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VOLUME I OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM PICKENS COUNTY

G Edward Welmaker, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V

CLIFFORD WYLIE,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF PICKENS	)	Case No(s) 09-GS-39-1406,
	)	09-GS-39-1407,
State of South Carolina,	)	09-GS-39-1413
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Clifford Wylie,	)	
	)	
Defendant	)	
	)	

January 15, 19, & 20, 2009
Pickens, South Carolina

B E F O R E

HONORABLE G EDWARD WELMAKER, Judge

A P P E A R A N C E S

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Attorney for the Defendant

Reported by Danette P Hanks
Circuit Court Reporter

Transcribed by Teresa B Johnson
Circuit Court Reporter

1 that again

2 **MR STEVENSON** Certainly, Your Honor If I
3 may, one real weird thing that happened with my
4 recorder I actually instead of stopping it and
5 pausing it, I started it and stopped it when we
6 got to the first break And that entire segment
7 is one recording on the recorder I'd be happy to
8 delete that if I can figure out how to do it,
9 with you standing there, I'd be happy to do it

10 **THE COURT** All right Then you can erase
11 that There's nothing that you need newsworthy, I
12 don't think, that's happened so far

13 **MR STEVENSON** No, no

14 **THE COURT** Mr DeJong

15 **MR DEJONG** Thank you, Your Honor May it
16 please the court I don't have a dog in the fight
17 about saying something intentionally bad about
18 somebody, but I do have an issue with this whole
19 matter The issue is this Ms Munson says she
20 is -- believes that Your Honor is taking care of
21 it And I mean no disrespect to Your Honor But
22 for the record, it is now five minutes until
23 11 00 on the morning of January the 15th of 2010
24 This presumptively happened at 8 45 this morning
25 So some two hours and ten minutes, something like

1 that, before arguing this In the interim there
2 has been a break

3 Now, I don't know who these two jurors are
4 that this gentleman spoke to, and I guess none of
5 us do But it raise two concerns, Your Honor
6 Number one concern is, we don't know to what
7 extent, if any, those two jurors has tainted the
8 rest of the panel And certainly that is a
9 concern that they might have some advance
10 knowledge There has been a break Cell phones
11 are abundant on the jury panel as they walk into
12 the courtroom

13 Obviously we did not monitor, nor would we
14 have had any reason to monitor, those potential
15 jurors at that time So again, I don't think we
16 can say, okay, he talked to two people at 8 45,
17 and two hours and ten minutes later say, well, we
18 can't say that those individuals have talked to
19 anybody and this becomes a rippling effect like
20 throwing a rock in a pond and we don't know where
21 the ripples stop

22 Obviously they have not -- the panel, as
23 such, has not been put, and was not put under any
24 restriction or admonitions or warnings by the
25 Court that they were not to contact anybody or

1 attempt to do any research on their own or
2 whatever That's the first point

3 The second point is this, and I think I
4 alluded to that yesterday, Your Honor, when we
5 had the conference in your office We talked
6 briefly about the press What we are doing this
7 morning is very -- for me, it is very unique,
8 having been a public defender here now for ten
9 plus years I never recall having struck a jury
10 on Friday and then had a three-day hiatus until
11 we actually started the trial So now it is
12 bothersome to me that I think at least two
13 potential jurors have been flagged that the media
14 is interested in this case

15 And in spite of whatever restrictions or
16 admonitions the judge may give or Your Honor may
17 give those jurors or even the panel as a whole,
18 obviously if a -- it was obvious to me, I asked
19 Bailiff Smith if that was a pen or a tape
20 recorder on the rail up here? He advised it was
21 a tape recorder And I'm not trying to testify
22 He just said he was under the impression the
23 press had approval to do that

24 We had a whole jury panel sitting here I
25 don't know how many members are in the panel I

1 didn't count them and I didn't count the returns
2 But every jury member, if they were paying any
3 attention at all, saw a tape recorder go on that
4 bench These people are human beings, Your
5 Honor And obviously we're not going to put a
6 spy mechanism on to see what they do for the next
7 three days

8 I don't know what's going to be printed in
9 the Greenville News, if anything Seems like one
10 branch of the media picks something up on it,
11 they all jump on it like white on rice So with
12 that, I don't know what the TV coverage is going
13 to be I don't know what the radio coverage is
14 going to be I don't know what the newspaper
15 coverage is going to be And I think it just
16 really puts turmoil, especially with those
17 jurors, and we not knowing how much they may have
18 tainted the rest of the jury

19 Now, having said that, I know no way of -- if
20 we try to make a determination if they were
21 tainted, then I think that's going to taint the
22 jury As far as trying to single these people
23 out, yes, I would like to know who they are But
24 I don't know how we do that without tainting the
25 rest of the jury panel So I'm in a quandary

1 I've got to strike a jury for Mr Wylie To
2 the best of our ability, a fair and impartial
3 jury And now they have had some outside
4 influence However great it may be, we don't
5 know, and we certainly don't know about the rest
6 of the panel I would ask the Court for a
7 continuance at this point in time and dismiss the
8 panel, Your Honor

9 **THE COURT** Yes, ma'am, Ms Munson

10 **MS MUNSON** Absolutely no evidence of any
11 kind of tainting What I understood Mr
12 Stevenson said, he was trying to find what
13 elevator to get on He gets on an elevator He
14 says something about there's a murder trial
15 Somebody said, oh, my And that was it There's
16 been no discussion of, yes, it's Clifford Wylie,
17 and Clifford Wylie is alleged to have shot his
18 wife And you know, there was an argument
19 There's none of that

20 They didn't get any information -- there's no
21 evidence that they got any information before
22 they came in here that they wouldn't have gotten,
23 like I said And I'm not throwing rocks at any of
24 the bailiffs The bailiffs are talking to them
25 when they come in, yeah, we've got a murder

1 trial There is no evidence that they got any
2 information, any outside information, that they
3 shouldn't have That's number one

4 Number two, I strongly object to singling out
5 any particular jurors because I think Your Honor,
6 more than most, is very careful about asking
7 potential jurors, did you know anything about the
8 case before you came in here either from the
9 media or your neighbors or from any other source?
10 What do you know and can it prejudice you? Every
11 single one of them may know something about the
12 case before they came in here But as Your Honor
13 knows, that doesn't mean they can't be good
14 jurors

15 If they cannot be fair and impartial and try
16 the case based on what they hear in here and the
17 law that you give them, then we have a problem
18 But I think just because two jurors heard that
19 it's a murder trial, that's just really extreme,
20 Your Honor, and I respectfully ask that you deny
21 that motion

22 **THE COURT** Let me verify, first of all, the
23 recapitulation of some of the discussions we've
24 had over the last several weeks with counsel
25 about scheduling this trial I know that the

1 State was anxious to have it tried last year and
2 the case was continued over their objection
3 because of different matters that were brought to
4 the court's attention by the public defender, so
5 it was postponed until this week This week
6 being next week, really, the trial time

7 We have a holiday and we also have a
8 mandatory judicial conference for Friday that
9 we're hoping to get the jury selected today so
10 that we can be ready to start with the testimony
11 on Tuesday, was the reason for that I'm
12 certainly going to monitor this case well,
13 particularly with whatever news articles may be
14 forthcoming and that may in any way influence the
15 jury over the weekend before they come back on
16 Tuesday or whatever

17 But Mr DeJong, I really believe I'm going to
18 have to hear more and I know none of us want to
19 single out the jurors If you feel in some way
20 you would like to have the information about
21 which those two jurors were, I'll be glad -- two
22 alternatives I'll be glad for you and Mr
23 Welborn, Mr Stevenson, to walk outside through
24 the jury, go down the hallway, huddle up, let him
25 point out who they were Then when they stand

1 up, you'll know And if you want to use a cause
2 strike -- I'm going to obviously interrogate the
3 jurors now, but you'll have that information

4 I can have our jury, if they are qualified,
5 after I interrogate them in a little bit, I can
6 have them come forward rather than standing in
7 place Mr Stevenson can then pass you a note
8 while they're coming forward That was the one,
9 or the other one I can do it either way I can
10 not do that at all I'm just giving you that
11 opportunity if you feel like it would help you to
12 do one or the other

13 He's seated on the front row behind you now
14 He could easily pass you a slip of paper or get
15 word to your investigator Your investigator
16 could look at him on each one and he could nod or
17 not nod and then your investigator could get the
18 information to you But short of that, I'm going
19 to obviously voir dire the jury and see if
20 there's any prejudice anyway But I wanted you to
21 have those opportunities if you desire

22 **MS MUNSON** One other thing that I would
23 like for you to consider is, Your Honor, that the
24 docket both in Greenville and Pickens County is
25 published on the Internet The type of charge,

1 the indictments, who the lawyers are I honestly
2 cannot see -- jurors seeing this online would
3 know more about the case than some guy standing
4 in the elevator indicating he was ---

5 **THE COURT** Well, I need to ask them that
6 too, if they have any information about it So
7 that's just another source of information, maybe
8 not as fresh as what happened this morning

9 **MR DEJONG** Your Honor, if I may respond
10 And I think you have said it -- put it succinctly
11 here in denying my motion for a continuance and
12 dismissing ---

13 **THE COURT** At this time I'm going to voir
14 dire the jury

15 **MR DEJONG** Yes, sir I understand But
16 what I'm trying to do is protect my record here,
17 however, in that I take it -- respectfully take
18 exception with Your Honor's ruling But in an
19 effort to -- in light of Your Honor's ruling in
20 an effort to try to represent my client to the
21 best of my abilities, I don't believe it would be
22 appropriate for me to go out there with Mr
23 Welborn and Mr Stevenson

24 I would, however, if we're going to do this,
25 and I'm not trying to be offensive to Your Honor,

1 I don't like the note passing If we're going to
2 do it, I would ask that the reporter and Mr
3 Welborn walk down the hallway together And then
4 Mr Welborn can -- he's very astute and
5 observant He can at least tell us the way they
6 are dressed or what they've got on or what they
7 look like So I'll have a ninety percent shot at
8 not putting them on the jury, if that is, if that
9 is our procedure, Your Honor

10 **THE COURT** All right, sir

11 **MR DEJONG** But in doing that, I want the
12 record to be clear that I'm not waiving ---

13 **THE COURT** I understand And your objection
14 or motion for a continuance is continuing subject
15 to the voir dire And I may change my mind

16 **MR DEJONG** I understand

17 **THE COURT** I'm like you I don't know what
18 all has taken place in the last two hours Just
19 puts us -- we're doing this for efficiency today
20 and we're not being very efficient so far, but
21 we're going to see if we can do better

22 **MR DEJONG** The other ---

23 **THE COURT** All of us

24 **MR DEJONG** I'm sorry, Your Honor I did
25 not mean to interrupt you The other thing that

1 (WHEREUPON, a recess is taken)

2 THE COURT Mr DeJong, you're risen from
3 your seat Is there any matter you have to
4 present to the Court now?

5 MR DEJONG Your Honor, I think one matter
6 I would like to address the Court on, and then
7 after that I'm fairly flexible It came to my
8 attention Tuesday of this week that my client was
9 disgruntled with me There were issues that I was
10 not aware of And just so the record is clear, I
11 have no problem with Mr Wylie whatsoever But as
12 I said, it came to my attention that he has some
13 issues on some writings that were, with his
14 approval, turned over to me And in a couple of
15 those writings, he talked about both, quote,
16 firing, end-quote

17 I would ask the Court to voir dire Mr Wylie
18 I think that is an issue that we need to address
19 early on I just submit that to Your Honor I'll
20 be very candid It came as a bit of a surprise to
21 me because nothing had been voiced and I was
22 unaware of anything But I would ask the Court to
23 voir dire Mr Wylie as to that particular
24 situation We'll see how we move forward after
25 that

1 **THE COURT** Thank you, Mr DeJong
2 Mr Wylie, if you would, you can remain
3 seated right there I don't need to bring you up
4 here I believe I'll be able to hear from you
5 If I could, I'd ask you if you would, raise your
6 right hand Do you swear or affirm the testimony
7 you've about to give me will be the truth, the
8 whole truth and nothing but the truth, so help
9 you God?

10 **MR WYLIE** Yes, sir

11 **THE COURT** We haven't yet started this
12 trial, but it's very important that I make sure
13 you understand your rights to have a legal
14 counsel representing you Mr DeJong has been
15 representing you He's done a lot of preliminary
16 stuff that I've eluded to on the record here in
17 conference, although we haven't had formal
18 hearings during the course of this trial If you
19 have any misgivings or difficulties with your
20 lawyer's representation, I'll be glad to hear
21 about that It would have to be a substantial --
22 I'll let you know, if you have a substantial
23 reason that you believe that he should be
24 discharged in this case, I'll be glad to hear
25 from you If there's anything you want to tell

1 me about that, I'll be glad -- more than glad to
2 hear from you

3 MR WYLIE Yes, sir I was just -- it's not
4 really a problem with Mr DeJong It's more a
5 problem with ---

6 THE COURT Hang on just a minute I need
7 you to speak up I can hear you, but I want to
8 make sure the Court Reporter can hear you as
9 well

10 MR WYLIE It's not a problem with Mr
11 DeJong It's a problem more with the system and
12 the timing of everything where, you know, there's
13 a lot of stuff we didn't get to till late or be
14 able to get to And you know, that's not his
15 fault That's a system problem with him being
16 overloaded and stuff

17 THE COURT Okay, sir

18 MR WYLIE You know, I hope you understand
19 that

20 THE COURT Yes, sir, I understand that I
21 know sometimes things do come in at the last
22 minute and lawyers have to be flexible with that
23 I guess one benefit of our selecting the jury
24 today was that we'll have a long weekend I know
25 we like to take our holidays, but sometimes

1 lawyers, as I experienced when I was a lawyer,
2 you have to work some weekends You have to work
3 some holidays And I'm confident that Mr DeJong
4 will be fully prepared for the case Is there
5 any other issues that we need to talk with you
6 about as far as Mr DeJong?

7 MR WYLIE No, sir, not really It's just
8 basically a timing issue, you know, ---

9 THE COURT All right, sir

10 THE DEFENDANT -- like I said, being able to
11 do things and things didn't get to us in a timely
12 manner

13 THE COURT All right, sir Thank you very
14 much, sir

15 All discovery, I'm assuming, has been given
16 by the State to the defense?

17 MS MUNSON It's my position it has, Your
18 Honor

19 THE COURT All right, ma'am

20 MR DEJONG I can't know or don't know,
21 Your Honor I got some in this morning I haven't
22 had a chance to look at that yet

23 MS MUNSON And what he got in this
24 morning, and he likes to do this, what he got in
25 this morning was nothing that he didn't already

1 have It was just a couple of notes to fill in
2 the firearms report That's all he got It was
3 nothing new It was nothing that -- if he needs
4 time with it, that's fine

5 **THE COURT** Okay

6 **MS MUNSON** Just so the Court knows we're
7 not hiding these things to the last minute and
8 then dumping I want that really clear

9 **THE COURT** All right So everybody's got
10 everything they need Again, from the conference
11 we had last week trying to see how this case
12 could best be presented with the holiday and for
13 justice to all, I think there were some
14 preliminary issues that the attorneys mentioned
15 that we may need to discuss about a statement
16 There might have been other issues that I can't
17 recall But we can certainly take those up now so
18 that we can start with the opening statements and
19 testimony first thing on Tuesday morning Again,
20 we're going to operate on an efficient schedule,
21 but not a rushed schedule I want everybody to
22 know that Are there any suppression motions or
23 statements or evidence or any other matters,
24 identification, anything we need to take care of?
25 We'll be glad to do it now

1 **MR DEJONG** I don't know why I always jump
2 on my feet first I'll be happy to defer to you,
3 Ms Munson, if you want to go first

4 **MS MUNSON** I appreciate that One thing I
5 think we need to get clear, Your Honor, is the
6 matter of the defense competency evaluation As
7 you will recall, this is actually the second time
8 that we have delayed this case for the defendant
9 On November the 25th, the Court signed in order
10 for him to be evaluated for criminal
11 responsibility and competency to stand trial and
12 a capacity to conform He was -- that order was
13 signed by the Court November the 25th of 09

14 On November the 30th of 09, I was served
15 with notice of intent to use an insanity defense
16 To this date, I've gotten no documents
17 whatsoever No names of witnesses No names of
18 anything or anybody Mr DeJong intends to use to
19 prove that What we don't have, Your Honor, is
20 the written report of Dr Cross who did the
21 evaluation of Mr Wylie

22 What I got off the fax machine yesterday, I
23 gave the Court a copy, I gave the Court -- a copy
24 to Mr DeJong And it was written by Dr Cross'
25 supervisor, clearly stating that the opinions of

1 Dr -- Dr Cross' opinions were that he's
2 competent to stand trial, criminal responsibility
3 and has the capacity to conform It's my
4 position that the actual written report itself is
5 not something that should cause us to delay the
6 hearing It's just writing the report, his
7 opinions are formed So I'd like to put that
8 matter to rest at this point, Your Honor

9 THE COURT Do you have a copy of the letter,
10 Mr DeJong?

11 MR DEJONG Your Honor, I have a copy of
12 the letter, but I have a problem with process
13 There's no two ways but that Mr Wylie went to
14 Columbia for an evaluation at my request The
15 problem I have is this, number one, I do not have
16 a copy of the report which precludes me, I
17 believe, from a Blair hearing at this point in
18 time The -- without the report itself, granted
19 I've got a letter here which purports to be Dr
20 Cross' findings But certainly the letter itself,
21 as signed by the individual that signed it, is
22 hearsay in and of itself There's no underlying
23 data There's no nothing And of course, the
24 individual that signed the letter did not purport
25 to review the records or anything else He simply

1 states he talked to Dr Cross and then sets forth
2 what Dr Cross' findings were and that is what we
3 have

4 I believe, Your Honor, and I could be wrong,
5 and I'm sure either Your Honor or Ms Munson will
6 correct me, but when there is an evaluation, a
7 copy of that evaluation goes to the Court And if
8 my understanding is correct, the Court, based
9 upon that evaluation, must make a finding of
10 competency on the record And I would submit to
11 Your Honor, with all due respect, that without
12 the report from Dr Cross that there is no record
13 that the Court would have before it to determine
14 competency, even if a Blair hearing was not held

15 There was, again, a conference with Your
16 Honor and Ms Munson and myself, at which time I
17 believe Your Honor signed the -- both the order
18 for the competency evaluation and for a
19 McNaughton evaluation At which time, I, if I
20 recall correctly, I suggested we needed a Blair
21 hearing with which Ms Munson agreed, as my
22 memory serves me

23 Obviously at this point in time, Your Honor,
24 I am precluded from having that Blair hearing
25 I'm not saying that the State sent Dr Cross on

1 vacation But certainly, as I understand it, so
2 the record is clear, Dr Cross is not available
3 He is vacationing, I don't know if out of state
4 or not, but he is certainly vacationing and is
5 not available for court today

6 So again, Your Honor, if the Court -- if I'm
7 correct, that the Court must make a finding of
8 competency based upon the record and/or the
9 evaluation, which would be the record in this
10 case, that there is nothing from which the Court
11 could base its finding of competency other than
12 the hearsay letter that we have from Dr Musick,
13 I guess, that's M-U-S-I-C-K, Chief Psychologist
14 for Forensic Evaluation Service So I would
15 consider that, Your Honor, a glaring problem in
16 this case to move forward at this point in time
17 without either the Blair hearing or a copy of
18 that evaluation, which we don't have, to be made
19 a Court's exhibit from which Your Honor could
20 find competency, again, as I understand the
21 rules, even if I did not request a Blair hearing

22 **THE COURT** Solicitor

23 **MS MUNSON** Please the Court, Your Honor
24 The report itself will be here, so I don't see
25 that as an issue The reason that this -- when we

1 as to whether or not he isn't competent or that
2 he has psychiatric problems There's no notes,
3 there's no doctor coming in here And I'm being
4 redundant now But that's my position, Your
5 Honor There's nothing for the Court to consider
6 as to his competence or his ability to understand
7 right from wrong

8 **THE COURT** Mr Wylie, let me talk to you
9 just a minute You're still under oath You told
10 me earlier about the process was giving you some
11 problems because of the timing of things You've
12 had an opportunity to talk with your attorney
13 during the course of this case, haven't you?

14 **MR WYLIE** Yes I've talked, I've talked to
15 him some

16 **THE COURT** Okay And you've understood what
17 he told you about the charges against you?

18 **MR WYLIE** I mean, there's some stuff I
19 understand and some stuff I don't

20 **THE COURT** Well, you're not a lawyer I
21 understand that You understand what my role is
22 in this trial, don't you?

23 **MR WYLIE** I mean, sort of I mean, I'm
24 still -- at the doctor in Columbia, there was
25 some things that I would have liked to been able

1 got together and agreed to have these competency
2 things done, the basis for sending the defendant
3 for an evaluation was evidence of paranoia and
4 tangential conversations with defense attorney
5 There's no evidence that he was suffering from
6 any kind of psychiatric disorder, any kind of
7 brain injury that would prevent him from
8 understanding what was going on Your Honor,
9 it's my position that this was done just as a
10 matter of covering the bases

11 The defendant -- there's nothing in the
12 record, nothing been presented by the defense,
13 who has the burden on this, not me, there's been
14 nothing presented or offered to this court to say
15 that this man has any problems understanding
16 what's going on or that he has a long psychiatric
17 history or that he hears voices or for some
18 reason has a valid, true problem to keep him from
19 understanding what's going on

20 It's my position, Your Honor, that to delay
21 the trial just to get the report that is going to
22 say what that letter says would be an un -- it
23 would be a delay that is unnecessary, especially
24 in the face of the fact, Your Honor, that there
25 is absolutely nothing for this court to examine

1 to ask Mr DeJong if he were down there with me
2 that I didn't understand

3 THE COURT Okay Did you have a chance to
4 ask him when you came back?

5 MR WYLIE I didn't have anything to ask him
6 with

7 THE COURT But you know, you know what I am?
8 Do you understand what I'm called?

9 MR WYLIE Yeah

10 THE COURT What's that?

11 MR WYLIE You're the judge

12 THE COURT And do you know that Mr DeJong
13 is representing you, obviously You've already
14 told me that

15 MR WYLIE Yes, sir

16 THE COURT And you understand what this
17 person over here is doing Who does she
18 represent?

19 MR WYLIE (No response)

20 THE COURT You don't know who ---

21 MR WYLIE I mean, I guess

22 THE COURT You guess it's the State, don't
23 you?

24 MR WYLIE I guess so

25 THE COURT They're the ones trying to prove

1 the case against you

2 MR WYLIE Yeah Trying to prove the case
3 against me

4 THE COURT All right, sir You've had a
5 chance to go over with Mr DeJong all three
6 charges that you're here on today? You've been
7 charged with murder Are you aware of that?

8 MR WYLIE Yes, sir I'm aware of that one

9 THE COURT And you're aware that you've also
10 been charged with possessing a weapon, firearm,
11 during the course of the murder?

12 MR WYLIE Yes, sir We kind of touched on
13 the other two things a little bit later

14 THE COURT And the other two things being
15 the weapon and the unlawful conduct toward a
16 child?

17 MR WYLIE Yeah That was the thing that I
18 didn't really understand

19 THE COURT Okay But when we had the
20 conference in which the order was signed for the
21 Blair hearing, I raised the issue about the
22 timeliness of a report and was assured that it
23 would be here It wasn't I'm somewhat distressed
24 that the Department of Mental Health didn't
25 fulfill its duty, according to what I understood,

1 that they would clearly have it back within --
2 the order being issued in November, they would
3 have it back by the end of the year

4 Based on what I have now, Mr DeJong, I would
5 see no reason to continue the case I think the
6 test of competency is -- I'm satisfied in my own
7 mind with that Certainly I'll retain that as a
8 matter that can be re-raised during the course of
9 the trial If I see anything that occurs that
10 may be -- may give me some trepidation or
11 hesitancy about that ruling, I'll certainly
12 revisit it But based on what I have now before
13 me, I don't think there's any issue as to the
14 competency of Mr Wylie as far as standing trial
15 and of his responsibility at the time of the
16 alleged offense

17 I'll deny any motion you may have to continue
18 it on the fact that there has not been a report
19 made by the Department of Mental Health But I
20 make a finding now that based upon the evidence
21 that I have before me that he is competent to
22 stand trial Yes, sir

23 **MR DEJONG** I'm not arguing I just need a
24 little clarification, Your Honor That was the
25 motion Your Honor has denied it, so I gather I

1 am protected on the record unless either you,
2 myself or the State brings that up at a later
3 point in the trial

4 **THE COURT** Correct

5 **MR DEJONG** Thank you, Your Honor

6 **MS MUNSON** The next thing I might -- Mr
7 DeJong and I talked about this earlier to inquire
8 as to whether or not he believes there's going to
9 be a Fourth Amendment suppression issue on the
10 weapon recovered and the clothing recovered from
11 the defendant

12 **MR DEJONG** There will not be a Fourth
13 Amendment issue on the weapon, Your Honor
14 Certainly I'm not relieving the State of any
15 burden of proof as to the weapon, the search
16 warrant, validity of the search warrant, or
17 anything else But if all of that stands, there
18 would be no suppression motion as to the weapon
19 as to the search I guess I'm saying, if they
20 dotted all their I's and crossed all their T's
21 once they got there, then that won't be an issue,
22 Your Honor

23 **THE COURT** All right, sir

24 **MS MUNSON** Three more issues One of them,
25 Your Honor, is the Angela Gasque was the

1 dispatcher working at Clemson City Police
2 Department when the call came in from Mrs Wylie
3 I intend to put her on the stand to get her to
4 testify as to what Missy said to her My
5 intention there is that it is -- it's
6 non-testimonial in the nature because it was not
7 Missy or anybody anticipating prosecution and
8 that it's excited utterance and/or present sense
9 impression with Missy telling the dispatcher,
10 this is who I am, this is who I am, he's got a
11 gun, and then later on in the tape the dispatcher
12 hears what she described as faint screaming
13 because she can't hear any words

14 **THE COURT** As I understand, you want to
15 offer this testimony from the witness or from the
16 tape or both?

17 **MS MUNSON** There is no tape of the 911
18 call, and I will offer -- call a witness to
19 explain that There was a malfunction with the
20 equipment at Clemson so the dispatcher -- when
21 the dispatcher went back to get the call it
22 wasn't there

23 **THE COURT** All right Mr DeJong? Do you
24 have an objection to the statement?

25 **MR DEJONG** Yes, Your Honor, I do It's

1 very troublesome if there is no tape I believe
2 I have been furnished a statement from the
3 dispatcher, but I'm not sure what the State is
4 saying here to me it's blatant hearsay for
5 somebody to come in and testify what the alleged
6 victim had to say on 911 Certainly that is a
7 matter of interpretation I'm inclined to agree
8 with Ms Munson that it's not really a Crawford
9 issue, if that's what she was anticipating I
10 don't really believe it would be a Crawford
11 issue But if it's being offered for the truth
12 of the statement that was made, then my position
13 is that it is hearsay and should not be allowed,
14 Your Honor

15 **MS MUNSON** Your Honor, it is absolutely
16 hearsay However, it fits under one of two
17 exceptions, 803(1), present sense impression in
18 that Missy Wylie is saying, this is where I am,
19 this is my address, he has a gun, he's going to
20 shoot me, please come for help An excited
21 utterance She's under the influence of her
22 husband standing there with a gun and she's
23 afraid And the dispatcher has an open line from
24 the time that Missy calls to the time that
25 officers get on the scene, which is two minutes

1 So it's absolutely hearsay, but it fits
2 exceptions, Your Honor

3 **MR DEJONG** 803 and what was your other
4 one, Ms Munson?

5 **MS MUNSON** 803(1) present sense impression
6 and 803(2)

7 **THE COURT** Well, obviously it would meet the
8 exemption -- I believe it would meet the
9 exception to the hearsay rule The next analysis
10 really has to be whether or not the prejudicial
11 effect outweighs the probative value under 403
12 Ms Munson, as I understand the dispatcher is --
13 is that going to be the gist of the comments that
14 he has a gun, he's threatening me? Is she going
15 to say, he shot me, or is it ---

16 **MS MUNSON** Oh, no You can't hear the
17 shot You can't hear her say, don't shoot me
18 She says, I'm Missy Wylie, this is my address,
19 please send someone, my husband has a gun, he's
20 going to shoot me Then you don't hear anything
21 for a while except screaming away from the
22 telephone And the whole time the dispatcher is
23 telling officers where to go I've got her
24 statement here And the dispatcher is in the
25 courtroom, Your Honor, if you want me to put her

1 up on the stand

2 THE COURT You say the only thing you hear
3 is screaming in the background Is that what
4 she's going to be testifying to?

5 MS MUNSON Yes

6 THE COURT You made it sound almost like
7 there was a tape that you had heard But ---

8 MS MUNSON I apologize, Your Honor There
9 is no tape

10 THE COURT It's just what she will say

11 MS MUNSON Yes, sir

12 THE COURT All right Mr DeJong, anything
13 else?

14 MR DEJONG May I have just one moment,
15 please, Your Honor?

16 THE COURT Yes, sir

17 MR DEJONG I have nothing further to add
18 than what I've already argued, Your Honor

19 THE COURT If that is the extent of her
20 testimony, I believe that is pertinent evidence
21 and I will allow it in I think the probative
22 value outweighs any prejudicial effect
23 Obviously it's prejudice to the defendant, but I
24 believe it's permissible hearsay under Rule 801,
25 or excuse me, 803(1) and (2) Any other issues?

1 **MS MUNSON** Yes, sir, Your Honor The last
2 issue is the in-car videotape Make sure I get it
3 on the record There were three in-car
4 videotapes The three first officers, and the
5 tapes ran from the time they left the police
6 department until the time they got to the scene,
7 Officer Hogue's, Officer Arflin's, and I forget
8 who the other officer was, Your Honor But there
9 are two we don't intend to use at all

10 The one that we would intend to use portions
11 of is the in-car video of Officer Hogue You can
12 see him driving to the scene and you can hear
13 radio traffic, the dispatcher telling him where
14 to go, the dispatcher telling him that he doesn't
15 hear anything and he has an open line, things of
16 that nature You see him get to the residence
17 You can see him outside the residence ask where's
18 the shooter? You can hear a voice say, I am At
19 which point, Officer Hogue says that he's got one
20 down and one in custody Then they go into the
21 house But there's some screaming and yelling
22 and get me some rubber gloves and things of that
23 nature that I didn't hear anything in there that
24 I think is prejudicial to the defendant

25 The last part of the tape that I would want

1 to show is Officer Hogue goes into the room and
2 gets child who is the eight-year-old son
3 of the couple You can hear Officer Hogue
4 talking to child telling him it's okay, look
5 this way, trying to get child out of the house
6 without seeing his mother dead in the floor
7 child on his own, begins to talk to Officer
8 Hogue Is my mother going to be okay? I've never
9 seen someone shot before Where was she shot?
10 And then child was placed into a patrol car We
11 had talked yesterday about running the whole part
12 of Officer Hogue's tape I can see that from the
13 time -- and I believe the number was 21

14 **THE COURT** 20? 2120? Let me put on the
15 record The attorneys yesterday, when we talked,
16 agreed to let me review a tape I reviewed that
17 last night in my home I tried to make notations
18 myself of what I thought might be troubling
19 issues, at least for the State And I might have
20 missed some of them But basically I guess -- I
21 hated to interrupt you, Ms Munson

22 **MS MUNSON** That's okay

23 **THE COURT** But where you were getting at was
24 repetition of the same thing where he tells other
25 officers? Is that what you were talking about?

1 **MS MUNSON** Yes, Your Honor Once
2 child voice is gone and the very first thing
3 that prompts it is you can hear what I believe to
4 be Matt Culbreth say, tell me what you've got
5 At that point, the rest of it I agree could cause
6 problems in the trial It's officers telling
7 other officers what they heard and what they
8 think and things of that nature child is no
9 longer on the tape

10 **THE COURT** So you're basically saying, after
11 the initial conversation when they arrived and
12 then the conversation with the child is all the
13 audio that you're looking for on that tape?

14 **MS MUNSON** Yes, sir

15 **THE COURT** What about that, Mr DeJong?

16 **MR DEJONG** Well, Your Honor, I think with
17 regard to the statement made -- allegedly made by
18 my client, I think we would have to have a
19 Jackson v Deno on that

20 **THE COURT** I agree with you We'll have
21 that

22 **MR DEJONG** So we might have a cart before
23 the horse just a little bit there I can't really
24 argue that, with all due respect, until we get
25 through the Jackson v Deno With regard to what

1 the child says, I do take issue with that Even
2 under, I presume, I hate to presume, but I
3 presume again the State is trying to come in
4 under South Carolina Rules of Evidence, 803
5 subparagraph (2), excited utterance, and perhaps
6 present sense impression, although I would
7 certainly object to it coming in under present
8 sense impression I would further object, Your
9 Honor, to it coming in even as an excited
10 utterance under Rule 803(2)

11 Certainly officers have talked to him at that
12 point in time Whether that is on the video or
13 not, I don't know I don't know that we can hear
14 everybody that has been talking to this child
15 So this was some time after the alleged shooting
16 had taken place I have tried to very candidly
17 look at the case law on excited utterances and
18 I'm still scratching my head based upon how far
19 -- how close you have to be before it is an
20 excited utterance But I would submit to the
21 Court that this is far enough away from the
22 alleged offense itself that is no longer an
23 excited utterance and therefore the Court should
24 not allow it, Your Honor

25 **THE COURT** And again, we'll hear the

1 testimony in a Jackson -- we can cover both of
2 that in a Jackson Deno hearing But the other
3 issue that was outstanding of the reaffirmation
4 of the statement, that's been -- it's agreed to
5 that'll be redacted I don't know whether you
6 intend to play the tape, ---

7 MS MUNSON Yes, I do and ---

8 THE COURT -- but not the sound or at least
9 mute those portions that say that Is that what
10 you're intending to do?

11 MS MUNSON Well, it's my position, Your
12 Honor, that up until the point that child stops
13 talking that it should be admissible, the sound
14 and the picture

15 THE COURT Okay On child -- I'm back to
16 the other one now The other -- when the tape
17 starts, your intent is to show the tape with the
18 sound up until the defendant is on the initial
19 incident?

20 MS MUNSON The initial ---

21 THE COURT Once the yellow tape gets up,
22 maybe as sort of a stopping place then I'm
23 just ---

24 MS MUNSON Well, the yellow tape is up
25 before the officers get child

1 **THE COURT** Right We're still talking about
2 the defendant now before we get to child
3 Okay?

4 **MS MUNSON** Oh, the defendant Yes

5 **THE COURT** So the defendant then -- strictly
6 with the defendant, the rest of the tape is going
7 to be totally muted or only muted when there's a
8 statement of a reaffirmation of what the officer
9 has said?

10 **MS MUNSON** I think what you're talking
11 about is other people saying, he said he shot
12 her, things of that nature

13 **THE COURT** Right I understand from your
14 position was -- you were going to mute that?

15 **MS MUNSON** I would agree that's probably a
16 good idea Because it is a ---

17 **THE COURT** But are you going to play the
18 audio on everything else that's happening?

19 **MS MUNSON** Yes

20 **THE COURT** Sirens and

21 **MS MUNSON** Yes, sir

22 **THE COURT** So you would have it marked to
23 mute those each time they occur?

24 **MS MUNSON** Yes, sir

25 **THE COURT** All right But otherwise the

1 sound is going to be playing?

2 MS MUNSON Yes, sir

3 THE COURT All right Now let's talk about
4 the child

5 MS MUNSON Okay

6 THE COURT There's only -- is there one
7 occasion where you want the child's testimony to
8 be played or more than one?

9 MS MUNSON There's a recording of what the
10 child is saying when he is coming out of the
11 house And then once he is on his way to the
12 police department, he has a conversation with
13 Officer Bell that is not recorded in anyway And
14 what I would like to do is get Officer Bell to
15 testify as to the things that the child was
16 saying spontaneously on the way to the police
17 department

18 THE COURT All right The other statements
19 the child made, date of birth, telephone number,
20 is that going to be played?

21 MS MUNSON (No response)

22 THE COURT I just want to make sure that
23 today we -- Mr DeJong, tell me what the child
24 said you have an objection to, on the tape? Then
25 we'll go to the hearsay

1 **MR DEJONG** On the tape, I have the
2 objection to the child saying I've never seen
3 anyone shot before

4 **THE COURT** Does he -- let me interrupt
5 Does he say I've never seen anyone shot or does
6 he say I've never heard anyone shot before?

7 **MS MUNSON** He says, I've never heard
8 anyone shot before

9 **THE COURT** That's what I heard him say,
10 but ---

11 **MR DEJONG** That may be, Your Honor It's
12 been a few days since I looked at the tape You
13 looked at it last night Any of those
14 statements, though, I object to Okay?

15 **THE COURT** All right Any statements on the
16 tape -- the first statements he makes you object
17 to Would you object to him giving his date of
18 birth and the name of his parents and so forth?

19 **MR DEJONG** No I don't have any objection
20 to that

21 **THE COURT** All right And were there --
22 that was toward the end And again, I've had the
23 benefit of recently listening to it

24 **MS MUNSON** Yes, sir

25 **THE COURT** The other is toward the front

1 Are there any other audio on the tape that the
2 child would be saying that the State wants to put
3 in other than the initial, walked by, looked this
4 way, I've never heard or seen anybody shot before
5 and then toward the end where he says this is my
6 date of birth

7 MS MUNSON Right You can hear them
8 shuffling through the leaves And then it's
9 clear that he's in a patrol car somewhere and he
10 just stops talking

11 THE COURT And there's nothing else?

12 MS MUNSON And that's when it stops

13 THE COURT Okay So ---

14 MS MUNSON On the tape

15 THE COURT So the defense's objection then
16 is the initial conversation on the tape and the
17 hearsay conversation that was not on the tape
18 that the officer's going to be testifying to?

19 MR DEJONG Yes, Your Honor

20 THE COURT Is that ---

21 MR DEJONG I'm a little confused I need
22 clarification I don't know how Your Honor is
23 going to rule, but it's my understanding if Your
24 Honor allows in the child's statement on the
25 tape, on videotape, that the State agrees

1 anything after that they would not play unless I
2 open a door later on

3 MS MUNSON Correct

4 THE COURT That's what we just said There
5 is nothing else

6 MR DEJONG There's nothing else

7 THE COURT According to what I -- well,
8 except this is my date of birth

9 MR DEJONG If she wants to play that ---

10 MS MUNSON Your Honor, everything that the
11 child says on that in-car video, audio and video,
12 even though you can't -- you never see him on the
13 video But everything he says from the time the
14 officer says, go to your room, Buddy, or whatever
15 he says, the whole time that he's in the house
16 and comes out of the house and then is placed in
17 a patrol car That's what I want Now, I don't
18 think -- did the officers go back to him and then
19 start asking him date of birth and all of
20 those ---

21 THE COURT Toward the end of the tape It's
22 very clear I mean, it's not garbled It's very
23 clear at the end They wanted to find out if he
24 knew his mama's birthday and things like that
25 And again, if that -- y'all are going to watch

1 this again, I'm sure, ---

2 MS MUNSON Yes, sir

3 THE COURT -- and listen to it and there
4 might be some other things that come up before
5 Tuesday But by and large, as I understand what
6 I need to rule on now at the Jackson Deno is
7 statements of the defendant initially

8 MS MUNSON Right

9 THE COURT And I don't know of any reason we
10 need to play the tape again And then I'll hear
11 the hearsay that's not recorded of the child and
12 I'll make my ruling on those And then as far as
13 the child on the tape, perhaps I can defer that
14 'til Tuesday to give more time for everyone to
15 look up anything that we need to on that And
16 maybe even on all of it as far as the ---

17 MS MUNSON That's fine

18 THE COURT -- hearsay and excited utterance
19 But we need to get the testimony in now If I
20 can rule, I will If not, then I'll give you
21 time to find some cases But does everybody
22 understand the parameter of the issues now?

23 MR DEJONG For the defense, I think I do,
24 Your Honor

25 MS MUNSON I do too, Your Honor

1 **THE COURT** Okay The defendant -- is there
2 any statement of the defendant other than what's
3 on the videotape?

4 **MS MUNSON** No, sir

5 **THE COURT** Okay So that's it for him And
6 then we've got two on the child, one on the
7 videotape And for the purposes of the Jackson
8 Deno hearing, I've seen the videotape, but the
9 officer perhaps can testify as to what, in his
10 opinion, was said on the videotape and we can
11 just sort of treat -- just let him make sure that
12 he lets us all know when he's moving from one to
13 the other

14 **MS MUNSON** Okay

15 **THE COURT** As far as the child

16 **MS MUNSON** Okay

17 **THE COURT** And we'll hear both of those at
18 this hearing now

19 **MS MUNSON** All right

20 **THE COURT** And then I might -- I've got the
21 tape I can play it again this weekend myself if
22 I defer ruling All right So we're ready for
23 the testimony on that Is there anything else
24 from the State that needs to be presented?

25 **MS MUNSON** No, sir

1 **THE COURT** Is there anything from the
2 Defendant that we need to take care of today
3 other than the Jackson Deno?

4 **MR DEJONG** If I could just have fifteen
5 seconds to ---

6 **THE COURT** Yes, sir

7 **MR DEJONG** -- review my notes here, Your
8 Honor Some things we have agreed not to
9 disagree on, I don't really know that those need
10 to be made part of this hearing The only other
11 thing that, outside of the Jackson v Deno and
12 the two statements by the child would be with
13 regard to the pathologist's testimony in this
14 case, Your Honor Do you want me to take that up
15 now?

16 **THE COURT** Yeah, let's do that now and then
17 we'll just do the testimony at the end

18 **MR DEJONG** The State graciously informed
19 me, Your Honor, that Dr Ward, who I believe did
20 the autopsy in this report -- or in this case, is
21 on vacation, that he is not available to testify
22 in this trial Tuesday or Wednesday of next week,
23 if memory serves me correctly My understanding
24 is that the State intends to call another
25 psychologist to basically testify, I'm not sure

1 if from his report I'm not exactly sure what
2 the State intends to do there

3 However, Your Honor, I would take the
4 position that that is not proper That I think,
5 number one, the -- an expert can't testify from
6 records, if that is the way -- that those records
7 are from what a doctor would normally base their
8 conclusions on I simply argue to the Court that
9 another pathologist report is not a record that
10 some other pathologist would base their opinion
11 on That the opinion of the pathologist is based
12 upon the actual autopsy itself

13 Secondly, Your Honor, I think even though Ms
14 Munson, I believe, has shared with me that she
15 has no intent of trying to introduce the
16 pathology report that was prepared by Dr Ward, I
17 think certainly Dr Ward's report and autopsy
18 that he did was done with a view certainly toward
19 a trial in this case I think it is certainly
20 testimonial and evidentiary and what -- by
21 letting another pathologist testify from Dr
22 Ward's notes, whatever shall we say, certainly
23 deprives my client of a Fifth Amendment right to
24 confront the pathologist who I say is an accuser
25 Because I think if you look at all of that and

1 take that in the light of -- hold on I've got
2 the case here, Your Honor It'll take me a
3 minute to find it

4 I believe -- here is it right here
5 Melendez, M-E-L-E-N-D-E-Z, hyphen Diaz, D-I-A-Z,
6 versus Massachusetts That is a 2000 and --
7 actually it was decided on June the 25th of 2009
8 by the United States Supreme Court I raise that
9 case simply to say that in that case there was a
10 lab analysis done in a drug case The State did
11 not attempt to put the lab analysis in through
12 another person as the State is attempting to do
13 here They just simply attempted to introduce
14 the lab analysis

15 The United States Supreme Court said that was
16 not appropriate under Crawford, that that
17 analysis was obviously, as I read the case,
18 prepared with the new court's trial, and that the
19 defendant had a right confront his accuser under
20 his Fifth Amendment rights That's putting it
21 very, very succinctly The Supreme Court can get
22 very verbose sometimes, but ---

23 **THE COURT** Wasn't that a chain of custody
24 issue mainly?

25 **MR DEJONG** I don't read Melendez as being

1 a chain of custody issue That may have been
2 another issue in the case And I'll be candid
3 with the court I jumped down to the part where
4 they addressed Crawford I didn't read the entire
5 38-page epistle that was published by the United
6 States Supreme Court But I did -- and the part
7 where they start talking about Crawford, I didn't
8 read that as a chain of custody issue It was a
9 Crawford issue that the reports were prepared as
10 under Crawford it was testimonial and prepared
11 for a trial And therefore, the United States
12 Supreme Court said just to introduce the report

13 I'm a little bit afield here and I'm not
14 trying to lead Your Honor afield, but I think it
15 is analogues to what we're talking about here to
16 allow somebody else to come in and testify that
17 did not do the autopsy basically, in my opinion,
18 is testifying from -- his testimony is based on
19 hearsay based on Dr Ward's actual autopsy and
20 therefore I do not believe it would be
21 appropriate to allow that pathologist to testify,
22 that being a violation, in my opinion, both of
23 Crawford and my client's Fifth Amendment right of
24 confrontation, Your Honor

25 **THE COURT** What about that, Solicitor?

1 **JENNY HAMAKER** Your Honor, in State versus
2 Cutro, citation 365 S C 366, 2005, South
3 Carolina Supreme Court case, and I'll quote a
4 section of it for you if you will allow me to It
5 says, finally, in Crawford versus Washington, the
6 United States Supreme Court noted that hearsay
7 exception for business records and observed that
8 business records are not testimonial and
9 therefore do not implicate the confrontation
10 clause A public record, very much like a
11 business record, is not testimonial and its
12 admission similarly does not violate the
13 Defendant's confrontation rights

14 Also, in that same Supreme Court opinion,
15 Your Honor, the Supreme Court said that an
16 autopsy is in fact a public record and therefore
17 is not testimonial whatsoever Crawford
18 discussed cases in which a witness is trying to
19 give testimony against the defendant Nowhere in
20 the autopsy report is the defendant's name
21 listed Nowhere in the autopsy report is the word
22 "murderer" listed The officer -- I'm sorry, the
23 medical expert simply wrote down what he
24 observed He's not giving testimony against the
25 defendant The Crawford case is not meant to

1 prevent that from happening It's meant to
2 prevent things from happening like say, I saw the
3 defendant with a gun, those kind of hearsay
4 statements from coming in, Your Honor

5 THE COURT How does Cutro stand up in light
6 of Melendez versus Massachusetts from June of
7 2009?

8 MS HAMAKER Your Honor, to be quite frank
9 with you, I haven't looked at the cases that Mr
10 DeJong mentioned, but when I did do this case law
11 research on Westlaw, it is still showing as being
12 good case law

13 THE COURT Okay Well, maybe we can take a
14 look at that over the weekend

15 MR DEJONG I will be happy to trade the
16 cases I cited with Ms Hamaker, Your Honor, after
17 the -- after we get through here this afternoon,
18 Your Honor

19 THE COURT Anything else you've got, Mr
20 DeJong?

21 MS HAMAKER Your Honor, if I may interrupt
22 for a second?

23 THE COURT Yes, ma'am

24 MS HAMAKER Even if you were to decide
25 that it doesn't pass Crawford muster to get the

1 autopsy report in, our expert is basing his
2 opinion on several items One is going to be the
3 autopsy report, not Dr Ward's opinion

4 Dr Fulcher is going to base his opinion on
5 what was found inside the body, not on Dr Ward's
6 opinion He also looked at pictures of the crime
7 scene and he looked at pictures that were taken
8 from the autopsy, which we can lay the foundation
9 for All of these things, if you look at Rule
10 703, the basis of the opinion testimony by
11 experts, it says, the facts are that in a
12 particular case in which an expert bases his
13 opinion or inference may be those received by or
14 made known to the expert at or before the
15 hearing That the type reasonably relied on by
16 experts in a particular field in forming
17 opinions, the facts or data need not be
18 admissible in the evidence Dr Fulcher can
19 testify that this is done all the time During
20 his training and his residency up in Virginia,
21 because it's a teaching hospital, it happens all
22 the time when an autopsy is conducted by one
23 doctor and then another doctor does the opinion
24 and comes to testify in trial because the person
25 who did the autopsy is off around the country

1 doing other things in their field

2 **THE COURT** Well, his work in Virginia might
3 have taken place before the Crawford case ever
4 came about We'll see how all that plays

5 **MS HAMAKER** No, sir, Your Honor, he's
6 brand new

7 **THE COURT** Dr Fulcher is?

8 **MS HAMAKER** Yes, sir, Your Honor

9 **THE COURT** Okay Then perhaps it'll be a
10 moot issue anyhow I don't know -- the State can
11 try its case the way it sees fit, but if the
12 witness is going to testify toward the end, we
13 may still be here on Thursday for Dr Ward to be
14 here We'll see how that works too But anyhow,
15 we'll -- I'll take that under advisement I'll
16 read those two cases, Mr DeJong What else have
17 you got?

18 **MR DEJONG** One other clarification, Your
19 Honor The solicitor stated there was no mention
20 of murder I have to agree with her The last
21 line of the pathologist's report says the matter
22 of death is homicide I think a rose by any other
23 name is still a rose whether you spell it murder
24 or homicide, he certainly is saying it's a
25 homicide, Your Honor

1 **THE COURT** All right Well, I understand
2 the autopsy reports, that they normally say
3 homicide

4 **MS HAMAKER** And Your Honor, that portion
5 of the report is Dr Ward's opinion, which we
6 wouldn't be seeking to introduce anyway

7 **THE COURT** All right What else, Mr
8 DeJong?

9 **MR DEJONG** Your Honor, as best I can
10 determine, at this moment in time, that is all I
11 may think of six more things riding to Greenville
12 this evening That's all I have right now, Your
13 Honor

14 **THE COURT** Well, we can all be here at 8 30
15 Tuesday if we have any other things that we think
16 we need to clear up But let's get the testimony
17 now on the Jackson Deno on the statements and
18 allow you to cross examine these witnesses and
19 put up anything you want to, Mr DeJong You may
20 call your first witness

21 **MS MUNSON** May it please the Court, Your
22 Honor, the State calls Jay Hogue

23 **JOHN HOGUE**
24 having first been sworn, testifies as follows

25 **THE CLERK** If you would have a seat and

1 Q Okay Please tell the Court what he was
2 telling you

3 A As we was pulling off from the scene, he
4 stated that he hoped his mother was okay And at that
5 point in time, I think he closed my computer and he
6 said, you know, that he had heard his mother
7 screaming He had heard a loud bang Didn't know what
8 was going on Came out and said he saw his father with
9 a gun or with a weapon He wasn't sure what kind of
10 weapon it was It was a firearm in his hand

11 Q Okay And when child said that, did you
12 follow up? Did you ask what color gun, what kind,
13 caliber?

14 A No, ma'am Actually at that point in time, I
15 opened back up my laptop and told him to, you know,
16 draw some more if he wanted to

17 Q Okay

18 MS MUNSON I have nothing further at this
19 time, Your Honor

20 THE COURT You may cross examine the
21 witness

22 MR DEJONG Your Honor, may it please the
23 court

24 CROSS EXAMINATION

25 BY MR DEJONG

1 Q Do you know how old this child was?

2 A He had gave us his date of birth and
3 everything I had had an estimated range of how old he
4 was

5 Q So you put him in your patrol car to take him
6 to Clemson City Police Department?

7 A Yes, sir

8 Q And did you sit him in the front or the back
9 or where was he?

10 A The front passenger seat

11 Q All right, sir And there was no conversation
12 between you and he at all?

13 A No, sir, other than what I told him, if he
14 wanted to play on my computer he could

15 Q Was he calm?

16 A He was at that time

17 Q All right Was he playing on your computer?

18 A He did for a few

19 Q All right How long would you say he played
20 on your computer?

21 A Maybe a couple of minutes until we started to
22 pull off from the residence

23 Q Well, did you go in the house to get this
24 young person?

25 A No, sir

1 her go

2 THE COURT Yeah I thought I had, that that
3 would be admissible under Rule 803, with the
4 balance at 403 Let me repeat for the record that
5 I have had the benefit of reviewing the
6 videotape I find that the statements made on the
7 videotape by the Defendant would be admissible
8 under Jackson versus Deno I think by the
9 preponderance of the evidence that those
10 statements were voluntarily made, were not the
11 result of any interrogation, but rather on the
12 scene investigation and safety issues

13 I further find that the statement made by the
14 child while on video would also be permissible
15 for the general on-the-scene investigation of him
16 basically saying that I've never heard anybody
17 shot before I think that was part of the res
18 gestae event that was taking place

19 I am bothered by the statement of the child
20 in the patrol car with Officer Bell I think res
21 gestae by itself leads to an excited utterance as
22 to -- and is clearly stated more than once that
23 he was calm at that time I don't know exactly
24 from the video when they left, how long Officer
25 Bell was there He said several minutes, that he

1 couldn't estimate the time But I believe the
2 statement made by the child to Officer Bell would
3 not be admissible testimony unless that child
4 were to testify in court I understand he won't
5 be testifying

6 But I think it's too far removed from the
7 spontaneity of the event there at the house when
8 he was calmly moving down the road after playing
9 on a laptop And I think the confrontation clause
10 would certainly interfere with that So I'm not
11 going to allow the statement made by the child to
12 Officer Bell I'm going to allow the other
13 statements And I'll defer ruling on the autopsy
14 until Tuesday

15 **MR DEJONG** In light of that, Your Honor,
16 would you like us to be here at 8 30 on Tuesday
17 morning?

18 **THE COURT** Well, I said that only if there
19 were other matters that y'all -- you mentioned on
20 your way across the river you may have some other
21 thoughts I'll be here at 8 30 I'm sure Ms
22 Munson will be here at 8 30 If y'all have
23 something, Ms Hanks, she gets in early too
24 We'll assemble a little early if we need to,
25 quarter till, to get ---

1 January 19, 2010

2 (WHEREUPON, the Court resumes on the 19th day of
3 January, 2010 at approximately 9 10 a m)

4 **THE COURT** All right For the benefit of
5 the attorneys, I think the only thing we, uh, had
6 left on Friday was my ruling on the testimony of
7 Dr Fulcher I agree with Ms Hamaker on the law
8 on that I will allow his testimony as far as his
9 interpretation or his use of Dr Ward's report in
10 his testimony

11 Mr DeJong, I presume you received
12 communication over the weekend from the
13 Solicitor's office concerning a reconsideration of
14 my ruling earlier? You didn't? You haven't
15 checked your email

16 **MR DEJONG** I have not, Your Honor

17 **THE COURT** Have y'all talked?

18 **MR DEJONG** We have not

19 **THE COURT** I was a little distressed that
20 they sent me an email and copied you but did not
21 send it to my law clerk who really needed to be
22 the one spending her weekend looking over the law
23 But that being as it may, I did look over the law

24 For your benefit, Mr DeJong, Ms Munson has
25 asked me to reconsider my ruling on the non-

1 allowance of the statement made by the child in
2 the automobile with Officer Bell She sites State
3 v Simms and State v Ladner I have reviewed
4 both of those cases I find my ruling was
5 properly made and I will deny her motion I think
6 I cleared all that up earlier on Friday But my
7 ruling is based on the fact that I, first of all,
8 don't believe it met res gestae as the other did
9 Even if it did, I think the prejudicial effect of
10 letting this statement in would outweigh its
11 prejudicial value or the prejudicial value would
12 be outweighed by letting it in under 403

13 I think Crawford comes into play in this
14 case I read Ladner in very detailed I think
15 Ladner talks about Crawford even though the facts
16 in that case are very different being a sexual
17 conduct with a very small, two and a half year old
18 child

19 I think a good argument could be made by the
20 State, and I'm sure Ms Munson is prepared to make
21 that if I let her expound upon her short brief,
22 that we also have a charge of unlawful conduct
23 toward a child and the child is the victim
24 However, since it is a joint trial with a murder
25 case, the prejudice just concerns me more than the

1 right of confrontation So I respectfully deny
2 your motion for reconsideration, Ms Munson

3 MS MUNSON Thank you for your
4 consideration, Your Honor

5 MR DEJONG So am I clear then you are
6 allowing in the statement that was made to Officer
7 Bell on the way to the Clemson Police Department?

8 THE COURT I am not allowing it in I am
9 allowing the statement at the scene the child made
10 as he was escorted out the back door I am not
11 allowing the statement made to Officer Bell

12 MR DEJONG Oh, okay I'm sorry I
13 misunderstood I thought you had allowed the
14 statement at the scene in

15 THE COURT I had

16 MR DEJONG You are still allowing it in?

17 THE COURT Still allowing it in And I did
18 not allow the statement to Officer Bell in Friday
19 and I'm still not allowing it in

20 MR DEJONG Okay

21 THE COURT Nothing has changed

22 MR DEJONG I'm sorry, Your Honor I was
23 confused

24 THE COURT That's okay You didn't have
25 the benefit of looking at your email

1 **MR DEJONG** No, sir I didn't

2 **THE COURT** Okay Anything else we need to
3 take care of before the jury is brought in a
4 sworn?

5 **MS MUNSON** Nothing from the State, Your
6 Honor

7 **MR DEJONG** Your Honor, I would move to
8 sequester witnesses or police officers at the
9 scene Their testimony, I believe, would be
10 overlapping I would therefore move to sequester
11 all the witnesses with the exception of the
12 State's chief investigating officer There is
13 someone here on behalf of the alleged victim I
14 don't mind them staying in the courtroom but
15 everyone else, I would ask to sequester, Your
16 Honor

17 **THE COURT** Okay Are there any defense
18 witnesses? They would need to be sequestered as
19 well, if you plan to call any witnesses for the
20 defense other than the Defendant

21 **MR DEJONG** Well, I don't know if I do or
22 not But if I do, the only witness I would
23 anticipate calling would be permissible in the
24 courtroom That would be the Defendant, Your
25 Honor

1 **THE COURT** All right, sir Any position
2 from the State on sequestration?

3 **MS MUNSON** Yes, sir, Your Honor There's
4 one State's witness I'm going to call Her name
5 is Jadda Thomas She is here with the family I
6 would object to her being sequestered She wasn't
7 there at the scene Her testimony would not
8 overlap at all with the officers The other
9 officers, no, sir, I don't have an objection to
10 that except for Detective Peppers

11 **THE COURT** What's the nature of her
12 testimony?

