They started CPR and each time they compressed
24 her chest blood would shoot from her neck. So they just
25 grabbed the gurney and went into one of the rooms, and at

1 that point I didn't see much of her.

2 He was yelling as they came in that she has been raped.
3 From what I could see, as they wheeled her out of the room
4 in, her clothing was intact. There was nothing out of
5 order. It didn't appear that she had been redressed. It's
6 hard to redress someone and make it look like they did it
7 themselves.

8 Q. And tell me what happened next.

9 A. Justin got up, pulled out his cell phone, called
10 someone. And he started yelling on the phone that he was at
11 the hospital; told them which one; and that he got home,
12 couldn't get in the door, had to go around to the sliding
13 glass door, and found his wife in there and, quote, "the
14 bitch had bled all over my furniture, my TV, stereo," some
15 kind of game system. And he walked out of the sliding
16 doors, and at that time I went back into the ER and didn't
17 listen to the rest of the conversation.

18 Q. Mr. Neddo, how far were you away from Mr. Mallory when
19 you heard him say that?

20 A. As close as we are now.

21 Q. About seven, eight, ten feet, something like that?

22 A. Yes, sir.

23 Q. Is there any doubt in your mind that's what he said?

24 A. None. Like I said, I have been around the whole world.
25 I have heard different dialects and it's very hard to miss

1 "the bitch bled all over my" and then continued.

2 Q. Tell me what happened next, Mr. Neddo.

3 A. He came back in, and someone came out of our ER door,
4 which stays locked where they treat patients. He went in
5 and the nurses tried to talk to him and get him back out.
6 At that time they had not pronounced her dead.

7 He picked the phone up, called again. Basically
8 repeated the same thing with someone else; came back in,
9 went in the ER again.

10 At that time I don't remember -- I think it was Sherry
11 Wagner is her name, the head nurse. It was her job to
12 inform the family members that the loved one had passed
13 away. And normally we went into a very quiet room where
14 they had peace, a telephone to use, Klenex, restroom. He
15 didn't want any of that. He wanted to know right away was
16 she dead or alive, and Sherry told him he -- that she had
17 passed away. And the first thing that he yelled was "they
18 are going to blame me. God dammit, I know they are going to
19 blame me," and he ran out the door again.

20 At that time Sherry followed him and tried to put her
21 hand up on his left shoulder to calm him. She was genuinely
22 trying to be kind to him and calm him down, and he yanked
23 away from her and said something to the effect "leave me
24 alone, bitch," walked out, dropped down on his hands and
25 knees at some bushes and threw up. And after he threw up

1 she went back in.

2 He turned around and looked at me and said he didn't
3 need no damn security following him around, get away from
4 him.

5 Q. Were you following him around?

6 A. I was standing close to him, because the van was still
7 parked up on the driveway. He had brought her in. I
8 couldn't let him leave, because --

9 Q. Why?

10 A. -- there is state laws. And I almost believe it's
11 federal. I know it is state. If someone comes into an
12 emergency room and clearly there has been an act of
13 violence, we must immediately call law enforcement.

14 My job, again, I had the powers of a deputy sheriff in
15 any county in this state was to prevent him from leaving the
16 scene. And if I had to prevent him from leaving the
17 hospital, I would have.

18 Q. Did you call the authorities?

19 A. Several times.

20 Q. And that would have been the Richland County sheriff's
21 deputy?

22 A. Yes.

23 Q. Now, I believe there has been some discussion about a
24 consent. Was he asked to sign a consent form?

25 A. Yes, it's standard practice. Anytime that you bring

1 someone in, or you go in yourself for treatment in an
2 emergency room, you are presented with forms to sign for
3 insurance, and there is one that's consent to treat. Since
4 she was unconscious, we needed someone else to sign for
5 consent to treat her.

6 John Wertz was the technician who was working
7 admissions. John had gone out to Mr. Mallory and wanted me
8 to back him up, because this was after what I had mentioned
9 earlier. I went out with John. John asked him to sign it
10 and he told him hell, no, he wasn't signing anything, and he
11 walked off.

12 Q. Was there a man at the location who was wearing a nice
13 shirt and light blue sweat pants?

14 A. Yes, sir, he arrived -- one of the first to arrive.
15 There was I would say about ten people who arrived after the
16 phone calls were made. He was one of the first, and he went
17 to the van with Justin, and Justin reached into the van
18 between the two front seats and picked something up and he
19 brought it out where it was -- you couldn't see it on
20 camera, and it was handed over to the man in the blue sweat
21 pants. He put it under his jacket and covered it like this,
22 went to his car and got in, did something, and then got out.

23 I went into the ER and asked Sherry Wagner, the head
24 nurse, was the wound a knife cut or bullet wound, because I
25 never got to see it up close. She told me she couldn't tell

1 me at the point, because it had now become a criminal case.
2 They couldn't discuss it. I told her I needed to know
3 because I wanted to know whether I should be looking out for
4 a gun or a knife.

5 Q. Did you make sure that the man in the blue sweat pants
6 didn't come back into the hospital?

7 A. I really didn't have to stop him. Most of everything
8 after that went on outside the hospital.

9 Q. Mr. Mallory went outside of the hospital?

10 A. Yeah.

11 At one point he finally went to the parking lot at the
12 end and kind of collapsed down on his hands and knees and --
13 I wasn't close at that point. I don't know if he was
14 throwing up, crying. I don't know what went on.

15 Q. Okay. As a hospital corpsman in the Navy, did you deal
16 with situations where people passed away or died?

17 A. Oh, yes, sir, many times.

18 In Oakland, California I worked in the terminal ward
19 where patients in there were not going to live. They were
20 dying.

21 We had an eleven year old girl who had been shot by her
22 brother with a .357-magnum and had a hole like that in her
23 back. She was still alive and we were just waiting for her
24 to die, trying to keep her comfortable, and we saw how
25 families dealt with the grief of dying, and it was

1 different, but you never saw the anger come out.

2 Even as a firefighter, I would go to scenes of rape
3 and --

4 MR. UNDERWOOD: Your Honor, I'm going to object to
5 this line of response. I don't know see how it's relevant
6 to this case.

7 THE COURT: I'll sustain it based upon what I have
8 heard.

9 You may rephrase your question.

10 BY MR. AIKEN:

11 Q. Mr. Neddo, you were also an EMT, correct?

12 A. Yes, sir.

13 Q. Now, as an EMT did you have situations where you dealt
14 with families who had loved ones who had just recently died?

15 A. Yes, sir, many times.

16 Q. So you have had experience with that as a Navy
17 corpsman, correct?

18 A. Yes, sir.

19 Q. You have had experience with that as a firefighter?

20 A. Yes, sir.

21 Q. And you have had experience with that as an EMT?

22 A. Yes, sir.

23 Q. Now, based on that experience, dealing --

24 Well, let me ask you this. Did you deal with any
25 African American families who lost loved ones?

1 A. Yes, sir.

2 Q. Now, based on your experience, having dealt with those
3 situations, with grieving families of people who had
4 recently died, was Justin Mallory's --

5 MR. UNDERWOOD: Objection, Your Honor.

6 BY MR. AIKEN:

7 Q. -- response normal grief?

8 THE COURT: You need to rephrase the question.

9 BY MR. AIKEN:

10 Q. Now, based on all this experience that you have had,
11 dealing with families who have just immediately lost loved
12 ones, was Justin Mallory's response consistent with --

13 MR. UNDERWOOD: Same objection.

14 BY MR. AIKEN:

15 Q. -- what you saw over that period of time?

16 THE COURT: It's the same question. You need to
17 rephrase the question.

18 He can talk about what he observed. He can't give
19 opinions.

20 BY MR. AIKEN:

21 Q. What -- what did you observe, as far as the grief
22 response?

23 A. The grief response that I observed, I told you that he
24 had collapsed in the parking lot, and that there was at
25 least ten people present at the time that were his friends.

1 His friends were afraid to approach him. He was so violent
2 and acting so vindictive, or -- or just ornery, that his
3 family and friends would not go close to him.

4 And traditionally with African American families there
5 are a lot of hugging and praying and --

6 MR. UNDERWOOD: Your Honor, I'm going to object to
7 this.

8 THE COURT: I would sustain the objection.

9 You can talk about what he observed and what he
10 saw in this particular matter.

11 A. Okay. Everything that I said that I observed and after
12 the observation. I withdraw anything that I said about
13 typical, after the word typical.

14 MR. AIKEN: May I have a moment, please, Your
15 Honor?

16 THE COURT: Yes, sir.

17 (Off the record)

18 (Back on the record)

19 BY MR. AIKEN:

20 Q. Mr. Neddo, did Mr. Mallory's grief appear to be genuine
21 to you?

22 MR. UNDERWOOD: Your Honor, objection.

23 THE COURT: Rephrase that question.

24 BY MR. AIKEN:

25 Q. Based on -- based on what you know, having been on this

1 earth for 59 years, and based on your life experiences --

2 MR. UNDERWOOD: Your Honor, this whole line is
3 improper. I continue my objection.

4 Can counsel and I approach?

5 (Whereupon, the lawyers approached the bench for
6 an off-the-record discussion)

7 BY MR. AIKEN:

8 Q. Based on your life experiences, have you ever seen
9 anyone grieve in the way that Justin Mallory did?

10 A. No, sir.

11 MR. AIKEN: May I have a moment, please, Your
12 Honor?

13 THE COURT: Yes, sir.

14 (Off the record)

15 (Back on the record)

16 BY MR. AIKEN:

17 Q. Thank you, Mr. Neddo. If you would answer any
18 questions that the Government might have.

19 THE COURT: Any cross?

20 MR. UNDERWOOD: Briefly, Your Honor.

21 CROSS EXAMINATION BY MR. UNDERWOOD:

22 Q. Mr. Neddo, I want to understand this right.

23 You were working as a security guard that night, the
24 early morning of May 13th, 2006?

25 A. Yes.

1 Q. And you were watching the cameras that show the
2 entrance to the hospital at Providence Northeast, correct?

3 A. Yes.

4 Q. And you saw a van coming in I think you said at an
5 extreme high rate of speed?

6 A. Yes.

7 Q. And you immediately concluded you got a real emergency
8 here, right?

9 A. Yes.

10 Q. And when that van pulled up, how did it park? Was it
11 in a nice neat even parking space?

12 A. It was illegally parked on the wheelchair ramp leading
13 into the emergency room partially under the cover.

14 Q. Okay. Well, in an emergency people aren't worried
15 about properly parking cars, are they?

16 A. No, and --

17 Q. Because their concern is getting someone help, right?

18 A. Right.

19 Q. Okay. And you saw Justin Mallory get out of that van,
20 pick up his wife, who was dripping blood everywhere, right?

21 A. That's what I said.

22 Q. And you said he was screaming at the top of his lungs
23 for help, right?

24 A. Yes, he did.

25 Q. And all he wanted was someone to help his wife, right?

1 A. That's the way it sounded.

2 Q. Okay. You talked about this consent form. Wasn't she
3 already -- wasn't Nakia Mallory already pronounced dead at
4 the time that he supposed to be signing this form?

5 A. No.

6 Q. She wasn't?

7 A. No.

8 Q. It sounded like she was when you said it before.

9 A. No.

10 Q. Okay. When he found out that his wife had died, what
11 was his physical response?

12 A. Violently shaking at Nurse Wagner, backed off a little
13 and screamed "they are going to blame me."

14 Q. What was his physical response? Not what he said.
15 What did his body do? He fell down?

16 A. He -- he -- no, not at that point. He tensed up like
17 this and said "they are going to blame me for this."

18 Q. I didn't ask you what he said. I'm asking what his
19 body did. We are talking about his reactions. You have
20 seen people --

21 A. I just showed you what his body did.

22 Q. He tensed up?

23 A. He tensed up --

24 Q. All right.

25 A. -- and balled his fists up.

1 Q. And then after that you saw him go over up against the
2 wall and collapse down, right?

3 A. No, that's not what I said.

4 Q. You never said that he collapsed down?

5 A. When he came in with her in the beginning and they put
6 her on the gurney to see what was wrong, that is when he
7 collapsed down the wall.

8 Q. That's when he collapsed?

9 A. Yes.

10 Q. After he found out she was dead, you said that he went
11 outside and got on his knees, or was that inside the
12 hospital?

13 A. After he tensed up and said what he did twice, he went
14 out of the emergency room door, with Nurse Wagner following
15 him, trying to calm him down. He told her to get away. He
16 went outside. That's when he got on his knees and threw up
17 in the bushes.

18 Q. Right after finding out his wife was dead?

19 A. Yes.

20 Q. Now, you talked about seeing other people grieving, in
21 your testimony.

22 Not too personal, sir, but have you ever been married?

23 A. Yes.

24 Q. Did you ever come home one night and find your wife
25 lying in a puddle of blood in your apartment with a stab

1 wound in her neck, blood all over your living room? Have
2 you ever encountered that?

3 A. No.

4 Q. So you don't know how you would react in that
5 situation, do you?

6 A. Yes, I do.

7 Q. You don't know how Justin Mallory would react in that
8 situation, do you?

9 A. No, he can only answer that.

10 Q. But you have never experienced your wife being stabbed
11 in your home, have you?

12 A. No.

13 Q. You're not a psychologist, are you?

14 A. No.

15 Q. Now, was it your testimony today that you saw Justin
16 Mallory take something out of his van and give it to
17 somebody else?

18 A. Yes, it was.

19 Q. Now, in your statement --

20 Do you remember giving a statement to the police,
21 right? Didn't you give a statement to Investigator Holdorf?

22 A. Yes, I did.

23 Q. And you gave that statement on May 25th, 2006, right?

24 A. If that's the date on there, I don't know. It's been
25 seven years.

1 Q. Okay. Well, here.

2 MR. UNDERWOOD: May I approach the witness, Your
3 Honor?

4 THE COURT: Yes, sir.

5 BY MR. UNDERWOOD:

6 Q. Is this your signature, sir?

7 A. Yes.

8 Q. Okay. And the date on that document is May 25th?

9 A. Right.

10 Q. Okay. And in your statement didn't you say -- if I can
11 go to the third page -- that it was a friend of the husband
12 who went up to the van and opened the door, leaned in. It
13 looked like he might have been removing something. Isn't
14 that what you said in your statement?

15 A. If that's what I said, that's what happened.

16 Q. Okay. So it wasn't Justin Mallory that we went in that
17 car, it was somebody else?

18 A. Yes.

19 Q. That's what you said at the time?

20 A. (Shaking head yes).

21 Q. And that was on May 25th, two weeks after Justin
22 Mallory had been arrested, right?

23 A. Yes, so it was -- what I put in there is more correct
24 than what I just said.

25 Q. Now, you were the security guard in charge of keeping

1 that hospital safe that night, right?

2 A. Yes, sir.

3 Q. And you thought, according to your testimony, that
4 there was a gun involved, right?

5 A. I have no idea what was involved. I needed to find
6 out.

7 Q. But you thought that there was a weapon involved with
8 this van, right?

9 A. Yes.

10 Q. But you didn't tell the police about it that night, did
11 you?

12 A. They never asked, and they would not talk to me, even
13 when I attempted to talk to the deputies.

14 Q. Now, did you try to take a statement from this person
15 who was --

16 A. That is not my job. I don't --

17 Q. You said you are like the deputy sheriff at the
18 hospital.

19 A. I do not investigate. I only protect. The job that I
20 had, I only protected. I did not investigate.

21 Q. And you didn't record any of the things that you say
22 Justin Mallory said to make sure that a couple years later
23 you would remember exactly as correct, did you?

24 A. They do not provide us anything to record it, except
25 the cameras, and those were time lapsed, which is almost

1 useless.

2 Q. Okay.

3 (Off the record)

4 (Back on the record)

5 BY MR. UNDERWOOD:

6 Q. Thank you, sir.

7 MR. UNDERWOOD: No further questions, Your Honor.

8 THE COURT: Any redirect?

9 MR. AIKEN: No, ma'am.

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

12 THE WITNESS: Thank you.

13 THE COURT: May he be excused?

14 MR. AIKEN: Yes, ma'am.

15 THE COURT: You may be excused. Thank you.

16 Ladies and gentlemen, this is a good time to take
17 a break for the evening and for the week.

18 I'm going to remind you of the instructions that I
19 have given to you throughout the course of this trial; that
20 is, not to begin to discuss this matter among yourselves, as
21 you still have not heard all the evidence that has to be
22 presented.

23 As you come and go from the courthouse, again,
24 please remember not to listen to conversations that you may
25 hear in the hallways, again for the reasons that you will

1 have to make the decisions based upon the evidence that's
2 been presented here throughout the course of this trial.

3 Also please remember not to allow anyone to
4 approach you to discuss this matter with you. Again, if
5 someone attempts to discuss this case with you, please tell
6 them that you are a juror and you cannot discuss it, and I
7 ask that you report it as soon as possible.

8 Ladies and gentlemen, over the weekend I'm going
9 to ask that you follow all the instructions I have given to
10 you about any independent investigation or research.

11 And again, not to have any conversations with your
12 family or friends. Please tell them that the end is
13 somewhere in sight and that we will be able -- that the
14 judge still asks you not to discuss what you have heard or
15 seen with them.

16 Again, I tell you that, ladies and gentlemen,
17 because when you choose to talk about what you have seen or
18 what you have heard, you instinctively talk about the things
19 that you consider to be the most important to you. And I
20 want your fellow jurors to be able to hear exactly what you
21 consider to be most important, the things that stuck out in
22 your mind when it comes time for you all to begin your
23 deliberations. So that's why I have asked that you not
24 discuss this with family and friends.

25 And, again, any comments that they may make or

1 questions that they may ask of you about the testimony or
2 the evidence all has the potential to influence how you
3 think about this case. And, again, that would be improper
4 for even your family and friends to make suggestions to you
5 or ask you questions or somehow influence your thought
6 process. So please tell them again that I have asked you
7 not to discuss it.

8 Ladies and gentlemen, I'm going to ask you that
9 you report again on Monday morning at nine o'clock. If you
10 will go back into the jury room at this particular time,
11 Becky has -- she has checks. She has work excuses and she
12 has got a parking pass for you for next week. And so you
13 will need to park in the same place where you have parked
14 this week and put the parking pass in your windows. And
15 when she is finished with that, then there will be a deputy
16 to escort you over to the garage, given the fact that I'm
17 sure it's dark outside at this particular point.

18 I hope that you have a pleasant weekend and that
19 we will see you Monday morning at nine o'clock. Thank you.
20 I appreciate it.

21 (The following took place outside the presence of
22 the jury panel)

23 MR. AIKEN: Judge, I would like to point out that
24 my examination of Mr. Neddo lasted exactly 25 minutes.

25 THE COURT: Thank you so much.

1 MR. AIKEN: Yes, ma'am.

2 THE COURT: Are you sure it was 25?

3 MR. AIKEN: It was 25. I looked.

4 THE COURT: Are you sure it wasn't --

5 MR. AIKEN: I started at 6:00 and I finished at
6 6:25.

7 THE COURT: Thank you. I do appreciate that.

8 MR. AIKEN: And I commend the Government for an
9 appropriately short cross-examination.

10 THE COURT: All right. We do have additional
11 witnesses who may be called to testify at this particular
12 point on behalf of the defense, is that correct?

13 MR. LUKE SHEALEY: Yes, ma'am.

14 THE COURT: And there were other witnesses, but I
15 believe that you have agreed that they were released from
16 their subpoenas, so they do not have to come and be here,
17 primarily sheriff's department's witnesses?

18 MR. LUKE SHEALEY: Yes, those witnesses were
19 already called by the State.

20 THE COURT: Mr. Shealey, on behalf of your client,
21 are you all ready to make a decision, or do you still need
22 some additional time to discuss the matter?

23 MR. LUKE SHEALEY: I prefer to have the weekend,
24 but I can -- I can tell you tentatively I think that he is
25 probably leaning towards testifying, but I would like to

1 talk to him some more about it.

2 THE COURT: And that's fine. I'm just trying to
3 get an idea of, you know, where we will be on Monday, and
4 there may be other witnesses as well. And you will send me
5 an e-mail on that over the weekend?

6 MR. LUKE SHEALEY: Yes, ma'am.

7 THE COURT: All right. To the extent that you
8 will have requests to charge, if you will go ahead and
9 e-mail them to the office over the weekend, I can begin to
10 look at those.

11 I will tell you that because of the one juror who
12 has a four o'clock be at work, I'm going to try my best to
13 accommodate him. And I say that with the idea that to the
14 extent, depending on what time we finish and what time we
15 have a charge conference, you may need to be prepared,
16 depending on how long we go on Monday, for closing and
17 charge, or at least closing, but I'll play that by ear.
18 That really depends on the witness' testimony that we have.

19 I'm hoping, if nothing else, you know, if we have
20 to go to Tuesday, we go into Tuesday. That's -- I'm just
21 trying to get an idea, so just be prepared.

22 I understand that under -- by both the rule and
23 probably by statute, that I cannot limit the closing
24 arguments, at least not as to the defense's, except for
25 those provided by statute, which I think is two hours. I

1 assume it would be less than that.

2 And I'll be happy to look at any requests to
3 charge over the weekend.

4 Anything else we need to take up over the weekend
5 before we go come back on Monday?

6 MR. LUKE SHEALEY: You know, Mr. Goings and I are
7 going to work on redacting that video.

8 THE COURT: Yes, and y'all need to get together to
9 work on that. And I would suggest that you all actually
10 look at it and make sure that it's clean.

11 MR. LUKE SHEALEY: That's why I ran over and tole
12 him to shut it off.

13 MR. GOINGS: After he said it.

14 MR. LUKE SHEALEY: I'm sure we can find it
15 relatively quickly.

16 THE COURT: It's one hour, 11 minutes and 45
17 seconds, thereabouts. It may be a few seconds off, but
18 that's at least where the question comes up "have you ever
19 done drugs?"

20 MR. GOINGS: And we are cutting it off from that
21 point to the end.

22 THE COURT: Whatever you all decide on that,
23 because, remember, the jury may want to view it.

24 MR. AIKEN: Yeah, I think they will.

25 THE COURT: It was difficult to hear it, I'll just

1 tell you that, in the format which was presented, but
2 that's -- that's just the microphones and the way it is.

3 Anything else we need to take up?

4 MR. AIKEN: No, ma'am.

5 MR. GOINGS: Nothing from the state, Your Honor.

6 THE COURT: All right. Then we'll see you at nine
7 o'clock on Monday morning.

8 (Whereupon, proceedings were adjourned to November
9 25, 2013)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 JOSHUA WILLIAM PORCH,) 2011-GS-40-03359
7 DEFENDANT.) NOVEMBER 25, 2013
COLUMBIA, SOUTH CAROLINA

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10 B E F O R E:

11 THE HONORABLE ALISON RENE LEE, JUDGE. ; And a Jury.
12

13
14 A P P E A R A N C E S:

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1 (PROCEEDINGS, NOVEMBER 25, 2013)

2 THE COURT: Mr. Porch, as you will recall on
3 Friday I advised you about your right to be able to testify
4 in this particular matter. Do you remember that?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And I believe at that time I told you
7 I would give you a little extra time to make sure that you
8 had enough time to discuss the matter with your attorneys.
9 And have you had the opportunity to do that?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Have you made a decision as to whether
12 or not you wish to testify in this matter?

13 THE DEFENDANT: I'm going to testify.

14 THE COURT: Well, what I have heard you say is
15 that you are going to testify, is that correct?

16 THE DEFENDANT: Yes.

17 THE COURT: All right, thank you.

18 Is there anything else we need to take up this
19 morning?

20 MR. LUKE SHEALEY: Yes, ma'am.

21 Just to put on the record, and I think we probably
22 had this conversation at a bench conference, as to the
23 matter of our proposed witness Andelyn Rodriguez. I
24 think -- and we also had a discussion at the time that
25 Sergeant Strange was on the stand, and you -- we wanted to

1 get more into her statement through Sergeant Strange in more
2 detail. We wanted to draw out the fact that she had
3 witnessed Mr. Mallory in past attempts in 2002 choking Nakia
4 Mallory and threatening to kill her, and you limited that
5 under Sergeant Strange to only bring out the fact that he
6 had learned the witnesses had seen threats before in the
7 past. I think we objected at that time.

8 Since that testimony we then inquired about
9 whether we could actually call her as a witness, because we
10 felt it was probative to -- at least through the
11 investigation and what drove their investigation, we think
12 that's appropriate to show in order to present a complete
13 and full defense for Mr. Porch.

14 And my understanding is that you are not allowing
15 us to call her, that your feeling that perhaps that she's
16 just too remote that would act on the third-party guilt
17 analysis, and obviously we would disagree with the integrity
18 of that investigation analysis and the ability to present a
19 complete and full defense on the issue of whether Mr. Porch
20 or Mr. Mallory killed Nakia Mallory.

21 So we would just put on the record as not being
22 allowed to call her. We hadn't had a chance to, so I'll put
23 that on the record at this time.

24 THE COURT: Is there anything on that from the
25 State?

1 MR. GOINGS: Your Honor, the State's position is
2 obviously we objected to even the mention of Sergeant
3 Strange's testimony as wanting to question Andelyn
4 Rodriguez, the fact that the investigation had showed some
5 history of alleged prior domestic violence, one that
6 occurred so far in the past from the actual murder itself
7 that wasn't relevant, and also it's impermissible character
8 evidence under 608(b) of a witness.

9 We understood the court's ruling at that time was
10 only to explain the prosecutorial decisions that were made
11 during the investigation and leading up to the trial of
12 Justin Mallory.

13 Obviously Ms. Andelyn Rodriguez had invested the
14 court's continued ruling. Her testimony, she was in no way
15 part of any prosecutorial decisions that was being made by
16 Solicitor Meadors or the investigators with the Richland
17 County Sheriff's Office, and, therefore, it was totally
18 impermissible character or trait evidence on a witness, and
19 under 608(b) it should be excluded, because it does not go
20 to the truthfulness or veracity of that witness, being
21 Justin Mallory.

22 THE COURT: And I think I stated at the time that
23 I did think that it was -- it was -- at least in the
24 conversation that we had off the record that I did think
25 that it was remote, too remote.

1 And I allowed the testimony about prior -- any
2 prior difficulties he had -- he may have had with his wife.
3 To allow the defense to be able to put in a complete defense
4 and be able to continue to discuss the prosecutorial
5 decisions related to going forward with the case against Mr.
6 Mallory, and I allowed generally the evidence that they were
7 having difficulties.

8 I did not specifically allow the specific threats,
9 and still under the impression that it would not be
10 permissible, because I think that the prejudice outweighs
11 its probative value.

12 And while there has been evidence that there was
13 prior difficulty, I think to allow someone to come in and
14 testify about the specifics of what went on gets into a lot
15 of both prior bad acts of a witness. And even though it may
16 relate to a defense in the matter, I still think that the
17 fact that there was evidence about that there had been some
18 prior difficulties and that there were threats made is
19 sufficient to raise the question about the decisions the
20 prosecutors may have made in going forward and why they
21 decided to go forward with the matter. And the specifics
22 are not -- while they may be -- while they may be relevant,
23 I think the fact that it occurred in 2002, it introduces
24 into this case information that's not ultimately -- the
25 specifics of it ultimately are not relevant in terms of

1 whether there is third-party guilt, so I'm not going to
2 allow that testimony.

3 MR. LUKE SHEALEY: Another issue I was hoping to
4 get some clarification on, since Mr. Porch has decided to
5 testify, you know, we've -- in this very unusual situation
6 we have in this case where Investigator Cohen fought her
7 out-of-state subpoena and chose not to come, through no
8 fault of Mr. Goings, through no fault of this court, but
9 also through no fault of Mr. Porch's, you know, we've kind
10 of fashioned the way to go about it I think in Your Honor's
11 opinion is fair to both sides, where we obviously needed to
12 be able to tell that that was the longest interrogation. He
13 was with her for six and a half hours. Some of that was a
14 polygraph, which we can't mention in this court before this
15 jury, so what we have been doing is saying well, he --
16 after -- on that beginning of that day, on the 10th, he was
17 left with a California detective. He was with her six and a
18 half hours. I think they have been able to say including
19 some breaks and things like that, and then turned over to
20 Godfrey and McDaniels. So when Mr. Porch testifies, you
21 know, is he limited strictly to that, or can he say nothing
22 more about the process of that interrogation, what may have
23 been said to him, what threats may have been made, because I
24 think if he's strictly limited just to that, that his right
25 to testify is diminished greatly.

1 So it is an unusual situation that we are placed
2 in, but I just wanted to know the parameters from the court
3 before he testifies so I don't want to defy any potential
4 ruling, but I think that, you know, he should be allowed to
5 discuss, if necessary, anything that happened in there, but
6 for the polygraph. But -- so I -- I've never quite been put
7 in this situation, so I think that any limitation on his
8 testimony as to that situation, other than not being allowed
9 infringes on his right to testify. So I don't know how we
10 deal with it, but I'm bringing it up before we get started.

11 THE COURT: Mr. Goings?

12 (Off the record)

13 (Back on the record)

14 MR. GOINGS: Your Honor, we had -- we had limited
15 it. I thought that was the understanding of how we were
16 going to proceed.

17 The only thing I can think of at this point in
18 time is if Mr. Porch testifies about specific occurrences
19 within that six and a half hour interview with Investigator
20 Cohen, that it opens the door for the possibility of us
21 playing portions of that video as well.

22 THE COURT: I think there is -- I think there is
23 some problems with that, because certainly -- certainly
24 she's not here to be able to state what went on.

25 If she had been here, certainly you would have

1 been able to cross-examine her on those issues and she could
2 have stated, you know, what her view was, and then Mr. Porch
3 would be able to testify as to, you know, what he says
4 occurred, but I think -- I think Mr. Goings is correct, that
5 if you go too far into what occurred, what specifically was
6 said to him and what she did is just going to open the door
7 for them to put the video in.

8 MR. LUKE SHEALEY: Okay. Well, I just wanted to
9 know. I disagree with that ruling completely. I disagree
10 with that position, because he has right the testify.

11 THE COURT: Sure, he does.

12 MR. LUKE SHEALEY: It's not his fault that she was
13 a Government witness who interrogated him for six and a half
14 hours is not here.

15 I wasn't just to -- it's kind of like we have
16 already said, that he was there for six and a half hours
17 with this other detective, that it was more of the same,
18 without going into specific threats or anything that was
19 done, but I would just note my objection for the record and
20 I just disagree with that. I think he has a right to
21 testify, as I indicated through no fault of their own, and
22 that he will not be able to present his complete and full
23 story to the jury. And I just wanted to take it up and I
24 will certainly follow the court's ruling.

25 THE COURT: You know, he can present it, but just

1 understand that if he presents it, then they have got the
2 opportunity to rebut it through the use of the video.

3 MR. LUKE SHEALEY: Well, certainly we don't want
4 them to rebut that using this video when we don't have her
5 obviously here. Maybe I should kind of just hold oral
6 argument in front of them, which I'm not going to do, but I
7 understand your ruling and we won't go into it in any more
8 detail.

9 Those are the only issues I can think of. It
10 didn't take long.

11 Oh, I haven't seen the redacted video from Mr.
12 Goings. I guess I should see that.

13 MR. GOINGS: Your Honor, I worked --

14 THE COURT: You should have done that over the
15 weekend. That's what I told you all to do Friday before we
16 left here.

17 MR. GOINGS: Ma'am?

18 THE COURT: That's what I told you all to do
19 Friday when we left here, for both of you all to get
20 together and look at the video before today. That was
21 supposed to have been done.

22 MR. GOINGS: Well, I -- I think we agreed before
23 we left Friday what we were going to do and where we were
24 going to cut it off. Over the weekend I had tried for six
25 hours, plus. The problem with my video system and my

1 computer is I don't have administrative rights on it,
2 because I guess they don't trust us with our own computers,
3 but it is being edited as we speak right now in my office
4 with our I.T. department, and basically they have -- what we
5 did and what I believe we agreed on was that the 110 mark
6 where Investigator Godfrey gets up and is at the doorway,
7 that there is nothing really relevant from that point on,
8 they are going to cut that portion out and a just have up
9 until the 110 mark and nothing else. That's what I believe
10 we agreed on Friday. It's in the process. They told me --
11 they informed me about twenty minutes ago that it would take
12 about two hours to get it done and they were going to bring
13 it over here to us.

14 MR. LUKE SHEALEY: That sounds accurate to me. I
15 just want to -- you know, after we get done with today and
16 before the evidence goes to the jury, that eyeball it before
17 it gets substituted. That's perfectly acceptable to me.

18 THE COURT: All right.

19 MR. LUKE SHEALEY: Just one final thing, judge,
20 while I'm thinking about it. Mr. Porch will be our first
21 and only witness today, so we need to address the shackling,
22 whether you are going to allow him to walk up. We can't
23 have him shackled for the purposes of that, or whether you
24 want him sitting there, but we would again ask that he not
25 be shackled during his testimony.

1 THE COURT: Well, obviously he would be unshackled
2 so that he can walk freely up and he can walk freely back.

3 MR. LUKE SHEALEY: Yes ma'am.

4 THE COURT: And you may do that now, please.

5 (Whereupon, the defendant was unshackled)

6 THE COURT: Anything else we need to take up?

7 MR. LUKE SHEALEY: I don't believe so, judge.

8 MR. GOINGS: Nothing from the State.

9 THE COURT: You may ask the jury to come in,
10 please.

11 Before the jury comes in, I have ordered lunch for
12 the jury.

13 Please remember that I got at least one juror who
14 says he needs to be at work about four. Depending on how
15 far we get, I will inquire of what time he needs to leave
16 and allow him to do that.

17 (The following takes place in the presence of the
18 jury panel)

19 THE BAILIFF: The jury is seated, Your Honor.

20 THE COURT: Good morning, ladies and gentlemen.

21 THE JURY: Good morning.

22 THE COURT: At this time we are now ready to
23 continue on with the trial of this matter.

24 I hope you all had a good weekend.

25 THE JURY: We did. Thank you.

1 THE COURT: Good. Thank you. I'm glad to hear
2 that. Rest does a lot for everybody.

3 You may call your next witness.

4 MR. LUKE SHEALEY: Your Honor, the defense would
5 call Joshua Porch.

6 JOSHUA WILLIAM PORCH, having been first duly
7 sworn, testified as follows:

8 THE CLERK: Thank you. Have a seat on the witness
9 stand, please?

10 THE CLERK: State your name for the record.

11 THE WITNESS: Joshua William Porch.

12 DIRECT EXAMINATION BY MR. LUKE SHEALEY:

13 Q. Good morning, Josh.

14 A. Good morning.

15 Q. Josh, did you kill Nakia Mallory?

16 A. No, I didn't.

17 Q. Who did?

18 A. Justin Mallory did.

19 Q. How do you know?

20 A. I saw him. The night I was over there I saw them get
21 into a verbal altercation originally over him cheating.

22 Afterwards I saw him strike her several times. I stepped in
23 between both of them to try to stop it, and in turn I had
24 got injured myself. I got paper towels and I ended up
25 leaving.

1 Q. Okay. Why didn't you tell the police this in 2006 and
2 2007?

3 A. I was scared. Nakia and I were kissing, touching each
4 other that night. I didn't want my wife to find out what I
5 had done, and also I didn't want to be involved in this
6 case. I don't want to be charged myself.

7 Q. Okay. Josh, let's step back a little bit before we
8 start talking about this some more.

9 Tell this jury how old are you? Where are you from?

10 A. I'm 30 and I'm originally from Long Beach, California.

11 Q. Okay. Think back to 2006. How old were you then?

12 A. I think about 22, 21.

13 Q. Okay. And then in 2009, how old were you then?

14 A. 25.

15 Q. Okay. Let's talk about Long Beach. Is that where you
16 grew up?

17 A. For the most part. I was born in Compton. I stayed in
18 Long Beach for a few years, and I eventually moved to
19 Seattle and stayed there for about seven years, and went
20 back to California.

21 Q. Okay. And living in Long Beach, who did you leave
22 with?

23 A. My mother, my brother and my sister.

24 Q. Okay. Did you always live with them as a child?

25 A. Yeah. Well, from the ages from when I was born until

1 about five I was living with my mother until -- until I was
2 five.

3 Q. Okay. Now, this is personal, but I have to ask you
4 this. Did something happen as a child that caused you to
5 have to leave your mother's care?

6 A. When I was about five years old, me, my brother and my
7 sister were molested by their biological father, so my mom
8 took us to Seattle to get us out of that situation.

9 Q. And at some point did you also have to leave your mom's
10 care, though?

11 A. Shortly after we came to Seattle, she dropped off us
12 with our aunt because she was the only one able to take care
13 of all three of us, and she went back to California to make
14 sure we had a home and my aunt reported us abandoned, so my
15 mother lost custody of us.

16 Q. Okay. Where did you go from there?

17 A. We stayed with my aunt for the majority of the time,
18 but periodically we would have to go into foster homes.

19 Q. Okay. And how long did you do the foster home
20 situation?

21 A. For a couple of them. It was only maybe a weekend for
22 one. It was like an orphanage kind of. We had to stay
23 there for about a week.

24 Q. Was that easy or was that hard?

25 A. That was hard. The one we stayed at a week was the

1 hardest. They separated me, my brother and my sister. They
2 wouldn't let us see each other, and they would only feed us
3 oatmeal for every meal.

4 Q. Okay. And how old were you when you were abused,
5 again?

6 A. Five.

7 Q. Okay. At some point did you go back to live with your
8 mother?

9 A. Yes, I moved back in with my mom when I was 13.

10 Q. Okay. And where were y'all staying then?

11 A. In Long Beach, California.

12 Q. Did you finish school there?

13 A. I graduated from Milliken High School.

14 Q. Milliken High School?

15 A. Yes.

16 Q. Okay. And what, if anything, did you do after you
17 graduated?

18 A. Right after graduation I went into the military, the
19 Army, and I pretty much -- I didn't know what I wanted to
20 do, so I figured the Army would be the best thing. I would
21 be able to serve my country, travel the world, meet a lot of
22 different people, just having an adventure.

23 Q. That's why you wanted to go in the Army?

24 A. Yes.

25 Q. Did you stay in the Army a long time?

1 A. No, not at all. I was there maybe about a month.

2 Q. Okay. Did you -- what happened with the Army? Did you
3 not like it? What's -- tell the jury.

4 A. I didn't like it. I was young. I was only 17 at the
5 time. My mom had to sign me over to them, but once getting
6 there it wasn't -- it wasn't what I had expected.

7 Q. Okay. Is it fair to say it wasn't a very good fit?

8 A. No, not for me.

9 Q. Okay. So after that experience, what did you do? Did
10 you work? Tell the jury what you did.

11 A. Once I was discharged from the military I went back to
12 Long Beach, California.

13 Q. Let me stop you. What kind of discharge did you get?

14 A. A general discharge.

15 Q. Okay. Go ahead.

16 A. I moved back to Long Beach and got a job at Hollywood
17 Video. Just working full time there.

18 Q. Okay. How long did you work there?

19 A. For almost a year I was working at Hollywood Video.

20 Q. Okay. Did you like that job?

21 A. Actually I loved that job. It's -- I'm really into
22 video games and movies and stuff and you get free rentals,
23 me and my family.

24 Q. What's your favorite movie?

25 A. Avitar.

1 Q. Okay. All right.

2 Did you work anywhere else in California at that time?

3 A. I also worked at Quizno's Subs, and that was maybe for
4 close to a year.

5 Q. Okay. Now, I want to talk to you about Persia. We met
6 Persia the other day. Who is Persia?

7 A. Persia is my wife and the mother of my four children.

8 Q. Okay. Now, was there a time when you met Persia in
9 California?

10 A. Yes, I met Persia in California in the summer of I
11 think it was 2003. She was going to school out there.
12 She's not from California. She's originally from here.

13 Q. What was she -- what type of school was she going to?

14 A. She was going to Brooks College. She wanted to be a
15 fashion designer.

16 Q. Okay. How did y'all meet? Tell the jury about that a
17 little bit, the circumstances behind it.

18 A. It was one night in particular where I'm just sitting
19 at home. I'm just playing video games. My brother and a
20 friend of ours, they come over. They had met a couple of
21 females who were in college also, and they were supposed to
22 be having this party that night and they wanted me to come
23 with them. I really didn't want to. I was fine to sit at
24 home that night, but they had convinced me. They convinced
25 me to go out with them, so we ended up going. And where

1 this party is supposed to be in this apartment complex is a
2 gated community, so they needed somebody to unlock the door
3 for them. And luckily I knew somebody in there, so I called
4 them and they let us in, and I met Persia that night because
5 she was going to the same party.

6 Q. Okay. Did you and Persia instantly hit it off, or how
7 did that start up? How did it ultimately begin talking to
8 each other?

9 A. My brother and -- my brother and her friend Jason
10 decided they were going to play matchmaker. Neither one of
11 us really talking to either one of -- to either one, so my
12 brother kept coming to me saying "she likes you. She's just
13 shy." And my friend kept going to Persia and kept telling
14 her that "he likes you. He's just shy." So eventually we
15 just started talking.

16 Q. Okay. And after that night did y'all start dating?

17 A. Yes, that night we stayed out until the early morning
18 just talking. Exchanged numbers and been talking ever
19 since.

20 Q. Okay. Did you like Persia?

21 A. I love Persia.

22 Q. Okay. So you grew to love Persia?

23 A. Yes.

24 Q. Okay. How long did y'all date, and then tell us about
25 that relationship as it grows in California.

1 A. We weren't dating long before she had gotten pregnant.
2 She had gotten pregnant. I would say about seven -- seven,
3 eight months later we ended up getting married and moving
4 out here.

5 Q. Okay. Let's talk about that.

6 So y'all did make the decision to get married, correct?

7 A. Yes.

8 Q. Okay. Now, how did y'all decide to move out here? I
9 mean, your family was in California, right?

10 A. All my family is in California.

11 Q. Okay. So describe the process with y'all as a couple
12 and how y'all got out to South Carolina.

13 A. Like I said, she's originally from here, from Columbia.
14 She was pregnant and we both were young at the time. She
15 was getting homesick. She really wanted to see her family,
16 and also --

17 She was living with us at the time. That's me, my
18 brother, both my sisters, and my mom, and this was only a
19 two bedroom apartment, so she wanted to come to a place
20 where she could have her own room, at least, until we got
21 our own place. She figured it would be a lot easier for us
22 to come out here and get on our feet, find a place to live,
23 get a car, establish ourselves.

24 Q. Okay. And you had never been to South Carolina before,
25 right?

1 A. No, I have never been here before.

2 Q. Okay. So you were willing to make that commitment and
3 follow her across this country?

4 A. Yes, I loved her.

5 Q. Okay. And at that time you said -- was she still
6 pregnant, or had y'all had your first child?

7 A. When we moved out here she was still pregnant.

8 Q. So when you moved out here, though, what did you do?
9 Did you find work? Was she working? Talk to us a little
10 bit about that.

11 A. I had gotten a job. She wasn't working. She was --
12 she just stayed home. I applied to Food Lion and I got a
13 job there as a bagger and -- I was only working part-time,
14 so I continued looking for work, because it wasn't enough to
15 support a family. We had, like I said, a child on the way.
16 So I get a job at a gas station. I think it's a Corner
17 Pantry across the street from Food Lion on Clemson Road and
18 that was full time and it also paid more, but it still
19 wasn't enough to support my family, so I'm still looking for
20 work and eventually I get a full-time job at Blue Cross Blue
21 Shield.

22 Q. Okay. What were you doing there? Talk to us about
23 what kind of job that was.

24 A. At Blue Cross Blue Shield I was a customer service
25 representative. Like I said, it's full time. Basically I

1 take incoming calls from providers; that would be doctors,
2 nurses, and also just regular people who have insurance
3 policies with us. I'm giving information on benefits.

4 For the providers, they would normally have to give us
5 procedure codes, let us know what specific operation or
6 surgery, whether it was a routine physical, or inpatient or
7 outpatient surgery is covered, and I would tell them how.

8 For the members, I would just given them general
9 information on what kind of co-pay, or down payment, or
10 anything they would have to -- or down payment they would
11 have to make.

12 And claim status, whenever they have an operation done,
13 your claim is submitted to the insurance company, whether
14 it's medical or dental. I would have to give them the
15 status on that, whether we received it, whether it's
16 processing correctly. And if it is processing incorrectly,
17 I would have to adjust it.

18 Q. Okay. Did you like that job?

19 A. Yeah, that was -- that was a pretty cool job.

20 Q. Okay. Now, in what year did you move to South
21 Carolina, do you remember?

22 A. 2004.

23 Q. Okay. So now let's get up to around May, around the
24 summer of 2006. Are you working?

25 A. No, I don't -- I don't think so.

1 Q. Okay. Was your wife working?

2 A. Yes.

3 Q. Okay. Now, did y'all -- how did y'all -- did you send
4 your kids to expensive daycare, or how did y'all take care
5 of the kids?

6 A. It was a team effort. It wasn't just one of us taking
7 care of the kids. Usually I would be the one working. And
8 if for whatever reason I quit my job and started looking for
9 another one, she would pick up the slack and get the job. I
10 would stay home with the kids, feed them, make sure they
11 were fed, play with them, talk to them, make sure they were
12 all taken care of. And when I found another job, she would
13 come back home and take care of the kids.

14 From what happened to me when I was younger I don't
15 really trust a lot of people around my children and I would
16 prefer they would stay out of daycare.

17 Q. Now, getting again back to 2006, you knew the
18 Mallory's, right?

19 A. Yes, I did.

20 Q. How did you know the Mallory's?

21 A. At one point in time we were neighbors.

22 Q. Go ahead. What would y'all do? Would you ever go
23 there?

24 A. I would go over to hang out with Justin pretty
25 regularly, just talking, hanging out, playing video games,

1 maybe having a few drinks.

2 Q. Okay. And you just said you used to live at the Hunter,
3 Mills Apartments, right?

4 A. Yes.

5 Q. Now, in 2006 where were you living?

6 A. At Meredith Square Apartments.

7 Q. Okay. So at that point you weren't living at the same
8 apartment complex?

9 A. No, I wasn't.

10 Q. Okay. Now, Josh, I want to talk to you a little bit
11 now about some of your involvement with the police over the
12 course of this entire investigation, okay?

13 A. (Shaking head yes).

14 Q. Now, I want to talk to you about the day after this
15 incident. Okay.

16 Do you remember Sergeant Strange coming out to your
17 house in 2006?

18 A. Yes, I do.

19 Q. Right on Mother's Day?

20 A. Yes.

21 Q. Okay. And you sat here and you have heard what he
22 talked to you about. What did he ask you?

23 A. The first thing he did was let us know that Nakia had
24 died, and he asked me if I had known anything about it.

25 Q. Okay. And learning that news that Nakia had died, how

1 did that affect you?

2 A. I was genuinely shocked. My wife, when she found out,
3 immediately started crying. We both just had to sit down
4 and take that in. We both liked Nakia and --

5 Q. Why were you shocked?

6 A. Because I didn't know she was dead.

7 Q. Okay. We will get to what you saw in a little more
8 detail, but you didn't know -- you didn't think she was
9 dead?

10 A. No, not at all.

11 Q. Okay. What did you tell Sergeant Strange, though?

12 A. That I was not there.

13 Q. Okay. We have heard about this. We need to take about
14 it. Why did you tell Sergeant Strange that?

15 A. Sergeant Strange let it be known that they had already
16 arrested Justin Mallory, which was -- which is the person
17 who did this, and they had more than enough evidence to
18 convict him.

19 And at the time I didn't divulge anything that I know,
20 because, once again, I was scared of my wife finding out
21 what happened between Nakia and I, and I don't want to be
22 implicated in this murder that I had nothing to do with.

23 Q. Okay. This decision to tell him this was something
24 that you did on the spot, or was this something that you had
25 been thinking about?

1 A. No, it was something that I did on the spot. Like I
2 said, I didn't even know she had died in the first place.

3 Q. Okay. And, again, why would you be scared to tell your
4 wife that you were making out with Nakia?

5 A. Because that would possibly end our marriage.

6 Q. The marriage that you moved across the country for?

7 A. Yes.

8 Q. Okay. Would she like to hear about that?

9 A. No, not at all.

10 Q. Do you regret making out with Nakia?

11 A. Yes, I do.

12 Q. Okay. And, again, were there any other reasons why you
13 chose to keep yourself out of that situation?

14 A. Being young and -- being young and black, I don't know
15 if any of you can really relate to that, but divulging
16 information that you had been cut and bled on a murder
17 scene, it usually means you are automatically a suspect and
18 I didn't want that to happen at all.

19 Q. And you said I think just a second ago that he had
20 already told you they had Justin, right?

21 A. They said they had more than enough information,
22 evidence against him to convict him.

23 Q. Okay. Knowing that, did you feel the need to then
24 interject yourself into this situation?

25 A. No, I saw no -- no reason to. They were -- they were

1 police officers. I figured they knew what they were doing.

2 Q. Did you feel that they had the guy and they would be
3 able to do their job successfully without you letting your
4 wife know anything?

5 A. I know they have the guy. I saw what he did.

6 Q. Okay. But that was a lie, right? I mean, what you
7 told Strange, that wasn't the truth, right?

8 A. No, it was not. It was a lie.

9 Q. Okay. Now, did they ever talk to you at all after
10 that; the next day, the next week, the next month?

11 A. No, I didn't see them for over a year.

12 Q. Okay. And sometime around late June of 2007, did
13 Richland County come back out to your house?

14 A. Yes, they did.

15 Q. Who came to your house?

16 A. Captain Smith.

17 Q. Okay. What was he asking about?

18 A. He came out there asking about DNA, said there was DNA
19 on the scene and they had to figure out whose DNA it was,
20 and --

21 Q. When he was asking about DNA, what did you tell him?

22 A. That it was probably mine. I had cut myself while I
23 was there.

24 Once again, I was scared, so I just made up a story
25 saying that I cut myself on an apple while I was at Justin's

1 house.

2 Q. Why were you scared?

3 A. Because Persia still at this time didn't know about
4 Nakia and I, and I didn't want her finding out. And also I
5 still didn't want to get involved in this at all. I didn't
6 want to be considered a suspect.

7 Q. Okay. But you agree that that, not telling Stan Smith
8 the truth about that and how your blood was on the scene,
9 that was a lie, right?

10 A. Yes, that was.

11 Q. Okay. Was this again something that you kind of just
12 made up on the spot because he was asking you about it?

13 A. Yes, everything was just made up on the spot.

14 Q. Okay. And knowing that they had Justin already, did
15 you want to interject yourself into this situation?

16 A. No, not at all. They had the right guy. I didn't see
17 any reason for me to tell them that I was an eyewitness,
18 what I had witnessed that night.

19 Q. Okay. Did Stan Smith come back out to your house that
20 day?

21 A. Yes, he did.

22 Q. Okay. And now what's he -- what's he talking about?

23 A. He had -- he said he had spoken to Sergeant Strange and
24 had asked me if I had told him about this apple story when I
25 had first spoken with him, and I believe I told him that I

1 think I did. And, once again still, I'm not trying to get
2 any -- get any -- get involved in this at all.

3 Q. And, again, why? Why?

4 A. I'm scared. I don't want Persia to find out what
5 happened between me and Nakia, and I don't want to be
6 involved in this case. I don't want to be considered a
7 suspect for something I didn't do.

8 Q. Okay. Now, did they talk to you again? Did they want
9 you to come talk to them at Richland County?

10 A. Yes, they did.

11 Q. Okay. And who did you meet with at Richland County?

12 A. It was Captain Smith, Holdorf. I think White was one
13 of their names.

14 Q. Okay. Now, as you are sitting there, are they
15 basically saying, "look, we need to talk to you some more
16 about this." What is -- what are they telling you?

17 A. They are not really telling me anything. They are just
18 asking me exactly what happened. They had really --

19 At this point in time I just figured that it's too late
20 for me not to get involved, that I have already lied to them
21 previously, that the best thing for me to do is just to go
22 ahead and tell them what I had witnessed that night. So I
23 was a reluctant witness, but, nonetheless, I still did the
24 right thing and told them exactly what happened that night.
25 I testified to it in two trials.

1 Q. Did you want to tell them all this stuff?

2 A. No, not at all. Where I'm from it's frowned upon to
3 sit here and tell on anybody for any particular reason, to
4 the police at least.

5 Q. Okay. And how long did you talk to them?

6 A. For a few hours.

7 Q. Okay. And they questioned you a lot about it, right?

8 A. Yes.

9 Q. Okay. And at this point did you tell them everything
10 that you had seen that night?

11 A. Yes, I told them everything at this time.

12 Q. And who was typing? Was Stan Smith typing?

13 A. Yes, it was.

14 Q. Okay. And he talked to you all about what you had told
15 him, right?

16 A. Yes.

17 Q. At some point did anybody else come in the room?

18 A. Chief Wilson was in the room, but he wasn't really
19 involved in the questioning. It was more him just sitting
20 there watching. That's all.

21 Q. Okay. And this statement is in evidence. And all the
22 details that you provided, is that the truth?

23 A. Yes.

24 Q. Okay. And even when you told him how Nakia said, "how
25 could you" to Justin, was that the truth?

1 A. Yes, everything I said in that final statement that I
2 testified to in both trials is the truth.

3 Q. Okay. Now, after telling them all this, you knew that
4 Persia was going to find out, right?

5 A. Yes.

6 Q. All right. And here you are. You got yourself
7 involved in this, right?

8 A. Yes.

9 Q. Are you a happy man at this point?

10 A. No. I helped them. I testified to what I saw that
11 night, even though it was against my better judgment. I did
12 not want to. And, like I said, I was scared of my wife
13 finding out and I was scared of becoming a suspect. I
14 testified in both these trials. My marriage is now over and
15 here I am on trial for a murder I did not commit.

16 Q. Okay. At some point, based upon you had told Stan
17 Smith and Holdorf and Strange, did Deputy Solicitor John
18 Meadors ever want to come talk to you?

19 A. We did speak with him.

20 Q. Okay. Did he tell you that you would be necessary for
21 this trial?

22 A. Yes, he had put a subpoena out for me to be his
23 eyewitness. He had literally called me his star witness and
24 was telling me how important it was that I would come and
25 testify in both these trials.

1 Q. Okay. And did you do that?

2 A. Yes, I did.

3 Q. And did you want to?

4 A. No, even at this time I still did not want to testify.
5 I didn't want to get any further involved in this
6 investigation, but I did it any ways.

7 Q. And now there has been a lot of talk about -- mostly
8 from McDaniels and Godfrey, about how you knew all the facts
9 about this case and this is how you know this information
10 and all the details. Did Stan Smith, or any of those guys,
11 feed you details on this case?

12 A. I didn't know anything about this case. I was
13 sequestered, just as everybody else was. Once the trial was
14 going on and once I testified, I would leave. I wasn't
15 allowed to hear any other testimonies whatsoever. I didn't
16 know who the witnesses were. I didn't know anything about a
17 911 tape, or the security guard at the hospital. I didn't
18 know any details about the hospital. I'm not -- I didn't
19 even find out how Nakia died, I mean, the full details of
20 it, until McDaniels came and interrogated me in California.

21 Q. Okay. And we will get to that.

22 Did you know who Sherry Tribble was?

23 A. No.

24 Q. Okay. All you knew is what you saw and what you told
25 Stan Smith, right?

1 A. That's it.

2 Q. Okay. After you testified for John Meadors, did you
3 hang around the courtroom and watch the rest of the trial?

4 A. Every time I testified I would leave immediately.

5 Q. Okay. Did you want to be here testifying in this type
6 of thing?

7 A. No, not at all.

8 Q. And why not?

9 A. I never wanted to be involved. Like I said, I never
10 wanted my wife to find out what happened between Nakia and I
11 and I never wanted to become a suspect.

