

VOL. I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

William Jeffrey Young, Circuit Court Judge

RECEIVED

JAN - 9 2014

S.C. Supreme Court

ROGER DALE BURKE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001419

A P P E N D I X

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INDEX

INDEX	i
TRIAL TRANSCRIPT (dated August 23-25, 27, 2004).....	1
OPINION OF THE COURT OF APPEALS DISMISSING APPEAL	604
APPLICATION FOR POST-CONVICTION RELIEF WITH ATTACHED BRIEF AND MOTION (2007-CP-32-1784).....	605
APPLICATION FOR POST-CONVICTION RELIEF WITH ATTACHED BRIEF AND MOTION (2007-CP-32-1965).....	632
RETURN	660
LETTER FROM APPLICANT TO JUDGE KEESLEY (filed April 24, 2009)	664
ORDER MERGING 2007-CP-32-1965 WITH 2007-CP-32-1784	665
ORDER FOR CRIMINAL RESPONSIBILITY AND CAPACITY TO CONFORM EVALUATION (M'NAUGHTEN).....	666
MOTION FOR IN CAMERA HEARING TO CONSIDER RELIEVING POST-CONVICTION COUNSEL AND APPOINTING SUBSTITUTE COUNSEL	675
ORDER FILED SEPTEMBER 14, 2010 RELIEVING COUNSEL	676
HEARING TRANSCRIPT (dated April 26, 2012)	677
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated August 14, 2012).....	690
ORDER OF DISMISSAL	781
CLERK OF COURT RECORDS	791

1 STATE OF SOUTH CAROLINA

2 COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

5 STATE OF SOUTH CAROLINA)

6 - vs-)

7 ROGER DALE BURKE,)

8 Defendant.)

TRANSCRIPT OF RECORD

02-GS-32-3278-3281

10 August 23-25 & 27, 2004
11 Lexington, South Carolina

14 B E F O R E:

15 HONORABLE MARC H. WESTBROOK, Judge; and a jury.

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

19 ROBERT M. MADSEN, Asst. Solicitor
20 MARION M. MOSES, Asst. Solicitor
Attorneys for the State

21 WILLIAM N. NETTLES, Esquire
22 Attorney for the Defendant

24 L. COCONUT PANTSARI, R.P.R.
25 Circuit Court Reporter

INDEX

1		
2	Jury Impaneled	20
3	Jury Sworn	56
4	Opening Statement by Mr. Moses	59
5	Opening Statement by Mr. Nettles	63
6	State Rests	291
7	Directed Verdict by Mr. Nettles	291
8	Defense Rests	530
9	Directed Verdict by Mr. Nettles	530
10	Closing Statement by Mr. Moses	535
11	Closing Statement by Mr. Nettles	538
12	Closing Statement by Mr. Madsen	548
13	Jury Charge	559
14	Verdict	589

INDEX OF WITNESSES

16	<u>WITNESSES:</u>	<u>PAGE</u>
17	SCOTTIE FRIER	
18	In Camera Direct By Mr. Madsen	23
19	In Camera Cross By Mr. Nettles	39
20	In Camera Redirect By Mr. Madsen	47
21	BRANDON RAY BURKE	
22	Direct By Mr. Madsen	68
23	Cross By Mr. Nettles	85
24	Redirect By Mr. Madsen	97
25	---	

1	BILLY JOE STOREY	
2	Direct By Mr. Madsen	98
3	Cross By Mr. Nettles	107
4	Redirect By Mr. Madsen	111
5	ROBIN RENEE WALTERS	
6	Direct By Mr. Moses	114
7	JAMES L. HICKMAN	
8	Direct By Mr. Madsen	116
9	Cross By Mr. Nettles	135
10	SCOTTIE RICE FRIER	
11	Direct By Mr. Madsen	149
12	Cross By Mr. Nettles	194
13	Redirect By Mr. Madsen	210
14	MELVIN A. SEBOE	
15	Direct By Mr. Madsen	212
16	Cross By Mr. Nettles	217
17	NATHANIEL COLLINS, JR.	
18	Direct By Mr. Madsen	220
19	Cross By Mr. Nettles	228
20	Redirect By Mr. Madsen	232
21	KENNETH WHITLER	
22	Direct By Mr. Moses	233
23	Cross By Mr. Nettles	240.cross
24	WILLIAM ARMSTRONG	
25	Direct By Mr. Moses	245

1	Cross By Mr. Nettles	258
2	Redirect By Mr. Moses	263
3	Recross By Mr. Nettles	263
4	SCOTTIE RICE FRIER	
5	Direct By Mr. Madsen	264
6	Cross By Mr. Nettles	277
7	Redirect By Mr. Madsen	289
8	Recross By Mr. Nettles	290
9	MICHAEL DOUGLAS RATLIFF	
10	Direct By Mr. Nettles	301
11	Cross By Mr. Madsen	307
12	Redirect By Mr. Nettles	312
13	Recross By Mr. Madsen	313
14	Redirect By Mr. Nettles	313
15	FRANCES MARIE BURKE	
16	Direct By Mr. Nettles	314
17	Cross By Mr. Madsen	317
18	CLINT ADDY	
19	Direct By Mr. Nettles	320
20	Cross By Mr. Madsen	325
21	CYNTHIA MARIE ANDERSON	
22	Direct By Mr. Nettles	331
23	Cross By Mr. Madsen	336
24	TERRY ALLEN ANDERSON	
25	Direct By Mr. Nettles	339

1	Cross By Mr. Madsen	344
2	Redirect By Mr. Nettles	351
3	Recross By Mr. Madsen	352
4	JANE SIMPSON SINGLETON	
5	Direct By Mr. Nettles	354
6	Cross By Mr. Madsen	362
7	ALMON ODELL ANDERSON	
8	Direct By Mr. Nettles	367
9	Cross By Mr. Madsen	377
10	MICHAEL ALLEN BURKE	
11	Direct By Mr. Nettles	398
12	JOHN ESPOSITO	
13	Direct By Mr. Nettles	401
14	ROGER DALE BURKE	
15	Direct By Mr. Nettles	404
16	Cross By Mr. Madsen	461

STATE'S EXHIBITS

18	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
19	1-2	Diagrams		55
20	3-34	Photographs		55
21	35	Phone		55
22	36	Reciept (Shumpert's)		55
23	37	Bullet fragment		55
24	38	Bullet		55
25	39	Fired bullet		55

1	40	Two bullet fragments	55
2	41	Letter (12/17/01)	55
3	42	Motion (Family Court)	55
4	43	S.L.E.D. pistol application	55
5	44	Pistol box	55
6	45	Ammunition	55
7	46	.380-caliber pistol w/rounds	55
8	47	Map	55
9	48	Statement (Defendant)	167 179
10	49	Styrofoam head	194
11	50	Diagram (body)	194
12	51	Statement (Defendant)	264
13	52	Photograph	516 518
14	53	Photograph	516 517
15		DEFENDANT'S EXHIBITS	
16	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
17	1-4	Photographs	90 137
18	5	Photo (blown up)	144
19		COURT'S EXHIBITS	
20	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
21	1	Statement (Defendant)	26
22	2	Statement (Defendant)	37
23	3	Jury charge	581
24	4	Note from the jury	588
25			

Date: 8/23/04
 County: Lexington

VOIR DIRE

e No: 02-GS-32-3278-3281 Judge: Westbrook
 /State: State State/Pl's. Atty: Madsen/Moses

Defendant: Roger Dale Burke Defense Atty: Nettles

Jury Reportur: Pontsori

Page 1 of 2

Juror No.	Name	Sex	Race	Court	Strikes		
					Plaintiff	Defense	Accept
68	Patrick Jamison	m	B		✓①		
134	Kirk Thomas	m	W			✓①	
117	Kenneth Riddle	m	W				✓①
33	Allen Cook	m	W				✓②
110	Richard Paxton	m	W			✓②	
88	Walter Lee	m	W		✓②		
47	James Gantt	m	B				✓③
10	Tony Bell	m	W				✓④
35	Norman Counts	m	W				✓⑤
20	William Brown	m	W				✓⑥
5	John Anderson	m	W				✓⑦
95	Sandra Markman	F	W			✓③	
93	Lorry Lucas	m	W			✓④	
13	Janet Bolties	F	W			✓⑤	
12	Christine Black	F	W			✓⑥	
16	Jacqueline Bova	F	B		✓③		
149	Christine Wright	F	W				✓⑧
143	Charles Wessinger	m	W		✓④		

Please indicate who made the motion to strike the jurors "for cause"

Date: 8/23/04
County: Lexington

VOIR DIRE

Case No: 02-GS-32-3278-3281

Judge: Westbrook

City/State: State

State/Pl's. Atty: Madsen / Moses

Defendant: Roger Dale Burke

Defense Atty: Nettles

Court Reporter: Pantser,

Page 2 of 2

[illegible]

*For the court column, please indicate who made the motion to strike the jurors "for c

1 THE COURT: Is the State ready for the next
2 case?

3 MR. MADSEN: We are, Your Honor.

4 THE COURT: Is the defense ready?

5 MR. NETTLES: The defense is ready, Your
6 Honor.

7 THE COURT: Go ahead.

8 MR. MADSEN: Thank you, Your Honor. The State
9 calls the case of the State versus Roger Dale Burke,
10 Indictment 2002-GS-32-3281, indictment for burglary in
11 the first degree.

12 Indictment Number 2002-GS-32-3280, an
13 indictment against Roger Dale Burke for attempt to
14 commit arson.

15 Indictment Number 2002-GS-32-3278, the State
16 versus Roger Dale Burke, an indictment for murder.

17 Indictment Number 2002-GS-32-3279, the State
18 versus Roger Dale Burke, possession of a firearm or
19 knife during the commission of a violent crime.

20 THE COURT: Ladies and gentlemen, as you have
21 heard, we now call the case of the State versus Roger
22 Dale Burke. I will read to you again very briefly from
23 the indictments.

24 Remember, as we told you earlier, that the
25 indictments are only statements of the charges against

1 the Defendant. They don't mean he has done anything
2 wrong at all. In fact, it is up to the State to carry
3 the burden of proof as to that.

4 I am going to read to you very briefly from
5 the indictments. Of course, we will ask you later if
6 anyone has heard anything about the case or knows
7 anything about the case.

8 Indictment 2002-GS-32-3278 charges Mr. Burke
9 with murder. It alleges that Roger Dale Burke did in
10 Lexington County, on or about December 19, 2001,
11 willfully, feloniously, and with malice aforethought
12 kill the victim, Jenny A. Burke, by means of shooting
13 the victim with a pistol; and that Jenny A. Burke died
14 in Lexington County as a proximate result of the gunshot
15 wounds inflicted by Roger Dale Burke in violation of the
16 code of laws.

17 Indictment 2002-GS-32-3279 charges Mr. Burke
18 with possession of a firearm or knife during the
19 commission of a violent crime. It alleges that Roger
20 Dale Burke did in Lexington County, on or about
21 December 19, 2001, possess a firearm during the
22 commission of a violent crime, that being murder, in
23 violation of the Code of Laws of South Carolina.

24 Indictment 2002-GS-32-3281 is for burglary in
25 the first degree. It alleges that Roger Dale Burke did

1 in Lexington County, on or about December 19, 2001,
2 willfully and unlawfully enter the dwelling of Jenny A.
3 Burke at Drive in Pelion, South Carolina
4 without consent and with intent to commit a crime
5 therein.

6 And the Defendant, while in affecting entry or
7 in the dwelling or in immediate flight therefrom, that
8 he or another participant in the crime was armed with a
9 deadly weapon or explosive or caused physical injury to
10 a person not a participant in the crime or used or
11 threatened to use a dangerous instrument or displayed
12 what appeared to be a knife, pistol, revolver, rifle,
13 shotgun, machine gun or another firearm in violation of
14 the Code of Laws of South Carolina.

15 Indictment 2002-GS-32-3280 is for attempted
16 arson. It alleges that Roger Dale Burke did in
17 Lexington County, on or about December 19, 2001,
18 willfully and maliciously attempt to cause an explosion,
19 to set fire to or burn or cause to be burned or aided,
20 counseled or procured the burning of a dwelling house or
21 structure designed for human occupancy; and that is that
22 the Defendant did attempt to set fire to a home
23 belonging to Jenny A. Burke in violation of the Code of
24 Laws of South Carolina.

25 Again, remember these are only the allegations

1 against Mr. Burke at this time. Let me ask first, has
2 any member of the jury venire heard anything about this
3 case or do you know anything about this case?

4 (There is no response).

5 THE COURT: Is there anything about these
6 charges that would prevent any member of the jury venire
7 from being able to give both sides a fair trial? In
8 other words, that would prevent you from being able to
9 sit fairly and impartially as a juror?

10 (There is no response).

11 THE COURT: Let me introduce some folks again.
12 We have asked about the Solicitor's Office previously,
13 but I will ask about these gentleman here. Assistant
14 Solicitor Marion Moses will be one of the attorneys in
15 it, and Assistant Solicitor Robert Madsen will also be
16 involved. Does any member of the jury venire know or
17 know of Mr. Moses or Mr. Madsen?

18 (There is no response).

19 THE COURT: This is Mr. Burke. Let me ask
20 Mr. Burke to stand, please.

21 (The Defendant stands).

22 THE COURT: Does any member of the jury venire
23 know or know of Mr. Burke?

24 (There is no response).

25 THE COURT: Mr. Burke is represented by

1 Mr. Bill Nettles. Does anyone know or know of
2 Mr. Nettles?

3 (There is no response).

4 THE COURT: Thank you. The following people
5 may be witnesses in this case. Again, I will call the
6 names one at the time. If you know them, know this
7 witness or know of them or any of them, please stand at
8 that time and give us your name and your jury number,
9 please.

10 First, Colonel Mel Seboe of the Lexington
11 County Sheriff's Department.

12 (There is no response).

13 THE COURT: Major Larry Shea, spelled S-H-E-A,
14 of the Lexington County Sheriff's Department.

15 (There is no response).

16 THE COURT: Lieutenant George Brothers of the
17 Lexington County Sheriff's Department.

18 (There is no response).

19 THE COURT: Sergeant Nathaniel Collins of the
20 Lexington County Sheriff's Department.

21 (There is no response).

22 THE COURT: Sergeant P.C. Faigle of the
23 Lexington County Sheriff's Department.

24 (There is no response).

25 THE COURT: Sergeant Chris Lorick of the

1 Lexington County Sheriff's Department.

2 (There is no response).

3 THE COURT: Sergeant Scottie Frier of the
4 Lexington County Sheriff's Department. He is over here.
5 Does anyone know or know of Sergeant Frier?

6 (There is no response).

7 THE COURT: Detective Ashley Milton of the
8 Lexington County Sheriff's Department.

9 (There is no response).

10 THE COURT: Detective Brett Sims of the
11 Lexington County Sheriff's Department.

12 (There is no response).

13 THE COURT: And Detective Jim Hickman of the
14 Department.

15 (There is no response).

16 THE COURT: Detective Todd Cook, who is
17 currently with the Aiken County Sheriff's Department.

18 (There is no response).

19 THE COURT: Deputy Robin Walters.

20 (There is no response).

21 THE COURT: Linda Raines of the Lexington
22 County Sheriff's Department.

23 (There is no response).

24 THE COURT: Jonathan Gabert, formerly with the
25 Lexington County Sheriff's Department.

1 (There is no response).

2 THE COURT: Jason Leaphart.

3 (There is no response).

4 THE COURT: Bill Storey.

5 (There is no response).

6 THE COURT: Dana McCoy.

7 (There is no response).

8 THE COURT: Polly Shumpert. This is

9 Mrs. Shumpert right here.

10 (There is no response).

11 THE COURT: Jessie Burke, Jr. This is

12 Mr. Burke. Does anyone know or know of Mr. Burke?

13 (Juror stands).

14 THE COURT: Yes, sir, your name and number,
15 please, sir?

16 JUROR: I do not know my number.

17 THE COURT: What is your name?

18 JUROR: Brian Lowery.

19 THE COURT: Your last name?

20 JUROR: Lowery.

21 THE COURT: Mr. Lowery, how do you know
22 Mr. Burke?

23 JUROR: I worked on a job site with him for
24 about a week.

25 THE COURT: Would that affect whether you

1 could give both sides a fair trial in this case?

2 JUROR: I'm not sure.

3 THE COURT: Sir?

4 JUROR: I'm not sure.

5 THE COURT: Do you think you could or not, do
6 you know?

7 JUROR: Probably not.

8 THE COURT: We will excuse you from having to
9 sit on this case then.

10 CLERK: He is number 91, Your Honor.

11 THE COURT: In fact, this is the only other
12 case we will call for trial. So you can be excused.
13 You are welcome to go if you would like to. Anyone
14 else?

15 (Juror stands).

16 JUROR: You told me I was excused for this
17 case. Can I leave also?

18 THE COURT: Ma'am?

19 JUROR: Number 6. You told me I was excused
20 from this case. I can also leave?

21 CLERK: That is correct, Your Honor.

22 THE COURT: Yes, ma'am, I apologize. I should
23 have told you that before.

24 JUROR: Thank you.

25 THE COURT: You are free to go, Mrs. Bachman.

1 I believe number 6?

2 CLERK: Number 6.

3 THE COURT: Anyone else know Mr. Jessie Burke,
4 Jr.?

5 (There is no response).

6 THE COURT: Mr. Jessie Burke, Sr.

7 (There is no response).

8 THE COURT: Thank you, sir. Martha Burke.

9 (There is no response).

10 THE COURT: Thank you, ma'am. Dr. William
11 Armstrong.

12 (There is no response).

13 THE COURT: Alisha Maroney, spelled
14 M-A-R-O-N-E-Y.

15 (There is no response).

16 THE COURT: Dalton Burke.

17 (There is no response).

18 THE COURT: Amber Burke.

19 (There is no response).

20 THE COURT: Brandon Burke.

21 (There is no response).

22 THE COURT: Henry Moseley.

23 (There is no response).

24 THE COURT: Teresa Motes, M-O-T-E-S. This is
25 Mrs. Motes.

1 (There is no response).

2 THE COURT: Thank you, ma'am. Ken Whitler,
3 spelled W-H-I-T-L-E-R, with S.L.E.D., known as the South
4 Carolina Law Enforcement Division.

5 (There is no response).

6 THE COURT: C.E. Montgomery with S.L.E.D.

7 (There is no response).

8 THE COURT: Dana Fowler with S.L.E.D.

9 (There is no response).

10 THE COURT: Terry Anderson.

11 (There is no response).

12 THE COURT: Laura Corley with S.L.E.D.

13 (There is no response).

14 THE COURT: Geri Harrison.

15 (There is no response).

16 THE COURT: Wendell Amick.

17 (Juror stands).

18 THE COURT: Yes, sir, how do you know
19 Mr. Amick?

20 JUROR: Friends.

21 THE COURT: Would that affect whether you
22 could give both sides a fair trial in this case?

23 JUROR: No.

24 THE COURT: Thank you, sir.

25 CLERK: We need your name and number, please,

1 sir.

2 JUROR: Number 110, Richard Paxton.

3 THE COURT: Frances Marie Burke.

4 (There is no response).

5 THE COURT: Christopher Burke.

6 (There is no response).

7 THE COURT: Earl Martin of the Lexington
8 County Sheriff's Department.

9 (There is no response).

10 THE COURT: Jim Padgett.

11 (There is no response).

12 THE COURT: Thank you. Does any member of the
13 jury venire -- is there any member of the jury venire
14 who believes that a defendant must prove his innocence?

15 (There is no response).

16 THE COURT: Would the fact that the Defendant
17 has been arrested and charged with a crime create an
18 impression in your mind that he must be guilty or would
19 not have been brought in for trial?

20 (There is no response).

21 THE COURT: Does any member of the jury venire
22 know anything or have any other reason why you could not
23 give both sides a fair trial in this case?

24 (There is no response).

25 THE COURT: Any other questions from the

1 State?

2 MR. MADSEN: None from the State, Your Honor.

3 THE COURT: Defense?

4 MR. NETTLES: None from the defense, Your
5 Honor.

6 THE COURT: Again, five and ten on the
7 strikes.

8 Ladies and gentlemen, we will again go through
9 the process of selecting a jury, and I am going to turn
10 you over to the clerk. Madame Clerk.

11 (The jury is impaneled at 12:17 p.m.)

12 (During the jury selection process, the jurors
13 were called forward and peremptory strikes were
14 exercised as noted by the attached voir dire sheet made
15 a part of this record at page 7).

16 THE COURT: Counsel, let me ask you to
17 approach one second.

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

21 THE COURT: For the record, counsel, I
22 understand there are no motions, no Batson or J.E.B.
23 motions related to jury selection; is that right?

24 MR. MADSEN: None from the State.

25 MR. NETTLES: That's correct, Your Honor.

1 THE COURT: We are starting the other case in
2 the morning, and we will start this one as soon after
3 that as we can. What I am going to do is ask you to
4 call each night after 6:00 o'clock. Did all of you get
5 a little card with a phone number? Any one of you not
6 have it?

7 (There is no response).

8 THE COURT: Call that number after six, and
9 you will get a message as to what to do.

10 How will they be referred to, Madame Clerk?

11 CLERK: Panel number two.

12 THE COURT: You will be referred to as panel
13 number two. When you hear that, your ears ought to perk
14 up. That applies to you. You will get instructions as
15 to when you come back in to start the trial. We will
16 move as expeditiously as we can.

17 It's very important not to talk about the case
18 in any way. Don't let anybody talk with you about it.
19 Certainly let friends and family and coworkers know what
20 you are doing. Just don't talk about case. With that
21 in mind, we will see you sometime later this week. Have
22 a good day.

23 (The jury is excused for the day at
24 12:21 p.m.)

25 THE COURT: Counsel, any motions?

1 MR. NETTLES: I don't think so. I have gotten
2 all my discovery. They have been real good.

3 THE COURT: We will see you back then.

4 (Whereupon the proceedings were concluded for
5 August 23, 2004).

6 (The following proceedings were reported on
7 August 24, 2004).

8 THE COURT: Counsel, in the matter of the
9 State versus Burke, are there any -- I understand we
10 have gathered today to hear any motions, Jackson versus
11 Denno or any other hearings necessary. Do you want to
12 go ahead and take those first?

13 MR. MADSEN: That is correct, Your Honor. We
14 are ready to proceed with the Denno hearing if Your
15 Honor would like to hear that.

16 THE COURT: Are you ready, Mr. Nettles?

17 MR. NETTLES: We are, Your Honor.

18 THE COURT: Go ahead.

19 MR. MADSEN: Thank you, Your Honor. The State
20 would call Scottie Frier.

21 SCOTTIE FRIER, being
22 first duly sworn, testified as follows:

23 CLERK: Have a seat and state your full name
24 on the record.

25 THE WITNESS: I'm Scottie Frier, F-R-I-E-R.

SCOTTIE FRIER -- IN CAMERA DIRECT -- MR. MADSEN 23

1 IN CAMERA DIRECT EXAMINATION

2 BY MR. MADSEN:

3 Q Sergeant Frier, where are you employed?

4 A I am a sergeant with the Lexington County Sheriff's
5 Department.

6 Q And at your position as sergeant, what do you
7 actually do as sergeant? Are you assigned to a
8 specific area?

9 A Yes, sir, I am a supervisor in the major crimes
10 unit at the Sheriff's Office.

11 Q And back during December of 2001, what was your
12 position back then?

13 A I was a detective within that same unit at that
14 point.

15 Q And on December 20th of 2001, did you have an
16 occasion to become involved in this case?

17 A Yes, sir, I did.

18 Q Did you have an occasion to speak with the
19 Defendant, Roger Dale Burke?

20 A Yes, sir, I did, on December 20, 2001, at the
21 Sheriff's Department in Lexington County.

22 Q And could you tell the judge when and where this
23 occurred.

24 A Pursuant to us beginning the investigation where
25 Mrs. Burke had been slain at a home down in Pelion,

1 Mr. Burke was developed as a suspect. Some
2 arrest warrants were obtained for him that
3 charged him with assault and battery with intent to
4 kill.

5 We had been speaking with several members of
6 his family, and evidently some information had
7 gotten relayed to Mr. Burke that we wanted to see
8 him or talk to him concerning those charges; and he
9 appeared at the Sheriff's Office on Gibson Road.

10 Q Was he transported there by any law enforcement to
11 your knowledge?

12 A No, sir, he was brought there by another
13 individual. I want to say it was an acquaintance
14 of some type, but I am not exactly sure who it was,
15 but someone drove him to the Sheriff's Office.

16 Q Were you the first individual at the Sheriff's
17 Office to speak with him?

18 A No, sir, I was not. He indicated to, I believe the
19 desk personnel, that there were warrants possibly
20 for him. He was then directed towards our warrant
21 division.

22 An officer in the warrant division realizing
23 who he was and the fact that we needed to speak
24 with him in relation to this incident, I was
25 contacted. He was brought to an interview room or

SCOTTIE FRIER -- IN CAMERA DIRECT -- MR. MADSEN 25

1 an area in our department where I could speak to
2 him.

3 Q And did you actually speak to Mr. Burke that day?

4 A Yes, sir, I did.

5 Q Did you read Mr. Burke his rights?

6 A Yes, sir, I did, pursuant to questioning.

7 Q When you did that, how did you do that?

8 A There is a standard form that we use when we
9 interview someone who is accused of a crime and
10 the issues of Miranda will apply. That form has
11 five rights written out on them that are
12 numbered.

13 I simply would read from that form, reading
14 the words as they are printed and then explaining
15 them to the Defendant. Then I have a series of
16 checks, if you will, to account for each step that
17 I took in that process.

18 Q Do you have that original statement form?

19 A Yes, sir, I do. I actually have two. There were
20 two statements that I took from him.

21 Q Let's just start with the first one.

22 A Yes, sir.

23 MR. MADSEN: Your Honor, I would like to mark
24 this as a Court's exhibit at this point in time.

25 THE COURT: Yes, sir.

1 (Court's Exhibit Number 1 is marked for
2 purposes of the record).

3 BY MR. MADSEN:

4 Q Let me show you what has been marked as Court's
5 Exhibit Number 1 and ask if you are familiar with
6 this.

7 A Yes, sir. That is the first page and subsequent
8 pages of that form that I mentioned that we use
9 when we take a statement from an individual who is
10 accused of a crime and we feel like the Miranda
11 issues apply.

12 Q And that form starts out with some information on
13 the top. What is that information on the top that
14 it starts out with?

15 A There is some initial information in relation to
16 the date when this is taking place, the location
17 and the time that it started. Then there is a
18 place where we put the individual's information
19 that we are speaking to, to include the name, age,
20 place of birth or date of birth and place of birth
21 and then address and then who the individual is
22 that is interviewing him is also identified on that
23 form at that block.

24 Q And did you fill all that information out?

25 A Yes, sir, that is done in my handwriting.

SCOTTIE FRIER -- IN CAMERA DIRECT -- MR. MADSEN 27

1 Q You had talked earlier that you advised him of his
2 rights?

3 A Yes, sir, I did.

4 Q Is that the form that you used in accomplishing
5 that?

6 A Yes, sir. Just below that there is some printed
7 words that read, "Duly warned and advised me," and
8 then there are five sentences that denote those
9 rights. I would read directly from those as they
10 are printed on that page.

11 Q When advising an individual of their rights, do you
12 have a certain protocol or procedure that you
13 particularly follow?

14 A Yes, sir, I do.

15 Q Let me ask you, did you follow that same procedure
16 this day with Mr. Burke?

17 A Yes, sir, I did.

18 Q Could you tell the judge what that procedure is
19 that you followed.

20 A Yes, sir. When I begin this process, when I read
21 each of those rights that are printed out there,
22 after I have read that right, I will circle that
23 number. That's just my way of reminding myself
24 that I read him that specific right exactly as it
25 is printed on that form.

1 Subsequent to that when we go through those
2 rights and I am confident that the person
3 understands those rights, understands the meaning
4 of those rights and is willing to waive those
5 rights and speak to me, I will have him place him
6 an initial over on the left hand of that circled
7 number, not just one initial but five different
8 initials to make sure that he understands each
9 individual right as they are written.

10 Whenever that is completed on the right-hand
11 side of that number, I will then place my initials
12 as my way of acknowledging that when we did this, I
13 was confident that, one, he understood those rights
14 and that he was making a knowing and intelligent
15 waiver of those rights.

16 Q Is there anything that you do to make sure that --
17 or did you ask Mr. Burke whether he could read or
18 write?

19 A Yes, sir, that is a standard question I utilize.
20 Just to make sure I am confident in the answer to
21 that, I will have that individual read to me one of
22 those rights as they are printed on that form. I
23 won't always use the same one.

24 I asked Mr. Burke to read to me right number
25 one as it was printed. Then just over to the right

SCOTTIE FRIER -- IN CAMERA DIRECT -- MR. MADSEN 29

1 of that, you will see a line where I have drawn and
2 then I have got my initials besides that.

3 This is my way of knowing that that is the
4 specific right that I had him read aloud to me, and
5 from that I was confident that he could read as it
6 was printed on the page.

7 Q And could you tell the Court exactly those rights
8 as you read them to Mr. Burke that day.

9 A Yes, sir. They are: That I have the right to
10 remain silent and not make my statement at all.
11 That any statement I do make can be used against me
12 in court.

13 That I have the right to have an attorney
14 present at any time during questioning. That if I
15 cannot afford an attorney, I can apply to the court
16 to have one appointed at no cost to me.

17 And that if I decide to talk to an officer
18 without an attorney present, I may stop at any time
19 and request an attorney be present for further
20 questioning.

21 Q And did Mr. Burke appear to understand those
22 rights?

23 A Yes, sir, he did.

24 Q Did he waive those rights and agree to speak with
25 you?

- 1 A Yes, sir, he did.
- 2 Q At any point in time did he request an attorney?
- 3 A No, sir, he did not.
- 4 Q At any point in time did Mr. Burke request to
- 5 remain silent?
- 6 A No, sir, he did not.
- 7 Q Did Mr. Burke appear to be under the influence of
- 8 alcohol?
- 9 A No, sir, he seemed to completely understand what we
- 10 were doing.
- 11 Q How about under the influence of any type of drug
- 12 or narcotics?
- 13 A I did not sense that in any way, shape or form.
- 14 Q Did Mr. Burke comprehend the questions that you
- 15 were asking him?
- 16 A Yes, sir, he appeared to.
- 17 Q How about at any point in time did he become
- 18 uncooperative?
- 19 A No, sir, he was very cooperative and went into
- 20 great detail subsequently in this statement.
- 21 Q To get him to speak with you, did you promise him
- 22 any leniency?
- 23 A No, sir, I did not.
- 24 Q At any point in time did you threaten him.
- 25 A No, sir, I did not.

SCOTTIE FRIER -- IN CAMERA DIRECT -- MR. MADSEN 31

1 Q Once you went through those rights, did he actually
2 agree to give you a statement?

3 A Yes, he did.

4 Q Could you read that statement to the Court, please.

5 A Yes. It's a little lengthy so bear with me. "I
6 bought a .380 at Moseley's on Wednesday at
7 approximately 10:40 a.m. I had applied for the gun
8 on Friday. This was after bond court concerning
9 Christopher and what he did to my little girl.

10 "I took the gun to the wash hole and shot it a
11 couple of times. I bought the gun for \$150. I
12 called Jenny on her cell phone. She said she
13 wasn't going to come off of the papers. She said,
14 quote, now it's your turn to pay child support, you
15 son of a bitch, end quote.

16 "I went to the house. I went inside her
17 house. She was living with my brother. I got the
18 address from the papers. When I went into the
19 house, I got a Pepsi bottle with some gas in it. I
20 poured the gas on the sofa and in the bedroom.

21 "When Jenny got to the house off of Bud
22 Shumpert, I was in the hallway to the right. I
23 could not be seen when the door was opened. When I
24 came out, Jenny saw me. I said, quote, Jenny, why
25 are you trying to take the kids from me, end quote?

1 "She just started screaming. Brandon was
2 standing there. I pulled the gun out of my hip
3 pocket. Jenny had started to go for the phone when
4 she screamed. I shot Jenny. She grabbed her
5 chest. I think she said, quote, Brandon call the
6 law, end quote. I shot her, quote, one more or two
7 more times, end quote.

8 Then another sentence begins, "It might have
9 might have even been more, end quote. Quote, she
10 grabbed her chest. She went for the phone. She
11 hit the floor. She tried to get back up. I tried
12 to put the gun to her chest, but I may have hit her
13 in the head, end quote.

14 "Brandon ran out the back door. I think
15 Dalton was there also -- I'm sorry -- I think
16 Dalton was standing there also. I think Dalton saw
17 it. I went outside and told the kids to get in the
18 car.

19 "I had backed the car in between the trailer
20 and tree so she couldn't see the car. I took the
21 kids and we ended up at a pond near some woods and
22 ate some food that I had bought at Hardee's.

23 "I told Brandon to stay there. I left Brandon
24 in charge of the little kids at the pond. I told
25 him I had to go talk to Terry. I went by Terry's

SCOTTIE FRIER -- IN CAMERA DIRECT -- MR. MADSEN 33

1 and he wasn't there.

2 "I went back to Jenny's house. I took Jenny
3 out of the house. I put her in the car. I drove
4 out 178 to Samaria. I turned on the concrete road.
5 I went on some dirt roads back onto 178.

6 "Then I went to a place I knew before. It is
7 up on Elbert Taylor Road. It is land I knew was
8 there. I went down Elbert Taylor Road to another
9 dirt road and then right. Go straight, land on the
10 left. I put Jenny under some pine straw and limbs.
11 I then went back to where the kids were." Then
12 that ends the statement on page 4.

13 Q Once you were having him do this statement, was
14 there any place that you would have him denote or
15 sign on there as this statement was being taken?

16 A At the completion of the statement, it would have
17 been read to Mr. Burke in detail, describing to him
18 exactly what was written. Then at the end of that,
19 there is a place on the bottom right-hand corner
20 for the person giving the statement to sign the
21 statement as factual. That is signed on all four
22 pages by Dale Burke.

23 Q Did you witness him sign these four pages?

24 A Yes, sir, I did. I swore him to that statement and
25 notarized it on the bottom left hand side where my

1 signature is denoted and my expiration for my
2 notary commission is also denoted.

3 Q When you read that statement, was there any changes
4 that he indicated he wished to make with that
5 statement at that point in time?

6 A No, sir, there were not.

7 Q A little bit later did you have an occasion to come
8 back together with Mr. Burke in reference to an
9 additional statement you felt necessary?

10 A Yes, sir. Later that evening at approximately
11 19:40 hours, which would be 7:40 p.m., I approached
12 Mr. Burke in the detention center. The original
13 interview had taken place in an interview in the
14 Sheriff's Office.

15 Subsequent to that Mr. Burke had been placed
16 in our detention facility. There was another issue
17 that I needed to speak with him about. So going
18 into the detention center, I again approached him
19 about speaking to him and then covered these same
20 issues.

21 Q Let me just kind of back up here for a second.
22 Before you took -- after you got done with that
23 first statement, what did y'all end up doing?

24 A Based on the information that Mr. Burke gave us, he
25 was placed into a patrol car. We got a couple of

SCOTTIE FRIER -- IN CAMERA DIRECT -- MR. MADSEN

35

1 gentlemen from our tracking unit to follow us, and
2 Mr. Burke took us to a location down in the
3 southwestern part of our county where he took us to
4 the body of Jenny Burke.

5 Q And so you come back in front of him. Did you
6 actually get another statement from Mr. Burke
7 subsequent to that first four-page one?

8 A Yes, sir, I did.

9 Q And could you describe that statement form to the
10 judge.

11 A It's the same page, Your Honor, that we would have
12 used on the first. Those same rights are there.
13 Again going through the same process where each of
14 those rights was read to him, they were again
15 circled. They are again initialed by Mr. Burke.

16 He was a little different in this second one.
17 He actually put the initials R.D.B. instead of R.B.
18 on the first statement. That difference and the
19 fact I did not have him read a sentence to me on
20 that second statement in that we had already
21 covered that in the first statement some hours
22 earlier.

23 Q Before you took that second statement, did
24 Mr. Burke appear to understand those rights again?

25 A Yes, sir, he did.

1 Q Did you have any doubt that he was -- that you were
2 able to communicate with him or he understood that?

3 A No, sir, absolutely not.

4 Q Was he under the influence of any alcohol, drugs or
5 narcotics?

6 A Absolutely did not appear to be.

7 Q At any point in time before that second statement,
8 did he request an attorney?

9 A No, sir, he did not.

10 Q Did he request to remain silent?

11 A No, he did not.

12 Q At any point in time did you promise him any type
13 of leniency?

14 A No, sir, I did not.

15 Q Did you threaten him or coerce him to get him to
16 make this second statement?

17 A No, sir, I did not.

18 Q Did, in fact, he actually give you a second
19 statement?

20 A Yes, he did.

21 Q Could you publish that to the Court, please.

22 A Yes, sir. The second statement says: "After I
23 shot and left, I later got worried and I started
24 thinking about what I had done. I decided to go
25 back to the house to remove the body.

SCOTTIE FRIER -- IN CAMERA DIRECT -- MR. MADSEN 37

1 "I thought about burning the house. I thought
2 that it might look like Jenny left with the kids
3 and burned the house. I started to try and light
4 some wallpaper on fire. I did this when I removed
5 the body. I also wanted to get rid of that blood
6 evidence. That is why I tried to burn the house.

7 "The paper was burning when I left. I also
8 picked up about three -- and I have got the number
9 three in quotations marks and then three shell
10 casings in parentheses and shell casings is written
11 out -- I thought I got them all. I threw them out
12 of the car window. I'm not sure where."

13 Q And was that statement actually signed?

14 A Yes, that again was signed by Roger Burke.

15 Q Did you witness that?

16 A Yes, I did, again notarizing it with my signature
17 and my commission expiration.

18 Q Did you and Mr. Burke have --

19 MR. MADSEN: At this point in time, Your
20 Honor, I like to mark that second statement as Court's
21 Exhibit Number 2, please.

22 (Court's Exhibit Number 2 is marked for
23 purposes of the record).

24 BY MR. MADSEN:

25 Q Did you and Mr. Burke also have some discussion

1 about a shovel, and could you tell the Court about
2 that and kind of when that occurred.

3 A Yes, sir. There was some conversation about the
4 ability or the means by which that body was
5 disposed of and had any implements been used. He
6 identified to us a shovel that he had utilized and
7 giving us some information where that shovel could
8 be located.

9 Q Were y'all able to locate that shovel?

10 A If I'm not mistaken, Colonel Seaboe was actually
11 able to locate that implement, yes, sir.

12 Q At any point in time during either of these
13 statements or either in your conversations with
14 Mr. Burke, did he ever indicate that he wanted to
15 speak with an attorney?

16 A No, sir, he did not.

17 Q Did he ever indicate that he wanted to remain
18 silent?

19 A No, sir, he did not.

20 Q Was he cooperative the entire time?

21 A Yes, sir, he was.

22 Q Did he appear at all times to understand what he
23 was doing?

24 A Yes, sir, he did.

25 Q That's all the questions I have. If you could

SCOTTIE FRIER -- IN CAMERA CROSS -- MR. NETTLES

39

1 please answer any of Mr. Nettles' questions.

2 A Yes, sir.

3 THE COURT: Cross.

4 IN CAMERA CROSS EXAMINATION

5 BY MR. NETTLES:

6 Q How are you doing? Did Dale ever ask you for a
7 lawyer?

8 A No, sir, not that I remember.

9 Q Did he ever in any way hesitate to cooperate with
10 you?

11 A No, sir, he was very cooperative.

12 Q And as a matter of fact, he seemed from the very
13 beginning eager to tell you what had happened?

14 A I don't know if I would go that far.

15 Q What word would you use?

16 A He didn't just walk into the room and say: This is
17 what happened. This is where you can find Jenny.
18 There was some discussion. There was a great deal
19 of reluctance on his part to eventually tell us
20 where the body was.

21 Q Where is that found in the statement you have got
22 there?

23 A It's not in there. It's just my recollection of
24 our conversation.

25 Q What else about the conversation is not in the

1 statement?

2 A I'm not sure if I understand what you are asking
3 me.

4 Q Here is what I'm asking, okay. Does that statement
5 that you have read --

6 A Right.

7 Q -- is that exactly what was said or is that what
8 you heard, wrote down, and he signed?

9 A Some of it is a synopsis or just a summary of what
10 we talked about. You will notice in the statement
11 I will have several places where there are some
12 quotation marks in some sentences. Something like
13 that, that's where I tried to write exactly
14 something as he said it because it was pertinent to
15 that point.

16 Now that statement is not going to contain my
17 making a note: At this point he was more
18 cooperative then he was ten minutes ago. That is
19 not going to be written in there.

20 Mr. Burke was very cooperative. There was not
21 a lot of denial on his part as to what had taken
22 place. And if I was misleading about his
23 reluctance to cooperate, he was reluctant to take
24 us to that body.

25 Q But he did?

SCOTTIE FRIER -- IN CAMERA CROSS -- MR. NETTLES 41

1 A Eventually he did, you are exactly right. That
2 wasn't something he wanted to just walk in the door
3 and tell us about; but he eventually did, yes, sir.

4 Q But he certainly at no point -- and the only reason
5 I am asking you this is now that we know that what
6 you have got written there is not a verbatim -- you
7 would agree with me that what is written there is
8 not a verbatim account of what transpired in the
9 conversation that you and he had?

10 A Absolutely. There may be some things I do not have
11 written down. I try to summarize it as closely as
12 we can, but it is in my handwriting and it is my
13 summary of what we are speaking about as we are
14 going along. Absolutely.

15 Q So to that end then, is there anything else that
16 you can remember now that he told you in the form
17 of the statement -- and this would have been after
18 he was Mirandized -- that is not included in that
19 written statement?

20 A Nothing jumps out at me. I mean, if you were to
21 ask me specific questions about something, I could
22 tell you if I recall that or not.

23 Q See, I kind of can't do that because the only
24 memorialization we have got of this event is what
25 are your notes that he signed; right?

1 A Those are not so much notes. I mean, that is a
2 summary. I guess, if you will, that is a streaming
3 note if you will. I don't have him filling out a
4 duplicate form at the same time, no, sir. The
5 memory or the recording of that event is based on
6 this, my review of that with him, and him signing.
7 That's correct.

8 Q I understand you are trying to help me.

9 A Yes, sir.

10 Q But let's go back just for a second. You and I can
11 agree -- and I know I have asked you, but just to
12 bring you back so we have got a base to work from.

13 A Yes, sir.

14 Q You and I can agree that sometimes defendants write
15 out their own statements?

16 A That is correct.

17 Q Sometimes there is a conversation that doesn't get
18 recorded in any way? A police officer comes in and
19 says, "For whatever reason I didn't write it down,
20 but this is what he said"?

21 A Absolutely.

22 Q In this case what we have got is you and he talked,
23 correct?

24 A That's right.

25 Q And did you make these -- did you write what you

SCOTTIE FRIER -- IN CAMERA CROSS -- MR. NETTLES 43

1 just read to the Court contemporaneous with him
2 talking or did you talk to him and then write it on
3 out?

4 A I would talk to him first. We would just carry on
5 a conversation, you know: What do you want to tell
6 me about this, that kind of thing. Then when we
7 are through, I would say: Okay, we need to put
8 this in writing.

9 Q So, in other words, for instance in terms of your
10 question and answer session -- can we call it that?

11 A Right.

12 Q When that portion of it had ended, you said: Okay,
13 I need to put this in writing?

14 A That would be correct.

15 Q So then y'all sat there and he watched while you
16 wrote it or did you leave the room or did you stay
17 there?

18 A Oh, no. Not remembering exactly how this took
19 place, it would not be uncommon for me to begin
20 writing stuff immediately as we talked. Like he
21 says, "I brought the .380 pistol at Moseley's." I
22 may have written that immediately down.

23 Q I understand.

24 A What would happen is when I am writing this down,
25 every sentence I am writing down I am saying to

1 him. As I am writing it down, I am reading it to
2 him. I won't go to the next -- if he says: Whoa,
3 whoa, wait a minute, that's not right, then we will
4 have to fix that before we go on.

5 Q So, in other words, at the end of the question and
6 answer, the vast majority of the bulk -- the vast
7 majority is redundant -- the vast majority of what
8 you have had written there had already been
9 written?

10 A Had already been discussed and then we write it
11 down and read it.

12 Q Okay. So you talk for a little bit, then say: Now
13 I need to write this down?

14 A That's right.

15 Q Then you write a sentence and you say: Is that
16 right? Is that right?

17 A There you go.

18 Q And then you present it to him?

19 A I read it to him.

20 Q You read it to him.

21 A Then I present it to him and then I ask him: Is
22 this a factual statement? Yes, it is. Then sign
23 on these places right here and then at the end I
24 give them an opportunity: Is there anything you
25 would like to change or anything you would like to

SCOTTIE FRIER -- IN CAMERA CROSS -- MR. NETTLES 45

1 add into this?

2 Q But he only signed it -- I mean, he didn't sign
3 every line; right?

4 A He doesn't sign every line. He signs the end of
5 every page.

6 Q At the end of every page?

7 A That is correct.

8 Q He never asked for a lawyer?

9 A No, sir, he did not.

10 Q Did he ever at any point say: Hey, I am not so
11 sure about this. Maybe I ought to wait a little
12 bit?

13 A No. Again, the only reluctance on his part from
14 the onset was about taking us to that body. There
15 was some concern on his part about doing that, but
16 he eventually overcomes that and cooperates.

17 Q Did he tell you why he was reluctant to do it?

18 A I don't know if we got into exactly why. I will
19 tell you my perception was he was scared of that.
20 Our finding that body probably he saw as a kind of
21 a finality to this thing that he was maybe scared
22 of.

23 Q But pretty clearly by the time you got around to
24 discussing that, he had already shot her several
25 times?

1 A Absolutely.

2 Q And based on what you had at the time he started
3 talking to you about going to the body, there
4 wasn't any doubt about who killed her?

5 A That's correct. The information that he gives me
6 in that first statement, he took us straight there.
7 There was no -- any part of him trying to mislead
8 us in this. I mean, he drove us straight there.

9 Q Was the way that he took you there consistent with
10 the directions that he gave you in the statement?

11 A Yes, sir. We probably could have taken that
12 without him and gone straight there, yes, sir.

13 Q Thank you. This last point and I think I will be
14 done. What I want to guard against now is -- and I
15 would like for you to take your time. I would like
16 for you to just sort of think for a second. Is
17 there anything that you remember about that
18 conversation, anything, that you don't have
19 documented in either one of those statements?

20 A Nothing that jumps out at me. Again, if you have a
21 specific question.

22 Q I can't ask a specific question because I wasn't
23 there.

24 A I understand.

25 Q I'm not trying to hide anything from you. I'm just

SCOTTIE FRIER -- IN CAMERA REDIRECT -- MR. MADSEN 47

1 saying, is there anything that you can think of:
2 Oh, wow, this was in there. Now I remember this?

3 A Not that jumps out at me, not just off my
4 recollection, no, sir.

5 Q Give me one second.

6 (Pause).

7 MR. NETTLES: I have no further questions
8 thank you, Your Honor.

9 THE COURT: Any redirect?

10 MR. MADSEN: Just quickly, Your Honor.

11 IN CAMERA REDIRECT EXAMINATION

12 BY MR. MADSEN:

13 Q Sergeant Frier, once you get done with that
14 statement, you, I guess, read it to him?

15 A Yes, sir.

16 Q And then you give it to him to read?

17 A That's correct.

18 Q And if he would have said: Hey, we forgot to put
19 this in there, what would you have done?

20 A We would have added it in. We don't finalize that
21 statement by him signing it until we have reviewed
22 the contents of the statement, the fact that he
23 does not want to change anything and the fact that
24 he does not want to add anything.

25 Q So when you read it to him or he read it, if he

1 would have said: Well, this is wrong. It needs to
2 be done this way, what would y'all have done?

3 A I would have added that in in some form or fashion
4 to include -- as I said, you can look through the
5 statement. There are several places where there
6 are quotation marks at sentences. Those are me
7 trying to write it just as exactly as he said it
8 because it was a specific point he made.

9 To that degree or just to the degree of adding
10 what he wanted put in there, that would have been
11 done prior to asking him to finally sign it.
12 Because that is kind of a conclusion to this when
13 he signs it.

14 MR. MADSEN: That's all the questions I have,
15 Your Honor.

16 THE COURT: Anything else?

17 MR. NETTLES: Nothing.

18 THE COURT: You can step down.

19 THE WITNESS: Thank you, Your Honor.

20 MR. MADSEN: Your Honor, we had another
21 individual. As Sergeant Frier kind of told the Court
22 and I explained this to Mr. Nettles, when Mr. Burke
23 shows up at the Sheriff's Department, they have an
24 individual from the warrant department who just comes up
25 and takes custody of him.

1 I believe Sergeant Frier said he probably
2 either contacts him or puts him in an interview room.
3 He actually gave Mr. Burke his Miranda rights, didn't
4 question him. Mr. Burke didn't make any statements to
5 him.

6 We can call him. I can't put my hands on him.
7 He actually is employed now at the Aiken Sheriff's
8 Department, doesn't have a pager or a cell phone. He
9 could be here tomorrow morning.

10 I talked with Mr. Nettles, and he tells me he
11 doesn't think that we need him for this purpose or any
12 other purpose since he doesn't have anything that
13 Mr. Burke told him.

14 MR. NETTLES: My understanding is -- yes, I
15 agree with all that. My understanding is as long as
16 they don't call him and he doesn't show up and say that
17 Roger Dale told him something -- I applaud what they are
18 doing -- but my understanding is I only get a Jackson v.
19 Denno if they are going to call him. As long as I am
20 not going to see him on the witness stand, I don't have
21 a problem with it. I appreciate them sharing that with
22 me.

23 MR. MADSEN: I was just trying to be safe.
24 That's all we would have that Jackson versus Denno
25 hearing, Your Honor.

1 THE COURT: Do you wish to call any witnesses
2 on it, Mr. Nettles?

3 MR. NETTLES: None, Your Honor.

4 THE COURT: Mr. Burke, let me ask you to stand
5 one minute please.

6 Madame Clerk, would you put him under oath for
7 me.

8 ROGER DALE BURKE is first duly
9 sworn.

10 THE COURT: Mr. Burke, you understand that
11 this hearing that we are in right now is not the trial,
12 but it's a hearing to determine whether or not to allow
13 the State to use a statement that they allege you made.
14 Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And do you understand that you
17 have a right to testify in this hearing if you want to?
18 If you do testify, the State can't take anything you say
19 in this hearing and use it against you in their case in
20 chief. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you want a chance to talk with
23 him? I am sure Mr. Nettles explained it to you, but he
24 can go over it again.

25 (Pause).

1 THE COURT: Mr. Burke, you have had a chance
2 to talk with Mr. Nettles?

3 THE DEFENDANT: Yes, sir, Your Honor, I
4 understand.

5 THE COURT: Do you understand you can testify
6 if you want to?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you wish to?

9 THE DEFENDANT: No, sir.

10 THE COURT: Have you been satisfied with
11 Mr. Nettles as your lawyer?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And this will sound like a stupid
14 question, but we have always got to ask it. Today have
15 you had any kind of medication, drugs, alcohol or do you
16 have any kind of emotional or physical or mental
17 condition that would keep you from knowing what you are
18 doing and what is going on today?

19 THE DEFENDANT: No, sir.

20 THE COURT: Thank you, sir. Anything else
21 from the State on this issue?

22 MR. MADSEN: Not on the Jackson versus Denno
23 issue, Your Honor.

24 THE COURT: From the defense?

25 MR. NETTLES: Nothing, Your Honor.

1 THE COURT: Counsel, based on the testimony, I
2 find that the State has carried the burden of proof. As
3 you know, the burden of proof in this hearing is by the
4 preponderance of the evidence.

5 They have carried that burden of proof that
6 the Defendant made the statement, that he made the
7 statement understanding his rights, did so intelligently
8 and knowingly, freely and voluntarily.

9 With that in mind, it would be appropriate to
10 allow the statement to be introduced. We will allow it
11 to be introduced. Of course, at that time I will give
12 the jury an instruction as to that also. What is next,
13 Solicitor?

14 MR. MADSEN: Your Honor, the only thing that I
15 have next is just that I would like to request from the
16 Court, as Your Honor obviously can see, Scottie Frier is
17 our chief investigative officer.

18 I would request leave from the Court because I
19 think from a chronological point, he is called in at two
20 different areas. I would like leave of the Court to
21 potentially call him as a witness twice.

22 THE COURT: Do you anticipate any objection to
23 that, Mr. Nettles?

24 MR. NETTLES: No, sir.

25 THE COURT: All right.

1 MR. MADSEN: I just wanted to put the Court on
2 notice.

3 THE COURT: What else do you have?

4 MR. MADSEN: The State doesn't have anything
5 at this point in time.

6 THE COURT: Mr. Nettles, do you have any other
7 motions?

8 MR. NETTLES: No, sir.

9 THE COURT: We have the jury coming in at
10 nine. Mr. Nettles, I know you have your problem with
11 the federal people on Thursday?

12 MR. NETTLES: Yes, sir.

13 THE COURT: What we will do is we will start
14 at nine, and we will move the case along as quickly as
15 we can. If we have to go a little bit later Wednesday,
16 we will do that if we have to.

17 MR. NETTLES: I think and I'm almost positive,
18 I can check on it today. I think if they can get their
19 case in Wednesday, I think my case could go on Friday.
20 I'm not going to go all day on Friday.

21 THE COURT: Right.

22 MR. NETTLES: Just to let you know, I think I
23 can get mine in in a good morning.

24 THE COURT: Right. We can go Wednesday and
25 come back on Friday.

1 MR. NETTLES: Yes, sir, with a healthy morning
2 I think I can get it in.

3 MR. MADSEN: He has indicated, at least from
4 evidence, I don't think we are going to have a chain of
5 custody problem. That ought to speed it up quite
6 honestly.

7 THE COURT: I don't have a problem doing that.
8 Good. So much harmony here.

9 MR. NETTLES: We will sing Kum-bah-ya later.

10 THE COURT: We will stand in recess.

11 MR. MADSEN: Thank you, Your Honor.

12 (Whereupon the proceedings were concluded for
13 August 24, 2004).

14 (The following proceedings were reported on
15 August 25, 2004).

16 THE COURT: Counsel, in the matter of State
17 versus Burke, anything from the State before we bring
18 the jury in.

19 MR. MOSES: Nothing from the State, Your
20 Honor.

21 MR. MADSEN: Your Honor, I would mention that
22 we have premarked exhibits. We will be stipulating them
23 from, 1 through 44. But then we have got some bullets
24 and a gun. She tells me that there might a problem with
25 that.

1 THE COURT: We will see.

2 MR. MADSEN: We have stipulated those.

3 MR. NETTLES: There has been one in the past
4 with that gun.

5 THE COURT: Yes, sir.

6 MR. MADSEN: We haven't marked them at this
7 point in time. I believe he has stipulated to all the
8 evidence at this point in time. That should help us
9 move along.

10 THE COURT: Is that right, Mr. Nettles?

11 MR. NETTLES: That's right.

12 THE COURT: Anything from the defense before
13 we begin?

14 MR. NETTLES: Nothing, Your Honor.

15 THE COURT: Let's bring the jury in, please.

16 MR. MADSEN: It's actually 1 through 47 on the
17 exhibits.

18 (State's Exhibits Number 1-47 are received
19 into evidence).

20 THE COURT: Bring the jury.

21 (The jury enters the courtroom at 9:23 a.m.)

22 THE COURT: All parties and attorneys are in
23 the courtroom, and all jurors are with us. Madame
24 Clerk.

25 CLERK: If you will please stand and raise

1 your right hand.

2 (The jury is duly sworn).

3 THE COURT: Thank you, ma'am. Ladies and
4 gentlemen, as we told you, this is the matter of the
5 State versus Roger Dale Burke. As we told you in this
6 matter, the State has charged Mr. Burke with various
7 offenses by virtue of the indictments I showed you
8 yesterday.

9 Remember again the indictments are only
10 statements of the charges against the Defendant. They
11 don't mean he is guilty, don't mean he has done anything
12 wrong. They are not evidence. They simply are designed
13 to give him notice of what he is charged with.

14 I also, of course, will tell you the fact he
15 is charged does not mean that he is guilty. It is up to
16 the State to prove his guilt beyond a reasonable doubt,
17 and it's up to you decide whether they have carried that
18 burden of proof.

19 Now, I want to discuss with you just for a
20 moment what we are going to do and then your role and my
21 role. First of all, as soon as I am through with this
22 opening instruction, the attorneys will have opening
23 statements in which they will basically kind of lay out
24 for you what their case is about.

25 After those we will get into all the evidence

1 in the case. When the evidence is completed, we will
2 then have closing statements by the attorneys. I will
3 then give you a final instruction. At that point the
4 case will be yours.

5 Let's talk about your role for a minute. You
6 sit as the finders of fact. Nobody can tell you the
7 findings of facts. That is a duty reserved only to you.
8 As finders of fact, you are also the judges of the
9 credibility or the believability of all the witnesses
10 who testify.

11 You can believe everything a witness says.
12 You can believe nothing a witness says or anywhere in
13 between. You can believe one witness against all the
14 others or vice-versa. Again, that is within your
15 discretion to do so.

16 I will tell you that you must, however, focus
17 only on the evidence that comes into this courtroom.
18 You must put aside anything else. So let's talk about
19 what evidence is and what it is not.

20 What is evidence? Very simply evidence is the
21 testimony of the witnesses who testify, plus any other
22 exhibits or items or documents that come in through
23 those witnesses. That's what the evidence is. That's
24 all the evidence is. That is what you must consider.

25 So what is not evidence? Well, evidence is

1 not anything you may have heard outside of this
2 courtroom. You must put anything else you've heard
3 outside of the courtroom about this any case or any case
4 like it. You must put it aside and rely only on the
5 evidence in this courtroom.

6 Evidence is not anything the lawyers say. The
7 lawyers will give you opening and closing statements,
8 but that is only their interpretation of the facts.
9 They will ask questions, but that is designed only to
10 get the evidence from the mouth of the witness. Their
11 questions are not evidence, only the answers from the
12 witness.

13 Thirdly, anything I say is not evidence. My
14 role is to sit as the instructor of the law. You must
15 accept the law as I give it to you as correct. If I am
16 wrong, there is a time and a place it can be corrected.
17 But for today's purposes, you must accept it as
18 correct.

19 Now, from time to time, the attorneys will
20 make objections. Don't be concerned if an attorney
21 objects more than you think he should. They have a job
22 to do, and that's the way they have to do it.

23 If I rule against an attorney on an objection,
24 it doesn't mean that I favor one side or the other. I
25 simply am applying the rules of evidence to that

1 particular objection.

2 I will just tell you that it's very important
3 that you just listen closely. Observe closely. When it
4 comes time, we will ask you to just use your good common
5 sense and judgment that you use every day in your lives
6 to arrive at a verdict in this case and do that by
7 applying the facts as you find them to the law as I give
8 it to you.

9 At this time we are going to have opening
10 statements by the attorneys. Then we will get into the
11 evidence.

12 Any exception to charge from the State?

13 MR. MADSEN: None from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. NETTLES: None from the defense, Your
16 Honor.

17 THE COURT: Mr. Moses.

18 **OPENING STATEMENT**

19 MR. MOSES: Judge, jury, and executioner.
20 Ladies and gentlemen, on December 19, 2001, the
21 Defendant, Roger Dale Burke, took it upon himself to be
22 the judge, to be the jury, and to be the executioner of
23 his ex-wife, Jenny Burke.

24 Ladies and gentlemen, December 19, 2001, was a
25 Wednesday morning. It was a cold December morning, six

1 days before Christmas. It was the last day of school
2 for the kids. They had a half day of school for
3 Christmas break.

4 Jenny Burke went to pick up her children at
5 school. She took them to the park to play for a little
6 while. Jenny Burke has three children with the
7 Defendant. They are ages ten, six, and four.

8 They played at the park for a while. Then she
9 takes them by the Shumpert's I.G.A. out in Pelion on the
10 way home and picked up groceries for lunch. After that
11 they go home, they park the car, and the kids get out.

12 Little Amber, six-year-old Amber, runs to the
13 back yard to play on the swing, Dalton, age four, and
14 Brandon, age ten, they get out with their mother. She
15 has got the groceries. They go inside. She sets the
16 bag of groceries down on a table in the house.

17 At that point from out in the hallway, the
18 Defendant comes out where he had been lying in wait. He
19 had entered her home waiting on her return. She screams
20 for little Brandon to call the police.

21 Little Brandon is standing there in the same
22 room with his mother, watches his dad pull out a
23 .380-caliber pistol and shoots his mother in the chest.
24 Little Brandon grabs his little brother and runs out the
25 front door.

1 He runs to the back yard where Amber is and
2 grabs her. While he is back there, he hears several
3 other shots. While on the inside, the Defendant, he
4 shoots Jenny Burke again and again.

5 She falls dead right next to the Christmas
6 tree. The Defendant leaves the house, walks outside,
7 rounds up his children. He gets a station wagon that he
8 has hid behind the house, in between the house and the
9 woods, puts them in the car.

10 As they are driving off, he gives them
11 Hardee's breakfast biscuits that he had bought earlier
12 in the day. He drives them out to the woods, takes them
13 to a pond that he knew of, a secluded pond in the middle
14 of the woods.