13 **MS MUNSON** Her testimony, Your Honor,
14 would be as to the child in this case child
15 Wylie, how he was behaving after this incident
16 How she's known him, how long she's known him and
17 how he behaved after the incident As I said, she
18 was not there that night, can't possibly know
19 anything the officers know

20 **THE COURT** She is the witness who is the
21 law student, is that correct, in law school?

22 **MS MUNSON** Yes, sir Also, Your Honor,
23 she's here with the family She is, uh, dating or
24 engaged -- she's dating the son of the Defendant
25 and the deceased Uh, she's had a big part in the

1 care of this child It's my position she should
2 count as a victim under the Victims Rights Act

3 **THE COURT** I will allow her to stay in if
4 her testimony is limited to that

5 **MR DEJONG** Yes, sir I have no objection
6 as long as her testimony is limited to what the
7 Solicitor's is saying One other little thing,
8 Your Honor

9 **THE COURT** Yes, sir

10 **MR DEJONG** As I sit here and this
11 equipment is on, that light is bright

12 **THE COURT** All right

13 **MR DEJONG** I can not see the bench when
14 that light is on

15 **THE COURT** We'll take care of that

16 **MR DEJONG** Thank you, sir

17 **THE COURT** If you need time to let it warm
18 up, Ms Munson, we'll take that time I'll
19 explain to the jury that it needs to warm up

20 **MS MUNSON** Okay

21 **THE COURT** But I know that can be
22 distracting even up here Anything else?

23 **MS MUNSON** Nothing from the State, Your
24 Honor

25 **MR DEJONG** Nothing from the defense, Your

1 Honor

2 THE COURT All right Let's have our jury
3 come in We'll have them sworn I'll give them
4 brief preliminary remarks

5 (WHEREUPON, the jury enters at approximately
6 9 20 a m)

7 THE COURT Good morning, Ladies and
8 Gentlemen Thank you for, uh, waiting patiently
9 for us We were supposed to start at nine
10 o'clock We had a few preliminary little matters
11 we had to take care of I hope you had a good
12 weekend

13 If you remember, on Friday, I gave you
14 instructions that you were not to talk to anyone
15 about this case and not let anyone talk to you and
16 not to read anything about it Is there any
17 member of the jury panel who has not complied with
18 the instruction I gave you on Friday? If so,
19 please raise your hand

20 (No response)

21 Thank you There is no response Let me give
22 you a little overview of what we are going to be
23 doing This is in no way to be considered an
24 instruction on the law I'm going to give you
25 the law on this case when this matter is concluded

1 **THE COURT** Solicitor, you may address the
2 jury

3 **MS HAMAKER** Thank you, Your Honor May it
4 please the Court

5 Mr DeJong

6 This case is about an eight-year-old little
7 boy who experienced true terror This case is
8 about a little boy who was mere feet away when his
9 own father, the Defendant, the man seated right
10 there at that table, picked up a gun, aimed it at
11 the little boy's mother and fired one shot on
12 February the 13th of 2009 The evidence will show
13 that the Defendant, acting with a depraved heart,
14 ended more than one life that day He ended two
15 lives He ended the life of Melissa Wylie, his
16 wife And he also ended the life of his son as he
17 knew it before that fatal shot was delivered
18 Terror Pure and simple terror

19 The burden of proof lies right here at this
20 table The State must prove the Defendant guilty
21 beyond a reasonable doubt At the end of the
22 trial when you have heard all the evidence, you
23 will have insight into the terror of this eight-
24 year-old on the evening of February 2009 And you
25 will be left convinced, firmly convinced beyond a

1 reasonable doubt that the Defendant picked up the
2 gun and shot his wife in the presence of his
3 eight-year-old son

4 Now, at some point during the trial, the
5 State suspects that the defense will bring up that
6 this is Mr Wylie's day in court, the Defendant's
7 day in court The State recognizes that The
8 person who won't have her day in court is Melissa
9 Wylie That's because the Defendant picked up a
10 357 revolver, shot her in the back as she was
11 trying to escape She was completely unarmed
12 She was screaming for her life The evidence will
13 show that The State asks that, at the end of the
14 trial, you come back with a guilty verdict Thank
15 you for your time

16 **THE COURT** Mr DeJong

17 **MR DEJONG** Thank you, Your Honor May it
18 please the Court

19 Madam Solicitor

20 Ladies and Gentlemen, you just took an oath
21 It's a serious matter to take an oath The oath
22 you took said you would well and truly try this
23 case on the facts and the evidence I share that
24 with you simply to also share with you as we move
25 through this case, I would ask you to remember you

1 have no enemies to punish, you have no friends to
2 reward And your oath is, that you just took, is
3 that you will well and truly try this case on the
4 evidence and the law, not prejudice, not passion,
5 but well and truly try it on the facts and the
6 law

7 Friday, you were here for jury selection
8 And we all had an opportunity to introduce
9 ourselves And certainly Mr Wylie stood and you
10 saw him And I am here as Mr Wylie's advocate
11 Who I am is not particularly important I will
12 share this with you today, Ladies and Gentlemen,
13 that as I stand here pacing in front of you that I
14 share that I represent today the innocent Clifford
15 Austin Wylie You might well say the innocent
16 Clifford Austin Wylie? Yes indeed That's what I
17 said I will remind you as His Honor was reading
18 these indictments Friday, he shared with you and I
19 share with you that those indictments are no
20 evidence whatsoever in this case They are not
21 proof against Mr Wylie

22 Indeed, if we did not need to keep a paper
23 trial, we could stand here in front of you this
24 morning and tear those indictments up because as
25 far as this trial goes, those indictments are

1 totally meaningless Perhaps to go back one step
2 further, you could say the innocent Mr Wylie?
3 Wasn't he arrested? Indeed he was And indeed
4 some magistrate issued arrest warrants for him and
5 that's what started the whole process You see,
6 Ladies and Gentlemen, I think again as His Honor
7 shared with you Friday, the fact that Mr Wylie
8 was arrested, the fact that arrest warrants were
9 issued for him is no proof That is not evidence
10 against Mr Wylie

11 Again, we could stand here, but for the paper
12 trail that we have to leave in all cases, we could
13 stand here and tear those warrants up As far as
14 this trial, at this moment in time goes, those
15 arrest warrants are purely meaningless Why is
16 that? That is, Ladies and Gentlemen, because of
17 one fundamental principle, substantial right
18 afforded every citizen of Pickens County, every
19 citizen of the State of South Carolina and indeed
20 every citizen in the state of the United States of
21 America And what is that fundamental and
22 substantial right? That fundamental and
23 substantial right is what we call the presumption
24 of innocence

25 My client, Mr Clifford Austin Wylie, is

1 presumed, under the law, to be innocent That
2 presumption of innocence, Ladies and Gentlemen,
3 does not leave after the first witness testifies,
4 after the second witness testifies, indeed how
5 ever many witnesses there will be, that
6 presumption of innocence does not leave Indeed
7 and in fact and under the law, that presumption of
8 innocence, Ladies and Gentlemen, follows Mr Wylie
9 back into this jury room, after you have heard all
10 the testimony, after you have seen all the
11 evidence and after you have heard the charge on
12 the law from His Honor

13 Sometimes, we liken that presumption of
14 innocence to -- sometimes judges will say it's
15 like a cloak of righteousness that is draped
16 around the shoulders of the Defendant So I would
17 ask you to look at counsel table where I have been
18 seated this morning, and look at Mr Wylie Don't
19 look at the clothes that he is wearing What I'm
20 asking you to do is look at what is draped around
21 his shoulders That is a fundamental and
22 substantial right that is afforded every citizen
23 and that is the presumption of innocence

24 Mr Wylie has nothing to come to you today to
25 prove in part is because of that presumption of

1 innocence In large part, he has nothing to prove
2 because the Constitution of this great country of
3 ours and in this great state in which we live says
4 that anyone charged with a crime does not have to
5 prove their innocence

6 The burden of proof, Ladies and Gentlemen, is
7 indeed and in fact on the State That burden of
8 proof is the highest burden of proof in our
9 judicial system That burden of proof is beyond a
10 reasonable doubt I am not going to go into that
11 at this point in time We'll have an opportunity
12 to talk about burden -- beyond a reasonable doubt,
13 that burden of -- excuse me -- burden of proof
14 when I get to come back and talk to you at the
15 conclusion of this trial

16 Mr Wylie is charged with three offenses
17 He's charged with Murder, Unlawful Conduct Towards
18 a Child and Possession of a Weapon during the
19 Commission of a Violent Crime All of those
20 charges, Ladies and Gentlemen, you will have to
21 weigh You look at the credibility of the
22 witnesses and you look and listen to what comes
23 into the testimony

24 I would ask you not to close your mind simply
25 because they've used the word "murder" It is a

1 harsh word Taking the life of another person I
2 would simply ask you to remember, Ladies and
3 Gentlemen, people can die as a result of actions,
4 but they are not always murder Again, you are
5 here as the trier of the facts as Your Honor has
6 shared with you both Friday and today That's
7 going to be your determination

8 On behalf of Mr Wylie, I would like to thank
9 you all for being here I know there are a lot of
10 places you would rather be this morning than
11 sitting here in this jury box Ladies and
12 Gentlemen, without y'all, none of the rest of us
13 would have to be here You are the bedrock You
14 are the cornerstone of our entire judicial system,
15 especially our criminal judicial system And as
16 such, I thank you for being

17 I think the great Winston Churchill one time
18 said the highest service a citizen can render to a
19 community during peace time is jury service We
20 are not at peace Perhaps I can paraphrase him a
21 little bit by saying we are not at battle That's
22 the highest service you can render

23 In light of the frustrations and aggravations
24 and all the places you would rather be, I thank
25 you for your attention I'm more than gracious

1 I would ask you to remain attentive throughout
2 this trial When the -- excuse me -- when the
3 trial is over, bring back that verdict that speaks
4 the truth

5 **THE COURT** Solicitor, you may call your
6 first witness

7 **MS MUNSON** May it please the Court, Your
8 Honor The State calls Angela Gasque

9 **ANGELA GASQUE**
10 having first been sworn, testifies as follows

11 **THE CLERK** If you would, have a seat and
12 state your name for the record please

13 **THE WITNESS** My name is Angela Catherine
14 Gasque

15 **DIRECT EXAMINATION**

16 **BY MS MUNSON**

17 **Q** Would do you work for, ma'am?

18 **A** Clemson Police Department

19 **MR DEJONG** Your Honor, may it please the
20 Court, I object to this client's test -- to this
21 witness' testimony based on my objection

22 **THE COURT** All right Objection is
23 overruled and noted for the record

24 **BY MS MUNSON**

25 **Q** Who do you work for, ma'am?

1 **A** Clemson City Police Department

2 **Q** How long have you been with them?

3 **A** Four years

4 **Q** What do you do there?

5 **A** I'm a dispatcher

6 **Q** What are your duties?

7 **A** I answer the telephone, 911, regular

8 telephone calls for public service for stuff that goes

9 on in the city of Clemson I also do detention

10 **Q** Okay Uh, the term "dispatcher", do you
11 dispatch people?

12 **A** Yes, ma'am

13 **Q** How do you do that?

14 **A** Uh, I call the unit patrols over the radio
15 and let them know what kind of information that I've
16 gotten over the telephone

17 **Q** Okay Do you do this while you are on the
18 phone?

19 **A** Uh, sometimes

20 **Q** Okay When you answer the 911 phones at the
21 Clemson Police Department, do you have a handset phone
22 or how does that work?

23 **A** I have a handset

24 **Q** Okay

25 **A** I pick it up and answer it

1 Q All right And how do you dispatch the
2 officer? What piece of equipment do you use?

3 A We use a dispatch radio over to the right
4 hand side I also have a control as well

5 Q Okay Did you have any training with the
6 Clemson Police Department before you were allowed to
7 take over duties as a dispatcher?

8 A Yes, ma'am

9 Q And tell the jury about that

10 A Well, we go through a basic jail course, uh,
11 at the, uh, police academy And we go through a 911
12 school for a week And, uh, we also go through an
13 NCIC class that they give at the police department
14 This one that I went through was at Pickens County

15 Q Okay Were you with the Clemson Police
16 Department on February the 13th of '09?

17 A Yes, ma'am

18 Q Okay Were you working on that day?

19 A Yes, ma'am

20 Q What were your hours that day?

21 A Uh, I report for duty between 9 p m and 7
22 a m the following day I came in about 8 45 that
23 evening

24 Q Okay And when you came in at 8 45, did you
25 start working right away?

1 **A** Uh, yes, ma'am I signed on to the computer
2 Usually, that's what we do We come in a little bit
3 early and sign on to the computer and find out what's
4 going on, what had been going on prior to my arrival,
5 kind of like a briefing type thing Uh, we discuss
6 it Then I go right into duty

7 **Q** Okay Uh, did you receive a call at the
8 police department in reference to this case?

9 **A** Yes, ma'am

10 **Q** About -- well, can you tell us what time that
11 call came in?

12 **A** It was before 9 00 cause, uh, I actually got
13 signed on to the computer and the dispatcher that I
14 was coming in to work with, she had to go to the
15 restroom So it was a little bit before 9 00

16 **Q** Okay Did you say -- well, let me ask you
17 this When a call comes in, is there -- is it
18 recorded, not audio, but do you record in any way
19 exactly what time the phone call came in?

20 **A** Uh, yes, ma'am 911 has a system where it
21 tells you the time, the location, uh, and who it is
22 from

23 **Q** Okay Uh, would that document help you to
24 remember exactly what time this phone call came in?

25 **A** Yes, ma'am

1 Q Okay Just take a look at that

2 A Okay (Reviewing)

3 Q What does that appear to be, Mrs Gasque?

4 A Uh, it says 20 57 which would be 8 57 p m

5 Q Okay What is that that you are looking at?

6 A Oh, I'm sorry This is a call card that we
7 use Uh, when I log onto the computer, I create a
8 call card It's a thing on the computer where it
9 dates the time, what time, I mean, where it is taking
10 place at, what the people are saying, what time the
11 unit patrols are going to where I dispatched them to
12 and what's being said and taking place

13 Q So the call that came in to you was at 20 57?

14 A Yes, ma'am

15 Q From where did the call come?

16 A It came from 209 Maple Boulevard

17 Q All right Uh, what did the caller -- first
18 of all, could you anything about the sex of the
19 caller?

20 A Female She was a female

21 Q Okay And what did she say to you?

22 A She gave me her name, where she was at and
23 made the statement that her husband was there and had
24 a gun and was going to shoot her

25 Q Did she tell you what her name was?

1 A Yes, ma'am

2 Q What's her name?

3 A Uh, I don't remember ---

4 Q Okay That's fine

5 A --- the exact -- her name

6 Q All right Now, once -- once the female
7 said, told you where she was, her husband had a gun
8 and he was going to shoot her, what did you do?

9 A Uh, I confirmed her address She said yes,
10 my address is 209 Maple Boulevard I asked her where
11 her husband was She said he was right there

12 Q All right Now, once you got that
13 information from her, did you do anything as far as
14 contacting officers?

15 A Yes, ma'am I totally went straight for the,
16 the radio control for the radios and dispatched my
17 unit patrols that address and let them know what I had
18 going on and they went

19 Q Okay Now initially, when you call it out to
20 the officers, how do you communicate with them? Like
21 in normal language like this?

22 A No, ma'am We use codes Sometimes we do
23 use plain speech

24 Q Okay

25 A But this particular day, I used codes and

1 wanted them to know that I had a -- well, the whole
2 time that I was dispatching, I thought I said a 10-82,
3 which is a domestic, and I told them there was a male
4 subject with a gun -- female subject and a male
5 subject with a gun at 209 Maple Boulevard

6 **Q** Okay

7 **A** To be headed that way

8 **Q** Did you call it out as anything else other
9 than ---

10 **A** I did

11 **Q** Okay

12 **A** I called it out as a 10-72 which is a larceny
13 that's occurring at that time instead of a domestic

14 **Q** Okay So you hear from the female, then you
15 start dispatching your officers What is the next
16 thing that you heard?

17 **A** Well, I still had her on the line I asked
18 her to calm down, that I had units going that way
19 And, uh, she, uh, started screaming It was -- I
20 asked her to calm down That's when I asked her to
21 calm down, I had units going that way Then I didn't
22 hear anything

23 **Q** Okay Let me back up a little bit

24 **A** I'm sorry

25 **Q** Let me ask you Okay You said she started

1 screaming Could you hear any words?

2 A Uh, I just heard her hollering, screaming

3 Q Okay Was it easy to hear or difficult to
4 hear?

5 A Well, with me having the units going that way
6 and her on the phone trying to listen to what was
7 going on as my officers were going that way, of course
8 other phones come in too Of course I didn't answer
9 those And between the two, I didn't hear the exact
10 words I just heard her screaming

11 Q Screaming Okay Was it -- what about the
12 volume of the screaming? How well could you hear it?

13 A In the very beginning, when she first started
14 screaming, it was loud

15 Q Okay

16 A I tried to talk to her There was no one
17 there

18 Q Okay When she stopped screaming, what did
19 you hear?

20 A I heard nothing

21 Q All right And when you are hearing nothing
22 on the line, did you hang up?

23 A No, ma'am

24 Q Why not?

25 A I'm not supposed to

1 Q Okay

2 A And I wouldn't

3 Q While you are hearing nothing on the line,
4 are you saying anything to the officers?

5 A Not at that -- when I'm not hearing anything,
6 no, ma'am But I did hear some faint screaming in the
7 background within a few seconds, I guess I
8 dispatched over the radio that I had a female
9 screaming faintly in the background

10 Q When you say faintly in the background, what
11 do you mean by that?

12 A She was no longer up to the telephone She
13 was faintly in the background like she was in another
14 room or at a distance

15 Q Okay Now after you heard the faint
16 screaming, what's the next thing that you remember
17 hearing?

18 A Uh, I heard her screaming She screamed for
19 -- well, she screamed for a minute or so Then I
20 heard an officer enter

21 Q Okay Do you know what officer entered
22 first?

23 A Yes, ma'am It's going to be unit patrol 132
24 which at the time was J Hoke

25 Q Okay Do you know what time he got there?

1 **A** I could tell you from the call card, but I
2 don't remember what time he got there I did log it,
3 but they were on the scene

4 **Q** Okay After units got into the house ---

5 **A** Yes, ma'am

6 **Q** --- did you do anything else after that?

7 **A** Well, I heard the officer, uh, talking He
8 said get down, get down, get down, get down on the
9 floor

10 **Q** Now, once the officers were there -- after
11 the call was completed, did you do anything, uh,
12 regarding this case after you were done dispatching
13 and done talking to people on the phone? Did you do
14 anything?

15 **A** Well, I talked -- because it happened
16 suddenly, I typed in all the stuff that I could
17 recollect onto the call card We notified the people
18 we needed to notify when we were told

19 **Q** Okay Are these phone calls that come in,
20 are they generally recorded on audio?

21 **A** Yes, ma'am

22 **Q** Okay Did you try to recover it in this
23 case?

24 **A** I did When I found out that I had
25 dispatched it under a larceny and not a 10-82, I went

1 back to listen to the radio because the radio records
2 separately And the 911 and the regular telephones
3 that come in, they also record, you know, they record
4 separately from a different machine

5 Q Okay

6 A And when I went to go listen to the 911 call
7 directly, it didn't have anything on it at all

8 Q Okay Now, when you heard that, uh, who did
9 you call?

10 A I called my supervisor

11 Q And who was that?

12 A She's not a direct supervisor but her name is
13 Shay Boggs

14 Q Okay I have nothing further at this time,
15 Your Honor

16 THE COURT Mr DeJong, you may cross-
17 examine the witness

18 MR DEJONG Thank you, Your Honor May it
19 please the Court

20 CROSS-EXAMINATION

21 BY MR DEJONG

22 Q So you went to work on February the 13th of
23 '09 at what time?

24 A I got there about 8 45

25 Q 8 45 Signed in and you sit down at your

1 station, right?

2 **A** Yes, sir

3 **Q** All right Now, this call came in You
4 still have those papers?

5 **A** No, sir She's got them

6 **MS MUNSON** Your Honor, I don't object if
7 Mr DeJong wants to introduce those

8 **MR DEJONG** I don't want to introduce them
9 I just want to see what you were using to refresh
10 her memory on

11 **THE COURT** Yes, sir

12 **BY MR DEJONG**

13 **Q** Ad if you need them again, I will be more
14 than happy to let you see them You say this call
15 came in at 20 57

16 **A** Yes, sir

17 **Q** Do you need to see it? I'm sorry

18 **A** No, sir I don't

19 **Q** All right Now, obviously, other than what
20 you have testified to, you don't know what happened or
21 what was going on prior to this call coming in, do
22 you?

23 **A** No

24 **Q** All right Now, I am curious about one
25 thing You sent the call out, as I gather, as a code

1 10-72, right?

2 **A** Yes, sir

3 **Q** That is a larceny, right?

4 **A** Yes, sir

5 **Q** And it was a 10-72, 10-59, I believe, right?

6 **A** Yes, sir

7 **Q** 10-59 being a weapon?

8 **A** Yes, sir

9 **Q** Well, the reason you didn't get the 911 tape,
10 is that because you sent it out as a 10-72?

11 **A** No, sir Uh, all the phone calls, even the
12 local non-911 phone calls are recorded that come in
13 and the 911 are recorded From what I understand,
14 something was wrong with the equipment prior to my
15 arrival that evening and I wasn't aware about it until
16 after the fact

17 **Q** Well, you said there were two different
18 recording devices that record these transactions,
19 right? One is 911 and one is the radio, right?

20 **A** One is 911 and local phone calls

21 **Q** Okay So in this case, was the equipment
22 recording radio conversations, communications, was it
23 faulty too?

24 **A** Well, when I went to retrieve the radio
25 transmission, I didn't hear the radio transmission

1 either

2 Q The equipment wasn't faulty, was it?

3 A Evidently both were

4 Q All right

5 A As far as dispatch

6 Q On February the 13th of 2009, Clemson City
7 Police Department had faulty equipment as to 911 and
8 faulty equipment as to recording police
9 communications, right?

10 A Yes, sir

11 Q Okay So now, without those recordings, we
12 are left with your perceptions of what you heard that
13 night, right?

14 A Yes, sir

15 Q All right And that's what we are hearing is
16 your perception?

17 A What I heard, yes, sir

18 Q Yes, ma'am And in your testimony, at one
19 point in time, you said screaming At another point
20 in time, you said hollering I know the English
21 language is fascinating, but there is a difference
22 between screaming and hollering

23 A Yes

24 Q Would you agree with that?

25 A Yes, sir

1 Q All right Now, if I understood you
2 correctly, you were hearing hollering in the
3 background, right?

4 A Yes, sir

5 Q Well, when you say you heard that hollering
6 in the background, uh, -- let me back up a little bit
7 When you say the call came in, the person you say you
8 were speaking to, was her voice distinct?

9 A Yes

10 Q Was it as though they were holding the
11 telephone?

12 A Yes

13 Q Then, at some point in time, it becomes
14 basically indistinct, right?

15 A Yes

16 Q As though somebody had put the telephone
17 down, right?

18 A Yes

19 Q All right Well, at any point in time, did
20 anyone, based on what you could hear, become as clear
21 as when the call first came in?

22 A Uh, when she -- when I heard her hollering
23 which is -- she was loud, very loud and I could hear
24 her place the phone actually down, like it fell
25 against something and that's when -- well, I asked her

1 to calm down Of course, she was hollering very
2 loudly I could hear the phone drop to some degree
3 There was nothing in the background

4 Q Let me ask you this, ma'am You could hear
5 the phone drop or you could hear the caller's voice
6 becoming more indistinct and you could not hear?

7 A I could not hear -- she was loud and then I
8 tried to talk to her and tell her to calm down, that I
9 had units coming that way, then she became more
10 indistinct

11 Q All right Then after some time, you heard
12 silence, right?

13 A Yes, sir

14 Q The, uh, -- may I see those papers one more
15 time? Now, what I'm looking at here, ma'am, appears
16 to be four pieces of paper Is that what you say is
17 the record of the 911 call?

18 A It's a record of the communications, uh, the
19 types, uh, the typing of me and another unit, which is
20 another dispatcher as we are on the call in the
21 computer

22 Q All right If you will look at that, you say
23 the time the call came in was February the 13th, 2009,
24 20 57, 8 57 in the nighttime All right

25 A Yes, the call came in at 20 57

1 Q Then you go down There is a line that goes
2 all the way across You go down 2/13/2009 at 20 58,
3 you have male with gun threats, right?

4 A Yes, sir

5 Q Now, if you go, I believe, to the second page
6 of that, uh, next to the last entry there, 2/13/2009,
7 21 13

8 A Yes

9 Q That's when you, I gather, type in what the
10 conversation was about, right?

11 A Yes, sir

12 Q Now, between 20 -- 20 57, 8 57 and 21 13,
13 that's roughly 15 minutes, right?

14 A Yes, sir

15 Q And in that 15 minutes, there is a certain
16 amount of confusion, right?

17 A Not really confusion

18 Q Well, you are directing officers on the
19 dispatch, aren't you?

20 A Yes, sir

21 Q How many officers are you directing?

22 A At that time, I think we had three or four on
23 duty

24 Q All right The officer that was in the area,
25 you dispatched him?

1 A Yes, sir

2 Q And you are talking back and forth to those
3 officers, right?

4 A Yes, sir

5 Q Part of your job is to keep the officers, as
6 you put it, advised as to what is going on, right?

7 A Yes, sir

8 Q So you are doing that, I gather, for 15
9 minutes, correct?

10 A Yes, sir

11 Q Then 15 minutes after the fact, after you get
12 the call, after you directing these officers, 15
13 minutes later you type in your perception of what the
14 call was

15 A Yes, I type in what I heard What was going
16 on

17 Q Without -- again, with no tape?

18 A No, sir I didn't know there was no tape

19 Q Now, when this dispatch came in or this call
20 came in, were you the sole and single dispatcher with
21 regard to that call?

22 A No, sir

23 Q All right Who else would have been
24 dispatched?

25 A Dara Murray

1 Q I'm sorry?

2 A Dara Murray

3 Q Well, now is she doing the same thing you're
4 doing? Let me back up on this Do you tell her what
5 kind of call was coming in?

6 A Uh, yes, sir

7 Q All right So then from 20 57 to 21 13,
8 there's some conversation between you and this other
9 dispatcher of what the call was all about, right?

10 A In the beginning, yes, sir

11 Q I'm sorry

12 A In the beginning, yes, sir

13 Q Right Okay Now, you are talking to
14 officers on the radio, correct?

15 A Yes, sir

16 Q She's talking to officers on the radio All
17 this is going on at the same time for 15 minutes

18 A Well, she's listening She didn't actually
19 talk to anyone on the radio

20 Q Okay

21 A But she's assisting me because it was my
22 call

23 Q She's not talking to officers?

24 A No, sir

25 Q She's not on the telephone?

1 A She is on the telephone As we go along,
2 assisting me with what the officers are needing, where
3 they are at, to come out and who needs to be called

4 Q All right So you say the call came in at
5 20 57?

6 A Yes, sir

7 Q You dispatched a 10-72 larceny?

8 A Yes, sir

9 Q Now, the final thing that I understand that
10 you heard was the officer -- I believe you referred to
11 it as an officer entered, is that correct?

12 A I heard it, yes, sir

13 Q What time was that?

14 A I couldn't recollect what time it was I did
15 put it on the call card

16 Q All right You need the call card back
17 again?

18 A Yes, sir

19 Q Alrighty

20 A When I make an entry, it stamps it

21 Q We'll come back to that in a moment, okay?

22 A Yes, sir

23 Q What time was the entry?

24 A Uh, ---

25 Q When I say what time was the entry, I mean

1 what time was the officer's entry

2 **A** It says subject was on the ground and
3 ambulance was requested at this time That was at
4 21 01

5 **Q** 21 01 So there was an officer you
6 dispatched somewhere between 20 57 and 20 58, right?

7 **A** Yes

8 **Q** There was an officer there at 21 01?

9 **A** That's what it says

10 **Q** All right So from the time you say you got
11 the call from the officer getting there would have
12 been two to three minutes, right?

13 **A** Yes, sir

14 **Q** And once that officer made entry, you cut the
15 911 off?

16 **A** No, uh, I held on for a minute to make sure
17 everything was okay When I heard everything was
18 okay, that's when I hung up

19 **Q** All right

20 **MR DEJONG** May I have one moment please,
21 Your Honor?

22 **THE COURT** Yes, sir

23 (WHEREUPON, there is a pause)

24 **BY MR DEJONG**

25 **Q** Who was that that was assisting you?

1 **A** Her name is Dara Murray

2 **Q** Dara Murray?

3 **A** Dara Murray

4 **Q** Thank you, ma'am I have no further
5 questions

6 **THE COURT** Any redirect?

7 **MS MUNSON** Yes, Your Honor

8 **REDIRECT EXAMINATION**

9 **BY MS MUNSON**

10 **Q** Mrs Gasque, uh, what's the difference
11 between a scream and a holler?

12 **A** Well, it's basically the same to me, but it's
13 different, I guess Uh, she was hollering She was
14 screaming on the phone Hollering, I say -- when I
15 say hollering, I mean it was louder, I guess

16 **Q** Okay

17 **A** I could hear it closer

18 **Q** Now, Mr DeJong referred to confusion

19 **MR DEJONG** I'm sorry

20 **MS MUNSON** That's okay

21 **BY MS MUNSON**

22 **Q** Uh, when he was questioning you, he talked
23 about confusion Were you confused while you were
24 doing your job?

25 **A** No, I was not confused while I was doing my

1 job

2 Q How would you describe the job in terms of
3 hectic or calm?

4 A At that moment?

5 Q In general

6 A In general? It's a good job It's, it's
7 different because you do have 911 and then you do have
8 local phone calls which don't come in as emergencies
9 that may be an emergency that's on a local line

10 Q Okay Sometimes there's more to do than
11 others?

12 A Yes, ma'am

13 Q Now, the voice that -- obviously the one that
14 was talking to you was a female The screaming and
15 hollering voice, could you tell whether or not that
16 was male or female?

17 A Yes, ma'am

18 Q Which was it?

19 A It was a female

20 Q All right Now, how many calls like this
21 have you handled?

22 A Uh, ---

23 MR DEJONG Your Honor, I'm going to object
24 to that on grounds of relevance

25 MS MUNSON Your Honor, Mr DeJong has

1 attacked her credibility saying that ---

2 **THE COURT** I overrule the objection

3 **MS MUNSON** Thank you

4 **BY MS MUNSON**

5 **Q** How many calls like this have you had before
6 February 13, '09?

7 **A** None

8 **Q** How many have you had after that?

9 **A** None

10 **MS MUNSON** I have nothing further, Your
11 Honor

12 **MR DEJONG** Nothing on recross

13 **THE COURT** All right Thank you, ma'am
14 You may step down

15 **MR DEJONG** No objection to her being
16 excused

17 **MS MUNSON** Your Honor, the State calls
18 Sharon Boggs

19 **SHARON BOGGS**

20 having first been sworn, testifies as follows

21 **THE CLERK** If you would, have a seat State
22 your name for the record please

23 **THE WITNESS** My name is ---

24 **MR DEJONG** Your Honor, I -- I'm sorry Go
25 ahead, ma'am

1 **THE WITNESS** That's okay My name is Shay
2 Boggs

3 **MR DEJONG** May we approach?

4 **THE COURT** Yes, sir

5 **MR DEJONG** I apologize

6 (WHEREUPON, a bench conference is held off the
7 record)

8 **THE COURT** They just need to slide their
9 table over They can't see

10 **MR DEJONG** Madam Court Reporter, if I
11 slide this table over, will that mess with this?

12 **COURT REPORTER** I don't think so, John I
13 think it will pull it

14 **THE COURT** All right I'll tell you what,
15 Mr DeJong, we'll take a break in a minute
16 Let's get this witness, then we will take a
17 break

18 **MR DEJONG** Maybe after this witness
19 testifies, if we could do that

20 **THE COURT** All right

21 **MR DEJONG** Thank you, Your Honor

22 **DIRECT EXAMINATION**

23 **BY MS MUNSON**

24 **Q** All right Who do you work for, ma'am?

25 **A** I work for Clemson Police Department

1 Q How long have you been with them?

2 A 15 years

3 Q What are your duties?

4 A I'm responsible for the dispatch and the jail
5 functions

6 Q Okay Uh, how long have you had dispatch
7 functions?

8 A 15 years

9 Q Okay What is your job title?

10 A Communications Supervisor

11 Q All right What are your duties as the
12 Communications Supervisor?

13 A Just to make sure that day-to-day operations
14 and dispatch functions smoothly, that dispatchers are
15 aware of what they are supposed to be doing per their
16 jobs, per the training that they have had and then for
17 the jail, same thing

18 Q Okay How familiar are you with the
19 equipment used in the 911 and dispatch area?

20 A Pretty familiar I been there since it's
21 been installed

22 Q Okay And when was that?

23 A Uh, it's been about five or six years We've
24 had that equipment at least five years

25 Q All right The system that was installed

1 five years ago, how does that compare with the one
2 that you have now?

3 **A** It's the same system

4 **Q** Okay

5 **A** Same system

6 **Q** Now, did you get a call in reference to this
7 case?

8 **A** I did

9 **Q** Were you on duty?

10 **A** No, ma'am I was at home

11 **Q** You know about what time you got a call?

12 **A** 9 30, 10 o'clock I want to say somewhere in
13 that neighborhood

14 **Q** Okay Who called you?

15 **A** Actually it was the other dispatcher who was
16 on duty with Mrs Gasque

17 **Q** Okay After talking with the other
18 dispatcher, what did you do?

19 **A** I reported straight into work I was told to
20 come in

21 **Q** Okay How long did it take you to get there?

22 **A** Ten minutes at max

23 **Q** All right When you got there, what did you
24 do?

25 **A** I was told to pull the recordings from the

1 phone call that Mrs Gasque had received

2 Q Okay Did you ---

3 A I immediately went to the system to pull that
4 phone call

5 Q When you say you went to the system, where
6 was it in relation to where the dispatchers sit?

7 A There is a separating wall much like this
8 wall here in front of the jury except it is a full
9 wall I just have to walk around behind that wall

10 Q Okay And what did you do when you got
11 around behind the wall?

12 A Went straight to the recording system and
13 began to pull up the phone call

14 Q Okay How is it recorded?

15 A It's a digital recording system

16 Q Okay

17 A It's much like a regular laptop or
18 correction, a desktop PC

19 Q And when you went around there to try to
20 retrieve the call that Mrs Gasque got, what did you
21 find?

22 A I immediately noticed that the system was
23 completely turned off

24 Q Okay Do you know how that happened?

25 A I have my theory on it, because of power

1 surges from recent storms that we had had that it shut
2 down

3 Q All right Had that ever happened before?

4 A Yes, ma'am

5 Q What else besides the -- how recent was the
6 storm that may have caused this problem?

7 A I believe it ---

8 MR DEJONG Your Honor, I'm going to object
9 to this may stuff

10 THE COURT All right I'll sustain the
11 objection as the question is asked

12 BY MS MUNSON

13 Q How -- had you had a storm prior to this call
14 on February the 13th?

15 A Yes, ma'am

16 Q And when was that?

17 A Yes, ma'am It was within that 24-hour time
18 period

19 Q Okay What kind of a storm?

20 A My understanding is thunderstorm

21 Q Okay

22 A Just a regular natural thunderstorm

23 Q Now, when you've had thunderstorms like that
24 in the past, how, if at all, does it affect the
25 equipment at the police department?

1 **A** When we have power surges that come through,
2 that is what affects our equipment because the
3 equipment blinks with each power surge After several
4 blinks, that recording system goes into a safe mode,
5 what's called safe mode

6 **Q** What does the blinking indicate?

7 **A** That we've had a power surge come through
8 We lost temporary power for a few seconds and then
9 power was immediately restored

10 **Q** What is safe mode?

11 **A** Safe mode is a function the system is
12 equipped with so it will protect the motherboard of
13 the computer system so that it will not fail

14 **Q** Okay The dispatchers that you supervise,
15 what type of access did they have to, uh, the
16 recording and things of that nature that you went back
17 to behind the wall to look at?

18 **A** They have same access that I do It is an
19 open doorway

20 **Q** Okay

21 **A** However, they have not had any training on
22 that system at all

23 **Q** So when a call needs to be retrieved, who is
24 the one who has to do it?

25 **A** It's either myself or one of the captains

1 Q Okay As far as the system being off and on,
2 how does it get turned off and on?

3 A In this case, when the power was off, it was
4 a failure of that system with the power surges that
5 came through when the computer went into safe mode
6 The UPS which is the battery back up for it that is
7 supposed to power it with no power failed at the same
8 time Therefore, it had nothing else to rely on for
9 power

10 Q Okay Now, were you able to correct that
11 problem?

12 A Not at that time We had to purchase a new
13 battery back up

14 Q And has that been done?

15 A Yes, ma'am It was done the very next
16 morning

17 MS MUNSON Okay I have nothing further,
18 Your Honor

19 THE COURT You may cross-examine the
20 witness

21 MR DEJONG Thank you, Your Honor May it
22 please the Court

23 CROSS-EXAMINATION

24 BY MR DEJONG

25 Q Recording these 911 calls are fairly

1 important, aren't they, ma'am?

2 A Yes, sir Yes, sir It is

3 Q And that equipment had been installed five
4 years ago?

5 A Yes, sir

6 Q Five years prior to February the 13th, 2009?

7 A Uh-huh

8 Q Over those five years, you had thunderstorms
9 before, haven't you?

10 A Yes, sir

11 Q Over those five years, thunderstorms have
12 knocked out equipment?

13 A Yes, sir

14 Q On more than one occasion?

15 A Yes, sir

16 Q So your equipment going down after a
17 thunderstorm was not particularly an unusual
18 phenomenon, was it?

19 A No, sir

20 Q Now, you get called to come in to work on
21 February the 13th of 2009 I believe you said roughly
22 9 30, right?

23 A Somewhere in that neighborhood, yes, sir

24 Q All right Now, you also testified, if I
25 understood you correctly that you were the

1 communications supervisor

2 **A** Yes, sir

3 **Q** And as such, it would be your responsibility,
4 I would gather, to certainly make sure it is working
5 and running

6 **A** Yes, sir

7 **Q** So if I understand you correctly, that
8 equipment may not have been working for some 23 hours

9 **A** It is possible

10 **Q** Right So there is a thunderstorm and nobody
11 bothers to check the equipment

12 **A** Yes, sir

13 **Q** Correct? Until after you go looking for
14 something, right?

15 **A** Yes, sir

16 **Q** And, uh, you got at 9 30 on February the 13th
17 of 2009 When did you leave prior to that?

18 **A** Around six o'clock, 5 30 or six o'clock

19 **Q** On Friday evening?

20 **A** Uh-huh

21 **Q** I mean -- I said Friday evening I'm sorry
22 I don't know that it was Friday

23 **A** That day

24 **Q** The 13th?

25 **A** Yes, sir

1 Q So at that point in time, the thunderstorm
2 could have been, uh, 18 hours in the past, correct?

3 A Yes, sir It could have

4 Q All right You didn't check the equipment?

5 A When I left, the equipment was functioning
6 correctly when I left

7 Q How many captains are on duty around there?

8 A At that time of day, none at the police
9 department

10 Q Okay So when I understand then, on February
11 the 13th of 2009 at 8 57 in the evening, there wasn't
12 a soul in the police department that had training on
13 this equipment?

14 A Yes, sir

15 Q Thank you, ma'am No further questions

16 THE COURT Redirect

17 REDIRECT EXAMINATION

18 BY MS MUNSON

19 Q Mrs Boggs, explain the battery backup that
20 failed

21 A Okay

22 Q How many times has that happened before?

23 A It has happened a few times We have
24 replaced that battery backup at least twice

25 Q Okay How do you know when it goes down?

1 **A** It alarms

2 **Q** Okay

3 **A** There is an alarm on it

4 **Q** Is it like a -- what does the alarm sound
5 like?

6 **A** It's just a beep and then a few minutes later
7 you will hear beep

8 **MS MUNSON** Okay And -- I have nothing
9 further, Your Honor

10 **THE COURT** Okay

11 **MR DEJONG** Nothing on recross, Your Honor

12 **THE COURT** Thank you You may step down

13 **THE WITNESS** All right Thank you

14 **MR DEJONG** No objection to her being
15 excused, Your Honor

16 **THE COURT** Ladies and Gentlemen, I'm going
17 to let you go back to your jury room just for a
18 short break We'll take about a 10-minute break
19 When you come back, uh, you may like where you
20 are sitting A lot of us get used to a seat and
21 you want to sit there Some of you may want to
22 move around and sit on one end or the other or
23 the front or the back

24 Mr Gregg, I'm going to ask you to be the
25 foreperson of the jury If you will occupy the

1 seat on the front row closest to the witness
2 stand here

3 The last two jurors who were called, uh, I
4 believe the last two that came out, Mr Connelly
5 and Mrs Franklin, you will need to occupy the
6 two seats on the back Y'all will be the
7 alternates Y'all are every bit as much a part
8 of this trial as anyone else because you are
9 picked in case some unforeseen circumstance
10 happens with the first 12 that were selected, an
11 illness befell someone, let's hope that doesn't
12 happen, or an emergency happens, then you will
13 step into their places

14 Except for those three, they will occupy the
15 two back seats on the back row, Mr Gregg on the
16 front seat, the rest of you can sit anyplace you
17 want What the foreperson does is, uh, more or
18 less be the liaison with the court While you
19 are back in the jury room, you may have a special
20 need Some of you may need to make an emergency
21 call to check on a child or whatever it may be
22 You may need the temperature adjusted or need to
23 ask the clerk to help you with something that
24 way, snacks or whatever it may be You may have
25 a question of the Court

1 The foreperson would be the one on behalf of
2 the fellow jurors to write that question out and
3 sign his name and give it to the bailiffs and
4 whoever needs to can take care of that matter for
5 you Sometimes exhibits are offered into
6 evidence Sometimes they are presented and
7 passed around to the jury Sometimes not But
8 if they are, the foreperson would be the one that
9 would be handed those exhibits to look at it and
10 pass it around to everyone else

11 The foreperson would be the one that
12 ultimately when all the evidence is in, you are
13 ready to begin your deliberations, he will make
14 sure that everyone has their say, that everyone
15 has an opportunity to express their opinion about
16 the facts of the case so that a unanimous verdict
17 can be reached and would write out the verdict
18 form for the court He will be sort of the
19 liaison for the court

20 If there are some questions you have or needs
21 you have while back there, Mr Evans here today,
22 you didn't get to meet all these people Friday
23 I think we have different bailiffs Mr Evans
24 and Mr Henry are here to help you Mr Teal is
25 back there on the door They'll help you any way

1 they can We'll take a short break to give you
2 time to refresh yourself We'll be back in about
3 10 minutes You may go back to your jury room
4 (WHEREUPON, the jury exits at approximately
5 10 21 a m)

6 **THE COURT** All right Mr DeJong, at the
7 bench, your client was having a hard time seeing
8 the witness seat Obviously, there's folks got
9 to be working here, the clerk and the Court
10 Reporter for sure But make whatever adjustments
11 you need, within reason, to move your table
12 We'll see if we can help with the visibility of
13 the witness

14 (WHEREUPON, a short recess is taken)

15 (WHEREUPON, Court Exhibit 1 is marked for
16 identification purposes)

17 **THE COURT** If they are ready, if they are
18 ready, we'll have them back

19 (WHEREUPON, the jury enters at approximately
20 10 38 a m)

21 **THE COURT** We'll get that taken care of I'm
22 sure Another note from the jury about the
23 squeaky chairs We're going to take care of
24 them

25 **MR DEJONG** I'm sorry, Your Honor

1 **THE COURT** Another note from the jurors
2 about the squeaky chairs We're going to see if
3 we can take care of that over lunch time

4 Solicitor, you may call your next witness

5 **MS MUNSON** Thank you, Your Honor The
6 State calls Jay Hogue

7 **JAY HOGUE**
8 having first been sworn, testifies as follows

9 **THE CLERK** If you would, have a seat and
10 state your name for the record please

11 **THE WITNESS** Jay Hogue of the Clemson
12 Police Department

13 **DIRECT EXAMINATION**

14 **BY MS MUNSON**

15 **Q** How long have you been with the Clemson P D ?

16 **A** A little over two years now

17 **Q** Okay Did you have any law enforcement
18 experience prior to that?

19 **A** Yes, ma'am I got hired August 4th, 2000, so
20 a little over nine years now

21 **Q** Okay Where did you work before the Clemson
22 P D ?

23 **A** Anderson County Sheriff's Office for
24 approximately two and a half years and Clemson
25 University Police Department for four years

1 Q What is your job title at the Clemson City
2 Police Department?

3 A Road patrol officer

4 Q What are your duties?

5 A To answer calls for service, pretty much any
6 type of calls for service that comes into the police
7 department Any kind of complaints

8 Q Okay

9 A And so forth

10 Q All right So you with the Clemson Police
11 Department in February of '09?

12 A Yes, ma'am

13 Q And did you get a call that referenced this
14 case?

15 A Yes, ma'am I did

16 Q Or hear a call?

17 A Yes, ma'am

18 Q Okay Uh, what date?

19 A It was February 13th, 2009

20 Q Do you know what time you heard the call?

21 A I believe the first call came in at 8 57 p m
22 if I'm not mistaken

23 Q Where were you when you got this call?

24 A We were at briefing Our briefing for third
25 shift is at nine o'clock so we was actually at

1 briefing at the police department

2 Q Nine o'clock at night?

3 A Yes, ma'am

4 Q How did you hear this call or get this call?

5 A Over the radio Our dispatcher informs us
6 over the radio We carry mobile units that are
7 connected to our side

8 Q Okay So who was that call directed?

9 A I believe it was originally for Mike Arflin

10 Q Okay What type call was it?

11 A It came out as a 10-72 which is a larceny
12 call with a male subject armed with a weapon of some
13 sort

14 Q Okay When you heard that call, what did you
15 do?

16 A Uh, several of us within the police
17 department left the police department at the same time
18 in the back lot of the police department and went to
19 209 Maple Boulevard which is where the complainant was
20 calling from

21 Q How did you get there?

22 A We ran blue light and siren

23 Q Okay How many of you went?

24 A There were -- I know of at least two behind
25 me Three total, I saw in my rearview mirror coming

1 up at the same time

2 Q All right How fast did it -- how quickly
3 did you get there?

4 A Approximately two minutes Maybe a little
5 less than two minutes

6 Q Okay Was anybody in your car with you?

7 A No, ma'am I was by myself

8 Q All right And the other cars?

9 A I believe everybody were by their self that
10 evening

11 Q Okay What address did you go to?

12 A 209 Maple Boulevard

13 Q In what city is that?

14 A It's in the city limits of Pickens

15 Q In what county?

16 A In Pickens County

17 Q When you got there, where did you park?

18 A I actually pulled directly into their
19 driveway, the resident's drive at 209 Maple Boulevard
20 My vehicle angled towards the residence, the front
21 door of their residence

22 Q All right How quickly did the other
23 officers get there?

24 A They were simultaneous We got there exactly
25 at the same time

1 Q Once you got out of your car, what did you
2 do?

3 A I drew my service weapon and proceeded
4 towards the front door due to the fact that there was
5 a subject inside with a gun, we came armed

6 Q Okay Now, when you got there, were there
7 any other emergency vehicles there at that time?

8 A No, ma'am

9 Q All right So when you pulled your gun,
10 where did you go?

11 A I went to the front door

12 Q Okay Did anybody go to the front door with
13 you?

14 A Uh, I didn't -- I believe Officer Taylor went
15 to the front door with me I didn't see him at the
16 time at the front door with me I saw later after
17 that incident both officers, Mike Arflin and Blake
18 Arflin, went to the rear of the residence

19 Q Okay As you were approaching the house, did
20 you notice anything?

21 A I went to the residence I originally went
22 behind their vehicle that was parked in the driveway
23 and proceeded toward the front door, clearing the
24 windows and got to the front door Then I checked the
25 door handle to see if it was locked when I first

1 arrived at the front door and it was unlocked

2 Q It was unlocked?

3 A Yes, ma'am

4 Q All right Once you got to the door and it
5 was unlocked, what did you do?

6 A It got opened by, later I found out, Mr
7 Wylie

8 Q Okay

9 A It got opened As he opened it up, I never
10 actually opened the residence I just checked the
11 door handle to see if it was locked He actually
12 opened up as I was checking it Opened it up and I
13 saw the body

14 Q As the door was opening, where were you?

15 A I was directly in front of the front door at
16 the threshold of it on the right to the side

17 Q How far open did the door come?

18 A Uh, a little more than halfway He had to
19 pull it open to get it to open due to the victim's
20 legs blocking the door

21 Q What was the lighting like inside the house?

22 A Uh, I don't recall any type of lighting other
23 than possibly my headlights coming inside from my
24 patrol vehicle coming inside There might have been
25 some interior lights I could see him clear as day as

1 I was standing in front of him talking to him at the
2 threshold

3 Q Okay Whenever the door was opened, you say
4 Mr Wylie, who are you talking about?

5 A The Defendant, Clifford Wylie

6 Q Okay Can you describe the piece of clothing
7 he is wearing and where he is sitting for the record

8 A He is sitting beside Mr DeJong at the
9 defense table with a stripe button up shirt

10 Q Okay

11 A Clean shaven

12 Q Thank you, Officer Hogue Now, when he
13 opened the door, did he say anything to you as he
14 opened the door?

15 A As he opened the door, he said somebody dial
16 911

17 Q Okay And what did you say back to him?

18 A I believe I said I am 911

19 Q Okay At this point, where are you standing?

20 A I'm still outside at the threshold of the
21 front door

22 Q You are armed?

23 A Yes, sir I have a weapon in hand Not
24 pointing at him but in hand

25 Q Okay Now, what did you say to him next?

1 **A** I asked him -- I looked down, I could see
2 plain view a body right at the threshold of the door
3 I asked him where is the shooter

4 **Q** Where is?

5 **A** Where is the shooter

6 **Q** Okay And when you said to the Defendant
7 where is the shooter, what did he say?

8 **A** He said I am

9 **Q** He said I am?

10 **A** Yes, ma'am

11 **Q** Now once he said that, what did you do first?

12 **A** Immediately told my dispatch that we had a
13 female subject down and we was going to have one
14 detained or in custody

15 **Q** Okay And then when you are talking to
16 dispatch and saying one down and one in custody, where
17 were you?

18 **A** I'm still outside at the front door I was
19 still waiting for another unit to come to me because
20 -- before we made entry together I didn't want to
21 enter the residence by myself

22 **Q** Why didn't you want to do that?

23 **A** For officer safety reasons We -- especially
24 he still possibly had a weapon on him

25 **Q** Okay Now, who went in with you?

1 **A** Officer Arflin is the one I saw directly
2 beside me also Officer Blake Arflin Officer Mike
3 Arflin went in beside me We went in together Blake
4 Arflin came in behind us Officer Taylor came in
5 right behind him

6 **Q** Okay Once you got inside the residence,
7 what did you do?

8 **A** We ordered the Defendant to the ground He
9 claimed he had a bad back At that point, we still
10 forced him to the ground so we were able to control
11 him a little better We got him on the ground, got
12 him handcuffed and begin to try to search his person
13 as best as possible

14 **Q** Okay He wasn't fighting you, was he?

15 **A** No, ma'am He wasn't fighting us He just
16 claim he had a bad back

17 **Q** Okay Now, once you got in the residence and
18 had him contained, what did you do?

19 **A** I asked him -- before I searched his person,
20 I asked him where is the gun

21 **Q** Had you given him his Miranda rights at that
22 point?

23 **A** No, ma'am I had not

24 **Q** Okay Why did you ask him where's the gun?

25 **A** For officer safety and for residents that's

1 still inside, anybody that's still inside that
2 residence at that point

3 Q Okay When you went in, what did you know
4 about who was in the house?

5 A Only thing we knew at the time was there was
6 a male subject inside with a firearm and a female
7 subject that had, was screaming or had faint screaming
8 coming through the phone

9 Q Okay When you asked the Defendant where's
10 the gun, what did he say to you?

11 A He said in or near a box in the living room
12 which was to my right A living room near to the bed
13 and window in the living room area

14 Q Okay And when he said in the box near the
15 bed, were you able to see anything like that?

16 A Yes, ma'am Clear from where my line of
17 sight was, I could see the window and the box, or the
18 window and the bed he was talking about I never saw
19 the box

20 Q Okay Now once you got him detained, did you
21 find anybody else in the house?

22 A Yes, ma'am He -- well, as we took him down
23 to the ground, he begin asking about his son

24 Q Who is he?

25 A Uh, an eight-year-old child named child

1 Wyllie At the time, he was eight years old

2 Q No, who begin asking about him?

3 A The Defendant, Mr Wyllie

4 Q And he begin asking about his son

5 A Yes, ma'am

6 Q And did you see anybody in the house?

7 A When he begin asking, I looked to my left

8 There's a hallway that goes straight down I looked
9 to my left and I could see a young child at the
10 threshold, standing at the threshold of a bedroom with
11 the interior light on inside that bedroom

12 Q Okay What did you do when you saw that
13 child inside the bedroom?

14 A I asked him to go back inside his room and
15 wait for us to get there, for his safety

16 Q And what did he do?

17 A He did just as I said

18 Q All right Once the child went back in the
19 bedroom, what did you do?

20 A Uh, we begin, I begin trying to get people,
21 to make sure they stayed clear of the residence and
22 begin trying to get other units to come around to the
23 back door since the victim was at the front door Get
24 Mr Wyllie out of the residence

25 Q Okay Why did you take him out the back

1 door?

2 A The body was directly at the front door We
3 didn't want to do any kind of crime scene
4 contamination if at all possible

5 Q All right Once you got -- first of all, who
6 took the Defendant out of the residence?

7 A Officer Blake Arflin and I believe it was
8 Officer Taylor that went out with him if I'm not
9 mistaken

10 Q Okay And then what did you do?

11 A I went to attend to the child in the back
12 bedroom

13 Q All right When you approached the bedroom,
14 was the door open or shut?

15 A It was open, wide open

16 Q All right Where was the child?

17 A He was still in the bedroom standing right
18 next to his bed

19 Q Okay And what did you do with the child?

20 A I begin -- he was obviously a little bit on
21 the emotional side He was asking about his mother
22 He was asking about his mother

23 Q Okay

24 A And I began to walk him out towards the
25 hallway so I could take him out the back door

1 Q Okay How long did you stay in the door --
2 in the bedroom with him?

3 A Not long at all I would say no more than
4 probably eight seconds guesstimating

5 Q And you took him out of the residence?

6 A Yes, ma'am

7 Q How did you get him out?

8 A We were walking from his bedroom down the
9 hallway If you take a left at the end of the
10 hallway, there's a sliding glass door at the rear of
11 the residence that's directly in front of the front
12 door I was trying to block his view of his mother
13 and take him out the backdoor

14 Q Okay The child was able to identify who,
15 how he was related to the adults in the house?

16 A Yes, ma'am He said my -- he kept referring
17 to his mother or his mama

18 Q Did he tell you how old he was?

19 A No, ma'am I don't believe he ever actually
20 mentioned his age until I later identified it

21 Q Okay Now, let me show you what's been
22 marked as State's Exhibit 1 if you could take a look
23 at that please

24 A Yes, ma'am It's my in-car video tape from
25 my patrol vehicle

1 Q And have you looked at that?

2 A Yes, ma'am

3 Q When is the last time you looked at it?

4 A This morning

5 Q Okay Is it a true and accurate depiction of
6 your trip there and what went on while you were at the
7 house?

8 A Exactly what happened

9 Q Okay Now, you say your in-car video,
10 explain to the jury what that means

11 A Every patrol car, road unit patrol car, we
12 have a mobile vision camera system mounted on our
13 windshield, above our windshield with a mic system
14 that's clips to our belts that records Once the blue
15 lights are activated, it automatically comes on or we
16 can press the record button and the mic will record
17 everything we say and everything that happens directly
18 in front of the vehicle

19 Q Okay Let me show you State's Exhibits 2
20 through 6 It will be 2, 3, 4, 5, and 6 Just take a
21 look at those

22 A Yes, ma'am You want me to describe them?

23 Q If you could just take a look at them

24 A The ---

25 Q Without describing them

1 **A** I'm sorry

2 **Q** Just look at each exhibit

3 **A** (Reviewing)

4 Yes, ma'am

5 **Q** Okay Are these true and accurate depictions
6 of what you saw going up to the house?

7 **A** Yes, ma'am

8 **Q** And once you got in?

9 **A** Yes, ma'am

10 **Q** And the position of the body?

11 **A** Yes, ma'am

12 **Q** Okay

13 **MS MUNSON** Your Honor, I offer State's 2
14 through 6 into evidence

15 **THE COURT** Any objection?

16 **MR DEJONG** May it please the Court, Your
17 Honor, I have no objection to 2 and 3 I do
18 object to 4, 5 and 6, Your Honor

19 **THE COURT** What's your objection?

20 **MR DEJONG** May we approach?

21 **THE COURT** Yes, sir

22 (WHEREUPON, a bench conference is held off the
23 record)

24 **THE COURT** I've viewed the, uh, photographs
25 to which the defense objects I believe under

1 Rule 403, they would be properly admissible
2 I've done the balancing test under the rule
3 I'll allow them in over objection
4 (WHEREUPON, State's Exhibits 2 through 6 are
5 admitted into the record)

6 MS MUNSON Your Honor, I also offer into
7 evidence State's number 1 which is the officer's
8 in-car video

9 MR DEJONG That would be over my objection
10 as ---

11 THE COURT Yes, sir

12 MR DEJONG --- to objections I made last
13 Friday

14 THE COURT Over objection, the exhibit is
15 in evidence

16 (WHEREUPON, State's Exhibit 1 is admitted into the
17 record)

18 BY MS MUNSON

19 Q Officer Hogue, I'm showing you State's
20 Exhibits 7, 8, 9, 10 and 11 if you could take a look
21 at these please

22 A Yes, ma'am (Reviewing)

23 Q Okay Are these exhibits true and accurate
24 depictions of the layout of the house that you went to
25 on February 13th of ---

1 **A** Yes, ma'am They are

2 **Q** --- '09?