12 Q. Did you kill Nakia?

13 A. No, I did not kill anyone.

14 Q. Who did?

15 A. Justin Mallory.

16 Q. Okay. How do you know?

17 A. I saw him do it.

18 Q. After these two trials, did you learn that Justin
19 Mallory got a not guilty?

20 A. Yes, I did.

21 Mr. Meadors called my wife and I at our home and told
22 us that he was found not guilty. And we asked him, "well,
23 what happens now? Is there anything else that we can do?"

24 He says "no, that's it. There is nothing else we can
25 do. That's twice. That's double jeopardy."

1 He said, "thank you so much for your help. You were a
2 star witness. You did great and we appreciate all your
3 help."

4 Q. Okay. What happened with you and Persia and your
5 marriage?

6 A. From that moment our marriage pretty much went
7 downhill. That's the reason why I moved back to California,
8 just because Persia and I had ended up separating.

9 Q. Okay. In your mind did that have anything to do with
10 the fact that you repeatedly had to talk about how you made
11 out with another woman that night?

12 A. Yes, that was the major reason why our marriage.

13 Q. She was not happy about that?

14 A. Not at all.

15 Q. Okay. And are you on trial for murder?

16 A. Yes.

17 Q. Okay. So the two reasons that you did not want to get
18 involved are actually reality for you now, is that fair?

19 A. Yes, that's the truth.

20 Q. Let's talk about California. Did you move back there
21 because that's where your family is?

22 A. Yes, that's where I grew up. That's where all my
23 family is.

24 Q. And the situation with Persia, do you still love her?

25 A. Yeah, I still love Persia.

1 Q. Y'all are separated because y'all are having problems?

2 A. Yes, our marriage is over.

3 Q. But she still has all your children, right?

4 A. All four.

5 Q. Do you still talk to Persia and talk to the children?

6 A. Every day.

7 Q. Now, back in California what did you do? Did you try
8 to find work? What's going on?

9 A. After I moved back home I had gotten a job about three
10 days later at Big Clyde's Sporting goods. It's -- basically
11 we just have any kind of sporting equipment that you can
12 think of and we sell it. It's not really a commission job.
13 It's an hourly wage, but I was good at it and my manager was
14 planning on promoting me.

15 Q. Okay. Did you like that job?

16 A. I loved that job. I was thinking about pursuing it as
17 a career.

18 Q. Okay. And were you working -- and where were you
19 living? Who were you staying with?

20 A. I was staying with my mother and my brother and both my
21 sisters and a friend of ours.

22 Q. Okay. And let's start bringing you to the night that
23 you got arrested, which I believe is late July 8th of 2009.
24 Were you working that day?

25 A. No, that was -- that was my last day off.

1 Q. Okay. So being that it was a day off, tell the jury
2 what time did you get up? What were you doing that day?
3 Talk to us about your day.

4 A. I got up probably around nine or ten, went through my
5 normal routine; brushed teeth, washed face, took the dog out
6 for a walk. And after that it was just pretty much passing
7 time playing video games, watching TV, until later in the
8 evening where my sister and I, my youngest sister Jada, her
9 and I -- well, all of us are actually really close, but Jada
10 and I always this thing where will go rent like cheesy
11 horror movies and watch them together. So that night we
12 decided to go to Blockbuster and rent a few DVD's. We came
13 back home and she wanted snacks, so we ended up leaving and
14 going to Walgreen's. It's only like a block away from our
15 house.

16 Q. Okay. Let me stop you right there. Was this fairly
17 usual routine for your day off?

18 A. Yes.

19 Q. Okay. Are you -- do you like to sleep until twelve,
20 one, two?

21 A. No.

22 Q. Okay.

23 A. Not at all.

24 Q. What time do you usually go to bed, on average?

25 A. Midnight, one o'clock.

1 Q. Okay. Now, let's talk about these three movies that
2 you got. Are you planning on watching all these movies back
3 to back to back that night?

4 A. No, maybe one of them, or most of one of them.
5 Sometimes I end up falling asleep.

6 Q. Okay. So you wouldn't stay up until three, or four, or
7 five in the morning just watching movies for the heck of it,
8 would you?

9 MR. GOINGS: Objection to the leading, Your Honor.

10 A. No.

11 THE COURT: Sustain as to the leading.

12 BY MR. LUKE SHEALEY:

13 Q. Would you stay up to three, or four, or five in the
14 morning just watching movies?

15 A. No, I have to be -- I have to go to work.

16 Q. Okay. That's not -- is that something that you
17 normally do, ever?

18 A. Just stay up to three, four o'clock in the morning
19 watching movies?

20 Q. Right.

21 A. No.

22 Q. All right. Now, let's get back to Walgreen's, all
23 right.

24 Did something happen at that Walgreen's? And if so,
25 tell the jury what it was.

1 A. Well, my sister -- I think it was me, my sister Jada
2 and my other sister's boyfriend Brandon, she gets her
3 snacks. And as we are leaving, walking up to the register,
4 I see a man walk up to me and he pulled something out of his
5 pocket and puts it up against my chest. I later find out it
6 is Sergeant McDaniels, and he tells me I am under arrest for
7 the murder of Nakia Mallory. I mean, as he does, as he
8 leans close and whispers in my ear that, "you almost got
9 away with it."

10 At this time my --

11 Q. Let me stop you. Let me stop you.

12 What is going through your mind when Sergeant McDaniels
13 walks up to your chest, this guy you have never seen, and
14 says, "you are under arrest for the murder of Nakia
15 Mallory?"

16 A. The first thing that registered was just shock. I
17 really couldn't believe it, because I helped them. I
18 testified in two trials, and now, just like I feared, I'm
19 ending up being arrested for something I didn't do.

20 Q. Okay. Is this your worst nightmare coming true?

21 A. Pretty much.

22 Q. All right. Keep going. What else happens?

23 A. Jada and Brandon didn't exactly realize what had
24 happened at first, so they continued walking. When they did
25 realize I was no longer with them, they turned around and

1 they see Sergeant McDaniels had already placed cuffs on me.
2 He was taking me over to the photo shop within Walgreen's.
3 The few customers that were in there had left by this time.
4 And my sister Jada runs off and Brandon comes back trying to
5 figure out what happened, and I just tell them, "just tell
6 my mom that I'm being arrested. Just tell her that I'm
7 being arrested." So he leaves.

8 And as I'm inside Walgreen's a lot of the Long Beach
9 Police Department starts coming in. There is about 13 of
10 them, all that entered into the building. And as they were
11 all coming in walking around the building and standing
12 around me, Sergeant McDaniels starts saying, "you think this
13 is your time to shine? This isn't your time to shine."

14 Q. Okay. So you are under arrest. Sergeant McDaniels has
15 told you these things. What happens? Where do you go from
16 there?

17 A. I went --

18 Q. Approximately, as best as you can remember, what time
19 of night is it at this point?

20 A. It's pretty close to eleven by now.

21 Q. Okay. Where do they take you?

22 A. They take me down to the Long Beach city jail. It's
23 all in one. The police department. The Long Beach Police
24 Department, and the city jail is all just one building.
25 They take me there. And once we get there, they take me

1 upstairs and put me in a room where they handcuffed me to
2 the table.

3 Q. All right. Now, at some point does McDaniels come in?

4 A. Yes, it was not shortly after I was handcuffed to the
5 table he walked into the room.

6 Q. Is it him and Godfrey, or is it just him?

7 A. It's just McDaniels. Godfrey hadn't even shown up yet.

8 Q. Okay. Now, I want you to describe to this jury what
9 happened next in that initial conversation with Sergeant
10 McDaniels.

11 A. He walks around only a few feet from me and asked me if
12 I'm a monster. And he uncuffs me and he says -- basically
13 he informs me that the reason why he picked me up on his own
14 is because he spoke with Captain Smith and Holdorf and both
15 of them told me how timid I was and mild mannered. I wasn't
16 aggressive at all, which is why I had no problem arresting
17 me on his own without the help of Long Beach Police
18 Department.

19 After that he just goes on this rant. He starts asking
20 me questions. He --

21 Q. Let me stop you right there. Is he advising you of
22 your rights right now?

23 A. No, he hasn't advised me of anything.

24 Q. He's not telling you that you have a right to a lawyer?

25 A. No.

1 Q. He's not telling you that you have a right to not talk
2 to him?

3 A. No.

4 Q. He's not telling you that anything you say can be used
5 against you later?

6 A. No, he didn't advise me of anything at this time.

7 Q. Tell this jury what he did tell you.

8 A. Well, he came in, after he took the handcuffs off,
9 asked me if I'm a monster. And originally I wasn't trying
10 to speak to him. I wasn't saying anything.

11 And he asked me if I am a monster, because I'm not
12 cooperating at all. He says "well, if you are a monster,
13 maybe I should put these cuffs back on, because it pretty
14 much depends on you on what happens later. We can go get
15 Persia." He says Chief Wilson instructed him to come out
16 here to do whatever is necessary to arrest me, or get
17 whatever they could from me, and says that I must be a
18 monster if I'm willing to let everyone else go down with me.

19 Q. Okay. When he's telling you this, about arresting
20 Persia, what is going on in your mind? Do you feel like --
21 tell the jury how do you feel about your choice regarding
22 cooperation?

23 A. I never had a choice on whether or not I cooperated or
24 not. I -- my first priority was to protect my family.

25 The threats that he made to Persia and my

1 brother-in-law Robert I took for true, and I still believe
2 that they would have arrested them.

3 I figured I would go ahead and say whatever it is they
4 need me to say and I could always come back and fight it
5 later on my own. I would much rather do it on my own than
6 to have Persia arrested and my children put into foster care
7 and my brother-in-law arrested, when neither one of them did
8 anything wrong.

9 Q. And had Persia given statements to police before, in
10 '06, or '07?

11 A. Yes, she had given statements.

12 Q. Was McDaniels letting you know that those statements
13 might get her in trouble, unless you came clean with his
14 version of the truth?

15 A. Yes, that's exactly what happened. I didn't have a
16 choice at all in cooperating with them fully. Had I not, my
17 family would have been arrested.

18 Q. After that threat, talk about what happens. What do
19 you do? What is said?

20 A. After that threat I just pretty much cooperated.

21 He asked me if Justin was really there and I just said
22 no, and Godfrey still isn't here at this time, but he just
23 starts asking more questions.

24 Q. Okay. If you had said the truth and not cooperated
25 with him about what he wanted, what did you feel would

1 happen?

2 A. My family would have been arrested. Persia would have
3 gone to jail, Robert would have gone to jail, and would have
4 lost my children.

5 Persia was pregnant at the time and she would probably
6 end up having to give birth while she was incarcerated.

7 Q. Where do you think your children would go if Persia got
8 arrested?

9 A. They would go into foster care. There is --

10 We're her parents. I don't know of anybody else who
11 could take on three small children and one on the way.

12 Q. Okay. So talk to us, tell this jury exactly the way
13 McDaniels is going about it. Is he supplying scenarios? Is
14 he -- just --

15 A. He's --

16 Q. Describe it.

17 A. They were feeding me information the whole time. They
18 supplied we with scenarios. They are showing me autopsy
19 pictures. They are telling me how these wounds are made,
20 how they could possibly happen.

21 I didn't know what a contusion was until they showed me
22 autopsy pictures of where they had peeled the skin off of
23 Nakia and showed me where these things were.

24 Q. We will get to that second statement. We are still at
25 the first statement in the wee hours of the morning of the

1 9th, okay?

2 At some point does Godfrey get there?

3 A. Yes, he eventually showed up, and at that time
4 McDaniels pretty much updates him on what has transpired
5 between the two of us, that I admitted that Justin was no
6 longer there and that I was the cause of Nakia Mallory being
7 killed.

8 Q. Okay. And do you agree with that?

9 A. Not at all.

10 Q. Are you telling him that, though?

11 A. Yes, I had to tell him that.

12 Q. Okay. Do you remember this statement?

13 A. Yes, I do.

14 Q. Okay. This is your signature, right; Joshua Porch?

15 A. Yes.

16 Q. And in it it's twice on every page, isn't it?

17 A. It is. I would have signed it a thousand times if it
18 would keep my family out of jail.

19 Q. Okay, that's what I'm asking.

20 If you had not signed that last page, or the page
21 before that, what did you think would happen?

22 A. I wouldn't have been cooperating with them. Had I not
23 cooperated, my family would have been arrested.

24 Q. Okay. Was that made perfectly clear to you?

25 A. Yes, it was crystal clear in my mind.

1 Q. Now, obviously, based on what you have said, you are
2 here before us today. What is your feeling about the
3 consequences of your actions on that day?

4 A. What's my feeling of the consequences of my actions?

5 Q. Do you think that you would be able to -- the truth
6 will come out at some point? Were you worried about
7 yourself at that point?

8 A. I am innocent. I testified in the first two trial of
9 exactly what I saw. The only reason why I admitted to those
10 statements and made that confession on the tape is to
11 protect my family, to make sure that nobody else got
12 arrested along with me. I was going either way. It didn't
13 matter what I said or what I did, but I'm going to do
14 whatever I can to protect my family.

15 Q. Okay. Just -- do you know how long that interrogation
16 lasted?

17 A. A few hours. I think it was about five, six hours that
18 it lasted.

19 Q. Okay. And we have heard some on the video, and I think
20 it's been asked some of McDaniels, what is this whole 20
21 piece concept that they are talking about? Explain to the
22 jury what that meant.

23 A. This whole 20 piece concept that was just every time I
24 would give them information, they would say, "oh, well,
25 that's 10 pieces. That's 10 pieces. What about that 11th

1 piece," or, "what about that 15th piece." All they are
2 doing is letting me know that they need more information.

3 Every time I would tell them something, they would go
4 back and realize they want more and then come back and tell
5 me, "well, now you are at 17, but we need that 18th piece."
6 Each time they say that, I would just go along with it.

7 I didn't have a choice. I'm going to agree to whatever
8 they say, whatever scenario they bring up. Whatever reason
9 they say I did it, I'm going to agree to it. I -- I'm
10 protecting my family. I don't -- I didn't see any other way
11 to do that.

12 Q. All right. Now, at some point they got done with you
13 on that first interrogation, right?

14 A. Yes.

15 Q. Where are you taken?

16 A. To a -- to a cell. To the Long Beach city jail, which
17 is on another floor.

18 Q. Okay.

19 A. I didn't get any sleep. By the time they finished with
20 this interrogation, it was past the time where I was able to
21 sleep.

22 And the Long Beach city jail is not made for long term.
23 You are supposed to be there about a day or two, tops. This
24 is an incredibly small space. It's the -- the cell is
25 probably about the length of a twin bed, and it's four of

1 them in each cell. You have enough room to jump off your
2 bunk and use the restroom and then get back on.

3 During one period of time they will open up the bars
4 and you walk out. You are not allowed to lay back down
5 again. So, like I said, I could never -- I never had an
6 option of sleeping that day.

7 Where it's 30 people crammed in a space that's not even
8 half the size of this courtroom, sitting on concrete
9 benches, if you have to use the restroom, it's in front of
10 30 other men, because all the toilets are right there in
11 front of everybody, right underneath the TV.

12 Q. Now, at some point on July 9th did Godfrey and
13 McDaniels come talk to you again?

14 A. Yes, a few hours later, actually after leaving.

15 Q. Did you go to the same room? Where did you go?

16 A. I believe it's the same room.

17 Q. Okay. Now, at this time is Godfrey there from the
18 get-go?

19 A. Yes, he is.

20 Q. Okay. Now, at this time do they come -- do they come
21 with a bunch of information; pictures, medical stuff?

22 A. They had a lot of pictures.

23 And this particular time they proceeded to explain to
24 me how Nakia's injuries were caused. They were really
25 interested in the contusions, which is what they talked

1 about the most.

2 Q. Now, let me stop you about that.

3 Are you -- do you have any medical training at all?

4 A. No, I don't.

5 Q. You have a high school education, right?

6 A. Yes.

7 Q. All right. Do you know about medical terminology and
8 what contusions necessarily mean?

9 A. No, I didn't know what they were talking about when
10 they first said it.

11 Q. Now, I can't help but notice that the word contusions
12 comes up in your statement, comes up in the video. Whose
13 word is that?

14 A. That's their word.

15 Q. Okay. So are they confronting you with medical
16 evidence?

17 A. Yes, that's pretty much the entire interrogation is
18 them confronting me with medical evidence.

19 They even went as far as to call who they told me was
20 the medical examiner on their cell phone, who also explained
21 to me exactly what a contusion is and how they are caused.
22 They said it's from a blunt force trauma that -- it doesn't
23 show up on the skin. There is no swelling. You won't be
24 able to see it visibly on your skin. It's all underneath.
25 The only way that you would be able to see it is through an

1 autopsy.

2 Q. Okay. Hold the phone on that.

3 Who is making that phone call to a medical examiner?

4 A. McDaniels.

5 Q. And why is he doing this?

6 A. So they can tell me what a contusion is.

7 Q. And did they do that?

8 A. In detail.

9 Q. And did you then put that in this statement?

10 A. Yes, I did.

11 Q. Do you remember this statement? This is the second
12 July 9th statement?

13 A. Yes. This is the other statement I made.

14 Q. Okay. And is it fair to say that this one focuses a
15 lot on details of injury, right?

16 A. Yes.

17 Q. Okay. This is where -- is it fair that this is where
18 they first get to that palm strike language, right?

19 A. Yes.

20 MR. GOINGS: Object to the leading, Your Honor.

21 THE COURT: Sustained.

22 BY MR. LUKE SHEALEY:

23 Q. Is this where that palm strike information enters their
24 arena?

25 MR. GOINGS: The same objection, Your Honor.

1 THE COURT: Rephrase.

2 BY MR. LUKE SHEALEY:

3 Q. Did they talk about palm strikes?

4 A. Yes, they actually did. They informed me that if
5 someone were to be punched with a closed fist, that that
6 would show up on the skin. It would cause swelling, or it
7 could have possibly even cut somebody, depending on how much
8 force was used.

9 So this is when another scenario came up where they
10 would just ask a question where, "okay. So how were these
11 contusions caused? Did you punch them, or was it just more
12 just you using palm strikes?"

13 And I just went with the most obvious choice, which was
14 palm strikes. It's softer than bone and knuckles and it's
15 not going to leave -- it's not going to cause swelling.

16 Q. Okay. Is that palm strike statement a false statement?

17 A. Yes, it is.

18 Q. Why did you say that?

19 A. To protect my family. I didn't have a choice at all.
20 If I just said, "no, I don't want to talk to you," or, "I'm
21 not saying anything else," then my family would be arrested.

22 Like I said, I'm going to jail either way. It doesn't
23 matter what I say or what I do. The only reason why I'm
24 doing this is to protect my wife and my brother.

25 Q. And this statement is three pages. And what would you

1 feel would have happened if you didn't sign one of those
2 pages?

3 A. That they would be arrested.

4 Q. Okay. Now, it also discusses a cut on Nakia's eye.
5 Did they talk to you about that?

6 A. Yes, they talked to me about all of her injuries.
7 About the contusions, they said there was some I believe on
8 her face, on the side of the head. They said that she had a
9 cut above her eye and that she was stabbed in the neck.

10 Q. Okay. Did you know anything about what had happened
11 that night, other than what you had seen during that brief
12 fight?

13 A. No, I had no other information than what I saw that
14 particular night.

15 Q. Okay. Now, how long in your memory does this
16 interrogation lasts with all the medical evidence?

17 A. Another few hours. Exactly I don't know. It was a few
18 hours.

19 Q. Okay. Now, once it ended where were you put?

20 A. I was put back in Long Beach city jail.

21 Q. In the same holding cell?

22 A. In the same holding cell with 30 other people.

23 And like I said, this jail is not made for long term.
24 You are not allowed to change your clothes. They take your
25 belt, your shoelaces from you, because people end up killing

1 themselves there. You are not allow to brush your teeth or
2 take showers. And by now I believe this is the second day.

3 Q. Is that where you spent the night, the night of July
4 9th?

5 A. Yes.

6 Q. Okay. Did you get any sleep? How much sleep did you
7 get, if any?

8 A. I got -- I got a couple of hours of sleep. Maybe about
9 two hours, tops.

10 Q. Okay. And you -- had you been up since when you got up
11 on July 8th, your day off?

12 A. Yes, I didn't get any sleep that night, and really
13 didn't get any sleep the day after.

14 Q. Okay. Did you have occasion to talk to police again on
15 July 10th?

16 A. Yes. They came and picked me up and took me to -- I
17 don't know where exactly it was. I know it was in L.A., but
18 as far as the building, I think it was like a sheriff's
19 department, something like that.

20 Q. Okay. Who picked you up?

21 A. McDaniels and Godfrey.

22 Q. Okay. And did they then leave you with an investigator
23 from the Los Angeles Sheriff's Department?

24 A. Yes, I was with that investigator for about six and a
25 half hours.

1 Q. Okay. More of the same?

2 A. Yes, it's more of the same.

3 Q. Okay. Now, after that time, that six and a half hours,
4 where did you go?

5 A. I didn't go anywhere, but I was turned over to Godfrey
6 and McDaniels once again and they start off with the 20
7 pieces again. They say I think I'm at 18, or 19 at this
8 time and need more information from me.

9 Q. And that's the video that we saw right there?

10 A. Yes.

11 Q. That hour long video? That was actually recorded,
12 right?

13 A. Yes.

14 Q. Getting back to the first two statements on July 9th,
15 was any of that recorded?

16 A. None of it was recorded. They didn't seem interested
17 in recording anything.

18 Q. Now, getting back to the 10th, on that final
19 interrogation with Godfrey and McDaniels, you said they are
20 talking about what?

21 A. The 20 pieces, about how I need to offer up more
22 information to them.

23 Q. Okay. And they are -- they have got you now talking
24 about a knife, right?

25 A. Yes.

1 Q. Okay. And they are talking about the car, right?

2 A. Yes, they mentioned my jeep.

3 Q. Now, you watched this video. It was all played here in
4 front of us. Does this question by McDaniels sound
5 familiar? "You are telling me exactly what happened with
6 your brother-in-law, your wife does not necessarily mean
7 that they will have to pay for what you involved them in,
8 but you do realize that at some point a lot of that is going
9 to come into place?" Do you remember that?

10 A. Yes, I do.

11 Q. Is that what you saw on that video?

12 A. Yes, it is.

13 Q. Do you recall your answer being "yes"?

14 A. Yes.

15 Q. Do you recall McDaniels saying "and it's important for
16 you to be honest now, because first they are saying -- does
17 McDaniels say "what else are you missing, as far as telling
18 us? Let's talk about the car. You cleaned the car." Do
19 you remember that?

20 A. Yes, I do.

21 Q. And your initial answer is what?

22 A. "No."

23 Q. Okay. But they brought up your brother-in-law and your
24 wife again, didn't they?

25 A. Yes, they did.

1 Q. And you immediately changed your story when confronted
2 with that, right?

3 A. Yes. And him saying that was just letting me know,
4 once again, that my family's life was on the line. My first
5 instinct is to protect them. I figured that would be what
6 anyone would do when one of their loved ones is in jeopardy.
7 I'll take on whatever I have to and fight it on my own,
8 rather than have them experience something like this.

9 Q. And do you remember you then said, "yes, I cleaned the
10 car"?

11 A. Yes.

12 Q. "20 pieces" is what Godfrey says, right?

13 A. Yes.

14 Q. And right below, do you remember McDaniels saying, "and
15 you know we talked to your brother-in-law. Didn't we tell
16 you that?"

17 A. I remember him saying that.

18 Q. And he says, "all right. Well, we got him too." Do
19 you remember that?

20 A. Yes, afterwards I asked him if he arrested him.

21 Q. Were you worried that they were arresting your family?

22 A. Yes, they told me as much if I weren't going to
23 cooperate.

24 Q. All right. I'm going to bring you back to the night
25 that we are all here for.

1 Did you have occasion to go over to the Mallory's house
2 that night?

3 A. Yes, I would go over there regularly.

4 Q. Okay. Did you go earlier in the day?

5 A. Yes, I had gone there earlier that day with my oldest
6 child, Genesis, my daughter. It wasn't for anything in
7 particular. I just went over and hung out for a little bit
8 and that -- that was all. Justin said he had to run a few
9 errands, so I left. I was there maybe for 10 minutes, 10,
10 15 minutes.

11 Q. Okay. And then later did you have occasion to go back
12 over there?

13 A. Yes, I had gone over there later that evening. I
14 knocked on the door. Nakia answered and Justin wasn't home.
15 I was going over there to buy a bottle of liquor. It was
16 too late. All the liquor stores were closed, so I couldn't
17 just go there get one. She said all the liquor in the house
18 is Justin's, I would have to ask him, but since he wasn't
19 home I couldn't ask him, so I left.

20 Q. Okay. And from that point where did you go?

21 A. From there I went to a friend of mine by the name of
22 Marcus. And I went to his apartment and we played some
23 video games, talked, had a few drinks. And I was over there
24 for I don't know how long. Maybe a few hours.

25 Q. Did you leave and go home?

1 A. I left. I did leave Marcus' house and I didn't go
2 home. At this time it was pretty late. The exact time I
3 wouldn't be able to tell anyone, but I didn't feel like
4 going inside. I just -- I just wasn't ready just to go
5 inside and go to bed, so I figured I would go back to Justin
6 and Nakia's apartment to see if Justin was up, to see if he
7 wanted to hang out for awhile.

8 Q. And how old again are you at this point, in 2006?

9 A. I'm 22 at the time.

10 Q. Okay. And you had your wife and your young child at
11 the house?

12 A. I had my wife and my daughter and my -- we had a second
13 child. My son was a few months old at the time.

14 Q. And you said you weren't ready to go to bed?

15 A. No, I wasn't ready to go in.

16 Q. Why would you have gone to the Mallory's that last time
17 that night? What would you -- what would you be looking to
18 do?

19 A. Really I just wanted to hang out with somebody. I
20 wasn't tired. I was going over there to try to hang out
21 with Justin, maybe have a couple more drinks, talk, maybe
22 play some video games or something. That's pretty much it.

23 Q. Okay. And was Justin there?

24 A. No. I knocked on the door and Nakia had answered.

25 Justin wasn't home. I -- she told me as much. I asked him

1 if he would be home soon. She said he should be.

2 Q. Okay. Did she invite you in?

3 A. Yes, she did invite me in.

4 Once coming in I sat down on the couch. She sat down
5 on the same couch. We were having just a pretty general
6 conversation. It was nothing specific. I had a few drinks
7 and one thing led to another. Nakia and I started making
8 out, touching.

9 Q. Okay. Let me stop you right there. Do you remember
10 who initiated this? Was it you? Was it her? What?

11 A. I couldn't really tell you who initiated anything. It
12 just -- I'm not even sure how it happened myself. It was
13 just mutual. I can't say who initiated what.

14 Q. Is that the first time something that happened with
15 her?

16 A. Yes, the first and only time.

17 Q. Do you remember how long that lasted?

18 A. Not particularly. It wasn't really long at all. I
19 wasn't paying much attention to time.

20 Q. Okay. At some point did y'all stop making out?

21 A. We did. It happened just -- it stopped just as
22 suddenly as it began.

23 Q. Okay. Was there anything sexual? Any clothes off,
24 or --

25 A. No clothes are off. No sex was made. Nothing.

1 Q. Okay. And y'all are both sitting on the couch?

2 A. Yes.

3 Q. Do you remember what time it was?

4 A. No, I don't. I just know it was late. The exact time
5 I couldn't tell you. I wasn't paying any attention to time
6 at that point.

7 Q. Okay. What happens next?

8 A. Shortly after we stopped is when Justin comes home, and
9 he sees me there and it's late. I take it that he was
10 surprised or probably wasn't too happy about seeing me there
11 with his wife at this late hour. And he asked me what am I
12 doing there. I never got a chance to answer.

13 Nakia jumps up and asked him where has he been. She's
14 being real confrontational. She's getting in his personal
15 space. She's pushing him, trying to figure out what he's
16 been doing. She's accusing him pretty much of cheating,
17 asked him pretty much, "where have you been? Who were you
18 with," stuff like that. He's not answering.

19 They keep going back and forth, her pushing, him trying
20 to get away, but can't. The altercation or verbal
21 altercation leads into the kitchen. And once they are in
22 there, I can't really see what they are doing. All I can do
23 is hear them.

24 Q. Well, let me ask you this.

25 Knowing that this fight is now breaking out about --

1 you being there probably isn't helping the situation. All
2 right. Why don't you just leave? Why didn't you just run
3 out that door at that point?

4 A. This isn't the first time that they have gotten into
5 any type of verbal argument.

6 MR. GOINGS: Objection, Your Honor. It goes to
7 character evidence of the witness.

8 MR. LUKE SHEALEY: Your Honor, may we approach?

9 THE COURT: Yes.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 BY MR. LUKE SHEALEY:

13 Q. All right. Josh, again you are explaining why you
14 didn't just leave at that moment. Go ahead.

15 A. Like I was saying, this isn't the first time that they
16 have gotten into any argument in front of me. Most times it
17 dies down. It never becomes physical, at least it never has
18 in my presence.

19 Q. Okay. And do you think that you leaving out right then
20 and there, would that make it seem worse?

21 A. Yeah, it would make me look even more -- it would make
22 me look suspicious if all the sudden as soon as he comes in
23 is I jump up and run out the door. I figured I would just
24 stay and see what's beginning on. I didn't -- I mean, they
25 were just arguing.

1 Q. All right. Can you really see them when they are in
2 the kitchen?

3 A. No, I can't see what they are doing. All I can do is
4 hear them.

5 Q. You can hear them?

6 A. Yeah.

7 Q. At any point in time did Nakia say "how could you?"

8 A. Yes.

9 Q. Okay. And you recall that?

10 A. I do recall her saying "how could you."

11 Q. And that is in your statement?

12 A. Yes.

13 Q. Okay. Do they ever come out of the kitchen?

14 A. They do come out of the kitchen. And at this time
15 Nakia is still confronting Justin, and she is actually
16 pretty relentless in trying to figure out what he has been
17 doing and who he has been doing it with. And he's trying to
18 get past her, and as they are coming back into the living
19 room she's in front of him and she just keeps pushing him.
20 At this time I noticed an object in his hand and I see him
21 strike her several times before I actually get up and get in
22 between them to try to break them up.

23 Q. Okay. Let me stop you right there.

24 What does this object look like? Can you tell? Is it
25 a knife? Is it -- what is it?

1 A. I -- I'm not sure. It could have been a knife, or a
2 screwdriver. I'm -- I'm guessing it was a knife. I'm not
3 sure.

4 Q. Okay. Was he moving quickly, or was he moving slowly?

5 A. No, everything is happening fast. It may sound like
6 things are going rather slowly with the way I'm explaining
7 it, but everything that happened happened incredibly fast.

8 Q. All right. From the point he gets in the door to the
9 going in the kitchen and coming back, how long is that?

10 A. Maybe a few minutes, tops, if that.

11 Q. Okay. Tell us what happened as he's striking her with
12 that object.

13 A. After he strikes her a couple of times, I get up and I
14 get in between them.

15 Q. Why? Why?

16 A. Because I'm trying to diffuse the situation. At this
17 time it's gotten out of hand.

18 Q. Okay. Do you remember what hand he's using? Can you
19 tell?

20 A. No. Like I said, everything is happening fast.
21 Everyone is moving. I wouldn't be able to sit here and tell
22 you honestly what exactly hand he was using.

23 Q. Okay. So you jump up in between them. What happens?

24 A. Once I get in between them, I -- I ended up getting cut
25 myself. And after that happens, once I get between them,

1 things -- things stop. Justin walks off down the hallway.
2 I'm assuming he was going -- I don't know where he's going.
3 He goes down their hallway.

4 At this time I'm scared myself. I don't want to be
5 here any more, so -- I'm bleeding. I go into the kitchen
6 looking for paper towels to wipe my hand up. And while I'm
7 in the kitchen I look under the sink and I didn't see any
8 paper towels there. I noticed them on the counter, so I
9 grabbed a few. I wiped my hand up, wrapped my hand up. And
10 as I'm talking out the kitchen I noticed that there is a few
11 drops of blood on the floor. It may sound stupid, but it's
12 my habit of picking up my mess, so automatically I wipe a
13 couple of drops and realize how stupid that is and I leave
14 after that.

15 Q. Okay. Hold on now.

16 Did you scour the kitchen wiping up every single piece
17 of blood that you dropped in there?

18 A. No, I still had several drops of blood all over the
19 floor.

20 Q. Again, why did you wipe that up?

21 A. Just habit. I wasn't thinking. At this time I'm
22 shocked, I'm scared.

23 Q. All right. Now, do you want to hang around at this
24 point?

25 A. No, not at all.

1 Q. Okay. What do you see? Where is Nakia?

2 A. Nakia is on the couch. At this time she's just kind of
3 sitting there. She has her hand up like this, and -- I
4 didn't stop to check her injuries to see how badly hurt she
5 was or anything. I just -- I saw her. And when I saw her,
6 there wasn't blood all over the scene, like they were
7 showing me in all the photos.

8 Q. Okay. Let me ask you this. If Nakia is here, and we
9 know from this trial now that the right -- the wound is on
10 the right side of her neck. Is it fair to say the door is
11 over here?

12 A. Yes, it would be on her left side.

13 Q. Okay. And is that the way that you are going, to that
14 door?

15 A. Yes, I would only be able to see her left side.

16 Q. Okay. So did you see a whole bunch of blood and stuff
17 coming out?

18 A. No. I saw some blood, but what I did see was what I --
19 I didn't think was life threatening at all.

20 Had I known how badly injured she was, I would have
21 called 911 and gotten her help.

22 Q. Okay. But you said you left quickly?

23 A. Yes.

24 Q. And why did you want to leave quickly?

25 A. I didn't want to be further involved in this situation.

1 It's already gotten way out of hand and I was scared. I
2 just wanted to go.

3 Q. But, again, what would you have done if you had known
4 how hurt Nakia was?

5 A. I would have called 911 and gotten her help, had I
6 known how badly hurt she was. I wouldn't be here now.
7 Nobody would have been here now.

8 Q. Where did you go from there?

9 A. I went straight home.

10 Q. Did you wake your wife up and say, "hey, I just
11 witnessed something and I just cheated on you"?

12 A. No, I didn't tell her anything. I didn't tell anyone
13 anything.

14 Q. Okay. And when police came to you the next day, again,
15 why did you say you hadn't been there?

16 A. They had the right guy already. They said as much.
17 They said they had already arrested him, that they had more
18 than enough evidence to convict him. I didn't see why it
19 was necessary for me to tell them exactly that I was there,
20 that I had gotten hurt and my blood was there and that I was
21 making out with Nakia.

22 Q. Would that have been good for your marriage?

23 A. That wouldn't have been good for my marriage at all.

24 Q. And did ultimately it prove bad for your marriage?

25 A. Ultimately it proved to be the catalyst for the end of

1 my marriage.

2 Q. And that very thing that you were scared of, putting
3 yourself into this investigation and on that crime scene,
4 did that end up being bad for you?

5 A. Yes, ultimately me helping law enforcement and
6 testifying in two trials ended up with me becoming a
7 suspect, once Justin Mallory was found not guilty, and they
8 pretty much had to do a public apology. He started suing
9 them and they then came after me.

10 Q. Did you kill Nakia?

11 A. No, I did not kill Nakia, or anyone else.

12 Q. Who killed Nakia?

13 A. Justin Mallory.

14 Q. Josh, thank you. Please answer any questions that the
15 Government lawyer has for you, okay?

16 THE COURT: Any cross?

17 MR. GOINGS: Yes, ma'am.

18 CROSS EXAMINATION BY MR. GOINGS:

19 Q. Mr. Porch, you're a liar, aren't you?

20 A. Are you asking me if I lied?

21 Q. Yes.

22 A. Those first two statements with the police?

23 Q. Yes.

24 A. Yes, I did lie.

25 Q. So you admit to this jury that you're a liar, correct?

1 A. I admit to this jury that during those first two
2 statements I lied, because I was scared of being involved in
3 this, of being considered a suspect and my wife finding out
4 that I cheated on her.

5 Q. Okay. Well, let's go through those first two
6 statements.

7 Well, let's -- first off, let's start with your version
8 of what you think or what you say happened the night of May
9 14th, 2006, okay?

10 And it's your testimony before this jury that the
11 statements that you made in California are no longer
12 correct? Is that what you are saying?

13 A. They never were correct.

14 Q. Never were correct.

15 And that you are saying that the statement that you
16 gave to police on July 2nd, 2007, and your testimony before
17 the jury and judge in the two trials of Justin Mallory is
18 what is the truth?

19 A. That is the truth. I know what I saw.

20 Q. Do you have your statements up there?

21 A. No.

22 Q. Now, let's go to May 14th, 2006.

23 You have just told this jury that you didn't tell the
24 cops the truth about what happened because you didn't want
25 to get involved, is that correct?

1 A. That I was scared that my wife to find out what
2 happened between Nakia and I. And also I did not want to get
3 involved.

4 Like I said, where I'm from you don't do things like
5 that. You don't tell on people. It's frowned upon. You
6 end up getting hurt yourself.

7 Q. So what you are telling me is, your culture, when you
8 see someone who kills another person is not to tell on them?
9 Is that what you want this jury to believe?

10 A. When I was there I didn't know that she was dying, or
11 that she was dead. I didn't find that out until the day
12 after when Sergeant Strange told me.

13 Q. But you found out?

14 A. Yes.

15 Q. And you are still telling this jury that it's your
16 culture, once you found out that she's dead, not to tell law
17 enforcement about what you saw?

18 A. I know law enforcement informed me that they already
19 arrested Justin Mallory, who did do this, and that they had
20 more than enough evidence to convict him.

21 Q. My question is you are telling this jury that your
22 culture says you don't snitch, and that's one of the reasons
23 you didn't tell law enforcement?

24 A. The reasons I didn't tell law enforcement is because I
25 was scared of my wife finding out what happened between

1 Nakia and I, and also I didn't want to get involved at all.

2 Q. What was this story about or this testimony about from
3 where I come from --

4 A. It is frowned upon.

5 Q. -- we don't tell on people?

6 A. Where I come from it is frowned upon for you to tell on
7 anybody for any reason or you could end up getting hurt
8 yourself.

9 Q. All right. So you want this jury to believe one of the
10 reasons you didn't tell law enforcement is because you don't
11 snitch, correct? Ain't that just a fair way of saying it?

12 A. Is that I don't snitch?

13 Q. Tell what you saw is snitching, right?

14 A. No, I didn't never say anything about snitching.

15 Q. Maybe we are getting confused here.

16 You said that where you are from you don't tell on
17 people, correct?

18 A. Yes, there are people who -- it's frowned upon for some
19 people to tell.

20 Q. Is that not called snitching?

21 A. Yes.

22 Q. All right. So you didn't snitch on Justin, supposedly,
23 when you found out Nakia Mallory was murdered, because from
24 where you are from people don't snitch?

25 A. No, that wasn't my reason.

1 The reason for me not getting involved, like I stated
2 earlier, is because I was scared for my wife finding out,
3 and also I just didn't want to get involved. I didn't want
4 to become a suspect myself.

5 Q. Then why tell this jury from where people where you are
6 from we don't tell on people? I mean, what was the purpose
7 of that part of your testimony if you going to tell them now
8 that that wasn't one of the reasons that you used?

9 A. Is that a direct question?

10 Q. Yes, that's a question. I mean, what -- what's the
11 purpose of the testimony about "from where I'm from we don't
12 snitch?"

13 A. It's part of the way that I grew up.

14 Q. And it's part of the reason that you didn't tell law
15 enforcement?

16 A. Yes.

17 Q. Thank you. Finally.

18 Now, so you want this jury to believe that people from
19 where you are from, or where you grew up, if they see
20 someone kill another person, they are not going to tell law
21 enforcement?

22 A. Are you asking me for myself, or just people in
23 general?

24 Q. From your knowledge of people where you grew up and
25 where you grew up and yourself, you are going to tell me

1 that --

2 MR. LUKE SHEALEY: Your Honor, objection. This is
3 calling for speculation.

4 THE COURT: I'll overrule the objection.

5 BY MR. GOINGS:

6 Q. Now, go ahead and answer the question.

7 A. Could you repeat it, please?

8 Q. You to want this jury to believe that people where you
9 come from, saying your culture that you grew up in, that
10 they see someone kill another person, they are not going to
11 tell the police?

12 A. Yes, that's happened before. Where I'm from people, at
13 times, if gangs are involved and a gang were to kill
14 somebody, there are people who will not tell the police what
15 happened, because these people live in their neighborhood.
16 They, like I said, can be harmed themselves for sitting here
17 testifying.

18 Q. Is this a gang murder?

19 A. No.

20 Q. Now, you also said that you didn't your wife to find
21 out is another reason, correct?

22 A. Yes.

23 Q. What did you tell your wife about how you got your hand
24 cut that night?

25 A. I believe I told her something that I cut my hand on a

1 rail at Marcus' house, something like that.

2 Q. And so you wasn't honest with your wife on the first
3 night, is that correct?

4 A. No, I wasn't. Like I said, I didn't want to tell her
5 what happened that night.

6 Q. And you also testified that when the officers arrived
7 on the scene, or to your house the next day, Investigator
8 Strange, correct?

9 A. Yes.

10 Q. He's the one that came and spoke with you?

11 A. Yes.

12 Q. He informed you that they had more than enough evidence
13 on Justin Mallory already?

14 A. Yes, Sergeant Strange --

15 Q. Is that correct?

16 A. Sergeant Strange did tell me that, that they had
17 already arrested him and they had more than enough evidence
18 to convict him.

19 Q. So you used that as part of your reasoning to not get
20 involved, correct?

21 A. Yes, they had -- they had the right guy. There was no
22 reason for me to get involved.

23 Q. Wouldn't you agree, if we are to believe this third --
24 eventually third statement that you gave to law enforcement
25 on July 2nd, 2007, that that would give law enforcement even

1 more evidence against Mallory?

2 A. I would --

3 Q. You would agree, right?

4 A. I would agree, but when someone tells you they have
5 more than enough to convict somebody, why would you need to
6 add more?

7 Q. And you want this jury to believe that that was the
8 reason that you didn't give this detailed statement on July
9 2nd about you being there at the time the incident occurred,
10 because you didn't want to get involved and they already had
11 enough evidence against Mallory?

12 A. And also I was scared, yes.

13 Q. You were scared.

14 I mean, this is pretty damning evidence against
15 Mallory, ain't it?

16 A. It is.

17 Q. But you didn't want to get involved?

18 A. I was scared. I didn't want my wife to find out.
19 Like, once again, I didn't want to get involved. I didn't
20 want to become a suspect to be implicated in this.

21 Q. And you lived with that lie for how long?

22 A. What lie?

23 Q. The first lie that you told Investigator Strange he
24 went out -- when he came out to your house and you said you
25 didn't know anything about it and you wasn't there. How

1 long did you live with that lie?

2 A. A little over a year. I don't know the exact time.

3 Q. May 14th, 2006 is the day that he came out there,
4 correct?

5 A. Yes.

6 Q. Okay. So from May 14th, you got June, July, August,
7 September, October, November, December, January, February,
8 March, April, May, and finally in June of 2007 is when you
9 came forward -- or when -- they actually had to come to you
10 again, didn't they?

11 A. Yes, Captain Smith came out to my house.

12 Q. So it's 13 months.

13 Did you ever tell your wife the truth?

14 A. No. Like I said, I never told anybody what happened
15 that night.

16 Q. Your conscience never got to the best of you and say,
17 "hey, I think I need to let law enforcement know what I saw
18 that night?"

19 A. Law enforcement already arrested the right man.

20 Q. Okay. Your statement gives them more evidence against
21 him, correct?

22 A. And they also informed me they had more than enough
23 evidence to convict them.

24 Q. During that 13 months you didn't think Nakia Mallory's
25 family had a right to know exactly what happened?

1 A. They already knew what happened. Justin Mallory killed
2 her.

3 Q. This is what law enforcement was operating on when they
4 arrested Justin Mallory, is that what you are saying?

5 A. Are you talking about the --

6 Q. I mean, they didn't know this information at that point
7 in time, right?

8 A. No.

9 Q. They don't know why the argument started or anything
10 like that, correct?

11 MR. LUKE SHEALEY: Your Honor, I'm going to
12 object. He's asking him to ask what he might know about the
13 investigation. He hasn't become part of it or aware of it
14 at that point in time. I don't think it's appropriate.

15 THE COURT: Rephrase the question.

16 MR. GOINGS: Yes, ma'am.

17 BY MR. GOINGS:

18 Q. You hadn't told the story yet, had you? This July 2nd,
19 2007 statement, you hadn't told them yet, had you?

20 A. No, I hadn't told the truth yet.

21 Q. So law enforcement couldn't know exactly what happened,
22 according to you, correct?

23 A. That would be correct.

24 Q. Nakia Mallory's family wouldn't be able to know what
25 exactly happened, correct?

1 A. They knew what happened. I'm pretty sure the police
2 informed them that Justin Mallory killed their -- killed
3 Nakia.

4 Q. They didn't know why, did they?

5 A. I don't know.

6 Q. 13 months, according to you, if we believe this last
7 statement that you gave on July 2nd, 2007, we know why,
8 correct?

9 A. Yes.

10 Q. 13 months just sitting there your conscience never told
11 you "I need to tell somebody?"

12 A. They had already arrested the right man.

13 Q. You keep on saying they had already arrested the right
14 man.

15 Your conscience -- I'm asking about your conscience.
16 You didn't think law enforcement had the right to know
17 exactly what you say right now, because you have given so
18 many statements so far, who knows what the truth is any
19 more, but --

20 MR. LUKE SHEALEY: Objection, Your Honor.
21 Improper commentary by counsel.

22 THE COURT: I'll sustain the objection.
23 Rephrase the question.

24 MR. GOINGS: Thank you, Your Honor.

25 BY MR. GOINGS:

1 Q. 13 months you never went and told law enforcement the
2 truth, correct?

3 A. That's correct.

4 Q. All because you didn't want to lose your wife, is what
5 you want this jury to believe?

6 A. Law enforcement had already arrested the man who is
7 responsible for this.

8 Q. Let me ask you this. Do you think if a person kills
9 someone, they should be convicted?

10 A. Should they be -- you mean charged and convicted?

11 Q. Yeah.

12 A. If somebody murdered someone else?

13 Q. Yes.

14 A. Yes.

15 Q. Do you think it's fair for law enforcement to have all
16 the evidence that they can have against that person?

17 A. Law enforcement informed me they already had that.

18 Q. My question is do you think it's fair -- or should law
19 enforcement have exactly all the evidence that they can have
20 before they go to trial against somebody?

21 A. Yes, that would be fair.

22 Q. Wouldn't you agree in that 13 month period that this
23 would have been helpful to law enforcement?

24 A. Are you asking me what I would think back then, or now?

25 Q. Back then.

1 A. Back then it could have been helpful, but --

2 Q. Could have been helpful? That going to be your
3 testimony, it could have been helpful?

4 A. I'm on trial right now, so apparently it wasn't too
5 helpful.

6 Q. So 13 months go by and you don't tell your wife, you
7 don't tell anybody, "hey, this is what really happened that
8 night," correct?

9 A. That's correct. I was scared. I didn't tell anybody
10 on this earth what had happened that night.

11 Q. Because you didn't want to lose your wife and you
12 didn't want to be a suspect?

13 A. That's correct. If the time arose where I would have
14 to tell something, I would have, like I originally did when
15 I testified in those two trials.

16 When the police came to me, once again, they said they
17 had already arrested Justin Mallory, that they had more than
18 enough evidence to convict him. I was scared.

19 Q. Well, let's go to that second part, okay?

20 You are approached by law enforcement, finally, because
21 DNA has to be explained. Is that your understanding?

22 A. Yes.

23 Q. And Major Smith comes out to talk with you at your
24 house, is that correct?

25 A. Yes, he does.

1 Q. Is Persia there?

2 A. Not that first time.

3 Q. And what happens when he comes out to your house that
4 first time? What's he say to you?

5 A. He tells me that there is DNA that is unexplained for.

6 Q. That's problematic for you at that point, ain't it?

7 A. How so?

8 Q. I mean, you know your DNA is there, don't you?

9 A. I told him that -- I lied about why my DNA was there,
10 but I told him that it would more than likely be my DNA.

11 Q. What did you tell him was the reason at that point in
12 time?

13 A. I then told him that I had cut myself cutting an apple,
14 I believe, for my daughter.

15 Q. So you lied again?

16 A. Yes, I lied to Captain Smith at that time, because,
17 once again, I'm scared and I'm not wanting to be involved in
18 this. I don't -- my wife still doesn't know what happened
19 between Nakia and I. No one knows what really happened that
20 night, so I lied.

21 Q. You don't want law enforcement to find out the truth
22 that you killed Nakia Mallory, do you?

23 A. Justin killed Nakia Mallory.

24 Q. Now, when law enforcement shows up at your door and
25 they explain to you that DNA needs to be explained, do you

1 think there might be some problems with their case at that
2 point in time?

3 A. No.

4 MR. LUKE SHEALEY: Objection, Your Honor.

5 Again, he's asked to speculate about the problems
6 with law enforcement's case. He has no knowledge of that at
7 that time.

8 THE COURT: Rephrase the question.

9 MR. GOINGS: I'll withdraw the question, Your
10 Honor.

11 BY MR. GOINGS:

12 Q. Now, you bring your daughter into this lie, correct?

13 A. My daughter --

14 Q. Genesis?

15 A. -- was with me that day I went there.

16 Q. She wasn't there the day you cut your hand or the time
17 that you cut your hand, was she?

18 A. Are you talking that night when Justin come in?

19 Q. Your last purported truthful statement of what you are
20 telling this jury happened that night --

21 A. No, she wasn't.

22 Q. -- your daughter wasn't there, was she?

23 A. No.

24 Q. You indicated to Major Smith that you cut your hand
25 while making an apple -- to getting an apple for her earlier

1 that day, correct?

2 A. That's correct.

3 Q. And that you actually went on to tell him that you
4 cleaned up, correct?

5 A. That's what it says in the statement and that's what
6 I --

7 Q. Do you need to see the statement again? You forgot
8 what you told law enforcement?

9 A. I lied, and it was years ago.

10 Q. Would you like to review it?

11 A. Yes.

12 Q. Okay.

13 (Witness reviewing document)

14 BY MR. GOINGS:

15 Q. Are you familiar with it now?

16 A. Yes.

17 Q. So you brought your daughter into this lie, correct?

18 A. About being cut, yes.

19 Q. Thank you.

20 All along you are just giving law enforcement enough to
21 explain you out of things, aren't you?

22 A. Yes, I'm trying to keep from being involved and for my
23 wife finding out.

24 Q. And from law enforcement finding out that you actually
25 killed Nakia Mallory, isn't that right?

1 A. No, I'm trying to keep law enforcement from finding out
2 that I was there when Justin Mallory killed Nakia Mallory.

3 Q. Law enforcement comes back the same day, correct?

4 A. Yes.

5 Q. What did they want this time?

6 A. I believe he had asked me if I had told Sergeant
7 Strange about this apple story.

8 Q. What did you tell him?

9 A. I said "I think so."

10 Q. You knew you hadn't told Sergeant Strange about that
11 apple story, didn't you?

12 A. You are asking me for -- you are asking me if I knew?

13 Q. Right now you knew when you told Major Smith that you
14 didn't know if you told Sergeant Strange about the apple
15 story, you knew, in fact, you hadn't told him, didn't you?

16 A. Yes, that's correct.

17 Q. So you lied to Major Smith again, didn't you?

18 A. Yes, I lied.

19 Q. To avoid detection for killing Nakia Mallory?

20 A. No, I didn't kill Nakia Mallory.

21 It was to avoid my wife finding out what happened and
22 that I was even there that night when it happened. I don't
23 want to be involved in this case. I'm scared and I really
24 don't want to be involved.

25 Q. You even went on to go ahead and forced out of the fact

1 that you cleaned up, and they knew that you cleaned up,
2 correct?

3 A. I don't know what they knew.

4 Q. I mean, you admitted that you told Major Smith that you
5 cleaned up the cut on your hand with paper towels, correct?

6 A. Yes.

7 Q. Because you knew after you killed Nakia Mallory you had
8 cleaned up the kitchen, isn't that right?

9 A. I didn't kill Nakia Mallory, so that's incorrect.

10 Q. Well, according to -- well, let's use your version of
11 the truth then.

12 On July 2nd, 2007, you knew, supposedly after Justin
13 Mallory stabbed his wife, you got cut in the process and you
14 cleaned that blood up, correct?

15 A. After Justin Mallory killed his wife, yes.

16 When I got those paper towels to stop the bleeding on
17 my hand, I did wipe up some drops of blood, as y'all will
18 see later in the pictures that they is still drops of my
19 blood on the floor. It was not me stopping to clean up.

20 Q. You wish you would have got them all, don't you?

21 A. No.

22 Q. No? No?

23 A. I --

24 Q. But for a year and a half you didn't tell law
25 enforcement the truth, and you are going on sit here and

1 tell this jury that you didn't wish you got all the drops of
2 your blood up? Then you would have never come into it,
3 would you?

4 A. I don't know.

5 Q. And you wanted to go ahead and explain the cleanup of
6 the murder scene because you knew that you did it.

7 A. I never cleaned up the murder scene.

8 Q. According to your statement, when Nakia Mallory was
9 sitting on the couch, you went to clean up because you cut
10 your hand in this struggle, correct?

11 A. I did get my hand cut by Justin Mallory.

12 Q. Now, let's go to the July 2nd, 2007. You supposedly
13 finally come clean with law enforcement. Is that your
14 testimony?

15 A. I did finally come clean with law enforcement. I did
16 finally tell them what happened that night. I did tell them
17 that I witnessed Justin and Nakia getting into an
18 altercation, where he was the cause of her death later.

19 Q. And you testified twice to this version, your version
20 of the truth, is that correct?

21 A. That's correct.

22 Q. And you said the State called you their star witness?

23 A. Mr. Meadors called me his star witness.

24 Q. Well, let's go through exactly what happened the night,
25 according to you, on May 14th, 2006, okay?

1 Now --

2 First of all, what did you tell Persia about your DNA
3 being -- or your blood being at the Mallory residence,
4 before you got to the July 2nd statement?

5 A. The same thing I told law enforcement, that I cut
6 myself on an apple.

7 Q. Did she question you as to why you lied to her for over
8 a year?

9 A. That did come up?

10 Q. What did you tell her?

11 A. I'm sorry, what did you say?

12 Q. When she said, "Joshua, why lie to me for over a year
13 about cutting your hand," what was your response to it?

14 A. I don't remember. I just remember eventually she found
15 out what happened between Nakia and I.

16 Q. You don't remember what you told her and how you
17 explained to her why you lied about where the cut on the
18 hand came from? Is that what you want this jury to believe?

19 A. Are you -- I don't understand what you are saying.

20 Q. You don't remember what you told her about why you lied
21 to her for over a year about your hand being cut, is that
22 correct?

23 A. Yes.

24 Q. Okay. But you are telling this jury yet that you
25 admitted that you lied to your wife Persia, correct?

1 A. Yes.

2 Q. I mean, why not tell her the truth from the get-go that
3 you cut your hand -- I'll take that back.

4 MR. GOINGS: Strike that question, Your Honor.

5 BY MR. GOINGS:

6 Q. July 2nd, 2007, the police finally gets you to
7 supposedly tell them the truth about you being present when
8 Justin comes home, correct?

9 A. Yes.

10 Q. What time did you originally get to the Mallory
11 residence that night?

12 A. You are talking about when this altercation happened?

13 Q. No, what's the first time that you got there?

14 You testified -- you put in your statement the first
15 time that you got there was around ten or eleven, is that
16 correct?

