

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Beaufort County

Perry M. Buckner, Circuit Court Judge

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S.C. Supreme Court

JOSE ANGEL HERRERA,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001119

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
07-GS-07-1921, 1922

STATE OF SOUTH CAROLINA

-vs-

JOSE ANGEL HERRERA

:
:
: TRANSCRIPT OF RECORD
:
:

MARCH 16, 17, 18, AND 20, 2009
BEAUFORT, SOUTH CAROLINA

B E F O R E:

HONORABLE G. THOMAS COOPER, JR., JUDGE, AND A JURY.

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

DUFFY STONE, SOLICITOR
ANGIE TANNER, DEPUTY SOLICITOR
ATTORNEYS FOR THE STATE

LAUREN CARROWAY, ESQUIRE
GENE HOOD, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

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1 (MONDAY, MARCH 16, 2009.)

2 (19 COLOR PHOTOS WERE PREMARKED FOR IDENTIFICATION AS
3 STATE'S EXHIBIT NOS. 1 THROUGH 19.)

4 THE COURT: WELCOME TO THE COURT OF GENERAL SESSIONS,
5 LADIES AND GENTLEMEN. WE'RE ABOUT TO GO INTO A TRIAL OF A
6 CASE THAT THE OTHER JUDGE COOPER EXPLAINED TO YOU THIS
7 MORNING. BY THE WAY, HE'S FROM MANNING, SOUTH CAROLINA. I
8 LIVE IN CAMDEN, BUT MY OFFICE IS IN COLUMBIA. I'M A
9 CIRCUIT JUDGE FOR THE FIFTH JUDICIAL CIRCUIT. HE IS SORT
10 OF SEMI-RETIRED AND PREFERS TO SPEND HIS TIME IN BEAUFORT
11 COUNTY IF HE GETS A CHANCE TO. SO THAT'S WHY HE HAPPENS TO
12 BE HERE AT THE SAME TIME I AM.

13 SO WE'RE GOING TO GO INTO ANOTHER QUALIFICATION
14 PROCESS. IT'S NOT QUITE AS EXTENSIVE AS THE ONE YOU WENT
15 THROUGH THIS MORNING. BUT THIS WILL BE CASE-SPECIFIC.
16 THIS WILL BE SPECIFIC AS TO THE CASE THAT WE ARE ABOUT TO
17 TRY. AND YOU'RE GOING TO LEARN A LITTLE BIT ABOUT IT.

18 WE NEED TO FIND OUT IF YOU HAVE ANY CONNECTION TO IT,
19 KNOW ANYTHING ABOUT IT, READ ANYTHING ABOUT IT, HEARD
20 ANYTHING ABOUT IT, TALKED ABOUT IT, ANYTHING LIKE THAT. I
21 DON'T KNOW MUCH ABOUT THE CASE MYSELF. I KNOW THE NAME OF
22 THE CASE. AND AT THIS TIME I'M GOING TO ALLOW THE
23 SOLICITOR TO CALL THE NAME OF THAT CASE. SOLICITOR.

24 MR. STONE: MAY IT PLEASE THE COURT, YOUR HONOR. YOUR
25 HONOR, THE STATE CALLS INDICTMENT NO. 2007-GS-07-1921,

1 CHARGING JOSE ANGEL HERRERA WITH THE OFFENSE OF MURDER.

2 INDICTMENT NO. 2007-GS-07-1922, CHARGING THE

3 DEFENDANT, JOSE ANGEL HERRERA, WITH POSSESSION OF A WEAPON

4 DURING THE COMMISSION OF A VIOLENT CRIME.

5 I'LL HAND THESE INDICTMENTS TO YOUR HONOR.

6 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M

7 GOING TO TELL YOU A LITTLE BIT ABOUT THE CHARGES IN THIS

8 CASE IN A MINUTE, BUT YOU HEARD THE SOLICITOR ANNOUNCE THE

9 CASE. AND IN ANY CASE TRIED IN SOUTH CAROLINA OR IN THIS

10 UNITED STATES, THE PROSECUTING ENTITY IN SOUTH CAROLINA IS

11 THE SOLICITOR'S OFFICE. SOME STATES THEY CALL IT THE

12 STATE'S ATTORNEY. SOME STATES THEY CALL IT THE DISTRICT

13 ATTORNEY. BUT IN SOUTH CAROLINA OUR CASES ARE PROSECUTED

14 BY THE SOLICITOR'S OFFICE. AND THERE ARE 16 CIRCUIT

15 SOLICITORS IN SOUTH CAROLINA THAT ACT AS THE PROSECUTING

16 ENTITIES.

17 NOW, THE SOLICITOR WHO IS GOING TO TRY THIS CASE TODAY

18 IS YOUR ELECTED SOLICITOR FROM BEAUFORT COUNTY, MR. DUFFY

19 STONE, AND HIS DEPUTY SOLICITOR, MS. ANGIE MCCALL TANNER.

20 COUNSEL, IF YOU WILL JUST STAND AND FACE THE JURY.

21 (COMPLIED.)

22 THE COURT: ANY MEMBER OF THE JURY PANEL RELATED BY

23 BLOOD OR CONNECTED BY MARRIAGE, OR EMPLOYMENT OR CLOSE,

24 PERSONAL ACQUAINTANCE OF EITHER MR. DUFFY STONE, SOLICITOR

25 STONE, OR HIS DEPUTY SOLICITOR, MS. ANGIE MCCALL TANNER?

1 IF SO, PLEASE STAND. ANYBODY KNOW EITHER OF THESE TWO
2 ATTORNEYS HERE THAT PRACTICE HERE IN THE SOLICITOR'S OFFICE
3 IN BEAUFORT COUNTY?

4 (NO RESPONSE.)

5 THE COURT: ANY MEMBER OF THE JURY PANEL OR ANY MEMBER
6 OF YOUR FAMILY WORK EITHER IN THE OFFICE OF THE SOLICITOR
7 OR CLOSELY WITH THE OFFICE OF THE SOLICITOR HERE IN
8 BEAUFORT COUNTY?

9 ANY MEMBERS OF THE JURY -- OH, YES, SIR. YOUR NUMBER
10 PLEASE?

11 JUROR: 123.

12 THE COURT: ALL RIGHT. MR. 123. AND HOW DO YOU KNOW
13 -- TELL ME WHAT YOU ---

14 JUROR: MY WIFE WORKS FOR A LAW FIRM HERE IN BEAUFORT,
15 TUPPER, BENSLEY, AND DEAN (PHONETIC).

16 THE COURT: OKAY. AND THEY WOULD HAVE SOME CONTACT
17 WITH THE SOLICITOR'S OFFICE?

18 JUROR: SHE'S A PARALEGAL.

19 THE COURT: OKAY. AND THE NAME OF THE FIRM AGAIN?

20 JUROR: TUPPER, BENSLEY, AND DEAN.

21 THE COURT: OKAY. THANK YOU VERY MUCH, MR. 123.

22 AND, LADIES AND GENTLEMEN, IT'S MY PRACTICE WHEN WE GO
23 THROUGH THIS PROCEDURE TO TALK TO JURORS -- THAT WHEN I ASK
24 YOU A QUESTION AND YOU DO RESPOND, I'M GOING TO ASK YOU TO
25 TELL ME YOUR JUROR NUMBER. I'M NOT GOING TO ASK YOU YOUR

1 NAME. THROUGHOUT THIS ENTIRE PROCESS YOU'LL BE IDENTIFIED
2 BY YOUR JURY NUMBER. SO IF YOU'LL CHECK THAT NOW IF YOU
3 DON'T ALREADY KNOW WHAT IT IS.

4 I FOUND, PARTICULAR IN CRIMINAL COURT, THAT JURORS
5 FEEL MORE COMFORTABLE BEING IDENTIFIED BY NUMBER AS OPPOSED
6 TO BY NAME. SO I APPRECIATE, MR. 123, GIVING ME THAT
7 INFORMATION.

8 ANYBODY ELSE?

9 (NO RESPONSE.)

10 THE COURT: NOW, SOLICITOR STONE IS ALSO THE SOLICITOR
11 FOR ACTUALLY FIVE COUNTIES HERE IN THE LOW COUNTRY OF SOUTH
12 CAROLINA; THAT BEING BEAUFORT, ALLENDALE, JASPER, AND
13 HAMPTON.

14 MR. STONE: AND COLLETON.

15 THE COURT: AND COLLETON, I'M SORRY. COLLETON, YEAH.
16 ANY MEMBER OF THE JURY PANEL HAVE ANY CONNECTIONS WITH THE
17 SOLICITOR'S OFFICE IN ANY ONE OF THE FIVE COUNTIES THAT
18 SOLICITOR STONE REPRESENTS -- ANY OF THE ADJOINING
19 COUNTIES?

20 (NO RESPONSE.)

21 THE COURT: ALL RIGHT. NOW, BECAUSE THE SOLICITOR'S
22 OFFICE WORKS CLOSELY WITH LAW ENFORCEMENT, I NEED TO KNOW
23 IF ANY MEMBER OF THE JURY PANEL OR ANY MEMBER OF YOUR
24 FAMILY IS EMPLOYED IN LAW ENFORCEMENT? AND THAT COULD MEAN
25 ANYTHING FROM THE BEAUFORT COUNTY SHERIFF'S OFFICE TO THE

1 CITY OF BEAUFORT POLICE DEPARTMENT, THE STATE LAW
2 ENFORCEMENT DIVISION, THE FBI, THE DRUG ENFORCEMENT GROUP
3 OF LAW ENFORCEMENT, OR ANY MILITARY -- I KNOW THERE'S A
4 MILITARY PRESENCE HERE IN BEAUFORT COUNTY, ANY MILITARY
5 POLICE FORCE, ANY TYPE OF LAW ENFORCEMENT AGENCY THAT
6 EITHER YOU OR ANY MEMBER OF YOUR FAMILY WORKS FOR? ANY
7 MEMBER OF THE JURY PANEL?

8 YES, MA'AM. IF YOU'LL JUST STAND AND, AGAIN, IDENTIFY
9 YOURSELF BY NUMBER.

10 JUROR: I'M JUROR 56. MY HUSBAND IS WITH THE BLUFFTON
11 POLICE DEPARTMENT.

12 THE COURT: HE WORKS THERE NOW?

13 JUROR: YES.

14 THE COURT: DO YOU KNOW WHAT TYPE OF WORK HE DOES?
15 INVESTIGATION OR ---

16 JUROR: INVESTIGATION.

17 THE COURT: ALL RIGHT. MS. 56, LET ME ASK YOU THIS:
18 WOULD THE FACT THAT YOUR HUSBAND WORKS IN LAW ENFORCEMENT,
19 WOULD THAT IN ANY WAY INTERFERE WITH YOUR ABILITY TO GIVE
20 BOTH THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL
21 IN THIS CASE?

22 JUROR: JUST BEING THAT MY HUSBAND HAS BEEN IN LAW
23 ENFORCEMENT FOR 12 YEARS, HE'S BROUGHT A LOT OF THINGS
24 HOME.

25 THE COURT: HE'S DID WHAT?

1 JUROR: HE'S BROUGHT A LOT OF THINGS HOME, AND I HAVE
2 -- I HAVE A TENDENCY TO SIDE WITH -- WITH HIM.

3 THE COURT: THAT'S WHAT WE NEED TO KNOW. AND I
4 APPRECIATE YOUR HONESTY AND YOUR CANDOR, MA'AM. SO YOU
5 THINK IT MAY IN SOME MANNER INFLUENCE YOUR JUDGMENT BASED
6 ON WHAT YOU HEAR FROM LAW ENFORCEMENT IN THIS CASE?

7 JUROR: IT COULD.

8 THE COURT: IT COULD. ALL RIGHT. THANK YOU VERY
9 MUCH, MS. 56.

10 YES, SIR, AND YOUR NUMBER PLEASE.

11 JUROR: NO. 90. MY SON HAD BEEN WITH THE DEFENSE
12 INTELLIGENCE AGENCY, AND NOW HE'S A POLICE OFFICER.

13 THE COURT: WHERE?

14 JUROR: IN CHARLOTTE.

15 THE COURT: IN CHARLOTTE. ALL RIGHT. MR. 90, AGAIN,
16 WOULD THAT FACT IN ANY WAY INTERFERE WITH YOUR ABILITY TO
17 GIVE BOTH THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL
18 TRIAL?

19 JUROR: WELL, HE HAS SHARED A LOT OF DIFFERENT THINGS,
20 SO IT WOULD BE HARD TO SAY.

21 THE COURT: ALL RIGHT. WELL, WE'VE GOT A CASE THAT
22 WE'VE GOT TO TRY. AND I UNDERSTAND THAT HE'S SHARED
23 THINGS. BUT I GUESS WHAT I'M -- THE LAST LADY IT WAS HER
24 HUSBAND. THIS IS YOUR SON. I DON'T KNOW HOW CLOSE OR HOW
25 MUCH CONTACT YOU HAVE WITH HIM. I'M SURE HE SHARES THINGS

1 WITH YOU. OBVIOUSLY, WE NEED JURORS WHO ARE FAIR AND
2 IMPARTIAL. AND I GUESS MY QUESTION IS: DO YOU THINK YOU
3 COULD BE FAIR TO BOTH THE DEFENDANT AND TO THE STATE IN
4 TRYING THIS CASE?

5 JUROR: I BELIEVE SO.

6 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, MR. 90.

7 YES, SIR.

8 JUROR: NO. 230. I HAVE A NEPHEW WHO IS WITH THE
9 KERSHAW, DEPUTY SHERIFF'S OFFICE.

10 THE COURT: THE TOWN OF KERSHAW OR THE COUNTY OF
11 KERSHAW?

12 JUROR: COUNTY.

13 THE COURT: ALL RIGHT. THAT'S A NEPHEW?

14 JUROR: YES. AND A BROTHER-IN-LAW WHO IS RETIRED FROM
15 THE HIGHWAY PATROL IN SOUTH CAROLINA.

16 THE COURT: ALL RIGHT. THE SAME QUESTION. DO YOU
17 FEEL THAT THAT FAMILY CONNECTION WOULD IN ANY WAY INTERFERE
18 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE STATE ---

19 JUROR: I DON'T THINK SO.

20 THE COURT: YOU THINK YOU WOULD BE FAIR AND IMPARTIAL
21 TO BOTH PARTIES?

22 JUROR: YES.

23 THE COURT: THANK YOU VERY MUCH, MR. 230.

24 YES, MA'AM.

25 JUROR: NO. 74. MY HUSBAND IS RETIRED FROM THE NEW

1 YORK POLICE, WEST CHESTER COUNTY.

2 THE COURT: HOW LONG HAS HE BEEN RETIRED?

3 JUROR: ALMOST 20 YEARS.

4 THE COURT: WOULD THAT FACT IN ANY WAY INTERFERE WITH

5 YOUR ABILITY TO GIVE BOTH THE STATE AND THE DEFENDANT A

6 FAIR AND IMPARTIAL TRIAL?

7 JUROR: NO.

8 THE COURT: THANK YOU, MS. 74.

9 YES, SIR.

10 JUROR: I HAVE A ---

11 THE COURT: NUMBER?

12 JUROR: 172. MY DAUGHTER JUST GOT OUT OF THE SECRET

13 SERVICE. AND I HAVE A BROTHER WHO HEADS UP ONE OF THE

14 DEPARTMENTS IN WASHINGTON IN THE SECRET SERVICE.

15 THE COURT: A BROTHER?

16 JUROR: YES.

17 THE COURT: SO IT'S NOT A SECRET ANY MORE?

18 JUROR: NO.

19 THE COURT: NO. 172, WOULD THAT FACT IN ANY WAY

20 INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE

21 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

22 JUROR: NO, SIR.

23 THE COURT: IN THIS CASE?

24 JUROR: NO, SIR.

25 THE COURT: THANK YOU VERY MUCH.

1 ANYBODY ON THIS SIDE?

2 (NO RESPONSE.)

3 THE COURT: THEY'RE ALL ON THAT SIDE.

4 LADIES AND GENTLEMEN, I'M GOING TO TAKE THAT ONE STEP
5 FURTHER. ANY MEMBER OF THE JURY PANEL WHO REGULARLY
6 SUPPORTS GROUPS WHICH HAVE AS THEIR PRIMARY FUNCTION THE
7 SUPPORT OF LAW ENFORCEMENT OR VICTIMS OR VICTIMS' RIGHTS?
8 IN OTHER WORDS, GROUPS LIKE MOTHERS AGAINST DRUNK DRIVING,
9 STUDENTS AGAINST DRUNK DRIVING, CITIZENS AGAINST VIOLENT
10 CRIME, THINGS WHERE YOU MAY WORK WITH PRISONERS COMING OUT
11 OF THE SYSTEM, THE ALSTON WILKES SOCIETY, THINGS LIKE
12 SISTER CARE, OR THE SOUTH CAROLINA TROOPERS ASSOCIATION, OR
13 THE SHERIFFS ASSOCIATION, OR ANY OF THESE GROUPS WHICH HAVE
14 AS THEIR PRIMARY FUNCTION EITHER THE SUPPORT OF LAW
15 ENFORCEMENT, VICTIMS, OR VICTIMS' RIGHTS? ANY MEMBER OF
16 THE JURY PANEL CONTRIBUTE TO ANY OF THESE GROUPS?

17 YES, SIR. NUMBER ---

18 JUROR: 230.

19 THE COURT: 230. YES, SIR.

20 JUROR: I CONTRIBUTE TO CITIZENS OPPOSED TO DOMESTIC
21 ABUSE.

22 THE COURT: ALL RIGHT. THANK YOU, MR. 230.

23 ANYBODY ELSE? YES, SIR. NUMBER?

24 JUROR: 202. THE UNITED WAY.

25 THE COURT: 222?

1 JUROR: YES.
2 THE COURT: NO. YOU'RE NOT 222?
3 JUROR: 202.
4 THE COURT: OH, I'M SORRY.
5 JUROR: THAT WOULD NOT INTERFERE WITH MY JUDGMENT IN
6 THIS CASE.
7 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, MR. 202.
8 ANYBODY -- YES, SIR.
9 JUROR: 126.
10 THE COURT: YES, SIR.
11 JUROR: AS A BUSINESS OWNER, I CONTRIBUTE TO A LOT OF
12 LAW ENFORCEMENT ACTIVITIES, CALENDARS, WHATEVER.
13 THE COURT: ALL RIGHT.
14 JUROR: BUT I DOUBT IT WOULD ---
15 THE COURT: YOU THINK IT WOULD INTERFERE WITH YOUR
16 JUDGMENT?
17 JUROR: I WOULD HOPE NOT.
18 THE COURT: DO YOU EVER GIVE TO THE TROOPERS
19 ASSOCIATION?
20 JUROR: YEAH, UNTIL I FOUND OUT THAT IT DIDN'T ALL GO
21 TO THE TROOPERS.
22 THE COURT: WELL, LET ME TALK WITH YOU. DID YOU GET A
23 LITTLE STICKER FROM THE TROOPERS ASSOCIATION TO PUT ON THE
24 BACK OF YOUR CAR?
25 JUROR: YES.

1 THE COURT: DID YOU PUT IT ON THERE?
2 JUROR: NO.
3 THE COURT: EVER GET A TICKET?
4 JUROR: I'VE GOTTEN A TICKET.
5 THE COURT: WELL, YOU'VE GOT TO PUT IT ON THERE.
6 JUROR: IT'S SORT OF LIKE A LOT OF OTHER CHARITIES. I
7 MEAN, I LIKE TO INVESTIGATE THEM SO I DON'T THROW MONEY
8 AWAY.
9 THE COURT: THANK YOU VERY MUCH, MR. 126. I
10 APPRECIATE YOUR HONESTY.
11 ANYBODY ELSE? YES, MA'AM.
12 JUROR: 161.
13 THE COURT: YES, MA'AM.
14 JUROR: I'VE GIVEN TO THE TROOPERS AND THE SHERIFF AND
15 CODA.
16 THE COURT: DID YOU GET A STICKER?
17 JUROR: I DID.
18 THE COURT: PUT IT ON?
19 JUROR: I'VE USED IT.
20 THE COURT: THANK YOU VERY MUCH, MS. 161.
21 YES, MA'AM, WITH THE BLUE SHIRT AND DRESS ON.
22 JUROR: THE SAME THING, THE TROOPERS ASSOCIATION, AND
23 I PUT THEM ON MY CAR.
24 THE COURT: YOUR NUMBER PLEASE?
25 JUROR: 260.

1 THE COURT: 260?
2 JUROR: YES.
3 THE COURT: OKAY. THANK YOU VERY MUCH.
4 ANYBODY ELSE?
5 (NO RESPONSE.)
6 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M
7 GOING TO INTRODUCE THE DEFENDANT IN THIS CASE TO YOU TODAY.
8 THE DEFENDANT IS MR. JOSE ANGEL HERRERA. MR. HERRERA, WILL
9 YOU STAND AND FACE THE JURY PLEASE.
10 (COMPLIED.)
11 THE COURT: ANY MEMBER OF THE JURY PANEL RELATED BY
12 BLOOD OR CONNECTED BY MARRIAGE OR EMPLOYMENT OR A CLOSE,
13 PERSONAL ACQUAINTANCE OF MR. JOSE ANGEL HERRERA? ANYBODY
14 KNOW MR. HERRERA?
15 (NO RESPONSE.)
16 THE COURT: THANK YOU VERY MUCH. MR. HERRERA IS
17 REPRESENTED IN THIS MATTER TODAY BY MS. LAUREN CARROWAY AND
18 MR. GENE HOOD. ANY MEMBER OF THE JURY PANEL RELATED BY
19 BLOOD OR CONNECTED BY MARRIAGE, OR EMPLOYMENT OR A CLOSE,
20 PERSONAL ACQUAINTANCE OF EITHER MS. LAUREN CARROWAY OR MR.
21 GENE HOOD? ANY MEMBER OF THE JURY PANEL?
22 YES, MA'AM. AND YOUR NUMBER PLEASE?
23 JUROR: 218.
24 THE COURT: ALL RIGHT.
25 JUROR: I'M A FRIEND OF MS. CARROWAY.

1 THE COURT: ALL RIGHT. MS. 218, HOW DO YOU KNOW MS.
2 CARROWAY? IS IT SOCIALLY OR THROUGH CHURCH OR THROUGH
3 SCHOOL OR ---
4 JUROR: SOCIALLY.
5 THE COURT: ALL RIGHT. AND LET ME ASK YOU THIS. MS.
6 218, DO YOU FEEL THAT BASED ON YOUR FRIENDSHIP WITH MS.
7 CARROWAY, THAT THAT WOULD IN ANY WAY INTERFERE WITH YOUR
8 ABILITY TO GIVE BOTH THE STATE AND THE DEFENDANT A FAIR AND
9 IMPARTIAL TRIAL?
10 JUROR: NO, SIR.
11 THE COURT: YOU COULD BE FAIR TO BOTH PARTIES?
12 JUROR: YES, SIR.
13 THE COURT: THANK YOU VERY MUCH.
14 YES, MA'AM. YOUR NUMBER PLEASE?
15 JUROR: 186.
16 THE COURT: 186. YES, MA'AM.
17 JUROR: SHE'S THE DEFENDER FOR MY SON.
18 THE COURT: SHE WHAT?
19 JUROR: SHE WAS THE DEFENDER FOR MY SON.
20 THE COURT: OKAY. SHE -- FOR YOU OR FOR YOUR SON?
21 JUROR: MY SON.
22 THE COURT: FOR YOUR SON?
23 JUROR: YES.
24 THE COURT: OKAY. SO SHE REPRESENTS A MEMBER OF YOUR
25 FAMILY?

1 JUROR: (NODS HEAD.)

2 THE COURT: ALL RIGHT. MS. 186, DO YOU THINK YOU
3 COULD BE FAIR TO BOTH PARTIES THROUGHOUT THIS CASE EVEN
4 THOUGH MS. CARROWAY REPRESENTS ONE OF YOUR FAMILY MEMBERS?

5 JUROR: UH-HUH.

6 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, MS. 186.
7 ANYBODY ELSE?

8 (NO RESPONSE.)

9 THE COURT: ANY MEMBER OF THE JURY PANEL OR ANY MEMBER
10 OF YOUR FAMILY EMPLOYED WITHIN THE BEAUFORT COUNTY PUBLIC
11 DEFENDER'S OFFICE? ANY MEMBER OF THE JURY PANEL KNOW
12 ANYBODY THAT WORKS WITHIN THE PUBLIC DEFENDER'S OFFICE? IF
13 SO, PLEASE STAND.

14 (NO RESPONSE.)

15 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU
16 HEARD THE SOLICITOR IDENTIFY THE INDICTMENTS IN THIS CASE.
17 AND LET ME JUST SAY THIS TO YOU: THE INDICTMENTS ARE JUST
18 PIECES OF PAPER. THESE ARE THE FORMAL DOCUMENTS BY WHICH A
19 CASE IS BROUGHT INTO COURT. THEY'RE NOT EVIDENCE OF
20 ANYTHING. AND I'M GOING TO READ THE INDICTMENTS TO YOU,
21 TELL YOU WHAT THE CHARGES ARE. BUT I WANT YOU TO
22 UNDERSTAND -- AND THIS IS A VERY IMPORTANT POINT OF LAW --
23 THAT ANY INDIVIDUAL IN SOUTH CAROLINA, IN THIS UNITED
24 STATES, IS PRESUMED INNOCENT OF THE CHARGES LEVELED AGAINST
25 THEM OR BROUGHT AGAINST THEM UNTIL THE STATE PROVES THOSE

1 CHARGES BEYOND A REASONABLE DOUBT.

2 SO THESE DOCUMENTS ARE NOT EVIDENCE OF ANYTHING. THEY
3 ARE MERELY THE CHARGING DOCUMENTS, THE FORMAL DOCUMENTS BY
4 WHICH A CASE IS BROUGHT INTO COURT. AND YOU'RE NOT TO
5 ASSUME ANYTHING OR INFER ANYTHING FROM THEM OTHER THAN
6 THAT'S THE CHARGE AND THAT'S THE CASE THAT WE WILL BE
7 PROCEEDING ON.

8 THE FIRST CHARGE IS -- AND AS THE SOLICITOR
9 IDENTIFIED, THIS IS THE CHARGE OF MURDER; THAT IN BEAUFORT
10 COUNTY ON OR ABOUT SEPTEMBER 16, 2007 -- SO IT'S A YEAR AND
11 A HALF AGO -- THE DEFENDANT, JOSE ANGEL HERRERA, WITH
12 MALICE AFORETHOUGHT DID KILL AND MURDER KATHERINE HERRERA
13 BY MEANS OF SHOOTING HER WITH A PISTOL, AND THAT KATHERINE
14 HERRERA DID DIE IN BEAUFORT COUNTY AS A RESULT OF THAT
15 GUNSHOT ON OR ABOUT SEPTEMBER 16, 2007..

16 THE SECOND CHARGE IS THAT IN BEAUFORT COUNTY ON THE
17 SAME DATE THE DEFENDANT, JOSE ANGEL HERRERA, DID POSSESS A
18 WEAPON OR VISIBLY DISPLAY WHAT APPEARED TO BE A WEAPON
19 DURING THE COMMISSION OR THE ATTEMPTED COMMISSION OF
20 MURDER, A VIOLENT CRIME.

21 NOW, THESE ARE THE TWO CHARGES WITH WHICH THE
22 DEFENDANT IS CHARGED. I NEED TO KNOW IF ANY MEMBER OF THE
23 JURY PANEL OR ANY MEMBER OF YOUR FAMILY KNOWS ANYTHING
24 SPECIFICALLY ABOUT THIS CASE? IN OTHER WORDS -- LET ME SEE
25 HERE. THIS CASE ACCORDING TO MY INFORMATION OCCURRED ON

1 CHERRY POINT ROAD. IS THAT ON HILTON HEAD?

2 MR. STONE: NO, SIR. IT'S IN BLUFFTON.

3 THE COURT: IN BLUFFTON.

4 MR. STONE: RIGHT OFF OF 170.

5 THE COURT: ALL RIGHT. CHERRY POINT ROAD IN BLUFFTON.

6 NOW, I'M GOING TO ASK YOU IN A MINUTE IF YOU'VE READ

7 ANYTHING ABOUT IT, HEARD ANYTHING ABOUT IT. BUT I NEED TO

8 KNOW IF ANY MEMBER OF THE JURY PANEL KNOWS ANYTHING

9 SPECIFICALLY ABOUT IT THAT THEY DIDN'T READ IN THE

10 NEWSPAPER, THAT SORT OF THING? ANY MEMBER OF THE JURY

11 PANEL HAVE ANY CONNECTION WITH THIS CASE, KNOWS THIS

12 DEFENDANT, LIVES ON CHERRY POINT ROAD IN BLUFFTON, OR HAVE

13 ANY OTHER DIRECT CONNECTION WITH THE CASE?

14 (NO RESPONSE.)

15 THE COURT: ALL RIGHT. NOW, I ASK IF ANY MEMBER OF

16 THE JURY PANEL -- WELL, JUST ANY MEMBER OF THE JURY PANEL

17 READ ANYTHING ABOUT IT, HEARD ANYTHING ABOUT IT, OR HAD ANY

18 DISCUSSIONS WITH ANYBODY THAT MIGHT HAVE HEARD OR READ

19 SOMETHING ABOUT IT? ANY MEMBER OF THE JURY PANEL?

20 ALL RIGHT. NOW, I TELL YOU WHAT I'M GOING TO DO,

21 BECAUSE I'D RATHER NOT HAVE YOUR FELLOW JURORS HEAR WHAT

22 YOU MAY HAVE TO SAY ABOUT IT. I'M GOING TO ASK YOU TO COME

23 FORWARD. I GUESS, JUST LINE UP OVER HERE AND LET ME TALK

24 TO YOU ABOUT WHAT YOU KNOW ABOUT IT. LET ME SAY THIS TO

25 BEGIN WITH: NOTHING WRONG ABOUT READING IT IN THE PAPER.

1 THAT HAPPENS ALL THE TIME. I'LL NEED TO KNOW IF BY READING
2 IT IN THE PAPER YOU FORMED ANY OPINIONS OR IF IT'S JUST A
3 MATTER OF READING SOMETHING IN THE NEWSPAPER.

4 ALL RIGHT. MA'AM, IF YOU'LL COME UP. I'LL NEED YOUR
5 JURY NUMBERS.

6 YES, MA'AM.

7 BAILIFF: JUROR 60, YOUR HONOR.

8 (THE FOLLOWING TOOK PLACE ON THE RECORD OUTSIDE THE
9 HEARING OF THE JURY PANEL.)

10 THE COURT: YES, MA'AM.

11 JUROR: MY HUSBAND READ THE ARTICLE TODAY AND WE WERE
12 KIND OF CASUALLY TALKING ABOUT HOW COULD SHE HAVE BEEN SHOT
13 IN THE BACK OF THE HEAD. WE WERE ACTING IT OUT, YOU KNOW,
14 TRYING TO FIGURE IT OUT. SO WE KIND OF TALKED.

15 THE COURT: OKAY. OTHER THAN JUST READING IT IN THE
16 PAPER AND DISCUSSING IT, DO YOU THINK YOU FORMED ANY
17 CONCLUSIONS ABOUT THE CASE THAT WOULD KEEP YOU FROM ---

18 JUROR: HONESTLY?

19 THE COURT: --- BEING FAIR AND IMPARTIAL?

20 JUROR: HONESTLY, YES. THAT'S -- I COULD, BECAUSE I
21 CAN'T SEE HOW THAT COULD HAVE HAPPENED WITH THE LITTLE BIT
22 OF DETAIL I HAVE. BUT I -- I WAS THINKING I CAN'T -- NOT
23 THAT MY MIND CAN'T BE CHANGED OR I WOULDN'T LISTEN. BUT I
24 DID SAY TO MY HUSBAND, THAT CAN'T -- IT'S NOT POSSIBLE HE
25 DID THIS. MY LITTLE BIT OF LAW AND ORDER.

1 THE COURT: C.S.I.?
2 JUROR: YES.
3 THE COURT: ALL RIGHT. AND WHAT PAPER DID YOU READ IT
4 IN?
5 JUROR: THE PACKET.
6 THE COURT: PACKET?
7 JUROR: UH-HUH.
8 THE COURT: YOU LIVE IN HILTON HEAD?
9 JUROR: UH-HUH.
10 THE COURT: OKAY. JUST HAVE A SEAT. THANK YOU.
11 BAILIFF: JUROR 93, YOUR HONOR.
12 THE COURT: GOOD MORNING.
13 JUROR: I READ IT IN THE PAPER AND THEN DISCUSSED IT
14 WITH OTHER PEOPLE, BUT NOTHING MORE THAN WHAT WAS IN THE
15 PAPER.
16 THE COURT: OKAY. YOU SAY YOU DISCUSSED IT WITH OTHER
17 PEOPLE?
18 JUROR: WITH OTHER WOMEN.
19 THE COURT: WHAT?
20 JUROR: WITH OTHER WOMEN.
21 THE COURT: DO YOU LIVE ON HILTON HEAD?
22 JUROR: YES.
23 THE COURT: AND WHERE DID YOU READ IT?
24 JUROR: IN THE PACKET.
25 THE COURT: YESTERDAY?

1 JUROR: YESTERDAY, AND THEN BACK WHEN IT WAS
2 COMMITTED.
3 THE COURT: BACK THEN TOO?
4 JUROR: YEAH, AND THEN IT WAS IN YESTERDAY'S PAPER.
5 THE COURT: ALL RIGHT. DO YOU THINK AS A RESULT OF
6 THOSE DISCUSSIONS THAT YOU SORT OF HAVE A PRECONCEPTION?
7 JUROR: I'M AFRAID I DO.
8 THE COURT: YOU DO?
9 JUROR: I'M AFRAID I DO.
10 THE COURT: THANK YOU VERY MUCH, MA'AM..
11 BAILIFF: YOUR HONOR, JUROR NO. 11 (SIC).
12 THE COURT: GOOD MORNING. 11.
13 JUROR: 111.
14 THE COURT: OH, 111. WHAT DO YOU KNOW ABOUT IT? DID
15 YOU READ ABOUT IT?
16 JUROR: YEAH. I READ IN THE PAPER ABOUT IT. AND I
17 TALKED WITH MY HUSBAND AT BREAKFAST ABOUT IT.
18 THE COURT: WHERE DO YOU LIVE?
19 JUROR: IN BLUFFTON.
20 THE COURT: YOU LIVE IN BLUFFTON. OKAY. WHEN IT
21 OCCURRED, DID YOU TALK ABOUT IT AT THAT TIME OR JUST AS A
22 RESULT OF SEEING IT IN THE PAPER?
23 JUROR: JUST AS A RESULT OF SEEING IT IN THE PAPER.
24 THE COURT: JUST THIS WEEKEND?
25 JUROR: RECENTLY.

1 THE COURT: OKAY. DO YOU FEEL THAT THAT DISCUSSION
2 WOULD KEEP YOU FROM BEING OPEN MINDED ABOUT IT, LISTENING
3 TO ALL THE EVIDENCE?

4 JUROR: IT MIGHT. I THOUGHT THE ARTICLE MADE IT SOUND
5 LIKE HE WAS GUILTY.

6 THE COURT: WELL ---

7 JUROR: I KNOW.

8 THE COURT: NOBODY IS UNTIL PROVEN GUILTY; THAT'S OUR
9 SYSTEM.

10 JUROR: I UNDERSTAND.

11 THE COURT: DO YOU FEEL YOU WOULD BE BIASED TOWARDS
12 HIS GUILT AT THIS POINT AS OPPOSED TO BEING OPENED MINDED
13 AND FAIR AND IMPARTIAL -- I DON'T MEAN FAIR AND IMPARTIAL.
14 I KNOW YOU WOULD BE FAIR AND IMPARTIAL. BUT DO YOU THINK
15 YOU HAVE BEEN SOMEHOW TAINTED BY THAT?

16 JUROR: RIGHT NOW, YEAH.

17 THE COURT: OKAY. THANK YOU.

18 BAILIFF: JUROR 119 (SIC), YOUR HONOR.

19 THE COURT: 119?

20 JUROR: 190.

21 THE COURT: OH, I'M SORRY. YES, MA'AM, WHAT DO YOU
22 KNOW ABOUT IT IF ANYTHING?

23 JUROR: I READ ABOUT IT IN THE PAPER WHEN IT HAPPENED.

24 THE COURT: WHEN IT HAPPENED?

25 JUROR: WHEN IT HAPPENED. BUT IT WAS IN YESTERDAY'S

1 PAPER TOO.

2 THE COURT: IT WAS. WHERE DO YOU LIVE?

3 JUROR: I LIVE IN BLUFFTON.

4 THE COURT: YOU LIVE IN BLUFFTON. DO YOU HAVE ANY

5 OTHER CONNECTION WITH ANY OF THE -- WHATEVER YOU READ

6 ABOUT?

7 JUROR: NO. NO.

8 THE COURT: DO YOU FEEL THAT BY READING IT, THAT IN

9 SOME WAY THAT WOULD PREVENT YOU FROM BEING OPEN MINDED AND

10 FAIR AND IMPARTIAL?

11 JUROR: NO, I DON'T THINK.

12 THE COURT: YOU JUST READ IT?

13 JUROR: JUST READ IT.

14 THE COURT: THANK YOU, MA'AM.

15 BAILIFF: JUROR 17.

16 THE COURT: HOW ARE YOU? TELL ME WHAT YOU KNOW ABOUT

17 IT?

18 JUROR: WE'RE DEVELOPING A COMMUNITY IN THAT AREA.

19 THE COURT: WHERE DO YOU LIVE?

20 JUROR: I DON'T LIVE THERE. WE'RE DEVELOPING A

21 COMMUNITY THERE.

22 THE COURT: OH, A BUSINESS.

23 JUROR: YES. AND I REMEMBER WHEN THAT OCCURRED,

24 AROUND THE CLUBHOUSE WE HAD HUGE DISCUSSIONS.

25 THE COURT: THIS WAS IN 2007?

1 JUROR: YES.
2 THE COURT: WHAT CLUBHOUSE?
3 JUROR: THE CLUBHOUSE AT ABBY GLENN (PHONETIC).
4 THE COURT: ABBY GLENN IS NEAR THIS?
5 JUROR: YES, IT'S NEAR CHERRY POINT. YOU KNOW, WE
6 JUST GOT INTO THE DISCUSSION OF, YOU KNOW, WIFE BEATING AND
7 THAT KIND OF THING, YOU KNOW.
8 THE COURT: DO YOU THINK THOSE DISCUSSIONS WOULD
9 AFFECT YOUR JUDGMENT IN TERMS OF BEING FAIR AND IMPARTIAL
10 TO BOTH PARTIES IN THIS CASE?
11 JUROR: IT MIGHT. IT MIGHT. I CAN'T SAY FOR SURE,
12 BUT IT MIGHT.
13 THE COURT: YOU HAVE SOME PRE-CONCEIVED IDEAS ABOUT
14 THE GUILT OR INNOCENCE OF THE DEFENDANT?
15 JUROR: I DO. I DO.
16 THE COURT: THANK YOU.
17 BAILIFF: JUROR 45, YOUR HONOR.
18 JUROR: HOW ARE YOU, SIR?
19 THE COURT: ALL RIGHT. WHAT'S YOUR NUMBER?
20 JUROR: I'M HIGHLY FAMILIAR WITH THE CASE, JUST LIKE A
21 LOT OF FOLKS, JUST READING ABOUT IT IN THE PAPER AND STUFF.
22 THE COURT: DO YOU KNOW ---
23 JUROR: JUST FOLLOWED IT. NO. JUST FOLLOWED IT.
24 THE COURT: ANY DISCUSSIONS WITH PEOPLE ABOUT IT?
25 JUROR: NO, NOT SPECIFICALLY ANYBODY IN PARTICULAR.

1 THE COURT: COULD YOU BE FAIR AND IMPARTIAL TO BOTH
2 PARTIES IN THIS CASE?

3 JUROR: WELL, I TELL YOU, SIR. AS A YOUNGER MAN, I
4 MYSELF SPENT A LITTLE BIT OF RUCKUS TIME, AND I DON'T WANT
5 TO WISH -- WELL, I JUST THINK I MIGHT HAVE A BIAS JUST FROM
6 EVEN READING ABOUT IT. AND I'VE MAYBE ALREADY FORMED AN
7 OPINION. I'M JUST BEING HONEST WITH YOU. THAT'S ABOUT AS
8 HONEST AS I CAN BE.

9 THE COURT: WHAT TYPE OF WORK DO YOU DO?

10 JUROR: I'M A CHARTER CAPTAIN. CHARTERS FOR SEA
11 PINES.

12 THE COURT: OKAY.

13 JUROR: IT'S BEEN A SLOW SEASON SO FAR.

14 THE COURT: WE NEED TO GET PEOPLE TO SIT ON THIS JURY.

15 JUROR: I UNDERSTAND THAT. I AGREE. I UNDERSTAND. I
16 WANT TO DO MY DUE DILIGENCE. BUT IT'S ALSO NOT FAIR OF ME
17 NOT TO SAY WHAT'S ON MY MIND.

18 THE COURT: OKAY. WHAT WAS YOUR NUMBER AGAIN?

19 JUROR: 45.

20 THE COURT: ALL RIGHT. MR. 45, THANK YOU VERY MUCH.

21 BAILIFF: YOUR HONOR, JUROR 173.

22 THE COURT: HOW ARE YOU?

23 JUROR: GOOD. HOW ARE YOU?

24 THE COURT: FINE. YES, MA'AM. WHAT DO YOU KNOW ABOUT
25 IT?

1 JUROR: I READ IT -- THAT THE TRIAL IS GOING TO START
2 TODAY. AND I REMEMBERED THAT I READ SOMETHING ABOUT IT IN
3 SEPTEMBER, THE DAY BEFORE MY ANNIVERSARY.

4 THE COURT: THAT'S AN EASY WAY TO REMEMBER.

5 JUROR: YEAH.

6 THE COURT: OTHER THAN THAT, HAVE YOU HAD ANY
7 DISCUSSIONS OR ANYTHING?

8 JUROR: NO.

9 THE COURT: DO YOU FEEL YOU COULD BE FAIR AND
10 IMPARTIAL ---

11 JUROR: YES. ABSOLUTELY.

12 THE COURT: THANK YOU VERY MUCH, MS. 173.

13 BAILIFF: JUROR 274, YOUR HONOR.

14 THE COURT: YES, MA'AM.

15 JUROR: I'M NOT SURE IF THIS IS APPLICABLE. I WORK
16 WITH A GRIEF COUNSELING TEAM FOR STUDENTS IN BEAUFORT
17 COUNTY, AND I JUST STARTED WORKING WITH A STUDENT WHO LOST
18 HER MOTHER SOMEWHERE IN SEPTEMBER OF '07. I DON'T KNOW.
19 IT'S NOT THAT SAME NAME, BUT I DON'T KNOW. THE STUDENT'S
20 NAME IS M.A. [REDACTED] I DON'T KNOW IF THERE'S A CONNECTION
21 OR NOT AND ANOTHER CASE ALTOGETHER.

22 THE COURT: OKAY. YOU DIDN'T WORK WITH ANYBODY?

23 JUROR: NO. NO. I JUST HAPPEN TO KNOW THE CHILD WHO
24 JUST LOST HER MOTHER, AND I JUST DIDN'T KNOW IF IT WAS THE
25 SAME CASE.

1 MR. STONE: I THINK IT IS. MAY I ASK. I DON'T WANT
2 TO INTERRUPT. IS IT MADISON AUST?
3 JUROR: YES.
4 MR. STONE: YES, IT'S THE SAME. AND SHE IS A WITNESS.
5 JUROR: I KNEW SHE WAS GOING TO BE A WITNESS, SO I
6 JUST DIDN'T KNOW IF IT WAS GOING TO BE THE SAME CASE. WHAT
7 ARE THE CHANCES OF THIS HAPPENING?
8 THE COURT: SHE'S THE DAUGHTER?
9 MR. STONE: SHE'S THE DAUGHTER OF THE DECEASED.
10 THE COURT: OKAY. SHE GAVE A DIFFERENT NAME ---
11 JUROR: AND THAT'S WHY I WAS CONFUSED TOO. I JUST
12 WASN'T SURE.
13 THE COURT: OKAY. THANK YOU VERY MUCH, MS. 274.
14 BAILIFF: YOUR HONOR, JUROR 76.
15 JUROR: HOW ARE YOU?
16 THE COURT: FINE. HOW ARE YOU?
17 JUROR: I SAW THE ISLAND PACKET ARTICLE YESTERDAY.
18 THE COURT: OKAY. NOBODY ---
19 JUROR: THAT'S ALL. I JUST READ THE NEWSPAPER
20 ARTICLE. I COULD BE FAIR ON BOTH SIDES.
21 THE COURT: YOU COULD?
22 JUROR: I COULD.
23 THE COURT: OKAY. THANK YOU VERY MUCH.
24 BAILIFF: JUROR 138, YOUR HONOR.
25 THE COURT: YES.

1 JUROR: I SAW AN ARTICLE YESTERDAY IN THE ISLAND
2 PACKET.
3 THE COURT: THAT'S ABOUT IT?
4 JUROR: YEAH, THAT'S IT.
5 THE COURT: NO OTHER CONNECTION WITH IT?
6 JUROR: NO.
7 THE COURT: NO DISCUSSIONS ABOUT IT?
8 JUROR: NO.
9 THE COURT: PRECONCEIVED IDEAS ABOUT IT ONE WAY OR THE
10 OTHER?
11 JUROR: NO.
12 THE COURT: THANK YOU VERY MUCH.
13 BAILIFF: YOUR HONOR, JUROR 182.
14 JUROR: I JUST READ ABOUT IT WHEN THE INCIDENT
15 HAPPENED, AND IN THE PAPER YESTERDAY. AND, YES, I HAVE
16 FORMED AN OPINION. OBVIOUSLY, IT PROBABLY COULD BE
17 CHANGED.
18 THE COURT: WELL, HAVE YOU DISCUSSED IT WITH ANYBODY,
19 FAMILY MEMBERS OR ANYTHING LIKE THAT, FRIENDS?
20 JUROR: FRIENDS AND FAMILY MEMBERS.
21 THE COURT: WHERE DO YOU LIVE?
22 JUROR: HILTON HEAD.
23 THE COURT: AND DO YOU FEEL THAT YOU COULDN'T BE
24 IMPARTIAL?
25 JUROR: I MEAN, I FEEL LIKE I COULD, BUT ---

1 THE COURT: LISTEN TO THE EVIDENCE?
2 JUROR: UH-HUH.
3 THE COURT: BUT YOU THINK YOU HAVE A PRECONCEIVED IDEA
4 ABOUT WHAT HAPPENED?
5 JUROR: UH-HUH.
6 THE COURT: AND YOUR NUMBER AGAIN WAS MS. 182, RIGHT?
7 JUROR: YES.
8 THE COURT: THANK YOU, MA'AM.
9 BAILIFF: JUROR 41, YOUR HONOR.
10 THE COURT: 41. WHAT DO YOU KNOW?
11 JUROR: AT THE TIME -- I MEAN, I KNOW ABOUT IT FROM
12 LIVING ON HILTON HEAD.
13 THE COURT: YOU LIVE ON HILTON HEAD.
14 JUROR: I LIVE ON HILTON HEAD. MY CHILDREN ARE IN THE
15 BEAUFORT COUNTY SCHOOL SYSTEM, SO WE'VE DISCUSSED IT AMONG
16 PARENTS AND TEACHERS, FRIENDS, BECAUSE WE WERE HAVING
17 CHILDREN AND SHE WAS A TEACHER.
18 THE COURT: AND YOU READ ABOUT IT AGAIN YESTERDAY?
19 JUROR: A LITTLE BIT YESTERDAY.
20 THE COURT: DO YOU FEEL THAT NOT NECESSARILY YOU'VE
21 MADE UP YOUR MIND, BUT YOU HAVE A CERTAIN BIAS ABOUT WHAT
22 YOU MIGHT FEEL THAT YOU COULDN'T BE FAIR TO BOTH PARTIES?
23 JUROR: IT'S HARD -- THAT'S REALLY HARD.
24 THE COURT: I KNOW.
25 JUROR: IT'S HARD NOT TO BE. I MEAN, TO BE HONEST

1 IT'S HARD WHEN YOU HEAR SOMETHING AND TALK ABOUT IT, YOU DO
2 FORM SOMEWHAT OF AN OPINION. OF COURSE, YOU DON'T REALLY
3 KNOW, SO YOU CAN'T BE CERTAIN. SO YOU -- I COULD HAVE MY
4 MIND CHANGED DEFINITELY.

5 THE COURT: OKAY. BUT YOU FEEL WE'D HAVE TO CHANGE
6 YOUR MIND?

7 JUROR: MAYBE SO. I'M AFRAID -- I'M AFRAID, MAYBE SO.

8 THE COURT: OKAY.

9 JUROR: I'M TRYING TO BE. I'M NOT REALLY SURE.

10 THE COURT: THAT'S WHY I WANT YOU TO BE HONEST.

11 JUROR: IT'S HARD. I'M NOT SURE HOW I FEEL.

12 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

13 BAILIFF: JUROR 98, YOUR HONOR.

14 THE COURT: WHAT DO YOU KNOW ABOUT THIS IF ANYTHING?

15 JUROR: WELL, I WORK IN BLUFFTON.

16 THE COURT: YOU WORK IN BLUFFTON?

17 JUROR: THE LAST HALF OF '07 AND THE FIRST HALF OF
18 '08.

19 THE COURT: WHAT KIND OF WORK?

20 JUROR: I WAS INVOLVED IN SALES, COUNTER SALES. SO I
21 DO A LOT OF INTERACTION WITH THE LOCAL FOLKS. A LOT OF
22 THESE GUYS ARE BLUFFTON RESIDENTS. SO I HAD A LOT OF
23 EXPOSURE TO THIS THING, YOU KNOW, A LOT OF HEARSAY, TALK,
24 WHATEVER. I READ ABOUT IT. AND WHAT I HEARD WAS MOSTLY
25 DETRIMENTAL TO THE DEFENDANT. SO I HEARD FROM GUYS LIVING

1 IN THE AREA.

2 THE COURT: THESE PEOPLE THAT MAY HAVE BEEN A MEMBER
3 OF THE HISPANIC COMMUNITY?

4 JUROR: NOT NECESSARILY. ALL I'M SAYING IS, I HAD
5 SOME EXPOSURE. IT CAME UP A LOT, THE TOPIC.

6 THE COURT: DO YOU FEEL THAT SOME WAY PREJUDICED YOU?

7 JUROR: I'M TAINTED. IT DOESN'T MEAN I CAN'T BE
8 IMPARTIAL, BUT I GOT HIT PRETTY GOOD WITH IT.

9 THE COURT: DO YOU THINK THAT THE DEFENDANT WOULD HAVE
10 TO CHANGE YOUR MIND?

11 JUROR: WELL, OBVIOUSLY, IF I SIT THROUGH THE CASE,
12 THEY MIGHT DO THAT. BUT I HAVE A PRESUPPOSITION TOWARDS
13 SOMETHING. I'M NOT SAYING I CAN'T BE.

14 THE COURT: THAT'S OKAY. THANK YOU VERY MUCH.

15 BAILIFF: JUROR 268, YOUR HONOR.

16 JUROR: 268.

17 THE COURT: YES, SIR. WHAT DO YOU KNOW ABOUT THIS?

18 JUROR: I DON'T KNOW MUCH, OTHER THAN WHAT WAS IN THE
19 PAPER.

20 THE COURT: WHERE DO YOU LIVE?

21 JUROR: ON HILTON HEAD.

22 THE COURT: YOU LIVE ON HILTON HEAD?

23 JUROR: UH-HUH. SO, YOU KNOW, I HEARD. I CAN'T SAY
24 IN DETAIL. I'M NOT GOING TO SIT HERE AND SAY I CAN'T BE
25 IMPARTIAL, BECAUSE THE WAY I FEEL, I FEEL I'VE BEEN

1 UNJUSTLY CONVICTED WITH MY CASE ABOUT 2, 3 WEEKS AGO.
2 RIGHT NOW I'M FACING ---
3 THE COURT: WHERE WAS THAT?
4 JUROR: HILTON HEAD ---
5 REPORTER: I'M SORRY.
6 THE COURT: HE FELT HE WAS CONVICTED ---
7 JUROR: UNFAIRLY ---
8 THE COURT: --- UNFAIRLY IN MAGISTRATE'S COURT.
9 JUROR: YOU KNOW WHAT I'M SAYING.
10 THE COURT: I UNDERSTAND. WHAT'S YOUR NUMBER AGAIN?
11 JUROR: 268.
12 THE COURT: THANK YOU, MR. THOMAS.
13 (PAUSE.)
14 (END OF IN CAMERA.)
15 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, LET'S
16 CONTINUE WITH OUR DIALOGUE. ANY MEMBER OF THE JURY PANEL
17 HAVE CHILDREN OR GRAND CHILDREN OR ANY MEMBER FROM YOUR
18 FAMILY THAT -- CHILDREN THAT ATTEND OAKATIE ELEMENTARY
19 SCHOOL?
20 (NO RESPONSE.)
21 THE COURT: ALL RIGHT. LET ME ASK IF ANY MEMBER OF
22 THE JURY PANEL OR ANY MEMBER OF YOUR FAMILY HAS EVER BEEN
23 THE VICTIM OF A VIOLENT CRIME? ANY MEMBER OF THE JURY
24 PANEL OR ANY MEMBER OF YOUR FAMILY EVER BEEN THE VICTIM OF
25 A VIOLENT CRIME? AND JUST GIVE ME YOUR NUMBER PLEASE,

1 MA'AM, ON THE FRONT ROW. I'M NOT GOING TO ASK YOU MUCH
2 ABOUT IT. I JUST NEED TO KNOW SOME BASICS. YOUR NUMBER
3 AGAIN?
4 JUROR: 218.
5 THE COURT: AND, MS. 218. IS IT YOU OR A MEMBER OF
6 YOUR FAMILY?
7 JUROR: ME.
8 THE COURT: AND HOW LONG AGO?
9 JUROR: 1999. '99
10 THE COURT: '99. ALL RIGHT. IS THAT MATTER RESOLVED
11 NOW?
12 JUROR: YES.
13 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, MS. 218.
14 LET ME ASK YOU, WOULD THAT EXPERIENCE ON YOUR PART, WOULD
15 THAT IN ANY WAY INTERFERE WITH YOUR ABILITY TO GIVE BOTH
16 THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL IN
17 THIS CASE?
18 JUROR: NO, SIR.
19 THE COURT: THANK YOU VERY MUCH, MA'AM.
20 YES, MA'AM, NUMBER?
21 JUROR: 17.
22 THE COURT: 17. ALL RIGHT. AND WAS IT YOU OR A
23 MEMBER OF YOUR FAMILY?
24 JUROR: A MEMBER OF MY FAMILY BACK IN AUGUST.
25 THE COURT: OF '08?

1 JUROR: PAST AUGUST.
2 THE COURT: IN BEAUFORT COUNTY?
3 JUROR: YES.
4 THE COURT: AND HAS THAT MATTER BEEN RESOLVED?
5 JUROR: YES.
6 THE COURT: IT HAS. ALL RIGHT. THANK YOU VERY MUCH,
7 MS. 17. LET ME ASK YOU. WOULD THAT FACT IN ANY WAY
8 INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
9 DEFENDANT A FAIR AND IMPARTIAL TRIAL? I KNOW YOU CAME UP A
10 MINUTE AGO ON THIS OTHER.
11 JUROR: THIS INCIDENT WOULDN'T, BUT THE OTHER INCIDENT
12 WOULD.
13 THE COURT: YOU COULD BE FAIR AND IMPARTIAL WITH THAT?
14 JUROR: WITH THIS. YES.
15 THE COURT: YES, MA'AM, IN THE YELLOW JACKET.
16 JUROR: 42.
17 THE COURT: 42. YOU OR A MEMBER OF YOUR FAMILY?
18 JUROR: IT WAS A MEMBER OF MY FAMILY. AND IT HAS BEEN
19 RESOLVED.
20 THE COURT: WAS IT ---
21 JUROR: I DON'T THINK IT WOULD AFFECT ---
22 THE COURT: WHERE WAS IT?
23 JUROR: IT WAS IN NORTHERN GEORGIA.
24 THE COURT: IN NORTHERN GEORGIA?
25 JUROR: YES.

1 THE COURT: NOT BEAUFORT COUNTY?
2 JUROR: NO.
3 THE COURT: OKAY. BUT HOW LONG AGO, MA'AM?
4 JUROR: IT WAS IN 1990.
5 THE COURT: YOU STILL THINK YOU CAN BE FAIR AND
6 IMPARTIAL?
7 JUROR: YES, I DO.
8 THE COURT: THANK YOU VERY MUCH, MA'AM.
9 YES, MA'AM. NUMBER PLEASE?
10 JUROR: 40.
11 THE COURT: 40. YES, MA'AM. YOU OR A MEMBER OF YOUR
12 FAMILY?
13 JUROR: ME.
14 THE COURT: YES, MA'AM.
15 JUROR: 2007.
16 THE COURT: 2007. IS THIS MATTER CONCLUDED NOW,
17 RESOLVED?
18 JUROR: AS FAR AS I'M CONCERNED, NO. BUT, YEAH.
19 THE COURT: AS FAR AS YOU'RE CONCERNED, IT'S NOT
20 RESOLVED?
21 JUROR: NO.
22 THE COURT: OKAY. WAS THERE LEGAL ACTION TAKEN?
23 JUROR: AS FAR AS I'M CONCERNED, NO.
24 THE COURT: AND WAS IT IN BEAUFORT COUNTY?
25 JUROR: YES.

1 THE COURT: ALL RIGHT. ALL RIGHT. MS. 40, WOULD THAT
2 PERSONAL EXPERIENCE YOU HAVE, WOULD THAT IN ANY WAY
3 INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
4 DEFENDANT FAIR AND IMPARTIAL TRIAL?

5 JUROR: NO, IT WOULDN'T.

6 THE COURT: YOU COULD BE FAIR TO BOTH PARTIES?

7 JUROR: YES, SIR.

8 THE COURT: THANK YOU VERY MUCH, MS. 40.

9 YES, MA'AM.

10 JUROR: 274.

11 THE COURT: YES, MA'AM.

12 JUROR: MEMBER OF MY FAMILY 6 YEARS AGO. IT HAS BEEN
13 RESOLVED, AND WOULD NOT AFFECT MY BEING ABLE TO BE FAIR TO
14 BOTH SIDES.

15 THE COURT: THANK YOU VERY MUCH, MS. 240 -- 274. ALL
16 RIGHT. I TURN THAT AROUND, LADIES AND GENTLEMEN, AND ASK
17 IF YOU OR ANY MEMBER OF YOUR FAMILY HAD EVER BEEN ACCUSED
18 OF COMMITTING A VIOLENT CRIME? IN OTHER WORDS, TO THE
19 POINT THAT LAW ENFORCEMENT GOT INVOLVED, JUST NOT SOMEBODY
20 THROWING IDLE WORDS AROUND, BUT ACTUALLY GETTING INVOLVED
21 WITH -- GETTING THE CASE INVOLVED WITH LAW ENFORCEMENT?
22 ANY MEMBER OF THE JURY PANEL OR ANY MEMBER OF YOUR FAMILY
23 BEEN ACCUSED OF COMMITTING A VIOLENT CRIME?

24 ALL RIGHT. WITH THE ---

25 JUROR: 166. MY BROTHER, 1990'S.

1 THE COURT: BROTHER?
2 JUROR: YES.
3 THE COURT: 1990'S?
4 JUROR: YES, SIR. I COULD BE FAIR TO BOTH.
5 THE COURT: YOU COULD?
6 JUROR: YES.
7 THE COURT: HAS THAT MATTER BEEN RESOLVED?
8 JUROR: YES, SIR.
9 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.
10 YES, SIR.
11 JUROR: JUROR 45. ME PERSONALLY. I'D RATHER NOT GO
12 IN TO IT.
13 THE COURT: I'M NOT GOING TO ASK YOU TO. IS IT
14 RESOLVED?
15 JUROR: YES, SIR.
16 THE COURT: HOW LONG AGO?
17 JUROR: THREE YEARS AGO, TWO AND A HALF YEARS.
18 THE COURT: ALL RIGHT. DO YOU THINK YOU CAN BE FAIR
19 AND IMPARTIAL TO BOTH PARTIES?
20 JUROR: YES.
21 THE COURT: BASED ON THAT FACT ---
22 JUROR: THAT GOES HAND-IN-HAND WITH WHAT I SAID
23 EARLIER.
24 THE COURT: OKAY. THANK YOU VERY MUCH, MR. 45.
25 YES, MA'AM.

1 JUROR: 161.
2 THE COURT: YES, MA'AM. YOU ARE 161?
3 JUROR: I AM.
4 THE COURT: I'M SORRY. I WAS LOOKING AT THE OTHER
5 LADY, I THOUGHT SHE SPOKE. 161?
6 JUROR: YES.
7 THE COURT: YES.
8 JUROR: I WAS INVOLVED IN A DOMESTIC VIOLENCE.
9 THE COURT: HOW LONG AGO?
10 JUROR: MAYBE 5 YEARS, 7 YEARS.
11 THE COURT: IN BEAUFORT COUNTY?
12 JUROR: YES.
13 THE COURT: HAS THAT MATTER BEEN RESOLVED, MA'AM?
14 JUROR: IT HAS.
15 THE COURT: THANK YOU VERY MUCH, MA'AM. DO YOU THINK
16 YOU CAN BE FAIR AND IMPARTIAL TO BOTH PARTIES?
17 JUROR: YES.
18 THE COURT: THANK YOU VERY MUCH.
19 AND NOW.
20 JUROR: NO. 11.
21 THE COURT: YES, MA'AM.
22 JUROR: STEP-SON IN ABOUT 1999.
23 THE COURT: OKAY.
24 JUROR: IT'S RESOLVED IN OHIO.
25 THE COURT: IN OHIO?

1 JUROR: (NODS HEAD.)

2 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, MA'AM.

3 ALL RIGHT. LADIES AND GENTLEMEN, I'M GOING TO READ TO

4 YOU A LIST OF POTENTIAL WITNESSES IN THIS CASE. IF ANY OF

5 THESE WITNESSES ARE PRESENT, I'LL ASK THEM TO PLEASE STAND

6 SO THE JURY CAN IDENTIFY YOU. BUT THE QUESTION IS THE SAME

7 AS TO EACH WITNESS. THAT IS, ANY MEMBER OF THE JURY PANEL

8 RELATED BY BLOOD, CONNECTED BY MARRIAGE OR EMPLOYMENT OR A

9 CLOSE, PERSONAL ACQUAINTANCE OF ANY OF THE FOLLOWING

10 INDIVIDUALS:

11 JOHN ADAMS WITH THE BEAUFORT COUNTY SHERIFF'S

12 DEPARTMENT?

13 (NO RESPONSE.)

14 THE COURT: M.A. [REDACTED] A-U-S-T, WITH THE

15 HARDEEVILLE POLICE DEPARTMENT. IS THAT ---

16 MR. STONE: SHE'S FROM HARDEEVILLE, YOUR HONOR, SHE'S

17 NOT ---

18 THE COURT: SHE'S NOT IN LAW ENFORCEMENT?

19 MR. STONE: NO, SIR.

20 THE COURT: MS. M.A. [REDACTED] YES, MA'AM, I KNOW.

21 NUMBER ---

22 JUROR: 274.

23 THE COURT: 274, YOU DISCLOSED TO ME THAT YOU KNOW MS.

24 AUST. THANK YOU VERY MUCH, MS. 274.

25 BOB BROMAGE, BEAUFORT COUNTY SHERIFF'S OFFICE.

1 (NO RESPONSE.)

2 THE COURT: RAMONA COOPER WITH THE BEAUFORT COUNTY
3 SHERIFF'S OFFICE.

4 NOW, WHAT WAS YOUR NUMBER AGAIN PLEASE, MA'AM?

5 JUROR: 56.

6 THE COURT: MS. 56, I HAVE THE FEELING YOU'RE GOING TO
7 STAND UP SEVERAL TIMES.

8 JUROR: YES.

9 THE COURT: SO I GUESS ---

10 JUROR: HER SON IS ALSO A FRIEND OF MY SON.

11 THE COURT: OKAY.

12 JUROR: AND SHE IS IN THE DEPARTMENT WITH MY HUSBAND.

13 THE COURT: ALL RIGHT. MS. 56, YOU'RE PROBABLY GOING
14 TO KNOW SEVERAL OF THESE PEOPLE. DO YOU THINK BECAUSE OF
15 YOUR KNOWLEDGE OF OR FRIENDSHIP WITH SEVERAL OF THESE
16 OFFICERS, THAT THAT WOULD IN ANY WAY INTERFERE WITH YOUR
17 JUDGMENT TO GIVE BOTH THE STATE AND THE DEFENDANT A FAIR
18 AND IMPARTIAL TRIAL?

19 JUROR: IT COULD.

20 THE COURT: IT COULD?

21 JUROR: YES.

22 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, MS. 56.

23 AND JUST FOR THE RECORD, MS. 56'S HUSBAND WORKS FOR
24 THE BLUFFTON POLICE DEPARTMENT.

25 JUROR: MY SON IS ALSO -- HE'S A MEMBER OF THE

1 EXPLORER'S PROGRAM WITH THE SHERIFF'S DEPARTMENT IN
2 BEAUFORT COUNTY. I FORGOT TO TELL YOU THAT.
3 THE COURT: OKAY. MS. 56, YOU NEED NOT STAND EVERY
4 TIME I CALL OUT THESE NAMES.
5 JUROR: OKAY.
6 THE COURT: JUST RAISE YOUR HAND. ALL RIGHT.
7 WALTER CRIDDLE, BEAUFORT COUNTY SHERIFF'S OFFICE.
8 (NO RESPONSE.)
9 THE COURT: DAN DEFREESE. DAN DEFREESE, WITH THE
10 STATE LAW ENFORCEMENT DIVISION.
11 (NO RESPONSE.)
12 THE COURT: CINDY DUGGAN, A WITNESS FROM BLUFFTON; IS
13 THAT CORRECT?
14 MR. STONE: YES, SIR.
15 (NO RESPONSE.)
16 THE COURT: MEREDITH FLORENCIO, BEAUFORT COUNTY
17 SHERIFF'S OFFICE.
18 (NO RESPONSE.)
19 THE COURT: JOSE GUERRERO, A WITNESS FROM BEAUFORT.
20 (NO RESPONSE.)
21 THE COURT: DEJUAN OR DEJUAN HOLMES, BEAUFORT COUNTY
22 SHERIFF'S OFFICE.
23 (NO RESPONSE.)
24 THE COURT: JAMES HOYT -- I'M SORRY. MR. HOLMES.
25 YOU'RE JUROR NUMBER ---

1 JUROR: 268.
2 THE COURT: 268. YOU KNOW MR. HOLMES?
3 JUROR: YES, I DO.
4 THE COURT: OKAY. THANK YOU VERY MUCH.
5 JAMES HOYT, BEAUFORT COUNTY SHERIFF'S OFFICE.
6 YES, MA'AM, MS. 56.
7 JUROR: YES.
8 THE COURT: MS. KATHLEEN KEATING FROM BLUFFTON.
9 (NO RESPONSE.)
10 THE COURT: MR. TERRY LASETER, L-A-S-E-T-E-R, FROM
11 BLUFFTON.
12 (NO RESPONSE.)
13 THE COURT: JEFF LAUVER, FROM THE BEAUFORT COUNTY
14 SHERIFF'S OFFICE.
15 (NO RESPONSE.)
16 THE COURT: BARBARA METCALF, A WITNESS FROM BEAUFORT.
17 (NO RESPONSE.)
18 THE COURT: HOLLY MIXSON, A WITNESS FROM RIDGELAND.
19 (NO RESPONSE.)
20 THE COURT: SHAYNA ORSON, WITH THE BEAUFORT COUNTY EMS
21 OFFICE.
22 (NO RESPONSE.)
23 THE COURT: RHETT PARNELL, BEAUFORT COUNTY SHERIFF'S
24 OFFICE.
25 (NO RESPONSE.)

1 THE COURT: RICK PATRILLA, FROM BEAUFORT -- I MEAN,
2 FROM BLUFFTON.
3 (NO RESPONSE.)
4 THE COURT: DR. ERIN PRESNELL, CHARLESTON.
5 (NO RESPONSE.)
6 THE COURT: ERIC RICKER, BEAUFORT COUNTY SHERIFF'S
7 OFFICE.
8 ALL RIGHT, 268.
9 MICHAEL RILEY, BEAUFORT COUNTY SHERIFF'S OFFICE.
10 56.
11 JEAN ROBERT, BEAUFORT COUNTY SHERIFF'S OFFICE.
12 56.
13 CHUCK RUNNION.
14 56.
15 BEAUFORT COUNTY SHERIFF'S OFFICE.
16 KEESHA SHAW FROM BEAUFORT.
17 (NO RESPONSE.)
18 THE COURT: ILA SIMMONS, STATE LAW ENFORCEMENT
19 DIVISION.
20 (NO RESPONSE.)
21 THE COURT: AMY STEPHENS, SLED.
22 (NO RESPONSE.)
23 THE COURT: AL STUCKEY FROM SLED.
24 (NO RESPONSE.)
25 THE COURT: DEANNE TUYLS, T-U-Y-L-S, FROM HARDEEVILLE.

1 (NO RESPONSE.)

2 THE COURT: ANGELA VIENS OR VIENS, V-I-E-N-S, BEAUFORT
3 COUNTY SHERIFF'S OFFICE.

4 (NO RESPONSE.)

5 THE COURT: ANY OTHER WITNESSES? IS THERE ANOTHER
6 LIST?

7 MS. CARROWAY: YES, SIR.

8 THE COURT: I'M SORRY. RUSSELL SNODGRASS -- FROM
9 WHERE?

10 MS. CARROWAY: BEAUFORT.

11 THE COURT: FROM BEAUFORT?

12 (NO RESPONSE.)

13 MS. CARROWAY: JUDGE, I'M SORRY. HE'S FROM BRUNSWICK,
14 GEORGIA.

15 THE COURT: FROM BRUNSWICK, GEORGIA.

16 (NO RESPONSE.)

17 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'VE
18 INTRODUCED THE PARTIES TO YOU. I TOLD YOU WHAT THE CHARGES
19 ARE. AND WE'VE DISCUSSED WITH A NUMBER OF YOU THE FACT
20 THAT YOU MAY HAVE HAD SOME CONTACT ABOUT SOME CONNECTION
21 WITH THIS CASE THROUGH THE NEWSPAPER AND MEDIA. AND OTHER
22 THAN THOSE PEOPLE WHO CAME UP AND TALKED TO ME PRIVATELY,
23 OTHER THAN THOSE PEOPLE, IS THERE ANY MEMBER OF THE JURY
24 PANEL WHO FEELS THAT FOR ANY REASON -- AND, MS. 56, THAT
25 WOULD INCLUDE YOU BECAUSE YOU'VE EXPRESSED IDENTIFICATION

1 WITH MOST OF THE WITNESSES IN THIS CASE, WHICH I UNDERSTAND
2 -- IS THERE ANY REASON WHY ANY OTHER MEMBER OF THE JURY
3 FEELS THEY COULD NOT BE FAIR AND IMPARTIAL FOR ANY REASON
4 TO BOTH THE STATE AND THE DEFENDANT?

5 ALL RIGHT, SIR. DO YOU WANT TO APPROACH THE BENCH.

6 (PAUSE.)

7 BAILIFF: JUROR 276, YOUR HONOR.

8 (THE FOLLOWING TOOK PLACE ON THE RECORD OUT OF THE
9 HEARING OF THE JURY PANEL.)

10 THE COURT: ALL RIGHT.

11 JUROR: I MOVED HERE JUST OVER A YEAR AGO. I'VE BEEN
12 THE VICTIM OF TWO ROBBERIES.

13 THE COURT: WHERE DO YOU LIVE?

14 JUROR: SEA PINES.

15 THE COURT: IN SEA PINES.

16 JUROR: AND MY NEXT DOOR NEIGHBOR HAS BEEN ROBBED AS
17 WELL. SO MY WHOLE THING IS I'VE BEEN ROBBED TWICE, MY NEXT
18 DOOR NEIGHBOR'S BEEN ROBBED THREE TIMES.

19 THE COURT: IN THE LAST YEAR?

20 JUROR: IN THE LAST YEAR. A LOT OF THIS DOESN'T GET
21 REPORTED. HIS NEXT DOOR NEIGHBOR'S BEEN ROBBED TWO TIMES.
22 THAT'S SEVEN CRIMES IN A YEAR AND A HALF. NOT ONE
23 INVESTIGATION. NOT ONE ARREST. SO I HAVE A PRETTY CHEATED
24 VIEW BEAUFORT COUNTY POLICE.

25 THE COURT: ALL RIGHT.

1 JUROR: IT TOOK ME THREE DAYS TO GET, YOU KNOW, THE
2 POLICE REPORT. AND I HAD TO PAY A DOLLAR AND A HALF TO GET
3 IT. IT'S JUST INSULTING. SO I JUST REALLY -- I WOULD WORK
4 VERY HARD TO NOT LET THAT AFFECT ME. I REALLY WOULD,
5 BECAUSE I KNOW MY DUTY. BUT I HAVE TO BE HONEST.

6 THE COURT: DO YOU THINK THOSE EXPERIENCES WOULD TAINT
7 YOUR DECISION-MAKING ABILITY IN A CASE LIKE THIS?

8 JUROR: THIS IS A VERY IMPORTANT CASE. THIS IS NOT A
9 TRAFFIC ACCIDENT. I TAKE IT VERY SERIOUSLY. SO I WOULD
10 WORK HARD.

11 THE COURT: ALL RIGHT. LET ME ASK YOU THIS. DO YOU
12 THINK YOU WOULD BE BIASED TOWARDS ONE SIDE OR THE OTHER?

13 JUROR: YEAH, I WOULD BE AGAINST THE POLICE, AGAINST
14 LAW ENFORCEMENT, WHICH I HATE -- I HATE TO TAKE THAT
15 POSITION.

16 THE COURT: SOME OF THESE LAW ENFORCEMENT OFFICERS MAY
17 HAVE RESPONSIBILITIES ON HILTON HEAD FOR ALL I KNOW.

18 JUROR: RIGHT. NONE OF THE NAMES YOU MENTIONED I
19 RECOGNIZE. I DIDN'T RECOGNIZE ANY OF THOSE. SO THE
20 DETECTIVE WHO WAS ASSIGNED, I DIDN'T RECOGNIZE. HE WASN'T
21 NAMED, SO THAT'S PROBABLY GOOD.

22 THE COURT: OKAY. THANK YOU VERY MUCH.

23 JUROR: THANK YOU.

24 (END OF IN CAMERA.)

25 THE COURT: ALL RIGHT. COUNSEL, THE CLERK HAS

1 INFORMED ME THE BEST WAY TO DO THIS IS TO STRIKE YOUR
2 STRIKE SHEETS. SHE'S GOING TO CALL OUT THE NUMBERS. YOU
3 STRIKE FROM YOUR STRIKE SHEET BEFORE WE ACTUALLY START TO
4 STRIKE THE JURY.

5 LADIES AND GENTLEMEN, THERE ARE A NUMBER OF JURORS WHO
6 ARE GOING TO BE DISQUALIFIED FROM SITTING ON THIS CASE.
7 AND I'M GOING TO CALL OUT THEIR NUMBERS, BUT THESE ARE NOT
8 YOUR NUMBERS. WE'VE MIXED THEM UP. SO IF I CALL OUT A
9 NUMBER AND YOU THINK THAT'S YOUR NUMBER, I FOOLED YOU.
10 OKAY.

11 ALL RIGHT. COUNSEL, STRIKE JUROR NO. 1 ON THE LEFT-
12 HAND SIDE.

13 STRIKE JUROR NO. 22.

14 STRIKE JUROR NO. 23.

15 STRIKE JUROR NO. 28.

16 STRIKE JUROR NO. 31.

17 STRIKE JUROR NO. 34.

18 STRIKE JUROR NO. 37.

19 STRIKE JUROR NO. 41.

20 STRIKE JUROR NO. 49.

21 STRIKE JUROR NO. 50.

22 NOW, LET ME SEE IF THAT COMPARES WITH YOUR LIST. IS
23 THAT CORRECT?

24 MS. CARROWAY: YES, YOUR HONOR.

25 MR. STONE: YES, YOUR HONOR.

1 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THE
2 CLERK IS GOING TO CALL THE NAMES OF THE REMAINING JURORS
3 WHO HAVE BEEN PRE-SELECTED BY THE COMPUTER. YOUR NAME HAS
4 JUST BEEN SELECTED TO BE CALLED FOR THE TRIAL OF THIS CASE.
5 AND THE CLERK IS GOING TO ASK YOU TO COME FORWARD. AND THE
6 ATTORNEYS ARE GOING TO HAVE ONE FINAL CHANCE TO STRIKE FROM
7 THE JURY PANEL.

8 NOW, THAT PROCESS WILL TAKE A FEW MINUTES. BUT JURORS
9 SEEM TO THINK SOME TIMES THAT THE ATTORNEYS SELECT THE
10 JURY. THAT'S NOT TRUE. THEY HAVE A CERTAIN NUMBER OF
11 STRIKES OR JURORS THAT THEY CAN STRIKE FROM THE JURY, BUT
12 THEY CAN'T STRIKE JUST ANYBODY THEY WANT TO.

13 SO THERE ARE RULES THAT GOVERN THIS PROCEDURE, WHICH
14 WE NEED NOT GET IN TO. BUT I'M GOING TO ASK YOU JUST TO
15 FOLLOW THE INSTRUCTIONS OF THE CLERK, AND WE WILL NOW
16 COMMENCE TO DRAW THIS JURY.

17 (THE JURY WAS EMPANELED AT 4:30 P.M.)

18 THE COURT: ANY OBJECTION TO THE JURY SELECTION
19 PROCESS FROM THE STATE?

20 MR. STONE: NO, SIR.

21 THE COURT: FROM THE DEFENSE?

22 MS. CARROWAY: NO, YOUR HONOR.

23 THE COURT: ALL RIGHT. THANK YOU.

24 MS. CARROWAY: I JUST WANT TO MAKE SURE THE VOIR DIRE
25 IS MADE A PART OF THE RECORD.

1 THE COURT: ALL RIGHT. I THINK IT IS. OH, I'M SORRY.
2 THAT'S FINE.

3 (THE JURY PANEL WAS EXCUSED.)

4 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THOSE OF
5 YOU WHO WERE SELECTED ON THIS JURY, BEFORE WE ACTUALLY
6 START THE TRIAL, THERE ARE A NUMBER OF LEGAL MATTERS THAT I
7 NEED TO TAKE UP WITH THE ATTORNEYS. I'M JUST CHECKING THE
8 SCHEDULE. THEY TELL ME IT'S GOING TO BE MAYBE AS MUCH AS A
9 COUPLE HOURS. THE BEST THING FOR US TO DO IS GO AHEAD AND
10 DO THAT, AND THAT INVOLVES EXHIBITS AND THINGS LIKE THAT.

11 THERE'S NO SENSE IN YOU WASTING YOUR TIME SITTING HERE
12 IN THE JURY ROOM WAITING FOR US TO GET READY. AND IT'S
13 4:30. IT'S BEEN A LONG DAY. SO I'M GOING TO EXCUSE YOU
14 NOW FOR THE EVENING, ASK YOU TO BE BACK IN THE JURY ROOM --
15 NOT THE ASSEMBLY ROOM, BUT THE JURY ROOM. THE BAILIFF IS
16 GOING TO SHOW YOU WHERE YOUR JURY ROOM IS.

17 I ASK YOU TO BE BACK AT 11:00 O'CLOCK IN THE MORNING,
18 BECAUSE WE MAY NOT FINISH WHAT WE'VE GOT TO DO HERE THIS
19 EVENING, AND WE WILL RECONVENE, THE LAWYERS AND MYSELF, IN
20 THE MORNING PRIOR TO THE ACTUAL START OF THE TRIAL.

21 SO I'M GOING TO ASK YOU TO DO SEVERAL THINGS OTHER
22 THAN RETURN TO THE JURY ROOM AT 11:00 O'CLOCK.

23 THE FIRST THING I'M GOING TO ASK YOU TO DO IS NOT
24 DISCUSS THIS CASE AMONG YOURSELVES WHEN YOU RETURN TO THE
25 JURY ROOM OR WITH ANYONE ELSE OVER THE EVENING HOURS.

1 YOU'VE SEEN FROM TODAY'S PROCESS THAT THIS CASE HAS
2 HAD SOME PUBLIC INTEREST HERE IN BEAUFORT COUNTY, AND YOU
3 NEVER KNOW IF YOU SPEAK TO SOMEBODY ABOUT THE CASE THAT
4 THEY MAY HAVE SOME KNOWLEDGE OF IT OR MAY HAVE SOME OPINION
5 ABOUT IT. AND THAT WOULD BE HIGHLY IMPROPER FOR YOU TO
6 DISCUSS THIS CASE WITH ANYONE, INCLUDING YOUR FAMILY OVER
7 THE EVENING HOURS. SO I'M GOING TO ASK YOU NOT TO DO THAT.

8 I TRUST THAT YOU WILL HONOR MY REQUEST IN THAT REGARD.
9 IT'S EASY TO TELL SOMEBODY YOU'RE ON A JURY. BUT THERE'S
10 REALLY NO REASON TO DO THAT. BUT IF SOMEBODY WERE TO ASK
11 YOU, YOU JUST TELL THEM THE JUDGE SAYS I CANNOT TALK ABOUT
12 IT. YOU JUST NEVER KNOW WHAT SOMEBODY ELSE OFF THE STREET
13 IS GOING TO TRY TO SAY TO YOU OR FRIENDS OR FAMILY, THINGS
14 LIKE THAT. IT WOULD BE IMPROPER TO DISCUSS THE CASE WITH
15 ANYONE ELSE OVER THE EVENING HOURS.

16 YOU'RE GOING TO BE ASKED TO DECIDE THIS CASE BASED ON
17 THE EVIDENCE YOU HEAR IN THIS COURTROOM, NOT SOMETHING THAT
18 SOMEBODY ELSE TELLS YOU OUT OF THE COURTROOM. AND THERE
19 MAY BE SOME PRESS REPORTS ABOUT IT DURING THE COURSE OF THE
20 TRIAL. I DON'T KNOW. I DON'T LIVE HERE, SO I HAVE NO IDEA
21 WHETHER THE PRESS IS GOING TO BE INVOLVED OR NOT. BUT THEY
22 MIGHT. I'LL ASK YOU NOT TO EVEN READ PRESS REPORTS,
23 BECAUSE THE PRESS REPORT THAT SOMEBODY WRITES IS SOMETHING
24 THAT THEY INTERPRET FROM SOMETHING THEY'VE HEARD IN THE
25 COURTROOM.

1 AND YOU'RE THE ONES THAT ARE GOING TO HEAR THE
2 EVIDENCE. YOU'RE THE ONES THAT ARE GOING TO HAVE TO DECIDE
3 BASED ON WHAT YOU HEAR IN THIS COURTROOM, NOT WHAT SOME
4 REPORTER TELLS YOU ABOUT THE CASE OR THAT SORT OF THING.

5 SO I'LL ASK YOU TO NOT READ ANY PRESS REPORTS ABOUT
6 IT, IF THERE ARE ANY. I HAVE NO IDEA WHETHER THERE ARE
7 GOING TO BE ANY PRESS REPORTS.

8 THE SECOND THING I'M GOING TO ASK YOU TO DO IS WHEN
9 YOU RETURN TO THE JURY ROOM IN THE MORNING AS WELL, I'M
10 GOING TO ASK YOU TO SELECT ONE OF YOUR MEMBERS TO BE THE
11 FOREPERSON OF THE JURY.

12 NOW, THE LAST LADY AND GENTLEMAN THAT WERE CHOSEN THAT
13 ARE SEATED ON THE BACK ROW ARE GOING TO BE OUR ALTERNATES
14 IN CASE FOR SOME REASON SOME MEMBER OF THE JURY PANEL IS
15 NOT ABLE TO CONTINUE THROUGH THE TRIAL.

16 I'M INFORMED THAT THE TRIAL IS LIKELY TO TAKE 2 DAYS.
17 IN OTHER WORDS, IT WILL BE FINISHED THIS WEEK. IT'S NOT
18 GOING TO RUN THAT LONG. BUT IT WILL BE A FULL TRIAL. IT
19 MAY BE 2 DAYS. IT MAY BE 2 AND A HALF DAYS. BUT
20 NEVERTHELESS, IT'S A TRIAL THAT CAN BE COMPLETED THIS WEEK.

21 SO I'LL ASK YOU WHEN YOU RETURN TO THE JURY ROOM, JUST
22 SELECT ONE OF YOUR MEMBERS TO BE THE FOREPERSON. THAT
23 PERSON WILL TAKE THE SEAT WHERE THE GENTLEMAN IS SEATED ON
24 THE FRONT ROW BY MY IMMEDIATE LEFT IN THE LIGHT-COLORED
25 SHIRT, AND WILL MAINTAIN THAT SEAT THROUGHOUT THE TRIAL.

1 THE REST OF THE SEATS DON'T HAVE ANY NAMES ON THEM, SO
2 I WANT YOU TO BE COMFORTABLE WHERE YOU CHOOSE TO SIT. YOU
3 DON'T HAVE TO SIT IN THE SAME SEAT EVERY TIME. IF YOU HAVE
4 ANY PROBLEMS WITH HEARING, THINGS LIKE THAT, YOU MAY WANT
5 TO SIT ON THE FRONT ROW SO THAT YOU CAN HEAR WHAT THE
6 ATTORNEYS SAY AND WHAT THE WITNESSES SAY.

7 NOW, THE WITNESSES ARE ALL GOING TO BE TESTIFYING FROM
8 RIGHT HERE, SO I WANT YOU TO BE ABLE TO COMFORTABLY SEE AND
9 HEAR WHAT THE WITNESSES HAVE TO SAY IN THIS CASE.

10 SO IF YOU'LL DO THAT FOR ME AT 11:00, IF YOU'LL PICK
11 ONE OF YOUR MEMBERS TO BE THE FOREPERSON, THAT PERSON WILL
12 EVENTUALLY WRITE THE VERDICT IF THAT BECOMES NECESSARY, AND
13 WILL PRESIDE DURING THE DELIBERATIONS IN THE COURTROOM
14 (SIC) WHEN THE CASE IS TURNED OVER TO YOU.

15 THE THIRD THING I'M GOING TO ASK YOU TO DO IS HAVE A
16 PLEASANT EVENING. WE'LL SEE YOU AT 11:00 O'CLOCK IN THE
17 MORNING. THANK YOU VERY MUCH.

18 (THE JURY EXITS THE COURTROOM AT 4:37 P.M.)

19 THE COURT: ALL RIGHT, COUNSEL. ANY MOTIONS?

20 MR. STONE: NOT FROM THE STATE, YOUR HONOR. BUT A
21 SERIES OF THEM, I BELIEVE, FROM THE DEFENSE.

22 THE COURT: ALL RIGHT. COME TO ORDER PLEASE. MS.
23 CARROWAY.

24 MS. CARROWAY: THANK YOU, YOUR HONOR.

25 THE COURT: HOLD ON A MINUTE.

1 (PAUSE.)

2 MS. CARROWAY: YOUR HONOR, JUST SO WE'RE CLEAR WITH

3 REGARD TO THE VOIR DIRE. YOU DECLINED TO CHARGE ---

4 THE COURT: 7, 8, AND 9.

5 MS. CARROWAY: --- 7, 8, AND 9.

6 (DEFENDANT'S REQUESTED VOIR DIRE, 2 PAGES, MARKED FOR

7 IDENTIFICATION AS COURT'S EXHIBIT NO. 1.)

8 THE COURT: ALL RIGHT. MS. CARROWAY.

9 MS. CARROWAY: THANK YOU, YOUR HONOR. AT THIS POINT

10 THE DEFENSE WOULD MOVE TO SEQUESTER ALL POTENTIAL WITNESSES

11 IN THIS CASE.

12 THE COURT: ANY OBJECTION?

13 MR. STONE: NO OBJECTION, YOUR HONOR, AS LONG AS THAT

14 IS RECIPROCAL.

15 THE COURT: WITH THE EXCEPTION OF THE INVESTIGATING

16 OFFICER.

17 MR. STONE: YES, YOUR HONOR. OUR CHIEF INVESTIGATING

18 OFFICER, YES, SIR, WOULD BE CAPTAIN BOB BROMAGE. I ASK

19 THAT HE REMAIN, BUT ALL THE REMAINING WITNESSES, I HAVE NO

20 OBJECTION TO THEIR SEQUESTRATION.

21 THE COURT: MOTION GRANTED.

22 MS. CARROWAY: ALSO, YOUR HONOR, I RENEW MY RULE 5 OUT

23 OF AN ABUNDANCE OF CAUTION.

24 THE COURT: RULE 5, SOLICITOR?

25 MR. STONE: WE HAVE TWO THINGS, YOUR HONOR. FIRST OF

1 ALL, I THINK WE HAVE PROVIDED MS. CARROWAY WITH EVERYTHING,
2 INCLUDING TRANSCRIPTS OF THE AUDIO TAPES TODAY, THAT YOU
3 WILL HEAR TODAY.

4 ALSO, WE HAVE AN OPEN-FILE POLICY IN WHICH SHE'S
5 WELCOME NOT ONLY TO OUR MATERIAL, BUT ANYTHING OUT OF THE
6 SHERIFF'S OFFICE. AND THAT IS OPEN TO HER AS WELL. I HAVE
7 PREMARKED ALL OF THE EXHIBITS AND AT WHATEVER TIME WOULD BE
8 BEST -- IN FACT, I'VE SHOWN MOST OF THE PHOTOGRAPHS IF NOT
9 ALL OF THEM TO THE DEFENSE THAT I PLAN ON USING. SO WE ARE
10 AS OPEN AS WE CAN POSSIBLY BE ON THAT. I DON'T BELIEVE
11 THERE'S ANYTHING MS. CARROWAY HAS NOT SEEN OR HAD ACCESS
12 TO.

13 THE COURT: ANYTHING YOU KNOW, MS. CARROWAY, THAT
14 YOU ---

15 MS. CARROWAY: NO, SIR, YOUR HONOR.

16 THE COURT: --- HAVE NOT RECEIVED?

17 MS. CARROWAY: JUST LIKE I SAID, OUT OF AN ABUNDANCE
18 OF CAUTION IF THERE'S ANYTHING ELSE OUT THERE.

19 I ALSO WANT TO SETTLE THE RECORD ON ANY AND ALL
20 POTENTIAL WITNESSES.

21 THE COURT: HAS THAT BEEN DONE?

22 MR. STONE: CERTAINLY THE RECORD, IF SHE MEANS RUNNING
23 A CRIMINAL RECORD CHECK ON ALL WITNESSES, I WOULD BE GLAD
24 TO DO THAT. I DO NOT HAVE THAT IN FRONT OF ME. I WOULD
25 NEED MR. SNODGRASS' INFORMATION. I BELIEVE IT'S ON HER

1 WITNESS LIST.

2 MOST OF OUR WITNESSES ARE LAW ENFORCEMENT. BUT I WILL

3 RUN THOSE IF WE NEED TO, BUT I AM PRETTY CONFIDENT ---

4 THE COURT: YOU HAVE SOME NON-LAW ENFORCEMENT.

5 MR. STONE: WE HAVE SOME NON. I'D BE GLAD TO RUN ALL

6 THOSE CRIMINAL RECORDS AS WELL.

7 THE COURT: IS THAT SATISFACTORY?

8 MS. CARROWAY: YES, SIR, YOUR HONOR.

9 THE COURT: ALL RIGHT. DO THAT IN THE MORNING.

10 MR. STONE: IN FACT, COULD I GO AHEAD AND GET MR.

11 SNODGRASS' DATE OF BIRTH, AND I'LL GO AHEAD AND DO THAT AND

12 GET SOMEONE ON THAT NOW.

13 MS. CARROWAY: DUFFY, IT'S IN THE ---

14 MR. STONE: OKAY. I'LL GET IT DONE. I DON'T WANT TO

15 SLOW US UP. I'LL FIND IT.

16 (PAUSE.)

17 THE COURT: OKAY.

18 MS. CARROWAY: YOUR HONOR, I DON'T KNOW WITH REGARDS

19 TO THE MOTION TO REDACT THE STATEMENT IN REFERENCE TO ANY

20 PRIOR RUN-INS WITH THE LAW, GANG ACTIVITY, AND THAT, AND

21 ALSO THE JACKSON V. DENNO HEARING -- I DON'T KNOW IF YOU

22 MAYBE WANT TO JUST TAKE ALL THE STATEMENTS. THERE'S A

23 NUMBER OF TAPED CONFESSIONS AND STATEMENTS GIVEN. IF YOU

24 WANT TO TAKE ALL OF THOSE AND LISTEN TO THEM OVER NIGHT.

25 THE COURT: DO YOU HAVE TRANSCRIPTS?

1 MR. STONE: I DO, YOUR HONOR. IN FACT, IF I COULD
2 MARK THIS -- IF YOU WOULD ALLOW, COULD I MARK THIS AS A
3 COURT'S EXHIBIT. THIS IS AN UN-OPENED TRANSCRIPT THAT I
4 RECEIVED FROM THE COURT REPORTER. WE ALSO RECEIVED COPIES
5 ON THIS VIA EMAIL. AND I SENT THAT EMAIL OVER TO THE
6 DEFENSE ATTORNEY.

7 WHAT I'D LIKE TO DO IS MARK IT AS A COURT EXHIBIT AND
8 ALLOW YOU TO USE THIS TO REFERENCE ANYTHING.

9 THE COURT: ANY OBJECTION?

10 MS. CARROWAY: NO OBJECTION, YOUR HONOR. I WILL SAY
11 WHAT CONCERNS ME ABOUT THAT IS THERE IS A NUMBER OF THINGS
12 LISTED AS INAUDIBLE IN THERE THAT I UNDERSTAND WHAT THEY'RE
13 SAYING. AND SOME OF THEM DO REFERENCE GANG ACTIVITY, AS
14 WELL ALL OF THE STATEMENTS AREN'T TRANSCRIBED.

15 THE COURT: ARE NOT?

16 MS. CARROWAY: YES, SIR.

17 THE COURT: ARE THERE ANY LANGUAGE ISSUES, MS.
18 CARROWAY?

19 MS. CARROWAY: NO, SIR. I DON'T KNOW ABOUT YOUR
20 WITNESSES.

21 MR. STONE: I THINK ALL OF THEM ARE TRANSCRIBED, YOUR
22 HONOR. I'M TRYING TO THINK OF ANY THAT WOULD NOT BE.
23 THERE IS A WRITTEN STATEMENT THAT WASN'T TRANSCRIBED. BUT
24 OTHER THAN THAT, I THINK THEY ARE ALL TRANSCRIBED,
25 INCLUDING THE 9-1-1 TAPE. I'M SORRY, THAT WOULD BE

1 DIFFERENT, THAT'S NOT TRANSCRIBED.

2 MS. CARROWAY: THE ORIGINAL STATEMENT THAT'S GIVEN AT
3 SCENE AT THE TIME THAT'S NOT TRANSCRIBED TO THE BEST OF MY
4 KNOWLEDGE.

5 MR. STONE: IT IS TRANSCRIBED.

6 MS. CARROWAY: IT IS?

7 MR. STONE: YES. LET ME PULL MINE JUST TO BE SURE.

8 THE COURT: WELL, HAS MS. CARROWAY SEEN THE
9 TRANSCRIPTION OF ---

10 MR. STONE: IT'S IN THAT BIG ONE, YES, SIR.

11 THE COURT: YOU EMAILED IT TO HER AS OPPOSED TO ---

12 MR. STONE: I EMAILED IT TO HER. AND I CAN MAKE
13 REFERENCE TO IT. SHE MAY BE ABLE TO FIND WHAT I'M TALKING
14 ABOUT.

15 THE COURT: OKAY.

16 MR. STONE: IT'S OUT OF ORDER, SO IT MAY BE CONFUSING.
17 THE ACTUAL FIRST ONE AT THE SCENE STARTS ON PAGE 55 AND
18 ENDS OF PAGE 58.

19 MS. CARROWAY: YOU'RE RIGHT. I'M SORRY.

20 MR. STONE: AND I'LL GO AHEAD AND GO THROUGH THIS,
21 YOUR HONOR, IF THAT WOULD BE OKAY. THE SECOND -- SECOND
22 STATEMENT, WHICH IS ACTUALLY THE FIRST ONE IN CUSTODY
23 STARTS ON PAGE 3 AND GOES TO PAGE 54.