15 They sit around the pond. They eat their
16 Hardee's biscuits. By now it's about mid-afternoon.
17 The Defendant gets up and he leaves. He gets in the car
18 and leaves his children sitting there by the pond on
19 that cold day.

20 He goes back over to Jenny Burke's house where
21 her dead body is still lying next to the Christmas tree.
22 He gets her dead body, puts it in the stationwagon. He
23 goes in and he tries to burn the house down. He tries
24 to hide what he has done.

25 He puts her body in the station wagon and

1 drives off, drives out in the country, out near Cedar
2 Branch Road. He goes to an old place that he had been
3 before out in the woods and parks the car.

4 He pulls Jenny Burke's dead body out of the
5 car and drags it over to a cutover. He covers her body
6 up with sticks debris, branches. He leaves her there.
7 He gets back in the car. He drives back over to the
8 pond where he has left his children.

9 He picks his children up, puts them in the
10 car. By now it's about dark. They drive around. He
11 drives over to his aunt's house. That's where he gets
12 out. He leaves his children in the car, no car running,
13 no heat, it's cold.

14 Ladies and gentlemen, on December 19, 2001,
15 the Defendant took it upon himself to be the judge of
16 his ex-wife. He was her jury. And when he convicted
17 her, he sentenced her to death.

18 I ask you to please listen to the witnesses
19 that you will hear on this witness stand today. Pay
20 attention to the evidence you will see. At the end of
21 this trial the State is going to come back, and we are
22 going to ask you to convict this man of four charges.

23 We are going to ask you to convict him for
24 burglary first, breaking into her house. We will ask
25 you to convict him of the attempted arson of her house,

1 to convict him of the possession of a deadly weapon
2 during the commission of a crime. And we are going to
3 ask you to convict him of murder for the death of Jenny
4 Burke.

5 THE COURT: Mr. Nettles.

6 OPENING STATEMENT

7 MR. NETTLES: Well, you know, there is a
8 little bit that went on before all that they talked to
9 you about, and there is a little bit that went on after
10 all they talked about. You are going to hear about
11 that, too.

12 Because if this were merely the facts that
13 they have put forward, this case would be in a very
14 different posture. But allow me to share what you are
15 going to hear about what took place before these events
16 and what took place after these events.

17 Because I have got to imagine that some of
18 your are sitting there going: Why did he kill her?
19 They kind of left it out in a vacuum. We don't make
20 decisions in a vacuum. The judge has already told you
21 that he is going to ask you to apply your common sense.

22 Let's talk for a second about this. What you
23 are going to hear is this. You are going to hear that
24 my client, Roger Dale Burke, this man right here many
25 years ago met a woman named Jenny.

1 Jenny and he worked at Hardee's together where
2 they became friends, didn't date quite right away.
3 Let's be clear about something, y'all. They weren't
4 management at Hardee's, okay. They were just working at
5 Hardee's.

6 Jenny became pregnant, not with Roger Dale's
7 child, but they later married; and Roger adopted her
8 first child. They then married and they had two
9 children of their own.

10 The relationship that they had was a
11 relationship that was of -- I mean, they were working
12 hard. They were barely getting by. Their marriage
13 began to fall apart, as happens sadly sometimes.

14 But, you know, sometimes as marriages fall
15 apart, you still love your children. Roger Dale loved
16 those children. You are going to hear that the most
17 important thing in Roger Dale's life was his children.

18 And what you are going to find out is that
19 because of things that took place completely out of
20 Roger Dale's control, they began to -- she, Jenny --
21 began to try to take Roger Dale's children away from
22 him. You are going to hear that those children were the
23 most important thing in his life.

24 Roger Dale made some bad decisions. At the
25 end of this case, sadly, sadly, I feel that chances

1 are -- and as a matter of fact, I will tell you based on
2 the evidence and based on what you are going to hear
3 Roger Dale told the police when he turned himself in --
4 they didn't go get Roger Dale. He turned himself in --
5 you are going to convict him of burglary.

6 You are going to convict him of having a
7 firearm during the course of a violent crime. You are
8 going to do that. You will convict him -- and Roger
9 Dale will tell you, as he told the police, you will
10 probably convict him of arson. And he is all those
11 things, but what he is not is a murderer.

12 You see, for someone to be convicted of
13 murder, they have got to have a heart devoid of all
14 social duty. Roger Dale went over to that house and
15 committed a burglary because he wanted to talk about why
16 it was they were going to take away his children.

17 And the situation -- and he saw things and he
18 perceived things in that house that caused him, perhaps
19 wrongly, to think and enraged him to such a degree that
20 he made some tragically bad decisions.

21 He shot her and he is not proud of it, and he
22 told the police. This isn't one they figured out
23 through D.N.A. or matching bullets or anything. They
24 figured this out because Roger Dale went to the
25 Lexington County Sheriff's Department and turned himself

1 in and told them what happened and told them where the
2 body was.

3 He did go sit by a pond and eat with his
4 children because he knew it was going to be the last
5 meal he was ever going to have with his children. I
6 represent a burglar. I represent an attempted arsonist,
7 and I represent a man who used a gun during the course
8 of a violent crime.

9 Roger Dale Burke, what was in his heart was
10 not a heart devoid of all social duty. That's what the
11 judge is going to tell you. A heart fatally bent on
12 mischief, a dark heart, a depraved heart. That's the
13 kind of heart that a murderer has.

14 They will not be able to prove that. They
15 will try through -- I mean, they are doing their job.
16 They have got a job to do, and I have got a job to do.
17 They can't prove to you that Roger Dale had a heart
18 devoid of all social duty fatally bent on mischief.

19 One other thing before I close. Why did Jenny
20 leave him? Why did Jenny leave him? Three kids. Why
21 did she leave him? See that man right there in the
22 white shirt, that man right there, the last row over
23 there, that's Roger Dale's brother.

24 His wife left him for his brother, and then
25 they were trying to take the kids and move the kids in

1 with his brother. That made a man think not exactly
2 right.

3 At the end of this case, Roger Dale will
4 likely not be found guilty of all charges. But if you
5 hold the government to their burden and don't just --
6 there will be some horrible autopsy, there will be some
7 horrible pictures. You are going to see some pictures
8 that will make -- that y'all don't see.

9 But keep in mind throughout this whole trial
10 what was in his heart. Because we don't have to prove
11 anything. They have got to prove that he had a heart
12 that was devoid of all social duty fatally bent on
13 mischief, a dark heart, a depraved heart.

14 We are asking you to look into a man's heart.
15 And in order to do that, we are going -- we get to go
16 last. Please don't make up your mind until you have
17 heard what we have got to say.

18 It's just like when the government up here in
19 their opening and they only told you the worst possible
20 facts, we have got a story to tell. We have got a story
21 to tell. Roger Dale has got a story to tell. I ask you
22 not to make up your mind until we have got the
23 opportunity to tell our story. Thank you very much.

24 THE COURT: The State, call your first
25 witness, please.

1 MR. MADSEN: Your Honor, the State would call
2 Brandon Burke.

3 BRANDON RAY BURKE, being
4 first duly sworn, testified as follows:

5 CLERK: Have a seat right there. Speak up
6 loud and clear. State your full name for me, okay.

7 THE WITNESS: Brandon Ray Burke.

8 DIRECT EXAMINATION

9 BY MR. MADSEN:

10 Q Brandon, how old are you?

11 A I am 13 years old.

12 Q And what grade are you in?

13 A I am in the eighth grade.

14 Q And you just started the eighth grade?

15 A Yes, sir.

16 Q Tell the jury a little bit, what are kind of some
17 the things you like to do, Brandon?

18 A I like to play football and go fishing.

19 Q And when you say play football, are you currently
20 playing or do you play competitively in a league?

21 A No, I don't play competitively in a league. I just
22 play with my friends.

23 Q How about in the past, have you ever done it in the
24 past where you played in a league?

25 A Yes, sir.

BRANDON BURKE -- DIRECT -- MR. MADSEN

69

- 1 Q How about any other sports?
- 2 A I've played baseball before.
- 3 Q And you like to go fishing?
- 4 A Yes, sir.
- 5 Q How about any brothers or sisters, do you have any
- 6 brothers or sisters?
- 7 A Yes, sir, I have a little brother and a little
- 8 sister.
- 9 Q What is your little brother's name, Brandon?
- 10 A Dalton.
- 11 Q And how old is Dalton now?
- 12 A Six.
- 13 Q And what is your sister's name?
- 14 A Amber.
- 15 Q And how old is Amber now?
- 16 A Nine.
- 17 Q And tell the jury, Dalton (sic), who is your
- 18 mother?
- 19 A Jenny Michelle Burke.
- 20 Q Do you recall -- let's kind of jump back a little
- 21 bit back to 2001. Back in 2001 your mother Jenny
- 22 Burke, who was she married to?
- 23 A Roger Dale Burke.
- 24 Q And who was that?
- 25 A My dad.

- 1 Q And at some point in time did they split up?
- 2 A Yes, sir.
- 3 Q Before they split up where were y'all living?
- 4 A At Road.
- 5 Q And at that Road, besides you,
- 6 your mom, and your dad, who else was living there?
- 7 A I don't know. I don't remember.
- 8 Q How about your brother and sister, where were they
- 9 living?
- 10 A They were living with us.
- 11 Q And once they split up, where did your dad live?
- 12 A He stayed there and my mom left.
- 13 Q Your mom left?
- 14 A (Witness nods). (Indicating affirmative response).
- 15 Q And once they split up who did you stay with?
- 16 A I stayed with my dad.
- 17 Q And how often did you go stay with your mom?
- 18 A A couple of nights a week.
- 19 Q Let me show you what has been marked as State's
- 20 Exhibit Number 2, I believe without objection. Do
- 21 you recognize State's Exhibit Number 2?
- 22 A Yes, sir, I do.
- 23 Q What is that a diagram of?
- 24 A My mom's house.
- 25 Q And just to kind of show the jury, who all was

BRANDON BURKE -- DIRECT -- MR. MADSEN

71

1 living at your mom's house?

2 A My mom and my Uncle Jessie and Leaphart.

3 Q Leaphart, was that a first or last name?

4 A I think it was his last name. I'm not entirely
5 sure.

6 Q And on this diagram of their house, do you remember
7 which one was your mother's bedroom?

8 A The bedroom number one.

9 Q This one right here (indicating)?

10 A Yes, sir.

11 Q How about Leaphart's bedroom?

12 A Bedroom number 3.

13 Q Bedroom number three down here (indicating)?

14 A Yes, sir.

15 Q When you would stay with your mom that couple of
16 nights a week, where would you sleep?

17 A Bedroom number two.

18 Q How about your brother and sister?

19 A The living room, wherever they dropped.

20 Q Okay. Let me show you what has been marked as
21 State's Exhibit Number 1. Do you recognize that?

22 A Yes, sir.

23 MR. MADSEN: This is State's Exhibit Number 1
24 without objection.

25 Q What is that a diagram of?

- 1 A That's where my mom lived.
- 2 Q So she lived here. What was all this surrounding
- 3 her basically?
- 4 A Trees.
- 5 Q So this (indicating) is all woods --
- 6 A Yes, sir.
- 7 Q -- basically all the way around. Back during that
- 8 time, what school did you go to?
- 9 A Gilbert Middle School.
- 10 Q And what grade were you in?
- 11 A Fifth grade.
- 12 Q How about your sister Amber, who was the second
- 13 oldest; right?
- 14 A Yes, sir, I think she was in the first grade.
- 15 Q Where did she go to school?
- 16 A Gilbert Elementary School.
- 17 Q How about your little brother Dalton?
- 18 A I think he in pre-K.
- 19 Q Where was that at?
- 20 A Gilbert Elementary School.
- 21 Q And do you recall the day of December 19, 2001?
- 22 A Yes, sir, I do.
- 23 Q That was a December date. Where did you stay that
- 24 night?
- 25 A We were going to stay at my mom's house.

BRANDON BURKE -- DIRECT -- MR. MADSEN

73

1 Q And when you stayed at your mom's, did you have
2 school that day?

3 A Yes, sir, we had half a day of school.

4 Q A half a day of school. Why was that?

5 A Because it was the end of the Christmas holidays.

6 Q At some point in time did you meet up with your
7 mom?

8 A Yes, sir.

9 Q Do you remember approximately what time that was?

10 A No, sir.

11 Q You only had a half day; is that correct?

12 A Yes, sir.

13 Q Where did you meet up with your mother at?

14 A At the park across the street.

15 Q That park was across the street from where?

16 A Gilbert Middle School.

17 Q When you saw your mother, who else was there with
18 her?

19 A Amber and Dalton.

20 Q How long did y'all stay at the park, Brandon?

21 A Thirty minutes to an hour.

22 Q And once you left that park, do you remember where
23 you went?

24 A No, sir, I don't. I think we went to a grocery
25 store.

1 Q Do you remember the name of the grocery store?

2 A Shumpert's.

3 Q And how long did you stay at Shumpert's?

4 A I don't know.

5 Q Once you left Shumpert's, did you go back to your
6 mom's house?

7 A Yes, sir.

8 Q Let me show you what has been marked as State's
9 Exhibit Number 3. Do you recognize that car in the
10 picture?

11 A Yes, sir, I do.

12 Q Whose car is that?

13 A That would be my mom's car.

14 Q Is that the car that you were traveling in that
15 day?

16 A Yes, sir, it is.

17 Q When you went to Shumpert's?

18 A Yes, sir.

19 Q When you went from Shumpert's back to your mom's
20 house, was that the car that you traveled in?

21 A Yes, sir.

22 Q This kind of place right here, back here
23 (indicating), what is that?

24 A That would be the front porch.

25 Q So on State's Exhibit Number 2, that's kind of this

BRANDON BURKE -- DIRECT -- MR. MADSEN

75

1 area right here (indicating) shown in this picture?

2 A Yes, sir.

3 Q What happens, Brandon, when y'all get to your mom's
4 house. Do you remember where you pull up?

5 A We pull up in front of the house.

6 Q When you say the front of the house, which side of
7 this house do you kind of consider the front of the
8 house?

9 A This side at the front porch (indicating).

10 Q So you pull up here (indicating)?

11 A Yes, sir.

12 Q That picture I showed you, was that where y'all
13 pulled up?

14 A Yes, sir.

15 Q Let me show you State's Exhibit Number 25. Do you
16 recognize that?

17 A Yes, sir, I do.

18 Q Whose car is that?

19 A That would be my dad's car.

20 Q When you pulled up that day, do you remember seeing
21 your dad's car there?

22 A No, sir, I don't.

23 Q Tell the jury, Brandon, when you get out of the
24 car, what do y'all do?

25 A We go inside and we smell something funny. It kind

- 1 of smelled like gas.
- 2 Q When you say we go in inside, who all went inside?
- 3 A Me, my mom, and Dalton.
- 4 Q How about Amber?
- 5 A Amber walks outside to the tire swing.
- 6 Q So you, Dalton, and your mom kind of go in this way
- 7 (indicating)?
- 8 A Yes, sir.
- 9 Q Where does Amber go?
- 10 A She goes around back to the tire swing.
- 11 Q On State's Exhibit Number 1, where is the tire
- 12 swing?
- 13 A Back in the wooded area around the house.
- 14 Q That area right here (indicating)?
- 15 A Yes, sir.
- 16 Q So when y'all walk in the house, what do you say
- 17 that you notice?
- 18 A It smelled like gas.
- 19 Q And when it smells like gas, what do y'all do?
- 20 A We smell around to see where it's coming from and
- 21 then we go inside.
- 22 Q So when you go inside, where do you go next,
- 23 Brandon?
- 24 A I go to the kitchen to see if anything is turned
- 25 on.

BRANDON BURKE -- DIRECT -- MR. MADSEN

77

- 1 Q So you go to this area here (indicating)?
- 2 A Yes, sir.
- 3 Q Where does your mother go?
- 4 A She goes to the living room. She stays in the
- 5 living room.
- 6 Q So this area here (indicating)?
- 7 A Yes, sir.
- 8 Q How about your brother?
- 9 A He stays with my mom.
- 10 Q And you go in here and what are you doing?
- 11 A I am looking to see if anything is turned on.
- 12 Q When you are in there, do you find anything turned
- 13 on?
- 14 A No, sir.
- 15 Q When you are in there looking for something turned
- 16 on and your mother is standing in the living room,
- 17 what happens next?
- 18 A My dad comes out of bedroom number two and comes
- 19 down the hall and into the living room.
- 20 Q So he comes out of here (indicating) and comes into
- 21 here (indicating)?
- 22 A Yes, sir.
- 23 Q When he does that, is he saying anything, Brandon?
- 24 A I don't remember.
- 25 Q As far as his demeanor, does he seem happy, sad,

- 1 mad?
- 2 A He seems mad.
- 3 Q What does he do?
- 4 A He comes out with a gun and he shoots my mom.
- 5 Q When we say with a gun, where is your mom standing?
- 6 A At the end of the sofa in the living room.
- 7 Q Here (indicating)?
- 8 A Yes, sir.
- 9 Q And where is your dad when he shoots your mom?
- 10 A He's at the other end of the sofa.
- 11 Q Tell me when to stop.
- 12 A Right there.
- 13 Q Right here (indicating)?
- 14 A Yes, sir.
- 15 Q Where are you?
- 16 A I am right beside my mom.
- 17 Q So when you have seen him, you move beside your
- 18 mom?
- 19 A No. I moved further down towards the Christmas
- 20 tree, yes, sir.
- 21 Q Where is Dalton.
- 22 A He is with me.
- 23 Q When you see your dad shoot your mom, what do you
- 24 do?
- 25 A I take Dalton outside with me and go around to get

BRANDON BURKE -- DIRECT -- MR. MADSEN

79

- 1 Amber.
- 2 Q Before you go outside, could you tell where your
- 3 mom got shot?
- 4 A Like in the chest area.
- 5 Q And did she fall down at that point?
- 6 A No, sir.
- 7 Q So you take Dalton outside. Where do y'all go?
- 8 A We go back around outside to the tire swing.
- 9 Q So on this diagram, I guess back around here
- 10 (indicating)?
- 11 A Yes, sir.
- 12 Q And who was back there?
- 13 A Amber.
- 14 Q What do you tell Amber?
- 15 A I tell Amber that daddy is here and he shot momma.
- 16 Q And after you tell her that or while you are out
- 17 there, do you hear anything, Brandon?
- 18 A I hear a couple more gunshots.
- 19 Q When you hear a couple more gunshots, what do you
- 20 do?
- 21 A We go back inside.
- 22 Q And when you get back in, what do you see?
- 23 A She fell down and is on the floor.
- 24 Q When you say she fell down and is on the floor, who
- 25 are we talking about?

- 1 A My mom.
- 2 Q What do you do after you see her laying down there?
- 3 A My dad shows back up at the front door and tells us
- 4 to, "Come on. Let's go."
- 5 Q So he didn't come out with you?
- 6 A No, sir.
- 7 Q He shows back up here (indicating)?
- 8 A Yes, sir.
- 9 Q Is he coming from somewhere in here or is he coming
- 10 from outside?
- 11 A I don't know.
- 12 Q And what does he do when he shows back up at that
- 13 front door?
- 14 A He tells us to, "Come on. Let's go," and we get
- 15 into his car and leave.
- 16 Q And when you say y'all get into his car and leave,
- 17 who is that?
- 18 A Me, Amber, and Dalton.
- 19 Q When you are talking about the car you get into,
- 20 State's Exhibit Number 25, is that the car?
- 21 A Yes, sir.
- 22 Q And that's the car you didn't see when you pulled
- 23 up?
- 24 A Right.
- 25 Q Where do you go from your mom's house, Brandon?

BRANDON BURKE -- DIRECT -- MR. MADSEN

81

- 1 A We go to a pond or a wooded area.
- 2 Q And do y'all eat anything at that pond?
- 3 A Yes, sir.
- 4 Q What do y'all have to eat?
- 5 A Sausage biscuits.
- 6 Q Do you remember where they were from?
- 7 A Hardee's.
- 8 Q Now, when you are leaving your mom's house and
- 9 going to that pond, do y'all stop off and get
- 10 Hardee's?
- 11 A No, sir.
- 12 Q Does he already have it in his car?
- 13 A Yes, sir.
- 14 Q So you get to that pond. Kind of try to describe
- 15 this to the jury. Is this like in the middle of
- 16 civilization beside a house or how is it?
- 17 A It's not beside a house. It's just there.
- 18 Q When y'all get to that pond, is there anything else
- 19 around that pond?
- 20 A No, sir.
- 21 Q How about as far as any trees?
- 22 A Yeah, there's lots of trees.
- 23 Q So when you get to that pond, where does your dad
- 24 take you?
- 25 A He takes us out into the middle of the woods.

1 Q Back at this point in time, back in 2001,
2 December 19th, how old are you?

3 A I am 11, 10 or 11.

4 Q And how old is Amber?

5 A Six or seven.

6 Q And how about Dalton?

7 A Four or five.

8 Q And who stays there with you?

9 A My dad stayed there with us for a couple of
10 minutes.

11 Q Then what does he do?

12 A He leaves.

13 Q He leaves. And at some point in time does he come
14 back?

15 A Yes, sir.

16 Q I didn't hear you.

17 A Yes, sir.

18 Q And when he leaves and comes back, does he come
19 back in a couple of minutes, a couple of hours,
20 longer than that? Could you tell the jury about
21 how long.

22 A It was about 45 minutes to an hour.

23 Q So y'all are right there by the pond?

24 A Yes, sir.

25 Q And when he comes back, where does he take you to?

BRANDON BURKE -- DIRECT -- MR. MADSEN

83

1 A He takes us to this house that I think I am related
2 to, but I really don't know where it's at.

3 Q Does he take you right there or do y'all drive
4 around?

5 A We drive around for a little while.

6 Q What happens when y'all get to that house, Brandon?

7 A He goes in and talks for a little while.

8 Q Let me jump back a second. When y'all are driving
9 from the pond to that house, does he say anything
10 about your mother?

11 A He asked us if what he thinks he did was right.

12 Q What did you tell him?

13 A I told him no, I didn't think it was right.

14 Q Did he tell you about a conversation he had with
15 your mother?

16 A Yes, sir.

17 Q What did he tell you about the conversation he had
18 with your mother?

19 A He said that he had called her and said that she
20 was all right.

21 Q When you had gone back in this house that second
22 time, did you know whether she was all right or
23 not?

24 A Yes, sir, I did.

25 Q What did you know?

- 1 A I could tell that she was already dead.
- 2 Q Once he drops you off at that house, does he leave
- 3 that car running?
- 4 A No, sir.
- 5 Q I think you said he goes in the house and you think
- 6 it's some kind of kin?
- 7 A Yes, sir.
- 8 Q At some point in time does he come back out?
- 9 A Yes, sir.
- 10 Q What does he do with that car?
- 11 A He moves it closer to the house.
- 12 Q And once he moves that closer to the house, do
- 13 y'all go in the house with him?
- 14 A No, sir.
- 15 Q What does he do?
- 16 A He goes back inside the house.
- 17 Q What do y'all do?
- 18 A We stay outside in the car.
- 19 Q Is the car running?
- 20 A No, sir.
- 21 Q This is December. Is it light or dark out at this
- 22 point in time?
- 23 A Dark.
- 24 Q How about being cold?
- 25 A Yeah, it's pretty cold.

BRANDON BURKE -- CROSS -- MR. NETTLES

85

1 Q And how long do y'all stay in that car, do you
2 know?

3 A No, sir, we all fell asleep.

4 Q And do you know who the next person to wake you up
5 was?

6 A The police.

7 Q With what did the police do?

8 A They take us out of the car and take us to their
9 car. We sit there for about five minutes, and then
10 we go to the police department.

11 Q Brandon, do you see the man who shot your mother
12 that day on December 19th in this courtroom?

13 A Yes, sir.

14 Q Could you point him out to me with what he is
15 wearing.

16 A He is over there in the white shirt.

17 MR. MADSEN: Your Honor, if the record could
18 reflect he has identified the Defendant.

19 THE COURT: So noted.

20 Q Brandon, answer any questions Mr. Nettles has.

21 CROSS EXAMINATION

22 BY MR. NETTLES:

23 Q Brandon, when is the last time you saw this man?
24 Can you see him over those Kleenex?

25 A Yes, sir.

- 1 Q When is the last time you saw him?
- 2 A On December 19th.
- 3 Q December 19th?
- 4 A (Witness nods). (Indicating affirmative response).
- 5 Q The day all this happened?
- 6 A Yes, sir.
- 7 Q Now, on the day that all this happened, let's talk
- 8 about something for a second. You gave a statement
- 9 to the police. Do you remember that?
- 10 A No, sir.
- 11 Q You don't?
- 12 MR. NETTLES: May I approach, Your Honor?
- 13 THE COURT: Yes, sir.
- 14 BY MR. NETTLES:
- 15 Q Take a look at that for me. Do you remember
- 16 signing something like that?
- 17 A Yes, sir, I do.
- 18 Q And that was something that the police officers
- 19 talked to you about what had happened?
- 20 A Yes, sir.
- 21 Q And they wrote it all out for you?
- 22 A Yes, sir.
- 23 Q And they asked you to take a look at it?
- 24 A Yes, sir.
- 25 Q And you signed it there at the end?

BRANDON BURKE -- CROSS -- MR. NETTLES

87

1 A Yes, sir.

2 Q And you said just a second ago when Mr. Madsen was
3 talking to you that your dad asked you if he
4 thought -- if you thought what he had done was
5 right, right?

6 A Right.

7 Q And you told him no?

8 A Yes, sir.

9 Q And then he also told you why he did it, didn't he?

10 A I don't remember.

11 Q Let's take a second here and look at your
12 statement. The second page of your statement here,
13 you see right there where it says -- I'm talking
14 about like ten lines down.

15 MR. MADSEN: Judge, I think the proper way is
16 to have him review the statement and then ask if he
17 recalls it.

18 MR. NETTLES: I understand. I was going to
19 draw his attention to it if you don't mind. I just
20 figured it would save us all some time.

21 MR. MADSEN: That's fine, as long as he has an
22 independent recollection.

23 BY MR. NETTLES:

24 Q Start right here with "I." Just read that to
25 yourself. Right there where your thumb is, right

1 there. Read that to yourself right there, okay?

2 A (Pause). Okay.

3 Q Did you get to read that?

4 A Yes, sir.

5 Q Does that help you any to remember what you told
6 the police?

7 A Yes, sir.

8 Q So when he asked you if you thought it was okay,
9 you told him no?

10 A Yes, sir.

11 Q And then he told you why he had done it, right?

12 A Yes, sir.

13 Q And you told the police what he told you, right?

14 A Yes, sir.

15 Q Tell the jury what you told the police.

16 A I told the police that he asked me if I thought
17 what he had done was wrong and I said yes. He then
18 told me that they were blaming him for what
19 Christopher did to Amber. He said they were doing
20 this so mom could take us. When he told -- I can't
21 read that.

22 Q That's enough. Just so you and I understand, on
23 that time, at that time, when y'all were in the car
24 together after this had taken place, he told you
25 that they were blaming him for what Christopher had

BRANDON BURKE -- CROSS -- MR. NETTLES

89

1 done; right?

2 A Yes, sir.

3 Q And that they were going to try to take you from
4 him, right?

5 A Yes, sir.

6 Q Do you feel like your dad loves you?

7 A Yes, sir.

8 Q Do you love your dad?

9 A In some ways, yes.

10 Q I understand. I mean, it's kind of hard in light
11 of what has happened; right?

12 A Yes, sir.

13 Q Christopher got arrested for doing some bad things,
14 didn't he?

15 A Yes, sir.

16 Q But your dad didn't have anything to do with that,
17 did he?

18 A No, sir.

19 Q And as a matter of fact, tell the jury what your
20 dad did when he found out what Christopher had
21 done?

22 A I don't know what he did.

23 Q Christopher wasn't at the house anymore, was he?

24 A No, sir.

25 Q Christopher is your dad's nephew, right?

1 A Yes, sir, I think so.

2 Q He is kin, right?

3 A Yes, sir.

4 Q And Christopher moved in with y'all, right?

5 A Yes, sir.

6 Q After your momma moved out?

7 A Yes, sir.

8 Q And Christopher did some things to your sister,
9 right?

10 A Yes, sir.

11 Q And your dad didn't tolerate that, did he?

12 A No, sir.

13 Q Let me ask you a couple of other questions. Hold
14 on just a second.

15 (Attorneys confer).

16 MR. NETTLES: I will mark these as Defendant's
17 Exhibit 1, 2, 3, and 4, Your Honor.

18 THE COURT: Yes, sir.

19 (Defendant's Exhibits Number 1-4 are marked
20 for identification).

21 BY MR. NETTLES:

22 Q Brandon, I will show you these and do you recognize
23 that from inside your momma's house?

24 A Yes, sir.

25 Q Could you tell me -- and I am referring to Defense

BRANDON BURKE -- CROSS -- MR. NETTLES

91

1 Exhibit 1 -- could you tell me where in this house
2 Defense Exhibit 1 is?

3 A Bedroom number one.

4 Q Bedroom number one back here (indicating)?

5 A Yes, sir.

6 Q And I will show you Defense Exhibit 2 is the same
7 thing, right?

8 A Right.

9 Q Whose bedroom was this?

10 A That was my mom's and my Uncle Jessie's bedroom.

11 Q Your mom and Uncle Jessie. Your Uncle Jessie and
12 your mom were in this bedroom (indicating), right?

13 A Right.

14 Q And then where were -- your Uncle Jessie, that
15 that's guy in the white shirt right back over
16 there?

17 A Yes, sir.

18 Q And that's your dad's brother?

19 A Yes, sir.

20 Q Now, bedroom number two, who stayed in bedroom
21 number two?

22 A I did.

23 Q Who stayed in bedroom number three?

24 A Leaphart.

25 Q Where would your sister -- now, who was Leaphart?

- 1 A He is my Uncle Jessie's friend.
- 2 Q Now, where would your two younger, I guess, brother
3 and sister stay?
- 4 A On the sofa, bedroom number two with me, wherever
5 they dropped.
- 6 Q Okay. Wherever they dropped, in other words,
7 wherever they went to sleep?
- 8 A Yes, sir.
- 9 Q This is Defense Exhibit Number 3. Do you recognize
10 that?
- 11 A Yes, sir, I do.
- 12 Q Tell me where Defense Exhibit Number 3 was?
- 13 A In the living room.
- 14 Q Right here where it says Christmas tree?
- 15 A Yes, sir.
- 16 Q And then Defense Exhibit Number 4, is that this big
17 screen T.V. right here (indicating)?
- 18 A Yes, sir.
- 19 Q Now, Brandon, would you agree with me that your mom
20 and dad were going through a difficult time?
- 21 A Yes, sir.
- 22 Q And that it was something that both of them -- it
23 caused them a lot of pain?
- 24 A Yes, sir.
- 25 Q And it caused the family a lot of pain?

BRANDON BURKE -- CROSS -- MR. NETTLES

93

1 A Yes, sir.

2 Q And would you agree with me that that pain that
3 your dad felt was probably made worse because it
4 was his brother that your momma was with?

5 A Yes, sir.

6 Q And let me ask you this. You remember the
7 statement that I showed you, and do you remember --
8 well, let me ask you this. When you came in the
9 house and your dad was there?

10 A Yes, sir.

11 Q And he came out and you saw that he was in the
12 house there?

13 A Uh-huh. (Indicating affirmative response).

14 Q Do you remember what he said?

15 A No, sir.

16 Q Do you remember that he said, "Are you going to try
17 to take my kids"?

18 A Yes, sir.

19 Q But clearly based on what he said, it was your
20 impression that he was there because he was
21 concerned about what was going to happen to y'all?

22 A Yes, sir.

23 Q And whenever you left with your dad and you went
24 to -- whenever y'all left there, your dad didn't
25 hurt you; did he?

1 A No, sir.

2 Q And you never felt scared of your dad, did you?

3 A Um, no, sir.

4 Q And when he left y'all in the woods and y'all ate,
5 remember y'all sat down and ate. Do you remember
6 that?

7 A Yes, sir.

8 Q He was gone about 30 minutes and he came back,
9 right?

10 A Right.

11 Q Now, during all this time and it was December and
12 everything, while you were scared and you were
13 confused, you never got the sense that your dad was
14 trying to harm you in any way; did you?

15 A No, sir.

16 Q Brandon, before all of this, okay, before all this,
17 and before -- setting aside the relationship that
18 your parents had, would you consider your dad a
19 good father?

20 A Yes, sir.

21 Q Did he take care of you?

22 A Yes, sir.

23 Q You felt like he loved you?

24 A Yes, sir.

25 Q Felt like he would do anything in the world for

BRANDON BURKE -- CROSS -- MR. NETTLES

95

1 you?

2 A Yes, sir.

3 Q Is there Any doubt in your mind about that?

4 A No, sir.

5 MR. NETTLES: Just one second.

6 (Pause).

7 Q Brandon, let me ask you this. How did you feel
8 about your momma taking you from your daddy?

9 A I didn't know --

10 MR. MADSEN: Judge, I will object. I don't
11 know if that has any relevance.

12 THE COURT: Overruled. I will give him a
13 little bit of room with it. Go ahead.

14 BY MR. NETTLES:

15 Q Okay. You can answer that.

16 A Can you repeat the question?

17 Q Sure. I asked you, how did you feel about the
18 situation -- let me back up one second. You and
19 your brother and sister were what was kind of what
20 we call joint custody. In other words, you spent
21 some of the time with your daddy and some of the
22 time with your momma; right?

23 A Yes, sir.

24 Q And you understand that there was getting ready to
25 be a hearing where they were going to take you so

1 that you would spend all your time with your momma,
2 and you wouldn't spend time with your dad?

3 A I didn't know that.

4 Q How would you feel about that?

5 A I wouldn't like it.

6 Q Why is that?

7 A Because I wouldn't get to see my dad very much.

8 Q You said at the beginning that you liked to play
9 football, right?

10 A Right.

11 Q And you liked to play baseball?

12 A Yes, sir.

13 Q Did your daddy coach you?

14 A No, sir -- well, yes, sir.

15 Q Let's be sure about that. Was your dad one of your
16 coaches?

17 A Yes, sir.

18 Q Did he go to your games?

19 A Yes, sir.

20 Q Did he watch you?

21 A Yes, sir.

22 Q Was he proud of you?

23 A Yes, sir.

24 MR. NETTLES: I don't believe I have anymore
25 questions, Your Honor.

BRANDON BURKE -- REDIRECT -- MR. MADSEN

97

1 THE COURT: Redirect?

2 REDIRECT EXAMINATION

3 BY MR. MADSEN:

4 Q Brandon, when your dad came out of the bedroom and
5 down that hall, did he tell your mom, "let's sit
6 right here on this sectional sofa and talk about
7 this"?

8 A No, sir.

9 Q What did he do?

10 A He shot her.

11 Q No discussion?

12 A No, sir.

13 Q Brandon, when is the last time you saw your mom?

14 A On December 19th.

15 MR. MADSEN: That's all the questions I have.

16 THE COURT: Any recross?

17 MR. NETTLES: No further questions, Your
18 Honor.

19 THE COURT: You can step down.

20 MR. MADSEN: Your Honor, the State would call
21 Bill Storey.

22 BILLY JOE STOREY, being
23 first duly sworn, testified as follows:

24 CLERK: State your full name.

25 THE WITNESS: My name is Billy Joe Storey.

1 DIRECT EXAMINATION

2 BY MR. MADSEN:

3 Q I know your real name is Billy. Do you have a
4 nickname you kind of go by?

5 A Yes, sir, Bill.

6 Q And, Bill, where do you currently work?

7 A Right now I am doing vinyl siding with Tommy
8 Shiveler out of Swansea.9 Q When you say you are doing vinyl siding, kind of
10 tell the jury what that entails.11 A It's construction. We cover the outside of the
12 house with vinyl siding to keep from having to do
13 any painting or such as that.

14 Q How long have you kind of been in that work?

15 A About 12 years.

16 Q And you are currently working for who?

17 A Tommy Shiveler.

18 Q Do you recall back on December 19th of 2001, who
19 you were working with back then?

20 A Bob Mansfield.

21 Q And who else was working with you with Bob
22 Mansfield?23 A J.J., Jason Leaphart, my brother, I believe, and a
24 couple others.

25 Q When we say J.J., we are talking about Jessie

BILLY JOE STOREY -- DIRECT -- MR. MADSEN.

99

1 Burke, Jr.?

2 A Yes, sir.

3 Q And y'all are working with Bob Mansfield. What are
4 y'all doing then?

5 A Vinyl siding.

6 Q And kind of tell them, as far as when you are doing
7 vinyl siding, is a one or two-hour deal a day?

8 A No, sir, it's pretty much from sunup to sundown.

9 Q And did you have an arrangement back then with kind
10 of J.J. and Jason Leaphart as to how y'all went to
11 and from work?

12 A Yes, sir.

13 Q Could you tell the jury basically what that was.

14 A I was driving J.J.'s car at the time. He had
15 previously lost his license for a short period. He
16 asked me if I would swing by, pick them up, carry
17 them to work, drop them after, and sometimes
18 possibly even drive his car to my house.

19 Q Let me show you what has been marked as State's
20 Exhibit Number 4. Do you recognize that?

21 A Yes, sir, that's J.J.'s car.

22 Q That white Thunderbird. On December 19, 2001, is
23 that the Thunderbird you picked them up in, that
24 you picked J.J. and Jason Leaphart up in?

25 A Yes, sir.

1 Q And do you remember where y'all were working on
2 vinyl siding that day?

3 A I am wanting to say we was in an apartment complex
4 on Clemson road, but I'm not exactly sure.

5 Q At some point in time, do y'all get back to J.J.'s
6 house?

7 A Yes, sir.

8 Q And who lives -- do you recognize what has been
9 marked as State's Exhibit Number 2?

10 A Yes, sir.

11 Q Who is that a diagram of?

12 A The bedroom of J.J.'s down on the end. It's pretty
13 much the whole diagram of their trailer, the
14 layout.

15 Q Who lived in this trail?

16 A J.J., Jason Leaphart, Jenny.

17 Q Let me show you what has been marked as State's
18 Exhibit Number 1. Do you recognize that?

19 A Yes, sir.

20 Q And at some point in time after y'all got out of
21 work, did y'all end up back at this trailer?

22 A Yes, sir.

23 Q When y'all came up, where did y'all park?

24 A In the front. We pulled up behind Jenny's car.

25 Q Let me show you what has been marked as State's

BILLY JOE STOREY -- DIRECT -- MR. MADSEN

101

1 Exhibit Number 3. Do you recognize that?

2 A Yes, sir.

3 Q What is that a picture of?

4 A That's where we parked and Jenny's car as well.

5 Q Exhibit Number 4, I guess, is a little bit farther
6 down on that trailer?

7 A Yes, sir.

8 Q Where is that kind of on this diagram?

9 A That's the front porch there. The white car was
10 probably sitting about the corner. Jenny's car was
11 sitting pretty much straight across from the front
12 door.

13 Q And who was driving that white Thunderbird?

14 A I was.

15 Q What did Jason and J.J. do?

16 A They walked in and instantly walked -- come back to
17 the door and told me to hold on a sec, things
18 didn't look right.

19 Q And what did you do?

20 A I held on a sec.

21 Q At some point in time on State's Exhibit Number 2,
22 did you enter that residence?

23 A Yes, sir.

24 Q When you got in that residence, what, if anything,
25 did you see?

1 A As soon as you walked in, it was what appeared to
2 be a big puddle of blood in front of the Christmas
3 tree.

4 Q Let me show you what has been marked as State's
5 Exhibit Number 7 and State's Exhibit Number 8. Do
6 you recognize those?

7 A Yes, sir.

8 Q What are those pictures of?

9 A The blood stains and whatnot we seen as soon as we
10 walked in.

11 Q What did you think when you saw the blood stains on
12 Exhibit Number 7 and Number 8?

13 A At first, I kind of thought it was jelly, maybe
14 hoping perhaps one of the kids had maybe made a
15 mess or something and accidentally spilled
16 something. I was hoping it wasn't what it was.

17 Q What did you do?

18 A Well, I just kind of glimpsed down at it and stuck
19 my finger to it and realized it was blood.

20 Q And what did y'all do -- what did you do once you
21 realized it was blood?

22 A Started panicking, looking for Jenny and the kids.

23 Q Do you remember seeing any type of groceries or
24 anything there?

25 A Yes, sir, there was some groceries sitting on the

BILLY JOE STOREY -- DIRECT -- MR. MADSEN

103

1 kitchen table.

2 Q I show you State's Exhibit Number 5. Do you
3 recognize that?

4 A Yes, sir.

5 Q Does that include those groceries you are talking
6 about on the table?

7 A Yes, sir.

8 Q When you went up to those groceries -- well, let me
9 show you State's Exhibit Number 10 and Number 11.

10 Is that another look at those groceries?

11 A Yes, sir.

12 Q Were you kind of able, from looking at those
13 groceries, to determine what their status was?

14 A Yes, sir.

15 Q Tell the jury kind of what their status was.

16 A They was warm, apparently had been sitting on the
17 table a while, of which was some which needed to be
18 refrigerated, such as meats and whatnot.

19 Q So these things were warm when y'all got there?

20 A Yes, sir.

21 Q As far as when y'all got there, was it day or
22 nighttime?

23 A It was done dark.

24 Q Do y'all start looking around that trailer?

25 A Oh, yes, sir.

1 Q What do you find?

2 A I went to get a soda, I believe, out the fridge.

3 There was a empty shell casing of a .380 Winchester
4 that was laying in front of the refrigerator door.

5 Q And did you pick that casing up?

6 A Yes, sir.

7 Q Did anyone find anything else?

8 A Yes. I believe it was J.J., one of the two, had
9 found the head of a bullet which apparently had
10 struck something. It had a crease in the head of
11 it.

12 Q What did y'all do with that casing that you found?

13 A We stick it on top of the refrigerator and notified
14 the police where we had found it and whatnot.

15 Q Let me show you State's Exhibit Number 13 and
16 State's Exhibit Number 14. Do you recognize those
17 two photographs?

18 A Yes, sir.

19 Q What are State's Exhibit Number 13 and State's
20 Exhibit Number 14?

21 A This was the refrigerator and where we placed the
22 shell and the head of the bullet of which we found.

23 Q Did y'all find Jenny there?

24 A No, sir.

25 Q How about the kids?

BILLY JOE STOREY -- DIRECT -- MR. MADSEN

105

- 1 A No, sir.
- 2 Q What do y'all do then next?
- 3 A We pretty much started panicking, trying to get to
- 4 the phone, realizing we needed to get in touch with
- 5 somebody.
- 6 Q Did y'all get to the phone?
- 7 A Yes, sir.
- 8 Q What did you notice, if anything, about the phone?
- 9 A It was pretty much dismantled.
- 10 Q When you say dismantled, what are we talking about?
- 11 A As in took apart. The battery on the back and
- 12 whatnot was off. It was a cordless.
- 13 Q Let me show you State's Exhibit Number 35. Do you
- 14 recognize that?
- 15 A Yes, sir.
- 16 Q What is that?
- 17 A That's the phone, of which we was putting together
- 18 to make the phone calls with.
- 19 Q So when y'all got to it, could you use the phone?
- 20 A Not when we first got to it, no, sir.
- 21 Q What did y'all have to?
- 22 A We had to remantle (sic) it and put it together.
- 23 Q So this phone was not, Number 35, was not in
- 24 working order?
- 25 A No, sir, not when we got there.

1 Q Let me show you State's Exhibit Number 6. Do you
2 recognize that photograph?

3 A Yes, sir.

4 Q What is that a photograph of?

5 A That's the photograph of the phone base where the
6 phone usually sits and whatnot. I want to say the
7 phone was laying on the floor when we come in if I
8 am not mistaken.

9 Q Were y'all able to put the phone back together?

10 A Yes, sir.

11 Q And once y'all put the phone back together, what do
12 y'all do?

13 A We call J.J.'s mother.

14 Q And after you called J.J.'s mother, who do you call
15 next?

16 A 911.

17 Q Do you remember seeing anything unusual about a
18 corner in the trailer?

19 A Yes, sir.

20 Q What do you recall seeing?

21 A There was some wallpaper peeled back, and it also
22 had been set afire. It looked like it was to burn
23 the house.

24 Q Let me show you State's Exhibit number 17. Do you
25 recognize that?

BILLY JOE STOREY -- CROSS -- MR. NETTLES

107

1 A Yes, sir.

2 Q What is that a photograph of?

3 A That's the corner of which somebody apparently
4 tried to burn it.

5 Q So after y'all called J.J.'s mother, y'all called
6 the law?

7 A Yes, sir.

8 Q And when they got there, did you tell them what
9 y'all had found?

10 A Yes, sir.

11 Q How long did you end up staying out there that
12 night?

13 A Until about 3:00 a.m. that morning.

14 Q Answer any questions Mr. Nettles has.

15 THE COURT: Cross.

16 CROSS EXAMINATION

17 BY MR. NETTLES:

18 Q Billy, this phone over here, it doesn't have a
19 whole lot of moving parts to it; does it?

20 A No, sir.

21 Q As a matter of fact, what y'all did was you -- I
22 mean, you put a battery back in it, right?

23 A Yeah.

24 Q The phone was on the floor and the battery had come
25 out the back, right?

1 A (Witness nods). (Indicating affirmative response).

2 Q So in order to use it, you just put the battery
3 back in and it worked; right?

4 A (Witness nods). (Indicating affirmative response).

5 Q I'm sorry. I'm not being difficult. But, see, she
6 is taking down what you are saying.

7 A Yes, sir.

8 Q And head nods don't show up. So this was just --
9 it worked?

10 A Once you put it together, yes, sir.

11 Q Putting it together, it wasn't like it was a big
12 project. The phone was on the floor, the battery
13 was there, you put the battery in the phone, put
14 the little back on the back, and it worked?

15 A As nervous as we was, yes, sir, it was a pretty big
16 problem.

17 Q But that is a personal thing, right?

18 A Yes.

19 Q Really what it was was just putting a battery in
20 the phone?

21 A Yes, sir.

22 Q You didn't have to go get another battery or
23 anything?

24 A No, sir.

25 Q It was all right there?

BILLY JOE STOREY -- CROSS -- MR. NETTLES

109

1 A Yes, sir.

2 Q Now, as it relates to this, which is State's
3 Exhibit Number 5, this Defense Exhibit Number 4 is
4 a picture of the same thing; isn't it?

5 A Yes, sir.

6 Q And Defense Exhibit number 3, that's the same
7 thing; isn't it?

8 A Yes, sir.

9 Q Now, the J.J. that you are referring to, is J.J. --
10 that is him in the white shirt?

11 A Yes, sir.

12 Q And that is his brother?

13 A Yes, sir.

14 Q And when you said that whenever y'all thought
15 something was wrong and you got the phone and put
16 the battery back in the phone, that you called
17 J.J.'s mother?

18 A Yes, sir.

19 Q That's also his mother?

20 A Yes, sir.

21 Q And you were driving because J.J. didn't have a
22 driver's license?

23 A Yes, sir.

24 Q He is old enough to have a driver's license?

25 A Yes, sir.

1 Q And you had been over there before? Have you ever
2 been over there socially?

3 A A few times, yes, sir.

4 Q And Jenny was staying there as well, right?

5 A Yes, sir.

6 Q So staying in the house was -- did you know where
7 they were staying within this house?

8 A Yes, sir.

9 Q Jenny and J.J. were staying back here (indicating)?

10 A Yes, sir.

11 Q And Brandon was staying here (indicating)?

12 A Yes, sir.

13 Q And this (indicating) was Leaphart's room?

14 A Yes, sir.

15 Q Where did the other two children stay?

16 A I'm not sure. I very rarely seen them, once or
17 twice occasionally when I was over there. It
18 wasn't an everyday thing when I went over there
19 that I seen them.

20 Q Right, right, right. Now, Jenny that was staying
21 here (indicating) with J.J. was married to or was
22 still married to Roger Dale; right?

23 A Yes, sir, to my understandings.

24 MR. NETTLES: Just one second, Your Honor.

25 (Pause).

BILLY JOE STOREY -- REDIRECT -- MR. MADSEN

111

1 MR. NETTLES: No further questions.

2 THE COURT: Any redirect?

3 MR. MADSEN: Just one question.

4 REDIRECT EXAMINATION

5 BY MR. MADSEN:

6 Q When you would go over there socially, it's not
7 like they had moved into that trailer --

8 MR. NETTLES: Objection, leading.

9 THE COURT: Just rephrase it.

10 BY MR. MADSEN:

11 Q How long had they been in that trailer?

12 A Probably four or five months.

13 Q And who was living there during that entire four or
14 five months?

15 A Jason Leaphart, J.J., and Jenny.

16 MR. MADSEN: That's all the questions I have.

17 THE COURT: Any recross?

18 MR. NETTLES: None, Your Honor.

19 THE COURT: You can step down. Thank you,
20 sir.

21 MR. MADSEN: Your Honor, I would ask that
22 Mr. Storey be excused.

23 THE COURT: You are free to go. In fact, any
24 witness when their testimony is completed will be
25 allowed to leave if they want to.

1 MR. MADSEN: Thank you, Your Honor.

2 THE COURT: Counsel, we have been going a
3 little over an hour. Let's take a short break here.

4 Ladies and gentlemen, we will take a short
5 break and give you a chance to stretch your legs a
6 little and get some air and get some refreshments --
7 everyone please be seated.

8 Ladies and gentlemen, if you need refreshments
9 or anything, let the bailiffs know. They will take good
10 care of you. Remember, the important thing is don't
11 talk about the case.

12 I told you -- or I meant to tell you, and I
13 think I left it out at the beginning -- one thing I
14 want to be sure and tell you was don't form any
15 opinions about the case until you have come to the
16 very end.

17 You never know, the last thing you hear may
18 be the most important thing. You don't know that until
19 you get there. So you should never form any opinions
20 about the case until you have heard everything. Of
21 course, that's why it's important not to talk about
22 the case.

23 With that in mind, we will see you back in a
24 few minutes.

25 (The jury retires to the jury room).

1 THE COURT: The jury is secured. Anything
2 from the State before we recess?

3 MR. MADSEN: Nothing from the State.

4 THE COURT: Is there anything from the
5 defense?

6 MR. NETTLES: None, Your Honor.

7 THE COURT: We will stand in recess.

8 (Whereupon there was a recess).

9 THE COURT: Anything from the State before we
10 bring the jury in?

11 MR. MADSEN: Nothing from the State, Your
12 Honor.

13 THE COURT: From the defense?

14 MR. NETTLES: Nothing, Your Honor.

15 THE COURT: Bring them in.

16 (The jury returns to the courtroom).

17 THE COURT: All parties and attorneys are in
18 the courtroom, and all jurors are back with us. Call
19 your next witness.

20 MR. MOSES: The State would call Master Deputy
21 Robin Walters.

22 ROBIN RENEE WALTERS, being
23 first duly sworn, testified as follows:

24 CLERK: Have a seat, please, ma'am. Speak up
25 loud and clear and state your full name on the record.

1 THE WITNESS: Robin Renee Walters.

2 DIRECT EXAMINATION

3 BY MR. MOSES:

4 Q Deputy Walters, where do you work?

5 A Lexington County Sheriff's Department.

6 Q In what capacity are you employed with the
7 Lexington County Sheriff's Department?

8 A I am a master deputy at the Lexington County
9 Sheriff's Department.

10 Q What does your job entail?

11 A I supervise road deputies.

12 Q How long have you been employed there?

13 A For four years.

14 Q Were you employed there on December 19, 2001?

15 A Yes, sir, I was.

16 Q Do you recall that day?

17 A Yes, sir, I do.

18 Q Were you on duty that day?

19 A Yes, sir, I was.

20 Q How did you become involved in this case?

21 A I was actually dispatched to the scene at
22 Drive.

23 Q And where is Drive?

24 A In the Pelion area of Lexington County.

25 Q About what time did you get there?

ROBIN WALTERS -- DIRECT -- MR. MOSES

115

1 A I arrived on the scene at 7:56 in the afternoon.

2 Q Was it dark?

3 A Yes, sir.

4 Q Who was there when you showed up?

5 A I believe it was a group of people. I can't
6 remember exactly who. I know that the Defendant's
7 brother was there and some other people.

8 Q What did you see when you arrived?

9 A I saw the group of people standing out by the front
10 porch and everybody started talking to me all at
11 once. I had to ask them to hold tight and let me
12 talk to somebody one at a time.

13 Q Were you the first law enforcement officer on the
14 scene?

15 A Yes, sir, I was.

16 Q What did you do after that?

17 A After that Deputy Gabert arrived with me, and I
18 told him that we needed to do a safety sweep of the
19 house and make sure there was no suspects or
20 victims still inside the house.

21 Q Was there anybody inside?

22 A No, sir.

23 Q What did you do after you did the safety sweep?

24 A We set up the crime scene tape and asked everybody
25 to stand back and I notified major crimes.

1 Q Did you tape it off?

2 A I did.

3 Q Who did you call when you called major crimes?

4 A Sergeant Frier.

5 Q Answer any questions the defense might have.

6 THE COURT: Cross.

7 MR. NETTLES: I can't think of a thing I could
8 ask her.

9 THE COURT: You get off easy. You can step
10 down.

11 MR. MOSES: Thank you.

12 MR. MADSEN: Your Honor, the State would call
13 Jim Hickman.

14 JAMES L. HICKMAN, being
15 first duly sworn, testified as follows:

16 CLERK: Have a seat and state your full name.

17 THE WITNESS: James L. Hickman, H-I-C-K-M-A-N.

18 DIRECT EXAMINATION

19 BY MR. MADSEN:

20 Q Detective Hickman, where are you employed?

21 A Lexington County Sheriff's Department.

22 Q And actually I called you detective. What is your
23 actual title there?

24 A I'm an identification officer and my job is
25 basically crime scenes.

JAMES HICKMAN -- DIRECT -- MR. MADSEN

117

1 Q So when you say crime scenes, how long have you
2 been working at the Sheriff's Department?

3 A Approximately 15 years.

4 Q And how long have you been doing crime scenes?

5 A A little over 30.

6 Q So you are the C.S.I. guy?

7 A Yes, sir.

8 Q Like the T.V. show?

9 A Well, not quite but, yes, sir.

10 Q Is there a little bit of difference in the reality
11 of what you do and kind of what you see on that
12 T.V. show?

13 A Yes, sir, there is.

14 Q Would you like to be able to do some of the things
15 they can do?

16 A Yes, sir, I would like to work a crime scene and
17 complete everything and have it all done in an
18 hour.

19 Q Back on December 19, 2001, were you working for
20 Lexington County in crime scene back then?

21 A Yes, sir, I was.

22 Q Did you have an occasion to be become involved in
23 this case?

24 A Yes, sir.

25 Q Could you tell the jury about how you become

1 involved.

2 A Yes, sir. I was on call for I.D. and I received a
3 call from dispatch, and they dispatched me to this
4 address, which is Drive.

5 Q At whose request did you go out to Lane Drive?

6 A Dispatch is the one that called me, and I am
7 assuming the request come from major crimes.

8 Q Sergeant Frier is a part of major crimes?

9 A Yes, sir.

10 Q When you get out there, what do you do?

11 A Normally when I first arrive, I try to talk to the
12 first officer or one of the investigators to
13 determine exactly what happened. Then once I find
14 out a brief description of the incident, I go into
15 the crime scene and walk through it and just look
16 around and see what I can see and see the things
17 that who I have talked to has talked about.

18 I make my notes as to where these items are
19 located and what they are and any other thing I
20 happen to see. I'm also looking at that time for
21 any safety things, like something that might could
22 hurt me.

23 Once I have done that, then I come back and
24 get a video camera or a 35, which we do both, and
25 go back in and take pictures of the scene, just

JAMES HICKMAN -- DIRECT -- MR. MADSEN

119

1 like I saw it when I first walked through.

2 I do 35-millimeter stills and I do a video of
3 it. Once I have completed this, I go back into the
4 scene again and this time I put identifying marks,
5 like one, two, three on places with evidence that I
6 will seize.

7 I use A.B.C.s on other items which I am not
8 going to seize, and it's just something I want to
9 draw your attention to. Then I go back and
10 rephotograph the scene again.

11 Once this is completed, then I go back in and
12 collect each one of these items that I have
13 identified and photographed. I mark them, tag
14 them, and bag them.

15 Then once I have finished all of that, we walk
16 back through it again to see if I have missed
17 anything. Usually I get one of the investigators
18 or somebody else to walk through also and determine
19 if anything else needs to be done.

20 Q And do you recognize the diagrams in State's
21 Exhibit Number 1 and State's Exhibit Number 2?

22 A Yes, sir, I do.

23 Q Where was that?

24 A The lower one is the interior of the trailer at
25 Drive, and the other one is the outside of the

1 same address.

2 Q When you get there, is there one of these two
3 diagrams that basically is kind of your focus area?

4 A Yes, sir, the lower one is what I'm focused on, on
5 the inside of the trailer.

6 Q You actually -- what do you notice when you first
7 get into this trailer in State's Exhibit Number 2?

8 A When I first walked in, I smelled gasoline. I am
9 looking around to determine where the origin is. I
10 couldn't find any spills or anything where I could
11 definitely say that there was gasoline there, but
12 there was just an odor of it.

13 As I progressed back to the north end of the
14 trailer, which is the master bedroom, and on this
15 diagram it's the far one, it gets a little stronger
16 in there; but I never could find out where it was
17 coming from.

18 Q So you smell gasoline stronger in bedroom number
19 one?

20 A Yes, sir.

21 Q What else do you do? Once you get inside, what did
22 you do next?

23 A Once I got inside, I identified each one of the
24 areas that I want to collect, and I photographed
25 and marked them and collected them.

JAMES HICKMAN -- DIRECT -- MR. MADSEN

121

1 Q Let me show you State's Exhibit Number 5, number 7,
2 and Number 8 and ask if you recognize those.

3 A Yes, sir, I do.

4 Q What are those photographs of?

5 A State's Exhibit Number 7 is a photograph of the
6 living room floor, showing the blood and a couple
7 other items that I found on the living room floor.
8 You can see from this photograph where the letter
9 F. is at, that is a blood stain on the middle of
10 the floor.

11 To its right where E. is at, E. was a
12 impression which I felt was a shoe print when I
13 first saw it; but later on I got to looking at it,
14 and it wasn't. I don't know exactly what it was.
15 It was blood. That was right next to a Christmas
16 tree.

17 Then number one is a Sony Game Boy or one of
18 those little games that you play, and it was drug
19 off; and there is a little bit more blood there.
20 Then over on the left-hand side, you can see letter
21 G. I think that's the ottoman to the coach, and it
22 has some blood on it.

23 Q Let me show you this area that I have got the laser
24 pointer on, what is that?

25 A That is the entrance where I come in, the front

1 door.

2 Q Where is it on here?

3 A May I?

4 MR. MADSEN: Judge, may he step down?

5 THE COURT: Yes, sir.

6 (Witness leaves the witness stand).

7 BY MR. MADSEN:

8 Q Go ahead.

9 A The area he pointed out is this door here
10 (indicating), this being the front going in. The
11 blood stain and everything was right in here
12 (indicating).

13 The shoe track or what I called the shoe track
14 to start with, the other blood, was here
15 (indicating). Off this end (indicating) of the
16 couch -- it was a sectional couch -- that's where
17 that stain was. That photograph was taken from the
18 kitchen area looking back towards the front door.

19 Q Let me show you State's Exhibit Number 5. What is
20 that a photograph of?

21 A This is again in the living room and dining room.
22 This one I was standing basically at the front door
23 and taking a picture towards the inside. Again,
24 you can see the blood on the floor, the blood on
25 the couch area there.

JAMES HICKMAN -- DIRECT -- MR. MADSEN

123

1 The one that you can't distinguish what it is
2 on the left is under the Christmas tree. That was
3 the one that had the bloody -- what we thought was
4 the footprint.

5 Back in the background you will see on this
6 section (indicating), there on the right-hand side
7 the little counter that comes out, that is the
8 letter I. That's where the telephone was at or the
9 telephone cradle, not the phone itself.

10 Q Let me show you State's Exhibit Number 8. That is
11 just, I guess, a close-up of that area?

12 A Yes, sir, that's a close-up of the blood stain
13 itself. You can also see the PlayStation -- not
14 the station but the hand things to play with the
15 Game Boy.

16 Q Can I get you, on State's Exhibit Number 2, to put
17 where that large stain is.

18 A (Witness complies). It would be almost in the
19 middle of the room closer to the front of the T.V.
20 set and close to the Christmas tree. Up on the top
21 of this photograph, that's the Christmas tree with
22 the presents around it.

23 Q Let me show you what has been marked without
24 objection as State's Exhibit Number 9. What is
25 that a photograph of?

1 A That's a photograph of the kitchen area. You can
2 see -- to orient you a little bit -- the Christmas
3 tree is on the left. The Christmas tree is here
4 (indicating), and this (indicating) is the kitchen
5 area back over towards the stove, the sink, and the
6 refrigerator.

7 Q Let me show you State's Exhibit Number 10.

8 A This is the dining room area. On the chart it
9 would be in this area (indicating) where the dining
10 room is at. You can see, I think there's three
11 plastic bags, groceries bags, on the table. You
12 can also see what looked like two Ziploc bags of
13 hamburger meat just sitting there on the table.

14 Q That area that is in State's Exhibit Number 10 is
15 where on here?

16 A Right in this area here (indicating).

17 Q As far as the groceries, what condition were they
18 in?

19 A The meat was thawing. They had been sitting there
20 quite a while. If I remember correctly, there was
21 some frozen goods in the bags, and they were all
22 completely thawed.