17 A. You are talking that evening when I went there to buy a
18 bottle of liquor?

19 Q. Yes, the first time.

20 A. Yes, that's -- I believe I said around ten or eleven.

21 Q. Okay. And Justin wasn't home, was he?

22 A. No.

23 Q. And were you having a drink with Nakia on that
24 particular occasion?

25 A. No.

1 Q. How long were you there then?

2 A. A few minutes.

3 Q. Now, the times that you had gone to the Mallory
4 residence, Justin parks his van right in the front of their
5 apartment, is that correct?

6 A. Yes.

7 Q. So when you get there at ten or eleven you know Justin
8 is not home, correct?

9 A. I find out when I asked.

10 Q. Well, did you see his van?

11 A. No. I wasn't paying much attention. I just drove
12 there.

13 Q. You remember not seeing his van, correct?

14 A. Yes.

15 Q. You know what he drives, correct?

16 A. Yes.

17 Q. So when you get there and you don't see his van, you
18 know Justin is not home?

19 A. Yes.

20 Q. Okay. But you still go and ask for him at the door?

21 A. I still asked for a bottle of liquor. I asked to buy a
22 bottle of liquor.

23 Q. Now, you testified that you went to your friend Marcus'
24 house and came back to Justin and Nakia's house around one
25 o'clock in the morning, is that correct?

1 A. If that's what it says. I don't remember the exact
2 times.

3 Q. You don't remember testifying in two trials that you
4 estimated your time of arrival on the second time to Nakia
5 Mallory's residence was at one o'clock in the morning?

6 A. No, I don't remember the exact time.

7 Q. Okay. Would you disagree with that?

8 A. I would say I don't remember.

9 (Off the record)

10 (Back on the record)

11 BY MR. GOINGS:

12 Q. Was Justin's van in front of the apartment at this
13 time?

14 A. When I go back this time?

15 Q. Yes.

16 When you go back, was it in front of --

17 A. No, I don't think so.

18 Q. Huh?

19 A. No, I don't think so.

20 Q. So you knew Justin wasn't home again, correct?

21 A. Yes.

22 Q. But you still went to the door, correct?

23 A. Yes.

24 Q. And Nakia tells you he's not home, correct?

25 A. That's correct, she said that he should be back

1 shortly.

2 Q. And then she invites you in and at some point in time
3 y'all start making out, correct?

4 A. That's correct.

5 Q. How long were you there before you all started making
6 out?

7 A. I couldn't give you an exact time.

8 Q. How long had you known Nakia prior to this date?

9 A. A year. A little over a year.

10 Q. Did you ever have any personal conversations with her,
11 one on one?

12 A. With who?

13 Q. Did you ever have one-on-one conversations with her?

14 A. Yes.

15 Q. Like y'all were alone, or with people?

16 A. There was people around, but as far as Nakia and I
17 speaking to each other with no one else in the conversation,
18 yes, we have had that before.

19 Q. Did you ever flirt with each other?

20 A. Not really.

21 Q. Prior to you getting to that house that night, was
22 there anything in your mind that made you think Nakia
23 Mallory wants you?

24 A. No.

25 Q. You went over there to try to get some from her, didn't

1 you?

2 A. No.

3 Q. And when you got there and saw Justin Mallory's van was
4 still not there, you knew it was a perfect opportunity to
5 try to put the moves on her, isn't that right?

6 A. No.

7 Q. Well, that's eventually what you testified and stated
8 happened, is it not?

9 A. No, that's not what I testified to.

10 I never once said that I went there to try to put the
11 moves on her, to seduce her in any way.

12 Q. But that's --

13 A. I said I went there originally to look for Justin.

14 Q. And y'all eventually started making out, correct?
15 Isn't that what you testified to?

16 A. Yes.

17 Q. According to you, correct?

18 A. That would be the truth.

19 Q. We don't know what Nakia would have told us, do we?

20 A. Unfortunately Justin killed her.

21 Q. Now, who started the interaction, you or Nakia?

22 A. Like I said earlier, I don't remember who started it.
23 It just happened. It's not something that was planned or
24 something that I remember her being the aggressor, or me.
25 It happened.

1 Q. And never before until this night had y'all flirted
2 with each other in any way?

3 A. No, not that I recall.

4 Q. Never had a longing stare at each other?

5 A. You said a longing stare?

6 Q. Yeah.

7 A. No.

8 Q. Never held hands?

9 A. No, Nakia and I had never done anything like that
10 before. We have never had sex, or a secret affair, or
11 anything of that nature.

12 Q. You want this jury to believe that you go over there
13 waiting on Justin and just romance pops off?

14 A. I expect the jury to believe the truth. That's up to
15 them to find out.

16 Q. And that's your version of the truth at this point in
17 time, is it not?

18 A. No, that is the truth.

19 Q. That's not what you told law enforcement in California
20 now, is it?

21 A. That's not what I told law enforcement?

22 Q. In California about what happened. You gave a
23 completely different statement then, didn't you?

24 A. Oh, you mean those false confessions? Yes.

25 Q. We will get to those.

1 It's interesting that you call them false confessions,
2 because that means -- you brought in an expert to say
3 exactly that, didn't you?

4 MR. LUKE SHEALEY: Objection, Your Honor.

5 THE COURT: Rephrase the question.

6 MR. LUKE SHEALEY: This is not appropriate by Mr.
7 Goings.

8 THE COURT: I already answered your objection.
9 Rephrase the question.

10 BY MR. GOINGS:

11 Q. Did you have a false confession expert come and testify
12 on your behalf?

13 A. Yes, last week.

14 Q. Now, going back to your July 2nd statement, that's what
15 I'm going to call it from now on, okay? You want this jury
16 to believe no flirtation, no longing stares, no hand
17 holding, no nothing inappropriate between you and Nakia
18 Mallory the whole year, or so, that you knew her, but on
19 this particular night you get over there and the romance
20 just pops off? I mean, it happens automatically, correct?

21 A. It happens. Like I said, we were there for a little
22 while talking. It happened. I can't sit here and just go
23 into detail how everything started, how it was initiated.

24 Q. It's kind of funny how you can remember things right
25 off the top of your head on certain things, but when we need

1 to know exactly how it started, you can't remember. Is that
2 what you are telling this jury?

3 A. That I can't remember how the kissing started?

4 Q. Yeah.

5 A. Yes.

6 Q. Did you sweet talk her?

7 A. Did I sweet talk her into kissing me?

8 Q. Yes.

9 A. Is that what you are asking me?

10 Q. Yes.

11 A. I have already said I don't remember how it started.

12 Q. Because it never happened, did it? You tried and she
13 rebuffed your advances, isn't that the truth?

14 A. No, what I said in that statement is the truth.

15 Q. Now, how long was this intimate time that you had with
16 Nakia Mallory going on before Justin Mallory got there?

17 A. I don't know. Like I said prior, I wasn't paying much
18 attention to time. I couldn't tell you the exact time of
19 when everything happened or how long it was.

20 Q. Didn't you testify --

21 Well, you sure did remember when you were asked on
22 direct examination that from the time Justin Mallory got
23 home to the time you left was less than five minutes, didn't
24 you?

25 A. That's an approximation. If that's what I testified

1 to, I mean, then that's what it is. As of right now I don't
2 remember. This happened how long ago, seven, almost eight
3 years ago?

4 Q. You don't find it funny that you can remember things
5 that are helpful to your testimony, but you can't remember
6 other details? You don't find that odd?

7 A. Do I find it odd or funny?

8 Q. Yeah.

9 A. No.

10 Q. I mean, I'm trying to think in my head how you remember
11 it's five minutes by the time Justin gets home, but you
12 can't tell this jury or give them any idea how long you were
13 at the Mallory residence with Nakia Mallory.

14 A. I don't understand what you are trying to say.

15 Q. Of course not.

16 Well, let me ask you this. You said it was under five
17 minutes, correct, on direct examination?

18 A. If that's what it says in the statement.

19 Q. I'm asking about what you just testified to this jury.

20 When your attorney asked you how long were you there --
21 or how long was it by the time Justin came home and the time
22 that you left, what was your response?

23 A. A few minutes.

24 Q. You could remember that, but you can't remember how
25 long you were there in general?

1 A. From the time I got there until the time I left, no.

2 Q. What?

3 A. No.

4 Q. And you don't -- my question to you is don't find it
5 odd that you remember the things that help you in your case
6 and you don't remember other things?

7 A. I don't see how any of that would help me.

8 Q. You know -- you sat here in this trial, correct, and
9 listened to all the testimony?

10 A. Yes.

11 Q. And you knew -- I don't know what you knew by the of
12 the trials, I'm sure that you did, but you at least for this
13 trial you know that the timeline and the opportunity for
14 Justin Mallory to supposedly have committed this crime is a
15 very tight window, isn't it?

16 A. That's what they said.

17 Q. So your testimony of it happened in less than five
18 minutes, or in a few minutes, is very helpful to fit that
19 timeline, isn't it?

20 A. Helpful for who?

21 Q. For you, if you want this jury to believe the story
22 that Mr. Mallory is the one that killed her.

23 A. Oh, you mean the truth?

24 Q. Is it helpful for your story?

25 A. I guess.

1 Q. It matches perfectly, don't it?

2 A. I -- I don't know.

3 Q. You don't know?

4 If you say it happened within a few minutes and you
5 know that there is a very tight window that only shows
6 possibly a few minutes for Mr. Mallory to have done this,
7 you don't know if that's helpful to your case?

8 A. Yes.

9 Q. Let's go to the altercation itself.

10 You said Mallory comes home and finds you there. You
11 don't know what time of the morning this, I'm assuming,
12 correct?

13 A. That's correct.

14 Q. A man alone with his wife is your testimony, correct?
15 That's what he finds when he gets there?

16 A. Yes.

17 Q. Did he ever exchange words with you?

18 A. No. He had asked me a question once, but he -- I never
19 was able to answer. Me and him never had any words. Nakia
20 stopped him from doing so.

21 Q. You don't find it odd that he didn't have problem with
22 you being at his home alone with his wife that late in the
23 day?

24 A. His wife was confronting him the entire time. He
25 didn't have much of an option but to pay attention to her.

1 As I had said earlier, she was relentless. She was not
2 letting him go anywhere.

3 Q. And not one time did Mr. Mallory come to you and say
4 "hey, what are you doing here?"

5 A. No, not one time.

6 Q. Now, where were you at when they went to the kitchen?

7 A. I was still sitting on the couch in their living room,
8 the one closest to the door.

9 Q. And it was your testimony that it's one o'clock -- or
10 you don't know what time. It's the early morning hours,
11 correct?

12 A. Yes.

13 Q. It's your testimony before this jury here today that
14 you didn't want to -- you didn't leave because you seen
15 things die down between them, correct?

16 A. Yes, I have seen them argue before. This wasn't the
17 first time.

18 Q. If it was late, and even when they first started
19 arguing, why didn't you just leave then, just bow out, and
20 say "I got to go, it's late?"

21 A. I think if I just hopped up and start running out, the
22 first thing he would probably think is suspect me of doing
23 something.

24 Q. You didn't think he was going to expect that already?

25 A. He didn't see anything.

1 Q. Do what?

2 A. He didn't see anything. When he had first came in, we
3 weren't doing anything when he walked in.

4 Q. But you are still alone there with his wife in the
5 early morning hours by yourself. You know that's going to
6 run through his head, Mr. Porch, don't you?

7 A. You should probably ask him. I don't know what he
8 thinks.

9 Q. I'm asking you. If you came home and found a man in
10 your house with Persia, wouldn't you think something?

11 A. I have. Him, to be exact.

12 Q. Now, describe this fight for me. It goes in the
13 kitchen. Where does it go next?

14 A. It comes back in the living room.

15 Q. And you say at this point in time you see the object in
16 Justin's hand?

17 A. Yes, I saw a object in his hand.

18 Q. And where is he at in relation to you?

19 A. I'm still sitting on the couch, so they are right there
20 in the -- by the front door area.

21 Q. And what happens next?

22 A. He strikes her.

23 Q. Describe it to the jury. How does he strike her?

24 A. He hits her. I don't --

25 Q. Where at?

1 A. In the face area, up here.

2 Q. I mean --

3 A. Everything is happening quickly. It's not as if they
4 are just standing still. He's exchanging blows with one
5 another. Everything is moving, everything is happening
6 quickly.

7 My first thing -- my first reaction was to get up and
8 get between them and try to stop this, not how he was
9 striking her or where.

10 Q. Is she taking it? I mean, is she fighting back?

11 A. Well, like I said, she's confronting him the whole
12 time. She was pushing him. Once he started hitting her,
13 there is not much of her fighting back any more. And,
14 besides, I had gotten between them.

15 Q. When she -- when you are in between them, she's
16 swinging at him? Is he swinging at her? I mean, what's
17 going on?

18 A. No, once I got between them, he was no longer able to
19 hit her. He actually had struck me once in my hand.

20 Q. And that's when you get cut on your hand?

21 A. Yes.

22 Q. And what hand was cut?

23 A. My left hand I believe was the one that was cut.

24 Q. Where is -- describe what you are do. Where is Nakia
25 Mallory when you get in between them?

1 A. She is behind me now.

2 Q. She's behind you?

3 A. Yes.

4 Q. So you are facing who?

5 A. Justin.

6 Q. And you get cut, is your testimony?

7 A. That's correct.

8 Q. And then you immediately go to clean it up?

9 A. No.

10 Q. What happened?

11 A. After I get cut, I go into the kitchen looking for the
12 paper towels.

13 Q. That's what I just asked you. You get cut and you
14 immediately go to clean up, correct?

15 A. You are talking about wrapping up my hand, because
16 that's what I went to get paper towels for.

17 Q. You wiped up the floor too, didn't you?

18 A. Yes, I wiped up a couple of drops of blood before I
19 left.

20 Q. So after you get cut, you immediately go to get the
21 paper towels to clean up your hand, correct?

22 A. Yes.

23 Q. Thank you.

24 And you say that you immediately leave?

25 A. Yes.

1 Q. Did you ever see Justin Mallory stab Nakia Mallory in
2 the neck?

3 A. Like I told you, I don't know what was in his hand. I
4 know he struck her. I know when I left that I saw some
5 blood on her, not nearly as much of what they were showing
6 me in those pictures, and I left. I didn't stop to examine
7 how badly hurt she was, or where he was, or what object he
8 used to strike her with.

9 Q. Well, you said you saw her -- you saw him strike her in
10 the face. You didn't say anything about the neck.

11 I'm asking you, did you see Justin Mallory stab her in
12 the neck?

13 A. No.

14 Q. Now, you said that when you went to the kitchen,
15 correct? That's where you went to get the paper towels?

16 A. Yes.

17 Q. Did you normally know where they kept the paper towels
18 at?

19 A. I suppose.

20 Q. What do you mean you suppose? You have been over there
21 before, didn't you?

22 A. Yes, about seven years ago.

23 Q. Didn't you testify in previous trials that you knew
24 where they kept their paper towels at? That's why you knew
25 to go underneath the sink?

1 A. Is that what it says in the transcript?

2 Q. I don't know. You don't remember that either, huh?

3 A. Do what?

4 Q. You don't remember testifying to that twice?

5 A. If that's what it says in the transcript, then that's
6 what I said.

7 Q. Okay. Well, what do you remember now? Do you remember
8 where their paper towels were kept?

9 A. I remember getting paper towels off the counter.

10 Q. You went first underneath the sink. Why did you go
11 underneath the sink?

12 A. I was looking for paper towels.

13 Q. But you said that you found them on the counter?

14 A. Yes.

15 Q. So where were they, under the sink, or on the counter?

16 A. I said I had looked under the sink for paper towels. I
17 did not see any, so I got them off the counter.

18 Q. You are saying all this because you have to explain the
19 existence of your blood underneath the sink, correct?

20 A. I didn't know my blood was under the sink.

21 Q. But you knew you went under there to get the paper
22 towels, to cover your bases, right?

23 A. I just told the truth.

24 Q. You said that you cleaned up. How fast did you clean
25 up?

1 A. It took a second for me to wipe off a -- wipe up a
2 couple drops of blood.

3 Q. Where at?

4 A. On the floor.

5 Q. What about on the counter? Did you ever clean up
6 there?

7 A. No, not that I remember.

8 Q. How many wipes did you use on the floor?

9 A. I -- I don't know.

10 Q. Think back. Can you remember?

11 A. You are asking me how many times did I wipe the floor?

12 Q. Yeah.

13 A. I don't know. I know I wiped the floor.

14 Q. Do you remember testifying on cross-examination when
15 you were questioned by Justin Mallory's attorney Jerry
16 Finney that it was couple of quick wipes?

17 A. You said do I remember? No.

18 Q. Okay. You don't remember?

19 A. If a that's what I said -- if that's what it says in
20 those transcripts, then that's what I said in those first
21 two trials.

22 Q. Okay. Again, so you knew law enforcement was going to
23 find all that, so you had to explain it away, didn't you?

24 A. No, I didn't know what law enforcement had found or
25 what they were going to find.

1 Q. That doesn't look like a couple of quick swipes, does
2 it?

3 MR. LUKE SHEALEY: Objection, Your Honor.

4 A. I don't even know.

5 MR. LUKE SHEALEY: He's being asked to -- this is
6 the talk about what law enforcement used to cleaning
7 chemical, how is he supposed to speculate as to that?

8 THE COURT: I'm going to overrule.

9 He can answer what he believes, based upon what he
10 sees.

11 A. Repeat the question.

12 BY MR. GOINGS:

13 Q. It's more than a couple of quick wipes, is it not?

14 A. I don't know. It shows up that the floor was wiped.
15 It doesn't tell me how many times.

16 Q. Okay. You could see the outline of those wipe marks,
17 can't you?

18 A. And you can tell me how many times that floor is wiped
19 by looking at that?

20 Q. I can tell you it's more than just that, don't you
21 agree? A couple quick swipes is like that. That's way
22 more, correct?

23 A. So you can tell how many swipes that is?

24 Q. Answer my question. My question is to you.

25 A. It's how many times that is? I told you I don't --

1 Q. That appears to be more than just a couple of quick
2 swipes is my question, correct?

3 A. Yes.

4 Q. Okay. Like someone is trying to cover up their blood
5 on the scene of a murder, does it not?

6 A. No. There's still plenty of other drops of blood all
7 over the floor, which is mine, which I told them so.

8 Q. Because you missed it, isn't that right?

9 A. Because I wasn't trying to clean them.

10 Q. You missed the blood under the counter too, isn't that
11 right?

12 A. I never cleaned under the counter.

13 Q. You want this jury to believe that you took the time to
14 clean up your hand during this violent attack that was
15 happening between Nakia Mallory and Justin Mallory; that you
16 took the time to find paper towels to clean up the floor,
17 clean up the counter, wrap your hand up, all while this
18 violent attack that you described in your statement was
19 going on? That's what you want this jury to believe?

20 A. This violent attack had stopped, as I testified.

21 Q. Well, let's talk about that. You said when you left
22 Nakia Mallory was where?

23 A. On the couch.

24 Q. And you testified that you seen the injuries,
25 supposedly shown to you by law enforcement over in

1 California, correct?

2 A. Yes.

3 Q. You have seen these photos, haven't you?

4 A. Yes.

5 Q. It's a lot of blood?

6 A. It is.

7 Q. Everywhere?

8 A. Yes, it is.

9 Q. All right. It's on the TV, on the floor, on the couch,
10 on the wall, by the door. It's everywhere, isn't it?

11 A. Yes, it is.

12 Q. And you have seen these injuries from Nakia Mallory,
13 correct?

14 A. Yes.

15 Q. Stab wound to the neck, cut on her eye, abrasions on
16 her chin?

17 A. Yes.

18 Q. You were shown these, right?

19 And you want this jury to believe that when you left
20 that apartment you ain't seen any of that?

21 A. I didn't see any of that blood, and I did not see those
22 injuries.

23 When I left, the only side of her that was I was able
24 to see was the left side.

25 Q. There is blood by the door, blood on the wall, blood on

1 the TV, everywhere, and you didn't see that?

2 A. When I left that blood that's all over the wall, all
3 over the furniture, all over the TV was not there.

4 Q. Convenient, ain't it?

5 You didn't see that?

6 A. No.

7 Q. And if you would have, you would have called law
8 enforcement, right?

9 A. Had I known how serious her injuries were, yes, I would
10 have called 911.

11 Q. Now, you went to great lengths to cover your tracks,
12 didn't you?

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

14 Q. You testified against an innocent man twice to send him
15 to jail for something that you did, didn't you?

16 A. I testified against the killer, yes, I did.

17 Q. On July 9th, 2009, Justin Mallory wasn't the killer,
18 according to you, was he?

19 A. No, he was not.

20 Q. You told law enforcement that Justin wasn't even there,
21 didn't you?

22 A. I didn't have a choice.

23 Q. You didn't have a choice.

24 A. Had I not told them that, then my wife and my brother
25 would have been arrested.

1 Q. Oh, they threatened you, didn't they? Is that what
2 your testimony is?

3 A. They threatened my family, yeah.

4 Q. Well, let's talk about when you first -- when they
5 first get to you, you were asked several questions about
6 what you had done that day and you said -- you testified
7 that y'all had gotten some movies and you were going to go
8 back home and watch those movies, right?

9 A. Yes.

10 Q. And you were with your sister and she wanted to go get
11 some snacks, so that's why y'all went to the Walgreen's, is
12 that right?

13 A. Yes.

14 THE COURT: Mr. Goings?

15 MR. GOINS: Yes, ma'am.

16 THE COURT: This would be a good time to take a
17 morning break.

18 Ladies and gentlemen, let's take our morning
19 break.

20 I'm going to remind you of the instructions I have
21 given to you; that is, not to begin discuss this matter, as
22 you still have not heard all the evidence that has to be
23 presented.

24 Let's take a break and then we will come back.

25 (The following takes place outside the presence of

1 the jury panel)

2 THE COURT: Mr. Porch, I'll remind you that during
3 this break you show not discuss your testimony with anyone.
4 You have not concluded it, so it would be inappropriate to
5 discuss it with anyone, including your attorneys.

6 You may step down from the witness stand at this
7 time.

8 Is there anything we need to take up before we
9 take a break?

10 MR. LUKE SHEALEY: I don't believe so, judge.

11 MR. GOINGS: Nothing from the State, Your Honor.

12 THE COURT: Let's take a break and then we will
13 come back.

14 (Whereupon, proceedings were recessed)

15 (Whereupon, proceedings were reconvened)

16 THE COURT: Is there anything we need to take up
17 before we bring the jury in?

18 MR. LUKE SHEALEY: I don't believe so, judge.

19 MR. GOINGS: Your Honor, the only think I needed
20 was we are trying to get our I.T. guy to try to turn on the
21 computer, because I was going to play just a portion of the
22 videotape, just some -- it won't boot up for me. I don't
23 know what the problem is with it, so we have asked him to
24 come in to look at it.

25 THE COURT: So it won't turn on at all?

1 MR. GOINGS: No. I mean, it turns on, but it says
2 no -- it says we need a password for a boot min. I mean,
3 this is Richland solicitor's office stuff, so --

4 THE COURT: So have you called them, or what?

5 MR. GOINGS: We have called them, Your Honor.

6 We can go forward. I can just -- I can make do
7 without it, if they don't get here in time.

8 THE COURT: All right. Someone from the
9 solicitor's office?

10 MR. GOINGS: Ma'am?

11 THE COURT: Is it someone in the solicitor's
12 office?

13 MR. GOINGS: Yeah, the I.T. guy that's been in and
14 out of the courtroom last week with us and we were trying to
15 locate him.

16 THE COURT: Well, you can go forward without him.
17 We can call the jury in.

18 You can ask them to come in.

19 (The following takes place in the presence of the
20 jury panel)

21 THE BAILIFF: The jury is seated, Your Honor.

22 THE COURT: Yes, sir, you may continue.

23 MR. GOINGS: Thank you, Your Honor.

24 If it please the court.

25 BY MR. GOINGS:

1 Q. Mr. Porch, we were about to get into your statements in
2 California before we broke, but I want to backtrack for just
3 one second, okay?

4 Now, I asked you several questions about the fact that
5 you are telling this jury that all the blood on the scene,
6 on the TV, on the X-Box, on the couch, all of these -- all
7 this blood, you didn't see it?

8 A. All that blood wasn't there when I left.

9 Q. But a violent struggle is what you witnessed between
10 Nakia Mallory and Justin Mallory, correct?

11 A. That's correct.

12 Q. How long had you known Nakia, again?

13 A. A little over a year.

14 Q. A friendly relationship y'all had?

15 A. With both of them, Justin and Nakia.

16 Q. Okay. Is it fair to say that you were friends with
17 Nakia?

18 A. Yes.

19 Q. Knowing that this violent altercation took place,
20 according to your words, between her husband and Nakia,
21 witness her getting struck by Mr. Mallory is what you
22 testified to, correct?

23 A. Yes.

24 Q. Knowing that she was slouched on the couch holding her
25 neck, after you finished cleaning up your hand, is what your

1 testimony is, correct?

2 A. That's what I said.

3 Q. Okay. You were walking out the door, not one time do
4 you think about saying, "hey, Nakia, are you okay?" That
5 didn't cross your mind at all?

6 A. No. Like I said, I was scared. My first priority was
7 just trying to get away from there.

8 Q. You were scared that you were going to get caught
9 because you just stabbed her, isn't that right?

10 A. No.

11 Q. Let's go to the California statements.

12 You admit that you were given your advise of rights, is
13 that correct?

14 A. You mean I was mirandized?

15 Q. Yes.

16 A. Yes, eventually I was mirandized.

17 Q. I'm trying to locate --

18 Before we get there, you said that y'all were getting
19 movies, or you were going to go back and watch, and that's
20 when law enforcement from South Carolina approached you in
21 the Walgreen's, is that correct?

22 A. Yes, that's when McDaniels arrested me inside
23 Walgreen's.

24 Q. So it wasn't your plan to go home and go to bed, was
25 it?

1 A. No, I had planned on watching probably about one movie
2 before going to bed.

3 Q. Okay. It's convenient that that's your testimony that
4 you were going to only watch one movie, but you bought
5 three, is that not correct?

6 A. Yes, I had rented three. I didn't know it was a
7 requirement to watch all three once you get them.

8 Q. You wasn't tired in the early morning hours of July the
9 9th, 2009, were you?

10 A. I was tired.

11 Q. Did you ever tell law enforcement that you were tired?

12 A. No. Like I said, I don't think it would have mattered
13 whether I was tired, or hungry, or anything. My family was
14 in jeopardy.

15 Q. Are you saying law enforcement starved you?

16 A. Are you saying they starved me?

17 Q. They didn't offer you food?

18 A. No, they did not withheld food from me.

19 Q. They didn't, or they did?

20 A. They did not.

21 Q. All right. So they fed you?

22 A. No, I didn't eat. I told them that on the tape as well
23 "I can't eat."

24 Q. Did they offer food to you?

25 A. Yes, and I told them I could not eat.

1 Q. Did they offer drinks to you?

2 A. Yes.

3 Q. Did they offer you bathroom breaks?

4 A. Yes, I was able to use the restroom.

5 Q. Okay. And you said that you were advised of your
6 rights, correct?

7 A. Yes, eventually they did mirandize me.

8 Q. At 1:12 a.m., Pacific Time, on July 9th of 2009, they
9 went over this form with you, isn't that right?

10 A. Yes.

11 Q. That's your signature?

12 A. That is my signature.

13 Q. I mean, you are not denying that you signed this,
14 correct?

15 A. No.

16 Q. And your testimony, what you want this jury to believe,
17 is that they threatened your family, so you had to tell them
18 what you thought they wanted to hear, correct?

19 A. There threatened my family, so I told them what they
20 told me. The scenarios and everything that they -- they
21 were giving all that to me. The information, how the wounds
22 were caused, the scenarios I think could possibly have
23 happened, they give me one. And something wouldn't add up,
24 they would come back and give me another. Then something
25 wouldn't add up. That's why they keep bringing up this 20

1 pieces.

2 Q. What did they threaten Persia with?

3 A. They said that they were going to arrest Persia and my
4 brother-in-law, had I not cooperated with them.

5 Q. What did Persia do wrong?

6 A. I know she gave statements in the first -- well, not in
7 the first two trials, but she had given law enforcement
8 statements prior.

9 What she did wrong, I don't know. I'm not a police
10 officer. I just know that they said they were going to
11 arrest her. I thought that was a genuine threat.

12 Q. You didn't bother asking them for what?

13 A. No.

14 Q. What were they going to arrest your brother-in-law for?

15 A. My car. He never spoke with law enforcement, but he
16 was the one who cleaned my jeep. I never did. That's why I
17 admitted to doing that as well, to protect him. I admitted
18 to everything to protect my family.

19 Q. Did he ever clean your car for you?

20 A. You said has he ever cleaned my car for me?

21 Q. Did he ever clean your car for you after the murder?

22 A. Yes.

23 Q. So he did?

24 A. Yes.

25 Q. He cleaned out the blood that you got in your car?

1 A. Yes.

2 Q. So that part is not a lie from your statements in
3 California?

4 A. Did he ever clean out my car, that part is not a lie?

5 Q. You just testified that, yes, your brother-in-law
6 cleaned out your car.

7 You just testified that, yes, your brother-in-law
8 cleaned out the car after the murder took place, correct?

9 A. Yes, he did clean out my car. That's what I testified
10 to. In California I told them that I cleaned out the car.

11 Q. So you are admitting to the jury that Robert Brown
12 cleaned out your car after the murder?

13 A. He cleaned my car a couple of days after it had
14 happened. It wasn't like I went home and then immediately
15 went to him to have him clean my car. But, yes, he did
16 eventually clean my car.

17 Q. So your admissions today in this courtroom is that
18 Robert Brown cleaned out your car upon your request after
19 the murder?

20 A. No, not upon my request at all. I have never asked him
21 to clean out that car.

22 My testimony is my brother-in-law cleaned out my car a
23 couple of days after the incident between Justin and Nakia
24 had happened.

25 Q. Why?

1 A. You would have to ask him that.

2 I'm pretty sure law enforcement would have done an
3 investigation. McDaniels said that he spoke with him. I
4 figured he would know.

5 Q. It's your car, it not? Is it your car?

6 A. Yes.

7 Q. You don't know why Robert Brown is cleaning out your
8 car two days after the murder?

9 A. No, you would have to ask him why he would do certain
10 things. I can't answer for other people.

11 Q. How did he get your car?

12 A. We lived next door to each other.

13 Q. So you are telling this jury it's common for Robert
14 Brown just to clean out your car?

15 A. To clean my car?

16 Q. Yes.

17 A. He's done it before. But if he does it on a regular
18 basis, then, no, he does not.

19 Q. We know, by your testimony here today, he did it two
20 days after the murder, correct?

21 A. Yes, that is correct, he did it two days after.

22 Q. And you don't know why?

23 A. You should ask him. I can't speak for Robert Brown.

24 Q. It's your car, though, correct?

25 A. Yes, we have established it's my car, but I cannot tell

1 you why he did it. I can't speak for anyone else.

2 Q. My question to you --

3 A. Sergeant McDaniels spoke with him.

4 Q. My question to you is you are going to sit here and
5 tell this jury that two days after the murder of Nakia
6 Mallory, Robert Brown, your brother-in-law, cleaned out your
7 car and you don't know why?

8 A. I did not ask him to clean out the car. I did not talk
9 to him about why he cleaned out the car.

10 Q. So that part of your statement in California, that you
11 are claiming now is untruth and coerced by law enforcement,
12 is, in fact, true? Robert Brown did clean out your car?

13 A. In California I told the investigators, after they had
14 another implied threat to my family, that I cleaned out the
15 car.

16 Now, if you are asking me if the truth is my
17 brother-in-law cleaned out the car, then, yes, he did.

18 Q. But you don't know why?

19 A. I never asked him why.

20 Q. Two days after the murder?

21 A. I did not ask him why.

22 Q. You don't think that's odd?

23 A. For a family member to clean out my car?

24 Q. Two days after a murder?

25 A. I don't think it's odd for a family member to clean out

1 a car for you, period. I don't see how it matters when.

2 Q. Okay. Now, you are telling law enforcement that they
3 threatened you and that's why you felt it imperative that
4 you cooperate, no matter what?

5 A. It wasn't a matter of what I felt. I had to, or else
6 actions would be taken against my family. They would have
7 been arrested.

8 Q. And you wanted to protect your family?

9 A. Yes.

10 Q. You would do anything that you could to make sure that
11 they wasn't going to jail?

12 A. Yes.

13 Q. Even though Persia hadn't done anything wrong?

14 A. In the law's eyes I don't know if she did or did not.
15 I took their threat as genuine.

16 Q. And this threat, that you never asked what she's going
17 to be charged with, correct? That's what you just told this
18 jury. You didn't bother to inquire as to what they were
19 going to threaten Persia with?

20 A. No, I'm not used to being interrogated for long hours.

21 Q. Not used to it? You went through it back in 2007,
22 didn't you?

23 A. Those weren't interrogations. They were questioning
24 me. I was never in police custody. I was never served a
25 warrant. I was never taken against my will, and I was never

1 threatened.

2 Q. And how did you feel about law enforcement when they
3 made this threat to you?

4 A. You say how did I feel about them?

5 Q. Yeah.

6 A. At that particular time my only concern was protecting
7 my family. It wasn't about whether I liked the people who
8 arrested me or not, if that's what you are asking.

9 Q. Well, when somebody makes a threat against your family,
10 are you going to tell this jury that you are going to like
11 that person from then on?

12 A. Am I going to like that person from then on?

13 Q. Yeah.

14 If they threatened your family, are you still going to
15 like the person?

16 A. I guess not.

17 I mean, if you are asking me if I like McDaniels, then
18 I have no ill will towards him, but he's not somebody I'm
19 going to hang out when I -- when this is over.

20 Q. A man had just threatened to send your wife to jail,
21 you don't have any problems with it?

22 A. No, I don't harbor any ill will towards him, or
23 anybody.

24 Q. After he threatens your wife?

25 A. I'm speaking about now.

1 Back then, like I said, I wasn't thinking about how
2 much I liked them or how much I disliked them. My only
3 concern is protecting my family.

4 Q. But he threatened your wife, correct?

5 A. And my brother-in-law, yes.

6 Q. And you are going to tell this jury back then you
7 didn't have any --

8 A. I said now.

9 Q. -- any feelings toward him, back then?

10 A. Back then, no, I'm not --

11 Q. When he makes the threat, you don't like, "hey, man,
12 you can't threaten my wife like that?"

13 A. The only person I was thinking about was my wife and my
14 brother-in-law. I'm not thinking about how much I like
15 McDaniels or how much I dislike McDaniels.

16 Q. It never crossed your mind that when he supposedly
17 makes this threats against your wife and your
18 brother-in-law --

19 MR. LUKE SHEALEY: Your Honor, I think we have
20 covered this ground at this point. He's answered the
21 question. It's about the third question.

22 THE COURT: Overrule.

23 Let him answer the question.

24 BY MR. GOINGS:

25 Q. It never crossed your mind? You never had any inkling

1 of bad will towards Sergeant McDaniels right after he
2 threatened your family?

3 A. No, I still don't have any ill will towards him.

4 Like I said, at the time I wasn't sitting here thinking
5 about how much I liked him or how much I disliked him. My
6 only concern is keeping my family out of jail.

7 Q. Your testimony here today is you still don't have any
8 personal feelings to Sergeant McDaniels and Sergeant Godfrey
9 after they supposedly coerced you into making these
10 confessions?

11 A. I don't have any ill will towards anyone. If someone
12 does me wrong, it does not mean I need to hate them for the
13 rest of my life or hold a grudge. The only person that's
14 going to hurt is me in the long run.

15 Q. Even when they are trying to use those supposedly false
16 confessions, as you just stated, to send you to prison --

17 A. And like I said --

18 Q. -- you don't hate them?

19 A. And what good would me hating them do? My personal
20 feelings don't come into play here.

21 Q. All right. Let's move on.

22 You made a statement that night, correct, or that
23 morning?

24 A. Yes.

25 Q. A ten page statement. Do you remember that?

1 A. Yes, and I signed all ten pages, I believe, for a total
2 for twenty times.

3 And like I testified earlier, I would have signed it a
4 thousand times if, it meant keeping my wife and my
5 brother-in-law out of jail.

6 Q. And you remember reading on each page of this statement
7 "I have made the foregoing statement free and voluntary,
8 without fear, threat, promise, or reward, or hope of reward
9 of any kind?"

10 A. Yes. Had I not signed those papers, my family would
11 have been arrested. If I did not cooperate, my family would
12 have been arrested.

13 Q. You didn't even ask law enforcement what Persia was
14 going to get arrested for.

15 A. I don't see how that would even matter. I would
16 believe law enforcement when they say something. To serve
17 and protect is not what they give an oath to?

18 Q. Ten times you signed that statement, correct?

19 A. No, I signed ten pages. I signed it twenty times.

20 Q. Okay. Well, that statement appears on the bottom of
21 each sheet, does it not?

22 A. Yes. And like I said prior, I will sign that a
23 thousand times if it means protecting my family.

24 Q. And your testimony here today is that you wasn't tired
25 when you were giving this statement, were you?

1 A. You said my testimony was I wasn't tired?

2 Q. Were you falling asleep during the interview, or the
3 interrogation as you want to call it?

4 A. No, not initially. When they would walk out, I would
5 put my head on the table. But like I said, it's not like I
6 could go to sleep. They wouldn't leave me alone. They
7 testified to that themselves. They were not going to let me
8 go to sleep any ways.

9 Q. You understood their questions to you, right?

10 A. Yes.

11 Q. You understood the answers that you were giving, right?

12 A. Yes.

13 Q. But you are saying everything contained within this
14 statement is false, coerced out of you?

15 A. Yes. They had threatened my wife and my
16 brother-in-law. That is the only reason why I signed those
17 papers.

18 It's -- once again, it does not matter what I did or
19 what I said, I'm going to jail. The only decision was if
20 I'm going to jail by myself.

21 Q. You said that you didn't give law enforcement what they
22 wanted, they were going to jail, correct?

23 A. They were going to arrest Persia and Robert, yes.

24 Q. You know law enforcement didn't even think that your
25 last statement was the whole truth, right?

1 A. You mean when I testified that Justin Mallory?

2 Q. No, I'm talking about after December 10th -- I mean --
3 not December.

4 July 10th rolls around, the videotaped statement where
5 you admit to taking the knife after the murder and disposing
6 of it in the trash can, combined with your other two
7 statements where you admit that on that night there is an
8 altercation between you and Nakia Mallory, they didn't
9 believe that that's exactly how it went down?

10 A. No, they did not. Each time they would come and speak
11 to me. They would leave, and I don't know if they spoke to
12 somebody or what the deal was, but I know they would come
13 back expecting me to confess to more things to better suit
14 their purposes.

15 Q. But you didn't, did you?

16 A. I didn't what?

17 Q. You didn't give them a final version that they wanted,
18 did you?

19 A. Eventually I did. I believe it's on the July 10th is
20 when I -- on that tape was the final version that they were
21 happy with.

22 Q. They were still asking for more pieces of the puzzle,
23 according to you, right?

24 A. Yes, throughout the entire interrogation.

25 Q. And you wouldn't give it to them, would you?

1 A. No, I was reluctant.

2 Q. But you wasn't reluctant at the very beginning?

3 A. I gave them everything that they needed at the very
4 beginning to try to keep my family out of it.

5 Now, when each time they came back was and threatened
6 that my family would be arrested, I would give more. I did
7 not want to give them more, but I'm going to if it means
8 protecting my family.

9 Q. You finally called it quits, didn't you?

10 A. No, I never once told them I'm done talking. They
11 called it quits. They said they were done with me.

12 Q. But you didn't give them a final --

13 A. I believe on the video I asked them was there anything
14 else.

15 Q. You didn't give them that final piece that they wanted,
16 did you?

17 A. I did. They wanted me to admit to taking the knife and
18 throwing it away, and I gave them that.

19 Q. They wanted you to admit to the truth, in fact that you
20 stabbed Nakia Mallory that night, not in self-defense?

21 A. The truth is that Justin Mallory killed Nakia.

22 Q. They wanted you to tell them the truth, that you went
23 over there, tried to make advances on Nakia Mallory. She
24 rebuffed you and you lost it. You couldn't let your wife
25 find out. You couldn't let Justin find out what went on

1 that night between you and Nakia Mallory, so you got the
2 knife and you stabbed her. That's what law enforcement
3 wanted, is it not?

4 A. Yes, that's a lie. Law enforcement wanted me to tell
5 was that I got the knife from Nakia, that I stabbed her,
6 that I was the aggressor, that she pushed me away. That's
7 the lie that they wanted me to tell, yes.

8 Q. You didn't tell them that, did you?

9 A. No.

10 I did confess to everything else, taking the knife,
11 throwing it away, to killing her. I completely implicated
12 myself from this crime. I changed everything that I said.

13 Q. So you want this jury to believe that you gave all that
14 information, but you wouldn't take that last leap and give
15 law enforcement exactly what they wanted, which was the
16 truth, because you were worried about your wife and your
17 brother-in-law?

18 A. I made those statements because my wife and
19 brother-in-law, to protect them.

20 Q. You didn't give them the full truth of what they
21 wanted.

22 A. The full truth of what they wanted? I gave them pretty
23 much everything that they wanted. They wanted a confession.
24 They wanted me to take responsibility for the death of this.

25 I even explained to them how this could have happened,

1 with the scenarios that they were giving me. I even
2 admitted to taking the supposed murder weapon and throwing
3 that away as well.

4 I admitted to basically everything that they wanted me
5 to.

6 Q. But not everything, correct, because your last version
7 even suggested that there was some type of struggle over the
8 knife and she accidentally got stabbed, correct?

9 A. Yes, I did say that.

10 Q. Law enforcement wanted the truth out of you, the whole
11 true?

12 A. And I had told the truth when I testified in those two
13 trials.

14 Now, if you are referring to these lies that they
15 threatened to get -- threatened me to get out of me --

16 Q. They wanted more?

17 A. Yes, and I gave them more. I cooperated with them.

18 Now, when they stopped the interview, not me. They
19 stopped it. They had finally realized they had gotten
20 enough from me. They was supposed to bring me back here.
21 They made a big deal out of it, put me in the news and --

22 Q. So you are telling this jury that if they kept on
23 pushing you, you would have finally came over and told them
24 what they wanted to hear, the exact thing they wanted to
25 hear?

1 A. I gave them exactly what they wanted to hear.

2 Q. Well, you just testified that they wanted for you to
3 say that you were the aggressor, that you stabbed Nakia, and
4 then you left her for dead. That's not exactly what you
5 told them.

6 A. If it wasn't enough for the law enforcement, then they
7 would have came back and tried to get more information out
8 of me. They are the ones who stopped -- they are the ones
9 that stopped the interview, not me.

10 Q. And based on your testimony here today, it appears as
11 if they came back to you and threatened you some more,
12 supposedly, that you would have gave them that information?

13 A. Yes, I would have gave them whatever was necessary to
14 protect my family.

15 Like I said, the only decision I had to make up was if
16 I was coming to jail by myself. I decided I'm going to come
17 here by myself, that I would fight this later.

18 I did not kill Nakia Mallory. I even testified to who
19 did.

20 Q. And if you would have finally gave up that information,
21 it would have been the truth, wouldn't it? The fact, you
22 went over there, you were the aggressor. You made the
23 moves. You got shot down and then you couldn't let your
24 wife find out. You couldn't let Justin find out, so you
25 stabbed her.

1 While she was bleeding to death on the couch, you went
2 in there, cleaned up your hands, and then left. You picked
3 up the knife and left her to bleed to death in that
4 apartment. That's the truth, isn't it?

5 A. What I testified to in the first two trials is the
6 truth.

7 Q. And everything that you told law enforcement in
8 California was based on these alleged threats made by these
9 two officers who came to you the night of January -- or July
10 9th, 2009, is that correct?

11 A. And the scenarios they supplied me with, yes.

12 Q. And they were feeding this information to you?

13 A. Yes, they said that in the tape as well, "we showed you
14 everything. We told you everything."

15 Q. You already knew everything, because you killed her on
16 May 14th, 2006, isn't that right?

17 A. No. Like I testified, I didn't know anything until law
18 enforcement showed it to me.

19 Q. You didn't need the pictures to know where you hit her,
20 did you?

21 A. I never struck her. I never stabbed her. I didn't
22 kill her. I saw the man who killed her. I testified to
23 that fact twice.

24 Q. You didn't know -- you didn't need to know that she
25 bled out from the stab wound to her neck, because you gave

1 her that stab wound, didn't you?

2 A. No.

3 Q. You didn't need to tell them -- or for them to tell you
4 that the murder weapon wasn't found, because you knew you
5 had took that murder weapon, didn't you?

6 A. I don't know what Justin did with it.

7 Q. Now, these threats that you say were made, you are
8 saying that you harbor no ill will towards these officers
9 who allegedly threatened to take your wife and
10 brother-in-law to jail to get you to confess to something
11 you didn't do, supposedly, and you have no problems with
12 them?

13 A. I'm not one to hold grudges. I don't harbor any ill
14 will towards them, or anyone else.

15 Q. And back then when they are supposedly allegedly making
16 these threats on a day in and day out basis, you just like
17 "okay, you are still good guys." That's what you are
18 telling this jury?

19 A. I'm saying that they are good guys?

20 Q. Yeah.

21 They are threatening your wife for nothing, for -- she
22 didn't do anything, right?

23 A. They are doing what they need to to get a conviction.

24 Q. They are threatening your wife, are they not?

25 A. Yes, and my brother-in-law.

1 Q. She didn't do anything, did she?

2 A. No, she didn't do anything wrong, to my knowledge.

3 Q. Your brother-in-law, even though he cleaned your car
4 out two days after the murder, didn't do anything wrong?

5 A. No.

6 Q. And they are threatening to put these two people in
7 jail if you don't falsely confess to something that you
8 didn't do, and you have no problems with them? That's what
9 you want these people to believe?

10 A. That's the truth.

11 Like I said, it would only hurt me to sit here and try
12 to hold onto hate or hate somebody. It doesn't do anything
13 to them whatsoever.

14 MR. GOINGS: Beg the court's indulgence.

15 (Off the record)

16 (Back on the record)

17 MR. GOINGS: Your Honor, I don't know where that
18 exhibit I'm looking for is.

19 Your Honor, may we approach?

20 THE COURT: Yes, sir.

21 (Whereupon, the lawyers approached the bench for
22 an off-the-record discussion).

23 THE COURT: One more time, counsel.

24 (Whereupon, the lawyers approached the bench for
25 an off-the-record discussion)

1 BY MR. GOINGS:

2 Q. Again, no hard feelings about two officers threatening
3 your wife and your brother-in-law for things they didn't do,
4 and you are just fine with that?

5 A. You said I'm just fine with it?

6 Q. Uh-huh.

7 Back then were you just fine with them making threats
8 against your wife?

9 A. It wouldn't -- they did. It wouldn't have mattered how
10 I felt about it.

11 Q. You didn't harbor any ill will against them?

12 A. None. I still don't, or Justin Mallory, for that
13 matter.

14 Q. You think it's respectful for officers to threaten an
15 innocent wife, an innocent brother-in-law, to try to get you
16 to coerce -- or try to coerce a confession out of you?

17 A. There was no try. They did. And I do think it's
18 unfortunate, but it's not up -- it's not for me to judge
19 them on what they do, to judge their character.

20 Q. That's very big of you not to try to judge somebody's
21 character, when they are trying to coerce a false confession
22 out of you? You want this jury to believe that you are just
23 okay with it?

24 A. Okay with it? I wouldn't say that, but I honestly
25 don't care anything about their character. I'm more

1 concerned about my family than anything.

2 Q. Do you remember making this video, or being in this
3 video?

4 A. Yes, I do.

5 (Whereupon, the videotaped was started)

6 (Whereupon, the videotape was stopped)

7 BY MR. GOINGS:

8 Q. Did you make those statements?

9 A. Yes, that's me making those statements.

10 Q. Nothing but respect is how they treated you in
11 California, correct?

12 A. Yes, that's what I said.

13 Q. But you want this jury to believe that even though you
14 made that statement on July 10th, 2009, that these two
15 officers came to you, threatened your wife, threatened your
16 brother, wanted you to confess to something that you didn't
17 do, to send you prison, and that's treating you with
18 respect?

19 A. Those things are not, but at that point I had been up
20 for three days. I'm just agreeing and saying whatever they
21 want me to at this time.

22 Q. They didn't ask you --

23 A. I'm just saying whatever they want me to, what I think
24 they want me to say.

25 Q. Okay.

1 MR. GOINGS: No further questions, Your Honor.

2 MR. LUKE SHEALEY: Brief redirect.

3 THE COURT: Yes, sir.

4 REDIRECT EXAMINATION BY MR. LUKE SHEALEY:

5 Q. Josh, on that, and you have been asked extensively, and
6 you have told the jury, why again did you sign those
7 statements and say what you said?

8 A. I signed those statements to keep my family out of
9 jail. I said those things to do the same exact thing. I'm
10 going to do whatever is necessary to protect my family.

11 Q. Did you believe that the threats that they made on day
12 one of that interrogation were real and credible?

13 A. Yes. I still believe those threats they made on day
14 one are real and credible.

15 Q. Okay. So when they are asking you and they are
16 bolstering themselves up and saying "we have treated you
17 with nothing but respect, right," are you going to say "hey,
18 you have been a real jerk," or do they still hold the keys
19 over your wife's freedom?

20 A. I'm just going to say "yeah, you have treated me with
21 nothing but respect. I wish we could have met under
22 different circumstances." I'm going to say whatever it is
23 they need me to say in order to protect my family.

24 Q. And is what you said there in saying whatever it is
25 they need you to say, is that the way all three days went?

1 A. All three days.

2 MR. LUKE SHEALEY: Nothing further.

3 THE COURT: You may step down.

4 Any further witnesses from the defense?

5 MR. LUKE SHEALEY: Your Honor, at this time the
6 defense rests.

7 THE COURT: Any rebuttal witnesses?

8 MR. GOINGS: No, Your Honor.

9 THE COURT: I'm sorry?

10 MR. GOINGS: No, Your Honor.

11 THE COURT: Ladies and gentlemen, at this time we
12 have some legal issues which we need to take up outside of
13 your presence. I'm going to ask that you retire to the jury
14 room, not to begin any discussions among yourselves. Even
15 though you may have heard all the evidence, you are still
16 not in the position to be able to determine the facts and
17 make a decision in this case until you hear my instructions
18 to you as to the law.

19 I asked the lunch to arrive about this time, so
20 hopefully it has arrived, and I will bring you back in as
21 soon as possible.

22 We will ask that you take a lunch break and I'll
23 give you some time to walk around outside to get some fresh
24 air. And when you leave, if you will notify the bailiffs
25 that you are leaving to go take a walk around and come back,

1 I'm going to ask that you come back by 1:30 at the latest.

2 Thank you.

3 (The following takes place outside the presence of
4 the jury panel)

5 THE COURT: Are there any motions at this time?

6 MR. LUKE SHEALEY: Yes, ma'am.

7 Your Honor, at this time the defense would again
8 move for a directed verdict.

9 I have set forth the standard already. As you
10 know, it's any direct evidence, or any substantial
11 circumstantial evidence.

12 What you have presented again by the State and
13 throughout our case is the situation of self-defense, the
14 situation of accident. And I again would cite State v.
15 Dickey, which I have passed up and we discussed earlier in
16 the week.

17 You know, it's defense counsel's position that the
18 State has to disprove self-defense for this case to get to a
19 jury.

20 You have three statements are the only evidence,
21 per the State's theory, in the light most favorable to them,
22 of how this thing played out.

23 One, the first one, you know, is she came onto
24 him. There was some kind of issue after that, after he
25 stopped her advances. She gets the knife, comes at him.

1 And although I think you read in the last motion on this,
2 that he said he wasn't that scared, and you surmised he
3 might have had an opportunity to go to the door, that is
4 only one of two -- of three statements.

5 The other statements are increasingly more
6 self-defense. Now, this is the second time. He makes the
7 advance, she gets mad, goes and gets the knife.

8 Every one of these statements is her coming at him
9 with a knife, that any reasonable person would have fear of.

10 Your Honor, the law in this state is not that you
11 have to retreat. And I think you did state in your first
12 motion that he had an opportunity to retreat; therefore,
13 self-defense would survive, that it should be able to get to
14 a verdict.

15 Under 16-11-440(c), you are not -- you don't have
16 a duty to retreat anyplace that you have right to be.

17 The testimony here by Mr. Porch is that he was
18 invited in that night, that he went to look for Justin.
19 Justin wasn't home and that he casually talked to Nakia, had
20 drinks, and then proceeded to become romantic before
21 stopping, before Justin came home.

22 So I don't see how this can get to a jury under
23 Dickey. I don't think that that one statement proves beyond
24 a reasonable doubt and is somehow was stronger, has a
25 greater weight than the other two statements, so that he

1 could get to a jury under a Dickey analysis.

2 And I think the law in this state under
3 16-11-440(c) is if you are attacked in a place you have to
4 be --

5 THE COURT: I'm listening.

6 MR. LUKE SHEALEY: If you are attacked in a place
7 that you have a right to be, you do not have a duty to
8 retreat. And we are not -- we are not asking for an
9 immunity hearing, or anything like that. Obviously it
10 wasn't done, but that's not our theory of how this thing
11 happened, but it's the State's theory as he got attacked in
12 this way.

13 So we would ask that it does not -- we don't think
14 it survives a Dickey-style motion today, which is proved
15 self-defense beyond a reasonable doubt to get to a jury, and
16 we would ask that it be denied.

17 THE COURT: I'm sorry, so your theory is that even
18 though he may have been a guest in her home, that once she
19 came after him, he did not have a duty to retreat and leave?

20 MR. LUKE SHEALEY: Per that statute, Your Honor,
21 if you're in a place you have a right to be, is what it
22 says.

23 I think if you -- if there is evidence presented
24 by the State that you get ejected, that you are being asked
25 to leave, well, had that been in that statement, then I

1 think that that does not. Then obviously that law doesn't
2 apply, because now you are not a guest. You are not in a
3 place you have a right to be.

4 THE COURT: Well, what about the inferences that
5 can be drawn when someone comes at you in your own home with
6 a knife and coming towards you?

7 MR. LUKE SHEALEY: Well, Your Honor, I think that
8 you know the law as well as anybody, that you don't --
9 especially when you are being attacked, you don't have to
10 retreat that would cause you further harm. No one is going
11 to turn their back on a knife.

12 It was a quick situation it sounds like from these
13 statements, although we disagree with the statements
14 completely, but it's their theory, it's in the light most
15 favorable to the State, Mr. Porch isn't required to then
16 turn around on an angry woman with a knife. So we don't
17 think that would be reasonable. We think he was entitled
18 under 16-11-440(c) to stand his ground.

19 That law does not -- it compliments the other laws
20 of self-defense. It compliments cases like Dickey, so that
21 he does not -- he does not have a duty to retreat.

22 At that point the question for Your Honor to
23 decide is, well, has there been some evidence in this record
24 that now disproves self-defense beyond a reasonable doubt.
25 I don't know where it comes from. That's just one statement

1 out of two. The other two are talking more of his fears,
2 talking more of him trying to prevent her from hurting him,
3 or hurting herself, and that is in the light most favorable
4 to the State.

5 So I think that it does survive a directed verdict
6 and we would ask you to not allow it to get to the jury at
7 this time.

8 We would also specifically, for the record, renew
9 all of our pretrial objections and motions and the mistrial
10 motions that we made throughout the course of this trial.