3 **MS MUNSON** Your Honor, I offer exhibits 7
4 through 11 into evidence

5 **THE COURT** Any objection to 7 through 11?

6 **MR DEJONG** Without objection, Your Honor

7 **THE COURT** Without objection, they are
8 admitted into evidence

9 **(WHEREUPON, State's Exhibits 7 through 11 are**
10 admitted into the record)

11 **MS MUNSON** Your Honor, at this time, I
12 request permission to publish portions of State's
13 Exhibit 1 that Your Honor has ruled as
14 admissible

15 **THE COURT** You may do so subject to the
16 objection

17 **(WHEREUPON, State's Exhibit 1 is played)**

18 **BY MS MUNSON**

19 **Q** Officer Hogue, whose voice is that with the
20 child?

21 **A** Mine

22 **Q** This is a laser pointer, Officer Hogue Just
23 hit that red button I'm going to ask you things
24 about those photos

25 **A** Yes, ma'am

1 Q All right What we've got up here, Officer
2 Hogue, is what's been admitted into evidence as
3 State's Exhibit 2 Now, if you could, with the laser
4 pointer, show the jury, uh, where on State's Exhibit
5 number 2 that you entered the house

6 A Right there at the front door which is right
7 there

8 Q Okay What is shown in State's Exhibit
9 number 3?

10 A The same front door That was a back view
11 that you saw a moment ago That's the front door
12 right there

13 Q Okay

14 A Where I came in

15 Q All right What do we have in State's
16 Exhibit number 4?

17 A That was my view when I first approached the
18 front door and the door was opened by Mr Wylie, the
19 Defendant, Mr Wylie That's exactly how I saw the
20 victim lying

21 Q Okay Now, in State's number 5, is this from
22 inside or outside the house

23 A That's inside the residence

24 Q Okay And where is the front door on State's
25 Exhibit number 5?

1 A It is right behind where the victim is lying
2 over here

3 Q And where on State's Exhibit number 5 did
4 this Defendant indicate to you that the gun was?

5 A Next to the window in the bed area right
6 here

7 Q What is shown in State's Exhibit number 6?

8 A That is looking directly at the front door
9 with the back door directly to our rear

10 Q Okay So where would you have been standing
11 before entering the house?

12 A At that front door on the outside right
13 there

14 Q All right What is shown here in State's
15 Exhibit number 7?

16 A That is standing right where the first
17 picture was taken or the last one showing the opposite
18 way from the front door and glass door are right clear
19 of each other

20 Q Okay On State's Exhibit number 7, can you
21 see the door that you took child out of the house?

22 A Yes, ma'am Right there The glass --
23 sliding glass door, we exited Went around that table
24 and exited out the back door right there

25 Q Okay Now does that go out onto a -- flat

1 out to the ground or what happens when you go out that
2 door right there?

3 **A** There's a patio or balcony, not a balcony but
4 a patio We had to go down the steps to get to the
5 yard

6 **Q** About how many steps?

7 **A** Uh, probably five, six, seven I never
8 counted them Sorry

9 **Q** Okay How high up off the ground?

10 **A** Approximately four or five feet

11 **Q** Okay Now State's Exhibit number 8, from
12 where is this photo taken?

13 **A** It is taken from the sliding glass door
14 looking directly into the front door where I entered
15 right there

16 **Q** Okay What is this, number 9, show?

17 **A** That is looking from the patio or the outside
18 patio, wood patio, inside towards the front door which
19 is right there

20 **Q** Okay And what does State's Exhibit number
21 11 show?

22 **A** The suspect, when we took the suspect into
23 custody, looking to my left, that is the child's room
24 that I could see him come out of when he began asking
25 about his father, or about his son

1 Q Okay

2 A The child came out of that room and was
3 standing in the hallway right there

4 Q All right And what's shown here in State's
5 Exhibit number 10?

6 A That is the kitchen area The sliding glass
7 door is to our right right here The front door is
8 around the corner, to our left

9 Q And can you see on State's Exhibit 11 where
10 you took the Defendant into custody?

11 A His head would have been right about there

12 Q Okay

13 A His body on the back side

14 Q Okay And looking back at State's number 7,
15 where in relation to this photograph would the hallway
16 be that you took child down to take him out?

17 A Directly to your -- to my left If you were
18 to turn this to your left, you would see the hallway
19 where the bedroom is

20 Q Okay So when you go in the front door of
21 the house, where would that hallway be?

22 A It would be on your left As you are walking
23 towards that sliding glass door, about halfway right
24 where the photo is taken right there, ---

25 Q Okay

1 **A** --- you go to the left, right where the
2 kitchen starts

3 **MS MUNSON** I have nothing further at this
4 time, Your Honor

5 **THE COURT** You may cross-examine the
6 witness, Mr DeJong

7 **MR DEJONG** Thank you, Your Honor May we
8 have the lights back up?

9 **THE COURT** Yeah

10 **MR DEJONG** Thank you

11 **CROSS-EXAMINATION**

12 **BY MR DEJONG**

13 **Q** So as I understand it, on February the 13th
14 of 2009, you were actually at the Clemson Police
15 Department when this call came through?

16 **A** That's correct, sir

17 **Q** All right I believe you were in a staffing
18 or briefing room or something along those lines?

19 **A** Second and third shift briefing, yes, sir

20 **Q** Okay And there were other officers in that
21 briefing with you?

22 **A** Yes, sir

23 **Q** Is that the same briefing room where you
24 would take a prisoner to talk to them when they went
25 into the police station?

1 **A** No, sir

2 **Q** Okay Uh, now, you got the call you say at
3 10 57?

4 **A** 8 57, sir

5 **Q** 8 57, I stand corrected 20 57 ---

6 **A** That's correct

7 **Q** --- on a 24-hour quadrant So you were in
8 the Easley -- excuse me -- Clemson Police Department
9 You leave You get in your car and you are at 209
10 Maple, is that Boulevard or Road?

11 **A** It's Boulevard

12 **Q** Maple Boulevard in two minutes or less?

13 **A** Approximately two minutes

14 **Q** Okay And you are running blue lights

15 **A** Yes, sir

16 **Q** Running sirens

17 **A** Yes, sir

18 **Q** And how many other officers were in that
19 briefing room with you when you left?

20 **A** Uh, at least -- at least three Patrolmen
21 Mike Arflin and Blake Arflin left the same time I did
22 from the patrol room I was not able to see the
23 people

24 **Q** Do you know who the fourth person was that
25 was in there?

1 **A** Uh, no, sir I'm assuming it was Officer
2 Taylor but I'm not sure if he was in the patrol room
3 when we left or not

4 **Q** You are the lead car so to speak, right?

5 **A** Yes, sir

6 **Q** Now, as you pull in, is that a driveway that
7 you pulled into?

8 **A** Yes, sir, a concrete driveway that goes to a
9 garage area

10 **Q** Okay Well, when you say a garage area,
11 there was no garage on that house, was there, Officer
12 Hogue?

13 **A** The vehicle is parked on the right side The
14 residence's front door is to your left where the
15 vehicle was parked on the outside

16 **Q** There was no garage or no carport?

17 **A** No, sir

18 **Q** Now, when you, uh, let's jump ahead here a
19 little bit When you say you took this young person
20 out of the house, you went out the sliding glass
21 doors?

22 **A** The rear sliding glass doors, yes, sir

23 **Q** And I believe once you go out the sliding
24 glass doors, you would have to basically turn left to
25 go down some steps, correct?

1 **A** Uh, yes, sir If you are going out, go down
2 the steps to the left and out the gate to the right

3 **Q** Now, when you went down -- after you were at
4 the bottom of those steps, did you go straight and
5 then around the house or did you go back around the
6 patio and out the house?

7 **A** I'm pretty sure -- the gate was to the right
8 side of the house I'm pretty sure we went around the
9 patio to the, to where the gate was to go out the exit
10 the right side of the house, if you looking at the
11 front door

12 **Q** All right So there was a gate there?

13 **A** I'm pretty certain there was like a gate or
14 opening there to get through

15 **Q** I don't have the equipment but maybe we can
16 look at the pictures that were introduced Let's look
17 at what's been introduced as State's Exhibit number 2
18 I apologize to the jury that can't see this If you
19 will look at that, that's facing the house

20 **A** Yes

21 **Q** Correct?

22 **A** That's correct, sir

23 **Q** Now, if you were facing the house, did you
24 come out to the road, did you come around from the
25 right or to the left?

1 A From the right side if you are looking at the
2 house over here to the right

3 Q Okay All right And there was a gate
4 there, right?

5 A I'm pretty certain it was I had to ask him
6 where the gate was to get out

7 Q Ask who?

8 A The child

9 Q Okay Was the gate open or close?

10 A I can't recall

11 Q All right Was there a fence all the way
12 around the back yard?

13 A I know there was one where we come out at I
14 can't recall whether it was enclosed or not

15 Q All right Other than responding to this
16 call, did you have any further investigation on this
17 case?

18 A No, sir I did not, other than to secure the
19 scene That's it

20 Q All right, sir Never went back to the
21 residence again

22 A Never went back inside the residence, no,
23 sir

24 Q Okay All right So Mr Wylie had already
25 been taken out of the residence before you say you

1 took this young person out?

2 **A** That's correct, sir

3 **Q** All right Now, which door did he go out?

4 **A** He went out the sliding glass door as well

5 We used the back door instead of the front because the

6 victim was lying there

7 **Q** Well did you take -- did Mr Wylie go out the
8 same way that you said you took this young person out?

9

10 **A** That's correct but a good time lapse

11 difference

12 **Q** Now, let's go back You got the -- you're
13 the lead vehicle I gather, looking at this video,
14 the video was activated when you hit the blue lights,
15 correct?

16 **A** That's correct

17 **Q** Now, as you are approaching 209 Maple
18 Boulevard, your blue lights are on, correct?

19 **A** No, sir We actually deactivated them or
20 deactivated our siren as we turned onto Maple
21 Boulevard

22 **Q** Okay So you deactivated the blue lights but
23 you were still running the siren?

24 **A** No, sir We deactivated the siren as we
25 turned onto Maple Boulevard because we didn't want

1 anybody to hear us coming and prepare for us

2 obviously

3 Q Your blue lights still on?

4 A Yes, sir

5 Q Was it dark?

6 A Yes, sir

7 Q All right And we are talking about the

8 usual, normal police car blue lights?

9 A Yes, sir, blue

10 Q Can be seen a long way away, can't they?

11 A I would imagine, sir

12 Q All right, sir And behind you were Arflin

13 and Arflin, right?

14 A Yes, sir

15 Q They brothers?

16 A I don't know the exact relation, but they are

17 not brothers

18 Q Same last name

19 A Yes, sir

20 Q Mike and?

21 A Blake

22 Q Blake?

23 A Blake Yes, sir

24 Q You know who was directly behind you?

25 A I believe it was Mike directly behind me

1 Q Now, where were you when they got to 209
2 Maple Boulevard?

3 A We got there together

4 Q Together?

5 A Yes, sir I pulled in the first driveway,
6 they pulled in right behind me in the second

7 Q Now, your car is in the driveway, where did
8 they park in relationship to your car?

9 A To my right, to the next house, if you are
10 looking at the front door again The house is to the
11 right

12 Q Okay So that would be closer to the road, I
13 guess, where y'all would turn right or left to get
14 into Maple Boulevard?

15 A Yes, sir It's several hundred yards to you
16 get to Issaqueena Trail or Pendleton Road I'm sorry

17 Q Now, when you get out of your car, do you see
18 them get out of their cars?

19 A I was paying attention to the house I never
20 actually saw the exit

21 Q Or did they -- it's your testimony they did
22 not go to the front door?

23 A That is correct They went beside the
24 vehicle in the yard directly to the back

25 Q Would that be to the left of where, uh, if

1 you were facing the house, would that be the left?

2 **A** No, sir Be to the right

3 **Q** Okay All right Now, you drew your weapon

4 **A** Had it in hand, yes, sir

5 **Q** Did they draw their weapon? Do you know?

6 **A** I can not answer that To be honest with
7 you, I don't know

8 **Q** When they -- they came into the house at some
9 point later, was their weapons drawn?

10 **A** I know Officer Arflin's was, Mike Arflin's
11 We entered the together, the residence

12 **Q** All right So do you approach the front door
13 by yourself?

14 **A** At the time, I thought was by myself, yes,
15 sir

16 **Q** Well, I'm not sure I understand that answer
17 At the time, you thought you were by yourself What
18 did you find out later on, that you were not by
19 yourself?

20 **A** Yes, I had Officer Taylor directly behind the
21 me the entire time as we approached

22 **Q** Okay So now we have, you know when Officer
23 Taylor got there?

24 **A** No, sir He walked up and was behind me as I
25 was at the front door I wasn't aware I was paying

1 attention to the people inside

2 Q Did Officer Taylor have his weapon drawn?

3 A I can not answer that question, sir

4 Q Okay Did he go in the house?

5 A Yes, sir He went in with myself as well as

6 Officer Mike Arflin and Blake Arflin

7 Q So at that point in time -- at some point in
8 time, almost simultaneously, there are four of you in
9 the house at the same time

10 A Yes, sir

11 Q All right At least two of you had weapons
12 drawn

13 A Yes, sir

14 Q Okay Do you fire your weapon regularly?

15 A Yes, sir

16 Q Okay When is the last time you fired your
17 weapon?

18 A We have quarterly training I do not know
19 the exact date

20 Q All right And you carry that weapon in your
21 vehicle I would imagine, do you not?

22 A The weapon I had was carried on my side

23 Q Yes, sir But it's in your vehicle?

24 A Yes, sir

25 Q Who transported Mr Wylie to the Clemson

1 Police Department?

2 **A** I know that Officer Arflin, Blake Arflin
3 transported or walked him out of the residence I'm
4 not sure which vehicle transported him I was still
5 inside the residence

6 **Q** I know there's some confusion especially for
7 an old man Was it Blake or Mike Arflin?

8 **A** Blake Arflin Officer Mike Arflin remained
9 with the vehicle

10 **Q** Okay So Blake, was he one of the guys that
11 had his weapon drawn?

12 **A** I can't answer that

13 **Q** You don't know that All right Now, you
14 get to the front door with presumptively Officer
15 Taylor right behind you, right?

16 **A** Yes, sir

17 **Q** Now, what are you doing at the front door
18 when Mike and Blake Arflin come back around?

19 **A** I'm standing there with Mr -- the Defendant,
20 Mr Wylie directly in front of me inside the threshold
21 of the door

22 **Q** All right Now, who opened -- let me back up
23 on that When Mike and Blake Arflin come up, are
24 their blue lights still on?

25 **A** I can not answer that question I do not

1 know

2 Q Okay You say you killed your siren, right?

3 A Yes, sir

4 Q Where did you kill it?

5 A At the intersection of Maple Boulevard and
6 right before Holly Avenue which is -- as soon as you
7 turn left on Maple to Pendleton Road, right there in
8 that area

9 Q All right, sir So is the front door open
10 now when, uh, you walk up to it?

11 A No, sir It was not open It was closed

12 Q At that point in time, have you heard any
13 sounds?

14 A Uh, no, sir

15 Q Do you open the door or does Mr Wylie open
16 the door?

17 A Mr Wylie opened the door I checked to see
18 if it was locked or unlocked

19 Q Okay Well, it's pictures of -- let me go
20 back a little bit You say the front door was
21 blocked, right?

22 A Blocked by the -- well, we didn't know until
23 it got open It was blocked by the victim's legs

24 Q Who moved the victim's legs?

25 A It was moved when he pulled the door open

1 Mr Wylie pulled the door open Her leg slid to the,
2 if you are looking at them, to the left

3 Q How wide did the door finally get open?

4 A I would approximate more than half the way
5 open

6 Q Okay Well, let me show you State's Exhibit
7 number 3 Is that trying to show -- that's a picture
8 of the front door Is that trying to show how open
9 the front door really was?

10 A I am unable to tell what the purpose of the
11 photo was, but that is exactly or roughly how far the
12 door was open when I was sitting there talking with
13 Mr Wylie

14 Q Okay So you say nothing and Mr Wylie opens
15 the door?

16 A Uh, I went to the door I said Police
17 Department He yelled through the door at me, and I
18 said Police Department He opens the door and begins
19 stating "Dial 911"

20 Q He said dial 911?

21 A Yes, sir

22 Q Once, more than once?

23 A I do not recall for exact I know he said at
24 least once I told him I was 911 or that we were 911

25 Q Okay Now, your car lights are shining on

1 that front door?

2 **A** Yes, sir

3 **Q** And I believe there was also a porch light,
4 was there not, or a front?

5 **A** Uh, as I found out later, there was a porch
6 light

7 **Q** And indeed, that came on as you were
8 approaching the house, right?

9 **A** Yes, sir

10 **Q** So the front door was pretty well lit at that
11 point in time?

12 **A** Yes, sir

13 **Q** Okay And when he opened the door, did you
14 see him?

15 **A** Yes, sir I could see him clearly in front
16 of me

17 **Q** Whole body?

18 **A** No, sir He was behind the door I could
19 see from about here to up on his face

20 **Q** Would you have seen his left-hand side or his
21 right-hand side?

22 **A** That would be his left-hand side looking at
23 me

24 **Q** Okay You happen to know if Mr Wylie is
25 left-handed or right-handed?

1 A No clue, sir

2 Q Okay So he -- is the door open when he says
3 call 911?

4 A Yes, sir I said Police Department As he's
5 opening it, he states the 911 part

6 Q Okay Now, once the door is opened, you go
7 inside?

8 A No, sir I remain -- cause I thought once
9 again I was at the door by myself I remained for
10 another officer to come with me, to enter together for
11 officer safety reasons

12 Q Well, the part of Mr Wylie that you could
13 see, did he have any weapon?

14 A No, sir I did not see any weapon in his
15 hand

16 Q Was he yelling?

17 A No, sir

18 Q Was he cursing?

19 A No, sir

20 Q Was he attempting to flea?

21 A No, sir

22 Q He stood there and said call 911?

23 A Yes, sir

24 Q Where are you -- wait a minute Now, your
25 weapon is still drawn at that point

1 **A** It's angled to the ground but I did have it
2 in hand, yes, sir

3 **Q** And at this point in time, to your knowledge,
4 was Blake Arflin at the door yet?

5 **A** No, sir I knew Mike Arflin was directly
6 beside me

7 **Q** The door's open Now how do you get inside
8 the house?

9 **A** We push the door the remainder of the way
10 open as we enter the residence Once Mike Arflin came
11 beside me, I told him Mr Wylie told me he was the
12 shooter and we entered together

13 **Q** Okay So there was four of you, in want of a
14 better term, bursting inside the house?

15 **A** There was at least two of us Once again, I
16 can't answer for the other two behind us

17 **Q** When the two of you burst inside the house,
18 was Mr Wylie still at the front door?

19 **A** He backed from the front door but he was
20 right at, near the front door

21 **Q** Okay So he had to basically back up to let
22 y'all in?

23 **A** That's correct, sir

24 **Q** All right Did he ever at any time that you
25 were able to observe, attempt to leave the residence?

1 A No, sir

2 Q Now, there was a good bit of yelling on that
3 tape Was Mr Wylie resisting in any way?

4 A He wasn't a fighter's resist He was saying
5 he had a bad back But our training is we're going to
6 get them on the ground to secure

7 Q All right So we paint an accurate picture
8 It wasn't as though he was flailing his arms or
9 kicking or biting or screaming or ---

10 A No, sir

11 Q --- anything like that?

12 A No, sir

13 Q He just said I got a bad back, I can't get
14 down

15 A Yes, sir

16 Q How many officers take him down?

17 A That I know of, me and Mike Arflin assisted
18 to the ground

19 Q All right When you take him down, how did
20 you take him down?

21 A I can't recall exactly It happened so fast
22 But I know we assist -- we didn't let him fall to the
23 ground We essentially assisted him to the ground

24 Q Okay So did you put him on his back or on
25 his face?

1 **A** No, sir He was on his stomach

2 **Q** Okay So if I understood you correctly, you
3 said you didn't just smash him into the ground

4 **A** No, sir

5 **Q** So you had to have kind of -- what's the word
6 I'm looking for? You had to kind of support him on
7 his chest or his shoulders, would you not?

8 **A** When we escorted him down to the ground, we
9 didn't have to hold him anymore ---

10 **Q** Right

11 **A** --- once he is on his chest area on the
12 ground, face down

13 **Q** But as he was going down, if you hadn't
14 supported him -- he was a big man, was he not?

15 **A** He was a pretty big fellow Yes, sir

16 **Q** You would have had to support him or he would
17 have smashed his nose into the ground

18 **A** That's correct We had ahold of him,
19 obviously, going down

20 **Q** Right So you would have had him by his
21 shoulders or in his chest area

22 **A** Somewhere in that area, yes

23 **Q** Okay All right Very good Okay Now,
24 when you cuffed him, how did you cuff him?

25 **A** Uh, really behind his back Hands behind his

1 back

2 Q Used one set or two sets?

3 A I can not recall exactly, sir

4 Q All right Now, when you took him out of the
5 house, did he need help getting up?

6 A Yes, sir

7 Q How much help did he have to have getting up?

8 A Myself and another officer, Blake Arflin
9 assisted him in getting him to his feet

10 Q Okay Now, he's cuffed at this point

11 A That's correct

12 Q So Mike Arflin helped take him down?

13 A Yes, sir Originally he helped take him
14 down

15 Q And Blake Arflin helped you get him up?

16 A That's correct

17 Q And again, you were the two officers that I
18 believe you know of that had your weapons drawn?

19 A Myself and Mike Arflin had our weapons drawn

20 Q All right I'm sorry I'm getting the
21 Arflins confused here But okay Okay So Mike
22 Arflin had his weapon drawn He helped him down

23 A Yes, sir

24 Q Blake Arflin, you don't know He helped him
25 up?

1 **A** Yes, sir

2 **Q** Now, in helping him up, again, did you have
3 to kind of get him ---

4 **A** We had to get -- I get under his arm and try
5 to -- we were trained at the academy on how to help
6 people get up

7 **Q** Right

8 **A** You know, try to cock his knee forward You
9 hear us on the tape try to tell him to cock his knee
10 forward, to roll him over on top of it and try to get
11 him up

12 **Q** So again you're ---

13 **A** We are having to pull up on him

14 **Q** --- having to get him by the chest or the
15 shoulders ---

16 **A** Yes, sir

17 **Q** --- to pull him up Okay All right Now,
18 he goes -- let me ask you this At what point in time
19 do you finally holster your weapon?

20 **A** After we get him down and secured, after we
21 put the handcuffs on him, I secured my weapon back in
22 my holster

23 **Q** So while you and Mike Arflin are taking him
24 down, you still have your weapon in your hand?

25 **A** Absolutely, yes, sir

1 Q Okay So you are taking him down with one
2 hand and holding a weapon in the other?

3 A Yes, sir When the weapon pointed down,
4 pointed at the ground, yes, sir

5 Q All right I think sequenced a little bit
6 here by your testimony But he calls 911, and you at
7 some point shortly after that say where is the
8 shooter?

9 A Uh, I don't think he called 911 I believe
10 it was the female victim

11 Q No, he said call 911

12 A Oh, yes, sir I'm sorry At the door

13 Q Yes, sir

14 A I apologize

15 Q No problem He said call 911 It was after
16 that that you said where is the shooter

17 A Yes, sir

18 Q Now, are you inside the house or outside?

19 A I'm outside the house when I asked where's
20 the shooter

21 Q Okay And he says I am

22 A Yes, sir

23 Q Was the door open or closed at that point in
24 time?

25 A It was partially opened It was halfway just

1 like I explained to you

2 Q And you could see him when you asked that
3 question?

4 A That's correct, sir I could see his upper
5 torso

6 Q And he could see you as far as we know

7 A Yes, sir

8 Q Okay Are you right-handed or left-handed?

9 A I'm right-handed

10 Q So that weapon would have, that you had in
11 your hand would have been clearly visible to someone
12 standing outside that door?

13 A Yes, sir

14 Q You, in answering questions of Ms Munson, I
15 believe said you took him down to control him better?

16 A Yes, sir That's what we're trained to do

17 Q It wasn't really that he was out of control
18 It was a matter for everybody's protection at that
19 point?

20 A That's correct To make sure that he don't
21 fight or prevent it before it happens

22 Q All right So you, Mike Arflin, and maybe
23 others Now, you said you took him down on, uh, I
24 believe we were looking at State's Exhibit number 10
25 Again, I apologize to the jury They can't see this

1 But I believe if you're looking at that, the kitchen
2 is over here to the right That was an eating area to
3 the left

4 MS MUNSON May it please the Court, Your
5 Honor I apologize for interrupting But I would
6 be happy to operate that

7 THE COURT If he needs it, he'll ask you

8 MS MUNSON Okay

9 THE COURT If you would like for her to use
10 that, that will be fine

11 MR DEJONG Thank you Okay

12 BY MR DEJONG

13 Q The eating area was really back here, right?

14 A Yes, sir

15 Q This was a table and then the sliding glass
16 door was over there

17 A Yes, sir

18 Q If I understood you correctly, you are saying
19 that his head, when you took him down was kind of in
20 that eating area?

21 A It was to the left of the eating area Back
22 this way Turn the corner

23 Q Was he still in the living room at that point
24 in time?

25 A He was right at the threshold or, I guess,

1 the divider between the kitchen area right here ---

2 Q Uh-huh

3 A --- and the living room Right in the
4 middle

5 Q Okay As you come in the front door, you
6 come in some distance and you go left and there is the
7 hallway, correct?

8 A Probably seven or eight feet perhaps

9 Q All right And then right beyond the opening
10 of that hallway would kind of be that eating area?

11 A Yes, it opens up to the -- yes, sir

12 Q So roughly 10 feet

13 A I would guesstimate

14 Q Yeah, I understand At some point in time,
15 he was pushed back to that area?

16 A As soon as we entered in, he turned and went
17 away from us We escorted him to the ground

18 Q Okay Uh, now, at that point in time, he --
19 let ask you, when did he start asking questions about
20 his son?

21 A As we were putting him into custody, actually
22 putting the handcuffs on him

23 Q Okay So how long had you been in the house
24 at this point in time?

25 A Roughly, I would assume maybe 20 or 30

1 seconds I'm guessing there a little bit

2 Q So his immediate reaction was call 911?

3 A Yes, sir, as soon as we knocked

4 Q Then, within seconds, he's asking about his
5 son

6 A Yes, sir

7 Q All right Now, once you get him in cuffs,
8 do you pat him down?

9 A Yes, we tried He's on his stomach so we
10 can't get to the front of his person

11 Q And he's cuffed behind his back?

12 A That's correct

13 Q Pretty securely

14 A Yes, sir

15 Q Okay Couldn't get to any pockets or
16 anything out

17 A Well, you can move your hands to get to
18 pockets

19 Q But now there are four officers in the house?

20 A I would say so at that point, yes, sir

21 Q To your knowledge, does Mike Arflin still
22 have his weapon drawn?

23 A I can not answer that question I'm pretty
24 sure he holstered as well because he went to the
25 victim directly after we got him cuffed

1 Q Okay And once you got him in the cuffs,
2 he's faced down, do you immediately start getting him
3 back up again?

4 A No, sir He remained in that position, I
5 can't give you a guesstimated time, before I actually
6 had somebody, Blake Arflin, there to assist him, get
7 him up, get him out of the house We was trying to
8 make sure there was no other parties there in the
9 residence other than the child

10 Q Did you ever do any search of the home?

11 A No, sir I did not

12 Q Okay So it's your testimony you asked him
13 where the gun was and he said something about the
14 living room?

15 A Yes, sir He said in or near a box near the
16 window in the living room

17 Q So we're clear about this living room, do you
18 recall was there a bed in the living room?

19 A It was like a -- I assume it was like a
20 makeshift bed of some sort It had a blanket on top
21 of it where you can lay down

22 Q It wasn't a sofa?

23 A That I recall, no, sir, I don't believe it
24 was

25 Q Did you ever go to the box?

1 **A** No, sir Never did

2 **Q** On the video, I'm not familiar with all of
3 that equipment This one I may have to ask Ms
4 Munson I'm not sure But as you viewed the video,
5 up in the upper left hand corner there is a number I
6 don't remember what it started out at, 21-something
7 and then it goes up Do you know what that number is?

8 **A** I believe it's a counter of some sort, clock
9 counter

10 **Q** Next to that, it said four-something or
11 other 449 stuck in my mind Do you know what that?

12 **A** No, sir

13 **Q** I don't really know that it's important I
14 thought you might know Well, what I am curious about
15 is as you were en route, it took you two minutes or
16 possibly less The dispatcher was still saying she
17 was hearing hollering in the background, right?

18 **A** Til we got a little closer, I recall she said
19 the screams were getting faint of some sort

20 **Q** All right So how far away, to the best of
21 your recollection, was -- were you from 209 Maple
22 Boulevard when that dispatch came through to you?

23 **A** Originally or on the way?

24 **Q** On the way

25 **A** Several people were talking on the radio at

1 that point, but I was on Pendleton Road when she said
2 screams were getting faint

3 Q Okay

4 A Which is less than a quarter of a mile, I
5 would assume Somewhere in that range

6 Q Okay So if I understand, I'm not trying to
7 back you in a corner but I understand you saying you
8 were -- when that dispatch came through, you said you
9 believe you were less than a quarter of a mile away
10 from 209 Maple Boulevard

11 A That's completely a guesstimation I was on
12 Pendleton Road somewhere

13 Q I understand But you were a lot closer when
14 that dispatch came in than when the first dispatch
15 came in and you were at the police department

16 A I was probably less than, a little more than
17 halfway there

18 Q Do you know how many miles it is by the way?

19 A No, sir I never did my tripometer or
20 anything on it

21 Q Okay That the, uh, you know how many
22 doors there were on the house?

23 A No, sir I didn't count them I'm sorry

24 Q You only familiar with the front door and the
25 patio door

1 **A** The child's door, yes

2 **Q** That was an interior door

3 **A** Yes, sir

4 **Q** I'm sorry I didn't make my question clear
5 How many entrances and exit doors?

6 **A** I know of at least two, that's it

7 **Q** Other than going in the front door, you say
8 you took Mr Wylie down, did you go through that house
9 at all?

10 **A** Other than going to the child's room, no,
11 sir

12 **Q** All right

13 **A** I briefly looked in the hallway obviously,
14 but to the child's room

15 **Q** All right But in the kitchen area or beyond
16 the kitchen area, you didn't look at any of the house?

17 **A** No, sir, did not

18 **Q** Okay Did I get that picture back?

19 **A** Yes, sir

20 **Q** I'm bad about taking the Court Reporter's
21 exhibits I don't want to do that

22 **MR DEJONG** May I have one moment please,
23 Your Honor?

24 **THE COURT** Yes, sir

25 **(WHEREUPON, there is a pause)**

1 BY MR DEJONG

2 Q When you went in that front door, was it
3 halfway open?

4 A If my recollection serves me correct, it was
5 about halfway open because he drug it open to a
6 halfway point to where I could see him

7 Q And then when you went in, there was a body
8 laying there, right?

9 A I could see that before I went in

10 Q Okay

11 A It was in plain view as soon as he opened the
12 door

13 Q But you had to step in or step on the body to
14 get in the house?

15 A We had to step over the body, yes, sir

16 Q All right Now, as y'all are doing this, you
17 are going in the house, y'all are talking, I guess,
18 right?

19 A We're trying to communicate to some extent,
20 yes, sir

21 Q One officer was making a good bit of noise at
22 one point in time, you would agree with that?

23 A When?

24 Q When he was talking about getting down,
25 getting down

1 **A** Yeah, we all were hollering

2 **Q** Right And the radio still had dispatches
3 coming through, right?

4 **A** And anybody else, yes, sir

5 **Q** Thank you, Officer

6 **THE COURT** Anything on redirect?

7 **MS MUNSON** No, sir

8 **THE COURT** All right Thank you, Officer
9 Hogue You may step down

10 **THE WITNESS** Thank you, sir

11 **MR DEJONG** No objection to his being
12 excused, Your Honor

13 **MS MUNSON** Your Honor, the State calls
14 Michael Weigt

15 **MICHAEL WEIGT**

16 having first been sworn, testifies as follows

17 **THE CLERK** If you would, have a seat and
18 state your name for the record please

19 **THE WITNESS** My name is Michael James
20 Weigt

21 **DIRECT EXAMINATION**

22 **BY MS MUNSON**

23 **Q** Who do you work for, sir?

24 **A** Pickens County EMS

25 **Q** Okay How long have you been with Pickens

1 County EMS?

2 **A** Uh, three and a half years

3 **Q** What is your job title?

4 **A** Paramedic

5 **Q** And what are your duties?

6 **A** To help people that are hurt or injured

7 **Q** Okay Do you hold any licensing or

8 certification?

9 **A** Yes, I have a national registry certification
10 as well as a state

11 **Q** Okay What kind of things can you do as a
12 paramedic as far as on the scene? Can you give drugs
13 or

14 **A** Yes, ma'am We can give drugs, defibrillate
15 We have a cardiac monitor We can secure an airway

16 **Q** Okay Now, did you get a call in reference
17 to this case?

18 **A** Yes, ma'am We were called out for a
19 gunshot

20 **Q** Do you remember the date?

21 **A** No, ma'am

22 **Q** Okay Once you got the call, where did you
23 go?

24 **A** We went directly to the scene we were told to
25 go to

1 Q Do you know where that was?

2 A No, ma'am It was just a residence

3 Q Okay Did you -- you know what city it was
4 in?

5 A It was in Clemson

6 Q When you got there, were there any other
7 emergency personnel or law enforcement?

8 A There were several officers there prior to my
9 arrival As far as I know, I was the only EMS unit
10 there There may have been rescue I don't know

11 Q Okay Who else was in your unit?

12 A My partner which is a paramedic

13 Q Okay When you got to the scene, where did
14 you go?

15 A An officer met us at the unit He asked us
16 to enter the rear of the residence Crime scene was
17 up already and they didn't want us to go through the
18 scene

19 Q Okay And did you do that?

20 A Yes, ma'am

21 Q When you went around the back of the house,
22 did anyone go with you?

23 A Yes, an officer did

24 Q Okay Once you got to the back of the house,
25 what did you do?

1 **A** We entered the residence, just myself and the
2 officer He directed me to the patient that was
3 laying on the floor in the front of the house

4 **Q** Okay Who else was in the house when you
5 went in with the officer?

6 **A** Just the patient

7 **Q** Okay And what did you do when you got, when
8 you saw the patient?

9 **A** When we approached, she obviously looked dead
10 to me, but I knelt down, checked pulse, checked to see
11 if she was breathing and both were absent

12 **Q** Did you do anything else?

13 **A** After checking for pulse and breathing, I put
14 my cardiac monitor on the patient

15 **Q** Okay I'm showing you State's Exhibit number
16 6 that's already in evidence If you could use this
17 laser pointer right here with the little red button on
18 it, do you see on that exhibit where your monitor --
19 where you put your monitor pads?

20 **A** Yes, ma'am There on the arm There's one
21 there on the leg and the other leg there

22 **Q** Okay How long were you inside the
23 residence?

24 **A** Just a few minutes

25 **Q** After you heard no heartbeat, no breathing,

1 what did you do?

2 **A** I told the officer there was nothing we could
3 do and we exited the facility or the residence

4 **Q** Okay

5 **MS MUNSON** Just one moment, Your Honor

6 (Pause)

7 **BY MS MUNSON**

8 **Q** Mr Weigt, do you generate a report when you
9 go on a scene?

10 **A** Yes, ma'am

11 **Q** And what sort of information is in that?

12 **A** Uh, patient information Basically what we
13 found, what we see

14 **Q** Okay

15 **A** General assessment type things

16 **Q** Would it include the date and time that you
17 went to the location?

18 **A** Yeah, we keep a log, when the dispatch was
19 notified, when they called us out, when we arrived on
20 the scene, those types of things Yes, ma'am

21 **Q** Okay

22 **A** And when we cleared the scene

23 **Q** I'll just hand you this for a second If you
24 could just take a look at that

25 **A** (Reviewing)

1 Q What does that appear to be?

2 A My run log, computer generated

3 Q Okay Can you tell from looking at that what
4 date you got this call?

5 A Yes, 2/13/09

6 Q And what time did you receive your dispatch
7 call?

8 A It was received at 21 07

9 Q And what time is that in non-military?

10 A 10 00

11 Q 21 01?

12 A 9 00

13 Q That's fine

14 A You make me count

15 Q And can you tell the jury from looking at
16 that time what time you got on the scene?

17 A We arrived on the scene at 9 09

18 Q All right Thank you

19 MS MUNSON I have nothing further at this
20 time, Your Honor

21 THE COURT You may cross-examine the
22 witness

23 MR DEJONG Thank you, Your Honor May it
24 please the Court

25 CROSS-EXAMINATION

1 BY MR DEJONG

2 Q Where were you when the dispatch came
3 through?

4 A We was at our station in Central

5 Q Okay Where is that in relationship to the
6 Post Office?

7 A A few blocks away, I believe

8 Q Okay A few blocks on the Pickens side?

9 A Or actually right behind the library if you
10 are familiar with that

11 Q So it took y'all from the time you left til
12 the time you got there some six minutes, right?

13 A Yes, sir

14 Q Okay Now, that dispatch, did that come
15 through your dispatch?

16 A I believe it was county dispatch

17 Q I'm sorry?

18 A County dispatch

19 Q County dispatch? All right Uh, so you are
20 Pickens County EMS, right?

21 A Yes, sir

22 Q So if you have to respond to Clemson, you
23 don't get the dispatch from Clemson It goes through
24 a different dispatch, right?

25 A I really don't understand or know how they

1 actually do it All I know is our dispatcher

2 dispatched us to the call

3 Q Okay Fair enough And when you got to 209
4 Maple Boulevard, where did you stop, for want of a
5 better term, park your vehicle?

6 A We were on the street

7 Q All right

8 A Maybe one house away from the residence

9 Q Do you remember any police cars being there?

10 A Yes, sir There was several

11 Q Okay Uh, were you at a point where the way
12 you were parked, you were blocking those police cars
13 in or anything?

14 A No, sir

15 Q Okay You were met by an officer when you
16 got there?

17 A Yes, sir

18 Q Where was your partner during all this if you
19 know?

20 A He was driving

21 Q Okay

22 A He actually met us at the -- we hadn't
23 actually gotten out of the unit yet

24 Q I'm sorry

25 A We were not out of the unit yet The officer

1 met us at the door of our unit

2 Q At the door of the residence?

3 A No, sir, our ambulance

4 Q Okay

5 A He was waiting for us

6 Q Okay So your partner, he stayed in the
7 vehicle, I gather, right?

8 A Yes, sir

9 Q Now, if you're facing the house, do you
10 remember whether you went around to the right or to
11 the left?

12 A We went to the right

13 Q Okay All right You recall whether or not
14 there was any obstructions to your getting to the
15 back?

16 A No, I don't I don't recall anything

17 Q You recall any fences being there?

18 A There may have been a fence I'm not real
19 sure

20 Q Okay I gather you never transported the
21 body

22 A No, sir

23 Q Okay Other than checking for vitals, that's
24 what you did?

25 A Yes, sir

1 **MR DEJONG** One moment please, Your Honor

2 (Pause)

3 **BY MR DEJONG**

4 **Q** To put those ---

5 **A** Electrodes?

6 **Q** What are they?

7 **A** The electrode pads?

8 **Q** To put those on her, did you move the body?

9 **A** No, sir

10 **Q** In any way?

11 **A** No, sir

12 **Q** Didn't move an arm, didn't move a leg, didn't
13 move the victim?

14 **A** No, sir You can tell by the placement of
15 the electrode pads, I didn't move the patient

16 **Q** Did you ever remove the pads?

17 **A** No, sir

18 **MR DEJONG** Thank you, sir

19 **MS MUNSON** Nothing on redirect, Your
20 Honor

21 **THE COURT** Thank you, sir You may step
22 down

23 **THE WITNESS** Thank you

24 **MR DEJONG** No objection to him being
25 excused, Your Honor

1 **THE COURT** Mr Foreman, Ladies and
2 Gentlemen, this might be a good time for you to
3 take a short break I ask you again to go back
4 to your jury room Do not discuss the case as
5 I've told you before We'll call you back after
6 about a 10-minute break

7 **(WHEREUPON, the jury exits at approximately**
8 11 55 a m)

9 **THE COURT** All right Let's take a 10-
10 minute break

11 **(WHEREUPON, a short recess is taken)**

12 **(WHEREUPON, the jury enters at approximately**
13 12 15 p m)

14 **THE COURT** Solicitor, you may call your
15 next witness

16 **MS MUNSON** Thank you, Your Honor The
17 State calls Officer James Maw

18 **JAMES MAW**
19 having first been sworn, testifies as follows

20 **THE CLERK** If you would, have a seat and
21 state your name for the record please

22 **THE WITNESS** Jimmy Maw with Clemson City
23 Police Department

24 **DIRECT EXAMINATION**

25 **BY MS MUNSON**

1 Q What are your duties with the police
2 department, Officer Maw?

3 A I am an ID technician and community
4 specialist and evidence custodian

5 Q Okay Did you go to an autopsy related to
6 this case?

7 A Yes, I did

8 Q On what date?

9 A February the 14th of 2009

10 Q Where did you go?

11 A It was at Greenville Memorial

12 Q Who conducted the autopsy?

13 A Dr Warder, I believe it was Dr Ward

14 Q Okay Let me show you State's Exhibit number

15 25

16 A Yes, ma'am

17 Q Do you recognize that?

18 A Yes, I do

19 Q Is that an accurate depiction of the entry
20 wound that you saw at the autopsy?

21 A Yes, it is

22 MS MUNSON I have nothing further, Your
23 Honor

24 THE COURT Any cross-examination?

25 MR DEJONG May it please the Court

1 May I see that picture please, Madam
2 Solicitor?

3 **MS MUNSON** Sorry

4 **CROSS-EXAMINATION**

5 **BY MR DEJONG**

6 **Q** Hard to get oriented But I guess I'm
7 handing it to you in the right way

8 **A** Yes, sir

9 **Q** All right

10 **A** She was laying ---

11 **Q** Can you give me a perspective on that
12 picture, Officer Maw? Was the body laying face up or
13 face down at that point in time?

14 **A** Laying with her back up She was face down

15 **Q** Face down? Okay Now, Dr Ward did the
16 autopsy?

17 **A** I believe that's correct

18 **Q** Thank you, sir No further questions

19 **THE COURT** Any redirect?

20 **MS MUNSON** No, sir

21 **THE COURT** All right Thank you Mr Maw,
22 you may step down

23 You may call your next witness

24 **MS HAMAKER** The State would call Dr James
25 Fulcher

1 **JAMES FULCHER, MD**
2 having first been sworn, testifies as follows
3 **THE CLERK** You may be seated and state your
4 name for the record please
5 **THE WITNESS** I'm Dr James William Fulcher
6 **DIRECT EXAMINATION**
7 **BY MS HAMAKER**
8 **Q** Dr Fulcher, where do you work?
9 **A** I'm the Deputy Medical Examiner for
10 Greenville and Pickens county
11 **Q** How many medical examiners work in your
12 office?
13 **A** There are two of us to serve both counties
14 My boss, Mike Ward, is the Chief Medical Examiner and
15 I'm the only other medical examiner under him, the
16 Deputy Medical Examiner
17 **Q** And what are your job duties?
18 **A** I perform autopsies and do death
19 investigation I'm kind of the leader of the death
20 investigation The coroners go to the scene, gather
21 data I'm kind of the quarterback, if you will I
22 manage everything and then do the actual autopsy
23 **Q** How long have you had your position as a
24 Deputy Medical Examiner?
25 **A** I've been with Greenville and Pickens County

1 for six months

2 Q Are you licensed to practice medicine in this
3 state?

4 A I'm licensed to practice medicine in South
5 Carolina and Virginia

6 Q What is your field of practice?

7 A I'm a specialist I'm a forensic
8 pathologist

9 Q What is forensic pathology?

10 A Forensic pathology is the practice of
11 medicine that relates the study of death in unnatural
12 events

13 MR DEJONG Before we approach too much
14 further down this road, I think Madam Solicitor
15 is getting into qualifications here But so the
16 record is clear, I renew my motion ---

17 THE COURT All right, sir

18 MR DEJONG --- as to my objection to Dr
19 Fulcher's testimony

20 THE COURT All right, sir Your objection
21 is noted Okay

22 BY MS HAMAKER

23 Q Continue

24 A Uh, it's -- it relates to determining --
25 really the main purpose is a cause and manner of death

1 in each case

2 Q Does your office have a peer review process?

3 A It does, yes My boss, Mike Ward and I
4 review each other's autopsies on homicides If there
5 is a homicide that one of us is ruling that manner of
6 death, he does the complete report and then I review
7 every aspect of that so two physicians have signed off
8 on that report

9 Q And would it go the other way around too
10 where you do the autopsy and Dr Ward views your work?

11 A Yes, absolutely

12 Q Please tell the jury your educational
13 background

14 A I went to college at the University of
15 Virginia I then went to medical school right after
16 at the Medical College of Virginia in Richmond,
17 Virginia I then spent two years doing my internship
18 and my first year residency in Augusta, Georgia Then
19 I moved back up for family medical reasons to Virginia
20 and finished my two years of residency So four years
21 total there I then completed a final fifth-year of
22 training in forensic pathology at the central office
23 of the Chief Medical Examiner of Virginia

24 Q Your internship, what was that in?

25 A The internship in pathology is general

1 pathology, anatomic and clinical pathology as they
2 relate in a hospital setting

3 **Q** And what -- tell me about your -- I'm sorry
4 Tell the jury about your residency program

5 **A** The residency is additional training after
6 the internship It's four years for anatomic and
7 clinical pathology It basically certifies you to go
8 in and do microscopic interpretation of biopsies or
9 surgical specimens in the hospital Also, I could
10 manage any laboratory like a microbiology lab or
11 hematology lab All those aspects of a hospital, the
12 pathologist are integral to the functioning of those
13 laboratories in the hospital

14 **Q** Will you please tell the jury about your
15 fifth year?

16 **A** Sure

17 **Q** Your extra fifth year

18 **A** The fifth year fellowship in forensic
19 pathology is an intense year devoted only to the study
20 of forensic pathology Uh, the reason we have to go
21 through all the medical training to do forensic
22 pathology is because we need to be well versed in all
23 natural causes of death as to rule those out in saying
24 something is an unnatural cause of death

25 **Q** And can you tell the jury more specifically

1 all the training you have received in forensic
2 pathology?

3 **A** Absolutely Absolutely Uh, when I was a
4 resident, I did part-time work for the medical
5 examiner for Virginia as a local medical examiner
6 During two years course, I would work my full day as a
7 resident, a medical resident And then afterwards,
8 spend several hours an evening doing external exams on
9 people that had either been in car wrecks or various
10 homicides, suicides I would do an external exam on
11 those That involved a detailed description of the
12 body, limited invasive procedures, toxicology
13 specimens Then I would write a small report on that
14 I did approximately 380 of those while I was
15 in training This is just part time work in addition
16 to my residency I'm also -- also as chief resident,
17 acted as a liaison between the medical examiner's
18 office and my teaching hospital The Commonwealth of
19 Virginia figured out they could save money by having
20 me train people and go around myself to local
21 hospitals doing external exams there rather than
22 paying funeral homes to transport bodies across
23 various areas It just cheaper to send us there So
24 I did that for two years I actually started that for
25 the Commonwealth

1 I am currently the director of an internship
2 at Clemson University It didn't exist before I got
3 here but I do love to teach, I do love, uh,
4 publishing So I contacted Clemson University and
5 have a young lady right now that's very excited about
6 training with me

7 MR DEJONG Objection, Your Honor

8 THE COURT I sustain the objection

9 THE WITNESS Sorry

10 BY MS HAMAKER

11 Q Dr Fulcher, how many autopsies to this date
12 have you conducted?

13 A I have conducted 450 autopsies here

14 Q Of those, approximately how many did you have
15 an opinion as to the cause of death?

16 A All of them

17 MS HAMAKER Your Honor, at this time, the
18 State would like to admit Dr Fulcher as an
19 expert in forensic pathology

20 THE COURT Any voir dire or any further
21 objection?

22 MR DEJONG No voir dire, Your Honor, but
23 not waiving my prior objection

24 THE COURT All right All right This
25 witness will be considered an expert in the field

1 of forensic, uh, pathology Ladies and
2 Gentlemen, let me just explain to you about an
3 expert witness Normally, when a person comes
4 into the courtroom and sits in the witness box,
5 they are not allowed to give an opinion about
6 anything They can talk about what they saw or,
7 uh, heard, uh, tasted, but they can't give
8 opinions We have exceptions to that under our
9 rules of evidence When someone is qualified
10 because of training or education or experience,
11 they are permitted to give an opinion in certain
12 areas that the Court qualifies them in This
13 witness has been qualified in the area of
14 forensic pathology He can gave an opinion, gave
15 a basis of that opinion

16 This doesn't mean you must except that
17 opinion You are going to hear all the evidence
18 in this case, and you are to give this, uh,
19 testimony the weight that you think it deserves
20 You can use it in any way that you see fit along
21 with all the other evidence

22 All right Ms Hamaker, you may continue

23 **BY MS HAMAKER**

24 **Q** Dr Fulcher, did you conduct an autopsy in
25 this case?

1 **A** I did not No, ma'am

2 **Q** Who did?

3 **A** My boss, Mike Ward, the Chief Medical
4 Examiner

5 **Q** Is he available to testify today?

6 **A** He is not

7 **Q** Why is that?

8 **A** He is out of state on vacation

9 **Q** Do you know when Dr Ward performed this
10 autopsy?

11 **A** Yes, it was, uh, February 14th of 2009

12 **Q** Were you asked to review Melissa Wylie's file
13 on this case?

14 **A** I was

15 **Q** And did you so in fact review it?

16 **A** I reviewed the entire file

17 **Q** And after reviewing the entire file, did you
18 review anything else?

19 **A** I reviewed his, uh, photos

20 **Q** When you say his, who do you mean?

21 **A** Sorry Dr Ward's photos taken at autopsy,
22 crime scene photos made available by the Pickens
23 County coroner and his actual autopsy report

24 **Q** And after reviewing all three of those items,
25 were you able to come up with an opinion to a

1 reasonable degree of medical certainty?

2 **A** I was

3 **Q** As to the manner of death?

4 **A** I was

5 **Q** What is that opinion?

6 **A** The manner of death in this case is a gunshot
7 wound to the back, the right shoulder specifically

8 **Q** And can you tell me how the bullet went
9 through the body?

10 **A** Sure The decedent in this case was shot in
11 the right postural shoulder, right above the shoulder
12 blade I'm going to turn slightly and show them
13 Right about here We have a photo of that The
14 bullet then pierces the shoulder blade, the actual
15 bone, the scapula It then enters the chest cavity
16 and wounds the right lung, then crosses the midline
17 and damages the aorta, the large vessel that carries
18 blood to the entire body, leaves the heart It
19 severely damages that and then injures the other lung
20 on the other side before embedding in the soft tissue
21 in the arm pit on the other side

22 **Q** Is that where the bullet was eventually
23 found?

24 **A** Absolutely The bullet was recovered from
25 the soft tissue and pleural space on the left side of

1 the body We found it there

2 Q You mentioned a picture of the, uh, the entry
3 wound from the bullet

4 A Yes

5 Q Is this it?

6 A This is it

7 MS HAMAKER Your Honor, at this time, the
8 State would like to enter into evidence State's
9 Exhibit 25

10 THE COURT Exhibit 25, subject to the
11 objection of the defense is admitted into
12 evidence

13 (WHEREUPON, State's Exhibit 25 is admitted into
14 the record)

15 BY MS HAMAKER

16 Q Dr Fulcher, I think you might have a little
17 laser there that you could work to point if you need
18 to

19 A Oh, good

20 Q Can you tell me what this picture shows?

21 A Yes, this shows a gunshot entrance wound

22 Q And can you see anything else in this
23 picture?

24 A I do I see an abrasion collar here, which
25 my partner has, uh, described It's oriented toward

1 the decedent's -- if you are looking at it from
2 behind, it's oriented towards the right side It's
3 this thin pink rim around here

4 Q Now, is this her back or is her front?

5 A This is her back This is her right
6 shoulder Her arm would come down here Her legs
7 would go that way Her head and her hair is right
8 there So she's facing into the stainless steel table
9 when this picture is taken

10 Q Doctor, I'm going to show you another
11 picture

12 A Sure

13 Q It's been marked as State's Exhibit number 6

14 A Yes

15 Q Do you recognize that photo?

16 A I do I reviewed this in the file

17 Q And did you use it in basing your opinion?

18 A I did This is a picture of the scene made
19 available by the coroner's office

20 Q What in this picture did you use to form the
21 basis of your opinion?

22 A We have some blood here on the floor And
23 this is the decedent obviously lying here These
24 factors combined with the blood here, which we can
25 explain later, I believe there was an up close photo

1 of the blood, make it seem that blood may have been
2 dropped from some height to this area

3 Q Is there anything else about the victim
4 herself in this picture that you base your opinion on?

5 A There is There's some blood coming from the
6 mouth Giving fatal wounds to the lungs, people that
7 are injured and have some sort of penetrating injury
8 to the chest cavity that damages the lungs, they will
9 usually, if they are not instantaneously killed, cough
10 up blood This blood all over the face is most
11 certainly from her coughing up blood

12 Q And can you explain for the jury a little bit
13 more detail about what actually causes that process of
14 coughing up blood?

15 A Sure Absolutely When the bullet passes
16 through the lungs, it damages the smaller windpipes
17 You breathe in and it goes through your trachea, the
18 air When the bullet passes through, it destroys
19 those small air chambers and they begin to fill with
20 blood The lungs get a great deal of the blood supply
21 from the heart When they are injured, they bleed
22 profusely and the blood comes from inside the lungs
23 out the trachea up the nose and mouth

24 Q Dr Fulcher, do you have an opinion as to how
25 long it would have taken Mrs Wylie to pass away?

1 **A** I do In my experience, someone shot with a
2 fatal injury to the aorta will lose a significant
3 amount of blood very quickly On average, about 5 to
4 10 seconds With just a lung injury, someone may
5 survive longer In my own personal experience, I've
6 had assailants shot and then run for several blocks
7 with just a lung injury But the injury to the aorta
8 is not instantaneously fatal¹, but it would take
9 several seconds to lose that blood It's about the
10 size of a garden hose in someone her size You could
11 imagine under pressure if you punch a hole in a garden
12 hose, it leaks very, very fast

13 **MS HAMAKER** Your Honor, that's all the
14 State has for this witness at this time

15 **THE COURT** All right If you would, answer
16 any questions of the defense

17 **THE WITNESS** Yes, sir

18 **THE COURT** Mr DeJong, you may cross-
19 examine the witness

20 **MR DEJONG** Thank you, Your Honor May it
21 please the Court

22 **CROSS-EXAMINATION**

23 **BY MR DEJONG**

24 **Q** So you are the Deputy Medical Examiner for
25 Pickens and Greenville County?

1 **A** Correct

2 **Q** And Dr Ward is the Chief Medical Examiner?

3 **A** Correct, sir

4 **Q** And you've been quarterbacking that team for
5 six months now

6 **A** Yes, sir

7 **Q** All right Did you in any way participate in
8 this autopsy?

9 **A** I did not

10 **Q** Were you present?

11 **A** I was not I was in Virginia

12 **Q** All right So what you are going on is
13 basically Dr Ward's report

14 **A** Correct

15 **Q** Now, other than this picture that's been
16 identified as State's Exhibit 25, Dr Ward's pictures,
17 and his report, did you talk to any other people?

18 **A** I did not

19 **Q** Okay Now, this particular individual if I'm
20 looking at the picture right -- I don't want to be
21 unfair to you, so I'll let you see the picture

22 **A** Sure

23 **Q** Almost, and that's not a term of science, I
24 realize that, but almost went in (inaudible), right?

25 **A** Yes

1 Q Now, if someone, just a normal given, is shot
2 in the side ---

3 A Uh-huh

4 Q --- are there any viable organs there?

5 A It depends on how far it penetrates

6 Q I'm sorry?

7 A It depends on how far the bullet goes If it
8 stops in the shoulder, if it damages a vessel, it may
9 be fatal If it stops in the soft tissue and muscle
10 of the shoulder, it will not be fatal However, if it
11 penetrates further into the chest cavity, it will
12 eventually hit the aorta, heart and other vital
13 organs

14 Q Yes, sir My question is if you are shot
15 there and it doesn't go any further, there aren't any
16 vital organs, are there?

17 A Correct

18 Q To shoot somebody to kill them, to shoot them
19 in the shoulder is not exact the place you would
20 shoot, is it?

21 A No

22 Q Now, let's talk a little bit, what you are
23 looking at on State's Exhibit number 25 ---

24 A Uh-huh

25 Q --- I gather you are saying that is the entry

1 wound, right?

2 **A** Yes, sir

3 **Q** Actually, you are not saying that Dr Ward
4 said that was the entry wound, right?

5 **A** My medical opinion based on my training with
6 this picture, I can identify this is an entry wound

7 **Q** All right So, now you talk about a bullet
8 in this case That word "bullet" can be kind of a
9 strange word When we are talking about a bullet,
10 normally, we are talking about the lead projectile
11 that comes out of a gun, right?

12 **A** Correct

13 **Q** At least on a pistol

14 **A** Correct

15 **Q** Now, there can be situations where to use
16 that term bullet, where that would fragment, right?

17 **A** Yes

18 **Q** And indeed, there was fragmentation of, using
19 that term, of the bullet in this case

20 **A** Yes

21 **Q** And that fragmentation when the bullet
22 fragmented could have done as much or more damage than
23 the actual bullet itself, could it not?

24 **A** You are speaking in particular to this case
25 or in general?