24 THE COURT: MS. CARROWAY, DO YOU HAVE ANY OBJECTION
25 WITH THE COURT TAKING THIS TRANSCRIPTION, TRY AND FOLLOW

1 ALONG WITH IT?

2 MS. CARROWAY: NO, SIR. THE ONLY OBJECTION I HAVE IS
3 THAT YOU ARE CONSCIOUS OF THE FACT THAT THINGS THAT ARE
4 LISTED AS INAUDIBLE ARE NOT NECESSARILY ALL INAUDIBLE. I
5 DON'T THINK THE COMPUTER THE COUNTY GAVE ME IS REALLY HIGH-
6 TECH.

7 THE COURT: OKAY.

8 MS. CARROWAY: AND I COULD HEAR THEM FINE.

9 MR. STONE: CAN I MARK IT AS A COURT'S EXHIBIT, YOUR
10 HONOR?

11 MS. CARROWAY: WITHOUT OBJECTION.

12 (AUDIO TRANSCRIPTION MARKED FOR IDENTIFICATION AS
13 COURT'S EXHIBIT NO. 2.)

14 THE COURT: OKAY.

15 MR. STONE: THE THIRD STATEMENT, YOUR HONOR, WHICH IS
16 THE SECOND IN CUSTODY, STARTS ON PAGE 99 AND RUNS TO PAGE
17 124.

18 I'M SORRY. AND THE FOURTH STATEMENT IS THE THIRD IN
19 CUSTODY STATEMENT. AND THIS RUNS FROM PAGE 59 TO PAGE 98.

20 THE COURT: IT IS SO IDENTIFIED IN THE TRANSCRIPT?

21 MR. STONE: YES, SIR.

22 THE COURT: OKAY. SO WE HAVE FOUR STATEMENTS?

23 MR. STONE: THAT'S CORRECT. AND, ACTUALLY, INCLUDING
24 THE 9-1-1 CALLS, YOUR HONOR, THERE WOULD BE SIX TOTAL.

25 THE COURT: TWO OF THOSE ---

1 MR. STONE: I HAVE TWO 9-1-1 CALLS.

2 THE COURT: ARE THEY TRANSCRIBED?

3 MR. STONE: THEY ARE -- YES, SIR, THEY ARE POWER
4 POINTED. THEY'RE ACTUALLY TRANSCRIBED.

5 THE COURT: PART OF THIS DOCUMENT?

6 MR. STONE: THEY ARE NOT IN THAT DOCUMENT, NO, SIR.
7 THAT'S THE ONLY ONE THAT'S NOT TRANSCRIBED. THEY'RE NOT
8 PARTICULARLY LENGTHY, AND I HAVE THAT WITH ME TODAY AS
9 WELL.

10 THE COURT: DO THEY NEED REDACTION?

11 MR. STONE: I DID NOT FIND ANYTHING IN THOSE THAT
12 NEEDED REDACTION. THOSE WERE 9-1-1 CALLS COMING IN THAT
13 THE DEFENDANT HIMSELF MADE. AND I DIDN'T FIND ANYTHING
14 THAT WAS -- NEEDED ANY TYPE OF REDACTION IN THOSE.

15 MS. CARROWAY: YOUR HONOR, I'M IN AGREEMENT WITH THAT.

16 THE COURT: OKAY.

17 MR. STONE: AND WE MAY BE ABLE TO AGREE TO SOME
18 REDACTIONS, BUT I DON'T KNOW HOW YOU WOULD LIKE TO HANDLE
19 THOSE, YOUR HONOR.

20 THE COURT: MS. CARROWAY, HAVE YOU IDENTIFIED WHAT THE
21 OBJECTIONS YOU HAVE?

22 MS. CARROWAY: YES, YOUR HONOR.

23 THE COURT: YOU HAVE?

24 MS. CARROWAY: I HAVE. I'VE BEEN THROUGH THEM. WELL,
25 I WENT THROUGH THEM BEFORE I HAD THE TRANSCRIPT AND I NOTED

1 THE MINUTE -- YOU KNOW, THE MINUTE WHERE IT WAS IN THE
2 AUDIO RECORDING. I DIDN'T KNOW IF YOU WANTED TO LISTEN TO
3 THE TAPES OR ---

4 THE COURT: WELL, LET ME ASK YOU THIS. CAN YOU TAKE
5 THIS AND IDENTIFY YOUR OBJECTIONS?

6 MS. CARROWAY: YES.

7 THE COURT: DO THAT.

8 MS. CARROWAY: SURE, I CAN DO THAT. THAT WILL NOT BE
9 A PROBLEM. I CAN DO IT THIS EVENING.

10 THE COURT: ALL RIGHT. WE CAN TAKE IT UP IN THE
11 MORNING.

12 MR. STONE: YES, SIR.

13 THE COURT: TAKE YOUR OBJECTIONS UP IN THE MORNING.

14 MS. CARROWAY: OKAY.

15 THE COURT: ALL RIGHT. WE'LL DO THAT IN THE MORNING.

16 MS. CARROWAY: OKAY. DO YOU WANT ME TO MARK THIS ONE?

17 THE COURT: YES. THAT'S A COURT EXHIBIT. IT'S NOT
18 GOING ANYWHERE.

19 MS. CARROWAY: OKAY.

20 THE COURT: HIGHLIGHT WHAT YOUR OBJECTIONS ARE.

21 ALL RIGHT. NEXT MOTION?

22 MS. CARROWAY: THE NEXT MOTION I HAVE, YOUR HONOR,
23 WOULD BE THE RULING ON THE ADMISSIBILITY OF ANY POTENTIAL
24 LYLE MATERIAL, AS WELL AS I THINK THERE'S SOME PHOTOGRAPHS
25 OF THE VICTIM. I KNOW THEY WERE IN EVIDENCE. I DON'T KNOW

1 IF DUFFY PLANS TO USE THEM AS FAR AS ---

2 THE COURT: WHAT DO YOU MEAN IN EVIDENCE?

3 MS. CARROWAY: THE PICTURES OF -- THERE'S A BUNCH OF
4 PICTURES OF KNIVES AND DIFFERENT WEAPONS.

5 THE COURT: NOTHING'S IN EVIDENCE.

6 MS. CARROWAY: I SAID I KNOW THE PICTURES I'M
7 REFERRING TO WERE IN EVIDENCE, AND I DON'T KNOW IF DUFFY
8 PLANS TO USE THEM IN THE CASE.

9 THE COURT: WHAT DO YOU MEAN WERE IN EVIDENCE?

10 MS. CARROWAY: NOT IN EVIDENCE. I'M SORRY. AT THE
11 SHERIFF'S OFFICE, YOUR HONOR, IN THE FILE AT THE SHERIFF'S
12 OFFICE.

13 THE COURT: OKAY.

14 MR. STONE: I DO NOT, YOUR HONOR. THERE ARE -- AND WE
15 HAVE ALREADY PREMARKED STATE'S EXHIBIT 1 THROUGH 19. AND I
16 HAVE THE FULL COLLECTION THERE. I WILL HAND THAT TO THE
17 DEFENSE. THE ONLY WEAPON WE PLAN ON INTRODUCING IN THIS
18 CASE WOULD BE THE GUN, THE PISTOL THAT WAS THE ACTUAL
19 MURDER WEAPON. THE OTHER WEAPONS THAT ARE IN THE HOUSE, WE
20 DON'T PLAN ON BRINGING THAT UP AT THE TRIAL PHASE OF THIS
21 CASE.

22 THE COURT: ALL RIGHT.

23 MS. CARROWAY: YOUR HONOR, I AM GOING TO OBJECT TO
24 STATE'S EXHIBIT 7 THROUGH 15.

25 THE COURT: JUST CALL THE NUMBERS OUT.

1 MS. CARROWAY: STATE'S 7, STATE'S 8, STATE'S 9,
2 STATE'S 10, 11, 12, STATE'S 13, STATE'S 14, AND STATE'S 15.

3 THE COURT: ALL RIGHT. DO YOU HAVE COPIES OF THEM?

4 MS. CARROWAY: I'M LOOKING AT THEM.

5 THE COURT: YOU HAVE THE ONES HE PLANS TO OFFER?

6 MS. CARROWAY: YES, SIR.

7 THE COURT: LET ME SEE.

8 (PAUSE.)

9 THE COURT: DO YOU HAVE A SET OF COPIES THAT YOU CAN
10 FOLLOW ALONG WITH ME?

11 MS. CARROWAY: I DON'T HAVE A HARD COPY, YOUR HONOR.
12 I HAVE THEM ON A DVD. BUT I'M FAMILIAR WITH THEM.

13 THE COURT: DO YOU WANT ME TO COME DOWN THERE?

14 MS. CARROWAY: I'LL COME UP THERE. IT DOESN'T MATTER.

15 THE COURT: ALL RIGHT. NO OBJECTION TO 1, 2, 3, 4, 5,
16 6 -- 6?

17 MS. CARROWAY: THAT'S CORRECT.

18 THE COURT: ALL RIGHT. SOLICITOR?

19 MR. STONE: YES, SIR.

20 THE COURT: 7 APPEARS TO BE A DAMAGE TO A WALL.

21 MR. STONE: THAT'S CORRECT.

22 THE COURT: WHAT'S THE OBJECTION?

23 MS. CARROWAY: YOUR HONOR, IT'S NOT RELEVANT IN ANY
24 WAY. IT'S PROBATIVE OF NOTHING. THERE'S NO ALLEGATION
25 THAT THAT WALL WAS PUNCHED IN CORRELATION TO THE EVENT IN

1 QUESTION.

2 THE COURT: THIS IS THE RESIDENCE?

3 MS. CARROWAY: YES, SIR.

4 THE COURT: WHAT'S THE STATE'S POSITION?

5 MR. STONE: THAT IS NOT ONLY THE RESIDENCE, THAT IS
6 THE BEDROOM OF THE CRIME SCENE WHERE THE VICTIM WAS FOUND.
7 THE BLOWS THAT YOU SEE ARE INDICATIVE OF THE ACTION OF THE
8 DEFENDANT WHO MADE IN HIS OWN STATEMENT THAT HE HAD MADE
9 THE HOLES IN THOSE WALLS. HE STATED HE GOT MAD AT THE
10 DECEASED AND THAT HE ---

11 THE COURT: AT THE TIME OF THE ---

12 MR. STONE: HE SAYS IN HIS STATEMENT -- WHAT HAPPENS
13 IS THERE ARE TWO DIFFERENT THINGS. LAW ENFORCEMENT GO IN
14 THERE AND THEY SEE THIS ROOM. AND IN FACT, ONCE THEY SEE
15 THE ROOM, THEY RECOGNIZE THAT THIS IS A CRIME SCENE OF
16 DOMESTIC VIOLENCE.

17 THE COURT: THIS IS WHERE THE VICTIM WAS FOUND?

18 MR. STONE: YES, SIR. THERE'S A BEDROOM. AND
19 ATTACHED DIRECTLY TO THE BEDROOM IS THE BATHROOM. SHE IS
20 FOUND INSIDE THE BATHROOM NEXT TO THE TOILET. AND I THINK
21 YOU HAVE A PHOTO UP THERE OF THAT AS WELL.

22 THE COURT: WE'LL GET TO THAT.

23 MR. STONE: THE LAW ENFORCEMENT GOES. THEY SEE THE
24 SCENE OF DOMESTIC VIOLENCE. THEY IN FACT ASK THE DEFENDANT
25 AS WHEN HE IS SAYING HE DOESN'T KNOW ANYTHING ABOUT THIS --

1 WHAT HAPPENED TO HIS WIFE.

2 THE QUESTION WAS: WE'VE SEEN THE SIGNS OF DOMESTIC
3 VIOLENCE. WE THINK -- WE THINK WE'RE ASKING THE RIGHT
4 PERSON THESE QUESTIONS.

5 THE DEFENDANT THEN RESPONDS THAT I GOT MAD AT HER;
6 THAT WAS MONTHS AGO, AND I PUNCHED THE WALL.

7 THE COURT: LET ME ASK YOU THIS.

8 MR. STONE: YES, SIR.

9 THE COURT: 8 IS ALSO ON THE WALL. 9 IS ALSO DAMAGE
10 TO -- IT LOOKS LIKE MAYBE IS THE SAME PLACE. 10 IS DAMAGE
11 TO THAT BOARD WALL. ARE THESE ALL RELATED TO WHAT YOU'RE
12 DISCUSSING?

13 MR. STONE: YES, SIR. THEY ARE ALL IN THE SAME ROOM,
14 THEY'RE IN SEPARATE PLACES. YES, SIR.

15 THE COURT: 7 THROUGH 12?

16 MR. STONE: THAT'S CORRECT. AND THEY ARE THE CLOSER
17 PHOTOS OF 6, 5, 4, AND 3 THAT DEFENSE HAS NOT OBJECTED TO.
18 THESE ARE THE OUTSIDE PHOTOS -- EXCUSE ME. INSIDE.

19 YOU CAN ACTUALLY MATCH THOSE TOO TO THE SCENE.

20 THE COURT: ALL RIGHT. I SEE. WELL, THEN, ARE THEY
21 DUPLICATIVE?

22 MR. STONE: I BELIEVE THAT THEY'RE BETTER -- YOU CAN
23 SEE A GENERAL VIEW FROM THE OUTSIDE. THE CLOSEST SHOWS THE
24 FORCE THAT IT TOOK TO PUT THOSE HOLES. I DON'T BELIEVE THE
25 OUTSIDE SHOT SHOWS THAT. WHEN I SAY OUTSIDE, I MEAN, THE

1 ONE THAT'S A LITTLE BIT FURTHER REMOVED.

2 THE COURT: DISTANCE.

3 MR. STONE: YES, SIR. I BELIEVE THE CLOSE-UP SHOWS
4 THE FORCE THAT IT TOOK TO KNOCK THAT TYPE OF HOLE IN THERE.
5 I ALSO THINK, YOUR HONOR, THAT -- AND THIS WOULD ALSO GO TO
6 THE DEFENSE'S ARGUMENT AS TO STATE VERSUS LYLE AND THAT
7 STATEMENT THAT THE DEFENDANT MAKES COMING INTO EVIDENCE
8 THAT HE PUNCHED THE WALL BECAUSE HE WAS MAD AT HER.

9 AND I'VE ALREADY HANDED YOUR HONOR STATE VERSUS
10 BRAXTON (PHONETIC), WHICH BASICALLY SAYS PRIOR EVIDENCE OF
11 ILL FEELINGS BETWEEN THE DECEASED AND THE DEFENDANT IS
12 RELEVANT AND PROBATIVE. AND I BELIEVE THAT ALL OF THAT IS
13 BASICALLY THE SAME THING. THAT IS THE CRIME SCENE AS THE
14 OFFICERS FOUND IT AT THAT TIME.

15 THE COURT: ALL RIGHT. MS. CARROWAY, DO YOU AGREE
16 THAT OTHER THAN THE FACT THAT THE STATE WANTS TO OFFER
17 THESE, THAT THEY ARE THE SAME LOCATIONS AS DEPICTED IN 3
18 THROUGH 5?

19 MS. CARROWAY: TO THE BEST OF MY KNOWLEDGE, YOUR HONOR
20 -- AND I'M SURE THEY WOULD HAVE SOMEBODY TESTIFY TO SUCH.

21 THE COURT: ALL RIGHT. I THINK I NEED TO HEAR THAT
22 TESTIMONY OR SEE THAT TESTIMONY BEFORE I RULE ON THAT.
23 I'LL TAKE THIS ONE UNDER ADVISEMENT. I'LL LET YOU KNOW, 7
24 THROUGH 15.

25 MS. CARROWAY: YOUR HONOR, DO YOU WANT TO HEAR FROM ME

1 ON THE ISSUE OF THE BRAXTON CASE OR LYLE MATTERS NOW?

2 THE COURT: WELL, LET'S GET THAT TESTIMONY IN FRONT ON
3 THE RECORD THAT HE GOT MAD AT HER SOME TIME PRIOR TO THE
4 INCIDENT AND PUNCHED THE HOLES IN THE WALL. I MEAN, I
5 THINK THAT TESTIMONY NEEDS TO BE FLESHED OUT SO I CAN PUT
6 THIS IN SOME KIND OF CONTEXT.

7 I'LL CERTAINLY HEAR YOUR ARGUMENT.

8 THAT'S 7 THROUGH 12. 13, 14, AND 15 -- 13, 14, 15.

9 NO OBJECTION TO 16 THROUGH 19, CORRECT?

10 MS. CARROWAY: THAT'S CORRECT, YOUR HONOR.

11 THE COURT: ALL RIGHT. SOLICITOR, START WITH 13.

12 MR. STONE: I APOLOGIZE. BUT WHICH ONE IS 13?

13 THE COURT: HERE.

14 MR. STONE: JUST SHOW IT TO ME, AND I CAN GO FROM
15 THERE. THERE SHOULD BE TWO AND THREE IN A SERIES OF THAT
16 FIRST TWO DEPICTING THE VICTIM AS SHE WAS FOUND ONCE LAW
17 ENFORCEMENT GOT THERE. IT'S PARTICULARLY RELEVANT BECAUSE
18 OF THE NUMEROUS STORIES THE DEFENDANT TOLD LAW ENFORCEMENT
19 OF HOW SHE DIED.

20 THAT FIRST PHOTOGRAPH SHOWS THAT, NUMBER ONE, IF
21 YOU'LL NOTICE IN HER LEFT HAND SHE STILL HAS TOILET TISSUE
22 IN HER HAND. SHE WAS SEATED -- SITTING, EXCUSE ME, ON THE
23 TOILET WHEN SHE WAS SHOT.

24 THE COURT: IT'S HER RIGHT HAND.

25 MR. STONE: OKAY. I'M TURNING IT AROUND IN MY MIND.

1 I APOLOGIZE. AT LEAST IN ONE HAND. THE OTHER HAND, I
2 BELIEVE IS TUCKED UNDER HER.

3 THE COURT: THAT'S CORRECT.

4 MR. STONE: IT SHOWS, NUMBER ONE, THAT SHE WAS, OF
5 COURSE, NO THREAT TO THE DEFENDANT WHEN HE SHOT HER. IT
6 ALSO SHOWS THAT THE DEFENDANT LATER TELLS LAW ENFORCEMENT
7 -- ACTUALLY CALLS ON 9-1-1 AND SAYS THAT HE IS CHECKING THE
8 DECEASED'S PULSE, WHICH I ALSO THINK IF YOU LOOK VERY
9 CLOSELY AT NOT ONLY THAT PHOTOGRAPH, WHICH I BELIEVE IS
10 STATE'S 13, BUT ALSO STATE'S 14, THAT SHOWS THAT THAT'S
11 JUST ABOUT IMPOSSIBLE. IT DOESN'T LOOK LIKE SHE'S BEEN
12 MOVED SINCE SHE FELL.

13 AGAIN, I THINK THAT GOES DIRECTLY TO THE DEFENDANT'S
14 ALLEGATION THAT THIS WAS AN ACCIDENT. I THINK -- AND I SAY
15 ACCIDENT. THAT'S ACTUALLY HIS THIRD STATEMENT.

16 THE FIRST STATEMENT HE SAYS HE DOESN'T KNOW WHAT
17 HAPPENED.

18 THE SECOND STATEMENT IT WAS AN ATTEMPTED SUICIDE THAT
19 HE TRIED TO STOP AND THE GUN WENT OFF.

20 THE THIRD STATEMENT HE SAYS THAT IT WAS AN ACCIDENT.
21 HE WALKED IN JUST TO GET HER TO CALM DOWN. HE TRIPPED OVER
22 HER CLOTHES AND SHOT HER IN THE BACK OF THE HEAD.

23 AND THEN THE FOURTH STATEMENT HE ACTUALLY MADE WAS A
24 PART OF THE LAST STATEMENT WHICH WE ALLEGE TO BE THE
25 CONFESSION IN WHICH HE SAID HE BLACKED OUT AND HE DIDN'T

1 REMEMBER WHAT HAPPENED.

2 REGARDLESS, IT'S -- I BELIEVE IT'S RELEVANT TO SHOW
3 NOT ONLY THE PLACEMENT OF THE VICTIM, THAT SHE'S NO
4 THREAT ---

5 THE COURT: YOU TALKING ABOUT 13?

6 MR. STONE: YES, SIR. THAT SHE WAS NO THREAT TO HIM.

7 14 SHOWS THAT -- SOMETHING ELSE THAT I THINK IS
8 PARTICULARLY RELEVANT. THE DEFENDANT CALLED ON 9-1-1 AND
9 SAID, MY WIFE HAS BEEN SHOT BY A SMALL CALIBER PISTOL.
10 IF YOU CAN LOOK AT EITHER 13 OR 14 AND DETERMINE HOW
11 HE KNEW THAT, IT'S AN AMAZING THING. I THINK THAT'S THE
12 SCENE AS LAW ENFORCEMENT OFFICERS SAW IT WHEN THEY GOT
13 THERE. IT'S LITERALLY IMPOSSIBLE FROM THOSE TWO
14 PHOTOGRAPHS TO TELL THAT SHE HAS BEEN, (A) SHOT; OR (B)
15 WITH A SMALL CALIBER WEAPON. AND, OF COURSE, NO. 3 IS WITH
16 A PISTOL. THAT'S PARTICULARLY RELEVANT BECAUSE HE HAS ALL
17 THIS INSIDE INFORMATION WHEN HE'S CALLING 9-1-1; THAT'S THE
18 PURPOSES BEHIND 13 AND 14.

19 THE COURT: WELL, OKAY. 15?

20 MR. STONE: AND IN 15, SHE IS MOVED IN PHOTOGRAPH 15
21 BY EMS, AND THAT'S THE FIRST TIME ANYONE COULD REALLY TELL
22 WHAT HAPPENED TO HER; AND THAT WAS THE POINT BEHIND 15.

23 THE COURT: WELL, THERE APPEARS TO BE SOME -- DO YOU
24 HAVE A PATHOLOGIST WHO IS GOING TO TESTIFY?

25 MR. STONE: I DO.

1 THE COURT: I THINK THAT 15 IS PROBABLY UNNECESSARY.
2 IT'S PERHAPS MORE GRAPHIC THAN NEEDS TO BE SHOWN TO THE
3 JURY. I THINK THE PATHOLOGIST IS GOING TO HAVE TO IN SOME
4 WAY INDICATE THAT THERE'S A NEED TO SHOW 15 TO THE JURY IN
5 TERMS OF THE CAUSE OF DEATH.

6 I MEAN, TO AN UNTRAINED EYE -- AND IT MAY BE VERY
7 UNTRAINED -- IT APPEARS THAT YOU CAN -- ONE CAN SEE WHAT
8 APPEARS TO BE MAYBE AN ENTRY WOUND. ON 13 -- CERTAINLY
9 CANNOT TELL MUCH ABOUT THE CAUSE OF DEATH FROM 13. IT
10 APPEARS THAT THERE MAY BE AN ENTRY WOUND ON 14. AND 15 I
11 THINK IS JUST MORE GRAPHIC AND PREJUDICIAL THAN THIS JURY
12 NEEDS TO KNOW ABOUT, TO SEE, PLUS THE FACT THE BODY HAS
13 BEEN MOVED, WHICH IS NOT AS PROBATIVE AS EITHER 13 OR 14
14 MIGHT BE.

15 SO I UNDERSTAND THAT THE DEFENSE IS GOING TO OBJECT TO
16 ALL THREE. IT MAY BE NECESSARY TO SUPPORT THE TESTIMONY OR
17 CONTRADICT THE TESTIMONY OF THE DEFENDANT AS TO THE CAUSE
18 OF DEATH OR HIS VERSION OF THE CAUSE OF DEATH IS. BUT IF
19 THE PATHOLOGIST MAKES SOME -- AND I CAN'T -- I THINK WE
20 BETTER DO THE PATHOLOGIST IN CAMERA AS TO WHY HE WOULD
21 THINK 15 IS NECESSARY TO SHOW THE JURY, BECAUSE IT IN SOME
22 WAY DEPICTS THE CAUSE OF DEATH -- NOT SOME WAY DEPICTS THE
23 CAUSE OF DEATH, BUT BOLSTERS HIS TESTIMONY.

24 MR. STONE: AND I MAY BE ABLE TO MAKE IT EASIER FOR
25 THE COURT AS WELL THE DEFENSE. I ALSO HAVE -- AND THIS IS

1 PART OF THE DEFENSE'S MOTION. I HAVE AN ANATOMICALLY
2 CORRECT DUMMY FOR A BETTER WORD THAT THE PATHOLOGIST CAN
3 USE TO SHOW BASICALLY THE PATH OF THE WOUND. IT IS --
4 THERE'S NO CLOTHES ON IT. THERE'S NO BLOOD. THERE'S
5 NOTHING LIKE THAT.

6 I'LL WITHDRAW NUMBER -- IS IT 15? I'LL BE GLAD TO
7 WITHDRAW THAT WITH MY INTENTION OF LETTING THE PATHOLOGIST
8 SHOW ON THE EXHIBIT. AND, AS I SAID, THERE IS NOTHING
9 GRAPHIC ABOUT THAT. THERE'S NO BLOOD.

10 THE COURT: I UNDERSTAND.

11 MR. STONE: IF THAT WOULD ---

12 THE COURT: YES, I THINK THAT GOES A LONG WAY TO
13 RESOLVING THE ISSUE.

14 13 AND 14 I'LL -- WE'LL JUST SEE WHEN HE GETS HERE.
15 BUT 15 HAS BEEN WITHDRAWN.

16 (STATE'S EXHIBIT NO. 15 IS WITHDRAWN.)

17 MS. CARROWAY: OKAY. WE'LL GO WITH WITHHOLDING RULING
18 ON THAT UNTIL THE PATHOLOGIST TESTIFIES IN CAMERA.

19 THE COURT: OR SOMEHOW MAKES 13 AND 14 PROBATIVE,
20 WHETHER IT'S -- BASED ON HIS STATEMENT. I'M JUST NOT SURE
21 HOW THE EVIDENCE IS GOING TO FALL OUT. IF THERE'S
22 SOMETHING IN 13 AND 14 THAT CONTRADICTS WHAT THE DEFENDANT
23 SAYS HAPPENED, THEN IT BECOMES RELEVANT. I MEAN, IT
24 BECOMES PROBATIVE. BUT UNTIL THAT TIME, YOU KNOW, IT'S
25 SORT OF STERILE AT THIS POINT. I CAN'T DETERMINE ONE WAY

1 OR THE OTHER. BUT AT LEAST AS TO 15, 15 IS WITHDRAWN.

2 MS. CARROWAY: OKAY.

3 THE COURT: AND, SOLICITOR, 7 THROUGH 12 MAY BE JUST

4 DUPLICATIVE. BUT I'LL WITHHOLD RULING ON THOSE.

5 MR. STONE: YES, SIR. I BELIEVE ONCE WE PLAY THE

6 TAPES, YOUR HONOR, I THINK ALL OF THAT WILL BE A LITTLE BIT

7 MORE UNDERSTANDABLE.

8 THE COURT: ALL RIGHT.

9 MS. CARROWAY: YOUR HONOR, I THINK WHAT WE HAVE LEFT

10 -- THE SOLICITOR IS CLEAR THAT HE DOESN'T INTEND TO

11 INTRODUCE ---

12 THE COURT: KNIVES OR WEAPONS?

13 MS. CARROWAY: --- KNIVES OR WEAPONS ---

14 MR. STONE: DO NOT.

15 THE COURT: WHAT ABOUT THE USE OF THE DUMMY?

16 MS. CARROWAY: YOUR HONOR, I'M ALSO OBJECTING TO THE

17 USE OF THE DUMMY. I THINK THE INVESTIGATORS CAN TESTIFY TO

18 WHAT THEY SAW. THE PATHOLOGIST CAN TESTIFY TO WHAT SHE

19 FOUND. THIS ISN'T A PARTICULARLY COMPLICATED CRIME SCENE

20 WHERE THERE'S BULLETS FLYING EVERYWHERE OR ANYTHING OF THAT

21 NATURE AND SHE NEEDS TO LINE THINGS UP. IT'S ONE SHOT.

22 IT'S NOT LIKE THERE'S STRAY BULLETS. THERE'S NOTHING. I

23 THINK THE PURPOSE OF THE DUMMY IS TO KIND OF ACT ON WHAT

24 HAPPENED AND TO INFLAME THE JURY.

25 THE COURT: ALL RIGHT. WELL, I THINK IF THE TESTIMONY

1 IS AS I ANTICIPATE, I THINK IT'S RELEVANT. IT'S PROBATIVE.
2 YOU KNOW, THE DIRECTION OF THE SHOTS AND THINGS LIKE THAT,
3 BECAUSE I DON'T KNOW IF THAT'S RELEVANT OR NOT. IN OTHER
4 WORDS, WAS SHE SHOT LAYING DOWN? WAS SHE SHOT SITTING?
5 WAS SHE SHOT IN BED? ALL OF THOSE THINGS MAY BE RELEVANT.
6 AND I CAN'T PRECLUDE THE USE OF THE DUMMY AT THIS POINT.

7 MS. CARROWAY: OKAY. AND I BELIEVE ALL WE HAVE LEFT
8 IS THE ---

9 THE COURT: THE STATEMENTS?

10 MS. CARROWAY: YES, SIR.

11 THE COURT: ALL RIGHT. HELP ME OUT HERE. WHAT ARE WE
12 GOING TO DO? ARE WE GOING TO PLAY THEM OR ARE YOU GOING TO
13 FIRST MARK WHAT YOU OBJECT TO?

14 MS. CARROWAY: YOUR HONOR, I CAN MARK WHAT I OBJECT
15 TO, AND THAT WILL BE WITH REFERENCE TO THEM BEING REDACTED
16 IF THEY WERE ADMITTED IN SPITE OF THE DENNO HEARING.

17 THE COURT: LET'S DO THIS ---

18 MS. CARROWAY: DENNO BEING A SEPARATE ISSUE.

19 THE COURT: LET'S DO THE DENNO HEARING. HOW MANY
20 OFFICERS?

21 MR. STONE: TWO, YOUR HONOR. ONE IS RELATIVELY QUICK.
22 THE FIRST ONE IS ACTUALLY WAS A NON-CUSTODIAL. AND I'LL
23 PROBABLY NEED TO PUT HIM UP JUST TO ESTABLISH THAT.

24 THE COURT: GO AHEAD.

25 (STATEMENT OF JOSE A. HERRERA, 9-16-07, 1 PAGE, MARKED

RHETT PARNELL - DIRECT BY MR. STONE

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1 FOR IDENTIFICATION AS STATE'S EXHIBIT NO. 20.)

2 THE COURT: THE COURT REPORTER NEEDS A BREAK.

3 (A RECESS WAS TAKEN.)

4 THE COURT: CALL YOUR WITNESS.

5 MR. STONE: YES, SIR. THE STATE CALLS CORPORAL RHETT
6 PARNELL.

7 RHETT C. PARNELL, BEING FIRST
8 DULY SWORN, TESTIFIED AS FOLLOWS:

9 CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME AND
10 SPELL YOUR LAST NAME.

11 WITNESS: MY FIRST NAME IS RHETT CARTER PARNELL,
12 P-A-R-N-E-L-L.

13 DIRECT EXAMINATION BY MR. STONE:

14 Q AND IT IS PRONOUNCED PARNELL?

15 A YES, SIR.

16 Q I APOLOGIZE. I GOT HUNG UP ON THAT. I APOLOGIZE.

17 CORPORAL, YOU WERE CALLED TO THE SCENE ON SEPTEMBER 16 AT
18 150 CHERRY POINT ROAD; IS THAT CORRECT?

19 A YES, SIR, IT IS.

20 Q AND WHERE IS THAT LOCATED EXACTLY?

21 A IN BLUFFTON. THAT WOULD BE SOUTH CAROLINA. YOU TAKE
22 CHERRY POINT ROAD AND FOLLOW IT AROUND TO A CURVE, THEN IT
23 DEAD ENDS.

24 Q OKAY. AND BEFORE YOU GET TO THE DEAD END, THAT'S AT
25 150 CHERRY POINT?

RHETT FARNELL - DIRECT BY MR. STONE

78

- 1 A YES, SIR.
- 2 Q ALL RIGHT. AND WHAT WERE YOU CALLED TO THE SCENE TO
- 3 DO? WHAT WAS YOUR JOB?
- 4 A I WAS JUST ROAD PATROL OFFICER, AND INITIALLY
- 5 RESPONDED FOR A SHOTS FIRED CALL THERE. AND WE WERE --
- 6 THAT'S WHAT I WAS HEADING THERE FOR.
- 7 Q ALL RIGHT. AND WHEN YOU GOT THERE, WERE YOU BY
- 8 YOURSELF OR WAS ANYBODY ELSE WITH YOU?
- 9 A YES, SIR, THERE WERE OTHER OFFICERS THERE.
- 10 Q OKAY. WHO WAS WITH YOU, DO YOU RECALL?
- 11 A AT THE TIME IT WAS CORPORAL RICK PATRILLA AND SERGEANT
- 12 ERIC RICKER.
- 13 Q NOW, DID THEY COME WITH YOU OR DID THEY COME IN THEIR
- 14 SEPARATE CARS?
- 15 A SEPARATE CARS.
- 16 Q ONCE YOU GOT TO 150, WERE THEY ALREADY THERE OR DID
- 17 YOU BASICALLY ARRIVE AT THE SAME TIME?
- 18 A BASICALLY AT THE EXACT SAME TIME.
- 19 Q NOW, ONCE YOU GOT TO THE SCENE, WHAT DID YOU SEE?
- 20 WHAT DID YOU ENCOUNTER?
- 21 A WE RAN IN TO MR. HERRERA ACTUALLY IN THE ROAD IN FRONT
- 22 OF HIS HOUSE. AND ---
- 23 Q DO YOU SEE MR. HERRERA IN THE COURTROOM TODAY?
- 24 A YES, SIR, I DO.
- 25 Q AND COULD YOU POINT HIM OUT FOR ME, PLEASE?

RHETT PARNELL - DIRECT BY MR. STONE

79

- 1 A SITTING RIGHT THERE.
- 2 Q YOU'RE POINTING TO THE DEFENDANT, THIS FIRST GENTLEMAN
- 3 AT THE DEFENSE TABLE?
- 4 A THAT'S CORRECT.
- 5 Q ALL RIGHT. NOW, LET ME FIRST SHOW YOU STATE'S EXHIBIT
- 6 1, MAKE SURE WE'RE TALKING ABOUT THE SAME THING. IS THAT
- 7 THE ADDRESS THAT YOU RESPONDED TO, STATE'S EXHIBIT 1?
- 8 A YES, SIR, IT IS.
- 9 Q ALL RIGHT. AND IS THAT A FAIR AND ACCURATE DEPICTION
- 10 OF THE SCENE AS YOU SAW IT THAT NIGHT?
- 11 A YES, SIR.
- 12 Q ALL RIGHT. AND WHAT EXACTLY IS IN THAT PHOTOGRAPH?
- 13 A THE FRONT OF THE HOUSE, FRONT DOOR, A PORCH. THERE'S
- 14 A SILVER VEHICLE AND A DARK BLUE VEHICLE.
- 15 Q AND THAT IS A FAIR AND ACCURATE DEPICTION OF THE SCENE
- 16 AS YOU GOT THERE?
- 17 A YES, SIR.
- 18 Q OKAY. NOW, ONCE YOU ARRIVED AT CHERRY POINT DRIVE AND
- 19 YOU SEE MR. HERRERA, WHAT -- DO YOU HAVE A PARTICULAR
- 20 RESPONSIBILITY? HOW IS YOURS ANY DIFFERENT THAN THE OTHER
- 21 TWO OFFICERS THAT ARE THERE?
- 22 A WELL, WE ALL SHARE THE SAME RESPONSIBILITIES AT THE
- 23 TIME. I SPOKE TO MR. HERRERA TO THE SIDE, BASICALLY ASKED
- 24 HIM WHAT HAPPENED AT THAT TIME.
- 25 Q OKAY. NOW, AT THE TIME THAT YOU'RE TALKING TO HIM,

- 1 HE'S STANDING OUTSIDE OF THE HOUSE?
- 2 A THAT'S CORRECT.
- 3 Q ANYONE ELSE AROUND HIM?
- 4 A NO, SIR.
- 5 Q ALL RIGHT. AT THIS TIME IS HE IN CUSTODY?
- 6 A NO, SIR.
- 7 Q IN FACT, AT THIS POINT IS HE EVEN A SUSPECT ACCORDING
- 8 TO YOU?
- 9 A NO, SIR.
- 10 Q ALL RIGHT. NOW, WHEN YOU ASK HIM WHAT HAPPENED, WHAT
- 11 DOES HE TELL YOU AT THE SCENE?
- 12 A HE SAID THAT HE HAD JUST GOTTEN HOME FROM THE STORE,
- 13 LOCAL STORE, AND CAME HOME AND FIND HIS WIFE IN THE BEDROOM
- 14 DEAD.
- 15 Q DID YOU ASK HIM ANYTHING ELSE ABOUT THE CONDITION OF
- 16 THE HOUSE, ANYTHING LIKE THAT?
- 17 A NO, SIR, NOT AT THAT TIME.
- 18 Q DID YOU AT SOME POINT ASK HIM TO WRITE A STATEMENT?
- 19 A YES, SIR, I DID.
- 20 Q ALL RIGHT. NOW, LET ME ASK YOU BEFORE WE GO TO HIS
- 21 STATEMENT, DO YOU NORMALLY GET STATEMENTS FROM WITNESSES AS
- 22 WELL AS DEFENDANTS?
- 23 A YES, SIR.
- 24 Q ALL RIGHT. AT THE TIME THAT THE STATEMENT THAT YOU
- 25 GOT FROM MR. HERRERA, WHAT WAS HE TO YOU AT THAT POINT?

RHETT PARNELL - DIRECT BY MR. STONE

81

- 1 A AT THAT POINT HE WAS A WITNESS.
- 2 Q ALL RIGHT. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S
- 3 EXHIBIT 20. ASK IF YOU COULD IDENTIFY THAT?
- 4 A THIS IS THE STATEMENT HE GAVE ME ON THE TRUNK OF MY
- 5 CAR THAT NIGHT.
- 6 Q OKAY. LET ME SHOW THIS TO THE DEFENSE ATTORNEY.
- 7 (PAUSE.)
- 8 Q THIS STATEMENT WHEN YOU SAY HE GAVE IT TO YOU ON THE
- 9 TRUNK OF YOUR CAR, WHAT DO YOU MEAN BY THAT?
- 10 A HE LITERALLY WROTE IT ON THE TRUNK -- USING THE TRUNK
- 11 OF THE CAR AS A DESK. HE WROTE THE STATEMENT.
- 12 Q OKAY. AND THIS STATEMENT AT THE TIME -- AGAIN, HE IS
- 13 NOT IN CUSTODY AT THE TIME?
- 14 A NO, SIR.
- 15 Q ALL RIGHT.
- 16 MR. STONE: I'LL HAND IT UP TO YOUR HONOR. IF THERE'S
- 17 ANY QUESTION FROM THE DEFENSE.
- 18 (PAUSE.)
- 19 Q I ASK YOU. I KNOW HE WASN'T IN CUSTODY. DID YOU DO
- 20 ANYTHING, FORCE HIM TO WRITE A STATEMENT, COERCE HIM IN ANY
- 21 WAY?
- 22 A NO, SIR.
- 23 MR. STONE: YOUR HONOR, THAT'S ALL WE WOULD HAVE FROM
- 24 THIS WITNESS CONCERNING THAT PARTICULAR STATEMENT.
- 25 THE COURT: MS. CARROWAY.

RHETT PARNELL - CROSS BY MS. CARROWAY

82

1 MS. CARROWAY: THANK YOU, YOUR HONOR.

2 CROSS EXAMINATION BY MS. CARROWAY:

3 Q YOU SAID THAT YOU ARRIVED WITH PATRILLA AND RICKER?

4 A THAT'S CORRECT.

5 Q OKAY. HOW MANY POLICE CARS WERE THERE?

6 A RIGHT WHEN WE FIRST ARRIVED THERE, CORPORAL PATRILLA
7 WAS THE FIRST ONE THERE. RICKER AND I PULLED UP SECOND, SO
8 THAT WOULD MAKE THREE. AND THEN THE SERGEANT FOLLOWED UP,
9 THE SUPERVISOR -- THE ROAD SUPERVISOR CAME IN.

10 Q SO PATRILLA WAS THE FIRST ONE THERE?

11 A YES, MA'AM.

12 Q AND HAD YOU LISTENED TO THE 9-1-1 TAPE BEFORE YOU
13 ARRIVED?

14 A NO. NO. WE DON'T HAVE THE CAPABILITY TO HEAR THAT.

15 Q AND PATRILLA'S REPORT SAYS THE DEFENDANT WAS DETAINED
16 WHEN HE ARRIVED?

17 A WE NEVER PLACED HANDCUFFS ON HIM AT ALL.

18 Q WHEN YOU NORMALLY DETAIN A SUSPECT, HOW WOULD YOU GO
19 ABOUT DOING THAT?

20 A THE NORMAL PROCEDURE TO DETAIN SOMEONE IS TO PLACE
21 HANDCUFFS ON THEM IN ORDER TO CONTROL THEM.

22 Q OKAY.

23 MS. CARROWAY: BEG THE COURT'S INDULGENCE FOR JUST ONE
24 MINUTE, YOUR HONOR.

25 (PAUSE.)

RHETT PARNELL - REDIRECT BY MR. STONE

83

- 1 MS. CARROWAY: NO FURTHER QUESTIONS, YOUR HONOR.
- 2 MR. STONE: JUST BRIEFLY, YOUR HONOR.
- 3 REDIRECT EXAMINATION BY MR. STONE:
- 4 Q ONE OTHER THING. DID YOU ASK HIM ABOUT THE CONDITION
- 5 OF THE DOOR TO THE HOUSE?
- 6 A I DID.
- 7 Q WAS THAT BEFORE YOU GOT THIS WRITTEN STATEMENT OR
- 8 AFTER YOU GOT THE WRITTEN STATEMENT?
- 9 A IT WAS BEFORE THE WRITTEN STATEMENT.
- 10 Q THIS WAS WHEN YOU INITIALLY ASKED HIM WHAT HAPPENED?
- 11 A YES, SIR.
- 12 Q AND WHAT DID YOU ASK HIM CONCERNING THE CONDITION OF
- 13 THE DOOR?
- 14 A WELL, ORIGINALLY HE SAID THAT, YOU KNOW, HE CAME HOME
- 15 AND FOUND HIS WIFE WAS DEAD. SO THE GENERAL QUESTION IS TO
- 16 ASK: WELL, WAS THE DOOR FORCED OPEN?
- 17 AND HE SAID, NO, IT WAS NOT FORCED OPEN.
- 18 Q DID YOU ASK HIM WHETHER IT WAS LOCKED OR UNLOCKED?
- 19 A YES, SIR, I DID.
- 20 Q AND WHAT DID HE SAY?
- 21 A HE SAID HE HAD TO OPEN THE DOOR.
- 22 MR. STONE: OKAY. I DON'T HAVE ANYTHING ELSE, YOUR
- 23 HONOR.
- 24 THE COURT: MS. CARROWAY?
- 25 MS. CARROWAY: YOUR HONOR, NO FURTHER QUESTIONS OF

BOB BROMAGE - DIRECT BY MR. STONE

84

1 THIS WITNESS.

2 THE COURT: YOU MAY COME DOWN.

3 (THE WITNESS LEAVES THE WITNESS STAND.)

4 MR. STONE: YOUR HONOR, THE STATE CALLS CAPTAIN BOB
5 BROMAGE TO THE STAND.

6 THE COURT: IS THAT WITH REGARD TO THIS STATEMENT?

7 MR. STONE: NO, SIR, IT'S NOT. WE CAN PROBABLY COVER
8 THAT STATEMENT WITHOUT CAPTAIN BROMAGE.

9 THE COURT: ALL RIGHT. HE CAN COME ON UP. HE CAN
10 HAVE A SEAT UP HERE.

11 BOB BROMAGE, BEING FIRST DULY
12 SWORN, TESTIFIED AS FOLLOWS:

13 CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME,
14 SPELL YOUR LAST NAME.

15 WITNESS: ROBERT E. BROMAGE, B-R-O-M-A-G-E.

16 DIRECT EXAMINATION BY MR. STONE:

17 Q AND YOU'RE A CAPTAIN WITH BEAUFORT COUNTY SHERIFF'S
18 OFFICE; IS THAT CORRECT?

19 A YES, SIR.

20 Q WOULD YOU HAVE BEEN THE LEAD INVESTIGATING OFFICER,
21 THE HIGHEST RANKING OFFICER AT THE SCENE ON SEPTEMBER 16, I
22 BELIEVE; IS THAT CORRECT?

23 A I WAS.

24 Q OKAY. AND AT 150 CHERRY POINT DRIVE (SIC); IS THAT
25 RIGHT?

BOB BROMAGE - DIRECT BY MR. STONE

85

- 1 A YES, SIR.
- 2 Q NOW, DID YOU ALSO DEAL WITH THE DEFENDANT, MR.
- 3 HERRERA?
- 4 A I DID.
- 5 Q AND DO YOU SEE HIM IN THE COURTROOM?
- 6 A I DO.
- 7 Q AND COULD YOU POINT HIM OUT FOR US PLEASE?
- 8 A SITTING NEXT TO THE DEFENSE COUNSEL, DARK HAIR,
- 9 GLASSES, BROWN SHIRT.
- 10 Q NOW, AND I WANT TO SEPARATE THIS IF YOU WOULD PLEASE.
- 11 YOU TOOK A NUMBER OF STATEMENTS FROM MR. HERRERA; IS THAT
- 12 CORRECT?
- 13 A I DID.
- 14 Q THE FIRST STATEMENT THAT YOU TOOK FROM MR. HERRERA,
- 15 TELL ME THE CONDITIONS SURROUNDING THAT? WHAT HAPPENED
- 16 THERE? WHERE ARE YOU?
- 17 A SEPTEMBER 16, 2007 AT 150 CHERRY POINT ROAD ---
- 18 THE COURT: THE 16TH?
- 19 WITNESS: THE 16TH OF SEPTEMBER 2007.
- 20 A AT HIS RESIDENCE AT 150 CHERRY POINT ROAD. HE WAS
- 21 OUTSIDE THE RESIDENCE, NOT HANDCUFFED, JUST STANDING
- 22 AGAINST THE POLICE CAR TO MY RECOLLECTION.
- 23 Q AND THIS WAS AFTER CORPORAL PARNELL HAD ALREADY GOTTEN
- 24 THE STATEMENT FROM HIM?
- 25 A THAT'S CORRECT.

BOB BROMAGE - DIRECT BY MR. STONE

86

1 Q NOW, YOU ARRIVED. I'M ASSUMING YOU DID NOT ARRIVE
2 WITH THE OTHER THREE OFFICERS THAT PARNELL TALKED ABOUT?

3 A IT TOOK ME CONSIDERABLY LONGER TO GET THERE. I CAME
4 FROM THE HILTON HEAD ISLAND, AND DROVE OUT THERE. IT'S
5 PROBABLY ABOUT A 30-MINUTE RIDE. SO AFTER THE ALTERCATION,
6 IT WAS ABOUT 7:30 P.M.

7 Q AND YOU HAD ALREADY HAD ACCESS TO THE 9-1-1 TAPES AT
8 THAT POINT, RIGHT?

9 A I'D JUST FINISHED PLAYING THAT TO ME ON MY CELL PHONE
10 ON THE WAY OUT THERE, SO I COULD HEAR WHAT HE REPORTED TO
11 9-1-1.

12 Q AND THE PERSON REPORTING TO 9-1-1 IS MR. HERRERA; IS
13 THAT ---

14 A HE IDENTIFIED HIMSELF AS HERRERA.

15 Q OKAY. ONCE YOU ARRIVED AT THE SCENE, WHAT DO YOU DO?

16 A WENT IN THE HOUSE TO GET AN IDEA OF WHAT WE HAD, TOOK
17 A LOOK AT THE VICTIM. THE VICTIM WAS LAYING IN THE MASTER
18 BATHROOM OFF OF THE MASTER BEDROOM, TO THE LEFT-HAND SIDE
19 OF THE RESIDENCE. AND FROM WHERE I WAS STANDING, I
20 COULDN'T QUITE SEE ANY WOUND OR ANYTHING ELSE. BUT SHE WAS
21 DECEASED, BECAUSE SHE HAD BEEN CHECKED BY EMS PRIOR TO
22 THAT.

23 THAT'S WHEN I EXITED THE RESIDENCE AND PULLED MR.
24 HERRERA ASIDE AND WALKED OVER -- WALKED OVER TO THE SIDE
25 YARD AND HAD A CONVERSATION WHICH WAS ACTUALLY TAPED WITH A.

BOB BROMAGE -- DIRECT BY MR. STONE

87

1 DIGITAL RECORDER.

2 Q LET ME FIRST -- BEFORE WE GO INTO THAT -- SHOW YOU
3 STATE'S EXHIBIT -- AND I THINK THIS WILL BE STATE'S EXHIBIT
4 13. CAN YOU IDENTIFY THAT PHOTOGRAPH?

5 A THAT'S THE ONE THAT I IDENTIFIED AS KATHERINE HERRERA
6 THAT WAS DECEASED IN THE RESIDENCE.

7 Q IS THAT FAIR AND ACCURATE DEPICTION OF HOW KATHERINE
8 HERRERA WAS WHEN YOU WALKED INTO THE BATHROOM IN THE HOUSE?

9 A YES. YES, SIR.

10 THE COURT: 13?

11 MR. STONE: 13, YOUR HONOR.

12 THE COURT: THAT'S AFTER EMS HAD BEEN THERE?

13 MR. STONE: I'M SORRY.

14 Q I'LL ASK YOU THAT ---

15 A I BELIEVE EMS DETERMINED SHE WAS DECEASED PRIOR TO US
16 GOING IN. WE DON'T MAKE THAT DETERMINATION.

17 Q THIS IS THE SCENE AS YOU SAW IT WHEN YOU GOT THERE?

18 A THAT'S PRECISELY WHAT I SAW.

19 Q OKAY. ALL RIGHT. NOW, LET ME SHOW YOU THE OTHER
20 PHOTOGRAPH.

21 MR. STONE: I DON'T PLAN ON OFFERING THIS AS EVIDENCE.

22 Q LET ME SHOW YOU STATE'S EXHIBIT 15. WOULD YOU TELL ME
23 ABOUT THAT PHOTOGRAPH PLEASE?

24 A YES, THAT'S -- THAT'S THE PHOTOGRAPH AFTER WE ROLLED
25 HER BODY OVER TO TRY TO DETERMINE AT THE SCENE WHAT HAD

1 OCCURRED AND HOW SHE DIED. WE'RE NOT PATHOLOGIST, BUT WE
2 DO SEE THIS A GOOD BIT. THE WHITE ROUND THINGS ON HER BODY
3 ARE ACTUALLY LEADS THAT EMS WOULD HAVE PUT ON TO DETERMINE
4 ANY VITAL SIGNS.

5 Q SO 13 IS AS IT WAS AT THE SCENE. THIS IS AFTER -- 15
6 IS AFTER SHE HAS BEEN TURNED OVER BY EMS?

7 A YES, THAT IS CORRECT.

8 Q LET ME SHOW YOU STATE'S EXHIBIT 14 AND ASK IF YOU CAN
9 IDENTIFY THAT AS WELL?

10 A THAT'S A CLOSE-UP PICTURE OF THE -- I GUESS IT WOULD
11 BE -- WHAT'S IT NO. 12 OR 13, THE FIRST ONE YOU SHOWED ME.

12 Q 13.

13 A NO. 13. THAT'S A CLOSE-UP SHOT TO FURTHER SHOW IT'S
14 VERY, VERY DIFFICULT TO DETERMINE WHAT HAD CAUSED THE
15 INJURY.

16 Q OKAY. AND, AGAIN, THIS IS HOW THE DECEASED LOOKED
17 WHEN YOU GOT TO THE HOUSE?

18 A THAT'S HOW SHE LOOKED.

19 Q OKAY. ALL RIGHT. LET ME SHOW YOU STATE'S EXHIBIT 3,
20 4, 6, AND 5. ARE THESE ALSO FAIR AND ACCURATE DEPICTIONS
21 OF THE SCENE AS YOU SAW THEM THAT DAY?

22 A YES, SIR.

23 Q OKAY. I'LL SHOW YOU 7 THROUGH 11 AND ASK IF THESE --
24 OR 12, EXCUSE ME. ARE THESE ALSO FAIR AND ACCURATE
25 DEPICTIONS OF THE SCENE AS YOU SAW IT WHEN YOU GOT THERE

BOB BROMAGE -- DIRECT BY MR. STONE

89

1 THAT DAY?

2 A YES, SIR.

3 Q OKAY. ALL RIGHT. NOW, THE FIRST STATEMENT THAT YOU

4 GET FROM MR. HERRERA IS A RECORDED STATEMENT; IS THAT

5 CORRECT? THE ONE THAT -- I'M SORRY, NOT RECORDED

6 STATEMENT. THE STATEMENT BASICALLY AS HE'S STANDING

7 OUTSIDE; IS THAT CORRECT?

8 A THAT'S CORRECT. I WALKED OVER UP TO ABOUT 10 YARDS

9 FROM THE SHERIFF'S OFFICE PATROL CAR WITH HIM.

10 Q AND IS HE IN CUSTODY AT THIS TIME THAT YOU'RE TALKING

11 TO HIM?

12 A HE'S NOT IN CUSTODY.

13 Q ALL RIGHT. AND DO YOU THEREFORE READ HIM HIS RIGHTS,

14 ANYTHING LIKE THAT?

15 A NO, I DO NOT.

16 Q OKAY. AND AT THE POINT THAT YOU'RE TALKING TO HIM,

17 WHERE ARE THE OTHER OFFICERS, ARE THEY AROUND AS WELL?

18 A THEY'RE OFF TO THE SIDE. I TALK TO HIM MYSELF TO TRY

19 TO GET AN IDEA OF WHAT HE WAS REPORTING.

20 Q OKAY. ALL RIGHT.

21 MR. STONE: YOUR HONOR, I HAVE THE RECORDING OF THIS

22 PARTICULAR INTERVIEW. I OFFER THAT FOR YOUR HONOR AT THIS

23 POINT. THAT IS TRACK 2, AND I HAVE ALREADY SHOWN IT TO

24 DEFENSE COUNSEL.

25 THE COURT: OKAY. TRACK 2?

1 MR. STONE: IT'S TRACK 2 FOR THE CD THAT I'LL BE
2 PUTTING -- THAT I WILL BE OFFERING AS WELL. AGAIN, LET ME
3 -- I'M SORRY. THERE'S A TRANSCRIPTION OF THAT, YOUR HONOR.
4 I APOLOGIZE. IT STARTS ON PAGE 55.

5 THE COURT: I NOW HAVE GIVEN MY TRANSCRIPT TO MS.
6 CARROWAY.

7 MR. STONE: IT GOES THROUGH 58.

8 THE COURT: ALL RIGHT. 55 THROUGH 58. ARE YOU WITH
9 US, MS. CARROWAY?

10 MS. CARROWAY: YES, SIR, YOUR HONOR.

11 THE COURT: OKAY.

12 MR. STONE: DO YOU WANT ME TO PLAY THAT, YOUR HONOR?

13 THE COURT: THIS HAS A GOOD MANY INAUDIBLES ON THIS.

14 MR. STONE: LET ME ASK.

15 THE COURT: GO AHEAD.

16 Q CAPTAIN BROMAGE, THE TAPE RECORDER, WHERE IS THAT ON
17 YOU? IS IT IN YOUR POCKET? IS IT ---

18 A MY CHEST POCKET RIGHT HERE. IT COULD HAVE BEEN IN MY
19 PANTS POCKET, THOUGH.

20 Q HAVE YOU HEARD THIS RECORDING AND READ THE
21 TRANSCRIPTION?

22 A I HAVE.

23 Q IS THAT A FAIR AND ACCURATE DEPICTION AS YOU RECALL
24 IT?

25 A YES, SIR.

BOB BROMAGE - DIRECT BY MR. STONE

91

- 1 THE COURT: OKAY.
- 2 (TAPE WAS PLAYED IN OPEN COURT.)
- 3 Q CAPTAIN BROMAGE, IS THAT A FULL RECORDING OF THE
- 4 CONVERSATION YOU HAD WITH MR. HERRERA AT THE SCENE?
- 5 A THAT IS.
- 6 Q AND DURING THAT CONVERSATION DID YOU THREATEN HIM,
- 7 PROMISE HIM ANYTHING, IN ANY OTHER WAY TRY TO GET HIM TO
- 8 MAKE THAT STATEMENT?
- 9 A NO, SIR.
- 10 Q OKAY. AND WAS HE IN CUSTODY AT THAT TIME?
- 11 A NO, HE WAS NOT.
- 12 Q NOW, AT SOME POINT YOU PUT HIM IN CUSTODY; IS THAT
- 13 CORRECT?
- 14 A HE WAS PUT IN CUSTODY AFTER WE DID THE GUNSHOT RESIDUE
- 15 KIT, WHICH WOULD HAVE BEEN SOME TIME AFTER -- IT WOULD HAVE
- 16 BEEN WITHIN PROBABLY 15 MINUTES OF THE INTERVIEW.
- 17 Q OKAY. THE INTERVIEW THAT WE JUST HEARD?
- 18 A THE ONE YOU JUST HEARD.
- 19 Q AND WHEN YOU PUT HIM IN CUSTODY, WHAT DID YOU PUT HIM
- 20 IN CUSTODY FOR?
- 21 A A PAROLE OR PROBATION VIOLATION OUT OF CALIFORNIA. I
- 22 BELIEVE PAROLE.
- 23 Q OKAY. DID YOU THEN INTERVIEW HIM AGAIN AFTER HE WAS
- 24 IN CUSTODY?
- 25 A I DID.

BOB BROMAGE — DIRECT BY MR. STONE

92

1 Q AND WHERE DID THAT INTERVIEW TAKE PLACE?

2 A THE FIRST ONE WAS AT THE BLUFFTON LAW ENFORCEMENT
3 CENTER THAT SAME NIGHT. THE BLUFFTON SUBSTATION, WHICH IS
4 ACTUALLY WHERE THE TANGER OUTLET STORES ARE.

5 Q OKAY. AND THAT IS HOW FAR FROM THE CRIME SCENE?

6 A 6 MILES.

7 Q THAT IS A SUBSTATION FOR THE BEAUFORT SHERIFF'S
8 OFFICE? IT'S NOT THE BLUFFTON POLICE DEPARTMENT ---

9 A NO.

10 Q --- IT'S THE SHERIFF'S OFFICE; IS THAT RIGHT?

11 A THE SHERIFF'S OFFICE SUBSTATION INSIDE THE TANGER
12 SHOPPING OUTLET, THAT THEY ALLOW US TO OCCUPY FOR A PLACE
13 TO SET UP SHOP IN BLUFFTON.

14 Q ALL RIGHT. AND AT THIS POINT HE IS IN CUSTODY; IS
15 THAT CORRECT?

16 A THAT IS CORRECT.

17 MR. STONE: YOUR HONOR, THAT WOULD BE TRANSCRIPT
18 STARTING ON PAGE 3. AND IT WILL CONTINUE UNTIL PAGE 54.

19 THE COURT: OKAY. HOW WAS THIS MADE?

20 MR. STONE: I'M SORRY?

21 THE COURT: HOW WAS THIS MADE?

22 MR. STONE: OH, I APOLOGIZE. I DIDN'T COVER THAT.

23 Q CAPTAIN, WHEN -- THIS WAS ALSO RECORDED, THIS SECOND
24 INTERVIEW?

25 A YES, SIR.

BOB BROMAGE - DIRECT BY MR. STONE

93

1 Q AND THIS IS, AGAIN, HE'S IN CUSTODY AT THIS POINT?

2 A HE'S IN CUSTODY AT THAT POINT.

3 Q WHEN YOU RECORD IT, WHERE IS THE RECORDER, HOW IS THIS
4 RECORDED?

5 A GENERALLY SPEAKING, IT'S CLOSE TO THE SUBJECT YOU'RE
6 INTERVIEWING. HE KNOWS IT'S THERE. I BRING A NOTEBOOK,
7 AND I BELIEVE I DID ON THIS OCCASION. THE NOTEBOOK IN
8 FRONT OF HIM. HE'S ACROSS THE TABLE. WE'RE RIGHT NEXT TO
9 HIM, AND I CAN GET HIM ON THE RECORDER.

10 Q NOW, TO YOUR KNOWLEDGE, DOES ANYONE ELSE READ HIM HIS
11 RIGHTS OTHER THAN YOU?

12 A I BELIEVE I'M THE ONLY ONE WHO DID IT.

13 Q AND YOU DID THAT ON THE RECORDING AS WELL; IS THAT
14 CORRECT?

15 A I DID.

16 Q DID YOU READ HIM HIS RIGHTS WHEN YOU INITIALLY TOOK
17 HIM INTO CUSTODY OR JUST WHEN YOU GOT HIM TO THE SUBSTATION
18 FOR THIS RECORDING?

19 A I READ HIM HIS RIGHTS WHEN I WAS SITTING DOWN TO
20 INTERVIEW HIM AFTER HE WAS IN CUSTODY.

21 Q ALL RIGHT. AND SO THAT'S ON THIS TAPE?

22 A THAT IS ON THIS TAPE.

23 MR. STONE: YOUR HONOR, I WOULD LIKE TO PLAY THAT AT
24 THIS TIME.

25 THE COURT: I HOPE IT'S BETTER THAN THE LAST ONE.

1 MR. STONE: IT IS. HOWEVER, IT IS LONGER.

2 THE COURT: LONGER IS FINE.

3 (TAPE IS PLAYED IN OPEN COURT.)

4 THE COURT: MS. CARROWAY, MY UNDERSTANDING IS YOU PLAN
5 TO GO THROUGH THIS STATEMENT AND HAVE OBJECTIONS TO
6 PORTIONS OF IT; IS THAT CORRECT, YOU WISH TO REDACT
7 PORTIONS OF IT?

8 MS. CARROWAY: YES, SIR.

9 THE COURT: ALL RIGHT. NOW, DO YOU HAVE AN OBJECTION
10 BASED ON JACKSON V. DENNO TO THE VOLUNTARINESS OF IT? IF
11 YOU DO NOT, THEN WE DON'T NEED TO LISTEN TO THIS WHOLE TAPE
12 UNTIL YOU TELL ME WHAT YOUR OBJECTIONS ARE. DO YOU WANT TO
13 DO IT TWICE?

14 MS. CARROWAY: YES, SIR, I DO HAVE AN OBJECTION UNDER
15 NAVY AND THE SEIBERT FACTORS BASED ON THE ORIGINAL
16 STATEMENT, AND THAT CARRYING OVER. AND I COULD GO THROUGH
17 THAT NOW OR ---

18 THE COURT: YOU WOULD HAVE TO BRING UP NAVY. MY CASE.
19 GOT REVERSED.

20 I DON'T SEE -- GO AHEAD. LET'S TALK ABOUT THAT,
21 BECAUSE NAVY THERE WAS -- THERE WAS -- THE POLICE ACTUALLY
22 LURED IN A SENSE THE DEFENDANT INTO MAKING FURTHER
23 STATEMENTS BECAUSE THEY KEPT SAYING, WELL, WE KNOW THAT, WE
24 KNOW THIS, WE KNOW THIS, WE KNOW THAT.

25 NOW, AT THIS POINT, HOW IS THAT COMPARABLE TO WHAT WE

1 HAVE HERE? I HAVE NOT SEEN OR HEARD THE WHOLE THING. BUT
2 I DON'T WANT TO SIT HERE FOR AN HOUR AND LISTEN TO THIS
3 UNTIL I KNOW WHAT YOUR OBJECTIONS ARE. IF WE HAVE TWO
4 ISSUES HERE, ONE IS VOLUNTARINESS UNDER MIRANDA. AND THE
5 SECOND -- AND HE SAYS HE GAVE HIM MIRANDA. AND IF HE MADE
6 A VOLUNTARY STATEMENT, THEN YOUR OBJECTIONS ---

7 MS. CARROWAY: YES, SIR.

8 THE COURT: --- AFTER YOU TELL ME WHAT YOU WANT
9 REDACTED. DO YOU FOLLOW ME?

10 MS. CARROWAY: YES, SIR. I BELIEVE THERE ARE TWO
11 SEPARATE ISSUES AS FAR AS WE DEAL WITH JACKSON V. DENNO AND
12 THEN WHATEVER YOU DEEM IS ADMISSIBLE. AND THEN WE'LL GO
13 THROUGH WHAT NEEDS TO BE REDACTED BASED ON WHETHER THOSE
14 STATEMENTS WERE ADMISSIBLE.

15 THE COURT: WELL, LET ME JUST SAY AT THIS POINT FROM
16 WHAT I'VE HEARD SO FAR IT'S ADMISSIBLE.

17 MS. CARROWAY: YES, SIR. I THINK WHAT I FEEL LIKE I
18 NEED TO DO IS MAYBE GET TESTIMONY FROM PATRILLA, OFFICER
19 PATRILLA, WHO IS THE OFFICER WHO IN THE REPORT SAYS THAT
20 JOSE WAS DETAINED.

21 THE COURT: THAT'S THE FIRST STATEMENT?

22 MS. CARROWAY: YES, SIR. AND I BELIEVE THAT THE FIRST
23 STATEMENT -- MY REVIEW OF THE FIRST STATEMENT IS IN CUSTODY
24 AND IN VIOLATION OF MIRANDA FOR THAT REASON. AND BECAUSE
25 OF THAT, BASED ON THE SEIBERT FACTORS, THE SUBSEQUENT

1 STATEMENT WOULD ALSO BE INADMISSIBLE. AND I CAN GO THROUGH
2 THE SEIBERT FACTORS ---

3 THE COURT: YOU HAVE TO LEAD ME THROUGH THAT.

4 MS. CARROWAY: OKAY. YOUR HONOR, THE SEIBERT FACTORS
5 I THINK WERE ESTABLISHED TO DETERMINE WHETHER WHAT THEY
6 CONSIDER A MID-INTERROGATION MIRANDA WOULD SUFFICE. AND
7 THEY LOOKED AND THEY CONSIDERED THE COMPLETENESS ---

8 THE COURT: LET ME JUST GET FOR THE RECORD. THESE ARE
9 THE SAME DAY?

10 MS. CARROWAY: YES, SIR, THESE ARE -- AND THAT'S -- I
11 BELIEVE CAPTAIN BROMAGE ARRIVED ABOUT 7:30 AT THE SCENE.
12 AND HE SAID HE WENT INSIDE AND DID SOME THINGS, AND THEN I
13 BELIEVE THE SECOND STATEMENT FROM THE 16TH WAS TAKEN AT
14 10:20.

15 THE COURT: OKAY. GO AHEAD.

16 MS. CARROWAY: THE FIRST ONE WE'RE GOING TO LOOK TO IS
17 THE COMPLETENESS AND DETAIL OF THE FIRST STATEMENT. THE
18 WHOLE STORY IS LAID OUT IN THE FIRST STATEMENT AT THE
19 SCENE. THE CAT'S OUT OF THE BAG SO TO SPEAK. HE TELLS IT
20 FROM BEGINNING TO END. HE TELLS ESSENTIALLY THE EXACT SAME
21 THING HE TELLS WHEN HE GETS TO THE SUBSTATION AN HOUR OR
22 TWO LATER, YOUR HONOR.

23 THE SECOND FACTOR IS THE OVERLAPPING CONTENT, ONCE THE
24 STATEMENTS ARE VIRTUALLY THE SAME.

25 TIMING AND SETTING. YOU KNOW, WE'RE DEALING WITH A

1 COUPLE OF HOURS WHICH IS ESSENTIALLY THE SAME AMOUNT OF
2 TIME DEALT WITH IN NAVY. AND I UNDERSTAND THAT NAVY WAS
3 ALREADY AT THE POLICE STATION. BUT I WOULD ARGUE WITH THAT
4 STRONG A POLICE PRESENCE, IT'S VERY SIMILAR.

5 AND HE'S ALSO CONSISTENTLY WITH POLICE OFFICERS THE
6 WHOLE TIME.

7 AND THEN THE FOURTH ONE IS THIS IS THE SAME POLICE
8 OFFICER IN THIS INSTANCE, IT'S BROMAGE IN BOTH INSTANCES
9 THAT INTERVIEW MY CLIENT.

10 YOUR HONOR, OUR ARGUMENT WOULD BE THAT THE FIRST
11 STATEMENT, HE IS IN CUSTODY, AND IT'S TAKEN IN VIOLATION OF
12 MIRANDA. AND BECAUSE OF THAT, THIS CASE LAW APPLIES, AND
13 THE SUBSEQUENT STATEMENT IS INADMISSIBLE.

14 THE COURT: ALL RIGHT. WHAT IS THE STATE'S POSITION?

15 MR. STONE: I DON'T UNDERSTAND, YOUR HONOR. AND I
16 APOLOGIZE. I'M NOT FOLLOWING. THIS FIRST STATEMENT, IS
17 SHE TALKING ABOUT THE WRITTEN STATEMENT THAT WE'VE ALREADY
18 PUT UP AS WAS IN CUSTODY AT THE TIME?

19 THE COURT: NO. SHE'S TALKING ABOUT THE INAUDIBLE
20 STATEMENT THAT I FRANKLY AM NOT IN AGREEMENT WITH MS.
21 CARROWAY, THAT THAT IS A FULL STATEMENT. I HAD GREAT
22 DIFFICULTY DISCERNING ANYTHING FROM THAT STATEMENT. MAYBE
23 YOU CAN HEAR BETTER THAN I CAN, BUT ---

24 MS. CARROWAY: THE STORY THAT HE TELLS IN THAT
25 STATEMENT IS THE SAME STORY THAT HE TELLS WHEN HE GETS TO

1 THE SUBSTATION. THE FACTS AS HE GIVES THEM IN THAT
2 STATEMENT ARE THE SAME.

3 THE COURT: IF YOU SAY SO. I'M UNABLE TO DETERMINE
4 THAT, BUT GO AHEAD. SOLICITOR.

5 MR. STONE: YES, SIR. THERE IS NO TESTIMONY THAT HE
6 IS IN CUSTODY AT THE TIME. AGAIN, CAPTAIN BROMAGE HAS
7 ARRIVED ON THE SCENE. HE'S ASKING HIM BASICALLY WHAT
8 HAPPENED.

9 I WILL AGREE WITH YOU THAT IT'S INAUDIBLE, WHICH IS,
10 OF COURSE, THE REASON I GAVE IT TO A COURT REPORTER.

11 THE COURT: HE PULLS HIM ASIDE, THAT IS SOME
12 INDICATION -- MAYBE THAT'S TAKING THE WORDS TOO LITERALLY.

13 BUT ---

14 MR. STONE: I THINK WHAT CAPTAIN BROMAGE ALSO SAID WAS
15 HE WAS TRYING TO GET HIM AWAY FROM THE OTHER OFFICERS AND
16 HEAR THE STORY FOR HIMSELF. THE STATEMENT ITSELF IS, OF
17 COURSE ---

18 THE COURT: WHETHER IT'S CUSTODIAL OR NOT MAY BE THE
19 ISSUE. BUT IT'S CERTAINLY AN INTERROGATION. HE'S
20 CERTAINLY ---

21 MR. STONE: NO QUESTION. YES, SIR.

22 THE COURT: IT'S INAUDIBLE.

23 MR. STONE: THAT'S RIGHT, THERE'S NO QUESTION IT'S AN
24 INTERROGATION. THE ISSUE IS WHETHER OR NOT HE'S IN
25 CUSTODY. THERE'S BEEN NO TESTIMONY THAT HE WAS IN CUSTODY

1 BECAUSE HE WASN'T IN CUSTODY. HE WAS PLACED IN CUSTODY
2 AFTER THIS FOR A PAROLE VIOLATION.

3 THE COURT: THE QUESTION IS WHETHER A REASONABLE
4 PERSON WOULD FEEL FREE TO LEAVE UNDER THOSE CIRCUMSTANCES.

5 MR. STONE: RIGHT.

6 THE COURT: WHERE THERE ARE COP CARS ALL AROUND AND
7 THE OFFICER PULLS HIM ASIDE.

8 MR. STONE: YES, SIR. AND WHAT'S IMPORTANT HERE IS --
9 AND I THINK IT'S ESSENTIAL TO THIS ENTIRE ANALYSIS -- IS
10 THAT COP CARS ARE HERE BECAUSE THE DEFENDANT CALLED THEM.
11 IT WOULD BE A LITTLE BIT MORE UNUSUAL IF THEY DIDN'T COME.
12 IN OTHER WORDS, THOSE THREE OFFICERS ARRIVED AT A SCENE IN
13 WHICH THE DEFENDANT CALLED ON 9-1-1 AND SAID, MY WIFE IS
14 DEAD, COME.

15 SO HE'S INVITED LAW ENFORCEMENT TO THE SCENE.
16 OTHERWISE -- SO AS FAR AS ANY ARGUMENT THAT THEY WOULD BE
17 OVERBEARING, THEY SHOULD BE EXACTLY WHAT HE WOULD EXPECT.
18 AND IN FACT, THERE SHOULD BE MORE OFFICERS THERE
19 EVENTUALLY.

20 AGAIN, ACCORDING TO THE DEFENDANT HIMSELF, SHE'S BEEN
21 SHOT AND KILLED. THIS ISN'T AN ACCIDENTAL SHOOTING, SO LAW
22 ENFORCEMENT CLEARLY WAS TO BE EXPECTED BY THE DEFENDANT.

23 THE COURT: OKAY. ALL RIGHT. NOW, LET'S MOVE ON, MS.
24 CARROWAY, TO MID-STREAM INTERROGATION. IS THAT HOW YOU ---

25 MS. CARROWAY: I THINK MID-INTERROGATION MIRANDA WOULD

1 BE I GUESS WHAT THEY'RE EXPECTING TO CURE THIS PREVIOUS
2 STATEMENT THAT WAS GIVEN WITHOUT BENEFIT OF MIRANDA.

3 MY ARGUMENT WOULD BE THAT HE IS IN CUSTODY, AND THUS
4 ENTITLED TO MIRANDA.

5 THE COURT: THE FIRST STATEMENT?

6 MS. CARROWAY: YES, SIR. THE FIRST -- THE FIRST
7 STATEMENT, I THINK, IS -- THAT AND THE TAPE RECORDED
8 STATEMENT WITH OFFICER BROMAGE.

9 THE COURT: YOU THINK THIS ONE IS EVEN DEFICIENT OR
10 DEFECTIVE?

11 MS. CARROWAY: YES, SIR.

12 THE COURT: I DISAGREE WITH YOU ON THAT.

13 MS. CARROWAY: I THINK THAT THE FIRST OFFICER THAT
14 ARRIVED ON THE SCENE, HER REPORT SAYS THAT HE WAS DETAINED
15 AT THAT POINT. THERE WERE A NUMBER OF POLICE OFFICERS
16 THERE.

17 THE COURT: WHO SAID HE WAS DETAINED?

18 MS. CARROWAY: PATRILLA, WHICH IS WHY I WANT TO TAKE
19 TESTIMONY.

20 THE COURT: OH, OKAY.

21 MS. CARROWAY: CAPTAIN BROMAGE HAS LISTENED TO THE
22 9-1-1 TAPES BEFORE SPEAKING WITH HIM, HE TESTIFIED TO THAT.
23 HE RECORDED THE CONVERSATION WITH ---

24 THE COURT: HE SAID WHAT?

25 MS. CARROWAY: HE HAS LISTENED TO THE 9-1-1 TAPES

1 PRIOR TO THE ---

2 THE COURT: 9-1-1.

3 MS. CARROWAY: YES, SIR. PRIOR TO SPEAKING -- PRIOR
4 TO SPEAKING WITH JOSE. HE RECORDED THE CONVERSATION
5 WITHOUT JOSE KNOWING. YOU CAN HEAR BY THE NATURE OF THE
6 CONVERSATION IT IS CLEARLY AN INTERROGATION. HE WAS A
7 SUSPECT AT THAT POINT. THE POLICE PRESENCE IS OVERWHELMING
8 AT HIS HOME. AND I THINK THAT HE'S CLEARLY IN CUSTODY. I
9 THINK UNDER NO CIRCUMSTANCES WOULD HE FEEL HE WAS FREE TO
10 LEAVE.

11 BECAUSE HE'S IN CUSTODY, HE'S ENTITLED TO MIRANDA.
12 AND THE SUBSEQUENT STATEMENT WOULD BE INADMISSIBLE BECAUSE
13 I DON'T THINK THE MID-INTERROGATION MIRANDA CURES IT.

14 LIKE I SAID, SEIBERT, WHICH IS THE CASE THAT THE NAVY
15 COURT RELIED ON, TAKES YOU THROUGH THESE FACTORS. AND
16 UNDER THESE FACTORS, OUR CASE IS RIGHT ALONG. WE'VE GOT
17 THE SAME POLICE OFFICER INTERROGATING HIM BOTH TIMES. WE
18 HAVE, YOU KNOW, A SIMILAR AMOUNT OF TIME TO WHAT WE ARE
19 DEALING WITH IN NAVY AS FAR AS BETWEEN THE FIRST STATEMENT
20 ON THE NIGHT OF THE 16TH AND THE SECOND STATEMENT.

21 THE CONTENT IS VIRTUALLY IDENTICAL AS FAR AS THE
22 VERSION OF EVENTS HE SAYS HAPPENED WHEN HE FIRST SPEAKS TO
23 BROMAGE AT THE SCENE AND WHAT HE SAYS ON THE NIGHT OF THE
24 16TH.

25 I BELIEVE THAT THIS CASE WOULD BE DEEMED NON-VOLUNTARY

1 BASED ON THE LACK OF MIRANDA IN THE FIRST STATEMENT. THE
2 SECOND STATEMENT WOULD ALSO BE SUPPRESSED.

3 THE COURT: NAVY STILL HAS A LOT OF FACTUAL SITUATIONS
4 THAT WE DON'T INCLUDE. HE WAS TAKEN AWAY FROM HIS FAMILY
5 AT THE FUNERAL OF HIS SON. QUITE A NUMBER OF -- A NUMBER
6 OF DIFFERENCES. SOME OTHER FACTORS THAT LED TO THAT
7 CONFESSION IN THAT CASE -- BUT THAT'S NEITHER HERE NOR
8 THERE.

9 IS THERE ANY OTHER REASON TO GO FORWARD WITH LISTENING
10 TO THE REMAINDER OF THIS TAPE?

11 MS. CARROWAY: THAT'S THE LEGAL ISSUE THAT I HAVE. I
12 DON'T THINK FACTUALLY WHAT'S ON THE REST OF THIS TAPE IS A
13 CONCERN.

14 THE COURT: ALL RIGHT. EXCEPT FOR THE REDACTION
15 PURPOSES?

16 MS. CARROWAY: YES, SIR. YES, SIR. AND, ACTUALLY, I
17 THINK THIS STATEMENT IS PRETTY CLEAN TO THE BEST OF MY
18 KNOWLEDGE. I'LL GO BACK THROUGH IT TONIGHT.

19 THE COURT: YES, THE PAROLE VIOLATION.

20 MR. STONE: I WOULD SUGGEST THE BEGINNING OF THAT TO
21 BE REDACTED, YOUR HONOR. HE MENTIONS THAT HE'S HAD -- I
22 CAN'T REMEMBER EXACTLY HOW HE PUT IT, BUT I MARKED THAT.

23 THE COURT: I'M GOING TO LET ---

24 MS. CARROWAY: I'LL GO THROUGH IT.

25 MR. STONE: OKAY.

1 THE COURT: --- MS. CARROWAY GO THROUGH IT.
2 I'LL RE-READ SEIBERT. I'M PRETTY FAMILIAR WITH NAVY.
3 AND, SOLICITOR, ANYTHING YOU WANT TO OFFER ON THAT ISSUE,
4 THE LEGAL ISSUE OF WHETHER OR NOT THE FACT HE WAS NOT
5 MIRANDIZED IN THE FIRST IN CAMERA. I THINK IT WAS AN
6 INTERROGATION. AND WHETHER BEING MIRANDIZED AT THE STATION
7 AT A POINT IN TIME AT 10:20 IN THE EVENING, THE SECOND
8 STATEMENT WAS TAKEN FROM THIS OFFICER IS SUFFICIENT TO
9 PROTECT HIS MIRANDA RIGHTS IS THE ISSUE.
10 I'LL HEAR YOU ON THAT IN THE MORNING.
11 MR. STONE: WELL, I'LL BE GLAD TO LOOK OVER IT. I'M
12 GOING TO LOOK OVER NAVY AND SEE THAT -- QUITE FRANKLY, I'VE
13 NEVER BEEN TROUBLED TOO MUCH ABOUT A CUSTODIAL ISSUE TO
14 BEGIN WITH, BECAUSE IT IS AN INVESTIGATION. THE DEFENDANT
15 CALLS LAW ENFORCEMENT TO THE SCENE CLAIMING HIS WIFE HAS
16 BEEN MURDERED. I DON'T KNOW WHAT THE DEFENDANT WOULD
17 EXPECT TO HAPPEN IF LAW ENFORCEMENT DIDN'T AT LEAST SAY,
18 WHAT HAPPENED?
19 DOES CAPTAIN BROMAGE SEPARATE HIM FROM THE REST OF THE
20 OFFICERS? I WOULD THINK THAT WOULD BE LESS COERCIVE THAN
21 WERE HE TO GATHER THEM ALL AROUND HIM AND START FIRING
22 QUESTIONS AT HIM.
23 CLEARLY, CAPTAIN BROMAGE PULLS HIM TO THE SIDE. HE
24 ASKED HIM IN A VERY NON-CONFRONTATIONAL TONE, WHAT
25 HAPPENED? TELL ME WHAT HAPPENED? AND THEN AT THAT POINT

1 HE IS STILL NOT IN CUSTODY UNTIL I THINK 15 MINUTES LATER
2 WHEN THEY GOT THE REPORT BACK FOR THE PAROLE VIOLATION. HE
3 WAS NEVER TAKEN INTO CUSTODY FOR ANY OF THE STATEMENTS THAT
4 YOU'RE ABOUT TO HEAR.

5 THE COURT: THAT'S NOT THE ABSOLUTE CRITERIA AS TO
6 WHETHER HE HAD CUFFS ON.

7 MR. STONE: NO, SIR. BUT IT IS -- BUT IT IS -- THE
8 CRITERIA IS BASED ON WHETHER THE DEFENDANT FEELS LIKE HIS
9 ABILITY TO LEAVE HAS BEEN SUBSTANTIALLY IMPAIRED.

10 THE COURT: EXACTLY.

11 MR. STONE: THE DEFENDANT HAS CALLED LAW ENFORCEMENT
12 TO THE SCENE. HE IS STANDING THERE TALKING TO THE OFFICER,
13 GIVING A STORY WHICH IS RELATIVELY CONSISTENT WITH WHAT HE
14 SAID ON THE 9-1-1 TAPE. I WOULD BE QUITE SURPRISED IF THE
15 DEFENDANT KNEW WHAT WAS EVER GOING TO HAPPEN TO HIM.

16 I THINK LAW ENFORCEMENT -- AT THAT POINT YOU LOOK AT
17 IT FROM THE STANDPOINT OF THE DEFENDANT. I DON'T SEE
18 ANYTHING IN THERE THAT WOULD INDICATE THAT THE DEFENDANT
19 FELT LIKE HE WAS NOT FREE TO LEAVE.

20 THE COURT: SOMEWHERE IN ANY OF THESE STATEMENTS WHERE
21 THE DEFENDANT CLAIMS THAT AN UNKNOWN ASSAILANT COMMITTED
22 THE MURDER?

23 MR. STONE: YES, SIR. YES, SIR. HIS FIRST -- THE --
24 I THINK IT'S THIS STATEMENT, IN FACT, YOUR HONOR, THAT HE
25 DOES. HE CLAIMS THAT HE LEFT. AND, IN FACT, IT IS

1 CONSISTENT WITH HIS 9-1-1 CALL -- THERE'S TWO 9-1-1 CALLS.
2 HE LEFT. HE CAME BACK ---

3 THE COURT: WHAT DOES THE 9-1-1 CALL SAY?

4 MR. STONE: HE CALLED THE JASPER COUNTY. AND THEN
5 BECAUSE HIS CELL PHONE IS PICKING UP ON THE WRONG TOWER,
6 THEY SWITCHED HIM OVER TO BEAUFORT AND HE TOLD, AGAIN, THE
7 SAME STORY. BUT HE SAID HE CAME -- HE SAID HE AND HIS WIFE
8 WERE IN A DISAGREEMENT. HE HAD -- HE TOOK HER HOME WITH
9 HIS STEP-CHILD. THEN HE LEFT TO GO GET BEER. DROVE DOWN
10 THE ROAD AND REALIZED THAT HE ALREADY HAD BEER, SO HE
11 TURNED AROUND AND CAME BACK. AND IN THAT TIME FRAME
12 SOMEONE HAD BROKEN INTO THE HOUSE AND KILLED HIS WIFE.

13 AND, IN FACT, HE TOLD THE OFFICER -- THE FIRST OFFICER
14 THAT TESTIFIED, I BELIEVE, HE ALSO TESTIFIED THAT THE MAN
15 SAID THAT HE LEFT. WHEN HE CAME BACK HOME, THAT'S HOW HE
16 FOUND HIS WIFE.

17 THE COURT: I HAD NOT READ THIS YET.

18 ALL RIGHT. JUST FOR -- I DON'T THINK WE NEED TO PLAY
19 THE REST OF THIS TAPE FOR MY PURPOSES. NOW, I THINK I HAVE
20 ENOUGH INFORMATION TO RULE ON THE ADMISSIBILITY OF BOTH
21 STATEMENT NO. 2 AND STATEMENT NO. 3. AND I'M GOING TO RE-
22 READ SEIBERT AND PROBABLY NAVY THIS EVENING, TO SEE IF THEY
23 APPLY.

24 ALL RIGHT. WHAT ABOUT THE THIRD STATEMENT?

25 MR. STONE: WE HAVE THE THIRD STATEMENT ALSO, YOUR

1 HONOR. THAT STARTS ON PAGE ---

2 THE COURT: I ASSUME YOU TAKE THE SAME POSITION WITH
3 REGARD TO THE NEXT STATEMENT?

4 MS. CARROWAY: YOUR HONOR, I DO TAKE THE SAME POSITION
5 WITH REGARD TO THAT STATEMENT, AND ALL SUBSEQUENT
6 STATEMENTS.

7 THE COURT: THAT'S WHAT I THOUGHT. I DON'T EVEN KNOW
8 WHEN THE NEXT ONE IS MADE. IS IT ALSO A RECORDED
9 STATEMENT?

10 MR. STONE: THEY WERE BOTH RECORDED, YOUR HONOR. THEY
11 WERE BOTH TAKEN -- HE IS IN CUSTODY AT THE TIME. ON THESE
12 HE IS AT THE BEAUFORT COUNTY DETENTION CENTER. IT IS
13 SEPTEMBER THE 18TH. IT IS NOW 2 DAYS LATER.

14 THE COURT: 2 DAYS LATER?

15 MR. STONE: YES, SIR. THE TIME IS 2:50 P.M. ON THE
16 FIRST STATEMENT. AND THEN THE NEXT STATEMENT IS 4:15 P.M.
17 CAPTAIN BROMAGE IS THE OFFICER WHO READS HIM HIS RIGHTS IN
18 THE BEGINNING OF BOTH OF THOSE -- BOTH OF THOSE STATEMENTS.
19 AND WE HAVE THOSE ON TAPE AS WELL.

20 THE COURT: ALL RIGHT. LET'S GO AHEAD AND LET'S GET
21 THROUGH ---

22 MR. STONE: YES, SIR.

23 THE COURT: --- THE MIRANDA.

24 MS. CARROWAY: YOUR HONOR, I DO HAVE ONE OTHER MOTION
25 WITH REGARD TO THESE STATEMENTS IN ADDITION TO MY SEIBERT

1 ISSUE. DO YOU WANT TO HEAR THAT BEFORE YOU LISTEN TO IT?

2 THE COURT: I'M NOT GOING TO LISTEN TO THE WHOLE
3 THING.

4 MS. CARROWAY: OKAY. THEN I'LL TELL YOU THAT CAPTAIN
5 BROMAGE DOES READ HIM HIS MIRANDA RIGHTS AT THE BEGINNING
6 OF THIS STATEMENT. THE VERY NEXT THING OUT OF HIS MOUTH IS
7 THAT THE JURY IS GOING TO HAVE TO HEAR FROM THAT GUY OVER
8 THERE. THEY'RE SEEING TATTOOS. AND THE GUY WHO DOESN'T
9 WANT TO TALK, AND THE JURY NEEDS AN EXPLANATION.

10 MY ARGUMENT WOULD BE THAT, YOU KNOW, HE READS THEM --
11 HE GOES THROUGH MIRANDA IN THIS KIND OF A BOILER PLATE
12 FASHION ---

13 THE COURT: GIVE ME A PAGE REFERENCE.

14 MS. CARROWAY: I'M SORRY, YOUR HONOR. WHEN I MADE MY
15 NOTES I DIDN'T HAVE THE ---

16 THE COURT: WELL, MAYBE THE SOLICITOR CAN GIVE ME A
17 PAGE REFERENCE. WHERE DOES THIS ONE START?

18 MR. STONE: THIS ONE STARTS, YOUR HONOR, ON PAGE 99.

19 THE COURT: 99?

20 MR. STONE: YES, SIR. AND IT RUNS TO 124.

21 THE COURT: DO YOU KNOW WHERE SHE'S TALKING ABOUT?

22 MR. STONE: I DON'T KNOW, BUT I WILL TRY TO FIND IT.

23 (PAUSE.)

24 MR. STONE: THAT IS ON PAGE -- IT WILL START ON PAGE
25 102 AT LINE 18. AND IT RUNS THROUGH 103, THROUGH LINE 17.

1 (PAUSE.)

2 THE COURT: SO HE ALSO DID ---

3 MR. STONE: HE DID. WE'RE NOT GOING TO USE THAT.

4 THERE'S NOTHING TO MATCH TO ANYTHING. THEY DIDN'T COMPARE
5 TO ANYTHING.

6 THE COURT: WELL, YOU HAVE TO REDACT IT THEN. I THINK
7 IT DOES NEED TO BE REDACTED.

8 (PAUSE.)

9 THE COURT: WHAT'S YOUR OBJECTION?

10 MS. CARROWAY: YOUR HONOR, I THINK IT NEGATES MIRANDA.
11 I THINK HE TELLS HIM HE HAS A RIGHT TO REMAIN SILENT, BUT
12 THEN HE TURNS AROUND AND SAYS, NOT REALLY, NO, YOU DON'T,
13 BECAUSE IF YOU DO, THE JURY'S GOING TO HOLD IT AGAINST YOU,
14 WHICH IS AN IMPROPER STATEMENT OF LAW FOR STARTERS. BUT I
15 THINK IT IS ESSENTIALLY LIKE MIRANDA HASN'T BEEN GIVEN. I
16 THINK THAT STATEMENT IS MORE POWERFUL ON HIM THAN THE
17 READING OF MIRANDA.

18 THE COURT: ONCE HIS MIRANDA RIGHTS WERE GIVEN, THAT
19 DOOR APPLIES. YOU CAN'T PROMPT HIM ON HIS EXERCISE OF HIS
20 CONSTITUTIONAL RIGHTS. IS THAT YOUR OBJECTION?

21 MS. CARROWAY: I THINK THAT WOULD BE PART OF IT. IT'S
22 KNOWN AS A DOYLE (PHONETIC) VIOLATION IN ADDITION TO ---

23 THE COURT: WELL, THIS MAY BE -- DO YOU THINK -- ALL
24 RIGHT. THAT'S NOT A REDACTION; THAT GOES TO THE HEART OF
25 YOUR OBJECTION?

1 MS. CARROWAY: YES, SIR.

2 THE COURT: IT'S NOT VOLUNTARY?

3 MS. CARROWAY: IT GOES TO THE VOLUNTARINESS OF THE
4 STATEMENT, YES, SIR.

5 YOUR HONOR, MY ARGUMENT WOULD BE, YOU KNOW, THIS IS
6 ESSENTIALLY LIKE NOT HAVING MIRANDA IN THIS FIRST STATEMENT
7 ON THE 18TH. AND THEN YOU'RE RIGHT BACK WITH THE SEIBERT
8 FACTORS, THE FACT ABOUT HIS STATEMENT AND YOU'VE GOT THIS
9 OVER ARCHING THEM THAT YOU REALLY CAN'T REMAIN SILENT. YOU
10 HAVE THIS DUTY TO SPEAK AND ...

11 THE COURT: LET'S SEE WHAT HE SAYS. THE OFFICER IS
12 DOING ALL THE TALKING. WHERE DOES THE DEFENDANT SAY
13 ANYTHING?

14 MS. CARROWAY: HE DOES, YOUR HONOR.

15 THE COURT: HE DOES?

16 MS. CARROWAY: YES, SIR.

17 THE COURT: I HAVEN'T GOT TO IT YET.

18 MS. CARROWAY: YOUR HONOR, THAT WOULD GO ALSO TO MY
19 OBJECTION IN THAT IT TOOK SOME COAXING -- FOR LACK OF A
20 BETTER WORD. HE REMAINS SILENT FOR A WHILE, BUT HE'S GOT
21 THIS IDEA IN HIS HEAD THAT HE CAN'T.

22 (PAUSE.)

23 THE COURT: I STILL HAVEN'T GOTTEN TO THE DEFENDANT'S
24 TESTIMONY.

25 MS. CARROWAY: YOUR HONOR, I BELIEVE PART OF IT BEGINS

1 AT THE BOTTOM OF 110.

2 (PAUSE.)

3 THE COURT: OKAY. ALL RIGHT. WHAT'S THE STATE'S
4 POSITION ON THIS ARTICLE, THAT EVEN THOUGH MIRANDA WAS
5 GIVEN, THE OFFICER PORTRAYED TO THE DEFENDANT THAT
6 REGARDLESS OF HIS RIGHT TO REMAIN SILENT, HE TELLS HIM HE
7 BETTER MAKE A STATEMENT, THAT HE NOT JUST ENCOURAGES -- I
8 MEAN, HE ENCOURAGES -- ENCOURAGES HIM TO MAKE A STATEMENT,
9 BUT HE DOES SO UNDER SOME SORT OF IMPLIED THREAT?

10 MR. STONE: WELL, I DON'T -- I DON'T SEE A THREAT IN
11 THERE. I DO SEE THAT HE IS CERTAINLY SUGGESTING THAT HE
12 GIVES A STORY. OF COURSE, HIS NEXT STORY IS THAT HIS WIFE
13 TRIED TO COMMIT SUICIDE.

14 THE COURT: RIGHT.

15 MR. STONE: BUT REGARDLESS OF THAT, I THINK THE ISSUE
16 IS STILL GOING TO BE WHETHER OR NOT THE STATEMENT ITSELF
17 WAS VOLUNTARY AFTER THE MIRANDA WAS READ. CLEARLY, HE'S IN
18 CUSTODY. NO QUESTION THERE.

19 I BELIEVE IT'S ALSO CLEAR THAT HE HAS GIVEN HIM
20 MIRANDA RIGHTS. THE ISSUE THEN IS, HAS HE SOMEHOW
21 OVERBORNE HIS ABILITY TO STILL MAKE A VOLUNTARY STATEMENT?

22 IT'S VOLUNTARY ENOUGH FOR HIM TO MAKE UP ANOTHER
23 STORY, WHICH TO ME AT LEAST SHOWS SOME LACK OF BEING
24 COERCED BY CAPTAIN BROMAGE. DURING NONE OF THIS DO YOU
25 HEAR CAPTAIN BROMAGE SCREAM AT THE DEFENDANT. HE DOESN'T

1 -- HE DOESN'T THREATEN HIM. I THINK THE ISSUE STILL ---
2 THE COURT: IT'S PRETTY TOUGH LANGUAGE THOUGH.
3 MR. STONE: I'M SORRY?
4 THE COURT: IT'S PRETTY TOUGH LANGUAGE.
5 MR. STONE: WELL, HE TELLS -- KEEPING IN MIND ALSO
6 THAT WHEN YOU'RE TALKING ABOUT THE COMMENT ON THE DEFENDANT
7 NOT MAKING A STATEMENT, THAT'S IN FRONT OF A JURY WHETHER
8 OR NOT CLEARLY ONCE HE INVOKES HIS MIRANDA RIGHTS, WE CAN'T
9 EVEN MAKE A MENTION OF THAT TO THE JURY THAT HE NEEDS TO
10 STAY SILENT. AND I THINK FROM THAT STANDPOINT, THAT PART
11 OF THAT STATEMENT PROBABLY SHOULD BE REDACTED. I DON'T
12 THINK HOWEVER THAT GOES TO THE VOLUNTARINESS OF THE
13 STATEMENT.
14 THE COURT: THAT'S YOUR POSITION.
15 MR. STONE: RIGHT. YES, SIR.
16 THE COURT: IT GOES TO VOLUNTARINESS, NOT ---
17 MR. STONE: EXACTLY.
18 THE COURT: FORGET ABOUT REDACTION. YOU HAVE TO GET
19 PAST THAT THRESHOLD FIRST.
20 MR. STONE: SURE. BUT I THINK TAKING THE TOTALITY OF
21 THE CIRCUMSTANCES, LOOKING AT EVERYTHING THAT IS IN THAT,
22 THAT IS A -- THAT ENTIRE STATEMENT FROM 2:50 TO 3:25. IT
23 WASN'T PARTICULARLY LONG ALTHOUGH IT LOOKS MUCH LONGER WHEN
24 YOU'RE READING THE TRANSCRIPT. BUT -- AND, AGAIN, THE
25 DEFENDANT AT THE CONCLUSION OF THAT WAS NOT SO OVERBORNE HE

1 SAID, OH, YEAH, SHE WAS TRYING TO KILL HERSELF AND I TRIED
2 TO STOP HER AND THE GUN WENT OFF.

3 THE COURT: THE OFFICER CAN TELL HIM THINGS ---

4 MR. STONE: HE ALSO CAN LIE TO THEM IF HE WANTS TO.
5 AND I DON'T EVEN THINK IN THIS THERE'S ANY LIE. I KNOW HE
6 CAN LIE TO HIM. HE CAN BE OVERLY NICE TO HIM. HE CAN BE
7 CONNIVING. HE CAN KNOW ABOUT EVIDENCE THAT HE IN FACT
8 TELLS -- MISLEADS THE DEFENDANT. AND, IN FACT, NONE OF
9 THAT -- THAT'S MUCH MORE EXTREME I THINK THAN WHAT YOU HAVE
10 IN ANY OF THIS THAT CAPTAIN BROMAGE DID.