11 MR. GOINGS: Your Honor, the State's position, as
12 we argued in the first D.V. motion after the State rested,
13 one, we believe that even taking all three statements, none
14 of the elements of -- or the four elements of self-defense,
15 which I think is taken, is proved beyond a reasonable doubt,
16 taking the facts in the light most favorable to the State.
17 Pretty much all four of them, but the jury has the right to
18 disregard any statement from the defendant.

19 If they want to believe that second statement and
20 none of the other statements, then they have the ability to
21 do so. And if you look at that second statement
22 specifically with the fear -- the part about the fear of the
23 defendant, he specifically stated he did not have any fear
24 and didn't believe that Nakia Mallory wanted to use the
25 knife against him.

1 Going to the second -- or one of the other
2 elements that said that the defendant must have not be
3 responsible for bringing on any part of the altercation.
4 Obviously in his last statement he indicates that he was
5 calling Nakia a bitch, wanted an explanation as to why she
6 was going to start something and did not finish it, which
7 causes an argument to escalate. If we -- just by going on
8 his statement, if you believe that's true what occurred. So
9 that element can be proven beyond a reasonable doubt.

10 And the State only has to disprove one element out
11 of four for the self-defense not to operate in the State of
12 South Carolina. Here you can have at least two. The fact
13 as the fear, the fact that he did not retreat. He may have,
14 according to his statement, have been allowed lawful entry
15 into the home. However, once he starts calling her a bitch
16 and the argument escalates and she goes and gets the knife,
17 obviously that lawful permission has now been terminated and
18 he is no longer lawfully there.

19 He had the opportunity to retreat and did not take
20 it and, therefore, that particular element can't be the
21 satisfied.

22 So the State has many grounds and it only has to
23 show in the light most favorable to the State one of those
24 grounds. If you take out one, there is no self-defense.
25 You can take out pretty much every one, looking at some

1 piece of evidence in this case.

2 MR. LUKE SHEALEY: I just want to be clear, judge.
3 Mr. Goings is really only referencing one of the three
4 statements, so I don't know how you can say, looking at
5 these three statements in totality, that, one, if he says
6 he's not scared is beyond a reasonable doubt to get to a
7 jury.

8 And the State can't question its own evidence.
9 They have put this evidence into the record. This is their
10 theory of defense, so they can't then try to diminish it
11 and -- we did not put this into the record. This is their
12 theory, that giving the most light to them. So --

13 And you can't also make assumptions. We can only
14 go by what's in evidence, what's in the testimony. We can't
15 make an assumption that because she began to wield a knife,
16 that he was then not allowed to be there. There is no
17 evidence of that. The only evidence we know is that she --
18 if that is what the State is presenting as their evidence is
19 wanting to hurt him. And, you know -- and you know in the
20 law of self-defense don't require you to retreat if it would
21 make you be in danger of being hurt happen. So I don't know
22 how you can make those assumptions or jump to that evidence.

23 And, again, that's only one of two statements --
24 three statements.

25 Prior to -- the second and the third statement are

1 increasingly more of a confrontation, are increasingly more
2 of him trying to prevent her from cutting him or cutting
3 herself.

4 So I don't think it survives and meets the ability
5 to get to a jury and I would ask that you not allow it.

6 And I forgot one thing. Mr. Goings brought up an
7 idea that calling somebody a name would -- makes you at
8 fault for bringing on a lethal difficulty situation. That's
9 not the law of our state, Your Honor, and that's not what --
10 you can't -- if you get into a big fight with someone and
11 you pull a gun and the other guy pulls a gun, yeah, you are
12 bringing on the difficulty, but being romantic and, per the
13 State's theory, calling somebody a bitch after they stopped
14 the advance does not mean that you brought on the difficulty
15 and should have known that you would have brought on the
16 difficulty in a knife fight. So I don't think that argument
17 holds a lot of weight either. So I would state that for the
18 record.

19 THE COURT: Remember at the directed verdict stage
20 I'm concerned with the existence of evidence.

21 I'm also concerned with, not necessarily the
22 weight to be given to the evidence, I also -- I don't look
23 at the inferences necessarily that can be drawn directly
24 from that evidence, other than to determine whether there is
25 the existence of competing inferences.

1 I stated earlier at the directed verdict stage
2 after the State's case that I thought that there was
3 evidence in the record that would demonstrate that there was
4 evidence to defeat the defense of self-defense, on the basis
5 of that he didn't -- that Mr. Porch did not -- and the State
6 had indicated that he was afraid and evidence, that he
7 walked towards her after she became armed with a knife. I
8 notice that that's in at least two of his statements. It's
9 in the written statement on 7-9-2009, in the early morning
10 hours. It's also in the typed statement on July the 9th of
11 2009, in which he stated that, "Nakia came out of the
12 kitchen with the knife in her hand and I got up and I went
13 towards her. Nakia was saying something, but I don't
14 remember what she was saying."

15 He does say "I was more focused on the knife."

16 And as she was coming -- "as I was coming towards
17 her I struck her three times in the forehead with my palms.
18 I grabbed her arm in an attempt to get her to stop swinging
19 the knife. At some point I got cut."

20 I think that there is -- there is certainly
21 evidence in the record for the jury to consider the question
22 of self-defense. I'm not negating the defense at all.

23 And I understand that the State has the burden of
24 proving beyond a reasonable doubt the absence of any one of
25 the elements of self-defense in order to defeat the defense.

1 And, again, it's the jury's call as to what
2 evidence to believe and what weight to give the evidence. I
3 do believe that there are conflicting -- there is
4 conflicting evidence in the record.

5 (Off the record)

6 (Back on the record)

7 THE COURT: Pursuant to the statutory provisions,
8 the Stand Your Ground Statute is not applicable to this
9 particular situation. This Act was effective on June the
10 9th of 2006, and it specifically states it's not
11 retroactive.

12 And the fact the incident occurred in May of 2006,
13 I don't think that he's entitled to be able to take
14 advantage of the presumptions under the Act. It appears to
15 be -- if I'm reading the case law correctly, that the one
16 case in which the incident occurred four months prior to the
17 effective date of the Act, the court held that he could not
18 either receive a charge for it or have it applied
19 retroactively; State v. Bolin, 673 S.E. 2d 885.

20 So based upon the law that would have been in
21 effect at the time that the incident occurred, there is a
22 duty when you are a guest in someone else's home to retreat.
23 It says "where possible, if the attacker is the owner or
24 occupier of the property."

25 So based upon all that information, I don't think

1 that a directed verdict is appropriate. I think it
2 becomes -- it's a jury issue and certainly the evidence for
3 the jury to consider.

4 I don't think at this particular point, based
5 upon -- I don't even think under State v. Dickey, this
6 particular scenario that I have to make a specific finding
7 that the State defeats it beyond a reasonable doubt. I
8 think the State -- the jury -- I'm sorry, the court in that
9 case considered all the evidence relating to the facts and
10 circumstances and concluded there is only one inference that
11 could be drawn, and under the circumstances here I think
12 that there could be more than one inference drawn, so I'm
13 denying your motion on that basis.

14 MR. LUKE SHEALEY: Your Honor, I would just say as
15 to the stand your ground, and we -- we are not asking for an
16 immunity hearing. Certainly this incident is pre-stand your
17 ground. The reason I brought it up is in the context of
18 self-defense generally, as we stood here and you stood here
19 current binder of the law when discussing whether someone
20 has a duty to retreat or not. I bring it up because that's
21 the current status of the law when we make a directed
22 verdict analysis. I'm not saying that stand your ground was
23 an applicable defense for an immunity hearing. Certainly
24 it's not our defense anyway. That's the State's theory is
25 some type of fight between our client and the victim.

1 THE COURT: Well, I mean, you have asked for a
2 charge on it, and then -- and so in the context of
3 self-defense, certainly the case law at the time this
4 offense occurred was that someone who is a lawful guest has
5 no duty to retreat before using deadly force in self-defense
6 against an intruder. But if there is a guest present, he
7 has the duty to retreat, where possible, if the attacker is
8 the owner or the occupier of the home. And so I think
9 that's good case law and it hasn't been overruled.

10 Certainly the Stand Your Ground Statute may have
11 some impact on that; for instance, this had occurred after
12 the enactment of that particular statute in the prosecution
13 after that date, but I think that under the circumstances
14 it's the appropriate law and that's the way I have got to
15 look it in terms of what was in existence at the time. And
16 particularly in light of the fact that the Stand Your Ground
17 Act has not been charged, so I'll -- and your objection is
18 noted for the record.

19 MR. LUKE SHEALEY: Thank you.

20 THE COURT: Anything else we need to take up at
21 this particular point as it relates to motions?

22 And your remaining motions for the same reasons, I
23 haven't heard a basis to alter or amend my previous response
24 at this time.

25 MR. LUKE SHEALEY: Thank you.

1 THE COURT: Anything else we need to take up?

2 Do you want to talk about charges?

3 MR. BRIAN SHEALEY: Yes, sir, Your Honor, and I
4 don't know how you want to do it. Do you want to talk about
5 the ones you may have issue with or got questions about?

6 THE COURT: No, I'm going to tell you what I'm
7 going to charge and then you make all your exceptions for
8 the record, otherwise.

9 I will charge them that they have the duty to
10 determine the facts based upon the evidence. The fact that
11 there is an indictment is not evidence in this case.

12 I will also instruct them as it relates to the
13 credibility, that judge the credibility of the witnesses who
14 testify in this matter.

15 I will charge them on expert testimony.

16 I will charge them on circumstantial evidence,
17 that circumstantial evidence is a proof of chain of facts
18 and circumstances indicating the existence of a fact, and
19 that there is no distinction between the weight or value to
20 be given to direct or circumstantial evidence, and that they
21 have to weigh all the evidence. And if after weighing all
22 of the evidence, if they are not convinced of the guilt of
23 the defendant beyond a reasonable doubt, they must find him
24 not guilty.

25 Again, as I have indicated, I'll charge them on

1 the fact that he was indicted or arrested is not evidence of
2 guilt or inference of guilt and may not be considered as any
3 evidence of guilt against the defendant; that he is
4 innocent. He is innocent from the time that he comes into
5 court, until such time as the jury finds that he's guilty,
6 based upon evidence that satisfies them of their guilt
7 beyond a reasonable doubt.

8 I will talk to them about the robe of
9 righteousness, which we are all familiar with, that places
10 him in that class of being innocent until that robe is
11 stripped by the evidence which convinces the jury of guilt
12 beyond a reasonable doubt.

13 I charge the Victor v. Nebraska, the reasonable
14 doubt charge, which is there are very few things that we
15 know with absolute certainty. The law does not require
16 evidence or proof that overcomes every possible doubt.

17 If based upon consideration of the evidence they
18 are firmly convinced the defendant is guilty of the crime
19 charged, you must find him guilty.

20 If they feel, on the other hand, if there is a
21 real possibility that he's not guilty, they must give him
22 the benefit of the doubt and find him not guilty.

23 I'll charge them on the statements, both written
24 and video statements, alleged to be made by the defendant
25 admitted into evidence. While I have determined that the

1 statements are admissible, they have to make their own
2 decision as to whether or not the defendant made the
3 statement, which would -- and they also must determine
4 whether the statements were made voluntarily or his own free
5 will; that is, the statement was not caused by pressure,
6 fear, force, threats, coercion, intimidation, by hope of
7 promise of leniency or reward.

8 They have to consider the characteristics of the
9 defendant, the details of the questioning.

10 The factors they may consider are the age of the
11 defendant; education, or lack thereof; his mental ability or
12 capacity; his IQ or intelligence; his background
13 environment; the length and place of detention; the nature
14 of the questioning; the advice, or lack thereof, of his
15 Constitutional Rights, including, but not limited to, the
16 right to remain silent; the statement could be used against
17 him in court; he has a right to have a lawyer present; and
18 that if he could not afford a lawyer, one would be appointed
19 to represent him without costs; and that he could stop
20 making a statement at any time.

21 They must carefully consider all the surrounding
22 circumstances before they give any weight to this alleged
23 statement.

24 The burden is on the State to prove beyond a
25 reasonable doubt the statement was voluntary. If you

1 determine that it was, then you may give the statement any
2 further consideration that they consider proper. They have
3 to decide what weight, if any, should be given to the
4 statement.

5 If you find that the alleged statement was not
6 free and voluntarily, then you should not consider the
7 statement at all.

8 I will charge them -- I will charge them on
9 accident. The defendant raises the defense of accident --
10 and this is not the order in which I'm going to charge them,
11 so just bear with me.

12 Accident may be excused -- an act may be excused
13 on the ground of accident if it's shown that the act is
14 unintentional, that the defendant was acting lawfully and
15 that reasonable care was used by the defendant in handling
16 the weapon.

17 The burden is on the State to prove beyond a
18 reasonable doubt the act was not an accident, but was caused
19 by the negligence or the carelessness on the part of the
20 defendant, or by unlawful activity of the defendant.

21 Self-defense. Self-defense is a complete defense
22 and if established, you must find the defendant not guilty.

23 The State has the burden of disproving
24 self-defense by proof beyond a reasonable doubt.

25 If you have a reasonable doubt as to the

1 defendant's guilt after considering all the evidence,
2 including the evidence of self-defense, then you must find
3 the defendant not guilty.

4 On the other hand, if you have no reasonable doubt
5 of the defendant's guilt, after considering all the
6 evidence, including the evidence of self-defense, then you
7 must find the defendant guilty.

8 The elements are that the defendant must be
9 without fault in bringing on the difficulty.

10 If the defendant's conduct was the type that was
11 reasonably calculated to and did provoke a deadly assault,
12 the defendant would be at fault in bringing on the
13 difficulty and would not be entitled to an acquittal based
14 on self-defense.

15 Self-defense is not available to a person who uses
16 language which is so contemptuous that a reasonable person
17 would expect it to bring on a physical encounter and which
18 to actually contribute to the physical encounter.

19 The second element is that the defendant was
20 actually in imminent danger of death or serious bodily
21 injury, or that the defendant actually believed that he was
22 in imminent danger of death or serious bodily injury.

23 It must be shown that the circumstances would have
24 warranted a person of ordinary firmness and courage to
25 strike the fatal blow to prevent death or serious bodily

1 injury.

2 If the defendant believed he was in imminent
3 danger of death or serious bodily injury, it must be shown
4 that a reasonable and prudent person of ordinary firmness
5 and courage would have had the same belief.

6 In deciding whether the defendant actually was, or
7 he believed he was, in imminent danger of death or serious
8 bodily injury, you should consider all the facts and
9 circumstances surrounding the crime, including the condition
10 and characteristics of the defendant and the victim.

11 The defendant does not have to show that he was
12 actually in danger. It's enough that the defendant believed
13 he was in imminent danger and a reasonably prudent person of
14 ordinary firmness and courage would have had the same
15 belief.

16 The defendant has the right to act on appearances,
17 even though the defendant's look may have been mistaken.

18 It's for you, the jury, to decide whether the
19 defendant's fear of imminent danger of death or serious
20 bodily injury was reasonable and would have been felt by an
21 ordinary person in the same situation.

22 The final element of self-defense is that the
23 defendant had no other probable way to avoid danger of death
24 or serious bodily injury other than to act as the defendant
25 did in this particular instance.

1 The defendant had no duty to retreat, if by doing
2 so the danger of being killed or suffering serious bodily
3 injury would increase.

4 A lawful guest in another's home has no duty to
5 retreat before using deadly force in self-defense against an
6 intruder.

7 The lawful guest is a person who enters the
8 premises of another by express or implied invitation.

9 However, a guest has a duty to retreat, where
10 possible, if the attacker is the owner or occupier of the
11 property.

12 A person cannot be required to make an exact
13 calculation as to the degree or amount of force which may be
14 needed to avoid death or serious bodily harm. Therefore, in
15 self-defense the defendant has the right to use the force
16 needed to avoid death or serious bodily harm.

17 Force used in self-defense does not have to be
18 limited to the degree or amount of force that's used by the
19 victim. The defendant has the right to use so much force as
20 appeared to be necessary to complete self-protection and
21 which a person of ordinary reason and purpose would have
22 believed to be needed to prevent death or serious bodily
23 injury.

24 I'll charge on murder.

25 The State must prove beyond a reasonable doubt

1 that the defendant killed another person with malice
2 aforethought.

3 Malice is hatred, ill will, or hostility towards
4 another person. It's the intentional doing of a wrongful
5 act without just cause or excuse, with an intent to inflict
6 injury, or under circumstances that the law would infer as
7 evil intent.

8 Malice aforethought is not required that malice
9 exists for any particular time before the act is committed,
10 but malice must exist in the mind of the defendant just
11 before and at the time the act was committed. Therefore,
12 there must be a combination of the previous evil intent and
13 the act.

14 It may be expressed or inferred. These are not
15 different types of malice, but merely the manner in which
16 malice may be shown to exist; that is, either by direct
17 evidence or by inference from the facts and circumstances
18 which are proved.

19 Expressed malice is shown when a person speaks
20 words which express hatred or ill will for another, or
21 whether the person prepared beforehand to do the act which
22 was later accomplished.

23 Malice may be inferred from the conduct showing a
24 total disregard for human life.

25 I will charge manslaughter. If you feel the State

1 has failed to prove beyond a reasonable doubt that the
2 defendant committed murder, you may consider whether the
3 State has proved beyond a reasonable doubt that the
4 defendant committed voluntary manslaughter. It's a lesser
5 included offense.

6 The State must prove beyond a reasonable doubt
7 that the defendant took the life of another in sudden heat
8 or passion, based upon sufficient legal provocation.

9 Both heat of passion and sufficient legal
10 provocation must be present at the time of the killing to
11 constitute voluntary manslaughter.

12 Sudden heat of passion may for a time affect a
13 person's self-control, temporarily disturb a person's
14 reasoning. Heat of passion must be the type that would make
15 the ordinary person unable to coolly reflect on his actions
16 and produce an uncontrolled impulse to do violence.

17 Sufficient legal provocation must be the type that
18 would make the person of ordinary and reasonable caution
19 become enraged and to lose control temporarily.

20 Provocation needed for voluntary manslaughter must
21 come from the act of or related to the victim.

22 Words alone, however vulgar and insulting, are not
23 enough to be legal provocation.

24 Where a death is caused by the use of a deadly
25 weapon, the words must be accompanied by some overt and

1 threatening act which could have produced heat of passion.

2 The exercise of a legal right, no matter how
3 offensive it is to another, is never sufficient legal
4 provocation for manslaughter.

5 If heat of passion had cooled or there was enough
6 time between the provocation, if any, and the passion of a
7 reasonable person to cool, the killing would not be
8 voluntary manslaughter.

9 In deciding whether a reasonable person would have
10 had enough time to cool off, you consider the facts and
11 circumstances surrounding the killing.

12 You may consider the nature of the provocation, if
13 any; the defendant's mental and physical state; and the
14 circumstances and relationships between the parties.

15 I will not charge specifically defense request
16 charge No. 3 on the credibility of the investigation. I
17 think that would be a comment on the facts of the case.

18 I think that's jury argument that can be made to
19 the jury, and the charge repeatedly talks about considering
20 all the evidence, and, in particular, considering the
21 credibility of the witnesses and all those occurring in
22 looking at the charge and whether the State has met the
23 burden.

24 I think that was the only -- and as I indicated, I
25 would not charge the defense request to charge No. 8, which

1 is self-defense, right to stand your ground.

2 I believe that the other -- all the other charges
3 I have included within my charge, maybe not the exact
4 language defense has requested, but I think I have covered
5 the subject matter and what I have stated is the correct
6 statement of the law.

7 Are there any additional requests from the State?

8 Oh, and, of course, I'll charge them that their
9 verdict has to be unanimous.

10 I guess their verdicts would be guilty of murder;
11 or, guilty of voluntary manslaughter; or, not guilty, and we
12 will do a separate verdict for form to that effect.

13 Anything further from the State?

14 MR. GOINGS: Nothing from the State, Your Honor.

15 THE COURT: From the defense?

16 MR. BRIAN SHEALEY: Yes, Your Honor.

17 Briefly, Your Honor, regarding your charge on
18 malice, because we do have a deadly weapon, or an allegation
19 of a deadly weapon, such as a knife used. I would
20 respectfully request the Belcher charge that malice may not
21 be inferred from the use of a deadly weapon, if there has
22 been any evidence presented that can reduce, mitigate, or
23 excuse, or justify killing. I think there is plenty of that
24 in this case. In fact, even the State's evidence about Ms.
25 Mallory coming at Mr. Porch with a knife. So I think there

1 was justification for in the end using her knife, as it
2 were, to inflict this injury. That's the State's evidence,
3 but whenever it comes to malice, when it comes to the use of
4 a deadly weapon, malice may not be inferred by the use --

5 THE COURT: I didn't charge them that.

6 MR. GOINGS: Your Honor, Belcher is not a
7 comparable charge. It's saying you can't charge any more --

8 THE COURT: I specifically left out the language
9 about malice could be inferred from using a deadly weapon.
10 I did not charge that at all.

11 I said malice could be inferred from all the facts
12 and circumstances, but I specifically did not say deadly
13 weapon, because that was --

14 MR. BRIAN SHEALEY: That's fine, Your Honor. I
15 won't hit it over the head.

16 I would say this, just for the purposes of the
17 record, that as far as a credibility of investigation charge
18 the defense submitted, obviously we have been saying all
19 week and now on Monday this is a very unique case. That's
20 been coming from the stand, as far as testimony from
21 everybody in this case has knowledge that there was a
22 lawsuit being filed against Richland County Sheriff's
23 Department. And then, in turn, there are actions taken by
24 different investigators in this case from Richland County
25 Sheriff's Department. Their decisions made that they would

1 submit as new evidence and maybe a new point of focus.
2 However, under the right to present a full and complete
3 defense, you know, we have shown information that
4 potentially there was bias and a need to point in a
5 different direction.

6 So I think for the purposes of the record, that
7 the credibility of investigation charge is pertinent and
8 probative in this matter. I understand you have ruled on
9 that, but I would like to put that for the record.

10 Additionally, Your Honor, respectfully, kind of
11 regarding self-defense, and I think you have covered a good
12 bit on self-defense, but we have also covered -- I think it
13 was a part of your ruling and denying the directed verdict
14 on two occasions, in part, that maybe there is evidence that
15 Mr. Porch could have avoided the situation, that he should
16 have retreated. I think you might have mentioned the fact
17 that he took steps in a couple of these statements towards
18 Ms. Mallory when she had the knife.

19 State v. Rash, Your Honor, the defendant doesn't
20 have to wait until the assailant gets the drop on him. This
21 is regarding defendant's request to charge No. 9. He has a
22 right to act under the law of self-preservation and prevent
23 his assailant from the getting the drop on him. If it's
24 apparently, or reasonably apparent, the assailant is taking
25 the steps to get a drop on him, he must take steps first to

1 prevent such assailant from getting the drop on him.
2 Literally here we are talking about these steps, which I
3 know that Your Honor noted in ruling against defense's
4 directed verdict motion.

5 So I think it's appropriate here to have that last
6 bit of language about how someone can not wait and actually
7 to have someone get drop the drop on him. He can take
8 measures, such as walking towards someone here. I think --
9 I think it's probative to include that kind of language from
10 State v. Rash, which I think part of that case's language is
11 included in your self-defense charge, but the defense would
12 respectfully ask that additional language be included.

13 THE COURT: And I'll look at the case and look at
14 the context of it.

15 MR. LUKE SHEALEY: Thank you, Your Honor.

16 MR. GOINGS: And, Your Honor, just to that end, I
17 know there is a case. I looked at it last night in
18 preparation for what we thought we would argue about this,
19 and I didn't write it down, but I will try to find it when
20 we take a break, that actually discusses the language of
21 wait until the person gets the drop on him. That court
22 refused to charge it in its closing charge to the jury and
23 the Court of Appeals upheld it and said that that particular
24 language is not necessary in a self-defense charge, and I
25 will try to find that case for you. I know it's a South

1 Carolina case. I just cant' recall what it is right now.

2 THE COURT: Was it within the last year or so,
3 or --

4 MR. GOINGS: Well, obviously it had to come after
5 the case they cited, Your Honor. It won't take but about
6 two seconds, if I can get on Westlaw and pull it up.

7 MR. LUKE SHEALEY: Your Honor, State v. Gilchrist,
8 that's 2005, where it was upheld that the defendant was not
9 entitled to an appearance charge under the mistaken
10 appearance of danger. It was under the State's theory or
11 the State's evidence about these statements and there was a
12 knife in play. This is not a situation where someone from
13 long a distance away thought they might have seen a gun, or
14 something, and took measures. This is a confrontation that
15 was, indeed, per the State's evidence. This is no mistaken
16 appearance of danger. There is danger. So I think that
17 clearly indicates how is distinguished. That's State v.
18 Gilchrist. That's 364 S.C. 173. Mistaken appearance of
19 danger.

20 Here there is three statements regarding a danger
21 that is, in fact, a knife, per the State's evidence.

22 THE COURT: Like I said, I'll look at it and read
23 it.

24 Let's just take a break and come back and consider
25 that.

1 And I'll see if I can also find out from my juror
2 whether he needs to leave, or what time, if he needs to
3 leave, to be at work. This is -- if you will recall, this
4 is my juror that says that he works from four to ten, and I
5 think I told him that I would try to accommodate him. And
6 so, you know, in light of -- in light of where we are, I'll
7 still confirm with him whether he, in fact, needs to leave
8 and what time he needs to leave. So let's -- I'll give
9 y'all --

10 MR. GOINGS: I found the case I was talking about.

11 THE COURT: Okay. Tell me what it is.

12 MR. GOINGS: State v. Harris, 382 S.C. 107.

13 THE COURT: I'm sorry, 382 what?

14 MR. GOINGS: S.C. 107.

15 THE COURT: State v. Harris?

16 MR. GOINGS: Court of Appeals, 2009.

17 THE COURT: Okay. I'll look at that over the
18 break as well.

19 MR. GOINGS: Okay.

20 (Whereupon, proceedings were recessed)

21 (Whereupon, proceedings were reconvened)

22 THE COURT: During the lunch break I had the
23 opportunity to read State v. Harris and State v. Rash.

24 State v. Rash I think factually is a little
25 different than what we have here. In that particular case I

1 think in involved some conversations or discussions or
2 threats that were made; that the person, after threatening
3 someone with a knife, he was going to get a gun. And so the
4 court did charge about the defendant doesn't have to wait
5 until his assailant gets the drop on him. He has a right to
6 act under the law of self-preservation and prevent his
7 assailant from getting the drop on him. If it's apparent,
8 or reasonably apparent, his assailant is taking steps to get
9 the drop on him, he must take steps first to prevent such
10 assailant from getting the drop on him. And the court in
11 that case said that that charge was okay.

12 In Harris, the defendant in that case specifically
13 asked or had submitted a charge that referenced -- in other
14 words, if a defendant is in imminent danger of, or if the
15 defendant's belief that he is in imminent danger of death or
16 receiving bodily harm is reasonable, he need not wait until
17 actual attack or injury or until force is used by the
18 aggressor before exercising the right to use deadly force in
19 self-defense. In other words, the defendant need not wait
20 until the assailant gets the drop on him in order to be
21 entitled to use force in self-defense.

22 And the court indicated that the charge that was
23 actually given states that the defendant has the right to
24 act on appearances, even though the defendant's beliefs may
25 be mistaken, in language to the effect that the defendant

1 does not have to show that he was actually in danger, that
2 that was sufficient and that the court did not have to
3 charge the words "get the drop on him," or that language
4 similar in charging the jury.

5 And so I think the charge as a whole, including
6 the language which required the defendant was actually in
7 imminent danger, must be shown that the circumstances would
8 have warranted a person of ordinary firmness and courage to
9 strike the fatal blow to prevent death or serious bodily
10 injury; or, if the defendant believed he was in imminent
11 danger of death or serious bodily injury, it must be shown
12 that a reasonably prudent person of ordinary firmness and
13 courage would have felt the same belief.

14 And then it goes on to say that in deciding
15 whether the defendant actually was, or believed he was, in
16 imminent danger of death or serious bodily injury, they have
17 to look at all the facts and circumstances surrounding the
18 crime, including physical condition and characteristics of
19 the defendant and the victim.

20 And then it goes to say that the defendant does
21 not have to show that he was actually in danger. It is
22 enough that the defendant believed that he was in imminent
23 danger and a reasonable prudent person of ordinary firmness
24 and courage would have had the same belief.

25 He has the right to act appearances, even though

1 the defendant's beliefs may have been mistaken, and it's up
2 to you to decide whether that fear of imminent danger of
3 death or serious bodily injury is reasonable and would have
4 been felt by the person in the same circumstances.

5 And I think that comports with -- I think it's a
6 correct statement of law and I think that -- we are not
7 talking about the circumstances in getting the drop on
8 somebody, or not waiting until there is some risk of injury
9 before acting, which is I think part and parcel of what the
10 defense is requesting, and so I don't think that that charge
11 is appropriate, and so I will not charge that language, and
12 your exception is noted for the record.

13 MR. BRIAN SHEALEY: And just a couple more issues
14 on the record regarding that, Your Honor, for purposes of
15 the record?

16 THE COURT: Yes.

17 MR. BRIAN SHEALEY: Your Honor, I would note in
18 the Harris case, which Mr. Goings cites, and you just read
19 for the record the charges that you are going to be giving
20 with respect to, I guess, acting on the appearance of
21 danger.

22 In the Harris case the judge actually gave a more
23 detailed charge on considering the victim's conduct,
24 actions, general demeanor immediately, saying that you may
25 consider that before the incident has bearing on the

1 deceased temper and state of mind at the time of the fatal
2 encounter and the defendant does not have to show that he
3 was actually in danger.

4 That's a little more specific. I think the court
5 in this Harris case cites that to show that because they
6 were not stressing in the charge about what the decedent's
7 conduct was, you can consider that in relationship to the
8 way they acted, and that was why it was not improper to not
9 get the drop on the type language.

10 Here, I think with their charge, Your Honor,
11 respectfully we don't have that.

12 I would also note again that the obvious as the
13 fact finders and when you are thinking about the DV, the
14 obvious analysis in considering self-defense and duty of one
15 to retreat, in the statement that the State has presented as
16 their evidence that he -- the statement says that he takes
17 steps towards Ms. Mallory. I think that is very apparent,
18 and it was apparent to you, and I think apparent to the
19 jury, and that's one of the reasons when considering in the
20 case law the defendant's right to act on appearances, that
21 here it would be very proper, very proper to put this kind
22 of language in here. That I would just like to note that
23 for --

24 THE COURT: Put which language in?

25 MR. BRIAN SHEALEY: That you don't have to wait

1 for someone to get the drop on you.

2 So here, because we don't have that more specific
3 charge regarding the victim's temperament, demeanor, as
4 there was in the Harris case, which they note, that's why
5 they don't feel it's improper to not put the get the drop on
6 your language.

7 In your instructions, Your Honor, the jury won't
8 have that kind of language. That's why I feel it would be
9 probative and pertinent to put the traditional get the drop
10 on you type of language, especially when we have in
11 someone's statement that's in the State's evidence here that
12 they say Mr. Porch is, you know, saying that he, you know,
13 took steps towards the victim in this case. That's why we
14 feel it's a little bit distinguishable from the Harris case.

15 The Harris case was actually overturned on other
16 grounds. They had a terrible golden rule violation of the
17 state. In the end they overturned that case and I think
18 it's kind of a moral side issue for them.

19 But I do note that there is a vast discrepancy
20 between a pretty good instruction and how it wasn't
21 necessary, wasn't improper, and here I don't think that your
22 instruction actually has that language regarding the
23 deceased temperament, as noted in the Harris case. That's
24 why we just for the record noted that we feel this would be
25 appropriate.

1 THE COURT: And I'll let your comments stand for
2 the record, but I think in light of the fact that I tell
3 them that they have to consider all the facts and
4 circumstances surrounding the incident, including the
5 conduct by the parties, that language about considering --
6 all the facts and circumstances surrounding the crime,
7 including the physical condition and characteristics of the
8 defendant and of the victim. And so I think all of the
9 facts and circumstances they can consider and you can make
10 whichever argument that you want to make. I think it's an
11 appropriate charge.

12 And Harris is factually different. Harris does
13 also involve an altercation in which there was some comments
14 made about "why don't you step outside and let's take care
15 of this like men." And so certainly that language I think
16 could easily have been.

17 And then the court goes on to recite facts about
18 when the decedent came down the steps, Harris pulled out the
19 gun, shot him, and then --

20 So I think the factually you are correct. It is a
21 little bit different from the situation we have here, but I
22 think what I intend to charge them is a correct statement
23 and it still allows them to examine all the circumstances
24 surrounding it in determining what they consider to be
25 relevant in terms of whether or not he felt that there was

1 fear of serious bodily injury or death, danger of death, and
2 whether or not he had the opportunity to retreat from the
3 scene, based upon the evidence that's been presented.

4 And I understand that you all have already -- you
5 have looked at the video, is that correct?

6 MR. GOINGS: Yes, Your Honor.

7 MR. LUKE SHEALEY: Yes, ma'am.

8 THE COURT: And what we will do is we will
9 substitute the --

10 MR. GOINGS: This for State's Exhibit 50 and make
11 the other one a court exhibit?

12 THE COURT: Yes.

13 I did talk to the -- just to put on the record, I
14 did talk to the jurors. I talked initially to the one that
15 had conflicts, and -- but then there was another juror who
16 also needed to know about work issues. And so what I did
17 was go into the entire jury panel that was present at the
18 time and indicate that when they came back into court, we
19 would be doing closing arguments and then I would instruct
20 them on the law and then they would begin their
21 deliberations. And that it was up to them as to how long
22 they wanted to go, that I understood that they had been here
23 for over a week, that several people had made sacrifices in
24 terms of their work, and that they would need to come to a
25 conclusion about -- that if there was somebody that really

1 needed to get to work to protect their work issues, then I
2 would let them go and come back tomorrow.

3 I said but even if you stayed, that was not a
4 basis to skip through things and to try to come to a
5 decision just for simply for the fact of getting done this
6 evening. That, you know, if they would need to take their
7 time and go through all the evidence and deliberate, and if
8 they could not come to a conclusion -- or if they needed
9 more time, then I would be bringing them back tomorrow for
10 more time. So -- and I told them that I would tell them
11 that very same thing when they come out and I give my
12 instructions to them.

13 Several of them, you know, really tried to express
14 a desire to kind of get through it, and so I told them that
15 they could talk among themselves about the time issue and I
16 would ask for a decision when they came back at two. They
17 said -- they sent -- and I asked them to write me a note
18 that says "we are able to deliberate today. And if in the
19 middle of that deliberation we cannot come to a conclusion,
20 we can reconvene tomorrow."

21 And so I asked them specifically that meant that
22 they were willing to go past five or six p.m. today and
23 break this evening at what time, and they said they would be
24 willing to stay here until nine o'clock this evening.

25 So that tells me that they have resolved whatever

1 their work issues are and that they are willing, since we
2 are about to go into closings and charge, that they are
3 willing to stay and to deliberate. And then if they are
4 unable to -- you know, if they can't reach a decision today
5 before nine o'clock, then we will tell them again when I
6 charge them not to rush through it. They can come back
7 tomorrow and they have got all day tomorrow.

8 MR. LUKE SHEALEY: So we don't have a juror that
9 needs to be to work at four any more?

10 THE COURT: No.

11 MR. LUKE SHEALEY: Okay.

12 THE COURT: So at this time we need to be
13 prepared to go through closing and charge.

14 MR. GOINGS: Your Honor, this is oldest State's
15 Exhibit 50 that we will mark as a Court's Exhibit.

16 (DVD was remarked and admitted into evidence as
17 State's Exhibit No. 50).

18 (DVD was marked as Court's Exhibit No. 4 for
19 identification0.

20 THE COURT: Anything else we need to take up?

21 MR. GOINGS: Nothing from the State, Your Honor.

22 MR. LUKE SHEALEY: No, ma'am.

23 THE COURT: I have given you a verdict form.

24 Are there any changes or corrections I need to
25 make to the verdict form?

1 MR. LUKE SHEALEY: I don't believe so.

2 MR. GOINGS: None from the State, Your Honor.

3 THE COURT: All right.

4 MR. LUKE SHEALEY: I assume that you are going to
5 be telling them that obviously the standard it doesn't
6 matter which one is on the bottom and which one is on the
7 top?

8 THE COURT: Yes.

9 If there is nothing else, you may ask the jury to
10 come in.

11 (The following takes place in the presence of the
12 jury panel)

13 THE COURT: Good afternoon, ladies and gentlemen.

14 At this time we are now going to hear the closing
15 arguments of the attorneys. As I told you earlier when this
16 trial began, the closing arguments are not evidence, but
17 what they will do is they will pick portions of the evidence
18 and make arguments to you about that evidence in an effort
19 to try to sway you to find the facts in accordance with
20 their view of what occurred, so I ask that you listen to
21 those closing arguments very carefully.

22 Sometimes those closing arguments may cause you to
23 think about the evidence in a different light, or they may
24 raise questions that you will want to discuss among
25 yourselves when it's time for you all to begin

1 deliberations.

2 Then once they have finished their closing
3 arguments, then I will instruct you or charge you on the law
4 that's to be applied, and then you may begin your
5 deliberations at that particular point.

6 Mr. Goings?

7 MR. GOINGS: Your Honor, the State will waive on
8 behalf and do its closing all together, put the law and the
9 evidence and final remarks together.

10 THE COURT: Do you waive opening?

11 MR. GOINGS: Right.

12 THE COURT: Thank you.

13 Mr. Shealey.

14 MR. LUKE SHEALEY: May it please the court.

15 I like to watch the American Movie Channel. One
16 of my favorite movies is a 1957 classic starring Henry
17 Fonda. It's called 12 Angry Men.

18 This movie starts in the jury deliberation room.
19 They have already heard the case and they are in that room.
20 And, of course, the star of the show is Henry Fonda. And
21 they raise their hands all at once and say "what are out
22 numbers, guilty or not guilty?" And at first, of course, as
23 you might expect Henry Fonda is the one holdout for not
24 guilty. It's a murder case. It's involving a knife, and
25 there's a lot of evidence. But the whole course of the

1 trial Henry Fonda's character is asking his fellow jury
2 members to review this case, not of passion, not of
3 prejudice, but to look at it through the eyes of the law,
4 with logic, with reason, and they do that, and they reach a
5 just result.

6 And the reason I tell you that is because that is
7 hard sometimes to understand the function of a jury. You
8 are coming off the street with all your personal
9 experiences, they are all different from each other, and you
10 hear a lot of stuff from lawyers and from judges, a lot of
11 stuff from this witness stand. You are not the same person
12 that came in off the street. You now sit here as an
13 embodiment of this justice system. Everybody has got their
14 own passion and prejudice. Deep down no one likes to admit
15 it, but you do, and you bring that in here with you, but not
16 when you evaluate this evidence. This is not a court of
17 popular opinion. This is not a court of popularity.

18 In our every day lives we are kind of trained to
19 pass to quick judgment, to judge somebody by the way they
20 look, by the way they talk. Some of our most entertaining
21 television, Jerry Springer, Cheaters, all these shows that
22 are designed to make you draw you in in its drama. It's
23 designed that you sit there on your couch to chuckle and
24 pass judgment, because something like that might happen to
25 you in your life. Well, that guy is funny, he's a weirdo,

1 but that's out the window when you come in here. You are
2 not in your armchair. You are not at your home. You are
3 sitting with the privilege of being jurors in this
4 courtroom, in this state, in this country, the best judicial
5 system in the world, and you have to put that aside, put the
6 passion and your prejudice aside.

7 And it's not obvious. I'm not saying that you
8 come in here with that, but part of what the State of South
9 Carolina wants you to do is get mad, get justice, and do it
10 for the wrong reasons, but you have to sit there and filter
11 that. And once you apply the logic and the reason, without
12 the passion and prejudice, I think you will be able to do
13 your job correctly.

14 In order to find Joshua Porch guilty of murder in
15 this case, and that's what the State of South Carolina is
16 asking you to do, there is no mistake about that, you have
17 to be convinced beyond a reasonable doubt that it was Josh
18 that night who killed Nakia and not Mallory, okay, after
19 looking all of this evidence.

20 And only then if you somehow get past that
21 unanimously, do you decide, because the judge will charge
22 you on several different options that you can consider; is
23 it murder? Is it self-defense? Is it accident? Is it
24 voluntary manslaughter? Only once you can prove and
25 convince yourself beyond a reasonable doubt that it was him

1 and not Mallory can you even get to that second step, and
2 that's why I'm telling you how important your job is, to not
3 sit there and go on your gut feeling; to not sit there and
4 think man, he sounded kind of weird to me. You put that all
5 out the window. Only if the evidence gets you to that place
6 do you take that second step. If you can't get to that
7 second place, then it's a not guilty. Then you have done
8 your jobs.

9 This is a biggest day in Joshua Porch's life. He
10 sits here cloaked in a robe of righteousness, which is fancy
11 language the Supreme court has given us to say he is
12 innocent, if, and until, the State can prove him guilty
13 beyond a reasonable doubt. If they can prove it was him and
14 not Mallory, only then is that cloak lifted from him. Only
15 then.

16 He doesn't have to prove anything to you. He
17 didn't have to take that stand, but he did. He doesn't have
18 to convince you of his innocence. He starts that way, and
19 that's the way the system is meant to be. It's not meant to
20 be easy. This is important. It's not meant to have an
21 accusation against somebody. We experienced that in this
22 country. It's called the Salem Witch Trials. People were
23 accused of being witches. Some of them confessed to it and
24 they were burned at the stake, and it's a tragic period in
25 our history, but it happened. Our system today is the best

1 in the world because we do not let that kind of thing happen
2 any more. We do not. Otherwise, the weak, the dumb, the
3 unpopular would not be treated fairly in society and we
4 cannot have that.

5 I'm going to be asking you to think about
6 decisions. In this life all of you know what we got. We
7 got easy decisions. We have got hard decisions. And I
8 would tell you that the easy decisions, they are the
9 tempting ones. They are the way out. That's that road to
10 temptation, but the hard ones, the ones that you wrestle
11 with, the ones that you grapple with on the inside, when you
12 make that hard decision, you usually come to a true result.
13 You are on a diet. A piece of cake is sitting right there.
14 Easy decision, get a little cake. The hard decision is to
15 stave that off.

16 You are on your tenth wedding anniversary and you
17 are at a nice restaurant and you are sitting there with your
18 spouse and there is that woman or man across the room who's
19 attractive. Easy decision is look at that woman or man.
20 The hard decision is to be focused and committed to your
21 partner. These are examples.

22 You know, everybody that has an easy decision or a
23 hard decision, and every once in a while, as I talk about
24 evidence in this case, I'm going to ask you to not take that
25 road to temptation. I'm going to try to help you think

1 about that evidence that's tempting down that road and then
2 give you the tools that you need to pull yourself back up to
3 wrestle with that hard decision.

4 So let's talk about the evidence.

5 The very first witness that you heard from Justin
6 Mallory. He never testified in his own trials. He never
7 chose to say what allegedly happened when his butt was on
8 the line for murder, and that's because he would be exposed
9 to cross-examination and the story would not hold water.
10 But he testifies in this case, because he's not facing
11 anything. This is the first time you ever hear from him and
12 he's a witness for the State, because they to present him to
13 you. If they had not put Mallory on the stand, what would
14 you think? That they are hiding from it. Of course. They
15 had to put him on the stand, cheating, lying guy that he is,
16 because there is no way around it. They had to get his
17 story out now, even though it wasn't important enough then.

18 And I talked to Mr. Mallory extensively and he and
19 I answered some questions and I wrote down his lies and I
20 wrote down the things that we talked about as we went over
21 them. This is a guy --

22 Every time someone takes this stand you assess his
23 credibility. Let's talk about that.

24 This is a guy that on Mother's Day was out
25 cheating on the mother of his children, out late at night.

1 He had been drinking heavily. Ricki Cook, his girlfriend of
2 a few months, he took her out on that special day, and not
3 his wife and the mother of his children. And he didn't just
4 take her anywhere. He took her to the Applebee's on the
5 other side of town where he let you know that he takes
6 steps, measures to not get caught. This is a guy that's not
7 dumb. He didn't want to get caught cheating, so he went on
8 the other side of town.

9 We talked about the drinks he had and what he had
10 for dinner. And then they had a little discussion about who
11 was going to pay for the hotel, because this was an affair.
12 The whole point was to have sex, and not with his wife who
13 was home with their two kids. So later he decides he will
14 go ahead and pay for the room. They go to the Economy Inn.
15 He doesn't deny they had sex. He is seen later after that
16 on the Exxon video, which is how later investigators help
17 piece together this timeline. From there he goes to
18 Ricki's. From there he goes home.

19 Now, he tried to tell you, and the State did a
20 good job of trying to work with this timeline, but the
21 Government in the past two trials had to a science, Richland
22 County sheriff's deputies had to a science, Holdorf, the
23 lead officer on this case, Strange, they timed this. They
24 used cell phone towers. Cell phone towers don't lie. Cell
25 phone towers aren't out cheating on their wives. They are

1 incapable of that. All they do is track your movement.

2 So these officers tracked his movement and it
3 didn't have anywhere, and now this prior statement, or
4 anywhere in the prior trials did he have a 10 or 15 minute
5 window where he hung out at Ricki's, which he is now trying
6 to say. He then goes home.

7 He admits to lying four times, by my count, simply
8 about that cheating. Doing dirt were his words.

9 Now, let's talk about Sherry Tribble a little bit
10 as we talk more about Mr. Mallory.

11 Sherry Tribble, a very smart woman. I think she
12 said she was an aerospace engineer. Instead of doing that,
13 she's doing something else now. She testified for the
14 Government. Not these gentlemen, but John Meadors was
15 sitting right here. Investigator Holdorf was sitting right
16 there. With all the resources of the State of South
17 Carolina in the past two trials against Mr. Mallory, who
18 would have been sitting right there, she testified, because
19 she was an eyewitness to this murder.

20 Here is what she heard, and you have to remember,
21 Holdorf said, as the lead officer, she's not so good with
22 times. Well, she woke up that night, staying at her
23 boyfriend's apartment, because she heard something. She
24 heard an argument. Her statement, you have it. I encourage
25 you to read it. They had her try to play with her own

1 timeline a little bit and it was just you make -- make up of
2 it what you will, but her statement says that she last
3 looked at the clock at 2:18. Then I talked to her about
4 this, because this was surprising to me. Then 30 to 45
5 minutes goes by and she looks out the window because she
6 hears something.

7 They had her try to say, well, maybe it was
8 earlier, 2:18. Been there, a couple minutes go by, and then
9 you hear something, and then a couple more minutes go by.
10 They are trying to play with it, but here is what doesn't
11 matter. The time doesn't matter. What matters is when it
12 peaks her interests. That argument was so unusual that you
13 would get out of your bed and look out that window under
14 that lamp post, clear as day, as Nakia is alive and crying
15 and arguing about what she thought was cheating, or a
16 domestic situation.

17 Mallory's big white van was there. She recognized
18 this van. She has identified it in both trials. She
19 identified it in this trial.

20 Let me say that again. This is why all this
21 bickering about the timeline will not matter. When Nakia is
22 alive, he's there. He testified that he came home to her
23 half dead, gurgling. This is -- this is his story. Someone
24 had done something to her, but what Sherry Tribble, who has
25 no dog in this fight, saw was Nakia saying things about the

1 fight, about the cheating. "How could you," all the while
2 while his van is there. He's there. He was there when she
3 was alive, and then when she goes silent he's there.

4 She looks out that window and the van is moved
5 closer, because you don't want to take the limp lifeless
6 body of your wife a long way. That's something that you
7 don't want to draw attention to. Then he's seen and
8 identified by Sherry Tribble as running out to the car,
9 opening up that van door, and saying "look what you made me
10 do." Okay? He was there when she was alive and then she is
11 silenced and he's saying "look what you made me do."

12 This is why law enforcement was so convinced,
13 amongst other things, because you have this independent
14 witness who saw this, that fit their timeline with cell
15 phone towers and technology and good police work. He was
16 there when she was alive. Listen to those words, okay?
17 "How could you," and "look what you made me do." Think
18 about those two words as they relate to each other. These
19 are not words that Joshua Porch and Nakia would say to each
20 other after fooling around and then he gets mad. No. These
21 are words that old couples say who have a history of
22 problems. You heard about a history of abuse in this case
23 and threats and a rocky marriage from Holdorf and Strange.
24 "Look what you made me do."

25 "How could you? "How could you" are words of a

1 woman who had an expectation of a man. They aren't just of
2 any man, some guy that you know just as an acquaintance in
3 the neighborhood. "How could you?" Those are words you say
4 to your man when he's been out cheating, when he's done
5 something to you, you had trust in him. You exchanged vows.
6 "How could you?"

7 And what does a man say, who has a history of
8 cheating and disrespecting? You know he doesn't respect
9 her, because he's out cheating on her on that special day
10 for Mother's Day. A guy like that blames a woman all the
11 time. So even though he killed her, he is saying "look what
12 you made me do", because he's just got such a habit of that.
13 Those two words with that couple makes sense. Those words
14 with Josh and Nakia do not make sense together. Use your
15 common sense on that.

16 And I have said a lot of things about Justin
17 Mallory. He and I had a contentious time up there. I'm not
18 saying that he's some kind of methodical serial killer, or
19 I'm not saying he's some kind of plotting guy who had
20 planned on doing this. I'm just saying he's a guy who drank
21 too much that night, who has a history of abusing Nakia, who
22 clearly didn't respect her. And when she finally, when he
23 came home late, confronted him about it, he didn't want to
24 hear that. So he got into it with her and it went a little
25 too far, and it's just like the hundreds of cases that Major

1 Smith and Holdorf and all these guys have seen before, a
2 domestic abuse, it takes that one angry stroke too far. I'm
3 not saying he's some kind of monster. I'm saying it
4 happened and it went and got out of hand and now he's having
5 that moment, "oh my God, what will I do? What will I do
6 now?" Okay?

7 Sherry Tribble, no dog in this fight. She is
8 doubt for you, ladies and gentlemen. You have doubt, and
9 you will keep that doubt, because law enforcement has doubt.
10 They had doubt. They have it now.

11 We will talk about Stan Smith and Holdorf. You
12 have to think about this. This is that tough decision that
13 I'm asking you to wrestle with, okay?

14 Sherry Tribble saw him with a hat, saw him with a
15 dark jacket, something to that effect. That's going to be
16 important and that was important to law enforcement.

17 You heard from other witnesses in this case. You
18 heard from Holdorf, their lead case officer, this guy who is
19 on the ground. He's the one that the next day is
20 interviewing people. He's talking to Mallory. He's talking
21 to Mallory about his situation. Mallory tries to say he's
22 got an alibi, that he's with Ricki Cook. Okay, they go to
23 talk to Ricki Cook. It's not an alibi unless it covers the
24 time of that crime, but it did shed a lot of light on what
25 he was doing that night.

1 When Holdorf created that timeline, that watched
2 perfectly with a window of Mallory getting there at 3:30 and
3 having plenty of time to do this.

4 Do you remember Holdorf? Have you -- you probably
5 hadn't been on a lot of juries before that. You will not
6 see a lead investigator from a case, he looked so pained to
7 be testifying for the Government. They are trying to --
8 they tried hard to get him to go through his old work and
9 say what he had spent years developing and say -- the man
10 has spent years prosecuting was now not the killer. You
11 could look in Holdorf's face and see that torment. It was
12 almost like the leaf washed over him, when my brother got to
13 cross-examine him. Well, it wasn't really like
14 cross-examination. It was more like a chat. "Okay,
15 Holdorf, let's talk about what really happened." Holdorf
16 admitted that he found the 911 call by Mallory to be fake.
17 He found Mallory's grief at the hospital to be angry and not
18 genuine, and he talked about that timeline and the work he
19 did to establish that timeline extensively.

20 Now, it came up through several witnesses, and the
21 State worked really hard at this, to try to say that maybe
22 these guys were on the ground working so hard, Strange and
23 Holdorf, maybe they just took the wrong route that they
24 timed, so this timeline is all off. Okay. Maybe Mallory --
25 they didn't listen to Mallory when he told them what way to

1 go. No, no, no.

2 Listen, remember the testimony. It was questioned
3 that you had Mallory, and Strange is out timing this, the
4 quickest way from that path, from the Exxon to Ricki's to
5 home, and Strange timed it perfectly. They had -- they
6 relayed that information back to Holdorf, who is
7 interviewing Mallory, and nothing is said. He's confronted
8 with that evidence. He doesn't say "oh, well, I was wanting
9 to go to the strip club after hooking up with Ricki, so
10 actually I went way the other way." That's not said.
11 That's not said. They knew exactly the route he took and
12 they knew that as well because cellphones don't lie. The
13 cell phone towers aren't liars. They aren't cheaters. They
14 tell you exactly the way a person goes, and it didn't go
15 back to anywhere else to give him more time, because -- and
16 that's -- you have seen this. You are all smart. They are
17 trying to make it seem like he didn't get there at 3:30, all
18 right? That he -- just like he testified. He got there and
19 literally what he says was within one minute he assessed the
20 situation, checked on his children and called 911. And we
21 know -- and you have it in evidence. The 911 call was made
22 at 3:37. The official police version, which was the version
23 that I would say we should take as true, because that's the
24 whole point of 911 call is to know when they get them in.
25 It's better than the phone records. So they want you to

1 think that he got there that late, missed the true killer,
2 and was calling within one minute. And we will talk about
3 the medical testimony. And then within five minutes, and
4 it's on that time stamp at the security -- on the security
5 footage at that hospital at 3:42. They want you to think
6 that, but that is the exact opposite of what two trials were
7 of Investigators Holdorf, Smith and Strange put him there.
8 They put him there around 3:30. It's plenty of time to get
9 busted on his cheating, to have a violent argument about it,
10 to kill her, and then have that -- and then have that "oh my
11 God" moment. How do I make this look better for myself?
12 What can I do? I call 911. I can try to clean up. There
13 is -- that's not going to help. She's now bleeding
14 profusely. I can go to my neighbor. I can get rid of this
15 hat that may have gotten some blood on it. I can get rid of
16 this jacket that may have gotten some blood on it, and I can
17 pretend that my house was broken into and my wife was raped
18 and I can play the victim.

19 Holdorf has doubt. Therefore, you have doubts.

20 The fact that Justin Mallory was found not guilty
21 by a one person in 2008, a judge at a bench trial, does not
22 mean he is innocent, and we have talked about that. And
23 that analysis should not preclude you from thinking about
24 whether the State has now done their job and proved Joshua
25 Porch as the one beyond a reasonable doubt, and this is a

1 tough concept. It's important that you understand that,
2 okay, because he had doubt, you have to have doubt.

3 Stan Smith. Okay. I talked to Mallory about how
4 this is the first time we are hearing from him and I
5 questioned him about how there's still a lot to gain from
6 this, because there is a civil lawsuit going on, which he
7 told you about, and I think it came out through a few other
8 witnesses, that Joshua Porch goes down for this, it helps
9 his civil lawsuit, which is why I say was the first time we
10 are hearing from him. But that civil lawsuit affects these
11 officers, and I talked to Stan Smith about that.

12 Stan Smith is number three at the Richland County
13 Sheriff's Department and I talked to him about his
14 credentials and his experience, because he has a lot of
15 experience. He did his job the right way the first time
16 around. But as number three, as a major, right under Chief
17 Wilson, who is just under Leon Lott, the sheriff, he is
18 exposed to political pressure, okay? They are getting sued.
19 They don't want a lawsuit. They are trying to placate
20 people. And you know what? That doesn't get sheriffs
21 re-elected just to say, "oh, the guy got off and we are just
22 left here with no justice for anybody." That doesn't get
23 sheriffs elected. Sheriffs like to be keepers. Sheriffs
24 like to talk statistics about all the convictions they have
25 got and how they are doing this and how they are doing that.

