

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lexington County
Honorable Thomas A. Russo, Circuit Court Judge
Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHELLIE LAVETTE DAVIS,

APPELLANT

APPELLATE CASE NO. 2018-000366

RECORD ON APPEAL

GARY H. JOHNSON
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ZACHARY W. JONES
Assistant Attorney General
PO Box 11629
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR APPELLANT

S. RICHARD HUBBARD, III
Solicitor, Eleventh Judicial Circuit
205 East Main Street, Suite 309
Lexington, SC 29072
(803) 785-8285

ATTORNEYS FOR RESPONDENT

VOLUME II OF III

PAGES 501-1000

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED APRIL 21-25, 2014	1
JURY <i>VOIR DIRE</i>	18
JURY SELECTION	57
JURY SWORN	129
OPENING STATEMENT BY MS. DAVIS	137
OPENING STATEMENT BY MS. ZMROCZEK	140
TESTIMONY	
KRISTOPHER LANGE	
Direct Examination by Ms. Davis	145
Cross-Examination by Ms. Zmroczek	151
JEFFREY PALKOWSKI	
Direct Examination by Ms. Davis	155
Cross-Examination by Ms. Zmroczek	165
Redirect Examination by Ms. Davis	167
CHARLEY RICE	
Direct Examination by Mr. Riddle	168
Cross-Examination by Ms. Zmroczek	194
Redirect Examination by Mr. Riddle	199
ARLETTA CARR	
Direct Examination by Mr. Riddle	204
Cross-Examination by Ms. Zmroczek	224
LISA JACKSON	
Direct Examination by Ms. Davis	236
Cross-Examination by Ms. Zmroczek	249
TEPHANISA JONES	
Direct Examination by Ms. Davis	255
Cross-Examination by Ms. Zmroczek	267
WILLIAM DERRENBACHER	
Direct Examination by Mr. Riddle	270

Cross-Examination by Ms. Zmroczek	282
Redirect Examination by Mr. Riddle.....	288
Recross-Examination by Ms. Zmroczek.....	288
MICHON MANSFIELD	
Direct Examination by Mr. Riddle.....	289
Cross-Examination by Ms. Zmroczek	306
JANICE ROSEMAN	
Direct Examination by Ms. Davis.....	315
Cross-Examination by Ms. Zmroczek	328
JOSEPH CHAPPELL	
Direct Examination by Ms. Davis.....	333
Cross-Examination by Ms. Zmroczek	343
SCOTT McDONALD	
<i>Voir Dire</i> Examination by Mr. Riddle	346
Direct Examination by Mr. Riddle.....	349
Cross-Examination by Ms. Zmroczek	362
HENRY DUKES, JR.	
Direct Examination by Mr. Riddle.....	364
Cross-Examination by Ms. Zmroczek	389
STEPHEN COLLINS	
Direct Examination by Mr. Riddle.....	399
Cross-Examination by Ms. Zmroczek	426
Redirect Examination by Mr. Riddle.....	448
Recross-Examination by Ms. Zmroczek.....	450
CHRISTOPHER McTEAGUE	
Direct Examination by Mr. Riddle.....	452
Cross-Examination by Mr. Dowtin.....	470
SHELBY DERRICK	
Direct Examination by Ms. Davis.....	477
Cross-Examination by Ms. Zmroczek	510
Redirect Examination by Ms. Davis	519
Recross-Examination by Ms. Zmroczek.....	521
DAVID DAY	
Direct Examination by Ms. Davis.....	524
DOCTOR JANICE ROSS	
Direct Examination by Mr. Riddle.....	528

DEFENSE MOTION TO EXCLUDE TO STATE’S EXHIBIT NO. 16 (PHOTOGRAPH) BY MS. ZMROCZEK	533

RESPONSE BY MR. RIDDLE	534

COURT’S RULING FINDING STATE’S EXHIBIT NO. 16 ADMISSIBLE	535

TESTIMONY

DOCTOR JANICE ROSS

Continued Direct Examination by Mr. Riddle.....	536
Cross-Examination by Ms. Zmroczek	548
Redirect Examination by Mr. Riddle	550

JOHN ROBERTS

<i>Voir Dire</i> Examination by Mr. Riddle	551
Direct Examination by Mr. Riddle.....	553

JENNIFER CLAYTON

<i>Voir Dire</i> Examination by Mr. Riddle	555
Direct Examination by Mr. Riddle.....	557
Cross-Examination by Ms. Zmroczek	562

BLADE FINS

Direct Examination by Mr. Riddle.....	565
Cross-Examination by Mr. Dowtin.....	572

RENEE STRICKLAND

Direct Examination by Ms. Davis.....	573
Cross-Examination by Ms. Zmroczek	590

JUROR NO. 50 (IN-CAMERA)

Direct Examination by the Court	593

WILBUR DUANE JOHNSON

<i>Voir Dire</i> Examination by Mr. Riddle	595
Direct Examination by Mr. Riddle.....	597

DOUG NOVAK

Direct Examination by Ms. Davis.....	599
Cross-Examination by Ms. Zmroczek	605
Redirect Examination by Ms. Davis	606

JAMES GREEN

<i>Voir Dire</i> Examination by Mr. Riddle	607
Direct Examination by Mr. Riddle.....	609

Cross-Examination by Ms. Zmroczek	627
STATE RESTS	628
DEFENSE RENEWAL OF ALL PRIOR OBJECTIONS AND MOTION FOR DIRECTED VERDICT BY MR. DOWTIN	629
COURT’S RULING DENYING MOTION FOR DIRECTED VERDICT	629
TESTIMONY COLLOQUY WITH DEFENDANT	630
TESTIMONY	
EDDIE PRESTIGIACOMO	
Direct Examination by Ms. Zmroczek.....	644
Cross-Examination by Mr. Riddle	648
Redirect Examination by Ms. Zmroczek	649
KAREN SCHWARTZ	
Direct Examination by Mr. Dowtin	651
Cross-Examination by Mr. Riddle	656
DEIRDRE DAVIS	
Direct Examination by Ms. Zmroczek.....	658
Cross-Examination by Mr. Riddle	663
SHELLIE DAVIS	
Direct Examination by Ms. Zmroczek.....	664
Cross-Examination by Mr. Riddle	706
Redirect Examination by Ms. Zmroczek	742
RANA PERI DAVIS	
Direct Examination by Mr. Dowtin	749
NINA PINEDA	
Direct Examination by Ms. Zmroczek.....	752
ROBERT “EDDIE” WILDER, JR.	
Direct Examination by Mr. Dowtin	756
KENYATTA TERRY-ALLEN	
Direct Examination by Mr. Dowtin	760
TRACEE CROCKER	
Direct Examination by Ms. Zmroczek.....	763

ENOLA THORNTON	
Direct Examination by Ms. Zmroczek.....	768
NAEKA COLLINS	
Direct Examination by Ms. Zmroczek.....	775
Cross-Examination by Mr. Riddle	782
Redirect Examination by Ms. Zmroczek	783
DOCTOR DONNA SCHWARTZ-WATTS	
<i>Voir Dire</i> Examination by Ms. Zmroczek	785
Direct Examination by Ms. Zmroczek.....	786
Cross-Examination by Mr. Riddle	791
Redirect Examination by Ms. Zmroczek	802
WILLIAM TYSON	
<i>Voir Dire</i> Examination by Ms. Zmroczek	807
Direct Examination by Ms. Zmroczek.....	809
Cross-Examination by Mr. Riddle	826
Redirect Examination by Ms. Zmroczek	835
DEFENSE RESTS	837
DEFENSE RENEWAL OF MOTION FOR DIRECTED VERDICT	838
COURT’S RULING DENYING MOTION FOR DIRECTED VERDICT	838
CHARGE CONFERNCE	839
CLOSING ARGUMENT BY MS. ZMROCZEK	852
CLOSING ARGUMENT BY MR. RIDDLE	867
CHARGE ON THE LAW	889
VERDICT	915
POLLING OF THE JURY.....	918
DEFENSE MOTION FOR DIRECTED VERDICT	922
COURT’S RULING DENYING MOTION FOR DIRECTED VERDICT	922
DEFENSE MOTION FOR FINDING THAT THE DEFENDANT IS A BATTERED WOMAN BY A PREPONDERANCE OF THE EVIDENCE BY MS. ZMROCZEK.....	924

COURT’S RULING FINDING THE DEFENDANT BATTERED BY A PREPONDERANCE OF THE EVIDENCE.....	924
STATE’S OBJECTION TO COURT’S RULING FINDING THE DEFENDANT BATTERED.....	925
COURT’S INQUIRY TO CLARIFY PURPOSE OF DEFENSE MOTION FOR FINDING REGARDING BATTERED WOMAN STATUS	926
DEFENSE REQUEST FOR LEAVE TO SUPPLEMENT MOTION	927
COURT DEFERS RULING	927
DEFENSE CLARIFIES MOTION FOR FINDING OF BATTERED WOMAN SYNDROME PURSUANT TO S.C. CODE ANN. § 16-25-90	930
DEFENSE MOTION TO DEFER SENTENCING	932
RESPONSE BY MR. RIDDLE	933
COURT’S RULING DEFERRING SENTENCING PENDING AN EVIDENTIARY HEARING ON THE DEFENSE MOTION FOR A FINDING OF BATTERED WOMAN SYNDROME PURSUANT TO S.C. CODE ANN. § 16-25-90	934
DEFENSE EXHIBIT NO. 6 (JOURNAL ENTRY (12 PAGES)).....	938
DEFENSE EXHIBIT NO. 7 (NOTEBOOK JOURNAL (19 PAGES))	962
DEFENSE EXHIBIT NO. 8 (RED NOTEBOOK).....	999
DEFENSE EXHIBIT NO. 9 (BLUE NOTEBOOK)	1002
DEFENSE EXHIBIT NO. 26 (PHONE RECORDS).....	1021
MOTION TO REQUEST HEARING TO RECONSIDER NOT FINDING OF A BATTERED WOMEN [SIC] DURING SENTENCING FILED MAY 8, 2014.....	1022
ORDER DENYING DEFENDANT’S MOTION FOR HEARING TO RECONSIDER NOT FINDING BATTERED WOMAN DURING SENTENCING FILED FEBRUARY 7, 2018	1023
NOTICE OF APPEAL FILED FEBRUARY 28, 2018	1025
COURT OF APPEALS ORDER REMANDING FOR A NEW HEARING ON THE DEFENSE MOTION TO BE CLASSIFIED AS A BATTERED SPOUSE PURSUANT TO S.C. CODE ANN. § 16-25-90 DATED JANUARY 14, 2022	1028

TRANSCRIPT OF HEARING DATED JULY 29-30, 2024	1030

COURT’S NOTATION OF THE PROCEDURAL POSTURE	1035

TESTIMONY

CATHERINE ROSS

Direct Examination by Mr. Gilliam	1036
Cross-Examination by Ms. Taylor	1048
Redirect Examination by Mr. Gilliam	1052

WHITNEY DANSO

Direct Examination by Mr. Johnson	1054
Cross-Examination by Mr. McNair	1067
Redirect Examination by Mr. Johnson.....	1096
Recross-Examination by Mr. McNair	1105

WANDA HUNDLEY

Direct Examination by Mr. Johnson	1109
Cross-Examination by Mr. McNair	1117
Redirect Examination by Mr. Johnson.....	1120

DEIRDRE DAVIS-WASHINGTON

Direct Examination by Mr. Johnson	1122
Cross-Examination by Mr. McNair	1130
Redirect Examination by Mr. Johnson.....	1137

DEFENSE NOTATION OF TRIAL TESTIMONIES BY MR. JOHNSON	1138

TESTIMONY

ARLETTA CARR

Direct Examination by Mr. McNair	1145
Cross-Examination by Mr. Johnson.....	1158
Redirect Examination by Mr. McNair	1164

JESSE MOON

Direct Examination by Ms. Taylor	1167
Cross-Examination by Mr. Johnson.....	1172
Redirect Examination by Ms. Taylor.....	1175

LYNESHA HOWARD

Direct Examination by Mr. Johnson	1179
Cross-Examination by Ms. Taylor	1182

DEFENSE ARGUMENT FOR FINDING OF BATTERED SPOUSE	1188

RESPONSE BY MR. McNAIR.....	1196
CONTINUED DEFENSE ARGUMENT BY MR. JOHNSON	1204
COURT DEFERS RULING ON DEFENSE MOTION TO BE CLASSIFIED AS A BATTERED SPOUSE PENDING THE SUBMISSION OF POST-HEARING MEMORADUMS FROM BOTH PARTIES	1205
ORDER DENYING MOTION TO CLASSIFY THE DEFENDANT AS A BATTERED SPOUSE PURSUANT TO S.C. CODE ANN. § 16-25-90 FILED JANUARY 24, 2025	1209
INDICTMENT.....	1218
SENTENCE SHEET.....	1220
CERTIFICATE OF COUNSEL	1221

S. DERRICK - DIRECT EXAMINATION BY MS. SHANNON DAVIS 501

1 A. This would be a guide room -- diagram, sorry, of the
2 actual bedroom, this being the entrance way or the, the
3 door, and you enter the door. The dresser and TV stand is
4 off to the right. The bed is directly in front of you, and
5 the victim was laying right beside the bed on the left
6 side.

7 Q. And who drew this diagram?

8 A. I actually drew the diagram.

9 Q. And is that something that you typically do on your
10 scenes?

11 A. Yes, ma'am.

12 Q. Okay, and I see that there is measurements. Who came
13 up with these measurements?

14 A. We, we -- sorry. We measured with measuring tape,
15 meaning we as me and crime scene Investigator Day actually
16 strung out measuring tape and measured the length of the
17 walls and the length of the evidence of items in relation
18 to the corners and, and everything in the walls.

19 Q. Okay. So, item number 1, what would that be?

20 A. Item number 1 would be the casing, the shell casing.

21 Q. And that's what we've already put into evidence
22 earlier?

23 A. Yes, ma'am.

24 Q. Okay, and this is -- would have been where you would
25 have found it?

1 A. Yes, ma'am.

2 Q. Okay, and how about number 2?

3 A. Number 2 would be the actual Blackberry cell phone
4 after it fell onto the floor in between the dresser and TV.

5 Q. Okay, and where is number 3?

6 A. Number 3 is the bed.

7 Q. The bed, okay, and what are these arrows?

8 A. The arrows and the lines actually is, is what we call
9 triangulation. When we're measuring, it just gives it
10 reference point to the corners of the room as to how far
11 away the items were.

12 Q. Shelby, did you learn at a later time that evidence
13 was collected in Charlotte, North Carolina?

14 A. Yes, ma'am, I was.

15 Q. And did you process any evidence from there?

16 A. Yes, ma'am, I did. I retrieved a purple bag from
17 evidence and executed a search warrant on that bag. I also
18 retrieved a black purse and executed a search warrant on
19 the cell phone that was in that purse, and I executed a
20 search warrant on the vehicle that was actually in our
21 evidence impound lot.

22 Q. Okay, and you said that you executed a search warrant
23 on a purple bag?

24 A. Yes, ma'am.

25 Q. Would that be State's Number 65?

S. DERRICK - DIRECT EXAMINATION BY MS. SHANNON DAVIS 503

1 A. That would be.

2 Q. And did it have contents in it whenever you executed
3 it?

4 A. Yes, ma'am.

5 Q. And did you take out all of these, all of the
6 contents, and photograph that?

7 A. As, as executing the warrant, I actually did. I took
8 the, the item into our crime lab, laid all the items out,
9 and photographed all them.

10 Q. Okay, and inside the purple bag -- I'm going to show
11 you Number -- State's 64. Did you find this inside the
12 purple bag?

13 A. Yes, ma'am.

14 Q. Okay, and can you tell the jury what that is?

15 A. It is a white envelope, bank style envelope, with
16 cash.

17 Q. Okay, and did you open that envelope to see what was
18 inside of it?

19 A. I did. I opened it to inventory the amount of cash
20 that was in it.

21 Q. Okay, and State's Number 40, was this what was inside
22 of that white envelope?

23 A. Yes, ma'am. That's all the cash, and there was
24 actually some jewelry, some rings that were placed in the
25 white bag -- or envelope. I'm sorry.

S. DERRICK - DIRECT EXAMINATION BY MS. SHANNON DAVIS 504

1 Q. And is there any handwritten note on that white
2 envelope?

3 A. There is. There's a handwritten note on the front and
4 back of the envelope.

5 Q. Can you read what those say?

6 A. The -- I guess this would be the front. That's what
7 I'm calling the front. It actually has the bank's
8 information. It says:

9 Shellie thanks -- thanks you for a good job.

10 Love you.

11 And I can't read the signature.

12 Q. Okay, and how about on the back?

13 A. And on the back is more handwriting in blue ink, and
14 it says:

15 Please use for my kids. I'm so sorry.

16 And another signature that I don't...

17 Q. Okay.

18 A. Can't make out.

19 Q. And State's Number 39, would this be a picture that
20 you took of the purple bag when you were inventorying it?

21 A. Yes, ma'am.

22 Q. And can you see the white envelope inside of it?

23 A. Yes, ma'am. It's right here, located right there.

24 Q. So, State's Number 64 would be the white envelope in
25 State's 39?

S. DERRICK - DIRECT EXAMINATION BY MS. SHANNON DAVIS 505

1 A. Yes, ma'am.

2 Q. Okay. So, this was packaged separately after you
3 inventoried the purple bag?

4 A. It was.

5 Q. And you said that you had a search warrant, or you
6 executed a search warrant for the defendant's cell phone.
7 Is that right?

8 A. I did.

9 Q. And where was that cell phone found?

10 A. The cell phone was located when I retrieved it out of
11 our evidence property room.

12 Q. Okay.

13 A. Oh, I'm sorry. It was located in the black purse that
14 was in our property room.

15 Q. Okay. So, State's Number 68, this black purse, would
16 it have been located in the black purse?

17 A. Yes, ma'am.

18 Q. And did you sign out the black purse from evidence?

19 A. I did.

20 Q. And what did you do then?

21 A. I signed out the purse. I removed the cell phone from
22 the purse and conducted a search warrant on the cell phone
23 using our Cellebrite system.

24 Q. So, you did the same thing for the defendant's phone
25 as you did for the victim's phone?

1 A. Yes, ma'am.

2 Q. Okay, and State's Number 76, can you tell me what this
3 is?

4 A. This is actually a Blackberry cell phone that I
5 retrieved from the black purse, and that would be the
6 defendant's.

7 Q. And you did the Cellebrite dump on this phone?

8 A. Yes, ma'am.

9 Q. And the Cellebrite dumps, do you put those on a CD?

10 A. I do. I put the information that's retrieved to the
11 copied information that's on the USB drive. I transfer it
12 from the USB drive to a, a CD. That way I can turn the CD
13 in to our evidence property room.

14 Q. Okay, and did you do that in this case for ---

15 A. I ---

16 Q. --- both the defendant and the victim's cell phone?

17 A. I did. I also had a CD copy. I place a copy in my
18 case file. I give a copy to the lead investigator, which
19 would be Steve Collins or Detective Collins, and place a CD
20 also in evidence.

21 Q. Okay. Did you also execute a search warrant on
22 Shellie Davis's vehicle that was found in Charlotte?

23 A. Yes, ma'am. I, I -- at the time I executed a search
24 warrant, our vehicle had already been towed to our impound
25 lot at Lexington County.

S. DERRICK - DIRECT EXAMINATION BY MS. SHANNON DAVIS 507

1 Q. So when you processed the vehicle, it was already in
2 Lexington?

3 A. Yes, ma'am. It was in our secured evidence property
4 impound lot.

5 Q. Okay, and did you locate any physical evidence inside
6 the defendant's vehicle?

7 A. I did. Executing the search warrant, I took
8 photographs of the exterior of the vehicle and the interior
9 of the vehicle, and I located a brown paper bag in the
10 passenger seat -- well, passenger floorboard that had a gun
11 box located in the brown bag.

12 Q. This is State's Number 63. Would you take a look at
13 this? Tell the jury what that is.

14 A. This -- well, actually it's the brown bag that I
15 folded up, the gun box that was in the brown bag, and the
16 paperwork that went with the gun box.

17 Q. If you could look at the paperwork on here. Could you
18 tell the jury what that is for?

19 A. This is actually a receipt for the Firestorm .380,
20 which is matching the Firestorm .380 box, gun box from
21 People's Pawn Shop.

22 Q. Okay, and can you tell the jury the date on that
23 receipt?

24 A. The date is listed 7/21/10.

25 Q. Okay, and that was found in a paper bag in the

1 defendant's vehicle?

2 A. Yes, ma'am.

3 Q. And this gun box, can you tell me what type of gun
4 that would be for?

5 A. This is a Firestorm gun box, and on the side of it, it
6 says Duo-Tone cal .380, and it has a serial number.

7 Q. Can you read the serial number, please?

8 A. A68037 is what I can see on the sticker.

9 Q. Thank you. Sorry it's dusty.

10 A. Yes.

11 Q. And State's 41, is this the defendant's vehicle that
12 you processed?

13 A. Yes, ma'am.

14 Q. And it's located at the impound lot in Lexington at
15 this time?

16 A. That is.

17 Q. And State's Number 42, would that be the license plate
18 of the defendant's vehicle?

19 A. That is the license plate that the defendant's vehicle
20 was displaying at that time of the search warrant, yes,
21 ma'am.

22 Q. State's 43?

23 A. That would be the interior of the vehicle, the
24 passenger side with the seat and floorboard.

25 Q. And is this the brown paper bag that you were ---

S. DERRICK - DIRECT EXAMINATION BY MS. SHANNON DAVIS

509

1 A. Yes ---

2 Q. --- speaking of?

3 A. --- ma'am.

4 Q. And these items were located in this brown bag?

5 A. Yes, ma'am.

6 Q. State's 44.

7 A. Is just a closer shot of the brown bag in the
8 passenger seat floorboard.

9 Q. And State's number 45.

10 A. And that would be me opening the bag and taking a
11 photo of the contents that's in the bag before I remove it.

12 Q. So, this would be what you saw when you opened the
13 bag?

14 A. Yes, ma'am.

15 Q. Shelby, the evidence that was collected in this case,
16 did you take any of it to SLED to be tested?

17 A. Yes, ma'am, I did.

18 Q. Okay. Do you recall when that happened?

19 A. I believe I took -- I don't have that paperwork with
20 me, but I do believe -- I think it was the 5th of October.

21 Q. Okay, and do you recall what evidence you took to
22 SLED?

23 A. I took all the evidence other than the items that were
24 collected at autopsy.

25 Q. Okay, and you wouldn't have tested any of that? That

1 would have all been done at SLED?

2 A. Yes, ma'am. The testing would have been -- taken at
3 SLED, not by me.

4 Q. Did you take part in the search that occurred at the
5 defendant's residence on Algrave?

6 A. No, ma'am. I was not involved in that search.

7 Q. Okay.

8 MS. SHANNON DAVIS: I think that's all the questions I
9 have for you. Please answer any of the defense's
10 questions.

11 THE COURT: Yes, ma'am.

12 CROSS-EXAMINATION BY MS. ZMROCZEK:

13 Q. Shelby, I tried real hard to listen, and I don't, I
14 don't want to be confused. When she was showing you
15 State's Number 14, what I heard was it was before the scene
16 had been manipulated except for the body, right? You had
17 to roll the, the body over?

18 A. Uh-huh.

19 Q. Can you explain to me how you did that, to the jury
20 how you did that?

21 A. How I rolled the, the body?

22 Q. Right. Right.

23 A. The body's -- or the victim's head and everything, the
24 body was laying on the -- on his back. Therefore, we had
25 to roll him over onto his side and possibly -- I think we

S. DERRICK - CROSS-EXAMINATION BY MS. ZMROCZEK

511

1 rolled his a little bit further onto his belly to see the
2 actual back of his head, and actually did have to scoot the
3 bed over a little bit because his head was actually
4 underneath the bed frame.

5 Q. Okay, and at that point, did you also have to lift the
6 sheets, or you didn't have to lift the ---

7 A. Yes, ma'am. When we moved the bed, we lifted the
8 bedspread in order to see his face and to, to roll him.

9 Q. Okay. That's what I wanted to make sure I understood.
10 And, and the reason that you take all the pictures and try
11 not to manipulate anything is why?

12 A. To show the actual scene as is, as we find it, and how
13 it was left.

14 Q. But you're aware that there had already been several
15 people in there and had actually rolled the body before you
16 did, correct?

17 A. I believe the paramedics were actually on the scene
18 before I was and viewed the body.

19 Q. And rolled it as well?

20 A. Okay. I'm not sure what the actual EMTs do when they
21 do that.

22 Q. Okay. You weren't aware of that?

23 A. They checked the body, so they obviously, I guess,
24 rolled it if they did, but they didn't move or manipulate
25 as far as moving location.

1 Q. Okay, and they didn't move the bedspread?

2 A. I don't think so. Not that I recall. I don't know if
3 they actually moved the bedspread or if we actually did
4 when we moved it.

5 Q. Okay, and you don't recall which one it was?

6 A. We moved it at that time. I don't know if it was
7 actually me lifting or someone else that was with me
8 lifting it.

9 Q. Okay, and talk to me about this aspirated blood. How
10 does that work?

11 A. Aspirated blood is just the term that we use for that
12 pattern of spatter, and it, it has oxynated blood and
13 bubbles and it's, it's more consistent with a spit or cough
14 than it is projected out of a vein or something.

15 Q. Was there any aspirated blood found anywhere else
16 besides the inside of his right palm?

17 A. I'm -- it -- there could have been. I, I'm not sure.
18 I just know about on the right palm as, as that, that being
19 that pattern.

20 Q. If there were, you would have documented it and taken
21 pictures of course?

22 A. Yes, ma'am.

23 Q. Okay, and you don't have any of those pictures?

24 A. If they're, they're not in there, then no, then no,
25 they weren't that significant, no, ma'am.

S. DERRICK - CROSS-EXAMINATION BY MS. ZMROCZEK

513

1 Q. Okay, and I'm going to show you. You talked about
2 Cellebrite. Tell the jury why it's important to run phones
3 through Cellebrite.

4 A. We run the phones through Cellebrite to capture the
5 data that's on the phone, the actual phone.

6 Q. What does that help with?

7 A. It puts it in, like, a PDF form and it gives us a list
8 so we can go through and actually look at it instead of
9 flipping through the phone.

10 Q. Let me rephrase the question. Do you do that to help
11 investigate and understand what's going on with a case?
12 Does that help provide information or could it?

13 A. Yes, ma'am. Usually cell phone information is -- and
14 nowadays when everybody's on their cell phones and stuff
15 like that, it kind of gives us maybe, like, a timeline or,
16 or sequence of events usually.

17 Q. And this is Defendant's Exhibit 40. Would that be --
18 you said you downloaded from the defendant's and the
19 victim's of phones, their contacts, correct?

20 A. Yes, ma'am. It would have, it would have pulled their
21 contacts.

22 Q. Okay, and that's -- and that, that would be what you
23 would -- that was the format that it comes out of
24 Cellebrite, correct?

25 A. I believe so. I mean, this is a contact list, and

1 that would be consistent with the same.

2 Q. And it -- there are eighty-seven contacts, so that
3 would ---

4 A. Yes.

5 Q. --- include the entire contacts? And this, this is
6 the same -- this picture is the same envelope that you
7 actually collected?

8 A. Yes, ma'am.

9 Q. And it was in the bag in Charlotte, correct?

10 A. Uh-huh.

11 Q. And you found some other items in Ms. Shellie Davis's
12 car. Is this consistent with the resume or stack of
13 resumes that you found in there?

14 A. This is a resume-type style letter, yes, ma'am.

15 Q. Okay. What else? What else did you find?

16 A. This looks like a receipt.

17 Q. For a bus ticket?

18 A. Okay. Yeah. Southeastern Stages, yes.

19 Q. And you found all those in, in her car?

20 A. Yes, ma'am. Those would have been in the car.

21 Q. Okay, and the, the victim's cell phone was ringing,
22 and I understand it was in the black pack that, that we
23 showed the jury and then it fell off because it was
24 ringing?

25 A. Yes, ma'am.

S. DERRICK - CROSS-EXAMINATION BY MS. ZMROCZEK

515

1 Q. And then later on I asked you to, to power it back up
2 so that we could take pictures of the call logs because
3 those don't show up this up in the Cellebrite, correct?

4 A. They were not captured by the Cellebrite, no, ma'am.

5 Q. And I'm not asking you to identify any of the numbers,
6 but are these the pictures that you took of the missed
7 calls? Or tell the jury what, what pictures you took. You
8 don't have to explain what's in them, just what you took.

9 A. Okay. These look like my photos. I'm not quite sure
10 if they are or not; I would assume they are. They are
11 actually screenshots of the call log that are present on
12 cell phones.

13 Q. So, you just powered it up and would scroll through
14 and take a picture and ---

15 A. Take a picture as I scrolled through. We have a --
16 it's kind of like a table, and we hook our camera to it so
17 it shoots at a, a 90 degree angle. That way you don't have
18 to hold the camera and focus and everything, and we either
19 scroll through or narrow down and take photographs as we do
20 it.

21 Q. And, and I know that you didn't -- all you did was
22 take the pictures, so...

23 A. Yes, ma'am. I didn't go through the actual phone. I
24 went through and took the photos.

25 Q. And I do believe you said that when you were powering

1 it off, there, there -- in these photos, there will be an
2 outgoing call to Ms. Shellie Davis, but that was an
3 accident from you?

4 A. Yes, ma'am.

5 Q. Okay. Okay. All, all phones are different, right?

6 A. Yes, they are.

7 Q. You don't know what button to hit. I completely
8 understand. And they would show the dates and times of
9 those phone calls, correct?

10 A. Yes, ma'am.

11 Q. Okay. You also took, you took pictures of locks from
12 the main door, correct?

13 A. Yes, ma'am.

14 Q. And then what does this picture depict?

15 A. This is actually a lock that was on the bedroom door
16 of Jermaine.

17 Q. This was on the inside?

18 A. Inside, yes, ma'am.

19 Q. Of Jermaine's room? Tell the jury what this picture
20 is.

21 A. This would be a picture of the dresser top drawer. I
22 pulled out the drawer and took a photograph of the contents
23 of the drawer.

24 Q. And did you do that for all the drawers?

25 A. I believe so.

S. DERRICK - CROSS-EXAMINATION BY MS. ZMROCZEK

517

1 Q. Okay. Did you take any pictures of -- pictures or
2 photographs of any personal items that were in the room
3 other than ---

4 A. Like framed photographs?

5 Q. Right.

6 A. As far as general photographs of the actual room, then
7 yes, I don't recall actually focusing on a certain photo or
8 not.

9 Q. You said that you had processed the -- Jermaine's
10 vehicle?

11 A. Uh-huh.

12 Q. And you collected some items from there?

13 A. Yes, ma'am.

14 Q. But you also photographed items?

15 A. I did.

16 Q. What, what -- was this taken from the front pass -- or
17 the front seat?

18 A. This looks to be a seat of, of a vehicle yes, ma'am.

19 Q. Okay.

20 A. I can't tell you by the photograph if it's front or
21 back.

22 Q. Right. Okay. You found -- but the cash that you
23 inventoried and found came out of Jermaine's vehicle?

24 A. There was cash in the vehicle, yes, ma'am.

25 Q. Okay. Shelby, let's talk briefly about the sheet and

1 the swabs that you took. You took them that, that very day
2 that you were processing the scene, correct?

3 A. I took them once I got back to -- oh, I'm sorry.
4 According to my notes, I did collect swabs A through E,
5 which would have been from the bedspread and the two
6 bedsheets, at 9/29, 10:30 a.m., which would have been a
7 different day.

8 Q. Okay, but you collected ---

9 A. So in the, in the crime lab, I collected the swabs of
10 the sheet.

11 Q. Okay, and then you sent those to SLED, right?

12 A. I actually logged them into evidence. I believe they
13 were sent. I did not send them.

14 Q. You took -- the state showed you and you -- showed the
15 -- a picture of the cell phone, of the victim's cell phone.
16 It had twenty missed calls on it?

17 A. Yes, ma'am. The screenshot I took from the actual
18 scene location, it, it shows, I believe, twenty missed
19 calls and so many voicemails.

20 Q. And that was, you said, around 3:00 you were taking
21 those pictures?

22 A. I -- we started at 1453, 2:53. It probably would have
23 been about 3, 3:30.

24 Q. And then, and then you powered it off?

25 A. Yes, ma'am.

S. DERRICK - CROSS-EXAMINATION / REDIRECT EXAMINATION 519

1 Q. So, all of the pictures that, that -- when you
2 repowered it up and showed that -- that show the times and
3 the calls, those would have been the twenty missed calls
4 that were encapsulated in the ---

5 A. Yes, ma'am.

6 Q. --- picture you took with the times?

7 A. Uh-huh.

8 Q. And the reason that you, as a crime scene
9 investigator, collect all these -- collect all this
10 evidence, preserve it, make sure that it's -- the integrity
11 is preserved is because that also helps to understand what
12 happened that day, correct?

13 A. Yes, ma'am.

14 MS. ZMROCZEK: I have no further questions.

15 MS. SHANNON DAVIS: Very briefly, Judge.

16 REDIRECT EXAMINATION BY MS. SHANNON DAVIS:

17 Q. Shelby, I believe that the defense showed you some,
18 some phone calls or pictures of the victim's phone screen
19 of missed calls. I believe it's Defendant's 24 through 37.
20 Is this the full list of how many calls that you took
21 pictures of?

22 A. I don't know the actual number, but I believe I
23 actually took, like, 300 photographs of the cell phone.

24 Q. So, this would not be all of them?

25 A. No, ma'am.

S. DERRICK - REDIRECT EXAMINATION BY MS. SHANNON DAVIS 520

1 Q. This would be a very short, short list of them?

2 A. Yes, ma'am.

3 Q. So, there are many more calls than just this?

4 A. There are many more photographs, yes, ma'am.

5 Q. Okay, and the swab that you took from sheets and the
6 comforter at the victim's home, I'm going to show you
7 State's Number 66. Can you tell the jury what this is?

8 A. This is one white sheet and one green sheet.

9 Q. And without opening it up, how do you recognize that
10 as yours?

11 A. Well, I recognize the handwriting to be mine, but I
12 have initialed here and I have initialed the seal and dated
13 it as well.

14 Q. So, you would have taken swabs from these sheets?

15 A. Yes, ma'am.

16 Q. Okay, and the same for State's 67?

17 A. Yes, ma'am. This is labeled bedspread, item number 3,
18 which is the bed, and this is also my handwriting and my
19 initials.

20 Q. Okay.

21 A. Yes.

22 Q. And this would have been -- that you took swabs
23 from ---

24 A. Yes, ma'am.

25 Q. --- the victim's bed?

S. DERRICK - RECROSS-EXAMINATION BY MS. ZMROCZEK

521

1 MS. SHANNON DAVIS: Beg the court's indulgence.

2 Thank you, Shelby. That's all I have.

3 MS. ZMROCZEK: I just have -- briefly, Your Honor.

4 RECROSS-EXAMINATION BY MS. ZMROCZEK:

5 Q. The DNA swabs, that -- it's not -- is that, is that
6 your job to send them off to SLED or would that be the job
7 of the investigator?

8 A. Once I collect them, then we talk about what items I
9 have collected, and then it's ultimately their -- the
10 decision of the lead investigator to choose which items are
11 going.

12 Q. And you gave a copy of the CD of the cell dumps of the
13 -- the Cellebrite dumps of the victim's and the defendant's
14 phone to Investigator Collins?

15 A. I usually make a copy to put in my case file. I
16 usually make a copy of them for the investigator, and then
17 I also place them into evidence. So, if I don't give him a
18 copy, he actually can get them out of evidence if he needs
19 a copy.

20 Q. Okay, and then you, you took over 300 pictures of the
21 cell phones because there were more calls than just
22 September 22nd, correct?

23 A. Yes, ma'am.

24 Q. Okay, but -- so, there were numerous dates which would
25 encompass the 300 calls, correct?

1 A. I took photographs of all the call logs. I'm not sure
2 exactly what dates are, but everything that was present on
3 the cell phone, I took photographs of.

4 Q. But September 22nd, the day of this incident and the
5 photo that you took off the twenty missed calls ---

6 A. Yes, ma'am, they would have been in, in the call logs
7 as well.

8 Q. Okay.

9 MS. ZMROCZEK: I have no further questions.

10 MS. SHANNON DAVIS: We ask that she be excused, Your
11 Honor.

12 MS. ZMROCZEK: Without objection.

13 THE COURT: Without objection. You're free to go,
14 ma'am. Thank you.

15 WITNESS: Thank you.

16 (THE WITNESS EXITS THE STAND.)

17 THE COURT: Y'all come up real quick.

18 (OFF-THE-RECORD BENCH CONFERENCE.)

19 THE COURT: All right, ladies and gentlemen, we're
20 going to break for lunch at this time. It's 12:20, so I'm
21 going to ask you, if you would, to please be back at, let's
22 see, let's be back at 2:00, okay? If you will be back in
23 the jury room at 2:00, and we will continue at that point.

24 Please have no conversation with anyone during the
25 lunch break as you, as you leave the courthouse. Don't

1 allow anyone to talk with you. Just enjoy your break and
2 then when you come back, we'll get started, okay?

3 Everyone remain seated while the members of the jury
4 are dismissed.

5 (THE JURY EXITS AT 12:20 P.M.)

6 THE COURT: All right, anything we need to take up
7 before we break?

8 MS. SHANNON DAVIS: Not from the state, Your Honor.

9 MS. ZMROCZEK: Not from the defense.

10 THE COURT: All right, we'll be back at 2:00.

11 (OFF THE RECORD.)

12 THE COURT: We ready?

13 MS. SHANNON DAVIS: Your Honor, State's number 60 the
14 defense has no objection to, so we can put that into
15 evidence.

16 THE COURT: All right, is that correct, Ms. Zmroczek?

17 MS. ZMROCZEK: That is correct.

18 THE COURT: All right, State's 60 is in without
19 objection.

20 (BULLET CORE AND JACKET MARKED INTO EVIDENCE AS
21 STATE'S EXHIBIT NUMBER 60.)

22 THE COURT: All right, anything we need to take up
23 before we resume the trial?

24 MS. SHANNON DAVIS: Nothing from the state, Your
25 Honor.

D. DAY - DIRECT EXAMINATION BY MS. SHANNON DAVIS

524

1 MS. ZMROCZEK: Nothing for the defense.

2 THE COURT: All right, please have the jury join us,
3 please.

4 (THE JURY ENTERS AT 2:04 P.M.)

5 THE COURT: I hope everyone had a good, good lunch
6 break. We will resume. If you recall, we were still in
7 the state's case, so we will pick up there.

8 Shannon, you may call your next witness.

9 MS. SHANNON DAVIS: Thank you, Your Honor. The state
10 calls David Day.

11 THE COURT: All right, Mr. Day, if you will please
12 come around and be sworn, sir.

13 DAVID DAY, BEING DULY SWORN,
14 TESTIFIES AS FOLLOWS:

15 CLERK OF COURT: Once you are seated, state your full
16 name, spelling your last on the record, please.

17 WITNESS: My name is David Day, D-a-y.

18 DIRECT EXAMINATION BY MS. SHANNON DAVIS:

19 Q. Investigator, where are you employed?

20 A. Lexington County Sheriff's Department.

21 Q. And what do you do there?

22 A. I'm a crime scene investigator.

23 Q. Okay, and were you present for Shelby Derrick's
24 testimony?

25 A. Yes, ma'am.

D. DAY - DIRECT EXAMINATION BY MS. SHANNON DAVIS

525

1 Q. Do you do the same thing that she does?

2 A. Yes, ma'am.

3 Q. Okay. Were you working in that capacity on September
4 22nd of 2010?

5 A. Yes, ma'am.

6 Q. Okay, and did you respond a crime scene at Feather Run
7 Trail?

8 A. I did.

9 Q. And what was your role at that scene?

10 A. I had heard that Investigator Derrick was en route to
11 what we call a signal 9, which is a death, a known call.
12 So, I had called her on the phone and asked her if she
13 needed any help because I didn't have anything going on at
14 the moment, and she said sure, and so I just responded out
15 there to assist her.

16 Q. So, you assisted her on the scene?

17 A. Yes, ma'am.

18 Q. Okay, and did you arrive at the same time Shelby did
19 on the scene?

20 A. Yes, ma'am.

21 Q. Okay, and when you were on the scene, I know that you
22 were assisting Shelby. What -- but what actions did you
23 take at Feather Run?

24 A. The crime scene ended up being kind of small, so there
25 was really not much that I could do. Basically what I did

1 was I helped carry equipment from her vehicle to the
2 apartment. With gloves on, I helped search the apartment.
3 I also helped her measure the room by holding the tape
4 measure, and I also helped her process the vehicle that was
5 in the front parking lot.

6 Q. Did you take a GSR test from the victim's roommate,
7 Charley Rice?

8 A. I, I did, yes, ma'am.

9 Q. And did you use the same method that Shelby showed the
10 jury earlier today?

11 A. Yes.

12 Q. Okay, and did you give that kit to Shelby after you
13 were done?

14 A. Yes. She was standing near me, and I, I did it in her
15 presence. So, when I was done and signed and sealed it, I
16 turned it over to her.

17 Q. Okay, and you also assisted on the search of the
18 victim's vehicle?

19 A. Yes.

20 Q. Okay. Did you leave Feather Run Trail at the same
21 time as Shelby Derrick?

22 A. Yes, ma'am.

23 Q. Okay. On the next day, did you attend Jermaine
24 Davis's autopsy?

25 A. I did.

D. DAY - DIRECT EXAMINATION BY MS. SHANNON DAVIS

527

1 Q. And where was that performed?

2 A. Newberry hospital.

3 Q. Okay, and do you know which doctor did the autopsy?

4 A. Yes, ma'am. Dr. Ross.

5 Q. Okay, and what did you do at the autopsy?

6 A. Basically my job at autopsies is to, to give the
7 doctors information about what we saw at the scene, kind of
8 fill in the blanks, and also to take general photographs of
9 the body, and to collect any evidence, and the, the
10 toxicology and serology packet.

11 Q. And did you collect any evidence from the autopsy?

12 A. I collected the toxicology, the serology packet, along
13 with a bullet projectile, and I think a pair of underwear
14 and a pair of earrings.

15 Q. Okay, and the toxicology and serology, what would you
16 have done with that after you left the autopsy?

17 A. I go straight to headquarters, and because it's
18 dealing with bodily fluids and tissue, we do not keep it in
19 our evidence room. So, I, I logged it in. Then
20 immediately had it signed out to me and took it over to
21 SLED for testing.

22 Q. Okay, and you also said that there was a projectile
23 collected at autopsy?

24 A. Yes, ma'am.

25 Q. I'm going to show you what's been admitted as State's

D. DAY - DIRECT EXAMINATION BY MS. SHANNON DAVIS

528

1 60. Do you recognize this?

2 A. Yes. That is the projectile that I collected from the
3 autopsy.

4 Q. And where was this taken from the victim, if you
5 recall?

6 A. From the head.

7 Q. So, this is the bullet that was taken from Jermaine
8 Davis's head at the autopsy?

9 A. That is correct.

10 Q. Is that the extent of your involvement in this
11 investigation?

12 A. Yes. On this, yes.

13 MS. SHANNON DAVIS: I have no further questions.

14 Please answer any the defense has.

15 MS. ZMROCZEK: No questions, Your Honor.

16 THE COURT: Thank you very much, sir. Step down.

17 (THE WITNESS EXITS THE STAND.)

18 MR. RIDDLE: Your Honor, the state would call Dr.
19 Janice Ross to the stand.

20 THE COURT: All right, Dr. Ross, please come around to
21 be sworn.

22 JANICE E. ROSS, BEING DULY SWORN,
23 TESTIFIES AS FOLLOWS:

24 CLERK OF COURT: Once you're seated, state your full
25 name, spelling your last for the record.

J. ROSS - VOIR DIRE EXAMINATION BY MR. RIDDLE

529

1 WITNESS: Janice Edwards Ross, R-o-s-s.

2 MR. RIDDLE: Beg the court's indulgence one moment.

3 THE COURT: Yes, sir.

4 VOIR DIRE EXAMINATION BY MR. RIDDLE:

5 Q. Dr. Ross, are you employed at Newberry Pathology?

6 A. Yes.

7 Q. All right.

8 MS. ZMROCZEK: Your Honor, we would stipulate to her
9 as an expert.

10 MR. RIDDLE: I'd like to briefly qualify her just so
11 they know some of her experience and background.

12 BY MR. RIDDLE:

13 Q. You're a medical doctor?

14 A. Yes.

15 Q. All right. Been a medical doctor for how long?

16 A. Thirty-seven years.

17 Q. All right, and how long have you been in, in Newberry?

18 A. Fourteen years.

19 Q. All right. Where were you before that?

20 A. In central New York, but I grew up in Columbia.

21 Q. Okay. You board certified in pathology?

22 A. Yes.

23 Q. Specifically, are you board certified in forensic
24 pathology?

25 A. Yes.

J. ROSS - DIRECT EXAMINATION BY MR. RIDDLE

530

1 Q. All right. Have you testified as an expert witness
2 before in the courts of South Carolina?

3 A. Yes.

4 Q. Can you tell me approximately how many times?

5 A. Approximately seventy times.

6 Q. Seventy?

7 A. Yes.

8 MR. RIDDLE: Your Honor, I would move that -- well, I
9 guess she stipulated. I'll just go on at this point since
10 she stipulated.

11 THE COURT: All right.

12 DIRECT EXAMINATION BY MR. RIDDLE:

13 Q. Doctor, tell us what pathology is.

14 A. Pathology is the study of disease. As a pathologist,
15 I learned how to identify cancers and leukemias and
16 infections from persons, and also learned how to do an
17 autopsy to find the cause of death. Forensic pathology
18 further learns how to do a specific forensic autopsy where
19 we are able to identify types of injuries, patterns of
20 injuries, and know how to collect fluids for toxicology,
21 and document evidence for a court of law.

22 Q. All right, and when you do a forensic autopsy, do you
23 follow a specific protocol or series of steps that you go
24 through in performing one of those?

25 A. Yes.

J. ROSS - DIRECT EXAMINATION BY MR. RIDDLE

531

1 Q. Can you sort of describe generally what your protocol
2 is, and then we'll come back and take it up as it relates
3 to this case.

4 A. Yes. First off, the coroners of the different
5 counties will call and ask for us to do an autopsy, and I
6 schedule it. The body is brought to us at the morgue at
7 Newberry County Memorial Hospital in a body bag. We open
8 the body bag, take photographs of the clothed body, take an
9 inventory of the clothing and personal belongings, take the
10 clothing off, and then take photographs of the external
11 body and look for and photograph any patterns of injury.
12 Then we, depending on the case -- in this case it was a
13 gunshot wound, so we do x-rays to see if there's any bullet
14 remaining in the person. And then we do an autopsy where
15 we look internally at each organ to identify injuries
16 internally or natural disease.

17 Q. And do you document your findings, Doctor?

18 A. Yes.

19 Q. And do you do that by notes and drawings and
20 photographs?

21 A. Yes.

22 Q. As well as x-rays?

23 A. Yes.

24 Q. All right. Did you follow these same general protocol
25 steps when you did the autopsy on Jermaine Davis?

1 A. Yes.

2 Q. All right. Can you tell us when you performed that
3 autopsy, Doctor?

4 A. Yes. September 23, 2010.

5 Q. All right, and that was done at your lab up in
6 Newberry?

7 A. At the morgue in the hospital, yes.

8 Q. All right. When you first, when you first examined
9 the body of Jermaine Davis, what did you find upon your
10 visual examination of him?

11 A. We found that there was a gunshot wound in the back
12 top of the neck, and otherwise no specific injuries. The
13 palms of the hands were covered with fingerprint ink.

14 Q. Okay, and did you observe when you opened the body bag
15 any blood around his face?

16 A. There was some blood in his nose.

17 Q. In his nose?

18 A. Yeah, and underneath the head from, from oozing
19 basically.

20 Q. Okay. Doctor, do pictures help you describe your
21 testimony?

22 A. Yes. Yes.

23 Q. Okay. Let me show you a series of pictures and ask
24 you if you recognize these and if these will help explain
25 your findings to the jury. 46.

J. ROSS - DIRECT EXAMINATION BY MR. RIDDLE

533

1 A. Yes.

2 Q. 47.

3 A. Yes.

4 Q. 48.

5 A. Yes.

6 Q. 49.

7 A. Yes.

8 Q. And 16.

9 A. Yes.

10 MR. RIDDLE: Your Honor, I would offer these into
11 evidence at this time.

12 MS. ZMROCZEK: Your Honor, we stipulated to
13 everything, but we do have an objection to 16.

14 (OFF-THE-RECORD BENCH CONFERENCE.)

15 THE COURT: Ladies and gentlemen, I need to take up a
16 matter of law. Please, if you would, step to the jury room
17 while I do this. We'll bring you back out shortly.

18 (THE JURY EXITS AT 2:16 P.M.)

19 THE COURT: All right, Ms. Zmroczek.

20 MS. ZMROCZEK: Your Honor, we object to Number 16.

21 That's not the way that she found the -- she took her own
22 set of autopsy pictures and, Your Honor, we just feel like
23 a close up of the face is, is more prejudicial than
24 probative in this case. We let the other picture in where
25 -- how they found the body, and, and we understand that

J. ROSS - DIRECT EXAMINATION BY MR. RIDDLE

534

1 they need to show the, the, the wound in the back of the
2 head, and we don't think that that's more prejudicial than
3 probative. But, Your Honor, a close up of his face we
4 believe is too prejudicial.

5 THE COURT: What's the purpose of 16, Solicitor?

6 MR. RIDDLE: The purpose of 16 is dealing with the
7 issue of aspirated blood, Your Honor. The, the defense
8 asked the crime scene -- Ms. Derrick, I'm sorry, about
9 aspirated blood, and she said something about there was no
10 other aspirated blood. And as Your Honor can see in the
11 picture, not the blood that's to the left of the head but
12 the blood that's on his chest and in this general area,
13 there's a spot of blood and there's several spots of blood
14 up beside on the other side of the head from where most of
15 the blood is, Your Honor. I apologize. On the -- in this
16 area, and the doctor says to a reasonable degree of medical
17 certainty it is her opinion that the aspirated blood which
18 is depicted in State's Exhibit Number 20, which is already
19 in, that that is, in fact, aspirated blood. And I was
20 offering that to corroborate and show that there was
21 aspirated blood in the hand and also at the crime scene.

22 MS. ZMROCZEK: Your Honor, my objection is that they
23 rolled the body. The body was rolled twice before those
24 pictures were taken and, and so I don't know that you can
25 say to a reasonable degree of medical certainty. Even if

J. ROSS - DIRECT EXAMINATION BY MR. RIDDLE

535

1 you could, the close up of the face is, you know, with all
2 the blood ---

3 THE COURT: Well, your objection is that its ---

4 MS. ZMROCZEK: More prejudicial than probative.

5 THE COURT: --- prejudicial effect is greater than any
6 probative value?

7 MS. ZMROCZEK: Certainly.

8 THE COURT: I, I'm going to, I'm going to sustain the
9 objection as to 16. I think you've got, I think you've got
10 the aspirated blood and the, and the explanation in the
11 hand. I don't know that it's necessary for that, so -- but
12 40 ---

13 MS. ZMROCZEK: We have no objections to the other
14 ones, Your Honor.

15 THE COURT: Right. 46, 47, 48, and 49 are all in
16 without objection.

17 All right, anything further?

18 MR. RIDDLE: No, sir.

19 THE COURT: Before I bring them back in?

20 MR. RIDDLE: No, sir.

21 MS. ZMROCZEK: Nothing, Your Honor.

22 THE COURT: All right, let's bring them back in.

23 (PHOTOGRAPHS INDIVIDUALLY MARKED INTO EVIDENCE AS
24 STATE'S EXHIBITS 46, 47, 48, 49.)

25 (THE JURY ENTERS AT 2:21 P.M.)

1 THE COURT: All right, I'm going to sustain the
2 objection as to 16, and the remaining photos are in without
3 objection.

4 BY MR. RIDDLE:

5 Q. You received the body of Jermaine Davis?

6 A. Yes.

7 Q. And did the autopsy on the 23rd. Did you notice any
8 injuries to him from the neck down?

9 A. No, sir.

10 Q. All right. Did you notice an injury on him above,
11 above his shoulders?

12 A. Yes.

13 Q. Okay, and where was that injury, Doctor?

14 A. There was an entrance gunshot wound in the back of the
15 neck, right at the very top of the neck in the midline, in
16 the middle.

17 Q. Let me show you State's Exhibit Number 46. Does that
18 fairly and accurately depict the injury that you saw?

19 A. Yes.

20 Q. All right, and where -- could you point on me where
21 that injury was on him, Doctor?

22 A. Yes. Right here.

23 Q. And could you tell from your examination, Doctor, what
24 caused that injury?

25 A. It was a gunshot wound.

J. ROSS - DIRECT EXAMINATION BY MR. RIDDLE

537

1 Q. Was there an exit wound?

2 A. No.

3 Q. Is this an entrance or an exit wound?

4 A. Entrance.

5 Q. This is an entrance wound?

6 A. Yes.

7 Q. Were you able to find the bullet, Doctor?

8 A. Yes.

9 Q. Where was the bullet?

10 A. The bullet was in the front of the brain and just
11 resting basically on the -- just to the right of the
12 midline.

13 Q. Okay. Still in the skull?

14 A. In the middle, yes.

15 Q. Inside of the skull?

16 A. Correct.

17 Q. All right. Now, Doctor, as part of your training, did
18 you examine the edges and the characteristics of this
19 wound?

20 A. Yes.

21 Q. When you examined the edges and the characteristics of
22 a wound, what are you looking for?

23 A. We are looking for general measurements, but we're
24 also looking to identify any evidence of the range of the
25 gunshot wound. In other words, how close the gun was to

1 the skin of a person.

2 Q. If you're far away from a person when you shoot them,
3 what do you see?

4 A. We usually call this a distant gunshot wound. When a
5 bullet comes out of a gun, so does powder. Some of it's
6 burning, and so does soot, and -- but the powder and the
7 soot on go a certain distance. So, if, if the person, the
8 person who is shot is close enough to the barrel of a gun,
9 you might see evidence of the powder or the soot around the
10 entrance wound. But if it's a distance beyond that, you do
11 not see evidence of that. The distance that this occurs
12 depends on the type of gun, the length of the barrel, the
13 ammunition, a lot of different factors.

14 Q. In general, what do you define as a distant gunshot
15 wound? What would be the minimum distance in general?

16 A. At least 24 to 30 inches.

17 Q. Before you get a distant gunshot wound?

18 A. Yes.

19 Q. Closer than that, what would you start expecting to
20 see?

21 A. You can see evidence of the powder.

22 Q. Evidence of powder?

23 A. Yes, and soot closer to that.

24 Q. And soot if it gets even closer?

25 A. Yes.

J. ROSS - DIRECT EXAMINATION BY MR. RIDDLE

539

1 Q. If it's a contact wound, do you see specific findings
2 there?

3 A. You see soot around the edge of the wound, and you see
4 -- you can see actually the imprint of the barrel of the
5 gun.

6 Q. Okay. So if the barrel is touching, you see one thing
7 and then as it gets further away, you see less and less?

8 A. Correct.

9 Q. And if it's more than -- did you say two feet? Is
10 that correct?

11 A. At least two feet.

12 Q. Two feet, you won't see anything except for the
13 gunshot wound?

14 A. Correct.

15 Q. This is a distant wound?

16 A. Yes. We had to shave hair around it, but I did not
17 see any evidence of powder in the hair either.

18 Q. Okay. Now, Doctor, you indicated that you take
19 x-rays. Is that correct?

20 A. Yes.

21 Q. I'm going to show you State's 47. What is that an
22 x-ray of?

23 A. That's an x-ray of Jermaine Davis's head at the time
24 of autopsy looking at it from the side view.

25 Q. From the right side?

1 A. It doesn't matter. I mean, it's, it's from a side
2 view.

3 Q. Okay.

4 A. It's called a lateral x-ray.

5 Q. And the front of his head would be -- would that be on
6 the side with the sticker or the side without the evidence
7 sticker?

8 A. The side with the sticker.

9 Q. The face is towards the evidence sticker?

10 A. Correct.

11 Q. And what is that object that's kind of silvery up at
12 the top?

13 A. That's the bullet.

14 Q. That bullet had traveled all the way from the back of
15 his head up to the front?

16 A. Yes.

17 Q. State's 48, what is that?

18 A. That's an x-ray from the front of the face. We call
19 it an anterior posterior. It goes -- shows the front to
20 the back.

21 Q. Okay. The first one was side to side, and this one is
22 front to back?

23 A. Correct.

24 Q. And this, can you see the bullet in that as well?

25 A. Yes.

J. ROSS - DIRECT EXAMINATION BY MR. RIDDLE

541

1 Q. And it's resting?

2 A. It's tucked towards the top and basically in the --
3 right in the midline.

4 Q. In the midline? The path of that bullet, Doctor, was
5 it front to back or back to front?

6 A. Back to front, slightly upward.

7 Q. Back to front, slightly upward?

8 A. And it did go slightly to the right.

9 Q. Okay, slightly to the right.

10 MS. ZMROCZEK: I'm sorry, which direction? I couldn't
11 hear.

12 MR. RIDDLE: Slightly to the right.

13 MS. ZMROCZEK: Thank you.

14 BY MR. RIDDLE:

15 Q. Now, Doctor, the bullet, when it struck Jermaine, what
16 part of his brain did that hit?

17 A. It went in, into the skull, right at the base of the
18 skull, and it hit part of the brain stem in the pons. Then
19 it went up through into slightly a little bit of the right
20 side of the frontal brain. It also fractured a little bit
21 on the floor of the frontal skull right sort of below the
22 -- well, it would be just above the eye and close to the
23 nose.

24 Q. All right, and would that account for the blood you
25 saw in his nose when he was first brought to you?

1 A. Yes.

2 Q. Okay. Would that blood be able to travel from his
3 nose and back into his throat?

4 A. It could, yes.

5 Q. Okay. Doctor, the part of the brain itself that it
6 hit, what, what is the brainstem and I believe you said the
7 pons, what would be the effect of a shot like that on an
8 individual?

9 A. The, the brainstem is right before the spinal cord.
10 So, lacerating that part of the brain and calling --
11 causing a concussion -- a concussive effect, the power of
12 the weapon would cause immediate stoppage of any nerve, any
13 enervation to the rest of the body below. It would cause
14 him to just drop.

15 Q. You mean drop where he stood?

16 A. Drop to the floor, yes.

17 Q. Okay, Doctor, have you seen before State's Exhibit
18 Number 14?

19 A. Yes.

20 Q. Okay. Do you have an opinion, based on a reasonable
21 degree of medical certainty, of where Jermaine was standing
22 at the time that blow struck the back of his head and
23 entered his brain?

24 A. Yes.

25 Q. Where was he standing?

J. ROSS - DIRECT EXAMINATION BY MR. RIDDLE

543

1 A. Right at the closet door facing the closet.

2 Q. And just dropped where he stood?

3 A. Correct.

4 Q. And, Doctor, after you took the x-rays and everything,
5 did y'all recover the bullet that was in Jermaine's brain?

6 A. Yes.

7 Q. Okay. Let me show you what's marked State's Exhibit
8 Number 49. Is that the bullet that you recovered?

9 A. Yes. It's part of the jacket, which is the copper
10 colored piece, and the lead bullet.

11 Q. All right. Does -- they sometimes separate?

12 A. Yes.

13 Q. Okay, and had it separated in this particular case?

14 A. Yes.

15 Q. Okay. So, you recovered it in these two pieces?

16 A. Yes.

17 Q. From inside Jermaine's skull?

18 A. Yes.

19 Q. After you recovered this bullet, Doctor, what did you
20 do with that?

21 A. We sealed it. Photographed it, sealed it, and
22 submitted it for -- to Investigator Day for the -- to take
23 to SLED.

24 Q. Okay, David Day that just testified?

25 A. Yes.

1 Q. He was at that autopsy?

2 A. Yes.

3 Q. All right. Now, Doctor, is part of the protocol that
4 you do in an autopsy, does that involve the taking of
5 toxicology tests?

6 A. Yes.

7 Q. And do you do that in every case?

8 A. Yes.

9 Q. What's the purpose of doing that?

10 A. See if there are any drugs inside the body that would
11 cause him to be unconscious before even the gunshot.

12 Q. Okay, and did you do toxicology in this particular
13 case?

14 A. Yes.

15 Q. And can you tell us what Mr. Davis was tested for?

16 A. Generally drugs of abuse like narcotics, cocaine, and
17 other drugs which include, like, alcohol and amphetamine,
18 uppers and painkillers.

19 Q. Okay.

20 A. As well as marijuana.

21 Q. All right. You tested him, had him tested for all of
22 that?

23 A. Yes.

24 Q. And did he test positive for anything?

25 A. No.

J. ROSS - DIRECT EXAMINATION BY MR. RIDDLE

545

1 Q. No alcohol?

2 A. No.

3 Q. No marijuana?

4 A. No.

5 Q. No cocaine?

6 A. No.

7 Q. No amphetamines or methamphetamines?

8 A. No.

9 Q. No valiums or other benzodiazepines?

10 A. No.

11 Q. I forgot what else you said, but he didn't have any of
12 it?

13 A. Correct.

14 Q. Okay. Now, you, you mentioned that he dropped right
15 where he stood based on the part of the brain that the
16 bullet hit?

17 A. Yes.

18 Q. Do you have an opinion to a reasonable degree of
19 medical certainty if he would have gone face into the
20 closet if he had been bent over?

21 A. It would -- yeah. It would go with gravity. So, if
22 he were bending forward, then the -- he would have toppled
23 forward, yes.

24 Q. All right. So, it's your opinion that he was upright?

25 A. Correct.

1 Q. Facing the closet?

2 A. Yes.

3 Q. All right. Now, we talked about the, the bullet, and
4 you said it broke the fossa, which -- well, tell us what a
5 fossa is. I'm not going to tell you what a fossa is.

6 A. It's just the bottom. There's a front and middle and
7 posterior. If you look at the bottom of the skull from the
8 inside, just little areas where the brain sits. Front,
9 back. Front, middle, and back.

10 Q. Okay.

11 A. And the front part, there was just a little bit of a
12 fracture. It's, it's a very thin bone at that point which
13 lies above the eyes and the nose.

14 Q. All right, and that would allow blood to get into his
15 sinuses and his nose?

16 A. Some could, could get through there, yes.

17 Q. All right, and, Doctor, you've seen State's Exhibit
18 Number 20?

19 A. Yes.

20 Q. Okay. Do you have an opinion to a reasonable degree
21 of medical certainty whether or not that is aspirated
22 blood?

23 A. Well, it's, it's blood spatter which could come from
24 his coughing his blood out into his hand.

25 Q. Coughing blood? Would that be during the final

J. ROSS - DIRECT EXAMINATION BY MR. RIDDLE

547

1 breaths?

2 A. Yes.

3 Q. Okay. How long would you expect Jermaine Davis to
4 have lived after receiving this gunshot wound?

5 A. About less than a minute. Not more than a couple
6 minutes.

7 Q. Okay. Doctor, at the end of the day, what was your
8 opinion as to the cause of death of Jermaine Davis?

9 A. The laceration of the brain due to the gunshot wound
10 to the head.

11 Q. And was that gunshot wound -- it was a distance
12 gunshot wound?

13 A. Yes.

14 Q. Meaning greater than two feet?

15 A. Yes.

16 Q. Away?

17 A. Yes.

18 Q. And that's greater than two feet from the end of the
19 barrel?

20 A. Correct.

21 Q. From the end of the barrel of the gun?

22 A. Yeah, 24 to 30 inches, yes.

23 Q. Okay, and it was from behind?

24 A. Yes.

25 Q. Almost straight back to front, slightly to the right?

J. ROSS - CROSS-EXAMINATION BY MS. ZMROCZEK

548

1 A. Correct.

2 Q. At a upward angle?

3 A. Yes.

4 Q. Okay, and that he fell exactly where he was shot?

5 A. Yes.

6 MR. RIDDLE: Thank you, Doctor. Answer any of
7 defense's questions.

8 THE COURT: Cross?

9 MS. ZMROCZEK: Thank you.

10 CROSS-EXAMINATION BY MS. ZMROCZEK:

11 Q. Good afternoon, Dr. Ross.

12 A. Good afternoon.

13 Q. Just a couple of quick questions. Did you take a
14 height and weight?

15 A. Yes. We measured him to be 6 feet, 1 and a half
16 inches, and we don't have a scale in his -- in the morgue,
17 but we estimated him to be about 220 pounds.

18 Q. About 220?

19 A. Yes.

20 Q. And over 6 feet or right at 6 feet?

21 A. Correct.

22 Q. And back to front, slightly to the right, does that
23 have to do with the trajectory or the path that the bullet
24 was traveling?

25 A. Yes. Bullets go straight, so.

J. ROSS - CROSS-EXAMINATION BY MS. ZMROCZEK

549

1 Q. So, if somebody is standing, if somebody is standing
2 to the left, then the bullet would go to the right if
3 that's...

4 A. The bullet would go left to right, yes.

5 Q. Okay, left to right. Gravity, it wouldn't change
6 direction.

7 A. Right.

8 Q. The -- and you testified he dropped where he was
9 standing and that -- you said it could be aspirated blood
10 on his hand?

11 A. Could be.

12 Q. But in order for that to happen, his hand would have
13 to be in front of his face at the time, right?

14 A. Correct.

15 Q. Okay, and he wasn't bending down. He was fully erect,
16 face in front of hand, correct?

17 A. Apparently, yes.

18 Q. And that was his right hand?

19 A. Correct.

20 Q. And, and, Doctor, are you familiar with what happens
21 to body tissue if someone has something forced in their
22 anus?

23 A. I've seen injuries, yes.

24 Q. Is there blood that can come from that?

25 A. Yes.

J. ROSS - CROSS-EXAMINATION / DIRECT EXAMINATION

550

1 Q. Would it be a lot of blood or could it just be a
2 little bit or?

3 A. It could be either one.

4 Q. It could be either one?

5 A. Yes.

6 Q. But something forced into someone's anus could cause
7 bleeding, correct?

8 A. Correct.

9 MS. ZMROCZEK: I have no further questions. Thank
10 you.

11 REDIRECT EXAMINATION BY MR. RIDDLE:

12 Q. Doctor, you can get some bleeding with consensual
13 intercourse, can't you?

14 A. Yes.

15 MR. RIDDLE: Thank you. That's all.

16 THE COURT: Thank you very much, Doctor. You may step
17 down now.

18 Any objection to ---

19 MR. RIDDLE: I'd ask that she be excused, Your Honor.

20 MS. ZMROCZEK: No objection.

21 THE COURT: Thank you very much, ma'am. Appreciate
22 you being here.

23 (THE WITNESS EXITS THE STAND.)