23 Q Let me show you State's Exhibit Number 11. Did you
24 find anything with or in reference to those
25 groceries?

JAMES HICKMAN -- DIRECT -- MR. MADSEN

125

1 A Yes, sir. In one of the bags, there was a grocery
2 receipt from Shumpert's Grocery, Shumpert's I.G.A.

3 Q Let me show you what has been marked as State's
4 Exhibit Number 36. Do you recognize that?

5 A Yes, sir, I do.

6 Q What is that?

7 A This is the grocery list from Shumpert's I.G.A. or
8 the receipt that you see in this photograph.

9 Q On that grocery list, when were those groceries
10 purchased? Do you want to look at this picture?

11 A Yes sir, this one is sort of faded. It's 12/19/01
12 at -- I believe it says 1:11 p.m.

13 Q Are you familiar with where Shumpert's Grocery is
14 in Pelion?

15 A Right downtown, right in the middle of town.

16 Q Any idea how far it is from this house?

17 A No, sir.

18 Q Did you notice anything when you were inside of
19 that mobile home in reference to any type of
20 projectiles, casings or fragments?

21 A Yes, sir. On the top of the refrigerator, it was
22 pointed out to me earlier. There was a shell
23 casing and a bullet that someone had found and
24 placed there. There was also --

25 Q Let me stop you there. Let me show you State's

1 Exhibit Number 13.

2 A Yes, sir.

3 Q Do you recognize that photograph?

4 A Yes, sir, that's the refrigerator in the kitchen.

5 You can just barely see sitting up on top of it,
6 sort of the right-hand side the shell casing.

7 Q That area right there (indicating)?

8 A Yes, sir, that's the shell casing stuck up there.

9 Q Let me show you what has been marked as State's
10 Exhibit Number 14.

11 A That would be on the same refrigerator just a
12 little bit closer up where you can see the shell
13 casing, which is on your right-hand side and the
14 bullet itself which is on the left-hand side.

15 Q Was it your understanding that those are the ones
16 that the witnesses had found?

17 A Yes, sir. It was my understanding that the witness
18 had found them in the kitchen area and placed them
19 there.

20 Q Let me show you State's Exhibit Number 3 -- or
21 excuse me -- State's Exhibit Number 38. Do you
22 recognize that in relation to these two
23 photographs, State's Exhibit Number 14 and State's
24 Exhibit Number 13?

25 A Yes, sir, I do.

JAMES HICKMAN -- DIRECT -- MR. MADSEN

127

1 Q What is that?

2 A This is the shell casing and the bullet that was
3 recovered from the top of the refrigerator.

4 Q So that's the bullet and shell casing that is in
5 this picture?

6 A Yes, sir.

7 Q Could you take this and on State's Exhibit Number 2
8 place where you recovered State's Exhibit Number 38
9 from.

10 A (Witness complies). It was on top of the
11 refrigerator, sort of closer to the right-hand side
12 than anywhere else.

13 Q And you are somewhat familiar with firearms and
14 bullets and casings through your work; is that not
15 correct?

16 A Yes, sir.

17 Q How would you classify this shell casing and bullet
18 that were on there?

19 A It's a fired shell casing and a fired bullet. I
20 think it's a .380.

21 Q And did you find anymore --

22 A Yes, sir, I did.

23 Q -- shell casings and/or spent bullets?

24 A Yes, sir. There was a bullet that was found under
25 the dining room table, and there was a metal

1 fragment that was found a little bit further in the
2 dining room area, I believe.

3 Q Let me show you State's Exhibit Number 15.

4 A Yes, sir.

5 Q Do you recognize that?

6 A Yes, sir, that's the bullet that was found under
7 the dining room table.

8 Q Let me show you State's Exhibit Number 16. Is that
9 a closer-up picture?

10 A Yes, sir, that's just closer up showing the bullet
11 itself.

12 Q Let me show you what has been marked as State's
13 Exhibit Number 39. Do you recognize that?

14 A Yes, sir, I do.

15 Q And what is that?

16 A This is the bullet that I found under the table.

17 Q So that is this bullet in State's Exhibit Number 15
18 and State's Exhibit Number 16?

19 A Yes, sir.

20 Q You had testified as to smelling gas. Were you
21 able to find any area in the house as far as any
22 burning?

23 A Yes, sir. As you leave the kitchen/dining room
24 area and going down the hall towards the master
25 bedroom, which is on the north end of the trailer,

JAMES HICKMAN -- DIRECT -- MR. MADSEN

129

1 right at the corner of the hallway at the floor
2 level, there was a burned area there.

3 Q Let me show you State's Exhibit Number 17. Do you
4 recognize that?

5 A Yes, sir, I do.

6 Q What is that?

7 A That is the burned area that I just spoke of that
8 is located at the corner. If you look around,
9 there is a cabinet there. The cabinet itself is in
10 the kitchen and right next to the refrigerator.

11 Q With that black pen can you kind of put a line on
12 State's Exhibit Number 2 as to where this burned
13 area on State's Exhibit Number 17 is.

14 A It was right along in this area (indicating).
15 Actually this cabinet here (indicating) comes all
16 the way out to the wall level, and the burned area
17 was right here (indicating).

18 Q Draw a line to that and put burn.

19 A (Witness complies).

20 Q When you go into a crime scene like this, you had
21 said that you kind of try to look for dangers to
22 yourself. What kind of worries would the smell of
23 gas and/or seeing something burned cause you as
24 just the investigator going in there?

25 A (Witness resumes the witness stand). The first

1 thing is gas, when it gets in a confined area, it
2 can be very bad for your health. It can actually
3 make you become unconscious and it can hurt you.

4 So that was one of my concerns. If there is
5 gas there, there is usually a fire. If there is a
6 fire, has the fire gone out and will it rekindle
7 while I'm there?

8 Those are things -- and I hate to be in a
9 burning building. So I want to make sure. There
10 is blood in the house, bullets have already been
11 found that I knew about. Is there a gun somewhere
12 and is it safe or not safe?

13 Q And let me show you State's Exhibit Number 19. Do
14 you recognize that photograph?

15 A Yes, sir.

16 Q Which bedroom does that photograph come out of?

17 A That's in the master bedroom, the one on the north
18 end of the trailer.

19 Q How about State's Exhibit Number 20, do you
20 recognize that photograph?

21 A Yes, sir, that's the closet in the master bedroom.

22 Q Were you able to determine from State's Exhibit
23 Number 20 whether those were male or female
24 clothes?

25 A Those were female clothes, and I think there is a

JAMES HICKMAN -- DIRECT -- MR. MADSEN

131

1 child's coat hanging in there, too.

2 Q These are from State's Exhibit Number 2, what is
3 known as bedroom number one?

4 A Yes, sir.

5 Q Let me show you State's Exhibit Number 18. Do you
6 recognize that?

7 A Yes, sir.

8 Q What is that a photograph of?

9 A That is the -- you can see on the right-hand side,
10 that's the sectional couch. That is the game
11 station or playboy (sic), whatever it is called.
12 If you look at it, you will see the cord which runs
13 up towards the lower end of the photograph and back
14 around.

15 The cord itself has blood on it. The Game Boy
16 and the control handles does not. Also the thing
17 that is on one side, on the opposite side from
18 where the chair is at or the couch, is the T.V.
19 set. It's sort of dark colored.

20 Q Let me show you State's Exhibit Number 12 and ask
21 if you recognize this.

22 A Yes, sir, I do.

23 Q What is that?

24 A That is a fragment or a piece of bullet that I
25 found. It was located in the -- sort of in the

1 kitchen/dining room area but more in the living
2 room than anywhere else. It's right along the line
3 there.

4 Q And I believe that was State's Exhibit Number 12.
5 Let me show what has been mark as State's Exhibit
6 Number 37.

7 A Yes, sir, this is the metal fragment which I found
8 in that location.

9 Q So that's this (indicating) in State's Exhibit
10 Number 12?

11 A Yes, sir.

12 Q Could you please take and mark where you found that
13 on here.

14 A (Witness leaves the witness stand and complies).

15 Q Can you write fragment.

16 A (Witness complies).

17 Q And how about jump back to the one you had found,
18 could you just put bullet in casing.

19 A (Witness complies).

20 Q And let me show you again State's Exhibit
21 Number 15.

22 A Yes, sir.

23 Q Can you place that?

24 A That would be in this area (indicating), but it's
25 under the table.

JAMES HICKMAN -- DIRECT -- MR. MADSEN

133

1 Q Put that with a line and bullet.

2 A (Witness complies and resumes the witness stand).

3 Q Did you notice anything, Detective Hickman, in
4 reference to the ceiling area here in this living
5 room?

6 A Yes, sir, there was a ceiling fan in the living
7 room. Around the ceiling fan, which is almost
8 directly over the blood that was on the floor,
9 there was blood spattered on the ceiling itself.

10 Q Let me show you State's Exhibit Number 21 and 22.
11 Do you recognize those photographs?

12 A Yes, sir, these are photographs of those blood
13 stains that was on the ceiling.

14 Q The top part what is that right there (indicating)?

15 A That is the base of the ceiling fan and light.

16 Q Using State's Exhibit Number 2, where did you see
17 the blood drops?

18 A (Witness leaves the witness stand). The ceiling
19 fan was approximately in the middle there. It
20 would be this area here (indicating) on the
21 ceiling.

22 Q Can you draw a line and put "Blood drops on
23 ceiling."

24 A (Witness complies).

25 Q Do you recognize anything in reference to this

1 threshold right here (indicating) that leads from
2 that front porch area into the residence?

3 A Yes, sir, there was more blood on the threshold
4 itself which appeared to be where something was
5 drug across it.

6 Q Let me show you what has been marked as State's
7 Exhibit Number 23 and State's Exhibit Number 24.
8 Do you recognize those photographs?

9 A Yes, sir. This is the blood stain or the blood
10 marks that I was just talking about, one is. The
11 other one is the same one, just a little bit
12 closer.

13 Q As far as from that scene, was that pretty much the
14 major items that you collected while you were at
15 State's Exhibit Number 2, at that home?

16 A Yes, sir, it was.

17 Q At some point in time did you happen to go to the
18 autopsy of the victim Jenny Burke?

19 A Yes, sir, I did.

20 Q Let me show you what has been marked as State's
21 Exhibit Number 40. Do you recognize that?

22 A Yes, sir, I do.

23 Q What is that?

24 A This is the bullet that was retrieved from
25 Mrs. Burke at the autopsy.

JAMES HICKMAN -- CROSS -- MR. NETTLES

135

1 Q Do you recall where that bullet was retrieved from?

2 A It come out of her head.

3 Q Could you please answer any questions that
4 Mr. Nettles has.

5 THE COURT: Cross.

6 MR. NETTLES: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. NETTLES:

9 Q Detective Hickman, you got to the crime scene on
10 what, the 19th, the same day that it happened, I
11 think?

12 A Yes, sir.

13 Q And whenever you got there, the crime scene tape
14 was around it and everything?

15 A Yes, sir.

16 Q I am showing you what has been marked Defense
17 Exhibit 3. Did you take that picture?

18 A Yes, sir.

19 Q Is that the same television and Christmas tree that
20 is on this display here?

21 A Yes, sir, it is.

22 Q Defense Exhibit 4, is that the same blood marked
23 television and Christmas tree that is on State's
24 Exhibit Number 2?

25 A Yes, sir, it is.

1 Q This Defense Exhibit 1 -- I mean -- Defense Exhibit
2 for I.D. purposes Number 1. That's Defense Exhibit
3 1, I believe?

4 A Yes, sir, Defense 1.

5 Q Is that this item right here (indicating)?

6 A Yes, sir, I think so.

7 Q Which is in bedroom number one?

8 A In the master bedroom.

9 Q And Defense Exhibit 2 for I.D., that's also another
10 picture of what was in bedroom number one right
11 over here (indicating)?

12 A Yes, sir.

13 Q This is the room where you smelled the strongest
14 concentration of gasoline?

15 A Yes, sir.

16 MR. NETTLES: At this time, Your Honor, the
17 defense would move to introduce Defense Exhibit for I.D.
18 1, 2, 3, and 4.

19 THE COURT: Just for identification right now?

20 MR. NETTLES: No, they have already been
21 marked for I.D. I move them into evidence at this
22 point.

23 THE COURT: Any objection?

24 MR. MADSEN: No objection.

25 THE COURT: Without objection.

JAMES HICKMAN -- CROSS -- MR. NETTLES

137

1 (Defendant's Exhibits Number 1-4 are received
2 into evidence).

3 BY MR. NETTLES:

4 Q Now this right here (indicating), and I am talking
5 about Defense Exhibit 3, this big Confederate flag
6 that is in this picture right here (indicating)?

7 A Yes, sir.

8 Q This big Confederate flag right here (indicating)
9 is flying behind the big screen T.V.?

10 A Yes, sir.

11 Q And then this other Confederate flag that is on
12 Defense Exhibit 4; is that right?

13 A Yes, sir.

14 Q That Confederate flag is laying over the top of
15 like the V.C.R. and stuff that is sitting on top of
16 the T.V.; is that right? Is that what that is? Is
17 that like a V.C.R. or D.V.D. player?

18 A Yes, sir, I think it is.

19 Q Something that puts stuff on the T.V.?

20 A Yes, sir.

21 Q Now this right here (indicating), that was in the
22 master bedroom, Defense Exhibit 2, what is that up
23 there at the top up there?

24 A It's a photograph -- well, no, sir, it's not a
25 photograph, but it's a...

1 Q Like a mirror?

2 A A mirror or an image or something with a tree and
3 some people around it.

4 Q Okay. Do you remember seeing that when you were in
5 there?

6 A I'm sure I did; but, no, sir, I don't remember.

7 Q I mean, it was a while ago?

8 A Yes, sir.

9 Q But there is no dispute in your mind that this,
10 which is Defense Exhibit 2, and this, which is
11 Defense Exhibit 1, that this mirror, sort of
12 mural kind of thing, was right here in the master
13 bedroom; right?

14 A Yes, sir.

15 Q And that's right here (indicating)?

16 A Yes, sir.

17 Q But you don't recall exactly what that mural is of,
18 do you?

19 A No, sir, I don't.

20 Q But it was a tree?

21 A It appears to be a tree and appears to be some
22 people around it. Then the bright spot in the
23 middle, I believe, is the reflection from my flash
24 when I took the picture.

25 Q Do you remember what the people standing around the

JAMES HICKMAN -- CROSS -- MR. NETTLES

139

1 tree were wearing?

2 A No, sir.

3 Q Did they have anything on their heads?

4 A It looks like they've got cone-shaped hats and
5 robes.

6 Q Robes?

7 A Or dresses.

8 Q Right, right.

9 A Yes, sir.

10 Q Right. Would you agree with me that this is a
11 blow-up of that? This is a blow-up of that?

12 A Yes, sir.

13 Q I mean, it's just a bigger picture of what I just
14 showed you in Defense Exhibit 1 and 2?

15 A It's of one of them. I don't remember which one it
16 is; but, yes, sir, it is.

17 MR. MADSEN: Can I see that, Judge?

18 MR. NETTLES: Sure.

19 MR. MADSEN: Judge, I think we might have a
20 matter of law.

21 THE COURT: Ladies and gentlemen, let me ask
22 you to step to the jury room just for a moment. While
23 you are there, be sure not to talk about the case,
24 please.

25 (The jury retires to the jury room).

1 THE COURT: The jury is secured. Go ahead,
2 Mr. Madsen.

3 MR. MADSEN: Judge, I would object. I think
4 he has got the small photograph in, but the large
5 photograph, I think under Rule 403 -- I don't quite,
6 first of all, understand the relevance.

7 Second of all, if Mr. Nettles is kind of going
8 where I think he is going, I still don't see the
9 relevance; but I think it's just there to confuse the
10 jury.

11 He can certainly explain himself, but I think
12 basically what he is trying to say is that whatever is
13 in this is potentially, I guess, depicting the Klan. I
14 don't understand in a murder where somebody breaks into
15 a house where this quite honestly is relevant.

16 I mean, if he can later establish some nexus,
17 maybe it does become relevant or not prejudicial; but I
18 don't know if he has established that at this point in
19 time.

20 THE COURT: Where are you going with it,
21 Mr. Nettles?

22 MR. NETTLES: Well, Your Honor, Defense 1 and
23 2 are in evidence. They are in evidence.

24 THE COURT: Right.

25 MR. NETTLES: All that is is a blow-up. I

1 just don't have the opportunity, I would point out, I
2 just don't have the opportunity to blow up all of my
3 stuff. All I have done is taken a picture that is in
4 evidence.

5 THE COURT: Yes, sir.

6 MR. NETTLES: And admittedly by the witness
7 it's nothing but a blow-up of that, which is exactly
8 what they have done with every piece of evidence they
9 have moved in, in that they have taken it and put it up
10 on a screen so people can see it; and I have done the
11 same thing.

12 MR. MADSEN: I think the stuff I have put in,
13 Your Honor, we have showed, even though stipulated to by
14 the defense, we have still shown relevance. I don't
15 think he has.

16 Even if we get past that threshold, my
17 objection would be at this point in time that it's just
18 not appropriate. It's meant to confuse the jury.

19 THE COURT: I gather, Mr. Nettles, that one of
20 your aims is basically a lesser included of probably
21 manslaughter? Do I gather that?

22 MR. NETTLES: Yes, sir.

23 THE COURT: Some form of dementia or
24 disturbance defense or something?

25 MR. NETTLES: It's not dementia. The

1 solicitor and I talked about that.

2 THE COURT: Disturbed rather.

3 MR. NETTLES: What is part of my defense --
4 and we will kind of see how it goes. We are early in
5 the State's case.

6 THE COURT: Right.

7 MR. NETTLES: But these are pictures that, you
8 know, the government has chosen to show pictures of, you
9 know, stockings hung by the chimney with care. They
10 want to put in the Christmas tree.

11 They are trying to show this as being the
12 idyllic household. It was a perfect place for children
13 to be raised. And for some reason my client came in
14 there and killed people.

15 The situation is that household was a very
16 different place. The fact of what my client saw was
17 going on in that household disturbed him and caused him
18 to -- and what his children were being exposed to.

19 I believe it's very relevant. I believe it's
20 a crucial part of our defense. This individual took the
21 pictures. I would also point out that Defense 1 and 2,
22 which these are blow-ups of, have already been moved
23 into evidence. I moved them into evidence. They didn't
24 say anything. I showed a blow-up.

25 THE COURT: What about that, Mr. Madsen?

1 MR. MADSEN: Judge, I guess if he's getting to
2 a heat of passion type thing, I mean, case law is pretty
3 clear that words are not enough without any type of
4 action.

5 If words are not enough, then clearly I don't
6 see that a photograph -- and Your Honor has seen it --
7 is going to be enough. I have kind of got an idea where
8 Mr. Nettles is going.

9 If we travel down that path, then we might
10 need to go -- I know Mr. Burke has a tattoo with S.S.
11 apparently somewhere on his body. I don't know if he
12 wants to -- I just don't think it's relevant. I think
13 we are going down a path that we don't need to be going
14 there.

15 THE COURT: I understand that. Counsel, just
16 going from -- and I realize opening statements are not
17 evidence -- but just going by what Mr. Nettles said in
18 opening statements and basically what has come out to
19 some degree in the child's testimony, there is at least
20 some indication that the defense is going along the
21 lines of the Defendant's concern for his children.

22 I don't know where he is going. I assume part
23 of the concern is that the children are being raised in
24 a home, in a house, where the Klan has some sort of
25 presence.

1 I note also that the witness had some trouble
2 on the regular size picture identifying whatever it was
3 in the photo. I think it's really up to the jury to
4 decide this.

5 I don't normally allow blow-ups. I will do it
6 this time though because it will obviously give them a
7 better chance to decide as a factual issue whatever this
8 is and how this affects the case. I think it's
9 appropriate as a jury issue. I will let it in.

10 MR. MADSEN: Thank you, Your Honor.

11 THE COURT: Anything else?

12 MR. NETTLES: Nothing, Your Honor.

13 MR. MADSEN: No, Your Honor.

14 COURT REPORTER: Judge, do you want me to mark
15 that as an exhibit?

16 THE COURT: Yes.

17 (Defendant's Exhibit Number 5 is received into
18 evidence).

19 THE COURT: Bring the jury.

20 (The jury returns to the courtroom).

21 THE COURT: All parties and attorneys are in
22 the courtroom, and all jurors have returned.

23 Counsel, as I indicated a moment ago, I will
24 allow the blow-up to be admitted.

25 MR. NETTLES: Thank you, Your Honor.

JAMES HICKMAN -- CROSS -- MR. NETTLES

145

CROSS EXAMINATION

BY MR. NETTLES:

Q It's investigator, right? I just want to make sure I don't promote you or demote you.

A That's fine. Identification officer is the correct title, but I answer to most anything.

Q Can I call you investigator?

A Yes, sir.

Q Investigator, this is a blow-up of Defense 1 and 2?

A It's a blow-up of one of those photographs.

Q Fair enough. That's very fair. That's very fair. Defense 5 is a blow-up of Defense 2?

A Yes, sir.

Q And this was in the master bedroom?

A Yes, sir.

Q Number one. And it was kind of right there, not very far from where the burn mark was you found; right?

A If you look down the hallway, that's the hallway leading back into the kitchen, the kitchen/dining room. There is an air conditioner in the window. You can almost see the table. But where the table is at is where the burn mark was at.

Q Right here (indicating) is where that picture is, right here (indicating)?

1 A Yes, sir.

2 Q Right here (indicating), and I am referring to
3 State's Exhibit Number 2. Right here (indicating)
4 is where the burn mark was?

5 A Yes, sir.

6 Q Right in here (indicating) is where the strong odor
7 of gasoline was?

8 A Yes, sir.

9 Q Now, these pictures that you took of -- and I am
10 referring to State's Exhibit 22 and State's Exhibit
11 21.

12 A Yes, sir.

13 Q They were taken off the ceiling up here
14 (indicating)?

15 A Yes, sir, in the living room.

16 Q And while certainly they are red, there was no
17 testing done on those to determine whose blood that
18 was?

19 A That I cannot answer. To the best of my
20 recollection, I took a sample of them. Whether
21 they were --

22 Q Tested or not you don't know?

23 A No, sir.

24 Q You hit it with a swab?

25 A Yes, sir.

JAMES HICKMAN -- CROSS -- MR. NETTLES

147

- 1 Q And the reason you hit it with a swab was so you
2 could then send it to S.L.E.D.?
- 3 A S.L.E.D.
- 4 Q Or the F.B.I. or whoever is doing the testing?
- 5 A Yes, sir.
- 6 Q And it was your hope that they could then tell
7 you -- while they couldn't tell you how long that
8 blood had been there, they could tell you -- they
9 could type it for you?
- 10 A They could tell me it was blood, yes, sir.
- 11 Q But they couldn't tell you how long it had been
12 there?
- 13 A No, sir, I don't think so.
- 14 Q Now, this (indicating) was this right here
15 (indicating), this being State's Exhibit 17, right
16 here (indicating) on the corner?
- 17 A Yes, sir.
- 18 Q Now, this right here (indicating), State's Exhibit
19 7. Is that State's Exhibit 7?
- 20 A Yes, sir.
- 21 Q State's Exhibit 7. That blood has got what we
22 call -- it looks like there was some dragging
23 involved with that, right?
- 24 A Yes, sir.
- 25 Q In other words, what that could be, one explanation

1 for that is that the person fell, bled, and then
2 was dragged?

3 A Yes, sir.

4 Q And that's also consistent with what we have got --
5 that's also shown here in State's Exhibit 8?

6 A Yes, sir.

7 Q And that's actually a little bit better picture of
8 the dragging, right? Certainly it is shown here by
9 State's Exhibit 24, which is the picture you took
10 of the threshold?

11 A Yes, sir.

12 Q And those are also drag marks, right?

13 A Yes, sir.

14 Q As is 23?

15 A Yes, sir.

16 Q Now, I want to clear up one thing. At one point
17 you said that there was a Game Boy. I believe you
18 said playboy. You meant to say Game Boy, didn't
19 you?

20 A It was one of those things. I don't know the
21 difference.

22 Q It was a game, right?

23 A Yes, sir.

24 MR. NETTLES: I have no further questions.

25 Thank you very much.

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

149

1 THE COURT: Redirect?

2 MR. MADSEN: I don't have anything else for
3 Investigator Hickman.

4 THE COURT: You can step down. Thank you,
5 sir.

6 MR. MADSEN: Your Honor, the State would call
7 Sergeant Scottie Frier.

8 SCOTTIE RICE FRIER, being
9 first duly sworn, testified as follows:

10 CLERK: Have a seat and state your full name,
11 please.

12 THE WITNESS: My full name is Scottie Rice
13 Frier, F-R-I-E-R.

14 DIRECT EXAMINATION

15 BY MR. MADSEN:

16 Q Sergeant Frier, where are you employed?

17 A I am currently employed with the Lexington County
18 Sheriff's Department.

19 Q And how long have you been employed there?

20 A I have been at the Sheriff's Department since 1987.

21 Q And in what capacity are you currently employed?

22 A I currently serve as the supervising sergeant over
23 the violent crimes or the major crimes unit at the
24 Sheriff's Department.

25 Q And when we talk about major crimes, what are we

1 talking about?

2 A Those are classified as violent crimes against
3 individuals. They include armed robbery, murder,
4 criminal sexual assault, kidnapping.

5 Q Were you on duty December 19, 2001?

6 A Yes, sir, I was. I was on call as an investigator
7 within the major crimes unit at the Sheriff's
8 Office.

9 Q And when you got a call as the major crimes
10 investigator, where did you go?

11 A I responded to Drive which is located in
12 the Pelion area of Lexington County, South
13 Carolina.

14 Q And when you got there, what did you find?

15 A I initially met with Master Deputy Walters.
16 Originally we were looking at this as a missing --
17 or we were being given information of a possible
18 missing person.

19 A young man had come home, found some disarray
20 within the residence. There was some blood
21 evidence found, and he was not able to account for
22 his girlfriend and some children that should have
23 been with her.

24 Q And so when you get there, you start -- you talk
25 with Deputy Walters first, I guess?

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

151

1 A That's correct.

2 Q What do you do? Once you kind of get an idea with
3 her, kind of tell the jury what your role is, what
4 you are doing.

5 A When Ms. Walters brings my attention to several
6 items of evidence inside the home, our initial
7 concern is having our crime scene personnel come in
8 and process and preserve that evidence.

9 We've also got a secondary concern of trying
10 to locate this woman who is supposed to be home and
11 these children that she is supposed to have with
12 her.

13 So we are kind of going in a twofold direction
14 at this point. One thing is we have got to
15 preserve what we have here and try to see what
16 evidentiary value is in that. Then we have also
17 got to try to locate these people out of a concern
18 for their well-being based on the evidence that we
19 see inside the home.

20 Q Once Investigator Hickman gets done doing his job,
21 what do you do with him?

22 A I will then go back through the crime scene with
23 him and review what evidence he has either found,
24 documented, located, collected, made note of, and
25 try to see how that correlates into what we

1 understand is taking place at this time.

2 Q And you are the lead investigator on this case,
3 correct?

4 A That is correct, sir.

5 Q Once you had walked that crime scene with
6 Investigator Hickman and see what he has found,
7 what do you know?

8 A There is a pool of blood that is located on the
9 floor. It is of sufficient quantity to lead us to
10 great concern for someone's well-being. There is
11 also evidence that several rounds have been
12 discharged from a firearm.

13 There is some evidence that someone has
14 suffered a gunshot wound inside the home and that
15 that someone who has suffered a wound has been
16 removed from the residence. There is also some
17 indication that someone has attempted to set fire
18 to the residence, presumably or possibly to destroy
19 what evidence we have found.

20 Q And as far as what you know, did Jenny Burke and
21 her kids -- how did they leave?

22 A There was some evidence found at the scene to
23 suggest there had been another vehicle at the scene
24 that we did not find upon our arrival.

25 Q How about Jenny Burke's car?

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

153

1 A Jenny Burke's vehicle is there or what I understand
2 to be her vehicle is there.

3 Q And when you say something about another vehicle,
4 do you walk kind of outside of that trailer in
5 State's Exhibit Number 2?

6 A Yes, sir. We walk and then have our bloodhound
7 unit or our tracking units come and really scour
8 that entire perimeter in hopes of finding
9 Mrs. Burke or those children.

10 Q And did you have that done?

11 A That was done, both by myself and by other agents.
12 I was a part of a great portion of that search.

13 Q And when you are on the outside -- let me show what
14 has been marked as State's Exhibit Number 1. Do
15 you notice anything in reference to the outside of
16 that residence in State's Exhibit Number 1?

17 A Yes, I do.

18 THE WITNESS: Your Honor, may I step down and
19 point something out?

20 THE COURT: Yes, sir, you sure may.

21 THE WITNESS: Thank you.

22 A (Witness leaves the witness stand). Yes, sir, I
23 do. There are what appear to be vehicle tracks.
24 There is at least one vehicle that is right here
25 (indicating) around the front of the residence.

1 There are some vehicle tracks that come off of
2 this driveway area, if you will, and produce what
3 we refer to as lay down in the grass. It indicates
4 that tire tracks come back around to an area that
5 would be somewhere around this area (indicating) of
6 the mobile home.

7 Q Let me show you State's Exhibit number 3 and
8 State's Exhibit Number 4. Do you recognize those
9 photographs?

10 A Yes. Those photographs that you are holding up,
11 they denote this area. They denote vehicles in
12 this area right here (indicating).

13 Q And where do you see this lay down?

14 A This lay down goes back from this driveway
15 (indicating), back over in this area (indicating).
16 There is some evidence that a vehicle may have even
17 been staged or spent some time in this area right
18 here (indicating).

19 Q And if I am coming in from this driveway, that lay
20 down that you see back there, what does that lead
21 you to believe?

22 A There's a couple things significant about that.
23 There is no indication that there is a common area
24 where vehicles are parked. There is no dying of
25 grass or any bare areas where you think the cars

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

155

1 park.

2 The other thing that seems to be real
3 significant is that if you are entering this
4 driveway and coming to here (indicating), you are
5 not going to see that car.

6 What appears to be the common travel in and
7 out of that residence suggests that when they stop
8 here (indicating), they would travel straight in
9 and out of the house. Unless you drove somewhat
10 into this area (indicating), you would not know
11 that car is back there.

12 Q Can you mark on there and put lay down or grass lay
13 down?

14 A (Witness complies). That lay down at some point in
15 time appears to go completely around the residence,
16 as though that was the path that the vehicle
17 eventually takes out.

18 Q So once you do that walk down and you scout the
19 perimeter and you don't find anyone, you are
20 obviously talking with a lot of people there;
21 correct?

22 A Yes, sir. At that point in time I am somewhat
23 orchestrating where we are going with the different
24 facets of the investigation.

25 Q Based on you talking with people there, is there

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

156

1 someone who you want to talk with?

2 A Yes, sir. Through the course of the investigation
3 and doing some background as it relates to Jenny
4 Burke, the woman who was supposed to be at the
5 home, we understand that she has an estranged
6 husband, Roger Dale Burke.

7 MR. NETTLES: Objection. I object to the
8 characterization of estranged.

9 THE COURT: Sustained, just rephrase it.

10 THE WITNESS: Yes, sir.

11 A She is currently separated from her husband, who is
12 identified to us as Roger Dale Burke.

13 Q Were you able to account for Mr. Burke's
14 whereabouts?

15 A No, sir, we were not. To the extent that we were
16 actually able to speak that night to his parents,
17 they were not able to account for his whereabouts.

18 Q At some point in time that y'all get done or get
19 everything out that you need at this residence,
20 what do y'all do next?

21 A We then leave and continue efforts to try to locate
22 Roger Burke, Jenny Burke or the three children that
23 we are still not able to account for at this time.

24 Q Let me show you what has been marked as State's
25 Exhibit Number 23 and 24. Do you recognize those?

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

157

1 A Yes, sir, that is some blood evidence that myself
2 and Detective Hickman made note of while we were in
3 the crime scene.

4 Q As far as that blood evidence, do you have any kind
5 of specific training in reference to blood
6 evidence?

7 A Yes, sir, I am specifically trained as a blood
8 stain analyst.

9 Q As far as a blood stain analyst, what kind of
10 training do you have?

11 A I have extensive training, specifically in the area
12 of blood stain analysis. Then I have a sufficient
13 quantity of training as it relates to areas
14 associated with that to contain blood stain
15 evidence, crime scene photography, homicide
16 investigation, homicide and sex crime
17 investigation, crime scene processing, crime scene
18 reconstruction, crime scene interpretation.

19 I have approximately 260 hours in those
20 related fields, to go along with approximately 56
21 hours of training specifically for blood stain
22 analysis.

23 MR. MADSEN: Your Honor, I believe at this
24 point in time we would offer him as an expert in blood
25 stain analysis. I believe Mr. Nettles is willing to

1 stipulate.

2 MR. NETTLES: I have and I am.

3 THE COURT: Without objection. Ladies and
4 gentlemen, this witness will be qualified as an expert
5 in the area of blood stain analysis.

6 Remember I told you earlier that you are the
7 judges of the credibility and the weight of the
8 testimony of all witnesses, including experts.

9 An expert is allowed to give an opinion
10 because of his background, training, education or
11 qualification in a particular area.

12 You are not bound by the opinion of any
13 expert. You decide how much weight and credibility to
14 give to that also.

15 Any exception to that charge from the State?

16 MR. MADSEN: No, Your Honor.

17 THE COURT: Defense?

18 MR. NETTLES: None, Your Honor.

19 THE COURT: Go ahead.

20 BY MR. MADSEN:

21 Q State's Exhibit Number 23, do you recognize that
22 photograph?

23 A Yes, sir. Again, that's one of the photographs of
24 a stain of blood that Detective Hickman and I made
25 note of at the crime scene.

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

159

1 Q And I guess 24 is just a little bit more of a
2 close-up?

3 A Yes, sir, that's correct.

4 Q As far as being a blood stain expert, what can you
5 tell from State's Exhibit Number 23 and Number 24,
6 given those blood stains left?

7 A In blood stain we refer to stains or spatter, as
8 was spoken of by Detective Hickman earlier, they
9 are referred to as phenomena. The number of those
10 phenomena have different names.

11 That is referred to a swiping or wiping. As
12 Mr. Nettles aptly described to you, it denotes some
13 type of dragging or movement of either a
14 blood-soaked object or an object being drug or
15 moved through blood.

16 My interpretation of that would certainly be
17 that that does not appear to have been a pool of
18 blood that had an item or an object subsequently
19 moved through it. It appears that somebody soaked
20 with blood had been drug or dragged across that
21 threshold.

22 Q Is that your opinion with a reasonable degree of
23 certainty within your field of blood stain
24 analysis?

25 A Yes, sir.

1 Q At some point in time after you have gathered all
2 the information that you need from there, what do
3 y'all end up doing then?

4 A At that point in time we begin a somewhat massive
5 search for Roger Dale Burke, Jenny Burke, and the
6 three children. Based on the blood evidence that
7 we are seeing there, we have got reason to believe
8 that someone has met with, if not a fatal, a very
9 seriously inflicted wound. The information we have
10 obtained at that point is there is great concern
11 that Mr. Burke may have caused harm to Mrs. Burke.

12 Q So once y'all leave that residence, at some point
13 in time are you called to another residence within
14 Lexington County?

15 A Yes, sir. At some point we get a call to go to
16 Road, still within Lexington
17 County, in that a vehicle that we believe belongs
18 to Roger Dale Burke has been located on this
19 property and that the children may be in that
20 vehicle.

21 Q And do you actually proceed to that
22 Road?

23 A Yes, sir, I do, with a number of other people.

24 Q And when you go there, what do you find?

25 A We find, I believe, it's white with wood grain

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

161

1 siding station wagon. It is parked somewhat close
2 to a mobile home at that address at Calks Ferry
3 Road, and three children are found inside of that
4 vehicle.

5 Q Let me show you what has been marked as State's
6 Exhibit Number 25. Do you recognize that
7 photograph?

8 A Yes, sir, that's the vehicle that we found at Calks
9 Ferry Road or we were led to at Calks Ferry Road.

10 Q Who was in that vehicle at Calks Ferry Road?

11 A There were three small children in there, who I
12 later found out were Brandon, Dalton, and Amber, I
13 believe are those children's names. They are found
14 inside the car.

15 Q How about the status? Is that car running?

16 A No, it's not.

17 Q We are at the next day. So we are in
18 December 20th?

19 A Yes, sir, it's around or very shortly after
20 2:00 a.m. that we are made aware that that vehicle
21 is at Calks Ferry Road. It's 2:00 o'clock in the
22 morning, if you will, on what is now the 20th of
23 December just before Christmas.

24 Q So it's December 20th about 2:00 a.m.?

25 A Yes, sir.

1 Q What's the weather like?

2 A It's cold. It's South Carolina December right
3 before Christmas. It's cool.

4 Q Any adults in sight with those children in that
5 car?

6 A Not at that time. At some point in time we are
7 introduced to a resident from that address; but at
8 the time those children are found in the vehicle,
9 there are no adults present. They are in the car
10 alone with no blankets or cover and the vehicle is
11 not on, and the heat is not running.

12 Q When you take a look inside of that car where there
13 are children, what do y'all do with the children?

14 A The children are taken out of the vehicle. They
15 are subsequently interviewed there on the scene so
16 we can try to gain as much information as they may
17 know about what has happened.

18 They are eventually placed into what is called
19 protective custody. There is an emergency
20 protective custody done where they are turned over
21 to the Department of Social Services for placement.

22 Q When you get there with the kids and see this car
23 or them in this car, do you notice anything
24 significant that you see inside of this car?

25 A I do not find it, but subsequently I am -- it is

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

163

1 pointed out to me a firearm that is in the vehicle
2 and a box that appeared to be the box that a
3 firearm would go into, as when it was purchased.

4 Q Let me show you State's Exhibit Number 47. Do you
5 recognize this?

6 A Yes, sir. That's a map and some further detail of
7 a map of that area in Lexington County that I spoke
8 of, of Drive where the body -- where the
9 incident location took place.

10 Q That is Drive?

11 A That's correct.

12 Q How about where the children were found?

13 A The children were found -- I don't know if we've
14 got it denoted on the map. They were found up in
15 the area of Calks Ferry Road.

16 Q So Calks Ferry Road is somewhere up here
17 (indicating)?

18 A Right, it will be north of this.

19 Q Once y'all interview the children, what do you have
20 done with this car?

21 A That car is seized, if you will, by the Sheriff's
22 Department in that we take possession of it. We
23 have a tow truck come, take possession of the
24 vehicle, transport it to the Sheriff's Department
25 so that it can be held so that we can search it.

1 Because of our belief obviously based on some
2 things that we see initially and what we believe
3 may have taken place out of a concern for the
4 evidentiary value, we are going to hold that,
5 vehicle, secure a search warrant, and then do a
6 thorough processing and search of that vehicle. So
7 it would be taken to the Sheriff's Office to be
8 held there pending that search.

9 Q And did you have that done?

10 A Yes, sir. I directed a deputy who worked in the
11 warrant division at the time to sit with that
12 vehicle and assist in the process of getting it to
13 the Sheriff's Office.

14 Q Once you clear that scene at Road,
15 we are pretty early in the morning hours?

16 A Yeah, we are flirting with daybreak at this point.
17 Once we get the car done and some other issues, we
18 are getting to five or 6:00 o'clock in the morning
19 at this point.

20 Q At some point in time are you called or are you
21 referenced or do you somehow end up back at the
22 Sheriff's Office and come in contact with the
23 Defendant?

24 A Yes, sir. Just prior to leaving, at some point
25 in time we get to a point where we have got the

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

165

1 children. We know they are safe. We have still
2 not been able to locate Mr. Burke or Mrs. Burke.

3 We are about to not be able to justify our
4 means in that everybody is getting kind of tired.
5 So we are going to have to break off for just a
6 little bit.

7 I instruct another investigator to obtain an
8 arrest warrant for Mr. Burke based on the
9 information that we have, that arrest warrant
10 charging him with assault and battery with intent
11 to kill.

12 It is made common knowledge to Mr. Burke's
13 family, to include his mother and father, that that
14 warrant exists and that we are holding it for him
15 and need to get him in custody.

16 At that point in time that I know that arrest
17 warrant is being secured and he is being placed on
18 the computer nationwide as a wanted person, I then
19 break off and go get some sleep until subsequently
20 coming back to the office.

21 This is still on the 20th. Around 1:00 p.m.
22 on the 20th, I am notified that Mr. Burke has shown
23 up at the front lobby of the Sheriff's Office, Mr.
24 Roger Dale Burke. He has gone back toward the
25 warrant division, and the warrant division deputy

1 has him while they are trying to locate me.

2 Q And are you put in contact with him?

3 A Yes, I go back into the warrant division. Our
4 deputy has Mr. Burke. I am introduced to him, and
5 I take possession of him and take him around to an
6 interview room.

7 Q Once y'all get in the interview room, do you advise
8 Mr. Burke of his rights?

9 A Yes, sir. We go through his Miranda rights very
10 specifically as they relate to his being now in
11 custody and his right to an attorney.

12 Q How do you do that as far as his Miranda rights?
13 Is there anything that you used to assist yourself
14 on that day on the 20th?

15 A Yes. We have a standard form that we use when we
16 question someone who is at this point going to be a
17 suspect or a defendant in an issue. If Miranda
18 applies and those legal concepts apply, there is a
19 form that we use where we explain those rights to
20 the individual and have them make what we refer to
21 as a waiver of those rights.

22 This is where he acknowledges: Yes, I
23 understand this, but I am willing to talk to you
24 now without an attorney present. It's a process we
25 cover to make sure he understands that, makes an

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

167

1 intelligent waiver of that, and we have some
2 documentation of that.

3 Q Could you tell the jury the rights as you told him
4 that day on the 20th?

5 A Yes. Have you got that form and I will read them
6 just as exactly as they are written.

7 (State's Exhibit Number 48 is marked for
8 identification).

9 BY MR. MADSEN:

10 Q Let me show you what has been marked as State's
11 Exhibit Number 48 for I.D. Do you recognize that?

12 A Yes, sir. That is the original of the form that I
13 used when I began speaking to Mr. Roger Dale Burke
14 at the Lexington County Sheriff's Department.

15 Q And could you tell this jury the rights as you
16 advised him on that day.

17 A Yes, sir.

18 Q Let me stop you there. Is there some initial stuff
19 that you fill out on the top before you do that?

20 A Yes, sir, there is. If it may assist, if you want
21 to put this up where they can see it, I can kind of
22 point to it.

23 MR. NETTLES: If y'all are going to do that, I
24 will need talk to the judge.

25 MR. MADSEN: I will go through the rights

1 first.

2 THE COURT: Yes, sir.

3 BY MR. MADSEN:

4 Q Tell the jury the rights as you gave them to him
5 that day.

6 A There are five rights printed on this form that I
7 read to him and explain to him. They read: That I
8 have the right to remain silent and not make any
9 statement at all.

10 That any statement I do make can be used
11 against me in court. That I have the right to have
12 an attorney present at any time during questioning.
13 That if I cannot afford an attorney, I can apply to
14 the Court to have one appointed at no cost to me.

15 That if I decide to talk to an officer without
16 an attorney present, I may stop at any time and
17 request an attorney be present for further
18 questioning. Those five rights were read to him.

19 Q Did he appear to understand when you read him those
20 rights?

21 A Yes, sir, he did.

22 Q Did he appear to be intoxicated?

23 A No, sir, he did not.

24 Q Did he appear to be under drugs, whether legal or
25 illegal?

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

169

1 A No, he did not.

2 Q At any point in time to get him to make a statement
3 to you, did you ever threaten him?

4 A No, I did not.

5 Q Did you ever promise him any leniency?

6 A No, sir, I did not.

7 Q At any point in time was he really ever
8 uncooperative?

9 A No, sir, he was cooperative throughout the
10 interview.

11 Q You said you read him those rights?

12 A Yes, sir, read them specifically to him as they are
13 printed on that form.

14 Q At some point in time did you determine whether or
15 not he could read?

16 A Yes, sir. I have a process that I go through when
17 I do these advisement of rights. One of those
18 processes is to make sure that the person can read
19 and write the English language.

20 I will have them read one of those sentences
21 to me and ask them to specifically: Read that
22 exactly as you see it printed, not what you might
23 have heard, but as you see it printed.

24 As long as they can read that back to me
25 exactly as it is written, then I believe that they

1 can read and write.

2 Q And do you have the Defendant do that?

3 A Yes, sir, I specifically had him read right number
4 one and made a notation on the form that that was
5 done.

6 Q And at any point when you gave him those rights,
7 did he ever request an attorney?

8 A No, sir, he did not.

9 Q Did he ever request to remain silent?

10 A No, he did not.

11 Q Did he actually give you a written statement?

12 A Yes, sir, he did, a quite detailed written
13 statement.

14 Q Once y'all got done with that statement, what do
15 you do?

16 A During the course of that statement, Mr. Burke
17 indicates to us that --

18 Q Not so much that, but once you get done with that
19 does he sign it anywhere?

20 A I apologize. I got ahead of you. Yes, sir. After
21 we go over the rights, there is a statement made by
22 Mr. Burke. That statement is reduced to writing.
23 I then review that statement with Mr. Burke, and he
24 signs that statement as a factual statement given
25 to law enforcement.

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

171

1 Q So do you just give it to him and let him read it?
2 How do you go about that once that statement is
3 done?

4 A No, sir. The first thing I do is read the
5 statement exactly as I have written it out, asking
6 him does he have any questions or concern what is
7 written.

8 I then specifically hand him the statement and
9 ask him to review it to make sure it is as I just
10 read to him and then ask him if he would like to
11 make any corrections or make any additions, to
12 please do so. If not, I ask him to sign the
13 statement as factual.

14 Q When you did that, did he request any additions or
15 deletions to that statement?

16 A No, sir, he did not.

17 Q Did he actually sign that statement?

18 A Yes, sir, he did. It's a four-page statement, and
19 he signed all four pages.

20 MR. MADSEN: At this time point in time, Your
21 Honor, we would move State's Exhibit Number 48 for I.D.
22 purposes in evidence.

23 MR. NETTLES: We object.

24 THE COURT: Counsel, I note the objection.

25 Based on all the record involved, I will allow it to be

1 admitted.

2 MR. NETTLES: You may want to let me be heard
3 on that if you don't mind.

4 THE COURT: Okay. Jurors, let me ask if you
5 will step to the jury room just for a moment. While you
6 are there, be sure not to talk about the case, please.

7 (The jury retires to the jury room).

8 THE COURT: The jury is secured. Mr. Nettles,
9 I assume we had just taken everything up in the Denno
10 hearing. Go ahead.

11 MR. NETTLES: Well, Your Honor actually it's
12 not that. My concern is this. Based on your ruling, we
13 didn't even have any argument on the Denno. He was not
14 in any way coerced and all that.

15 My concern is this, is that there is a
16 difference between a statement -- to call it a
17 statement. When a defendant writes a statement out, he
18 writes it out.

19 THE COURT: Yes, sir.

20 MR. NETTLES: They give him a piece of paper
21 and say: Write out what happened. He writes it out and
22 signs it. That's one thing. What we have got here is
23 more akin to police notes that the police officer --
24 that the Defendant has read over.

25 One of the things we talked about in the

1 Jackson v. Denno hearing was the fact that this officer
2 wrote them all out, and he said he couldn't think of
3 anything that wasn't in there, but that he could not
4 tell us this is exactly what took place. Except for the
5 places where there's quotation marks around it, it was
6 his characterization of what happens.

7 Now, I don't have any -- I am not moving that
8 what he says Roger Dale said during the interview does
9 not come in. It's a statement against interest, the
10 oral part. My concern is this is not Roger Dale's
11 written statement. This is a police officer's
12 memorialization of what happened.

13 THE COURT: So you are objecting to the
14 written statement?

15 MR. NETTLES: To the written statement. If
16 the written statement stays out and he wants to say: I
17 talked to him. Roger Dale told me this. Roger Dale
18 told me this. Roger Dale told me this, that, and the
19 other. That I don't object to. It's just the actual
20 moving of the statement in because it's my position that
21 it is more akin to notes.

22 THE COURT: What about that?

23 MR. MADSEN: Your Honor, I clearly think that
24 Sergeant Frier has described that they went over this
25 basically as they are kind of going through it.

1 Obviously, I don't think Sergeant Frier is a
2 stenographer and it's line by line.

3 But he has testified in the Denno hearing. I
4 think he has testified -- well, not testified today
5 because we haven't gotten into the substance -- that
6 they have gone through this. And as they are going
7 through, they are filling it out, and going on and then
8 if there are specific quotes.

9 But the Defendant, obviously at the end, they
10 go over it together. He adopts it. He signs, I
11 believe, on each of the four pages adopting it. He is
12 given an opportunity by Sergeant Frier to make any
13 additions that he feels are necessary, any deletions.

14 I believe under the case law, Your Honor, that
15 it is appropriate to put that written statement in. It
16 also includes, as Your Honor is aware, the Miranda
17 rights which we have obviously covered.

18 I believe that the written statement is
19 appropriate, that he has adopted it, signed off on that
20 written statement. He can read and write, as Sergeant
21 Frier has already testified that he was able to
22 determine. So I think it's appropriate to put that
23 written statement in.

24 MR. NETTLES: Just as it relates to case law,
25 this is our feeling on it, our position on it. We feel

1 pretty strongly about it. If there is case law that
2 says that this kind of thing comes in, I will certainly
3 withdraw my argument. But I just wanted to say I'm not
4 aware of any. If they want to share some with me, I
5 would be happy to see it.

6 Secondly, the concern that this would then be
7 would be where this goes to next is law enforcement just
8 shows defendants incident reports, which we all know
9 don't come in and say: Is that right? The guys says:
10 Yeah, that's right.

11 The next thing you know we are just trying
12 cases through incident reports. There is a reason --
13 lastly, I would point out that under Crawford, I am not
14 able to cross examine that statement.

15 I can cross examine him talking about what he
16 said; but as to that statement, I can't cross examine
17 that statement. So separate and apart from the fact --
18 well, I apologize for calling it a statement -- that
19 account of what happened that was signed by Roger Dale,
20 I can't cross examine that. So there is also a Sixth
21 Amendment element as well, Your Honor.

22 THE COURT: Mr. Madsen.

23 MR. MADSEN: Judge, I thought we had been
24 through this with the Denno. Obviously they had a right
25 in the Denno hearing for a limited purpose if the

1 Defendant gets up and says: He is a lying S.O.B. and he
2 put thumb screws to me. I mean, we could have handled
3 that there.

4 But I don't think there is any law that says
5 that an adopted written statement like this can be held
6 out. It's kind of normal course. It's done hundreds
7 and thousands of times, clearly think it's appropriate.
8 I certainly think that he can cross examine him in
9 reference to that statement. I have seen it done
10 hundreds of times.

11 THE COURT: Yes, sir.

12 MR. NETTLES: Your Honor, I would just say
13 that Jackson v. Denno -- I apologize, I thought that
14 Jackson v. Denno was simply for the purpose of
15 deciding -- so I did not bring it up at that point
16 because I didn't feel it was appropriate.

17 THE COURT: I don't think you waived anything.
18 My concern though, I guess, Mr. Nettles, is that
19 Mr. Burke did sign the statement. I guess this would be
20 akin in some sense to a typed statement. If it had been
21 typed and then signed, are you saying that you don't
22 think that would have been admissible?

23 MR. NETTLES: No, sir, I think there is -- to
24 answer your question, no, sir, I don't believe that
25 would be admissible.

1 THE COURT: What about that, Mr. Madsen? I
2 guess what he is saying is -- and obviously you know it
3 better than I do. Mr. Nettles, you tell me if I'm
4 wrong. You are saying that unless it's written in
5 Mr. Burke's own handwriting, you don't think it's
6 admissible.

7 MR. NETTLES: Yes, sir. I believe there is a
8 huge difference between -- yes, sir. To answer your
9 question succinctly, yes, sir. That is the difference
10 that makes one a statement by the Defendant and the
11 other notes by law enforcement that the Defendant has
12 had the opportunity to review.

13 THE COURT: Mr. Madsen.

14 MR. MADSEN: Judge, I clearly don't think that
15 Mr. Nettles has any law to kind of back that up, to back
16 up basically what he is arguing quite frankly. It's
17 kind of normally done.

18 He clearly adopted those, signed off on them,
19 and adopted them as his statement. We clearly think
20 whether it's handwritten by him, handwritten by law
21 enforcement or even typed out, that it is appropriate.

22 Obviously, Mr. Nettles had said something
23 about incident reports at some point in time. Clearly
24 that is not what we are dealing with here. That's an
25 entirely different matter.

1 This is an incident where he has told Sergeant
2 Frier what went on. Sergeant Frier has written it down,
3 gone over it with him, not only piecemeal, but then at
4 the end gone back through it.

5 I believe his testimony was he read it back to
6 the Defendant, that he then gave it to the Defendant,
7 who he is sure can read and write, a chance to read it,
8 any additions, deletions, anything wrong. There was
9 not. So then Mr. Burke signs off on it. I clearly
10 believe it's appropriate and should come in.

11 THE COURT: Anything else, Mr. Nettles?

12 MR. NETTLES: No, sir, Your Honor. Just
13 before you rule, I ask you to incorporate that part of
14 what we are relying on is the testimony that was given
15 at the Jackson v. Denno hearing. I would just
16 incorporate all of that testimony.

17 THE COURT: I note that. Actually, it's a
18 pretty creative argument, Mr. Nettles.

19 MR. NETTLES: I agree.

20 THE COURT: I think I will have to let it in
21 though. When he signed it, I think in effect it became
22 his statement then.

23 MR. NETTLES: I understand.

24 THE COURT: It will be an interesting issue
25 for the Supreme Court to hear possibly. They may not

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

179

1 get to it. You never know. If it does go up, it will
2 give them something to hear.

3 MR. NETTLES: Yes, sir.

4 THE COURT: I will let it in.

5 MR. MADSEN: Thank you, Your Honor. So that
6 will be State's Exhibit Number 48 in evidence.

7 (State's Exhibit Number 48 is received into
8 evidence).

9 THE COURT: Are you ready?

10 MR. MADSEN: Yes, sir.

11 THE COURT: Let's bring the jury in.

12 (The jury returns to the courtroom).

13 THE COURT: All parties and attorneys are in
14 the courtroom, and all jurors are back with us. For the
15 record we will allow the statement to be admitted. Go
16 ahead, Mr. Madsen.

17 MR. MADSEN: Thank you, Your Honor.

18 **DIRECT EXAMINATION**

19 BY MR. MADSEN:

20 Q Have you got State's Exhibit Number 48?

21 A Yes, sir.

22 Q What is State's Exhibit Number 48?

23 A That's the original statement form that I reviewed
24 the rights with Mr. Burke with and then
25 subsequently took a written statement from him

1 concerning the events as he related them to me.

2 Q What is the information on the top?

3 A Again, that is the standard form that we use. The
4 first line being the date, the place where the
5 statement is being taken, the time it started.
6 Then there is some handwritten information that I
7 put in there indicating that I interviewed Roger
8 Dale Burke, who is 28 years old, his date of birth
9 being the

10 His present address is on Nathan Miller Road
11 Detective S.R. Frier is the person he is making a
12 statement to. I have identified myself as a
13 detective with the Lexington County Sheriff's
14 Department. There is also his Social Security
15 number that I've got handwritten up in that top
16 corner.

17 Q You had talked about some procedure that you used
18 or procedure that you follow in advising the
19 Defendant of his rights?

20 A That's right.

21 Q Could you show on this form kind of that procedure
22 that you use so they will know.

23 A Just so it makes it easier for me to testify in
24 court as far as my understanding of his
25 recollection of the rights and how it went, I kind

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

181

1 of follow a procedure whereas when I read that
2 right as it's printed to the individual, I will
3 circle that number each time I read it.

4 That's just my way, when I see that form
5 later, I know that I read that right to him exactly
6 as it's printed on that form. Subsequent to that I
7 will ask him, after we have gone over each of those
8 rights, I will ask him:

9 Do you understand these rights? Do you have
10 any question about any one of the individual
11 rights? And are you comfortable in talking to me
12 now without an attorney present?

13 If he understands all this, has no questions,
14 I sense no intoxication or mental defect, I will
15 ask him to place his initials on each side of each
16 one of those numbers where I have circled.

17 I won't ask him to do just one. I ask him to
18 place an initial by each one of those rights so
19 that that denotes he understands each individual
20 right.

21 Then if I am comfortable that we have followed
22 that process and he understands it, I put my
23 initials -- I apologize that they are not very
24 legible, but those are my initials, S.R.F., on each
25 side of those numbers -- denoting that we followed

1 that process, I am comfortable he understood what
2 we were doing, and I feel like he is making an
3 intelligent waiver of those rights.

4 Q And did that happen in this case?

5 A Yes, sir, it does, as denoted by the markings on
6 that form.

7 Q That R.B. on there, whose initials are those?

8 A Those would be Roger Burke's.

9 Q You had talked about determining whether or not the
10 Defendant could read. How did you go about that?

11 And is that indicated on State's Exhibit Number 48?

12 A It is. I will have -- when I ask that specific
13 question, "Can you read and write," I will ask them
14 to read for me one of those rights as it is
15 printed. As I spoke of earlier, I had him read
16 that first sentence:

17 "That I have the right to remain silent and
18 not make any statement at all." What I will do is
19 I will put a slash beside that sentence indicating
20 that is the one I want him to read.

21 And if he can read it to me as it's printed, I
22 will put my initials beside that little mark.
23 That's my way of knowing that he read something
24 aloud to me so I believe that he can read.

25 Q And did the Defendant do that?

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

183

1 A Yes, he did.

2 Q And were you comfortable that he could read?

3 A Yes, I was.

4 Q At this point in time could you publish this
5 statement to the jury.

6 A Yes, sir.

7 Q We will start with page one.

8 A "I bought a .380 at Moseley's on Wednesday at
9 approximately 10:40 a.m. I had applied for the
10 gun on Friday. This was after bond court
11 concerning Christopher and what he did to my little
12 girl.

13 "I took the gun to the wash hole and shot it a
14 couple of times. I bought the gun for \$150. I
15 called Jerry (sic) on her cell phone. She said she
16 wasn't going to come off the papers.

17 "She said, quote, now it's your turn to pay
18 child support you son of a bitch, end quote. I
19 went to the house. I went inside her house. She
20 was living with my brother.

21 "I got the address from the papers. When I
22 went into the home, I got a Pepsi bottle with some
23 gas in it. I poured the gas on the sofa and in the
24 bedroom.

25 "When Jerry got to the house -- I'm sorry --

1 when Jenny got to the house off Bud Shumpert, I was
2 in the..." -- and then we go to the second page.

3 Q So when you said Jerry, you mean Jenny?

4 A Jenny, I apologize.

5 Q The Defendant's wife?

6 A That's correct.

7 Q And once you all had gotten done with that written
8 part, at some point in time does he sign that?

9 A Yes, but that's after we get the entire thing
10 written out and review it for content.

11 Q Let me show you page two of that.

12 A It begins with: "...hallway to the right. I could
13 not be seen when the door was opened. When I came
14 out, Jenny saw me. I said, quote, Jenny, why are
15 you trying to take the kids from me, end quote.

16 "She just started screaming. Brandon was
17 standing there. I pulled the gun out of my hip
18 pocket. Jenny had started to go for the phone when
19 she screamed. I shot Jenny. She grabbed her
20 chest.

21 "I think she said, quote, Brandon call the
22 law, end quote. I shot her, quote, one more or two
23 more times, end quote. Quote, it might have even
24 been four, end quote.

25 "Quote, she grabbed her chest. She went for

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

185

1 the phone. She hit the floor. She tried to get
2 back up. I tried to put the gun to her chest, but
3 I may have hit her in the head, end quote. Brandon
4 ran out the back door. I think Dalton was..." --
5 and we go to a third page.

6 It begins. "...standing there also. I think
7 Dalton saw it. I went outside and told the kids to
8 get in the car. I had backed the car in between
9 the trailer and a tree so she couldn't see the car.

10 "I took the kids and we ended up at a pond
11 near some woods and ate some food I bought at
12 Hardee's. I told Brandon to stay there. I left
13 Brandon in charge of the little kids at the pond.
14 I told him I had to go talk to Terry. I went by
15 Terry's and he wasn't there.

16 "I went back to Jenny's house. I took Jenny
17 out of the house. I put her in the car. I drove
18 out 178 to Samaria. I turned on the concrete road.
19 I went on some dirt roads back onto 1789. Then I
20 went to a place I knew before." Then we go on to a
21 fourth page.

22 It begins: "It is up on Elbert Taylor Road.
23 It is land I knew was there. Down Elbert Taylor
24 road to another dirt road, turn right. Go
25 straight. Land on left. I put Jenny under some

1 pine straw and limbs. I then went back to where
2 the kids were."

3 Q Once y'all had gotten done with that statement,
4 what do you have him do?

5 A I then read that statement to him in its entirety
6 exactly as it's written on that form. I then hand
7 him that statement, ask him to read what I have
8 just read to him, review it for the contents; and
9 if it is a factual statement, I ask him to sign
10 each of the pages.

11 Q And did he actually review this statement?

12 A Yes, he did.

13 Q And did he sign State's Exhibit Number 48?

14 A Yes, he did. On the bottom of each page on the
15 right-hand side, there is a little note for the
16 person giving the statement to sign it. It
17 actually says, "Person giving statement," and it's
18 got the signature of Roger Burke on it.