1 So to have a murderer, where they can't pin it on somebody,
2 that don't get anybody elected.

3 So you have a directive, and we will talk about
4 Chief Wilson, but he has a directive from Leon Lott to Chief
5 Wilson, "get on this. Do what you need to do." And that
6 meant going over Stan Smith, who has thirty years
7 investigator, as the head of the Major Crime Unit,
8 thoroughly comfortable with the first two trials and Joshua
9 Porch's testimony and his statement, thoroughly comfortable,
10 okay? So now he's being called here by the Government to
11 oddly, and I would submit, to be emotionally torn here, to
12 one thing say "well, we got lied to. It's not me. It's
13 John Meadors." We didn't hear from John Meadors, did we,
14 who was the deputy solicitor for 20 or 25 years here. He
15 had to sit here and kind of put it on him and step back and
16 say "oh, it's not me," because they are being sued. And I
17 know this is a lot of stuff going on and everybody deals
18 with this, but a lot of money is at stake. And he --

19 So then when I questioned him, and all I wanted to
20 get is the work he'd done in the past. All I wanted to do
21 is talk about the good investigation, all his thirty years
22 experience, because he has investigated, he admitted, a
23 hundred murder cases. He's interviewed thousands of
24 witnesses, and all I tried to do was do what he really was
25 doing in '07 and '08 and was feeling comfortable with Joshua

1 Porch.

2 People don't like to get involved, okay? There is
3 a lot of reasons for that, and we can go into some of them,
4 but guys like Stan Smith know that. The average witness
5 don't want to get involved in a murder investigation,
6 especially when it involves you revealing that you are
7 messing around with somebody else. Even if it was a
8 one-time thing, he knew that, so I had to pull out his
9 deposition from the lawsuit and start asking him about it
10 and you saw a very angry evasive major. Okay. But he did
11 not disagree with me when I asked him exactly what he had
12 said under oath in the past.

13 Here it is that I read to him exactly, which he
14 agreed. "I believe that what he, his version, the final
15 version that he testified to, it did indeed dovetail with
16 the Sherry Tribble factor and I couldn't get past that. It
17 bothered me that he had come up with several versions, and
18 my interview reports it was apparent that he was very, very
19 afraid of Persia and that he was worried about the
20 ramifications of the girlfriend and having to admit that to
21 his wife. And that to me explains some of it. The fact
22 that it sort of again dovetailed with Sherry Tribble's
23 explanation. To be fair, the timeline, the domestic related
24 argument, the contention, and it was an argument about
25 adultery, as pointed out by Sherry Tribble and argued about

1 an affair or infidelity. It all fit. So in that vein the
2 answer to your question I thought he was a credible witness.
3 He hurt himself by giving false statements on the front end,
4 as far as his credibility, when he testified in his trials."

5 So Stan Smith, when I asked him about it,
6 reluctantly agreed "yes, I was satisfied with him."

7 Do you think that someone like Stan Smith would
8 recommend to John Meadors, the deputy solicitor, to put up a
9 witness that they thought was lying? No. At the end of the
10 day someone of that rank is not going to do that, because
11 that's called suborning perjury. No one is going to risk
12 their careers for anybody. Stan Smith didn't have to. He
13 sat Josh down with Holdorf and Sergeant Strange and Sergeant
14 White and they all talked at Richland County, and that was
15 when Josh finally said "look, I have been lying to you guys.
16 I have been lying about not being there, period. I have
17 been lying about this silly apple story, because I didn't
18 want to get involved. I damn sure didn't want my wife to
19 know I was cheating, and I didn't want to be involved in
20 this trial, period. So, yeah, I was there. Here is what
21 happened." And he told them just what he told you today
22 about what happened that night.

23 In all those years of investigative experience put
24 together were comfortable with that, it fit perfectly with
25 the evidence. Sherry Tribble putting Mallory on the scene.

1 That fight happened inside the house. She hears Nakia say
2 "how could you," and then later Mallory, "look what you made
3 me do." He's satisfied all of that experience, all those
4 people that were on the ground in person talking to these
5 witnesses.

6 These guys have a doubt about Joshua Porch being
7 the killer. Because of all that, you have to have doubt.
8 They had doubt. They still doubt. That is your doubt.
9 Okay.

10 I talked to Stan Smith again about some of the
11 evidence Chief Wilson and these guys were talking about;
12 left-handed versus right-handed assailant, things like that.
13 And he answered me, reluctantly again, because he's in a
14 tough situation being called by these Government lawyers in
15 the middle of a lawsuit, he's worried about being
16 inconsistent. He wants to help them, because they are the
17 law, but he's in a tough spot, and you can see it as plain
18 as day on his face. And I asked him what he thought by that
19 left-hand versus right-hand, and maybe y'all can't read it.
20 "When I say first heard that, my immediate response was,
21 well, he was between them by his own admission and had
22 gotten cut. Again, these aren't two statues involved in the
23 fight and a third one gets in the middle. I mean, there is
24 movement and gyrating and it didn't -- I wasn't -- it wasn't
25 that probative to me, and not just trying to defend our

1 investigation or our case, to me that sort of corroborated
2 what he said. He was in between the two of them. Obviously
3 someone else, you know, felt that it was more probative, and
4 I think they actually sought the arrest warrant based on
5 that information."

6 Stan Smith didn't think it mattered at all about
7 this left-hand versus right-hand. And even Chief Wilson,
8 I'll talk to you more about him later, freely admitted to me
9 the assailant could be left-handed, the assailant could be
10 right-handed.

11 Stan Smith didn't care at all to look for Joshua
12 Porch's blood on Nakia's shirt, because it would be there,
13 the evidence that they found credible. Mr. Porch's story
14 was that he got a cut in a fight in between two people.
15 They are not going to test Nakia's shirt for Joshua's blood.
16 It would be there. It makes sense that they didn't find it
17 relevant, okay.

18 So then you get to Chief Wilson, the self-admitted
19 armchair quarterback, the guy who is not on the ground.
20 He's number two at Richland County. He, by his own
21 admission, moves paper from the left side of his desk to the
22 right side of his desk. But the sheriff, Leon Lott, said
23 "look, you need to look into this." And I'm telling you
24 it's because of the lawsuit. And that you know what's not
25 good for getting re-elected? Not having somebody on the end

1 of a hook on a murder. That is not satisfactory, so he said
2 "Wilson, look into this," and Wilson did. He didn't ever go
3 to the crime scene. He didn't ever talk to a witness in
4 person, but he had all those papers on the left and the
5 right of his desk and he looked into the file.

6 And I talked to him. I talked to him about what
7 he did specifically. He didn't re-interview witnesses. He
8 knew all of this stuff that his men, who were on the ground,
9 found such compelling evidence against Mallory, he had it
10 all. He admitted to me that Stan Smith and Meadors both
11 still thought Mallory did it, but he can't go after Mallory
12 any more, because he got a not guilty. It would be double
13 jeopardy going after Mallory.

14 So he looks at all his files, he looks at all his
15 papers and then he says "what can I do? I can surmise that
16 it would be more fitting for a left-handed assailant, and I
17 think Mr. Porch is left-handed." But in his same report,
18 which I asked about him, he said, "well, it could be
19 right-handed." Okay.

20 What else did he do? He goes and they tests
21 Nakia's shirt for Joshua's blood, the same test that the
22 other guys, the investigators before him with all their
23 experience, who did not find relevant. Of course, it would
24 be there. He was in the middle of a fight when he had got
25 cut. He finds a drop of Joshua's blood on the front of her

1 shirt and he acts like that's the smoking gun. "Oh, this is
2 just wildly inconsistent with Mr. Porch's story, because his
3 left hand was cut. So how in the world would it be on
4 Nakia's right front shirt?" Right? "If he's facing Justin
5 and Nakia is here to protect her, if this hand is cut, it's
6 inconceivable that it would be here." What?

7 He even admitted to me that he is not a
8 pathologist. He didn't consult a medical doctor about any
9 of this, and that he agreed, reluctantly, that it could --
10 could be -- that it could have been there, even by his own
11 admission. So he ignored exactly what Stan Smith thought
12 about this. He didn't find it relevant. By his own
13 admission he had gotten cut, but that was the only piece of
14 so-called new evidence Chief Wilson had. But what he had
15 was desperation to help Leon Lott put someone on the hook
16 for this murder.

17 So then I went, and you may recall, I read the
18 murder warrant to him, and he agreed that he said the
19 following in terms of probable cause, which is when he
20 swears an oath to a judge, just like this judge, and he says
21 "judge, I'm going to tell you a reason under oath why I
22 deserve a warrant for murder." He told that judge, and this
23 is back 7-7-09, and he just has that little piece of blood
24 on this so-called new evidence. He said, "judge, the
25 defendant has admitted to being at the scene of the crime

1 during the assault and stabbing." Of course he has. He
2 testified for two trials that he was there as an eyewitness
3 watching a husband kill his wife, but he told that to a
4 judge, to say that Josh has admitted to being there.

5 "And has further implicated in the crime by DNA
6 testing of blood found at the scene that puts the defendant
7 at the scene." He testified at two trials. It was
8 explained by John Barron, the DNA guy. It was explained by
9 Holdorf. It was explained that he got cut. He bled. He
10 went to treat his cut, bleeding, and bled on the scene.
11 Because he's not some criminal mastermind trying to clean up
12 every piece of evidence, there is blood there. He didn't
13 make any real attempt to clean it up. That was what Deputy
14 John Meadors told everybody at the first two trials.

15 Chief Wilson misled that magistrate, and then goes
16 on to say "it, implicates the defendant in the assault at
17 the time of the murder," because that little piece of blood,
18 that Stan Smith didn't think was relevant at all. Is that
19 what you expect from your deputy chief of police at Richland
20 County Sheriff Department, that he would twist that
21 information to get a murder warrant? I should think not,
22 but he was feeling the pressure, the political pressure, to
23 get somebody for this.

24 I want to talk to you about some more witnesses in
25 this case.

1 We brought you Ivan Neddo. Ivan Neddo, another
2 person who has no dog in this fight, was called for two
3 trials by the State. He told you about his experience
4 working as a medic, as an EMT, in the military as a medic.
5 He worked as an investigator for the Department of Defense,
6 the Federal Government. And then towards the end of his
7 career he was doing security at places like this hospital.
8 Clearly he is disabled now.

9 He told you what he heard; Mallory driving up,
10 saying things like "bitch bled all over my TV, my Play
11 Station." And it was not any kind of cultural discrepancy,
12 as Mr. Mallory tries to maintain. I think he said something
13 like "yeah, I just said it's a bitch man. It's a bitch."

14 "What happened?"

15 "No, no, no."

16 Mr. Neddo said he was from me to that witness
17 stand when he heard it. And it was his job, when anybody
18 comes in to watch them closely, because they are
19 automatically someone who brings a body, you got watch them.
20 Either they know something, they are a witness, or either
21 they did it. It's very likely. He has that directly. And
22 what he heard was Mallory calling people saying "bitch bled
23 all over my TV, my Play Station." Who does that? If you
24 love your wife and found her tragically stabbed by some
25 intruder, are you thinking about your TV? Are you thinking

1 about your Play Station? No, you are thinking about your
2 wife. That describes perfectly the moral compass of Justin
3 Mallory. He refused, you heard, sign a consent form to even
4 treat his wife. He smashed his cell phone.

5 Now, you are going to hear, and I'm sure Mr.
6 Goings will talk about it, that he went outside and puked in
7 the bushes. They are going to want to tell you that this is
8 genuine emotion. All right. I mean, Ivan Neddo thinks it's
9 not genuine. When investigator Holdorf, per his
10 investigation, thought it was not genuine.

11 All of us have been in that situation where we did
12 something wrong and we know we are about to get caught.
13 Usually the bigger the wrong, the worse it feels; that gulp,
14 and you know you are going to get caught. That's just after
15 he had been told, he went in there and demanded to know "is
16 she dead or alive?" That was the testimony. Not "what can
17 I do to help?"

18 Once he was told she was dead, that gulp moment
19 sat in and he is thinking about himself. "They are going to
20 blame me." Yeah, they are going to blame you for what you
21 did. And he had that physical reaction of fear to what he
22 knew he would have to take the blame for. It was not grief.
23 People were there. They testified about that. It was that
24 moment when your stomach turns, because you know you just
25 messed up.

1 Again, I'm not saying he's Jack the Ripper. I'm
2 saying he's an abusive husband who didn't give a damn who
3 came home and didn't want to hear what his wife had to say
4 about cheating and he took it too far. I'm not saying he
5 woke up that day thinking about killing her, but it
6 happened. And you have a doubt, because they have a doubt.
7 Mr. Neddo called from that table for two trials.

8 We are going to talk about what happened in
9 California. Okay. That's powerful evidence for Mr. Porch.
10 We sit here coming in with all your common experiences and
11 you say "I'll never admit to anything I did not do." That's
12 mind boggling. That's mind boggling, okay? And is it,
13 until you learn what type of training the investigators have
14 and what they are trained to do, and that's why we brought
15 you Dr. Deborah Davis from Nevada, Reno. She's a professor
16 of psychology.

17 You heard from her for awhile, okay? The
18 testimony was long. I admit it. It was important that you
19 heard every word she said, because it describes in great
20 detail the techniques they use. She has attended the Reid
21 Training Seminar and the Zulawski Training Seminar that they
22 send all these investigators to. It is a process, and she
23 described it kind of like a used car salesman. And we have
24 all been to used car lots, or anyplace. Even new cars.
25 They are trained to make you feel comfortable and then they

1 tell you your credit is bad and then you need to buy it
2 through their financier. And then the next thing you know
3 you are leaving with a car, or at least a date to come back
4 and look at the car. All right? You know this is not
5 funny, but this is the type of thing. It's you build a
6 rapport.

7 You heard that they confront you with scenarios
8 and try to get -- once they could get you down a little bit,
9 it's an accident, it's an accident. Then once you say that,
10 they say, okay, okay, let's go from here. Once you got one
11 foot in the door they have got you. They have got you.

12 She told you that people who have had traumatic
13 childhoods are more susceptible to being convinced, to being
14 overborne in this type of way.

15 Job Porch, he told you it was hard for him. He
16 was molested as a child. He was taken from the home. He
17 went to foster homes until he was about 11 or 12 and was
18 able to come back, okay? His upbringing was one of these
19 factors that leads people to falsely confess.

20 And they tell you there is all kinds of ways.
21 There is threats, which is what I'm telling you happened
22 here. There is a way that they make you think of
23 consequences. "We will work it out later, okay?" There is
24 all this rapport building. They feed you scenarios. Okay,
25 we are going to talk about that.

1 Remember things she said. That's why I brought
2 here into her court because it exists. This is a science.
3 It's a whole body of psychology devoted to understanding
4 this; the suggestiveness, the persuasiveness.

5 These investigators, Shawn McDaniels, Brian
6 Godfrey, they are trained in this. They are trained to
7 testify to you. They are trained when they get a very
8 simple and direct question from someone like myself, someone
9 like Mr. Aiken, to turn to you and then go off on a
10 roundabout exploration through whatever topic they want. Do
11 you think that's an accident? No. Judge their credibility.
12 They are all part of this training.

13 So what Chief Wilson did was prepare and mislead
14 this judge, in my opinion, with a warrant for murder. Then
15 he got two guys. Godfrey and McDaniels had nothing to do
16 with the first investigation; never been to the crime scene,
17 never talked to a witness that mattered on the front end.
18 They all second-guessed Stan Smith, Holdorf, Strange. And
19 he gave them probably the most favorite thing an
20 investigator can have is a murder warrant.

21 These guys did not choose this profession because
22 they do not enjoy this type of set-up. Okay? These guys
23 are like trained highly skilled Rottweilers. Okay? And
24 every dog loves a bone, and the bone was the murder warrant,
25 and they chewed on that bone all the way on that flight to

1 California. And they got them all lathered up and Josh is
2 the bunny rabbit. High school education, childhood trauma,
3 no special skill or experience to deal with this, and those
4 Rottweilers are around him, and Josh sees them coming, but
5 he is in a trap. His leg is in a trap, and his family is in
6 that trap with him. And what do you do to get out of a
7 trap? Sometimes an animal like that will chew its own leg
8 off, hurt himself to get out of that trap. And that in a
9 nutshell is what happened, people.

10 You heard from Josh. They got him there. He was
11 having a normal day off, going to watch some movies.

12 He was arrested late at night, brought over to
13 Long Beach. Godfrey wasn't there. It was just McDaniels.
14 McDaniels, who traveled all this way with that bone in his
15 mouth and he's got Josh in that trap. Josh tries to resist,
16 doesn't say anything at first, and then Josh pulls away.
17 "We are going to arrest your wife and your brother-in-law."
18 All that matters is what Josh believes. Persia had been
19 involved in the first investigation. She had given
20 statements, and they told him he had a choice, "they could
21 all go down with you, or you can lay down and just go down,"
22 so he chewed off his own leg. From that point on he made a
23 conscious decision to agree with whatever; three days of
24 whatever.

25 The first interrogation. This was what my brother

1 did with Godfrey. The period was five hours. Now, they are
2 going to come up here and say there was some breaks and
3 things, and we gave him snacks. Josh told you he couldn't
4 eat. He's just telling them whatever they want, because he
5 believes a credible threat to his family, the family that
6 has four children, Persia being the mother. They were
7 separated because of his testimony for this Government. He
8 had to admit that he had cheated that night, repeatedly.
9 That ain't good for any marriage, but he still loved her and
10 he knew that if they arrested her, his children were going
11 to foster care, the same foster care he experienced. From
12 that moment on, five hours, plus later that day another
13 three hours. Then we went the following day for seven and a
14 half hours; six and a half hours with the California
15 investigator, another final hour with Godfrey and McDaniels.
16 Fifteen and a half hours.

17 Do you remember Dr. Davis' testimony about time
18 and that type of interrogation and how it would wear on you
19 until you want to do anything to get out of there.

20 Now, Josh had a threat. He's already made that
21 decision, that he's going to take it and he will -- it's not
22 right, he will fight it later, as long as it keeps his wife
23 out of jail.

24 20 piece concept. You hear them. You can watch
25 that video.

1 Now, isn't it funny that you only got the last
2 hour out of the fifteen and a half hour interrogation?
3 Isn't that wild? If they didn't have something to hide,
4 would they not have recorded everything? Honestly, answer
5 that question. If you didn't want to be questioned about
6 what you were doing, just record everything. But some
7 things don't look good on video. Some things don't look
8 good on audio. Threats to your family do not look good, but
9 this initial, we got you, you are in my room right now and
10 I'm going to make you crack. That ain't pretty on a
11 recording. And so the only reason you got that final hour
12 is because they transition over to Los Angeles Sheriff's
13 Department, where then as a habit record everything. So --
14 and you have that, and I encourage you to listen to every
15 second of it. And I encourage you specifically to listen to
16 2713 as a perfect illustration, as a microcosm of that
17 entire interrogation, where you have McDaniels say "okay.
18 What else? What else are you missing, as far as telling us.
19 Let's talk about this car."

20 Job says "okay."

21 McDaniels: "Did you clean that car?"

22 Josh said "no."

23 McDaniels: "You are telling me exactly what
24 happened with your brother-in-law or your wife does not
25 necessarily mean that they will have to pay for what you

1 involved them in, but you do realize that at some point a
2 lot of this is going to come into play?"

3 Porch: "Yes."

4 McDaniels: "It's important to be honest now."

5 Porch: "Yes, I cleaned the car."

6 Do you see how that works? This is the tail end.
7 It's all gravy at this point. It doesn't matter. They are
8 just looking for details to help make it sound -- this thing
9 sound even better. That is what's recorded.

10 Can you imagine the first hour?

11 Godfrey says 20 pieces. He's looking for that
12 20th piece.

13 McDaniels says "and you know we talked to your
14 brother-in-law. Didn't we tell you that?"

15 Porch says "no."

16 McDaniels says, "all right. Well, we got him
17 too."

18 Porch says "you arrested him?"

19 Read his first statement, his very first statement
20 where he says "I was being honest with him, I said Persia
21 didn't know anything." Why is that the first statement?
22 Because all they are talking about is how Persia is going to
23 get locked up, unless he goes along with this.

24 They are going to harp on what Mr. Goings played
25 there at the end, them saying "well, we have been nothing

1 but nice to you, haven't we? And we would have been friends
2 in other circumstances, right?"

3 You don't spit in the eye of your captor. You
4 don't do that. Yeah, he's playing along. He played along
5 every time he signed that statement. Twenty times the first
6 one, because anything he does to go against, he's worried
7 means his family is in jeopardy. Okay? So I wouldn't hold
8 much stock in the idea that he says that they had such a
9 good time with him. Fifteen and a half hours over three
10 days.

11 You heard from Joshua Porch, finally. Okay. He
12 told you exactly what happened that night, which is exactly
13 consistent with what he told Major Smith, Sergeant Strange,
14 Sergeant Holdorf, and they found credible and believable and
15 presented that to the jury through John Meadors, because
16 it's the truth.

17 Now, you have questions about that? Why didn't he
18 tell the truth in the front end in 2006, when they came out
19 to him? And it reminded me of my dad's World War II jeep.
20 Okay. It's a 1941 Willis. When I was growing up he took
21 time to carefully restore it, so it was in perfect original
22 condition. And I had my little toys, and that jeep sat in
23 the garage would always be a toy for me. So when I turned
24 16, I got my license and I said "dad, can I drive the jeep?"
25 And he looked at me and he said "son, you are not ready.

1 You got to remember, you got to warm it up properly. You
2 have got to drive slowly and remember the brakes are shot."

3 So as time went by, I just turned 18. I had been
4 driving for a few years. I hadn't gotten in any wrecks, I
5 hadn't got into any trouble. I said "dad, dad, could I
6 drive the jeep?" He said "son, you are not ready, but one
7 day you will be. And when you are, make sure to warm it up
8 properly, drive slowly and watch for the soft brakes."

9 Finally I turned 21 and I went to college. I was
10 finishing college, I bought my own car. I drove up in my
11 car and visited my dad and he was going fishing with a
12 buddy. And I saw the jeep sitting there, so I sort of
13 thought I would just ask, "dad, can I drive the jeep?" And
14 he tossed the keys to me and he said "son, you are ready.
15 So, remember, warm it up properly, watch, drive slowly and
16 watch the brakes." So I did. I did all those things, just
17 like I was supposed to do. We lived out in Blythwood and we
18 had a tract of land next to us and it was a perfect little
19 course that he would drive me on sometimes when I was always
20 sitting in the passenger seat. So I get in it and I warmed
21 it up and I'm driving about five miles an hour through this
22 tract and I'm watching the brakes. I'm barely touching the
23 brakes. I don't even need brakes. So I take my first turn
24 and I go "oh, he didn't tell me it didn't have power
25 steering," and I crashed that sucker right into a ditch into

1 a tree and put a big dent in the bumper, and I have a
2 decision to make at that point. I could walk back, find my
3 dad and tell him what happened, but I called my brother and
4 I said "Brian, I crashed the jeep. Help me out. Let's tow
5 this thing out of here." So Brian brings his SUV and we
6 hook it up with chains and we jerked it out of the ditch and
7 I tear the whole bumper off, making matters worse. And he
8 tows it back in. Dad is still out fishing. And we pushed
9 the thing and -- it won't even start. We push it back into
10 the garage and dad didn't notice for a month and I never
11 told him. Okay. Even though I was in the right, I did what
12 he told me to do, I never told him that I was scared. And
13 when he found out, I don't need to tell you that he didn't
14 believe, but I followed his rules, okay? That helped me
15 think about this case.

16 Josh witnessed this murder. Justin come home,
17 this fight. He was there. He had just got intimate with
18 Nakia the first time, mutual. It wasn't something that they
19 had done before. Justin was coming home from his affair.
20 He doesn't like Josh being there, okay, but he doesn't have
21 time to really get into it with Josh. Nakia confronts him,
22 "where have you been? What's going on?" A fight happens.
23 Josh sees it go into the kitchen. It comes back. He is
24 striking her with something. Josh tried to get in between
25 and get the cuts on the hand. Now he's hurt. He goes to

1 the kitchen to stop the bleeding. He's bleeding. He tries
2 to wipe up some. He just gets the heck out of there. He
3 looks at Nakia. Only her left side would be facing him on
4 that couch. The right side is where the injury is. Okay.
5 And you heard from Dr. Bradley Marcus said that it would be
6 a slow bleed. It's not going to be gushing like that at
7 first.

8 All right. He doesn't go home and wake up his
9 wife and tell her that he's been out cheating. He didn't
10 even know. He thought it was just a domestic fight and he
11 left. They got pretty serious. He didn't know that she was
12 that hurt, but when the police come knocking on his door
13 that day, he didn't tell the truth because he was scared.
14 He hadn't done anything wrong, but if he told his wife about
15 him being over there and why he was over there, that
16 marriage, that woman he loved, he came here all the way from
17 California to be with, would not be happy.

18 He didn't want the young black man in South
19 Carolina to put himself on any crime scene when police are
20 saying "we have got the guy." He thought maybe this than is
21 a good samaritan. He didn't know what they needed or didn't
22 have through investigation, but because he told them the
23 initial lies, he didn't want to get involved, was a
24 reluctant witness, is why we are sitting here today. Why
25 people took out a murder warrant for him, even though Stan

1 Smith believed, and Josh -- Holdorf believes him, they had
2 their doubts as to why you have to have your doubts. Okay.

3 Now, Bradley Marcus, I mentioned, he's a
4 pathologist. Okay. He's a trained medical doctor. He
5 talked to you about cause of death, times of death. And the
6 actual original medical pathologist, Stan Kessler, had
7 passed on. So Dr. Bradley Marcus has to review his actual
8 autopsy report to generate his own report, which he agreed.
9 He agreed with the findings. The cause of death was that
10 wound to the vein, not an artery that spurts blood. He
11 agreed with that it's a vein that oozes blood. Veins drain.
12 Arteries pump from the heart. All that blood was from
13 aspiration. It went deep enough that she was choking as
14 well on her own blood. Okay.

15 Now, the State spent a lot of time, and I don't
16 understand, trying to match this up to Justin's story,
17 trying on direct, and you remember to say "there was only
18 five minutes, right?"

19 And Bradley Marcus says "she only would have lived
20 five minutes after that type of wound."

21 That they think matches up with Justin's story of
22 getting there approximately within one minute, assessing the
23 scene, checking his kids before calling 911 at 3:37, as you
24 can see from that report. And then he gets to the hospital,
25 per security footage, at 4:42 (sic). So they like that.

1 But I don't think they thought it through, because she could
2 only have lived five minutes, and he is there at five
3 minutes, then he could only be the person to have put that
4 injury on her, unless he had seen somebody walking out the
5 door as he came in. So that doesn't make much sense. That
6 actually strengthens the case against Mr. Mallory.

7 We asked Dr. Bradley Marcus about what Stan
8 Kessler had a reason to testify to and he didn't disagree
9 that Ms. Mallory could have lived anywhere between five
10 minutes to ten minutes to fifteen minutes. The reason they
11 ran from that in the first place is because that fits
12 Holdorf's timeline perfectly. They had him there at 3:30.
13 Okay. Enough time to get in a violent fight about cheating,
14 to then have that "oh my God moment" when he realized you
15 hurt your wife, mortally. He had a few minutes to think
16 "what do I do? How do I play this." Make a 911 call to the
17 police was fake. And you know he can't leave her there.
18 You have got to go ask for help and then take her to the
19 hospital and say that she was raped by an intruder, when
20 there is no signs of intrusion and there is no signs of any
21 sexual assault whatsoever. That was the play. And that
22 would have allowed, and that fits with the medical
23 testimony. He had got there at 3:30, had that fight, hurt
24 her shortly thereafter. She came in the hospital alive.
25 She would still have been able to be alive and then expire

1 after 3:42. That fits as well and that's what they were
2 running from, because that was the original investigation
3 timeline.

4 Other things that you need to look at is the
5 medical report. That wound into her neck was only two and a
6 half to three inches. They measure these things. They
7 don't just guess. So look at Joshua's false statement in
8 California and asked them how long the knife blade is that
9 he's trying to describe to them. It's four -- four to five
10 inches. No. This is some kind of short weapon. He doesn't
11 even know the facts that fit the case as much as they are
12 trying to put them in his mouth. He doesn't even know the
13 right facts. Now, they got him to say a few things. They
14 told you they called a medical examiner. They brought
15 pictures of the injuries and showed it to him, confronted
16 him with it in that second statement. That second statement
17 talks about palm strikes. They were trying to mesh his
18 story to the evidence so that it sounds better.

19 All right. Dr. Davis talked to you about that and
20 why they do that, so that it's more persuasive to you guys
21 in the end. That's that hard question. The easy question
22 is he said he had a knife. He said he did it. The hard
23 question is listening to someone like Dr. Davis, listening
24 to Joshua Porch, listening to the training, skilled
25 investigators on the ground in the first two trials, who

1 felt thoroughly confident about Justin Mallory as the
2 killer.

3 Everything I have said is doubt, and everything
4 that the original investigators believed is doubt.
5 Therefore, you should not be able to get to that second
6 question. You should not. Okay. But because I'm talking
7 to you, because I know that road to temptation is easy, we
8 are going to talk about that second question anyway. There
9 might be a couple of you on there that want to talk about
10 it. Let's go down that road.

11 This is a charge for murder. The judge will tell
12 you that murder is the unlawful killing of another human
13 being with malice aforethought. Okay. It has to be
14 unlawful, number one. I mean, it's not self-defense. It's
15 not accident. When you kill somebody and it's murder, you
16 have to have malice. That's a legal term that means that
17 evil in your heart, a wickedness, a depravity, and it has to
18 be before, okay?

19 At the time -- and we are going to play this. I'm
20 going to play devil's advocate with you. We are going down
21 that road of temptation. At the time, if you believe their
22 evidence, these two written statements and that one video,
23 they're all some form of either "I came onto her," or, "she
24 came onto me," but somehow it stops, and maybe there is
25 words exchanged. Well, okay, the second statement says

1 "well, you are a bitch for stopping this hookup session."

2 And then she heard their evidence. We did not
3 bring this to you. This is not the truth, but per their
4 evidence she then goes and grabs the knife. In every
5 version she goes and grabs a knife and confronts him with
6 it. All right. And they wrestle over it. And each
7 statement gets a little better in which you -- the first is
8 "we fall on the couch." Well, they talked to him. That was
9 five hours. The third statement -- the second statement,
10 got you for three hours. Now it's not that, it's "it goes
11 into her neck somehow." And the third statement is more or
12 less saying "he eventually tries after being attacked,
13 wrestling over that knife." I think they are actually
14 acting it out. Go ahead and feel free to watch it. And as
15 he's trying to prevent her from hurting him, or hurting her,
16 the wrestling goes into her neck, what they are presenting
17 to you. That is not murder. Okay. That is a struggle over
18 a knife when someone was trying to attack you. That's
19 self-defense.

20 You are going to hear from the jury (sic) about
21 the charge of self-defense. Self-defense is a justified
22 killing, okay? If you find the elements of that are met, he
23 is not guilty, per their evidence, and I'm still down this
24 road of temptation with you.

25 To find someone guilty of self-defense, they have

1 to disprove some things. They have to disprove -- they have
2 to show somehow he started it, he brought about the fight.
3 Calling someone a bitch is not being they come and, if you
4 believe this version, attacking you with a knife. It's a
5 little extreme.

6 You have to actually be in fear, reasonable fear,
7 of some kind of danger to yourself. Well, I think it's
8 common sense if someone is coming at you with a knife and
9 they're upset, you are going to be afraid. Anybody would
10 be. You have to basically act proportionately, do what
11 someone in your circumstances an ordinary person would do.
12 Yes, an ordinary person is not going to turn their back on a
13 knife. They are going to try to take away the knife, or
14 stop the person with the knife. This is their evidence, and
15 that's what in those statements. Okay.

16 So even down that road of temptation, even though
17 you can't get past all the doubt in this case from two
18 prosecutions and a hundred years of investigative
19 experience, what they are presenting to you is self-defense.
20 Isn't that crazy? They have spent all this trial proving
21 that he's here, but they haven't talked to you once about
22 what they are saying is the truth. It ain't murder.

23 She's also going to talk to you about accident,
24 meaning that -- it's just like it sounds. Somehow -- if you
25 are struggling over something, somebody can accidentally

1 kill somebody. That's not murder either. That is a not
2 guilty.

3 She's also going to give you the option for what
4 they call voluntary manslaughter, which means that if you
5 have a -- it's an unlawful killing when you have a sudden
6 legal provocation and you act in the heat of passion, okay?

7 The easy way to describing that is when you find
8 your spouse home in bed with somebody, cheating on you. You
9 can't control yourself. The whole point of that is you
10 can't control yourself. There is some type of situation
11 where you really just can't control yourself. All right.
12 That's another option.

13 Down this road to temptation that you can't get
14 past, because you have all that doubt from police. It's not
15 coming from me. I'm telling you the doubt that the police
16 have. So even if you get down that road, you can feel
17 comfortable in knowing that he's not guilty, because they
18 haven't proved murder. Every killing is not a murder. Even
19 if you think he did it, they have to prove beyond a
20 reasonable doubt that the way that he did it was murder.

21 What they have presented is not murder and we
22 dispute it, that evidence, but they are the ones giving it
23 to you, so I want to talk to you about it.

24 This is the biggest day in Joshua Porch's life.
25 And, as I said, you sit here as jurors, not coming off your

1 sofa cushions from house watching your shows that encourage
2 you to make judgments based on things, like your prejudice,
3 your passion. Law is logic and reason without those things.
4 You sit here viewing through the lens of deliberation. That
5 is your job. It is a special job. You are the gate
6 keepers. I would ask you to do your job.

7 There has been one miscarriage of justice already
8 in this case. Two wrongs do not make a right. You are not
9 sitting here being asked to do justice. That is not the
10 appropriate question for that family. They have suffered
11 tragically. The killer is in this courtroom, but he's not
12 sitting at defense table.

13 Look through the window of deliberation, think
14 about this case. When the Government asks you to go down
15 that road to temptation, use these tools to pull yourself
16 back up and say, "well, how have I gotten past all the doubt
17 that two investigations have provided me? How? How am I
18 even asking you to consider? How are you asking me to
19 consider it," because you can't. And when you reach that
20 true verdict, that tough choice that you are wrestling with,
21 the true choice, not the easy choice, it will be one of not
22 guilty for Josh Porch.

23 THE COURT: Ladies and gentlemen, this will be a
24 good time to take an afternoon break.

25 I'm going to remind you of the instructions that I

1 have given to you; that is, not to begin to discuss this
2 matter among yourselves, as you still have not heard all the
3 closing arguments nor my instructions as to the law.

4 I would ask that you retire to the jury room and
5 do not begin any discussions or deliberations. We will come
6 back shortly after this break.

7 (The following takes place outside the presence of
8 the jury panel)

9 THE COURT: Is there anything we need to take up
10 before we take a break?

11 MR. GOINGS: Nothing from the State, Your Honor.

12 MR. LUKE SHEALEY: No, ma'am.

13 THE COURT: Let's take a break and then we will
14 come back.

15 (Whereupon, proceedings were recessed)

16 (Whereupon, proceedings were reconvened)

17 THE COURT: Anything we need to take up before we
18 bring the jury in?

19 MR. GOINGS: Nothing from the State, Your Honor.

20 MR. LUKE SHEALEY: No, ma'am.

21 THE COURT: You may ask the jury to come in,
22 please.

23 (The following takes place in the presence of the
24 jury panel)

25 THE BAILIFF: The jury is seated, Your Honor.

1 THE COURT: Mr. Goings?

2 MR. GOINGS: If it please the court.

3 Ladies and gentlemen, you don't go to the lengths
4 that that defendant, Mr. Porch, went to to cover up an
5 accident, to cover up self-defense. You don't lie to law
6 enforcement over and over. You don't clean up the murder
7 scene. You don't testify and try to send an innocent man to
8 prison, not once, but twice, to cover up an accident. You
9 don't leave a woman to bleed to death to cover up an
10 accident, or an action in self-defense. You cover up, you
11 do the things that Joshua Porch did to cover up a murder.

12 He went there that night. His advances were
13 rebuffed by Nakia and he had to do something. If he didn't,
14 Justin would find out. If he didn't, Persia Porch would
15 find out. So he did what he thought was the right thing to
16 do. He took the knife and stabbed her. He went in there
17 and cleaned up while she's bleeding on the couch. Her
18 children are in the bedroom sleeping, he cleans his hands,
19 cleans the floor, gets the knife and leaves.

20 Joshua Porch is a liar. Joshua Porch is a
21 murderer. He's guilty.

22 Now, at the beginning of this case Josh got up
23 here -- Josh Underwood got up here and told you the things
24 we were going to show you, and the judge is probably going
25 to charge you in a little when she gives you the law. And

1 if anything I say differs from what she says the law is,
2 then you obviously you go by her.

3 Mr. Shealey even indicated that Mr. Porch came in
4 here cloaked in a robe of righteousness, presumed innocent.
5 Ladies and gentlemen, through the course of this trial the
6 State has ripped that robe from him, and there sits a guilty
7 man, a man that on May 14th, 2006, went into [REDACTED] off
8 Pinelane Road to kill Nakia Mallory on the morning of
9 Mother's Day and left her to die. And since that time, from
10 day one, has done nothing, nothing but lie. He lied to
11 Officer Strange. When that didn't work, he changed his
12 story by again explaining his DNA. When that didn't work,
13 he comes up with a story "I was there when Justin came
14 home." That was a lie.

15 He finally started telling some truth in
16 California. Not the whole truth.

17 Then he wants to come in here, get on the stand
18 and lie to you that he was threatened, that he was coerced.
19 There is no way, ladies and gentlemen. He gave half-truths
20 to the detectives out there. He finally came honest that
21 Justin Mallory wasn't there, but he didn't give you the
22 whole truth. But you know the whole truth. You don't go
23 those lengths.

24 He tried to send an innocent man to jail twice, to
25 cover up an accident? To cover up self-defense? It's weird

1 that they would argue that there at the end their position
2 is "it was a false confession. No, I was forced into this."
3 But you know the truth, and we are going to go over the
4 truth.

5 Normally I go through a big spiel about what the
6 law in a particular case is and how that law applies to the
7 facts as we give it, but the judge is going to charge you on
8 what the law is. She's going to go over a bunch of things
9 with you. She's going to go over that it's the State's
10 burden to prove each element of the offense beyond a
11 reasonable doubt, and that's true. And by the end of this
12 case when you look at that evidence, you are going to see
13 beyond a reasonable doubt he is guilty of murder. It's not
14 justified homicide and self-defense or an accident. It's
15 murder.

16 Now, when we say reasonable doubt, the judge is
17 going to charge you that when you look at the evidence and
18 you apply it to the facts, if you are left firmly convinced
19 of the defendant's guilt, then he's guilty.

20 The State doesn't have to show it beyond every
21 doubt. That's pretty much impossible. There are very few
22 things in this world that you could prove beyond every
23 doubt. It's a reasonable doubt.

24 If you are firmly convinced after looking at the
25 evidence that that man took the life of Nakia Mallory and

1 then did everything that he could to cover it up, cover up
2 the murder.

3 Now, this is kind of odd for me. I have never
4 actually had this kind of case, and it's basically two cases
5 in one. The State has to show you -- we don't have to, but
6 pretty much the way this case came to my office, for me to
7 show you that man is responsible for the murder, for the
8 murder, I had to show you why Justin Mallory was not, and we
9 have done both.

10 And, ladies and gentlemen, it's hard for me to say
11 this, and I have worked with Richland County on a number of
12 cases, I know Investigator Holdorf, I know Major Stan Smith,
13 I know Solicitor Meadors, and it pains me to say this, but
14 they made a mistake, a horrendous mistake, when they
15 arrested Justin Mallory not five hours after his wife's
16 death and then they put blinders on. They didn't look at
17 the evidence objectively any more. They ran from day one
18 saying that this is a domestic argument and they got their
19 man, and it's just not correct.

20 It got worse when that man got involved. It
21 didn't get even said back then, they should have, but they
22 didn't, they kept running, and it's unfortunate. Justin
23 Mallory lost a couple -- or three or four years of his life
24 dealing with this while he was in jail waiting on his first
25 trial, waiting on his second trial. It's unfortunate, it's

1 a shame, and it pains me to say that, because I know the
2 individuals involved, but they made a mistake. You know it
3 right now, because you have heard the evidence and you have
4 looked at what they saw. They made a mistake and finally we
5 are getting it right.

6 Now, let's look for the first part. Mr. Shealey
7 says that officers had doubt, you need to have doubt. Well,
8 let's walk it through and see. And once you walk through
9 the evidence we know of, before we even get to Mr. Porch,
10 there is no way Mr. Mallory had time to make it home, get in
11 a fight with his wife, take her to the hospital. There is
12 just no way. Well, how do we know that?

13 Well, who is the first witness you heard from?
14 You heard from Justin Mallory, and he gave you his timeline
15 about where he was.

16 And when we are talking about people who come up
17 here and testify, ladies and gentlemen, you are going to
18 judge their credibility. That's y'all's role. Y'all get to
19 determine who you want to believe, who you don't want to
20 believe, but when you are doing that, look at what the
21 evidence, physical evidence, that doesn't lie supports, such
22 as the Exxon gas station video.

23 We know, from playing that video, that Justin
24 Mallory was at the Exxon on Broad River Road at 3:30 a.m..
25 No doubt. The video I think you will watch says 3:20 and a

1 half seconds you see him actually on camera at the cash
2 register, but Investigator Holdorf came in here and told you
3 "well, no, I timed it when I went and watched it a couple
4 days later and it was 21 minutes off." So three a.m., gas
5 station, without a doubt.

6 What did Justin Mallory say? "Yeah, I was
7 cheating on my wife. Yeah, I lied to her. I lied to Ricki
8 Cook. I was going and cheated on my wife with Ricki Cook to
9 take her out for her birthday." All verified. All
10 corroborated.

11 Mr. Shealey cross-examined Mr. Mallory on the
12 receipt from Applebee's. No doubt that they were there that
13 night. No doubt they checked into the Exxon -- I mean the
14 Economy Inn at 1:57 a.m. the morning of May 14th, 2006. The
15 receipt is in evidence. You can look at it. Investigator
16 Holdorf verified it. No doubt.

17 Nothing -- all of it corroborates what Justin
18 Mallory told law enforcement from the beginning. He told
19 them once he left the Economy Inn, he went to that gas
20 station. That's how they knew to go look there, and he
21 bought a Yoohoo and a peach style cigar. Watch the video.
22 That's all on there. It even comes up under that camera
23 angle, if you watch it close enough, exactly what he bought;
24 a Yoohoo an a peach style cigar. All corroborated.

25 Sure, Mr. Mallory was cheating on his wife; of

1 lying to Ricki Cook. You can think about -- if you think
2 he's a jerk, that's fine. You could think of him worse than
3 that. You could hate him for being out with another woman
4 that night. I'm sure he hates himself right now. He sat up
5 here and told you that it killed him. The choices he made
6 that night is eaten away at him. Why? Because if he would
7 have been home, where he should have been, it wouldn't have
8 happened. He told y'all that. He pointed. He sat there
9 and said "if I was home, I would have saw him coming and
10 would have stopped him," and he's right. But unfortunately
11 he wasn't, and he got in that door that night and Nakia is
12 dead. But nothing that the evidence from his first two
13 trials show Justin's timeline, his statement and his
14 testimony to y'all was a lie. From day one Justin Mallory
15 told law enforcement where he had been, what he had done,
16 and it all is corroborated by the evidence.

17 So let's continue looking at that evidence.

18 Mr. Mallory told you that once he left the gas
19 station -- about ten or fifteen minutes before, he left the
20 gas station on Broad River Road, he went to Bush River Road
21 where he dropped Ricki Cook off at her sister's apartment.

22 Now, I know y'all are familiar with this area and
23 probably know what I'm talking about, but just in case you
24 don't, these apartments that he's talking about on Bush
25 River Road, that's right across from the Cracker Barrel down

1 there, right off the exit. I think it's the old Waccamaw
2 Pottery Store used to be right there behind Cracker Barrel.
3 That's where we are talking about. Right across the street
4 from those places is these apartments that he took and
5 dropped Ricki Cook off at. And he said ten to fifteen
6 minutes later he left.

7 Now, Mr. Shealey cross-examined him and said "you
8 didn't tell law enforcement about the 10 or 15 minutes in
9 your original statement, did you?" And it's not in his
10 statement. That don't mean it's not true.

11 How do we know it's not true? Listen to the rest
12 of his testimony. What did he tell you? As soon as he left
13 after this 10 or 15 minute window that he was sitting in the
14 apartment complex with Ricki Cook, he said he got on the
15 interstate and was driving up 20 and he started making phone
16 calls to his friends. He said he didn't want to go home, he
17 wanted to go to the strip club, so he calls people on the
18 way home.

19 That very phone? Yes. Investigator Holdorf got
20 up here and told "yes, I pulled his phone records. I pulled
21 his phone records and I reviewed them, and sure enough, yes,
22 he was making phone calls to individuals." He called his
23 friend Rock, he called a couple other friends, just as he
24 told law enforcement back then, and just as he told y'all
25 today. His story has never changed.

1 If you look at those phone records, and I asked
2 Investigator Holdorf about the phone records, the first
3 phone call he makes after he drops Ricki Cook off is at
4 3:16. Think about it. 3:16. If he leaves the gas station
5 at three o'clock in the morning, goes down three exits,
6 which approximately how far it is is three exits down the
7 opposite way from his house and stays there 10 to 15 minutes
8 talking with Ms. Cook before she finally goes in, exits the
9 apartment complex, gets on the interstate, dials. 3:16.
10 Approximately 10 to 15 minutes later when we know he's at
11 the gas station. It corroborates his story. Unfortunately
12 the first investigators, the solicitor made a mistake.

13 Investigator Holdorf went on to tell you that that
14 phone call at 3:16 pinged in the vicinity of Broad River
15 Road. That makes sense. He also tells you that they got a
16 two mile radius. We don't know what two mile portion he was
17 in.

18 Think about his statement from what he says. He
19 wanted to go to the strip club. As soon as he dropped her
20 off he probably got on the phone, as soon as he hits the
21 interstate, down there closer, which is in the two mile
22 radius of Broad River where the first cell phone ping hits.
23 So you got him going down the interstate making a phone call
24 in the vicinity of Bush and Broad River Road at 3:16 in the
25 morning.

Investigator Strange got up here and testified "I tracked it. I went and determined how long it would take to get from one location to the other," but he didn't use the route that Justin Mallory took. Why? Because they were tunnel visioned. They took the fastest route because they wanted to give Mr. Mallory as much time as possible to come home to commit the murder, even though they are not looking at the evidence and how it's corroborating what he told them way back then. But Investigator Strange told y'all that it took from Ricki Cook's apartment to [REDACTED] 19 minutes. Investigator Holdorf really wasn't basing his time frame on that particular amount of time from Investigator Strange. If you listened to what Investigator Holdorf told you, he's looking at the phone records, the phone records of Justin Mallory to develop his timeline. Not what time the 911 operating center shows as their time, but the phone records of Justin Mallory, and he told y'all that from the cell tower halfway -- or the halfway point of the cell tower that picked up the last phone call that Justin Mallory made that night, it was six and a half minutes to get to [REDACTED]. That's what he told you, and that's what he developed on his timeline. The phone records of Justin Mallory, the last phone call 3 minutes, 24 seconds -- I'm sorry, 3:24 a.m. and 29 seconds. That's when he hangs up the phone, the last phone call to the last friend to go to the strip club. The

1 halfway point from that location or that cell tower that
2 picked up the phone call Investigator Holdorf told you was
3 six and a half minutes to the residence of the Mallory's
4 house.

5 Investigator Holdorf also said "I don't know how
6 fast he was driving. I don't know how many lights he hit.
7 I don't know where, in fact, in this two mile radius that
8 this cell phone covered where he was actually at." If he's
9 closer to the Bush River Road part, it would take him
10 longer. If he's closer to his residence, it would take him
11 shorter. Again, they wanted to give as much time as
12 possible because of this tunnel vision. Unfortunately
13 that's what it was.

14 So if you add -- first of all, even if you take
15 Investigator Holdorf and his testimony and he says the
16 earliest he could get home was 3:30. What if he was caught
17 by a couple more traffic lights? What if he was driving
18 slower than normal, because he had been drinking some
19 alcohol that night? What if it took him three, two, three
20 four minutes longer to get home from Investigator Holdorf's
21 testimony? Then they would have known at that point there
22 is no way he could have committed the murder. Why? Because
23 we know at 3:35 a.m. from his phone records he was calling
24 911. They want to point out it's 3:37, according to that.
25 No, no, ladies and gentlemen. The timeline was based on the

1 phone records of Justin Mallory, and Investigator Holdorf
2 told you at 3:35, based on his phone records, he was calling
3 911.

4 Even if you don't agree with that, do you think
5 3:30 is the time? Still not enough time for Mallory. To
6 find Justin, and we will get to that in a little while, get
7 in a fight with his wife, go get a knife, stab her, cause
8 that much blood, and then go to a neighbor's house with not
9 an inch of blood on his clothes to ask for help. Shaheed
10 Hargraves got up here and told you "when he came to my door
11 I didn't see any blood on him." So obviously what he did,
12 he changed clothes to?

13 Ladies and gentlemen, Mallory did not have time to
14 commit the murder. It's not possible.

15 Yeah, they got a great built-in defense already.
16 If it's not possible, why was he tried twice? I told you
17 why. They made a mistake. They didn't look at it
18 objectively. They went through their investigation trying
19 to show as much time as possible for Mr. Mallory to come
20 home and commit this murder. They did that from day one,
21 even before this man started telling all his lies. It's
22 fortunate, but that's what happened.

23 What else do we know? How else do we know all
24 this and Mr. Mallory's statement is the truth, besides the
25 fact that he hadn't changed it from day one?

1 Well, I told you about Mr. Hargraves already, the
2 fact that he didn't see no blood on Mr. Mallory when he came
3 beating at the door, ranting. He told you he could barely
4 hold the phone. He was shaking. He was shaking, because he
5 just came home and found his wife bleeding to death in their
6 house. Think about it. It's not fake emotion. Justin
7 Mallory is reacting the way he knew he himself to be. I
8 mean, that's his reaction. He was visibly shaking, crying,
9 wanting help for his wife. That's what Mr. Hargraves told
10 you.

11 You can listen to the 911 phone call that defense
12 wants to point out that Investigator Holdorf believes was
13 fake. So what? So what if Holdorf thinks that Mr.
14 Mallory's reaction on the 911 tape was fake? What were they
15 doing at the time? Yeah, that was his testimony the first
16 two trials. So what? And he may honestly believe that, I
17 don't know. Or he may -- he may have said it just so that
18 would be even more evidence against him, but one person
19 cannot determine whether or not, when hearing somebody else,
20 if their emotions are genuine or not.

21 I listened to the 911 tape. We played it for
22 y'all. I thought the emotions were genuine. It matches
23 what he found. When he came home that night, he found his
24 wife bleeding. He came home to this scene and his wife
25 laying on the floor.

1 It also corroborates Shaheed Hargraves testimony
2 where he came knocking on the door, because if you listen to
3 that 911 tape, you can hear him going to doors and knocking,
4 asking for help, pleading for it.

5 Who else that was interviewed by law enforcement
6 and came up here and testified before you corroborates that
7 part of the information? Dennis Tentyon. He told you that
8 the last time he looked at his clock it was 3:08 in the
9 morning. And then he said it's an estimation of what time
10 he told law enforcement it was 10 to 15 minutes later the
11 first thing he hears is beating on the door, someone asking
12 for help. Mr. Mallory, beating on his neighbors doors
13 asking for help for his wife.

14 Mr. Tentyon goes on to say "after I hear the
15 beating and yelling for help, I hear a man and a woman's
16 voice," which seems odd, because we know at this point in
17 time Nakia Mallory is not speaking.

18 Listen to that 911 tape again. Just listen to it.
19 Justin Mallory is not talking in a low tone. He's
20 screaming. He's yelling. It's very high pitched. Honestly
21 it sounds like a woman in some parts of the tape. That's
22 what Mr. Tentyon heard, after he heard the beating, the
23 request for help from Mr. Mallory for his wife.

24 And defense wants to put in a lot about Sherry
25 Tribble and what she told law enforcement right after and

1 what she put in her statement and what she came in here and
2 told y'all. And she explained that her statement is not
3 exactly how it reads. That's what she came here and told
4 y'all, because her testimony on this stand was "at 2:18 was
5 the last time that I looked at the clock." 2:18 a.m.. She
6 had just got home from Washington, D.C. around one o'clock
7 in the morning. They went to bed about 1:30, and at 2:18 is
8 the last time that she looked at the clock. And she
9 testified the 30 to 45 minutes that's in her statement was
10 the length of time that she was in bed before she heard the
11 first sound. Again, the 2:18 mark, and that's what she told
12 you on the stand. She said it was "2:18 was the last time I
13 looked at the clock and a few minutes later is when I heard
14 the woman's muffling sound and a break." And the woman,
15 shortly thereafter, the woman again and then a break. And
16 shortly thereafter the woman again saying "how could you?"
17 She said the breaks in between each of the times she heard
18 the woman and then she didn't hear the woman any more. And
19 it was a longer break before she heard the first male voice.

20 Defense wants you to disregard her whole testimony
21 to you. They want you to go back to her statement, which
22 says "it's 2:18 and then approximately 30 to 45 minutes is
23 the first time I hear the woman," but that's not what she
24 told y'all. She remembered what she put in her statement
25 and she told y'all that's not how she meant it. She said 30

1 to 45 minutes in her statement was the length of time that
2 she was in bed, and she went to bed at 1:30, and at 2:18 she
3 looked at her clock and shortly thereafter is the first time
4 she hears the woman's voice. Then a break, the woman's
5 voice again, and then a break, and then a long break before
6 she hears the man.

7 The only troubling part about her testimony,
8 however, is she gets out of bed at the 2:18 and a little bit
9 of -- a little bit after 2:18, after she first hears the
10 woman's voice, and looks out the window and sees Justin
11 Mallory's van. Obviously she's mistaken, because we know a
12 little bit after 2:18 in the morning Justin Mallory's van
13 was not there. How do we know that? He's at the Economy
14 Inn still with Ricki Cook. Three o'clock. At three o'clock
15 he's at the gas station. We know that. We know his van is
16 not at that apartment complex, but the first time she really
17 identifies Justin Mallory in the street lamp is when she --
18 is after these short breaks between the woman's voice and
19 then a long pause and this man's voice. She gets back up.
20 She looks down, she sees a white van catty-corner by the
21 apartment and a man screaming. She told y'all "he looked
22 frantic. He looked out of breath. I didn't know him then,
23 but later came to find out," and she identified him as
24 Justin Mallory. She said "shortly after I saw him, closes
25 the van doors, the van leaves." Well, yeah, because that's

1 the time Justin Mallory gets home and finds his wife, goes
2 and asks for help from neighbors, and does the only thing
3 any person would do - help his wife. So he moves it, gets
4 his van, puts him by the house, picks her up, loads her in
5 the van and speeds off to the nearest hospital.

6 There's nothing wrong with Sherry Tribble's
7 testimony, y'all. It's not like she forgot anything. It's
8 not like she didn't try to explain when defense counsel
9 cross-examined her on it. She had an explanation and she
10 told you the statement, which is it just did not read as it
11 appeared in the statement. And she told y'all, and the
12 testimony before y'all this week, or last week, was "at 2:18
13 was the first time I hear a woman." We know Justin Mallory
14 is the not home, ladies and gentlemen.