24 MR. RIDDLE: John G.D. Roberts.

25 JOHN G. ROBERTS, BEING DULY SWORN,

J. ROBERTS - VOIR DIRE EXAMINATION BY MR. RIDDLE

551

1 TESTIFIES AS FOLLOWS:

2 CLERK OF COURT: Once you're seated, state your full
3 name, spelling your last on the record.

4 WITNESS: John Gray Dodd Roberts, R-o-b-e-r-t-s.

5 VOIR DIRE EXAMINATION BY MR. RIDDLE:

6 Q. Where you employed, sir?

7 A. Work for the South Carolina Law Enforcement Division,
8 more commonly called as SLED.

9 Q. And how long have you been with SLED, sir?

10 A. It was nine years in February.

11 Q. All right. What do you do with SLED today?

12 A. Right now I am an arson investigator.

13 Q. All right. Have you always been in arson?

14 A. I have not.

15 Q. All right. What, what did you do prior to being in
16 arson with SLED?

17 A. From 2005 until November of 2012, I was a trace
18 evidence analyst in the Forensic Services laboratory.

19 Q. All right, and what is trace evidence?

20 A. Trace evidence is evidence that you generally cannot
21 see with your naked eye. In our department, trace evidence
22 consisted of paint, fiberglass, explosives, gunshot
23 residue, bank dye packs, and arson analysis.

24 Q. All right, and can you tell us what your educational
25 background is, sir?

1 A. I have a Bachelor's of Science degree in chemistry
2 from Texas A&M Corpus Christie. When I moved to South
3 Carolina and got the job at SLED, I, I trained under my
4 lieutenant who had been in trace evidence for not quite a
5 million years but close before I got there. He taught me
6 how to do gunshot residue first off because that was back
7 then and it is still our greatest volume of cases.

8 I followed him around. I learned how to work the
9 chemical instruments that we used. I learned how to write
10 reports. I learned how to make conclusions based on data
11 that was generated by the evidence brought in. I learned
12 how to manipulate -- or not manipulate but to process
13 evidence that come in.

14 I was given a test at the end of three or four or five
15 months by everybody in the department that was court
16 qualified to testify in gunshot residue. Once I passed
17 that test, I was given cases to work on on my own, which I
18 did from 2005 until November of 2012.

19 Q. Have you received training along the way from 2005 to
20 '12 to update your knowledge in GSR testing?

21 A. We do. We are required once a year to take
22 proficiency tests that were provided to us by an outside
23 agency. We would take those tests and send them off and
24 then get the results, and I passed every time.

25 Q. All right. Mr. Roberts, were you asked to perform

J. ROBERTS - DIRECT EXAMINATION BY MR. RIDDLE

553

1 some gunshot residue analysis?

2 Well, excuse me. Have you ever been qualified as an
3 expert in the courts in South Carolina?

4 A. I have.

5 Q. And approximately how many times?

6 A. It's in excess of seventy times.

7 Q. All right.

8 MR. RIDDLE: Your Honor, I'd move that he be qualified
9 as an expert in gunshot residue.

10 MS. ZMROCZEK: Your Honor, we stipulate to all SLED
11 agents' testimony. We understand that he would like to put
12 their education in front of the jury, but we stipulate to
13 them all testifying as experts in their field.

14 THE COURT: All right. Okay. He is so qualified.
15 Thank you.

16 DIRECT EXAMINATION BY MR. RIDDLE:

17 Q. Mr. Roberts, were you asked to perform some gunshot
18 residue testing in this particular case?

19 A. I was.

20 Q. Did you receive a gunshot residue kit on Charley Rice?

21 A. I did.

22 Q. And did you perform the analysis on the, on the
23 evidence which was collected and submitted by the Lexington
24 County Sheriff's Department from Charley Rice?

25 A. I did.

1 Q. And can you tell the jury what the results of your
2 testing was?

3 A. For Charley Lee Rice, there were four -- or there were
4 samples taken from four areas. When they do a gunshot
5 residue test, as has probably been explained, they take
6 samples from the right palm, the right back of the hand,
7 the left palm, the left back of the hand. In that case and
8 in this case, that's what gets tested at SLED. In this
9 case I tested the right palm and the right back, the left
10 palm and the left back, and in each case I found that the
11 quantities of metal found did not indicate the presence of
12 gunshot residue.

13 Q. No gunshot resident on Charley?

14 A. That's correct.

15 Q. All right. Did you also receive a, a gunshot residue
16 kit that had been done on the hands of the victim in this
17 case, Jermaine Davis?

18 A. I did.

19 Q. And was it the same kit that you just described for
20 Charley Rice?

21 A. It was the same, it was the same kit in that it was a
22 kit that consisted of samples from the four areas of the
23 hands, and in this case the results were the same. The
24 quantities of metals found did not indicate the presence of
25 gunshot residue.

J. CLAYTON - VOIR DIRE EXAMINATION BY MR. RIDDLE

555

1 Q. So, neither Charley nor Jermaine had any gunshot
2 residue on either palm or either back?

3 A. That's correct.

4 Q. All right.

5 MR. RIDDLE: Thank you. Please answer any of Ms.
6 Zmroczek's questions.

7 WITNESS: Yes, sir.

8 MS. ZMROCZEK: No, no questions.

9 THE COURT: Thank you, sir. You may step down.

10 MR. RIDDLE: Your Honor, I'd ask that he be excused.

11 MS. ZMROCZEK: Without objection.

12 THE COURT: Very good.

13 (THE WITNESS EXITS THE STAND.)

14 MR. RIDDLE: Your Honor, the state would call Jennifer
15 Clayton to the stand.

16 JENNIFER CLAYTON, BEING DULY
17 SWORN, TESTIFIES AS FOLLOWS:

18 CLERK OF COURT: Once you're seated, state your full
19 name, spelling your last for the record, please.

20 WITNESS: Jennifer Clayton, C-l-a-y-t-o-n.

21 VOIR DIRE EXAMINATION BY MR. RIDDLE:

22 Q. Jennifer, where do you work?

23 A. I'm currently employed by the South Carolina Law
24 Enforcement Division, also known as SLED.

25 Q. And what do you do at SLED?

1 A. I'm currently a DNA analyst.

2 Q. And have you been doing that for a while?

3 A. Approximately ten years.

4 Q. All right. How long have you been employed at SLED?

5 A. It will be twelve years this August.

6 Q. Where were you employed prior to coming to SLED?

7 A. A number of places. I was actually in fields not
8 related to forensic science prior to that, and so when I
9 started at SLED, I started as a forensic technician before
10 becoming a forensic analyst there.

11 Q. All right. You're a graduate of Chapel Hill?

12 A. University of North Carolina at Chapel Hill, correct.

13 Q. What's your degree?

14 A. It's a Bachelor of Science in biology.

15 Q. And you went to work for SLED and went to work for
16 their DNA department?

17 A. That's correct.

18 Q. Do you have to be trained in order to perform DNA
19 testing?

20 A. That's correct. Once I was hired as the DNA analyst,
21 I completed a approximately one-year training program under
22 another qualified analyst, and I worked case work under his
23 supervision before I was allowed to work any cases on my
24 own.

25 Q. And do you, like Mr. Roberts, have to take proficiency

J. CLAYTON - DIRECT EXAMINATION BY MR. RIDDLE

557

1 tests in order to stay qualified to run DNA tests?

2 A. That's correct. For a DNA analyst, we are required to
3 take a proficiency test every -- actually twice a year.

4 Q. Okay, and were you asked -- well, let me back up.
5 Have you ever been qualified as an expert before?

6 A. Yes, sir.

7 Q. Approximately how many times?

8 A. Approximately thirty times.

9 MR. RIDDLE: Your Honor, I move she be qualified as an
10 expert.

11 THE COURT: Without objection.

12 MR. RIDDLE: In DNA analysis.

13 DIRECT EXAMINATION BY MR. RIDDLE:

14 Q. Were you asked to perform some tests in this
15 particular case?

16 A. Yes, I was.

17 Q. Okay, and did you receive some swabs in this case?

18 A. Yes, sir.

19 Q. Okay, and were the swabs marked or identified as to
20 their origin?

21 A. Yes, sir.

22 Q. Okay. Can we start with a, a brief explanation of
23 what it is you do when you receive swabs and what you're
24 testing for?

25 A. As a DNA analyst, we -- I sometimes test for DNA and

1 sometimes I also test for the presence of body fluid to see
2 if I can determine which type of body fluid might be
3 present, whether that's blood, semen, or saliva.

4 In this particular case, there was a request to test
5 the possible presence of blood on some of the items. So, I
6 first tested the possible presence of blood. If there was
7 blood indicated, I then took those samples on to DNA
8 analysis. In DNA analysis, I develop what's called a DNA
9 profile from the evidence, and that DNA profile can be
10 compared to DNA profiles that are developed from standards
11 to determine if the two profiles match.

12 Q. And standards are known profiles?

13 A. That's correct. A standard is collected from an
14 individual. So, the DNA profile that is developed from
15 that individual is known to belong -- or from that item is
16 known to belong to that individual.

17 Q. All right, and did you have a standard for Jermaine
18 Davis in this case?

19 A. Yes, I did.

20 Q. Okay, and did you likewise have a standard for Shellie
21 Davis in this case?

22 A. Yes, I did.

23 Q. And, and you had several items of unknown origin,
24 correct?

25 A. Yes.

J. CLAYTON - DIRECT EXAMINATION BY MR. RIDDLE

559

1 Q. Or unknown DNA perhaps?

2 A. That's correct.

3 Q. All right. You mentioned that you first test for the
4 presence of blood?

5 A. That's correct, if it's requested.

6 Q. Okay, and is that what was requested in this case?

7 A. Yes. That's correct.

8 Q. Okay, and when, when you tested -- first of all, how
9 many items were submitted, unknown items?

10 A. Five evidence samples were submitted for testing.

11 Q. Okay. Can you list the items that were submitted to
12 testing for you?

13 A. Yes. Item, SLED item 17 was swabs from a white sheet.
14 SLED item 18 was swabs from a green sheet. SLED item 19
15 was also swabs from a white sheet. SLED item 20 was swabs
16 from a green sheet, and item 20 -- SLED item 21 was swabs
17 from a bedspread.

18 Q. All right. You didn't actually see the sheets or the
19 bedspread?

20 A. No, I did not.

21 Q. Okay. When you got those samples in, what steps did
22 you take as far as testing for blood?

23 A. I first tested for the possible presence of blood. I
24 used what's called a presumptive test; it indicates the
25 presence of blood but does not confirm it. If that test

1 comes up positive, I take, take the sample on to DNA
2 analysis. If it's negative, I stop my analysis at that
3 time and repackage the samples and seal them up.

4 Q. When you tested SLED item number 17 which was
5 identified as swabs from the white sheet, did you find
6 blood or not?

7 A. There was no blood indicated on that item.

8 Q. Okay, and when you tested SLED item number 18 which
9 was identified as a swab from the green sheet, did you find
10 blood or not?

11 A. There was no blood indicated on that item either.

12 Q. All right, and you tested the second set of swabs from
13 the white sheet, SLED item 19, correct?

14 A. Correct.

15 Q. And did you find blood or not?

16 A. Yes, there was blood indicated on that item. So, that
17 item went on to DNA analysis.

18 Q. All right, let's go to SLED item 20, which is the
19 second set of swabs from the green sheet. Did you find
20 blood or not?

21 A. Yes, blood was indicated, so again that item was taken
22 on to DNA analysis.

23 Q. All right, and then you also had some -- SLED item 21,
24 which was swabs from the bedspread itself?

25 A. That's correct.

J. CLAYTON - DIRECT EXAMINATION / CROSS-EXAMINATION

561

1 Q. Okay, and did you test that for blood?

2 A. Yes. Again, blood was indicated, so that item was
3 taken on to DNA analysis.

4 Q. All right. So, 17 and 18, no blood, no DNA, correct?

5 A. Correct.

6 Q. All right. 19, 20, and 21 there was blood, so you
7 went past the presumptive test and developed or attempted
8 to develop a DNA profile on those?

9 A. That's correct.

10 Q. All right, and were you able to develop profiles on
11 those three items, 19, 20, and 21?

12 A. Yes, I was.

13 Q. All right. Let's take 19 and 20 first, which are the
14 swabs from the sheet. When you developed a DNA profile,
15 were you able to match that to one of the standards that
16 you had in this case?

17 A. Yes, I was.

18 Q. Okay, and who did that, who did that DNA profile match
19 for the swabs on the sheets?

20 A. For item 20, the DNA profile developed from that item
21 matched Shellie Davis. For item 19, I actually developed
22 what's called a mixture. That's when more than one
23 individual donates DNA to an item, and sometimes one
24 individual donates more DNA than another individual, and we
25 call that the major contributor. So in this case, the

J. CLAYTON - DIRECT EXAMINATION / CROSS-EXAMINATION 562

1 major contributor, the DNA profile developed from the major
2 contributor also matched Shellie Davis. And the DNA
3 profile from the minor contributor had so little
4 information in it that I was not able to do a comparison
5 with it.

6 Q. Okay. So, a part of 19 matched Shellie Davis?

7 A. That's correct, the major contributor.

8 Q. The major contributor. 20 matched Shellie Davis?

9 A. That's correct.

10 Q. Okay, and that's blood that was seen on the sheets of
11 the bed?

12 A. Yes. There was blood indicated on both of those
13 items.

14 Q. Okay, and on item 21, which was the bedspread covering
15 that bed, were you able to develop a DNA profile from the
16 samples taken from that?

17 A. Yes, I was.

18 Q. All right, and the DNA profile on the samples from
19 item 21, were you able to match that to anyone?

20 A. Yes. The DNA profile developed from item 21 matches
21 the DNA profile of Jermaine Davis.

22 MR. RIDDLE: Thank you, Jennifer. Please answer any
23 of the defense's questions.

24 CROSS-EXAMINATION BY MS. ZMROCZEK:

25 Q. Ms. Davis, when you -- when did you develop that --

J. CLAYTON - CROSS-EXAMINATION BY MS. ZMROCZEK

563

1 when did you develop the profile on 19, 20, and 21, on what
2 date? Sorry.

3 A. On what date did I develop the profile?

4 Q. Yes.

5 A. May I refer to my notes?

6 Q. Oh, oh, please. Yeah.

7 (A PAUSE.)

8 A. The DNA profile for those items would have been
9 developed on -- oh, that's the standards. Sorry. Wrong
10 place.

11 Q. No worries.

12 A. February 24th of 2014.

13 Q. That's when you were able to compare them, correct?

14 A. That is when I completed the DNA analysis portion of
15 the testing, correct.

16 Q. Right, and when did you first receive those items and
17 know that there were blood on them?

18 A. I first took the items into my custody and tested them
19 for the possible presence of blood on February 19th of
20 2014.

21 Q. Okay, and at that point, that's when you developed the
22 profile and found and gave your results to what you just
23 testified, correct?

24 A. Correct. It would taken additional time to develop
25 the DNA profiles from the standards. When I do my

1 analysis, I complete analysis on my samples, and then I go
2 back and complete the analysis on the standards. So the
3 standards, the analysis on the standards was completed on
4 March 4th of 2014. So that -- at that point, I would have
5 compared the DNA profiles from the standards to the DNA
6 profiles from the evidence.

7 Q. Did you...

8 (COUNSELORS CONFER.)

9 BY MS. ZMROCZEK:

10 Q. Did you first receive these items, the swabs, back ---

11 MS. ZMROCZEK: If I may approach, Your Honor?

12 Q. --- on October 5th of 2010? Do you have when you
13 submitted them -- or first received the swabs, the swabs?

14 A. That would be -- February 19th would be when I first
15 submitted the swabs -- received the swabs. If you're
16 referring to when SLED first received the swabs, I do not
17 have that paperwork in front of me.

18 Q. Okay. Do you recognize this paperwork?

19 A. The first two pages appears to be a receipt that is
20 issued to a submitting agency when they submit SLED --
21 evidence to SLED. The other paper, I've not seen this form
22 before. It's listed as being from the Lexington County
23 Sheriff's Department.

24 Q. But it's a receipt that SLED gives to -- the first two
25 pages are the receipt that SLED gives to the agency,

B. FINS - DIRECT EXAMINATION BY MR. RIDDLE

565

1 correct?

2 A. Correct. When evidence is submitted to SLED, it's
3 entered into our computer system, and then a printout is
4 given to the submitting agency stating what evidence was
5 taken into custody by the, the -- SLED.

6 Q. What does that receipt show in that first -- that
7 evidence is first submitted to SLED?

8 A. The submission date for that is October 5, 2010.

9 MS. ZMROCZEK: I have no further questions.

10 MR. RIDDLE: Ask that she be excused, Your Honor.

11 MS. ZMROCZEK: Without objection.

12 THE COURT: All right. Thank you very much, ma'am.
13 You're free to go.

14 (THE WITNESS EXITS THE STAND.)

15 MR. RIDDLE: State would call B.J. Fins to the stand.

16 BLADE J. FINS, BEING DULY SWORN,
17 TESTIFIES AS FOLLOWS:

18 CLERK OF COURT: Once you're seated, state your full
19 name, spelling your last, please.

20 WITNESS: May name is Blade Jonathan Fins, F-i-n-s.

21 DIRECT EXAMINATION BY MR. RIDDLE:

22 Q. Mr. Fins, what do you do for a living?

23 A. I own People's Pawn Shop in Columbia, South Carolina.

24 Q. And where is that located in Columbia?

25 A. On Assembly Street.

B. FINS - DIRECT EXAMINATION BY MR. RIDDLE

566

1 Q. And how long have you owned that shop?

2 A. Twenty-eight years.

3 Q. Is it a family business, or did you start it?

4 A. I started it.

5 Q. You started it. Still run it?

6 A. Yes.

7 Q. To this day?

8 A. Yes.

9 Q. All right, and you always been located on Assembly
10 Street?

11 A. Yes.

12 Q. Mr. Fins, as part as your business, are you a licensed
13 firearms dealer?

14 A. Yes.

15 Q. All right, and you sell guns at ---

16 A. Correct.

17 Q. --- People's Pawn?

18 A. Yes.

19 Q. Did you have occasion back in July of 2010 to sell a
20 firearm to Shellie Davis?

21 A. Our records indicate that, yes.

22 Q. Okay. Let me show you what's been marked State's 73
23 for identification.

24 (A PAUSE.)

25 MR. RIDDLE: Your Honor, without objection.

B. FINS - DIRECT EXAMINATION BY MR. RIDDLE

567

1 THE COURT: All right, that's State's what?

2 MR. RIDDLE: 73.

3 THE COURT: 73 without objection. Is that correct?

4 MR. DOWTIN: Yes, Your Honor, no objection.

5 THE COURT: All right.

6 (GUN PURCHASE PAPERWORK MARKED INTO EVIDENCE AS
7 STATE'S EXHIBIT NUMBER 73.)

8 BY MR. RIDDLE:

9 Q. Mr. Fins, I'm going to hand you that. Is that a copy
10 of the records from your establishment, sir?

11 A. Yes, it is.

12 Q. All right, and by law are you required to keep those
13 records for a period of time?

14 A. Yes, we are.

15 Q. How long?

16 A. Twenty years.

17 Q. Twenty years?

18 A. Twenty years.

19 Q. All right, and this was -- gun was sold in 2010?

20 A. That is correct.

21 Q. All right. Now, when someone comes in to buy a gun, is
22 there a specific form they have to fill out?

23 A. Yes, federal form 4473.

24 Q. 44?

25 A. 73.

B. FINS - DIRECT EXAMINATION BY MR. RIDDLE

568

1 Q. 73, and that's an application to purchase a gun?

2 A. That is correct.

3 Q. All right, and who fills out page 1 of that?

4 A. The person that wants to buy the gun.

5 Q. All right.

6 A. That is in their handwriting.

7 Q. That would be in their handwriting?

8 A. Yes, sir.

9 Q. Okay, and on the form I just handed you, State's
10 Exhibit Number 73, I believe.

11 A. Yes, sir.

12 Q. Who filled that out?

13 A. Ms. Shellie Davis.

14 Q. All right, and she gives her name?

15 A. Correct.

16 Q. Did she give an address?

17 A. Yes.

18 Q. What address did she give?

19 A. ■■■ Algrave Way.

20 Q. All right, and where is that located?

21 A. Columbia, South Carolina, Richland County.

22 Q. All right, and are there some other questions on that
23 form?

24 A. Correct.

25 Q. All right. Now, when you flip to page 2 of that, does

B. FINS - DIRECT EXAMINATION BY MR. RIDDLE

569

1 it require y'all to check their identification?

2 A. Yes.

3 Q. Okay, and did y'all do that in this particular case?

4 A. Yes, sir.

5 Q. All right, and what type of identification did she
6 provide?

7 A. A South Carolina driver's license.

8 Q. All right, and you record the number there?

9 A. That is correct.

10 Q. All right, and does page 3 describe the weapon that is
11 going to be purchased?

12 A. Yes, sir.

13 Q. All right, and what weapon was being purchased at that
14 time?

15 A. A Firestorm .380 semiautomatic pistol.

16 Q. Does it give a serial number there?

17 A. It does.

18 Q. What serial number is appearing on that form?

19 A. A, alpha, [REDACTED].

20 Q. All right. Let me show you State's Exhibit Number 63.
21 Does that appear, amongst other things, to be a Firestorm
22 box?

23 A. Yes, sir.

24 Q. Does it have a serial number on the end?

25 A. Yes, it does.

1 Q. And is -- the serial number on this box match the one
2 on that form?

3 A. Absolutely.

4 Q. All right. In this box, do you recognize that white
5 form on top?

6 A. Those are my sales receipts, yes, sir.

7 Q. That's one of the sales receipts?

8 A. Yes, sir.

9 Q. Okay. Does that form come in duplicate, more ---

10 A. It ---

11 Q. --- than one copy?

12 A. It does. There's a yellow and a white. We have the
13 yellow, and the customer gets the white.

14 Q. Customer gets the white when they leave, okay. Now,
15 in that packet of paper, State's Exhibit Number 73, do you
16 have a copy of your copy of that receipt there?

17 A. Yes.

18 Q. The same as is in the box?

19 A. Yes.

20 Q. Or in with the box, and is there another receipt that
21 shows the computer-generated receipts ---

22 A. Right.

23 Q. --- from your store?

24 A. Yeah.

25 Q. Okay. Now, let me go back to this receipt that's in

B. FINS - DIRECT EXAMINATION BY MR. RIDDLE

571

1 the box for a minute. When you sold the gun, she would be
2 issued this white receipt?

3 A. That is correct.

4 Q. Okay. What did she buy when she bought this gun?

5 A. She bought the Firestorm .380 pistol, along with one
6 box of .380 ACP ammo.

7 Q. And how many bullets came in that box of ammo?

8 A. That was a small box. That was twenty, twenty rounds.

9 Q. Okay, and is there a brand name of that ammunition
10 listed on that receipt?

11 A. Yes, Starfire.

12 Q. Okay. Is that a brand you sell?

13 A. Used to. Not anymore.

14 Q. Not anymore, okay. When you sell a firearm or anyone
15 in your store, do you do something in addition to what the
16 federal law requires you to do in regards to
17 identification?

18 A. We do, yes, sir.

19 Q. And what, if anything, do y'all do that's actually in
20 addition to what federal law requires?

21 A. We take a copy of their ID, whatever it might be.

22 Q. Okay.

23 A. On a copy machine and then put it with the FFL form.

24 Q. Federal Firearms License?

25 A. Federal Firearms License, right. Uh-huh.

1 Q. And why do you do that?

2 A. It just -- over the years, dealing with the federal
3 government and the inspectors that come through and
4 everything, they, they like it. They've requested it, and
5 so to be accommodating, I have done it.

6 Q. All right, and makes your life easier, correct?

7 A. Yes, it does.

8 Q. All right.

9 A. Yes, it does.

10 Q. And in that packet there, you have a copy of Shellie
11 Davis's ---

12 A. Yes.

13 Q. --- driver's license?

14 A. Yes, sir, right here. Uh-huh.

15 Q. Identifying her as the person that bought the gun?

16 A. Correct.

17 Q. All right, and when was this gun sale made?

18 A. July, July 21, 2010.

19 MR. RIDDLE: Thank you, Mr. Fins. That's all the
20 questions I have.

21 MR. DOWTIN: Briefly, Your Honor.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION BY MR. DOWTIN:

24 Q. Good afternoon, Mr. Fins.

25 A. Hi.

B. FINS - CROSS-EXAMINATION BY MR. DOWTIN

573

1 Q. Do you have to do a background check on people before
2 you can sell them a gun?

3 A. Yes, sir.

4 Q. And to your knowledge and your experience, does
5 federal law prevent someone who has a criminal domestic
6 violence conviction from purchasing a gun?

7 A. Absolutely.

8 MR. DOWTIN: No further questions. Thank you.

9 THE COURT: All right, thank you very much, sir. You
10 may step down.

11 MS. SHANNON DAVIS: Your Honor, we'd ask that he be
12 excused.

13 MS. ZMROCZEK: Fine.

14 THE COURT: All right, without objection. You're free
15 to go, sir. Thank you.

16 (THE WITNESS EXITS THE STAND.)

17 THE COURT: Call your next witness.

18 MS. SHANNON DAVIS: State calls Renee Strickland.

19 THE COURT: Ms. Strickland, if you'd please come
20 around.

21 RENEE STRICKLAND, BEING DULY

22 SWORN, TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: Once you're seated, state your full
24 name, spelling your last for the record.

25 WITNESS: My name is Renee Strickland,

1 S-t-r-i-c-k-l-a-n-d.

2 DIRECT EXAMINATION BY MS. SHANNON DAVIS:

3 Q. Renee did you previously work for Lexington County
4 Sheriff's Department?

5 A. I did, yes.

6 Q. And when did you leave there?

7 A. January 31st of this year.

8 Q. So, very recently?

9 A. Very recently, yes.

10 Q. What did you do at Lexington County Sheriff's
11 Department?

12 A. I was employed there as a crime scene investigator and
13 also as a major crimes investigator.

14 Q. How long did you work for Lexington County?

15 A. I began at Lexington County in 2009 and worked there
16 up until January 31st of this year.

17 Q. Okay, and do you have any other prior law-enforcement
18 experience?

19 A. I do. I began my career in law enforcement in 2004
20 with the Cayce Department of Public Safety where I was a
21 victim advocate and detective. I then was hired by SLED in
22 2007. I was a special agent with them in the crime scene,
23 latent print division prior to coming to SLED in 2009 --
24 coming to Lexington County in 2009, I'm sorry.

25 Q. Okay, and September 22nd of 2010, were you working as

R. STRICKLAND - DIRECT EXAMINATION BY MS. SHANNON DAVIS

575

1 a CSI for Lexington County?

2 A. I was, yes.

3 Q. On that day, were you called to a scene involving the
4 defendant, Shellie Davis?

5 A. I was, yes.

6 Q. And why were you called to that scene?

7 A. I was called to that scene. I was on my week of night
8 shift. Crime scene investigators work in a rotation at the
9 sheriff's department. When we're on night shift we come in
10 -- I think at that time the schedule was about 1:30 to
11 9:30. So, I'd come in at 1:30 that day. The other two
12 crime scene investigators which testified earlier, CSI
13 Derrick and Day, were still at the original scene. I was
14 notified by the, the night shift sergeant, who was Sergeant
15 Palkowski, that he needed me to respond to [REDACTED] Algrave Way
16 in reference to a search warrant of that residence.

17 Q. And do you know whose residence that is?

18 A. I was advised that that residence was the residence of
19 Ms. Shellie Davis and the, the marital home of she and
20 Jermaine Davis.

21 Q. Okay. Do you remember what time you responded there?

22 A. Approximately 7:30 or give or take the approximation,
23 around 7:30-ish.

24 Q. In the evening?

25 A. Yes.

1 Q. And who was on scene when you arrived?

2 A. When I arrived on scene, Detective Chandler, who is
3 now Detective Stoner, was there; Detective Derrenbacher;
4 Detective Chappell; and also Detective Russell; and a
5 Detective Dauway, who was with Richland County.

6 Q. And what did you on the scene?

7 A. I photographed the residence and also executed a
8 search warrant inside the residence with the aid of the
9 investigators there, and acted in their direction as to
10 collecting evidence that would be probative in this case.

11 Q. So, the investigators on scene would have helped you
12 execute the warrant by looking for evidence, and you would
13 have documented that and collected it?

14 A. Exactly. My knowledge was somewhat limited. I had no
15 direct knowledge of, of the original crime scene. So, I
16 pretty much was acting at their direction. They had a
17 little more background information on the case.

18 Q. When you executed the search warrant, did you have any
19 information regarding the type of weapon that you all were
20 looking for or any ammunition that you would be looking
21 for?

22 A. I did. I was briefed by the investigators on scene
23 that they had recovered a .380 caliber cartridge case from
24 the scene, so we knew that we were looking for any
25 information or any evidence that related to a firearm or

R. STRICKLAND - DIRECT EXAMINATION BY MS. SHANNON DAVIS

577

1 ammunition or anything that would, that would go along with
2 that to a .380 handgun.

3 Q. Okay, and at Algrave Away, did you collect any
4 evidence, any physical evidence there?

5 A. I did, yes.

6 Q. And what would that be?

7 A. I'm going to refer to my notes.

8 Q. Sure. Please.

9 A. I collected one box of Starfire ammunition. It
10 contained thirteen unfired cartridges, meaning that was --
11 it was missing seven for a total of -- twenty would have
12 been in the box.

13 Q. And where did you find that?

14 A. In there -- there are two dressers in the master
15 bedroom. One had a mirror attached, and on the other side
16 of the room there was a dresses that had no mirror. So,
17 this particular -- this box of ammunition was collected
18 from the top right dresser drawer with -- on the dresser
19 where the mirror was attached.

20 Q. And you said that was the master bedroom?

21 A. Yes. That's correct.

22 Q. And did you have information that that was Shellie
23 Davis's bedroom?

24 A. The investigators on scene had already talked with two
25 adults who also lived in the residence, and they indicated

1 that that would be her room. It also was very apparent
2 that this was the master bedroom of the house. We also
3 found personal effects within the room that belonged to Ms.
4 Davis. So, that's how we knew that this was her room.

5 Q. And your search of the residence was focused on
6 Shellie Davis's bedroom?

7 A. Correct.

8 Q. Okay.

9 A. Yes.

10 Q. Other than the box of ammunition, did you find
11 anything else?

12 A. We did. I collected a receipt that was dated 9/21/10
13 and the time was 9:34:18. That was collected from the top
14 of the dresser. Again, the dresser with the mirror
15 attached. I, I also collected one red in color spiral
16 notebook with writing on the pages. That was collected.
17 On the side of the bed near the night stand in the master
18 bedroom, we collected one Bible, maroon -- in a
19 maroon-colored case, and that was collected from the top of
20 the dresser with the mirror. One blue in color Staple's
21 spiral notebook with writing on the pages, that was
22 collected from the bottom drawer on the left side,
23 left-hand side, and that was also the dresser with the
24 mirror attached. Collected a foreclosure notice. That was
25 collected from the top left dresser of the dresser without

R. STRICKLAND - DIRECT EXAMINATION BY MS. SHANNON DAVIS

579

1 the mirror on the opposite side of the room. Also a notice
2 to vacate property, that was collected from the top left
3 drawer of the dresser without the mirror. One foreclosure
4 notice from an insurance company collected from the top
5 left drawer of the dresser without the mirror in the master
6 bedroom. Also collected one black shirt which was a size
7 10, one black and white T-shirt size medium, one black
8 leather belt, one black pair of pants size 6, and one black
9 mesh wrap. These were all collected from the bed in the --
10 on the top of the bed in the master bedroom. Collected
11 twelve pages of paper, flower-printed paper, collected from
12 the top drawer of the night stand which was -- there was
13 one night stand to the right of the bed. And nineteen
14 pages of notepaper, also with writing on them, and that was
15 collected from the dresser with the mirror attached in the
16 master bedroom. And lastly, one South Carolina driver's
17 license bearing the name Shellie Lavette Davis, and that
18 was collected from the bottom left drawer of the dresser
19 with the mirror attached, also in the master bedroom.

20 Q. That's quite a list.

21 A. Yes.

22 Q. Why is it that you all will collect so much evidence
23 from that scene at that time?

24 A. When we execute a search warrant -- a search warrant
25 is what we refer to as a one-shot deal. Now, you can go

1 back, but if you do have to go back, you have to obtain
2 another search warrant. So, our policy is to -- it's
3 better to collect more than you need than to not collect
4 enough. So, any, any evidence that we find that may be
5 probative to the case, we collect.

6 Q. Do you recall what time you left Algrave Way?

7 A. Around 2200 hours.

8 Q. What time would that be to regular people?

9 A. 10:00.

10 Q. 10:00 at night. So, you were there pretty late?

11 A. Yes.

12 Q. Okay. Was Shellie Davis ever on scene while you were
13 there?

14 A. No.

15 Q. And the evidence that was collected from Algrave Way,
16 what was done with that?

17 A. I transported it my crime scene vehicle back to the
18 sheriff's department, which it was secured in our crime
19 lab.

20 Q. Okay. Renee, I'm going to show you some photographs.
21 State's Number 27, what is that?

22 A. That's the front of the residence.

23 Q. The residence at Algrave Way?

24 A. Algrave Way.

25 Q. And that would have been the defendant's residence?

R. STRICKLAND - DIRECT EXAMINATION BY MS. SHANNON DAVIS

581

1 A. Correct.

2 Q. And this would have been the very front?

3 A. Yes, that's correct.

4 MS. ZMROCZEK: And, Your Honor, these are all without
5 objection.

6 MS. SHANNON DAVIS: Your Honor, these are going to be
7 State's 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and
8 26.

9 THE COURT: 26 through 38?

10 MS. SHANNON DAVIS: Yes, sir.

11 THE COURT: All right, all without objection. Thank
12 you, ma'am.

13 MS. SHANNON DAVIS: Thank you, Your Honor.

14 (PHOTOGRAPHS INDIVIDUALLY MARKED INTO EVIDENCE AS
15 STATE'S EXHIBITS 26, 27, 28, 29, 30, 31, 32, 33, 34, 35,
16 36, 37, 38.)

17 BY MS. SHANNON DAVIS:

18 Q. Okay, what is State's Number 28?

19 A. That's a picture. That a view through the door of the
20 master bedroom, and you can see the bed in that picture.

21 Q. So, if you're standing at the door of Shellie Davis's
22 bedroom, this would have been what you would have seen?

23 A. Correct.

24 Q. How about Number 29?

25 A. Number 29 is a closer view, photograph of the bed.

1 Q. And the clothes that you described as -- that you
2 collected that were black, do you see those in these
3 photographs?

4 A. I do, yes.

5 Q. And that would have been in the far corner of the bed?

6 A. That's correct.

7 Q. Okay. State's Number 30, I know that you described a
8 dresser.

9 A. Yes. That's the dresser if you're -- if you're facing
10 the bed, that would be to the left side of the bed. That's
11 the dresser that I referred to earlier with the mirror
12 attached.

13 Q. And what is it that you found in this dresser?

14 A. Several things. The South Carolina driver's license,
15 the blue in color spiral notebook, the box of ammunition,
16 and I believe some other, some other papers with writing on
17 them. And on the top, the receipt and the Bible.

18 Q. Okay, and State's Number 31, is that a closer view of
19 the same dresser?

20 A. It is.

21 Q. And State's Number 32?

22 A. That's the night table that's to the right of the bed
23 in the master bedroom.

24 Q. And you also collected evidence from this night
25 stand ---

R. STRICKLAND - DIRECT EXAMINATION BY MS. SHANNON DAVIS

583

1 A. I did.

2 Q. --- as well?

3 A. I collected twelve -- the floral paper with the
4 writing on them from the night stand.

5 Q. Okay, and State's Number 33, what is this?

6 A. That's a picture of the inside of the closet, the
7 master bedroom.

8 Q. So, you searched the defendant's entire bedroom?

9 A. Correct, yes.

10 Q. And is this closet attached?

11 A. It is.

12 Q. Was there a bathroom also attached?

13 A. I believe so, yes.

14 Q. And Number 34?

15 A. Those -- that is the clothing that I collected that
16 was on the bed.

17 Q. So, this is just a closer view of what was taken from
18 the bed?

19 A. Yes. That's correct.

20 Q. Okay, Number 35?

21 A. That is the top right dresser drawer. When opened,
22 this right here is the box of ammunition, the Starfire box
23 of ammunition, and that's from the dresser with the mirror
24 attached.

25 Q. So, that would have been what was in State's Number

1 30?

2 A. Correct. Yes.

3 Q. And you said top. What drawer?

4 A. Top right.

5 Q. Top right drawer you found the box of ammunition, and
6 as it is in State's 35, is that the position in which you
7 found it?

8 A. Yes.

9 Q. State's 36, what is different about that one?

10 A. The box has been turned to show the, the caliber of
11 the ammunition, and you can see .380 written on it.

12 Q. And what type of ammunition was it?

13 A. .380 Starfire.

14 Q. And that's the type of ammunition you knew you should
15 be looking for?

16 A. Correct.

17 Q. To match the shell casing from?

18 A. Recovered from the original scene, yes.

19 Q. And State's 37?

20 A. That's a close-up photograph of the actual box.

21 Q. So, this is the same box that was found in the dresser
22 in State's 36?

23 A. It is, correct.

24 Q. State's 38?

25 A. That's a photograph of the tray that holds the unfired

R. STRICKLAND - DIRECT EXAMINATION BY MS. SHANNON DAVIS

585

1 cartridges within that box. That is what was contained
2 within that specific box. There are thirteen unfired
3 cartridges.

4 Q. And how many were missing?

5 A. Seven.

6 Q. So, this would have been what was inside State's
7 Number 37?

8 A. Correct.

9 Q. And you opened this to ---

10 A. Yes.

11 Q. --- see what was inside? State's Number 26?

12 A. That is the blue in color Staple's spiral notebook.
13 That was collected from the bottom left drawer of that same
14 dresser with the mirror attached.

15 Q. And you also said that you found the defendant's
16 driver's license in one of the drawers?

17 A. Correct.

18 Q. Which dresser was that?

19 A. That was the dresser with the mirror attached also.
20 It was actually in the same drawer as that particular
21 notebook that you just showed me.

22 Q. Okay, and this is State's Number 77.

23 MS. ZMROCZEK: Without objection, Your Honor.

24 (DEFENDANT'S DRIVER'S LICENSE MARKED INTO EVIDENCE AS
25 STATE'S EXHIBIT NUMBER 77.)

R. STRICKLAND - DIRECT EXAMINATION BY MS. SHANNON DAVIS

586

1 BY MS. SHANNON DAVIS:

2 Q. Can you identify State's 77?

3 A. Yes. That's a South Carolina driver's license bearing
4 the name Shellie Lavette Davis.

5 Q. And is this what you found in the dresser drawer?

6 A. It is.

7 MS. SHANNON DAVIS: Your Honor, this is State's 56. I
8 believe it's without objection.

9 MS. ZMROCZEK: It is, Your Honor.

10 THE COURT: All right.

11 (BOX OF AMMUNITION MARKED INTO EVIDENCE AS STATE'S
12 EXHIBIT NUMBER 56.)

13 BY MS. SHANNON DAVIS:

14 Q. State's 56, can you tell us what that is?

15 A. Yes. This is the box of ammunition that I collected
16 from the top right drawer of the dresser with the mirror on
17 it in the master bedroom.

18 Q. So, that matches the pictures that we just saw?

19 A. It does, yes.

20 Q. And did you do anything to process that box?

21 A. I did.

22 Q. What did you do?

23 A. After I secured it in the crime lab, the following day
24 I performed a, a specific type of enhancement technique on
25 that using -- we call it super glue fuming, cyanoacrylate

1 fuming. What we do is we have a chamber in the lab, and
2 basically that progress involves a few drops of super glue
3 in a little tin plate. It gets heated and the super glue
4 then forms a gas which adheres to what we call latent
5 prints, which are latent prints that are not visible to the
6 naked eye. The super glue fume will then adhere to
7 substances within latent prints. There's fatty materials,
8 amino acids, and, and things of that sort that the super
9 glue adheres to.

10 The super glue, one, makes the print visible, and it
11 also makes it more durable. Latent prints, by their very
12 nature, are very fragile, so we are more able to process
13 them. After the super glue fuming is completed, the
14 process continues and black fingerprint powder is applied
15 to that, to the print that's visible, and then lifted with
16 tape and applied to a card.

17 Q. So, essentially you're checking that for fingerprints?

18 A. Right.

19 Q. Okay, and were you able to find any on that ammunition
20 box?

21 A. Yes, I did find one latent print on the side of the
22 Starfire ammunition box which I was able to lift.

23 Q. And you were able to lift a latent print from the box?

24 A. Yes.

25 Q. Okay.

1 MS. SHANNON DAVIS: Your Honor, State's 62, I believe
2 without objection.

3 MS. ZMROCZEK: Without objection.

4 THE COURT: All right.

5 (LATENT PRINT MARKED INTO EVIDENCE AS STATE'S EXHIBIT
6 NUMBER 62.)

7 BY MS. SHANNON DAVIS:

8 Q. If you look at State's 62, if you'll open it up. Can
9 you tell the jury what that is?

10 A. This is a latent -- what we refer to as a latent lift
11 card. Basically after we've processed a piece of evidence
12 and we lift it, it's then applied -- that's a piece of
13 tape. It's applied to this card so that it can be
14 compared. On the back of the card, all pertinent
15 information: case number, victim's name, and the
16 approximate relative location of where the print was
17 collected on the item. And then we do a cursory drawing on
18 the side to -- just for reference as to where we collected
19 the print from.

20 Q. And this is your handwriting on the print?

21 A. It is.

22 Q. I mean, on the card?

23 A. It is.

24 Q. Okay, and is this the print that you lifted from the
25 ammunition box?

R. STRICKLAND - DIRECT EXAMINATION BY MS. SHANNON DAVIS

589

1 A. That is the print, yes.

2 Q. Did you do the comparison of the print in this case?

3 A. No, I did not. I submitted -- once the print was
4 lifted, I submitted it to our evidence department, and that
5 comparison would have been done by our latent print
6 examiner, Mr. Duane Johnson.

7 Q. So, you just lifted the print. You didn't test it or
8 compare it to anything else?

9 A. No.

10 Q. Renee, was that the extent of your involvement in this
11 case?

12 A. It was, yes.

13 MS. SHANNON DAVIS: I have no further questions.

14 Please answer any Ms. Zmroczek has.

15 MS. ZMROCZEK: Your Honor, we need to get a bunch of
16 things out of evidence. If you'll just give me a second?

17 (A PAUSE.)

18 THE COURT: All right.

19 MS. ZMROCZEK: Your Honor, I believe at this time
20 we're going to move in Defendant's Number 2, which is the
21 Bible; 5, which is the receipt; 6, 7, 8, and 9, which are
22 the journal and notebooks; and 11 and 12, which 11 is the
23 notice to vacate and 12 is the foreclosure.

24 MS. SHANNON DAVIS: Without objection, Your Honor.

25 THE COURT: All right, all those items are in evidence

R. STRICKLAND - CROSS-EXAMINATION BY MS. ZMROCZEK

590

1 without objection, defense exhibits.

2 (BAG WITH BIBLE MARKED INTO EVIDENCE AS DEFENDANT'S
3 EXHIBIT NUMBER 2.)

4 (RECEIPT MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
5 NUMBER 5.)

6 (JOURNAL ENTRY - 12 PAGES MARKED INTO EVIDENCE AS
7 DEFENDANT'S EXHIBIT NUMBER 6.)

8 (NOTEBOOK MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
9 NUMBER 7.)

10 (RED NOTEBOOK MARKED INTO EVIDENCE AS DEFENDANT'S
11 EXHIBIT NUMBER 8.)

12 (BLUE NOTEBOOK MARKED INTO EVIDENCE AS DEFENDANT'S
13 EXHIBIT NUMBER 9.)

14 (NOTICE TO VACATE MARKED INTO EVIDENCE AS DEFENDANT'S
15 EXHIBIT NUMBER 11.)

16 (FORECLOSURE NOTICE MARKED INTO EVIDENCE AS
17 DEFENDANT'S EXHIBIT NUMBER 12.)

18 CROSS-EXAMINATION BY MS. ZMROCZEK:

19 Q. Ms. Strickland, these were also items that you
20 collected out of the master bedroom?

21 A. Yes, ma'am.

22 Q. All of these items. You stated that when you collect
23 evidence, it was to provide some probative value to the
24 case?

25 A. Correct.

R. STRICKLAND - CROSS-EXAMINATION BY MS. ZMROCZEK

591

1 Q. Tell the jury what that means.

2 A. That means evidence basically that's pertinent to the
3 case that would, for lack of a better -- to shed some light
4 on the case or of evidentiary value.

5 MS. ZMROCZEK: I have no further questions, Your
6 Honor.

7 MR. RIDDLE: Your Honor, can we approach?

8 THE COURT: Yeah.

9 (OFF-THE-RECORD BENCH CONFERENCE.)

10 THE COURT: Thank you.

11 MS. ZMROCZEK: Without objection.

12 THE COURT: You're free to go.

13 There's no objection to her being excused?

14 MS. ZMROCZEK: No. Not at all.

15 THE COURT: All right, thank you very much, ma'am.
16 You're free to go.

17 (THE WITNESS EXITS THE STAND.)

18 THE COURT: All right.

19 JUROR: I'm sorry. Sure would like a break.

20 THE COURT: That's exactly what we were talking about.
21 We're going to take that break right now. We'll just take
22 about ten, fifteen minutes. You're to have no conversation
23 about the case.

24 BAILIFF: Please remain seated as the jury leaves.

25 (THE JURY EXITS AT 3:32 P.M.)

1 THE COURT: All right, folks, we'll take about ten,
2 fifteen minutes.

3 (OFF THE RECORD.)

4 THE COURT: Before we get started, I think -- Wade,
5 you were up here when I got this note from the back,
6 weren't you?

7 MR. DOWTIN: Yes, Your Honor.

8 THE COURT: Okay. Aimee, just to bring you up to
9 speed, Juror number 50, Barbara Delacruz, sent a note out
10 and says:

11 I know Mr. Roberts's wife. I used to go to
12 church with them.

13 That's all it says, so I figured I'd bring her out. I
14 didn't know who Mr. Roberts was. Apparently he ---

15 MR. RIDDLE: Mr. -- he was the trace analyst, Your
16 Honor.

17 MS. ZMROCZEK: The gunshot residue.

18 THE COURT: Okay.

19 MS. ZMROCZEK: We didn't even ask any questions, I
20 don't think.

21 MR. RIDDLE: I don't even think -- yeah, I don't think
22 they asked any questions, so.

23 THE COURT: Well, what I'm ---

24 MR. RIDDLE: But I, I do agree with what ---

25 THE COURT: --- going to do is have her come out and

1 ask if it has any affect on her ability to be fair and
2 impartial.

3 MR. RIDDLE: Yes, sir. I, I agree with that.

4 THE COURT: All right, ask Tommy is he'll ask Ms.
5 Barbara Delacruz, Juror number 50, to step over here.

6 (JUROR NUMBER 50 ENTERS THE COURTROOM.)

7 THE COURT: Ms. Delacruz.

8 JUROR: Yes.

9 THE COURT: I, I -- I've got the message that you sent
10 out that apparently you know Mr. Roberts's wife. You used
11 to ---

12 DEPUTY: Quiet, please.

13 THE COURT: --- go to church with them?

14 JUROR: Yes.

15 THE COURT: All I want to ask is the fact that that --
16 you, you have that relation with Mr. Roberts's wife, would
17 that in any way have any affect on your ability to be fair
18 and impartial?

19 JUROR: No, sir.

20 THE COURT: All right. Thank you very much, ma'am. I
21 appreciate that.

22 JUROR: Thank you.

23 THE COURT: Thank you for sending this out. That was,
24 that was the right thing to do.

25 JUROR: Okay.

1 (JUROR NUMBER 50 EXITS THE COURTROOM.)

2 THE COURT: All right, that's Court's Exhibit Number
3 3.

4 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
5 NUMBER 3.)

6 THE COURT: All right, any issues regarding Ms.
7 Delacruz?

8 MR. RIDDLE: No, sir.

9 MS. ZMROCZEK: No, sir.

10 THE COURT: All right. Anything before we bring the
11 jury out?

12 MR. RIDDLE: No, sir.

13 THE COURT: Okay.

14 MS. ZMROCZEK: Nothing from defendant.

15 THE COURT: All right, would you please bring the jury
16 out?

17 (THE JURY ENTERS AT 3:54 P.M.)

18 THE COURT: All right, you may call your next witness,
19 sir.

20 MR. RIDDLE: Your Honor, the state would call Duane
21 Johnson to the stand.

22 THE COURT: Mr. Johnson, if you would please come
23 around, sir.

24 WILBUR DUANE JOHNSON, BEING DULY
25 SWORN, TESTIFIES AS FOLLOWS:

W. JOHNSON - VOIR DIRE EXAMINATION BY MR. RIDDLE

595

1 CLERK OF COURT: Once you're seated, state your full
2 name, spelling your last on the record, please.

3 WITNESS: My full name is Wilbur Duane Johnson,
4 J-o-h-n-s-o-n.

5 VOIR DIRE EXAMINATION BY MR. RIDDLE:

6 Q. Mr. Johnson, where are you employed?

7 A. Currently I am unemployed.

8 Q. Retired?

9 A. Retired.

10 Q. Where were you employed back in 2010, sir?

11 A. Lexington County Sheriff's Department.

12 Q. And what did you do with the sheriff's department back
13 then?

14 A. I was an identification officer.

15 Q. And specifically did you do fingerprint analysis with
16 sheriff's department?

17 A. I did.

18 Q. All right, matching known prints off a fingerprint
19 card to latent prints that are found on a piece of
20 evidence?

21 A. Yes.

22 Q. All right, and, Mr. Johnson, what is your law
23 enforcement background?

24 A. In 1964, April '64 I joined the FBI in Washington, DC,
25 and I worked with the FBI from that point until September

1 of 2000, with the exception of a two-year military
2 interruption. I retired from the FBI in September of 2000.
3 Moved back to South Carolina and essentially rested for a
4 year, and then Chief James at the sheriff's office
5 contacted me about possibility of taking a part-time
6 position with the sheriff's office because they were
7 wanting to, to get an AFIS system for the department and
8 also have somebody to operate that, and I had those skills.

9 Q. And AFIS is the Automated Fingerprint Identification
10 System?

11 A. It is.

12 Q. And, and when you were with the FBI, were you a
13 fingerprint examiner with them as well?

14 A. I was a fingerprint examiner the entire time with the
15 FBI.

16 Q. Have you ever been qualified as an expert in
17 fingerprints?

18 A. I have.

19 Q. Approximately how many times, sir?

20 A. In excess of 150 times.

21 Q. How many states have you testified in?

22 A. I've testified in thirty-eight states, plus the
23 territories of Virgin Islands and Puerto Rico.

24 Q. Have you been qualified in the state courts of South
25 Carolina?

W. JOHNSON - DIRECT EXAMINATION BY MR. RIDDLE

597

1 A. Yes, sir, many times.

2 Q. All right.

3 MR. RIDDLE: Your Honor, I would offer him as an
4 expert in fingerprint identification.

5 MS. ZMROCZEK: We stipulate, Your Honor.

6 THE COURT: Without objection.

7 DIRECT EXAMINATION BY MR. RIDDLE:

8 Q. Mr. Johnson, did you receive the fingerprint that
9 Renee Strickland just testified about lifting using the
10 super glue fuming method?

11 A. Yes, sir, I did.

12 Q. And that was submitted for -- to you for analysis?

13 A. It was.

14 Q. Did you obtain a known fingerprint card of the
15 defendant, Shellie Davis, from this arrest on this charge?

16 A. I did.

17 Q. And did you perform an analysis between the unknown
18 print off that ammunition box and the known prints of Ms.
19 Shellie Davis?

20 A. I did, but I would like to explain what my analysis
21 consisted of.

22 Q. That was my next question, sir.

23 A. Okay. Latent prints in a lot of occasions are lifted
24 from sources, and when I receive them I examine them for
25 the presence -- or latent prints that are suitable for

1 comparison purposes.

2 In this particular case, there was one latent print
3 present on the lift card, and I compared that to the known
4 prints of Shellie Davis, and it was -- it is my opinion
5 that that latent print matched the right ring finger of Ms.
6 Davis.

7 Q. The latent print that was on the Starfire ammo box?

8 A. Yes.

9 Q. State's Exhibit Number 56?

10 A. I have never seen the box before. Only thing I saw
11 was the lift.

12 Q. Was the latent card?

13 A. Yes.

14 Q. And that would be State's Exhibit Number 62?

15 A. Yes, sir, it is, and I recognize this by on the back
16 of the card in the lower right-hand corner, my initials WJ
17 are there, along with the date of 10/17, and that would
18 have been the date that I, that I first received it from
19 evidence.

20 Q. All right. That's when you received this fingerprint
21 card from -- or, excuse me, this latent lift from Ms.
22 Strickland?

23 A. I did not receive it personally from Ms. Strickland.
24 I received it from the evidence unit with the sheriff's
25 office.

D. NOVAK - DIRECT EXAMINATION BY MS. SHANNON DAVIS 599

1 Q. I, I got you. I got you, and it matched Ms. Davis's
2 right ring finger?

3 A. Yes, sir.

4 MR. RIDDLE: Thank you, Duane. That's all the
5 questions I have.

6 MS. ZMROCZEK: No questions, Your Honor.

7 THE COURT: Thank you very much, sir.

8 WITNESS: Thank you.

9 THE COURT: You may step down; you're free to go.

10 WITNESS: Thank you.

11 MR. RIDDLE: Can he be excused, Your Honor?

12 THE COURT: Yes, sir.

13 MS. ZMROCZEK: Without objection.

14 (THE WITNESS EXITS THE STAND.)

15 THE COURT: All right, you may call your next witness.

16 MS. SHANNON DAVIS: State calls Doug Novak.

17 DOUG NOVAK, BEING DULY SWORN,

18 TESTIFIES AS FOLLOWS:

19 CLERK OF COURT: Once you are seated, state your name,
20 spelling your last for the record, please.

21 WITNESS: Doug Novak, N-o-v-a-k.

22 DIRECT EXAMINATION BY MS. SHANNON DAVIS:

23 Q. Doug, where are you employed?

24 A. Lexington County Sheriff's Department.

25 Q. And what do you do there?

1 A. I'm currently the sergeant over Forensic Services,
2 which entitles -- encompasses evidence, CSI, and the drug
3 lab.

4 Q. And how long have you been with Lexington County
5 Sheriff's Department?

6 A. Fifteen years.

7 Q. And you said you were the sergeant over Forensic...

8 A. Services.

9 Q. Forensic Services. Okay, how long have you been in
10 that position?

11 A. Approximately eight months.

12 Q. Okay, and what are your duties in that position?

13 A. I supervise the CSI Unit, the drug lab, and the
14 evidence room. The evidence room, when the evidence comes
15 in, me or my custodians check in the evidence, and that
16 starts the chain of custody. We also allow -- or when
17 appointments are made from counsel preparing for trial,
18 they come over and review the evidence to get ready for
19 trial. We check -- we send evidence to SLED when requested
20 by different officers, case officers, and I oversee that
21 process of evidence.

22 CSI, I oversee them: going out to scenes, who goes to
23 which scenes, reviewing reports, approving reports, and if
24 the drug lab, making sure the lab -- the evidence that is
25 submitted for the drug lab gets sent to her for chemical

D. NOVAK - DIRECT EXAMINATION BY MS. SHANNON DAVIS

601

1 testing.

2 Q. Okay. So, all of the evidence that we have in here
3 today, you're in charge of the evidence property room?

4 A. Yes, ma'am.

5 Q. Okay, and I know that you just mentioned it a little
6 bit, but is it typical for both the state and the defense
7 to come and review evidence that's been collected in
8 preparation for trial?

9 A. Yes, ma'am.

10 Q. And did both sides do that in this case?

11 A. Yes, ma'am.

12 Q. Okay. I want to show you State's Exhibit 68. Was
13 this in evidence at the evidence property room?

14 A. Yes, ma'am.

15 Q. And did both sides, the state and the defense, come
16 and review the contents of that purse?

17 A. I believe -- I know the state did. I'm not sure about
18 the defense as coming over. I know the defense came over
19 and reviewed items.

20 Q. Both sides were given the opportunity ---

21 A. Yes.

22 Q. --- to look at all the evidence in ---

23 A. Yes, ma'am.

24 Q. --- this case? Okay, and when the state came, did we
25 go through the evidence in that purse?

D. NOVAK - DIRECT EXAMINATION BY MS. SHANNON DAVIS

602

1 A. Yes, ma'am.

2 Q. And did we locate anything in there?

3 A. There is a key in there with the Firestorm label to
4 it.

5 Q. And can you find that in there today?

6 A. Yes, ma'am.

7 Q. Is this the same key that the state and you saw
8 whenever we went through the purse ---

9 A. Yes, ma'am.

10 Q. --- that day?

11 (FIREARM KEY MARKED AS STATE'S EXHIBIT NUMBER 83 FOR
12 IDENTIFICATION.)

13 MS. SHANNON DAVIS: And, Your Honor, I believe there's
14 no objection.

15 MS. ZMROCZEK: Excuse me, there is no objection.

16 THE COURT: All right, State's 83 is in evidence
17 without objection.

18 (FIREARM KEY MARKED INTO EVIDENCE AS STATE'S EXHIBIT
19 NUMBER 83.)

20 BY MS. SHANNON DAVIS:

21 Q. Sergeant Novak, this is now admitted as State's 83.
22 Can you tell us what this is?

23 A. It is a key that goes to a Firestorm Bersa .380 gun
24 for the safety lock.

25 Q. And in your experience as a law-enforcement officer,

D. NOVAK - DIRECT EXAMINATION BY MS. SHANNON DAVIS

603

1 do you know what that would be used for?

2 A. It's to -- a key that uses -- to turn a firearm from a
3 fire to a safety position.

4 Q. Okay.

5 A. To make it where you can't fire the gun.

6 Q. And were you asked to, to test that key on the gun
7 that had been submitted as evidence in this case?

8 A. Yes, ma'am.

9 Q. And what did you do?

10 A. I placed the key inside -- I first cleared the weapon
11 to make sure it had no ammunition in it and it was empty.
12 I inspected it, and it was in the fire position when I
13 looked at the gun. I put the key inside the gun, moved it
14 to the safety position, moved it back to the fire position
15 showing that it worked, and put the key back in the purse
16 where I found it.

17 Q. So, the key did fit the gun in this case?

18 A. Yes, ma'am.

19 Q. Okay, and when you originally tested it in there --
20 this is State's Exhibit 61. Is this the gun that you
21 tested the key in?

22 A. Yes, ma'am.

23 Q. Okay, and where would you have put the key in the gun?

24 A. There is a -- can I hold it?

25 Q. Sure.

D. NOVAK - DIRECT EXAMINATION BY MS. SHANNON DAVIS

604

1 A. There's a safety mechanism here, and I would put it --
2 put the -- just like a hex key and I put in the -- into
3 this little hole, and I turned it to the left -- I mean, to
4 the right, which put it down to the safety position. Then
5 I turned it back to the right, back up to the left, and put
6 it back in the original position, which is the fire
7 position.

8 Q. So, when you originally got this out of evidence, it
9 was in the fire position?

10 A. Yes, ma'am.

11 Q. You turned it to safety with the key?

12 A. Yes, ma'am.

13 Q. And back to firing position how you originally had it?

14 A. Where I originally found it.

15 Q. Okay, and that's in this very small circular ---

16 A. Yes, sir.

17 Q. --- place? And the key goes in that little hole? Is
18 that where the key ---

19 A. I'm sorry.

20 Q. --- goes, in the little hole that I'm ---

21 A. Yes, ma'am.

22 Q. --- pointing to? And the key that was found in the
23 defendant's purse did fit this gun?

24 A. Yes, ma'am.

25 Q. And what did you do with the key after you tested to

D. NOVAK - DIRECT EXAMINATION / CROSS-EXAMINATION

605

1 see if it fit the gun?

2 A. Put it back in the purse where I found it.

3 Q. And did you put the purse back into evidence?

4 A. Yes, ma'am.

5 Q. Is that the extent of your involvement in this case?

6 A. Yes, ma'am.

7 MS. SHANNON DAVIS: I have no further questions.

8 Please answer any of the defense.

9 CROSS-EXAMINATION BY MS. ZMROCZEK:

10 Q. In your training and experience as a gun owner and
11 law-enforcement officer, if you're keeping a gun In your
12 house around nine children, would you like to keep the
13 safety in it?

14 A. I'm ---

15 Q. Would you like to keep it safe? Would you like to
16 keep it locked so that children cannot fire the gun?

17 A. Yes, ma'am.

18 Q. And then when you take the gun out and you're going to
19 use it for personal protection, would you want to have it
20 in the fire position?

21 A. I don't -- personally, I don't own any guns that have
22 a safety on it. All mine are non-safety, but yes, if
23 you're going to be carrying, it would be on non-safety in
24 the fire position.

25 Q. And all yours are non-safety because if you're

1 carrying it to use it ---

2 A. From -- in my profession, you don't want any, any
3 split second it would take -- you need every second you can
4 count.

5 Q. And, and I'm not trying to question you on the date,
6 but do you recall on or about April 15th, just a few days
7 ago or a few weeks ago, Mr. Downtin and the solicitor's
8 office came to your office, and Mr. Downtin was inquiring
9 specifically about the gun and safety?

10 A. That's your partner?

11 Q. Yes.

12 A. Yes, ma'am. I know him as Wade.

13 Q. As Wade, yes, and then on April 17th, you, you
14 provided a report. Just April 17, 2014, you provided a
15 report that you found that key in the purse and ---

16 A. Yes, ma'am.

17 Q. --- it fit the gun?

18 A. Yes, ma'am.

19 Q. And ---

20 A. Yes, ma'am.

21 Q. And that was just recently?

22 A. Yes, ma'am.

23 MS. ZMROCZEK: Thank you. I have no further
24 questions.

25 REDIRECT EXAMINATION BY MS. SHANNON DAVIS:

D. NOVAK - REDIRECT EXAM / J. GREEN - VOIR DIRE EXAM 607

1 Q. Sergeant Novak, when you took the gun out of evidence,
2 it was in the fire position?

3 A. Yes, ma'am.

4 MS. SHANNON DAVIS: No further questions, Your Honor.

5 THE COURT: Thank you very much.

6 MS. SHANNON DAVIS: May he be excused?

7 MS. ZMROCZEK: Absolutely.

8 THE COURT: All right, you are free to go, sir. Thank
9 you.

10 WITNESS: Thank you.

11 (THE WITNESS EXITS THE STAND.)

12 MR. RIDDLE: State would call James Green to the
13 stand.

14 JAMES GREEN, BEING DULY SWORN,
15 TESTIFIES AS FOLLOWS:

16 CLERK OF COURT: Once you're seated, state your full
17 name, spelling your last, please.

18 WITNESS: James Green, G-r-e-e-n.

19 VOIR DIRE EXAMINATION BY MR. RIDDLE:

20 Q. Mr. Green, where are you employed?

21 A. I'm employed by the South Carolina Law Enforcement
22 Division, commonly referred to as SLED.

23 Q. And how long have you been at SLED?

24 A. Since June of 2005.

25 Q. In what part of SLED do you work, sir?

1 A. I'm a firearms examiner in the Forensic Services
2 laboratory.

3 Q. Work out in the big building on Broad River Road?

4 A. Yes, sir.

5 Q. How long have you been doing firearms out at SLED,
6 sir?

7 A. Since I started in 2005.

8 Q. All right. You've always been there?

9 A. Yes, sir.

10 Q. Did you have to have any specialized education or
11 training in order to do what you do at SLED?

12 A. Not to get hired, no, sir. Preferred but not
13 required. When I was hired at SLED, I began the firearms
14 and toolmarks course of instruction, which is approximately
15 three to four-year course of instruction. Very intensive.
16 A lot of reading, a lot of studying. Practical problems,
17 practical exercises, written and oral exercises and tests
18 dealing with firearms, types, makes, models, calibers,
19 actions, safeties, different types of ammunition, and
20 learning how each type of firearm can possibly leave
21 markings on a fired ammunition component like a cartridge
22 case or a bullet.

23 Once I successfully -- or once I completed the course
24 of instruction, I was given a very comprehensive final
25 consisting of, like, 400-something definitions,

J. GREEN - VOIR DIRE EXAM / DIRECT EXAM BY MR. RIDDLE 609

1 thirty-something essay questions, which being an English
2 major I turned it into, like a sixty-page final. Kind of
3 verbose when I type. And I was given practical problems
4 and practical exercises to work as real cases and work them
5 on my own. I successfully passed that. I was deemed
6 competent in the field of firearms identification and given
7 a case load and started working cases on my own.

8 Q. And subsequent to your initial qualification as a
9 firearm examiner, do you have to undergo proficiency tests
10 every so, every so often?

11 A. Yes, sir. We go -- undergo proficiency tests once a
12 year.

13 Q. Okay. Now, have you ever been qualified as an expert
14 in firearms and toolmarks before?

15 A. Yes, sir.

16 Q. Appropriately how many times?

17 A. Twenty-five times, twenty-four state and one federal.

18 MR. RIDDLE: Your Honor, I'd move that he be qualified
19 as an expert in the area of firearms and toolmark
20 identification.

21 MS. ZMROCZEK: We stipulate.

22 THE COURT: It's stipulated.

23 DIRECT EXAMINATION BY MR. RIDDLE:

24 Q. Mr. Green, were you given some items to look at in
25 this particular case?

J. GREEN - DIRECT EXAMINATION BY MR. RIDDLE

610

1 A. Yes, sir.

2 Q. Could you tell me the list of the items that you
3 received that you looked at in this particular case?

4 A. Yes, sir. Let me get my report, if I may. What I'll
5 do first is I'll refer to the SLED item numbers.

6 Q. Okay.

7 A. SLED item 8 was one fired bullet jacket and one fired
8 lead bullet core.

9 Q. Stop. Let me show you State's, State's 60 and ask you
10 if you recognize what that is.

11 A. Yes, sir. This is SLED item 8, which is State's
12 Exhibit 60. Whenever we get evidence in the firearms
13 department, if it's feasible, if the evidence is big
14 enough, we mark it or we scribe on it with our lab number,
15 our item number, and initials. So, if you see me looking
16 through the, the Ziploc bags, that's what I'm doing is I'm
17 looking for my markings on the evidence to make sure that's
18 what I looked at. And also the packaging has my initials
19 on it. Yes, sir, this is SLED item 8, which State's
20 Exhibit 60.

21 Q. All right. What was the next item that you received?

22 A. Item 9.

23 Q. Which is?

24 A. One Bersa model Firestorm semiautomatic pistol, .380
25 auto caliber, serial number 868037, and it was received

J. GREEN - DIRECT EXAMINATION BY MR. RIDDLE

611

1 without a magazine.

2 Q. All right. Let me show you what's State's 61. I can
3 show you the box as well. Do you need to see that?

4 A. No, sir. This is the SLED item 9, pistol that was
5 submitted.

6 Q. Serial number matches?

7 A. Yes, sir, serial number does.

8 Q. All right. What was the next item you received?

9 A. Item 10 was one Bersa magazine and one unfired .380
10 auto caliber cartridge.

11 Q. State's 58?

12 A. Yes, sir, State's Exhibit 58 is SLED item 10.

13 Q. All right.

14 A. Item 11 was two unfired .380 auto caliber cartridges.
15 Again, that's SLED item number.

16 Q. All right, and I'm handing you State's 59.

17 A. State's Exhibit 59 is SLED item 11.

18 Q. All right. What next?

19 A. Item 13, SLED item 13 was one PMC brand 20 cartridge
20 capacity ammunition box containing thirteen unfired .380
21 auto caliber cartridges.