19 Q And that's on page one?

20 A That's on all four pages.

21 Q It's the same thing on page two?

22 A That's correct, down on the bottom.

23 Q Same thing on page three or four?

24 A That is correct.

25 Q Once you read this statement, State's Exhibit

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

187

1 Number 48, to him and he read it himself, did he
2 ask to make any additions to this statement?

3 A No, he did not.

4 Q At any point in time did he say: Whoa, that
5 shouldn't be in there. That's wrong we need to
6 clarify that?

7 A No. Had he done that, I would not have had him put
8 his signature on it until we got that clarified.

9 Q So if he felt there was something else important,
10 y'all would have put it on here?

11 A Yes. We would have had several minutes of
12 conversation before that thing is finally signed;
13 whereas, if there is anything else he needs to add
14 or he is not comfortable with what we have gotten
15 written in there, for us to discuss it and change
16 it and he doesn't ask me to make any amendments or
17 take anything out.

18 Q And at any point in time does he request an
19 attorney?

20 A No, he does not.

21 Q At any point in time does he ask to remain silent?

22 A No, he does not.

23 Q Did you ever promise him anything?

24 A No, sir, I did not.

25 Q Did you ever force him to give you that statement

1 or coerce him in any manner?

2 A No, sir, I did not.

3 Q Once y'all get done with that statement, what do
4 y'all do?

5 A Based on the information that Mr. Burke gave us at
6 that point, his description as you read there was
7 quite accurate in where we might locate the body of
8 Jenny Burke.

9 So with that information I got another
10 detective, Brett Sims, and two of our tracking
11 officers, the bloodhound guys, who had been at the
12 original scene. We set up for them to follow
13 myself and Mr. Burke as he took us to the location
14 where Mrs. Burke's body might be located.

15 Q And did y'all go with the Defendant to that
16 location?

17 A Yes, we did.

18 Q Let me show you what is marked as State's Exhibit
19 Number 47.

20 A Yes, sir.

21 Q Do you recognize that?

22 THE WITNESS: Your Honor, may I step down
23 again?

24 THE COURT: Yes, sir.

25 (Witness leaves the witness stand).

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

189

1 A Yes, sir, that is the map that we spoke of
2 earlier --

3 THE COURT: By the way, Mr. Nettles, if you
4 need to come around and see better, you can.

5 MR. NETTLES: Thank you, Your Honor, I
6 appreciate that.

7 A This is a map. It's a bigger area of the county.
8 Just to get your bearings right, this (indicating)
9 is down in the southern part of the county. This
10 (indicating) would be the town of Pelion right here
11 just before you travel down into -- I believe
12 that's where Orangeburg starts down there.

13 This (indicating) Drive is where we
14 initially responded to for at that time what we
15 believed to be a missing person case. Then there
16 is denotation of where we were taken and located
17 the body and then an area that we discussed later
18 or Brandon discussed in his testimony about where
19 they were left, which is mentioned in Mr. Burke's
20 statement.

21 Q Let me show you what is marked as State's Exhibit
22 Number 33 and ask if you recognize State's Exhibit
23 Number 33.

24 A Yes, sir. That is a dirt road that goes onto a
25 cleared out area. This Elbert Taylor Road, which

1 is denoted right here (indicating) on the map,
2 would actually be kind of running here
3 (indicating). This is a dirt road that goes off of
4 Elbert Taylor Road. It looked like the land was
5 where they had gone in and done -- where they had
6 pulled the wood off.

7 Q Let me show you State's Exhibit Number 34. Is that
8 kind of a backed-up picture --

9 A Yes, sir.

10 Q -- of State's Exhibit Number 33?

11 A That's correct. On that picture Elbert Taylor Road
12 would run here (indicating) and then you just
13 travel that dirt road up (indicating). Then the
14 body is located very close to that cleared out area
15 right there (indicating).

16 Q So what are the significance of State's Exhibit
17 Number 33 and State's Exhibit Number 34?

18 A That is going to be the area where the body was
19 found discarded. In one of those pictures I can
20 point out to you, you can actually see, as it
21 relates to these vehicles, if you look at this
22 picture closely, you will see what appear to be
23 three men right here (indicating) in this area.
24 That, in relation to this road, is where the body
25 was found. You can see one of the gentlemen is

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

191

1 wearing a gray shirt. I believe that is Detective
2 Hickman.

3 Q Let me show you State's Exhibits 30 and 31. What
4 are the significance of those? Do you recognize
5 those photographs?

6 A Yes. Those denote -- those two photographs are the
7 dirt portion of that pathway, if you will, onto
8 this land. Those are going to be close-ups of this
9 area right here (indicating). These are some areas
10 that are past where we stopped our patrol vehicles
11 because we noted the amount of tire wear
12 impressions in the sand.

13 Q So those tracks there aren't made by police
14 vehicles?

15 A No. Once we go onto that roadway and start seeing,
16 as we get in there, that amount of tire wear
17 impressions, which is going to be just past where
18 those cars are, we make sure we stop so that they
19 can be photographed.

20 Q Let me show you what has been marked as State's
21 Exhibit Number 32. Do you recognize that?

22 A Yes, sir. That is kind of difficult. There
23 appears to be a sock here (indicating). But
24 basically this was the pile of straw and limbs
25 that were placed over the discarded body of Jenny

1 Burke.

2 Q So under that pile of limbs, straw, and all that
3 kind of stuff, who is under there?

4 A The body of Jenny Burke is under there. You can
5 denote in the photograph I believe that is a sock.
6 She has on blue pants. I believe that is one of
7 the pant's legs. The body of Jenny Burke is under
8 that pile of debris.

9 Q So when y'all go out with the Defendant, do y'all
10 end up recovering Jenny's body?

11 A Yes, sir, we do, at the exact location he took us
12 to. (Witness resumes the witness stand).

13 Q Once y'all have recovered her body or there at the
14 body, do you have an investigator do something with
15 the Defendant?

16 A Yeah. Based on the information that Mr. Burke is
17 giving us, I have Detective Brett Sims actually
18 have Mr. Burke take him to the area where Brandon
19 had described earlier of him leaving the children
20 in the woods while he had gone back to dispose of
21 the body.

22 Q And on State's Exhibit Number 47, is that denoted
23 on that map?

24 A Yes, it is denoted with an arrow that leads to that
25 pond right near I-20 and Pond Branch Road and again

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

193

1 at a location not too far from where the body had
2 been discarded.

3 Q If you could answer any questions Mr. Nettles has.

4 A Yes, sir.

5 THE COURT: Counsel, it's almost one. Do you
6 think it would be better to go ahead and take a lunch
7 break at this point?

8 MR. NETTLES: I think so.

9 THE COURT: Ladies and gentlemen, we will take
10 a lunch break. I will ask you to be back at
11 2:00 o'clock. Let's be prepared to get started back
12 then. Be sure to remember don't talk about the case,
13 and don't let anybody talk with you about the case. See
14 you back at two.

15 (The jury is excused for lunch at 12:50 p.m.)

16 THE COURT: Anything before we recess for
17 lunch from the State?

18 MR. MADSEN: No, Your Honor.

19 THE COURT: Defense?

20 MR. NETTLES: No, sir.

21 THE COURT: We will see you back at two.

22 (Whereupon there was a luncheon recess).

23 MR. MADSEN: We are marking Exhibits 49 and 50
24 by agreement.

25 THE COURT: Any objection?

1 MR. NETTLES: No, sir.

2 (State's Exhibits Number 49-50 are received
3 into evidence).

4 THE COURT: Anything from the State before we
5 bring the jury in?

6 MR. MADSEN: No Your Honor.

7 THE COURT: From the defense?

8 MR. NETTLES: No, sir, Your Honor.

9 THE COURT: Let's bring them in.

10 (The jury returns to the courtroom at
11 2:05 p.m.)

12 THE COURT: All parties and attorneys are in
13 the courtroom, and all jurors have returned,
14 Mr. Nettles.

15 MR. NETTLES: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. NETTLES:

18 Q How are you doing?

19 A Good, sir.

20 Q Let's talk for a second about, if you don't mind,
21 and let's start with you talked a little bit about
22 the grass tracks in the back yard?

23 A Yes, sir.

24 Q Those grass tracks -- and I believe you talked
25 about those in relation to State's Exhibit

SCOTTIE FRIER -- CROSS -- MR. NETTLES

195

1 Number 1?

2 A That's correct.

3 Q And those grass tracks were back in here
4 (indicating)?

5 A Those that I recall -- and I don't remember that I
6 followed them completely around, but I remember
7 them being in the area right in here (indicating).

8 Q But these grass tracks right in here (indicating),
9 do we have any pictures of those?

10 A Mr. Nettles, I don't know for sure.

11 Q I mean, do you have any?

12 A I do not have any, no, sir.

13 Q Do we have anything where we tie this grass -- or
14 as a matter of fact, let me put it to you this way.
15 There is nothing that ties this laid-down grass to
16 State's Exhibit 25?

17 A Nothing, other than Mr. Burke's statement he hid
18 the car in an area that matched that description.

19 Q Right.

20 A But we have no impressions of tire wear that we say
21 match that car, no, sir.

22 Q As a matter of fact, had Roger Dale not told you or
23 Mr. Burke, my client --

24 A That's correct.

25 Q -- not told you that he pulled his car back over

1 there, there was nothing about this car that you
2 could match to that independently?

3 A We would have known a car did it but not that car.

4 Q That's my question.

5 A Absolutely.

6 Q The only way you knew that this car was back there
7 was because Dale told you?

8 A That's absolutely correct.

9 Q Let's talk for a second about when he turned
10 himself in -- and he did turn himself in?

11 A He did.

12 Q Granted that y'all had -- well, let's talk about
13 one other thing for a second before we get to that.
14 The three children you found were his three
15 children in the car?

16 A That's correct.

17 Q They were asleep?

18 A I was not the first person there. When I got there
19 they were awake, but my understanding from the
20 responding deputies is they found them asleep.

21 Q Asleep. And the house that they were found outside
22 of, do you know that to be Teresa Mote's house.

23 A I know she one of the persons who lives in there,
24 that's correct.

25 Q And she is part of Roger Dale's family?

SCOTTIE FRIER -- CROSS -- MR. NETTLES

197

- 1 A To some degree but I'm not sure what.
- 2 Q His dad's sister?
- 3 A I'm assuming you are correct there.
- 4 Q But it wasn't a stranger's house?
- 5 A No, sir, it was not.
- 6 Q We had started to talk about that. Let's talk
7 about this for a minute now for a second. At
8 1:00 o'clock p.m., that would be the next day, you
9 had worked basically all night?
- 10 A That's correct.
- 11 Q And had gone home to get a little bit of sleep.
12 Were you called back in or were you already in?
- 13 A I was already back into the office but was called
14 around to the warrant division.
- 15 Q The warrant division.
- 16 A Because Mr. Burke had come in.
- 17 Q And there would be nothing unusual about someone
18 turning themselves into the warrant division?
- 19 A No, because I will go on an assumption that when I
20 had relayed the information to his family that we
21 had a warrant on him --
- 22 Q Right.
- 23 A -- I could envision him walking in the door to our
24 dispatch and saying, "There's a warrant on me," and
25 them referring him straight to the warrant

- 1 division.
- 2 Q Right. So then they called you?
- 3 A That's correct.
- 4 Q And you came out and you Mirandized him?
- 5 A Not until we got back into the seclusion of the
- 6 interview room.
- 7 Q But he was Mirandized?
- 8 A He was, yes, sir.
- 9 Q And you talked about it and you threw it up here on
- 10 the screen here, but basically what it comes down
- 11 to is at that point you had sufficient -- you were
- 12 going to arrest him?
- 13 A There was an outstanding arrest warrant, yes, sir.
- 14 Q And you were going to arrest him?
- 15 A He was under arrest, yes, sir.
- 16 Q So at that point a whole hosts of rights became
- 17 available to him?
- 18 A That is correct, the Miranda rights.
- 19 Q And those rights, such as the right to have a
- 20 lawyer?
- 21 A That's correct.
- 22 Q The right to remain silent?
- 23 A That's correct.
- 24 Q The right to have a lawyer present at any time
- 25 while he was being questioned?

SCOTTIE FRIER -- CROSS -- MR. NETTLES

199

1 A Yes, sir.

2 Q He was told that anything he said, if it went to
3 court, it was going to be used if it could against
4 him in court?

5 A Yes, it was.

6 Q Let's be clear about something for a second. Even
7 though he knew and there is no doubt in your mind
8 he understood it, he could have remained silent but
9 he didn't?

10 A That's correct, he did not.

11 Q And even though it was no doubt in your mind that
12 he knew he could have had a lawyer, and if he
13 couldn't have afforded one, somebody would had
14 gotten him one, he said: Nope, don't want a
15 lawyer?

16 A That's correct. He was willing to talk to us.

17 Q And even though you told him: Look now, you know,
18 this is stuff, you tell me this stuff, and if this
19 goes to trial, we can use this against you in
20 court, he said: No, I want to talk?

21 A That's correct.

22 Q And he told you what happened?

23 A Yes, sir, he did.

24 Q And he told you that when he bought the gun, he
25 said he bought the gun, the .38, and he told you

1 where he bought it?

2 A Yes, sir.

3 Q Do you have a copy of it?

4 A Not with me, I do not.

5 Q Here you go. I will give you the original so you
6 and I are on the same page.

7 A That's fine, good deal, thank you.

8 Q And he told you where he bought the gun?

9 A Yes, he did.

10 Q After he turned himself in?

11 A That's correct. I knew Moseley's to be Moseley's
12 pawn shop in Batesburg.

13 Q That's when he said, "I bought it at Moseley's."

14 A Yes, sir.

15 Q He told you that after he turned himself in and
16 waived all of his constitutional rights?

17 A Yes, sir.

18 Q And he told you that he bought the gun -- he had
19 applied for the gun on Friday, right, because there
20 is a waiting period for a handgun?

21 A That's correct.

22 Q And he told you -- and there was a time frame that
23 he told you when he applied for the gun. What was
24 that?

25 A It had to do with a family member of his by the

SCOTTIE FRIER -- CROSS -- MR. NETTLES

201

1 name of Christopher who had been arrested as it
2 relates to a molestation charge. I believe it had
3 to deal with his daughter.

4 Q His daughter.

5 A His initial explanation was that he had bought
6 that -- it was quite unsettling -- he had indicated
7 to us he was going to use it at the bond hearing
8 for Christopher.

9 Q So what he told you was: I bought the gun after
10 the bond setting for Christopher?

11 A No, he bought it prior. His intention was to have
12 that weapon at the bond hearing so that he could
13 attack or...

14 Q I know that sounds really bad against my guy and
15 everything, but that's kind of not what the
16 statement says; is it? It says, "I had applied for
17 the gun on Friday. This was after the bond court
18 concerning Christopher."

19 A Yes, sir.

20 Q So while all that other stuff you said kind of
21 sounds bad about my client, what his statement said
22 is that he applied for the gun after the bond
23 setting?

24 A That's the way the statement is written, that's
25 correct.

1 Q And you wrote that statement, right?

2 A I did, sir, that's correct.

3 Q And you checked all this out, right?

4 A I'm sorry?

5 Q You checked all this out right, the statement,
6 whether it's true or not?

7 A Concerning what had happened with Christopher and
8 the allegation?

9 Q Yes.

10 A I was aware of that before this statement was
11 taken.

12 Q So, you --

13 A I knew for a fact that his concerns about
14 Christopher and the charges related to his daughter
15 was, in fact, legitimate because I was aware of
16 that criminal case.

17 Q And his statement says he didn't even apply for the
18 gun until after the bond setting?

19 A That's correct.

20 Q And he told you about the conversation they had
21 that where she told him it was his turn to pay
22 child support "you son of a bitch," right?

23 A I don't know if I'd characterize that as a
24 conversation. It was: Are you going through with
25 this, she responds, and then he pulls the weapon

SCOTTIE FRIER -- CROSS -- MR. NETTLES

203

- 1 out.
- 2 Q Well, no. I am talking about the first page.
- 3 A That's correct.
- 4 Q She said, quote -- you put quotes, right?
- 5 A That's right. I apologize, that first set of the
- 6 conversation had to do with a quick cell phone
- 7 conversation between the two of them. You are
- 8 right. That's my mistake.
- 9 Q Okay?
- 10 A That's correct.
- 11 Q So he called her and said: What is going on here?
- 12 And according to his statement --
- 13 A That's right.
- 14 Q -- which you are telling this jury is correct,
- 15 right?
- 16 A That's right.
- 17 Q That she said it's your turn, quote -- your
- 18 handwriting, right?
- 19 A That's right.
- 20 Q "Now it's your turn to pay child support, you son
- 21 of a bitch."
- 22 A That written that way denotes that that is exactly
- 23 what Roger Dale Burke said she said to him on the
- 24 telephone.
- 25 Q And then he went on to tell you what had transpired

1 inside the home there?

2 A Yes, sir, to some degree, that's correct.

3 Q And as a matter of fact, you had all this evidence
4 here. We've got all these pictures and all this
5 stuff. None of this, all this stuff they got out
6 here, is in any way inconsistent with anything he
7 said in his statement?

8 A No, sir. No, sir.

9 Q So all this stuff that we got here and laying out
10 here in front of the jury supports what Roger Dale
11 told you after he turned himself in and waived all
12 his rights?

13 A Yes, sir.

14 Q He didn't try -- then he told you where the body
15 was?

16 A Yes, sir, a little reluctantly but we eventually
17 got to that point.

18 Q But, I mean, he told you after he told you he had
19 shot her, right?

20 A That's correct.

21 Q So kind of throwing in that reluctantly, you would
22 give me this, okay, that the directions that he
23 gave you, you could have found it without even
24 loading him in the car?

25 A Once he was forthcoming about being able to locate

SCOTTIE FRIER -- CROSS -- MR. NETTLES

205

1 the body, he was very descriptive.

2 Q When you say forthcoming, let's be clear about
3 something.

4 A Okay.

5 Q You are not implying at one point he told you a
6 story otherwise and then changed his story, are
7 you?

8 A No, sir. Disclosing to us the location of the
9 body, he just did not want to do that. We talked
10 back and forth about that, but there was some
11 reluctance on his part, I imagine just out of fear:
12 I've got to tell law enforcement where I put a
13 body. There was some hesitancy on his part.

14 Q And you said hesitance but you didn't like put
15 thumb screws on him and trick him or anything,
16 right?

17 A Absolutely not.

18 Q My point is he told you, right?

19 A It was not -- it didn't take us two hours to get to
20 that point, but he didn't just say: I have done
21 this and I need to take you to the body. It was:
22 I have done this, but we had to work on getting to
23 going to the body.

24 Q You could certainly agree with me that this wasn't
25 something that Roger Dale took lightly?

1 A No, sir.

2 Q This was a grave situation.

3 A Exactly right.

4 Q Now, you talked about your beginning of your
5 investigation at the beginning of your direct which
6 we did before lunch that you knew when you got
7 there that you had -- and this was before you had
8 the opportunity to talk to Roger Dale?

9 A That's correct.

10 Q Before you had the opportunity to talk to anybody
11 else. What you knew you had was you had a pool of
12 blood, right?

13 A That's correct.

14 Q And that pool of blood -- did you go in this
15 residence?

16 A Yes, sir.

17 Q That pool of blood is right here in front of the
18 big Confederate flag and the big screen T.V.,
19 right?

20 A That's correct. That's all in that same living
21 room.

22 Q That's in this room, right?

23 A Yes.

24 Q That's sort of the main room when you come in right
25 there?

SCOTTIE FRIER -- CROSS -- MR. NETTLES

207

1 A Yes, sir.

2 Q This is Defense Exhibit 4 is this same thing right
3 here, right?

4 A That's correct, right there with the T.V.

5 Q When you walk in the front door?

6 A That is correct, sir.

7 Q You also said that you had -- so that was the one
8 big piece of evidence which I suppose told you
9 something pretty bad had gone on, right?

10 A That's correct.

11 Q The other thing you had was you had a smell of
12 gasoline, correct?

13 A That's correct.

14 Q And that gasoline would have been in what has been
15 marked Defense Exhibit 5. This is a picture taken
16 of the room where you smelt the strong odor of
17 gasoline?

18 A I don't recall exactly where I perceived the
19 strongest odor of the gas. I remember gas being in
20 the residence. I believe Detective Hickman did
21 more along with charting where we thought the
22 concentration of that was. I remember smelling
23 gas, but I don't remember it being more specific at
24 one end of the house or the other on that.

25 Q But when you went into this room, you smelled

1 gasoline?

2 A Yes, sir, absolutely.

3 Q Do you know what this is right up here

4 (indicating)? I am referring to State's Exhibit 5.

5 Do you know what this is right here (indicating)?

6 A It appears to be some type of mural, if you will.

7 It's not a photograph.

8 Q Do you remember seeing this?

9 A I remember there being something like that on the
10 wall. I don't remember exactly the description of
11 what it was. I will tell you this. My focus in
12 that house was pretty limited to the area where
13 there was blood evidence. Mr. Hickman would have
14 done a much more in detail search of the rest of
15 the house.

16 Q Right, right. If you let me talk to Dale for just
17 a second I might be done.

18 A Yes, sir.

19 (Pause).

20 Q You knew or did you know from your investigation
21 that the people who lived in this room
22 (indicating), the room with the mural back here,
23 this room back here (indicating), you knew that the
24 people that lived in this room with the mural that
25 they were -- this is where Jenny and Jason lived?

SCOTTIE FRIER -- CROSS -- MR. NETTLES

209

1 Did you know that?

2 A I don't know if I can say for sure I knew what the
3 sleeping arrangements were in there. I knew -- if
4 you are getting to the reference of at the time we
5 were there, did I know that Roger Dale Burke had an
6 issue with the fact that his brother was now with
7 his soon to be ex-wife, I knew that; but I didn't
8 know who was sleeping where.

9 Q I understand. That's where I was moving towards.

10 A I think I know where you are going.

11 Q So you knew at some point during the course of your
12 investigation and fairly early, you received
13 information that Roger Dale's wife Jenny was to
14 some degree, however we want to characterize it,
15 had taken up with his brother?

16 A Absolutely, and the dynamics of such a scenario
17 were what caused us such grave concern.

18 Q I understand.

19 A But, yes, sir, that was certainly a factor into:
20 We've got to find these people pretty quick.

21 Q I understand.

22 A We were aware of that.

23 Q I understand. I understand.

24 MR. NETTLES: I have no further questions.

25 Thank you.

1 THE COURT: Any redirect?

2 MR. MADSEN: Real quickly.

3 REDIRECT EXAMINATION

4 BY MR. MADSEN:

5 Q On the statement that the Defendant gives you and
6 that y'all memorialized, whatever he tells you,
7 whether it's truth or lie, whether you can
8 corroborate it or not, does that go down on this
9 paper?

10 A Yes, sir, I am not going -- I am not going to have
11 him say something to me and decide: I don't think
12 that's in my best interest, so I'm not going to
13 write that part down.

14 On occasions where he says something that I
15 feel like are very pertinent statements that he is
16 making, I notate those by putting that in quotation
17 marks where I try to write as closely to verbatim
18 of exactly what he said and the way he said it.
19 The quotations marks denote that that is a very
20 specific statement he made in relation to what we
21 were talking about.

22 Q So what is in State's Exhibit Number 48, some of
23 them with the quotation marks are the verbatim
24 word?

25 A As close as I could get them written down as we

SCOTTIE FRIER -- REDIRECT -- MR. MADSEN

211

1 were talking.

2 Q And the other stuff is basically a summary?

3 A That would be a very profound way to state it. It
4 would be a recap or an assessment of what he said
5 happened.

6 Q But they are the words that come from this
7 Defendant?

8 A Yes, sir. That's based on the information he
9 provided me, yes, sir.

10 MR. MADSEN: That's all the questions I have.

11 THE COURT: Any recross?

12 MR. NETTLES: One second, Your Honor.

13 THE COURT: Sure.

14 (Pause).

15 MR. NETTLES: I have no further questions,
16 Your Honor. Thank you.

17 THE COURT: You can step down.

18 THE WITNESS: Thank you.

19 MR. MADSEN: Your Honor, the State would call
20 Colonel Mel Seboe.

21 MELVIN A. SEBOE, being
22 first duly sworn, testified as follows:

23 CLERK: Have a seat, please, sir, and state
24 your full name on the record.

25 THE WITNESS: My name is Melvin A. Seboe.

1 DIRECT EXAMINATION

2 BY MR. MADSEN:

3 Q Colonel Seboe, where are you employed?

4 A Lexington County Sheriff's Department.

5 Q And how long have you been employed at the
6 Lexington County Sheriff's Department?

7 A Thirty-two years.

8 Q And obviously you are a colonel, where do you fall
9 on kind of the rank at the Sheriff's Department?

10 A I would be the number three man.

11 Q So you are pretty high up?

12 A Yes, sir.

13 Q And what do you do at the Sheriff's Department now?

14 A I am in charge of the special operations division.

15 Q Could you tell this jury, what is the special
16 operations division?17 A It's includes some of the functions that normally
18 don't happen day to day. I do such things as the
19 bomb squad, the S.W.A.T. team, bloodhound tracking,
20 aircraft operations, things of this nature.21 Q And how long have you been in charge of those
22 special operations?

23 A Some of these since I started.

24 Q Did you have an occasion on December 19, 2001, to
25 go to Drive?

MELVIN SEBOE -- DIRECT -- MR. MADSEN

213

1 A Yes, sir, I did.

2 Q Let me show what you has been marked as State's
3 Exhibit Number 1. Do you recognize that?

4 A Yes, sir, I do.

5 Q When you get there, you were there in reference to
6 what type of special operation?

7 A Bloodhound tracking.

8 Q What do you do when you get there as far as
9 bloodhound tracking?

10 A Our initial action is we take a brief from what
11 happened, the best we know. Then my job is to try
12 to find tracks.

13 Q Were you able to find anything out around this
14 residence?

15 A Foot travel in and around the house was so
16 cluttered that I could not determine whose was
17 which footprints, but there were some other tracks,
18 car tracks, that I thought were unusual.

19 Q And where did you notice those car tracks?

20 A What I believed to be behind the residence, not a
21 normal place to park.

22 Q Is that this area here (indicating?

23 A Yes, sir, I believe so.

24 Q Why do you say that that was kind of unusual?

25 A It was the only set of tracks that had matted down

1 the grass in that area. It did not appear that it
2 would be a normal place to park, as in the
3 driveway.

4 Q So when y'all get there with the bloodhound, you
5 don't find any people, any victims or anything like
6 that out and about with the bloodhounds that night;
7 do you?

8 A No, sir, we did not.

9 Q At some point in time are you called to another
10 location?

11 A Yes, sir, I was.

12 Q In Lexington County?

13 A Yes, sir.

14 Q Do you recall approximately how you got there?

15 A At the direction of now Sergeant Scottie Frier.

16 Q Was he in the same car with y'all?

17 A No, sir, I don't believe he was in the same car.
18 We were in the same motorcade if you will.

19 Q Who are you taking out there?

20 A I had taken some other man trackers along with me.

21 Q How about the dogs?

22 A We did not take the dog on that mission.

23 Q When you get out there, let me show you what has
24 been marked as State's Exhibit Number 47, which is
25 what has been marked as "body location." Are you

MELVIN SEBOE -- DIRECT -- MR. MADSEN

215

1 familiar with that diagram and that area?

2 A Yes, sir, I am.

3 Q Could you tell the jury when you get out there,
4 what do you do?

5 A Upon arrival the information had been given that
6 there was perhaps a body secreted some place there
7 on the property.

8 Q And when you get out there, what do you do? How
9 long does it take you to find the body?

10 A The best I can recall, within about 20 minutes
11 because this was, if you will, a pulped-out area
12 that had been replanted in pines. There were some
13 old logging roads that made access to the area
14 where you could see tire tracks quite available.

15 Q Let me show you what has been marked as State's
16 Exhibit Number 33 and 34. Do you recognize those
17 photographs or that area?

18 A Yes, sir, I do.

19 Q And what are those photographs of?

20 A It appears an overhead aerial photograph of the
21 area where the body was found.

22 Q And do you recall -- let me show you what has been
23 marked as State's Exhibit Number 30 and 31. Do you
24 recall those?

25 A Yes, sir, I do.

1 Q What were those?

2 A It appears to be tire impressions in the sand in
3 that logged-out area close to where the body was
4 found.

5 Q Tell the jury as far as you finding the body, what
6 did you actually do?

7 A By using those tire prints more as a reference
8 point, seeing that they went forward and then
9 backed into a little cleared area and then came to
10 a stop, you could see where the driver of the
11 vehicle had gotten out, gone around to the back of
12 the vehicle, probably the trunk area, and had
13 apparently, after finding the body, I realized this
14 was drug marks where the body was taken out of the
15 car and dragged backwards toward the small
16 indentation in the ground.

17 Q Were you able to finally find what you believed to
18 be an area that contained the body?

19 A Yes, sir, I did.

20 Q Let me show you what has been marked as State's
21 Exhibit Number 32. Do you recognize that?

22 A Yes, sir, I do.

23 Q What is that?

24 A That is the small indentation in the ground where the
25 body was found. It appeared it was trying to be

MELVIN SEBOE -- CROSS -- MR. NETTLES

217

1 hidden by piling some brush and sticks and what not
2 on top of it.

3 Q Did you find anything near this area that is shown
4 in State's Exhibit Number 32 in reference to a
5 disturbance of the ground?

6 A Yes, sir, there was some drag marks to that
7 specific area.

8 Q How about any type of dig marks?

9 A I don't recall the dig marks specifically. If you
10 are talking about dig marks as in a shovel, yes,
11 sir, there appeared to have been an attempt at
12 digging a grave.

13 MR. NETTLES: Objection. I think this is
14 outside of his qualifications.

15 THE COURT: Yes, sir. I will sustain the
16 objection, counsel.

17 MR. MADSEN: That's all the questions I have,
18 Your Honor.

19 THE COURT: Cross.

20 **CROSS EXAMINATION**

21 BY MR. NETTLES:

22 Q Colonel, one of the things when you said drag
23 marks, that refers to marks that are made when a
24 body is drug; right?

25 A Yes, sir.

1 Q So if I were drugged by -- there's all kinds of
2 ways we can tell, when we come up to a scene, where
3 the body has been drug. One way is the clothing
4 can show dragging, correct?

5 A Yes, sir, it could.

6 Q Pull clothes off, right?

7 A Right.

8 Q Or just pulling somebody. Depending on which way
9 they are pulled, you can pull the pants down or the
10 shirt up; right?

11 A Yes, sir.

12 Q And it will leave on the ground, even if the person
13 is not bleeding, sometimes if they are drug through
14 the ground, just sort of common sense, it's like
15 dragging a sack. If you drug a sack through the
16 ground, it leaves drag marks; right?

17 A Yes, sir.

18 Q A similar thing?

19 A Yes, sir.

20 Q And so what you saw at the location near here is --
21 well, I believe it's State's Exhibit 33.

22 A Yes, sir.

23 Q That's the aerial view?

24 A Yes, sir.

25 Q Of the broad area where the body was found?

MELVIN SEBOE -- CROSS -- MR. NETTLES

219

1 A Yes, sir.

2 Q And you found an area where the car had been backed
3 up to sort of the brush line?

4 A Yes, sir.

5 Q And it appeared that -- and you said trunk. But
6 you didn't know whether it was the trunk or out of
7 the back of a truck or whatever it was -- but the
8 body was taken from the car, on the ground, and
9 then drug across the ground?

10 A Yes, sir, that's what it appeared to be.

11 Q Okay. Did you find the body?

12 A Yes, sir, I believe I was one of the first ones
13 there.

14 Q The body, as you found it, was consistent with
15 having been drug there?

16 A Yes, sir, it was.

17 Q I have no further questions. Thank you very much,
18 Colonel.

19 THE COURT: Any redirect?

20 MR. MADSEN: That's all the questions I have

21 THE COURT: Colonel, you can step down. You
22 are free to go if you like.

23 MR. MADSEN: Your Honor, the State would call
24 Sergeant Nathaniel Collins.

25 NATHANIEL COLLINS, JR., being

1 first duly sworn, testified as follows:

2 CLERK: Have a seat and state your full name,
3 please.

4 THE WITNESS: My name is Nathaniel Collins,
5 Jr.

6 DIRECT EXAMINATION

7 BY MR. MADSEN:

8 Q Sergeant Collins, where are you currently employed?

9 A At the Lexington County Sheriff's Department.

10 Q And currently in what capacity are you employed
11 there now?

12 A I am a shift supervisor for the warrant division.

13 Q Back in December of 2001, specifically December 19,
14 2001, were you the shift supervisor over the
15 warrant division back then?

16 A No, sir, I was not. I was the sergeant for the
17 crime scene unit and the evidence room.

18 Q And as far as for the crime scene unit, just tell
19 the jury a little bit about what kind -- what were
20 some of the things as a supervisor there that you
21 did?

22 A Well, we had crime scene officers that process or
23 collect recorded evidence from the scenes, took
24 photographs, collected the evidence, logged it into
25 evidence. We would send it off to S.L.E.D. to be

NATHANIEL COLLINS, JR. -- DIRECT -- MR. MADSEN 221

1 tested, keep chain of custody on that stuff going
2 back and forth to S.L.E.D., that kind of stuff.

3 Q And did you have an occasion to process a car on
4 December 20, 2001?

5 A Yes, sir, I did.

6 Q Could you tell the jury about that, please.

7 A I was given a search warrant on the morning of
8 December the 20th. Actually it wasn't that
9 morning, it was later that afternoon. About 2:30 I
10 started and it was a Pontiac station wagon.

11 Q Let me show you a photograph. Do you recognize
12 State's Exhibit Number 25?

13 A Yes, sir.

14 Q Is that the station wagon that you served that
15 search warrant on?

16 A Yes, sir.

17 Q Once you did that and you processed it, do you
18 recall what you found?

19 A I started out by taking a lot of pictures of the
20 car and just doing an overall inventory of what I
21 observed inside the vehicle at the time I began my
22 warrant. I found there was a lot of stuff in
23 there. Probably the most important thing or one of
24 the most important things I found --

25 MR. NETTLES: Objection. I mean, I don't

NATHANIEL COLLINS, JR. -- DIRECT -- MR. MADSEN

222

1 think he can characterize what is important and what is
2 not. I think he can just tell us what he found.

3 THE COURT: Yes, sir, sustained.

4 BY MR. MADSEN:

5 Q Let me show you what is marked as State's Exhibit
6 Number 29. Do you recognize that?

7 A Yes, sir, I do.

8 Q What is that?

9 A It's a photograph of some legal documents I located
10 under the seat inside the vehicle.

11 Q Let me show you what has been marked as State's
12 Exhibit Number 42. Do you recognize that?

13 A Yes, sir, I do.

14 Q What is that?

15 A This is the legal document that I found underneath
16 the seat of the vehicle. It's a motion and notice
17 of motion for emergency or temporary relief and
18 order through family court.

19 Q Let me show you State's Exhibit Number 41. Do you
20 recognize that?

21 A Yes, sir, I do.

22 Q What is that?

23 A It's a letter from an attorney to the Defendant
24 advising him that there is a copy of a motion for
25 notice -- I'm sorry -- a notice of motion for

NATHANIEL COLLINS, JR. -- DIRECT -- MR. MADSEN 223

1 emergency temporary relief and order enclosed.

2 Q And that was another document that you found in the
3 car?

4 A Another document found inside the vehicle, yes,
5 sir.

6 (Attorneys confer).

7 MR. MADSEN: Judge, I believe that the State
8 and the Defendant have entered into a stipulation that
9 there was some other legal paperwork in that car, an
10 affidavit of which included the current address of Jenny
11 Burke at that point in time.

12 MR. NETTLES: We worked that stipulation out
13 beforehand.

14 BY MR. MADSEN:

15 Q Let me show you what is marked as State's Exhibit
16 Number 43. Do you recognize that?

17 A Yes, sir, I do.

18 Q And did you find that within that car?

19 A Yes, sir. This is a South Carolina Law Enforcement
20 Division purchase application record that was found
21 inside the vehicle.

22 Q And who is that purchase record issued to?

23 A It indicates that the buyer is Roger Dale Burke.

24 Q Does it indicate on what date he received it?

25 MR. NETTLES: Your Honor, I will object at

NATHANIEL COLLINS, JR. -- DIRECT -- MR. MADSEN

224

1 this point. I don't think the proper foundation has
2 been laid for that. I think he can say he found it; but
3 in terms of him testifying, I don't think the proper
4 foundation has been laid.

5 MR. MADSEN: It's actually been stipulated
6 that it's in evidence. I'm just asking him to publish
7 it to the jury.

8 THE COURT: I understand. Let him still lay
9 the foundation.

10 MR. NETTLES: That's all right. I see what
11 you are saying. I withdraw my objection.

12 THE COURT: That's fine.

13 BY MR. MADSEN:

14 Q Does it have a date on there?

15 A In block 27 it states that the date of sale was
16 December 19, 2001.

17 Q So that is the day before you are processing the
18 car?

19 A Yes, sir, that's what is listed on the paperwork.

20 Q Are you familiar with this type of paperwork in
21 reference to the purchase of a pistol?

22 A If I ever filled one out? No, sir, I am not
23 familiar with it personally.

24 Q Let me show you what has been marked as State's
25 Exhibit Number 28. Do you recognize that?

NATHANIEL COLLINS, JR. -- DIRECT -- MR. MADSEN 225

1 A Yes, sir, I do.

2 Q What is that?

3 A That's a box, a pistol box, that a pistol would
4 come in when you buy it from a gun dealer for a
5 .380.

6 Q And did you find that in that car?

7 A Yes, sir, it was located in the back passenger area
8 of the vehicle.

9 Q Let me show you State's Exhibit Number 44. Is that
10 that box?

11 A Yes, sir.

12 Q Can you determine from that box what type of
13 firearm was sold in that box?

14 A It's indicated on the box here that it's a model
15 C.F. .380 A.C.P. High Point Firearms.

16 Q What caliber was it?

17 A A .380.

18 Q Did you find a firearm?

19 A Yes, sir, I did. I found a High Point .380-caliber
20 semiautomatic pistol.

21 Q Let me show you what has been marked as State's
22 Exhibit Number 26. Do you recognize that
23 photograph?

24 A Yes, sir, it's the picture I took of the gun in the
25 vehicle as I found it.

- 1 Q And I believe that is in the driver's side?
- 2 A Front passenger area, yes, sir.
- 3 Q Let me show you what is marked as State's Exhibit
- 4 Number 27. Do you recognize that photograph?
- 5 A Yes, sir, it's another photograph I took of the
- 6 firearm inside the gun (sic) -- it's a close-up to
- 7 scale version.
- 8 Q Let me show you what has been marked as State's
- 9 Exhibit Number 46 and ask if you recognize that.
- 10 A Yes, sir, I do.
- 11 Q And what is that?
- 12 A This is the actual firearm I found in the vehicle.
- 13 The serial number is the same.
- 14 Q What type of gun is that?
- 15 A It's a High Point .380 semiautomatic.
- 16 Q And inside that box with that gun, is there
- 17 something else in there?
- 18 A Yes, sir, there's five rounds of ammunition in one
- 19 bag and a single round of ammunition in the other.
- 20 Q Where did that five rounds of ammunition and that
- 21 single other round come from?
- 22 A They would have came from the weapon itself. The
- 23 single round would have been the one loaded.
- 24 Q So that gun was loaded when you found it?
- 25 A Yes, sir.

NATHANIEL COLLINS, JR. -- DIRECT -- MR. MADSEN 227

1 Q As far as are you familiar with what this
2 (indicating) is?

3 A The gun lock?

4 Q Yes, sir.

5 A Yes, sir, I am familiar with it.

6 Q Tell the jury, what is a gun lock?

7 A It's a device placed on the gun to make it safe
8 from somebody who doesn't hold the key to the lock.

9 Q Was that on there when you got it?

10 A No, sir.

11 Q Is it normally --

12 A That's a safety precaution that has been applied to
13 the weapon.

14 Q Can you determine whether or not this gun is the
15 same one that is purchased in State's Exhibit
16 Number 43?

17 A Yes, sir. On the application and record from
18 S.L.E.D., block 25 indicates that the serial number
19 is P-762890. That is the same serial number that
20 is on the weapon P-762890.

21 Q Let me show you what has been marked as State's
22 Exhibit Number 45. Do you recognize that?

23 A Yes, sir, I do. It's a box of Winchester .380
24 automatic ammunition.

25 Q Let me show you State's Exhibit Number 26. Where

1 did you recover that ammunition from?

2 A It was located from the front of the vehicle next
3 to the firearm.

4 Q Is that what is in State's Exhibit Number 26?

5 A Yes, sir, it's depicted there and also depicted in
6 the photograph displayed.

7 Q Is that ammunition that is contained in that the
8 type that would be used in that .380 High Point
9 pistol?

10 A Yes, sir.

11 Q If you can answer any questions Mr. Nettles has.

12 A Yes, sir.

13 THE COURT: Cross.

14 CROSS EXAMINATION

15 BY MR. NETTLES:

16 Q When you searched this car, you found, in addition
17 to this gun, you found a whole bunch of stuff like
18 empty Coke cans and empty milk cartons?

19 A There was a lot of stuff in that car.

20 Q It was not a well-kept car. You will give me that,
21 right?

22 A Yes, sir.

23 Q And you also found a lot of tools, like you found a
24 work belt and a speed squarer?

25 A And a toolbox.

NATHANIEL COLLINS, JR. -- CROSS -- MR. NETTLES 229

1 Q A toolbox?

2 A Yes, sir.

3 Q Stuff that someone -- tin snips, sort of tools of a
4 trade of a guy who worked, for instance, doing
5 vinyl siding; right?

6 A They were tools.

7 Q Construction type of stuff, right?

8 A (Witness nods). (Indicating affirmative response).

9 Q And measuring tapes, such like that?

10 A Yes, there was tools there. I wouldn't dispute
11 what particular kind of tools, but there were a lot
12 of tools and clothes and empty food wrappers and
13 stuff.

14 Q This letter that you found here from the lawyer.
15 Do you have a copy of that?

16 A Yes, sir, I think so.

17 MR. NETTLES: Judge, I am referring to State's
18 Exhibit 41.

19 Q Based on that letter we can surmise that Roger's
20 phone had been disconnected, can't we? I will show
21 it to you, State's Exhibit 41.

22 A Yes, sir. The last sentence from his lawyer
23 states, "That I found that your home phone has been
24 disconnected."

25 Q Now, in State's Exhibit 42, which is the motion and

1 notice of motion for emergency temporary relief and
2 order, that also, what that says is --

3 A Excuse me.

4 Q Is that a gun?

5 A No.

6 Q It did fall off your belt?

7 A It did.

8 Q That seems to tell us that they were trying to take
9 custody of his children, right, go from joint
10 custody to full custody? Isn't that what the
11 motion says that you found, State's Exhibit 42?

12 A Yes, sir, I believe that's what the motion is a
13 request for.

14 Q On State's Exhibit 43, which is the S.L.E.D.
15 application that you found?

16 A Uh-huh. (Indicating affirmative response).

17 Q There's a couple of things about this. As it
18 relates to a handgun, you've got to apply for all
19 this and then wait; don't you?

20 A That's my understanding of it, yes, sir.

21 Q So the fact that he picked up the gun on the 19th,
22 he would have had to have applied for it before
23 that; right?

24 A That's my understanding, yes, sir.

25 Q And the other thing that you can tell from this is

NATHANIEL COLLINS, JR. -- CROSS -- MR. NETTLES 231

1 it asks: Have you ever -- are you a felon? Have
2 you ever had any felony over a year, right? That's
3 question number B. or letter B. on there. Do you
4 see it?

5 A "Are you under indictment for a felony for any
6 court crime punishable by punishment for a term
7 exceeding one year?" Yes, sir.

8 Q So it's not even convicted but just even under
9 indictment?

10 A Correct.

11 Q And he answered that no?

12 A He answered it no.

13 Q Well, you are aware -- do you have any evidence
14 that is not true?

15 A No, sir, I don't.

16 Q Now, the gun that was found, when you found the gun
17 in the car -- and this is the gun as you found
18 it -- I mean, that's just laying in the floorboard
19 up there; right?

20 A Yes, sir.

21 Q I mean, you didn't have to uncover anything to find
22 it; right?

23 A No, sir.

24 Q You didn't get the sense that anybody was trying to
25 hide it or anything, right?

NATHANIEL COLLINS, JR. -- REDIRECT -- MR. MADSEN 232

1 A It was there in plain view.

2 Q It wasn't like it was duct taped underneath the
3 dashboard or anything?

4 A No, sir.

5 Q The same thing with the box that you found, the box
6 it was just laying in plain view?

7 A Yes, sir.

8 Q And the bullets, the same thing; right?

9 A Uh-huh. (Indicating affirmative response). The
10 bullets were slightly under the seat, but --

11 Q All right there together?

12 A -- once you leaned down to get the gun, you could
13 see the bullets pretty easy.

14 Q If you let me talk with Dale, I might be done.

15 A Okay.

16 Q Thank you.

17 MR. NETTLES: No further questions, Your
18 Honor. Thank you.

19 THE COURT: Anything else?

20 MR. MADSEN: Yes, sir.

21 REDIRECT EXAMINATION

22 BY MR. MADSEN:

23 Q Sergeant Collins, if there were other occupants of
24 that car at some point in time, would that gun have
25 been in plain view to them?

KENNETH WHITLER -- DIRECT -- MR. MOSES

233

1 A Depending on where they were in vehicle, yes, it
2 could have been in plain view to them.

3 MR. MADSEN: No further questions.

4 THE COURT: Anything else, Mr. Nettles?

5 MR. NETTLES: Nothing.

6 THE COURT: You can step down.

7 MR. MOSES: The State would call Ken Whitler
8 to the stand.

9 KENNETH WHITLER, being
10 first duly sworn, testified as follows:

11 CLERK: State your full name on the record.

12 DIRECT EXAMINATION

13 BY MR. MOSES:

14 Q Mr. Whitler, can you state your occupation to the
15 jury, please.

16 A My name is Kenneth Whitler, W-H-I-T-L-E-R. I am
17 currently employed by the South Carolina law
18 enforcement division in the laboratory section.

19 Q How long have you been employed by S.L.E.D.?
20 That's commonly called S.L.E.D.?

21 A It's commonly called S.L.E.D., since 1997.

22 Q Where were you previously employed?

23 A Previously I was employed by the Federal Bureau of
24 Investigation. I retired from the F.B.I. in 1997
25 and came to work for S.L.E.D.

1 Q What did you do for that agency?

2 A From approximately 1990 until '97, I was a firearms
3 tool mark examiner with the F.B.I. laboratory.

4 Q What specialization do you have in your work? What
5 training have you had in your capacity at S.L.E.D.
6 now?

7 A In order to be a firearms -- it's called firearms
8 identification is what you are training to do.
9 There is no school you can go to and get a degree
10 in firearms identification. You have to learn from
11 other qualified examiners.

12 I got my training when I was working in the
13 F.B.I. laboratory. The training consists of about
14 two years of on-the-job training where you look at
15 literally hundreds or in some cases thousands of
16 cartridge cases and bullets, test firearms and
17 actually work on real cases.

18 At the end of the training period when the
19 other examiners give you a series of tests, if you
20 successfully complete them, then you are a
21 certified by the F.B.I. or allowed to become a
22 firearms tool mark examiner.

23 When I came to S.L.E.D., I basically, when I
24 retired from the F.B.I., I came to S.L.E.D. to do
25 the same job. I just don't have as long as a

KENNETH WHITLER -- DIRECT -- MR. MOSES

235

1 commute as I used to. So I am still doing firearms
2 identification at this time for S.L.E.D.

3 Q How many times have you been qualified to testify
4 as an expert in state or federal courts, an expert
5 in firearms identification?

6 A I have been accepted as an expert approximately 150
7 times in various state, local, federal courts, as
8 well as some territorial courts in two other
9 countries.

10 MR. MOSES: Your Honor, at this time we would
11 submit that Mr. Whitler is qualified as an expert in
12 firearms identification.

13 THE COURT: Any objection?

14 MR. NETTLES: Without objection.

15 THE COURT: Ladies and gentlemen, again, I
16 told you earlier about expert witnesses. Remember that
17 an expert is qualified as such because of their
18 experience, training and background or education in a
19 particular area.

20 They are allowed to give opinions in that
21 area. Remember you are not bound by the opinion of any
22 expert. You decide how much weight and credibility to
23 give to it.

24 Any exception to that charge from the State?

25 MR. MOSES: None from the State, Your Honor.

1 THE COURT: Defense?

2 MR. NETTLES: Nothing, Your Honor.

3 THE COURT: Continue.

4 BY MR. MOSES:

5 Q Mr. Whitler, how did you become involved in this
6 case, in what capacity?

7 A Evidence was submitted in this case by the
8 Lexington County Sheriff's Department.

9 Q Can you explain to this jury what exactly firearms
10 identification is.

11 A Firearms identification is the study of the
12 microscopic marks on ammunition components for the
13 purpose of associating those components with
14 each -- or with a particular firearm.

15 Very basically what we are trying to do is
16 determine if a bullet was fired by a particular
17 firearm barrel or a particular cartridge case was
18 fired in a particular firearm. If no firearm is
19 submitted, then we try to determine if all the
20 bullets and cartridge cases were fired by the same
21 firearm.

22 We are able to do that because when the bullet
23 goes down the barrel, it picks up microscopic marks
24 from the process of making that barrel, plus any
25 use or abuse of that firearm.

KENNETH WHITLER -- DIRECT -- MR. MOSES

237

1 It's the same way with the cartridge case in
2 that the firearm has various tool marks that are
3 still left in the metal of the firearm that, when
4 the cartridge is fired, the cartridge case will
5 pick up some of these marks in many cases.

6 What we do is we take the submitted bullets
7 and cartridge cases, and if we have a firearm, we
8 put it on a comparison microscope which allows us
9 to look at two objects at the same time.

10 If we have a gun, we will test fire the gun
11 and take those test fired bullets and cartridge
12 cases and put a test fired bullet that we know the
13 source, we know it came from the particular gun,
14 and put the questioned bullet on the other stage.

15 We look at them and try to determine if the
16 microscopic marks on the bullet or the cartridge
17 case match. If we get sufficient agreement of
18 those marks on the bullets or the cartridge case,
19 then I am able to say that bullet or cartridge case
20 was fired by a particular firearm.

21 Q Mr. Whitler, I will show you what is marked as
22 State's Exhibit Number 46. Do you recognize that?

23 A Yes, I do.

24 Q Is it in substantially the same condition as it was
25 when it came in your possession?

1 A Yes, it is.

2 Q Is this gun in working order?

3 A It was at the time I test fired it.

4 Q What did you do with this when it came in your
5 possession?

6 A I test fired it and compared the test fired bullets
7 and cartridge cases to the submitted bullets and
8 cartridge cases.

9 Q What did you find?

10 A I determined that the bullets, that three of the
11 bullets that were submitted and one of the
12 cartridge cases, was fired by that gun.

13 Q Mr. Whitler, I will hand you what has been marked
14 as State's Exhibit Number 40, Number 39, 38, and
15 37. Can you identify those exhibits?

16 A Yes, I can. These are items I have previously
17 examined.

18 Q Can you explain to the jury each exhibit, please.

19 A State's Exhibit 37 is a fired bullet jacket
20 fragment. State's Exhibit 38 is a fired bullet and
21 a fired cartridge case. State's Exhibit 39 is a
22 fired bullet. State's Exhibit 40 is also a fired
23 bullet that has come apart. So now it's a fired
24 bullet core and a fired bullet jacket.

25 Q When these came into your possession, how did you

KENNETH WHITLER -- DIRECT -- MR. MOSES

239

1 examine them?

2 A I examined those, as I said before, on a comparison
3 microscope. That's a microscope that lets me look
4 at two objects at the same time. I took the
5 bullets and compared them to the test fired bullets
6 that I obtained by test firing the pistol. With
7 the cartridge case, I did the same thing. I
8 compared it microscopically to the cartridge cases
9 I test fired.

10 Q I want to show you what has been marked as State's
11 Exhibit 40 that you just looked at. What did you
12 conclude, if you can conclude anything, what did
13 you conclude by examining that?

14 A State's Exhibit 40 has the same general
15 characteristics, rifling characteristics as the
16 test bullets fired by the submitted pistol. There
17 aren't -- there weren't sufficient microscopic
18 marks on the bullet, however, that would allow me
19 to identify that bullet as being fired by that gun.
20 So this bullet could have been fired by that pistol
21 or any other pistol with similar rifling
22 characteristics.

23 Q Thank you. As to these bullets, can you explain
24 your conclusions from your examination.

25 A State's Exhibit 37, which is the bullet jacket

1 fragment, State's Exhibit 39, which consists of a
2 bullet and a cartridge case, the bullet and the
3 cartridge case, as well as State's Exhibit 39
4 bullet, were all fired by the submitted pistol.

5 Q To a reasonable degree of certainty within the
6 field of firearms analysis or identification, can
7 you determine if that bullet casing was fired from
8 this gun (indicating)?

9 A Yes. As I have said before, this cartridge case,
10 which is State's Exhibit 38, was fired by that
11 pistol.

12 Q And to a reasonable degree of certainty within the
13 field of firearms identification, can you determine
14 if those bullets or bullet fragments were fired
15 through this barrel?

16 A Yes.

17 Q Please answer anything that the defense has.

18 THE COURT: Cross.

19 CROSS EXAMINATION

20 BY MR. NETTLES:

21 Q Just so I'm sure, State's Exhibit 37, we are seeing
22 that little piece right there (indicating). This
23 is a fragment of a bullet?

24 A That's a fragment, yes, sir.

25 Q That peeled off when it hit something?

KENNETH WHITLER -- CROSS -- MR. NETTLES

241

1 A When the bullet hits something, it's a piece of
2 copper, it's called the jacket, if it hits
3 something, it can break off a piece or the bullet
4 expands. So this is a piece of the jacket
5 material.

6 Q Right. So, in other words, this bullet had to have
7 been fired and then sometime between the time it
8 left the end of the barrel, it struck something and
9 a piece of it came off?

10 A Yes, sir.

11 Q That's great. Then this, State's Exhibit 40,
12 that's the bullet right there (indicating) or a
13 projectile?

14 A This (indicating) is the jacket and this
15 (indicating) is the bullet core which is left.
16 When I received it, this was all one piece; but
17 during the examination it separated.

18 Q I understand. Just so we are all kind of clear,
19 when you get -- the bullets are around here
20 somewhere -- but whenever you get a bullet and you
21 put the bullet in the gun, you have got the casing
22 and the projectile?

23 A Yes, that's called a cartridge.

24 Q The cartridge, that's right.

25 A Yes.

1 Q Then the projectile is the piece that actually
2 comes out of the end of the barrel?

3 A That's correct.

4 Q That projectile, in this case there was lead and
5 then there was copper on top of the lead?

6 A That's correct.

7 Q And so on State's Exhibit 40, that's (indicating)
8 the lead?

9 A That's correct.

10 Q The little black piece there. Then sort of the
11 copper looking piece, which is copper?

12 A Is the jacket.

13 Q Is the jacket. When it came to you, those two were
14 together?

15 A That's correct.

16 Q Okay. What is that?

17 A Thirty-nine.

18 Q Thirty-nine. That would be what we would say would
19 be a --

20 A A bullet.

21 Q -- a whole projectile pretty much?

22 A Yes, that's the bullet.

23 Q That is the copper on the outside and the lead in
24 the inside?

25 A Yes, sir. And I think you can see, if you hold it

KENNETH WHITLER -- CROSS -- MR. NETTLES

243

1 on the side, that you can look in the base and see
2 the lead.

3 Q Right, right. But that's a whole projectile,
4 right?

5 A That's correct.

6 Q And then this, State's Exhibit 38, what we have
7 here would be?

8 A You have the bullet and the cartridge case.

9 Q Can you tell whether that bullet is matched to that
10 cartridge case?

11 A No.

12 Q So, I mean, you know that's the right caliber for
13 that projectile?

14 A Yes, that's correct.

15 Q But you can't say that for sure that that
16 projectile fits in that cartridge, that it came
17 from that cartridge?

18 A No, sir.

19 MR. NETTLES: That's all the questions I have.

20 Thank you.

21 THE COURT: Any redirect?

22 MR. MOSES: Nothing further from the State.

23 THE COURT: You can step down.

24 MR. MOSES: The State would call Dr. William
25 Armstrong.

1 THE COURT: Counsel, I just noticed we have
2 been going a little over an hour. Why don't we take a
3 break at this point and give the jury a chance to move
4 around a little bit.

5 Ladies and gentlemen, we will take a short
6 break. Remember, we don't talk about the case. See you
7 back in a few minutes.

8 (The jury retires to the jury room).

9 THE COURT: The jury is secured, counsel. We
10 will stand in recess.

11 (Whereupon there was a recess).

12 THE COURT: Counsel, I have printed off a
13 rough, tentative copy of the charge. I know that we are
14 going to have some delay in the trial here. What we
15 will do is I will have it to you before you leave so you
16 will have plenty of time to read it the rest of the day
17 and tomorrow. I will expect all of you to spend your
18 spare hours reading this instruction.

19 MR. NETTLES: You can bet it will be done.

20 THE COURT: All right. Anything from the
21 State before we start back?

22 MR. MADSEN: Nothing from the State. Your
23 Honor, I will just let you know, we have got
24 Dr. Armstrong and then Sergeant Frier. So I don't think
25 we are even going to go late, late.

WILLIAM ARMSTRONG -- DIRECT -- MR. MOSES 245

1 MR. NETTLES: I believe I am going to be able
2 to do -- I think I will be done by Friday lunch or soon
3 thereafter.

4 THE COURT: Anybody you can call today if you
5 have time?

6 MR. NETTLES: No, sir, I apologize for that.

7 THE COURT: We had talked about that
8 yesterday. I don't want to put you on the spot on that.

9 THE COURT: All right. Bring the jury in.

10 (The jury returns to the courtroom).

11 THE COURT: All parties and attorneys are in
12 the courtroom, and all jurors are with us. Call your
13 next witness, please.

14 MR. MOSES: The State would call Dr. William
15 Armstrong.

16 WILLIAM ARMSTRONG, being
17 first duly sworn, testified as follows:

18 CLERK: Can you state your full name on the
19 record, sir.

20 THE WITNESS: My name is William Armstrong.

21 **DIRECT EXAMINATION**

22 BY MR. MOSES:

23 Q Dr. Armstrong, are you a duly license physician in
24 the State of South Carolina?

25 A Yes, I am.

1 Q How long have you been licensed?

2 A In this State 26 years.

3 Q Are you presently engaged in the practice of
4 forensic pathology?

5 A Yes, I am.

6 Q What are the duties of a forensic pathologist?

7 A A forensic pathologist is one who examines dead
8 bodies. It is different from a regular pathologist
9 who examines bodies after death in that we
10 additionally correlate more the circumstances of
11 the death as best as possible from investigative
12 reporting. We do not investigate it directly
13 ourselves.

14 In addition to that, we do a standard external
15 examination and document all external findings.
16 This may include taking X-rays, which is not
17 standard for a regular pathologist. We then
18 perform an internal examination at that same time,
19 at which time we take samples, small samples of
20 various organs which are pertinent to solving the
21 case or documenting the case.

22 We also take body fluids, such as blood and
23 urine and sometimes eye fluid, for toxicological
24 studies which are performed in our lab, and we have
25 the ability to back that up at S.L.E.D.

WILLIAM ARMSTRONG -- DIRECT -- MR. MOSES

247

1 After that the tissue is processed for
2 preparing microscopic slides. So we examine the
3 tissue, small pieces of tissue that we have
4 obtained under the microscope.

5 Then after that we correlate those findings
6 with the external and visual findings and the
7 toxicology and the X-rays and kind of put the local
8 case together to form what is called a final
9 anatomic diagnosis, and in that is included the
10 cause of death.

11 But what is also different about a forensic
12 autopsy is we also determine manner of death. In
13 other words, the type of death it is. The manners
14 of death would include natural causes, accidental,
15 homicide, suicide, and actually legal execution is
16 one which was recently introduced in this State.

17 Q Thank you. Where did you receive your medical
18 training and education?

19 A I received my medical training, my M.D. degree,
20 from the University of Michigan. Also, my
21 pathology training was done at the University of
22 Michigan.

23 Q Are you on any boards within this State that
24 involve forensic pathology or any type of field
25 similar to that?

1 A No, no boards, no.

2 Q Do you teach at the medical school?

3 A Yes, I do. I'm a clinical professor of pathology
4 at the Medical School here in Columbia or over
5 there in Columbia.

6 Q Where and in what capacity are you employed at this
7 time?

8 A I'm a pathologist practicing at Lexington Medical
9 Center, and I have been there for three and a half
10 years. Prior to that I had been at Richland
11 Memorial Hospital or Palmetto Richland for 22 years
12 and in both places performed the autopsies for or
13 at the request of the Coroner, whether it be
14 Richland County or in this case Lexington County.

15 Q How many autopsies do you think you have performed
16 in your career?

17 A Oh, thousands.

18 Q Have you previously been qualified as an expert in
19 forensic pathology in State or federal courts?

20 A Yes, I have.

21 Q Approximately how many times?

22 A Several hundred times.

23 MR. MOSES: Your Honor, at this time we would
24 move that Dr. Armstrong be an expert in the field of
25 forensic pathology.