11 THE COURT: ALL RIGHT. ANYTHING FURTHER?

12 MS. CARROWAY: YOUR HONOR, I'LL JUST SAY THAT I'M NOT
13 DISAGREEING WITH THE SOLICITOR, IN THAT I UNDERSTAND THEY
14 CAN LIE TO HIM. THEY CAN BE REALLY, REALLY, REALLY NICE,
15 AND ALL THOSE THINGS. BUT YOU CAN'T TELL HIM YOU HAVE THE
16 RIGHT TO REMAIN SILENT, OH, NOT REALLY, THE JURY HAS TO
17 HEAR FROM YOU; AND THAT'S WHAT HAPPENED.

18 HE'S TELLING HIM THAT THE JURY HAS TO HEAR FROM HIM OR
19 THEY'RE GOING TO HOLD IT AGAINST HIM; AND THAT'S WRONG. I
20 THINK IT OVERPOWERS MIRANDA. YOU READ MIRANDA IN THIS KIND
21 OF UNIFORM MONOTONE FASHION, AND THEN WITH SOME CONVICTION
22 HE SAYS, LISTEN, MAN. THE JURY HAS TO HEAR FROM YOU.
23 THEY'RE GOING TO SEE THIS GUY SITTING OVER THERE WITH
24 TATOOS WITH NOTHING TO SAY, AND THEY HAVE TO HEAR FROM YOU.
25 AND THAT -- THAT OVERPOWERS MIRANDA.

1 THE COURT: THAT'S JUST NOT A LITTLE WHITE LIE?
2 MS. CARROWAY: I AGREE.
3 THE COURT: NO. I'M ASKING YOU..
4 MS. CARROWAY: AND I ALSO SAY, YOUR HONOR, THAT THIS
5 STATEMENT, MUCH LIKE NAVY, THEY GIVE THE STATEMENT. HE
6 ALREADY KNOWS THE RESULTS FROM THE PATHOLOGIST DURING --
7 WHILE GIVING THIS STATEMENT, THE FIRST STATEMENT ON THE
8 18TH. WE COME BACK A COUPLE MINUTES LATER AND SAID, OKAY.
9 HERE'S THE RESULTS FROM THE PATHOLOGIST. CLEARLY, WHAT YOU
10 SAID ISN'T EXACTLY ACCURATE.
11 THE COURT: WHERE DOES THAT COME IN?
12 MS. CARROWAY: IT'S A SIMILAR SITUATION IN NAVY WHERE
13 THEY'VE ALREADY ---
14 THE COURT: OH, OH.
15 MS. CARROWAY: THEY'RE ALREADY FAMILIAR WITH THE ---
16 THE COURT: NAVY YOU SAID.
17 MS. CARROWAY: YEAH. I THINK THE ---
18 THE COURT: THERE'S NO PATHOLOGIST REPORT IN THIS ONE.
19 MS. CARROWAY: NO. WELL, BROMAGE SAYS THAT HE IS
20 ALREADY FAMILIAR WITH THE RESULTS FROM THE PATHOLOGIST'S
21 OFFICE WHEN HE TAKES THIS STATEMENT ON THE 18TH -- THIS
22 FIRST STATEMENT ON THE 18TH.
23 THE COURT: OKAY.
24 MS. CARROWAY: AND THEN HE TAKES A SECOND STATEMENT ON
25 THE 18TH AND SAYS, OKAY. WELL, HERE'S WHAT -- YOU KNOW, WE

1 KNOW THERE'S NO SOOT OR TATTOOING SO I KNOW WHAT YOU'RE
2 SAYING IS NOT ACCURATE AND THE SCIENCE ISN'T BEHIND YOU AND
3 WE KNOW THE SCIENCE. IT'S A VERY SIMILAR SITUATION.

4 THE COURT: ALL RIGHT. I DIDN'T READ THAT PART.

5 MS. CARROWAY: THE COURT IN NAVY -- AND MY ARGUMENT
6 WOULD BE THAT EVEN THOUGH MIRANDA IS GIVEN, HE SOMEWHAT
7 NEGATES IT. SO WE'RE BACK TO THE NAVY AND SEIBERT FACTORS
8 ALL OVER AGAIN WITH THIS AND THE SUBSEQUENT STATEMENT.

9 THE COURT: ALL RIGHT. WELL, LET'S RECONVENE AT --
10 WHAT ELSE DO WE HAVE IN TERMS OF PRETRIAL?

11 MR. STONE: I DON'T BELIEVE THERE IS ANYTHING ELSE
12 PRETRIAL.

13 THE COURT: THE PHOTOGRAPHS?

14 MR. STONE: YES, SIR. AND THERE IS THAT FINAL
15 STATEMENT AS WELL, YOUR HONOR. AND I THINK IT'S PRETTY
16 MUCH THE SAME AS THE FOURTH STATEMENT, WHICH IS THE 4:15
17 THAT SAME AFTERNOON.

18 THE COURT: AND THAT'S THE ---

19 MR. STONE: THAT'S THE ACTUAL AS CLOSE TO A CONFESSION
20 AS WE HAVE. IN THAT ONE HE SAYS ---

21 THE COURT: IS THAT THE ONE HE SAYS HE BELIEVES THE
22 GUN WENT OFF?

23 MR. STONE: HE GIVES ACTUALLY TWO STORIES IN THAT.
24 THE FIRST STORY IS THAT HE GOT MAD. HE WAIVED THE GUN AT
25 HER TO GET HER TO BE QUIET AND THE GUN -- HE TRIPPED OVER

1 EITHER HER CLOTHES OR THE CAT.

2 THE COURT: THAT'S RIGHT.

3 MR. STONE: AND THAT IS ---

4 THE COURT: WHERE IS THAT?

5 MR. STONE: THIS IS STARTING ON PAGE -- THIS IS THE
6 FINAL STATEMENT, WHICH ACTUALLY WILL BE IN YOUR SUMMARY AT
7 PAGE 59.

8 THE COURT: OH, OKAY.

9 MR. STONE: YES, SIR. AND THAT ENDS AT PAGE 98. BUT
10 HE STATES THAT IT MIGHT HAVE BEEN THE KITTEN THAT HE
11 TRIPPED OVER, THE LITTLE KITTEN. AND THEN LATER ON ---

12 THE COURT: WAS HE MIRANDIZED?

13 MR. STONE: YES, SIR, THE SAME THING. HE WAS
14 MIRANDIZED AGAIN, YES, SIR. AND THIS WAS AT 4:15 P.M. ON
15 SEPTEMBER THE 18TH.

16 THE COURT: ONCE AGAIN, HE SAYS IN THIS ONE HE TRIPPED
17 OVER SOMETHING AND THE GUN WENT OFF?

18 MR. STONE: HE DOES. AND THEN TOWARD THE END HE
19 FINALLY SAYS THAT HE BLACKED OUT AND HE REALLY DOESN'T
20 REMEMBER WHAT HAPPENED BUT HE KNOWS HE SHOT HER BECAUSE HE
21 SAW THE GUN IN HIS HAND.

22 THE COURT: WHAT WAS THE PATHOLOGIST -- ANY
23 PATHOLOGIST REPORT THAT QUICK?

24 MR. STONE: HE DID NOT.

25 THE COURT: TWO DAYS?

1 MR. STONE: IT PROBABLY WOULD BE BETTER TO COME FROM
2 CAPTAIN BROMAGE THAN ME, BUT ---
3 THE COURT: OKAY. IT COMES BACK TO NAVY. YOU SAY --
4 MS. CARROWAY, HERE HE SAYS HE HAS ---
5 MS. CARROWAY: HE TELLS THEM ---
6 THE COURT: NOT THAT IT MAKES MUCH DIFFERENCE.
7 MS. CARROWAY: HE TELLS THEM THAT -- AFTER HE GETS THE
8 FIRST REPORT ON THE 18TH, HE TELLS HIM THAT HE KNOWS THE
9 SCIENCE OF DOESN'T MATCH UP AND ---
10 THE COURT: NO STIPPLING?
11 MS. CARROWAY: RIGHT. THERE'S ALSO ONE MORE STATEMENT
12 ON THE 21ST.
13 (PAUSE.)
14 MS. CARROWAY: AND THE 19TH.
15 THE COURT: WELL, I CAN'T FOLLOW IT IN THE WAY THIS
16 TRANSCRIPT IS PUT TOGETHER.
17 (PAUSE.)
18 THE COURT: OKAY. ALL RIGHT. THOSE ARE YOUR ISSUES?
19 MS. CARROWAY: (NODS HEAD.)
20 THE COURT: OKAY. ALL RIGHT. SOLICITOR, LET'S TAKE
21 IT UP IN THE MORNING. I'LL BE GLAD TO LOOK AT -- DO YOU
22 HAVE THESE CASES? I'M SURE YOU CAN IF YOU DON'T ALREADY
23 HAVE THEM.
24 STATE V. NAVY IS A SOUTH CAROLINA COURT OF APPEALS
25 CASE AT 370 SC 398, 635 SE 549. AND SEIBERT IS MISSOURI

1 VERSUS PATRICIA SEIBERT UNITED STATES SUPREME COURT 542 --
2 542 US 600, A 2003 SUPREME COURT CASE. I'LL HEAR FROM YOU
3 IN THE MORNING.
4 MR. STONE: YES, SIR.
5 THE COURT: ALL RIGHT. ANYTHING FURTHER?
6 MS. CARROWAY: NO, SIR. YOUR HONOR, MAY WE APPROACH
7 FOR ONE MINUTE.
8 THE COURT: SURE.
9 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)
10 THE COURT: ALL RIGHT. YOU MAY COME DOWN, SIR. THANK
11 YOU VERY MUCH.
12 (THE WITNESS LEAVES THE WITNESS STAND.)
13 (COURT IS IN RECESS.)
14 (TUESDAY, MARCH 17, 2009.)
15 (AERIAL VIEW OF CHERRY POINT ROAD MARKED FOR
16 IDENTIFICATION AS STATE'S EXHIBIT NO. 21.)
17 (AERIAL VIEW OF CHERRY POINT ROAD MARKED FOR
18 IDENTIFICATION AS STATE'S EXHIBIT NO. 22.)
19 (LARGE DIAGRAM OF MASTER BEDROOM AND MASTER BATH
20 MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT NO. 23.)
21 (LARGE DIAGRAM OF HOUSE MARKED FOR IDENTIFICATION AS
22 STATE'S EXHIBIT NO. 24.)
23 (LARGE DIAGRAM OF HOUSE MARKED FOR IDENTIFICATION AS
24 STATE'S EXHIBIT NO. 25.)
25 THE COURT: SOLICITOR, ARE YOU READY TO CONTINUE?

1 MR. STONE: PARDON ME?
2 THE COURT: ARE YOU READY TO PROCEED?
3 MR. STONE: I AM.
4 THE COURT: DEFENSE READY TO PROCEED?
5 MS. CARROWAY: YES, YOUR HONOR.
6 THE COURT: ALL RIGHT. LET'S REVISIT THIS ISSUE OF
7 THE STATEMENTS AND THE ADMISSIBILITY OF THE STATEMENTS. I
8 NEED ONE PIECE OF FACTUAL INFORMATION. WHEN WAS THE
9 DEFENDANT ARRESTED?
10 MR. STONE: HE WAS ARRESTED APPROXIMATELY 3 HOURS
11 AFTER CAPTAIN BROMAGE INITIALLY TALKED TO HIM.
12 THE COURT: ON THE 16TH?
13 MR. STONE: NOT FOR THE MURDER CHARGE; THAT WAS FOR
14 THE PAROLE VIOLATION. HE WASN'T ARRESTED FOR THE MURDER
15 CHARGES UNTIL THE 19TH.
16 THE COURT: I LEFT THE INDICTMENTS IN THE OFFICE.
17 GIVE ME THAT AGAIN NOW.
18 MR. STONE: HE WAS ARRESTED ON THE MURDER CHARGE ON
19 SEPTEMBER THE 19TH; THAT WOULD BE AFTER ALL OF THE
20 STATEMENTS THAT WE HAVE PRESENTED TO YOUR HONOR.
21 HE WAS ARRESTED ON THE PROBATION VIOLATION WHICH WAS
22 OUTSTANDING FROM CALIFORNIA APPROXIMATELY 3 HOURS -- A FEW
23 HOURS AFTER CAPTAIN BROMAGE SPOKE TO HIM AT THE SCENE.
24 THE COURT: THAT'S THE 16TH?
25 MR. STONE: YES, SIR.

1 THE COURT: AND THAT WAS PRIOR TO THE -- I'M GOING TO
2 CALL IT THE SECOND STATEMENT TAKEN BY BROMAGE?

3 MR. STONE: YES, SIR, THAT WOULD BE THE FIRST
4 CUSTODIAL ---

5 THE COURT: FIRST CUSTODIAL.

6 MR. STONE: YES, SIR.

7 THE COURT: HE WAS ARRESTED PRIOR TO THAT?

8 MR. STONE: THAT'S CORRECT. HE WAS ARRESTED AND TAKEN
9 TO THE BLUFFTON ANNEX. AND THAT WAS THE FIRST -- YES, SIR.

10 THE COURT: ALL RIGHT. WELL, LET ME JUST COMMENT ON
11 THE FIRST ORAL INCULPATORY STATEMENT. THE STATE MADE THE
12 ARGUMENT YESTERDAY THAT THE FACT THAT THE DEFENDANT CALLED
13 POLICE THROUGH 9-1-1 I THINK IS PERSUASIVE.

14 GOING BACK AND REVIEWING BOTH EVANS AND NAVY, BOTH OF
15 THOSE CASES -- IT'S PRETTY CLEAR NOW, ALTHOUGH IT WASN'T
16 CLEAR TO ME AT THE TIME -- THAT THE DEFENDANT WAS IN
17 CUSTODY.

18 EVANS WAS IN A BACK ROOM, I BELIEVE IN THE
19 CHESTERFIELD COUNTY COURTHOUSE, AND WAS NOT FREE TO LEAVE.
20 AND NAVY WAS TAKEN FROM THE FUNERAL OF HIS SON IN A POLICE
21 CAR AND TAKEN TO THE POLICE STATION. AND THE SUPREME COURT
22 CONCLUDED THAT THAT CLEARLY WAS CUSTODY, AND HE WAS NOT
23 MIRANDIZED WHEN HE GAVE THAT FIRST ORAL INCULPATORY
24 STATEMENT.

25 AND I SEE SOME SIMILARITIES AND SOME DIS-SIMILARITIES

1 BETWEEN THIS CASE AND BOTH EVANS AND NAVY FACTUALLY.

2 HERE THE DEFENDANT REQUESTED THE ASSISTANCE OF LAW
3 ENFORCEMENT BY CALLING 9-1-1. CALLED THEM TO HIS PREMISES.
4 THEY ARRIVED. HE GIVES A VOLUNTARY STATEMENT -- WRITTEN
5 STATEMENT WHICH INDICATES THAT THERE'S AN UNKNOWN ASSAILANT
6 THAT KILLED HIS WIFE.

7 AND LAW ENFORCEMENT ARRIVES WITH -- I DON'T REMEMBER
8 HOW MANY VEHICLES. I ASSUME THEY'VE GOT BLUE LIGHTS. I'M
9 ASSUMING THERE'S A GUY PUTTING UP YELLOW TAPE. I'M
10 ASSUMING THERE ARE PEOPLE GOING IN OR AROUND THE PREMISES.
11 EMS IS CALLED. AND THE DETECTIVE, THE INVESTIGATOR,
12 ARRIVES SOME 30 MINUTES LATER.

13 IN ORDER TO TRY TO FIND OUT WHAT'S GOING ON -- 30
14 MINUTES LATER, YEAH. HE'S ALREADY HEARD THE 9-1-1 TAPES.
15 AND HE ARRIVES, AND IN AN EFFORT TO DETERMINE WHAT THE
16 DEFENDANT IS TELLING HIM OR TELLING THESE OFFICERS EXACTLY
17 WHAT HAPPENED, HE TAKES THE DEFENDANT ASIDE TO A QUIETER
18 PLACE AND ASKS HIM BASICALLY WHAT'S GOING ON, WHAT
19 HAPPENED?

20 I'LL TELL YOU THAT TRANSCRIPT OR RECORDING OF THAT
21 CONVERSATION IS -- IT IS WHAT IT IS. IT'S PROBABLY NOT
22 GOING TO BE VERY HELPFUL TO THE JURY, BUT NEVERTHELESS. I
23 DON'T BELIEVE THAT'S A CUSTODIAL SITUATION. I THINK THAT
24 BECAUSE THE DEFENDANT REQUESTED THE POLICE TO COME, HE'S
25 TRYING -- WHETHER HE'S BEING TRUTHFUL OR NOT IS NOT MY

1 CONCERN. BUT HE SEEMS TO BE TRYING TO ENGAGE THE POLICE
2 HELP FIND OUT WHO KILLED HIS WIFE. AND I DON'T THINK THAT
3 IS A CUSTODIAL SITUATION.

4 NOW, LET'S BE FRANK ABOUT IT. WHEN THERE IS A KILLING
5 OR A MURDER OR SUICIDE -- WHO KNOWS -- WHEN THE POLICE ARE
6 CALLED TO IT -- A HOMICIDE I SHOULD SAY. EVERYBODY'S A
7 SUSPECT. AND BY THE SAME TOKEN, NOBODY'S THE SUSPECT IN
8 THE SENSE THAT IT'S A CLEAN BLACKBOARD, AND WE'VE GOT TO
9 START SOMEWHERE TO FIND OUT WHAT HAPPENED. THE POLICE DO.
10 AND HE'S REQUESTING THAT THEY DO THAT.

11 NOW, I DON'T -- IF HE HAD SAID FOR EXAMPLE, I'M
12 DISTRAUGHT. I'M UPSET. I WANT TO GO TALK TO MY MOTHER,
13 DID HE HAVE A REASONABLE EXPECTATION THAT HE COULD DO THAT?
14 MAYBE. PROBABLY. WOULD THE OFFICER HAVE LET HIM DO THAT?
15 I DON'T KNOW.

16 BUT I'VE GOT TO JUDGE IT BASED ON HIS PERCEPTION OF
17 WHETHER HE HAD THE REASONABLE RIGHT TO LEAVE.

18 I THINK -- I MEAN, THIS IS HINDSIGHT. WE DON'T KNOW
19 WHAT WAS IN THE DEFENDANT'S MIND AT THE TIME. HE PROBABLY
20 FELT HE COULD LEAVE. BUT ON THE OTHER HAND, I DON'T KNOW
21 WHAT HE KNEW AT THE TIME, YOU KNOW. ALL I CAN BASE IT ON
22 IS WHAT I'VE SEEN IN THE VERY SHORT SNAPSHOT OF WHAT
23 HAPPENED IN THIS CASE.

24 AND THAT JUST LEADS IN TO SEIBERT. AND I DON'T THINK
25 BASED ON WHAT I'VE SEEN AND HEARD SO FAR THAT THIS IS A

1 MID-INVESTIGATION OR A MID-INTERROGATION MIRANDIZATION.

2 SO I FIND UNLESS THERE'S OTHER EVIDENCE THAT THE ORAL
3 INCULPATORY STATEMENT GIVEN AT THE SCENE IS ADMISSIBLE.

4 NOW, I HAVEN'T GONE MUCH FURTHER IN MY ANALYSIS OTHER
5 THAN TO DECIDE THAT ISSUE. WHAT HAPPENS AT THE STATION,
6 WHAT HAPPENS AS A RESULT OF THE MIRANDA WARNINGS AT THE
7 STATION AND WHETHER WHAT ENSUES FROM THERE IS ADMISSIBLE,
8 I'M NOT PREPARED TO RULE ON AT THIS TIME. ALTHOUGH, I
9 THINK WE'VE GOT TO DO SOMETHING ALONG THOSE LINES BETWEEN
10 NOW AND 11:00 O'CLOCK WHEN THE JURY GETS HERE, BECAUSE I
11 DON'T KNOW WHAT THE STATE'S CASE CONSISTS OF. I HAVE A
12 FEELING IT CONSISTS PRIMARILY OF THESE STATEMENTS AND THE
13 SOLICITOR IS GOING TO WANT TO USE THEM TO SOME DEGREE IN
14 HIS OPENING ARGUMENT.

15 NOW, MS. CARROWAY, YOU HAD THE ASSIGNMENT OF LOOKING
16 THROUGH THOSE STATEMENTS LAST NIGHT AND STATING YOUR
17 OBJECTIONS TO THE VARIOUS PORTIONS.

18 I THINK YOU DID MENTION -- I KNOW YOU DID MENTION
19 YESTERDAY THAT YOU HAVE SOME CONCERN ABOUT THE -- FOR LACK
20 OF A BETTER WORD -- EMASCULATION OF MIRANDA BY WHAT
21 FOLLOWED IN ONE OF THESE STATEMENTS FROM THE OFFICER WHERE
22 THE OFFICER IN EFFECT SAYS: YOU'VE GOT THE RIGHT TO REMAIN
23 SILENT. BUT YOU BETTER NOT OR SOMETHING TO THAT EFFECT.

24 AND, FRANKLY, BECAUSE THESE ARE OUT OF ORDER IN THIS
25 TRANSCRIPT, I SORT OF WAS FLIPPING BACK AND FORTH, I'M NOT

1 CLEAR AS TO WHAT THE SECOND, THIRD, AND FOURTH, AND WHAT HE
2 SAID, WHEN HE SAID IT. SO LET'S TRY TO FOCUS IN ON --
3 SINCE I'VE ALREADY RULED THAT THE FIRST STATEMENT -- WE'RE
4 UP TO THE POINT OF MIRANDIZATION AT THE STATION 3 HOURS
5 AFTER THE -- AND AFTER THE ARREST FOR THE PAROLE VIOLATION.
6 AND LET'S MOVE ON FROM THERE.

7 MS. CARROWAY: OKAY. YOUR HONOR, THE FIRST STATEMENT
8 ON THE 18TH -- AND I THINK THEY ARE PROBABLY STILL TABBED,
9 BECAUSE I TABBED THEM FOR MY BENEFIT LAST NIGHT.

10 THE COURT: ON THE 18TH?

11 MS. CARROWAY: YES, SIR. THE FIRST STATEMENT ON THE
12 18TH, WHICH IS ACTUALLY THE LAST STATEMENT, I BELIEVE.

13 THE COURT: IN THE BOOK?

14 MS. CARROWAY: IN THE BOOK.

15 THE COURT: ALL RIGHT.

16 MS. CARROWAY: IS WHERE HE GIVES MIRANDA. HE GIVES
17 HIM AN ORAL SWAB, AND THEN THE FIRST WORDS OUT OF HIS MOUTH
18 ESSENTIALLY ARE, YOU KNOW: YOU CAN'T REMAIN SILENT. THE
19 JURY'S GOING TO SEE YOU SITTING OVER THERE. THEY'RE GOING
20 TO SEE THOSE TATOOS. AND THEY DESERVE -- THEY NEED AN
21 EXPLANATION. THEY NEED TO HEAR FROM YOU.

22 I THINK THAT ESSENTIALLY NEGATES MIRANDA. I MEAN,
23 THEY ARE DEFINITELY MORE POWERFUL WORDS TO THE DEFENDANT
24 THAN THE ONES THAT HAVE JUST BEEN READ TO HIM. IT'S A REAL
25 CONVERSATION WITH EMOTION BEHIND IT. AND I THINK THAT IT

1 TELLS HIM, YES, YOU HAVE THIS RIGHT TO REMAIN SILENT BUT
2 YOU BETTER NOT, YOU REALLY SHOULDN'T AND YOU CAN'T.

3 THAT'S IN THE FIRST STATEMENT. AND MY ARGUMENT THERE
4 WOULD BE THAT'S ESSENTIALLY A NON-MIRANDIZED STATEMENT.

5 THE COURT: ALL RIGHT. THIS IS -- YOU'RE CALLING THIS
6 THE FIRST MIRANDIZED STATEMENT?

7 MS. CARROWAY: NO, SIR. THIS IS THE FIRST STATEMENT
8 ON THE 18TH.

9 THE COURT: THE FIRST STATEMENT ON THE 18TH?

10 MS. CARROWAY: THEY ARE ON TWO SEPARATE CD'S. THEY
11 KIND OF TAKE A 5-MINUTE SMOKE BREAK IN BETWEEN AND THEY
12 COME BACK. AND SO THEY'RE DONE SEPARATELY.

13 THE COURT: OKAY.

14 MS. CARROWAY: THE FIRST ONE AND THE SECOND ONE.

15 THE COURT: ALL RIGHT. IT ACTUALLY STARTS ON PAGE 99.
16 THERE'S MIRANDA. THERE'S AN ORAL SWAB. (PAUSE.) TALKS
17 ABOUT BEING DIS-RESPECTED BY WOMEN. ALL THE EVIDENCE
18 POINTED AT YOU. IT'S NOT OBJECTIVE. DOESN'T PUT YOU IN A
19 GOOD LIGHT. THERE'S NO EXPLANATION FROM THE GUY THAT DID
20 THIS. IS THAT WHERE YOU'RE ---

21 MS. CARROWAY: IT STARTS RIGHT THERE, YOUR HONOR.

22 THE COURT: IS THAT WHERE YOUR ---

23 MS. CARROWAY: YES, SIR, YOUR HONOR.

24 THE COURT: --- PRIMARY OBJECTION?

25 MS. CARROWAY: AT THE TOP OF PAGE 103 IT STARTS RIGHT

1 THERE. THERE'S NO EXPLANATION FROM THE GUY THAT DID THIS;
2 AND THAT'S WHAT THEY'RE LOOKING FOR. IT'S NOT THAT IT
3 JUSTIFIES WHAT HAPPENED, BUT THEY NEED TO HEAR FROM THE GUY
4 WHO'S SITTING OVER THERE. IF THEY DON'T HEAR FROM HIM,
5 THEY'RE SEEING TATOOS ON HIM. AND, AGAIN, I'M NOT SELLING
6 YOU A BILL OF GOODS. I HOPE YOU UNDERSTAND. LET ME SHOW
7 YOU SOMETHING. THEY'RE SEEING TATOOS AND THEY'RE SEEING A
8 GUY THAT DOESN'T WANT TO TALK.

9 THE COURT: SEEING A GUY WHO JUST HAD AN ARGUMENT WITH
10 HIS WIFE PRIOR TO THAT.

11 THEN HE GOES IN TO THE EVIDENCE.

12 SOLICITOR, YOU'RE GOING TO OFFER THE OFFICER THAT TOOK
13 THIS, YOU'RE NOT OFFERING THE WRITTEN STATEMENT?

14 MR. STONE: THAT'S CORRECT. THAT'S CORRECT. I CAN
15 REDACT WHATEVER IF THAT'S THE ISSUE.

16 THE COURT: IF IT'S NOT GOING TO THE JURY, WHY WOULD
17 YOU REDACT IT?

18 MR. STONE: WELL, THAT'S RIGHT.

19 THE COURT: HE'S GOING TO TESTIFY, ISN'T HE?

20 MR. STONE: YES, SIR.

21 THE COURT: YOU CAN'T USE THIS WRITTEN ---

22 MR. STONE: THE TRANSCRIPT ITSELF? MY THOUGHT WAS ON
23 THE FINAL CONFESSION TO USE THE TRANSCRIPT, BECAUSE IT DID
24 COME FROM AN OFFICIAL COURT REPORTER TO AID SO THE JURY CAN
25 HEAR IT. ON THE OTHER HAND, IF IT'S THAT ---

1 THE COURT: HE'S GOING TO TESTIFY, ISN'T HE?
2 MR. STONE: HE IS. HE IS.
3 THE COURT: HE'S GOING TO TESTIFY TO ALL THESE
4 STATEMENTS?
5 MR. STONE: THAT'S CORRECT.
6 THE COURT: WE'VE STILL GOT THE SAME ISSUE ---
7 MR. STONE: YES, SIR.
8 THE COURT: --- BUT WE'RE NOT READING THESE TO THE
9 JURY OR ---
10 MR. STONE: NO, SIR. MY THOUGHT IS THAT HE WOULD
11 INTRODUCE THE TAPE AND WE WOULD PLAY THE TAPE FOR THE JURY.
12 THE COURT: WHICH TAPE?
13 MR. STONE: THE -- THESE FINAL TAPES. RIGHT NOW --
14 AND I'M KIND OF WAITING TO SEE WHERE WE ARE ON THE
15 REDACTION AND HOW MUCH TROUBLE THE REDACTION IS GOING TO
16 BE. BUT ASSUMING THE REDACTION IS GOING TO BE A DIFFICULT
17 THING TO GET AROUND, MY THOUGHT IS THAT WE PLAY THE FINAL
18 TAPE TO THE JURY.
19 THE COURT: ARE YOU TALKING ABOUT THESE CD'S?
20 MR. STONE: YES, SIR.
21 THE COURT: YOU'RE GOING TO PLAY HIS CONFESSION?
22 MR. STONE: YES, SIR. I THINK -- AND THE REASON IS
23 THIS, YOUR HONOR. AND I DON'T KNOW IF THERE IS A BETTER
24 WAY OF GETTING AROUND IT. AND I WOULD CERTAINLY -- IF THE
25 COURT FINDS THERE IS A BETTER WAY FOR ME TO DO THIS, THE

1 ISSUE IS THIS: IT'S A TWO-PRONG ANALYSIS. YOU HAVE TO
2 FIND THAT IT'S VOLUNTARY, BUT SO DOES THE JURY.

3 AND WHAT MY THOUGHT IS, WHEN I'M LISTENING TO THOSE
4 TAPES, THE TONE OF CAPTAIN BROMAGE'S VOICE, THE TONE OF THE
5 DEFENDANT'S VOICE ALL, I THINK, GOES TO THE VOLUNTARINESS
6 OF THE STATEMENT. AND FROM THAT STANDPOINT, I THINK IT'S
7 IMPORTANT THE JURY HEARS AT LEAST PART OF THE CONVERSATION
8 GOING ON, WHEN THEY HAVE TO ALSO MAKE THE SAME
9 DETERMINATION THE COURT DOES; THAT'S THE REASON I WOULD
10 OFFER IT.

11 I WOULD LIKE TO CUT IT DOWN AND MAKE IT AS CLEAN AS
12 POSSIBLE. AND IF IT'S JUST PUTTING IN THAT LAST ONE AFTER
13 WE SUMMARIZE THE ---

14 THE COURT: THE WRITTEN STATEMENT? YOU WOULD PUT THE
15 WRITTEN STATEMENT IN?

16 MR. STONE: I WOULD, BUT THERE'S NOT A WRITTEN
17 STATEMENT.

18 THE COURT: ALL RIGHT. WELL, LET'S GO BACK TO THE --
19 LET ME HEAR YOU, BECAUSE I THINK THIS LINE OF QUESTIONING
20 SEEMS TO ME PERMEATES SOME OF THESE STATEMENTS. IS THIS
21 THE ONLY ONE WHERE HE TALKS ABOUT THE GUY WHO'S SITTING
22 OVER THERE?

23 MS. CARROWAY: YOUR HONOR, THERE'S SOME COMMENTS IN
24 THE SECOND STATEMENT ON THE 18TH THAT CONCERN ME AS WELL.

25 THE COURT: ON THE SAME ISSUE OR ---

1 MS. CARROWAY: YES, THIS IS THE MOST IMPORTANT DAY IN
2 THE LIFE OF THIS CASE, AND WHAT YOU SAY HERE NEEDS TO ECHO
3 IN THE COURTROOM.

4 THE COURT: TELL ME WHAT PAGE IS THAT.

5 MS. CARROWAY: I HAVE IT'S ON PAGE 61 AND 62; THAT
6 WOULD BE IN THE SECOND STATEMENT ON THE 18TH, BUT IT'S IN
7 THE TRANSCRIPT IT'S BEFORE THIS ONE.

8 THE COURT: WELL, I DON'T THINK THAT'S AS QUESTIONABLE
9 AS THE STATEMENT ON 103.

10 MS. CARROWAY: YOUR HONOR, MY ARGUMENT WOULD BE THAT
11 THE STATEMENT ON 103 IS ESSENTIALLY -- MAKES THAT FIRST ON
12 THE 18TH STATEMENT A NON-MIRANDIZED STATEMENT. AND THEN
13 WE'RE RIGHT BACK WITH THE SEIBERT FACTORS FOR THE
14 SUBSEQUENT STATEMENT AND A MID-INTERROGATION MIRANDA. HE
15 RE-MIRANDIZES HIM ---

16 THE COURT: EVERY TIME.

17 MS. CARROWAY: YES, SIR, BUT I WOULD ARGUE NOT HAVING
18 -- ESSENTIALLY NOT HAVING MIRANDIZED THE BEGINNING OF 9/18
19 STATEMENT, IT'S MID-INTERROGATION MIRANDA. I MEAN, THE
20 CAT'S ALREADY OUT OF THE BAG. HE'S ALREADY SAID
21 EVERYTHING. CAN'T UN-RING THAT BELL. AND NOW IT HAS THIS
22 OVER-ARCHING THEME THAT'S PRESSURE FROM BROMAGE THAT MY
23 CLIENT HAS TO TALK, THAT THE JURY HAS TO HEAR HIM, WHICH IS
24 CLEARLY INCORRECT.

25 THE COURT: RIGHT. ALL RIGHT. SOLICITOR, HOW ABOUT

1 THIS ISSUE OF THE OFFICER INTERROGATIONS. THE DEFENSE SAYS
2 THAT THE NATURE OF THE INTERROGATION NEUTRALIZES THE
3 MIRANDA WARNINGS, THAT HE HAS A RIGHT TO REMAIN SILENT.

4 MR. STONE: I WISH, YOUR HONOR, THAT I HAD READ AND
5 PROPERLY ARGUED SEIBERT TO YOU LAST NIGHT. THAT HAS
6 ABSOLUTELY NOTHING TO DO WITH THIS SITUATION. SEIBERT IS
7 AN INTENTIONAL INTERROGATION TECHNIQUE WITH LAW
8 ENFORCEMENT, AND IT'S VERY IMPORTANT IN THIS ANALYSIS. IT
9 WAS -- THE THEORY WAS A LAW ENFORCEMENT OFFICER SHOULD
10 FIRST ARREST; 2, QUESTION; 3 -- AND THIS IS THE IMPORTANT
11 PART -- GET THE CONFESSION. GET ALL OF THE INFORMATION,
12 AND THEN MIRANDIZE AND GO BACK IN IN ORDER TO GET THE EXACT
13 SAME THING THEY ALREADY GOT.

14 WHAT'S IMPORTANT ABOUT THIS IS HE DOESN'T CONFESS.
15 EVEN AT THIS POINT WHEN THE DEFENSE IS MAKING A BIG MOTION
16 THAT HIS WILL IS OVERBORNE -- AND THAT'S THE LAW IN SOUTH
17 CAROLINA. THE ISSUE IS WHETHER OR NOT THE DEFENDANT'S WILL
18 WAS OVERBORNE. IS THIS STATEMENT BY A PREPONDERANCE OF THE
19 EVIDENCE VOLUNTARY? THAT'S THE ISSUE. THERE IS NO
20 SPECIFIC CASE LAW THAT SAYS WHAT SHE WANTS IT TO SAY, OR
21 I'M ASSUMING WE'VE READ IT. AND I'VE GONE THROUGH
22 EVERYTHING I CAN FIND, AND I CAN FIND NOTHING ON THIS.

23 WE KNOW LAW ENFORCEMENT CAN MISLEAD A DEFENDANT. WE
24 KNOW ALL THE OTHER TECHNIQUES THEY CAN USE, THE RE-
25 TECHNIQUE AND ALL THIS OTHER STUFF.

1 AND THE BOTTOM LINE IS THE ISSUE IS: WAS HIS
2 STATEMENT VOLUNTARY?

3 AS YOU JUST POINTED OUT AND THE DEFENSE, HE GETS
4 QUESTIONED AND MAKES THIS REFERENCE TO THEY. THEY DOESN'T
5 SAY THE JURY. BUT HE SAYS, THEY WANT TO HEAR FROM YOU.

6 IN THE CASE OF STATE VERSUS MYERS, I BELIEVE THE SLED
7 AGENT ASKED THE DEFENDANT IN THAT CASE, DON'T YOU WANT TO
8 SAY YOU'RE SORRY? AT WHICH TIME, OF COURSE, HE BREAKS DOWN
9 AND DOES SAY. JUSTICE PLEICONES DECIDED THAT THAT WAS A
10 PERFECT PART OF POLICE INTERROGATION.

11 WHAT'S NOTABLE HERE IS THAT THIS REFERENCE TO THEY
12 WANT TO HEAR FROM YOU COMES ON PAGE 103. HE THEN MAKES --
13 I SAY, HE. THE DEFENDANT MAKES THREE OR FOUR COMMENTS
14 TALKING BACK AND FORTH TO CAPTAIN BROMAGE SAYING, I HEAR
15 YOU. I ALREADY TOLD YOU WHAT HAPPENED ON SUNDAY.

16 IT WASN'T UNTIL PAGE 110 THAT HE FINALLY SAYS, I'LL
17 TELL YOU WHAT HAPPENED.

18 WHAT'S IMPORTANT IS IF HIS WILL IS SO OVERBORNE, YOU'D
19 THINK HE WOULD HAVE CONFESSED, BUT HE DIDN'T. AFTER ALL OF
20 THIS, THE DEFENSE SAYS THAT CAPTAIN BROMAGE HAS MADE HIS
21 STATEMENT INVOLUNTARY. WHAT DOES HE SAY? MY WIFE TRIED TO
22 COMMIT SUICIDE AND I GRABBED THE GUN AND IT WENT OFF.
23 THAT'S NOT A CONFESSION. IT'S CERTAINLY NOT SEIBERT. AND
24 IT'S NOT ANYTHING ELSE.

25 FROM YOUR STANDPOINT ANALYZING THE TOTALITY OF THE

1 CIRCUMSTANCES, IF HIS WILL WAS OVERBORNE, NEXT TIME LET'S
2 GET A CONFESSION. THAT'S NOT A CONFESSION.

3 IN FACT, HE DOESN'T GIVE A CONFESSION UNTIL AN
4 ENTIRELY DIFFERENT INTERVIEW WAY DOWN THE ROAD. HE'S STILL
5 SAYING THE SAME -- HE'S JUST CHANGING HIS STORY. THIS TIME
6 IT'S, MY WIFE COMMITTED SUICIDE.

7 HE GIVES A CONFESSION LATER ON AND I THINK THE DEFENSE
8 MIGHT HAVE AN ANGLE WHERE THERE'S SOMETHING THAT'S DOWN THE
9 LINE. BUT IT'S NOT. AND THE ISSUE HERE BEFORE THE COURT
10 IS: WAS THIS BY A PREPONDERANCE OF THE EVIDENCE DID HE
11 MAKE THIS STATEMENT VOLUNTARILY?

12 OF COURSE, HE MADE IT VOLUNTARILY. HE LIED. HE TOLD
13 US WHAT HE WANTED US TO KNOW. AND I DON'T SEE HOW THAT
14 COULD BE INVOLUNTARY REGARDLESS OF WHAT CAPTAIN BROMAGE
15 SAID.

16 THE COURT: YES.

17 MS. CARROWAY: THANK YOU, YOUR HONOR. I UNDERSTAND
18 THE SOLICITOR IS SAYING THIS IS NOT A CONFESSION. THESE
19 ARE CLEARLY INCULPATORY STATEMENTS. HE PUTS HIMSELF AT THE
20 SCENE WITH HIS HAND ON A GUN. TO ARGUE THAT THESE
21 STATEMENTS AREN'T INCULPATORY, I DON'T SEE HOW HE CAN GET
22 THERE. THEY ARE DEFINITELY INCULPATORY STATEMENTS.

23 AND HE MAKES THE POINT THAT HE DOESN'T SAY ANYTHING
24 UNTIL PAGE 110. I MEAN, BUT BROMAGE IS TALKING UNTIL PAGE
25 110. MY CLIENT DOESN'T REALLY SAY MUCH UNTIL PAGE 110.

1 BROMAGE IS CONTINUING TO TELL HIM WHY HE NEEDS TO MAKE A
2 STATEMENT.

3 TO SAY HE DOESN'T CONFESS UNTIL WAY DOWN THE ROAD,
4 WELL, YOUR HONOR, THEY TAKE A CIGARETTE BREAK AND COME
5 BACK. I MEAN, I DON'T KNOW HOW THAT'S WAY DOWN THE ROAD.
6 IT'S IN THE SECOND STATEMENT THAT'S GIVEN AT THE JAIL THAT
7 DAY.

8 AND TO ARGUE THAT THIS FIRST STATEMENT ISN'T A
9 CONFESSION AND ISN'T INCULPATORY -- I MEAN, YOU'VE READ THE
10 STATEMENT. IT'S AN INCULPATORY STATEMENT.

11 WE'VE GOT HIM AT THE SCENE WITH A GUN, ADMITTING THEY
12 WERE ARGUING. I MEAN, IT'S AN INCULPATORY STATEMENT.

13 THE COURT: YOU HAD MY TRANSCRIPT OVERNIGHT, SO I
14 HAVEN'T READ IT.

15 MS. CARROWAY: SORRY.

16 THE COURT: ALL RIGHT. LET'S MOVE ONTO THE NEXT
17 STATEMENT TO WHICH YOU HAVE AN OBJECTION. I UNDERSTAND
18 YOUR OBJECTION ABOUT TO MIRANDA'S GONE, MIRANDA'S GONE.
19 THAT'S SEIBERT. BUT ASSUME MIRANDA IS NOT GONE BY THE RE-
20 MIRANDIZATION, WHAT'S OBJECTIONABLE ABOUT THE STATEMENT
21 THAT YOU'VE MARKED AS NO. 2 ON THE 18TH? OTHER THAN ---

22 MR. STONE: MAY I INTERRUPT JUST A MINUTE, TO MAKE
23 SURE I'M ON THE SAME PAGE, YOUR HONOR. I APOLOGIZE. IS IT
24 PAGE 59?

25 THE COURT: YES.

1 MR. STONE: THANK YOU.

2 MS. CARROWAY: YOUR HONOR, MY CONCERN ABOUT THAT

3 STATEMENT IS I THINK WE'VE GOT THE SAME ---

4 THE COURT: THIS IS THE ECHO IN THE COURTROOM ---

5 MS. CARROWAY: YES, SIR.

6 THE COURT: --- LANGUAGE?

7 MS. CARROWAY: YES, SIR. IS THAT THE SECOND PARAGRAPH

8 -- I GUESS THE FIRST FULL PARAGRAPH ON PAGE 61?

9 THE COURT: RIGHT.

10 MS. CARROWAY: THIS IS GOING TO ECHO IN THE COURTROOM,

11 IT'S GOING TO ECHO IN A COURT OF LAW. IT'S THE SAME THING.

12 YOU HAVE THE RIGHT TO REMAIN SILENT, BUT NOT -- NOT REALLY.

13 YOU'VE GOT TO TALK. THIS IS WHAT THE COURTROOM IS GOING TO

14 HEAR.

15 THE COURT: WELL, COULD THAT BE A FABRICATION? IS

16 THAT THE TYPE OF THING THAT FALLS UNDER THE DOCTRINE THAT

17 THE POLICE CAN USE CERTAIN ---

18 MS. CARROWAY: YOUR HONOR ---

19 THE COURT: --- PERSUASIVE TACTICS, SHALL WE SAY?

20 MS. CARROWAY: I WOULD ARGUE -- I DON'T DISAGREE WITH

21 YOU THAT THE POLICE CAN USE PERSUASIVE TACTIC AND THEY CAN

22 EVEN MISLEAD. BUT I THINK TO SAY THINGS THAT NEGATE

23 MIRANDA AND TELL THEM, YOU KNOW, HERE'S THESE RIGHTS YOU

24 HAVE. YOU HAVE THE RIGHT TO REMAIN SILENT, BUT NOT SO

25 MUCH. THE COURT -- YOU KNOW, IT'S GOING TO ECHO IN A COURT

1 OF LAW.

2 WE'RE BACK TO THE SAME THING. THEY CAN MISLEAD. THEY
3 CAN, YOU KNOW, BE VERY NICE AND ALL THESE THINGS, BE
4 DECEPTIVE. BUT THEY CANNOT TELL THEM THAT THEIR MIRANDA
5 RIGHTS DON'T REALLY APPLY.

6 THE COURT: IF THE STATEMENT HAD BEEN YOUR SILENCE IS
7 GOING TO ECHO IN A COURT OF LAW, WOULD THAT BE A STRONGER
8 CASE?

9 MS. CARROWAY: I THINK THAT GOES TO THE SAME THING. I
10 THINK THAT'S WHAT WE'RE DEALING WITH.

11 THE COURT: OF COURSE, HE DOESN'T SAY THAT.

12 MS. CARROWAY: I UNDERSTAND. BUT I THINK THAT'S WHAT
13 IT IMPLIES.

14 THE COURT: ALL RIGHT. HOW ABOUT THE REST OF THAT
15 STATEMENT?

16 MS. CARROWAY: YOUR HONOR, THE COMMENTS MADE IN THE
17 PREVIOUS STATEMENT MAKE THE SAME AS YOU SEE HERE ON PAGE 61
18 ALL THAT MUCH STRONGER. I MEAN, WE'RE DEALING WITH ---

19 THE COURT: I THINK THAT PROBABLY ---

20 MS. CARROWAY: I WOULD ARGUE THAT IT'S AN OVER-ARCHING
21 IDEA THAT WEIGHED IN MY CLIENT'S MIND THROUGHOUT THE
22 PROCESS, YOUR HONOR.

23 THE COURT: ALL RIGHT. ANY PROBLEM WITH THE
24 STATEMENTS ON THE 16TH? NOW, WE'RE NOT TALKING ABOUT
25 REDACTION.

1 MS. CARROWAY: RIGHT. I WAS JUST TALKING ABOUT THE
2 VOLUNTARINESS.
3 THE COURT: RIGHT. THE STATEMENTS ON THE 16TH?
4 MS. CARROWAY: NO, SIR.
5 THE COURT: OKAY.
6 MS. CARROWAY: YOUR HONOR, I WOULD STILL NOTE MY PRIOR
7 OBJECTION THOUGH THAT I BELIEVE -- I -- I DON'T BELIEVE THE
8 FIRST STATEMENT TO BE CUSTODIAL. AND BASED ON THAT ---
9 THE COURT: I UNDERSTAND. ALL RIGHT. SOLICITOR,
10 YOU SAY THAT THIS -- THAT IS THE SECOND STATEMENT ON THE
11 18TH ---
12 MR. STONE: YES, SIR.
13 THE COURT: --- THAT'S THE ONE YOU PLAN TO ---
14 MR. STONE: I DO.
15 THE COURT: --- PLAY? ALL RIGHT. WELL, THE
16 VOLUNTARINESS ISSUE THEN -- WHAT ABOUT THE SECOND STATEMENT
17 WHEN HE -- HE'S -- THE FIRST ONE IS AT 2:50 AND THE NEXT
18 ONE IS AT, WHAT, 4:15; IS THAT CORRECT? TWO HOURS LATER?
19 MR. STONE: YES, SIR.
20 THE COURT: I DON'T KNOW HOW MUCH OF A BREAK THERE
21 WAS, BUT YOU SAID ---
22 MR. STONE: IT STOPPED AT 3:25. THE SECOND ONE
23 STOPPED -- EXCUSE ME, THE SECOND ONE, YOUR HONOR, IN
24 CUSTODY -- I'M SORRY. LET ME PHRASE IT THE WAY YOU GUYS
25 ARE TALKING ABOUT IT. ON THE 18TH THE FIRST STATEMENT

1 STARTED AT 2:50 AND ENDED AT 3:25.

2 THE COURT: OKAY.

3 MR. STONE: AND THEN THE NEXT STATEMENT STARTED AT
4 4:15.

5 THE COURT: SO ABOUT HALF AN HOUR. AND HE RE- --
6 RE ---

7 MR. STONE: AND HE STARTS ALL OVER WITH THE MIRANDA
8 AND GOES THROUGH THE WHOLE PROCESS AGAIN.

9 AGAIN, YOUR HONOR, I DO NOT SEE ANY CASE LAW AT ALL TO
10 SUPPORT THE DEFENSE'S POSITION ON THIS. THE ISSUE IS
11 WHETHER OR NOT THE DEFENDANT'S STATEMENT WAS VOLUNTARY; AND
12 THAT'S THE DETERMINATION BOTH THE COURT AND THE JURY MAKES
13 BY A PREPONDERANCE OF THE EVIDENCE.

14 I THINK THAT IT IS VERY CLEAR IN THE CONVERSATIONAL
15 TONE ON NOT ONLY THE TAPE BUT ALSO THE TRANSCRIPTION OF THE
16 TAPE, THAT THE RIGHTS WERE READ TO HIM; THAT HE UNDERSTOOD
17 THOSE RIGHTS; AND AT SOME POINT STILL WITHHOLDS GIVING THE
18 FULL STATEMENT.

19 I THINK AFTER HE SAYS THAT -- AFTER HE SAYS, OKAY. I
20 GOT MAD. I HELD A GUN AND I TRIPPED AND IT WENT OFF. HE
21 THEN GOES INTO, YOU KNOW WHAT, LET ME TELL YOU THE REAL
22 TRUTH. I BLACKED OUT. I DON'T REMEMBER ANYTHING.

23 SO I DON'T KNOW THAT WE EVER GOT THE FULL STORY FROM
24 MR. HERRERA. BUT I THINK CLEARLY WHAT THAT SHOWS US IN
25 THIS TRANSCRIPT IS THAT HIS STATEMENTS WERE VOLUNTARY AND I

1 THINK THAT IS THE ISSUE.

2 I DON'T THINK WHETHER OR NOT I CAN USE THEM TO MY
3 BENEFIT OR NOT IN THE CONCEPT OF PUTTING HIM IN THE HOUSE
4 VERSUS NOT PUTTING HIM IN THE HOUSE -- ANY OF THAT STUFF IS
5 IRRELEVANT QUESTION. THE RELEVANT QUESTION IS: IS HIS
6 STATEMENT VOLUNTARY? AND IS THAT VOLUNTARY BY A
7 PREPONDERANCE OF THE EVIDENCE? AND I THINK THE RECORD IS
8 CLEAR ON THAT.

9 THE COURT: MS. CARROWAY, ANYTHING FURTHER?

10 MS. CARROWAY: YOUR HONOR, I DON'T THINK THE ISSUE
11 HERE IS WHETHER OR NOT HIS MIRANDA RIGHTS WERE READ OR
12 WHETHER BROMAGE WAS NICE TO HIM. I'M NOT DISPUTING EITHER
13 OF THOSE THINGS. THE THING THAT BROMAGE SAID AFTER READING
14 THE MIRANDA RIGHTS OVERPOWERS THE MIRANDA RIGHTS AND MAKE
15 IT AS IF THEY'RE NOT THERE.

16 AND I WOULD ARGUE THAT SEIBERT DOES APPLY. I DON'T --
17 I MEAN, WE'RE DEALING WITH -- AT THAT POINT WE'RE DEALING
18 WITH MIRANDA THAT'S READ KIND OF MID-INTERROGATION. IT'S
19 CLEARLY APPLICABLE.

20 THE COURT: IT WOULD BE A CLOSER CASE IF HE HAD NOT
21 READ THE ---

22 MS. CARROWAY: I UNDERSTAND.

23 THE COURT: --- RIGHTS THE SECOND TIME.

24 MS. CARROWAY: BUT, THERE AGAIN, I GO BACK TO LIKE IT
25 HAPPENED. I MEAN, THE STATEMENTS THAT HE MADE AFTER

1 READING MIRANDA ARE MUCH MORE POWERFUL THAN THE READING OF
2 MIRANDA.

3 THE COURT: WELL, HE'S TOLD HE HAS A RIGHT TO REMAIN
4 SILENT.

5 MS. CARROWAY: AND THEN HE'S TOLD, NOT REALLY, YOU
6 CAN'T. IT'S GOING TO BE HELD AGAINST YOU. I MEAN, THAT'S
7 BASICALLY WHAT HAPPENED.

8 THE COURT: HE DIDN'T SAY THAT.

9 MS. CARROWAY: HE SAID THAT THE JURY HAS TO HEAR FROM
10 HIM.

11 THE COURT: HE DIDN'T SAY THAT IN THOSE WORDS.

12 MS. CARROWAY: THAT'S THE MESSAGE THAT'S BEING SENT.

13 THE COURT: ALL RIGHT. SOLICITOR, WHAT WAS THE MYERS
14 -- DO YOU HAVE MYERS?

15 MR. STONE: YES, SIR, I'VE GOT A COPY OF THAT. LET ME
16 HAND ANOTHER COPY TO THE DEFENSE ATTORNEY.

17 THE COURT: ALL RIGHT. ANYTHING FURTHER ON THIS
18 ISSUE?

19 MR. STONE: EXCUSE ME?

20 THE COURT: ANYTHING FURTHER ON THIS ISSUE?

21 MR. STONE: NO, SIR, NOT FROM THE STATE.

22 MS. CARROWAY: NO, YOUR HONOR.

23 THE COURT: ALL RIGHT. ANYTHING FURTHER OF A PRETRIAL
24 NATURE?

25 MR. STONE: NOT FROM THE STATE, YOUR HONOR. WE HAD

1 MARKED A FEW MORE EXHIBITS. I HAVE SHOWN THOSE TO DEFENSE
2 COUNSEL. WE ALSO HAVE THE PHYSICAL EVIDENCE HERE, READY TO
3 GO AS WELL. I'LL PRE-MARK THAT AS WELL.

4 THE COURT: HAVE YOU SEEN ALL THAT?

5 MS. CARROWAY: I HAVE, YOUR HONOR. THE DRAWINGS OF
6 THE HOUSE AND THE AERIAL VIEW IS WITHOUT OBJECTION.

7 THE COURT: ALL RIGHT. SO THE ISSUE OF PHOTOGRAPH 7,
8 8, 9, 10, 11, AND 12 IS STILL OUTSTANDING, CORRECT?

9 MS. CARROWAY: YES.

10 THE COURT: SOLICITOR, OTHER THAN THE FACT THAT THOSE
11 ARE DUPLICATIVE OF PRIOR PHOTOGRAPHS, WHAT MAKES THEM
12 EITHER PROBATIVE OR PREJUDICIAL?

13 MR. STONE: EXCUSE ME, I'M SORRY. THE PREVIOUS
14 PHOTOGRAPHS ARE GIVING YOU THE CONTEXT OF THE BEDROOM.

15 THE COURT: THE FULL ROOM?

16 MR. STONE: YES, SIR. AND THAT WOULD BE STATE'S
17 EXHIBIT 6 -- EXCUSE ME. LET ME START OVER. EXHIBIT 3, 4,
18 5, 6, AND 8. THOSE ARE THE -- THAT'S THE CONTEXT OF THE
19 BEDROOM ITSELF. I DON'T BELIEVE THAT FROM THOSE
20 PHOTOGRAPHS I THINK IT SHOWS YOU WHERE THESE -- THESE HOLES
21 ARE. I DON'T THINK IT SHOWS YOU THE DETAIL ENOUGH TO
22 DETERMINE THE DEPTH OF THEM. AND THE DEPTH, OF COURSE, IS
23 RELEVANT BECAUSE IT SHOWS THE FORCE THAT'S USED TO MAKE
24 THOSE HOLES.

25 NO. 12 AND NO. 11 AND NO. 7 ARE SIMPLY PHOTOGRAPHS OF

1 THE HOLES SO THAT THE JURY CAN TELL THE FORCE USED TO MAKE
2 THESE HOLES. IT SHOWS THAT THEY'RE ACTUALLY CRACKING
3 THROUGH NOT ONLY THE OUTSIDE SHELF, BUT ---

4 THE COURT: WHAT -- ALL RIGHT. LET'S ASSUME THEY SHOW
5 WHAT THEY SHOW. WHAT ARE THEY INTENDED TO SHOW TO THE
6 JURY? WE'RE GETTING BACK TO LYLE AND WHETHER OR NOT THIS
7 IS A LYLE ISSUE, I DON'T EVEN KNOW. I DON'T RECALL WHEN
8 THOSE HOLES IN THE WALL WERE MADE, WHAT, SOME 10 DAYS PRIOR
9 TO OR ---

10 MR. STONE: NO, SIR. WHAT HAPPENED WAS -- IS THAT THE
11 OFFICERS SEE THESE HOLES AS THEY GET THERE. WHEN CAPTAIN
12 BROMAGE IS QUESTIONING THE DEFENDANT, THE DEFENDANT -- HE
13 SAYS, LOOK. I KNOW WHAT HAPPENED HERE. I SEE SIGNS OF
14 DOMESTIC VIOLENCE ALL OVER YOUR BEDROOM. EXPLAIN IT.

15 AT WHICH TIME THE DEFENDANT SAYS, THOSE ARE HOLES I
16 MADE MONTHS AGO.

17 THE COURT: MONTHS AGO.

18 MR. STONE: HOWEVER -- AND THE REASON THIS IS
19 IMPORTANT IS BECAUSE FOR RES GESTAE TO BE RELEVANT, THE
20 TIMING IS IMPORTANT.

21 FOR 404 (B), OBVIOUSLY THE CLEAR AND CONVINCING AS
22 WELL AS THE TIMING -- BUT THE BIG ISSUE IS UNDER STATE
23 VERSUS BRAXTON, IT'S EVIDENCE OF A PREVIOUS FIGHT WITH THE
24 DECEASED. IN FACT, HE SAYS -- THE DEFENDANT SAYS, I DID
25 THAT AFTER I GOT MAD AT KATHERINE -- WHO IS HIS WIFE --

1 THAT HE ENDED UP SHOOTING. I GOT MAD. SHE LEFT. THEY'RE
2 MY WALLS. I PUNCHED THEM.

3 SO HE IS ADMITTING TO AN ALTERCATION BETWEEN HIMSELF
4 AND THE DECEASED, WHICH IS RELEVANT -- NOT UNDER EITHER
5 404 (B) OR RES GESTAE, BUT IS A STRAIGHT ADMISSIBILITY
6 UNDER STATE VERSUS BRAXTON -- BRAXTON AND STATE VERSUS LUKE
7 WILLIAMS, WHICH I HANDED TO YOUR HONOR EARLIER.

8 THE COURT: I'VE GOT BRAXTON.

9 MR. STONE: THE STATEMENT THAT'S IN THIS CASE -- STATE
10 VERSUS JOHN GREGORY BRAXTON, IN HOMICIDE CASES EVIDENCE OF
11 PREVIOUS QUARRELS AND ILL FEELINGS OR HOSTILE ACTS BETWEEN
12 PARTIES IS ADMISSIBLE TO SHOW ANIMUS PROBABLY EXISTED
13 BETWEEN THE PARTIES AT THE TIME OF THE HOMICIDE.

14 THE COURT: OKAY.

15 MR. STONE: AND THAT IS QUOTING -- BRAXTON IS QUOTING
16 AT THAT POINT STATE VERSUS WILLIAMS, WHICH I ALSO HANDED UP
17 TO YOU.

18 IT GOES FURTHER TO SAY, EVIDENCE OF CONTROVERSIAL
19 TELEPHONE CALLS AND LOUD ALTERCATIONS ALL ESTABLISH A
20 STRAINED NATURED OF THE PARTIES' RELATIONSHIP; THAT'S WHAT
21 THIS CASE IS ALL ABOUT. THIS IS A DOMESTIC MURDER. THE
22 SIGNS OF THOSE HOLES IN THE WALL THAT THE DEFENDANT ADMITS
23 HE MADE WHEN HE WAS ANGRY AT THE DECEASED IS SIGNS OF A
24 DOMESTIC PATTERN. AND ALL OF THAT IS RELEVANT UNDER
25 BRAXTON AND WILLIAMS TO ESTABLISH ILL FEELINGS BETWEEN THE

1 TWO.

2 THE COURT: ALL RIGHT. DO YOU AGREE OR DISAGREE WITH
3 THAT?

4 MS. CARROWAY: DISAGREE.

5 THE COURT: DISAGREE WITH BRAXTON AND WILLIAMS?

6 MS. CARROWAY: I DO, YOUR HONOR. IN BRAXTON, YOU
7 KNOW, THEY ALLOW A GUN IN FOR IDENTIFY PURPOSES. A GUN WAS
8 USED IN A PRIOR INCIDENT. IT WAS THE MAIN ISSUE AT TRIAL.
9 HERE ---

10 THE COURT: THAT'S 404, RIGHT?

11 MS. CARROWAY: YES, SIR.

12 THE COURT: ALL RIGHT.

13 MS. CARROWAY: BUT THAT'S WHAT HAPPENED IN THE BRAXTON
14 CASE. HERE WE'RE DEALING WITH SOMETHING THAT'S NOT
15 RELEVANT. IT'S PROBATIVE OF NOTHING. WE HAVE NO IDEA HOW
16 LONG AGO HE TOLD ---

17 THE COURT: HE SAID -- I DON'T KNOW. THE SOLICITOR
18 SAID THAT THE DEFENDANT IDENTIFIED WHEN HE MADE THE HOLES
19 -- THAT HE'D MADE THE HOLES AND WHEN HE MADE THE HOLES.

20 MS. CARROWAY: SOME MONTHS BEFORE. YOU KNOW, AS FAR
21 AS RES GESTAE, I THINK THAT ---

22 THE COURT: THAT'S PROBABLY STRETCHING RES GESTAE.

23 MS. CARROWAY: SURE. THAT THEY HAVE TO BE SO LINKED
24 TOGETHER THAT YOU CAN'T PROVE ONE WITHOUT THE OTHER; THAT'S
25 CLEARLY NOT THE CASE HERE. THIS DOES NOT GO TO AN ELEMENT

1 THAT THE STATE HAS A BURDEN OF PROVING.

2 THE COURT: HOW ABOUT THIS LANGUAGE IN WILLIAMS THAT
3 SAID EVIDENCE OF A PRIOR DISCORD -- MARITAL DISCORD, WHEN
4 HE ADMITS THAT -- WHEN HE SAYS THAT IT'S PRIOR MARITAL
5 DISCORD?

6 MS. CARROWAY: YOUR HONOR, I WOULD ARGUE THAT IT CAN'T
7 BE PROVED BY CLEAR AND CONVINCING EVIDENCE WHICH I STILL
8 THINK IT NEEDS TO BE. AND FOR THEM TO SAY THAT THE
9 DEFENDANT, FINE, WE DON'T BELIEVE ANY OF HIS STATEMENTS ---

10 THE COURT: WELL ---

11 MS. CARROWAY: --- BUT ON THIS ONE WE'RE GOING TO TAKE
12 WHAT HE SAYS AT FACE VALUE.

13 THE COURT: YOU DIDN'T OBJECT TO THE PHOTOS NOT THE
14 CLOSE-UPS, BUT THE FULL ROOM PHOTOS WHICH SHOW THE SAME
15 THING ---

16 MS. CARROWAY: YES, SIR. BUT ---

17 THE COURT: IN MORE DETAIL -- LESS DETAIL.

18 MS. CARROWAY: AT THAT POINT I DON'T THINK THE JURY IS
19 GOING TO -- WITHOUT PROBING BY THE STATE -- IS GOING TO
20 HONE IN ON THAT HOLE. I THINK THAT JUST SHOWS THE ROOM AND
21 THE LAYOUT OF THE HOUSE.

22 THE COURT: WELL, THEY ---

23 MS. CARROWAY: AND I WOULD OBVIOUSLY ---

24 THE COURT: --- ARE GOING TO DO THAT ANYWAY, WHETHER I
25 LET THESE IN OR NOT.

1 MS. CARROWAY: RIGHT. BUT I WOULD OBVIOUSLY OBJECT TO
2 ANY COMMUNICATION FROM SOLICITOR STONE ABOUT THESE HOLES.

3 THE COURT: UNTIL IT COMES FROM YOUR CLIENT, RIGHT?
4 AGAIN, I HAVEN'T READ IT, BUT I UNDERSTAND HE DOES SAY HE
5 DID IT.

6 MS. CARROWAY: HE DOES SAY THAT, BUT I WOULD ARGUE
7 THAT THEY'RE NOT RELEVANT AT THIS POINT. THEY DO NOTHING
8 TO PROVE ANYTHING ABOUT A GUNSHOT.

9 THE COURT: THAT'S TRUE. I GO BACK TO WILLIAMS, AND
10 I'M JUST READING THE QUOTED LANGUAGE BECAUSE SOMEBODY ELSE
11 HAD MY COPY. DO YOU HAVE IT?

12 MR. STONE: I HAVE IT. HERE'S ANOTHER COPY.

13 THE COURT: I'VE GOT IT HERE. I WANT TO MAKE SURE MS.
14 CARROWAY HAS IT. UNDER SECTION 4 ADMISSION OF EVIDENCE OF
15 MARITAL DISCORD. THE LANGUAGE QUOTING CLINKSCALES IN
16 HOMICIDE CASES ALTHOUGH EVIDENCE OF PREVIOUS QUARRELS AND
17 ILL FEELINGS IS ADMISSIBLE TO SHOW THAT ANIMUS PROBABLY
18 EXISTED BETWEEN THE PARTY AT THE TIMES, THE DETAILS OF THE
19 DIFFICULTY SHOULD BE EXCLUDED.

20 OF COURSE, I'M NOT SURE THIS IS THE DETAILS OF THE
21 DIFFICULTIES. IT'S JUST EVIDENCE OF THE DIFFICULTIES.

22 ALL RIGHT. I'M GOING TO ALLOW THE PHOTOGRAPHS.
23 OBJECTION TO PHOTOGRAPHS 7, 8, 9, 10, 11, AND 12 IS
24 OVERRULED RESPECTFULLY.

25 I'M GOING TO GO IN THE NEXT 30 MINUTES WHILE WE'RE

1 WAITING FOR THE JURY, READ THE TRANSCRIPT BECAUSE I HAVE
2 NOT HAD THE OPPORTUNITY TO DO THAT. AND I'LL GIVE YOU MY
3 RULING AT THAT TIME.
4 ANYTHING FURTHER?
5 MR. STONE: NO, SIR.
6 MS. CARROWAY: NO, YOUR HONOR.
7 THE COURT: ANYTHING OUTSTANDING?
8 MS. CARROWAY: NO, SIR.
9 THE COURT: ALL RIGHT. LET'S STAND AT EASE FOR ABOUT
10 30 MINUTES.
11 MS. CARROWAY: YOUR HONOR.
12 THE COURT: YES.
13 MS. CARROWAY: SORRY. WHAT ABOUT PHOTOGRAPHS 13 AND
14 14 OF THE VICTIM?
15 THE COURT: WELL, I TOLD YOU I WOULD NOT RULE ON THAT
16 UNTIL I HEAR FROM THE PATHOLOGIST AS TO WHY THEY NEED TO
17 COME IN. I THINK YOU OBJECTED TO THE MODEL WHICH I ALSO
18 OVERRULED.
19 MS. CARROWAY: THE DUMMY?
20 THE COURT: THE DUMMY, YES. I JUST RESERVE RULING ON
21 THE PHOTOGRAPHS.
22 ALL RIGHT. STAND AT EASE.
23 (A RECESS WAS TAKEN.)
24 (PLASTIC BAG CONTAINING BOX OF BULLETS MARKED FOR
25 IDENTIFICATION AS STATE'S EXHIBIT NO. 26.)

1 (PLASTIC BAG WITH DRINK CUP CONTAINING SMALL PACKAGE
2 OF BULLETS MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT NO.
3 27.)

4 (BROWN BAG CONTAINING WHITE BAG WITH G.S.R. MARKED FOR
5 IDENTIFICATION AS STATE'S EXHIBIT NO. 28.)

6 (BROWN BAG WITH BULLETS MARKED FOR IDENTIFICATION AS
7 STATE'S EXHIBIT NO. 29.)

8 (PLASTIC BAG CONTAINING ROUND METAL CONTAINER WITH
9 SHELL MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT NO. 30.)

10 (GUN MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT NO.
11 31.)

12 THE COURT: ALL RIGHT. COUNSEL, I'VE REVIEWED THE
13 TRANSCRIPTS OF THE STATEMENTS GIVEN AT THE LAW ENFORCEMENT
14 CENTER ON THE 18TH, BOTH THE FIRST AND SECOND STATEMENTS.
15 AND I FIND THAT THE MIRANDA WARNINGS WERE CLEAR AND
16 ADEQUATE WARNINGS, THAT THE DEFENDANT HAD THE RIGHT TO
17 REMAIN SILENT AND WAS NOT -- HE WAS GIVEN HIS RIGHT TO
18 COUNSEL ALSO, AND THAT HE -- I PROBABLY SHOULDN'T REFER TO
19 THE FACT THAT THE DEFENDANT HAD SOME -- FROM WHAT I
20 UNDERSTAND -- EXPERIENCE WITH LAW ENFORCEMENT, WHETHER IN
21 THIS CALIFORNIA SITUATION BECAUSE HE WAS ON PAROLE FROM
22 CALIFORNIA, WHETHER THAT EXPERIENCE IN ANY WAY IMPLICATED
23 OR INFLUENCED HIS DECISION IN THIS CASE, I DON'T KNOW. BUT
24 THERE IS SOME -- I THINK THAT'S WORTH MENTIONING IN THIS
25 CASE. I THINK HE WAS GIVEN A CLEAR RIGHT TO REMAIN SILENT.

1 AND THE COMMENTS OF THE OFFICER, ALTHOUGH I MUST SAY
2 THEY'RE FAIRLY PROVOCATIVE, THEY ARE -- I DON'T FIND THEM
3 TO BE COERCIVE AND SUCH THAT THEY WOULD OVERBEAR HIS FREE
4 WILL TO REMAIN SILENT OR HIS RIGHT TO EITHER REMAIN SILENT
5 OR NOT REMAIN SILENT.

6 I MEAN, IT'S WHETHER THESE TACTICS ARE STANDARD POLICE
7 TACTICS OR THIS INDIVIDUAL OFFICER'S TACTICS TO TRY TO
8 ENTICE A CONFESSION, I'M NOT SURE. BUT I FIND BY THE
9 PREPONDERANCE OF THE EVIDENCE THAT THE STATEMENTS WERE FREE
10 AND VOLUNTARY, AND I OVERRULE YOUR OBJECTION RESPECTFULLY
11 -- OR OBJECTIONS, RESPECTFULLY OVERRULE YOUR OBJECTIONS.

12 NOW, THIS HAS NOTHING TO DO WITH THE REDACTION. THESE
13 STATEMENTS ARE GOING TO HAVE TO BE HEAVILY REDACTED --
14 SOLICITOR. THESE STATEMENTS ARE GOING TO HAVE TO BE
15 HEAVILY REDACTED. THERE'S JUST A LOT OF OBJECTIONABLE
16 MATERIAL IN THOSE STATEMENTS. AND HOW THAT PROCESS IS
17 GOING TO TAKE PLACE, I'M NOT SURE AT THIS POINT. BUT
18 THERE'S AN ABUNDANCE OF IMPROPER, INADMISSIBLE -- ALTHOUGH
19 WITH THE STATEMENTS IN, THE DEFENSE MAY NOT WANT -- GIVEN
20 THE NATURE OF THE QUESTIONING BY THE OFFICER, DEFENSE MAY
21 WANT TO LEAVE THEM IN TO TRY TO CONVINCE THE JURY THAT
22 THOSE WERE COERCIVE STATEMENTS.

23 SO I LEAVE THAT FOR A LATER DECISION IN THE TRIAL.

24 JUROR NO. 10, ROBERT -- WELL, JUROR NO. 10 IS THE
25 FOREPERSON. ANYBODY INTERESTED IN THAT.

1 ALL RIGHT. ARE YOU READY FOR THE JURY?
2 MR. STONE: THE STATE'S READY, YOUR HONOR.
3 THE COURT: DEFENSE READY?
4 MS. CARROWAY: DEFENSE IS READY, YOUR HONOR.
5 THE COURT: ALL RIGHT. BRING THE JURY PLEASE.
6 (THE JURY RETURNS TO THE COURTROOM AT 11:15 A.M.)
7 BAILIFF: YOUR HONOR, ALL THE JURORS ARE SEATED.
8 THE COURT: THANK YOU VERY MUCH. GOOD MORNING, LADIES
9 AND GENTLEMEN.
10 JURORS: GOOD MORNING.
11 THE COURT: JUROR NO. 10, I APPRECIATE YOUR
12 WILLINGNESS TO SERVE AS FOREPERSON OF THIS JURY. THANK YOU
13 VERY MUCH.
14 FOREPERSON: YOU'RE WELCOME, YOUR HONOR.
15 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, NOW
16 WE'RE GOING TO SWEAR THE JURY PLEASE.
17 (THE JURY WAS FIRST DULY SWORN AT 11:15 A.M.)
18 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU HAVE
19 RECEIVED YOUR OATH AS JURORS IN THIS CASE. WE'RE NOW READY
20 TO BEGIN THE TRIAL. PERMIT ME JUST A FEW MINUTES BEFORE WE
21 BEGIN TO LET YOU KNOW WHAT YOUR ROLE IS IN THIS CASE, WHAT
22 MY ROLE IS, AND WHAT IS EXPECTED OF YOU IN THIS CASE, AND
23 WHAT THE ROLE OF THESE FINE ATTORNEYS IS. MY PURPOSE IN
24 DOING SO IS TO PUT YOU AT EASE IN WHAT MAY BE SOMEWHAT OF
25 AN UNFAMILIAR SETTING TO MOST IF NOT ALL OF YOU.

1 IN THIS COURT, A CRIMINAL LAW VIOLATION IS PRESENTED
2 IN A LEGAL DOCUMENT KNOWN AS AN INDICTMENT. THERE ARE TWO
3 INDICTMENTS IN THIS CASE. I WANT TO REMIND YOU AGAIN THAT
4 INDICTMENTS ARE NOT EVIDENCE. AN INDICTMENT IS MERELY THE
5 DOCUMENT CONTAINING THE SPECIFIC CHARGE AGAINST A
6 PARTICULAR INDIVIDUAL.

7 THE DEFENDANT HAS PLED NOT GUILTY TO THESE
8 INDICTMENTS. THE STATE THEREFORE HAS A BURDEN OF PROVING
9 EACH OF THE ELEMENTS OF THE INDICTMENT BEYOND A REASONABLE
10 DOUBT. AND IT WILL BE YOUR DUTY TO DECIDE WHETHER THE
11 STATE HAS MET THAT BURDEN.

12 NOW, PLEASE DO NOT INFER FROM ANYTHING THAT I SAY AS
13 TO WHAT YOUR VERDICT SHOULD BE. YOU ARE TO DETERMINE THE
14 INNOCENCE OR GUILT OF THE DEFENDANT BASED ON THE EVIDENCE
15 THAT WILL BE INTRODUCED DURING THE TRIAL OF THIS CASE.

16 I HAVE NO OPINION ABOUT THE FACTS OF THIS CASE THAT I
17 MAY SHARE WITH YOU. IN FACT, THE CONSTITUTION OF THE STATE
18 OF SOUTH CAROLINA PROVIDES THAT A TRIAL JUDGE SHALL MAKE NO
19 COMMENT OR STATEMENT TO A JURY ABOUT THE FACTS OF A CASE.

20 CONSEQUENTLY, DO NOT INFER FROM ANYTHING THAT I MIGHT
21 SAY DURING THE COURSE OF THIS INSTRUCTION OR ANYTHING THAT
22 I MIGHT SAY DURING THE COURSE OF THE TRIAL IN RULING ON THE
23 ADMISSIBILITY OF EVIDENCE OR OTHERWISE THAT I HAVE ANY
24 OPINION ABOUT THE FACTS IN THIS CASE.

25 YOU AND YOU ALONE ARE TO DETERMINE THE FACTS AS THEY

1 MAY APPEAR IN THIS CASE. YOU ARE THE SOLE AND EXCLUSIVE
2 JUDGE OF THE EVIDENCE AND I AM THE JUDGE OF THE LAW. AND
3 YOU ARE TO TAKE AND ACCEPT THE LAW AND APPLY IT PRECISELY
4 AS I STATE IT TO YOU.

5 NOW, LET ME REMIND YOU OF TWO LEGAL PRINCIPLES THAT WE
6 WILL USE DURING THE COURSE OF THIS TRIAL. THE FIRST IS THE
7 LEGAL YARDSTICK THAT YOU WILL USE IN JUDGING OR MEASURING
8 THE EVIDENCE IN THIS CASE; THAT LEGAL YARDSTICK IS KNOWN AS
9 THE BURDEN OF PROOF. AND IN THIS CASE THE BURDEN OF PROOF
10 IS ON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT.

11 SHOULD THE STATE FAIL TO MEET THAT BURDEN OF PROOF, IT
12 WOULD BE YOUR DUTY TO FIND THE DEFENDANT NOT GUILTY.

13 THERE IS ABSOLUTELY NO BURDEN WHATSOEVER ON THE
14 DEFENDANT TO DISPROVE OR PROVE ANYTHING. THERE IS NO
15 BURDEN ON THE DEFENDANT TO TESTIFY OR PRESENT ANY EVIDENCE,
16 BECAUSE THE BURDEN IS AND REMAINS ON THE STATE TO PROVE
17 GUILT BEYOND A REASONABLE DOUBT.

18 SECOND, I ASK YOU TO RECALL MY EARLIER COMMENT TO THE
19 ENTIRE JURY PANEL CONCERNING THE PRESUMPTION OF INNOCENCE.
20 THIS IS A CARDINAL AND FUNDAMENTAL RULE OF LAW THAT A
21 DEFENDANT WILL ALWAYS BE PRESUMED INNOCENT OF THE CRIME FOR
22 WHICH HE HAS BEEN INDICTED. THE PRESUMPTION OF INNOCENCE,
23 IN OTHER WORDS, IS NOT JUST A SIMPLE LEGAL THEORY OR JUST A
24 LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH ANY
25 ACCUSED, INCLUDING THE DEFENDANT, IS ENTITLED.

1 NOW, AS WE BEGIN THIS TRIAL, YOUR ROLE LIES
2 ESSENTIALLY IN THE OATH YOU TOOK AS JURORS, PART OF WHICH
3 REQUIRES YOU TO WELL AND TRULY TRY THE CASE.

4 YOUR OATH REQUIRES YOU TO FIND FACTS, TO FIND THE
5 TRUTH FROM THE EVIDENCE PRESENTED TO YOU DURING THE COURSE
6 OF THE TRIAL.

7 YOU ARE NOT TO CONSIDER ANYTHING YOU HAVE HEARD OR
8 READ OR ANYTHING ELSE DURING THE COURSE OF THIS CASE EITHER
9 BEFORE OR DURING THE TRIAL. YOU MUST MAKE YOUR
10 DETERMINATION FROM THE FACTS OF THIS CASE BASED ONLY ON THE
11 EVIDENCE PRESENTED TO YOU IN THIS COURTROOM DURING THE
12 COURSE OF THE TRIAL.

13 WELL, WHAT IS EVIDENCE? IN SOUTH CAROLINA EVIDENCE
14 COMES IN ONE OF THREE SOURCES. THE MOST COMMON EXAMPLE OF
15 EVIDENCE IS THE TESTIMONY OF A WITNESS. A WITNESS WILL
16 TESTIFY FROM THIS WITNESS STAND. YOU WILL SEE AND HEAR AND
17 OBSERVE THE WITNESSES, INCLUDING THE Demeanor OF THE
18 WITNESS.

19 YOU WILL DETERMINE THE CREDIBILITY OF EACH WITNESS.

20 THE SECOND SOURCE OF EVIDENCE KNOWN TO THE LAW IS WHAT
21 THE LAW CALLS AN EXHIBIT. AN EXHIBIT MAY BE A PHOTOGRAPH
22 OR A CHART OR A DIAGRAM. AN EXHIBIT MAY BE A TANGIBLE
23 DOCUMENT WITH AN EXHIBIT LABEL ATTACHED TO IT. AND AT THE
24 END OF THE CASE WHEN YOU RETIRE TO THE JURY ROOM TO BEGIN
25 YOUR DELIBERATIONS, ALL OF THE EXHIBITS RECEIVED IN

1 EVIDENCE WILL GO WITH YOU TO THE JURY ROOM.

2 AND THE THIRD SOURCE OF EVIDENCE IS WHAT THE LAW CALLS
3 A STIPULATION. A STIPULATION IS BASICALLY AN AGREEMENT
4 BETWEEN THE PARTIES AS TO THE EXISTENCE OF SOME FACT. IF
5 THERE IS SUCH A STIPULATION, YOU WOULD BE REQUIRED TO
6 ACCEPT THAT STIPULATION AS CONCLUSIVELY DETERMINED FOR
7 PURPOSES OF THE TRIAL.

8 SO, LADIES AND GENTLEMEN, THAT'S WHAT EVIDENCE IS.
9 IT'S TESTIMONY, EXHIBITS, AND ANY STIPULATIONS.

10 NOW, AS THE TRIAL JUDGE, I WILL PRESIDE OVER THE TRIAL
11 OF THE CASE AND I WILL RULE ON THE ADMISSIBILITY OF
12 EVIDENCE AND AT THE END OF THE CASE EXPLAIN THE LAW TO YOU
13 AS APPLICABLE TO THIS CASE.

14 NOW, PLEASE UNDERSTAND, AGAIN, WHAT I TELL YOU IS NOT
15 EVIDENCE. AND BY THE SAME TOKEN, WHAT THESE ATTORNEYS TELL
16 YOU IS NOT EVIDENCE. THE ATTORNEYS MAKE OPENING AND
17 CLOSING STATEMENTS TO YOU. BUT THOSE STATEMENTS ARE NOT
18 EVIDENCE.

19 THE ATTORNEYS WILL ASK QUESTIONS OF THE WITNESSES, BUT
20 THE QUESTIONS ARE NOT EVIDENCE.

21 IT IS THE RESPONSES OF THE WITNESSES TO THOSE
22 QUESTIONS WHICH CONSTITUTE EVIDENCE.

23 NOW, LADIES AND GENTLEMEN, YOU AND I DON'T ASK
24 QUESTIONS OF THE WITNESSES. WE DO NOT OFFER ANY EXHIBITS.
25 YOUR DUTY IS TO LISTEN OPENLY, HONESTLY TO THE EVIDENCE,

1 KEEP AN OPEN MIND. DO NOT FORM ANY CONCLUSIONS OR
2 JUDGEMENTS UNTIL YOU HAVE RECEIVED AND CONSIDERED ALL THE
3 EVIDENCE, THE ARGUMENTS OF THE ATTORNEYS, AND MY FINAL
4 INSTRUCTIONS TO YOU ON THE LAW.

5 CONSISTENT WITH YOUR OATH, DO NOT DISCUSS THIS CASE
6 WITH YOUR FELLOW JURORS OR WITH ANYONE ELSE. THE FIRST
7 OPPORTUNITY YOU WILL HAVE TO DISCUSS THIS CASE IS AT THE
8 END OF THE TRIAL WHEN I AUTHORIZE YOU TO BEGIN YOUR
9 DELIBERATIONS. I TRUST YOU WILL HONOR MY INSTRUCTIONS AND
10 YOUR OATH IN THIS REGARD.

11 NOW, LET'S LOOK BRIEFLY AT THE TRIAL PROCESS. EACH
12 SIDE MAY MAKE AN OPENING STATEMENT TO YOU.

13 AFTER THE OPENING STATEMENTS WE WILL BEGIN WITH THE
14 RECEIPT OF EVIDENCE. THE STATE GOES FIRST, PRESENTS
15 EVIDENCE. THE STATE GOES FIRST BECAUSE THE STATE BROUGHT
16 THESE CHARGES AND IT HAS THE BURDEN OF PROOF.

17 AFTER WE'VE HEARD AND RECEIVED THE EVIDENCE FROM THE
18 STATE, THE SAME OPPORTUNITY IS GIVEN TO THE DEFENDANT,
19 BEARING IN MIND, HOWEVER, THERE IS ABSOLUTELY NO BURDEN ON
20 THE DEFENDANT TO PRESENT ANY EVIDENCE AT ALL.

21 ONCE WE HAVE RECEIVED ALL THE EVIDENCE IN THE CASE,
22 EACH SIDE IS PERMITTED TO MAKE A FINAL ARGUMENT OR
23 SUMMATION TO YOU, AFTER WHICH I WILL INSTRUCT YOU ON THE
24 LAW OF SOUTH CAROLINA AS IT APPLIES TO THIS CASE.

25 IT IS AT THAT POINT, AT THE END OF THE TRIAL WHEN YOU

1 WILL BEGIN YOUR DELIBERATIONS.

2 MR. FOREPERSON, IT WILL BE YOUR DUTY TO PRESIDE IN THE
3 JURY ROOM AT THAT TIME, BE THE JURY SPOKESPERSON HERE IN
4 COURT AND WRITE THE VERDICT IF THAT BECOMES NECESSARY.

5 NOW, LET ME CLOSE WITH A COUPLE OF HOUSEKEEPING
6 MATTERS. GENERALLY, WE RUN COURT FOR ABOUT AN HOUR AND A
7 HALF TO TWO HOURS BETWEEN BREAKS. THINGS FREQUENTLY
8 HAPPEN, HOWEVER, DURING THE COURSE OF THE TRIAL WHICH MAY
9 CAUSE US TO DEVIATE FROM A NORMAL SCHEDULE. FOR EXAMPLE,
10 WE WILL TAKE A BREAK WHENEVER YOU NEED A BREAK. IF YOU
11 NEED A BREAK, JUST RAISE YOUR HAND AND GET THE BAILIFF'S
12 ATTENTION, AND WE'LL TAKE A BREAK.

13 ALSO, LEGAL QUESTIONS COME UP FROM TIME TO TIME WHICH
14 MAY REQUIRE ME TO SEND YOU BACK TO THE JURY ROOM MORE
15 FREQUENTLY THAN I WOULD LIKE TO.

16 ALSO, FROM TIME TO TIME YOU MAY HEAR ONE OF THE
17 ATTORNEYS SAY SOMETHING LIKE, I OBJECT FOR SOME REASON.
18 THE ATTORNEYS ARE NOT TRYING TO HIDE ANYTHING FROM YOU.
19 THEY ARE MERELY FOLLOWING WHAT ARE KNOWN AS THE RULES OF
20 EVIDENCE. THESE ARE BASICALLY THE RULES OF THE ROAD THAT
21 GOVERN ALL TRIALS. AND THEY'RE ASKING THE COURT TO RULE ON
22 WHETHER ONE OR THE OTHER SIDE HAS VIOLATED ONE OF THESE
23 RULES, WHETHER INTENTIONALLY OR INADVERTENTLY.

24 IF YOU CANNOT HEAR A PARTICULAR WITNESS, MYSELF, OR
25 ONE OF THE ATTORNEYS, PLEASE LET US KNOW SO WE CAN HAVE

1 THEM SPEAK UP MORE CLEARLY.

2 IF YOUR VIEW OF AN EXHIBIT IS BLOCKED OR OBSTRUCTED,
3 PLEASE LET US KNOW AND WE'LL CORRECT THAT.

4 IF YOU NEED TO BRING ANYTHING TO MY ATTENTION DURING
5 THE COURSE OF THE TRIAL, PLEASE NOTIFY ONE OF THE BAILIFFS.
6 IF YOU NEED TO CONTACT ME, IT MAY BE NECESSARY FOR THE
7 BAILIFF TO ASK YOU TO PUT THAT QUESTION OR CONCERN IN
8 WRITING SO THAT WE CAN HAVE A RECORD OF IT. I'LL RESPOND
9 TO YOU AS QUICKLY AS I CAN, TO THE EXTENT THE LAW PERMITS
10 ME TO DO SO.

11 NOW, I'VE ASKED THE BAILIFF TO PROVIDE YOU WITH NOTE
12 PADS AND PENCILS FROM WHICH YOU CAN MAKE INDIVIDUAL NOTES.
13 I CAUTION YOU AT THIS STAGE OF THE PROCEEDING, AND I'LL
14 CAUTION YOU AGAIN LATER, THAT IF YOU DO MAKE NOTES, THE
15 NOTES ARE FOR YOUR OWN BENEFIT AND FOR YOUR OWN USE AT A
16 LATER TIME. THEY'RE NOT TO BE USED TO TRY TO CONVINCE
17 SOMEBODY ELSE THAT YOU HEARD SOMETHING THAT THEY DIDN'T.
18 IN OTHER WORDS, THE NOTES SHOULD BE PURELY PERSONAL TO YOU
19 AND WILL NOT BE USED FOR ANY OTHER PURPOSE.

20 AT THE END OF THE DAY, YOU WILL LEAVE THE NOTE PADS
21 HERE. IF YOU HAVE YOUR NAMES ON THEM, YOU WILL PICK THEM
22 BACK UP IN THE MORNING. THEY'LL BE SECURE OVER THE EVENING
23 HOURS.

24 ALL RIGHT. LADIES AND GENTLEMEN, I WANT TO THANK YOU
25 FOR YOUR KIND ATTENTION. I HOPE YOU WILL GIVE THE SAME

1 UNDIVIDED ATTENTION TO THESE ATTORNEYS AND THE PARTIES IN
2 THIS CASE.

3 ALL RIGHT. SOLICITOR, WE WILL NOW BEGIN WITH THE
4 OPENING STATEMENTS.

5 MR. STONE: MAY IT PLEASE THE COURT, YOUR HONOR.

6 OPENING STATEMENTS BY MR. STONE ON BEHALF OF THE STATE:

7 KATHERINE HERRERA IS THE VICTIM IN THIS CASE.

8 KATHERINE HERRERA WAS DEFENSELESS, TOTALLY, 100 PERCENT
9 DEFENSELESS. AND ON SEPTEMBER THE 16TH, 2007 HER HUSBAND,
10 THIS GENTLEMAN SITTING RIGHT HERE BETWEEN THESE TWO
11 LAWYERS, JOSE HERRERA, GOT IN AN ARGUMENT WITH HER. AND
12 WHEN THEY GOT BACK TO THEIR HOUSE, SHE WENT TO THE
13 RESTROOM. SHE SAT ON THE TOILET URINATING. AND JOSE
14 HERRERA WENT TO THE BEDSIDE TABLE AND GOT A .22 CALIBER
15 HANDGUN AND WALKED INTO THE BATHROOM AS SHE WAS SITTING
16 THERE DEFENSELESS AND SHOT HER IN THE BACK OF THE HEAD AND
17 KILLED HER; THAT'S WHAT THIS CASE IS. IT SOUNDS SIMPLE
18 BECAUSE IT IS SIMPLE; THAT'S EXACTLY WHAT HAPPENED.

19 JOSE HERRERA TOLD LAW ENFORCEMENT FOUR DIFFERENT
20 THINGS ABOUT WHAT HAPPENED THAT DAY. THE FIRST THING HE
21 SAID WAS, I LEFT HER SOME TIME. I CAME BACK AND I FOUND MY
22 WIFE THERE, SHOT IN THE BACK OF THE HEAD BY A SMALL CALIBER
23 PISTOL.

24 YOU'LL HEAR THE 9-1-1 CALL HE MADE DESCRIBING HOW HE
25 SAW THAT SCENE.

1 SECONDLY, HE TOLD POLICE, WELL, WE GOT IN AN ARGUMENT
2 AND SHE WAS TRYING TO COMMIT SUICIDE. SHE WENT TO THE
3 RESTROOM AND SHE SAT DOWN. SHE TOOK THE PISTOL AND HELD IT
4 ON HER HAND. AND WE FOUGHT OVER IT AND IT ACCIDENTLY WENT
5 OFF.

6 THEN HE TOLD LAW ENFORCEMENT, OKAY. I WENT IN. I HAD
7 THE GUN. I WAS MAD. I WAS JUST TRYING TO GET HER TO BE
8 QUIET. I TRIPPED OVER SOMETHING, MAYBE HER CLOTHES, MAYBE
9 THE CAT. THE GUN WENT OFF. AND I SHOT AND KILLED HER.
10 AND THEN FINALLY, WE WERE IN AN ARGUMENT. I GOT MAD.
11 I GOT THE GUN. AND I WENT BLANK. I DON'T KNOW WHAT
12 HAPPENED.

13 REGARDLESS OF ANY OF THOSE STORIES -- REGARDLESS OF
14 ANY OF THOSE STORIES, SHE WAS DEFENSELESS. SHE HAD NO GUN,
15 NO KNIFE, NO FIST, NOTHING. SHE WAS IN HER MOST VULNERABLE
16 STATE WHEN HE SHOT AND KILLED HER.

17 THAT'S THE EVIDENCE THAT YOU'RE GOING TO HEAR, LADIES
18 AND GENTLEMEN. NOT FROM ME, FROM THAT WITNESS STAND.
19 YOU'RE GOING TO HEAR IT IN THE FORM OF 9-1-1 TAPES. YOU'RE
20 GOING TO HEAR IT IN THE FORM OF TESTIMONY.

21 MY JOB IS TO PRESENT THAT TESTIMONY TO YOU. MY JOB IS
22 TO PROVE THIS CASE BEYOND A REASONABLE DOUBT. AND IF I
23 DON'T DO THAT, YOUR JOB IS TO COME BACK INTO THIS JURY ROOM
24 (SIC) AND FIND THE DEFENDANT NOT GUILTY.

25 BUT AFTER YOU HEAR THE TESTIMONY, I'M GOING TO ASK YOU

1 TO DO ONE THING AND ONE THING ONLY. COME BACK HERE AND
2 GIVE US A VERDICT THAT SPEAKS THE TRUTH; THAT'S IT.

3 THANK YOU.

4 THE COURT: MS. CARROWAY.

5 MS. CARROWAY: MAY IT PLEASE THE COURT, YOUR HONOR.

6 OPENING STATEMENTS BY MS. CARROWAY ON BEHALF OF THE
7 DEFENDANT:

8 GOOD MORNING, LADIES AND GENTLEMEN. MY NAME IS LAUREN
9 CARROWAY. AND IT IS MY PLEASURE TO REPRESENT MR. JOSE
10 HERRERA. WE WANT TO THANK YOU ALL FOR BEING HERE, BECAUSE
11 I KNOW EVERYBODY HAS BUSY LIVES, AND THERE'S PROBABLY
12 SOMETHING ELSE YOU NEED TO DO. BUT I ASK YOU TO REMEMBER
13 THAT TO EVERY ONE IN THIS COURTROOM, THIS IS AN EXTREMELY
14 IMPORTANT DAY.

15 I ASK YOU TO REMEMBER THAT YOU AND YOU ALONE ARE THE
16 ULTIMATE FINDERS OF FACT. AS YOU LISTEN TO ALL THE
17 TESTIMONY AND LOOK AT ALL THE EVIDENCE, CAREFULLY EVALUATE
18 THE CREDIBILITY OF EACH AND EVERY WITNESS. THINK ABOUT
19 WHAT MAKES SENSE. THINK ABOUT WHAT WOULDN'T MAKE SENSE.

20 REMEMBER THAT WHILE YOU'RE A PANEL OF 12, YOU'RE ALSO
21 12 INDIVIDUALS. AND EACH AND EVERY ONE OF YOU BRING
22 SOMETHING DIFFERENT TO THE TABLE. STAND FIRM IN YOUR OWN
23 BELIEFS. USE YOUR COMMON SENSE.

24 ONE THING THAT IS REALLY IMPORTANT AND THE JUDGE
25 TOUCHED ON THIS AND I WANT TO ELABORATE ON IT IS THAT JOSE

1 SITS BEFORE YOU AN INNOCENT MAN RIGHT NOW. HE, LIKE ALL
2 CITIZENS, IS DRAPED IN A CLOAK OF INNOCENCE. AND THIS IS A
3 VERY IMPORTANT RIGHT THAT WE ALL SHARE. AND HE REMAINS
4 PROTECTED BY THAT CLOAK OF INNOCENCE UNLESS THE STATE OF
5 SOUTH CAROLINA CAN PROVE EACH AND EVERY ELEMENT OF THE
6 CRIME CHARGED BEYOND A REASONABLE DOUBT.