22 Q. State's Exhibit 56.

23 A. Yes, sir. If I may? When everyone is calling it
24 Starfire earlier and I'm calling it PMC, it's the same
25 thing. PMC is actually the manufacturer. Starfire is the,

J. GREEN - DIRECT EXAMINATION BY MR. RIDDLE

612

1 is the trade name, like the type of bullets loaded in these
2 cartridges. It's like saying I have a GMC pickup truck or,
3 or, or a 1500. Well, Starfire would be a 1500, GMC would
4 be the make. So, if I say PMC and they're saying Starfire,
5 it's the same thing. But, yes, sir, these are the -- this
6 is item 13, which was...

7 Q. All right. Did you have any other items?

8 A. Item 14 was one fired .380 auto caliber cartridge
9 case.

10 Q. All right. Let me show you State's 57.

11 A. All right, State's Exhibit 57 is the item 14 cartridge
12 case, the SLED item 14 cartridge case.

13 Q. Now, when you receive a group of items like you've got
14 in front of you right now and are asked to do some testing,
15 what do you do in order to conduct that testing? What's
16 the steps you take?

17 A. Firearms identification is the, is the field of
18 forensic science in which the examiner attempts to
19 determine a common origin. In this case, for instance, I
20 received a fired bullet jacket, a fired bullet core, and a
21 fired cartridge case and the answer was -- excuse me, the,
22 the question was were they fired from this gun. So, what I
23 did was I evaluated the evidence, I looked at the jacket,
24 the bullet jacket and fragment which is State's Exhibit 60,
25 and the core and saw if they were suitable for, for

1 identification.

2 When firearms are created, a manufacturer will say we
3 want to have our rifling specifications in the barrel to be
4 this. We want it to be this caliber, things like that, and
5 all those build up the class characteristics.

6 Rifling is made up of lands and grooves and the lands
7 are the raised portion between the grooves, and what
8 happens is the groove is formed by cutting or removing
9 metal, and it adds a spherical look to the barrel. If you
10 look down the barrel of a, of a rifle, a firearm, you'll
11 see, like, spirals. And what that does is when the bullet
12 is fired, the projectile is fired, it imparts a rotary spin
13 on the bullet.

14 Think of football. When Payton Manning throws a
15 really nice spiral, it goes far and is very accurate. It's
16 the same thing with a bullet. The spin on the bullet
17 caused by the rifling makes it accurate, makes it go
18 further, and it doesn't tumble. When the bullet's passing
19 through the rifling, it's taking on very tiny, microscopic
20 scratches or striations that are on each individual firearm
21 and not the one made behind it or before it that make that
22 unique to each particular firearm. That's what we're
23 looking for.

24 Same way with a cartridge case is when somebody pulls
25 a trigger on a firearm and this, for instance, the hammer

1 falls, hits the firing pin. The firing pin goes forward
2 and hits the primer of the cartridge case. The primer
3 ignites, sends a flash of flame through a flash on the
4 cartridge case, which is little, tiny hole which starts
5 burning the gunpowder. That burns in ever increasing rates
6 until it reaches its critical point where it creates enough
7 gas to where it propels the bullet out of the, out of the
8 cartridge case, down the barrel of the gun, towards its
9 intended target.

10 As I stated just a second ago, when the bullet is
11 going down the barrel, it takes on the markings of the
12 barrel. Well, Newtonian physics with equal and opposite
13 reaction, as the bullet's going one way, the cartridge case
14 is going the other way, and it's hitting the breach face of
15 the firearm and it's taking on the marks of the breach
16 face. So, that's what we're looking for.

17 So, once I evaluated the State's Exhibit 60 and
18 State's Exhibit 57, I observed the firearm. I looked at
19 it, made sure it was safe to fire. I like my hands; I
20 don't want to shoot a gun that's going to blow up in my
21 hand. And then I go into our bullet recovery room. Excuse
22 me. Before that, decide and choose on the right type of
23 ammunition, a type that's similar because we have found
24 that different types of ammunition will mark differently
25 even if fired out of the same gun.

J. GREEN - DIRECT EXAMINATION BY MR. RIDDLE

615

1 Q. All right, let me stop you right there. You're at the
2 part now where you're fixing to test fire that weapon?

3 A. Yes, sir.

4 Q. All right. You do a safety inspection on that gun
5 first?

6 A. Yes, sir. Like I said, I don't want to pull the
7 trigger and have it go off in my hand.

8 Q. So, you, you examined the gun, examined the safety
9 features on the gun, and make sure that the gun operates
10 correctly?

11 A. Yes, sir, prior to test firing.

12 Q. All right, and you know how to do that on almost any
13 gun that comes into the lab, right?

14 A. Yes, sir. If I don't, I know where to find -- knew
15 who to ask, knew -- know what to find out, but yes, sir.

16 Q. Okay.

17 MR. RIDDLE: Your Honor, at this time I would ask
18 permission for the safety cable to be removed from the gun
19 so that he can demonstrate how the gun operates and the
20 safety features. It will stay in his hands the whole time.

21 THE COURT: You have the key?

22 Ladies and gentlemen, we're going to take the gun lock
23 off. There is no ammunition. The ammunition is in another
24 spot, and this is for purposes of the officer to
25 demonstrate how the gun operates.

J. GREEN - DIRECT EXAMINATION BY MR. RIDDLE

616

1 BY MR. RIDDLE:

2 A. Just so you know, the gun is physically -- when you
3 look at it, I can see it's physically and visually
4 unloaded. I've been shootings since I was three, so I'm
5 very familiar with firearms, so nothing's going to happen.

6 Q. I'm going to set State's Exhibit Number 83 up here as
7 well because, I mean, you're ---

8 A. Okay.

9 Q. --- going to need that ---

10 A. Yes, sir.

11 Q. --- at some point. Now, tell the jury what kind of
12 gun that is.

13 A. Close it first.

14 (A PAUSE.)

15 A. This is a semiautomatic pistol. What that means is if
16 you take a fully loaded magazine and insert it into the
17 magazine well, you can pull the slide back and, and let it
18 go, and see the hammer's come back. If there's a fully
19 loaded magazine, when you release the slide, it strips the
20 top cartridge which is a piece of unfired ammunition off
21 the magazine, puts it into the chamber of the firearm.
22 When you pull the trigger, the chain of events I spoke
23 about earlier -- the hammer falls forward, hits the firing
24 pin, that whole chain of events. When the -- this is a
25 recoil-operated firearm, and I'll explain that in a second.

J. GREEN - DIRECT EXAMINATION BY MR. RIDDLE

617

1 When the bullet goes this way, the cartridge case goes this
2 way ---

3 COURT REPORTER: Slow down, please.

4 WITNESS: Oh. I'm sorry. I get excited.

5 BY MR. RIDDLE:

6 A. When the bullet is expelled out the bullet barrel and
7 the cartridge case comes backwards, the slide recoils and
8 it comes back. On the firearm right here, you can see the,
9 like, the matt stainless and then that little black streak
10 that runs down the side? That's the extractor. That is
11 the little hook that holds the cartridge case. When the
12 slide comes back out of the closed position, it's bringing
13 the fired cartridge casing with it.

14 Q. James, how about come step down.

15 A. All right.

16 Q. That way everybody will be the same distance from you
17 and they can see what you're doing just a little bit
18 better.

19 A. Okay.

20 Q. I tell you what I want you to do. I'm going to stand
21 over here, and you stand over there so the court reporter
22 can hear you.

23 A. Okay. Okay. Like I said, when you pull the trigger,
24 the hammer will fall forward. The slide will start to
25 recoil, and there's the extractor. It grabs the cartridge

1 case, pulls it out of the chamber. When it gets far enough
2 back -- you can't see it because I don't have a light, but
3 there's an ejector. That's a solid and moveable ejector.
4 The cartridge case hits that ejector and it's expelled from
5 the firearm. Under tension of the spring recoil -- or the
6 recoil spring which under here, the slide moves back
7 forward. As it does so, it strips the next cartridge out
8 of the magazine, loads it into the chamber. You pull the
9 trigger. The entire sequence happens again. That happens
10 until either the shooter stops pulling the trigger or the
11 magazines runs empty. When the magazine runs empty, the
12 slide will lock open just like that.

13 Q. And it will stay back when there's no other -- no more
14 bullets in ---

15 A. Yes, sir.

16 Q. --- in the magazine to load the ---

17 A. Correct.

18 Q. --- gun again?

19 A. People refer to that as, like, a slide lock or a slide
20 hold opener.

21 Q. Okay.

22 A. The slide will hold ---

23 Q. All right.

24 A. --- hold itself back by the use of that little feature
25 right there. When the magazine is fully empty and the

J. GREEN - DIRECT EXAMINATION BY MR. RIDDLE

619

1 slide's forward, when you pull the trigger, the last
2 cartridge expelled, the slide will lock back.

3 Q. Now, can you tell us what kind of safety features that
4 gun has on it?

5 A. Yes, sir. This gun has four different safeties on it.

6 Q. All right.

7 A. The first one, which is most noticeable, is this right
8 here. It's a -- what we call a rotating safety lever. Let
9 me see if it will do it. Did you see how the hammer fell?
10 Okay, well, a lot of people think that's going to make the
11 gun fire, but it doesn't. You can see right here the
12 little black circular thing is the tail of the firing pin.
13 This right here, the safety lever, what it does is when you
14 rotate it up, it actually slightly retracts the firing pin
15 in here. So, it moves up and it comes in position, and it
16 actually puts a block of steel between the hammer and the
17 firing pin. So when it comes down, the hammer will not hit
18 the firing pin. It hits that block of steel. It's
19 incapable of firing in that position because they're --
20 it's, like, you know, you want it to be here but it's that
21 far away for, for lack of a better example.

22 This pistol also has a magazine safety. I'm trying
23 not to point it at anybody. If you pull the trigger,
24 nothing happens without the magazine in it. The magazine
25 safety is actually that little tiny piece of metal right

J. GREEN - DIRECT EXAMINATION BY MR. RIDDLE

620

1 there, that little -- you see, like, a little slight,
2 slight cut in the frame?

3 COURT REPORTER: Keep your voice up, please.

4 WITNESS: Okay. I'm sorry. I'm getting sick.

5 BY MR. RIDDLE:

6 A. That little, slight cut in the frame, that's the
7 magazine safety. When the magazine is inserted into the
8 pistol, there's a little, tiny detent on the magazine, and
9 it pushes that up so when you pull the trigger, it'll,
10 it'll fire. But in the absence of the magazine, the gun
11 won't fire.

12 There's also another safety which is strictly
13 internal, and without taking it apart I can't show it to
14 you, but there is a firing pin block. And what that is is
15 a little spring tension piece of metal that in this
16 position, if you pull the trigger, the firing pin will go
17 forward once it's hit by the, the hammer. If the little
18 bar of steel that's inside the frame hits it, when you pull
19 the trigger, the bar of steel rotates like this and it
20 deactivates the firing pin safety. Basically what that
21 does is if I drop the gun like this, the firing pin's not
22 going to go forward on its own and fire. That, that, that
23 block of steel, the firing pin block physically blocks the
24 firing pin from moving forward until it's pushed up out of
25 the way. Doing that is by pulling the trigger.

J. GREEN - DIRECT EXAMINATION BY MR. RIDDLE

621

1 Q. So, that keeps the gun from going off, say, if you
2 dropped it?

3 A. Yes, sir.

4 Q. Okay.

5 A. And the fourth safety is what was described before,
6 which -- what Bersa calls their integral locking system.

7 Q. I'm going to hand you State's 83.

8 A. Okay, right now it's in the fire position. You saw me
9 -- I'll defeat the magazine safety. Pull the trigger,
10 okay? There's two ways to do this. If you turn the
11 magazine -- or, excuse me, the integral lock system on to
12 where it's in the S position with the slide closed and the
13 hammer down, watch this. Nothing. I'm not the strongest
14 person in the world, but I'm fairly strong. The trigger
15 will not move.

16 We're going to deactivate it. Now with the hammer
17 cocked, you can also turn it to the safe position and the
18 trigger will move just a hair. And what it does is
19 actually blocks the rear movement of the trigger. It
20 totally locks the firearm so it cannot be fired. Cocked,
21 loaded, regardless, it will not fire with that interlocking
22 safety on.

23 Q. Magazine in or out, it doesn't make any difference?

24 A. Correct.

25 Q. So, in order for that gun to fire, there has to be at

1 least four things in the right place at the right time for
2 it to ---

3 A. Yes, sir.

4 Q. --- for it to fire?

5 A. Right. Three of them are what we call passive
6 safeties. Actually, excuse me, two of them are passive
7 safeties and two of them are active safeties.

8 Q. Okay.

9 A. The passive safeties you defeat just by simply loading
10 and pulling the trigger. The active safeties you actually
11 have to manually defeat.

12 Q. And the active safeties on that gun would be the
13 integral lock with the key?

14 A. Correct and the delocking safety, which is ---

15 Q. Okay.

16 A. --- this bar right here.

17 Q. Right. Okay.

18 A. And actually you can see when you, when you
19 deactivates with -- the slide is closed, it actually
20 slightly moves the hammer back out of the way. It puts
21 that bar of steel between the two so it won't go forward
22 and hit.

23 Q. Okay, and it's in the fire position when you can see
24 the little red ---

25 A. Yes, sir. When the little red dot is visible on the

J. GREEN - DIRECT EXAMINATION BY MR. RIDDLE

623

1 frame, and when the little notch on the integral key lock
2 is on the F position or fire, that's when it will -- is
3 unloaded -- or, excuse me, unlocked.

4 Q. All right. Thank you. You can have a seat again.

5 When you examined that gun for safety features and for
6 soundness, did you find it safe to test fire?

7 A. Yes, sir.

8 Q. All right, and did you, in fact, test it?

9 A. Yes, sir I, did.

10 Q. And when you test fire a gun, do y'all have a special
11 place y'all do it?

12 A. We do. We have a bullet recovery room, and inside
13 that room is about a 4 foot diameter stainless steel tank
14 that's two stories tall. That's full of water that funnels
15 at the bottom, and there's a colander attached to a chain.
16 What we do is once we deem the firearm safe to fire and we
17 select the correct ammunition and we put on our hearing
18 protection, our eye protection, we close the lid of the
19 tank. We turn on the capitation or the, the water to get
20 it swirling, and we shoot into the water because it does
21 not add to or take away any markings from the fired
22 ammunition components. Point straight down into the tank,
23 pull the trigger once, twice, three times, however many
24 times you're shooting. Then once you've shot your tests,
25 you sure the magazine's unloaded. Drop the magazine,

J. GREEN - DIRECT EXAMINATION BY MR. RIDDLE

624

1 pistol. I rack the slide a couple times to make sure. Set
2 it aside. Open up the tank, pull up the colander, and
3 there are our fired bullets and cartridges in the bottom.

4 Once we have those, then we can go forward to
5 microscopic comparisons. The primary tool we use is what's
6 called a comparison microscope, and it's two microscopes
7 connected by one optical bridge that lets us look at two
8 objects simultaneously. The first thing I do and all of
9 our examiners do is look at the tests we fired from the gun
10 and see if they're marking consistently. Like I said, some
11 brands of ammunition will mark differently, and once I
12 deemed that they were marking consistently, I then compared
13 the known tests I fired from this pistol against State's
14 Exhibits 57 and 60.

15 Q. All right, and let's talk about the results of your
16 examination. You test fired that gun, correct?

17 A. Yes, sir.

18 Q. And it was marking consistently?

19 A. Yes, sir.

20 Q. All right. Item 8, which was the bullet and jacket
21 from the autopsy.

22 A. Yes, sir.

23 Q. Do you do anything with the lead core of the bullet?

24 A. When I evaluated it, I saw -- basically a lead core
25 is, like some hollow points like State's Exhibit 56, what

J. GREEN - DIRECT EXAMINATION BY MR. RIDDLE

625

1 they are is a copper jacket surrounding a lead core. The
2 copper jacket was -- it takes all the markings left on the
3 bullet by the, the barrel of a firearm. So, it, it's like
4 a jacket wearing over somebody. You know, if you're
5 outside and it's raining, your jacket's going to get wet
6 but your body's not, and that's what the, the jacket and
7 the core are doing. The jacket is taking all the markings.
8 The core is not.

9 So, State's Exhibit 60, which is SLED item 8, the core
10 portion had no marks of value on it and is unsuitable for
11 identification.

12 Q. All right. How about the jacket, the outside part?

13 A. Oh, the jacket part I was able to compare with the
14 test I fired from the pistol submitted.

15 Q. All right. Did you reach any conclusions about item 8
16 in regards to this case?

17 A. Yes.

18 Q. Item 8 being the bullet from the autopsy or bullet
19 jacket from the autopsy.

20 A. Yes, sir. The item 8 bullet jacket, or State's
21 Exhibit 60, was fired by this pistol.

22 Q. That pistol ---

23 A. Yes, sir.

24 Q. --- up there? All right, and that pistol was SLED
25 item 9?

1 A. Yes, sir.

2 Q. Okay. Did you look at the cartridge casing, which I
3 believe was SLED item 14?

4 A. Yes, sir, I did. SLED item 14, or State's Exhibit 57,
5 was also fired by SLED item number 9, the pistol.

6 Q. Okay. Now, in terms of the other items that you have,
7 the magazine with the one bullet in it, is that magazine
8 appropriate for use in that particular firearm?

9 A. Yes, sir, it is, and it's actually what I used to test
10 fire the pistol.

11 Q. Okay, and how about that round of ammunition that's
12 contained in that?

13 A. Yes, sir. All of the unfired ammunition I received
14 was the proper caliber, the correct caliber for use in this
15 pistol and other .380 pistols.

16 Q. All right, and was the ammunition that you received,
17 the three rounds -- I need to put the numbers on the record
18 -- the ammunition that's contained in SLED item 10, which
19 is State's 58, and the ammunition contained in SLED item
20 11, State's 59, that's consistent for use in that pistol?

21 A. Yes, sir.

22 Q. And with this magazine?

23 A. Yes, sir.

24 Q. How does it compare with the box of ammunition
25 contained in State's Exhibit 56?

J. GREEN - DIRECT EXAMINATION / CROSS-EXAMINATION

627

1 A. They are the same caliber, the same brand, and the
2 same make.

3 Q. All right. Appear to be the same?

4 A. Yes, sir.

5 Q. All right. That, that gun in your hand and that
6 magazine, how many rounds would that magazine hold?

7 A. Let me check my notes. I thought I had it. It will
8 hold seven.

9 Q. Seven?

10 A. Yes, sir.

11 Q. That box of ammunition is a twenty-round box?

12 A. Yes, sir.

13 Q. How many rounds were in it when you received it?

14 A. Thirteen.

15 MR. RIDDLE: Thank you, Mr. Green. Please answer any
16 questions Ms. Zmroczek has.

17 CROSS-EXAMINATION BY MS. ZMROCZEK:

18 Q. James, with all the gun knowledge that you have,
19 shooting guns since you were three years old, can you tell
20 this jury why that gun was fired?

21 A. No, ma'am.

22 MS. ZMROCZEK: Thank you. I have no further
23 questions.

24 MR. RIDDLE: Nothing further. After he secures the
25 gun, I have nothing further.

1 THE COURT: All right. You are done.

2 WITNESS: Yes, sir.

3 THE COURT: Go ahead and put the gun lock back, and
4 then you'll be free to go.

5 (A PAUSE.)

6 (THE WITNESS EXITS THE STAND.)

7 MR. RIDDLE: Your Honor, at this time, the state rests
8 its case in chief.

9 THE COURT: All right. Thank you, sir.

10 Ladies and gentlemen, you heard Mr. Riddle state that
11 the state has rested its case in chief, and what typically
12 occurs at this point is I have motions that I need to take
13 up at the close of the state's case and before we proceed
14 any further, and I'm going to do that.

15 But it's about twenty minutes to 5. You've worked
16 late the last couple of nights you've been here. I'm going
17 to let you off early tonight. We're going to adjourn the
18 court for the evening as far as your purposes. We'll stay
19 and I'll take up the motions so that when we start back in
20 the morning, we'll be ready to hit the road running, okay?
21 So, thank you for your, your patience today as we've gone
22 in and out and dealt with things.

23 Please continue to ask anyone who is curious to
24 continue to be patient, that you're still involved in the
25 trial of the case and still cannot talk about the case.

1 We'll start back at 9:00 in the morning. When everyone's
2 reconvened, we'll, we'll get started, okay?

3 So, everyone please remain seated while the members of
4 the jury are excused.

5 (THE JURY EXITS AT 4:39 P.M.)

6 THE COURT: All right, at this time I'll take up any
7 motions at the close of the state's case.

8 MR. DOWTIN: May it please the court?

9 THE COURT: Yes, sir.

10 MR. DOWTIN: Your Honor, at this time we'd like to
11 renew any previous objections made, and we'd also like to
12 move for directed verdict pursue to Rule 19 in South
13 Carolina Rules of Criminal Procedure basically -- based
14 upon primarily the state's failure to produce a direct or
15 substantial circumstantial evidence to the elements
16 required for murder, primarily malice aforethought. And as
17 Your Honor is aware, mere suspicion of Ms. Davis's guilt is
18 not enough to go forward. As such, we'd move for directed
19 verdict motion. Thank you -- or directed verdict.

20 THE COURT: All right, I'm going to respectfully deny
21 that motion, Mr. Downtin. At this stage, obviously the
22 court is not concerned about the weight of the evidence,
23 merely the existence of it, and I think it's a factual
24 issue that the jury must consider. There was testimony,
25 depending on how the jury receives it, as to difficulties

1 between the, the parties. That the separation appeared to
2 be maybe something less than amicable, depending on if you
3 believe what you -- the things you've heard. And so I
4 think it's a weight issue rather than the existence of
5 evidence. So, I'm going to respectfully deny the motion.

6 Anything else?

7 MS. ZMROCZEK: Your Honor, at this time, just since
8 the jury is out and we have a little bit of time, if the --
9 Judge, if you'd like to inquire about her testifying?

10 THE COURT: Yes.

11 MS. ZMROCZEK: I've already said she is going to, and
12 she already is, but I, I still...

13 THE COURT: Sure. Be happy to do that.

14 Ms. Davis, you understand the any, any defendant in a,
15 in a criminal trial has constitutional rights with regards
16 to whether or not they choose testify. You have the right
17 to testify, and you have the right to remain silent. You
18 understand that?

19 DEFENDANT: Yes, sir.

20 THE COURT: Okay. Now, let me first address the right
21 to remain silent. Every person who's charged with a
22 criminal offense has the right to remain silent, and if you
23 choose to do that, if you choose to not testify or to not
24 put up any evidence, then what I would do is when I charge
25 the jury that -- on the law that applies to this case, I

1 would essentially tell them that the state has the burden
2 of proof and that you have nothing to prove in this case.

3 As, as a person who is charged with a criminal
4 offense, you don't have the burden of proving anything.
5 The burden rests on the state and the -- that the law
6 provides that all citizens have the right to remain silent,
7 and the fact that you choose to exercise that
8 constitutional right, that's a factor that the jury cannot
9 consider at all in their deliberations with regards to your
10 guilt or innocence. I would instruct them as a matter of
11 fact that the fact that you chose to exercise your
12 constitutional right to remain silent could not even be
13 discussed in the jury room at all. That's not a factor for
14 them to even give a moment's consideration. Do you
15 understand that?

16 DEFENDANT: Yes.

17 THE COURT: And if you chose to exercise that
18 constitutional right, I would instruct them in that
19 fashion. So, you have that. You have the right to remain
20 silent.

21 But you also have a right to testify. You have a
22 right to testify in your own defense if you choose to do
23 so. What's important for you to understand if you do
24 decide to testify, to testify is that obviously you would
25 answer questions from your attorneys, but you would also be

1 obligated to answer any questions from the state's
2 attorneys. Do you understand that?

3 DEFENDANT: Yes, sir.

4 THE COURT: Okay. Now, the other thing -- and I don't
5 know because we haven't discussed it at this point. I
6 don't know if you have any prior criminal history that
7 would be subject to being cross-examined but -- or
8 impeached with. In other words, if you have any ---

9 Is there any prior record that we need to be concerned
10 about?

11 MR. RIDDLE: No, sir, there's no convictions that I
12 intend to use.

13 THE COURT: Okay. We don't need to go into that then.
14 What I was going to tell you is that you would be subject
15 to being asked about that if, if you had that, but that's
16 not the case here. So, it's -- what is important for you
17 to understand, however, is that whatever -- any questions
18 that the state's attorneys ask, you'd be required to
19 respond to those questions as well. You understand that?

20 DEFENDANT: Yes.

21 THE COURT: All right. Now, have you talked with your
22 attorneys about your right to testify or not testify?

23 DEFENDANT: Yes, sir.

24 THE COURT: Y'all have discussed that?

25 DEFENDANT: Yes, sir.

1 THE COURT: Okay. Now -- and that's appropriate and
2 I'm glad you've done that because I tell folks this all the
3 time. Often, often times -- another term we use for
4 lawyers is counselor, and that's what their job is, to
5 counsel you and to give you their best counsel as to what
6 they -- the way they perceive the case and how it's going
7 and, and, and to help you in your decision in trying to
8 make that call on whether or not to testify, but I always
9 told defendants this.

10 No one can make that decision for you. That has got
11 -- because it's your constitutional right. You can ask
12 your attorneys what they think. You can get their
13 opinions, but when the dust settles on this decision, it
14 has got to be your decision. Whether or not you want to
15 testify or whether or not you want to remain silent has to
16 be your decision. You understand that?

17 DEFENDANT: Yes, sir.

18 THE COURT: All right. Now, have you made a decision
19 as to whether or not you will testify?

20 DEFENDANT: Yes, sir.

21 THE COURT: All right, and what is that decision?

22 DEFENDANT: I will testify on my behalf.

23 THE COURT: All right, and that decision to testify,
24 has that been your decision?

25 DEFENDANT: Yes, it has.

1 THE COURT: Has anyone forced you into making that
2 decision?

3 DEFENDANT: No, sir.

4 THE COURT: Has anyone coerced you or threatened you
5 in any way to get to you make that decision?

6 DEFENDANT: No, sir.

7 THE COURT: All right, and that's a decision that
8 you've made of your own free will?

9 DEFENDANT: Yes, sir.

10 THE COURT: All right. Very good, ma'am. Thank you
11 very much, ma'am.

12 Well, what we'll do is when we begin tomorrow, we'll,
13 we'll open with the defense's case and whatever witnesses
14 and however -- whatever order obviously they wish to call
15 them.

16 Is there anything this afternoon that we need to deal
17 with before we start in the morning? If, if there is, we
18 will. If there's not, then I suspect when the jury comes
19 out, I'll just recognize the defense for their first
20 witness.

21 MS. ZMROCZEK: I believe there is, Your Honor.

22 THE COURT: All right.

23 MS. ZMROCZEK: There are -- there was testimony today
24 about text messages and Cellebrite and downloading, and I
25 know that the phone records have been throughout this case.

1 And tomorrow we intend to offer into evidence some of the
2 text messages that were downloaded by the state's witnesses
3 that testified today. And I have redacted those text
4 messages to only include conversations between the victim
5 and the defendant, and I provided those a long time ago to
6 the state and, and also with a summary. And apparently
7 maybe there's -- the summary is, like, the number of phone
8 calls between the two, and apparently there's a discrepancy
9 on that, and I believe Ms. Davis and I -- or Shannon and I
10 are going to have a meeting of the minds to, to add those
11 up.

12 But the issue goes to -- Your Honor, there are some
13 text messages that are on Shellie's phone, Ms. Davis's
14 phone that came from the defendant, and they reference
15 something that is going to, I believe, is going to require
16 some explaining to the jury. The best way -- and I'll just
17 tell you what it is, Your Honor. I've shown them and I've
18 told them about, and I gave them a copy of the CD, and it's
19 been premarked.

20 He, being Jermaine Davis, sent a group of text
21 messages to the defendant when she wasn't responding to
22 him, and he said to her numerous times:

23 Eat the cake, Anna May. Eat the damn cake.

24 Your Honor, if I say that to you, you don't know what
25 that means. If I say that to the jury, there -- the

1 majority of them are not going to know what that means.
2 She's going to testify as to what she knew what that meant.
3 It comes from a movie the movie, the, the movie *What's Love*
4 *Got to Do with It* with Ike and Tina Turner, and it's -- I
5 have cut it down to a very limited two-minute clip that
6 shows just that scene so that they can understand what he
7 meant and what she understood it to mean when he said that
8 to her.

9 THE COURT: Well, I don't think you can show it to
10 tell the jury what he meant.

11 MS. ZMROCZEK: No, no, not what he meant but what she
12 meant -- what she understood it to mean when he said it to
13 her.

14 THE COURT: Why can she not just testify about that?

15 MS. ZMROCZEK: She can, Your Honor, but I think the,
16 the whole point to this case is her state of mind and her
17 fear, and they asked every witness. You never saw her beat
18 -- you never saw him beat her. You never saw bruises. You
19 never saw -- and obviously we will have witnesses that
20 testified that they did see bruises, but nobody saw him
21 beat her because that's not what people do in front of
22 other people, Your Honor.

23 If you would like to watch the clip, I, I still want
24 to proffer it. I understand that you're going to make a
25 decision after maybe you hear the testimony, but I would

1 still like to proffer it and put it into evidence at some
2 point.

3 THE COURT: All right.

4 MS. ZMROCZEK: As ID.

5 THE COURT: Mr. Riddle.

6 MR. RIDDLE: Well, first of all, I agree completely
7 with the court that there is no way that that movie can
8 show what he meant. She's more than welcome to get up
9 there to testify to say she watched the movie and to say
10 she understood it to mean this. But to play the movie
11 itself -- first of all, the movie is not relevant. The,
12 the actual movie itself is not relevant to her
13 understanding. She can say what she took that to mean.

14 But to play the movie injects an arbitrary factor into
15 this case. It's confusing. It's a waste of time. It's
16 unduly prejudicial under 403 because it will depict a scene
17 where a man is beating a woman, and there's no evidence of
18 that in this case. And to -- I mean, that's like allowing
19 an accident reconstruction computer animation that's using
20 facts that aren't in evidence in a case. I, I object.

21 THE COURT: All right.

22 MR. RIDDLE: I object to, to that being allowed in.
23 If she wants to get on the stand and testify that she has
24 seen that movie and that she understood it to mean this,
25 that's fine.

1 THE COURT: You've got the clip you're talking about?

2 MS. ZMROCZEK: I do, Your Honor, and I understand
3 right now it's not in evidence.

4 THE COURT: Correct.

5 MR. RIDDLE: And just for the record, Your Honor,
6 while she, she's looking for that, she gave that to me
7 yesterday. I haven't had a chance to watch it. I'm
8 basing what I said about it on what Ms. Zmroczek told me
9 about it. I may have some more to say about it once I've
10 had a chance to watch it. I just didn't while we were
11 putting up our case.

12 THE COURT: Sure.

13 MR. RIDDLE: Because I was, I was dealing with other
14 issues.

15 THE COURT: Okay. All right.

16 MS. ZMROCZEK: And it's just, it's just a two-minute
17 clip so that ---

18 THE COURT: All right. I'm, I'm, I'm going to watch
19 it in, in just a little bit, and then I'll give it back,
20 and then y'all can watch it and do whatever you want to,
21 but I think I need to look at it before I make a decision.

22 MS. ZMROCZEK: And, Your Honor, I would ask that you
23 simply reserve that decision until after she testifies so
24 that we -- because I understand it's hard to make a
25 decision right now when you don't know -- there's no --

1 there are no facts in evidence. I understand that.

2 THE COURT: Okay.

3 MS. ZMROCZEK: I do understand that.

4 THE COURT: All right.

5 MS. ZMROCZEK: I just, I know how sometimes I tend to
6 muck up things while the jury's here. So, I wanted to
7 address that issue before.

8 THE COURT: Anything, anything else before we adjourn?

9 MR. RIDDLE: No, sir.

10 THE COURT: Anything further?

11 MS. ZMROCZEK: No, sir.

12 THE COURT: All right, I'm going to take my computer
13 back here. I'm going to watch it. I'll -- it's only two
14 minutes. I'll send it right back out. Then y'all can view
15 it, and again I'm not ruling at this point.

16 MR. RIDDLE: We've got a copy, Judge. I just
17 haven't ---

18 THE COURT: You got a copy?

19 MS. ZMROCZEK: Yes.

20 MR. RIDDLE: She gave me a copy; I just hadn't had a
21 chance to look at it.

22 THE COURT: Well, don't wait on me. You go ahead and
23 look at it.

24 MR. RIDDLE: Huh?

25 THE COURT: I'll look at mine and get it back to you,

1 and then again I'll just -- nothing will be shown until
2 we've had a chance to fully be on the record and, and after
3 everyone has had a chance to have their say, okay?

4 MR. RIDDLE: One question.

5 THE COURT: Yeah.

6 MR. RIDDLE: And just because I'm not tracking. Are
7 you going to go watch it and then come back out here or are
8 we done for the day?

9 THE COURT: No, no, we're done.

10 MR. RIDDLE: Okay. That's, that's what I needed to
11 know.

12 THE COURT: We're, we're done. I just asked Ms.
13 Zmroczek to hang around so I can give it back to her.

14 MR. RIDDLE: Oh, okay. I gotcha. I gotcha.

15 MS. ZMROCZEK: Thank you.

16 MR. RIDDLE: Thank you, Your Honor.

17 THE COURT: All right.

18 (WHEREUPON, THE CASE IS AT EASE.)

19 *THURSDAY, APRIL 24, 2014*

20 (COURT RESUMES AT 9:08 A.M.)

21 (TEXT MESSAGES MARKED AS DEFENDANT'S EXHIBIT NUMBER 74
22 FOR IDENTIFICATION.)

23 THE COURT: Anything we need to take up before we
24 bring the jury out this morning from the state?

25 MR. RIDDLE: I think we need to take up that video

1 clip. I was able to watch that.

2 THE COURT: Okay.

3 MS. ZMROCZEK: I believe -- it's my understanding,
4 Judge, that I'm simply going to mark it as a court's ID
5 and it's not going to go into -- that, that -- you said
6 that ---

7 THE COURT: Is that number 74?

8 MS. ZMROCZEK: Number 58.

9 THE COURT: Okay.

10 MS. ZMROCZEK: It was 58.

11 THE COURT: Well, it's currently marked for ID
12 purposes.

13 MS. ZMROCZEK: Right, but I just wanted to put it in
14 to preserve my objection, that I felt like it was relevant
15 and it will be relevant after her testimony and I don't
16 know -- to put it in now because obviously she hasn't
17 testified yet, but I can tell you what she, what she will
18 testify ---

19 THE COURT: I'm, I'm going to, I'm going to hold off
20 until we get to that point, and then I'll hear you. I
21 mean, in other words, before we get to any introduction of
22 anything, I'll send the jury out, and I'll take up at that
23 point.

24 MR. RIDDLE: So, she, she's going to take it up with
25 Your Honor before she brings it up in front of the jury.

1 That's, that's what I want to happen.

2 MS. ZMROCZEK: I would never play a video in front
3 of ---

4 THE COURT: Well, I mean, I wouldn't let you get that
5 far.

6 MS. ZMROCZEK: Right.

7 THE COURT: But even, even given any conversation
8 about a video -- in other words, it won't be mentioned
9 prior to us taking up the issue.

10 MR. RIDDLE: Right, like, like we did with the CDV.

11 MS. ZMROCZEK: Right.

12 MR. RIDDLE: At the bench.

13 THE COURT: Correct.

14 MS. ZMROCZEK: Or I'll, or I'll indicate that we would
15 have a matter of law so that the jury can go out.

16 THE COURT: There you go.

17 MS. ZMROCZEK: I'll make sure that I don't start ---

18 THE COURT: Okay.

19 MS. ZMROCZEK: --- running down that road.

20 THE COURT: Okay. All right, anything else?

21 MS. ZMROCZEK: I believe that -- are we going to --
22 there are pictures and text messages that I intend to
23 introduce to her, and I believe that they object to that.
24 I don't know if we need -- that that needs to come in -- or
25 be addressed now.

1 MR. RIDDLE: I, I think they're just going to need to
2 lay the foundation. We'll just have to take it up as we
3 go, Your Honor.

4 THE COURT: All right. All right, let's bring the
5 jury.

6 (THE JURY ENTERS AT 9:11 A.M.)

7 THE COURT: Before we get started, I want to share
8 something with y'all. Very few people will go through life
9 and actually witness a miracle. Some people will go
10 through life and never witness miracle. I witnessed one
11 this morning, and because it's so rare that you see a
12 miracle, you, you want to share it.

13 I'm coming down I-20 toward Columbia and around mile
14 marker 88, 89, somewhere in there, there's a big tractor
15 trailer turned over in the middle of the interstate in the
16 big, big median there with highway patrolmen and emergency
17 vehicles and everything, and I went right through. I went
18 right past it. There were no rubberneckers, nobody -- the
19 traffic flowed right through. Nobody stopped to gawk at it
20 or anything. I ride I-20 every day. That never happens,
21 so I just felt that was a miracle.

22 Ladies and gentlemen, if you recall, when we, when we
23 ended court, adjourned yesterday, the state had rested its
24 case in chief, and I had matters of law that I needed to
25 take up with the attorneys, which is common to every case.

E. PRESTIGIACOMO - DIRECT EXAMINATION BY MS. ZMROCZEK 644

1 Once the state has rested their case, there's matters of
2 law that the court has to address.

3 We did that yesterday afternoon, and so now we're
4 ready to proceed, and so I would recognize Ms. Zmroczek for
5 the defense's first witness.

6 MS. ZMROCZEK: Thank you, Your Honor. We call Eddie
7 Prestigiacomo.

8 THE COURT: All right.

9 EDDIE PRESTIGIACOMO, BEING DULY
10 SWORN, TESTIFIES AS FOLLOWS:

11 CLERK OF COURT: Have a seat, please, sir. Once
12 you're seated, state your full name, spelling your last for
13 the record.

14 WITNESS: Eddie Prestigiacomo, E-d-d-i-e
15 P-r-e-s-t-i-g-i-a-c-o-m-o.

16 DIRECT EXAMINATION BY MS. ZMROCZEK:

17 Q. Mr. Prestigiacomo, will you please tell the jury where
18 you're employed?

19 A. Lexington County Sheriff's Office.

20 Q. What are your duties?

21 A. I am a sergeant over investigations.

22 Q. Have you always been the sergeant over investigations?

23 A. No, I haven't.

24 Q. What were your duties in 2010?

25 A. I was a Major Crimes detective.

E. PRESTIGIACOMO - DIRECT EXAMINATION BY MS. ZMROCZEK 645

1 Q. Do you recall an incident on September 22, 2010?

2 A. Yes, I do.

3 Q. How were you involved in that incident?

4 A. I was summoned to the scene by Lieutenant Scottie
5 Prior, who was my boss over Major Crimes, to assist in a
6 murder.

7 Q. Did you conduct any interviews?

8 A. Yes, I did.

9 Q. With whom did you conduct interviews?

10 A. I conducted several interviews. I'm going to refer to
11 my report. Two folks that were checking on the victim,
12 Jermaine Davis: Latasha Adams, Raymond Adams. And I later
13 spoke to Mr. Davis's -- the victim's boss, Lancelot Wright,
14 which led me to interviewing Arletta Carr.

15 Q. Where did you interview Arletta Carr?

16 A. I interviewed her at Outlet Point on Bush River Road
17 right down from I-20.

18 Q. What did she tell you?

19 A. Can you rephrase that question, please?

20 Q. What did she tell you specifically to the behavior of
21 Shellie Davis?

22 A. She described -- she -- I can lay the, the framework
23 of this interview.

24 Q. Certainly.

25 A. I made a phone call to Ms. Carr. She was very, very

E. PRESTIGIACOMO - DIRECT EXAMINATION BY MS. ZMROCZEK 646

1 upset, and I wanted to really talk to her about it.
2 Apparently she had checked on Mr. Davis, made a phone call,
3 and even talked to Ms. Shellie Davis, checking on Mr.
4 Davis, Jermaine.

5 Had her come to meet me at Outlet Point, and when we
6 got there, she got there, she was extremely upset. It took
7 a little while for me to get into the meat and potatoes of
8 why I was asking her to talk to me, and she described her
9 relationship with Mr. Davis.

10 Q. And I believe you put in your report and told
11 Investigator Collins that she described it as controlling,
12 right? Her, Shellie Davis's ---

13 A. I just testified to the fact that Ms. Carr described
14 to me the relationship she had with Mr. Davis, the victim,
15 as being a brother/sister relationship. She cared about
16 his well-being.

17 Q. Certainly.

18 A. And some of the problems he had in his life. That was
19 the beginning of the interview. She further indicated to
20 me that there were problems, and she described a pattern of
21 a controlling and odd behavior, and she laid out an example
22 to me how they do high-profile -- I guess it was security,
23 private security where she showed up unannounced at a work
24 function, and it got to the point where Mr. Davis was
25 upset. Ms. Carr confronted Ms. Davis and, and, and let her

E. PRESTIGIACOMO - DIRECT EXAMINATION BY MS. ZMROCZEK 647

1 know. Look, if this continues, he's going to lose his job.

2 Q. Did she ever, Ms. -- did Mrs. Carr -- or Ms. Carr ever
3 tell you that Shellie said if nobody -- if I can't have
4 Jermaine, then no one can?

5 A. Is that quote unquote?

6 Q. Yes.

7 A. Verbatim?

8 Q. Yes.

9 A. I don't remember she saying that specifically. Again,
10 you know, I'm going to reiterate this, this interview took
11 place in the midst of her being very upset. She lost
12 somebody very close. So, delicately I went into these
13 details.

14 Q. If she had ---

15 A. Um.

16 Q. --- told you that -- sorry. If she had told you that,
17 would you have put that in your report? Would that have
18 been relevant?

19 A. If she told me what? I'm sorry.

20 Q. If she told you that Shellie had said if nobody can
21 have Jermaine ---

22 A. Okay.

23 Q. --- if I can't have him, then nobody can.

24 A. Verbatim quote unquote?

25 Q. Certainly. Would you ---

1 A. That ---

2 Q. --- have put in your report?

3 A. That is not in my report. She said a lot of things,
4 and during the course of that, you write. You jot things
5 down. She said a lot of things about their relationship,
6 but that particular quote, I don't recall that. Is it
7 possible she said it? Yes, it is, I guess, but I don't
8 recall specifically.

9 Q. And wouldn't that be relevant in a case where you're
10 investigating a death under investigation?

11 A. I would think so, yes, ma'am.

12 MS. ZMROCZEK: I have no further questions. please
13 answer any questions the state may have.

14 CROSS-EXAMINATION BY MR. RIDDLE:

15 Q. I think you started to say that she described to you a
16 relationship where Ms. Davis was very controlling of
17 Jermaine. Is that correct?

18 A. Yes, sir.

19 Q. Okay, and gave you the example about her showing up
20 unannounced as one example of that controlling by the
21 defendant?

22 A. Yes, sir.

23 Q. Okay. She also told you that they had had a big fight
24 that morning, didn't she?

25 A. Yes, she did.

E. PRESTIGIACOMO - CROSS-EXAM / REDIRECT EXAM

649

1 Q. Okay, and that she specifically asked Ms. Davis if she
2 had just spoken to him or had seen him that morning,
3 correct?

4 A. That is correct.

5 Q. And she indicated that Ms. Davis had told her in a
6 very -- or had been very evasive with her when she asked
7 that specific question, correct?

8 A. That is correct. I remember -- and, and that was what
9 I was trying to get from Ms. Carr, the conversation she had
10 with Ms. Davis on that particular day. But there was not
11 much of a conversation because she was very evasive.
12 Didn't want to, you know -- I think she even made a
13 statement I'm going to check on him later when he wakes up,
14 and that's when the conversation ended.

15 MR. RIDDLE: Thank you.

16 REDIRECT EXAMINATION BY MS. ZMROCZEK:

17 Q. In your report, you put down -- she was able to
18 provide you some details, correct, Ms. Carr, because you
19 put down that -- about that specific event that she showed
20 up at, that Shellie showed, correct, that one event that
21 she told you about? You put that in your report, correct?

22 A. Yes, ma'am.

23 Q. Okay, and no -- and nothing else about her saying
24 nobody could have Jermaine but her, those words are not in
25 your report?

E. PRESTIGIACOMO - REDIRECT EXAMINATION BY MS. ZMROCZEK 650

1 A. Okay.

2 Q. Correct?

3 A. Could you please rephrase the question? I apologize.

4 Q. That's okay.

5 A. I want ---

6 Q. I just want to make sure ---

7 A. I want to get this right.

8 Q. --- that there is nowhere in your report ---

9 A. Okay.

10 Q. --- that, that she said Shellie said if nobody can
11 have Jermaine, I can.

12 A. Yes, ma'am. As I previously testified, that
13 particular quotation is not in my report, but it was a
14 description of ---

15 Q. When she showed up ---

16 A. --- of, of, of ---

17 Q. --- to that event?

18 A. --- of odd and controlling behavior in the midst of
19 the grief. So, what is in my report is what I was told by
20 Ms. Carr.

21 MS. ZMROCZEK: Thank you.

22 WITNESS: Yes, ma'am.

23 MS. ZMROCZEK: No further questions.

24 THE COURT: Thank you very much, sir. You may step
25 down.

K. SCHWARTZ - DIRECT EXAMINATION BY MR. DOWTIN

651

1 MS. ZMROCZEK: We ask that he be released, Your Honor.

2 THE COURT: You, sir, you are free to go. Thank you.

3 WITNESS: Thank you, Judge.

4 (THE WITNESS EXITS THE STAND.)

5 THE COURT: Call your next witness.

6 MR. DOWTIN: Your Honor, at this time we call Karen
7 Schwartz.

8 KAREN SCHWARTZ, BEING DULY SWORN,

9 TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: Once you're seated, state your full
11 name, spelling your last for the record, please.

12 WITNESS: My name is Karen Schwartz, S-c-h-w-a-r-t-z.

13 DIRECT EXAMINATION BY MR. DOWTIN:

14 Q. Good morning. How are you doing?

15 A. Good.

16 Q. Ms. Schwartz, where are you from?

17 A. I currently live in Florida. Bradenton, Florida.

18 Q. And before Bradenton, where did you live?

19 A. Right here in Columbia.

20 Q. How long did you live in Columbia?

21 A. Eight years.

22 Q. And what's your occupation?

23 A. I'm a real estate broker.

24 Q. How long were you in real estate?

25 A. I've been in real estate since early 2000, for twelve

1 years.

2 Q. And did you do anything before you went into real
3 estate?

4 A. Yes, sir. I'm actually a bachelor's prepared nurse, a
5 registered nurse, and I had that career for all those years
6 before I went into real estate.

7 Q. Okay. During you time in real estate, did you come to
8 know Shellie Davis?

9 A. Yes, sir.

10 Q. And do you remember -- do you recall exactly when you
11 met Shellie Davis?

12 A. I met Shellie when we were both agents at Coldwell
13 Banker. Shellie was new. I had been there just a little
14 bit longer than she had.

15 Q. And do you recall what years?

16 A. That would probably be 2003, 2004.

17 Q. And during that time, was Shellie -- how did y'all
18 interact? Like, what was her -- like, did y'all work
19 together? Were you ---

20 A. Yeah. No. We -- well ---

21 Q. --- above her or?

22 A. All real estate agents are pretty much independent
23 contractors. So, we're all sort of our own entities. And
24 when you're, when you're relatively new, you're not a top
25 producer, so you don't have an office. So, the rest of us

K. SCHWARTZ - DIRECT EXAMINATION BY MR. DOWTIN

653

1 were sort of out on the floor in cubicles. So, we would
2 see each other at work regularly, be in the same meetings
3 together, things like that.

4 Q. And during that experience, how would you describe Ms.
5 Davis as a worker?

6 A. Inconsistent. She was there for -- you know,
7 regularly for a while and then just kind of gone for a
8 little while and then back, and that's very difficult.
9 She's, you know, I think a good real estate agent. She
10 just didn't for some reason have the capacity to sort of
11 stick to it on a full-time basis.

12 Q. And do you have any understanding of why she was
13 inconsistent?

14 MR. RIDDLE: Objection. It's got, it's got to be
15 coming from hearsay, Your Honor.

16 THE COURT: Ask the question again.

17 MR. DOWTIN: Do, do you have any understanding of why
18 she was inconsistent in showing up for work, based on
19 personal things she observed.

20 THE COURT: All right, she can testify to anything she
21 can -- she knows based on her personal knowledge but not
22 what someone else has told her.

23 MR. DOWTIN: Moving on.

24 BY MR. DOWTIN:

25 Q. During the time you worked with Shellie, did you ever

1 notice any marks or bruises on her?

2 A. I did.

3 Q. And do you recall when you saw those bruises on her?

4 A. When we were at Coldwell Banker, I saw bruises on her
5 forearms all, sort of all the way around her forearms, and
6 I asked her pretty much point blank how that happened.
7 And we had a very brief conversation, but she was frankly
8 very upset and crying. So, there wasn't a lot of
9 conversation, but there was certainly an interaction about
10 those bruises.

11 Q. And so you did talk to Shellie about the bruises?

12 A. Yes, sir.

13 Q. And without telling me what Shellie said, what was
14 your understanding of how the bruises got there?

15 MR. RIDDLE: Objection. How can she say ---

16 THE COURT: Step up here.

17 (OFF-THE-RECORD BENCH CONFERENCE.)

18 THE COURT: All right, overruled. Go ahead.

19 BY MR. DOWTIN:

20 Q. And, Ms. Schwartz, what was your understanding of how
21 the bruises got there?

22 A. That Jermaine had hit her.

23 Q. Did -- sorry. Do you recall her demeanor when she
24 spoke with you about the bruises?

25 A. She was very, very upset, tearful, crying and when I

K. SCHWARTZ - DIRECT EXAMINATION BY MR. DOWTIN

655

1 confronted her with the question, she kind of got very
2 quiet, withdrawn, and really wouldn't talk anymore.

3 Q. And were you aware of any marital problems Ms. Davis
4 was having?

5 A. I was, yes, sir.

6 Q. And?

7 A. I was aware that at the time Jermaine was a truck
8 driver, over-the-road truck driver, car hauler is what he
9 had been doing, and I was aware on a couple of times when
10 he just didn't come home. He was gone for weeks at a time.
11 No, no -- minimal contact and not sending money home, not
12 making sure his family was taken care of.

13 Q. Did you personally ever have to help Shellie?

14 A. I did. I did. One time Shellie -- it was Christmas
15 and Shellie was very upset. They didn't have presents.
16 They didn't have money for food. They didn't have
17 anything, and so I did loan her \$500 so her kids and her
18 family could have Christmas.

19 Q. Ms. Schwartz, have you spoken with anybody about this
20 case prior to this, being here today?

21 A. Yes, the prosecutor's office.

22 Q. And do you remember what you told them about?

23 A. I believe they asked me if I had seen bruises on
24 Shellie. I said yes, and they asked me if she had, you
25 know, told me that they were from Jermaine, and I said yes.

K. SCHWARTZ - CROSS-EXAMINATION BY MR. RIDDLE

656

1 Q. And did they send you a subpoena to be here?

2 A. No, sir.

3 MR. DOWTIN: No further questions. Please answer any
4 questions Mr. Riddle may have.

5 CROSS-EXAMINATION BY MR. RIDDLE:

6 Q. She didn't tell you fell down the stairs?

7 A. She, she did mumble something about falling, but I
8 didn't buy it and I kept pushing her.

9 Q. So, when, when you were asked how the bruises got on
10 her forearm, she said she had fallen down the stairs, but
11 you didn't believe that?

12 A. That's correct.

13 Q. So, you kept pushing for a different answer?

14 A. I kept pushing for the truth, yes, sir.

15 Q. What you believed to be the truth?

16 A. Yes, sir.

17 Q. Okay.

18 MR. RIDDLE: No more questions.

19 THE COURT: All right, thank you, ma'am. You may step
20 down.

21 (THE WITNESS EXITS THE STAND.)

22 THE COURT: You may call your next witness.

23 MS. ZMROCZEK: Thank you. Your Honor, we call Deirdre
24 Chen Davis.

25 MR. DOWTIN: Your Honor, may Ms. Schwartz be excused?

K. SCHWARTZ - CROSS-EXAMINATION BY MR. RIDDLE

657

1 THE COURT: Yes. Sure. Thank you very much for being
2 here. You're free to go.

3 Come on around, ma'am, and, and this witness's name
4 is?

5 MS. ZMROCZEK: Sorry. Deirdre Chen Davis.

6 THE COURT: All right, ma'am, what do your friends
7 call you?

8 WITNESS: Deirdre Davis or Dee Dee.

9 THE COURT: Let, let's go with that so ---

10 MS. ZMROCZEK: Oh, because of the name.

11 THE COURT: --- we can keep the record squared away as
12 to -- throughout the record I'm hoping that we'll have the
13 person referred to as Ms. Davis being the defendant. So,
14 do you mind if we use your name here, Dee Dee?

15 WITNESS: That's fine.

16 THE COURT: So, whenever -- all right. Go ahead, Ms.
17 Zmroczek.

18 MS. ZMROCZEK: Thank you, Your Honor. I'm sorry I
19 didn't think about that.

20 DEIRDRE A. DAVIS, BEING DULY
21 SWORN, TESTIFIES AS FOLLOWS:

22 CLERK OF COURT: Once you're seated, state your full
23 name on the record, please, ma'am.

24 WITNESS: My name is Deirdre Angela Davis. First name
25 is spelled D-e-i-r-d-r-e Angela D-a-v-i-s.

1 DIRECT EXAMINATION BY MS. ZMROCZEK:

2 Q. And as the, as the judge instructed, I'm going to
3 refer to you as Dee Dee, okay? It's confusing because we
4 have Shellie Davis and one of the prosecutors is actually
5 Shannon Davis. So, we're calling her Shannon and we'll
6 call you Dee Dee, okay?

7 A. That's fine.

8 Q. Okay. Dee Dee, where do you live?

9 A. In Maryland.

10 Q. And how long have you lived there?

11 A. I've lived in Maryland since I was thirteen years old.

12 Q. Do you know Shellie Davis?

13 A. Yes, I do.

14 Q. How do you know Shellie Davis?

15 A. We started out as coworkers. Then we became friends
16 in 1991.

17 Q. Which was my next question. How long have you known
18 Shellie?

19 A. Since 1991, twenty-three years or so.

20 Q. Tell the jury about your friendship with Shellie prior
21 to 1996. Did y'all grow up together? What kind of things
22 did you do?

23 A. As I stated before, we actually started out working
24 together. She was my client at first, and the conversation
25 I had with her over the telephone was so personal that I

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

659

1 asked my boss if she -- he could actually hire her for a
2 job at that time. From that experience, we became the best
3 of friends.

4 Q. How often did you speak with her?

5 A. We spoke almost every day, especially when she was in
6 Maryland.

7 Q. And do you recall -- have you ever met Jermaine Davis?

8 A. Yes, I have.

9 Q. How did you meet Jermaine?

10 A. Through Shellie.

11 Q. Do you know when they were married?

12 A. My recollection is that they were married in 1997,
13 '98.

14 Q. Do you recall if Shellie -- did you see her or talk to
15 her as much after she was married?

16 A. We definitely continued to talk. As the years went on
17 it became a little infrequent, but we continued to talk,
18 absolutely.

19 Q. Describe, describe to the jury what, if any, changes
20 you saw in Shellie when she lived in Maryland after she was
21 married.

22 A. Shellie's personality was very much boisterous, you
23 know, fun, straight to the point, as both of our
24 personalities are. It became to the point where she wasn't
25 as confident anymore. Very submissive. As the time went

1 on, she was pretty much -- every -- anything that Jermaine
2 said is what Shellie would do.

3 Q. Was it always that way?

4 A. Her before marriage? Absolutely not.

5 Q. And did you ever have discussions with her about it?

6 A. Yes, plenty of discussions.

7 Q. What did you tell her to do?

8 A. I've always -- I'm a strong person. That's Angela
9 Davis, and I've always, you know, tried to instill in her
10 the confidence that she needed to be able to not only take
11 care of herself but as the children were born, also then be
12 able to make sure that she can be strong enough for her
13 kids.

14 Q. Tell the jury about her relationship with her
15 children.

16 A. Shellie has had the absolute best relationship.
17 That's who they had. They -- her children have always had
18 her consistently in their lives taking care of them,
19 providing for them, giving them the love every single day
20 of ---

21 Q. Did ---

22 A. --- their lives.

23 Q. Did you see Jermaine interact with the children?

24 A. I've seen Jermaine interact with them when he was in
25 Maryland. Again, he was truck driver, so he was gone a

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

661

1 lot. Truck driver, bus driver, limo driver, he's been, you
2 know, again a person that was in transportation. So, he
3 was gone a lot.

4 Q. What was your under -- do you know why they left
5 Maryland?

6 A. He wanted to move south.

7 Q. Did you see Shellie much after she moved south?

8 A. Not as much.

9 Q. Did you speak to her as much?

10 A. I still spoke with her. Probably not as frequent as
11 we did in Maryland, but I still would consider -- you know,
12 a few times a week.

13 Q. Did you ever discuss her relationship?

14 A. Absolutely.

15 Q. Do you recall the year 2010?

16 A. I do.

17 Q. Do you recall what happened significant in July of
18 2010?

19 A. I do.

20 Q. Tell the jury what happened.

21 A. In July 2010, I was actually enrolled in school, legal
22 studies, and this particular lesson that I was on just
23 happened to be child custody, legal separation, and
24 divorce. When I went through the materials in there, I
25 thought it would be at least helpful just in case she was

1 going to need that. And I took it upon myself to send an
2 email and said, you know -- referred -- I don't remember
3 the exact, you know, verbiage but, you know, just basically
4 told her to take a look just in case she was going to need
5 this later, and that's when I sent that email.

6 Q. You sent her an email with your notes or PowerPoint?

7 A. Yes. It was a PDF-type document.

8 Q. What was her reaction to that?

9 A. She was a little disturbed by it, and when I say
10 disturbed, I think she was thinking that I was saying,
11 okay, this is the process. We're going to get it started
12 because again that is very much my personality. You know,
13 I'm going to walk you through what I feel like you really,
14 you know, should be doing. And so she -- I think she
15 thought that maybe, you know, that I was kind of going
16 against what she and Jermaine were at that particular time
17 in their marriage.

18 Q. Did she ever tell you that she hated Jermaine?

19 A. No. She's never used hated Jermaine with me.

20 Q. Has she ever told you she wanted to leave Jermaine?

21 A. No, unfortunately, as much as I wanted her to.

22 Q. After you sent her that email in July, did she speak
23 to you?

24 A. No. I haven't spoken to her until this incident.

25 Q. Did you speak to her ---

D.A. DAVIS - DIRECT EXAMINATION / CROSS-EXAMINATION

663

1 A. Afterwards.

2 Q. --- after this incident?

3 A. After. Once she had come through, and I spoke with
4 her in the facility.

5 Q. When -- you say facility?

6 A. The -- when she was transferred from North Carolina to
7 South Carolina. So, the detention center, Lexington.

8 Q. And how have you spoken with -- you, you have spoken
9 with her since she's been in the detention ---

10 A. Absolutely.

11 Q. --- center?

12 A. I've spoken with her. I've scheduled regular visits,
13 everything.

14 MS. ZMROCZEK: Please answer any questions the state
15 may have for you.

16 MR. RIDDLE: Beg the court's indulgence for one
17 moment.

18 THE COURT: Yes, sir.

19 (A PAUSE.)

20 CROSS-EXAMINATION BY MR. RIDDLE:

21 Q. Have many times have you gone to see her in the jail?

22 A. I have -- physically come to the location?

23 Q. Yes, ma'am.

24 A. Probably maybe about two or three times.

25 Q. Traveling down from Maryland?

1 A. Traveling down from Maryland.

2 Q. Okay.

3 A. And then I, and I frequently schedule video visits.

4 Q. Okay.

5 MR. RIDDLE: Thank you. That's all I've got.

6 THE COURT: All right. Thank you very much, ma'am.

7 WITNESS: Thank you.

8 THE COURT: You may step down.

9 (THE WITNESS EXITS THE STAND.)

10 THE COURT: You may call your next witness.

11 MS. ZMROCZEK: Thank you. The defense calls Shellie
12 Davis.

13 THE COURT: All right, Ms. Davis, if you'd please come
14 around and be sworn, ma'am.

15 SHELLIE DAVIS, BEING DULY SWORN,
16 TESTIFIES AS FOLLOWS:

17 CLERK OF COURT: Once you're seated, speak up loud and
18 clear. State your full name, spelling your last.

19 WITNESS: My name is Shellie Lavette Davis, D-a-v-i-s.

20 DIRECT EXAMINATION BY MS. ZMROCZEK:

21 Q. Shellie, did you shoot Jermaine?

22 A. Yes.

23 Q. Tell the jury why you shot Jermaine.

24 A. I was afraid he was going to kill me.

25 Q. Shellie, how long were you married to Jermaine?

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

665

1 A. We got married April, April 10, 1997.

2 Q. How many children did you have with Jermaine?

3 A. Four biological children with Jermaine, and I had one
4 son, my oldest son, which he loved as his own in the
5 beginning.

6 Q. Tell the jury how you first met Jermaine.

7 A. When I was in college and I had my, had my first son,
8 my friends that were around me were married and had
9 children or a child, at least one around Marquis's age, and
10 I wanted -- because I saw how beautiful it was for young
11 people to have kids and married, and I thought that's what
12 I wanted.

13 Well, a very dear friend of mine that I grew up with
14 in church, her husband worked with Jermaine. And he always
15 said Shellie, I have the perfect man for you. I have the
16 perfect guy. I -- he -- you just can't go wrong with this
17 guy and I want to introduce you.

18 Well, he had told me that back in March of '96,
19 February or March, but we never had a chance to see each
20 other or talk on the phone because at that time their
21 schedules were really busy, and so when they went to work
22 in Atlanta for transportation at the Olympics, I had a
23 chance to talk to him on the phone. We seemed to have
24 talked pretty well, and then we had a chance to talk on the
25 phone with each other just a couple of times before we met,

1 and I was at my sister's house, and I called him and left
2 him a message, and he said I want to come see you. I'm
3 just down the street. And when he came down the street,
4 that was the first time we had physically seen each other.
5 So, it was a little weird, but we talked in the hallway for
6 over eight hours.

7 Q. How was your relationship with Jermaine?

8 A. In the beginning, Jermaine made me feel so special. I
9 never had anybody -- he, he, he made me feel like I was the
10 most beautiful person in the world, not just, not just the
11 things I'd done that made me feel like a bad person. He
12 loved me. He always -- out of nowhere, Jermaine would pop
13 up over at my house unannounced when I was living with my
14 parents because at the time I was living with my parents,
15 with my son. And he would come over and -- in a Goldline
16 charter bus and bring it down the street to my house, and
17 it was just -- you know, everybody's, like, what is that
18 noise? But that was my man, you know, coming to see me,
19 you know, and ---

20 Q. How long -- sorry.

21 A. It was beautiful.

22 Q. How long after you dated had you gotten -- did you get
23 married?

24 A. We were dating six months to the day when we got
25 married.

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

667

1 Q. How many children did you have?

2 A. We had four beautiful addition to the one.

3 Q. When did the relationship change?

4 A. Maybe, maybe two weeks after we got married.

5 Q. How did it change?

6 A. Jermaine was physically abusive.

7 Q. Was he physically abusive? How was he physically
8 abusive?

9 A. Jermaine bought a car. He said we needed a second
10 car, and we went to go look at a Honda Accord because it
11 was an automatic. And -- but when we got to the
12 dealership, things kind of changed and he bought a
13 Volkswagen Jetta, which was a five speed. I didn't know
14 how to drive that, and he said, well, you're going to learn
15 how to drive it. And so I was a little upset because I was
16 pregnant and needed to get to school, and I didn't want to
17 -- I really didn't want to do it, but I didn't have a
18 choice.

19 Well, after going out for almost a week, I just, I
20 just could not grasp the concept of pushing in the clutch
21 and giving it a little gas, and so it was always cutting
22 off, and he was in the vehicle with me at this particular
23 time in a busy location during rush hour, and I was just
24 frustrated. I was, like, I can't do this. I just -- I'm
25 sorry. I just can't do this. I'm going to need you to

1 drive. Please just go ahead and drive, and I'll get it
2 later.

3 Well, I got out of the car to switch positions with
4 him. He got out of the car and grabbed me and threw me
5 across the hood and said you ungrateful bitch. How dare
6 you not appreciate something I gave you.

7 Q. You were pregnant at the time?

8 A. Yes, I was.

9 Q. Was that the extent of the physical violence that he
10 used on you?

11 A. No.

12 Q. What were the other -- what were other occasions?

13 A. In the beginning, it seemed like the worst of the
14 abuse was when I was pregnant. So -- I'm sorry. He would
15 often grab me or throw me against a wall when he was angry.
16 He would rape me when I was pregnant.

17 Q. Can you give an estimate the total number of times
18 that he hit you?

19 A. I don't know. Twice a week when we were, when we were
20 first married, it seemed like. Once we moved down here, it
21 was probably the same but not as often because he was
22 always gone. So, you have to account for those weeks when
23 he was gone.

24 Q. Why did you move down to South Carolina?

25 A. Jermaine said after 2000 -- after September 11th, it

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

669

1 was just crazy back home in Maryland, and -- but we got
2 through that I thought. And then when anthrax happened
3 after that with a chemical in the mail, you couldn't even
4 open your mail. So, he was, like, I can't do this. I
5 can't -- we can't raise our kids in this environment. You,
6 you've got to see that it's not a good environment. He
7 was, like, I grew up in the South and that's where I've
8 always wanted to raise my kids. So, we, we don't have to
9 necessarily go to North Carolina, but I think if we move to
10 Columbia, it's a nice area and we just started a trucking
11 company. So, he would be home every night the way I would
12 want him to be there. So, that's why we moved.

13 Q. He grew up in North Carolina?

14 A. Yes, ma'am. He grew up in Winston-Salem, North
15 Carolina.

16 Q. What did he tell you about his relationship with his
17 family?

18 A. In the beginning, Jermaine told me that he was pretty
19 close with his sisters, and he was starting to have a
20 pretty good relationship with his mother, but it wasn't
21 like that, and he didn't grow up with that because he said
22 that his mom just gave him up and, and shipped him to, to
23 live with her mother, like, weeks after he was born. So,
24 he always felt like she didn't love him, which, you know,
25 everybody loves their child, but...

1 Q. When you moved down to South Carolina, did you have a
2 job?

3 A. I was a stay-at-home time mom, and I helped him
4 process his bill of ladens, as they're called, so that he
5 could receive payment from the companies he contracted
6 with.

7 Q. Did y'all -- did he hit you in South Carolina?

8 A. Yes.

9 Q. What were the circumstances surrounding those?

10 A. When we were here, Jermaine was -- Jermaine always
11 felt like I didn't appreciate what he did. Like, when we
12 moved to Columbia, we move to the northeast side of town,
13 and it was a beautiful little house, but it really wasn't
14 big enough, considering how large our family was, but it
15 was better than what our options were. So, he was, like,
16 this is what he wants because I want the best for my
17 family. I, I said okay. It's beautiful. We'll make it
18 work. And he -- the first time he hit me there was after
19 -- right about the time we filed for bankruptcy, and that
20 was in 2002, like maybe shortly after he started working
21 for Waggoners.

22 Q. Describe how you felt when he would hit you.

23 A. Why couldn't I get it right? Why couldn't I make --
24 always tried to figure out what I was doing wrong to make
25 him -- and I would do, I would do anything to make it

1 right.