1 Q In particular to this case

2 A In particular to this case, the fragments
3 found, and I will read directly from the report here
4 just to make sure I'm getting it exactly right Two
5 smaller fragments are recovered from the deep muscles
6 within the scapula and the right chest wall In this
7 particular case, those fragments stopped before
8 entering any vital areas They were trapped in
9 between the scapula and the right chest wall
10 Therefore, the fatal injury was caused by the main
11 bullet mass

12 Q All right That ultimately lodged where?

13 A It actually went through the aorta, the lungs
14 and then ended up recovered in the left pleural space
15 which is the area surrounding the left lung, the
16 thoracic cavity, if you will

17 Q All right, sir Well, as a pathologist and
18 based on Dr Ward's report and your review, do you
19 have an opinion as to the distance of the gunshot?

20 A I do not to a medical certainty, no

21 Q Okay You also, I think, well, let me ask
22 you You were shown State's Exhibit 6, I believe

23 A Yes, I was Yes, sir

24 Q All right Now, were you shown that before
25 today?

1 **A** Yes, this was made available in our report
2 The coroner provided this for us

3 **Q** Well, you indicated when you were looking at
4 the screen that there was what you said was blood at
5 the front door, right?

6 **A** Correct

7 **Q** Uh, and from looking at that picture, it was
8 a fairly substantial amount of blood

9 **A** Yes, it is a substantial amount of blood

10 **Q** But that is all kind of in one spot, right?

11 **A** It is, yes

12 **Q** And then there's really not that much blood
13 around the body itself, is it?

14 **A** With the exception of what's coughed up, yes

15 **Q** Okay So apparently somewhere along the
16 lines, the body was moved?

17 **A** She could have moved of her own free will
18 The wound she had of course would have allowed
19 movement and conscious movement for about 5 to 10
20 seconds

21 **Q** And that being the case, there would have
22 been blood from one spot to the next, right?

23 **A** Possibly It looks like most of the blood in
24 her case was spilled into the pleural cavity and not
25 released from the body She -- well, continue

1 Q Certainly some was released from the body,
2 wasn't it?

3 A A little bit, yes The amount you see on the
4 floor, it constitutes actually a minimal amount of
5 bleeding in the case If you look at the autopsy
6 report on number 1, she has bilateral hemothorses
7 which is blood in the chest cavity She has an entire
8 liter of blood in her left chest cavity and 800 mls,
9 which is almost a full liter in her right So in a
10 woman her size, she has almost half of her blood
11 volume free in her chest

12 Q Now, you have a lot of years of medical
13 training, haven't you?

14 A I have, yes, sir

15 Q All right With all those years of medical
16 training, you would have some idea that if you shot
17 somebody there, it might cause a lot of damage

18 A Absolutely, yes, sir

19 Q I don't got no medical training

20 A I understand

21 Q I wouldn't know that, would it?

22 **MS HAMAKER** Objection He can be
23 argumentative He can ask the witness some
24 questions but ---

25 **THE COURT** Overruled I will allow him to

1 ask his questions

2 You may proceed Mr ---

3 MR DEJONG Not having ---

4 THE COURT --- DeJong

5 MR DEJONG I'm sorry, Your Honor

6 BY MR DEJONG

7 Q Not having any medical training, I have no
8 way of knowing that, would I?

9 A That's true

10 Q And that all comes because you can sit down
11 -- maybe Monday morning quarterback would be a better
12 term, huh?

13 A Okay

14 Q Now, Monday morning quarterbacking, with all
15 of your years of medical experience, you can say
16 that's what happened?

17 A Yes

18 Q But in that instant that a gun is discharged,
19 no medical training, you have no way of knowing all
20 that, would you?

21 A Without medical training, you would not know
22 that Correct

23 MR DEJONG Thank you, sir No further
24 questions

25 THE COURT Any redirect?

1 MS HAMAKER Yes, Your Honor

2 REDIRECT EXAMINATION

3 BY MS HAMAKER

4 Q Dr Fulcher, is it unusual for a doctor to
5 make an opinion as to the cause of death based on
6 somebody else's autopsy report?

7 MR DEJONG Your Honor, I'm going to object
8 on that The Court's already ruled about that

9 THE COURT How is that responsive to the
10 cross-examination?

11 MS HAMAKER Your Honor, in the beginning
12 of his cross-examination, he went into that this
13 doctor was not the one to conduct the autopsy

14 THE COURT I will allow the question

15 BY MS HAMAKER

16 Q Is it unusual for one doctor to base his
17 opinion as to the cause of death on another doctor's
18 autopsy report?

19 A It is not In fact, uh, where I trained and
20 in almost all fellowship training programs, or almost
21 50 in the country, when you are under training, you
22 eventually leave and the attendings and people who
23 supervise you will go to court and testify using your
24 autopsy report Autopsy reports are written in a
25 fairly standardized way where another forensic

1 pathologist should be able to look at it and make good
2 sense of it

3 **MS HAMAKER** That's all from the State,
4 Your Honor

5 **THE COURT** All right Thank you, sir You
6 may step down, Dr Fulcher

7 **THE WITNESS** Thank you

8 **MS HAMAKER** Your Honor, may he be excused?

9 **MR DEJONG** No objection, Your Honor

10 **THE COURT** Without objection, the witness
11 may be excused Can I see the attorneys just a
12 moment please

13 **(WHEREUPON, a bench conference is held off the**
14 **record)**

15 **THE COURT** You may call your next witness,
16 Solicitor

17 **MS MUNSON** Thank you, Your Honor The
18 State calls Mike Arflin

19 **MIKE ARFLIN**

20 having first been sworn, testifies as follows

21 **THE CLERK** If you would, have a seat and
22 state your name for the record please

23 **THE WITNESS** Yes, sir Michael Arflin

24 **DIRECT EXAMINATION**

25 **BY MS MUNSON**

1 Q Who do you work for, sir?

2 A Clemson City Police Department

3 Q How long have you been with them?

4 A I been with Clemson City since February of
5 2008

6 Q Okay Do you have any law enforcement
7 experience prior to that?

8 A Yes, ma'am, Anderson County

9 Q How long you been with them?

10 A Nine years

11 Q You have any military experience?

12 A Yes, ma'am I do

13 Q All right Do you have any medical training?

14 A Yes, ma'am I do

15 Q Explain that to the jury

16 A Uh, went to college to be an Emergency
17 Medical Technician, EMT I was also a combat life
18 saver in the Army Two tours overseas

19 Q Okay What are your duties with the Clemson
20 City Police Department?

21 A I'm a patrolman Also on the HRT, the
22 tactical team

23 Q All right Were you with them in February of
24 2009?

25 A Yes, ma'am

1 Q Did you get a call in reference to this case?

2 A Yes, ma'am

3 Q Where were you when you got the call?

4 A I was actually at the police department when
5 the call was originally dispatched

6 Q Where in the police department?

7 A In the patrol room downstairs

8 Q Who all was down there?

9 A To the best of my knowledge, it was myself,
10 Lieutenant Gooch, Sergeant Link, I believe Officer
11 Hogue, pretty much everybody that was coming into work
12 that evening

13 Q Okay Uh, what type of call did you get?

14 A It was originally dispatched as a larceny in
15 progress involving a man with a gun, a 10-72

16 Q Okay What did you do when you got the call?

17 A We immediately went to our vehicles and
18 started to respond emergency response with blue lights
19 and sirens

20 Q Was anybody in your car with you?

21 A No, ma'am

22 Q About how long did it take you to get there?

23 A Less than a minute or a little bit over it at
24 most

25 Q All right When you got there, was there any

1 other law enforcement personnel there?

2 **A** Uh, Officer Hogue was directly in front of
3 me We actually arrived at the same time

4 **Q** Okay

5 **A** I believe Officer Blake Arflin and Officer
6 Taylor were directly behind me

7 **Q** Were they together or in separate vehicles?

8 **A** Separate vehicles

9 **Q** Okay When you got there, where did you go?

10 **A** I immediately went to the rear of the
11 residence to watch the back exits

12 **Q** Okay How many doors did you notice on your
13 way around the back of the house?

14 **A** Just the one in the rear is the only one I
15 noticed, the sliding glass door on the deck area

16 **Q** What was the lighting like in the back yard?

17 **A** The lighting in the back yard was pretty much
18 not there

19 **Q** Okay Uh, the door you described as a
20 sliding glass door, where was it on the house?

21 **A** It was pretty much, if I remember correctly,
22 in the center of the residence As you looked into
23 the residence from the sliding glass door, you are
24 looking into the kitchen area, like a hallway or a
25 doorway that actually lead -- you could see straight

1 to the front door of the residence

2 Q Okay When you were at the at the back of
3 the house, did you look through that window?

4 A Yes, I did

5 Q What was the lighting like inside the house?

6 A The lights were on The kitchen area was
7 well lit The living room area was lit

8 Q What, if anything, was, uh, covering was' over
9 the, uh, door, the glass door?

10 A There were none I could see straight in

11 Q How high up off the ground was the sliding
12 glass door?

13 A As I stood there, I actually had to kind of
14 get up on my tiptoes cause I'm not very tall, to see
15 in So I'm 5'7 It was right around eye line for me

16 Q Okay Was there anything between the house
17 and where you were?

18 A Just the deck

19 Q Okay What type of deck was it?

20 A Wood deck Normal deck with railing Easy
21 to see through

22 Q All right Was anybody around the back of
23 the house with you?

24 A Officer Arflin, the other Officer Arflin

25 Q Okay When you looked into the house, what

1 did you see?

2 **A** First, I saw Mr Wylie standing there
3 basically -- looked like he was in the doorway at the
4 kitchen area Apparently, Officer Hogue had started
5 knocking at that point He started to approach the
6 door, the front door

7 **Q** All right So when you first saw him, was he
8 moving?

9 **A** At first, no, he was just standing there

10 **Q** Okay Could you see -- what was he doing?

11 **A** Like I said, just pretty much standing there
12 until, I believe, the front door started getting
13 knocked on Then he went to the front door

14 **Q** Okay How do you know the front door was
15 getting knocked on?

16 **A** Just by his reaction, the way he immediately
17 addressed it with his face and started to walk towards
18 it

19 **Q** Okay Let me, uh, this is State's Exhibit
20 number 9 And if you could use that laser pointer
21 right there, Officer Arflin Now, State's Exhibit 9,
22 what does that show?

23 **A** That's the sliding glass door area

24 **Q** Okay

25 **A** Basically right here is the decking area

1 Q Okay

2 A This is the kitchen and that being the front
3 door right there

4 Q Can you show me on that exhibit where you saw
5 the Defendant standing when he first walked in the
6 door?

7 A Yes, ma'am Right in this area

8 Q Which way was he facing?

9 A He's kind of facing -- he looked to be facing
10 in this direction, just more or less looking at -- I
11 couldn't tell anything specific he was looking at
12 But he was facing in that direction

13 Q Okay How much could you see?

14 A I could see pretty much from his knees up

15 Q Was he -- when you heard -- when he moved,
16 where did he go?

17 A He went straight toward the front door right
18 there

19 Q What did he do when he went to the front
20 door?

21 A He went over and started tugging on
22 something I actually got up a little bit higher so I
23 to be able to see I was looking along the floor
24 line, underneath the table and all, and could actually
25 observe him starting to pull a body out of the way

1 He was acting like she was blocking the door

2 Q When you saw him doing that, what did you do?

3 A I told Officer Arflin, the other Officer
4 Arflin to go We actually started to run around the
5 front of the house to assist Officer Hogue

6 Q Okay When you got around the front of the
7 house, what did you do?

8 A Officer Hogue looked at me and said he said
9 he did it He said he shot her

10 MR DEJONG Objection, Your Honor

11 THE COURT Sustained

12 BY MS MUNSON

13 Q When you got around the house, what did you
14 do?

15 A Went inside the residence with Officer Hogue

16 Q When you first got to the front of the
17 residence, was there anybody there but Officer Hogue?

18 A I believe Officer Taylor was also standing
19 there

20 Q And when you got in there, what did you do?

21 A Had drawn my service weapon due to the nature
22 of the call and started ordering the Defendant to get
23 down on the ground, get down on the ground

24 Q Okay And did he?

25 A At first, he said that he couldn't He

1 advised that because of his back, he couldn't get down
2 to the ground Due to the nature, I actually forced
3 him down to the ground for our safety

4 Q Well, when you forced him to the ground,
5 after that, did he ask for any medical attention?

6 A Not at that point

7 Q What injuries did you cause to him that you
8 observed?

9 A None

10 Q Okay Once he was, uh, handcuffed, what was
11 the next thing that you did?

12 A At that time, I went over to the body to
13 check for her condition

14 Q Okay

15 A I actually went to check her pulse, the pulse
16 on the wrist

17 Q Okay

18 A I did not feel a pulse She was actually
19 turning cyanotic, which is the blueness to the face
20 for lack of oxygen

21 Q Okay

22 A I could see that her eyes were open Her
23 pupils were fixed and dilated and she was having no
24 respiration So at that point, I told Officer Hogue
25 that she was dead

1 Q When you say -- pardon me for being ignorant
2 about it When you say dilated, you mean real small
3 or real big on the pupils?

4 A They were completely open Her pupils were
5 blank

6 Q All right Once he was detained and you saw
7 the condition of the person on the floor, what did you
8 do?

9 A At that point, I started basically wanting to
10 put out the crime scene

11 Q How did you go about doing that?

12 A Officer Hogue directed, I believe Officer
13 Blake Arflin and Officer Taylor to move the Defendant
14 out of the house through the rear of the residence
15 On the way out, we had been advised about a child in
16 the residence who Officer Hogue recovered and escorted
17 out I stayed inside and advised Officer Taylor to
18 start the crime scene log

19 Q Okay Once the child was out and once the
20 Defendant was out, who else came in and out of the
21 house, if anyone?

22 A The only person allowed inside was the medic
23 from Pickens County EMS, it was a Michael Weigt

24 Q Okay When he came into the house, were you
25 in there?

1 A I was

2 Q Who brought him in the house?

3 A He was brought to the back door by one of the
4 other officers I can't say for sure who But he
5 came in through the rear of the residence and came to
6 the body

7 Q Okay And once he left, what was the next
8 thing that happened?

9 A When he left the building, once he left the
10 residence, I left directly behind him We closed it
11 all the way off We went outside to make sure that
12 the crime scene tape was correct

13 Q Okay

14 A I think we established a second boundary with
15 crime scene tape

16 Q Okay

17 A And just started the report process

18 Q The door that you saw, the sliding glass
19 door, do you remember if it was open or closed when
20 you were looking through it?

21 A When I was looking through it, it was closed

22 Q Okay Did you find anybody else in the
23 house?

24 A No

25 Q Okay When you got into the house, uh, along

1 with Officer Hogue, did you notice anything at all
2 other than what you were seeing?

3 **A** As far as?

4 **Q** Any sounds, any smells?

5 **A** No, ma'am

6 **Q** When you went in with Officer Hogue?

7 **A** Just basically gunpowder That's the first
8 thing that comes to mind

9 **Q** Okay Well, how would you -- explain for the
10 jury how you would know what gunpowder smells like?

11 **A** Aside from being a police officer, having
12 been in the military also deployed overseas, it's just
13 one of those smells that is immediate Once you fire
14 a weapon, you just learn what it smells like

15 **Q** Okay Now, once the, uh, -- everyone was
16 out, do you know who else went in and out of the
17 house?

18 **A** At that point, no, ma'am

19 **Q** Who was keeping up with that?

20 **A** Officer Taylor

21 **Q** All right

22 **MS MUNSON** All right I have nothing
23 further at this time, Your Honor

24 **THE COURT** You may cross-examine the
25 witness

1 MR DEJONG Thank you, Your Honor May it
2 please the Court

3 CROSS-EXAMINATION

4 BY MR DEJONG

5 Q You're Mike Arflin, right?

6 A Yes, sir I am

7 Q You and Blake related?

8 A Yes, sir We are

9 Q What's the relationship?

10 A Cousins

11 Q Cousins Okay So on February the 13th of
12 2009, you are with the Clemson Police Department?

13 A Yes, sir

14 Q And were you sitting at your desk or what
15 were you doing?

16 A At that time, right about the time the call
17 came in, we had what we call briefing When a new
18 shift arrive, we actually meet and have a quick
19 briefing and tell what had gone on on the shift prior
20 before going back out on the road

21 Q Again, were you in a room with other people?

22 A Yes, sir

23 Q How many people were in the room?

24 A Everybody that was working that evening

25 Q How many was that?

1 A Eight to nine

2 Q All right So a dispatch message,
3 communication comes over the radio, 10-72 in progress,
4 right?

5 A Yes, sir

6 Q And you remember hearing anything about a 10-
7 59 at that point in time?

8 A Yes, sir I do

9 Q Okay A 10-72 is a larceny basically, right?

10 A Yes, sir

11 Q Okay How many of those nine people at that
12 point in time leave that room?

13 A Like I said, myself, Officer Hogue, Officer
14 Bell, uh, Officer -- the other Officer Arflin and
15 Officer Taylor all left I believe one of the reserve
16 officers was already kind of in the area

17 Q All right Now, do you know, Officer Arflin,
18 how far it is from the Clemson Police Department to
19 209 Maple Boulevard in Clemson?

20 A Not right off the top of my head, no, sir

21 Q Uh, well, you say you got there in a minute
22 or less, right?

23 A Yes, sir

24 Q Now, did you continue to get dispatches as
25 you were en route to this place?

1 A Just advised as to what the dispatcher was
2 hearing

3 Q Okay Now, who's the lead call?

4 A The lead call is Officer Hogue

5 Q Who is second call?

6 A Mine

7 Q Who is third call?

8 A Either Officer Taylor or the other Arflin

9 Q Okay Now Hogue was in front of you Was he
10 running his lights?

11 A Yes, sir We were all responding in
12 emergency code

13 Q And sirens?

14 A Yes, sir

15 Q And you were?

16 A Yes, sir

17 Q As far as you know, the car behind you were?

18 A Yes, sir

19 Q Also whoever was driving?

20 A Yes, sir

21 Q February 13th of 2009, you remember what the
22 weather was like?

23 A No, sir I can't

24 Q Was it raining or cool?

25 A I believe it was clear As far as whether it

1 was raining or -- whether it was cold or warm, I

2 Q Well, in some weather, sound and light travel
3 further than in other weather, don't they?

4 A Yes, sir

5 Q So all three of you are running lights and
6 sirens At what point in time, if ever, do you turn
7 your siren off?

8 A When we turned onto Maple

9 Q When you turned onto Maple, your lights still
10 on at that point in time?

11 A I pretty much think I shut everything down,
12 but I can not say 100 percent

13 Q Okay How about Hogue's? Do you remember?

14 A I believe he shut everything down also

15 Q Okay Well, what road do you turn off of to
16 go onto to Maple Boulevard?

17 A Pendleton Road

18 Q From Pendleton Road to 209 Maple Boulevard,
19 how far is that?

20 A Approximately two blocks Not that far

21 Q Not far at all Okay Now, when you get
22 there, where did Hogue park his vehicle?

23 A In the driveway, directly in front of me

24 Q And where do you park in relationship to
25 Hogue's car?

1 A Behind him I was partially in the driveway
2 and partially in the roadway, but directly behind him

3 Q Were you perpendicular to him?

4 A I was more at an angle behind his car

5 Q Okay Did you pay any attention where the
6 third car came in? Where it parked?

7 A No, sir

8 Q Okay Did you see Officer Hogue get out of
9 his car?

10 A Yes, sir I did

11 Q All right And which direction did he head?

12 A He went left towards the front door

13 Q Which direction did you go?

14 A I went down the right side of the house as
15 you are looking in the front around into the back
16 yard

17 Q All right You went around the right of the
18 house?

19 A Yes, sir

20 Q Okay You remember that backyard being
21 fenced?

22 A Yes, it was

23 Q Okay Did you have to jump the fence?

24 A No, sir I believe the fence was unlocked

25 Q Okay So at any rate, you opened the gate if

1 that's ---

2 **A** Yes, sir

3 **Q** --- what you're telling me Then you and
4 another officer went to the backyard

5 **A** Yes, sir

6 **Q** At that point in time, did you have your
7 weapon drawn?

8 **A** Not at that point

9 **Q** Okay What point in time did you draw your
10 weapon?

11 **A** When we came around the front of the house
12 and entered

13 **Q** All right Now, if you -- I don't believe
14 we've got a picture of the back of the house But
15 we'll talk about it anyway You go around the back of
16 that house You say it's a deck, right?

17 **A** Yes, sir

18 **Q** Actually there's a roof over and it has some
19 studs in it, does it not?

20 **A** I'm assuming I guess Best I could, best I
21 remember was a deck at that point I wasn't really
22 paying attention to the roof lining

23 **Q** All right Did you ever go up on the deck?

24 **A** Only coming out of the house

25 **Q** Pardon me?

1 **A** Coming out of the house, heading back out
2 when we left

3 **Q** Okay So you came out You didn't go in
4 that way?

5 **A** No, sir

6 **Q** Well, you say you didn't go up on the deck,
7 but it's raised, right?

8 **A** Yes, sir

9 **Q** And if I understood you correctly, it was
10 about eye level, right?

11 **A** Yes, sir

12 **Q** All right And according to, I believe you
13 were looking at State's Exhibit 9 Let me show you
14 this Put it on the overhead Is that what you were
15 looking at when you told us Mr Wylie was ---

16 **A** Yes, sir

17 **Q** You see any weapon in his hand?

18 **A** No, sir I didn't

19 **Q** You ever see Mr Wylie that night with a
20 weapon?

21 **A** No, sir

22 **Q** You seen any blood on him?

23 **A** Not to my memory

24 **Q** Okay You got pretty close to him, didn't
25 you?

1 **A** Close enough to put him on the ground, yes,
2 sir

3 **Q** Yes, sir And so you don't remember seeing
4 anything, right?

5 **A** No, sir

6 **Q** Other than your activity out there at 209
7 Maple Boulevard on February the 13th, 2009, do you
8 have any other, any further involvement with this
9 case?

10 **A** No, sir

11 **Q** Did you ever go back to 209 Maple Boulevard
12 again?

13 **A** No, sir

14 **Q** Now, you say that the kitchen area -- let me
15 see I think you said the eating area and the living
16 room area were well lighted Is that what you said?

17 **A** It's well lit

18 **Q** Okay Was a light on in the interior of the
19 house?

20 **A** Yes

21 **Q** Okay Did -- from your observation standing
22 there at the patio door, we'll come around to the
23 front door in a minute, but from your observation of
24 standing there at the back door, did Mr Wylie ever
25 attempt to run?

1 A No, sir

2 Q Did he ever attempt to hide?

3 A No, sir

4 Q He stood there?

5 A Yes, sir

6 Q Until at some point in time, he went to the
7 front door, right?

8 A Yes, sir

9 Q Now, when the front door was open, were you
10 back around there?

11 A When it was opened the rest of the way, I
12 was When it was initially pulled, I was --

13 Q Were you there when Officer Hogue first spoke
14 to Mr Wylie?

15 A No, sir

16 Q Now, you, uh, well you don't see a weapon
17 You say you see what appears to be something laying at
18 the front door, right?

19 A A body

20 Q Right

21 A That was identified I could identify that

22 Q That deck is kind of eye level for you

23 A Yes, sir

24 Q And you -- I'll show you the picture again
25 You are having to look through chairs and table legs

1 and everything else to get to the front door, right?

2 **A** Yes, sir

3 **Q** Pardon me?

4 **A** Yes, sir

5 **Q** Okay And when Hogue is going to the front
6 door, are any transmissions, communications or
7 dispatches between you and Hogue?

8 **A** The only thing that was communicated by
9 Officer Hogue at that point is when I was coming back
10 around the residence, he advised that there was a
11 subject down and they needed EMS

12 **Q** All right When you went back around to the
13 front door, did Blake Arflin go with you also?

14 **A** Yes, he followed me around to the front

15 **Q** So there was nobody at the back door now?

16 **A** At that point, no

17 **Q** You just left that totally unsecure, correct?

18 **A** Yes, sir

19 **Q** All right And when, uh, -- well, actually,
20 you did that before Hogue even called you I believe
21 you said you were on your way back around to the front
22 of the house, right?

23 **A** As soon as I saw the body laying, yes, sir

24 **Q** All right So you say you saw the body and
25 you and Blake both head for the front door, correct?

1 **A** Yes, sir

2 **Q** Go the same way?

3 **A** Yes, sir

4 **Q** Okay Now, when you get to the front door,
5 where is Hogue?

6 **A** He is standing in front of the front door
7 The door is cracked He's standing there looking in

8 **Q** When you get up there, can you see Mr Wyllie?

9 **A** Not until I entered

10 **Q** Okay So are you saying when you got back
11 around front, nobody standing at that door could have
12 seen Mr Wyllie?

13 **A** I think the only person that could see Mr
14 Wyllie at that point was Officer Hogue

15 **Q** Okay You couldn't see Wyllie, if I
16 understand you, because Hogue was blocking your
17 vision, is that what you are saying?

18 **A** No, because I was coming from around the
19 side I actually came directly down the front side of
20 the house When I got to the doorway is when we made
21 entry

22 **Q** Well, who was the first person in the house?

23 **A** That would have been Officer Hogue followed
24 by myself

25 **Q** Okay So who made first physical contact

1 with Mr. Wylie?

2 **A** I believe I would be the first one that
3 actually made physical contact with him

4 **Q** Now, you are coming back around the front of
5 the house. You draw your weapon?

6 **A** I drew my weapon right before entering

7 **Q** Right before entering. When was the last
8 time you fired your weapon?

9 **A** Before that day or not?

10 **Q** Yeah

11 **A** Before that day, I can't remember when our
12 last training was

13 **Q** Certainly handled your weapon from time to
14 time, don't you?

15 **A** By all means, yes, sir

16 **Q** All right. Now, so you go --

17 **THE WITNESS** I'm having a hard time when he
18 walks away

19 **THE COURT** The witness indicated he's
20 having a hard time hearing you when you not ---

21 **MR. DEJONG** I'll try to keep ---

22 **THE COURT** --- facing him, Mr. DeJong

23 **MR. DEJONG** He might have the same problem
24 I have

25 **THE WITNESS** I'm deaf in one ear. I got to

1 be able to see you

2 **MR DEJONG** I'm sorry?

3 **THE WITNESS** I'm deaf in one ear I've got
4 to be able to see you

5 **MR DEJONG** I apologize, sir I'll try to
6 face you

7 **BY MR DEJONG**

8 **Q** So you're heading for the front door and you
9 draw your weapon?

10 **A** Yes, sir

11 **Q** You go around Hogue, bust pass him, over him,
12 under him? How do you get around Hogue?

13 **A** I believe at that point we -- when he started
14 to enter, we more or less were almost directly on top
15 of each other going through the door

16 **Q** All right, sir Now, when you are going in
17 the door, do you see Mr Wylie with any kind of weapon
18 in his hand?

19 **A** No, sir I didn't

20 **Q** At any time, while you were there on February
21 the 13th, did you see Mr Wylie with a weapon?

22 **A** No, sir

23 **Q** Now, who was shouting for Mr Wylie to get
24 down?

25 **A** It probably would have been me

1 Q Okay Was he physically resisting in any way
2 to get down?

3 A Other than just not following orders, yes
4 No Let me rephrase that Other than not following
5 orders, no I apologize

6 Q He was not physically resisting?

7 A Not physically He wasn't fighting us

8 Q Indeed, he said he couldn't because he had a
9 bad back, right?

10 A Yes, sir

11 Q So who then assisted Mr Wyllie to the floor?

12 A I did

13 Q By yourself?

14 A Yes, sir

15 Q Where is your weapon at this point in time?

16 A In my hand

17 Q Pardon?

18 A In my hand

19 Q In your hand?

20 A In my right hand

21 Q How big is Mr Wyllie?

22 A He's a pretty big fellow

23 Q About the same size now as he was on February
24 13th?

25 A He's lost a little bit of weight to the best

1 of my memory

2 Q Would have been bigger on February the 13th?

3 A Yes, sir

4 Q And you right-handed or left-handed?

5 A I'm right-handed, but I can use my left hand
6 too

7 Q Well, I understand you can use it Which
8 weapon -- which hand were you holding your weapon in?

9 A My right hand

10 Q Your right hand?

11 A Which is my strong hand, yes, sir

12 Q And you are telling us that you take Mr
13 Wylie down by yourself?

14 A Yes, sir

15 Q Well, when you take him down, do you take him
16 down or do you gently lower him to the floor?

17 A As gentle as possible, but it's not a very
18 gentle process

19 Q Your hands on his shoulders?

20 A I had a hand on his shoulder

21 Q All right On his chest?

22 A Not on his chest

23 Q Okay Now, when you got down on the floor,
24 who actually cuffed him?

25 A Officer Hogue and the other Officer Arflin

1 Q Do you remember how he was cuffed?

2 A To the rear which is our policy, but I can't
3 remember otherwise

4 Q How many sets of cuffs were used?

5 A That, I can't testify to I can't remember

6 Q Okay At some point in time, -- let me ask
7 you this Did your radio stay on the whole time you
8 were there?

9 A Yes, sir

10 Q Do you know who requested an ambulance?

11 A Officer Hogue

12 Q Okay Do you at what point in time he
13 requested an ambulance?

14 A When he saw that somebody was down which is
15 before we actually entered

16 Q Before anybody entered?

17 A Exactly

18 Q Okay So when you and Hogue went into that
19 house, did anybody else come in behind you?

20 A Officer Taylor and the other Officer Arflin

21 Q They had their weapons drawn?

22 A I -- I was looking ahead of me I was paying
23 attention to the Defendant, not to them

24 Q Okay At what point in time did you put your
25 weapon back in its holster?

1 **A** When he was handcuffed

2 **Q** You said you smelled gunpowder?

3 **A** Yes, sir

4 **Q** Gunpowder lingers in the air for a while,
5 doesn't it?

6 **A** It does, yes, sir

7 **Q** Now, while you were out there, so we
8 understand, you, the other Arflin, Taylor, and Hogue
9 are all uniform patrol, right?

10 **A** Yes, we are

11 **Q** Don't mean any disrespect but y'all aren't
12 detectives, right?

13 **A** No, we're not

14 **Q** So while you were out there on the crime
15 scene, did any detectives come out there?

16 **A** Officer Peppers, Detective Peppers was on the
17 scene or came

18 **Q** Did he go in the house?

19 **A** I can't advise at that point Like I said,
20 once I exited the residence -- he didn't come in while
21 we were inside

22 **Q** I may have asked you I apologize if I did
23 I want to be sure Was Mr Wylie able to get up off
24 the floor by himself?

25 **A** No We had to help him up

1 Q You say we had to help him up, who helped him
2 up?

3 A Officer Hogue and the other Officer Arflin

4 Q Now, what's been shown to you is State's
5 Exhibit number 9 I'll show it to you again Do you
6 know when that picture was taken, Officer Arflin?

7 A No, I do not

8 Q Okay Well, looking at the picture, when you
9 were peering over the floor of that deck, is that
10 pretty much what it looked like?

11 A For the most part, yes, sir, except the
12 sliding glass door was shut

13 Q Okay All right The furniture pretty much
14 in place

15 A Yes, sir

16 Q And everything All right

17 MR DEJONG Can I have one moment, please,
18 Your Honor

19 THE COURT Yes, sir

20 (WHEREUPON, there is a pause)

21 MR DEJONG Thank you, Officer Arflin

22 THE COURT Any redirect?

23 MS MUNSON Yes, sir

24 REDIRECT EXAMINATION

25 BY MS MUNSON

1 Q Officer Arflin, do you fire your weapon -- do
2 you do any practice shooting? Are you required to do
3 that?

4 A Yes, ma'am

5 Q What is the policy of the Clemson Police
6 Department about staying up to date or practice firing
7 weapons?

8 A One a quarter, during training, we have to
9 qualify with it

10 Q Okay Once you fire the weapon, are you
11 required to do anything with it?

12 A Other than maintain it

13 Q What do you mean by maintain it?

14 A Clean my weapon after every firing to make
15 sure it's in proper order, to make sure there's no
16 defects

17 Q Okay Is that required by the police
18 department?

19 A I believe so

20 Q All right Now, did you touch the Defendant
21 with your gun?

22 A No

23 Q Did anybody, did you see him get hit or
24 touched with a gun?

25 A No

1 Q I don't know if Mr DeJong asked you or not,
2 but do you know how long it was since you fired your
3 weapon before this night?

4 A That, I couldn't say Unless I fired it that
5 day, I knew I had fired it that day

6 Q You saying you did fire it that day?

7 A No, I didn't fire it that day

8 Q Okay Great Now, you went in the front
9 door but out the sliding glass door?

10 A Yes, ma'am

11 Q Do you remember whether the sliding glass
12 door was open or shut when you went back out?

13 A When I left it, it was open When I left
14 out, the EMS personnel walked out just prior to me so
15 I don't -- I can't remember if he opened it or not
16 when I exited it

17 Q After you first went in and initially took
18 the Defendant down and he was taken out the back door

19 A It had to be opened It was closed

20 Q It had to be opened All right Do you know
21 whether or not it was locked?

22 A That I don't know

23 Q All right Thank you Nothing further

24 **THE COURT** All right Thank you You can
25 step down, Mr Arflin

1 at 2 30 Be back in your jury room at 2 30

2 (WHEREUPON, the jury exits at approximately

3 1 19 p m)

4 (WHEREUPON, a lunch recess is taken)

5 THE COURT Everybody ready to proceed?

6 MS MUNSON Yes, sir

7 MR DEJONG We're ready, Your Honor

8 THE COURT Let's get our jury back if they
9 ready to come in

10 (WHEREUPON, the jury enters at approximately

11 2 35 p m)

12 THE COURT Solicitor, you may call your next
13 witness

14 MS MUNSON Your Honor, the State calls
15 Detective James Peppers

16 JAMES PEPPERS

17 having first been sworn, testifies as follows

18 THE CLERK If you will, have a seat and state
19 your name for the record please

20 THE WITNESS Detective James Peppers with
21 the Clemson Police Department

22 DIRECT EXAMINATION

23 BY MS MUNSON

24 Q How long have you been with the Clemson
25 Police Department, sir?

1 **A** Nine years

2 **Q** And you are a detective?

3 **A** Yes

4 **Q** What are your duties as a detective?

5 **A** Investigate crimes such as property crimes,
6 homicides

7 **Q** Okay You have any law enforcement
8 experience prior to being at Clemson for nine years?

9 **A** Yes

10 **Q** What is that?

11 **A** I was actually with the Highway Patrol for 15
12 years

13 **Q** Okay Now, were you with Clemson Police
14 Department on February 13th of '09?

15 **A** Yes

16 **Q** How did you find out about this case?

17 **A** Actually, I was in my personal vehicle and I
18 was headed to the BiLos to get something and actually
19 saw two of our marked units running blue lights and
20 sirens and actually called dispatch

21 **Q** Okay And after you called dispatch, where
22 did you go?

23 **A** She told me they were headed to a house with
24 a man with a gun and they were ---

25 **MR DEJONG** Objection, Your Honor

1 MS MUNSON Where did you go ---

2 THE COURT I sustain the objection

3 BY MS MUNSON

4 Q Where did you go after you got, after you
5 talked to the dispatcher?

6 A I immediately returned back home and got my
7 patrol car and then responded to Maple Boulevard

8 Q About how long, about how long from the time
9 you saw the other cars and the time you got to the
10 scene, about how much time passed?

11 A Roughly between 10 to 15 minutes max

12 Q Okay Describe what you saw when you first
13 got there as far as who else was there?

14 A When I initially got there and got out of the
15 car, I was approached by Lieutenant Gooch who was the
16 shift supervisor I generally like to go to the
17 supervisor when I arrive on the scene He told me
18 that Mr Wylie ---

19 MR DEJONG Objection, Your Honor

20 BY MS MUNSON

21 Q Without saying what anybody said, ---

22 A Sure

23 Q --- describe what you saw as far as cars and
24 lights, anything that you saw that way

25 A Uh, there was patrol cars in the driveway

1 facing the house There was two that was sitting
2 side-by-side almost but they were all right there in
3 the one driveway

4 Q Okay Did you notice anything out in front
5 of the house other than the cars?

6 A They had actually already put up crime scene
7 tape around the, around the yard actually

8 Q Now, did you actually go into the house at
9 that point?

10 A No, I did not

11 Q How long were you on the scene?

12 A I was probably there maybe 20 minutes, 25
13 minutes

14 Q Where did you go after you were on the scene?

15 A At that point, I got back in my patrol car
16 and proceeded back to our office, and I actually
17 followed Blake Arflin transporting Mr Wylie back to
18 the office

19 Q Okay What did you do at the office?

20 A Once we got in the back in the back parking
21 lot, I actually got out and went over to help Officer
22 Arflin with getting Mr Wylie out of the patrol car
23 and walked in the back door

24 Q Okay Did you notice anything about what Mr
25 Wylie was wearing?

1 A He had on a pair of shorts and a t-shirt

2 Q Did you notice anything about the colors?

3 A The color was kind of an odd looking bluish
4 looking color shorts And the t-shirt, I believe, was
5 yellow

6 Q Okay Now once he was inside the police
7 department, did you take anything from him?

8 A I did We -- at some point, we took his
9 shorts and his t-shirt

10 Q Okay Let me show you State's Exhibit number
11 12

12 A Yes, that's the t-shirt that Mr Wylie had
13 on ---

14 Q Okay

15 A --- that night

16 Q What else is in there?

17 A There's also a pair of shorts that he had on

18 Q Okay After you took these from Mr Wylie,
19 what did you do with them?

20 A They were placed in my office and the door
21 was locked where nobody else has a key to my office

22 Q And then from your office, where did it go?

23 A It was placed into evidence

24 Q Did you give it to anyone? Any person?

25 A Officer Maw initially took control of those

1 Q Okay What else did you do while you were at
2 the police department?

3 A I attempted to interview Mr Wyllie

4 Q Other than that

5 A Other than that, we did a search warrant for
6 209 Maple

7 Q All right When you say did a search
8 warrant, explain to the jury the process you go
9 through

10 A The process to get a search warrant, you have
11 to do a description of the property, the house, the
12 house number, of course, and then wait for it After
13 you get all that in -- what we were looking for in
14 this case is we were looking for a weapon or anything
15 that would have an involvement in the homicide, in the
16 murder

17 Q Okay What do you do once you type up a
18 warrant?

19 A Present it to a judge to be signed

20 Q How does that go with the judge?

21 A Judge reads it to see if you have probable
22 cause, enough information in there to obtain a search
23 warrant If it does, they sign it at that point
24 Judge Keller, I believe, is the one who actually
25 signed it

1 Q Okay Once you have the warrant in hand,
2 where do you go?

3 A I actually went back out to the residence at
4 209 Maple

5 Q Okay Why did you get a search warrant?

6 A Because I just didn't want to go in without a
7 search warrant and process it for evidence or anything
8 like that

9 Q Okay When you went back with the search
10 warrant, did you go in the house at that point?

11 A I did

12 Q Okay

13 A I actually went in the back door and the
14 kitchen

15 Q Before you went in, did you have to check in
16 anywhere? Did you walk in? How did you do that?

17 A It should have been a log and everybody that
18 been in was checked in and out on the log

19 Q Do you remember who was doing that?

20 A I believe it was Officer Tiller, I believe

21 **MS MUNSON** I have nothing further at this
22 time, Your Honor

23 **THE COURT** Examine the witness, Mr. DeJong

24 **MR DEJONG** Thank you, Your Honor May it
25 please the Court

1 CROSS-EXAMINATION

2 BY MR DEJONG

3 Q Were you actually on duty that night,
4 Detective Peppers?5 A I was not actually on duty, but we rotate
6 calls by seven days, and investigations I was
7 actually the investigator on call8 Q All right, sir So you say once you heard
9 something on dispatch, you went home?10 A No, sir Actually, I was headed to the
11 grocery store and I actually met two of our units
12 running blue lights and siren I picked up my cell --
13 I had my cell phone I called dispatch to find out
14 what was going on because I was actually on call

15 Q Where did you go pick up your patrol car?

16 A Back at my residence

17 Q Okay So you never made it to the grocery
18 store

19 A That's correct

20 Q You turned around, but then you went home?

21 A That's correct

22 Q You picked up your patrol car?

23 A That's correct

24 Q And then once you picked up your patrol car,
25 you went to 209 Maple Boulevard?

1 A That's correct

2 Q Now, would you have been, for want of a
3 better term, would you have been the senior detective
4 on call that night?

5 A Not by number of years, but that's not how we
6 rotate our calls

7 Q Let's drop the senior part You would have
8 been the detective on call that night?

9 A That's correct

10 Q All right And you are telling me as the
11 detective on call, you never went in the residence
12 that night?

13 A Not prior to the search warrant

14 Q Let's talk about the search warrant, when did
15 you get the search warrant?

16 A It was later on Actually probably around --
17 I had to wait for the judge to actually -- he lives in
18 Easley He had to drive to Clemson

19 Q When did you actually execute the search
20 warrant?

21 A That night, or later that night

22 Q Okay Then who all was there when the search
23 warrant was executed?

24 A Detective Brown who actually executed the
25 search warrant I just signed it He executed it

1 Officer Maw collected the evidence that we collected

2 Q So you went back out there Did you take the
3 search warrant out there?

4 A I did drive it back out

5 Q Okay But what you are telling me is you
6 weren't involved in the search at all?

7 A That's correct

8 Q All right The, uh, fact that there's crime
9 scene tape up at a place, the significance of that is
10 basically just to keep certain people out of a certain
11 area, right?

12 A Yes, that's correct

13 Q That's pretty standard procedure, right?

14 A Sure

15 Q The shorts and t-shirt that you identified
16 for Ms Munson, was anything else taken from Mr
17 Wylie?

18 A That night, from his person?

19 Q Yes

20 A No, sir

21 Q All right You followed Blake Arflin back to
22 the police department?

23 A That's correct

24 Q And when you got there, you helped Blake
25 Arflin get Mr Wylie out of the patrol car?

1 A Yes, sir

2 Q Physically help Mr Wylie get out of the
3 patrol car?

4 A Actually, we were going to attempt because
5 it's not a whole long of room, Mr Wylie is a tall
6 fellow We were going to help him He actually felt
7 more comfortable maneuvering himself to get out

8 Q All right The first time you went out to
9 209 Maple Boulevard, you were there for about 20
10 minutes?

11 A Yes, sir Give or take a few minutes

12 Q All right And the second time you went out
13 there, how long were you out there the second time?

14 A With the search warrant, with them executing
15 the search warrant, I was there for a while

16 Q Do you know how long?

17 A No, sir, Not right off the top of my head

18 MR DEJONG May I have a moment please,
19 Your Honor?

20 THE COURT Yes, sir

21 (WHEREUPON, there is a pause)

22 BY MR DEJONG

23 Q How long was that pair of shorts and that t-
24 shirt in your office?

25 A Just until we came from the house back to the

1 office is when I turned it over to Officer Maw

2 Q That was after the search warrant?

3 A That was after the search warrant That's
4 correct

5 Q Thank you, sir

6 THE COURT Any redirect?

7 MS MUNSON No, sir

8 THE COURT Thank you, sir You may step
9 down, Officer Peppers

10 MS MUNSON Your Honor, the State calls
11 Jimmy Maw

12 MR DEJONG I have no objection to
13 Detective Peppers being excused if he so desires,
14 Your Honor

15 THE COURT All right Officer Maw
16 Officer Maw, let me remind you you are still
17 under oath

18 THE WITNESS Yes, sir

19 THE COURT If you would just have a seat
20 please and state your name for the record

21 JAMES MAW

22 having previously been sworn, testifies as
23 follows

24 THE WITNESS Jimmy Maw

25 DIRECT EXAMINATION

1 BY MS MUNSON

2 Q You are the evidence person for Clemson
3 Police?

4 A That's correct

5 Q Did you go to 209 Maple on the date of this
6 incident?

7 A Yes, ma'am I did

8 Q Were you on duty?

9 A No, they called me in

10 Q Okay When you first got to the scene, do
11 you remember about what time it was?

12 A About 9 30, I believe it was, is when they
13 called me or sometime after nine o'clock

14 Q Okay When you got to the scene, did you go
15 into the house?

16 A No, ma'am

17 Q Why did you not go into the house at that
18 time?

19 A I was advised that we were going to wait on
20 Pickens County Sheriff's Department to do ID work or
21 the crime scene itself We waited Also, I was
22 advised that, uh, Detective Peppers from our
23 department also obtained a search warrant before we
24 went in

25 Q Okay Once Detective Peppers got back to the

1 scene with the search warrant, what did you do?

2 **A** I went in with also -- went into the
3 residence with the Pickens County ID officers And we
4 identified certain things inside the apart -- inside
5 the house They photographed them Then once
6 everything was photographed and identified, then I
7 collected the items that I needed to collect to take
8 to our department in this case

9 **Q** Okay Now, you say things were photographed,
10 how were they photographed?

11 **A** The Pickens County officer photographed them
12 with an ID number or a letter And once they were
13 photographed by Pickens County, I went behind them and
14 photographed them also to be able to show our
15 department what we collected from the location

16 **Q** Okay Let me show you State's Exhibits
17 number 22 and 23

18 **A** Okay

19 **Q** Do you recognize those items?

20 **A** Yes, I do

21 **Q** Are they true and accurate depictions of that
22 phone when you got to the house?

23 **A** That's correct

24 **MS MUNSON** Your Honor, I move State's 22
25 and 23 into evidence

1 **MR DEJONG** Without objection, Your Honor

2 **THE COURT** Without objection, exhibits 22

3 and 23 are into evidence

4 (WHEREUPON, State's Exhibit numbers 22 and 23 are
5 admitted into the record)

6 **BY MS MUNSON**

7 **Q** All right There we go This is State's
8 Exhibit number 22 that's in evidence now

9 **A** Yes, ma'am

10 **Q** You can use the laser pointer right there
11 Just punch on the red button

12 **A** Okay

13 **Q** What is depicted in this exhibit?

14 **A** The telephone is laying in the chair with the
15 receiver in the floor This is a desk inside the
16 kitchen area The phone is upside down at this point
17 here with the receiver down

18 **Q** Okay What does State's Exhibit number 23
19 show?

20 **A** This is the phone, after we turn the phone
21 back over, it shows that the phone is 9-1 -- that the
22 phone had been dialed 911 at the time

23 **Q** All right Now, Officer Maw, I'm going to
24 show State's Exhibit 16, 17, 18, 19, and 20

25 **A** Okay

1 Q Do you recognize those items?

2 A Yes, I do

3 Q How do you recognize them?

4 A These are the items that were found inside
5 the residence that night, that I collected from the
6 residence

7 Q Are they true and accurate depiction of how
8 you found them?

9 A Yes, ma'am

10 Q And how you recovered them?

11 A Yes, ma'am

12 MS MUNSON Your Honor, I move State's 16,
13 17, 18, 19 and 20 into evidence

14 THE COURT Any objections to the exhibits?

15 MR DEJONG No objections, Your Honor

16 THE COURT Without objection, exhib ---

17 MS MUNSON No, Officer Maw ---

18 THE COURT --- exhibits 16 through 20

19 MS MUNSON I apologize, Your Honor

20 (WHEREUPON, State's Exhibits 16 through 20 are
21 admitted into the record)

22 BY MS MUNSON

23 Q What is presented as State's Exhibit number
24 5, Officer Maw ---

25 A Yes, ma'am

1 Q Would you use the laser pointer that's right
2 there and indicate in this Exhibit for the jury where
3 you found the items that are depicted in these State's
4 Exhibits

5 A Okay Coming into the living room part, this
6 is the bed area On the other side of this bed is a
7 lamp stand The black box was found down below that
8 area with the items that are in the box

9 Q Okay Let me just show you State's Exhibit
10 number 16 Now, what does this show?

11 A That is a locked box or safe that we found at
12 the edge of the bed

13 Q Was it locked?

14 A No, ma'am

15 Q Okay Now, what does State's Exhibit number
16 17 show?

17 A It shows this is ammunition for a gun This
18 is a blue stocking cap This is a rag At this time,
19 that's all you are able to identify is the ammunition,
20 the blue hat and the rag at this time

21 Q Okay State's Exhibit number 18

22 A Now, once you've pulled the stocking cap back
23 and identified a weapon or a pistol at that time
24 inside this box

25 Q Okay Now, showing you State's number 19

1 **A** Okay Once we picked the items out of the
2 box and brought it to the edge here and laid it out,
3 this is the weapon that we found in the box in a
4 holster with the blue hat and also this rag was
5 wrapped around it

6 **Q** And finally, I'm showing you State's Exhibit
7 number 20

8 **A** That is the weapon that we recovered Like I
9 said, with the blue hat and also the cover that was
10 inside the safe at the time we recovered everything

11 **Q** All right Officer Maw, I'm going to show
12 you State's Exhibit number 26 Take a look at this

13 **A** Okay

14 **Q** Do you recognize that?

15 **A** Yes, I do

16 **Q** What is State's Exhibit number 26?

17 **A** It's a home security safe that was in our
18 photograph

19 **Q** Okay What's inside of State's Exhibit
20 number 26?

21 **A** This one is -- the, uh, at this time, the
22 holster, the blue cap and also the rag that was used
23 that was wrapped around the gun inside the box

24 **Q** Okay

25 **MS MUNSON** Your Honor, I move State's 26

1 into evidence

2 **MR DEJONG** Without objection, Your Honor

3 **THE COURT** Without objection, Exhibit 26

4 with the content is into evidence

5 **(WHEREUPON, State's Exhibit number 26 is admitted**

6 into the record)

7 **BY MS MUNSON**

8 **Q** Now, Officer Maw, I'm going to show you

9 State's Exhibit number 15

10 **A** Okay

11 **Q** Take a look at this

12 **A** This is a box that I took the gun and placed

13 inside of and taped it up and took it to SLED

14 **Q** Now does that weapon have any identifying

15 marks on it?

16 **A** It has my case number, also when it was

17 sealed up in Columbia with my initials on it

18 **Q** Okay The firearm itself

19 **A** The firearm, the only thing that -- I don't

20 have any initials on the firearm, no, ma'am

21 **Q** If you would, open State's 15

22 **A** Okay

23 **Q** What is inside State's 15?

24 **A** The gun itself and the ammunition that was

25 taken from the gun on the incident -- of the incident

1 that took place that night

2 Q Okay Now, the firearm itself, does it have
3 any marks on it that would help you to identify it?
4 Any numbers that are ---

5 A It would have the, uh, -- I'm trying to
6 locate the number (Pause)

7 The VIN, the serial number is on the back of
8 the gun that is, uh, that was then logged into SLED
9 headquarters

10 Q Okay Can you tell what it is from looking
11 at that weapon? "

12 A Yes, ma'am

13 Q What is that?

14 A You need the numbers?

15 Q Yes, sir

16 A V6965219

17 **THE COURT** Officer Maw, let me just ask
18 you, has that weapon been disabled?

19 **THE WITNESS** Disabled?

20 **THE COURT** Is it -- is it -- is the chamber
21 been disabled in any way now for purposes of the
22 jury to see it?

23 **THE WITNESS** Yes, sir

24 **THE COURT** I want to make sure you complied
25 with the court rules in handling that weapon,

1 sir

2 **THE WITNESS** Okay It seal -- it's empty
3 and it's sealed in the package

4 **THE COURT** All right, sir

5 **THE WITNESS** I mean, there is no ammunition
6 in it

7 **BY MS MUNSON**

8 **Q** What else is in the Exhibit?

9 **A** It's got, uh, package that we sent down with
10 seven shells, actual bullets and one empty bullet
11 that's in a packet here

12 **Q** Okay From where did you get State's number
13 15(a) and 15(b)?

14 **A** It was taken from the gun that night

15 **Q** Okay

16 **A** Once we secured the gun, we unloaded it and
17 placed each item in a plastic bag to be taken to SLED
18 headquarters

19 **Q** Is this gun in, uh, the same condition as
20 when you took it that night?

21 **A** Yes, ma'am

22 **MS MUNSON** Your Honor, I'm going to offer
23 State's 15, 15(a) and 15(b)

24 **MR DEJONG** Your Honor, may we approach?

25 **THE COURT** Yes, sir

1 (WHEREUPON, a bench conference is held off the
2 record)

3 **THE COURT** All right Ladies and
4 Gentlemen, let's take a short break I'll ask
5 you to go back to your jury room Let me remind
6 you again, don't discuss the case We'll call
7 you back in just a couple of minutes after we get
8 this matter resolved If you will go back to
9 your jury room

10 (WHEREUPON, the jury exits at approximately
11 3 01 p m)

12 **THE BAILIFF** The door is closed

13 **THE COURT** Okay I understand one of the
14 jurors needed a break So that was an opportune
15 time to take a break One of the jurors needed a
16 break

17 **MR DEJONG** Oh, okay

18 **THE COURT** That was a, I would presume, a
19 bathroom break or whatever I understand from
20 the bench conference that the box had a, the
21 weapon, uh, bag of ammunition and then an empty
22 bag and then one more bag maybe?

23 **MS MUNSON** Yes, sir 15(b) is a clear
24 plastic bag with one cartridge in it

25 **THE COURT** Okay

1 MS MUNSON 15(a) is a plastic bag with
2 seven spent and unspent cartridges in it

3 THE COURT Okay

4 MS MUNSON And the plastic bag is in the
5 box and it's empty

6 THE COURT And it's unmarked?

7 MS MUNSON It's unmarked

8 THE COURT Okay With consent, that bag
9 will not be admitted

10 MR DEJONG That's correct

11 THE COURT Mr DeJong, any objection to the
12 Exhibit 15, 15(a) and 15(b)?

13 MR DEJONG No objection

14 THE COURT All right I'm going to take
15 just a short break Uh, let me remind, uh,
16 Solicitor in particular and Mr DeJong as well,
17 let's be mindful of the Supreme Court's rule of
18 handling firearms as far as pointing it toward
19 the jury

20 Don't do that, Mr Maw

21 THE WITNESS I'm sorry

22 THE COURT I know it's in a bag, but as I
23 understand bullets can go through plastic bags
24 So if you would, be careful about that and make
25 sure your other witnesses and anybody handling

1 the gun understands We've told them it's
2 unloaded, but it's not -- I understand it's not
3 sealed in any way and has a clip in it So let's
4 make sure the jury doesn't have any apprehension
5 about the weapon while we are here

6 **MS MUNSON** Yes, sir, Your Honor

7 **THE COURT** You may step down, Mr Maw Let
8 me remind you not to discuss your testimony with
9 anyone while we are taking a break
10 We'll be at ease for 10 minutes

11 **(WHEREUPON, State's Exhibit numbers 15, 15(a) and**
12 **15(b) are admitted into the record)**

13 **(WHEREUPON, a short recess is taken)**

14 **BY MS MUNSON**

15 **Q** What is depicted here, Officer Maw?

16 **A** These are the fragments that were taken from
17 the body and laid out on a blue cloth inside the, uh,
18 autopsy room

19 **Q** Okay What did you do with these fragments?

20 **A** They was taken to SLED, the South Carolina
21 Law Enforcement Division in Columbia along with the
22 gun and other items to have it tested to see if that
23 matched up

24 **Q** Okay I'm showing you State's Exhibit 13
25 If you could, just take a look at that

1 **A** Okay

2 **Q** Do your initials appear anywhere on State's
3 Exhibit 13?

4 **A** It does

5 **Q** And ---

6 **A** On February the 20th of 2009, this was taken
7 to SLED and I signed it where they taped it

8 **Q** Okay If you don't mind, open that up and
9 let's see what's inside What is that you are holding
10 up?

11 **A** This is a bag with a blue container that was
12 cup or container that we -- that was, that Dr Warder
13 put the fragments inside of

14 **Q** Okay

15 **A** To take to transport to SLED

16 **Q** Where were you when he was putting those
17 items in that container?

18 **A** I was standing close by him

19 **Q** Okay Now, let me show you State's Exhibit
20 number 15

21 **A** Okay

22 **Q** Do you recognize that?

23 **A** Yes, I do

24 **Q** Do your initials appear anywhere on there?

25 **A** Yes

1 Q Where?

2 A Here in red and I think that was, it appears
3 to be the -- I can't identify it They got two on it
4 I can't see it Here it is It's here on the bottom
5 March 20th, '09 is when I took this one to Columbia

6 Q Okay And what is in State's Exhibit
7 number ---

8 A This is the victim's clothing

9 Q From where did you get State's Exhibit number
10 14?

11 A It was taken while we were at the autopsy at
12 the hospital

13 Q And what did you do with the clothing once
14 you got it from the hospital?

15 A I brought it back to our police department
16 and logged it in as evidence And once I logged it,
17 we tried to get everything together and also I took it
18 to South Carolina Law Enforcement Division in
19 Columbia

20 Q Okay Did you have to take any special care
21 with any of the pieces of clothing in State's Exhibit
22 14?

23 A Yes, I did The shirt that the victim was
24 wearing was covered in blood I have to -- I had to
25 hang it and let it dry until I could put it, pack it

1 up in a brown envelope or brown bag and take it to
2 Columbia So we let it dry before I transported it

3 Q Okay Where did this drying process take
4 place?

5 A In my evidence room

6 Q Who has access to that room?

7 A I have access and, uh, I have one other lady,
8 it's a major over the investigation She has a key
9 for that office too

10 Q What goes on inside the evidence room?

11 A The evidence room is where we store our
12 evidence We log it in and -- for cases like this or
13 cases that we have in our police department

14 Q Okay Does anything else go on inside there?

15 A No, ma'am

16 Q What facilities do you have at the Clemson
17 Police Department to, say, test fire guns?

18 A We don't have one

19 Q I'm going to show you State's Exhibit number
20 28 and 29 Take a look at those

21 A Okay

22 Q Do you recognize those?

23 A Yes, I do

24 Q Are they true and accurate depictions of the
25 shirt after you got it back from autopsy?

1 **A** Yes, sir

2 **MS MUNSON** Your Honor, I offer State's 28
3 and 29 into evidence

4 **MR DEJONG** Without objection, Your Honor

5 **THE COURT** Without objection, 28 and 29 are
6 in evidence

7 **(WHEREUPON, State's Exhibit numbers 28 and 29 are**
8 admitted into the record)

9 **BY MS MUNSON**

10 **Q** All right Officer Maw, this is State's 28
11 that is in evidence What does this show?