7 REASONABLE DOUBT, LADIES AND GENTLEMEN, IS THE HIGHEST
8 STANDARD OF PROOF IN OUR COURT SYSTEM. AND WHAT IT MEANS
9 KIND OF IN A NUTSHELL IS THAT IF YOU THINK JOSE IS GUILTY,
10 YOU CANNOT CONVICT HIM. YOU MUST BE SURE.

11 AS WE GO THROUGH THIS TRIAL, I JUST WANT YOU ALL TO
12 REMEMBER. I WANT YOU TO REMEMBER THE CLOAK OF INNOCENCE
13 THAT JOSE IS DRAPED IN. I WANT YOU TO REMEMBER THE STATE'S
14 BURDEN. AND REMEMBER TO USE YOUR COMMON SENSE.

15 THANK YOU.

16 THE COURT: CALL YOUR FIRST WITNESS.

17 MR. STONE: THE STATE CALLS HOLLY MIXSON.

18 (PAUSE.)

19 (CD OF 9-1-1 CALLS MARKED FOR IDENTIFICATION AS
20 STATE'S EXHIBIT NO. 32.)

21 MR. STONE: SHE'S ACROSS THE HALL.

22 THE COURT: LADIES AND GENTLEMEN, THE WITNESSES ARE
23 KEPT OUTSIDE THE COURTROOM SO THEY DON'T HEAR WHAT THE
24 OTHER WITNESSES SAY, SO THEY'RE WHAT WE CALL SEQUESTERED
25 ACROSS THE HALL. AND THIS WILL BE THE PROCEDURE THROUGHOUT

HOLLY MIXSON - DIRECT BY MR. STONE

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1 THE TRIAL TO BRING THE WITNESSES IN INDIVIDUALLY.

2 HOLLY MIXSON, BEING FIRST

3 DULY AFFIRMED, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY MR. STONE:

5 Q GOOD MORNING, MS. MIXSON, I THINK YOU NEED TO SPELL
6 YOUR LAST NAME SO THAT EVERYONE CAN GET THAT.

7 A M-I-X-S-O-N.

8 Q SO IT'S MIXSON; IS THAT CORRECT? DID I PRONOUNCE IT
9 CORRECTLY?

10 A YES, SIR.

11 Q AND WHAT DO YOU DO, MS. MIXSON?

12 A I'M A 9-1-1 OPERATOR AND DISPATCHER FOR JASPER COUNTY.

13 Q FOR JASPER COUNTY?

14 A YES.

15 Q HOW LONG HAVE YOU BEEN DOING THAT?

16 A 2 YEARS.

17 Q ALL RIGHT. BRING THAT MICROPHONE TO YOUR MOUTH SO I
18 CAN HEAR YOU A LITTLE BIT BETTER, PLEASE.

19 (COMPLIED.)

20 Q HOW LONG HAVE YOU BEEN DOING THAT?

21 A FOR 2 YEARS.

22 Q AND IS YOUR DUTY FROM A 9-1-1 OPERATOR -- EXACTLY,
23 WHAT DO YOU DO?

24 A I TAKE 9-1-1 CALLS AND DISPATCH CALLS.

25 Q SO WHEN A CALL COMES IN, YOU'RE THE PERSON THAT'S ON

HOLLY MIXSON - DIRECT BY MR. STONE

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- 1 THE OTHER END?
- 2 A YES, SIR.
- 3 Q AND THEN WHEN YOU SAY DISPATCH, WHAT DO YOU MEAN?
- 4 A SENDING LAW ENFORCEMENT, FIRE, EMS OUT TO THE CALL.
- 5 Q YOU WORK IN JASPER COUNTY. YOU DON'T WORK IN BEAUFORT
- 6 COUNTY AS WELL. I'M ASSUMING THAT'S TWO SEPARATE ---
- 7 A IT'S TWO SEPARATE JURISDICTIONS, RIGHT.
- 8 Q WHEN A CALL COMES IN TO YOU ON A REGULAR BASIS, WHAT
- 9 DO YOU DO?
- 10 A GATHER ALL THE INFORMATION THAT I CAN GET, DISPATCH
- 11 THE CALL OUT. IF IT'S FOR ANOTHER JURISDICTION, PASS IT
- 12 ALONG TO THEM.
- 13 Q NOW, WHEN THESE CALLS ARE COMING IN, ARE THEY BEING
- 14 RECORDED AT THIS STATION?
- 15 A YES, SIR, EVERYTHING THAT COMES INTO OUR CENTER, 9-1-1
- 16 CALLS, REGULAR CALLS, THEY'RE ALL RECORDED.
- 17 Q AND THEY'RE RECORDED AT THE TIME THAT THEY ARE GOING
- 18 ON; IS THAT CORRECT?
- 19 A YES, SIR.
- 20 Q AND THEN THEY'RE KEPT, I'M ASSUMING, FOR SOME PERIOD
- 21 OF TIME?
- 22 A YES, SIR.
- 23 Q OKAY. NOW, I HAVE GONE OVER WITH YOU WHAT HAS BEEN
- 24 MARKED AS STATE'S EXHIBIT 32.
- 25 MR. STONE: AND, YOUR HONOR, I'VE SHOWN THIS TO THE

1 DEFENSE ATTORNEY.

2 Q AND ON THIS DISK, I THINK I'VE GONE OVER WITH YOU ON
3 THAT, HAVE YOU REVIEWED WHAT'S ON THE DISK?

4 A YES, SIR.

5 Q AND IS THAT A FAIR AND ACCURATE DEPICTION OF THE 9-1-1
6 CALL ON SEPTEMBER 16, 2007?

7 A YES, SIR.

8 Q AND IS THIS YOUR VOICE ON THIS?

9 A YES, SIR.

10 Q AND DO YOU RECALL WHO ELSE'S VOICE IS ON THIS?

11 A I RECALL JOSE HERRERA'S VOICE ON THERE, AND ALSO THE
12 DISPATCHER FROM BEAUFORT COUNTY.

13 Q TELL ME ABOUT THAT IF YOU WOULD. WHY IS THE BEAUFORT
14 COUNTY DISPATCH ON THIS?

15 A WHEN WE ORIGINALLY GOT THE CALL, WE -- IT WAS IN AN
16 AREA THAT FALLS BETWEEN BEAUFORT AND JASPER. WE WERE UNDER
17 THE ASSUMPTION THAT FIRST IT WAS IN OUR JURISDICTION, SO WE
18 TOOK THE INFORMATION, GOT OUR LAW ENFORCEMENT IN ROUTE, AND
19 THEN CAME TO DETERMINE THAT IT WAS BEAUFORT COUNTY, SO WE
20 TRANSFERRED THE CALL TO BEAUFORT COUNTY.

21 Q OKAY. AND YOU MADE THAT TRANSFER, AND THAT'S ON THIS
22 TAPE AS WELL?

23 A YES, SIR.

24 MR. STONE: OKAY. YOUR HONOR, AT THIS TIME I OFFER
25 STATE'S EXHIBIT 32 INTO EVIDENCE.

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1 MS. CARROWAY: WITHOUT OBJECTION.

2 THE COURT: WITHOUT OBJECTION.

3 (STATE'S EXHIBIT NO. 32 RECEIVED IN EVIDENCE.)

4 MR. STONE: YOUR HONOR, AT THIS TIME I MOVE TO PUBLISH
5 THE JASPER PORTION OF THE 9-1-1 CALL.

6 THE COURT: WITHOUT OBJECTION. YOU'RE NOT GOING TO
7 ASK THIS WITNESS ANYTHING?

8 MR. STONE: I AM NOT. I THOUGHT I'D LEAVE HER IN
9 CASE ---

10 THE COURT: THAT'S FINE.

11 (9-1-1 CALL FROM STATE'S EXHIBIT NO. 32 PLAYED IN OPEN
12 COURT.)

13 Q MS. MIXSON, I'M ASSUMING THERE IS A DIFFERENCE BETWEEN
14 CHERRY POINT ROAD AND CHERRY ---

15 A HILL.

16 Q CHERRY HILL?

17 A YES.

18 Q CHERRY HILL WOULD BE IN JASPER?

19 A CORRECT.

20 Q DO YOU KNOW HOW THIS COULD HAPPEN, THAT THIS WOULD GO
21 TO JASPER DISPATCH INSTEAD OF BEAUFORT?

22 A WELL, IT DEPENDS ON -- HE WAS CALLING FROM A CELL
23 PHONE, SO IT DEPENDS ON WHAT TOWER IT HIT ON. IN THAT AREA
24 IT'S SUCH A CLOSE AREA, THE LINE BETWEEN BEAUFORT AND
25 JASPER, USUALLY -- WE HARDLY EVER GET CALLS UNLESS IT -- IT

1 POPS UP ON THE WRONG TOWER FOR WHATEVER REASON IT MAY BE
2 FOR BEAUFORT COUNTY.

3 Q AND THAT TAPE WE JUST PLAYED, THAT IS A FAIR AND
4 ACCURATE DEPICTION OF THE 9-1-1 CALL AS YOU RECEIVED IT
5 THAT DAY?

6 A YES, SIR.

7 MR. STONE: I DON'T HAVE ANY FURTHER QUESTIONS FOR
8 THIS WITNESS, YOUR HONOR.

9 THE COURT: MS. CARROWAY?

10 MS. CARROWAY: YOUR HONOR, I DON'T HAVE ANY QUESTIONS
11 FOR THE WITNESS.

12 THE COURT: YOU MAY COME DOWN.

13 (THE WITNESS LEAVES THE WITNESS STAND.)

14 THE COURT: MAY THE WITNESS BE EXCUSED?

15 MR. STONE: YES, SIR.

16 THE COURT: WITHOUT OBJECTION?

17 MS. CARROWAY: WITHOUT OBJECTION, YOUR HONOR.

18 MR. STONE: THE STATE CALLS BARBARA METCALF.

19 BARBARA METCALF, BEING FIRST
20 DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION BY MR. STONE:

22 Q MS. METCALF, WHAT DO YOU DO, MA'AM?

23 A I'M A 9-1-1 DISPATCHER FOR BEAUFORT COUNTY.

24 Q AND HOW LONG HAVE YOU BEEN DOING THAT FOR BEAUFORT
25 COUNTY?

BARBARA METCALF -- DIRECT BY MR. STONE

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1 A 5 AND A HALF YEARS NOW.

2 Q AND WHAT IS YOUR JOB AS THE DISPATCHER FOR BEAUFORT
3 COUNTY?

4 A WE ANSWER THE NON-EMERGENCY AND EMERGENCY CALLS AND
5 DISPATCH -- FOR THE COUNTY WE DISPATCH ALL OF THE SHERIFF'S
6 DEPARTMENT, BEAUFORT CITY, PORT ROYAL, BLUFFTON CITY, AND
7 FIRE AND EMS.

8 Q ALL EMERGENCIES THAT TAKE PLACE IN BEAUFORT COUNTY,
9 ALL THOSE 9-1-1 CALLS GO TO YOUR OFFICE; IS THAT RIGHT?

10 A YES.

11 Q AND YOU AS A DISPATCHER, YOU RECEIVE THOSE CALLS.
12 WHAT DO YOU DO?

13 A WE TAKE THE INFORMATION FROM THE CALLS, PLACE THEM IN
14 THE COMPUTER, AND FIND THE NECESSARY PERSONNEL TO SEND OUT.

15 Q OKAY. NOW, I HAVE REVIEWED WITH YOU AND I HAVE MARKED
16 AS STATE'S EXHIBIT 32, THE DISK OF THE 9-1-1 CALL FROM
17 SEPTEMBER 16, 2007; IS THAT CORRECT?

18 A YES, SIR.

19 Q AND THAT DISK WAS AS YOU SAW IT AND REVIEWED IT TODAY
20 A FAIR AND ACCURATE DEPICTION OF THE EVENTS THAT TRANSPIRED
21 THAT DAY?

22 A YES, SIR.

23 Q AND I'M ASSUMING THAT YOURS WORK SIMILAR TO JASPER.
24 YOU REPORT -- THERE'S A RECORDING OF ALL THE DISPATCHES AS
25 THEY ARE COMING IN; IS THAT CORRECT?

RICK PATRILLA - DIRECT BY MR. STONE

166

1 A YES.

2 MR. STONE: AND, YOUR HONOR, WE HAVE ALREADY MOVED
3 THAT INTO EVIDENCE. I ASK TO PUBLISH THAT TO THE JURY AT
4 THIS TIME.

5 THE COURT: ANY OBJECTION?

6 MS. CARROWAY: WITHOUT OBJECTION.

7 THE COURT: WITHOUT OBJECTION. WHAT NUMBER IS THAT?

8 MR. STONE: THIS IS EXHIBIT 32, YOUR HONOR.

9 (9-1-1 CALL, STATE'S EXHIBIT NO. 32, PLAYED IN OPEN
10 COURT.)

11 MR. STONE: I DON'T HAVE ANY FURTHER QUESTIONS FOR
12 THIS WITNESS, YOUR HONOR.

13 MS. CARROWAY: I DON'T HAVE ANY QUESTIONS FOR THIS
14 WITNESS, YOUR HONOR.

15 THE COURT: THANK YOU VERY MUCH. YOU MAY COME DOWN,
16 MA'AM.

17 (THE WITNESS LEAVES THE WITNESS STAND.)

18 THE COURT: MAY THE WITNESS BE EXCUSED?

19 MS. CARROWAY: WITHOUT OBJECTION.

20 THE COURT: WITHOUT OBJECTION.

21 MR. STONE: THE STATE CALLS SERGEANT RICK PATRILLA.

22 RICHARD F. PATRILLA, BEING
23 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION BY MR. STONE:

25 Q SERGEANT PATRILLA, YOU ARE RETIRED SERGEANT PATRILLA;

RICK PATRILLA - DIRECT BY MR. STONE

167

- 1 IS THAT CORRECT?
- 2 A YEAH, RETIRED CORPORAL.
- 3 Q AND HOW LONG HAVE YOU BEEN RETIRED?
- 4 A JUST OVER A YEAR.
- 5 Q OKAY. I NEED YOU TO PULL THAT MICROPHONE TO YOU. I'D
- 6 MOVED IT AWAY FROM YOU.
- 7 A JUST OVER A YEAR.
- 8 Q JUST OVER A YEAR. YOU WERE WITH THE BEAUFORT
- 9 SHERIFF'S OFFICE?
- 10 A BEAUFORT COUNTY SHERIFF'S OFFICE.
- 11 Q AND HOW LONG DID YOU WORK WITH THE BEAUFORT SHERIFF'S
- 12 OFFICE?
- 13 A I STARTED MY FOURTEENTH YEAR.
- 14 Q I GUESS LET'S GO STRAIGHT TO SEPTEMBER 16, 2007. WHAT
- 15 WAS YOUR RANK AT THE TIME?
- 16 A CORPORAL.
- 17 Q AND WHAT WAS YOUR JOB -- WHAT DID YOUR JOB ENTAIL AT
- 18 THAT TIME?
- 19 A SOUTHERN ENFORCEMENT.
- 20 Q WHAT DO YOU MEAN SOUTHERN ENFORCEMENT?
- 21 A PATROL THE STREETS. NO SPECIAL TEAMS OR ANYTHING.
- 22 JUST ROAD PATROL.
- 23 Q AND SOUTHERN MEANING SOUTHERN BEAUFORT COUNTY?
- 24 A CORRECT.
- 25 Q SO WHEN THERE WAS A 9-1-1 CALL TO 150 CHERRY POINT

RICK PATRILLA - DIRECT BY MR. STONE

168

1 ROAD, DID YOU RESPOND TO THAT?

2 A YES.

3 Q AND THAT WOULD HAVE BEEN PART OF YOUR DUTIES AS A
4 PATROL OFFICER?

5 A YES, SIR.

6 Q ALL RIGHT. WHAT DID YOU -- FIRST OF ALL, THAT IS IN
7 BEAUFORT COUNTY, IS IT NOT?

8 A YES, IT IS.

9 Q AND WHERE IS IT EXACTLY?

10 A IT'S OFF OF HIGHWAY 170 BY THE OAKATIE ELEMENTARY
11 SCHOOL.

12 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
13 EXHIBIT 21. BEFORE YOU TELL ME ABOUT THAT, JUST ASK IF YOU
14 RECOGNIZE THAT?

15 A YES, I DO.

16 Q ALL RIGHT. AND IS THAT A FAIR AND ACCURATE DEPICTION
17 OF THE OVERALL VIEW OF THAT AREA THAT YOU'RE DESCRIBING?

18 A YES, SIR.

19 MR. STONE: ALL RIGHT. YOUR HONOR, AT THIS TIME WE
20 MOVE STATE'S EXHIBIT 21 INTO EVIDENCE.

21 MS. CARROWAY: WITHOUT OBJECTION.

22 THE COURT: WITHOUT OBJECTION.

23 (STATE'S EXHIBIT NO. 21 RECEIVED IN EVIDENCE.)

24 Q NOW, LET ME ASK YOU IF YOU CAN COME DOWN FROM THE
25 STAND.

RICK PATRILLA - DIRECT BY MR. STONE

169

- 1 MR. STONE: PERMISSION, YOUR HONOR?
- 2 THE COURT: YES, SIR.
- 3 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)
- 4 Q I'M GOING TO ASK YOU TO KEEP YOUR VOICE UP. YOU CAN
- 5 USE THIS MICROPHONE IF YOU NEED TO. IF YOU COULD, ORIENT
- 6 THE JURY TO THIS MAP AREA?
- 7 A THIS IS LIKE YOU'RE GOING TOWARD BEAUFORT.
- 8 Q AND YOU'RE INDICATING ON THE LEFT SIDE OF THIS, 170?
- 9 A YES. YOU COME DOWN HERE AND TURN RIGHT ON CHERRY
- 10 POINT, AND HERE IS THE ELEMENTARY SCHOOL. CAME DOWN THIS
- 11 ROAD. AND THE ROAD KIND OF "Y'S". CAME OFF -- CAN'T
- 12 REALLY SEE VERY WELL. BUT IT LOOKS LIKE IT COMES DOWN HERE
- 13 AND IT TURNS AND IT TURNS AGAIN. I THINK THAT'S THE AREA
- 14 RIGHT THERE.
- 15 Q ALL RIGHT. SO ALL OF THIS IS CHERRY POINT ROAD?
- 16 A YES.
- 17 Q IT APPEARS TO DEAD END HERE; IS THAT CORRECT?
- 18 A YES, SIR.
- 19 Q ALL RIGHT. SO BASICALLY, YOU DRIVE IN, AND THEN YOU
- 20 HAVE TO GO BACK OUT; IS THAT RIGHT?
- 21 A YES.
- 22 Q AND ALL THIS ENTIRE AREA IS IN BEAUFORT COUNTY?
- 23 A YES, SIR, AS FAR AS I KNOW.
- 24 Q AT LEAST 150 IS ---
- 25 A YES.

RICK PATRILLA - DIRECT BY MR. STONE

170

1 Q --- IN BEAUFORT COUNTY?

2 A YES.

3 Q ALL RIGHT. OKAY. HANG ON JUST A SECOND. I'M SHOWING
4 YOU STATE'S EXHIBIT 22. DO YOU RECOGNIZE THIS AS WELL,
5 WITHOUT GOING INTO DETAIL?

6 A YES, SIR.

7 Q ALL RIGHT. AND IS THIS A CLOSE-UP BASICALLY OF WHAT
8 -- OF THE LARGER MAP?

9 A YES, SIR.

10 MR. STONE: YOUR HONOR, AT THIS TIME WE MOVE STATE'S
11 EXHIBIT 22 INTO EVIDENCE.

12 MS. CARROWAY: WITHOUT OBJECTION.

13 THE COURT: WITHOUT OBJECTION.

14 (STATE'S EXHIBIT NO. 22 RECEIVED IN EVIDENCE.)

15 Q NOW, IF YOU WILL PLEASE, SHOW THE JURY THERE WHAT
16 WE'RE TALKING ABOUT?

17 A BASICALLY THE SAME THING. IT'S -- YOU STILL COME DOWN
18 THIS ROAD AND IT VEERS OFF. AND YOU KIND OF VEER OFF TO
19 THE RIGHT, COME DOWN, AND THE ROAD CURVES AROUND, AND COMES
20 BACK TO THE RIGHT AGAIN. AND THAT'S THE INCIDENT LOCATION
21 THERE.

22 Q WHICH IS 150 -- MARKED AS THE GREEN 150?

23 A THAT IS CORRECT.

24 Q ALL RIGHT. HERE. THIS APPEARS TO BE A DEAD END AT
25 THE END OF THIS ROAD; IS THAT RIGHT?

RICK PATRILLA -- DIRECT BY MR. STONE

171

- 1 A YES, SIR, THAT IS.
- 2 Q ALL RIGHT. BACK UP HERE WHERE YOU SAID, I THINK, THE
- 3 ROAD VEERS ---
- 4 A RIGHT.
- 5 Q --- IS THERE ANOTHER ROAD OUT THERE?
- 6 A YES, SIR, IT'S -- IT STILL GOES TO ANOTHER PART OF THE
- 7 CHERRY POINT AREA, BUT IT DEAD ENDS BACK HERE ALSO.
- 8 Q OKAY. SO THERE'S SORT OF A "Y" IN HERE ---
- 9 A YES.
- 10 Q OR A "V"?
- 11 A YES.
- 12 Q ALL RIGHT. I'D ASK YOU TO TAKE THE STAND PLEASE.
- 13 (THE WITNESS RETURNS TO THE WITNESS STAND.)
- 14 Q NOW, WHEN YOU ARRIVED AT 150 CHERRY POINT DRIVE (SIC),
- 15 WHAT DID YOU DO? FIRST OF ALL, DID YOU BY YOURSELF OR WERE
- 16 YOU WITH OTHER OFFICERS? HOW DID THAT WORK?
- 17 A THREE OF US RESPONDED, AND WE RESPONDED IN THREE
- 18 SEPARATE VEHICLES.
- 19 Q AND I'M ASSUMING YOU'RE RESPONDING TO THE 9-1-1 CALL?
- 20 A CORRECT.
- 21 Q AND ONCE YOU ARRIVED AT THE SCENE, WHAT DID YOU DO?
- 22 A THE FIRST THING I DID THAT I REMEMBER WAS WE GOT ON
- 23 LOCATION, AND THERE WAS POSSIBLY STILL SOMEONE LOOSE. WE
- 24 DIDN'T KNOW. WE SAW AN INDIVIDUAL IN THE ROAD. AND I
- 25 REMEMBER SEEING THE SMALL GIRL. AND WE TOLD HIM TO WAIT

1 RIGHT THERE, WAITED FOR ANOTHER SERGEANT, SERGEANT CRIDDLE,
2 AND SERGEANT RICKER, AND I. THEN WE WENT INSIDE THE HOUSE,
3 CLEARED IT.

4 Q NOW, YOU WERE GOING INSIDE THE HOUSE OR CRIDDLE IS
5 GOING WITH YOU AS WELL?

6 A AND RICKER ALSO.

7 Q ALL RIGHT. I SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
8 EXHIBIT 1, ASK IF YOU CAN IDENTIFY THAT PLEASE?

9 A YES, SIR, THAT'S THE INCIDENT LOCATION.

10 Q IS THAT A FAIR AND ACCURATE DEPICTION OF HOW THE
11 INCIDENT LOCATION LOOKED WHEN YOU ARRIVED?

12 A YES, SIR.

13 Q OKAY. I SHOW YOU STATE'S EXHIBIT 2, ASK IF YOU COULD
14 IDENTIFY THAT?

15 A IT'S THE INTERIOR OF THE RESIDENCE.

16 Q IS THAT A FAIR AND ACCURATE DEPICTION OF THE SCENE AS
17 YOU SAW IT THAT DAY?

18 A YES, SIR.

19 Q STATE'S EXHIBIT 3, IS THAT A FAIR AND ACCURATE
20 DEPICTION OF THE SCENE AS YOU SAW IT THAT DAY?

21 A YES.

22 Q AND IS THAT A SEPARATE ROOM FROM STATE'S EXHIBIT 2?

23 A YES, I BELIEVE IT IS.

24 Q OKAY. AGAIN, IS STATE'S EXHIBIT 3 A FAIR AND ACCURATE
25 DEPICTION OF THE ROOM AS YOU SAW IT?

RICK PATRILLA - DIRECT BY MR. STONE

173

- 1 A YES, SIR.
- 2 Q I SHOW YOU STATE'S EXHIBIT 4, ASK IF YOU COULD
- 3 IDENTIFY THAT PLEASE?
- 4 A THAT'S APPEARS TO BE THE INSIDE OF THE BEDROOM.
- 5 Q OKAY. IS THAT A FAIR AND ACCURATE DEPICTION OF THE
- 6 BEDROOM AS YOU SAW IT THAT DAY?
- 7 A YES, SIR.
- 8 Q AND STATE'S EXHIBIT 5?
- 9 A AGAIN, THE SAME -- THE SAME ROOM.
- 10 Q AND IS THAT A FAIR AND ACCURATE DEPICTION OF THAT
- 11 ROOM?
- 12 A YES, SIR.
- 13 Q I SHOW YOU STATE'S EXHIBIT 6, ASK IF YOU CAN IDENTIFY
- 14 THAT PLEASE?
- 15 A YES, SIR, THE SAME ROOM.
- 16 Q AND IS THAT A FAIR AND ACCURATE DEPICTION OF THE ROOM
- 17 AS YOU SAW IT THAT DAY?
- 18 A YES, SIR.
- 19 Q I SHOW YOU STATE'S EXHIBIT 7, 9, 10, 11, AND 12. ARE
- 20 THOSE PHOTOGRAPHS FAIR AND ACCURATE DEPICTIONS OF THAT ROOM
- 21 AS YOU SAW THEM AS YOU WENT ON TO THE SCENE THAT DAY?
- 22 A YES, SIR, THEY SURE ARE.
- 23 MR. STONE: OKAY. YOUR HONOR, AT THIS TIME THE STATE
- 24 MOVES STATE'S EXHIBIT 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, AND
- 25 12 INTO EVIDENCE.

RICK PATRILLA - DIRECT BY MR. STONE

174

1 THE COURT: ALL RIGHT. 1 THROUGH 6 ARE ADMITTED
2 WITHOUT OBJECTION?

3 MS. CARROWAY: YES, SIR, YOUR HONOR.

4 THE COURT: 7 THROUGH 12 ARE ADMITTED OVER THE
5 DEFENDANT'S OBJECTION.

6 MS. CARROWAY: I RENEW MY PRIOR OBJECTION.

7 (STATE'S EXHIBIT NOS. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11,
8 AND 12 RECEIVED IN EVIDENCE.)

9 MR. STONE: YOUR HONOR, AT THIS TIME I WOULD LIKE TO
10 PUBLISH THESE TO THE JURY.

11 THE COURT: THERE'S NO 8. THERE'S NO 8?

12 MR. STONE: NO, SIR, NO 8.

13 THE COURT: THANK YOU.

14 MR. STONE: THAT WAS A DUPLICATE PHOTO. I APOLOGIZE.

15 THE COURT: GO AHEAD.

16 (PAUSE.)

17 Q NOW, IF I COULD GET YOU TO COME OFF THE STAND PLEASE.

18 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

19 Q LET ME GET MY PHOTOGRAPHS TO MAKE SURE I'M SHOWING YOU
20 THE RIGHT EXHIBIT NUMBER. THIS IS STATE'S EXHIBIT 1, WHAT
21 I'M SHOWING. THE LINES ARE HERE. COULD YOU TELL US WHAT
22 THAT IS PLEASE?

23 A YES, SIR. THAT'S THE ---

24 MR. STONE: MAKE SURE SHE CAN HEAR.

25 A THAT'S THE RESIDENCE AT 150 CHERRY POINT ROAD FROM THE

RICK PATRILLA - DIRECT BY MR. STONE

175

- 1 FRONT.
- 2 Q ALL RIGHT. THE CARS IN THE DRIVEWAY OR IN THIS FRONT
3 AREA. ARE THOSE YOUR CARS OR CARS THAT WERE THERE WHEN YOU
4 GOT THERE?
- 5 A THOSE CARS WERE THERE WHEN WE ARRIVED.
- 6 Q NOW, I'M SHOWING YOU STATE'S EXHIBIT NO. 2. COULD YOU
7 TELL US WHAT THAT IS?
- 8 A YES, SIR, THAT'S THE LIVING ROOM AREA OF THE HOUSE.
- 9 Q AND THIS IS THE CONDITION THAT YOU FOUND IT IN WHEN
10 YOU WALKED IN?
- 11 A YES, SIR.
- 12 Q ALL THESE ITEMS HERE WERE AS THEY ARE IN THIS
13 PHOTOGRAPH?
- 14 A YES.
- 15 Q ALL RIGHT. THIS IS THE FRONT OF THE HOUSE, THIS IS AS
16 YOU WALK IN?
- 17 A I BELIEVE AS WE WALK IN -- YEAH, THAT'S THE LIVING
18 ROOM I BELIEVE. YOU WALK IN FROM THIS WAY, AND THEN THE
19 BACK BEDROOM, I BELIEVE IS THAT WAY.
- 20 Q ALL RIGHT. I SHOW YOU STATE'S EXHIBIT NO. 3. WHAT
21 ROOM IS THIS?
- 22 A THAT'S THE BEDROOM.
- 23 Q AND IS THIS HOW YOU FOUND IT WHEN YOU GOT THERE?
- 24 A TO THE -- TO THE BEST OF MY KNOWLEDGE, YES, EXACTLY
25 LIKE THAT.

RICK PATRILLA - DIRECT BY MR. STONE

176

- 1 Q STATE'S EXHIBIT 4, WHAT IS THAT?
- 2 A THAT'S THE SAME ROOM FROM THE BOTTOM OF THE BED
- 3 LOOKING TOWARD THE DOOR TO GO OUT -- THE DOOR TO THE LIVING
- 4 ROOM.
- 5 Q STATE'S EXHIBIT 5?
- 6 A IT'S BASICALLY THE SAME SHOT AS THE PREVIOUS, BUT A
- 7 LITTLE BIT MORE TO THE LEFT.
- 8 Q AGAIN, THIS IS HOW YOU FOUND IT WHEN YOU GOT THERE?
- 9 A YES, SIR.
- 10 Q STATE'S EXHIBIT 6?
- 11 A FROM THE SAME ROOM, BASICALLY FROM THE FOOT OF THE
- 12 BED, LOOKING TOWARD THE WALL AND THE BATHROOM AREA.
- 13 Q TELL ME WHAT THESE ITEMS ARE HERE?
- 14 A THESE APPEAR TO BE SOME TYPE OF DAMAGE IN THE WALL.
- 15 THIS IS A SPEAKER THAT APPARENTLY MAY HAVE FALLEN FROM WHEN
- 16 THAT DAMAGE WAS DONE.
- 17 Q AND WHAT ABOUT THE SIDE OF -- THESE ITEMS OVER HERE?
- 18 A STILL MORE DAMAGE IT LOOKS LIKE TO REPAIR AND THE
- 19 CENTER, THE OFF COLOR AREA THERE.
- 20 Q NOW, LOOKING AT THIS AREA HERE TO THE RIGHT OF THAT,
- 21 I'M GOING TO SHOW YOU STATE'S EXHIBIT NO. 7. THAT'S A
- 22 CLOSE-UP OF THAT PHOTOGRAPH?
- 23 A YES, SIR, THAT IS.
- 24 Q THAT SCENE. AND WHAT DOES THAT DEPICT?
- 25 A IT LOOKS LIKE SOMEONE MAY HAVE PUNCHED -- PUNCHED

RICK PATRILLA -- DIRECT BY MR. STONE

177

1 SOMETHING IN THE WALL HERE, AND THERE'S A LARGER HOLE RIGHT
2 THERE -- WHAT MADE THAT.

3 Q OKAY. STATE'S EXHIBIT 9, WHAT IS THAT? IS THIS THE
4 SAME OR DIFFERENT HOLES?

5 A IT LOOKS LIKE IT'S A DIFFERENT HOLE. IT LOOKS LIKE IT
6 COULD HAVE BEEN MADE BY SOMETHING ELSE.

7 Q STATE'S EXHIBIT 10, WHAT ARE THOSE?

8 A MORE HOLES IN THE WALL.

9 Q AND THIS AREA THAT'S PLASTERED, IS THIS ACTUALLY
10 HOLLOW HERE?

11 A YES, IT DOES APPEAR HOLLOW.

12 Q AND STATE'S EXHIBIT 11?

13 A IT'S THE SAME HOLE ONLY WITH A RULER.

14 Q AND 12?

15 A AGAIN, JUST MEASUREMENTS FROM THE SAME HOLE.

16 Q ALL RIGHT. GO AHEAD AND TAKE YOUR SEAT IF YOU WOULD.

17 (THE WITNESS RETURNS TO THE WITNESS STAND.)

18 Q NOW, YOU WALKED THROUGH THE BEDROOM. DID YOU GO INTO
19 ANY OTHER ROOMS OFF OF THE BEDROOM?

20 A NOT RIGHT OUT OF THE CALL -- WHEN WE WENT IN SERGEANT
21 RICKER AND SERGEANT CRIDDLE CLEARED THE LEFT, AND I JUST
22 COVERED -- OR THEY WENT TO THE RIGHT, AND I COVERED THEIR
23 LEFT. AND THEN WE WENT IN TOWARD THE BEDROOM.

24 Q OKAY. SO AS YOU GET INTO THE BEDROOM, DO YOU GO INTO
25 ANY AREA IN THE BEDROOM THEN?

RICK PATRILLA - DIRECT BY MR. STONE

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1 A WE -- WE -- WE WENT INTO THE BEDROOM. WHEN I WENT IN
2 THE BEDROOM, I WENT TO THE LEFT AND SAW THE VICTIM AND TOLD
3 THEM I HAVE THE VICTIM. AND THEN THEY CLEARED OUT OF THE
4 BED -- THE VERY IMMEDIATE AREA.

5 Q ALL RIGHT. AND YOU WERE THE FIRST ONE INTO THAT AREA;
6 IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q AND WHAT ROOM ARE YOU IN OR WHAT AREA OF THE HOUSE?

9 A THE BACK BEDROOM. I GUESS THE MASTER BEDROOM.

10 Q OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S
11 EXHIBIT 13 AND 14. FIRST, CAN YOU IDENTIFY THOSE TWO
12 PHOTOGRAPHS?

13 A YES, SIR.

14 Q AND IS THAT A FAIR AND ACCURATE DEPICTION OF THE SCENE
15 AS YOU SAW IT BEING THE FIRST ONE IN ON THE SCENE?

16 A YES, SIR.

17 MR. STONE: YOUR HONOR, AT THIS TIME WE MOVE STATE'S
18 EXHIBIT 13 AND 14 INTO EVIDENCE.

19 MS. CARROWAY: YOUR HONOR, I'M GOING TO OBJECT.

20 THE COURT: OVER THE OBJECTION. MARK THEM IN EVIDENCE
21 -- I MEAN, MARK THEM FOR IDENTIFICATION. THEY'RE NOT IN
22 EVIDENCE AT THIS TIME. LEAVE IT ON THE COURT REPORTER'S
23 DESK.

24 Q NOW, YOU WENT THROUGH THE SCENE, DID YOU FIND ANY
25 EVIDENCE OF FORCED ENTRY INTO THE HOUSE?

RICK PATRILLA - DIRECT BY MR. STONE

179

- 1 A NO, SIR, I DID NOT.
- 2 Q WHEN YOU GO INTO THE BATHROOM, WHAT DO YOU FIND IN THE
- 3 BATHROOM THAT'S OFF THE MASTER BEDROOM?
- 4 A THE VICTIM LAYING THERE, STILL WITH HER -- WITH HER
- 5 PANTS DOWN. SHE STILL HAD TOILET PAPER IN HER HAND,
- 6 APPARENTLY DECEASED.
- 7 Q FROM YOUR VIEW, COULD YOU TELL WHAT HAPPENED TO HER?
- 8 A NOT -- NOT IMMEDIATELY, NO.
- 9 Q AND IN WHAT CONDITION WAS THE BODY? WAS IT IN THE
- 10 SAME CONDITION -- YOU'RE THE FIRST ONE IN THE ROOM; IS THAT
- 11 CORRECT?
- 12 A YES, SIR.
- 13 Q AND WHERE IS HER HEAD?
- 14 A THE VICTIM'S HEAD WAS LOCATED FACE DOWN BETWEEN THE
- 15 TOILET AND THE BATHROOM DRAWERS IN A PILE OF CLOTHES.
- 16 Q NOW, DID YOU TOUCH THE VICTIM IN ANY WAY?
- 17 A NO.
- 18 Q AND AT SOME POINT IN TIME DID EMS ARRIVE?
- 19 A YES, SIR.
- 20 Q NOW, AT THE -- DID YOU ALSO CHECK THE TOILET AS WELL?
- 21 A YES, I DID.
- 22 Q AND WHAT DID YOU FIND?
- 23 A I DIDN'T SEE ANYTHING UNUSUAL.
- 24 MR. STONE: OKAY. I HAVE NO FURTHER QUESTIONS FOR
- 25 THIS WITNESS AT THIS TIME.

RICK PATRILLA - CROSS BY MS. CARROWAY

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1 THE COURT: CROSS EXAMINATION.

2 MS. CARROWAY: JUST A COUPLE, YOUR HONOR.

3 THE COURT: GO AHEAD.

4 CROSS EXAMINATION BY MS. CARROWAY:

5 Q CORPORAL PATRILLA, YOU TESTIFIED ON DIRECT THAT YOU
6 DON'T KNOW WHAT MADE THOSE HOLES?

7 A CORRECT.

8 Q AND WHEN YOU ARRIVED, YOU TESTIFIED YOU WERE THE FIRST
9 ON THE SCENE?

10 A YES.

11 Q AND WAS THERE ANY SHEETROCK OR CRUMPLED PIECES OF WALL
12 ON THE GROUND OR ANYTHING LIKE THAT?

13 A NOT THAT I REMEMBER. I WASN'T REALLY LOOKING FOR
14 THAT.

15 Q DO YOU WANT TO LOOK AT THE PICTURES?

16 A YEAH, I'LL LOOK AT THEM. I DON'T KNOW IF IT SHOWS
17 ANYTHING ON THE GROUND OR NOT.

18 Q DO YOU AGREE THERE'S NO DUST OR PIECES OF SHEETROCK?

19 A WELL, THERE'S SOME, BUT I -- THERE'S SOME INSIDE THE
20 WALL, BUT I DON'T SEE ANYTHING RIGHT -- RIGHT THERE.

21 Q WHERE STUFF FELL OUT OF THE WALL?

22 A RIGHT. OBVIOUSLY, IT HAD TO FALL OUT.

23 Q OKAY.

24 MS. CARROWAY: BEG THE COURT'S INDULGENCE FOR JUST A
25 MINUTE, YOUR HONOR.

DEJUAN HOLMES - DIRECT BY MR. STONE

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1 (PAUSE.)
2 MS. CARROWAY: NO FURTHER QUESTIONS, YOUR HONOR.
3 THE COURT: REDIRECT?
4 MR. STONE: NOTHING, YOUR HONOR.
5 THE COURT: ALL RIGHT. YOU MAY ---
6 MR. STONE: THE STATE CALLS DEJUAN HOLMES.
7 THE COURT: YOU MAY COME DOWN.
8 (THE WITNESS LEAVES THE WITNESS STAND.)
9 THE COURT: THIS WITNESS BE EXCUSED WITHOUT OBJECTION?
10 MS. CARROWAY: YES, SIR.
11 THE COURT: YOU'RE FREE TO GO. THANK YOU VERY MUCH.
12 DEJUAN HOLMES, BEING FIRST
13 DULY SWORN, TESTIFIED AS FOLLOWS:
14 DIRECT EXAMINATION BY MR. STONE:
15 Q GO AHEAD AND STATE YOUR FULL NAME SO THE COURT
16 REPORTER CAN GET THE SPELLING OF YOUR LAST PLEASE.
17 A DEJUAN HOLMES, H-O-L-M-E-S.
18 Q AND WHAT DO YOU DO, SIR?
19 A I'M A CRIMINAL INVESTIGATOR WITH THE SHERIFF'S OFFICE.
20 Q HOW LONG HAVE YOU BEEN WITH THE BEAUFORT SHERIFF'S
21 OFFICE?
22 A ABOUT 12 YEARS.
23 Q AND WHAT IS YOUR JOB AS A CRIMINAL INVESTIGATOR?
24 A INVESTIGATE CRIMES, FIND FACTS IN CASES, AND
25 ULTIMATELY FIND THE PERSON THAT'S RESPONSIBLE FOR

1 COMMITTING THAT CRIME.

2 Q ARE YOU REGIONALIZED? ARE YOU ON SOUTHERN OR NORTHERN
3 BEAUFORT COUNTY, OR DO YOU COVER THE ENTIRE COUNTY?

4 A NORMALLY, I COVER SOUTHERN BEAUFORT COUNTY.

5 Q NOW, ON SEPTEMBER 16, 2007 WERE YOU WORKING AS AN
6 INVESTIGATOR SOUTHERN BEAUFORT COUNTY THEN?

7 A I WAS.

8 Q AND DID YOU RESPOND TO THE 9-1-1 CALL AT 150 CHERRY
9 POINT ROAD?

10 A I DID.

11 Q NOW, WHAT DID YOU -- WHEN YOU GOT THERE, PEOPLE WERE
12 ALL RIGHT THERE I'M ASSUMING; IS THAT CORRECT?

13 A THAT'S CORRECT.

14 Q AND WHAT WAS YOUR JOB ONCE YOU GOT THERE?

15 A ONCE I GOT THERE, I MET WITH THE OFFICERS ON SCENE AND
16 STARTED TO GATHER INFORMATION ABOUT WHAT WAS GOING ON, AT
17 WHICH TIME I CONTACTED -- I WAS IN CONTACT WITH CAPTAIN
18 BROMAGE AND MASTER SERGEANT BROWN OF THE SHERIFF'S OFFICE.

19 Q NOW, AT SOME POINT IN TIME DID YOU GO THROUGH THE
20 CRIME SCENE?

21 A I DID.

22 Q AND DID YOU PREPARE A CRIME SCENE SKETCH?

23 A I DID.

24 Q LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 23,
25 24, AND 25. ARE THESE YOUR CRIME SCENE SKETCHES?

DEJUAN HOLMES - DIRECT BY MR. STONE

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1 A THEY ARE.

2 Q LET ME SHOW YOU. THAT ONE IS 23 I'VE SHOWED YOU

3 THERE. 24?

4 A IT IS.

5 Q AND 25?

6 A IT IS.

7 MR. STONE: AT THIS TIME, YOUR HONOR, WE MOVE STATE'S
8 EXHIBIT 23, 24, AND 25 INTO EVIDENCE.

9 MS. CARROWAY: WITHOUT OBJECTION.

10 THE COURT: WITHOUT OBJECTION.

11 (STATE'S EXHIBIT NOS. 23, 24, AND 25 RECEIVED IN
12 EVIDENCE.)

13 Q COULD I ASK YOU TO COME DOWN OFF THE STAND IF YOU
14 DON'T MIND PLEASE, SIR.

15 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

16 Q ALL RIGHT. LET ME FIRST SHOW YOU -- AND I WOULD ASK
17 YOU TO COME OVER HERE SO THE JURY AND THE COURT REPORTER
18 CAN HEAR YOU. LET ME SHOW YOU FIRST STATE'S EXHIBIT 25.
19 COULD YOU GIVE US AN OVERALL IDEA -- AND YOU'VE GOT A JUROR
20 RIGHT BEHIND YOU, SO SCOOT BACK A LITTLE. THERE YOU GO.
21 JUST OVERALL IDEA OF THE SCENE WHEN YOU GOT THERE?

22 A THIS IS THE RESIDENCE WHERE THE INCIDENT OCCURRED.
23 THIS IS THE FRONT PORCH WHERE WE MADE FIRST INITIAL ENTRY.
24 WALKED INTO THE RESIDENCE. THIS IS THE LIVING ROOM AREA.
25 TO THE RIGHT THERE'S A BATHROOM AND ANOTHER BEDROOM BACK

1 HERE. WALK ON THROUGH. THIS AREA RIGHT HERE, YOU WALK
2 INTO THE KITCHEN AREA. THIS IS A TABLE -- KITCHEN TABLE
3 HERE. YOU WALK ON TOWARD THE MASTER BEDROOM, TO THE BACK.
4 THERE'S A DOOR THAT OPENS OUTWARD. AND DIRECTLY IN FRONT
5 OF YOU AS YOU'RE WALKING DOWN THE HALLWAY, THERE'S A MASTER
6 BEDROOM AREA. MASTER BEDROOM, AND ALSO A BATHROOM IN THIS
7 LOCATION ALSO.

8 Q NOW, IF YOU'LL HOLD THAT JUST A SECOND. LET ME SHOW
9 YOU STATE'S EXHIBIT 2, WHICH I'VE ALREADY SHOWN THE JURY.
10 WHERE IS THIS IN RELATION TO THIS SCENE?

11 A THAT IS ACTUALLY IN THE LIVING ROOM AREA RIGHT HERE.

12 Q THAT'S THE FRONT AREA?

13 A YES, IT IS.

14 Q ALL RIGHT. AND STATE'S EXHIBIT 3?

15 A THAT'S THE MASTER BEDROOM AREA RIGHT HERE. AND THAT'S
16 A SHOT SHOWING THE -- THAT'S THE BATH DOOR RIGHT HERE,
17 WHICH IS RIGHT HERE.

18 Q OKAY. ALL RIGHT. AND STATE'S EXHIBIT 4 AND 5?

19 A THAT'S ALSO THE MASTER BEDROOM, THAT'S THE DOOR THAT
20 LEADS BACK OUT TO THE HALLWAY, RIGHT HERE.

21 Q OKAY.

22 A AND THAT'S THE MASTER -- MASTER BEDROOM ALSO. THAT'S
23 THE MASTER BED RIGHT HERE. AND THIS IS THE CLOSET. THAT
24 DOOR RIGHT THERE -- THE CLOSET RIGHT HERE.

25 Q ALL RIGHT. THESE -- LET ME SHOW YOU STATE'S EXHIBIT

DEJUAN HOLMES - DIRECT BY MR. STONE

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1 12 AND 11. DID YOU SEE THESE WHEN YOU GOT TO THE SCENE AS

2 WELL?

3 A I DID.

4 Q AND THIS MEASUREMENT, WAS THIS SOMETHING THAT YOU'RE

5 FAMILIAR WITH?

6 A YES, I WAS THE ONE HOLDING THAT RULER, AND SERGEANT

7 RUNNION WAS PHOTOGRAPHING THAT -- THOSE HOLES.

8 Q OKAY. ALL RIGHT. NOW, I'LL TRADE OUT WITH YOU. GO

9 TO STATE'S EXHIBIT 24. TELL THE JURY WHAT'S IN THAT AND

10 WHAT THIS SHOWS?

11 A THIS IS ALSO THE RESIDENCE WHICH I JUST SHOWED YOU.

12 YOU HAVE THE LIVING ROOM AREA. THE BATHROOM TO THE RIGHT.

13 AND ALSO THIS BACK BEDROOM HERE TO YOUR RIGHT. THE KITCHEN

14 AREA RIGHT HERE, AS I SAID BEFORE. THIS IS A SHORT HALLWAY

15 THAT LEADS TO THE MASTER BEDROOM TO THE RIGHT. IT'S A DOOR

16 THAT LEADS TO A LITTLE PORCH TO THE RIGHT, THAT OPENS

17 OUTWARD. THE MASTER BEDROOM IS HERE. AND THIS IS THE

18 MASTER BATHROOM. AND INSIDE THE MASTER BATHROOM WAS THE

19 DECEASED, MS. HERRERA.

20 Q ALL RIGHT. AND YOU DREW THAT IN?

21 A I DID.

22 Q OKAY. AND AGAIN, ON STATE'S EXHIBIT 23, WHICH IS A

23 CLOSE-UP OF THAT PARTICULAR BED, ARE THOSE YOUR DRAWINGS

24 AND MEASUREMENTS?

25 A THEY ARE.

1 Q AND COULD YOU TELL THE JURY WHAT THAT SIGNIFIES,
2 PLEASE?

3 A AGAIN, THIS IS THE MASTER BATHROOM. THIS IS THE TUB
4 AREA. THIS IS THE COMMODE. WHICH, IF YOU'RE WALKING INTO
5 THE MASTER BATHROOM, THE COMMODE IS SITTING DIRECTLY IN
6 FRONT OF YOU. TO THE RIGHT IS THE TUB AREA. TO THE -- TO
7 THE LEFT OF THE TOILET ON THE -- ON THE FLOOR WAS THE
8 DECEASED. SHE WAS LAYING ON HER RIGHT SIDE, AND HER HEAD
9 WAS FACING TOWARDS THE FLOOR. AND JUST TO THE LEFT OF HER
10 IS THE VANITY, ALONG WITH THE SINK RIGHT THERE.

11 Q OKAY. GO AHEAD AND TAKE THE STAND IF YOU WILL.

12 (THE WITNESS RETURNS TO THE WITNESS STAND.)

13 Q LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT FOR
14 IDENTIFICATION 13 AND 14. IS THAT A FAIR AND ACCURATE
15 DEPICTION OF THE SCENE AS YOU SAW IT?

16 A YES, SIR.

17 Q OKAY. WHEN YOU SAW THE -- WHEN YOU WALKED INTO THE
18 BATHROOM AND SAW THE DECEASED, COULD YOU TELL FROM YOUR
19 VANTAGE POINT HOW SHE DIED?

20 A NO, I COULDN'T.

21 Q AND TELL ME ABOUT WHERE HER HEAD WAS?

22 A IF YOU WALK INTO THE MASTER BATHROOM, YOU'D RUN RIGHT
23 INTO THE TOILET. TO THE LEFT OF THAT TOILET BETWEEN THE
24 VANITY THERE LAID THE VICTIM ON THE FLOOR. SHE WAS
25 PARTIALLY -- HER PANTS WAS DOWN TO HER KNEE. SHE WAS

DEJUAN HOLMES - DIRECT BY MR. STONE

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1 LAYING ON HER RIGHT SIDE AND HER HEAD WAS FACING TOWARD THE
2 FAR LEFT CORNER OF THE -- OF THE BATHROOM -- BATHROOM
3 CORNER OF THE VANITY AND THE TOILET.

4 Q IN FACT, COULD YOU EVEN SEE ANY BLOOD FROM THERE?

5 A I COULDN'T.

6 Q AND YOU'VE BEEN AN INVESTIGATOR FOR HOW LONG?

7 A 5 YEARS.

8 Q NOW, I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT

9 26 AND 27. CAN YOU IDENTIFY THOSE ITEMS?

10 A THIS IS THE COCA COLA CUP THAT WAS SITTING ON THE --
11 ON THE DRESSER IN THE MASTER BEDROOM. IT CONTAINED .22
12 CALIBER BULLETS.

13 Q AND THAT WAS STATE'S EXHIBIT?

14 A 27.

15 Q AND TELL ME ABOUT STATE'S EXHIBIT 26?

16 A THIS IS ALSO A .22 CALIBER LONG RIFLE BULLETS THAT WAS
17 THE SAME -- NEAR IN THE AREA OF THIS COCA COLA CUP THAT
18 ALSO CONTAINED BULLETS FROM A .22 CALIBER RIFLE.

19 Q OKAY. AND THIS WAS IN THE HOUSE?

20 A WAS IN THE HOUSE ALSO ON THE DRESSER.

21 MR. STONE: YOUR HONOR, AT THIS TIME WE WOULD MOVE
22 EXHIBIT 26 AND 27 INTO EVIDENCE.

23 MS. CARROWAY: WITHOUT OBJECTION.

24 THE COURT: WITHOUT OBJECTION.

25 (STATE'S EXHIBIT NOS. 26 AND 27 RECEIVED IN EVIDENCE.)

DEJUAN HOLMES -- CROSS BY MS. CARROWAY

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1 Q NOW, LET ME GO BACK TO 27 BECAUSE WE DIDN'T OPEN THIS

2 UP. THIS IS THE CANISTER YOU WERE REFERRING TO?

3 A THAT IS.

4 Q AND IF YOU WILL, SHOW ME WHAT'S INSIDE JUST TO MAKE

5 SURE?

6 A THIS CONTAINS ROUNDS, THE .22 CALIBER ROUNDS.

7 Q OKAY. AND THE ROUNDS WERE OPEN?

8 A THEY WERE OPEN, SITTING IN THIS CUP WHEN I FOUND THEM.

9 Q ALL RIGHT. AND STATE'S EXHIBIT 26, THESE ROUNDS AS
10 WELL?

11 A THEY WERE ALSO SITTING ON THE -- ON THE DRESSER IN THE
12 MASTER BEDROOM.

13 Q OKAY. NOW, SERGEANT HOLMES, AT SOME POINT ---

14 MR. STONE: I TELL YOU WHAT, THAT'S ALL THE QUESTIONS
15 I HAVE AT THIS TIME, YOUR HONOR. I MAY RE-CALL HIM IN
16 ANOTHER MATTER LATER.

17 THE COURT: QUESTIONS?

18 MS. CARROWAY: THANK YOU, YOUR HONOR.

19 CROSS EXAMINATION BY MS. CARROWAY:

20 Q I JUST HAVE A COUPLE OF QUESTIONS FOR YOU. YOU FILED
21 A REPORT BASED ON WHAT YOU FOUND?

22 A YES, MA'AM.

23 Q OKAY. AND IN THAT REPORT YOU SAY YOU TALKED WITH

24 M.A. [REDACTED] JOSE'S STEP-DAUGHTER?

25 A YES, I DID.

DEJUAN HOLMES - CROSS BY MS. CARROWAY

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1 Q FROM THAT CONVERSATION YOU LEARNED THAT SHE STAYED
2 WITH HER DAD THAT WEEKEND?

3 A YES.

4 Q THAT SHE'D BEEN GONE SINCE THURSDAY?

5 A I DON'T KNOW HOW LONG SHE'D BEEN GONE. I KNOW SHE
6 STAYED THAT WEEKEND.

7 Q AND THAT SHE HAD JUST ARRIVED HOME?

8 A YES.

9 Q AND THAT JOSE AND KATHY HAD PICKED HER UP FROM THE
10 HARDEEVILLE WALMART WHERE THEY EXCHANGED HER WITH HER
11 FATHER?

12 A THAT'S CORRECT.

13 Q OKAY. AND THAT THEY ARGUED ON THE WAY HOME FROM THAT?

14 A THAT'S CORRECT.

15 MS. CARROWAY: OKAY. YOUR HONOR, BEG THE COURT'S
16 INDULGENCE JUST ONE MOMENT.

17 (PAUSE.)

18 Q ONE MORE QUESTION, INVESTIGATOR HOLMES. YOU ALSO
19 LEARNED FROM THIS INTERVIEW WITH MADISON THAT SHE HAD NEVER
20 SEEN JOSE HIT HER MOTHER?

21 A I'D HAVE TO REFER BACK TO MY REPORT.

22 Q DO YOU WANT TO LOOK AT MY COPY? I APOLOGIZE, THERE'S
23 SOME MARKINGS ON IT.

24 A THAT'S FINE. (PAUSE.) THAT'S CORRECT.

25 MS. CARROWAY: NO FURTHER QUESTIONS, YOUR HONOR.

SHAYNA ORSON -- DIRECT BY MR. STONE

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1 THE COURT: REDIRECT?

2 MR. STONE: NOT AT THIS TIME, YOUR HONOR.

3 THE COURT: ALL RIGHT, SIR. YOU MAY COME DOWN. THANK
4 YOU VERY MUCH.

5 (THE WITNESS LEAVES THE WITNESS STAND.)

6 MR. STONE: THE STATE CALLS SHAYNA ORSON TO THE STAND.

7 SHAYNA ORSON, BEING FIRST
8 DULY SWORN, TESTIFIED AS FOLLOWS:

9 MR. STONE: YOUR HONOR, MAY WE APPROACH BRIEFLY, YOUR
10 HONOR.

11 THE COURT: YES.

12 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
13 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)
14 DIRECT EXAMINATION BY MR. STONE:

15 Q WHAT DO YOU DO, MA'AM? I SEE YOU'RE IN YOUR EMS
16 OUTFIT. BUT TELL THE JURY WHAT YOU DO PLEASE?

17 A I'M A PARAMEDIC FOR BEAUFORT COUNTY EMS.

18 Q ALL RIGHT. NOW, WHEN YOU SAY PARAMEDIC, WHAT DOES
19 THAT MEAN?

20 A IT MEANS I RUN OUR AMBULANCE, RESPOND TO EMERGENCY
21 CALLS, AND PROVIDE LIFE SUPPORT FOR PEOPLE IN NEED.

22 Q WHAT TYPE OF TRAINING DO YOU RECEIVE TO ALLOW YOU TO
23 BE A PARAMEDIC?

24 A THERE'S EDUCATIONAL TRAINING AND CLASS TRAINING.

25 THERE'S ALSO FIELD TRAINING IN HOSPITALS AND TIME ON THE

SHAYNA ORSON - DIRECT BY MR. STONE

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- 1 AMBULANCE TO GET FAMILIAR WITH THE DUTIES THAT COME ALONG
2 WITH THE JOB.
- 3 Q NOW, WHEN YOU ARRIVE ON SCENE, YOU SAY YOU ARE ABLE TO
4 GIVE SOME LIFE SUPPORT; IS THAT CORRECT?
- 5 A YES, SIR.
- 6 Q AND CAN YOU ALSO DETERMINE DEATH?
- 7 A YES, SIR.
- 8 Q AND, AGAIN, THAT GOES BACK TO THE TRAINING THAT YOU
9 JUST DESCRIBED?
- 10 A YES, SIR.
- 11 Q HOW LONG HAVE YOU BEEN A PARAMEDIC?
- 12 A I'VE BEEN A PARAMEDIC FOR ABOUT 3 AND A HALF YEARS.
- 13 Q AND IN THAT TIME HAVE YOU PRONOUNCED PEOPLE DEAD OR AT
14 LEAST ---
- 15 A YES, SIR.
- 16 Q --- MADE TESTS; IS THAT FAIR?
- 17 A UH-HUH.
- 18 Q NOW, ON SEPTEMBER 16, 2007 YOU WERE A PARAMEDIC THEN,
19 WERE YOU NOT?
- 20 A YES, SIR.
- 21 Q WERE YOU CALLED TO 150 CHERRY POINT ROAD?
- 22 A YES, SIR.
- 23 Q DID YOU GO BY YOURSELF, DID YOU GO WITH A TEAM, HOW
24 DID THAT HAPPEN?
- 25 A WE RESPONDED TO THE EMS DISPATCH. THE FIRE AND EMS

1 WERE DISPATCHED AT THE SAME TIME, BLUFFTON FIRE DEPARTMENT.
2 AND WE RESPONDED, STOOD BY AWAY FROM THE SCENE, TO WAIT FOR
3 THE POLICE DEPARTMENT TO CLEAR THE SCENE.

4 Q CLEAR THE SCENE MEANING?

5 A MEANING THE SCENE WOULD BE SAFE AND SECURE FOR US.

6 Q AND YOU WENT INTO THE HOUSE AT 150 CHERRY POINT DRIVE
7 (SIC) -- ROAD?

8 A YES.

9 Q DID YOU GO IN THE BATHROOM?

10 A YES, SIR.

11 Q AND WHAT DID YOU FIND ONCE YOU GOT THERE?

12 A I FOUND A WHITE FEMALE ON -- SHE WAS ON THE GROUND
13 WEDGED IN BETWEEN -- THERE WAS A TOILET, A PILE OF CLOTHES,
14 LIKE DIRTY LAUNDRY, AND THEN A BATHROOM SINK COUNTER AREA,
15 WEDGED TO THE FLOOR.

16 Q NOW, WHAT WAS YOUR JOB? GOING INTO THE BATHROOM, WHAT
17 WERE YOU THERE FOR?

18 A MY JOB WAS BASICALLY JUST TO LITERALLY PRONOUNCE HER
19 DECEASED.

20 Q DID YOU HAVE TO DO ANYTHING BEFORE THAT?

21 A I HAD TO -- IN ORDER FOR ME TO DO IT WITH MY CARDIAC
22 MONITOR THAT WE CARRY -- WE USE THAT. WE NEEDED TO
23 REPOSITION THE BODY SO THAT I WOULD BE ABLE TO GET ACCESS
24 TO HER TO PUT THE LEADS IN THEIR CORRECT PLACEMENT.

25 Q SO YOU COULD NOT GET TO HER IN THE POSITION SHE WAS IN

SHAYNA ORSON - DIRECT BY MR. STONE

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1 THEN?

2 A NO, SIR. SHE WAS KIND OF TWISTED.

3 Q IN FACT, COULD YOU TELL HOW SHE DIED BY LOOKING AT HER
4 WHEN YOU WALKED IN?

5 A NO, IT WASN'T IMMEDIATELY OBVIOUS.

6 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
7 13 AND 14, AND JUST TELL ME. CAN YOU IDENTIFY THOSE
8 PHOTOGRAPHS?

9 A YES, SIR.

10 Q IS THAT A FAIR AND ACCURATE DEPICTION OF HOW THE
11 DECEASED LOOKED WHEN YOU GOT THERE?

12 A YES, SIR.

13 Q AND THESE CLOTHES THAT YOU'RE DESCRIBING, THESE ARE
14 THE CLOTHES THAT YOU ---

15 A YES.

16 Q AND HOW THEY WERE POSITIONED AT THE TIME?

17 A YES, SIR.

18 Q ALL RIGHT. AND FROM THIS POSITION, YOU THEN HAD TO
19 MOVE THE DECEASED; IS THAT CORRECT?

20 A YES, SIR.

21 MR. STONE: YOUR HONOR, AT THIS TIME WE MOVE STATE'S
22 EXHIBIT 13 AND 14 INTO EVIDENCE.

23 THE COURT: SUBJECT TO THE SAME OBJECTION?

24 MS. CARROWAY: OBJECTION, YOUR HONOR.

25 THE COURT: MARK THEM FOR IDENTIFICATION ONLY.

1 MR. STONE: OKAY.

2 Q NOW, WHEN ---

3 THE COURT: COUNSEL, APPROACH.

4 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
5 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

6 Q NOW, WHEN YOU ARRIVED AND SAW THE SCENE, HOW DID YOU
7 REPOSITION THE VICTIM?

8 A WE ADJUSTED HER BODY SO THAT SHE WAS MORE ON HER
9 POSTERIOR SIDE -- ON HER BACK SIDE. I HAD TO BE ABLE TO
10 PUT MY CARDIAC MONITOR LEADS ON EITHER SIDE OF HER CHEST,
11 AND THEN ON HER LOWER TORSO AREA.

12 Q AND THEN ONCE YOU DID THAT, WHAT DID YOU DO?

13 A ONCE WE ATTACHED THE CARDIAC MONITOR, WE READ THAT IT
14 ASYSTOLE, WE CHECKED A SECOND LEAD, WHICH CONFIRMED
15 ASYSTOLE. AND THEN I REMOVED THE MONITOR AND LEFT THE
16 ELECTRODES ON THE BODY AND REMOVED MYSELF FROM THE SCENE.

17 Q SO WHAT DOES THAT MEAN IN LAYMAN'S TERMS?

18 A PRONOUNCING A PERSON ASYSTOLIC MEANS THAT THEY HAVE NO
19 ELECTRICAL RHYTHM IN THEIR HEART. THE HEART HAS ITS OWN
20 ELECTRICAL CONDUCTION SYSTEM. AND BY OUR CARDIAC MONITORS,
21 WE CAN READ WHAT THE HEART IS DOING THROUGH READING THE
22 ELECTRICITY IT'S PROVIDING.

23 SHE HAD NO HEARTBEAT. SHE WAS NOT BREATHING. SHE HAD
24 NO PULSE. NO RESPIRATION. NOTHING. SHE WAS -- SHE WAS
25 DECEASED AT THAT POINT IN TIME.

DR. PRESNELL — DIRECT BY MR. STONE

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1 MR. STONE: I DON'T HAVE ANY FURTHER QUESTIONS OF THIS
2 WITNESS.

3 MS. CARROWAY: NO QUESTIONS FOR THIS WITNESS.

4 THE COURT: ALL RIGHT. YOU MAY COME DOWN, MA'AM.
5 THANK YOU VERY MUCH.

6 (THE WITNESS LEAVES THE WITNESS STAND.)

7 THE COURT: MAY THIS WITNESS BE EXCUSED?

8 MS. CARROWAY: WITHOUT OBJECTION.

9 THE COURT: WITHOUT OBJECTION.

10 MR. STONE: THE STATE CALLS DR. ERIN PRESNELL.

11 DR. SUSAN ERIN PRESNELL,

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION BY MR. STONE:

14 Q DR. PRESNELL, WHAT DO YOU DO, MA'AM?

15 A I'M A FORENSIC PATHOLOGIST AT MUSC, THE MEDICAL
16 UNIVERSITY OF SOUTH CAROLINA AT CHARLESTON.

17 Q AND HOW LONG HAVE YOU BEEN A FORENSIC PATHOLOGIST?

18 A I'VE BEEN DOING FORENSIC AUTOPSIES SINCE 1995, BUT I
19 DID MY SUB-SPECIALTY TRAINING AND I BECAME BOARD CERTIFIED
20 IN 1999.

21 Q AND WHAT TYPE OF TRAINING DID YOU RECEIVE IN ORDER TO
22 DO THIS?

23 A WELL, A FORENSIC PATHOLOGIST IS A MEDICAL DOCTOR, SO
24 YOU GO TO COLLEGE. GRADUATE, GET YOUR DEGREE. GO TO
25 MEDICAL SCHOOL; THAT'S 4 YEARS. AFTER MEDICAL SCHOOL YOU

1 PICK WHAT SPECIALTY YOU WANT TO GO IN TO, PEDIATRICS,
2 SURGERY, OR MEDICINE. I CHOSE PATHOLOGY WHICH WAS A 5-YEAR
3 TRAINING PROGRAM AFTER THAT. AND THEN IN ADDITION TO
4 GENERAL PATHOLOGY I SUB-SPECIALIZED FOR ANOTHER YEAR IN
5 FORENSIC PATHOLOGY.

6 Q WHAT'S THE DIFFERENCE?

7 A WELL ---

8 Q WHAT'S THE ADD ON FOR FORENSICS?

9 A WELL, MOST PATHOLOGISTS REALLY AREN'T FORENSIC
10 PATHOLOGISTS. EVERY ONE'S KIND OF GETTING FAMILIAR WITH
11 WHAT A FORENSIC PATHOLOGIST DOES. BUT GENERAL PATHOLOGY --
12 PATHOLOGY IS THE STUDY OF DISEASE. AND SO TISSUES LIKE
13 YOUR FAMILY PHYSICIAN OR SURGEON MIGHT REMOVE FROM A
14 PATIENT -- LIKE IF YOU GOT A SKIN BIOPSY OR IF YOU HAD
15 SURGERY FOR COLON POLYP OR SOMETHING LIKE THAT, THAT TISSUE
16 WOULD GO TO THE PATHOLOGIST. THEY WOULD LOOK AT IT, LOOK
17 UNDER THE MICROSCOPE, AND DIAGNOSE A DISEASE -- THERE IS
18 DISEASE OR NOT, THERE'S A CANCER OR NOT, AN INFECTION OR
19 NOT. THAT'S GENERAL PATHOLOGY, SURGICAL PATHOLOGY.

20 FORENSIC PATHOLOGY IS KIND OF A SUB-SPECIALTY WHERE
21 WE'RE NOT JUST LOOKING AT A PIECE OF TISSUE, WE'RE LOOKING
22 AT A WHOLE ENTIRE PERSON THAT'S PASSED ON. WE ARE LOOKING
23 FOR DISEASES, BUT WE'RE ALSO INTERPRETING TRAUMA. AND
24 ULTIMATELY THAT PROCESS IS CALLED THE AUTOPSY. AND
25 ULTIMATELY WE TRY TO ESTABLISH THE CAUSE AND MANNER OF

DR. PRESNELL - DIRECT BY MR. STONE

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1 DEATH.

2 Q AND HAVE YOU TESTIFIED IN A COURTROOM BEFORE
3 CONCERNING FORENSIC PATHOLOGY?

4 A YES.

5 Q HAVE YOU BEEN QUALIFIED AS AN EXPERT IN THE FIELD?

6 A YES, SIR.

7 Q HOW MANY TIMES?

8 A I'D HAVE TO ESTIMATE AROUND 70 OR 80.

9 MR. STONE: YOUR HONOR, AT THIS TIME WE ASK TO QUALIFY
10 DR. PRESNELL AS AN EXPERT IN FORENSIC PATHOLOGY.

11 THE COURT: ANY VOIR DIRE OR OBJECTION?

12 MS. CARROWAY: NO VOIR DIRE OR OBJECTION, YOUR HONOR.

13 THE COURT: THANK YOU. YOU MAY PROCEED.

14 Q NOW, DID YOU DO THE PATHOLOGY ON KATHERINE HERRERA?

15 A YES, I DID AN AUTOPSY ON HER SEPTEMBER 17TH OF 2007.

16 Q AND AS A RESULT OF THAT, WHEN YOU DO AN AUTOPSY, DO
17 YOU HAVE INFORMATION CONCERNING THE CRIME SCENE, VARIOUS
18 THINGS LIKE THAT BEFORE YOU DO THE AUTOPSY?

19 A IT DEPENDS ON THE CASE, ON HOW MUCH INFORMATION IS
20 ACTUALLY AVAILABLE WHEN THEY FIND SOMEBODY THAT'S DECEASED.
21 IN THIS PARTICULAR CASE, WE RECEIVED A FAIR AMOUNT OF
22 INFORMATION AS WELL AS SOME SCENE PICTURES -- A PICTURE OF
23 THE SCENE, OF WHERE THE FATALITY OCCURRED.

24 Q OKAY. NOW, LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S
25 EXHIBIT 13 AND 14 FOR IDENTIFICATION. ARE THESE A COUPLE

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1 OF THE SAME PHOTOS THAT YOU VIEWED CONCERNING THIS CASE?

2 A YES, THEY ARE.

3 Q ALL RIGHT. AND ARE THESE PHOTOS THAT YOU TOOK INTO
4 CONSIDERATION AND USED WHEN DETERMINING YOUR FINAL AUTOPSY
5 REPORT?

6 A I CERTAINLY REVIEWED THEM. BUT THE FINDINGS IN OUR
7 AUTOPSY WOULD STAND REGARDLESS OF WHETHER WE SAW THE PHOTOS
8 OR NOT. BUT PERHAPS INTERPRETING HOW INJURY OCCURRED IS
9 ASSISTED BY THOSE PHOTOGRAPHS.

10 MR. STONE: OKAY. AT THIS TIME, YOUR HONOR, WE MOVE
11 STATE'S EXHIBIT 13 AND 14 INTO EVIDENCE.

12 THE COURT: THE SAME OBJECTION STILL. MAINTAIN THEM
13 FOR IDENTIFICATION PURPOSES UNTIL SHE PUTS SOMETHING ON THE
14 RECORD, SHE SAYS SHE SAW THEM.

15 MR. STONE: I'M SORRY. I THOUGHT I DID. I APOLOGIZE.

16 THE COURT: SHE SAID SHE SAW THEM.

17 MR. STONE: OKAY.

18 THE COURT: I SUSTAIN THE OBJECTION. I'M NOT GOING TO
19 RULE THEM OUT, BUT I'M STILL GOING TO -- SHE'S GOT TO
20 COMPLETE HER TESTIMONY.

21 MR. STONE: OKAY.

22 Q ALL RIGHT. DR. PRESNELL, TELL ME FIRST OF ALL, THE
23 AUTOPSY THAT YOU PERFORMED, WHAT EXACTLY DID YOU DO?

24 A WELL, ALL OF OUR AUTOPSIES -- ALL OF OUR FORENSIC
25 AUTOPSIES ARE COMPLETE AUTOPSIES. SO WE BASICALLY TAKE

DR. PRESNELL -- DIRECT BY MR. STONE

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1 PICTURES AND DO DIAGRAMS THROUGHOUT THE WHOLE PROCESS, HOW
2 WE RECEIVE THE BODY, AFTER WE UNCLOTHED THE BODY, AFTER
3 WE'VE CLEANED UP ANY BLOOD OR DIRT OR ANYTHING ON THE BODY.
4 AFTER WE DO ALL THE EXTERNAL DOCUMENTATION, THEN WE DO THE
5 INTERNAL PORTION OF THE AUTOPSY, WHICH INCLUDED VIEWING ALL
6 THE ORGANS. IT ALSO INCLUDES THE BRAIN. IN THIS CASE, THE
7 UPPER SPINAL CORD AS WELL.

8 AND WE ALSO TAKE SAMPLES OF SOME OF THE TISSUES TO
9 LOOK UNDER THE MICROSCOPE IF THAT MAY ASSIST US FURTHER IN
10 COMING UP WITH A CONCLUSION TO THE CASE.

11 WE ALSO GET -- DRAW BLOOD AND URINE IF THERE IS URINE
12 AVAILABLE TO RUN TOXICOLOGIC TESTING ON FOR DRUGS AND
13 ALCOHOL.

14 SO WE DO ALL THAT DURING THE DAY, USUALLY DURING ONE
15 DAY. AND THEN ALL THE RESULTS WILL COME BACK IN TO US OVER
16 A PERIOD OF TIME. AND WE'LL COMPOSE THE AUTOPSY REPORT
17 AFTER THAT.

18 ALL THOSE THINGS WERE DONE IN THIS CASE.

19 Q AND WHAT WERE YOUR FINDINGS AFTER YOU DID THIS
20 PROCEDURE -- AFTER YOU FOLLOW THOSE PROCEDURES?

21 A WELL, THE BIGGEST, MOST SIGNIFICANT FINDING IS THE MS.
22 HERRERA HAD A GUNSHOT WOUND. IT WAS HER CAUSE OF DEATH.
23 THE GUNSHOT WOUND ENTERED THE RIGHT BASE -- EXCUSE ME, THE
24 LEFT BASE OF THE SKULL AND TRAVELED DOWNWARD JUST A LITTLE
25 BIT, DOWNWARD ON HER BODY JUST A LITTLE BIT, AND INTO HER

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1 VERTEBRAL COLUMN, WHICH IS THE BONE THAT SURROUNDS HER
2 SPINAL CORD, AND IN THROUGH THE SPINAL CORD AND HIT THE
3 OTHER SIDE OF THE VERTEBRAL COLUMN. THIS IS WHERE WE
4 ACTUALLY RECOVERED THE BULLET.

5 SO BASICALLY, THE FATAL INJURY IS A SINGLE GUNSHOT
6 WOUND ENTERING THE BASE OF THE LEFT SKULL AND TRAVELING
7 INTO THE UPPER CERVICAL SPINAL CORD.

8 Q I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 30.
9 CAN YOU IDENTIFY THAT PLEASE?

10 A THIS IS A CONTAINER, AND IT HAS ONE OF OUR AUTOPSY
11 LABELS ON IT WITH THE DECEDENT'S NAME AND ALSO THE MARKINGS
12 PROJECTILE.

13 Q AND WHAT DOES THAT MEAN, THE MARKINGS PROJECTILE?

14 A THIS WOULD BE THE CONTAINER THAT WE TRANSFERRED THE
15 BULLET THAT WE RECOVERED AT AUTOPSY TO AUTHORITIES.

16 Q ALL RIGHT. NOW, YOU DO THAT -- THIS STICKER, THIS
17 WHITE STICKER, THAT IN FACT HAS YOUR NAME TYPED AT THE
18 BOTTOM, THAT IS THE STICKER YOU PROVIDE FROM MUSC?

19 A YES, SIR, THAT'S OUR AUTOPSY STICKER. WHEN WE LOG IN
20 A CASE, WHEN A CASE COMES, IT GENERATES AN AUTOPSY NUMBER.
21 AND THEY PRINT OFF LABELS. AND ALL THAT INFORMATION IS
22 PRINTED ON THE LABELS, AND THIS IS ONE OF THOSE LABELS.

23 Q AND DO YOU PLACE IT IN THIS METAL CONTAINER?

24 A YES.

25 Q AND IS IT SEALED?

DR. PRESNELL -- DIRECT BY MR. STONE

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- 1 A NOT USUALLY.
- 2 Q ALL RIGHT. WHAT DO YOU DO WITH IT ONCE YOU PLACE IT
- 3 IN THE METAL CONTAINER?
- 4 A AT THAT TIME WE TRANSFER IT TO THE LAW ENFORCEMENT
- 5 USUALLY WHO IS IN ATTENDANCE AT THE AUTOPSY.
- 6 Q ALL RIGHT. NOW, LET ME ASK YOU IF YOU WOULD PLEASE,
- 7 DESCRIBE THE BULLET PATTERN COMING IN. COULD YOU COME OFF
- 8 THE STAND. DO YOU MIND DOING THAT?
- 9 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)
- 10 Q WOULD YOU SHOW THE JURY ON ME PLEASE WHERE YOU'RE
- 11 TALKING ABOUT AS FAR AS THIS BULLET?
- 12 A IF YOU COULD TURN AROUND, FACE THAT WAY.
- 13 Q SURE.
- 14 A FACE THAT WAY.
- 15 Q YES.
- 16 A THE ENTRANCE OF THE -- THE BULLET ENTRANCE ENTERED
- 17 RIGHT HERE AT THE BASE OF THE SKULL. TRAVELED, THEN HIT
- 18 THE BONE HERE, THE SPINAL CORD. IT HIT THE BONE ON THE
- 19 OTHER SIDE OF THE VERTEBRAL COLUMN THERE.
- 20 Q ALL RIGHT. YOU MENTIONED EARLIER A DOWNWARD ANGLE.
- 21 COULD YOU SHOW THE JURY WHAT YOU MEANT BY THAT?
- 22 A WHEN WE ARE TRYING TO ESTIMATE TRAJECTORY OR ANGLE OF
- 23 THE BULLET, WHAT WE'RE DOING IS ESTIMATING THE PATHWAY THAT
- 24 IT'S TAKING THROUGH THE BODY. SO WE DON'T NECESSARILY KNOW
- 25 THE POSITION THAT THE PERSON WAS IN BY LOOKING AT THEM ON

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1 OUR AUTOPSY TABLE. AND SO WHAT WE TRY TO DO IS DESCRIBE --
2 BASICALLY DESCRIBE THE DIRECTION OF THE BULLET THROUGH THE
3 BODY.

4 IN THIS CASE -- IN THIS CASE IT'S COMING IN THE BASE
5 OF THE SKULL, SO IT'S GOING SLIGHTLY DOWN. IT'S ALSO GOING
6 SLIGHTLY FORWARD. AND IT'S GOING TO THE PERSON'S RIGHT.

7 SO HAVING THAT BE THE DIRECTION DOESN'T NECESSARILY
8 MEAN THAT SHE IS STANDING UP LIKE THIS, BUT THAT IF YOU
9 MOVE THE PERSON -- AND I'LL JUST SHOW IT ON ME. IF YOU
10 MOVE THE PERSON -- AND I'LL JUST SHOW IT ON ME. IF YOU
11 MOVE THE PERSON, YOU KEEP THIS ANGLE OF THE BULLET THROUGH
12 HER BODY. YOU CAN NOW MOVE HER OR ME AS THAT PERSON AND
13 TRY TO PREDICT WHERE THE BULLET ACTUALLY CAME FROM.

14 Q USING WHAT I'VE SHOWN YOU AS STATE'S EXHIBIT 13 AND
15 14, CAN YOU TELL US ANYTHING AS FAR AS THE DIRECTION OF THE
16 SHOT OR WHERE THE BULLET WAS FIRED? FIRST OF ALL, IS THERE
17 ANY DISTANCE INDICATION OR ANYTHING LIKE THAT OR COULD YOU
18 TELL THAT FROM THE AUTOPSY?

19 A WELL, ONE OF THE THINGS WHEN WE'RE TRYING TO INTERPRET
20 TRAUMA IS WITH GUNSHOT WOUNDS TO TRY TO INTERPRET THE RANGE
21 OF FIRE, MEANING IN THREE BROAD CATEGORIES FOR FORENSIC
22 PATHOLOGIST. IS IT CONTACT? IS IT CLOSE RANGE? OR IS IT
23 A DISTANT GUNSHOT WOUND?

24 A CONTACT GUNSHOT WOUND MEANS THE BARREL OF THE GUN IS
25 UP AGAINST THE SKIN. TO INTERPRET -- TO UNDERSTAND WHAT IT

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1 LOOKS LIKE, THE ACTUAL INJURY LOOKS LIKE, YOU HAVE TO THINK
2 ABOUT WHAT COMES OUT THE END OF THE GUN. NOT JUST THE
3 BULLET COMES OUT OF THE BARREL, BUT YOU ALSO HAVE SOOT FROM
4 THE IGNITION. AND YOU ALSO HAVE LITTLE PIECES OF GUNPOWDER
5 PARTICLES. THE GUNPOWDER IS WHAT IGNITES TO PROPEL THE
6 BULLET DOWN THE CHAMBER, DOWN THE BARREL OF THE GUN.

7 IF YOU HAVE THE GUN RIGHT UP AGAINST THE SKIN, THEN
8 YOU HAVE THIS LITTLE DEPOSIT -- OR A DEPOSIT OF SOOT AROUND
9 THE ENTRANCE WOUND.

10 AS THE GUN IS TAKEN AWAY FROM THE TARGET OR THE
11 VICTIM, NOT ONLY WILL THE SOOT POSSIBLY REACH THE SKIN, BUT
12 YOU ALSO HAVE THE GUNPOWDER PARTICLES THAT ARE COMING OUT
13 WITH THE BULLET AT THE SAME TIME. THOSE GUNPOWDER
14 PARTICLES WILL STRIKE THE SKIN AND ACTUALLY CAUSE LITTLE
15 ABRASIONS, LITTLE SCRATCHES AROUND THE WOUND.

16 Q IS THAT THE STIPPLING?

17 A THIS IS REFERRED TO AS STIPPLING. SOME PEOPLE CALL IT
18 POWDER TATTOOING. WE USUALLY CALL IT STIPPLING.

19 ONCE THE GUN IS FAR ENOUGH AWAY, THEN NEITHER THAT
20 SOOT NOR THOSE GUNPOWDER PARTICLES ARE GOING TO REACH THE
21 SKIN. THAT'S CONSIDERED A DISTANT GUNSHOT WOUND.

22 SO CONTACT IS RIGHT UP AGAINST THE SKIN. YOU SEE
23 SOOT.

24 CLOSE RANGE IS WHERE THE GUNPOWDER PARTICLES CAN STILL
25 REACH THE SKIN AND CAUSE SCRATCHES OR DEPOSIT ON THE

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1 CLOTHING -- AND THAT'S A CLOSE RANGE GUNSHOT WOUND.

2 AND THEN A DISTANT GUNSHOT WOUND IS WHEN IT'S FAR

3 ENOUGH AWAY WHERE NONE OF THAT REACHES IT AND YOU JUST HAVE

4 A HOLE, NO SOOT OR STIPPLING AROUND THE ENTRANCE WOUND.

5 IN THIS PARTICULAR CASE HER ENTRANCE WOUND WAS RIGHT

6 AT THE BASE OF THE SKULL. IT'S ACTUALLY IN THE HAIRLINE,

7 WHICH OCCASIONALLY THE HAIR CAN OBSCURE WHETHER THAT

8 MATERIAL GETS TO THE SKIN. IN THIS CASE WE DID NOT SEE ANY

9 SOOT OR STIPPLING. THEREFORE, WE CONSIDERED IT A DISTANT

10 GUNSHOT WOUND.

11 TO ACTUALLY NARROW DOWN WHAT ARE THOSE DISTANCES --

12 CONTACT IS EASY, IT'S UP AGAINST THE SKIN. BUT HOW FAR

13 AWAY IS CLOSE RANGE? TO NARROW IT DOWN, YOU'D REALLY NEED

14 TO TEST FIRE THE GUN WITH THE SUSPECTED AMMUNITION.

15 HOWEVER, IN GENERAL -- BROAD GENERAL CATEGORIES, A DISTANT

16 GUNSHOT WOUND -- IF YOU WANTED TO TEST MOST GUNS, 90-SOME-

17 ODD PERCENT OF GUNS, BY THE TIME YOU WERE A YARD TO A YARD

18 AND A HALF AWAY, THAT -- GUNPOWDER MATERIAL, GUNPOWDER

19 PARTICLES AND THE SOOT WON'T REACH THE SKIN.

20 SO USUALLY FOR MOST GUNS BY THE TIME YOU'RE A YARD TO

21 A YARD AND A HALF AWAY -- I MEAN, IT COULD BE CLOSER. BUT

22 A YARD TO A YARD AND A HALF AWAY AND ANYWHERE BEYOND THAT

23 IS CONSIDERED A DISTANT GUNSHOT WOUND.

24 Q SO THAT WOULD BE FROM ME TO YOU AND YOUR HEAD, IT

25 WOULD BE THIS DISTANCE? APPROXIMATELY?

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1 A ABOUT A YARD, YES.

2 Q OKAY. NOW, AGAIN, I SHOWED YOU STATE'S EXHIBIT 13 AND
3 14 FOR IDENTIFICATION. ASSUMING THAT THE -- AND THE
4 PHOTOGRAPH SHOWS THAT THE TOILET WAS ACTUALLY UP AGAINST
5 THE BATHROOM WALL; IS THAT CORRECT?

6 A YES.

7 Q ALL RIGHT. SO FROM THAT STANDPOINT IF SOMEONE IS
8 SITTING ON THE TOILET, IS IT POSSIBLE FOR THE DISTANT
9 GUNSHOT TO COME FROM BEHIND THEM, OR AT LEAST WITH THE WALL
10 HERE?

11 A FOR SOME -- IT DOESN'T MAKE SENSE TO HAVE SOMEBODY
12 STANDING BETWEEN THE PERSON AND THE WALL IF THE TOILET IS
13 UP AGAINST THE WALL. THAT WOULD BE TOO CLOSE TO CREATE A
14 DISTANT GUNSHOT WOUND.

15 Q FROM THE STANDPOINT OF THE PERSON AS YOU SEE IN 13 AND
16 14 HOW SHE LANDED, CAN YOU GIVE US ANY IDEA ABOUT HOW THE
17 SHOT -- WHERE THE SHOT CAME FROM OR HOW IT HAPPENED?

18 A WHAT'S 13 AND 14?

19 Q I'M SORRY. I APOLOGIZE. THESE TWO. JUST GIVING YOU
20 SOME IDEA OF THE SCENE.

21 A OKAY. I WAS ASKED EARLIER WAS I PROVIDED INFORMATION
22 OF THE SCENE. AND, YES, I WAS. I ALSO HAD THE OPPORTUNITY
23 TO SEE PICTURES. AND WHAT I SAW WAS THE TOILET IN THIS
24 AREA, A DOOR OUT IN FRONT, AND A TOILET PAPER ROLL ON THE
25 SIDE OF THE WALL HERE. THE SCENE, MS. HERRERA HAD HER

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1 PANTS DOWN. THERE WAS URINE IN THE TOILET OR YELLOW FLUID
2 IN THE TOILET CONSISTENT WITH URINE. THERE WAS TOILET
3 PAPER IN HER HAND. AND SHE WAS FOUND LIKE DOWN ON THE
4 FLOOR IN THAT DIRECTION. SO ON THE RIGHT SIDE -- ON THIS
5 SIDE OF THE TOILET BETWEEN THE TOILET AND THE TOILET PAPER
6 ROLL. SHE WAS FOUND IN A DOWNWARD POSITION FACE DOWN.
7 JUST LOOKING AT THAT, THAT POSITIONING AND WITH THE
8 SCENARIOS SUGGESTING WHAT SHE WAS DOING, URINATING, GETTING
9 THE TOILET PAPER, AND WITH THE BULLET BEING -- OR THE
10 ENTRANCE BEING RIGHT HERE, WE WERE TRYING TO SUPPOSE WHERE
11 COULD THE GUN ACTUALLY BE POSITIONED IF THE BULLET IS
12 TOWARDS THE BACK OF HER HEAD. AND IF THERE'S SOMEBODY --
13 WE WERE SUPPOSING THERE WAS SOMEBODY THERE IN THE DOORWAY
14 -- AND THAT WOULD BE ENOUGH DISTANCE TO MAKE THIS A DISTANT
15 GUNSHOT WOUND. AND, REMEMBER THE PENCIL -- THE PENCIL IS
16 APPROXIMATELY WHERE THE BULLET IS TRAVELING THROUGH THE
17 BODY. TO HAVE HER IN THIS POSITION WOULD THEN PUT THE
18 DIRECTION OF THE SHOT COMING FROM THE DOORWAY AREA. THAT
19 WAS CERTAINLY CONSISTENT WITH THAT SCENARIO AND THE SCENE
20 AND THE FINDINGS OF THE BULLET, AND ITS DIRECTION SUPPORTED
21 THAT SCENARIO OF HER PERHAPS BEING TWISTED OVER IN THIS
22 GENERAL DIRECTION.
23 Q SO ON ME AS FAR AS THIS IS CONCERNED, YOU'RE TALKING
24 ABOUT HERE TO MY LEFT; IS THAT CORRECT?
25 A YES, THE BULLET IS ENTERING THIS DIRECTION.

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1 Q SO HER HEAD WOULD HAD TO HAVE BEEN AT LEAST THIS
2 ANGLE; IS THAT RIGHT?

3 A IT'S GOING -- YES. WELL ---

4 Q YOU PUT ME WHERE YOU NEED TO. THERE YOU GO.

5 A ALL RIGHT. SO IF WE'RE GOING THIS WAY FOR IT TO BE
6 COMING UP IN FRONT. NOW, THAT'S NOT TO SAY THAT SHE
7 COULDN'T BE A LITTLE BIT MORE OFF CENTER OR A LITTLE BIT
8 MORE ANGLED UPWARD. BUT IT WOULD CERTAINLY SUGGEST THAT IT
9 WAS COMING FROM THAT DIRECTION.

10 Q ALL RIGHT. THANK YOU.

11 (THE WITNESS RETURNS TO THE WITNESS STAND.)

12 Q DID YOU FIND ANY DEFENSIVE WOUNDS ON MS. HERRERA?
13 FIRST OF ALL, LET ME BACK UP AND ASK YOU WHAT DEFENSIVE
14 WOUNDS ARE WHEN I ASK YOU THAT QUESTION?

15 A WELL, DEFENSE WOUNDS ARE WOUNDS THAT ARE IN A LOCATION
16 THAT WOULD BE CHARACTERISTICALLY -- ARE THE CHARACTERISTIC
17 LOCATION OF WHERE SOMEBODY MIGHT BE TRYING TO DEFEND
18 THEMSELVES. LIKE FOR INSTANCE IF -- NOT THIS CASE, BUT SAY
19 A KNIFE ATTACK. IF SOMEBODY PUT THEIR HANDS UP LIKE THIS,
20 YOU MIGHT EXPECT INJURIES ON THOSE HANDS.

21 IN THIS CASE, MS. HERRERA HAD JUST A FEW OTHER
22 INJURIES. ONE OF THEM WERE HER FRONT TEETH WERE CHIPPED,
23 WHICH SUGGEST PERHAPS AN IMPACT ON THE GROUND, AGAIN, WENT
24 ALONG WITH THE SCENARIO.

25 ALSO, THE ONLY OTHER INJURIES WE HAD WERE A COUPLE OF

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1 BLUE CONTUSIONS OR BRUISES. WE HAD SOME AROUND THE KNEE
2 AREA, THE RIGHT KNEE, LEFT KNEE, AND ALSO ON THE RIGHT
3 WRIST. THE BRUISES COULD PERHAPS BE AN INJURY FROM A
4 DEFENSIVE GESTURE, PERHAPS. BUT WE CANNOT SAY
5 DEFINITELY.

6 Q ANY SCRATCHES OR ANYTHING LIKE THAT UNDER HER
7 FINGERNAILS, ANYTHING ELSE THAT YOU FOUND?

8 A SHE HAD A BRUISE ON THE RIGHT -- THE RIGHT WRIST.
9 THERE WAS ALSO A LITTLE ABRASION OR SCRATCH ASSOCIATED WITH
10 THAT. SHE ALSO HAD A BRUISE UNDERNEATH HER PINKY FINGER ON
11 THE RIGHT SIDE, HER RIGHT FIFTH FINGER, A LITTLE CONTUSION
12 AT THE NAIL BED. AND LIKE I SAID, SOME CONTUSIONS AROUND
13 THE KNEES AND ONE -- AN ADDITIONAL ABRASION OR SCRATCH ON
14 THE LEFT SIDE, VERY MINOR FINDINGS.

15 Q ONE OTHER THING AND YOU MAY HAVE INDICATED THIS
16 PREVIOUSLY AND I MISSED IT. BUT THE ANGLE WHICH THE SHOT
17 -- I KNOW YOU'RE SAYING IT CAME FROM THIS FRONT AREA. DID
18 YOU INDICATE WHETHER OR NOT IT WAS UPWARD OR DOWNWARD, FROM
19 SOMEBODY ABOVE OR BELOW SOMEONE?

20 A I SAID THAT IT WAS CONSISTENT WITH COMING FROM THE
21 FRONT AREA. THE FINDINGS AT AUTOPSY SUPPORTED THAT
22 SCENARIO. THE ACTUAL BULLET THROUGH THE HEAD WAS --
23 REMEMBER, MY DIRECTION IS BASED ON HER -- ON HER BODY, ON
24 HER STANDING UPRIGHT. THE POSITIONING -- OR THE DIRECTION
25 OF THE BULLET THROUGH HER HEAD IS GOING A LITTLE BIT DOWN

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1 ON HER AND A LITTLE BIT FORWARD ON HER. SO, AGAIN, IF
2 SHE'S ALL THE WAY TWISTED AROUND, THE BULLET MIGHT BE
3 COMING MORE IN AN UPWARD DIRECTION. IF SHE'S NOT AS
4 TWISTED AS MUCH, IT MIGHT BE COMING IN A DOWNWARD
5 DIRECTION. SO IT'S DIFFICULT TO ACTUALLY SAY WHICH ONE
6 THAT WAS.

7 Q CAN YOU TELL WITH THAT INFORMATION WHETHER OR NOT SHE
8 WAS ABOVE OR BELOW THE ASSAILANT?

9 A YOU KNOW, AGAIN, THE SCENARIO THAT WAS PRESENTED WITH
10 HER ON THE TOILET, IT WOULD DEPEND ON HOW MUCH SHE'S
11 TWISTING. IT CERTAINLY SUGGESTS WITH, AGAIN, THE BULLET
12 GOING SLIGHTLY -- SLIGHTLY DOWN AND SLIGHTLY FORWARD THAT
13 -- AGAIN, KIND OF IMAGINE YOURSELF MOVING YOUR BODY WITH
14 IT. BUT IF YOU MOVE AND YOU BEND OVER TOWARDS THAT TOILET
15 PAPER ROLL, THEN THE PERSON WOULD BE OUT IN FRONT AND
16 PERHAPS SLIGHTLY ABOVE THE PERSON.

17 MR. STONE: YOUR HONOR, AT THIS TIME WE RENEW OUR
18 MOTION TO PUT IN STATE'S EXHIBIT 13 AND 14.

19 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I TOLD
20 YOU WE NEED -- LET ME TAKE THIS UP WITH THE ATTORNEYS FOR
21 JUST A MINUTE. WE'RE GOING TO TAKE A LUNCH BREAK SHORTLY.
22 BUT LET ME TRY TO RESOLVE THIS MATTER BETWEEN THE ATTORNEYS
23 AT THIS TIME. I'M GOING TO ASK YOU TO GO TO THE JURY ROOM.
24 DON'T DISCUSS THE CASE. JUST RELAX FOR A FEW MINUTES. AND
25 WE'LL CALL YOU BACK AS SOON AS WE'RE READY. JUST RELAX FOR

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1 A FEW MINUTES. AND AS I SAY, WE'RE GOING TO TAKE A LUNCH
2 BREAK AFTER THIS WITNESS ANY WAY.

3 (THE JURY RETIRES TO THE JURY ROOM AT 1:04 p.m.)

4 THE COURT: ALL RIGHT. MS. CARROWAY, STATE YOUR
5 OBJECTION.

6 MS. CARROWAY: YES, SIR, YOUR HONOR. AT THIS POINT
7 WE'RE GOING TO OBJECT TO STATE'S 13 AND 14. NOTHING DR.
8 PRESNELL SAID MADE THOSE PICTURES PROBATIVE OF ANYTHING.
9 THEY ARE VERY GRAPHIC. AND I THINK THEY'RE MEANT MERELY TO
10 INFLAME THE JURY. THEY DON'T GO TO PROVE ANY PART OF THE
11 STATE'S CASE. THEY ARE DEFINITELY MORE PREJUDICIAL THAN
12 PROBATIVE.