15 The only time she positively identifies Justin
16 Mallory and hears anything he says in a frantic pace, not
17 finishing his sentences, is when he's loading his wife in
18 the van to take her to the hospital for help. Everything
19 corroborates the story that Justin Mallory told law
20 enforcement and they want.

21 Again, hate him all you want for cheating on his
22 wife, for lying to Ricki Cook, for wanting to go to the
23 strip club. None of that makes him a killer. None of it.
24 He acted rationally when he got home, as any person who
25 would come home and find their wife in a pile of blood,

1 would be shaking, physically shaking, frantic, hollering,
2 asking for help. All of this is corroborated by the
3 eyewitnesses on the scene; Hargraves, Tentyon, Tribble, all
4 of them.

5 Then he takes her to the hospital. And you heard
6 his second call to 911 at 3:37, while he's en route to the
7 hospital. I take that back. En route to the hospital a
8 little later after 3:37. And, again, defense wants you to
9 use that 3:37 time as the time he comes home. No, 3:35, his
10 phone records. 3:35 is the first call to 9:11. That's the
11 time he used.

12 Then the second 911 coming in. Again he's
13 screaming, "tell them to be ready. I'm bringing her in."
14 He wants help for his wife.

15 You heard from Ivan Neddo. And, you know, Mr.
16 Neddo came in here and told you what he believed he heard.
17 And I think he did that, but I also think he -- he doesn't
18 like Mr. Mallory. And -- but even just listen to his
19 testimony. He told you that he was reviewing the video
20 cameras with the new security guy, training him, and he sees
21 a van coming at a high rate of speed into the hospital
22 parking lot. And then he says "well, he illegally parked."
23 Of course, the guy is carrying his wife who is bleeding to
24 death in the van, no one is going to bother to park
25 correctly. But he told you that he gets out, he is frantic,

1 he is hollering for help, grabs his wife. She's bleeding.
2 He takes her into the hospital, all the while screaming
3 "help us. Help us." He finally gives her over and he goes
4 against the wall and just crashes. That was the first part
5 of his testimony to y'all. It corroborates Justin Mallory's
6 story that he came home and found him wife bleeding, to this
7 scene, this gruesome scene, this scene caused by that man.

8 And Mr. Neddo says that, "you know, I wanted to
9 stay close to Mr. Mallory." I don't know exactly why he
10 wanted to stay close, but he did.

11 And he said he overheard Mr. Mallory talking with
12 his friend saying "bitch bled all over my TV and my Play
13 Station." And defense wants to characterize that and say
14 "Mr. Mallory is only concerned about his TV and his Play
15 Station being bled on." No, ladies and gentlemen, no.
16 Y'all heard Mr. Mallory testify. He told you how he acts.
17 Y'all seen how he reacts when he was answering questions.
18 It's his attitude.

19 And you can see someone says "man, what happened?

20 "Man, I don't know. Bitch bled all over my TV, my
21 X-Box, my Play Station."

22 It's not disdain for his wife. He's in a
23 situation he's never found himself in before. He's scared.
24 He came home to find his wife bleeding profusely, needing
25 help, about to die. No explanation. All he could say is

1 what he thought. Was it a bad choice of words? Of course.
2 It doesn't mean that it wasn't genuine. That's how he acts.
3 He just explained it, "I don't know. Bitch bled all over my
4 TV, my X-Box." There is blood everywhere. That's what he
5 found when he came home and that was caused by that man
6 right there.

7 Now, Ivan Neddo went on to testify, and this is
8 why I say I don't know if he doesn't like Mallory, or what,
9 but he testified that "I have seen many a people react to
10 death," and I would say I don't doubt that he has. People
11 react different, ladies and gentlemen. Y'all know that.
12 Y'all know that. To say Justin Mallory's reactions at the
13 hospital when he finds out his wife is dead, where he goes
14 outside and throws up, throws up, bends over and throws up,
15 and he's going to sit there and this is what he thinks is
16 fake on Mallory? Come on now. He made the same mistake law
17 enforcement did. He made a rush to judgment and he wants to
18 characterize everything that Justin Mallory did that night
19 as some type of admission of guilt. No, ladies and
20 gentlemen, look at all the evidence. Look at the timeline.
21 Mallory did not have time to kill his wife. Domestic
22 arguments do -- if we assume he even had five minutes, it
23 doesn't call that quick. You know, it still doesn't give
24 him to do the things that this defense wants you to believe
25 when he finds Porch there, confronts his wife, go gets a

1 knife, stabs her. In a bloody crime scene, you get no blood
2 on his clothes and goes to the neighbors soon thereafter and
3 knocks for help. It didn't happen that way. And if it did
4 happen the way they want you to believe that Sherry Tribble
5 was sitting there looking at it the whole time, why don't we
6 see him then?

7 Ladies and gentlemen, just look at it objectively.
8 The timeline doesn't fit. We know Mallory didn't do it, and
9 this was before we even get to this man over here. He was
10 innocent from day one. He told law enforcement from day
11 one, "look, I was cheating on my wife. I didn't do it.
12 This is what time I got the home. This is what I found and
13 this is what I did," and everything from that point on
14 corroborates his story, except that law enforcement had its
15 blinders on. Tunnel vision, and it's unfortunate. It's a
16 shame.

17 Then it even gets worse for Mr. Mallory. Law
18 enforcement eventually finds the real killer, although they
19 don't know it at the time, and they believe his lies. From
20 day one they believed Joshua Porch, even though he
21 continuously lied to them over and over, instead of Mallory.

22 Well, look at those lies. Let's see what kind of
23 man this is.

24 In the afternoon of May 14th, 2006, Investigator
25 Randy Strange arrives at his place and asked him "do you

1 have any information?"

2 Mr. Porch says "no, I don't. Wasn't there, don't
3 know anything."

4 For a year -- for over a year he doesn't tell his
5 wife the truth, what he says is the truth now. He doesn't
6 go to law enforcement and "hey, you know what I told y'all
7 the afternoon of the murder, yeah, that's not true. I
8 actually was there when Justin Mallory came home and killed
9 his wife." For a year he says nothing. He says it's
10 because he's scared and he doesn't want to lose his wife.
11 No, that's because he's praying. He's praying and hoping
12 that Mallory goes down for this because they won't look at
13 him any more, because he's the killer. But unfortunately in
14 his haste to clean up this crime scene he missed a couple of
15 drops of blood. He missed it. He missed it under the sink.
16 He missed it on the floor. He thought he got it all, but
17 unfortunately for him he didn't, so his original lie to
18 cover up him stabbing Nakia Mallory wouldn't work any more,
19 so he had to change it. He knew his DNA was going to be
20 there. When Stan Smith came out there the first time, he
21 knew it. That's why he volunteered the information from the
22 get-go. You heard Stan Smith say "yeah, as soon as I asked
23 him about it, he came right forward and said, oh, no, you
24 are going to find my DNA there." Why? According to him is
25 because he cut his hand when he was cutting an apple for his

1 daughter earlier in the day on May 14th, 2006. That was his
2 second story to law enforcement, to cover up his tracks. He
3 had to explain his DNA. They know they would find it.

4 When they came and said "hey, we have got foreign
5 DNA. We have to explain that," he knew it was his, because
6 he killed her and he got cut in the process and he tried to
7 clean it up, but he didn't get it all.

8 And so he told law enforcement that, and he was
9 hoping -- he was hoping -- he was praying that was going to
10 be enough for them to not look at him, but it wasn't.

11 So does he do then? He changes his story again to
12 this July 2nd, 2007 statement, which would ultimately become
13 his testimony in the first two trials against Mallory and
14 what he's now coming back in here to say to y'all is the
15 truth, is what happened. "Don't believe everything that I
16 said in California. This is the truth." Again, not because
17 he wants to help convict Mallory, or he finally has an
18 epiphany to become honest with law enforcement. That's what
19 he wants you to believe. No, it's to cover up his actions.
20 It's to cover up the fact that he stabbed Nakia Mallory in
21 the neck. Not by accident, not in self-defense, but as in
22 murder.

23 But he tells this story to law enforcement,
24 because, one, he's got to explain all of his DNA that they
25 found. And his first story just wasn't holding water, so he

1 comes up with the July 2nd statement. His testimony here
2 today was "no, I was there." Really? "When Justin Mallory
3 came home in the early morning hours of May 14th, 2006,
4 because me and Nakia were making out and we stopped and a
5 little time later Mallory comes home. They get in a fight.
6 Mallory gets an object and strikes her a couple of times.
7 I'm the hero. I tried to break it up. I get cut. That's
8 why my blood is there. These cleaning marks we see, that
9 was me just wiping up my blood, being cut during the
10 altercation between Justin Mallory and Nakia Mallory."

11 Let's look at that for a second. I asked Mr.
12 Porch on cross "was there any other time -- you knew this
13 woman for a year. Was there flirting going on? Holding
14 hands? Any idea that you would think that she would be
15 interested?"

16 "No, none of that."

17 But he wants y'all to believe that he just went
18 over there, popped up at one o'clock in the morning, and Ms.
19 Mallory, who hadn't gave him any vibes in the past year,
20 just started making out.

21 No, ladies and gentlemen. He might have gone over
22 there to try to get some from Ms. Mallory. She wasn't
23 having it. And he knew at that point in time Justin was
24 going to find out. More importantly, Persia is going to
25 find out, and we just can't have it, so he kills her.

1 He wants to blame it on Justin Mallory. He got up
2 on this stand twice - once in front of a jury and once in
3 front of a judge - and tried to send that man to prison for
4 his life to cover up what he did. That's the actions that
5 this man took to cover up his murder, but if you look at it,
6 ladies and gentlemen, his story doesn't make any sense.

7 We went through a whole day getting in DNA
8 evidence for you. We had to go through change of custody
9 witnesses, the DNA expert, and we discussed what DNA was
10 found and where. The blood that was found at the scene that
11 night came from two people - Nakia Mallory and Joshua Porch.
12 Those are the only two. If it's a violent struggle between
13 Nakia Mallory and Justin Mallory, as Mr. Porch wants y'all
14 to believe, why isn't his DNA, his blood there?

15 The only DNA that they find from Justin Mallory is
16 on the couch and on a cigar. Well, he lives there. Of
17 course you are going to have some remnants of DNA on the
18 couch. It's not blood, just DNA. He probably smoked it
19 sometime that day, or the day before. Of course, his DNA is
20 going to be there.

21 The only blood -- blood is a sign of an injury.
22 The only two people's blood that was found on the scene that
23 day was Joshua Porch and Nakia Mallory. This is a violent
24 struggle between Nakia Mallory and Justin Mallory, don't you
25 think he was injured somehow?

1 Let's go further. The shirt that Nakia Mallory
2 was wearing that day was retested. There was a portion of
3 Joshua Porch's blood or DNA found on the right front of her
4 shirt. Not Justin Mallory's blood. 16 cuttings were taken
5 from the shorts and the shirt of Nakia Mallory. 16. Not on
6 one of those was the DNA of Justin Mallory found. Not on
7 one.

8 His was. His DNA was there.

9 A violent altercation between husband and wife and
10 you don't expect to find any DNA on her shirt? But we find
11 his? He wants to explain it, "well, I got cut on the hand."
12 Defense counsel was making all these movements. His DNA is
13 on the shirt because he killed her. He got cut on the hand
14 because he stabbed her and his hand slipped. That's why his
15 DNA is on her. That's why his is the only DNA that you find
16 in the kitchen, where he goes and cleans up. Not Justin
17 Mallory's, but Joshua Porch. His statements don't hold
18 water.

19 Now, granted, law enforcement didn't have the
20 benefit of the shirt and the shorts testing when they still
21 believed his story and put him up. And they did have the
22 DNA testing of his DNA that was found on the scene and on
23 the floor. Defense counsel argued "well, they knew all
24 that. They knew all that. They knew his DNA was there."
25 Well, you are right, they did. Again, they made a mistake

1 and put the blinders on and it was unfortunate. But y'all
2 seen the evidence objectively. That's why the judge found
3 him not guilty, because he's not guilty. He's innocent.

4 Joshua Porch killed Nakia Mallory that night.
5 Justin Mallory, bad timing. The time that he got home, his
6 conduct afterwards, whether you agree with it or not, that's
7 what got him in the situation he got in, but still no fault
8 of his own. He was acting genuinely. Every turn of the way
9 from the time he went into the door to get help, from the
10 time he took her to the hospital, from the time he was
11 calling 911, it's all genuine responses from a husband who
12 came home to find his wife on the floor in her own puddle of
13 blood.

14 The DNA evidence all points to one direction - to
15 that man, Joshua Porch. Nowhere else. No need to look any
16 further. It's Joshua Porch who killed Nakia Mallory that
17 night, but you don't have to stop there.

18 How do we know Justin Mallory is innocent?
19 Finally, in 2009, Joshua Porch in California give some
20 statements. They will be here for you to review.

21 The first thing is "Mallory wasn't there. He
22 didn't do it." Finally. Some inkling of the truth of what
23 happened the night, or the early morning hours of May 14th,
24 2006. Finally.

25 He wants to come back in here, after giving three

1 statements in California, and tell y'all that "no, I was
2 coerced in everything that I said in that statement, because
3 they had threatened my wife and they threatened my
4 brother-in-law." That's what he wants y'all to believe,
5 "that they threatened me from day one and I was just giving
6 them what they wanted," is what he says.

7 Ladies and gentlemen, he lied to law enforcement
8 back then. He lied to juries twice in the Mallory trials,
9 and then he came in here and he lied to you. He wasn't
10 coerced.

11 You have heard McDaniels and Investigator Godfrey
12 get up here and describe their investigation and what they
13 did and what they went over with Joshua Porch when they got
14 to California. When McDaniels approached, he didn't hold
15 nothing back. He -- as a matter of fact, he went up and
16 told y'all, came out his own, "yeah, I went up there, put my
17 hand on his shoulder and said you almost got away with it."
18 He tried to hide that from y'all? No, because that's what
19 he did.

20 What he didn't do was threaten Joshua Porch's
21 family to arrest Persia Porch or to arrest Robert Brown for
22 what they did. Those threats wasn't made.

23 And Joshua Porch, when he gave his first ten page
24 statement, on every piece of paper at the bottom of that ten
25 page statement he signed it saying "I give this statement

1 freely and voluntarily without threat or promises." Ten
2 times he signed that.

3 He wants you just to believe "I did it because I
4 was just doing what they wanted me to do. I didn't want to
5 rock the boat. They threatened my family. I didn't want
6 them to go to jail." No, he did it because they didn't make
7 the threats.

8 And they wasn't feeding him information over and
9 over on these three days -- I say three days. It was
10 actually only two days of interrogation. They knew they
11 wasn't getting the full story from Joshua Porch, because
12 that's what he does, and y'all seen it. From day one to
13 Randy Strange; to the second statement given to Major Smith;
14 to the third statement given to Major Smith. He gives just
15 enough information to serve his needs. He had hoped law
16 enforcement would get off his back, and that's what he was
17 trying to do in California with his first statement saying
18 "I went over there. We were getting into it. She wanted to
19 stop and then she got mad" at him. That was his first
20 statement. That don't make no sense.

21 Second statement. "Well, no, you are right, I was
22 the aggressor. I came on to her. She wouldn't have me. I
23 called her a bitch. She got mad at me for calling her a
24 bitch. I said why are you being like this? Why do you want
25 to start something and then don't want to finish it? And

1 that's why she got upset and went and got the knife."

2 No, the only part of those statements that are
3 particularly true is the fact that Justin Mallory we know
4 was not there any more.

5 He is still giving half-truths. Even in his last
6 statement, when he finally tells the law enforcement
7 officers, "I took it." He finally admits that, because he
8 did. We know the murder weapon was not found, because we
9 know he took it after he stabbed her.

10 THE COURT: Mr. Goings, if you would move that
11 microphone?

12 MR. GOINGS: Because of the closeness?

13 Ladies and gentlemen, Joshua Porch is a proven
14 liar. The only thing he was really honest about in these
15 statements in California, even though he doesn't want y'all
16 to believe it.

17 And let's look at the expense they took to have
18 this false confession person come down here and testify to
19 y'all, to go over, I don't know, what, three hours of
20 testimony it felt like, almost; the scenarios about false
21 confessions and what happens, what games law enforcement
22 plays to get these false confessions.

23 How many cases where they actually studied? Out
24 of the known convictions, 125 of them were false
25 confessions, according to that one flash she put up there,

1 if I can recall. 125. Do you know how many cases -- just
2 think about it. How many crimes are committed in the United
3 States on a given day? Talking millions. Millions of cases
4 a day. Do you know how many of those probably result in a
5 confession? A large majority, but they found a 125. Not
6 125 million, not 125 thousand, but 125 false confession
7 cases, and the majority of those were individuals who were
8 guilty. He was 25 at the time he was interviewed. He was
9 not young.

10 Now, they want you to believe that he came from a
11 troubled background and that makes him more susceptible to
12 false confessions. Did you ever hear one time Dr. Davis
13 tell you -- she's a psychologist, and psychology she got to
14 do the doctor's degree in that. Did she ever tell you that
15 she examined the defendant in this case; personally sat down
16 with him and talked about his background, went over and gave
17 him a psychological evaluation? Because if she did, I
18 didn't hear her.

19 And did she ever tell you that "I have looked at
20 the facts of this case, I have talked with Justin, and it's
21 my opinion that he made a false confession."

22 MR. LUKE SHEALEY: Objection, Your Honor.

23 Can we approach?

24 THE COURT: Yes.

25 (Whereupon, the lawyers approached the bench for

1 an off-the-record discussion)

2 MR. LUKE SHEALEY: Your Honor, just for the record
3 I would move for a mistrial, based on what we discussed.

4 THE COURT: Your objection is noted on the record.
5 This would be taken up at a later point.

6 MR. GOINGS: And you heard her testify, ladies and
7 gentlemen. And you can review it again, if you want to, but
8 it's my understanding of her testimony she would never come
9 into a court and give an opinion as to whether a confession
10 was false. She testified to that.

11 But look at how much she's paid to come in here
12 and just give the factors of what a false confession is.
13 Just put it in your mind. \$2,500 a day is what they had to
14 pay her to bring her down here just to testify about facts
15 that's going to be pretty much every case in a confession is
16 given, because law enforcement uses these techniques all the
17 time. Every law enforcement jurisdiction uses them. They
18 have only found a hundred -- the slide she put up, she said
19 there was other case studies, but the ones she put up 125
20 false confession cases; the majority of those done by
21 individuals who were young.

22 His confession, just because these techniques and
23 strategies that are used by law enforcement, which were
24 normally taught and then most law enforcements use these, do
25 not mean his confession was false. He wants you to believe

1 that, because he wants these statements out of your head.
2 He wants you to believe that, because if you take those
3 statements away and you go back to the original testimony,
4 his actions that night don't seem as bad. But if you know
5 and you go back there and look and you determine that he, in
6 fact, told some truth to law enforcement then when he told
7 you that Justin Mallory was not home when the murder took
8 place, then his actions on -- the fact that -- because if
9 you believe these statements, ladies and gentlemen, the fact
10 that Mallory wasn't home, what does that leave Joshua Porch
11 looking like? It looks like a man who has continuously
12 lied. He testified against an individual twice, and you
13 know that he didn't commit a crime, to cover up your acts.
14 You are not covering the actions -- you are not covering up
15 something that happened in self-defense. You are covering
16 up a murder. His murder. That's from Nakia Mallory.

17 Now, he said he was threatened. I asked him
18 specifically "did you ever ask law enforcement what they
19 were going to charge Persia with?"

20 "No. I think law enforcement is doing their duty.
21 They swore an oath. I don't think that they would lie to
22 me."

23 Come on, ladies and gentlemen. If somebody
24 threatens your wife with charges, the first question out of
25 your mouth is going to -- and you know she didn't do

1 anything, "with what? She didn't do nothing." He is saying
2 he didn't do that. He trusted law enforcement. They swore
3 an oath.

4 I asked him about his brother-in-law, Robert
5 Brown, why law enforcement was going to threaten him.

6 "Well, he cleaned my car." And we are going to
7 get back to that portion in just a second, because that one
8 actually caught me by surprise.

9 But, ladies and gentlemen, if law enforcement is
10 threatening your brother-in-law, and more specifically your
11 wife, with crimes that you know they didn't commit, you
12 don't just start signing away your life. You ask questions.
13 "What are you going to charge them with? They didn't do
14 anything." He tried to explain them out of the situation.
15 Not Mr. Porch. He wants y'all to believe, "no, they told me
16 that, so I just started to tell them what they want." He
17 really didn't tell them what they want. He gave bits and
18 pieces of information along at a time, all to help his own
19 interests. That's why he gives three different statements
20 and he adds a little each time.

21 And law enforcement still do not have a statement
22 that actually speaks the truth. The truth, as you know it,
23 that he killed her that night, left her to die, because he's
24 covering up his actions and he didn't want his wife to find
25 out that he tried to make the moves on Nakia Mallory,

1 because she was going to find out. There is no doubt Nakia
2 Mallory would have told Justin. And Justin -- y'all seen
3 him. You know how he acts. He would have confronted Joshua
4 Porch. Persia Porch would have found out that he tried to
5 cheat on her and his marriage was over. That's what he was
6 trying to cover up.

7 And if he was trying to give law enforcement
8 exactly what they wanted, why didn't he just tell them that
9 from the get-go? Because it's his character to only tell
10 law enforcement enough to hopefully satisfy them to get them
11 from stop to look at him like he's guilty of murder. He did
12 it from day one. "I don't know anything. I wasn't there."

13 He did it on June 27th, 2007. "Yeah, you are
14 going to find my DNA there, because I cut my hand on an
15 apple with my daughter earlier in the day."

16 That didn't work. "Okay, fine, my DNA is there
17 and I cleaned it up, because I saw Justin Mallory -- I was
18 there when Justin Mallory came home and killed his wife and
19 I got cut in the process."

20 To California. "Okay, Justin wasn't there. Y'all
21 are right. I got it right. He wasn't there."

22 "She was the aggressor. She started the make-out
23 session and then she stopped, went and got the knife."

24 To the next statement, "no, I was the aggressor.
25 I started it. She stopped it. I called her a bitch. I got

1 mad at her for starting something that she didn't want to
2 finish. She went and got the knife, but I didn't take the
3 knife. I left it there."

4 To the third statement. "Yeah, you are right. I
5 took the knife."

6 It's not a lie. It's not a false confession.
7 It's part truth. Yes, he went over there that night.
8 Justin wasn't there. He tried to put the moves on her. She
9 got upset. He had to do something. He killed her, took the
10 knife out of her neck, went and cleaned up in the kitchen.
11 He tried to clean up all his blood from the floor, from the
12 sink, and fortunately he missed some of it, and he left her
13 there to die. It's not an accident. He wasn't acting in
14 self-defense.

15 Two days later, he told y'all from that witness
16 stand, just not a few hours ago, Robert Brown, his
17 brother-in-law, did, in fact, clean out his car two days
18 after the murder. Why. Why? Again, to cover up evidence.

19 Mr. Porch wants y'all honestly to believe his
20 statements during cross-examination that he didn't know why
21 Robert Brown would clean out his car. It's his car.

22 He testified "you will have to go ask him."

23 "No, it is your car. You know why he is cleaning
24 it out."

25 No brother-in-law just on the whim goes and cleans

1 out his brother in-law's car. It doesn't happen. Y'all
2 know it doesn't happen, but he got caught. He didn't mean
3 to answer yes when I asked him that question, but he had to
4 explain it away, once he said yes, because he couldn't get
5 out of it. So he lied some more. He told you "I don't know
6 why he was cleaning out my car. You'd have to go ask him."

7 Ladies and gentlemen, we know why he was cleaning
8 out that car. He asked him to do it. He asked him to help
9 cover up the evidence that was in his car from his actions
10 that night on May 14th, 2006.

11 Now, the judge is going to charge you on what the
12 law in South Carolina is concerning murder, concerning
13 voluntary manslaughter, concerning accident, concerning
14 self-defense.

15 And, again, it's odd that the defense wanted to
16 argue this at the end. They wanted to make this seem like
17 you if go down the easy road, this is the stuff you still
18 need to look at. No, they're trying to throw up anything
19 that they can for you to not look at the truth and what the
20 facts are and what his actions tell you what happened that
21 night, because you get to use his actions when you go back
22 there.

23 When you determine whether or not he acted with
24 malice, we have a thing that's called inferred malice in
25 this state. It can be express or it can be implied, meaning

1 that you get the use the acts as a conduct of a person to
2 determine or not -- to determine whether or not they acted
3 with malice at the time. And basically malice is what it
4 boils down to. It's evil intent.

5 And y'all heard me say it over and over you do not
6 lie to law enforcement from day one, change your story to
7 suit your interests, testify against an innocent man twice
8 to cover up an accident, to cover up something that
9 supposedly happened in self-defense. No, you do it to cover
10 up with murder. He wanted to send an innocent man to
11 prison. Ladies and gentlemen, that's conduct that shows you
12 that when he stuck that knife in Nakia Mallory's neck that
13 night, he was doing it with evil intent, to cover up him
14 being found out by his wife.

15 Let's talk about the self-defense argument a
16 little bit.

17 Well, first of all the law on accident.

18 Basically the law on accident is, you know, if you
19 are doing something -- it basically means what it sounds
20 like. It's just an accident. You didn't mean for it to
21 happen and you were doing something lawful at the time. It
22 was an accident.

23 Wrestling over a knife, even if we go by what his
24 statement is, it's not an accident.

25 Self-defense says -- you have to prove four things

1 in the State of South Carolina in order to establish
2 self-defense, and the State has to show beyond a reasonable
3 doubt that at least one of those elements is not there. And
4 those four elements are things like that the defendant
5 couldn't have done anything to contribute to the thing
6 happening, meaning if there is a fight, then it means that
7 the defendant can't claim or can't have caused anything
8 leading up to that fight.

9 Ladies and gentlemen, if you believe the
10 statement, look at it. I mean, self-defense is not there.
11 He called her a bitch, he says. He got mad at her. He
12 called her a bitch in her own home.

13 Now, defense is going to argue words are not
14 enough, and you heard that argument from them. Yeah, words
15 are enough, if you think those words can escalate a person
16 to violence. You calling someone a bitch in their own home
17 that they won't have sex with you? Well, that's going to
18 lead to something violent. Again, even if you just believe
19 what's in his statement, which does not support
20 self-defense.

21 Also the defendant must be in fear of his life is
22 another element of self-defense. In order to strike a
23 lethal blow, the defendant must be in fear of his life.
24 Read his statement. Read his statement. He wasn't in fear.
25 He wasn't scared. He wasn't scared of Nakia. It's all in

1 there.

2 It's not self-defense. It's not an accident. His
3 actions show you that beyond a reasonable doubt. He took
4 her life with malice. He stuck that knife in her neck to
5 cover up -- well, I mean so nobody would find out,
6 especially his wife.

7 If this is a violent altercation, like he
8 suggests, where she goes and gets the knife and he acts in
9 self-defense, look at the wounds that Nakia Mallory
10 suffered. Count them up. You got the diagram. Look at
11 them. The doctor testified multiple abrasions about her
12 head, her cheek, and her neck. You can see the pictures
13 back there. You can look at them. Knife wound to the eye.
14 Abrasion on the cheek. Bruises on the neck. Bruises on the
15 cheek. Stab wound is in her neck. Look at them. Just
16 count them up, the injuries that she suffered that night,
17 compared to what Mr. Porch tells you.

18 We know the only thing he got was a cut on his
19 hand when he stabbed her.

20 Look at the crime scene pictures, the amount of
21 blood. This was not an accident. These are not injuries
22 sustained in self-defense. These are injuries from someone
23 being attacked.

24 She tried to fight him. Remember the DNA under
25 the fingernail? Who is the only person -- well, who do we

1 know was the contributor, according to the DNA analyst? We
2 know it wasn't Mallory's under her fingernail. It was
3 Joshua Porch's DNA. And she got that DNA, we can't exclude
4 from Joshua Porch when she was defending the person who
5 caused all these injuries; all these bruises, those cuts,
6 and that stab wound to the neck, all caused by that
7 defendant Joshua Porch, who is guilty of murder.

8 Thank you.

9 THE COURT: Ladies and gentlemen, once again I'm
10 going to ask that you take a break and not begin to discuss
11 this matter among yourselves, as you have not heard my
12 instructions to you as to the law. I ask that you retire to
13 the jury room for a break and then we will come back and
14 continue on.

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: Mr. Shealey, you moved for a mistrial
18 on the basis of some comments that were made by the State
19 regarding the testimony of Deborah Davis and what her
20 testimony was and what she was asked to do and what she
21 didn't do in this particular case?

22 MR. LUKE SHEALEY: Yes, ma'am, I would like to put
23 that on the record, if I could, at this time.

24 THE COURT: Yes, please.

25 MR. LUKE SHEALEY: Your Honor, my understanding

1 and what I objected to was Mr. Goings argument saying that
2 to the jury, essentially, not once did you ever hear Dr.
3 Davis say that this was a false confession, based on her
4 evaluation of this case.

5 My understanding from the law in this state and
6 from our pretty extensive pretrial hearing on it, and
7 looking at your past transcript involving the same
8 situation, was that the ultimate opinion on this type of
9 thing could not be given in this type of case. She was
10 merely here to educate in terms of the factors that are
11 present in general in false confessions, that I was not -- I
12 was specifically instructed not to draw those conclusions in
13 this case.

14 She could have drawn those conclusions in this
15 case, based on her view of the discovery. She never did
16 psychologically evaluate Mr. Porch, but she could have
17 mentioned numerous factors that were present in this case,
18 but I stayed away from that. So I find it extremely
19 improper and prejudicial against the defense for Mr. Goings
20 to then say "hey, jury, look, she never even told you that
21 it was a false confession. They paid her \$2,500 to be
22 here." She can't even tell you that, because I was not
23 allowed to go into that, and I think that's proper, but I
24 wasn't allowed to, based on your ruling. But it's not
25 proper for him to then insinuate that and directly argue

1 that to the jury. So I felt that at that point I have to
2 object and make a mistrial for going into that at this time.

3 MR. GOINGS: And, Your Honor, the State's
4 position, obviously, is that she testified on direct
5 examination she would never testify or give an opinion that
6 a particular confession was false. That's the only thing
7 that I was trying to argue to the jury. I don't believe
8 it's prejudicial to the defendant, nor require a mistrial at
9 this time.

10 THE COURT: I believe that that's something that
11 can be cured through a curative instruction, so let's talk
12 about --

13 I don't intend to declare a mistrial on that
14 basis. I've not yet charged the jury. So when I do charge
15 them relating to expert testimony, I will be happy to give
16 them a curative instruction as to the testimony that was
17 offered, expert testimony offered about false confessions.
18 And I would propose words to the effect of "Rules of
19 Evidence allow experts to provide testimony which would aid
20 the trier of fact to understand or determine a fact at
21 issue. In this case expert testimony was provided to
22 explain scientific data and conclusions about circumstances
23 leading to false confessions. The testimony was not
24 offered, nor was it allowed for specific conclusions as to
25 whether or not a false confession was given in this case."

1 And I'll go on to tell them that they have to
2 consider, you know, all the evidence, and they can
3 determine, you know, whether to accept or reject her
4 testimony, based upon whether or not they determine it was
5 based upon sufficient education, training, or if it was
6 outweighed by other evidence, or other testimony or other
7 evidence.

8 Any response?

9 MR. LUKE SHEALEY: No, I'm in a tough position,
10 because I think a mistrial is appropriate, and that's why I
11 asked for it. I don't know if -- I think perhaps maybe that
12 generally helps, but I don't know if -- it also calls
13 attention to Mr. Goings argument even that much more, so I
14 don't know if you can cure this type of thing, but, you
15 know, I -- I will leave it to Your Honor, judge. I have
16 asked for what I asked for.

17 THE COURT: Yes, sir, I understand you have asked
18 for a mistrial. I don't think that a mistrial is
19 appropriate. After all, jury argument is not evidence.
20 However, I am sensitive to the conclusions that can be drawn
21 from those arguments. And since my charge on expert
22 witnesses indicates that ordinarily they cannot testify as
23 to conclusions or opinions, that's the opportunity that I
24 have to explain the parameters of her testimony and what
25 specifically she was allowed to testify to, which I think

1 would take away any arguments made by the State that she
2 didn't offer an opinion as to the false confession in this
3 case.

4 I'll give you all a moment to determine whether or
5 not there is something that you want to add or change to
6 those statements. We will take a break and then we will
7 come back.

8 MR. LUKE SHEALEY: A moment to see if there is
9 something we want to add to your curative?

10 THE COURT: Yes.

11 MR. LUKE SHEALEY: I could fashion my own
12 curative.

13 THE COURT: Well, then you can -- you certainly
14 have that opportunity to do so. I mean, if you would like
15 to do that and present it to me, I will be happy to consider
16 it.

17 MR. LUKE SHEALEY: Yes, ma'am.

18 THE COURT: I mean, I wrote mine while the
19 conversation was taking place, so I'm not trying to say it's
20 the only language that can be used, but certainly I wanted
21 to present it in the form of considering the testimony of
22 the witnesses and the credibility, and particularly as it
23 relates to expert witnesses. That's the context in which it
24 was raised. And I chose to do that by trying to rely on
25 Rule 702 for what the language of that particular rule

1 states.

2 We will take a brief break and we will come back.

3 (Whereupon, proceedings were recessed)

4 (Whereupon, proceedings were reconvened)

5 THE COURT: This is the area of false confessions.

6 "This court's ruling was that this expert testimony was used
7 to educate jurors in this case, but that the expert was not
8 allow to give an ultimate opinion in this case whether it
9 was a false confession. Please disregard any comments
10 alluding to the fact that she failed to give an ultimate
11 opinion."

12 MR. GOINGS: I have no problems with it.

13 MR. LUKE SHEALEY: That sounds brilliant to me.

14 MR. GOINGS: I object. They wrote it.

15 THE COURT: And surprisingly I don't really have
16 an opinion about it either, so I don't object to it.

17 Now, I can give that during the course of the time
18 where I talk about the evidence in this case, or during my
19 discussion about expert testimony.

20 MR. LUKE SHEALEY: I would prefer it around expert
21 testimony.

22 THE COURT: Okay. Anything else we need to take
23 up before we bring our jury in?

24 MR. GOINGS: Nothing from the State?

25 MR. LUKE SHEALEY: Nothing from the defense,

1 judge.

2 THE COURT: And you know that door gets locked?

3 THE BAILIFF: Yes, ma'am.

4 THE COURT: Are you going to send somebody?

5 THE BAILIFF: Somebody is coming around the back.

6 As soon as I put them all in their seat, I will lock it.

7 THE COURT: Thank you.

8 THE BAILIFF: Yes, ma'am.

9 THE COURT: You can bring them in.

10 (The following takes place in the presence of the
11 jury panel)

12 THE BAILIFF: The jury is seated, Your Honor.

13 THE COURT: If you will do the outside door
14 instead of that one.

15 THE BAILIFF: Yes, sir.

16 THE COURT: Okay. Go ahead and let them in, and
17 then lock all the outside doors, please.

18 (Whereupon, at 5:50 p.m., the Court charged the
19 jury panel)

20 THE COURT: During this trial, ladies and
21 gentlemen, you and I have certain duties to perform.

22 As the trial judge it's my responsibility to
23 preside over the trial of this case and to rule upon and
24 pass upon the admissibility of evidence that's been
25 presented throughout the course of this trial. And you are

1 to accept only the competent evidence which is before you.
2 To any evidence to which there was an objection sustained,
3 you must not speculate as to what the evidence might have
4 been or the reasons for the objection.

5 Again, you should consider all the evidence, along
6 with any agreements of counsel that have been made a part of
7 the record in this case.

8 Also you should never insinuate to be true any
9 suggestion that's made of a question that's asked of a
10 witness. A question is not evidence, but it can be
11 considered by you only to the extent that it supplies
12 meaning to the answer that was provided.

13 Again, you should consider all the testimony and
14 all the evidence and the exhibits in this matter.

15 Now, in addition, ladies and gentlemen, every case
16 that comes before the court, you all are the sole judges of
17 the facts of this matter. No one can tell you what the
18 facts of this case are. And if I have done anything
19 throughout the course of this trial that's given you any
20 impression that I'm commenting on the facts and I'm telling
21 you what facts to find, I ask that you set that aside as
22 well.

23 Under your oath as jurors you were sworn to accept
24 the law as I charge it to you. Now, if by chance I make
25 some error in that law, then there is another court and

1 another time that could correct those errors of law. But
2 for purposes of this trial, right now this moment, you must
3 accept the law as I charge it to you as being the correct
4 statement of the law.

5 Now, again, in every case tried before a jury,
6 you, the jurors, have become the sole and exclusive judges
7 of the facts. In order to do that, you have to analyze and
8 evaluate the evidence and determine what evidence convinces
9 you of its truth. In order to do that, you have to evaluate
10 the credibility or believability of the witnesses who
11 testified. And credibility is simply a legalistic term
12 meaning believability.

13 In determining the credibility or believability of
14 the witnesses who have testified, you may consider the
15 following factors:

16 What was the manner and appearance of the witness
17 who testified?

18 Was he or she hesitant or straightforward in
19 answering the questions?

20 Was the testimony of a witness consistent or
21 inconsistent?

22 How did the witness come to know the facts that he
23 or she testified? What was his or her ability to know these
24 facts?

25 Is there a reason that a witness would want to

1 give testimony that would help one side or the other? In
2 other words, was the witness' testimony biased or prejudiced
3 in some manner?

4 And was the testimony of a witness strengthened or
5 weakened by other testimony or other evidence?

6 Now, ladies and gentlemen, ordinarily under our
7 Rules of Evidence witnesses cannot testify to opinions or
8 conclusions. An exception exists for those that we call
9 expert witnesses. Those are witnesses, who, because of
10 their education or training, they profess to be an expert in
11 some art or science. And you may consider any -- and they
12 may express an opinion in the area which they profess to be
13 an expert. You should consider any expert opinion that has
14 been offered in this case and give it the weight that you
15 think that it deserves.

16 If you should determine that an expert's opinion
17 is not based upon sufficient education or training, or if
18 it's outweighed by other evidence, or the reasons given to
19 support the opinion are not sound, then you are free to
20 disregard that particular witness' testimony or opinion.

21 An expert's opinion is to be given no greater
22 weight than from any other witness who testifies simply
23 because that person professes to be an expert, and you are
24 not required to accept an expert's opinion, even though it
25 may be uncontradicted.

1 Now, in this particular case, ladies and
2 gentlemen, expert testimony was heard regarding the area of
3 false confessions. This court made rulings that the expert
4 was allowed to testify in an effort to educate the jurors in
5 this particular case, but the expert was not allowed to give
6 an ultimate opinion in this case whether there was a false
7 confession given. So I'm going to ask you, ladies and
8 gentlemen, to please disregard any comments alluding to the
9 fact that the expert in this case failed to give an ultimate
10 opinion as to whether or not a false confession was given.
11 That was not her role in this particular matter. It was
12 simply to educate you in that area, for you to make the
13 decision as to, along with all the other evidence in this
14 case, to determine whether or not there was, in fact, a
15 false confession.

16 Now, ladies and gentlemen, when you consider all
17 of the witnesses testimony in this case, you may believe in
18 judging their credibility, you may believe one witness
19 against several witnesses, or you may believe several
20 witnesses against one witness.

21 You may believe a portion of a witness' testimony
22 and disregard other portions of that same witness'
23 testimony.

24 And if you have a good and sufficient reason for
25 doing so, you may accept the witness' testimony in its

1 entirety, or you may reject it in its entirety.

2 These factors -- you may also consider whether or
3 not a witness' testimony has been impeached or challenged by
4 prior other inconsistent statements.

5 And if you determine that a witness' testimony has
6 been impeached, you may give any or all the witnesses
7 present, or prior testimony, the weight that you think that
8 it deserves.

9 These factors you should not exercise arbitrarily,
10 but if in your good judgment there is reason for you to
11 consider these factors, then you should do so.

12 Your objective, ladies and gentlemen, is to
13 determine the truth. And you do not determine the truth by
14 counting the number of witnesses who have testified for one
15 side or the other. The truth isn't determined by counting
16 witnesses. The law simply requires that when you exercise
17 your mental processes and coming up with what you consider
18 to be truthful evidence, that you should use your good
19 common sense, your sense of logic and reasoning. Use your
20 experiences in life. You then apply these attributes to the
21 evidence and determine what you, the jury, consider to be
22 truthful evidence. And then to those true statements of
23 fact as determined by you, you apply the law as I charge it
24 to you, and then you will be able to arrive at your verdict.

25 Ladies and gentlemen, your verdict should not be

1 based upon sympathy, passion or prejudice. By your verdict
2 you have no friends to reward and you have no enemies to
3 punish. Your verdict should simply speak the truth.

4 Now, there are two types of evidence that are
5 normally generated during the course of a trial. One is
6 direct evidence and the other is circumstantial evidence.

7 Direct evidence directly proves the existence of a
8 fact and does not require any deduction.

9 Circumstantial evidence is a proof of a chain of
10 facts and circumstances that indicate the existence of a
11 particular fact.

12 Now, crimes can be proven by circumstantial
13 evidence, and the law doesn't make any distinction between
14 the weight or the value to be given to either direct
15 evidence or circumstantial evidence.

16 Now, to the extent that the State relies on
17 circumstantial evidence, all of the circumstances must be
18 consistent with each other, and when taken together point
19 conclusively to the guilt of the accused beyond a reasonable
20 doubt. If these circumstances merely portray the
21 defendant's behavior as suspicious, then the burden of proof
22 has failed.

23 The State has the burden of proving that the
24 defendant is guilty beyond a reasonable doubt, and the
25 burden rests with the State, regardless of whether the State

1 relies on direct evidence, or circumstantial evidence, or a
2 combination of the two.

3 Now, ladies and gentlemen, once again, I instruct
4 you that the fact that this defendant was arrested and
5 charged in this indictment presented is not evidence and
6 cannot be considered by you as evidence of guilt in this
7 particular case, nor does it create any presumption or
8 inference of guilt. The documentation, this indictment in
9 this matter, is simply the formal written document on which
10 we are able to come into court and have a trial and go
11 forward with the evidence in the trial of this particular
12 matter.

13 Now, to this indictment the defendant has pleaded
14 not guilty, and that plea casts the burden upon the State to
15 prove that the defendant is guilty, because a person who is
16 charged with committing a criminal offense in South
17 Carolina, or anywhere in this country, is never required to
18 prove that they are innocent.

19 Ladies and gentlemen, I charge you that it is a
20 very important and cardinal rule of evidence that the
21 defendant in a criminal trial, no matter how serious the
22 charges against him may be, is always presumed to be
23 innocent, and is innocent of the crime, until he is
24 convicted by evidence that satisfies you of his guilt beyond
25 a reasonable doubt.

1 Now, the presumption of innocence does not end
2 when you go into the jury room. The presumption of
3 innocence stays with him from the time that he first makes
4 an appearance here in court, until such time as you return a
5 verdict of guilt that's based upon evidence that convinces
6 you of that guilt beyond a reasonable doubt.

7 Now, you have heard comments alluded that the
8 Supreme Court has stated that the presumption of innocence
9 is like a robe of righteousness that's placed about the
10 defendant, and it casts that the defendant in the class of
11 the innocent, unless, and until, that robe is stripped from
12 him by evidence that satisfies you of that guilt beyond a
13 reasonable doubt.

14 Now, ladies and gentlemen, the presumption of
15 innocence is not just some nice legal theory. It's not just
16 some idea that we follow. It is a very important and
17 cardinal rule of law that must be followed and is the
18 principle by which our Constitution is established, and it
19 again means that the defendant is innocent, until you are
20 convinced of his guilt by evidence that satisfies you of
21 that guilt beyond a reasonable doubt.

22 Now, ladies and gentlemen, what is reasonable
23 doubt? The Government has the burden of proving each and
24 every element of the crime charged by proof beyond a
25 reasonable doubt.

1 Now, some of you may have served as jurors in
2 civil cases in which you were told that it was only
3 necessary that a fact had to be proven more likely true than
4 not true. Well, in criminal cases the Government's burden
5 is more powerful than that. It is proof beyond a reasonable
6 doubt.

7 Proof beyond a reasonable doubt is proof that
8 leaves you firmly convinced of the defendant's guilt.

9 Now, there are very few things that we know in
10 this world with absolute certainty, and the law does not
11 require proof that overcomes every possible doubt.

12 But if, based upon your consideration of all of
13 the evidence that has been presented in this case, you think
14 that the defendant -- that you are firmly convinced that the
15 defendant is guilty of the crime of which he's been charged,
16 then you must find him guilty.

17 If, on the other hand, after considering all of
18 the evidence that's been presented in this case, you believe
19 there is a real possibility that he is not guilty, then you
20 must give him the benefit of that doubt and find him not
21 guilty.

22 In this particular case, ladies and gentlemen, a
23 statement, both written statements and a video statement,
24 have alleged to have been made by the defendant have been
25 admitted into evidence in this case. And while the court

1 has determined that the statement is admissible, I instruct
2 you now, ladies and gentlemen, that you make the ultimate
3 decision as to whether or not the defendant made that
4 statement. And if you determine that the defendant did, in
5 fact, make the statement, then you must determine whether
6 the statement was made by the defendant voluntarily and of
7 his own free will. This means that the statement was not
8 caused by pressure, force, fear, threats, coercion, or
9 intimidation, or by hope or a promise of leniency, or a
10 reward of any kind.

11 In determining whether the statement was
12 voluntary, you should consider both the characteristics of
13 the defendant and the details of the questioning.

14 Some of the factors that you must consider are the
15 age of the defendant; the defendant's education, or lack of
16 education; the defendant's mental ability or capacity; the
17 defendant's IQ or intelligence; the defendant's background
18 and environment; the place and length of detention; the
19 nature of the questioning; and the advice, or lack thereof,
20 to the defendant of his Constitutional Rights.

21 Those rights include, but are not limited to, the
22 right to remain silent; that any statement could be used
23 against him in a court of law; the right to have a lawyer
24 present; that if he could not afford a lawyer, a lawyer
25 would be appointed to represent him without any costs; and

1 that he could stop making a statement at any time.

2 You must carefully consider all the surrounding
3 circumstances before you give any weight to the alleged
4 statement.

5 The State has the burden of proving beyond a
6 reasonable doubt that the statement was voluntary. If you
7 determine that it was, then you may give the statement any
8 further consideration that you deem proper. You must decide
9 what weight, if any, should be given to the statements in
10 this case.

11 If you determine that a statement was not the free
12 and voluntary statement of the defendant, you should not
13 consider the statement at all.

14 Now, ladies and gentlemen, the defendant in this
15 case has been charged with murder.

16 The State must prove beyond a reasonable doubt
17 that the defendant killed another person with malice
18 aforethought.

19 Malice is hatred, ill will, or hostility towards
20 another person. It is the intentional doing of a wrongful
21 act without just cause or excuse and with an intent to
22 inflict an injury, or under circumstances that the law will
23 infer an evil intent.

24 Malice aforethought does not require that malice
25 exists for any particular time before the act is committed,

1 but malice must exists in the mind of the defendant just
2 before and at the time the act was committed. Therefore,
3 there must be a combination of previous evil intent and the
4 act.

5 Malice aforethought may be expressed or inferred.
6 And the terms expressed or inferred do not refer to
7 different types of malice. It is just the manner in which
8 malice may be shown to exists; that is, either by direct
9 evidence or by inference from the facts and circumstances
10 which are proved.

11 Express malice is shown when a person speaks words
12 which express hatred or ill will for another, or when the
13 person has prepared beforehand to do the act which was later
14 accomplished.

15 For example, lying in wait for a person, or any
16 other acts of preparation going to show that the deed was
17 within the defendant's mind would be express malice.

18 Malice may be inferred from conduct showing a
19 total disregard for human life.

20 Included within the offense of murder is the
21 lesser included offense of voluntary manslaughter.

22 To prove voluntary manslaughter, the State must
23 prove beyond a reasonable doubt that the defendant took the
24 life of another person in sudden heat of passion, based upon
25 sufficient legal provocation.

1 Both heat of passion and sufficient legal
2 provocation must be present at the time of the killing to
3 constitute voluntary manslaughter.

4 Sudden heat of passion may for a time affect a
5 person's self-control and temporarily disturb a person's
6 reasoning.

7 Sudden heat of passion must be the type that would
8 make an ordinary person unable to coolly reflect on his
9 actions and would produce an uncontrolled impulse to do
10 violence.

11 Sufficient legal provocation must be the type that
12 would make a person of ordinary reason and caution become
13 enraged and to lose control, at least temporarily.

14 The provocation needed for voluntary manslaughter
15 must come from some act of the victim, or related to the
16 victim. For example, an overt threatening act, or physical
17 encounter, or unprovoked attack with a deadly weapon.

18 Words alone, however, no matter how vulgar or how
19 insulting, are not enough to be legal provocation.

20 Where death is caused by the use of a deadly
21 weapon, the words must be accompanied by some overt
22 threatening act which could have produced the heat of
23 passion.

24 The exercise of a legal right, no matter how
25 offensive it is to another, is never sufficient legal

1 provocation for voluntary manslaughter.

2 If the heat of passion had cooled, or if there was
3 enough time between the provocation, if any, and the killing
4 for the passion of a reasonable person to cool, then the
5 killing would not be voluntary manslaughter.

6 In deciding whether a reasonable person had enough
7 time to cool off, you should consider all of the
8 circumstances surrounding the killing.

9 You may consider the nature of the provocation, if
10 any; the defendant's mental and physical state; and the
11 circumstances and relationships between the parties.

12 Now, there are some defenses that have been
13 claimed in this particular case. The defendant has raised
14 the defense of accident.

15 An act may be excused on the ground of accident if
16 it is shown that the act was unintentional, that the
17 defendant was acting lawfully and that reasonable care was
18 used by the defendant in the handling of a weapon.

19 For example, if a person is lawfully armed in
20 self-defense and a gun accidentally discharges, the defense
21 of accident would apply.

22 The burden is on the State to prove beyond a
23 reasonable doubt that the act was not an accident, but was
24 caused by the negligence or carelessness on the part of the
25 defendant, or by unlawful activity by the defendant.

1 The defendant has also raised the defense of
2 self-defense.

3 Self-defense is a complete defense, and if it is
4 established, you must find the defendant not guilty.

5 The State has the burden of disproving
6 self-defense by proof beyond a reasonable doubt.

7 If you have a reasonable doubt of the defendant's
8 guilt after considering all the evidence, including the
9 evidence of self-defense, then you must find the defendant
10 not guilty.

11 On the other hand, if you have no reasonable doubt
12 of the defendant's guilt, after considering all of the
13 evidence, including the evidence of self-defense, then you
14 must find the defendant guilty.

15 The following elements are required to establish
16 self-defense:

17 First, the defendant must be without fault in
18 bringing on the difficulty.

19 If the defendant's conduct was the type which was
20 reasonably calculated to and did provoke a deadly assault,
21 the defendant would be at fault in bringing on the
22 difficulty and would not be entitled to an acquittal based
23 on self-defense.

24 Self-defense is not available to a person who uses
25 language which is so contemptuous that a reasonable person

1 would expect it to bring on a physical encounter and which
2 did actually contribute to the physical encounter.

3 The second element of self-defense is that the
4 defendant was actually in imminent danger of death or
5 serious bodily harm, or that the defendant actually believed
6 he was in imminent danger of death or serious bodily harm or
7 injury.

8 If the defendant was actually in imminent danger,
9 it must be shown that the circumstances would have warranted
10 a person of ordinary firmness and courage to strike the
11 fatal blow to prevent death or serious bodily injury.

12 If the defendant believed he was in imminent
13 danger of death or serious bodily injury, it must be shown
14 that a reasonably prudent person of ordinary firmness and
15 courage would have had the same belief.

16 In deciding whether the defendant actually was, or
17 believed he was, in imminent danger of death or serious
18 bodily injury, you should consider all the facts and
19 circumstances surrounding the crime, including the physical
20 condition and characteristics of the defendant and the
21 victim.

22 The defendant does not have to show that he was
23 actually in danger. It is enough that the defendant
24 believed he was in imminent danger and a reasonably prudent
25 person of ordinary firmness and courage would have had the

1 same believe.

2 The defendant has the right to act on appearances,
3 even though the defendant's beliefs may have been mistaken.

4 It is for you, the jury, to decide whether the
5 defendant's fear of imminent danger of death or serious
6 bodily injury was reasonable and would have been felt by
7 ordinary person in the same situation.

8 Words accompanied by hostile acts may, depending
9 on the circumstances, establish self-defense.

10 The final element of self-defense is that the
11 defendant had no other probable way to avoid the danger of
12 death or serious bodily injury than to act as the defendant
13 did in this particular instance. In other words, the
14 defendant has a duty to retreat, unless there was no
15 probable way to avoid the danger than to act as the
16 defendant did in this particular instance.

17 However, the defendant has no duty to retreat, if
18 by doing so the danger of being killed or suffering serious
19 bodily injury would increase.

20 A lawful guest in another's home has no duty to
21 retreat before using deadly force in self-defense against an
22 intruder.

23 A lawful guest is a person who enters the premises
24 of another by either express or implied invitation.

25 However, a guest does have a duty to retreat,

1 where possible, if the attacker is the owner or occupier of
2 the property.

3 A person cannot be required to make an exact
4 calculation as to the degree or amount of force which may be
5 needed to avoid death or serious bodily harm. Therefore, in
6 self-defense the defendant has the right to use the force
7 that's needed to avoid death or serious bodily harm.

8 The force used in self-defense does not have to be
9 limited in degree or amount of force used by the victim.
10 The defendant has the right to use so much force as appeared
11 to be necessary for complete self-protection and which a
12 person of ordinary reason and firmness would have believed
13 to be needed to prevent death or serious bodily harm.

14 If the defendant is justified in defending
15 himself, then the defendant is also justified in continuing
16 to use force until it is apparent that the danger of death
17 or serious bodily injury has completely ended.

18 Now, ladies and gentlemen, when you have
19 considered all of the evidence in this case and you have
20 determined the facts, based upon the evidence, and you apply
21 the law as I charged it to you, then it would be time --
22 then you will be able to arrive at your verdict and it will
23 be time for your foreperson to complete the verdict form,
24 and I'll go over the form with you, Mr. Foreman.

25 It says we, the jury, unanimously find Joshua

1 Porch, there's a space, "guilty of murder";

2 Or, guilty of voluntary manslaughter;.

3 Or, not guilty.

4 There is no significance to the order in which I
5 put them on the page. I have to put one first, I have to
6 put one second, and I have to put one third.

7 Ladies and gentlemen, you should consider all of
8 the evidence that's been presented in this case. You
9 consider whether or not the State has proven beyond a
10 reasonable doubt that the defendant, Joshua Porch, is guilty
11 of murder. If you find that the State has met that burden,
12 then you would check that box, and you would sign your name,
13 Mr. Foreperson;

14 Or, if you determine that the State has not proven
15 that the defendant was guilty, you may consider voluntary
16 manslaughter. Did the State prove beyond a reasonable doubt
17 that the defendant was guilty of voluntary manslaughter, as
18 I charged that to you? If you find that the State proved
19 that, then you would check that box and sign your name;

20 Or, after considering all of the evidence in this
21 case, including the evidence related to all of the defenses,
22 if you determine that the State has failed in its burden of
23 proving either guilty of murder or guilty of voluntary
24 manslaughter beyond a reasonable doubt, then you would check
25 not guilty.