12 **A** That is the victim's shirt that was taken
13 from, from her on the day of the autopsy I brought
14 it in Like I said, I hung it up in our evidence room
15 over a door to let it dry out before taking it and
16 transporting it to Columbia

17 **Q** Okay Is that the front or the back of the
18 shirt?

19 **A** That is the front of the shirt

20 **Q** Okay Is there anything else that you
21 noticed about the shirt other than the red substance?

22 **A** No, ma'am Except for the design in the
23 middle that identified it was her shirt at the time
24 that we collected it

25 **Q** Okay Let me show you State's number 29 Do

1 you recognize that?

2 **A** That -- let me see The area right here is a
3 hole that's in her shirt that appears to be a bullet
4 hole

5 **Q** Okay Now, let me show you another exhibit

6 **A** Okay

7 **Q** Let me show you State's number 24

8 **A** Okay Okay

9 **Q** Do you recognize that?

10 **A** Yes, I do

11 **Q** Does this accurately depict that shirt on
12 Missy Wylie at the scene?

13 **A** Yes

14 **MS MUNSON** Your Honor, I'm going to move
15 State's 24 into evidence

16 **THE COURT** Any objection to Exhibit ---

17 **MR DEJONG** Your Honor, the same objection
18 I had on -- I'm not sure which one it was I
19 could find it Actually same objection I had as
20 to Exhibit 25 and I think very early on today,
21 there were three others All the same objection

22 **THE COURT** All right Subject to your
23 objection, Exhibit 24 is admitted in evidence

24 **(WHEREUPON, State's Exhibit 24 is admitted into**
25 the record)

1 BY MS MUNSON

2 Q Officer Maw, State's Exhibit number 24

3 A Okay This is at the residence of the night
4 of the incident This is the coroner's hand She's
5 identifying the location of where the wound was or the
6 bullet hole in the shirt

7 Q Okay Now, is that -- can you tell from --
8 were you there while this -- did you see this actually
9 at the scene?

10 A Yes

11 Q Okay Now, the reddish area, what part of
12 Missy's body is that?

13 A That is the --

14 Q This area right here, what part of her body
15 is that?

16 A That's the right shoulder

17 Q Okay Now, after looking at State's Exhibit
18 number 24, I'm going to show you State's Exhibit
19 number 28 again After looking at State's Exhibit
20 number 24, is 28 the front or back of Missy's shirt?

21 A I apologize This is the back area of the
22 shirt The stain on the back is more -- the blood
23 stain is on the back of the shirt instead of the
24 front

25 Q Okay

1 **MS MUNSON** Beg the Court's indulgence

2 (Pause)

3 Thank you, Your Honor I have nothing
4 further of this witness at this time

5 **THE COURT** Mr DeJong, you may cross-
6 examine the witness

7 **MR DEJONG** Thank you, Your Honor May it
8 please the Court

9 **CROSS-EXAMINATION**

10 **BY MR DEJONG**

11 **Q** Now, Officer Maw, who prepared the property
12 and evidence report?

13 **A** The what?

14 **Q** Who prepares the property and evidence
15 reports?

16 **A** I put them in the evidence -- I put them in
17 the computer once I log stuff in

18 **Q** All right And then a report is run from
19 what you put in the computer?

20 **A** Yes, sir

21 **Q** Well, you gave this jury a serial number a
22 while ago That's not the same gun you logged into
23 property and evidence, is it?

24 **A** That is the -- that's a number that was given
25 to me at the time

1 Q Well, didn't you log it in under serial
2 number 4074?

3 A I believe that's correct

4 Q All right Now, you are saying that's not
5 correct?

6 A At the time of the incident or the time that
7 we did this, I removed the gun from the box, picked it
8 up and tried to identify I did not try to lift it or
9 touch it more than I had to due to the fact that we
10 wanted to have it transported to SLED So I
11 identified the numbers on the front of, or don't know
12 exactly which area did the number come from I would
13 have to open the gun up and look at it to identify it
14 That was the number that I did take and have that
15 night with the, also with Detective Peppers that wrote
16 down in the search warrant

17 Q Well, you are the evidence custodian, right?

18 A Yes, sir

19 Q And keeping evidence properly logged would be
20 important in any case, would it not?

21 A Yes, sir It is

22 Q And especially in a case like this

23 A Yes, sir

24 Q And they were logged wrong?

25 A Yes, sir It was logged wrong

1 Q All right, sir Now, the -- you got there
2 but you did not go into the residence is what you are
3 telling me

4 A Yes, sir

5 Q Correct?

6 A That's correct

7 Q You said you were waiting for Pickens County
8 to show up

9 A Pickens County deputies, ID unit was going to
10 help assist

11 Q Now, the -- show you what's been introduced
12 as State's Exhibit 22 and 23 But before I ask you
13 about those two exhibits, were you there when
14 Detective Peppers came back with search warrant?

15 A I was standing outside the residence in the
16 driveway or roadway waiting on the Detective Peppers
17 to bring the search warrant

18 Q And what time did he get there with the
19 search warrant?

20 A I can't give you a time on that I don't
21 know

22 Q What time did Pickens County Sheriff's Office
23 ID get there?

24 A They were there before Detective Peppers
25 brought the search warrant back I can't give you a

1 time on that right off hand

2 Q When they got there, did y'all go into the
3 residence?

4 A No, sir

5 Q When you got there, Pickens County Sheriff's
6 deputies got there, who was in the residence?

7 A The officers that was here on the witness
8 stand this morning was the one that was in the house
9 and came out

10 Q How many officers is what I'm asking you

11 A I think the video -- if I saw the video
12 correctly, there were three or four I'm not
13 definitely sure

14 Q Now, referring to State's Exhibits 22 and 23,
15 I believe

16 A Yes, sir

17 Q That, uh, table, desk or whatever you want to
18 call it, where was that located in the house, Officer
19 Maw?

20 A When you come in the -- if you come in the
21 rear of the house through a sliding glass door, you
22 are coming into the kitchen area and the desk is right
23 in front of you

24 Q All right So would it be safe to say that
25 was in the kitchen area, right?

1 A Yes

2 Q And when you got, when you finally gained
3 access to the house, you know what time you finally
4 got into the house?

5 A No, sir I don't remember the exact time

6 Q All right And who actually did the
7 searching?

8 A Pickens County, uh, Pickens County ID officer
9 that was on the scene located some of the stuff I
10 think Detective Peppers was, uh, also looking around
11 the area, looking for the item that we were looking
12 for At that time, it was the gun

13 Q Okay Well, let's go back to the telephone
14 for just a moment

15 A Yes, sir

16 Q You recall what kind of floor there was in
17 the kitchen?

18 A It's a tiled floor

19 Q All right And the, according to the picture
20 now, this is not a cell phone, this is a table model
21 receiver hard line telephone, right?

22 A Yes, sir

23 Q It appears that the receiver is laying on the
24 floor

25 A The telephone is laying on the chair and the

1 receiver is laying on the floor

2 Q Okay Is that the way that you found it?

3 A Yes, sir

4 Q Okay Now, you say the telephone was upside
5 down?

6 A Yeah It was upside down in the chair

7 Q So you couldn't see the 911 until you turned
8 it over

9 A That's correct

10 Q Okay The -- so that connection had not been
11 cut for some hours at this point in time?

12 A Yes, sir

13 Q All right Uh, what you have shared with
14 Madam Prosecutor while she was asking you questions
15 and what we have seen here is -- some of it was not
16 taken out of the house I understand that You
17 didn't take the telephone, right?

18 A No, sir

19 Q You took this locked box?

20 A Yes, sir

21 Q Which the contents which basically is --
22 that's State's Exhibit 26 Then you took a pistol and
23 some shell casings, right?

24 A Yes, sir

25 Q Along with -- you identified some pictures of

1 ammunition, is that correct?

2 A Yes, sir

3 Q I don't believe they've been introduced

4 A No, sir They haven't

5 Q Thank you, sir I want to be clear on one
6 thing, who found the gun?

7 A Uh, Detective Peppers or one of the Pickens
8 County, I think the Pickens County ID officer that was
9 actually in the residence with us actually located it
10 first because someone made the statement that we found
11 the item at the end of the bed

12 Q All right And that item being the pistol?

13 A Yes, sir

14 Q Now, to your knowledge, was the pistol in the
15 lock box?

16 A Yes, sir

17 Q Along with that blue cap and a white cloth?

18 A Yes, sir

19 Q Now the blue cap was just like a regular blue
20 stocking ---

21 A Stocking cap

22 Q Not like a ski mask ---

23 A No, sir

24 Q --- or anything like that Okay When you
25 are at the scene and the weapon is found ---

1 **A** Yes, sir

2 **Q** --- was the weapon cleared at that point in
3 time? In other words, was the ammunition taken out of
4 the weapon?

5 **A** Yes, it was

6 **Q** Who took the ammunition out of the weapon?

7 **A** I did

8 **Q** Did you pay any attention to the ammunition
9 when you took it out of the weapon?

10 **A** Yes, sir

11 **Q** Did you look at what order those rounds were
12 in the weapon?

13 **A** The ammunition should have my initials or
14 numbers on them the way I took them out

15 **Q** Well, let me show you what's been marked
16 here State's Exhibit, I guess, 15(a) It appears
17 that there's writing on the shell casings, but I can't
18 see that far

19 **A** That is correct

20 **Q** Okay

21 **A** Yes, sir

22 **Q** And just so we all know when we look at those
23 shell casings, what do you have written on those shell
24 casings?

25 **A** I'm trying to identify it, sir I've got --

1 I've got a case number and I've got the case number
2 and an item number on each one of them it looks like
3 I'm having a problem looking inside the container

4 Q I'm sorry

5 A That's what it appears We've got item
6 number and our case number on them

7 Q Is the item number the same on each one of
8 them?

9 A No, sir It's got different numbers

10 Q Was that just a count or was that how you
11 actually took them out the weapon?

12 A Just a count I believe it was

13 Q All right So getting back to my question
14 was you didn't pay any particular attention to what
15 round came out of which little hole in the chamber?

16 A Sir, I'm not -- can't remember

17 Q Very good Now, also looking at -- I'm
18 sorry State's Exhibit 15(a), there appears to be to
19 spent rounds in there Is that correct, sir?

20 A Yes, sir

21 Q Were those rounds spent, shot, fired, empty
22 when you cleared that gun?

23 A No, sir Not them two

24 Q All right So what has been identified as
25 State's Exhibit 15(a), at the time you cleared that

1 weapon on, what day was it?

2 **A** The 13th, February 13th

3 **Q** February 13th?

4 **A** Yes, sir

5 **Q** When you cleared that weapon on February the
6 13th, there were seven live rounds in that gun?

7 **A** Yes, sir

8 **Q** And there was one empty?

9 **A** Yes, sir

10 **Q** And the hammer was on the empty ---

11 **A** I believe so

12 **Q** Was the safe on? Does it have a safe?

13 **A** I don't think it has a safe, no, sir

14 **Q** You found the weapon, right?

15 **A** I took it from the black box, yes, sir

16 **Q** Anything that you found about that weapon,
17 that it was in a ready fire position other than just
18 being a normal ---

19 **A** Well, you take a revolver that's here, once
20 you pull it out, you can actually pull the trigger
21 It will automatically fire

22 **Q** And if you kept pulling the trigger, it would
23 have kept firing ---

24 **A** All the rounds

25 **Q** --- until all the rounds were out All

1 right The black box, when you found it subject to
2 the search warrant, was it locked?

3 A No, sir

4 Q It was not locked?

5 A No, sir

6 Q Was it closed or ---

7 A It was closed

8 Q Okay Did you run a weapons check on the
9 weapon?

10 A I believe Detective Peppers did that

11 Q Okay Was it -- to your knowledge, was there
12 any indication that the weapon was stolen?

13 A No, sir I don't think there was -- no
14 indication that I was told

15 Q Now, when you got the -- you discovered this
16 weapon pursuant to the search warrant You couldn't
17 tell how long it had been in the box?

18 A No, sir

19 Q You couldn't tell when the weapon had been
20 loaded

21 A No, sir

22 Q You couldn't tell even if it had been removed
23 on February the 13th, prior to February the 13th, you
24 don't know how long it was there?

25 A No, sir I don't

1 Q You don't know anything about it?

2 A No, sir

3 Q Okay So other than the locked box, the blue
4 cap, white cloth, the gun, the ammunition and perhaps
5 some other ammunition, did you take anything else from
6 the house?

7 A There were some other items in the box in the
8 black box

9 Q Do you recall what they were?

10 A They were some cloth, silicon cloth that was
11 in plastic bags -- it was already still sealed in bags
12 that was taken from the residence

13 Q Okay

14 A And I can't remember what else, if there was
15 anything else or not

16 Q Well, they were in the black box, right?

17 A Yes, sir With the ammunition

18 Q Okay Aside from anything in the black box,
19 what was taken?

20 A Basically, I think that was it

21 Q Did you take a box that had any pill bottles
22 or medication bottles?

23 A No, sir

24 Q Okay Was there one there?

25 A There was a box of something sitting on the

1 table, yes, sir

2 Q And where was that in relationship to this
3 black box, State's Exhibit number ---

4 A They was sitting on a coffee table right in
5 the middle of the floor Then the locked box was at
6 the other end of the bed

7 Q Okay Well, when the Solicitor was showing
8 you pictures, you pointed out a lamp that had a -- a
9 table that had a lamp on it

10 A Yes, sir

11 Q Would you say that was at the head of the
12 bed?

13 A It depends on how you look at that bed if it
14 was the head or the -- I mean, it was a day-type bed,
15 I think it was I'm not definitely sure which end was
16 which

17 Q I'm just trying to get a point of reference

18 A Okay

19 Q Let's say that's the head of the bed

20 A We say it's the head, okay

21 Q For purposes of these questions That was
22 the head of the bed, where was the lock box?

23 A Down below, at the end If you are going to
24 use that as the head of the bed, it would be right
25 there at the bottom of it on the floor

1 Q All right, sir Now, was it under the bed?

2 A When I was advised it was there, I walked
3 over and it was sitting in the floor Now, I can not
4 tell you if it was under the bed, if one of the other
5 officers that was actually looking for it pulled it
6 out from under the bed I can't testify to that But
7 the box was at the end of the bed when I photographed
8 it

9 Q Are you the forensic officer for Clemson
10 Police Department?

11 A Yes, I do ID tech, yes, sir

12 Q All right, sir As such, do you try to
13 secure fingerprints or anything like that?

14 A Yes, sir We do

15 Q Did you ever attempt to secure fingerprints
16 off of the gun?

17 A The gun was taken to SLED, South Carolina Law
18 Enforcement Division We requested the fingerprints
19 to be done down there along with everything else that
20 we sent

21 Q Did you ever get any reports back or anything
22 on fingerprints?

23 A The reports would have been sent back to the
24 detective that was actually handling the case I
25 don't receive anything back from that

1 Q Did you as a forensic officer for the Clemson
2 Police Department attempt to fingerprint anything?

3 A No, sir

4 Q Items that are taken to SLED, there is a
5 request for fingerprints, do you request that?

6 A I tell what exactly from the detectives from
7 our department, what we would ask them for So they
8 was asked to do fingerprints and then do the
9 ballistics test on the gun

10 Q Okay So we're sure you requested
11 fingerprints on the gun, ballistics on the gun

12 A Yes, sir

13 Q Did you ever request fingerprints on these
14 shells?

15 A I don't remember if the shells were asked or
16 not I can't remember

17 Q What's been introduced as State's Exhibit
18 number 28 which you say was the shirt that was taken
19 from the alleged victim ---

20 A That's correct

21 Q --- you said the shirt was wet?

22 A Yes, sir

23 Q They get wet at the autopsy?

24 A No, it was wet from her blood

25 Q I see Only in the front?

1 **A** No, sir In the back

2 **Q** So let me see I think we both got confused
3 somewhere

4 **A** Yes, sir I did testify to that By looking
5 at it up there, I couldn't identify But there is a
6 marking showing there is a hole right there on her
7 shirt, the back part of her shirt

8 **Q** Okay So this would be the back of the
9 shirt?

10 **A** Yes, sir That's the back

11 **Q** And you are saying there was a hole kind of
12 up in here someplace?

13 **A** Yes, sir

14 **Q** Other than that particular hole, was there
15 any other holes in that shirt?

16 **A** No, sir I didn't find anything else or
17 didn't see anything else

18 **Q** Did you look?

19 **A** Yes, sir

20 **MR DEJONG** One moment please, Your Honor

21 **THE COURT** Yes, sir

22 (WHEREUPON, there is a pause)

23 **BY MR DEJONG**

24 **Q** Were any items turned over to you that were
25 taken from Mr Wylie's person?

1 **A** The only thing that was taken from him was
2 his clothing

3 **Q** That's it?

4 **A** That I know of, sir

5 **Q** Okay That's the only thing that you would
6 have had in Property and Evidence?

7 **A** That's the only thing I had -- show that was
8 in Property and Evidence, yes, sir

9 **Q** Okay (Pause)

10 Thank you, Officer Maw

11 **THE COURT** Any redirect?

12 **MS MUNSON** No, sir

13 **THE COURT** Thank you, Officer Maw You may
14 step down, sir

15 **MR DEJONG** No objection to him being
16 excused, Your Honor

17 **MS MUNSON** Your Honor, the State calls
18 Doris Yarborough (Pause)

19 I apologize, Your Honor I'm going to have
20 to step out and locate her

21 **THE COURT** All right

22 **(WHEREUPON, there is a pause)**

23 **DORIS YARBOROUGH**

24 having first been sworn, testifies as follows

25 **THE CLERK** If you would, have a seat and

1 state your name for the record

2 THE WITNESS My name is Doris Yarborough,
3 Y-A-R-B-O-R-O-U-G-H

4 DIRECT EXAMINATION

5 BY MS MUNSON

6 Q Who do you work for, ma'am?

7 A I work for the South Carolina Law Enforcement
8 Division also known as SLED

9 Q How long have you been with them?

10 A 19 months

11 Q Did you have -- what work experience did you
12 have prior to going to SLED?

13 A Administrative

14 Q What are your duties with the South Carolina
15 Law Enforcement Division?

16 A Uh, I'm a forensic technician in the log-in
17 area of SLED

18 Q All right What are your duties?

19 A To accept evidence from the different
20 agencies throughout the State of South Carolina, to
21 place it in our secure evidence room and to also hand
22 it off the analyst that needs it for analysis

23 Q Okay Describe for the jury the process that
24 you go through when you receive a place of evidence
25 from an outside agency

1 **A** When an officer from an agency within South
2 Carolina, uh, agency comes in, we look at their
3 paperwork We look at the items they have for
4 submission and we log it into our computer Upon
5 submission, a lab number is generated which is a
6 yellow sticker It goes on each package that is
7 received And we take it on a said-to-contain basis,
8 meaning whatever they say is on their paperwork, we
9 don't actually see all the physical evidence But we
10 take it and then it is sealed I seal it They sign
11 and initial, the date and their initials I transfer
12 it to the secure evidence room for the area that it
13 needs to go to

14 **Q** Okay What sort of records are generated
15 when you take in a piece of evidence?

16 **A** They get a receipt with those items listed
17 and the submitting officer's signature along with mine
18 and the date and time

19 **Q** Okay Let me show you this, State's Exhibit
20 number 13 Will you just take a look at this?

21 **A** Okay This is a package that was -- this is
22 my handwriting It's got Clemson P D on it I made
23 sure that this yellow seal that said SLED was closed
24 and sealed and that the officer that submitted it
25 signed and dated it I put this submission number on

1 it along with the item number, our item number for
2 that item

3 Q Does the item number have a description
4 associated with it?

5 A In the computer system, it does

6 Q What item number did your computer give to
7 State's Exhibit number ---

8 A May I look at my notes?

9 Q Yes, ma'am

10 A (Reviewing) According to the submitting
11 paperwork, it was Item number 2, it says missile and
12 fragments

13 Q Okay When you received that, was it
14 packaged this way?

15 A I don't ---

16 Q Or was it like this?

17 A I can't remember

18 Q Okay But in any event, is there an
19 inspection that you do of what was brought in?

20 A I take that item and put it -- according to
21 their paperwork and put it into that envelope if it's
22 not already in one And then when it goes to the
23 analyst to be examined, then they will verify that it
24 is indeed what the paperwork says it is

25 Q Okay And on what date did you receive

1 State's Exhibit number 13?

2 A That would be February 20th, 2009

3 Q And do you know what time you received it?

4 A 14 31 which would be 2 31 in the afternoon

5 Q How do you get that information into the
6 computer?

7 A The computer system is set up that way

8 Q Okay Do you type in the information or

9 A I type in the information from the paperwork
10 that I receive

11 Q Is there any other, uh, is there anything
12 else that you use to identify the items that you take
13 in?

14 A Uh, I'm not understanding your question

15 Q I'm asking you about a badge or a bar code or
16 anything like that that you take it in

17 A Okay My computer, the one that I use is set
18 up with my name and my ID I have to log onto it each
19 day And once I have taken some evidence into
20 custody, it's in my custody after I have generated the
21 receipt and the stickers that go on the evidence
22 Then I -- this is my ID That's my bar code Then
23 when I transfer that evidence to our secured evidence
24 room, we have different areas for items I scan it to
25 that particular area and it shows what the date and

1 time that it was placed into that area

2 Q Okay So you received this evidence at

3 14 31 ---

4 A Correct

5 Q --- on the 20th of February?

6 A Correct

7 Q Once you received it, what did you do with
8 it?

9 A Once I received it, I scanned it into our
10 evidence room on 14 34

11 Q On the same day?

12 A On the same day

13 MS MUNSON I have nothing further, Your
14 Honor

15 MR DEJONG May I see Exhibit 13 please

16 CROSS-EXAMINATION

17 BY MR DEJONG

18 Q With regard to this case, Ms Yarborough, did
19 you log any other evidence in?

20 A Uh, I will refer to my notes, to the
21 paperwork that I received from the Clemson P D I
22 received a handgun, the missile fragments and two
23 gunshot residue kits from the victim and the suspect
24 as well as some unfired bullets and one fired bullet

25 Q All right The weapon that you received, did

1 you note the serial number on it?

2 **A** There is a number that says it's a serial
3 number of 4074

4 **Q** All right Now, you also got gunshot residue
5 kit, I guess we call them kits, right?

6 **A** Yes, sir

7 **Q** So that we understand, that is basically
8 where after there is ---

9 **MS MUNSON** Objection, Your Honor Basis
10 of knowledge for what a gunshot residue kit is

11 **THE COURT** I will overrule your objection
12 I will allow him leeway on cross-examination

13 **BY MR DEJONG**

14 **Q** A gunshot residue kit, that's something you
15 get where somebody's hands had been bagged, correct,
16 basically?

17 **A** I assume so

18 **Q** Let me ask you this ---

19 **A** I just know that it's a GSR kit

20 **Q** When you get a GSR kit, tell me what it looks
21 like

22 **A** It's usually in an envelope, so I don't see
23 the contents of the kit

24 **Q** So all you get is an envelope?

25 **A** Yes, sir, with a name on it

1 Q So you took in the State's Exhibit 13, a gun
2 with a serial number 4-0-something on it, ammunition,
3 and gunshot residue kits?

4 A Correct

5 Q Did you take, did you get any clothing?

6 A No, sir I did not

7 Q All right You did say you got ammunition,
8 right?

9 A I did

10 Q Does that note as to whether it is expended
11 or spent ammunition or live ammunition?

12 A I had seven 357 bullets and one empty shell

13 Q All right Once you log it in, it just goes
14 in an evidence room there at SLED?

15 A In our secured evidence room, yes, sir

16 Q And then you, if I understood you correctly,
17 you said you have to make sure that it goes to whoever
18 the appropriate forensic person is?

19 A I have the ability to do that, but we do have
20 a person full time in our evidence room who takes care
21 of that If she's out -- if she's out, then one of
22 the other technicians that log in also have the
23 capability of handing it off to the analyst

24 Q So how many technicians in your

25 A We have four log in technicians and one full-

1 time evidence room technician

2 Q All five of those people have access to the
3 evidence room?

4 A We do

5 Q Okay And in this case, did you actually
6 determine -- or I'm not sure that's a good choice of
7 words, deliver, transfer the evidence you took to
8 whoever the appropriate forensic person was?

9 A I did not

10 Q Okay Do you know who did?

11 A I do

12 Q Who is that?

13 A That would be Ms Pat Crooks

14 Q I'm sorry?

15 A Patricia Crooks

16 Q Patricia Crooks?

17 A Yes, sir

18 Q So Clemson City Police Department brought you
19 this stuff on February the 20th of 2009 You log it
20 in Did everything go into the evidence room at 14 34
21 in the afternoon?

22 A Uh, yes, sir The things that I took in did

23 Q I'm sorry, ma'am?

24 A The things that I took in did

25 Q And that's what you and I just discussed,

1 right?

2 **A** Yes, exactly

3 **Q** So I'm only asking you what they are, not
4 anything else You took a gunshot residue kit Did
5 they have names on them?

6 **A** They did

7 **Q** What were the names on them?

8 **A** According to my paperwork, I have a, uh,
9 victim's gunshot residue kit and a suspect gunshot
10 residue kit

11 **Q** But no formal name? Just suspect and victim,
12 right?

13 **A** Yes, sir

14 **Q** Thank you, ma'am

15 **THE COURT** Any redirect?

16 **MS MUNSON** No redirect, Your Honor

17 **THE COURT** All right Thank you, ma'am

18 You can step down, Ms Yarborough

19 **MR DEJONG** No objection to this witness
20 being excused, Your Honor

21 **MS MUNSON** Your Honor, may we approach?

22 **THE COURT** Yes, ma'am

23 (WHEREUPON, a bench conference is held off the
24 record)

25 **THE COURT** Mr Foreman, Ladies and

1 Gentlemen of the jury, I'll ask you, if you
2 would, take a short break and we'll get this one
3 matter resolved, then we will be ready to start
4 the trial back Don't discuss the case while you
5 are back in your jury room We'll take just a
6 very short break

7 **(WHEREUPON, the jury exits at approximately**
8 4 02 p m)

9 **THE BAILIFF** The door is closed

10 **THE COURT** All right I understand from
11 the bench conference that there were a couple of
12 witnesses from SLED that the State would need to
13 call for chain purposes The defense counsel has
14 indicated his willingness to stipulate to that
15 chain since these folks, as I understand and he
16 understood, from the Solicitor's comments that
17 they did not do any examination, they were just
18 in the transferring of the items from one place
19 to another Is that correct, Mr DeJong, that
20 you have agreed that these witnesses are not
21 called to the stand although they are available
22 to be called now?

23 **MR DEJONG** If I may respond to the latter
24 part of Your Honor's statement It's my
25 understanding that they were only ministerial to

1 **MS MUNSON** That's correct, Your Honor
2 **THE COURT** All right How about Ms
3 Crooks? I think she was another one that was ---
4 **MR DEJONG** Yes, sir I think I already
5 stipulated to ---
6 **THE COURT** All right To her So all four
7 of those are now with the same stipulation as to
8 just passing
9 **MR DEJONG** Yes, sir
10 **THE COURT** All right Thank you, sir
11 All right, Solicitor, you may call your next
12 witness -- or wait, bring our jury in first Why
13 don't we do that See if they are ready if you
14 would
15 **(WHEREUPON, the jury enters at approximately**
16 4 23 p m)
17 **THE COURT** Solicitor, you may call your
18 next witness
19 **MS HAMAKER** Your Honor, the State would
20 call Tracy Thrower at this time
21 **TRACY THROWER**
22 having first been sworn, testifies as follows
23 **THE CLERK** If you would, have a seat and
24 state your name for the record
25 **THE WITNESS** Tracy Thrower, T-H-R-O-W-E-R

1 DIRECT EXAMINATION

2 BY MS HAMAKER

3 Q Mr Thrower, where do you work?

4 A I am employed by the South Carolina Law
5 Enforcement Division also known as SLED in the
6 firearms department in the forensic services building7 Q And how long have you worked with SLED in
8 that division?

9 A I believe approximately 12 years now

10 Q And what is your educational background?

11 A I have a Bachelor of Science degree with a
12 major in Biology13 Q What specialized training have you had in
14 firearms identification?15 A I have completed the SLED course of
16 instruction in firearm identification which is about a
17 three and a half year program It is mentored by
18 court qualified firearm examiners During that time,
19 I had to perform extensive reading, studying, I was
20 given oral examinations, written examinations,
21 practical problems22 I had to assist examiners in preparing their
23 cases I had to perform extensive microscopic
24 comparison I had the opportunity to attend various
25 schools and seminars in the field of identification

1 Once I graduated, I was allowed to work cases on my
2 own. Additionally, since then, I have completed the
3 course of specialized techniques and firearm
4 identification which is taught by the Federal Bureau
5 of Investigation. I have completed the course taught
6 by the Bureau of Alcohol Tobacco and Firearms in
7 serial number restoration. I have completed the
8 course on specialized scientific, a course in
9 scientifically defensible criteria for identification
10 of tool marks which is taught by Murdock and Moran.
11 I have completed numerous armor courses which
12 an armor course is a program that teaches you how --
13 you know, each fire manufacturer puts on their guns
14 They teach you how to disassemble and troubleshoot
15 problems or malfunctions with their guns, how to
16 repair them. I have had the opportunity to instruct
17 and teach at various seminars.

18 Q Is the SLED forensic laboratory, is it
19 accredited?

20 A Yes, it is.

21 Q By whom is it accredited?

22 A It is accredited by the American Society of
23 Crime Laboratory Directors Lab Division.

24 Q And what is the purpose of accreditation?

25 A It's a method of quality assurance. It

1 provides a mechanism to assure that we are, uh, that
2 we have written protocols, written procedures that we
3 are performing The work that we are performing is
4 following what we say that we do, that the type of
5 work that we, the product that we are putting out is
6 the same type of work product that is being performed
7 at other accredited laboratories throughout the United
8 States

9 Q And is your testing in accordance with those
10 other accredited laboratories across the US?

11 A Yes, it is

12 Q What is firearm identification?

13 A Firearms identification is a discipline of
14 forensic science in which a firearm examiner attempts
15 to determine if a fired bullet or fired cartridge case
16 or other ammunition component was fired by a
17 particular firearm This is done through the
18 evaluation of class characteristics, sub-class
19 characteristics and individual characteristics that
20 are placed on the ammunition component during normal
21 operation of the firearm There are other similar
22 examinations that we perform such as serial number
23 restoration, physical or fracture match, muzzle to
24 target distance determination for a physical shot
25 pellet pattern, limited crime scene assistance and

1 other source of examinations that may be related to
2 this field

3 Q And how long has firearms identification been
4 used?

5 A In it's present form, roughly since the
6 1920s

7 Q And have, has the reliability of this type of
8 testing been proven?

9 A Yes, it has Uh, there have been numerous
10 validity studies, uh, to show that the techniques that
11 we are using can be trusted These studies have been
12 published in professional journals, professional
13 scientific journals and have been peer reviewed

14 Q Have you been specifically trained to conduct
15 these type of examinations?

16 A Yes, I have

17 Q And to interpret the results of those
18 examinations?

19 A Yes, ma'am

20 Q How many exams have you conducted if you had
21 to guess?

22 A I would say roughly, uh, tens of thousands

23 Q Do other people in your division do peer
24 review on your examinations?

25 A Yes, as part of our quality assurance

1 program, every case that I work, every result that I
2 put out will have a 100 percent microscopic
3 verification of my results We also have peer review
4 of our case files Another qualified examiner will go
5 completely through our case file and make sure that
6 everything that we document makes sense, make sure
7 that we are documenting things appropriately and that
8 the conclusions we reach can be reached based on our
9 documentation We also have a review of our case
10 file, of our report so that our report is also 100
11 reviewed before it is published

12 Q Does your department participate in
13 proficiency tests?

14 A We do participate twice a year in proficiency
15 tests

16 Q Can you describe those tests to the jury

17 A Uh, the test is produced by a company called
18 Collaborative Testing Services or CTS Uh, once a
19 year, we will receive a firearm related proficiency
20 test Once a year, we will receive a tool mark
21 related proficiency test During this test, they will
22 make up some scenario similar to some sort of a crime
23 scene In the firearm proficiency test, we will
24 typically receive either fired bullets or fired
25 cartridge cases that are supposedly from a crime

1 scene Those are our unknowns

2 Then they will have test fires, which
3 whatever gun that they would have that was supposedly
4 used in the crime, they will test fire and give us
5 three or four fire bullets that supposedly came from a
6 known revolver Based on that, uh, we can visually
7 compare the unknown bullets to our test fires or our
8 knowns and attempt to determine whether the unknown
9 samples were fired by the firearm

10 Q Have you passed all of these proficiency
11 tests?

12 A Yes, I have

13 Q Have you been qualified as an expert before?

14 A Yes, ma'am

15 Q How many times?

16 A I believe, uh, 40 now

17 Q In which courts?

18 A Uh, in state, general session court and also
19 in federal court

20 MS HAMAKER Your Honor, at this time, I
21 would like to move this witness as an expert
22 witness in firearm analysis

23 THE COURT Any voir dire or any objection?

24 MR DEJONG No voir dire, Your Honor

25 THE COURT Okay This again, will be an

1 expert witness again, Ladies and Gentlemen, you
2 take the testimony as you see fit based upon what
3 he tells you based upon his examination and the,
4 uh, reasons for his opinion that he may give

5 **BY MS HAMAKER**

6 Q Mr Thrower, uh, before we get into anything
7 you may have done in this case, do you think it would
8 benefit the jury to know about the different parts of
9 a cartridge?

10 MR DEJONG Your Honor, I object to the
11 form of the question on that one

12 THE COURT I sustain the objection as to
13 the form of the question or the way it's phrased

14 **BY MS HAMAKER**

15 Q Mr Thrower, can you tell me what those
16 documents show?

17 A Okay Uh, this document is a picture of a
18 piece of ammunition, an entire unfired piece of
19 cartridge It's cut away so that you can see what the
20 internal components look like This area that goes
21 from here, this outside area ---

22 Q Mr Thrower, maybe -- let's put that up here
23 so you can explain it to the jury better

24 A Okay

25 Q And you have a laser pointer right there

1 **A** Essentially what this is is a diagram to help
2 you with some of the terminology that I will be using
3 that may be unfamiliar to some of you This outer
4 area right here is the cartridge case It is simply
5 the container that holds all the other components of
6 an unfired piece of ammunition It holds this upper
7 portion which is the bullet or projectile It holds
8 these little circles that you see which is the
9 gunpowder, which is the propellant

10 Down here in the head, you will see this
11 little object which is the primer That is the
12 ignition component for the rest, uh, for the
13 cartridge Typically, what happens is the hammer of
14 the firearm will strike the primer and crush that
15 primer which has an explosive compound in it When it
16 crushes that explosive compound, it explodes It
17 causes hot flames, fire and gases to shoot through
18 this little hole right here which is called the flash
19 hole which then ignites all this gunpowder As that
20 gunpowder burns, it creates heat, it creates gas,
21 pressure, that is what actually pushes this bullet
22 down the barrel and towards the target

23 A little bit more This is -- not being a
24 color photograph, you can see this is probably a
25 different color material on the outside of the bullet

1 as opposed to this lighter color or darker color,
2 whichever way you see it in the middle This outer
3 area is a thin layer of copper known as a jacket that
4 is surrounding this inner portion which is made out of
5 lead Basically the purpose behind the jacket is the,

6 uh, cause less trash left behind You don't have to
7 clean the gun as much It will also allow you to fire
8 higher pressure rounds through the barrel so you could
9 have a faster bullet without having as much damage to
10 the barrel

11 Q So which part of this diagram shows the
12 actual bullet?

13 A The bullet is all this area up here

14 Q The bullet jacket and the bullet core?

15 A The jacket which is the outside and the core
16 which is the inside

17 Q Mr Thrower, did you have any involvement in
18 this case?

19 A Yes, ma'am I did

20 Q Did you conduct any examinations in relation
21 to this case?

22 A Yes, ma'am I did

23 Q Did you conduct an examination of the gun for
24 this case?

25 A Yes, ma'am I did

1 Q Mr Thrower, I'm going to show you what's
2 already been entered into evidence as State's Exhibit
3 15

4 A First, Ladies and Gentlemen of the jury, this
5 firearm is unloaded As you just saw, I checked the
6 revolver, the cylinder There's no ammunition in the
7 gun or the cylinder This gun is safe for me to
8 handle

9 Q Do you recognize that gun?

10 A Yes, I do

11 Q How do you recognize it?

12 A On the underside of this area, which is known
13 as the top strap, I took an electric pencil and
14 engraved my case number, item number and initials onto
15 the gun

16 Q Does that gun have a serial number on it?

17 A Yes, it does

18 Q What is that serial number?

19 A The serial number is V6965219

20 Q Are there any other numbers on that gun?

21 A Yes, there are One, it says 357 magnum on
22 the barrel

23 Q What does that number indicate?

24 A That is the caliber of the gun It tells
25 what ammunition should be fired in this gun There is

1 also a number 4074 which is on the crane and yolk of
2 the gun which is this area in here I believe also
3 there is a number 608 on the crane also which is the
4 model number of the gun

5 Q The 4074 number, what does that number
6 represent?

7 A The 4074 is simply an assembly number
8 During the manufacture of the firearm, the company
9 will place certain parts together For instance, all
10 this area right here is the frame There is a cut out
11 in a plate that is placed in this area that covers all
12 the internal components Also you have the crane, the
13 thing that this portion which holds the cylinder All
14 of these parts will probably have this assembly number
15 on it because once these parts are fitted, they are
16 then sent and polished together so that the polished
17 marks all line up and match Then during assembly,
18 the parts are taken apart on -- they may have several
19 parts on the same table

20 In order to keep mismatching the parts and
21 making sure that all the polishing marks stay the
22 same, they will stamp a temporary assembly number so
23 that they can make sure all the parts stay together
24 for each particular gun It's simply a number that
25 will help keep the gun parts together during the

1 manufacture One of the last steps before the gun is
2 actually finished is they will then go in and assign
3 each gun a unique serial number

4 Q Would you please tell me about the
5 examinations that you conducted on that gun?

6 A Okay As I received the gun, one of the
7 first things I will do is open the container, I will
8 place gloves on and look for any trace evidence on the
9 gun that I could potentially contaminant If I do not
10 see any trace evidence, the next thing that I will do
11 is I will look for paperwork that came with the gun
12 and I will verify the information on the paperwork
13 with the information on the gun and make sure that
14 what they say, what the submitter says is in the box
15 is actually there and make sure they describe it
16 correctly

17 In this case, I noticed that they had
18 described the serial number as being 4074, which is
19 incorrect That is simply an assembly number on the
20 gun I then made a note that this was incorrect and
21 that the correct serial number is the number I stated
22 earlier VG965219 I looked the gun over I looked
23 for any obvious damage or defect to the gun, anything
24 I need to be aware of for my safety in handling the
25 gun and testing the gun, also for any damage that may

1 have occurred if the gun was dropped, if there's
2 anything that sticks out that says maybe this gun is
3 malfunctioning or has been damaged

4 I will then document or photograph the gun
5 from various angles, taking pictures of various
6 portions of the gun to record information I then use
7 departmental worksheets and take notes about the gun,
8 what does the gun look like, what's the make, the
9 model, the serial number, the caliber, what's the
10 finish, what types of sights are on it, how many
11 pieces of ammunition will it hold It's actually a
12 two-page document of fill-in-the-blank information to
13 remind me everything that I need to document about the
14 gun

15 I will also perform a trigger point analysis
16 I will look and I will see how much force will be
17 placed on the trigger in order to cause the gun to
18 fire This is done by placing a series of weights --
19 we've got a series of weights with a C-shaped bracket
20 The weights are on the bottom, the bracket comes up
21 with the little handle that hangs on the trigger I
22 simply pick the gun up and I see how much weight that
23 trigger can support without firing At some point in
24 time, I will add weight Every time I pick it up, the
25 gun will start to fire That is how I determine how

1 much force must be applied to the trigger to cause it
2 to fire

3 I will look for, like I said, any sorts of
4 malfunctions I will look and see what type of
5 safeties are on the gun I will test the safeties and
6 see if they are working properly

7 I will also take the gun into our bullet
8 recovery room where our bullet recovery tank is
9 Bullet recovery tank is about a three foot in diameter
10 piece of stainless steel pipe It's about waist high
11 The pipe goes down through the floor, the second floor
12 all the way down through the floor in the first floor
13 of our building where there's a large cone in the
14 bottom of this big piece of pipe At the bottom of
15 that cone sits a little cup with a chain tied to it
16 The chain goes all the way back up to where I am

17 This pipe is full of water so that when I
18 shoot down into the water, the bullet or projectile
19 strikes the water The water slows the bullet down to
20 a safe speed, then it bounces along the bottom of that
21 tank and falls into the cup I can pull the chain up
22 I can dump the bullets into my hand That's how I
23 recover my test specimens that I will need for later
24 for comparison to bullets found at the crime scene

25 At the same time, in a revolver, the fired

1 cartridge cases will stay in the gun I can take
2 those out and just dump them in my hand That's where
3 I will recover fired cartridge cases for comparison
4 Therefore, I test that the gun is working properly

5 I talked about testing the safeties on the
6 gun The first thing I do is identify what type of
7 safeties happen to be in the gun This gun has a
8 safety known as a transfer bar Basically, the way
9 that works, once again, the gun is unloaded and the
10 cylinder's open This piece right here is called the
11 hammer This pulls back Okay When you pull this
12 back, it is cocked

13 As you pull the trigger, the trigger will
14 release the hammer and the hammer can come forward to
15 strike a little piece of metal here known as the
16 firing pin In order for -- in order for this gun to
17 fire, the trigger must be held to the rear In order
18 for the transfer bar to work, the trigger, when the
19 trigger is held to the rear, the transfer bar comes
20 up The hammer then strikes the transfer bar The
21 transfer bar is pushed into the firing pin
22 Therefore, the firing pin can go through and strike
23 the primer

24 If the trigger is released, like you see in
25 old western movies where someone will try to decock a

1 gun, they will pull the trigger a little bit, they
2 will pull back on the hammer and then they will try
3 and let it go forward and take their finger off the
4 trigger so it won't fire As the trigger goes
5 forward, the transfer bar is pulled down and out of
6 the way so it is no longer between the hammer and the
7 firing pin

8 The only way this gun can fire is if the
9 trigger is held to the rear during the entire firing
10 process As soon as the trigger is released by the
11 shooter's finger, it will allow or the transfer bar
12 goes out of the way and the gun becomes safe It is
13 an automatic built-in safety

14 This gun also has what they call the Taurus
15 security system in the hammer If you look, there's a
16 little black keyhole right here in the hammer The
17 way this is designed, when the gun is not being used,
18 as an extra security precaution so if somebody gets a
19 hold of the gun or a child gets a hold of the gun, the
20 gun can not be fired You simply stick a key in
21 there You turn it The gun won't work When I
22 received this gun, the lock, the Taurus security
23 system was unlocked But I did not receive a key with
24 it so I could not test the security system to see if
25 it was functional

1 Q Did you find that this gun was in working
2 order when you examined it?

3 A This gun was in working order, yes

4 Q And you said you conducted a force test on
5 this gun?

6 A The trigger pull analysis?

7 Q Yes, sir

8 A Yes, I did conduct trigger pull analysis on
9 this firearm

10 Q Mr Thrower, that's been premarked as State's
11 Exhibit number 13 Do you recognize those items?

12 A (Reviewing)

13 Q If it would help you, ---

14 A Yes

15 Q --- you are more than welcome to go ahead and
16 open that up

17 A I can read through the plastic It still has
18 my seal across the top

19 Q Okay

20 A Yes, I recognize these items

21 Q What are those items? You need something
22 to

23 A This is State's Exhibit 13?

24 Q Yes, sir

25 A Which is SLED exhibit number 2 What you see

1 this piece up here is the copper bullet jacket that I
2 showed you on the, uh, slide or projector up there
3 This is the outer portion of a bullet that actually
4 comes into contact with the inside of the barrel
5 This is the portion of the bullet that gets all the
6 markings from the barrel

7 What you see down here, this large fragment
8 is a portion of the bullet core which is the lead
9 inner portion of the bullet which is all this area
10 right here The first piece is this outside bullet
11 jacket The second piece is a large portion of this
12 bullet core, the inside The inside never touches the
13 bullet or the barrel So it does not receive
14 markings

15 Then there's a couple of very small lead
16 fragments that could be portions of a bullet core
17 They did not have enough or any particular shape or
18 markings to say they definitely had to be part of a
19 bullet, but they are consistent with construction of a
20 bullet core

21 **MS HAMAKER** Your Honor, at this time, the
22 State would like to introduce State's Exhibit
23 number 13 into evidence

24 **THE COURT** Any objection?

25 **MR DEJONG** Without objection

1 **THE COURT** Without objection, Exhibit 13 is
2 into evidence

3 **(WHEREUPON, State's Exhibit 13 is admitted into**
4 the record)

5 **BY MS HAMAKER**

6 **Q** Can you see which one you are referring to as
7 being the copper jacket?

8 **A** I believe so, yes It appears that this
9 piece up here is the copper jacket which is the outer
10 portion of the bullet Then you have the large chunk
11 of lead which is consistent with being the core of a
12 bullet Then one small lead fragment, another small
13 lead fragment, then this is a small piece of this
14 bullet jacket that broke off during my examination

15 **Q** Did you do any testing on State's Exhibit 13,
16 any examinations?

17 **A** Yes, I did

18 **Q** And can you tell the jury about those
19 examinations?

20 **A** Much like as I have described about the gun,
21 I also, uh, opened it up I looked for trace
22 evidence I verified what was claimed to be in the
23 container I documented it using departmental
24 worksheets I took photographs of the evidence I
25 had to sanitize the bullet as it was -- in order to

1 protect myself from anything that may be on it Then
2 I would place it on a microscope and see which -- and
3 verify that the core looked like a core, that I could
4 see portions at the base

5 There were impressions on the core that were
6 consistent with ribs that were on the inside of the
7 jacket And just a general overview of the fired
8 bullet jacket to see what kind of markings are on it
9 If the markings there are suitable for identification,
10 basically, do the markings that I see, are they of
11 good enough quality and consistency or good enough
12 quality that if I compared them to bullets that I fire
13 out of a gun, do I have a, do I think that I might be
14 able to make an identification

15 Q In this case, were you able to make an
16 identification?

17 A Yes, I was

18 Q And can you tell the jury what that
19 identification was?

20 A That State's Exhibit 13 was ---

21 Q Excuse me

22 A That State's Exhibit 13, the fired bullet
23 jacket fragment, the copper fragment was fired by
24 State's Exhibit 15, the Taurus model 1608 revolver
25 Based on my examination, I believe that the likelihood

1 another firearm could have fired this bullet to be so
2 remote as to be considered a practical impossibility
3 that based on my training, my experience and my
4 research, the ability of another arm to produce this
5 quantity of markings that match to be, the ability for
6 another firearm to produce that many markings that
7 match, I would not expect it It's beyond, way below
8 where I consider possible

9 Q Let me ask you one last question Were you
10 able to match up the bullet core to the firearm in
11 this case?

12 A No, I was not The bullet core, once again,
13 is the inside of the bullet It never actually
14 contacts the inside of the barrel The bullet core is
15 protected by this jacket which is on the outside The
16 jacket is what actually comes into contact with the
17 inside of the barrel and receives all the markings as
18 the bullet passes through the barrel and scratches it

19 MS HAMAKER Your Honor, the State has no
20 further questions for this witness

21 THE COURT All right Mr DeJong, you may
22 cross-examine the witness

23 MR DEJONG Thank you, Your Honor May it
24 please the Court

25 CROSS-EXAMINATION

1 BY MR DEJONG

2 Q Now, Mr Thrower, if you will, describe the
3 bullet jacket, right?

4 A Yes, sir

5 Q Now, are all bullets jacketed?

6 A No, sir

7 Q Okay So in this case, you're saying the
8 fired bullet was jacketed

9 A Yes, sir

10 Q Okay Now, did you get other rounds of
11 ammunition that were said to be taken out of this
12 weapon?

13 A Yes, sir I did

14 Q Let me show you what's been marked as State's
15 Exhibit 15(a) Can you look at that and see if you
16 can identify that?

17 A State's Exhibit 15(a) were the SLED item
18 number 5 through 11 which are, 1, 2, 3, 4, 5, 6, 7,
19 which was originally seven unfired cartridges, 357
20 magnum caliber I believe they are all Remington
21 brand They are now -- three of these are now
22 actually fired specimens They were originally all
23 unfired

24 Q Finished?

25 A Yes, sir

1 Q I'm sorry Are they all jacketed?

2 A Yes, sir They are all, uh, semi-jacketed
3 Some were hollow points Some were soft points

4 Q What's the difference between jacketed and
5 semi-jacketed?

6 A As you see up here, the jacket extends all
7 the way up to the side to the nose This top portion
8 On a semi-jacketed bullet, a portion of this area up
9 here, this portion of bullet is call the bearing
10 surface That is the point that comes to bear on the
11 inside of the barrel Okay The area that is curved
12 or slanted between the bearing surface and the nose is
13 called the O-give Okay On a jacketed bullet, this
14 entire surface will be coated with copper or aluminum
15 or steel or some other jacketing material On a semi-
16 jacketed bullet, it will typically only go about half-
17 way up On the rest, the core would be exposed So
18 in this case, if you can see it, you see copper about
19 half way up Then you can see the lead core that goes
20 the rest of the way

21 Q So as we look at that, you see what appears
22 -- well, there's 1, 2, 3 spent rounds in that now,
23 right?

24 A Yes, sir

25 Q And those are rounds you fired?

1 **A** No, sir

2 **Q** They came to you this way?

3 **A** No, sir

4 **Q** Well, how did they get spent?

5 **A** Uh, after I completed my evidence or
6 completed my examination, I transferred the evidence
7 to the trace department where they would perform
8 muzzle-to-target-distance determination During the
9 course of that examination, I would have to -- they
10 would typically use -- submit our ammunition for the
11 purpose of testing because it best represents to the
12 ammunition that was used at the time of the crime

13 **Q** So did you fire any of the unspent?

14 **A** No, sir

15 **Q** I mean, any of the spent, I guess what I'm
16 saying

17 **A** No

18 **Q** All right

19 **A** During my examination, I used ammunition from
20 the SLED firearm reference collection

21 **Q** The three that were fired out of here, do you
22 know if they were jacketed, semi-jacketed, not
23 jacketed?

24 **A** They were all semi-jacketed Some were
25 hollow points Some where soft points

1 Q All right And, uh, the gun you found to be
2 in working order?

3 A Yes, sir

4 Q Now, -- well, I don't want to assume
5 anything Are fingerprints in your department?

6 A Uh, no, sir I do not do fingerprints That
7 was done before the firearm came into my possession

8 Q All right Well, you said you examined the
9 weapon for trace evidence, right?

10 A Yes, sir

11 Q When you say you examine a weapon for trace
12 evidence, what are you looking for there?

13 A I use a microscope where I can typically zoom
14 somewhere, uh, up to ten power I will look around
15 the muzzle of the firearm to see if I could find any
16 sort of blood spatter, any droplets of blood or any
17 sort of material that may be from -- excuse me -- from
18 a victim I look for anything that's out of place
19 that doesn't look like it should be part of the gun
20 It may be a fiber It could be hair It could be
21 blood Anything that is not part of the gun If I
22 find trace evidence, then I will collect it as
23 appropriate and submit, either submit it for analysis
24 or return it with the firearm

25 Q Okay I guess you don't do gunshot residue

1 either

2 **A** No, sir I do not

3 **Q** Okay Basically, what you're looking at is
4 guns and bullets and jackets and all that good stuff,
5 right?

6 **A** Yes, sir

7 **Q** All right Okay When you say you tested
8 trigger pull, how do you measure that? Pounds per
9 square inch? What's the measurement?

10 **A** It is simply the measurement of the amount of
11 weight that must be placed on that portion of the
12 firearm which happens to be the trigger that will
13 cause the firearm to fire Once again, the way that
14 we do this is I have a series of weights in quarter
15 pound increments From the weights, there's a little
16 handle The gun is pointed towards the ceiling

17 Then the handle on the trigger pull weight is
18 placed on the trigger at the position where
19 approximately the figure would rest I try and pick
20 the weights up If I can pick the weight up, it's not
21 heavy enough The gun will not fire at that weight
22 So I add some weight I try and pick it up again
23 Eventually, as I keep adding weight, I will get to a
24 place where as I pick it up, the gun will start to
25 fire Once I find a weight where it fires every time

1 I pick it up, that is what I consider to be the amount
2 of force necessary to be placed upon the trigger to
3 cause the gun to fire

4 Q How much weight did you have to put on this
5 gun?

6 A This gun can be fired in two different ways
7 I have two different measurements that I took One
8 way to fire it is known as single latch mode which
9 means you precock the hammer so that the only thing
10 that pulling of the trigger does is simply release the
11 hammer to cause the gun to fire In the single action
12 mode, it took approximately four and one half to four
13 and one quarter pounds of pressure to cause the gun to
14 fire

15 In double action mode, double action means
16 the trigger must do two things As you pull the
17 trigger, the trigger is causing the hammer to be
18 cocked Once the trigger goes far enough back, it
19 actually releases the hammer which can fall forward
20 and cause the gun to fire So in double action mode,
21 it's doing two things In double action mode, it took
22 approximately ten and one quarter to ten and one half
23 pounds of pressure to cause the gun to fire

24 Q When you say four and a quarter to four and a
25 half or ten whatever the last one was, I understand

1 what you are saying Would the size or weight of the
2 person firing the weapon have anything to do with the
3 ease of firing that weapon?

4 A No, sir

5 Q Now, in this case, you were sent expended
6 round, right?

7 A I was sent, uh, bullet fragments and I was
8 sent one fired cartridge casing

9 Q Well, let me show you what's been marked as
10 State's Exhibit 15(b) Were you sent that?

11 A Yes, sir I was sent State's Exhibit 15(b)
12 which is one Remington brand 357 Magnum caliber fired
13 cartridge case

14 Q Did you perform any test on that?

15 A I documented it using departmental
16 worksheets I photographed it but I did not
17 microscopically compare it to the firearm

18 Q And why not?

19 A Because, uh, it is our current guidelines at
20 SLED that fired ammunition components that are removed
21 from a gun by other people that we can document that
22 police actually took a fired cartridge case out of a
23 gun that through all the years that we've been proving
24 that the guns, the ammunition that someone took out of
25 a gun was fired in the gun it was taken out of was

1 actually turning -- was using a lot of time and we
2 weren't getting anything out of it It wasn't proving
3 anything So we decided that we no longer test
4 ammunition that somebody else took out of a gun

5 Q All right, sir Now, so assuming for the
6 moment that that -- what would you actually call this?
7 Is this a shell casing? What do you call this?

8 A It's a fired cartridge case

9 Q Fired cartridge case Assuming that fired
10 cartridge case was fired by the weapon that you
11 tested, the manner of firing, you would not know
12 whether it was single action or double action, right?

13 A No, sir I could not tell that

14 Q And the safe mechanism on this jacket or on
15 this gun, I don't fully understand You either have a
16 single action or double action, right?

17 A Right

18 Q Now, you were explaining this bar
19 Y'all mind turning this thing off for me
20 please

21 You were describing this bar that was a
22 safety on the weapon, right?

23 A Uh-huh

24 Q Well, that bar, can you move it manually?

25 A No, the only way that -- well, by manually,

1 the only way to manipulate that bar is either by
2 manipulation of the hammer or by manipulation of the
3 trigger

4 Q Okay So let's forget the key safety gizmo
5 for a moment Let's just talk about that Okay I
6 pick up that weapon and it is loaded I pull the
7 trigger

8 A Yes, sir

9 Q It's going to fire?

10 A Yes, sir

11 Q I keep pulling the trigger As long as
12 there's ammunition in there, it's going to fire

13 A Yes, sir

14 Q So there's nothing -- once one round is
15 fired, to prevent that weapon to continue firing as
16 long as the trigger is pulled

17 A For each individual pull of the trigger

18 Q Yes, sir I guess we are saying the same
19 thing

20 A Yes, sir

21 Q You are saying it a little bit better than I
22 am If I stand there and keep pulling the trigger,
23 it's going to fire?

24 A Yes, sir

25 Q Until ultimately it says click because there

1 ain't nothing else to fire

2 A Correct Yes, sir

3 Q All right So short of that, I'm puzzled
4 that we can call that a safety mechanism because if I
5 pick the gun up and pull the trigger, it's going to
6 fire if it's got live ammunition in it, isn't it?