13 THE COURT: MR. STONE.

14 MR. STONE: YOUR HONOR, THEY'RE NOT GRAPHIC AT ALL.
15 THERE'S NOT A BIT OF BLOOD IN EITHER ONE OF THOSE
16 PHOTOGRAPHS. THE FACT THAT WE HAVE HAD AT THIS POINT FOUR
17 WITNESSES THAT HAVE TESTIFIED CONCERNING THESE PHOTOGRAPHS.
18 THE PEOPLE THAT SAW HER AT THE SCENE ---

19 THE COURT: THERE'S NO QUESTION THAT THAT'S WHERE SHE
20 WAS AND THAT THAT'S WHAT THEY SAW; THAT'S NOT THE ISSUE.

21 MR. STONE: AND HERE'S THE POINT, YOUR HONOR. THE
22 DEFENDANT SAYS HE WALKS IN ON HIS WIFE AND SEES THAT SHE'S
23 SHOT IN THE BACK OF THE HEAD WITH A SMALL CALIBER PISTOL
24 AND THERE'S ABSOLUTELY NO WAY OF LOOKING AT THIS PHOTOGRAPH
25 AND TELLING THAT. AND YOU'VE HAD TESTIMONY FROM TWO POLICE

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1 OFFICERS AND AN EMS TECH THAT HAVE CONFIRMED THAT.

2 FURTHER, DR. PRESNELL SAID THAT THESE PHOTOGRAPHS,
3 ALONG WITH THE OTHER INFORMATION THAT SHE RECEIVED, HELP
4 HER TO TELL THE JURY HOW THIS COULD HAVE HAPPENED.

5 I THINK THAT IS ALL AS WELL PROBATIVE NOT JUST OF THE
6 CRIME SCENE ITSELF, BUT HOW THE PERSON -- THE DEFENDANT WHO
7 CALLED ON 9-1-1 THAT INDICATED THAT THAT WAS HOW SHE DIED.
8 THERE'S CLEARLY NO WAY OF TELLING THAT FROM THIS.

9 THE EMS PERSON HAD TO MOVE HER IN ORDER TO CHECK HER
10 PULSE.

11 ON EMS -- ON THE 9-1-1 TAPE THE DEFENDANT IS ACTUALLY
12 SAYING HE'S CHECKED HER PULSE.

13 I THINK YOU CAN LOOK AT THOSE PHOTOGRAPHS AND ALSO
14 GATHER THAT HE PROBABLY DIDN'T EVEN LOOK AT HER.

15 DR. PRESNELL USED IT AS FAR AS HER DETERMINING HOW THE
16 EVENT TOOK PLACE.

17 AND, AGAIN, FROM AN ANALYSIS THAT YOUR HONOR MAKES
18 FROM THE CASE LAW THAT I HAVE READ ON THIS, IT'S CLEARLY IS
19 IT MORE PREJUDICIAL THAN PROBATIVE? THERE IS NOTHING
20 GRAPHIC IN EITHER ONE OF THOSE PHOTOGRAPHS. IT IS AN
21 UNFORTUNATE SCENE, OBVIOUSLY. BUT IT HAS NO BLOOD. I TOOK
22 OUT THE ONLY PHOTOGRAPH THAT WE HAD THAT HAD ANY BLOOD ON
23 IT.

24 PLUS, YOUR RULING ON THAT IS NOT GOING TO BE
25 OVERTURNED SHORT OF -- AS LONG AS IT IS IN SOME WAY

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1 CONNECTED TO THE EVIDENCE. AND IT HAS BEEN CONNECTED TO
2 THE EVIDENCE BY AT THIS POINT FOUR WITNESSES, NOT INCLUDING
3 THE 9-1-1 TAPE.

4 MS. CARROWAY: YOUR HONOR, I'M TAKING A TOTALLY
5 DIFFERENT TAKE ON THAT. YOU'VE GOT FOUR WITNESSES THAT
6 TESTIFIED TO WHAT THEY SAW. THE PICTURES ARE MERELY
7 BOLSTERING THEIR TESTIMONY. THEIR TESTIMONY IS EVIDENCE.
8 THEY TESTIFIED VERY CLEARLY TO WHAT SAW. THE PICTURES
9 WOULD MERELY INFLAME THE JURY.

10 IN ADDITION TO THAT, MY RECOLLECTION OF WHAT DR.
11 PRESNELL SAID WAS THAT SHE DID REVIEW THE PICTURES, BUT HER
12 POSITION WAS THE SAME REGARDLESS OF WHAT WAS IN THE
13 PICTURES.

14 I DON'T THINK THAT THEY ARE PROBATIVE OF ANYTHING THAT
15 SHE'S SAID HERE TODAY.

16 THE COURT: WELL, THEY'RE PROBATIVE OF WHERE THE SHOT
17 CAME FROM.

18 MS. CARROWAY: BUT I THINK THAT HER TESTIMONY IS VERY
19 MUCH SUFFICIENT AS TO WHERE THE SHOT CAME FROM. I THINK
20 THAT THE ---

21 THE COURT: WELL, THERE ARE TWO THINGS WE'VE GOT TO
22 ANALYZE. FIRST IS PREJUDICIAL VALUE; AND, SECONDLY, WHAT'S
23 PROBATIVE ABOUT THE PICTURES IN RESPECT TO THE CAUSE OF
24 DEATH AND THE MANNER -- NOT ONLY THE CAUSE OF DEATH. WE
25 KNOW THE CAUSE OF DEATH IS A GUNSHOT WOUND TO THE HEAD.

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1 BUT THE MANNER OF THE DEATH IS WHAT IS PROBATIVE IN ANY
2 CASE, THE MANNER IN WHICH IT OCCURRED.

3 NOW, THE WITNESS HAS TESTIFIED THE MANNER IN WHICH IT
4 OCCURRED. THE QUESTION IS -- WHICH WASN'T ASKED: IF THE
5 PHOTOGRAPHS HELP HER OR HELPED HER, AIDED HER, IN HER
6 DECISION AS TO HOW THE DEATH OCCURRED. THAT QUESTION WAS
7 NEVER ASKED. I DON'T KNOW IF YOU WANT TO ASK IT OUT OF THE
8 PRESENCE OF THE JURY.

9 MR. STONE: I'LL BE GLAD TO CLEAR THAT UP. I THOUGHT
10 I DID ASK THAT, YOUR HONOR, BUT I'LL BE GLAD TO CLEAR THAT
11 UP IF I MISSED IT.

12 THE COURT: WELL, I DON'T THINK YOU COVERED IT. AND
13 SHE'S -- IN THE COURT'S OPINION, SHE'S THE ONLY ONE THAT
14 CAN BRING THE PICTURES IN. THEY CAN'T BE BROUGHT IN BY THE
15 OFFICERS THAT JUST WITNESSED THE SCENE AND TOOK THE
16 PHOTOGRAPHS. THE PATHOLOGIST AS I EXPLAINED YESTERDAY
17 WOULD HAVE TO SAY THAT THE PICTURES AIDED HER IN
18 DETERMINING THE MANNER AND CAUSE OF DEATH. IF SHE SAYS
19 THAT, THEY'RE GOING TO BE ADMISSIBLE.

20 MR. STONE: MAY I ASK HER THAT, YOUR HONOR?

21 THE COURT: GO AHEAD.

22 Q LET ME SHOW YOU STATE'S EXHIBIT 13 AND 14.

23 A I NEED TO CLARIFY CAUSE AND MANNER OF DEATH. FOR US
24 MANNER OF DEATH IS HOMICIDE VERSUS ACCIDENT OR SUICIDE. SO
25 AS FAR AS DOES IT HELP CLARIFY SEQUENCE OF EVENTS, ALL I

1 CAN SAY IS -- I MEAN, WHAT I CAN SAY DEFINITELY IS THE
2 FINDINGS AT AUTOPSY. THEN THERE CAN BE A CERTAIN NUMBER OF
3 SCENARIOS PROPOSED, AND DO MY FINDINGS SUPPORT THE
4 SCENARIO. BECAUSE, OBVIOUSLY, YOU KNOW, I CAN'T SAY
5 EXACTLY HOW IT HAPPENED.

6 I DO THINK THESE PICTURES HELP EXPLAIN THE SCENARIO
7 THAT'S PROPOSED JUST BY PUTTING THE TOILET AND WITH THE
8 LOCATION OF THE TOILET PAPER ROLL AND THE LOCATION OF THE
9 DECEDENT AND THE POSSIBLE POSITIONING THAT SHE WAS IN OR
10 PERHAPS THE WAY SHE WAS LEANING.

11 AGAIN, IT DOESN'T CHANGE HOW MY AUTOPSY IS GOING TO
12 READ AS FAR AS MY CAUSE AND MANNER OF DEATH. BUT I THINK
13 IT DOES SUPPORT THE -- IT DOES HELP EXPLAIN THE PROPOSED
14 SCENARIO THAT THE AUTOPSY FINDINGS ARE CONSISTENT WITH.

15 MR. STONE: CAN I ASK A FOLLOW UP TO THAT, YOUR HONOR?
16 Q YOU INDICATED ALSO ON THERE THAT ONE OF YOUR FINDINGS
17 COULD VERY WELL BE -- IN THIS CASE IT WAS HOMICIDE AS CAUSE
18 OF DEATH OR MANNER OF DEATH? I'M SORRY, I GET THEM
19 CONFUSED.

20 A THAT WOULD BE OUR MANNER OF DEATH.

21 Q YOUR MANNER OF DEATH ---

22 A RIGHT.

23 Q --- WOULD BE IN THIS CASE HOMICIDE; IS THAT CORRECT?

24 A YES.

25 Q AND YOUR OTHER ALTERNATIVE COULD HAVE BEEN SUICIDE; IS

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1 THAT CORRECT?

2 A USUALLY, YES.

3 Q OKAY. AND DO THOSE PHOTOGRAPHS HELP SEPARATE BETWEEN
4 THE TWO?

5 A WELL, OUR AUTOPSY FINDINGS HELP SEPARATE THE TWO. YOU
6 KNOW, IT'S NOT A CONTACT GUNSHOT WOUND, NOR EVEN A CLOSE
7 RANGE GUNSHOT WOUND.

8 Q OKAY. ALL RIGHT. AND DO THOSE PHOTOGRAPHS HELP AT
9 ALL IN THAT DETERMINATION?

10 A I DON'T KNOW THAT THEY COULD OTHER THAN I DON'T SEE A
11 GUN IN THE PICTURE.

12 THE COURT: THAT IT WAS OR WAS NOT SUICIDE?

13 DR. PRESNELL: IT WAS NOT SUICIDE.

14 MR. STONE: YOUR HONOR, I'LL ALSO HAND UP STATE VERSUS
15 FLETCHER, WHICH IS ANOTHER CASE AS FAR AS PHOTOGRAPHS ARE
16 CONCERNED. THIS ONE WAS A HOMICIDE BY CHILD ABUSE CASE.
17 THE PHOTOGRAPH WAS AS IT SAYS, VICTIM LYING INSIDE THE
18 DOOR, A SMALL AMOUNT OF BLOOD. THERE WAS ANOTHER SHOT
19 SHOWING ANOTHER ANGLE TO THE VICTIM'S BODY THAT DID SHOW
20 BLOOD.

21 IN THIS CASE IT SPECIFICALLY SAID THAT PHOTOGRAPHY
22 CORROBORATED THE TESTIMONY OF THE RESPONDING OFFICER
23 REGARDING THE POSITION OF THE VICTIM'S BODY.

24 IT ALSO CORROBORATED THE TESTIMONY OF DR. SEXTON, WHO
25 WAS THE PATHOLOGIST IN THAT CASE.

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1 AND IT ALSO NOTED THAT THE MATERIALITY AND
2 ADMISSIBILITY OF THESE PHOTOGRAPHS WAS WITHIN THE SOUND
3 DISCRETION, BUT IF THEY SERVED TO CORROBORATE TESTIMONY
4 IT'S NOT ABUSE.

5 I DON'T -- AT THIS POINT, I THINK WE HAVE BOTH OF
6 THOSE PRONGS.

7 THE COURT: MS. CARROWAY, DO YOU HAVE ANY QUESTIONS OF
8 THIS WITNESS ON THIS ISSUE ALONE?

9 MS. CARROWAY: NO, NOT THIS ISSUE SPECIFICALLY.

10 THE COURT: ALL RIGHT.

11 MS. CARROWAY: I HAVE A COUPLE THINGS I'D LIKE TO
12 POINT OUT AT THE APPROPRIATE TIME ABOUT WHAT SHE SAID.

13 THE COURT: WITH REGARD TO THIS ISSUE?

14 MS. CARROWAY: THIS ISSUE.

15 THE COURT: GO AHEAD.

16 MS. CARROWAY: SHE SPECIFICALLY JUST SAID THAT HER
17 AUTOPSY FINDINGS WOULD NOT CHANGE WITH THESE PICTURES.
18 THESE PICTURES DIDN'T HELP HER IN ANY WAY.

19 THE COURT: SHE DIDN'T SAY THAT.

20 MS. CARROWAY: SHE SAID ---

21 THE COURT: IN TERMS OF THE AUTOPSY.

22 MS. CARROWAY: SHE SAID THAT THE PICTURES WOULD HELP
23 EXPLAIN THE PROPOSED SCENARIO, BUT THEY DIDN'T HELP -- THEY
24 DIDN'T AID HER IN HER DECISION. THEY HELPED EXPLAIN THE
25 SCENARIO ABOUT REACHING FOR THE TOILET PAPER ---

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1 THE COURT: THAT'S WHAT THIS CASE IS ---

2 MS. CARROWAY: --- BECAUSE OF THE WAY THE BATHROOM IS
3 SET UP. BUT I DON'T THINK THEY WENT SPECIFICALLY TO HER.

4 THE COURT: THIS TRIAL IS NOT ABOUT THE AUTOPSY. THIS
5 TRIAL IS ABOUT WHAT HAPPENED ON SEPTEMBER 16TH AT THIS
6 LOCATION.

7 MS. CARROWAY: I KNOW, BUT I THINK WITH REGARD TO THEM
8 BEING PROBATIVE TO WHAT SHE SAID, I DON'T BELIEVE THAT THEY
9 ARE.

10 THE COURT: OKAY. I RESPECTFULLY OVERRULE YOUR
11 OBJECTION AND ADMIT THE PHOTOGRAPHS BASED ON THE
12 PATHOLOGIST'S MOST RECENT TESTIMONY.

13 BRING ---

14 MS. CARROWAY: BOTH -- I'M SORRY.

15 THE COURT: GO AHEAD.

16 MS. CARROWAY: BOTH OF THEM?

17 THE COURT: LET ME JUST ---

18 MR. STONE: I'M SORRY. DID I NOT HAND YOU BOTH OF
19 THEM? I APOLOGIZE.

20 THE COURT: I DON'T NEED EITHER ONE OF THEM. NOW THE
21 DEFENSE COUNSEL OBJECTS TO BOTH OF THEM.

22 MR. STONE: YES, SIR.

23 THE COURT: AND THERE'S NOTHING ON THE RECORD AS TO
24 WHETHER ONE IS JUST DUPLICATIVE, WHY WE ONLY NEED ONE, WHY
25 DOES SHE NEED TWO; THAT'S THE QUESTION, THAT'S THE

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1 OBJECTION AT THIS POINT. SO PROCEED WITH THAT.

2 MR. STONE: YES, SIR. 13 -- LET ME MAKE SURE I GET
3 THE NUMBERS RIGHT. 13 IS THE SCENE AS ALL OF THE OFFICERS
4 AND EVERYONE SAW IT. 14 IS A CLOSE-UP OF THE HEAD WHICH,
5 YOUR HONOR, SHOWS WHAT YOU REALLY CANNOT QUITE SEE IN 13.

6 THE COURT: YOU NEED TO ASK THE WITNESS, NOT ME. IF
7 BOTH OF THEM -- IF HER TESTIMONY APPLIES TO BOTH PICTURES
8 OR JUST ONE.

9 Q DOES YOUR TESTIMONY APPLY -- DID YOU SEE BOTH OF THESE
10 PHOTOGRAPHS, 13 AND 14?

11 A YES, I'VE SEEN THEM BOTH. 13 IS THE ONE THAT'S MOST
12 SIGNIFICANT.

13 Q OKAY. DID YOU USE 14 AT ALL?

14 A NO, NOT REALLY.

15 MR. STONE: OKAY. ALL RIGHT.

16 THE COURT: ADMIT 13, NOT 14.

17 MR. STONE: NOTHING ELSE, YOUR HONOR.

18 THE COURT: BRING THE JURY.

19 (THE JURY RETURNS TO THE COURTROOM AT 1:20 P.M.)

20 BAILIFF: YOUR HONOR, THE JURY IS PRESENT.

21 THE COURT: ALL RIGHT. SOLICITOR, YOU MAY PROCEED.

22 MR. STONE: YOUR HONOR, AT THIS TIME WE MOVE STATE'S
23 EXHIBIT 13 INTO EVIDENCE.

24 THE COURT: OVER THE OBJECTION OF THE DEFENSE.

25 (STATE'S EXHIBIT NO. 13 RECEIVED IN EVIDENCE.)

DR. PRESNELL - DIRECT BY MR. STONE

219

1 MR. STONE: PERMISSION TO PUBLISH TO THE JURY PLEASE.

2 THE COURT: WITH THIS WITNESS?

3 MR. STONE: YES, WITH THIS WITNESS.

4 Q IF YOU WOULD STEP DOWN.

5 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

6 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT

7 13. IS THIS THE SCENE AS YOU SAW IT THAT -- IS THIS THE

8 PHOTOGRAPH THAT YOU WERE DISCUSSING EARLIER WHEN YOU WERE

9 DISCUSSING THE SCENARIO?

10 A YES.

11 Q ALL RIGHT. TELL US WHAT IS IN THIS PICTURE AND WHAT

12 YOU DESCRIBED EARLIER?

13 A WELL, I'LL SHOW IT TO THIS SIDE OF THE JURY, THEN I'LL

14 MOVE OVER TO THIS SIDE SO EVERYONE CAN SEE.

15 I THINK THE PICTURE REALLY DOES SPEAK A THOUSAND WORDS

16 AS FAR AS SEEING THE LAYOUT OF THE BATHROOM, HER POSITION.

17 THE TOILET HERE UP AGAINST THE WALL. THE DOOR, YOU SEE THE

18 DOOR FRAME RIGHT HERE. REMEMBER THE DISTANCE OF YARD TO A

19 YARD AND A HALF FOR A DISTANT GUNSHOT WOUND. THERE IS THE

20 TOILET PAPER ROLL, RIGHT ON THE WALL THERE. YOU SEE THE

21 TOILET PAPER IN HER HAND AND HER PANTS DOWN LIKE SHE HAD

22 JUST FINISHED URINATING.

23 AND, AGAIN, THAT POSITIONING AND THEN COLLAPSE IN THAT

24 DIRECTION.

25 AGAIN, THE LAYOUT OF THE BATHROOM WITH THE TOILET UP

DR. PRESNELL -- CROSS BY MS. CARROWAY

220

1 AGAINST THE WALL, THE TOILET PAPER ROLL ON THE RIGHT SIDE
2 OF THE TOILET. THERE IS THE DOOR JAM. AGAIN, KEEPING IN
3 MIND THE DISTANCES AS FAR AS A DISTANT GUNSHOT WOUND, A
4 YARD TO YARD AND A HALF AWAY.

5 HER POSITION THERE IS LAYING DOWN. THE TOILET PAPER
6 IN HER HAND, AND HER COLLAPSE -- HER FACE DOWN COLLAPSED.

7 MR. STONE: THANK YOU, DOCTOR, I DON'T HAVE ANY
8 FURTHER QUESTIONS AT THIS TIME.

9 (THE WITNESS RETURNS TO THE WITNESS STAND.)

10 THE COURT: CROSS EXAMINATION.

11 MS. CARROWAY: THANK YOU, YOUR HONOR.

12 CROSS EXAMINATION BY MS. CARROWAY:

13 Q HI, DR. PRESNELL. JUST A COUPLE OF QUESTIONS. YOU
14 TESTIFIED THAT YOU PERFORMED A TOXICOLOGY ON THE VICTIM?
15 A YES, WE DRAW THE BLOOD AND SEND IT OFF FOR TOXICOLOGIC
16 TESTING. AND IN MS. HERRERA'S SHE HAD NICOTINE, WHICH IS
17 USUALLY FROM CIGARETTE SMOKING. AND SHE ALSO HAD A BLOOD
18 ALCOHOL OF .086. JUST FOR A REFERENCE POINT, .08 IS AT THE
19 LEGAL LIMIT FOR DRIVING WHILE INTOXICATED. AND HER'S WAS
20 .086.

21 Q AND AS TO THE BRUISES, YOU DON'T KNOW HOW OR EXACTLY
22 WHEN THEY HAPPENED?

23 A NO. THEY ARE RECENT BRUISES, BUT THEY COULD HAVE BEEN
24 HOURS BEFORE OR MAYBE A DAY BEFORE, THE BRUISES ON HER
25 EXTREMITIES.

1 MS. CARROWAY: NO FURTHER QUESTIONS.
2 MR. STONE: NOTHING ELSE, YOUR HONOR.
3 THE COURT: YOU MAY COME DOWN, MA'AM. THANK YOU VERY
4 MUCH.
5 (THE WITNESS LEAVES THE WITNESS STAND.)
6 THE COURT: COULD SHE BE EXCUSED?
7 MS. CARROWAY: WITHOUT OBJECTION.
8 THE COURT: WITHOUT OBJECTION.
9 ALL RIGHT. LADIES AND GENTLEMEN, AS I SAID A FEW
10 MINUTES AGO, LET'S TAKE OUR LUNCH BREAK AT THIS TIME. I'LL
11 ASK YOU TO BE BACK IN THE JURY ROOM AT 2:30, AT WHICH TIME
12 WE WILL CONTINUE WITH THE TRIAL.
13 AGAIN, DON'T DISCUSS THE CASE AMONG YOURSELVES WHEN
14 YOU RETURN TO THE JURY ROOM OR WITH ANYONE ELSE OVER THE
15 LUNCH HOUR. HAVE A PLEASANT LUNCH. WE'LL SEE YOU AT 2:30.
16 THANK YOU VERY MUCH.
17 (THE JURY EXITS THE COURTROOM AT 1:24 P.M.)
18 THE COURT: NOW, WE'LL STAND AT EASE UNTIL 2:30.
19 (COURT IS IN RECESS FOR LUNCH.)
20 THE COURT: ARE YOU READY TO CALL YOUR NEXT WITNESS?
21 MS. TANNER: YES, SIR, YOUR HONOR..
22 THE COURT: YOU'RE GOING TO CALL ---
23 MS. TANNER: YES, YOUR HONOR.
24 THE COURT: DEFENSE READY?
25 MS. CARROWAY: YES, YOUR HONOR, WE'RE READY.

KATHLEEN KEATING - DIRECT BY MR. STONE

222

- 1 THE COURT: BRING THE JURY.
- 2 (THE JURY RETURNS TO THE COURTROOM AT 2:38 P.M.)
- 3 BAILIFF: YOUR HONOR, THE JURY IS PRESENT.
- 4 THE COURT: THANK YOU VERY MUCH. HOPE YOU HAD A
- 5 PLEASANT LUNCH, LADIES AND GENTLEMEN. WE'RE NOW READY TO
- 6 CONTINUE WITH THE TRIAL.
- 7 SOLICITOR, CALL YOUR NEXT WITNESS.
- 8 MR. STONE: THE STATE CALLS KATHLEEN KEATING TO THE
- 9 STAND.
- 10 KATHLEEN KEATING, BEING FIRST
- 11 DULY SWORN, TESTIFIED AS FOLLOWS:
- 12 DIRECT EXAMINATION BY MR. STONE:
- 13 Q MS. KEATING, IF YOU WOULD SPELL YOUR LAST NAME FOR THE
- 14 COURT REPORTER PLEASE?
- 15 A K-E-A-T-I-N-G.
- 16 Q OKAY. I'M GOING TO ASK YOU TO KEEP THAT MICROPHONE
- 17 CLOSE SO I CAN HEAR YOU. MS. KEATING, WHERE DO YOU LIVE,
- 18 MA'AM?
- 19 A 132 CHERRY POINT ROAD.
- 20 Q AND HOW LONG HAVE YOU LIVED AT 132 CHERRY POINT ROAD?
- 21 A AT 132, I THINK 6 OR 7 YEARS NOW.
- 22 Q SO IN SEPTEMBER OF 2007 YOU LIVED THERE AS WELL?
- 23 A OH, YEAH.
- 24 Q AND WHO DO YOU LIVE THERE WITH?
- 25 A TWO DAUGHTERS.

KATHLEEN KEATING -- DIRECT BY MR. STONE

223

- 1 Q OKAY. LET ME ASK YOU IF YOU COULD PLEASE, MA'AM, TO
2 COME DOWN OFF THE STAND.
3 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)
4 Q I'M GOING TO SHOW YOU STATE'S EXHIBIT 22, BUT I WANT
5 YOU TO KEEP YOUR VOICE UP.
6 LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
7 22 AS A MAP. COULD YOU TELL US WHERE YOUR HOUSE IS IN
8 RELATION TO THIS MAP?
9 A (INDICATING.)
10 Q YOU ARE POINTING AT WHAT?
11 A 132.
12 Q 132?
13 A (NODS HEAD.)
14 Q NOW, DO YOU KNOW THE PEOPLE THAT LIVED AT 150?
15 A YES.
16 Q AND WHO ARE THEY?
17 A JOSE AND KATHY.
18 Q JOSE AND KATHY WHAT? WHAT IS THE LAST NAME?
19 A HERRERA.
20 Q ALL RIGHT. AND DOES THIS HOUSE -- TELL ME WHAT
21 RELATIONSHIP THEIR HOUSE HAS WITH YOURS?
22 A WE -- WE -- MY HOUSE IS PRETTY MUCH IN FRONT OF THEIR
23 HOUSE.
24 Q OKAY. AND DO YOU HAVE A FENCE BACK THERE?
25 A YES.

KATHLEEN KEATING - DIRECT BY MR. STONE

224

1 Q AND SO YOUR LAND ACTUALLY GOES INTO THE BACK --
2 BASICALLY THE BACK YARD OF THE HERRERA HOUSE; IS THAT
3 RIGHT?

4 A YES.

5 Q OKAY. HAVE A SEAT. THANK YOU.

6 (THE WITNESS RETURNS TO THE WITNESS STAND.)

7 Q NOW, YOU WERE AT WORK DURING THE EVENTS OF SEPTEMBER
8 16, 2007?

9 A YES.

10 Q AND HOW DID YOU FIRST FIND OUT ABOUT WHAT HAD
11 HAPPENED?

12 A I GOT HOME AND I SAW A CORONER'S TRUCK, BUT I THOUGHT
13 IT WAS SOMEBODY ELSE. BUT ANYWAY, I RAN IN MY HOUSE, AND
14 SOMEBODY HAD LEFT ME A MESSAGE TO LEAVE MY DOGS ON THEIR
15 LEADS.

16 Q OKAY. LET ME LEAVE YOU RIGHT THERE. SO YOU FOLLOWED
17 THE CORONER'S VAN INTO YOUR NEIGHBORHOOD?

18 A NO, INTO MY -- I JUST FOLLOWED HIM INTO MY
19 NEIGHBORHOOD, BUT I PARKED IN MY GARAGE -- MY LOT AND WENT
20 INTO MY HOUSE AND GOT THIS MESSAGE, PLEASE KEEP YOUR DOGS
21 ON THEIR LEADS.

22 Q NOW, WHEN YOU GO DOWN YOUR ROAD, THAT ROAD CIRCLES
23 AROUND; IS THAT CORRECT?

24 A UH-HUH.

25 Q AND IT DEAD ENDS AT THE VERY END OF ---

KATHLEEN KEATING - DIRECT BY MR. STONE

225

- 1 A YEAH.
- 2 Q --- CHERRY POINT ROAD; IS THAT RIGHT?
- 3 A YES.
- 4 Q SO YOU WOULD PULL IN FIRST, AND THE CORONER VAN WAS
- 5 AHEAD OF YOURS?
- 6 A YES.
- 7 Q ALL RIGHT. NOW, AT SOME POINT IN TIME DID YOU LOOK IN
- 8 YOUR BACK YARD, GO THROUGH YOUR BACK YARD?
- 9 A A COUPLE OF DAYS LATER.
- 10 Q OKAY. AND LET ME SHOW YOU WHAT'S BEEN MARKED AS
- 11 STATE'S EXHIBIT 29. ASK IF YOU COULD IDENTIFY THIS PLEASE,
- 12 MA'AM?
- 13 A YEAH, THAT'S THE BOX OF BULLETS I FOUND IN MY BACK
- 14 YARD, VERY CLOSE TO THE HOUSE.
- 15 MR. STONE: ALL RIGHT. YOUR HONOR, AT THIS TIME WE
- 16 MOVE STATE'S EXHIBIT 29 INTO EVIDENCE.
- 17 MS. CARROWAY: WITHOUT OBJECTION.
- 18 THE COURT: WITHOUT OBJECTION.
- 19 (STATE'S EXHIBIT NO. 29 RECEIVED IN EVIDENCE.)
- 20 Q AND WHERE EXACTLY DID YOU FIND THESE BULLETS?
- 21 A MY BACK YARD EXTENDS BACK. AND THE FENCE BETWEEN THE
- 22 HERRERA'S HOUSE AND MINE IS PRETTY FAR BACK THERE. AND I'D
- 23 SAY IT WAS ONLY MAYBE ABOUT, I DON'T KNOW, MAYBE ABOUT 5
- 24 FEET AWAY FROM THE FENCE.
- 25 Q ON YOUR SIDE OR THEIR SIDE?

JEFF LAUVER — DIRECT BY MR. STONE

226

- 1 A ON MY SIDE. THEY HAVE VERY LITTLE BACK YARD.
- 2 Q ALL RIGHT.
- 3 MR. STONE: I DON'T HAVE ANY FURTHER QUESTIONS.
- 4 MS. CARROWAY: I DON'T HAVE ANY QUESTIONS OF THIS
- 5 WITNESS.
- 6 THE COURT: YOU MAY COME DOWN, MA'AM. THANK YOU VERY
- 7 MUCH.
- 8 (THE WITNESS LEAVES THE WITNESS STAND.)
- 9 THE COURT: THIS WITNESS BE EXCUSED?
- 10 MR. STONE: SHE CAN, YOUR HONOR.
- 11 THE COURT: WITHOUT OBJECTION.
- 12 MR. STONE: YOUR HONOR, THE STATE CALLS OFFICER JEFF
- 13 LAUVER.
- 14 JEFF LAUVER, BEING FIRST DULY
- 15 SWORN, TESTIFIED AS FOLLOWS:
- 16 DIRECT EXAMINATION BY MR. STONE:
- 17 Q YOU ARE SERGEANT LAUVER; IS THAT CORRECT?
- 18 A YES.
- 19 Q AND YOU WORK WITH THE BEAUFORT SHERIFF'S OFFICE?
- 20 A YES.
- 21 Q WHAT DO YOU DO WITH THEM?
- 22 A I'M A K-9 OFFICER WITH THE SHERIFF'S OFFICE.
- 23 Q ALL RIGHT. PULL THAT MICROPHONE TO YOU SO I CAN HEAR
- 24 YOU. WHAT IS A K-9 OFFICER? WHAT DO YOU MEAN BY THAT?
- 25 A I HAVE A FULLY FUNCTIONAL PATROL DOG WITH ME AT ALL

JEFF LAUVER — DIRECT BY MR. STONE

227

1 TIMES. I ASSIST THE ROAD AND ANSWER ANY TYPE OF CALLS THAT
2 DEAL WITH K-9.

3 Q NOW, WHAT DO YOU DO WITH THE K-9 SPECIFICALLY?

4 A K-9 RESPOND TO DIFFERENT FUNCTIONS. IT'S A TRACKING
5 DOG. IT'S A DRUG DOG. DOES BUILDING SEARCHES, ARTICLE
6 SEARCHES. AND OFFICER PROTECTION.

7 Q DO YOU USE ONE DOG OR DO YOU HAVE A NUMBER OF THEM?

8 A I USE ONE DOG.

9 Q AND WHAT TYPE OF DOG IS THAT?

10 A IT'S A BELGIAN MALAWI.

11 Q DOES IT HAVE A NAME?

12 A BUCK.

13 Q OKAY. AND THIS IS THE DOG THAT YOU STAY WITH?

14 A YES.

15 Q DID YOU TRAIN BUCK OR IS BUCK TRAINED? WAS BUCK
16 TRAINED BEFORE YOU GOT HIM?

17 A BUCK IS TRAINED BEFORE WE GET HIM. AND THEN WE GO OUT
18 AND GET CERTIFIED ON THE TRAINING.

19 Q WERE YOU CERTIFIED USING BUCK?

20 A YES.

21 Q NOW, TELL ME WHEN YOU HAVE A DOG IF HE HAD THESE MULTI
22 FUNCTIONS, THE SEARCH ASPECT OF IT. WHAT DOES THAT ENTAIL?

23 A AS FAR AS DOING ARTICLE SEARCHES?

24 A YES.

25 Q BASICALLY IT'S WE TRAIN ON IT A CERTAIN AMOUNT OF

- 1 TIMES A MONTH OR A WEEK. AND BASICALLY WHAT THE DOG DOES,
2 IT PICKS UP A SCENT NOT NATURAL TO THE ENVIRONMENT, UNTIL
3 THAT ENVIRONMENT ENCOMPASSES THAT SCENT.
- 4 Q SOMETHING OUT OF PLACE?
- 5 A CORRECT.
- 6 Q AND IS THAT ALWAYS EXPLOSIVES? IS IT DRUGS? COULD IT
7 BE BOTH?
- 8 A IT COULD BE ANYTHING.
- 9 Q ANYTHING THAT'S NOT NATURAL?
- 10 A CORRECT.
- 11 Q NOW, WHAT I WANT TO KNOW IS DO YOU GET TRAINING OR
12 DOES THE DOG GET TRAINED OR BOTH?
- 13 A IT WOULD BE BOTH.
- 14 Q AND DO YOU GET TRAINED TOGETHER?
- 15 A YES.
- 16 Q AND YOU BOTH WORK -- LET ME BACK UP TO SEPTEMBER OF
17 2007. YOU WERE TRAINED WITH BUCK DURING THAT TIME?
- 18 A CORRECT.
- 19 Q AND TRAINED IN THE USE OF THE DOG AS A SEARCH?
- 20 A YES, THE FULL FUNCTIONS OF THE PATROL DOG.
- 21 Q WHAT HAPPENS WHEN A DOG IS -- WHEN YOU HAVE A DOG
22 THAT'S SEARCHING FOR ITEMS THAT ARE UNNATURAL TO THE
23 ENVIRONMENT, SOMETHING OUT OF PLACE?
- 24 A BASICALLY I SET UP USUALLY A PATTERN SEARCH, DEPENDING
25 ON THE CIRCUMSTANCES. IF THE DOG GETS IN THE AREA, YOU CAN

JEFF LAUVER — DIRECT BY MR. STONE

229

1 USUALLY TELL BY BODY LANGUAGE, GETS A LITTLE MORE EXCITED,
2 SO ON. AND THEN ONCE IT PIN POINTS THE ITEM OR WHATEVER BY
3 GNAWING OR SCRATCHING TO INDICATE ON IT.

4 Q AND YOU'VE RECEIVED TRAINING SO YOU UNDERSTAND WHAT
5 THOSE MOTIONS MEAN?

6 A CORRECT.

7 MR. STONE: AT THIS TIME, YOUR HONOR, I WOULD QUALIFY
8 HIM AS AN EXPERT IN DOG HANDLING FOR THE PURPOSES OF
9 SEARCH.

10 THE COURT: ANY VOIR DIRE OR OBJECTION?

11 MS. CARROWAY: NO, YOUR HONOR.

12 THE COURT: ALL RIGHT. YOU MAY PROCEED.

13 Q ALL RIGHT. NOW, LET ME ASK YOU, SIR, IF YOU WOULD --
14 I'M GOING TO GIVE YOU THIS. LET ME SHOW YOU FIRST WHAT'S
15 BEEN MARKED AS STATE'S EXHIBIT 21. DO YOU RECOGNIZE THIS
16 AREA?

17 A YES.

18 Q LET ME ASK YOU TO COME DOWN FROM THE STAND AND SHOW
19 THE JURY WHAT WE'RE TALKING ABOUT.

20 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

21 Q I'M GOING TO HAND YOU THIS AND I'M GOING TO -- ALL
22 RIGHT. NOW, THIS AREA THAT I SHOW YOU HERE ON STATE'S
23 EXHIBIT 21, IS THIS THE AREA THAT YOU SEARCHED?

24 A YES.

25 Q AND YOU WERE SEARCHING FOR ANYTHING IN PARTICULAR OR

JEFF LAUVER - DIRECT BY MR. STONE

230

1 JUST ---

2 A FOR A WEAPON.

3 Q OKAY. TELL ME WHAT THE SEARCH ENTAILED?

4 A BASICALLY, I STARTED -- I BELIEVE IT WAS ON THE 17TH
5 WITH MY DOG SEARCHING THE AREA FROM THE SCHOOL ON THE SOUTH
6 SIDE OF CHERRY POINT ROAD, ALL THE WAY DOWN TO THE "Y"
7 INTERSECTION, AND I CROSSED OVER THE ROAD TO THE NORTH SIDE
8 AND WORKED BACK UP TO THE ENTRANCE OF THE SCHOOL, WHERE I
9 GOT CALLED TO ANOTHER TYPE CALL. HAD TO RESPOND TO THAT.

10 COME BACK THE NEXT DAY. WE DID FROM THE ENTRANCE TO
11 THE SCHOOL UP TO 170 AND BACK TO MY STARTING POINT. AFTER
12 COMPLETING THAT, I CAME DOWN TO THE "Y" INTERSECTION AND
13 WORKED FROM THE FIRST HOUSE, THE SET OF WOODS AT THE FIRST
14 HOUSE, UP TOWARDS THE "Y" INTERSECTION TO WHERE I ENDED MY
15 OTHER SEARCHES AT. AND THEN BACK DOWN THE OTHER SIDE OF
16 THE ROAD, UP THE "Y" INTERSECTION, WHERE I LOCATED THE
17 WEAPON.

18 Q ALL RIGHT. LET ME STOP YOU RIGHT THERE. YOU STAY
19 RIGHT WHERE YOU ARE IF YOU DON'T MIND. I SHOW YOU WHAT'S
20 BEEN MARKED AS STATE'S EXHIBIT NO. 16. IS THAT A FAIR AND
21 ACCURATE DEPICTION OF THAT "Y" INTERSECTION AS YOU
22 DESCRIBED IT?

23 A YES.

24 Q AND STATE'S EXHIBIT 17, IS THAT A FAIR AND ACCURATE
25 DEPICTION OF THE SCENE AS YOU SAW IT THAT DAY?

JEFF LAUVER -- DIRECT BY MR. STONE

231

1 A YES.

2 Q AND STATE'S EXHIBIT 18 AND 19, IS THAT A FAIR AND
3 ACCURATE DEPICTION OF THE SCENE AS YOU SAW IT?

4 A YES.

5 MR. STONE: OKAY. YOUR HONOR, AT THIS TIME WE MOVE
6 STATE'S EXHIBIT 17, 18, 19, AND 16 INTO EVIDENCE.

7 MS. CARROWAY: WITHOUT OBJECTION.

8 THE COURT: THE NUMBERS AGAIN?

9 MR. STONE: YOUR HONOR, THAT IS NO. 16, 17, 18, AND
10 19.

11 (STATE'S EXHIBIT NOS. 16, 17, 18, AND 19 RECEIVED IN
12 EVIDENCE.)

13 Q THANK YOU VERY MUCH. NOW, SERGEANT, IF YOU WILL COME
14 OVER HERE AND SHOW THIS ---

15 MR. STONE: THIS IS NOW, YOUR HONOR, WITH PERMISSION
16 TO PUBLISH TO THE JURY, THIS IS STATE'S EXHIBIT NO. 17.

17 Q WOULD YOU SHOW THE JURY WHAT THIS IS PLEASE?

18 A BASICALLY, THIS IS THE "Y" INTERSECTION WHERE THE TWO
19 ROADS -- CHERRY POINT ROAD NORTH AND SOUTH SPLIT UP. THIS
20 IS MY VEHICLE. AND THE BASIC AREA OF THE LAST PLACE I
21 SEARCHED AND WHERE THE WEAPON WAS LOCATED.

22 Q OKAY. ALL RIGHT. AND THIS IS -- I'M NOW SHOWING
23 STATE'S EXHIBIT 17.

24 A THIS WOULD BE CHERRY POINT ROAD SOUTH.

25 Q WHICH IS ON THE BOTTOM ON THE SCREEN?

1 A RIGHT. ON THE BOTTOM OF THE SCREEN, UP TOWARDS
2 CHERRY POINT NORTH WHERE THE WEAPON WAS LOCATED IN THE
3 WOODS.

4 Q ALL RIGHT. NOW, I'M ASSUMING BUCK HITS AT THIS AREA?

5 A YES. WHAT BUCK DID BASICALLY WAS -- I COULD SEE A
6 BODY LANGUAGE CHANGE IN HIM. I OBSERVED THE WEAPON FIRST,
7 BUT THE BODY LANGUAGE CHANGE TELLS ME THAT IT IS SOMEWHAT
8 FRESH AND THAT THE ENVIRONMENT HASN'T ENCOMPASSED THAT
9 SCENT, SO IT'S A FRESHER SCENT. HIS BODY LANGUAGE CHANGED.
10 OBVIOUSLY, I HAD SEEN THE WEAPON, SO I DIDN'T WANT HIM TO
11 HIT ON IT TO DESTROY ANY EVIDENCE OR INDICATE ON IT. SO AT
12 THAT TIME I PULLED HIM AWAY FROM IT.

13 Q AND THIS IS STATE'S EXHIBIT -- LET ME MAKE SURE I GET
14 MY NUMBERS RIGHT. NO. 18. IS THAT THE WEAPON AS YOU FOUND
15 IT OUT THERE?

16 A YES.

17 Q AND STATE'S EXHIBIT 19, IS THAT THE WEAPON AS YOU
18 FOUND IT?

19 A YES.

20 Q OKAY. THANK YOU. TAKE THE STAND.

21 (THE WITNESS RETURNS TO THE WITNESS STAND.)

22 MR. STONE: I DON'T HAVE ANY FURTHER QUESTIONS OF THIS
23 WITNESS, YOUR HONOR.

24 MS. CARROWAY: NO QUESTIONS FOR THIS WITNESS, YOUR
25 HONOR.

DEJUAN HOLMES - DIRECT BY MR. STONE

233

- 1 THE COURT: YOU MAY COME DOWN. THANK YOU.
2 (THE WITNESS LEAVES THE WITNESS STAND.)
3 THE COURT: THE WITNESS BE EXCUSED?
4 MR. STONE: YES, SIR.
5 THE COURT: WITHOUT OBJECTION.
6 MR. STONE: YOUR HONOR, THE STATE RECALLS DWAYNE (SIC)
7 HOLMES, WHO WAS PREVIOUSLY SWORN. DEJUAN HOLMES, EXCUSE
8 ME.
9 THE COURT: YOU'RE STILL UNDER OATH.
10 DEJUAN HOLMES, HAVING BEEN
11 PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:
12 DIRECT EXAMINATION BY MR. STONE:
13 Q INVESTIGATOR HOLMES, I'D INTRODUCED YOU EARLIER, BUT
14 YOU'RE THE INVESTIGATOR ON THIS CASE; IS THAT CORRECT?
15 A YES, SIR.
16 Q LET ME SHOW YOU ON THE MONITOR WHAT HAS BEEN MARKED AS
17 STATE'S EXHIBIT NO. 19. DO YOU RECOGNIZE THAT, SIR?
18 A I CAN'T SEE IT.
19 Q I'M SORRY. YOU'RE RIGHT. YOU'RE AT A BAD ANGLE. LET
20 ME JUST HAND YOU THE PHOTOGRAPH.
21 A THAT'S THE GUN THAT WAS FOUND ON CHERRY POINT ROAD.
22 Q AND YOU WERE OUT THERE AT THE TIME; IS THAT CORRECT?
23 A I WAS CALLED AFTER BY SERGEANT LAUVER AFTER HE LOCATED
24 IT. I WAS CALLED OUT THERE TO THE LOCATION.
25 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT

DEJUAN HOLMES - DIRECT BY MR. STONE

234

1 31 AND ASK IF YOU CAN IDENTIFY THAT ITEM PLEASE?

2 A THIS IS THE GUN THAT WAS OUT THERE ON THE SCENE.

3 MR. STONE: OKAY. YOUR HONOR, AT THIS TIME WE MOVE
4 STATE'S EXHIBIT 31 INTO EVIDENCE.

5 MS. CARROWAY: NO OBJECTION, YOUR HONOR.

6 THE COURT: WITHOUT OBJECTION.

7 (STATE'S EXHIBIT NO. 31 RECEIVED IN EVIDENCE.)

8 MR. STONE: THAT'S ALL I HAVE, YOUR HONOR, FOR
9 INVESTIGATOR HOLMES.

10 MS. CARROWAY: I DON'T HAVE ANY QUESTIONS.

11 THE COURT: YOU MAY COME DOWN.

12 (THE WITNESS LEAVES THE WITNESS STAND.)

13 THE COURT: NOW MAY THE WITNESS BE EXCUSED?

14 MR. STONE: YES, SIR.

15 THE COURT: ALL RIGHT. WITHOUT OBJECTION. YOU'RE
16 FREE TO GO.

17 MR. STONE: THE STATE CALLS RUBEN GUERRERO.

18 (PAUSE.)

19 MR. STONE: INVESTIGATOR HOLMES IS STILL HERE. MAY I
20 RECALL HIM FOR ONE FURTHER QUESTION?

21 THE COURT: GO AHEAD.

22 MR. STONE: JUST BRIEFLY.

23 DIRECT EXAMINATION CONTINUED BY MR. STONE:

24 Q INVESTIGATOR, I APOLOGIZE FOR RECALLING YOU. ON

25 SEPTEMBER 16, 2007 DO YOU RECALL WHAT TIME YOU RECEIVED THE

DEJUAN HOLMES — DIRECT BY MR. STONE

235

- 1 CALL CONCERNING THE HOMICIDE AT 150 CHERRY POINT ROAD?
- 2 A IT WAS ABOUT 6:45 IN THE AFTERNOON.
- 3 Q AND DO YOU RECALL WHERE YOU WERE AT THE TIME?
- 4 A I WAS IN SHIFT BRIEFING AT THE HILTON HEAD OFFICE.
- 5 Q AND HOW DO YOU KNOW IT WAS THAT TIME?
- 6 A THE SHIFT BRIEFING NORMALLY STARTS AT 6:30.
- 7 Q WHAT IS SHIFT BRIEFING?
- 8 A SHIFT BRIEFING IS WHERE THE ONCOMING SHIFT COMES IN
- 9 AND GETS BRIEFED ABOUT -- GETS BRIEFED ABOUT WHAT HAD
- 10 HAPPENED EARLY -- WHATEVER HAPPENED DURING THE DAY ON THE
- 11 ROAD ON PATROL. AND AT ABOUT 6:45, LIKE I SAID, IT WAS
- 12 TOWARD THE END OF THE SHIFT WHEN WE WERE ABOUT TO LEAVE THE
- 13 OFFICE IS WHEN THE CALL CAME OUT.
- 14 Q AND YOU'RE ACTUALLY GOING ON SHIFT AT THAT POINT?
- 15 A ACTUALLY THAT NIGHT I WAS THE ON-CALL INVESTIGATOR.
- 16 AND I WAS WORKING THAT AFTERNOON.
- 17 Q OKAY.
- 18 A AND I WAS JUST ATTENDING THE SHIFT BRIEFING.
- 19 MR. STONE: THANK YOU, INVESTIGATOR. I PROMISE NOT TO
- 20 CALL YOU BACK AGAIN.
- 21 THE COURT: ANYTHING?
- 22 MS. CARROWAY: NOTHING, YOUR HONOR.
- 23 MR. STONE: NOW THE STATE CALLS RUBEN GUERRERO.
- 24 JOSE RUBEN GUERRERO, BEING
- 25 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

RUBEN GUERRERO — DIRECT BY MR. STONE

236

1 DIRECT EXAMINATION BY MR. STONE:

2 Q WHAT IS YOUR FULL NAME, SIR?

3 A JOSE RUBEN GUERRERO.

4 Q AND LET ME ASK YOU TO GET THE MIKE A LITTLE BIT CLOSER
5 TO YOU PLEASE, SIR. MR. GUERRERO, WHERE DO YOU LIVE NOW,
6 SIR?

7 A I LIVE IN TEXAS.

8 Q AND WHERE IN TEXAS?

9 A NEAR SAN ANTONIO, A TOWN CALLED PLEASANTON.

10 Q HOW LONG HAVE YOU LIVED IN SAN ANTONIO?

11 A SINCE OCTOBER.

12 Q PRIOR TO OCTOBER -- OF THIS YEAR?

13 A YES, 2008.

14 Q 2008. ALL RIGHT. BEFORE THAT, WHERE DID YOU LIVE?

15 A IN BEAUFORT, SOUTH CAROLINA.

16 Q WHERE EXACTLY?

17 A OFF RIVERS HILL (PHONETIC) ROAD IN BURTON. 85 RIVERS
18 HILL ROAD, OR 71 RAMSEY ROAD. THERE'S TWO ADDRESSES THERE.

19 Q DO YOU KNOW JOSE ANGEL HERRERA?

20 A YES, I DO.

21 Q AND DO YOU SEE HIM IN THE COURTROOM?

22 A YES, I DO.

23 Q CAN YOU POINT HIM OUT FOR ME PLEASE?

24 A HE'S RIGHT HERE.

25 Q THE GENTLEMAN SEATED BETWEEN THESE TWO PEOPLE HERE?

RUBEN GUERRERO - DIRECT BY MR. STONE

237

- 1 A YES, THAT'S CORRECT.
- 2 Q THE ONE IN THE MIDDLE. ALL RIGHT.
- 3 MR. STONE: JUST LET THE RECORD REFLECT HE IDENTIFIED
- 4 THE DEFENDANT.
- 5 THE COURT: SO REFLECTED, THE WITNESS IDENTIFIED THE
- 6 DEFENDANT.
- 7 MR. STONE: YES, SIR.
- 8 Q AND HOW LONG HAVE YOU KNOWN HIM?
- 9 A I MET HIM WHEN I WAS WORKING AT ATHENA. I DON'T KNOW,
- 10 WHENEVER HE MOVED OVER THERE. I DON'T KNOW EXACTLY WHAT
- 11 MONTH OR YEAR IT WAS. WELL, IT WAS 2006, 2007 TIME FRAME.
- 12 Q DID YOU KNOW HIS WIFE, KATHERINE HERRERA?
- 13 A YES, I DID.
- 14 Q AND IS HER DAUGHTER M.A. [REDACTED]
- 15 A YES, I KNOW HER AS WELL, YES.
- 16 Q ON SEPTEMBER 16, 2006 (SIC), DID YOU SEE EITHER MR.
- 17 HERRERA OR KATHERINE HERRERA OR MADISON?
- 18 A YES, I SAW ALL THREE OF THEM THAT DAY.
- 19 Q AND WHERE WERE YOU WHEN YOU SAW THOSE THREE
- 20 INDIVIDUALS?
- 21 A I WAS AT MY HOUSE.
- 22 Q IN BURTON?
- 23 A YES, IN BURTON, SOUTH CAROLINA.
- 24 Q DO YOU RECALL ABOUT WHAT TIME THAT WAS?
- 25 A YEAH, IT WAS ABOUT 5:35 -- NO. IT WAS ABOUT 5:40,

- 1 5:45.
- 2 Q HOW DO YOU KNOW THAT?
- 3 A I HAD TWO MISSED CALLS FROM HIM, ONE AT 5:33, ONE AT
- 4 5:36. AND SHORTLY THEREAFTER, HE PULLED UP TO MY HOUSE,
- 5 ABOUT 5:40, 5:45.
- 6 Q WHAT DO YOU MEAN MISSED CALLS?
- 7 A HE CALLED ME BUT I DIDN'T ANSWER.
- 8 Q IS IT ON YOUR CELL PHONE OR YOUR HOME PHONE?
- 9 A CELL PHONE.
- 10 Q WHEN -- AND SO YOU'RE AT YOUR HOUSE. DO YOU SEE HIM
- 11 AFTER THOSE CALLS COME IN?
- 12 A YEAH, AFTER I DIDN'T ANSWER THE CALLS, HE PULLED IN TO
- 13 MY HOUSE AND IT WAS HIM, KATHY, AND LITTLE MADISON IN THE
- 14 CAR.
- 15 Q DO YOU RECALL WHAT KIND OF CAR HE HAD?
- 16 A IT WAS A DIFFERENT CAR. THEY HAD A TRUCK, BUT IT HAD
- 17 BEEN ROLLED OVER. IT WAS LIKE A LARGE SEDAN.
- 18 Q AND WHO IS -- ALL THREE OF THEM ARE IN THE CAR AT THE
- 19 TIME?
- 20 A YES, SIR.
- 21 Q TELL ME ABOUT THAT. WHAT HAPPENED THEN?
- 22 A WHEN HE PULLED UP, I WALKED OUT OF MY HOUSE. I ASKED
- 23 HIM IF HE WANTED TO COME IN. HE SAID, NO.
- 24 I SAID, YOU SURE?
- 25 HE GOES, NO.

RUBEN GUERRERO - DIRECT BY MR. STONE

239

- 1 HE SEEMED MAD. I SAID, WHAT'S WRONG?
- 2 HE JUST SAID, THIS BITCH IS PISSING ME OFF.
- 3 I SAID, WHAT IT MEAN?
- 4 HE'S LIKE ANYTHING HAPPENS, THEY JUST WANT TO BLAME
- 5 ME. EVERYTHING'S MY FAULT ALL THE TIME.
- 6 Q AND WHO IS HE TALKING ABOUT WHEN HE SAYS THAT?
- 7 A HE'S TALKING ABOUT KATHY AND MADISON.
- 8 Q ARE THEY IN THE CAR AT THE TIME?
- 9 A YES, SIR.
- 10 Q DID THEY GET OUT OF THE CAR OR DID THEY STAY IN THE
- 11 CAR?
- 12 A NO. THEY STAYED IN THE CAR.
- 13 Q OKAY.
- 14 A I ASKED HIM WHAT HE WANTED.
- 15 HE SAID, THAT HE JUST BEEN SHOOTING THE SHOTGUN OR
- 16 SOMETHING THAT KATHY BOUGHT HIM, AND HE WANTED ME TO TAKE A
- 17 LOOK AT IT. I HAD THE SAME KIND OF SHOTGUN. AND IT WAS
- 18 JAMMING. SO WE WALKED TO THE BACK OF THE CAR AND HE KEPT
- 19 -- HE WAS JUST BASICALLY VENTING HIS FRUSTRATION. HE WAS
- 20 PRETTY PISSED OFF, YOU KNOW. YOU KNOW, HE'S SICK OF THIS
- 21 BITCH, THIS AND THAT, HE KEPT SAYING ABOUT KATHY.
- 22 AND I WAS JUST TELLING HIM, MAN, WHY DON'T YOU JUST
- 23 RELAX, YOU KNOW WHAT I MEAN. THEN I GOT HIM A BEER.
- 24 Q WHEN HE'S SAYING THIS, HOW FAR AWAY FROM KATHY IS HE
- 25 WHEN HE'S SAYING THIS?

1 A WE'RE AT THE TRUNK OF THE CAR LOOKING AT THE SHOTGUN.
2 Q SHE'S IN THE CAR?
3 A YES, SIR.
4 Q OKAY. GO AHEAD. I'M SORRY.
5 A AND THEN, YOU KNOW, AT FIRST I WANTED HIM TO STAY AND
6 KIND OF CHILL OUT. BUT HE WAS JUST REAL HOSTILE AND KIND
7 OF AGITATED, SO I JUST DECIDED IT WOULD BE BETTER IF THEY
8 PROBABLY JUST LEFT, YOU KNOW. AND I COULDN'T FIND THE GUN
9 OIL. I WAS TELLING HIM, YOU NEED TO OIL YOUR GUN. YOU
10 JUST CAN'T PUT A HUNDRED ROUNDS THROUGH A SHOTGUN OR
11 WHATEVER. I COULDN'T FIND IT SO I WENT TO MY FATHER-IN-
12 LAW'S HOUSE. AND HE DIDN'T HAVE IT. I CAME BACK TO MY
13 HOUSE. AND THEN I GUESS KATHY -- KATHY WAS SMOKING A
14 CIGARETTE. AND SHE OPENED THE DOOR TO LET THE SMOKE OUT
15 BECAUSE MADISON WAS IN THE CAR. AND HE YELLED -- HE YELLED
16 AT HER FOR OPENING THE DOOR.
17 HE SAID, YOU KNOW, I TOLD YOU TO STAY IN THE FUCKIN
18 CAR.
19 AND THEN SHE ---
20 Q WHEN HE SAID THAT, WHAT WAS HIS VOICE? WAS HE TALKING
21 NORMALLY? WAS HE ---
22 A NO. HE WAS MAD. HE WAS REAL LOUD. AND ---
23 Q DID SHE YELL BACK AT HIM?
24 A SHE JUST TOLD HIM, I'M JUST TRYING TO LET THE SMOKE
25 OUT, YOU KNOW. AND THEN SHE SHUT THE DOOR AND ROLLED THE

RUBEN GUERRERO - DIRECT BY MR. STONE

241

- 1 WINDOW DOWN. AND THEN I WENT INSIDE, FOUND THE GUN OIL,
2 AND GAVE IT TO HIM. TOLD HIM HE COULD KEEP IT.
3 Q OKAY. YOU DIDN'T HELP HIM FIX THE GUN?
4 A NO.
5 Q WHY NOT?
6 A I NEEDED HIM TO GO.
7 Q WHY?
8 A BECAUSE HE WAS JUST LIKE SO ANGRY, YOU KNOW WHAT I'M
9 SAYING. I DIDN'T NEED THAT AT MY HOUSE.
10 Q AND THIS WAS ABOUT WHAT TIME?
11 A BY THE TIME THEY LEFT, IT WAS PROBABLY 10 OR 15
12 MINUTES AFTER WE GOT THROUGH. PROBABLY CLOSE TO 6:00
13 O'CLOCK.
14 Q DO YOU KNOW WHERE THEY LIVE?
15 A IN OAKATIE.
16 Q YES. HOW FAR IS YOUR HOUSE FROM OAKATIE?
17 A I DON'T KNOW IN MILES. PROBABLY LIKE A 40-MINUTE
18 DRIVE.
19 Q LET ME SHOW YOU WHAT'S BEEN PUT INTO EVIDENCE AS
20 STATE'S EXHIBIT 31. THIS PISTOL HERE. YOU EVER SEE THIS
21 GUN BEFORE?
22 A YES.
23 Q WHOSE PISTOL IS THIS?
24 A JOSE ANGEL HERRERA'S GUN.
25 Q AND HOW DO YOU KNOW THAT?

1 A I'VE SEEN IT AT WORK A COUPLE TIMES. HE SHOWED ME
2 AFTER HE BOUGHT IT. BUT IT HAD -- WHEN I FIRST SAW IT, IT
3 HAD A PENCIL UNDERNEATH THE BARREL. AND THEN I SAW IT
4 LATER WITH THE SCREW.

5 MR. STONE: NO FURTHER QUESTIONS AT THIS TIME, YOUR
6 HONOR.

7 THE COURT: CROSS EXAMINATION.

8 MS. CARROWAY: THANK YOU, YOUR HONOR.

9 CROSS EXAMINATION BY MS. CARROWAY:

10 Q MR. GUERRERO, YOU SAID THAT JOSE TOLD YOU THAT HE HAD
11 BEEN SHOOTING GUNS EARLIER IN THE DAY?

12 A EARLIER THAT DAY OR THE DAY BEFORE. THEY HAD BEEN
13 SHOOTING THE SHOTGUN AND IT WAS JAMMING.

14 Q RIGHT. HE WAS OUT AT A COOKOUT OUT ON SOME LAND IN
15 ST. HELENA?

16 A I THINK SO, SOMETHING LIKE THAT.

17 Q AND THEY WERE PAINTBALL SHOOTING AND SHOOTING AT
18 TARGETS?

19 A I'M NOT SURE EXACTLY WHAT HE WAS DOING EARLIER THAT
20 DAY. I KNOW THAT HE TOLD ME THAT HIS GUN WAS JAMMING AND
21 HE NEEDED ME TO TAKE A LOOK AT IT.

22 Q OKAY. HE ALSO TOLD YOU THAT THE GUN HAD GONE OFF
23 ACCIDENTLY BEFORE?

24 A WHICH GUN?

25 Q THIS GUN.

RUBEN GUERRERO — RECROSS BY MR. STONE

243

- 1 A THE REVOLVER?
- 2 Q YES. IN YOUR STATEMENT.
- 3 A WHAT'S THAT?
- 4 Q THAT HE TOLD YOU THAT THE GUN HAD GONE OFF
- 5 ACCIDENTALLY BEFORE?
- 6 MR. STONE: I OBJECT, YOUR HONOR.
- 7 THE COURT: ON WHAT GROUND?
- 8 MR. STONE: HEARSAY.
- 9 THE COURT: OVERRULE. GO AHEAD.
- 10 A I MEAN, YOU REFERRING TO THE SHOT FLOOR OR WHAT?
- 11 Q I'M REFERRING TO THE STATEMENT THAT JOSE MADE TO YOU
- 12 AND THAT YOU SAID TO THE POLICE?
- 13 A HE TOLD ME THAT HE HAD PULLED THE GUN OUT TO -- I
- 14 DON'T UNDERSTAND YOUR QUESTION.
- 15 Q IT'S OKAY. YOU SAID THAT THIS GUN HAD GONE OFF
- 16 ACCIDENTLY AND SHOT IN THE KITCHEN FLOOR BEFORE?
- 17 A YES.
- 18 MS. CARROWAY: OKAY. THANK YOU.
- 19 THE COURT: COUNSEL, APPROACH THE BENCH.
- 20 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
- 21 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)
- 22 MR. STONE: EXCUSE ME JUST A MOMENT, YOUR HONOR.
- 23 (PAUSE.)
- 24 RECROSS EXAMINATION BY MR. STONE:
- 25 Q I'M TRYING TO FIND IN YOUR STATEMENT CONCERNING THE

1 GUN GOING OFF. DO YOU KNOW WHAT THE CIRCUMSTANCES WERE
2 AROUND THAT? DID THE DEFENDANT TELL YOU THE CIRCUMSTANCES
3 AROUND THAT?

4 A IT WAS LIKE SHORTLY AFTER HE BOUGHT THE GUN, HE TOLD
5 ME THAT HIS SISTER HAD SOME GUYS OVER THE HOUSE AND HE
6 DIDN'T WANT THEM THERE.

7 MS. CARROWAY: OBJECTION, YOUR HONOR.

8 A IS THAT WHAT YOU'RE ASKING ME TO TELL THE STORY?

9 THE COURT: OVERRULE.

10 MR. STONE: THANK YOU.

11 MS. CARROWAY: IT'S NOT IN THE STATEMENT.

12 A THIS IS THE SAME -- THIS IS THE ONLY INCIDENT I KNOW.

13 Q WAIT JUST A SECOND, WAIT FOR THE COURT.

14 THE COURT: I DON'T KNOW EITHER. IF YOUR CLIENT TOLD
15 HIM SOMETHING, HE CAN TESTIFY ABOUT IT.

16 Q OKAY. NOW ANSWER.

17 A THERE WAS THESE GUYS IN THE HOUSE HE DIDN'T WANT
18 THERE, AND SO HE PULLED THE GUN OUT TO INTIMIDATE THEM, AND
19 THAT HE SHOT -- HE WANTED TO ACCIDENTLY OR WHATEVER, HE
20 SHOT A HOLE IN THE FLOOR IN THE KITCHEN.

21 MR. STONE: OKAY. THANK YOU. I DON'T HAVE ANYTHING
22 ELSE. OH, I'M SORRY. ONE OTHER QUESTION.

23 Q I ASKED YOU EARLIER, I THINK SEPTEMBER THE 16TH. I
24 MAY HAVE MIS-SPOKEN AND SAID 2006. I WAS ASKING ABOUT
25 2007. THE EVENTS THAT YOU DESCRIBED WERE THEY IN 2007?

RUBEN GUERRERO - RECROSS BY MR. STONE

245

1 A 2007.
2 MR. STONE: THANK YOU. AND I APOLOGIZE. THANK YOU,
3 YOUR HONOR.
4 THE COURT: ANYTHING?
5 MS. CARROWAY: NO FURTHER QUESTIONS, YOUR HONOR.
6 THE COURT: YOU MAY COME DOWN. THANK YOU VERY MUCH.
7 (THE WITNESS LEAVES THE WITNESS STAND.)
8 THE COURT: MAY THIS WITNESS BE EXCUSED?
9 MR. STONE: HE MAY, YOUR HONOR.
10 MS. CARROWAY: WITHOUT OBJECTION.
11 THE COURT: WITHOUT OBJECTION, YOU'RE FREE TO GO.
12 MR. STONE: EXCUSE ME JUST A MOMENT, YOUR HONOR.
13 (PAUSE.)
14 MR. STONE: MAY WE HAVE A SHORT BREAK, YOUR HONOR? I
15 APOLOGIZE FOR DOING THAT. IT WON'T TAKE MORE THAN 5
16 MINUTES.
17 THE COURT: WELL, APPROACH THE BENCH.
18 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
19 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)
20 (PAUSE.)
21 MR. STONE: COULD WE HAVE JUST A 5 MINUTE BREAK?
22 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, JUST GO
23 TO YOUR JURY ROOM FOR A FEW MINUTES AND DON'T DISCUSS THE
24 CASE AMONG YOURSELVES. WE'LL CALL YOU WHEN THEY'RE READY.
25 THANK YOU.

1 (THE JURY RETIRES TO THE JURY ROOM AT 3:12 P.M.)
2 THE COURT: 10 MINUTES.
3 (A RECESS WAS TAKEN.)
4 THE COURT: READY TO PROCEED, SOLICITOR?
5 MR. STONE: THANK YOU, YOUR HONOR. I APOLOGIZE FOR
6 THE DELAY.
7 THE COURT: THAT'S ALL RIGHT.
8 MR. STONE: YOUR HONOR ---
9 THE COURT: THE COURT REPORTER NEEDED A DELAY.
10 MR. STONE: I'VE ALTERED AN EXHIBIT, I WANTED YOUR
11 HONOR TO KNOW. EXHIBIT 31 ---
12 THE COURT: THE GUN LOCK?
13 MR. STONE: YES, SIR.
14 THE COURT: THANK YOU. FRANKLY, I LET THAT BY ME TOO.
15 READY FOR THE JURY?
16 MR. STONE: SIR?
17 THE COURT: ARE YOU READY FOR THE JURY?
18 MR. STONE: YES, SIR.
19 MS. CARROWAY: YES, YOUR HONOR.
20 THE COURT: BRING THE JURY.
21 (THE JURY RETURNS TO THE COURTROOM AT 3:35 P.M.)
22 BAILIFF: YOUR HONOR, THE JURY IS PRESENT.
23 THE COURT: THANK YOU. SOLICITOR, CALL YOUR NEXT
24 WITNESS.
25 MR. STONE: THANK YOU, YOUR HONOR. THE STATE CALLS

TERRY LASETER - DIRECT BY MR. STONE

247

1 TERRY LASETER.

2 TERRY LASETER, BEING FIRST
3 DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE COURT: SPELL YOUR NAME FOR THE COURT REPORTER
5 PLEASE.

6 WITNESS: LASETER, L-A-S-E-T-E-R.

7 DIRECT EXAMINATION BY MR. STONE:

8 Q MR. LASETER, WHERE DO YOU LIVE, SIR?

9 A 146 CHERRY POINT ROAD.

10 Q AND THAT'S IN BEAUFORT COUNTY OFF OF 170?

11 A ABSOLUTELY, SIR.

12 Q DO YOU KNOW JOSE HERRERA?

13 A YES, SIR, I DO.

14 Q DO YOU SEE HIM IN THE COURTROOM TODAY?

15 A YES, SIR.

16 Q CAN YOU POINT HIM OUT FOR ME PLEASE?

17 A THE GENTLEMAN RIGHT HERE IN THE WHITE TURTLENECK.

18 MR. STONE: YOUR HONOR, PLEASE LET THE RECORD REFLECT
19 HE'S POINTED OUT THE DEFENDANT.

20 THE COURT: THE RECORD WILL SO REFLECT THE WITNESS
21 IDENTIFIED THE DEFENDANT.

22 Q MR. LASETER, ON SEPTEMBER 16, 2007 WERE YOU AT HOME,
23 SIR?

24 A YES, SIR.

25 Q I'M REFERRING TO SORT OF LATE AFTERNOON HOURS. WERE

TERRY LASETER - DIRECT BY MR. STONE

248

1 YOU THERE DURING THAT TIME?

2 A YES, SIR.

3 Q DID YOU SEE -- FIRST OF ALL, LET ME BACK UP A LITTLE
4 BIT. DO YOU ALSO KNOW KATHERINE HERRERA?

5 A YES, SIR.

6 Q DID YOU KNOW KATHERINE HERRERA?

7 A YES, SIR.

8 Q DID YOU KNOW HER DAUGHTER, M.A. [REDACTED]

9 A YES, SIR.

10 Q DID YOU HAVE OCCASION ON SEPTEMBER 16, 2007 TO SEE
11 KATHERINE HERRERA OR JOSE HERRERA OR MADISON?

12 A ALL THREE.

13 Q AND WHERE WERE YOU, SIR, WHEN YOU SAW THEM?

14 A I HAVE A CARPORT, AN OPEN CARPORT ON THE SIDE OF MY
15 HOUSE. I WAS SITTING UNDER THERE SMOKING A CIGARETTE. AND
16 THEY CAME FROM HIGHWAY 170 HEADING TOWARD THEIR HOUSE PAST
17 MY HOUSE.

18 Q OKAY. LET ME ASK YOU IF YOU COULD, SIR, TO COME DOWN
19 OFF THE STAND. I'M GOING TO SHOW YOU STATE'S EXHIBIT 22.

20 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

21 Q PLEASE KEEP YOUR VOICE UP WHERE THE COURT REPORTER CAN
22 HEAR YOU. STATE'S EXHIBIT 22, WHICH IS AN AERIAL SHOT OF
23 YOUR NEIGHBORHOOD. COULD YOU TELL ME FIRST OF ALL WHERE
24 JOSE AND KATHERINE HERRERA LIVED?

25 A 150.

TERRY LASETER - DIRECT BY MR. STONE

249

- 1 Q AND WHERE IS YOUR HOUSE?
- 2 A 146.
- 3 Q AND THIS ROAD, IS THIS CHERRY POINT ROAD HERE?
- 4 A YES, SIR, IT COMES DOWN THROUGH HERE, TURNS THROUGH
- 5 HERE, TURNS A 90-DEGREE TURN AT MY HOUSE HEADING TOWARDS
- 6 150.
- 7 Q AND DOES IT GO BACK OUT TO 170?
- 8 A NO, SIR.
- 9 Q WHAT DOES IT DO?
- 10 A IT DEAD ENDS.
- 11 Q AND THIS ROAD UP HERE AT THE VERY TOP OF STATE'S
- 12 EXHIBIT 22, THAT IS CHERRY POINT ROAD COMING IN?
- 13 A COMING IN. AND IT FORKS RIGHT HERE, COMES THIS WAY,
- 14 AND COMES THIS WAY TO THE NORTH SIDE.
- 15 Q AND 146 WAS YOUR HOUSE. AND THEIR HOUSE IS 150; IS
- 16 THAT CORRECT?
- 17 A YES, SIR.
- 18 Q ALL RIGHT. THANK YOU. IF YOU WILL TAKE THE STAND.
- 19 (THE WITNESS RETURNS TO THE WITNESS STAND.)
- 20 Q WHEN YOU SAW JOSE HERRERA AND KATHERINE HERRERA AND
- 21 MADISON THAT DAY, YOU WERE UNDER YOUR PORCH; IS THAT RIGHT?
- 22 A UNDER MY CARPORT, SIR.
- 23 Q OKAY. AND THEY WERE IN A CAR, I'M ASSUMING?
- 24 A YES, SIR.
- 25 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT

TERRY LASETER - DIRECT BY MR. STONE

250

- 1 1. THE CAR IN THAT PHOTOGRAPH OF THE CRIME SCENE, DO YOU
2 RECOGNIZE THE CAR IN THAT SCENE?
3 A YES, SIR.
4 Q AND THERE ARE TWO OF THEM. I'M SPECIFICALLY REFERRING
5 TO -- WELL, DID YOU SEE THAT CAR -- EITHER ONE OF THOSE
6 CARS THAT DAY?
7 A THE SILVER CAR IS THE ONE THEY WERE DRIVING THAT DAY.
8 Q OKAY. ALL RIGHT. NOW, TELL ME WHEN YOU FIRST SAW
9 THEM, ARE YOU INSIDE OR OUTSIDE YOUR PORCH? IS IT ENCLOSED
10 OR IS IT OPEN?
11 A IT IS AN OPEN CARPORT WITH PLASTIC AROUND THE BACKSIDE
12 OF IT. THE WIND COMES FROM THE NORTH, THE BACKSIDE OF THE
13 HOUSE, SO THERE'S PLASTIC THERE.
14 Q ABOUT HOW FAR FROM THE ROAD IS THIS PORCH?
15 A 50 FOOT, 55 FOOT.
16 Q OKAY. TELL ME WHAT YOU SEE?
17 A I SEE THEM COME BY.
18 Q AND IN WHICH DIRECTION?
19 A HEADING TOWARDS THEIR HOUSE.
20 Q TOWARDS -- DOWN TOWARDS THE DEAD END PART?
21 A CORRECT, YES, SIR.
22 Q TELL ME ABOUT THAT?
23 A THEY RODE BY. PULLED INTO THE DRIVE. I HEARD DOORS
24 OPEN. DOORS CLOSE. I IMMEDIATELY HEARD VOICES.
25 Q WHAT KIND OF VOICES?

TERRY LASETER - DIRECT BY MR. STONE

251

1 A IT SOUNDED LIKE SOME ARGUING. NOT BEING ABLE TO PICK

2 UP EXACT WORDS ---

3 Q RIGHT.

4 A --- BUT DEFINITELY AN ANGERED SOUND. LASTED FOR 2 OR

5 3 MINUTES MAYBE. AND THEN THE FRONT DOOR OF THE TRAILER

6 SLAMMED.

7 Q OKAY. NOW, WHEN THEY FIRST CAME DOWN THE ROAD, WHAT

8 CAUGHT YOUR ATTENTION?

9 A THEY WERE ALL THREE IN THE CAR TOGETHER.

10 Q WHEN THEY PULLED INTO THE YARD, HOW LONG -- DID YOU

11 SEE THEM AGAIN AFTER THAT?

12 A NO, SIR; NOT UNTIL LATE THAT EVENING.

13 Q OKAY. WHAT HAPPENED LATER THAT EVENING?

14 A I WENT INSIDE. THAT WAS A SUNDAY EVENING. MONDAY

15 SCHOOL. I HAVE THREE CHILDREN THAT GO TO SCHOOL. SO

16 THAT'S THE NIGHT THAT'S PUSHED TO GET THE CHILDREN READY

17 FOR SHOWERS AND FED AND EVERYTHING. I HAD TAKEN MY

18 CIGARETTE AND WENT BACK INSIDE TO FINISH UP SUPPER, I

19 RECKON. AND PROBABLY 10 MINUTES LATER I SAW POLICE AROUND

20 THE FRONT OF MY HOUSE AND HEADING DOWN TOWARDS 150.

21 Q WHEN YOU FIRST SAW THE CAR GO IN WITH MADISON AND

22 KATHERINE AND JOSE, WHO WAS DRIVING?

23 A JOSE.

24 Q AND WHAT SEAT WAS KATHERINE IN?

25 A FRONT SEAT PASSENGER SIDE.

TERRY LASETER - DIRECT BY MR. STONE

252

1 Q SO MADISON WOULD HAVE BEEN IN THE BACK SEAT?

2 A YES, SIR.

3 Q AND THEN DID YOU SEE THAT CAR AGAIN THAT DAY?

4 A THAT CAR DID PULL BACK OUT PROBABLY 7 TO 8 MINUTES
5 AFTER IT PULLED IN. AND ONE OF THE PROBLEMS I HAD WAS
6 HAVING THREE CHILDREN OUT THERE PLAYING IS THE SPEED THAT'S
7 USED. THAT'S A 90-DEGREE TURN. AND THAT CAR COME FLYING
8 BACK BY WITH JOSE ONLY IN IT, AND HIM TALKING ON THE CELL
9 PHONE.

10 Q AND THIS WAS ABOUT 7 TO 10 MINUTES AFTER HE HAD GONE
11 IN THE FIRST TIME?

12 A YES, SIR.

13 Q MADISON NOR KATHERINE HERRERA WERE WITH HIM AT THIS
14 POINT?

15 A NOT THAT I SAW IN THE CAR, NO, SIR.

16 MR. STONE: ALL RIGHT. I DON'T HAVE ANY FURTHER
17 QUESTIONS AT THIS TIME, YOUR HONOR.

18 MS. CARROWAY: YOUR HONOR, I DON'T HAVE ANY QUESTIONS.

19 THE COURT: ALL RIGHT. YOU MAY COME DOWN, SIR. THANK
20 YOU VERY MUCH. THE WITNESS BE EXCUSED?

21 MR. STONE: YES, SIR.

22 MS. CARROWAY: WITHOUT OBJECTION.

23 THE COURT: WITHOUT OBJECTION.

24 (THE WITNESS LEAVES THE WITNESS STAND.)

25 MS. TANNER: YOUR HONOR, THE STATE CALLS M.A. [REDACTED]

M.A. [REDACTED] - DIRECT BY MS. TANNER

253

1 THE COURT: APPROACH THE BENCH PLEASE.

2 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
3 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

4 THE COURT: LADIES AND GENTLEMEN, I NEED TO TAKE UP A
5 MATTER OF LAW WITH THE ATTORNEYS. I KNOW WE JUST SAT DOWN,
6 BUT AGAIN I'M GOING TO ASK YOU TO RETIRE TO JURY ROOM FOR
7 JUST A FEW MINUTES. WE'LL CALL YOU WHEN WE'RE READY.

8 (THE JURY RETIRES TO THE JURY ROOM AT 3:45 P.M.)

9 THE COURT: ALL RIGHT. SOLICITOR, CALL YOUR WITNESS.

10 MR. STONE: THE STATE CALLS M.A. [REDACTED] A-U-S-T.

11 [REDACTED] M.A. [REDACTED] BEING FIRST

12 DULY SWORN, TESTIFIED AS FOLLOWS:

13 THE COURT: YOU MAY PROCEED.

14 MS. TANNER: THANK YOU, YOUR HONOR.

15 DIRECT EXAMINATION BY MS. TANNER:

16 Q GOOD AFTERNOON, MADISON. I NEED YOU TO SPEAK CLOSE UP
17 TO THE MICROPHONE SO WE CAN HEAR YOU. CAN YOU STATE YOUR
18 NAME FOR THE RECORD PLEASE?

19 A M.A. [REDACTED]

20 Q AND HOW DO YOU SPELL YOUR LAST NAME?

21 A A-U-S-T.

22 Q MADISON, HOW OLD ARE YOU?

23 A 13.

24 Q WHAT GRADE IN SCHOOL ARE YOU IN?

25 A SEVENTH.

M.A. [REDACTED] - DIRECT BY MS. TANNER

254

1 Q AND MADISON, DO YOU KNOW THE DIFFERENCE BETWEEN THE
2 TRUTH AND A LIE?

3 A YES.

4 Q CAN YOU EXPLAIN FOR US THE DIFFERENCE BETWEEN THE TWO?

5 A WELL, ONE YOU CAN BE HONEST ABOUT AND PEOPLE CAN
6 BELIEVE YOU. AND THE OTHER THEY JUST KNOW THAT YOU AREN'T.

7 Q ALL RIGHT. AND DO YOU UNDERSTAND YOUR DUTY AS A
8 WITNESS IN COURT?

9 A YES.

10 Q WHAT WOULD THAT BE?

11 A TO TELL THE TRUTH, AND TO BE HONEST WITH EVERYBODY.

12 MS. TANNER: YOUR HONOR, IF THERE'S ANYTHING FURTHER.

13 I THINK THAT COVERS UNDER THE RULES THE QUESTIONS THAT
14 WOULD BE ASKED A CHILD WITNESS.

15 THE COURT: DO YOU HAVE ANYTHING?

16 MS. CARROWAY: NO, YOUR HONOR.

17 THE COURT: IS IT MS. AUST? IS THAT THE WAY YOU
18 PRONOUNCE YOUR LAST NAME?

19 WITNESS: AUST.

20 THE COURT: MS. AUST, YOU UNDERSTAND THAT WHEN YOU PUT
21 YOUR HAND ON THE BIBLE, IT'S IMPORTANT YOU TELL THE TRUTH.
22 DO YOU UNDERSTAND THAT?

23 WITNESS: YES, SIR.

24 THE COURT: AND SOME TIMES REAL YOUNG PEOPLE HAVE A
25 HARD TIME UNDERSTANDING THAT, AND THEY SOME TIMES THEY SAY

M.A. [REDACTED] - DIRECT BY MS. TANNER

255

1 -- OR MAY SAY SOMETHING BECAUSE THEY THINK SOMEBODY ELSE
2 JUST WANTS TO HEAR THAT. DO YOU UNDERSTAND THAT?

3 WITNESS: YES.

4 THE COURT: YOU WERE YOUNG AT ONE TIME, I'M SURE. BUT
5 AT THIS POINT, THIS IS SORT OF GROWN UP WORLD, AND YOU
6 UNDERSTAND THAT?

7 WITNESS: OKAY.

8 THE COURT: AND YOU UNDERSTAND THE IMPORTANCE OF
9 TELLING THE TRUTH?

10 WITNESS: YES, SIR.

11 THE COURT: OKAY. THANK YOU VERY MUCH.

12 SHE CAN COME DOWN UNTIL THE JURY IS RE-SEATED.

13 (THE WITNESS LEAVES THE WITNESS STAND.)

14 THE COURT: ALL RIGHT. BRING THE JURY PLEASE.

15 (THE JURY RETURNS TO THE COURTROOM AT 3:50 P.M.)

16 BAILIFF: THE JURY IS SEATED, YOUR HONOR.

17 THE COURT: ALL RIGHT. SOLICITOR, YOU MAY CONTINUE.

18 MS. TANNER: THANK YOU, YOUR HONOR. THE STATE CALLS

19 M.A. [REDACTED] TO THE STAND.

20 M.A. [REDACTED] BEING FIRST

21 DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION BY MS. TANNER:

23 Q GOOD AFTERNOON, MADISON.

24 A GOOD AFTERNOON.

25 Q HOW OLD ARE YOU?

M.A. [REDACTED] — DIRECT BY MS. TANNER

256

- 1 A 13.
- 2 Q AND WHAT GRADE ARE YOU IN SCHOOL?
- 3 A SEVENTH.
- 4 Q AND WHAT SCHOOL DO YOU GO TO?
- 5 A H.E. MCCRACKIN MIDDLE SCHOOL.
- 6 Q ARE YOU INVOLVED IN ANY SPORTS OR ACTIVITIES IN
- 7 SCHOOL?
- 8 A LACROSSE.
- 9 Q AND IS THAT WITH A MIDDLE SCHOOL TEAM?
- 10 A NO. THE HIGH SCHOOL.
- 11 Q SO YOU PLAY LACROSSE WITH HIGH SCHOOL?
- 12 A YES.
- 13 Q HOW LONG HAVE YOU BEEN DOING THAT?
- 14 A FOR 2 AND A HALF MONTHS.
- 15 Q ARE YOU ENJOYING THAT?
- 16 A YES.
- 17 Q NOW, WHERE DO YOU LIVE NOW?
- 18 A I LIVE IN HARDEEVILLE.
- 19 Q AND WHO DO YOU LIVE WITH?
- 20 A MY DAD.
- 21 Q AND HAVE YOU ALWAYS LIVED WITH JUST YOUR DAD?
- 22 A YES, AND HIS GIRL FRIEND AND HER SON.
- 23 Q BEFORE YOU LIVED WITH HIM, WHO WERE YOU LIVING WITH?
- 24 A I WAS LIVING WITH HIM AND ONE OF HIS OTHER GIRL
- 25 FRIENDS.

M.A. [REDACTED] - DIRECT BY MS. TANNER

257

1 Q AND HOW ABOUT BEFORE YOU LIVED WITH YOUR DAD, DID YOU
2 EVER LIVE WITH YOUR MOM?

3 A YES.

4 Q AND WHEN YOU LIVED WITH YOUR MOM, DID ANYONE ELSE LIVE
5 WITH YOU?

6 A YES, JOSE.

7 Q AND WHO IS JOSE TO YOU?

8 A HE WAS MY STEP-DAD.

9 Q AND, MADISON, I'M GOING TO ASK YOU ABOUT THE DAY YOUR
10 MOM DIED.

11 A OKAY.

12 Q CAN YOU TELL ME WHEN'S THE FIRST TIME YOU SAW HER THAT
13 DAY?

14 A WHEN IT WAS LIKE 5:00 O'CLOCK WHEN MY DAD WAS TAKING
15 ME AND WE WERE MEETING HER BECAUSE LIKE I ONLY SEE MY DAD
16 EVERY OTHER WEEKEND. SO I WENT TO GO. WE WERE MEETING
17 EACH OTHER AT WALMART, AND THAT'S WHEN I SAW HER, WHEN HE
18 WAS DROPPING ME OFF.

19 Q AND ONCE YOU GOT DROPPED OFF TO YOUR MOM, WAS ANYBODY
20 WITH YOUR MOM WHEN SHE PICKED YOU UP?

21 A JOSE.

22 Q AND WHAT WERE THEY DRIVING? DO YOU KNOW WHAT COLOR
23 THE CAR WAS?

24 A I DON'T REMEMBER.

25 Q THAT'S FINE. ALL RIGHT. SO ONCE THEY PICK YOU UP,

- 1 WHO'S DRIVING THE CAR?
- 2 A JOSE.
- 3 Q AND ARE YOU SITTING?
- 4 A I'M SITTING IN THE BACK SEAT.
- 5 Q AND WHERE IS YOUR MOM SITTING?
- 6 A UP FRONT IN THE PASSENGER SEAT.
- 7 Q AND WHERE DO YOU GUYS GO AFTER THEY PICK YOU UP?
- 8 A BACK TO OUR HOUSE AT OAKATIE.
- 9 Q AND DID YOU STAY THERE FOR THE REST OF THE NIGHT?
- 10 A NO.
- 11 Q WHERE DID YOU GO?
- 12 A WE -- AFTER WE GOT THERE, WE WENT TO HIS FRIEND
- 13 RUBEN'S HOUSE.
- 14 Q HOW LONG DID YOU STAY AT YOUR HOUSE BEFORE YOU LEFT TO
- 15 GO TO RUBEN'S?
- 16 A THE MAXIMUM, ABOUT 20 TO 25 MINUTES, I THINK. YEAH.
- 17 Q AND ONCE YOU GO TO RUBEN -- DO YOU ACTUALLY MAKE IT TO
- 18 RUBEN'S HOUSE?
- 19 A YES.
- 20 Q DO YOU STOP ANYWHERE BETWEEN YOUR HOUSE AND RUBEN'S
- 21 HOUSE?
- 22 A YEAH, WE STOPPED BY LIKE OLD SALEM (PHONETIC) WHEN
- 23 THEY WERE ARGUING. AND THEN WE WENT BY LIKE THE BRIDGE AND
- 24 LIKE THE LEFT SIDE. WE LIKE HEARD THEM, THEY WERE ARGUING
- 25 SOME MORE. AND THEN HE WANTED HER TO GET OUT OF THE CAR

M.A. [REDACTED] — DIRECT BY MS. TANNER

259

- 1 AND WE DIDN'T. AND THEN WE JUST -- AND THEY WERE OKAY.
2 AND WE WENT TO -- WE WENT TO HIS HOUSE, AND JOSE GOT OUT OF
3 THE CAR, AND WE WERE IN THE CAR.
4 Q YOU SAID THEY WERE ARGUING. WHO WAS ARGUING?
5 A JOSE AND MY MOM.
6 Q DO YOU KNOW WHAT THEY WERE ARGUING ABOUT?
7 A NO.
8 Q AND HOW LOUD WAS THE ARGUMENT? WAS IT A LITTLE
9 ARGUMENT OR A BIG ARGUMENT?
10 A IT WAS A BIG ARGUMENT, BUT THEY WERE ARGUING REALLY
11 LOUD.
12 Q AND YOU SAID YOU STOPPED NEAR ONE OF THE BRIDGES?
13 A YES.
14 Q WHAT WAS THAT ALL ABOUT?
15 A THEY WERE JUST ARGUING, SO HE PULLED THE CAR OVER AND
16 THEY WERE ARGUING.
17 Q AND WHAT DID HE SAY?
18 A HE SAID THAT SHE SHOULD GET OUT OF THE CAR, BUT SHE
19 DIDN'T.
20 Q AND DID YOU GUYS KEEP DRIVING THEN?
21 A YEAH, AFTER -- YEAH, WE WENT TO RUBEN'S HOUSE.
22 Q AND ONCE YOU GET TO RUBEN'S HOUSE, DO YOU GET OUT OF
23 THE CAR?
24 A NO.
25 Q DID YOUR MOM GET OUT OF THE CAR?

M.A. [REDACTED] — DIRECT BY MS. TANNER

260

- 1 A NO.
- 2 Q DID SHE TRY TO GET OUT OF THE CAR?
- 3 A NO.
- 4 Q HOW ABOUT JOSE?
- 5 A YES, HE DID.
- 6 Q HOW LONG DID YOU STAY AT RUBEN'S HOUSE?
- 7 A I'M NOT SURE. I DON'T REMEMBER.
- 8 Q DID YOU GET A CHANCE TO TALK TO RUBEN?
- 9 A NO.
- 10 Q DO YOU KNOW IF JOSE GO INSIDE RUBEN'S HOUSE OR DID
- 11 THEY STAY OUTSIDE OF THE CAR?
- 12 A I THINK THEY WENT BY LIKE HIS SIDE DOOR, BUT I DON'T
- 13 REMEMBER THEM GOING INSIDE.
- 14 Q ALL RIGHT. ONCE YOU LEAVE RUBEN'S HOUSE, WHERE DID
- 15 YOU GO?
- 16 A WE WENT BACK HOME.
- 17 Q IS THAT THE CHERRY POINT HOUSE?
- 18 A YES.
- 19 Q NOW, BETWEEN RUBEN'S HOUSE AND THE CHERRY POINT HOUSE,
- 20 ARE JOSE AND YOUR MOM STILL ARGUING?
- 21 A YES.
- 22 Q ONCE YOU GET HOME TO YOUR HOUSE AT CHERRY POINT, ARE
- 23 THEY STILL ARGUING?
- 24 A NOT AS MUCH AS THEY WERE BEFORE, BUT THEY WERE STILL
- 25 ARGUING.

M.A. [REDACTED] - DIRECT BY MS. TANNER

261

1 Q AND WHEN YOU GET HOME, ALL YOU GUYS GET OUT OF THE CAR
2 AT THE SAME TIME OR AT DIFFERENT TIMES?

3 A MY MOM HELPED ME GET MY STUFF OUT OF THE CAR, AND THEN
4 SHE TOLD ME TO GO TAKE A SHOWER AND STUFF. I THINK SHE
5 WENT INSIDE TOO. AND THEN I THINK HE WENT AFTER HER.

6 Q AND ONCE YOU GET IN THE HOUSE, WHAT DO YOU DO?

7 A I -- MY MOM -- I GO TO MY ROOM TO GET ALL MY STUFF
8 READY FOR A SHOWER. AND MY MOM, SHE COMES IN AND SHE TELLS
9 ME TO GO AHEAD AND GET IN THE SHOWER AND JUST STAY IN THE
10 SHOWER. AND WHEN I'M OUT TO STAY IN MY ROOM BECAUSE
11 THEY'RE ARGUING. SHE DIDN'T WANT ME TO WITNESS THEIR
12 ARGUING AND STUFF.

13 Q DO YOU DO THAT? DO YOU GO TO THE SHOWER?

14 A YES.

15 Q HOW LONG WOULD YOU SAY YOU'RE IN THE SHOWER?

16 A ABOUT 8 MINUTES.

17 Q DID YOU WASH YOUR HAIR?

18 A YEAH.

19 Q DO ALL THAT GIRL STUFF?

20 A YEAH.

21 Q AND WHILE YOU'RE IN THE SHOWER, DO YOU HEAR ANYTHING
22 STRANGE?

23 A I HEARD A BANG, SO I DECIDED I'D MAKE IT QUICKER AND
24 GO AHEAD AND FINISH WASHING THE SOAP OUT OF MY HAIR. AND
25 THEN I GOT OUT.

M.A. [REDACTED] — DIRECT BY MS. TANNER

262

1 Q YOU SAID YOU HEARD A WHAT?

2 A LIKE A BANG LIKE.

3 Q A BANG. SO ONCE YOU GET OUT OF THE HOUSE -- OUT OF
4 THE SHOWER, DO YOU -- WHO DO YOU SEE NEXT?

5 A JOSE.

6 Q WHERE DO YOU SEE HIM?

7 A LIKE I WAS GETTING OUT OF THE SHOWER, AND HE SAID,
8 JUST LIKE, GO TO YOUR ROOM. SO I WENT AND I CHANGED. AND
9 THEN I WAS WALKING -- I HAD MY DOOR OPEN AFTER I CHANGED.
10 AND HE SAID, JUST STAY IN YOUR ROOM. SOMETHING HAPPENED.
11 AND SO HE GOT ON THE PHONE AND HE STARTED TO WALK OUTSIDE.
12 SO AT FIRST I OPENED THE DOOR, AND THEN I LOOKED OUT
13 THE HALLWAY WINDOW. AND I SAW LIKE HIM LIKE ON THE PHONE.
14 AND HE WAS LIKE ON THE PORCH. AND THEN HE WALKED DOWN THE
15 STEPS. AND THEN HE WAS LIKE CIRCLING AROUND IN THE YARD
16 REAL NERVOUSLY. AND THEN -- AND THEN I WALKED OUTSIDE
17 AFTER THAT.

18 Q WAS JOSE STILL ON THE PHONE WHEN YOU GOT OUTSIDE?

19 A NO. HE WAS JUST HANGING UP.

20 Q COULD YOU HEAR ANY OF THE CONVERSATION HE WAS HAVING
21 ON THE PHONE?

22 A NO.

23 Q MADISON, I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
24 STATE'S EXHIBIT 25.

25 MS. TANNER: YOUR HONOR, IF I COULD HAVE HER COME OFF

M.A. [REDACTED] - DIRECT BY MS. TANNER

263

1 THE STAND.

2 THE COURT: SURE.

3 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

4 Q NOW, MADISON, I'VE PREVIOUSLY SHOWN YOU WHAT'S BEEN
5 MARKED AS STATE'S 25. I WANT YOU TO USE THIS AND KIND OF
6 SHOW THE JURY -- START FROM THE FRONT PORCH -- WHERE
7 EVERYTHING IS IN YOUR HOUSE?

8 A OKAY. LIKE THIS IS THE FRONT ROOM, YOU WALK IN. THEN
9 THIS RIGHT HERE IS THE SPARE BEDROOM. AND THIS IS THE
10 HALLWAY. THEN THIS IS MY BATHROOM. HERE IS MY ROOM AND MY
11 CLOSET. AND THEN OVER HERE THERE'S THE LIVING ROOM. AND
12 THE KITCHEN THERE. THE LAUNDRY ROOM. AND OUTSIDE THERE
13 WOULD BE A LITTLE ROOM CONNECTED. THEN THERE'S THIS ROOM.
14 AND IN HERE WOULD BE MY MOM AND JOSE'S ROOM. AND HERE
15 WOULD BE THEIR BATHROOM RIGHT THERE.

16 Q MADISON, WHEN YOU GUYS GET HOME, CAN YOU SHOW THE JURY
17 WHERE YOU WENT?

18 A OKAY. I WENT TO MY ROOM. AND SHORTLY AFTER THAT MY
19 MOM FOLLOWED IN AND SAID, GO AHEAD AND TAKE A SHOWER AND
20 EVERYTHING. SO AFTER THAT, THAT'S WHEN I TOOK A SHOWER. I
21 GOT THE SHOWER. AND THEN AFTER THAT, AFTER I GOT OUT OF
22 THE SHOWER, I WAS LIKE WALKING BACK TO MY ROOM, AND HE SAID
23 JUST LIKE, YOU KNOW -- JUST LIKE HANG TIGHT FOR A LITTLE
24 BIT. GO BACK IN YOUR ROOM, GET DRESSED, AND EVERYTHING.
25 SO I WENT BACK IN MY ROOM AND I GOT DRESSED. AND THEN I

M.A.