1 In other words, if you have a reasonable doubt as
2 to the guilt of murder or guilt of voluntary manslaughter,
3 after considering all of the evidence, including the
4 evidence of both accident and self-defense, and you
5 determine that the State has failed to disprove accident and
6 the State failed to disprove self-defense beyond a
7 reasonable doubt, then your verdict would be not guilty, and
8 sign your name again.

9 So you only check one box. You cannot check more
10 than one box.

11 Ladies and gentlemen, your verdict must be
12 unanimous. It must be the verdict of all twelve of you.

13 You have been sworn as fair and impartial jurors
14 to determine the facts of this particular case, based upon
15 the evidence that has been presented and based upon the law
16 as I have instructed you. And when you have done that and
17 determined your verdict, then no one can complain about the
18 verdict that you have reached and you would have fully
19 discharged your duty and your responsibility as jurors in
20 this particular matter.

21 Again, ladies and gentlemen, your verdict should
22 simply speak the truth. It should have not be based upon
23 sympathy, passion, or prejudice. Again, your verdict should
24 simply speak the truth.

25 At this time, ladies and gentlemen, I'm going to

1 ask that you retire to the jury room. And before you begin
2 any deliberations the law requires that I consult with the
3 attorneys to see if I have omitted anything from my
4 instructions to you.

5 If I have not omitted anything, then the
6 indictment, which is the charging document, the verdict
7 form, as well as all of the exhibits will be sent back to
8 you to begin your deliberations.

9 Mr. Foreman, if throughout the course of your
10 deliberations there are any questions that come up and you
11 would like for us to try to answer those questions, if you
12 will write the question on a sheet of paper, sign your name,
13 knock on the door and give it to the bailiff and we will try
14 to answer your question.

15 If, however, you have no questions, when you reach
16 your verdict, if you will knock on the door at that time and
17 tell them that you have reached a verdict in this case.

18 Now, based upon my earlier questions to you, you
19 have indicated that you would like to deliberate until at
20 least nine o'clock, and I will not disturb you during that
21 time. I will leave it up to you to tell me when you are
22 ready to go home for the evening.

23 And if you need any -- if you would like to look
24 at the exhibits that are CD's or DVD's and you need
25 equipment to review those, please let me know so that I can

1 accommodate you in that particular regard.

2 I would tell you as well that I do not have a
3 written copy of my charge to give to you. If you need to
4 hear additional -- rehear any portions of the charge, I will
5 be more than happy to do that. You will just need to tell
6 me what portions, if you decide to you want to do that.

7 I'm going to ask that you --

8 As to the alternates, again, your role has been
9 extremely important. If one of your fellow jurors had been
10 unable to complete service and you would stepped into that
11 person's shoes, I will ask if you will both wait outside the
12 jury room and I'll come and talk to you in just a few
13 moments and excuse you from any further services as
14 necessary.

15 At this time I'll ask that you return to the jury
16 room and await further instructions.

17 (Whereupon, at 6:23 p.m., the jury panel went to
18 the jury room, awaiting instructions to begin
19 deliberations).

20 THE COURT: Are there any exceptions to the
21 charge, by the State?

22 MR. GOINGS: None from the State, Your Honor.

23 THE COURT: By the defense?

24 MR. LUKE SHEALEY: No, ma'am.

25 THE COURT: Please come and look at all these

1 exhibits. As I understand it, there are a few exhibits that
2 are not in evidence that were marked, but they were not
3 admitted.

4 There are some of the photographs, I think.

5 There is the property report, No. 33.

6 There are two photographs, as I understand, Nos.
7 26, 27, 33.

8 MR. LUKE SHEALEY: Your Honor, something just
9 occurred to me. We have got several videos in evidence. We
10 have got the video for the statement. We have got an Exxon
11 video. I don't know what device is going to be back there
12 in order for them to play it, but I would not want it to be
13 the solicitor's computer. I don't know what's on that
14 computer. They may say defense lawyers are liars, or
15 something, but I just -- I don't know what it's going to be,
16 but I would object to it being prosecution equipment, for
17 the record.

18 THE COURT: We can look at that. I don't know
19 necessarily what computer is available that they could use,
20 but be might just have to bring them back into court so they
21 could hear it.

22 (Off the record)

23 (Back on the record)

24 THE COURT: So you all have agreed on all the
25 evidence.

1 Have you looked at the indictment? The verdict
2 form and the indictment.

3 MR. GOINGS: No objection.

4 MR. LUKE SHEALEY: No objection from the defense.

5 THE COURT: Okay. You may tell them they may
6 begin their deliberations.

7 (Whereupon, at 6:33 p.m., the jury panel was
8 instructed to begin deliberations)

9 THE COURT: We will stand in recess until we hear
10 from them further.

11 Let me ask. Do you all want to let the alternates
12 go home, not release them; or release them and just go from
13 there, in the event that something happens?

14 MR. LUKE SHEALEY: I prefer to play it safe, Your
15 Honor.

16 MR. GOINGS: If we are going to do that, that they
17 can't discuss the case.

18 THE COURT: Right, I have instructed them not to.

19 MR. LUKE SHEALEY: That's probably the safest
20 thing.

21 THE COURT: So you don't have any problem with
22 them leaving the building and going home and just not
23 hanging around here?

24 MR. LUKE SHEALEY: I don't have a problem.

25 MR. GOINGS: No objection from the State.

1 MR. LUKE SHEALEY: I don't have a problem, judge,
2 with that.

3 THE COURT: Just as long as we know how to get
4 ahold of them. And I'll instruct them that they should not
5 discuss the testimony with anyone.

6 (Off the record)

7 (Back on the record)

8 (DVD marked as Court's Exhibit No. 5 for
9 identification)

10 THE COURT: The note from the jury that says "we
11 would like to see the tape of the defendant when he was
12 being questioned in California."

13 And the clerk's office has a television and a DVD
14 player, and so -- but we figured bringing them back in the
15 courtroom wasn't going to be any better than what they heard
16 played back, so they are going to carry that to them and
17 I'll just mark this note.

18 MR. GOINGS: And, Your Honor, it should play. I
19 know the original one we had was a DVD and it played through
20 a DVD player, and I'm assuming by office did it the same way
21 again, although I didn't look at it, but it could play on
22 the DVD player.

23 THE COURT: They will tell us if they have a
24 problem.

25 We'll just mark this note and I'll let you know

1 when it gets in there so they can start looking at it.

2 (Jury Note marked as Court's Exhibit No. 6 for
3 identification)

4 THE COURT: And I told the two alternates that
5 they would not be excused. They could leave. I have their
6 numbers. They should not discuss it with anyone and they
7 should not allow anyone to approach them to discuss it,
8 until they receive the phone call from us.

9 We will stand in recess until we hear back from
10 them.

11 (Whereupon, at 6:45 p.m., proceedings were
12 recessed, pending the verdict of the jury panel)

13 (Whereupon, at 7:10 p.m., proceedings were
14 reconvened)

15 THE COURT: State's Exhibit No. 50 did not play.
16 They are going to bring -- they have to bring them up. But
17 I just want to get the preliminary and State's Exhibit No.
18 50 did not play on the DVD player because it's a Windows
19 Media file.

20 Sergeant Watkins, or lieutenant, or whatever his
21 rank is -- Watson has found a clean computer. It is a scrub
22 computer, but it did come from the solicitor's office, so I
23 want you all to look on it. There is no access to the
24 Internet, and we have checked both Google Chrome and
25 Internet Explorer and it's -- I didn't look at the documents

1 to see if there were any documents on it, but it's
2 apparently one that they have used in another case when they
3 needed to play stuff, so I'm going to have it brought in
4 here so you all can look at it and examine it to see if it's
5 sufficient and then we will see if it works.

6 MR. LUKE SHEALEY: Probably one I made them use in
7 that other case.

8 THE COURT: And then I have another note from the
9 jury about charge.

10 MR. LUKE SHEALEY: All right.

11 THE COURT: For which we will bring out Mr. Porch.

12 MR. LUKE SHEALEY: Yes, ma'am.

13 (Off the record)

14 (Back on the record)

15 THE COURT: We good?

16 MR. LUKE SHEALEY: Yes, ma'am.

17 THE COURT: Is there anything we need to take up
18 before we bring the jury in?

19 MR. GOINGS: Nothing from the State.

20 MR. LUKE SHEALEY: No, ma'am.

21 (Jury Note marked as Court's Exhibit No. 7 for
22 identification)

23 THE COURT: Okay. Let's bring them in.

24 (Whereupon, at 7:20 p.m., the jury panel returned
25 to the courtroom)

1 THE BAILIFF: The jury is seated, Your Honor.

2 THE COURT: Mr. Foreman, I received a note from
3 you that says "we will need clear definitions on intent,
4 definition of murder, definition of voluntary manslaughter,
5 included malice, etcetera."

6 Is that the note that you sent?

7 JURY FOREMAN: Yes, ma'am.

8 THE COURT: At this time, ladies and gentlemen,
9 what I will do is I will reinstruct you on the law as it
10 relates to murder and involuntary manslaughter -- I'm sorry,
11 voluntary manslaughter.

12 The defendant in this case has been charged with
13 murder.

14 The State must prove beyond a reasonable doubt
15 that the defendant killed another person with malice
16 aforethought.

17 Malice is hatred, ill will, or hostility towards
18 another person. It is the intentional doing of a wrongful
19 act, without just cause or excuse, and with an intent to
20 inflict an injury, or under circumstances that the law would
21 infer an evil intent.

22 Malice aforethought does not require that malice
23 exists for any particular time before the act is committed,
24 but malice must exist in the mind of the defendant just
25 before and at the time the act is committed. Therefore,

1 there must be a combination of previous evil intent and the
2 act.

3 Malice aforethought may be express or implied.
4 And that, again, does not refer to different types of
5 malice. It's just the manner in which malice may be shown
6 to exists; that is, either by direct evidence or by
7 inference from the facts and circumstances which are proved.

8 Express malice is shown when a person speaks words
9 which express hatred or ill will for another, or when the
10 person prepared beforehand to do the act which was later
11 accomplished.

12 So, for example, lying in wait for a person, or
13 any other acts of preparation going to show that the deed
14 was within the defendant's mind would be expressed malice.

15 Malice may be inferred from conduct showing a
16 total disregard for human life.

17 Included within the offense of murder is the
18 lesser included offense of voluntary manslaughter.

19 To prove voluntary manslaughter the State must
20 prove beyond a reasonable doubt that the defendant took the
21 life of another in the sudden heat of passion, based on
22 sufficient legal provocation.

23 Both heat of passion and sufficient legal
24 provocation must be present at the time of the killing to
25 constitute voluntary manslaughter.

1 Sudden heat of passion may for a time affect a
2 person's self-control and temporarily disturb a person's
3 reason. The heat of passion must be the type that would
4 make an ordinary person unable to coolly reflect on his
5 actions and would produce an uncontrollable impulse to do
6 violence.

7 Sufficient legal provocation must be the type that
8 would make a person of ordinary reason and caution become
9 enraged and to lose control temporarily.

10 The provocation needed for voluntary manslaughter
11 must come from some act of the victim, or related to the
12 victim. For example, an overt threatening act or physical
13 encounter for an unprovoked attack with a deadly weapon.

14 Words alone, however vulgar or insulting, are not
15 enough to be legal provocation.

16 Where death is caused by the use of a deadly
17 weapon, the words must be accompanied by some overt
18 threatening act which could produce the heat of passion.

19 The legal exercise -- I'm sorry, the exercise of a
20 legal right, no matter how offensive it is to another, is
21 never sufficient legal provocation for voluntary
22 manslaughter.

23 If the heat of passion had cooled, or if there was
24 enough time between the provocation, if any, and the killing
25 for the passion of a reasonable person to cool, the killing

1 would not be voluntary manslaughter.

2 In deciding whether a reasonable person would have
3 had enough time to cool off, you should consider all the
4 circumstances surrounding the killing. You may consider the
5 nature of the provocation, if any; the defendant's mental
6 and physical state; and the circumstances and relationships
7 between the parties.

8 And, ladies and gentlemen, since you did not ask
9 me to charge about any defenses, I will not do that at this
10 particular time.

11 That concludes my instructions to you as to the
12 offense of murder and the lesser included offense of
13 voluntary manslaughter.

14 I would ask that you return to the jury room and
15 continue your deliberations.

16 We do have -- I understand that the tape did not
17 play in the DVD player, so we have secured a computer and
18 the speakers that you would use in order to play that
19 particular tape. We did test it, so it does work, and we
20 will take that into the jury room with you so that you can
21 look at the video.

22 If you will return to the jury room and continue
23 on with your deliberations.

24 (Whereupon, at 7:27 p.m., jury panel returned to
25 the jury room to continue deliberations)

1 THE COURT: Is there anything further at this
2 time?

3 MR. LUKE SHEALEY: No, ma'am.

4 MR. GOINGS: Nothing from the State, Your Honor.

5 THE COURT: All right. And this note about the
6 charge is Court's Exhibit No. 7, and we will stand in recess
7 until we hear from them further. Thank you.

8 (Whereupon, at 7:28 p.m., proceedings were
9 recessed, pending the verdict of the jury panel)

10 (Whereupon, at 8:00 p.m., proceedings were
11 reconvened)

12 THE COURT: All right, I received another note
13 from the jury that says "are we able to obtain the legal
14 definition of murder and voluntary manslaughter in writing?
15 Yes or no?"

16 MR. LUKE SHEALEY: Your Honor, I guess -- are you
17 asking for comments from the gallery, on us?

18 THE COURT: Yes.

19 MR. LUKE SHEALEY: I guess the way I usually dealt
20 with this, I guess the concern is that by having them having
21 it in writing, it puts more emphasis on it, or something. I
22 would just ask that it be recharged, if necessary, and --
23 that would be the defense's position. I don't think -- I
24 don't think I can remember too many times, or if at all,
25 that charges have actually been sent back there.

1 MR. GOINGS: Your Honor, the only -- the State's
2 position, and we will leave it in your discretion, I guess,
3 it can't just be those parts of the charge. It's got to be
4 the whole charge, if you send it back.

5 THE COURT: Well, I wasn't planning on sending it
6 back. I was just planning on answering really their
7 question. I have no problem writing down exactly what
8 murder is, which is killing another person with malice
9 aforethought.

10 And voluntary manslaughter is taking the life of
11 another person in the sudden heat of passion, based on
12 sufficient legal provocation.

13 MR. LUKE SHEALEY: Isn't that part of your charge,
14 though?

15 THE COURT: That's -- that's the definition of
16 both of those. I mean, it doesn't go into any detail or any
17 explanation.

18 I don't -- I don't know whether that will prompt
19 them to ask something specific, or there is something else
20 they want to hear, or --

21 MR. LUKE SHEALEY: I would just object to anything
22 that's going back that is only part of the charge. I
23 think -- I don't know if it's appropriate to send any
24 charges in writing, because it gives that undue emphasis.
25 And like the State says, if it's going to be any, it should

1 be all, but I would just say that you maybe read them again,
2 if you would like to read the exact definition, but not to
3 send it back.

4 THE COURT: Because what they asked me for
5 included -- they wanted information about intent and malice,
6 and this time they are asking for -- it just says "the legal
7 definition of murder and voluntary manslaughter."

8 MR. LUKE SHEALEY: Yes, ma'am.

9 We object to the written form being sent back.

10 THE COURT: What I have written is "I cannot give
11 you my written instructions. I will be happy to recharge
12 you the law, if you want."

13 Anything else?

14 MR. GOINGS: Nothing from the State, Your Honor.

15 MR. LUKE SHEALEY: No, ma'am.

16 THE COURT: Mr. Talbert, if you will give this to
17 the foreperson, ask him to read it, and save the note. Do
18 not crumble it up, throw it out, tear it up or --

19 THE BAILIFF: Keep it.

20 THE COURT: To keep the note.

21 THE BAILIFF: Yes, ma'am.

22 THE COURT: Thank you.

23 We will wait until we hear from them.

24 (Whereupon, at 8:05 p.m., proceedings were
25 recessed, pending the verdict of the jury panel)

1 (Whereupon, at 8:08 p.m., proceedings were
2 reconvened)

3 THE COURT: "We would like you to read the
4 definition of murder and voluntary manslaughter slowly,
5 please."

6 (Jury Note marked as Court's Exhibit No. 8 for
7 identification)

8 THE COURT: And so with that we will bring them
9 in.

10 (Whereupon, at 8:11 p.m., the jury panel returned
11 to the courtroom)

12 THE BAILIFF: The jury is seated, Your Honor.

13 THE COURT: Mr. Foreman, you have written me a
14 note indicating that you would like to hear the definition
15 of voluntary manslaughter and murder again, is that correct?

16 JURY FOREMAN: Yes, sir.

17 THE COURT: I'll do my best to read it slowly.

18 JURY FOREMAN: Thank you.

19 THE COURT: Again, ladies and gentlemen, the
20 defendant has been charged with murder.

21 The State has the burden of proving beyond a
22 reasonable doubt that the defendant killed another person
23 with malice aforethought.

24 Malice is hatred, ill will, or hostility towards
25 another person. It is the intentional doing of a wrongful

1 act, without just cause or excuse, and with an intent to
2 inflict an injury, or under circumstances that the law will
3 infer an evil intent.

4 Malice aforethought does not require that malice
5 exists for any particular time before the act is committed,
6 but malice must exists in the mind of the defendant just
7 before and at the time the act is committed. Therefore,
8 there must be a combination of previous evil intent and the
9 act.

10 Malice aforethought may be implied or -- I'm
11 sorry, may be inferred or expressed. And, again, those are
12 just the manner in which malice is shown to exists; that is,
13 either by direct evidence or by inference from the facts and
14 circumstances which are proved.

15 Express malice is shown when a person speaks words
16 which express hatred or ill will for another, or when a
17 person prepared beforehand to do the act which was later
18 accomplished.

19 So, for example, lying in wait for another person,
20 or any other acts of preparation going to show that the deed
21 was within the defendant's mind would be express malice.

22 Malice may be inferred from conduct showing a
23 total disregard for human life.

24 Voluntary manslaughter is a lesser included
25 offense of murder.

1 To prove voluntary manslaughter the State must
2 prove beyond a reasonable doubt that the defendant took the
3 life of another in sudden heat of passion, based on
4 sufficient legal provocation.

5 Both the heat of passion and sufficient legal
6 provocation must be present at the time of the killing to
7 constitute voluntary manslaughter.

8 Sudden heat of passion may for a time affect the
9 person's self-control and temporarily disturb a person's
10 reason.

11 The heat of passion must be the type that would
12 make an ordinary person unable to coolly reflect on his
13 actions and would produce an uncontrollable impulse to do
14 violence.

15 Sufficient legal provocation must be the type that
16 would make a person of ordinary reason and caution become
17 enraged and to lose control temporarily.

18 The provocation needed for voluntary manslaughter
19 must come from some act of the victim, or related to the
20 victim. For example, an overt threatening act, or physical
21 encounter, or an unprovoked attack with a deadly weapon.

22 Words alone, however vulgar or insulting, are not
23 enough to be legal provocation.

24 Where the death is caused by the use of a deadly
25 weapon, the words must be accompanied by some overt

1 threatening act which could produce the heat of passion.

2 The exercise of a legal right, no matter how
3 offensive it is to another, is never sufficient legal
4 provocation for voluntary manslaughter.

5 If the heat of passion had cooled, or if there was
6 enough time between the provocation, if any, and the killing
7 for the passion of a reasonable person to cool, the killing
8 would not be voluntary manslaughter.

9 In deciding whether a reasonable person would have
10 had enough time to cool off, you should consider all the
11 facts and circumstances surrounding the killing. You may
12 consider the nature of the provocation, if any; the
13 defendant's mental and physical state; and the circumstances
14 and relationships between the parties.

15 Now, let me tell you, ladies and gentlemen, I see
16 several of you taking notes. With regard to those notes,
17 those notes are only to be used for your purposes in
18 refreshing your recollection of what was said. Just because
19 one person took notes doesn't mean that the notes of that
20 person controls over the individual recollection or notes of
21 any other person. They are to be used solely by you to
22 refresh your own recollection as to what was stated in this
23 matter; that is, if someone remembers the charge or
24 instructions differently from what someone else has written
25 down, the fact that it's written down by one person is not

1 to be given preference over what someone individually
2 remembers.

3 So at this time, ladies and gentlemen, I ask that
4 you return to the jury room and continue with any
5 deliberations that you may have.

6 (Whereupon, at 8:18 p.m., the jury panel returned
7 to the jury room to continue deliberations)

8 THE COURT: Is there anything further from the
9 State or from the defense?

10 MR. GOINGS: Nothing further from the State, Your
11 Honor.

12 MR. LUKE SHEALEY: No, ma'am.

13 THE COURT: This note is Court's Exhibit No. 8.
14 We will stand in recess until we hear from them
15 further. Thank you.

16 (Whereupon, at 8:20 p.m., proceedings were
17 recessed, pending the verdict of the jury panel)

18 (Whereupon, at 8:35 p.m., proceedings were
19 reconvened)

20 THE COURT: The current note says "can we take
21 into account the actions of the defendant after the stabbing
22 to determine murder or voluntary manslaughter?"

23 MR. LUKE SHEALEY: I would say no, because it's
24 malice aforethought, not malice afterthought. So -- I mean,
25 I think they can take into anything they want in terms of

1 credibility on whether they can believe him or not, but I
2 don't think they can say if he lied, he's a bad guy, that's
3 malice. So that's I think pretty clear, per the law, it has
4 to be malice aforethought, if that's what they mean.

5 THE COURT: I give it you exactly how they wrote
6 it.

7 MR. GOINGS: Our position is that they are allowed
8 to consider all the acts and the conduct of the defendant to
9 determine what his state of mind was, including everything
10 he did afterwards.

11 MR. LUKE SHEALEY: No, that's a misstatement of
12 the law. It's malice aforethought.

13 If they are talking about proving murder and
14 malice at the time -- you know, if you kill someone in
15 self-defense and be scared that it happened and then lie and
16 do various things afterwards to cover it up, even though it
17 might have been a justified killing. So it's malice at the
18 time of the event. So I don't know -- I just don't know if
19 that's what they mean or not. I mean, that sounds like
20 that's what they mean. It sounds like -- they have been
21 asked to be charged on murder versus voluntary. It sounds
22 like they are asking about malice, in particular, so I would
23 ask that you instruct them no, it's malice aforethought.

24 THE COURT: Anything further from the State?

25 MR. GOINGS: The State rests on its original

1 argument, Your Honor. I believe the law says that conduct
2 can be used to determine malice. We believe the acts
3 afterwards can also be used by the jury.

4 (Off the record)

5 (Back on the record)

6 THE COURT: While I would -- yeah, I mean, I agree
7 with the defense, that obviously the state of mind has to
8 exists at the time of the act occurred. And whether that's
9 malice or whether that's heat of passion with sufficient
10 legal provocation, I think, you know, there is no question
11 that it has to exists at the time that the act was
12 committed. But I think in terms of all the facts and
13 circumstances which may have a bearing as to whether or not
14 the requisite intent existed at the time the act was
15 committed should be considered by the jury. And, you know,
16 it's up to them to determine what evidence that is and
17 whether or not it shows that either the defendant had malice
18 or ill will at the time, or, you know, that there was heat
19 of passion with sufficient legal provocation. So I think
20 that they can consider that within those parameters.

21 Now, the question is how to communicate that to
22 the jury so that they can adequately consider it, in light
23 of the way that they have written the question.

24 MR. LUKE SHEALEY: What is your --

25 Well, number one, it's generally --

1 For the record I disagree with anything that the
2 jury can consider that malice can somehow be gleaned from
3 something that happened after. Every single charge and
4 every single case on malice, it says it must be malice
5 aforethought. You know, it even goes and gives context to
6 it, whether it's -- it doesn't have to be necessarily days
7 lying in weight. It just has to be formed just prior and
8 during the fatal blow.

9 And I you think there is cases and things saying
10 obviously evidence of flight, certainly that that might go
11 to the inference of guilt, but not to actual mental state
12 itself.

13 So I have got a problem with that. I will except
14 your ruling however you sound that, but you could always
15 just recharge your charge that discusses malice again and
16 see if that helps them, but I don't -- I don't know how to
17 fashion things different, but I completely disagree that all
18 the circumstances --

19 You know, one -- I don't think -- I guess they are
20 thinking about this whole case and whether the State's
21 assertion that he lied numerous times, that that goes to
22 whether they believed his version of events; truthfulness,
23 his credibility. It doesn't go to whether he had malice at
24 the time, if they believed the State's version that this
25 fatal encounter happened. So I -- I don't have anything

1 else on that regard, except an objection, or to perhaps
2 recharge malice, your definition.

3 MR. GOINGS: Honestly, judge, I don't know either.
4 I don't know what they're wrestling over. I don't know what
5 issues they asked. I mean, I suppose -- we are not in
6 there. I don't know exactly what they are talking about.

7 The best course may be is just to recharge them on
8 your definition of malice, and it contains the language
9 referred to the defendant's conduct.

10 THE COURT: I mean, the only other thing I know to
11 tell them is that I'm not sure what the question is asking,
12 although it looks like it's in plain English.

13 MR. LUKE SHEALEY: All I would suggest is to
14 recharge, judge. I don't know, but if you -- I'll leave
15 that up to you. That's all I would be comfortable with is
16 recharging your malice charge. Otherwise, I think they are
17 going to take an impermissive inference on how malice is
18 created under our laws.

19 I will note that it's past nine o'clock right now,
20 that they previously indicated they would be willing to work
21 until nine. I think you just commented that there is
22 somewhat impatient in there right now, which makes me think
23 that they want to --

24 THE COURT: They -- they want an answer.

25 MR. LUKE SHEALEY: Right, but because maybe they

1 want to be able to go get this over with so they can go
2 home, which I think is not --

3 I would ask that they be charged, be released, so
4 that they can think about this and not make a decision on
5 this case based on being tired.

6 THE COURT: I mean, the only -- the only other
7 thing I could tell them is that -- you know, that was --
8 what I started out by saying is that, you know, for murder
9 it must be a killing with malice aforethought; and for
10 voluntary manslaughter -- it must be, you know, malice
11 aforethought at the time the act was committed. And for
12 voluntary manslaughter, it -- you know, there must be both
13 heat of passion and provocation at the time the act
14 occurred, and just say I don't understand -- you know, I
15 don't know what you are trying to get at.

16 MR. LUKE SHEALEY: Well, I actually like your more
17 full malice charge, because it does describe what the law
18 commands about malice and it doesn't have to be two weeks
19 before, it doesn't have to be a day before. It just has to
20 be just before and during the moment, and that gives them
21 some context that it's not after. I don't want these jurors
22 thinking it's malice after the thought is all that matters,
23 because I completely disagree that's the state of the law.
24 So at least that way it gives them the idea of the direction
25 it goes before, how much before. At least that gives them

1 some context.

2 THE COURT: What I wrote, "I cannot answer the
3 question as written. Malice or sudden heat of passion and
4 sufficient legal provocation must exists at the time of the
5 act. I will be happy to recharge you on the law."

6 MR. LUKE SHEALEY: I have no objection to that,
7 Your Honor.

8 MR. GOINGS: Nothing from the State, Your Honor.

9 THE COURT: Okay.

10 MR. LUKE SHEALEY: And, Your Honor, do you know
11 how much longer you plan on having them deliberate today?

12 THE COURT: Until they tell me they want to go.
13 When they tell me -- when they send me a note saying "I want
14 to go home," and I told them that earlier. I mean, I have
15 never had a jury that says when they give me a time.
16 Sometimes I have had them go past the time to get home, and
17 sometimes I have had them say we are ready to go home.

18 And I can also put on here "I'll be happy to
19 recharge you on these elements in the morning," if you would
20 like.

21 MR. LUKE SHEALEY: I would appreciate that. I
22 mean, I'm just concerned that they are going to -- they
23 think they have to get it done tonight. I don't know.

24 THE COURT: And I told them earlier -- I mean,
25 when I went in to ask them about their work, I told them

1 that I don't want them to rush through it and that, you
2 know, that I can bring them back tomorrow without any
3 problem.

4 MR. LUKE SHEALEY: I'm just concerned when people
5 don't make good decisions, important decisions, when they
6 are tired. I just -- I don't know what they are thinking
7 back there, and I haven't really stayed past this much ever,
8 but I'm just -- you know, sometimes we ask for normal
9 working hours. Obviously we are running into the holidays
10 and we don't want to get two more days down the road and run
11 into Thanksgiving, but I don't think we really run into that
12 danger of that. I think they can get it done tomorrow,
13 but --

14 THE COURT: I don't think anybody -- I don't think
15 anybody has a problem with Tuesday.

16 MR. LUKE SHEALEY: That's what I would suggest.

17 THE COURT: I know somebody has got a problem with
18 Wednesday. He told me he would not be here Wednesday.

19 MR. LUKE SHEALEY: I would request that they be
20 allowed to retire for the night and start fresh again
21 tomorrow.

22 MR. GOINGS: Your Honor, the State's position is
23 we will leave it up to the jury. If they want to go home,
24 go home. If they want to keep working.

25 THE COURT: I wrote "I cannot answer your question

1 as written. Malice or sudden heat of passion and sufficient
2 legal provocation must exists at the time of the act. I
3 will be happy to recharge you on these elements. Please let
4 me know what you would like to do."

5 And that's gives them an open door to say "we want
6 to go home," or "we want to continue," or "we are want to
7 hear it," or nothing at all.

8 Again, if you will give them the note and have the
9 foreperson share it and not to destroy it, but to save it.

10 THE BAILIFF: Yes, ma'am.

11 THE COURT: Thank you.

12 We will wait to hear from them. We will stand in
13 recess.

14 (Whereupon, at 9:15 p.m., proceedings were
15 recessed, pending the verdict of the jury panel)

16 (Whereupon, at 9:17 p.m., proceedings were
17 reconvened).

18 THE COURT: I sent the note to them and the
19 response I got is "there is no need to recharge the
20 elements. We will have a decision shortly." That's signed
21 by the foreperson.

22 (Jury Note marked as Court's Exhibit No. 9 for
23 identification)

24 (Off the record)

25 (Back on the record)

1 THE COURT: They got a verdict. They have
2 indicated they have a verdict.

3 (Off the record)

4 (Back on the record)

5 (Whereupon, at 9:23 p.m., proceedings were
6 reconvened)

7 THE COURT: Ladies and gentlemen, I understand
8 that the jury has reached a verdict in this case.

9 We are about to receive the jury back into the
10 courtroom to receive their verdict. I tell you that there
11 should be no outburst, no sighs, no screams, no yelling, or
12 any comments, any show of emotion. If you think that you
13 may not be able to control your emotions when the verdict is
14 read, I ask that you leave the courtroom at this time. And
15 the deputies are present to make sure that order is
16 maintained in the -- that there is order maintained in the
17 courtroom. That's done for the safety of all the
18 individuals within the courtroom. So I'm giving you this
19 opportunity at this time. If you think that you could not
20 sit quietly without any display of emotion when the verdict
21 is read, I ask that you please leave the courtroom at this
22 time.

23 (No response).

24 THE COURT: Is there anything from the State?

25 MR. GOINGS: Nothing from the State, Your Honor.

1 THE COURT: Anything from the defense?

2 MR. LUKE SHEALEY: No, ma'am.

3 THE COURT: This note is from my juror who needs a
4 work excuse.

5 You may ask the jury to come in.

6 (Whereupon, at 9:25 p.m., the jury panel returned
7 to open court to report its verdict)

8 THE BAILIFF: The jury is seated, Your Honor.

9 THE COURT: Mr. Foreman, I understand that you all
10 have reached a verdict, is that correct?

11 JURY FOREMAN: Yes, we have.

12 THE COURT: Would you please pass it to the
13 bailiff?

14 Madam Clerk, would you please publish the verdict?

15 THE CLERK: In the Court of General Sessions,
16 Fifth Judicial Circuit, The State of South Carolina, County
17 of Richland, in the matter of the State of South Carolina
18 versus Joshua Porch, Indictment Number 2011-GS-40-3359, we,
19 the jury, unanimously find Joshua Porch guilty of murder.

20 Signed by the foreperson and dated 11-25-13.

21 Mr. Foreman, is this your verdict and the verdict
22 of the entire jury?

23 JURY FOREMAN: Yes, ma'am.

24 THE CLERK: Thank you.

25 THE COURT: Do the parties wish to poll the

1 jurors?

2 MR. LUKE SHEALEY: Yes, ma'am.

3 THE COURT: Ladies and gentlemen, the clerk will
4 call your name or your juror number. She will ask you two
5 questions. Those questions will be: Was this your verdict
6 and is it still your verdict. And I ask that you answer
7 according to your conscience.

8 THE CLERK: Demond June, Number 139, was this your
9 verdict?

10 JUROR NUMBER 139: Yes, ma'am.

11 THE CLERK: Is it still your verdict?

12 JUROR NUMBER 139: Yes, ma'am.

13 THE CLERK: Dexter Smith, Number 248, was this
14 your verdict?

15 JUROR NUMBER 248: Yes, ma'am.

16 THE CLERK: Is it still your verdict?

17 JUROR NUMBER 248: Yes, ma'am.

18 THE CLERK: Errick Bethel, number 20, was this
19 your verdict?

20 JUROR NUMBER 20: Yes, ma'am.

21 THE CLERK: Is the still your verdict?

22 JUROR NUMBER 20: Yes, ma'am.

23 THE CLERK: Rosa Washington, number 277, was this
24 your verdict?

25 JUROR NUMBER 277: Yes, it was.

1 THE CLERK: Is it still your verdict?

2 JUROR NUMBER 277: Yes, it is.

3 THE CLERK: Patrick McMahon, number 171, was this
4 your verdict?

5 JUROR NUMBER 171: Yes, ma'am.

6 THE CLERK: Is it still your verdict?

7 JUROR NUMBER 171: Yes, ma'am.

8 THE CLERK: Carly Perry, number 203, was this your
9 verdict?

10 JUROR NUMBER 203: Yes, ma'am.

11 THE CLERK: Is it still your verdict?

12 JUROR NUMBER 203: Yes, ma'am.

13 THE CLERK: Vanessa White, number 286, was this
14 your verdict?

15 JUROR NUMBER 286: That's correct.

16 THE CLERK: Is it still your verdict?

17 JUROR NUMBER 286: That is correct.

18 THE CLERK: Toni Odom, number 193, was this your
19 verdict?

20 JUROR NUMBER 193: Yes, it was.

21 THE CLERK: Is it still your verdict?

22 JUROR NUMBER 193: Yes, it is.

23 THE CLERK: Patrick Mcelderry, number 169, was
24 this your verdict?

25 JUROR NUMBER 169: Yes.

1 THE CLERK: Is it still your verdict?

2 JUROR NUMBER 169: Yes.

3 THE CLERK: Richard Smith, number 251, was this
4 your verdict?

5 JUROR NUMBER 251: Yes.

6 THE CLERK: Is it still your verdict?

7 JUROR NUMBER 251: Yes.

8 THE CLERK: Shannon Purvis, number 211, was this
9 your verdict?

10 JUROR NUMBER 211: Yes, ma'am.

11 THE CLERK: Is it still your verdict?

12 JUROR NUMBER 211: Yes, ma'am.

13 THE CLERK: James Ferreira, number 86, was this
14 your verdict?

15 JUROR NUMBER 86: Yes, ma'am.

16 THE CLERK: Is it still your verdict?

17 JUROR NUMBER 86: Yes, ma'am.

18 THE CLERK: The jury is polled.

19 THE COURT: Ladies and gentlemen, the court is not
20 concerned with the verdict that you reached so much as I'm
21 concerned with the process by which you reach your verdict.
22 You listened to the evidence as it was presented throughout
23 the course of this trial and you have made the decision as
24 to what the evidence showed in terms of the facts. You also
25 listened to my instructions as to the law and applied that

1 law to the facts as determined by you. And having done so
2 you arrived at your individual, and no one can complain
3 about the verdict that you have reached and you have fully
4 discharged your duty and your responsibility as jurors in
5 this particular matter.

6 On behalf of the State I would like to thank you
7 and the county I would like to thank you very much for your
8 services last weekend, this week. Your jury service, of
9 course, is concluded. I ask that you return to the jury
10 room for your work forms, return to work forms. There will
11 be checks sent to you in the mail for your service for
12 today, unless you have them.

13 THE CLERK: No.

14 THE COURT: If you will, please leave with us the
15 plastic portion of your badge. The white portion is your
16 souvenir for jury service. Thank you very much for your
17 service and have a good Thanksgiving.

18 (Whereupon, at 9:28 p.m., the jury panel was
19 discharged)

20 (Off the record)

21 (Back on the record)

22 THE COURT: Are there any motions at this time?

23 MR. LUKE SHEALEY: Yes, ma'am, at this time the
24 defense would make a motion for a new trial, considering all
25 the objections, motions, the denial to the directed verdict

1 that we made; considering the barely three hours the jury
2 had to consider a case that took well over a week, two
3 investigations.

4 You could see specifically that juror, Ms. Purvis,
5 sitting there crying, you know, almost as if it wasn't her
6 verdict. She did acknowledge it.

7 I asked us for not to be working past nine, but we
8 ended up doing that.

9 I would specifically cite some of the motions. I
10 renew all of them in regard to mistrials regarding Mr.
11 Goings mischaracterization of expert opinion in closing; the
12 mistrial motion regarding the gay/sexual commentary that was
13 allowed to be introduced into evidence that unfairly
14 prejudiced the jury; the mistrial motion based on the drug
15 commentary, which was played in front of the jury about our
16 client, what drugs he did or didn't do, which was solicited
17 by law enforcement; the fact that that video was even
18 allowed to be played without Investigator Cohen being here
19 from California; the fact we were limited by not having
20 Andelyn Rodriguez allowed to testify to her specific threat
21 that she wrote in a little statement to law enforcement of
22 Mr. Mallory choking Nakia Mallory and threatening to kill
23 her in the past, but that limited our right to present a
24 complete and full defense; as well as limited Joshua Porch
25 and his testimony, limited Joshua Porch concerning to what

1 he could say regarding the six and a half interrogation with
2 Ms. Cohen, and typically because she didn't come, he was not
3 allowed to go into that. It was almost as if it had never
4 existed.

5 We would -- we simply would object and renew our
6 motion to allow us to discuss further with Sergeant Strange
7 the Andelyn Rodriguez incident. We were only allowed to say
8 a threat in the past had occurred. We felt that was further
9 prevented our right to present a complete and full defense.

10 We object to your prior ruling saying the
11 pathologist could be testified in the way it was, even
12 though he was dead, his pathology report was ruled to be not
13 testimonial in nature.

14 We object to and would seek a new trial based on
15 the failure to give a jury charge on not letting someone get
16 the drop on you.

17 And one of our original motions in March when Mr.
18 Aiken argued regarding judicial estoppel.

19 Those are all the ones I can think of right now,
20 but if I haven't listed any other objections or motions or
21 mistrial motions, I would renew those as well, so we would
22 ask for that new trial at this time.

23 THE COURT: Any response from the State?

24 MR. GOINGS: Just briefly, Your Honor.

25 The State would reiterate all the arguments it's

1 made to all the mistrial motions, all the pretrial motions,
2 and everything that has been ruled upon before.

3 As to the length of deliberations, the jury at no
4 time appeared or stated they wanted to go home. They
5 weren't directed to deliberate that long. It was like they
6 came to a conclusion. Everybody was polled. Even if she,
7 Ms. Purvis, was upset, she did acknowledge her verdict.

8 THE COURT: Considering all the motions that have
9 been made and all the reasons cited for the motion, I will
10 deny the request of the defense. I think I gave ample
11 reasons and sufficient legal reasons for the rulings that
12 were made, particularly with respect to the presentation of
13 the evidence.

14 And as it relates to the pretrial motions, I think
15 the reasons for those were stated at the hearing.

16 I don't recall any renewal related to the
17 estoppel, other than the general renewal motions, and I
18 believe I ruled on the estoppel issue at the hearing in
19 March of this year.

20 As it relates to the juror, all of the jurors did,
21 in fact, when they were polled, affirmed their verdict. And
22 while there was one juror who was crying, the other jurors
23 certainly displayed some type of -- well, the other jurors,
24 when I shook their hand and said -- you know, were visibly
25 moved by whatever verdict that they reached, they still all

1 affirmed that it was their verdict and still their verdict
2 at the time that they were polled.

3 The length of time relating to the deliberations,
4 you know, we never know what the jury considers at the time
5 that they reviewed the evidence. Certainly over the course
6 of a week they heard information about the statements over
7 and over and over again. They heard about the circumstances
8 over and over and over again, and so -- the recap in closing
9 arguments certainly brought to the forefront issues for them
10 to consider. I think that they had -- each juror was able
11 to consider those factors. And the length of time that they
12 deliberate is not directly in correlation to whether or not
13 they had sufficient time, based upon all the evidence that
14 was presented. I think over the course of the week they had
15 enough time to consider as the testimony came in and in
16 considering it and in considering the closing arguments of
17 the attorneys. So I'll deny your motion on those basis.

18 Are we ready to go forward with the sentencing?

19 MR. GOINGS: The State is ready, Your Honor.

20 MR. LUKE SHEALEY: Unless Your Honor ruled
21 otherwise.

22 THE COURT: We can go forward.

23 Yes, sir, Mr. Goings.

24 MR. GOINGS: Thank you, Your Honor.

25 If it pleases the court, obviously the jury

1 believed the State's case, that the defendant took the life
2 of Nakia Mallory on May 14th, 2006. The heinous nature of
3 the crime, the brutal injuries she received that night, not
4 only the fatal stab wound, all goes to the heinous nature of
5 this particular murder; the fact that the defendant allowed
6 her to bleed out, left her there to die; the fact that he
7 committed the murder while her children were sleeping in the
8 back bedroom.

9 At this point in time we have several individuals
10 from the family who want to address the court, as well as
11 Sergeant McDaniels who wants to address the court.

12 The State will be seeking life and request a life
13 sentence.

14 The family is here. I believe the mother of the
15 victim wants to address the court. The father of the victim
16 wants to address the court. And Mr. Mallory, the husband of
17 the victim, wants to address the court at the appropriate
18 time, as well as Sergeant McDaniels.

19 THE COURT: Yes. Tell me your name, please.

20 MICHELLE RILEY: Michelle Riley.

21 THE COURT: Yes, ma'am.

22 MICHELLE RILEY: Your Honor, as Nakia's mother I
23 feel a strange sorrow, hurt, and a sense of loss I cannot
24 describe. I saw my daughter the day before her death. She
25 was so happy. She told me "mom, I don't have any money

1 because I need a battery for my car." I found I spent a lot
2 of time, and tomorrow referring to Mother's Day, her last
3 day alive. I was so looking forward to our time together,
4 time that would never happen, that never happened, and never
5 will happen. Then I see visions of her in her coffin. My
6 baby, I just cannot believe it. She called me every day.
7 She would say things like "mom, what are you doing? What
8 are you cooking," or how to cook for this her family and "I
9 love you." I forever been deprived of my one and only
10 daughter. I forget she's gone and still expect the phone to
11 ring sometime. It doesn't and the reality sets in. She had
12 a wonderful relationship, as well as my daughter-mother
13 bond. She was my only daughter. I miss her so. Nakia's
14 daughter Gabbie and son Justin, Jr. Are what helps me give
15 me strength to make it each day. Gabbie would have been
16 turning three on July the 29th at the time of her murder and
17 Justin was 15 months old. I gave Gabbie a birthday party,
18 something that I knew Nakia would have done. Gabbie had to
19 celebrate this without her mother. This was a very
20 difficult time for any child, because they want their mommy.
21 She asked for mommy. Those are difficult moments we all
22 have had to deal with. I don't know if Gabbie saw what
23 happened to her mother, but she used to wake up screaming
24 "I'm scared, I want my mom," and jump out of bed and run
25 through the house shortly after her mother's death. I kept

1 my grandchildren a lot to help Nakia when she was working
2 and needed rest or wanted to go out with Justin. Casey also
3 helped. They loved watching their niece and nephew and
4 seeing and helping their big sister. I still wonder if
5 Gabbie saw anything and she was affected by this.

6 Justin Jr. Was late walking. He was 15 months
7 when Nakia died and had not started to walk. Nakia had
8 taken him to the doctor trying to see if something was wrong
9 with his foot or leg. She was so concerned and it was her
10 dream to see him walking. I wish so bad for Nakia could see
11 him walking and in school and know that everything is all
12 right with his leg and that he is a smart funny little boy.

13 Just seeing all of these milestones that Nakia
14 will not be able to witness hurts me. She will miss
15 birthdays, holidays, and first days of school, graduations,
16 proms, and seeing her children grow up and get married. Not
17 only will Nakia miss out, but so will my grandchildren. It
18 brings so much pain. I try to think of Nakia, what Nakia
19 would do when planning for the children.

20 Casey, Nakia's brother, graduated high school four
21 days after I buried Nakia. He was grief stricken and still
22 feels the pain to this day because of the death of his
23 sister. He sits us down some of the time. He says it's
24 okay, but I know that he's trying to be strong for me and
25 all of us. He talks about how much Nakia was looking

1 forward to being at his graduation and supporting him as his
2 education begins towards his goal of becoming a doctor. He
3 was an honor student and I'm hoping that the death of his
4 sister does not affect his future. He still talks about the
5 Monopoly games that his sister used to play with him to the
6 day that she was taken from us. He remembers those days and
7 treasures every moment he got with his sister and all the
8 love she showed him. He talks of how much support she was
9 for him and his love for her.

10 Henry, Nakia's youngest brother, he is hurt by
11 Nakia's death as well. He said that he relied on Nakia for
12 support with school and social life. She was the one that
13 kept him on the right path anytime he veered off and she was
14 there to help and guide him back. He could count on her to
15 tell him what was right and to keep his secrets. She was a
16 good big sister and he misses her a lot. He goes out to the
17 grave site once a week at night and cries. He regularly
18 watches over the grave and cleans it up.

19 Both of them have talked about what would have
20 happened if they stayed the night again, like they were
21 planning to. They asked each other questions like could
22 that have been prevented and think that if they were there
23 she would still be here.

24 Randy. Nakia's father called me every day. He
25 said that he felt like giving up. Some days he didn't think

1 he could make it. He gets very emotional. His family says
2 that they are concerned about him. He was so upset and
3 angry at Nakia's tragic death. Nakia was the only child for
4 my ex-husband and I. Randy says there is no more joy in his
5 life with Nicki gone.

6 We, Nakia Mallory's family, continue to be
7 devastated by her violent death. It's overwhelming to think
8 that a death such as Nakia's had happened, especially since
9 it was a result of a decision that should have been
10 controlled and never happened. I think how could Joshua
11 Porch could have done such vicious and hurtful things to my
12 daughter. These thoughts continue to haunt me. I think of
13 the pain she must have endured. I try to think that maybe
14 she passed out or went unconscious before she was stabbed
15 and tortured. I wonder what her last thoughts were. I can
16 only imagine she must have been thinking of her children,
17 what's going to happen to them. "Oh God, please help me.
18 Will I be all right?"

19 I do not want anyone else to feel the pain that we
20 are and will continue to experience. Your Honor, I plead
21 with you to punish Joshua Porch to the fullest extent of the
22 law. He needs to pay for the crimes that he committed and
23 he needs to see how his decision, not only cost us a
24 daughter's loss, but also him as well.

25 Thank you for allowing me the opportunity to share

1 my feelings and make this request.

2 THE COURT: Thank you.

3 Yes, sir.

4 JUSTIN MALLORY: Yeah, Mother's Day '06, you know,
5 I -- I was not a real good guy. I was cheating on my wife.
6 I'm living with that every day.

7 I mean, this guy right here, I mean, just in every
8 way tried to ruin me. I mean, he just -- people like to
9 love to hate for me. My own friends turned against me.
10 Everything in my world collapsed because of this guy right
11 here. Here he got found guilty today. I mean, he took so
12 much. I mean, he just -- she was -- I wasn't -- y'all, I'm
13 blaming myself still. When Justin just got found guilty,
14 I'm still blaming myself, you know. I don't just have
15 words.

16 Please let -- don't let this man back out on the
17 street, judge, please. I can't even compose enough to get
18 words in, but I missed everything; my son's first steps.
19 I'm supposed to be at the funeral, hugging -- I'm supposed
20 to be hugging her and I have been got killed. But every
21 point they are pointing the finger at me because of the acts
22 of this guy? I mean, to this day I'm not full. I don't
23 have my stuff together. To this day I got hatred and just
24 pain everywhere. I tried to block it out. Yeah, I cuss
25 still. I still cuss. I'm sorry about that earlier, Your

1 Honor, but it's like the burden of the world to got this
2 stuff out. This is my first time crying sitting here. I'm
3 relieved.

4 Thank you, Your Honor. Thank you police. Thank
5 you, everybody. I appreciate it.

6 THE COURT: Thank you Mr. Mallory.

7 Yes, sir, tell me your name.

8 RANDY GIBSON: Randy Gibson, Your Honor.

9 THE COURT: What was the last name?

10 RANDY GIBSON: Gibson.

11 THE COURT: Yes, sir.

12 RANDY GIBSON: Yes, ma'am.

13 First of all, if it's okay, I would like to thank
14 the Attorney General's Office -- excuse me for a minute.

15 I'd like to thank the Attorney General's Office
16 for the job that they have done here this past week.

17 You know, between the first two trials when Justin
18 was tried and it was a mistrial and then the second trial he
19 was found not guilty, I began to think that justice would
20 never be served where concerning my daughter.

21 Yes, I am currently living out of state. Yes, me
22 and her mom were separated years ago, but I have never ever
23 stopped being in my daughter's life. She was my heart. And
24 to this day I cannot understand why this man standing, just
25 silent, for whatever reason, that you felt like you wanted

1 to take my daughter's life.

2 And, Your Honor, I don't know if I'm out of heart,
3 but I promise you that some way, that somehow, if I would
4 have just been there, you wouldn't have took her life. You
5 would not have took her life, and I want you to hear that.
6 But through it all, through it all, I forgive you for
7 killing my daughter. I forgive you, because if I don't, it
8 will be in my heart for the rest of my life, but I forgive
9 you for killing my daughter. I do.

10 And, judge, I just hope you take into
11 consideration the feelings and emotions of what we been
12 through for the last seven years when you sentence this man.
13 Thank you.

14 THE COURT: Thank you.

15 MR. GOINGS: Judge, Sergeant McDaniels.

16 SERGEANT MCDANIELS: Thank you, Your Honor.

17 There are two things in law enforcement, in a law
18 enforcement officer's career, that they pray, we pray to
19 never happen. One is to take a life of someone. Unlike
20 what most people may think, based on movies and things of
21 that nature, but that's one of them.

22 And the second thing is to arrest the wrong
23 person. It's a fear that we all live with. It's a fear
24 that we all constantly think about each time we put
25 handcuffs on someone and send them down to the jail with a

1 charge and accusation that they have committed something
2 that based on the facts that are presented at the time we
3 believe they did it. And to find out that we were wrong.

4 When Chief Wilson came to my office and asked me
5 to look at this case, I did not want to, because I knew that
6 confirmation that we locked up the wrong individual, it
7 would have a trickle effect that none of us will ever
8 forget.

9 And at the time, Your Honor, I had not met the
10 family. I had not met anyone that was involved in the case.
11 I simply had the facts, the documents associated with this
12 case, but I can tell you that when we got to California and
13 he confirmed through those statements, the second he
14 confirmed, Your Honor, it became as if I locked him up, and
15 at that time it was time to make it right. It is the reason
16 why I stay at the sheriff's department, because I knew that
17 we were okay when our leader, Sheriff Lott, immediately
18 after he heard our results in California, he went public and
19 he said, in his own words, "we made a mistake and we will
20 make it right."

21 We are not perfect, Your Honor. To see those
22 gentlemen get up there and admit that they were wrong, to
23 talk to this gentleman prior to coming here. And I know
24 that there are things that could not come into play as the
25 trial was going on, but this gentleman here, he told me,

1 Your Honor, that he did not want to put this family through
2 this trial. He told me that, and yet he did, and that's his
3 choice and that's his right, but on behalf of the Richland
4 County Sheriff's Department, and now that I have met and
5 bonded with the family, we ask that you give him life. This
6 is a very dangerous man. To do what he did to the justice
7 system, not once, but twice, and attempted to do it a third
8 time, I will never forget this in my career.

9 I had nothing to do with the original arrest, but
10 I feel just as responsible in trying to find the truth, Your
11 Honor, and I thank God that there is a higher power and that
12 this was solved by him, not by us.

13 We ask that you see it fit to make sure that we
14 don't ever have to deal with Joshua Porch and the fear that
15 comes along with that. Thank you.

16 MR. GOINGS: Nothing further from the State, Your
17 Honor.

18 THE COURT: From the defense?

19 MR. LUKE SHEALEY: Thank you, Your Honor.

20 May it please the court, I have discussed this
21 conviction with Mr. Porch, and generally counsel said not to
22 discuss a whole lot about the facts of the scenario, given
23 that he will have an appeal filed in this case. So if he's
24 not forthcoming or talking to you that much, Your Honor,
25 perhaps like or expect, it's because of me. Don't take that

1 out on Mr. Porch, because he's trying to preserve his
2 rights, but, as you know, this case wasn't originally my
3 case. It was my cousin Jay Cooper's case, who died in
4 March, late March, and at that point I didn't know Josh
5 quite as well I do now, so all I can speak is to the person
6 that I know.

7 He's been in jail for a little over four years,
8 but I did get to know him a lot more as I took over the case
9 from Jay, and that I began preparing for trial, and the
10 person that I know is not a monster. The person that I know
11 is a calm, lighthearted, mild-demeanored guy, that, as far
12 as I can tell, hasn't got any write-ups to discipline him.
13 He hasn't done anything but lives, that kind of stays to
14 himself and try to assist us in preparing for his defense
15 for trial.

16 So, as it goes -- and his mother -- his family
17 obviously is all from California. His mother had been here
18 all last week, but I do -- I do think that she would want us
19 to say something on her behalf. Obviously she has been in a
20 lot of phone contact with us. And actually at the bond
21 setting I did present to you, if you recall, numerous
22 neighbor letters, character references. I searched and
23 couldn't find them in my messy box. I couldn't. If you
24 allow me, I perhaps could supplement you with those, or if
25 not. If you don't care to hear from that, that's your call,

1 but I do have them. And I don't know if you do remember
2 them, but there are people out there in this world that do
3 think highly of Josh that couldn't unfortunately, due to the
4 great distance, be here and travel to try to support him in
5 his trial. So I don't want you to think that he has no
6 nobody, or that he's alone, that he's the type of guy that
7 never earned the love or respect of anybody in this world,
8 because that's just simply not the case.

9 Josh, I think in terms of prior criminal record,
10 has one prior conviction for criminal domestic violence.

11 He's 30 years old, judge. He, I believe at the
12 time that the incident occurred, he would have been 21 or
13 22.

14 And, Your Honor, I don't -- I have a lot I could
15 say about the facts of this case, but I really don't want
16 to, because I don't think it's appropriate, given that he's
17 going to -- we are going to talk about this on appeal some
18 day, but all I can tell you is what I know of Josh and
19 then --

20 I can tell you as the judge who is about to decide
21 his sentence and what you think is fair, that the State at
22 one time did offer voluntary manslaughter for 15 to 18 years
23 that Josh turned down, and they felt that that was
24 appropriate at the time, for what it's worth, and now are
25 asking for life.

1 And Sergeant McDaniels has asked for life,
2 mentioning specifically the fact that Josh told him,
3 although not admissible at trial in his opinion, that he
4 didn't want to put anybody through a trial. Well, as Your
5 Honor knows, he has a Constitutional Right to a trial, and I
6 don't think that to give him a life sentence based on
7 exercising a Constitutional Right is fair or appropriate. I
8 don't think a trial tax is appropriate, so I would ask that
9 you not give him a life sentence, particularly based on that
10 reason.