7 A If you pull the trigger and you hold the
8 trigger to the rear until firing is complete, yes,
9 sir

10 Q Okay

11 A If you pick it up and start to pull the
12 trigger and your finger slips off the trigger or if
13 you try like you see in many old westerns where they
14 have the hammers already cocked To make the gun
15 safe, they want to decock the gun or put the hammer
16 down The only way to do that is to put your finger
17 on the trigger, pull the hammer back slightly, pull
18 the trigger far enough so that the sear, which is the
19 mechanism that contacts the hammer will clear You
20 can then lower the hammer past that engagement place,
21 let go of the trigger and then slowly lower the hammer
22 to keep it from firing

23 If the trigger is not -- what this mechanism
24 does is many times during that decocking process, the
25 finger may slip off that trigger or a finger may slip

1 off the hammer and cause the hammer to go forward
2 forcefully which could cause an accidental firing
3 What this trigger, this bar does is if a finger slips,
4 it's an automatic self-engaged safety that will
5 prevent the gun from firing unless the trigger is
6 being held to the rear

7 Q Okay You said a whole bunch of stuff there
8 I got to get it down to little pieces for me

9 A Okay

10 Q First fire or any fire, I guess, if we're
11 going single action ---

12 A Uh-huh

13 Q --- you've got to pull the trigger back, hold
14 it and it fires

15 A Correct

16 Q Now, to get it to fire the next round, that
17 trigger would have to come forward and I have to pull
18 the trigger again

19 A Correct You must let the trigger go
20 forward It must reset Then you must pull the
21 trigger, full pull again also on a revolver to cause
22 it to fire a second time

23 Q Not like, I guess, we would call an automatic
24 or semi-automatic that you hold the trigger down

25 A Not like a machine gun No, you pull the

1 trigger one time and it goes and continues to fire
2 until it runs out of ammunition or if the trigger is
3 released

4 Q Let's go back and talk about this accidental
5 firing for a moment The gun -- let's say we are in
6 -- I guess this would be double action at this point
7 in time I pull the hammer back

8 A That would be single action

9 Q That's single action?

10 A That's single

11 Q Okay Double action is just when I pull the
12 trigger

13 A Double action, you pull the trigger, the
14 trigger cocks the hammer and then releases

15 Q Thank you, sir Okay I pull the hammer
16 back Now, for whatever reason, I'm going to ease
17 that forward, let's say I bump into something and my
18 finger slips

19 A The finger on the trigger or the finger on
20 the hammer?

21 Q On the hammer

22 A Okay

23 Q Is that hammer going to move forward with
24 such force to strike that cartridge to set it off?

25 A Only if the trigger is pulled far enough back

1 that it is essentially a full pull of the trigger If
2 that trigger is held all the way back to the full pull
3 where it would be fired anyway, then it -- and the
4 trigger is held there, then the hammer can go forward

5 Q And that's what you said would be an
6 accidental discharge or accidental firing?

7 A That would be an unintentional discharge
8 The person did not mean it

9 Q Okay All right All right You pull -- so
10 we don't cock the gun I can't get them straight at
11 5 15 in the afternoon what you say are double I just
12 pull the trigger

13 A Uh-huh

14 Q Is there some pause in there as I pull the
15 trigger, the hammer is going to go back and then is
16 there a pause until I pull the trigger further back to
17 bring it forward?

18 A No, sir When you pull the trigger, either
19 you pull it far enough back that it actually just
20 releases the hammer which goes flying forward to cause
21 the gun to fire At any point in time that you go,
22 that you pull the trigger that you do not quite get
23 far enough back to cause it to fire, if you let the
24 trigger go forward, the hammer goes back down and the
25 transfer bar disengages

1 Q And you said this key security -- not what
2 you called it

3 A The -- I believe Taurus calls it -- Taurus
4 calls their version a Taurus Security System

5 Q All right You did not get a key with that?

6 A No, sir I did not

7 Q So you could not test that?

8 A No, sir I did not

9 Q Do you know what the age of this gun was?

10 A No, sir I do not It's fairly new They
11 haven't been producing this gun for a long period of
12 time

13 Q Well, maybe age isn't a real good choice of
14 words How about usage? Has the gun been used a lot?

15 A It did not show signs of extreme wear and
16 tear It appeared to be in very good working order

17 Q Okay Now, when we talk about firearm
18 identification and we are talking about firearm
19 markings, we are really talking about two different
20 things, aren't we?

21 A I'm not sure I understand your question

22 Q Well, maybe I can try to clear it up a little
23 bit When you talk about these markings that are on
24 the shell casing or wherever you find those markings,
25 those are really tool markings, are they not?

1 **A** Yes, sir Firearm identification is actually
2 just a small category of the entire field of tool mark
3 identification Where the gun is actually the harder
4 object or the tool that marks the softer object which
5 is the bullet or the cartridge casing

6 **Q** And the, those tool markings are actually in,
7 for want of a better term, the barrel of the gun
8 They get there when the gun is manufactured, don't
9 they?

10 **A** That is one instance where they can be placed
11 there, yes, sir These tool marks can also be in the
12 barrel They can be on the breach face, the
13 extractor, the ejector There can be -- depending on
14 what piece of -- what part of the piece of ammunition
15 is being contacted

16 **Q** Okay Well, as I understand it, what you
17 tested in this case was the shell jacket

18 **A** The bullet jacket, yes, sir

19 **Q** Yes, the bullet jacket Okay And those
20 markings are tool markings, are they not?

21 **A** Yes, sir

22 **Q** These aren't extractor markings?

23 **A** No, sir

24 **Q** Or hammer markings or whatever They are
25 tool marks

1 **A** These are tool marks that were placed in the
2 barrel most likely during the manufacture of the
3 barrel They can also be placed there later, post-
4 consumer, due to the use and abuse of a firearm
5 There is a possibility of rust If they used
6 corrosive ammunition, that can cause the inside of the
7 barrel to rust If they cleaned the gun improperly,
8 uh, they can actually gouge the inside of the barrel
9 with the cleaning brush If you use a stainless stain
10 brush, it can scratch the inside of the barrel And
11 there's also, always the possibility of someone
12 intentionally trying to damage the barrel by inserting
13 a screwdriver or some other device to try to scratch
14 the inside of the barrel There's many reasons there
15 could be markings inside the barrel of the firearm

16 **Q** Well, when this gun came to you, what was its
17 condition?

18 **A** It appeared to be in very good condition

19 **Q** All right Did you find rust on it?

20 **A** I do not believe no, sir, I did not find
21 any rust on the firearm

22 **Q** And you said some of the rounds came to you,
23 seven came to you?

24 **A** Seven unfired cartridges were submitted to
25 me Yes, sir

1 Q Seven unfired cartridges Some hollow point,
2 some of them?

3 A Correct

4 Q All semi ---

5 A Yes

6 Q As to hollow point and non-hollow point, the
7 order that those rounds were loaded into the gun, you
8 don't know?

9 A No, sir I don't

10 Q Okay The cylinder itself, this being a
11 revolver, did you test whether there was any play or
12 movement in the cylinder itself?

13 A Uh ---

14 Q Or did you notice any?

15 A I didn't notice any play The gun appeared
16 to be fairly tight All the parts -- I did not notice
17 any wobble in the gun It still seemed to be fairly
18 tight

19 Q I believe on one place on your report, I
20 believe it's probably on page 4, you had condition
21 filed slash residue, right?

22 A Yes, sir

23 Q It hadn't been cleaned in a long time?

24 A I did not note extreme filing What I mean
25 by file is there will be a copper color on the inside

1 of the barrel where every time the bullet passes down
2 that barrel, the rough edges on the inside of the
3 barrel may scrape a little bit of that material off
4 and leave a small copper deposit in the barrel I
5 noticed copper deposits in the barrel By residue
6 means I looked in there and I could see pieces that
7 appeared to be like gun powder, pieces of gun powder
8 particles left over which is consistent with what I
9 would find for a shooting

10 Q On the cylinder condition, you also noted
11 residue, right?

12 A Yes, sir Once again, the residue being
13 consistent with firing, I noticed what would be
14 consistent with gunshot residues within the barrel
15 Or within the cylinder, I'm sorry

16 Q And assuming those -- well, assuming all
17 eight of those rounds, State's Exhibit 15(a) and
18 15(b), you could not tell this jury when those rounds
19 were put in that gun?

20 A No, sir I don't know when they were placed
21 in the gun

22 Q Or how long they had been there?

23 A No, sir

24 Q One moment please

25 A Yes, sir

1 (WHEREUPON, there is a pause)

2 BY MR DEJONG

3 Q As you pull that trigger -- I think we are
4 talking single act We're not cocking, okay?

5 A It's not cocked It will be double action

6 Q Okay I won't get that one today You pull
7 that trigger, do you reach a point in there where
8 there is a point of no return?

9 A Yes, sir

10 Q Is that the ten or four and a half pounds or
11 whatever?

12 A That is the ten and a quarter to ten and a
13 half pounds, yes, sir

14 Q Once you get there, (inaudible)

15 A Yes, sir Once you reach that point, the gun
16 was going to fire

17 Q Uh, thank you

18 THE COURT Any redirect?

19 MS MUNSON No, sir, Your Honor

20 THE COURT Thank you, sir

21 MR DEJONG No objection to this witness
22 being excused, Your Honor

23 THE COURT You may step down, Mr Thrower
24 Can I see the attorneys here just for a
25 minute please?

1 Again, let me remind you as I did on Friday
2 that you shouldn't do any independent research
3 and check on words that you heard and you don't
4 know the definition of exactly Everything you
5 need to know will be clarified and presented by
6 these attorneys That's all you need You don't
7 need to do any independent research and you
8 shouldn't do any independent research about this

9 We will maintain the purity of the jury
10 system in this case and all cases taking place in
11 this courtroom I know that you will fulfill
12 your oath in that regard Have a good evening,
13 Ladies and Gentlemen I'll see you back at 8 45
14 in the morning We'll be ready to begin at that
15 time

16 (WHEREUPON, the jury exits at approximately
17 5 25 p m)

18 **THE COURT** All right Anything we need to
19 take care of for the evening?

20 **MR DEJONG** Your Honor, I would prefer, if
21 necessary, to come back earlier in the morning
22 than 8 45 If we have to, I think we're going to
23 have to visit the, uh, testimony of Dr
24 Threadgill, Your Honor

25 **THE COURT** Doctor? Of whom?

1 **MR DEJONG** Dr Hope Threadgill

2 **THE COURT** Okay All right

3 **MR DEJONG** If I am pronouncing that
4 correctly I think we probably need to visit
5 that at some point in time in the morning I
6 apologize for that It didn't really strike me
7 until today at lunchtime

8 **THE COURT** Okay

9 **MS MUNSON** As for that, Your Honor, I'm
10 going to be talking to her tonight If she
11 doesn't have to change her appointments and come
12 in here in the morning, I think that would be ---

13 **MR DEJONG** Like I said, I just thought of
14 it at lunchtime I would like overnight to look
15 at ---

16 **THE COURT** When were you planning to call
17 this witness, in the morning?

18 **MS MUNSON** If that's what's best for her
19 I'm going to try not to inconvenience the
20 witnesses any more than I already do

21 **THE COURT** Okay

22 **MS MUNSON** But I don't have to call her in
23 the morning

24 **THE COURT** Well, maybe it would be good for
25 her to be here in the morning in case we have to

1 have some testimony taken in camera

2 MR DEJONG If it's going to be, say, after
3 lunch, if that's what Ms Munson anticipates, and
4 I'm not trying to run her case, it could be we
5 could do it during the lunch hour I'm just, as
6 a courtesy to the Court and Ms Munson, I thought
7 I had argued everything I had to argue I
8 thought I got argued out Friday but I think there
9 is going to be ---

10 THE COURT Okay

11 MR DEJONG --- from the defense side an
12 issue with her testimony

13 THE COURT The State have three witnesses
14 relating to the unlawful conduct of the child
15 charge or more?

16 MS MUNSON Two, Your Honor

17 THE COURT Two witnesses?

18 MS MUNSON Yes, sir I intend to call
19 David Thomas to testify about how the child acted
20 after this incident Then, I intend to call Dr
21 Hope Threadgill as an expert in post-traumatic
22 stress disorder to talk about the fact that this
23 young child has that because of this incident in
24 her opinion

25 THE COURT All right Let's see if we

1 can't start at 8 30 in the morning then If the
2 witness can't be here, that will be fine I will
3 at least hear the arguments Then we can, uh, do
4 her -- if we need to do an in camera hearing on
5 her, then we can do it during a break or
6 beforehand So we will be ready to start at 8 30
7 in the morning

8 **MS MUNSON** Yes, sir

9 **THE COURT** Have a good evening

10 **MR DEJONG** Thank you, Your Honor

11 **(WHEREUPON,** the Court recessed for the day at
12 approximately 5 50 p m)

1 January 20, 2010

2 (WHEREUPON, the Court resumes on the 20th day of
3 January, 2010 at approximately 8 30 a m)

4 **THE COURT** All right Mr DeJong, I believe
5 you had something for us this morning?

6 **MR DEJONG** I do, Your Honor, thank you
7 May it please the court On January the 12th,
8 Your Honor, the solicitors office under their
9 continuing duty to provide discovery under rule
10 five, provided me a report of one, Hope,
11 T-H-R-E-A-D-G-I-L-L, Threadgill Of course, I
12 have no way of knowing, Your Honor, what she will
13 testify to However, if she testifies based upon
14 this report, I have some objections to that and I
15 don't know if Your Honor is privy to a copy of
16 that report or not I'll be happy to hand mine
17 up I think I can work without it

18 Mine is not marked, Ms Munson Do you want
19 to see what I'm handing up to the Court?

20 **MS MUNSON** That's fine Thanks

21 (WHEREUPON, the report is handed up to the Court)

22 **MR DEJONG** This is a report Your Honor,
23 which I presumed and the testimony of this
24 witness I presume, is to go to the charge of
25 unlawful conduct towards a child The problem I

1 have this report is that it doesn't really go, in
2 my opinion, to the unlawful conduct of the child,
3 towards the child. If Ms. Threadgill is allowed
4 to testify to the things said in that report,
5 number one, there is a lot of hearsay and there's
6 hearsay in hearsay. Number two, I take the
7 position Your Honor, that it is a somewhat veiled
8 way of getting the minor child to testify via
9 this psychologist as to the allegation of the
10 murder. I would not have an opportunity to cross
11 examine the child.

12 There are conversations in there that were
13 allegedly had with caretakers, where certain
14 things were said and certain things were repeated
15 by those caretakers to Ms. Threadgill that the
16 minor child said. The child's statement was
17 allowed in on the video, and Your Honor ruled on
18 that, I'm not arguing on that point. But now, to
19 allow all of this in, I think it grossly
20 prejudicial to my client as regard to the murder
21 charge. I don't believe that that should be
22 allowed. I think certainly it wouldn't allow his
23 Fifth Amendment right of confrontation to allow
24 that in there.

25 I believe that this psychologist could

1 testify as to her observations of the child in
2 counseling But to get into all of these other
3 conversations and be allowed to testify to them
4 is totally inappropriate and not proper under
5 hearsay or just about any other rule that you can
6 come up with And certainly it denies my
7 client's Fifth Amendment right to confrontation
8 So, I would submit Your Honor, if the
9 psychologist testifies, that her testimony be
10 limited to her observations of the child

11 **THE COURT** All right Ms Munson, or Ms
12 Hamaker, Ms Munson

13 **MS MUNSON** I agree But there are two
14 things about her testimony, Your Honor Number
15 one, I provided this to Mr DeJong I'm not so
16 sure that I would've had to, but I was just
17 providing it with him so that he knows
18 everything I certainly don't expect to ask her,
19 what did the kid's teacher tell you? I think I
20 know a little bit better than that

21 But the reason I want to put her on the stand
22 is two-fold Number one, to not put her on the
23 stand leads to the jury nothing but speculation
24 as to whether or not this man could of harmed or
25 did harm the child mentally Not physically but

1 mentally Number two, it's absolutely relevant
2 why this kid is not testifying She can testify
3 that it is, that he's not testifying because it
4 would harm him mentally, in her opinion, to have
5 to sit there look at him and tell the jury what
6 he heard and saw

7 So I don't intend to ask her anything about
8 what anybody else told her I intend to ask her
9 what her qualifications are I intend to offer
10 her to the Court as an expert in the field of
11 post-traumatic stress disorder, I intend to ask
12 her what that is and in her opinion, does child
13 have it? And that's it

14 **THE COURT** Nothing relating to the events of
15 that night, as far as what he saw or anything
16 about a murder?

17 **MS MUNSON** Absolutely not, Your Honor I
18 agree that that would be improper

19 **THE COURT** All right Mr DeJong, that
20 solve the problem, you think?

21 **MR DEJONG** I can't really say until the
22 witness testifies

23 **THE COURT** Well, I understand that and
24 you're certainly, you know, subject to make any
25 objections you feel appropriate at that time

1 **MR DEJONG** If what the Solicitor is saying,
2 yeah, I have a certain amount of merit I'm not
3 suggesting that I agree with her qualifications
4 as an expert Those are all issues down the
5 road But as to what the Solicitor is saying,
6 that (inaudible), I would reserve any further
7 objection until such time as the witness may
8 testify

9 **THE COURT** Solicitor, just be sure you
10 instruct the witness not to get into any of the
11 factual allegations about this particular
12 incident

13 **MS MUNSON** Yes, sir, Your Honor And as I
14 understand it, Mr DeJong, I don't know if we
15 said it out loud or not or to anybody other than
16 me, but I think he intends to object to the
17 testimony of Jadda Thomas And the reason I
18 would put her on the stand, I think the jury has
19 a right to know things that the child did after
20 the event

21 Again, not the child saying to Jadda, I saw
22 dad shoot mom None of that, just how he was
23 acting Did he act afraid? I expect her
24 testimony to be, that for quite some time after
25 the incident the child could not eat without

1 vomiting He had to sleep with his brother He
2 was unexpectedly terrified for no apparent
3 reason Things of that nature She can testify
4 to how the child acted up until this point

5 I think it's a legitimate defense that maybe
6 this kid had some emotional mental problems
7 before this incident and that if he does have
8 PTSD, maybe he got it from something along time
9 ago I think the jury has a right to know that
10 Again, I don't intend to ask her, what did he
11 tell you that he saw? I don't intend to ask her
12 anything about what -- anything about that

13 **THE COURT** Well, remember the scope of the
14 elements of the offense, this is not a civil
15 lawsuit in which the amount of damage needs to,
16 just that he did suffer under the elements of the
17 statute that he has, his physical or mental well
18 being We don't need to -- I guess I'm just not,
19 you don't need to overstate his problems for the
20 jury as far as all the issues If it's
21 repetitive of what's already been said you'll
22 know not to have repetitive testimony I presume
23 that the last witness is gonna to testify to
24 something different from the counselor?

25 **MS MUNSON** The counselor couldn't have

1 anyway of knowing day to day how the child acts

2 **THE COURT** Okay

3 **MS MUNSON** The counselor, day to day,
4 didn't see the child

5 **THE COURT** All right

6 **MS MUNSON** And I understand what the Court
7 is saying enough, but I respectfully say I think
8 that's up to the jury how much damage is done

9 **THE COURT** All right

10 **MS MUNSON** If he was upset and threw up and
11 cried one night, I mean

12 **THE COURT** Yeah Well, I'm not restraining
13 you on that but the elements of that the criminal
14 offense are what the jury needs to hear if the
15 State, you know, can prove those Yes, sir?

16 **MR DEJONG** The only thing I would have to
17 say about that, Your Honor, I think the State
18 would have to lay a foundation that the speaking
19 of the last witness, I believe that's Ms Thomas

20 **THE COURT** Hang on just a minute

21 **MR DEJONG** I think the State would have to
22 lay a foundation that that witness had sufficient
23 contact with that child prior to the allegation
24 before she would be allowed to testify as to her
25 observations after the alleged incident

1 **MR DEJONG** Nothing from the defense, Your
2 Honor
3 **THE COURT** Let's have our jury come in if
4 they are ready Mr Evans Hang on just a minute
5 **MR DEJONG** May I have that report back, I'm
6 sorry
7 (WHEREUPON, the jury enters at approximately
8 8 51 a m)
9 **THE COURT** Good morning, Ladies and
10 Gentlemen I hope you had a restful evening
11 We're now ready to proceed Solicitor, you may
12 call your next witness
13 **MS MUNSON** Thank you, Your Honor The
14 State calls, Blake Arflin
15 **BLAKE ARFLIN**
16 having first been sworn, testifies as follows
17 **THE CLERK** If you would, please state your
18 name
19 **THE WITNESS** My name is Blake Arflin
20 **DIRECT EXAMINATION**
21 **BY MS MUNSON**
22 **Q** Who do you work for, sir?
23 **A** Clemson City Police Department
24 **Q** How long have you been with them?
25 **A** Going on two and a half years now

1 Q Two and a half years?

2 A Yes, ma'am

3 Q Okay Do you have any law enforcement
4 experience prior to that?

5 A Yes, ma'am I worked a year at West Pelzer
6 and a year at Honea Path Police Department

7 Q Can you keep your voice up, please?

8 A I'm sorry I worked a year at West Pelzer
9 Police Department and a year after that at the Honea
10 Path Police Department

11 Q Okay What are your duties?

12 A Primary duties are uniform patrol as far as
13 initial response to initial calls in progress

14 Q Okay Do you have any other duties at the
15 Clemson Police Department other than uniform patrol?

16 A I'm assigned to our HRT Team, which is a high
17 risk team

18 Q High risk?

19 A Yes, ma'am

20 Q Now, you got a call in reference to this
21 case?

22 A Yes, ma'am

23 Q Where were you when you got the call?

24 A Initially, I was at the police department
25 when the call came in from dispatch

1 Q And where in the police department were you?

2 A Downstairs

3 Q Downstairs, where downstairs?

4 A We were downstairs getting ready to have our
5 briefing for the next shift coming on

6 Q Okay Do you know about how many other
7 people were in the room?

8 A I can think of at least probably two or three
9 other people that were down with me Yes, ma'am

10 Q All right Do you have any responsibilities
11 regarding signing people in or making sure who's at
12 the briefings?

13 A No, ma'am, I do not

14 Q Okay How did you hear this call?

15 A We were advised by our dispatch that there
16 was a larceny in progress involving a firearm at the
17 address

18 Q Okay Did you hear over a loud speaker in
19 the office or how did you hear it?

20 A It came over our radio

21 Q Okay Where did you go into response to
22 that?

23 A Immediately went to my patrol car and
24 responded to the scene

25 Q Okay Was there anybody else in your patrol

1 car?

2 **A** No, ma'am

3 **Q** Do you know if anybody else went to the
4 scene?

5 **A** Yes, ma'am I do recall me and Mike Arflin
6 leaving and going to our patrol cars and responding

7 **Q** Okay Now, did you go the same direction?

8 **A** Yes, ma'am

9 **Q** Okay Do you remember who was in front and
10 who was in back?

11 **A** As I recall, I believe Mike Arflin and Jay
12 Hogue were in front of me and Officer Taylor was
13 behind me

14 **Q** Okay And how did you go to the scene?

15 **A** Given the facts of what dispatch advised us,
16 we responded emergency response, which is lights and
17 siren

18 **Q** All right When you got there, did you see
19 any other emergency personnel at the scene already?

20 **A** No, ma'am

21 **Q** All right What did you do when you got out
22 of your car?

23 **A** Initially, Officer Hogue went to the front,
24 and myself and Officer Arflin immediately went to the
25 back of the residence

1 Q Do you know where Officer Taylor went?

2 A No, ma'am At the time, I didn't know
3 exactly which way he was going at the time I
4 followed Officer Mike Arflin to the back

5 Q When you say you went to the back explain to
6 the jury what you mean by, I went to the back?

7 A As I stated, Officer Hogue went to the front
8 of the residence, myself and Officer Mike Arflin went
9 to the back side of the residence

10 Q How did you get to the back?

11 A As I recall, we went around to the side of
12 the, right side of the house and went around to the
13 back I believe there was a fence, I believe either
14 the gate was opened, I don't recall ever opening a
15 gate when we went into the backyard

16 Q Okay What all do you remember, if anything,
17 about that fence?

18 A I just, I just remember briefly seeing a
19 fence but I don't recall much about the fence

20 Q Where did you see the fence? In front of you,
21 or?

22 A As I recall, I remember just seeing it in the
23 corner

24 Q Okay What was the lighting like in the
25 backyard?

1 **A** There was a little, a little bit of
2 illumination from the inside of the house reflecting
3 through the glass door. You could see the backyard
4 fairly well from so many feet away from the house

5 **Q** Okay. Could you see the -- you say the glass
6 door. Did you actually see it?

7 **A** Yes, ma'am

8 **Q** What, if anything, was obstructing your view
9 from outside the house where you were to inside the
10 house?

11 **A** As I recall nothing, ma'am

12 **Q** Okay. Do you recall whether or not the back
13 door was open or closed?

14 **A** It was closed, ma'am

15 **Q** Okay. How long did you stay in the back of
16 the house?

17 **A** Probably approximately, probably maybe ten
18 seconds and then ---

19 **Q** Okay. And then where did you go after that?

20 **A** Officer Jay Hogue advised that he had one
21 subject down and requested EMS and then, obviously he
22 was excited in his voice and immediately Officer Mike
23 Arflin ran to the front and I followed in right behind
24 him and proceeded to the front of the residence

25 **Q** So why did you go around to the front with

1 Officer Mike Arflin?

2 **A** At the time, for officer safety for him being
3 that excited I didn't know exactly what he had at
4 that exact moment So I initially, just for officer
5 safety, I responded with Mike Arflin to the front

6 **Q** Okay When you got around to the front, what
7 did you do?

8 **A** Based on what I heard on the radio, I drew my
9 service weapon, walked to the front Immediately I
10 heard Officer Mike Arflin, Officer Hogue yelling for a
11 subject to get on the ground, get on the ground Once
12 I stepped toward the door, I could see a female
13 subject lying on the ground, stepped over her and
14 proceeded toward the suspect to get him restrained on
15 the ground with Officer Hogue

16 **Q** When you got in there and saw Officer Mike
17 Arflin and Officer Hogue with this other person
18 First of all, could you describe the other person that
19 they were with?

20 **A** Mr Wylie

21 **Q** Okay You're saying Mr Wylie, who are you
22 talking about? Explain to the jury

23 **A** The suspect The gentleman sitting right
24 there

25 **Q** Okay What were they doing with Mr Wylie

1 when you came in?

2 A They had him at gunpoint ordering him to get
3 on, to actually lay on the ground, to get on the
4 ground

5 Q Okay And how did you see him respond to
6 that?

7 A It took several verbal commands for him to
8 actually try to get him to order to go to the ground
9 At first, he would not And then, as I recall, once I
10 actually stepped inside and actually going in telling
11 him to, you know, to get down, get down, get down, he
12 actually -- then we actually put hands on him,
13 actually assisted him to the ground

14 Q Okay Now, he wasn't fighting?

15 A No, ma'am

16 Q Or cussing at you?

17 A No, ma'am

18 Q Anything like that?

19 A No, ma'am

20 Q He didn't hit you?

21 A No, ma'am

22 Q Spit on you?

23 A No, ma'am

24 Q None of that shenanigans?

25 A No, ma'am

1 Q Did you lay hands on Mr Wylie?

2 A Yes, ma'am I did

3 Q How did you do that?

4 A As I recall, I remember actually grabbing his
5 right arm once we, he was down to his knee level and
6 then actually assisted in putting in handcuffs to the
7 rear

8 Q Okay Once he was in custody, what else did
9 you do regarding Mr Wylie?

10 A At that time, Officer Hogue advised me to
11 remove him from the residence Myself and the deputy
12 from Pickens County Sheriff's Office who arrived
13 shortly thereafter assisted me in removing him from
14 the back side of the residence and I took him straight
15 to my patrol vehicle

16 MS MUNSON Okay I have nothing further
17 at this time, Your Honor

18 THE COURT Mr DeJong, you may cross examine
19 the witness

20 MR DEJONG Thank you, Your Honor May it
21 please the Court

22 CROSS-EXAMINATION

23 BY MR DEJONG

24 Q You were at the Clemson City Police
25 Department when this call came in?

1 A Yes, sir

2 Q What time does shift change?

3 A The shift actually began at that time at 9
4 p m , sir

5 Q All right So, what time did the call come
6 in?

7 A I can't recall the exact time that the call
8 came in, sir

9 Q Well, the shift starts at nine, you were
10 there for some sort of meeting or briefing just
11 shortly before 9 00, right?

12 A Yes, sir

13 Q Okay Had you had your briefing yet at that
14 point in time?

15 A As I recall, no I don't think we
16 actually ---

17 Q Well, the shift that went on at 9 00, what
18 would we call that, second shift, third shift?

19 A Third shift

20 Q Third shift?

21 A Yes, sir

22 Q All right How many people worked third
23 shift on uniform patrol?

24 A Being -- on that day, it was a combined
25 shift So, basically the other rotation normally

1 would be three officers and I believe that night if it
2 would have been full staffed it would have been six

3 Q How many?

4 A Six, it should have been

5 Q Uniform patrol

6 A Yes, sir

7 Q Okay So, is everybody required to go to
8 that? That briefing, whatever you call it?

9 A Usually Normally everybody usually reports
10 to briefing

11 Q So some officers left the Clemson Police
12 Department in response to what you heard on the radio,
13 right?

14 A Yes, sir

15 Q Now, who was the lead car?

16 A As I recall, it was Officer Hogue, I believe

17 Q Okay Who's next?

18 A The best I can remember, it was Officer Mike
19 Arflin

20 Q Third?

21 A I believe that, that was me and then Officer
22 Taylor

23 Q All right Well, you would have been the
24 third man and Taylor would have been, well, third car
25 and Taylor would have been the fourth car, right?

1 A I believe so Yes, sir

2 Q Did you see Taylor in your rear view mirror?

3 A I saw the fourth patrol car which I believe
4 was Officer Taylor Yes, sir

5 Q I won't hold you to Officer Taylor but there
6 was a fourth car behind you, right?

7 A I believe so, yes

8 Q All right Everybody was running lights and
9 siren?

10 A Yes, sir

11 Q Do you know how far it is from Clemson City
12 Police Department to 209 Maple Boulevard?

13 A I don't know exactly, sir, but I would
14 probably say at the most maybe 1 5, 1 7 miles, 1 75
15 miles maybe

16 Q All right Well, let me ask in maybe a
17 little different way How long did it take you from
18 the Clemson City Police Department to 209 Maple
19 Boulevard?

20 A I would say no more than three minutes, maybe
21 two and a half at the most

22 Q Could it have been a minute?

23 A It could of been shortly after that I don't
24 recall the exact time

25 Q As you were going to 209 Maple Boulevard, did

1 you leave your blue lights and your siren on all the
2 way?

3 **A** No, sir We deactivated them once we had
4 turned onto actual Maple off of Pendleton

5 **Q** All right So how far is 209, well, let me
6 back up here What road did you turn off of?

7 **A** Pendleton Road

8 **Q** And how far is that a right or a left or do
9 you remember?

10 **A** It's a left

11 **Q** All right, sir And how far from that
12 intersection of Pendleton Road and Maple Boulevard is
13 it to 209 Maple Boulevard?

14 **A** As I recall, it would probably be maybe four
15 to five hundred yards maybe on the right

16 **Q** Did you cut both your blue lights and your
17 siren off?

18 **A** No, sir I just deactivated my siren

19 **Q** Okay So, it is dark when you get there?

20 **A** Yes, sir

21 **Q** And these are the normal police rotating blue
22 lights, right?

23 **A** Yes, sir

24 **Q** All right Do you recall what the weather
25 was like that night?

1 A I don't recall the cloud conditions or
2 anything but I know it was not raining or anything

3 Q Now, let me show you what has been marked as
4 State's Exhibit Number 2 Can you identify that for
5 me?

6 A Yes, sir

7 Q What is it?

8 A From what it looks to be the scene of the
9 incident

10 Q All right, sir Exterior?

11 A Yes, sir

12 Q Picture of a residence, right?

13 A Yes, sir

14 Q Is that the residence you went to?

15 A As I recall from what I can remember, yes, it
16 appears to be

17 Q As you're facing that residence, Officer
18 Arflin, when you got there, as you're facing it, did
19 you go to the right or the left?

20 A If I'm facing it, I actually went to the
21 right

22 Q All right Now, is there a garage on that
23 residence?

24 A I do not recall seeing a garage on it

25 Q Was there a carport?

1 A I can't remember, sir

2 Q Was there any yard lighting in the front yard
3 of that house?

4 A I don't remember any specific lighting as an
5 actual picture of the house

6 Q Well, you said to the best of your
7 recollection there was a fence there, right?

8 A Yes, sir

9 Q Now, the fence would have been on the end of
10 the house?

11 A I don't know exactly where it was connected
12 to, but I just remember as I stated earlier that I do
13 remember seeing a fence

14 Q Well, when you got to the fence you could not
15 of seen the sliding glass doors, could you?

16 A Not when I got to the fence until we got to
17 the backyard

18 Q All right Just so I'm sure, was there any
19 backyard lighting in that residence, around the
20 residence I'm not talking lights that you say was
21 coming out the patio doors I'm asking you about the
22 light in the yard?

23 A I don't recall any in the yard, sir

24 Q All right Now, you said that you and Mike
25 Arflin went to the back?

1 **A** Yes, sir

2 **Q** You were there about ten seconds?

3 **A** Approximately

4 **Q** Well, is that ten seconds from where you
5 stopped in the back or is that ten seconds from going
6 through the fence or is it ten seconds after you left
7 the car?

8 **A** From what I can recall, probably from the
9 time, from the time we got to the fence and then from
10 the time we actually stopped We immediately were
11 advised what was going on and immediately went to the
12 front

13 **Q** That being the case from the, well, let me
14 ask you this, how far was it from the fence to the
15 patio door?

16 **A** Maybe 30 to 40 feet from what I can remember
17 I can't recall exactly

18 **Q** Okay So, from the fence, you went 1001,
19 1002, 1003, 1000 -- up to 1010 and you turned around
20 and went to the back, back to the front of the house,
21 right?

22 **A** From what I can recall Yes, sir

23 **Q** All right So, that being, well, did you and
24 Mike Arflin both go back to the front of the house at
25 the same time?

1 **A** Initially yes Yes, sir

2 **Q** And that being the case, ten seconds there
3 was really no opportunity for you to make any
4 observations in the house was there?

5 **A** As I recall, I was there long enough to be
6 able to see actually being right directly with the
7 line with the door

8 **Q** You could see the front door?

9 **A** The back sliding glass door, sir

10 **Q** See the back sliding glass door You saw the
11 back sliding glass door and then you all turned and
12 went back to the front, is that what you're telling
13 me?

14 **A** About the time that I remember looking at the
15 glass door

16 **Q** All right And you and Mike Arflin left,
17 both went back around the same time?

18 **A** Yes, sir

19 **Q** I want to be sure on that Okay The back
20 of the house where the sliding glass door was does
21 that sliding -- describe that area for me as you
22 recall?

23 **A** What I remember seeing was immediately seeing
24 the illumination from the glass door So immediately
25 my attention was directed toward there so I could see

1 anything And all I remember seeing was the actual
2 glass doors, is all I paid attention to

3 Q All right Wasn't there like a deck on that
4 house?

5 A I do remember but I can't recall exactly what
6 type of fixtures it had coming from the house

7 Q All right So, you couldn't describe that
8 deck for me at all?

9 A No

10 Q If there was one?

11 A From what I recall, I couldn't describe
12 exactly what the deck was Like I said, all I can
13 remember paying real close attention to was the door
14 and looking through into the residence

15 Q When you and Mike Arflin went around there,
16 did y'all try the sliding glass door to see if it was
17 locked or not?

18 A No, sir We didn't have that time

19 Q At the time you went around to the sliding
20 glass door, did you see Mr Wylie?

21 A From the time I went to the back, no, sir

22 Q So the first time you saw Mr Wylie was when
23 you went to the front?

24 A Correct

25 Q Okay Now, at what point in time, Officer

1 Arflin, did you draw your weapon?

2 **A** As I was running back to the front I remember
3 as I was going around back to the side, I remember I
4 drew my service weapon

5 **Q** What kind of weapon do you carry?

6 **A** It's a Glock 40 caliber

7 **Q** I'm sorry?

8 **A** A Glock 40 caliber

9 **Q** All right Smith and Wesson, Remington, what
10 is it?

11 **A** It's a Glock

12 **Q** A Glock?

13 **A** Yes, sir

14 **Q** Okay Now, so you and Mike Arflin were at
15 the back door, you both run to the front, correct?

16 **A** Yes, sir

17 **Q** Leaving no security whatsoever on the back
18 side of that house?

19 **A** Yes, sir

20 **Q** All right Now, when you get to the front of
21 the house, who, if anyone -- back around to the front,
22 who, if anyone, do you see?

23 **A** Once we got to the front, I recall seeing
24 Officer Taylor and then I saw Officer Hogue moving
25 into the front

1 Q Well, can you get a little more precise where
2 Officer Hogue exactly was when you got around to the
3 front? Was he outside or inside the house or where
4 was he?

5 A After I rounded the corner from what I
6 remember seeing I remember seeing Officer Taylor
7 standing shortly down a little bit from Officer Hogue
8 and as we got closer I then observed Officer Hogue
9 moving into the door

10 Q All right Can you tell the order -- well,
11 how many officers went into the house at that point in
12 time?

13 A At that point, I remember seeing Officer
14 Hogue enter then Officer Mike Arflin entered and I
15 followed in behind Officer Mike Arflin

16 Q Did Taylor come in?

17 A I believe he came in behind me, sir

18 Q Okay Do you know whether Taylor had his
19 weapon drawn or not?

20 A I can't recall, sir

21 Q All right Do you know whether or not Hogue
22 had his weapon drawn?

23 A Yes, sir He did I believe

24 Q Do you know whether or not Mike Arflin had
25 his weapon drawn?

1 **A** Yes, sir I remember seeing his weapon
2 drawn

3 **Q** And when you entered the house, did you have
4 your weapon still drawn at that time?

5 **A** Yes, sir I did

6 **Q** Okay And being uniform patrol, I gather all
7 three of you were in uniform that night?

8 **A** Yes, sir We were

9 **Q** All right Much like you are dressed today?

10 **A** It's a different uniform but it's similar
11 Yes, sir

12 **Q** These are your court clothes, right?

13 **A** Yes, sir

14 **Q** Okay But your normal uniform patrol uniform
15 is very similar to that, you don't wear the tie?

16 **A** No, sir

17 **Q** That's the basic difference?

18 **A** Yes, sir

19 **Q** All right Now, so when you and Mike Arflin
20 get to the front of the house everybody is still on
21 the outside, is that what you're telling me?

22 **A** As I remember, when running around the house,
23 my attention, of course, was focused toward the door
24 And at that time, we were -- Officer Mike Arflin was
25 ahead of me and I remember seeing Officer Hogue moving

1 in and Officer Mike Arflin followed

2 Q Can you tell me the actual order of how
3 people went into the house?

4 A As I recall, it was Officer Jay Hogue,
5 Officer Mike Arflin, myself and then Officer Taylor

6 Q Now, who, to use the law enforcement
7 euthanasia, who took Mr Wylie down?

8 A As I recall, Officer Hogue put hands on him
9 first and then I holstered my weapon and then I placed
10 my hands on officer -- Mr Wylie as well

11 Q All right When you took him down was he
12 standing, speaking of Mr Wylie now, was he standing,
13 seated or how, where was he?

14 A As I recall, when I put my hands on him, he
15 was actually going to the ground and I actually
16 grabbed, I can't recall which arm I believe it was
17 his left arm and proceeded to put handcuffs on him

18 Q As he was lowered to the ground, did you put
19 your hands on his shoulders?

20 A I don't recall ever touching his shoulders
21 No, sir

22 Q How about his chest?

23 A From what I can remember, I grabbed his
24 actual -- I can't remember exactly which arm, but I
25 remember actually grabbing an arm I believe

1 Q All right Well, where was Mike Arflin at
2 that point in time?

3 A As I -- I can't recall But I know he was --
4 I can't recall if he was actually touching him or not,
5 but I do know he was right there with us

6 Q All right Did you ever see Mr Wyllie with a
7 weapon?

8 A No, sir

9 Q Of any kind?

10 A No, sir

11 Q Did once Mr Wyllie was taken down was he
12 patted down?

13 A Yes, sir

14 Q Okay Who patted him down?

15 A I believe Officer Hogue did

16 Q Were you standing there?

17 A Yes, sir

18 Q Were any weapons retrieved from Mr Wyllie?

19 A No, sir

20 Q Did you see any weapons lying in the area of
21 where Mr Wyllie was?

22 A No, sir

23 Q Did you notice any blood or anything on Mr
24 Wyllie?

25 A I don't recall seeing any blood on him No,

1 sir

2 Q Do you recall how he was dressed?

3 A I believe it was a T-shirt and some type of
4 pants

5 Q You were about the third guy in, I believe,
6 according to your testimony, is that right?

7 A Yes, sir

8 Q Did you ever see Mr. Wylie make any attempt
9 to run?

10 A No, sir

11 Q To leave in any way?

12 A No, sir

13 Q And other than just not following the
14 command, did he resist in any way?

15 A No, sir. He did not

16 Q Now, when Mr. Wylie was taken down was he put
17 on his, face down or on his back?

18 A As I recall it was more, when I laid my hand
19 on him he was to his knees and then I don't recall if
20 it was face down or back. I just remember actually
21 having ahold of his arm

22 Q Can you tell me how he -- I'm sorry. I
23 didn't mean to interrupt you, sir. Can you tell me
24 how he was cuffed?

25 A To the rear, both hands were handcuffed to

1 the rear

2 Q One set of cuffs or two?

3 A I can't remember how many sets of cuffs were
4 used

5 Q Did Mr Wylie need any assistance in getting
6 up after he was taken down?

7 A As I remember, he was not able to say he was
8 getting back up And I did say that -- I don't
9 remember stating that, actually pulling him up

10 Q You did?

11 A I didn't remember helping pull him up

12 Q Who else was there helping in pulling him up?

13 A I can't recall for sure but I, it may of, I
14 believe it might of been Officer Hogue

15 Q Okay Then you took him to your patrol car?

16 A Yes, sir

17 Q Who was with you when they took him, you took
18 him to the patrol car?

19 A It was a deputy from Pickens County Sheriff's
20 Office

21 Q Do you know his name?

22 A I believe his last name, a Deputy Norton

23 Q All right And did Mr Wylie need assistance
24 getting into the patrol car?

25 A When I put him in I believe the cages aren't,

1 are fairly short and actually I think I had to assist
2 him putting his right leg in

3 Q And did you then -- well, where did you go
4 then?

5 A Once he was in the back of my patrol vehicle,
6 I then shut the door and I stood by at the patrol
7 vehicle

8 Q Okay From the time you put him in your
9 patrol vehicle until you left 209 Maple Boulevard, how
10 long was it?

11 A Maybe 30 to 40 minutes from what I can
12 remember

13 Q 30 to 40 minutes?

14 A Is from the best I can remember, maybe

15 Q Okay So that I'm clear, you removed him
16 from the residence with the help of Pickens County
17 Deputy?

18 A Yes, sir

19 Q Placed in the rear of your car, correct?

20 A Yes, sir

21 Q And then he set in the rear of your car some
22 30 to 40 minutes before you took him to the police
23 department?

24 A It may of been shorter than that or slightly,
25 but he did

1 Q Somewhere in that vicinity?

2 A Yes, sir

3 Q Now, when you take, get to the Clemson Police
4 Department, well, let me ask you this, did anybody
5 ride with you in your vehicle when you were
6 transporting Mr Wylie to the police department?

7 A No, sir

8 Q When you got to the police department, did
9 any other officers come to your car?

10 A Detective Peppers arrived on scene

11 Q Did Mr Wylie need any assistance getting out
12 of the car?

13 A As I recall, I did assist him in swinging his
14 legs out of the vehicle

15 Q Now, once you get him out of the vehicle,
16 where do you take him?

17 A From the point we left the vehicle, we took
18 him to an interview room

19 Q Okay From the time you first saw Mr Wylie
20 until the last time you saw him, did he ever leave
21 your sight?

22 A No, sir

23 Q Was he ever allowed to use the bathroom?

24 A From what I recall no, sir

25 Q All right Now, describe for me please

1 briefly the room that you took him to in the Clemson
2 Police Department?

3 A The room that we took him to is just a, it
4 was up to a single room there were no windows just an
5 interview room

6 Q I'm sorry Let me get that exhibit back from
7 you I don't think we need it anymore, but we don't
8 want to loose it A regular interview room?

9 A Yes, sir

10 Q Okay Is how many interview rooms does
11 Clemson Police Department have?

12 A We just have one that we use

13 Q Do police officers use that room for whatever
14 reason from time to time?

15 A Usually it's made to bring in -- for the
16 purposes to interview

17 Q I'm sorry I can't hear you?

18 A Usually it's used to actually interview
19 people

20 Q Okay When police officers are doing reports
21 or anything, do they use that room?

22 A I've never made a report in there, sir

23 Q Now, how long was Mr Wylie in that room?

24 A From the time -- he was in there from the
25 time I remember I left Clemson, it was maybe 30

1 minutes, 40 minutes

2 Q I'm sorry?

3 A Maybe 30 to 40 minutes

4 Q 30 to 40 minutes So, he was in that
5 interview room for 30 to 40 minutes, right?

6 A Yes, sir

7 Q So, he set in your car 20 to 30 minutes, give
8 or take a little?

9 A Yes, sir

10 Q Now, is that the last you saw of him?

11 A I'm sorry, sir

12 Q Is that the last time you saw Mr Wylie?

13 A I was still in the interview room with him, I
14 don't understand as far as

15 Q Well, when he left the interview room, did
16 you leave the interview room?

17 A Yes, sir

18 Q And that's the last you saw him?

19 A Yes, sir

20 Q Did you book him in?

21 A I assisted in the booking, but shortly
22 thereafter that I did leave

23 Q Okay Was anything taken from Mr Wylie
24 while he was at the police department?

25 A His clothing that he had

1 Q Anything else?

2 A He did also have -- his hands were swabbed, I
3 believe

4 Q What kind of swabs? Do you know?

5 A I'm not familiar with them

6 Q That's fine Was that done at the police
7 department?

8 A Yes, sir

9 Q How soon after you got to the police
10 department was that done?

11 A Probably within the 30 minutes, probably

12 Q Did you do the swabbing?

13 A No, sir

14 Q Do you know who did?

15 A It was a Lieutenant, I don't recall his name,
16 with Pickens County Forensics

17 MR DEJONG One moment please, Your Honor

18 Thank you, sir

19 THE COURT Any redirect?

20 MS MUNSON Briefly, Your Honor

21 REDIRECT EXAMINATION

22 BY MS MUNSON

23 Q Officer Arflin, when you went from the back
24 of the house to the front, how were you moving?

25 A I was running

1 **MS MUNSON** Nothing further, Your Honor

2 **THE COURT** All right Thank you, sir You
3 may step down, Officer Arflin

4 **MR DEJONG** No objections to him being
5 excused, Your Honor

6 **MS MUNSON** Your Honor, the State calls Rory
7 Bell

8 **RORY BELL**
9 having first been sworn, testifies as follows

10 **THE WITNESS** If you would, have a seat and
11 state your name for the record

12 **THE WITNESS** My name is Rory Bell

13 **DIRECT EXAMINATION**

14 **BY MS MUNSON**

15 **Q** How long have you been with the Clemson
16 Police Department, Officer Bell?

17 **A** A year and about five days now

18 **Q** Okay Did you have any law enforcement
19 experience prior to that?

20 **A** Yes, ma'am

21 **Q** With who?

22 **A** Anderson City

23 **Q** How long were you with them?

24 **A** From 03 to 07

25 **Q** Okay Now, did you go to 209 Maple Avenue on

1 February 13th of 09?

2 A Yes, ma'am

3 Q Did you actually go into the house?

4 A No, ma'am

5 Q When you got to the scene, who else was
6 already there?

7 A There were several other officers Officer
8 Hogue, Officer Arflin, Officer Arflin, there's Blake
9 Arflin and Mike Arflin

10 Q Okay Did you actually go into the house?

11 A No, ma'am

12 Q What assignments were you given when you got
13 to the scene?

14 Q When I arrived on scene, I was asked by my
15 Lieutenant to secure the scene with the crime scene
16 tape I went to my patrol car and got the crime scene
17 tape out of my patrol car, at that time, passed it off
18 to them

19 Q Okay What parts of the outside of the house
20 did you go to?

21 A The driveway is about as far as I went to

22 Q How long before you got there -- well, first
23 of all, do you know how long the other officers were
24 there before you got there?

25 A Probably a couple of minutes, three, four

1 minutes maybe before I arrived

2 Q Before you arrived?

3 A Yes

4 Q Okay How long were you at the scene?

5 A Probably, I would say five, ten minutes,

6 maybe fifteen Not exactly sure on the time frame on

7 that

8 Q And at some point you left the scene?

9 A Yes, ma'am

10 Q When you left the scene was anybody with you?

11 A Yes, ma'am I was asked to escort the child,

12 child to the police department

13 Q And did you do that?

14 A Yes, ma'am

15 Q Who went with you in your patrol car besides

16 child

17 A Just myself and child

18 Q Where in your patrol car did you put him?

19 A The front passenger seat

20 Q And where did you take him?

21 A To the police department, downstairs

22 Q About how long did it take you to get there?

23 A Estimated, probably eight to ten minutes,

24 roughly

25 Q Okay How were you driving from the scene to

1 the police department?

2 **A** Just casual speed, normal speed limit,
3 stopping, you know, stop signs, red lights whatever we
4 got, you know, just caught at

5 **Q** When you got there, where did you take
6 child

7 **A** Took him to our briefing room downstairs
8 where a T V and everything set up

9 **Q** Okay How long, how long were you with
10 child

11 **A** From the time I got him til I was relieved by
12 the DSS worker, a few hours probably I would have to
13 say

14 **Q** Okay How much of the time that few hours,
15 was he out of your sight?

16 **A** Never

17 **Q** All right Now, at the police department
18 what happened when DSS got there?

19 **A** DSS arrived They were checking to locate
20 the older brother that lived in Clemson They went to
21 his work place or had an officer go to his workplace
22 to try to locate him to ask him to come to the police
23 department

24 **Q** And then after -- after that, what happened
25 with, in regards to DSS?

1 **A** Once the brother, the older brother arrived,
2 DSS at that time decided to notify

3 **MR DEJONG** I'm gonna object now I think
4 he's testifying about hearsay

5 **MS MUNSON** No, sir Your Honor, it's
6 already in the record that Missy Wylie is dead and
7 that's all he's going to testify to

8 **MR DEJONG** Well, but he's saying DSS
9 decided to do something, I think that he would
10 have no ---

11 **THE COURT** I'll allow him to -- sir, you
12 can't discuss anything that someone else said or
13 thought but you can certainly discuss your
14 observation So, I'll allow the question

15 **BY MS MUNSON**

16 **Q** Thank you, Your Honor When DSS got there
17 after locating the older brother -- first of all, did
18 you see the older brother?

19 **A** Yes, ma'am He came to the police
20 department

21 **Q** About how old did he appear to be?

22 **A** Twenties, young twenties

23 **Q** All right Was anybody with the older
24 brother when he came to the police department?

25 **A** I believe his girlfriend was with him but she

1 waited, I believe in the front lobby

2 Q Okay Did you see the girlfriend?

3 A I don't recall seeing her that night

4 Q Now, when DSS, after the older brother was
5 there on the scene, what happened next?

6 A DSS, sorry?

7 Q Not who said or who decided, but what
8 happened next?

9 A The older brother and the younger brother,
10 child and his brother were advised that their
11 mother had passed away

12 Q Who was there when child was advised that
13 his mother had died?

14 A Myself, his brother and a DSS worker

15 Q How did child without saying what anybody
16 said, how did child react?

17 A At the time, he was told he turned real pale
18 looked, you know, like he was about to pass out and
19 then started vomiting profusely

20 Q Thank you Your Honor, I have nothing
21 further at this time

22 THE COURT You may cross examine the
23 witness

24 MR DEJONG I have no questions of this
25 witness Your Honor

1 **THE COURT** Thank you Officer Bell, you may
2 step down

3 **MR DEJONG** No objection as to him being
4 excused Your Honor

5 **MS MUNSON** Your Honor, the State calls Greg
6 Taylor

7 **GREGORY TAYLOR**
8 having first been sworn, testifies as follows

9 **THE CLERK** If you would, have a seat and
10 state your name for the record

11 **THE WITNESS** Gregory S Taylor

12 **DIRECT EXAMINATION**

13 **BY MS MUNSON**

14 **Q** Who do you work for, sir?

15 **A** Clemson City Police Department

16 **Q** And how long have you been with them?

17 **A** A little over a year

18 **Q** Did you respond to a scene related to this
19 case?

20 **A** Yes, ma'am I did

21 **Q** On what date?

22 **A** I do not recall I haven't got the ---

23 **Q** Okay That's fine Where were you when you
24 found out about this call?

25 **A** We were in briefing at the police department,

1 downstairs

2 Q When you say "we", who are you talking about?

3 A Myself, Officer Arflin, Mike Arflin, Officer
4 Blake Arflin and Officer Hogue

5 Q Okay And in response to the call, where did
6 you go?

7 A We all went to the scene at Maple

8 Q Okay Can you explain to the jury how you
9 went, in what order?

10 A The order was Officer Hogue and then, I
11 believe, Officer Mike Arflin arrived next, then
12 Officer Blake Arflin and then myself But we were all
13 pretty much there at the same exact time

14 Q Okay When you go there, what did you do?

15 A Officer Mike Arflin and Blake Arflin went to
16 the rear of the house Myself and Officer Hogue went
17 to the front

18 Q Okay How close to Officer Hogue were you
19 initially?

20 A Right behind him Directly behind him

21 Q All right And what did you do at the front
22 of the residence?

23 A While Officer Hogue was knocking on the door,
24 we were both standing there with our weapons drawn
25 waiting because we didn't know what exactly had

1 transpired in the residence When the suspect opened
2 the door, Officer Hogue was speaking with him and ---

3 Q Okay At some point did you go in?

4 A Yes, ma'am

5 Q Who went in the house first?

6 A Officer Hogue went in first I believe
7 Officer Mark Arflin went in second, Blake Arflin went
8 in third, I went in last

9 Q Okay How long were you at the front of the
10 house before Officer Mike Arflin came in?

11 A A matter of minutes

12 Q Okay And when Officer Hogue, Arflin and
13 Arflin went in, you went in last?

14 A Yes, ma'am

15 Q And what did you do when you got in?

16 A I stood back while they were detaining the
17 suspect and swept the scene to make sure nobody else
18 would come out -- were coming out, if anybody else
19 were -- is in the residence

20 Q Okay When you say swept the scene, what are
21 you talking about?

22 A Just visually looked around the room down the
23 hallway

24 Q Did you find anybody else in the house?

25 A The minor child walked out of the rear

1 bedroom while I was looking down the hallway

2 Q How far up the hallway did he come to where
3 you guys were?

4 A He was approximately halfway up the hallway,
5 probably ten, fifteen feet

6 Q Okay Did you have, did you tell him
7 anything?

8 A I don't recall if I actually told him to step
9 back or not

10 Q Okay What part did you play in taking the
11 defendant into custody?

12 A None I just secured the scene while they
13 were placing him in custody

14 Q Okay When you left, how did you go out?

15 A I believe I went back out the front door

16 Q Okay What instructions did you have at that
17 point when you left the scene?

18 A I was told -- at that time, I was told to
19 secure the scene outside as far as assist with crime
20 scene tape and so forth After that, I was told to
21 canvas the area and see if anybody heard anything

22 Q And did you do that?

23 A Yes, ma'am I did

24 Q How did you go about canvassing the area?

25 A Went door to door

1 Q About how many houses to the left and right?

2 A I believe I went two to the left, two to the
3 right, and I believe those to the four directly across
4 the street

5 Q Okay What information did you get without
6 saying what anybody said, what information did you get
7 in canvassing the area?

8 A Nothing really

9 MS MUNSON Thank you I have nothing
10 further Your Honor

11 THE COURT Any ---

12 MR DEJONG Thank you, Your Honor May it
13 please the Court

14 CROSS-EXAMINATION

15 BY MR DEJONG

16 Q When y'all, y'all being Hogue, Mike Arflin,
17 Blake Arflin and you were going to Maple Boulevard,
18 did you see the three cars ahead of you?

19 A Yes

20 Q How close were you all would you say?

21 A We were all within visual distance of each
22 other I mean at no time did we lose sight of each
23 other

24 Q Now, when you say the call came in, were you
25 in a briefing at that point in time?

1 A Yes, sir We were

2 Q Okay And this briefing is when you have
3 shift change, right?

4 A Yes, sir

5 Q And how many people -- the shift started at
6 9 00, right?

7 A Yes, sir

8 Q And how many people worked that shift?

9 A Normally there was that night, I believe, as
10 far as on my side, I was the only one from my
11 rotation And then there was, I believe, there were
12 only -- if memory serves me correct there was only a
13 couple other people working that evening as far as
14 actually on shift

15 Q So, do you leave the Clemson Police
16 Department the same time to your knowledge as Hogue,
17 Arflin and Arflin?

18 A Yes We left right at -- all went straight
19 out the back door straight to our vehicles

20 Q And was anyone in your, other than you in
21 your vehicle?

22 A No, sir

23 Q Now, when you're running to Maple Boulevard,
24 did you have lights and sirens on?

25 A Yes, sir

1 Q Did you leave them on all the way to Maple
2 Boulevard?

3 A Yes, sir

4 Q Okay So, you did not turn your siren off
5 until you got to 209 Maple Boulevard, correct?

6 A We turned it off right prior to getting
7 there

8 Q All right Did you leave your blue lights
9 on?

10 A We also extinguished them before we turned
11 onto Maple

12 Q I see Now, you got there, well, all four of
13 you got there the same time, I believe you said,
14 right?

15 A Yes, sir

16 Q Now, when you get, got out of your vehicle,
17 where did you park your vehicle?

18 A I believe, I'm not exactly sure, but they
19 were all pretty much right in the same area

20 Q Did you draw your weapon immediately upon
21 getting out of your vehicle?

22 A I believe I drew it as we were approaching
23 the front door

24 Q Pardon me?

25 A I believe I drew it as we was approaching the

1 front door

2 Q Well, from your vehicle to the front door,
3 how far was that?

4 A Approximately 20 yards

5 Q Okay Now, is Hogue behind you or in front
6 of you?

7 A In front of me

8 Q You say that, well, Blake and Mike Arflin
9 came back in a matter of minutes back to the front?

10 A After the suspect opened, started opening the
11 front door, I believe, if, like I said, if memory
12 serves me correct I believe Officer Hogue advised
13 that we had someone opening the door and at that time
14 they both came running back around

15 Q Well, from the time you got there til the
16 time that the door opened wasn't a matter of minutes,
17 was it?

18 A It was -- I don't know exactly how long it
19 was as far until the front door opened so

20 Q Well, let me ask you this, if you and Hogue
21 were approaching the front of the house, did you stop
22 and do anything?