- DIRECT BY MS. TANNER

264

1 WENT OUT. I WAS ACTUALLY AT MY ROOM AND HE CAME BACK AND
2 SAID, JUST STAY IN YOUR ROOM. AND THEN HE SAID SOMETHING
3 HAPPENED. SO THEN HE WALKED OUTSIDE. I WENT TO GO LOOK.
4 THAT'S WHEN I SAW HIM GO OUTSIDE, I WENT TO LOOK OUT THE
5 WINDOW. AND I SAW HIM TALKING ON THE PHONE AND HE WAS LIKE
6 PACING.

7 SO THEN I DECIDED TO WALK OUT THERE. AND RIGHT WHEN I
8 WALKED OUT, HE WAS JUST HANGING UP THE PHONE AND HE HUNG
9 UP. AND THEN HE JUST WAS LIKE, THERE'S BEEN LIKE A BREAK-
10 IN AND STUFF, SO.

11 Q HE TOLD YOU THERE HAD BEEN A BREAK-IN?

12 A YES.

13 Q DID YOU SEE ANYBODY ELSE AROUND THE HOUSE?

14 A NO.

15 Q THANK YOU, MADISON. YOU CAN GO BACK TO THE STAND.

16 (THE WITNESS RETURNS TO THE WITNESS STAND.)

17 Q MADISON, HOW LONG DID YOU LIVE WITH JOSE AND YOUR MOM?

18 A I DON'T REMEMBER HOW LONG EXACTLY.

19 Q THAT'S FINE. DURING THE TIME THAT YOU LIVED WITH JOSE
20 AND YOUR MOM, DID YOU EVER SEE HIM WITH A PISTOL?

21 A YEAH.

22 Q A HANDGUN?

23 A YEAH.

24 Q MADISON, I'M GOING TO SHOW YOU WHAT'S BEEN MARKED

25 ALREADY AS STATE'S EXHIBIT 31. TELL ME IF YOU CAN IDENTIFY

M.A. [REDACTED] - CROSS BY MS. CARROWAY

265

1 THIS ITEM? YOU'VE SEEN THIS ITEM BEFORE?

2 A YES.

3 Q WHERE HAVE YOU SEEN THIS ITEM BEFORE?

4 A ON HIS LIKE NIGHT TABLE. AND THEN WHEN WE WOULD GO
5 PLACES, HE WOULD PUT IT IN HIS POCKET. BUT AT NIGHT IT
6 WOULD BE ON THE NIGHT TABLE.

7 Q AND YOU SAID HE. WHO IS HE?

8 A JOSE.

9 Q AND, MADISON, I HAVE TO ASK YOU, DO YOU SEE JOSE IN
10 THE COURTROOM?

11 A YES.

12 Q CAN YOU POINT TO JOSE?

13 A RIGHT THERE.

14 MS. TANNER: HAVE THE RECORD REFLECT SHE'S INDICATED
15 THE DEFENDANT.

16 THE COURT: SO REFLECT THE WITNESS IDENTIFIED THE
17 DEFENDANT.

18 MS. TANNER: THANK YOU, MADISON. PLEASE ANSWER
19 ANYTHING THAT THE DEFENSE LAWYER HAS.

20 THE COURT: MS. CARROWAY.

21 MS. CARROWAY: THANK YOU.

22 CROSS EXAMINATION BY MS. CARROWAY:

23 Q HI, MADISON.

24 A HI.

25 Q MY NAME IS LAUREN CARROWAY. I JUST WANT TO ASK YOU A

M.A. [REDACTED] - CROSS BY MS. CARROWAY

266

- 1 COUPLE OF QUESTIONS. DO YOU REMEMBER TALKING TO OFFICER
2 VIENS SHORTLY AFTER ALL THIS HAPPENED, SHE'S THE LADY
3 POLICE OFFICER GIVEN A STATEMENT?
4 A YES.
5 Q I THINK YOUR DAD WAS THERE WITH YOU?
6 A YEAH.
7 Q OKAY. DURING THAT STATEMENT YOU TOLD HER THAT YOU'D
8 BEEN AT YOUR DAD'S SINCE THURSDAY?
9 A UH-HUH.
10 Q IS THAT CORRECT?
11 A YEAH.
12 Q OKAY. AND LIKE YOU TESTIFIED TO, THAT JOSE AND YOUR
13 MOM WERE ARGUING?
14 A UH-HUH.
15 Q OKAY. AND YOU TOLD HER THAT YOU HAD NEVER SEEN JOSE
16 HIT YOUR MOM OR ANY SIGNS OF DOMESTIC VIOLENCE?
17 A NO.
18 Q OKAY. AND YOU ALSO SAID THAT JOSE AND YOUR MOM
19 DON'T REALLY ARGUE A LOT, BUT THEY PLAY AROUND AND JOKE
20 AROUND ---
21 A YEAH.
22 Q --- AND LAUGH AND SCREAM LIKE THAT?
23 A YEAH.
24 Q OKAY.
25 MS. CARROWAY: YOUR HONOR, BEG THE COURT'S INDULGENCE

M.A. [REDACTED] — CROSS BY MS. CARROWAY

267

1 FOR JUST ONE MOMENT.

2 (PAUSE.)

3 Q MADISON, I JUST HAVE A FEW MORE QUESTIONS FOR YOU.

4 OKAY?

5 A OKAY.

6 Q YOU TESTIFIED THAT YOU ALL GET HOME FROM PICKING YOU
7 UP WITH YOUR DAD, RIGHT?

8 A UH-HUH.

9 Q AND YOU GO GET IN THE SHOWER?

10 A UH-HUH.

11 Q OKAY. AND ABOUT HOW LONG DO YOU THINK IT WAS AFTER
12 YOU GOT HOME THAT YOU GOT IN THE SHOWER?

13 A LIKE HOW LONG BEFORE I GOT IN THE SHOWER?

14 Q APPROXIMATELY?

15 A I THINK AT LEAST 3 OR 4 MINUTES, BECAUSE I JUST HAD TO
16 GET MY CLOTHES AND THE TOWEL AND EVERYTHING.

17 Q AND WHEN YOU CAME INSIDE, YOU AND YOUR MOM AND JOSE
18 ALL CAME INSIDE WHEN YOU ARRIVED HOME ORIGINALLY?

19 A I THINK SO. I KNOW WHEN MY MOM CAME IN. I'M NOT SO
20 SURE ABOUT HIM. I THINK HE DID.

21 Q BUT WHEN YOU GOT OUT OF THE SHOWER, HE WAS INSIDE?

22 A YEAH.

23 MS. CARROWAY: OKAY. YOUR HONOR, ONE MOMENT.

24 (PAUSE.)

25 MS. CARROWAY: I DON'T HAVE ANY MORE QUESTIONS, YOUR

CHUCK RUNNION - DIRECT BY MR. STONE

268

- 1 HONOR.
- 2 THE COURT: REDIRECT?
- 3 MS. TANNER: NOTHING FURTHER, YOUR HONOR. MAY THIS
- 4 WITNESS BE EXCUSED?
- 5 THE COURT: ANY OBJECTION?
- 6 MS. CARROWAY: NO, YOUR HONOR.
- 7 THE COURT: YOU MAY COME DOWN. YOU'RE FREE TO GO,
- 8 MA'AM. THANK YOU VERY MUCH.
- 9 (THE WITNESS LEAVES THE WITNESS STAND.)
- 10 THE COURT: NEXT WITNESS.
- 11 MR. STONE: SERGEANT CHUCK RUNNION.
- 12 CHUCK RUNNION, BEING FIRST
- 13 DULY SWORN, TESTIFIED AS FOLLOWS:
- 14 DIRECT EXAMINATION BY MR. STONE:
- 15 Q INVESTIGATOR RUNNION, YOU ARE WITH THE BEAUFORT COUNTY
- 16 SHERIFF'S OFFICE, ARE YOU NOT?
- 17 A YES, SIR.
- 18 Q SEPTEMBER 16, 2007 YOU WERE WITH THE SHERIFF'S OFFICE?
- 19 A YES, SIR.
- 20 Q AND IN WHAT CAPACITY?
- 21 A INVESTIGATOR WITH HILTON HEAD.
- 22 Q DID YOU RESPOND TO 150 CHERRY POINT ROAD ON THAT DAY?
- 23 A YES, SIR, I DID.
- 24 Q AND YOU WERE PART OF THE CRIME SCENE TEAM
- 25 INVESTIGATOR?

CHUCK RUNNION - DIRECT BY MR. STONE

269

- 1 A YES, SIR.
- 2 Q DID YOU ALSO ATTEND THE AUTOPSY OF KATHERINE HERRERA?
- 3 A YES, SIR.
- 4 Q AND THAT WAS PERFORMED BY DR. ERIN PRESNELL; IS THAT
- 5 CORRECT?
- 6 A CORRECT.
- 7 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
- 8 30. AND DO YOU RECOGNIZE THAT, SIR?
- 9 A YES, SIR, THIS IS THE CONTAINER IN WHICH I PLACED THE
- 10 ROUND THAT I RECEIVED FROM DR. PRESNELL.
- 11 Q AND WHEN YOU SAY THE ROUND, THE SHELL, THE BULLET?
- 12 A YES, SIR.
- 13 Q AND THAT IS AT THE AUTOPSY?
- 14 A YES, SIR.
- 15 Q WHEN YOU RECEIVED THE BULLET FROM DR. PRESNELL, YOU
- 16 PUT IT IN THAT CONTAINER?
- 17 A YES, SIR.
- 18 Q AND I KNOW THAT IS HER STICKER. WHAT DID YOU DO WITH
- 19 IT AFTER THAT?
- 20 A I PROCEEDED DIRECTLY TO BEAUFORT COUNTY SHERIFF'S
- 21 OFFICE ON 2001 DUKE STREET AND TURNED IT OVER TO THE
- 22 EVIDENCE TECHNICIAN THERE.
- 23 Q DID YOU CHANGE IT OR ALTER IT IN ANY WAY?
- 24 A NO, SIR.
- 25 MR. STONE: NO FURTHER QUESTIONS, AT THIS TIME, YOUR

RAMONA COOPER - DIRECT BY MR. STONE

270

1 HONOR.

2 MS. CARROWAY: I DON'T HAVE ANY QUESTIONS FOR THE
3 WITNESS.

4 THE COURT: YOU MAY COME DOWN, SIR. THANK YOU VERY
5 MUCH. MAY THE WITNESS BE EXCUSED?

6 MR. STONE: PARDON ME?

7 THE COURT: MAY THE WITNESS BE EXCUSED?

8 MR. STONE: YES, SIR.

9 MS. CARROWAY: WITHOUT OBJECTION.

10 THE COURT: WITHOUT OBJECTION.

11 (THE WITNESS LEAVES THE WITNESS STAND.)

12 MR. STONE: YOUR HONOR, THE STATE CALLS RAMONA COOPER.

13 RAMONA COOPER, BEING FIRST

14 DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION BY MR. STONE:

16 Q MS. COOPER, YOU'RE OBVIOUSLY WITH THE SHERIFF'S
17 OFFICE. IN WHAT CAPACITY?

18 A I AM THE EVIDENCE TECHNICIAN.

19 Q AND HOW LONG HAVE YOU BEEN THE EVIDENCE TECHNICIAN AT
20 THE SHERIFF'S OFFICE?

21 A 4 YEARS.

22 Q IN SEPTEMBER OF 2007 YOU WERE WITH THE SHERIFF'S
23 DEPARTMENT IN THE EVIDENCE ROOM; IS THAT CORRECT?

24 A YES, SIR.

25 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT

RAMONA COOPER - DIRECT BY MR. STONE

271

1 30. ASK IF YOU CAN IDENTIFY THAT FOR US PLEASE?

2 A YES, THIS ITEM WAS SUBMITTED TO THE EVIDENCE SECTION
3 BY OFFICER RUNNION.

4 Q AND THIS BAG THAT APPEARS TO BE AT ONE TIME HEAT
5 SEALED WITH SOME RED INITIALS ON IT, IS THAT YOUR DOING?

6 A YES, PER THE REQUEST OF STAFF SERGEANT VIENS FOR ITEMS
7 TO GO TO SLED FOR ANALYSIS. BECAUSE THIS ITEM WOULD GO TO
8 FIREARMS, I PULLED IT FROM THE EVIDENCE BAG AND HEAT SEALED
9 IT IN THIS CONTAINER BECAUSE IT WAS GOING TO A SEPARATE
10 OFFICE FOR ANALYSIS.

11 Q OKAY. AND NONE OF THIS WRITING ON THIS IS YOURS, IS
12 IT?

13 A NO, SIR.

14 Q ALL RIGHT. BUT WHEN YOU TOOK THE METAL CONTAINER FROM
15 SERGEANT RUNNION, YOU PUT IT IN THE HEAT SEALED BAG, DID
16 YOU CHANGE IT OR ALTER IT IN ANY WAY BEFORE YOU PUT IT IN
17 THE HEAT SEALED BAG?

18 A I DIDN'T DO IT AT THE SAME TIME THAT OFFICER RUNNION
19 SUBMITTED IT. IT WAS A COUPLE OF DAYS LATER WHEN I GOT THE
20 REQUEST AND REALIZED THAT IT WOULD HAVE TO GO TO DIFFERENT
21 DIVISIONS OF SLED, AND AT THAT TIME IS WHEN I PULLED IT AND
22 PUT IT IN THAT CONTAINER AND HEAT SEALED IT MYSELF.

23 Q YOU PULLED IT OUT OF THE EVIDENCE LOCKER?

24 A YES.

25 Q DID YOU CHANGE IT OR ALTER IT IN ANY WAY?

DAN DEFREESE - DIRECT BY MR. STONE

272

- 1 A NO, SIR.
- 2 MR. STONE: OKAY. NO FURTHER QUESTIONS OF THIS
- 3 WITNESS, YOUR HONOR.
- 4 MS. CARROWAY: YOUR HONOR, I DON'T HAVE ANY QUESTIONS
- 5 FOR THIS WITNESS.
- 6 THE COURT: THANK YOU VERY MUCH. YOU MAY COME DOWN.
- 7 (THE WITNESS LEAVES THE WITNESS STAND.)
- 8 THE COURT: MAY THIS WITNESS BE EXCUSED?
- 9 MS. CARROWAY: YES, SIR.
- 10 THE COURT: WITHOUT OBJECTION.
- 11 MR. STONE: THANK YOU. DAN DEFREESE.
- 12 DAN DEFREESE, BEING FIRST
- 13 DULY SWORN, TESTIFIED AS FOLLOWS:
- 14 DIRECT EXAMINATION BY MR. STONE:
- 15 Q YOU WOULD BE SPECIAL AGENT DEFREESE?
- 16 A YES, SIR.
- 17 Q IS THAT THE CORRECT TITLE?
- 18 A YES, SIR.
- 19 Q AND WHO DO YOU WORK FOR, SIR?
- 20 A I WORK FOR THE SOUTH CAROLINA LAW ENFORCEMENT
- 21 DIVISION. I'M ASSIGNED TO THE FORENSIC SERVICES LABORATORY
- 22 IN COLUMBIA. AND I WORK IN THE DEPARTMENT WITHIN THE
- 23 LABORATORY WHERE WE ANALYZE FIREARM AND TOOL MARK EVIDENCE.
- 24 Q HOW LONG HAVE YOU DONE THAT?
- 25 A FOR 42 YEARS.

DAN DEFREESE — DIRECT BY MR. STONE

273

1 Q YOU STILL WITH SLED?

2 A YES, SIR.

3 Q AND YOU IN BALLISTICS. DO YOU HAVE OTHER AGENTS THAT
4 WORK UNDER YOU?

5 A NO, NOT CURRENTLY.

6 Q BUT THAT IS YOUR BASIC -- THE BALLISTICS LAB IS YOUR
7 LAB OVER THERE?

8 A YES, SIR. BUT WE REFER TO IT AS FIREARMS
9 IDENTIFICATION, BUT IT'S ALSO REFERRED TO AS BALLISTICS.

10 Q OKAY. WHAT'S THE DIFFERENCE? TELL ME WHAT THAT
11 MEANS?

12 A BALLISTICS ACTUALLY IS THE STUDY OF PROJECTILES IN
13 FLIGHT. BALLISTICS WOULD BE SOMETHING PRACTICED BY NASA
14 FOR INSTANCE, IN FIGURING WHERE THINGS GO IN SPACE, AND
15 LIKE THE FIELD ARTILLERY, KNOWING WHERE THINGS ARE FROM
16 BEING PROJECTED FROM VERY, VERY LARGE GUNS.

17 FIREARMS IDENTIFICATION GENERALLY DEALS WITH THAT
18 PORTION OF THE STUDY OF FIREARMS HAVING TO DO WITH THE
19 IDENTIFICATION OF AMMUNITION COMPONENTS, BEING ABLE TO TELL
20 FOR INSTANCE IF A GIVEN BULLET WERE FIRED BY A SPECIFIC
21 FIREARM OR A GIVEN CARTRIDGE CASE WAS FIRED BY A SPECIFIC
22 FIREARM.

23 AND WE DO THAT BY LOOKING FOR THE SAME CLASS
24 CHARACTERISTICS AND LOOKING FOR INDIVIDUAL CHARACTERISTICS
25 THAT ARE PECULIAR TO ONE AND ONLY ONE GUN. AND WHERE WE

DAN DEFREESE - DIRECT BY MR. STONE

274

1 CAN FIND THAT, WE CAN CONCLUDE THAT A PARTICULAR BULLET,
2 FOR INSTANCE, WAS FIRED BY ONE GUN OR A PARTICULAR
3 CARTRIDGE CASE WAS FIRED BY ONE GUN.

4 Q NOW, DO YOU ALSO MAKE DETERMINATIONS ABOUT PARTICULAR
5 CLASSES OF GUNS OR TYPES OF BULLETS?

6 A WE DO, BECAUSE IN MANY CASES FOR INSTANCE, THE BULLETS
7 ARE TOO BADLY DAMAGED TO BE IDENTIFIED WITH A SPECIFIC GUN
8 BUT THEY MAY POSSESS CERTAIN CLASS CHARACTERISTICS WHERE WE
9 CAN TELL THAT THEY COULD HAVE BEEN FIRED OR COULD NOT HAVE
10 BEEN FIRED BY A GIVEN FIREARM.

11 Q IS IT TOO SIMPLE FOR ME TO SAY THAT THE SIZE OF THE
12 BULLET AND THE CARTRIDGE OF THE GUN HAS TO BE SIMILAR OR IS
13 THAT JUST TOO SIMPLE?

14 A IT'S ONLY A LITTLE MORE COMPLICATED THAN THAT, BECAUSE
15 NORMALLY A CLASS CHARACTERISTIC OF A GIVEN BULLET OR
16 CARTRIDGE CASE WOULD BE THAT IT IS OR IS NOT THE CORRECT
17 CALIBER FOR USE IN A GIVEN FIREARM.

18 Q NOW, FOR YOU TO BE ABLE TO TESTIFY IN COURT TODAY,
19 OTHER THAN YOUR 42 YEARS OF EXPERIENCE, WHAT TYPE OF
20 TRAINING DID YOU RECEIVE?

21 A WELL, MY PRINCIPLE TRAINING I ACTUALLY RECEIVED AT
22 SLED. AFTER I WAS EMPLOYED, I BEGAN A COURSE OF
23 INSTRUCTION THAT LASTED ABOUT 2 AND A HALF YEARS. I
24 STUDIED THE TECHNIQUES OF FIREARM AND TOOL MARK
25 IDENTIFICATION FROM A GENTLEMAN BY THE NAME OF MILLARD

DAN DEFREESE — DIRECT BY MR. STONE

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1 CATE. MR. CATE WAS THE PERSON WHO ESTABLISHED THE SLED
2 LABORATORY WHEN SLED ITSELF WAS ESTABLISHED IN 1947. I
3 ALSO STUDIED UNDER LIEUTENANT CARL STOKES. BUT AFTER ABOUT
4 2 AND A HALF YEARS OF TRAINING, I BEGAN ACCEPTING CASES ON
5 MY OWN AND TESTIFYING AS TO MY RESULTS. AND I'VE BEEN
6 DOING THAT SINCE 1969.

7 Q HAVE YOU EVER BEEN QUALIFIED IN COURT AS AN EXPERT
8 BEFORE?

9 A YES.

10 Q AND IT IS IN -- I WANT TO MAKE SURE I GET THIS RIGHT.
11 NOT BALLISTICS. IT WOULD BE TOOL MARKS AND IDENTIFICATION?

12 A IT WOULD BE FIREARM AND TOOL MARK IDENTIFICATION.

13 MR. STONE: OKAY. YOUR HONOR, AT THIS TIME WE ASK
14 THAT HE BE QUALIFIED AS AN EXPERT IN FIREARMS AND TOOL MARK
15 IDENTIFICATIONS.

16 THE COURT: ANY VOIR DIRE OR OBJECTION?

17 MS. CARROWAY: NO, YOUR HONOR.

18 THE COURT: THANK YOU. YOU MAY PROCEED.

19 Q NOW, LET ME FIRST SHOW YOU WHAT HAS BEEN INTRODUCED
20 INTO EVIDENCE AS STATE'S EXHIBIT 27. I'LL HAND THESE TO
21 YOU INDIVIDUALLY AND TRY NOT TO GET THEM CONFUSED. AND
22 THIS IS PART OF THAT. COULD YOU TELL US, THERE'S SOME RED
23 INITIALS AND RED WRITING ON THAT. WHAT IS THAT?

24 A THOSE ARE MY INITIALS, AND THE DATE IS 7/1/08, WHICH
25 WOULD HAVE BEEN THE DATE THAT I HEAT SEALED THIS POUCH.

DAN DEFREESE - DIRECT BY MR. STONE

276

1 Q OKAY. LET ME OPEN THAT. (PAUSE.) ALL RIGHT. LET ME
2 GO AHEAD AND OPEN THAT UP. TELL US WHAT YOU FIND IN THAT
3 BAG PLEASE?

4 A THESE ARE UN-FIRED .22 LONG RIFLE CALIBER CARTRIDGES.

5 Q LONG RIFLE, DOES THAT MEAN THAT THOSE BULLETS GO INTO
6 A RIFLE INSTEAD OF A HANDGUN?

7 A NO, SIR. THERE ARE A NUMBER OF DIFFERENT .22 CALIBER
8 CARTRIDGES. THE .22 SHORT, THE .22 LONG, AND THE .22 LONG
9 RIFLE ARE THE MOST COMMON. THERE ARE TWO DIFFERENT LENGTHS
10 OF CARTRIDGE CASES USED AND TWO DIFFERENT SIZES OF BULLETS
11 USED TO MAKE THOSE THREE. BUT THE LONG RIFLE CALIBER
12 CARTRIDGE HAS THE LONG CARTRIDGE CASE AND THE LONG -- THE
13 LONGEST BULLET. SO IT SHOOTS THE HEAVIEST BULLET. ALL
14 BULLETS ARE THE SAME DIAMETER.

15 Q ALL RIGHT. LET ME ALSO SHOW YOU WHAT'S BEEN MARKED
16 INTO EVIDENCE AS STATE'S EXHIBIT 29. AND I'LL PUT THIS
17 OVER HERE TO KEEP THEM TOGETHER. COULD YOU IDENTIFY THIS
18 FOR US PLEASE? THIS I THINK ALSO HAS YOUR INITIAL, DOES IT
19 NOT, ON THE BACK?

20 A IT HAS MY INITIAL ON THE LABEL. IT ALSO HAS MY
21 INITIAL ON THE HEAT SEAL AND THE DATE 7/1 OF '08. AND THIS
22 IS A 100-ROUND CAPACITY CARTRIDGE BOX THAT ALSO CONTAINS
23 .22 LONG RIFLE CALIBER CARTRIDGES.

24 Q I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 26.
25 AND ASK IF YOU COULD IDENTIFY THAT AS WELL?

DAN DEFREESE — DIRECT BY MR. STONE

277

1 A YES, THIS IS ALSO A 100-ROUND CAPACITY CARTRIDGE BOX.

2 IT HAS MY INITIALS ON THE SEAL AND THE DATE 7/1 OF '08.

3 AND IT CONTAINS .22 LONG RIFLE CALIBER CARTRIDGES.

4 Q LET ME ASK YOU -- THIS HAS BEEN MARKED AND NOT PLACED

5 IN EVIDENCE YET. STATE'S EXHIBIT 30. THE HEAT SEAL

6 WRAPPING THERE, COULD YOU EXPLAIN THAT PLEASE?

7 A THIS PLASTIC POUCH WAS SEALED ON TWO SIDES -- HEAT

8 SEALED ON TWO SIDES WHEN I RECEIVED IT. I CUT IT OPEN

9 BELOW ONE OF THE HEAT SEALS, SO THAT I COULD RETRIEVE THE

10 CONTENTS OF THE TIN. AND UPON THE CONCLUSION OF MY

11 EXAMINATION, I HEAT SEALED IT AGAIN AND PUT MY INITIALS AND

12 THE DATE THAT I SEALED IT.

13 Q SO THE RED WRITING IS ACTUALLY YOUR INITIALS?

14 A YES, SIR.

15 Q ALL RIGHT. AND INSIDE THE TIN I BELIEVE THERE'S ALSO

16 YOUR INITIALS ON THE OUTSIDE OF THE TIN; IS THAT CORRECT?

17 A THERE IS.

18 Q ALL RIGHT. SO IT WAS SEALED WHEN YOU RECEIVED IT, AND

19 THAT'S THE CONDITION THAT YOU TOOK IT OUT AND STUDIED IT;

20 IS THAT RIGHT?

21 A YES, SIR, EXCEPT, OF COURSE, I HAD NOT WRITTEN ON IT

22 AT THE TIME I RECEIVED IT.

23 Q OKAY.

24 MR. STONE: YOUR HONOR, AT THIS TIME WE MOVE STATE'S

25 EXHIBIT 30 INTO EVIDENCE.

DAN DEFREESE - DIRECT BY MR. STONE

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1 MS. CARROWAY: WITHOUT OBJECTION.

2 THE COURT: WITHOUT OBJECTION.

3 (STATE'S EXHIBIT NO. 30 RECEIVED IN EVIDENCE.)

4 Q LET ME HAND YOU BACK STATE'S EXHIBIT 30. AND I ASK
5 YOU TO GO AHEAD AND BRING THAT CANISTER OUT PLEASE.

6 A YES, SIR. ITEM 30 CONTAINS ANOTHER SMALLER POUCH
7 WHICH I -- IN WHICH I PLACED THE BULLET THAT WAS CONTAINED
8 WITHIN THAT TIN WHEN I RECEIVED IT.

9 Q OKAY. NOW, COULD I ASK YOU TO STEP DOWN OFF THE STAND
10 IF YOU WOULD, PLEASE. PUT THAT RIGHT THERE AND I'LL WALK
11 IT OVER.

12 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

13 Q ALL RIGHT. IF YOU COULD, SHOW THE JURY -- I KNOW YOU
14 WERE LOOKING AT YOUR LITTLE EYE GLASS TO SHOW IT. BUT
15 COULD YOU SHOW THE JURY WHAT'S IN STATE'S EXHIBIT 30?

16 A WITHIN THE TIN OF STATE'S EXHIBIT 30 IS IN MY RECORDS,
17 MY ITEM 11. THAT'S THE REASON ON THE LABEL IT'S MARKED NO.
18 11; THAT'S JUST THE NUMBER THAT I USED IN THE LABORATORY,
19 BECAUSE WE ASSIGN AN ITEM NUMBER TO EVERY ITEM EXAMINED.

20 BUT THERE IS A DAMAGED LEAD BULLET. THE LEAD BULLET
21 ACTUALLY HAS TRACES OF COPPER PLATING ON THE OTHER SIDE OF
22 THE BULLET. THIS BULLET IS CONSISTENT IN ITS SIZE AND
23 WEIGHT WITH BEING A .22 CALIBER BULLET.

24 Q LET ME SHOW YOU THIS WHICH IS STATE'S EXHIBIT 29,
25 WHICH IS THE BOX OF BULLETS THAT HAS ALREADY BEEN

DAN DEFREESE - DIRECT BY MR. STONE

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1 INTRODUCED INTO EVIDENCE. ARE THESE THE SAME TYPE?

2 A THESE ARE THE SAME TYPE IN THAT THEY ARE COPPER PLATED
3 LEAD .22 CALIBER BULLETS.

4 Q OKAY. WHILE I HAVE YOU UP HERE, I'LL SHOW YOU THESE
5 BULLETS AS WELL. THESE BULLETS THAT CAME FROM STATE'S
6 EXHIBIT 27 WITH THE LARGE CUP. I ASK IF THOSE ARE ALSO
7 CONSISTENT?

8 A THESE ARE ALSO PLATED .22 CALIBER BULLETS. THE
9 PLATING ON ALL OF THESE BULLETS IS A COPPER ALLOY. THESE
10 PARTICULAR ONES ARE MORE NEARLY BRASS COLORED, WHEREAS THE
11 OTHER ONES HAVE A MORE DISTINCTIVE COPPER COLOR, OR COPPER
12 TONE TO THEM.

13 Q AND STATE'S EXHIBIT 26 AS WELL?

14 A 26 CONTAINS .22 LONG RIFLE CALIBER, WHICH HAVE THE
15 COPPER COLOR PLATING ON THEM.

16 Q NOW, FROM THIS, WHICH I'M GOING TO REFER BACK TO
17 STATE'S EXHIBIT 30 WHICH APPEARS TO BE MOSTLY DAMAGED. CAN
18 YOU TELL US MUCH ABOUT THIS?

19 A ACTUALLY, IT WAS SO BADLY DAMAGED THAT I COULD NOT
20 TELL THE NUMBER OF LAND AND GROOVE IMPRESSIONS REMAINING ON
21 IT.

22 Q ALL RIGHT. LET ME BACK YOU UP A LITTLE BIT. WHEN YOU
23 SAY LAND AND GROOVE IMPRESSIONS, WHAT ARE YOU TALKING
24 ABOUT?

25 A WITHIN THE INSIDE SURFACE OF THE BORE, THE INSIDE OF

DAN DEFREESE — DIRECT BY MR. STONE

280

1 THE BARREL OF A RIFLE FIREARM, WHICH INCLUDES RIFLES,
2 PISTOLS, AND REVOLVERS, THERE ARE A SERIES OF SPIRALING AND
3 GROOVES THAT WE REFER TO AS RIFLING. WHEN A BULLET PASSES
4 THROUGH THE BARREL AND OUT OF THE GUN, THE RIFLING IS THERE
5 TO GRIP THE BULLET AND TO IMPART A SPIN ON THE BULLET SO
6 THAT THE BULLET WILL BE STABLE IN FLIGHT. THIS IS DONE
7 MUCH IN THE SAME WAY THAT A QUARTERBACK PUTS A SPIN ON A
8 FOOTBALL TO KEEP IT FROM TUMBLING END OVER END IN FLIGHT.

9 IT IS THE MARKS THAT ARE LEFT ON THE BULLET BY THE
10 RIFLING THAT WHEN THEY'RE SUFFICIENTLY UNDATED FORMS THE
11 BASIS OF OUR ABILITY TO IDENTIFY A PARTICULAR BULLET AS
12 BEING FIRED BY A PARTICULAR GUN.

13 IN THIS CASE THIS BULLET WAS SO BADLY DAMAGED THAT IT
14 JUST DID NOT -- IT -- THERE WAS SO LITTLE OF IT LEFT I
15 COULDN'T MAKE A DETERMINATION EVEN OF THE WIDTHS OF THE
16 LAND AND GROOVE IMPRESSIONS LEFT.

17 Q CAN YOU TELL ANYTHING FROM IT AS COMPARED TO THESE
18 OTHER BULLETS?

19 A WELL, ITS WEIGHT IS CONSISTENT WITH THAT OF A .22 LONG
20 RIFLE. IT WEIGHS MORE THAN THE WEIGHT OF A NORMAL .22
21 SHORT OR .22 LONG, WHICH PUTS IT IN THE WEIGHT OF EITHER A
22 .22 LONG RIFLE OR A .22 LONG RIFLE HOLLOW POINT. AND THERE
23 WERE SPECKS OF COPPER PLATING IMBEDDED REMAINING ON THIS
24 SPECIMEN WHEN I EXAMINED IT.

25 Q OKAY. SO THESE BULLETS HERE, ARE THEY CONSISTENT WITH

DAN DEFREESE — DIRECT BY MR. STONE

281

1 ANY OF THESE?

2 A THEY COULD BE, YES. THEY COULD HAVE BEEN FROM A
3 COMMON SOURCE. THEY DON'T NECESSARILY HAVE TO, BUT THEY
4 CERTAINLY COULD HAVE BEEN.

5 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
6 31, WHICH INCLUDES ACTUALLY TWO ITEMS. ONE ARE THE SHELLS
7 AND THE SECOND IS THE GUN ITSELF.

8 A YES, SIR.

9 Q AND DID YOU -- AND I THINK THOSE ARE YOUR INITIALS
10 THERE, ARE THEY?

11 A THEY ARE.

12 Q OKAY. WHAT CAN YOU TELL US ABOUT THESE SHELLS?

13 A WITHIN THIS CONTAINER THERE WERE 5 UNFIRED .22 LONG
14 RIFLE CARTRIDGES WITH COPPER PLATED BULLETS. AND THEN
15 THERE WAS 1 FIRED CARTRIDGE CASE. THE FIREARM I TEST
16 FIRED, AND I OBTAINED BULLETS AND CARTRIDGE CASES THAT I
17 KNEW THIS GUN HAD FIRED FOR PURPOSES OF DOING MY
18 COMPARISONS.

19 I ATTEMPTED TO IDENTIFY THE FIRED CARTRIDGE CASE IN
20 THIS POUCH BACK TO THIS FIREARM, BUT WAS NOT ABLE TO DO SO.
21 THERE WERE SIMILARITIES IN THE MARKINGS, BUT THERE JUST
22 WERE NOT ENOUGH MARKINGS PRESENT ON THIS FIRED CARTRIDGE
23 CASE TO SAY THAT THIS GUN FIRED IT. IT COULD HAVE FIRED
24 IT, BUT I JUST WAS NOT ABLE TO TELL.

25 Q AND THIS -- HOW MANY BULLETS DOES THIS GUN HOLD?

DAN DEFREESE - DIRECT BY MR. STONE

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1 A IT CAN HOLD A MAXIMUM OF 6 CARTRIDGES BEFORE IT HAS TO
2 BE RELOADED.

3 Q OKAY. AND YOU RECEIVED 5 OUT OF THE 6?

4 A WELL, THERE WERE 5 UNFIRED AND 1 FIRED. 1 FIRED
5 CARTRIDGE CASE AND 5 UNFIRED CARTRIDGES RECEIVED IN THIS
6 POUCH.

7 Q OKAY. THESE BULLETS HERE, THEY WOULD FIT INTO THAT
8 GUN OR WOULD THEY NOT?

9 A ANY OF THESE CARTRIDGES WE'VE BEEN TALKING ABOUT WOULD
10 FIT IN THIS GUN.

11 Q NOW, THE GUN ITSELF OBVIOUSLY HAS BEEN ALTERED IN
12 WHATEVER THIS CENTER PIECE IS CALLED. WHAT EFFECT IF ANY
13 DOES THAT HAVE ON THE FIRING OF THAT GUN?

14 A THIS -- THIS IS A MACHINE SCREW THAT'S BEEN
15 SUBSTITUTED FOR THE NORMAL CYLINDER PIN IN THIS REVOLVER.
16 THE NORMAL CYLINDER PIN IS SOMEWHAT SHORTER AND IS NOT AT
17 ALL SHAPED LIKE THIS.

18 THIS PIN IS UNDER-SIZED SO THAT WHEN THE CYLINDER IS
19 CLOSED, THE CYLINDER MOVES BACK AND FORTH MORE THAN IT
20 WOULD BE DOING IF IT HAD ITS ORIGINAL CYLINDER PIN IN IT.

21 THE REVOLVER ITSELF IS ALSO NOT IN THE -- IN NEW
22 CONDITION. IT'S A LONG WAY FROM THAT. AND IT HAS A
23 TENDENCY NOT TO PROPERLY ALIGN THE CYLINDER WITH THE BARREL
24 AT THE TIME OF FIRING. SOME TIMES IT ALIGNS. SOME TIMES
25 IT DOESN'T ALIGN. IT CAUSES THE BULLETS THAT ARE FIRED IN

DAN DEFREESE — DIRECT BY MR. STONE

283

1 THIS GUN TO BE EXTREMELY VARIABLE IN THEIR MARKINGS. IN
2 FACT, THEY'RE GROSSLY DIFFERENT IN APPEARANCE DEPENDING
3 UPON WHETHER THE CYLINDER WAS PROPERLY ALIGNED OR
4 MISALIGNED AT THE INCIDENT FIRING.

5 Q DOES THAT MAKE THAT GUN MORE OR LESS SUSCEPTIBLE TO
6 ACCIDENTAL DISCHARGE?

7 A ACTUALLY, IT DOESN'T. AS PART OF OUR EXAMINATION OF A
8 FIREARM, WE ALSO WILL TAKE A TRIGGER PULL WEIGHT
9 MEASUREMENT.

10 Q AND WHAT IS A TRIGGER PULL WEIGHT MEASUREMENT?

11 A IT IS A WAY OF DETERMINING HOW MUCH EFFORT IS REQUIRED
12 IN ORDER TO MAKE THE TRIGGER FIRE THE GUN. AND THIS IS
13 WHAT'S KNOWN AS A DOUBLE ACTION REVOLVER. IT'S CAPABLE OF
14 FIRING IN TWO DIFFERENT WAYS. ONE OF THEM IS IN A DOUBLE
15 ACTION MODE, WHERE YOU GIVE IT ONE LONG PULL OF THE TRIGGER
16 AND THAT BOTH COCKS THE HAMMER AND THEN AT SOME POINT IT
17 RELEASES THE HAMMER TO FIRE THE GUN.

18 AND IT'S ALSO CAPABLE OF SINGLE ACTION FIRING, WHERE
19 THE HAMMER IS MANUALLY COCKED AND THEN A SOMEWHAT LIGHTER
20 PULL OF THE TRIGGER RELEASES THE HAMMER AND CAUSES THE GUN
21 TO FIRE.

22 I FOUND THE SINGLE ACTION TRIGGER PULL TO BE IN THE
23 RANGE OF 4 1/2 TO 4 3/4 POUNDS, WHICH IS ABOUT WHAT I WOULD
24 EXPECT THIS GUN TO HAVE.

25 AND ITS DOUBLE ACTION TRIGGER PULL WAS IN THE RANGE OF

DAN DEFREESE — CROSS BY MS. CARROWAY

284

1 14 TO 15 POUNDS, WHICH IS A LITTLE ON THE HEAVY SIDE, BUT
2 IT'S STILL WITHIN THE REALM OF NORMAL.

3 Q HEAVY SIDE MAKING IT MORE DIFFICULT ACTUALLY TO FIRE?

4 A YES. AND ITS TRIGGER PULL BEING HEAVY IS PROBABLY DUE
5 TO THE USE OF THE INAPPROPRIATE CYLINDER PIN, WHICH
6 PROBABLY CREATES A BIT MORE FRICTION THAN WOULD BE CREATED
7 BY ITS NORMAL CYLINDER PIN.

8 Q OKAY. OTHER THAN THAT IT FIRES THE SAME AS ANY OTHER
9 GUN?

10 A YES.

11 Q OKAY. YOU CAN TAKE YOUR SEAT.

12 (THE WITNESS RETURNS TO THE WITNESS STAND.)

13 MR. STONE: I DON'T HAVE ANY FURTHER QUESTIONS FOR
14 THIS WITNESS.

15 THE COURT: CROSS EXAMINATION?

16 MS. CARROWAY: THANK YOU, YOUR HONOR.

17 CROSS EXAMINATION BY MS. CARROWAY:

18 Q MR. DEFREESE, JUST SO I'M CLEAR, YOUR TESTIMONY IS
19 THAT YOU DON'T KNOW WHETHER THIS BULLET CAME OUT OF THIS
20 GUN?

21 A THAT'S CORRECT. IT COULD HAVE BEEN FIRED BY THAT GUN,
22 BUT I CAN'T SAY SO FOR CERTAIN.

23 MS. CARROWAY: OKAY. YOUR HONOR, BEG THE COURT'S
24 INDULGENCE FOR JUST ONE MINUTE.

25 (PAUSE.)

BOB BROMAGE - DIRECT BY MR. STONE

285

1 Q MR. DEFREESE, YOU CAN'T TESTIFY THAT THIS GUN FIRED
2 THE PROJECTILE THAT WAS TAKEN FROM KATHY?

3 A THAT'S CORRECT. I DON'T KNOW WHERE THE PROJECTILE
4 CAME FROM. BUT I CAN'T -- I CAN'T TELL YOU FOR CERTAIN
5 THAT STATE'S EXHIBIT 30 WAS FIRED BY THAT GUN.

6 MS. CARROWAY: OKAY. THANK YOU.

7 THE COURT: ANYTHING FURTHER?

8 MS. CARROWAY: NO FURTHER QUESTIONS, YOUR HONOR.

9 MR. STONE: NO, SIR.

10 THE COURT: YOU MAY COME DOWN.

11 (THE WITNESS LEAVES THE WITNESS STAND.)

12 MR. STONE: THE STATE CALLS CAPTAIN BOB BROMAGE FOR
13 JUST BRIEF TESTIMONY, YOUR HONOR.

14 BOB BROMAGE, BEING FIRST DULY
15 SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY MR. STONE:

17 Q YOU ARE CAPTAIN BOB BROMAGE; IS THAT CORRECT?

18 A I AM.

19 Q AND YOU WORK WITH THE BEAUFORT COUNTY SHERIFF'S
20 OFFICE?

21 A YES, SIR, I DO.

22 Q WOULD YOU HAVE BEEN THE HIGHEST RANKING OFFICER IN THE
23 JOSE HERRERA CASE OR THE EVENT THAT TOOK PLACE SEPTEMBER
24 16, 2007?

25 A YES, SIR, I WAS.

BOB BROMAGE — DIRECT BY MR. STONE

286

1 Q AT SOME POINT IN TIME DID YOU HAVE CONTACT WITH MR.
2 HERRERA?

3 A I DID, SIR.

4 Q CAN YOU IDENTIFY HIM IN THE COURTROOM TODAY?

5 A I CAN. HE'S IN THE MIDDLE BETWEEN THE TWO ATTORNEYS,
6 PUBLIC DEFENDERS.

7 MR. STONE: PLEASE LET THE RECORD REFLECT, YOUR HONOR,
8 HE'S IDENTIFIED THE DEFENDANT.

9 THE COURT: SO REFLECT HE'S IDENTIFIED THE DEFENDANT.

10 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
11 28. SPECIFICALLY, INSIDE STATE'S EXHIBIT 28 IS A WHITE
12 ENVELOPE. COULD YOU IDENTIFY THAT FOR US PLEASE?

13 A IT'S A TRI-TECH GUNSHOT RESIDUE EVIDENCE COLLECTION
14 KIT.

15 Q AND EXACTLY WHAT IS A GUNSHOT RESIDUE COLLECTION KIT?

16 A YOU SWAB THE HANDS OF A SUSPECTED PERSON THAT FIRED A
17 GUN AND AT THAT POINT COLLECTS LEAD PARTICLES THAT WOULD BE
18 CONSISTENT WITH GUNSHOT RESIDUE TO BE SENT TO A LAB AND
19 ANALYZED THERE.

20 Q NOW, THE LAB MATERIAL THAT YOU USE, WHERE DO YOU GET
21 THAT FROM?

22 A WHERE DO WE GET THE KITS FROM?

23 Q YES.

24 A THE KITS ARE ORDERED BY BEAUFORT COUNTY SHERIFF'S
25 OFFICE AND ISSUED TO THE INVESTIGATOR STAFF.

BOB BROMAGE -- DIRECT BY MR. STONE

287

1 Q AND THESE ARE THE ONES YOU USE ON A ROUTINE BASIS?

2 A YES, SIR, THEY ARE.

3 Q DO YOU RECEIVE ANY TYPE OF SPECIAL TRAINING OR
4 ANYTHING LIKE THAT IN ORDER TO LEARN HOW TO TAKE GUNSHOT
5 RESIDUE TESTS?

6 A YES. I ATTENDED A FORENSIC SCIENCE INTERNSHIP AT
7 SOUTH CAROLINA LAW ENFORCEMENT DIVISION IN 1999. BUT THESE
8 ACTUALLY HAVE INSTRUCTIONS INSIDE THAT ARE VERY EASY TO
9 FOLLOW.

10 Q SO THIS IS NOT SOMETHING THAT NECESSARILY REQUIRES
11 EXPERT TESTIMONY FROM YOUR SIDE?

12 A NO. IT TAKES SOMEBODY SHOWING YOU TO DO IT ONCE, AND
13 YOU CAN DO IT AFTER THAT.

14 Q NOW, LITERALLY -- AND I APOLOGIZE FOR INTERRUPTING.
15 WHAT DO YOU DO LITERALLY?

16 A THERE ARE TWO DIFFERENT COMPONENTS IN THIS GUNSHOT
17 RESIDUE KIT. THERE ARE SOME THAT HAVE A -- FOR LACK OF A
18 BETTER WORD -- MAGNETIC OR DOUBLE SIDED TAPE TO THEM AND
19 YOU PUT THEM ON THE HANDS OF THE SUBJECT, ON THE FRONT AND
20 BACK OF THE HANDS AND BOTH HANDS, THEN YOU SEAL THOSE AND
21 PUT THEM INTO THE ENVELOPE.

22 AND THEN THERE'S NITRIC ACID THAT YOU ACTUALLY PUT ON
23 A COTTON SWAB. AND, AGAIN, GO ON THE FRONT AND THE BACK OF
24 THE HANDS OF THE SUBJECT, AND YOU SEAL THOSE IN LITTLE
25 CONTAINERS, PUT THEM IN THERE. FILL OUT THE PAPERWORK, AND

BOB BROMAGE — DIRECT BY MR. STONE

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1 SEAL THE ACTUAL ENVELOPE WHICH WOULD HAVE A SIGNATURE ON
2 IT.

3 Q THIS ENVELOPE, WHICH IS A WHITE ENVELOPE INSIDE THE
4 YELLOW ENVELOPE OF STATE'S EXHIBIT 28, THIS IS THE ENVELOPE
5 YOU FILL OUT; IS THAT CORRECT?

6 A THAT'S CORRECT.

7 Q THIS IS YOUR HANDWRITING ON THE FRONT?

8 A THAT IS.

9 Q NOW, THERE'S A RED EVIDENCE SEAL WITH SOME INITIALS ON
10 THE BACK. WOULD YOU TELL ME ABOUT THAT PLEASE?

11 A YES, SIR, THAT'S R.E.B. MY NAME IS ROBERT EDWARD
12 BROMAGE; THAT'S MY INITIALS THAT I DID ON THE -- GIVE ME A
13 SECOND TO LOOK AT MY REPORT.

14 Q SURE.

15 A ON SEPTEMBER 16, 2007 I ACTUALLY SEALED THIS ENVELOPE
16 AND IT WAS ABOUT 8:00 O'CLOCK IN THE EVENING.

17 Q 8:00 O'CLOCK P.M.?

18 A P.M., YES, SIR.

19 Q AND IS THIS THE TEST SAMPLE THAT YOU TOOK FROM JOSE
20 HERRERA ON THE 16TH?

21 A YES, HE VOLUNTEERED A SAMPLE.

22 Q AND YOU TOOK THEM YOURSELF?

23 A I DID.

24 Q AND THEN WHEN YOU SEALED THIS ENVELOPE, DID ANYONE
25 ELSE -- THIS IS YOUR EVIDENCE TAPE HERE, THE RED?

ILA SIMMONS — DIRECT BY MR. STONE

289

1 A THE RED IS MY EVIDENCE TAPE.

2 Q OKAY. AND DID YOU DO ANYTHING OTHER THAN PUT THEM IN
3 THE ENVELOPE AND MARK THEM AND SEAL THEM?

4 A COLLECT THEM, FILL OUT THE PAPERWORK, SEAL IT, AND
5 THEN I RETURN IT TO OUR EVIDENCE SECTION.

6 Q AND THEN IT GOES TO STATE LAW ENFORCEMENT?

7 A STATE LAW ENFORCEMENT DIVISION.

8 MR. STONE: ALL RIGHT. I DON'T HAVE ANY FURTHER
9 QUESTIONS AT THIS TIME OF THIS WITNESS, YOUR HONOR.

10 MS. CARROWAY: YOUR HONOR, I DON'T HAVE ANY QUESTIONS
11 OF THIS WITNESS.

12 THE COURT: ALL RIGHT. YOU MAY COME DOWN.

13 (THE WITNESS LEAVES THE WITNESS STAND.)

14 MR. STONE: THE STATE CALLS ILA SIMMONS.

15 ILA SIMMONS, BEING FIRST DULY
16 SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION BY MR. STONE:

18 Q MS. SIMMONS, WHAT DO YOU DO, MA'AM?

19 A I'M EMPLOYED AT THE SOUTH CAROLINA LAW ENFORCEMENT
20 DIVISION FORENSIC LABORATORY IN THE TRACE EVIDENCE
21 DEPARTMENT.

22 Q WHAT IS TRACE EVIDENCE EXACTLY?

23 A IT ENCOMPASSES SEVERAL AREAS OF FORENSICS. WE ANALYZE
24 GUNSHOT RESIDUE, GUNPOWDER RESIDUE. WE PERFORM FIBER AND
25 PAINT COMPARISONS. AND WE ANALYZE ARSON AND EXPLOSIVE

ILA SIMMONS - DIRECT BY MR. STONE

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- 1 RESIDUES.
- 2 Q YOU ANALYZE ALL OF THOSE?
- 3 A YES, SIR, I DO.
- 4 Q AND HOW LONG HAVE YOU BEEN IN THAT TYPE OF LAB?
- 5 A ALMOST 9 YEARS.
- 6 Q AND ALL OF THE TIME, THE ENTIRE TIME AT SLED?
- 7 A YES, SIR.
- 8 Q NOW, WHAT TYPE OF TRAINING DID YOU RECEIVE IN ORDER TO
- 9 ALLOW YOU TO DO THIS TYPE OF TESTING?
- 10 A I HAVE A BACHELOR OF SCIENCE DEGREE IN CHEMISTRY.
- 11 AFTER COMPLETING THAT, I WENT TO WORK AT SLED, WHERE I
- 12 WORKED 3 YEARS WITH A COURT-QUALIFIED SLED CERTIFIED TRACE
- 13 EVIDENCE EXAMINER WHO TAUGHT ME HOW TO COLLECT AND ANALYZE
- 14 ALL AREAS OF TRACE EVIDENCE. I'M ALSO A MEMBER OF THE
- 15 FBI'S G.S.R. OR GUNSHOT RESIDUE SYMPOSIUM WHERE THE FBI
- 16 INVITES PEOPLE FROM ALL AROUND THE WORLD THAT ANALYZE
- 17 GUNSHOT RESIDUE TO COME AND SET UP STANDARDS AND PRACTICES
- 18 FOR ANALYZING G.S.R.
- 19 Q HAVE YOU BEEN QUALIFIED IN COURT AS AN EXPERT IN THIS
- 20 FIELD BEFORE?
- 21 A YES, SIR, OVER 125 TIMES.
- 22 Q HOW MANY?
- 23 A OVER 125 TIMES.
- 24 Q LET ME BACKUP JUST A MINUTE AND ASK YOU SOMETHING.
- 25 GUNSHOT RESIDUE, WHAT EXACTLY ARE WE TALKING ABOUT? HOW

ILA SIMMONS - DIRECT BY MR. STONE

291

1 CAN YOU TEST THIS? WHAT ---

2 A GUNSHOT RESIDUE IS A MIXTURE OF MICROSCOPIC CHEMICALS
3 THAT COME OUT OF A GUN WHEN IT'S FIRED. IT CAN GET ON
4 ANYTHING IN CLOSE PROXIMITY TO THE GUN WHEN THE GUN IS
5 DISCHARGED, INCLUDING THE HANDS OF THE PERSON HOLDING THE
6 WEAPON.

7 A STANDARDIZED KIT IS COLLECTED AND WE CAN ANALYZE FOR
8 SPECIFIC METALS THAT ARE FOUND IN GUNSHOT RESIDUE TO HELP
9 US DETERMINE WHETHER OR NOT SOMEONE'S HANDS WERE IN THE
10 VICINITY OF THE WEAPON WHEN IT WAS FIRED.

11 MR. STONE: OKAY. YOUR HONOR, AT THIS TIME WE WOULD
12 OFFER HER AS AN EXPERT IN THE FIELD OF TRACE EVIDENCE, AND
13 SPECIFICALLY GUNSHOT RESIDUE TEST RESULTS AND ANALYSIS.

14 THE COURT: ANY VOIR DIRE OR OBJECTION?

15 MS. CARROWAY: NO, YOUR HONOR.

16 THE COURT: ALL RIGHT. YOU MAY PROCEED.

17 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
18 28, BUT INSIDE OF THAT IS A WHITE ENVELOPE. DO YOU
19 RECOGNIZE THAT ENVELOPE?

20 A YES, SIR, THIS IS THE GUNSHOT RESIDUE EVIDENCE KIT
21 THAT I ANALYZED. IT'S MARKED WITH OUR LABORATORY
22 IDENTIFICATION NUMBER AS WELL AS AN ITEM NUMBER, THE DATE
23 THE KIT WAS OPENED FOR ANALYSIS, AND MY INITIALS.

24 Q NOW, THE RED TAPE THAT SEALS THIS UP TOP WITH THE
25 INITIALS -- I BELIEVE IT'S R.B. OR SOMETHING LIKE THAT ---

ILA SIMMONS - DIRECT BY MR. STONE

292

- 1 A YES, SIR.
- 2 Q --- THAT IS NOT YOU; IS THAT CORRECT?
- 3 A NO, SIR, THAT IS NOT.
- 4 Q WHEN YOU RECEIVE THIS, THIS IS HOW YOU RECEIVE IT
- 5 ALREADY SEALED?
- 6 A YES, SIR, IT IS ALREADY SEALED BY THE PERSON WHO
- 7 COLLECTS THE KIT AND INITIALED.
- 8 Q OKAY. AND YOU BREAK THAT SEAL?
- 9 A YES, SIR, I DID.
- 10 Q AND THEN AFTER YOU BREAK THE SEAL, YOU TEST WHAT'S
- 11 INSIDE OF IT?
- 12 A YES, SIR.
- 13 MR. STONE: ALL RIGHT. AT THIS TIME, YOUR HONOR, WE
- 14 MOVE STATE'S EXHIBIT 28 INTO EVIDENCE.
- 15 MS. CARROWAY: WITHOUT OBJECTION.
- 16 THE COURT: WITHOUT OBJECTION.
- 17 (STATE'S EXHIBIT NO. 28 RECEIVED IN EVIDENCE.)
- 18 Q NOW, LET ME ASK YOU IF YOU WOULD PLEASE WHAT THE
- 19 RESULTS OF THE TEST THAT YOU RAN ON STATE'S EXHIBIT 28?
- 20 A WITHIN THIS KIT THERE ARE COLLECTION SAMPLES FROM --
- 21 ONE SAMPLE FROM THE RIGHT PALM, A SAMPLE FROM THE BACK OF
- 22 THE RIGHT HAND, ANOTHER SAMPLE FROM THE LEFT PALM, AND A
- 23 SAMPLE FROM THE BACK OF THE LEFT HAND.
- 24 ON THE RIGHT PALM I FOUND THAT GUNSHOT RESIDUE WAS
- 25 FOUND.

ILA SIMMONS -- DIRECT BY MR. STONE

293

1 ON THE BACK AREA OF THE RIGHT HAND I FOUND THAT
2 GUNSHOT RESIDUE WAS FOUND.

3 ON THE PALM OF THE LEFT HAND, GUNSHOT RESIDUE WAS ALSO
4 FOUND.

5 ON THE BACK OF THE LEFT HAND, ROUND LEAD PARTICLES
6 WERE FOUND. ROUND LEAD IS A COMPONENT OF GUNSHOT RESIDUE.

7 Q SO IN YOUR TESTING WAS THERE GUNSHOT RESIDUE ON THE
8 HAND THAT CAME FROM THAT TEST?

9 A YES.

10 Q ON BOTH THE FRONT AND THE BACK ON BOTH HANDS?

11 A YES. A COMPONENT ON -- WE LOOK FOR THREE ELEMENTS.
12 ON THE RIGHT PALM, ON THE BACK OF THE RIGHT HAND AND ON THE
13 LEFT PALM, ALL THREE ELEMENTS WERE FOUND. ON THE BACK OF
14 THE LEFT HAND WE ONLY FOUND ONE OF THE ELEMENTS THAT WE'RE
15 LOOKING FOR, BUT THAT IS A COMPONENT OF GUNSHOT RESIDUE.

16 Q SO IT IS POSITIVE ON ALL OF THOSE HANDS?

17 A YES, SIR.

18 Q NOW, HOW LONG DOES GUNSHOT RESIDUE STAY ON SOMEBODY'S
19 HANDS?

20 A GUNSHOT RESIDUE BEGINS TO FALL AWAY IMMEDIATELY. IF I
21 WERE TO FIRE A GUN NOW, AS SOON AS I STARTED MAKING CONTACT
22 WITH THINGS, THE GUNSHOT RESIDUE WOULD BEGIN TO BE REMOVED.
23 IT HAS A CONSISTENCY OF FLOUR. IT'S VERY LIGHT, VERY EASY
24 TO JUST SLUFF OFF THE HANDS. IF I WERE TO WASH MY HANDS,
25 IT WOULD BE GONE.

- 1 ON A LIVING PERSON, GUNSHOT RESIDUE WILL NOT LAST
2 LONGER THAN 6 HOURS, AND THAT IS THE FARTHEST EXTREME --
3 THAT IS THE FARTHEST WE HAVE EVER SEEN IT REMAIN ON
4 SOMEONE'S HANDS.
- 5 Q NOW, YOU CAN'T TELL, I'M ASSUMING FROM THAT TEST
6 WHETHER OR NOT WHAT TIME FRAME, CAN YOU?
- 7 A NO, SIR. IT WAS JUST WITHIN 6 HOURS OF THE COLLECTION
8 KIT.
- 9 Q OKAY. 6 HOURS OF THE COLLECTION KIT?
- 10 A YES, OF THE INCIDENT, THE COLLECTION KIT BEING
11 COLLECTED. IT HAD TO HAVE BEEN WITHIN 6 HOURS OF THE
12 SHOOTING.
- 13 Q I UNDERSTAND. BUT YOU CAN'T TIME IT FROM THAT?
- 14 A NO, SIR, I CANNOT.
- 15 Q WHY IS IT COMES OFF? I KNOW IT'S THE CONSISTENCY OF
16 FLOUR. BUT WHY DOES IT COME OFF OF YOUR SKIN?
- 17 A BECAUSE IT'S VERY LIGHT, AND IT'S SMALL, ROUND,
18 MICROSCOPIC PARTICLES. SO IF YOU START SWEATING OR YOUR
19 SKIN IS ABSORBING THINGS AS IT DOES ALL THE TIMES, IT
20 BEGINS TO REMOVE FROM YOUR HANDS.
- 21 Q DO THE LEVELS OF GUNSHOT RESIDUE DROP AS THEY COME OFF
22 THE SKIN? IN OTHER WORDS, ARE THEY HIGHER CLOSER TO THE
23 GUNSHOT AS OPPOSED TO LATER ON?
- 24 A YES, SIR.
- 25 Q 6 HOUR WINDOW?

ILA SIMMONS - CROSS BY MS. CARROWAY

295

1 A YES, SIR, AS SOON AS THE GUN WAS FIRED, THE GUNSHOT
2 RESIDUE BEGINS TO DIMINISH. THE CONCENTRATIONS WILL GET
3 LESS AND LESS.

4 Q CAN YOU TELL ANYTHING FROM THE CONCENTRATION OF THAT
5 TEST?

6 A YES, SIR, I CAN.

7 Q WHAT CAN YOU TELL US?

8 A I CAN TELL YOU THAT THE CONCENTRATIONS THAT ARE FOUND
9 ARE CONSISTENT WITH FIRING A WEAPON, BUT I CAN'T SAY HOW
10 RECENTLY TO THE KIT.

11 MR. STONE: OKAY. THANK YOU VERY MUCH. I DON'T HAVE
12 ANY FURTHER QUESTIONS.

13 THE COURT: CROSS EXAMINATION?

14 MS. CARROWAY: THANK YOU, YOUR HONOR.

15 CROSS EXAMINATION BY MS. CARROWAY:

16 Q MS. SIMMONS, JUST A COUPLE OF QUESTIONS. YOU CAN'T
17 TELL WHAT KIND OF GUN WAS SHOT?

18 A NO, MA'AM.

19 Q OKAY. AND YOU SAID IT CAN BE ON YOUR HANDS UP TO 6
20 HOURS?

21 A THAT'S A POSSIBILITY, YES.

22 MS. CARROWAY: BEG THE COURT'S INDULGENCE JUST A
23 MINUTE, YOUR HONOR.

24 (PAUSE.)

25 MS. CARROWAY: NO FURTHER QUESTIONS.

1 THE COURT: ANY REDIRECT?

2 MR. STONE: NO FURTHER QUESTIONS FOR THIS WITNESS,
3 YOUR HONOR.

4 THE COURT: YOU MAY COME DOWN, MA'AM. THANK YOU.

5 (THE WITNESS LEAVES THE WITNESS STAND.)

6 THE COURT: ANY OBJECTION TO EXCUSING THIS WITNESS?

7 MS. CARROWAY: NO, YOUR HONOR.

8 MR. STONE: NONE FROM THE STATE, YOUR HONOR.

9 THE REMAINING WITNESSES, YOUR HONOR, ARE CONCERNING
10 THE PREVIOUS ISSUES.

11 THE COURT: APPROACH THE BENCH.

12 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
13 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

14 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE
15 JURY, THE ATTORNEYS TELL ME THAT THE NEXT WITNESS MAY BE
16 SOMEWHAT LENGTHY AND IT'S A QUARTER TO 5:00. JUST LOOKING
17 AT MY NOTES, WE'VE BEEN THROUGH 16 OR 17 WITNESSES TODAY;
18 THAT'S A GOOD DAY'S WORK.

19 SO I'M GOING TO EXCUSE YOU NOW FOR THE EVENING, ASK
20 YOU TO BE BACK IN THE JURY ROOM AT 9:30 AT WHICH TIME WE
21 WILL RE-COMMENCE THE TRIAL. AGAIN, DON'T DISCUSS THIS CASE
22 WITH ANYONE ELSE OVER THE EVENING HOURS OR WHEN YOU RETURN
23 TO THE JURY ROOM AMONG YOURSELVES.

24 I'LL ALSO CAUTION YOU AGAIN ABOUT READING ANY PRESS
25 REPORTS. I DON'T KNOW THAT THERE WILL BE ANY PRESS

1 REPORTS, BUT THERE MAY BE. SO I'M GOING TO ASK YOU NOT TO
2 READ ANY PRESS REPORTS ABOUT THE CASE IF THEY DO IN FACT
3 APPEAR.

4 AND ONE OTHER THING -- AND I KNOW YOU WOULDN'T DO IT.
5 BUT SOME TIMES JURIES HAVE A TENDENCIES TO WANT TO DO A
6 LITTLE INVESTIGATION ON THEIR OWN. AND SOME TIMES I'VE HAD
7 IT HAPPEN, JURIES LOOK THINGS UP AT NIGHT ON THE INTERNET,
8 YOU KNOW, AND TRY TO SOLVE THE CSI THEMSELVES OR TRY TO GO
9 BY THE SCENE OF WHERE SOMETHING MIGHT OR MIGHT NOT HAVE
10 HAPPENED IN AN EFFORT TO TRY TO MAYBE BETTER UNDERSTAND --
11 AND HARMLESSLY DOING SO. BUT I'LL ASK YOU NOT TO DO THAT,
12 NOT TO TRY TO INVESTIGATE THIS CASE ON YOUR OWN.

13 I'LL ASK YOU JUST TO RELAX OVER THE EVENING HOURS.
14 HAVE A PLEASANT MEAL AND HAVE A PLEASANT EVENING AND WE'LL
15 SEE YOU AT 9:30 IN THE MORNING.

16 THANK YOU VERY MUCH.

17 (THE JURY EXITS THE COURTROOM AT 4:45 P.M.)

18 THE COURT: WE'LL STAND AT EASE UNTIL 9:30.

19 (COURT IS IN RECESS.)

20 (WEDNESDAY, MARCH 18, 2009.)

21 THE COURT: ALL RIGHT. SOLICITOR, ARE YOU READY TO
22 PROCEED?

23 MR. STONE: THE STATE'S READY, YOUR HONOR.

24 THE COURT: DEFENSE READY?

25 MS. CARROWAY: JUDGE COOPER, THERE'S ONE THING THAT

1 WAS JUST BROUGHT TO MY ATTENTION AND I JUST WANT TO
2 CLARIFY. I'M NOT SURE. SOLICITOR STONE INTENDS TO PASS
3 OUT COPIES OF THE TRANSCRIPT OF JUST THE ONE PARTICULAR
4 STATEMENT TO THE JURY, THAT WILL BE FOR THEIR CLARIFICATION
5 WHILE THE TAPE IS PLAYING IN THE COURTROOM. THEY WOULDN'T
6 BE ALLOWED TO TAKE THOSE BACK WITH THEM?

7 MR. STONE: THAT'S FINE.

8 MS. CARROWAY: OKAY. BUT THE PORTIONS THAT YOU HANDED
9 THEM ARE NOT HIGHLIGHTED IN ANY WAY?

10 MR. STONE: THEY'RE NOT. I'LL GIVE THE COURT A COPY
11 AS WELL.

12 MS. CARROWAY: OKAY.

13 MR. STONE: IN FACT, THEY'RE NOT NUMBERED AS WELL, SO
14 THERE'S NO INDICATION THAT THERE'S A SKIP WITH THE
15 REDACTION.

16 COULD I MAKE THIS A COURT'S EXHIBIT, YOUR HONOR.

17 (TRANSCRIPT MARKED FOR IDENTIFICATION AS COURT'S
18 EXHIBIT NO. 3.)

19 MR. STONE: AND I INTEND, YOUR HONOR, JUST TO CLARIFY.
20 THIS, TO INTRODUCE THE SOUND OF THE TAPE BUT NOT THE ACTUAL
21 DISK ITSELF BECAUSE IT HAS OTHER MATERIAL ON THERE AS WELL.
22 I COULD DO IT ONE OF TWO WAYS. I COULD CERTAINLY TAKE THAT
23 OFF AND CREATE A NEW DISK, BUT I DON'T KNOW THAT THAT'S
24 NECESSARY JUST FOR PLAYING IT TO THE JURORS.

25 THE COURT: I DON'T SEE ANYTHING OBJECTIONABLE, BUT

RHETT PARNELL - DIRECT BY MR. STONE

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1 I'M NOT AS TECHY AS YOU ARE.

2 MR. STONE: I'M NOT EITHER. I'M JUST SUFFERING
3 THROUGH.

4 THE COURT: ALL RIGHT. MS. CARROWAY, ARE YOU READY TO
5 PROCEED?

6 MS. CARROWAY: YES, SIR.

7 THE COURT: BRING US THE JURY.

8 (THE JURY RETURNS TO THE COURTROOM AT 9:48 A.M.)

9 BAILIFF: THE JURY IS SEATED, YOUR HONOR.

10 THE COURT: THANK YOU VERY MUCH. GOOD MORNING, LADIES
11 AND GENTLEMEN.

12 JURORS: GOOD MORNING, JUDGE.

13 THE COURT: I HOPE YOU HAD A PLEASANT EVENING. WE'RE
14 NOW READY TO CONTINUE WITH THE TRIAL.

15 SOLICITOR, YOU MAY CALL YOUR NEXT WITNESS.

16 MR. STONE: THANK YOU, YOUR HONOR. CORPORAL RHETT
17 PARNELL.

18 RHETT PARNELL, BEING FIRST
19 DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION BY MR. STONE:

21 Q CORPORAL PARNELL, YOU ARE WITH BEAUFORT SHERIFF'S
22 OFFICE, OBVIOUSLY; IS THAT CORRECT?

23 A YES, SIR, THAT IS.

24 Q AND HOW LONG HAVE YOU BEEN WITH THE SHERIFF'S
25 DEPARTMENT?

RHETT PARNELL - DIRECT BY MR. STONE

300

- 1 A ABOUT 7 AND A HALF YEARS.
- 2 Q AND ON SEPTEMBER 16, 2007 YOU WERE WITH THE SHERIFF'S
- 3 DEPARTMENT AT THAT TIME?
- 4 A YES, SIR.
- 5 Q AND IN WHAT POSITION?
- 6 A I WAS A LANCE CORPORAL AT THE TIME, JUST ROAD PATROL.
- 7 Q AND WAS THAT REGIONALIZED AT ALL OR THROUGH THE ENTIRE
- 8 COUNTY?
- 9 A REGIONALIZED TO THE BLUFFTON AND HILTON HEAD SIDE.
- 10 Q DID YOU RESPOND TO 150 CHERRY POINT ROAD ON SEPTEMBER
- 11 16, 2007?
- 12 A YES, SIR, I DID.
- 13 Q AND WHEN YOU GOT THERE, WHAT DID YOU FIND?
- 14 A WE LOCATED MR. HERRERA IN THE ROAD, DIRECTLY IN FRONT
- 15 OF HIS HOUSE.
- 16 Q DID YOU GO BY YOURSELF OR WERE YOU WITH OTHER
- 17 OFFICERS?
- 18 A NO, SIR. I WAS WITH 2 OTHER OFFICERS IN SEPARATE
- 19 PATROL CARS.
- 20 Q ALL 3 OF YOU ROLLED UP?
- 21 A YES, SIR.
- 22 Q ALL RIGHT. NOW, AT THE TIME THAT YOU GOT THERE, DID
- 23 YOU TALK TO MR. HERRERA?
- 24 A YES, SIR, I DID.
- 25 Q AND THIS WAS WHEN YOU INITIALLY GOT TO THE SCENE; IS

RHETT PARNELL - DIRECT BY MR. STONE

301

1 THAT CORRECT?

2 A THAT'S CORRECT.

3 Q WAS MR. HERRERA IN CUSTODY OR RESTRAINED IN ANY WAY?

4 A NO, SIR.

5 Q WHAT DID YOU TALK TO MR. HERRERA ABOUT? WHAT DID HE
6 TELL YOU?

7 A WE SIMPLY ASKED HIM WHAT HAPPENED. HE WAS THE BEST
8 WITNESS WE HAD.

9 Q AND WHAT DID HE SAY?

10 A HE SAID THAT HE HAD WENT OUT TO THE LOCAL STORE. ON
11 HIS WAY BACK HE DISCOVERED HIS WIFE WAS DECEASED IN THEIR
12 MASTER BATHROOM.

13 Q DID YOU AT SOME POINT ASK HIM TO WRITE A STATEMENT, A
14 WITNESS STATEMENT?

15 A YES, SIR, I DID.

16 Q AND WHERE DID THAT TAKE PLACE?

17 A TOOK PLACE ON THE TRUNK OF MY PATROL CAR, RIGHT IN
18 FRONT OF THE HOUSE.

19 Q DID YOU THREATEN HIM OR COERCE HIM IN ANY WAY TO GET
20 HIM TO WRITE THAT STATEMENT?

21 A NO, SIR.

22 Q AND AT THAT TIME HE WAS A WITNESS WRITING YOU A
23 STATEMENT?

24 A THAT'S CORRECT.

25 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT

RHETT PARNELL - DIRECT BY MR. STONE

302

1 20. FIRST, LET ME JUST ASK, CAN YOU IDENTIFY THAT?

2 A THAT'S THE STATEMENT HE GAVE.

3 Q AND WHEN YOU SAY HE GAVE IT, DID HE WRITE IT OR DID
4 YOU WRITE IT?

5 A NO, SIR. THAT'S HIS HANDWRITING.

6 Q AND IS THAT HIS SIGNATURE AT THE BOTTOM?

7 A YES, SIR.

8 MR. STONE: YOUR HONOR, AT THIS TIME WE INTRODUCE
9 STATE'S EXHIBIT NO. 20.

10 THE COURT: OVER THE DEFENSE OBJECTION; IS THAT
11 CORRECT?

12 MS. CARROWAY: YES, YOUR HONOR.

13 THE COURT: SO ADMITTED.

14 (STATE'S EXHIBIT NO. 20 RECEIVED IN EVIDENCE.)

15 MR. STONE: YOUR HONOR, AT THIS TIME I'D ASK TO BE
16 ABLE TO PUBLISH THIS TO THE JURY.

17 THE COURT: GO RIGHT AHEAD.

18 MR. STONE: STATEMENT OF JOSE HERRERA. SEPTEMBER 16,
19 2007. WOKE UP ABOUT 9:00 A.M. MY WIFE CALLED HER FRIEND
20 AROUND 10:00 A.M. TOOK SHOWER. WE BOTH GOT READY TO GO TO
21 HER HOUSE. LEFT ABOUT 10:40 A.M. WENT TO WALMART IN
22 BEAUFORT TO BUY AMMUNITION FOR HER NEW MOSSBERG .12 GAUGE,
23 THEN BOUGHT BEER AT BP STATION ON HIGHWAY 170 AND HIGHWAY
24 280. GOT TO HER HOUSE AND HAD A BBQ DINNER AND SHOT WEAPON
25 ALL DAY, AS WELL AS PAINTBALL WARS. CAME BACK AT AROUND

RHETT PARNELL - DIRECT BY MR. STONE

303

1 4:15 TO PICK UP HER DAUGHTER BY 5:00 AT THE HARDEEVILLE
2 WALMART PARKING LOT BY GARDEN SECTION. WENT BACK TO
3 BEAUFORT WALMART TO EXCHANGE SHOTGUN FOR REASON BEING THAT
4 IT WAS JAMMING. FRUSTRATION CAUSED HER TO FORGET ABOUT IT
5 AT MOMENT BEING, SO CAME BACK HOME. I DROPPED MY WIFE,
6 KATHERINE LYNN HERRERA, AND HER DAUGHTER, MADISON PAIGE
7 AUST, AT 150 CHERRY POINT ROAD SOUTH. WAS ON MY WAY TO THE
8 STORE TO BUY BEER AND REMEMBERED I STILL HAD SOME IN GARAGE
9 FROM PREVIOUS NIGHT. TURNED AROUND TO COME HOME. WAS GONE
10 APPROXIMATELY 15 TO 20 MINUTES. ON ARRIVAL I LOOKED FOR MY
11 WIFE. LOOKED AROUND HOUSE TO FIND HER LAYING ON SIDE BY
12 TOILET. CALLED 9-1-1 AND GOT HER DAUGHTER OUT OF THE
13 HOUSE. OFFICERS ARRIVED IN UNKNOWN SITUATION AT THIS
14 POINT. SIGNED JOSE A. HERRERA, 9/16/07.

15 IS THAT THE STATEMENT YOU RECEIVED FROM HIM THAT DAY?

16 A YES, SIR, IT IS.

17 MR. STONE: I DON'T HAVE ANY FURTHER QUESTIONS OF THIS
18 WITNESS, YOUR HONOR.

19 THE COURT: CROSS EXAMINATION?

20 MS. CARROWAY: I DON'T HAVE ANY QUESTIONS OF THIS
21 WITNESS, YOUR HONOR.

22 THE COURT: YOU MAY COME DOWN. THANK YOU VERY MUCH.

23 (THE WITNESS LEAVES THE WITNESS STAND.)

24 THE COURT: THE WITNESS BE EXCUSED?

25 MR. STONE: HE MAY, YOUR HONOR.

BOB BROMAGE — DIRECT BY MR. STONE

304

1 THE COURT: WITHOUT OBJECTION.

2 MR. STONE: THE STATE CALLS CAPTAIN BOB BROMAGE TO THE
3 STAND.

4 ROBERT E. BROMAGE, BEING
5 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY MR. STONE:

7 Q CAPTAIN BROMAGE, YOU'RE WITH THE BEAUFORT COUNTY
8 SHERIFF'S OFFICE?

9 A I AM, SIR.

10 Q AND HOW LONG HAVE YOU BEEN WITH THE SHERIFF'S OFFICE?

11 A 18 AND A HALF YEARS.

12 Q WHAT DO YOU DO, SIR, WITH THEM?

13 A I DO DEATH INVESTIGATION, HOMICIDE AND COLD CASE
14 INVESTIGATION THROUGHOUT THE COUNTY.

15 Q AND YOU'RE A CAPTAIN NOW; IS THAT CORRECT?

16 A I AM, SIR.

17 Q FOR THE PURPOSE OF THIS CASE THAT TOOK PLACE ON
18 SEPTEMBER 16, 2007, WOULD YOU HAVE BEEN THE HIGHEST RANKING
19 OFFICER ON THE SCENE?

20 A I WAS, SIR.

21 Q NOW, WHEN DID YOU FIRST FIND OUT ABOUT THIS? HOW DID
22 YOU GET INVOLVED?

23 A PROBABLY AROUND A QUARTER TO 7:00 THAT NIGHT.

24 Q OKAY.

25 A I WAS THE COMMAND DUTY OFFICER FOR THE COUNTY THAT

BOB BROMAGE — DIRECT BY MR. STONE

305

1 NIGHT, JUST SO HAPPENED.

2 Q WHAT IS THE COMMAND DUTY OFFICER?

3 A TWICE A MONTH AN OFFICER WITH THE RANK OF LIEUTENANT
4 OR ABOVE WILL BE COMMAND DUTY TO ANSWER MEDIA CALLS, TO
5 ASSIST IN ANYTHING THAT'S GOING ON, MAJOR INCIDENTS
6 THROUGHOUT THE COUNTY.

7 Q AND YOU WERE ON CALL THAT NIGHT?

8 A I WAS.

9 Q HOW DID YOU FIND OUT ABOUT THIS SITUATION?

10 A I GOT A CALL FROM DISPATCH TO MY RECOLLECTION.

11 Q AND WHAT DID YOU DO?

12 A I RESPONDED TO 150 CHERRY POINT ROAD.

13 Q AND THAT IS OFF OF 170 AND SORT OF BLUFFTON/OAKATIE
14 TYPE SECTION?

15 A THAT IS, SIR.

16 Q ALL RIGHT. NOW, WHAT DID YOU KNOW ABOUT THE SITUATION
17 BEFORE YOU GOT THERE?

18 A I KNEW THEY HAD CALLED 9-1-1, SO I HAD DISPATCH PLAY
19 THE 9-1-1 TAPE ON MY ROUTE OUT THERE. THROUGH MY CELL
20 PHONE I WAS ABLE TO LISTEN TO THE CALL, SO I COULD GET AN
21 IDEA OF WHAT WAS GOING ON AT THE SCENE.

22 Q AND AS YOU WERE LISTENING TO THE 9-1-1 CALL, WHAT ARE
23 YOU GATHERING FROM THAT?

24 A FOUND IT SUSPICIOUS THAT THE COMPLAINANT CALLING
25 MENTIONED THAT IT WAS A SMALL CALIBER PISTOL THAT INFLECTED

BOB BROMAGE — DIRECT BY MR. STONE

306

1 THE WOUND TO HIS WIFE AND SHE WAS DECEASED; THAT JUST
2 STRUCK ME AS VERY ODD.

3 Q WHY DID THAT STRIKE YOU AS ODD?

4 A I'VE BEEN AROUND A COUPLE HUNDRED SHOOTING DEATHS, AND
5 IT'S VERY DIFFICULT TO DETERMINE WHAT CALIBER WEAPON UNLESS
6 YOU'RE AN EXPERT IN FIREARMS. I WOULDN'T CONSIDER MYSELF
7 AN EXPERT, AND I CERTAINLY WOULDN'T TRY GUESSING WHAT KIND
8 OF WOUND IT WAS.

9 Q WHEN YOU ARRIVED AT THE SCENE, WHAT DID YOU DO? FIRST
10 OF ALL, WHO WAS THERE, BECAUSE YOU WOULD NOT HAVE BEEN THE
11 FIRST ONE AT THE SCENE?

12 A I WAS NOT THE FIRST ONE THERE. THERE WERE SEVERAL
13 OFFICERS THERE. OFFICER PARNELL. OFFICER HOLMES WAS ALSO
14 THERE -- SERGEANT HOLMES WAS IN THE INVESTIGATOR. AND
15 SEVERAL OTHER OFFICERS. I MET WITH THEM. WE KIND OF
16 WALKED THROUGH THE HOUSE BECAUSE I WANTED TO SEE THE ACTUAL
17 DECEDENT TO SEE WHAT WE HAD.

18 I LOOKED IN THE BATHROOM OF THE MASTER BEDROOM AND SAW
19 THE DECEDENT LAYING ON THE FLOOR.

20 Q PRIOR TO GOING INTO THE BATHROOM, DID YOU GO THROUGH
21 THE BEDROOM?

22 A I DID.

23 Q AND IN FACT THAT'S HOW YOU HAVE TO GET INTO THE
24 BATHROOM, IS IT NOT?

25 A THAT'S CORRECT.

BOB BROMAGE -- DIRECT BY MR. STONE

307

1 Q AND DID YOU NOTICE ANYTHING IN THE BEDROOM?

2 A I NOTICED NUMEROUS HOLES IN THE WALL THAT WERE

3 OBVIOUSLY SUSPICIOUS.

4 Q NOW, AT SOME POINT THAT DAY -- AND THIS IS AT THE

5 SCENE -- DID YOU MEET WITH JOSE HERRERA?

6 A I DID. AFTER I LEFT THE BATHROOM, I CAME OUT AND I

7 ASKED JOSE HERRERA TO WALK WITH ME SO I COULD TALK WITH HIM

8 FOR A FEW MINUTES AND TRY TO GET HIS SIDE OF THE STORY,

9 WHAT HAPPENED.

10 Q DO YOU RECOGNIZE MR. HERRERA IN COURT?

11 A I DO, SIR.

12 Q AND COULD YOU POINT HIM OUT?

13 A HE'S THE ONE IN THE WHITE TURTLENECK NEXT TO THE

14 DEFENSE COUNSEL.

15 MR. STONE: YOUR HONOR, IF THE RECORD WOULD REFLECT.

16 THE COURT: LET THE RECORD REFLECT THE WITNESS

17 IDENTIFIED THE DEFENDANT.

18 Q NOW, CAPTAIN BROMAGE, WHERE WERE YOU WHEN YOU FIRST

19 TALKED TO JOSE HERRERA?

20 A I WAS OVER TOWARDS THE MARSH, TOWARDS I GUESS FOR LACK

21 OF A BETTER WORD, THE WOOD LINE, PROBABLY ABOUT 30 FEET

22 FROM THE PATROL VEHICLES BY MYSELF TALKING TO HIM.

23 Q AND THIS IS IN HIS FRONT YARD BASICALLY OR IN THAT

24 AREA?

25 A IT'S ACROSS THE STREET FROM. I BELIEVE -- I WANT TO

BOB BROMAGE — DIRECT BY MR. STONE

308

1 SAY IT'S AN EMPTY LOT. IT COULD BE, MAY BE JUST AN OVER-
2 SIZED LOT.

3 Q OKAY. AND AT THAT POINT DID YOU TALK TO HIM ABOUT
4 WHAT HAD HAPPENED?

5 A I DID. I ASKED HIM WHAT HAPPENED, AND HE RECOUNTED
6 THE STORY FOR ME.

7 Q NOW, THIS WOULD HAVE TAKEN PLACE -- DO YOU HAVE ANY
8 IDEA EXACTLY WHAT TIME THIS WOULD HAVE TAKEN PLACE?

9 A APPROXIMATELY 7:40 P.M. ON THE 16TH OF SEPTEMBER 2007.

10 Q AND THAT IS -- WELL, IT'S AT THE SCENE; IS THAT FAIR
11 TO SAY?

12 A YES, SIR.

13 Q ALL RIGHT. NOW, AT THE SCENE YOU'RE TALKING TO MR.
14 HERRERA. AT THIS POINT IS HE IN CUSTODY?

15 A HE IS NOT IN CUSTODY.

16 Q AND HAVE YOU RESTRICTED HIS FREEDOM IN ANY WAY,
17 THREATENED HIM, ANYTHING LIKE THAT?

18 A NO, SIR. AT THAT POINT HE WAS A COMPLAINANT IN THIS
19 INCIDENT.

20 Q AND WHEN YOU SAY COMPLAINANT, WHAT DO YOU MEAN?

21 A HE CALLED IN THE ACTUAL -- HE CALLED THE SHERIFF'S
22 OFFICE TO RESPOND THERE.

23 Q OKAY. NOW, WHAT DO YOU ASK HIM BASICALLY? DO YOU ASK
24 HIM ANY POINTED QUESTIONS OR DO YOU JUST BASICALLY SAY,
25 WHAT HAPPENED?

BOB BROMAGE -- DIRECT BY MR. STONE

309

1 A I ASKED HIM WHAT HAPPENED IN THE FRONT. AND THEN I
2 GOT A LITTLE POINTED ON IT AFTER A WHILE.

3 Q ALL RIGHT. NOW, WHAT DID HE TELL YOU HAPPENED AT THE
4 SCENE BACK WHEN YOU FIRST ARRIVED?

5 A IF I CAN REFER TO MY NOTES.

6 Q SURE.

7 A HE ADVISED INITIALLY THAT THEY'D BEEN OUT ALL DAY.
8 THEY HAD A VERBAL DISAGREEMENT, INDICATED THERE WAS NOTHING
9 PHYSICAL TO THAT DISAGREEMENT. SAID THEY CAME BACK TO THE
10 RESIDENCE AND THAT HE LEFT FOR BEER, REALIZING THAT HE
11 STILL HAD BEER FROM THE NIGHT BEFORE, HE CAME BACK TO THE
12 RESIDENCE AND WALKED STRAIGHT IN HIS ROOM. LOOKED AROUND
13 FOR A LITTLE BIT, AND THEN FOUND HER IN THE BATHROOM, AND
14 THEN NOTICED -- NOTICED A SMALL CALIBER GUNSHOT WOUND.
15 ACTUALLY ADVISED HE KNOWS WHAT IT LOOKS LIKE WHEN I ASKED
16 HIM HOW HE KNOWS IT LOOKS LIKE.

17 Q DID HE INDICATE HOW MUCH TIME HE HAD BEEN GONE?

18 A HE INDICATED ABOUT 10 OR 15 MINUTES.

19 Q OKAY. AND THIS WAS -- AGAIN, THIS WAS RIGHT AT THE
20 SCENE RIGHT AFTER HE HAD GIVEN PARNELL THE INITIAL
21 STATEMENT; IS THAT RIGHT?

22 A THAT'S CORRECT.

23 Q HOW EXACTLY DID HE PHRASE -- YOU SAID EARLIER THAT HE
24 DIDN'T -- YOU SAID THAT HE WASN'T IN A FIGHT. HOW DID HE
25 PHRASE THAT?

BOB BROMAGE — DIRECT BY MR. STONE

310

1 A HE INDICATED, WE ENCOUNTERED A LITTLE ARGUMENT BUT
2 NOTHING MAJOR. NOTHING TO WHERE I GRABBED HER, NOTHING
3 WHERE I THREW HER, NOTHING LIKE THAT.

4 Q DID HE TELL YOU AT THAT POINT IF HE -- IF HE DID
5 ANYTHING TO HER ONCE HE FOUND HER, HE TOUCHED HER ANY,
6 MOVED HER ANY WAY?

7 A GIVE ME A SECOND, SIR. SAID I TRIED TO PICK HER --
8 TRIED TO GRAB HER NECK LIKE THIS AND I PUSHED HER HAIR BACK
9 -- INDICATING HE PUSHED HER HAIR BACK LIKE THAT.

10 Q IS HE SHOWING YOU THIS AS HE'S TELLING YOU?

11 A HE'S SHOWING ME, YES, SIR.

12 Q OKAY. NOW, LATER ON DID YOU ACTUALLY TALK TO MR.
13 HERRERA AGAIN?

14 A I DID. I TALKED TO HIM LATER THAT NIGHT.

15 Q WHERE WAS THAT CONVERSATION?

16 A OUR BLUFFTON SUBSTATION WHICH IS LOCATED IN THE TANGER
17 OUTLETS IN BLUFFTON ON U.S. 278.

18 Q AT THAT POINT WAS HE IN CUSTODY?

19 A YES, HE WAS IN CUSTODY.

20 Q NOW, AT THE BLUFFTON POLICE DEPARTMENT IN CUSTODY DID
21 YOU READ HIM HIS MIRANDA RIGHTS?

22 A I DID.

23 Q THE RIGHTS THAT WE ALL HEAR ABOUT?

24 A I DID ADVISE HIM OF HIS RIGHTS.

25 Q AND HOW DID YOU DO THAT? DID YOU DO THAT ON A CARD?

BOB BROMAGE -- DIRECT BY MR. STONE

311

1 DID YOU DO THAT FROM MEMORY? WHAT DID YOU DO?

2 A I DID IT ON A CARD THAT'S FURNISHED BY THE SOUTH
3 CAROLINA LAW ENFORCEMENT OFFICERS ASSOCIATION, SO THAT
4 WE'RE CONSISTENT IN OUR READING OF THEIR RIGHTS.

5 Q AND WHAT RIGHTS DID YOU READ HIM AT THE SUBSTATION?

6 A I READ THE RIGHTS. YOU HAVE THE RIGHT TO REMAIN
7 SILENT. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU
8 IN A COURT OF LAW. YOU HAVE A RIGHT TO AN ATTORNEY PRESENT
9 WHILE YOU'RE BEING QUESTIONED. IF YOU CANNOT AFFORD AN
10 ATTORNEY, ONE WILL BE APPOINTED FOR YOU BEFORE ANY
11 QUESTIONING IF YOU WISH -- IF YOU WISH TO HAVE AN ATTORNEY.

12 Q AND DID YOU ASK HIM THOSE QUESTIONS INDIVIDUALLY?

13 A I DID.

14 Q AND DID HE ANSWER WHETHER OR NOT HE UNDERSTOOD THOSE
15 RIGHTS?

16 A HE ANSWERED, YES, SIR, TO EVERY ONE OF THEM.

17 Q DID YOU AT ANY POINT PROMISE HIM ANYTHING, THREATEN
18 HIM IN ANY WAY TO GET HIM TO TALK TO YOU?

19 A NO, SIR.

20 Q DID YOU ASK HIM THAT IF HE -- DID YOU TELL HIM THAT IF
21 HE WANTED TO TALK TO AN ATTORNEY, YOU WOULD STOP
22 QUESTIONING AND HE COULD GET AN ATTORNEY?

23 A I DID, SIR.

24 Q AND AT ANY POINT IN TIME DID HE ASK FOR ONE?

25 A NO, SIR.

BOB BROMAGE — DIRECT BY MR. STONE

312

1 Q SO THIS NEXT STATEMENT AT THE BLUFFTON POLICE
2 DEPARTMENT IS AFTER YOU HAVE READ HIM HIS RIGHTS; IS THAT
3 RIGHT?

4 A HE WAS FULLY MIRANDIZED AT THAT POINT.

5 Q ALL RIGHT. AND THAT BLUFFTON SUBSTATION, WHERE WAS
6 THAT AT THE TIME?

7 A AGAIN, IT WAS AT THE TANGER OUTLET, BLUFFTON, SOUTH
8 CAROLINA.

9 Q OKAY. ABOUT WHAT TIME WAS THIS?

10 A IT'S ABOUT 20 AFTER 10:00 P.M. THAT NIGHT.

11 Q ALL RIGHT. WHAT DID MR. HERRERA TELL YOU ABOUT THAT
12 DAY? AND HOW DID YOU GO ABOUT THAT? DID YOU JUST ASK HIM
13 GENERALLY WHAT HAPPENED OR HOW DID THAT WORK?

14 A IN A NORMAL INTERVIEW, I'M SITTING DOWN. SO I WAS
15 ABLE TO RECORD IT.

16 Q ANYBODY IN THE ROOM WITH YOU OR JUST YOU AND THE
17 DEFENDANT?

18 A THERE WERE OFFICERS OFF TO THE SIDE, BUT I SAT WITH
19 THE DEFENDANT MYSELF AND HAD SOME PRIVACY AND SOME QUIET.

20 Q OKAY. ALL RIGHT. WHAT DID HE TELL YOU HE DID?

21 A HE EXPLAINED THE DAYS' EVENTS. THEY'D BEEN OUT ALL
22 DAY. THEY WERE SHOOTING GUNS EARLIER THAT DAY. THEY WENT
23 TO GET THEIR DAUGHTER, MADISON, AT HARDEEVILLE WALMART.
24 AFTER THAT THEY WENT BACK HOME AND THEY WENT TO BEAUFORT TO
25 SEE A FRIEND OF HIS. AFTER THAT THEY WENT BACK HOME. AND

BOB BROMAGE - DIRECT BY MR. STONE

313

1 AGAIN HE LEFT. THEY HAD BEEN ARGUING. AGAIN, NOTHING
2 PHYSICAL.

3 Q SPECIFICALLY, LET ME ASK YOU THIS. SPECIFICALLY, TELL
4 ME EXACTLY WHEN YOU ASKED HIM WHAT HAPPENED, WHAT EXACTLY
5 DID HE SAY?

6 (PAUSE.)

7 Q THAT WOULD BE PAGE 10, I THINK, OF YOUR REPORT.

8 A THANK YOU, SIR. HE ADVISED, HE WALKED IN THE DOOR,
9 WALKED STRAIGHT TO HIS ROOM, LOOKED IN THE ROOM, DIDN'T SEE
10 HER IN THE ROOM. WENT BACK TO MY STEP-DAUGHTER'S ROOM. I
11 KNOW SHE WAS IN THE SHOWER BECAUSE I COULD STILL HEAR THE
12 WATER. LIGHT COMING OUT. WENT IN MY STEP-DAUGHTER'S ROOM.
13 LOOKED AROUND. DIDN'T SEE NOTHING. WENT INTO THE SPARE
14 BEDROOM THAT WE HAVE RIGHT THERE. LOOKED FOR HER.
15 NOTHING. THEN WENT BACK. I LOOKED OUT THE BACK SIDE,
16 MAYBE SHE WAS SMOKING A CIGARETTE. NOTHING. WENT STRAIGHT
17 INTO MY ROOM, WENT IN THE BATHROOM, AND THAT'S WHERE I
18 FOUND HER LAYING ON THE FLOOR RIGHT THERE, SHOT. I CAN'T
19 DO NOTHING BUT JUST CALL THE COPS AND HAD MY STEP-DAUGHTER
20 OUTSIDE SO SHE WOULDN'T HAVE TO SEE THAT.

21 Q DID YOU ASK HIM ABOUT EXAMINING HIS WIFE WHEN HE FOUND
22 HER IN THAT POSITION?

23 A I DID.

24 Q AND WHAT DID HE SAY?

25 A I WENT OVER, LIKE I SAID. I THOUGHT SHE HAD PASSED

BOB BROMAGE - DIRECT BY MR. STONE

314

1 OUT OR SOMETHING SO I GRABBED HER SHOULDER AND MOVED HER.
2 SHE WOULDN'T BUDGE. THEN I PUSHED MY HAND BEHIND HER NECK
3 LIKE THIS. I PUSHED HER HAIR BACK; THAT'S WHEN I NOTICED
4 THE WOUND. I COULDN'T DO NOTHING BUT CALL THE COPS.

5 Q AT SOME POINT DURING YOUR CONVERSATION WITH HIM DID
6 YOU ASK HIM IF HE OWNED A GUN?

7 A I DID.

8 Q DID YOU ASK HIM THAT ONCE, TWICE, A NUMBER OF TIMES,
9 OR WHAT?

10 A NUMEROUS TIMES.

11 Q AND WHAT DID HE TELL YOU AT THAT TIME?

12 A TOLD ME HE DID NOT OWN -- DID NOT OWN A GUN. DIDN'T
13 OWN A GUN, MEANING NOT THE SHOTGUN THAT THEY WERE FIRING
14 THAT DAY.

15 AND I ASKED HIM MORE SPECIFICALLY -- BECAUSE WE HAD
16 FOUND .22 CALIBER CARTRIDGES IN HIS RESIDENCE IN THE
17 BEDROOM.