11 Thirty years day for day is a long time in prison,
12 judge. I think the average statistics from our capital
13 defense litigation team here, the indigent defense, capital
14 defense team says that the average person lives to be 50 in
15 prison. So Josh is 30. So even if you gave him the
16 minimum, 30 years, then I don't know that he would live to
17 see the end of that, and I would ask you to question whether
18 in your opinion, getting to know him a little bit, learning
19 about this case, whether you think that in terms of
20 recidivism if he needs a life sentence. I will leave that
21 to you. I don't think he does. But if you -- you know, I
22 don't think he's the type of person that we need to lock up
23 and throw away the key. I have never seen any indication of
24 that, and I have known a lot of criminal defendants. So
25 I'll say that two cents worth. I would ask you to give him

1 the minimum, just 30 years, which I think it's a substantial
2 sentence day for day.

3 And if co-counsel at all would like to speak,
4 that's fine. If not, we will just leave it at that.

5 I don't think Mr. Porch wants to speak. Maybe he
6 will.

7 THE COURT: Mr. Shealey, Mr. Aiken?

8 MR. AIKEN: No, ma'am.

9 MR. BRIAN SHEALEY: I have nothing, judge.

10 THE COURT: Mr. Porch, you have had excellent
11 legal counsel to represent you throughout the course of this
12 trial, and you have had attorneys who take very seriously
13 their responsibility and their duty to defend someone who
14 has been charged with an offense and to give them your full
15 attention and to pursue every defense available, as well as
16 to protect all of your Constitutional Rights, and they have
17 done that in this case.

18 I have had the opportunity over the past six or
19 seven months to learn a lot about this particular matter.
20 There were times that I have heard the pretrial motions in
21 March, and there were a number of them throughout the course
22 of them preparing your defense and in conjunction with the
23 trial this last week and today. I have learned more about
24 this case than what is revealed just in statements and I had
25 the opportunity to consider it during pretrial. There were

1 a number of statements that were provided. Those were
2 presented here in court.

3 The defenses that were raised were considered,
4 both the defense of accident, the defense of self-defense,
5 as well as the issues about prosecution and how they chose
6 to prosecute Mr. Mallory and then came to prosecute you, and
7 those were all factors that were important to you and to
8 your attorneys in presenting that evidence to the court and
9 to the jury, and that was done in this particular case.

10 While there may have been some people who were
11 convinced of your guilt, this has always been a case in
12 which there are questions that may have been arisen as to
13 your guilt or your innocence and I think they were all
14 presented to the jury for their consideration, and
15 ultimately it became a jury of twelve people to make that
16 decision. So this is not a decision made by one person.
17 It's not a decision made by just a few people. They heard
18 it. They were individual people selected by you and your
19 attorneys and by the State to hear fairly and impartially
20 the evidence that had to be presented.

21 And certainly while there was a lot of evidence,
22 I'm sure that there was additional evidence that both sides
23 would have liked to have had to present to the jury, but
24 based upon the evidence that was presented to them, they
25 made a decision that you were guilty of this particular

1 offense, even taking into consideration the defenses that
2 were raised by you and your attorneys.

3 It's hard to imagine what has been going through
4 everyone's mind since May 14th of 2006. We have heard
5 little snippets from Justin Mallory, from Nakia's parents.
6 We have heard snippets from you, from your statements and
7 during your testimony. We've heard certainly quite a bit
8 from law enforcement on what they did and why they did what
9 they did. And we've heard the conflicting evidence that was
10 presented about whether Mr. Mallory was guilty of this
11 offense or whether you were guilty of the offense.
12 Obviously there is no way to go back to that date and take
13 back what occurred.

14 I heard statements made by you in the course of
15 reading the statements that were made in California after
16 your arrest about you being sorry for the circumstances in
17 putting the family through the events, and, you know, there
18 is no way to take away the pain that they have all endured
19 for the last seven years. They wanted to know what happened
20 and who committed the offense and who committed the crime
21 and who took Nakia from them.

22 And while there may be some dispute in terms of
23 what you believe as to whether or not the right person has
24 been convicted of the offense, certainly the twelve jurors
25 came to that conclusion.

1 I don't -- the only thing that I think will ease
2 the pain associated with that and for them is closure as it
3 relates to this particular chapter, but also passage of
4 time. And I understand that there may be some family
5 members that harbor some ill will, I'm hoping that through
6 the passage of time, the closure as it relates to this
7 particular matter, and perhaps with some counseling and
8 prayer that their pain will be eased over the years, but it
9 becomes my duty, based upon the conviction, to impose a
10 sentence.

11 I have heard the State and family members ask for
12 a life sentence. I have heard your attorneys ask for the
13 minimum of 30 years.

14 I have had the opportunity to look at the crime
15 scene photos in terms of how this place, how the apartment
16 looked. I have had the opportunity to read the autopsy
17 report. I have had the opportunity to see the photographs
18 of her injuries. I can't say that I understand what
19 occurred. I'm not sure that I ever will understand what
20 occurred.

21 I don't think that this is a sentence that would
22 warrant the minimum, based upon the injuries that were
23 suffered, the manner in which she died, the attempts to
24 conceal what occurred. And even though that may not have
25 been something to consider in terms of your guilt or your

1 innocence, it's certainly relevant to what sentence should
2 be imposed.

3 There are -- there are factual situations that
4 are -- that are much worse than this one. There are people
5 who have committed offenses more severe in the manner in
6 which the death occurred and circumstances, and so I have
7 always believed that I should consider the facts and
8 circumstances surrounding the death and view that with the
9 idea of imposing the appropriate penalty. And with no --
10 certainly no disrespect to the family at all, because
11 this -- I mean, this -- this was a death which was uncalled
12 for. It was tragic. It obviously caused her to -- even
13 though it might have been a relatively short time period
14 between the time that she was stabbed and the time that she
15 died, it wasn't a slow death in terms of time, but in terms
16 of the fact that the blood was oozing from her body and
17 leaving her body to become a lifeless body, that's a factor
18 that I consider too, but it is not the most heinous crime
19 that I have read of or heard of committed by somebody in
20 South Carolina. And so for that reason I do not think that
21 life would be appropriate. And, again, that's with no
22 disrespect at all to the family, to what the family is
23 feeling.

24 Ms. Riley is correct that they will spend the rest
25 of their lives in wanting it, and their children will

1 spending the rest of their lives wanting to know what was
2 their mother like, and, you know, tell me about her, and the
3 times and the occasions that they have missed together, so
4 I'm mindful of that as well, but I think under the
5 circumstances that a sentence of 50 years would be
6 appropriate.

7 And so, Mr. Porch, I will sentence you to the
8 Department of Corrections for a period of 50 years.

9 I understand that you have been incarcerated since
10 July the 8th or 9th of 2009. I'll give you credit for the
11 time that you have served.

12 I understand the impact of your actions affects
13 not only the Mallory family and the Riley family and the
14 Gibson family, but it also impacts your family as well. It
15 impacts your children and that they will not have the
16 opportunity to spend time with you outside prison walls;
17 that you will also, in fact, miss all of the same
18 circumstances and same events that Nakia Mallory and her
19 children would miss, and -- and what occurred in this case
20 is a real tragedy. It's a real tragedy, because it didn't
21 have to occur. And I hope that over the next years that all
22 of the families will be able to get some closure, may be
23 able -- perhaps able to understand what occurred, perhaps be
24 able to find the opportunity to forgive and to give thanks
25 for the opportunities and the times that they did have with

1 Nakia.

2 So, again, Mr. Porch, do you understand that you
3 have been charged with murder. It is a violent crime. It's
4 also considered to be a most-serious crime, and that it is
5 one that requires day for day incarceration.

6 And I understand -- I understand that, you know,
7 at this particular point there is not much that you want to
8 say, and I do recall specifically the letters that were
9 written on your behalf at the time of the bond hearing from
10 friends, and I think there was some work associates from
11 California, and I do recall those. I'm not passing judgment
12 on me as a person, just as to the acts that the jury has
13 determined that you have committed. So I wish you luck, and
14 closure to your family. Thank you.

15 Anything further at this time?

16 MR. GOINGS: Nothing from the State, Your Honor.

17 (END OF REQUESTED TRANSCRIPT OF RECORD)

18

19

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23

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25

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for RICHLAND County, South Carolina, on the 19th, 20th 21st, 22nd, and 25th days of November, 2013.

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

May 6, 2014



Michael R. Watts
Circuit Court Reporter

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

The Honorable Alison R. Lee, Circuit Court Judge

Case No. 2011-GS-40-03359

Appellate Case No. 2013-002531

RECEIVED
MAR 27 2015
SC Court of Appeals

State of South Carolina, ... Respondent,
v.
Joshua William Porch, ... Appellant.

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STATEMENT OF THE CASE

The Richland County Grand Jury indicted Joshua Porph (“Porph”) for the murder of Nakia Mallory in 2011. (Trans. Dated 11/18/13 at 4; R.____) A Richland County jury found Porph guilty of murder on November 25, 2013, and the trial court sentenced him to fifty years’ imprisonment that same day. (Trans. Dated 11/25/13 at 1806–09, 1833; R.____). Porph timely filed and served his notice of appeal. (Notice of Appeal; R.____)

FACTS

In the early morning hours of May 14, 2006, Nakia Mallory was murdered. The Richland County Sheriff’s Department (“RCSD” or “the RCSD”) initially charged Justin Mallory (“Mallory”) with the crime. (Trans. Dated 11/18/13 at 163; R. ____). Mallory’s first trial ended with a hung jury. (*Id.*). For his second trial, Mallory opted for a bench trial, and the court found him not guilty. (*Id.* at 163–64).

In each trial, Porph testified for the State as an eyewitness to the crime. (Trans. Dated 11/25/13 at 1521–23; R.____). Porph testified he witnessed an altercation between Nakia and Mallory. (*Id.*). Porph also witnessed Mallory strike Nakia with a weapon, causing her to bleed. (*Id.*). Porph intervened in the dispute and suffered an injury himself, which caused his own blood to be left at the scene. (*Id.*).

Following the State’s failure to obtain a conviction against Mallory, the RCSD focused their attention on Porph. (Trans Dated 11/21/13 at 1057–59; R ____). On July 7, 2009, the RCSD obtained a warrant for Porph’s arrest. (Trans. Dated 11/21/13 at 1058; R.____). The RCSD did not inform the magistrate of Porph’s prior involvement with RCSD’s investigation of the crime or Justin Mallory’s trials. (Trans. Dated

11/12/13 at 54–56, 74–75; R.____). Instead, the RCSD explained only that Porch’s statements placed him at the scene of the crime and that newly tested blood evidence matched the blood left at the scene by Porch.¹ (Trans Dated 11/12/13 at 7–10, 54–56; R.____).

On July 8, 2009, investigators with the RCSD, Sergeants Shawn McDaniels and Brian Godfrey, travelled to California with the arrest warrant for Porch. (Trans. Dated 11/21/2013 at 1058–59; R.____) McDaniels arrested Porch that night. (Trans Dated 11/25/13 at 1527–28; R.____). The interrogation began at approximately 1:00 a.m. on July 9, 2009. (Trans. Dated 11/21/2013 at 1065–69; R.____).

McDaniels and Godfrey continued their initial interrogation of Porch until somewhere between 5 a.m. and 6 a.m. on July 9, 2009. (*Id.* at 1075–76, 1089; R.____) (explaining that Porch’s first interrogation concluded “anywhere between five or six a.m.”) During that interrogation, Porch allegedly provided a statement implicating himself in Nakia Mallory’s death (*Id.* at 1078, R.____).

McDaniels and Godfrey then interrogated Porch for “several hours later that same day,” beginning at 2:19 p.m. (*Id.* at 1087–89; R.____) According to McDaniels, a second interrogation was necessary because Porch’s initial statement indicated Nakia Mallory’s death was an accident. (*Id.* at 1091; R.____). McDaniels described Porch’s initial statement:

Once we got past the fact that Justin Mallory was never present during the stabbing, he stated that he was involved and it was an accident, and that, you know, there was no intent to stab her, and that there was an altercation as a

¹ The warrant failed to include the fact that Porch had previously testified for the State that Porch’s blood was at the scene as a result of the altercation with Justin Mallory and the deceased. Instead, the RCSD testimony implied the blood evidence was different from that previous testimony

result of her trying to come on to him and he rejected her and then she went to the kitchen and got a knife, because she was rejected, and so I needed to clear that up.

(*Id.* at 1091; R.____).

This second interrogation concluded approximately three hours later around 5:15 p.m. (*Id.* at 1093; R.____). During this interrogation, Porch added details to this statement allegedly consistent with evidence law enforcement collected. As McDaniels explained:

Well, it was very significant as it pertains to the evidence that we had from the case file. Of course, it was—you know, he added more to his statement in terms of the interaction, the encounter. It started swaying away from Nakia Mallory being the one to initiate and being the one to kind of come on to him to, you know, that she rejected him. He admitted to calling her a bitch. And he then offered, you know, the explanation describing the sequence of events, that she got upset and that she went to the kitchen and got a knife, after saying “excuse me, you don’t talk to me like that.” And he also changed his statement at this particular point from the first statement, you know, as it pertains to the struggle itself. You know, he added this time that he struck her a couple of times to the forehead area, which was consistent with the evidence that we had.

(*Id.* at 1102; R.____).

McDaniels and Godfrey interrogated Porch for a third time on July 10, and the investigators videotaped this interrogation, unlike the previous two interrogations. (*Id.* at 1186; R.____) McDaniels testified that the interrogation video begins around 11:00 a.m. that day, but that his portion of the interrogation occurs approximately six hours later. (*Id.*). During this six hour gap, Roberta Cohen, an investigator with the Los Angeles County Sheriff’s Office (“LASD” or “the LASD”), interrogated Porch and administered a polygraph examination. (Trans. Dated. 11/18/13 at 171; R.____). The

State subpoenaed Cohen to testify at trial regarding her interrogation. However, despite that subpoena, Cohen refused to testify at Porch's trial and did not appear. (*Id.* at 172-73; R. ____). As a result, the State entered into evidence only the portion of the video showing the interrogation by McDaniels and Godfrey (*Id.* at 173-74, 191, 199-200, R. ____; Trans. Dated 11/21/13 at 1106-07, R. ____).

However, over a request from Porch's trial counsel, the trial court ruled that Porch could not discuss Cohen's interrogation during his testimony or the court would allow the State to introduce those portions of the interrogation video even in Cohen's absence. (Trans. Dated 11/25/2013 at 1498-1500, R ____). According to the trial court, Porch's trial counsel had sufficient opportunity to cross-examine Cohen, therefore satisfying Confrontation Clause concerns, despite the fact that Cohen did not appear at trial and could not be cross-examined by Porch before the jury. (Trans. Dated 11/18/13 at 182-85; R. ____).

On November 25, 2013, a Richland County jury found Porch guilty of murder. (Trans. Dated 11/25/13 at 1806-09, R ____). The trial court sentenced Porch to fifty years' imprisonment. (*Id.* at 1833; R. ____).

STATEMENT OF ISSUES

- I. Whether the trial court erred in failing to void the State's arrest warrant under *Franks v. Delaware*.
- II Whether the trial court erred, and violated Porch's rights under the Confrontation Clause, in limiting Porch's testimony based on the unavailability of a State witness.

STANDARD OF REVIEW

In criminal cases, an appellate court sits to review errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). An appellate court will not reverse the trial court's decision absent an abuse of discretion. *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 146 (2007). An abuse of discretion occurs when the trial court's ruling is based on an error of law, or when grounded in factual conclusions, is without evidentiary support. *Id.*, 647 S.E.2d at 166–67.

Appellate courts are bound by fact findings in response to motions preliminary to trial when the findings are supported by evidence and not clearly wrong or controlled by an error of law. *State v. Amerson*, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993).

The violation of the Sixth Amendment right to confrontation is not per se reversible error. *State v. Graham*, 314 S.C. 383, 386, 444 S.E.2d 525, 527 (1994), *State v. Lewis*, 324 S.C. 539, 558, 478 S.E.2d 861, 867 (Ct. App. 1996). The reviewing court must determine whether that error was harmless beyond a reasonable doubt. *Graham*, 314 S.C. at 386, at 444 S.E.2d at 527

ARGUMENT

I. The trial court erred in failing to void the State's arrest warrant under *Franks v. Delaware*.

The RCSD omitted critical exculpatory information from the arrest warrant in this case. As a result, the warrant failed to establish probable cause for Porch's arrest. Porch suffered prejudice from this error. This Court should reverse.

In *Franks v. Delaware*, 438 U.S. 154 (1978), the United States Supreme Court held the Fourth and Fourteenth Amendments to the United States Constitution afforded

criminal defendants the right to challenge the veracity of a warrant affidavit following the warrant's execution. *State v. Missouri*, 337 S.C. 548, 553, 524 S.E.2d 394, 396 (1999). In *Franks*, the Supreme Court provided a two-part test.

- 1) To mandate an evidentiary hearing, the challengers' attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth and those allegations must be accompanied by an offer of proof; and
- 2) If these requirements are met, and if, when material that is subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required.

Id. at 554, 524 S.E.2d at 397 (citing *Franks*, 438 U.S. at 171–72). This test applies both to an act of commission, in which false information is in the warrant affidavit, and acts of omission, in which exculpatory material is not included in the affidavit. *Id.*; see also *Horton v. City of Columbia*, 408 S.C. 27, 36, 757 S.E.2d 537, 541 (Ct. App 2014) (“However, the *Franks* test also applies to acts of omission while exculpatory information is left out of the affidavit.”).

In *Missouri*, police obtained a search warrant for the home of Curtis Sibert for cocaine. *Id.* at 550, 524 S.E.2d at 395. The lead detective submitted an affidavit to support the warrant, which stated in pertinent part

Your affiant . . . states that on January 25, 1995 he received information from investigator Sam C. Cureton of the Greenville County Sheriff's Office pertaining to Victor Wyatt Missouri. The information that was relayed to your affiant that Missouri was involved in the manufacture and distribution of crack cocaine. The following is a chronological chain of events leading to your affiant's [sic] belief that Victor Wyatt Missouri, and others not yet

identified, are manufacturing and distributing crack cocaine. . .

The confidential source of information, who from here forward will be referred to as CSI, stated that for the past two months he has purchased a total of two kilograms of cocaine from Victor Missouri. He would receive this in half kilo quantities every two weeks.

On February 3, 1995, at 4.00 in the morning, Missouri called CSI and told him that [Sibert] was back and they needed somewhere to cook the crack. He said he couldn't cook it at his (Missouri) house because he had relatives there. CSI told him he would give him an answer later and he ultimately told him no. Around 9:00 this same morning CSI paged [Sibert] via his digital pager. [Sibert] returned the call and told CSI they were still trying to get it together. At 10:15 another page was made to [Sibert] with the same results. At 2:00 in the afternoon the CSI drove to [Sibert] apartment at 400 Summit Drive and went in to inquire about his portion of the cocaine. Your affiant wired the CSI with a body transmitter that would enable your affiant to monitor the conversations he had while inside this apartment. Your affiant, while monitoring the audio transmitter, heard a male voice, whom CSI later stated was [Sibert], question CSI about the phone that had been used earlier trying to set the transaction up. This male appeared to be somewhat reserved about talking with CSI about the cocaine. CSI told your affiant that [Sibert] did appear to be nervous about the deal they were trying to make. **[Sibert] told CSI that he had the crack but he would call him when it was right.**

Id. at 550–52, 524 S.E.2d at 395–96 (alterations added) (emphasis in original). Police received and executed a search warrant based on this affidavit and found Missouri in the kitchen standing over a sink, facing a set of triple beam scales. *Id.* at 552, 524 S.E.2d at 396. Inside the sink, police discovered a quantity of cooked, crack cocaine. *Id.* Police arrested Missouri for trafficking in crack cocaine. *Id.*

At the suppression hearing, the lead detective testified that the affidavit contained a false statement, because Sibert never told the CSI there was crack in his

apartment. *Id.* at 553, 524 S.E.2d at 396. The lead detective testified that the CSI informed him on two occasions that day of the search that the crack was not in Sibert's apartment. *Id.* Sibert also explained to the informant he did not want to cook the cocaine at his own home because "his wife was trying to go straight." *Id.* This information was not provided to the magistrate in the supporting affidavit. *Id.*

The *Missouri* court held that the lead detective "at least acted recklessly in making the false statement and in omitting the exculpatory information." *Id.* at 555, 524 S.E.2d at 397. Following this conclusion, the court then looked to whether excluding the false information and inserting the exculpatory statement, there remained "a substantial basis upon which the magistrate could have found probable cause to issue the warrant." *Id.* The court held that a substantial basis did not exist, as the omitted information struck at the "very heart of the affidavit's purpose" which was to establish probable cause for a search of Sibert's apartment for crack cocaine. *Id.* at 556, 524 S.E.2d at 398 ²

The circumstances of the instant case are similar. The police affidavit provided the magistrate with the following information:

That on 5/14/2006, while at 1103 Pineland Road, Apartment 311-C, in the Dentsville Magistrate District of Richland County, one Joshua Porch did commit the crime of murder, in that he did with malice aforethought, assault

² The inclusion of this omitted material created an "affirmative hurdle" which the remaining portions of the affidavit could not overcome. The remaining portions demonstrated that, (1) the suspects arranged to sell cocaine, (2) the suspects transported cocaine to Greenville for this purpose, and (3) the presence of baking soda, a common cocaine production drying and cutting agent, in Sibert's apartment. *Missouri*, 337 S.C. at 556, 524 S.E.2d at 398. The Court acknowledged that these facts made the presence of cocaine in Sibert's apartment a fair probability, but that the insertion of the omitted information defeated this probability. *Id.* ("This, in turn, erodes the basis upon which a magistrate could find probable cause to search [Sibert's] apartment" (alterations added)), *see also State v. Missouri*, 361 S.C. 107, 115, 603 S.E.2d 594, 598 (2004) (In addition, because we held in a prior decision that the search warrant in this case was invalid, the evidence seized must be suppressed and Missouri's conviction vacated.")

and stab Nakia Mallory in the neck which resulted in the death of Nakia Mallory. . . .

The defendant has admitted to being at the scene of the crime during the assault and stabbing and has been further implicated in the crime by DNA testing of blood found at the scene that puts the defendant at the scene.

(Trans. Dated 11/12/13 at 9, 12-1; R ____).

The RCSD failed to provide key exculpatory information regarding why Porch admitted to being at the scene of the crime during the assault and stabbing and why his blood was found at the scene of the crime. (Trans. Dated 11/12/13 at 54-56, 74-75; R ____). Porch served as the key eye witness for the State in two prosecutions of Justin Mallory for this crime. As part of that service, Porch admitted to being present at the home of Justin and Nakia Mallory on the night of the murder, of intervening in a domestic dispute between the Mallorys, and watching Justin Mallory injure Nakia. (Trans. Dated 11/25/13 at 1503; R. ____). In addition, Porch explained his blood was at the scene of the crime because of injuries he suffered as he attempted to intervene in the dispute. (*Id.*). However, the RCSD, having now concluded to pursue Porch for this crime after two unsuccessful prosecutions, included none of this explanatory and exculpatory information in the affidavit. (Trans. Dated 11/12/13 at 7-10, 54-56; R. ____). Omitting this information demonstrates a clear reckless disregard for the truth.

Prior to trial, Porch requested an evidentiary hearing as to probable cause because of the deficient nature of the warrant. The only uncontested language from the affidavit is the following:

That on 5/14/2006, while at 1103 Pineland Road, Apartment 311-C, in the Dentsville Magistrate District of Richland County, one Joshua Porch did commit the crime of murder, in that he did with malice aforethought, assault

and stab Nakia Mallory in the neck which resulted in the death of Nakia Mallory.

(*Id.* at 7, 12; R. ____). This bare allegation can not establish probable cause for the RCSD arrest warrant. The trial court agreed with Porch's trial counsel that the omissions warranted an evidentiary hearing, finding.

After—after reviewing all of the information, I—I think that there were—that—that the affidavit contained in—in—in the arrest warrant lacks information which would have been relevant to making a decision as to probable cause. And it—it—lacks both exculpatory and inculpatory [sic] information.

(*Id.* at 23–24; R. ____).

During the evidentiary hearing, Porch's trial counsel presented testimony from Officer David Wilson of the RCSD and the magistrate that issued the arrest warrant, Judge Phil Newsom. Officer Wilson confirmed that previous RCSD investigators relied on Porch as an eye witness in two previous trials for Nakia Mallory's murder. (*Id.* at 41–42; R. ____). According to Officer Wilson, the information in the affidavit was sufficient for a finding of probable cause because of prior inconsistent statements attributed to Porch and the newly discovered blood evidence on Nakia Mallory's clothing that matched to Porch. (*Id.* at 53, 64–65; R. ____).

Critically, the affidavit did not contain this information, and Officer Wilson could not confirm he discussed this information with Judge Newsom. (*Id.* at 50–51, 53; R. ____). Following Officer Wilson's testimony, Judge Newsom testified that Officer Wilson did not inform him that Porch previously testified on two occasions as an eyewitness to the crime. (*Id.* at 74–75; R. ____).

Despite testimony that the affidavit failed to include exculpatory information and the magistrate's testimony that he was definitely not informed of this information, the trial court refused to void the arrest warrant. The court stated,

But after hearing all of the information, both information that would have been exculpatory as well as information that the—the—the police officers had available to them, I find that there was sufficient probable cause.

(*Id.* at 85; R. ____).

The trial court erred for several reasons. First, Porch's trial counsel showed intent through reckless disregard. It is well-established that affidavits are normally drafted by nonlawyers and in the "midst" and "haste" of a criminal investigation. *United States v. Ventresca*, 380 U.S. 102, 108 (1965). Consequently, the warrant need not include every piece of conceivable information. *United States v. Colkley*, 899 F.2d 297, 300–01 (4th Cir. 1990) (citations omitted). That said, *Franks* protects against omissions designed to mislead or that are made in reckless disregard of whether they would mislead the magistrate. *Id.* at 301 (citation omitted).

This was no hastily thrown together investigation. The RCSD was preparing for the third trial in this matter and prepared an affidavit which failed to include information "clearly critical" to the probable cause determination *Id.* (citation omitted). The affidavit contained information accusing Porch of Nakia Mallory's murder but which had previously been accepted by the State as part of his role as an eyewitness to that same murder. This is critical information necessary for the magistrate to weigh in determining whether probable cause existed. Under the trial court's formulation of *Franks*, police will have wide discretion to seek arrest warrants based generally on an eyewitness's statements regarding the crime.

Second, the trial court erred because *Franks* required the trial court to assess whether when the material subject to the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant to support a finding of probable cause. The affidavit in this case did not meet this demanding standard. *United States v. Colkley*, 899 F.2d 297, 300 (4th Cir. 1990) (explaining that when the affiant's material recklessness is proved by a preponderance of the evidence, the warrant "must be voided" and evidence or testimony gathered pursuant to it must be excluded (citation omitted)).

Third, the trial court erred by adding Officer Wilson's testimony regarding probable cause to the defective arrest warrant, and relying on Officer Wilson's analysis of certain evidence in determining whether probable cause existed. Such a ruling constitutes a misapplication of *Franks*. The trial court had to examine the magistrate's analysis of the information presented by police, not the government's description of what it would include in the affidavit if granted a mulligan. *See Missouri*, 337 S.C. 548, 524 S.E.2d 394 (1999) ("Thus, the primary issue before this Court is whether excluding the false information and inserting the exculpatory statement, there remains a substantial basis upon which the magistrate could have found probable cause to issue the warrant.").

Courts conducting a *Franks* examination must apply a "totality of the circumstances" test. *See Colkley*, 899 F.2d at 301-02 (citing *Illinois v. Gates*, 462 U.S. 213 (1983)). This test requires a "practical, commonsense decision whether, given all the circumstances set forth in the affidavit, there is probable cause to believe the suspect committed the offense. *Id.* at 302 (citations omitted). The language of the

affidavit, when viewed through the lens of *Franks*, *Colkley*, and South Carolina appellate precedent, does not present probable cause that Porch committed the alleged crime. *See also Thompson v. Smith*, 289 S.C. 334, 336, 345 S.E.2d 500, 502 (1986) (defining probable cause as a “good faith belief that a person is guilty of a crime when the belief rests on such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise”).

Thus, the trial court erred in failing to void the arrest warrant and any resulting evidence. *See id.* (“A warrant that violates *Franks* is not subject to the good-faith exception to the exclusionary rule” (citing *United States v. Leon*, 468 U.S. 897, 923 (1984))). This Court should reverse.

II. The trial court erred and violated Porch’s rights under the Confrontation Clause by limiting Porch’s testimony based on the unavailability of a State witness.

The Sixth Amendment’s Confrontation Clause provides that “in all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. amend. VI. The Confrontation Clause bars the admission of testimonial statements of a witness who does not testify at trial unless the witness is unavailable, and the defendant had a prior opportunity to cross-examine that witness. *Crawford v. Washington*, 541 U.S. 36, 68 (2004)

Investigator Cohen’s interrogation of Porch constitutes testimonial evidence. In *State v. Stokes*, 381 S.C. 390, 401, 673 S.E.2d 434, 439 (2009), the South Carolina Supreme Court held that statements taken by police officers in the course of interrogations are testimonial. In addition, the United States Supreme Court considers three factors in determining whether a statement is testimonial: (1) the formal or

systematic nature of the questioning; (2) the objective belief of the declarant whether the statement could be used in a future court proceeding; and (3) the government agent's primary purpose in conducting any questioning of the declarant. *Id.* (citing *Davis v. Washington*, 547 U.S. 813 (2006); *Crawford v. Washington*, 541 U.S. 36 (2004)).

In *United States v. Ayala*, 469 F. Supp. 2d 357 (4th Cir. 2007), the Fourth Circuit found the declarant's out of court statements non-testimonial. In that case, the defendant, Barry Ayala, challenged the admission of certain statements attributed to a co-defendant, Edward Pope. Police arrested Ayala and Pope during an undercover operation. Earlier that day, police also arrested Stephen Poindexter for drug possession. *Id.* at 359. In an attempt to gain favor with the authorities, Poindexter volunteered to work in an undercover capacity and secure additional arrests. *Id.* Poindexter placed a cell phone call to Pope and explained he knew of a customer looking to buy two eight balls of crack cocaine. *Id.* During their conversation, Poindexter handed the phone to a federal drug agent under the guise that the agent was the customer seeking to purchase crack cocaine. *Id.*

Pope informed the agent that "his guy" would supply the drugs, and the agent and Pope agreed to meet at a fast food restaurant. *Id.* Pope and Ayala arrived at the restaurant and police immediately converged on their vehicle. *Id.* at 359–60. Later, police discovered 1.8 grams of crack cocaine in the interior of the car near where Ayala had been sitting. *Id.* Ayala sought, unsuccessfully, to bar the government from introducing Pope's statements to the agent. *Id.*

On appeal, the Fourth Circuit affirmed the trial court's decision, observing that the co-defendant's statements occurred in a "highly informal" setting—a cell phone conversation. *Id.* at 361 ("Nothing in the record indicates that the incriminating statements resulted from a level of questioning so formal, systematic, or intensive as to be considered an interrogation."). Moreover, Pope had no expectation or indication his statements would be used in a future government proceeding, and Pope did not know he was speaking to a government agent. ("At all times during the conversation, [the agent] presented himself as a buyer seeking to purchase crack cocaine." *Id.* (alterations added)). Last, the agent did not illicit statements from Pope to prove or establish past facts or conduct. Instead, the agent and Pope negotiated the terms and conditions of a drug purchase. *Id.* at 361–62.

The circumstances in *Ayala* bear a stark contrast to the instant case. Investigator Cohen's interrogation did not take place in a "highly informal" setting. To the contrary, it is difficult to conceive of a more formal setting for the questioning of a criminal defendant than that orchestrated by Investigator Cohen and the RCSD. The *Miranda* warnings issued during the interrogation provided fair notice that any statement Porch made could or would be used in a future government proceeding and removed any possibility that the interrogation were "informal." (Trans. Dated 11/18/13 at 173; R. ____; Trans. Dated 11/21/13 at 1065–69, 1089; R. ____). Finally, the very purpose of this interrogation was to prove or establish past facts and conduct—specifically to prove the State's newest theory regarding Nakia Mallory's murder. Consequently, Investigator Cohen's interrogation of Porch constituted testimonial evidence.

Porch's trial counsel did not have an adequate prior opportunity to cross-examine Cohen regarding this testimonial evidence because Cohen refused to appear at trial. Moreover, the trial court erred in holding that Investigator Cohen's appearance at a pre-trial *Jackson v. Denno*³ hearing satisfied the Confrontation Clause's prior opportunity requirement. The trial court collapsed the significantly different concerns of pre-trial *Jackson v. Denno* hearings and trial rights under the Confrontation Clause.

In a pre-trial *Jackson v. Denno* hearing, the central concern is the voluntariness or involuntariness of a defendant's confession. That case provides that a defendant in a criminal case is entitled to an evidentiary hearing on the voluntariness of statements made by the defendant prior to submission of such statements to the jury. *See State v. Samuel*, No. 27498, 2015 S.C. Lexis 85, at *2 (S.C. Feb. 25, 2015) (citing *Jackson*, *supra*); *see also State v. Silver*, 307 S.C. 326, 331, 414 S.E.2d 813, 815 (Ct. App. 1992) ("The test of admissibility of a statement is voluntariness.").

On the other hand, the Supreme Court explained the importance of the Confrontation Clause reliability inquiry like so:

Where testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment's protection to the vagaries of the rules of evidence, much less to amorphous notions of "reliability". . . . Admitting statements deemed reliable by a judge is fundamentally at odds with the right of confrontation. To be sure, the Clause's ultimate goal is to ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. *It commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination.* The Clause thus reflects a judgment, not only about the desirability of

³ 378 U.S. 368 (1964)

reliable evidence (a point on which there could be little dissent), but about how reliability can best be determined.

Crawford, 541 U.S. at 61 (emphasis added).

In fact, by threatening Porch with the introduction of a videotape displaying Cohen's interrogation, the trial court imbued this testimonial evidence with a certain indicia of reliability, counter to Supreme Court precedent. *See Crawford*, 541 U.S. at 62 ("Dispensing with confrontation because testimony is obviously reliable is akin to dispensing with jury trial because a defendant is obviously guilty. This is not what the Sixth Amendment prescribes."). Thus, the trial court erred.

In addition, the trial court's error does not constitute harmless error. The facts of *State v. Graham*, 314 S.C. 383, 444 S.E.2d 525 (1994) are instructive on this point. In *Graham*, the defendant argued that his Sixth Amendment right to confront a witness was violated and the Court agreed.

On the afternoon of January 25, 1992, the defendant, "Tunch" Simmons, Steven Warren, Sr., and Jim Brabham (the "victim") drank beer at a local boat landing. *Id.* at 384, 444 S.E.2d at 526. In the late afternoon, all of the men left the boat landing and returned to a fireworks stand on Highway 17, operated by "Tunch" Simmons. *Id.* Steve Warren, Jr. was working at the fireworks stand that afternoon. *Id.* Earlier in the day, the victim left two shotguns at the fireworks stand in an effort to sell the guns. *Id.* When the men came in from the boat landing, Steve Warren, Jr. gave his father, Steve Warren, Sr., one of the guns, a piece of cardboard, and a shell for the gun. *Id.* The testimony diverged as to the events which followed. *Id.*

The defendant testified that Steve Warren, Sr. and the victim went into the parking lot of the fireworks stand where Steve Warren, Sr. shot the victim in the chest

and then held a second gun on the defendant and forced the defendant to shoot the victim again. *Id.* Steve Warren, Sr testified that the defendant shot the victim twice with no involvement of Steve Warren, Sr. *Id.* Late that evening, the defendant, Steve Warren, Sr., and Steve Warren, Jr. loaded the victim's body into the bed of "Tunch" Simmons' pickup truck and dumped the victim's body in the river. *Id.* The next day, "Tunch" Simmons' pickup truck was found burning in a wooded area near Highway 17 in Jasper County. *Id.*

The defendant and Steve Warren Sr. were tried and convicted of the murder of Jim Brabham. *Id.* Steve Warren, Jr. agreed to testify for the State in exchange for the State's agreement not to prosecute him for the death of Jim Brabham. *Id.* "Tunch" Simmons pled guilty to accessory after the fact of murder and received an eight-year sentence. *Id.*

At trial, the court prevented the defendant from impeaching Simmons by bringing his eight year sentence to the jury's attention. *Id.* at 385, 444 S.E.2d at 528. The State did not call Simmons to the stand, but the defendant's co-defendant, Warren Sr., did. *Id.* at 386, 444 S.E.2d at 528. Simmons arrived with counsel and announced he intended to invoke his Fifth Amendment right not to incriminate himself. *Id.* Simmons claimed that although he pled guilty in the murder, there was still an indictment for murder pending against him in the case. *Id.* The defendant's counsel objected, arguing that the plea agreement freed Simmons from further prosecution. *Id.* The trial court informed the solicitor that he could not prevent Simmons from testifying under the threat of additional prosecution. *Id.* at 386-87, 444 S.E.2d at 528. The solicitor conceded he could not prevent Simmons from testifying but the solicitor

threatened further prosecution if Simmons did not testify “truthfully.” *Id.* at 387, 444 S.E.2d at 528. The solicitor defined “truthfully” as the fact that Simmons was intoxicated at the time of the murder and did not know of the events surrounding the event. *Id.* Unsurprisingly, Simmons testified to this version of events. *Id.*

However, the defendant proffered the testimony of Gary Simmons who testified that Tunch informed him shortly after the murder that “he would have no further problems” with the victim, and that “Tunch” admitted to killing the victim.” *Id.* In a unanimous decision, the Court concluded:

The solicitor’s attempted manipulation of “Tunch” Simmons’ testimony and the proffered testimony of Gary Simmons raises in our minds the question of the extent of “Tunch” Simmons’ involvement in the death of Jim Brabham. As the sole finders of fact, we believe the jury was entitled to know Simmons’ sentence. Murder is a serious crime for which [the defendant], who was sixteen at the time of the murder, received a sentence of life in prison. By contrast, Simmons was able to avoid the heavy penalty in exchange for what may have been his silence. We believe [the defendant] was prejudiced by not having “Tunch” Simmons’ sentence presented to the jury.

Id. (finding the error was not harmless and reversing and remanding for a new trial (alterations added)).

In this case, investigators from the RCSD and the LASD interrogated Porch for approximately seven hours on July 10, 2009 and videotaped this interrogation. However, the jury only viewed that portion of the videotape featuring investigators from the RCSD, and after the majority of intensive questioning was completed. The State did not enter into evidence the entire videotape as the LASD investigator, Cohen, refused to appear at Porch’s trial. The trial court then warned Porch that if he testified regarding Cohen’s interrogation, the State would be allowed to rebut that testimony

with pertinent portions of the video, even in Cohen's absence. This violated Porch's rights under the Confrontation Clause and limited the jury's ability as the sole finder of fact to properly assess the credibility of the interrogations and incriminating statements at play in this case.

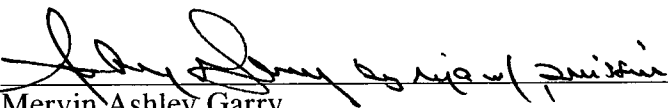
The trial court collapsed two distinctly different constitutional guarantees and in the process violated Porch's rights under the Confrontation Clause. Porch did not have the opportunity for an adequate cross-examination of Cohen and because of this the trial court should not have entertained the possibility of admitting testimonial evidence involving Cohen. The Confrontation Clause error in this case is unique, but clear, and mandates this Court vacate Porch's conviction.

CONCLUSION

The trial court's rulings under *Franks v. Delaware* and the Confrontation Clause constitute reversible error and this Court should reverse the trial court and vacate Porch's conviction.

[Signature Page Follows]

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March 27, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Alison Renee Lee
Circuit Court Judge

RECEIVED

MAR 27 2015

SC Court of Appeals

Case No. 2011GS4003359

Appellate Case No. 2013-002531

The State, ... Respondent,

v.

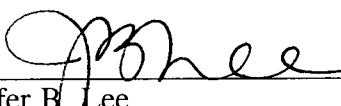
Joshua William Porch, ... Appellant.

Proof of Service

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Joshua William Porch, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

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March 27, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable Alison R. Lee, Circuit Court Judge
Appeal Case No. 2013-002531

THE STATE

Respondent,

V.

JOSHUA WILLIAM PORCH,

Appellant

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court erred in failing to void the State's arrest warrant under Franks v. Delaware?
- II. Whether the trial court erred, and violated Porch's rights under the Confrontation Clause, in limiting Porch's testimony based on the unavailability of a State witness?

STATEMENT OF THE CASE

On May 14, 2006, appellant Joshua Porph murdered Nakia Mallory in Richland County. On July 7, 2009, an arrest warrant was issued for Porph charging him with Nakia Mallory's murder. Appellant was arrested for the murder on July 8, 2009 in Los Angeles, California. He was returned to South Carolina. The Richland County grand jury indicted appellant for Nakia Mallory's murder in 2011 (*Ind. # 2011-GS-40-03359*). The case was prosecuted by the Attorney General's Office. Appellant proceeded to a jury trial before the Honorable Alison Rene Lee, Circuit Court Judge, on November 18, 2013; and, on November 25, 2013, the jury found appellant guilty of Nakia Mallory's murder. Judge Lee sentenced appellant to fifty (50) years imprisonment for the murder. (Tr. pp. 1806-09, 1833). This appeal followed raising two (2) issues.

RESPONDENT'S STATEMENT OF FACTS

Nakia Mallory ("the victim"), the mother of two (2) small children, was murdered in the early morning hours of May 14, 2006 in her home, an apartment, in Richland County. The victim was stabbed to death. The victim had one (1) stab wound *to her right* neck and one (1) superficial stab wound over *her right* eye.¹ She had also been beaten about the head. The knife wound to the neck was fatal. A large amount of blood was found in the den of her apartment *and* a small amount in the kitchen. It appeared someone had attempted to clean up the blood in the kitchen by wiping it with a cloth. There was also a spot of blood on a bottle of dish detergent or cleaner under the kitchen counter. The murder weapon, a knife, was never found, nor was the cloth used to wipe up the blood in the kitchen. (Tr. pp. 125-66, 233-311, 319-31, 331-74, 388-423, 512-59, 561-638, 886-908).

The victim's husband, Justin Mallory ("Justin"), came home at approximately 3:30 a.m. on May 14, 2006 and found the victim in the above described condition on the floor of the den. There was blood everywhere in the den. Justin immediately flew into a panic and checked on the couples' two (2) children, who were asleep in a bedroom, and then immediately sought assistance from neighbors by banging on their doors.² Justin also called 911 and reported what he had found. After waiting for some period of time for EMS to arrive, Justin could wait no longer and picked his wife up and placed her in his van and drove her to Provident North East Hospital. The victim was pronounced dead there. Justin, of course, got his wife's blood on him

¹ Appellant Porch is left handed.

² The neighbor, Shareed Hargraves, testified when the victim's husband came banging on his door for assistance, the husband did not have any blood on his person. (Tr. pp. 627-38).

when he carried her to the van and into the hospital. (Tr. pp. 125-66, 233-311; 319-31, 512-59, 627-38).

Justin cooperated fully with police including informing police of his whereabouts on the night of the murder, signing consents to search all of his property, and submitting a DNA buccal sample. Justin admitted he had been with another woman romantically prior to finding his wife, had stayed at a motel with the woman, stopped at a convenience store, took the woman home, and then drove home talking to friends on his cell phone. When he arrived home, he discovered his wife's body. He sought assistance from neighbors, called 911, heard gurgling sounds coming from his wife, and picked her up and placed her in his van and drove her immediately to the hospital. (Tr. pp. 125-66, 233-311, 331-81; 512-59; 909-43).

The husband, Justin, was initially charged with the murder by the Richland County Sheriff's Office and indicted. The 5th Circuit Solicitor's Office prosecuted the case. Justin was tried twice resulting first in a hung jury and in his second trial an acquittal by Judge Thomas Cooper. (Tr. pp. 125-66; 233-311).

After his acquittal, Justin contacted the Richland County Sheriff's Office and Sheriff Leon Lott. Justin informed the Sheriff's Office he was not involved in the murder and asked that they re-open the investigation into the murder of his wife. As a result, the Richland County Sheriff's Office decided to take a fresh look at the case and assigned Chief Deputy Sheriff David Wilson as the investigator to review the investigation to determine if the wrong person was charged. The investigation focused on appellant, Joshua Porch ("**Porch**"), who had testified in the husband's trials claiming he, Porch, was an eyewitness to the murder. (Tr. pp. 125-66, 233-311, 943-54, 1011-51).

Police first approached Porph as a result of the husband's [Justin's] statement given the night of the victim's murder. Porph was a neighbor of Justin and the victim. Justin told police the only persons who could possibly have killed his wife were the maintenance man *or* Porph, because they each had been in his apartment recently. Police approached Porph the day after the victim's murder. In his 1st statement to police, **Porph** denied being present at the scene at the time of the crime and claimed he knew nothing about the murder. Porph's wife, Persia Porph, also told police at that time that Porph was with her the night of the victim's murder.³ Over a year later and shortly before the husband's first trial, prosecutors discovered there was unidentified blood [male DNA] in the kitchen of the victim's apartment. Porph was contacted again by police in an attempt to identify this unknown male DNA. At that time, Porph admitted being present at the scene [the victim's apartment] earlier in the evening of the murder and cutting his hand while slicing an apple. Porph was polygraphed on this statement and failed the polygraph. Upon further questioning, Porph gave a 3rd version where he stated that on the night of the murder he was at the crime scene "fooling around" with the victim, but the victim's husband came home and attacked the wife with an object, and he [appellant **Porph**] was cut on his hand while intervening. Porph claimed he was facing the husband when this occurred. Porph admitted he bled in the kitchen of the home, and before leaving the apartment attempted to clean up the blood. This was the version Porph testified to at the husband's two (2) trials. As previously stated, the husband was ultimately acquitted. (Tr. pp. 667-88, 736-44, 650-66, 745-90, 819-82, 943-52).

³ Porph's wife changed her statement at Porph's trial testifying he left the apartment during the night of the victim's murder and returned some time later in the night or morning (Tr. pp. 650-66).

Chief Deputy Wilson realized Porch had given inconsistent versions of the event, including stating on one (1) occasion he cut his right hand and on another occasion he cut his left hand. Porch also admitted he had attempted to clean up the crime scene [the kitchen] where he had bled. (Tr. pp. 1011-51).

Chief Deputy Wilson requested additional D.N.A. testing after the husband's acquittal. It revealed appellant **Porch's** blood [DNA] was on the victim's shirt, not just in the kitchen. Porch's blood was found on the bottom right of the victim's shirt. D.N.A. consistent with Porch's DNA had also previously been found under the victim's fingernails. No DNA of the husband was found on the victim or under her fingernails. It was also determined Porch was left-handed, and both stab wounds to the victim were on *her* right side. The husband [Justin] was right-handed. The criminal re-investigation of the murder ultimately determined Porch murdered the victim, and an arrest warrant for murder was obtained on July 7, 2009. (Tr. pp. 512-60, 1011-51).

Investigators with the Richland County Sheriff's Office traveled to California on July 8, 2009 and arrested **Porch** that night for the victim's murder. Porch was questioned shortly after midnight on July 9, 2009, resulting in **Porch** providing a statement implicating himself in the victim's death, alleging it was an accident. **Porch admitted the victim's husband [Justin] was not present when the victim was killed, i.e. Porch had perjured himself in the husband's two (2) trials.** (Tr. pp. 952-54, 1055-1107, 1134-91, 1216-17, 1343-1431, State's 47).

Later that same day, the investigators questioned Porch again. In this statement, Porch claimed the victim "came on to him," and he rejected her, and she got a knife and there was a struggle over the knife, and he [Porch] ended up hitting her several times in the forehead. This

was consistent with the autopsy results. (Tr. pp. 1055-1107, 1134-91, 1134-91, 1216-17, 1343-1431, State's 49).

Investigators questioned Porch again on July 10th, and this interview was videotaped.⁴ In this statement, Porch made further incriminating statements implicating himself in the victim's murder. Porch admitted it was he who "came on" to the victim; she rejected him, and he ended up killing her [stabbing her].⁵ Porch admitted he attempted to clean up the crime-scene and carried the murder weapon with him and disposed of it. After hearing all of the evidence, including appellant Porch's confessions, including his videotaped confession, the jury found Porch guilty of the victim's murder. (Tr. pp. 1055-1107, 1134-91, 1216-17, 1343-1431, State's Ex. 50; 1806-09).

ARGUMENT I.

What Occurred Below

Prior to trial, Porch moved to suppress all evidence flowing from his arrest in California for murder, specifically his confessions. Porch alleged the arrest warrant contained false information and omitted exculpatory material, and therefore his confessions should be suppressed pursuant to Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674 (1978). Judge Lee conducted a suppression [Franks] hearing regarding the circumstances of the issuance of the

⁴ Prior to this 3rd statement, Porch was polygraphed/interviewed by a Los Angeles County detective. The Los Angeles detective who polygraphed Porch appeared and testified at the Jackson v. Denno, 378 U.S. (1964) hearing; however, a California court ruled she did not have to return to South Carolina for the actual trial, and she did not.

⁵ In a strange but appropriate twist of fate, Justin Mallory, the husband, testified at Porch's trial helping establish that it was in fact Porch who murdered the victim Nakia Mallory. Justin accounted for his whereabouts up until just moments before he discovered the body, began banging on neighbors doors, and called 911. This included cell phone records and tower information that showed Justin coming from another location [i.e. dropping off the paramour] and headed toward the apartment where he and his wife lived while talking to friends on his cell phone. (Tr. pp. 125-66, 971).

arrest warrant and whether the warrant was supported by probable cause. (Tr. 11/12/2013, pp. 1-96; Defendant's Ex. 1 [Arrest Warrant]). At the conclusion of the hearing, Judge Lee found the arrest warrant did not contain any false statement and was supported by probable cause, and even including the exculpatory material Porch alleged should have been included, there was still probable cause to support the arrest warrant for murder; therefore, Porch's motion to suppress his confessions was denied. (Tr. 11/12/2013, pp. 85-90; Tr. 11/18/2013, pp. 1-13). Porch alleges on appeal Judge Lee erred in this ruling. Porch is wrong.

Standard of Review
(General Appellate Standard)

The conduct of a criminal trial is left largely to the discretion of the trial judge, and this Court will not interfere unless the rights of the appellant were prejudiced. State v. Bridges, 278 S.C. 447, 298 S.E.2d 212 (1982). Therefore, this Court reviews errors of law only and is bound by the trial court's factual determinations unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Id.

Standard of Review
(Circuit Court's Affirmation of Probable Cause)

The Fourth Amendment applies to all seizures of the person. United States v. Brignoni-Ponce, 422 U.S. 873 (1975); State v. Khingratsaipon, 352 S.C. 62, 572 S.E.2d 456 (2002). An arrest of a person is a "seizure" within the meaning of the Fourth Amendment of the United States Constitution. United States v. Mendenhall, 446 U.S. 544 (1980). The standard of review of Fourth Amendment search *or* seizure issues on appeal is deferential and is limited to

determining whether any evidence supports the trial court's finding, with the appellate court only being able to reverse the ruling of a trial judge where there is clear error. State v. Morris, 411 S.C. 571, 769 S.E.2d 854 (2015); State v. Taylor, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013); State v. Tindall, 388 S.C. 518, 520, 698 S.E.2d 203, 205 (2010); State v. Tynes, 402 S.C. 211, 740 S.E.2d 512 (Ct. App. 2013).⁶

Standard of Review
(Magistrate's Issuance of a Warrant)

Warrants are constitutionally preferred; and, in determining whether they should issue, magistrates are concerned with probabilities, not certainties. See State v. Sullivan, 267 S.C. 610, 230 S.E.2d 621 (1976). As a result, a reviewing appellate court gives great deference to a magistrate's determination of probable cause. See State v. Jones, 342 S.C. 121, 536 S.E.2d 675 (2000); State v. Weston, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997); State v. Jenkins, 398 S.C. 215, 727 S.E.2d 761 (Ct. App. 2012)(other numerous citations omitted). When determining the propriety of the issuance of a warrant, the duty of the appellate courts is simply to determine

⁶ State v. Brockman, 339 S.C. 57, 528 S.E.2d 661 (2000))(holding the validity of a search or seizure depends upon "a number of antecedent determinations, each of which is inherently fact-specific" and "entails an inquiry into the totality of the circumstances" and an appellate court must affirm if there is "any evidence" to support the ruling); State v. Thompson, 363 S.C. 192, 199, 609 S.E.2d 556, 560 (Ct. App. 2005)(deferential standard of review applies in a challenge to a trial court's fact-driven affirmation of probable cause.). "On appeal from a suppression hearing, the appellate court will give deference to the circuit court's findings and only reverse if there is clear error." State v. Davis, 371 S.C. 412, 639 S.E.2d 457 (Ct. App. 2007), *quoting* Brockman, 339 S.C. at 66, 528 S.E.2d at 666. As a result, if there is any evidence to support the trial judge's ruling it will be affirmed on appeal. See Taylor, *supra*; State v. Brown, 401 S.C. 82, 736 S.E.2d 263 (2012); State v. Cheeks, 400 S.C. 329, 733 S.E.2d 611 (Ct. App. 2012). The appellate court may conduct its own review of the record to ascertain if there is any evidence to support the ruling. Davis, *citing* Khingratsaphon, 352 S.C. at 70, 572 S.E.2d at 459-60. In criminal cases, appellate courts are bound by fact findings in response to preliminary motions where there has been conflicting testimony or where the findings are supported by the evidence and not clearly wrong or controlled by an error of law. Tynes, *supra*, *citing* State v. Asbury, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997). But see State v. Kinloch, 410 S.C. 612, 767 S.E.2d 253 (2014).

whether the magistrate had a substantial basis for concluding probable cause existed. *See Kinloch*, 410 S.C. 617, 767 S.E.2d 155; *State v. Herring*, 387 S.C. 201, 212, 692 S.E.2d 490, 495 (2009); *State v. Spears*, 393 S.C. 466, 713 S.E.2d 324 (Ct. App. 2011). In making such a decision, an appellate court must consider the totality of the circumstances. *Jones, supra* (stating under the totality of the circumstances test, a reviewing court considers all circumstances, including status, basis of knowledge, and veracity of informant, when determining whether or not probable cause existed); *State v. Dupree*, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003).

The magistrate should determine probable cause based on all of the information available to the magistrate at the time the warrant was issued. *State v. Driggers*, 322 S.C. 506, 473 S.E.2d 57 (Ct. App. 1996). In determining the validity of the warrant, a reviewing court may consider only information brought to the magistrate's attention. *State v. Martin*, 347 S.C. 522, 556 S.E.2d 706 (Ct. App. 2001). "[T]he duty of a reviewing court is simply to ensure that the magistrate had a 'substantial basis' for ... conclud[ing] that probable cause existed." *Weston*, 329 S.C. at 290-91, 494 S.E.2d at 802-03. However, all that is necessary for the issuance of a warrant is probable cause. *State v. Covert*, 382 S.C. 205, 675 S.E.2d 740 (2009), *citing State v. Sachs*, 264 S.C. 541, 555, 216 S.E.2d 501, 508 (1975).

Probable Cause to Arrest

"Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious person under the circumstances to believe likewise." *City of Spartanburg v. Wortman*, 310 S.C. 1, 4, 425 S.E.2d 18, 20 (1992). The substance of all definitions of probable cause is a reasonable ground for belief of guilt, and the belief of guilt must be particularized with respect to the person