23 A No

24 Q You went straight to the front door?

25 A We walked straight from our vehicles to the

1 front door

2 Q Well, how long did you stand at the front
3 door before it started to open?

4 A I don't recall

5 Q Okay Now, at that point in time did Hogue
6 have his weapon drawn?

7 A Both of our weapons were drawn when we were
8 at the door

9 Q When you went into the house, give me the
10 order again that the officers went into the house?

11 A Officer Hogue went in first, Mike Arflin went
12 in second, Blake Arflin went in third, I went in last

13 Q Okay And it was like, boom, boom, boom,
14 everybody went into the house but in that order,
15 right?

16 A Yes, sir

17 Q Nobody stayed outside or anything?

18 A No, sir

19 Q All right Other than going, well, were
20 there any other officers there?

21 A At that time, no

22 Q And at what point in time did any officer go
23 back and attempt to secure the back of the house?

24 A From where we were, at the front door, you
25 could see the back of the house

1 Q All right Now, did you see Mr Wylie that
2 night?

3 A Yes, I did

4 Q Did you ever see him have a weapon of any
5 kind?

6 A When we -- when he opened the door, he did
7 not, no

8 Q Any other time?

9 A No

10 Q Never saw him with a gun?

11 A No, sir

12 Q Did Mr Wylie resist in anyway?

13 A He would not get on the ground when ordered

14 Q And advised that he had a bad back, right?

15 A I believe so, yes

16 Q Did he physically resist in anyway?

17 A No, sir

18 Q Did he direct profanity at you or any
19 officer?

20 A Not that I recall, no

21 Q Other than just not getting down when he was
22 ordered to, he cooperated, right?

23 A Yes, sir

24 Q Now, you say he wouldn't go down or didn't go
25 down was he finally taken to the floor?

1 A He was assisted to the floor, yes

2 Q And who assisted him to the floor?

3 A I believe -- it was Officer Arflin, the two
4 Officer Arflins and Officer Hogue

5 Q Okay The three of them assisted him to the
6 floor?

7 A Yes, sir

8 Q Well, how were they positioned when they were
9 assisting him to the floor?

10 A I do not recall Like I said, I was
11 concentrating on the rest of the house

12 Q And you say you didn't see anyone there
13 except for a minor, right?

14 A Yes, sir

15 Q And you went in the front door of the house,
16 right?

17 A Yes, sir

18 Q And as you go in the front door you're
19 stepping into the living room, correct?

20 A Yes, sir

21 Q And the person that was down was at the
22 living room door or the front door, right?

23 A Yes, sir

24 Q Now, from the entrance hallway, excuse me
25 from the front door let's put it that way From the

1 front door would be several feet and then to your left
2 would be a hallway, correct?

3 A Yes, sir

4 Q And is that the hallway you said you saw the
5 minor child?

6 A Yes, sir

7 Q Did the minor child at that time ever come
8 into the living room?

9 A While I was there, he started up the hall,
10 and like I said, I don't remember who actually told
11 him to stop

12 Q Okay Did he go back to another room as far
13 as you know?

14 A When I left the residence, he was still
15 standing at the end of the hallway

16 Q All right The end of the hallway furthest
17 away from the living room?

18 A Yes, sir

19 Q And from that, did you go down there?

20 A No, sir

21 Q And from that hallway, based on what you
22 observed, could you have seen the front door?

23 A From where the child was, when I saw him, no

24 Q At what point in time did you re-holster your
25 weapon?

1 **A** After the scene was secure and I left the
2 residence

3 **Q** And you went back out the front door?

4 **A** Yes, sir

5 **Q** Okay How many exterior entrances or doors
6 were there to that house?

7 **A** I do not recall I know there was the back
8 door and the front door

9 **Q** Was there -- when you got to the front door
10 was there any lighting in the house?

11 **A** I do not recall

12 **Q** Were there any exterior lights on the
13 outside?

14 **A** Also, I don't recall that

15 **MR DEJONG** One moment please, Your Honor

16 **BY MR DEJONG**

17 **Q** When you say Mr Wylie opened the door, did
18 he open it all the way?

19 **A** No He did not

20 **Q** Did you all push the door open?

21 **A** No, not at first when he started to open the
22 door He reached down and removed what was in front
23 of the door and started pulling it open And at that
24 time, we saw what was laying in front of the door and
25 I believe Officer Hogue did have to push it open

1 slightly

2 **REDIRECT EXAMINATION**

3 **BY MS MUNSON**

4 Q How well could you see in the house?

5 A Inside the house everything was as far, lit
6 enough where everything was visible

7 Q Who did you see turning on lights?

8 A I do not recall who actually, if what lights
9 were turned on, who turned them on

10 Q Did the lighting change at all from the time
11 you got in until the time you went out?

12 A Everything I -- I don't recall as far as the
13 light as far as

14 Q Okay Who, if anyone, was using flashlights
15 inside the house?

16 A We all had flashlights when we went inside
17 the house

18 Q Turned on?

19 A I can't recall whose lights were on and whose
20 were not

21 Q Nothing further, Your Honor

22 **MR DEJONG** Nothing on the re-cross, Your
23 Honor No objection to him being excused

24 **THE COURT** Thank you, sir You may step
25 down

1 **MS MUNSON** Your Honor, the State calls J T
2 Albrecht

3 **J T ALBRECHT**
4 having first been sworn, testifies as follows

5 **DIRECT EXAMINATION**

6 **BY MS MUNSON**

7 **Q** Who do you work for, sir?

8 **A** Pickens County Sheriff's Office

9 **Q** How long have you been with the sheriff's
10 office?

11 **A** Since 2001

12 **Q** Do you have any law enforcement experience
13 prior to that?

14 **A** Yes, ma'am I worked for the City of Mauldin
15 since form 1993 till 2001

16 **Q** Okay What are your current duties with the
17 sheriff's office?

18 **A** I'm a sergeant in forensics

19 **MR DEJONG** Excuse me, I'm sorry, Ms
20 Munson Could we get him a little closer to the
21 microphone?

22 **BY MS MUNSON**

23 **Q** How long have you been a sergeant in the
24 forensics department?

25 **A** Since 2006

1 Q What are your duties in that department?

2 A Crime scene, anything to do with crime
3 scenes

4 Q Only for the sheriff's office?

5 A Well, I work for the sheriff's office but I
6 also assist with other agencies within the county

7 Q Okay Did you get a call to assist in this
8 case?

9 A Yes, ma'am

10 Q On what date?

11 A February 13th

12 Q And when did you get the call?

13 A Nine forty-five in the evening

14 Q And where did you go?

15 A To 209 Maple Boulevard, Clemson

16 Q When you got there, describe for the jury
17 about how many other emergency personnel things of
18 that nature were there?

19 A The crime scene had already been taped off
20 and there was Clemson City Police Officers there

21 Q Okay Was there anyone else from your
22 department there?

23 A No, ma'am

24 Q Did anyone else from your department come out
25 there?

1 **A** Yes, ma'am Lieutenant Robinson with the
2 sheriff's office also in forensics came out there

3 **Q** Okay Now, when you first got to the scene
4 did you immediately go into the house?

5 **A** No, ma'am

6 **Q** Why not?

7 **A** When I first got there, I spoke with the
8 officers from Clemson since they had requested us to
9 come out to get a general idea of what we were dealing
10 with They told me they had a shooting and that the
11 suspect was at Clemson City Police Department and that
12 the victim of the shooting was in the house And that
13 they both resided in the house

14 **Q** Okay

15 **A** It was their belief that the, or to their
16 knowledge the victim still in the house was deceased
17 I told them they need to obtain a search warrant and
18 that I would remain outside the crime scene tape until
19 they got the search warrant

20 **Q** At some point, did the search warrant arrive?

21 **A** Yes, ma'am

22 **Q** And to the pursuant of the search warrant did
23 you go in?

24 **A** Yes, ma'am

25 **Q** And just generally what did you do when you

1 got in there?

2 **A** The first thing I did was once I made entry
3 to the scene was photograph everything as I saw it I
4 started from the front door took pictures without
5 entering the house, just because the door was
6 partially open And then so as to not step on the
7 victim or contaminate anything at that area of the
8 house, everybody made entry to the house from the rear
9 door off of a, like, an elevated deck and sliding
10 glass door From that point, I came in and
11 photographed the kitchen area Photographed the
12 telephone The reason I photographed the telephone is
13 that it appeared that somebody in the house had dialed
14 911 and the phone had a timer on it and it was
15 counting up It was still, the phone was still off
16 the hook it was still counting I photographed that

17 **Q** After you photographed, what did you do?

18 **A** After we photographed the kitchen and stuff,
19 then we moved to the living room and I photographed
20 everything as I found it in the living room

21 **Q** Okay Let me show you what's in evidence as
22 State's Exhibit Number 16 Do you recognize that?

23 **A** Yes, ma'am That's a gun safe

24 **Q** Okay Who took that photograph?

25 **A** I did

1 Q And what, if at all -- what, if anything, did
2 you do to that gun safe prior to photographing it?

3 A Nothing

4 Q Okay Was -- after you photographed it, did
5 you do anything else with it?

6 A After I photographed it, I opened it

7 Q Okay Do you remember whether or not it was
8 locked?

9 A It was not

10 Q Okay Were you wearing anything on your
11 hands when you started?

12 A Oh, yes, ma'am, always, gloves

13 Q Okay What kind of gloves?

14 A They're not latex but they're like latex
15 I'm not really sure what they're made out of

16 Q Okay

17 A It's a rubber-type glove

18 Q Okay I'm showing you State's 22 and 23 Do
19 you recognize these?

20 A Yes, ma'am These are photographs of the
21 kitchen and this is the phone I was talking about

22 Q Okay In State's Exhibit Number 22 in
23 particular when you say it's the kitchen, what else is
24 shown in that photograph?

25 A Well, it's the kitchen area This is the

1 phone, you know, I would call it a phone desk It's
2 like a little desk area and the phone is off the hook

3 Q Okay Now, inside the gun safe, what did you
4 find?

5 A There was a hat, there was a like a rag and
6 of course there was a Taurus 357 revolver

7 Q Okay Let me ask you this, Sergeant
8 Albrecht Once you photographed the gun safe, once
9 you opened it, then what did you do?

10 A I removed the weapon

11 Q Okay Before you removed the weapon, what
12 did you do?

13 A Well, I photographed the contents of the
14 safe, if that's what you mean, as I saw it when I
15 opened it

16 Q Okay I'm showing you State's Number 17, 18,
17 19 and 20 They're already in evidence

18 A That's correct

19 Q Do those accurately show the process you went
20 through?

21 A Yes, ma'am Actually they are in order I'm
22 sorry, yeah That's how that would have been

23 Q All right Once you got the firearm, what
24 did you do with it? Once you got through the layers
25 and got to the actual firearm, what did you do with

1 it?

2 **A** I marked the cylinder, held it When I say
3 mark, you know, position my fingers in the cylinder
4 would not rotate or spin when I opened it I opened
5 the cylinder to check to see if the weapon was still
6 loaded and if, you know, if so to render it safe In
7 this case, when I opened the cylinder it was on a
8 spent, spent round so the weapon was safe but loaded

9 **Q** Okay How many rounds were in the weapon?

10 **A** There was seven live and one fired

11 **Q** And the one fired, where was that?

12 **A** It was in the fire position under the hammer

13 **MS MUNSON** Okay I have nothing further at
14 this time, Your Honor

15 **THE COURT** You may cross examine the
16 witness

17 **MR DEJONG** Thank you, Your Honor May it
18 please the Court

19 **CROSS-EXAMINATION**

20 **BY MR DEJONG**

21 **Q** So, as I understand it, you advised Clemson
22 Police Department to get a search warrant, right?

23 **A** Yes I told them I couldn't enter the house
24 without a search warrant

25 **Q** All right Who'd you tell that?

1 A I don't remember his name He was a
2 sergeant

3 Q Okay Clemson City Police Department?

4 A Yes, sir

5 Q Okay Now, I know in your report you say
6 you, if I got it correctly, you say you measured the
7 distance, I believe, from the street to the front
8 door, is that correct?

9 A That's correct

10 Q What was that distance?

11 A From the mailbox to the front door was 59
12 feet 9 inches

13 Q All right Where can you -- well, let's do
14 this Let me show you what's been marked as State's
15 Exhibit Number 2, Officer Albrecht, and can you
16 identify the, that residence that's in that picture?

17 A Yeah, that's 209 Maple Boulevard

18 Q Okay The mailbox, would that have been
19 close to the driveway?

20 A It was to the right from this picture I'm
21 in the road outside the tape and just took a general
22 picture of the frontage of the house The mailbox
23 would have been, like, over here

24 Q Is that in the same vicinity as the drive, as
25 the driveway to the house?

1 **A** Yeah It's pretty close

2 **Q** Okay How many police cars were there when
3 you got there?

4 **A** I don't remember

5 **Q** Okay So, you waited outside until the
6 search warrant got there?

7 **A** That's correct

8 **Q** How many people, officers were involved in
9 executing the search warrant?

10 **A** I couldn't honestly say I could only guess
11 a number, so I won't I'd have to say I don't know

12 **Q** Well, how many do you think were involved?

13 **A** At least five

14 **Q** All right And were those a mix -- was that
15 a mixture of Pickens County Sheriff's Office and
16 Clemson Police Department or do you recall?

17 **A** It was myself and Lieutenant Robinson from
18 the sheriff's office Everybody else was from
19 Clemson

20 **Q** Okay Do you recall any of the names from
21 Clemson?

22 **A** All but one

23 **Q** Who were they?

24 **A** Jimmy Maw and Captain Peppers

25 **Q** All right, sir Now, this phone that you

1 took the picture of, you said that it had a counter on
2 it, correct? And if you need to see it, I'll show it
3 to you

4 A Yes

5 Q Showing you what's been marked State's
6 Exhibit Number 23 That counter, that is a counter on
7 there, for want of a better term, is it not?

8 A Yeah That's the only thing I can think to
9 call it It would be like a call timer

10 Q It certainly would show when the call was
11 made, correct?

12 A No It's just got a call timer on it

13 Q Or who made the call, right?

14 A It doesn't show who made the call

15 Q Now, who actually found the gun safe that you
16 photographed?

17 A Me

18 Q Pardon?

19 A Me

20 Q You did What room did you find it in?

21 A It was in the living room

22 Q All right Where in the living room?

23 A It was up against the wall nearest on the, if
24 you were coming from the kitchen through the house
25 going toward the exit door into the living room The

1 furthest wall, I guess, would be the exterior wall
2 facing the road and you would turn left at the door,
3 there was like a portable bed up against the wall, on
4 that wall and the safe was at the head of that bed
5 between the bed and a end table on the floor

6 Q As you, well, did you come out of the kitchen
7 when you saw the safe?

8 A I'm sorry

9 Q Were you coming out of the kitchen when you
10 saw the safe?

11 A Oh, no No, I came out of the kitchen and
12 photographed the living room and I was actually
13 looking for a handgun that was, you know, may of been
14 dropped or thrown, you know, was hidden somewhere

15 Q Okay Well, this little safe, was it
16 visible?

17 A Yeah Once I went over there and started
18 looking and that's where I saw it

19 Q Okay It was unlocked?

20 A Correct

21 Q Okay The -- well, you say you photographed
22 it Let me see if I can find that one State's
23 Exhibit Number 17 and also -- well, let me just start
24 with State's Exhibit Number 17, is that the first
25 photo that you took after the -- you found it and you

1 actually opened the lid?

2 **A** When I first found it, it was closed

3 **Q** Right I understand that But then you
4 opened the lid, right? Somebody did?

5 **A** I did

6 **Q** You did Is that the photo, the first photo
7 you took after the lid was opened?

8 **A** Looks like it

9 **Q** All right Well, a moment ago you were
10 looking -- I'll show you all the same exhibits if you
11 need them But you said they were in order and I
12 believe 17 was after you photographed the safe itself?

13 **A** I was referring to the reference of the
14 photos she was showing me

15 **Q** All right So, there was -- well, again tell
16 me what was in the safe?

17 **A** There was -- of course, there was a gun in
18 there There was a blue stocking cap There was two
19 boxes of 357 ammunition I think that was Remington
20 There was a rag, like a, I call it a rag It was just
21 a piece of material

22 **Q** All right From top to bottom of this safe,
23 can you tell me the order of those items? And I'll
24 show you a picture again if it will help you

25 **A** From top to bottom

1 Q Right Yes, sir In other words, what would
2 have been the first thing, the second thing until you
3 got to the bottom And I'll show you again State's
4 Exhibit Number 17 if you need it, officer

5 A All right Well, the first thing you see is
6 like a blue stocking cap And then there's the white
7 material and two boxes of shells That's all I see in
8 that picture

9 Q Well, perhaps I can ask the question a little
10 differently Was the gun on the bottom of the safe?

11 A No, the gun is in the hat

12 Q It's in the hat?

13 A Yeah, I think so

14 Q Okay And was the gun in the holster?

15 A Yeah The gun's in a holster in that

16 Q Okay So, the gun's in a holster in the hat?

17 A Uh-huh

18 Q Okay And was -- look again Was that one
19 box of ammunition, was it on top of the hat or beside
20 the hat or where was it?

21 A Which box?

22 Q Pardon me?

23 A Which box?

24 Q The one

25 A This one or this one?

1 Q If you're looking from the bottom of the
2 picture to the top, it would be the one on the left
3 That one?

4 A I think it's just sitting beside it

5 Q Beside it?

6 A Uh-huh

7 Q Okay And that is precisely how you found
8 it?

9 A Yeah

10 Q So, in the execution of the search warrant
11 you're telling us now that you found the safe, you
12 opened the safe, photographed the safe, you took the
13 contents out of the safe?

14 A Correct

15 Q And you cleared the weapon?

16 A Correct

17 Q When you cleared the weapon, did you keep
18 track of the order that the rounds were actually in
19 the chamber of the pistol?

20 A Just that the spent round was under the
21 hammer and Jimmy Maw from Clemson was there when I
22 opened the cylinder And I just showed him what I
23 found, and I left everything with him

24 Q One of those guns you have the little push
25 thingamajigger You can push the shells out and they

1 just come out?

2 **A** Oh, yeah, yeah

3 **Q** That how you took them out?

4 **A** No You would push -- for something like
5 that, what you would do is push it back far enough
6 that you could extract the shells but not let them
7 fall out of the weapon

8 **Q** You did or you did not let them?

9 **A** You could do that, but no, I didn't do that

10 **MR DEJONG** All right One moment please,
11 Your Honor

12 **BY MR DEJONG**

13 **Q** When the search warrant got there, do you
14 recall what time that was, Officer Albrecht?

15 **A** No, sir

16 **Q** Okay At any rate, was the alleged victim's
17 body still present in the house when you got there?

18 **A** Yes

19 **Q** And did it remain there while you all were
20 executing this search warrant?

21 **A** Yes

22 **Q** Through the entire time?

23 **A** Yes

24 **Q** So that I'm clear, when you cleared that
25 weapon, there was one spent round, one expended round

1 or whatever you want to call it One shot, right?

2 A Uh-huh

3 Q Or emptied?

4 A Right

5 Q And seven live rounds?

6 A I believe so, yes

7 Q You don't know how long the rounds had been
8 in the weapon, do you?

9 A No

10 Q When you opened the box, how did you open the
11 box, if I might ask? Did you just lift the lid?

12 A Yeah

13 Q Okay That's all that was required? Did you
14 have to turn anything?

15 A No I had to think about that, but no, it
16 just, it just opened

17 Q Okay Was the box under the bed, at the edge
18 of the bed, where exactly was it?

19 A It was in between the bed and the night
20 stand

21 Q Okay Easily visible?

22 A Yeah Once you got up to the head of that
23 bed, yeah

24 Q Yes, sir Thank you, sir

25 THE COURT Any redirect?

1 **MS MUNSON** No, sir

2 **THE COURT** Thank you Officer Albrecht, you
3 may step down Mr Foreman, Ladies and Gentlemen,
4 this would be a good time to take a break, I
5 believe I'll ask you to go back to your jury
6 room Remember not to discuss the case in any
7 way We'll call you back in ten or fifteen
8 minutes

9 (WHEREUPON, the jury exits at approximately
10 10 09 a m)

11 **THE COURT** You ready to proceed, Solicitor?

12 **MS MUNSON** Yes, Your Honor, just to -- I
13 want to make the Court aware I've got the
14 witness coming at 11 00 Dr Threadgill who was
15 here all day yesterday Obviously, nobody can
16 anticipate how long things are going to happen
17 I could call Tony Robinson to the stand I
18 don't have that much to ask him However, what I
19 don't want to be in a position to doing is
20 inconveniencing this professional again She had
21 her whole afternoon scheduled and changed all of
22 her appointments, now she's having to do the same
23 thing today I don't want to risk not putting her
24 on the stand until noon After what we did to her
25 yesterday, or I did to her yesterday, what I would

1 prefer to do, even though I can understand how the
2 Court would think it would be wasting a half an
3 hour My position is that it is not I just
4 don't think it's fair to do that to her

5 **THE COURT** Well, if you put Officer Robinson
6 up, I don't know, Mr DeJong may have lots of
7 questions to ask him

8 **MS MUNSON** He will

9 **THE COURT** He will You just know that he
10 will Well, let's give it a try and if we have to
11 break it, we'll -- how long do you expect your
12 direct examination?

13 **MS MUNSON** Fifteen minutes And I
14 anticipate cross to be about forty-five

15 **THE COURT** Well, he might fool you It
16 might be longer than that, but let's give it a try
17 and if we -- maybe we can even have a conference
18 if need be and split the cross Let's see We'll
19 try to accommodate your witness We'll do
20 everything we can to accommodate her All right
21 Let's have our jury come back

22 (WHEREUPON, the jury enters at approximately
23 10 28 a m)

24 **THE COURT** All right Solicitor, you may
25 call your next witness

1 **MS MUNSON** Your Honor, may we approach?

2 **THE COURT** Yes

3 (WHEREUPON, a bench conference is held off the
4 record)

5 **MS MUNSON** Your Honor, the State calls
6 Lieutenant Tony Robinson

7 **THE COURT** All right Sir, you may come
8 around and be sworn please, sir

9 **TONY ROBINSON**
10 having first been sworn, testifies as follows

11 **THE CLERK** If you would, have a seat and
12 state your name for the record

13 **THE WITNESS** Tony Dale Robinson

14 **DIRECT EXAMINATION**

15 **BY MS MUNSON**

16 **Q** Who do you work for, sir?

17 **A** I'm with the Pickens County Sheriff's Office

18 **Q** How long have you been with the sheriff's
19 office?

20 **A** 20 years

21 **Q** What are your current duties?

22 **A** I'm a lieutenant over the Crime Scene Unit
23 and the Property and Evidence at the sheriff's office

24 **Q** How long have you had that position?

25 **A** For most of those 20 years Well, I've been

1 a lieutenant for the last five years or so

2 Q Okay Do you have any specialized training
3 in the area of latent fingerprint identification and
4 recovery?

5 A I do

6 Q Please tell the jury about that

7 A I've attended -- I've been doing latent
8 fingerprints for the 20 years that I've been in the
9 identifications division I've attended basic
10 fingerprint at the South Carolina Criminal Justice
11 Academy, advanced fingerprint at the -- it was also
12 held at the academy which is taught by the FBI And
13 as I said, I've been doing it for 20 years, comparing
14 latent fingerprints and trying to define latent
15 fingerprints

16 Q Over that 20 years, can you say about how
17 many times you have developed and lifted latent
18 prints?

19 A Thousands

20 Q Okay Have you ever been qualified as an
21 expert in the field of latent fingerprints?

22 A I have

23 Q Approximately how many times?

24 A At least four that I can recall

25 Q In what courts?

1 **A** In general sessions court

2 **MS MUNSON** Okay Your Honor, at this time
3 I offer Lieutenant Robinson to the Court as an
4 expert in the field latent fingerprint recovery

5 **THE COURT** Any voir dire or any objection to
6 the witness?

7 **MR DEJONG** No voir dire, Your Honor

8 **THE COURT** Excuse me He'll be qualified as
9 an expert in the field of latent fingerprint
10 analysis

11 **MS MUNSON** Thank you, Your Honor

12 **THE COURT** All right You may proceed

13 **BY MS MUNSON**

14 **Q** What is a latent fingerprint?

15 **A** A latent fingerprint is when you touch an
16 object, the oil from your skin is secreted through the
17 pores in your skin When you touch an object, some of
18 that oil is left behind Latent fingerprinting is the
19 process of thus finding those prints, developing them
20 somehow You can't see them so we have to bring them
21 out somehow to where we can see the fingerprints

22 **Q** What techniques do you use to develop a
23 latent print?

24 **A** There's different techniques It depends on
25 the type of material that you're processing for the

1 prints The most common method is dust It's called
2 fingerprint dust or powder which basically sticks to
3 the oil that is left behind by the fingerprint

4 **Q** What factors determine whether or not a
5 latent print will be left when a person touches an
6 item?

7 **A** Theoretically, you're gonna leave that oil
8 from your skin If you're secreting anything, oil and
9 water from your skin, when you touch something, you're
10 gonna leave it behind That doesn't mean you're going
11 to leave us something behind that we can identify as
12 belonging to a specific person though That's where
13 we have to develop it and hopefully if you look at the
14 ends of your fingers you're gonna see ridges in your
15 fingerprints, or in on your fingertips Those ridges,
16 some of them split off into two, some of them end
17 Those are what are unique to each of you and that's
18 why I can determine one fingerprint from another, by
19 those points of identification we call them

20 **Q** What, how does the actual surface that is
21 touched play into whether or not a latent print can be
22 recovered?

23 **A** Well, it's not automatic Just because you
24 touch something doesn't mean we're gonna find a
25 fingerprint that we can identify to somebody The

1 surface has a lot to do with it We don't fingerprint
2 clothing We don't fingerprint -- well, you can try
3 to fingerprint any, most any other surface that's
4 hard, such as rocks or bricks or things like that, but
5 it's very rare that you'll find any fingerprint on a
6 surface like that So it basically depends on the
7 porousness The best surfaces for fingerprinting are
8 smooth hard clean surfaces

9 Q Okay Once a fingerprint is left on an item,
10 how secure is that latent print In other words, what
11 can damage it or harm it?

12 A That's another thing There's no way to know
13 how long a fingerprint has been on an item So when
14 we find a print, there's no way to know for sure if
15 it's been on there for a day, or a month, or a year
16 So, we cannot make that determination on how long a
17 fingerprint has been on something If a fingerprint
18 is there, it's probably gonna stay for -- and it
19 depends on the person that left it behind, depending
20 on the chemical composition of what they're secreting
21 from their skin Some last longer than others

22 Q What can remove a latent print from the
23 surface?

24 A Any type of rubbing, if something is wiped
25 with a cloth that could certainly take off a

1 fingerprint You could smudge up -- if there were a
2 fingerprint on an object and then I picked it up
3 afterward, I could smudge your fingerprint off the
4 object with my fingerprint

5 Q Okay Let me show you what's in evidence as
6 State's Exhibit number 15 Lieutenant Robinson, first
7 of all, is that weapon safe?

8 A It is

9 Q Okay You didn't have anything to do with
10 the collection of that evidence, correct?

11 A I did not

12 Q Okay Do you have an opinion, in looking at
13 State's Exhibit 15 about how good a surface that is
14 for leaving a latent fingerprint?

15 A In the 20 years that I've been doing latent
16 fingerprints, I've never had a lot of success with
17 firearms This particular firearm has a rubber grip
18 which would be very difficult to get fingerprints
19 from Uh, the other surface on it is smooth and hard
20 surface like I said But the problem with firearms is
21 a lot of them are cleaned with oil or wiped down with
22 oil to keep them from rusting over the years and it's
23 just very difficult I've never had a lot of success
24 fingerprinting firearms

25 Q Okay If State's Exhibit 15 had a latent

1 print on it and then it was put into a holster, how,
2 if at all, in your opinion, would that affect any
3 latent print that was on the weapon?

4 **A** That could certainly smear a latent print off
5 of an object

6 **Q** In your opinion, if State's Exhibit number 15
7 was in a holster and then removed from the holster, in
8 other words, latent print left, put in the holster,
9 removed from the holster and then handled with a
10 person wearing rubber gloves, what is your opinion
11 about how that would affect the latent prints on that
12 weapon?

13 **A** You could certainly smudge the prints off of
14 it that way The prints could be wiped off by the
15 holster

16 **Q** Okay Would the rubber gloves have any
17 affect on it?

18 **A** Yes

19 **Q** All right I'm showing State's Exhibit 15(a)
20 and 15(b) Again, what did you have to do with
21 anything with the collection of those items?

22 **A** Nothing

23 **Q** What is your opinion about the surfaces of
24 15(a) and 15(b) about how good they would be or bad
25 for keeping a latent fingerprint?

1 **A** Well, once again, unfortunately firearms and
2 bullets are the same way It's just very difficult to
3 obtain prints on them A bullet slides into the
4 chamber of a revolver and it fits very snugly in that
5 chamber It's difficult Fired shell casings get
6 very hot when they are fired The heat can distort or
7 take away any chance of getting a fingerprint in that
8 situation

9 **MS MUNSON** Thank you I have nothing
10 further, Your Honor

11 **THE COURT** You may cross-examine the
12 witness

13 **MR DEJONG** Thank you, Your Honor May it
14 please the Court

15 **CROSS-EXAMINATION**

16 **BY MR DEJONG**

17 **Q** Lieutenant Robinson, you had occasion to go
18 to 209 Maple Boulevard in Clemson, South Carolina?

19 **A** I did

20 **Q** Do you recall when that was?

21 **A** February 13th, 2009

22 **Q** All right, sir Now, you work for Pickens
23 County Sheriff's Office, right?

24 **A** Yes, I do

25 **Q** Okay Do you loan your services, for want of

1 a better term, to other agencies in Pickens County?

2 **A** We'll go wherever we are called to in Pickens
3 County whether it is a city or county residence

4 **Q** And at somebody's request, you went to 209
5 Maple Boulevard?

6 **A** I did

7 **Q** Now, do you recall about what time of the day
8 or night you got to 209 Maple Boulevard?

9 **A** Around midnight Maybe 11 30

10 **Q** Who, if anybody else, was present when you
11 got to 209 Maple Boulevard?

12 **A** Uh, there were several Clemson police
13 officers Everybody was outside of the residence
14 Sergeant Albrecht who works with me was there

15 **Q** Did you and Sergeant Albrecht go in at the
16 same time?

17 **A** Yes

18 **Q** To your knowledge, was that the first time
19 Sergeant Albrecht had been in the house?

20 **A** To my knowledge I'm not sure about that
21 though

22 **Q** Let me ask you this, were you present at 209
23 Maple Boulevard when the search warrant was executed?

24 **A** I was

25 **Q** All right Were you in the house when the

1 search warrant was executed?

2 **A** I did go in the house, yes

3 **Q** You did?

4 **A** Yes

5 **Q** All right Did you actually participate in
6 the execution of the search warrant?

7 **A** I didn't do any physical searching of the
8 residence

9 **Q** Okay But now, you been with Pickens County
10 Sheriff's Office for 20 years

11 **A** That's correct

12 **Q** Most of those 20 years, you have been in
13 property ID and crime scene, correct?

14 **A** That's correct Yes

15 **Q** And over those years, you have lifted
16 thousands of latent prints

17 **A** I have lifted thousands I won't say I've
18 matched thousands but I have lifted thousands

19 **Q** Okay You have lifted them Now, and you
20 just didn't show up at 209 Maple Boulevard Somebody
21 requested that you come there, right?

22 **A** That's correct

23 **Q** All right Now, to your knowledge, were you
24 the only person when that search warrant was being
25 executed that had fingerprint expertise?

1 A Sergeant Albrecht has fingerprint expertise
2 I don't know if he's an expert qualified, but he
3 certainly does latent fingerprinting I think Officer
4 Maw with Clemson city has done fingerprinting

5 Q You certainly saw what was going on while
6 this search warrant was being executed, didn't you?

7 A I did

8 Q Was anything done at that point in time to
9 preserve fingerprints that you could see?

10 A On what?

11 Q Anything

12 A The gun was collected in a manner, I hope,
13 would preserve them

14 Q Well, did you attempt to lift latent prints
15 off anything?

16 A No, sir I did not

17 Q Black box, State's Exhibit number 26, did you
18 attempt to lift latent fingerprints?

19 A No, I would not attempt to lift fingerprints
20 off anything like this at the scene If I could take
21 it with me back to the office, that's what I would do

22 Q Let's talk about that Now, apparently you
23 did not take anything back to the office, right?

24 A I did not We went in and assisted Clemson
25 city, but they agreed to collect evidence This was

1 in their jurisdiction They were doing all the
2 evidence collection work

3 Q Well, fingerprints, I think this was touched
4 on when you were talking with Ms Munson, but
5 fingerprints can disintegrate, for lack of a better
6 term, over time, right?

7 A Possibly, yes

8 Q If they were subdued to heat changes,
9 moisture, oils, whatever, humidity, correct?

10 A Possibly, yes

11 Q All right So it would be important, would
12 it not, if you were going to try to lift fingerprints
13 to lift them as quickly as possible?

14 A They are not going to deteriorate over a few
15 minutes time I think if I referred to that, I was
16 more referring to time as in months and years more
17 than I am minutes and hours

18 Q But again, through handling or whatever, you
19 said a few moments ago they could be smudged or
20 whatever?

21 A They could be, yes

22 Q All right And you said guns were difficult
23 but let's just talk about State's Exhibit number

24 15(a) These are bullets, for want of a better term,
25 right?

1 **A** They are

2 **Q** And something rubbing those bullets could
3 smudge fingerprints, right?

4 **A** They could, yes

5 **Q** Even so much as this plastic bag

6 **A** Possibly

7 **Q** All right Now, so you didn't take anything
8 with you, any of the evidence that was taken, right?

9 **A** I did not

10 **Q** You didn't attempt to fingerprint anything
11 there?

12 **A** No

13 **Q** What exactly did you do?

14 **A** I did a GS -- gunshot residue test on the
15 victims hands which I turned over to Officer Maw

16 **Q** Okay

17 **A** That was basically my main function And I
18 also, before I ever responded to the scene, done
19 gunshot residue on the suspect's hands

20 **Q** Did you do the testing on that?

21 **A** No, I did not do the testing That's a kit
22 that we send to the state lab in Columbia

23 **Q** All right Now, uh, did you do any diagrams
24 or sketches of the alleged crime scene?

25 **A** A sketch was done I didn't draw it but I

1 helped do some measurements for the sketch

2 **Q** And helping do those measurements, were those
3 the measurements, to your knowledge, that were put on
4 the sketch?

5 **A** They are Should be

6 **Q** Okay Let me show you a piece of paper I've
7 got in my hand and ask you if you can identify that,
8 Lieutenant Robinson

9 **A** That's the sketch that was done that night

10 **Q** All right And you participated in
11 measurements on that sketch, right?

12 **A** I did

13 **Q** Is there a measurement on there, Lieutenant
14 Robinson, from the front door, that is the door that
15 would face Maple Boulevard, from the front door to the
16 hallway?

17 **MS MUNSON** Your Honor, I'm going to have
18 to object The Lieutenant has testified that it
19 is not his sketch He helped with the
20 measurements I would submit that the defense
21 has to lay more of a foundation as to whether or
22 not he actually recorded the measurements He's
23 testifying from someone else's work

24 **MR DEJONG** He said those are the
25 measurements on the drawing

1 **THE COURT** All right If you would, uh, I
2 say the objection is well taken If you could,
3 establish that he participated or what he did
4 about the measurements from the sketch

5 **BY MR DEJONG**

6 **Q** Who actually drew the sketch?

7 **A** Brad Smith was a, uh, person on the scene
8 He was actually a Pickens police officer He was with
9 the coroner's office that night He was working with
10 the coroner

11 **Q** All right, sir So who actually drew the
12 sketch?

13 **A** Brad Smith drew the sketch

14 **Q** Who actually did the measurements that are on
15 the sketch?

16 **A** He and I did the measurements together

17 **Q** All right By doing them together, one
18 person holding one end of the tape measure and another
19 person holding the other end of the tape measure?

20 **A** That is correct

21 **Q** Which end of the tape measure where you on?

22 **A** I believe ---

23 **Q** How far it was or ---

24 **A** I believe I was on what we would call the
25 smart end of the tape measure which is the one that

1 how far it is

2 Q All right So I'm Brad Smith I was holding
3 the little end You are rolling it out that way, then
4 you look down and say that jury box rail is X feet,
5 right?

6 A That's right

7 Q Is that what was recorded on that?

8 A Yes

9 Q Did you participate in drawing the document?

10 A I did not

11 Q Okay Looking at that diagram, and if you
12 need a moment or two, would you look at it and see if
13 the measurements on that diagram are the measurements
14 to the best of your recollection that you took on
15 February the 13th of 2009 at 209 Maple Boulevard in
16 Clemson, South Carolina

17 A They are

18 Q All right then Now, is there a measurement
19 from the front door to the hallway?

20 A I do not see one

21 Q All right Is there a measurement from the
22 front door to the sliding glass doors?

23 A I do not see one

24 Q What measurements do you have on there?

25 A The measurements -- we were basically

1 measuring the position of the body laying inside the
2 front door

3 Q All right That was it?

4 A That was basically our purpose, yes

5 Q All right So basically you were called out
6 there to read the tape measurement, right?

7 A And to do gunshot residue

8 Q Okay Right How long were you there?

9 A Probably three hours Two hours, two to
10 three hours

11 Q All right You said you did gunshot residue
12 on the alleged victim, correct?

13 A Yes

14 Q You also did them on Mr Wylie?

15 A I did

16 Q Where did you do them on Mr Wylie?

17 A At the Clemson Police Department

18 Q So if I understand you correctly, that would
19 have been on February the 14th?

20 A I probably got there before midnight It
21 would have been on the 14th The time should be on
22 the kit I don't know if the kit's in evidence

23 Q Okay Late February the 13th or early
24 morning hours February the 14th?

25 A Yes

1 Q And where did you take the gunshot residue
2 kit as to Mr Wylie?

3 A In a room at the Clemson Police Department

4 Q Do you know how long he had been in that room
5 before you did the ---

6 A I do not

7 Q Okay So all your purpose was there was to
8 perform however you do the kit?

9 A That's right

10 Q You have any training in that?

11 A It's -- there's actually instructions in the
12 kit, but I been doing them for 20 years, so

13 Q All right

14 One moment please, Your Honor (Pause)

15 Not only on the bullets of the gun, you
16 didn't come to any latent prints anywhere that night?

17 A No, sir Not on a case like this No, sir

18 MR DEJONG Thank you

19 THE COURT Any redirect?

20 MS MUNSON No, sir

21 THE COURT Thank you, Officer Robinson

22 You may step down

23 MR DEJONG No objection to him being
24 excused, Your Honor

25 MS MUNSON Your Honor, may we approach?

1 **MS MUNSON** Thank you, Your Honor The
2 State calls Dr Hope Threadgill

3 **HOPE THREADGILL**
4 having first been sworn, testifies as follows

5 **THE CLERK** If you would, have a seat and
6 state your name for the record

7 **THE WITNESS** I'm Dr Hope Threadgill

8 **DIRECT EXAMINATION**

9 **BY MS MUNSON**

10 **Q** Dr Threadgill, what do you do for a living?

11 **A** I do counseling for a living

12 **Q** How long have you been doing that?

13 **A** Over 26 years

14 **Q** Do you have any -- hold any licensing in
15 South Carolina that allows you to do that?

16 **A** Yes, I do I'm licensed as a professional
17 counselor and I'm licensed as a supervisor

18 **Q** Okay Do you do any teaching in that field?

19 **A** I have in the past but not currently

20 **Q** Okay Now, tell the jury about your
21 educational background

22 **A** I have a bachelors degree from the University
23 of South Carolina, a masters degree from the
24 University of Minnesota and a doctorate degree from
25 the University of Northern Colorado and that's in

1 counseling psychology

2 Q Okay Do you have any specialized treatment
3 in the area of post-traumatic stress disorder?

4 A I'm certified by the American Academy of
5 Experts in Traumatic Stress So yes, I do hold
6 certification in that

7 Q How much experience have you had in treating
8 people with post-traumatic stress?

9 A A great deal That's one of the primary
10 focuses of my practice

11 Q Okay And you've been doing that for how
12 long?

13 A At least 20 years

14 Q Had you ever been, uh, qualified as an expert
15 in the field of post-traumatic stress disorder?

16 A Yes

17 Q How many times?

18 A Around four

19 Q Okay And in what courts?

20 A This court and a court in Georgia

21 Q Okay

22 **MS MUNSON** Your Honor, at this time, I
23 would offer Dr Threadgill to the Court as an
24 expert in the field of post-traumatic stress
25 disorder

1 **THE COURT** Any voir dire of the witness or
2 any objection?

3 **MR DEJONG** May it please the Court, yes,
4 Your Honor

5 **THE COURT** All right You may examine the
6 witness

7 **MR DEJONG** Thank you, Your Honor

8 **VOIR DIRE EXAMINATION**

9 **BY MR DEJONG**

10 **Q** Dr Threadgill, you've been involved in
11 counseling for 26 years?

12 **A** Yes

13 **Q** Of the 26 years, how much of that has been
14 involved with what is commonly referred to as post-
15 traumatic stress disorder?

16 **A** Over 20 years of that has been involved If
17 you are asking percentages, ---

18 **Q** Yes, ma'am

19 **A** --- I would say anywhere from a third to half
20 my practice

21 **Q** All right Ma'am, how many of those are
22 children?

23 **A** Over the years?

24 **Q** Pardon me?

25 **A** Clarify your question

1 Q Okay How many children have you seen that
2 you say have post-traumatic stress disorder over the
3 last 20 years?

4 A That's, uh, -- it's going to be over 25 to
5 30 And that's a guesstimate I did not create a
6 list of the number of kids I've seen

7 Q You are counseling -- well, I don't know that
8 -- do you have any particular training with regard to
9 children?

10 A Yes In my doctorate program, I was trained
11 family therapy and trained in marriage therapy both

12 Q All right Marriage and family therapy
13 includes children?

14 A Yes

15 Q All right Thank you, ma'am No further
16 questions

17 **THE COURT** All right

18 **MR DEJONG** No voir dire

19 **THE COURT** I'll permit the witness to
20 testify as an expert in the field of post-
21 traumatic stress disorder Let me remind you
22 again, Ladies and Gentlemen, you have heard
23 various experts as testimony to be considered by
24 you as any other testimony You can give it the
25 weight that you think is proper You can use

1 this testimony any way you see fit in your
2 determinations later

3 Solicitor, you may continue your examination

4 **MS MUNSON** Thank you, Your Honor

5 **BY MS MUNSON**

6 **Q** Dr Threadgill, what is post-traumatic stress
7 disorder?

8 **A** It's a situation in which someone has
9 experienced, witnessed or been exposed to a traumatic
10 event They then tend to have as symptoms recurrent
11 memories, flashbacks, nightmares, uh, different things
12 along that line Their anxiety level becomes
13 heightened They become hypervigilant They can have
14 other symptoms

15 **Q** Okay Now, what characteristics would you
16 have to see in a patient before you could make a
17 determination or diagnosis of post-traumatic stress
18 disorder?

19 **A** I need to understand that they have actually
20 either experienced it themselves or witnessed a
21 situation that was very traumatic They have to
22 demonstrate symptoms like I mentioned earlier which
23 basically, uh, can be hearing sounds, uh, that they
24 recollect throughout the day memories that come to
25 them at times when they are in the middle of doing

1 other things, difficulty sleeping because of
2 nightmares or being woken up due to nightmares They
3 can have exposure to a situation or a trigger where
4 they might go somewhere and they have a memory of the
5 trauma that gets flashed back into their head

6 Q Okay When you are, uh, diagnosing or
7 attempting to make a diagnosis on a patient, the
8 things that you examine ---

9 A Right

10 Q --- in your practice, are they same -- is
11 this the same process that is generally accepted in
12 your field?

13 A Yes There is a diagnostic manual called the
14 DSM-IV, so it's a fourth edition And we diagnose
15 based on a set criteria within that diagnostic manual
16 that is known throughout the counseling, psychological
17 and psychiatric field

18 Q Okay Now, when you are making your
19 diagnosis, from where -- without saying what anybody
20 said, from where do you get information with which to
21 make a diagnosis?

22 A The -- one of the main areas is from the
23 person that I'm seeing who shares with me information
24 Sometimes other people may share that information with
25 me When there are events like post-traumatic stress

1 disorder where there are legal factors involved, often
2 I'm given reports where a statement has been made
3 But I usually don't get that until after the first
4 session

5 **Q** Again, are these things that are generally
6 used in your field of practice to make this
7 determination?

8 **A** Yes

9 **Q** Now, are you treating a patient related to
10 this case?

11 **A** Yes, I am

12 **Q** And who is that?

13 **A** That is child

14 **Q** How old -- when did you first start treating
15 him?

16 **A** I saw him first on March 12th of 2009

17 **Q** Okay How old was he?

18 **A** He had just turned 8

19 **Q** Do you know when his birthday is?

20 **A** It's in January, I'm thinking the 25th, but
21 I'm not positive

22 **Q** Okay How often have you seen child
23 since March of 2009?

24 **A** Initially, I saw him weekly Then we moved
25 to every other week and then to monthly Currently,

1 I'm seeing him monthly

2 Q Okay How long did you, how much time did
3 you spend with him every time that you saw him?

4 A An hour

5 Q Okay What sort of -- how did the process go
6 in your, uh, sessions with child

7 A Well, I would ask him how he's doing, what
8 he's been doing since I saw him last and if there are
9 any things that he would like to talk about

10 Q Okay Did you ask him to do any -- was there
11 any testing involved?

12 A No No testing

13 Q Okay Are you still seeing child

14 A Yes, I am

15 Q Who would generally come with him to these
16 appointments?

17 A His brother Charlie

18 Q Do you know how old Charlie is?

19 A You're testing my memory He's in his early
20 20s

21 Q Okay Did anyone else come to these sessions
22 with child and Charlie?

23 A One time his -- Charlie's girlfriend came
24 with them I talked with her for a few minutes

25 Q Okay So in making your diagnosis, did you

1 talk with Charlie?

2 **A** I talked with Charlie, but I primarily talked
3 with child

4 **Q** Okay Did you talk to Jadda at all?

5 **A** I talked with Jadda once

6 **Q** Okay

7 **A** In terms of the counseling sessions

8 **Q** Okay Based on your, uh, meetings with
9 child and you training experience, do you have an
10 opinion as to whether or not child is
11 suffering from this disorder?

12 **A** Yes, I do

13 **Q** Please give that opinion to the jury

14 **A** I believe that child has post-
15 traumatic stress disorder And there are two types
16 One is acute which last a month Anything over a
17 month is considered chronic and his is chronic

18 **Q** What does chronic mean?

19 **A** Chronic means that it is long-standing

20 **Q** Are you still treating him?

21 **A** Yes, I am

22 **Q** Okay Do you know why -- let me ask you
23 this, do you have an opinion as to whether or not --
24 as to how it would affect child to come into
25 court and testify?

1 **A** Yes

2 **Q** Tell that opinion to the jury

3 **A** When I first started seeing child without
4 my asking him details, he started sharing details with
5 me And one of the first things he said was ---

6 **MR DEJONG** Objection, Your Honor

7 **THE COURT** What's your objection?

8 **MR DEJONG** May we approach?

9 **THE COURT** Yes, sir

10 **(WHEREUPON, a bench conference is held off the**
11 **record)**

12 **BY MS MUNSON**

13 **Q** Dr Threadgill, ---

14 **MR DEJONG** I think I had objected, Your
15 Honor

16 **THE COURT** Yes, sir I overrule your
17 objection as the question is now asked

18 You may repeat your question for the benefit
19 of the witness

20 **BY MS MUNSON**

21 **Q** What is your opinion as to how it would
22 affect child to come in here and testify?

23 **A** I believe it would be detrimental to child
24 because of some of the symptoms that he experienced
25 after the event and that he may have a recurrence of

1 some of those symptoms

2 Q Okay And you started to say one of the
3 first things he told you

4 A One of the first things he said to me is he
5 believed this to be his fault

6 MS MUNSON Nothing further at this time,
7 Your Honor

8 THE COURT You may cross-examine the
9 witness

10 MR DEJONG Thank you, Your Honor May it
11 please the Court

12 CROSS-EXAMINATION

13 BY MR DEJONG

14 Q Dr Threadgill, the DSM, the Diagnostic
15 Statistical Manual IV, right? That has been redone
16 four times, right?

17 A Correct

18 Q And, uh, that manual sets many different
19 types of -- I don't really know the word I'm looking
20 for The best I can come up with is conditions,
21 correct?

22 A They are considered psychiatric diagnoses,
23 yes

24 Q Yes, ma'am Do not necessarily rise to the
25 level of mental illness?

1 **A** They are mental illnesses that are diagnosed

2 **Q** Well, uh, I don't know Is smoking

3 cigarettes in the, uh, ---

4 **A** It's not in the DSM

5 **Q** Okay

6 **A** There are different criteria in the DSM

7 Excuse me Some are clearly mental illnesses Others
8 are adjustment disorders

9 **Q** And in the process of that manual being
10 revised over how ever many years, some things come on
11 and some things drop off, right?

12 **A** Very few

13 **Q** Okay But they do?

14 **A** Yes

15 **Q** All right Now, what is the DSM for --
16 criteria for post-traumatic stress disorder?

17 **A** It is someone who has experienced, witnessed
18 or been exposed to a traumatic event that is -- in
19 which they tend to have nightmares or other symptoms
20 like flashbacks during the day when they recall the
21 information The event has to continue to be
22 recurrent in their mind that it interferes with their
23 daily functioning and activities

24 **Q** All right That's the criteria of the DSM
25 IV?

1 **A** Yes

2 **Q** All right Now, prior to March the 12th of
3 2009, had you had any contact with child

4 **A** No

5 **Q** Had you had any contact with his brother?

6 **A** His brother grew up with my youngest son but
7 I had not seen him in probably six years

8 **Q** Let me rephrase my question Professionally?

9 **A** No

10 **Q** All right And whatever had occurred in
11 child life prior to March the 12th of 2009,
12 you would not know, would you?

13 **A** Not without talking to other people who he
14 had interacted with

15 **Q** Yes, ma'am

16 **A** Or getting the information directly from
17 child

18 **Q** Did you have any records from any other
19 counselors?

20 **A** No, I did not

21 **Q** Psychiatrists?

22 **A** No

23 **Q** Psychologists?

24 **A** No

25 **Q** Now, you have, say you have seen him since

1 March the 12th of 2009?

2 **A** That's correct

3 **Q** And see him once a month?

4 **A** Initially, I saw him weekly Now he's being
5 seen once a month

6 **Q** How long did you see him weekly?

7 **A** For about three months

8 **Q** Okay And then after that, you dropped down
9 to once a month for an hour?

10 **A** After that, I went to two weeks, every two
11 weeks and then once a month

12 **Q** How long was it every two weeks?

13 **A** Each time I saw him, it was for an hour that
14 we met

15 **Q** All right Now, now traumatic events, that's
16 a fairly -- would you agree that's a fairly subjective
17 term?

18 **A** No, it is clarified in the DSM IV as it can
19 be sexual abuse or assault It can be a death It
20 can be something like the war experience

21 **Q** All right Let's talk about death I'll
22 give you a hypothetical An eight-year-old male who
23 observed a grandparent that they are close to die of
24 natural causes Traumatic event?

25 **A** That would be a basic grief reaction

1 depending on what their symptoms are You are not
2 describing a traumatic event You are describing an
3 actual death

4 Q That's not traumatic?

5 A It depends on the type of death The trauma
6 has to do with the way the person died In this case
7 and in other cases, people are traumatized in some
8 way Deaths occur from war, from being shot or
9 killed, ran over, being blown up by bombs and I do
10 work with people who are, uh, coming back from the war
11 in the military I also know that people who have
12 experienced seeing someone killed in a trauma
13 accident, like a car wreck that's sudden or someone
14 being shot Those would be trauma

15 Q All right Well, a car accident Okay A
16 car accident in which somebody is killed would be a
17 traumatic event

18 A If the person witnessed it, experienced it or
19 observed it

20 Q And hypothetically, an eight-year-old that
21 observed an accidental shooting of a person would be a
22 traumatic event?

23 A Can be

24 Q Did anyone other than Charlie's fiance or
25 Charlie come in to the sessions with Mr child

1 A No

2 Q And Charlie's fiance came one time, I believe
3 you said, right?

4 A One time that I talked with her

5 Q Okay Now, you have this criteria as set
6 forth in the DSM that using that criteria to meet the
7 criteria is basically subjective with a person looking
8 at the person and that criteria

9 A It would not be subjective if there are facts
10 that are present And what we're looking at is that
11 there were facts that were present He was actually
12 in the home He heard the gunshot He heard his
13 parents fighting He heard his mother talk on the
14 phone to the police and say he has a gun Those are
15 facts that I'm getting from the child You can call
16 them subjective if you would like, but they are also
17 substantiated by the reports that I've received

18 Q The point I'm making though is there is no
19 testing that you do to determine that

20 A I could do testing but I don't tend to give
21 it to an eight-year-old

22 Q Right Well, is there an (inaudible) for an
23 adolescent, right?

24 A Yeah, but he's eight

25 Q I beg your pardon?

1 **A** He was eight and he was a recent eight

2 **Q** Yes, ma'am, but you didn't give him that
3 item?

4 **A** No, because it's over 256 questions

5 **Q** Yes, ma'am But that is a diagnostic tool

6 **A** So is the DSM IV with specific criteria laid
7 out that we must follow of which I did follow And
8 child does meet the criteria for chronic post-
9 traumatic stress disorder I do not want him to be
10 traumatized any further

11 **Q** Yes, ma'am It has become very personal with
12 you, hasn't it?

13 **A** No, it has not It is personal in the sense
14 that every client that I see is considered to be
15 someone that if I don't make the connection with them
16 to be empathetic and concerned, you don't have a
17 relationship to help them My goal is to help them
18 Anytime someone who is a child experiences the death
19 of their parent by the hands of the person who is also
20 the other parent is very traumatic event, sir

21 **Q** Thank you, ma'am No further questions

22 **A** And if you would like a copy of the DSM IV, I
23 will be glad to provide it

24 **THE COURT** Any redirect?

25 **MS MUNSON** No, sir

1 **THE COURT** Thank you, ma'am You may step
2 down

3 **THE WITNESS** Certainly

4 **THE COURT** You may call your next witness

5 **MS HAMAKER** The State calls Ila Simmons

6 **ILA SIMMONS**

7 having first been sworn, testifies as follows

8 **THE CLERK** If you would, have a seat and
9 state your name for the record

10 **THE WITNESS** My name is Ila Simmons

11 **DIRECT EXAMINATION**

12 **BY MS HAMAKER**

13 **Q** Ms Simmons, where do you work?

14 **A** I work at the South Carolina Law Enforcement
15 Division also known as SLED in the forensic laboratory
16 trace evidence department

17 **Q** And how long have you been there?

18 **A** 10 years

19 **Q** What is your educational background?

20 **A** I have a Bachelors of Science in Chemistry
21 After completing my Bachelors of Science degree, I
22 came to work at SLED The first three years that I
23 worked at SLED, I worked with a court qualified SLED
24 certified trace evidence examiner who taught me how to
25 collect and analyze trace evidence During that time,

1 I had to take written, practical and oral examinations
2 and complete all of them with 100 percent efficiency
3 to continue on in my training

4 **MR DEJONG** Your Honor, I apologize for
5 interrupting I'm competing with the trucks out
6 here Can we maybe turn the sound up just a
7 little bit

8 **THE COURT** All right

9 **BY MS HAMAKER**

10 **Q** Is the SLED laboratory accredited?

11 **A** Uh, yes, ma'am We are

12 **Q** What does it mean to have accreditation?

13 **A** We are accredited by ASCLAD which is the
14 American Society of Crime Lab Directors Many crime
15 lab directors from around the country inspect each
16 other's laboratories ASCLAD dictate everything we do
17 within the laboratory, from how we mark our evidence
18 to the type of educational background we have to have
19 prior to working in a specific department

20 **Q** Is the testing that you conduct in accordance
21 with other labs throughout the US?

22 **A** Yes, ma'am It is

23 **Q** Would you please tell the jury what trace
24 evidence is

25 **A** Trace evidence encompasses several areas of

1 forensics We analyze gunshot residue, gun powder
2 residue We perform fiber and paint comparisons as
3 well as analyzing explosive and arson debris

4 Q Have peer review the type of testing you do
5 to make sure everything is correct?

6 A Yes, ma'am Within our laboratory, we have
7 what is known as a technical peer review where all of
8 the tests that I have performed have to be reviewed by
9 another analyst within our department to make sure
10 that they concur with my results

11 Q Does your department participate in any kind
12 of proficiency testing?

13 A Yes, ma'am We do

14 Q Have you passed all those tests?

15 A Yes, ma'am

16 Q Have you ever been qualified as a trace
17 expert witness before?

18 A Yes, ma'am

19 Q And in which courts?

20 A In the federal courts, state courts of South
21 Carolina and civil court

22 MS HAMAKER Your Honor, at this time, the
23 State would like to offer the witness as an
24 expert in trace evidence

25 MR DEJONG No voir dire, Your Honor

1 **THE COURT** All right Again, this witness
2 will be qualified as an expert in the area of
3 trace evidence

4 **BY MS HAMAKER**

5 **Q** Ms Simmons, did you conduct any examination
6 in relation to this case?

7 **A** Yes, ma'am I did

8 **Q** And what did you conduct the examinations on?

9 **A** I analyzed some clothing and I also analyzed
10 some gunshot residue kits

11 **Q** And what kind of examinations are those
12 called?

13 **A** I analyzed the clothing from Mr Wylie for
14 the presence of gunshot residue From Mrs Wylie, I
15 analyzed her clothing for the presence of gun powder
16 And I analyzed the gunshot residue kits from the hands
17 of both persons for also the presence of gunshot
18 residue

19 **Q** Ms Simmons, I want to first talk about the
20 gunshot residue examination you conducted on Mr
21 Wylie's clothing (Pause)

22 Ms Simmons, this has been marked as State's
23 Exhibit number 12 Can you tell me what's in there?

24 **A** Uh-huh I will (Pause)

25 Yes, ma'am This is the shirt and pair of

1 shorts that I conducted the gunshot residue test on
2 from Mr Wylie

3 **MR DEJONG** Without objection, Your Honor

4 **MS MUNSON** Your Honor, the State would
5 like to introduce State's Exhibit 12 into
6 evidence

7 **MR DEJONG** Without objection

8 **THE COURT** Without objection, number 12 is
9 in evidence

10 **(WHEREUPON, State's Exhibit 12 is admitted into**
11 **the record)**

12 **BY MS HAMAKER**

13 **Q** Let me sit this right next to you in case you
14 need to refer to it Ms Simmons, this has been
15 marked as State's Exhibit 27 Can you tell the jury
16 what that is?