2 Q. Was it always bad?

3 A. No, it wasn't always.

4 Q. Tell the jury about what would happen after he hit
5 you.

6 A. He would always say that you know you just need to be
7 submissive. You know you're always talking about the Bible
8 and the Bible says you're supposed to be submissive to me,
9 and you're not being submissive when you ask me questions
10 or when you don't follow through what I say to do. And he
11 was, like, well, I know you'll get better. You just have
12 to keep trying. You make me do these things to you.
13 Usually, usually after he would hit me, we would have sex.

14 Q. Was that willing?

15 A. Sometimes because he said sex was a part of making our
16 marriage better, so I wanted to do that, but other times it
17 was not. I could never tell Jermaine no. Would never --
18 it didn't matter if I was sick or my cycle or just had a
19 child. It did not matter. I could never tell him no; he
20 would never accept no. So, I accepted that was my job as
21 his wife to do what he said to do, and that's what I did.

22 Q. Did you ever tell anybody?

23 A. I did but not in the beginning because how do you
24 explain? How do you explain to your, your family that
25 you're not really that close to that something like this is

1 going on in your life? How do you tell your friends who
2 have always been strong and you've always been outgoing
3 that this is what you're going through? You -- it was
4 hard, but I, I did mention it, and it made me feel so bad
5 because I didn't want anybody to think I was weak.

6 Q. When did you start working?

7 A. I had -- you mean in Columbia?

8 Q. Yes.

9 A. We had moved to -- off of Garner's Ferry Road, and so
10 he was working at Waggoners, and Jermaine was always gone.
11 He was, like, you know, I have to say I don't like this
12 because we never have no money. We have never have no
13 money. You, you just -- you're always spending money. You
14 -- I mean, we got these kids and, you know, it's just --
15 it's not cheap. And I said, well, I can help you with
16 that, you know. You don't have to do it by yourself. Let
17 me -- we'll figure out something. He's, like, well -- we
18 talked about it because a friend of ours -- or a friend of
19 his who became a friend of mine sold real estate in
20 Maryland and was very successful. So, that's what I
21 decided to do, and he was supportive at the time.

22 Q. Did you meet people through your job?

23 A. I did.

24 Q. Did you meet Karen Schwartz through your job?

25 A. I did.

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

673

1 Q. Tell the jury about the incident where -- did Karen
2 ever see any bruises?

3 A. She did.

4 Q. Tell the jury about that incident.

5 A. Well, there was a couple of times that she saw. The
6 time that I remember most is when -- was in -- I think it
7 2005 and Jermaine had blackened my eye. I had never had a
8 bruise like that, and so -- and I had to go to work. I
9 tried to stay home for a couple of days until it healed so
10 I didn't look too bad, but I had to get to work. So, I
11 went to work with that black eye.

12 Q. What did, what did you tell her when she asked you
13 about it?

14 A. Told her I fell down the steps.

15 Q. Did she believe you?

16 A. No.

17 Q. Why didn't you call the police?

18 A. I called the police once when we first got here, when
19 he started working at Waggoners, and when they came to the
20 house, Jermaine said -- I told them what happened. He had
21 hit me because I wanted to pay the bills with the money
22 that -- with the -- with his pay, and I told them what
23 happened, that he had thrown me across the room into the
24 wall and the kids were the great room at the time.

25 Well, when the police came, he said ma'am, do you

1 work? I said I'm a stay-at-home mom, and he said -- well,
2 my husband talked to them and they said, well, he's getting
3 ready to leave. So, he's going -- said he was going to
4 work, so we're going to let him go ahead and go or you guys
5 stay apart. They didn't do anything.

6 Q. Were the police ever called again?

7 A. No. Not by me, no.

8 Q. Not by you?

9 A. No.

10 Q. Were they called by anybody else?

11 A. Jermaine had called him.

12 Q. When was that?

13 A. In 2006.

14 Q. Why did Jermaine call the police in 2006?

15 A. I have the client at -- let me go back. In 2006
16 things were, like, really rocky. Like, I didn't understand
17 what was going on. He was always gone. He wouldn't call.
18 He wouldn't send money. It was just -- it was crazy. I'd
19 find out about a couple of women that he was talking to.
20 So, we just -- I thought this was is a point where we were
21 probably going to end up, end up separating.

22 But this particular day he had come back from a Myrtle
23 Beach trip that he said was with his best friends that he
24 grew up with, which I know, and it was just a males weekend
25 because he needed a getaway to spend with the guys. Well,

1 when he came back, my truck which I had at the time was
2 causing me problems, and I had a client that I had to meet,
3 and my clients, I love my clients but when I know they're
4 about to write a contract, I don't let anything distract me
5 from that unless it's an emergency.

6 And so my truck was acting up. I asked him could I
7 use the Jaguar at the time. He just went off on me, and it
8 was weird because he had told me the Jaguar was, was for me
9 for business, but then when I asked him this particular day
10 to use it, he wouldn't let me use it. I was, like,
11 Jermaine, please. I have somebody that I'm taking out.
12 So, he took the keys and he ran. I was, like, I have an
13 appointment. You can't do this. So, I went to reach for
14 the key, and he, he hit me and I fell back but I got back
15 up, and he just started.

16 Like, when Jermaine gets angry or really violent,
17 sometimes I will hold on to him so that it will stop him
18 from, from doing too much damage, so to speak. And so I
19 held on to him, but he would still, like, swing me around
20 the room. So, finally I was just so mad, I was just, like,
21 I can't do this. I can't do this anymore.

22 There was a -- in the, in the linen closet there was,
23 like, this metal pole that he uses when he straps down the
24 vehicles because he was car hauler. Well, he told me to
25 keep that in the house when he was not there as protection

1 against someone breaking into the house, and that's what I
2 did. But on this particular day, I was angry. I was tired
3 of him hitting me; I was tired of him treating me like crap
4 for no reason. I, I couldn't believe he was interfering
5 with me making money when Jermaine's motto is you make that
6 money period. You make that money. Got to get that money.
7 And so angry. I told him, I -- okay, you want to fight?
8 All right. Here we go. I'm ready.

9 Q. So, you fought back?

10 A. I was planning on it, but Jermaine ran into the
11 bathroom and he was laughing at first, but then I heard him
12 on the phone. I had no idea he was on the phone with the
13 police until they showed up at the house.

14 Q. Was that the only time you ever fought back?

15 A. Yes.

16 Q. Why?

17 A. Because after that incident, the way that he had
18 talked to the police and the way he was on -- the way the
19 police was on his side and they arrested me, I was not, I
20 was not going to fight him back because it would always
21 come back on me. I...

22 Q. Why didn't you leave him?

23 A. Where was I going to go? I had nowhere to go.

24 Q. You mentioned other women. Were you mad about the
25 other women?

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

677

1 A. I was upset, yes, because why would you need -- why
2 are you talking to other women? In the beginning, yeah, I
3 was. I was upset about it.

4 Q. Did you and he ever work on your marriage?

5 A. Yes.

6 Q. How?

7 A. He said he was because we would go to counseling,
8 normally within a church. Whether it was a church that we
9 were members of or a church of a friend, we would go. We
10 would talk to other married couples, and so he would always
11 say we were going to be all right. We're going to be all
12 right.

13 Q. You said you were mad at Jermaine. What was your
14 biggest emotion with Jermaine?

15 A. Fear.

16 Q. Why?

17 A. Because I loved him so much. I always wanted to
18 please him, but Jermaine could, he could flip like that.
19 It didn't take much. We could be talking to someone right
20 at -- right in the house and everything would be okay, but
21 then as soon as that door shut, well, why did you -- why
22 are you talking to him like that? It was just -- I felt
23 like I could never win.

24 Q. Did you ever stalk Jermaine? Did you ever control
25 him?

1 A. No.

2 Q. Did you ever show up at his job when you weren't
3 supposed to?

4 A. Yes.

5 Q. Tell the jury about that incident.

6 A. When we separated, Jermaine at the time was not
7 driving trucks anymore, so he was working for a, a company
8 under Lance Wright, which was his, which was his direct
9 boss because that was his personal -- he was his personal
10 assistant. And Jermaine at that time was keeping me -- he
11 got paid every two weeks. He gave me \$200 every two weeks
12 to take care of the kids and the house.

13 Well, this particular Thursday or Friday, he was
14 supposed to come by and bring money for me to take care of
15 the kids.

16 Q. When was this?

17 A. This was in April of 2010. I'm sorry I can't remember
18 the exact date, and so he was acting real, real strange.
19 He was, just, oh yeah, I'm coming back. I, I got to do
20 this function, you know. I -- we, we're going to have this
21 cabaret and, you know, I told you I always wanted to do
22 this, and so I, I'll be over there. But I needed that
23 money, and I knew something was wrong. And I was, like,
24 you're doing a cabaret? You never told me about that.
25 He's, like, yeah. Me and some friends got together. We're

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

679

1 doing a cabaret and it's going to be off of Garner's Ferry
2 and that's where I went.

3 Q. And you stated that you were separated. When did that
4 happen?

5 A. That was in March.

6 Q. Why did that happen?

7 A. Talk about the incident before?

8 Q. Right.

9 A. Before my grandmother passed away, Jermaine was going
10 to -- he said he got permission from Lance to take the
11 company vehicle to Maryland so that we could go see my
12 grandmother, and everything was okay. He was, like, I know
13 you love your grandmother, but it's going to be all right.
14 We're going to go up there and see her, so it's okay.
15 Well, that next day we got a call from my mother saying my
16 grandmother passed away. I was devastated because I hadn't
17 seen her since 2009, and I -- it was kind of a shock.

18 Well, Jermaine was, like, okay. Well, we're going to
19 go. You just got to get everything ready. Get yourself --
20 get everything together and we'll go up there. I said
21 okay.

22 During the process of getting everything together, I
23 went and got my hair done so that I'd look nice. I wanted
24 to make sure the boys had their haircuts, but he started,
25 he started acting funny again. It was, like, you know, I

1 would call him. What? What do you want? Well, I'm, I'm
2 done at the hairdresser. You know, what timeframe are we
3 looking at right now? Well, I, I'll talk to you later.
4 I'm working. I'm working. Okay.

5 I got home before he did and Jermaine was supposed to
6 be on this -- can't remember what day, but this night he
7 was going to be there at 7 because we were preparing for --
8 to plan on what kids -- if they need shoes or clothes or
9 whatever for the funeral, we wanted to go ahead and get all
10 that stuff situated.

11 Well, he didn't come home until almost 10:00, so
12 something was wrong because he wouldn't answer his phone.
13 So when he came in, he was just nonchalant. Well, I was
14 just sitting on the bed like...

15 Q. Did he hit you that day?

16 A. Later that night. Later that night.

17 Q. And this was March?

18 A. Yes, it was.

19 Q. Did you go to Maryland?

20 A. I did. I went to my grandmother's funeral by myself
21 because ---

22 Q. What happened when you were in -- what happened when
23 you were at your grandmother's funeral?

24 A. Jermaine, I called him because I always checked in. I
25 checked in when I got there, let him know where I was. And

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

681

1 that morning of the funeral, he was acting funny again, and
2 I, I knew something was wrong. I was, like, what's wrong?
3 He was, like, well, right now isn't the time to talk about
4 it. I said Jermaine, what's wrong? Well, I hate to tell
5 you this right now but, you know, I packed my stuff and I
6 left. I got my own place.

7 Q. What did your family know about what happened in
8 March?

9 A. At the time, nobody knew what happened in March
10 because I didn't tell anyone what happened.

11 Q. But what did they see?

12 A. I was staying with my best friend, and I needed to
13 get, like, a jacket to go with a pair of black slacks, and
14 as I was getting dressed, my best friend saw the bruises on
15 my legs.

16 Q. You were getting dressed for the funeral?

17 A. Yes.

18 Q. Is this the first time the family found out about
19 bruises?

20 A. I believe it's the first time they've seen bruises
21 like this, like, like that, I think.

22 Q. What was the reaction?

23 A. They were upset. I didn't tell my parents. I just
24 told my best friend, you know, what happened. She was very
25 upset.

1 Q. So, he beats you in March. You go to your funeral.
2 You go to your grandmother's funeral, and you come back and
3 he had moved out?

4 A. Yes.

5 Q. And then you went to his place of business or one of
6 his events in April, correct?

7 A. Yes.

8 Q. How did you and Jermaine converse?

9 A. He started texting me a lot, which he would call. If
10 I didn't answer, he'd text. I'd text him.

11 Q. You know that your phone records have been admitted
12 into evidence?

13 A. Yes.

14 Q. Do you recall what his phone number was when he was
15 texting you in April?

16 A. His phone number was 803 -- he had two phones. The
17 business phone was 803-673, I think it was 94 -- 9403 and
18 then the phone we had on our -- together was 803-309-1 --
19 143.

20 Q. I'm going to show you what's been marked for ID as
21 Defendant's Number 26 and ask you if you -- without saying
22 what it is, do you recognize what this document is? Do you
23 recognize what it is?

24 A. Yes.

25 Q. How do you recognize it?

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

683

1 A. Because it's his phone number.

2 Q. What, what is this document?

3 A. It's text messages.

4 Q. From who to who?

5 A. From Jermaine's cell phone to mine.

6 MS. ZMROCZEK: Your Honor, at this point we'd like to
7 move Defendant's 26 into evidence.

8 THE COURT: Any objection?

9 MR. RIDDLE: No, sir.

10 THE COURT: All right, without objection.

11 (TEXT MESSAGES MARKED INTO EVIDENCE AS DEFENDANT'S
12 EXHIBIT NUMBER 26.)

13 BY MS. ZMROCZEK:

14 Q. Ms. Davis, I'm going to ask that you tell the jury
15 what the dates on those text messages are.

16 A. The first one is April the 12th of 2010. Do you want
17 me to list all the dates?

18 Q. No. It's a conversation from April 12th to when?

19 A. The last entry is April 4th -- no, April 24, 2010.

20 Q. This was after you had gone to his work and got into a
21 fight. What was he telling you? Let me ask you it this
22 way. After you had had a fight, did you always speak to
23 him the next day?

24 A. Usually, yes.

25 Q. If you were really afraid and scared, would you pick

1 up the phone the next day?

2 A. No, I would not.

3 Q. Is that something typically you would do?

4 A. I would avoid his calls if we got -- if he would hit
5 me, yes, or if he was verbally abusive, yes, I would not
6 answer the phone.

7 Q. What would he do and what did he do to get you to
8 answer the phone? What did he tell you that -- what would
9 he do -- what did he tell you on those text messages to try
10 to get you to answer the phone?

11 A. You want me to read each one?

12 Q. The jury will have it to read.

13 A. Okay.

14 Q. Does he make a reference in those text messages? Did
15 he always make a reference to you?

16 A. Yes.

17 Q. What was the reference? What would he say to you?

18 A. If I didn't do -- if I didn't answer the phone and do
19 what he say -- he was calling me Anna May.

20 Q. Call you Anna May. Why would he call you Anna May?

21 A. Because I knew I was supposed to what he said do.

22 Q. What did, what did that mean to you, Anna May? What
23 is that a reference from to you?

24 A. The movie *What's Love Got to Do with It*.

25 Q. Explain to the jury how that affected -- or why

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

685

1 that's important. What does, what does that have to do
2 with anything?

3 A. If -- Jermaine always said I needed to be submissive.
4 I wasn't submissive. So, if I didn't do what he said do,
5 he would say Anna May, eat the cake. Eat the damn cake,
6 Anna May.

7 Q. Did you know what he meant by that?

8 A. I better do what he says.

9 Q. Why do you know what he meant with that? You said it
10 came from a movie. Tell the jury.

11 A. In the movie -- this is a movie about Tina Turner and
12 Ike Turner, her husband, and there's a scene in the movie
13 where they were on tour and they were doing pretty well,
14 but when they were in the diner, people always wanted to
15 approach Tina Turner for her signature and always wanted to
16 talk to her. So, there are two kids, I think, who, who
17 called her Tina or something because Ike said that's Mrs.
18 Tina Turner. That's a married woman, and so they wanted
19 her autograph. So, she signed their autographs. You know,
20 just pleased with, you know, I guess the little fans or the
21 recognition.

22 And Ike is sitting next to her, and you can see he's a
23 little -- he's upset, and so he says this cake is good,
24 Anna May. This cake is real good, and she's, like, it's,
25 it's all right cake. It's all right, Ike. I don't want

1 the cake. Anna May, this cake is good. You better eat
2 this cake, Anna May. And so she just didn't want the cake,
3 so when she was -- he was trying to force it to her, but
4 she was moving out the way. I don't, I don't want that,
5 and he shoved it in her face, and so in that, in that scene
6 when he shoved it in her face, her best friend reacted
7 because he was being abusive and she wasn't doing anything
8 about it. And so when her friend Jackie got up to, I
9 guess, protect her or tell him not to do that to her, he
10 hit Jackie instead and, and...

11 Q. Let me ask it this way, Shellie. What did it mean to
12 me to you when he said eat the cake, Anna May? When he
13 would text that to you, what did that mean?

14 A. I better answer the phone. I better do what he says
15 or.

16 Q. Or what?

17 A. I was going, I was going to be in trouble with him.

18 Q. Just going to be in trouble? Was he going to yell at
19 you? Was he going to shove cake in your face?

20 A. No.

21 Q. What was he going to do?

22 A. He was going to hit me.

23 Q. They entered your phone records and phone logs, but
24 did you also have conversations via text the month of
25 September? We have your phone records in evidence. Did

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

687

1 you also have conversations the month of September with
2 Jermaine?

3 A. Yes.

4 Q. I show you what's been marked as Defendant's Exhibit
5 74 and ask if you can recognize it.

6 A. Yes.

7 Q. You do recognize these? How do you recognize them?
8 (A PAUSE.)

9 Q. How do you recognize those?

10 A. These were ---

11 Q. Speak loud.

12 A. These were text messages to me.

13 Q. From who?

14 A. From Jermaine.

15 MS. ZMROCZEK: And, Your Honor, as we discussed
16 before, I redacted any unnecessary text messages. At this
17 point, we'd like to move Defendant's Exhibit 74 into
18 evidence.

19 MR. RIDDLE: No objection.

20 THE COURT: Without objection, 74 is in evidence.

21 (TEXT MESSAGES MARKED INTO EVIDENCE AS DEFENDANT'S
22 EXHIBIT NUMBER 74.)

23 MS. ZMROCZEK: Your Honor, may we approach?

24 THE COURT: Yes, ma'am.

25 (OFF-THE-RECORD BENCH CONFERENCE.)

1 THE COURT: 38 is in evidence without objection.

2 (SUMMARY OF PHONE RECORDS MARKED INTO EVIDENCE AS
3 DEFENDANT'S EXHIBIT NUMBER 38.)

4 BY MS. ZMROCZEK:

5 Q. The telephone messages that were put into evidence by
6 the state will depict conversations between you and
7 Jermaine, correct?

8 A. Yes.

9 Q. So, you spoke the month of September?

10 A. Yes.

11 Q. Did you ever go on trips? Did you ever go on trips
12 with Jermaine for work?

13 A. I did once in September.

14 Q. September of 2010?

15 A. Yes.

16 Q. Even though he didn't live there?

17 A. Yes. That is correct.

18 Q. What happened on that trip? When was that trip for
19 this month of September?

20 A. Okay, that, that was the first weekend in September,
21 which was after one of my kid's birthdays, so that first
22 weekend in September, that Labor Day weekend. He called me
23 and I had not answered this phone. So, one of my kids
24 grabbed my phone and he was, like, why don't you answer the
25 phone? I'm trying to call you. What are you doing? I'm

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

689

1 just, I was just sitting with the kids and Michon. And he
2 was, like, well, I'm in Atlanta with Lance and I'm -- I
3 won't be here all weekend.

4 And so he was, like, you know, it's funny because they
5 were out at a mall or some place, and there were all these
6 different women. Most of them, according to him, were
7 shaped like me. And so he said I'm watching them and
8 they're, you know, they're eyeing all these, they're eyeing
9 all these hoes like they special. It's, like, I don't know
10 why I trip so much because when I look at them, all I see
11 is you. So, he invited -- he said he wanted me to come and
12 spend the weekend with him because we needed the time.

13 Q. What did he tell you about your marriage that weekend?

14 A. That he wanted his marriage and he wanted to work at
15 everything.

16 Q. Did he tell you what you had to do to make that
17 happen?

18 A. Yes.

19 Q. What did he tell you?

20 A. I needed to get another job.

21 Q. Did you?

22 A. Yes.

23 Q. You mentioned Michon, Jermaine's sister. She lived
24 with you?

25 A. Yes.

1 Q. Did you and Michon get along?

2 A. Not really.

3 Q. Did you all -- did you -- you didn't always fight with
4 her or did you?

5 A. I didn't always fight with her, but we didn't always
6 get along either. So, I know it might sound weird, but we
7 didn't really get along, but her being there with kids, I
8 thought after agreeing to it -- excuse me -- was good to
9 have the family around.

10 Q. What was last fight you and Michon got into?

11 A. We were, we were preparing to go to Polo Road.
12 This is after her and Bill had come back from a trip to DC
13 and ---

14 Q. What day was that?

15 A. The incident was on, incident was on September 19th.

16 Q. The incident?

17 A. Was an argument.

18 Q. The argument with you and Michon was on September
19 19th?

20 A. Yes.

21 Q. How did that affect you and Jermaine?

22 A. Well, there was an argument with his sister, so he was
23 upset.

24 Q. Did you go to Icy's?

25 A. I did.

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

691

1 Q. Who did you see there?

2 A. Michon, Chuck, which is Charles, his roommate, and
3 Jermaine.

4 Q. What happened after that?

5 A. I went back to ---

6 Q. Move your hand away from your mouth because I know
7 you're -- it's just I want to make sure I can understand
8 what you're saying.

9 A. I'm sorry.

10 Q. It's okay. You went back to where?

11 A. Back to the apartment with Jermaine.

12 Q. What happened 20th, the 19th, the morning of the 20th
13 at the apartment with Jermaine?

14 A. He...

15 Q. You have to tell the jury.

16 A. He anally raped me.

17 Q. Where did that happen?

18 A. At the apartment.

19 Q. In his room?

20 A. His room.

21 Q. Had he done that before?

22 A. Yes.

23 Q. Why did he tell you he did it?

24 A. I was bad. I was causing trouble.

25 Q. That was September 20th. Did you talk to him

1 September 21st?

2 A. Not that I can remember, no.

3 Q. Shellie, we need to tell the jury about 22nd. Do you
4 remember that day?

5 A. I do.

6 Q. Tell the jury what happened that day.

7 A. I hadn't really slept that well on the 22nd, so when I
8 woke up, I was tired already, and so I just felt sick. I
9 just, I just felt sick and I was just worn out, but I had
10 received my first check from my job. So, Jermaine had told
11 me when I got my first check, that regardless of what was
12 going on, he was coming home. So, I put my check and the,
13 the check from the taxes into my purse. Went over there.

14 Q. You went over there where?

15 A. Early that morning to Jermaine's apartment.

16 Q. Did you have the gun?

17 A. I did.

18 Q. Tell the jury why you had the gun.

19 A. The gun was already in my purse because I was just
20 tired and I wanted to -- I figured the problem was me and
21 that if I was out of the way, everything would be all
22 right. He would be a part of kids.

23 THE COURT: I'm sorry. Can y'all approach, please?

24 (OFF-THE-RECORD BENCH CONFERENCE.)

25 BY MS. ZMROCZEK:

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

693

1 Q. Shellie, what was your plan that morning?

2 A. It was, it was to actually show Jermaine the check and
3 kill myself.

4 Q. How did that change?

5 A. Because when I was in the apartment talking to him ---

6 Q. Did he let you in, or did you use your key?

7 A. He let me in.

8 Q. How did he know you were there?

9 A. I called him, tell him I was outside. He said I could
10 come up.

11 Q. What happened when you went in?

12 A. We went to his bedroom. There were -- the apartment
13 was really dark, and we went into his bedroom, and we were
14 talking. I gave him a, I gave him a kiss and I sat on the
15 floor while he laid in the bed.

16 Q. And then what happened?

17 A. I asked him how he was and that I have a surprise for
18 him. He said what. I said remember when you said that
19 when I get my first check that you were coming home, and I
20 said I got my first check. I wasn't expecting to get a
21 check.

22 Q. And what did he say to you?

23 A. That's good. That's good. That's real good.

24 Q. And then what happened?

25 A. He was, like, I did say that, but we got a, we got a

1 issue we have to clear up is what he said.

2 Q. Did you get into a fight that morning?

3 A. It was more like him, more like him yelling. Not so
4 much of a, of a fight, but he was upset because he said I
5 jeopardized his job and he thought I disrespected him.

6 Q. So, he just yelled you?

7 A. When he moved, when he moved off the bed, I moved
8 toward the end of the corner to get some distance between
9 us because he was up -- he was upset about his job and ---

10 Q. Was he just upset?

11 A. He was angry.

12 Q. Was this a normal flight?

13 A. No.

14 Q. How was this different?

15 A. Before, Jermaine had told me before if I ever
16 disrespected him and if I ever jeopardized his job, he
17 would kill me himself.

18 Q. So, you got there and he's yelling at you, telling you
19 you disrespected his job?

20 A. Yes.

21 Q. So, what did you do?

22 A. I stood at the corner of the, of the bed and I was
23 just in shock because I could not -- I knew I had not done
24 anything against him or his job, and so I had the gun in my
25 hand. I pulled it out of my purse, which was on my lap.

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

695

1 He was standing at the -- at his -- at the closet, and he
2 had his back to me saying that I disrespected his job, and
3 I knew I didn't, and I knew when he turned his back, he
4 was...

5 Q. You knew that when he turned his back. I'm sorry,
6 what?

7 A. I knew when he turned his back that he was going to
8 attack me. I feared because he said I disrespected his job
9 and that his job was everything to him. I thought he was
10 going to kill me.

11 Q. Turned his back on you before?

12 A. Yes.

13 Q. What happened before when he turned his back on you?
14 How many times?

15 A. A couple that really stand out to me, but the last one
16 was, I think, June or July.

17 Q. Compared to the times that he hit you, how were these
18 different?

19 A. I'd never seen the anger, and he was just so angry
20 with me. I was scared. I knew it was different; I felt it
21 was different.

22 Q. What happened after you pulled the gun out of your
23 purse?

24 A. Had his back to me. Seemed like he was about to turn
25 around. I fired.

1 Q. Did you know that you had hit Jermaine at that point?

2 A. No, I did not.

3 Q. What did you do next?

4 A. I fired the gun but I didn't realize I had hit him
5 because there was no blood. There was nothing like you
6 would expect.

7 Q. Where was Jermaine?

8 A. He was on the floor.

9 Q. Did you go look at him?

10 A. I started to go to him, but I jumped back.

11 Q. Why?

12 A. He was going to grab me. I didn't want him to grab
13 me.

14 Q. What did you do after that?

15 A. I left. I ran for the door. I left. I was trying to
16 get away. I couldn't believe -- I knew he was coming after
17 me. I knew Jermaine was coming after me and I was
18 struggling, trying to get out the door. I could not get
19 out. When I finally got the door open, I ran.

20 Q. You talked to several people that day?

21 A. I did.

22 Q. You talked to Arletta. You talked to people telling
23 you to come back to the apartment. Why didn't you come
24 back to the apartment?

25 A. I thought they were trying to set me up with Jermaine.

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

697

1 Q. What do you mean set you up with Jermaine?

2 A. They weren't my friends. They were Jermaine's
3 friends. So, I thought he was doing that to lure me back
4 to where he was so that he could kill me because I knew
5 they didn't like me.

6 Q. Why did you go quit your job?

7 A. I knew that he was coming for me, but I didn't want
8 any ties anywhere, so I quit my job, both of them.

9 Q. What did you do next?

10 A. I went to the -- I realized I didn't have -- I had
11 money from the concession stand but it wasn't enough to pay
12 my kids back.

13 Q. To -- I'm sorry?

14 A. Pay my kids back for them spending their money.

15 Q. What do you mean pay your kids back?

16 A. When we worked the concession stand, he paid us,
17 everyone who worked, money for that day of working, and so
18 he gave envelopes to us and in the envelope was \$80.

19 Q. How much money had the kids spent?

20 A. I know it was over \$100 for candy because the money
21 that they spent was their money.

22 Q. I'm showing you what's in evidence, State's 64. Can
23 you tell the jury what this is?

24 A. That's the envelope.

25 Q. Speak up.

1 A. I'm sorry.

2 Q. What does it say on the envelope?

3 A. Please use for my kids. I'm so sorry. I'm so
4 sorry.

5 Q. What were you sorry for?

6 A. That they were taken advantage of, and I didn't do
7 anything about it. I didn't say anything about it.

8 Q. Why did you tell people -- why didn't you tell anybody
9 where you were going?

10 A. I didn't want Jermaine be able to find me, and I
11 didn't want anybody involved.

12 Q. What was your plan?

13 A. Once I got the money out, I wanted to look really -- I
14 wanted to look nice for my last day. My plan was to kill
15 myself.

16 Q. Where were you going to do this?

17 THE COURT: Let me ---

18 (OFF-THE-RECORD BENCH CONFERENCE.)

19 THE COURT: Ladies and gentlemen, I need to get you to
20 step back to the jury room real quick. Please have no
21 conversation about the case.

22 (THE JURY EXITS AT 10:49 A.M.)

23 THE COURT: Ma'am, back there with a camera, please
24 come up here.

25 Y'all come up.

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

699

1 (OFF-THE-RECORD BENCH CONFERENCE.)

2 THE COURT: While the jury is out, if you need to use
3 the restroom real quick, you can do that.

4 WITNESS: Thank you.

5 THE COURT: Ms. Davis if you need to be excused ---

6 MS. ZMROCZEK: We can't talk.

7 THE COURT: You can't talk to anybody, but if you need
8 to use the restroom, let your lawyer know, okay?

9 WITNESS: Thank you.

10 MS. ZMROCZEK: Thank you.

11 THE COURT: Go ahead and just take a moment.

12 (OFF THE RECORD.)

13 THE COURT: Ladies and gentlemen, if I -- let me have
14 your attention please, everybody here at the courtroom.
15 I'm going to say this out of an abundance of caution, okay?
16 I'm, I'm, I'm not aware that anyone has done anything wrong
17 at this point, but here's what I am going to tell you
18 because either very few of you or none of you know me. I'm
19 very serious when I tell you this.

20 I'm not going to tolerate any disturbance in the
21 courtroom, and I'm not going to tolerate any disturbance on
22 the grounds of the courthouse, so I'm going to tell you
23 now. I've gotten some reports that there seems to be some
24 tension and emotion that's starting to build. I'm, I'm
25 just going to make you this promise. Anybody causes any

1 disturbance at all on the grounds of this courthouse,
2 parking lot, court hallways, bathrooms, anywhere, I'm just
3 making you this promise. You're going to jail. I'm going
4 to hold you in contempt, and I can hold you in jail until I
5 decide it's time for you to go, and I'm making you that
6 promise. Better not have any disturbance anywhere around
7 this building or the grounds of this building.

8 Now, that's -- maybe it doesn't need to be said, but
9 it has been said. You are on notice of it, so we'll just
10 take it from there.

11 I want to express to everybody that I am fully aware
12 of the tragedy and emotions involved, and I don't expect
13 people to be robots. I don't expect you to not have
14 feelings and emotions. The lady who was crying earlier and
15 I had to ask her to leave, I wasn't upset with her at all.
16 I understand it. All I need for the purposes of this case
17 and for the members of the jury is that they not be
18 disturbed or unduly influenced by anything going on in the
19 courtroom. So, that, that, that young lady didn't do
20 anything wrong.

21 But I tell you this. If you feel like you can't
22 control your emotions, go ahead and excuse yourself and
23 leave the courtroom, okay, because my whole purpose and my
24 whole mission is that the state and the defense gets a fair
25 and impartial trial, and that's what we're going to see,

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

701

1 that that occurs. So, just thank you for your attention on
2 that.

3 Now, is Ms. Davis ready to come back? Let's bring Ms.
4 Davis back in.

5 You ready, Ms. Zmroczek?

6 MS. ZMROCZEK: Yes, sir.

7 THE COURT: Is the state ready?

8 MS. SHANNON DAVIS: Yes, Your Honor.

9 MR. RIDDLE: Yes, sir.

10 (A PAUSE.)

11 THE COURT: Ms. Davis, if you would please come back
12 up to the witness stand and we'll, we'll resume. You're
13 still under oath, ma'am.

14 (A PAUSE.)

15 THE COURT: All right, let's bring the jury back,
16 please.

17 (THE JURY ENTERS AT 11:10 A.M.)

18 THE COURT: All right, ladies and gentlemen, thank you
19 for your courtesy in allowing me to take up a matter that I
20 needed to take up. We're going to resume now.

21 And I apologize, Ms. Zmroczek. If you would -- if
22 you've got the last question you asked, if you would ask
23 that question and then allow Ms. Davis to respond.

24 MS. ZMROCZEK: Okay. I think I do.

25 BY MS. ZMROCZEK:

1 Q. Ms. Davis, I believe I was asking where, where you
2 were going.

3 A. After it happened, or where did I plan? I don't
4 understand.

5 Q. Where did you plan? You had said you planned to kill
6 yourself, correct? I don't want to put words in your
7 mouth.

8 A. Yes.

9 Q. Where were you going?

10 A. I wanted, I wanted to look nice my last day. I needed
11 to shower, but I know I couldn't go to any of my friends
12 because he would find me there.

13 Q. Because who would find you there?

14 A. Jermaine.

15 Q. So, where did you go?

16 A. Went to a friend of mine who's an agent. Went to his
17 house. I called him and asked him if I could just take a
18 shower. That was all I needed.

19 Q. Was he somebody you were romantically involved with?

20 A. No.

21 Q. Why did you go there? Why did you call him?

22 A. I knew it would be safe. Jermaine didn't where he
23 was, didn't know who he was.

24 Q. And so you took a shower and then what?

25 A. I left. I, I lied to him and told him a client called

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

703

1 and wanted to see one of my listings and I left.

2 Q. And where did you go?

3 A. I was headed to Charlotte.

4 Q. Why were you headed to Charlotte?

5 A. I screwed up things so bad with my kids in not
6 protecting them that I couldn't face them anymore. So, I
7 wanted to see somebody who knew me, really knew me.

8 Q. Who were you going to see?

9 A. Naeka Collins.

10 Q. Who is she?

11 A. She is my childhood best friend, in choir with her in
12 church.

13 Q. What happened when you got to Charlotte?

14 A. I met her -- called her and told her I just wanted to
15 see her. She was at work; she said I could come to her
16 job.

17 Q. Was this the first time you'd thought about committing
18 suicide, Shellie?

19 A. No.

20 Q. Was it the first day?

21 A. No.

22 Q. Yesterday the state -- or we put into evidence
23 journals that were taken from your home. What did you put
24 in these journals? And the jury will get to read them, but
25 tell them what you put in here.

1 A. How I felt, how sad I was. I couldn't understand why
2 I was going through what I was going through because I felt
3 like I wasn't doing anything wrong, but Jermaine kept
4 telling me I was. So, I must have been doing something to
5 make him, make him hate me.

6 Q. What happened when you got to Charlotte and you saw
7 Naeka?

8 A. Just broke down and cried when I saw her. I couldn't
9 tell her what was going on because I didn't really want her
10 involved, but I just, I just needed to see her just to tell
11 me what good memories we had together. All I needed was
12 one.

13 Q. Did you try to kill yourself?

14 A. Yes.

15 Q. How?

16 A. That day? You mean that day? We went to her
17 brother's house. Her mom was there and it was so -- it was
18 nice because I wanted to see her mom, and I was so, I was
19 so broken. They wanted to pray for me, but I, I couldn't
20 have them pray for me. I already, I already made my
21 decision what I was going to do. There's no saving me.

22 Q. Did you make that decision before or after you fired
23 the gun at Jermaine's house?

24 A. I thought about it before, but that's what I planned,
25 but I wanted to go to Charlotte to see her this last time.

D.A. DAVIS - DIRECT EXAMINATION BY MS. ZMROCZEK

705

1 But when they was talking about praying for me, I was,
2 like, I'm not that person that I was when I met her. I
3 just couldn't.

4 I was just tired of living a lie that I was perfect
5 because I wasn't no matter how I tried. I tried to be
6 perfect. I tried to be a perfect wife. I tried to be a
7 perfect mother. I tried to get along with everybody. I
8 tried. I tried to be a good agent and I just -- I was
9 failing and I didn't understand why it was my fault. And I
10 wasn't blaming anybody. It was me. It was my fault
11 because I was a failure, so.

12 Q. Shellie, what happened after you left Naeka's
13 apartment or Naeka's brother's apartment?

14 A. I had to get away; I had to get away. I was just -- I
15 screwed everything up and for them to pray for me, I was --
16 I was so upset. I was, like, I knew my life didn't have
17 any value, and so I just sat in the woods. I was just -- I
18 was ready, and I wanted it to be over. I wanted to have
19 control over something finally, and I thought I could
20 control this. Nobody can say they killed me. Nobody can
21 say anything else about me, so that's why I wanted to kill
22 myself. I wanted to get my control back, and I thought it
23 would feel, it would feel good that I did it and not
24 anybody else, and so I shot. I'm sorry.

25 Q. You went to the hospital?

1 A. Yes.

2 Q. After you -- after they took you to the hospital,
3 where did they take you?

4 A. I was at the hospital for some weeks, and then they
5 took me to some jail.

6 Q. Where do you live now?

7 A. Lexington County Detention Center.

8 Q. How long have you lived there?

9 A. I guess about a thousand 200 and almost 50 days, about
10 three and a half years.

11 Q. So, Shellie, that morning on September 22nd, did you
12 go to that apartment to kill your husband?

13 A. No.

14 MS. ZMROCZEK: Please answer any questions the state
15 may have.

16 THE COURT: Cross?

17 CROSS-EXAMINATION BY MR. RIDDLE:

18 Q. Ms. Davis, the 21st or the 20th you say you were
19 raped?

20 A. Yes. I'm sorry. Yes.

21 Q. And two days later, you go back over to the apartment?

22 A. Yes.

23 Q. To show him a paycheck?

24 A. Yes.

25 Q. Why didn't you do that over the telephone?

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

707

1 A. Because he said he wanted to see it when I got it.

2 Q. Could've told him you had it.

3 A. But that's not what he told me to do.

4 Q. You took a gun with you, right?

5 A. Yes.

6 Q. Got it out of your house, right?

7 A. Yes.

8 Q. Got the key? Huh?

9 A. Yes.

10 Q. When did you take that safety off?

11 A. Can I back up just a second?

12 Q. Sure.

13 A. This -- the key was in the truck because for some time
14 I would take it with me on the days I felt really bad and I
15 thought about killing myself. So, I had everything laid
16 out for me so all I had to do was take the safety off.

17 Q. Do what?

18 A. Take the safety off.

19 Q. When did you take the safety off?

20 A. When I got in the car.

21 Q. To go to his house?

22 A. Yes.

23 Q. So, you got a gun and put it in your car, correct?

24 A. I believe that was in my car at the time. I just --
25 because there were times when I would take it with me and

1 times that I wouldn't. So -- but it was mine and it was in
2 my possession. I just don't want to say for sure. I just
3 -- it was in my possession. I had it; it was mine.

4 Q. That bag and the box that the gun came in, surely that
5 didn't ride around in your car when you were showing
6 clients houses, did it?

7 A. I took that I with me. I didn't want any of that in
8 the house.

9 Q. So, you took the bag and the box and the gun and you
10 put it in your car, right?

11 A. Yeah.

12 Q. And you had the key, and then you took the gun out of
13 the box, didn't you?

14 A. It wasn't in the box.

15 Q. Where was the gun?

16 A. The gun was in the console of my truck.

17 Q. The gun was in the console of your truck. Well, when
18 did you turn the safety off then?

19 A. When I was in the truck.

20 Q. Okay. Is that before you leave your house?

21 A. Yes, I think so.

22 Q. And you were on your way to Jermaine's?

23 A. Yes.

24 Q. And then when you got to Jermaine's, you took the gun
25 out of the console?

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

709

1 A. Yes.

2 Q. And you took it into his house?

3 A. It was in my purse, in my -- going with me, yes.

4 Q. Okay. Why did you take the gun into his house?

5 A. Because after I showed him the check, I wanted to show
6 him that I, I did something right.

7 Q. Why did you take the gun in his house?

8 A. Because I was going to kill myself after I presented
9 the check.

10 Q. So, you go to show him a check and then shoot
11 yourself?

12 A. Yes.

13 Q. Why didn't you just take a picture of it and text it
14 to him?

15 A. That is not what he told me to do.

16 Q. Had you been told to shoot yourself?

17 A. He told me before that if I decided to take my life,
18 that nobody would care. The kids would be all right. I
19 didn't matter.

20 Q. Those journals, those are your most private thoughts,
21 right?

22 A. Yes.

23 Q. Things you can't even tell your family and your
24 friends, correct?

25 A. Some, some of the stuff I could probably tell my best

1 friend, but it helped to just write it.

2 Q. If I hand you those journals, can you show me where
3 Jermaine raped you?

4 A. I don't, I don't think so.

5 Q. No, ma'am.

6 A. I don't remember writing that last few days.

7 Q. Oh, there's writing in there from the last few days.
8 There's writing from the last few days, but it doesn't say
9 anything about Jermaine raping you, does it?

10 A. I don't believe so. It's not something that you would
11 want to make public.

12 Q. In public? Those are your journals, ma'am. Those are
13 yours, right?

14 A. Yes.

15 Q. If you can't tell your diary, who can you tell?

16 A. People often read your diaries.

17 Q. Well, that's not in public. You can hide them
18 somewhere in your house, can't you?

19 A. It never works. What you think is personal is not
20 personal.

21 Q. I want to talk to you about the text messages for a
22 minute, okay, the ones that you said were so threatening,
23 right? You remember those? Have to speak out loud.

24 A. Yes.

25 Q. Is this a copy of them?

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

711

1 A. Yes. Those are some of the text messages.

2 Q. Okay. Is that the ones you were talking about?

3 A. Yes.

4 Q. That Ms. Zmroczek showed you?

5 A. Yes.

6 Q. Defense Exhibit Number 26?

7 A. Yes.

8 Q. Now, you told this big, long story about Ike and Tina
9 Turner, didn't you?

10 A. As it was in the movie, yes.

11 Q. Speak up, please.

12 A. As it was in the movie, yes.

13 Q. Okay. That first text message says:

14 Good morning. I've been trying to call you all
15 morning. No answer. Thanks for being you.

16 Right?

17 A. Yes.

18 Q. You feel threatened by that?

19 A. I knew he was angry with me.

20 Q. Thanks for being you.

21 And you knew he was angry?

22 A. He's been trying to call me, and I would not answer
23 his phone calls.

24 Q. Okay. The next one says:

25 I'm loading up to go out of town. I will text

1 you when I get there. I will not bother calling
2 you because you don't answer your phone.

3 Were you feeling threatened by that?

4 A. I knew he was angry, but I knew -- he wrote was going
5 out of town, so I knew he wasn't coming to me.

6 Q. He wasn't coming to you, was he?

7 A. He said he was loading up to go out of town. I knew
8 he was angry with me for not answering the phone.

9 Q. Then five days later he said:

10 Trying to call you so I can give you some money,
11 but you won't answer the phone. You need to call
12 before I get busy.

13 You felt threatened by that?

14 A. No, I didn't feel threatened by that.

15 Q. Then five days later again he texted you: I just want
16 to say hello to you. Did you feel threatened by that?

17 A. Not at that time, no, but I had done what he said do.

18 Q. And then on the 24th, numbers 5 and 6, you got two in
19 a row, right?

20 A. Yes.

21 Q. Hello. I have been calling the house for three
22 days and no one will answer, nor will you answer
23 your phone. That's cool. I'm not mad because
24 the day will come when you will be without a
25 choice. Time will tell. You continue not to

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

713

1 answer. I am fine with that. You have a blessed
2 day. Please tell the kids I said hello.

3 Is it your testimony that you felt threatened by that,
4 Ms. Davis?

5 A. That was how he would talk. He says that -- but there
6 will come a time without a choice. Time would tell.

7 Q. Because he had moved out, hadn't he?

8 A. He had moved his things to an apartment.

9 Q. He was moving on, wasn't he?

10 A. He was. It would appear that way, but ---

11 Q. Yes, ma'am, it would.

12 A. Can I finish?

13 Q. Yes, ma'am.

14 A. It would appear that way, yes, but Jermaine and I
15 would spend nights together. We would go out because he
16 said he wanted to work on his marriage.

17 Q. On the 24th, later on that night he texts you again,
18 doesn't he? Says:

19 I know your pretty ass hear me dammit. I'm mad
20 as hell at you. I am drinking right now because
21 of you. You're the most non-answering person
22 I've ever met.

23 Right?

24 A. Uh-huh.

25 Q. You didn't have control over anything, did you? For

1 twelve days you hadn't answered the phone, and that's as
2 mad as it gets, isn't it?

3 A. In his text messages, it would appears so.

4 Q. And the very next one -- because there was a series
5 that came in that night, weren't there? 4:20, 4:10,
6 starting at 21:45:22? Line 7, Ms. Davis.

7 A. Okay.

8 Q. The one I just read.

9 A. Okay.

10 Q. And one came in less than two minutes later, correct?

11 A. Yes.

12 Q. I love you and you know it, but you refuse to
13 help me. Cora, grab the wheel. Grab the wheel,
14 Cora.

15 With a smiley face. You felt threatened by the smiley
16 face?

17 A. He was trying to get my attention.

18 Q. No, ma'am, that's not the question. Did you ---

19 A. Did I ---

20 Q. --- feel threatened by the smiley face?

21 A. I don't remember the smiley face, but I don't feel
22 threatened by that comment.

23 Q. Do you see the smiley face there?

24 A. No, sir. There's no smiley face.

25 Q. A colon and a parenthesis, a smiley face?

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

715

1 A. Okay. I'm used to seeing on my Blackberry the
2 physical smiling -- smiley face because that's what -- we
3 had blackberries. So, I did not realize that's what that
4 was. I'm sorry.

5 Q. Just send something. I mean damn, send an F-you
6 or something.

7 That's, what, a minute later? He just wants to talk
8 to you. And then a minute later he says:

9 Eat the cake, Anna May. Eat the damn cake.

10 With the smiley face. Did you feel threatened by the
11 smiley face?

12 A. When he said eat the cake, I knew what he -- those
13 last two statements, I knew what he, what he was indicating
14 without him saying it.

15 Q. The last one in this series -- well, the last two all
16 within about five minutes: Anna May, Anna May, answer me.
17 And then less than thirty seconds later: I know do you are
18 LOL right now. Did you feel threatened by that?

19 A. I thought that was a joke.

20 Q. It was all a joke?

21 A. That comment, he -- that was meaning it as a joke but
22 wasn't funny.

23 Q. The whole thing was a joke, wasn't it?

24 A. All the text messages?

25 Q. All the references to Anna May was a joke. Every time

1 he said it, it said smiley face or LOL, didn't it?

2 A. It would appear that way, yes.

3 Q. It would appear that way, wouldn't it?

4 Now, tell me something. When did you pack this purple
5 bag?

6 A. When I was at my house when I arrived there.

7 Q. Arrived there when?

8 A. After leaving his apartment.

9 Q. You couldn't go to your friends because you were
10 afraid he was going to come find you there, so you go home?

11 A. I went home thinking it would end there, but when I
12 got there, Bill and Seneca were there asleep. I couldn't
13 stay there.

14 Q. So, you went in. You packed your bag?

15 A. I grabbed what I thought I needed and I left.

16 Q. Why didn't you take a shower there?

17 A. I didn't want him to catch me there. Like I said,
18 Bill and Seneca were on the family room floor asleep.

19 Q. So, you left the most likely place he could find you
20 when you went home and went to the second most likely place
21 he would find you when you went to work, correct?

22 A. Yes.

23 Q. You didn't think he'd find you there?

24 A. I didn't stay at that location at my job. I went in,
25 quit my job, and left.

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

717

1 Q. And you thought it was more important to quit your job
2 than to tell your kids goodbye?

3 A. When I left that morning, I'd already told them that I
4 loved them. That was best I can do because I'd already
5 failed them in every other way. So.

6 Q. The only one you talked to that morning was Marlin,
7 Ms. Davis, and you told him to wake the other ones up,
8 correct?

9 A. I thought the other kids were groggy, so -- kind of
10 getting out of sleep, but I could be wrong.

11 Q. Is that correct, Ms. Davis?

12 A. I thought I had spoken to -- I thought I'd given
13 them...

14 Q. Ma'am, it's a simple, simple question. The statement
15 is the only one you spoke to that morning was Marlin. Is
16 that or is that not correct?

17 A. I remember speaking to Marlin.

18 Q. Okay. So, when did you tell the other children
19 goodbye?

20 A. I tell them I love them. I didn't tell them goodbye.

21 Q. So, you thought it was more important to quit your job
22 than tell your kids goodbye, correct?

23 A. I'd already failed them, so yes, I didn't think there
24 was anything else I needed to say.

25 Q. Matter of fact, you quit both of your jobs, didn't

1 you?

2 A. I did.

3 Q. One of them you'd only been working at for a week,
4 right?

5 A. Almost two maybe.

6 Q. Okay, because you called him, right?

7 A. I did.

8 Q. And you quit that job?

9 A. I did.

10 Q. And that was more important than telling your kids
11 goodbye?

12 A. It was about stopping any type of interference with
13 him finding me. I didn't want those place -- I didn't want
14 anybody involved.

15 Q. You didn't want anybody involved. Well, if that's the
16 case, why didn't you go out to your car and shoot yourself
17 right then at Jermaine's apartment?

18 A. I was scared of him coming after me; I was scared.

19 Q. You had the gun in your hand, correct?

20 A. It was in my purse.

21 Q. Oh, you had put it back in the purse by then?

22 A. When I was trying to get out of the apartment.

23 Q. You put it back in the purse?

24 A. I couldn't get out, so I had to put it -- I had put it
25 down in order to get out.

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

719

1 Q. And you put it back in your purse?

2 A. Yes.

3 Q. Okay, and then you left, right?

4 A. Yes, sir.

5 Q. Okay, and I presume you got in your car in the parking
6 lot, correct?

7 A. I did.

8 Q. You didn't have time to get it out and just shoot
9 yourself right then and there?

10 A. There were people outside.

11 Q. That's not the question, ma'am. The question is did
12 you have time to pull the gun out and shoot yourself right
13 there?

14 A. I don't under -- I don't understand. If you're asking
15 a technical question, then yes, there was time.

16 Q. Yes, there was time.

17 A. But there were people outside.

18 Q. So? What difference does that make?

19 A. I guess I wasn't rational.

20 Q. When you pulled the gun out in Jermaine's apartment --
21 because he was standing facing away from you in the closet,
22 right?

23 A. Yes.

24 Q. And you pulled it out, and you shot him in the back of
25 the head, correct?

1 A. I didn't realize that's where he was shot. I didn't
2 realize he was shot, but I did pull the gun out and fire
3 it.

4 Q. All right. You pulled the gun out and fired it. What
5 happened to Jermaine as soon as you fired the gun?

6 A. He kind of dropped but...

7 Q. He crumpled to the floor, didn't he?

8 A. Wasn't like that because when I fired it, I was
9 expecting, from what I've seen, that there would be blood
10 all over the place. When it happened, it didn't happen the
11 way I thought.

12 Q. Did he or did he not get shot and go straight to the
13 ground?

14 A. He went to the ground, yes.

15 Q. Boom. Dead. Correct?

16 A. I did not know that at the time.

17 Q. But you pulled the trigger?

18 A. I pulled the trigger, yes.

19 Q. And as soon as you did, he collapsed, correct? Is
20 that correct, ma'am?

21 A. It is correct, but that's not what I thought. When he
22 went to the ground, I didn't think he was hit.

23 Q. Well, what did you think he was doing?

24 A. I thought he got out of the way when he heard the
25 gunfire because I didn't see any blood. I didn't.

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

721

1 Q. So, you want these folks to believe that you pointed a
2 gun at someone, shot them in the back of the head. As soon
3 as you pull the trigger, he drops like a rock and is laying
4 there in the position that he's in in that picture, and you
5 didn't think you'd hit him?

6 A. I didn't. I ---

7 Q. Did you see him move?

8 A. I was afraid to get too close to check.

9 Q. Ma'am, did you see him move?

10 A. No.

11 Q. No, and he's laying there with his legs all askew,
12 right?

13 A. What do you mean as, as ---

14 Q. Well, I'll show you the picture. Give me just a
15 moment.

16 (A PAUSE.)

17 Q. Askew with his legs all at a strange angle. That's
18 how he was laying, wasn't he?

19 A. I don't remember him looking like that.

20 Q. That's how he was laying, wasn't he?

21 A. I don't remember him looking like that when I left.

22 Q. And you, you said you were over here, right?

23 A. Yes.

24 Q. Somewhere near this corner of the bed. So, you walked
25 kind of by him to get out the door, right?

1 A. I walked toward the edge of the bed because there was
2 no -- he didn't -- I thought he was...

3 Q. He didn't move, did he?

4 A. He was not in movement, but I thought that if I got
5 close to him, he was going to attack me.

6 Q. What about this makes you think you're going to be
7 attacked?

8 A. I don't remember him looking like that.

9 Q. You got back to your car, right?

10 A. Yes.

11 Q. And you called your friend Tracee Crocker, correct?

12 A. Yes.

13 Q. And you had a conversation with her?

14 A. Yes.

15 Q. You never told her not one time that you had been to
16 Jermaine's, correct?

17 A. No.

18 Q. Didn't tell her y'all had an argument?

19 A. I told her -- I asked her when I called her, I said
20 hey, Tracee, sounding like me because Tracee didn't know as
21 often as I went over to Jermaine's place. So when I called
22 her, I tried to sound as normal as possible, and I asked
23 her, okay, what happened with the whole Francesca thing?
24 What happened? What did she, what did she say about that?

25 Q. You called Tracee Crocker, correct?

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

723

1 A. Yes, sir.

2 Q. And then you talked to her as if Jermaine is still
3 alive, correct?

4 A. Yes.

5 Q. You didn't tell her you'd been to see him, correct?

6 A. No.

7 Q. And you didn't tell her that you had shot a gun in his
8 apartment?

9 A. No.

10 Q. Whether it hit him or not, correct?

11 A. No, I did not.

12 Q. Your plan wasn't to commit suicide, was it?

13 A. Yes.

14 Q. It was to get away, correct?

15 A. That's not true.

16 Q. That's not true?

17 A. No, it's not.

18 Q. Well, you didn't shoot yourself until after you got
19 phone calls from Steve Collins, did you?

20 A. I didn't know what was going on because I would check
21 messages, expecting to hear from Jermaine.

22 Q. And instead you heard from the police, didn't you?

23 A. I did get a message, but I thought it was strange
24 because...

25 Q. What did you think was strange about the fact that the

1 police were calling when you had shot a gun and your
2 husband dropped like a rock, Ms. Davis?

3 A. Because Jermaine told me he had friends in Lexington
4 County police that he had socialized with, and so he always
5 told me that he's always protected because of who he is,
6 who he knows. So, I thought that this person called me to
7 scare me. I didn't think -- I didn't think anything else.

8 Q. Let me make sure I understand. You go to your
9 husband's apartment, correct?

10 A. Correct.

11 Q. You drive 22 miles, correct?

12 A. That's what I did quite often, yes.

13 Q. And you did it that morning?

14 A. Yes.

15 Q. And you get your gun out, correct?

16 A. It's in my ---

17 Q. Am I correct, ma'am?

18 A. Okay. Yes.

19 Q. And you turned the safety off, correct?

20 A. I think so, yes. Yes.

21 Q. And you put the gun in your purse, correct?

22 A. Yes.

23 Q. And you take it into his apartment, correct?

24 A. Correct.

25 Q. And you're in the apartment, and y'all get into an

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

725

1 argument, correct?

2 A. Correct.

3 Q. And you pull the gun out, correct?

4 A. Yes.

5 Q. And you point it at Jermaine, correct?

6 A. Yes.

7 Q. And you pull the trigger, correct?

8 A. Yes.

9 Q. And he drops like a rock, correct?

10 A. He drops, yes.

11 Q. And you flee the scene, correct?

12 A. I left.

13 Q. And the police end up calling you about that, correct?

14 A. They didn't call me giving details as to what was
15 happening. It was ---

16 Q. Did the police call you about it?

17 MS. ZMROCZEK: Your Honor, I'd ask that he let the
18 witness answer the question.

19 MR. RIDDLE: If she'd be responsive to the question, I
20 would, Your Honor.

21 THE COURT: All right, ask your question.

22 Ma'am, respond to his questions.

23 BY MR. RIDDLE:

24 Q. Did the police call you?

25 A. Yes.

1 Q. And you're telling these folks here that that was all
2 a setup by Jermaine's friends on the police force to trick
3 you?

4 A. That's what I thought.

5 Q. That's what you're telling them?

6 A. It's what I thought. You don't understand. He had
7 connections.

8 Q. Jermaine drove a car for people, right?

9 A. Yes.

10 Q. He worked for people?

11 A. Yes.

12 Q. And he knew people that he drove for, correct?

13 A. That's not how he told me. That he socialized. That
14 he knew these people.

15 Q. I believe you testified about back when y'all got
16 married, right?

17 A. Yes.

18 Q. You dated six months and then you were married?

19 A. Yes.

20 Q. You were pregnant when you got married?

21 A. Yes, I was.

22 Q. Okay, and you testified that Jermaine became abusive
23 two weeks later?

24 A. Yes.

25 Q. All right, and he was abusive with you all the time

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

727

1 you were up in Maryland, right?

2 A. Just about, yes.

3 Q. And then you moved down here, right?

4 A. Yes.

5 Q. And he was abusive down here?

6 A. Yes.

7 Q. But you never told anybody, correct?

8 A. In details, no. I talked to my best friend.

9 Q. Who?

10 A. Deirdre Davis.

11 Q. When?

12 A. Just various times I talked to her. I stopped telling
13 her a lot of the stuff that was happening because I wasn't
14 the person she knew and I felt stupid, and she didn't like
15 Jermaine. So -- and I wanted our marriage to work. So,
16 when he told me we were working on it, that's what we were
17 doing.

18 Q. Well, when you filed for divorce in 2006, Ms. Davis.

19 A. Yes, sir.

20 Q. Did you allege physical abuse at that time?

21 A. At that time when I spoke to my attorney?

22 Q. Did you allege physical abuse in your complaint?

23 A. In my complaint? No.

24 Q. No. Exactly. You alleged that he had moved out,
25 correct?

1 A. I don't remember if he had moved out at that time, but
2 that could be correct.

3 Q. So, you had a lawyer and you were moving forward with
4 the divorce?

5 A. Yes. I didn't want to but I had to.

6 Q. Well, you filed it, didn't you?

7 A. I did.

8 Q. And then this man that was so abusive with you, you
9 dismissed that divorce and didn't go forward with it,
10 right?

11 A. He came back, and we went to counseling. He said he
12 wanted this marriage. I dropped everything.

13 Q. But you never even alleged physical abuse, did you?

14 A. In the report, I guess not. I ---

15 Q. In the divorce papers, you didn't allege physical
16 abuse, did you?

17 A. I don't believe I did.

18 Q. You need to see a copy to be sure?

19 A. It would help because that was in 2006, and the
20 attorney drew those documents up, so.

21 Q. Okay. Now, you indicated that you never stalked
22 Jermaine, correct?

23 A. Yes.

24 Q. Okay. Defense Exhibit Number 38, you called him 151
25 times in three weeks, correct?

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

729

1 A. When was that?

2 Q. September of 2010.

3 A. Can I see?

4 Q. Sure. It's your exhibit.

5 A. Okay. Okay.

6 (A PAUSE.)

7 Q. Is that correct?

8 A. Yes.

9 Q. All right. Now, you bought this gun in July, correct?

10 A. Yes.

11 Q. Why did you buy that gun?

12 A. Jermaine had -- was yelling at me that I never do what
13 he says do, and that's one of the reasons that he left, and
14 I wanted to be the man. I wouldn't let him be the man. I
15 wouldn't do what he said, and one of the things I know that
16 he said was to purchase a gun.

17 Q. So, you bought that gun because he told you to?

18 A. I did. Not that specific type, but I bought a gun
19 because he said.

20 Q. Because he said what?

21 A. To -- that I never do what he said because -- we had
22 talked about -- when he took me to the shooting range for
23 the first time, buying a gun, he told me he wanted me to
24 learn how to shoot a gun so that we had guns together.

25 Q. When was that?

1 A. Maybe April or May because he was going to the
2 shooting range, I guess, and he called me and said that's
3 where he was going. He was, like, come on. Come with me,
4 and that's what I did. I dropped everything and I went
5 with him. I met him ---

6 Q. Y'all had already separated at that point?

7 A. We were physically living two different places, but we
8 would still do things together. We were still intimate.
9 He would still come to the house. So, he ---

10 Q. And you ---

11 A. --- would visit.

12 Q. --- wouldn't show up at his workplace unannounced to
13 confront him about things. He's encouraging you to buy a
14 gun. Is that what you're telling these folks?

15 A. I showed up at an event not knowing that it was that
16 event because what he said was he and his friends were
17 doing a cabaret.

18 Q. That's not what I'm asking you about, ma'am. What
19 I'm asking you about is did you show up at an event
20 unannounced ---

21 A. Yes.

22 Q. --- to confront him?

23 A. Yes.

24 Q. And you're telling this jury that he's encouraging you
25 to buy a gun?

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

731

1 A. Yes, I am.

2 Q. During this same time period?

3 A. Yes, I am.

4 Q. The man that has to be so controlling and in charge
5 and on top of you all the time is wanting to arm you. Is
6 that what you're telling this jury?

7 A. That is exactly what I'm telling the jury.

8 Q. The man that's beating you and raping you is wanting
9 to put a gun in your hands. That's what you're telling
10 this jury?

11 A. Yes. That is what I am telling you.

12 Q. In those journals, isn't there a part -- I wish I
13 could find it right this minute. I'm going to let Shannon
14 find it for me.

15 (A PAUSE.)

16 Q. Isn't there a part of those journals where you talk
17 about you're following Jermaine right after y'all were
18 separated?

19 A. If that's in there, I would need to see it so that ---

20 Q. I'm going to let you see it in just a second.
21 Following him around and he doesn't know it, right?

22 A. Can I see it? Then I can ---

23 Q. Sure.

24 A. Then I can answer your question.

25 Q. Okay. Right here: I followed him but he didn't see

1 me. Do you see that?

2 A. Can I...

3 Q. Hmm?

4 A. Can I, can I have that?

5 Q. May 21, 2010, correct?

6 A. Okay.

7 Q. No other date. What does that line right there say?

8 A. I followed him but he didn't see me.

9 Q. Okay. So, the man that you're following around -- you
10 don't call that stalking, do you? Do you call that
11 stalking?

12 A. No, I don't call that stalking.

13 Q. Well, he's your ---

14 A. Because ---

15 Q. --- separated spouse, right?

16 A. He is physically separated, yes.

17 Q. He'd be mad if he caught you following him around,
18 wouldn't he?

19 A. Probably.

20 Q. And according to you, he'd beat you, correct?

21 A. Probably. More likely, yes.

22 Q. You're following him around?

23 A. There was a time where I had talked to, again, Tracee
24 and just sharing some things with her, and she talked to me
25 about an attorney, but ---

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

733

1 Q. Ma'am, were you following him around?

2 A. But you have to understand. I was not following. On
3 that day I must have been because I wrote it.

4 Q. Right, and that's the same man that controlled
5 everything?

6 A. Yes.

7 Q. And you're following him around?

8 A. Yes.

9 Q. And that's the same man that wants to put a gun in
10 your hand?

11 A. Yes, that is the same man who took me to Shooters to
12 learn how to use a gun.

13 Q. Tell me why you loaded seven rounds of ammunition in
14 that gun if you were just going to commit suicide.

15 A. Because when I bought the gun, the guy behind the
16 counter -- when we -- okay, when we went to Shooters, we
17 had to load the guns, but I could never get the bullets in.
18 So, when -- I went to purchase the gun, it was the same
19 issue. So, the guy told me you need to practice so that
20 you can know how to use the gun.

21 Well, I never took the ones out because I struggled so
22 much in getting them in. And once I figured out how to
23 load it, I just left it.

24 Q. Let me ask you about that green bag again, or that
25 purple bag rather. When did you pack that?

1 A. When I got to my house and saw that it wasn't ending.

2 Q. When you saw that it what?

3 A. Was not ending.

4 Q. And you packed this bag, and what were you planning on
5 doing with it?

6 A. I needed to shower, and I wanted to put on what I
7 called my last outfit.

8 Q. Hm-hmm.

9 A. And I wanted to make sure that when they found me,
10 that I looked as close to myself, nice.

11 Q. What's this?

12 A. It's a flat iron. It's a curler.

13 Q. Curler. What did you need this for?

14 A. I didn't want to look a mess; I wanted to fix my hair.

15 Q. You didn't want to look a mess. What did you think a
16 bullet was going to do to your head? You're going to fix
17 your hair before you put a bullet in your head?

18 A. I wanted to look nice and see myself look nice one
19 last time.

20 Q. Where were you going to see yourself nice?

21 A. When I looked in the mirror after I got dressed. That
22 was ---

23 Q. Where?

24 A. At my friend's house in Sumter.

25 Q. In Sumter?

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

735

1 A. Yes.

2 Q. So, you went to Sumter before you went to Charlotte?

3 A. Yes.

4 Q. Took a shower?

5 A. Yes.

6 Q. And then turned around and drove back up to Charlotte?

7 A. I didn't drive back up, but I drove to Charlotte. I
8 wasn't heading to Charlotte and then changed my direction.

9 Q. Now, tell me about that envelope with the money again.

10 A. We worked at the concession stand. So, the envelope
11 was originally given to me by Jermaine, and it had, I
12 think, \$80 in it from working that day. But, when he
13 talked to the boys, he was, like, well, laughing with them.
14 Well, your money had to be used for -- the candy, the money
15 that you made, that's part of the, that's part of the
16 business, I guess, something along those lines. But bottom
17 line, the boys did not get paid the money that they put in
18 plus the profit.

19 Q. When did he give you this money?

20 A. It was either Monday or Tuesday.

21 Q. Okay. So, let me get this straight. This is the day
22 he died, right?

23 A. Yes.

24 Q. This is the time period where you say ---

25 A. Yes.

1 Q. --- he raped you?

2 A. Yes.

3 Q. And then on the same day that he rapes you, he brings
4 you money?

5 A. Either that day or Tuesday, yes, for the concession
6 stand. Yes, he did.

7 Q. That's him, isn't it?

8 A. It is.

9 Q. Shellie, thank you for a great job. Love
10 Jermaine.

11 That's the man that's in control?

12 A. Yes.

13 Q. That's so abusive?

14 A. That's Jermaine.

15 Q. Let me ask you about somebody. You know a lady named
16 Margaret Spence, worked over at the jail?

17 A. Margaret Spence?

18 Q. Uh-huh. She saw you when you first came in. Remember
19 her?

20 A. I do not remember a Margaret Spence. I'm sorry, no.

21 Q. Do you remember telling Margaret Spence that it was an
22 accident that you shot Jermaine?

23 A. I probably did.

24 Q. It was an accident. That you tried to pull the gun
25 out of your purse, and it just went off. Did you tell her

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

737

1 that?

2 A. Probably.

3 Q. Yes, ma'am, you did, didn't you? Go ahead and admit
4 that. It's okay.

5 A. It's, it's not that I'm trying to ---

6 MS. ZMROCZEK: Your Honor, if he's going to ask her
7 about something, I think he needs to let her see it.

8 THE COURT: I don't think he's asking her about a
9 document, is he?

10 MR. RIDDLE: No, I'm not.

11 THE COURT: He's asking her if she said that to the
12 lady at the jail.

13 MS. ZMROCZEK: What I heard was you did say that. I
14 mean ---

15 THE COURT: Answer the question. You did or you
16 didn't.

17 BY MR. RIDDLE:

18 A. I probably did, but I don't remember. What timeframe
19 are you talking about that I said that?

20 Q. Okay. Let me ask you about this right here. You were
21 in here when Mr. McDonald testified, right?

22 A. Is that about the call to the cell?

23 Q. Yes, ma'am.

24 A. Yes, I was here.

25 Q. Okay, and you would -- you agree with him that you

1 called Jermaine at 6:59, right?

2 A. Yes.

3 Q. And that's right about the time that you got to his
4 house, correct?

5 A. I was already there, yes.

6 Q. Okay, and then you don't call anybody until 8:09,
7 right?

8 A. Yes.

9 Q. That's when you're leaving his house, right?

10 A. Yes.

11 Q. Because you don't call Tracee Crocker or anybody while
12 you're at his house, do you?

13 A. No.

14 Q. Okay. So, you're there that whole time, correct?

15 A. Yes.

16 Q. And you're standing over here, right?

17 A. Yes.

18 Q. By this dresser, correct?

19 A. Yes.

20 Q. By the TV, correct?

21 A. Yes.

22 Q. And he's over there at the closet, right?

23 A. Yes.

24 Q. And you'd been over to that apartment before, right?

25 A. Yes.

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

739

1 Q. And one night when you were over there, you got ahold
2 of his cell phone, didn't you?

3 A. I did.

4 Q. And you went through it, didn't you?

5 A. The text messages, yes.

6 Q. Uh-huh, and you got angry at him, didn't you?

7 A. I was upset.

8 Q. You went through his text messages?

9 A. Yes.

10 Q. Y'all were separated at the time, right?

11 A. Basically living in two different places, yes.

12 Q. And you were voluntarily going over there spending the
13 night?

14 A. Yes.

15 Q. And you woke him up and confronted him about the text
16 messages, right?

17 A. Yes, one night I did.

18 Q. All right, and on that particular occasion, Ms. Davis,
19 isn't it true that Jermaine got a text at 8:04 a.m. from an
20 individual that said:

21 GM, my life, have a blessed day. I love you.

22 A. Wait a minute. Are you talking about on that day that
23 we ---

24 Q. On that day ---

25 A. --- hadn't talked?

1 Q. Yes, ma'am.

2 A. That's not correct.

3 Q. You didn't see that?

4 A. No, sir, I did not because when his phone rang, he
5 asked me to get it and I got it and gave it to him.

6 Q. You didn't see that text message on that cell phone

7 ---

8 A. No.

9 Q. --- at 8:04?

10 A. No, sir, I did not.

11 Q. Right before Jermaine died?

12 A. No, sir, I did not.

13 Q. Okay. One more question for you. I think you
14 testified that Jermaine was in the bed and y'all were
15 talking, right?

16 A. Yes.

17 Q. When did the bed get made up?

18 A. He was -- it was already partially made as it was when
19 he was on it. So when he got up, he just got up from it.

20 Q. When did the covers get pulled to the top?

21 A. When -- I guess that's how he was sleeping when I came
22 in. So, I, I guess before he opened the door to let me in.

23 Q. All right.

24 A. That's when the -- yeah.

25 Q. After this incident, you talked to Tracee and you

D.A. DAVIS - CROSS-EXAMINATION BY MR. RIDDLE

741

1 never told her?

2 A. No.

3 Q. And she's your friend?

4 A. Yes.

5 Q. You talked to Enola. You never told her and she's
6 your friend, right?

7 A. Yes.

8 Q. You talked to Reggie, right?

9 A. Yes.

10 Q. You never told him. He's your friend?

11 A. Yes.

12 Q. You talked to Teph, correct?

13 A. Yes.

14 Q. And you thought she was part of this setup?

15 A. Yes.

16 Q. And you talked to Lisa, and you thought she was part
17 of the setup?

18 A. Yes.

19 Q. And you thought the police were part of the setup?

20 A. The guy that called, yes.

21 Q. Well, you got more than one call from Steve Collins,
22 didn't you?

23 A. To be honest with you, if it's in my phone record,
24 then it's, it's got to be the case because I don't
25 remember.

D.A. DAVIS - CROSS-EXAMINATION / REDIRECT EXAMINATION 742

1 Q. You got more than one call from him.

2 A. Okay.

3 Q. And you thought the police were part of that setup to
4 lure you back to Jermaine's. That's what you're telling
5 these folks?

6 A. Yes, because Jermaine said he had connections on the
7 Lexington County police and that he taken them out several
8 times and they were friends. He didn't tell me a specific
9 person so a name could be attached to it. That's just what
10 he told me.

11 Q. And that same controlling, abusive, raping, conniving
12 man wanted to put a gun in your hands?

13 A. That same man, yes, is the same man that I loved.

14 Q. Wanted to put the gun in your hands?

15 A. Yes, sir.

16 MR. RIDDLE: All right. Thank you.

17 REDIRECT EXAMINATION BY MS. ZMROCZEK:

18 Q. Let me show you what's been marked for ID as
19 Defendant's 63. Do you recognize that?

20 A. I've never seen it, but he told me that's where he was
21 to get that.

22 Q. He told you ---

23 MR. RIDDLE: Objection.

24 MS. ZMROCZEK: Okay.

25 BY MS. ZMROCZEK:

D.A. DAVIS - REDIRECT EXAMINATION BY MS. ZMROCZEK

743

1 Q. What do you know about in March that Jermaine did?

2 A. He took a concealed weapons class.

3 Q. Did he get his concealed weapons permit?

4 A. Yes, he did.

5 Q. That was in March?

6 A. Yes, I believe so.

7 Q. 2010?

8 A. Yes.

9 Q. And you told the jury -- what did you tell the jury
10 that he would take you to do?

11 A. He took me shooting at a place he would go.

12 Q. Why did, why did he, why did he tell you you needed to
13 go?

14 A. He said because I needed to learn how to use it. He
15 wanted me to have experience with it like he was, and he
16 wanted me to go through the class.

17 Q. Do you recognize what's been marked as Defendant's
18 Exhibit 55 for ID?

19 A. Yes.

20 Q. How do you recognize it?

21 A. We were at NASCAR.

22 Q. And you were there?

23 A. Yes.

24 Q. On what device was this picture taken?

25 A. I think it was a phone, but it might have been, it

1 might have been a -- the cameraman because there was a
2 photographer there, too.

3 MS. ZMROCZEK: Your Honor, at this point like to move
4 Defendant's Exhibit 55 into evidence.

5 MR. RIDDLE: I don't know how it's relevant. I don't
6 object.

7 THE COURT: Without objection.

8 (PHOTOGRAPH MARKED INTO EVIDENCE AS DEFENDANT'S
9 EXHIBIT NUMBER 55.)

10 BY MS. ZMROCZEK:

11 Q. Ms. Davis, you said you went to NASCAR in Charlotte?

12 A. Yes.

13 Q. And this was the picture that was taken in NASCAR in
14 Charlotte?

15 A. Yes.

16 Q. And the police you know took your phone, right?

17 A. Yes.

18 Q. When you take pictures, do you know that they're
19 dated?

20 A. Yes.

21 Q. You remember what month you went to Charlotte?

22 A. It was May. I think it was Memorial -- that -- either
23 -- that Saturday.

24 Q. May 22nd. Mr. Riddle was asking you about journals,
25 and he asked you one line out of the thirty-nine journals

D.A. DAVIS - REDIRECT EXAMINATION BY MS. ZMROCZEK

745

1 that are in there about stalking. Were you still doing
2 things as a family in May 2010?

3 A. We were.

4 Q. Show you what's been marked as Defendant's Exhibit 53
5 for ID. Do you know what that picture is? Do you
6 recognize it?

7 A. Yes.

8 MS. ZMROCZEK: Your Honor, at this point we'd like to
9 move Defendant's Exhibit 53 into evidence.

10 MR. RIDDLE: No objection.

11 THE COURT: Without objection.

12 (PHOTOGRAPH MARKED INTO EVIDENCE AS DEFENDANT'S
13 EXHIBIT NUMBER 53.)

14 BY MS. ZMROCZEK:

15 Q. Shellie, tell the jury what this picture is.

16 A. It's Arletta's birthday party.

17 Q. I'm sorry?

18 A. Arletta's birthday party at Rush's.

19 Q. In July?

20 A. Yes, ma'am.

21 Q. June 2010?

22 A. Yes.

23 Q. Who's that standing right there with you?

24 A. That's my husband. That's Jermaine.

25 Q. That was in July of 2010. You talked about Jermaine

D.A. DAVIS - REDIRECT EXAMINATION BY MS. ZMROCZEK

746

1 telling you that you should just kill yourself, that the
2 kids would be all right when Mr. Riddle asked you?

3 A. Yes.

4 Q. Why did he tell you to kill yourself?

5 A. He said I don't, I don't -- he said -- like, he said
6 it -- I don't give a fuck what you do. If you kill
7 yourself, you'll be doing everybody a favor because the
8 kids will be all right and he will be all right.

9 Q. Text messages between you and Jermaine go right all
10 the way up to September 19, 2010. They'll get to read
11 them, but what was your understanding of the marriage in
12 September 2010?

13 A. We were working on our marriage. All he need to do
14 was just see a paycheck, and he was coming back home.

15 Q. Did you always do what he told you to do?

16 A. Yes.

17 MS. ZMROCZEK: I have no further questions.

18 MR. RIDDLE: Nothing further.

19 THE COURT: All right, thank you, ma'am. You may step
20 down.

21 WITNESS: Can I have a minute, please?

22 THE COURT: Yeah. We're going to take break now.

23 All right, ladies and gentlemen, we're going to take a
24 break. We're going to break for lunch.

25 Ms. Davis, you just stay right here, and we're going

1 -- we'll take a break in just a second.

2 Please have no conversation about the case. I would
3 ask if you would please be back in the jury room by 2:00,
4 and we'll start back at 2:00, okay?

5 So, everybody else please remain seated while the
6 members of the jury are excused.

7 (THE JURY EXITS AT 12:36 P.M.)

8 (THE WITNESS EXITS THE STAND.)

9 THE COURT: All right, anything before we adjourn for
10 the lunch break?

11 MR. RIDDLE: I thought when she stood up, she was
12 fixing to address the court.

13 THE COURT: That's okay.

14 MR. RIDDLE: That's why I was waiting. I apologize.

15 THE COURT: That's all right.

16 MR. RIDDLE: Nothing from the state.

17 THE COURT: Okay.

18 MS. ZMROCZEK: Nothing from defense.

19 THE COURT: All right. Well, we'll recess now, and we
20 will reconvene at 2:00.

21 MS. ZMROCZEK: And, Your Honor, for timing purposes, I
22 believe I will be able to finish today.

23 THE COURT: Okay. All right.

24 MS. ZMROCZEK: So, we might have a charge conference.

25 THE COURT: If y'all -- I haven't gotten anything as

1 far as any specific request to charge.

2 MS. SHANNON DAVIS: We were waiting on the defense's
3 testimony.

4 THE COURT: Okay, and we'll also ---

5 MS. SHANNON DAVIS: But I have reviewed ---

6 THE COURT: We'll also talk about that probably later
7 this afternoon. All right. So, we'll start back at 2,
8 folks.

9 (OFF THE RECORD.)

10 THE COURT: All right, anything we need to take up
11 before we bring the jury out?

12 MR. RIDDLE: No, sir.

13 MS. ZMROCZEK: Nothing from the defense.

14 THE COURT: All right, let's bring the jury out.

15 (THE JURY ENTERS AT 2:13 P.M.)

16 THE COURT: All right, ladies and gentlemen, hope
17 everyone had a good lunch. If you recall, we were still on
18 the defense's case when we broke, and we will pick up there
19 with Ms. Zmroczek's next witness.

20 MR. DOWTIN: May please the court, Your Honor?

21 THE COURT: Sorry.

22 MR. DOWTIN: Perfectly fine, Your Honor. We call Ms.
23 Rana Davis.

24 RANA P. DAVIS, BEING DULY SWORN,
25 TESTIFIES AS FOLLOWS:

R.P. DAVIS - DIRECT EXAMINATION BY MR. DOWTIN

749

1 CLERK OF COURT: Once you're seated, state your full
2 name on the record.

3 WITNESS: Name is Rana, R-a-n-a. Peri, P-e-r-i.
4 Davis, D-a-v-i-s.

5 DIRECT EXAMINATION BY MR. DOWTIN:

6 Q. All right, and, Ms. Davis, I don't mean any
7 disrespect, but I'm going to refer to you as Rana because
8 we've had several Ms. Davises referenced, and for the sake
9 of the record and the court reporter, I'm just going to
10 refer to you as Rana if that's okay.

11 A. That's fine.

12 Q. Rana, where are you currently living?

13 A. Columbia, South Carolina.

14 Q. And how long have you lived there?

15 A. Since 1988.

16 Q. And what's your occupation?

17 A. Patient advocate for a nonprofit.

18 Q. And, Rana, do you know Shellie Davis?

19 A. I do.

20 Q. How do you know her?

21 A. We used to work together as real estate agents and we
22 became personal friends.

23 Q. Do you recall exactly when y'all first met?

24 A. I believe it was 2004 at Coldwell Banker.

25 Q. And during that time y'all got to know each, how often

1 would you talk with Shellie?

2 A. Probably during that time about every day.

3 Q. And during that time, did she ever talk with you about
4 her marriage?

5 A. Yes.

6 Q. Were you aware of any marital problems they were
7 having?

8 A. Yes.

9 Q. Did you ever help Shellie with the marital problems
10 she was having?

11 A. Yes. A couple of occasions, she came and stayed at my
12 home just because she was just very distraught. I
13 connected her with the pastor of our church because there
14 were a couple times she was contemplating suicide, and it
15 was just way above me, and we would talk often. I took her
16 to the dentist once and stayed with her all day because she
17 had nobody, and went to her house and took care of her
18 children. Opened up my home to her. Like I said she came,
19 at least stayed two weekends I know. You know, she was,
20 she was just broken.

21 Q. And, Rana, during your friendship with Shellie, as it
22 progressed, did you notice any changes in Shellie?

23 A. Yes. When we first started off as real estate agents,
24 she was very bubbly. I always remember she had beautiful
25 white teeth. Very helpful because I was new in the

R.P. DAVIS - DIRECT EXAMINATION BY MR. DOWTIN

751

1 business, and I think she was there before I was. And as
2 things progressed, as we got to know one another, we
3 switched offices and she would call me often.

4 Like I said just broken. I don't know any other way
5 to say it but hopeless, depressed, and that's why a lot of
6 time, you know, I got the pastor to come in, and it was
7 like nothing I could say or help her with that made her
8 feel like she could make a difference or that things would
9 be better. She just felt like it was a hopeless situation,
10 but she did all she could, I believe, to make it work.

11 She told me, you know, that she was just going to stay
12 and -- because that's what she chose to do, and I -- she
13 was controlled, and there was not a lot of things she could
14 do. When she came to my home, it was very late at night,
15 and she was concerned that I would be involved, but I felt
16 like I had to help if I could, but...

17 MR. DOWTIN: Okay. Thank you very much, Rana. I have
18 no further questions. Please answer any questions the
19 state may have.

20 MR. RIDDLE: No questions.

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

22 (THE WITNESS EXITS THE STAND.)

23 THE COURT: You may call your next witness.

24 MS. ZMROCZEK: Thank you, Your Honor. We call Nina
25 Pineda.

N. PINEDA - DIRECT EXAMINATION BY MS. ZMROCZEK

752

1 May she be excused, Your Honor?

2 THE COURT: Yes.

3 NINA PINEDA, BEING DULY SWORN,
4 TESTIFIES AS FOLLOWS:

5 CLERK OF COURT: Once you're seated, state your full
6 name, spelling your last for the record, please.

7 WITNESS: My name's Nina Pineda, N-i-n-a P-i-n-e-d-a.

8 DIRECT EXAMINATION BY MS. ZMROCZEK:

9 Q. Ms. Pineda, will you tell the jury where you work?

10 A. I currently work at the Keswick Apartments.

11 Q. Have you always worked there?

12 A. I have not.

13 Q. Where were you working in 2010?

14 A. I was working at Quail Hollow Apartments.

15 Q. What was your job title at Quail Hollow Apartments?

16 A. I was the community manager.

17 Q. What were your job duties?

18 A. Running the daily ins and outs of the property,
19 maintenance, lease negotiations, overlooking employee
20 personnel, rent collections.

21 Q. Did you deal with the residents? Did you have a lot
22 of interaction with the resident?

23 A. I did. It was a smaller community.

24 Q. I'm going to show you what's in evidence as State's
25 Exhibit 10. Do you recognize that?

N. PINEDA - DIRECT EXAMINATION BY MS. ZMROCZEK

753

1 A. I do.

2 Q. What is that?

3 A. That's building G, one of our buildings at Quail
4 Hollow.

5 Q. And, and do you know who lived in building G in
6 apartment G8 in 2010?

7 A. I do.

8 Q. Who was that?

9 A. Charley Rice.

10 Q. How did you know Charley Rice?

11 A. I first met Charley when I was new there because he
12 would come in when he was late on payments. He did
13 communicate that he was going to be late, when he was going
14 to pay. That's how I first met him.

15 Q. Did you know anyone else that lived in that apartment?

16 A. In the beginning, I believe it was a brother that
17 lived with him.

18 Q. Did you even know Jermaine Davis?

19 A. I did meet him later on, yes.

20 Q. What did you know about Jermaine living in that
21 apartment?

22 A. We did not know until later on that he was possibly
23 there. We learned -- I guess I should back up. We were
24 seeing a new car hanging around the property for a while.
25 It's a small community, but I wasn't aware of who it

1 belonged to. And one day this particular car drove up
2 which was a black Denali, came in and tried to put in a
3 work order, and we cannot take work orders unless the
4 person's on the lease. So, we asked if he was living there
5 and he said no, he wasn't living there. It was just -- you
6 know, he was visiting. So, we couldn't take the work order
7 from him. So, that's actually how we started talking to
8 Jermaine.

9 Q. Do you recall September 22, 2010?

10 A. I do.

11 Q. Tell the jury why you recall that day.

12 A. On that day in the latter part of the afternoon,
13 almost evening, Charley Rice did come to the office.
14 Clearly looked affected. White, obviously scared. I'm not
15 sure if the correct words were he killed himself or he was
16 shot, speaking of someone that was with him, but he said
17 that someone was in his apartment. He needed help and he
18 needed to use our phone -- his cell phone was dead
19 apparently -- to call 911.

20 Q. He called 911. What happened next?

21 A. We let him use our phone. He went outside in front of
22 the office. It was a wireless phone. There are storefront
23 windows in front of the office. He was pacing back and
24 forth, and he did call 911 that I'm aware of.

25 Q. Did you speak with any of the police or any of the EMS

N. PINEDA - DIRECT EXAMINATION BY MS. ZMROCZEK

755

1 that day?

2 A. If I did, I wasn't necessarily interviewed or I don't
3 believe part of the police report. I don't -- if I spoke,
4 it was just in passing or maybe us asking them a question.

5 Q. As part of your duties when you worked there, did you
6 also live there?

7 A. I did live there, yes.

8 Q. Did you live in a two bedroom or a three-bedroom
9 apartment?

10 A. I lived in a three-bedroom apartment.

11 Q. Was this the similar layout to the three-bedroom
12 apartments? Were they all the same or were they different?

13 A. The reason they'd be different, if they were flip
14 flopped on the other sides. So, they're all the same.

15 Q. Did you have roommates where you lived?

16 A. I did at one point, yes.

17 Q. Okay. Tell, tell the jury about what you can hear and
18 what you can't hear in these, in these apartments.

19 A. You can hear everything. They are older apartments.
20 They were built, I believe, in the '70s. When I started
21 working there, they were roughly forty years old. You
22 could hear your neighbors if they talked too loud. The
23 front doors were made of a really heavy metal, so unless
24 you closed it yourself lightly, if you just walked out, it
25 would slam shut.

N. PINEDA - DIRECT EXAMINATION BY MS. ZMROCZEK

756

1 I could hear my, my neighbors. For example, if my
2 master bedroom shared a wall with their master bedroom, if
3 they were talking loud enough, I could hear their
4 conversation, among other things. So, I mean, you could --
5 they're older apartments, so you can hear. They're not
6 well insulated.

7 Q. Okay. Did you ever see Shellie Davis or her children
8 at the apartment?

9 A. No, ma'am.

10 Q. Okay.

11 MS. ZMROCZEK: Those are all the questions I have.
12 Please answer any questions the state may have.

13 MR. RIDDLE: No questions.

14 THE COURT: Thank you very much, ma'am. You are free
15 to go.

16 (THE WITNESS EXITS THE STAND.)

17 THE COURT: You may call your next witness.

18 MR. DOWTIN: Your Honor, we call Mr. Eddie Wilder.

19 ROBERT E. WILDER, JR., BEING DULY
20 SWORN, TESTIFIES AS FOLLOWS:

21 CLERK OF COURT: Once you're seated, state your full
22 name, spelling your last for the record.

23 WITNESS: Okay. Robert Edgar Wilder, Jr. Wilder,
24 W-i-l-d-e-r, and I go by Eddie.

25 DIRECT EXAMINATION BY MR. DOWTIN:

R. WILDER - DIRECT EXAMINATION BY MR. DOWTIN

757

1 Q. Mr. Wilder, where are you from?

2 A. Chapin, South Carolina.

3 Q. And have you been in the state of South Carolina
4 pretty much your whole life?

5 A. Entire life, yes, sir.

6 Q. And what do you do for a living?

7 A. I own ERA Wilder Realty.

8 Q. And do you know Shellie Davis?

9 A. Yes, sir.

10 Q. And how do you know Shellie?

11 A. Shellie worked for our company for approximately five
12 years. Until the very last -- until probably the end of --
13 the first four years she was with our company, we had a
14 manager by the name of Colie Tyson who managed her, and he
15 was very particular about who worked in his office. He has
16 been in the business probably thirty-five years. He was
17 very conscientious, and Shellie was one of his shining
18 stars over there.

19 Q. So during the time she worked with you, did you get to
20 know Shellie?

21 A. Very well.

22 Q. And how would you describe her as a worker?

23 A. The first word I'd have to describe Shellie would be
24 kind. Second one would probably be loving. Third one
25 would be giving. We have is a very collaborative company,

1 and we've grown at a very fast pace, and we had -- at the
2 period of time, we probably had somewhere in the
3 neighborhood of about 300 real estate agents that worked
4 for our company. So, it would not be hard for me not to
5 know somebody, but as someone mentioned earlier, she had
6 this smile that was contagious, and she had this attitude
7 that kind of matched that. And everything that we had in
8 training, everything that we had in our company she was
9 always a part of and had a very wonderful spirit as far as
10 that.

11 I also got the chance to manage her when this -- and
12 when the incident occurred, I was actually -- the manager
13 who managed her at the period of time had some major heart
14 problems and had to retire. So, I had taken over that
15 office.

16 Q. And do you remember speaking with her on the morning
17 of September 22, 2010?

18 A. Yes, sir, very well.

19 Q. And ---

20 A. I'll never forget it.

21 Q. Do you recall what her demeanor was like that morning?

22 A. I, I walked in the front door. I was the second
23 person in the building. She was sitting on the sofa. I
24 believe I was the second person in the building. She was
25 sitting on the sofa, and she said can I see you for a

R. WILDER - DIRECT EXAMINATION BY MR. DOWTIN

759

1 minute. She walked into my office, and she looked a little
2 bit sad and said I need to talk to you. When I usually
3 hear that, that's when someone tells me that they're no
4 longer going to be with my company. So, I kind of have an
5 idea that there's a change in their life, and she looked at
6 me and she -- I said are you going to take a full-time job
7 somewhere, and she goes yes. And, and I sat down and I
8 said you know I care about you. I said we'll let you go in
9 our referral company. We went through a little discussion
10 of how our procedures kind of, kind of work. She got up
11 and hugged my neck. She told me she loved me; I told her I
12 loved her. She walked out the door, and that was the last
13 time I saw her.

14 MR. DOWTIN: All right. Thank you, Mr. Wilder.
15 Please answer any questions the state may have.

16 MR. RIDDLE: No questions.

17 THE COURT: Thank you, sir. You may step down.

18 MR. DOWTIN: Your Honor, may, may Mr. Wilder please be
19 excused?

20 THE COURT: Yes. Absolutely.

21 Thank you, sir.

22 (THE WITNESS EXITS THE STAND.)

23 THE COURT: Yes, sir.

24 MR. DOWTIN: Your Honor, we call Kenyatta Terry-Allen
25 at this time.

K. TERRY-ALLEN - DIRECT EXAMINATION BY MR. DOWTIN

760

1 THE COURT: All right, ma'am, if you'd please come
2 around this way.

3 KENYATTA TERRY-ALLEN, BEING DULY
4 SWORN, TESTIFIES AS FOLLOWS:

5 CLERK OF COURT: Once you're seated, state your full
6 name, spelling your last, please.

7 WITNESS: Full name Kenyatta Terry-Allen, T-e-r-r-y
8 hyphen A-l-l-e-n.

9 DIRECT EXAMINATION BY MR. DOWTIN:

10 Q. Ms. Terry-Allen, where are you from?

11 A. Silver Spring, Maryland.

12 Q. And how long have you lived there?

13 A. All my life.

14 Q. And what do you do for a living?

15 A. Property management.

16 Q. And how do you know Ms. Shellie Davis?

17 A. That's my cousin.

18 Q. Are you and Shellie fairly close?

19 A. I would say so.

20 Q. Without saying what she said, did Shellie ever talk
21 with you about her marriage?

22 A. Not at all.

23 Q. Did you ever see any bruises on Shellie?

24 A. First I've seen bruises on her was March 19th when she
25 came home for our grandmother's homegoing service.

K. TERRY-ALLEN - DIRECT EXAMINATION BY MR. DOWTIN

761

1 Q. And you recall where the bruises were on Shellie?

2 A. They were actually on her leg.

3 Q. Ms. Terry-Allen, I'm about to show you what's been
4 marked as State's or State's -- excuse me, Defendant's
5 Exhibit 64 and 65. Do you recognize these?

6 A. I do.

7 Q. What are they?

8 A. Bruises that was on her leg, pictures that I had
9 taken.

10 Q. You -- who took the pictures?

11 A. I took those pictures.

12 Q. And do you know where they were taken?

13 A. At my home.

14 Q. And do you know when they were taken?

15 A. March 19, 2010.

16 MR. DOWTIN: Your Honor, at this time I'd like to
17 submit Defendant's Exhibit 64 and 65 into evidence.

18 MR. RIDDLE: No objection.

19 THE COURT: Without objection, they're in evidence.

20 (PHOTOGRAPH MARKED INTO EVIDENCE AS DEFENDANT'S
21 EXHIBIT NUMBER 64.)

22 (PHOTOGRAPH MARKED INTO EVIDENCE AS DEFENDANT'S
23 EXHIBIT NUMBER 65.)

24 BY MR. DOWTIN:

25 Q. Did you ask Shellie about these bruises?

1 A. I did.

2 Q. And when you spoke with Shellie about these bruises,
3 what did she tell you?

4 A. She had told me the night ---

5 MR. RIDDLE: Objection to the hearsay, Your Honor.
6 Objection to hearsay.

7 MR. DOWTIN: Your Honor, I believe it's the same issue
8 we had earlier under 803.

9 THE COURT: Overruled under 803.

10 BY MR. DOWTIN:

11 Q. And if you would continue.

12 A. She had told me the night before she had come up to
13 our grandmother's homegoing service that her and Jermaine
14 had had an altercation.

15 Q. What did she say about the altercation?

16 A. Basically she said in the midst of the altercation, he
17 had threw her across the bed and he actually was choking
18 her that night, and she had went out. She said almost lost
19 consciousness, and that was the nature of it, and that's
20 how she got the bruises.

21 Q. Okay, and when Shellie told you about the bruises,
22 what did you, what did you say to her?

23 A. I basically told her it's time to come home; she needs
24 to come home.

25 Q. I just have one last question. Do you know what eat

N. PINEDA - DIRECT EXAM / T. CROCKER - DIRECT EXAM

763

1 the cake Anna May means?

2 A. Eat the cake Anna May, basically in urban terms, in
3 African-American terms we look at it as -- excuse my French
4 -- I'm going to beat your ass. That's how they look at it
5 when someone says eat the cake Anna May in those terms.

6 MR. DOWTIN: I have no further questions. Please
7 answer any questions the state may have.

8 MR. RIDDLE: I don't have any questions, Your Honor.

9 THE COURT: All right, thank you very much. You may
10 step down.

11 MR. DOWTIN: Your Honor, may she be excused?

12 THE COURT: Absolutely.

13 MR. DOWTIN: Thank you.

14 THE COURT: Free to go.

15 (THE WITNESS EXITS THE STAND.)

16 MS. ZMROCZEK: Your Honor, defense calls Tracee
17 Crocker.

18 TRACEE CROCKER, BEING DULY SWORN,
19 TESTIFIES AS FOLLOWS:

20 CLERK OF COURT: Once you're seated, state your full
21 name for the record, spelling your last.

22 WITNESS: Tracee Crocker. Last name C-r-o-c-k-e-r.

23 DIRECT EXAMINATION BY MS. ZMROCZEK:

24 Q. Ms. Crocker, where do you work?

25 A. I currently work at BB&T.

1 Q. How do you know Shellie Davis?

2 A. I am a mortgage loan officer and Shellie, at the time
3 that I met her, she was a real estate agent at Coldwell
4 Banker.

5 Q. How long have you known her?

6 A. I guess 2003, somewhere between 2003, 2005, somewhere
7 between.

8 Q. Do you know Jermaine Davis?

9 A. I...

10 Q. Did you know Jermaine Davis?

11 A. I know him.

12 Q. How, how did you come to know Jermaine?

13 A. Through Shellie.

14 Q. Did you ever see them interact?

15 A. Yes. They came to my birthday party; they were
16 together there.

17 Q. Did you ever talk to Shellie about problems that she
18 was having?

19 A. Yes.

20 Q. What were those conversations?

21 A. Just Jermaine leaving, moving out, cheating. I mean,
22 we talked about a little bit of everything. The kids.

23 Q. In May, in May, around May of 2010, did you ever give
24 her any advice?

25 A. Yes.

T. CROCKER - DIRECT EXAMINATION BY MS. ZMROCZEK

765

1 Q. What was that advice?

2 A. I advised her to seek an attorney, a divorce attorney
3 who was a friend of mine and, and -- so that she could get
4 some help for finances and so forth.

5 Q. Tracee, do you -- what's your cell phone number?

6 A. 803-665-██████.

7 Q. You haven't been here all week. Cell phone records,
8 it's been called -- you were the very first person that,
9 that Shellie Davis called, according to these phone
10 records, after she left Jermaine's house September 22,
11 2010. Did you speak with her that morning?

12 A. I did.

13 Q. Do you recall what that conversation was about?

14 A. Yes. It was, it was in reference to -- she told me
15 something about the person that Jermaine worked for, which
16 was Lance. That -- but she didn't tell me. It was about a
17 woman that Lance was obviously seeing at the time, so.

18 Q. Okay. Was she upset?

19 A. Yes.

20 Q. Why was she upset?

21 A. Because they had gotten into an argument.

22 Q. Did you speak with her later on that day?

23 A. Yes, I did.

24 Q. What was her demeanor on those conversations?

25 A. She was -- she still sounded upset, but we just, we

1 just talked. I mean, I, I probably did a lot of the
2 talking, but we talked, and just trying to smooth things
3 over. I just wanted to make sure she was okay when I
4 talked to her later on that day.

5 Q. Did you know of any physical abuse in the, in the
6 relationship?

7 A. I did not.

8 Q. Did you know of any emotional abuse in the
9 relationship?

10 A. I did.

11 Q. Tell the jury about what you knew about that.

12 A. We were together one time. I think I cut her hair,
13 and she was -- they were getting back together. They were
14 discussing it. She had text messages where he had
15 discussed getting back together. We were at my house and
16 probably thirty minutes into it, he sent her a text message
17 saying he changed his mind and wanted to get a divorce and
18 -- or he couldn't do it anymore, and at that point she, she
19 was hysterical. She was upset.

20 Q. And was that a recent conversation, or was that
21 something that had happened in the past?

22 A. I'm sorry?

23 Q. This wasn't in September. This was ---

24 A. No. This was -- yeah.

25 Q. Okay.

T. CROCKER - DIRECT EXAMINATION BY MS. ZMROCZEK

767

1 A. This was way back.

2 Q. Way back?

3 A. Yeah. It wasn't, it wasn't in September, no.

4 Q. Right. Did anyone -- when was the first time anyone
5 came to speak to you about this case?

6 A. This year. I'm sorry. I'm sorry. I take that back.
7 September, October of last year.

8 Q. And with whom did you speak?

9 A. Mr. Wilson, Kevin Wilson and another detective,
10 investigator. I can't remember his name.

11 Q. Okay, and did they ask you about the conversations
12 that day?

13 A. Yes.

14 Q. Were you actually under subpoena to be here for trial?

15 A. Yes.

16 Q. Knowing Shellie as you have for the long time, did you
17 find her behavior normal on September 22, 2010?

18 A. Normal? She would ---

19 Q. How would you describe it?

20 A. Yeah. She -- it was a normal day of being upset.
21 Whenever Shellie and I talked, it was pretty much about
22 Jermaine, something that had happened. So, yeah, I was
23 used to her being upset, and we stayed on the phone a lot.
24 We talked a lot, you know, making sure that, you know, she
25 was okay. So, it was -- it didn't seem like a different

1 day for me.

2 Q. Did she ever in all of those times that you talked
3 about Jermaine, did she ever say she wished he were dead?

4 A. No.

5 Q. In fact, what did she always say?

6 A. She loved him. She wanted her marriage to work.

7 MS. ZMROCZEK: Please answer any questions the state
8 has.

9 WITNESS: Thank you.

10 MR. RIDDLE: No questions.

11 THE COURT: Thank you, ma'am. You may step down, and
12 you're free to go.

13 (THE WITNESS EXITS THE STAND.)

14 MS. ZMROCZEK: Call Enola Thornton.

15 ENOLA THORNTON, BEING DULY SWORN,

16 TESTIFIES AS FOLLOWS:

17 CLERK OF COURT: Once you're seated, state your full
18 name, spelling your last for the record, please.

19 WITNESS: Enola Thornton, T-h-o-r-n-t-o-n.

20 DIRECT EXAMINATION BY MS. ZMROCZEK:

21 Q. Ms. Thornton, please tell the jury where you work.

22 A. I, I currently work for South Carolina Real Estate
23 Exchange.

24 Q. How do you know Shellie Davis?

25 A. Shellie and I were business partners at ERA Wilder

E. THORNTON - DIRECT EXAMINATION BY MS. ZMROCZEK

769

1 Real Estate.

2 Q. Explain what that means.

3 A. We were both independent contractors, but we actually
4 combined our business and worked together, which started
5 out at the Belleclave subdivision.

6 Q. How closely did you work with Shellie?

7 A. Shellie and I had contact daily, every day, six, seven
8 days a week.

9 Q. Did you know Jermaine?

10 A. I knew Jermaine, yes.

11 Q. How did you know Jermaine?

12 A. I knew Jermaine through Shellie.

13 Q. Did you ever see Jermaine show up at work?

14 A. Yes.

15 Q. When was that?

16 A. Usually when we were getting paid on closing days.

17 Q. Did you ever know the children?

18 A. I did.

19 Q. What did you, what did you know about the children?

20 A. They were very, very well behaved. I remember the
21 first time I saw them, I walked in the office and the five
22 of them were lined up on the couch and I was, like, whose
23 kids are those acting so great, you know. But they were
24 very well behaved.

25 Q. Did you ever go to, did you ever go to Shellie and

1 Jermaine's house?

2 A. I've been to Shellie's house twice. I don't think
3 I've ever been inside, though.

4 Q. Have they ever been to your house?

5 A. Shellie has.

6 Q. Enola, did you speak with Shellie that day on
7 September 22, 2010?

8 A. I did.

9 Q. The jury's going to have the phone records, and is it
10 common throughout the phone records to see your number over
11 and over?

12 A. Yes.

13 Q. Not just that day?

14 A. Yes.

15 Q. Tell the jury why y'all spoke on the phone so much.

16 A. Well, we started every day off on the phone, kind of
17 planning our day, what needed to be done for that day. You
18 know, seeing, you know, if we were going to talk to this
19 client or what houses needed flyers. We talked about
20 business daily.

21 Q. What was different about this day?

22 A. When Shellie called me, it was actually a little later
23 than it usually was when we talk, but she was very upset.
24 She was crying; she was distraught. I could tell it over
25 the phone. She was crying, so I could hardly understand

1 what she was saying.

2 Q. Did you speak with her or anybody else later on that
3 day?

4 A. I spoke to Shellie off and on. We played phone tag a
5 lot that day. I talked to her, I think, two, three times
6 that day.

7 I had messages Janice from the office trying to locate
8 Shellie that day, but I didn't pick up because I personally
9 thought Janice was being nosy, so I would not pick the
10 phone up.

11 Q. And did you speak with her -- or did the phone ring
12 later on that evening?

13 A. It did.

14 Q. Tell the jury about that.

15 A. I, I had gone home for today. My husband and my son
16 were home, but I went out the back gate of my yard to my
17 neighbor's. I had my cell phone with me and about, I guess
18 about 8:20 that night the phone rang, and the call was from
19 Shellie's phone, but on the other end was a gentleman and
20 he was going to tell me -- he wanted me to contact
21 Shellie's family because she had been hurt.

22 At that time, the gentleman told me she fell off of
23 something and she burst her head. My comment to him was,
24 you know, I don't know how to get in touch with Jermaine
25 because I knew he wasn't living at the house anymore. So,

1 I drove my neighbor's car that night; my neighbor rode with
2 me. My husband didn't even know I had left the community,
3 but I drove my neighbor's car over to the Highlands to
4 Shellie's over on Algrave.

5 When I got there, there was CSI, police all over the
6 place. I pulled in the driveway. I recognized Jermaine's
7 sister sitting on the stairs. The children where all out
8 in the yard playing. So, I went directly to Jermaine's
9 sister. Shellie's children ran up to me and hugged me. I
10 hugged them back, but I tried to walk away with Jermaine's
11 sister so they wouldn't hear what I was saying about
12 Shellie. And I proceeded to tell Jermaine's sister that
13 someone to called me and said that Shellie was hurt. And
14 by the time that conversation was over, the police were all
15 over me, and that's where we were.

16 Q. Enola, had you ever known Shellie to want to hurt
17 herself before?

18 A. Yes.

19 Q. Did you ever try to help her through any of that?

20 A. I did. There was an occasion not too far from the
21 September 2010 incident where Shellie and I started off
22 talking about business that morning, and she was just
23 talking just out of her head, talking about herself, and I
24 was concerned. I went to her house and I banged on the
25 door, and she would not open the door. So as Mr. Wilder

E. THORNTON - DIRECT EXAMINATION BY MS. ZMROCZEK

773

1 said, at that time we had a broker who was very involved
2 our lives, Mr. Colie Tyson, and I went directly to Colie
3 and I told him, you know, what my fears were and that she
4 wouldn't answer the phone and she wouldn't answer the door.
5 And so Colie actually went to [REDACTED] Algrave and got Shellie
6 out of the house that day.

7 Q. Enola, in times you spoke with Shellie six to seven
8 days a week multiple times a day, did she ever tell you she
9 wanted to hurt Jermaine?

10 A. No.

11 Q. Did she ever tell you she wanted to leave Jermaine?

12 A. No.

13 Q. Did she ever tell you that -- if she couldn't have
14 Jermaine, that nobody could?

15 A. No. She loved Jermaine.

16 MS. ZMROCZEK: Beg the court's indulgence.

17 Q. Ms. Thornton, have you spoken with anyone in the
18 prosecution about this case?

19 A. I have.

20 Q. Did you receive a subpoena to come to court?

21 A. I did.

22 Q. What did you tell the prosecution that you knew about
23 this case?

24 A. The night that I went over to Algrave, I, I was asked
25 by -- I think his name is Mr. Derrenbacher to, to write a

1 statement because I had times in my phone that day which I
2 talked to Shellie. At first I didn't want to write the
3 statement because my husband didn't even know where I was,
4 you know? I actually am supposed to be at the neighbor's
5 house, but he told me he wanted me to write it while it was
6 fresh in my mind. So, I right there on the back of the
7 police car, I went through my phone and I recorded the
8 times, which are the times in my statement, and that's why
9 those times are so specific because they came directly out
10 of my phone. And the same thing I'm telling you all here
11 today is what I told the prosecution.

12 MS. ZMROCZEK: Please answer any questions the state
13 may have for you.

14 MR. RIDDLE: No questions.

15 THE COURT: Thank you very much, ma'am. You may step
16 down.

17 (THE WITNESS EXITS THE STAND.)

18 THE COURT: Your Honor, we call Naeka Collins to the
19 stand.

20 THE COURT: All right. Please come around.

21 NAEKA COLLINS, BEING DULY SWORN,
22 TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: Once you're seated, state your full
24 name, spelling your last for the record, please.

25 WITNESS: Naeka Latrice Collins, C-o-l-l-i-n-s.

N. COLLINS - DIRECT EXAMINATION BY MS. ZMROCZEK

775

1 DIRECT EXAMINATION BY MS. ZMROCZEK:

2 Q. Ms. Collins, where do you live?

3 A. Charlotte, North Carolina.

4 Q. How long have you lived there?

5 A. Six years in July.

6 Q. Do you know Shellie Davis?

7 A. Yes.

8 Q. How long have you known Shellie Davis?

9 A. Thirty years.

10 Q. A good portion of your life?

11 A. Yes.

12 Q. How would you describe your friendship with Shellie?

13 A. We were best friends from eleven years old until about
14 eighteen, nineteen when -- you know, after high school and
15 families. You know, we just kind of grew -- we didn't grow
16 apart, but we just started doing different things, but we
17 were best friends for a long time.

18 Q. Did you speak to her often?

19 A. Once we were in our twenties, it was every few months
20 or so, but from eleven to twenty we were talking every day.
21 We were inseparable.

22 Q. When -- as you got older, did you come to know her
23 family?

24 A. Yes.

25 Q. Can you tell the jury what you observed about the

1 relationship with her family?

2 A. She loved her family; her life was her kids and her
3 marriage. That's all she talked about. Whenever we
4 talked, it was always what Jermaine was doing, what the
5 kids were doing. She was a sports mom. So, if they were
6 doing soccer or cheerleading or football, she was always
7 there. She was very involved in school outings or field
8 trips or whatever the case may be. She was always about
9 family.

10 Q. Naeka, do you recall September 22, 2010?

11 A. Yes.

12 Q. Tell the jury what happened on that day.

13 A. That day in the afternoon around maybe 1, 1 or 1:30, I
14 received a phone call from Shellie on my cell phone, and it
15 was a surprise because I hadn't talked to her in a couple
16 months, and she said hey, Naeka. I'm on my way to
17 Charlotte. I'm coming to see you, and I said okay. You
18 know, I thought maybe something special was going on, and
19 she said no. I'm just coming to see you. So, I said okay.
20 Well, you know, I'm at work right now, but you could come
21 to my job, and then we can go, you know, home from there
22 because I was, I was getting off work around 3:00.

23 And so I gave her the directions. She got to my job,
24 called me, and I went down to the lobby to see her. And
25 when I saw her, I was taken aback because she was extremely

1 skinny, almost skeletal, and her hair was not normally like
2 she would normally do, but she smiled at me like normal.

3 We hugged; we embraced. We walked around the corner
4 so we could have some private time to talk, and she just
5 began to cry and let me know everything that was going on
6 with her at that time, which was she was upset about the
7 way her marriage was turning out. It wasn't going the way
8 she expected it to go. Jermaine was abusive, and this was
9 all the first time I heard this. So, she was just going in
10 about what was going on about Jermaine.

11 So, we talked for about thirty minutes. I had to get
12 back to my desk. I did. When I got off work, she met me
13 around the corner. We picked up my kids from school. Went
14 home. She changed her clothes and got, you know, cleaned
15 up, freshened up. We sat on the sofa for a little while
16 and we, you know, just went back through and talking. And
17 because I had not heard this before, I was asking
18 everything. What happened, what was going on, what did he
19 do, why are you still there, all of those kinds of
20 questions.

21 I knew -- I am -- we know each other from church. I'm
22 a very religious person. I pray. I knew I needed help in
23 praying with her and praying for her. My mom was in town.
24 I called another friend of mine, and we went to my
25 brother's house, who happened to be out of town, and I told

1 my mom and my friend we need to pray for Shellie because
2 she's in a really bad spot and really bad place. So,
3 that's what we did. We went over.

4 But even in talking to Shellie, I mean, the whole time
5 I was just letting her know she could move to Charlotte.
6 She doesn't have to stay in South Carolina. She doesn't
7 have to be in a -- in an abusive relationship. We love
8 you. The kids will be great at this church. I have
9 schools. I have an apartment. We can do whatever you need
10 to do, you know, to get you healthy and whole again and
11 that's -- that was the purpose for going and praying with
12 her and praying for her.

13 So, we got to the house. We ate spaghetti. She saw
14 my mom. You know, we talked a little bit, and then I told
15 her it was time for us to pray and really do what we came
16 there to do. Shellie got really antsy. She couldn't sit
17 still. She was uncomfortable, noticeably uncomfortable,
18 and she went into the bathroom. She came out and then she
19 walked out the door. She just left out of the door, and I
20 didn't know what was going on. I didn't know why she left.

21 It made me angry because I thought I'm trying to help
22 you and you leaving. And so I went out. I waited about
23 five minutes. I went outside thinking she was just cooling
24 off, and I didn't see her. She was gone. I didn't know
25 where she went and she didn't -- she drove with me. I'm

N. COLLINS - DIRECT EXAMINATION BY MS. ZMROCZEK

779

1 sorry. So, when we went to my brother's house, she was in
2 the car with me.

3 I went back in the house, waited a little while.
4 Decided that it was time for me to leave, and I told my mom
5 if Shellie comes back, call me. I'll come back and get
6 her, and then my cell phone rings and it was Shellie, and
7 when I answered the phone, she said Naeka. And I said
8 Shellie, where are you, but she couldn't talk. She said
9 I la da, like she couldn't form a sentence. And so I hung
10 up the phone and called back, and she didn't call -- she
11 didn't answer, but then my phone rang again and it was
12 Shellie again, and she said Naeka, and I said Shellie,
13 where are you. I thought maybe she had gotten hit by a car
14 because there is construction around where my brother lived
15 at that time. I thought maybe she got hit by a car; she
16 was on the side of the road. So, I said Mom, I'm going to
17 get Shellie. She's somewhere, so I'm going to drive slow.

18 By this time it's getting dark outside, and as I'm
19 driving down the road, I see a woman walking towards me,
20 and when she got in my headlights, I realized that it was
21 Shellie.

22 Her, her hair was splayed open, and there was debris
23 in her hair and there was blood everywhere: down the side
24 of her face and down her arm and on her clothes. I just
25 screamed because I didn't, I didn't know what to do. I

1 didn't know what was going on. I didn't know what happened
2 to her.

3 And I called my husband. My husband happened to come
4 over to the house and he had just left. I called my
5 husband. I said honey, I need you to get back here.
6 Something happened to Shellie, and I thought she stabbed
7 herself because there was so much debris in her hair, and
8 it was sticking out and, like I said, it was dark. And
9 then I later found out that it was a gunshot wound.

10 So, we called the ambulance. My husband came. We sat
11 her down, and she kept crying and said my head hurts, my
12 head hurts, my head hurts. And then the ambulance came,
13 and we told the story I don't know how many times of what
14 was happening, what was going on, you know, and then
15 finally they took her away. The ambulance took her away,
16 and I tried to go to the hospital with her, but they
17 wouldn't let me.

18 And we talked to the police and talked to the police,
19 and they held us there in that -- in my brother's
20 neighborhood. And so South Carolina police came, and we
21 have to give our story to them and then after that, I was
22 able to leave.

23 Q. Naeka, when you were having dinner and the whole time
24 that Shellie was there, was her phone ringing at that
25 point? Did, did she ---

N. COLLINS - DIRECT EXAMINATION BY MS. ZMROCZEK

781

1 A. No.

2 Q. --- ever answer her phone?

3 A. No.

4 Q. She -- did you ever hear the phone ringing and her
5 just not pick it up?

6 A. No. The phone did not ring. She was not on her phone
7 at all.

8 Q. And you say she got there in the late afternoon?
9 About what time?

10 A. She got to me about 2:00 because we talked until 2:30
11 and I got off work at 3. So, I needed to get back to my
12 desk. So, it was late afternoon.

13 Q. When the -- gave your statements to the police and you
14 gave them the stuff that she brought with her?

15 A. Yes.

16 Q. How did Shellie react when you told her to leave
17 Jermaine when she told you about the abuse?

18 A. She said she knew she could, but that's not what she
19 wanted to do.

20 Q. Did she ever tell you she wanted to kill Jermaine?

21 A. No.

22 Q. What, what did she ever only say about Jermaine?

23 A. She loved Jermaine and she wanted her marriage to
24 work.

25 MS. ZMROCZEK: Please answer any questions the state

1 may have.

2 CROSS-EXAMINATION BY MR. RIDDLE:

3 Q. She knew she could leave Jermaine?

4 A. She did not want to leave Jermaine.

5 Q. But she knew she could?

6 A. Yes.

7 Q. Okay. You talked to the police that night. You
8 didn't ever tell them about any kind of abuse, did you?

9 A. No, sir.

10 Q. Okay, and do you remember Investigator Wilson calling
11 you and wanting to meet with you and talk to you about this
12 case?

13 A. Yes, sir.

14 Q. But you wouldn't to that, would you?

15 A. No, sir.

16 Q. So, nobody other than Shellie's side has had a chance
17 to hear about the abuse until this very minute, correct?

18 A. I can't tell you what anybody else heard.

19 Q. But you didn't -- you wouldn't talk to Investigator
20 Wilson and the solicitor's office staff, would you?

21 A. No, I did not talk to them.

22 Q. Did she ever tell you that she had shot Jermaine that
23 day?

24 A. No, sir.

25 Q. Didn't tell you that?

N. COLLINS - REDIRECT EXAMINATION BY MS. ZMROCZEK

783

1 A. No, sir.

2 MR. RIDDLE: Thank you. That's all I have.

3 MS. ZMROCZEK: Just one question.

4 REDIRECT EXAMINATION BY MS. ZMROCZEK:

5 Q. When was the first time Investigator Wilson or anyone
6 from the prosecution's office tried to speak with you?

7 A. Maybe August last year.

8 Q. 2013?

9 A. 2013, yes.

10 Q. Are you telling this jury what you observed from
11 Shellie that evening?

12 A. Yes, ma'am.

13 MS. ZMROCZEK: No further questions.

14 THE COURT: All right, thank you very much, ma'am.
15 You may step down.

16 (THE WITNESS EXITS THE STAND.)

17 MS. ZMROCZEK: Your Honor, may we approach briefly?

18 THE COURT: I'm sorry?

19 MS. ZMROCZEK: May we approach briefly?

20 THE COURT: Yeah. Sure.

21 (OFF-THE-RECORD BENCH CONFERENCE.)

22 THE COURT: All right, ladies and gentlemen, we're
23 going to take a short break. If you need anything while
24 you're back there, let us know. Please have no
25 conversation about the case. We'll bring you back out

1 shortly.

2 (THE JURY EXITS AT 2:59 P.M.)

3 THE COURT: All right, we'll be at ease for a little
4 bit.

5 MS. ZMROCZEK: Thank you.

6 (OFF THE RECORD.)

7 (PHOTOGRAPH OF CT SCAN MARKED INTO EVIDENCE AS
8 DEFENDANT'S EXHIBIT NUMBER 51. STIPULATED TO BY COUNSEL
9 OFF THE RECORD.)

10 MR. RIDDLE: Thank you, Your Honor, for your
11 indulgence.

12 THE COURT: Yes, sir. You're welcome. Are you ready
13 now?

14 MR. RIDDLE: Yes, sir.

15 (A PAUSE.)

16 THE COURT: You ready?

17 MS. ZMROCZEK: Yes, Your Honor.

18 THE COURT: All right, let's bring the jury back in,
19 please.

20 (THE JURY ENTERS AT 3:23 P.M.)

21 THE COURT: All right, ladies and gentlemen, we'll
22 resume with the trial and recognize Ms. Zmroczek for her
23 next witness.

24 MS. ZMROCZEK: Thank you, Your Honor. May it please
25 the court? We call Dr. Donna Schwartz-Watts, please.

D. SCHWARTZ-WATTS - VOIR DIRE EXAM BY MS. ZMROCZEK

785

1 THE COURT: All right.

2 DONNA SCHWARTZ-WATTS, BEING DULY
3 SWORN, TESTIFIES AS FOLLOWS:

4 CLERK OF COURT: Have a seat, Doctor. Once you're
5 seated, state your full name, spelling your last for the
6 record.

7 WITNESS: Donna Marie Schwartz-Watts, S-c-h-w-a-r-t-z
8 hyphen W-a-t-t-s.

9 VOIR DIRE EXAMINATION BY MS. ZMROCZEK:

10 Q. Dr. Schwartz-Watts, can you tell this jury where
11 you're employed?

12 A. Well, I have two jobs. I work in Department of Mental
13 Health and my position there, I'm the director of
14 Psychiatric Service at Patrick Harris Hospital, which is
15 the in-patient psychiatric facility in Anderson, South
16 Carolina, but that's not the hat I'm wearing today. I also
17 have a private practice in forensic psychiatry.

18 Q. What is your educational background?

19 A. I went to college at Furman University, and I
20 graduated in 1985 with a Bachelor of Arts degree in
21 psychology, and then I went to medical school at the
22 University of South Carolina School of Medicine, and I
23 graduated from there in 1989 with a doctorate in medicine.
24 I'm licensed to practice medicine in South Carolina.

25 After medical school, I did a year of training in

1 general psychiatry at the Department of Mental Health here
2 in Columbia, South Carolina, and then I completed another
3 year of training in forensic psychiatry, which is a
4 subspecialty of psychiatry, and I finished that in 1993 --
5 '94. After that, I worked at Department of Mental Health
6 for, I think, two or three years, and then I went to the
7 University of South Carolina medical school. I worked
8 there for seventeen years, and approximately four or five
9 years ago I left and went back to Mental Health and have
10 been working as in in-patient physician since then.

11 MS. ZMROCZEK: Your Honor, at this time we would move
12 to enter Dr. Schwartz-Watts as an expert in forensic
13 psychology.

14 MR. RIDDLE: No objection.

15 THE COURT: All right, and she is so qualified.

16 DIRECT EXAMINATION BY MS. ZMROCZEK:

17 Q. Dr. Schwartz-Watts, were you retained by me to examine
18 and evaluate Ms. Shellie Davis?

19 A. Yes.

20 Q. What did you use in assisting, in assist -- in
21 assisting yourself? How, how were you assisted in
22 preparing for her evaluation?

23 A. Well, I had previously been prescribed -- provided the
24 discovery in her case, and what the discovery is it's the
25 incident reports, it's the witness statements that were

D. SCHWARTZ-WATTS - DIRECT EXAMINATION BY MS. ZMROCZEK 787

1 related to her charges, the police records, those sorts of
2 things. I also initially had -- she had gone to Carolinas
3 Hospital after she had shot herself, and I had some of the
4 records, most of the records from that hospitalization. I
5 evaluated Ms. Davis at the detention center here.

6 Afterwards I asked for some more information, the records
7 from the jail where she's been treated. And also while she
8 was in the Carolinas Hospital System, she had been seen by
9 a psychiatrist, and I asked to see those notes.

10 Q. And, Doctor, she was in Carolinas Hospital because she
11 had a self-inflicted gunshot wound. Is that correct?

12 A. Yes.

13 Q. I'm going to show you what's been entered into
14 evidence as Defendant's 51, and can you explain to the jury
15 what that depicts?

16 A. Sure. Again, keep in mind I'm a psychiatrist. I do
17 have some training in neurology, but by no means am I a
18 radiologist. It's not uncommon in my practice that I would
19 look at a scan, but certainly I, I would not be the one
20 reading or interpreting the report, but I will -- I am, I
21 am familiar that this is a CAT scan of her head. And this
22 shows a bullet fragment that's located in -- outside of her
23 brain matter. It affects it some but in between the skull
24 and the brain matter.

25 Q. Are you aware it that is still inside of her head?

D. SCHWARTZ-WATTS - DIRECT EXAMINATION BY MS. ZMROCZEK 788

1 A. Yes.

2 Q. Dr. Schwartz-Watts, was Shellie given a diagnosis?

3 A. Yes.

4 Q. What is the diagnosis?

5 A. By me or by the physicians in Charlotte?

6 Q. By the physicians in Charlotte.

7 Q. She at the, at the time that she was hospitalized, she
8 had a gunshot wound to the head. She did have some brain
9 abnormality; she has some contusions inside of her brain.
10 She was consulted by a psychiatrist almost immediately.
11 Since it was a somewhat severe attempt, she had a sitter
12 with her in her room at all times. The psychiatrist
13 diagnosed her with acute stress disorder and then -- and he
14 put depression. He did not qualify. There's different
15 names of depressions that psychiatrists use, but he just
16 diagnosed depression.

17 Q. And now that you've had a chance to look at all of her
18 records, how, how would she be -- or how would she be
19 diagnosed now?

20 A. My diagnosis of her is major depressive disorder
21 recurrent. Now, what that means is to be diagnosed with
22 the major depression, you have to have a two-week period of
23 time where you don't feel well. You're not sleeping well.
24 You may be not eating well. You lose weight. You develop
25 suicidal ideation.

D. SCHWARTZ-WATTS - DIRECT EXAMINATION BY MS. ZMROCZEK 789

1 And I based my diagnosis on her present symptoms when
2 I saw her in 2011. I also based it on the history of what
3 had been provided, and also the detention center records
4 where she was seen after this period of time. She's
5 carried that diagnosis as well.

6 Q. When reviewing the medical records that Carolina -- at
7 the Carolina hospital, did anything else jump out at you
8 with regards to her case?

9 A. Well, certainly. Again, she -- the, the -- she had
10 some brain damage, so to speak, where, because of the
11 gunshot wound to the head, she had two different kinds of
12 hematomas to the head. She had what is called a subdural
13 hematoma. Now, what -- a subdural hematoma is actually a
14 bruise inside the brain matter. She also had an epidural
15 hematoma. An epidural hematoma is a bruise on the outside
16 of the skull. It involves the bone. She had a brain
17 fracture occur, skull. That was significant. The second
18 thing that was significant, she had some findings because
19 of that. The findings that were noted is that she had some
20 left lower extremity weakness. She had some difficulties
21 in her fingers, and she had a decreased rectal tone.

22 Q. Dr. Schwartz-Watts, you have read the discovery, and
23 you are aware of her behavior on September 22, 2010. Is
24 that behavior consistent with someone who is suicidal?

25 A. Yes.

1 Q. Is it common or is it -- is that behavior consistent
2 -- is lying or not telling people where you're going
3 consistent with someone who is suicidal?

4 A. It can be.

5 Q. Are the actions of going to work and quitting your
6 job, what, what, what are those? Is, is a name given to
7 that or some sort of -- when someone has, I guess, suicidal
8 ideations or is someone that wants to commit suicide, what
9 are some common things that people can do, or the common
10 things that people so?

11 A. Well, there's different forms of planning that goes
12 into suicide. Some people when they commit suicide, it's
13 very impulsive. They might get upset and then immediately
14 do something to harm themselves. Other people plan a
15 suicide. So, it, it, it depends on the person, but it's
16 not uncommon at all to see someone that has planned a
17 suicide, they will lie to people. They will put on a good
18 front. It's very common. One of the risk factors for
19 suicide and depression is when a person first gets better
20 and they have some improvement in their symptoms. That's
21 actually when the suicide risk is the highest because they
22 had energy to carry out a plan. But it's not uncommon at
23 all for a person to plan, to quit jobs, to pay bills, to
24 say goodbye to people but not in a way that they're saying
25 goodbye, I'm going to kill myself, but to find loved ones

D. SCHWARTZ-WATTS - DIRECT EXAM / CROSS-EXAM

791

1 and have a last conversation with them. So, those
2 behaviors, some of the things she did are certainly
3 consistent with someone that would be planning a suicide.

4 Q. Now, are you aware if, if her suicide was something
5 that was new or something that she had experienced before
6 or, or expressed before?

7 A. She'd actually told me that she had had a history of
8 two prior suicide attempts, but if you look in the medical
9 records, which is why I wanted to see the psychiatrist's
10 statement from the hospital system, she -- he had -- she
11 had told him she had ten prior attempts. So, she's had a
12 history of attempts. The attempts she had described to me
13 in the past were overdosing on medications.

14 MS. ZMROCZEK: Thank you, Dr. Schwartz-Watts. Please
15 answer any questions the state has.

16 CROSS-EXAMINATION BY MR. RIDDLE:

17 Q. The doctors in Charlotte diagnosed her with acute
18 distress disorder?

19 A. Yes.

20 Q. Acute meaning what?

21 A. Acute stress disorder means that you have just very
22 recently been through a traumatic event, and it's, it's,
23 it's I don't want to say normal, Mr. Riddle, but if
24 somebody has just been through an experience, say a bad car
25 wreck or some point of trauma, it's a normal physiologic

D. SCHWARTZ-WATTS - CROSS-EXAMINATION BY MR. RIDDLE 792

1 response for the brain to have problems remembering things,
2 to maybe have some difficulty recalling events. One would
3 be very anxious. One can stand outside of him or herself,
4 and so it's, it's, it's defined by a timeline of symptoms.
5 If it were to persist, it would be called posttraumatic
6 stress disorder, but around the period of time of an event,
7 it's called acute stress disorder.

8 Q. Acute meaning recent?

9 A. Yes.

10 Q. Like killing your husband that morning?

11 A. That could be, absolutely. That could be. Just the
12 event alone could be enough to, if you had the physiologic
13 symptoms with that, could be enough to make that diagnosis.

14 Q. And that would certainly make you suicidal once you
15 get text messages and realized the cops are closing in on
16 you, right?

17 A. That could be ---

18 Q. Or ---

19 A. --- one reason.

20 Q. --- voicemails?

21 A. That could be a reason.

22 Q. Okay. Now, you indicated that you reviewed discovery
23 in this case?

24 A. Yes.

25 Q. And that's important to you, correct?

D. SCHWARTZ-WATTS - CROSS-EXAMINATION BY MR. RIDDLE

793

1 A. Yes.

2 Q. And all the police reports are important, are they
3 not?

4 A. Yes.

5 Q. And I'd like to show you some and ask you if you
6 reviewed those in making your determinations.

7 A. Thank you.

8 Q. If you can turn to tab 1. Before I get into that, did
9 you write a report in this case?

10 A. I did.

11 Q. Okay. Let me ask you about that real quick. In your
12 report, did she state to you that she had been raped by Mr.
13 Davis two days before this?

14 A. No. Her, her report to me in, in outlining some of
15 the abuses she had mentioned was that he would force her to
16 have anal sex when she didn't want to.

17 Q. When was the last time that she told you something had
18 happened to her?

19 A. In reviewing the episodes -- what I asked her was to
20 describe episodes of abuse.

21 Q. Right.

22 A. Seeing if she remembered those details, and she
23 reported that the last episode that they -- the last fight
24 that they had been in -- let me refer to my notes. Her
25 words were:

1 The last fight, he had two cell phones. He was
2 working at Blue Ribbon.

3 Q. At Blue Ribbon?

4 A. Yes.

5 Q. He wasn't even with his current job at the time?

6 A. These, these are my notes from her.

7 Q. Okay.

8 A. He was hiding one phone, acting weird. I found
9 his phone in his car. I saw text messages and
10 pictures of a girl.

11 And in parentheses black.

12 Showed it to him. He was in bed asleep. He was
13 pushing me. I was swinging back trying to get it
14 out of his hand.

15 She states her head hit the headboard of the bed, and
16 she had bruises all over her legs.

17 Q. Okay. Did she also tell you that her husband made her
18 quit real estate? I'm reading off the second page of your
19 report. It's in the second paragraph.

20 A. Thank you.

21 Q. Right under Maryland and Washington, DC, and it'll be
22 faster if I show you on mine.

23 A. I'm sorry. Oh, I, I see it. Okay. Thank you.

24 She states he wanted to pick out her friends and
25 made her quit her real estate job because he did

D. SCHWARTZ-WATTS - CROSS-EXAMINATION BY MR. RIDDLE

795

1 not like the attention she was getting.

2 Q. And she described two, two prior suicide attempts?

3 A. To me, yes.

4 Q. Okay. Now let me go back to this notebook for just a
5 minute. Did you have what's listed under tab 2 in your
6 discovery?

7 A. Yes.

8 Q. Okay, and does that indicate she had told someone that
9 if she couldn't have Jermaine, no one could?

10 A. Yes.

11 MS. ZMROCZEK: Your Honor, may we approach?

12 THE COURT: Sure.

13 (OFF-THE-RECORD BENCH CONFERENCE.)

14 THE COURT: Overruled. You may continue.

15 BY MR. RIDDLE:

16 Q. Did you also have what's listed under tab 3, Doctor?

17 A. Yes.

18 Q. Okay, and does that indicate that there was a history
19 of domestic abuse against Jermaine?

20 A. Yes.

21 Q. Doctor, did you have what was listed under tab 4?

22 A. Yes.

23 Q. And does that indicate that she showed up at an event
24 unannounced to confront the victim?

25 A. Yes.

1 Q. Does it also indicate that earlier the week he was
2 killed, all the way at the bottom, that she had spent the
3 night at his apartment and had gone through his cell phone?

4 A. Yes.

5 Q. And that she was extremely mad because of the numbers
6 for females in his phone?

7 A. Yes.

8 Q. Doctor, under tab 5, the last line on that page, does
9 that indicate that the oldest child -- and the children are
10 listed above that and dates of birth -- the oldest child
11 knew his mother and father argued but had never seen them
12 actually become involved in a physical altercation?

13 A. Yes.

14 Q. And that they were not living together?

15 A. Yes.

16 Q. Under number 6, Doctor, did you have that?

17 A. It's, it's, it's not familiar, but I, I probably just
18 don't recall seeing that. I'm sure I had at the time. It
19 would have been in the regular discovery package.

20 Q. Well, we can skip that one if you didn't rely on that.
21 Under tab 7, Doctor, did you have that?

22 A. Yes.

23 Q. And that indicates that every time she was not at
24 home, she would be over at Jermaine's house?

25 A. Yes.

D. SCHWARTZ-WATTS - CROSS-EXAMINATION BY MR. RIDDLE 797

1 Q. Okay, and does the second page of that also indicate a
2 prior history of physical abuse against Jermaine?

3 A. Yes.

4 Q. Under tab 8, Doctor, did you have that?

5 A. Yes.

6 Q. And does that indicate an assault on Jermaine by
7 Shellie?

8 A. Yes.

9 Q. In 2006?

10 A. Yes.

11 Q. Under 9, Doctor, did you have that?

12 A. I don't recall this.

13 Q. All right, we'll skip that one then. Did you have
14 what's listed under tab 10?

15 A. I'll double check. I don't recall this one but I
16 would -- if you'll allow me, I'll be glad to look through.

17 Q. Okay.

18 (A PAUSE.)

19 Q. Are your pages in order, Doctor?

20 A. I think so.

21 Q. Okay, because it would be page 291 of the discovery
22 that was sent out initially.

23 A. I think my numbers are different than yours.

24 Q. That's the case number there actually.

25 A. I've got it. Thank you.

1 (A PAUSE.)

2 A. Thank you. I do have it, yes, sir.

3 Q. Okay.

4 A. Thank you.

5 Q. And that's a police report where Shellie Davis is the
6 complainant, correct?

7 A. Yes.

8 Q. And it alleges that someone assaulted her, does it
9 not?

10 A. Yes.

11 Q. Somewhat unrelated to this case and it happened on her
12 job, correct?

13 A. Yes.

14 Q. Could you also look at page 293 of the discovery?

15 A. Yes.

16 Q. And is that a police report where she's the
17 complainant?

18 A. Yes.

19 Q. And she's alleging that something was stolen from her
20 car?

21 A. Yes, her wallet.

22 Q. So, she's not afraid to call the police when something
23 happens to her, is she?

24 A. Well, I, I can't say that, but it's certainly clear by
25 her past when she believes she was assaulted or the victim

1 of theft, she called the police.

2 Q. All right, and could you turn to tab 12?

3 A. Yes.

4 Q. Okay, and do you have this page in the book, Doctor?

5 I'm sorry. I may not have included that one.

6 A. I, I believe I saw the screening from the...

7 Q. From the medicals?

8 A. Yes.

9 Q. Did you get the complete medicals from the jail?

10 A. I looked at them, yes.

11 Q. Okay.

12 A. Those are not in hard copy with me. They're on...

13 Q. On a disc?

14 A. Yes, sir.

15 Q. Okay. Well, I'm sorry I didn't have that one in your
16 book, but she was asked when she was booked in the jail if
17 she'd ever been the victim of a crime, and she indicated
18 no?

19 A. Correct.

20 Q. Domestic violence would be a crime?

21 A. It would depend how you define it. I certainly
22 consider it one, but I'm not -- I can't say whether she
23 would or not.

24 Q. All right, and you have a mental health screening
25 evaluation there?

1 A. I do.

2 Q. And question 6 on the right-hand side, history of
3 victimization, what did she indicate?

4 A. No.

5 Q. Doctor, under tab 13, is that a mental health
6 evaluation?

7 A. It is.

8 Q. And that was part of the jail medicals?

9 A. Yes. This would have been done by a mental health
10 counselor, not a psychiatrist but counselor that's trained
11 in doing these trainings, yes.

12 Q. All right, at the, at the jail?

13 A. Yes.

14 Q. Dated 10/9/2010?

15 A. Looks like 10/11/2010. Are we on the right one?

16 Q. I don't know. This one here under 13.

17 A. That one, 13.

18 Q. Okay. I don't know how I've gotten that mixed up.
19 This is something that you saw, is it not, Doctor?

20 A. Yes.

21 Q. And does that indicate that Ms. Davis told the mental
22 health worker at the jail that the shooting was an
23 accident?

24 A. I, I don't see the word accident.

25 Q. It went off as she took it out of her purse, hitting

D. SCHWARTZ-WATTS - CROSS-EXAMINATION BY MR. RIDDLE

801

1 her husband?

2 A. Yes, it does say that.

3 Q. I'm sorry, but not that she intentionally pulled the
4 trigger. I mean, I'm not saying that specific language is
5 in there, but that sentence reads that it was an accidental
6 shooting and not an intentional act?

7 A. I, I, I think that is attributing probably more to it
8 than we can. It just says she ---

9 Q. Okay.

10 A. --- took out the gun, went to shoot herself, and it
11 went off and shot and killed him.

12 Q. Okay. All of the things that you diagnosed her as --
13 the major depression, the epidural and subdural hematoma --
14 all of that happened after she tried to shoot herself,
15 correct?

16 A. Certainly the, the hematomas, but it -- it's my
17 opinion that she had pre-existing major depression as well.
18 She had a long history of some suicide attempts. Her -- I
19 came into the court, I think, when one of her friends was
20 finishing testifying, and by the time she had presented to
21 her friends, I believe her name was Nina, she has lost a
22 lot of weight. So, those things take a period of time.
23 So, it, it's my opinion she had a pre-existing depression
24 as well.

25 MR. RIDDLE: Okay. All right. Thank you, Doctor.

D. SCHWARTZ-WATTS - REDIRECT EXAM BY MS. ZMROCZEK

802

1 That's all the questions I have for you.

2 THE COURT: Redirect?

3 MS. ZMROCZEK: Yes

4 REDIRECT EXAMINATION BY MS. ZMROCZEK:

5 Q. Dr. Schwartz-Watts, when he asked you about that
6 statement about Shellie saying that if she couldn't have
7 him, nobody could, that wasn't by Arletta Carr, was it?

8 A. I'm sorry?

9 Q. That wasn't by Arletta Carr, was it?

10 A. I'd have to see it again.

11 (A PAUSE.)

12 A. Thank you. I'm sorry. I just didn't remember the
13 name. This says -- the date of it 9/27/10, and it states
14 witness, and the title of this pages is Steve Collins's
15 Notes and it says Christina Skinner.

16 Q. Thank you.

17 MR. RIDDLE: Can I have my book back?

18 MS. ZMROCZEK: In, in a second.

19 BY MS. ZMROCZEK:

20 Q. And then when he asked you about the other discovery
21 wherein the prior abuse was about Jermaine, those were all
22 the witness statements, correct? There were no police
23 reports that listed Jermaine as the victim?

24 A. I'm sorry. I don't -- have to -- can I see that
25 again? I have about 300 page of records, so having to

D. SCHWARTZ-WATTS - REDIRECT EXAM BY MS. ZMROCZEK 803

1 recall just a specific paragraph and who authored it, I'm
2 not able to do that. Thank you.

3 That is a Richland County sheriff's incident report,
4 and I'm sorry. I'm not able to read the admitting -- the
5 officer's name.

6 Q. Okay. In the discovery number 9, is that a statement
7 that goes along with that incident report?

8 A. The date of that is March 20, 2006.

9 Q. And doesn't it state in that that Shellie had been
10 arrested in Maryland?

11 A. Yes. It states:

12 Has this individual ever assaulted you or
13 threatened you in the past? If so, please
14 indicate when, and did you file a police report
15 on that incident? Yes, six years ago in
16 Maryland, and she went to jail for CDV. Threats
17 all of the time.

18 Q. And that's signed by?

19 A. J. Davis.

20 Q. So, all that information was coming from Jermaine
21 Davis?

22 A. In that report, yes.

23 Q. When Mr. Riddle asked you about her filing a police
24 report where her wallet was stolen and where she was
25 assaulted, was, was -- Jermaine Davis was never the

1 perpetrator in that, was he?

2 A. No.

3 Q. She never filed a police report that you've seen, that
4 you've seen against Jermaine Davis?

5 A. No, and I specifically -- that's one of the things I
6 asked about, and I noted in my report that there was no
7 corroborating police reports that she had been abused by
8 him or made reports.

9 Q. And the depression, when he diagnosed her with acute
10 stress, that could have been from a rape two days earlier,
11 correct?

12 A. Certainly.

13 Q. Were you provided information about sexual abuse by
14 Jermaine Davis?

15 A. Yes.

16 Q. What types of things were you told?

17 A. I, I met with you last week and you had some incident
18 reports that -- from, I think, some of the witnesses that
19 you've used today that alleged -- that reported knowledge
20 of that.

21 Q. And did you also get that knowledge from Shellie? Did
22 she talk to you about forced rape or forced sexual?

23 A. Her words to me were what I put in the report: that he
24 would force her to have anal sex when she did not want to.
25 She did not call that rape. Her words were he forced anal

D. SCHWARTZ-WATTS - REDIRECT EXAM BY MS. ZMROCZEK

805

1 sex when she did not want it.

2 Q. What was her affect when you met with her?

3 A. She was still depressed. She was -- had what's called
4 a constricted affect. She did not display a full range of
5 emotions, and, and her appearance was consistent with
6 someone who was anxious and depressed.

7 Q. And are, are those behaviors consistent with someone
8 who is anxious and depressed? They, they -- do they always
9 tell the truth? Do they try to hide? Is it consistent
10 with someone who's depressed to not, not let people know?

11 A. It certainly happens. There's many people -- it
12 depends if you're private. Some people when they're
13 depressed, you can see it on their face. They'll tell
14 people. Some people -- it depends on your personality
15 structure, but there's many people that hide it.

16 Right now I work on a women's unit in our hospital,
17 and out of the ten women that are depressed, you may see
18 them throughout the day laughing, playing cards, looking as
19 if they're not. So, everyone's different, but it's
20 certainly consistent to see someone not have a full range
21 of emotion and to be anxious with depression. Those things
22 are comorbid with that.

23 Q. And in all of the discovery that you reviewed and all
24 the medical records, all the reports and police reports,
25 was there ever an indication that Ms. Davis wanted to hurt

D. SCHWARTZ-WATTS - REDIRECT EXAM BY MS. ZMROCZEK

806

1 Mr. Davis?

2 A. Other than, I guess, the statement that Mr. Riddle
3 would have showed me. I believe it was the statement of
4 Christina Skinner saying that if she couldn't have him, no
5 one can. But there was no specific threats that I
6 reviewed.

7 Q. And, and you have over 300 pages in front of you and
8 several other hundred pages were provided by -- on a disc.
9 Is that correct?

10 A. Yes.

11 MS. ZMROCZEK: Thank you. I have no further
12 questions.

13 MR. RIDDLE: Nothing further, Your Honor.

14 THE COURT: Thank you very much, Doctor.

15 WITNESS: May I be excused, Your Honor?

16 THE COURT: Yes, ma'am.

17 No objection, correct?

18 MS. SHANNON DAVIS: No, sir.

19 THE COURT: Thank you very much.

20 (THE WITNESS EXITS THE STAND.)

21 MS. ZMROCZEK: Your Honor, we call Dr. William Tyson.

22 THE COURT: All right.

23 WILLIAM M. TYSON, BEING DULY

24 SWORN, TESTIFIES AS FOLLOWS:

25 CLERK OF COURT: Once you're seated, state your full

W. TYSON - VOIR DIRE EXAMINATION BY MS. ZMROCZEK

807

1 name, spelling your last for the record, please.

2 WITNESS: My name is William Michael Tyson, and that's
3 spelled T-y-s-o-n.

4 VOIR DIRE EXAMINATION BY MS. ZMROCZEK:

5 Q. Dr. Tyson, please introduce yourself to the jury.
6 Tell them where you work.

7 A. Yes. I'm more or less self-employed as part of a
8 corporation, psychological corporation in North Carolina.
9 I am a partner in that corporation. I'm employed in -- as
10 a psychologist with a practice divided between clinical
11 psychology and forensic psychology.

12 Q. And how long have -- are, are you -- what is your
13 educational background?

14 A. I hold a doctorate in clinical psychology from the
15 University of Massachusetts at Amherst; that degree was
16 earned in October of 1983 and formally awarded in February
17 1984. I served my pre-doctoral clinical psychology
18 internship at the North Hampton Veterans Administration
19 Medical Center, and I served my residency requirement for
20 permanent licensure as a psychologist in the state of North
21 Carolina while employed at Foothills Area Programs, which
22 covered a four-county area in western North Carolina.

23 Q. What licenses do you hold?

24 A. I hold a license as a psychologist from the North
25 Carolina Psychology Board. I also am licensed as a health

1 services provider by the -- in psychology by the same
2 board.

3 Q. Do you have any specialties?

4 A. I specialize -- as I said, I divide my practice
5 between clinical psychology and forensic psychology.
6 Clinical psychology is a formal branch of psychology which
7 combines the science of human behavior, the science of
8 behavior and the findings of that science with the
9 application of those findings to the solution of human
10 problems.

11 Forensic psychology is an informal subspecialty of
12 psychology which simply has to do with -- it's a little
13 more complicated than this, but simply put it, it has to do
14 with findings of behavioral sciences as they apply to the
15 legal matters, both civil and criminal.

16 Q. And are there any criminal matters that you
17 specifically -- or have any specialties in?

18 A. Well, I specialize, I specialize in impulse control
19 disorders and principally drugs, violence, and sexual
20 offending and abuse, and I also specialize in the -- in
21 traumatic disorders. That is the effect of those behaviors
22 and offenses on the victims of that behavior.

23 MS. ZMROCZEK: Your Honor, at this time we'd like to
24 introduce Dr. Tyson as an expert in forensic and clinical
25 psychology.

W. TYSON - DIRECT EXAMINATION BY MS. ZMROCZEK

809

1 THE COURT: Any objection?

2 MR. RIDDLE: No, sir.

3 THE COURT: Without objection.

4 DIRECT EXAMINATION BY MS. ZMROCZEK:

5 Q. Dr. Tyson, do you know Shellie Davis?

6 A. I do not. I met her this afternoon for the first
7 time.

8 Q. Okay. Have you reviewed anything in preparation for
9 her case?

10 A. I've reviewed substantial records relating to this
11 case and relating to the events surrounding the death of
12 her, I guess, former husband.

13 Q. Okay. Dr. Tyson, will you please tell the jury what
14 battered women's syndrome is?

15 A. Yes. Battered women's syndrome is a -- well, it's a
16 syndrome that is -- it's a pattern of events that involve
17 the development of a relationship that is increasingly
18 defined by the -- by violence within the relationship, and
19 it, it consists of -- as it develops, it begins -- the
20 relationship begins to be characterized by three phrases,
21 the first being a, a development of tension which
22 eventually leads, as it builds, to a violent incident which
23 then is followed by two things. One is an attribution of
24 blame onto the victim or the recipient of the physical
25 event or the physical abuse, and also an, an acceptance of

1 the blame or responsibility by the victim. And it's also
2 marked then by what we sometimes refer to the honeymoon
3 period where there are expressed intentions to do better
4 and a rebirth of the relationship and a regeneration of the
5 relationship which, in fact, masks the fact that the
6 tension is beginning to build in the relationship such that
7 it eventually ends in another violent episode which is then
8 followed by, again, an accommodation or an acceptance of
9 blame by the victim, as well as yet another recommitment to
10 a successful relationship. Again, another honeymoon.

11 Now in some relationships, an episode of violent
12 behavior may scar both the victim and the, and the
13 perpetrator in such a way that they do actually commit
14 themselves to a restructuring of the relationship. And so
15 as a result, they do not repeat the violent episodes, and
16 that, of course, is the hope of the victim in the battery
17 relationship.

18 But in the battery relationship, the perpetrator
19 appears to view the fact that the victim is not ending
20 their relationship and also is not -- and is accepting the
21 blame, blame for the relationship as a permission to
22 continue to use violence as a way of handling conflict and
23 handling tension in the relationship.

24 So, simply put, that's what the battered spouse or
25 battered person syndrome is. It usually is thought of as

1 marked by violence, and there are special effects of
2 violence in these types of relationships. There are also
3 similar kinds of effects that can be -- that can develop in
4 pathological relationships where the -- instead of a
5 battering or a physical abuse, it might be sexual
6 indiscretion or cheating episodes that become repetitive,
7 or drug use, but they don't seem to have the same effect
8 that the battering, that the physical violence has.

9 Physical violence tends to change the nature of the
10 relationship and the nature of that repetitive pattern
11 because the victim, in addition to -- while, while the
12 victim is accepting blame and responsibility for fixing the
13 relationship, they also begin to anticipate and avoid and
14 take steps to avoid the physical pain that is associated
15 with the battering and the cycle of battering incidents,
16 and that seems to change the nature of the relationship
17 substantially. So, violence -- violent episodes, when they
18 are part of this cycle, tend to complicate matters and
19 intensify the nature of the pathological relationship.

20 Q. What are some common characteristics of women in
21 battered relationships, and it's not just women. I
22 understand.

23 A. Right.

24 Q. Not to ---

25 A. Well, we'll ---

1 Q. Person.

2 A. --- keep it simple, and as long as everybody remembers
3 that it's not only women who can be battered, battered, and
4 that these relation -- these pathological relationships can
5 develop differently.

6 But two things happen. One is they begin to become
7 hypersensitive to the other individual, to the batterer, to
8 the perpetrator. They tend to become suspicious and they
9 tend to become guilty. They tend to deny and hide the
10 effect, the effects of the battery. They tend to refocus
11 on other issues, often times themes of problems in their
12 relationship which serve to obscure or mask the violence.
13 It's very rare that someone comes in and -- to talk about
14 being depressed or to talk about some of the symptoms that
15 are associated with battered women's syndrome such as the
16 preoccupation with the relationship and the sense of
17 responsibility for the failings of the relationship. It's
18 rare that they actually talk about the battering or talk
19 about anything violent or coercive or oppressive that may
20 be going on in the relationship. It also often takes quite
21 a while for that to emerge, possibly out of a sense of
22 shame, possibly out of a sense of guilt, but mostly out of
23 as a wish and intense belief that the dreams of a happy
24 marriage that have been promised are going to eventually
25 come true with enough work on their part and with enough

1 commitment on their part. So, they become very intensely
2 invested in the relationship, almost pathologically so.

3 They also develop depression. They often lose
4 interest in other pursuits that previously have been found
5 to be pleasurable. They narrow their focus. The
6 relationship becomes all-consuming, and primarily the
7 characteristic that's the most pronounced is that no matter
8 how unhappy, miserable, depressed, or even unpleasant that
9 they become, they won't leave the relationship.

10 Q. How do these, how do these women function on the
11 outside, or do they function?

12 A. Well, denial is a wonderful thing, and they will often
13 create a persona of functioning, adequate functioning.
14 They, they become very adept at explaining away things that
15 are potentially embarrassing or potentially might reveal
16 the nature of the violence in their relationship. They
17 engage in happy talk, a lot some wishful thinking,
18 alternating with periods of intense hysteria and distress
19 that -- where they become inconsolable, but again the
20 characteristic that's the most notable in a battered
21 person's syndrome is that they will not disengage or leave
22 the relationship, and they have usually a wide range of
23 rationales for staying in the relationship.

24 Q. Dr. Tyson, are there characteristics that are also
25 similar or common to batterers?

1 A. Well, boy, that's a source of great debate. There are
2 some people who have characterized batterers as committed
3 to a sense of power and dominance, even sadism where --
4 towards the victim. But in my experience, I found that
5 that doesn't hold up. In fact, often times to the outside
6 observer, the casual observer, these guys are not
7 especially powerful. There has -- you know, there's a lot
8 of talk about the patriarchy and -- well, when I used to do
9 batterers group and I'd have these guys coming in for
10 treatment, it was very clear to me that these were not the
11 men who were upholding the patriarchy. These were often
12 times rather unhappy men themselves who were limited in
13 their range of skills for handling conflict and would --
14 played their part in the cycle as someone who might be very
15 impulsive, impulse drive, selfish, but also often times
16 very unhappy that they couldn't make the marriage work.
17 So, there's a range of, there's a range of folks and a
18 range of patterns of the batterer just like there's a wide
19 range of how the victims present themselves.

20 The characteristic that is common to victims is that
21 they do not directly acknowledge the violence as the nature
22 of the problem, and the problem with the batterer is
23 usually that he will not accept the responsibility for the
24 actual batter, for the violence. So, so, the one common
25 characteristic that we can count on is that the batterer

W. TYSON - DIRECT EXAMINATION BY MS. ZMROCZEK

815

1 will tend to project the blame for the problems in their
2 relationship onto the victim, and the victim will tend to
3 accept that blame.

4 Now, the particular topography or behavior, specific
5 behavior that they might engage in to effect that outcome
6 is more or less irrelevant and takes a lot of forms. The
7 central characteristic is that the batterer is able to
8 displace blame onto the victim and may use that as a
9 justification for the violence, and the victim was willing
10 to accept that responsibility and commit themselves to more
11 and more work and more and more obsession with the
12 relationship, and more and more conviction that they are
13 responsible to fix the problems even though the problem is
14 essentially caused by the violence.

15 Q. Is there a -- is there -- do, do battered women
16 frequently call the police or file police reports against
17 their batterers?

18 A. Actually no, they don't. Often times -- the battering
19 has to become very, very bad before they will file a
20 report, and then it's not infrequent that they drop the
21 charges. Again, they go into the honeymoon phase.
22 Promises are made. They believe that the marriage can be
23 worked on and can be fixed, so they drop the charges, and
24 then of course things go back into the pattern of tension
25 building.

1 Now, the other factor that complicates this is the
2 battering doesn't come out of nowhere. It, it doesn't.
3 You know, you get married. You buy a house. You have a
4 kid, and then one day your husband comes home and beats you
5 up. These conflicts and tensions begin slowly and they
6 begin in small forms, and they take a long time for the
7 cycle to emerge. And during that time, we may go from
8 threats, from looks of anger, from exasperation, from body
9 signals and body language that might convey threat,
10 postures that might convey threat. Just simply the size
11 and strength differential can convey threat. It may begin
12 to show as pushing or as grabbing or as some sort of
13 struggle for something, and eventually it will intensify.

14 The intensive violence, it may or may not become more
15 frequent. In fact, sometimes the more intense, the more
16 intense manifestations of the battered person's syndrome
17 occur in relationships where the actual violent episodes
18 are less frequent because they're more out of the norm and
19 there's more time for the person to believe the fantasy
20 that the relationship is going to right itself. But they
21 become more intense, and there does become more and more --
22 the power differential between perpetrator and the victim
23 becomes wider and wider and often times takes the form of
24 other kinds of manifestations. So, for instance, the
25 sexual abuse that's been talked about, the demands, and

1 also the acquiescence of the victim to the sexual demands.
2 So, they tend not to view themselves as being battered or
3 beaten, and they tend not to view themselves as being raped
4 or abused. They tend to view this as a problem in the
5 marriage which can be fixed probably by them.

6 Q. And when you say -- I want to go back to what you said
7 when you were talking a certain posture or a certain -- if
8 I can make it or the less scholarly like myself -- the
9 trigger. Can you explain what that means to a battered
10 person? Like, you said that they have -- there's something
11 that's done that they know they're going to react to.
12 Explain that to the jury.

13 A. Yeah. People often convey threat with their body
14 language. They look tough. They can look imposing. They
15 can make themselves look kind of grim and threatening.

16 Q. And how does the battered woman perceive this
17 differently than, than ---

18 A. Well.

19 Q. --- you or I?

20 A. At first they don't. Well, I -- he looked angry, so I
21 backed away. But when the violence occurs, that changes
22 everything because now it's not simply he looked angry. He
23 looked angry changes or transforms into he looked like he
24 was going to hit me, or he looked like he was going to lose
25 control. Lose control is often a euphemism for slapping

1 me, hitting me, knocking me down the stairs. You know,
2 punching me in the gut or something which inflicts pain.

3 So, the difference in how the battered person views
4 all that has to do with repeated exposure to the pain and
5 the violence that causes the pain or inflicts the pain.
6 Now, the way that that manifests itself in the victim is
7 the victim becomes more hypersensitive to little signals,
8 little movements which might be imperceptible. Even if you
9 watch the video tape, you might not see what the victim is
10 seeing because the victim has been through a number of
11 episodes of being hit and has become hyper vigilant as to
12 the events that immediately precede, immediately precede
13 the violence.

14 So, for instance, let's say -- I'm just picking
15 something out of a hat. If a look of exasperation followed
16 with I don't know what to do with you is routinely followed
17 by a punch in the gut that doubles you over in pain and
18 takes you to the floor, then pretty soon you're reacting to
19 the look of exasperation. You don't even wait for the I
20 don't know what to do with you. You're already either
21 defending yourself, or if you get pushed to the extreme
22 where, like a beaten dog, you try to bite back, it may
23 provoke an episode of violence, defensive violence on the
24 part of the victim. It just depends on the individual, how
25 that plays out in the individual couple, how that plays

W. TYSON - DIRECT EXAMINATION BY MS. ZMROCZEK

819

1 out. But it's the hyper vigilance, it's the hyper
2 awareness of the other person's subtle behavioral signs or
3 what gamblers call tells, some little thing that the person
4 does that's almost imperceptible that lets you know that
5 the gambler is bluffing or actually has the hand.

6 Q. But to the victim, is ---

7 A. To the victim, these are very prominent and very
8 pronounced. Now, they may not be able to articulate it.
9 They may not be able to tell you exactly what it is, but
10 they react to it and they react to it unconsciously the way
11 we react to anything that is imminently dangerous.

12 If you're in a near-miss auto accident, your, your
13 brain -- you know, your heart goes up into your throat,
14 your stomach twists, you -- your brain shuts off, and
15 you're acting on pure reaction because thinking would get
16 in the way of the reactions you have to engage. Now, you
17 may be able to reconstruct what you did afterwards, but at
18 the moment you go on automatic and you go in reflex, and
19 your brain -- your thinking is out of it.

20 Now, victims will often respond to the -- well, most
21 of you probably read about Pavlov over the years where
22 Pavlov had dogs and he fed the dog and he paired it with
23 ringing a bell, and the dogs would salivate and he -- and
24 then after a while, he would just ring the bell. The dogs
25 would salivate even though there was no food there.

1 They're giving that kind of Pavlovian response to an event
2 that has happened just prior to the violence predictably
3 enough that they reacted to that event rather than -- and,
4 and react to it as though they're in imminent danger, even
5 though to a casual observer who's not familiar with the
6 learning history, is going to look at it and say what was
7 that about. And so often times when we try to analyze
8 exactly what happened in these kinds of cases, we cannot
9 see it from the vantage point of the victim.

10 The victims are usually very poor at articulating what
11 the issues really were and what the events really were, and
12 often times are, are only able to reconstruct
13 retrospectively what might have happened or what must've
14 happened because they're in a moment of panic where they're
15 not actually thinking and observing and recording. They're
16 simply responding reflexive.

17 Q. Dr. Tyson, after reviewing some records and hearing
18 some of the testimony today, is it your opinion that
19 Shellie Davis fits the pattern, the profile of a battered
20 woman?

21 A. I don't have an opinion on that. I can't. I mean,
22 it's certainly a viable hypothesis. If the evidence, if
23 the evidence shows and the jury finds that the evidence
24 shows that the kind of events that I've just described took
25 place, then they -- I assume they will determine that that

W. TYSON - DIRECT EXAMINATION BY MS. ZMROCZEK

821

1 is so. But I am not in a position to give an opinion on
2 that. I'm simply in a position to describe what we usually
3 see, and then the question is whether the facts as they
4 have been presented match up to that formulation or that
5 conceptualization ---

6 Q. So, you ---

7 A. --- of what a battered woman's syndrome is.

8 Q. So, you provide the background as to what a battered
9 woman's syndrome is, but you won't provide facts, correct?

10 A. Well, I don't have ---

11 Q. Or you won't apply it to the facts?

12 A. I, I don't have the facts, and I'm not the finder of
13 facts. So, it would be -- I, I would have a problem
14 offering any kind of an opinion other than to say -- with
15 most jurors and judges, most triers of fact are not
16 familiar with the intricacies of how battered women's
17 syndrome and how these behavioral processes operate, and I
18 see my role here is simply to illuminate some of that and
19 provide that information. But in terms of the facts and
20 certainly the facts of this case, I can't draw any
21 conclusions. It would be -- I, I wouldn't do. I can't do
22 it.

23 Q. And would you do it in any case?

24 A. Not where I had not directly -- I mean, the, the facts
25 always either match up to the theory or they don't. And as

1 I understand South Carolina law, the -- I'm allowed to give
2 evidence about what battered women's syndrome is. I am not
3 allowed -- but, but the facts have to be provided by fact
4 witnesses as to whether or not that matches up to what I'm
5 describing.

6 Q. And, Doctor, lastly can you talk to the jury about
7 what learned helplessness is?

8 A. Certainly. We talked a little bit about -- or I
9 described a little bit about Pavlov and what they call
10 reflexive conditioning. But years and years later, there
11 was a series of experiments where dogs were placed in
12 chambers where they were given -- they were shocked. There
13 was a shock with -- in a harness, and now the usual
14 preparation for training in what's called avoidance is that
15 the dog receives the shock, and then it can avoid the shock
16 by pressing a lever or by engaging in some type of a --
17 some kind of a device or engaging in some sort of behavior
18 which is programmed to avoid the shock, and this is one of
19 the models of learning that has been developed over the
20 years.

21 We tend to do things which avoid pain, and we tend to
22 do things which produce pleasure. So, we do more of them
23 if they produce pleasure, but we also will do more of them
24 if they avoid pain. So, sometimes we eat the reward --
25 we'll eat because we want to avoid hunger, and sometimes we

1 eat because there's good food in front of us.

2 And without getting too technical about this, engaging
3 in a behavior to avoid pain or to -- what's called
4 avoidance is effective, and we tend to learn all sorts of
5 great stuff and tend to learn fast if it avoids pain, or at
6 least that's the theory.

7 Well, one of the psychologists found that while that
8 works with contingent pain, if the pain is noncontingent --
9 that is, there's no relationship between what the animal
10 does and by extension between what the human does and what
11 happens to them. So, if pain comes regardless of what they
12 do, after a while they stop doing anything. They just do
13 nothing; they just survive. They just wait for the paint
14 to be over, and to a point where if they are trained on
15 these -- this -- what was called learned helplessness, that
16 is where the animal was noncontingently -- pain was
17 noncontingently inflict -- inflicted to the point where the
18 animal just stopped trying to avoid the pain and just laid
19 down and waited for it to be done with, or laid on their
20 furriest side so -- to try to minimize the electric shock.
21 That when there is a contingency imposed and they actually
22 could avoid the pain, they won't. They won't try. They
23 won't do it, even to the point where the experimenters
24 would lift the dog -- well, this one was done with dogs --
25 would lift the dogs up and literally hold their hands to

1 mimic the movements of jumping or a little barrier to where
2 there would be no shock. Even if they literally picked
3 them up, they wouldn't do it. They just would lay flat and
4 wait for the pain to end and just tolerate the pain, and
5 they called that phenomenon learned helplessness.

6 And that later on became used as a model for battered
7 person syndrome, and people who were afflicted with
8 noncontingent pain or noncontingent violence, that they
9 actually became helpless. And even when offered the
10 opportunity to help themselves, they would not engage in
11 it. So, that became one of the early models for what we
12 now call battered person syndrome. It's that process of
13 learned helplessness that you learn that your behavior
14 doesn't matter. It will not avoid the pain. You then
15 eventually do not engage in behavior even when offered the
16 opportunity to -- that would allow you to escape from the
17 situation.

18 They actually at one point just opened the cage doors
19 so the dogs could have just walked out of the cage and away
20 from the shock, but the dogs wouldn't. They wouldn't walk
21 out of the open doors.

22 So, that's -- obviously because it's an experimental
23 preparation, it's an oversimplification, and when we get
24 into human behavior, things are a lot more complicated and
25 there are a lot more variables that have to develop, but,

W. TYSON - DIRECT EXAMINATION BY MS. ZMROCZEK

825

1 but it's still not a bad model for what happens in these
2 relationships.

3 Q. So to translate, the door could be open, the threat
4 could be gone, and they still won't leave?

5 A. Yeah.

6 MS. ZMROCZEK: Please answer any questions the state
7 would have.

8 WITNESS: May I beg the indulgence of the court for a
9 short break, Your Honor?

10 THE COURT: Yes, sir. Sure. Absolutely.

11 All right, ladies and gentlemen, just step back into
12 your jury room. Have no conversation with the case, and
13 we'll get started back in just a little bit.

14 (THE JURY EXITS AT 4:32 P.M.)

15 THE COURT: You may step down.

16 WITNESS: Thank you.

17 THE COURT: Just don't have any conversation with ---

18 WITNESS: No.

19 THE COURT: --- with anybody about your testimony.

20 WITNESS: No, sir.

21 THE COURT: All right. Thank you.

22 (OFF THE RECORD.)

23 (THE JURY ENTERS AT 4:41 P.M.)

24 THE COURT: All right, now, you are recognized, Mr.
25 Riddle, for cross-examination.

1 MR. RIDDLE: Thank you, Your Honor.

2 CROSS-EXAMINATION BY MR. RIDDLE:

3 Q. Mr. Tyson, I believe you've indicated that often time
4 victims of battery drop charges. Is that correct?

5 A. That is.

6 Q. So, it wouldn't be unusual for somebody to have been
7 arrested in Maryland on CDV charges and arrested in South
8 Carolina on CDV charges and not have any record, would it?

9 A. It's perfectly possible.

10 Q. And if somebody is being abused, you said that they
11 would avoid the pain, correct?

12 A. Well, it's basically human reflex to avoid pain.

13 Q. Right.

14 A. Or to escape from it.

15 Q. Like move out?

16 A. Well, that's the complication. That would normally be
17 -- that would be the expected response would be to not just
18 avoid the pain but avoid the perpetrator of the pain or the
19 inflictor of the pain. That's what makes battered person's
20 syndrome counterintuitive, but it also is what makes it
21 pathological.

22 Q. But if the fellow being battered just moved out of the
23 house and moved in with a couple of friends of his, that
24 would avoid the pain, wouldn't it?

25 A. Presumably, unless the fellow continued to have

W. TYSON - CROSS-EXAMINATION BY MR. RIDDLE

827

1 contact with the person who allegedly infected the pain.

2 Q. Now, you reviewed documents in this case.

3 A. I did.

4 Q. Is that correct?

5 A. I did.

6 Q. How much did you review?

7 A. There was quite a bit. I don't have a number of pages
8 that was sent to me electronically. I read through them.
9 I didn't count the pages.

10 Q. What was the source of all the documents that ---

11 A. All of the documents came from Ms. Zmroczek.

12 Q. And when were you provided with these documents?

13 A. I think the first set came on the 11th of April.

14 Q. Of this year?

15 A. Yes.

16 Q. That's the first time ---

17 A. Well, about, what, ten days.

18 Q. That's the first time that you reviewed any documents?

19 A. That's correct.

20 Q. When did you get retained in this case?

21 A. Officially would have been probably about the 14th.
22 Well, that -- the 11th since I agreed to look at the
23 documents.

24 Q. 11th of April of this year?

25 A. Yes. Now, you are -- you do remember I didn't conduct

1 an evaluation. That I'm here to testify as to the
2 literature on battered spouse syndrome. So, since I didn't
3 conduct an evaluation and since the records that I reviewed
4 weren't really germane to my testimony...

5 Q. Well, if the records weren't germane, why did you
6 review them?

7 A. To get a feeling what for the issues of the case were.

8 Q. So you could tailor your testimony for this jury?

9 A. Well, that's an inferential leap that I'm not sure I
10 would want to agree with.

11 Q. All right.

12 A. No. I read the documents so I could advise the
13 counselors whether I would be helpful or not in presenting
14 testimony, and I read the records to see what kind of facts
15 they intended to present.

16 Q. Let me ask you this, Doctor. What's your hourly rate?

17 A. 200. Well, my company bills me out at \$200 per hour.

18 Q. And how many hours do you have sunk in this at this
19 point?

20 A. I have submitted a bill for eighteen hours.

21 Q. So, you're getting paid \$3,600 so far?

22 A. Well, Blueridge Behavior Systems, my corporation, is
23 getting paid. I am not making that much.

24 Q. Your office ---

25 A. That's how much my company bills for my time, \$200 per

W. TYSON - CROSS-EXAMINATION BY MR. RIDDLE

829

1 hour.

2 Q. But it's your company?

3 A. Well, yes, but that's ---

4 Q. So, it's you.

5 A. --- \$200. It's not a salary. It's before the phone
6 bill is paid and all of the toilet paper is purchased and
7 all of the costs of running a business are factored in.
8 It's not like I get a paycheck for \$200 an hour.

9 Q. Everybody's got overhead, sir. You're making ---

10 A. Not everybody. Some ---

11 Q. --- \$200 an hour ---

12 A. --- people -- excuse me.

13 MR. RIDDLE: Your Honor.

14 A. Some people ---

15 THE COURT: Hold on.

16 A. --- are employees.

17 THE COURT: Hold on. We're not going to have two
18 people talking at one time.

19 WITNESS: I apologize.

20 MR. RIDDLE: I'm sorry. I wasn't -- I apologize. I
21 wasn't actually finished with my question.

22 THE COURT: All right.

23 WITNESS: I apologize, sir.

24 MR. RIDDLE: If I interrupted him ---

25 WITNESS: Please finish ---

W. TYSON - CROSS-EXAMINATION BY MR. RIDDLE

830

1 MR. RIDDLE: -- I apologize.

2 WITNESS: --- your question.

3 THE COURT: Go ahead. Ask, ask your question. Go
4 ahead.

5 MR. RIDDLE: Thank you, Your Honor.

6 BY MR. RIDDLE:

7 Q. You are getting paid \$200 an hour to be here?

8 A. No. Blueridge Behavior Systems bills my time, and
9 Blueridge Behavior Systems is being paid. I will
10 eventually get money, assuming that Blueridge Behavior
11 Systems makes enough money to pay me.

12 Q. Half of your practice is clinical?

13 A. Yes.

14 Q. Half of it is forensic?

15 A. Roughly speaking. It's divided. I wouldn't put it --
16 I wouldn't quantify it as half and half.

17 Q. It -- is that not what you said on ---

18 A. No.

19 Q. --- direct?

20 A. I said it's the practice divided between clinical and
21 forensic psychology.

22 Q. All right, which you make a living coming to court and
23 testifying partially?

24 A. I testify rarely. I do evaluations. This is the
25 first time in three months I've been in a courtroom.

W. TYSON - CROSS-EXAMINATION BY MR. RIDDLE

831

1 Q. Okay. You are licensed in North Carolina?

2 A. That is correct.

3 Q. Okay. Hand you this and ask if you recognize what it
4 is.

5 A. Yes, I do.

6 Q. What is that, Doctor?

7 A. This is a consent agreement between the North Carolina
8 Psychology Board and me.

9 Q. Right, and that consent agreement found that you had
10 violated some of the statutes concerning the practice of
11 psychology in North Carolina, did it not?

12 A. No. As a matter of fact, it did not.

13 Q. Well, look at paragraph 3.

14 A. Yes.

15 Q. Respondent admits that the board interprets the
16 actions described to constitute violations of the
17 North Carolina general statute.

18 A. That is correct.

19 Q. And it gives the section number 90-270.15(a)(7) and
20 (a)(10), correct?

21 A. Yes.

22 Q. Of the North Carolina Psychology Practice Act?

23 A. Yes.

24 Q. Respondent further accepts and agrees to the
25 remedial action.

1 Correct?

2 A. Yes.

3 Q. All right, and North Carolina section 90-270.15,
4 section (a)(7) says that you violated a provision of the
5 article or the rules of the board.

6 A. Well, no, that's not what it says. What it says is
7 what the rule is.

8 Q. Sir?

9 A. What it says is what the rule is. The board said I
10 violated it. If you read the next paragraph ---

11 Q. Wait. Wait a minute. You're, you're not answering my
12 question.

13 A. Well.

14 Q. I'm asking if ---

15 A. And I ---

16 Q. --- that's what the statute says.

17 A. That is -- you -- no, you asked that -- the statute
18 said that I violated it. The statute simply says what the
19 rule is.

20 Q. All right, and section (a)(10), does that say that --
21 the statute, does that say:

22 Has been guilty of immoral, dishonorable,
23 unprofessional, or unethical conduct as defined
24 in this subsection.

25 A. No.

W. TYSON - CROSS-EXAMINATION BY MR. RIDDLE

833

1 Q. That's the section that it says you violated ---

2 A. It does not.

3 Q. --- does it not?

4 A. It does not say that. This consent order makes very
5 clear what it is that I did and what it is the board said I
6 did. It also makes very clear that I did not agree but
7 that we came to an agreement to drop the case if I would go
8 get an -- two hours of education from a former board member
9 about the particular rule, which had nothing to do with
10 clinical or forensic practice. It simply had to do with
11 the, with the supervision of a master's level psychologist,
12 and the board disagreed as to whether he needed two hours a
13 month or one hour a month. Because I was the supervisor, I
14 was included in this.

15 Now, this has nothing to do with anything. Certainly
16 there was no finding, and this order makes it very, very
17 clear that there was no finding or disciplinary action
18 against me.

19 Q. Let me ask you if I am reading this correctly.

20 Paragraph 3.

21 A. Yes.

22 Q. Respondent admits that the board interprets the
23 action described in paragraphs 2.a through 2.b to
24 constitute violations of the North Carolina
25 General Statutes 90-270.15(a)(7) and (10) ---

W. TYSON - CROSS-EXAMINATION BY MR. RIDDLE

834

1 A. I did admit ---

2 Q. --- of the North Carolina ---

3 A. Okay.

4 Q. --- Psychology Practice Act and Section 21 NCAC
5 54.2001(c)(5) of the North Carolina Psychology
6 Board rule. Respondent further accepts and
7 agrees to the remedial action therein -- herein.

8 Excuse me. Does it say that?

9 A. It says exactly that.

10 Q. All right.

11 A. It says I admitted.

12 WITNESS: I, I, I believe I'm allowed to explain my
13 answer?

14 THE COURT: Yes, sir.

15 BY MR. RIDDLE:

16 A. It says that I admitted the board thought I violated
17 those paragraphs and that they -- I admitted that those
18 paragraphs are part of the statute you cited. And I also
19 accepted that I would go to a remedial action which was
20 nondisciplinary and that there was no finding against my
21 license. And nowhere in this document is there any place
22 where I agree that I did what the board believes I did,
23 which is to supervise a master's level psychologist for one
24 hour per month as opposed to the two that the board
25 believes that he should have received supervision.

W. TYSON - CROSS-EXAMINATION / REDIRECT EXAMINATION

835

1 Now, there is no admission and there is no
2 disciplinary finding. I agreed to go meet with a doctoral
3 level psychologist to make certain that I understood how
4 the board interprets those paragraphs. Now, that's all
5 there is in this document.

6 Now, if you want to make this out to be an ethical
7 breach on my part, there's nothing I can do to stop you,
8 but the board doesn't seem to think it's a breach, and
9 neither does anybody else.

10 MR. RIDDLE: Thank you, Doctor. That's all I have.

11 WITNESS: You're welcome. Do you want this back?

12 MR. RIDDLE: Sure.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION BY MS. ZMROCZEK:

15 Q. Are you currently licensed in North Carolina?

16 A. I am licensed.

17 Q. Do you currently practice in North Carolina?

18 A. I currently practice. My license is in good standing,
19 and there have been no disciplinary actions against it
20 despite the fact that there have been numerous complaints
21 given the -- there have been numerous attempts to challenge
22 my license, given the high intensity and high conflict work
23 that I do. So, I've been investigated by the board, and I
24 have always been -- all charges have always been dismissed.
25 So, I have a valid license. There is no actions against

1 it, no limitations, and no disciplinary action has ever
2 been imposed.

3 Q. Does that have anything to do with the testimony that
4 you provide about battered women?

5 A. None whatsoever. If you were questioning me about
6 supervision of master's level psychologists, then it might
7 be relevant, but this is totally irrelevant to anything
8 before this court.

9 Q. Battered women have characteristics that are common
10 amongst the group, correct?

11 A. Yes.

12 MR. RIDDLE: Objection. That's not responsive to
13 cross.

14 MS. ZMROCZEK: That's all I have.

15 THE COURT: Sustained.

16 All right, thank you very much, sir.

17 WITNESS: Am I ---

18 THE COURT: Yeah. I was going to just say any
19 objection?

20 Yes, sir, you are free to go.

21 WITNESS: I'm sorry. I should have ---

22 THE COURT: That's okay.

23 WITNESS: May I take this with me?

24 THE COURT: Absolutely. Sure.

25 (THE WITNESS EXITS THE STAND.)

1 MS. ZMROCZEK: Your Honor, the defense rests.

2 THE COURT: All right. Thank you.

3 (A PAUSE.)

4 THE COURT: All right, ladies and gentlemen, you heard
5 Ms. Zmroczek indicate that the defense had rested their
6 case. Again we're at a position where I have to take up
7 matters of law, and it's about 5:00. So, we're going to
8 adjourn for the afternoon. There's no sense in you hanging
9 here while I take up those matters of law, and so we'll,
10 we'll do that at this time.

11 If you would continue to adhere to instructions to, to
12 protect your ability to be fair and impartial, to not talk
13 about the case with anyone. Don't allow anyone to talk
14 with you about the case.

15 I, I would anticipate that you'll have this case for
16 your consideration at some point tomorrow, so I do
17 anticipate that we will finish, but I still need to take up
18 these matters and there's other things that we need to do
19 before we continue forward. So, please have no
20 conversation about the case. Continue to ask your family,
21 friends, and loved ones to be patient and that probably,
22 probably at some point this weekend you'll be able to tell
23 them whatever they want to know, okay?

24 Thank you for your attention today, and we'll start
25 back at 9:00 in the morning, okay?

1 Everyone please remain seated while members of the
2 jury are excused.

3 (THE JURY EXITS AT 4:50 P.M.)

4 THE COURT: Let me ask y'all to step up real quick.

5 (OFF-THE-RECORD BENCH CONFERENCE.)

6 THE COURT: All right, at this time I'll take up any
7 motions at the close the defense's case.

8 MS. ZMROCZEK: Your Honor, we at this point would
9 renew our motion for a directed verdict under Rule 19 based
10 on everything that we argued yesterday.

11 THE COURT: All right. Thank you. Ms. Zmroczek, I'm
12 going to respectfully deny that. As I said earlier, I, I
13 do think that these are questions of fact that a jury is
14 going to have to resolve. As a matter of fact, I think the
15 last witness even agreed to that, that these are questions
16 of fact for a jury. So, I, I think it's appropriate for
17 the case to go forward to the jury and make their call.

18 Anything else?

19 MR. RIDDLE: No, sir.

20 MS. ZMROCZEK: Nothing.

21 THE COURT: All right. Ladies and gentlemen, we're
22 going, we're going to adjourn this trial until 9:00
23 tomorrow morning, but I will tell you, because I know some
24 folks have stayed around and chatted at the end of the day.
25 I'm wanting to get this courtroom cleared out because they

1 do have -- drug court has a graduation ceremony this
2 evening, and I think that's at 6:00, but they need to come
3 in and set up for that. So, if, if you would, we're
4 adjourned. And you don't have to rush out, but go ahead
5 and make your way out, you know, and we'll open up the
6 courtroom for the drug court folks, okay? So, we'll
7 reconvene tomorrow morning at 9:00.

8 (WHEREUPON, THE CASE IS AT EASE.)

9 *FRIDAY, APRIL 25, 2014*

10 (COURT RESUMES AT 9:13 A.M.)

11 THE COURT: All right, we've got several matters we
12 need to obviously go over before we get started. So, I'll
13 just hear from, from the state first. Is there anything --
14 have you had an opportunity to review the charge that I --
15 the proposed charge? It's just a draft at this point.
16 It's not anything etched in stone, but the state ---

17 MS. SHANNON DAVIS: The jury, Your Honor -- I'm sorry.

18 THE COURT: Go ahead.

19 MS. SHANNON DAVIS: Your Honor, we have had a chance
20 to look over your proposed charge, and we have no exception
21 to it.

22 THE COURT: All right, and again, you know, we still
23 have some issues to talk about, but that's, that's
24 everything that I think could possibly be covered. There
25 may be some things that we -- you know, I don't know what

1 until we finish taking up whatever motions we have. So, go
2 ahead, Ms. Zmroczek.

3 MS. ZMROCZEK: And, Your Honor, I think this is the
4 Law Review in me, but on page 13 there's a, there's a typo.
5 It says ---

6 THE COURT: There's probably several.

7 MS. ZMROCZEK: Okay.

8 THE COURT: More than just page 13.

9 MS. ZMROCZEK: Well, I just found that. I didn't know
10 if we were going to run through that, but, Your Honor,
11 obviously -- and I understand we're going to have
12 arguments, and we would take exception to the voluntary
13 charge. And depending on what they argue, we may have a
14 different position on that obviously.

15 But, Your Honor, the one thing that we did see is that
16 under the self-defense section, there is a section about
17 size and age, relative sizes, ages, and weights of the
18 defendant and victim in deciding if there was actually ---

19 THE COURT: Here's, here's the thing. I, I, I know
20 you made that request, and I'm happy to put it in if there
21 was any testimony that -- I didn't remember there being any
22 testimony discovering the -- or discussing the size of the
23 victim and the size of the defendant.

24 MS. SHANNON DAVIS: We would agree with Your Honor.
25 We don't believe that there was any testimony provided to

1 that effect.

2 MS. ZMROCZEK: I asked, I asked the -- Dr. Ross what
3 -- if she weighed and measured the defendant and that was,
4 that was put into the record.

5 THE COURT: Okay. All right. Well, I'll add that.
6 That's not a problem. The only reason I didn't put it in,
7 in the draft was I wanted -- that's a question I had that I
8 need an answer, whether or not there was any testimony as
9 to that.

10 MS. ZMROCZEK: And what I recall her testimony being,
11 Your Honor, was that she weighed or measured him at 73 and
12 a half inches, and then she -- I think, I believe she told
13 the jury she didn't have a scale but approximated him at
14 220.

15 THE COURT: Okay.

16 MS. ZMROCZEK: Based on her medical knowledge.

17 THE COURT: All right.

18 MS. ZMROCZEK: And that's -- that -- that's ---

19 THE COURT: Yeah. All right. Well, I'll certainly
20 add that because that, that's appropriate and that's an
21 area.

22 MS. ZMROCZEK: And that, that was -- other than that
23 issue.

24 THE COURT: Okay. Now, let's go ahead and discuss the
25 lesser-included offenses. I think the state is making a

1 request for a voluntary manslaughter charge.

2 MS. SHANNON DAVIS: That's correct, Your Honor.

3 THE COURT: And, Ms. Zmroczek, the defense opposes
4 that?

5 MS. ZMROCZEK: We do, and based on the argument that
6 they make for voluntary, Your Honor, we may have another --
7 we may request involuntary, depending on what their basis
8 for voluntary is.

9 THE COURT: All right. All right, Shannon, I'll be
10 happy to hear from you with regards to that.

11 MS. SHANNON DAVIS: Thank you, Your Honor. Our basis
12 for requesting the voluntary manslaughter charge is that we
13 believe that there was sufficient evidence from the state
14 and the defense that the victim and the defendant got into
15 a big fight that morning. The defendant testified that the
16 victim had threatened to kill her. That he was going to
17 hit her and was winding up to hit her in his signature
18 roundhouse move. We believe that's an overt, threatening
19 act. There is history of prior difficulties, and there's
20 testimony about adultery, Your Honor. So, we believe that
21 that is sufficient heat of passion with the fight and
22 sufficient legal provocation with the winding up to hit her
23 as an overt act.

24 And I did provide the court and the defense with some
25 case law yesterday. *State vs. Lowery* stated that a heated

1 argument plus evident physical encounter was sufficient for
2 voluntary manslaughter charge. *State vs. Wiggins* stated
3 that heated argument, coupled with fear, was sufficient for
4 a legal -- for a voluntary manslaughter charge. In *State*
5 *vs. Davis*, fighting was sufficient for a voluntary
6 manslaughter charge. And in the *Gilliam* case that was
7 cited within one of the defense's cases, I believed it
8 stated that the court is able to charge voluntary
9 manslaughter as well as self-defense. So, they're not
10 exclusive. And under *State vs. Gardner* and the *Dempsey*
11 case, it stated that you must clearly have no evidence in
12 order for the court to choose not to submit a voluntary
13 manslaughter charge. And it's the state's position that
14 there has been sufficient evidence for the jury to consider
15 the voluntary manslaughter charge in this case, Judge.

16 THE COURT: All right, Ms. Zmroczek.

17 MS. ZMROCZEK: Thank you, Your Honor, and, and we also
18 submitted case law last night, including well into last
19 night, and I apologize for that, which mostly rested on
20 *State vs. Starnes*. Your Honor, we understand that, that
21 you can have a self-defense and a voluntary. That they
22 aren't, they are not mutually exclusive.

23 THE COURT: Right.

24 MS. ZMROCZEK: And we also submitted *State vs. Dicky*.
25 Your Honor, if the, if the court is inclined to believe

1 that there is sufficient or any testimony that, that would
2 warrant a voluntary charge, we would then ask that there
3 also be an involuntary charge. As of yesterday ---

4 THE COURT: Well, there has to be evidence to support
5 that.

6 MS. ZMROCZEK: As, as of yesterday a case came out of
7 -- *State vs. Battle*, and the evidence came, Your Honor,
8 when Mr. Riddle had Dr. Donna Schwartz-Watts read from the
9 jail records that she said she pulled the gun out of her
10 purse and it went off. That was evidence that was read to
11 the jury. That, that came from the witness stand. Your
12 Honor, if, if the standard is going to be any evidence --
13 and there's, like I said, there's a case out yesterday and
14 I just printed it off if, if you would like me to hand it
15 up.

16 THE COURT: Yeah.

17 MS. ZMROCZEK: And I have a copy for them, *State vs.*
18 *Battle* where they say any evidence. And what they're
19 asking this court to rely on on their voluntary charge are,
20 are statements that the defendant made, even though she
21 testified from the witness stand that she was in fear and
22 that it wasn't a fight. It was him yelling at her. But I
23 understand that if we're going to talk about weight and,
24 and credibility of the evidence ---

25 THE COURT: Well, I -- no, no. She went further.

1 MS. ZMROCZEK: No, she ---

2 THE COURT: She went further than that.

3 MS. ZMROCZEK: What she said is ---

4 THE COURT: She said that he was, he was getting ready
5 to physically assault her, and that's what she thought.

6 MS. ZMROCZEK: Right. That was her reasonable belief.

7 THE COURT: Right.

8 MS. ZMROCZEK: Certainly.

9 (A PAUSE.)

10 THE COURT: State have a position on that?

11 MR. RIDDLE: Your Honor, I'm still trying to digest
12 *Battle*.

13 THE COURT: I, I think Ms. Zmroczek is correct.

14 MR. RIDDLE: I didn't hear that, Your Honor.

15 THE COURT: I think Ms. Zmroczek is correct based,
16 based on my reading, and goes along with the same theory
17 that that state is arguing for voluntary. It's the
18 presence of any evidence.

19 MR. RIDDLE: Yes, sir.

20 THE COURT: Not the weight of the evidence.

21 MR. RIDDLE: Yes, sir.

22 THE COURT: So, although -- and this doesn't matter,
23 but personally I don't think this is an involuntary case
24 because I listened to the testimony, but the evidence is
25 there and it's there for the jury to give weight to, not

1 the court, and so I think I'm, I'm inclined to charge both
2 voluntary and involuntary.

3 MR. RIDDLE: All right.

4 MS. ZMROCZEK: Thank you, Your Honor.

5 THE COURT: You are requesting the involuntary charge,
6 correct?

7 MS. ZMROCZEK: If the voluntary comes in, then yes.

8 THE COURT: Oh, yeah.

9 MS. ZMROCZEK: We would ask for the involuntary.

10 THE COURT: Yeah. Yes.

11 MS. ZMROCZEK: And again we would state for the record
12 that we -- that, you know, I -- we understand with that
13 case law yesterday, I think that, if it's appropriate, for
14 both to come in if there is any evidence.

15 THE COURT: Sure. All right. Well, I'm going to --
16 I've got, I've got a standard involuntary manslaughter
17 charge that I'll add to it. If you want to look at it, you
18 can.

19 I'm just trying to think. Is there anything else?
20 All right, is it -- let me just ask y'all because y'all
21 know what's in your minds. Is there anything else that we
22 need to take up other than the addition of the involuntary
23 manslaughter charge with -- and right now I'm just
24 referring to the charges, okay?

25 MS. SHANNON DAVIS: I don't believe so, Your Honor.

1 THE COURT: Is there anything, anything further from
2 the defense regarding the charges? I'm going to add the
3 involuntary manslaughter, but is there anything else that
4 would -- and correct the typo on page 13. And seriously, I
5 appreciate you pointing it out. There very well may be
6 more but ---

7 MS. ZMROCZEK: And then the size and weight and then
8 other than that, Your Honor.

9 THE COURT: Size and weight, thank you. I'll also add
10 that language, and I'm trying to think. I'm going to look
11 at it right now. I believe what you, what you submitted on
12 size and weight, Ms. Zmroczek, is the same thing.

13 MS. ZMROCZEK: I think we cut pasted from, from the
14 court's websites.

15 THE COURT: Yeah, and so I'll, I'll probably just
16 insert what you've submitted.

17 MS. ZMROCZEK: And then of course on the verdict form,
18 I understand that you would also add ---

19 THE COURT: I'll have to add involuntary, correct.

20 (A PAUSE.)

21 THE COURT: All right, anything else we need to take
22 up?

23 MS. SHANNON DAVIS: Not from the state, Your Honor.

24 THE COURT: Anything further from the defense?

25 MS. ZMROCZEK: Not from the defense.

1 THE COURT: Okay. I, I didn't ask. Does the state
2 have anything -- any further presentation to make?

3 MR. RIDDLE: No, sir.

4 THE COURT: All right. So -- and, and let me, let me
5 go ahead and mention this before we bring the jury out and
6 get started. The -- everything will go back to the jury
7 room other than the gun and the ammunition. And even --
8 but I will tell them if they want to examine those items,
9 they, they can just let us know, and I'll let them come
10 back out in the courtroom and examine those if they feel
11 that they need to do that. I think that's the only thing
12 that, evidentiary wise, that I wouldn't send back, but I
13 will let them know that I'll keep it out here and that if
14 they want to look at it, just to let me know and we'll
15 bring them back out, okay?

16 All right, anything further?

17 MS. ZMROCZEK: May I have just a few minutes, Your
18 Honor? I tried, I tried to get a little bit of evidence
19 ready.

20 THE COURT: Yeah. I'm going to include that
21 involuntary charge, so I'll let you go ahead and do what
22 you need to do while I'm gone.

23 MR. RIDDLE: Your Honor.

24 THE COURT: Yes, sir.

25 MR. RIDDLE: Just as, as kind of a housekeeping

1 matter.

2 THE COURT: Sure.

3 MR. RIDDLE: Can we take a slight break between
4 arguments so that I can get a little bit organized after
5 she's done and not have to be fumbling around through
6 evidence during my argument?

7 THE COURT: Yeah.

8 MR. RIDDLE: Is that -- I mean, just, you know, a
9 three-minute break just to get the pieces I want for my
10 argument out and in a spot where I know they are.

11 THE COURT: Sure. That's not a problem.

12 MR. RIDDLE: Thank you.

13 THE COURT: But I'm going to get -- go ahead and let
14 Ms. Zmroczek do what she needs to do.

15 MR. RIDDLE: Yes.

16 MS. ZMROCZEK: Thank you.

17 (OFF THE RECORD.)

18 THE COURT: Folks, you heard the officer just give you
19 some instruction about the closing arguments, and
20 everything he said, I would say what he said, but I know
21 some of y'all -- some people have walked out. I don't
22 know, maybe to use the restroom or whatever. We're getting
23 ready to start, and the doors will be locked. So, if
24 there's any folks out there that y'all know want to be
25 present but stepped out to use the restroom, somebody might

1 want to go tell them we're getting ready to start and they
2 need to come on back.

3 MR. RIDDLE: I'm going to step out and do that this
4 very moment.

5 THE COURT: We're, we're going to have a little bit of
6 time before we start.

7 (OFF THE RECORD.)

8 THE COURT: All right, bring the jury in.

9 (THE JURY ENTERS AT 9:43 A.M.)

10 THE COURT: Ladies and gentlemen, welcome back. I
11 want to start out by thanking you. I want to thank you for
12 this entire week. You have been about as outstanding a
13 jury panel as I've ever worked with, and I really mean
14 that. You've always been on time. You've all -- I mean,
15 you've always -- we've never had to wait on you. You've
16 always had to wait on us and, I mean, you'd be surprised at
17 how many times I have juries and we've got jurors that if
18 I'd asked them to be here at 9:00, they struggle in at
19 9:15, and it's just -- I want you to know.

20 You, you may, you may think that what you've done is
21 nothing to be discussed, but it is because it's rare to
22 have a jury panel that has been as consciousness as you
23 have been, and so I really do appreciate that.

24 We are -- when we rested yesterday, the defense had
25 rested their case and I had matters of law to take up, and

1 we did that. We've taken care of those things. So, we've
2 reached the portion of the trial where the evidence is
3 closed; all of the evidence in this case that you're going
4 to have at your disposal to make your decision is, is, is
5 in. But the -- we're, we're at the point now where the
6 lawyers are going to have an opportunity to address you
7 with what we commonly call closing arguments or final
8 summations.

9 Now, if you recall, when we started this case I told
10 you that when the lawyers address you with their opening
11 statements, that that was not evidence in the case. That
12 was merely their contention as to what the evidence in the
13 case would show. Well, that same instruction I give you
14 with regards to their closing arguments. What they're
15 going to share with you closing in their closing arguments
16 is not evidence. The evidence is closed. They're not
17 under oath; they're not testifying in this case. So, what
18 they share with you is not evidence.

19 Although it's not evidence, it's important that you
20 listen carefully to what the attorneys share with you.
21 This is their opportunity to argue to you what they believe
22 the evidence has shown, and so it's important that you
23 listen carefully to, to them as they address you with their
24 closing remarks.

25 We have a lot of exhibits and things that have come in

1 during the course of this trial. So, Ms. Zmroczek is going
2 to address you with her closing argument first, and then
3 we're going to take just a short break. Not very long.
4 Just long enough to give the state an opportunity to gather
5 together those exhibits they intent to use in their
6 closing, and then we'll come back and start.

7 So, that's kind of how things will occur. And then
8 once the attorneys have concluded their remarks to you, it
9 will then be my opportunity then to charge you the law that
10 is applicable in this case. So, if you would, please
11 listen carefully as the attorneys address you in their
12 closing arguments.

13 Ms. Zmroczek.

14 MS. ZMROCZEK: Thank you. May it please the court?

15 THE COURT: Yes, ma'am.

16 MS. ZMROCZEK: Good morning, ladies and gentlemen. I,
17 too, want to thank you for your patience and your
18 attention. I've tried a lot of cases in this county, and I
19 agree with the judge. There has not been a more attentive
20 jury to the evidence, and as the judge said, that's the
21 most important thing in our case.

22 We've come to the end of our journey, and at this
23 point I must say you might have more questions than
24 answers. You remember in the beginning of the trial when
25 we first started and I first stood up here, I said the key

1 question in this case, this was not a whodunit. This was a
2 why, why, why done it.

3 As the judge said, I get to make my closing remarks,
4 and then I have to sit down and I'll tell you as a defense
5 attorney, that's the hardest time because then Mr. Riddle
6 gets to come up for the state and they get to argue, and I
7 can't reply to what they say. Many of you are thinking
8 great. This is the last time you'll get to hear from me,
9 but it's done that way for a reason, and that reason is the
10 burden rests on the state. They, they told you in opening
11 they welcome that burden.

12 The state has to prove to you beyond a reasonable
13 doubt Shellie Davis did not act in self-defense and if they
14 can't do that, the judge will tell you that you must follow
15 the law and find her not guilty. The reason it's done that
16 way is because you all have sat here all week to come to
17 answer a very serious question of fact, and that question
18 of fact is why was that trigger pulled that morning. If
19 you don't have the facts to answer that question, Judge
20 Russo will instruct you on the law, and he will tell you
21 the law will be your guide and that you must follow the
22 law, and it will help guide you to a just decision.

23 I've broken my closing arguments down in three ways.
24 The first I want to talk to you about is my biggest fear.
25 I'm going to tell you what that is, address it, and tell

1 you why I believe that it scares me. Secondly, I'm going
2 to briefly discuss the state's case and what I believe
3 their evidence shows.

4 The judge told you you will have to rely on how you
5 remember the evidence being presented. It's true what I
6 say is not evidence. What I say is a guide to what I
7 believe or what the defense believes the evidence shows or
8 doesn't show. Then I'd like to talk about the defense
9 case, and the judge will tell you, and you'll hear it over
10 and over and over. It's not a two-sided affair. There's
11 no burden on the defendant to put up a defense or to prove
12 her innocence or to even raise doubt. There is no burden.
13 We put testimony and evidence in, but we could have sat at
14 that table and not questioned one witness, not
15 cross-examined one piece of evidence, and the burden would
16 still be on the State of South Carolina to prove her guilty
17 beyond a reasonable doubt.

18 My biggest fears, I have two. My biggest fear is that
19 you will see reasonable doubt as a defense to self-defense.
20 You'll be given several charges; you'll be given several
21 options by the judge. He will tell you that you get to
22 choose from not guilty and murder, voluntary manslaughter,
23 and involuntary manslaughter. But my biggest fear, the one
24 I'm most worried about, is that you won't start
25 deliberating with self-defense as the starting point

1 because if you deliberate with self-defense at the starting
2 point and you find that it has not been proven beyond a
3 reasonable doubt that she was not acting in self-defense,
4 the law will tell you you have to go no further.

5 When I did my opening statement, I had my very fancy
6 chart, my very fancy board to talk to you what we believed
7 this case is about what it's not about. We believed it was
8 about abuse, manipulation, and lies. And now that all the
9 evidence is in, we can talk about the manipulation and the
10 lies.

11 It is our position that this case is not about cell
12 phone towers, guns, or infidelity. There's a lot of
13 evidence in regarding these factors and, and we will
14 address them. We will address them as long as we're not
15 losing sight of the key question, and the key question is
16 why did she pull that trigger that morning?

17 There were a lot of questions in the state's case
18 raised that I want to address. It was alleged and
19 testified to that she had a secret key made to his
20 apartment, and the judge told you you'll have all this
21 evidence to go through in the room, and, and you can go
22 over that evidence and you can go through it, and I
23 encourage you to do so. If there was a key in Shellie
24 Davis's possession that fit the lock in this apartment, it
25 would have been presented to you.

1 I want to address the statement if she couldn't have
2 him, no one could. Dr. Schwartz-Watts got on the stand and
3 read a statement. She was asked if she reviewed the
4 discovery, which she did in coming to her decision and her
5 conclusion and her medical opinion, and she read a
6 statement to you. That statement was that Shellie said if
7 she couldn't have Jermaine, then no one could, but that
8 statement was not written by Arletta Carr. The reason that
9 Witnesses come to the stand -- I believe y'all did it when
10 you did your oath -- and you raise your right hand, and
11 there was a story behind that.

12 Back in the old days, back in England they used to
13 brand on the inside of your right hand a P if you had been
14 convicted of perjury. We don't do that now, but the
15 premise is still there because when they raise their right
16 hand, you can see that there's no P. The person who made
17 that statement did not come and testify. You did not get
18 to judge her credibility; you didn't get to look at her or
19 hear me ask her questions.

20 How that evidence was presented to you was through a
21 different witness who didn't say it. It didn't make it in
22 any police report. It was an important enough motive, and
23 it didn't make it in one police report.

24 It's been alleged that Jermaine was the victim of
25 abuse. Those are the facts for you to decide. The judge

1 will give you guidance in the law that you can consider,
2 relevant size and weight. Dr. Ross testified he was 73 and
3 a half inches and 220 pounds. She didn't have a scale, and
4 you saw Shellie's height. You heard the testimony that she
5 had lost a lot of weight, but what was most important to me
6 was his sister who sat on that stand and said in response
7 to the question was Jermaine afraid of Shellie. Not only
8 did she say no but she laughed.

9 And I want to talk about laughing and smiling faces
10 for just a moment as well because against men -- men
11 against women, woman against woman, men against men,
12 criminal domestic violence is not a laughing matter. Eat
13 the cake, Anna May. Ha, ha. Did that threaten you? It's
14 not a laughing matter. It is true Jermaine is not here.
15 It is tragic, but the question is why.

16 You've heard from witnesses. The state put up their
17 witnesses, and I want to briefly discuss them. Briefly.
18 Charley Rice, the very first words out of his mouth were I
19 don't know them that well. He doesn't them that well, but
20 he was able to provide the police with an opinion as to her
21 controlling behavior and her violence. What was more
22 telling to me, when Nina Pineda came up and testified, the
23 property manager at Quail Hollow Apartments, she has no
24 interest and no bias in this case, and she told you that
25 that morning, Chris Rice came running down ---

1 MR. RIDDLE: Objection, Your Honor. She's
2 mischaracterizing what she said. She said that evening,
3 Your Honor.

4 THE COURT: Sustained.

5 MS. ZMROCZEK: She said late that evening. I
6 apologize.

7 THE COURT: All right.

8 MS. ZMROCZEK: And again the judge will tell you that
9 ---

10 I'm sorry. Did you need to rule?

11 THE COURT: No.

12 MS. ZMROCZEK: Oh.

13 THE COURT: I sustained the objection.

14 MS. ZMROCZEK: Thank you.

15 And the judge will tell if I misstate evidence, you
16 are to rely on, on what you remember.

17 And she did, she did -- apologize. Late that
18 afternoon into the early evening, I believe she said he
19 came down as white as a sheet and used her phone, the
20 office phone. He said that he was not awoken by a gunshot
21 because the radio was playing in his, in his room. But he
22 said the phone steady rang for twenty minutes, and you get
23 to look at these phone records with the times. And it's
24 not a big deal except if you're going to lie about the
25 little things that don't matter, then you might lie about

1 the things that do and the control and the violence.

2 Arletta Carr loved Jermaine. Wrote a statement but
3 didn't put in that statement that Shellie said if she
4 couldn't have him, no one could because it didn't come from
5 her. She testified that she has a long conversation with
6 Shellie, 123 seconds, and she gets out that she was being
7 evasive. They had a big fight. He was going to call her
8 when he woke up. The phone records will show that she did
9 talk to her. Everyone agrees. Even Shellie testified to
10 that one event, and we'll get into her state of mind. But
11 don't you think if there were proof that she were stalking
12 him at Hemingway's, stalking him at the Gamecock place,
13 stalking, stalking him somewhere else, following him around
14 town that Investigator McDaniels would have made a huge
15 chart showing where her phone was? They breezed over that
16 she had five fraudulent checks. This time it was her mouth
17 that was writing checks that the evidence can't cash.

18 She knew Ms. Davis. I think she said she spoke five
19 or six -- less than ten times, I believe, but Shellie Davis
20 shared the most intimate things with her, but Lisa Jackson
21 and Teph Jones, who have known Shellie Davis for eight
22 years, didn't hear about marital problems because she kept
23 them a secret. They never heard Shellie or saw Shellie be
24 controlling or violent; they never heard Jermaine or saw
25 Jermaine be controlling or violent. I believe Lisa Jackson

1 described Shellie as introverted. Those are people who
2 have known Shellie and Jermaine for eight years. Those are
3 also the people who did not provide any testimony that
4 Jermaine was afraid of the victim.

5 In fact, July 4th they both attend -- July 4, 2010,
6 just a few months before September, two months, the same
7 month that she bought the gun, they were together at the
8 barbecue. You recall Teph Jones did speak with Shellie and
9 said that she sounded concerned.

10 I'll discuss burdens a little earlier, and when you
11 say the burden is on the state, it's not just the
12 prosecutors. The burden is on the police to investigate
13 criminal activity, to protect the judicial process,
14 maintain the highest ethics and standards because that's
15 where the evidence comes from. That's how this process
16 gets started. Ask yourself if, when Investigator Collins
17 testified I believe what they said, if that's, if that's
18 good enough.

19 There was so much talk about primary aggressor and
20 whether or not these charges existed, and Shellie told you
21 she was arrested. She wasn't convicted. Don't you think
22 if there was a conviction, it, it would have been provided
23 to you? Don't you think that if there were police reports
24 and incident reports from Maryland that they would have
25 been provided to you? Because sometimes people get it

1 wrong and sometimes people lie. They do it for all kinds
2 of reasons. They do it because they're scared. They do it
3 because they're being manipulative or manipulated. They do
4 it because they don't recognize a phone number when they're
5 on a stakeout.

6 Shellie testified that she was afraid that she was
7 being lured back. That her belief at that time was when
8 that gun went off, she thought Jermaine drop -- she thought
9 Jermaine missed the bullet.

10 And there was a lot of testimony that she didn't come
11 back to the apartment. And you'll have the phone records,
12 and you'll see at 1, some time in the afternoon around
13 1:34, she calls Jermaine's phone. And you'll see and CSI
14 dared testify she accidentally called Shellie's phone at
15 2:34, but Shellie didn't know that that was an accident.
16 She didn't know that that wasn't Jermaine. So, it makes
17 sense at that point when she's already on her way to
18 Charlotte to kill herself that she still believed Jermaine
19 was alive.

20 Mr. Riddle will come up and I suspect will tell you
21 use your good common horse sense. But when you use it, use
22 it to all the witnesses and their explanations.

23 Investigator Collins didn't want to be taken away from
24 where he was so that Shellie could escape or that, or that
25 he didn't know what he was walking into. I submit that

1 that's not any different than Shellie's beliefs with what
2 she knew at the time.

3 Investigator Derrick at the scene does her job,
4 collects her evidence, collects her evidence that could
5 provide relevant information to what happened. Submitted
6 that evidence to SLED in 2010 and SLED identified blood on
7 these sheets. In 2014, the defense requested it be tested,
8 and it came back and that blood on those sheets came back
9 to Shellie Davis. When you're looking at the evidence and
10 you're looking for corroboration, look to the evidence that
11 can't be changed or forgotten or misremembered.

12 CSI Strickland testified what she did at the home was
13 collect what she believed to be any evidence probative to
14 the case. Do you recall I asked probative to the case,
15 what does that mean? It means shed the light, shed some
16 light on what happened.

17 When you take these back into the evidence room with
18 you, you get to open them. You get to rip them open and
19 you get to read the dates and her words and not just one
20 line or one page but all of them. And I challenge you to
21 go in every piece of evidence because you won't find
22 evidence of Shellie ever saying she hated Jermaine and that
23 she wanted to kill him because she didn't. You will find
24 evidence of fear and hurt, and those were her words before
25 this happened because that evidence was collected by CSI

1 Strickland on September 22 of 2010.

2 The blood on the hand, we don't know whose blood that
3 was because it wasn't tested, if it's Jermaine blood. Then
4 listen to how Dr. Ross described: he dropped where he
5 stood. And if he were bending over, he would have fallen
6 forward. How did that blood get on his hand? His hand had
7 to be in front of his mouth. Could he be coughing? Could
8 he be getting ready to turn around and punch? Would his
9 hand then be in front of his mouth?

10 It's not a 50/50 standard. It's not a 51 standard.
11 It's not a percentage standard. It's not a preponderance
12 of the evidence, a greater weight. It is beyond a
13 reasonable doubt. It's evidence that leaves you firmly
14 convinced in her guilt.

15 Lastly, I want to talk about the defense case. The
16 judge will tell you that defendants are presumed innocent,
17 and when I hear that, I'm not -- I think back to sixth
18 grade civics and the lip service, and it's not just a
19 presumption of innocence, and she didn't have to prove
20 anything. But she got up there on that stand and
21 testified. And he will tell you each witness gets to be
22 judged on their demeanor and appearance and their candor.
23 And she testified I may have told Arletta we had a big
24 fight that morning. She testified that even if it, if it
25 would hurt her case, but she told you that she was -- the

1 very first two questions: did you shoot your husband and
2 why. Because I was afraid he was going to kill me.

3 Corroboration. When I asked Investigator Collins
4 what, what did you follow up on, because anybody can say
5 anything. I have six sisters and I'm the oldest, and I
6 would color on the wall. I, I would do it and my parents
7 would come in and say who colored on the wall, and we're
8 all standing there and they got seven different stories,
9 seven different stories. So, what they started doing is
10 only let us coloring with certain colors so that they could
11 decide -- they could not have to decide, so that they would
12 have proof.

13 And Kenyatta Terry-Allen provided some proof.
14 Jermaine's words, Jermaine's words provided the proof and
15 the corroboration.

16 And the summary of the phone records. If you don't
17 want to rely on these numbers, you can count them yourself.
18 Ms. Davis was asked you called, you called Jermaine 151
19 times in the month of September, didn't you, or in the
20 twenty-two days of September, didn't you? Yes. And he
21 called her 269 times, and I broke it down into the hours
22 and the times that those phone calls were made and the text
23 messages between 10 and 6 a.m., and most importantly what
24 those text messages will be provided to you, and you can
25 read every one of them. And they're not just colored for

1 pretty -- the, the, the outgoing calls are highlighted and
2 the incoming calls are not. Not to draw attention to one
3 another but to make it easier to read.

4 Arletta and Charley testified that he didn't want her,
5 but you'll get to read his words and how he spoke to her.
6 And you saw the bus ticket when she went down to Atlanta on
7 September 1st, and you get to look at the text messages and
8 see how he treated her after he asked her to come down, and
9 how he ignored her and told her to hold on, and then a few
10 days later said let's go to the beach.

11 Ladies and gentlemen, Dr. Tyson explained what a cycle
12 was, and you get to look at that cycle through the evidence
13 that's presented. Dr. Tyson, who is an expert -- and he
14 told you it's not his job to apply the facts to his
15 knowledge of battered woman syndrome because he didn't hear
16 the testimony. He left that to you, the judges of the
17 facts. And when he couldn't be cross-examined on the
18 science or demeaned by being referred to as mister instead
19 of doctor, he was embarrassed or attempted to be demeaned
20 because he didn't supervise a master's student, and he
21 wasn't -- he didn't lose his license. He wasn't
22 disciplined, but none of that changes what he said about
23 the characteristics of a battered woman.

24 And Dr. Schwartz-Watts was called to help explain
25 Shellie's state of mind when she drove to Charlotte because

1 normal, reasonable people don't do that. But when you read
2 those journal entries and you look at the dates and you
3 look at the July 21st in her journal entry, the same date
4 that they put the receipt in, July 21st that she bought the
5 gun, and she apologizes to her children because she can't
6 take it and she's ending it, and then you go back a few
7 more months in March and in April and you read her words
8 and you go back to 2006, and you remember the cycle that
9 Dr. Tyson talked about. She filed for divorce and he
10 talked her out of it, and she withdrew it. It was
11 reasonably necessary to her to defend herself.

12 If it has not been proven to you beyond a reasonable
13 doubt that that trigger of him that morning yelling at her
14 because he was going to lose her job -- he was going to
15 lose his job, although nobody testified to that. And that
16 trigger of him turning around is what made her not shoot
17 herself and shoot him in fear and then continue with her
18 plan. And as it was pointed out in cross-examination, she
19 couldn't even do that good enough because she didn't feel
20 good enough and she didn't feel worth it. But most
21 importantly she felt fear, and that fear is why she acted
22 in self-defense, and that fear is why she is not guilty of
23 murder, and she's not guilty of manslaughter, voluntary or
24 involuntary. It's why she's not guilty: because she was
25 justified in her actions. Thank you.

1 THE COURT: All right, ladies and gentlemen, I'm going
2 to get you to step back to the jury room. Have no
3 conversation about the case at all. It'll be just a couple
4 of minutes, and then we'll bring you back out.

5 (THE JURY EXITS AT 10:26 A.M.)

6 (A PAUSE.)

7 THE COURT: All right, let's bring the jury back in,
8 please.

9 (THE JURY ENTERS AT 10:34 A.M.)

10 THE COURT: All right, ladies and gentlemen, if you
11 would please turn your attention to Mr. Riddle as he
12 presents his closing argument.

13 MR. RIDDLE: Thank you, Your Honor.

14 Good morning. If Shellie Davis had stayed home that
15 day, Jermaine would be here and you wouldn't. If Shellie
16 Davis had taken the Bible that she put into evidence over
17 to Jermaine's apartment instead of this gun, Jermaine would
18 be here and you would not.

19 True battered women or men, as the situation may be,
20 deserve sympathy. They do. They're trapped; they're
21 stuck. They're in a house with the batterer. They have no
22 place to go and no place to hide. They're beaten and
23 beaten over and over again until they strike back.
24 Sometimes they'll even kill the batterer while they're
25 asleep because they know as soon as they wake up, the

1 beatings are going to start over. That's what a battered
2 spouse is.

3 If you believe the defendant, she had every battered
4 spouse's wildest dream come true. The batterer, according
5 to Shellie Davis, moved out. He didn't want to batter her
6 anymore if you believe her, and her abuse would end. But
7 for her, that was her worst nightmare because when Jermaine
8 moved out, she lost control of him.

9 She was in control. She wore the pants. I don't
10 remember who said that. Somebody did. She wore the pants.
11 Remember everybody talked about the kids and how well
12 behaved they were? She had them under control. Five kids,
13 one mom, they're all sitting on the couch lined up as good
14 as they could be. She was in control of them. But when
15 her house is going into foreclosure, she's not spending
16 money on kids. She's buying a gun, spending money down at
17 People's Pawn. I don't remember how much it was. Y'all
18 will have that with you; you can look at it.

19 She wants you to believe that she was going to commit
20 suicide, and we're going to talk about some more suicide in
21 a minute, but if -- she didn't kill herself in the
22 apartment. She didn't kill herself in the parking lot
23 outside when she got back to her car because there was
24 people around. She didn't kill herself when she went to
25 the house. She didn't kill herself when she went to work.

1 She didn't kill herself in Charlotte when she went to
2 Naeka's work or when she went to Naeka's home, or even when
3 she first got to Naeka's brother's house. She only
4 committed suicide after the cops start calling and leaving
5 her voice mails when she knows that they're coming. That's
6 when she committed suicide.

7 She was depressed. The doctors in Charlotte said she
8 had been diagnosed with acute depression. Well, Donna
9 Schwartz-Watts said longer term, longer-term depression.
10 You know, I mean, I don't think that's that great, big of a
11 medical leap she tried to commit suicide. I'll concede
12 that. And I think almost by definition you got to be
13 depressed to try to commit suicide. So, I don't have a
14 problem with either one of those diagnoses, either acute
15 depression or longer-term depression, but you know what
16 neither one of those sets of doctors diagnosed her as? A
17 battered spouse, neither one.

18 Donna Schwartz-Watts saw her in the jail way early on,
19 and she told Donna about some alleged abuse that had
20 happened to her over a fourteen-year time period, but Donna
21 didn't diagnose her as a battered spouse, and she didn't
22 tell Donna that she had been anally raped two or three days
23 before she killed her husband.

24 Then that guy from North Carolina comes in that was
25 hired a full ten days before y'all were sworn in as jurors

1 to review documents provided only from the defendant so
2 that he could tailor his testimony to fit these facts. He
3 never even met Shellie Davis, never met her until he showed
4 up here to testify.

5 It's been said that I demeaned him by asking him a
6 question where he was found to have engaged in immoral,
7 dishonorable, unprofessional ---

8 MS. ZMROCZEK: Objection, Your Honor. He's
9 mischaracterizing.

10 THE COURT: Come up.

11 (OFF-THE-RECORD BENCH CONFERENCE.)

12 MR. RIDDLE: But he wouldn't admit that. He won't
13 even admit to y'all that he's making \$3,600 by coming down
14 here and testifying.

15 Now, that's almost amazing to me. That's almost
16 amazing to me because all of y'all engage in business of
17 some form or another. All of y'all have expenses and
18 overhead, but I paid any of y'all \$3,600, y'all are \$3,600
19 to the good. And whether some of that money goes to pay
20 your light bill or buy toilet paper or whatever it goes to,
21 at the end of the day you've still got \$3,600 more than you
22 had when you started. But he wanted to go through all this
23 about no, that money goes to my company and then my company
24 will pay me if there's any money left over by the time we
25 get to the end of that. He's still \$3,600 to the good.

1 And here's the most amazing thing about that guy. Even he
2 doesn't diagnose her as a battered spouse.

3 You know, ladies and gentlemen, the point of closing
4 argument is for us to talk to you about the law and about
5 the facts. That's what the point of this is and to tell
6 you how each side sees the evidence and the law in this
7 case and how y'all arrive at y'all's verdict. When I'm
8 done, the judge is going to charge the law, and y'all are
9 going to decide what the facts are.

10 You've heard all the evidence, okay? You've heard it
11 all. It came from up there, it comes from these exhibits,
12 but all evidence is not a fact. In fact, no evidence is a
13 fact until you decide it is. Y'all are like a big, old
14 sponge: all the evidence gets poured into you, and then the
15 twelve of y'all squeeze the truth out of that sponge.
16 That's what y'all do. Evidence goes in the top; facts come
17 out the bottom. And it's only after the twelve of y'all
18 have processed all of this evidence that any of it, any of
19 it becomes a fact because that's what y'all do. That's
20 exactly what y'all do.

21 Judge is going to tell y'all, is going to give you a
22 charge about the credibility of the witnesses, okay? Ms.
23 Zmroczek says she's afraid that y'all won't start with
24 self-defense. Well, I'll tell you something. You can't
25 start with anything until you decide the credibility of the

1 witnesses because y'all can't apply the law of
2 self-defense, of murder, of voluntary manslaughter,
3 involuntary manslaughter. Y'all can't apply that to
4 anything until y'all determine what the facts are, and then
5 once y'all decide the facts, y'all take the facts that you
6 find and apply that to the law that the judge gives you.
7 So, you don't start with self-defense or murder or anything
8 else. You start by determining what the facts are -- and
9 again all the evidence that came in -- based on y'all's
10 good sense, y'all's background, y'all's experiences. Got
11 twelve sets of eyes, twelve sets of ears. Y'all decide
12 what the facts are.

13 Judge is also going to tell you about burden of proof,
14 reasonable doubt, presumption of innocence, and I submit to
15 y'all when y'all have the charge, you'll see this. It's
16 kind of like three sides of a triangle, okay? The state
17 has the burden of proof to prove beyond a reasonable doubt,
18 to remove the presumption of innocence. They all three go
19 together; they all three go together. Right now Ms. Davis
20 is presumed innocent. Stays that way until y'all decide
21 what the facts are and apply it to the law.

22 He's going to tell you -- and I skipped something and
23 I apologize. He's going to tell y'all about credibility,
24 and he's going to tell y'all that you look at any number of
25 factors, and I'm going to list a couple but not all of them

1 probably that he does. You look at their demeanor or how
2 they appear. You look at their bias. Are they for one
3 side or another? You look at their motive. Who's got the
4 most to gain or lose by testifying in a particular way?
5 You look at all the things, all the things that y'all look
6 at in ordinary life to determine whether somebody's telling
7 the truth.

8 If y'all were to go in to a used car lot and you're
9 talking to the salesman, sometimes you might say hmm. I
10 might need to take this with a little grain of salt. Maybe
11 I'm not really getting the full story on all this, and you
12 judge that based on your eyes and your ears and your common
13 sense and your background and your wisdom that you've
14 gathered over the course of your lives.

15 So, I got one thing to ask y'all. Please don't check
16 all of that stuff when you go into the jury room. Take it
17 in there with you. Take it in there with you and use your
18 common sense, your background, your experience, your wisdom
19 in determining who is telling the truth in this case when
20 y'all squeeze those facts out of the sponge.

21 Now, the defendant in this case is charged with
22 murder. Murder is the killing of a person with malice
23 aforethought, either expressed or implied. That's what
24 murder is. Judge is going to tell you this, and I think
25 he's going to give it to you in writing. No doubt that a

1 person's been killed.

2 Malice aforethought, what is that? Well, it's
3 actually two different things. Malice, malice is meanness,
4 wickedness, intent. That's what malice is, like malicious,
5 malevolent. It's wickedness. What does aforethought mean?
6 Judge is going to tell you about that, too. Judge is going
7 to tell you that malice must exist with aforethought, which
8 means it must exist just before, just before. Not days
9 before, weeks before, even hours or minutes before. Just
10 before and at the time that the fatal blow was struck,
11 malice aforethought. What's expressed or implied mean?
12 That's just different ways to prove malice.

13 Those are the elements, the killing of a person with
14 malice aforethought. Expressed or implied, simply how it
15 gets proved. Expressed malice, what is that? That's
16 things like I'm going to kill you. That's an expression of
17 malice, an expression of intent. What's implied malice?
18 Well, implied malice is circumstances from which you could
19 infer malice, okay? Like driving 20 miles, like getting
20 the gun out of the console, like pulling the safety key out
21 of your purse and turning the safety off, like putting the
22 gun in your purse, like taking it inside the apartment.
23 That's implied malice or inferred malice. You're judging
24 malice or you're finding malice based on the circumstances
25 surrounding what went on that day as opposed to expressed

1 malice, which would be an actual statement of I'm going to
2 do this. So, that's murder. That's murder.

3 Judge is also going to give you a charge on an offense
4 called voluntary manslaughter, and I'm going to tell you a
5 bit about voluntary manslaughter. It's still an
6 intentional killing. It's a killing that's done on
7 purpose, but it's done without malice and it's done in
8 what's known as sudden heat and passion upon sufficient
9 legal provocation, and again that's two different things,
10 and the judge is, I believe, going to give you this in
11 writing as well. So, y'all don't need to rely on what I'm
12 saying to remember it.

13 What is sudden heat and passion? It's when a
14 situation overcomes a person's mind and they don't have the
15 ability to coolly reflect. And sufficient legal
16 provocation is something that the victim of the killing has
17 done to provoke that heat of passion.

18 Now, I will tell you the classic example of that,
19 okay? The example of that is that you walk into your home
20 and you catch your spouse in bed in what the law refers to
21 as a guilty embrace: in bed with their lover. The term
22 guilty embrace comes from a long time ago as well. But you
23 catch your spouse in bed, and you lose the ability to
24 coolly reflect on it, and you grab a gun and you kill them
25 both. Sufficient legal provocation: the spouse has

1 provoked you to have such a heat of passion that you can't
2 coolly reflect things. So, that's a lesser offense of
3 murder. You got killing with malice and then killing with
4 sudden heat of passion and sufficient legal provocation.

5 Judge is going to instruct you on a third form of
6 homicide in this state, and that's called involuntary
7 manslaughter. Now, folks, involuntary manslaughter is an
8 unintentional killing, an unintentional killing, but the
9 defendant got on the stand and told you she did it on
10 purpose. So, I submit that's not really an issue. She
11 said I pointed the gun at him and shot him. So, I don't
12 believe involuntary manslaughter is even in play.

13 Having said that, you'll have that option in the jury
14 room, and it's for you to decide what the facts of this
15 case are, and it's for you to decide how those facts apply
16 to the law that the judge gives you.

17 Judge is also going to charge you on the law of
18 self-defense. If you find self-defense in this case, then
19 the killing is, in fact, justified and she should be
20 acquitted. Judge is going to tell you about the elements
21 of self-defense, and just like with the elements of murder,
22 you have to have all of them. You have to have all the
23 elements of self-defense in order for the killing to be
24 justified.

25 The first element of self-defense actually is what I

1 started these closing remarks with: no fault in bringing on
2 the difficulty. No fault in bringing on the difficulty.
3 If she'd have just stayed home, Jermaine would be here and
4 you would not.

5 Second one is that person is in imminent danger of
6 losing their life or sustaining serious bodily harm or
7 believes that they're in that danger, okay? Imminent
8 danger of sustaining death or serious bodily harm, or a
9 belief that they're in that danger, and the judge will give
10 you this in writing.

11 The last element is that there is no means of avoiding
12 it. No other means of avoiding it. That's what's known in
13 the law as the duty to retreat, and you've heard that you
14 have no duty to retreat your own home. If you're in your
15 own house, you don't have to flee out of the house if
16 somebody breaks in. You can defend your home. She wasn't
17 at her own house, and she had a duty to retreat.

18 Closing argument is also a time to look at the
19 evidence in the case and what the state submits that
20 evidence has proven to y'all. First of all, I would submit
21 that the evidence shows that Jermaine moved out of the home
22 on Algrave Drive in over in Richland County and that he had
23 been gone for months. I think the evidence also shows you
24 that the defendant would go over to his apartment behind
25 Lexington hospital all the time. Went there quite often.

1 Does not sound -- or I submit to you it doesn't sound like
2 she's afraid of him, like she's trying to avoid pain.

3 I think the evidence, even by Ms. Davis's own
4 admission, is that she would go through his cell phone
5 looking for phone numbers, texts, calls from other women
6 and that if she found them, she'd wake him up and confront
7 him about it. That does not, I submit to you, sound like
8 someone trying to avoid conflict.

9 I want you to look when y'all are back there at the
10 contact list for Shellie Davis's cell phone. Just flip
11 through it. Most of it is regular names, most of it is.
12 But then there's some in there that say things like: Bitch
13 that J calls. There's one in there, I think that says: Ho
14 4 J, white. Does that sound like Jermaine is controlling
15 her?

16 She came and went as she pleased; she wasn't held
17 hostage. She wasn't confined to that house like a classic
18 battered spouse is, nowhere to go, nowhere to hide. She
19 had a residence 25 miles away from this guy, way yonder
20 across town, Northeast Columbia.

21 In her opening statement, Ms. Zmroczek told y'all that
22 Ms. Davis had spent her whole life telling lies, covering
23 up, hiding the truth, but now she's finally going to tell
24 you the truth.

25 Who's got the most to gain or lose here? Who's got

1 the most to gain or lose? She said the trigger move is a
2 roundhouse punch, roundhouse punch. The guy, the guy is
3 standing in the doorway to the closet. He's standing in
4 the doorway to the closet, and by her own admission she's
5 standing somewhere over here. And when she shoots the gun
6 -- and the injector port's on the right-hand side. Y'all
7 can see that. When she shoots the gun back in this way, it
8 kicks the bullet way over here, or the cartridge case
9 rather.

10 And the gun barrel, the gun barrel -- y'all all heard
11 Dr. Ross -- is a minimum -- I can't reach that far or I
12 would, but it's a minimum 24 inches to 30 inches at a
13 minimum away from his head. She's way over here, and she
14 wants you to believe that this guy's turned his back
15 completely to her because he's going to come, come around
16 punch and her. Does that make sense to y'all? I don't
17 know how he could even hit her with the closet doors in the
18 way, and she's at least 3 feet away and an arm's length
19 past that.

20 The defendants said in their opening that the battered
21 woman syndrome was going to explain self-defense to y'all,
22 but I don't think that explains her following him when he
23 doesn't know it, or telling Michon she's going to secretly
24 make a key to his apartment, or showing up at his work
25 uninvited to confront him. She wanted him back. He was

1 out of control. He was living over in West Columbia with
2 two guys. He was working his jobs.

3 She said that she was going to commit suicide. Now,
4 maybe I don't quite understand this, but if you're going to
5 commit suicide, does it really make a lot of difference if
6 somebody hits you first? I don't know. Is it reasonable
7 in y'all's minds if you've been brutally raped two days
8 before to go back to this apartment? Does it make sense
9 that Jermaine Davis -- I don't see it right here in front
10 of me, but you'll have it back there --- would take the
11 time to go pay her for working in the concession stand when
12 he's such a bad guy, beating her, battering her, all this?
13 Is he going to worry about paying her 80 bucks or something
14 like that?

15 And why is this punch this one time any different than
16 any of the other punches she's allegedly taken over their
17 fourteen-year marriage? The defendant told you and wants
18 y'all to believe that Jermaine Davis, the limo driver, can
19 manipulate the entire system and get police to do his
20 bidding for him so that he can continue to batter her.
21 That's what she told y'all. Is that a reasonable belief?
22 That just because she -- that just because he's got the
23 number of some elected officials, that he can control their
24 actions because he has their phone number? He's a limo
25 driver. He drives important people around, but that

1 doesn't make him important people. That makes him know
2 some important people, and we all know important people.
3 Our bosses are important; sometimes we drive them around.
4 Our families are important; we drive them around.

5 She told you she couldn't go to Enola's or couldn't go
6 to Tracee's because she was afraid that Jermaine was going
7 to find her. So, instead she goes to her house, the single
8 most likely place for him to look, and from there she goes
9 to work, the second most likely place for him to look.

10 Does that make sense? That's up to y'all to decide.

11 She said she went to the apartment with a surprise for
12 Jermaine: a paycheck. I submit to y'all she had a surprise
13 for him, but it wasn't a paycheck. It wasn't a paycheck
14 because after she killed him, she took the time to mail
15 that paycheck to her parents.

16 I wanted to make a couple remarks about some of the
17 things that the defense said in their closing argument.
18 I've already addressed a couple of them, but I want to, I
19 want to address them anyway. First one was the issue about
20 starting with self-defense. Again, you can't start with
21 self-defense or any of the law the judge gives you until
22 y'all determine what the facts are. So, you have to start
23 with credibility and the evidence, okay? Y'all have to
24 figure out what the facts are first.

25 Second is they started -- she started talking about

1 the state's case, and she talked about the key that Ms.
2 Davis may have had. Well, Ms. Davis testified Jermaine let
3 him -- in. What difference does it make?

4 She talked about the smiley face and laugh out loud.
5 I'll tell y'all something. I'm an old bald guy and I don't
6 understand a lot of things, but I'm pretty sure I know what
7 a smiley face and laugh out loud means, and I'm pretty sure
8 when you look at this, you will see that this is not a
9 threat. This is a joke, and it's from April. I'm not
10 saying it's in good taste. I'm not saying it's in good
11 taste at all, but it's not a threat. It's not some kind of
12 thing designed to control her.

13 She talked about Charley Rice and Ms. Pineda. Ms.
14 Pineda doesn't even know what time of day this happened.
15 Talking about evening time, Charley comes in there.
16 Evening time, she's already up in Charlotte. Police are in
17 Charlotte, I think, at 7 or 7:30, and it's September.
18 Still staying light.

19 She said that the defendant thought the bullet missed,
20 the bullet missed. I don't know how you think that. I
21 don't how you point a gun at the back of somebody's head,
22 pull the trigger and they drop like a rock, and you go with
23 the theory that you've missed.

24 What does the blood on the sheets mean? The bed was
25 made up. Dr. Ross says you can have some bleeding from

1 consensual sexual intercourse. I submit it means nothing.
2 Certainly doesn't prove that a rape happened.

3 Blood on the hand, whose blood it is. Well, the
4 defendant told you: he never hit me. So, who's bleeding on
5 that scene? Jermaine. So, whose blood is it? Jermaine's.
6 Aspirated blood. His hand must have been near his mouth at
7 some point when he was taking his last breath.

8 The defendant's testimony: I was in fear. She was
9 going to kill herself is what she said. She cried all
10 through her testimony. You know what she didn't cry at?
11 When I showed her. He didn't look like that. He died
12 within seconds to minutes. What did he look like? There's
13 brain matter on the floor underneath him. How far you
14 think he got? Hit the part of his brain that controls your
15 ability to stand up, and he fell in a heap. That's exactly
16 what he looked like when she left.

17 The defendant wants you to believe that he was going
18 to get up from that because he had just ducked, and he was
19 going to try and get her, and then he was going to get this
20 great conspiracy together that included the police and the
21 judges and the legislators and whoever else was in his
22 phone, and they were all going to conspire together and
23 find her and lure her back to Jermaine so he could beat her
24 some more. Does that makes sense?

25 And let's talk about the flat iron for a minute, okay?

1 Let's talk about the flat iron because I pulled that out.
2 You remember she told y'all that she packs this bag after
3 the shooting when she went back by the house? She told
4 y'all that, and she told y'all that it was her intent to
5 commit suicide. Let's look at this bag for a minute.
6 Let's look at what she's got.

7 She's got a flat iron so she can fix her hair. Got a
8 shoe here. Got a couple of hats. What do you need hats
9 for if you're going to fix you hair and then kill yourself,
10 and why two? Here's the other shoe. Underwear, one. A
11 dress, change of clothes. Another pair of underwear. What
12 you need two pairs of underwear for if you're going to kill
13 yourself? You need another pair of jeans? Do you need
14 your wallet? You need a calculator? Keys to a bunch of
15 people's houses? Third pair of underwear. Toothpaste,
16 deodorant, bunch of receipts, hairbrush. Sunglasses, great
17 big ones to cover your face. A comb, fingernail clippers,
18 a toothbrush, a bunch of cotton balls, a whole lot of
19 receipts. Is that somebody that's going to kill
20 themselves, or is that somebody taking a trip and hiding
21 out?

22 Change of pants, change of dress, three pairs of
23 underwear, toothbrush, toothpaste, deodorant, two hats,
24 sunglasses, flat iron, that's what she packed to commit
25 suicide. Does it make sense that she's going to kill

1 herself, or does it make more sense that she's running?

2 Y'all decide.

3 The journals, her innermost thoughts, the things she
4 can't tell to anybody else, they're in evidence and y'all
5 can rip them open and look at them, and I tell you what.
6 You will not find anything in there about Jermaine raping
7 her. You won't find anything about him abusing her.
8 You'll find a lot about her being depressed and sad and
9 upset because Jermaine left. He was moving on.

10 She says the note on the money was because she screwed
11 up with the kids. The kids were well-adjusted; that's what
12 everybody said. She said it was because she didn't protect
13 them. From what? From what? They told the police they
14 had seen them argue but never seen them fight. What did
15 she have to protect them from? She was so worried about
16 her kids, she didn't even tell them goodbye.

17 The defense made a big deal that we didn't talk to
18 some of the witnesses in this case until 2013. They didn't
19 even find that guy from North Carolina to April 11th of
20 this year. Here's what we got, folks. We got that Naeka
21 Collins girl, the only person, the only person that says
22 she was told about the abuse. She refused to talk to us,
23 and she admitted that she never told the cops about it that
24 night.

25 She didn't kill him because she was battered. She

1 killed him because he was moving on. Defendant told Donna
2 Schwartz-Watts that Jermaine made her quit her job at the
3 real estate company. He was dead when she quit.

4 She might have been depressed, acutely or chronically,
5 I don't know. I don't know, but the answer to depression
6 probably lies with a counselor or with a doctor, but it
7 sure doesn't lie in a gun store.

8 The one thing we can believe from that North Carolina
9 guy is that it's not uncommon that CDV charges get dropped,
10 and I can promise you if there was a history of Jermaine
11 being arrested for CDV charges, you'd know about it. I can
12 assure you of that.

13 This case shouldn't be in general sessions court,
14 ladies and gentlemen. It should have been in family court.
15 Should have been in family court and it would have been in
16 family court if she'd have stayed home or not brought that
17 gun to Jermaine's house that morning. She didn't even
18 allege abuse when she filed in family court before she
19 dropped it.

20 Here's what we got at the end of the day. Here's what
21 we got. We got a distant 24 to 30 inches minimum fatal
22 gunshot wound to the very back of his skull, and he dropped
23 like a stone while he's standing in the doorway to the
24 closet and the defendant standing over here. Because that
25 bullet disrupted -- I think that's the word the doctor

1 used. I might be wrong. That bullet disrupted his ability
2 to have any rigidity or muscle control in his body, and he
3 just went down. Gravity did all the work.

4 It's malice. It's meanness, plain and simple. She
5 lost control of him when he moved out, and she couldn't get
6 him to come back. That gun, that gun was her final tool to
7 regain control of Jermaine Davis, and after she left there,
8 it wasn't about suicide. It was about her curling iron,
9 her hats, her three pairs of underwear, her two changes of
10 clothes, and her sunglasses. She was on a journey. She
11 was on a journey. It became about suicide once the cops
12 started zeroing in, but it didn't start that way.

13 You want to talk about corroboration? That purple bag
14 is your corroboration right there. Evidence that can't be
15 changed, can't be misremembered: three pairs of underwear
16 and two hats.

17 Y'all took an oath at the beginning of this week. I
18 don't know if y'all remember it, okay? I'll tell you what
19 it was briefly. Raised your hand and said you will well
20 and truly try. Y'all have done that. That's what the
21 judge was talking about earlier. Showing up on time, being
22 very attentive, all of those things, y'all have -- well and
23 truly try? Y'all have done that.

24 You're fixing to do the second part, true deliverance
25 of a verdict render, and that's when y'all will go back in

1 the jury room, keeping your common sense, keeping your
2 wisdom, keeping all your experiences. That's when you're
3 going to take all that evidence and squeeze it out of that
4 sponge. True deliverance of a verdict render.

5 All we ask is that you fulfill your oath. That's all.
6 Nothing more, nothing less. Do justice in this case. I
7 submit to you that justice in this case is murder. I
8 submit to you this is malice, plain and simple, and I
9 submit to you that that's the corroboration you need right
10 there. Thank you.

11 THE COURT: Ladies and gentlemen, my charge to you is
12 going to take about twenty to twenty-five minutes. Does
13 anybody need to go to the restroom, anything, before we
14 start?

15 MS. ZMROCZEK: Your Honor, may I approach for one
16 minute?

17 THE COURT: Yes, ma'am.

18 MS. ZMROCZEK: May we approach? Sorry.

19 (OFF-THE-RECORD BENCH CONFERENCE.)

20 BAILIFF: Excuse me, Your Honor, they do need a break.

21 THE COURT: All right. Well, go do that, and I'll
22 tell you at this time we'll bring you back in when you let
23 us know you're ready, okay? So, take care of that, and
24 please have no conversation about the case.

25 (THE JURY EXITS AT 11:30 AM.)

1 (OFF THE RECORD.)

2 (THE JURY ENTERS AT 11:42 AM.)

3 *JURY CHARGE*

4 THE COURT: All right, ladies and gentlemen,
5 throughout the trial, I've been up on the bench. You
6 recall when we started this case I said that you were the
7 triers of fact and I was the judge of the law, and so it's
8 been appropriate throughout the trial for me to be out of
9 the way while the lawyers present the facts to you. But we
10 have now reached the portion of this case where you and I
11 are in this together, you as the judges of the facts and me
12 as the judge of the law. So, I think it appropriate for me
13 to be down here with you to give you the instructions.

14 Now, I'm going to read these to you verbatim so I
15 don't leave anything out or misquote anything, okay? Mr.
16 Foreman and members of the jury, you have heard all of the
17 evidence and the arguments of both parties. I will now
18 explain to you the law which applies to this action.

19 The indictment charges the defendant, Shellie Lavette
20 Davis, with the offense of murder. I remind you that the
21 fact that the defendant was arrested, charged, and indicted
22 in this case is not evidence in this case, and it cannot be
23 considered by you as evidence of guilt in this case, nor
24 does it create any presumption or inference of guilt. The
25 indictment is simply the formal written instrument which

1 contains the charge made against the defendant. It is the
2 formal document by which this case is brought into this
3 court.

4 Now, I will give you a copy of these instructions in
5 written form to have with you in the jury room. During
6 your deliberations, you may refer to the instructions to
7 guide you in your decision-making. You must consider,
8 however, the instructions as a whole and not follow some
9 and ignore others.

10 Now, the defendant has pled not guilty to the
11 indictment and to the charge, and that plea puts the burden
12 on the state to prove the defendant guilty. A person
13 charged with committing a criminal offense in South
14 Carolina is never required to prove him or herself
15 innocent. I charge you that it is an important rule of law
16 that the defendant in a criminal trial, no matter what the
17 seriousness of the charge may be, will always be presumed
18 to be innocent of the crime for which the indictment was
19 issued unless guilt has been proven by evidence satisfying
20 you of that guilt beyond a reasonable doubt.

21 This presumption of innocence does not end when you
22 begin your deliberations, but it accompanies the defendant
23 throughout the trial until you reach a verdict of guilt
24 based on evidence satisfying you of that guilt beyond a
25 reasonable doubt. The presumption of innocence is not a

1 mere legal theory. It's not just a legal phrase, but it is
2 a substantial right to which every defendant is entitled
3 unless you, the jury, are satisfied from the evidence of
4 the defendant's guilt beyond a reasonable doubt.

5 So, what is a reasonable doubt in the law? The state,
6 as I said, has the burden of proving the defendant guilty
7 beyond a reasonable doubt. Some of you may have served as
8 jurors in civil cases where you were told that it is only
9 necessary to prove that a fact is more likely true than not
10 true such as by the greater weight or the preponderance of
11 the evidence. In criminal cases, the state's proof must be
12 more powerful than that. It must be beyond a reasonable
13 doubt.

14 Proof beyond a reasonable doubt is proof that leaves
15 you firmly convinced of the defendant's guilt. There are
16 very few things in this world that we know with absolute
17 certainty, and in criminal cases the law does not require
18 proof that overcomes every possible doubt. The state's
19 burden simply requires proof beyond any reasonable doubt.

20 There is no obligation on the defendant to raise any
21 doubt or any other possibility. She is presumed innocent,
22 and the state has the burden of proof and must prove that
23 the defendant is guilty beyond any other reasonable
24 possibility.

25 Now, I remind you that during this trial, you and I

1 have certain duties to perform. As the trial judge, it is
2 my responsibility to preside over the trial of the case,
3 and I also have the duty to rule on the admissibility of
4 evidence offered during the trial. You are to consider
5 only the competent evidence that is before you; you are to
6 consider only the testimony which has been presented from
7 the witness stand, any exhibits which have been made part
8 of the record in this case, and any stipulations or
9 agreements of counsel.

10 I have the additional duty to charge you the law
11 applicable to this case. As the presiding judge, I am the
12 sole judge of the law in this case, and it is your duty as
13 jurors to accept and to apply the law as I now state it to
14 you. If you already have any idea as to what the law is or
15 what the law ought to be and it does not agree with what I
16 now tell you the law is, you must abandon your idea because
17 you are sworn to accept the law and apply the law exactly
18 as I state it to you.

19 In every case tried in this court before a jury, the
20 jury becomes the sole and the exclusive judge of the facts
21 of a case. A trial judge cannot intimate, state, comment
22 on, or make any statement to a trial jury about the facts
23 of a case. Since you, the jury, are the sole judge of the
24 facts in this case, you are not to infer from what I have
25 said during the process of this trial in ruling on the

1 admissibility of evidence or otherwise or anything that I
2 say now during the course of this instruction to you that I
3 have any opinion about the facts in this case. The law
4 does not allow me to have an opinion about the facts. That
5 is a matter solely for you, the jury, to determine. As
6 jurors, it is your duty to determine the effect, value,
7 weight, and truth of the evidence presented during this
8 trial.

9 Now, there are two types of evidence which are
10 generally presented in a trial. There's direct evidence
11 and there's circumstantial evidence. Direct evidence is
12 the testimony of a person who claims to have actual
13 knowledge of a fact, such as an eyewitness. It is evidence
14 which immediately establishes the main fact to be proved.
15 Circumstantial evidence is proof of a chain of facts and
16 circumstances indicating the existence of a fact. It is
17 evidence which immediately establishes collateral facts
18 from which the main fact may be inferred. Circumstantial
19 evidence is based on inference and not on personal
20 knowledge or observation.

21 Now, the law makes absolutely no distinction between
22 the weight or the value to be given to either direct or
23 circumstantial evidence, nor is a greater degree of
24 certainty required of circumstantial evidence than of
25 direct evidence. You should weigh all of the evidence in

1 this case.

2 To the extent that the state relies on circumstantial
3 evidence, all of the circumstances must be consistent with
4 each other and, when taken together, point conclusively to
5 the guilt of the accused beyond a reasonable doubt. If
6 these circumstances merely portray the defendant's behavior
7 as suspicious, the proof has failed.

8 The state has the burden of proving the defendant
9 guilty beyond a reasonable doubt. This proof rests with
10 the state regardless of whether the state relies on direct
11 evidence, circumstantial evidence, or some combination of
12 the two.

13 Necessarily, you must determine the credibility of
14 witnesses who have testified in this case and, ladies and
15 gentlemen, credibility simply means believability. It
16 becomes your duty as jurors to analyze and evaluate the
17 evidence and determine which evidence convinces you of its
18 truth.

19 In evaluating eyewitness testimony, you should
20 remember that the state must prove the identity of the
21 defendant as the person who committed the crime beyond a
22 reasonable doubt.

23 In determining the believability of witnesses who have
24 testified in this case, you may believe one witness over
25 several or several witnesses over one. You may believe a

1 part of the testimony of a witness and reject the remaining
2 part of the testimony of that same witness. You may
3 believe the testimony of a witness in its entirety or
4 reject that testimony in its entirety. You may consider
5 whether any witness has exhibited to you any interest,
6 bias, or other motive in this case. You may consider
7 whether a witness is seeking a personal gain, as well as
8 the appearance and the manner that the witness -- of the
9 witness while on the witness stand. You have the right to
10 consider anything in this record that will help in judging
11 the credibility of the witnesses who have testified.

12 Now, the rules of evidence ordinarily do not permit
13 witnesses to testify to opinions or conclusions. There is
14 an exception to this rule for witnesses that we call expert
15 witnesses. A witness who by education and experience has
16 become an expert in some art, science, profession, or
17 calling may state an opinion as to the relevant and the
18 material matter in which the witness claims to be an expert
19 and may also state the reasons for that opinion.

20 You should consider any expert opinion received in
21 evidence in this case and like any other evidence, give it
22 the weight that you think it deserves. An expert witness's
23 testimony is to be given no greater weight than that of any
24 other witness simply because that witness is an expert.
25 Further, you are not required to accept an expert's opinion

1 even though it's not contradicted.

2 Now, a statement alleged to have been made by the
3 defendant has been admitted into evidence in this case.
4 While the court has determined that the statement is
5 admissible, I instruct you that you make the ultimate
6 decision of whether or not the defendant made the
7 statement. If the defendant did make the statement, then
8 you must determine whether the statement was made by the
9 defendant voluntarily and of her own free will. This means
10 that the statement was not caused by pressure, force, fear,
11 threats, coercion, or intimidation, or by hope or promise
12 of leniency or reward of any kind. In determining whether
13 the statement was voluntary, you should consider both the
14 characteristics of the defendant and the details of the
15 questioning. A defendant must be advised of their
16 constitutional rights, including but not limited to the
17 right to remain silent; that any statement could be used
18 against her in a court of law; the right to have a lawyer
19 present; that if she could not afford a lawyer, a lawyer
20 would be appointed to represent her without any cost; and
21 that she could stop making a statement at any time. You
22 must carefully consider all of the surrounding
23 circumstances before you give any weight to an alleged
24 statement.

25 The state has the burden of proving that a -- beyond a

1 reasonable doubt that the alleged statement was voluntary.
2 If you determine it was, you may give the statement any
3 further consideration that you deem proper if you decide,
4 if you decide, if you decide what weight, if any, should be
5 given to the alleged statement. If you determine that the
6 alleged statement was not free and voluntary, then you
7 should not consider that statement at all.

8 Now, the defendant is charged with the crime of
9 murder. The following are the elements that the state must
10 prove beyond a reasonable doubt to prove murder. First,
11 that the defendant killed other person and second, that she
12 did so with malice aforethought. Malice is hatred, ill
13 will, or hostility toward another person. It is the
14 intentional doing of a wrongful act without just cause or
15 excuse and with the intent to inflict an injury or under
16 circumstances that the law will infer an evil intent.

17 Malice aforethought does not require that malice exist
18 for any particular time before the act is committed, but
19 malice must exist in the mind of the defendant just before
20 and at the time that the act is committed. Therefore,
21 there must be a combination of the previous evil intent and
22 the act.

23 Malice aforethought may be expressed or inferred.
24 These terms expressed and inferred do not mean different
25 kinds of malice but merely the manner in which malice may

1 be shown to exist. That is either by direct evidence or by
2 inference from facts and circumstances which are proved.

3 Expressed malice is shown when a person speaks words
4 which express hatred or ill will for another, or when the
5 person prepared beforehand to do the act which was later
6 accomplished. Inferred malice may be found to exist when
7 circumstances demonstrate a wanton or reckless disregard
8 for human life, or when a reasonably prudent person would
9 have known that, according to common experience, there was
10 a plain and strong likelihood that death would follow the
11 contemplated act.

12 Now, if you find that the state has failed to prove
13 beyond a reasonable doubt that the defendant committed
14 murder, you may consider whether the state has proved
15 beyond a reasonable doubt that the defendant committed
16 voluntary manslaughter. To prove voluntary manslaughter,
17 the state must prove beyond a reasonable doubt that the
18 defendant took the life of another in the sudden heat of
19 passion based on sufficient legal provocation. Both heat
20 of passion and sufficient legal provocation must be present
21 at the time of the killing to constitute voluntary
22 manslaughter.

23 Sudden heat of passion may for a time affect a
24 person's self-control and temporarily disturb a person's
25 reason. The sudden heat of passion must be the type that

1 would make an ordinary person unable to coolly reflect on
2 her actions and would produce an uncontrollable impulse to
3 do violence.

4 Sufficient legal provocation must be the type that
5 would make a person of ordinary reason and caution become
6 enraged and to lose control temporarily. The provocation
7 needed for voluntary manslaughter must come from some act
8 of or related to the victim. Words alone, however vulgar
9 or insulting, are not enough to be legal provocation.
10 Where death is caused by the use of a deadly weapon, the
11 words must be accompanied by some overt threatening act
12 which could have produced the heat of passion. The
13 exercise of a legal right, no matter how offensive it is to
14 another, is never sufficient legal provocation for
15 voluntary manslaughter.

16 If the heat had cooled, or if there was enough time
17 between the provocation, if any, and the killing for the
18 passion of a reasonable person to cool, then the killing
19 would not be voluntary manslaughter. In deciding whether a
20 person, a reasonable person would have had enough time to
21 cool off, you should consider all of the facts and
22 circumstances surrounding the killing. You may consider
23 the nature of the provocation, if any, the defendant's
24 mental and physical state, and the circumstances and
25 relationships between the parties.

1 Now, if you find that the state has failed to prove
2 beyond a reasonable doubt that the defendant committed
3 either murder or voluntary manslaughter, you may then
4 consider whether the state has proved beyond a reasonable
5 doubt that the defendant committed involuntary
6 manslaughter. To prove involuntary manslaughter, the state
7 must prove beyond a reasonable doubt that the defendant
8 unintentionally killed the victim without malice but while
9 engaged in an unlawful activity not naturally tending to
10 cause death or great bodily harm. Or that the defendant
11 unintentionally killed the victim without malice but while
12 engaged in a lawful activity with reckless disregard for
13 the safety of others.

14 Unintentional means that the defendant did not intend
15 for anyone to be killed or seriously injured. Reckless
16 disregard for the safety of others is more than mere
17 negligence or carelessness. Mere negligence or
18 carelessness is the failure to use the care that a person
19 of ordinary reason would use under the same circumstances.
20 Reckless is a conscious failure to use ordinary care.
21 Reckless disregard for the safety of others means that you
22 are not interested in the consequences of your action or
23 the rights and the safety of others.

24 If a person who knows or should know that ordinary
25 care requires certain precautions to be taken for the

1 safety of others when using a dangerous instrumentality
2 such as a gun or a car but that person fails to use those
3 precautions without concern, the person's actions are
4 considered reckless.

5 The state must also prove beyond a reasonable doubt
6 that the defendant's act was the proximate cause of the
7 death. Proximate cause is the direct cause; it is the
8 immediate cause. There must be a chain of causation from
9 the time of the injury inflicted by the defendant until the
10 time of the victim's death. The defendant's act need not
11 be the sole cause of the death but must be a proximate
12 cause contributing to the death of the victim. The
13 violation of a statute, if it is the proximate cause of the
14 injury, is evidence of recklessness.

15 Now, the defendant has raised the issue that the time
16 -- at that -- at the time of the killing, the victim --
17 excuse me. Now, the defendant has raised the issue that at
18 the time of the killing of the victim, that she was
19 suffering from battered person syndrome. You heard
20 testimony discussing what that entails. Keep in mind that
21 whether the defendant was suffering from battered person
22 syndrome is an evidentiary fact that only you, the jury,
23 can decide. If you find that the evidence supports a
24 finding that the defendant was suffering from battered
25 person syndrome at the time of the killing, then you may

1 consider that as you consider the elements of self-defense.
2 If you find the evidence does not support that finding,
3 then you will disregard the battered person syndrome as you
4 consider the elements of self-defense.

5 Now, the defendant has raised the defense of
6 self-defense. Self-defense is a complete defense and if it
7 is established, you must find the defendant not guilty.
8 The state has the burden of proving self-defense by proof
9 beyond a reasonable doubt. If you have a reasonable doubt
10 of the defendant's guilt after considering all of the
11 evidence, including the evidence of self-defense, then you
12 must find the defendant not guilty. On the other hand, if
13 you have no reasonable doubt of the defendant's guilt after
14 considering all of the evidence, including the evidence of
15 self-defense, then you must find the defendant guilty.

16 The following elements are required to establish
17 self-defense. The first element is that the defendant is
18 without fault. First, the defendant must be without fault
19 in bringing on the difficulty. If the defendant's conduct
20 was the type which was reasonably calculated to and did
21 provoke a deadly assault, the defendant would be at fault
22 in bringing on the difficulty and would not be entitled to
23 an acquittal based on self-defense.

24 If you find from the evidence that the defendant was
25 suffering from battered person syndrome and the defendant

1 killed her abuser during a confrontation when the abuser
2 clearly is the aggressor, this element is satisfied.
3 However, it may be possible to characterize a battered
4 person as the victim of a continuing assault at the hands
5 of the batterer. When this is the case, the first element
6 of self-defense may be satisfied even though the battered
7 person acts at a time when the batterer is not being
8 physically abusive.

9 The second element is that the defendant was in
10 imminent danger. The second element of self-defense is
11 that the defendant was actually in imminent danger of death
12 or serious bodily harm, or that the defendant actually
13 believed she was in imminent danger of death or serious
14 bodily injury.

15 If the defendant was actually in imminent danger, it
16 must be shown that the circumstances would have warranted a
17 person of ordinary firmness and courage to strike the fatal
18 blow to prevent death or serious bodily injury. If the
19 defendant believed she was in imminent danger of death or
20 serious bodily injury, it must be shown that a reasonably
21 prudent person of ordinary firmness and courage would have
22 had that same belief.

23 In deciding whether the defendant actually was or
24 believed she was in imminent danger of death or serious
25 bodily injury, you should consider all of the facts and

1 circumstances surround -- surrounding the crime, including
2 the physical condition and the characteristics of the
3 defendant and the victim.

4 Now, the defendant does not have to show that she was
5 actually in danger. It would be enough if the defendant
6 believed she was in imminent danger, and a reasonably
7 prudent person of ordinary firmness and courage would have
8 had the same belief. The defendant has the right to act on
9 appearances even though the defendant's beliefs may have
10 been mistaken. It is for you to decide whether the
11 defendant's fear of imminent danger of death or serious
12 bodily injury was reasonable, and it would have been felt
13 by an ordinary person in the same situation.

14 Again, if you should find from the evidence that the
15 defendant was at the time suffering from battered person
16 syndrome, then the law provides that at times a battered
17 person actually is in imminent danger of violence when she
18 acts. Depending on the facts of the case, the defendant
19 may act in self-defense if she believes she is in imminent
20 danger of death or serious bodily injury even though the
21 batterer is not being physically abusive when the defendant
22 acts. This is because battered persons can experience a
23 heightened sense of imminent danger arising from the
24 perpetual terror of physical and mental abuse.

25 Often the terror does not decrease -- does not decrease

1 even when the batterer is absent or asleep. Where torture
2 appears unending and escape impossible, the belief that
3 only the death of the batterer can provide relief may be
4 reasonable in the mind of a person of ordinary firmness.

5 Now, the relative sizes, age, and weights of the
6 defendant and the decedent may be considered in deciding
7 the apparent or actual need for force in self-defense and
8 the amount of force needed. Evidence of prior difficulties
9 between the defendant and the victim may be considered in
10 deciding whether a threat existed, whether the defendant
11 had a reason to believe a threat existed, and how serious
12 that threat was.

13 If the evidence shows that there were threats made by
14 the victim, that may be considered in determining whether
15 the defendant actually was or believed she was in imminent
16 danger. The reputation of the victim as a violent person
17 may be considered in deciding whether there was a need for
18 violence or force, whether the defendant had a reason to
19 believe that there was a need for force, and whether deadly
20 force was reasonably necessary.

21 If the evidence supports a finding of prior instances
22 of violence by the victim, this may be considered in
23 deciding whether the defendant actually believed she was in
24 imminent danger of death or serious bodily injury, or was
25 actually in imminent danger.

1 Now, the third element that the defendant -- is that
2 the defendant had no other way to avoid the danger. The
3 final element of self-defense is that the defendant had no
4 other probable way to avoid the danger of death or serious
5 bodily injury other than to act as the defendant did in
6 this particular instance.

7 A person cannot be required to make an exact
8 calculation as to the degree or amount of force which may
9 be needed to avoid death or serious bodily harm.
10 Therefore, in self-defense the defendant has the right to
11 use the force needed to avoid death or serious bodily harm.
12 The force used in self-defense does not have to be limited
13 to the degree or the amount of force used by the victim.
14 The defendant has the right to use so much force as
15 appeared to be necessary for complete self protection and a
16 person of ordinary reason and firmness would have believed
17 to be needed to prevent death or serious bodily harm.

18 Now, Mr. Foreman and ladies and gentlemen of the jury,
19 as you retire to begin your deliberations, I want to
20 express to you the hope that each of you will be mindful of
21 the importance of your responsibility. You're not called
22 upon to serve as jurors very often, and the proper
23 performance of the duty requires each of you to reach the
24 height of freeing your mind of all improper influences.

25 As the presiding officer of this court, I am vitally

1 concerned that whatever verdict you find will be the result
2 of your going into the jury room and confining your, your
3 consideration to the evidence and to the law that you have
4 heard in this courtroom, weighing it fairly and
5 impartially, as I have every confidence you will do. Your
6 verdict in this case cannot be based on sympathy,
7 compassion, prejudice, or emotion, or some other
8 consideration that's not found in the evidence. And
9 remember, ladies and gentlemen, your verdict must be
10 unanimous.

11 Now, Mr. Brady, the -- as I said earlier, this
12 notebook will be in the jury room with you. The verdict
13 form is in the front cover. The verdict form is a, is a
14 fairly simple form as far as the form goes. You will
15 deliberate and you'll, you'll arrive at a verdict, whatever
16 it may be, and the verdict form just lists the four
17 possible forms of verdict. There are four possible forms
18 of verdict in this case, depending on your evaluation of
19 the evidence and application of the law, and I've got -- I
20 just have those listed.

21 There's no significance at all to the order in which
22 they are listed. It's just any time you list more than one
23 thing, you have to put one ahead of the other. So, there's
24 no significance to this order. It's just simply the
25 options are either that you find the defendant either not

1 guilty or guilty of murder or guilty of voluntary
2 manslaughter or guilty of involuntary manslaughter.
3 Whatever verdict you reach, Mr. Brady, you'll mark the
4 appropriate selection and then sign the verdict form as the
5 foreperson.

6 Now, ladies and gentlemen, I'm going to excuse you to
7 go back into the jury room, but I would ask that you do not
8 begin your deliberations quite yet. I'm going to take just
9 a moment to talk with the attorneys to see if there's
10 anything that I've left out. If there is anything I need
11 to alter or add to or correct, I'll bring you back out and
12 I'll do that. If the charge is fine as presented, we'll
13 then gather the exhibits and we'll have those taken back to
14 the jury room. When you receive the exhibits and the
15 notebook, that's your cue to begin your deliberations.

16 Now, there's one thing you're not going to have back
17 there. The gun and the ammunition I will not send back.
18 If you need to view it, just let me know. We'll bring you
19 back out, and we'll allow you to do that, but other than
20 that, all the other exhibits will be in the back with you.

21 Also, I don't know if lunch is here or not, but it's
22 coming. It's on the way. So, I'm going to let y'all make
23 that decision how you want to do lunch. You can deliberate
24 while you eat, or you can stop your deliberations and enjoy
25 your lunch, whatever y'all want to do, but we will bring

1 your lunch to you as soon as it arrives, okay?

2 So, if you would, please step back into the jury room
3 and have no conversation until you receive these items.

4 BAILIFF: If it pleases the court, Your Honor? Can
5 they take their notepads back with them now?

6 THE COURT: They can take their notepads, but, but
7 again don't, don't look at anything until you get these
8 items, and then you can have those available.

9 (THE JURY EXITS AT 12:15 P.M.)

10 THE COURT: All right, are there any exceptions or
11 objections to the charge from the state?

12 MS. SHANNON DAVIS: Not from the state, Your Honor.

13 THE COURT: Anything from the defense?

14 MS. ZMROCZEK: Not for the defense.

15 THE COURT: Okay, folks, y'all have a pretty daunting
16 task. You need to get with Elizabeth to make sure that
17 everything that is supposed to be here is here, and then
18 we'll send that back to the jury.

19 MR. RIDDLE: I'll bet you ---

20 THE COURT: Also -- oh. I'm sorry.

21 MR. RIDDLE: I was going to say I'll bet you she's
22 already done that.

23 THE COURT: Right. She's on top of it. No question
24 about it.

25 The other thing. Just so, just so you'll know because

1 I know some judges do it different, and in all candor I
2 don't know why. I just reviewed the statute. The statute
3 says that if all of the main jurors are healthy and well to
4 deliberate, that the alternates are to be discharged. I
5 don't keep alternates here. I send them. So, I'm just
6 giving you that information. I know a lot of judges keep
7 them in another room.

8 MR. RIDDLE: I understand.

9 MS. ZMROCZEK: You'll call them in and left them go?

10 THE COURT: I'll call them in here and let them go
11 after we verify that we have everything.

12 (WHEREUPON, ATTORNEYS REVIEW EXHIBITS WITH THE COURT
13 REPORTER.)

14 (JURY DELIBERATIONS BEGIN AT 12:26 P.M.)

15 THE COURT: Let's have order real quick here. What do
16 you got?

17 MS. ZMROCZEK: Your Honor, at this time we would like
18 to formally withdraw exhibits we marked for ID that were
19 not entered.

20 THE COURT: All right.

21 MS. ZMROCZEK: And those include number 3, number 4,
22 number 17, number 19, number 20, number 22, number 25,
23 number 39, 41, 42, 43, 44, 45, 46, and 48, 49 and 50, 52,
24 54, 56, 57, 58, 59, 60, 61, 62, 63, 66 through 73, and 75
25 [sic].

1 THE COURT: All right, and those are all defense
2 exhibits, correct?

3 MS. ZMROCZEK: Yes.

4 THE COURT: All right, and those are all marked for
5 identification purposes but were not entered into evidence.
6 They're being withdrawn, and so we'll return those back to
7 you.

8 MS. ZMROCZEK: Thank you.

9 MS. SHANNON DAVIS: Your Honor.

10 THE COURT: State.

11 MS. SHANNON DAVIS: On behalf of the state, the state
12 will withdraw State's Exhibits 16 for ID and State's
13 Exhibit 19 for ID.

14 THE COURT: All right, do you have those?

15 MS. SHANNON DAVIS: Yes, sir. I have them here.

16 THE COURT: All right. Thank you, folks.

17 (WHEREUPON, THE ALTERNATES ENTER THE COURTROOM.)

18 THE COURT: Ladies, thank you for your service, and I
19 want to tell you you have the toughest job here because as
20 an alternate, you have to do everything the main panel has
21 done.

22 I always relate things to football, and to me this is
23 like you have practiced all week, you've sweated, you've
24 hit, you've bled, and now it's Saturday afternoon and we're
25 getting ready to kick off and we're playing the biggest

1 game of the year, and the coach is telling you you can't
2 play. That's kind of what being an alternate is like, and
3 -- but I do want you to understand the importance of it.

4 If any of the folks on the main panel, if for any
5 reason -- and I've had it occur where before we began our
6 deliberations, someone had an emergency in their family and
7 had to leave. They've gotten sick themselves and they've
8 gotten ill and were not able to continue. If that were to
9 have happened, then one of you would have had to have
10 stepped in to that, or maybe even both if it were to happen
11 to two, would have had to have stepped in and replaced
12 those main jurors. And then -- and of course at that point
13 if you weren't hearing everything they heard, seen
14 everything they saw, and listened to every -- all the
15 testimony, you then -- you would be at a disadvantage as a
16 juror. So, it was important that you be here for
17 everything.

18 But now that it's time for them to deliberate, the law
19 says that the court is to discharge you, and you have no
20 further obligation on this case. So, I brought you in here
21 to let you know that your service for this case has ended.

22 Now, I know you ordered lunch, and it should be here
23 at any minute. If you want to wait and take your lunch,
24 you can eat it here or you can take it with you. It's up
25 to you, or you don't have to wait on it. I guarantee you

1 there's somebody in this courthouse that will eat it if you
2 don't.

3 Your lunch has arrived, and so if you want to eat it
4 here, we'll find a good place for you to do that. If you
5 want to take it with you, that's fine.

6 If you need a work excuse, Hope can give that to you.

7 ALTERNATE: I've already got it.

8 THE COURT: I'll just shut up and let y'all go, but I
9 want to thank you for your service. I thank you very much
10 for your service this week, and I am sincere when I tell
11 you that. You've done a vital role to our system of
12 justice.

13 Now as I told you, you're free to go. You are also
14 free to stay. Some alternates hang around. They want to
15 see what ends up happening, but I'm going to leave that up
16 to you to do whatever you'd like to do, okay? Thank you
17 very much, ladies.

18 All right, we will remain at ease while the jury does
19 their work. The attorneys, if y'all are going to leave the
20 court area, just if you'd leave us a cell phone number or
21 way to contact you in case there's any question, and so
22 we'll just be at ease unless we get a question or we get a
23 verdict, okay?

24 (OFF THE RECORD.)

25 THE COURT: All right, ladies and gentlemen, it is my

1 understanding that the jury has reached a verdict. I sit
2 here as the rest of you do, and I have no idea what that
3 verdict is, but I need -- I tell folks this at every case,
4 whether it be a criminal case or whether it be a civil
5 case. The jury -- I don't ever ask anybody to agree with
6 the jury's verdict, but all I ask is that the jury's
7 verdict be received in a professional manner and in a
8 respectful manner.

9 Again, if you don't agree with it, that's fine, but --
10 and I'm, I'm asking a lot because I know that cases that
11 involve loss of life and loss of loved ones and stuff
12 involves emotions. But again, as I told you before, I, I
13 really need -- if you don't think you can control your
14 emotions, you need to remove yourself from the courtroom
15 and, and hear the verdict somewhere else because if there's
16 any outburst in the courtroom -- and I'm not trying to be a
17 jerk. It's just -- I'm going to lock you up, okay? You
18 got deputies here and whoever -- hopefully there won't be
19 any problem, but if there is, I'm going to take you into
20 custody and, and it's not because I'm unfeeling. I
21 understand emotions run high. However, it's just that the
22 jury, whether you agree or disagree with their verdict, it
23 is the verdict of the twelve, and it is to be received in a
24 professional and a respectful manner. Any -- anything you
25 want to voice about the jury's verdict outside on your own,

1 that, that's your prerogative, but, but in here the court's
2 going to maintain the proper decorum, okay?

3 Is the state ready to receive the verdict?

4 MR. RIDDLE: Yes, sir.

5 THE COURT: Defense ready?

6 MS. ZMROCZEK: Yes, Your Honor.

7 THE COURT: Okay. All right. If you would, bring,
8 bring the jury in.

9 (THE JURY ENTERS AT 4:20 P.M.)

10 THE COURT: All right, Mr. Brady, has the jury reached
11 a unanimous verdict, sir?

12 FOREPERSON: Yes, sir, we have.

13 THE COURT: All right. If you don't mind passing that
14 to Ms. Frick.

15 (A PAUSE.)

16 THE COURT: All right, Madame Clerk, if you would
17 please publish the verdict of the jury.

18 *VERDICT*

19 CLERK OF COURT: Indictment 2011-GS-32-1037, *The State*
20 *vs. Shellie Lavette Davis*, we, the jury, find the
21 defendant, Shellie Lavette Davis, guilty of murder, and it
22 is so signed by foreman, dated April 25, 2014.

23 Mr. Foreman, ladies and gentlemen, if this is your
24 verdict, please indicate each of you by raising your right
25 hand.

1 All hands raised, Your Honor.

2 THE COURT: Thank you, ladies and gentlemen.

3 Y'all may have a seat.

4 Ladies and gentlemen, I want to thank you for your
5 service this week, and, and I said something to you earlier
6 this morning when we first reconvened, and I want to
7 reiterate it because I really -- and I don't even know how,
8 how to get you to understand how sincere I am.

9 This particular -- I will -- I, I don't know your
10 names and -- but this panel I'll remember because I don't
11 recall, and I've been on the bench now for going on ten
12 years and before that I was a trial lawyer and have been in
13 front of hundred of juries. But I don't recall ever seeing
14 a panel that was so conscientious, showed up when you were
15 supposed to be here, listened to the testimony as you did.
16 As I'm up here presiding over cases, I'm doing other things
17 involving the trial as well as other things, and -- but I,
18 I do keep an eye and watch and see, and you were very
19 attentive. You listened to the witnesses. You were
20 respectful, too. You'd be surprised at some jurors that I
21 see, that it's clear that they're not listening. Some will
22 actually -- they look like -- maybe they're listening but
23 they'll close their eyes and put their head back, and I
24 think they're sleeping.

25 But bottom line is you folks, I appreciate so much

1 your service this week. As you can see, jury service is
2 not necessarily an easy thing. You've been here all week.
3 You've been away from your job and your families, at least
4 most of the day, and you've done a large service to your
5 community by working this week.

6 When I gave you the qualifications on Monday, if you
7 recall, I told you that jury -- you're only required to
8 serve on jury duty once every three calendar years, so you
9 have earned an exemption. If you were to receive a summons
10 for jury duty either the balance of this year or 2015 or
11 2016, if you receive a jury summons from state court and
12 you wish to exercise that, that exemption, you're, you're,
13 you're certainly entitled to do so.

14 But I always tell folks it is that: it's just an
15 exemption. It doesn't mean you're not qualified to serve,
16 and so if you do receive a summons again and you -- in that
17 timeframe and you do wish to serve, I would encourage you
18 to do so.

19 The service that you give on jury duty is -- I've,
20 I've heard this said before and I agree with it. It's
21 probably second only to your service that you give to your
22 country in the military if you were to do that. It's one
23 of the highest services that a citizen can give. We don't
24 have a perfect system of justice in this country because it
25 was created by men and, therefore, it's going to have

1 faults, but I will say this. There's no question it is the
2 best form of justice, and it's the best way to resolve
3 issues more than anywhere else on the planet. So, you,
4 you've just really done a great service to your community,
5 and I want to thank you for that.

6 Now before I excuse you, I'm going to ask Madame Clerk
7 if you would poll the jury and then we'll proceed after
8 that.

9 CLERK OF COURT: Yes, sir.

10 *POLLING OF THE JURY*

11 CLERK OF COURT: Ladies and gentlemen, I'm going to
12 call your name. If you'll hold up your name -- your hand
13 where I can recognize you? I will ask you as to the
14 verdict, was this your verdict and is it still your
15 verdict. At that time, please respond.

16 Diane Clayton.

17 JUROR: It was my verdict.

18 CLERK OF COURT: You got to wait. As to the verdict,
19 was this your verdict and is it still your verdict?

20 JUROR: It was my verdict.

21 CLERK OF COURT: John Fitts, as to the verdict, was
22 this your verdict? Is it still your verdict?

23 JUROR: It was my verdict; it still is.

24 CLERK OF COURT: Thank you, sir.

25 Barbara Delacruz, as to the verdict, was this your

1 verdict? Is it still your verdict?

2 JUROR: Yes.

3 THE COURT: Ian Turner, as to the verdict, was this
4 your verdict? Is it still your verdict?

5 JUROR: Yes.

6 CLERK OF COURT: Assyria Stewart, as to the verdict,
7 was this your verdict? Is it still your verdict?

8 JUROR: Yes, it is.

9 CLERK OF COURT: Michelle Grahn, as to the verdict,
10 was this your verdict? Is it still your verdict?

11 JUROR: Yes.

12 CLERK OF COURT: Darren Atkins, as to the verdict, was
13 this your verdict? Is it still your verdict?

14 JUROR: Yes, ma'am.

15 CLERK OF COURT: Lynn Roof, as to the verdict, was
16 this your verdict? Is it still your verdict?

17 JUROR: Yes.

18 CLERK OF COURT: Terry Brady, as to the verdict, was
19 it your verdict? Is it still your verdict?

20 FOREPERSON: Yes.

21 CLERK OF COURT: Charles Goodwin.

22 JUROR: Yes.

23 CLERK OF COURT: As to the verdict, was this your
24 verdict? Is it still your verdict?

25 JUROR: Yes, it is.

1 CLERK OF COURT: Jeannie Bedenbaugh, as to the
2 verdict, was this your verdict? Is it still your verdict?

3 JUROR: Yes.

4 CLERK OF COURT: Cynthia Quarles, as ---

5 JUROR: Yes.

6 CLERK OF COURT: --- to the verdict, was this your
7 verdict? Is it still your verdict?

8 JUROR: Yes.

9 THE COURT: All jurors polled, Your Honor.

10 THE COURT: All right. Thank you.

11 Anything further of the jury?

12 MS. ZMROCZEK: Nothing.

13 THE COURT: Now, folks, in just a few minutes or in
14 just a little bit, we'll move to the sentencing phase. I'm
15 going to excuse you. However, I always tell, I tell juries
16 all the time. You are the ones who worked the case. If
17 you would like to remain and, and be present for
18 sentencing, here's what I'm going to do. I'm going to
19 excuse you and those of you wish to leave, you're free to
20 go. Those of you would like to remain and, and stay for
21 sentencing, can come back in and have a seat in the jury
22 box. If you -- and the reason I'm going to excuse you to,
23 to go out into the hall for just a moment is if anyone
24 needs a work excuse -- you've already got them? Hope is so
25 far ahead of me. I very much appreciate this lady over

1 here. She's excellent.

2 Well, here's what I'm going to do. Those of you who
3 would like to remain, you, you are welcome to do so. Those
4 of you that would like to be excused, you are, you're free
5 to go. I'm going to give both the state and the defense a
6 minute or two to gather their thoughts and things, and then
7 we'll proceed to sentencing in about a few minutes, okay?
8 So, we're going to remain at ease for a moment.

9 Ladies and gentlemen, again I thank you for your
10 service. Those of you that wish to go, you're free to go;
11 those of you that would like to remain, you're welcome to
12 stay.

13 (A PAUSE AS SOME JURORS EXIT THE COURTROOM.)

14 THE COURT: Is the state ready to proceed to
15 sentencing?

16 MR. RIDDLE: We need just a few minutes. I need to
17 see if any family members would like to address Your Honor.

18 THE COURT: All right, go ahead and take that
19 opportunity.

20 Ms. Zmroczek, you can talk with your folks, and I will
21 be, I'll be happy to hear from anyone who would like to
22 address the court.

23 And the same, Mr. Riddle, with regards to the state's
24 -- the victims. I'll be happy to hear from anyone who
25 would like to address the court with regards to sentencing.

1 (A PAUSE.)

2 THE COURT: All right, at this time I'm going to take
3 up any motion at the close of the case and the reading of
4 the verdict. Ms. Zmroczek.

5 MS. ZMROCZEK: Thank you, Your Honor. At this time,
6 we would move to set aside the jury verdict, and we would
7 ask the court direct a verdict pursuant to -- based on all
8 of our former motions, Your Honor, and our arguments with
9 regards to what the facts in evidence would show in this
10 case.

11 THE COURT: All right, ma'am. I'm going, I'm going to
12 respectfully deny that motion, Ms. Zmroczek. I, and I said
13 it earlier and I, and I still stand by that. I, I think
14 there was evidence in the case, clearly evidence whereby
15 depending on how a jury viewed it -- any time you have a
16 case that -- such as this, the -- it's the province of the
17 jury to determine the facts and to determine that based
18 upon the evidence and the weight that they give to the
19 evidence and to the testimony. And I don't see anything
20 and haven't seen anything in the record that would cause me
21 to hesitate as to the way the jury found the facts, the
22 weight they gave to those facts, and the verdict that they
23 arrived at. And I think it, as I said, was a matter of
24 fact for the jury to decide.

25 I think it -- the evidence was presented and based on

1 the way the jury, the jury viewed that evidence, that it
2 does support the verdict, and so I'm going to respectfully
3 deny that motion.

4 Anything else motion wise from the state -- defense?

5 MS. ZMROCZEK: No.

6 THE COURT: All right. Now I'm going to hear from the
7 state as -- with regards to if the defendant has any prior
8 record, any prior history, and then as, as well as what
9 position, if any, you have regarding the sentencing.

10 MR. RIDDLE: Your Honor, if it pleases the court, Ms.
11 Davis does not have any prior record. And the family
12 wanted me to express essentially three, three things to the
13 court.

14 THE COURT: All right.

15 MR. RIDDLE: In regards to this case. As a collective
16 group, the Davis family indicated that there's no winners
17 in this case. That it's been a tragedy for both families,
18 and that they feel like the children of Jermaine and
19 Shellie Davis have suffered the most out of all of this.

20 THE COURT: Thank you very much.

21 MR. RIDDLE: And that would be all that we have at
22 this time, Your Honor.

23 THE COURT: Thank you, Mr. Riddle.

24 All right, Ms. Zmroczek, I'm, I'm happy -- I'll be
25 happy to hear from you. If Ms. Davis wishes to address the

1 court, she's certainly welcome to do that. She's not
2 required to do that, and then if there's anyone that would
3 like to address the court on her behalf, I'll be happy to
4 hear from them as well.

5 MS. ZMROCZEK: Your Honor, before, before I address
6 the court, I would ask that the court make a finding under
7 the statute by a preponderance of the evidence that she is
8 a battered woman. What that does is that provides her
9 certain services within the South Carolina Department of
10 Corrections, and that's something that you would have to
11 note on the verdict sheet.

12 THE COURT: And that is by the preponderance of the
13 evidence?

14 MS. ZMROCZEK: It is by the preponderance of the
15 evidence, Your Honor.

16 THE COURT: All right, I'll make that finding.

17 MS. ZMROCZEK: Thank you.

18 THE COURT: I think that's appropriate.

19 MS. ZMROCZEK: Thank you, Your Honor.

20 Ms. Davis is forty-one years old. She has five
21 children, as you know. She has no record. You heard her
22 testify and you heard her facts.

23 Sorry.

24 I've just -- I've known her for a long time. She's
25 been in jail for four years, and she would ask that -- she

1 understands that there's a mandatory minimum sentence of
2 thirty years day for day, and she would ask that the court
3 exercise its discretion and provide the minimum sentence in
4 this case.

5 And I believe that there are two family members, or
6 one family member and one friend of the family that would
7 like to address the court.

8 THE COURT: Sure.

9 MS. ZMROCZEK: Thank you.

10 THE COURT: Happy to hear from them.

11 Mr. Riddle.

12 MR. RIDDLE: I just want to address the finding that
13 she's a battered woman because that kicks in a 25 percent
14 parole eligibility provision.

15 THE COURT: Okay.

16 MR. RIDDLE: And I think that flies in the face a
17 little bit of the jury's verdict, and I just wanted to put
18 that on the record.

19 THE COURT: Well, I, I, I don't see how it flies in
20 the face of a verdict. The law does not state that if
21 someone is a battered -- is considered to be suffering from
22 battered person syndrome that they can't be convicted of
23 murder.

24 MR. RIDDLE: Yes, sir.

25 THE COURT: So, it clearly doesn't fly in the face.

1 The standard -- and, and for what it's worth, which is
2 worth nothing, but for what it's worth, based on the
3 evidence that was presented this week, I agree with the
4 jury's verdict.

5 MR. RIDDLE: Yes, sir.

6 THE COURT: I think, I think they got it right, but
7 the standard is, is beyond a reasonable doubt.

8 MR. RIDDLE: Right.

9 THE COURT: For the jury.

10 MR. RIDDLE: Yes, sir.

11 THE COURT: The standard for what Ms. Zmroczek is
12 asking is by a preponderance or greater weight of the
13 evidence which is, as you know, a civil standard which is
14 just merely by, by the greater weight.

15 I'm not, I'm not sure I'm totally clear on what all of
16 the requirements are for someone to medically be qualified
17 for that, that finding, but I, I do believe that, that,
18 based on the testimony and the evidence, that there, there
19 was -- this was an abusive relationship. I believe it was
20 an abusive relationship both ways. Give me, give me one
21 second.

22 MR. RIDDLE: Yes, sir.

23 (A PAUSE.)

24 THE COURT: Ms. Zmroczek, let me clarify. Are you
25 asking for a finding that she was suffering from battered

1 person syndrome at the time, or are you looking for a
2 finding that she was battered because I think there's a
3 difference.

4 MS. ZMROCZEK: If I, if I may pull up the statute,
5 Your Honor?

6 THE COURT: Sure.

7 MS. ZMROCZEK: Just so I can look at that?

8 THE COURT: Sure. I was under the impression that
9 we were deciding whether or not she was -- had been
10 battered, not that she was suffering from the syndrome,
11 but, but I ---

12 MR. RIDDLE: I was referring to 16-25-90, Your Honor.

13 (A PAUSE.)

14 THE COURT: We're, we're -- Ms. Zmroczek, we're
15 talking about section 16-25-90? Is that what we're
16 referring to?

17 MS. ZMROCZEK: Bear with me, Your Honor. I'm sorry.
18 I've read that statute, but there -- but...

19 (A PAUSE.)

20 MS. ZMROCZEK: Your Honor, while I'm -- I can --
21 while I'm researching that, if you want to hear from the
22 other ---

23 THE COURT: I'm going to get Hannah to look at it as
24 well.

25 MS. ZMROCZEK: Okay.

1 THE COURT: Let, let's -- let me go ahead and hear
2 from anyone who would like to address the court on behalf
3 of Ms. Davis.

4 Ma'am, if I could just get your name for the record,
5 please?

6 MS. THORNTON: Enola Thornton.

7 THE COURT: All right, Ms. Thornton, I'll be glad to
8 hear from you, ma'am.

9 MS. THORNTON: If it please the court.

10 THE COURT: Yes, ma'am.

11 MS. THORNTON: Your Honor, I have known Shellie for
12 seven years. She was my business partner. I've worked
13 beside her, laughed beside her, cried beside her. She has
14 been -- it, it's a tragedy on both sides, and my heart goes
15 out to Jermaine's family as well as Shellie. I knew both
16 of them. I also know their five children, and they're the
17 ones who suffered the most, and if for no other good but
18 the good of the children, I ask that you please show her
19 leniency.

20 THE COURT: All right. Thank you, ma'am. Thank you
21 for being here today.

22 MR. CALE: How you doing, sir?

23 THE COURT: Yes, sir.

24 MR. CALE: My name is Robert Cale, and I both know the
25 families also. They're good families. Everybody's well

1 intended and all this, and I believe with all my heart --
2 I've known Shellie for about seven or eight years and I'm a
3 pastor, and I'm her pastor and the children's pastor for
4 her children and whatnot, and I sit back and try to remain
5 neutral with everything. I understand, as I visited her so
6 many times in the detention center, whatnot, trying to
7 analyze everything. Bit by bit I realized, you know, that
8 she needs more than just going to jail again. I think all
9 of us here who are of sound mind can comprehend that nobody
10 shoots themselves. Either they're -- they're both, they're
11 both wrong, and I think that needs to be considered deeply
12 before anyone makes any judgment.

13 THE COURT: Thank you very much.

14 MS. SHIPMAN: Hi. My name is Tia Shipman and I am
15 Shellie Davis's sister. I'm her baby sister and I don't
16 want to reiterate what everyone has already said. They
17 talked about the children. We all love the children so
18 much, but I think that you don't know what you have until
19 it's gone, and I think she's realized that it was almost
20 gone, and now there's a possibility that there's real life.
21 And I just hope that you give her the opportunity to
22 experience the life that she just really realized could
23 really have been gone and possibly make the charge less.

24 And of course the kids already don't have a dad, and
25 if they have a mom in jail, it's almost as if they don't

1 have a mom either. So, I'm just hoping that you see that
2 part and, and, and down in the bottom of your heart --
3 because I don't, I actually don't know what it's like to
4 not have my parents. I have, I have no idea what they're
5 going through. My parents have been married for forty-six
6 years and they love each other dearly, and we've never seen
7 our parents fight.

8 So, I don't know what she's going through and I don't
9 know what a married couple would actually go through
10 either, but from looking at it from the outside, just hope
11 that you could just give her a lesser sentence.

12 THE COURT: Thank you, ma'am.

13 MS. ZMROCZEK: Your Honor, I have had a chance to
14 review the statute. That, that would be the finding that
15 we are looking for under 16-25-90.

16 THE COURT: All right.

17 (A PAUSE.)

18 THE COURT: Let me hear from you, Ms. Zmroczek.

19 MS. ZMROCZEK: Your Honor, the evidence that came not
20 only from the witness stand, I believe even as the jurors
21 sat through sentencing and, as you said, that you believed
22 that this was an abusive relationship, they affirmatively
23 agreed with you.

24 Your Honor, I firmly believe that there was fault on
25 both parties in the relationship, not in this -- and maybe

1 even in this instance, Your Honor, but we obviously respect
2 the verdict of the jury. And we do not believe that this
3 flies in the face of the jury's verdict.

4 The statute was enacted by the legislature for this
5 very purpose because they recognized the mental aspect that
6 goes along with this crime, Your Honor, and it's not only
7 just parole eligibility. They receive special counseling
8 services. They receive special services once within the
9 Department of Corrections, Your Honor, and we believe that
10 she through -- not only through her own testimony but the
11 testimony of interested and not interested parties, we
12 believe that she would meet the requirements.

13 THE COURT: All right. Thank you, ma'am.

14 Let me, let me read what I've got here, and then I'll
15 recognize you, Mr. Riddle.

16 MR. RIDDLE: Yes, sir.

17 (A PAUSE.)

18 MS. ZMROCZEK: Your Honor.

19 THE COURT: Yes, ma'am.

20 MS. ZMROCZEK: I know you're discussing with ---

21 THE COURT: Go ahead.

22 MS. ZMROCZEK: I know you're discussing with your law
23 clerk, and I do not mean to interrupt, but I would have an
24 additional proposal if the court would consider it.

25 I have spoken with Dr. Donna Schwartz-Watts via text

1 message, and she indicates that if the court were to prefer
2 to defer sentencing, she could provide more testimony if
3 the court requires that if, if that's what the court
4 would...

5 THE COURT: Well, right now that's what I'm trying to
6 decide is -- because, because here's, here's what I, here's
7 what I have. The only testimony in this case of physical
8 violence, domestic violence -- and not that it doesn't
9 carry weight, but it, but it came from Ms. Davis. None of
10 the other folks that testified -- they all said they
11 believe it went on. No one saw it. They claimed to have
12 seen some bruising but they, they don't know, they don't
13 know where it came from.

14 I had no one ever, ever witnessing domestic violence
15 between the two. I even have testimony from other folks
16 that say that they seemed to be a happy couple and that the
17 children never witnessed any arguing between their parents.
18 I mean, these are the things I'm weighing. I don't know if
19 there's any other evidence, and I don't know what Dr.
20 Schwartz-Watts would have, but I'm, I'm happy to consider
21 it.

22 (A PAUSE.)

23 MR. RIDDLE: Your Honor.

24 THE COURT: Yes, sir.

25 MR. RIDDLE: I'm sorry. I don't want to interrupt

1 you.

2 THE COURT: I welcome the interruption. I mean, I,
3 I've never had a case that, that dealt with battered person
4 syndrome.

5 MR. RIDDLE: Sure.

6 THE COURT: So, this is the first time I'm encountered
7 with it, which is why I'm having to do some research on the
8 fly.

9 MR. RIDDLE: Me, too, actually, Your Honor. I have
10 two things. I wanted to hand up a copy of *State vs.*
11 *Grooms*, which is a case which interprets Section 16-25-90
12 which basically indicates that -- it requires the defendant
13 do more than produce evidence of a history of criminal
14 domestic abuse that she believes is credible. Use of the
15 term credible evidence indicates the legislature intended
16 that the evidence, in fact, be trustworthy, not simply
17 plausible. And it goes on to say some other things, and I
18 will hand this up.

19 THE COURT: All right.

20 MR. RIDDLE: That's point number one. Point number
21 two is while none of the family members wanted to address
22 the court regarding sentencing, I know that at least one
23 family would like to address the court regarding the issue
24 of whether or not Jermaine was a batterer. And I had
25 placed what I placed on the record before regarding

1 sentencing prior to Ms. Zmroczek making that motion.

2 THE COURT: Sure.

3 MR. RIDDLE: So, let me hand up the case, and I'll
4 wait for your direction.

5 THE COURT: All right. Well, I think, I think what I
6 will do, to give me an opportunity to research this issue,
7 is withhold sentencing until I can -- and we can reconvene
8 for a hearing, which I think is appropriate, a hearing as
9 to this issue, and then allow both sides to present. Not
10 to retry the case clearly, but simply to present what they
11 wish to present with regards to the issue of battered
12 person syndrome.

13 MR. RIDDLE: Can I check one thing, Your Honor?

14 THE COURT: Yeah.

15 (A PAUSE.)

16 MR. RIDDLE: Thank you for your indulgence, Your
17 Honor. Are you just going to notice us?

18 THE COURT: All right, here's, here's what we're going
19 to do. Obviously Ms. Davis is in custody, and I don't want
20 to delay this too long, but we'll have, we'll have to
21 reconvene some time the, the week of -- I might could do it
22 next week. Next week is a chambers week, so I don't have a
23 court reporter scheduled, but I could probably get one.
24 So, how about April the 30th, next Wednesday? Any problem
25 or any issue with that?

1 MR. RIDDLE: No, sir. I can do that.

2 THE COURT: All right, and let me say this because
3 I've had -- and understandably I've had the request from
4 the family with regards to, to leniency and the young lady
5 who asked to reduce the charge.

6 The conviction for murder carries a mandatory minimum
7 thirty years up to life. So, I can't, I, I can't, nor
8 would I, reduce the charge because I think the verdict was
9 appropriate. So, that, that's, that -- just so you -- for
10 your understanding, that, that's -- if, if I were to be as
11 lenient as I could possibly be, it's a mandatory minimum
12 thirty years up to life. So, I just -- I didn't want to
13 send folks away this evening hoping for a lighter sentence
14 than that even though I know that they, they would like
15 that.

16 And I apologize to the members of the jury that have
17 remained here, but as I said before, in all the years I've
18 done this, this is the first case I've had that involves
19 this, this issue, and the statute does talk about a
20 post-verdict hearing to address the issues regarding the
21 battered person syndrome.

22 So, we'll reconvene Wednesday, 10:00. I'll get Court
23 Administration to get us a court reporter, and then I'll
24 hear from both the state and the defense with regards to
25 that issue, all right?

1 (A PAUSE.)

2 THE COURT: Now, folks, I want everyone to remain
3 seated. I'm going to excuse this jury, and so we're going
4 to all remain in the courtroom for a few minutes while the
5 jury is excused, okay?

6 (A PAUSE AS THE REMAINING JURORS EXIT THE COURTROOM.)

7 THE COURT: All right, anything else from anybody?

8 MR. RIDDLE: Not at this time, Your Honor.

9 THE COURT: All right, court is adjourned.

10 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR LEXINGTON COUNTY, SOUTH CAROLINA, ON THE 21ST, 22ND, 23RD, 24TH, 25TH DAYS OF APRIL, 2014.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

NOVEMBER 3RD, 2018

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Lexington County
Evidentiary

Case Number
10-0878

Richardson
To: (Print) [Signature]
From: (Print) [Signature]

To: (Print)
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5/20/06 6:50am

Today is my first day writing in my journal. It took me three days to muster the nerve to do this. Writing is very personal & I'm not sure if I am even ready to be so raw with myself; being so honest about how I really truly feel about my life and everything in it. But this is my therapy, my medicine for all that I've been through the last eight months. My life has been a ride before then but nothing like ~~this~~ ever! Things are too fresh to really get back into but I know eventually I'm going have to write it out. I have learned the true meaning of LOVE at the age of 33. It saddens me to know real love because with it comes good and bad, the acceptance of all things including hurt. God is so perfect in all He does and create. He's love all the time. I've been hurt so hard and for so long by my husband but yet, I still love him.

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I justify this because I know I've hurt him too but nothing like how he has done by me. I know he loves me and ---- but this is about me and how I've felt over the last months and my recovery time & healing. I want to heal and move on & forward with my family intact better than before. He's realized some things but so have I. My relationship is so new for me because of the commitment & time together.

5/26/16 9:13am

Another day has ^{come} here with new hopes and possibilities. I feel very good this morning. I took the time to focus on one of my children's needs than my own or his. Mario is very sweet and generally an awesome kid. But sometimes he just gets into stuff. I get on him but assure him I love him at the same time. I love to see him smile. The night before last, Martinique wanted



her time. Caught up in my own drama, I had to realize she needed me and it felt good to deliver. I love all my kids. Yesterday was very difficult for me. When your spouse cheats on you, you go through so much emotionally, mentally & physically. I broke down because I felt Jermaine was lashing out at me about my job, not getting enough contracts. He's right but now when he talks to me, I can't help but feel I am falling short of what he wants and the other women were better in these areas. I love him so much but it's hard to trust after all that has happened. But I'm trying because I want my family to be together. I only wish he knew how I feel sometimes and what I went through during that time. I'm proud of him because he says he's striving to make me #1 (really show me that I am in his life).



He didn't realize that was what he was suppose to do. I realized I didn't re-assure him. I want to do all I can to make my marriage better than ever. I just hope he's sincere in doing it too. The kids need us both. I don't want to have this book be a contribute to sorrow. When I look back over it I want to be able to say, I've learned so much & see how victorious I've become because I went through & stick with it. I want this book to inspire me to keep going. Yesterday I broke down twice in the truck over everything all over again. And I thought ~~at~~ at that time I can't recover but then I got his shorts. I felt myself picking up again. I spoke to no one and I got through. I know God keeps me and I began to have



some peace. One of the things I have to understand is Jermaine may not realize or see how he's hurt me. He's not a woman to express everyday he sees my pain. But I believe he knows and one day we'll discuss it. One thing I realize is a man being a man is allowing him to make his own choices and ~~not~~ see his own mistakes. You can't shove your ideas down his throat or chastise him like a child. I get that's what he meant when he would say your not my mother or I have one mother. Respect is allowing him to drive us to our destination without give directions or advice how to get there every step of the way. And any wrong turns along the way NO crucifying but loving reassurance. My concerns with him, I'll give them to God and leave them there.



I'll let God handle the rest and trust in Him to do it. The love I have for him I feel is God sent anyway and if He gave me that, I know everything He will too. I will continue to do my part until He says otherwise.

5/26/56 6:27pm

I'm enjoying a "chill" day. I've spent most of the day talking to my brobee. It feels so good being in this place. I never want this to end or go backwards. The kids are being good as usual even though they aren't listening like they should and lying so they don't get in trouble. With kids, that never works you get in more trouble. Hopefully they will learn that soon. When you lie as an adult, the consequences are



~~can~~ so much greater.

Sometimes, I wonder if God deals with everybody the way He deals with me. If so, and we listened, the world would be in a better place. I may feel how I feel but I can't make excuses for what he did and I won't. I don't. But I can't spend every day of my life wondering why. I never thought I would think this but I am glad we went "through" it and survived. I want to be able to help my kids or anyone that needs it. I will testify of God's grace & mercy for seeing us through victorious. It's Memorial Weekend and the kids and I will find something to do. (in peace). My funny, positive thought for the day is: loving the way I look in in those beautiful bright colors of orange.



green & pink. Just something to make me smile again.

5/28/06 12:12pm

I laying here waiting on my pain medicine to kick in so we can clean and have some real fun. His cousins want to stop by to see the kids and I'm fine with it. I can't believe I'm still cramping like this after all these years — after having kids. This crap still hurts like hell. I really need to do something today so that I to focus on it again. It's still fresh so this will happen from time to time. I thought loving him more would help ease the pain he has caused me but instead, some how, I've learned to love me more and that helps. I love the way I look in the mirror. I love accenting what I think are ~~my~~ most capatviving features.



I love buying clothes and things for myself and even for the kids and him. I really get a kick out of that. I love that I'm willing to try something new with my hair in the other direction this time. And it's ok because it's what I want. All pain and hurt eventually will fade and in this case, I hope the memories do too. I would be totally devastated if this is all a lie! But I'm trusting it's not. Therapy lesson #1 > Stop watching movies where the husband has cheated on wife or left to be w/ the other woman. Not helping me at all!

8/29/04 7:59pm

OK... rule #2: Follow the first rule. I've practically watch cheating movies 3 times today. I want to talk to someone.



but I'm afraid they'll ask him Jermaine
 if I are doing. I don't want to talk about
 it. I mean everything seems good but
 how long will it last. I could go for
 forever, I always did. He's in Texas now.
 We've had good conversations throughout the
 weekend & today. (Men don't want with different women
 They just want sex → wasn't lacking or needing in that
 area, wanted to be respected. Made my value go up
 so much because of talking to others - all he did.
 Appreciates that I fight for the family. We have
 "TRUE LOVE" for each other. (words) Some of the things said
 to me that I hope are true. If he were pulling
 my leg, would I know it for real? I know
 enough to get a divorce but that's not at all
 what I want and he knows it. Tracee once
 told me that he knows I'm fighting for the
 marriage and he's playing on that because he
 doesn't want it. But he told me today that



saying he was backing up and leaving one day
 I would say go ahead and get your ass out.
 He was right. The other day he tried me and
 I passed. I don't think he has the right
 to do that. But he says some of the most
 loving things to me: how I'm the best thing
 that ever happened to him, how he loves me
 so much more now than before, how much he
 respects & appreciates me, how proud he is that
 we made it through the storm, how he can't
 deny me ever for shopping or driving the Toge <sup>I did
know the
car. :)</sup>
 He says some wonderful things like putting me
 1st, calling me beautiful and leaving me sweet
 messages. My heart ~~that~~ wants to believe every
 word from his tongue but when he does not
 call, my mind wonders back to what he did
 before. But again he does assure me, like to-
 day that he won't ever do any thing again.
 Lord, you know my poor heart can't take



anything else and I hope I passed this test. I will survive this storm and its aftermath because I have to. ~~I~~ I deserve it. My heart is right. And I am only responsible for me and my actions. I have to keep reminding myself that because my mind wants to steer the other way some times. But I can't. God wants me to take care of me & the kids. I don't need that extra stress of wondering what he is doing. My trust is going to ~~be~~ lie w/ God because he knows my desire & my heart. I will let Him handle everything else. God knows I've been tortured enough by those actions. I have to leave my burdens to Him. I wished that I had listened to the godly advice to the very end but I have learned so much. I thank God for the advice and prayers because they



sustained me. As I write, I am beginning to feel better. I needed this. I should feel better because I am a phenomenal woman. I love my life. It is just beginning and it will get better every day!

9:27pm

He's doing it again !!!!!

5/30/06 4:20pm

Today I went to my first class of Top Gun. It was good because I learned some interest things about real estate. The main thing, what I've been avoiding in this business, it is what I have to do to really be successful. And that's what I want to be. The class made me look at myself as a person and a business woman. One of the things I must do is conquer that "big fear". I can & I will be a big success in real estate.



I have to be a sponge and observe every word. I will take courage and follow through on every task. I've beat myself up for so long for not being perfect. But in my flaws, there should never be a day that I don't try. If I have the confidence to try then I'll have it to succeed. My fear of failing has stopped me from fully trying. I thought Jermaine would leave if I hit it really big thinking he would I don't need him. I need to do this for my family because they all need me to. I want to show myself that I can. Jermaine is very encouraging of me doing this business. One of the things the instructor said was needing the support of family. And I do now more than ever before. I'm ready to go to the next level. I know I am because I'm starting



10:58am 5/31/06

I thought last night was the worst night ever... considering how well things have been lately. I had a dream in 3 parts. The first part was in a garage like setting and there were 2 women I think there along with someone else. I was looking for Jermaine. I kept getting on the motorcycle trying to ride but I went nowhere. The second was in a weird house and we were getting ready to go to a club or party. We were getting ready in two different areas at different times. I thought we were going together but he left with his friends including Brian. I looked for him but did not see him there and when me & others tried to get in we couldn't. We were trapped on a ladder of some kind. The last was even weirder. I was leaving a place



and got into the truck. I didn't go far but went to park in the parking space and I came to a sudden stop. I got out and saw a ton of cars behind the truck and people were running towards me screaming. They ran into me, well the truck. They were holding different body parts saying they were hurt. The scene was very dark except for the headlights of the cars. It was my friends from the Spring plus Denny. I couldn't understand because they ran into the truck at a stop. They gathered around as if they were going to kill me they were so angry & upset. But in the midst of it I was trying to explain but didn't know how. All of them were there, Bosticks, Kaha Nneka, Alicia & Enca and their mom. My sister was trying to help me but couldn't.



Everyone began to leave but her and I went to bathroom so puzzled. I left the door open because everything was open, like the house was finished. I sat there in the open but couldn't do anything and I tried to talk. I wanted to explain but didn't ~~the~~ know where or how to begin. As I tried my sister started calling everyone back. They gathered around to hear and began to praise and pray to God. But no words would come out. My mouth was open but nothing would come out & I woke up feeling the trauma. I knew there was a meaning and seeked interpretation. I wanted to call Eld. Gray but I did not want to call his home that early. I wasn't sure what he or Tobie would have said at 3am in the morning. So I called Ivory and wouldn't you know she



explained it to me. Everything had meaning

1. the truck & motorcycle - transportation;
means to get around

- yet I was going nowhere; life at a
standstill.

2. friends & sister - all from Spring where
we grew up & fellowshipped
together. They're saved
now

- very familiar; at the same place at
one time

3. setting (last one) - represents rapture.
everyone going but me.

4. my sister - blood line; couldn't take me
through

5. toilet - humiliation; place of secretion but
could not release.



How awesome God is to show me this
 to get my attention; to give me a
 chance to get it right and come back to
 Him. He loves me just that much. After-
 wards, she prayed with me & I repented
 before the Lord. I know He heard me &
 answered. Then we did a group prayer at
 4:30 w/ Chelle. I felt sooooo good. ^(10:42pm) Every
 chance I get I am going to be
 on the phone. That's a couple of ways
 to reconnect. I didn't talk to
 Jermaine as much today. I went thru
 withdrawal at first but I made it.
 I got him to want my conversation and
 I really don't mind if he doesn't call
 me back tonight. I'm ok. Let him
 continue to think he's in control. But
 if he calls, I'll gladly answer. I know
 if I didn't talk to him or on the
 phone period outside of business so



much, I'd remember to call L/JO about the closing. I've got to sharpen back up and get my head out of the sand... or in this case the "drama that WAS and IS NO LONGER" hint hint. I am going to be better than alright but super fabulous. And my marriage - blissful, my kids exceptional. Yes, in my time. Thanks to my Lord and Savior, all the bitter stuff is gone. The enemy is defeated! I've got the victory!

6/2/02 ~~10:35am~~ 12:15pm

I've talked to Tiffany, Angie, my mum and agents today. Unfortunately, I don't know what's going on with Jermaine. Once again another mood change or in his case personality switch. I'm upset about all the stuff that's been going on the



last couple of days and I am exhausted
 and tired. One day he's lovey dovey, the
 next, angry and the next, irritated. Today
 nasty and unfeeling. I know controlling
 emotions is a must and I'm not sure
 if talking to Kenny was in my best
 interest but Termaine is doing the tricks
 again. This time I call him on it; only
 talking to him when he calls me, never
 answering my calls but I'm suppose to
 be #1, snapping at me because I'm
 worried about this court case and the
 way he's been with me lately. At one point
 I was ok not talking to him any more.
 Then he calls me. I can't play the
 game in my marriage. That's not how it
 should be. Of all the people I've talked
 to: Angie, Tiffany, Shanice, Lisa, Shanice,
 Monique, Travis, Piper, Melvin, Tammy, Mrs. Davis
 Mrs. White, Russell, Kelly, Debbie, Karen, Barbara
 Scott



my parents, Ivory, his mother, Tanya, Mrs. Jones, Carolyn, Mikee, Michael, Jeanell (Wendy, Keisha, Danielle) & other women whoing with. Rhonda, Kelly at office, Ted, Colie, Amos, George C. Pastor Lawson, Asst Pastor Davis, Rana & her Pastor, Darnilee & her husband, Yolanda & her husband, Frankie & Terri, Kelly Hite and Vonne & Tracee and her friend, Kenny & Melvina & Pam. But no one can make a decision for me. My family deserves so much better than this. Oh yeah and Dee Dee, Denny & Stacy.

10/21/06 5:49pm

I've haven't written in a while. I need the handwriting practice. I don't know when my handwriting got so bad. It needs improvement. The up and down roller coaster has been going



no. It seems like there could be some
stabilizing

no



Lexington County Sheriff's Department
Evidentiary Chain of Custody

962

Case Number

10-087850

From: (Print)	(Sign)	Date:	Time:
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19 PAGES OF NOTEBOOK PAPER W/Writing ON

4/4/10
7:40pm

Today has been an interesting day to say the least. Jermaine has taken his actions to an all new level. He went to the country to clear his head. Alone? Absolutely not! This one minute in and the next out is too overwhelming for me. He goes back and forth so bad so much, I can't keep up. Well guess what? I don't have to any more.

This will be my last writing. I have decided to end things here. I know some people can handle this but I can not! I love my children god knows I do. They are not enough to keep me going. The drama with Jermaine abandoning us and saying he's coming back is way too much for me to bear. I sacrifice my entire life dedicating it to my husband first & kids. It has gotten me to this point.

I talked to my kids about their dad leaving and they have mixed emotions. Probably because he's rarely here anyway and has always been in & out. They have cried enough. Is he a good father? When it was convenient for him to be. I will miss my rascals but I am looking forward

to this being my last night. I never want to awake again. I hope these pills do it this time. I tired of being in this life. I've told God I don't want to be here any more and I want it to be my last.

To my children; you are all so brilliant so smart and so witty. Be strong for each other. Remember, you are all you have. I love you, but I'm suppose to be stronger and I'm not. For that I am so sorry to leave you this way. I think it's best for your dad to take true responsibility and raise you now. I've gotten you this far. He should handle it from here on out. He has the answers so this is his chance.

To those who have taken the time to talk and share with me; Deirdre, Adrienne, Enola, Tracee, Tish, Monique, Rita, Taria, Tia Wanda & Mrs. Jones, I appreciate your words and prayers. ~~My~~ My parents & Lorenzo, thank you. My cousins Kenny & Angie so glad for you too.

4/19/10.

It has gotten worse. I've tried everything! Now I will try this. He blames me but never mind. Stephanie, Tony, Kristine Alca Angel Skinner

and god knows who else he met or folles on
Black People Meet. I can't take any more and
now I don't have too.

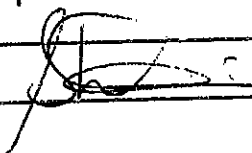
~~To Lancelot Wright~~

To Lancelot Wright:

Jermaine is not the person you think. He's
using you and your truck / business to further his
lies and adultery. You think like David Myers,
Tony Williams and the rest of your surroundings
that it's me. It wasn't. I was trying to
save my marriage. It just so happened the
3 women I called were not involved. Jermaine's
not taking care of his 5 kids with what you
pay him. He's been hiding his money and doesn't
take care of his responsibility with his family.
How can you believe a person who left his family
to fend for themselves, a home he put in foreclosure
and secured a place just for him?

I apologize for what you have been led to
believe but ask Tracee & Tom Cooker.

Love ya and wish you the best.



5/9/10 8:50pm Monday Evening

I wondered my handwriting has become so sloppy. Whenever I am writing my nerves are usually all over the place.

Here I am yet again! Why the hell me?!?! My truck has been acting up since my oil change. I told Jermaine but at the time he had no concern. Ok, he comes by Sunday (yesterday). I thought the talk gave way to progress and enlightenment until today. He comes by the house after going to RCE & RHTS. He said he needed to have me sign forms I all ready signed per Dr. Sober. I agree and he comes by.

He makes small talk as I fill out the forms. I tell him about my truck so he takes it for a test drive. When we get back, we sit and talk. He then changes yet again in what he wants - doesn't want his marriage (different from last night - he's a family man & wants his family). Then he says there's hope and then, he's not going to be easy. I have to work at getting him back?

Four hours of this back and forth, tears, anger, this game he plays. He decides to finally leave to return papers to Dr. Sober.

without me. I didn't want him to leave like this; no closure, agreement or decision. But he said he would come back after I beg not to leave. I go to my truck and it won't start. I called and told him. He shows up with new attitude; I owe him an apology. He says I need to clean up my act because I doubted his return. He wants to make love. I wanted to before he left but puzzled when he came back so eager. A part of me was glad he wanted me but I told him I want more.

I ask does he want his marriage he said yes but I need to get it together. We make love the way he wants. He's surprised, amazed and sleep. We cuddle, he rubs my arm and lays in my arm. We're happy, enjoying the moment. He ask how can I do that. I respond, I love and want you, our marriage. He says he loves me over again.

Marquis needs to go to the library so we take him and head to AutoZone. We get back only to realize the battery in the truck is dead. I ask how much and he says around 40 bucks. He ask what I have and I say \$50. When we get to WalMart, it cost \$77.00. No warranty on the old one.

Before we get to WalMart, he goes on and on about our making love and ask me how my closings are going. He asked me when do I think I can meet him half way. I say end of month. He then says he needs to see consistency for 3 months because he can't come back in same situation. The finances need to be better and show stability. I'm shocked. He gets mad that I'm feeling that way. I understand consistency but he acts like I'm the reason for our financial struggle. He admits before that yes I had about 6-7,000 dollars from last year but nothing sustained us this year to date. Amazing, because I contributed very little to my money; no where near. His excuse he was trying but cab wasn't making it. Really? Now working for Lance and you still broke? Paying money to David Myers for Smokey D's Restaurant business but yet, I'm the blame?

OK, back to WalMart. So he's mad at the \$89.00 bill for battery and the fact that he missed Mr. Wright's call @ 7:10pm due to the phone being on silent. Now it's almost 8 and he has to drop me & Marquis home. He's angry because he has \$13.00 dollars left until Wednesday. I gave 50.00, he gave 40.00, did I not meet him halfway in repair? Remember, that's his argument. I need to

meet him halfway, 50 yard line. I don't understand. He goes on, what would I have done if he didn't have the money. or what would I do if he wasn't around. I said hard to respond because I am your wife and you are here. I'm married to you so I come to you. He goes on how he's tired of living from paycheck to paycheck.

He vowed he'd never live like that 3-4 years ago? Huh? Then he says then child support wants me to pay. I said can we get back to our plan why are you going there. I haven't taken you for child support. He yells you will. It's just a matter of time.

He speeds through the Summit in the rain trying to drop us off; mad & complaining. He pulls up and Marquis and I sit there. I look back and he yells get out I have to go. So we do. I look back at him and he speeds off ~~down~~ up to the cul-de-sac and back down pass the house like a bat. WTF?!

Someone once said that this would not end until he really hurts me. Now over a week later, she right (Mrs. Jones). It hurts because,

he can turn into a monster at any time, no warning. How can I be so stupid? There isn't anything to do or say other than, I'm tired. The more I try the worse he gets. The cycle is inevitable.

Does he love the kids? In some way but not as a ~~dad~~ Dad but a sperm donor. It sounds good rolling off his tongue but there's no proof of action. What have I subjected my kids to? A man with no values and few morals.

5/4/10 7:24pm

I've felt like crap all day long. Jermain called me the first time @ 12:49am to tell me he was still working and he'll call when he's done with Lance and that he was tired. The next one came @ 9:23am asking me did I have the battery in. I told him No. ~~He~~ He said he didn't get in until 5:30am this morning. The Denali was in the shop. So he called Joe to come by. He fixed the truck but the light "charger" still comes on.

I get so confused by his calls because one minute he's nice and the next mean. Why do I put myself in this situation, because I love him.

I hate that I love him! I can't function. You would think he was the last male on earth. He's so not but I married him, I'm his wife. Why can't I be like other woman, strong and vital. But I've been this way since I've been with him. He goes through thinking it's ok to leave his family and people around him ~~consign~~ like he's right and it's ok.

All the time he failed, misused money didn't make money, I never left. I stayed because I thought he'd get it together. He takes a job paying 70,000 less than he usually would make and I thought he did it to be home and help raise the kids and be a real family. He's still not around. The kids seem numb. They are use to him being gone or in and out. He's left no mark of positivity in them. They've expressed their disappointment, abandonment and mad feelings of his behavior.

I can't handle the pain. I cry often and try to sleep it away. There's no luck. I have to talk to the kids again. I wish I were a better mother. I wish I could pick up the pieces, really, LEAVE the broken pieces and move the kids and I to a new place. The smog here is trying to smother us. For me that weight is too heavy. He left me to burden it all.

My kids deserve two parents committed to

their well being, keeping them active and focusing on their work. A deeply depressed mother always trying to pull it through and a selfish self righteous father who only focusing on his needs and desires to be a part of the elite wealthy. Never mind the key factor to their success is their family.

I read Luke 11, Keri, thank you. I can't find the solitude to make it. I'm nearly writing this so my kids will know. I didn't enjoy my life as I wanted to.

5/21/10 6:55pm

I am feeling blah. Everyday I feel numb. I know how I want to be feeling but afraid to express or relish in it because he changes so much.

Last week, Wednesday or so, Jernani was along me for the fuel stamps card so he could get some groceries. He said he had no money. Smokey B's drained him. Side bar, he says that's what happens every check once he gives me \$250 or \$240. At first he said we can go \$50.00 bucks then he says meet ~~him~~ me so he can get the card & get \$100.00 dollars worth. Of course, I was suspicious. We never went. Well Friday, he called all dry and ask for the card again. I said oh you being dry.

Then, he starts yelling, he can be how he wants so I hung up the cell. He starts calling me about ~~that~~ midnight or so until about 4 or 50. I was asleep downstairs and saw the missed calls when I went to my room. He starts again around 8. When I answer, he tells me he's coming to get the boys and he's on his way over. He asked why I didn't answer. I told him I was asleep. He tells me to make sure the kids eat because he has no money. I said ok and got off the phone.

When he gets here, he's dry. I asked what was going on. He says I don't answer my phone but he's fine with it. He's not dealing with anyone any more. I keep asking what's he's talking about. He says you know but I'm ok with it, I'll be all right. He gets on attitude going toward the truck so I'm left standing in the yard watching him and the boys pull off.

Sweetie and I go to WalMart to get her some sandals and then head back to the house. On the way went RT Mart but saw nothing. Terman said he had to bring the boys back by 2:30pm. We got there a little before and waited. He calls to ask what we were doing and I said we just got in. He tells

me that he and the boys are at his place chillin and if I got bring their swimming trunks. I said sure but then he called back no, he came back to the phone after I spoke to Marquis, Martin and Mario asking them where their stuff is. He says the pool is still closed and dirty. They were too young for Tony's house. I said ok and hung up the phone.

He called back around 5 or 10 after and said he was on his way with the boys to drop them off. I said ok and hung up. He came in asking for the nail file. I said it's upstairs and so he went. The kids were setting up the Will and going outside. I went upstairs to see what he was doing since he was gone for a little while. I peeped in our bathroom and he was filing his thumb nail. So I turned to walk out but then he said something smart under his breath so I went back. He came out toward me and we look at each other and began to kiss passionately. We began undressing and made love. It was passionate, like we hadn't been together that Monday, 5/10 before. We filled each other and said we loved each other. He kept saying how he wanted me so bad yesterday.

After laying together, he said he had

to go and meet Lane. At least for a couple of hours, it was like he never left.

He called me afterwards to say I could have gone. I was shocked. He said he to go home to get ready to take them out but he would see how long they would be so he could come back. We talked a bit a few more times and Sunday came.

Since he said he was coming to church and I hadn't heard from him I decided to call. He was half asleep. ~~He~~ didn't get in until 5:30 a.m. He said he was going so I say Ok and started getting everyone ready. He called and said he was going.

It was awkward because he was there as we pulled up. I didn't know how to greet or address him. Since we're separated so we spoke and I spoke and hugged the others. I got my seat and came back out then he gave me a half hug. We didn't sit together but he did Children's church.

When church was over I asked what he was doing. I would invite him to eat over on Sundays but he would decline.

So I was reluctant to ask again but I did. He said he had to go back to Lance's and then he'd come. I was skeptical but let it go. After a while he called and said he was alone and that he was on his way. He came and sat. We all watched Rush Hour 3. He said he had to pick up their boys from the Governor Elect's house but he didn't. He went back to Lance's to do something he told me he had done already (put the tarp on his boat - the delay for coming earlier).

I followed him but he didn't see me. He started in the I don't wanna be married and fussing on his finances. I was baffled because every thing seemed fine. I cried as he told me I should have listened to him when he told me about getting a job in Jersey. I let him go on down 37P and I turned around so disappointed, confused and hurt again. He insisted he doesn't talk to Kristina or anyone but occasionally. I was devastated in that part of the conversation at the house. It just replayed as I got gas and headed home alone.

I got back and told the kids to get ready for school. They did and went to bed. He called asking if we could finish talking

Chuck was with him because he was dropping him off on this side and he wanted more drink. I said yes. He came like after 10:30 or so. We finished our talk as he told me his finances bother him and he doesn't like to be broke. He wants to be here but he needs help. We sip on our drinks as he eats. We don't finish the drinks but we slowly move toward each other. I turn off the tv as he moves toward me and we both go upstairs to our room.

5/25/10 1:21pm

After all is said and done, I've had enough. This situation with Jermaine, and [Kirstina] is too much. I relive Sunday over and over in my head. I can't take it. How would you feel if another woman told you your husband is a good man but, he left his family [wife of 14 years with five kids]? How would you feel hearing him in the background?

He blames me for everything and tells Lance, David and whoever else that will listen: I'm the problem. Sunday, he told me he had nothing to do but the catering with David Myers. All of a sudden, went into this rag over all this stuff he had to do once he left the house. He just went off the deep end about this stuff he had to do for his job. But he went to her ~~place~~ place (apt.).

I thought being his wife in full capacity since he left would help him see this is where he needs to be but I was wrong.

He's whole thing was respect and meeting him at the 50 yard line. I was there, lining up money for repairs to house, helping with the bills, giving him money to eat or soap to bath and toothpaste to brush his teeth, giving him something to eat when he came by. How could he do this?

My life has been about my family until I don't know anything else. Everyone says that was a mistake but I took pride in knowing I was there for my husband and kids and it was what he wanted. I did all I could and ^{ALL} I knew how. Only to have him be so ungrateful and unappreciative and so disrespectful. I'm removing myself because I can't take the torture he's put me through and my kids don't need to see me like this.

Black woman in this area have no respect for relationship or marriage. To someone else's husband and make him your own is beyond me. It must be a southern thing or a desperate thing. He left his family,

abandoned them to fend for themselves and not help to the full extent of a man but he's a good man. Why, because ~~he~~ he gives to you?

I would hope my kids learn better. Unfortunately I'm not here to reiterate it. I've taught them what I could and wish I was strong enough to do more. Mentally and emotionally dealing with my marriage has taken its toll on me. I'm drained. I can see pass this moment. I'm sorry. I don't mean to be selfish but I can't handle what he's putting me through in our marriage and these pending check charge too. Not to mention, the foreclosure, 5 kids with individual needs, the bills, repairs to the home and truck. Why does he get to walk away? But I get it, you can't make someone do right.

To my beautiful children, I love you all so much. You deserve the best. Unfortunately it's not your dad because

he's not here ~~now~~ has he been and it's not me because the pressure is too much. I should have been: all I needed to be first and then add to it instead of the latter. My mistakes, losing myself early on and accepting of things that were wrong and not voicing them until I was ready to explode. Shutting down solves nothing and neither does exploding.

I don't believe in mind games because it only leads to this. Please forgive my choice.

Love,

Shellie

Bills Due

January

Phone (house) - 58.00 pd. \$ 45.72

Electric/gas - 320.00 pd. \$ 370.00

Nav. - 400.00 pd.

Water (City of Cork) - 70.00 pd. \$ 75.00

Sewer (Palmetto Utilities) - 90.00 outstanding

Cadillac - 375.00 ? sold

Directv - 80.00 ?

Cell phones - (mine) 70.00 ^{outstanding} yours (103.00) pd.Internet - 57.60 ^{outstanding}

about day thing

@ 8:30am - Michelle

July 12, 2010 @ 3:05pm

I laying here thinking the same thoughts since this all began. But now, they've gone to the kids. I hate that they were born to us as their parents. So irresponsible to not do the right thing to raise them the right way to be respectful & complete individuals. Instead, a father who walked out & plays the emotional game of in & out of their lives. Always using them as pawns when it's necessary to make him appear as a "good" father. Financially contributing nothing to any of their needs. They remind him all the time that he owes them money. A mother so emotionally & mentally warped because of her relationship and broken commitment their father left her with. Physically deteriorating from the stress of being alone, a husband who lies single and cheats and kids looking to you to see them through. I can't and they know it. They watch him come and go to and what happens to me when he does.

Well, today, I made a decision. How, I don't know but I can't make it or go on like this. Killing myself is the better choice. I'm tired and I've done all I could.

I won't have to hear "I'm coming home" any more or "Financially I'm not where I need to be". I'm not even looking forward to counselling any more. Just tired and so fed up. I really can't go any further than this. He uses me and sleeps with other women or should I say WHORES. I hate these sleazy bitches that have no self control and want other people's men. I hate him for the pain he's caused, the games he's played & the fake image he's been portraying. He's quest to be like Lance overshadows reality. He will never see my kids with him again.

I was supportive, loving and whatever else he needed from me. I was everything to him and nothing for myself. When I would figure it out and set things for me, he would say I didn't need him, I want to wear the pants. I realized success for him for me was the family and being there for him. So that's what I did only to be left lost in the end.

One week today, we were here as a family's suppose to be. His words of coming home, re-structuring and needing to see his value seemed real. I was so happy my family was back together and would never see division again. How could I have been wrong again?!

9:51pm. on Monday night, 7/12/10

All day been in & out of tears. I haven't changed my mind. I want to do something fun with the kids. Sherce called with the ok for the concession @ Polo Road. Maybe that's it, he was playing this role because ~~he~~ he wants me to get the trailer. He's a user now. He can't make it on his own. He will use someone to get ahead. All I can think about is the ~~condoms~~ condoms in his drawer. Listening to him explain that he drives single guys in the Denali that need them for strip clubs or people the pick up and they were just in his pockets that he emptied out. Why was I in his drawer anyway. Let alone early that week, he was coming back home. The call from Arletta that he ignored and froze in time afterwards. As if I don't know him even in his deceitfulness. Somethings, like gestures & mannerisms don't change

7/16/10 @ 8:22am.

Been up now for a little over an hour. Still shocked & dismayed over my

my conversation with DeeDee. I'm thinking we going to have an adult conversation about her email on her studying divorce annulment & legal separation and her conversation to Enola about how she felt about my marriage & Jermaine, of which I felt and still feel was inappropriate because you don't tell your so called best friend's co-worker you don't know her business and the email was insensitive. I express to her calmly how I felt and goes off about how she's offended and upset that I'm calling her with this when she's only being concerned about me & the kids. I told her I understood that but she shouldn't not have done that. I don't care what's going on, I would not tell your co-workers your personal business regardless of what is going on. (She went into drama queen mode of how I don't call to check on her, I think I'm the only one going through stuff, Adrienne texts her everyday to check on her, she's a planner & doesn't know what's going on with the house, I'm just sitting here waiting on them to take it, I'm giving her and everyone else what he should be getting, she's a single mom w/ 2 kids with no child support but she still tries to help, I'm snappy when she calls, I need to be doing what I need to for my kids, she has a ton of close friends, she's a straight shooter, she's not changing for no

one, she is who she is, she didn't agree with me on how I answered her ~~with~~ about my parents not getting the kids when they said they were; ALL CRAZY!! And for her to say I'm going to see who my real friends are. Are you fucking kidding me?!? I asked 4 people what they thought, she was WRONG. Concern, ok; don't like the situation, fine all the other stuff too much. I hate when people try to make themselves feel better by trying to put someone else down? You can never do enough in someone's eyes. In all her mess, I've never judged her until now; he gripes with her parents in helping her, Marvin - her live in but ~~even~~ claims she's independent. No, you're not. Her other friends she talks about to me, now realizing she does the same with me. A gossip is a gossip is a gossip. As much as she talked about Shaundricka, Shan and even Adrienne and her fakeness, lies and disingenuous ways. How she talked about her when her boyfriend dumped her on his b-day - Really, DeeDee?! And then say don't call me unless it's an emergency. She's out of the whole thing? Even you said I haven't spoken to you in 2 months. Yeah 2 months about my situation, so WHY would I start again now? You are not on my emergency call list any way, bitch! You won't be called period. While you're playing perfect to Marvin, you fell to to him your rendezvous with his cousin's close friends. While you're calling people hoers & sluts, Stop smiling in their faces and calling yourself a friend when you

run them down to other people. You can't shine the spotlight in the crowd without putting it on yourself FIRST! Smart and stupid all in one.

7/21/2010 @ 3:10pm

I've spent more time on my knees with Jermaine than God and for that I'm paying dearly. I thought as long as I was peaceful and went along, I was going to be ok. Disagreeing only makes him mad and not wanting to be with me anymore. I'm sad because most of me what him back and believed he was coming back to make things right. The other small part I battled with was his lying still about Christine and calling maybe even seeing others.

I can spend the night and sometimes days with him and he'll say we can get back on track staying in "our lanes" and he's always going to make a wise decision and he's coming back home. But then, in a moment it changes; he gets distant, the dryness in the phone or the "I'm getting the kids" routine. We got the deal with Polo Road. We had to meet w/ Reggie from Cico Cole on Friday but, Thursday, Jermaine acted like there wasn't going to be a meeting because Mr. Myers couldn't make it. I asked what was wrong and he said "his fingers". He'd been home all day and didn't bother to get the kids or call ~~them~~ but then again, he does not call them. He said he was going to meet

Mr. Myers @ B. I left it alone and he said he would call me. He didn't so I called early Friday morning. He was asleep and I asked what was the time we were suppose to meet. He never mentioned the meeting with Regina @ 9:00 so I asked did he call her. He said he needed to. He got mad saying I was starting an argument but I told him I wasn't and was keeping it business. He said he would call me back but didn't. Mr. Myers called and said he was calling me back. Side note, Tuesday I met w/ Jermaine & Mr. Myers to discuss roles with the concession. His ass was wearing the cologne which he told me he was going to ~~throw~~ throw it away. I was uncomfortable and didn't eat. He passed me his bill to pay and I said I'm not paying for you. We went to the State building to get info for getting our name & license. He sat in the truck while me & Mr. Myers went in. Mr. Myers asked if I was OK I said I will be but I'm just so tired. Once we got the information we stood up there for 20 mins talking about why Jermaine changed everything, this was suppose to be a family business for all of us to go on vacations and take care of our families. I told him that Jermaine does this all the time. One minute he's coming home the next not. I was tired of being confused. I told him if I can't trust him with our relationship how can I trust him in business. Mr. Myers said I'm about family and I'll

16
continue to talk to him because I told him he needs to be home. His wife told Termaine he wants his cake and eat it too and life don't work that way that's why she is not comfortable. Mr. Myers said he's trying to do things like Lance but he's not him. He doesn't know what it took for Lance to get to where he is now. He told me to hang in there. So when Mr. Myers told me he was headed to the Hilton for the meeting, I was surprised and said I'll be there. I saw the truck parked behind it & went in. I called Termaine once he didn't answer but the second he did and said to come over to then he sees me. I was calm but irritated because he's back to the games again. We didn't say much but as we walked out he was laughing saying I got drama. I told him I was embarrassed for him and his actions.

Later he called me saying we need to decide on what we're going to do because Mr. Myers doesn't feel comfortable. He felt the tension between us at the meeting. He knows that was him because he didn't have to lie. That's my problem with him is that he lies so much. He told me he gets paid on Fridays now but his pay stub said 7/14th. Mr. Myers told Termaine ~~was~~ what I said and I told him I was upset and he caught me at a time when I was frustrated and confused and needed to talk. He said you think Mr. Myers

isn't going to do business with me but he knows me. I did things for him that helped him out. I just need you to be supportive. I expressed my feelings about him & our marriage but I was crying so much I had to go. So I hung up and told him I'll call back when I get myself together. I feel asleep and he called me all night into the next morning. I let him know we and we made love. He woke up saying I'm coming home and we going to get it together. He took me to Tony's where I was able to ride the jet skis before he took it to Lance's. He held me and said he loved & wanted only me. We cleared the air and he said he was no longer calling Christina because he has no reason to and he's taking my feelings into consideration where he hasn't before. He said he was not talking to any females except Arletta & Tonya because they're really just good friends. I was ok with that. We spent all day Saturday with my parents, Lorraine & the kids preparing for Sweetie's b'day. Tracee called and I said so far so good, I'll call you later. I was so happy. We went to dinner and Termaine asked me to stay with him Saturday night. I got my stuff and we left.

Out of no where, he's starting up about finances and how that has to be right before he comes back. I panicked and said why are you dragging and jerking me around like this I

Can't take this. Why the game. What's your
 point? I knew I should have gone back home
 but I stayed. He wanted to make love but
 I said you're using me and I don't like being
 used. He got mad and moved away from me. The
 next morning he wasn't saying much to me but
 talking to Chuck. I finally got him to talk to me
 in the bathroom. He said I didn't understand all
 he sees @ is his finances. I got in the shower
 with him and kissed him. I told him that I'm
 there with him and we will work it out. He knows
 I've always helped him as a family. We got
 to the house later than planned but all of us went
 to church. He wanted me to cook so I did. He
 did change his clothes but complained how hot the
 house was. After he ate he left. I asked him to
 take me to the store to get change. I told him
 I was feeling uncomfortable and wanted to know that
 our finances was what we were working on. He said
 that's it. He doesn't talk to any one else. He left
 and I let him go as much as it hurt. I didn't
 feel right but what could I do.

Later Sunday night, I called him and he
 would not answer. I panicked. When I finally got
 him sitting in truck after I'd left to get gas and
 just drive around as I always do to calm down, ~~he~~
 he called saying he went to hear jazz off Brad Rovi.
 and he knows I thought he was with Christina but
 he wasn't. I was sick. I hate that feeling of insecurity.

that he's brought on and doesn't acknowledge. He wanted me to come over but I was taking the truck to shop to get looked at in the morning. He said he didn't like smoke blown up his ass and was going to bed. When he called I told him the truck was being looked at and he told me what to do.

After my parents & Lorenzo left, he called and asked me to bring the kids over since he was not going to Charleston. When we got there he had to leave and didn't come back until the pool closed. We went in the apartment to change and left because he had to go and help Arlette with her party plans with Lance. What are you do? He didn't call or come by until ~~that~~ that morning when he asked what we were doing. He later invited us to go to the apartment where there's A/C. The house was so hot so we got our swim stuff and some extra clothes and headed that way. I called Adrienne only to get a dry response. Evidently she's piggy-backing on Dee Dee. Shameen and I talked a bit while the kids played the Wii and Marquis did his schoolwork. Jermaine didn't come until after 9pm. We stayed the night because he said he didn't mind since the house was super hot. When he left to get Lance & his wife from their anniversary dinner. He wanted us to go to his room so I could take care of him. As his wife I always did and still do. He told me that

the only thing ~~were~~ were lacking was our finances. He would come home now. He said constantly that he loved me and we cuddled and went to sleep.

We woke up early so he could go to Mullen & Charlotte. His phone rang and when I sat up I saw it was Christine. I asked who was that he said Tony. I know he was lying. I laid there thinking why is he lying and why is she calling. He said he doesn't talk to her any more. Why lie if there's nothing to hide. I got up and said are you seriously going to lie to me. Then Mr Myers called. He showed me the phone, that's David Myers. I said that was her before why lie, just tell the truth. He goes that was Tony texting me. I said Terrence what is going on. He goes I don't have time to argue first thing in the morning. I told him there wouldn't be an argument if he was lying to me to my face. When he left I called her all of sudden, he went into I'm trying to control him, he can talk to or call anyone he wants to I don't pay his bill. So what he talks to her and wear the cologne she bought. He told me when I buy him some he'll throw it away until then he's wearing it. Just a nightmare from last night. It's like he's two people. He told me not to call her because he doesn't have time for the drama. He later calls back to say we need to end this because no one is going to yell at him and all I see is the bed. He didn't have to lie we would have been fine had he said the truth.

I can't take any more. I do right and nothing goes well. He said he'll be fine if something happened to me because he has a steady check. Well he got to put that to use. I loved him and always will. I should not have to put up with him living a double life; enjoying the benefits of marriage and family and the freedom of being single and no accountability. Why did it come to this?

7:45pm on 7/21/10

Just took the kids to subway and picked up some of their favorites from Publix. I get lots of compliments on the kids. So unfortunate that I can only think of the last times I made love with my husband. I wore the white lingerie for him Friday night or should I say Saturday morning. The passion we have is priceless. I loved our connection. Our making love last night. I always give him all of me to show him, I'm in our marriage and still believe in it. Whatever it takes to make it work so I thought. I mean am I suppose to stand by and watch my husband talk to the other woman? Am I suppose to be like, well he's here with me so wait your turn? Really, sharing him on some level with Christine, Arletta, well not Arletta on that level. She's a friend but any other woman you know wants your husband? What has the world, society or black men to come to? Why is the commitment between two people so hard? Or is it just my husband? He asked me why do I take care of him so well and why I treat him so good. My response was I just love you and still do

like I did when I met him. I just generally love him, broke or rich, fat or thin, young or old and unfortunately good or bad. WHY, WTH?!!?

We're in this hot house and it feels like a sauna! The kids are eating. My time is winding down. I have to do this tonight. Two bills to pay. I just don't want to face another day. He's got it all figured out.

God, please forgive me for leaving and ending this like this. I can handle this any more. Mentally, I am gone. Emotionally, I'm a wreck. Physically, I'm shrinking by the minute. No appetite or desire to eat let alone look a food. Lord, please take me away to a place I can only see your face. Where I can stay in your arms or just lay at your feet. I want peace of mind again, joy again, happiness again. I can't take this darkness and sadness any more! Please God save me from this distress. Lord, please send your angels to always protect my kids. I don't want them hurting or suffering for me and Jermaine's actions. Comfort their hearts and all of those that will mourn. Save their souls and help them all to live righteously.

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