18 HE SAID A FRIEND GAVE ME THAT LITTLE BAG OR THAT
19 LITTLE CUP WITH A FEW .22 SHELLS IN THERE.

20 Q AND THIS WOULD HAVE BEEN THE CUP THAT WE INTRODUCED AS
21 STATE'S EXHIBIT, I BELIEVE, 27?

22 A YES.

23 Q THIS CUP RIGHT HERE?

24 A IT IS, SIR.

25 Q ALL RIGHT. BUT EVEN AFTER YOU ASKED HIM ABOUT THE

BOB BROMAGE — DIRECT BY MR. STONE

315

1 SHELLS, DID HE EXPLAIN IF HE HAD A GUN OR NOT?

2 A HE SAID HE DIDN'T HAVE A GUN. HE WENT ON TO SAY THAT
3 HE ANTICIPATED GETTING A GUN MAYBE DOWN THE ROAD SOME LATER
4 DATE. I ASKED HIM SPECIFICALLY IF HE OWNED A .22 CALIBER
5 PISTOL, AND HE SAID HE DID NOT.

6 Q ALL RIGHT. NOW, DID YOU ALSO -- AND WE HAVE
7 INTRODUCED PHOTOGRAPHS FROM STATE'S EXHIBIT 3, 4, 5, AND 6,
8 OF THE INSIDE THE BEDROOM. DID YOU ASK HIM ABOUT THOSE?

9 MS. CARROWAY: YOUR HONOR, I'M GOING TO OBJECT BASED
10 ON MY PREVIOUS OBJECTION AT THIS POINT.

11 THE COURT: YOUR PREVIOUS OBJECTION OVERRULED. GO
12 AHEAD.

13 A YES, SIR, I DID.

14 Q AND HOW DID YOU ASK HIM ABOUT THOSE PHOTOGRAPHS?

15 A I TOLD HIM THERE WERE SIGNS OF DOMESTIC VIOLENCE ALL
16 OVER THE HOUSE. AND I ASKED HIM WHERE ALL THE HOLES CAME
17 FROM.

18 Q WHAT DID HE TELL YOU?

19 A HE SAID IT CAME FROM BEFORE, THAT HIS STEP-DAUGHTER
20 COULD ATTEST TO THAT. AND THEN INDICATED THAT MONTHS AGO.

21 Q SPECIFICALLY, PAGE 14 ON YOUR NOTES AT THE BOTTOM,
22 WHAT DID HE TELL YOU?

23 A I ASKED HIM WHAT HAPPENED DURING THAT INCIDENT. HE
24 SAID, I GOT MAD. MY WIFE LEFT.

25 Q THEN THE NEXT PAGE?

BOB BROMAGE — DIRECT BY MR. STONE

316

1 A SAID MY WIFE LEFT AND SHE WENT TO MY AUNT'S HOUSE AND
2 I STAYED HOME ALONE, AND I WAS MAD. NOBODY WAS HOME, SO I
3 MADE HOLES IN MY WALL. IT'S MY HOUSE. I FIGURED NOBODY IS
4 HOME, SO I HIT MY WALLS.

5 Q NOW, OTHER THAN THAT, DID MR. HERRERA TELL YOU
6 ANYTHING AS FAR AS WHAT HAPPENED TO HIS WIFE AND HOW SHE
7 ENDED UP IN THAT SITUATION?

8 A THE MAJORITY OF THE CONVERSATION REVOLVED AROUND THE
9 PISTOL.

10 Q WHEN YOU ASKED HIM IF HE KNEW WHAT HAPPENED, WHAT DID
11 HE SAY? SPECIFICALLY, PAGE 24 IN YOUR NOTES.

12 A I HAVE NO IDEA WHAT HAPPENED IN THAT HOUSE.

13 Q DID YOU QUESTION MR. HERRERA AGAIN?

14 A I DID, SIR.

15 Q AND WAS THAT THE SAME DAY, NEXT DAY, OR WHEN?

16 A IT WAS TWO DAYS LATER, ON THE 18TH OF SEPTEMBER.

17 Q AND WHERE DID THIS CONVERSATION TAKE PLACE?

18 A THIS CONVERSATION TOOK PLACE AT THE BEAUFORT COUNTY
19 LAW ENFORCEMENT CENTER, WHICH IS ACTUALLY ACROSS THE
20 PARKING LOT HERE.

21 Q AND, AGAIN, AT THIS POINT, OBVIOUSLY, MR. HERRERA IS
22 STILL IN CUSTODY; IS THAT CORRECT?

23 A THAT IS CORRECT.

24 Q NOW, DO YOU READ HIM HIS RIGHTS AGAIN?

25 A I DID, SIR.

BOB BROMAGE -- DIRECT BY MR. STONE

317

1 Q AND WHAT RIGHTS WERE THOSE?

2 A YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU SAY
3 CAN AND WILL BE USED AGAINST YOU. YOU HAVE A RIGHT TO AN
4 ATTORNEY PRESENT WHILE YOU'RE BEING QUESTIONED. IF YOU
5 CANNOT AFFORD TO HIRE AN ATTORNEY, ONE WILL BE APPOINTED
6 FOR YOU BEFORE ANY QUESTIONING IF YOU WISH. AND THEN WE GO
7 IN TO A WAIVER OF THE RIGHTS. DO YOU UNDERSTAND THESE
8 RIGHTS I'VE READ TO YOU? HAVING THESE RIGHTS IN MIND, DO
9 YOU WISH TO SPEAK TO ME NOW?

10 Q AT THAT POINT DID HE INDICATE WHETHER OR NOT HE
11 UNDERSTOOD THOSE RIGHTS?

12 A HE UNDERSTOOD. HE INDICATED HE UNDERSTOOD THE RIGHTS,
13 ALSO STATED HE WOULD TALK TO ME ABOUT WHAT HAPPENED.

14 Q AND AT ANY POINT DID YOU PROMISE HIM ANYTHING,
15 THREATEN HIM IN ANY WAY?

16 A NO, SIR.

17 Q NOW, AT THIS POINT, THIS IS -- IS THIS THE NEXT DAY OR
18 2 DAYS LATER?

19 A 2 DAYS LATER.

20 Q 2 DAYS LATER. AT THIS POINT, LET ME SHOW YOU WHAT'S
21 BEEN MARKED AS STATE'S EXHIBIT 29. IT WAS TESTIFIED THAT
22 THESE SHELLS WERE FOUND BEHIND THE HOUSE. DO YOU KNOW
23 ABOUT THAT AT THIS POINT?

24 A YES, I DO.

25 Q THE GUN, WHICH IS STATE'S EXHIBIT NO. 31 HAD BEEN

BOB BROMAGE - DIRECT BY MR. STONE

318

- 1 LOCATED AT THIS POINT. DID YOU KNOW ABOUT THAT?
- 2 A YES, SIR, I DID.
- 3 Q OKAY. ALL RIGHT.
- 4 A I PHOTOGRAPHED THE GUN AT WHERE IT WAS LOCATED.
- 5 Q OKAY. SO THESE PHOTOGRAPHS -- THIS PHOTOGRAPH HERE,
- 6 STATE'S EXHIBIT NO. 19?
- 7 A EXACTLY THE SAME.
- 8 Q DID YOU TELL MR. HERRERA THAT YOU HAD THIS INFORMATION
- 9 WHEN YOU TALKED TO HIM THIS TIME?
- 10 A YES, I WENT IN TO IT DURING THE INTERVIEW.
- 11 Q OKAY. FIRST OF ALL, LET ME ASK YOU SPECIFICALLY ABOUT
- 12 THE AMMUNITION. DID YOU TELL HIM THAT THEY HAD FOUND THE
- 13 AMMUNITION?
- 14 A YES, SIR.
- 15 Q AND WHAT DID YOU TELL HIM?
- 16 A (PAUSE.)
- 17 Q PAGE 103.
- 18 A THANK YOU. ABOUT THE AMMUNITION I SAID, THEY FOUND IT
- 19 YESTERDAY IN THE WOODS, A BOX OF .22 AMMUNITION; THAT'S
- 20 EXACTLY THE SAME TYPE OF .22 AMMUNITION THAT YOU HAD IN THE
- 21 HOUSE IN THAT BOX.
- 22 Q THEN YOU ALSO TOLD HIM ABOUT THE GUN?
- 23 A I DID.
- 24 Q NOW, YOU SAID YOU HAD A PHOTOGRAPH. DID YOU SHOW HIM
- 25 THE PHOTOGRAPH?

BOB BROMAGE - DIRECT BY MR. STONE

319

- 1 A I SHOWED HIM THE PHOTOGRAPH OF THE GUN.
- 2 Q AND THAT WAS OUT IN THE WOODS AS IT WAS FOUND?
- 3 A EXACTLY.
- 4 Q ALL RIGHT. NOW, AT THIS POINT AFTER YOU HAVE INFORMED
- 5 HIM OF THE BULLETS AND THE GUN THAT WAS FOUND, DID HE TELL
- 6 YOU WHAT HAPPENED AT THE HOUSE?
- 7 A HE GAVE ME A DIFFERENT STORY, SIR.
- 8 Q LET ME ASK YOU TO GO TO PAGE 110 IN YOUR REPORT.
- 9 A YES, SIR.
- 10 Q TELL ME WHAT HE TELLS YOU AT THIS TIME? AND THIS,
- 11 AGAIN, THIS IS AT LAW ENFORCEMENT. SO THIS IS AT THE
- 12 DETENTION CENTER RIGHT HERE; IS THAT CORRECT?
- 13 A IT'S AT THE LAW ENFORCEMENT CENTER ACTUALLY. I HAD
- 14 SOME DEPUTIES PICK HIM UP FROM THE DETENTION CENTER AND
- 15 BRING HIM TO TALK TO ME.
- 16 Q WHAT DAY IS THIS?
- 17 A THIS IS THE 18TH, AT APPROXIMATELY 2:50 P.M.
- 18 Q ALL RIGHT. WHAT DOES HE TELL YOU?
- 19 A WELL, AFTER I ASKED HIM WHAT HAPPENED, HE SAID, I
- 20 DON'T WANT TO MAKE IT SEEM LIKE SHE DID -- OKAY. SHE WAS
- 21 PLAYING AROUND. WE CAME HOME. I TOLD HER I WANTED TO
- 22 LEAVE. SHE GOT MAD BECAUSE I WAS GOING TO LEAVE. SHE WAS
- 23 USING THE RESTROOM. SHE GRABBED MY PISTOL POINTED AT HER
- 24 HEAD. I WENT TO REACH FOR IT. WHEN I REACHED UP TO GET
- 25 IT, JUST ACCIDENTLY SHOT ITSELF.

BOB BROMAGE — DIRECT BY MR. STONE

320

1 Q LET ME ASK YOU TO GO DOWN TO THE BOTTOM OF 111 IN YOUR
2 NOTES.

3 A YES, SIR.

4 Q YOU ASKED HIM TO CLARIFY. WHAT WAS HIS RESPONSE?

5 A YOU WANT THE TRUTH. I WILL TELL YOU THE TRUTH. SHE
6 WAS PLAYING. I DIDN'T KNOW SHE WAS PLAYING AROUND. WHEN I
7 REACHED OVER AND TRIED TO GET IT, IT WENT OFF. IT
8 TRIGGERED.

9 Q FURTHER DOWN, STARTING AT 9, WHAT ELSE?

10 A IT WAS IN HER HAND, THEN I GRABBED IT. AS SOON AS I
11 GRABBED IT, SHE LET GO AND I GUESS MY FINGER WENT INTO THE
12 TRIGGER BECAUSE THE HAMMER WAS ALREADY COCKED BACK. THAT
13 LITTLE .22 SHE HAD, YOU COULDN'T SHOOT IT LIKE THAT. YOU
14 HAD TO PULL THE HAMMER BACK. AND THEN WHEN I SEE HER PULL
15 THE HAMMER BACK, THAT'S WHEN I REACHED OUT THERE. I
16 REACHED OUT TO TRY AND GET IT FROM HER. WHEN I GRABBED IT,
17 SHE LET GO SO I GUESS MY HAND -- AGAIN, THIS IS TAPED AND
18 SOME OF IT YOU JUST CAN'T HEAR.

19 Q NOW, DID YOU ASK HIM SPECIFICALLY ABOUT THIS TAKING
20 PLACE IN THE BATHROOM ON THE TOILET?

21 A YES, SIR.

22 Q ALL RIGHT. WHAT WAS HIS -- WHAT EXACTLY WAS YOUR
23 QUESTION?

24 A WHY WOULD SHE SIT ON THE TOILET AND PLAY AROUND WITH A
25 GUN?

BOB BROMAGE -- DIRECT BY MR. STONE

321

1 Q AND WHAT DID HE SAY?

2 A BECAUSE SHE HAD TO GO AND PEE BECAUSE WE'D ALREADY GOT
3 BACK.

4 Q DID HE GIVE YOU ANY FURTHER EXPLANATION OF THAT DAY?

5 A YES, SIR.

6 Q AND WHAT DID HE SAY?

7 A SAID SHE WAS MAD BECAUSE WE HAD THAT ARGUMENT. I SAID
8 I WAS GOING TO LEAVE. AND WHEN I SAY -- WHEN I SAY SHE
9 DON'T -- SHE DON'T WANT ME TO LEAVE. SO SHE GRABBED IT,
10 SAT DOWN AND PEED. AND THEN WHILE SHE WAS PEEING, SHE
11 POINTED AT HER HEAD -- AND POINTED AT HER HEAD. THAT'S
12 WHEN I WENT IN BECAUSE I DIDN'T WANT MY WIFE DOING ANYTHING
13 LIKE THAT. I LOVE MY WIFE. SHE -- WHEN I REACHED IN, SHE
14 LET GO OF IT. WHEN SHE LET GO, I GUESS MY HAND WENT ON THE
15 TRIGGER.

16 Q YOU ASKED HIM TO FURTHER CLARIFY?

17 A YES, SIR.

18 Q AND WHAT DID HE SAY?

19 A I'M NOT TOO SURE EXACTLY HOW IT HAPPENED -- HOW IT ALL
20 WENT DOWN, BECAUSE AT THE TIME SHE -- AFTER I HEARD THAT
21 GUNSHOT, I DIDN'T KNOW WHAT TO THINK. MY MIND IS STILL A
22 BLANK.

23 Q ALL RIGHT. NOW, AT THIS POINT DID HE SHOW YOU --
24 PHYSICALLY SHOW YOU HOW IT HAPPENED?

25 A HE GOT UP AND SHOWED ME HOW IT HAPPENED. I ASKED HIM,

- 1 AND HE ACTUALLY ASKED ME IF HE COULD SHOW ME? I SAID,
2 SURE.
- 3 Q CAN YOU COME OFF THE STAND AND SHOW ME WHAT HE SHOWED
4 YOU?
- 5 A YES, SIR.
- 6 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)
- 7 Q AND LET'S ASSUME FOR A SECOND THAT I AM YOU AND THAT
8 YOU ARE JOSE HERRERA. HOW DID HE SHOW YOU?
- 9 LET ME GET YOU TO TURN OVER HERE SO THIS JUROR HERE
10 CAN SEE. KEEP YOUR VOICE UP SO THEY CAN HEAR.
- 11 A WHEN HE CAME IN THE BATHROOM ---
- 12 Q I'M GOING TO GET YOU THE MICROPHONE. SORRY.
- 13 A I'LL SPEAK -- I'LL SPEAK LOUD. SHE WAS SITTING ON THE
14 TOILET WITH THE GUN. HE CAME IN. KIND OF TRIPPED OVER
15 LIKE THIS. IT WENT OFF AND JUST LEANED AGAINST THE WALL.
16 THE WALL WOULD BE RIGHT HERE.
- 17 Q WHICH IS BEHIND THE TOILET?
- 18 A RIGHT BEHIND. IT'S PROBABLY A FOOT OR SO, SO THERE'S
19 NOT MUCH ROOM THERE AT ALL.
- 20 Q AND THE GUN WOULD HAVE BEEN WHERE?
- 21 A THE GUN WOULD HAVE BEEN RIGHT HERE. THE GUN WENT OFF,
22 THEN HE WAS TRYING TO ---
- 23 Q OVER HERE, SO THESE PEOPLE CAN SEE.
- 24 A THE GUN WOULD HAVE BEEN RIGHT HERE.
- 25 Q ALL RIGHT. GO AHEAD AND HAVE A SEAT.

BOB BROMAGE -- DIRECT BY MR. STONE

323

- 1 (THE WITNESS RETURNS TO THE WITNESS STAND.)
- 2 Q AND THAT'S HOW HE SHOWED YOU IT HAPPENED?
- 3 A THAT'S HOW HE SHOWED ME IT HAPPENED.
- 4 Q DID YOU ASK HIM WHAT HAPPENED TO THE GUN AFTERWARDS?
- 5 A I DID.
- 6 Q DID HE TELL YOU WHAT HE DID WITH THE GUN?
- 7 A HE DID, SIR.
- 8 Q WHAT DID HE SAY?
- 9 A SAID, I PANICKED. PICKED THE GUN UP, CALLED 9-1-1.
- 10 AND THEN I WENT TO GO THROW -- WHICH IS INAUDIBLE --
- 11 BECAUSE I DIDN'T WANT -- IT WAS NOT INTENTIONAL, SIR. IT
- 12 WAS NOT INTENTIONAL.
- 13 Q DID HE TELL YOU DURING THIS CONVERSATION WHERE HE
- 14 THREW THE GUN OR DID YOU HAVE A CONVERSATION WITH HIM AT
- 15 ALL ABOUT THAT, JUST IN GENERAL TERMS?
- 16 A I ASKED HIM WHERE HE THREW THE GUN.
- 17 Q AND YOU HAD ALREADY SHOWN HIM THIS PHOTOGRAPH; IS THAT
- 18 CORRECT?
- 19 A I SHOWED HIM THE PHOTOGRAPH, WHICH HE ACKNOWLEDGED WAS
- 20 HIS GUN.
- 21 Q DID HE TELL YOU WHERE HE THREW THE GUN?
- 22 A HE SAID HE THREW IT AT THE "Y" INTERSECTION IN THE
- 23 WOODS.
- 24 Q AND THAT IS WHERE WE'VE ALREADY SHOWN HERE ON STATE'S
- 25 EXHIBIT 21, THIS IS THE "Y" AS CHERRY POINT ROAD GOES DOWN

BOB BRÖMAGE - DIRECT BY MR. STONE

324

- 1 AND FORKS; IS THAT RIGHT?
- 2 A YES, SIR, HE DESCRIBED IT TO ME.
- 3 Q OKAY. DID HE SAY WHEN HE THREW THE GUN?
- 4 A HE INDICATED HE THREW THE GUN AWAY WHILE HE WAS ON THE
- 5 PHONE WITH 9-1-1.
- 6 Q DID YOU ASK HIM ABOUT THE SHELLS, HOW THE SHELLS GOT
- 7 OVER THE FENCE?
- 8 A YES, SIR, I DID.
- 9 Q WHAT DID HE TELL YOU?
- 10 A SAID THAT DURING -- AFTER -- AFTER THE GUN WENT OFF,
- 11 THAT HE WENT BACK IN THE HOUSE, GRABBED THE SHELLS, WENT
- 12 OUT THE BACK DOOR, THREW THEM OVER THE FENCE. AND THAT WAS
- 13 A LATER STORY. HIS FIRST STORY WAS THAT HE'D THROWN THE
- 14 CARTRIDGES OVER -- THAT CASE OF CARTRIDGES OVER ---
- 15 Q AND YOU'VE POINTED TO THIS, THIS IS STATE'S EXHIBIT
- 16 29?
- 17 A THAT'S IT RIGHT THERE. THREW THOSE OVER A FEW DAYS
- 18 PRIOR TO THE INCIDENT. SO AT THIS POINT OF THE INTERVIEW,
- 19 HE WAS INDICATING THAT HE HAD THROWN THOSE OUT. AND I
- 20 ASKED HIM NUMEROUS TIMES.
- 21 Q OKAY. ALL RIGHT. NOW, YOU WENT BACK AND QUESTIONED
- 22 HIM ONE OTHER TIME, DID YOU NOT?
- 23 A I DID, SIR.
- 24 Q AND THIS IS -- THIS WAS A RECORDED STATEMENT?
- 25 A YES, SIR.

BOB BROMAGE - DIRECT BY MR. STONE

325

- 1 Q AGAIN, HE WAS IN CUSTODY?
- 2 A HE WAS IN CUSTODY.
- 3 Q AND YOU READ HIM HIS RIGHTS AT THIS POINT?
- 4 A I DID.
- 5 Q ALL RIGHT. AND THAT IS ON THE TAPE AS WELL; IS THAT
- 6 CORRECT?
- 7 A THAT IS, SIR.
- 8 Q DID YOU EVER REVIEW THAT TAPE?
- 9 A I HAVE.
- 10 Q AND THE TRANSCRIPT THAT GOES ALONG WITH THAT TAPE?
- 11 A I HAVE.
- 12 Q IS THE TRANSCRIPT TO YOUR MEMORY ACCURATE AS TO WHAT
- 13 YOU HEAR ON THE TAPE AND WHAT YOU RECALL AS THE PERSON
- 14 INTERVIEWING HIM?
- 15 A IT IS THE TAPE OF THE ACTUAL CONVERSATION THAT I HAD
- 16 WITH MR. HERRERA. AND THERE ARE SOME SPOTS WE MAY NOT BE
- 17 ABLE TO HEAR, BUT THAT'S JUST THE RECORDING.
- 18 MR. STONE: YOUR HONOR, AT THIS TIME -- AND I BELIEVE
- 19 I'VE GIVEN ONE TO THE DEFENSE ATTORNEY AND YOUR HONOR AS
- 20 WELL. I'D LIKE TO HAND THESE OUT TO THE JURORS, IT'S A
- 21 TRANSCRIPT OF THE TAPE THAT I WILL PLAY.
- 22 THE COURT: GO AHEAD.
- 23 MR. STONE: THANK YOU.
- 24 MS. CARROWAY: YOUR HONOR, I'M JUST GOING TO RENEW MY
- 25 PRIOR OBJECTION AT THIS POINT ABOUT THE ADMISSIBILITY OF

BOB BROMAGE - CROSS BY MS. CARROWAY

326

1 THE STATEMENT.

2 THE COURT: SO NOTED. OVERRULED.

3 (PAUSE.)

4 MR. STONE: DOES EVERYONE HAVE A COPY?

5 (TAPE WAS PLAYED IN OPEN COURT.)

6 MR. STONE: NO FURTHER QUESTIONS, YOUR HONOR.

7 MS. CARROWAY: THANK YOU, YOUR HONOR.

8 THE COURT: CROSS EXAMINATION.

9 CROSS EXAMINATION BY MS. CARROWAY:

10 Q GOOD MORNING, CAPTAIN BROMAGE.

11 A GOOD MORNING.

12 Q YOU JUST TESTIFIED ON DIRECT THAT YOU'VE BEEN A POLICE
13 OFFICER FOR 18 YEARS?

14 A 18 YEARS -- 18 AND A HALF.

15 Q YOU'RE A CAPTAIN, CORRECT?

16 A THAT'S CORRECT.

17 Q SO YOU'RE THE HIGHEST RANKING OFFICER AT THE SCENE
18 THAT NIGHT?

19 A IT WAS.

20 Q YOU'VE INVESTIGATED A NUMBER OF SERIOUS CASES. I
21 THINK YOU'VE TESTIFIED 200-PLUS HOMICIDE CASES?

22 A NO. NO. NO. NO. SEVERAL SUICIDES, HOMICIDES,
23 TRAUMATIC DEATHS.

24 Q A LARGE NUMBER?

25 A A LARGE NUMBER. HOMICIDES PROBABLY 50 OR 60.

BOB BROMAGE -- CROSS BY MS. CARROWAY

327

1 Q AND YOU'RE ALSO INVOLVED IN LIKE A COLD CASE?

2 A COLD CASE OR UNRESOLVED HOMICIDES THAT I GO BACK AND
3 REVISIT THE INVESTIGATIONS AND TRY TO MAKE SOMETHING
4 HAPPEN.

5 Q AND YOU'VE HAD SOME SUCCESS WITH THAT?

6 A YES, MA'AM.

7 Q NOW, YOU INTERVIEWED JOSE A NUMBER OF TIMES, SIX TO BE
8 EXACT?

9 A THAT SOUNDS RIGHT.

10 Q OKAY. TWICE ON THE 16TH, TWICE ON THE 18TH THAT THE
11 PROSECUTOR JUST TALKED ABOUT, BUT ALSO ON THE 19TH AND THE
12 21ST?

13 A THAT IS CORRECT.

14 Q SO WHAT I KIND OF WANT TO DO IS JUST GO THROUGH THOSE
15 WITH YOU FOR A MINUTE, STARTING WITH THE BEGINNING OF THE
16 FIRST INTERVIEW ON THE 18TH, OKAY?

17 A THAT'S FINE.

18 Q YOU WOULD AGREE THAT DURING THIS INTERVIEW, THEN AT
19 12:30 YOU TELL JOSE IT'S NOT LIKE YOU PLANNED TO KILL HER.
20 I APOLOGIZE CAPTAIN BROMAGE.

21 A THERE'S A LOT OF -- THERE'S A LOT OF NOTES, AND I'M
22 SORRY, I JUST CAN'T KEEP TRACK OF THEM ALL.

23 Q I PREPARED FOR THESE WITH THE AUDIO, NOT WITH THE
24 TRANSCRIPT, SO I'VE GOT THE MINUTES DOWN.

25 A THAT SOUNDS CORRECT. I CERTAINLY DID SAY THAT AT SOME

BOB BROMAGE — CROSS BY MS. CARROWAY

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- 1 POINT.
- 2 Q OKAY. AND THEN AT 18:40 IT WAS APPARENT -- YOU SAY IT
3 WAS APPARENT THAT YOU LOVED YOUR WIFE?
- 4 A YES, I'M SURE.
- 5 Q AT MINUTE 19:30 YOU SAY, IT'S NOT LIKE YOU PLANNED IT.
6 IT'S NOT LIKE YOU PREMEDITATED IT?
- 7 A THAT SOUNDS RIGHT, YES, MA'AM.
- 8 Q AND THEN JOSE TELLS YOU AT MINUTE 23, IT WASN'T
9 INTENTIONAL. CORRECT?
- 10 A THAT SOUNDS CORRECT.
- 11 Q HE SAID, I PANICKED AT MINUTE 24. CORRECT?
- 12 A THAT SOUNDS CORRECT.
- 13 Q HE SAID, AGAIN, AT MINUTE 25, IT WAS NOT INTENTIONAL.
14 I SWEAR ON MY MOM'S LIFE.
- 15 A THAT SOUNDS RIGHT.
- 16 Q AND DIRECTLY AFTER THAT, HE SAID, I WAS SCARED AND I'M
17 STILL SCARED.
- 18 A THAT SOUNDS RIGHT.
- 19 Q OKAY. AND THEN WE'RE GOING TO MOVE ON TO THE SECOND
20 INTERVIEW ON THE 18TH, WHICH IS THE ONE THAT SOLICITOR
21 STONE JUST PLAYED FOR US. DURING THAT INTERVIEW, YOU WOULD
22 AGREE THAT JOSE SAID, I DID NOT INTEND TO DO IT?
- 23 A THAT SOUNDS RIGHT, MA'AM, YES.
- 24 Q I WAS NOT GOING TO POINT THE GUN AT HER?
- 25 A YES, MA'AM.

BOB BROMAGE — CROSS BY MS. CARROWAY

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1 Q AND THEY WERE ARGUING AND THAT SHE PUSHED HIM AND SHE
2 TRIED TO HIT HIM?

3 A YES, MA'AM.

4 Q OKAY. AND YOU SAY AT MINUTE 13, I DON'T THINK YOU
5 INTENDED TO KILL HER?

6 A YES, MA'AM.

7 Q OKAY. THEN JOSE SAYS, AGAIN, MOVING ON. AT MINUTE 21
8 JOSE SAYS, SHE PUSHED ME?

9 A YES, MA'AM.

10 Q OKAY. AND YOU AGREE THAT AT MINUTE 24 SHE (SIC) SAYS
11 IT WAS AN ACCIDENT -- JOSE SAID IT WAS AN ACCIDENT?

12 A YES, MA'AM.

13 Q HE THEN SAID HE TRIPPED. HE MIGHT HAVE BEEN OVER A
14 KITTEN OR HER FEET, HE'S NOT SURE WHAT HE TRIPPED ON?

15 A THAT SOUNDS RIGHT, YES.

16 Q OKAY. AND HE SAYS, THIS IS THE LAST THING I WANTED TO
17 DO. I LOVE MY WIFE. YOU WOULD AGREE WITH THAT?

18 A HE DID SAY THAT.

19 Q OKAY. AND YOU SAY AT THE VERY END OF THE INTERVIEW, I
20 CAN TELL IT'S JUST A SITUATION THAT ESCALATED?

21 A YES, MA'AM.

22 Q OKAY. ALL RIGHT. MOVING ON TO THE 19TH NOW. AT THE
23 BEGINNING OF THAT INTERVIEW, YOU WOULD AGREE THAT YOU SAY,
24 I SEE SOMETHING THAT HAPPENED IN THE HEAT OF PASSION.
25 MINUTE 345?

BOB BROMAGE — CROSS BY MS. CARROWAY

330

1 A TO BE HONEST WITH YOU, I'VE NOT REVIEWED ANYTHING FROM
2 THE 19TH OR THE 21ST SINCE IT HAPPENED.

3 Q OKAY. SO YOU WOULDN'T DISAGREE WITH ME THAT THAT'S
4 WHAT THIS SAID?

5 A I WOULDN'T DISAGREE.

6 Q OKAY. AND THAT YOU BELIEVED WHAT HAPPENED IS THAT YOU
7 TRIPPED? MINUTE 440 IS WHAT YOU SAY.

8 A TO BE HONEST, I DON'T KNOW.

9 Q OKAY. WELL, DO YOU WANT TO LISTEN TO THE TAPE? OR
10 WOULD YOU ---

11 A IF YOU THINK IT'S NECESSARY.

12 Q OKAY. WELL, YOU WOULDN'T DISAGREE WITH ME THAT THIS
13 IS WHAT THEY SAY?

14 A I WOULDN'T THINK THAT YOU WOULD MISLEAD ME LIKE THAT.

15 Q I CAN ASSURE YOU THAT I WENT THROUGH THIS
16 METICULOUSLY.

17 A YES, MA'AM.

18 Q YOU SAY THAT IT WAS LOOKED AT AS A MOMENT OF PASSION
19 AT MINUTE 720?

20 A I SAID IT WAS LOOKED AT?

21 Q THAT YOU'RE LOOKING AT IT AS A MOMENT OF PASSION,
22 MINUTE 720?

23 A I MAY HAVE SAID THAT.

24 Q OKAY. JOSE SAYS THAT HE'D BEEN DRINKING ALL DAY AND
25 THAT HE DID NOT MEAN TO DO IT AT MINUTE 955?

BOB BROMAGE - CROSS BY MS. CARROWAY

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1 A THAT MAKES SENSE.

2 Q OKAY. LET'S MOVE ON TO THE 21ST, THE LAST STATEMENT.

3 THE SIXTH AND FINAL STATEMENT HE SAYS -- JOSE SAYS, YOU

4 WOULD AGREE THAT HE SAID, SHE PUSHED ME. I STUMBLED AND I

5 DID NOT FALL. AND SHE SAID, IF YOU LEAVE, WAIT TO SEE

6 WHAT'S WAITING FOR YOU WHEN YOU GET HOME. THAT WAS AT

7 MINUTE 530. YOU WOULDN'T DISAGREE WITH THAT?

8 A I'VE HEARD THAT NUMEROUS TIMES IN THE INTERVIEWS, YES.

9 Q AND THEN YOU SAY AT MINUTE 645, THERE'S NOTHING TO

10 SUGGEST THAT YOU PLANNED IT. THERE WAS A LOT OF EMOTION

11 GOING ON. YOU WOULDN'T DISAGREE WITH THAT?

12 A I WOULDN'T DISAGREE WITH THAT.

13 Q OKAY. AND THEN JOSE SAYS AT MINUTE 1030, IT WAS NOT

14 INTENTIONAL. IT WAS AN ACCIDENT. SHE PUSHED ME AND I

15 STUMBLED KIND OF ONTO THE BED. YOU WOULDN'T DISAGREE WITH

16 THAT?

17 A THAT WOULD BE THE FIRST TIME THAT I HEARD THAT, THAT

18 HE STUMBLED ONTO THE BED BECAUSE THAT'S NOT HOW HE

19 INDICATED SHE -- SHE -- YEAH, HE KIND OF INDICATED HOW SHE

20 PUSHED HIM IN ONE OF THOSE FIRST INTERVIEWS.

21 Q OKAY. AT MINUTE 15 SHE DID NOT INTEND -- JOSE SAID

22 THAT HE DID NOT INTEND FOR THINGS TO HAPPEN THIS WAY. YOU

23 WOULD AGREE WITH THAT?

24 A YEAH, I WOULD.

25 Q OKAY. MINUTE 1710 YOU WOULD AGREE THAT YOU SAID,

1 I WAS JUST HOPING I MISSED. I PANICKED. I STARTED
2 SHAKING.

3 A THAT SOUNDS RIGHT.

4 Q OKAY. AND DIRECTLY AFTER THAT HE SAID, I DIDN'T WEAR
5 GLOVES OR WIPE OFF THE GUN?

6 A I ASKED HIM THAT, I DO RECALL THAT, YES.

7 Q RIGHT. AND THEN IMMEDIATELY FOLLOWING THAT, HE SAYS
8 HE WAS HAPPY, HE LOVED HIS WIFE, AND THEY HAD PLANS FOR THE
9 FUTURE TOGETHER?

10 A THAT SOUNDS RIGHT.

11 Q AND THEN TOWARDS THE END OF THE INTERVIEW AT MINUTE 40
12 YOU COMMENT ON THE GUN BEING A PIECE OF CRAP AND IT'S HELD
13 TOGETHER BY A SCREW?

14 A THAT'S EXACTLY HOW IT IS.

15 Q AT THE VERY END YOU TELL JOSE YOU KNOW HE DIDN'T TELL
16 THE TRUTH BEFORE BECAUSE HE WAS SCARED. BUT YOU'RE GLAD
17 HE'S BEING TRUTHFUL NOW?

18 A YES, I'M SURE I SAID THAT.

19 MS. CARROWAY: YOUR HONOR, I BEG THE COURT'S
20 INDULGENCE JUST A MOMENT.

21 (PAUSE.)

22 MS. CARROWAY: YOUR HONOR, NO FURTHER QUESTIONS.
23 THANK YOU.

24 THE COURT: REDIRECT?

25 MR. STONE: JUST A FEW.

BOB BROMAGE — REDIRECT BY MR. STONE

333

1 REDIRECT EXAMINATION BY MR. STONE:

2 Q HOW LONG HAVE YOU BEEN DOING THIS, CAPTAIN?

3 A BEEN DOING CRIMINAL INVESTIGATION SINCE 1992, WHICH
4 INCLUDES HOMICIDE. I'VE BEEN SPECIFICALLY IN COLD CASE AND
5 HOMICIDE AND DEATH INVESTIGATIONS SINCE 1999 WHEN THE
6 SHERIFF TOOK OVER.

7 Q YOU'VE DONE INTERVIEWS BEFORE OF DEFENDANTS?

8 A THOUSANDS.

9 Q HAVE YOU HAD ANY TRAINING IN DEFENDANTS AND GETTING
10 STATEMENTS FROM THEM?

11 A A LOT, SIR.

12 Q OKAY. YOU'RE TELLING HIM -- I WANT TO MAKE SURE I'VE
13 GOT THIS RIGHT. YOU DIDN'T MEAN TO KILL HER. I KNOW YOU
14 APPARENTLY LOVED YOUR WIFE, NOT LIKE YOU PLANNED IT. YOU
15 WERE SCARED. I UNDERSTAND. THE SITUATION ESCALATED. ALL
16 THIS STUFF. WHAT ARE YOU DOING THAT FOR?

17 A I'M DOING THAT TO PROVIDE AN ATMOSPHERE THAT IS
18 COMFORTABLE FOR HIM TO TELL ME THE TRUTH; THAT'S WHAT WE
19 LOOK FOR, TO LEAD HIM TO BELIEVE THAT I UNDERSTAND WHAT
20 WENT ON, WHETHER IT'S THE TRUTH OR NOT.

21 Q WHY?

22 A BECAUSE IT WAS APPARENT FROM THE BEGINNING THAT WAS
23 NOT THE TRUTH, THE INITIAL STORY. AND THE ACCIDENT WASN'T
24 PLAUSIBLE. SO WE JUST WENT ON AND ON. AND YOU HAVE TO
25 HAVE SOME KIND OF RAPPORT WITH THE PERSON YOU'RE ACTUALLY

1 INTERVIEWING. AND YOU HAVE TO PUT YOURSELF ON THEIR LEVEL
2 TO GET ANY KIND OF TRUTH. IF THEY'RE UNCOMFORTABLE WITH
3 YOU, THEY'RE NOT GOING TO TELL YOU THE TRUTH.

4 MR. STONE: I DON'T HAVE ANY FURTHER QUESTIONS, YOUR
5 HONOR.

6 THE COURT: ANYTHING FURTHER?

7 MS. CARROWAY: NO FURTHER QUESTIONS, YOUR HONOR.

8 THE COURT: ALL RIGHT. YOU MAY COME DOWN.

9 (THE WITNESS LEAVES THE WITNESS STAND.)

10 MR. STONE: YOUR HONOR, THE STATE RESTS.

11 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE
12 JURY, THAT CONCLUDES THE EVIDENCE TO BE PRESENTED TO YOU BY
13 THE STATE. AS I INDICATED TO YOU, THE DEFENSE NOW HAS THE
14 OPPORTUNITY TO PRESENT A DEFENSE, BUT BEFORE WE DO THAT,
15 THERE ARE A NUMBER OF LEGAL MATTERS I NEED TO TAKE UP WITH
16 THE ATTORNEYS.

17 SO LET'S TAKE OUR MORNING BREAK. IT WILL BE ABOUT 15
18 MINUTES, I GUESS. SO JUST RELAX IN THE JURY ROOM. WE'LL
19 CALL YOU WHEN WE'RE READY.

20 THANK YOU VERY MUCH. DON'T DISCUSS THE CASE AMONG
21 YOURSELVES WHILE YOU'RE IN THE JURY ROOM. JUST LEAVE THOSE
22 TRANSCRIPTS HERE PLEASE.

23 (THE JURY RETIRES TO THE JURY ROOM AT 11:13 A.M.)

24 THE COURT: ALL RIGHT. ANY MOTIONS?

25 MS. CARROWAY: YES, YOUR HONOR. AT THIS TIME THE

1 DEFENSE WOULD MOVE FOR A DIRECTED VERDICT MOTION. IN THE
2 LIGHT MOST FAVORABLE TO THE STATE, I BELIEVE THERE IS
3 INSUFFICIENT EVIDENCE TO SEND THE CASE TO THE JURY.

4 I WOULD ALSO RENEW ALL OF MY PRIOR MOTIONS AND
5 OBJECTIONS AT THIS TIME.

6 THE COURT: WHAT'S THE STATE'S POSITION?

7 MR. STONE: NO FURTHER ARGUMENT ON THOSE ISSUES, YOUR
8 HONOR, AND I THINK THE RECORD SPEAKS FOR ITSELF AS TO THE
9 ALLEGATIONS IN THIS CASE.

10 THE COURT: ALL RIGHT. I FEEL THERE IS SUFFICIENT
11 EVIDENCE TO TAKE THIS CASE TO THE JURY. IN THE LIGHT MOST
12 FAVORABLE TO THE STATE, I RESPECTFULLY DENY YOUR MOTION.

13 NOW, IS THE DEFENSE READY TO PROCEED?

14 MS. CARROWAY: YES, SIR. THE DEFENSE RESTS. WE DON'T
15 HAVE ANYTHING.

16 THE COURT: LET ME DO THIS BEFORE YOU MAKE THAT
17 DECISION.

18 MR. HERRERA, IF YOU WOULD STAND PLEASE. I NEED TO
19 ADVISE YOU OF CERTAIN RIGHTS.

20 (COMPLIED.)

21 THE COURT: MR. HERRERA, AT THIS TIME I AM GOING TO
22 EXPLAIN TO YOU CERTAIN OF YOUR RIGHTS. IF YOU DO NOT
23 UNDERSTAND ANYTHING I SAY, PLEASE LET ME KNOW. IF YOU WANT
24 ME TO EXPLAIN ANYTHING IN MORE DETAIL, PLEASE LET ME KNOW.
25 DO YOU UNDERSTAND?

1 MR. HERRERA: YES.

2 THE COURT: WE NOW REACH THE STAGE OF THE TRIAL WHERE
3 YOU MAY PRESENT YOUR DEFENSE. YOU HAVE THE RIGHT TO CLAIM
4 THE PROTECTIONS GIVEN TO YOU BY THE FIFTH AMENDMENT TO THE
5 CONSTITUTION OF THE UNITED STATES. THIS AMENDMENT STATES
6 IN PART: NO PERSON SHALL BE COMPELLED IN ANY CRIMINAL CASE
7 TO BE A WITNESS AGAINST HIMSELF. THIS MEANS THAT YOU
8 CANNOT BE REQUIRED TO TESTIFY IN THIS CASE.

9 YOU HAVE THE RIGHT TO TESTIFY ON YOUR OWN BEHALF.
10 HOWEVER, NO ONE CAN MAKE YOU TESTIFY. THIS IS A PERSONAL
11 RIGHT. NO ONE CAN WAIVE THIS RIGHT EXCEPT YOU.

12 IF YOU DECIDE TO TESTIFY, YOU WILL BE SUBJECT TO THE
13 SAME RULES THAT GOVERN OTHER WITNESSES IN THIS CASE. YOU
14 MAY BE EXAMINED AND CROSS EXAMINED ON ANY RELEVANT ISSUE IN
15 THIS CASE.

16 IN ADDITION, IF YOU HAVE ANY CONVICTIONS INVOLVING
17 DISHONESTY OR FALSE STATEMENT OR FOR CRIMES PUNISHABLE BY
18 IMPRISONMENT FOR MORE THAN 1 YEAR AND THIS COURT DETERMINES
19 THAT THE PROBATIVE VALUE OF ADMITTING THIS EVIDENCE
20 OUTWEIGHS ITS PREJUDICIAL EFFECT TO YOU, THE SOLICITOR WILL
21 BE ABLE TO INTRODUCE YOUR RECORD TO ATTACK YOUR CREDIBILITY
22 IF YOU DECIDE TO TESTIFY.

23 THIS DECISION ON YOUR PART MUST BE FREELY,
24 VOLUNTARILY, AND INTELLIGENTLY MADE WITH KNOWLEDGE OF THE
25 PROTECTIONS GIVEN TO YOU BY THE FIFTH AMENDMENT TO THE

1 CONSTITUTION AND THE CONSEQUENCES OF YOUR DECISION TO
2 TESTIFY.

3 IF YOU DECIDE NOT TO TESTIFY, I WILL INSTRUCT THE
4 JURORS THAT THEY CANNOT GIVE THE FACT THAT YOU DID NOT
5 TESTIFY ANY CONSIDERATION WHATEVER, AND THAT THERE IS TO BE
6 ABSOLUTELY NO PREJUDICE TO YOU BECAUSE YOU DID NOT TESTIFY.

7 IT IS LEFT ENTIRELY UP TO YOU WHETHER OR NOT YOU
8 TESTIFY.

9 YOU MAY TALK WITH YOUR ATTORNEY, YOUR FAMILY AND
10 FRIENDS, OR ANYONE ELSE. BUT THE FINAL DECISION WILL BE
11 LEFT ENTIRELY UP TO YOU.

12 DO YOU UNDERSTAND WHAT I HAVE EXPLAINED TO YOU?

13 MR. HERRERA: YES.

14 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT WHAT I'VE
15 EXPLAINED TO YOU?

16 MR. HERRERA: NO, SIR.

17 THE COURT: HAVE YOU DISCUSSED WITH YOUR ATTORNEY
18 WHETHER YOU SHOULD TESTIFY OR NOT TESTIFY?

19 MR. HERRERA: YES, SIR.

20 THE COURT: DO YOU WISH TO TALK TO YOUR ATTORNEY ANY
21 MORE ABOUT THIS ISSUE?

22 MR. HERRERA: JUST SOME MORE -- MORE ISSUES REAL
23 QUICK.

24 MS. CARROWAY: YOUR HONOR, MAY WE HAVE JUST A MINUTE?

25 THE COURT: WE'LL TAKE A BREAK. WE'RE GOING TO TAKE A

1 10-MINUTE BREAK ANY WAY. YOU CAN EITHER TALK TO HIM AT
2 COUNSEL TABLE OR IN THE HOLDING CELL. HOWEVER YOU WISH.

3 MS. CARROWAY: OKAY.

4 THE COURT: LET'S TAKE A 10-MINUTE BREAK.

5 (A RECESS WAS TAKEN.)

6 THE COURT: ALL RIGHT. MR. HERRERA, HAVE YOU HAD AN
7 OPPORTUNITY TO DISCUSS THE ISSUE WITH YOUR ATTORNEY?

8 MR. HERRERA: YES, SIR.

9 THE COURT: ALL RIGHT. DO YOU WISH TO TESTIFY?

10 MR. HERRERA: NO, SIR.

11 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. MS.

12 CARROWAY ---

13 MS. CARROWAY: AT THIS TIME, YOUR HONOR, THE DEFENSE
14 RESTS.

15 THE COURT: DO YOU WISH TO ANNOUNCE THAT TO THE JURY
16 OR ---

17 MS. CARROWAY: I WOULD.

18 THE COURT: YOU WOULD OR THE COURT. EITHER WAY. YOU
19 WILL, THAT'S FINE.

20 MS. CARROWAY: OR YOU CAN.

21 THE COURT: IT'S UP TO YOU.

22 MS. CARROWAY: YOU CAN.

23 THE COURT: THAT'S FINE.

24 MS. CARROWAY: BEFORE WE BRING THE JURY BACK, YOUR
25 HONOR, ALSO, SINCE I'VE RESTED, I'D LIKE TO RENEW MY

1 DIRECTED VERDICT MOTION.

2 THE COURT: CERTAINLY.

3 MS. CARROWAY: AND ALSO ALL MY OTHER PREVIOUS MOTIONS
4 AND OBJECTIONS.

5 THE COURT: RESPECTFULLY DENIED.

6 MS. CARROWAY: THANK YOU.

7 THE COURT: NOW, WHAT I PLAN TO DO IS DISMISS THIS
8 JURY FOR LUNCH. DO OUR CHARGE CONFERENCE. BREAK FOR
9 LUNCH. BRING THEM BACK, WHATEVER, 1:30, AT WHICH TIME
10 WE'LL DO FINAL ARGUMENT AND CHARGE. DEFENSE HAS PRESENTED
11 NO EVIDENCE. CORRECT? ALL RIGHT. DEFENSE WILL CLOSE.

12 MR. STONE: YES, SIR.

13 THE COURT: ALL RIGHT. BRING THE JURY PLEASE.

14 (THE JURY RETURNS TO THE COURTROOM AT 11:38 A.M.)

15 BAILIFF: THE JURY IS SEATED, YOUR HONOR.

16 THE COURT: THANK YOU VERY MUCH. ALL RIGHT. LADIES
17 AND GENTLEMEN OF THE JURY, I'LL ANNOUNCE TO YOU AT THIS
18 TIME THAT THE DEFENSE ALSO RESTS. THAT MEANS YOU'VE HEARD
19 ALL OF THE EVIDENCE IN THE CASE. THE REMAINING PORTION OF
20 THE TRIAL CONSISTS OF THE FINAL ARGUMENTS OF COUNSEL AND MY
21 CHARGE TO YOU ON THE LAW OF THE STATE OF SOUTH CAROLINA AS
22 IT APPLIES TO THIS CASE.

23 NOW, THAT PROCESS GENERALLY TAKES PERHAPS UP TO AN
24 HOUR AND A HALF OR TWO HOURS. AND I'M NOT GOING TO KEEP
25 YOU HERE AND START THAT PROCESS, BECAUSE IT WILL RUN INTO

1 OUR LUNCH HOUR.

2 SO WHAT I'M GOING TO DO AT THIS TIME IS EXCUSE YOU NOW
3 UNTIL 1:30. THAT'S A LITTLE BIT LONGER THAN WE WOULD
4 NORMALLY DO, BUT THERE ARE A NUMBER OF THINGS THAT COUNSEL
5 AND I NEED TO DO PRIOR TO THE FINAL CLOSINGS AND THE CHARGE
6 ON THE LAW AS IT APPLIES TO THIS CASE. THERE ARE SEVERAL
7 LEGAL ISSUES WE NEED TO DISCUSS BEFORE THAT FINAL ARGUMENT
8 TAKES PLACE.

9 SO YOUR LUNCH HOUR WILL BE A LITTLE LONGER THAN
10 NORMAL, BUT I'LL ASK YOU TO BE BACK IN THE JURY ROOM AT
11 1:30, AT WHICH TIME WE WILL CONCLUDE THIS CASE. AND,
12 AGAIN, I'LL ASK YOU NOT TO DISCUSS THE CASE WITH ANYONE
13 WHILE YOU'RE AT LUNCH OR AMONG YOURSELVES WHEN YOU RETURN
14 TO THE JURY ROOM.

15 WE'LL SEE YOU AT 1:30, AT WHICH TIME WE WILL CONCLUDE
16 THE CASE. THANK YOU VERY MUCH.

17 (THE JURY EXITS THE COURTROOM AT 11:40 A.M.)

18 THE COURT: ALL RIGHT. ANY REQUEST FOR CHARGE FROM
19 THE STATE?

20 MR. STONE: YOUR HONOR, THE STATE WOULD ONLY REQUEST A
21 CHARGE ON MURDER. WE DON'T BELIEVE THERE'S ANY OTHER
22 APPROPRIATE LAW. OF COURSE, THE OTHER -- I KNOW WHAT THE
23 STANDARD CHARGES ARE AS FAR AS THE REASONABLE DOUBT, THINGS
24 LIKE THAT. WE DON'T HAVE ANY SPECIFIC CHARGE AS TO ANY OF
25 THAT.

1 THE COURT: ALL RIGHT. I'LL PROVIDE YOU WITH A COPY
2 OF MY CHARGE BEFORE WE RECONVENE, LET'S PUT IT THAT WAY.
3 AND IF YOU HAVE ANY OBJECTIONS TO IT, I'LL CERTAINLY HEAR
4 THEM AT THAT TIME.

5 FROM THE DEFENSE?

6 MS. CARROWAY: YOUR HONOR, THE DEFENSE WOULD REQUEST
7 VOLUNTARY MANSLAUGHTER, INVOLUNTARY MANSLAUGHTER, ACCIDENT,
8 AND THE CHARGE FROM ELMORE (PHONETIC) THAT THE DEADLY
9 WEAPON DOESN'T NECESSARILY EQUAL MALICE, THAT IT IS A
10 PERMISSIVE INFERENCE.

11 I'VE PROVIDED CASE LAW TO YOUR LAW CLERK. WITH
12 VOLUNTARY MANSLAUGHTER WE HAVE STATE V. CAIN (PHONETIC).
13 AND THAT'S A CASE WHERE THE ONLY EVIDENCE IS THAT THE
14 DEFENDANT AND HIS WIFE WERE ARGUING SEVERAL HOURS PRIOR AT
15 A PARTY WHERE THEY WERE DRINKING, AND THE CHARGE WAS GIVEN.

16 AND IN THIS CASE WE'VE GOT THEM ARGUING RIGHT UP UNTIL
17 SECONDS BEFORE.

18 WE ALSO HAVE THE -- AS FAR AS THE LEGAL PROVOCATION,
19 WE'VE GOT THE PUSH. THERE'S CONSISTENT TESTIMONY ABOUT A
20 PUSH, EVEN AN ATTEMPTED HIT. I THINK THAT CHARGE IS
21 APPROPRIATE.

22 THE COURT: I TEND TO AGREE WITH YOU.

23 MS. CARROWAY: INVOLUNTARY MANSLAUGHTER IS LOOKING TO
24 STATE V. LIGHT (PHONETIC), YOUR HONOR, WHERE IT SAYS IF
25 THERE'S ANY EVIDENCE AT ALL IN THE RECORD, THE CHARGE MUST

1 BE GIVEN. AND I'M ALSO LOOKING AT STATE V. BURRIS, WHERE I
2 UNDERSTAND THE SOLICITOR IS GOING TO ARGUE UNDER THE NEW
3 WORTON (PHONETIC) CASE, BUT I WOULD ARGUE THAT MY CASE IS
4 DIFFERENT FROM THAT. IT'S SIMILAR TO BURRIS. IN THAT IN
5 BURRIS THE DEFENDANT IS IN HIS OWN HOME, AND THEY SAY THAT
6 THAT'S NOT UNLAWFUL BECAUSE HE'S IN POSSESSION OF THE GUN
7 EVEN THOUGH IT WOULD OTHERWISE BE UNLAWFUL ISN'T BECAUSE
8 HE'S IN HIS HOME, WHEREAS HERE IN THE WORTON CASE THE
9 DEFENDANT'S NOT IN HIS HOME.

10 WE WOULD ALSO USE BURRIS, YOUR HONOR, AS A BASIS FOR
11 ASKING FOR AN ACCIDENT CHARGE.

12 THE COURT: LET'S STAY WITH INVOLUNTARY FOR A MINUTE.

13 MS. CARROWAY: OKAY.

14 THE COURT: THERE'S SOME QUESTION ABOUT THAT, WHETHER
15 THAT SHOULD BE CHARGED. THE STATE HAS FURNISHED BOTH
16 WORTON -- WELL, WORTON -- WORTON IS BASED ON REESE. AND IT
17 SEEMS TO ME THAT EITHER POINTING OR PRESENTING A LOADED OR
18 UNLOADED FIREARM IS A VIOLATION OF THE STATUTE. AS A
19 MATTER OF FACT, IT'S A FELONY. AND THE INVOLUNTARY CHARGE
20 IS DEFINED AS THE KILLING OF ANOTHER WITHOUT MALICE AND
21 UNINTENTIONALLY WHILE ENGAGED IN EITHER AN UNLAWFUL ACT NOT
22 AMOUNTING TO A FELONY -- WHICH WE DON'T HAVE HERE -- OR AN
23 UNLAWFUL ACT WITH RECKLESS DISREGARD. I MEAN, INVOLUNTARY
24 IS THE KILLING OF ANOTHER ALMOST LIKE AN ACCIDENT.

25 MS. CARROWAY: YOUR HONOR ---

1 THE COURT: I MEAN, THE SHOOTING, NOT INTENDING TO --
2 IT'S A GAME AND HITTING SOMEONE.

3 MS. CARROWAY: I WOULD ARGUE THAT THERE IS EVIDENCE IN
4 THE RECORD THAT HE HAD NO INTENT TO POINT THE FIREARM IN
5 ANY WAY, HE TRIPPED AND FELL.

6 THE COURT: HE WENT AND GOT THE FIREARM AND WENT TO
7 THE BATHROOM DOOR WHERE SHE WAS LOCATED.

8 MS. CARROWAY: WELL, THERE WAS TESTIMONY THAT HE
9 DIDN'T INTEND TO POINT AT HER, THAT HE TRIPPED AND FELL.

10 THE COURT: HOW ABOUT IT, SOLICITOR?

11 MR. STONE: IN WORTON AS I GAVE YOU EARLIER, IT WAS
12 EVEN LESS THAN WHAT WE HAVE HERE. THE PERSON IN THAT CASE
13 ACCORDING TO THE BEST CASE SCENARIO IS THAT THE DEFENDANT
14 ACTUALLY WAIVED THE GUN IN THE AIR AND IT SOMEHOW WENT OFF
15 AND SHOT THE PERSON. THERE'S NOT EVEN THE INDICATION AS
16 MUCH AS THERE IS HERE THAT THERE WAS A POINTING. CLEARLY,
17 I DON'T SEE HOW THE DEFENSE CAN ARGUE THAT THIS IS -- THAT
18 POINTING THE GUN AT SOMEBODY IS A LAWFUL ACTIVITY. IT
19 CERTAINLY IS NOT ONE THAT TENDS TO CAUSE -- IT CERTAINLY IS
20 ONE THAT TENDS TO CAUSE DEATH OR SERIOUS HARM AS WE HAVE
21 HERE.

22 I THINK WORTON IS VERY CLEAR ON THIS.

23 THE COURT: HOW ABOUT PRESENTING THE FIREARM?

24 MS. CARROWAY: YOUR HONOR, I WOULD ARGUE THAT THE
25 DIFFERENCE IN THIS CASE AND WORTON IS THAT IN THIS CASE THE

1 DEFENDANT IS IN HIS HOME. SO YOU'RE BACK WITH THE BURRIS
2 SITUATION.

3 THE COURT: WELL, I JUST DON'T SEE IT, MS. CARROWAY.
4 IN MY OPINION THIS GOES BEYOND -- I MEAN, THERE'S A FIREARM
5 THAT'S BEING WAIVED AROUND AND THERE'S EVIDENCE OF ILL-
6 WILL. I MEAN, WITHOUT QUOTING THE DEFENDANT, HE WAS TIRED
7 OF THIS, AND THE FACT THAT HIS WIFE MAY OR MAY NOT HAVE
8 BEEN BADGERING HIM. OF COURSE, THOSE ARE WORDS. I THINK
9 YOU GET TO THE VOLUNTARY WITH THE PUSH. I DON'T THINK YOU
10 WOULD HAVE GOTTEN THERE IF IT WEREN'T FOR THE PUSH. BUT
11 NEVERTHELESS, THAT'S THE WAY THAT IS.

12 I JUST DON'T SEE -- AND I'VE BEEN WRONG ON NOT
13 CHARGING INVOLUNTARY BEFORE. BUT THE SUPREME COURT IN --
14 EVEN IN REESE, THERE WAS AN APPEAL FROM THE COURT OF
15 APPEALS, THEY SAID THAT FAILURE TO GIVE THE INVOLUNTARY
16 CHARGE IN THAT CASE WAS CORRECT.

17 ARE NOT YOUR CASES SELF-DEFENSE CASES THAT YOU --
18 BURRIS AND LIGHT?

19 MS. CARROWAY: YOUR HONOR, BURRIS IS A SELF-DEFENSE
20 CASE. BUT I THINK THAT THE PRINCIPLE STILL STANDS. THE
21 ISSUE IN THAT CASE WAS IT CAN -- I CAN'T REMEMBER IF HE WAS
22 CHARGED OR IT WAS POSSESSION OF AN -- UNLAWFUL POSSESSION
23 OF A WEAPON OR POSSESSION BY A PERSON UNDER 21, AND THEY
24 SAID, WELL, EVEN THOUGH HE'S UNLAWFULLY ARMED TECHNICALLY,
25 WE'RE SAYING I BELIEVE HE WAS IN HIS OWN HOME. AND SO THAT

1 DOESN'T DENY HIM THE ABILITY TO ASSERT THESE DEFENSES.

2 THE COURT: WHAT DOES IN YOUR OWN HOME LEGALLY MEAN?

3 I MEAN, WHAT'S THE CONSEQUENCE OF BEING IN YOUR OWN HOME?

4 MS. CARROWAY: I'M NOT SURE WHAT YOU MEAN.

5 THE COURT: WELL, YOU KEEP REFERRING TO, BUT HE WAS IN
6 HIS OWN HOME, BUT HE WAS IN HIS OWN HOME.

7 MS. CARROWAY: I THINK THAT'S WHAT THE BURRIS SAID. I
8 APOLOGIZE. I ACTUALLY HANDED MY COPY TO THE -- I'VE GOT
9 NOTES ON IT. I CAN'T ---

10 THE COURT: THAT'S ALL RIGHT.

11 MS. CARROWAY: SORRY.

12 THE COURT: I MEAN, IS THERE SOME LEGAL SIGNIFICANCE
13 TO BEING IN YOUR OWN HOME? SEEMS TO ME YOU CAN STILL POINT
14 AND PRESENT A FIREARM ILLEGALLY EVEN IN YOUR OWN HOME.

15 MS. CARROWAY: YES, SIR. I THINK THE POINT I WAS
16 MAKING IS THAT THE COURT IN BURRIS ALLOWED -- SHOULD HAVE
17 ALLOWED ACCIDENT AND INVOLUNTARY MANSLAUGHTER EVEN THOUGH
18 HE HAD BEEN IN UNLAWFUL POSSESSION OF THE GUN AT THE TIME.
19 THEY SAID THAT HE WAS ALLOWED TO POSSESS THE WEAPON IN HIS
20 HOME. AND I WOULD ARGUE THAT'S WHAT HAPPENING HERE.

21 THE COURT: I SEE.

22 MS. CARROWAY: THERE HAS TO BE, YOU KNOW, UNDER A
23 NUMBER OF CASES -- NAUGHTON I THINK IS ONE OF THEM. THE
24 EVIDENCE HAS TO BE VIEWED IN THE LIGHT MOST FAVORABLE IF
25 THERE'S ANY EVIDENCE AT ALL. THERE IS EVIDENCE, THE

1 DEFENDANT'S OWN STATEMENT IS HE DIDN'T INTEND TO POINT IT
2 AT HER.

3 I THINK THAT THAT'S SUFFICIENT TO GIVE THE CHARGE TO
4 THE JURY.

5 THE COURT: HOW ABOUT IT, SOLICITOR? DOES THAT MAKE
6 IT A JURY QUESTION?

7 MR. STONE: JUDGE, I DON'T -- I DON'T -- WHETHER HE
8 POSSESSED A GUN IN THE HOME IS ONE THING. I UNDERSTAND
9 POSSESSION OF THE GUN. HOWEVER, YOU STILL DON'T GET TO
10 POINT IT AT SOMEBODY. AND SINCE THE GUN FIRED ---

11 THE COURT: SHE SAYS HE DIDN'T INTEND TO POINT IT,
12 WHICH WOULD SUGGEST THAT WAS A JURY ISSUE.

13 MR. STONE: WORTON DIDN'T EITHER. WORTON DIDN'T
14 INTEND TO POINT IT AT ANYBODY. AND THE SUPREME COURT IN
15 THAT CASE IN FEBRUARY SAID, IT'S NOT A JURY QUESTION.
16 THERE'S NO CHARGE.

17 THE COURT: WELL, REESE DIDN'T INTEND TO POINT IT
18 EITHER, HE SAID. HE PRESENTED IT. AND THERE'S A
19 DIFFERENCE.

20 WHAT ARE YOUR OTHER REQUEST TO CHARGE, MS. CARROWAY?
21 HOW DO WE EVER GET TO ACCIDENT, OTHER THAN THE FACT HE SAID
22 IT WAS AN ACCIDENT? I MEAN, THAT'S NOT THE LAW OF
23 ACCIDENT. YOU JUST CAN'T SAY IT AND MAKE IT AN ACCIDENT.

24 MS. CARROWAY: YES, SIR, I UNDERSTAND. I'M ALSO
25 RELYING ON BURRIS FOR THAT -- THAT -- THE ACCIDENT CHARGE

1 WAS GIVEN IN THAT CASE AS WELL. I THINK HE SAYS IT'S AN
2 ACCIDENT. HE SAYS THAT HE TRIPPED. SO THERE'S EVIDENCE IN
3 THE RECORD THAT THE JURY COULD FIND IT WAS AN ACCIDENT, AND
4 THAT WE'RE ENTITLED TO AN ACCIDENT CHARGE.

5 THE COURT: DOESN'T HE HAVE TO BE, AGAIN, ACTING
6 LAWFULLY?

7 MS. CARROWAY: YES, SIR, THAT'S WHY I'M SAYING UNDER
8 BURRIS THAT IT IS CONSIDERED LAWFUL FOR HIM TO POSSESS A
9 HANDGUN.

10 THE COURT: WELL, POSSESSING A HANDGUN IS LAWFUL, BUT
11 PRESENTING IT ---

12 MS. CARROWAY: AND I WOULD JUST ARGUE, AGAIN, THAT
13 THERE'S EVIDENCE IN THE RECORD THAT HE DIDN'T INTEND TO
14 POINT OR PRESENT IT.

15 THE COURT: DO YOU HAVE OTHER ---

16 MS. CARROWAY: WELL, JUDGE, VOLUNTARY AND ---

17 THE COURT: OH, YES, ELMORE.

18 MS. CARROWAY: AND ELMORE.

19 THE COURT: ANY PROBLEM WITH ELMORE?

20 MR. STONE: NO.

21 THE COURT: THAT'S THE LAW.

22 MR. STONE: YES, SIR. I DON'T HAVE ANY PROBLEM WITH
23 THAT.

24 MS. CARROWAY: JUST THE OTHER STANDARD STUFF IS FINE,
25 REASONABLE DOUBT.

1 THE COURT: ALL RIGHT. WELL, LET ME HAVE BURRIS.

2 I'LL READ IT AGAIN.

3 MR. STONE: COULD I GET EITHER THE CITE OF THE CASE

4 BECAUSE I HAVEN'T SEEN IT. I'LL JUST PULL THE CITE.

5 MS. CARROWAY: 344 SC 256.

6 THE COURT: WE'LL PRINT A COPY.

7 MR. STONE: THANK YOU, YOUR HONOR.

8 THE COURT: FOR US.

9 MS. CARROWAY: I APOLOGIZE FOR NOT HAVING COPIES, YOUR
10 HONOR.

11 THE COURT: ALL RIGHT. LET'S STAND AT EASE UNTIL
12 ABOUT 1:15, AND I'LL GIVE YOU MY CHARGE AT THAT TIME.

13 MS. CARROWAY: OKAY.

14 MR. STONE: THANK YOU, YOUR HONOR.

15 (PAUSE.)

16 THE COURT: ALL RIGHT. COME TO ORDER PLEASE. MS.
17 CARROWAY, WITH RESPECT TO THE POSSESSION OF THE WEAPON
18 DURING -- ANY MOTIONS ON THAT OR REQUEST TO CHARGE? I'M
19 JUST GOING TO CHARGE THE STATUTE.

20 MS. CARROWAY: THAT'S GOOD, YOUR HONOR.

21 THE COURT: NOW, THE VERDICT FORM, IS IT SATISFACTORY
22 TO SEND THE INDICTMENTS? ANY OBJECTION FROM THE STATE?

23 MR. STONE: NOT FROM THE STATE, YOUR HONOR.

24 MS. CARROWAY: YOUR HONOR, IF THE LESSER INCLUDED ARE
25 CHARGED, WE'LL HAVE SOME ADDITIONAL.

1 THE COURT: YOU'RE RIGHT. WE'LL HAVE TO DO A VERDICT
2 FORM ON THAT FOR THE LESSER INCLUDED, YOU'RE RIGHT.

3 ALL RIGHT. WE'LL STAND AT EASE UNTIL 1:15.

4 (COURT IS IN RECESS FOR LUNCH.)

5 THE COURT: ALL RIGHT. I HAVE REVIEWED THE CASES
6 SUBMITTED BY THE DEFENDANT, AND PARTICULARLY WITH REFERENCE
7 TO BURRIS. AND THE FACTS ARE SO MUCH DIFFERENT IN BURRIS
8 THAN THEY ARE HERE, NOT THAT THAT IS DISPOSITIVE. BUT
9 BURRIS IS A SELF-DEFENSE CASE. AND SELF-DEFENSE IS NOT AN
10 UNLAWFUL ACT. AND BURRIS POSSESSED A PISTOL IN THAT CASE.
11 AND I JUST THINK THAT THAT IS NOT WHAT WE HAVE HERE. HERE
12 WE HAVE A POINTING AND PRESENTING, REGARDLESS OF HOW THE
13 DEFENDANT CHARACTERIZES IT, WHICH IS A FELONY.

14 AN EXCEPTION FOR SELF-DEFENSE IN A SELF-DEFENSE CASE
15 IS NOT WHAT WE HAVE HERE.

16 I THINK THIS CASE NEEDS TO GO TO THE JURY ON MURDER
17 AND VOLUNTARY MANSLAUGHTER AND THAT'S IT; AND THAT'S THE
18 WAY I SO RULE.

19 NOW, I HAVE PREPARED FOR COUNSEL A SET OF CHARGES WITH
20 A VERDICT FORM ON MURDER AND THE LESSER INCLUDED CHARGE OF
21 VOLUNTARY MANSLAUGHTER.

22 I HAVE NOT PREPARED BUT I CAN PREPARE A VERDICT FORM
23 ON THE WEAPONS CHARGE. MAYBE IT WOULD BE MORE CONSISTENT
24 WITH THE JURY IF I DID THAT INSTEAD OF GIVING THEM THE
25 INDICTMENT.

1 I'LL GIVE YOU A FEW MINUTES TO LOOK THOSE OVER. THE
2 JURY'S NOT PRESENT YET, SO WE'LL JUST RELAX. IF WE HAVE
3 ANY EXCEPTIONS, LET ME KNOW.

4 (PAUSE.)

5 MR. STONE: I DON'T HAVE ANY OBJECTIONS TO THIS
6 CHARGE, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 (PAUSE.)

9 MS. CARROWAY: YOUR HONOR, I DON'T HAVE ANY OBJECTION
10 TO THESE CHARGES.

11 THE COURT: OTHER THAN THOSE PREVIOUSLY STATED?

12 MS. CARROWAY: YES, SIR. I WOULD JUST NOTE FOR THE
13 RECORD THAT MY OBJECTION BASED ON YOUR REFUSING TO CHARGE
14 INVOLUNTARY AND ACCIDENT -- BASED ON THE ---

15 THE COURT: YES, MA'AM. I UNDERSTAND.

16 ALL RIGHT. THE STATE READY FOR THE JURY?

17 MR. STONE: THE STATE'S READY, YOUR HONOR.

18 THE COURT: DEFENSE READY FOR THE JURY?

19 MS. CARROWAY: YES, SIR.

20 THE COURT: BRING THE JURY.

21 I'M GOING TO TAKE JUST A MINUTE AND EXPLAIN TO THEM
22 THE CONCEPT OF A LESSER INCLUDED CHARGE.

23 MS. CARROWAY: YOU SAID YOU WOULD DO A VERDICT FORM
24 FOR THE ---

25 THE COURT: WEAPONS CHARGE.

1 MS. CARROWAY: YES, SIR.

2 THE COURT: OKAY.

3 MS. CARROWAY: OKAY. JUST SO THEY ARE THE SAME.

4 THE COURT: THEY ARE THE SAME. I JUST DON'T LIKE
5 LAWYERS TO GET UP AND START TALKING ABOUT SOMETHING THAT I
6 HAVEN'T TOLD THEM THAT THEY ARE TO CONSIDER.

7 (THE JURY RETURNS TO THE COURTROOM AT 1:35 P.M.)

8 BAILIFF: THE JURY IS SEATED, YOUR HONOR.

9 THE COURT: THANK YOU VERY MUCH.

10 ALL RIGHT. LADIES AND GENTLEMEN, I HOPE YOU HAD A
11 PLEASANT LUNCH. WE'RE NOW READY TO CONCLUDE THE TRIAL WITH
12 THE FINAL ARGUMENTS OF COUNSEL AND MY INSTRUCTIONS TO YOU
13 ON THE LAW AS IT APPLIES TO THIS CASE.

14 BEFORE THAT BEGINS, LET ME JUST TAKE A MINUTE TO
15 EXPLAIN SOMETHING TO YOU. IT'S A CONCEPT IN OUR LAW KNOWN
16 AS LESSER INCLUDED OFFENSE. NOW, YOU MAY HAVE HEARD FROM
17 WATCHING T.V., C.S.I., OR LAW AND ORDER, THINGS LIKE THAT
18 AND YOU MAY HAVE HEARD REFERENCES TO THINGS LIKE MURDER IN
19 THE FIRST DEGREE, MURDER IN THE SECOND DEGREE, MURDER IN
20 THE THIRD DEGREE; THAT SORT OF THING.

21 WELL, WE DON'T HAVE THAT HERE IN SOUTH CAROLINA IN
22 THOSE TERMS. ALTHOUGH, WE DO HAVE THE SAME BASIC LAW.

23 IN SOUTH CAROLINA THE -- I'M GOING TO CALL IT --
24 LESSER INCLUDED OFFENSES UNDER THE STATUTE OF MURDER ARE
25 VOLUNTARY MANSLAUGHTER AND INVOLUNTARY MANSLAUGHTER.

1 NOW, I HAVE DETERMINED AFTER A LENGTHY DISCUSSION WITH
2 THE ATTORNEYS THAT IN THIS CASE I'M GOING TO ALLOW THE
3 VOLUNTARY MANSLAUGHTER CHARGE TO GO TO THE JURY. IN OTHER
4 WORDS, YOU'RE GOING TO BE ASKED TO CONSIDER AND THE
5 ATTORNEYS ARE GOING TO TALK TO YOU ABOUT IT, AND THAT'S WHY
6 I WANTED TO APPRIZE YOU OF THIS SITUATION BEFORE YOU HEAR
7 IT FIRST FROM THE ATTORNEYS.

8 THE ATTORNEYS ARE GOING TO TALK TO YOU ABOUT THE
9 LESSER INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER. AND
10 THEY'LL PROBABLY TALK TO YOU A GOOD BIT ABOUT THAT.

11 SO IN YOUR -- WHILE YOU'RE LISTENING TO THE ATTORNEYS,
12 DON'T BE SURPRISED IF THEY TALK TO YOU ABOUT THIS. IN
13 ANOTHER STATE IT MIGHT BE CALLED MURDER TWO OR MURDER IN
14 THE SECOND DEGREE, OR SOMETHING LIKE THAT. BUT IN SOUTH
15 CAROLINA IT'S CALLED VOLUNTARY MANSLAUGHTER, AND IT IS A
16 SEPARATE CRIME, BUT IT'S ALSO INCLUDED WITHIN THE UMBRELLA
17 UNDER THE MURDER STATUTE.

18 SO WHEN YOU HEAR THAT, I DIDN'T WANT YOU TO BE
19 SURPRISED. THEY PROBABLY WILL EXPLAIN IT IN MORE DETAIL.
20 I WILL EXPLAIN IT TO YOU IN MUCH GREATER DETAIL IN MY FINAL
21 ARGUMENT -- I MEAN, INSTRUCTIONS TO YOU.

22 BUT AS YOU GO THROUGH, THEY'RE NOT JUST CREATING
23 SOMETHING FOR YOU TO CONSIDER. IT IS THE LAW. I WILL
24 EXPLAIN IT TO YOU IN GREATER DETAIL. BUT I WANTED YOU TO
25 BE AWARE OF IT BEFORE THE SUMMATIONS ACTUALLY STARTED.

1 SO WITH THAT LITTLE PREFACE, SOLICITOR, YOU MAY BEGIN
2 YOUR CLOSING ARGUMENT.

3 MR. STONE: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
4 COURT, SIR.

5 THE COURT: YES, SIR.

6 CLOSING ARGUMENTS BY MR. STONE ON BEHALF OF THE STATE:

7 MURDER, LADIES AND GENTLEMEN, IS THE UNLAWFUL KILLING
8 OF ANOTHER WITH MALICE. MALICE. WHAT IS MALICE? MALICE
9 IS SOMETHING THAT'S IN YOUR HEART, IN YOUR MIND. MALICE IS
10 AN EVIL INTENT, A CRIMINAL INTENT, WICKEDNESS. IT'S
11 DEFINED A NUMBER OF DIFFERENT WAYS.

12 THE DETERMINATION YOU HAVE BEFORE YOU IS WHETHER OR
13 NOT WHEN JOSE HERRERA SHOT AND KILLED HIS WIFE THERE WAS
14 MALICE.

15 NOW, THERE'S A NUMBER OF WAYS IN SOUTH CAROLINA THAT
16 YOU CAN DETERMINE THAT. NUMBER ONE, USE OF A DEADLY
17 WEAPON. DID JOSE HERRERA USE A PISTOL WHEN HE SHOT AND
18 KILLED KATHERINE HERRERA IN THE BACK OF HER HEAD? YOU MAY
19 USE THAT TO DETERMINE HIS MALICE. BUT YOU DON'T HAVE TO
20 AND YOU DON'T NEED TO, BECAUSE THIS RECORD IS ABSOLUTELY
21 FULL OF MALICE.

22 EVERYTHING YOU HEARD IN THIS COURTROOM SPEAKS TO
23 MALICE, FROM THE BEGINNING, TO THE MIDDLE, TO THE END. AND
24 NOT ONLY THE EVIDENCE AND THE PHYSICAL EVIDENCE THAT YOU
25 SAW AND THE PHOTOGRAPHS THAT YOU SAW, THE WORDS THAT YOU

1 HEARD, EVERYTHING SAYS MALICE.

2 NO. 1 -- AND I APOLOGIZE FOR THIS LANGUAGE AND I
3 CERTAINLY HOPE YOU TAKE IT IN THE CONTEXT. BUT IT'S
4 IMPORTANT BECAUSE IT TELLS YOU WHAT IS IN JOSE HERRERA'S
5 HEART AND MIND REFERRING TO HIS WIFE BEFORE HE SHOTS AND
6 KILLS HER. THAT BITCH IS PISSING ME OFF. GET THE FUCK
7 BACK IN THE CAR. TALK LIKE THAT TO SOMEBODY AND NOT HAVE
8 SOME MALICE IN YOUR HEART AND IN YOUR MIND?

9 GET OUT OF THE CAR AT THE BRIDGE. GET OUT OF THE CAR.
10 GET OUT OF THE CAR? PARK ALONG THE SIDE OF THE ROAD, GOING
11 OVER THE BRIDGE INTO BEAUFORT, JUST GET OUT.

12 AND THEN WHAT HAPPENS WHEN HE SHOTS HER? I THINK
13 THIS IS PARTICULARLY IMPORTANT. IF WE REMEMBER BACK TO THE
14 VERY FIRST WITNESSES I PUT UP ON THE STAND, THE 9-1-1
15 CALLS. THEY GO INTO THE HOUSE. SHE GOES TO THE RESTROOM.
16 HE GOES TO GET A GUN. HE DIDN'T HAVE IT WITH HIM. HE GOES
17 TO GET IT. IT'S LOADED FULLY. AND EITHER HE COCKS IT OR
18 IT'S ALREADY COCKED.

19 NOW, HE SAYS, THIS GUN ACCIDENTLY GOES OFF.

20 BUT THE BALLISTICS EXPERT OR THE PROJECTILE EXPERT
21 THAT YOU HEARD WHO'S BEEN DOING THIS FOR 42 YEARS SAID
22 WHAT? THIS GUN DOESN'T GO OFF ANY MORE OR LESS
23 ACCIDENTALLY THAN ANY OTHER GUN. AND IN FACT, IT'S A
24 LITTLE BIT HARDER; THAT'S WHAT HE TESTIFIED TO.

25 BUT REGARDLESS, LET'S ASSUME FOR A SECOND THAT THIS

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1 GUN DOES ACCIDENTLY GO OFF LIKE IT DID PREVIOUSLY WHEN HE
2 WAS TRYING TO INTIMIDATE SOME GUY BY WAIVING IT AT HIM, AND
3 IT SHOT INTO THE FLOOR -- AT LEAST ACCORDING TO HIM. YOU
4 DON'T POINT A LOADED HANDGUN AT SOMEBODY AND NOT HAVE
5 MALICE, PERIOD.

6 BUT LET'S GO BACK TO THE 9-1-1 CALL. YOU HEARD THE
7 TESTIMONY -- AND I CERTAINLY HOPE YOU REMEMBER THIS. THE
8 9-1-1 OPERATOR SAID, DOES SHE HAVE A PULSE? IS SHE
9 BREATHING?

10 AND WHAT DOES HE SAY? NO, MA'AM, SHE DOESN'T HAVE A
11 PULSE, I'M CHECKING IT NOW. REALLY? BECAUSE WE NOW KNOW
12 THAT'S NOT WHAT HE WAS DOING AT ALL. THAT'S NOT WHAT HE
13 WAS DOING AT ALL.

14 I WOULD SUBMIT TO YOU, LADIES AND GENTLEMEN, HE DIDN'T
15 EVEN TOUCH HER. WHY? WHAT WAS HE DOING WHEN HE'S TALKING
16 TO THE 9-1-1 OPERATOR? IS HE CHECKING THE PULSE OF THE
17 WIFE THAT, OH, MY GOODNESS I JUST ACCIDENTLY SHOT? IS HE
18 SEEING IF SHE'S BREATHING? IS HE DOING ANYTHING TO GIVE
19 HER AID? NO. WHAT'S HE DOING? HE'S TAKING THIS GUN AND
20 HE'S THROWING IT AWAY. HE'S GETTING IN HIS CAR AND HE'S
21 DRIVING DOWN THE ROAD TO THROW THE GUN AWAY.

22 BUT THAT'S NOT ALL. IT WAS QUITE A BUSY AFTERNOON
23 BECAUSE HE HAD TO TAKE THE BULLETS AND RUN THOSE OUT THE
24 BACK OF THE YARD AND THROW THOSE OVER THE FENCE WHILE HE
25 WAS ON THE PHONE WITH 9-1-1.

1 THINK ABOUT THAT A MINUTE. CAN YOU IMAGINE? AND I
2 KNOW IT'S DIFFICULT. BUT CAN YOU IMAGINE HAVING SHOT
3 SOMEBODY AND YOUR REACTION IS, I BETTER GET RID OF THE
4 EVIDENCE. YOU DON'T HAVE MALICE IN YOUR HEART AND YOU
5 DON'T HAVE MALICE IN YOUR MIND? AND YOU TELL THE 9-1-1
6 OPERATOR I'M CHECKING ON HER NOW, AND IN FACT YOU'RE DOING
7 NOTHING BUT COVERING YOUR OWN BASES. THAT'S ALL YOU'RE
8 DOING.

9 AND THAT'S EXACTLY WHAT JOSE HERRERA DID FROM THE
10 BEGINNING, IN THE MIDDLE, AND THE END. HIS INTENTION, HIS
11 HEART, HIS MIND DIDN'T HAVE A THING TO DO WITH KATHERINE
12 HERRERA. IT ALL HAD TO DO WITH HIM.

13 AND HIS STATEMENTS TO LAW ENFORCEMENT, ALL OF THESE
14 STATEMENTS, WHAT WERE THEY? THEY WERE ABOUT HIM, UNTIL HE
15 COULDN'T GET AWAY WITH IT ANY MORE AND HE CHANGED IT TO
16 SOMETHING ELSE.

17 REMEMBER HIS LAST STATEMENT? THE BEGINNING -- OF
18 COURSE, AT THE VERY FIRST THIS WAS AN UNKNOWN SITUATION, HE
19 DIDN'T KNOW WHAT HAPPENED. NOT, OH, MY GOODNESS, I WAS
20 UPSET AND I ACCIDENTLY SHOT MY WIFE. I DON'T KNOW WHAT
21 HAPPENED.

22 ONE HAS TO WONDER IF MADISON WASN'T IN THE HOUSE IF
23 HE'D EVEN HAVE CALLED 9-1-1. BUT UNFORTUNATELY, HER BEING
24 THERE MANDATED IT BECAUSE AT SOME POINT SHE WAS COMING OUT
25 OF THAT SHOWER. AT SOME POINT SHE WAS COMING OUT OF THE

1 BEDROOM AND SHE WAS GOING TO FIND HER MOTHER DEAD.

2 SO WHAT DOES HE SAY? I DON'T KNOW WHAT HAPPENED. WE
3 HAD A LITTLE ARGUMENT. WASN'T A FIGHT OR ANYTHING. WASN'T
4 LIKE I PUSHED HER OR SHOVED HER OR THREW HER. WE JUST HAD
5 A LITTLE ARGUMENT.

6 THE NEXT INTERVIEW, I DON'T OWN A GUN. I DON'T EVEN
7 OWN A GUN. I MEAN, THERE'S THAT SHOTGUN, BUT I DON'T OWN A
8 PISTOL.

9 THEN YOU KNOW WHAT? OKAY. I DO OWN A GUN. BY THE
10 WAY, I RAN OUT OF THE HOUSE AND I THREW IT AWAY. BUT, YOU
11 KNOW WHAT? IT WAS A SUICIDE. I WALKED INTO THE RESTROOM
12 AND MY WIFE WAS SITTING ON THE TOILET AND SHE WAS TRYING TO
13 KILL HERSELF, SO I GRABBED THE GUN FROM HER AND IT
14 ACCIDENTLY WENT OFF.

15 AND THEN I TRIPPED. I DON'T REMEMBER IF IT WAS THE
16 CAT OR SOME HER CLOTHES OR SOMETHING, BUT I TRIPPED; THAT
17 WAS WHAT IT WAS.

18 HE SAID SOMETHING TO CAPTAIN BROMAGE AT THE VERY END
19 THAT I THOUGHT WAS PARTICULARLY IMPORTANT. DO YOU WANT THE
20 HONEST TRUTH NOW? WOULDN'T THAT BE NICE? I DON'T KNOW
21 THAT HE EVER DID TELL THE HONEST TRUTH. I BLACKED OUT.

22 BUT WHEN DID HE BLACK OUT? AFTER SHE SAID SOMETHING
23 STUPID. HOW DARE HER? HOW DARE HER.

24 YOUR DETERMINATION IS WHETHER OR NOT HE HAD MALICE.
25 AND YOU DON'T HAVE TO JUST RELY ON THE GUN. YOU CAN RELY

1 ON HIS ACTIONS, WHAT HE SAID TO HER BEFOREHAND. YOU CAN
2 RELY ON THE SIGNS OF DOMESTIC VIOLENCE ALL OVER THAT HOUSE.
3 AND HOW DID THAT HAPPEN BY THE WAY? MY HOUSE. MY WALLS.
4 I GOT MAD AT MY WIFE. I PUNCHED THEM. IT'S HIS PROPERTY.
5 AND I WOULD SUBMIT TO YOU, SO IS SHE, AT LEAST IN HIS MIND.
6 HOW DARE SHE SAY SOMETHING STUPID TO ME. WHAT WAS HIS
7 INTENTION? DO YOU REMEMBER THE LAST STATEMENT THAT YOU
8 HEARD WHAT HE SAID HIS INTENTION WAS? MY INTENTION WAS TO
9 GET HER TO BE QUIET SO I COULD CHILL OUT. WELL, HE DID IT.
10 HE DID IT.

11 THE DEFENSE IS GOING TO TALK TO YOU ABOUT VOLUNTARY
12 MANSLAUGHTER. I'LL TELL YOU JUST REAL BRIEFLY ABOUT WHAT
13 VOLUNTARY MANSLAUGHTER IS. VOLUNTARY MANSLAUGHTER IS THE
14 UNLAWFUL KILLING OF ANOTHER WITHOUT MALICE. AND IT
15 REQUIRES SOMETHING WHEN YOU USE A HANDGUN. IT REQUIRES AN
16 OVERT ACT, AN ACT OR A THREATENING ACT, SOME TYPE OF
17 HOSTILE ACT FROM THE OTHER PERSON.

18 EXCUSE ME, MR. BAILIFF. I'M SORRY. I HAVE TO MOVE
19 YOU JUST A SECOND. THAT'S GOOD.

20 IT REQUIRES, LADIES AND GENTLEMEN, AT THE TIME THAT
21 JOSE HERRERA TOOK THIS HANDGUN AND SHOT HER IN THE BACK OF
22 THE HEAD THAT SHE WAS DOING SOMETHING THREATENING TO HIM.

23 PLEASE TELL ME WHAT THAT WOULD BE. PLEASE TELL ME
24 WHAT HOSTILE ACT KATHERINE HERRERA DID TO HIM RIGHT BEFORE
25 HE SHOT AND KILLED HER. FOR HIM TO GET VOLUNTARY

1 MANSLAUGHTER MEANS SHE'S THREATENING HIM. SHE'S MAKING A
2 HOSTILE OVERT ACT, NOT SITTING IN THE TOILET IN HER MOST
3 VULNERABLE POSITION.

4 LADIES AND GENTLEMEN, THIS ISN'T VOLUNTARY
5 MANSLAUGHTER. AND IT'S NOT NOT GUILTY. THIS IS MURDER.
6 AND HE HAD MALICE.

7 AS I TOLD YOU AT THE VERY BEGINNING OF THIS, SHE WAS
8 DEFENSELESS. SHE WAS ABSOLUTELY DEFENSELESS. THE ONLY
9 THING SHE HAD IN HER HAD WAS A PIECE OF TOILET TISSUE. BUT
10 SHE SAID SOMETHING OR DID SOMETHING TO UPSET HIM. SINCE
11 SHE'S PROPERTY, HE JUST SHOT HER. JUST SHOT HER.

12 LADIES AND GENTLEMEN, SHE WAS DEFENSELESS. AND THIS
13 ACT -- THIS ACT IS DEFENSELESS. I TOLD YOU I'D ASK YOU TO
14 DO ONE THING AND ONE THING ONLY. BRING BACK A VERDICT THAT
15 SPEAKS THE TRUTH.

16 THANK YOU.

17 THE COURT: MS. CARROWAY.

18 MS. CARROWAY: THANK YOU, YOUR HONOR. MAY IT PLEASE
19 THE COURT.

20 CLOSING ARGUMENTS BY MS. CARROWAY ON BEHALF OF THE
21 DEFENDANT:

22 GOOD AFTERNOON. I HAVE TO HAVE MY NOTES UP HERE.

23 LADIES AND GENTLEMEN, KATHY HERRERA IS DEAD AND JOSE SHOT
24 HER. WE ARE NOT DISPUTING THAT. WE ARE NOT DISPUTING THAT
25 AT ALL. IT'S TRAGIC AND IT'S TERRIBLE. AND I AM SURE THAT

1 IF JOSE COULD GO BACK IN TIME, HE WOULD.

2 AT THE BEGINNING OF THIS CASE I ASKED YOU TO REMEMBER
3 THE STATE HAD THE BURDEN OF PROOF AND THAT THEY HAD TO
4 PROVE EACH AND EVERY ELEMENT OF THIS CRIME BEYOND A
5 REASONABLE DOUBT.

6 ONE OF THE ELEMENTS THEY HAVE TO PROVE, JUST LIKE
7 SOLICITOR STONE TOLD YOU, IS MALICE, THAT HE PREMEDITATED
8 IT.

9 AND I'LL TELL YOU ALL, THIS IS CLEARLY NOT
10 PREMEDITATED. IF IT WAS, HE WOULD HAVE HAD A PLAN. OKAY.
11 MADISON WOULDN'T HAVE BEEN THERE. HE WOULD HAVE HAD A PLAN
12 ABOUT WHAT TO DO WITH THE GUN, WOULD HAVE HAD A PLAN ABOUT
13 WHAT TO DO WITH THE BULLETS, WOULD HAVE HAD A PLAN ABOUT
14 WHAT TO TELL THE AUTHORITIES. HE WOULDN'T HAVE CALLED
15 9-1-1 IN AN ATTEMPT TO SAVE HIS WIFE'S LIFE.

16 INSTEAD WHAT WE'RE DEALING WITH IS THE HEAT OF
17 PASSION, SOMETHING THAT HAPPENS ALL OF A SUDDEN. MADISON
18 IS HOME FOR THE FIRST TIME IN FOUR DAYS. HE'S NOT WEARING
19 GLOVES AND HE CALLS 9-1-1 BECAUSE HE WANTS TO SAVE HIS
20 WIFE'S LIFE.

21 THE OTHER THING I MENTIONED TO YOU IN OPENING WAS TO
22 USE YOUR COMMON SENSE AND DRAW ON YOUR REAL LIFE
23 EXPERIENCES, BECAUSE A HUSBAND AND A WIFE CAN MAKE YOUR
24 BLOOD BOIL LIKE ANYTHING ELSE. TRUST ME, I KNOW. THEY CAN
25 GET UNDER YOUR SKIN. IT IS VERY HARD -- YOU KNOW, THE

1 FIGHT STARTS ABOUT SOMETHING LITTLE AND IT JUST ESCALATES
2 AND YOU DON'T EVEN KNOW IN THE END WHAT YOU ALL WERE
3 FIGHTING ABOUT TO BEGIN WITH. AND IT'S VERY, VERY HARD IN
4 THAT SITUATION TO STEP BACK AND NOT TO LET YOUR EMOTIONS
5 GET THE BEST OF YOU.

6 AND IT IS CLEAR WHAT HAPPENED IN THIS CASE. JOSE AND
7 HIS WIFE ARE OUT AT A BBQ IN THE AFTERNOON ON ST. HELENA
8 DRINKING BEER, HAVING A GOOD TIME. THEY BOTH MAYBE HAD A
9 LITTLE TOO MUCH TO DRINK. YOU HEARD THE TOXICOLOGIST SAY
10 THAT KATHY'S BLOOD ALCOHOL LEVEL WAS OVER THE LEGAL LIMIT.

11 YOU HEARD JOSE SAY THAT IN HIS STATEMENT THAT HE HAD A
12 GOOD BIT TO DRINK. SO THEY'RE DRINKING ALL AFTERNOON AT A
13 BBQ. THEY COME BACK INTO TOWN, GO OVER TO HARDEEVILLE TO
14 PICK UP MADISON AND THE ARGUING BEGINS OVER SOMETHING
15 SMALL. BUT IT CONTINUES. THEY ARGUE AND ARGUE AND ARGUE.
16 THEY ARGUE FROM HARDEEVILLE BACK HOME, TO JOSE'S FRIENDS
17 HOUSE, TO THE BEAUFORT WALMART, AND BACK HOME AGAIN. AND
18 BY THE TIME THEY GET HOME, JOSE'S BLOOD IS BOILING.
19 THEY'VE BEEN AT EACH OTHER'S THROATS NOW FOR A GOOD AMOUNT
20 OF TIME. AND HE DECIDES HE NEEDS TO GO OVER TO SUNSET,
21 HAVE A COUPLE BEERS, COOL OFF, LET THINGS CHILL OUT FOR A
22 LITTLE BIT.

23 AND WHEN HE'S GATHERING HIS THINGS TO LEAVE, HE WALKS
24 BY KATHY ON HER WAY TO THE BATHROOM AND SHE PUSHES HIM.
25 SHE TRIES TO HIT HIM. AND HE LOSES IT. SHE EVEN SAYS TO

1 HIM, IF YOU LEAVE, WAIT AND SEE WHAT'S WAITING FOR YOU WHEN
2 YOU GET HOME. AND HE SNAPPED. AND HE GETS THE GUN. HE
3 JUST WANTS THE ARGUING TO STOP, BUT HE TRIPS. AND HE TELLS
4 YOU. HE'S HONEST AT THIS POINT. I DON'T -- I DON'T KNOW
5 WHAT I TRIPPED ON. I CAN'T BE SURE. IT MAY HAVE BEEN THE
6 CAT. IT MAY HAVE BEEN HER FEET. IT MAY HAVE BEEN SOME
7 CLOTHES. BUT I TRIPPED AND THE GUN GOES OFF, AND THAT'S
8 WHAT I KNOW.

9 YOU ALL, I'M NOT ASKING YOU TO TAKE THIS FROM ME. THE
10 EVIDENCE OF THIS IS SITTING RIGHT HERE AT THE STATE'S
11 TABLE. CAPTAIN BOB BROMAGE. CAPTAIN BROMAGE IS A VERY
12 EXPERIENCED, VERY TALENTED INVESTIGATOR. HE'S BEEN THROUGH
13 HUNDREDS AND HUNDREDS OF CASES YOU'VE HEARD HIM SAY. HE'S
14 WORKED ON THE COLD CASE CRIME TEAM. HE HAS DONE A LOT OF
15 AMAZING THINGS.

16 AND HE SAYS THROUGHOUT HIS STATEMENT THAT HE BELIEVES
17 JOSE DIDN'T INTEND TO KILL HER. HE KNOWS THAT HE TRIPPED.
18 HE KNOWS IT WAS AN ACCIDENT. HE KNOWS HE DIDN'T PLAN IT.
19 IT'S SOMETHING THAT HAPPENED IN THE HEAT OF PASSION.

20 AND JOSE, WHO ADMITTEDLY MADE A HUGE MISTAKE AT THE
21 BEGINNING OF HIS CASE WHEN HE SAYS -- WHEN HE LIES TO THE
22 AUTHORITY. HE PANICS AND HE SAYS THAT. I PANICKED. I
23 DIDN'T KNOW WHAT TO DO. AND I LIED.

24 AND, IN THE END HE COMES CLEAN AND HE TELLS THE TRUTH.
25 BUT PART OF THAT TRUTH IS THAT IT WASN'T INTENTIONAL. THAT

1 HE TRIPPED. THAT HE WASN'T TRYING TO POINT HIS GUN AT HER.
2 THAT HE DID NOT INTEND TO KILL HIS WIFE. THAT IT WAS AN
3 ACCIDENT.

4 LADIES AND GENTLEMEN, THERE'S A NUMBER OF LOOSE ENDS I
5 KIND OF WANT TO TIE UP. NAMELY, THE STATE WOULD HAVE YOU
6 BELIEVE THAT THIS WAS A HOME OF DOMESTIC VIOLENCE AND
7 TURBULENCE. AND I SUBMIT TO YOU THAT THAT'S NOT THE CASE.
8 THE ONE PERSON WHO LIVED IN THE HOME WITH JOSE AND KATHY
9 WAS MADISON. AND SHE SAT RIGHT THERE AND SHE TOLD YOU THAT
10 SHE HAD NEVER SEEN ANY SIGNS OF DOMESTIC VIOLENCE IN HER
11 HOME, THAT SHE HAD NEVER SEEN JOSE HIT HER MOTHER. AND SHE
12 LIVED THERE WITH THEM. IF ANYBODY WOULD KNOW IF THERE IS
13 DOMESTIC VIOLENCE, I THINK SHE WOULD. SHE LIVED UNDER THE
14 SAME ROOF.