17 **A** Yes, ma'am This -- when collecting gunshot
18 residue samples from a garment, we take particle lifts
19 which is basically like a double-sided tape on a
20 handle and we dab it over areas of the garment And
21 these are particle lifts that collected from the shirt
22 and shorts

23 **MS MUNSON** Your Honor, the State would
24 like to introduce State's Exhibit number 27 into
25 evidence

1 **MR DEJONG** Without objection, Your Honor

2 **THE COURT** Exhibit 27 is into evidence

3 (WHEREUPON, State's Exhibit 27 is admitted into
4 the record)

5 **BY MS HAMAKER**

6 **Q** Ms Simmons, can you tell the jury what
7 gunshot residue consists of?

8 **A** Gunshot residue is a mixture of microscopic
9 chemicals that come out of a gun when it is fired
10 They come out of the muzzle of the gun primarily
11 Also they can come out of an ejector port on an semi-
12 automatic weapon and around the cylinder of a
13 revolver These primarily consists of lead-barium
14 antimony in the particles

15 **Q** And where would you expect gunshot residue to
16 land after the gun is shot?

17 **A** Uh, it comes out in like a cone-shape cloud
18 It can get on the hands of someone firing the weapon
19 or anything in close proximity to the weapon when it
20 is discharged in about five to six feet

21 **Q** Okay And can you please tell the jury about
22 the test you conducted on the Defendant's clothing?

23 **A** Yes, ma'am I took, uh, the particle lifts
24 that I mentioned early on the double-sided sticky tape
25 and sampled them across the shirt and the front of the

1 shorts

2 Q And did you find any gunshot residue?

3 A On the shorts, I did not find gunshot
4 residue However, on the shirt, yes, I did find
5 gunshot residue particles present

6 Q And where were those particles present?

7 A They were found on the left chest area, the
8 right chest area and the left sleeve

9 Q I'm going to move over the gunpowder test
10 that you conducted on the victim's clothing This is
11 State's Exhibit number 14 Can you please tell the
12 jury what that is

13 A Yes, ma'am It's the clothing from the
14 victim that I analyzed for the presence of gunpowder

15 MR DEJONG Without objection, Your Honor

16 THE COURT Without objection, State's
17 Exhibit 14 is into evidence

18 (WHEREUPON, State's Exhibit 14 is admitted into
19 the record)

20 BY MS HAMAKER

21 Q Again, I'm just going to sit this next to you
22 in case you need to refer to it at some point Can
23 you tell the jury about the gunpowder test that you
24 conducted on that shirt?

25 A Yes, ma'am We conduct gunpowder

1 examinations to try to determine how far the muzzle of
2 the gun was from the garment when someone was shot
3 What we do is we will take the gun that was used in
4 the incident as well as any ammunition that was
5 submitted along with that gun We will take the
6 garment with the bullet hole in it and process it
7 chemically When gunpowder begins to burn, it will
8 react with the chemical paper that we use and make
9 bright orange dots on the paper It creates a pattern
10 around the whole, the whole area in the garment

11 And we'll take the gun, we'll take the
12 ammunition and we will stand at different distances
13 We'll start at contact We'll press the gun into a
14 standard cloth and we will shoot it Put another
15 piece of cloth up and shoot it at six inches And we
16 will go back and process this cloth the same way we
17 process the shirt that has the bullet holes in it
18 And we will compare the patterns that we found on the
19 shirt to our test patterns and we can determine how
20 far the gun was from the shirt when it was discharged

21 Q Ms Simmons, this is State's Exhibit 15 Is
22 that the gun that you used in your testing?

23 A Yes, ma'am It has the same serial number as
24 well as my initials, the item number and the
25 laboratory identification number

1 Q Thank you And this is State's Exhibit
2 number 15(a) Are those the bullets that you used or
3 the cartridges that you used during your testing?

4 A Yes, ma'am When they came to me, they were
5 live cartridges which means they have not been fired
6 yet But during the course of my examination, I had
7 to fire them through the gun That's why all that's
8 left is the cartridge casing and the projectile
9 portion is gone

10 Q So let me make sure I have this right You
11 used that gun with those bullets and you fired it at
12 something?

13 A Yes, ma'am, at test cloth that we had
14 validated for the test

15 Q Did you measure the gunshot, I'm sorry, the
16 gunpowder on that test cloth?

17 A Yes, ma'am

18 Q And then you compared it to the shirt's
19 pattern?

20 A Yes, ma'am

21 Q And did you come up with an opinion?

22 A Yes, ma'am The distance of the muzzle from
23 the garment when the gun was fired was between one
24 feet and three feet So anywhere in between that
25 distance

1 Q The muzzle to the shirt?

2 A Yes, ma'am

3 Q Can you look at the victim's shirt and show
4 it to the jury?

5 A I can Yes, ma'am

6 Q Will you tell the jury how many holes you see
7 in that shirt?

8 A Okay It just might take me a moment to get
9 down and get it out

10 Q Would a knife or ---

11 A It would help to cut that tape there Thank
12 you When the shirt was submitted to me, it was in
13 contact However, when I processed the garment, I had
14 to cut the garment open This was the hole that was
15 processed for gunpowder This would have been the
16 back of the shirt That would have been the front of
17 the shirt

18 Q Thank you Now, Ms Simmons, you said
19 gunshot residue was found on the Defendant's shirt and
20 gunpowder was found on the victim's shirt What's the
21 difference between gunshot residue and gunpowder?

22 A In the cartridge, there is a primer on one
23 end There's a shell casing in the middle, then there
24 is a projectile The gunshot residue comes primarily
25 from the primer portion where the gunpowder is the

1 powder that is in the cartridge case that begins to
2 burn When the firing pin falls on a primer, it makes
3 a small spark The chemicals inside are shock
4 sensitive The small spark goes through a very small
5 hole, makes the gunpowder begin to burn Pressure
6 builds up and pushes the projectile out of the gun
7 That's how they differentiate The gunpowder is found
8 in the cartridge casing The GSR is found in the
9 primer portion

10 Q So which direction of the gun would you
11 expect the gunpowder to come out of?

12 A It would be headed out of the muzzle and away
13 from gun in the same direction as the projectile

14 Q And the gunshot residue?

15 A The same way Primarily, it would be headed
16 away from the person firing the weapon A small
17 amount can come back and get on the hands of the
18 person firing the weapon

19 Q Let me ask you one more question Would you
20 expect an operator who maybe perhaps just handled his
21 gun to be able to transfer any kind of gunshot residue
22 onto the Defendant's shirt?

23 A That is a possibility However, the
24 importance of the gunshot residue particles that we
25 find is their shape If you see sleet come out of the

1 sky, you will see that it's perfectly round because it
2 is basically water falling out of the sky and it's
3 freezing It's basically the same way with this
4 molten lead-barium antimony that comes out of the gun

5 When it comes out of the gun and lands on the
6 skin, it cools to a round shape It's very fragile
7 If someone were to handle a gun and then touch someone
8 else, it would -- it could definitely damage the
9 particles The particles that were found on the shirt
10 were very spherical So they weren't as consistent as
11 being from a transfer situation as they are from being
12 in a plume of a cloud But I can't definitively rule
13 out that that's not a possibility It could be a
14 possibility

15 Q Strong possibility?

16 A Uh, it's possible However, generally, the
17 test that we've conducted when we've fired guns and
18 then taken rags and wiped the guns down and then
19 processed the rags, the methodology is different for
20 those particles than would be on someone's hands from
21 firing a gun They would be either oblong or even
22 have one flat edge

23 Q I understand Oh, was there any gunshot
24 residue found on the victim's hands?

25 A No, ma'am

1 Q On the Defendant's hands?

2 A No, ma'am

3 Q Thank you

4 THE COURT You may cross-examine her

5 MR DEJONG Thank you, Your Honor May it
6 please the Court

7 CROSS-EXAMINATION

8 BY MR DEJONG

9 Q So you tested the gunshot residue kits -- I
10 guess they would call them kits, right?

11 A From the hands?

12 Q Yes, ma'am

13 A Yes, sir

14 Q On both the alleged victim in this case and
15 the Defendant?

16 A Yes, sir

17 Q And the results on both were negative?

18 A Yes, sir That's correct

19 Q You found no GSR, no gunshot residue on
20 either one of them

21 A That's correct

22 Q You say you did find gunshot residue on the
23 shirt that Mr Wylie was supposedly wearing on the
24 night of February the 13th?

25 A Yes

1 Q All right Let's talk a little bit about
2 this gunshot residue transfer Given a situation
3 where an officer walks into a room where there has
4 been a recent gunshot, the officers say that room
5 smells like gunpowder, there would be gunshot residue
6 in the air, would there not?

7 A Depending upon the time and the conditions in
8 the room Yes, sir There could still be some

9 Q Well, when we talk about the firing pin
10 hitting the hammer or the firing pin hitting that
11 shell, bullet, whatever, that strikes the primer,
12 right?

13 A Yes, sir

14 Q Now, when that bullet finally explodes, for
15 want of a better person -- for want of a better term,
16 there is basically a cloud of gunshot residue that
17 comes out of that gun, right?

18 A Yes, sir

19 Q And it's like any other particles They say
20 in the air?

21 A Yes, sir They do

22 Q Right And like any other particles, gravity
23 being gravity, they ultimately float down, don't they?

24 A That's correct

25 Q And if you happen to be in the way of the

1 float, they are going to float on you, aren't they?

2 A Yes, sir

3 Q Or me?

4 A Yes, sir

5 Q So the mere fact that somebody may have
6 gunshot residue on them does not in and of itself
7 conclusively say they fired a gun?

8 A No, sir It does not

9 Q It simply says they have been in proximity,
10 perhaps, to where a gun was fired

11 A Yes, sir

12 Q Okay Now, let's also -- I think that's
13 where I was going and I got sidetracked I don't
14 know But let's talk about transfer Giving a --
15 give you a situation where four police officers take
16 -- well, let me back up Hypothetical, four police --
17 three police officers, weapons drawn in hand for some
18 period of time Then one, two or three of those
19 officers physically take an individual down to the
20 floor Certainly, there could be a transfer of
21 gunshot residue

22 A Yes, sir There can be a transfer

23 Q Okay Now, hold that for a moment Let's go
24 one step further Hypothetically speaking, after that
25 individual is taken down and placed in a police car,

1 that is regularly used in routine patrol by police
2 officers and sits in that police car for 30 to 40
3 minutes, there would be a transfer of gunshot residue

4 **A** If the gunshot residue was in the car, that
5 is a possibility

6 **Q** Yes, ma'am Now, let's take it one step
7 further Given that same hypothetical situation, the
8 take down, the helping up, getting to the car, sitting
9 in that car for some 30 to 40 minutes, now an officer
10 that has had his gun drawn, not necessarily
11 immediately prior but some time within a short period
12 of time assist an individual out of a vehicle, could
13 there be gunshot residue transfer?

14 **A** Yes, sir If there's gunshot residue on the
15 hands and they touch the garment, that is a
16 possibility

17 **Q** Yes, ma'am Now, one step further All of
18 what I have just given you included, but now you set
19 an individual in a police department room where there
20 are police officers and individual sits there for 20
21 to 30 minutes, gunshot residue transfer?

22 **A** Yes, sir If gunshot residue is present,
23 that is a possibility

24 **Q** Do you, as part of your testing, Ms Simmons,
25 make any -- let me try to ask it simpler Do you do

1 anything with blood?

2 A No, sir

3 Q Okay Blood is somebody's else's ---

4 A Right

5 Q Okay You're basically looking for gunshot
6 residue?

7 A Yes, sir

8 Q What do you call this thing where you fire
9 the weapon and you look at the gunpowder? What kind
10 of test is that?

11 A We call it gunpowder We analyze for
12 gunpowder, yes

13 Q Okay Analyze for gunpowder That one's
14 fairly simple for me When you test fire this weapon,
15 or I don't want to say test fire because you weren't
16 testing the weapon, were you?

17 A I was just testing for the pattern of
18 gunpowder, yes, sir

19 Q Okay The shells that you used were part of
20 what is State's Exhibit 15(a) Is that correct?

21 A That's correct, sir

22 Q When -- how many did you fire?

23 A I test fired -- I would have to look at my
24 notes, if you don't mind, very quickly

25 Q Yes, sir Please do Please do

1 **A** (Reviewing)

2 I believe I used five I think Yes, sir
3 I didn't write down exactly how many I used I know
4 that there were six live cartridges and one live
5 cartridge that was disassembled by firearms

6 **Q** Okay Well, I'm looking here at what appears
7 to be 1, 2, 3, 4, 5, 6, 7 cartridges I think -- I'll
8 let you count

9 **A** I used three, and two of them have -- 1, 2,
10 3, 4, 5, 6 -- there were seven all together and three
11 were used

12 **Q** Okay Those three were used by you?

13 **A** Yes, sir They were

14 **Q** Okay Now, when you did that test, did you
15 use hollow-points or regular points or what did you
16 use?

17 **A** It was the regular in there, if I can show
18 you real quickly

19 **Q** Surely

20 **A** Uh-huh It was this type of round here that
21 was just a flat nose type

22 **Q** Flat nose type?

23 **A** Yes, sir

24 **Q** Is that a hollow-point?

25 **A** No, sir It's not a hollow-point

1 Q Okay Would the hollow-point or non-hollow-
2 point in your opinion make any difference on the
3 testing?

4 A No, sir, because generally as long as we use
5 the same type ammunition that was used in the
6 incident, we just have to have ammunition that's
7 what's consistent with what was used in the -- because
8 they are both going to have the same types of
9 gunpowder

10 Q Okay Now, you say that, uh, you initially
11 tested what has, I think, been introduced as State's
12 Exhibit 14 and I'm holding up this shirt It appears
13 to be a t-shirt

14 A Yes, sir

15 Q Which now is cut down the front

16 A Yes, it is

17 Q You cut down the front ---

18 A I did

19 Q --- for testing purposes You first tested
20 that for gunpowder

21 A Yes, sir I did

22 Q Did you find any gunpowder?

23 A Yes, sir I did

24 Q Okay And so that equates into your test
25 when you fire into this special cloth, right?

1 **A** Yes, sir I do I use that pattern and
2 compare it to my test patterns

3 **Q** And once you do that, then you compare the
4 gunpowder on the shirt to these various distances that
5 you ---

6 **A** Test fired

7 **Q** --- test fired Okay And that is kind of a
8 comparison

9 **A** Yes, sir That is an approximation as to the
10 distance of the ---

11 **Q** You can't say to a definite degree of
12 scientific certainty but it's consistent with that

13 **A** It's consistent with that because I can't say
14 what the variables were in the room at the time

15 **Q** Yes, ma'am And the -- your final conclusion
16 was that the shot occurred from one to three feet
17 away?

18 **A** Yes, sir

19 **Q** I don't know if you do any measurements or
20 not, but I will ask you anyway Did you measure from
21 the top seam of the shirt to where that ---

22 **A** No, sir I did not

23 **Q** Did you do any measurements at all?

24 **A** No, sir I did not

25 **Q** But you would agree with me that's basically

1 in the upper right shoulder area?

2 A In this area here

3 Q A couple, three inches maybe down?

4 A Uh-huh

5 Q So your testing and your conclusion would be

6 it wouldn't have been no closer than one foot and no

7 more than three feet?

8 A That's correct Yes, sir

9 Q Did you personally fire the gun?

10 A Yes, sir I did

11 Q Did you have any trouble firing it?

12 A No, sir

13 Q It fired easily?

14 A Yes, sir

15 Q Okay

16 A With standard -- with a revolver that size,

17 yes, sir

18 Q All right No malfunction on the gun?

19 A It did not malfunction while I was test

20 firing, no, sir

21 Q When you fired -- I'm going to get confused

22 I'm going to forewarn you that I'm going to get

23 confused Did you do the single action or the double

24 action?

25 A I always get confused on those as well I

1 pulled the hammer back and then pulled the trigger

2 Q All right Did you ever try just -- you did
3 that on all three?

4 A Yes, sir I did

5 Q You never tried the other one ---

6 A No, sir I didn't

7 Q --- did you?

8 A No, sir I didn't

9 Q All right And in your firing, you only were
10 just firing You weren't doing any test on the
11 weapon?

12 A No, sir I did not

13 Q Thank you, Ms Simmons

14 THE COURT Any redirect?

15 MS HAMAKER Yes, sir, Your Honor

16 REDIRECT EXAMINATION

17 BY MS HAMAKER

18 Q When Mr DeJong was speaking with you and
19 asking you questions, he said could these transfers
20 happen at the police or in the back of a car, could
21 these type of things happen Let's focus on this
22 case Could you, in this particular case -- you said
23 something about molecules and the shape of them Is
24 it likely that that happened?

25 A Generally, as I mentioned before, when you

1 have a transfer situation, the particles are oblong
2 shaped or flat on one edge These particles were very
3 spherical I can't say definitively, but it is more
4 consistent with having been in the cloud of residue
5 than transfer, but I can't say that specifically

6 MS HAMAKER Nothing further, Your Honor

7 MR DEJONG Nothing on recross No
8 objection to this witness being excused, Your
9 Honor

10 THE COURT All right Thank you You may
11 step down

12 You may call your next witness

13 MS MUNSON Thanks, Your Honor The State
14 would call Jadda Thomas

15 JADDA THOMAS

16 having first been sworn, testifies as follows

17 THE CLERK You may be seated State your
18 name for the record

19 THE WITNESS Jadda Francis Thomas

20 DIRECT EXAMINATION

21 BY MS MUNSON

22 Q What do you do, Ms Thomas?

23 A I'm a law student at the University of South
24 Carolina

25 Q Okay Where did you get your undergraduate

1 degree?

2 **A** Clemson University

3 **Q** Do you know a kid named child

4 **A** Yes, ma'am

5 **Q** Hold on a second How do you know child

6 Wylie?

7 **A** Uh, I've been dating his older brother for

8 five years now

9 **Q** How old was child when you met him?

10 **A** Four

11 **Q** How much time have you spent with him from

12 the time he was four til the time he was eight?

13 **A** Virtually every time Charlie went over to his

14 house to play with his brother, I went So if I had

15 to guess, probably over 20 times I went and visited

16 with him

17 **Q** From the time he was four til the time he was

18 eight?

19 **A** Uh-huh

20 **Q** When you were around him, how much time did

21 you spend around him?

22 **A** Whenever I went over to his house, probably

23 the majority of the time I was with him In his room,

24 playing with him, watching TV with him

25 **Q** Okay The visits that you would take, were

1 they short visits or long visits?

2 **A** They were generally long visits because we
3 didn't get to go over there that often, so we would
4 stay for a long time

5 **Q** When you say over there, where would you go?

6 **A** To 209 Maple

7 **Q** Okay Did you and Charlie ever take child
8 anywhere?

9 **A** Not by ourselves

10 **Q** Okay What sort of things would you do with
11 child outside the home?

12 **A** Uh, he came to my graduation so we all went
13 out to eat He came to my mom's birthday party, at
14 Clemson baseball games Uh, just with his mom We
15 would see him at Colombo's He came over to swim at
16 Charlie's apartment with his mom

17 **Q** Okay So your contact with child was not
18 just at 209 Maple?

19 **A** No

20 **Q** Okay Now, did you ever have any contact
21 with child before February 13th of '09 overnight?

22 **A** No

23 **Q** Okay Now, have you had any contact with
24 child since February 13th of '09?

25 **A** Yes, ma'am

1 Q Would you say that the contact you've had
2 with him since then was more or less?

3 A More

4 Q Okay What kind of contact have you had with
5 him since February the 13th?

6 A Uh, I lived with him over the summer every
7 day Now, I see him Thursday night through Sunday
8 night

9 Q Okay

10 A Every week

11 Q All right

12 A Over Christmas break, I spent a whole month
13 with him every day and every night

14 Q Okay And the time that you were spending
15 with him, where was that?

16 A After February 13th?

17 Q Yes, ma'am

18 A At Charlie's house

19 Q Where is that?

20 A Do I have to say the address?

21 Q No, ma'am I apologize You do not Did
22 you ever spend any time with child anywhere other
23 than Charlie's?

24 A Since February 13th?

25 Q Yes, ma'am

1 **A** Yes, ma'am I've taken him to the beach By
2 myself? I've taken him to my parent's house I've
3 taken him to lots of places by myself

4 **Q** Okay child behavior before January
5 [sic] 13th of '09 and after February 13th of '09, has
6 it changed if at all?

7 **A** Yes

8 **Q** How has it changed?

9 **A** Before February 13th, he never -- he just
10 seemed like a normal little boy He never asked
11 questions about if anybody was in danger or he never
12 sensed that anything was wrong He just wanted to
13 play games He loves his older brother He just
14 wanted to play with us and watch TV with us and eat
15 chicken fingers with us I never heard him worry
16 about anything as far as relatives, his family
17 members, my health, anybody's health There was no
18 negativity He was just a normal little boy

19 **Q** Okay And how has his behavior changed?

20 **A** His behavior months after February until
21 probably end of the summer, every little noise, every
22 little anything he heard, Charlie being gone, he's in
23 a state of constant, somebody's died, has Charlie
24 died, are you feeling okay I mean constant,
25 constantly needs reassurance that we're not going to

1 die, we are here, we're always going to be here and we
2 love you It's a matter of constantly, constantly
3 every day over and over again reassuring him that none
4 of his relatives are going to die, that we're all
5 safe He needs that sense all throughout the day that
6 everything's okay

7 Q Okay Uh, how -- what have you observed
8 about his sleeping habits after February 13th of '09

9 MR DEJONG Your Honor, I'm going to object
10 to that She's already testified that she never
11 spent any over nights with him, had anything to
12 do with him overnight Nothing about sleeping
13 prior to February the 13th

14 MS MUNSON Your Honor, there's already
15 been testimony that one of the characteristics of
16 post-traumatic stress disorder is sleep
17 disruption

18 THE COURT All right If you can lay the
19 foundation that she's experienced his sleeping
20 before and after, I'll be glad to hear the
21 testimony

22 BY MS MUNSON

23 Q Have you ever had any information or observed
24 his sleeping habits prior to February the 13th of '09?

25 A Him going to bed ---

1 **MR DEJONG** Your Honor, objection to that
2 question She asked that question on two
3 different things Information or observation I
4 object to the information

5 **THE COURT** Okay Rephrase your question

6 **MS MUNSON** I apologize I thought I said
7 observation

8 **THE WITNESS** I can answer that

9 **MS MUNSON** Do you have any ---

10 **THE COURT** Let her ask her question first
11 Okay?

12 **THE WITNESS** Okay

13 **BY MS MUNSON**

14 **Q** Any observations as to child sleeping
15 habits prior to February 13th?

16 **A** I was at his house when he went to bed
17 multiple times I observed him going to take a bath,
18 going to sleep

19 **Q** Once he went to go to sleep, did you ever see
20 him again?

21 **A** No He would sleep heavily because we would
22 still watch TV The house was relatively small He
23 was never disturbed He never came out

24 **Q** Okay How has -- what have you observed
25 about his sleeping patterns after February 13th?

1 **A** Uh, night tremors is the only way I know how
2 to describe it He would wake up normally around two
3 o'clock in the morning screaming and looking like he
4 had just seen, I don't know, something terrifying He
5 would come in and have a blood curling scream And he
6 would be terrified and crying and it would take
7 Charlie a couple of hours after that to calm him down,
8 and he would just have to lay with him and pat his
9 back, and tell him everything was fine It was pretty
10 much an every night situation

11 **Q** Okay Did you have any chance to observe
12 child eating habits prior to February 13th of '09?

13 **A** Yes, he has a very healthy appetite He
14 always ate all his food, normally while watching TV
15 with us

16 **Q** Okay What have you observed about his
17 eating after February 13th of '09?

18 **A** Generally at nighttime, he would eat with us
19 We would all sit at the table And he would get
20 finished eating and say his stomach hurts And you
21 know, we would tell him your stomach is full, you just
22 feel full And he would immediately run to the
23 bathroom and vomit Everything It wasn't just him
24 spitting up He would sit there and vomit for a good
25 ten minutes

1 MS MUNSON Nothing further, Your Honor

2 THE COURT You may cross-examine the
3 witness

4 MR DEJONG Thank you, Your Honor

5 CROSS-EXAMINATION

6 BY MR DEJONG

7 Q So prior to February the 13th, how many times
8 were you with this young person at three o'clock in
9 the morning?

10 A Never

11 Q Okay Your one-on-one contact with him prior
12 to February the 13th, as I understand it, was very
13 limited

14 A In his room, I was one-on-one but I never
15 took him out of the home

16 Q When you was in his room, -- was all of that
17 at 209 Maple Boulevard by the way?

18 A In -- one-on-one in his room was at 209 I
19 had visited the previous residence but not one-on-one
20 with him

21 Q Okay So how many years did you go to Maple
22 Boulevard?

23 A I can't remember the exact date that they
24 moved to Maple Boulevard, but it was shortly after --
25 I only went there one or two times The previous

1 residence, I don't know what street address that was

2 **Q** All right And, uh, you characterize him as
3 a normal little boy?

4 **A** Before?

5 **Q** Yes, ma'am

6 **A** Yes, sir

7 **Q** How many boys have you reared?

8 **A** Have I reared?

9 **Q** Yes, ma'am

10 **MS MUNSON** Objection, Your Honor

11 **THE COURT** What's your objection?

12 **MS MUNSON** There's no evidence she's
13 reared a child

14 **THE COURT** I overrule your objection I
15 will allow him to ask the ---

16 **THE WITNESS** I have never been pregnant

17 **THE COURT** Wait, wait, wait just a minute

18 **THE WITNESS** Okay

19 **THE COURT** Let him ask the question

20 **THE WITNESS** Okay

21 **BY MR DEJONG**

22 **Q** I'm just simply asking I'll rephrase the
23 question Have you ever reared a little boy?

24 **A** No, sir

25 **Q** You currently in law school?

1 A Yes, sir

2 Q And where do you attend?

3 A University of South Carolina

4 Q And while law school is in session, do you
5 live in Columbia?

6 A Monday through Thursday

7 Q How long have you been in law school?

8 A I'm in my second year, so since fall of '08

9 Q Okay Of '08?

10 A Yes, sir

11 Q Okay Do you go to law school year-round?

12 A No, sir

13 Q You take summers off?

14 A Yes, sir

15 Q Okay Do you work during the summers?

16 A No, sir Not generally I did this past
17 summer part-time but not full-time

18 Q Do you take child to the doctor?

19 A Yes, sir

20 Q Okay Ever had him checked for food
21 allergies?

22 A Food allergies? No, sir

23 Q You ever had a gastrointestinal check done?

24 A No, sir

25 Q When is the last time you took him to the

1 doctor?

2 **A** Uh, I took him in January, this month,
3 earlier before I went back to school

4 **Q** Family practice doctor?

5 **A** Yes, sir

6 **Q** Check-up?

7 **A** Do I --

8 **Q** Check-up?

9 **A** It wasn't just a regular check-up

10 **Q** Okay And then other than that, you and or
11 Charlie will take him to Dr Threadgill?

12 **A** Yes

13 **Q** How many times have you talked to Dr
14 Threadgill?

15 **A** One time

16 **MR DEJONG** One moment, Your Honor

17 **THE COURT** Yes, sir

18 (WHEREUPON, there is a pause)

19 **MR DEJONG** Thank you, Ms Thomas

20 **THE COURT** Any redirect?

21 **MS MUNSON** Yes, sir

22 **REDIRECT EXAMINATION**

23 **BY MS MUNSON**

24 **Q** Ms Thomas, have you ever been around little
25 kids?

1 **A** Yes, ma'am

2 **Q** How often?

3 **A** I have a cousin that's eight and a cousin
4 that's nine that I'm around whenever I go to see my
5 parents, normally, around once a month

6 **Q** Okay Any other little kids?

7 **A** Yes, I babysat all through highschool

8 **MS MUNSON** Nothing further, Your Honor

9 **THE COURT** Thank you You ---

10 **MR DEJONG** Nothing on recross, Your Honor

11 **THE COURT** Thank you You may step down

12 **MS MUNSON** May it please the Court, Your
13 Honor That is the State's case

14 **THE COURT** Mr Foreman, Ladies and
15 Gentlemen, I do have a stipulation for the record
16 that the parties have agreed to It will be
17 marked as a Court exhibit It won't go back with
18 you But it basically says that the, uh, --
19 there's certain witnesses, Patricia Crooks,
20 Selena Kinard, Lisa McReynolds and Nikki Perry
21 are forensic technicians employed by the South
22 Carolina Law Enforcement Division or SLED Each
23 of these individuals took custody of and
24 transferred evidence submitted to SLED in this
25 case that none of the above named individuals

1 opened or unsealed or examined or tested any of
2 the evidence submitted at the trial in case
3 These witnesses weren't called Part of the
4 chain But the parties have stipulated that they
5 did not handle the evidence in any way, except
6 for transfer I wanted you to have that
7 information as the parties have stipulated

8 There's several legal matters that we need to
9 take care of at this time Ladies and Gentlemen,
10 rather than keeping you tied up and waiting, I
11 think I'll give you an early lunch break now
12 Let me remind you again, this case isn't over
13 yet The State has rested but there's -- until
14 you have heard the instruction from me as to the
15 law, you certainly should not be discussing it or
16 doing any kind of deliberations or letting anyone
17 else discuss it with you

18 I'm going to ask you, if you would, be back
19 in your jury room at 1 45, a quarter til 2 00
20 That will give you an hour and a half for lunch
21 We'll get some other matters taken care of here
22 I believe we will be ready for you when you come
23 back at 1 45 We'll be ready to start back with
24 the case at that time Have a nice lunch, Ladies
25 and Gentlemen

1 (WHEREUPON, the jury exits at approximately
2 12 16 p m)

3 (WHEREUPON, Court's Exhibit 2 is marked for
4 identification purposes)

5 **THE COURT** Mr DeJong, I presume you've had
6 an opportunity to talk with your client about
7 testifying I certainly need to talk to him
8 about that in just a moment as well about his
9 rights to make sure in my own mind that he
10 understands those Anything else we need to take
11 care of before that?

12 **MR DEJONG** Yes, sir At this point in
13 time, on behalf of Mr Clifford Austin Wylie, I
14 would move the Court for a directed verdict with
15 regard to the Murder and with regard to
16 Possession of a Weapon during the Commission of a
17 Violent Crime and the Unlawful Conduct towards a
18 Child, understanding, Your Honor, that on a
19 motion for directed verdict, you have to look at
20 the testimony in a light most favorable to the
21 state

22 However, in doing that, I would submit,
23 starting with the murder, Your Honor, obviously
24 the statute for murder is the taking another
25 person's life with malice aforethought I submit

1 to you, Your Honor, that malice aforethought must
2 be proved beyond a reasonable doubt by the State
3 I submit in this case, Your Honor, there is no
4 evidence from which a jury can find malice
5 aforethought with regard to the alleged shooting
6 in this case. Granted, there was a shot fired
7 Whether it was from Mr. Wylie or not, it is
8 certainly in my opinion questionable. And I
9 think when you take the testimony and the
10 evidence in the light most favorable to the
11 State, it is certainly questionable due to the
12 location by the evidence on the shirt, by the
13 testimony of the pathologist who did not do the
14 autopsy, but what his testimony was with regard
15 to the placement of the shot, the testimony of
16 the SLED agent, Ms. Simmons who said it's within
17 a foot to three feet. I would certainly submit
18 on that, Your Honor, that if somebody was
19 shooting from a foot to three feet, if there was
20 malice aforethought, I believe they could do a
21 lot better than shooting somebody basically in
22 the upper shoulder.

23 Also, in connection with that, Your Honor, in
24 this situation, Mr. Wylie, when law enforcement
25 got there, immediately asked someone to call 911

1 He never attempted to leave He never attempted
2 to resist the police officers When asked where
3 the shooter was, he said "I am" I submit to the
4 Court that that does not suggest any malice
5 aforethought whatsoever in this case All that
6 simply suggests is, at that point in time, he
7 said he was the shooter

8 Also, with regard to SLED, Your Honor,
9 looking at the gunshot residue and the testimony
10 of the SLED agent, I would suggest that the
11 testimony of the SLED agent, I don't want to say
12 is credible or not credible, but it is certainly
13 not definitive by her own statement A lot of
14 inconsistencies in the police report I simply
15 submit, Your Honor, that with regard to the
16 murder charge that the State, looking at it in
17 the light most favorable to the State, that there
18 is no evidence of malice in this case

19 Having said that, Your Honor, directly hinged
20 to that aspect on the murder charge, there's no
21 evidence of the murder charge Certainly, the
22 Possession of a Weapon during the Commission of a
23 Violent Crime would go out and the same argument
24 would be involved there

25 The Unlawful Conduct towards a Child is an

1 interesting statute I have not done a lot of
2 research on it The issue that I have on that in
3 a case where the State's burden is beyond a
4 reasonable doubt that I would submit to the Court
5 that there has to be some mens rea especially
6 under the allegations of this case If there is
7 no mens rea, if there is no malice aforethought,
8 then I would submit to the Court that there could
9 be no unlawful conduct towards a child That
10 would be my basis, Your Honor, the latter two and
11 on the former, that that would be the basis of my
12 motion for a directed verdict

13 **THE COURT** Ms Munson, Ms Hamaker, I'll be
14 glad to hear from the State

15 **MS MUNSON** May it please the Court, Your
16 Honor It's the State's position that there's
17 certainly enough evidence of malice for the Court
18 to send it to the jury Clearly, the victim was
19 being threatened by somebody when she called 911
20 She said it was her husband She said he had a
21 gun Not just that he had a gun, but that he had
22 a gun and was going to shoot her and there's
23 screaming in the back Although, the use of the
24 weapon by itself, I don't completely understand
25 the newest case law on the inference of malice

1 and using a weapon, but there is no other
2 evidence that it was accidental or anything else
3 of that nature I think there's enough evidence
4 for the Court to send it to the jury on the issue
5 of malice

6 I'm reading a little bit of case law here,
7 Your Honor I'm going to read it again because I
8 don't want to get it wrong It's the State
9 versus Jenkins, 278 S E 219 By failing to
10 include knowingly or other act words to indicate
11 criminal intent or motive, the legislature
12 intending that a person violates this section
13 without knowledge or intent that his act is
14 criminal fails to provide proper care and
15 attention for a child or helpless person so that
16 his life -- of whom he has custody so that his
17 life, health or comfort of that child or helpless
18 person is in danger or likely to be in danger

19 It goes more towards the neglect statute, the
20 neglect part of the statute which is not where
21 we're going, Your Honor It isn't in the statute
22 that he has in his mind I am going to
23 intentionally damage my son mentally I think
24 there's plenty of evidence that his intentional
25 acts, and if the jury believes that, it was an

1 intentional action, and the result of that mental
2 action put the child's mental health at risk We
3 respectfully ask the Court to send it to the jury
4 and let them decide

5 **THE COURT** I believe the State has
6 presented sufficient evidence It's total -- not
7 a total failure of competent evidence as to each
8 of the charges, all three of those Evidence
9 certainly raises much more than a mere suspicion
10 As you acknowledged, Mr DeJong, I must look at
11 all the evidence in the light most favorable to
12 the State in this stage of the trial I find
13 there is sufficient and substantial
14 circumstantial evidence which could reasonably
15 tend to prove the guilt of the accused from which
16 it could be fairly and logically deduced So I
17 will deny your motion Any other matters we need
18 to take care of before I talk with your client?

19 **MR DEJONG** I notice the clerk has
20 graciously overcome my stupidity on the lock box
21 I think once it is unlocked, the key probably
22 needs to come out of it if we can do that

23 **THE COURT** Well, if the jury wants to look
24 at the box, they may do the same thing you did

25 **MR DEJONG** Does it take the key to open it

1 is what I'm suggesting

2 THE COURT If it's locked -- I don't know
3 how it locks, but we will take care of that
4 before it goes back to the jury

5 MR DEJONG I know how it locks, Your
6 Honor

7 THE COURT I don't know about them They
8 may look at it They may lock it themselves We
9 at least have the key there

10 MR DEJONG Part of my motion for directed
11 verdict, Your Honor, was inquiry, I believe
12 perhaps more of Mr Wylie than myself I have
13 been over with Mr Wylie his right to testify,
14 Your Honor I've been over with him his right
15 not to testify I offer him to the Court at this
16 point in time for voir dire However, I would
17 like the opportunity to be able to speak with him
18 further over the lunch hour before we make a
19 final decision

20 THE COURT That's reasonable That's the
21 reason I sent the jury out just so that you would
22 have that opportunity

23 Mr Wylie, if you would, come forward with
24 your attorney please, sir

25 MR DEJONG Best you can, stand in front of

1 that box with the green light You want me to
2 move that box, Madam Court Reporter

3 **THE COURT** Don't let him touch it

4 Mr Wylie, if you would, please raise your
5 right hand Do you swear, solemnly swear or
6 affirm to tell the truth and nothing but the
7 truth in the questions I ask you now?

8 **MR WYLIE** Yes, sir Yes, sir

9 **THE COURT** Mr Wylie, I need to explain to
10 you certain legal matters I'm confident you've
11 had a chance to talk to your attorney about
12 these I need to be satisfied in my own mind
13 that you understand them As we go along, if you
14 need me to explain anything in more detail,
15 please let me know

16 We've reached the stage of the trial where
17 you can present a defense You have a right to
18 claim the protection given you by the Fifth
19 Amendment to the Constitution of the United
20 States which is also part of our Constitution in
21 South Carolina This language says that no
22 person in a criminal case can be compelled to be
23 a witness against himself, which means you can't
24 be required to testify in this case You have a
25 right to testify in your own behalf Nobody can

1 make you testify This is a personal right that
2 you can enjoy Nobody can waive this right, but
3 you

4 If you decide you want to testify now, you
5 will be subject to the same rules that govern any
6 other witnesses who have testified You can be
7 examined by your attorney and cross-examined by
8 the State on any relevant issue in the case In
9 addition, if you have any convictions that
10 involve dishonesty or false statements or any
11 crimes that you may have committed in the past
12 that may be punishable by imprisonment for more
13 than one year, then I determine that the
14 probative value of admitting this evidence
15 outweighs any prejudicial effect to you The
16 Solicitor would be allowed to introduce your
17 criminal record to attack your credibility

18 If you decide to testify, the decision that
19 you make must be made freely by you and
20 voluntarily by you and intelligently by you with
21 the knowledge that you have under the protections
22 to the Fifth Amendment to the Constitution and
23 with the knowledge that the consequences of your
24 decision to testify

25 Mr Wylie, you may decide not to testify in

1 this case If you do so, I will instruct the
2 jury that they can not give the fact that you
3 didn't testify any consideration whatsoever that
4 they can be no prejudice to you because you
5 exercise that right not to testify I will tell
6 them that they can't even talk about that in the
7 jury room that you chose not to testify

8 Whether to testify or not is left entirely up
9 to you You can talk with your attorney You
10 can have an opportunity to talk with him further
11 during our lunch break You can talk with
12 family, friends, anyone you want to, but the
13 final decision to testify or not to testify is
14 left entirely up to you Do you understand what
15 I have explained to you, Mr Wyllie?

16 **MR WYLLIE** Yes, sir I think so

17 **THE COURT** Do you have any questions of me
18 about this right to testify?

19 **MR WYLLIE** No, sir Not that I can think
20 of

21 **THE COURT** All right, sir Have you had a
22 chance already to talk with your lawyer some
23 about this matter of testifying or not
24 testifying?

25 **MR WYLLIE** When stuff came up at the last

1 minute, we haven't had as much time ---

2 THE COURT Okay

3 MR WYLIE --- as maybe we could have had,
4 but you know we discussed that It was a problem
5 with the system before

6 THE COURT I will certainly give you more
7 time to talk with him over the lunch break You
8 can make that decision with his advice The
9 decision is going to be yours though You
10 understand that?

11 MR WYLIE (Nods head)

12 THE COURT All right, sir All right
13 Thank you very much You may return to your
14 seat

15 MR DEJONG Your Honor, for the record, in
16 speaking with, uh, Madam Solicitor, there were no
17 609 issues if he decides to testify?

18 THE COURT Is that correct, Solicitor?

19 MS MUNSON Yes, sir

20 THE COURT Anything else we need to take
21 care of before we break for lunch?

22 MS MUNSON The objection that Mr DeJong
23 had to some of Dr Threadgill's testimony, I
24 don't know if we had that on the record when we
25 have the bench conference

1 **THE COURT** Yeah, I think I ruled that I had
2 overruled, his objection was timely made If
3 not ---

4 **MR DEJONG** You started asking a question
5 again I rudely objected -- rudely interrupted
6 you and objected and His Honor overruled my
7 objection

8 **MS MUNSON** The State has nothing further,
9 Your Honor

10 **MR DEJONG** Nothing further from the
11 Defendant

12 **THE COURT** Let me let the attorneys, if you
13 would, please look over the verdict forms that
14 we're looking at now Of course I haven't heard
15 from the defense There might be some changes,
16 but if y'all would just review those Again,
17 they are subject to change based on any defense
18 that comes forward I just want to make sure
19 that we've got things typed right and in order

20 **MR DEJONG** As to the forms themselves,
21 Your Honor, as it stands right now, I have no
22 objection

23 **MS MUNSON** No objection

24 **THE COURT** All right

25 **MS MUNSON** Your Honor, I anticipate you

1 that I'm not going to issue that in my charge
2 You have some leeway to argue as you wish on
3 inferred or implied malice, but I'm not going to
4 charge that

5 **MS MUNSON** Thank you, Your Honor

6 **THE COURT** Any other matters?

7 **MS MUNSON** Nothing from the State

8 **THE COURT** Mr DeJong?

9 **MR DEJONG** Nothing that I haven't already
10 argued, Your Honor

11 **THE COURT** All right When we, uh, when we
12 come back, I will allow you to rest on the
13 record Then I will tell them we are ready for
14 the closing statements Ms Munson will be ready
15 to, or Ms Hamaker will be ready to argue See
16 if the jury is ready to come back

17 **(WHEREUPON, the jury enters at approximately**
18 1 48 p m)

19 **THE COURT** Thank you very much, Ladies and
20 Gentlemen, for, uh, bearing with us

21 At this time, uh, Mr DeJong, you may call
22 your first witness

23 **MR DEJONG** May it please the Court, Your
24 Honor The defense rests

25 **THE COURT** All right Ladies and

1 Gentlemen, you've heard all the testimony in this
2 case You have not heard my instructions on the
3 law You have not heard the closing statements
4 of these attorneys They are about to address
5 you in closing I've told you from the beginning
6 that what they say to you is not evidence All
7 the evidence has been presented However, I urge
8 you to listen carefully as these attorneys
9 address you I'm confident they can give you
10 some valuable insights that will help you in your
11 deliberations in a few moments After they have
12 had a chance to talk with you briefly, I will
13 instruct you on the law and then the case will be
14 yours

15 Solicitor, you may address the jury

16 **MS MUNSON** May it please the Court, Your
17 Honor

18 Mr DeJong

19 . What happened? Who did it? And did it
20 violate the law? A reasonable conclusion you can
21 draw from the facts that you have in this case is
22 this, Mrs Wylie and the Defendant got into an
23 argument on the 13th of February 2009 Don't
24 know what the argument was about They got into
25 an argument The argument escalated to the point

1 that Missy had to call 911

2 We all have arguments with people How many
3 times that you have argued with somebody that you
4 are married to that you have to call 911? Not
5 only did she have to call 911, she told the 911
6 operator my husband has a gun Not some guy that
7 broke in off the street Not my little eight-
8 year-old kid My husband has a gun Not only
9 does he have a gun, he is going to shoot me
10 Whatever the argument was about escalated to the
11 point where he took a gun and presented it to his
12 wife in such a way that she had to call 911
13 because she was afraid she was going to get shot
14 She did And she died as a result of a gunshot
15 wound inflicted by him, not some guy on the
16 street

17 Officers hear this call because there's an
18 open line The dispatcher hears screaming,
19 hollering, yelling If you believe there are
20 differences in those terms, fine There was some
21 screaming, yelling, hollering of a female, not of
22 a male, of a female It got fainter The
23 dispatcher told you that it sounded like she
24 wasn't as close to the phone The dispatcher
25 told you that it also sounded like she dropped

1 the phone

2 Missy is on the phone with 911 He has a gun
3 pointing at her She screams and has to run away
4 from where the phone is She makes it to the
5 front door and he shoots her She dies as a
6 result of a gunshot wound inflicted by him with
7 their eight-year-old kid in the house

8 Officers hear the call go out and are very
9 close to the scene By the time Missy picks up
10 the phone and calls for help to the time the
11 officers get there is approximately three
12 minutes The doctor testified that it would take
13 five to ten seconds for someone with those types
14 of injuries inside their chest in a vessel the
15 size of a garden hose filling up her chest with
16 blood, it would take about five to ten seconds
17 So we know that she couldn't have really moved
18 anywhere other than where she was shot She made
19 it to the front door It's a reasonable
20 conclusion you could draw from the facts was that
21 she was trying to get away and didn't make it
22 because he shot her

23 The officers get there They approach the
24 door and you can see it on the tape As a matter
25 of fact, we will

1 **(WHEREUPON, State's Exhibit 1 is played)**

2 He, he directed the police to this box from
3 which we recovered this weapon that fired the
4 shot that killed Missy Wylie Where is the gun?
5 I don't know The bad guy took it The gun is
6 in my box at the head of my bed Not only was
7 the gun in there, the gun was in here, in the
8 holster, in the rag, in the hat Hidden He
9 shoots his wife She goes down Oh my God A
10 reasonable conclusion you can draw from the facts
11 is that he took that gun, stuck it back in the
12 holster, put it back in the rag, put it in back
13 in the hat, put it back in the box

14 If some other bad, malevolent creature went
15 into the house -- and you ladies and gentlemen
16 have to be firmly convince by the way that nobody
17 else did it but him If somebody else did it,
18 are they going to do that If you are going to
19 somebody's house and shoot and kill them, are you
20 going to carefully replace the gun or are you
21 going to take it with you? Are you just going to
22 drop it and run within three minutes? Now, sure,
23 three minutes is a very short period of time for
24 some things, but I submit to you that it's a very
25 long time, plenty of time for that Defendant to

1 have done what he did is to replace that gun
2 where it was found by the police

3 Now, you might wonder, you know, in any kind
4 of criminal case, let alone when there's a heavy
5 decision you have to make, it is a murder case
6 and I agree with Mr DeJong, you don't want
7 emotion taking over here But you might wonder
8 why you didn't get anymore specific instruction
9 about how to deliberate in a murder case

10 Ladies and Gentlemen, you've done the same
11 process before you came in here You're going to
12 do it again when you leave Any time in life
13 when you are faced with making an important
14 decision, you gather the facts, you take the
15 facts that you are firmly convinced are true and
16 then after careful deliberation and without
17 hesitation, you act The way that we're going to
18 ask you today is to find him guilty

19 His Honor is going to tell you about the law
20 in this case I'm not the judge I'm going to
21 leave most of that to him I would like to say a
22 couple of things about that You took an oath to
23 take the law as he gives it to you You might
24 have some idea in your head right now what you
25 think murder is You may have in your head that

1 a person has to have in their head I intend to
2 kill and then kill I respectfully submit to you
3 that is not what His Honor is going to tell you
4 He's going to tell you that you have to be
5 firmly convinced in regards to the murder charge
6 that the Defendant committed an intentional act
7 and that he did so with malice aforethought
8 He'll explain aforethought and he will explain
9 malice I don't want to confuse my version with
10 his because Judge Welmaker is the only one who
11 matters But he's not going to tell you that if
12 you aren't convinced that he intended to kill his
13 wife, you must find him not guilty You must be
14 convinced that he acted with malice, that he
15 committed an intentional act, that he had an evil
16 condition of the heart An intent to cause
17 another person harm without just cause or excuse
18 What better fits the definition that you are
19 going to get than him taking a gun, chasing his
20 wife, I will submit to you, from the kitchen to
21 the front door where she is trying to get away
22 and then shoots her?

23 His Honor is also going to charge you on the
24 law of unlawful conduct towards a child Ladies
25 and Gentlemen, I am just not going to go into a

1 whole lot about what you heard about what
2 happened to child Clearly, the child suffered
3 a traumatic event An eight-year-old kid's
4 mother dies Who does he want besides his
5 mother? His father His father is the one that
6 killed his mother You heard the therapist He
7 thinks it's his fault How much more unlawful
8 can the conduct be of this man towards his eight-
9 year-old son?

10 One of the things you're going to have to do
11 is judge credibility of the witnesses,
12 believability Again, this is something you do
13 all the time In particular, the testimony of
14 Angela Gasque with 911 Uh, you can tell from
15 the cross-examination of Mr DeJong that he was
16 saying you ladies and gentlemen only have her
17 version of the phone call to go on And for some
18 reason, because it's not recorded, you can't
19 believe it I submit to you that you ladies and
20 gentlemen don't have to have something recorded
21 to believe it There was a problem with the,
22 with the stuff at the police department That's
23 unfortunate But does it mean that you should,
24 without consideration, dump her testimony?

25 Check what she told you on the stand of what

1 she hears on the tape You hear her say on the
2 tape, nobody's talking I hear screaming It's
3 kind of faint She never had a call like that
4 before that night She never had one since I
5 submit to you that she remembers exactly what
6 happened that night She told you exactly what
7 happened that night

8 Now, clearly, uh, I'm an advocate Clearly,
9 Ms Hamaker is an advocate Clearly, Mr DeJong
10 is an advocate and a very good one You ladies
11 and gentlemen are advocates too Sure, you are
12 judges of fact, of facts in this very courtroom,
13 but you are advocates for the truth That's what
14 a verdict is, is to speak the truth The truth of
15 the matter is that that man shot and killed his
16 wife maliciously and did so with his eight-year-
17 old son in the house and that has caused him
18 mental trauma

19 Now, I'm not going to go into a lot about the
20 gunshot residue and all that stuff I'm sure
21 from the question, you can tell that the defense
22 would have you believe that that one gunshot
23 caused some sort of unnatural filling up the
24 house sort of cloud of gunshot residue that
25 everyone walked through and that's how the

1 Defendant got gunshot residue on his shirt, which
2 might be something that you would believe had it
3 not been for the shape of the particles
4 Remember Ila Simmons testified it was the shape
5 of the particles that made her, it's her opinion
6 that this wasn't transfer Mr DeJong had to
7 agree as well

8 Because she was shot in the shoulder, there
9 is no malice, no intent Let's ignore the fact
10 for a moment that he pointed a loaded handgun at
11 his wife Let's ignore that Would it have been
12 less malicious to shoot her foot or the shoot the
13 ground or to not shoot at all? He didn't have to
14 shoot her

15 There is, uh, -- His Honor is also going to
16 charge you on circumstantial evidence I
17 appreciate y'all's patience He's going to
18 charge you on circumstantial evidence The first
19 that that might pop in your head, it used to pop
20 in mind is circumstantial evidence is -- you hear
21 it on TV all the time You can't win that case,
22 it's purely circumstantial That is not what the
23 law is His Honor is going to tell you that
24 circumstantial is no less powerful and you have
25 every right to rely on it Just because the word

1 circumstantial is in front of it, don't let that
2 make you ignore it

3 You may have heard circumstantial evidence
4 compared to a chain Each piece of evidence is a
5 link the chain The problem with that analogy is
6 this, in that analogy, if one link breaks, you're
7 done The Defendant that Judge Welmaker is going
8 to give you is more like a rope made up of
9 several strings Now, each strand is a piece of
10 evidence

11 For example, the fact that Missy Wylie called
12 911 and said my husband has a gun, that one fact,
13 if you are firmly convinced it is true is not
14 enough to convict him of murder But then add
15 that to the screaming Add it to the gun Add
16 it to him saying I am You add it to him
17 directing the police to where the murder weapon
18 is All those things together paint a rope, a
19 rope that is substantial and strong and strong
20 enough to carry the State's heavy burden of
21 proof

22 Mr DeJong talked about the robe of
23 righteousness I agree with that That's how it
24 should be He's charged with a couple of very
25 serious offenses He's entitled to be innocent

1 right now, the robe of righteousness Ladies and
2 Gentlemen, the evidence in this case, snip, snip,
3 snip, cut away the threads that tie that rope
4 together

5 We can know few things in this life to an
6 absolute certainty The law does not require
7 that Don't be afraid of beyond a reasonable
8 doubt Don't be afraid of that When we both
9 agreed on all of you, y'all are the jury Take
10 the facts that you are firmly convinced are true
11 If you are firmly convinced that he is guilty of
12 these offenses, then find him guilty

13 I respectfully say to you that the evidence
14 in this case has moved the robe of righteousness
15 He is guilty of murdering his wife He is guilty
16 of having a firearm when he killed her And he
17 is guilty of the unlawful conduct towards his
18 son Thank you

19 **THE COURT** Mr DeJong, you may address the
20 jury

21 **MR DEJONG** Thank you, Your Honor May it
22 please the Court and Madam Prosecutors

23 Ladies and Gentlemen of the jury, you have
24 now heard all the testimony and will have at your
25 disposal most of the evidence in the jury room

1 I am not going to go over my whole opening
2 statement with you but there are a couple of
3 things that I would like to remind you One is
4 presumption of innocence, that even now, that
5 presumption of innocence follows Mr Wylie into
6 the jury room

7 The second thing that goes with that
8 presumption of innocence, Ladies and Gentlemen,
9 the Defendant did not testify in this case His
10 Honor is going to instruct you on that I ask
11 you to listen to the His Honor's instruction
12 The fact that he did not testify, I believe, His
13 Honor is going to tell you is not to be
14 considered by you

15 In other words, when you are in the jury
16 room, that thought that the Defendant did not
17 testify should not even cross your mind And
18 beyond that is not something that is to be talked
19 about among your deliberations It should not be
20 in your mind It should not be on your table
21 It should not be in your notes It should be no
22 place because it is not a consideration

23 Why is because the burden of proof is on the
24 State to prove Mr Wylie's guilt beyond a
25 reasonable doubt His Honor will charge you on

1 the law Again, please listen to the charge on
2 the law He is the law giver

3 As I shared, I think, with you yesterday,
4 beyond a reasonable doubt is the highest burden
5 of proof that we have in our judicial system
6 Some of you may have served on juries before or a
7 preponderance of the evidence, more likely than
8 not That's not where we are in a criminal case
9 In a criminal case, it is beyond a reasonable
10 doubt Basically, I think what His Honor will
11 share with you is something along the lines that
12 a reasonable doubt is such a doubt that a
13 reasonable person would hesitate in making
14 decisions or acting in their daily affairs

15 Now, the State in this case must prove beyond
16 a reasonable doubt the taking of the life of
17 another with malice aforethought Those, on the
18 murder charge, is what you will be considering
19 First, of course, you must make a determination
20 of whether or not Mr Wylie actually was the
21 shooter I'm not going to belabor that point but
22 that is one element that the State must prove
23 beyond a reasonable doubt

24 What I would like to do, however, is talk to
25 you about malice and malice aforethought That's

1 going to be the thrust of my argument because the
2 other two charges hinge so closely on the first
3 charge, that being murder His Honor will give
4 you a definition of malice Sometimes when we
5 talk about malice, we talk about a formed purpose
6 designed to do a wrongful act, something that
7 springs from wickedness, from depravity, from a
8 heart devoid of social duty and fatally bent on
9 mischief I'm not sure that's the words His
10 Honor will use You take the words His Honor
11 will use Sometimes those words are used as far
12 as a description or describing or defining of the
13 word malice

14 I would like to review with you a few things
15 I'm not going to rehash all 19 or 20 witnesses
16 that you have sat here so patiently and listened
17 to There are some things, I think, that bear
18 comment On February the 13th of 2009 at 20 57,
19 if memory serves me correctly, the Clemson Police
20 Department dispatcher says she got a call That
21 call was dispatched as a 10-72, as a larceny in
22 progress, 10-59, an individual with a gun For
23 whatever reason, Clemson had had problems with
24 their 911 equipment before, their dispatch
25 equipment before I believe the dispatcher or

1 the supervisor got the call that the equipment
2 could have been not working for up to 23 hours
3 It was not working

4 The call comes in at 20 57 according to the
5 dispatcher, a man with gun You have seen a
6 video, you heard the dispatching that went on
7 involved in that You take the facts as you've
8 heard them and the testimony as you've heard it,
9 but it was, I believe at 21 13 or 17, roughly 15
10 minutes after the dispatcher said the call came
11 in That's when the dispatch makes the notation
12 according to the dispatcher of what was said and
13 the 911 call She dispatching officers She's
14 talking to another dispatcher who is sitting
15 there Things are a bit chaotic She's trying
16 to direct all this traffic and tell them where to
17 go, albeit on the wrong 10-code I will refer to
18 that The wrong 10-code of 10-72

19 So indeed, if someone at Clemson Police
20 Department had checked the equipment, there may
21 not have been a problem If you decide that was
22 said, then you can still look at what was said
23 and what was the motivation We don't know The
24 Solicitor takes that -- at face value that that
25 was what was going on I submit to you phone

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

G Edward Welmaker, Circuit Court Judge

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SC Court of Appeals
RESPONDENT

THE STATE,

V

CLIFFORD WYLIE,

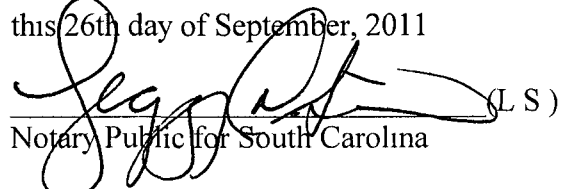
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Donald J Zelenka, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201, this 26th day of September, 2011


Emily Bryson
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 26th day of September, 2011

 (L S)
Notary Public for South Carolina

My Commission Expires December 4, 2017