WILLIAM ARMSTRONG -- DIRECT -- MR. MOSES

249

1 THE COURT: Any objection?

2 MR. NETTLES: None.

3 THE COURT: Without objection. Again, ladies
4 and gentlemen, this witness is qualified as an expert in
5 forensic pathology. Remember, he is allowed to give an
6 opinion. You are not bound by the opinion. You decide
7 how much weight and credibility to give to it.

8 Any exception to that from the State?

9 MR. MOSES: None from the State, Your Honor.

10 THE COURT: Defense?

11 MR. NETTLES: None, Your Honor.

12 THE COURT: Go ahead.

13 BY MR. MOSES:

14 Q During the month of December 2001, do you recall
15 how and where you were employed?

16 A I was employed at Lexington Medical Center.

17 Q Did you have the occasion to perform an autopsy on
18 Jenny Burke?

19 A Yes, I did.

20 Q Where did this autopsy take place?

21 A We performed those in the basement of Lexington
22 Hospital.

23 Q Can you explain to the jury what your autopsy
24 revealed.

25 A Yes. There were a total of five gunshot wounds to

1 the body. Four of these were below the neck, and
2 one was a bullet wound to the skull, the forehead.
3 The ones to the body had entrance wounds which were
4 round and smooth.

5 The one to the head had a stellate or tear
6 like lesion on the entrance wound to it, which we
7 consider essentially diagnostic of a contact wound.
8 In other words, the gun was held against the skin.
9 That bullet in the head was recovered and submitted
10 under exhibit.

11 Q I will stop you right here for a second. I will
12 show you what has been marked as State's Exhibit
13 Number 50.

14 MR. MOSES: Your Honor, this has already been
15 put into evidence. Do you mind if Dr. Armstrong stands
16 down?

17 THE COURT: Yes, sir, go ahead. Mr. Nettles,
18 you can come around if you need to.

19 A Let me just add that there is one additional
20 traumatic injury, and that is a ligature mark
21 around the neck.

22 Q If you will, Dr. Armstrong, can you step around
23 here.

24 A (Witness leaves the witness stand).

25 Q Point to the jury the five different entrance and

WILLIAM ARMSTRONG -- DIRECT -- MR. MOSES.

251

1 exit spots that you examined in your autopsy.

2 A Yes. The deceased that we are talking about was
3 obese. This diagram is in a slim, trim lady. So
4 keep that in mind when I am describing some of
5 these wounds.

6 Also, I want to say that while these are given
7 numbers one through five, that is not -- I am not
8 saying that that is the order that they occurred.
9 I am simply labeling them for your identification
10 purposes. I am not implying any order of bullets
11 by that numbering system.

12 So we will start off with the ones below the
13 neck. There was a bullet wound in the upper right
14 breast which traveled -- and we can trace these by
15 probes to find direct association with the tracks
16 of a bullet -- an entrance wound here (indicating)
17 and a probed soft tissue tract here (indicating),
18 and an exit wound approximately in this region
19 (indicating). By the way, entrance and exit wounds
20 look a little differently. The entrance wounds --
21 did you want to come closer?

22 MR. NETTLES: I'm fine. Thank you.

23 A Entrance wounds are cleaner. Exit wounds have more
24 of a fraying on them as a bullet tumbles. It's
25 fairly easy in almost all cases to establish, in

1 bullet holes that go in and out of the body, which
2 one was the entrance wound and which one is the
3 exit wound.

4 So this bullet number two then exited here
5 (indicating) and went off in this direction
6 (indicating). In fact, all of these below the
7 neck exited the body. There were no bullets
8 found.

9 The next bullet wound was a little bit more
10 complex. It traveled in a downward direction. We
11 will show it on this gentleman here in a minute in
12 3D. But it was fired in a downward direction,
13 entering the left upper breast here (indicating).

14 It went down through all soft tissue, all
15 through fat. It looks like it goes outside the
16 body, but in her it was still inside the body. It
17 came out from a fold of fat and then went back in
18 again in the groin area, went through some tissue
19 in the leg and came out here (indicating). So it
20 was a pretty direct shot there.

21 Another bullet wound entered under the left
22 rib cage. It traveled through the abdomen and its
23 contents. It actually lacerated or cut the left
24 lobe of the liver about right here (indicating).
25 The liver sort of lies in this direction

WILLIAM ARMSTRONG -- DIRECT -- MR. MOSES

253

1 (indicating).

2 It nicked that. It cut through the stomach
3 and the duodenum and passed through the back part
4 of the abdomen and actually exited in the left
5 buttock region, which is kind of dotted there
6 because it's behind us, and went through the back
7 and then out in that direction (indicating).

8 There was about a couple of pints of blood in
9 the abdomen cavity, free blood. I believe that it
10 is this bullet wound that actually caused that
11 injury, that blood to be there.

12 This bullet wound which I have labeled number
13 five did a little tricky thing. It was a shot in
14 this direction, in this location (indicating), just
15 right below your sternum.

16 It traveled downward through soft tissue, and
17 it hit the back of the pelvic bone and ricocheted
18 back up and exited out on the outside here
19 (indicating).

20 The last bullet wound labeled number one, this
21 (indicating) is approximately to represent the hair
22 line. In the hair itself approximately in this
23 region (indicating), it was what we call a stellate
24 bullet entrance wound. There was no exit wound
25 here. It was found in the back of the skull and

1 given to investigators.

2 There were ligature marks around the neck.
3 We, of course, lift the flap of skin up and examine
4 the neck structures. There was no soft tissue
5 hemorrhage here. So I interpret that finding as
6 that the ligature marks occurred after death and
7 that they did not contribute to death at all.

8 Potentially any of these bullet wounds would
9 have been survivable had medical attention been
10 obtained. Yes, there was a bullet wound to the
11 stomach, but it's a standard trauma procedure to
12 easily repair these things incurred.

13 The bullet wound to the head was not
14 survivable. It is my interpretation that it is
15 this bullet wound that actually killed the patient,
16 killed the victim. (Witness resumes the witness
17 stand).

18 Q Doctor, have you seen this (indicating) before?

19 A This appears to be the bullet that I recovered from
20 inside her head.

21 Q Doctor, if you will step down again, please.

22 A (Witness leaves the witness stand).

23 Q I understand, two dimensional, you can explain on
24 the board. Can you explain to the jury in three
25 dimensional on my body what these bullets did. I

WILLIAM ARMSTRONG -- DIRECT -- MR. MOSES

255

1 will take my coat off so you can see a little
2 clearer.

3 A I tried to convince one of the ladies to come up
4 because it was a female but none volunteered. The
5 bullet wound to -- face this way -- to the right
6 breast was really fired approximately in this
7 direction (indicating). It went in here
8 (indicating) and out here (indicating). So it was
9 more or less taken from the side.

10 The one from the left breast, which went down
11 through, came out fat, went back in and outside the
12 leg was -- if you look at it this way, from this
13 angle (indicating), as opposed to the other one
14 from this angle (indicating).

15 Q Doctor, let me stop you there. For a wound to go
16 from that angle that you just described, which
17 direction would the barrel of the gun have to be
18 pointed?

19 A The barrel of the gun would have to be pointing
20 downward for this. I am pointing my finger in the
21 direction of the barrel. The one under the rib
22 cage here (indicating) had to take a direction in
23 this direction (indicating), coming out the back
24 here (indicating). So it went in a downward
25 direction.

1 This one (indicating) followed the direction
2 somewhat in this direction here (indicating), where
3 it went down through the liver, stomach, bounced
4 off the pelvis, and out the back.

5 The bullet wound in the head -- turn a little
6 bit more. Thank you -- was, of course, in the hair
7 line. It went in a downward direction and to the
8 patient, the victim's, right and was found here
9 (indicating). So the direction of that bullet was
10 approximately this way (indicating).

11 Q Thank you.

12 A (Witness resumes the witness stand).

13 Q Doctor, I will show you what has been marked as
14 State's Exhibit Number 49. I want you to explain
15 to the jury what shape this represents on this head
16 as far as the contact wound that you described
17 previously.

18 A Well, we use the term stellate, which comes from
19 the word star. It looks not exactly like a star,
20 but it has a lot of sharp tearing edges around it.
21 There are two things that we look for in terms of
22 establishing contact wound injury where the weapon
23 is placed directly against the skin. One is this
24 type of tearing.

25 Another one is that we often look and find,

WILLIAM ARMSTRONG -- DIRECT -- MR. MOSES

257

1 but not always, a rim of bruising where the hole
2 went in. That's where the barrel was. The area of
3 bruising was not found in this case, but I am not
4 surprised at that because of the type of weapon
5 used, which was a recoil type weapon, rather than a
6 solid barrel. Also, the hair tends to protect a
7 little bit against that bruising injury.

8 So why that does that, and it does
9 predominantly in bullet wounds to the head, to the
10 skull, where the gasses which are released along
11 with the bullet create a tremendous increase in
12 pressure inside this fixed space. That then has to
13 get released out, and it gets released out by
14 pushing the skin among other things. That's why
15 you get the tearing.

16 Q Doctor, to get the stellate pattern that you just
17 described, does the barrel of the gun have to be
18 pressed against the head?

19 A Yes.

20 Q Would that cause a stellate wound if the barrel was
21 off of the head at this angle (indicating)?

22 A No.

23 Q For that to cause a stellate wound, it has to be
24 pressed against it?

25 A Yes. Other things against it are that if a gun is

1 held close to the skin but not against it, we see
2 powder, speckled marks on the skin, from the burnt
3 powder that comes out as well.

4 There were no powder burns or speckle marks on
5 it as well. So that is another point against it
6 being at some distance from the skin, rather than
7 being directly on the skin.

8 Q Doctor, from your examination you can determine
9 that she was shot. Can you determine that she was
10 shot at multiple angles?

11 A Yes.

12 Q Within a reasonable degree of medical certainty,
13 what was the cause of Jenny Burke's death?

14 A The cause of death was a gunshot wound to the head.

15 Q Within a reasonable degree of medical certainty,
16 what was the manner in which she was killed?

17 A The manner of death was homicide.

18 Q Can you explain the term homicide to the jury.

19 A Homicide is death of a person caused by the action
20 of someone else.

21 Q Thank you, Doctor. Answer any questions that the
22 defense might have.

23 **CROSS EXAMINATION**

24 BY MR. NETTLES:

25 Q Homicide says nothing about what was in the heart

WILLIAM ARMSTRONG -- CROSS -- MR. NETTLES

259

1 of the person who killed another person, right?

2 A That's correct.

3 Q So in other words, for instance, if it was
4 self-defense, if you killed me in self-defense,
5 that would be homicide; right?

6 A Yes.

7 Q So, in other words, what you are telling this jury
8 is that you can say, among some other things we
9 will talk about later, but as it relates to a
10 homicide, this wasn't -- she didn't fall out of a
11 car or drown in a pool by herself or something like
12 that?

13 A That's correct.

14 Q Now, you said when you just showed the jury the
15 angles of all the bullets and you had the solicitor
16 or the assistant solicitor stand up here, what you
17 did was you used him in sort of like the attention
18 position; right?

19 A Yes, that's correct.

20 Q As a matter of fact, this graph or this chart --
21 and I am referring to State's Exhibit 50 -- is of
22 someone in the attention position?

23 A Yes.

24 Q You don't know what position the deceased was in
25 when she got shot?

1 A That's correct. We can only tell relative
2 positions.

3 Q So the other thing we can say is there are a number
4 of different angles which could suggest, among
5 other things, that the bodies or the body was
6 twisting or turning?

7 A That's correct.

8 Q Because, as I believe you said, you can't say what
9 the order was that the bullets came in?

10 A That's correct.

11 Q Now, as it relates to the head wound, you did a
12 report; correct?

13 A Yes.

14 Q An autopsy report. And in that autopsy report you
15 talk about a lot of things. You talk about how
16 much people weigh, you talk about how much their
17 head weighs, how much their brain weighs, results
18 from the blood tests, et cetera; right? I mean,
19 it's a pretty intensive report; correct?

20 A We hope so.

21 Q Certainly whenever you were doing it, if you had
22 the choice between doing an extensive report and an
23 nonextensive report, you would choose the former;
24 correct?

25 A Yes.

WILLIAM ARMSTRONG -- CROSS -- MR. NETTLES

261

1 Q In your extensive report, it's accurate to the best
2 of your ability; correct?

3 A Yes.

4 Q There is no mention in there about the distance
5 from the head -- that the gun was from the head?

6 A Well, in forensic pathology terms, we take the term
7 stellate bullet wound to mean contact injury.

8 Q Just show me. Maybe I missed it. I am not a
9 doctor. I am a little old lawyer. Shows me where
10 it says stellate injury in your autopsy report.

11 A (Pause). External examination --

12 Q If you will tell me what page so I can follow
13 along.

14 A I don't know what kind of report you have, but mine
15 says page four.

16 Q Okay. Is that the page that says final autopsy
17 diagnosis?

18 A No.

19 Q Let me grab mine.

20 A I will quote the sentence. I am describing the
21 scalp lesion: "It is a uniformly stellate entrance
22 wound, two centimeters in greatest diameter." I
23 cannot clearly estimate the entrance wound
24 diameter, in other words, the bullet diameter.

25 Q Right. You don't say in there it was a contact --

1 you didn't say it was two inches, you don't say it
2 was three inches; do you?

3 A No. But as I just said, we take that to be
4 essentially diagnostic.

5 Q We do. Okay.

6 A In forensic pathology we do.

7 Q Let me ask you this. There was no bruise around
8 it, right?

9 A (Witness nods). (Indicating affirmative response).

10 Q Is that correct?

11 A That's correct.

12 Q And even if we assume for a second that stellate in
13 forensic pathology means right on the wound, one of
14 the things that we know is that you can't tell this
15 jury -- I mean, you are not trying to tell the jury
16 that you know to a reasonable degree of medical
17 certainty that the gun was held at the head for an
18 appreciable period of time before the bullet was
19 pulled -- before the gun was pulled?

20 A I cannot tell how long the gun was held to the
21 head. I can only say that it was held against the
22 head.

23 Q Even if the gun -- if this (indicating) were the
24 head and the gun went like that (indicating) and
25 the bullet went off -- boom, it went off -- and it

WILLIAM ARMSTRONG -- REDIRECT -- MR. MOSES

263

1 was just briefly there, it would produce this exact
2 same injury; right?

3 A I think that's correct. I would say that's
4 correct.

5 Q Okay.

6 MR. NETTLES: I have no further questions.

7 Thank you.

8 THE COURT: Any redirect?

9 MR. MOSES: Yes, Your Honor, just briefly.

10 **REDIRECT EXAMINATION**

11 BY MR. MOSES:

12 Q Doctor, can you conclude from your examination that
13 at the time of firing, the gun was held up against
14 the head of the victim?

15 A Yes.

16 Q Thank you.

17 **RECROSS EXAMINATION**

18 BY MR. NETTLES:

19 Q But you can't tell us whether it was there -- you
20 don't want to leave this jury with the impression,
21 do you, you are not trying to leave the jury with
22 the impression, which is what we are fighting over
23 here, is that someone walked up, put the gun to the
24 head, and held it there for any period of time and
25 pulled the trigger?

1 A That's correct. I can't tell the length of time.

2 Q How brief or how long?

3 A How brief or how long.

4 Q Thank you.

5 THE COURT: Doctor, you can step down. Thank
6 you, sir.

7 MR. MADSEN: Your Honor, the State would
8 recall Sergeant Frier.

9 SCOTTIE RICE FRIER, having
10 being previously duly sworn, resumed the witness stand
11 and testified as follows:

12 CLERK: Still under oath, Your Honor?

13 THE COURT: Yes, ma'am. You are still under
14 oath, Sergeant.

15 THE WITNESS: Yes, sir. Thank you.

16 MR. MADSEN: Your Honor, what was previously
17 marked as Court's Exhibit Number 2, I believe we will
18 stipulate to the entrance of it from what I understand.

19 MR. NETTLES: Correct.

20 (State's Exhibit Number 51 is received into
21 evidence).

22 DIRECT EXAMINATION

23 BY MR. MADSEN:

24 Q Sergeant Frier, let me show you what has been
25 marked as State's Exhibit Number 51.

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

265

1 A Yes, sir.

2 Q Do you recognize that?

3 A Yes, sir, I do.

4 Q What is that?

5 A This is a form consistent with the one I described
6 to the jury earlier. It is, again, a statement
7 form that has the Miranda rights on it. It's taken
8 as a subsequent second statement that I took from
9 Roger Dale Burke.

10 Q And what time did you take that statement from him?

11 A That statement, as is noted on the page, it says
12 started at 19:40, which is 7:40 p.m.

13 Q So you had taken State's Exhibit Number 48 at what
14 time?

15 A That was taken at 13:30 hours, which is 1:30 in the
16 afternoon on the 20th. This second statement was
17 subsequently at 7:40 that same day, about six hours
18 later.

19 Q Just so you we have an idea, at the point that you
20 take that second statement, you have established
21 these locations?

22 A Yes, sir. This is at the completion of us having
23 Mr. Burke down here, establishing where the
24 children had been left at the pond, and then him
25 being transported back to the detention facility.

1 Q And why did you want to take a second statement
2 from the Defendant?

3 A There was an issue I needed to resolve with him
4 about the attempted arson at the home.

5 Q And when you -- do you just have him start filling
6 out that statement or how do you go about it?

7 A No, sir. In a situation severe as this, I would
8 address those same Miranda issues. Miranda is kind
9 of a two-prong responsibility for law enforcement.
10 I have got to have a subject who is in police
11 custody or feels that he doesn't have a lot of
12 freedom to leave, and I am going to ask him a
13 question that if he answers, it may incriminate
14 him.

15 Because he is still in our detention and I am
16 going to ask him another question about a part of
17 that crime, then I am going, before I do that,
18 address those same Miranda issues again. Even
19 though he has waived them before, I am still going
20 to address them again before I talk to him.

21 Q And did you do that?

22 A Yes, sir, I did. In the very same fashion that I
23 described to the jury earlier, those rights are
24 read, I circle them, he initials them, and I put my
25 initials beside them.

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

267

1 Q So did you actually -- what is marked on here as
2 one, two, three, four, and five -- did you verbally
3 advise him of those rights again?

4 A Yes, sir, I read them again to him just as they are
5 printed on that page.

6 Q And did he appear to understand them again?

7 A Yes, he did.

8 Q Did he ever ask for an attorney?

9 A No, sir, he did not.

10 Q Did he ever ask not to speak with you any longer?

11 A No, he did not.

12 Q Was he ever not cooperative?

13 A No, sir, he was not.

14 Q Did he appear to be under the influence of alcohol
15 or any type of drug, whether legal or illegal?

16 A No, sir, he was not.

17 Q Did you force him to give you this statement or in
18 any way coerce him?

19 A No, sir, I did not.

20 Q Deprive him of food, drink or anything?

21 A No, sir.

22 Q Make him any promises of leniency?

23 A No, sir, I did not.

24 Q And did he actually give you that statement?

25 A Yes, sir. Again, in the same fashion that I did

1 before, I wrote out a statement based on our
2 conversation.

3 Q On there you didn't put anything there as far as
4 having him read you a right?

5 A No. We had just established that ability to read
6 and write some six hours before, so I wouldn't have
7 undergone that process again; but the same
8 advisement and that same process would take place
9 with me still sure that he is understanding what he
10 is doing. As Mr. Nettles had asked me earlier,
11 making sure that he understands that anything he
12 says, he could see again.

13 Q Could you go ahead and publish that statement to
14 the jury, please.

15 A Yes, sir. "After I shot and left, I later got
16 worried and I started thinking about what I had
17 done. I decided to go back to the house to remove
18 the body.

19 "I thought about burning the house. I thought
20 it might look like Jenny left with the kids and
21 burned the house. I started to try and light some
22 wallpaper on fire.

23 "I did this when I removed the body. I also
24 wanted to get rid of that blood evidence. That is
25 why I tried to burn the house. The paper was

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

269

1 burning when I left.

2 "I also picked up about three shell casings.
3 I thought I got them all. I threw them out of the
4 car window, I'm not sure where."

5 Q And who is that statement signed by?

6 A That statement is signed on the bottom by Roger
7 Dale Burke.

8 Q And who witnessed him signing that?

9 A As I had done with the initial, that's my signature
10 Scottie R. Frier; and I signed it as a notary. My
11 commission date is on the bottom.

12 Q And if the Defendant would have asked you to
13 include some other issue in this statement, would
14 you have let him?

15 A Absolutely. We would have undergone the same
16 process where that was read to him as I had written
17 it, handed it to him, asked him to review it for
18 fact, and that if he had anything to add or take
19 away, address that or if he found it be a factual
20 statement, to sign it.

21 Q Once you reviewed this with him, did he say: No
22 this isn't right. We need to change this?

23 A No, sir, he did not. He signed it as factual.

24 Q Did he say: Hey, I want to tell you about this.
25 Let's put this in here?

1 A No, sir, he did not.

2 Q You are familiar through your law enforcement
3 experience as far as the purchasing of firearms or
4 pistols?

5 A Yes, sir, I am.

6 Q Is there always a waiting period on those required?

7 A No, sir. There is the ability of some gun dealers
8 if they are on what is called online or they have
9 the ability to immediately communicate with
10 S.L.E.D., that background check can be done as far
11 as any criminal history; and the subject can
12 purchase the pistol.

13 Q Sergeant Frier, you have already been qualified as
14 an expert in -- was it blood spot or how did you
15 term it?

16 A Blood spatter pattern analysis or some people refer
17 to it as blood stain analysis.

18 Q And you heard Dr. Armstrong testify, correct?

19 A Yes, sir, I have.

20 Q Let me show you State's Exhibits Number 22 and 21
21 and State's Exhibit Number 49.

22 A Yes, sir.

23 Q Is there any significance in relation of those
24 photographs with this stellate wound?

25 A Yes, there are very significant correspondence.

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

271

1 Q To a reasonable degree within your expertise as far
2 as blood spatter, can you tell the jury what the
3 significance to those photographs is and that
4 stellate wound that is represented on State's
5 Exhibit Number 49.

6 A Yes, sir, I can.

7 THE WITNESS: Your Honor, may I step down?

8 THE COURT: Yes, sir.

9 (Witness leaves the witness stand).

10 A Kind of bear with me because I have to explain
11 something to you real quick about blood spatter and
12 stuff that we find significant. One of the main
13 aspects that we do with blood spatter analysis --

14 MR. NETTLES: Your Honor, this is sort of
15 nonresponsive. If he wants to question him, that's one
16 thing; but to stand up and give a class on blood
17 spatter, I don't think is appropriate.

18 THE COURT: Yes, sir. Let's don't go too far
19 with the answer.

20 THE WITNESS: I'm going to briefly explain the
21 significance.

22 THE COURT: Just do it briefly.

23 THE WITNESS: Yes, sir.

24 A One of the aspects of what we look at is blood that
25 has been subjected to some type of force or trauma

1 and what caused it, why is it presenting itself
2 like it is, and is it the result of trauma.

3 Any time that we find blood spatter on a
4 ceiling, understand that obviously to get there, it
5 had to do work against gravity. Therefore, there
6 has got to be some energy associated with it for it
7 to end up working against gravity and end up on the
8 ceiling.

9 Also, understanding the principles of fluids
10 in motion, we understand that when blood is
11 subjected to force, droplets of blood will spray
12 away from a source. Those droplets become airborne
13 and travel in a certain way until they strike an
14 element of the environment.

15 Q Let me stop you right there. Is that like if I'm
16 outside and there is a big puddle, and I run up and
17 jump in it, what is going to happen with that water
18 in that puddle?

19 A Droplets of that water are going to become airborne
20 because of the force.

21 Q Is that kind of what you are talking about?

22 A Yeah. We can go into a two-hour breakdown of the
23 principles of fluids in motion, but they take on a
24 very distinct characteristic. They travel in a
25 very distinct way based on the principles of fluids

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

273

1 in motion, and that understanding is what we base
2 blood stain analysis on.

3 Q Okay.

4 A The blood that we found on the ceiling in
5 correlation to the blood that we found on the
6 living room floor caused me a lot of concern
7 immediately.

8 To kind of cut to what we find later, when we
9 find Jenny Burke, that wound to her head, I am
10 fully anticipating finding a wound very similar to
11 that. Because of the dynamics that we find in
12 blood spatter, that would lead to something like
13 this.

14 That kind of correlated to one of the things
15 that I noticed in this blood stain on the floor.
16 You remember I kind of spoke earlier in blood
17 spatter that we deal with phenomena that we call
18 different --

19 MR. NETTLES: Your Honor, there has got to be
20 a question and answer.

21 THE COURT: Yes, sir. You can't just let him
22 go on like that, counsel. You will have to just make it
23 a question and answer format.

24 BY MR. MADSEN:

25 Q Is there a significance --

1 MR. NETTLES: Not to mention the fact that
2 everything he has just said, because there wasn't a
3 question and answer, the record -- we can't tell what he
4 was talking about because he didn't reference any of the
5 exhibits. I just want to reiterate that.

6 THE COURT: I agree, counsel. We need to keep
7 a good record. Let's slow down a little bit.

8 BY MR. MADSEN:

9 Q As far as Exhibit Number 5.

10 A Yes, sir.

11 Q What did that cause you concern about in reference
12 to the blood spatter?

13 A There is a voided area in the blood stain. If you
14 noticed, there is kind of a circle area here
15 (indicating) in a circular area here (indicating)
16 where there is no blood.

17 Basically what has happened is if that void is
18 there, there has to be a third part, an
19 intermediate target that is in the way of the
20 blood that is keeping it from getting to the
21 surface.

22 My concern with that was just the shape of
23 that to me kind of took on the impression of a head
24 and maybe shoulder or arm of a torso. By seeing
25 that, it kind of presented itself that I was afraid

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

275

1 that whoever was on this floor and creating this
2 void, based on the way that void patterned itself,
3 I was afraid that that was going to denote a head
4 wound.

5 Q And taking State's Exhibit Number 49, this stellate
6 wound, how does that correlate then to State's
7 Exhibit Number 21 and 22?

8 A As the doctor just described, he described this
9 finding consistent with a contact gunshot wound.
10 Again, this correlates to that in that if the
11 barrel of that gun is pressed against the skin and
12 it's fired, not only do you have the projectile
13 that exits the barrel of the weapon, but you have
14 got all of the energy that propels that projectile.
15 It's also exiting the barrel of the weapon.

16 Now, if that barrel is pressed against the
17 skin, in essence all of that energy is going to
18 travel into that area, to include that area between
19 the skin and the skull.

20 What that creates that we see in blood
21 spatter, sometimes referred to as a blow-back
22 effect, would be all of this energy that goes into
23 the head it's got to go somewhere.

24 It's generally going to follow the path of
25 least resistance. As it exits back out of the same

1 hole, that stellate appearance is created by the
2 skin ripping, if you will. And as that happens,
3 blood is going to exit out of that wound.

4 Q So is it your testimony to a reasonable degree of
5 certainty as an expert in blood spatter, that this
6 blood on the ceiling, I guess, was it blow back
7 coming from her head?

8 A That finding on that ceiling would be very
9 consistent with a blow-back effect of a contact
10 gunshot wound where blood spatter in essence
11 travels out of that wound as blow back from the
12 energy that went in. That would be very consistent
13 with it.

14 Q You can go ahead and take a seat.

15 A (Witness resumes the witness stand).

16 Q And on State's Exhibit 21 and State's Exhibit
17 Number 22, in reference to State's Exhibit
18 Number 2, I guess that is above that area of large,
19 I guess, pool of blood?

20 A Right. On one of the photographs, you will denote
21 what appears to be the base of the ceiling fan.
22 That blood stained evidence is located right near
23 the base of that ceiling fan. Detective Hickman
24 has it marked there blood on ceiling. That would
25 be very consistent with its relation to the blood

SCOTTIE FRIER -- CROSS -- MR. NETTLES

277

1 on the floor. (Witness resumes the witness stand).

2 Q If you could answer any questions Mr. Nettles has,
3 please.

4 A Yes, sir.

5 THE COURT: Mr. Nettles.

6 MR. NETTLES: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. NETTLES:

9 Q As it relates to this statement that he gave, all
10 right?

11 A Yes, sir.

12 Q You came and talked to him. You came and talked to
13 him, and you said you showed it to him?

14 A Yes, sir.

15 Q I am talking about State's Exhibit 48.

16 A Yes, sir.

17 Q And you showed it to him and he signed it?

18 A That's correct.

19 Q And you came back a second time, and you asked him
20 some more questions?

21 A That's correct.

22 Q And he signed that?

23 A That's correct.

24 Q So one thing we can say is that this statement,
25 that being the first statement, State's Exhibit 48,

1 write out a statement and hand it to him and say:
2 Is that right? That statement is produced by the
3 conversation he relates to me.

4 Q The opinions that you have just given as it relates
5 to this and the blow back on the ceiling, let's
6 talk about a couple of things, sort of leaps of
7 faith we have to make.

8 A Okay.

9 Q You know where I'm going, don't you?

10 A Yes, sir.

11 Q One of the things I am going to is in order for
12 what you said to work, we have got to know that
13 this blood came from her, right?

14 A If we are going --

15 Q Let me ask something to break that down.

16 A Okay.

17 Q You have gone to crime scenes and found blood?

18 A Yes, sir.

19 Q You have gone to crime scenes and you know whether
20 you did it or the I.D. tech did it, but what you
21 can do is swab it with a Q-tip, put it in a Ziploc
22 bag; right?

23 A That's correct.

24 Q Send it to S.L.E.D., correct?

25 A Yes, sir.

SCOTTIE FRIER -- CROSS -- MR. NETTLES

280

- 1 Q S.L.E.D. can come back and they can tell you,
2 depending on the amount of it, they can tell you
3 certainly at least the blood typing; right?
- 4 A That is correct.
- 5 Q Now, blood type, we have all got a blood type?
- 6 A Yes, sir.
- 7 Q So a couple of these people in this room may have
8 the same blood type?
- 9 A That's correct.
- 10 Q If the blood that you swab does not match the type
11 of the person that you are checking to see where it
12 came from, whether it's the Defendant or the
13 victim, you know that that blood didn't come from
14 that person?
- 15 A If their two D.N.A. types or their two blood types
16 don't match.
- 17 Q Not D.N.A. types, I am just talking about blood
18 type.
- 19 A As remote as their blood types, if they don't
20 match, that is correct. those are not the same
21 people.
- 22 Q They are not the same person?
- 23 A That's correct.
- 24 Q Even if it is the same blood type?
- 25 A That's correct.

1 Q You don't know for sure it came from the person
2 unless you do D.N.A. testing?

3 A That is correct.

4 Q There is no blood typing on this?

5 A No, sir.

6 Q So whenever you were talking all this and telling
7 the jury about the blood splatter on the ceiling,
8 that is assuming, first of all, that it's blood;
9 right?

10 A That's correct.

11 Q Because we don't have any testing that this stuff
12 on the ceiling is even blood, do we?

13 A At that point, the point I am first looking at it,
14 no, sir.

15 Q We don't have any question -- we don't even know
16 whether it's human blood, do we?

17 A That's correct.

18 Q At this point today we still don't -- we don't have
19 any testing that says it human blood; do we?

20 A Not that I am aware of.

21 Q And we don't have testing that says it blood, do
22 we?

23 A Not that I'm aware of.

24 Q So all this stuff that you just told about, all
25 this blow back, that is assuming, first of all,

SCOTTIE FRIER -- CROSS -- MR. NETTLES

282

1 that it's blood; and we don't know it's blood,
2 right?

3 A That's correct.

4 Q Second of all, we are assuming that it's human
5 blood; and we don't know it's human blood, if it is
6 blood?

7 A That's correct.

8 Q And, thirdly, we are assuming even if it is human
9 blood, we are assuming that it's hers?

10 A Yes, sir, we are certainly making that assumption.

11 Q And what you are saying is that if you hold a gun
12 up to somebody's head like this (indicating) and
13 pull the trigger, right, if my understanding of
14 what you are saying is correct, there is a lot of
15 pressure and a bullet coming out of a barrel is
16 going real fast?

17 A And it's not so much the bullet, it's the energy
18 that is propelling the bullet.

19 Q It's the energy that is propelling the bullet
20 behind it?

21 A Exactly.

22 Q And the thing that is closest to that is the gun?

23 A Yes, the barrel.

24 Q The barrel of the gun?

25 A That's correct.

1 Q Can you show me -- so what we've got is we've got
2 this person's head, which if you assume they are
3 standing up -- and we don't have any evidence of
4 that?

5 A That's correct.

6 Q But just to make it easiest for you, how far was it
7 from the top of her head, assuming she is standing
8 up, and let's just assume she is five foot eight
9 inches tall to the ceiling -- was it a seven-foot
10 ceiling?

11 A I don't remember the dimensions. If they were
12 taken, Detective Hickman would have taken those.

13 Q But at any rate, it's a normal size ceiling; right?

14 A Right.

15 Q You've got no blood on the gun?

16 A I don't know the answer to that.

17 Q Well, you are the detective; right?

18 A I don't know if the gun was tested for that.

19 Q I understand that. I am not asking whether it was
20 tested. You are saying this whole theory that you
21 just came down and conducted this little class and
22 you said if the gun goes like this (indicating),
23 that that blood, to whatever you said it was
24 consistent with or whatever it was, came from her
25 head and went to the ceiling; right?

SCOTTIE FRIER -- CROSS -- MR. NETTLES

284

1 A I said that would be consistent with that type of
2 injury that Mrs. Burke was later found to have.

3 Q We would also expect that if the gun was there,
4 that there would be blood. If the blood went all
5 the way to the ceiling, we can expect it to be on
6 the gun; can't we?

7 A That is correct.

8 Q Have you got the gun?

9 A The gun is here.

10 Q Can you show -- is there any blood on the gun?

11 A I don't know. The gun has been handled by a number
12 of people.

13 Q But whenever you found it, it was in the car;
14 right?

15 A That's correct.

16 Q Was there ever any blood on the gun?

17 A I don't know if I've seen a serology report from
18 S.L.E.D. if they found any.

19 Q I didn't ask you that. What I asked you is did you
20 ever see any blood on the gun?

21 A I never examined the gun. I saw the gun -- the gun
22 was pointed out to me right at the seat. I never
23 examined the gun.

24 Q You saw it at the scene?

25 A No, sir, not at the scene, where we located the

1 vehicle.

2 Q You are the -- I mean, when did you come up with
3 this theory about the bullet, the blood -- not even
4 the blood, the stuff that is on the ceiling --

5 A Uh-huh. (Indicating affirmative response).

6 Q -- came from her head. When did you first share
7 that with anybody?

8 A The night at the scene.

9 Q Okay. So at the scene you said: Wow, I think that
10 came from the woman getting shot?

11 A I laid that out as a very strong possibility, yes,
12 sir.

13 Q And in order to talk about that, since you thought
14 about it right then --

15 A Bear in mind at the scene, I do not know who has
16 been shot.

17 Q I understand.

18 A I have two things. I have a pool of blood on the
19 floor.

20 Q Right.

21 A I've got a pattern in that blood that concerns me
22 about where the wound may be. Then I have got what
23 appears to be blood spatter on the ceiling.

24 Q Right, but what I'm saying is --

25 A So I'm not going to say I think this person -- my

SCOTTIE FRIER -- CROSS -- MR. NETTLES

286

1 findings were that I was afraid someone had
2 suffered -- again you say leaps of faith. You said
3 a little while ago to give you that, I will give
4 you that. I've got spent shell casings, I've got
5 fired bullets, I've got a substantial pool of what
6 appears to be blood, and I have evidence of
7 spattered -- a substance that appears to be blood
8 on the ceiling.

9 Q Right.

10 A So I'm going to kind of make the leap of faith:
11 Gunshots have taken place, someone has been shot.
12 The blood would suggest someone has suffered an
13 injury, and the spatter -- that spatter would be an
14 element of a gunshot if that set of circumstances
15 took place.

16 Q But if as everyone said -- I mean, I understand
17 that. But now what we know is, is that someone has
18 at least posited the position that maybe the gun
19 was right up next to her head?

20 A Yes, sir, that has crossed my mind.

21 Q What I'm saying is assuming that's true --

22 A That's correct.

23 Q -- and the blood went from the top of her head to
24 the ceiling, wouldn't there be blood on the gun?

25 A Yes, sir.

1 Q There is no blood on the gun?

2 A I don't know the answer to that.

3 Q Okay.

4 A When the weapon goes to S.L.E.D. -- and, again, not
5 doing the evidence and property movement that they
6 do, I'm not sure if S.L.E.D. automaticity tests the
7 weapon for blood or if they just immediately begin
8 doing their test firing.

9 Q Let me ask you this. Is there anywhere that
10 anybody in any of the investigation -- because you
11 are the lead investigator, right?

12 A That's correct.

13 Q And somewhere you have got a folder with all the
14 reports in it, right?

15 A That's correct.

16 Q And you have looked them over because you are kind
17 of the grand master of all this, right? What I
18 mean by that, I mean you look at the individual
19 line officers that have talked to people. You look
20 at the reports. You kind of pull it all together,
21 right?

22 A That's correct.

23 Q Anywhere in anything you have got is there any note
24 from anybody -- anybody -- that there is any blood
25 on any gun in this case?

SCOTTIE FRIER -- CROSS -- MR. NETTLES

288

1 A Not that I'm aware of.

2 Q What is the difference between not that I'm aware
3 of and no?

4 A I have not seen it.

5 Q Okay.

6 A But if I can explain to the jury one thing. The
7 absence of blood on that weapon is not going to
8 alleviate the possibility that that still happened.
9 I do not know from the time that shooting incident
10 took place to the time we find the weapon what
11 changes have taken place to that weapon:

12 Has it been wiped down? Has it been reloaded?
13 Has it been handled? Has it been stuck back in
14 someone's waistband? Has it been put in something
15 to transport?

16 We are talking about spattered blood. We are
17 not going to be talking about a weapon that has
18 been stuck in a bucket of blood if you will. There
19 is the strong possibility that something can be
20 done to wipe that weapon down or to wipe off any
21 blood that may have been on it.

22 Q Do you have any evidence of any of that?

23 A No, I don't.

24 Q In other words, like there's blood spatter on the
25 gun and the person put it back in their pocket,

1 there would be blood on their pants; right?

2 A There is a possibility, yes, sir.

3 Q If there was blood and they stuck it back in there,
4 there would be blood on that; right?

5 A Could very well be.

6 Q Was there any blood anywhere on Roger Dale?

7 A Again, I don't know what clothes Roger Dale was
8 wearing when the shooting happened.

9 Q Let me ask you this. Did you find any blood, any
10 report of anybody of any blood anywhere on anything
11 to do with Roger Dale?

12 A No, sir, I did not.

13 Q I believe that's all I have got. Thank you very
14 much. I appreciate it.

15 THE COURT: Redirect?

16 MR. MADSEN: A quick question.

17 **REDIRECT EXAMINATION**

18 BY MR. MADSEN:

19 Q Let me show you State's Exhibit Number 51 where it
20 says, "I started." Do you see that area?

21 A Yes.

22 Q Could you read that and the next sentence.

23 A Yes, sir. "I started to try and light some
24 wallpaper on fire. I did this when I removed the
25 body."

SCOTTIE FRIER -- RECROSS -- MR. NETTLES

290

1 Q Now, the next sentence.

2 A "I also wanted to get rid of that blood evidence."

3 Q Does that indicate maybe trying to clean up?

4 A Or certainly trying to destroy evidence.

5 MS. MADSEN: That's all the questions I have.

6 RECROSS EXAMINATION

7 BY MR. NETTLES:

8 Q And that statement was made after he turned himself
9 in, right?

10 A That's correct.

11 Q Not only was this statement made after he turned
12 himself in -- and I am referring to State's Exhibit
13 51 -- but this was made after he turned himself in
14 and told you he had shot her?

15 A That's correct.

16 Q And told you where the body was?

17 A That's correct.

18 Q You would agree with me that we can all agree that
19 that on the floor is blood?

20 A I will tell you right now I'm not sure a test was
21 ever done. I was working under the assumption that
22 it was blood. I am working today under the
23 assumption that it was blood.

24 MR. NETTLES: I have no further questions.

25 Thank you.

1 THE COURT: You can step down.

2 THE WITNESS: Thank you, Your Honor.

3 MR. MADSEN: Your Honor, the State would rest.

4 THE COURT: Ladies and gentlemen, as you have
5 heard, the State has now rested their case. Let me tell
6 you that because of some scheduling problems that nobody
7 could help, we are not going to be able to start back
8 tomorrow. We will start back Friday morning.

9 We should be able to get the case to you -- in
10 fact, I am sure we will be able to get the case to you
11 on Friday sometime; but we will start back then. I will
12 ask you to be back at 9:30 on Friday morning.

13 We will be prepared to get started back up
14 then, and we will get it to you during the day on
15 Friday. It's very important again. Remember don't talk
16 about the case with anybody. With that in mind, we will
17 see you Friday morning at 9:00 o'clock. I'm sorry,
18 9:30.

19 (The jury is excused for the day at 4:30 p.m.)

20 THE COURT: Are there any motions from the
21 defense?

22 MR. NETTLES: Sir, I'm sorry?

23 THE COURT: Do you have any motions?

24 MR. NETTLES: Well, yes, sir. I would be
25 making a motion that the government has not met all the

1 necessary elements of the crimes charged. I would ask
2 that each of the subsequent charges be dismissed.

3 THE COURT: I note the motion, counsel, and
4 would have to deny the motion.

5 MR. NETTLES: And I just renew all my previous
6 objections.

7 THE COURT: So noted.

8 MR. NETTLES: Thank you.

9 THE COURT: Any motions from the State?

10 MR. MADSEN: No, Your Honor.

11 THE COURT: Let me ask a couple of questions
12 of Mr. Burke. Madame Clerk, would you put him under
13 oath for me, please.

14 CLERK: Yes, sir. Please stand and raise your
15 right hand.

16 ROGER DALE BURKE is first duly
17 sworn.

18 THE COURT: Mr. Burke, you understand the
19 State has charged you with a criminal offense, which
20 means that they have the burden of proof. In other
21 words, they must prove you guilty beyond a reasonable
22 doubt. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And, of course, they have to do
25 that by calling witnesses, which is what they have done.

1 Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You do not have the burden of
4 proof. In other words, you don't have to prove anything
5 whatsoever. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And so what that means is that you
8 don't have to call any witnesses if you don't want to,
9 but you can if you want to. It's entirely up to you.
10 So you would have to decide whether to call witnesses,
11 and you would have to decide whether to testify
12 yourself. That's kind of the purpose of what we are
13 doing here right now. First of all, have you had a
14 chance to go over this with your lawyer?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And have you been satisfied with
17 your lawyer?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you feel like he has done
20 everything you wanted him to?

21 THE DEFENDANT: Very much satisfied.

22 THE COURT: And you understand that -- today,
23 are you, and we will check on Friday to be sure, but as
24 of today do you feel that you are physically, mentally,
25 and emotionally capable of making these decisions as to

1 what to do?

2 THE DEFENDANT: Yes, sir, I do.

3 THE COURT: Let's talk about decisions.

4 First, as far as the decision to call a case, let me
5 tell you the repercussions involved. If you do decide
6 to call a case, then you would lose what would be the
7 last argument if you wanted it. Now, some people like
8 to have the last argument; some don't. It varies by the
9 individuals.

10 MR. NETTLES: He just told me he didn't
11 understand. Can I explain that to him real quick?

12 THE COURT: Sure.

13 (Pause).

14 THE COURT: Mr. Nettles, I had forgotten, you
15 have put evidence in.

16 MR. NETTLES: That's right.

17 THE COURT: So that takes that out.

18 MR. NETTLES: Right.

19 THE COURT: You understand, Mr. Burke -- I had
20 forgotten about that. I'm sorry -- you understand,
21 Mr. Burke, by the fact that you put evidence in, you
22 would lose that. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: As far as you testifying, do you
25 understand that if you decide to take the stand and

1 testify, in addition to answering your lawyer's
2 questions, you would also have to answer any questions
3 from the solicitor. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: So if you got up and decided you
6 were in trouble at some point, you couldn't change your
7 mind after you are up there. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Also, if you testify if you have
10 any prior convictions, certain kind of convictions, the
11 solicitor can ask you about them as for credibility
12 purposes. I will find out now if he would ask you.

13 Mr. Solicitor, if he were to testify, are
14 there any prior convictions you would ask him about?

15 MR. MADSEN: No, Your Honor, I do not believe
16 he has any prior impeachable convictions.

17 THE COURT: Do you understand that then,
18 Mr. Burke?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you did not testify, I would
21 give the jury an instruction if you wanted me to that
22 they could not consider that in any way, that it would
23 create no presumption against you. In fact, they
24 couldn't even talk about it in the jury room. Do you
25 understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you feel that you pretty well
3 understand your rights as to whether to call a case or
4 whether to testify?

5 THE DEFENDANT: Yes, sir, I do.

6 THE COURT: Have you made a decision yet as to
7 whether to do it?

8 Mr. Nettles, has he decided anything yet?

9 THE DEFENDANT: We are still talking about it
10 right now, Your Honor.

11 THE COURT: If you would, what I would ask you
12 to do -- of course, you have got until Friday morning to
13 basically decide -- if you would though, Mr. Nettles,
14 whenever y'all do make a decision, how about contact the
15 solicitor and let them know what you are planning to do.
16 So if we are going to the jury first thing Friday
17 morning, they need to be prepared to do that.

18 MR. NETTLES: No, I can tell you that we will
19 be calling witnesses.

20 THE COURT: Okay.

21 MR. MADSEN: I can tell them that.

22 THE COURT: Okay.

23 MR. NETTLES: But now as to whether Dale
24 testifies or not, we are still sorting that out.

25 THE COURT: Again, that is something he -- as

1 you know, Mr. Burke, you can change your mind at any
2 point. Even If you were to say right now, "I am going
3 to testify," you could still change your mind before you
4 actually take the stand.

5 If you were to say, "I'm not going to
6 testify," you could still change your mind about that
7 and decide to take the stand. So you don't have to tell
8 me now, but what I will do is give you obviously the
9 opportunity to talk with Mr. Nettles and make a decision
10 at some point between now and Friday morning.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Nettles, do you feel like you
13 given Mr. Burke the best advise you can give him?

14 MR. NETTLES: The best I am capable of.

15 THE COURT: I tried enough cases with you. I
16 know it's excellent advice, too. What I will do is hear
17 back from you on Friday morning.

18 MR. NETTLES: Yes, sir.

19 THE COURT: What your plans are. Anything
20 else then from the State before we recess for the day?

21 MR. MADSEN: No, Your Honor.

22 THE COURT: Defense?

23 MR. NETTLES: No, sir. I just want to talk
24 real quick. Dale wanted to apologize for being late
25 this morning, but they just didn't get him moved from

1 one floor to the other to get him dressed. Is there
2 anything we can do -- because we do want to start at
3 9:30 -- is there anything we can do to make sure about
4 that?

5 THE COURT: Dan, how about be sure and ask
6 them to get him here.

7 DEPUTY: Yes, sir, I will handle it.

8 THE COURT: In fact, ask him to have him
9 here -- what time would you want?

10 MR. NETTLES: Nine o'clock would be great.

11 THE COURT: Ask them to have him her at nine,
12 please, so he can have some time with Mr. Nettles.

13 DEPUTY: Yes, sir.

14 THE COURT: We will see you Friday morning.
15 Have a good evening. By the way, do either of you have
16 any proposed charges?

17 MR. NETTLES: I don't right now. I am sorry
18 about that. I might want to get something pulled
19 together tonight.

20 THE COURT: Just let me know as soon as you
21 can.

22 MR. NETTLES: Yes, sir.

23 THE COURT: Any from the State?

24 MR. MADSEN: I will take a look. I doubt it.

25 THE COURT: All right. Thanks.

1 (Whereupon the proceedings were concluded for
2 August 25, 2004).

3 (The following proceedings weren't reported on
4 August 27, 2004).

5 THE COURT: Anything from the State before we
6 begin?

7 MR. MADSEN: No, Your Honor.

8 THE COURT: From the defense?

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

10 THE COURT: Let me note one thing, too.
11 Mr. Burke, let me ask you to stand, please. You are
12 still under oath.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: We discussed a few things the
15 other day about if you would call a case or whether you
16 would testify or not. Do you recall all that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: This morning again, just for the
19 record, have you had any kind of medication or drugs or
20 alcohol or anything that would influence your judgment
21 at all today?

22 THE DEFENDANT: No, sir.

23 THE COURT: Any kind of emotional or physical
24 or mental condition that would keep you from knowing
25 what you are doing?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you had a chance to talk
3 about all this with your lawyer?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you decided whether you will
6 call a case or not?

7 THE DEFENDANT: Yes, sir, we are going to call
8 witnesses.

9 THE COURT: Is that your decision to do so?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And have you decided whether you
12 are going to testify or not?

13 THE DEFENDANT: Yes, sir, we have.

14 THE COURT: What are you going to do?

15 THE DEFENDANT: I'm going to take the stand.

16 THE COURT: You understand, again, even up to
17 the point that you actually take the stand, you can
18 still change your mind if you want to. Do you
19 understand?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Anything you want to add,
22 Mr. Nettles?

23 MR. NETTLES: No, sir.

24 THE COURT: Let's bring the jury in, please.

25 (The jury returns to the courtroom at

1 9:57 a.m.)

2 THE COURT: All parties and attorneys are in
3 the courtroom, and all jurors have now returned and are
4 with us. Mr. Nettles.

5 MR. NETTLES: Thank you, Your Honor. At this
6 time Roger Dale calls Michael Ratliff to the witness
7 stand.

8 MICHAEL DOUGLAS RATLIFF,
9 being first duly sworn, testified as follows:

10 CLERK: Please state your full name loud and
11 clear and spell your last name, please, for the court
12 reporter.

13 THE WITNESS: Michael Douglas Ratliff,
14 R-A-T-L-I-F-F.

15 DIRECT EXAMINATION

16 BY MR. NETTLES:

17 Q Mr. Ratliff, do you know that man right there
18 (indicating)?

19 A Yes, I do.

20 Q Who is that?

21 A That's Dale Burke.

22 Q How long have you known him?

23 A Since I was probably about 13.

24 Q And do you and he ever work together?

25 A Yes.

MICHAEL RATLIFF -- DIRECT -- MR. NETTLES

302

- 1 Q Tell us a little bit about that.
- 2 A Dale came to work for me a couple of times. I do
- 3 vinyl siding. He worked with me on and off
- 4 probably a couple of years.
- 5 Q Did you know his late wife?
- 6 A Yes.
- 7 Q Who is that?
- 8 A Jenny.
- 9 Q Do you know when they met?
- 10 A I was probably 17, somewhere in that area.
- 11 Q How old are you now?
- 12 A I can't say exactly. Huh?
- 13 Q How old are you now?
- 14 A Thirty-one.
- 15 Q So did they get married right away?
- 16 A Not right away, but it was, you know -- I can't
- 17 remember exactly how long before they got married.
- 18 Q Did they have an addition in their life fairly soon
- 19 after they got married?
- 20 A Yes.
- 21 Q What was that?
- 22 A Their son Brandon.
- 23 Q And how did that change Dale's life?
- 24 A Changed it a lot.
- 25 Q How is that?

1 A Dale, when he was in school, he was the class
2 clown, going out partying on the weekends and, you,
3 know, just full out just pretty much blowing
4 everything off. Everything was a joke.

5 Q Right.

6 A He stopped everything, pretty much stopped
7 everything. Even going with us, playing football,
8 just the little things. He just stayed home, went
9 to work, and took care of his family.

10 Q Now, talk to me a little bit, while we are talking
11 about family, talk to me a little bit about Dale's
12 relationship. Did he have any other children?

13 A Yes.

14 Q How many?

15 A Two more.

16 Q Tell me a little bit about Dale's relationship,
17 what you observed about Dale's relationship with
18 his children.

19 A Dale was a great father. He loved his children to
20 death. He always tried -- you know, him and Jenny
21 started taking them to church and stuff like that.
22 He stressed many times that he wanted them to have
23 the family lifestyle. He wanted things to be as
24 perfect as he could get for them.

25 Q Right. Did he face some challenges in giving them

MICHAEL RATLIFF -- DIRECT -- MR. NETTLES

304

1 a perfect life?

2 A Oh, yeah. I mean, things were never perfect. Him
3 and Jenny argued up and down, this, that, and the
4 others. Bills would come in. You know, there was
5 always ups and downs. It never was easy.

6 Q Was money a problem?

7 A Huh?

8 Q Was money a problem?

9 A Yeah, on and off. Yeah. I mean, like I said, it
10 was up and down, you know. It would be good for
11 awhile and then they would be struggling for
12 awhile.

13 Q Tell me a little bit about did a time come when
14 Jenny left Roger?

15 A Yes.

16 Q Or Dale. Who did she leave him for?

17 A His brother J.J.

18 Q How did that affect Dale?

19 A It tore him apart. I mean, it's probably the two
20 people he loved the most. He didn't take it well
21 at all. He was a totally different person after
22 that.

23 Q How is that?

24 A Dale is one that, you know, he had always been very
25 reliable as far as coming to work any time before

1 always. Whether he knew what he was doing, what
2 you put him on or not, he always gave his best.

3 Q Right, right.

4 A He still, like I said, he was always the joker, the
5 clown. None of that was -- none of that was there
6 anymore. There were a lot of defensive actions,
7 and it pretty much got to the point to where
8 besides for work, he pretty much shut most of his
9 friends out.

10 Q Did you ever get the opportunity to see how his
11 family interacted with him once his wife had left
12 and gone with his brother?

13 A Yeah.

14 Q How is that?

15 A He didn't get a whole lot of support from his
16 parents on that. J.J. is the youngest and his
17 mom -- his dad didn't say a whole lot. His mom
18 pretty much took J.J.'s side on that.

19 Q How do you know that?

20 A I went over to visit one night, and she was talking
21 about it to me and told me that Dale just needed to
22 calm down and shut his mouth and back off of it and
23 let them live their lives.

24 Q Them being who?

25 A J.J. and Jenny.

MICHAEL RATLIFF -- DIRECT -- MR. NETTLES

306

1 Q Tell me about, were you around when the issue of
2 the children and custody between Jenny and Dale
3 started to heat up a little bit?

4 A Yeah.

5 Q How did the prospect of Dale losing the children
6 affect him?

7 A It wasn't an issue with Dale. It was just an
8 absolute, he couldn't be without his kids.

9 Q Why do you say that?

10 A He pretty much told me that he couldn't live
11 without his kids; and if she took his kids, he
12 would probably kill her.

13 Q When he told you that, did you think he meant kill
14 her?

15 A I thought he was very angry. I didn't think he
16 would -- I didn't think he would actually do it,
17 you know. You never do think someone would
18 actually do it, you know. I talked to him quite a
19 few times and told him he just needed to get
20 through it. Dale is just the last person in the
21 world I would think would do it.

22 Q And when he -- as he shared with you, "If anybody
23 takes my kids, I'd kill them," I mean, would you
24 have called law enforcement or anything if you
25 thought that was a real threat as opposed to

1 blowing off steam?

2 A If it was someone that I thought had anger problems
3 that would actually do that, then, yeah, I would
4 probably call the police; but Dale has never been a
5 violent person.

6 As long as I've known him, I've never seen him
7 violent. It never crossed my mind. I knew it was
8 tearing him apart, but it never crossed my mind he
9 would actually do it.

10 Q Thank you, Mr. Ratliff. I don't have any other
11 questions.

12 THE COURT: Cross.

13 **CROSS EXAMINATION**

14 BY MR. MADSEN:

15 Q Mr. Ratcliff?

16 A Ratliff.

17 Q Ratliff. You got a chance then to go over to the
18 home at different points in time?

19 A Yes.

20 Q And Jenny was a good mom, too; wasn't she?

21 A Yes.

22 Q And she loved those kids?

23 A Uh-huh. (Indicating affirmative response).

24 Q And she would do anything for those kids, wouldn't
25 she?

MICHAEL RATLIFF -- CROSS -- MR. MADSEN

308

1 A Yes.

2 Q And when she split up with the Defendant and moved
3 in with his brother, we are not talking within the
4 week? We are not talking in December, are we?

5 A No.

6 Q We are not talking November, are we?

7 A Uh-huh. (Indicating affirmative response).

8 Q We are not talking October?

9 A Nope.

10 Q September. We are talking back to June, July or
11 May?

12 A Uh-huh. (Indicating affirmative response).

13 Q So six months beforehand, aren't we?

14 A Yes.

15 Q And at some point in time during that time, he
16 started talking about killing her. Is that what
17 your testimony was?

18 A Yes.

19 Q Was that right after they split?

20 A A little bit. It started within a few weeks
21 afterward, and it just progressed as time went on.

22 Q So he had talked about it six months beforehand?

23 A Yes.

24 Q About killing her?

25 A Yes.

1 Q And you said it progressed as it went on. Did it
2 get more specific as time went on?

3 A I can't say that it got more specific, no. I mean,
4 it pretty much stayed the same scenario. He never
5 was specific on saying he would exactly do this or
6 do that.

7 Q When you say the same scenario, was there a
8 scenario that he had in mind that he would tell you
9 about?

10 A He would just say if he lost -- that if she took
11 his kids from him, that, you know, he would kill
12 her.

13 Q But you know that when this went on, they actually
14 had joint custody. In other words, the kids spent
15 basically half the time with him and the kids spent
16 have the time with her; isn't that correct?

17 A Up until right beforehand, yes.

18 Q And when he would go through and kind of tell you
19 that he was going to kill her or said those things
20 six months beforehand, I believe what you said is
21 you kind of talked to him about it; wouldn't you?

22 A Yes.

23 Q And obviously we know that at least when you talked
24 with him or when you told him about those things,
25 you were basically able to kind of talk him out of

MICHAEL RATLIFF -- CROSS -- MR. MADSEN

310

1 it?

2 A I was doing what a friend would do. I was
3 consoling him.

4 Q Sure. You would tell him, "Hey, you don't need to
5 do this," wouldn't you?

6 A Right.

7 Q And apparently he listened to you?

8 A Yes.

9 Q He didn't do it six months beforehand, right?

10 A Right.

11 Q And you know that -- I guess, is it your testimony
12 then that you know at some point in time custody
13 kind of changed a little bit? Do you know that for
14 a fact?

15 A I know that he got a letter in the mail stating
16 that she was requesting an emergency hearing and
17 was not bringing the kids back home.

18 Q And you that that was because of some molestation
19 of the children that had taken place at his house?

20 A Yes.

21 Q By his nephew?

22 A Yes.

23 Q And the fact that Jenny was a good mom, you would
24 agree with me that if molestation occurs as his
25 house with his nephew who is living with him, a

1 good mom is going to want to take those kids out of
2 that house. You would agree with that?

3 A Yes.

4 Q And figure out -- make sure he is not involved.
5 Because a good mom's paramount concern are those
6 kids, isn't it?

7 A Yes.

8 Q And you know that -- do you know now that he killed
9 her on December 19th of 2001?

10 A Yes.

11 Q Did you know at the time that that hearing, so that
12 a judge could look over that, was scheduled just
13 two days later?

14 A I did not know the exact day of the hearing.

15 Q If I tell you that that hearing was scheduled two
16 days later, did you know that Jenny has those kids
17 from Sunday to Tuesday basically?

18 A Yes.

19 Q Dale was to get them back on Wednesday?

20 A Yes, sir.

21 Q So you would agree with me then that we are talking
22 about three days that he wouldn't have had those
23 kids before they had that hearing?

24 A Right.

25 Q And you would agree with me that under a situation

MICHAEL RATLIFF -- REDIRECT -- MR. NETTLES

312

1 like that, a good mom is going to want to protect
2 those kids more so than anything else first?

3 A Yes.

4 Q And then air it out in court and let a judge make a
5 decision about who is to blame or what that
6 custody has to -- or what has to happen with that?

7 A Right.

8 MS. MADSEN: That's all the questions I have.

9 THE COURT: Any redirect?

10 **REDIRECT EXAMINATION**

11 BY MR. NETTLES:

12 Q The discussions that Dale had when the subject
13 would come up about her taking his kids.

14 A Uh-huh. (Indicating affirmative response).

15 Q And his response, I take it from what have you
16 said, was sometimes: "If she tries to take my
17 kids, I'm going to kill her"?

18 A Uh-huh. (Indicating affirmative response).

19 Q Did you take that to be a threat or an expression
20 of anger?

21 A From Dale more of an expression of anger. He was
22 hurt.

23 Q Did you ever get the sense, and there was some
24 cross examination on it, but did you ever get the
25 sense that it was something that was imminent, I

1 mean, that was going to happen unless you stepped
2 in?

3 A No.

4 Q Thank you.

5 MR. NETTLES: I have no further questions.

6 THE COURT: Any recross?

7 **RECROSS EXAMINATION**

8 BY MR. MADSEN:

9 Q You know at this point in time he wasn't joking
10 about that, right?

11 A Right.

12 MR. MADSEN: That's all the questions I have.

13 **REDIRECT EXAMINATION**

14 BY MR. NETTLES:

15 Q That's at this point in time but not then, right?

16 A Right.

17 Q All right.

18 MR. MADSEN: That's all the questions.

19 THE COURT: You can step down. Thank you,
20 sir.

21 MR. NETTLES: At this time Roger Dale Burke
22 calls Ms. Marie Burke to the witness stand.

23 **FRANCES MARIE BURKE, being**
24 **first duly sworn, testified as follows:**

25 **CLERK: Have a seat and please state your full**

MARIE BURKE -- DIRECT -- MR. NETTLES

314

1 name on the record, ma'am.

2 THE WITNESS: Frances Marie Burke.

3 DIRECT EXAMINATION

4 BY MR. NETTLES:

5 Q How are you doing, Marie?

6 A I'm doing good.

7 Q Do you know this young man (indicating)?

8 A Yes, sir.

9 Q Who is that?

10 A My cousin Dale.

11 Q How are you related to him?

12 A I'm his cousin.

13 Q I understand. I appreciate you sharing that with
14 me, but how is it? Do you know what your
15 relation -- how you are cousins?

16 A Sir?

17 Q Never mind. Let me talk to you about this. Did
18 there come a time that you came and stayed with
19 Roger Dale and his kids?

20 A Yes, sir.

21 Q When was that, do you remember?

22 A I don't recall.

23 Q Do you remember how long you stayed with him?

24 A I think a couple of months.

25 Q And during that time, who was staying in the house?

- 1 A It was Dale, me, his three kids, and my brother
2 Christopher.
- 3 Q And who asked you to come stay at the house?
- 4 A Dale did.
- 5 Q Why did he ask you to come stay at the house?
- 6 A To help him take care of his kids while he worked.
- 7 Q And did you do that?
- 8 A Yes, sir.
- 9 Q And during that time how many nights at the
10 beginning, how many nights a week were the children
11 staying with y'all?
- 12 A About three or four nights.
- 13 Q And where would they go the other nights?
- 14 A With Jenny.
- 15 Q During that time you lived in the house, right?
- 16 A Yes, sir.
- 17 Q And did you see where Dale had any Confederate
18 memorabilia kind of stuff in the house?
- 19 A No, sir.
- 20 Q Ever?
- 21 A No, sir.
- 22 Q During the time that you were living there, did you
23 see something -- now, Christopher is your brother?
- 24 A Yes, sir.
- 25 Q Why did he have to leave the house?

MARIE BURKE -- DIRECT -- MR. NETTLES

316

- 1 A Because he molested Amber, Dale's little girl.
- 2 Q Did Dale have any part of that?
- 3 A No, sir.
- 4 Q What was Dale's reaction to that?
- 5 A He got peed off.
- 6 Q Peed off?
- 7 A He got really mad about it.
- 8 Q How mad?
- 9 A He was ready to beat -- he was beating Christopher
10 up about it.
- 11 Q Okay. Now, did Christopher have to leave the
12 house?
- 13 A Yes, sir.
- 14 Q Once Christopher was out of the house, in your
15 opinion how was Dale as a father?
- 16 A Sir?
- 17 Q Once Christopher was out of the house, how was Dale
18 as a father?
- 19 A He was a good father.
- 20 Q How was he before Christopher was out the house?
- 21 A He was a good father.
- 22 Q Did Dale know anything about what Christopher did?
- 23 A No, sir.
- 24 Q How did he find out?
- 25 A Amber told her mom, and Jenny called Dale and told

1 him.

2 Q And then Dale beat up Christopher?

3 A Yes, sir.

4 Q Did the children seem happy with Dale?

5 A Yes, sir.

6 Q I don't have any other questions. Thank you very
7 much.

8 THE COURT: Cross.

9 CROSS EXAMINATION

10 BY MR. MADSEN:

11 Q Miss Burke?

12 A Yes, sir.

13 Q So the kids would stay sometimes with the
14 Defendant?

15 A Yes, sir.

16 Q And the other time they would stay with their
17 mother Jenny?

18 A Yes, sir.

19 Q And that was kind of depending on the week,
20 sometimes three days, sometimes four days, since we
21 have got an odd number?

22 A Yes, sir.

23 Q And the kids seemed happy when they -- I believe
24 your testimony was -- when they were with the
25 Defendant?

MARIE BURKE -- CROSS -- MR. MADSEN

318

1 A Yes, sir.

2 Q But they seemed happy when they were with their
3 mom, too; right?

4 A I guess. I didn't know.

5 Q But they didn't seem sad when they came back from
6 her?

7 A No, sir.

8 Q As far as if she beat them up or anything like
9 that?

10 A No, sir.

11 Q And your brother was Christopher; isn't that
12 correct?

13 A Yes, sir.

14 Q And he was staying at that house at that point in
15 time?

16 A Yes, sir.

17 Q And at some point in time, I guess he ended up
18 molesting Amber and I think even Dalton; isn't that
19 true?

20 A I think so. I'm not for sure.

21 Q And he's not walking the streets today, is he?

22 A No, sir.

23 Q Where is he?

24 A He's in prison.

25 Q And Amber, I think your testimony was, Amber had

1 told Jenny?

2 A Yes, sir.

3 Q And then Jenny had told Dale?

4 A Yes, sir.

5 Q And do you think at all it got the Defendant upset
6 to know that the pornography that he had is what
7 Chris kind of used --

8 MR. NETTLES: Objection, objection, objection.
9 Wait a minute. If we are going to talk about this, you
10 know...

11 THE COURT: I am going to sustain the
12 objection.

13 Ladies and gentlemen of the jury, disregard
14 that. That should not have been asked again. Again,
15 remember a lawyer's questions are not evidence. The
16 only evidence is what comes from the mouth of the
17 witness.

18 Go ahead, counsel.

19 BY MR. MADSEN:

20 Q You would agree with me, Miss Burke, that kids
21 seeing their mother killed would be pretty
22 traumatic to them?

23 A Yes, sir.

24 Q And that a good father around Christmas would kind
25 of want to create loving memories for his children;

CLINT ADDY -- DIRECT -- MR. NETTLES

320

1 isn't that true?

2 A Yes, sir.

3 Q And you would agree with me that it would affect
4 children quite a long period of time to watch their
5 dad kill their mom and her die in front of the
6 Christmas tree; isn't that true?

7 A Yes, sir.

8 MR. MADSEN: That's all the questions I have?

9 MR. NETTLES: No further questions, Your
10 Honor.

11 THE COURT: You can step down. Thank you,
12 ma'am.

13 MR. NETTLES: At this time Roger Dale Burke
14 would call Mr. Clint Addy.

15 CLINT ADDY, being
16 first duly sworn, testified as follows:

17 CLERK: State your full name, sir.

18 THE WITNESS: Clint Addy.

19 **DIRECT EXAMINATION**

20 BY MR. NETTLES:

21 Q How are you doing, Mr. Addy?

22 A (Witness nods). (Indicating affirmative response).
23 All right.

24 Q Let me let you know this. Unlike in normal
25 conversations, you have got to speak so she can

1 take it down. You hear what I'm saying?

2 A I can hear you.

3 Q Mr. Addy, do you know Roger Dale?

4 A Yeah.

5 Q How do you know him?

6 A We grew up together.

7 Q And did y'all work together?

8 A Yeah.

9 Q What do you do for a living?

10 A Vinyl siding.

11 Q Is that what Roger Dale did?

12 A Yeah.

13 Q Did you work for him or did he work for you?

14 A We worked together. I take that back. I did work

15 for him, but we worked together also.

16 Q So tell us about when you say you did work for him

17 and then y'all worked together, was there -- tell

18 us about why it was that you worked for him.

19 A Why I worked for him?

20 Q I mean, did he have his own company?

21 A Yeah.

22 Q And when that happened, did you work for him?

23 A Yeah.

24 Q Then did there come a time that y'all were working

25 together?

CLINT ADDY -- DIRECT -- MR. NETTLES

322

1 A Yeah.

2 Q Who were you working for then?

3 A I was working for him and his brother.

4 Q And when he and his brother were working together,
5 did there come a day that you and -- is his brother
6 in the courtroom today?

7 A Yeah.

8 Q Where? Do you see him?

9 A Right there (indicating) in the white shirt.

10 Q Over here (indicating) in the corner?

11 A Yeah.

12 Q And did there come a day that you became aware of a
13 relationship between his brother, this guy right
14 here (indicating), and Dale's wife?

15 A Yeah.

16 Q Tell us about that.

17 A We was on the job site one day, and J.J. approached
18 me and told me, you know, he said, "This might be a
19 bad day. I said, "What you mean?" He said, "Just
20 remember I said that."

21 I didn't know what he meant. So Jenny came
22 out to the job site, I think and if I'm not
23 mistaken, I think she brought him lunch. I was
24 ready to go home because it was hot, and she
25 carried me home. At that time I kind of got the

1 picture.

2 Q Right.

3 A You know.

4 Q Right. That job site that Jenny brought J.J.

5 lunch, was Dale on that job site?

6 A No, he was -- when they was forming a business,
7 Dale worked at another job, him and J.J., you know,
8 did their business thing. But Dale had another job
9 also that he had to go to. He was doing that and
10 J.J. was running this one.

11 Q Running the job site, and Dale was running the
12 other?

13 A No. Dale had another job that he was doing. He
14 was working for somebody else.

15 Q I got you.

16 A And on the side, they had their thing going.

17 Q I got you.

18 A And J.J. ran that part.

19 Q I got you. Now, did you have the opportunity to
20 see Dale -- tell me a little bit about Jenny and
21 Dale's relationship at the beginning.

22 A You couldn't ask for a better marriage. I've
23 always told Dale I wish my marriage would have been
24 like that, you know. I mean, I have always said
25 that.

CLINT ADDY -- DIRECT -- MR. NETTLES

324

1 Q Was that the end or the beginning?

2 A It was like that the whole way until, you know, she
3 left him.

4 Q For who?

5 A For his brother.

6 Q Did you notice a change in Dale when she left him
7 for his brother?

8 A Yeah.

9 Q Tell us a little bit about that.

10 A He dropped weight. He argued a lot with his
11 friends. Because me and my friend Mike, the one
12 that was just up here earlier --

13 Q Right.

14 A -- we talked to him. We knew he was blowing off
15 steam. We figured he was just, you know, shooting
16 off his mouth. Because, you know, we would tell
17 him, you know, just calm down. He would get over
18 it in time or whatever. He lost weight. He
19 wouldn't eat. He didn't really -- it's like the
20 only thing he cared about was his kids. Anything
21 else, he didn't care about.

22 Q How do you know that was all he cared about was his
23 kids?

24 A Because it was -- I don't know how to explain it.
25 He just -- everything that he did concerned his

1 kids, everything.

2 Q Do you have children?

3 A Yeah.

4 Q Has Dale been around your children?

5 A Yeah, him and Jenny has baby-sitted my kids before.

6 Q Up until Jenny left Dale for J.J., was Jenny a good
7 mother?

8 A Yeah, I assume. I didn't see Jenny much really.

9 Q Right.

10 A I've seen Dale more than I have her; but from what
11 I've seen, she was.

12 Q Did J.J. have any other occupation other than vinyl
13 siding?

14 A Not that I know of. I think it's pretty much what
15 he did his whole life.

16 Q I have no further questions. Thank you.

17 THE COURT: Cross.

18 CROSS EXAMINATION

19 BY MR. MADSEN:

20 Q How are you doing, Mr. Addy?

21 A All right.

22 Q You would agree with me sometimes that we can't
23 help who we end up falling in love with; isn't that
24 true?

25 A Yeah.

CLINT ADDY -- CROSS -- MR. MADSEN

326

1 Q Even if you don't want to, sometimes you still end
2 up falling in love with them?

3 A Yeah.

4 Q And at some point in time, apparently Jenny fell in
5 love with Dale's brother; isn't that correct?

6 A (Witness nods). (Indicating affirmative response).

7 Q And we were not talking about December; are we?

8 A No.

9 Q The day where you kind had an idea, we are talking
10 back May or June --

11 A The summer.

12 Q -- of 2001, that summer?

13 A Yeah.

14 Q So it was a long time before December 19, 2001;
15 isn't that right?

16 A Yeah.

17 Q And during that period of time, the Defendant was
18 kind of talking about something that he was going
19 to do with Jenny; wasn't he?

20 A Yeah.

21 Q He was talking about how he was going to kill her,
22 wasn't he?

23 A Yeah, but I said it to my wife. I said it to my
24 wife, too, because I was going through marital
25 problems myself.

1 Q But you didn't end up doing it, did you?

2 A No, we both talked like that.

3 Q But now when Dale was talking about killing his
4 wife, it kind of even went a little bit further
5 than that; didn't it?

6 A Yeah.

7 Q He talked about a place that he could dispose of
8 the body, didn't he?

9 A At one time we talked about that.

10 Q And what you know of that place was like a big drum
11 or something like that, I guess, that had like
12 4,000-gallons of some kind of chemical in it; isn't
13 that right?

14 A Yes.

15 Q And Dale new about that because he had apparently
16 done some kind of electrician work or something out
17 there; isn't that right?

18 A Yeah, he wired up the building.

19 Q And that big 4,000-gallon chemical thing, according
20 to Dale, had some kind of chemical in there that
21 when you put a body in there, it would not only get
22 rid of all your skin --

23 A I said that.

24 Q So you knew that it had something that would get
25 rid of skin, bones and all that?

CLINT ADDY -- CROSS --- MR. MADSEN

328

1 A Yeah.

2 Q But the Defendant was telling you about how he
3 could get rid of her that way; isn't that correct?

4 A We both was talking about it as if --

5 Q And that's even going to be --

6 MR. NETTLES: Objection, Your Honor. How
7 about let him finish his answer.

8 THE COURT: Yes, sir, let him finish.

9 BY MS. MADSEN:

10 Q I'm sorry, go ahead.

11 THE COURT: Were you through?

12 A We both was talking about it as if like it wasn't a
13 serious thing. It was like, you know, I have said
14 many times I'm going to kill somebody, and I don't
15 mean it. I knew that he never meant it because all
16 he ever did was talk junk.

17 Q Kind of hard to say that he never --

18 A And everybody talks like that. Everybody in this
19 courtroom will talk like that.

20 Q It's kind of hard to say though that he didn't mean
21 it; isn't that true, Mr. Addy?

22 A Now I agree with that, but back then I wouldn't
23 have said that.

24 Q And when he talked about putting Jenny in that
25 caustic chemical to get rid of her, she wasn't the

1 only one that was going to go in there; isn't that
2 true?

3 A Yeah.

4 Q Who else, Mr. Addy?

5 A His cousin, the one that molested his kids.

6 Q Who else besides that?

7 A I can't remember right now..

8 Q Come on, Mr. Addy.

9 A Show me my statement and I will tell you.

10 Q What's that?

11 A Show me my statement and I will tell you.

12 Q Let me ask you this. You remember that this talk
13 was so serious that you kind of remember on the
14 19th that you called law enforcement -- actually, I
15 guess, Mike Ratliff who was up here, who you kind
16 of know and work with or something, he told you
17 that Jenny and the kids were missing; isn't that
18 true?

19 A Yeah, he come to a bar I was at.

20 Q He told you that. And you kind of knowing what the
21 Defendant had said in the past, you called law
22 enforcement; didn't you?

23 A Yeah, I was concerned.

24 Q And you called law enforcement and you told them
25 how he had worked on that big gray tank; isn't that

CLINT ADDY -- CROSS -- MR. MADSEN

330

1 right?

2 A I said -- yeah, I said we had talked about it.

3 Q Let me show you something and ask you, that area
4 that is highlighted, do you remember kind of having
5 that conversation with law enforcement?

6 A Yeah.

7 Q And do you remember what you said it would do to
8 bones?

9 A Yep.

10 Q And do you remember saying what was that on the
11 line after that?

12 A Yes, I remember saying that now, his kids, but...

13 Q So he just wasn't going to put his wife in that
14 tank is what he told you that you told law
15 enforcement, right?

16 A Yeah. I mean, he said it but it didn't mean
17 nothing.

18 Q But who else was he going to put in that tank?

19 A I could say I will kick somebody's ass in this
20 courtroom, but that doesn't mean I will do it.
21 Everybody says stuff like that.

22 Q That's not my question, Mr. Addy. My question is
23 this. Who else did he tell you and you tell law
24 enforcement that he was also going to put in that
25 tank?

1 A His kids.

2 MR. MADSEN: That's all the questions I have.

3 THE COURT: Any redirect?

4 MR. NETTLES: None, Your Honor.

5 THE COURT: You can step down. Thank you,
6 sir.

7 MR. NETTLES: Roger Dale calls Cindy Anderson.

8 CYNTHIA MARIE ANDERSON, being
9 first duly sworn, testified as follows:

10 CLERK: State your full name on the record.

11 THE WITNESS: Cynthia Marie Anderson.

12 DIRECT EXAMINATION

13 BY MR. NETTLES:

14 Q How are you doing, Ms. Anderson?

15 A Fine, how are you?

16 Q Good. Ms. Anderson, how long have you known -- do
17 you know this man over here (indicating)?

18 A Yes.

19 Q Who is that?

20 A That's Burke.

21 Q How have you known him?

22 A He used to work with my boyfriend and his dad.

23 Q How long ago was that?

24 A About eight years.

25 Q Eight years ago?

CYNTHIA ANDERSON -- DIRECT -- MR. NETTLES

332

- 1 A That's how long I've been with my boyfriend.
- 2 Q I'm sorry?
- 3 A That's how long I have been with Harry, my
- 4 boyfriend.
- 5 Q So you have known him for eight years?
- 6 A Yes.
- 7 Q That's what I needed. During that time did you
- 8 ever hear him ever talk about wanting to kill
- 9 Jenny?
- 10 A He said that if she took his kids from him that he
- 11 would.
- 12 Q Did you take him seriously?
- 13 A No.
- 14 Q Why not?
- 15 A Because he joked around a lot about a lot of stuff.
- 16 Q That's not kind of a joke, is it?
- 17 A No, but he told me he could kill me, too; and I'm
- 18 still here.
- 19 Q Why did he tell you he would kill you?
- 20 A Just joking around.
- 21 Q Do you remember when that was?
- 22 A No, no, sir.
- 23 Q Did you take him seriously when he said that?
- 24 A No, sir.
- 25 Q What would you have done if you had thought he was

1. serious?

2 A I would try to get him some help.

3 Q Why?

4 A Because I love Burke.

5 Q Why?

6 A Because I think he's a good person.

7 Q Why is that?

8 A He was a good daddy. I guess mine never was, and I
9 looked at that.

10 Q Ma'am, I've got to tell you, we've all got a little
11 bit of a concern here -- are you all right?

12 A (Witness nods). (Indicating affirmative response).

13 Q We've probably got a little bit of concern here
14 because there's been a lot of people up here
15 talking about, it sounds to me like or sounds to us
16 like, all Roger Dale did was walk around talking
17 about wanting to kill Jenny. Is that true?

18 A No, sir.

19 Q How do you know that?

20 A Because he would come to our house all the time
21 with his kids, and we would all do family stuff
22 together. His main concern was his kids.

23 Q Would it be a fair characterization in your opinion
24 that Roger was someone who all he was obsessed with
25 was trying to kill Jenny?

CYNTHIA ANDERSON -- DIRECT -- MR. NETTLES

334

1 A No, sir.

2 Q Let me ask you this. Did you know Roger Dale when
3 he got married to Jenny?

4 A No, sir.

5 Q You knew him after he was married to Jenny?

6 A Yes.

7 Q How was their relationship when you first met the
8 two of them?

9 A It was fine that I knew of. I never really went
10 over there much when she was there. He never came
11 around us much either because he was always with
12 his family.

13 Q When did he start spending more time with you?

14 A After Jenny left.

15 Q When Jenny left did she spend much time with the
16 children?

17 A She would pick them up on Sundays a 12:00 o'clock
18 and keep them until Tuesday.

19 Q Where did they spend the rest of the time?

20 A With Dale.

21 Q How did it affect Dale when he wasn't with his
22 kids?

23 A Her leaving or?

24 Q Let start with her leaving. How did that affect
25 him?

1 A He was very emotional about it, but his main
2 concern was his kids' well-being. He said he
3 didn't want them in the drug environment that his
4 brother was in.

5 Q Uh-huh.

6 A Basically that's it.

7 Q Did you ever spend any time over at Roger Dale's
8 house?

9 A Yes.

10 Q Did you ever see any sort of racist kind of stuff
11 at the house?

12 A No, sir.

13 Q Did you ever know Roger Dale to engage in
14 conversations like that?

15 A No, sir.

16 Q Did there come a time that he had to cut back on
17 his work?

18 A I think right there before he killed her, there
19 wasn't much work with whoever he was working for;
20 but he did still do some jobs.

21 Q How did he occupy his time then?

22 A He would hang out with us.

23 Q How about the kids?

24 A They were there, too.

25 Q But he would bring the kids over to your house?

CYNTHIA ANDERSON -- CROSS -- MR. MADSEN

336

1 A Yes.

2 Q Were his kids well behaved?

3 A Yes.

4 Q How did he interact with the children?

5 A He always took up a lot of time with them. We
6 would turn the radio on and dance with them, play
7 games, cards and stuff.

8 Q Thank you very much, Ms. Anderson.

9 THE COURT: Cross.

10 CROSS EXAMINATION

11 BY MR. MADSEN:

12 Q You would agree with me, Ms. Anderson, that it's
13 good for children to have their mother also; isn't
14 it?

15 A Yes.

16 Q Ms. Anderson, do you have any children?

17 A One.

18 Q And you would agree with me that you try to be a
19 good mother?

20 A Yes.

21 Q And you would agree with me that if you felt that
22 your children were in danger, you would try to
23 protect them; wouldn't you?

24 A Yes.

25 Q You would agree with me if something was going on

1 at another residence, you would protect your
2 children first and then ask questions later because
3 that would be your paramount concern; wouldn't it
4 be?

5 A Yes, sir.

6 Q And although the Defendant didn't have any
7 Confederate stuff at his house, you would agree
8 with me that that's not unusual in Lexington County
9 to see a Confederate flag or a shirt or bumper
10 sticker something like that; isn't that correct?

11 A Yes.

12 Q And you never saw Dale fly off the handle and do
13 anything to anyone that had any of that stuff, did
14 you?

15 A No, sir.

16 Q There were times that the kids would also spend
17 time with their grandparents, too; isn't that
18 correct?

19 A Yes.

20 Q When they weren't with Jenny or they weren't with
21 the Defendant?

22 A Yes, sir.

23 Q And you would agree with me, Ms. Anderson, that it
24 would be a pretty dangerous situation to leave,
25 say, ten year old or younger children in the woods

CYNTHIA ANDERSON -- CROSS -- MR. MADSEN

338

1 by themselves? Wouldn't you agree?

2 A Yes, sir.

3 Q Even made more so dangerous when they are in woods
4 right beside a pond; isn't that correct?

5 A Yes, sir.

6 Q You wouldn't leave your children there, would you?

7 A No, sir.

8 Q And you would agree with me that in December
9 leaving kids in a -- that you wouldn't leave your
10 kids in an unrunning car for hours and hours and
11 hours upon time; isn't that true?

12 A Yes, sir.

13 Q And you would agree with me, Ms. Anderson, that you
14 wouldn't want to have a gun, a loaded gun, in the
15 same car with your child; would you?

16 A No, sir.

17 Q Especially not a loaded chambered gun; isn't that
18 true?

19 A Yes.

20 Q And especially when those children were
21 unsupervised; isn't that correct?

22 A Yes, sir.

23 Q And especially when they can just sit there and
24 just look over and see that gun; isn't that true?

25 A Yes, sir.

1 MR. MADSEN: That's all the questions I have.

2 THE COURT: Any redirect?

3 MR. NETTLES: No, sir.

4 THE COURT: You can step down.

5 MR. NETTLES: At this time Roger Dale Burke
6 calls Terry Anderson.

7 TERRY ALLEN ANDERSON, being
8 first duly sworn, testified as follows:

9 CLERK: State your full name, please.

10 THE WITNESS: Terry Allen Anderson.

11 DIRECT EXAMINATION

12 BY MR. NETTLES:

13 Q How are you doing, Mr. Anderson?

14 A Fine, sir, how are you?

15 Q I'm doing good. Do you know that gentleman right
16 there (indicating)?

17 A Yes, sir, I do.

18 Q Who is that?

19 A Dale Burke.

20 Q How do you know him?

21 A I know him good. We've been real close friends for
22 a long time.

23 Q How long?

24 A Ten years probably.

25 Q How did you meet him?

TERRY ANDERSON -- DIRECT -- MR. NETTLES

340

1 A My dad and him worked together first and then later
2 I started working with him.

3 Q Did you know him before he was married to Jenny?

4 A No, I did not.

5 Q So the whole ten years you have known him, he was
6 married to Jenny?

7 A Yes, sir.

8 Q And tell me, did you have the opportunity to hang
9 around Dale and Jenny?

10 A Very little. Only a couple of times I was there
11 when they were together.

12 Q Tell me a little bit about how that was.

13 A Well, it was mainly right at the end when I started
14 coming over. They argued a little or whatever, but
15 it wasn't nothing, you know, no big deal.

16 Q Let me ask you this. Did there become a time when
17 you started spending more time with Dale?

18 A Yeah, it was.

19 Q What event in Dale's life triggered him spending
20 more time with you?

21 A When Jenny left him.

22 Q How did that affect him? Did you notice any kind
23 of change in him?

24 A Oh, yeah.

25 Q Share with us about that change.

1 A Like what has been said already, he was a being
2 jokester, always picked around. He was one of the
3 best people you ever met really. Then he just got
4 to where he didn't pick around.

5 He lost weight and was very emotional all the
6 time. Even when we was having fun or whatever, you
7 know, thought we was having fun, he would break
8 down and cry sometimes. He was just going through
9 a real tough time, you know.

10 Q Now, during the beginning of all of that with his
11 situation with his wife, he still had his children;
12 right?

13 A Yes, sir.

14 Q Tell me about what the children meant to Roger
15 Dale.

16 A They meant everything to him. I know times when he
17 would sell off some of the stuff, like to play for
18 a baseball and stuff like that, for his kids. He
19 done everything possible to be the best daddy he
20 could.

21 He done stuff, I know for a fact -- I got two
22 nephews that have a daddy that don't have anything
23 to do with them, but it was nothing he couldn't
24 have done any better. He was like the best dad you
25 could have had.

TERRY ANDERSON -- DIRECT -- MR. NETTLES

342

1 Q How did it affect or did it affect him when he
2 started looking at the proposition of losing his
3 children?

4 A He wasn't afraid of losing his kids at all. He was
5 a secure dad, you know. He had his own place. He
6 wasn't worried about it at first. He was kind of
7 getting over the fact of Jenny leaving him up until
8 the child got molested or whatever, and then he was
9 real afraid of losing his kids.

10 Q The person who molested his children, who was that?

11 A Christopher Burke.

12 Q Who is Christopher Burke?

13 A It was his nephew.

14 Q Christopher was living with him?

15 A Yes, sir.

16 Q Do you know why Christopher came to live with him?

17 A He had just got out of the mental hospital or
18 whatever. He was released because he had turned
19 18, and he didn't have anywhere else to go.

20 Q Who took him in?

21 A Dale did.

22 Q At the time -- so we've got Jenny leaves him. Do
23 you remember a time -- and you said at first that
24 he was not the least bit concerned about them
25 taking the kids. Did there come a time when he

1 became concerned about his ability or that someone
2 was going to take his kids from him?

3 A Like I said, not at first because he was way more
4 stable than she was. He wasn't floating around
5 from house to house. He had his own place. He
6 kept lights and food for them to eat, you know. It
7 was really no way possible to lose his kids because
8 he was doing everything right.

9 Q I understand. But did that situation change?

10 A Yeah. After they got molested, he spoke with
11 Jenny -- actually they both went to the hospital
12 together and had his daughter checked out. From
13 that point there when they were at the hospital,
14 she told him that she was going to take kids from
15 him.

16 Q That's what I'm trying to get to. How did that
17 affect him?

18 A It tore him apart.

19 Q Tell us about that.

20 A He was just totally -- you know, he was emotional
21 real bad all the time. He wouldn't eat. He said
22 he couldn't sleep. It was tearing him apart. He'd
23 tell me about nights that he would wake up and
24 dream not having -- he said he would think about
25 losing his kids and all. He said he couldn't live

TERRY ANDERSON -- CROSS -- MR. MADSEN

344

1 without his kids. His kids meant everything in
2 this world to him.

3 Q You have had the opportunity to sit in this
4 courtroom?

5 A Yes, sir.

6 Q You have heard testimony, even from Cindy, that
7 Roger Dale said, you know, that he might kill
8 somebody. Did you ever think he was a killer?

9 A No, definitely not, by no means. It was just -- I
10 know that's not something to joke about. It was
11 just something we would sit around and every once
12 in a while, he might would say something like that.

13 He was pretty well getting over it up until
14 the time where he about lost his kids. He was
15 accepting the fact that she had left him for his
16 brother and was mainly getting on with his life up
17 until he was concerned about losing his kids.

18 Q Thank you very much, Mr. Anderson. I appreciate
19 it.

20 A Thank you.

21 CROSS EXAMINATION

22 BY MR. MADSEN:

23 Q How are you doing, Mr. Anderson?

24 A Fine, sir. How are you doing?

25 Q Good. You would agree with me that you and the

1 Defendant were pretty doggone good friends?

2 A Yes, sir.

3 Q And you know at this point in time after he killed
4 his wife that he actually came looking for you;
5 isn't that true?

6 A That he came looking for me?

7 Q Yeah. When he left those kids at the pond, he was
8 trying to find you.

9 A No, not that I'm aware of.

10 Q Now, when we are talking about when his wife left
11 him, we are not talking December; isn't that right?

12 A Right.

13 Q We are talking May or June or the beginning of the
14 summer; isn't that right?

15 A Right.

16 Q And you know that he actually initiated divorce
17 proceedings against her; isn't that correct?

18 A Right, yes, sir.

19 Q They were kind of going through that; isn't that
20 correct?

21 A Yes, sir.

22 Q And they were able to agree on joint custody,
23 right?

24 A That's true, yes, sir.

25 Q You would agree with me that -- I guess your

TERRY ANDERSON -- CROSS -- MR. MADSEN

346

1 testimony was that at some point in time, he was
2 worried about potentially losing his kids; isn't
3 that true?

4 A After they were molested he was, yes.

5 Q And you would agree with me that a mom might be
6 concerned that if you let someone who just got out
7 of a mental institution come and live with you,
8 that a mom might be concerned about that; isn't
9 that true?

10 A If you know Dale as well as I did and as well she
11 should have, she shouldn't have had any worry in
12 this world. There is no way Dale would let
13 anything happen to his kids, and --

14 Q That wasn't my question.

15 MR. NETTLES: Objection, Your Honor. Please
16 allow him to finish the answer.

17 THE COURT: Let him answer the question. Go
18 ahead and finish your answer.

19 A I mean, just because he was in a mental hospital,
20 he could have been in there for a million reasons.
21 It's nothing to do with why he let him move in with
22 him.

23 He let him move in with him because he was a
24 good guy, and he needed somewhere to stay. If she
25 had any doubt in her head that something would have

1 happened to the kids while he had anything to do
2 with it or know about it, that would be a lie.

3 Q But you are not telling this jury, Mr. Anderson,
4 that you know why Christopher was in that mental
5 hospital; do you?

6 A No, I don't know why he was in there.

7 Q So you don't know if it was for sexual problems, do
8 you?

9 A No.

10 Q And getting back to my question, a good mom, her
11 job is always to make sure her kids are safe; isn't
12 that true?

13 A Yes, sir. But a good mom also don't come get the
14 kids on Sunday and bring them back on Tuesday so
15 she had the weekend to party and stay out all
16 night. That separates from a good mom and a bad
17 mom in my opinion.

18 Q I understand what your opinion is, Mr. Anderson.
19 But they agreed on some custody at some point in
20 time; isn't that true?

21 A Yeah.

22 Q So if she is supposed to have the kids from Sunday
23 to Tuesday, she is not going to have them the other
24 days of the week if they have agreed on joint
25 custody; isn't that correct?

TERRY ANDERSON -- CROSS -- MR. MADSEN

348

- 1 A Yeah. But it was mainly on her terms because she
2 didn't have to pay the bills that she left him
3 behind with. She had plenty of money to hire a
4 lawyer and do what she wanted to, and he didn't
5 because he was busy raising the kids.
- 6 Q But the days that she has them, she is busy raising
7 the kids, too; isn't she?
- 8 A Yes.
- 9 Q And he had lawyer at that point in time, too;
10 didn't he?
- 11 A Yeah, he did.
- 12 Q So she had a lawyer and he had a lawyer. When you
13 have a domestic problem, you work it out through
14 family court; isn't that true?
- 15 A Yes, sir.
- 16 Q And you said at some point in time, he became
17 worried about losing his kids because of what
18 happened in his house; isn't that true?
- 19 A Yes, sir.
- 20 Q And did you know that two days later they had a
21 hearing to air those issues out?
- 22 A No, I did not.
- 23 Q And you would agree with me though that if there is
24 some kind of problems, the way that you air it out
25 is in front of a judge in court; isn't that true?

1 A Yes, sir.

2 Q You don't take matters into your own hands, do you?

3 A No, you don't.

4 Q And Jenny certainly didn't go over there when she
5 found out that this stuff might have happened and
6 do something to the Defendant, did she?

7 A She did come over and they talked about it. She
8 was aware that Dale had put him in jail and locked
9 him up and done all the right correct procedures in
10 what had happened. He didn't let it be something
11 known of and not do anything about it.

12 Q She didn't hurt him or cause him any kind of
13 physical harm or do anything like that to him, did
14 she?

15 A No, sir.

16 Q She went through the proper procedures and decided
17 to let them air it out in court; isn't that
18 correct?

19 A Yes, sir.

20 Q And if the Defendant didn't do anything wrong with
21 that, then he wouldn't have anything to worry
22 about; isn't that correct? Isn't that true?

23 A But they were using that on their behalf because of
24 it happening in his house in order to take his kids
25 from him. She had been telling him she was going

TERRY ANDERSON -- CROSS -- MR. MADSEN

350

1 to take them anyway. That was just another bone in
2 the fire that they threw in.

3 Q Sure. But when you are in a custody dispute, even
4 though you can agree temporarily what it is,
5 ultimately it's got to be decided at a later time
6 by a judge; isn't that true?

7 A Yes, sir.

8 Q If both parents want custody, you go through court,
9 and eventually a judge will decide who is
10 ultimately going to get that custody or where we
11 want to put these kids or have them with joint
12 custody, kind of like the arrangement; isn't that
13 true?

14 A Yes, sir.

15 Q And if he didn't do anything wrong in relation to
16 those kids at that house, then he didn't have
17 anything to worry about; isn't that true?

18 A Yes, sir.

19 Q But he was worried, wasn't he?

20 A I guess so. Like I said, that was another thing,
21 you know, into it to make him worried about it.

22 Q Mr. Anderson, you testified he was worried?

23 A Yes, sir.

24 MR. MADSEN: That's all the questions I have.

25 THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. NETTLES:

Q To let you finish your question. Worried about what?

A Worried about losing his kids. It was just something else, you know, that all this stuff was happening. Like I said they had more money than he did. He was paying bills. He didn't have the money to actually battle them in court.

Of course, he was worried. I would have been too. I mean, anybody in their right mind would have been worried when something like that happens. If you are in a courtroom and you're listening to somebody's case and something happened in their house as bad, you know, that doesn't sound good. It sounds like it's a bad house to live in, but it was --

MR. MADSEN: I will have to object. I don't know if this is responsive to a question.

THE COURT: It is. It's appropriate, a little long, but appropriate.

BY MR. NETTLES:

Q Keep going.

A I think that's it.

Q It's all right. Keep going. It's your chance.

TERRY ANDERSON -- RECROSS -- MR. MADSEN

352

1 Worried about what? I think you were talking about
2 you were at the part where you were talking about
3 he didn't seem to have money for a lawyer and
4 fighting in court.

5 A Right.

6 Q Tell us about that.

7 A Like I said he was paying all of his bills. He was
8 having a tough time. The main thing, like I said,
9 he was concerned with his kids. Food and
10 electricity was his main concern at the time, you
11 know; and he wasn't going to do anything to
12 jeopardize that.

13 Q I understand. Thank you very much.

14 A Yes, sir.

15 THE COURT: Any recross?

16 RECROSS EXAMINATION

17 BY MR. MADSEN:

18 Q He was worried about those money issues because he
19 wasn't even working at that time, was he?

20 A He was working off and on. He was having a tough
21 time sleeping and stuff. So some days he didn't
22 work; but most of the time he did, yes, sir. Up
23 until this happened, he worked every day, sick. It
24 didn't matter if he was sick or half dead, he was
25 coming to work and working for his family.

1 Q When we say every day, we are talking about May or
2 June?

3 A No, I'm talking when he worked any month. It
4 didn't matter what month up until the end.

5 Q You said, Mr. Anderson, he was working on and off
6 until this matter. I'm asking, when Jenny and he
7 had split, are you talking about when they had the
8 custody issue on the children?

9 A Before Jenny and he had split, he worked every day.

10 Q I understand.

11 A After they split up, like I said, he had to keep
12 the kids sometimes because he didn't have money for
13 a baby-sitter. So some days he had to miss that.
14 Some days he had take his kids to school. He
15 missed only the days that he had to miss.

16 Q But he had someone living in the house who was
17 acting as baby-sitter for him, didn't he, a family
18 member; isn't that correct?

19 A But the two people he had living there, his family
20 members, you know, I'm not going to say he 100
21 percent trusted them to leave his kids completely
22 alone with.

23 Q So in other words, He didn't trust to leave his
24 kids with Marie or Christopher, who came out of the
25 mental institution?

JANE SINGLETON -- DIRECT -- MR. NETTLES

354

1 A Not a 100 percent, no.

2 Q But sometimes he would leave them there anyway; is
3 that correct?

4 A No, not that I'm aware of.

5 Q He never left them alone?

6 A Alone, no, sir, not that I know of.

7 MS. MADSEN: That's all the questions I have.

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

10 MR. NETTLES: Roger Dale calls Jane Simpson.

11 JANE SIMPSON SINGLETON, being
12 first duly sworn, testified as follows:

13 CLERK: Have a seat and state your full name,
14 please.

15 THE WITNESS: My name is Jane Simpson
16 Singleton.

17 DIRECT EXAMINATION

18 BY MR. NETTLES:

19 Q Mrs. Simpson, I know you have got a microphone
20 there. You have one of two choices, okay? You
21 need to lean up or talk louder. Actually three,
22 move the microphone closer to you.

23 A Okay.

24 Q You have got to do one of those three, okay?

25 A All right.

- 1 Q Mrs. Simpson, where do you live?
- 2 A I live at Road.
- 3 Q Is that where you lived whenever this took place?
- 4 A Yes, sir.
- 5 Q Who was your next door neighbor?
- 6 A Dale and Jenny Burke.
- 7 Q Once Jenny left who was your next door neighbor?
- 8 A Dale and the children.
- 9 Q Now, let's talk for a second. What do you do for a
- 10 living?
- 11 A I'm a nurse.
- 12 Q How long have you been a nurse?
- 13 A Twenty-two years.
- 14 Q Now, when you lived next door to Dale and Jenny,
- 15 tell me a little bit about at the beginning their
- 16 relationship.
- 17 A At the beginning when I first met them?
- 18 Q Yes, ma'am.
- 19 A That was one of the most wonderful couples I have
- 20 ever met in my life. Dale and Jenny were superb in
- 21 every way and wonderful parents.
- 22 Q How about the children?
- 23 A The children were well behaved, beautiful children.
- 24 Q Now, did the children always stay well behaved?
- 25 A Yes, sir.

JANE SINGLETON -- DIRECT -- MR. NETTLES

356

- 1 Q Did the marriage between Dale and Jenny ever
2 change?
- 3 A Yes, sir.
- 4 Q Share with us a little bit about that.
- 5 A Jenny left Dale.
- 6 Q And how do you know that?
- 7 A Dale told me.
- 8 Q Because you lived next door, did you see her quit
9 coming around?
- 10 A Yes, sir.
- 11 Q Go ahead.
- 12 A She left Dale for his brother.
- 13 Q Do you see his brother here in the courtroom?
- 14 A Yes, sir.
- 15 Q Where?
- 16 A Right there (indicating).
- 17 Q Right over here (indicating)?
- 18 A Yes, sir.
- 19 Q In the corner?
- 20 A Yes, sir.
- 21 Q And did you get to see Dale, and how that
22 affected -- did that affect him at all?
- 23 A It tore Dale apart.
- 24 Q Tell us a little bit about that.
- 25 A Dale would come to the house, and he would sit and

1 cry. He would be so emotional that he would jerk
2 so bad that he would shake my kitchen table. He
3 was just tore up because he loved Jenny. He loved
4 Jason. He loved his parents. He was losing -- his
5 whole life was just falling apart.

6 Q Let me ask you this. Before -- in the period
7 before Jenny actually moved out, okay, was there a
8 period where -- tell us about the period like the
9 month or two before Jenny actually up and moved out
10 on him in terms of what you witnessed in their
11 household.

12 A I know that Jenny was very depressed.

13 Q Okay.

14 A Her mother had died.

15 Q Okay. How did that seem to affect things?

16 A It was really bad. Jenny's mother died
17 unexpectedly and Jenny was just tore up. She was
18 worried about her health. She was scared she
19 wasn't going to be there for her kids. Then she
20 told me she started on diet pills, and the diet
21 pills were making her nervous. She was grieving
22 over her mother. She was just very sad.

23 Q How did that affect the family?

24 A The family just started -- it just didn't seem as
25 happy as it used to be.

JANE SINGLETON -- DIRECT -- MR. NETTLES

358

1 Q Yes, ma'am. Tell us about that.

2 A I'm not sure.

3 Q I mean, you said they didn't seem to be as happy.

4 I guess what I am asking you to do is share with us
5 why you think that.

6 A I went over there one day to check on Jenny, and
7 Brandon told me, he said: My mom is very, very
8 sad and she is not having a good time. Because her
9 mother was her best friend, and she really loved
10 her mother.

11 So they were going through the grieving
12 process. I was in the hospital the day Jenny's
13 mother died. Dale called me at 6:00 o'clock in the
14 morning, and he was crying because he was very
15 upset because he loved Jenny's mother, too.

16 Q Now, do you remember a time when you sort of
17 observed Dale's condition after Jenny left? And
18 did you make any suggestions to him?

19 A Yes. Dale came to my house and he had the children
20 with him. I have never seen a person so tore up.
21 He was wheezing really bad. I said, "Dale, what is
22 wrong? You need to go to the doctor."

23 He said, "I can't. I don't have the money."

24 He said something about he had respiratory
25 problems. He was crying and he said, "Jane, I

1 would be better off -- me and my kids both would be
2 better off dead then having to go through this and
3 the kids begging for their momma to come home, and
4 she won't come."

5 I told Dale then, I said, "Dale, you don't
6 have no right to even think of murder of anything
7 because God gives life, and you have no right to
8 take a life." I said, "You need help, Dale." I
9 said, "You need to go to mental health."

10 Q To what help?

11 A Mental health.

12 Q Why did you think that?

13 A It's a free place because he didn't have any money.
14 But he said, "No, Jane, if I do that, I don't have
15 the money now for a lawyer. I don't have money to
16 defend myself." He said, "If I do that, they will
17 use it against me."

18 Q Do what?

19 A If he goes to mental health, that they would use
20 that against him in his custody battle for his
21 children.

22 Q Do you remember when -- were there times when Jenny
23 and Dale would fight in their house?

24 A Yes.

25 Q What would Dale do with the children?

JANE SINGLETON -- DIRECT -- MR. NETTLES

360

1 A If Dale knew the police were coming or there was
2 going to be a problem beforehand because he would
3 call and say he was being threatened, he would send
4 the children to my house.

5 Q Did you ever receive a phone call from anybody
6 checking on Dale?

7 A Yes, sir, somebody from the domestic unit --

8 MS. MADSEN: Your Honor, I will object. I
9 think this will call for hearsay. She was receiving a
10 phone call from somebody.

11 THE COURT: Is that what it is?

12 MR. NETTLES: Yes, sir.

13 THE COURT: Sustained.

14 BY MR. NETTLES:

15 Q Did you ever hear Dale threaten to kill Jenny?

16 A No, sir.

17 Q And how long did you live next door to him?

18 A I think I moved in there in 2000 or '99. I knew
19 him and Jenny before that, way before that.

20 Q During that time did you ever hear him talk about
21 killing her?

22 A No, they just loved each other.

23 Q Did you ever hear Jenny threaten Dale?

24 MS. MADSEN: Judge, I will object. I think
25 that calls for hearsay.

1 THE COURT: I will allow that. It would be
2 appropriate for other purposes. Go ahead.

3 BY MR. NETTLES:

4 Q Did you ever hear Jenny threaten Dale?

5 A I did not hear her. Dale said --

6 MS. MADSEN: I will object if she did not hear
7 her.

8 MR. NETTLES: Actually I believe it would not
9 be the truth of the matter asserted. It was said.

10 THE COURT: Let her repeat the answer. I
11 thought she was saying she didn't hear it.

12 MR. NETTLES: What she said was she didn't
13 hear her say it, but she heard Dale say that she had
14 threatened him.

15 THE COURT: That's a little stretch, but I
16 will still let it in though. Go ahead.

17 MR. NETTLES: Thank you.

18 THE COURT: It would go to the Defendant's
19 state of mind, not close, but still state of mind.

20 MR. NETTLES: Yes, sir.

21 THE COURT: Go ahead.

22 BY MR. NETTLES:

23 Q Ma'am, was Dale having a hard time getting money
24 for a lawyer for the custody?

25 A Yes, sir. Dale was -- I watched Dale during that

JANE SINGLETON -- CROSS -- MR. MADSEN

362

1 year's time. By the end of, say, September or
2 October, Dale was like pushed up against a wall.

3 Q How could you tell?

4 A His nerves were shot. He cried all the time. He
5 would come to the house, and he couldn't keep his
6 conversations straight. He would go to tell me
7 something. He would get off on another subject.
8 His lights were being cut off. His phone got cut
9 off. He was in very, very bad shape.

10 Q Understanding all this was happening to him,
11 right -- and you've raised a son?

12 A Yes.

13 Q What is your opinion, even during the worse of the
14 times, about what kind of dad Dale was?

15 A I wish I had a dad like Dale.

16 Q Thank you, ma'am. I don't have any other
17 questions.

18 THE COURT: Cross.

19 CROSS EXAMINATION

20 BY MR. MADSEN:

21 Q You knew at some point in time, being the neighbor,
22 that he was having problems; isn't that correct?

23 A Yes, sir.

24 Q And you knew he didn't have any money, isn't that
25 correct, or was kind of having money problems?

1 A Yes, sir.

2 Q And being next door you kind of knew that he was
3 working sporadically, if at all, at various times;
4 isn't that correct? And that causes money
5 problems; isn't that true?

6 A Dale was a hard worker.

7 Q I understand. But at that point in time, he wasn't
8 working all that much?

9 A Not toward the last, no, sir.

10 Q And so when you knew he was having problems, you
11 told him about a place that he could go to for free
12 and get help?

13 A Yes, sir.

14 Q And he didn't do that, did he?

15 A He was afraid it would go against him in his
16 custody fight for his children, sir.

17 Q I believe if you told us correctly you told us you
18 are a nurse, right?

19 A Yes, sir.

20 Q So you are familiar with what is called H.I.P.P.A.,
21 aren't you? You are familiar with the law that
22 basically says your medical records are private. I
23 don't have a right to see them.

24 A Yes, sir.

25 Q No one has a right to see your own personal medical

JANE SINGLETON -- CROSS -- MR. MADSEN

364

1 records; isn't that correct?

2 A Yes, sir.

3 Q That goes to your own treatment. You know that
4 those kind of things are confidential being a
5 nurse; isn't that true?

6 A Yes, sir.

7 Q So he wouldn't have had to worry about that, would
8 he?

9 A He said he had seen it happen before. I don't
10 know, sir.

11 Q And you know when he had those kids at some point
12 in time, he didn't have a phone; isn't that
13 correct?

14 A Yes, sir.

15 Q His lights were getting cut off; isn't that
16 correct?

17 A Yes, sir.

18 Q There were some problems with that trailer, weren't
19 there?

20 A I'm not sure.

21 Q And when we get to kind of the winter months, you
22 want to have electricity; don't you?

23 A Yes, sir.

24 Q And you would you agree with me that when he and
25 Jenny had split up, that was quite a few months

1 before all this other stuff happened; isn't that
2 true. Before he killed her, it was quite a few
3 months before when they split up?

4 A Six months, is that right, five, six?

5 Q Does that sound about right to you?

6 A Yeah.

7 Q At no point in time, you said did the Defendant
8 ever talk to you about killing her; isn't that
9 true?

10 A That's true.

11 Q Never, never, never said anything about killing her
12 to you?

13 A Right.

14 MR. MADSEN: That's all the questions I have.

15 THE COURT: Any redirect?

16 MR. NETTLES: None, Your Honor.

17 THE COURT: You can step down. Counsel, why
18 don't we take a short break at this point.

19 MR. NETTLES: Yes, sir.

20 THE COURT: We have been going over a hour.

21 Ladies and gentlemen, we will take a short break to give
22 you a chance to move around and stretch your legs a
23 little. Just remember we don't talk about the case.
24 See you back in a few minutes.

25 (The jury retires to the jury room).

1 THE COURT: The jury is secured. Anything
2 before we recess from the State?

3 MR. NETTLES: I didn't mean to turn my back on
4 you.

5 THE COURT: I was looking that way. Anything
6 before we recess?

7 MR. NETTLES: No, sir.

8 MR. MADSEN: No, sir.

9 THE COURT: Let's stand in recess for about 15
10 minutes.

11 (Whereupon there was a recess).

12 THE COURT: Is the defense ready?

13 MR. NETTLES: We are, Your Honor.

14 THE COURT: Is the State ready?

15 MR. MADSEN: We are, Your Honor.

16 THE COURT: Let's bring the jury.

17 (The jury returns to the courtroom).

18 THE COURT: All parties and attorneys are in
19 the courtroom, and all jurors have returned. Call your
20 next witness, please.

21 MR. NETTLES: Thank you, Your Honor. Roger
22 Dale Burke calls Dale Anderson.

23 ALMON ODELL ANDERSON, being
24 first duly sworn, testified as follows:

25 CLERK: State your full name on the record and

1 speak up loud and clear.

2 THE WITNESS: Almon Odell Anderson.

3 DIRECT EXAMINATION

4 BY MR. NETTLES:

5 Q Mr. Anderson, what first name do you kind of go by?

6 A I go by Dell.

7 Q Dell?

8 A Yes, sir, Dell.

9 Q E. or A.?

10 A D-E-L-L.

11 Q I meant the left after D. I apologize.

12 Mr. Anderson, like I have asked a couple of other
13 people before you, do you know that man over there?

14 A Yes, sir, I do.

15 Q Who is that?

16 A That's Dale Burke.

17 Q How do you know him?

18 A We worked together for quite a few years, ten to
19 twelve years.

20 Q Worked together doing what?

21 A We crushed cars.

22 Q What?

23 A We crushed cars. I ran the crew and he worked for
24 me.

25 Q Tell me what crushing cars is.

ALMON ANDERSON -- DIRECT -- MR. NETTLES

368

1 A We would travel around the State to salvage yards
2 and take their old cars and mash them and haul them
3 to the grinder. Like I say, we worked together for
4 ten or twelve years or something. But this man,
5 I've heard a lot of bad stuff up here, you know,
6 talked about him. This is a good man, a very good
7 man. There was nothing more he loved than his kids
8 and his wife also. He loved his wife but more his
9 kids.

10 Q Mr. Anderson, I promise we will get to that, okay?
11 I appreciate that.

12 A I just don't like people saying bad stuff about
13 him. He's a good man.

14 Q I understand. I promise we will get a chance to
15 talk about that, okay? All right. Take my word on
16 that?

17 A Yes, sir.

18 Q Talk to me a little bit about when it is that
19 y'all -- did you ever work doing vinyl siding with
20 him?

21 A No, sir.

22 Q The time that you worked with him crushing cars,
23 was that before or after he started doing vinyl
24 siding?

25 A I think he might have done a little bit before, but

1 we worked together from the early '90s until '98, I
2 think it was, when we got laid off.

3 Q Y'all got laid off from the job crushing cars?

4 A Yes, sir. This guy also, he never missed a day of
5 work. At the end of our work period, it was me,
6 him, and my son that was the main people on the
7 crew.

8 If it rained or something, me and my son would
9 not want to work, you know. This man, "I want to
10 work. I need the money. I need the money." That
11 was the big -- you know, his family was everything
12 to him.

13 Q How do you know that?

14 A I mean, he just expressed the fact that his family
15 was everything to him. There was nothing more
16 important to him than his family because it's -- I
17 think in my opinion I think the reason for his
18 wife's death --

19 MR. MADSEN: Judge, I will object. I don't
20 think it's appropriate.

21 THE COURT: Sustained. He can't give opinion,
22 counsel.

23 BY MR. NETTLES:

24 Q Hang on. Stick with me now, Dell; okay?

25 A Okay.

ALMON ANDERSON -- DIRECT -- MR. NETTLES

370

1 Q I will promise we will get to everything. I
2 promise. Now, when y'all got laid off, all right,
3 did you continue to be a friend of Roger Dale's?

4 A Yes, sir, we have always been friends. For a
5 period of time after we got laid off, you know, a
6 few months we weren't together.

7 Q Doing what?

8 A Sir?

9 Q Worked together doing what?

10 A We kind of just didn't see one another every day as
11 we were used to. We seen each other maybe once a
12 week or once every two weeks or something.

13 Q Is that socially?

14 A Yes, sir.

15 Q Just kind of hanging out together?

16 A Yes, sir.

17 Q At that time tell me what the relationship was like
18 between him and Jenny.

19 A Well, at first when we got laid off, he had went to
20 work with his brother or something. I think they
21 had went together, and he was making good money and
22 everything was wonderful. Then his wife went to --
23 she left him for his brother.

24 Q That's his brother that's here in the courtroom?

25 A Yes, sir, that's him right behind you.

1 Q Right back over here (indicating)?

2 A Yes, sir.

3 Q And did that affect him at all?

4 A Yes, sir, that affected him a lot. But in time,
5 you know, like I say, he really loved his wife; but
6 he had overcome that. He did not 100 percent
7 overcome it, but he was dealing with it. He was
8 living with it.

9 Q Let me ask you this. Did there come a time that
10 she moved out of the house and moved and starting
11 saying with J.J.?

12 A Yes, sir.

13 Q And where did they move to, do you know?

14 A I'm not sure. That's when the big problem begun.
15 His brother -- you know, there was drugs in the
16 house with his wife, and he didn't want his kids in
17 that environment.

18 MR. MADSEN: Judge, I will object. I don't
19 know if that's from --

20 THE COURT: I understand.

21 MAN: He's lying.

22 MR. NETTLES: I'm sorry, do you have something
23 you want to share with us? Do you want to share
24 something with us?

25 THE COURT: Wait one second. Let's move

ALMON ANDERSON -- DIRECT -- MR. NETTLES.

372

1 Mr. Burke back to the back of the courtroom, please.
2 Move him back. Move him back now. Officers move. I
3 don't know what was said, but I did see him saying
4 something back behind Mr. Nettles there. We are not
5 going to have that. Officers, keep an eye on him.

6 Continue, Mr. Nettles. That was not
7 responsive. Go ahead.

8 MR. MADSEN: Judge, I would move to strike
9 that.

10 THE COURT: We will strike it.

11 BY MR. NETTLES:

12 Q We were talking about -- and I guess what I would
13 like to ask you about is I would like to ask you
14 about Dale. You saw Dale regularly?

15 A Yes, sir.

16 Q Or to some degree?

17 A Yes, sir.

18 Q Around the time that she left and went with J.J.?

19 A Yes, sir.

20 Q All I want you to tell me is how you observed it
21 affect him.

22 A Okay. It really affected him. He loved his wife
23 dearly, but in time he was coping with it. He was
24 living with it. The big problem came when -- you
25 know, like I say this man, he is family. He is

1 more so of a dad than anybody I've ever known.

2 The big problem came when he couldn't -- when
3 she left, they were from week to week. They
4 couldn't -- I mean, I know the man real personal.
5 It took both of the their checks to make it work.

6 Q Right.

7 A He could not make it work all alone.

8 Q When you say he couldn't make it work alone, he
9 couldn't make what work alone?

10 A He couldn't afford the payments. Their checks were
11 stretched out. He could not afford the payments.

12 Q How did that affect him?

13 A He had to move his niece and nephew in with him,
14 because they had checks coming in, to help him with
15 the bills.

16 Q Did his niece ever baby-sit?

17 A Sir, I don't know about that.

18 Q Okay. Was that Christopher you are talking about?

19 A Yes, sir.

20 Q Did there come a time that Christopher had to leave
21 the house?

22 A Yes, sir. Christopher molested the kids and at
23 that point, you know...

24 Q How did that affect Roger Dale?

25 A He would have killed him if he could have got his

ALMON ANDERSON -- DIRECT -- MR. NETTLES

374

1 hands on. I would have, too.

2 Q Why is that?

3 A I mean, your kids you are supposed to protect them
4 with everything you are worth. That's my opinion.

5 Q Is that how Roger Dale felt?

6 A That's exactly how he felt. The way I feel is if
7 his wife had never left, the niece and nephew would
8 have never moved in the house; and the kids would
9 never have been in the position to get molested.

10 Q I understand. Let me ask you this. Did you ever
11 see -- well, let me ask you this. Did you have any
12 interaction with Dale's parents during this, let's
13 call it a tumultuous time?

14 A Yes. At one point Dale was at my house and his
15 mother called my house. She was cussing him out
16 because J.J. said this kids --

17 MR. MADSEN: Objection, Your Honor?

18 A -- didn't go to school dressed properly.

19 MR. MADSEN: Judge?

20 THE COURT: Mr. Anderson, when he starts to
21 object, you stop talking.

22 THE WITNESS: Okay, yes, sir.

23 THE COURT: What is the objection?

24 MR. MADSEN: I think he was testifying or
25 going to testify as to hearsay. I heard the words he

1 said or she said or something like that. I do not
2 believe it would be appropriate.

3 MR. NETTLES: Let me rephrase the question.

4 THE COURT: Yes, sir.

5 BY MR. NETTLES:

6 Q Based on that incident that we are talking about,
7 what was your impression -- your impression -- of
8 whether the family was taking a side or not at that
9 time?

10 A Yes, sir, they was taking sides. They was for J.J.

11 Q Did that affect Roger Dale?

12 A Yes, sir.

13 Q How did that affect him?

14 A I mean, he had no one to turn to, no family to turn
15 to whatsoever. The thing I could not understand
16 about the situation is when Jenny wouldn't allow
17 Dale to carry the kids to his mother and father's.
18 Then when she leaves with J.J., they, I think at
19 one point, they stayed with them for a period of
20 time.

21 Q Let me ask you this. Tell me about, did you ever
22 see Dale ever do any kind of drugs?

23 A No, sir.

24 Q Did you ever see Dale drinking to excess?

25 A No, sir.

ALMON ANDERSON -- DIRECT -- MR. NETTLES

376

1 Q Did you ever see in Dale's -- were you ever at
2 Dale's house?

3 A Not a lot, not a whole lot. He came to my house a
4 lot. I got a garage and kind of people hang out,
5 you know.

6 Q I understand. Whenever you were at Dale's house,
7 did you see anything like, you know, Confederate
8 kind of stuff or anything like that?

9 A No, sir, he is not a racist person. If I had a
10 dollar for every time he has told me he would kill
11 me, I would carry everybody out to dinner.

12 Q Did he ever kill you?

13 A No, sir, not in the ten or twelve years; but he has
14 told me probably every day or sometimes two or
15 three times a day. That's just an expression he
16 has. Different people have different expressions.
17 That's an expression he has.

18 Q Let me ask you this. So would it be a fair
19 characterization in your mind and your experience
20 with him that he was someone that was obsessed with
21 killing his wife?

22 A No, sir, not whatsoever. He was not obsessed with
23 killing anybody. That's a expression he just has,
24 I mean.

25 Q Is he a good daddy?

1 A He's a very good daddy. When we would leave from
2 work if we was -- maybe we had to stay just a few
3 minutes later. Sometime we drove two hours at the
4 time and stuff.

5 If we had to leave a few minutes late or
6 something and it was going to be a ball practice or
7 something for his kids, he generally drove. We
8 would be coming down the road pretty fast just to
9 get to where he could carry his kids to the ball
10 practice on time or whatever. He's just a good
11 person he really truly is. I mean, I have never
12 met a better person.

13 Q Thank you. I appreciate that.

14 THE COURT: Cross.

15 CROSS EXAMINATION

16 BY MR. MADSEN:

17 Q How are you doing, Mr. Anderson?

18 A Just fine.

19 Q Killing someone is not so funny, is it?

20 A No, sir.

21 Q Murder is not a laughing matter, is it?

22 A No, sir, it's not.

23 Q We have laws in this county, don't we?

24 A Yes, sir.

25 Q And we follow those laws, don't we?

ALMON ANDERSON -- CROSS -- MR. MADSEN

378

- 1 A Yes, sir.
- 2 Q If we don't follow those laws, there's
- 3 repercussions to that; isn't there?
- 4 A That's exactly right.
- 5 Q And that's how it should be?
- 6 A Yes, sir, until you're driven to the point that if
- 7 you -- the man was not in his right mind.
- 8 Q That's not the question I asked, Mr. Anderson. You
- 9 understand, as I asked, that we have to follow
- 10 laws?
- 11 A Yes.
- 12 Q And you agree that you don't take matters into your
- 13 own hands; isn't that correct?
- 14 A That's true.
- 15 Q And you told this jury that Dale had kind of gotten
- 16 over the fact that his wife had left him, didn't
- 17 you?
- 18 A Yes, sir.
- 19 Q That he was dealing with it, wasn't he?
- 20 A Yes, sir.
- 21 Q You would agree with me that a good dad would want
- 22 to protect his children; isn't that correct?
- 23 A Yes, sir.
- 24 Q And a good mom would also, wouldn't she?
- 25 A Yes, sir, if she -- okay.

1 Q Isn't that true, Mr. Anderson?

2 A Yes, that's true. But if there was drugs in the
3 house, that's not protecting them.

4 Q Mr. Anderson, how about just answer my questions.

5 MR. NETTLES: Your Honor, I think it's kind of
6 a two-way street. I think he gets to answer whatever he
7 wants to say.

8 THE COURT: I understand.

9 MR. MADSEN: He doesn't have a right to get up
10 there and just start talking without answering
11 questions.

12 THE COURT: But he has a right to explain his
13 answer though. You may not feel like it's in response,
14 but he may. I will give him a little room.

15 THE WITNESS: Thank you, Judge.

16 THE COURT: Just answer the question.

17 THE WITNESS: Yes, sir.

18 BY MR. MADSEN:

19 Q Mr. Anderson, when you have good parents, their
20 responsibility with their children is to make sure
21 that those children are safe; isn't that true?

22 A That's correct.

23 Q And you said the Defendant is a good dad, didn't
24 you?

25 A Yes, sir.

ALMON ANDERSON -- CROSS -- MR. MADSEN

380

1 Q And if something was going on with his children
2 that he thought was bad, he's going to take care of
3 those children first?

4 A Exactly right.

5 Q And take them out of that situation?

6 A Yes, sir.

7 Q To protect those kids first. Isn't that true?

8 A Yes, that's what he was trying to do.

9 Q Then if that decision is not bad, he's going to err
10 on the side of caution; isn't he?

11 A Say that again.

12 Q If he thinks that there's something bad going on
13 with those kids, he's going to pull them out of the
14 that station and he is going to err on the side of
15 caution first; isn't he?

16 A Yeah, he is going to get them out of that
17 situation.

18 Q He would protect those kids first and ask
19 questions later?

20 A Yes, sir.

21 Q And a good mom would do the same thing with those
22 kids, wouldn't they?

23 A A good mom would, yes.

24 Q And if kids are getting molested in a house, a good
25 mom is going to want to figure out, you know: Hey,

1 I want those kids out of there first. Then we will
2 go to court or at some point in time, we will make
3 sure that they are safe and nothing else is going
4 on. Isn't that true?

5 A A good mom would. But if there's drugs in the
6 house, it's not a good mom in my opinion.

7 Q Did you ever go over to Jenny's house after she
8 split with Dale?

9 A No, sir.

10 Q So you didn't know anything about that then, do
11 you? That's just your opinion?

12 A I heard a lot about it.

13 Q You don't know that personally, do you?

14 A I don't know for a fact. No, I ain't never seen
15 the stuff.

16 Q I understand. That's all I'm asking, Mr. Anderson.
17 And you are testifying because you want to help the
18 Defendant out; isn't that true?

19 A I am testifying to the truth.

20 Q That's not my question, Mr. Anderson.

21 MR. NETTLES: Objection, he answered it.

22 THE COURT: Overruled. He answered it.

23 MR. NETTLES: Do you mean sustained?

24 THE COURT: I meant sustained, excuse me.

25 Sometimes even I get my words mixed up. Go ahead,

ALMON ANDERSON -- CROSS -- MR. MADSEN

382

1 Mr. Madsen. I'm sorry to interrupt.

2 BY MS. MADSEN:

3 Q You were obviously pretty good friends with the
4 Defendant; isn't that true?

5 A Yes, sir, I like him, yeah.

6 Q And you knew that he had filed for divorce against
7 his wife, didn't he?

8 A Not really. I knew she had left. I didn't know if
9 he had filed for divorce. I knew he had an
10 attorney fighting for the kids. So I would guess
11 they had filed for divorce. I mean, I didn't
12 personally know.

13 Q And that's kind of normal in divorce that maybe
14 both sides will have an attorney; isn't that
15 correct?

16 A Yes, sir.

17 Q And through those attorneys they will kind of
18 either figure out their issues themselves; isn't
19 that correct?

20 A Yes. The problem is though he couldn't afford his
21 attorney because she had left him with 100 percent
22 of the bills that the man couldn't pay. It was
23 taking two of their checks to pay both of the
24 bills. With her gone he only had one check, and he
25 couldn't afford an attorney. So what was he

1 supposed to do?

2 Q But you would agree that they had joint custody?

3 A They didn't have joint bills. He had all the
4 bills.

5 Q Mr. Anderson, are you saying that if she has fallen
6 in love with someone else that she should have just
7 stayed with him? Doesn't that kind of go against
8 why we have divorce? Doesn't a person have that
9 right, Mr. Anderson?

10 MR. NETTLES: Your Honor, I would like -- he
11 asked him a question, and I would like for him to be
12 able to answer it.

13 THE COURT: Yes, sir. Go ahead and answer the
14 question.

15 A I don't think she should have stayed with him.
16 Nobody should stay with nobody if they don't love
17 one another, but she shouldn't have dumped him with
18 all the bills. If he hadn't paid all the bills on
19 the house and whatever, where was he going to have
20 a place for the kids to stay?

21 Then y'all would come in and take his kids
22 from him, and that's exactly the reason that the
23 man is here today is because he didn't want to lose
24 his kids. He didn't want his kids in a bad
25 environment.

ALMON ANDERSON -- CROSS -- MR. MADSEN

384

1 Q His kids aren't in a bad environment watching their
2 mother get killed? That's not a bad environment,
3 Mr. Anderson?

4 A I don't know if that one-day scene might not be as
5 bad as seeing drugs going in the house every day,
6 in and out, in and out.

7 Q You have already testified, Mr. Anderson, that you
8 don't personally know that; didn't you?

9 A I didn't personally see her get killed either.

10 Q So that's not a bad environment for kids to
11 watch --

12 A I don't know. I didn't see the environment that it
13 happened. I mean, you are turning everything
14 around. So, you know...

15 Q And I guess, Mr. Anderson, what you testified is
16 it's this dead lady's fault that her children got
17 molested?

18 A Yes. If she hadn't left, the kids wouldn't have
19 been in the bad -- the place where he brought the
20 nephews and nieces in to help pay the bills. The
21 man wouldn't have -- you know, he could have made
22 it. If she had still been there, he would have
23 been paying the bills.

24 I would say it's partially her fault, too,
25 even though she is dead. I am sorry for her death,

1 but I am saying it's partially her fault, too.

2 Because if the man had been able to pay his bills
3 and all this, it wouldn't have been nothing like
4 that. You know it, too.

5 Q Sure. So you ought to bring someone in who is
6 coming out of a mental institution? Is that what
7 you are testifying to?

8 A You got to do whatever you got to do to keep your
9 kids. I mean, would you rather bring someone in
10 your house out of a mental institution or let your
11 kids go hungry? Sir?

12 Q The kids weren't going hungry, were they?

13 A I don't know. Without the help and the check from
14 the people, they might have. I don't know, do you?

15 Q Their momma bought them food, Mr. Anderson; didn't
16 she?

17 A Their momma put food in Mr. Burke's house for them?
18 I would think so, but I don't know.

19 Q She put food in those children's bellies when she
20 had them.

21 A So they supposed to go hungry the three or four
22 days he had them, right? He had all the bills to
23 pay. He couldn't afford it.

24 Q He had a family, didn't he; Mr. Anderson?

25 A That's who he brought in to try to help pay the

ALMON ANDERSON -- CROSS -- MR. MADSEN

386

1 bills. He's not responsible for what his nephew
2 done or whatever.

3 Q You think pretty highly of the Defendant. You have
4 made that clear; isn't that true?

5 A Oh, definitely.

6 Q He would have come to you and said, "I need help
7 with food for my children," you would have helped
8 him; wouldn't you?

9 A He came to me and asked me to help him pay his
10 light bill and I did. I done what I could do. I'm
11 not a rich person, but I did loan him money to pay
12 his light bill.

13 The man was so distressed after the rape or
14 whatever, molested the kids, he was so distressed
15 he couldn't work. You were saying he didn't work
16 for a period of time. He could not work. This man
17 was tore up because his kids was hurt. This man
18 was doing what he could do for his kids.

19 Q So, Mr. Anderson --

20 A He killed for his kids. I would do the same.

21 Q So, Mr. Anderson, he was so tore up he couldn't
22 work. How long wasn't he working because of what
23 had happened to his kids by Christopher? How long?

24 A I don't know. I don't know exactly how long. I
25 mean, he didn't work -- when he worked for me, he

1 worked every day. He cried when the man could not
2 work a day. He was -- if it was really raining, me
3 and my son wanted to go home, you know.

4 We was not rich or anything, but we was not,
5 you know, in bad shape. This man wanted to work
6 because he had bills to pay. They were stretched
7 out.

8 Both checks were stretched out for bills to
9 pay. One day's check missing, it put him in a
10 problem, you know, with him and Jenny. Then when
11 Jenny left, he had it all alone. He couldn't do
12 it. The man couldn't do it.

13 Q Mr. Anderson, did you know that Christopher was
14 arrested on December 13th of 2001?

15 A I don't know what day he was.

16 Q Less than one week before he killed his wife. Did
17 you know that, Mr. Anderson?

18 A Say that again.

19 Q That Christopher was arrested on December 13th, one
20 week before he killed his wife. Did you know that?

21 A That's sounds correct. Because once the guy raped
22 his wife (sic) or whatever, he knew he was gone.
23 He was going to lose his kids.

24 Q You mean the children?

25 A Sir?

ALMON ANDERSON -- CROSS -- MR. MADSEN

388

1 Q You said wife. You mean children?

2 A Once Christopher or whatever was arrested or
3 whatever, he knew he was going to lose his kids.
4 He put the kids in a bad environment, not
5 purposefully. He had to or either he had no place
6 to keep his kids.

7 Q So it was only that one-week period of time then
8 that he would have been so distraught about this
9 that he couldn't work? Is that what your testimony
10 is?

11 A I don't quite understand what you are saying.

12 Q You said he wasn't able to work because of what
13 Christopher had done.

14 A No, I didn't say he didn't work every day. But the
15 man, he would come to my house and be in my shop
16 and he would be pacing the floor, pacing the floor.
17 He could not stand still. He could not stand
18 still. He just paced the floor, paced the floor.
19 He was in bad shape. Honestly, I apologize to you,
20 I seen you needed help. I didn't help you. I
21 apologize.

22 Q But you agree that he put those kids in a bad
23 environment? Isn't that what you said?

24 A Not purposefully he didn't. He did put them in a
25 bad environment. The kids was molested but it

1 wasn't his fault. He put them in there. He put
2 the people in his house to help him pay the bills.

3 Q But good mommas ought to think about the safety of
4 those kids first; isn't that true?

5 A I agree with that.

6 Q If they are in a bad environment, a good parent
7 would want to get them out of that environment?

8 A Yes. Dale tried to get them out of the
9 environment. He couldn't afford no lawyer.

10 Q But he had one at that point in time, didn't he?

11 A He had one at one point in time, and I think by my
12 understanding, I am not correct on the dates or
13 whatever; but I think after the guy molested the
14 kids, I think his lawyer wouldn't defend him
15 anymore, told him that he was -- I don't know all
16 the legal stuff about it. Plus, he didn't have the
17 money. He probably wasn't paying the lawyer.

18 Q But, Mr. Anderson, you know if you can't afford a
19 lawyer that sometimes a Court will appoint one for
20 you if you ask; isn't that true?

21 A I think sometimes they will. I don't know if they
22 will in a case like that or not. Apparently he
23 didn't know neither because if he knew he could
24 have got a free lawyer, he definitely would have
25 got one.

ALMON ANDERSON -- CROSS -- MR. MADSEN

390

1 Q And you said that the most important thing to the
2 Defendant was family?

3 A Exactly.

4 Q And a family would be children?

5 A The first, the very top priority, is the kids.

6 Q Sure. And what happens to those kids; isn't that
7 true?

8 A Exactly.

9 Q And you would agree with me then that watching
10 momma get killed in front of the Christmas tree
11 would be bad for the kids; wouldn't it?

12 A I agree that could be bad for the kids. I am not
13 going to say that is not worse than seeing drugs
14 through the house from years on. I'm not saying
15 that's not worse. Which is worse? You tell me,
16 which is worse?

17 THE COURT: Just answer the question, please.

18 BY MR. MADSEN:

19 Q That could be bad?

20 A Sir?

21 Q Is that your answer, is that watching momma get
22 killed --

23 A Yes, that's bad.

24 Q And you would agree with me that that would break
25 up that family, wouldn't it?

1 A Yes. The only reason I agree that would break up
2 the family because if the family -- the kids, he
3 was going to lose the kids. There's no question in
4 my mind or his mind about that.

5 But if he was going to lose the kids, it would
6 be better for it to be over with and the kids to be
7 put in a home where they can be adopted out to
8 decent people.

9 Q So it's just better to go ahead and kill their
10 momma in front of them?

11 A I'm not saying it's better to kill their mother.
12 That man didn't actually -- he purposefully kill
13 the mother. The man was -- he should be -- I don't
14 know. I don't know all legal stuff and all. I'm
15 not a lawyer about none of this stuff.

16 He was temporarily insane in my opinion when
17 this thing happened. Because after Christopher
18 molested his kids, this man was tore up. He knew
19 by no shadow of a doubt because Jenny had told him
20 they were going to go court or whatever. He was
21 going to lose his kids, and that's the highest
22 priority this man has got in his life is his kids.

23 Q You would agree with me then that if somebody
24 doesn't know what they are doing -- that's what you
25 said, that he didn't know what he was doing; isn't

ALMON ANDERSON -- CROSS -- MR. MADSEN

392

1 that true?

2 A I would say at that point in time that he wasn't
3 exactly sure what he was doing.

4 Q You would agree with me that planning to do
5 something is inconsistent with that, wouldn't you?

6 A Yes. I would say if he planned it, yes.

7 Q And you would agree with me that hiding so someone
8 could see you do it would be inconsistent with
9 that, wouldn't it?

10 A Explain yourself.

11 Q You would agree with me that if someone doesn't
12 know what they're doing, they are certainly not
13 going to take steps to hide and jump out?

14 A I don't know about the hiding or whatever. But
15 after this thing occurred or whatever, I don't see
16 where the man was trying to hide or deny or
17 nothing.

18 He called me the next morning and asked me to
19 carry him to jail. I went and picked him up from
20 his home and I carried him to Lexington County
21 jail. He wasn't trying to hide or deny. He knew
22 he had done wrong.

23 Q You knew Jenny, didn't you?

24 A No, sir, not personally.

25 Q Had you met before?

1 A I just said, "Hi, how are you doing," or something.

2 I never talked to her.

3 Q You had met before though, right, in person?

4 A I've never had a conversation with her.

5 Q I mean, you have seen her with your own two eyes?

6 A Yes. I've seen you before, the same as I seen her.

7 Q And Jenny was a pretty large woman?

8 A Yes.

9 Q When we talk about weight on her, 260, 270; would
10 that seem fair?

11 A I don't know. I heard testimony a while ago that
12 she was on a lot of diet pills or something before.
13 I don't know what the woman weighed when she died
14 or whatever.

15 Q How about when you saw her?

16 A I hadn't seen her probably -- they had been
17 separated. I don't know, probably eight or ten
18 months since I had seen the woman.

19 Q When you saw her in eight or ten months.

20 A She was a pretty heavy woman.

21 Q And at that point in time, Dale wasn't even as
22 heavy as he is now; isn't that correct?

23 A That's correct.

24 Q He was quite a bit -- weighed quite a bit less,
25 quite a bit smaller?

ALMON ANDERSON -- CROSS -- MR. MADSEN

394

1 A Exactly.

2 Q You would agree with me that having a heavy person
3 that is pretty much -- if they are dead -- that is
4 just dead weight, isn't it?

5 A I agree with you. I see what you are getting at.

6 Q What am I getting at, Mr. Anderson?

7 A You getting at that this man toting this woman or
8 whatever. This man is strong. I worked with this
9 man. I'm not saying whatever went on there or
10 whatever. Go ahead with what you are wanting to
11 ask.

12 Q I think you answered it, Mr. Anderson.

13 MR. MADSEN: I have no more questions.

14 THE COURT: Any redirect?

15 MR. NETTLES: I can't think of anything, no,
16 sir.

17 THE COURT: You can step down.

18 MR. NETTLES: May we approach?

19 THE COURT: Step up just a minute.

20 (Whereupon there was a bench conference off
21 the record in the presence of the jury but out of the
22 hearing of the jury).

23 THE COURT: Jurors, we are going to go ahead
24 and take a lunch break at this point. There are some
25 matters that I have got to take up with the attorneys

1 during the lunch break.

2 What I will do is give you a few minutes
3 extra. I will ask you to be back at two. We are pretty
4 close to getting toward the end. There are some matters
5 I have got to take up with them. I didn't want to have
6 to have you sit back there while we are doing it.

7 This is good time to do it. Be back at two.
8 Remember don't talk about the case. I think actually we
9 are bringing in lunch for you, aren't we? I noticed
10 that. She should be back in just a few minutes with.

11 During the lunch break if you want to, you can
12 go out and take a walk or run some errands or anything
13 you want to, as long as you are back in at two. You can
14 eat your lunch here. You can take it somewhere else if
15 you want to or if you don't like it, you can go
16 somewhere else and eat, too. Either way is okay, as
17 long as you are back in the jury room at two, it will be
18 okay. See you back at two.

19 (The jury is excused for lunch at 12:10 p.m.)

20 THE COURT: The jury is secured. Anything,
21 counsel, before we break for lunch? I have got a matter
22 to take up back in chambers. Anything before that from
23 the State?

24 MR. MADSEN: No, sir.

25 THE COURT: Defense?

1 MR. MADSEN: No, sir.

2 THE COURT: We will stand in recess until
3 2:00 o'clock.

4 (Whereupon there was a luncheon recess).

5 THE COURT: Anything from the defense before
6 we begin?

7 MR. NETTLES: Nothing, Your Honor.

8 THE COURT: Anything from the State?

9 MR. NETTLES: Do you want to address the
10 officers?

11 (Attorneys confer).

12 MR. MADSEN: Judge, Mr. Nettles had subpoenaed
13 two officers. I think I am going to object to their
14 testimony. Apparently at some point in time, they came
15 out and took domestic-related reports.

16 It never ended up in any charges. I think
17 Mr. Nettles has talked to them, as well as I did. Both
18 of their incident reports are approximately a couple of
19 sentences.

20 Neither of them have any independent
21 recollection of these events. Even after going over the
22 report, they don't remember being out there. I mean,
23 this is apparently just nondescript that they went out
24 there, filed these for documentation purposes.

25 So I don't think under rule 602 that they

1 could testify because they are going to lack personal
2 knowledge to say that. Obviously I think if the Court
3 desires to under Rule 612, they can be given their
4 reports and attempt to refresh their recollection.

5 If they then have an independent knowledge of
6 it and can testify to it, I think they are good to go.
7 But if they don't then, then I think they lack that
8 personal knowledge.

9 Additionally, I don't know if there is any
10 type of relevance because these incident reports were
11 7/15/01 and 7/25/01. Like I said, no charges were ever
12 brought. Mr. Burke wasn't charged with anything. His
13 wife was not charged with anything. They were just
14 listed as just domestics for documentation purposes.

15 THE COURT: Well, Mr. Nettles can call the
16 witnesses and ask them and even let them use the report
17 to refresh their recollection. Of course, if they don't
18 remember, then they can say they don't remember. He can
19 still call the witnesses.

20 Of course, that's up to you, Mr. Nettles, to
21 decide if you want to let them get up and take that
22 chance.

23 MR. NETTLES: Yes, sir, I appreciate it, Your
24 Honor.

25 THE COURT: Anything else from the State

MICHAEL BURKE -- DIRECT -- MR. NETTLES

398

1 before we begin?

2 MR. MADSEN: No, Your Honor.

3 THE COURT: Defense?

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

5 THE COURT: Let's bring the jury in, please.

6 (The jury returns to the courtroom at

7 2:14 p.m.)

8 THE COURT: All parties and attorneys are in
9 the courtroom, and all jurors are now back with us.

10 Mr. Nettles.

11 MR. NETTLES: Thank you, Your Honor. At this
12 time Roger Dale Burke calls Investigator Burke.

13 MICHAEL ALLEN BURKE, being
14 first duly sworn, testified as follows:

15 CLERK: State your full name and spell your
16 last.

17 THE WITNESS: My name is Michael Allen Burke.

18 DIRECT EXAMINATION

19 BY MR. NETTLES:

20 Q Your rank is investigator?

21 A Detective, yes, sir.

22 Q Detective, I'm sorry. Detective Burke, I assume
23 you were not always a detective?

24 A No, sir.

25 Q Before that, specifically on 7/15 of '01, what was

1 your rank?

2 A I was a master deputy on patrol.

3 Q A master deputy with?

4 A The patrol shift.

5 Q Lexington County Sheriff's Department?

6 A Yes, sir. Yes, sir.

7 Q And would your duties -- what were your duties at
8 that time?

9 A I was a first line supervisor to three or four
10 other people, depending on how many we had on our
11 shift. I was also a call action deputy at the same
12 time.

13 Q A what kind of action?

14 A A call-answering deputy.

15 Q A call-answering deputy means that if there is a
16 call from somebody, you would then go out to them?

17 A Yes, sir.

18 Q So, in other words, somebody called my house got
19 broken into, you or somebody would maybe go out
20 there?

21 A Correct.

22 Q If somebody called and somebody said, "There's
23 somebody in my house," you would go out?

24 A Correct.

25 Q If there was a domestic dispute, those are the

MICHAEL BURKE -- DIRECT -- MR. NETTLES

399

1 your rank?

2 A I was a master deputy on patrol.

3 Q A master deputy with?

4 A The patrol shift.

5 Q Lexington County Sheriff's Department?

6 A Yes, sir. Yes, sir.

7 Q And would your duties -- what were your duties at
8 that time?

9 A I was a first line supervisor to three or four
10 other people, depending on how many we had on our
11 shift. I was also a call action deputy at the same
12 time.

13 Q A what kind of action?

14 A A call-answering deputy.

15 Q A call-answering deputy means that if there is a
16 call from somebody, you would then go out to them?

17 A Yes, sir.

18 Q So, in other words, somebody called my house got
19 broken into, you or somebody would maybe go out
20 there?

21 A Correct.

22 Q If somebody called and somebody said, "There's
23 somebody in my house," you would go out?

24 A Correct.

25 Q If there was a domestic dispute, those are the

1 types of calls that you would go out to?

2 A Correct.

3 Q Do you remember on 7/15 of '01 meeting this man
4 (indicating) right here?

5 A I do not remember, no, sir.

6 Q Could I show you --

7 MR. NETTLES: May I approach the witness, Your
8 Honor?

9 THE COURT: Yes, sir.

10 BY MR. NETTLES:

11 Q You and I have talked about this before?

12 A Yes, sir.

13 Q Do you recognize that?

14 A Yes, sir, this is a report that I wrote.

15 Q And have you had the opportunity to read the body
16 of what that was? I don't want to say anything, but
17 just read it to yourself.

18 A (Pause). Okay.

19 Q After having the opportunity to read it, we can
20 agree that's a report that you did?

21 A Yes, sir.

22 Q After having had the opportunity to read that
23 report, do you now have any recollection of meeting
24 this individual?

25 A I'm sorry. No, sir, I don't.

JOHN ESPOSITO -- DIRECT -- MR. NETTLES

401

1 Q That's fine. I have no further questions. Thank
2 you.

3 THE COURT: Any cross?

4 MS. MADSEN: No, Your Honor.

5 THE COURT: You can step down.

6 MR. NETTLES: At this time Roger Dale Burke
7 would call Sergeant Esposito.

8 JOHN ESPOSITO, being
9 first duly sworn, testified as follows:

10 CLERK: State your full name and please spell
11 your last.

12 THE WITNESS: My name is John Esposito,
13 E-S-P-O-S-I-T-O.

14 DIRECT EXAMINATION

15 BY MR. NETTLES:

16 Q How are you doing -- it's sergeant, correct?

17 A Yes, sir.

18 Q Sergeant Esposito, you work for the Lexington
19 County Sheriff's Department as well?

20 A I do.

21 Q And on 7/25/01 what were your duties?

22 A I was a corporal working the west region of
23 Lexington County.

24 Q As a corporal were you -- would one of your jobs
25 have been if there was, I believe it was a call --

1 what was it if there is a call?

2 A A call-answering deputy.

3 Q Were a call-answering deputy?

4 A Yes, sir.

5 Q As we just discussed and I believe you were in
6 here, that would be a phone call comes and if
7 somebody has to go, a police officer, has to be
8 dispatched to it, you would be one of those people
9 that if you were on duty and it was in your area
10 that might respond to such a call?

11 A That's correct.

12 Q And as we talked about before, that could include
13 any broad range from domestic calls to burglaries,
14 any sort of other violent crimes?

15 A That's correct.

16 Q Do you by any chance remember this individual here
17 (indicating), meeting this individual?

18 A No, sir.

19 MR. NETTLES: If I may, may I approach the
20 witness, Your Honor?

21 THE COURT: Yes, sir.

22 BY MR. NETTLES:

23 Q You and I have talked about this before. Do you
24 recognize that?

25 A Yes, sir, this is an incident report that I did.

JOHN ESPOSITO -- DIRECT -- MR. NETTLES.

403

1 This is the document.

2 Q And you know it's yours by your signature?

3 A Yes, sir.

4 Q Would you please take a look at the body of that
5 and just read it to yourself if you don't mind and
6 then allow me to ask you a question. Just look up
7 when you get down.

8 A Okay.

9 Q Having had the opportunity with anything you want
10 to look at on that report, is there anything about
11 that that refreshes your recollection about the
12 possibility of having met this man?

13 A No, sir.

14 Q Thank you very much.

15 MR. NETTLES: I have no further questions.

16 THE COURT: Any cross?

17 MS. MADSEN: No questions for Sergeant
18 Esposito.

19 THE COURT: You can step down. Thank you,
20 sir.

21 MR. NETTLES: At this time the defense would
22 call Roger Dale Burke.

23 ROGER DALE BURKE, being
24 first duly sworn, testified as follows:

25 CLERK: Have a seat, please, sir.

DIRECT EXAMINATION

1
2 BY MR. NETTLES:

3 Q On December 19, 2001, did you enter the home where
4 your wife and your brother were living without
5 their permission?

6 A Yes, sir.

7 Q Are you guilty of burglary?

8 A Yes, sir.

9 Q On December 19, 2001, while inside their home did
10 you try to set it on fire?

11 A Yes, sir.

12 Q Are you guilty of attempted arson?

13 A Yes, sir.

14 Q On December 19, 2001, did you have a gun in their
15 house?

16 A Yes, sir.

17 Q Did you use that gun during the commission of a
18 felony?

19 A Yes, sir.

20 Q Are you guilty of those three things?

21 A Yes, sir.

22 Q Did you shoot your wife that day?

23 A Yes, sir.

24 Q When did you meet your wife?

25 A I first met Jenny in '90. I wasn't but 16. I

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

405

1 didn't really have to have a job. I was just a
2 teenager and I left. I came back the next year.

3 Q Left where?

4 A I left Hardee's.

5 Q You met her at Hardee's?

6 A Me and Jenny both worked there together. Then I
7 left and went and started roofing. I came back
8 through the next year to get some food, and Jenny
9 was big as a barrel. She was pregnant.

10 Q Was that with your baby?

11 A No, sir.

12 Q Did y'all start dating then?

13 A Shortly thereafter.

14 Q Had y'all dated before that?

15 A No, sir.

16 Q How long did y'all date?

17 A It was after the child she was carrying was born.

18 Q Who is that child?

19 A That's Brandon Burke. He testified here.

20 Q That's the first witness we saw here?

21 A Yes, sir.

22 Q Did you ever adopt him?

23 A Yes, sir, legally in '95. It became final. It
24 took two or three years to actually complete the
25 process, but it was well worth it.

1 Q It was well worth it?

2 A Yes, sir.

3 Q Why is that?

4 A Because even though I know I didn't conceive him, I
5 can't say that he's not my child. It's like I
6 remember being there even though I wasn't.

7 Q Did y'all have any other children?

8 A Yes, sir.

9 Q And did you have those children after you were
10 married?

11 A Yes, sir. Amber was born in '95 and Dalton was
12 born in of '97.

13 Q So y'all had a total of how many children?

14 A Three.

15 Q When you met her and became reacquainted with her
16 when she was working at Hardee's, you were working
17 doing what?

18 A I really wasn't working much, just here and there.

19 Q What were you doing here and there?

20 A Roofing, shooting pool. I was doing a little bit
21 of construction here and there with Mike's brother
22 at the time, Rick.

23 Q Did all that change?

24 A Yes, sir. Like I said, I really didn't have to
25 have a job until I got with Jenny. I didn't have a

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

407

1 job when we first started dating, and I went to
2 work with her father.

3 Q Doing what?

4 A Putting in underground T.V. cable.

5 Q Did being married change your life at all?

6 A Yes, sir.

7 Q How is that?

8 A I didn't go play football. I didn't go to the pool
9 hall anymore.

10 Q Why is that?

11 A Because when I started dating Jenny, she already
12 had -- she had already had Brandon. She wouldn't
13 date me when I first met her because she was still
14 going through a divorce.

15 Q Right.

16 A Brandon was born on 3rd. Her divorce didn't
17 come final until August. She wouldn't let that be
18 no reason. It was a really nasty divorce. He was
19 very abusive and stuff like that.

20 Q So when did y'all start dating after her divorce?

21 A We met in 1991 on Labor Day. It was out at Thunder
22 Valley race track. We got reacquainted there
23 because her uncle played in a band.

24 It was a little Labor Day party. I had had a
25 crush on Jenny ever since I met her, but she said I

1 was irresponsible and I was a kid. So she wouldn't
2 really give me the time of day.

3 Q Did you -- I mean, I guess what I'm trying to get
4 at is once y'all got married, did you consider
5 yourself that you were still irresponsible?

6 A No, sir.

7 Q Did you begin to work?

8 A Yes, sir.

9 Q Did you quit screwing around?

10 A Yes, sir. For the first time, like I said,
11 Brandon -- it wasn't just me and Jenny. I actually
12 had somebody depending on me. You know, of course,
13 I didn't make the best money.

14 Jenny was making like, I think, minimum wage
15 then, like maybe \$5.10 an hour. But Brandon was my
16 heart. Because I didn't work, I was with him more
17 than Jenny was because she was working, staying
18 with me; and I was with Brandon all the time.

19 Q What you are telling us -- I mean, were you someone
20 that didn't work?

21 A No, sir, not after Brandon came into my life.

22 Q That's what I'm getting at. After Brandon came
23 tell us about what your employment was like from
24 then on.

25 A At first, like I said, I went to work with her dad

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

409

1 out of town. No man, I don't care how many
2 ceremonies you went through, no man likes the idea
3 of another man with his daughter. It don't mater
4 how good of a person he is, but actually we got
5 along all right. Sometimes we would fuss, but it
6 just didn't work good working with him.

7 Q What did you do after you quit doing that?

8 A I worked at Prime South.

9 Q Doing what?

10 A Doing steel work down behind the damn.

11 Q Okay.

12 A Then I went to work for Verbe Temples.

13 Q Doing what?

14 A Crushing cars.

15 Q That's what we heard about from Mr. Anderson?

16 A Yes, sir, and I stayed there seven and a half years
17 straight.

18 Q Then what did you do after that?

19 A We got laid off, as Dell said, because the price of
20 steel dropped. Nobody was crushing their cars.
21 Everybody wants the biggest amount of money they
22 can get.

23 I went to work doing vinyl siding. I done
24 vinyl siding with different peoples. In the vinyl
25 siding trade, you will be working with this guy one

1 minute, and then you work with the next guy. A
2 year and a half after I was doing vinyl siding is
3 when I started my own company. Mike taught me more
4 than everybody that I've ever worked for.

5 Q Who was your partner? Who did you work with when
6 you started your own company?

7 A It was my company. As I said, family can't work
8 together. They didn't -- Jason, my brother --

9 Q Answer this question for me. Who was working with
10 you when you started your own company?

11 A My brother Jason Burke and Jason Leaphart and Clint
12 Addy.

13 Q Jason Leaphart is not kin to you?

14 A No, sir.

15 Q And is that pretty much what you were doing?

16 A Throughout, yes, sir. Once the vinyl siding trade,
17 once I learned it good enough to start my own
18 business, it was the best money. I was actually
19 making money, making headway for myself.

20 Q Is your work kind of up and down depending on the
21 season?

22 A Yes, sir. In the wintertime, of course, there is a
23 whole lot more rain and weather. You can't do
24 vinyl siding or any type of construction in that
25 weather.

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

411

1 Q So now having talked about what you did for a
2 living, let's talk about some other things. I will
3 ask that you and I -- we are going to go through
4 your relationship and how it progressed with Jenny.

5 A Yes, sir.

6 Q We will talk about and pick up from when Brandon
7 was born. What was your -- after you and Jenny got
8 married, what was your relationship with Jenny like
9 at the beginning?

10 A The thing I loved about Jenny is she was a good
11 mother. I can't say she wasn't. She was raised up
12 in an abusive home, seen a lot of drinking. She
13 said she didn't want her kids to be raised in that.
14 That's what, even though I was young, that's what
15 she liked about me because I changed.

16 Q What was your -- how was your relationship with
17 her?

18 A Me and Jenny got along real good. She was not just
19 my wife, she was my best friend.

20 Q Where did she work?

21 A She started working -- she was working at Hardee's,
22 and then in '94 she started working at Fruit of the
23 Loom.

24 Q What time of day or night did she work?

25 A She had to work second and third shift because

1 seniority gets the first shift jobs.

2 Q But did that allow -- so then second and third,
3 that's at night?

4 A Yes, sir.

5 Q And who would be at home with the kids at night
6 then?

7 A It was me. I would have to -- because she worked
8 third shift, I would get up every morning and I
9 would have to get Brandon ready for school. I
10 would fix his lunch. I would take him to the
11 baby-sitter to meet the bus.

12 And when she worked second shift, it was the
13 same routine. So she wouldn't have to get up, I
14 would get Brandon up. When she got up and got
15 ready to go to work, she would take the two
16 youngest kids to the baby-sitter.

17 I would also, when I got off at 5:30 from
18 Temples, I would have to go by the baby-sitter and
19 pick them up because when she worked second, she
20 had already been at work by that time. That's the
21 reason she went to third. She said she was missing
22 so much of Brandon's life by working second.

23 Q So let me ask you then. Would it be safe to say
24 for a number of years y'all's relationship and the
25 family relationship, you and Jenny and the three

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

413

1 kids, was a good one?

2 A Yes, sir. Even though we had our problems, until
3 it was too late everything caught me by surprise.

4 Q Let's talk about that. When do you believe things
5 changed?

6 A As was stated earlier, Jenny's mom, who I loved
7 very much, when people didn't see me as nothing,
8 she really loved me. She said, you know, she knew
9 that I really loved Jenny and Brandon and took
10 Brandon as my own and I was a very good father.
11 Even though I didn't have a bunch of finances, she
12 knew that I would take care of them.

13 Q What happened though to her that caused things to
14 change?

15 A She died of a massive heart attack on December 9,
16 2000. Jenny took it very hard. She didn't have a
17 close relationship to her father due to her mom and
18 dad going through a divorce.

19 There were some -- there was a relative on one
20 side had shot the relative on the other side, and
21 Jenny was kind of like torn between the two, even
22 though she loved both of her uncles.

23 Q So how did her death -- or let me rephrase that.
24 Did her death in any way affect y'all's
25 relationship?

1 A Yes, sir, it did.

2 Q How is that?

3 A Jenny, as I said, she couldn't cope. She was
4 having a real hard time dealing with it. It
5 affected on her time as being a mother, too. She
6 would -- little things, such as the kids arguing,
7 Jenny couldn't take it.

8 Q Was that different from when it was before her mom
9 died?

10 A Yes, sir. Like I say, she was going through so
11 much. But after her mom died, it was just
12 everything was bottled up on her. She couldn't
13 deal with the normal things, kids arguing. I have
14 seen her pull her hair and run to the bedroom. She
15 was just real depressed without her mom.

16 Q How did that affect the relationship between you
17 and her?

18 A One of the big reasons was church at the time. Me
19 and Jenny, we took a lot of pride in having our
20 kids in church. I felt as a father, I still think
21 that's the best thing I have ever done.

22 Jenny got -- she didn't believe in God
23 anymore. She even went on to tell our kids as
24 much. She wouldn't let me keep the kids in church.
25 She said if there is a God, her mom wouldn't have

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

415

1 had to die at 48.

2 And that affected me a lot because I got my
3 kids asking questions: Daddy, why does momma say
4 there is no such thing as God? I didn't know how
5 to tell a ten year old or a six year old that.

6 Q Let me ask you this. So when -- I suppose that
7 lasted for awhile. Did it at some point -- did
8 y'all's relationship just kind of break apart?

9 A Yes, sir. In March as you stated, she was obese.
10 Jenny really wanted to lose weight. It cost a lot
11 of the money, but she wanted to go to Dr. Goodson.
12 I had my own vinyl siding business. For the first
13 time we actually had money to really do what we
14 wanted to.

15 We couldn't buy a new Jaguar or nothing; but
16 if we wanted a pizza, we didn't have to figure up
17 the checkbook to see if we had it. This really
18 upset Jenny. I noticed when she started going to
19 Dr. Goodson, she dropped weight extremely fast.
20 She said it was the pills that he had her on. She
21 dropped like 16 pounds in two weeks.

22 Q Right.

23 A She went back like four weeks later, and she had
24 dropped like 16 or 17 more. I don't remember. It
25 was like in six weeks she had almost dropped like

1 40-pounds.

2 Q Right.

3 A I didn't know at the time Jenny started not
4 sleeping for two or three days. At this time she
5 worked third shift, and it's not like Jenny not to
6 sleep.

7 Q Right.

8 A Jenny, as I said, she was a good mother up until
9 this time, but this is when it started to
10 deteriorate. She loved her sleep. Jenny wasn't
11 sleeping at all.

12 Q My question is: How did that affect the
13 relationship between you and her?

14 A I got the assumption that she kept saying it was
15 the pills she was on. Then I found some, what I
16 would call speed. I'm not sure, you know, black
17 beauties. I don't know anything about drugs to
18 describe them.

19 I found some pills in her pocketbook. Even if
20 it's regular caffeine pills over the counter, I
21 can't stand drugs. I don't see why a person needs
22 to take speed, and I don't see why they need to
23 take downers.

24 Q Did that affect your relationship with her?

25 A Yes, it did.

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

417

1 Q How?

2 A Because I didn't want her taking the drugs. She
3 said she was going to do what she wanted to.

4 Q At some point did your brother come to live with
5 y'all?

6 A Yes, sir.

7 Q When we are talking about your brother, we are
8 talking about J.J.?

9 A Yes, sir. It was actually two weeks before Faye
10 died. Jason, he had his own place, him and
11 Leaphart. He lost his place because he had a
12 Rottweiler as a puppy. They told him he could have
13 it. Well, a Rottweiler don't stay a puppy for
14 long. It started getting big. Then the guy said
15 his homeowner's insurance wouldn't allow him to
16 rent to Jason.

17 Q Did he then come move in with y'all?

18 A He came to me. I loved -- although it don't show
19 it now, we will get into that later -- I loved my
20 brother very much. He asked me and I wasn't going
21 to tell him no, he couldn't stay there.

22 Q How long did he stay with you?

23 A He stayed with me until May. He stayed with me
24 until May 30th.

25 Q Why did he leave?

1 A At the time I didn't know it, but me and Jenny was
2 arguing; and he was in the middle of the arguments.
3 He left and went and stayed with his friend Allen,
4 him and Leaphart both. Leaphart stayed with us as
5 well. When I give Jason a place to stay, Leaphart
6 was his roommate; and I let him stay there as well.

7 Q How long after that did Jenny leave?

8 A The very next week.

9 Q Where did she go?

10 A She went and stayed with J.J. at Allen's at first.

11 Q J.J., that's your brother?

12 A Yes, sir.

13 Q And how long did she go stay with J.J. before
14 December 19, 2001?

15 A She went and officially got her stuff and moved out
16 of my house on June the 15th. I had hired a
17 private investigator at that time. It was
18 documented her taking her clothes and moving out of
19 the house.

20 Q How did it feel? Tell us how it felt for your wife
21 to leave you and your three children and go live
22 with your brother.

23 A If you ain't never been through it, you might not
24 feel the same way I do.

25 Q I am asking you to tell us.

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

419

1 A I took it very hard. The main reason I took it
2 hard, I loved Jenny. Like I said, it hit me all at
3 the same time. I didn't see nothing coming. It
4 just hit me right in the face.

5 The main thing is I couldn't understand why
6 she was leaving me for J.J. with the lifestyles.
7 J.J. liked to party. He liked to drink, which when
8 he was staying with me, he respected me and the
9 kids and Jenny. He never done that around us
10 because he know I wouldn't allow it, but he never
11 done that.

12 Q Did you think there was ever any chance that maybe
13 y'all could get back together?

14 A No, sir. When she left she didn't want to split on
15 good terms. It was real nasty to the point, you
16 know, she even went into the detail of how she had
17 had sex with me just right after being with my
18 brother.

19 Q How did that feel?

20 A It hurt really bad. The day she said that I was on
21 the phone with my private investigator -- because
22 he had came, and he kept reminding me in my ear,
23 "Dale, all she is doing is trying to, quote, piss
24 you off where you would hit her. Then she would
25 have the kids." But when she did leave, she didn't

1 take the kids.

2 Q When she left where did the kids stay?

3 A She left the kids with me. She just took her
4 clothes and she didn't take all of them. She just
5 took her immediate things and left and went and
6 moved in with Allen and J.J.

7 Q After she left and went and lived with J.J. and
8 J.J.'s friend, how long was it before she started
9 getting visitation with the kids?

10 A She didn't even bother seeing the kids.

11 Q For how long?

12 A It was like three or four weeks. She didn't even
13 try to see the kids. She would pick them up from
14 the baby-sitter because we had a certain time. Our
15 baby-sitter doesn't watch the kids where we could
16 run the road and jump and joy. That was her aunt
17 watching the kids.

18 Jenny would pick the kids up at three and call
19 me on my cell phone. I would have to meet her.
20 She worked at night, as I said. So she would go
21 pick the kids up from the baby-sitter. She would
22 call me about five and want to meet and give me the
23 kids because she had to go back to where she was
24 staying with J.J.

25 Then for about three weeks we didn't see,

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

421

1 hear, talk to Jenny or nothing. It wasn't until --
2 she didn't even try to see the kids. I even called
3 her one night because Amber was crying. She wanted
4 to see her momma.

5 I called Jenny. I didn't actually call. I
6 got Brandon to call her on the cell phone. She
7 told me to get the kids' clothes ready. She would
8 be by to pick them up. I said, "You are not taking
9 them over there."

10 Q Over where?

11 A Over to Allen's and Jason's. I said, "Jenny, I
12 don't want my kids around that." She said she
13 wouldn't. Well, on the way she told me, "When I
14 get the kids," she told me right then, "When I get
15 the kids, don't expect them back. If you want me
16 to come and get them, don't expect the kids back.
17 I am not bringing them home." I said, "Save your
18 gas money. Don't even come over here," I said,
19 "because you are not getting them."

20 Q Let me ask you something. The two police officers
21 that were in here earlier, did you see them up on
22 the witness stand?

23 A Yes, sir.

24 Q Do you recognize those guys?

25 A Yes, sir. The image itself I wouldn't have, but I

- 1 remember the reports that day they came out.
- 2 Q Who called the police on those days?
- 3 A I did.
- 4 Q Why?
- 5 A On the 15th -- I can't remember which report is
- 6 different. So maybe if you could -- if I could see
- 7 the reports.
- 8 Q Let me ask this. Did you call the police?
- 9 A Yes, sir.
- 10 Q Did you call the police because of things that were
- 11 taking place at your house?
- 12 A Yes, sir. She came. Mr. Asbill on Saturday --
- 13 he's a private investigator. Like I said, she
- 14 wasn't trying to see the kids or nothing. Then
- 15 Mr. Asbill knocked on the door. Jason come to the
- 16 door, and he got Jenny. They was on the couch. He
- 17 told me that she barely had clothes on. Her
- 18 T-shirt covered her as she was standing up.
- 19 Q Wait, wait, wait a minute. I understand you want
- 20 to talk about that. I want to talk about the time
- 21 that you called the police to your trailer.
- 22 A Jenny had been served papers by Mr. Asbill.
- 23 Q Okay.
- 24 A Because I had initiated divorce proceedings.
- 25 Q What happened after you initiated divorce

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423

1 proceedings. Who came to your house?

2 A Jenny.

3 Q What did you do when she came to the house?

4 A I wasn't --

5 Q Listen to my question. What did you do when she
6 came to the house?

7 A She was beating on the trailer wanting to see the
8 kids.

9 Q Did you call the police?

10 A And I called the police.

11 Q Let me ask you this. Why did you call the police?

12 A Because she was beating on the trailer and
13 screaming, "You son of a bitch," blah, blah, blah.
14 The kids were really upset. To be totally honest,
15 the kids were crying. She was at such an irate
16 state, I wouldn't let her in the house.

17 Q Did you call the police another time?

18 A Yes, sir.

19 Q Why did you call the police?

20 A As a matter of fact, I went to Miss Jane's house to
21 use the phone to do that.

22 Q Why did you call them from Miss Jane's house?

23 A It was the 25th of July.

24 Q Why did you call police on the 25th?

25 A Because she came over there. Clint was there. She

1 came over there. We initially supposed to had our
2 first hearing to start the divorce proceedings, but
3 they had delayed it. She came over there and the
4 back door wasn't locked. I didn't know she was out
5 there, and she walked straight on in the house.

6 Q Was she living there then?

7 A No, she was staying with J.J. over at Allen's.

8 Q Okay.

9 A She came in the house. The kids, she talked to the
10 kids right there. But she was so mad at me because
11 I hit her with -- my sister took me because when
12 Jenny left, she took the only vehicle we had. She
13 left the kids with me. I didn't even have a car to
14 drive, but yet I had the kids. I got my sister to
15 take me to find a lawyer. The lawyer said, "You
16 don't need me. You got to prove divorce first."

17 Q While you are talking about a lawyer, was that me?

18 A No, that was --

19 Q I don't care who it was, but was it me?

20 A No, sir, I wouldn't be in this predicament now.

21 Q We will talk about that later. So you called the
22 police on those two occasions?

23 A Yes, sir. But there's more cases, more times than
24 that I called the police; but reports weren't made.
25 They just restored order but no reports were made.

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425

1 Q Let's talk for a second about -- let's go back and
2 talk for a second and talk about some of the events
3 leading up to the 19th, all right?

4 A Yes, sir.

5 Q Did you know where Jenny was living?

6 A Yes, sir, they had moved to Drive.

7 Q I'm sorry, I want to talk about one other thing for
8 a second before we get to that. At some point did
9 two other people -- I am talking about a point
10 after Jenny left when it's you and the three
11 children -- did two other people move in?

12 A Yes, sir.

13 Q Who was that?

14 A They said it was my nephew and my niece. Actually
15 they are my first cousins, Christopher.

16 Q And is one of those first cousins the woman Marie?

17 A Yes, sir.

18 Q That testified earlier?

19 A Yes, sir.

20 Q Who was the other one?

21 A Her little brother Christopher.

22 Q Now, Christopher, there has been some testimony
23 that Christopher had been in a mental institution.

24 Had Christopher been in a mental institution?

25 A No, sir.

1 Q Where had Christopher been?

2 A He had been in foster care.

3 Q Why did Christopher come stay with you?

4 A When he turned 18, he had to leave foster care. He
5 started staying with my mom. As me and my mom
6 didn't -- she took sides with my brother and Jenny.
7 Christopher was saying there. She was the only one
8 that would give him a place to stay. Then
9 October -- from the time Jenny left at the first of
10 June until October, I raised the kids by myself.

11 I was still paying a baby-sitter. When
12 Christopher -- me and my mom got in an big argument
13 because he relayed some information about Jenny and
14 Jason with the kids. It caused a big argument, and
15 she told Christopher he had to leave.

16 Q She or he?

17 A My mom told Christopher that he had to leave.

18 Q He had to leave staying where?

19 A With my mom.

20 Q Where did he go after he left there?

21 A I told him that he could stay with me.

22 Q Okay.

23 A He didn't get a crazy check when he left foster
24 care because he was still in school. He did get a
25 check as long as he stayed in school. He did say,

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427

1 you know, he would help me out with the bills. But
2 with him being in school, I didn't have the money
3 to pay the baby-sitter that I always had.

4 Q Who was the baby-sitter?

5 A At the time it was Jenny's aunt, but I didn't have
6 the money to pay her. I called Marie because at
7 the time Marie was staying with my cousin. She had
8 never been married. She didn't have a boyfriend,
9 didn't have a job. She wasn't tied down and I
10 needed a quick fix.

11 Q Right.

12 A And I asked her would she come and stay with me
13 because I knew that I couldn't get anybody, a close
14 friend, because I couldn't have my kids around them
15 like that or they would try to countersue that I
16 was have an adulterous relationship. So she was my
17 cousin. I didn't think that...

18 Q Tell us about, there has been some testimony about
19 what Christopher did to Amber. I want you -- how
20 about start with this. How about tell us how you
21 found out.

22 A We had a thing set up because me and Jenny had had
23 a bunch of -- we had a situation set up between our
24 lawyers where me and Jenny didn't have contact. My
25 dad would actually pick the kids up from my house,

1 take them to his; and she would meet him there to
2 swap the kids, where we didn't have to be around
3 each other. Daddy picked up the kids one Sunday
4 and he took them to meet Jenny. It was about an
5 hour after he left, jenny called me and she was
6 crying.

7 Q Jenny was crying?

8 A Yes, sir.

9 Q What did she tell you?

10 A She was crying and she told me, "You better do
11 something with that son of a bitch."

12 Q Son of a bitch who?

13 A She was talking about Christopher.

14 Q Why?

15 A I asked her what was she talking about. She said,
16 quote, he has been fucking your daughter.

17 Q What did that do to you?

18 A At first I thought it might have been some of
19 Jenny's bull crap because we was separated. I had
20 the kids. I had went through the legal process. I
21 took every step to raise my kids. Excuse me.

22 Q Do you want a little bit of water?

23 A I will get some in a second. She told me that she
24 was on the way to the house. I told her okay. As
25 soon as I hung up the phone, I looked at

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429

1 Christopher. He knew by the phone call, he knew
2 something was up. I seen the scaredness in his
3 eyes.

4 I asked him, I said, "You been touching my
5 daughter?" And he jumped up and ran. Well, I knew
6 he was guilty by the look on his face. So I
7 knocked the shit out of him.

8 He fell back in the chair and I started
9 hitting him. He kicked me, trying to kick me off.
10 I grabbed him by his leg and pulled him off on the
11 floor. I just got through fixing nailing up my
12 front steps. Nails had backed up.

13 I had a hammer there on my coffee table. He
14 reached for the hammer. At the same time I reached
15 and grabbed it, too. I even can tell you that I
16 drew the hammer back. I was about to bury it in
17 his skull just as hard as I could, but --

18 Q Why were you going to do that to him?

19 A Because I didn't know to the extent what had
20 happened to Amber at that time, but I just knew
21 on the overall he had been sexually touching her,
22 but I didn't know at the time exactly to what
23 extreme.

24 Jenny came over there. I had already called a
25 deputy to respond to the house. Marie was scared.

1 She was actually the one that made the phone call
2 because she thought I was going to kill her
3 brother. If I would have known what I found out
4 later on that night, I would have killed him. The
5 deputy came --

6 Q Why?

7 A Because he touched my little girl. She wasn't but
8 six years old. Jenny came and Amber got out the
9 car. I run and hugged her and picked her up. She
10 didn't really understand what had happened because
11 thank goodness he never actually penetrated enough
12 to cause her any trauma, but I still know as a
13 parent what he did to her. We took her to the
14 emergency room that night.

15 Q We who?

16 A Me, Terry, Cindy, Marie, and daddy.

17 Q And Jenny?

18 A Jenny and daddy rode together, and I rode with
19 Terry and Cindy. Like I said, I didn't have a car
20 at that time. When I got to the emergency room, me
21 and Jenny both went in the back. They done little
22 tests. They gave us the good news that said that
23 they didn't see no actual scarring on the inside
24 like he would have had he actually inserted.

25 Q I understand. Let's move on for a minute. As a

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431

1 result of that, as a result of what you just shared
2 with us, okay, did your custody or was it looking
3 like your custody might change?

4 A Yes, sir. Because that night Amber wouldn't open
5 up to the doctors. She didn't want to talk about
6 it.

7 Q That's not what I'm talking about. I want to talk
8 about the legal custody. After that took place,
9 was there something that happened where it looked
10 like you were going to lose custody or might lose
11 custody of the children?

12 A Jenny told me that night at the hospital --

13 MR. MADSEN: Judge, I will object. I think
14 that's hearsay. He clearly said: What Jenny told me.

15 THE WITNESS: That's my wife.

16 THE COURT: No, sir. I am going to allow it
17 only -- not for the value of what was said but because
18 of the effect that it had on him. Go ahead.

19 A Would you repeat the question?

20 Q My question was this. That night, you were
21 starting to say that night Jenny told you -- this
22 is the night after or the night y'all were at the
23 hospital.

24 A Jenny told me that -- I had a discussion -- and she
25 told me she wouldn't try to take the kids from me

1 because of that because she knew it wasn't my
2 fault. She even told the detective, if I am
3 pronouncing this right, I think it's Detective
4 Mount, that she wasn't going to take the kids away
5 from me.

6 Q Were you ever arrested for anything on that?

7 A No, sir. Actually two days later we had a
8 appointment set up at the Lexington County
9 Children's Shelter and spoke with a lady from the
10 Sheriff's Department, Andrea Hunter. She went
11 through the process with the kids: Bad touch, good
12 touch. Her final diagnosis that day --

13 Q I'm not sure you can get into all that. I'm not
14 afraid of it, but I wanted to make sure: Were you
15 ever a suspect? Were you ever arrested? Were you
16 ever charged with anything to do with that?

17 A No, sir.

18 Q Did you cooperate with them?

19 A Yes, sir.

20 Q Were you ever arrested for beating up Christopher?

21 A No, sir, charges were never pressed by him. As I
22 was saying at that time we talked to Andrea Hunter.
23 Jenny told me that Smokey had said it might not be
24 a good idea -- Smokey was her family court
25 lawyer -- not to send the kids back to the house.

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433

1 Q Let me ask you this. Did you at some point receive
2 some paperwork that caused you some concern that
3 you may not be able to keep custody of the
4 children?

5 A Yes, sir, but I would like to explain how that came
6 about.

7 Q Okay. Explain that.

8 A Anyway we were --

9 Q I want to be clear about something. You can't say
10 what other people said.

11 A I understand.

12 Q Go ahead.

13 A Me and Mrs. Hunter, we asked her -- told her that
14 we was going through a major divorce. Jenny had
15 told me that she wasn't go to bring -- that was on
16 a Tuesday -- that she wasn't going to bring back
17 the kids. I asked Mrs. Hunter her opinion.

18 Q I think you are getting into something you can't
19 say. That's why I didn't want to talk about all
20 this. You just can't.

21 A Okay.

22 Q That's called hearsay. Do you understand?

23 A Yes, sir.

24 Q After that was your custody affected?

25 A Not at that time.

1 Q Did it look like it was going to happen later?

2 A Not at that time I didn't know. Like I said. She
3 assured me she wasn't going to take the kids. Me
4 and her, actually we put our differences aside to
5 actually go through the legal system and prosecute
6 him in the correct way. We went to the counselors
7 at school and talked to them and explained what had
8 happened, and everything was fine.

9 Q Okay.

10 A Then that was on Friday that we went to
11 Christopher's bond hearing. The judge set his bail
12 at \$25,000.

13 Q Twenty-five thousand dollars, how did that make you
14 feel?

15 A I asked the judge, because I was considered the
16 victim because they said we had joint custody, but
17 let me clear that up. Even though it was joint
18 custody, I was the primary custodial parent. Jenny
19 just had the kids two days a week.

20 Q Let me ask you this. At some point around this
21 time, you bought a gun?

22 A Yes, sir. I didn't buy it then. I left --

23 Q Tell me about when you first went to the shop about
24 the gun.

25 A As I said the judge --

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435

1 Q Tell me when you went to go -- we will get to that.

2 Just work with me on this.

3 A After Christopher's bond hearing.

4 Q After Christopher's bond hearing. How soon after
5 Christopher's bond hearing?

6 A As soon as Christopher's bond hearing was over and
7 I found that he would probably get out on bond, I
8 went and applied for the pistol.

9 Q Let me go back to it. At Christopher's bond
10 setting, did anybody say anything to you at that
11 time about they were going to take away your
12 children?

13 A No, sir.

14 Q At that time of the bond setting whenever you
15 applied for the gun, did you have any idea that
16 anybody was going to take your children away from
17 you?

18 A Not at that time.

19 Q After you had applied for the gun, and after
20 Christopher's bond setting, did you begin to feel
21 that maybe someone was going to try to take your
22 kids from you?

23 A Yes, I did. Actually let me state for the record,
24 Terry talked me out of buying the gun at that time.
25 He said I didn't need it because he knew my state

1 of mind. He actually wasn't so sure that I
2 probably wasn't going to use it on myself.

3 I let the kids go with the Jenny that Sunday.
4 That was the following Sunday after Christopher's
5 bond hearing. Daddy come and picked them up and
6 took the kids to Jenny. It was a regular -- I
7 didn't know nothing was happening. The 17th, which
8 was a Monday, her lawyer went -- she picked the
9 kids up at Sunday at 12 and had them until Tuesday
10 at six.

11 Q Right.

12 A On Monday her attorney went -- I didn't know
13 nothing was happening at the time -- and filed
14 certain court documents to start the process to
15 take the kids out of my home, even after
16 Christopher was already arrested.

17 Q How did that feel?

18 A I took it very hard.

19 Q Why?

20 A One thing I thought I was too good of a daddy, too
21 careful to let anything like this happen. Then to
22 have it used against me just with the intent to
23 hurt me. It wasn't she was scared -- she wasn't
24 scared that I may hurt the kids. She done it
25 specifically to hurt me.

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

437

1 Q Did it hurt?

2 A Yes, sir, it did. On that Monday when they started
3 the papers, I didn't even know about it then.
4 That's the papers that was found on the front seat
5 of my car. Tuesday I come home from work like any
6 other day, and my dad was already in the yard.

7 He told me -- I said, "Where are the kids?"
8 He said, "She's not bringing them back." I said
9 why. He said her lawyer said she don't have to and
10 that he has got papers. He's got papers that says
11 that there was going to be emergency hearing on
12 Wednesday.

13 I said or I asked him, I said, "Where is
14 Brandon?" Daddy said that Brandon was taking it
15 very hard and actually had got in trouble by his
16 momma because he wanted to come home. He knew he
17 was supposed to come home on Tuesday.

18 Q Did you want him to come home?

19 A Yes, sir. It hurt me real bad when I finally
20 realized that they was going to use something out
21 of my control to take my kids from me. That's when
22 I realized that -- I hadn't had the papers at that
23 time -- but the kids didn't come --

24 Q When did you get the papers in?

25 A I actually got the papers the morning that all this

1 happened.

2 Q That night what happened?

3 A That night I went to Terry's. I told him what was
4 going on and I was real upset. We went and got
5 something to eat. Him and Sandy was kind of real
6 worried about me. I went home. I couldn't sleep
7 the whole night. Wednesday morning, the 19th, I
8 woke up. Jenny wouldn't let me talk to her on the
9 phone.

10 Q How do you know she wouldn't let you talk to her?

11 A I tried to call her. She had blocks on the phone.
12 They had their cell phones where they wouldn't
13 answer until they screened the calls.

14 Q Did you try to call her?

15 A Yes, sir.

16 Q Where were you trying to call her?

17 A I was trying to call her where we could talk about
18 this like normal people, but she wouldn't
19 cooperate. So I knew the next morning that she
20 would be taking the kids to school, so I met her.

21 Q We are going to slow down a little bit, okay? Did
22 you have a pistol at this point?

23 A No, sir.

24 Q When did you go get a pistol?

25 A After I got back home and received the papers in

1 the mailbox.

2 Q What day is that?

3 A The 19th.

4 Q So after you got the paperwork, you went and got a
5 pistol?

6 A Yes, sir.

7 Q Why did you go get a pistol?

8 A I had been intending to buy a pistol ever since
9 Christopher for protection. I never thought I
10 needed a gun at that time, but I went and bought
11 the pistol.

12 Q Was that a mistake?

13 A A very big one.

14 Q Let me ask you something. Did you go to Jenny's
15 residence on the 19th?

16 A Yes, sir.

17 Q Let's talk about it for a second. Do you want a
18 drink of water while I set this up?

19 (Pause).

20 Q Dale.

21 A Yes, sir.

22 Q Tell us, how did you find out where the house was?

23 A I stated in my statement that I got the address off
24 the paper, but that was a lie.

25 Q Where did you get it from?

- 1 A Clint had actually showed me the place that they
2 were living.
- 3 Q But was the address on the thing?
- 4 A Yes, sir, it was.
- 5 Q Let me ask you something. We showed this at the
6 beginning of the trial. I am talking about State's
7 Exhibit 1. Did you go to this place?
- 8 A Yes, sir.
- 9 Q When you got there, was there anybody there?
- 10 A No, sir.
- 11 Q When you went in, was there anybody there?
- 12 A I didn't go in at first; but, yes, when I went in,
13 there was nobody there.
- 14 Q Where did you park?
- 15 A I parked out front at first.
- 16 Q Where?
- 17 A Right in front of the white dot.
- 18 Q Right here (indicating)?
- 19 A Right behind Jenny's car.
- 20 Q Did you move your car?
- 21 A Yes, sir.
- 22 Q Where did you move your car to?
- 23 A Around to the side.
- 24 Q Over here (indicating), over there (indicating)?
- 25 A Right there.

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

441

1 Q Right there (indicating). Why did you move it over
2 there?

3 A Because I wanted to talk to Jenny, and I knew if
4 she seen the car that she wouldn't stop. I went in
5 the house.

6 Q Why did you go in the house?

7 A Another big mistake.

8 Q Why did you go in?

9 A I wanted to see exactly where my kids was, what
10 they were living in.

11 Q Did you go inside?

12 A Yes, sir.

13 Q Did you have permission?

14 A No, sir.

15 Q Was that against the law?

16 A Yes, sir.

17 Q When you went in, which door did you go in?

18 A You've got to go through the front door where the
19 front porch is.

20 Q Right here (indicating)?

21 A Yes, sir.

22 Q Did you go into the house?

23 A Yes, sir.

24 Q Where did you go then?

25 A First I looked at the house just to make sure that

- 1 nobody else was there.
- 2 Q What did you see in there?
- 3 A When I went to bedroom number --
- 4 Q Let's stop for a second. Let's start back out
- 5 here, the T.V. in the living room. What did you
- 6 see there?
- 7 A I seen a big Rebel flag over the top of the T.V.
- 8 Q Why does that matter?
- 9 A Because I knew my brother.
- 10 Q Let me ask you something --
- 11 A I knew he was a racist person, and it always
- 12 bothered me because me and him is from two
- 13 different molds. I didn't play like that.
- 14 Q Well, did you walk through the house?
- 15 A Yes, sir.
- 16 Q Was that wrong?
- 17 A Yes, sir.
- 18 Q Did you go back in their bedroom?
- 19 A Yes, sir. As I said I was making sure nobody was
- 20 there.
- 21 Q What did you see when you went back in the bedroom?
- 22 A When I went to bedroom number one, the first thing
- 23 I saw was a picture on the night stand.
- 24 Q Of what?
- 25 A Of Jason, my brother. It was on Jenny's night

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

443

1 stand. I know it was Jenny's night stand because
2 there was a picture of Jason and a picture of her
3 mom beside her bed. Jenny always kept a picture
4 of --

5 Q How did that make you feel?

6 A It said: I've dreamed of love and I dreamed of
7 you. It just brought the hurting part back that,
8 you know, she had left me for my brother and tore
9 up a happy home just because she wanted to be wild
10 and free.

11 Q Did you see anything else in there that caused you
12 any concern?

13 A Yes, sir, I seen --

14 Q What did you see?

15 A The mirror of a Klan rally, I would call it.

16 Q This is what has been marked as Defense Exhibit 5.
17 Is this a picture of what the inside of their
18 bedroom looked like?

19 A Yes, sir.

20 Q Tell me what this is right here (indicating)?

21 A It looks like a bunch of Klan's men.

22 Q Here (indicating)?

23 A Yes, sir.

24 Q I believe the police officer referred to them
25 earlier as guys with cones on their heads?

1 A Yes, sir. We all are human beings here. We know
2 what it means. It's Klan affiliated.

3 Q What was this right here (indicating)?

4 A It's a tree.

5 Q What's that hanging from the tree?

6 A What appeared to be a black man.

7 Q Do these people have a flag, the guys around the
8 tree?

9 A Yes, sir.

10 Q What kind of flag do they have?

11 A A Confederate flag.

12 Q Did seeing this -- what did that make you think?

13 A That, with the other things I saw in the house that
14 we ain't got to yet, I really saw what my kids
15 would be living in if I let her take my kids from
16 me. I'm sorry to say but I just couldn't let that
17 happen.

18 Q You couldn't let what happen?

19 A My kids be brought up in shit like that.

20 Q Why not? Did you think that was healthy?

21 A No, sir.

22 Q What did you do then, Dale?

23 A I got a bottle of gas, and I said I would burn this
24 fucking place down, and I poured it on the floor in
25 the bedroom.

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

445

- 1 Q In the master bedroom back here (indicating)?
- 2 A Yes, sir, right at the end of the bed, on the bed
- 3 and on the floor.
- 4 Q Did you light the gasoline?
- 5 A Not at that time. I heard a car pull up and it was
- 6 Jenny.
- 7 Q When you were there and you were going to go see
- 8 her, why did you go during the middle of the day?
- 9 A Because I knew -- I didn't know she wasn't going to
- 10 be there.
- 11 Q Who did you think was going to be there?
- 12 A I thought Jason would be there.
- 13 Q Did you think the children would be there during
- 14 the middle of the day on a weekday?
- 15 A No, sir.
- 16 Q Why not?
- 17 A Because they were in school.
- 18 Q Did you think they were going to be in school all
- 19 day?
- 20 A Yes, sir, I didn't -- I was going through so much I
- 21 forgot all about it being the last day before
- 22 Christmas vacation.
- 23 Q What is significant about the last day before
- 24 Christmas vacation?
- 25 A They get out early.

1 Q Did you know they were going to get out early that
2 day?

3 A I knew that day was coming, but I had totally
4 forgot that it was that day. To be honest with
5 you, I wasn't thinking right.

6 Q When the car pulled in the driveway and you heard
7 the door slam, what did you do?

8 A It was when I heard the kids were there that I knew
9 I was really in trouble. There was no way out
10 without being seen. I knew if Jenny seen me and I
11 just left, that she would call the law and have me
12 put away anyway.

13 I had actually went down the hall the other
14 direction right before the car had pulled up. When
15 I came out of his bedroom I went to and saw that, I
16 went to the other bedroom.

17 I saw Jenny's pillow that she had had ever
18 since she was 12 years old. She got it from Hilton
19 Head when her dad worked out of town. Jenny didn't
20 go nowhere without that pillow. She had slept on
21 it ever since she was a little girl. It was in
22 bedroom number two, along with my brother's boxing
23 shorts at the end of the bed.

24 Q Whose boxing shorts?

25 A My brother's, what I took to be my brother's. They

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

447

1 was too big for Leaphart.

2 Q So what happened next?

3 A I saw Dalton's blanket. Dalton is the four year
4 old. I saw Dalton's blanket on the bed as well.
5 It led me to believe that that's where my son was
6 spending his nights, in between his momma and his
7 Uncle Jessie.

8 Even though the Court order stipulated that
9 she wasn't supposed to have the kids around Jason
10 whatsoever, she kept breaking that Court order, and
11 it made me madder than hell.

12 Q What happened next?

13 A As I said, the kids came in. About that time Jenny
14 came in. I was scared. I was mad. I heard Jenny
15 say -- Brandon said, "I smell gas." Jenny said,
16 "Something is wrong." She grabbed the phone, and
17 Brandon said, "Are you calling Uncle Jessie,
18 momma?" She said yeah and I come out from behind
19 the door.

20 Q What did you do then?

21 A I had the gun, which was a big mistake. I had the
22 gun in the back of my pants. She screamed and I
23 pulled the gun out and I shot her. Brandon ran out
24 the house.

25 Q Let's stop right there for a second. Why did you

1 shoot her?

2 A I felt -- I felt like it would be better if me and
3 Jenny were both dead and that the kids have a
4 chance for some decent people to take them than it
5 would be for me to let, knowingly as a father, let
6 them be raised in that environment.

7 So I did shoot Jenny. Brandon ran out the
8 house. They said Dalton was there. I don't
9 remember Dalton seeing the first shot. I put the
10 gun to my head. I said, "This is what you wanted,
11 ain't it, bitch?"

12 She said, "No, I love you. I want to come
13 home." I said, "It's too late for that now." So I
14 sat down on the couch. Jenny was trying to kiss on
15 me and telling me that we was going to work this
16 out.

17 I let her get to me. Because even though I
18 was getting over it, I will never get over Jenny.
19 She was perfect. She was -- there is not a woman
20 in this courtroom that was any better a mother than
21 Jenny at one time, but she had changed; and I
22 couldn't accept the change that she was making.

23 I laid the gun down beside me, and she was
24 kneeling in front of me. She grabbed the gun and
25 pointed it at me. And when she went for it, I went

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

449

1 for it as well.

2 I grabbed the gun because the safety was on,
3 and she didn't know how to click it off. It was --
4 it happened so fast. But that's the description of
5 what happened. When she went for the gun, she
6 grabbed it and backed away from the couch toward
7 the Christmas tree.

8 I grabbed the gun from her, wrestled it from
9 her we were struggling over the gun. I was firing
10 the weapon. We were struggling. I'm not sure.
11 You know, they testified to where the bullets hit.
12 I'm not sure. I can't count the shots or how they
13 happened.

14 But Jenny had went to her knees, and she was
15 fighting me for the gun. I tried, with her
16 fighting for the gun, I tried to stick it to her
17 chest.

18 Jenny collapsed on the floor. I didn't
19 realize at the time that the gun had hit her in the
20 head, but I did not just stick the gun to her head
21 and pull the trigger.

22 Q Was she dead then?

23 A Sir?

24 Q Was she dead?

25 A Yes, sir.

1 Q What did you do then?

2 A She had already hit the floor. Brandon opened the
3 door and he ran back outside. I ran out the front
4 door, got the car, and come around. I told the
5 kids to get in.

6 Q You told the kids to do what?

7 A I told them to come on. They didn't hesitate one
8 minute. They got in the car and we left away.

9 Q And went where?

10 A We drove around for awhile, and I will tell you
11 something I probably shouldn't, but I want to be as
12 honest as I can. We rode around for a long while.
13 I went to every place that I thought my brother
14 would be.

15 Q Why?

16 A I was going to kill him.

17 Q Why?

18 A I figured if me and her -- she was already dead.
19 My plans was to take my own life.

20 Q Why didn't you?

21 A I had a conversation with Brandon before we got
22 there. I had a conversation with Brandon. On the
23 way he said, "Daddy, why did you shoot momma?" I
24 told him, "I couldn't lose you, Brandon. I
25 couldn't lose you. I couldn't let her take y'all

1 from me."

2 He said, "Daddy, but now we ain't going to
3 have you either." I said, "You are going to have
4 me, son." He said, "Daddy, promise me that you
5 won't hurt yourself."

6 So at that time I went -- honestly I went to
7 Terry's house. Terry gets off at 1:00 o'clock on
8 Wednesday. I saw his truck there with the door
9 open, but I didn't stop. I didn't want the kids to
10 tell him what had happened.

11 Q Where did you take them?

12 A I took the kids about a mile down the road to a
13 pond that we fished at many a times.

14 Q Why did you take them there?

15 A We were sitting around and I was thinking. I got
16 my car off the road where it couldn't be seen. We
17 was back in the woods, kind of trying to figure
18 out: What do I do from here?

19 By Terry being at home, I made a stupid,
20 stupid decision. I never left my kids alone, not
21 to go check the mailbox; but I left them there that
22 day. I went about a mile, I'd say, a mile and a
23 half back to Terry's house. By the time I got
24 there, Terry had already left.

25 Q Then where did you go?

1 A I decided to try to cover up because Brandon
2 didn't -- Brandon didn't -- I know he didn't want
3 to lose me, and I didn't want to lose them. It had
4 already sunk in to actually what I had done.

5 Q Where did you go?

6 A I went back to the house.

7 Q What did you do?

8 A I got the body, put it in my car, and I lit the
9 fire.

10 Q Where did you light the fire?

11 A At the corner of the little -- I wouldn't call it a
12 hallway, a little walkway from the kitchen, right
13 beside the refrigerator. You take two steps and
14 you are in their bedroom.

15 Q What did you do after that?

16 A I took the body to a place not far from where me,
17 Jason, Clint, and Leaphart had built a house while
18 we was doing framing for Thomas Rabon. We had
19 built a house. During our lunch hours riding down
20 the dirt road, we realized that place. It was the
21 first place, secluded place, that popped in my
22 mind.

23 Q What did you do at that secluded place?

24 A I took her body out the car. And while I was
25 dragging her, I think her top come off, maybe her

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

453

1 sock, too. I'm not sure. I'm not sure exactly,
2 you know, the process of it. I throwed some limbs
3 over the top of the body.

4 Q Then what did you do?

5 A I went back and got the kids.

6 Q Where did you take them?

7 A We rode around. It started getting dark. About
8 5:30 we went to Burger King in Batesburg. We got
9 it through the drive-through. The kids ate. I
10 rode around for awhile, and about 11:30 -- I am
11 roughly guessing, but it was late -- I went to my
12 aunt's house.

13 Q What is her name?

14 A Teresa Motes.

15 Q What did you do there?

16 A Let me set the record straight. I left the car
17 running, and I went inside to talk to my Aunt
18 Teresa. I told Brandon, "Y'all stay right here. I
19 will be back in a second."

20 I went in, I talked to Teresa, and asked her
21 if she had seen momma and daddy. She said no, but
22 she said she had seen them earlier in that day.

23 Then I asked her did she have Jason's, my brother
24 J.J., Jason, Jessie, Junior. We call him J.J. --

25 Q That's your brother that was with your wife?

1 A Yes, sir. I asked Teresa did she know his cell
2 phone number because I tried to call daddy's house,
3 and I couldn't get no answer nowhere. So I figured
4 they might be at my house.

5 Q So what did you do then?

6 A I left the car running. I pulled down because I
7 knew the police was probably, to be honest, the
8 police was probably looking for me. I parked the
9 car down toward the end of the trailer, and I left
10 the car running.

11 Q Who was in the car?

12 A The kids. They were all asleep.

13 Q Where did you go?

14 A They were all asleep.

15 Q Where did you go?

16 A I asked Teresa would she run me to the house
17 because I wanted to talk to my dad.

18 Q Okay.

19 A I left my kids in the car. They were asleep. But
20 to make it sound worse, they want to tell you the
21 car wasn't running. The car was running and the
22 heat was on.

23 Q Where did you go? Did you go see your dad?

24 A Yes, sir, that was the plan. I wanted to see my
25 dad.

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

455

1 Q Where did you go instead?

2 A I went to my house and my aunt pulled in the yard.
3 The police, I'm not sure which one, but blue lights
4 come in the driveway; and I hit the woods.

5 Q And where did you spend the night?

6 A Up under an old trailer that sits on -- it used to
7 be David's trailer, but his dad was staying there.
8 Miss Jane, his momma, lives in front.

9 Q And what did you do the next morning?

10 A I got up. I got up. I went back to my house, and
11 I seen a warrant for assault and battery with
12 intent to kill, due to Brandon's statement, on the
13 table.

14 I went to Miss Jane's but she wasn't home. So
15 I got my Dale Earnhardt phone that just sits flat
16 and it hangs the receiver up. I went over there
17 and I plugged it in to her outside jack.

18 Q Who did you call?

19 A I called Dell Anderson.

20 Q What did he do?

21 A He answered the phone -- Debbie answered the phone,
22 and I asked her where was Dell. Actually she
23 probably threw the phone at Dell. He got on the
24 phone. I could tell he was crying. He said, "Boy,
25 where you at?"

1 I said at the house. He said, "They say some
2 bad things about you." He said "Burke, I know
3 you" -- he calls me Burke. All their family does.
4 My name is Dale. They've never called me by name.
5 They just go by Burke.

6 He asked me, he says, "Son, I know you ain't
7 done this." I said, "Yeah, Dell, I did it." He
8 said, "What you want to do?" I said, "Will you
9 come and get me and take me to the Sheriff's
10 Department." I done that because I knew that my
11 kids was in custody at the police department. So I
12 went ahead and turned myself in.

13 Q Let me ask you, when you turned yourself in, you
14 gave a statement?

15 A Yes, sir, to Mr. Frier.

16 Q In that statement -- we all looked at it -- Dale,
17 there is no mention about you struggling over the
18 gun in the statement.

19 A Yes, it is if you look real close.

20 Q Where is that?

21 A I tried to put the gun to Jenny's chest, but all
22 the words, the direct words that I told Mr. Frier
23 that day, everything is not in there, not the whole
24 conversation.

25 Q He gave you the opportunity to look at it and sign

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

457

1 it.

2 A I didn't -- I didn't register everything. I was in
3 such a state of mind. I really didn't -- at that
4 time I didn't -- I could read but it didn't click.
5 But the way it was written, it's not the full
6 statement, the conversation we had.

7 Q Dale, I asked you at the beginning of your
8 testimony if you were a burglar.

9 A Sir?

10 Q I asked you at the beginning of your testimony if
11 you were a burglar. You told me you were.

12 A I did that day, yes, sir.

13 Q And I asked you if you attempted to commit an
14 arson, and you told me you did.

15 A Yes, sir.

16 Q And I asked you when you went in that house if you
17 had a gun, if you had a firearm in your possession
18 during the course of a crime; and you said you did.
19 I want to ask you this. I want you to look at the
20 jury. Are you a murderer?

21 A No, sir.

22 Q What was in your heart?

23 A I couldn't let my kids be brought up in that. I
24 felt, as was stated earlier, that I would be better
25 off dead. I couldn't let my kids be brought up in

1 there.

2 We ain't even touched on half of it. You
3 don't have proof, you don't have pictures, but
4 there was some things that led me to believe, not
5 only the racist stuff. I looked in the
6 refrigerator that day. They had a refrigerator on
7 the front porch, in the house and on the front
8 porch.

9 Both of them was slam full of Bud Lights.
10 That's the beer of choice for them. I don't drink.
11 If you see me drink two or three beers a year,
12 that's how much I would drink. I just never cared
13 for it, not even as a teenager much. That bothered
14 me.

15 I don't have pictures, but I know my brother
16 and I know he does drugs. I know his temper. I
17 know he already threatened to beat Brandon's ass
18 one day in a different altercation over the phone.

19 I just couldn't be --I'm sorry it happened. I
20 just -- I just couldn't. I love my mom. I don't
21 mean to hurt her by saying this, but she said the
22 hell with me, so to speak.

23 My dad, I lost him, too, but not because he
24 done me wrong. My mom was pissed off at my dad
25 because he was having anything to do with me at

ROGER DALE BURKE -- DIRECT -- MR. NETTLES

459

1 all. I felt like I had lost it all.

2 This was December. I had gotten paperwork the
3 first of December that I had to be off the land. I
4 only had about a year and a half left to pay on my
5 land and my trailer, and everything would have been
6 paid for. I was going to lose my house and land.

7 Q I understand.

8 A It had been mentioned that --

9 MR. MADSEN: Judge, I will object. I don't
10 know if there is a question there.

11 MR. NETTLES: I asked what was in his heart.

12 MR. MADSEN: He said, "I understand," and he
13 started talking again.

14 THE COURT: It's all right. Go ahead.

15 A Bad decisions was made. My heart wasn't a heart of
16 mischief, if I could describe it. I loved them,
17 Bill, to the point of making a good man do bad
18 shit. I spoke about they didn't believe in God.
19 J.J., he don't believe in church.

20 Q I understand.

21 A But there was a God that day.

22 Q I know.

23 A And it spared my life and it spared J.J.'s, too.

24 Q Thank you. Okay?

25 A Yes, sir.

1 THE COURT: Let's take a short break at this
2 point, counsel. I think we have been going a little bit
3 over an hour.

4 Ladies and gentlemen, we will take a short
5 break. Give you a chance to stretch your legs and get
6 some refreshments if you need to. Remember we don't
7 talk about the case. See you back in in just a few
8 minutes.

9 (The jury retires to the jury room).

10 THE COURT: The jury is secured. Anything
11 from the defense before we recess?

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

13 THE COURT: State?

14 MR. MADSEN: No, sir.

15 THE COURT: We will stand in recess about ten
16 or fifteen minutes.

17 THE WITNESS: I can step down?

18 THE COURT: Mr. Burke, during the break you
19 can get up and move around. Don't talk with anybody
20 about your testimony, okay?

21 THE WITNESS: Yes, sir. Yes, sir.

22 (Whereupon there was a recess).

23 THE COURT: Is the defense ready to start
24 back?

25 MR. NETTLES: Yes, sir, Your Honor.

ROGER DALE BURKE -- CROSS -- MR. MADSEN

461

1 THE COURT: Is the State ready?

2 MR. MADSEN: Yes, Your Honor.

3 THE COURT: Let's bring the jury in.

4 (The jury returns to the courtroom).

5 THE COURT: All parties and attorneys are in
6 the courtroom, and all jurors have returned.

7 Mr. Nettles -- I'm sorry, excuse me -- Mr. Madsen.

8 MR. MADSEN: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. MADSEN:

11 Q Mr. Burke?

12 A Yes, sir.

13 Q You remember Sergeant Scottie Frier, don't you?

14 A Yes, sir.

15 Q You remember you giving him a statement; isn't that
16 true?

17 A Yes, sir.

18 Q Let me show you what has been marked as State's
19 Exhibit Number 48 and ask if you recognize that.

20 A Yes, sir, I do.

21 Q And there is a signature at the bottom, at least
22 that first page. Whose signature is that?

23 A That's mine.

24 Q And on the -- if I may -- the second page. Whose
25 signature is that?

1 A That's mine.

2 Q The third and fourth pages?

3 A Yes, sir, that's mine as well.

4 Q And you remember Sergeant Frier going over those
5 rights that he testified about with you, don't you?

6 A Yes, sir, I do.

7 Q And you never asked for an attorney; isn't that
8 correct?

9 A Yes, sir.

10 Q And you never requested to remain silent, did you?

11 A No, sir.

12 Q And Sergeant Frier never threatened to beat you up
13 or do something to make you give either this
14 statement or another one that you gave, did he?

15 A No, sir.

16 Q He never promised you any leniency, did he?

17 A No, sir.

18 Q He made sure that you could read and write, didn't
19 he?

20 A Yes, sir.

21 Q And he actually made you read one of these things
22 to him, didn't he?

23 A Yes, sir.

24 Q And you and he then had a conversation, didn't you?

25 A Yes, sir.

ROGER DALE BURKE -- CROSS -- MR. MADSEN

463

1 Q And y'all came up with this written statement,
2 didn't you?

3 A Yes, sir, but --

4 Q And Sergeant Frier, once you all got done with this
5 written statement, he read it back to you; didn't
6 he?

7 A Yes, sir.

8 Q And he actually gave you an opportunity to read it,
9 too; didn't he?

10 A No, sir.

11 Q So he didn't give you an opportunity to read it?

12 A No, sir.

13 Q So he read it back to you?

14 A Yes, sir, he did.

15 Q And you knew what was in this statement when you
16 signed this statement, didn't you?

17 A Yes, sir.

18 Q And Sergeant Frier, you didn't tell him: Hey,
19 there is something wrong in that statement, and I
20 would like to change it; did you?

21 A No, sir. I was in a state of mind at the time that
22 it all sounded right to me. I wouldn't -- you can
23 change a word here or there and change the whole
24 thing, but it sounded basically what our
25 conversation was.

1 Q So basically you are not saying that these are
2 Sergeant Frier's words or things that happened, I
3 mean, he is getting this information from you;
4 isn't that true?

5 A Yes, sir. Some of them I think that, you know, he
6 done his -- most of the quotes are right, but I
7 think he left some stuff out that was actually said
8 and maybe insinuated -- although our conversation
9 was close to that -- kind of wrote it, you know, in
10 his own words, but it really sounded, you know, to
11 me -- like I said, I was crying during this time.
12 It was an emotional time for me.

13 Q Sure. And if you wanted to add something, Sergeant
14 Frier wasn't the type that you said had threatened
15 you. So you weren't worried about that if you
16 wanted to add something; isn't that true?

17 A No, sir, I really wasn't thinking. Once he read
18 the statement to me, I really thought, you know,
19 that was over. He got what he wanted, you know.

20 Q And all this stuff about the Confederate flag and
21 that picture and that, you didn't tell him about
22 anything of that; did you?

23 A No, sir, I didn't. I also didn't get a chance to
24 tell him about them fucking -- excuse me -- them
25 having sex in front of my kids neither.

ROGER DALE BURKE -- CROSS -- MR. MADSEN

465

1 Q And you didn't tell him about all that beer or the
2 picture that you saw in there, did you?

3 A No, sir. And I didn't get to tell him and he
4 didn't have in that report that I told him about
5 the drugs, and I had made plenty of statements to
6 the officers that has responded on numerous
7 occasion. So on both sides there is stuff that is
8 not in there.

9 Q You were going through, with your wife, in a
10 divorce; right?

11 A Yes.

12 Q And part of that divorce had to do with custody of
13 the kids; isn't that correct?

14 A Yes, sir.

15 Q And the way that is kind of set up is when you
16 originally filed for divorce, you kind of do a
17 temporary hearing; isn't that true?

18 A Yes, sir. But that temporary hearing, I agreed to
19 the temporary hearing -- the temporary custody --
20 with me being -- I have heard you say joint custody
21 50, 50 when that was not the case. I had the kids
22 five days and she had them two.

23 Q You say five days and you say I'm saying it two,
24 but actually your custody was that -- was it her
25 Sunday, Monday, Tuesday switch back to you kind of

1 half day?

2 A Actually she didn't pick them up till half a day
3 Sunday. So from Sunday to Monday and Monday to
4 Tuesday, add four more hours. It's two days, sir.

5 Q Okay. But y'all had agreed on that joint custody
6 at your temporary hearing; isn't that true?

7 A Yes, sir, with special stipulations involved as
8 well.

9 Q And you know when y'all had come up with that
10 agreement. Let me show you -- just a minute.

11 (Attorneys confer).

12 Q Let me show you and ask you if you recognize this.

13 A (Pause). Yes, sir, it appears to be from Michael
14 Ray Ellisor.

15 Q That was your attorney, right?

16 A Yes, sir, but I never got a copy of it. So I don't
17 know what it says on the inside. I've never seen a
18 copy.

19 Q Take a look. You have time. You are more than
20 welcome to read it.

21 A (Pause). Yes, sir, I have read it.

22 Q That's when you filed for divorce against your
23 wife; isn't that correct?

24 A Yes, sir, that's what it appears to be.

25 Q Where in this paperwork does it talk about her drug

1 use?

2 A It doesn't.

3 Q Y'all are fighting for custody though and that's
4 what you want in this family court paperwork; isn't
5 it?

6 A There was a problem with my attorney. After he had
7 determined that I had already sold all my equipment
8 to pay for the attorney, I sold all my equipment
9 for Mr. Asbill's private investigator services, he
10 took it upon himself that I couldn't pay him
11 really. I couldn't afford it.

12 Mr. Ellisor really didn't represent me like he
13 should have. He wouldn't accept my phone calls.
14 There is a whole other side to that that we haven't
15 expressed. I went to him numerous times and told
16 him about them having my kids around my brother,
17 which she wasn't supposed to. She kept breaking
18 that.

19 She was doing stuff deliberate just to keep me
20 from -- just trying to provoke me into doing
21 anything that might hinder my chances of winning
22 the final divorce and the kids.

23 Q So the answer is: No, there is nothing in there
24 about that in those papers; correct?

25 A No, sir.

1 Q And you would agree with me that in custody that
2 might be something that is kind of important?

3 A Well, as I said, I don't believe we would be here
4 today if my lawyer would have put the stuff in
5 there. But since I didn't have money, he just
6 wanted to shake hands with her lawyer and have a
7 buddy, buddy deal and get through it as easy as
8 possible. Because neither one of us, to quote
9 Michael Ellisor, had the money to fight this shit,
10 "And do you know that I cost \$200 an hour?"

11 Q In other words, you are saying it's his fault that
12 you killed your wife?

13 A I didn't say that, sir. That's what you said.

14 Q I was asking you.

15 A And I answered you.

16 Q Let me show you that and ask if you recognize that.

17 A (Pause). Yes, sir, it's a document through our
18 divorce.

19 Q It's a document to your divorce. This document has
20 to do with custody of your children; isn't that
21 correct?

22 A Yeah, because custody at the time that was signed,
23 we hadn't been to court yet. It had been
24 rescheduled for a later date.

25 Q This is before you had that temporary hearing to

1 decide those issues?

2 A Yes, sir.

3 Q And another issue that goes along with custody is
4 child support?

5 A Yes, sir.

6 Q And also payment of attorney's fees; isn't that
7 correct?

8 A Yes, sir.

9 Q Where in this document talks about her being bad,
10 using drugs, things like that?

11 A As I said, I will answer that question again. My
12 lawyer didn't want to fight. He wanted to have
13 what they call a mutual agreement divorce. I
14 didn't want a mutual agreement divorce.

15 I wanted -- because I knew I couldn't pay for
16 attorney's fees. They wanted us each to pay our
17 own. He didn't want to fight it. He didn't
18 want -- I asked him to have drug tests right then.

19 I said: You have us drug tested. Whoever has
20 not got drugs in their system, that's who get the
21 kids. I asked Michael Ellisor. I said set it up.
22 They got stuff to clear your body, but they have
23 come out with a thing where they can take one piece
24 of your hair.

25 I said, "If you think I'm lying, drug test us

1 both." I said let that be the evidence. He said,
2 "Dale, you don't have the money for all that. I
3 can't do this for free."

4 So me and Jenny, as your paper stated, it was
5 continued. And when it was continued, she came on
6 the 25th, which is one of the days -- that was one
7 of the incidents when she came and knocked the
8 stuff off the counter.

9 Clint was there. He was a witness to all
10 that. He even gave his opinion to what happened
11 that day. She done it. She done it that day.
12 Because at the time they said that we wasn't going
13 to have the hearing. She done everything she could
14 to try to provoke me that day, but I was smart
15 enough. I seen right through her.

16 Q So your answer is: No, that's not in there?

17 A No, sir.

18 Q And at some point in time, you went to the
19 temporary hearing; and you and her actually came up
20 to an agreement?

21 A No, sir. Let me set the record straight. Me and
22 her didn't come up to nothing. Her lawyer and my
23 lawyer both come to that agreement, and me standing
24 in the hall of the old family court on the bottom
25 floor.

ROGER DALE BURKE -- CROSS -- MR. MADSEN

471

1 I told Michael that I didn't like it. He said
2 why. I said, "Because you know I don't even have a
3 car. She took the only vehicle we have." He said,
4 "If you don't agree to this, I don't think you will
5 get custody of your kids. I think they will give
6 them to her."

7 I said, "That ain't what you told me when I
8 hired you, when you made me spend all the money to
9 Mr. Asbill. You told me that she would be lucky to
10 get out of the house with a picture of the kids."

11 Q That's not what you wanted?

12 A Yes, sir. I ain't going to lie to you. Yes, sir.

13 Q You say you didn't agree to it, but y'all had --
14 y'all had a temporary order, and you went in front
15 of a judge and you told him you agreed to it, and
16 the judge questioned you about that order.

17 A I did, and I will tell you I was upset that day.
18 But Michael, I didn't get along with him. Me and
19 him already had to start -- he got the private
20 investigator Bobby. Bobby came to me and said,
21 "Dale, if you don't do it, she is going to take the
22 kids."

23 He said, "You get the kids temporary. You
24 keep the kids." I said I can't -- I said, "I don't
25 like this. The paper says that I got to have all

1 the bills on me. She ain't got to take nothing but
2 the car." I told him I didn't want to.

3 He asked me why. I told him, I said, "As it
4 stands right now, I bring -- my total is \$1,600 per
5 month," being \$400 a week. I explained to
6 Mr. Ellisor that I had \$2,200 worth of monthly
7 bills together between the two of us, which is \$600
8 more than I made by myself.

9 That's not even counting groceries, gas,
10 anything that comes with it, insurance. It didn't
11 come with none of that. I told him that -- I told
12 him that I could not make it like that. He said
13 that we would get child support started.

14 Fearing that I was going to lose -- he told me
15 that I would lose my kids because adultery wasn't
16 enough for the husband to take the kids from their
17 home in South Carolina.

18 I said even though she packed her bags and
19 left the kids there and when she did left, she took
20 my checking account and drained it dry and put it
21 in my brother's checking account. There was
22 nothing I could do.

23 Q So are you saying at some point in time when you
24 were put under oath about that agreement, you lied
25 to the Court about accepting it?

ROGER DALE BURKE -- CROSS -- MR. MADSEN

473

1 A Sir, there never was no oath. There never was no
2 oath.

3 Q You never went in court and were never questioned
4 by a judge?

5 A The judge asked: Has the parties reached an
6 agreement? My lawyer said yes. I finally, being
7 in fear of losing my kids, I told him -- and he
8 said if we need help, we will come back in a couple
9 of months and get the judge, and we will bring all
10 the bills and we will divide everything. Me being
11 scared of it, he said, "Whoever gets the kids here,
12 that's usually who ends up with the kids." So I
13 said, "Do what you got to do."

14 Q You would agree with me, Mr. Burke, that after you
15 got done killing Jenny, you took the kids with you;
16 isn't that true?

17 A Yes, sir.

18 Q And that y'all stopped at, I guess, that pond or
19 those woods that you apparently had known about;
20 isn't that correct?

21 A Yes, sir.

22 Q And you actually didn't stop from there on the way
23 to get food, did you, you actually already had
24 food; didn't you?

25 A Yes, sir, I did. And I would like to explain that.

1 Q Let me ask you, that food was breakfast biscuits?

2 A Yes, sir.

3 Q And the time that you ended up killing her, that's
4 going to be midday, 1:30ish?

5 A Yes. When I left from getting the gun, anybody
6 that knows anything about Hardee's, they stop
7 making breakfast at 10:30. Well, it was before
8 11:00 o'clock. Whatever they already have made up
9 until that time at Hardee's stays in the box until
10 11:00 o'clock.

11 Q Sure.

12 A That was how me and Jenny has always done it. My
13 kids were very picky eaters. They loved breakfast
14 biscuits. A lot of times I would go, Jenny would
15 go, if it was around that time and there would be
16 three of this, two of that left in the box.

17 I went to Batesburg and it was somewhere
18 between 10:30 and 11:00 o'clock. I asked them what
19 all they had, and I said, "I will take everything
20 but the biscuits and gravy." I brought them a big
21 old bag of biscuits.

22 Q So if I understand what you are saying -- and you
23 worked at Hardee's, so you kind of know this, is
24 that they stop serving breakfast at 10:30; but if
25 they have some stuff they have made before 10:30

1 and they just haven't sold it, they will sell it up
2 to, I guess, did you say about 11 o'clock?

3 A Yeah. They got timers that they will leave it in
4 the box for so long. But when 10:30 comes,
5 anything that is already out of date, by law they
6 can't sell it anyway. But anything at that time
7 has got the window until 11:00 o'clock.

8 Q So you basically bought that, and you got enough to
9 give you and your kids?

10 A Yes, sir.

11 Q Because they are picky eaters?

12 A Yes, sir. You can re-refrigerate it. We have
13 bought bulk before. You can refreeze it. You can
14 refreeze it. A lot of mornings we would take them
15 out, you know, and thaw them out; and that would be
16 the kid's breakfast before they went to school.

17 Q You didn't want them to go hungry that day like a
18 good father; isn't that correct?

19 A The kids ain't the reason I bought those biscuits.
20 As I said, I just stopped by and I just bought a
21 big sack of biscuits. I didn't buy the biscuits
22 with that intent. I just bought them because that
23 was a custom. We have always done that.

24 Q You didn't buy those biscuits because you knew that
25 was going to be the last meal with your kids?

- 1 A No, sir, not at that time.
- 2 Q You told Sergeant Frier and we know that you went
3 and actually picked up that gun today; isn't that
4 correct -- or excuse me -- that gun on December 19,
5 2001; isn't that correct?
- 6 A Yes, sir, I did.
- 7 Q And you picked up that gun at about 10:20 that day;
8 isn't that correct?
- 9 A I thought it was a little later than that, but it
10 was around -- I thought it was like 10:40.
- 11 Q Let me show you what has been marked as State's
12 Exhibit Number 43. Do you recognize that,
13 Mr. Burke?
- 14 A Yes, sir.
- 15 Q And there is a time of sale on there, isn't it?
- 16 A Yes, sir.
- 17 Q What time is that sale?
- 18 A Ten-twenty.
- 19 Q There is a date on here also; isn't there?
- 20 A Yes, sir.
- 21 Q What date was that?
- 22 A December 19th, 2001.
- 23 Q It's that Wednesday, isn't it?
- 24 A Yes, sir.
- 25 Q It's that Wednesday, isn't it?

1 A Yes, sir.

2 Q The same day that you killed your wife; isn't that
3 true?

4 A Yes, sir.

5 Q And you told Sergeant Frier that after you bought
6 that gun, you actually went to the wash hole and
7 practiced shooting it. Where is that?

8 A The wash hole is out -- down 178 coming out of
9 Batesburg. I just went out --

10 Q Is that a shooting range?

11 A No, it's a secluded place down at a creek. I
12 went -- I wouldn't call it target practice. I just
13 went and popped it off a couple times.

14 Q You say a couple of times. Did you shoot a whole
15 box of bullets?

16 A No, sir.

17 Q Did you buy, I guess what has been marked as
18 State's Exhibit Number 45, did you buy that box of
19 bullets at the same time you bought the gun?

20 A Yes, sir, it appears to be the box of bullets. It
21 appears to be, any box of Winchester bullets; but
22 that's the kind I bought, yes, sir.

23 Q And this is the box of Winchester bullets that were
24 found in your car, this is the box that you bought;
25 isn't that correct.

- 1 A Yes, sir, I would say it is.
- 2 Q And did you buy another box of bullets?
- 3 A No, sir.
- 4 Q Did they give you some -- did they give you bullets
- 5 with the gun?
- 6 A No, sir.
- 7 Q You would agree that is pretty normal. I mean, you
- 8 can buy a gun and you can buy bullets, but you
- 9 don't buy bullets that come with a gun; right?
- 10 A They didn't already come in the gun, no.
- 11 Q And did you have other ammunition with you at that
- 12 point in time?
- 13 A No, sir.
- 14 Q And you didn't go to that wash hole and shoot off a
- 15 whole box of bullets?
- 16 A No, sir, I didn't.
- 17 Q Well, we know, Mr. Burke, when your gun was
- 18 found -- let me show you what is part of State's 46
- 19 with your gun -- that there was one in the chamber.
- 20 And count how many those are for me.
- 21 A Five.
- 22 Q And that's six, isn't it?
- 23 A Yes, sir.
- 24 Q And we know from State's Exhibit 50 that you shot
- 25 Jenny five times; isn't that correct?

ROGER DALE BURKE -- CROSS -- MR. MADSEN

479

1 A I didn't think it was five times. I thought it was
2 four.

3 Q So if she had five bullet wounds -- you are not
4 disputing that she had five bullet wounds in her?

5 A Sir, they said they would go -- I heard him testify
6 that one would go in and then exit and then go in
7 somewhere else. So I'm not sure about that. No,
8 sir, I'm not.

9 Q We've got one that goes in her, I guess, right
10 breast and goes up at that angle (indicating).
11 We've got one that comes here (indicating) and goes
12 straight down and enters out of her, I guess, right
13 buttock. We've got one that kind of goes straight
14 down and the doctor testified banked off the pelvic
15 bone and went out. We've got one that went
16 straight down. Jenny was a larger woman than this.
17 So instead of going out of the body, it kind of
18 went through a roll of fat and went down. Then
19 we've got a shot in the head. That's the five;
20 isn't it?

21 A Yes, sir, it appears to be.

22 Q So we've got five bullets from her, there were six
23 bullets in the gun, and 39 bullets in here. That's
24 39, plus 11 bullets accounted for. That's 50 out
25 of a 50-box?

- 1 A Yes, sir.
- 2 Q But you said you didn't buy any other bullets?
- 3 A I didn't.
- 4 Q You can't explain that, can you, Mr. Burke?
- 5 A No, sir, and I don't know if you can either.
- 6 Q You told Sergeant Frier also that you got her
- 7 address --
- 8 A If I could, could I answer the question, please?
- 9 Q Answer a question?
- 10 A Yeah.
- 11 Q Let me ask the question first.
- 12 A No, could I finish your question?
- 13 Q Sure.
- 14 THE COURT: Go ahead.
- 15 BY MR. MADSEN:
- 16 Q Sure.
- 17 A If you are hinting at that I didn't go by the wash
- 18 hole and shoot the gun like I told you I did in
- 19 that statement, if you are saying I gave a false
- 20 statement about that, you are saying that is false,
- 21 that's where I get you are going at, but everything
- 22 else when I admitted to killing her and doing what
- 23 I did, that's true, but the part when I went and
- 24 didn't fire the gun off at the wash whole, that
- 25 would be a lie? That's what you are insinuating?

ROGER DALE BURKE -- CROSS -- MR. MADSEN

481

1 Q No, sir, and it doesn't matter what I think or not.
2 You told Sergeant Frier that you went there and you
3 practiced shooting.

4 A Yes, sir, I did. And I know I shot once and it
5 might have been twice, but I know I popped the gun.
6 I shot it straight up in the air.

7 Q And we've got 30 bullets that were left in your
8 car, six in the gun, and five that went in Jenny.
9 That's 50. How many bullets came in that box?

10 A Fifty.

11 Q So you had to have had some other bullets or you
12 had to shoot off a whole box when you were
13 practicing.

14 A No, sir.

15 Q Because you have already testified, didn't you,
16 that you didn't have anymore bullets?

17 A Yes, sir, that's correct. We have a mathematical
18 error somewhere. I bought that box of bullets. I
19 bought that gun that day. I went and I popped the
20 gun off. I testified that I shot Jenny. I can't
21 tell you why the math ain't coming up.

22 Q Have you heard the statement that math doesn't lie?

23 A Yes, sir.

24 Q A lot of things can be changed. You agree with
25 that?

- 1 A Yes, sir.
- 2 Q Testimony can be changed?
- 3 A Yes, sir.
- 4 Q Testimony can be added to; isn't that correct?
- 5 A Yes, sir.
- 6 Q But figures don't lie; isn't that true?
- 7 A Do you know how many bullets the gun holds?
- 8 Q Yes, sir, I do. We will get to that. Don't worry.
- 9 A Yes, sir.
- 10 Q Now, did you pick up those breakfast biscuits
- 11 before or after you bought the gun?
- 12 A After I bought the gun.
- 13 Q And after you shot the gun at the wash hole, is
- 14 that when you went to Jenny's house?
- 15 A Not simultaneously left straight from there, but
- 16 yeah.
- 17 Q How long does it take you -- let me ask you this.
- 18 How long did you stay at Hardee's to get those
- 19 breakfast biscuits for the kids?
- 20 A I can't remember if they were busy. I don't know.
- 21 I didn't look at the time. I bought them before
- 22 11:00 o'clock, but it was after -- just because
- 23 that paper says 10:20 when I signed that paper,
- 24 that doesn't mean I left his shop at 10:20.
- 25 Q Sure. Would you call, I guess where Jenny's house

ROGER DALE BURKE --- CROSS -- MR. MADSEN

483

1 was, I guess that's kind of the Pelion area; right?

2 A Yes, sir.

3 Q You bought that gun in Batesburg; isn't that
4 correct?

5 A Yes, sir, that's correct.

6 Q So would it be fair to say if you bought this at
7 10:20, if you bought the gun at 10:20 -- you know
8 how long you were in the store -- would it be fair
9 to say that you had left there by 11-ish?

10 A Left about -- are you asking at --

11 Q At Moseley's.

12 A I left Moseley's before eleven. Yes, sir, I would,
13 but it would be after 10:30 because from Moseley's
14 to Hardee's isn't 250, 300-yards at the most.

15 Q So it's pretty close?

16 A And it was after 10:30 or I wouldn't have been able
17 to buy all the biscuits that was in the box.

18 Q Sure. Then you went to Hardee's and you bought all
19 those biscuits. And even if Hardee's is real busy,
20 you are not going to stay there more than 15
21 minutes; is that correct?

22 A No, I wouldn't say that. I have seen the times
23 Hardee's has been so packed you might stand in the
24 line 30 minutes waiting to get your food.

25 Q So what time would you say that you left Hardee's?

1 A Sir, I can't remember that. I wasn't watching the
2 clock.

3 Q And you left from Hardee's to go to Jenny's; isn't
4 that correct?

5 A No, sir. I told you I went to the wash hole.

6 Q You shot the gun there and practiced up a little
7 bit; isn't that correct?

8 MR. NETTLES: Objection, objection, calls for
9 facts that are not in evidence.

10 MR. MADSEN: Your Honor, his statement says
11 that --

12 MR. NETTLES: He said he shot the gun. He
13 didn't say he practiced up.

14 THE COURT: Ladies and gentlemen, again
15 remember the questions of the lawyer are not evidence.
16 Don't consider that in any way. Give no weight to it
17 whatsoever. Simply go by the answer of the witness. Go
18 ahead, counsel, Mr. Madsen.

19 MR. MADSEN: Hang on just a second, Judge.

20 (Pause).

21 BY MR. MADSEN:

22 Q And after you went and shot the gun?

23 A Yes, sir.

24 Q You went to Jenny's house after that?

25 A It wasn't straight from there, but I can't recall

ROGER DALE BURKE -- CROSS -- MR. MADSEN

485

1 where I went. I know I stopped at the Hill Top
2 restaurant and put some gas in the car. I think I
3 was talking to, if I remember, I think it was
4 Maxie's son-in-law.

5 I talked to him for a few minutes outside the
6 truck stop. I'm not sure of the times, but I
7 didn't leave straight from the wash hole and go
8 straight there, no, sir, I didn't.

9 Q At some point in time you got to Jenny's house,
10 didn't you?

11 A Yes, sir.

12 Q And it was sometime before she was there?

13 A Yes, sir, that's true.

14 Q And I think you had already testified that you had
15 forgotten that your children -- who you were
16 supposed to, by your custody deal, were supposed to
17 have that day; isn't that correct?

18 A Yes, sir. By my custody deal, I should have got
19 them back Tuesday night, that's correct.

20 Q But you should have had them Wednesday, too?

21 A If she would have brought them back, yes.

22 Q Sure. You said you had forgotten that they had
23 that half day of school that day?

24 A When I found out they wasn't coming home, and I
25 testified earlier I was going through a time, by

1 the next morning, I had forgotten all about the
2 time when the school was out.

3 If you are insinuating that they would have
4 been home with me, yeah, I would have known that
5 they got out of school earlier. But that day, I
6 didn't. You know, it just didn't register with
7 me.

8 Q And y'all's changed custody, I guess, at
9 12:00 o'clock on Tuesday by your agreement or
10 12:30?

11 A At 12:00 o'clock on Sunday, my dad would come pick
12 up the kids. She would keep them. She would keep
13 them through -- she was supposed to have them back
14 by 6:00 o'clock, not turn them over. They had to
15 be in my custody at 6:00 o'clock Tuesday, which is
16 48 hours -- 52 hours.

17 Q We mean 6:00 o'clock p.m., right?

18 A Yes, sir.

19 Q So when you killed her, you hadn't had -- you had
20 not just not had your kids for less than 24 hours
21 then?

22 A Yes, sir, that's true. No, actually I had them
23 when I killed her, I hadn't had them since Sunday.
24 That would be false. I hadn't had them since
25 Sunday at 12 when she picked them up.

ROGER DALE BURKE -- CROSS -- MR. MADSEN

487

1 Q Right. But she had the right through your
2 agreement to have them from Sunday through Tuesday
3 at 6:00 p.m.?

4 A Yes.

5 Q So the amount of custody that you were kind of
6 cheated out of at that point in time was less than
7 24 hours; wasn't it?

8 A This ain't a matter of being cheated. She didn't
9 return them. I've already stated that she already
0 was supposed to have turned the kids over. They
1 filed the papers. They didn't. I testified to
2 what happened.

3 Q So your answer is that's it less than 24 hours;
4 isn't that correct?

5 A She was supposed to turn them over the day before
6 at 6:00 o'clock, and she didn't. At that time when
7 she didn't turn them over, I didn't know if it was
8 some of her bull crap because I hadn't seen those
9 papers at the time.

10 I had talked to Michael Ellisor on the phone,
11 and he told me that they had filed papers for the
12 custody and that I should be getting them in the
13 mail and that we had an emergency hearing on
14 Friday, and he was not going to represent me.

15 Q And did you call him or did he call you?

1 A I called him. I called him from Terry's house
2 because my phone had been disconnected, temporarily
3 disconnected, because I hadn't paid the bill.

4 Q And at some point you went to her house; isn't that
5 correct?

6 A Yes, sir, it's true.

7 Q And I believe your testimony was that originally
8 you decided to park up in here (indicating); isn't
9 that correct?

10 A Yes, sir. When I pulled up -- when I pulled up, I
11 pulled straight up front.

12 Q And at some point in time, you decided to move your
13 car back here (indicating); isn't that true?

14 A Yes, sir.

15 Q And the reason that you moved your car right back
16 there is because you know when you drive in that
17 driveway that she wouldn't be able to see it; isn't
18 that correct?

19 A Yes, sir, that's true.

20 Q So when she came in that day, she's not going to
21 know that you are there; isn't that true?

22 A That's true as well --

23 Q And when she gets there --

24 MR. NETTLES: Judge, please let him finish his
25 answer.

ROGER DALE BURKE -- CROSS -- MR. MADSEN

489

1 THE COURT: If you weren't finished, you can
2 go ahead and finish your answer.

3 MS. MADSEN: I'm sorry. I thought he was.

4 A As I testified, I had already said: Yes, I parked
5 and the reason for that being, I knew if she seen
6 the car, she wouldn't stop and talk to me.

7 That's what I wanted to do. I wanted to talk
8 to her about the kids and I testified to that
9 earlier. So, yes, I pulled the car around back
10 where she would not see it.

11 Q And since she wasn't going to see the car, you just
12 wanted to talk with her? Is that what your
13 testimony is?

14 A Yes, sir, at that time. I wanted to talk to her
15 about the kids.

16 Q At that point in time, had you broken into her
17 home?

18 A Sir?

19 Q Had you broken into her home?

20 A No, I pulled up. I pulled up. Keep in mind
21 breaking in, the doors didn't lock on the place.
22 Even the police report says that in J.J.'s
23 statement, along with Brandon's, they never locked
24 the door.

25 So it wasn't like I forced my way in. I

1 opened the door and went right on in. But at the
2 time I testified I pulled up and I knew she
3 wouldn't stop and talk to me. I pulled around back
4 and I went in the house.

5 Q And you took this gun with you when you went in the
6 house, didn't you?

7 A Yes, sir, I did.

8 Q But you just wanted to talk with her; isn't that
9 correct?

10 A Yes, sir, that's true.

11 Q But you felt you needed to take a gun in with you?

12 A I didn't know if J.J. was there, and I knew that
13 J.J. had borrowed my daddy's shotgun, a double
14 barrel shotgun, because he was living out there in
15 the country and he wanted it for protection.

16 I knew Leaphart had a nine-millimeter. There
17 had been some previous disturbances with me and my
18 brother fighting, some attempts, that he was riding
19 around with the gun, leaving Bob's one day, which
20 Bob lives right beside Terry. They had the guns in
21 their car.

22 Actually Mike had been the one to warn me
23 because I had been threatening J.J., not to kill
24 him or nothing; but I told him when I found him, I
25 was going to whip his ass.

1 Q And when you took this gun in there, this gun was
2 loaded; wasn't it?

3 A Yes, sir, it was.

4 Q And when you loaded this gun, did you just load
5 this clip and then put the clip in, rack a round,
6 pull the clip back out, and put another one in or
7 did you just load this clip and put it in the gun?

8 A I loaded it the first time when I got to the wash
9 hole. I loaded it the first time. I popped -- I
0 know of one, maybe two, but I can't be sure to
1 that. That gun stayed that way after I shot it.

2 Let's say it was one round. I am pretty sure
3 that was all. I am pretty sure it was one shot. I
4 fired off a round, and I went to Jenny's house.

5 After I shot Jenny when I left later on that
6 day, due to the number of times that the gun was
7 fired at Jenny's, I did put more shells in the gun,
8 yes, I did.

9 Q So you know -- did you put more shells in the gun
10 before you went to Jenny's?

11 A No, sir, I didn't.

12 Q And when you were in Jenny's, was there actually a
13 round chambered in it?

14 A A round chambered in it?

15 Q In other words, was it ready to pull the trigger

1 and fire?

2 A Yes, sir. If you turned the safety off, yes, sir.

3 Q And you put bullets in this gun. So you know how
4 many bullets that clip can handle, don't you?

5 A Yes, sir.

6 Q How many bullets?

7 A I think one in chamber and six in the clip, if I
8 ain't mistaken. I don't know a lot about guns, and
9 I don't remember how many I put in there that day.

10 Q Let me show you State's Exhibit Number 44. Do you
11 recognize what that is?

12 A Yes, sir, it appears to be the box that the gun
13 came in.

14 Q And there is some paperwork that came with that
15 gun, isn't there?

16 A Yes, sir.

17 Q And I think that gun that you bought was a .380,
18 wasn't it?

19 A Yes, sir.

20 Q A .380 A.C.P.?

21 A I don't know what A.C.P. is. I bought it. It
22 appears to be that gun right there.

23 Q Let's see on there. What does it list the model
24 that you bought?

25 A A.C.P. I couldn't tell you what that means. I

1 don't know nothing about guns.

2 Q On the document in there, it lists a .380 A.C.P.;
3 isn't that correct?

4 A Yes, sir, it appears to be.

5 Q And it says a polymer frame?

6 A Yes, sir.

7 Q I guess that means plastic, right?

8 A I guess.

9 Q And it says it has an eight-shot mag; isn't that
10 correct?

11 A Yes, sir, I guess that's what it is.

12 Q When we are talking about mag, we mean that clip;
13 isn't that right?

14 A The clip? If the clip is the mag, I gues it's the
15 same.

16 Q So, in other words, that thing I popped out would
17 have eight shots in it?

18 A Like I said, I put bullets in the gun; but I didn't
19 count or make sure it was however many. I think,
20 if I am not mistaken -- I don't want to get caught
21 with perjury -- I think I just filled the clip up
22 and ejected one into the chambers and shot it at
23 the truck stop -- I mean -- at the wash hole.

24 Q So you might then -- if you had filled it up and
25 you had shot one, you would have seven left? Does

1 that sound right?

2 A No. But if says eight-shot mag, then that means it
3 holds one in the chamber and seven in the clip.

4 Q Actually it holds eight in there. Then you can
5 rack and put an extra one in there.

6 A No, it's not a nine shot. If it says eight, then
7 it takes one in the chamber and seven in the clip.

8 Q One in the chamber and seven in the clip. So when
9 the gun is found, there's six bullets in it?

10 A Yes, sir.

11 Q We counted those up, right?

12 A Yes, sir.

13 Q At some point in time, that means then if you shot
14 Jenny five times, you reloaded that gun; didn't
15 you?

16 A I just told you that a little while ago, sir. I
17 told you after I left, I did put more shells in the
18 gun. I told you that.

19 Q What was the significance of wanting six bullets in
20 that gun?

21 A I had shot the gun. The gun was either empty or
22 had one or two in it. I just refilled the clip.
23 It was my gun I done shot, and I refilled the clip.

24 Q And so you admit that when Jenny got in the house,
25 she apparently didn't know you were there. So your

ROGER DALE BURKE -- CROSS -- MR. MADSEN

495

1 hiding had worked; isn't that correct?

2 A I wouldn't call it hiding. You're right, I guess,
3 I hid the car, but I wasn't hiding in the house as
4 it looks like. I went in the house. That's where
5 the burglary charge came from. But she came home
6 while I was in the house. I testified to all that,
7 sir.

8 Q Sure. And you were in the house because you wanted
9 to talk with her?

10 A No, that's not true.

11 Q I thought that's what you testified to earlier?

12 A No, I testified I went to the house because I
13 wanted to talk to her.

14 Q You testified that that's why you moved your car
15 back there so she wouldn't know you were there
16 because you didn't want her to drive off because
17 you wanted to talk to her?

18 A That's not why I was in the house. I went there --
19 I testified that I went there. I parked. I knew
20 she would see the car. So I parked around back. I
21 went in the house. I testified I went in house
22 because I knew of the situation that my kids would
23 be living in.

24 Q You would agree with me then if you are going to
25 hide the car and you want to talk with her before

1 you went in the house, if she pulls up and sees you
2 standing in the front yard, that's not going to
3 accomplish your aim either; is it?

4 A That's the reason I told you that I parked the car
5 around back. Because if she seen me, she wouldn't
6 talk to me; and I wanted to talk to her about my
7 kids.

8 Q And you decided to go at some point in time into
9 her house?

10 A Yes, sir, I testified to that as well.

11 Q And when she came into that house, you didn't talk
12 to her; did you?

13 A No, sir. I did say -- I think Brandon's statement
14 said, "Are you going to take my kids, bitch?" If
15 that's what he said, it was something close to
16 that. I did say it when I heard her go for the
17 phone.

18 Q Sure. And that's what you told Sergeant Frier, and
19 so that's what y'all put in your statement; isn't
20 that correct?

21 A That's what he put in quotes, and he said -- he
22 testified that he put in quotation marks what I
23 said, and even Brandon's statement said along that
24 lines that's what I said: "Are you going to take
25 my kids, bitch?"

ROGER DALE BURKE -- CROSS -- MR. MADSEN

497

1 Q Sure. And then you testified that she tried to do
2 something?

3 A Yes, sir, that was after I shot the first time.

4 Q So she just came in the house and you said, "Are
5 you going to try to take my kids," and you shot
6 right after you said that?

7 A She went -- she went to grab the phone. She told
8 Brandon that she was calling Uncle Jessie because
9 something was wrong because they smelled gas from
10 where I poured gas in the bedroom with the intent
11 to burn the damn house down.

12 Q Does this (indicating) look like the phone?

13 A I didn't pay no attention to the phone.

14 Q When she went to grab for the phone, there was a
15 problem with the phone; wasn't there?

16 A No, sir, there was not.

17 Q That phone wasn't working because the battery had
18 been taken out, wasn't it?

19 A Not at that time, no, sir, that's not true.

20 Q You took the batteries out afterward?

21 A When I shot Jenny the first time, the phone hit the
22 floor. If you are saying, if you are insinuating
23 that I went in and disassembled the phone, no.

24 When she grabbed the phone, I shot; the phone hit
25 the floor, the back dropped out of it, and the

1 battery popped out.

2 Q And you put that statement in the statement that
3 you gave to Sergeant Frier?

4 A I don't know what Sergeant Frier put in that
5 statement. We just know what he read.

6 Q Well, he read it to you. You have already
7 testified to that, didn't you?

8 A Yes, sir. As I told you, that day I wasn't
9 thinking clearly. I didn't really remember it
10 until later. But I don't believe it says in that
11 statement that I took the phone apart waiting for
12 her to get home.

13 Q No, sir, it doesn't say that. But it doesn't say
14 that she went for it and dropped it either, does
15 it?

16 A No, sir, it doesn't. As I explained earlier, half
17 of the stuff I told Mr. Frier is not in that
18 report. We been through this ever since this trial
19 started.

20 Q You don't disagree that the batteries were off the
21 phone; isn't that correct?

22 A I didn't really, like I say, pay attention to the
23 phone, even after she dropped it. If they said
24 they come in and the battery was out of it and the
25 back was off of it, she dropped the phone when I

1 shot.

2 Q And did you later pick up the phone?

3 A No, sir, I didn't.

4 Q So why was the phone kind of upside down on the
5 rocker when the fellows got home? Why wasn't it on
6 the floor?

7 A I can't testify to that. I don't know why.

8 Q And your testimony was --

9 A That's not in the statement.

10 Q When you shot her the first time, where did you hit
11 her?

12 A It was in the high chest. I know it was high body.
13 That's the only shot, but I don't remember which
14 exact body shot went in.

15 Q Sure. Was she standing up, sitting down?

16 A She was standing up.

17 Q Like I am right now?

18 A He testified that she was in front of the Christmas
19 tree, but she was actually back onto the linoleum
20 right before you get to the chair and the kitchen
21 table right there.

22 Q And she was kind of standing up like I am right
23 like this?

24 A She was standing up.

25 Q And I guess your testimony is you didn't shoot her

1 in the head first; isn't that true?

2 A Yes, sir, that would be correct.

3 Q So you shot her when she was like this; isn't that
4 correct?

5 A She was standing up. I think it was high body.
6 The reason I will say that, as I put in my
7 statement that Scottie Frier and me went through,
8 Jenny grabbed her chest. So I would take it, yes,
9 I hit her in the chest.

10 Q Okay. And you would agree with me that if you
11 shoot me and I'm standing up, that a bullet is
12 going to go basically straight until it hits
13 something and bounces off or does something like
14 that; isn't that true?

15 A I guess they testified once it -- it could bounce
16 around once it has done; but it's going to go
17 straight and hit what it's aimed at.

18 Q Show me on State's Exhibit Number 50 which bullet
19 goes straight through anywhere there and doesn't go
20 down at some type of angle?

21 A I don't see that on that diagram, sir.

22 Q And you can look at that diagram and see that of
23 those shots, there's a bunch of different angles;
24 aren't there?

25 A Yes, sir, that would be true. I testified I was