15 ALSO, YOU NEED TO THINK ABOUT WHAT YOU'VE BEEN GIVEN
16 VERSUS WHAT YOU HAVEN'T BEEN GIVEN. CAPTAIN BROMAGE TOLD
17 US THERE WERE SIX TAPED STATEMENTS. SIX. THE STATE PLAYED
18 ONE FOR YOU AND GAVE YOU A TRANSCRIPT FOR ONE. AND I ASK
19 YOU TO ASK YOURSELF WHY?

20 SOLICITOR STONE ALSO MENTIONED THE LACK OF A HOSTILE
21 ACT. YOU KNOW, FOR VOLUNTARY MANSLAUGHTER WE NEED THE HEAT
22 OF PASSION, WHICH IS CLEARLY THERE. THEY'VE BEEN ARGUING
23 ALL DAY. COMBINED WITH THIS HOSTILE ACT.

24 I THINK A PUSH AND A HIT -- THINGS DON'T GET MUCH MORE
25 HOSTILE THAN PHYSICAL CONFRONTATION.

1 LADIES AND GENTLEMEN, WE ARE NOT STANDING BEFORE YOU
2 SAYING THAT HE'S NOT GUILTY. WE'RE NOT DOING THAT. WHAT
3 WE'RE SAYING TO YOU IS THAT HE'S NOT GUILTY OF MURDER. HE
4 DID NOT INTEND TO KILL HIS WIFE. HE DID NOT INTEND TO PULL
5 THE TRIGGER.

6 THANK YOU.

7 CHARGE OF THE COURT:

8 ALL RIGHT. LADIES AND GENTLEMEN OF THE JURY, YOU'VE
9 NOW HEARD ALL THE TESTIMONY IN THIS CASE AND YOU WILL TAKE
10 WITH YOU TO THE JURY ROOM ALL THE EVIDENCE IN THIS CASE
11 THAT'S BEEN INTRODUCED. YOU'VE HEARD THE ARGUMENTS OF BOTH
12 THE STATE AND THE DEFENDANT. LET ME EXPLAIN TO YOU THE LAW
13 AS IT APPLIES TO THIS CASE.

14 NOW, UNDER OUR CONSTITUTION AND CODE OF LAWS ONLY THE
15 JURY CAN MAKE FINDINGS OF FACT IN THIS CASE. I'M NOT
16 PERMITTED TO INDICATE TO YOU HOW I MIGHT FEEL ABOUT THE
17 FACTS. IF I'VE SAID OR DONE ANYTHING IN THIS CASE WHICH
18 WOULD INDICATE TO YOU THAT I HAVE AN OPINION CONCERNING THE
19 FACTS IN THIS CASE, YOU SHOULD DISREGARD THAT. THIS JURY
20 MUST INDEPENDENTLY WEIGH THE EVIDENCE PRESENTED IN THIS
21 TRIAL AND RENDER A VERDICT BASED SOLELY ON THAT EVIDENCE.

22 AND THE SAME CONSTITUTION AND LAWS WHICH DESIGNATE YOU
23 AS THE FINDERS OF FACT MAKE ME THE INSTRUCTOR OF THE LAW.
24 IF YOU HAVE SOME IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW
25 OUGHT TO BE, IT DOES NOT AGREE WITH WHAT I NOW TELL YOU THE

1 LAW IS, YOU'RE OBLIGATED UNDER THE OATH WHICH YOU'VE TAKEN
2 TO ABANDON THIS PRECONCEPTION ON YOUR PART AND ACCEPT AND
3 APPLY THE LAW PRECISELY AS I NOW STATE IT TO YOU.

4 NOW, THE DEFENDANT IN THIS CASE HAS BEEN CHARGED WITH
5 MURDER AND WITH THE POSSESSION OF A WEAPON DURING THE
6 COMMISSION OF A VIOLENT CRIME. I REMIND YOU AGAIN, THE
7 FACT THAT THE DEFENDANT WAS ARRESTED, CHARGED, AND INDICTED
8 IN THIS CASE IS NOT EVIDENCE IN THIS CASE, CANNOT BE
9 CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE, NOR
10 DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT.

11 THESE DOCUMENTS ARE SIMPLY THE FORMAL LEGAL WRITTEN
12 INSTRUMENTS WHICH CONTAIN THE CHARGES MADE AGAINST THE
13 DEFENDANT. THEY ARE THE FORMAL DOCUMENTS BY WHICH THIS
14 CASE IS BROUGHT IN TO COURT.

15 AND THE DEFENDANT HAS PLED NOT GUILTY TO THESE
16 INDICTMENTS. THAT PLEA PUTS THE BURDEN ON THE STATE TO
17 PROVE THE DEFENDANT GUILTY.

18 A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN
19 SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF OR
20 HERSELF INNOCENT.

21 I CHARGE YOU AGAIN, THIS IS AN IMPORTANT RULE OF LAW,
22 THAT THE DEFENDANT IN A CRIMINAL CASE NO MATTER HOW SERIOUS
23 THE CHARGE MAY BE WILL ALWAYS BE PRESUMED INNOCENT OF THE
24 CHARGE FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS
25 BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND

1 A REASONABLE DOUBT.

2 THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU
3 BEGIN YOUR DELIBERATIONS. BUT IT ACCOMPANIES THE DEFENDANT
4 THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT
5 BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A
6 REASONABLE DOUBT.

7 THE PRESUMPTION OF INNOCENCE AGAIN IS NOT A MERE LEGAL
8 THEORY. IT'S NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL
9 RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU THE
10 JURY ARE SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S
11 GUILT BEYOND A REASONABLE DOUBT.

12 WELL, WHAT IS A REASONABLE DOUBT IN THE LAW? A
13 REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A
14 REASONABLE PERSON TO HESITATE TO ACT. LET ME REPEAT THAT.
15 A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A
16 REASONABLE PERSON TO HESITATE TO ACT.

17 THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT
18 GUILTY BEYOND A REASONABLE DOUBT.

19 SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES
20 WHERE YOU WERE TOLD IT'S ONLY NECESSARY TO PROVE THAT A
21 FACT IS MORE LIKELY TRUE THAN NOT TRUE, SUCH AS BY THE
22 GREATER WEIGHT OR THE PREPONDERANCE OF THE EVIDENCE.

23 IN CRIMINAL CASES, HOWEVER, THE STATE'S PROOF MUST BE
24 MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE
25 DOUBT.

1 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES
2 YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.

3 THERE ARE VERY FEW THINGS IN THIS WORLD WE KNOW WITH
4 ABSOLUTE CERTAINTY. AND IN CRIMINAL CASES THE LAW DOES NOT
5 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF
6 BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY
7 CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME
8 CHARGED, YOU MUST FIND THE DEFENDANT GUILTY.

9 IF ON THE OTHER HAND YOU THINK THERE IS A REAL
10 POSSIBILITY THE DEFENDANT IS NOT GUILTY, THEN YOU MUST GIVE
11 THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND HIM NOT
12 GUILTY.

13 NOW, GENERALLY, THERE ARE TWO TYPES OF EVIDENCE
14 PRESENTED DURING A TRIAL: DIRECT EVIDENCE AND
15 CIRCUMSTANTIAL EVIDENCE.

16 DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO
17 CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN
18 EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES
19 THE MAIN FACT TO BE PROVED.

20 CIRCUMSTANTIAL EVIDENCE ON THE OTHER HAND IS PROOF OF
21 A CHAIN OF FACTS OR CIRCUMSTANCES INDICATING THE EXISTENCE
22 OF SOME FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES
23 COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED.

24 CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT
25 ON PERSONAL KNOWLEDGE OR OBSERVATION.

1 BUT THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN
2 THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR
3 CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF
4 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF
5 DIRECT EVIDENCE.

6 YOU SHOULD WEIGH ALL THE EVIDENCE IN THE CASE. AND
7 AFTER WEIGHING ALL THE EVIDENCE, IF YOU'RE NOT CONVINCED OF
8 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU
9 MUST FIND THE DEFENDANT NOT GUILTY.

10 NOW, NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY
11 OF WITNESSES WHO TESTIFIED IN THIS CASE. CREDIBILITY
12 SIMPLY MEANS BELIEVABILITY.

13 IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND EVALUATE
14 THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF
15 ITS TRUTH. IN DETERMINING THE BELIEVABILITY OF WITNESSES
16 WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE
17 WITNESS OVER SEVERAL WITNESSES OR SEVERAL WITNESSES OVER
18 ONE WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A
19 WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF
20 THAT SAME WITNESS.

21 YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS
22 ENTIRETY, OR REJECT THE TESTIMONY OF A WITNESS IN ITS
23 ENTIRETY.

24 YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO
25 YOU ANY INTEREST, BIAS, PREJUDICE, OR OTHER MOTIVE IN THIS

1 CASE. AND YOU MAY ALSO CONSIDER THE APPEARANCE AND MANNER
2 OF THE WITNESS WHILE ON THE WITNESS STAND.

3 NOW, NORMALLY IN TRIALS OF THIS SORT A PERSON -- A LAY
4 PERSON, I WOULD SAY, CANNOT OFFER WHAT'S KNOWN AS OPINION
5 TESTIMONY. NORMALLY, WHEN A PERSON TESTIFIES, THEY MAY
6 TESTIFY ONLY AS TO WHAT THEY SAW OR HEARD OR SENSED OR
7 SMELLED OR SOMETHING OF THAT NATURE.

8 HOWEVER, WE HAVE AN EXCEPTION IN THE LAW WHEN SOMEONE
9 IS QUALIFIED AS AN EXPERT BECAUSE OF EDUCATION OR
10 EXPERIENCE. EXPERTS QUALIFIED BY THE COURT ARE PERMITTED
11 TO GIVE THEIR OPINIONS IN CERTAIN AREAS. HOWEVER, THAT
12 DOES NOT MEAN YOU MUST ACCEPT THE EXPERT'S OPINION. IT IS
13 SIMPLY EVIDENCE FOR YOU, THE JURY, TO USE IN THE WAY THAT
14 YOU SEE FIT.

15 NOW, DURING THIS TRIAL YOU'VE HEARD THE TESTIMONY FROM
16 A CHILD; THAT IS A PERSON UNDER THE AGE OF 18. WHERE A
17 WITNESS IS A CHILD, YOU MUST DETERMINE AS WITH ANY OTHER
18 WITNESS, WHETHER THAT TESTIMONY IS BELIEVABLE.

19 IN DECIDING BELIEVABILITY, YOU MAY CONSIDER NOT ONLY
20 MATTERS THAT I'VE ALREADY DISCUSSED WITH YOU, BUT YOU MAY
21 ALSO CONSIDER THE AGE OF THE CHILD, THE CHILD'S ABILITY TO
22 OBSERVE AND REMEMBER FACTS, AND THE CHILD'S ABILITY TO
23 UNDERSTAND AND ANSWER QUESTIONS. BECAUSE YOUNG CHILDREN
24 MAY NOT FULLY UNDERSTAND WHAT IS HAPPENING HERE, IT IS UP
25 TO YOU TO DECIDE WHETHER THE CHILD UNDERSTOOD THE

1 SERIOUSNESS OF APPEARING AS A WITNESS IN A CRIMINAL TRIAL,
2 WHETHER THE CHILD UNDERSTOOD THE QUESTIONS, WHETHER THE
3 CHILD HAD A GOOD MEMORY, AND WHETHER THE CHILD UNDERSTANDS
4 THE DIFFERENCE BETWEEN LYING AND TELLING THE TRUTH.

5 IN ADDITION, YOUNG CHILDREN MAY BE INFLUENCED BY THE
6 WAY QUESTIONS ARE ASKED.

7 BUT IT'S UP TO YOU TO DECIDE WHETHER THE CHILD
8 UNDERSTOOD THE QUESTIONS ASKED.

9 NOW, IN ORDER TO ESTABLISH CRIMINAL LIABILITY,
10 CRIMINAL INTENT IS REQUIRED. FOR EXAMPLE, THE MENTAL STATE
11 REQUIRED TO BE PROVEN BY THE STATE FOR SOME PARTICULAR
12 CRIME MIGHT BE A SPECIFIC PURPOSE OR SOME SPECIFIC INTENT,
13 OR KNOWLEDGE OF CERTAIN FACTS OR RECKLESSNESS OR CRIMINAL
14 -- OR RECKLESSNESS. CRIMINAL INTENT MUST BE PROVEN BY THE
15 STATE BEYOND A REASONABLE DOUBT.

16 CRIMINAL INTENT IS A MATTER THAT MUST BE DETERMINED BY
17 THE JURY FROM THE CIRCUMSTANCES SURROUNDING THE SITUATION.

18 THERE'S NO WAY TO PROVE INTENT TO A MATHEMATICAL
19 CERTAINTY. THERE'S NO WAY MEDICAL SCIENCE CAN DISSECT A
20 PERSON'S BRAIN AND DETERMINE WHAT THE PERSON HAD IN MIND.
21 SO THE LAW SAID THAT CRIMINAL INTENT MAY BE INFERRED FROM
22 THE CIRCUMSTANCES SHOWN TO HAVE EXISTED.

23 THIS IS HOW YOU MAKE A DETERMINATION OF WHETHER OR NOT
24 THE ELEMENT REQUIRING INTENT WAS PRESENT.

25 CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS

1 WRONGDOING. IT'S UP TO YOU TO DETERMINE WHAT THE DEFENDANT
2 INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN TO HAVE
3 EXISTED AT THE TIME AND PLACE.

4 NOW, LADIES AND GENTLEMEN, A NUMBER OF STATEMENTS OF
5 THE DEFENDANT ALLEGED TO HAVE BEEN MADE BY THE DEFENDANT
6 HAVE BEEN ADMITTED INTO EVIDENCE IN THIS CASE. WHILE THE
7 COURT HAS DETERMINED THAT THESE STATEMENTS ARE ADMISSIBLE,
8 I INSTRUCT YOU THAT YOU MAKE THE ULTIMATE DECISION OF
9 WHETHER OR NOT THE DEFENDANT MADE EACH STATEMENT. AND FOR
10 EACH STATEMENT, IF THE DEFENDANT DID MAKE IT, YOU MUST
11 DETERMINE WHETHER THE STATEMENT WAS MADE BY THE DEFENDANT
12 VOLUNTARILY AND OF HIS OWN FREE WILL.

13 THIS MEANS THE STATEMENT WAS NOT CAUSED BY PRESSURE OR
14 FORCE OR FEAR OR THREATS OR COERCION OR INTIMIDATION OR BY
15 A HOPE OR PROMISE OF LENIENCY OR REWARD OF ANY KIND.

16 IN DETERMINING WHETHER SUCH STATEMENT WAS VOLUNTARY,
17 YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS OF THE
18 DEFENDANT AND THE DETAILS OF THE QUESTIONING.

19 SOME OF THE FACTORS THAT YOU MAY CONSIDER ARE: THE
20 AGE OF THE DEFENDANT. THE DEFENDANT'S EDUCATION OR LACK OF
21 EDUCATION. THE DEFENDANT'S MENTAL ABILITY OR CAPACITY.
22 THE DEFENDANT'S I.Q. OR INTELLIGENCE. THE DEFENDANT'S
23 BACKGROUND AND ENVIRONMENT. THE PLACE AND LENGTH OF THE
24 DETENTION. THE NATURE OF THE QUESTIONING. AND THE ADVICE
25 OR LACK THEREOF TO THE DEFENDANT OF HIS CONSTITUTIONAL

1 RIGHTS INCLUDING BUT NOT LIMITED TO: THE RIGHT TO REMAIN
2 SILENT; THAT ANY STATEMENT COULD BE USED AGAINST HIM IN A
3 COURT OF LAW; THE RIGHT TO HAVE A LAWYER PRESENT; IF HE
4 COULD NOT AFFORD A LAWYER, A LAWYER WOULD BE APPOINTED TO
5 REPRESENT HIM WITHOUT ANY COST; AND THAT HE COULD STOP
6 MAKING THE STATEMENT AT ANY TIME.

7 YOU MUST CAREFULLY CONSIDER ALL OF THE SURROUNDING
8 CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO THE ALLEGED
9 STATEMENT.

10 FOR EACH STATEMENT, THE STATE HAS THE BURDEN OF
11 PROVING BEYOND A REASONABLE DOUBT THAT THE STATEMENT WAS
12 VOLUNTARY.

13 IF YOU DETERMINE A STATEMENT WAS VOLUNTARY, YOU MAY
14 GIVE THAT STATEMENT ANY FURTHER CONSIDERATION YOU DEEM
15 PROPER. YOU MUST DECIDE WHAT WEIGHT IF ANY SHOULD BE GIVEN
16 TO THAT ALLEGED STATEMENT.

17 IF YOU DETERMINE ANY ALLEGED STATEMENT WAS NOT THE
18 FREE AND VOLUNTARY STATEMENT OF THE DEFENDANT, YOU SHOULD
19 NOT CONSIDER THAT STATEMENT AT ALL.

20 NOW, THE DEFENDANT IS CHARGED WITH MURDER. IN ORDER
21 FOR YOU TO FIND THE DEFENDANT GUILTY OF MURDER, THE STATE
22 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
23 KILLED ANOTHER PERSON WITH MALICE AFORETHOUGHT.

24 MALICE IS HATRED, ILL-WILL OR HOSTILITY TOWARDS
25 ANOTHER PERSON. IT IS THE WRONGFUL INTENT TO INJURE

1 ANOTHER AND INDICATES A WICKED OR DEPRAVED SPIRIT INTENT ON
2 DOING WRONG. IT IS THE DOING OF A WRONGFUL ACT
3 INTENTIONALLY AND WITHOUT JUST CAUSE OR EXCUSE.

4 MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXIST
5 FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED, BUT
6 THAT MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST
7 BEFORE AND AT THE TIME OF THE ACT IS COMMITTED.

8 THEREFORE, THERE MUST BE A COMBINATION OF PREVIOUS
9 EVIL INTENT AND THE ACT.

10 MALICE AFORETHOUGHT MAY BE EXPRESS OR INFERRED. THESE
11 TERMS EXPRESS AND INFER DO NOT MEAN DIFFERENT KINDS OF
12 MALICE, BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN
13 TO EXIST; THAT IS EITHER BY DIRECT EVIDENCE OR BY INFERENCE
14 FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED.

15 EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS
16 WHICH EXPRESS HATRED OR ILL-WILL FOR ANOTHER, OR WHEN THE
17 PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS LATER
18 ACCOMPLISHED. FOR EXAMPLE, LYING IN WAIT FOR A PERSON OR
19 ANY OTHER ACTS OF PREPARATION GOING TO SHOW THE DEED WAS
20 WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESS MALICE.

21 THE LAW SAYS THAT IF ONE INTENTIONALLY KILLS ANOTHER
22 WITH A DEADLY WEAPON, THE IMPLICATION OF MALICE MAY ARISE.
23 IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO
24 RAISE AN INFERENCE OF MALICE TO YOUR SATISFACTION, THIS
25 INFERENCE WOULD BE SIMPLY AN EVIDENTIARY FACT TO BE TAKEN

1 INTO CONSIDERATION BY YOU THE JURY ALONG WITH THE OTHER
2 EVIDENCE IN THE CASE. AND YOU MAY GIVE IT SUCH WEIGHT AS
3 YOU DETERMINE IT SHOULD RECEIVE.

4 IF YOU FIND EVIDENCE SUPPORTS A PRESUMPTION OF MALICE,
5 THAT PRESUMPTION WOULD BE REBUTABLE AND IS ALWAYS FOR THE
6 JURY TO DETERMINE FROM ALL OF THE EVIDENCE WHETHER OR NOT
7 MALICE HAS BEEN PROVED BEYOND A REASONABLE DOUBT.

8 NOW, AS I EXPLAINED EARLIER, THERE IS WITHIN THE
9 CHARGE OF MURDER THE LESSER INCLUDED CHARGE OF VOLUNTARY
10 MANSLAUGHTER.

11 IF YOU FIND THE STATE HAS FAILED TO PROVE BEYOND A
12 REASONABLE DOUBT THAT THE DEFENDANT COMMITTED MURDER, YOU
13 MAY CONSIDER WHETHER THE STATE HAS PROVED BEYOND A
14 REASONABLE DOUBT THAT THE DEFENDANT COMMITTED VOLUNTARY
15 MANSLAUGHTER.

16 TO PROVE VOLUNTARY MANSLAUGHTER, THE STATE MUST PROVE
17 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT TOOK THE LIFE
18 OF ANOTHER IN THE SUDDEN HEAT OF PASSION BASED ON
19 SUFFICIENT LEGAL PROVOCATION.

20 BOTH HEAT OF PASSION AND SUFFICIENT LEGAL PROVOCATION
21 MUST BE PRESENT AT THE TIME OF THE KILLING TO CONSTITUTE
22 VOLUNTARY MANSLAUGHTER.

23 SUDDEN HEAT OF PASSION MAY FOR A TIME AFFECT THE
24 PERSON'S SELF-CONTROL AND TEMPORARILY DISTURB A PERSON'S
25 REASON. THE SUDDEN HEAT OF PASSION MUST BE THE TYPE THAT

1 WOULD AN ORDINARY PERSON UNABLE TO COOLLY REFLECT ON HIS
2 ACTIONS AND WOULD PRODUCE AN UNCONTROLLABLE IMPULSE TO DO
3 VIOLENCE.

4 SUFFICIENT LEGAL PROVOCATION MUST BE THE TYPE THAT
5 WOULD CAUSE A PERSON OF ORDINARY REASON AND CAUTION TO
6 BECOME ENRAGED AND TO LOSE CONTROL TEMPORARILY. THE
7 PROVOCATION NEEDED FOR VOLUNTARY MANSLAUGHTER MUST COME
8 FROM SOME ACT OF OR RELATED TO THE VICTIM. WORDS ALONE,
9 HOWEVER, VULGAR OR INSULTING ARE NOT ENOUGH TO BE LEGAL
10 PROVOCATION.

11 WHERE DEATH IS CAUSED BY THE USE OF A DEADLY WEAPON,
12 THE WORDS MUST BE ACCOMPANIED BY SOME OVERT THREATENING ACT
13 WHICH COULD HAVE PRODUCED THE HEAT OF PASSION.

14 IF THE HEAT OF PASSION HAD COOLED OR IF THERE WAS
15 ENOUGH TIME BETWEEN THE PROVOCATION IF ANY AND THE KILLING
16 FOR THE PASSION OF A REASONABLE PERSON TO COOL, THE KILLING
17 WOULD NOT BE VOLUNTARY MANSLAUGHTER.

18 IN DECIDING WHETHER A REASONABLE PERSON WOULD HAVE HAD
19 ENOUGH TIME TO COOL OFF, YOU SHOULD CONSIDER ALL THE
20 CIRCUMSTANCES SURROUNDING THE KILLING.

21 YOU MAY CONSIDER THE NATURE OF THE PROVOCATION, IF
22 ANY, THE DEFENDANT'S MENTAL AND PHYSICAL STATE, AND THE
23 CIRCUMSTANCES AND RELATIONSHIPS BETWEEN THE PARTIES.

24 NEXT THE DEFENDANT IS CHARGED WITH POSSESSION OF A
25 WEAPON DURING THE COMMISSION OF OR ATTEMPT TO COMMIT A

1 VIOLENT CRIME. IN ORDER TO PROVE THE DEFENDANT GUILTY OF
2 THIS CHARGE, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
3 THAT THE DEFENDANT WAS IN POSSESSION OF A FIREARM DURING
4 THE COMMISSION OF A VIOLENT CRIME.

5 IN ORDER TO FIND THE DEFENDANT GUILTY OF POSSESSION OF
6 A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME, YOU MUST
7 FIRST FIND THE DEFENDANT GUILTY OF EITHER COMMITTING A
8 VIOLENT CRIME OR ATTEMPTING TO COMMIT A VIOLENT CRIME.

9 MURDER AND VOLUNTARY MANSLAUGHTER ARE VIOLENT CRIMES.

10 NOW, LADIES AND GENTLEMEN, I WANT TO EMPHASIZE THIS
11 FINAL POINT. I INSTRUCT YOU AND EMPHASIZE THE FACT THAT
12 THE DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE
13 CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATION OR YOUR
14 CONSIDERATION ON THE QUESTION OF GUILT OR INNOCENCE OF THE
15 DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER
16 WHATSOEVER.

17 A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN
18 SILENT. AND THE ASSERTION OF THIS RIGHT MUST NOT BE
19 CONSIDERED BY YOU IN YOUR DELIBERATION.

20 I REPEAT, UNDER YOUR OATH YOU ARE TO DRAW NO
21 CONCLUSIONS WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN
22 THIS CASE DID NOT TESTIFY. THE FACT THAT THIS DEFENDANT
23 DID NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED BY YOU IN THE
24 JURY ROOM.

25 THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON

1 THE STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS
2 INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO
3 PROVE GUILT BEYOND A REASONABLE DOUBT.

4 NOW, LADIES AND GENTLEMEN, I'M REQUIRED TO DECLARE THE
5 LAW AS I'VE DONE THROUGH THESE INSTRUCTIONS TO HELP AND
6 GUIDE YOU TO A JUST AND LAWFUL VERDICT. WHETHER SOME OF
7 THESE INSTRUCTIONS WILL APPLY WILL DEPEND ON WHAT YOU FIND
8 TO BE THE FACTS.

9 THE FACT THAT I'VE INSTRUCTED ON VARIOUS SUBJECTS IN
10 THIS CASE MUST NOT BE TAKEN BY YOU AS INDICATING AN OPINION
11 OF THIS COURT AS TO WHAT YOU SHOULD FIND TO BE THE FACTS OR
12 WHICH PARTY SHOULD BE ENTITLED TO YOUR VERDICT.

13 YOUR VERDICT MUST REPRESENT THE CONSIDERED JUDGMENT OF
14 EACH JUROR.

15 IN ORDER TO RETURN A VERDICT, IT'S NECESSARY THAT EACH
16 JUROR AGREE. YOUR VERDICT MUST BE UNANIMOUS. ALL 12 OF
17 YOU MUST AGREE ON THE VERDICT. YOUR VERDICT CANNOT BE
18 BASED ON SYMPATHY, PASSION, PREJUDICE, EMOTION, OR ANY
19 OTHER CONSIDERATION THAT IS NOT IN EVIDENCE IN THIS CASE.

20 REMEMBER AT ALL TIMES THAT YOU ARE NOT PARTISANS
21 FAVORING ONE PARTY OVER THE OTHER. YOU ARE JUDGES, JUDGES
22 OF THE FACTS. YOUR SOLE INTEREST IS TO SEEK THE TRUTH FROM
23 THE EVIDENCE IN THIS CASE.

24 YOU SHOULD NOW RETIRE TO THE JURY ROOM, LADIES AND
25 GENTLEMEN, BUT DO NOT BEGIN YOUR DELIBERATIONS UNTIL I HAVE

1 INSTRUCTED YOU TO DO SO, AND BASICALLY THAT MEANS THAT
2 UNTIL YOU HAVE RECEIVED ALL OF THE EVIDENCE IN THIS CASE
3 AND THE VERDICT FORM.

4 YOU WILL HAVE TWO VERDICT FORMS. THE FIRST IS THE
5 MURDER AND VOLUNTARY MANSLAUGHTER VERDICT FORM, WHICH
6 BASICALLY READS: WE THE JURY BY UNANIMOUS CONSENT ON THE
7 CHARGE OF MURDER FIND THE DEFENDANT, JOSE ANGEL HERRERA,
8 GUILTY OR NOT GUILTY.

9 IF YOU FIND THE DEFENDANT NOT GUILTY ON THE CHARGE OF
10 MURDER, THEN YOU MAY CONSIDER WHETHER THE DEFENDANT IS
11 GUILTY OF THE LESSER INCLUDED CHARGE OF VOLUNTARY
12 MANSLAUGHTER. AND THAT IS, WE THE JURY BY UNANIMOUS
13 CONSENT ON THE LESSER CHARGE OF VOLUNTARY MANSLAUGHTER FIND
14 THE DEFENDANT, JOSE ANGEL HERRERA, GUILTY OR NOT GUILTY.

15 MR. FOREMAN, WHEN THE JURY HAS COMPLETED ITS
16 DELIBERATIONS, IF YOU WILL FILL THIS FORM IN, SIGN IT AT
17 THE BOTTOM, AND DATE IT TODAY, KNOCK ON THE JURY ROOM DOOR,
18 AND WE WILL RECEIVE YOUR VERDICT.

19 WE ALSO HAVE A SIMILAR VERDICT FORM FOR THE POSSESSION
20 OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME. THEY
21 ARE BOTH -- THEY BOTH LOOK THE SAME.

22 ALL RIGHT. YOU MAY RETIRE TO THE JURY ROOM. BUT,
23 AGAIN, DON'T BEGIN YOUR DELIBERATIONS UNTIL YOU RECEIVE THE
24 EVIDENCE AND THE VERDICT FORM.

25 HOLD THE ALTERNATES IN THE HALL.

1 (THE JURY RETIRES TO THE JURY ROOM AT 2:15 P.M.)

2 THE COURT: ANY OBJECTIONS TO THE CHARGE FROM THE
3 STATE?

4 MR. STONE: NO, SIR. I WAS JUST CHECKING TO MAKE SURE
5 THAT SECOND DOOR CLOSED. NO, SIR. NO OBJECTION.

6 THE COURT: FROM DEFENSE?

7 MS. CARROWAY: YOUR HONOR, I DON'T HAVE ANY OBJECTION
8 ON THE CHARGES. JUST THE REMARKS THAT YOU MADE PRIOR TO
9 SOLICITOR STONE AND I GIVING OUR CLOSING I FOUND TO BE
10 MISLEADING IN THAT YOU SAID YOU DETERMINED THAT NO
11 INVOLUNTARY MANSLAUGHTER WAS APPROPRIATE AND THAT MURDER
12 AND VOLUNTARY MANSLAUGHTER -- IT KIND OF PRECLUDES THEIR
13 DECISION THAT THE DEFENDANT COULD BE NOT GUILTY OF
14 ANYTHING, THAT IT MUST BE EITHER MURDER OR MANSLAUGHTER.

15 THE COURT: WELL, THE VERDICT FORM DOESN'T SAY THAT.

16 MS. CARROWAY: YES, SIR. JUST NOTE MY OBJECTION. I'M
17 NOT SURE THERE'S ANYTHING THAT CAN BE DONE TO CURE IT AT
18 THIS POINT.

19 THE COURT: DID I EVEN MENTION INVOLUNTARY?
20 INVOLUNTARY?

21 MS. CARROWAY: YES, SIR.

22 THE COURT: I DID. WELL, I WAS PROBABLY JUST USING IT
23 AS AN EXAMPLE OF A LESSER INCLUDED CHARGE. IT WAS NOT PART
24 OF THE INSTRUCTION PER SE. BUT I UNDERSTAND.

25 ALL RIGHT. THANK YOU VERY MUCH.

1 LET'S CHECK THE EVIDENCE, COUNSEL.
2 (PAUSE.)
3 (EXHIBITS AND VERDICT FORMS WERE SENT TO THE JURY AT
4 2:20 P.M. TO BEGIN DELIBERATIONS.)
5 THE COURT: COUNSEL, DO YOU HAVE ANY OBJECTION TO
6 DISMISSING THE ALTERNATES AT THIS TIME, FROM THE STATE?
7 MR. STONE: NO, SIR.
8 THE COURT: FROM THE DEFENSE?
9 MS. CARROWAY: NO, SIR.
10 THE COURT: BRING THE ALTERNATES.
11 (THE ALTERNATE JURORS RETURNED TO THE COURTROOM AND
12 WERE EXCUSED.)
13 THE COURT: LET'S STAND AT EASE UNTIL WE HEAR FROM THE
14 JURY.
15 (COURT IS AT EASE AWAITING THE VERDICTS OF THE JURY.)
16 (NOTE FROM THE JURY WAS MARKED FOR IDENTIFICATION AS
17 COURT'S EXHIBIT NO. 4.)
18 THE COURT: ALL RIGHT. THE BAILIFF INDICATES THE JURY
19 HAS A VERDICT. ARE YOU READY TO RECEIVE THE VERDICT?
20 MR. STONE: THE STATE IS READY.
21 THE COURT: DEFENSE READY?
22 MS. CARROWAY: DEFENSE IS READY.
23 THE COURT: ALL RIGHT. BRING THE JURY.
24 (THE JURY RETURNS TO THE COURTROOM AT 3:35 P.M.)
25 BAILIFF: THE JURY IS SEATED, YOUR HONOR.

1 THE COURT: THANK YOU VERY MUCH. MR. FOREMAN, HAS THE
2 JURY REACHED A VERDICT?

3 FOREMAN: YES, YOUR HONOR.

4 THE COURT: WOULD YOU HAND IT TO THE BAILIFF PLEASE.

5 (PAUSE.)

6 THE COURT: MADAM CLERK, WILL YOU PUBLISH THE VERDICT
7 PLEASE.

8 CLERK: YES, YOUR HONOR.

9 VERDICT OF THE JURY:

10 CLERK: IN THE MATTER OF THE STATE OF SOUTH CAROLINA
11 VERSUS JOSE ANGEL HERRERA, INDICTMENT NO. 2007-GS-07-1921,
12 WE THE JURY BY UNANIMOUS CONSENT ON THE CHARGE OF MURDER
13 FIND THE DEFENDANT, JOSE ANGEL HERRERA, GUILTY, SIGNED JURY
14 FOREMAN, DATED MARCH 18, 2009.

15 IN THE MATTER OF THE STATE OF SOUTH CAROLINA VERSUS
16 JOSE ANGEL HERRERA, INDICTMENT NO. 2007-GS-07-1922, WE THE
17 JURY BY UNANIMOUS CONSENT ON THE CHARGE OF POSSESSION OF A
18 WEAPON DURING THE COMMISSION OF OR ATTEMPTING TO COMMIT A
19 VIOLENT CRIME FIND THE DEFENDANT, JOSE ANGEL HERRERA,
20 GUILTY. SIGNED FOREMAN, MARCH 18, 2009.

21 LADIES AND GENTLEMEN OF THE JURY, IF THIS IS YOUR
22 VERDICT, PLEASE INDICATE SO BY RAISING YOUR RIGHT HAND AT
23 THIS TIME.

24 (ALL HANDS RAISED.)

25 CLERK: ALL JURORS HAVE THEIR HANDS RAISED. THANK

1 YOU.
2 THE COURT: ANY DESIRE TO POLL THE JURY?
3 MS. CARROWAY: YES, YOUR HONOR.
4 THE COURT: PLEASE POLL THE JURY, MADAM CLERK.
5 CLERK: LADIES AND GENTLEMEN OF THE JURY, I WILL ASK
6 YOU A QUESTION AND I WILL ASK IT OF YOU BY YOUR JURY
7 NUMBER. IF YOU COULD PLEASE ANSWER.
8 JUROR NO. 285, IS THIS YOUR VERDICT?
9 JUROR: YES, MA'AM.
10 CLERK: DOES IT REMAIN YOUR VERDICT?
11 JUROR: YES, MA'AM
12 CLERK: THANK YOU. JUROR NO. 10, IS THIS YOUR
13 VERDICT?
14 JUROR: YES, MA'AM.
15 CLERK: DOES IT REMAIN YOUR VERDICT?
16 JUROR: YES, MA'AM.
17 CLERK: JUROR NO. 126, IS THIS YOUR VERDICT?
18 JUROR: YES, MA'AM.
19 CLERK: DOES IT REMAIN YOUR VERDICT?
20 JUROR: YES, MA'AM.
21 CLERK: THANK YOU. JUROR NO. 100.
22 JUROR: YES, MA'AM.
23 CLERK: IS THIS YOUR VERDICT?
24 JUROR: YES, MA'AM.
25 CLERK: DOES IT REMAIN YOUR VERDICT?

1 JUROR: YES, MA'AM.
2 CLERK: THANK YOU, SIR. JUROR NO. 35, IS THIS YOUR
3 VERDICT?
4 JUROR: YES, MA'AM.
5 CLERK: DOES IT REMAIN YOUR VERDICT?
6 JUROR: YES, MA'AM.
7 CLERK: JUROR NO. 123, IS THIS YOUR VERDICT?
8 JUROR: YES, MA'AM.
9 CLERK: DOES IT REMAIN YOUR VERDICT?
10 JUROR: YES, MA'AM.
11 CLERK: THANK YOU. JUROR 84, IS THIS YOUR VERDICT?
12 JUROR: YES.
13 CLERK: DOES IT REMAIN YOUR VERDICT?
14 JUROR: YES.
15 CLERK: JUROR NO. 222, IS THIS YOUR VERDICT?
16 JUROR: YES, MA'AM.
17 CLERK: DOES IT REMAIN YOUR VERDICT?
18 JUROR: YES, MA'AM.
19 CLERK: JUROR 218, IS THIS YOUR VERDICT?
20 JUROR: YES, MA'AM.
21 CLERK: DOES IT REMAIN YOUR VERDICT?
22 JUROR: YES, MA'AM.
23 CLERK: JUROR 201, IS THIS YOUR VERDICT?
24 JUROR: YES, MA'AM.
25 CLERK: DOES IT REMAIN YOUR VERDICT?

1 JUROR: YES, MA'AM.
2 CLERK: JUROR 44.
3 JUROR: YES, MA'AM.
4 CLERK: IS THIS YOUR VERDICT?
5 JUROR: YES, MA'AM.
6 CLERK: DOES IT REMAIN YOUR VERDICT?
7 JUROR: YES, MA'AM.
8 CLERK: JUROR 260, IS THIS YOUR VERDICT?
9 JUROR: YES, MA'AM.
10 CLERK: DOES IT REMAIN YOUR VERDICT?
11 JUROR: YES, MA'AM.
12 CLERK: THANK YOU.
13 THE COURT: THE JURY'S BEEN POLLED. ANY MOTIONS?
14 MS. CARROWAY: YES, YOUR HONOR. AT THIS TIME THE
15 DEFENSE WOULD MAKE A MOTION FOR A NEW TRIAL BASED ON THE
16 FACT THAT THE VERDICT IS NOT SUPPORTED BY THE EVIDENCE.
17 THE COURT: ALL RIGHT. WELL, I THINK THE JURY
18 CONSIDERED ALL THE EVIDENCE. THEY HAD CLEAR CHOICES WITH
19 WHICH TO MAKE, AND THEY HAD CLEAR EVIDENCE UPON WHICH THEY
20 BASE THEIR VERDICT. AND I RESPECTFULLY DENY YOUR MOTION.
21 MS. CARROWAY: YES, YOUR HONOR.
22 THE COURT: NOW, APPROACH THE BENCH SOLICITOR AND
23 DEFENSE COUNSEL.
24 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
25 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

1 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WHAT
2 TAKES PLACE NOW, NOW THAT YOU HAVE RENDERED YOUR VERDICT --
3 AND I APPRECIATE YOUR SERVICE AND YOUR WORK ON THIS CASE.
4 THE REMAINING PORTION OF THE TRIAL IS THE SENTENCING OF THE
5 DEFENDANT.

6 NOW, IN SOUTH CAROLINA IT'S PRETTY MUCH OUR PRACTICE
7 TO SENTENCE IMMEDIATELY FOLLOWING A VERDICT. IN OTHER
8 WORDS, IT'S NOT EXACTLY LIKE YOU SEE ON LAW AND ORDER WHERE
9 THE VERDICT IS RENDERED AND THEN THE DEFENDANT COMES BACK A
10 MONTH LATER FOR SENTENCING. IN FEDERAL COURT THEY DO THAT.
11 THEY HAVE THE RESOURCES WITH WHICH TO DO THAT. AND THEY
12 HAVE FEWER TRIALS THAN WE DO.

13 BUT IN SOUTH CAROLINA, PARTICULARLY IN BEAUFORT
14 COUNTY, WE WILL START OTHER TRIALS MONDAY MORNING. SO WE
15 DON'T REALLY HAVE A LOT OF LUXURY IN TERMS OF TIME TO LOOK
16 AT SENTENCING OR CONSIDER SENTENCING. SO OUR PRACTICE IS
17 TO DO IT IMMEDIATELY. THAT'S GOING TO TAKE PLACE IN JUST A
18 FEW MINUTES.

19 WHAT I WANT TO TELL YOU IS YOU CAN CERTAINLY SIT
20 THROUGH SENTENCING. I'M GOING TO DISMISS YOU AS A JURY AT
21 THIS TIME. BUT I WILL TELL YOU THAT YOU CERTAINLY HAVE THE
22 RIGHT TO SIT THROUGH THE SENTENCING. THIS IS AN OPEN
23 COURTROOM. IT'S A PUBLIC COURTROOM. IF YOU WISH TO SIT
24 THROUGH THE SENTENCING, YOU CAN DO THAT EITHER IN THE JURY
25 BOX OR THE BAILIFF WILL TAKE YOU AROUND TO ALLOW YOU TO SIT

1 IN THE GALLERY. IF YOU FEEL MORE COMFORTABLE SITTING IN
2 THE JURY BOX, YOU CAN DO THAT AND JUST WITNESS THE
3 PROCEDURE.

4 A LOT OF JURORS, I FIND, LIKE TO DO THAT SIMPLY
5 BECAUSE IT PUTS CLOSURE TO THE CASE AND THEY KNOW WHAT'S
6 TAKEN PLACE RATHER THAN HAVING TO READ ABOUT IT IN THE
7 PAPER THE NEXT DAY.

8 BUT I DO WANT TO ALSO ASSURE YOU THAT YOU ARE FREE TO
9 GO IF YOU WISH TO DO SO, AND YOU MAY DO SO AT THIS TIME.

10 IF YOU CHOOSE TO LEAVE AT THIS TIME, I WANT TO THANK
11 YOU FOR YOUR SERVICE IN THIS CASE. IT WAS SOMEWHAT OF AN
12 UNCOMFORTABLE CASE, BUT I NOTICED THROUGHOUT THE TRIAL THAT
13 YOU SAT PATIENTLY AND THAT YOU ARE INQUISITIVE. A NUMBER
14 OF YOU TOOK NOTES DURING THE COURSE OF THE TRIAL. AND IT
15 WAS AN IMPORTANT MATTER THAT NEEDED TO BE RESOLVED AND IT
16 NEEDED TO BE RESOLVED BY A JURY OF OUR PEERS.

17 THIS SYSTEM, AS I MENTIONED MANY TIMES, CAN DO WITHOUT
18 ME. IT CAN DO WITHOUT THESE ATTORNEYS. IT CAN'T DO
19 WITHOUT YOU. YOU'RE SUCH AN IMPORTANT PART OF THE JUDICIAL
20 SYSTEM, NOT ONLY IN THIS COUNTY BUT IN THIS STATE AND IN
21 THIS NATION, THAT YOUR ROLE AS JURORS WAS WRITTEN INTO THE
22 CONSTITUTION OF THE UNITED STATES. THAT'S HOW IMPORTANT
23 YOUR ROLE IS THAT YOU PERFORM.

24 SO I WANT TO THANK YOU VERY MUCH FOR YOUR SERVICE AND
25 YOUR WILLINGNESS TO COME AND ASSIST US AND TRY THIS CASE

1 AND HELP US MAKE A DECISION -- HELP MAKE A DECISION IN THIS
2 CASE, NOT HELP US. YOU MADE THE DECISION.

3 IT NOW BECOMES MY RESPONSIBILITY TO SENTENCE THE
4 DEFENDANT, WHICH I AM PREPARED TO DO AT THIS TIME. THERE'S
5 A PROCEDURE THAT WE DO IT. IT MAY TAKE 15, 20 MINUTES, I
6 DON'T KNOW. BUT IT'S A SHORT PROCEDURE, BUT I NEED TO
7 UNDERSTAND NOT ONLY FROM THE SOLICITOR IF THE DEFENDANT HAS
8 A PRIOR RECORD, I ALSO NEED TO UNDERSTAND HOW THE VICTIMS
9 FEEL OR THE FAMILY OF THE VICTIM FEEL IN THIS CASE. AND
10 ALL OF THAT GOES IN TO MAKING UP MY MIND AS TO WHAT IS A
11 PROPER SENTENCE.

12 AND I HAVE TO ALSO FOLLOW THE LAW. THE LAW PROVIDES
13 CERTAIN SENTENCES FOR CERTAIN CRIMES. AND I HAVE TO TAKE
14 THAT INTO CONSIDERATION ALSO.

15 SO IF YOU WISH TO LEAVE, YOU MAY LEAVE AT THIS TIME.
16 IF NOT, JUST RELAX FOR A FEW MINUTES, AND WE'LL BEGIN THE
17 SENTENCING PROCEDURE.

18 (A RECESS WAS TAKEN.)

19 THE COURT: ALL RIGHT. SOLICITOR.

20 MR. STONE: YOUR HONOR, THERE ARE TWO FAMILY MEMBERS
21 WHO WOULD LIKE TO ADDRESS YOU. WE ARE ALSO PREPARED AT
22 THIS POINT TO TELL YOU HIS PRIOR CRIMINAL HISTORY.

23 YOU, OF COURSE, ALREADY KNOW THAT HE WAS ON A PAROLE
24 VIOLATION, WHICH IS THE REASON HE WAS ARRESTED HERE. THAT
25 STEMS FROM A 2005 ARREST FOR POSSESSING OF A WEAPON IN

1 WHICH HE WAS NOT ALLOWED TO DO.

2 HE STARTS IN DECEMBER OF 2002 WITH BURGLARY IN THE
3 SECOND DEGREE, GRAND THEFT, AND RECEIVING STOLEN GOODS, AS
4 WELL AS A THEFT BY MISREPRESENTATION AS A CARD HOLDER.

5 THESE ARE CALIFORNIA ARRESTS -- CONVICTIONS, EXCUSE ME..

6 ALSO IN CALIFORNIA A CONVICTION IN SEPTEMBER OF 2003,
7 ANOTHER RECEIVING STOLEN GOODS.

8 IN OCTOBER OF THE SAME YEAR, POSSESSION OF A
9 CONTROLLED SUBSTANCE. HE RECEIVED 16 MONTHS IN PRISON.

10 WE HAVE A RECORD ALSO OF A PREVIOUS DOMESTIC SITUATION
11 AS WELL DURING THAT SAME YEAR. AND I BELIEVE ALL OF THOSE
12 -- THE 16 MONTHS FOR THE POSSESSION OF A CONTROLLED
13 SUBSTANCE AS WELL AS RECEIVING STOLEN GOODS IS WHAT CREATED
14 THE PAROLE SITUATION. AND THE POSSESSION OF A FIREARM
15 WOULD HAVE BEEN A VIOLATION OF THAT PAROLE.

16 MEMBERS OF THE FAMILY, YOUR HONOR, IF YOU WOULD HEAR
17 FROM THEM.

18 THE COURT: AT THIS TIME, GO AHEAD. YES, SIR, I'D BE
19 GLAD TO HEAR FROM YOU.

20 MR. STONE: DONNA COMINSKY (PHONETIC). WHERE WOULD
21 YOU LIKE HER, SIR.

22 THE COURT: RIGHT HERE.

23 LADY: YOUR HONOR, MY NAME IS DONNA COMINSKY. KATHY
24 WAS MY SISTER. AND THE DEFENSE HAS DISPLAYED TO YOU TODAY
25 WHAT THEY BELIEVE AND WANT YOU TO BELIEVE IS A CLEAN CUT,

1 MILD MANNERED MAN, AND THAT'S A LIE. WHAT TRULY SITS AT
2 THAT DEFENSE TABLE IS A MONSTER. IF YOU COULD HAVE SEEN
3 HIM ON SEPTEMBER 16, 2007, HE WOULD HAVE HAD A SHAVED HEAD
4 WITH TATOOS THAT SPEAK OF HATE ON THE TOP OF HIS HEAD, AND
5 HE WOULD HAVE HAD A SLEEVELESS T-SHIRT SO YOU COULD FURTHER
6 SEE THE GANG-RELATED TATOOS.

7 DON'T BE FOOLED BY WHAT IS SITTING THERE, BECAUSE HE'S
8 A MONSTER. HE HAS NO REGARD FOR HUMAN LIFE, NONE
9 WHATSOEVER. HE TOOK KATHY FROM US IN A SPLIT SECOND, AND
10 WE ARE LEFT WITH A LIFETIME OF SORROW. WE'LL NEVER GET
11 OVER THE PAIN OF THE LOSS EVER.

12 WHAT HE DID TO THIS FAMILY IS NEVER GOING TO FIX
13 ITSELF NO MATTER WHAT HE FACES.

14 HE HAS NO REGARD FOR THE JUSTICE SYSTEM. HE WAS A
15 PAROLE VIOLATOR ON SEPTEMBER 16, 2007. HE DOESN'T CARE.

16 HE HAS NO REMORSE FOR HIS ACTION. HE LEFT MY SISTER
17 HELPLESS, LAYING ON A BATHROOM FLOOR SO THAT HE COULD COVER
18 HIS OWN TRACKS. HE'S A MONSTER. AND HE NEEDS TO BE PUT
19 AWAY FOR THE REST OF HIS NATURAL LIFE WITH NO PAROLE SO
20 THAT HE NEVER CAN DO THIS TO ANOTHER FAMILY, CAN NEVER
21 VIOLATE ANOTHER PAROLE, AND CAN NEVER TAKE SOMEONE ELSE'S
22 LIFE.

23 AND I THANK YOU.

24 MR. STONE: YOUR HONOR, THIS IS CHRIS COMINSKY, YOUR
25 HONOR.

1 MAN: I LIVE HERE IN BEAUFORT COUNTY. AND KATHY WAS
2 MY AUNT. I'VE INVITED THIS PERSON OVER HERE INTO MY HOME,
3 ACCEPTED HIM AS PART OF MY FAMILY BECAUSE OF HER DECISION.
4 ON SEPTEMBER 16 I HAD A PHONE CALL, THE WORST PHONE CALL
5 I'VE EVER GOT IN MY LIFE. AT 31 YEARS OLD I GOT THE WORST
6 PHONE CALL I HAVE EVER RECEIVED IN MY LIFE. AND I HAD TO
7 CALL ALMOST EVERY PERSON YOU SEE BEHIND ME AND OTHER PEOPLE
8 OF MY FAMILY AND LET THEM KNOW WHAT'S HAPPENED TO US.

9 ON THAT DAY THAT PERSON SITTING OVER THERE, HE TOOK MY
10 AUNT. HE TOOK MY CHILDREN'S AUNT KATHY. HE TOOK MY AUNT'S
11 SISTERS AND BROTHERS -- HE TOOK THEM ALL AWAY FROM US. I
12 DON'T HAVE THE OPPORTUNITY TO KISS HER, TO HUG HER, OR TO
13 BE A PART OF HER LIFE.

14 I'M GOING TO BE HONEST WITH YOU. I TRUST THE JUDICIAL
15 SYSTEM, AND I BELIEVE IN IT. AND I JUST ASK THAT YOU TAKE
16 THAT INTO CONSIDERATION. WHEN YOU SENTENCE HIM, I DO NOT
17 WANT MY CHILDREN TO GROW UP AND ONE DAY HAVE TO RUN IN TO
18 THIS PERSON ON THE STREETS. I DO NOT WANT MY LITTLE COUSIN
19 WHOSE MOTHER WAS TAKEN FROM HER TO HAVE TO EVER SEE HIM ON
20 THE STREETS.

21 AND I BEG FOR YOU AND FOR EVERYONE HERE TO TAKE THAT
22 INTO CONSIDERATION IN YOUR SENTENCING. I APPRECIATE YOUR
23 TIME.

24 THE COURT: THANK YOU VERY MUCH.

25 MR. STONE: I DON'T THINK ANYONE ELSE WISHES TO SPEAK,

1 YOUR HONOR.

2 THE COURT: ALL RIGHT. MS. CARROWAY.

3 MS. CARROWAY: THANK YOU, YOUR HONOR.

4 (PAUSE.)

5 MS. CARROWAY: THANK YOU, YOUR HONOR. JOSE STANDS
6 BEFORE YOU. HE'S 26 YEARS OLD. HE'S ORIGINALLY FROM
7 CALIFORNIA. THROUGH MY CONSIDERATIONS WITH HIM, I'VE
8 LEARNED THAT HE MOVED OUT HERE TO MAKE STRIDES TOWARDS A
9 MORE POSITIVE LIFESTYLE. I THINK HE WAS DOING SOME THINGS
10 TO ACHIEVE THAT. HE'D GOTTEN A GOOD JOB, HE WAS WORKING
11 FOR ATHENA MARBLE, LAID OFF AT THAT BUT IMMEDIATELY GOT
12 ANOTHER JOB. HE MARRIED KATHY HERRERA, AND THEY WERE
13 BUILDING A LIFE TOGETHER.

14 YOUR HONOR, THERE WERE SOME MARITAL PROBLEMS, AND I
15 THINK YOU'VE HEARD THE FACTS. I THINK WHETHER OR NOT, YOU
16 KNOW, WE'VE GOT A LEGAL PROVOCATION, IT WAS A HEAT OF
17 PASSION SITUATION. AND I ASK YOU TO TAKE THAT INTO
18 CONSIDERATION.

19 I KNOW THAT THROUGH MY CONVERSATIONS WITH HIM, HE
20 WOULD DO ANYTHING HE COULD DO TO TAKE IT BACK AND KNOWS HE
21 CAN'T. BUT HE IS VERY REMORSEFUL.

22 I WILL TELL YOU THAT I'VE BEEN DEALING WITH JOSE NOW
23 SINCE SEPTEMBER OF 2007. WE HAVE SPENT A SIGNIFICANT
24 AMOUNT OF TIME TOGETHER. AND IN ALL MY DEALINGS WITH HIM,
25 HE IS VERY POLITE, VERY WELL SPOKEN, EXTREMELY RESPECTFUL.

1 HE'S VERY INTELLIGENT. HE'S ONE OF FOUR STUDENTS AT THE
2 DETENTION CENTER WHO PASSED THE GED CLASS. HE WAS WRITTEN
3 UP IN THE NEWSLETTER FOR THAT. AND THERE'S LETTERS -- IF I
4 MAY, YOUR HONOR, HAND THIS UP TO THE COURT.

5 (PAUSE.)

6 MS. CARROWAY: WRITTEN UP IN THE NEWSLETTER AS ONE OF
7 FOUR STUDENTS THAT PASSED WITH FLYING COLORS, WAS WRITTEN
8 UP. HIS TEACHERS WROTE HIM UP ABOUT POSITIVE EDUCATIONAL
9 GAINS HE WAS MAKING, POSITIVE ATTITUDE, HOW HE WORKS WELL
10 WITH THE OTHER STUDENTS.

11 YOUR HONOR, WE ARE GOING TO ASK THAT THE COURT
12 CONSIDER A 30 YEAR SENTENCE IN THIS MATTER. I BELIEVE
13 CONSIDERING THE CIRCUMSTANCES IT WOULD BE APPROPRIATE.
14 JUSTICE WOULD BE SERVED.

15 I ALSO WOULD ASK YOU TO CONSIDER RUNNING THE 5
16 CONCURRENT. I BELIEVE THAT THE LAW SAYS THAT YOU CAN RUN
17 IT CONSECUTIVE, BUT NOT THAT YOU HAVE TO.

18 THE COURT: MR. HERRERA, DO YOU HAVE ANYTHING YOU WANT
19 TO SAY?

20 MR. HERRERA: NO.

21 SENTENCE OF THE COURT:

22 ALL RIGHT. MR. HERRERA, ON YOUR POSSESSION OF A
23 WEAPON DURING THE COMMISSION OF A VIOLENT CRIME, THE
24 SENTENCE OF THE COURT IS YOU BE COMMITTED TO THE STATE
25 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 5 YEARS. THAT

1 SENTENCE TO RUN CONCURRENT WITH YOUR MURDER SENTENCE.

2 THE SENTENCE OF THE COURT ON YOUR CHARGE OF MURDER IS
3 THAT YOU BE COMMITTED TO THE STATE DEPARTMENT OF
4 CORRECTIONS FOR THE REMAINDER OF YOUR NATURAL LIFE WITHOUT
5 THE POSSIBILITY OF PAROLE. DO YOU UNDERSTAND, LIFE WITHOUT
6 PAROLE. THANK YOU.

7 MS. CARROWAY: THANK YOU, YOUR HONOR.

8 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THIS
9 COURT IS ADJOURNED.

10 (FRIDAY, MARCH 20, 2009.)

11 THE COURT: MS. CARROWAY.

12 MS. CARROWAY: THANK YOU, YOUR HONOR. YOUR HONOR, I
13 HAVE FILED A WRITTEN NOTICE OF MOTION TO RECONSIDER. WOULD
14 YOU LIKE TO SEE IT?

15 THE COURT: YES.

16 (PAUSE.)

17 MS. CARROWAY: YOUR HONOR, WE ARE ASKING THAT YOU
18 RECONSIDER THE SENTENCE IN THIS CASE BASED ON THE FACT THAT
19 THE SENTENCING TAKES PLACE IMMEDIATELY AFTER A THREE-DAY
20 EMOTIONAL TRIAL. WE WILL AGREE THAT THERE'S NOT BEEN A
21 SIGNIFICANT CHANGE IN CIRCUMSTANCES, BUT WE ARE SIMPLY
22 ASKING THAT YOU RECONSIDER.

23 THE COURT: SOLICITOR.

24 MR. STONE: WE ASK THAT YOU DENY THE MOTION, YOUR
25 HONOR. I DON'T BELIEVE -- I THINK YOUR HONOR WAS PRESENT

1 DURING THE TRIAL. I DON'T BELIEVE THAT WHILE IT MIGHT HAVE
2 BEEN EMOTIONAL FOR THE VICTIMS AND MAYBE THE DEFENSE IN
3 THIS CASE, IT WASN'T CERTAINLY FOR THE COURT.

4 HE HAS A PRIOR CRIMINAL HISTORY. I THINK THROUGHOUT
5 THE TRIAL, THROUGHOUT THE EVIDENCE THAT YOU HEARD, I
6 BELIEVE THAT IT WAS PRETTY CLEAR THAT HE WASN'T REALLY
7 CONCERNED WITH HIS WIFE.

8 AND THE ONLY THING THAT I WOULD STRONGLY DISAGREE WITH
9 WHAT THE DEFENSE ATTORNEY SAID WAS THAT IF HE HAD TO DO IT
10 ALL OVER AGAIN, HE WOULDN'T. AND I'M NOT SO SURE THAT'S
11 TRUE.

12 IF YOU LISTEN TO THE 9-1-1 TAPE AND YOU LISTEN TO THE
13 STATEMENTS THAT HE MADE, NOT ONE POINT DID HE GIVE ANY
14 REMORSE FOR WHAT HAPPENED.

15 I THINK FROM THE STATE'S POSITION YOUR SENTENCE WAS
16 APPROPRIATE.

17 THE COURT: ALL RIGHT. ANYTHING FURTHER?

18 MS. CARROWAY: I WILL DISAGREE WITH THE SOLICITOR THAT
19 HE DIDN'T GIVE ANY REMORSE. ON A NUMBER OF THE TAPES HE'S
20 CRYING HEAVILY.

21 THE COURT: ALL RIGHT. WELL, I SEE NO REASON AT ALL
22 TO CHANGE MY DECISION. I RESPECTFULLY DENY YOUR MOTION.

23 MS. CARROWAY: THANK YOU, YOUR HONOR.

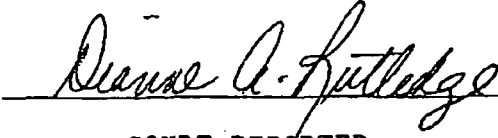
24 --- END OF TRANSCRIPT OF RECORD ---

25

1 I, THE UNDERSIGNED DIANNE A. RUTLEDGE, OFFICIAL COURT
2 REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF
3 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
4 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THE RECORD OF THE
5 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF
6 THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
7 COURT FOR BEAUFORT COUNTY, SOUTH CAROLINA ON THE 16, 17,
8 18, AND 20TH DAYS OF MARCH 2009.

9 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
10 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

11 JULY 29, 2009

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13 
14 COURT REPORTER
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FORM 5

STATE OF SOUTH CAROLINA)

County of Beaufort)Jose Angel Herrera #333836)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

2011-CP-07-5302
11 DEC 11 PM 1:11:00
CLERK OF COURT
BEAUFORT COUNTY, S.C.

APPLICATION FOR)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Inst.
P.O. Box 205, Ridgeville, SC. 29472
2. Name and location of Court which imposed sentence Beaufort County Court
Of General Sessions 102 Ribaut Rd. Beaufort, SC. 29901
3. Name(s) of co-defendant(s) (if any) N/A
N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-07-1921 Murder
 - (b) 2007-GS-07-1922 Poss. Weapon during Comm. Of Violent Crime

- (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 18, 2009 - Life without Parole
- (b) March 18, 2009 - 5 years concurrent
- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. They affirmed the conviction
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. Heard April 4, 2011 / Filed June 30, 2011
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) See additional page 1-of-6 for answer(b) See additional page 1-of-6 for answer(c) See additional page 1-of-6 for answer

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See additional pages 2-of-6 and 3-of-6 for answer(b) See additional page 4-of-6 for answer(c) See additional page 5-of-6 for answer

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO
N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) N/A
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes N/A
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Lauren Carroway - Trial Attorney
Beaufort County Public Defender / P.O. Box 525, Beaufort, S.C. 29902
 ii. Robert M. Dudek - Appeal Attorney
1330 Lady Street Suite 401 Columbia SC 29201
 iii. N/A

(b) the proceedings at which each such attorney represented you:

- i. Trial
 ii. Appeal
 iii. N/A

19. State clearly the relief you seek in filing this application:

See additional page 6-of-6 for answer

N/A

N/A

20. Are you now under sentence from any other court that you have not challenged?

No

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Beaufort)

I, Jose Angel Herrera, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jose A. Herrera

SWORN to and subscribed before me this 12th day of December, 2011.

Ludreen Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Jose Angel Herrera, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jose A. Herrera
Applicant

SWORN or affirmed to and subscribed before me this
12th day of December, 2011.

Ludric B. Bryant
Notary Public

My Commission Expires: May 26, 2020

1-of-6

Continue From
Form #5

In the Court of Common Pleas
Application for P.C.R.
Post-Conviction Relief

[Answer to question #10]

Question #10.

State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

[A.B.C.]

[Answer]

- A.) Ineffective assistance of Counsel / Doyle Violations
- B.) The state failed to produce all the necessary ingredients for the conviction of murder as defined in sec. 16-3-10 / Court errored in admitting Photographs
- C.) "Fundamental Fair Trial" "Reasonable Probability" and "Denying request for Jury instructions."

1-of-6

2 - of - 6Continue From
Form #5In the Court of Common Pleas
Application for P.C.R.
Post-Conviction ReliefAnswer to question #11

Question #11

State concisely and in the same order the facts which support each of the grounds set out in question #10.

Answer

A). I will establish several factors to be considered in the ineffective assistance of trial Counsel and the Doyle Violations. I will try to be as detailed as possible so this Court will fully understand the facts:

1.) Trial counsel erred and was ineffective by not arguing either of my first or second version of events as a basis for the requested Jury charge of involuntary manslaughter. Trial counsel erred and was ineffective in not making an objection, or to preserve my version of events for appellate review. (2.) Trial counsel was ineffective in failing to object to certain portions of the solicitor's closing argument/remark. I do think that the solicitor's remark is a Golden Rule Violation see Tr. → Page 356 → lines 1-3 "Can you imagine? and I know it's difficult, But can you imagine, having shot somebody and your reaction is, I better get rid of the evidence."

Continue next Page 3 of 6....

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
	)	2011-CP-07-5302
	)	
Jose Angel Herrera, #333836,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed December 14, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. The Applicant was indicted at the October 2007 term of the Beaufort County Grand Jury for murder (2007-GS-07-1921) and possession of a weapon during the commission of a violent crime (2007-GS-07-1922). Applicant was represented by Lauren Carroway, Esquire.

The Applicant proceeded to trial and was convicted. On March 18, 2009, the Applicant was sentenced by the Honorable G. Thomas Cooper to confinement for life without parole on the murder charge and 5 years on the weapons charge. The sentences are to be served concurrently.

The Applicant filed a timely notice of appeal. His appeal was perfected by Robert Dudek, Esquire, of the Office of Appellate Defense. By order filed June 30, 2011, the Court of Appeals affirmed the Applicant's convictions and sentences.

Attached herewith and incorporated herein are the records of the Beaufort County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel failed to argue Applicant's first and second version of events as a basis for requesting involuntary manslaughter and preserving the issue for appellate review.
 - b. Counsel failed to object to certain portions of the Solicitor's closing argument.
 - c. Counsel failed to move for a change of venue.
 - d. "Doyle violation".
2. The State failed to produce all the necessary ingredients for the conviction of murder as defined in Sec. 16-3-10.
3. Court erred in admitting photographs.
4. Court erred in denying request for jury instructions.

III.

In the first allegation, the Applicant alleges ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

In the second allegation, the Applicant alleges the State failed to carry their burden of proving the elements of murder at trial. The Respondent interprets this as an allegation that challenges the sufficiency of the evidence against the Applicant. The post-conviction relief court cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. § 17-27-20(a)(6) (1985). The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before and during the original trial or by review on motion for a

new trial or on appeal. Irick v. State, 264 S.C. 632, 216 S.E.2d 545 (1975); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). Therefore, the Court should summarily dismiss this ground for relief.

V.

In the remaining allegations, the Applicant alleges errors by the trial court. The Respondent submits that trial court errors are not proper for review on post-conviction relief and such allegations raise a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Both allegations made by the Applicant were both reviewed and ruled upon during the Applicant's direct appeal by the Court of Appeals. Therefore, the Court should summarily dismiss these allegation.

VI.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the ineffective assistance counsel claim and that the remaining allegations with summarily dismissed with prejudice.

[Signature on the following page.]

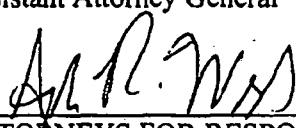
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

February 21, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

2011-CP-07-5302

JOSE ANGEL HERRERA, #333836)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

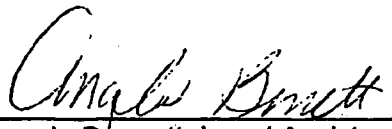
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Dudley B. Ruffala, Esquire
P.O. Box 7911
Hilton Head Island, South Carolina 29938

DATED this 21st day of February, 2013


Angela Bennett, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NO. 2011-CP-07-05302

JOSE ANGEL HERRERA

APPLICANT/DEFENDANT

VERSUS

APRIL 2, 2013

TRANSCRIPT OF POST-CONVICTION

RELIEF HEARING

BEAUFORT, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

RESPONDENT

B E F O R E:

HON. PERRY M. BUCKNER, JUDGE.

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

ON BEHALF OF THE STATE:

HON. ASHLEIGH R. WILSON

ON BEHALF OF APPLICANT/DEFENDANT:

HON. DUDLEY B. RUFFALO

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

ORIGINAL

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HON. LAUREN CARROWAY

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EXHIBITS

No exhibits were presented, either for marking for purposes of identification or entering as evidence.

1 BEGINNING 9:28 A.M.

2 BY THE COURT:

3 THE COURT: Ms. Wilson, I understand we need to take
4 the Herrera case first. Is that correct?

5 MS. WILSON: Yes, your Honor.

6 THE COURT: In that case -- Wanda, top of the
7 morning to you. This will be 2011-5302, in Beaufort.
8 Present in my courtroom is Mr. Dudley Ruffalo. Mr.
9 Ruffalo, bring your little important self up here and
10 have a seat at counsel table.

11 MR. RUFFALO: Yes, sir.

12 THE COURT: Also present is my good friend, Lauren
13 Carroway. Lauren, how are you this morning?

14 MS. CARROWAY: Good morning, Judge.

15 THE COURT: And also present for the State is
16 Ashleigh Wilson. Is Mr. Herrera in my box? Come have a
17 seat by Mr. Ruffalo. You put the packet on my desk?

18 MS. WILSON: Yes, your Honor. And your Honor, I
19 think that there's a matter that Mr. Ruffalo and I would
20 like to approach about.

21 THE COURT: Counsel approach. Why don't you come
22 around here, since I don't believe you want to stand on
23 the witness stand. Good morning, Mr. Ruffalo. How are
24 you?

25 MR. RUFFALO: Very well. And yourself?

1 THE COURT: Best thing you ever did was meet
2 somebody from Walterboro. What is it, Mr. Ruffalo?

3 OFF-THE-RECORD BENCH CONFERENCE. PRESENT:

4 THE COURT, MS. CARROWAY, MR. RUFFALO.

5 THE COURT: Stand back. Let's proceed.

6 OFF-THE-RECORD DISCUSSION.

7 THE COURT: All right. Wanda, as I said, this is
8 5302, Mr. Jose Herrera is present now with his attorney,
9 Mr. Ruffalo. Mrs. Wilson is present for the State.

10 Mr. Ruffalo, give me a minute, and let me review the
11 application and the State's return, and then we'll
12 proceed.

13 All right. Let the record reflect that I have now
14 reviewed the entire application, and I have reviewed a
15 portion of the trial transcript that is referred to in
16 the application. I have also reviewed the State's
17 return. Mr. Ruffalo, I understand that you're ready to
18 proceed. You may call your first witness.

19 MR. RUFFALO: Yes, sir. We call Mr. Jose Angel
20 Herrera.

21 THE COURT: Mr. Herrera, come around and be sworn by
22 the clerk of court.

23 WITNESS SWORN.

24 THE COURT: Watch your step. All right. Mr.
25 Herrera, you pull the chair back up and have a seat.

1 Make yourself comfortable. You're going to pull your
2 chair forward, and that microphone will amplify your
3 voice. I want you to speak up. State your full name.
4 Spell your last name for my court reporter.

5 APPLICANT: Jose Angel Herrera. H/e/r/r/e/r/a.

6 THE COURT: Your witness, Mr. Ruffalo.

7 MR. RUFFALO: With your permission. Thank you, your
8 Honor.

9 JOSE ANGEL HERRERA

10 DIRECT EXAMINATION, MR. RUFFALO:

11 Q Mr. Herrera, would you tell us where you are
12 currently residing?

13 A Leiber Correctional Institute.

14 Q Mr. Herrera, I'm going to hand you two documents,
15 with the permission of the Assistant Attorney General.
16 They are the Application for Post-conviction Relief, and
17 the return. If you don't have copies of them. And you
18 can refer to those.

19 Mr. Herrera, would you tell this Court why you
20 believe you are entitled to post-conviction relief in
21 accordance with your application.

22 A Well, good morning, your Honor.

23 THE COURT: Good morning.

24 A I would like to read relevant issues into the record
25 myself, to preserve them for review. The issues are

1 relevant and viable for the high courts to --

2 THE COURT: Slow down just a little bit for my court
3 reporter, Mr. Herrera.

4 A Yes, sir.

5 THE COURT: I want to listen to you. Don't go too
6 fast for her. Start over.

7 A I'd like to read relevant issues into record myself
8 to preserve them for review. The issues are relevant
9 and viable for the high courts to review. In all
10 fairness, I would like to squarely raise the
11 allegations, so they can be properly addressed.

12 First and foremost, having my trial in this county
13 seriously impaired my right for a fair trial. And
14 meaningful impaired my ability to defend against. It's
15 difficult to imagine why any competent lawyer would so
16 readily abandoned any effort to persuade the courts or
17 make a motion to move the trial to some other county so
18 I may have a fair trial.

19 My trial counsel refused to entertain the
20 possibility of moving the trial constitutes ineffective
21 assistance of counsel. I must say that having the trial
22 in this county is and was prejudice to me and my trial.

23 The court -- the whole case was tainted, for there
24 were so many jurors that knew about the case in this
25 county that the victim worked in. This was illegal

1 error by my trial counsel, as well as the trial judge.

2 My trial counsel failed to object to certain
3 portions of the solicitor's closing argument at the
4 state -- at the sentencing proceeding. My trial counsel
5 failed to oppose the prosecution throughout the
6 sentencing proceeding as a whole, and to do, at specific
7 points of the whole trial, when the State told the Court
8 that I had shown no remorse for the action, constituted
9 reversible error.

10 Comments concerning the defendant's lack of remorse
11 are constitutionally impermissible, because it violate
12 my *Fifth, Eighth, and Fourteenth Amendment* rights. And
13 my trial counsel's failure to object constitutes
14 ineffective assistance of counsel. And this was
15 extremely prejudicial to allow that statement from the
16 solicitor.

17 I do believe that the solicitor acted intentionally
18 by saying I showed no remorse. And my counsel's failure
19 to object constituted deficient performance. Excuse me.

20 I would like to say that my trial counsel was
21 ineffective for failing to object to trial judge's
22 erroneous jury instruction on malice, and for failing to
23 object that the gun was malice.

24 South Carolina courts have held that malice cannot
25 be implied or inferred by the use of a gun.

1 The State has requested on their return that this
2 Court not address some of my allegations in my PCR
3 application. I would like to respectfully ask that all
4 the allegations be addressed and heard, for they are
5 properly included in my application. All the
6 allegations to -- do -- all my allegations do fall under
7 ineffective assistance of counsel.

8 My trial judge erred for not allowing the jury the
9 charge on involuntary manslaughter or let the jury
10 consider the charge.

11 I do think that I was entitled to a direct verdict
12 when the State failed to prove or produce all necessary
13 ingredients for the conviction of murder. Motive and
14 malice are two ingredients needed for a conviction.

15 Your Honor, if I may illustrate a point.

16 THE COURT: We do this by question and answer, so.
17 Is there anything further question-wise, or you -- I
18 understand you want to make sure I understand your
19 allegations. Question?

20 BY MR. RUFFALO:

21 Q Mr. Herrera, would you like to make clear your
22 statement by example to the Court?

23 A In order to make a cake, you must have necessary
24 ingredients to make this cake: milk, eggs, flour.
25 Without these ingredients, you cannot make a cake. So

1 therefore, without malice and motive, you cannot have
2 murder.

3 Q Mr. Herrera, is there anything else that you would
4 like to present to this Court?

5 A Yes, your Honor. Yes, sir. With all due respect,
6 your Honor, to you and your court, by protecting my
7 rights as a defendant to a fair trial, the judicial
8 process of my trial should have been protected by
9 removing the trial to a forum beyond its probable
10 influence so it cannot deprive me my rights to a fair
11 trial. And my conviction, accompanied by such events,
12 do not meet any civilized conception of due process of
13 law. That, alone is sufficient, in my mind, to warrant
14 reversal.

15 I would like to thank your Honor for your time.

16 THE COURT: Very well.

17 MR. RUFFALO: No further questions, your Honor.

18 THE COURT: Very well. Cross-examination..

19 MS. WILSON: Thank you, your Honor.

20 JOSE ANGEL HERRERA

21 CROSS-EXAMINATION, MS. WILSON:

22 Q Mr. Herrera, do you recall meeting with Ms. Carroway
23 before your trial?

24 A Yes, I do.

25 Q And do you recall about how many times you met with

1 her?

2 A I would say approximately maybe two or three.

3 Q Two or three times. Did you have any other
4 communications with her, other than when you got to meet
5 with her in person?

6 A No, ma'am.

7 Q And do you recall her reviewing the discovery from
8 the State with the State had against
9 you?

10 A Somewhat

11 Q Did she
12 trial for y

13 A No, ma'am.

14 Q Did you discuss to
15 investiga

16 A Yes,

17 Q Okay

18 A I guess it were
19 with us character
20 witness to follow
21 that u

22 Q Are you a material in this
23 case?

24 A Yes, ma'am.

25 Q You gave some testimony about how you felt having

1 your trial in Beaufort was unfair. Is that correct?

2 A Yes, ma'am.

3 Q Do you recall during your trial the Court striking
4 several jurors who had testified that they gave -- they
5 had some awareness about your trial before?

6 A Yes.

7 Q Do you recall that? Nothing further. Thank you.

8 MR. RUFFALO: Nothing in re-direct, your Honor.

9 THE COURT: Anything further on cross, Ms. Wilson?

10 MS. WILSON: No, your Honor.

11 THE COURT: Re-direct?

12 MR. RUFFALO: No, sir.

13 THE COURT: You may step down.

14 A Thank you, your Honor.

15 THE COURT: If you care to help him right here.

16 Pull that chair up so he can get his packet and step
17 down.

18 Call your next witness, Mr. Ruffalo.

19 MR. RUFFALO: Your Honor, we have no other witnesses
20 on behalf of the applicant.

21 THE COURT: Very well. Call your first witness, Ms.
22 Wilson.

23 MS. WILSON: Your Honor, before the State calls its
24 first witness, I'd just like to, I guess, reiterate a
25 motion to dismiss, as in State's return, with regard to

1 two of Mr. Herrera's allegations. In his application,
2 he alleged that the State failed to produce all
3 necessary ingredients for the conviction of murder. And
4 for a PCR, you can't allege either -- you can't attack
5 the sufficiency of the evidence presented at trial. So
6 the State would request that you summarily dismiss the
7 allegation in the application for that basis.

8 Also, your Honor, the applicant alleges that -- he
9 alleges two issues in his application that were
10 addressed on appeal and are issues proper for appeal.
11 And PCR is not a substitute for a direct appeal. So we
12 request that you also dismiss those allegations, as
13 well.

14 THE COURT: It is true, Ms. Wilson, that the post-
15 conviction relief court cannot consider the sufficiency
16 of the evidence, as set forth in the act itself. In
17 other words, the *Uniform Post-conviction Act* is not a
18 substitute for remedies that were available during a
19 trial or by review on a motion for a new trial or on
20 appeal. And to the extent that Mr. Herrera's testimony
21 raises the issue of the trial court's decision to submit
22 the offense of murder to the jury, your motion is
23 granted.

24 MS. WILSON: Thank you, your Honor.

25 THE COURT: Now, whether or not -- clearly, Mr.

1 Herrera has every right to raise the issue of
2 ineffective assistance of counsel. He alleges that
3 there was a failure by counsel to move for a change of
4 venue. He alleges that his counsel failed to object to
5 the deputy solicitor's statement concerning -- or
6 whoever made it for the State -- lack of remorse. He
7 alleges that there was a failure to raise the issue by
8 his attorney of involuntary manslaughter. All of which
9 are grounded in ineffective assistance.

10 As to those grounds, based on his testimony, we need
11 to proceed. You understand?

12 MS. WILSON: Yes, your Honor.

13 THE COURT: Call your first witness.

14 MS. WILSON: Thank you, your Honor. The State calls
15 Ms. Lauren Carroway.

16 THE COURT: Ms. Carroway, if you'd come forward,
17 please, and be sworn by the clerk of court.

18 WITNESS SWORN.

19 THE COURT: Good morning. Watch your step. Have a
20 seat. Make yourself comfortable. Adjust that
21 microphone for people that are deaf, like Judge Buckner.
22 Not to mention Wanda, who needs to be able to hear.

23 State your full name, spell your last, please, for
24 the record.

25 MS. CARROWAY: Lauren Carroway. C/a/r/r/o/w/a/y.

1 THE COURT: Direct examination. Your witness, Ms.
2 Wilson.

3 MS. WILSON: Thank you, your Honor.

4 HON. LAUREN CARROWAY

5 DIRECT EXAMINATION, MS. WILSON:

6 Q Ms. Carroway, how long have you been practicing law?

7 A Since 2004.

8 Q And can you give us a little of your professional
9 background.

10 A I've been a public defender since 2004. I practiced
11 in Columbia, South Carolina, in Richland County for the
12 first two-and-a-half, three years.

13 Q I'm assuming you were appointed in this case. Is
14 that correct?

15 A Right.

16 Q Okay.

17 A The Public Defender's Office was appointed.

18 Q And how many times did you meet with Mr. Herrera
19 before going to trial?

20 A I reviewed my notes, and I count approximately ten
21 times that I met with him or talked to him on the phone.
22 They have a line from the phone where they can call
23 directly to my office.

24 Q Okay. And did you file Brady or Rule 5 motions for
25 Mr. Herrera?

1 A Yes.

2 Q And did you review what you received from the State?

3 A Yes.

4 Q And did you discuss with Mr. Herrera before going to
5 trial, the charges against him and what the State was
6 required to prove?

7 A Yes, at length.

8 Q And did you discuss his version of events of the
9 case?

10 A Yes.

11 Q And did you discuss possible defenses with Mr.
12 Herrera?

13 A Yes.

14 Q And did you have any defense to present at trial?

15 A We tried to argue that there wasn't malice. And
16 therefore, it wasn't murder.

17 Q And could you briefly characterize the State's
18 evidence against Mr. Herrera?

19 A The State had a strong case. Mr. Herrera made a
20 number of different statements to Office Bromage in this
21 case. They also had -- the stepdaughter was present in
22 the home when the incident occurred. And a number of
23 photographs and record -- recorded statements.

24 Q And did he give you any potential leads or witnesses
25 to investigate on his behalf?

1 A I'm -- I think what he was referring to is people he
2 wanted me to put up in reference to his good character,
3 but he wasn't testifying, and I didn't think that was
4 admissible. They didn't have any factual knowledge of
5 the case.

6 Q And what kind of investigation did you do, other
7 than what was requested from Mr. Herrera?

8 A I hired a firearms expert in this case. And that
9 one of Jose's statements was that it was kind of an
10 accident, the gun went off accidentally. And I know
11 that from another statement one of the witnesses had
12 made that there was some talk about the gun being old
13 and rickety. So I had a firearms expert look at the
14 weapon in hopes of him being able to shed some light on
15 that, but he wasn't able to.

16 Q Okay. And did you feel like you'd had ample time to
17 prepare for Mr. Herrera's trial?

18 A Yes.

19 Q And you said your trial strategy was to show lack of
20 malice. Is that correct?

21 A Yes.

22 Q And prior to going to trial, were there any
23 discussions about pleas or any type of negotiations from
24 the State?

25 A Yes.

1 Q And they were just not fruitful, or --

2 A It was Jose's decision that he wished to continue
3 with the trial.

4 Q And today, Mr. Herrera was speaking about how he
5 thought his trial in Beaufort County affected his right
6 to a fair trial. Did you feel like there was any basis
7 for a change in venue?

8 A I didn't make that motion, I can tell the Court
9 that. And the case was in the media, so.

10 Q Okay. And do you --

11 A Judge Cooper struck all -- or excused all -- or I
12 felt like all of the witnesses [sic] that said that they
13 had heard about the case in the media.

14 THE COURT: Witnesses?

15 A Jurors. I'm sorry, Judge. All the jurors that
16 referenced seeing or hearing it in the media.

17 Q Okay. Did you feel like the State's comments about
18 the lack of remorse during sentencing were
19 objectionable?

20 A I didn't object to it. I don't know whether or not
21 I should have.

22 Q Do you recall the malice instruction that was given
23 to the jury?

24 A Judge Cooper gave his standard instructions. From
25 the Bench Book. He didn't vary it in any way.

1 Q And you didn't think it was objectionable at the
2 time?

3 A No.

4 Q Did you request involuntary manslaughter for Mr.
5 Herrera?

6 A I can't remember.

7 Q Okay. If I brought you the transcript, --

8 A Yes, I can.

9 Q Okay.

10 THE COURT: Give her page and line number.

11 A Sorry.

12 MS. WILSON: Begging the Court's indulgence.

13 THE COURT: You have a copy, Mr. Ruffalo?

14 MR. RUFFALO: Yes, sir, I do.

15 THE COURT: Very well.

16 BY MS. WILSON:

17 Q Looking at, in the trial transcript, on Page 341.

18 A Yes, I did. I requested voluntary and involuntary
19 and accident.

20 Q Okay. And do you recall whether the Court accepted
21 those requests?

22 A He charged manslaughter, but not involuntary
23 manslaughter.

24 MS. WILSON: Thank you, Ms. Carroway.

25 THE COURT: Cross-examination.

1 HON. LAUREN CARROWAY

2 CROSS-EXAMINATION, MR. RUFFALO:

3 Q Ms. Carroway, at any time, did you notice, although
4 Jose is a natural-born citizen, did you notice any
5 language problems or barriers whatsoever?

6 A No.

7 Q Did you feel the need for any interpreter
8 whatsoever?

9 A No.

10 MR. RUFFALO: Thank you very much. That's all I
11 have, Judge.

12 THE COURT: Re-direct.

13 MS. WILSON: Nothing from the State, your Honor.

14 THE COURT: Ms. Carroway, you may step down.

15 A Thank you, your Honor.

16 THE COURT: Call your next witness, Ms. Wilson.

17 MS. WILSON: Nothing further from the State.

18 THE COURT: Any reply testimony from the applicant?

19 MR. RUFFALO: No, sir.

20 BY THE COURT:

21 THE COURT: Very well. All right, Counsel, I'm
22 going to ask you both to submit proposed orders to me.
23 Please submit them to me as follows: within ten days of
24 today, please submit your proposed orders to me at P.O.
25 Drawer 470, Walterboro, 29488. That's Drawer 470,

1 Walterboro 29488.

2 Please copy opposing counsel on any transmittal to
3 the court. Please include a self-addressed, stamped
4 envelop. And by *stamped*, Ms. Wilson and Mr. Ruffalo,
5 that means with sufficient postage affixed thereto.
6 Don't send me a 40-page order, and put one stamp on it.

7 Ms. Carroway, I'm going to excuse you, but in just
8 one moment. Have a seat for me.

9 So make sure there's sufficient postage, since I
10 have to pay my own postage.

11 If you want to comply with the time deadline, you
12 can email me your order. My email address is:

13 . I will expect you to also send
14 my law clerk an email order at

15 I will also expect you to send my law clerk, Camden
16 Hodge, who's only failing is that he's a University of
17 South Carolina fan, I'll expect you also -- isn't that
18 right, Mr. Lee?

19 MR. SCOTT LEE: That's right, your Honor.

20 THE COURT: I figured you'd agree. Also, I expect
21 you to send him a working copy of your proposed order so
22 that he has a working copy and I do, too. That's the
23 way we do it, because I've obviously got a lengthy
24 transcript to read.

25 If you email me the order to comply with the ten-day

1 time deadline, you will still have to United States mail
2 me an envelop with sufficient postage affixed thereto
3 for the return of your proposed order.

4 Obviously, any communication to this Court, whether
5 by email or United States mail, you must copy opposing
6 counsel on any communication.

7 Any questions about the proposed order procedure
8 from counsel for the applicant?

9 MR. RUFFALO: No, your Honor.

10 THE COURT: Any questions about the proposed order
11 procedure from counsel for the State of South Carolina?

12 MS. WILSON: No, your Honor.

13 THE COURT: Very well. This concludes the hearing.
14 I'm taking the packet with the return, the application,
15 the sentence sheet, and the transcript of the entire
16 trial, as well as the opinion of the Court of Appeals,
17 all of which are in my transcript with the final briefs
18 of the appellate and the final brief of the respondent
19 in connection with the direct appeal.

20 This concludes the hearing in connection with this
21 matter.

END HEARING 9:55 A.M.

CERTIFICATE OF REPORTER
APRIL 2, 2013 TRANSCRIPT OF
POST-CONVICTION RELIEF HEARING

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing April 2, 2013 Transcript of Post-conviction Relief Hearing is a true, accurate, and complete record of the proceedings had in the case of Jose Angel Herrera, Beaufort County, Court of Common Pleas, Case Number 2011-CP-07-05302.

I further certify that I am of neither kin, counsel, or interest to any party hereto.

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature July 22, 2013.


Wanda H. Rowe, CVR-M
Official Court Reporter

ORIGINAL

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498 WANDA H ROWE CVR
OFFICIAL COURT REPORTER
14TH JUDICIAL CIRCUIT
POB 146
BEAUFORT SC 29901-0146

TO:

MS LORIE NE FRENCH
SCCID
APPELLATE DEFENSE DIV
POB 11589
COLUMBIA SC 29211-1589

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Jose Angel Herrera, #333836,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2011-CP-07-5302

ORDER OF DISMISSAL

13 MAY -2 PM 3:03
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

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This matter comes before the Court by way of an application for post-conviction relief (PCR) dated December 14, 2011. The Respondent made its Return on February 21, 2013. An evidentiary hearing on the matter was convened on April 2, 2013 at the Beaufort County Courthouse. The Applicant was present at the hearing and represented by Dudley B. Ruffalo, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Also present and testifying was Lauren Carroway, Esquire. The Court had before it the trial transcript, the Beaufort County Clerk of Court records, and the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's Return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Beaufort County Clerk of Court. The Applicant was indicted at the October 2007 term of the Beaufort County Grand Jury for murder (2007-GS-07-

1921) and possession of a weapon during the commission of a violent crime (2007-GS-10-1922).

He was represented by Lauren Carroway, Esquire.

After the state called the case to trial, the Applicant was found guilty. On March 18, 2009, the Applicant was sentenced by the Honorable G. Thomas Cooper to life imprisonment for murder and five years for possession of a weapon. The sentences are to be served concurrently.

A Notice of Appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Robert Dudek, Esquire of the South Carolina Office of the Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Herrera, Op. No. 2011-UP-354 (filed June 30, 2011).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel failed to argue Applicant's first and second version of events as a basis for requesting involuntary manslaughter and preserving the issue for appellate review.
 - b. Counsel failed to object to certain portions of the Solicitor's closing argument.
 - c. Counsel failed to move for a change of venue.
 - d. "Doyle violation."
2. The State failed to produce all the necessary ingredients for the conviction of murder as defined in Sec. 16-3-10.
3. The Court erred in admitting photographs.
4. The Court erred in denying requests for jury instructions.

At the hearing, Applicant ~~proceeding~~ *proceeded* solely on the allegations of ineffective assistance

for the following reasons:

1. Failure to request a change in venue.
2. Failure to object to the State's comment about the Applicant's lack of remorse.
3. Failure to object to a bad malice instruction.
4. Failure to request an involuntary manslaughter charge.
5. Failure to call character witnesses.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Summary of the Testimony

13 PmB The Applicant, Jose Angel Herrera, was present and testified. The Applicant testified he met with his attorney two or three times prior to trial. He testified he vaguely remembers reviewing discovery with his attorney, but did not recall discussing possible defenses. The Applicant testified he gave his attorney several character witnesses to call on his behalf and she refused to do so.

He testified because his trial was held in Beaufort and jurors in the county knew the victim, he did not receive a fair trial. The Applicant testified his attorney should have objected to a portion of the State's closing. The Applicant testified further his attorney should have objected to the sentence he received and to the State saying he showed no remorse.

The Applicant testified his attorney should have requested an involuntary manslaughter charge. He testified further his attorney should have objected to the erroneous malice instruction. The Applicant testified that a directed verdict was warranted because the State did not prove malice. Lastly, the Applicant testified it was his decision to proceed to trial.

At the end of the Applicant's testimony, the State made a motion to dismiss all of the Applicant's allegations related to the sufficiency of the evidence and trial court errors. This

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Court granted the State's motion ~~of~~ the following basis. The post-conviction relief court cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. § 17-27-20(a)(6) (1985). The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before and during the original trial or by review on motion for a new trial or on appeal. Irick v. State, 264 S.C. 632, 216 S.E.2d 545 (1975); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975).

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Trial counsel, Lauren Carroway, was also present and testified she has been a public defender since 2004. She testified she met with the Applicant approximately ten times prior to trial and had phone conversations with the Applicant. Counsel testified she filed Brady and Rule 5 motions on the Applicant's behalf. She testified that prior to trial she discussed with the Applicant the elements of the charges against him and what the State was required to prove.

Counsel testified she discussed with the Applicant his version of the facts and possible defenses. She testified her trial strategy was to argue the State's failure to prove malice. Counsel testified the State had a strong case. She testified the Applicant wanted her to present evidence of his good character, but she did not because it would not have been admissible. Counsel testified her investigation of the Applicant's case included hiring a firearms expert who was unable to help.

Counsel testified she had ample time to prepare for trial and the Applicant wanted to proceed to trial. She testified she did not ~~motion~~ ^{PMB move} for a change in venue since the trial judge excused all jurors who said they had heard something about the case. Counsel testified she did not object to the State's comments about the defendant's lack of remorse. She testified further she did not object to the Court's malice instruction because it was not objectionable. Lastly,

counsel testified she requested an involuntary manslaughter charge and the Court denied her request.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

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For the Applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

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This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court finds counsel has extensive experience in the practice of criminal law and has been practicing law since 2004. This Court finds counsel met with the Applicant numerous times prior to trial and fully investigated the Applicant's case. This Court finds counsel filed Brady and Rule 5 motions on the Applicant's behalf and reviewed the received discovery with the Applicant. This Court finds counsel discussed with the Applicant the

elements of the charges against him and what the State was required to prove. This Court finds counsel discussed the Applicant's version of the facts and possible defenses with the Applicant.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have motioned for a change in venue. Counsel gave credible testimony and the record reflects that the trial judge excused all jurors who had heard, read, or discussed the case around town. Mere exposure to pretrial publicity does not automatically disqualify a prospective juror. State v. Manning, 329 S.C. 1, 7, 495 S.E.2d 191, 194 (1997) (citing State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990). "[T]he relevant question is not whether the community remembered the case, but whether the jurors ... had such fixed opinions that they could not judge impartially the guilt of the defendant." State v. Manning, 329 S.C. 1, 8, 495 S.E.2d 191, 194 (1997).

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This Court finds the trial court exercised caution by excusing the jurors who had heard or discussed the case prior to trial which prevented counsel's need to motion for a change in venue. This Court finds counsel's failure to request a change in venue did not result in deficient performance and prejudice did not result from counsel's performance.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the trial court's malice jury instruction. This Court finds and the record reflects that the malice instruction given by the Court was the standard malice charge given in South Carolina and was not objectionable. This Court finds this allegation is without merit.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have requested an involuntary manslaughter jury instruction. This Court finds and the record reflects counsel requested an involuntary manslaughter charge (T.341:6-7, 341:23-342:1) and her request was denied by the Court. (T. 349:16-18). The Court's denial of counsel's request was reviewed on appeal and affirmed. State v. Herrera, Op. No. 2011-UP-354 (filed June 30, 2011).

This Court finds the Applicant's allegation is without merit and counsel's performance was not deficient.

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2AB
This Court finds the Applicant failed to call character witnesses on his behalf. This Court finds trial counsel's performance was not deficient. This Court has repeatedly held a PCR applicant *must produce the testimony* of a favorable witness *or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, *supra*, 318 S.C. at 498-99, 458 S.E.2d at 540. This Court finds the Applicant failed to produce any testimony of character witnesses at the evidentiary hearing. This Court finds this allegation is without merit and counsel's performance was not deficient.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the State's comments about the Applicant's lack of remorse. This Court finds and the record reflects the State made no improper comments about the Applicant's lack of remorse during its closing argument. Counsel for the Applicant presented evidence of the Applicant's remorse as mitigation during the sentencing phase of the trial. This Court finds this allegation is without merit and counsel's performance was not deficient.

Accordingly, this Court finds the Applicant failed to prove the first prong of the Strickland test- that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in their representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland- that he was

prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore they are hereby denied and dismissed.

CONCLUSION

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Based on all the forgoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

[Signature on the following page.]

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice;
and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30 day of April, 2013



Perry M. Buckner
Presiding Judge
14th Judicial Circuit

Walterboro, South Carolina.

WITNESSES

Holmes - BCSO

DOCKET NO. 2007GS0701922

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2007

ARREST WARRANT NUMBER

J332873

THE STATE

VS.

Jose Angel Herrera

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

OCT 15 2007

VERDICT

Indictment for

Weapons / Poss. weapon during violent crime

SC Code: 16-23-0490

CDR Code:0549

Defendant

Witness:

C.C.C. PLS. and G.S.

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2007GS0701922

At a Court of General Sessions, convened on October 25, 2007, the Grand Jurors of Beaufort County present upon their oath:

Weapons / Poss. weapon during violent crime, if not also sen

That in Beaufort County, South Carolina, on or about September 16, 2007, the Defendant, Jose Angel Herrera, did possess a weapon or visibly display what appeared to be a weapon, during the commission, or attempted commission, of Murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

Holmes - BCSO

DOCKET NO. 2007GS0701921

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2007

ARREST WARRANT NUMBER

J332872

THE STATE

VS.

Jose Angel Herrera

ACTION OF GRAND JURY

True Bv

Chlorine

Forfeiture of Grand Jury

Date: 10/1/07

VERDICT

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code: 0116

C.C.C. PLS. and G.S.

Forfeiture of Petit Jury
Date:
INDICT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2007GS0701921

At a Court of General Sessions, convened on October 25, 2007, the Grand Jurors of Beaufort County present upon their oath:

Murder / Murder

That in Beaufort County on or about September 16, 2007, with malice aforethought, Jose Angel Herrera did kill and murder Catherine Herrera by means of shooting her with a pistol, and that Catherine Herrera did die in Beaufort County as a proximate result thereof on September 16, 2007; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor