

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Court of Common Pleas Case No. 2011-CP-26-3907
(Capital PCR Action)
Appellate Case No. 2014-000904

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S.C. Supreme Court

LOUIS MICHAEL WINKLER, JR.,

Respondent/Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Petitioner/Respondent.

APPENDIX

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1 A. Right.

2 Q. All right. So, you're laying on the floor. Now, are
3 you on your back, are you on your knees, are you on your
4 face, or how are you laying on the floor?

5 A. On my back.

6 Q. You're laying on the floor on your back, right?

7 A. Right.

8 Q. And the couch -- and from where you are, you're going
9 to be laying down behind the couch, and the couch is going
10 to be between you and where your mom is, right?

11 A. Right.

12 Q. All right. So, if you're laying down on your back on
13 the floor, how do you see Mick walk over to your mom and
14 shoot your mom?

15 A. I saw him walk in the general direction.

16 Q. Saw him walk in the general direction? So, you didn't
17 actually see him do it. You're saying you were there, he
18 was there, you saw him walk in the general direction, and
19 from that you assumed he must have done it, right?

20 A. Right.

21 Q. Now, let me ask you about your dad. Were your dad --
22 was your dad upset because your dad was married to your mom
23 before she got with Mick, right?

24 A. Right.

25 Q. In fact, Mick had something to do with the breakup of,

1 of their marriage, right?

2 A. I have no idea.

3 Q. And your dad didn't have any particular love for Mick,
4 did he?

5 A. No.

6 Q. But you love your dad, don't you?

7 A. Yes.

8 Q. No question about that?

9 A. Right.

10 Q. All right, and would you say you were closer to your
11 dad than you were to your mom?

12 A. No.

13 Q. And, J [REDACTED], on that day you say that Mick hit you
14 and he knocked you off the stool, but you don't remember
15 which hand. How did he hit you? Was it with ---

16 A. His fist.

17 Q. With his fist. So, he balled up his fist and he
18 knocked you off the stool. Is that what you're testifying
19 to?

20 A. Yeah.

21 Q. All right, and he hit you on which side of your face?

22 A. My right.

23 Q. On your right side. With his right hand?

24 A. I don't know what hand it was.

25 Q. You don't know what hand he hit you with?

1 A. Right.

2 Q. You just know he balled up his fist. Well, is he
3 right-handed or left-handed?

4 A. I don't know. He said he was left-handed.

5 Q. He told you he was left-handed?

6 A. Yes.

7 Q. How long did you -- you said earlier that you had,
8 that you and mom had lived with Mick for a period of time.
9 And, in fact, it was almost two years, wasn't it?

10 A. Right.

11 Q. All right. So, it wasn't a year like you told the
12 solicitor. It was actually more like two years that y'all
13 had lived with him before they separated.

14 A. Right.

15 Q. Right, and the separation was caused by friction
16 between Roger G. [REDACTED] your mom, and Mick, right?

17 A. No.

18 Q. No? Well, what was it caused by?

19 A. It was between Mick and my mom.

20 Q. All right. Let me ask you this. Now the gun, let's
21 talk about for a minute about the gun. You told the
22 solicitor that you saw this gun that the solicitor produced
23 in here today before, right?

24 A. Right.

25 Q. And where did you see the gun?

1 A. At Mick's house.

2 Q. At Mick's house, and how long ago was that? How long
3 before this incident occurred was that that you saw the
4 gun?

5 A. Probably about a year or two.

6 Q. About a year or two, and how long was it that the gun
7 that was under the pillow was there?

8 A. Not much before that. Probably about two or three
9 weeks before that.

10 Q. About two or three weeks before what?

11 A. March 6th.

12 Q. All right, two or three weeks before March 6th, that
13 gun was under the pillow? The gun that was, you say, in
14 your mom's bedroom?

15 A. Right.

16 Q. Now, let's talk about that for a minute. The gun that
17 you say was in your mom's bedroom, you sure that wasn't
18 your bedroom?

19 A. Well, it was at one point.

20 Q. It was at one point. In fact, all your stuff's in the
21 bedroom, right?

22 A. Right.

23 Q. All your clothing is in that bedroom, your drawings on
24 the wall in that bedroom. In fact, there was nothing of
25 your mom's in there other than the gun, right?

1 A. And her clothes in the dresser.

2 Q. Now, and, and when was it that your mom switched rooms
3 with you to take the room where the gun was under the
4 pillow?

5 A. I don't know. She said she couldn't sleep good on the
6 couch, so I let her have my room.

7 Q. Well, wasn't there two bedrooms in your house?

8 A. Right.

9 Q. And there's another bedroom upstairs, right?

10 A. Right.

11 Q. And that was the bedroom that she had been using,
12 right?

13 A. Maybe. I don't know.

14 Q. You don't know?

15 A. I thought she slept on the couch.

16 Q. I'm sorry?

17 A. I thought she slept on the couch.

18 Q. Thought she slept on the couch? So, you don't know
19 where she slept?

20 A. She did sleep on the couch.

21 Q. All right.

22 A. A period of time.

23 Q. Well, when Roger G. [REDACTED] would come over, where would
24 she sleep then?

25 A. She'd sleep in my room.

1 Q. Okay. Now the gun, let's go back to the gun under the
2 pillow. Whose gun, who did the gun belong to that was
3 under the pillow?

4 A. My dad.

5 Q. Your dad? Your dad, Roger G. [REDACTED]?

6 A. Right.

7 Q. No question about that, is there?

8 A. Right.

9 Q. That's who owned that gun?

10 A. Right.

11 Q. And Roger G. [REDACTED] is the one who put that gun there,
12 right?

13 A. Right.

14 Q. Now, let me ask you. When you told the police or you
15 -- well, let me rephrase that. When you had your
16 conversation with the police officer, the first officer who
17 arrived on the scene, you remember that, right?

18 A. Right.

19 Q. And the officer who came there was nothing but kind to
20 you, was he?

21 A. Right.

22 Q. Didn't yell at you, didn't scream at you, didn't
23 mistreat you in any way whatsoever, did he?

24 A. No.

25 Q. And he asked you some questions?

1 A. Right.

2 Q. And he -- you gave him some answers?

3 A. Right.

4 Q. Right, and you're saying that you did not tell him
5 that it was your dad who did the shooting?

6 A. Right.

7 Q. Okay. Now, J. [REDACTED], you know what Goth is?

8 A. What is what?

9 Q. Goth.

10 A. Yes.

11 Q. What is it?

12 A. A style.

13 Q. All right, what does that mean, a style?

14 A. Clothes style, how you wear your clothes.

15 Q. All right, and just how you wear your clothes. Is
16 that what it's about?

17 A. That's all I know it's about.

18 Q. Well, do you consider yourself Goth?

19 A. No.

20 Q. No?

21 (A PAUSE.)

22 Q. Just let me show you something and just ask you if you
23 recognize any of this stuff.

24 A. Yes.

25 Q. I'm sorry, I didn't hear your answer.

1 A. Yes.

2 Q. And whose stuff is it?

3 A. Mine.

4 Q. No question about that, is there?

5 A. None.

6 Q. That first book that I just put up there, what is that
7 book?

8 A. Halloween ---

9 MR. HEMBREE: Your Honor, I object to the relevance of
10 this line of questioning.

11 THE COURT: Mr. Wilson, are you going to tie this into
12 something, sir?

13 MR. WILSON: Well, I'm going to do my best, which is
14 why I'm asking these questions.

15 THE COURT: I ---

16 MR. WILSON: And I ---

17 THE COURT: Well, wait one second, Mr. Wilson. I'll
18 give you a little leeway there but after -- I mean, you've
19 got to have some relevance to it. So, I will give you some
20 leeway, but please, I'd like to see you tie this into
21 something.

22 MR. WILSON: Judge, just for the record so I can be
23 clear, I think that what's paramount in this case is the
24 credibility of this particular witness. This is the only
25 witness who will ---

1 MR. HEMBREE: May we approach the bench?

2 THE COURT: Well, continue on, sir. Just ask your
3 questions.

4 BY MR. WILSON:

5 Q. Tell us what this book, that first book, and that's
6 the only one I'm going to ask you about. I'm not even
7 going to ask you about the others. Just tell us what it is
8 and what it's about.

9 A. *Halloween and Satanism.*

10 Q. All right, and whose book is that?

11 A. I really don't know. I think it was my sister's.

12 Q. You think it's your sister's?

13 A. Yes. It's not mine.

14 Q. It's not yours?

15 A. No.

16 Q. Well, I asked you earlier if those were your books.
17 You told me yeah, and now you say that they're not.

18 A. The one ---

19 Q. Is that right?

20 A. These two are. This one was just in the room; it was
21 in a drawer.

22 Q. And, and you say that you're not Goth either?

23 A. No.

24 Q. All right, but you wear these black things and all
25 that stuff, right?

1 A. Yeah.

2 Q. All right and, in fact, your room at your house is
3 decorated with it, right?

4 A. No.

5 Q. No? You don't have big posters on the wall?

6 A. I did.

7 Q. All right. Now, let's talk about your dad for a
8 minute. On this particular day, your dad, and no question
9 about the fact that the only person you call dad is Roger
10 G. [REDACTED]?

11 A. Right.

12 Q. No doubt about that, is there?

13 A. No.

14 Q. And what time does your dad get off from work?

15 A. He gets off at 5:00.

16 Q. 5:00 and this, you say, happened around 5:30 or so?

17 A. Right.

18 Q. So, he would have been off from work, right?

19 A. Right.

20 Q. Did you have -- what, what was the last time of day
21 that you had a conversation with your dad before 5:30?

22 A. I don't think I talked to him that day.

23 Q. Well, you talked to him at around 6. We know that,
24 right, because ---

25 A. Yes.

1 Q. --- you've already told us that.

2 A. Yeah.

3 Q. What I'm asking you is what time did you talk to him
4 before that?

5 A. I didn't talk to him before that.

6 Q. So, you didn't talk to him any time before that 6:00
7 call when you and he talked with you in the back of the
8 police car?

9 A. Not that I remember.

10 Q. All right, and now when, when this happened, you
11 called 911, right?

12 A. Right.

13 Q. But you didn't call your dad?

14 A. No.

15 Q. All right. So, call 911. The police come. You still
16 don't call your dad, right?

17 A. No. Right.

18 Q. Okay. Now, let me ask you, J. [REDACTED]. In regards to
19 when you say Mick came into the house and y'all are all
20 seated there, you and your mom both, right, and there's
21 nobody else there according to you, right?

22 A. Right.

23 Q. All right. But -- well then answer, try to help me
24 with this. What was the reason that when someone's kicking
25 in your door that you don't do something? That you don't

1 scream or yell, call 911, do something? Get the gun from
2 under the pillow?

3 A. We didn't realize that it was our door. Sounded like
4 something from upstairs. We have people that lived above
5 us.

6 Q. Well, now you, you said to the solicitor that you
7 heard two bams at your door. You didn't say that it was at
8 someone else's door.

9 A. I said it's -- I heard two bams, that it didn't sound
10 like it was coming from our door.

11 Q. Okay, so now you heard two bams, but it didn't sound
12 like it was coming from your door?

13 A. No.

14 Q. It sounded like it was coming from somewhere else?

15 A. Right.

16 Q. So, you thought it was some neighbor upstairs or in
17 another apartment and that their door was being kicked in?

18 A. Right.

19 Q. And you were seated how far from the door?

20 A. About 7 or 8 feet.

21 Q. 7 or 8 feet, 7 or 8 feet from the door that was being
22 kicked, but you thought it was somebody else's door, and
23 your mom was sitting even closer because she was on the
24 couch, right?

25 A. Right.

1 Q. All right. Now as I understand it, your testimony is
2 is that when you're laying down on the floor behind the
3 couch where he'd knocked you down, and then he then walks
4 over, and then he shoots your mom. Then he comes back to
5 you?

6 A. Right.

7 Q. Right, but he doesn't shoot you?

8 A. No.

9 Q. Any particular reason that he doesn't shoot you, too?

10 A. No.

11 Q. No, and -- but he doesn't shoot you, doesn't hit you
12 again, right?

13 A. Right.

14 Q. And he just walks away?

15 A. Right.

16 Q. Leaves you there, right?

17 A. Right.

18 Q. And obviously you know who he is, right?

19 A. Right.

20 Q. Right, and so it wouldn't take any genius to figure
21 out that if you know who he is, that you could easily tell
22 the police, hey, look it was my stepdad.

23 A. Right.

24 Q. Right. Now in your 911 call, let's talk about that
25 for a minute. They asked you if you were alone. Do you

1 recall that in the 911 call that they asked you if you were
2 alone?

3 A. Yes.

4 Q. You never did answer them, did you?

5 A. I don't know.

6 Q. You don't know?

7 A. I don't know.

8 Q. Your dad was there with you, wasn't he?

9 A. No.

10 Q. When this all happened your dad, Roger G. [REDACTED], was
11 there.

12 A. No, he wasn't.

13 Q. You deny that?

14 A. He wasn't there.

15 MR. WILSON: No other questions.

16 THE COURT: Redirect?

17 MR. HEMBREE: Very briefly, Your Honor.

18 THE COURT: Yes, sir.

19 REDIRECT EXAMINATION BY MR. HEMBREE:

20 Q. J. [REDACTED], we're almost finished. I want to go back
21 over with you about what you could actually see of the
22 shooting. And Mr. Wilson had pointed out that you were on
23 the ground.

24 A. Right.

25 Q. Of course, you had already testified to that.

1 A. Right.

2 Q. And on cross-examination sort of said, well, then you
3 saw him go toward your mom.

4 A. Right.

5 Q. Could you see from your vantage point your mom stand
6 up?

7 A. Yes.

8 Q. And from your vantage point, could you -- how close
9 was the couch? Let me ask you this. From where you were
10 on the ground, how far was the couch away from you?

11 A. Probably about 5 feet.

12 Q. So.

13 A. 6 feet.

14 Q. So, it's a distance. So, there's, there's a distance
15 there. It's not like you're jammed up behind the couch,
16 are you?

17 A. Oh, the couch that I was in between, or the one she
18 was sitting on?

19 Q. The couch that you were in between.

20 A. Oh, it was, like, right beside me.

21 Q. And, but you could see over it when she stood?

22 A. I saw her get up.

23 Q. Saw her get up?

24 THE COURT: Answer yes or no. Did you?

25 WITNESS: Yes.

1 BY MR. HEMBREE:

2 A. Yes.

3 Q. And, J [REDACTED], did you see, did you see the shooting?

4 A. No.

5 Q. Did you see Mr. Winkler standing close to your mom?

6 A. Yes.

7 Q. And how close was Louis Winkler standing when you
8 heard the shot?

9 A. Right in front of her.

10 Q. I mean.

11 A. Not far away. Probably about that close.

12 Q. Okay, an arm's, arm's length away?

13 A. Yes.

14 Q. So, you could see their bodies?

15 A. Yeah.

16 Q. But you did not see the shot?

17 A. Right.

18 Q. You saw the gun?

19 A. Right.

20 Q. And you saw, I believe you testified you saw it when
21 he pulled it out of his waistband?

22 A. Right.

23 Q. As he left you and was approaching your mom?

24 A. Right.

25 Q. Did you see him raise the gun up?

1 A. Yes.

2 Q. Did you see him point it at your mom?

3 A. Yes.

4 Q. But you didn't see the shot?

5 A. Right. I didn't look.

6 Q. You know what's coming?

7 A. Yeah.

8 MR. HEMBREE: Thank you, J. [REDACTED]. Appreciate it.

9 THE COURT: Anything else, Mr. Wilson?

10 RECROSS-EXAMINATION BY MR. WILSON:

11 Q. Just one question about the couch. J. [REDACTED], let me
12 show you this picture. Take a look at that. Is that the
13 room?

14 A. Uh-huh.

15 Q. And is that the couch? Those are two couches that
16 we're talking about?

17 A. Yes.

18 Q. And this is the couch that you were behind, right
19 here?

20 A. Yes.

21 MR. WILSON: Your Honor, I'd ask this be marked.

22 THE COURT: Let it be marked for identification
23 purposes only.

24 MR. WILSON: At this time.

25 THE COURT: What number for identification is that?

1 COURT REPORTER: 1.

2 (TWO PHOTOGRAPHS MARKED AS DEFENDANT'S EXHIBIT NUMBER
3 1 FOR IDENTIFICATION.)

4 BY MR. WILSON:

5 Q. Now, let me ask you, J. [REDACTED]. This picture
6 accurately depicts, what's now marked as Defendant's
7 Exhibit Number 1, does that accurately depict two couches
8 that were in your living room on the day that this incident
9 occurred?

10 A. Yes.

11 Q. And that, and, and, and that's, based on everything
12 that you recall, that's an accurate depiction?

13 A. Yes.

14 Q. All right.

15 (COUNSELORS CONFER.)

16 MR. HEMBREE: Without objection, Your Honor.

17 THE COURT: Wait. Are you introducing it in evidence?

18 MR. WILSON: I am now after I showed it to him.

19 THE COURT: All right, you need to mark on it. Let
20 her take the ID off of it. Defense Exhibit 1 in evidence
21 without objection.

22 MR. WILSON: Thank you very much.

23 (PHOTOGRAPH MARKED INTO EVIDENCE AS DEFENDANT'S
24 EXHIBIT NUMBER 1.)

25 BY MR. WILSON:

1 Q. [REDACTED], this couch that you're telling me that,
2 that, that you were behind is this couch here. Is that
3 correct?

4 A. Right.

5 Q. And how high is the back of that couch?

6 A. Probably about 3 and a half feet.

7 Q. Okay, about the height of this rail, wouldn't you say?

8 A. Yeah.

9 Q. Okay, and you were laying flat on your back behind the
10 couch?

11 A. I was kind of beside it, not all the way behind it.

12 Q. Well, I mean, were you or weren't you? I mean, you're
13 saying now that you weren't behind it?

14 A. Not all the way behind it.

15 Q. Well, how far behind it were you behind it?

16 A. It was, like, between the computer desk and the couch,
17 not directly behind the couch.

18 Q. All right. Well, right here in this picture, if you
19 would just take this pen and mark an X on where you say you
20 were laying, where you're laying back behind the couch.

21 A. Right beside it that way.

22 Q. Okay, all right, all right. So, your head would have
23 been up this way towards the wall?

24 A. Yes.

25 Q. All right, and so this is where you were at. Is that

1 right?

2 A. Yes.

3 MR. WILSON: May I publish to the jury?

4 THE COURT: You may publish.

5 MR. HEMBREE: I'd like to see the alteration, please.

6 (A PAUSE.)

7 THE COURT: Just hand it to the foreperson.

8 MR. WILSON: Yes, sir. Thank you very much, J. [REDACTED].

9 MR. HEMBREE: Very briefly, Your Honor.

10 FURTHER DIRECT EXAMINATION BY MR. HEMBREE:

11 Q. That picture that you -- that Mr. Wilson's put in,
12 that really doesn't show the whole area where you were,
13 does it?

14 A. No.

15 MR. HEMBREE: I don't have any further questions.

16 MR. WILSON: No other questions.

17 THE COURT: Now, Mr. Wilson, Mr. Hembree, I was going
18 to break for the evening after this witness. We now have
19 an exhibit. I'll wait a minute and let them pass the
20 exhibits around.

21 Young man, if you wish, you may step down.

22 (THE WITNESS EXITS THE STAND.)

23 THE COURT: If you wish to, you can pass it around.

24 I'll let you pass it around again tomorrow if you wish also
25 before we begin.

1 (A PAUSE.)

2 THE COURT: While they're doing that, there was one
3 officer who was not here earlier today. Officer, are you
4 going...

5 (A PAUSE.)

6 THE COURT: If you would, please state your name for
7 record.

8 DEPUTY GRAHAM: Chris Graham.

9 THE COURT: Raise your hand, sir, right hand. Do you
10 swear -- oh, I'm sorry. Let's put him under oath, make
11 sure he has the jurors on this. Raise your hand again,
12 sir.

13 (WHEREUPON, THE DEPUTY IS SWORN.)

14 THE COURT: All right, as you understand as I
15 mentioned to everyone else, if you hear anything discussed
16 about the case by the jurors, you're supposed to let me
17 know.

18 DEPUTY GRAHAM: Yes, sir.

19 THE COURT: You can have a seat. Thank you, sir.

20 (A PAUSE.)

21 THE COURT: All right, at this time, ladies and
22 gentlemen of the jury, we will break for the evening.
23 We'll start, we'll start again tomorrow at 9 a.m.

24 Now what, what the custodians of you are going to do,
25 tomorrow morning they'll work out things for your breakfast

1 and all. It'll probably be there at your place of lodging.
2 Then we'll come on in and then we'll, we'll begin the trial
3 at 9:00 a.m.

4 Now, tonight I'm going to talk to them about this,
5 about as far as any phone calls, whatever. I mean, don't
6 -- this is only the first day of trial, and I don't see why
7 you'd need to make phone calls unless it's something very,
8 very important, or it's a child you need to check on or
9 someone sick you need to check on, but if you do, it will
10 be in a controlled situation.

11 I don't know if they've explained to you yet, but
12 there's two rooms for purposes of watching TV or movies or
13 whatever. So, that will be available. There are two
14 separate rooms so that, so that everybody's not required to
15 watch the same thing. So, that's available.

16 And also there's -- y'all have dinner tonight. The
17 county will pay for your dinner. However, the county will
18 not pay for any alcoholic beverages. So, and if you wish
19 to purchase something yourself during dinner, you're
20 limited to two, two drinks whatever it is. But you've got
21 to buy that yourself if you want to, but no more than that.
22 That's up to you, but the county will not purchase that at
23 all. And we will start back tomorrow morning at 9:00 a.m.

24 As I said, please do not, do not, do not discuss this
25 case. Please don't try and get the people I've put in

1 charge of you to violate any of my rules because then I've
2 got to get on them because they all have a duty. So,
3 everybody cooperate and have a good evening. Relax and
4 enjoy yourself.

5 By the way, is your lodging -- don't tell me where it
6 is. Just is your lodging okay? Everything fine? Now, if
7 there's anything wrong as far as something's wrong with
8 your room or whatever else, remember it's not like, you
9 know, you asked to have that room. So, something's wrong,
10 don't hesitate to let Mr. McLeod know about it. We'll get
11 everybody straightened out. Ms. Huggins has done a very
12 good job in doing her best to make sure you're comfortable.
13 So, if there's anything wrong at all, don't hesitate, but
14 let us know, let the people there know, and we'll make sure
15 that's straightened out, all right?

16 Good. We'll see you then tomorrow morning. Y'all try
17 to be here around a quarter to 9. We'll be starting back
18 at 9:00. See you then. Everyone else remain seated.

19 (THE JURY EXITS AT 6:58 P.M.)

20 (A PAUSE.)

21 THE COURT: Now I need to make a few things -- if you
22 would, everybody just step back for a second.

23 As I understand it, at this time State's Exhibit 35
24 when Ms. Hardwick testified, Exhibit 35 -- what's the other
25 exhibit that came in?

1 MR. HEMBREE: Exhibit ---

2 MR. HUMPHRIES: 1.

3 MR. HEMBREE: 1, Your Honor.

4 THE COURT: All right, 1 and 35 came on Ms. Hardwick
5 and with Mr. G [REDACTED] State's Exhibit 2, 3, and 25 and
6 Defense Exhibit 1.

7 MR. HEMBREE: That's correct.

8 THE COURT: Those are in evidence. I know other
9 things have been marked for ID and be subsequently
10 attempted to be introduced, but I just want to make sure I
11 got everything right in my records. That's everybody's
12 records?

13 MR. HEMBREE: That's what my records reflect, Your
14 Honor.

15 THE COURT: All right, good.

16 All right, now I want to say or ask whose phone went
17 off. I think I saw who looking for it, so I guess I know
18 whose phone went off. Was it you, sir? Was it you, ma'am?

19 All right, ma'am, one thing else, too. I said, I said
20 the rules were that everybody has to remain stationery.
21 Y'all came in and I -- it was in the middle of a witness,
22 so I didn't say anything. You all need to set your
23 situation up, ma'am and sir and everyone, the other people
24 followed those rules. If you can't follow the rules, then
25 you can't come in with a camera. It's an open courtroom.

1 You can always come in, but if I have another violation
2 now, I'm going to have to ask your camera not to be in
3 here. If your camera's going to be in here, I need you to
4 follow the rules.

5 Now, I'm not adept enough to know. I know that y'all
6 are aiming this way. I asked someone to ask you, and you
7 both said no one got any images of the young man. Is
8 correct?

9 UNIDENTIFIED FEMALE SPEAKER: Yes sir.

10 THE COURT: All right, all right. So, make sure you
11 don't come in and out. You stay there. I don't have
12 problems people coming in. It's an open courtroom, but
13 when you go back and forth it causes everybody to look and
14 it distracts. I saw one juror just looking this way and
15 that. And of course when I heard the phone going off,
16 everybody looked around a little bit. Now, if it goes off
17 again, you lose the phone and you're going to have to have
18 a fine. So, I advise you just not to bring it in here.
19 And please once you set it up, stay there. We have breaks
20 here with adequate time to set something back up at the
21 breaks.

22 All right, anything else from the state or from the
23 defense?

24 MR. HEMBREE: Your Honor, there's one matter I just
25 want to take up with the court very briefly. I'll just

1 express my concern. Mr. Wilson, his cross-examination of
2 J [REDACTED] G [REDACTED] questioned him about the reason for the
3 problems with the relationship between the defendant and
4 Becky Winkler. Your Honor, quite frankly it opened at the
5 door wide open for us to go into, and I would have been
6 well within my rights to go back in and do on redirect, ask
7 J [REDACTED] G [REDACTED] about many other acts of domestic
8 violence that, that the defendant committed upon Becky
9 Winkler. I did not do that; I chose not to. I took
10 discretion being the better part of valor to allow that one
11 sort of free pass.

12 But, Judge, I wanted, I guess I just wanted to say to
13 the court and to defense counsel another opportunity is
14 presented like that as, as, as we see the defense case
15 starting to, to formulate here, we have another opportunity
16 like that where the door is swung open by Mr. Wilson or Mr.
17 Rathbun to go into prior bad acts of this defendant based
18 on motive or some other theory of the case, we're going to
19 take that opportunity. And I don't want to create
20 appellate issues. I want to avoid that, but at the same
21 time within the rules I'm going to take, take advantage of
22 those opportunities. If Mr. Wilson, Mr. Rathbun want to
23 continue to take those, what I believe to be very risky
24 positions with these witnesses, we're going to, we're going
25 to come right through the door.

1 THE COURT: Mr., Mr. Hembree, please understand.
2 Whether you -- whether the door is open or wasn't open, I
3 make no ruling, and I'd be the one to decide that, whether
4 it be 404(b) or whatever else information coming in. So,
5 you are not restricted in any way from doing whatever you
6 feel is appropriate or -- and making whatever motions or
7 requests or desires you have. I'll just make rules in that
8 regard.

9 MR. HEMBREE: Thank you, Your Honor.

10 THE COURT: If the purpose of your statement was to
11 let Mr. Wilson know that you may attempt that, then I have
12 no problem with that statement.

13 MR. HEMBREE: Thank you, Your Honor.

14 THE COURT: And, Mr. Wilson, he said he may attempt
15 it.

16 MR. WILSON: I'm ---

17 THE COURT: I'm making no rulings whether he would do
18 it.

19 MR. WILSON: I understand that.

20 THE COURT: Or did do it.

21 MR. WILSON: And I appreciate that. Thank you.

22 THE COURT: All right now everyone, by the way, we
23 have one other thing: exhibits. The clerk, as exhibits
24 start gathering, she of course is not going to be able to
25 hold them all herself, carry them all herself. She wanted

1 to make sure you all have no objection if someone with Mr.
2 Thompson's staff helps her get exhibits down to her office.
3 Any objection of the state?

4 MR. WILSON: None.

5 MR. HEMBREE: No. None.

6 THE COURT: Okay. None from the defense?

7 MR. WILSON: None, Your Honor.

8 THE COURT: None from the defense?

9 MR. WILSON: No, sir.

10 THE COURT: All right. So, these exhibits here have
11 been marked for ID. At this time, we are all giving them
12 to the custody of the clerk. Is that correct?

13 MR. HUMPHRIES: I think that's where they belong at
14 this time.

15 THE COURT: Okay, you've already had them marked for
16 ID?

17 MR. HUMPHRIES: We do.

18 THE COURT: All right. Good. Then everyone have a
19 good evening. We'll see everyone tomorrow.

20 (WHEREUPON, THE CASE IS AT EASE.)

21 FRIDAY, FEBRUARY 1, 2008

22 (COURT RESUMES AT 9:20 A.M.)

23 THE COURT: Officers, anyone outside wishes to come
24 in, they may. But if people want to come in during the
25 course of the trial, that's fine. I don't want to lock the

1 courtroom. So, if people want to come in, that's fine,
2 too. What I just want to avoid is people going back and
3 forth.

4 So, the state's ready?

5 MR. HEMBREE: The state's ready to proceed, Your
6 Honor. I do have one matter to put on the record. There
7 are some photographs that the state will introduce through
8 our second witness this morning. They are State's Exhibits
9 4 through 10 marked for identification. I've reviewed
10 those with defense counsel, and they've indicated that
11 these will go without objection.

12 MR. WILSON: That is correct. That's correct, Your
13 Honor.

14 THE COURT: State's 4 through 10 in evidence without
15 objection.

16 MR. HEMBREE: Thank you, Yes, sir.

17 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
18 STATE'S EXHIBITS 4, 5, 6, 7, 8, 9, 10.)

19 MR. HUMPHRIES: While the jury's out, we may want to
20 talk about the second set of photographs. There is only
21 one I believe there may be any objection at all to, but if
22 we could look at those really quick, that way the next
23 witness could ---

24 THE COURT: Have you already shown them to Mr. Wilson?

25 MR. HUMPHRIES: They all have, they have, of course

1 these photographs but I'm going to show them to them now,
2 the ones I intend to introduce.

3 MR. WILSON: Thank you, sir.

4 (A PAUSE.)

5 MR. HEMBREE: Your Honor, I have one other.

6 THE COURT: Yes, sir.

7 MR. HEMBREE: One other matter for the record as
8 they're reviewing the photographs. We have prepared a copy
9 of all discovery that we have in this case for the court.
10 I don't know if there's -- it may, it may come in handy.
11 There may be some reasons to refer to something at some
12 point. But I would like to go ahead, I guess mark this box
13 as a court's exhibit and provide that to the court.

14 THE COURT: All right, Mr. Hembree, are you doing that
15 because you want to make sure that there's no doubt that
16 all the Rule 5's have been provided or -- because I have no
17 desire to view anything other than matters that have been
18 introduced in evidence or court's exhibits.

19 MR. HEMBREE: We do that, make that for purposes of
20 the record obviously, and you're right, Judge. And then
21 the other part, in some cases the court does have some need
22 to refer to something. It's just reference. We've had in
23 other, other instances that was helpful. But we will
24 provide it, make it part of the record and then ---

25 THE COURT: One thing that I did in having them

1 designate Ms. Harris as the court reporter is that my
2 experience with her is I've never known me to seek an
3 exhibit that I needed that wasn't available in a minute or
4 so. Not wanting to put pressure on her now.

5 MR. HEMBREE: I understand.

6 THE COURT: But she keeps things so organized, that it
7 makes the case run smoother. But if you want to, I don't
8 want to introduce it as a court's exhibit at this time
9 because it may theoretically have something I shouldn't be
10 looking at. But if you want to, set it over here behind
11 the box where the court reporter is if we do need it, if
12 you want to label it Rule 5.

13 MR. HEMBREE: It's labeled, Your Honor.

14 THE COURT: Everything in that box you provided to
15 defense?

16 MR. HEMBREE: Yes, Your Honor.

17 THE COURT: Now, Mr. Humphries, have you shown these
18 photographs to Mr. Wilson?

19 MR. HUMPHRIES: I have. There's a series of
20 photographs and a diagram, all of which will come in
21 without objection. I'm going to give them to the court
22 reporter. They are not sequentially numbered, but I'll
23 call them out for the record as I hand them to the court
24 reporter.

25 THE COURT: Well, why don't we go ahead and have the

1 court reporter and you not even on the record, just go
2 ahead and mark it and she -- you can announce the number
3 blank through blank.

4 MR. HUMPHRIES: Well, that's the problem. It's not
5 going blank through blank. They're not sequentially
6 numbered. That's why -- let me let her mark them. Then I
7 can put them on the record.

8 THE COURT: Very good. Let's do it that way.

9 (DIAGRAM MARKED INTO EVIDENCE AS STATE'S EXHIBIT
10 NUMBER 11.)

11 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
12 NUMBER 12.)

13 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
14 NUMBER 13.)

15 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
16 NUMBER 15.)

17 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
18 NUMBER 16.)

19 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
20 NUMBER 18.)

21 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
22 NUMBER 19.)

23 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
24 NUMBER 20.)

25 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT

1 NUMBER 22.)

2 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
3 NUMBER 23.)

4 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
5 NUMBER 24.)

6 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
7 NUMBER 26.)

8 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
9 NUMBER 27.)

10 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
11 NUMBER 29.)

12 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
13 NUMBER 30.)

14 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
15 NUMBER 31.)

16 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
17 NUMBER 32.)

18 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
19 NUMBER 33.)

20 MR. HUMPHRIES: Your Honor, for the record the state
21 introduces without objection the following exhibits: 12,
22 13, 15, 16, 18, 19, 20, 22, 23, 24, 26, 27, 29, 30, 31, 32,
23 33, and State's 11.

24 THE COURT: 11 is a ---

25 MR. HUMPHRIES: 11 is a ---

1 THE COURT: --- drawing?

2 MR. HUMPHRIES: 11 is a diagram. The others are
3 photographs, Your Honor.

4 THE COURT: Mr. Hembree, the court's been given photos
5 also, correct?

6 MR. HUMPHRIES: Yes.

7 (A PAUSE.)

8 THE COURT: All right, I need to alert everyone to
9 something. One of our jurors was sick last night. Did not
10 go to dinner and was going to attempt to go to breakfast
11 this morning, but could not eat anything at breakfast. The
12 sheriff and the other people with the juror as well as I've
13 had the clerk talk with her, maybe see if we could just get
14 a doctor to look at her. She's concerned she may have the
15 flu.

16 MR. HUMPHRIES: It's Ms. -- I'm sorry.

17 THE COURT: I was thinking about at one time having
18 her just sit on the end over there where the, where the
19 alternates sit, but Ms. Huggins after talking with her, and
20 I also called a doctor who really doesn't want to come to
21 see her because the doctor had a room full of patients.

22 But, Ms. Huggins, you're speaking now. What are you
23 suggesting?

24 (THE COURT CONFERS WITH THE CLERK.)

25 THE COURT: And the doctor can't get here. The lady,

1 this the juror who also has asthma, Ms. Shutoneis, as I
2 recall.

3 CLERK OF COURT: Brave.

4 THE COURT: Brave, Brave, Ms. Shutoneis Brave, and the
5 doctor suggests that we take her to the emergency room.

6 Ms. Huggins, you've talked with her, the juror or seen
7 the juror?

8 CLERK OF COURT: Yes, sir.

9 THE COURT: What is your impression of her?

10 CLERK OF COURT: She's very sick; she can hardly sit
11 up in the chair.

12 MR. HUMPHRIES: Your Honor, if I'm not mistaken, that
13 was the juror who we qualified her that was sick at that
14 time. In fact, I believe you asked her if she could -- she
15 was having difficulty breathing, and you asked her if she
16 had asthma. She indicated that she did.

17 THE COURT: Yes. She even used the breather, breather
18 then. I think I'm going to bring the lady out and just see
19 what we've got before we go any further with this. Ask her
20 to come out, if you would.

21 (A PAUSE.)

22 (THE JUROR ENTERS THE COURTROOM.)

23 THE COURT: Ms. Brave, come -- are you able to walk
24 around, ma'am?

25 Tell you, bring her a chair.

1 Come on up here if you could, Ms. Brave. Why don't
2 you just sit in the witness chair? That'd be good. Let's
3 have her sit in the witness chair.

4 So, you had a rough night, huh?

5 JUROR: Yes, sir.

6 THE COURT: I noticed yesterday, Ms. Brave, you were
7 doing your best to pay attention, but you did look like you
8 were not feeling well. I wish you had told me that before
9 we selected the jury. What do you think you have? Do you
10 think your asthma is acting up? Do you think you have the
11 flu or cold or what?

12 JUROR: This was going on for the past two weeks now.

13 THE COURT: Try to speak in the microphone there.

14 JUROR: I think I have the flu because it started
15 since last week, Monday. I was sick for the past two
16 weeks, but I had to come to jury duty. That's why I came
17 out.

18 THE COURT: Well, you know when I talked with you
19 individually, I thought maybe the only problem was the
20 asthma when you did the inhaler. If you'd have told me you
21 have the flu, I probably would have let you go then. I
22 wish I would have known.

23 Do you think you can stay with us, or do you feel that
24 -- they told me you didn't have any dinner last night.

25 JUROR: No, sir.

1 THE COURT: And you've had no breakfast this morning?

2 JUROR: Just some juice.

3 THE COURT: Do you feel you could -- do you want to
4 stay with us, or do you feel that you're so sick that you
5 need to go see your doctor?

6 JUROR: I need to see a doctor. I don't want to
7 jeopardize everybody else getting sick.

8 THE COURT: Okay. All right.

9 Does anyone want me to ask anything else, any other
10 questions?

11 MR. HUMPHRIES: Nothing from the state, Your Honor.

12 MR. WILSON: Nothing, Your Honor.

13 THE COURT: If you would, ma'am, would step back to
14 the room there for a minute, okay? Just step back. If you
15 would, step on back outside the door just for a second.

16 (THE JUROR EXITS THE COURTROOM.)

17 THE COURT: My observation of this juror is that she's
18 obviously sick, and two things. One, I'm concerned for her
19 individually and two, I have concern for, if she does have
20 the flu, what affect it may have on the entire jury. So,
21 I'm inclined to release this lady. Any objection from the
22 state?

23 MR. HUMPHRIES: None from the state, Your Honor.

24 THE COURT: From the defense?

25 MR. WILSON: Yes, sir. Your Honor, I would have to

1 object. My concern is this. She's the only African-
2 American on this panel.

3 THE COURT: I know.

4 MR. WILSON: On the, on the panel itself. Now, there
5 is one alternate African-American, and she has indicated
6 that she wants to go to the doctor, and I, I would at least
7 ask this court before you take her off of this panel, let,
8 allow her time to go to the emergency room or to see the
9 doctor. It may not be something that is serious. I don't
10 know and we don't know. Obviously she -- I agree with you
11 she seemed to be ---

12 THE COURT: Bring Ms. Huggins in her for me, please.
13 Oh, I've got her. Excuse me one second, please.

14 (OFF THE RECORD.)

15 THE COURT: Here's what I want to do. The doctor has
16 agreed to see her right now this minute, and I am going to
17 on ahead and have her, take her to see the doctor right
18 away, and the doctor's going to give me her estimation.
19 So, she's going to call me back. This will take probably
20 an hour or so. We'll just have to deal with it. And if
21 the doctor feels that this patient is such that --- one
22 thing the doctor said, she hasn't seen her in a while.
23 This is her doctor, but she says that if it's an asthma
24 attack or if it's the flu, she had concern about the
25 patient being by herself. I mean, obviously they are by

1 themselves. So, I'm going to have ---

2 Sheriff, you go ahead. Ms. Huggins is going to get
3 the address. You come get the address and blue light or
4 whatever, blue light her over there, and let's let the
5 doctor see her, and the doctor will call me on the phone.
6 If she does need to be released, then I -- we can do it
7 without her having to come back.

8 (A PAUSE.)

9 THE COURT: How about if y'all would, do y'all oppose
10 me bringing the foreperson out, let me explain to the
11 foreperson, and then I'll let the foreperson go back in.
12 And then, Mr. McLeod, y'all can -- let's say we'll be in
13 recess for about an hour.

14 MR. HEMBREE: No objection from the state.

15 MR. WILSON: No objection, Your Honor.

16 THE COURT: Bring me the foreperson only. Is Ms.
17 Brave right outside the door? Go ahead and let her step
18 in.

19 (THE JUROR ENTERS THE COURTROOM.)

20 THE COURT: Ms. Brave, the sheriff's going to take you
21 to the doctor right now to your doctor. She's going to see
22 you, and then she's going to call us and tell us, you know,
23 what your prognosis is. My main concern is you, ma'am.
24 So, I want to make sure you're okay. And if the doctor
25 says you can come back, fine. If the doctor says you

1 can't, we'll make sure you get home and everything else,
2 all right? All right, we're going to take care of you.

3 So, now please do not discuss this case with the
4 doctor or anyone else about what that the case is about,
5 but let the doctor see you. We'll be on the phone with
6 her. And I wish you the best whether, whether you come
7 back or not. I wish you the best, Ms. Brave, okay?

8 All right, you're going to get the blue light ride.
9 How about that? A friendly blue light ride.

10 (THE JUROR EXITS THE COURTROOM.)

11 (THE FOREPERSON ENTERS THE COURTROOM.)

12 THE COURT: Mr. Trout.

13 FOREPERSON: Yes, sir.

14 THE COURT: Ms. Brave is sick. It's obvious, and so
15 I'm having someone take her to her doctor.

16 FOREPERSON: Yes, sir.

17 THE COURT: And then the doctor's going to call me on
18 the phone and tell me, you know, what her condition is,
19 whether she can continue or not. And if she cannot, then I
20 will, I will draw one of the alternates.

21 But I wanted y'all to be -- you know, it's such a
22 fine, beautiful day outside, but it is going to be, I would
23 think, an hour at least, probably an hour because we're
24 going to have a phone call. Soon as she gets to the
25 doctor, she's going to see her right away. And so I'm

1 going to let y'all have an option. If you want to just
2 ride around in the van, that's fine. Mr. McLeod's there;
3 he can take y'all to get a cup of coffee maybe at one of
4 the restaurants outside the courthouse.

5 So, Mr. McLeod, use some creative techniques there.
6 And if y'all want to ride somewhere, let's just be back in
7 the jury room by ten minutes to 11, okay?

8 FOREPERSON: Yes, sir.

9 THE COURT: All right, we'll do it that way. So, do
10 y'all ---

11 Now, Mr. McLeod, if some of them don't want to go, you
12 keep people back there with them. Let them know if they
13 don't want to go, they have to stay back there in that jury
14 room. If they do want to go, give them a ride. You have a
15 good time.

16 THE COURT: See you in about an hour, okay?

17 FOREPERSON: Yes, sir.

18 THE COURT: Are there any other administrative matters
19 we could do that y'all have any thoughts or concerns about
20 we could work on?

21 MR. WILSON: I don't have any, Your Honor.

22 MR. HEMBREE: None from the state.

23 THE COURT: Good. Well, we'll wait and let me just
24 let you know this. The doctor said that she's going to
25 look at her, but unfortunately she hadn't seen the lady in

1 a while, and so she doesn't know how her asthma has
2 progressed. But I told the doctor that, one, if she thinks
3 she has the flu and she needs to not be around people, let
4 me know.

5 Two, if her asthma's to the point it's a danger of her
6 life because the doctor said from her notes that it could
7 very well be if it's gotten worse, may be, it may be life-
8 threatening if she's somewhere and no one's around her and
9 she, and something happens. And of course her being
10 sequestered in a room by herself and no one around, I got a
11 little concerned. I'm going to wait, and I'm going to let
12 the doctor see her before I make that decision in that
13 regard.

14 Plus just in case that happens -- it may not happen --
15 but just in case it happens, you all know that in my view
16 the law is that in a general sessions court, the alternates
17 are put in a hat and drawn by lot. Everyone agree with
18 that?

19 MR. WILSON: Yes, sir.

20 THE COURT: Everyone, we'll look at the statute and
21 look at the civil code and we'll see.

22 MR. HEMBREE: Thank you, Your Honor.

23 THE COURT: Better check. There's a statute about
24 general sessions court. There's a -- the only other
25 situation on alternates is by the Rules of Civil Procedure.

1 I see nothing in the Rules of Criminal Procedure, and so
2 the only thing I see is in the statute regarding alternates
3 and jurors, all right?

4 MR. WILSON: Thank you, Your Honor.

5 MR. HEMBREE: Thank you, Your Honor.

6 THE COURT: We'll be in recess for about an hour.

7 Y'all can by unanimous consent agree to something.

8 (OFF THE RECORD.)

9 THE COURT: Okay, Mr. McLeod, if you would come
10 around, sir.

11 MR. WILSON: Judge, the defendant is not here yet.
12 They're bringing him up.

13 THE COURT: Okay, we'll wait a few minutes.

14 (OFF THE RECORD.)

15 THE COURT: Mr. McLeod, would you come around, please?

16 RICK MCLEOD, BEING DULY SWORN,

17 TESTIFIES AS FOLLOWS:

18 EXAMINATION BY THE COURT:

19 THE COURT: Mr. McLeod, speak as loud as you can, make
20 sure everyone else can hear you. You came in this morning,
21 and you told me there was a problem with one of the jurors,
22 and that was Ms. Brave. Is that correct?

23 MR. MCLEOD: That's correct, Your Honor.

24 THE COURT: And your concern was that you thought she
25 was very sick?

1 MR. McLEOD: She indicated last night before supper
2 that she did not want to eat, and I asked her if she did
3 not want to or she was unable to. And she told me she was
4 sick, and she was just getting over the flu. She had
5 asthma, and she was very weak and did not feel like she
6 could eat. So, we left an agent with her and took the
7 other fifteen to eat.

8 THE COURT: All right. So, to your knowledge she had
9 nothing to eat last night?

10 MR. McLEOD: She had no supper last night. She got up
11 and she tried to eat something or drink some juice this
12 morning at breakfast, and she did not finish anything of
13 substance.

14 THE COURT: All right, I think also your female agent
15 who was with her overnight told me that she even threw up
16 during the night.

17 MR. McLEOD: We checked on her at bedtime and earlier
18 this morning, she said she threw up at 3:00.

19 THE COURT: All right, and didn't your agent say
20 something? She said she didn't sleep well, didn't sleep
21 very much at all last night?

22 MR. McLEOD: She did not get much rest at all. Now
23 the medicine, she said she had medication and it was making
24 her drowsy, so she was probably up and down, but she did
25 not get a full night's sleep.

1 THE COURT: All right, and I noticed yesterday, I did,
2 that she looked a little drowsy even yesterday. I tried to
3 keep looking at her to make sure she knew I was observing,
4 but -- and y'all brought her in today?

5 MR. McLEOD: Yes, sir.

6 THE COURT: All right, Thank you very much.

7 Now, I don't want to mention the thing about the
8 doctor, but I will put the name of the doctor as a court
9 exhibit with the court reporter so we'll have it in the
10 record in case you all want to check with it later.

11 But we had her transported to see the doctor. The
12 doctor called and I had you all, the lawyers, in the office
13 when the doctor talked with me. The doctor could not
14 definitely confirm her condition other than it was asthma,
15 but said the lady definitely needed to go the hospital and
16 get more treatment than she could get in her office. And
17 that she needed treatment right now, and she did not feel
18 she was capable of jury duty in the situation that she is
19 right now.

20 And, therefore, it's obvious no matter what care there
21 is, no matter how well she may be in the future, she's not
22 going to be well today. It was obvious from observations
23 of her when she came in the courtroom. She had difficulty
24 standing. She looked in pain and discomfort. She's had
25 nothing to eat now for twenty hours or more. She's had

1 very little sleep, and I don't blame her. Obviously she's
2 not doing well. Doctor also said when I talked with her
3 before she got in there that if she had an asthma attack
4 and she were by herself, she could die. So, and it's
5 definite the lady has asthma and is not doing too well with
6 the asthma.

7 I wish she would have told me more of her condition
8 because I asked her when I interviewed her was she okay to
9 serve, she said yes. But I think she's tried, but I don't
10 see how she's going to serve on this jury. Even if I
11 waited a day there's no, no more certainty that she'd get
12 well even by tomorrow and even if she got well tomorrow,
13 there's no certainty she wouldn't get sick again. But it's
14 definite she's not going to be well today.

15 All right, any comments from the state?

16 MR. HEMBREE: No, Your Honor.

17 THE COURT: Any comments from the defense?

18 MR. WILSON: Yes. Your Honor, I agree with the
19 court's assessment in what you have described and I
20 obviously participated in part in the conversations with
21 the doctor, and I know that what the court is saying is
22 correct. And, and I observed her when she left the
23 courtroom, and you are right. She had to lean on the, on
24 the rail and everything to support herself as she walked
25 out of the courtroom. I agree with all of that.

1 My concern though is, as I said earlier to the court,
2 is she's unfortunately -- or fortunately, whichever -- the
3 only African-American on the panel. And that causes me,
4 you know, great concern and if she is taken off of the
5 panel because of her illness. I understand, too, that even
6 if she goes to the emergency room, we don't know what the
7 outcome of that might be, and she might be hospitalized. I
8 understand that's a possibility, too.

9 And I guess if I'm asking anything, what I'm asking,
10 and I know that the court wants to move on with this case
11 and the case needs to proceed. I am simply asking that we
12 be allowed to see if she's going to be able to continue. I
13 know that that will cause delay, you know, and I know that
14 none of us want to do that. We all want to move this along
15 and have it conclude. But when I, when I weigh the loss of
16 that juror against the delay, then, you know, I, I, I -- in
17 all fairness to the defendant so that he gets a fair trial,
18 and this is a juror that obviously we felt very strongly
19 about in putting on this panel. That I would ask the court
20 to take the delay and let us see what the outcome might be.

21 THE COURT: Mr. Wilson -- I'm sorry, did you want to
22 say something?

23 MR. HEMBREE: Your Honor, just for purposes of the
24 record, just would like to note that neither the defendant
25 nor the victim in this case are African-American. I don't

1 know what -- I don't think that's any -- I don't think
2 that's what Mr. Wilson is arguing, but I would like to make
3 that part of the record.

4 THE COURT: Well, I think that's obvious there. But I
5 wanted to make sure if there's any way I could assist this
6 juror so she should, could continue that that was provided.
7 I think the juror has a right if the juror wants to be on
8 the jury.

9 I think this juror, though, has done all she can to
10 serve and to participate and do what she felt her civic
11 duty to do. But I think we're asking too much of her if we
12 say let us get you to the emergency room, let us get you
13 some IVs, find out this or that, and all the other jurors,
14 y'all just wait around the hotel all day because I think
15 everyone would agree the best care in the world will not
16 have this juror ready to serve today. And then like I
17 said, she may not be ready to serve tomorrow, and she may
18 very well have a serious condition. And I'm sure she's
19 concerned about that, very much so.

20 Plus the county, you know, they send her to the doctor
21 here and really would be, all this is a lesser concern, but
22 an overall concern that the county would be also involved
23 with bills of any further medical care. And who knows how
24 far that would go.

25 But the main concern is I just don't feel that the

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STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM HORRY COUNTY

James E. Lockemy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LOUIS MICHAEL WINKLER, JR.,

APPELLANT

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1 state nor the defense can get a fair trial with a juror who
2 yesterday did her best, but she was obviously drowsy
3 yesterday. She was obviously not as attentive as the other
4 jurors, and today obviously she didn't do anything.
5 Tomorrow she might be back being drowsy again, or she may
6 be in a hospital. I just think it's not fair to either
7 side, and I do find that all the jurors, regular jurors and
8 the alternate jurors, all the jurors are capable of giving
9 a fair trial. They were qualified by this court to do so,
10 and I feel they can give a fair trial to both the state and
11 to the defense. For that reason, I'm going to excuse this
12 juror at this time. I hope that she feels better, hope
13 things work out for her.

14 But, Sheriff, I want you to contact the deputy who's
15 with her, make sure the deputy is aware that the doctor
16 says this juror needs to go to the emergency room right
17 away. So, if you would have her family notified, get to
18 them, up to the emergency room with her. But, you know,
19 once y'all get her to the emergency room and you let them
20 know that, then the county's duty ends there. But as long
21 as you get the family, family notified and her family can
22 come up there so she's got a means of getting home and
23 everything else, but get her to the emergency room right
24 away, okay?

25 SHERIFF THOMPSON: Okay.

1 THE COURT: So, have them do that. Thank you very
2 much.

3 SHERIFF THOMPSON: Certainly.

4 THE COURT: And like I said, Ms. Huggins, go ahead and
5 write the name of the doctor and all that down for the
6 court reporter and make it a court exhibit. Lawyers, you
7 are welcome to observe that, but you're not to give that
8 name out to anyone, anyone at all. I don't want this
9 doctor getting phone calls from people after she did the
10 court a great favor with seeing this lady right away with a
11 room full of patients.

12 All right now, under 14-7-13 -- excuse me, dash 1340,
13 it says that:

14 If a juror becomes so ill or disabled as to be
15 unable in the judgement of the court ---

16 And this is this case.

17 --- to perform his or her duties thereon, the
18 court shall order that a juror to be discharged
19 and draw the name of one of the alternates, if
20 there be more than one, to be drawn by ballot to
21 serve in the place of such discharged juror
22 throughout the remaining of the proceedings.

23 Does anyone disagree that is the law? If so, let me
24 know now.

25 MR. HEMBREE: No disagreement from the state, Your

1 Honor.

2 MR. WILSON: No disagreement.

3 THE COURT: All right, anyone have objection to clerk
4 putting the names in a -- really, here we're going to do a
5 Styrofoam cup and -- I'm sorry?

6 MR. WILSON: No, sir.

7 THE COURT: Okay, put, have them in the -- the clerk
8 will put the four jurors in a Styrofoam cup and drawing out
9 one of the jurors. Any objections with the clerk doing
10 that herself?

11 MR. HEMBREE: No objection from the state.

12 MR. WILSON: I have no objection.

13 THE COURT: If you would, Madame Clerk, that means if
14 you would put juror 4 -- put juror 79, juror 470, juror 464
15 and 434, put those in a cup and give me a number, please.

16 CLERK OF COURT: Do you want me to put them in the
17 capsules?

18 THE COURT: Go ahead and do that, the four.

19 CLERK OF COURT: I have Patricia Chumas, Eddie Velez.

20 THE COURT: Velez is 464, Chumas was 79.

21 CLERK OF COURT: Jeron Wallingford, Wallingford.

22 THE COURT: That's 470.

23 CLERK OF COURT: And Helen Staton. Anybody want to
24 look over anything before I do this?

25 MR. WILSON: No.

1 MR. HUMPHRIES: No.

2 CLERK OF COURT: Jeron Wallingford.

3 THE COURT: All right, that puts Mr. Wallingford on
4 the jury then, number 470.

5 All right, is the state ready?

6 MR. HEMBREE: The state's ready, Your Honor.

7 THE COURT: Bring the jury in please.

8 Let y'all know for information purposes lunch will be
9 here around 1:15 or so, so we'll get about one session this
10 morning. We'll have lunch here; it will be about a thirty
11 to forty-five minute lunch period. That's probably all
12 we're going to do. We're going to have lunch here. Then
13 we're going to start back thirty, forty-five minutes later.
14 So, if y'all need to make arrangements, y'all make
15 arrangement to have something here for your client.

16 MR. WILSON: Yes, sir, Mr. Wilson.

17 DEFENDANT: Thank you, Your Honor.

18 (THE JURY ENTERS AT 11:22 A.M.)

19 THE COURT: Ladies and gentlemen, I wanted to let you
20 know about Ms. Brave. I had a doctor look at her, her
21 doctor, and the doctor says that she needs to go to the
22 emergency room and needed more care than she could really
23 give her at the doctor's office, and that she is, you know,
24 very sick. I think you all can agree with your
25 observations of she was very sick. But I did want, since

1 she wanted to serve, to first let someone look at her. But
2 even if she got better, it would be tomorrow, may have been
3 Sunday before she could be ready to serve. She was doing
4 her best but with her asthma and everything else, it became
5 difficult for her. And the doctor told me that an asthma
6 attack could be very dangerous if she's by herself, and
7 obviously y'all have to be in room by yourself. So, I have
8 excused her, excused her from this trial.

9 Now, the procedure in South Carolina when a juror,
10 regular juror is excused is you put all four names -- it
11 says in a hat, but in Conway we do Styrofoam cups. So, you
12 put all four names in a cup or some container, and you draw
13 one of the four alternates out. Other words, the number
14 you were selected makes no difference about you getting on
15 the jury.

16 So, the Clerk of Court put your names in capsules, put
17 it in the cup, shaked up the names, and she pulled out the
18 name of Mr. Wallingford. So, you're now on the jury, sir.
19 So, you and Ms. Chumas, y'all change places there. And
20 that's good. We just don't need to use this chair behind
21 you. That is back in the corner anyway. So, Mr.
22 Wallingford, you're on the jury, so you're now one of the
23 regular jurors.

24 But please, like I said, alternates, remaining three,
25 pay attention. Listen because you could very well be on

1 this jury also as we move forward.

2 You recall yesterday two witnesses testified, Ms.
3 Hardwick and a young man, young G [REDACTED]. Several exhibits
4 were introduced, and this morning both sides agreed without
5 objection to the introduction of about twenty-four
6 additional exhibits. So, they may refer to exhibits that
7 are already in evidence, and you may wonder why I didn't
8 rule, say they were admitted. They are already admitted.
9 I would read the numbers to you, but that way would be way
10 too long. But they know the numbers, and so twenty-four
11 exhibits in addition to the six exhibits introduced
12 yesterday are now in evidence.

13 We are now ready to proceed. We're going to go till
14 1, a little after 1, and then your lunch should be here,
15 and then we'll take about thirty to forty-five minutes, no
16 more than forty-five for lunch. Then get started back
17 again and go a little further, okay?

18 Everyone ready to proceed? Anyone talk about this
19 case with anyone, discuss it with anyone, hear anything
20 about it? If so, let me know now.

21 (THERE IS NO RESPONSE BY THE JURY.)

22 THE COURT: Any polling requested by the state?

23 MR. HEMBREE: No, Your Honor.

24 THE COURT: By the defense?

25 MR. WILSON: No, Your Honor.

1 THE COURT: All right, next witness for the state.

2 MR. HEMBREE: Thank you, Your Honor. The state calls

3 E. [REDACTED] C. [REDACTED] to the witness stand.

4 M. [REDACTED] C. [REDACTED], BEING DULY

5 SWORN, TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: Please have a seat and state your
7 name and spelling your last for the record.

8 WITNESS: Ma [REDACTED] C. [REDACTED], [REDACTED].

9 THE COURT: All right and now, young lady, if you
10 would, you saw everyone else. Yu need to make sure you do
11 that into the microphone.

12 WITNESS: Oh.

13 THE COURT: Go ahead and get comfortable. Now, once
14 again to make sure you speak into the microphone, give us
15 your name again.

16 WITNESS: Okay, Ma [REDACTED] E. [REDACTED] C. [REDACTED], C. [REDACTED].

17 THE COURT: Now, continue to do that with us.

18 WITNESS: Yes, sir.

19 THE COURT: All right, Mr. Hembree.

20 MR. HEMBREE: Thank you, Your Honor.

21 DIRECT EXAMINATION BY MR. HEMBREE:

22 Q. Miss C. [REDACTED], what name do you normally go by?

23 A. L. [REDACTED].

24 Q. L. [REDACTED]. So, is it okay if I call you L. [REDACTED] today?

25 A. Yes, sir.

1 Q. Thank you. L [REDACTED], tell me a little bit about -- how
2 old are you?

3 A. Sixteen.

4 Q. And where do you live?

5 A. Little River.

6 Q. Where do you go to school?

7 A. North Myrtle Beach High.

8 Q. And what year are you in high school?

9 A. Tenth.

10 Q. Now, you're acquainted with J [REDACTED] G [REDACTED]?

11 A. Yes, sir.

12 Q. Tell this jury a little bit about how long you've
13 known J [REDACTED] and what kind of relationship you have.

14 A. J [REDACTED]'s like my brother. We've known each other I
15 guess basically since birth because we've grown up
16 together. He's been my best friend since I can remember.

17 Q. Y'all ever date?

18 A. No, definitely not.

19 Q. How -- you had a friendship since you were how old?
20 Little children?

21 A. Basically.

22 Q. And how often do y'all speak?

23 A. Generally daily.

24 Q. Do -- he's going to a different high school?

25 A. Uh-huh.

1 Q. But back in 2006, do you know where J [REDACTED] was
2 attending high school?

3 A. North Myrtle Beach.

4 Q. And at that time, were you in high school or middle
5 school?

6 A. I was in middle schools still.

7 Q. You're a year younger than J [REDACTED]?

8 A. Well, I'm not a year. A couple months but a grade.

9 Q. A grade younger, okay, a grade, a grade behind
10 J [REDACTED].

11 Let me take you back to March the 6th of 2006. Do you
12 remember that day?

13 A. Yes, sir.

14 Q. Tell this jury just a little bit about that day for
15 you.

16 A. I stayed home sick from school that day because I
17 wasn't feeling well, and there was the concert going on
18 that night and I really wanted to go, but my mom wouldn't
19 let me go because I stayed home from school. When J [REDACTED] got
20 out of school, we were IM'ing on the computer for a while.

21 Q. Now, wait a minute. You were IM'ing on the computer.
22 I know what that is because I have teenage daughters, but
23 if you will, explain to the jury what IM'ing is on the
24 computer.

25 A. It's, like, messaging back and forth.

1 Q. Sort of like talking?

2 A. Like typing.

3 Q. Typing words and typing messages back and forth?

4 A. Yes.

5 Q. Gotcha.

6 A. And I called him at I think around 5, and his mom was
7 on the phone, so she told me to call back later. And then
8 I called back around, like, 5:30 I think it was. And we
9 were talking a little bit about the concert.

10 Q. Okay. Well, what was the, what was the plan? I mean,
11 what were y'all trying to -- what was the objective?

12 A. Okay, we were trying to get his mom to talk to my mom
13 into letting me go so that he wouldn't go by himself
14 because it was all the way in Myrtle Beach, and we thought
15 we had a pretty good plan. So, we were waiting for my mom
16 to get out -- from outside talking to our landlord just so
17 Ms. Becky could talk to her so ---

18 Q. Ms. Becky being?

19 A. J [REDACTED]'s mother.

20 Q. J [REDACTED]'s mom.

21 A. And that was our plan, and we were working out all the
22 glitches in it and everything.

23 Q. Now, you said it was about 5:30 when you were talking
24 to J [REDACTED]?

25 A. Yeah.

1 Q. This is -- but you talked to him before that. No.

2 A. Talked ---

3 Q. You talked to -- you IM'ed?

4 A. Yes.

5 Q. Entered instant message, and then you called but
6 talked to?

7 A. Ms. Becky.

8 Q. Ms. Becky.

9 A. And she was on the phone.

10 Q. Gotcha, and then she said call back later?

11 A. Uh-huh.

12 Q. And you, and did -- do you recall if you called him
13 back?

14 A. Uh-huh, around 5:30, 5:30, 25 maybe.

15 Q. Now, did J [REDACTED] have a cell phone at that time?

16 A. Yeah, but we didn't really talk on it a lot because we
17 kept getting in trouble for going over our minutes.

18 Q. Gotcha. So, you called him on -- they had a, they had
19 a landline at that house as well?

20 A. I called him off my house phone to his house phone.

21 Q. Okay. Tell this jury as you're talking to J [REDACTED],
22 did the conversation -- tell the jury how the conversation
23 ended.

24 A. I heard, like, a pop noise, and then I heard a
25 different voice that wasn't J [REDACTED]'s saying I told you I'd be

1 back. I'm not going to jail you stupid bitch, and I'm not
2 -- I'm back, I'm back. I'm never going back to jail. And
3 then I heard, like, a hit, and then the phone went to
4 static.

5 Q. Any other profanity?

6 A. Motherfucker was in there a couple times.

7 Q. I'm sorry to make you say that, but I know that you
8 need to say what you heard.

9 A. Okay.

10 Q. It's important for the record; it's important for the
11 jury to heard that.

12 The phone went dead?

13 A. Yes, sir.

14 Q. What did you do next?

15 A. I tried to call it back, but it wouldn't even ring.
16 So, I have it a few minutes, then I went outside and talked
17 to my neighbor, and then when my mom came back in, she had
18 got a phone call that there was something that happened at
19 Bay Tree. So, I called J. [REDACTED] on his cell phone, and he told
20 me it was bad and just to get there. So, we got there as
21 quick as we could.

22 Q. Do you know about what time it was when you called him
23 on his cell phone?

24 A. Around 5:57, 5:56.

25 Q. 5:57, that's pretty precise.

1 A. I looked at the caller ID afterwards.

2 Q. Caller ID on your phone. Now, did you do it at that
3 time, or did you go back and check that later?

4 A. I went back and checked it later.

5 Q. 5:57, 5:56, and all he said was what now?

6 A. It's bad. Just get here.

7 Q. What did you do?

8 A. I told Mom and we got in the car and came because our,
9 our houses were within walking distances.

10 Q. When you got there, what did you find?

11 A. J [REDACTED] was in the police car, and they wouldn't let us
12 talk to him, but they just, they had the caution tape up
13 and everything, and we heard that someone had gotten
14 killed, and we hoped it wasn't Ms. Becky.

15 Q. Did you stay around there for a while?

16 A. Yes, sir.

17 Q. About what time did you get home that evening?

18 A. I don't even know. It was past dark.

19 MR. HEMBREE: Please answer any questions defense
20 counsel might have for you. Thank you, L [REDACTED].

21 THE COURT: Okay, any questions, Mr. Wilson?

22 MR. WILSON: Yes, sir, Your Honor

23 CROSS-EXAMINATION BY MR. WILSON:

24 Q. Miss C [REDACTED], now you gave a statement to the police,
25 did you not?

1 A. Yes, sir.

2 Q. And this information that you just gave us today about
3 somebody being called a bitch, did you ever tell the police
4 that?

5 A. No, sir.

6 Q. I fact, the first time you've said that was today.

7 A. Yes, sir.

8 Q. Now, you also told us that J [REDACTED] and you were on
9 the phone, and you'd had conversation.

10 A. Yes, sir.

11 Q. And how long had you been talking?

12 A. Probably about ten minutes at the most. I'm not sure.

13 Q. All right, and you have been talking about ---

14 THE COURT: Young lady, if you would, the court
15 reporter's looking at me. Make sure you speak a little bit
16 louder.

17 WITNESS: Oh. I'm sorry

18 BY MR. WILSON:

19 Q. You'd been talking about ten minutes on the phone with
20 J [REDACTED], and you'd actually talked to his mom earlier?

21 A. Yes, sir.

22 Q. And now was those two separate phone calls, or was
23 that the same call and you just talked to Mom and then
24 talked to J [REDACTED]?

25 A. They were two separate calls.

1 Q. All right. So, you, did you call Mom or did she call
2 you? How, how did the two of y'all get to talk?

3 A. I called the house phone first to talk to J [REDACTED], but she
4 was on the phone. And so it beeped in and she answered.

5 Q. Okay.

6 A. And told, asked me to call back later.

7 Q. All right and, and then you call back later. How much
8 later are we talking about?

9 A. Probably about fifteen, twenty minutes.

10 Q. Okay, and that would have been around what time?

11 A. 5:30.

12 Q. Around 5:30 p.m. Is that what your testimony is?

13 A. Yes, sir.

14 Q. That this call where you're talking to J [REDACTED] is at
15 5:30 p.m.?

16 A. Yes, sir.

17 Q. You're certain about that?

18 A. Around 5:30, yes, sir.

19 Q. Okay, and you talk to J [REDACTED] five to ten minutes?

20 A. Yes, sir.

21 Q. Before anything happens?

22 A. Yes.

23 Q. All right. So, now we're talking 5:40, 5:35, 5:40.
24 Is that what you're saying?

25 A. Around 5:30, 5:40 is when the phone went.

1 Q. And you're certain of that?

2 A. Yes, sir.

3 Q. And at 5:35, 5:40 you hear a voice? You hear a noise
4 first. Now, describe the noise to me that you say you
5 heard.

6 A. It was, like -- I don't know. It was, like, a big
7 pop.

8 Q. Like a what now?

9 A. Like a pop.

10 Q. Like a big pump?

11 A. Pop, like something pops.

12 Q. Pop, p-o-p, like a pop?

13 A. Pop.

14 Q. Okay, okay, so you heard something like a pop, and
15 then you heard a male voice is what you said.

16 A. Yes, sir.

17 Q. All right. Did you know Mr. Winkler?

18 A. I was acquainted with him.

19 Q. All right, and had you been in his presence before?

20 A. Yes, sir.

21 Q. All right, and so you obviously heard him speak before
22 if you've been in his presence, right?

23 A. Yes, sir.

24 Q. And you and J [REDACTED] were friends and had been friends
25 for, you say since childhood?

1 A. Yes, sir.

2 Q. So, you would know his voice, would you not?

3 A. Mick or J [REDACTED]?

4 Q. I'm sorry?

5 A. Mick's voice or J [REDACTED]'s voice?

6 Q. Mick. When you say Mick, you're referring to this ---

7 A. Mr. Winkler.

8 Q. Yes, all right, and so my point is you knew him well
9 enough to call him Mick. So, you know his voice when you
10 heard it, right?

11 A. Not that well.

12 Q. Not that well, and actually on the phone, you didn't
13 know who the voice belonged to, did you?

14 A. No, sir.

15 Q. In fact, ma'am, when you're there, J [REDACTED] never says
16 to you on the phone that day when y'all are having this
17 conversation that there's anything wrong, does he?

18 A. No, sir.

19 Q. Doesn't yell, does he?

20 A. No, sir.

21 Q. Does he scream?

22 A. No, sir.

23 Q. Did he ask you to call 911?

24 A. No, sir.

25 Q. And then the phone goes dead?

1 A. Yes, sir.

2 Q. All right, and after the phone goes dead, you're not
3 upset because you don't call 911 either, do you?

4 A. No, sir.

5 Q. And as far as you know, there's nothing wrong other
6 than the call ended abruptly?

7 A. Yes, sir.

8 Q. And once you hung up the phone, you went about your
9 daily activities. In fact, as I understand it, you say you
10 went out and start talking to a friend?

11 A. Yes, sir.

12 Q. Okay, and as far as you knew, there was nothing, no
13 problem, right?

14 A. Well, not that I knew of, but I thought J [REDACTED] was
15 playing a joke on me.

16 Q. You thought J [REDACTED] was playing a trick on you? Okay, and
17 the next time that you have a conversation with J [REDACTED] is
18 when he calls you, or do you call back to talk to him?

19 A. He called me.

20 Q. He called you, and then that call you said was around
21 5:57?

22 A. Yes, sir.

23 Q. So, and we're, we have established that you're saying
24 that it was between 5:30 and 5:40. So, this is fifteen,
25 sixteen minutes later?

1 A. Yes, sir.

2 Q. There's about, right? Now, why are you so certain
3 about your times?

4 A. Because after everything that happened, I went and
5 checked my phone and looked at the time.

6 Q. Okay.

7 A. Because I know I'd need this information.

8 Q. So, after all this happened, you went back and you
9 pulled your times, looked at the telephone records to make
10 sure that it was actually 5:30 and not 5:28 or 5:29 or
11 whatever, right?

12 A. Well, on the house phone I couldn't check those, but
13 for my cell phone, the calls I made -- that I received from
14 J [REDACTED]'s cell phone, I ---

15 Q. Yes, ma'am.

16 A. --- could check that.

17 Q. And in the 5:57 call between you and J [REDACTED] you
18 checked that also to make sure that that time was correct,
19 right?

20 A. Yeah.

21 Q. All right.

22 A. Yes, sir.

23 Q. Now, what is the last time, ma'am, that you have been
24 to J [REDACTED]'s home?

25 A. The day before.

1 Q. The day before, and so you'd been in and out of that
2 home on a fairly regular basis would you say?

3 A. About every day.

4 Q. Just about every day, and so you were familiar with
5 kind of how it's set up there?

6 A. Yes, sir.

7 Q. All right.

8 MR. WILSON: And I don't think I have any other
9 questions. Thank you so much, ma'am.

10 THE COURT: Any redirect?

11 MR. HEMBREE: Very briefly, Your Honor.

12 REDIRECT EXAMINATION BY MR. HEMBREE:

13 Q. Just something I want to clarify. I'm not sure. I
14 got confused listening to Mr. Wilson on one of his
15 questions. I didn't want him to confuse you.

16 You indicated that you checked the time of one of the
17 calls.

18 A. Of one call.

19 Q. We're talking about three calls here, 5 ---

20 A. We had three calls.

21 Q. Okay, three calls, one where you talked to Ms.

22 G. [REDACTED]?

23 A. Uh-huh.

24 Q. One when you talked to J. [REDACTED] and the phone ---

25 MR. WILSON: I apologize. I object. This is his

1 witness, and now he's leading.

2 THE COURT: The rules do not apply to leading as when
3 you're recounting testimony already given. So, this isn't
4 the form of a question. I don't find that leading.

5 MR. HEMBREE: Thank you, Your Honor.

6 BY MR. HEMBREE:

7 Q. And, L [REDACTED], the second call to J [REDACTED], that's
8 another call we're talking about.

9 A. Uh-huh.

10 Q. The third call was to J [REDACTED] or from J [REDACTED]?

11 A. From J [REDACTED].

12 Q. From J [REDACTED], and that was -- let's -- okay. Now,
13 the first two calls were cell phone or landline?

14 A. Landline.

15 Q. Landline, and I believe you testified that you could
16 not check the times on the landline phone?

17 A. Uh-huh.

18 Q. So, you weren't able to go back and find it?

19 A. And find the exact time.

20 Q. Okay, and I believe your testimony was that it was
21 approximately 5 or 5:15, something like that of the first
22 call, and approximately 5:30 on the second call?

23 A. Yes, sir.

24 Q. And the cell phone call, though, you're specific about
25 because you checked the time on your cell ---

1 THE COURT: Now you, now you are being a little bit
2 more leading now. Just ask her this. Is that why, why or
3 what instead of ---

4 BY MR. HEMBREE:

5 Q. Why, why can you be, how can you be so specific on the
6 third one and not on the first two?

7 A. Because the first two were the house line, and our
8 caller ID was messed up at the time. And then the last
9 phone call was to my cell phone, and those are easily
10 checked, and I checked it after everything had happened.

11 MR. HEMBREE: Thank you, L. [REDACTED]. Please answer any
12 more questions Mr. Wilson may have for you

13 MR. WILSON: I don't have any additional questions.

14 THE COURT: Thank you. You may step down. Thank you
15 very much.

16 (THE WITNESS EXITS THE STAND.)

17 THE COURT: Next witness, please.

18 MR. HEMBREE: State calls Officer Tom Knoch to the
19 stand.

20 THE COURT: Someone is going to get the officer to the
21 stand?

22 MR. HEMBREE: Yes, sir.

23 THE COURT: Come around, Officer, if you would,
24 please, front.

25 THOMAS KNOCH, BEING DULY SWORN,

1 TESTIFIES AS FOLLOWS:

2 CLERK OF COURT: Please have a seat. Please state
3 your name and spell your last for the record.

4 THE COURT: Into the microphone, Officer, if you
5 would, please.

6 WITNESS: Yes, sir. My name is Thomas Knoch. My last
7 name is spelled K-n-o-c-h.

8 DIRECT EXAMINATION BY MR. HEMBREE:

9 Q. And is it Knoch?

10 A. Yes, sir.

11 Q. Officer Knoch, who do you work for?

12 A. I'm an officer for the Horry County Police Department,

13 Q. And how long have you been with the Horry County
14 Police Department?

15 A. Three years.

16 Q. What, what are your duties with the Horry County
17 Police Department?

18 A. I'm a patrol officer, and I work in the sector 10
19 area.

20 Q. Were you working -- I think you've already -- it's
21 obvious, but you were working back on March the 6th of
22 2006?

23 A. Yes, sir, I was.

24 Q. In what capacity?

25 A. As a patrol officer, uniform patrol officer.

1 Q. Uniform patrol. Were you assigned to a particular
2 part of the county?

3 A. Yes, sir.

4 Q. What, what section of Horry County were you assigned
5 to patrol?

6 A. The Long's Road/Little River area.

7 Q. Now, what, what shift do you recall working that day?

8 A. Day shift.

9 Q. And that carries you from when to when?

10 A. 6:00 a.m. to 6:00 p.m.

11 Q. Now toward the end of your shift, did you receive a
12 call about 911 that directed you to the Bay Tree apartment
13 complex?

14 A. Yes, sir, I did.

15 Q. All right. Tell us about what time you received the
16 dispatch.

17 A. It was approximately 1745, which was 5:45 p.m.

18 Q. Now, when you received that call, what when did you
19 do?

20 A. I proceeded immediately. I was directly on Highway 9
21 right in front of the entrance to Bay Tree at the time, and
22 I went directly in there and made the left turn onto Golf
23 Colony Lane.

24 Q. And did you, did you immediately go to the location of
25 the crime scene?

1 A. No, sir, I did not.

2 Q. And what prevented you from doing that?

3 A. Information that was relayed to the call taker. The
4 dispatcher was unsure of the exact building and/or
5 apartment, so I proceeded up and down [REDACTED]
6 until I did get an exact address.

7 Q. Did you observe anything suspicious as you patrolled
8 just that general area waiting, waiting for dispatch to
9 give you an exact location?

10 A. No, sir, I did not.

11 Q. Now, ultimately you received a confirmation on the
12 address?

13 A. Yes, sir, I did.

14 Q. Do you recall what that address was? Feel free to
15 refer to your notes if necessary.

16 A. Yes, sir. It would be [REDACTED]

17 Q. [REDACTED] was the apartment location?

18 A. Yes, sir.

19 Q. And did you locate that, that apartment?

20 A. Yes, sir, I did.

21 Q. Now, tell this jury a little bit about just the
22 general layout. I mean, it's probably a typical apartment
23 complex, but the layout of the buildings themselves.

24 A. Each building has, I believe it's five or six
25 apartments in it, and the second and third-floor apartment

1 have a, an exterior entrance door that you go in that door,
2 up a flight of steps. There's a landing, and there are two
3 condominiums or apartments at that landing, and then you
4 can just proceed up to the third floor.

5 Q. So, it's actually three, there are actually three
6 levels. There's a ground-floor apartment, a second-floor
7 apartment, and a third-floor or excuse me, condominium?
8 First, second, third-floor condominium?

9 A. Yes, sir.

10 Q. I want to show you -- well, I'll show you these
11 exhibits in a minute. You, when you got down to the door,
12 was it daylight or dark when you got there?

13 A. It was daylight, still light, daylight. Yeah, just
14 starting to get dark.

15 Q. What, what did you do? As soon as you pulled up in
16 the parking lot, where did you go?

17 A. Directly to the exterior door that had the address
18 [REDACTED] written on the door.

19 Q. Did you have your weapon drawn?

20 A. Yes, I did.

21 Q. What information had you been provided about this 911
22 call?

23 A. The information that I recall was that there, there
24 was a shooting that had just occurred. That's all I
25 recall.

1 Q. And what -- so, what's your primary concern as you
2 enter that building?

3 A. My safety ultimately and then the safety of anybody
4 else that's involved, and to secure the area for the later
5 investigation.

6 Q. So, you're not really there to investigate the crime.
7 You're there to just first, first there to secure it, see
8 everybody's safe?

9 A. Yeah, a crime of this seriousness, yes, sir, that is
10 correct.

11 Q. And as you entered the hallway, what did you find?

12 A. When I open, first opened the door I yelled up on to
13 the top of the steps to the landing there, and there was a
14 young man up there. He, he did respond to me, and I told
15 him expose his hands around the corner to me, which he did.
16 And then we had a brief conversation that was -- that took
17 place with me at the bottom of the steps and him at the top
18 of the steps.

19 Q. Fairly tense situation?

20 A. Extremely tense situation.

21 Q. You're at the bottom of the steps with your weapon
22 drawn?

23 A. Yes, sir.

24 Q. He's at -- where is he?

25 A. Up at the top of the steps right at the, at -- on the

1 landing. I guess it would kind of be around the corner.

2 Q. All right, could you see him clearly when you first
3 entered that hallway? Could you see him clearly at the top
4 of the steps?

5 A. I, I could see him clearly but I, I was unaware who or
6 what involvement he had with this at all.

7 Q. You don't know anything at this point.

8 A. I know absolutely -- I don't know anything that's gone
9 on. All I have is the information I received from my
10 dispatch. That's all.

11 Q. And the apartment itself, if I'm looking up, if I'm
12 looking up that stairway, which way is the crime scene?

13 A. To the left.

14 Q. To the left. Does the hallway take a turn to the
15 left, or is there a short ---

16 A. It's kind of like a T, sort of like a T. So, if you
17 go to the left or the right, if I'm not mistaken -- excuse
18 me -- the door to the entrance of the apartment, if you
19 made the left, you would go straight in. If you made,
20 like, a U-turn, if you would, you'd go up to the next
21 landing.

22 Q. Gotcha. Okay, it goes back behind you?

23 A. Yes, sir.

24 Q. As you look up there, you tell him to show your hands.
25 You testified to that.

1 A. Yes, sir.

2 Q. You said there was a brief conversation in that
3 hallway.

4 A. Yes, sir.

5 Q. Tell us about that conversation.

6 A. May I refer to my notes?

7 Q. Absolutely.

8 A. Okay.

9 Q. If you'll tell the jury the conversation you had with
10 -- and the person you later learned was J [REDACTED] G [REDACTED]?

11 A. Yes, sir.

12 Q. Well, tell about that conversation.

13 A. After he, he complied with everything that I asked him
14 to do, which was showing me his hands, once I understand
15 that he was not a threat to me, he made a statement to me.
16 He said he's gone, and I asked him. I said who.

17 One minute, please.

18 He said my dad, and then I, and I asked him where the
19 person was who was shot, and he said it's my mom, and he
20 pointed towards, like, his condominium or the, the open
21 door of unit [REDACTED] And he also made kind of a, another
22 statement to me. He said that she's dead.

23 Q. Now, where were you when this discussion took place?

24 A. I started at the base of the step, and I'm having the
25 conversation with him as I go up the steps. And at this

1 point I do still have my weapon drawn.

2 Q. Still quite a tense situation?

3 A. Absolutely.

4 Q. Now, tell us what you observed when you first entered
5 the apartment.

6 A. The door, the door jamb, there were some wood
7 splinters on the, on the floor directly adjacent to the
8 door and the jamb, whatever you have, some wood splinters
9 there. I went in and I saw a female victim laying on the
10 living room floor. As you walk into the condo the --
11 immediately to your left there would be a bedroom. Then
12 you would kind of go to, like, to the right there'd be the
13 kitchen area and then a living room, and you could see a
14 sliding patio door which went out to the balcony. In the
15 living room area there was, there were furnishings there,
16 and on the floor was a female victim laying, her face down,
17 if you would. But her head was turned so that the left
18 side of her face was exposed upwards.

19 Q. So, you're describing, it's -- her stomach was down?

20 A. Yes, sir.

21 Q. And, but her face is down in this way where her left
22 cheek is exposed?

23 A. Yes, sir. That's correct.

24 Q. And what did you observe? Anything unusual about her
25 left cheek?

1 A. That she had a wound of some sort to her face, and
2 there was blood.

3 Q. And the blood was on the wound as well as was on the
4 floor?

5 A. Yes, sir.

6 Q. Now, you mentioned that, and you've written in your
7 notes that when you asked who was gone, J [REDACTED] G [REDACTED]
8 said my dad.

9 A. Yes, sir.

10 Q. Is there any chance he said my stepdad?

11 A. Yes, it very well could have been. There could have
12 been several other things that may have been said that I
13 just don't recall due to the situation being as tense as it
14 was at the time, and I was the only officer of the scene.

15 Q. Understood. As you enter, you observe -- did you
16 render any aid to Ms. Winkler?

17 A. The very first thing I did.

18 Q. Did you -- what did you do to render aid?

19 A. I ran to her and I checked for any signs life. I
20 checked her carotid artery. I could not detect a pulse,
21 and I could look at her briefly and see if there was any,
22 any breathing going on, and I detected nothing. I am not
23 medical personnel. I can't make any determination, and I
24 immediately radioed for medical assistance right -- as soon
25 as that was -- as soon as I walked in there to make sure it

1 was safe for me to go to her, it was safe for me to go to
2 her and I checked her for signs of life, then I radioed in
3 for medical assistance to come in.

4 Q. How far behind you were they?

5 A. A few minutes. I'm not exactly sure.

6 Q. They were -- they had not reached the scene before
7 you?

8 A. Oh, no, sir.

9 Q. Because that does happen on occasion.

10 A. Yes, absolutely. Yes, it does.

11 Q. Now, what other -- where was J [REDACTED] G [REDACTED] as you
12 checked on Becky's condition?

13 A. He had stopped as we entered the door. He, he could
14 have been right next to, like, the breakfast bar area which
15 would probably be, guesstimation, maybe 15 to 20 feet from
16 where I was attempting to assist with Ms. G [REDACTED].

17 Q. And after you realize that Ms. G [REDACTED], that you
18 could not render any aid to Ms., to Becky G [REDACTED] --
19 excuse me, Becky Winkler, what did you do then?

20 A. I immediately had taken J [REDACTED] to the other bedroom
21 to separate him, get him away from the scene of the
22 incident to try to keep it as sterile as I possibly could.

23 Q. Now when you say the other bedroom, was that the
24 bedroom that was on the -- you described that was on the
25 left side as you came into the apartment?

1 A. Yes, sir.

2 Q. All right.

3 A. And the reason I did that, as of right now I'm still
4 the only officer on the scene. So, I have to maintain
5 security of the crime scene as well as this other
6 individual who still I don't know who or what part he's
7 played in whatever has happened.

8 Q. Fair enough. Now as you enter that other bedroom, or
9 that bedroom, did you ask J [REDACTED] G [REDACTED] anything?

10 A. Yes, sir, I did.

11 Q. Tell this jury what, what conversation you had about
12 that.

13 A. I sat him on the bed first and foremost and I kind of
14 scanned the room, visually scanned the room, and I observed
15 what later found out to be on the shelf a pellet gun, some
16 little, sort of pistol-type pellet gun. And I asked him
17 were there any other weapons in the house, and he said yes.
18 There's a gun under the pillow of the bed, and he went to
19 reach for the gun just to show me, not in any sort of
20 threatening manner. He went to reach for the gun, and I
21 said no, no. Just leave it there. And about that time, a
22 second officer walked through the door, and I turned over
23 J [REDACTED] to the second officer, who escorted him down to
24 keep him safe in a patrol car.

25 I took my ASP baton, which is what we use now for,

1 like, a nightstick which most people know. It's just
2 retractable. I extended it out and lifted up the left
3 pillow of the bed, and I did observe a black semiautomatic
4 handgun under the pillow. Put the pillow back, walked out,
5 kind of secured the scene at that point.

6 Q. Did you put up the crime scene tape?

7 A. I personally did not.

8 Q. Okay, and at that point, other officers arrive?

9 A. Yes, sir.

10 Q. You relinquished, relinquished crime scene to the
11 other officers?

12 A. Yes, sir.

13 Q. Standard procedure?

14 A. Standard, yes, sir.

15 Q. And tell us who. I mean, I don't -- you don't need to
16 tell us every officer's name that responded, but the
17 departments or divisions, excuse me, with your department
18 that would have responded to a crime to natures.

19 A. Multiple patrol officers, uniform patrol officers that
20 work with me to do the immediately securing of the crime
21 scene. The crime scene or the evidence technicians would
22 come in to process all the, the technical aspect of the
23 crime scene. And then the criminal investigation people
24 which do the investigation of the actual incident itself.

25 Q. All right, sir. You were not involved in processing

1 the crime scene at all?

2 A. No, sir.

3 Q. Officer Knoch, if I could ask you to step down off the
4 stand for just a minute ---

5 THE COURT: Well, Officer, before you do that, please
6 know there's no microphone down there close by, so speak
7 loudly. And the court reporter's going to let me know if
8 she can't hear you because she has got to hear you back
9 here. So, if you say something to the jury, sometimes your
10 back is to her. So, give me a good, loud voice, all right,
11 sir?

12 WITNESS: Yes, sir.

13 THE COURT: Try it again. Give me a good, loud voice.

14 WITNESS: A good, loud voice, sir.

15 THE COURT: There you go.

16 BY MR. HEMBREE:

17 Q. And to assist you in that, Officer Knoch, in keeping a
18 good, loud voice so the court reporter can hear you, I want
19 you to -- you kind of talk with me like this so she can
20 sort of catch you, catch your voice from that way.

21 A. Yes, sir.

22 Q. And what I'm going to do is show you some exhibits and
23 photographs that have been admitted into evidence and ask
24 you to just describe these for the jury. The first one's
25 State's Exhibit Number 4 and ask if you will tell the jury

1 what that's a photograph of.

2 A. This photograph is of the outside or the exterior door
3 the building I was explaining. This would be some of the
4 ground-floor units here. This door here is the entrance.
5 As you see, it's got [REDACTED] on it. It's the entrance that
6 goes into the hallway, up the steps to where the landing
7 was I, I saw the young man.

8 Q. And this is, it's got a [REDACTED], [REDACTED] and [REDACTED] on the
9 door?

10 A. Yes, sir.

11 Q. So, it's actually the exterior door for three
12 different apartments?

13 A. Yes, sir.

14 Q. Officer Knoch, let me have you describe State's
15 Exhibit Number 5 in evidence.

16 A. That would be the hallway. If the door that we, that
17 you just observed in the previous photo, if the door was
18 open, the door that had the three letters, [REDACTED], [REDACTED] and [REDACTED], I
19 believe it was, or whatever the letters were, if you open
20 that door, that's the view you get looking up towards the
21 landing.

22 Q. And your position when you first entered obviously at
23 the bottom?

24 A. Yes, sir.

25 Q. This, this?

1 A. Yes, sir.

2 Q. And Mr. G[REY]'s position, J[ACKSON] G[REY]'s
3 position was where?

4 A. The top of the steps right to the left.

5 Q. Officer Knoch, I'm going to show you State's Exhibit
6 Number 6 that's in evidence and ask you to describe that
7 photograph.

8 A. That would be the threshold of the entryway into the
9 apartment or the condominium where the victim was.

10 Q. And that item that's on the floor?

11 A. That's a baseball cap.

12 Q. Now State's Exhibit Number 7 also in evidence.

13 A. That would be the door, the entrance to the
14 condominium or apartment where the victim was.

15 Q. Now, there appear to be some items on the floor. Can
16 you describe what those are?

17 A. Those are the, the splinters of wood that was observed
18 when I went into the door.

19 Q. Appeared to be a forced entry?

20 A. Yes, sir.

21 Q. State's Exhibit Number 8.

22 A. That would be if, if you were walking into the door to
23 the right, that's the jamb where the, where the door
24 locking mechanism would work, and that's also, you can see
25 that it's broken.

1 Q. Now I'm going to take you to State's Exhibit Number 9
2 in evidence.

3 A. That's the bedroom that as you walk in the door, the
4 bedroom that's immediately to the left. And that's the
5 room where I secured the young man after I'd rendered the
6 first aid as much as I could to the victim.

7 Q. This black item you see on the bed, can you describe
8 it to us?

9 A. It looks like a remote control for a television or
10 something.

11 Q. Now I'm going to show State's Exhibits, State's
12 Exhibit Number 10 and ask you to identify that for me.

13 A. That is the handgun that was underneath the pillow
14 that I lifted up with my ASP baton, just observed it under
15 there. I placed the pillow back on top of it, and
16 obviously this photo is a photo that was taken by crime
17 scene after they have, they had lifted the pillow up.

18 Q. Officer Knoch, other than what you've described, did
19 you have -- you stayed around and assisted other officers
20 throughout the normal course of the evening?

21 A. Yes, sir, I did.

22 Q. About what time did you go off scene, if you recall?

23 A. I, I don't actually. It would have had to have been
24 7:30, 8:00 at the minimum I would think.

25 MR. HEMBREE: Officer Knoch, please answer any

1 questions defense counsel may have for you. Thank you.

2 WITNESS: Yes, sir.

3 THE COURT: Mr. Wilson?

4 MR. WILSON: Thank you, Your Honor.

5 CROSS-EXAMINATION BY MR. WILSON:

6 Q. Officer Knoch, you've been with the county police for
7 how long?

8 A. Three years.

9 Q. And this would have been March of 2006. So, how long
10 which you have been an officer with the county police at
11 that time?

12 A. Approximately a year and a half, I believe.

13 Q. About a year and a half?

14 A. A year and a few months, yes, sir.

15 Q. All right, sir, and had you have any law enforcement
16 experience prior to coming with the county, or is this your
17 first law enforcement job?

18 A. I had previous experience, sir.

19 Q. Tell us about that. How, how much more law
20 enforcement experience had you had?

21 A. Twenty-one years: eighteen with the United States
22 Capitol Police in Washington D.C., as well as three years a
23 military policeman United States Army.

24 Q. So, twenty, how many total?

25 A. Total, twenty-four years and a couple of months.

1 Q. All right, and so having done that, you've been to a
2 lot of, lot of crime scenes over the years?

3 A. Yes, sir, I have.

4 Q. And you know how important it is when you're going to
5 a crime scene, having been in law enforcement for twenty
6 plus years, and especially if you're going to where there
7 is a shooting or a homicide, that it's critical that you be
8 meticulous about what you do and putting down what you see
9 and what you hear and what happens. Would you agree with
10 that?

11 A. Yes, sir. I would.

12 Q. And being the fine officer I know you are, you do
13 that, do you not?

14 A. As best I can, sir.

15 Q. To the very best of your ability?

16 A. Yes, sir.

17 Q. On March the 6th of 2006, you did nothing any
18 different than you would have done at any other homicide or
19 any other case where you've gotten a call and there was
20 shooting, correct?

21 A. I, I would hope so, sir, yes, sir.

22 Q. All right, and you went back and at some point you put
23 down what you recalled from that incident. Is that a fair
24 statement?

25 A. Yes, sir. That is a fair statement.

1 Q. All right, and that's normal protocol to do that,
2 correct?

3 A. Yes, sir.

4 Q. All right, and now a couple of things that I want to
5 ask you about. One is you indicated that once you arrived
6 and you were coming into the hallway and you had your gun
7 drawn, tell me about the demeanor of the young man that you
8 encountered. Was he crying and nervous and scared and, you
9 know, in shock? I mean, I mean, just describe to us his
10 demeanor when you got there.

11 A. His demeanor, he was calm, calm and very cooperative
12 with me.

13 Q. Calm. Wasn't crying, was he?

14 A. Not that I can recall, no, sir.

15 Q. Wasn't yelling, screaming?

16 A. No, sir.

17 Q. Was corporative?

18 A. Yes, sir.

19 Q. And his mom was laying on the floor dead, right?

20 A. Yes, sir.

21 Q. And you wrote, did you not, in your report that he
22 said my dad just left or my dad's gone I think is what you
23 said. Is that what you said in your written report?

24 A. Would, would you like me to refer ---

25 Q. Sure.

1 A. --- to it so I can tell exactly? I have it right
2 here.

3 Q. You'd like to see it?

4 A. Yes, sir. I do have it. I believe exact, he said --
5 that I can recall -- he is gone. When I asked him who, he
6 said my dad.

7 Q. All right, and had he not told you that, you wouldn't
8 have written that, would you?

9 A. Absolutely not.

10 Q. And you wouldn't know his dad from his uncle from his
11 cousin, right?

12 A. That is correct.

13 Q. All right. Now, you go, as I understand it -- when
14 you go, is there a dog there? Do you recall some kind of a
15 poodle or small dog being there?

16 A. I don't recall, sir.

17 Q. All right, but once you, once you get inside the house
18 and -- do you go to the victim who is on the floor? Do you
19 go to her, once you get your safety and kind of check out
20 the house and make sure there's no one else in the house at
21 that time, do you then go and check her vitals to see what
22 her status is?

23 A. Yes, sir, I did.

24 Q. And at that point, you don't get any significant
25 vitals?

1 A. That's, that's correct.

2 Q. And how did, how did it come up that the gun was under
3 the pillow? How did that all transpire? Tell me about how
4 that came about.

5 A. I guess it's, it's the police nature and myself doing
6 it so long, I observed what I thought was a pistol on a, on
7 a shelf in there. And for my safety, I asked him were
8 there any more weapons in the apartment.

9 Q. All right, sir, and at that point he took you to the,
10 to the bed and started to try to retrieve the gun from
11 under the pillow, and you stopped him?

12 A. He, he was actually already sitting on the bed.

13 Q. All right, sir.

14 A. And he just went to lean back to show me, and I said
15 no, no, no. Don't touch it.

16 Q. Now, and then you just left the gun there for crime
17 scene people to come in and do what they needed to do with
18 the ---

19 A. After I verified that there actually was one there.

20 Q. All right, sir.

21 A. I left it there, that's correct.

22 Q. Now, when, when you complete that, at some point in
23 time, as I understand it, you took J [REDACTED] out of the
24 crime scene and either in the car or outside some place.
25 Is that right, or did you do that or did you have someone

1 else do that?

2 A. Another officer took him down, yes, sir.

3 Q. All right. When EMS arrived, were you still there
4 inside?

5 A. I -- we may have been passing in the hall.

6 Q. Okay.

7 A. As they go in or I was right by the door.

8 Q. So, you weren't, you weren't physically present when
9 they did whatever they did?

10 A. No, sir.

11 Q. All right, that's good. Now, one last thing. You
12 told the solicitor that there appeared to be, I think the
13 word the solicitor used was forced entry. Is that, is that
14 what you said, or is that what he asked you, I think, and
15 you responded it?

16 A. Yes, sir. That statement was made, yes, sir.

17 Q. And that's just is your guess about what you think
18 happened, right?

19 A. I -- yes, sir. That would be correct.

20 Q. All right, because it could have happened a very
21 different way, could it not have?

22 A. Yes, sir, it could have.

23 MR. WILSON: I don't have any other questions.

24 MR. HEMBREE: Nothing on redirect, Your Honor. We ask
25 that this witness be excused to return to his normal

1 duties.

2 THE COURT: Any objection? Hearing none ---

3 MR. WILSON: Judge.

4 THE COURT: Okay.

5 MR. WILSON: Before you do that, I would preserve the
6 right to call this witness at a later time.

7 THE COURT: Well, you're going to be on your duty
8 locally, are you not?

9 WITNESS: I'm at your beck and call, sir.

10 (THE WITNESS EXITS THE STAND.)

11 THE COURT: All right, we can contact you. See you
12 later.

13 Next witness, please.

14 MR. HUMPHRIES: State calls Andrew Cooper.

15 ANDREW COOPER, BEING DULY SWORN,
16 TESTIFIES AS FOLLOWS:

17 CLERK OF COURT: Please have a seat, and please state
18 your name and spell your last for the record, please.

19 WITNESS: Andrew Cooper, C-o-o-p-e-r.

20 THE COURT: And as you know, continue to speak in that
21 microphone, Officer.

22 WITNESS: Yes, sir.

23 THE COURT: Your witness, Mr. Humphries.

24 MR. HUMPHRIES: Thank you, Your Honor.

25 DIRECT EXAMINATION BY MR. HUMPHRIES:

1 Q. Tell this jury with whom you're employed at this time.

2 A. Currently I'm employed with the Horry County Sheriff's
3 Office as a sheriff's deputy.

4 Q. And in March of 2006, by whom were you employed?

5 A. With the Horry County Police Department.

6 Q. And in what capacity were you employed with the Horry
7 County Police Department in March of 2006?

8 A. I was assigned to the Crime Scene Unit.

9 Q. Tell this jury, if you will, generally what the Crime
10 Scene Unit does.

11 A. Crime Scene Unit, we get called to the crime scene.
12 Depending on what it is, we collect the evidence, preserve
13 it. We test it, whatever we need to do to prepare for
14 court.

15 Q. What is your rank or status with the sheriff's
16 department at this time?

17 A. Deputy sheriff.

18 Q. And did you hold a specific rank or title while at the
19 Horry County Police Department, particularly March?

20 A. Crime scene investigator.

21 Q. Okay. Now, let me ask you. Does Horry County Police
22 Department just throw somebody in the crime scene and tell
23 them to get to work, or do you receive some training?

24 A. Before you go back there, you have years of training.
25 You never -- it's continuous training.

1 Q. And, in fact, have you received significant training
2 in the area of crime scene processing?

3 A. Yes, I have. I'm a member of the International
4 Association for Identification. I have a certification
5 through there as a crime scene investigator level one.

6 Q. And what is the significance of level one versus any
7 other level?

8 A. There, there's three levels to it, but the level one
9 is the -- you start off at level one to start with.

10 Q. Tell this jury approximately how many crime scenes
11 you've processed and -- well, let me ask this. How long
12 were you with the Horry County Police Department?

13 A. The Horry County Police Department, I was -- from 1994
14 up till when I came here. That was over a year and a half
15 ago.

16 Q. All right, and how long were you in the Crime Scene
17 Unit?

18 A. Two years. I was with the Crime Scene Unit two years.

19 Q. All right, and while in the Crime Scene Unit,
20 approximately how many crime scenes did you process?

21 A. Probably close to a hundred at least, various types.

22 Q. Let's do this, Deputy Cooper. Let's tell the jury in
23 general what a crime scene tech or evidence technician does
24 when they first arrive at a crime scene.

25 A. When you first arrive on the crime scene, you want to

1 speak to the officers, the first responding officers, get
2 some -- any information about where the -- if there's any
3 victims, if anybody's been transported the to hospital and
4 things such -- the crime scene is secure. Then you want to
5 do the initial walk through.

6 Q. All right, and what is the purpose of the initial walk
7 through, and if you will speak just a little bit slower.

8 A. An initial walk through, you will see what the crime
9 scene, what you have there, see what's -- everything is,
10 how it -- maybe try to figure out how things happened. Do
11 a walk through and see what might be a piece of evidence
12 here, piece of evidence there. You want to see where
13 everything is laid out, get you an initial idea of what
14 possibly took place here, what caused this to happen.

15 Q. After you do the initial walk through, what then is
16 the protocol for an evidence technician?

17 A. During this time we want to take photographs, entire
18 photographs of the whole entire scene of inside the house,
19 outside the residence, document it, draw a diagram of it
20 for presentation in court for case later on.

21 Q. And let me ask you this. When you start taking
22 photographs, do you start inside the residence or do you
23 start in the exterior and move in?

24 A. On a, on a crime scene you start from the exterior and
25 then work your way itself into the house or apartment.

1 Q. And in this particular case -- well, let's -- after
2 you take the photographs, what then is the duty of a crime
3 scene technician?

4 A. The -- can you repeat that one more time?

5 Q. Yes. After you take the photographs.

6 A. Yeah.

7 Q. You've done the walk through.

8 A. Yeah.

9 Q. You've taken all the photographs or at least the
10 photographs of the exterior ---

11 A. Right.

12 Q. --- and moving in. What then is your responsibility
13 in terms of the evidence specifically?

14 A. It's to do a search and collection and preservation of
15 evidence that we collect from that scene.

16 Q. And what type of evidence do you typically collect,
17 elements, and relate that back to your walk through.

18 A. Yes.

19 Q. How do you identify items of evidence and their
20 relevance?

21 A. When we first get on the scene and we speak to the
22 officer, determine what kind of incident do we have, and
23 they kind of start looking. When you do your eliminary --
24 preliminary walk through, you start looking for those kind
25 of pieces of evidence to tie it in with what happened. So,

1 you look for various things, depending on what kind of
2 incident is was. Was it a shooting? Look for weapons.
3 Was it maybe a cutting or stabbing? You look for a knife.
4 Then you just put it all together.

5 Q. Very good. Now, as it relates to this particular
6 crime scene, did you take photographs? Did you draw a
7 diagram?

8 A. Yes, I did.

9 Q. And let me show you State's 11 which is in evidence.
10 Can you identify this diagram?

11 A. That, that's the diagram I drew of the scene that
12 night.

13 Q. And let me ask you. Would it assist you in your
14 presentation to the jury today?

15 A. Oh, it most certainly would.

16 THE COURT: For the record, that's Exhibit 11 in
17 evidence?

18 MR. HUMPHRIES: It's 11 in evidence, Your Honor.

19 MR. WILSON: Without objection.

20 THE COURT: It's already in. You about to ask him to
21 step down?

22 MR. HUMPHRIES: In just a moment, Your Honor. I want
23 to make sure we've got everybody where they can see it.

24 BY MR. HUMPHRIES:

25 Q. There is a microphone on this end of the, of the jury

1 rail. That's where I'm going to ask you to stand.

2 MR. HUMPHRIES: If he could step down at this time,
3 Your Honor?

4 THE COURT: And also remember, Officer Cooper.

5 WITNESS: Yes, sir.

6 THE COURT: I want to make sure you know. Please
7 speak loudly. Make sure you know this lady here can hear
8 you.

9 WITNESS: Yes.

10 THE COURT: So, that's where -- you've got to make
11 sure she can hear you as well as the jury.

12 WITNESS: Yes.

13 MR. WILSON: Is it all right if I move over?

14 THE COURT: You may move just around.

15 BY MR. HUMPHRIES:

16 Q. I'm going to ask you to move over here. You'll
17 remember that these jurors on the other end are also going
18 to need to see. So, if you'll stand back, I'll give you
19 this pointer. Keep your voice up.

20 A. Right.

21 Q. Speak slowly.

22 A. Okay.

23 Q. I show you a series of photographs that have been
24 introduced into evidence. I'm going to ask you to identify
25 them and then if they relate to the diagram, I'm going to

1 ask you to show from what vantage points you took them and
2 what they are a photograph of. State's 12.

3 A. This is a photograph of the outside, the parking lot.
4 This is the victim's vehicle, was later determined to be
5 the victim's vehicle.

6 Q. And the jurors will obviously have all these
7 photographs at some point. This is in front of the
8 apartment complex?

9 A. This portion would be the front of the parking lot,
10 and where this is right here, this is the front stairway
11 leading up. This would be the parking lot right here in
12 front of the building.

13 Q. State's 4, which has been previously published to the
14 jury.

15 A. This is the front door leading up to the apartment
16 complex, which would be right here. This would be the
17 swinging doors just leading up to the stairwell, the front
18 door.

19 Q. And again State's 5 in evidence has previously been
20 published to the jury.

21 A. This photograph was taken as you're standing at the
22 bottom of the stairway outside. I opened up the door
23 looking. I opened up the door. I was looking up. This is
24 the stairway. I was looking up to the second floor
25 landing. This would be the stairway going up to the second

1 floor.

2 Q. Now, State's 6 is in evidence.

3 A. This is a photograph I took once I got to the top of
4 stairway. I was right here. This as the victim's
5 apartment. This is a photograph of a dark-colored hat with
6 Budweiser, Bud on the emblem on the front of it, and it was
7 laying in front of this door, which is the victim's
8 apartment.

9 Q. And again, this been previously published.

10 Let me show you State's 13 which is in evidence.

11 A. This is a photograph of the hat -- it's a closer,
12 close-up view of it -- which was laying right in front of
13 the front door of the victim's apartment. This is just a
14 closer shot of it.

15 Q. Let me ask you. Did you collect this item of
16 evidence?

17 A. Yes, I did. I, I collected that before I went in and
18 collected evidence.

19 Q. Now I'm going to ask you to speak up just a little
20 bit.

21 A. I got it.

22 Q. Showing you State's 14 for identification purposes,
23 can you identify this item?

24 A. It -- this is the hat I collected into evidence from
25 in front of victim's door.

1 MR. HUMPHRIES: Move to introduce at this time, Your
2 Honor.

3 THE COURT: What number is that?

4 MR. HUMPHRIES: That is State's 14 for identification
5 purposes.

6 THE COURT: Any objection?

7 MR. WILSON: I don't, I don't have any objections.

8 THE COURT: 14 in evidence.

9 (HAT MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
10 14.)

11 BY MR. HUMPHRIES:

12 Q. Now show you State's 7. Tell me if you could identify
13 that photograph.

14 A. This is a photograph I took standing just outside in
15 the hallway looking into the victim's residence itself with
16 the door being open.

17 MR. HUMPHRIES: Your Honor, this is in evidence.

18 THE COURT: Yes, it is.

19 MR. HUMPHRIES: State's 7, thank you.

20 BY MR. HUMPHRIES:

21 Q. State's 8.

22 A. This is a photograph I took looking at -- standing
23 outside still of the victim's door looking at door jamb
24 where, where it had been -- undoubtedly some forced entry
25 had took place because the door jamb right here had been

1 busted. The frame, the lock mechanism and door frame
2 itself, the parts had been busted.

3 Q. Showing you State's 15.

4 A. On this photograph ---

5 Q. Let me do this. Let's look at State's 15 and 16 in
6 conjunction.

7 MR. HUMPHRIES: These are also in evidence, Your
8 Honor.

9 BY MR. HUMPHRIES:

10 A. On 15, I'm still standing in the doorway. I'm
11 standing in the doorway looking at the floor here of pieces
12 of wood from the door frame, pieces of the lock off the
13 door, the victim's front door there. The little metal
14 brass plate where the lock goes in from the door, that's
15 laying on the floor. I'm standing here in the door,
16 doorway looking down at this, pieces of wood.

17 On number 16, State's Exhibit Number 16, I'm just
18 standing just inside the door, and I'm looking down at the
19 floor at the same pieces of metal, same pieces of wood from
20 the door frame and the bottom of the door itself.

21 Q. Did you have an occasion to collect those items found
22 on the floor?

23 A. Yes, I collected all those little pieces of wood and
24 the little brass metal part that goes to the door frame.

25 Q. Let me ask you to look at State's 17 for

1 identification purposes. Tell me if you can identify those
2 items.

3 A. Yes, I can.

4 Q. What are they?

5 A. Those are the wood pieces to the door frame and the
6 metal latch from the door itself.

7 MR. HUMPHRIES: Move to introduce State's 17 for
8 identification purposes.

9 MR. WILSON: No objection.

10 THE COURT: What number is that again?

11 MR. HUMPHRIES: That is 17, Your Honor.

12 THE COURT: 17 in evidence without objection.

13 (DOOR JAMB AND FACEPLATE MARKED INTO EVIDENCE AS
14 STATE'S EXHIBIT NUMBER 17.)

15 THE COURT: For information purposes, exhibits 4
16 through 21 are in evidence.

17 MR. HUMPHRIES: Thank you, Your Honor.

18 THE COURT: 4 through 20 rather.

19 MR. HUMPHRIES: Yes, sir.

20 BY MR. HUMPHRIES:

21 Q. Now as you go into the entrance and go to the left,
22 what do you find there at the left?

23 A. When you walk into the front door of the apartment
24 itself, to the left is the victim.

25 Q. Let me show you State's 9, which has been published to

1 the jury. Can you identify that photograph?

2 A. It's walking into the bedroom, walking into the
3 doorway of the victim's bedroom and looking to the left,
4 this would be this bedroom itself. I took this photograph
5 standing at the entrance to that bedroom, the door.

6 Q. Now, showing you state's 10 which is in evidence, can
7 you identify that photograph?

8 A. Yes. I'm still in this bedroom here. When you first
9 walk in, first bedroom to the left, this is the bedroom.
10 This is the weapon that was found up under the pillow in
11 that bedroom right here.

12 Q. Let me ask you in regard to that weapon.

13 A. Yeah.

14 Q. Did you ultimately secure that as evidence?

15 A. I did. I collected it. I did.

16 Q. Did you document it in terms of its ---

17 THE COURT: Hold on a second. The court reporter did
18 not hear you.

19 COURT REPORT: He's dropping a lot of the ends of his
20 sentences.

21 MR. HUMPHRIES: Okay, if you'll just keep your voice
22 up throughout ---

23 WITNESS: Yeah.

24 MR. HUMPHRIES: --- the sentence.

25 Do you need him to repeat that?

1 COURT REPORTER: No. I got that.

2 MR. HUMPHRIES: Thank you.

3 BY MR. HUMPHRIES:

4 Q. Did you record the serial number of this handgun upon
5 its collection?

6 A. I collected the handgun, along with a serial number,
7 make and model of it.

8 Q. And did you collect that for purposes of subsequent
9 testing and analysis at the South Carolina Law Enforcement
10 Division?

11 A. I did.

12 Q. Now showing you State's 18 that is in evidence. Can
13 you tell the jury what's pictured there?

14 A. Yes. Come back in to the door here, I turned to the
15 right. And turning to the right, if you're here looking
16 down through the kitchen, kitchen area looking towards the
17 living room, this would be right along this area right here
18 looking down to, to the living room.

19 Q. Showing you State's 19 that is in evidence.

20 A. This is a photograph of a plate of food that was
21 prepared and is still sitting on the counter. The counter
22 would be right here in the kitchen area, but the plate of
23 food was sitting right on the edge of the counter.

24 MR. HUMPHRIES: State's 19 in evidence, Your Honor.

25 THE COURT: Already in evidence.

1 BY MR. HUMPHRIES:

2 Q. Now let me ask you. In processing a crime scene, do
3 you have an occasion to collect serological evidence?

4 A. Yes. I, I do.

5 Q. Showing you State's 20, which is in evidence.

6 A. This photograph is looking at the countertop right
7 here, kitchen countertop, what appeared to be a reddish
8 color liquid was on it. It was on the countertop itself,
9 which was close to the plate of food.

10 Q. Now let me ask you. In regard to this item, this
11 serological evidence, did you collect that evidence?

12 A. Yeah, I collected two swabs of that evidence, and the
13 swabs, I mean Q-tips. That's what we do is swabs. Took
14 the samples from it, two swabs.

15 Q. And let me ask you. Based on your experience and your
16 training, as well as your observations that evening, could
17 you tell regarding the character of that evidence whether
18 it appeared to be fresh or long standing?

19 A. It appeared to be fresh.

20 Q. Tell the jury why.

21 A. On a fresh one, something appeared to be fresh after
22 you just take the swabs and just take a sample of it and
23 swab it that way. It appeared things might have been there
24 for a while, I would have to take scrapings because it
25 would be dry. But this was fresh and still liquid, reddish

1 liquid prior to just taking a sample of it.

2 Q. Let me show you State's 21 for identification
3 purposes. Tell me if you can identify that item.

4 A. Yes, I can because it, this has my name on it, my
5 initials and my name and the case number and date.

6 Q. And what is it?

7 A. This is a swab box where we take swabs, samples of the
8 liquid or whatever, the DNA serology, and we'll place this
9 in so it can air dry before we package it up and send it
10 for laboratory test.

11 Q. Now, I note on this box the number 17, not the, not
12 the exhibit number but a number 17. Who placed that number
13 17 on the box?

14 A. I did. I done all the handwriting that was on this so
15 I could identify it.

16 Q. What does that number 17 correspond to on your
17 diagram?

18 A. 17 corresponds to the two swabs that I collected on
19 the countertop in the kitchen.

20 Q. Now, let me ask you. Upon collecting State's 21 for
21 identification purposes, did you maintain it in your
22 custody and control and preserve it and keep it safe from
23 any alteration? Did you maintain it in substantially the
24 same form?

25 A. I did. I sealed it up and I kept the integrity on it,

1 put -- sealed it with integrity tape, put crime scene and
2 evidence across the top so nobody else could tamper with
3 it.

4 Q. And ultimately, did you transfer it out of your
5 custody and control to another person or department within
6 -- or division within your department?

7 A. All evidence we, we turned it in to our evidence
8 collection, or evidence section lock up in our police
9 department.

10 Q. And let me ask you. Is Lori Rabon the key person
11 within your evidence locker or your evidence system there
12 at the department?

13 A. Lori Rabon is the supervisor of the evidence
14 collected.

15 Q. Let's move to State's 22.

16 MR. HUMPHRIES: Which is in evidence, Your Honor.

17 BY MR. HUMPHRIES:

18 A. Number 22 is a photograph. I'm standing, standing
19 here in the corner of the countertop, kitchen countertop
20 looking over at some stools and bar -- bar stools had been
21 knocked over, and it appeared that a struggle or something
22 had occurred at that point.

23 MR. HUMPHRIES: State's 22.

24 THE COURT: Yes, I have admitted 22 through 27 in
25 evidence.

1 BY MR. HUMPHRIES:

2 Q. Now, State's 23 and 24, these have been admitted into
3 evidence without objection. Tell the jury what's pictured
4 in those.

5 A. State's Exhibit Number 23 is a photograph I took of
6 the bar stools, of these bar stools here looking into the
7 living room area close to the countertop. And there was a
8 cell, a cordless phone with a battery in -- where the back
9 of it had been broke off laying on the floor. And State
10 Exhibit 24 is a close-up picture I took, a photograph of
11 the cordless phone itself. And it appeared that the
12 battery, the wires of the battery had been broken at the
13 back of it and took apart.

14 MR. HUMPHRIES: State's 23 and 24, Your Honor.

15 BY MR. HUMPHRIES:

16 Q. Show the jury, if you will, on your diagram the
17 location of this telephone when you observed it at the
18 crime scene.

19 A. Between the two chair -- this is the countertop still
20 between the two bar stools that were knocked over. They
21 were laying right between the two bar stools on the floor.

22 Q. Thank you, and did you have occasion to collect this
23 item of evidence?

24 A. Yes, I did.

25 Q. Showing you State's Exhibit 25 for identification

1 purposes. If you look inside that bag, you can tell me if
2 you can identify that item.

3 A. This this, this is the cordless phone, cordless phone
4 that was laying between the two stool -- bar stools.

5 THE COURT: Remember that was introduced yesterday
6 without objection.

7 MR. HUMPHRIES: Very good.

8 BY MR. HUMPHRIES:

9 Q. Now, I notice that the black or negative wire appears
10 to be connected to the battery pack. What is the condition
11 of the red or live wire?

12 A. It appeared it had been broken apart or pulled apart.

13 Q. Is it ---

14 A. Somehow.

15 Q. Is it connected to the battery pack?

16 A. No. The red wires are not connected to it.

17 Q. Now, prior to explaining this to the jury, I want you
18 to tell them what it is, what vintage it was taken, State's
19 26.

20 MR. HUMPHRIES: It's in evidence without objection,
21 Your Honor.

22 BY MR. HUMPHRIES:

23 A. This is a photograph I took. Coming into the living
24 room here, there's a spiral staircase that leads up to the
25 loft-type apartment upstairs or bedroom upstairs. I was

1 standing at the top of that spiral staircase looking over,
2 a bird's eye view of the whole living room itself and then
3 the victim laying on the floor.

4 MR. HUMPHRIES: Your Honor, at this time we'll publish
5 State's 26.

6 THE COURT: You may publish any exhibit 26 through 33
7 with the exception of 28.

8 MR. HUMPHRIES: Very good. Thank you, Your Honor.

9 State's 27 previously admitted without objection, Your
10 Honor.

11 BY MR. HUMPHRIES:

12 A. This is a photograph I come up to my -- up to the
13 victim.

14 Q. Keep your voice up.

15 A. I was -- when I reached the victim, during a closer
16 examination of the victim, this is a photograph of the
17 victim's right leg and a mace can, pepper spray can behind
18 her right knee was laying on the floor.

19 Q. Let me ask you. What appears to be attached to the
20 right inside ankle of the victim's leg?

21 A. That appeared to be -- EMS had left a patch where it
22 checked for heart, heart beat, heart rhythm. When they
23 came and checked the victim, they had left a patch attached
24 to her leg, one of the leads.

25 MR. HUMPHRIES: State's 27, Your Honor.

1 BY MR. HUMPHRIES:

2 Q. Showing you State's 28 for identification purposes.

3 Can you identify that item?

4 A. Yes. Yes, that's the pepper spray can behind the leg
5 of the victim.

6 MR. WILSON: I have no objection, Your Honor.

7 MR. HUMPHRIES: State's 28 into evidence, Your Honor.

8 THE COURT: Into evidence without objection.

9 (PEPPER SPRAY CAN MARKED INTO EVIDENCE AS STATE'S
10 EXHIBIT NUMBER 28.)

11 BY MR. HUMPHRIES:

12 Q. Showing you State's 29 moved into evidence without
13 objection.

14 A. It's a photograph of the victim's left hand which
15 shows blood all around the wrist area..

16 MR. HUMPHRIES: State's 29, Your Honor.

17 BY MR. HUMPHRIES:

18 Q. Now State's 30 and 31, let's look at the two of those
19 in conjunction.

20 MR. HUMPHRIES: They have been introduced into
21 evidence without objection, Your Honor.

22 BY MR. HUMPHRIES:

23 A. State Exhibit Number 30 is a photograph from looking
24 back toward the east wall, back towards the sliding glass
25 doors. I'm looking back to the east wall, and that

1 appeared to be a hole in the wall is what it is, with a
2 letter number A, a marker sticker when I marked that hole.
3 I found a hole in the wall.

4 Q. The next exhibit?

5 A. State Exhibit Number 31 is a closer up photograph I
6 took of the hole in the wall.

7 MR. HUMPHRIES: State's 30, 31.

8 THE COURT: In evidence.

9 BY MR. HUMPHRIES:

10 Q. Now, while the jury is looking at these photographs,
11 did you conduct any further investigation in regard to the
12 hole present in the wall?

13 A. Yes, I did. Depending on the -- what type of scene we
14 had there, it appeared to me that one -- someone had been
15 shot, so I was looking for a projectile hole in the walls,
16 and this is what it appeared to be at the time where a
17 bullet had went through the wall into the sheetrock.

18 Q. Now, let's be specific about that. In relation to the
19 position of the victim's body, where was that hole?

20 A. It's the east wall. The victim was right here. The
21 wall right behind her where the sliding glass door's here.
22 The projectile hole was in the wall right behind her.

23 Q. I'm going to show you again State's 26, which is in
24 evidence, in relation to State's 30. State's 26 pictures
25 the victim's body, and that east wall 30 is obviously of

1 the east wall. What I'd like you to do is on State's 26,
2 if you will point out to the jury where that hole was
3 located. If you will put your finger on it and slowly walk
4 down in front of all the jurors to reflect where that
5 bullet hole is in relation to that wall and the victim's
6 body. You don't have -- I don't want you to talk because
7 it's tough to hear you while you talk. Take your time.

8 THE COURT: Everyone realize you will have that, these
9 photographs in the jury room with you.

10 MR. HUMPHRIES: Thank you. Thank you, Your Honor.

11 (A PAUSE.)

12 BY MR. HUMPHRIES:

13 Q. Tell the jury what you did to further investigate that
14 hole in the wall.

15 A. Well, at the time it appeared like a projectile or
16 bullet had went through the wall. So, I figured, I went
17 down to the bottom of the base of the wall itself figuring
18 maybe the projectile would -- you know, two by four, some
19 kind of -- something inside had maybe fell down inside the
20 wall itself.

21 Q. Let me show you State's 32 and 33 in evidence. Show
22 them to you in conjunction. First of all, tell me what's
23 photographed there.

24 A. State Exhibit Number 32 is the bottom at the base of
25 the wall for -- the baseboard is directly below the hole,

1 projectile hole I just showed you, and I cut a section out
2 of the sheetrock out. And inside the sheetrock and the
3 insulation I have located the projectile itself.

4 Q. And the next photograph?

5 A. State Exhibit Number 33 is a closer up photograph of
6 the projectile that I found inside of the wall.

7 Q. And in relation to State's 11, would you show the jury
8 the relative position that you cut into the wall in order
9 to locate the projectile?

10 A. I cut the section of wall out right here, right below
11 the hole. It's on the east wall next to the glass door.

12 MR. HUMPHRIES: State's 32 and 33, Your Honor.

13 THE COURT: In evidence.

14 BY MR. HUMPHRIES:

15 Q. Now showing you State's 34 for identification
16 purposes, can you identify 34?

17 A. Yes, I can. That's the projectile that I removed from
18 the wall.

19 Q. And is that the same projectile pictured in State's 33
20 identified with a number A?

21 A. Yes, it is, yes.

22 MR. HUMPHRIES: More to introduce at this time.

23 MR. WILSON: I have no objection, Your Honor.

24 THE COURT: 34 in evidence without objection.

25 (PROJECTILE MARKED INTO EVIDENCE AS STATE'S EXHIBIT

1 NUMBER 34.)

2 Q. After looking at this projectile, did you, in fact,
3 take it into evidence?

4 A. Yes, I collected and packaged it up.

5 Q. And for what purpose did you take it into evidence?

6 A. For further, further analysis.

7 Q. By whom?

8 A. SLED, which is commonly known -- SLED is the State Law
9 Enforcement Division.

10 Q. Have a seat if you will. Let me ask you. In
11 conjunction with your responsibilities as the evidence
12 technician -- or crime scene technician, apologize -- do
13 you have the occasion to transport items of evidence to the
14 South Carolina Law Enforcement Division for analysis?

15 A. I -- we do.

16 Q. Let me ask you. Did you have an occasion on a certain
17 date to take from the evidence department of the Horry
18 County Police Department to the South Carolina Law
19 Enforcement Division a blood standard of the defendant in
20 this case, Louis Michael Winkler?

21 A. I did. I did.

22 Q. And while in your custody and control, did you change
23 it substantially as to form or content?

24 A. No, I did not.

25 Q. Did you preserve the integrity of that evidence?

1 A. It was secure in my care.

2 Q. And did you deliver it over to the South Carolina
3 Division in the state of which you received it for further
4 analysis?

5 A. Yes, I did.

6 Q. In addition, did you deliver both the fired
7 projectile, which is State's 34, to the South Carolina Law
8 Enforcement Division for further analysis?

9 A. Yes, I transported it there.

10 Q. And as to the firearm which is pictured in State's 10
11 in evidence, did you transport that firearm to the South
12 Carolina Law Enforcement Division for further analysis?

13 A. I did.

14 Q. And did you have an occasion to transport as well a
15 Jennings Bryco .380 handgun which had been collected by
16 other officers within the department to the South Carolina
17 Law Enforcement Division for comparative analysis to the
18 projectile, fired projectile as well as the handgun
19 pictured in State's 10?

20 A. I, I did. I did.

21 Q. Did you as well in regard to State's 21 for
22 identification purposes, your 17, the blood swab taken from
23 the serological evidence on the counter, did you also have
24 an occasion to take that item from your evidence department
25 and take it to the South Carolina Law Enforcement Division

1 for further analysis?

2 A. Yes, I did.

3 Q. And while in your custody and control at that point,
4 did you change it substantially as to form or content?

5 A. No.

6 Q. Did you maintain the integrity of that evidence while
7 in your custody and control?

8 A. Yes, I did.

9 Q. And did you deliver it to the South Carolina
10 Enforcement Division in the same form as you received it
11 from the Horry County Police Department evidence
12 department?

13 A. Yes, I did.

14 Q. Now, let's talk about both the handgun that is
15 pictured in State's 10 which you collected.

16 A. Yes, yes.

17 Q. And the Jennings Bryco .380 handgun. Can you
18 characterize those handguns in terms of whether they are
19 revolvers or semiautomatic handguns?

20 A. Those were, they are automatics.

21 Q. Okay. Now, let me ask you. When a semiautomatic
22 handgun ---

23 A. Yes.

24 Q. --- discharges a round and fires a projectile ---

25 A. Yes.

1 Q. ---- what typically happens to the casing in which
2 that projectile is seeded?

3 A. It's usually ejected out to the right.

4 Q. As opposed to a revolver? What happens with a
5 revolver?

6 A. A revolver is a -- you have a cylinder and the shell
7 casings will stay inside the revolver until you physically
8 remove them.

9 Q. Now, let me ask you this. Of course at the time you
10 processed the crime scene, did you know what type of
11 firearm had fired the projectile, this projectile -- I
12 believe it's State's 34 -- at the time that you collected
13 it?

14 A. No, not at the time I collected. I didn't know what
15 type of weapon it was.

16 Q. However, did you attempt to locate a fired casing?

17 A. Yes, I, I done a thorough search of the entire living
18 room apartment looking for a shell casing, but I was unable
19 to locate a shell casing.

20 Q. And again, did you have assistance from other officers
21 in that regard?

22 A. My supervisor, Peter Cestare.

23 Q. And again, did you conduct a thorough search for that
24 item?

25 A. I did a thorough search of the entire apartment under

1 couches, everywhere looking for it, but I was unable to
2 locate a shell casing for that one.

3 Q. Let me ask you this. Have you had an occasion in
4 conducting a crime scene processing in which a shooting
5 occurred with a semiautomatic handgun that you were not
6 able to account for all of the fired casings?

7 A. Yes, I have.

8 MR. HUMPHRIES: Answer any questions defense might
9 have for you. Thank you, sir.

10 THE COURT: Okay, Mr. Wilson? Okay, give her two
11 seconds to change computer files.

12 MR. HUMPHRIES: May we approach on an unrelated
13 matter?

14 THE COURT: Yes.

15 (OFF-THE-RECORD BENCH CONFERENCE.)

16 THE COURT: All right, I want to go another fifteen,
17 twenty minutes if we can, and we may break in between his
18 testimony, but is everyone okay?

19 All right, let's proceed. Cross-examination.

20 MR. WILSON: Thank you, Your Honor.

21 CROSS-EXAMINATION BY MR. WILSON:

22 Q. Now, Deputy Cooper, as I understand, you've been in
23 crime scene investigation for -- since 1994?

24 A. No, sir. I only did it for two years.

25 Q. You only did it for two years?

1 A. Yes, sir.

2 Q. And what two years was that?

3 A. The year before I came to the sheriff's office.

4 Q. Well, this happened in 2006.

5 A. Okay, two thousand ---

6 Q. This is 2008, so?

7 A. 2005, 2006.

8 Q. So, you started in 2005? Is that what you're saying?

9 You started doing crime scene investigation in 2005?

10 A. I don't know the exact date, but probably the end of
11 2005, beginning 2005.

12 Q. Okay, but you don't know when in 2005?

13 A. Not the exact date I don't.

14 Q. Whether it was the first of March or ---

15 A. No, sir.

16 Q. --- November?

17 A. No, sir.

18 Q. Before you got into crime scene investigation or
19 became a crime scene technician, what were you doing?

20 A. I was on the warrant division serving warrants.

21 Q. All right, and how long did you serve warrants before
22 you moved to crime scene?

23 A. I served warrants for four years.

24 Q. All right, and was that the beginning of your law
25 enforcement, serving warrants?

1 A. No, sir. I started in 1990.

2 Q. Okay, and you started 1990 where, doing what?

3 A. At the Horry County jail. I worked at J. Rubin Long.
4 We'd just moved out there, and I started work and at the
5 time my, my badge said Horry County Police on it.

6 Q. All right, and at that time, you were actually a
7 detention officer even though your badge said Horry County
8 Police?

9 A. Yes.

10 Q. Is that what you're saying? All right, and so at the
11 time you did this particular case, which would have been
12 March 2006, you would have been in crime scene technician
13 for, what, a year, a little better maybe?

14 A. Yes.

15 Q. All right, and so at that point, you had not done a
16 hundred crime scenes, right?

17 A. Not murder, murder, murders. It could have been
18 various types. Burglaries, larcenies, not all murders.

19 Q. How many murder crime scenes had you processed prior
20 to this one in 2006?

21 A. Maybe three.

22 Q. So, this would have been your fourth or your third
23 one?

24 A. This would have been the fourth.

25 Q. All right. Now, and before you became a crime scene

1 technician, you had certain training ---

2 A. Yes.

3 Q. --- that you had to go through, right?

4 A. Yes, sir.

5 Q. And crime scene is probably one -- being a crime scene
6 technician is probably one of the most technical jobs in
7 law enforcement. Would you probably agree with that?

8 A. Yes, sir

9 Q. Because it's really very important that you pay very
10 close attention to very small details?

11 A. Correct.

12 Q. And the reason for that is is that every small detail
13 in an investigation can prove to be the turning part in a
14 case.

15 A. Correct.

16 Q. And so it's also important that you keep the crime
17 scene pristine, right?

18 A. Yeah, the whole ---

19 Q. Meaning clean, meaning that you want to keep it clean.
20 You don't want any contamination. You don't want it
21 tainted in any way whatsoever.

22 A. Yes, sir.

23 Q. And that's very, very important. Would you agree with
24 me on that?

25 A. Yes, sir.

1 Q. And because of that, what you do is you try to, once
2 the crime scene is roped off and logged off, you want to
3 make sure that anybody who comes in and out of there
4 doesn't in any way move anything, change anything, alter
5 anything because having moved something or changed
6 something or altered something can make all the difference
7 in the world?

8 A. Yes, sir.

9 Q. And I'm sure in this particular investigation, being a
10 homicide, that you were equally up to that task and wanted
11 to make sure that was, in fact, what was going on, right?

12 A. Yes.

13 Q. Well, is there a crime scene log, a crime scene log
14 where people coming in and out the crime scene, officers?

15 A. What was your question?

16 Q. My question is did you do a crime scene log of people
17 who were coming in and out of the crime scene?

18 A. No, sir, I didn't. That wasn't my responsibility.

19 Q. That wasn't your responsibility?

20 A. Not the crime scene log, no.

21 Q. Well, if you don't know who's coming in and out, how
22 do you know who's doing what and who's walking where and
23 who's placing something in this place or moving something
24 from that place? How do you know that if you don't have a
25 crime scene log to know who's coming in and out of that

1 crime scene?

2 A. There was a crime scene log taken, the officers on
3 scene, patrol officers.

4 Q. All right. Did you sign that crime scene log?

5 A. I didn't sign it myself physically, no, sir.

6 Q. Well, let me take -- let you take a look at this
7 documents. See if you see your name on there.

8 A. Yes, I do.

9 Q. See your name on there, but you didn't put your name
10 on there?

11 A. No, sir. Physically, I didn't write it.

12 Q. And are you saying to me, then, that that's -- is that
13 a crime scene log that you'll keep in the normal course of
14 business over there at Horry County Police Department on
15 homicides and other crime scene investigations?

16 A. This is a crime scene log that, it was used for crime
17 scene investigations.

18 Q. All right, and you never saw that before today?

19 A. I saw it, but I didn't keep it.

20 Q. You saw it. When did you see it first?

21 A. It was sometime during the investigation. When it
22 first happened, I...

23 Q. Well, let me back up with you and ask you this. How
24 many names are on that crime scene log as to having come in
25 and out of that crime scene?

1 A. Has nineteen.

2 Q. Nineteen, nineteen officers, people came in and out of
3 that crime scene over a period of time, right?

4 A. Yes, sir.

5 Q. Nineteen, and over what period of time are we talking
6 about?

7 A. From the time the first officer arrives on the scene
8 and secured it until we released the scene, I guess.

9 Q. Okay, and you didn't get there for, what, an hour
10 after the first officer arrived?

11 A. The time it has it on here is 1904.

12 Q. Well, what time do you say you got there?

13 A. I -- it was about 7:00.

14 Q. Well, about 7:00, and help me here. You're, you're
15 the crime scene guy. You're the fellow who's going to
16 bring these pictures in here that you say you took, right,
17 and you found this evidence, and you photographed it, and
18 you meticulously kept it, and you took it to SLED to have
19 it examined.

20 A. Yes, sir.

21 Q. And I'm simply asking you what time did you arrive at
22 that location.

23 A. 1850, which would have been ten minutes till 7.

24 Q. All right, so ten minutes to 7, you arrived at that
25 location?

1 A. Right.

2 Q. Now, you never signed in as being on that crime scene,
3 did you?

4 A. I didn't, I didn't sign my name, no, sir.

5 Q. You don't know whether all nineteen of those people
6 were there or not there, do you?

7 A. I remember the majority of them.

8 Q. You remember the majority of them?

9 A. Yes, sir.

10 Q. How many of them touched the body of the victim?

11 A. I can't answer.

12 Q. How many of them went into the room where the gun was
13 found?

14 A. I can't answer that.

15 Q. How many of them walked into the area where that
16 bullet or that shell casing may have been found or may not
17 have been found, how many of those officers walked through
18 that area where that shell casing, if it lay there, may
19 have been moved by their feet?

20 A. That's probably at least one of two of the officers,
21 the first ones on the scene.

22 Q. Well, now you're telling me that there were nineteen
23 of them in and out of there.

24 A. Right.

25 Q. You don't know -- you weren't checking them, right?

1 A. No, sir.

2 Q. Did you tell them you can't walk in this area here,
3 you can only walk around there, or the rest of you guys
4 stay outside here until I finish photographing this crime
5 scene? Why would you need nineteen people? Was the
6 solicitor in there, too? Do you remember that?

7 A. Yes, sir.

8 Q. They were there?

9 A. Yes, sir.

10 Q. How many of them were there?

11 A. Shows three on the log sheet.

12 Q. Three solicitors were there at the crime scene. Why
13 in the world were they there while you were trying to
14 photograph the crime scene?

15 A. I photographed the crime scene before they arrived.

16 Q. I'm sorry?

17 A. I photographed it before they came in.

18 Q. Well, let's talk about that for a second. There was a
19 blood spot found, right?

20 A. Right.

21 Q. Tell us what time it was that you located that spot of
22 blood that you say that you found.

23 A. The original time I located it, I couldn't tell you
24 right offhand what time it was when I first located it.

25 Q. You don't know what time it was that you located it?

1 A. If you'd show me the pictures.

2 Q. Well, you put them on. You, you're the one that
3 testified to them. I don't know which one it was.

4 A. Yes, sir.

5 Q. I'm just simply asking the question. You say you took
6 a picture of the blood. I'm simply asking you when in the
7 investigation did you take it and who else was present when
8 you took it?

9 A. My supervisor, Peter Cestare, who was present when I
10 took it.

11 Q. All right, and, and, and what time was it that you
12 took it then?

13 A. I can't tell you what time it was.

14 Q. Don't know what time it was?

15 A. Don't know offhand.

16 Q. All right. Well, how many of those other nineteen
17 people were present when you took it?

18 A. At that time, nobody. I was doing ---

19 Q. What do you mean?

20 A. Just me and my supervisor, Peter Cestare. None of the
21 other ones were there when I was doing to initial walk
22 though.

23 Q. Well, when did they leave?

24 A. I wasn't keeping the crime scene log. I, I don't know
25 when they left. I...

1 Q. So, what you're telling me, then, if I'm listening to
2 you correctly.

3 A. Right.

4 Q. What you're saying to me is is that when you took
5 these pictures, they weren't there. So, that would mean
6 that they had already come and left?

7 A. No, sir.

8 Q. No, sir, what?

9 A. No, sir, they wasn't there when I took the pictures.

10 Q. All right. There were officers there before you
11 arrived.

12 A. First responding officers.

13 Q. All right, you didn't get there until ten minutes to
14 7?

15 A. Right.

16 Q. There was an hour to ten, fifteen minutes before you
17 there.

18 A. Right.

19 Q. And how many officers had come before you got there?
20 That's what I'm asking.

21 A. I can't answer that. I don't know.

22 Q. And, you don't -- not only can you not answer that,
23 you don't know what they did while they were there.

24 A. That's correct; I wasn't there.

25 Q. So, that shell casing we've all been searching for

1 could have been moved, kicked under something, stepped on,
2 caught under somebody's shoe. Anything could have
3 happened. We don't know, do we?

4 A. No, sir.

5 Q. Because the police officers and the solicitor's office
6 people were trampling all over the crime scene.

7 A. There was people in there before I got there. I...

8 Q. Now, let's talk about something else.

9 A. Okay.

10 Q. We know, do we not, that a cell phone was found?

11 A. Correct.

12 Q. And that you testified I think earlier that it had
13 broken or red card had been broken or something. Is that
14 right?

15 A. The red wires had been disconnected.

16 Q. Right.

17 A. They was broken.

18 Q. The red wire had been disconnected or broken or torn
19 off or whatever we want to call it.

20 A. Right.

21 Q. Correct? Now, you said in your report, did you not,
22 that that phone when you first observed it was actually in
23 a chair. Isn't that what you said in your report?

24 A. Just one second. Let me review my notes.

25 (A PAUSE.)

1 Q. Let, let, let me help you a little bit.

2 A. Okay.

3 Q. So, we can speed things along. Let me show you this
4 photograph. Just take a look at these two photographs
5 right there. Now, are those not copies of photographs that
6 you provided to the solicitor's office, who later then
7 provided them to us?

8 A. Yes, sir.

9 Q. All right, and in the photograph, the phone is not on
10 the floor, is it? It's in a chair. Fair statement?

11 A. Fair.

12 Q. That's in the photograph?

13 A. Correct.

14 Q. Now, the photograph you showed me in here has the
15 phone actually being on the floor between some chairs,
16 right?

17 A. Right.

18 Q. Why is that?

19 A. I do not know.

20 Q. You don't know? You don't know why that is?

21 A. The phone was, reviewing my notes, the phone, phone
22 had -- itself was located in the chair. I located the
23 battery pack next to the bar stools.

24 Q. Well, that's my point.

25 A. That's right.

1 Q. The phone was found in the chair.

2 A. Yeah, and I took it ---

3 Q. Why do we have pictures of the phone being on the
4 floor laying down between chairs which are turned over?

5 A. The reason on that, I took the photograph of the phone
6 itself lying in the chair. That's where I found it at.

7 That's where it was originally at. Later on I discovered
8 the battery. I figured, well, this must be the battery to
9 the phone because it wasn't in it. I took a photograph of
10 the -- what was in the chair. Took the photograph of the
11 phone. Went and laid it on the floor beside the battery
12 pack. I just connected it. It was common sense.

13 Q. Okay. So, the truth of the matter is this phone was
14 not where it's photographed in these pictures were these
15 chairs are turned over. This phone was found laying in a
16 chair which was upright. You just happened to find the
17 battery someplace else. So, then you take the phone and
18 then you put the chairs, put the phone and the pieces
19 altogether now between the chairs which are laying on the
20 ground.

21 A. And in this photograph that he gave me, the phone was
22 in the chair.

23 Q. Yes, sir.

24 A. And the, and the battery is missing out of this phone.

25 And I looked at the phone and the battery. They matched.

1 Q. Now, let me ask you. You got there around you said 18
2 what, 18?

3 A. 1850, which is ten minutes till 7.

4 Q. 1850, all right, but they got you showing up at 1909,
5 which would be seven -- or nine minutes after 7?

6 A. Correct.

7 Q. But you say you got there ten minutes before that, or
8 actually twenty minutes before that, right?

9 A. Yes, sir.

10 Q. All right. Now, there were at least nine, ten
11 officers there before you got there?

12 A. Yes, sir.

13 Q. All right, and did you talk with every single one of
14 those officers to find out before I start this crime scene,
15 fellows, tell me what it was that you did. Did you find
16 this, did you move that, did you change this, did you open
17 that, did you close? Did you do that?

18 A. Not with each one of them, no, I didn't.

19 Q. Not with each one of them. Now, when the solicitors
20 came over there.

21 A. Yes, sir.

22 Q. Had you taken the swabs of blood at that point, or do
23 you know what time you actually took the blood swabs?

24 A. Not an exact time I took them. No, sir, I don't.

25 Q. I'm sorry?

1 A. Not the exact time. I don't have the time when I
2 exactly took them.

3 Q. You don't have an exact time as to when you took the
4 swabs of blood?

5 A. No, sir. No.

6 Q. Well, when you take evidence, isn't part of the
7 process to take that item of evidence and meticulously
8 label it?

9 A. Yes.

10 Q. First you photograph it. Then you take it, and you're
11 going to package it. You're going to label it, and then
12 you're going to put your initials on it because it's
13 important that we know later on -- like now -- exactly
14 where, when, how that piece of evidence materialized.

15 A. Correct

16 Q. Now, let me ask you about the bullet, the bullet in
17 the wall. As I understand it from your testimony, you're
18 taking photographs, and somehow you found a hole in the
19 wall. Is that right? Did you find it yourself, or did
20 somebody else find it and show it to you or tell you about
21 it?

22 A. I found it myself.

23 Q. All right, you found this hole in the wall, and tell
24 us how high from the baseboard of the floor the actual hole
25 was in the wall.

1 THE COURT: Mr. Wilson, at some appropriate time,
2 maybe this would be a good time to take a break.

3 MR. WILSON: Yes, sir, because it's going to take me a
4 little bit longer, Judge.

5 THE COURT: You ready to take a break?

6 MR. WILSON: I'll, I'll take a break now.

7 THE COURT: Ladies and gentlemen of the jury, your
8 lunch is here. Let's go ahead and get your lunch, and I'd
9 like to start back at 2:00 if you can. If you all are not
10 ready, we won't. We will try to start back at, at 2:00.
11 So, enjoy your lunch. Do not discuss the case.

12 Everyone else stay where you are. Ladies and
13 gentlemen of the jury, you may step back to your jury room.

14 (THE JURY EXITS AT 1:25 P.M.)

15 THE COURT: Okay, just so there's no doubt and
16 everything on record, when the attorneys approached the
17 bench ---

18 Madame Court Reporter, I assume you did get that down,
19 didn't you?

20 COURT REPORTER: No, sir.

21 THE COURT: All right, when they approached the bench,
22 y'all's discussion was state wanted to know if this witness
23 could step down and they could call Dr. Proctor to the
24 stand to try to help out with his schedule, but Mr. Wilson
25 was concerned that they wanted to make sure that they

1 cross-examined this witness when his testimony was fresh
2 with the jury. So, therefore, we continued on, and y'all
3 will have to arrange for Dr. Proctor to be after this.

4 Anything else anyone wants to bring up before we take
5 lunch break?

6 MR. WILSON: No, sir.

7 THE COURT: All right, do it if you wish but if you
8 wish, let's make sure everybody's available at 2:00. Be
9 available at 2:00. See y'all then. Everybody have a nice
10 lunch. We're adjourned.

11 Oh, I'm sorry. You may step down but do not, do not
12 discuss your testimony with anyone. Do not talk about this
13 with the solicitor or anybody in your office or anyone
14 else, and you're subject to question about that once we get
15 back.

16 (THE WITNESS EXITS THE STAND.)

17 THE COURT: All right, that's one of those examples
18 why you do not move until I get out the door and y'all
19 forgot, right?

20 Anything else? Mr. Wilson, were you going to say
21 something?

22 MR. WILSON: No, sir, Your Honor.

23 THE COURT: All right, see y'all after lunch.

24 (OFF THE RECORD.)

25 THE COURT: The jurors are ready. The state ready?

1 MR. HUMPHRIES: State's ready.

2 THE COURT: Defense ready?

3 THE COURT: Ready, Your Honor.

4 THE COURT: Anyone want to ask Officer Cooper whether
5 he discussed his testimony with anyone?

6 MR. HUMPHRIES: No, Your Honor.

7 THE COURT: Mr. Wilson, you do not either?

8 MR. WILSON: Sir?

9 THE COURT: You don't want to ask him if he discussed
10 his testimony with anyone, do you?

11 MR. WILSON: No, sir. I trust him.

12 THE COURT: All right, good.

13 Bring the jury in, please.

14 All cell phones off. What about radios? Temperature
15 feels good. Giving the court reporter court's exhibit
16 regarding the doctor's information.

17 (DOCTOR'S NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
18 NUMBER 19.)

19 (THE JURY ENTERS AT 2:20 P.M.)

20 THE COURT: All right, anyone discuss this case with
21 anyone at all since we left for lunch? If so, let me know
22 now. Hearing no response, hearing no request for polling,
23 we will proceed. As you will recall, we were in the middle
24 of cross-examination of Officer Cooper.

25 Mr. Wilson, you may proceed.

1 MR. WILSON: Thank you, Your Honor.

2 BY MR. WILSON:

3 Q. Officer Cooper, I think when I, when we stopped, I was
4 asking you about the height of the bullet from the
5 baseboard of the area.

6 A. Yes, sir.

7 Q. To where it was found, and did you measure that for
8 us?

9 A. Yes, sir.

10 Q. All right, sir, and what was the, what was the length
11 from the floorboard to where the bullet entered the wall?

12 A. Measuring it from the -- well, measuring it from the
13 floor up, it was 4 foot 1 inch.

14 Q. Okay.

15 A. And measuring from the south wall over to the hole was
16 2 foot 9 inches.

17 Q. All right, I understand the height, but over to what
18 wall?

19 A. South wall would be the closest wall.

20 Q. All right, all right, I'm a little confused.

21 A. It was 4 foot 1.

22 Q. 4 foot 1 inch from the baseboard to where the hole
23 went into the wall?

24 A. Yes, sir.

25 Q. I gotcha. Now, you're saying it's 2 what, 2 feet from

1 where?

2 A. It was 2 foot 9 inches from the closest wall back to
3 the center of the hole. Can I show you on the diagram?

4 Q. Yes, sir, because I don't understand.

5 THE COURT: Why don't you hand it to him there, show
6 it to you.

7 MR. WILSON: Yes, sir.

8 THE COURT: Speaking louder, sir.

9 WITNESS: Yes, sir.

10 BY MR. WILSON:

11 A. From the base, the baseboard up it measures 2 foot 4
12 inches, and over -- this is, would be the south wall here.

13 Q. Oh, okay. Gotcha.

14 A. Now, the closest wall ---

15 Q. I understand.

16 A. --- back over to the center of the hole ---

17 Q. But it's actually in this wall here, and you're saying
18 this is the next closest wall?

19 A. Yes, sir, which is the south wall.

20 Q. I'm with you. I'm with you. I understand. Thank
21 you. Now, and you then retrieved the bullet or the
22 projectile from the wall?

23 A. Yes, sir.

24 Q. And when you were doing this, and once you got it, you
25 I'm sure recognized that it was going to be an important

1 part of this case and that the preservation of that piece
2 of material might very well be critical to the case?

3 A. Yes, sir.

4 Q. And I'm sure that when you, knowing those things, that
5 you packaged it in an appropriate way so that you could
6 preserve whatever was there for testing later?

7 A. I did.

8 Q. All right, and tell us how you packaged this.

9 A. Package it up, you want to put it in a -- wrap some
10 soft tissue around it. You don't want any more marks or
11 any damage to the projectile itself, so you're going to
12 wrap it in some soft tissue or cotton gauze and place it in
13 either a little canister or package in evidence box.

14 Q. Okay. So, it was placed in either a paper box or
15 after it was wrapped in either tissue or gauze it was
16 placed in a paper box and/or a canister?

17 A. Yes, sir.

18 Q. All right, and what type material would the canister
19 have been?

20 A. It would, it would have been a metal type canister and
21 if not, I used a paper which was a cardboard box, a little
22 small packaging cardboard box.

23 Q. All right, and we both agree, do we not, that the
24 reason that's important, the packaging of that bullet would
25 be important is because if there is blood or some other

1 kind of liquid substance on that and you don't package it
2 appropriately, then that material could be lost or it could
3 taint itself and be useless?

4 A. Correct.

5 Q. All right. sir. Now, when you sent it to SLED, which
6 I'm sure you did?

7 A. Yes, sir.

8 Q. Where did you send it first? To DNA for them to have
9 DNA testing, or did you send it to ballistics?

10 A. I'm pretty sure it went to ballistics first.

11 Q. Okay. Well ---

12 A. Try to determine what caliber, what, what it was.

13 Q. Well, now, let's talk about that for a second.

14 A. Yes, sir.

15 Q. Would that really be the correct procedure to send it
16 to ballistics first if you want to get the blood off of the
17 bullet? Because ballistics are going to do their testing
18 on it to determine the caliber and whether it was fired
19 from a particular gun, and they're going to have to handle
20 it and that kind of thing, right?

21 A. Yes, but there was no blood on it.

22 Q. Well, none that you could see, right?

23 A. None that I could see.

24 Q. But the fact that you can't see it, being a crime
25 scene expert, you know the fact you can't see it doesn't

1 mean it's not there..

2 A. Correct.

3 Q. And there could certainly be blood there, and there
4 can be material that you can't even see with the human eye
5 or the naked eye, and that may very well turn out to be
6 significant with DNA when you send it to DNA to have it DNA
7 tested, right?

8 A. Yes. Yes, sir.

9 Q. In fact, truth of the matter is the bullet wasn't sent
10 to DNA for what, over a year?

11 A. I, I, I was already gone and employed here in the
12 sheriff's office when that occurred. I don't know. I
13 wasn't a part of that.

14 Q. But as far as you know -- well, let me back up. How
15 long after March 6th was it before you left the Horry
16 County Police Department as crime scene technician?

17 A. I started with the sheriff's office on July 10th.

18 Q. Of '06?

19 A. 7.

20 Q. '07, so you were there for another year?

21 A. Yes, sir.

22 Q. And a couple of months, and do you know whether or not
23 during that year and two months or however many other
24 months, did you ever send this projectile to be tested for
25 DNA to determine whether or not the blood matter on that

1 belonged to Rebekah Winkler?

2 A. No, sir, I...

3 Q. But it was sent to ballistics to be tested to
4 determine whether or not or was fired from a particular
5 gun?

6 A. Yes, sir.

7 Q. Well, now, in, in your classes and in how they teach
8 you guys to do crime scene, would that be the correct
9 process, to send it to ballistics before you send it to
10 DNA?

11 A. Correct process would probably be to send it to DNA
12 first.

13 Q. All right. Now let's talk about something else.
14 Let's talk about the fact that you say that you found a --
15 or did two swabs of blood.

16 A. Yes, sir.

17 Q. At the crime scene.

18 A. Yes, sir.

19 Q. Right, and remember we were asking you earlier, or I
20 was asking you earlier about what time it was that you
21 found this blood?

22 A. Yes, sir.

23 Q. All right, and you told me that you found it earlier
24 before the solicitor and, and all those people arrived?

25 A. Yes, sir.

1 Q. Is that what you told me?

2 A. Yes, sir.

3 Q. That's not really true, is it?

4 A. The day the -- at the time I could not remember the
5 date and time it was, but the date and time are stamped on
6 the photograph itself.

7 Q. It is, isn't it?

8 A. Yes, sir.

9 Q. And it was after they had arrived?

10 A. I don't know what time they logged in. I do not know.

11 Q. Well, we're going to look at that. You have a log
12 sheet there.

13 A. Yes, sir.

14 Q. With the solicitors' names on it.

15 A. All right, sir.

16 Q. Tell us what time they log in.

17 A. Solicitor Fran Humphries, says he's logged in at 2135,
18 which would have been about 9:35.

19 Q. Okay.

20 A. Solicitor Scott Hixson at 22, it looks like 25 also,
21 which would be 10:25.

22 Q. Okay.

23 A. Solicitor Greg Hembree at 2233.

24 Q. That's 10:33?

25 A. Yeah. Yes, sir.

1 Q. Okay.

2 A. 10:33.

3 Q. All right, and let's look at what time your photograph
4 of this blood spot was observed.

5 A. 2249.

6 Q. 2249, 2249. In regular hours, that's what time?

7 A. Ten minutes to 12.

8 Q. Well, ten minutes to 11.

9 A. Ten minutes, sorry.

10 Q. Ten minutes to 11, right?

11 A. Ten minutes to 11, sorry. Yeah.

12 Q. So, all of them had already come on the scene and been
13 there for some minutes before this blood spot was found.
14 And now as I remember, if I'm correct -- you tell me if I'm
15 wrong, but as I remember, you told me that you got there I
16 think at ten minutes to 7?

17 A. Yes, sir.

18 Q. And so you had now been there from ten minutes to 7
19 until ten minutes to 11 before you found this blood spot?

20 A. Yes, sir.

21 Q. Four hours give or take?

22 A. Yes, sir.

23 Q. And your testimony is is that the blood spot was
24 bright red?

25 A. Red liquish [sic], yes, red liquish.

1 Q. Four hours later?

2 A. Yes, sir.

3 Q. Now as I understand it, you then swab this blood,
4 right?

5 A. I did.

6 Q. Having found this blood, and this is the only spot of
7 blood that you found anywhere other than with the victim
8 obviously anywhere in the house, right?

9 A. That, that's correct.

10 Q. No blood, no blood splatters, no blood anything
11 anywhere else?

12 A. There's blood pools around the victim where she was
13 laying.

14 Q. And I apologize. I agree. I didn't mean the victim.
15 I'm talking about on the walls, on J [REDACTED]'s clothes, on
16 chairs, on dining room table, on the lamp shades, anywhere.

17 A. There's no, no blood spatter.

18 Q. All right. So, you have one spot of blood and it's
19 probably what, quarter of an inch in length or diameter or
20 half an inch, what?

21 A. Yes, sir.

22 Q. And now the photograph that you gave us shows it as
23 more of a lineal smear. That is, a kind of a line smear
24 about a half inch long?

25 A. A smear.

1 Q. All right. Well, was it that way when you found it,
2 or is that after you have swabbed it?

3 A. That's the way I, I found it.

4 Q. Okay.

5 A. Took the photograph first.

6 Q. So, the photograph that you showed us is the
7 photograph that you took before you swabbed it?

8 A. Yes, sir.

9 Q. All right, and so that's how you found it when you saw
10 it, right?

11 A. Yes, sir.

12 Q. Now, and then you sent those swabs to SLED?

13 A. Correct.

14 Q. Now, do you know how it got smeared?

15 A. No, sir. I have no earthly idea. I wasn't there. I
16 don't know.

17 Q. You know who might have touched it before you got it?

18 A. No, sir. I can't answer that.

19 Q. I'm going to ask you about something else. Now, I
20 know that in the photographs that you took, specifically
21 what's marked as State's Exhibit Number 19, there's a plate
22 of food there.

23 A. Yes.

24 Q. Is that correct?

25 A. Yes, sir.

1 Q. Now, there's also a set of sunglasses, shades.

2 A. Correct.

3 Q. Right, and I'm sure you collected these, right?

4 A. I didn't collect the food, the food plate, no, sir. I
5 -- nor the, nor the glasses.

6 Q. Well, that's what I'm asking about, the glasses.

7 A. No, sir.

8 Q. I, I wouldn't think you'd collect the ---

9 A. I collected, I collected a pair of glasses, but it
10 wasn't those.

11 Q. Well, now, let me ask you this.

12 A. Yeah.

13 Q. Would you not think that it might be important as to
14 who's eating that plate of food and that the shades might
15 belong to the person who's eating the food?

16 A. I was, I was instructed when I first got on the scene,
17 informed that J [REDACTED] was sitting there eating the plate
18 of food, so I -- at the corner of the table.

19 Q. So, you accepted that and you went no further because
20 you were told J [REDACTED] was sitting there, end of story. No
21 need to investigate that. No need to check that. That's
22 what he said.

23 A. Correct.

24 Q. Correct. So, now because that, we don't know whether
25 or not those shades belonged to J [REDACTED] or some other

1 individual, do we?

2 A. No, sir.

3 Q. And shades, because of the smooth surface of the
4 lenses, we're able to get fingerprints a lot easier off
5 those kind of surfaces than we are off most surfaces. Is
6 that a fair statement?

7 A. It can.

8 Q. All right.

9 A. Yeah.

10 Q. Now let's talk about one other thing. Let's talk
11 about fingerprints.

12 A. Yes, sir.

13 Q. Now, you dusted for prints, did you not?

14 A. I did.

15 Q. And you actually found some latent prints?

16 A. Yes, sir, I did.

17 Q. And did you measure those prints against anybody other
18 than this defendant?

19 A. No, sir, I didn't.

20 Q. Well, did you send -- in order -- well, let me back
21 up. In order to have prints analyzed by SLED, you normally
22 will send the suspect prints to them, right?

23 A. Correct.

24 Q. And you will send the unknown prints to them, and they
25 will evaluate them and tell you whether they're a match or

1 they're not a match?

2 A. Right.

3 Q. And if you know that there's someone else's prints who
4 might need to be examined, then you could get those prints
5 and send those also?

6 A. Yes, sir.

7 Q. But you didn't sent anybody's prints other than the
8 defendant?

9 A. Yes, sir.

10 Q. So, you never got a match to any of the prints?

11 A. None of the prints matched up, no, sir.

12 Q. That's right, and it didn't belong to the defendant,
13 did it?

14 A. No, sir.

15 Q. Well, who did they belong to?

16 A. I have no earthly idea.

17 Q. Have no earthly idea?

18 A. Ones I got off the door was unreadable. There was
19 smudges in the one that was lifted.

20 Q. But, but you found some that were legible.

21 A. Yes, sir.

22 Q. But you never sent anybody else's prints there to
23 determine if they belonged to someone other than the
24 defendant. So, how could SLED ever tell you whether they
25 belonged to anyone else other than the defendant, and we

1 know they're not his because his was matched and they
2 didn't match.

3 A. I just didn't have them.

4 Q. Right. I'm getting to the close. I just got a couple
5 more things. One of the things I want to ask you about is
6 that there was also a pair of eyeglasses, some kind of -- I
7 don't know if they're reading glasses or if are -- they
8 were glasses. They were found. They were on the couch.

9 A. Yes, sir.

10 Q. In the house.

11 A. Yes, sir.

12 Q. Did you get the glasses?

13 A. Yes, sir, I did.

14 Q. Did you send the glasses and have them fingerprinted
15 to determine if there were any prints on those glasses?

16 A. No, sir, I sure didn't.

17 Q. And we don't know who those glasses belong to either,
18 do we?

19 A. No, sir.

20 Q. And those glasses were actually over on the couch down
21 kind of half embedded in the side of the couch?

22 A. On the back of it, on the back of the couch itself
23 between -- in the cushion on the, on the top.

24 Q. I think I have one last area and then I'll be through
25 with it. As I understand it, you did some measurements?

1 A. Yes.

2 Q. And you were there at the house until I think around
3 2330. Is that right, 11:30?

4 A. Yes, sir.

5 Q. All right, and did you ever measure the couch that
6 the, that was, that was nearest to the victim, Ms. Rebekah?
7 Did you ever measure the height of the back of the couch?
8 You told us that the bullet was 4 foot 1 inch into the wall
9 from ---

10 A. Correct.

11 Q. --- the floor.

12 A. Correct.

13 Q. How high was the back of the couch which was directly
14 behind her?

15 A. I didn't, I didn't measure the couch itself.

16 Q. You didn't measure the couch?

17 A. No, sir.

18 MR. WILSON: Court bear with me just one second,
19 please.

20 (DEFENSE COUNSELORS CONFER.)

21 MR. WILSON: I don't think I have any other questions.
22 Thank you so much.

23 THE COURT: Any redirect, Mr. Humphries?

24 MR. HUMPHRIES: Yes, Your Honor.

25 REDIRECT EXAMINATION BY MR. HUMPHRIES:

1 Q. Deputy Cooper, let's, let's talk just briefly about
2 crime scenes. Particularly when we talk about crime scenes
3 is the crime scene or the perimeter of the crime scene set
4 up immediately around the body, or is it expanded out?

5 A. You want to make the crime scene itself as large a
6 area as possible, not just right up on the victim itself.
7 You want to expand it out, make it large.

8 Q. And let me ask you. In connection with that, the, the
9 crime scene in this case, so you know how far the tape --
10 let's talk about the tape because that's really the
11 perimeter, is it not?

12 A. Correct.

13 Q. The tape for this crime scene, where was it? Was it
14 inside the building?

15 A. No, sir. No, sir. It was ---

16 Q. Exterior?

17 A. Exterior.

18 Q. And the crime scene log, is that recorded at the
19 perimeter at the crime scene?

20 A. The crime scene log is, it's before anyone crosses the
21 crime scene tape, the line where you cross that line to go
22 into the, the scene itself, that's where you log in.

23 Q. Okay.

24 A. Before you enter.

25 Q. So, this crime scene log that's been referred to would

1 record anybody who crosses the crime scene tape?

2 A. Correct.

3 Q. You've been cross-examined about a document, crime
4 scene entry log, in connection with this case.

5 A. Correct.

6 Q. Is that correct?

7 A. Correct.

8 Q. Okay, and many of the names have been published. I
9 want, I want to show this to you. You've got a copy of it?

10 A. Yes, sir.

11 Q. And a question was asked of you: how many people came
12 into the crime scene prior to your arrival. Okay?

13 A. Yes, sir.

14 Q. Who's the first?

15 A. Tom Knoch.

16 Q. That's the gentleman we heard from ---

17 A. Officer Tom Knoch from the Horry County Police
18 Department.

19 Q. First responding officer?

20 A. Yes, sir. Yes.

21 Q. PFC Mark Gordner, who is he?

22 A. Officer with the Horry County Police Department.

23 Q. Horry County Police Department?

24 A. Horry County Police Department.

25 Q. Corporal Bob Stevens, who's he with?

1 A. He's a corporal with the Horry County Police
2 Department also.

3 Q. Sergeant Kegler?

4 A. Officer with the Horry County Police Department.

5 Q. The next four individuals, that's four, next four,
6 with whom are they employed?

7 A. It has FS. I take it that's firefighter.

8 Q. Look at the department.

9 A. That's Horry County Fire Department, Fire Department
10 Rescue/EMS.

11 Q. Very good. Detective Ann Pitts?

12 A. She was a detective with the Horry County Police
13 Department.

14 Q. Now let me ask you. These crime scenes, is it
15 protocol that the detective division arrives at the crime
16 scene as well as the crime scene technicians?

17 A. It is. It's...

18 Q. In every case?

19 A. In every case, yes.

20 Q. Detective Lewis?

21 A. Is a detective with the Horry County Police
22 Department.

23 Q. And then you?

24 A. Yes, sir.

25 Q. Okay. So, we have four initial responding officers

1 from Horry County?

2 A. Correct.

3 Q. Four EMS technicians?

4 A. Correct.

5 Q. Two detectives?

6 A. That's right.

7 Q. Then you?

8 A. Correct.

9 Q. You were patrol before?

10 A. Yes, sir.

11 Q. You've received training regarding the securing of
12 crime scenes?

13 A. Right.

14 Q. Does that training consist of a directive that you not
15 disturb any of the crime scene to the best of your ability?

16 A. That is correct. You don't, don't touch anything.
17 Preserve it as is.

18 Q. Are detectives trained in a similar fashion in regard
19 to crime scenes?

20 A. That's correct.

21 Q. Now, once you and other crime scene technicians, and
22 in this case who else responded with you?

23 A. That was my supervisor Peter Cestare at the time.

24 Q. Okay, and once crime scene technicians respond to a
25 crime scene, who's in charge of that crime scene?

1 A. The crime scene investigators are.

2 Q. That would be you and ---

3 A. Correct.

4 Q. --- your supervisor?

5 A. Correct.

6 Q. And then once you take charge of crime scene, who
7 grants entry and exit to the crime scene, the immediate
8 crime scene?

9 A. Whoever's holding the, taking up the log.

10 Q. I'm taking about -- let's do this. The house.

11 A. Oh.

12 Q. Who controls the house?

13 A. We, we do, the investigators, crime scene
14 investigators. We have control over the crime scene then.

15 Q. Let me ask you. Is it common -- let's set aside the
16 initial responding officers. They had a job to do.

17 A. Right.

18 Q. Let's set aside the EMTs. They had a job to do.
19 Let's go to the detectives, the two that arrived before
20 you.

21 A. Correct.

22 Q. They're called. They've got a job to do.

23 A. That's right.

24 Q. And directive to follow in that regard. Is that
25 correct?

1 A. Correct.

2 Q. After crime scene takes over the immediate crime
3 scene, you're in charge of crime scene?

4 A. That's right.

5 Q. No one gains entry or exit to immediate crime scene
6 without your say so. Is that correct?

7 A. That's correct.

8 Q. It's been pointed out that three members of the
9 solicitor's office were ultimately given entry to that
10 crime scene.

11 A. Correct.

12 Q. Now let me ask you something as a practical matter.
13 Deputy, in a death investigation involving a death crime
14 scene, is it unusual to see, for instance, me at the crime
15 scene?

16 A. Is it?

17 Q. Is it unusual?

18 A. Oh, no, sir.

19 Q. Is it been your experience that I respond to almost
20 every murder crime scene?

21 A. That's correct.

22 Q. Now, let me ask you this. Do the solicitor's office
23 representatives ever come into a crime scene which has not
24 been secured by you?

25 A. No. Until we say so.

1 Q. You're the one who says it's okay?

2 A. That's correct. We need to say so.

3 Q. And do you allow members of the solicitor's office --
4 me personally -- to come into a crime scene until you have
5 secured the evidence?

6 A. No. Once we, we feel comfortable, then we'll let them
7 come in.

8 Q. And do members of the solicitor's office come into a
9 crime scene unescorted?

10 A. No. That's always one of us, investigator crime scene
11 technician, with them escorting them at all times.
12 Nobody's alone.

13 Q. What is the purpose of that?

14 A. The purpose of that is we want to keep the integrity
15 of the crime scene. You want to keep it so nobody -- we
16 know exactly where everybody goes, where they walk, keep
17 their hands in their pockets, don't touch anything, don't
18 move anything. They're with us the whole time.

19 Q. And, in fact, we're instructed to keep our hands in
20 our pockets the entire time.

21 A. That's, that's right. You're correct.

22 Q. Let's talk a little bit about that telephone. You
23 took a picture of a phone battery on the floor, telephone
24 in a chair?

25 A. Yes, sir.

1 Q. You placed the phone or the pieces of the phone with
2 the battery pack for one of those photographs?

3 A. That's right.

4 Q. You did that for what reason?

5 A. The first photograph I, I took of the phone is laying
6 in a chair. Then I was searching for the battery pack that
7 was missing. So, during my search I discovered a battery
8 pack and just connected them together, so I placed it side-
9 by-side because they went together, showing they were
10 separated. They were broken.

11 Q. Let me ask you this. You write a report, do you not?

12 A. Yes, sir.

13 Q. Fairly exhaustive report, isn't it?

14 A. Yes, sir.

15 Q. Forensic Services Section Investigative Report. You
16 make reference to finding the phone without the battery
17 pack in the seat of the chair?

18 A. Correct.

19 Q. No question about that?

20 A. That's correct.

21 Q. Do you make reference to finding the battery pack
22 ultimately on the floor?

23 A. Correct. Could I read it?

24 Q. Absolutely.

25 THE COURT: Any objection?

1 MR. WILSON: No, sir, I have no objections.

2 BY MR. HUMPHRIES:

3 A. There was -- in my report I found that on the seat of
4 one of the chairs of the dining table ---

5 THE COURT: Don't read it too fast. She has to take
6 down what you read.

7 WITNESS: Sorry.

8 BY MR. HUMPHRIES:

9 A. Found in the seat of one of the chairs at the
10 dining table was a cordless phone, white in
11 color, that was missing a battery pack. But
12 during the search of the area of the bar and the
13 bar stools, I located the battery pack, collected
14 both pieces into evidence.

15 Q. You trying to hide the fact that the phone without the
16 battery pack was first in the chair before you photographed
17 it on the floor?

18 A. No, sir. I just -- no, sir.

19 Q. Let me ask you this. In regard to your report, let's
20 stay right there. Do you write this report sequentially in
21 terms of what you see and what you do?

22 A. Correct.

23 Q. Chronological order?

24 A. Chronical [sic], in order.

25 Q. Would you refer again to your report in that same

1 paragraph? That would be the third paragraph on that page.
2 In that paragraph, do you discuss what you did
3 chronologically in terms of identification, processing, and
4 collection of evidence?

5 A. Yes, I did.

6 Q. Where do you record the processing or the location and
7 ultimate processing of the blood swab pictured in State's
8 20? Between what two events did that occur?

9 A. I'm reviewing my notes. Just one second.

10 Q. Sure.

11 (A PAUSE.)

12 A. I was, I was processing it. I was inside the kitchen
13 at the time I was processing it. I was processing the
14 countertop where the plate of food was. I was processing
15 it for latent prints at the time. I was dusting it for
16 fingerprints, and that's when I discovered the red colored
17 liquid, and that was between discovering the phone.

18 Q. Very good. Now, there is a time stamp on State's 20
19 which appears to be 2249.

20 A. Correct.

21 Q. And that's when you photographed it?

22 A. Yes.

23 Q. Let me ask you this. Before photographing, there's a
24 number 17?

25 A. Correct.

1 Q. What is that commonly called?

2 A. That's a evidence scale marker and it relates to my
3 number evidence 17, which seventeenth piece of evidence
4 that I collected.

5 Q. Is it your practice, are you trained when you observe
6 what you think could potentially be evidence in the case to
7 place an evidence marker beside it?

8 A. That's true.

9 Q. Do you do that throughout before you begin to take
10 photographs regarding those things? You understand my
11 question?

12 A. One more time.

13 Q. Do you first in going through a scene ---

14 A. Right.

15 Q. --- place those evidence markers at potential evidence
16 before ultimately taking those photographs?

17 A. I take the initial ones. I take the pictures as is
18 without any markers or anything placed anywhere. I'm
19 taking it just like it is when I see it, I initially find
20 it.

21 Q. And then you place a marker on it?

22 A. And when I discover some evidence, I'll place a marker
23 there and photograph it.

24 Q. And these evidence numbers, they're sequential?
25 They're in order?

1 A. Yes, sir.

2 Q. One through whatever?

3 A. Yes, sir.

4 Q. Is it then, does it follow then that 17 is located and
5 photographed after 16 and before 18?

6 A. It's after 16 and before 18.

7 Q. Let's talk about the fingerprints, latent fingerprints
8 at the crime, and tell the jury what a latent fingerprint
9 is.

10 A. A latent fingerprint is you can put your hand and
11 touch anything, an object or wall or anything, your car,
12 and a print, a latent print is a print that you can't see
13 until you actually apply dust, fingerprint powder to it,
14 and that's when it appears. It is invisible until you
15 actually apply powder to it and you have developed it.

16 Q. And latent really means hidden.

17 A. Hidden. It's hidden where you can't see it.

18 Q. Is there any rule of thumb, any, anything you go by
19 the determine how long latent fingerprints can be on the
20 surface before they're ultimately processed and lifted?

21 A. During my training and learning, a latent print, a
22 fingerprint can stay forever on anything until it's
23 actually disturbed.

24 Q. Depending on the environment and conditions?

25 A. Conditions or the environment, it can stay for

1 forever.

2 Q. Now let me ask you. Is it of any evidentiary value
3 whatsoever to compare the fingerprint impressions of
4 residents or frequent visitors to a home with a latent
5 print appearing in that home?

6 MR. WILSON: I object to the question. I think it's
7 a, that's a legal question as to whether or not it's of any
8 evidentiary value.

9 THE COURT: I thought he asked him was it, was it of
10 value to him as an investigator

11 MR. HUMPHRIES: Exactly.

12 THE COURT: The question is the value to you as an
13 investigator.

14 MR. HUMPHRIES: Thank you.

15 WITNESS: Answer it?

16 THE COURT: Yes.

17 BY MR. HUMPHRIES:

18 A. No, because they live there. That's their house.
19 They live there, so you're going to have fingerprints and
20 latent prints all over the house. They live there.

21 Q. So then would it have been any benefit to provide the
22 fingerprint impressions of J. [REDACTED] G. [REDACTED], Rebekah
23 Winkler, Roger Grainger to SLED for comparison when they
24 either lived there or frequent visitors?

25 A. No.

1 MR. HUMPHRIES: Thank you.

2 THE COURT: Would you like to have a couple more
3 questions?

4 MR. WILSON: Yes, sir, I do.

5 RECROSS-EXAMINATION BY MR. WILSON:

6 Q. You, you testified just a second ago that your
7 report's in chronological order and that you do this as you
8 go through, and that you chronologically list whether you
9 found the blood first or whether you found the cord phone
10 first or what you did first. Is that what you just told
11 the solicitor?

12 A. I go in the order as I arrive, and what I do find on
13 the initial walk through and the process, yes, sir.

14 Q. Are you telling me, then, that this report that he's
15 been referring to is in chronological order? You're not
16 saying that, are you?

17 A. In chrono...

18 Q. Chronological order, what that means is is that ---

19 A. Oh, I understand what that means.

20 Q. All right, sir, and are you telling me that you --
21 that these things are listed in chronological order because
22 he specifically asked you that question, and you told him
23 yes.

24 A. Right.

25 Q. And that is not true, is it?

1 A. I don't know what you're getting at.

2 Q. Well, what I'm getting at is read your report.

3 A. Okay.

4 Q. Right here, just read that. Read it.

5 THE COURT: When you say that, you've got several
6 colors.

7 MR. WILSON: I, I apologize. I pointed it to him. I
8 thought he saw me.

9 BY MR. WILSON:

10 Q. This part here where, where you talk about processing.

11 THE COURT: Read it slow, sir.

12 BY MR. WILSON:

13 A. As processing the door for footwear impressions.
14 Which are shoe prints.

15 Were, were developed on the apartment door.

16 There were, there were none.

17 Afterward, the wood chips and the parts of the
18 door lock was collected as evidence. On the
19 kitchen counter where the plate of food I
20 proceeded for latent prints and was able to
21 develop one partial palm print. And also
22 collected two swabs of reddish liquid-type
23 substance from the countertop.

24 Q. Go ahead.

25 A. Found on the seat of one of the chairs at the

1 dining table was a cordless phone, white in
2 color, that was missing a battery pack. But
3 during the search of the area of the bar and bar
4 stools, I located the battery pack and collected
5 both pieces as evidence.

6 Q. Continue.

7 A. Located on the east wall near the sliding glass
8 doors, a hole was discovered in the sheetrock
9 that measured 2 foot, 9 inches from the south
10 wall and 4 foot 1 inch from the floor up. It did
11 appear to have been made by some type of
12 projectile. I cut the sheetrock and removed the
13 section with the hole as evidence. I then
14 proceed to remove section of the drywall.

15 Q. All right, where on there does it talk about the blood
16 having been found because now you've found the, you've
17 found the phone. Where on there does it talk about the
18 blood having been found because the picture that we talked
19 about earlier, the blood was found at, if I make no
20 mistake, 2249. So, in your chronological order, which is
21 why I'm asking you this question, in your chronological
22 order from reading this, you've not read anything about the
23 finding blood yet. Or did you find the blood before? If
24 it's in chronological order, you would have had to have
25 found the blood first.

1 A. On the kitchen counter where the plate of food was, I
2 pressed it for latent prints. I was able to develop one
3 partial palm print, and also collected two swabs. So, I
4 collected the two swabs of reddish liquid while I was on
5 the kitchen counter.

6 Q. And, and, and in that report that you're reading to
7 us, you found the blood before you talk about the cordless
8 phone, don't you?

9 A. I -- yes, sir.

10 Q. All right. So, it's not in chronological order, is
11 it?

12 A. Not far as that part, no, sir.

13 Q. Well, not far as any part. You found, you found, you
14 took a photograph of this phone at -- what's the time,
15 2146, right?

16 A. Okay.

17 Q. 2146. So, you took that. You didn't find the blood
18 until what, 2249?

19 A. I saw it there, but I didn't collect it at the time.

20 Q. Well, now you're telling me now that you saw the blood
21 on the counter and you didn't take a picture of ---

22 A. At the time ---

23 Q. --- it for five hours?

24 A. At the time I didn't know it was blood. I collected
25 it. At the time, I didn't know. It was reddish liquid at

1 the time.

2 Q. Well, but ---

3 A. It was sitting ---

4 Q. Go ahead. I apologize.

5 A. It was sitting beside a plate of food. It could have
6 been ketchup.

7 Q. Now ---

8 A. I don't know, but I collected it though.

9 Q. So, what you're telling me now, and this is the first
10 time you've said this to me today, you're now telling me
11 that you found the blood earlier. You just didn't do
12 anything with it, and then you came back five hours later,
13 and then you photographed it? I thought you told me
14 earlier that you photographed -- as you found things, you
15 photographed them.

16 A. When I -- before I collected it. There's a plate of
17 food sitting at the table here. He was eating. Somebody
18 was eating. It appeared somebody was eating supper. Could
19 have been ketchup or anything at the time. I saw it, but I
20 did not collect it till later.

21 Q. Well, but back to my question.

22 A. Okay.

23 Q. Your report, the solicitor, the question originally
24 was in chronological order, is your report in chronological
25 order, and is it or isn't it? Simple as that.

1 A. It's markers, evidence markers. As I collect things,
2 I go from 16, 17, 18 chronological order that way as I
3 collect them. I collect evidence in order.

4 Q. All right, now. Well, now let me ask you another
5 question because there's been this issue about the battery
6 pack that you say that you found, and then you took the
7 battery and put it with the thing, with the cell phone.

8 A. Yes, sir.

9 Q. Show us a photograph that you took when you found this
10 battery pack.

11 A. I don't, I don't have a photograph of that, but it's
12 in my report. I don't have a photograph with me though.

13 Q. Well, you told us earlier that you photograph as you
14 go and that you don't move anything, you don't touch
15 anything until you photograph it.

16 A. Right.

17 Q. And I want to know where the photograph was showing
18 where you found that battery pack.

19 A. I don't have a photograph with me that shows the
20 battery pack, but I showed the photograph of the battery
21 and the phone itself and with the phone missing the battery
22 pack.

23 Q. But why wouldn't you have a photograph of the battery?
24 You say you found it.

25 A. Yes.

1 Q. And you say that you're -- this is all done
2 chronological order and you do it meticulously.

3 A. Right.

4 Q. But you don't take a photograph of where you found the
5 battery. You take them and all and put them -- take the
6 phone out of the chair, put it on the floor, and take the
7 battery pack and put it with it, and you put it between two
8 chairs that have turned over on the floor, and then you
9 bring that to us.

10 A. You said I turned two chairs over?

11 Q. No, sir. I'm saying between two chairs that were
12 turned over.

13 A. No. I ---

14 Q. I don't know how they got turned over.

15 A. No. I don't have a photograph of the battery itself.
16 But in my report, I showed I -- tells that I found the
17 phone without the battery. And later on during my search
18 of the, of the apartment, I located a battery, a cordless
19 phone battery. I just don't, I don't have a picture with
20 me showing the battery itself. But it's located beside the
21 bar stools.

22 Q. Now, in your report you said that you found the
23 battery pack in the area.

24 A. Right.

25 Q. Where the chairs were turned over, right?

1 A. Right.

2 Q. This is the photograph that you took of the area where
3 the chairs were turned over.

4 A. Correct.

5 Q. Show me where the battery pack is in that photograph.

6 A. You can't see it, but ---

7 Q. Can't see it?

8 A. But it's, but it's, it's there.

9 Q. It's there?

10 A. It's there behind the -- it's on the floor behind the
11 bar stool. But my angle where I took the photograph, you
12 cannot see, see the battery pack at this time.

13 Q. Can't see it, but it's there?

14 A. Yes.

15 Q. Now, who told you how to put -- who told you where to
16 put the phone and the battery pack when you got them both?
17 Who told you where to put them?

18 A. That was me. I took the photograph.

19 Q. All right. So, you just for no particular reason
20 decided to put it right down between the chairs that were
21 turned over and take a photograph of it?

22 A. I did. I photographed the phone itself when I found
23 the phone lying in the chair. And later on I took the
24 phone and laid it beside the battery I found on the floor.

25 Q. But isn't one of the cardinal rules about gathering

1 evidence is you don't move stuff, you don't tamper with it,
2 you don't change it, you don't alter it? Isn't that a
3 cardinal rule?

4 A. That's true.

5 Q. Of investigation?

6 A. That's true.

7 Q. And you talk about who's -- the solicitor asked you
8 questions about, well, who can, who, the people that came,
9 that some of them were trained, some of them were
10 detectives.

11 A. Right.

12 Q. Well, the solicitors train with y'all? Do they train
13 to go into crime scenes, to put on booties so that their
14 feet wouldn't take up hair samples or fibers or whatever
15 might be there? Did you put booties on them before you let
16 them in?

17 A. I, that night I don't know if they did or not, but
18 that's our protocol that we do wear booties, slips on our
19 shoes so we don't bring anything or take anything out.

20 Q. Well, and you didn't chauffeur them around, around the
21 scene because they were there for a period of time. You
22 didn't chauffeur them around, did you?

23 A. They could have been standing outside waiting to come
24 inside as far as I know. I was working, processing the
25 crime scene.

1 Q. Well, you told the solicitor a few minutes ago that
2 you don't even have to sign the log unless you're coming
3 through the tape.

4 A. Correct.

5 Q. So, they were inside the tape. Otherwise, they
6 wouldn't to sign the log.

7 MR. WILSON: I don't have any other questions.

8 WITNESS: Yes, sir.

9 THE COURT: Anything else?

10 FURTHER DIRECT EXAMINATION BY MR. HUMPHRIES:

11 Q. If I'm inside the tape, does that mean I'm inside the
12 house?

13 A. No, sir, because it was at the apartment complex and
14 it -- no, sir, and the apartment was upstairs inside.

15 MR. HUMPHRIES: Thank you.

16 THE COURT: All right, you may step down, sir. Thank
17 you very much.

18 (THE WITNESS EXITS THE STAND.)

19 THE COURT: Next witness, please.

20 MR. WILSON: May I approach and get my sheets?

21 THE COURT: Oh, yes.

22 MR. WILSON: Thank you.

23 MR. HUMPHRIES: Call the next witness, Your Honor.

24 THE COURT: Whose pen is that, by the way?

25 MR. WILSON: Pen? That's not mine -- that's mine.

1 THE COURT: I thought so.

2 MR. WILSON: Yes, sir. Thank you.

3 THE COURT: Call your next witness, please.

4 MR. HUMPHRIES: State calls Dr. Proctor.

5 EDWARD L. PROCTOR, JR., BEING DULY
6 SWORN, TESTIFIES AS FOLLOWS:

7 CLERK OF COURT: Please have a seat. Please state
8 your name and spell your last for the record.

9 WITNESS: Yes, ma'am. I am Edward Leroy Proctor, Jr.,
10 and that's P-r-o-c-t-e-r.

11 THE COURT: And, Doctor, thank you very much for
12 waiting. I know you've been waiting a while, sir.

13 WITNESS: Yes, sir.

14 THE COURT: All right, your witness.

15 MR. HUMPHRIES: Thank you.

16 DIRECT EXAMINATION BY MR. HUMPHRIES:

17 Q. Dr. Proctor, how are you employed, sir?

18 A. I'm self-employed.

19 Q. And in what capacity are you self-employed?

20 A. I am a physician engaged in the practice of pathology,
21 to include anatomic pathology, clinical pathology, and
22 forensic pathology.

23 MR. HUMPHRIES: Let me inquire at this time. Does the
24 defense stipulate to the qualifications ---

25 MR. WILSON: Absolutely.

1 MR. HUMPHRIES: --- of Dr. Proctor?

2 MR. WILSON: Absolutely. He is immanently qualified.

3 MR. HUMPHRIES: Your Honor, we would ---

4 THE COURT: You can introduce him, but you move now
5 to ---

6 MR. HUMPHRIES: I'm going ---

7 THE COURT: --- let him give opinion testimony?

8 MR. HUMPHRIES: Your Honor, I'm going to offer Dr.
9 Proctor as an expert in the field of forensic pathology.

10 THE COURT: Actually, and they will explain that
11 during questioning in a minute, so I'll explain that a
12 little for the jury.

13 What this means is normally a witness can only come to
14 the witness stand to testify what they perceive by their
15 senses: what they saw, what they heard, taste and smell,
16 things of that nature. However, if a witness is qualified
17 due to experience, education, licensure in certain fields
18 that are not common to the layperson, the court can qualify
19 that person to give opinion testimony.

20 Now, it doesn't mean you must accept the opinion
21 testimony. What it means is that opinion testimony becomes
22 evidence for you to consider along with all other evidence
23 in the case in reaching your own conclusion. You can
24 accept the opinion, reject the opinion, accept it in part,
25 reject it in part. That's totally up to you.

1 This person is a licensed medical doctor in the State
2 of South Carolina. He has also been trained in the area
3 of, and I assume board certified, in the area of pathology.
4 Therefore, I will permit him to give opinion testimony in
5 that area.

6 You may proceed.

7 MR. HUMPHRIES: Thank you, Your Honor.

8 BY MR. HUMPHRIES:

9 Q. Let's do this, Dr. Proctor. Let's explain to the jury
10 first what pathology is and then forensic pathology.

11 A. Yes, sir. Pathology is the field of medicine engaged
12 in both what we call anatomic and clinical laboratory work.
13 On the anatomic side, we actually examine specimens and
14 tissues that are removed at the time of surgery in a
15 doctor's office the render a diagnosis. We also do medical
16 autopsies, which is to determine the disease process that's
17 been involved in a person's life. But the clinical side,
18 we run blood bank, the microbiology section of the
19 laboratory, the chemistry section, and do all the tests
20 that you normally get performed when you go to a
21 laboratory.

22 Forensic pathology is very specific. It is the
23 medical legal evaluation of death. A forensic pathologist
24 is consulted in this county by the coroner and requested to
25 do an autopsy. And in a forensic case, the sole purpose is

1 to evaluate the deceased and work with investigative
2 authorities to determine the medical legal cause and manner
3 of death.

4 Q. Now, in conjunction with your qualifications and your
5 responsibilities, were you requested by the coroner of this
6 country to perform an autopsy on the body of Rebekah
7 Winkler?

8 A. Yes, sir, I was.

9 Q. If you will, tell the jury very briefly what's
10 involved in the performing of an autopsy.

11 A. Okay, the performance of a forensic autopsy is usually
12 initiated by investigative authorities. I am asked to do
13 an evaluation. I am given a history, usually brief at the
14 time because there's no a whole lot known, and my
15 evaluation consists of a complete external examination, a
16 dissection of the body to find the actual cause of death,
17 and then the performance of appropriate toxicologic studies
18 if necessary. And after all of that is done -- looking at
19 tissues under the microscope in addition -- we take the
20 history combined with our findings at the autopsy and
21 formulate a cause and manner of death.

22 Q. Did you do that in this case?

23 A. Yes, sir.

24 Q. What I'd like you to do at this point, Doctor, is
25 discuss your significant findings as it releases to the

1 autopsy performed on the victim.

2 A. The significant findings in this case were a gunshot
3 wound that this woman received with the entrance site in
4 the left cheek. This was a very close range wound because
5 there was around the entrance site a rim of what we call
6 stippling and residue. Stippling is caused -- are the
7 actual burn sites caused by the burning powder coming out
8 of the end of the gun. And residue is just residue of
9 power, the black smokey stuff that comes out of the smoke
10 -- comes out of the gun.

11 The residue was present. Had a rim of approximately 7
12 centimeters around the central entrance site and indicates
13 that this woman was shot at very close range, probably
14 within a distance of 12 to 18 inches and absolutely no more
15 than approximately 24.

16 The projectile passed anteriorly to posteriorly, left
17 to right approximately 15 degrees right of midline through
18 the base of the brain. Penetrated the brain stem, which is
19 the base of the brain that connects the brain to the
20 vertebral, the spinal cord. And exited the right occipital
21 area, or the posterior right side of the brain.

22 Q. And the angle it traveled, and you said anterior to
23 posterior.

24 A. Yeah.

25 Q. Of course, I've been with you enough to know that

1 means, but tell the jury what that means.

2 A. Okay, that literally means front to back. And using
3 myself, it entered the left cheek in this direction and
4 exited in the right posterior area.

5 Q. Let me ask you, if you will, I'm going to ask you to
6 step down with the court's permission ---

7 THE COURT: Now, could you speak very loud, Dr.
8 Proctor, please, sir?

9 MR. HUMPHRIES: And we usually don't have a problem
10 with that.

11 BY MR. HUMPHRIES:

12 Q. Come around, Doctor. Using this long dowel, I would
13 like you to demonstrate on me the bullet path in Ms.
14 Winkler.

15 A. Using Mr. Humphries, that's exactly where -- it
16 entered the left side approximately this direction, and it
17 came out just to the right of the victim's midline
18 posterior. I might push it all the way through, but
19 entered, entered here and out.

20 Q. And let's do this while you're still there and so it's
21 not on me. Give the jury the -- if this is the, if this is
22 horizontal, let's give them the angle elevation and
23 direction.

24 A. The actual path was -- with this being the horizontal
25 part of the body, it was actually fairly level going

1 through. My deviation was, you know, on midline slightly
2 to the victim's right side.

3 Q. Very good. Thank you, Doctor.

4 Let me ask you in, in connection with the bullet path.
5 Can you as a pathologist reliably tell a jury or anyone
6 else, for that matter, in what position the victim was
7 based solely on the wound pattern?

8 A. I can state from the standpoint of my training that
9 the position of the victim, whether laying down or
10 standing, would be somewhat difficult for me to say. I can
11 only state that the path was through the left cheek and out
12 the right occiput with the -- fairly horizontal.

13 Q. Very good.

14 A. Yes, sir.

15 Q. So then I believe it goes without saying you cannot
16 say whether the victim was fully erect, fully standing,
17 beginning to stand, or anything about her relative height,
18 the height at which she was at the time she was shot?

19 A. I can state from autopsy her height in inches. She
20 was approximately 67 inches tall, which is approximately
21 5-7, but in terms of was she standing or partially erect
22 when she was shot, no, sir, I don't know.

23 Q. Now, what was the result to Rebekah Winkler that came
24 from that particular wound?

25 A. The projectile that hit Ms. Winkler passed through the

1 pons. The pons is at the top of the brain stem, and it is
2 basically Grand Central Station for the brain. All of the
3 impulses, everything that occurs in the brain comes through
4 this central area. So, once that bullet hit the pons, it
5 is essentially instant.

6 Q. Having said that, would you expect any significant
7 motor movement on the part of the victim after having
8 received that particular wound?

9 A. The, the movement that you would expect from, say, Ms.
10 Winkler or anyone that receives this type of injury would
11 be mostly agonal movements. Just muscle contractions, that
12 kind of stuff, but any active motor functions such as
13 standing up, walking, that kind of stuff, no, sir, you
14 would not.

15 Q. Did you observe any other wounds, abrasions, cuts,
16 anything else to the body of the victim in this case?

17 A. The only other external injury or abrasion or
18 something of that nature other than some old scarring from
19 previous surgical procedures and whatnot was an abrasion at
20 the base of her left thumb.

21 Q. Showing you State's 29 which is in evidence. That of
22 course was taken at the crime scene. Does that reflects
23 somewhat that injured area?

24 A. Yes, sir, it does. It was, it was more visible from
25 the other side but that, that does, yes, sir.

1 Q. So, if her hand was in a palm upward position, it
2 would have been more visual than at this angle?

3 A. Yes, sir. That's a correct.

4 Q. Now, Doctor, can you tell us based on that finding how
5 Ms. Winkler would have sustained that injury?

6 A. I don't know.

7 Q. And let's just be clear. Would you expect any other
8 pathologist to know under the circumstances?

9 A. To my knowledge, no, sir. You know, many things could
10 have happened. I mean, you know, she could have sustained
11 it falling. She could have -- been a pre-existing
12 condition operation, abrasions or something that could have
13 happened before.

14 Q. Very good.

15 A. I really don't know.

16 Q. Doctor, let me ask you this. To a reasonable degree
17 of medical certainty, do you have an opinion regarding the
18 cause of death of Rebekah Winkler?

19 A. Ms. Winkler died as result of this gunshot wound to
20 the head causing massive damage to her brain stem.

21 Q. And to a reasonable degree of medical certainty, do
22 you have an opinion as to the manner of death of Ms.
23 Winkler?

24 A. Based upon my examination and the information I was
25 given at the time of autopsy, the manner of death in this

1 case would be homicide.

2 MR. WILSON: Thank you, Your Honor.

3 THE COURT: Cross-examination?

4 MR. WILSON: Yes, sir. Thank you, Your Honor.

5 CROSS-EXAMINATION BY MR. WILSON:

6 Q. Doctor, as I understand it, you got the body the same
7 day or the next day or do you recall?

8 A. Let's see, the autopsy was performed the day after the
9 incident.

10 Q. All right, sir, and essentially what you're telling us
11 today, as I understand it, is is that obviously she's dead
12 and obviously she was -- she died as a result of a gun shot
13 wound, and that that gun shot wound entered at a certain
14 angle?

15 A. That's correct.

16 Q. And that is the extent of what you're telling us in
17 terms of Rebekah Winkler's death and the fact that the
18 bullet did damage interiorly in her brain as it passed
19 through?

20 A. Yes, sir.

21 Q. And you're not telling us who shot her. Is that
22 correct?

23 A. That is correct.

24 Q. Do you have a time of death?

25 A. I have a time of death given to me by the coroner of

1 approximately 5:35 p.m. on March 6th.

2 Q. Okay. So, coroner gave you the time of death at 5:35
3 p.m.?

4 A. Yes, sir.

5 Q. Now, in all fairness, that is an estimate?

6 A. That is correct.

7 Q. And we usually can't tell at least within a matter of
8 minutes when a person died unless we're actually right
9 there when they die and see them killed?

10 A. That's correct.

11 Q. And you don't know actually when the coroner arrived
12 at the scene so he would have -- so, you wouldn't really
13 then know exactly when he made that determination?

14 A. No, sir.

15 Q. And how long she had been dead before he made that
16 determination?

17 A. No, sir, I do not.

18 Q. All right, sir. Now, let me ask you about the wound
19 on her hand; there was a wound on her hand. Let me show
20 you this picture. It might help you a little bit better
21 than the one the solicitor showed you. See if that's a
22 little clearer picture of the wound.

23 A. Yes, sir.

24 MR. WILSON: And, Your Honor, I asked this be marked
25 as an -- I'll show it to the solicitor.

1 (A PAUSE.)

2 MR. HUMPHRIES: No objection.

3 THE COURT: You want to have it marked, or you want to
4 introduce it?

5 MR. WILSON: I want to introduce it.

6 THE COURT: All right, go ahead and let her mark it.
7 Will this be 2?

8 COURT REPORTER: This will be 2.

9 THE COURT: It's in evidence, Defense Exhibit 2.

10 (PHOTOGRAPH MARKED INTO EVIDENCE AS DEFENDANT'S
11 EXHIBIT NUMBER 2.)

12 BY MR. WILSON:

13 Q. Now, Doctor, let me show you now what's marked as
14 Defendant's Exhibit Number 2 and ask you if that's a
15 photograph of the wound that you found on the hand of
16 Rebekah Winkler.

17 A. Yes, it is.

18 Q. All right, and would you describe that wound to us as
19 best you can?

20 A. This is a, an aberration of what I say recent origin
21 because you see the actual redness of the tissue. It
22 measures, based on looking at this, approximately 2
23 centimeters, just a little less than an inch. And it's at
24 the base of the thumb.

25 Q. Now, let me ask you in regards to that particular

1 wound. You said that you really can't tell where it comes
2 from, but you can eliminate the fact that -- or the
3 possibility anyway. Let me ask it that way. You can't
4 eliminate the possibility that wound could have come from a
5 struggle or a fight.

6 A. I, I, I -- I can say it's possible, but I cannot
7 eliminate it, no, sir.

8 Q. All right, can't eliminate it is what I ---

9 A. That's correct.

10 Q. That's my question. Now, did you conduct a toxicology
11 on Ms. Winkler?

12 A. I actually drew blood, and toxicologic evaluation was
13 actually performed by National Medical Services Laboratory,
14 yes, sir.

15 Q. All right, and what was her blood alcohol?

16 A. Her blood alcohol was 264 milligrams per deciliter.
17 To put that in the technology of, say, a breathalyzer exam
18 that is .26.

19 Q. .26 and legal intoxication in South Carolina now is
20 what, .8?

21 A. I think it's .08, yes, sir.

22 Q. All right, so it'd be three times plus ---

23 A. That's correct.

24 Q. --- legal intoxication?

25 A. Yes, sir.

1 MR. WILSON: I don't have any other questions.

2 THE COURT: Anything else, Mr. Humphries?

3 MR. WILSON: No. We ask this witness be excused, Your
4 Honor.

5 THE COURT: Doctor, you're excused. Thank you very
6 much.

7 WITNESS: Thank you, Your Honor.

8 (THE WITNESS EXITS THE STAND.)

9 THE COURT: Next witness, please.

10 MR. HUMPHRIES: Your Honor, could we take a very short
11 break at this point? We've got a number of exhibits we
12 need to mark.

13 THE COURT: All right, ladies and gentlemen, please
14 take a break. Do not discuss the case. Everyone else
15 remain seated, please.

16 (THE JURY EXITS AT 3:29 P.M.)

17 THE COURT: Just for making sure I've got the same
18 thing you all have, at this time for the state I have a 1
19 through 20 and 22 through 35, and then for the defense I
20 have 1 and 2. Is that y'all's record also? Madame Court
21 Reporter, is that what you have?

22 COURT REPORTER: Well, 35 was actually turned into a
23 court's exhibit.

24 THE COURT: 35 is a court exhibit?

25 COURT REPORTER: Right, it's a court exhibit, yes,

1 sir. So, it's 22 though 34.

2 THE COURT: All right, 35 is a court exhibit, then 1
3 is in. So, we've got 1 through 20 and 22 through 34, and
4 then 1 and 2 for the defense. So, just make sure no one
5 has any misunderstanding.

6 Okay, anything else? If not, take a break.

7 MR. HUMPHRIES: Thank you, Your Honor.

8 (OFF THE RECORD.)

9 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
10 37, 38, 39, 40, 41, 42 FOR IDENTIFICATION.)

11 (GREEN KNIT TOBOGGAN MARKED AS STATE'S EXHIBIT NUMBER
12 43 FOR IDENTIFICATION.)

13 (EIGHTEEN ROUNDS OF AMMUNITION MARKED AS STATE'S
14 EXHIBIT NUMBER 44 FOR IDENTIFICATION.)

15 (LOCK-BLADE KNIFE MARKED AS STATE'S EXHIBIT NUMBER 45
16 FOR IDENTIFICATION.)

17 (WALLET AND CONTENTS MARKED AS STATE'S EXHIBIT NUMBER
18 46 FOR IDENTIFICATION.)

19 (ARIEL MAP MARKED AS STATE'S EXHIBIT NUMBER 47 FOR
20 IDENTIFICATION.)

21 THE COURT: Everyone ready?

22 MR. WILSON: Ready, Your Honor.

23 THE COURT: Bring the jury in, please.

24 (THE JURY ENTERS AT 4:06 P.M.)

25 THE COURT: Okay, we're ready to proceed. Next

1 witness for the state.

2 MR. HUMPHRIES: State calls Toby Boyd.

3 THE COURT: Come around, Mr. Boyd, be sworn.

4 TOBY BOYD, BEING DULY SWORN,

5 TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: Please have a seat. Please state
7 your name and spell your last for the record.

8 WITNESS: My name is Toby Boyd, B-o-y-d.

9 THE COURT: All right, your witness.

10 MR. HUMPHRIES: Thank you, Your Honor.

11 DIRECT EXAMINATION BY MR. HUMPHRIES:

12 Q. Tell to this jury with whom you are employed.

13 A. I am employed with the Horry County Police Department.
14 I've been there nine years.

15 Q. Have you held various positions with Horry County
16 Police Department ---

17 A. Yes.

18 Q. --- since your hire?

19 A. Yes.

20 Q. Tell the jury in what division you were employed in
21 March to 2006.

22 A. I was a violent crime detective assigned to the
23 Violent Crime Unit in Horry County.

24 Q. And let me ask you. Did you have connection,
25 connections with your duties as a violent crime detective

1 with Horry County Police Department in March of 2006? Did
2 you assist in the search for or the apprehension of the
3 defendant, Louis Michael Winkler?

4 A. Yes, sir.

5 Q. Again, tell the jury what the date of the offense for
6 which we are here.

7 A. The actual homicide occurred on ---

8 Q. Yes, sir.

9 A. --- March 6, 2006.

10 Q. Are you aware of the efforts employed by the Horry
11 County Police Department and other agencies in attempts to
12 locate Louis Michael Winkler?

13 A. Yes, sir.

14 Q. Tell the jury, if you will.

15 A. After initially -- obviously we conducted a search of
16 the area. There officers that saturated the area in an
17 attempt to locate Mr. Winkler and was unable to do so in
18 the, in the days following the actual homicide.
19 Approximately one week into it, I would say that was on the
20 13th, we formed a task force to -- ultimately our goal was
21 to apprehend him, and we had on some nights five or six
22 different teams of two officers in plain clothes in some
23 areas where we thought he could have been located, some
24 areas where he had been seen. Or an area, I'm sorry, where
25 he had been seen once after the events occurred and we were

1 -- basically our goal was just to saturate the area, look
2 out for him. We'd hand out flyers, we asked questions and
3 pretty much just beat the bushes down. And that began on
4 the 13th and went through the day of the apprehension.

5 Q. What was the date of the apprehension?

6 A. The 20th, March 20, 2006.

7 Q. And do the math for us. How many days after the
8 incident?

9 A. Fourteen.

10 Q. Fourteen, thank you. Were you on site at the time of
11 the apprehension?

12 A. Yes, sir.

13 Q. All right.

14 A. In fact, I was the actual one that -- I mean, I was
15 the last one that spotted him in the wood line.

16 Q. Let's talk a little bit about that. Did you receive a
17 directive to go to a certain areas in connection with
18 Winkler?

19 A. Yes, sir. On the 20th at about 2:45, there was a call
20 to our dispatch center.

21 Q. And let me ask you. 2:45?

22 A. PM, 1445. That came into our dispatch center from the
23 area of Eagle Nest, Eagle Nest Golf Course.

24 Q. And what area of the county is Eagle's Nest Golf
25 Course?

1 A. Horry County, the Little River section of Horry
2 County.

3 Q. Okay.

4 A. Apparently a golfer out on the golf course had spotted
5 someone in the wood line. Knowing I guess that there was
6 a concentrated area there that they were searching, it
7 looked ---

8 MR. WILSON: Judge, I'm going to object. I don't ---

9 THE COURT: Sustaining, sustaining your objection as
10 to what he have thought someone know.

11 MR. WILSON: Yes, sir.

12 WITNESS: Okay.

13 MR. HUMPHRIES: Don't ---

14 THE COURT: I understand, Mr. Humphries. Only to the
15 point of him thinking someone knew something for whatever
16 reason.

17 MR. HUMPHRIES: Correct. The reason why he was there.

18 THE COURT: Right. Go ahead.

19 BY MR. HUMPHRIES:

20 A. Okay, we were there due to a call that came in from
21 our 911 center.

22 Q. All right. As a result of that call, how many agents
23 for the Horry County police department reported?

24 A. Dozens. I don't know exactly, sir.

25 Q. What other agencies were involved at that time?

1 A. We have our specialized teams, our SERT team, which in
2 essence is a SWAT type team and our bloodhound tracking
3 team throughout in our department, as well as we enlisted
4 the assistance of SLED and used their helicopter.

5 Q. Now, let me do to this.

6 MR. HUMPHRIES: Beg the court's indulgence.

7 BY MR. HUMPHRIES:

8 Q. Let me show you what's been marked State's 47 for
9 identification purposes. Can you identify this?

10 WITNESS: Can I stand up, sir?

11 THE COURT: If you need to stand up, sure. Speak loud
12 if you stand up.

13 BY MR. HUMPHRIES:

14 A. This is an ariel view of the, the actual incident
15 location as well as the apprehension area.

16 Q. Would it assist you in your testimony before this jury
17 today?

18 A. Yes, sir. I could point out some key points here.

19 (COUNSELORS CONFER.)

20 MR. WILSON: I have no objections, Your Honor.

21 THE COURT: Number?

22 MR. HUMPHRIES: Your Honor, that is State's 47.

23 THE COURT: All right, 47 into evidence without
24 objection.

25 (ARIEL MAP MARKED INTO EVIDENCE AS STATE'S EXHIBIT

1 NUMBER 47.)

2 MR. HUMPHRIES: And our court reporter is a
3 contortionist. Thank you.

4 Your Honor, I'm going to ask Mr. Boyd to step down at
5 this time.

6 WITNESS: Yes, sir.

7 THE COURT: You may do so.

8 MR. WILSON: Your Honor, I request permission to move
9 over.

10 THE COURT: You may do that.

11 MR. HUMPHRIES: If you will stand on the other side.

12 THE COURT: And, Mr. Wilson, that's a standing
13 permission. Any time a witness steps down, you may move to
14 wherever you wish to observe the witness's testimony.

15 MR. WILSON: Thank you, Your Honor.

16 BY MR. HUMPHRIES:

17 Q. If you will keep in mind that all of the jurors need
18 to see you as you testify, and so keep your voice up.

19 Now, can you tell me to what specific area -- well,
20 first of all let's orient the jury to this area. What's
21 located here? Identify some of the key locations, if you
22 will.

23 A. This is Highway 9 here. This is the beginning of
24 Highway 31, Carolina Place Parkway that goes southbound to
25 Myrtle Beach. Here is Patriot Golf Course. Here is

1 Eagle's Nest Golf Course, and Highway 17 would run along---

2 THE COURT: Real loud. She's having trouble.

3 BY MR. HUMPHRIES:

4 A. Highway 17 would run on this side of the, of the
5 actual photograph.

6 Q. Can you identify the location of Rebekah Winkler's
7 condo?

8 A. Yes, sir. Right here where this dot is at Bay Tree
9 Golf Course, 3700 Plantation Drive.

10 Q. All right.

11 THE COURT: Louder, louder.

12 BY MR. HUMPHRIES:

13 Q. You have to keep your voice up.

14 A. Okay.

15 Q. Where in what area were you deployed in connection
16 with the apprehension of Winkler?

17 A. Here on Eagle's Nest Golf Course. Is that better?

18 Q. Yes.

19 A. Here on Eagle's Nest Golf Course was -- he was spotted
20 in this area, or the person was spotted here. And as units
21 began to arrive, it became obvious that this was the area
22 right off of Bloom Drive that we needed to concentrate on.
23 That's where he was last seen by Mr. Devin, a witness
24 that's coming up later. So, we basically set up a type
25 perimeter around this area. The officers could see each

1 other. We knew he was pretty well contained on the inside,
2 and so it was here off of Bloom Drive where you see this,
3 these markers right here.

4 Q. All right. Now, you indicated to the jury earlier
5 that you actually were the last person to see him before he
6 entered the woods or the wood line?

7 A. Actually, he was in the woods, yes, sir.

8 Q. All right.

9 A. It was ---

10 Q. Tell the jury about that.

11 A. We was, we was set up right -- I was actually on the
12 perimeter in this area right here, and I spotted him moving
13 inside the perimeter.

14 Q. And can you tell me when you saw him, how was he
15 dressed?

16 A. Well, it was getting, it was -- I knew it dark, it was
17 dark pullover type -- it was getting, getting kind of late
18 in afternoon. I couldn't really say specifically but it
19 was obviously a male. I could see his, his features as a
20 -- would be a male in dark clothing. But me -- if I could
21 continue?

22 Q. Please.

23 A. The helicopter after arriving had scanned the area a
24 little a few moments and then went to North Myrtle Beach
25 airport to refuel.

1 Q. Yes.

2 A. And as he was returning is when I could hear him in
3 the background. I saw the defendant in the, in the wood
4 line and the ---

5 Q. And you said you could hear who in the background?

6 A. The helicopter was approaching from my rear, so.

7 Q. Okay.

8 A. He was coming back from North Myrtle Beach airport
9 after refueling.

10 Q. All right.

11 A. And I made radio contact with him from my position. I
12 told him the last place I'd seen him, 75, 50 or 75 yards
13 inside that perimeter area. The helicopter was able to
14 hover there, and members of our SERT team and bloodhound
15 tracking team had entered on foot and, and apprehended him
16 without, without any problems.

17 Q. All right, let me ask you this. There was -- well,
18 let me do this. Let me show you first of all a series of
19 photographs which been marked for identification purposes.
20 Let's start with State's 37 for identification purposes,
21 and don't publish that to the jury at this time, but tell
22 me if you can recognize it.

23 A. Yes, sir. I took this.

24 Q. And what is it?

25 A. It's a photograph of an abandoned semiautomatic -- or

1 semi truck, like an eighteen-wheeler type cab, and that was
2 in the, in the area where -- in fact, it was right up from
3 here was where he was actually apprehended. And that's
4 where we think he spent some of his time.

5 Q. Show to the jury, if you will, on State's 47 the
6 location of that semi.

7 A. It was here near the -- this point, right here on
8 Bloom Drive, and that's where it had been parked for some
9 time. As you can see, the grass was grown up around it,
10 and I don't know how long, but he been there for some time.

11 Q. Go ahead and have a seat. Now, you've testified that
12 you saw him or later we determined -- you determined to be
13 him.

14 A. Yes, sir.

15 Q. And directed the helicopter to that area?

16 A. Yes, sir.

17 Q. Direct the SERT team to that area?

18 A. Yes, sir.

19 Q. And you've told this jury that as a result of those
20 efforts, that Defendant Winkler was ultimately arrested?

21 A. Correct.

22 Q. Let me show you State's 42 for identification
23 purposes. Tell me if you can identify that photograph.

24 A. Yes, sir. I took, I took this picture, too, this
25 photograph. It's actually -- you want me to tell you what

1 it's of?

2 Q. Please.

3 A. It's the moment he came out of the woods after being
4 apprehended. He's, as you can see, he's surrounded by
5 members of our bloodhound team. And, in fact, there's a
6 member of our bloodhound team with the dog in the
7 background, and then that's the moment he came out I took
8 that photograph.

9 MR. WILSON: I don't have any objections, Your Honor.

10 MR. HUMPHRIES: Moving to introduce, Your Honor,
11 State's 42.

12 THE COURT: 42 in evidence without objection.

13 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
14 NUMBER 42.)

15 BY MR. HUMPHRIES:

16 Q. What was his general condition in terms of, for lack
17 of a better term, hygiene?

18 A. Sir, he, he could have used a shower. I don't know.
19 He had, he had been out there apparently a while. He
20 could...

21 Q. Let me, let me ---

22 A. He could have used a bath.

23 Q. Let me make it easier for you. Can you tell the jury,
24 was his physical condition and appearance consistent with
25 having been outside or in the woods from the time of the

1 homicide until the time he was arrested?

2 MR. WILSON: I object to the question. It calls for a
3 conclusion on the part of the witness about how -- he can
4 tell what he saw, but to have him to go that next step is
5 just his opinion.

6 THE COURT: Ask your question again, Mr. Humphries.

7 MR. HUMPHRIES: Your Honor, I'm not asking for an
8 expert opinion.

9 THE COURT: I know, but I didn't hear your question.

10 MR. HUMPHRIES: My question is was his general
11 condition, the condition of his hygiene consistent with
12 someone who would have been out of doors for the period of
13 time that they looking for him, approximately two weeks.

14 THE COURT: You mean you had -- was his condition such
15 that it appeared someone had been outside, the hygiene one
16 would normally get in a home for a period time?

17 MR. HUMPHRIES: Yes.

18 THE COURT: I'll let you ask that question.

19 MR. HUMPHRIES: That's the question.

20 THE COURT: Well, I know, but you can't say two weeks
21 or three weeks.

22 MR. HUMPHRIES: I understand.

23 THE COURT: Or one day or two days, but for some time.

24 MR. HUMPHRIES: Yes, sir.

25 BY MR. HUMPHRIES:

1 Q. Was his condition ---

2 A. Yes.

3 Q. --- consistent with someone who had been outside
4 for ---

5 A. A period of time, yes, sir.

6 MR. HUMPHRIES: Thank you. Answer any questions the
7 defense may have of you, sir.

8 THE COURT: Mr. Wilson?

9 CROSS-EXAMINATION BY MR. WILSON:

10 Q. Solicitor asked you about the arrest of the defendant.

11 A. Yes, sir.

12 Q. But now you were the chief investigating officer in
13 this entire case, right?

14 A. Yes, sir.

15 Q. And the ultimate responsibility for the entire case,
16 not just the arrest, but the entire case was yours, right?

17 A. Yes, sir.

18 Q. Ain't no question about that?

19 A. None at all.

20 Q. And let's talk about that for a minute.

21 A. Actually, sir, I, I inherited this a week into it.

22 Q. From Ann Pitts?

23 A. Detective Pitts initially had it. Due to a medical
24 problem, I got it on the 13th, so...

25 Q. Okay.

- 1 A. After the 13th was when I got it.
- 2 Q. You got it a week later?
- 3 A. Yes, sir.
- 4 Q. All right, and now let's talk about that. Did you go
- 5 to the autopsy?
- 6 A. No, sir.
- 7 Q. You didn't?
- 8 A. No, sir. Investigator Cooper went to the autopsy.
- 9 Q. Well, I notice in your report that you say -- let me
- 10 find it just so I can show you -- that you say that: The
- 11 report confirmed that the projectile taken from victim's
- 12 brain.
- 13 A. Yes, sir. That was a typo.
- 14 Q. Was a typo?
- 15 A. Yes, sir. It was a, it was a -- it wasn't in the
- 16 brain. It was through and through. I wasn't at the
- 17 autopsy, no, sir. That was a mistake that I made, a typo.
- 18 Q. Well, now, this report is dated March the 6th. Is
- 19 that right?
- 20 A. Which report, sir?
- 21 Q. The one that I'm holding here, or is this just the
- 22 date of the incident?
- 23 A. Yeah, that's the incident date.
- 24 Q. That's your incident date.
- 25 A. I didn't write this that day.

1 Q. All right. So, you didn't write it that day?

2 A. No, sir.

3 Q. You wrote it when?

4 A. After the investigation was concluded and I was
5 compiling my case file report.

6 Q. All right.

7 A. It would have probably been weeks later.

8 Q. And so when you say that, that there was a bullet
9 taken from her brain, that's not true, is it?

10 A. It was a typo, sir. No, sir, it's not true.

11 Q. All right.

12 A. It was a mistake that I made.

13 Q. All right.

14 A. There is no doubt about it. I made that mistake.

15 Q. All right.

16 A. But it was not in her brain. It was through and
17 through and came out of the wall.

18 Q. Okay, and let's talk about the other evidence that was
19 gathered because once you took over as the chief
20 investigating officer or detective for this case -- and
21 let's talk first of all. Let's go back and talk about your
22 experience. And how long have you been in law enforcement?

23 A. Fifteen years.

24 Q. Fifteen years, and how long have you been a detective?

25 A. Since May of '04.

1 Q. All right, and so at the time of this incident, you
2 would have been a detective for almost two years, short of
3 two months?

4 A. Yes, something like that.

5 Q. And having been a detective for two years, I'm sure
6 you would have investigated numerous cases?

7 A. Yes, sir.

8 Q. All right, and you know what the proper procedures and
9 protocol is and would be, right?

10 A. Right.

11 Q. And once you took over, then that responsibility for
12 making sure that these things are done falls to you, right?

13 A. Right.

14 Q. One of those things that would have fallen to you
15 would have been to make sure that the projectile -- that
16 is, this bullet that we've been talking about that you say
17 was found in the wall -- that it got to the right source,
18 right?

19 A. Yes, sir.

20 Q. And did you talk with the CSI guy, your crime scene
21 technician? Say hey, look, guy, this bullet needs to go to
22 DNA so we can determine whether this bullet ever was in her
23 brain?

24 A. There's no doubt I would have rather had DNA first.
25 That did not happen, and at your ---

1 Q. Go ahead.

2 A. It was a year later I think roughly after you and I
3 had discussed this that I sent it to them. It was
4 inconclusive at that point because it had been through
5 ballistics testing.

6 Q. But you ---

7 A. But yes, sir, you're right. I would, I would have
8 loved to had DNA first but that did not, that didn't
9 happen.

10 Q. It was a year later when I talked to you about it and
11 asked you had that been done and then it got done after
12 that, right?

13 A. Yes, sir.

14 Q. But at that time was too late. Wasn't no DNA on the
15 bullet, at least enough for them to test, right?

16 A. Right.

17 Q. So, it got gone. So, we don't know today who the DNA
18 on there, if any, belonged to who. And we don't know as a
19 result of that, then, whether that bullet was ever in her
20 head or not, do we?

21 A. It's the only bullet that was found in the building,
22 sir.

23 Q. That wasn't my question. My question to you was do we
24 know whether or not that bullet went through her brain?

25 A. We can't prove scientifically, no, sir. No, sir.

1 Q. We did not find a shell casing.

2 A. Correct.

3 Q. Now, being a detective, having been one for many years
4 and having this homicide case, did you happen to go to that
5 night to the scene?

6 A. No, sir. I was only involved the following week.

7 Q. Later on?

8 A. Yes, sir.

9 Q. Now, well let me ask you this. Were you in the
10 courtroom when your crime scene specialist Officer Cooper
11 testified?

12 A. Yes, sir.

13 Q. And are you telling me that it's standard protocol to
14 have nineteen people or eighteen people or fifteen people
15 different officers walk through the crime scene before CSI
16 completes it? Is that standard protocol in Horry County?

17 A. Each person had his own individual reason for being
18 there, and each individual had his own job. So, there's no
19 set number how many is too many. There's no -- it's
20 whatever it takes to take care of that.

21 Q. But you agree with me, would you not, that the more
22 people who trample through the scene, who walk through
23 there -- when you're in a crime scene, aren't you -- don't
24 you want to know, Detective, if there's some fibers there
25 that you might be able to get and use because the person

1 who's accused might have left some fibers on the carpet?
2 Or maybe he left some fingerprints on the door? Or maybe
3 there was some sand of a certain type on his shoe when he
4 left? Wouldn't you want to get those things, preserve
5 those things, send those things off?

6 A. Well, there was not nineteen people tramping through
7 the crime scene.

8 Q. Well, what word would you use for it?

9 A. I would say that they all came in and did their job
10 and removed themselves back. Being in the crime scene just
11 simply means inside the tape, Mr. Wilson. It doesn't mean
12 that he was, they were necessarily standing around looking
13 at the victim or, or, or touching anything. I -- that
14 doesn't mean that that's the case. It simply means that
15 they were inside the tape.

16 Q. Well, let's talk about that then.

17 A. And again, I was not there for that.

18 Q. Well, let's talk about that. When you say inside the
19 tape, you tape off the area that you're concerned about.

20 A. The bigger the better, yes, sir.

21 Q. Right, and ---

22 A. Probably, probably a parking lot was taped off as well
23 as the entire front ---

24 Q. Well, did you ---

25 A. --- entrance of the building.

1 Q. Go ahead.

2 A. And, I mean, being, standing in the parking lot, it's
3 doubtful that you would contaminate or, or damage the
4 integrity of that crime scene simply by standing on the
5 asphalt.

6 Q. Well, then if, if -- why would you cord it off? If
7 it's, if it's not ---

8 A. Because you want plenty of working room. You want
9 plenty of working room, and you've got all the time in the
10 world. Time's not an issue either. Once you start the
11 processing of a crime scene, you have as long -- as much
12 time as you need.

13 Q. That night you saw the crime log, the crime scene log?

14 A. I've seen it, yes, sir.

15 Q. And there ain't no question about how many people went
16 in and out of there, right?

17 A. No doubt, sir.

18 Q. And you don't know how long they stayed, do you?

19 A. No, sir.

20 Q. Because they didn't log out. So as far as that log's
21 concerned, they're still at the crime scene, aren't they?

22 A. There were a few he maybe -- I can't remember how
23 many, two or three that were signed out. It wasn't
24 properly timed, timed out, no, sir. For the most part, it
25 wasn't done correctly.

1 Q. Well, in fact, the solicitors didn't even log out
2 properly. I think Mr. Hembree did. The rest of them
3 didn't even bother to log out, did they?

4 A. Okay.

5 Q. True or not?

6 A. Yes, sir.

7 Q. Now, let's, let's go back and talk about something
8 else. As I understand it, in terms of the bullet, that was
9 found in the wall, right?

10 A. Yes, sir.

11 Q. Now, there was a cutting. What y'all did was once you
12 went to the crime scene and you cut out a little area where
13 the bullet actually went through the wall.

14 A. Yes, sir.

15 Q. Right, cut out that cardboard sheet, right?

16 A. Yes, sir.

17 Q. And I'm sure what you did with that cardboard sheet --
18 because that hole's in the cardboard sheet that the bullet
19 went through, right?

20 A. Yes, sir.

21 Q. So, you sent that cardboard sheet with the hole in the
22 middle to the DNA people so that they could test it in
23 order to determine if Rebekah Winkler's blood or her DNA
24 was in that hole that went through -- where the bullet went
25 through, right?

1 A. No, sir. The projectile was sent to SLED.

2 Q. Well, you didn't send ---

3 A. No, sir. The projectile.

4 Q. So, we didn't send that either?

5 A. Projectile, number 8.

6 Q. But now we're out looking for this guy, right?

7 A. Yes, sir.

8 Q. Tracking him down with bloodhounds and all this stuff,
9 but nobody's taking care of the evidence to see if we got
10 the right guy, right?

11 A. We were going on the eyewitness testimony.

12 Q. Going on the eyewitness testimony?

13 A. Yes, sir.

14 Q. Of course you've never had a person lie to you, I'm
15 sure. In all your years ---

16 A. Of course.

17 Q. --- of working in law enforcement, witnesses just
18 don't lie, do they?

19 A. No, sir, that's not the case at all.

20 Q. Not the case at all? In fact, they lie quite
21 frequently and sometimes not even lie. They just
22 misinform, right?

23 A. At times they do, sir.

24 Q. Right, and so if a eyewitness is wrong, we might very
25 well have the wrong man, right?

1 A. Yes, sir, you may if you go -- you don't just go by
2 that, on that alone. Certainly you couldn't. You
3 corroborate different things. You corroborate statements
4 made by them, and you, you know, make sure everything's ---

5 Q. Well, you got any other witnesses who says to you that
6 they saw this defendant fire a bullet and hit Rebekah
7 Winkler other than one person?

8 A. Sir, that's plenty for an arrest warrant, and that's
9 what we had that night.

10 Q. That's not my question to you, Officer. My question
11 to you is do you have any other single witness who says to
12 you ---

13 A. No.

14 Q. --- that they saw him fire a shot and shoot Rebekah
15 Winkler?

16 A. No, sir.

17 Q. Now, and I'll be through in just a minute. It's been
18 a long day, and I know we're all tired. I just want to ask
19 you one other thing. In regards to the house and to the
20 crime scene, the bullet that we found or that you found was
21 in on the bottom of the baseboard, correct?

22 A. Yes, sir. It was inside the drywall on the -- lying
23 on the two by four that's at the bottom of the wall.

24 Q. Okay. Now, there was insulation also inside the
25 interior of that wall, or was there?

1 A. I don't know, sir. It was an interior wall.

2 Q. Well, I know that, but my question is whether or not
3 there was insulation so that when the bullet pierced
4 through the sheetrock, whether or not if there was any
5 insulation in there, then that insulation might also ---

6 The COURT: All right, yes, sir?

7 MR. HUMPHRIES: I've, I've let this go on quite a bit.
8 I object at this time. He's asking an officer who was not
9 even at the scene about the collection of evidence. He's
10 had the witness who collected the evidence, which he did
11 ask. This witness cannot testify of his own personal
12 knowledge, and I object.

13 The COURT: Mr., Mr. Wilson.

14 MR. WILSON: Yes, sir.

15 The COURT: It does seem like he's got a point. I
16 mean, this witness wasn't there to collect the projectile.

17 MR. WILSON: I'm through just about anyway, Judge.

18 The COURT: All right.

19 MR. WILSON: It, it's ---

20 The COURT: Sustained. Next question.

21 MR. HUMPHRIES: Thank you.

22 MR. WILSON: Just give me one second, and I'll be
23 through.

24 BY MR. WILSON:

25 Q. Let me ask you. In terms of what evidence was sent to

1 SLED, as chief investigating officer, do you get to approve
2 or disapprove what CSI's going to -- crime scene
3 technician's going to send to SLED?

4 A. Well, ultimately, like you said before, the buck stops
5 here with me. But through having worked with those
6 individuals in the past you, you trust what they're doing
7 is correct. And so yes, sir, I, I -- it would be up to me,
8 I mean, ultimately.

9 MR. WILSON: Just bear with me one second, Your Honor.

10 The COURT: All right.

11 (DEFENSE COUNSELORS CONFER.)

12 MR. WILSON: I don't have any other questions. Thank
13 you so much, officer.

14 WITNESS: Yes, sir.

15 The COURT: Redirect?

16 MR. HUMPHRIES: No, Your Honor. Thank you.

17 The COURT: You may step down, sir.

18 (The WITNESS EXITS The STAND.)

19 The COURT: Next witness.

20 MR. HUMPHRIES: State calls Charles Devin. Mr. Devin,
21 come around and be sworn.

22 CHARLES DEVIN, BEING DULY SWORN,
23 TESTIFIES AS FOLLOWS:

24 CLERK OF COURT: Please have a seat. Please state
25 your name and spell your last the record.

1 WITNESS: My name is Charles Devin, D-e-v-i-n.

2 The COURT: And continue speaking into the microphone,
3 Mr. Devin. Thank you.

4 Your witness.

5 DIRECT EXAMINATION BY MR. HUMPHRIES:

6 Q. Mr. Devin, in what area of the county do you reside?

7 A. Little River.

8 Q. And are you employed on a full-time basis now?

9 A. No, just part-time.

10 Q. You, you wouldn't happen to be retired would you, sir?

11 A. Yes.

12 Q. And from what, what profession did you retire?

13 A. From federal government.

14 Q. You know, every time I ask somebody that, nobody ever
15 tells me where they worked in the federal government. They
16 all say federal government.

17 A. Army Corps of Engineers.

18 Q. There we go. Always makes me think they're some kind
19 of spy.

20 A. Right.

21 Q. Tell me how you are employed on a part-time basis.

22 A. Okay, I'm employed at Eagle's Nest Golf Course up in
23 Little River.

24 Q. And how are you employed there?

25 A. Bag drop.

1 Q. Say again? I'm sorry?

2 A. Bag drop. When people come in in the morning, the
3 afternoon.

4 Q. Gotcha. Let me ask you. Back in March of 2006.

5 A. Yes, sir.

6 Q. Were you employed there at Eagle's Nest as well?

7 A. Yes, sir.

8 Q. Okay. Let's talk a little bit about that day. Were
9 you working that day?

10 A. Yes, sir.

11 Q. Okay. Have many golfers on the course?

12 A. Yes, we did.

13 Q. Eagle's Nest is a pretty busy course, is it not?

14 A. Yes. That time of year especially.

15 Q. Had you heard of police efforts to locate a certain
16 individual in your area over the days preceding March 20th?

17 A. Yes, I did.

18 Q. So, you were aware of that?

19 A. Yes, I was.

20 Q. Did a suspicious individual come to your attention
21 while working there that day?

22 A. It was brought to my attention.

23 Q. Brought to your attention. By whom?

24 A. By our beverage cart girl.

25 Q. All right, and as a result of her having brought that

1 to your attention, what did you do?

2 A. Well, she said that some golfers had seen someone in
3 the woods on the fifteenth hole of the golf course.

4 Q. Okay.

5 A. And they were concerned.

6 Q. All right.

7 A. And I told her at that time, 11:30, 12:00, that I
8 couldn't go at that particular time. But as soon as I got
9 done doing what I was doing at the bag drop, I would take,
10 go out and take a look.

11 Q. Okay.

12 A. Well, she came back and mentioned that she saw him.

13 Q. Let me do this. Let me get you to speak up just a
14 little bit.

15 A. She mentioned that she saw him by the, the fourth
16 hole.

17 Q. By the fourth hole?

18 A. Which is by the men's and ladies' bathroom.

19 Q. All right.

20 A. Okay?

21 Q. Gotcha. Did you, after you got through with the
22 things that you were doing at the bag drop, take the
23 opportunity to go to that area to see if you could locate
24 that person?

25 A. Yes, I did.

1 Q. And to what area did you go?

2 A. To the fourth hole right by the bathrooms.

3 Q. Okay, and when you got there, did you see that person
4 that they'd been talking about?

5 A. No, I didn't, not at first.

6 Q. All right, so what did you do then?

7 A. Well, I stayed there for about two or three minutes,
8 and I saw no one. I scanned whole area, and I turned
9 around the golf club to go find the beverage girl to see
10 where in particular that area she had seen him.

11 Q. Okay.

12 A. As I did that, I caught something out of the corner of
13 my eye. Turned, and I drove over to that area, and it's a
14 grass area where the creek, you know, on the other side is
15 cleared out, woods.

16 Q. All right.

17 A. And, yeah.

18 Q. And once you got there, did you see anything?

19 A. Not at first, and I was, just, I just sat there.

20 Q. Okay.

21 A. But I knew there was something. Something had caught
22 my eye.

23 Q. Right.

24 A. And finally I saw something in the -- on the ground
25 move.

1 Q. Okay.

2 A. And that's when as I got up out of the cart, I could
3 see a jacket and a hood, and that was all I could see. So,
4 I mentioned that if you're there, you had best leave
5 because, you know, I'm going to call the police department.
6 You're on private property and so on.

7 Q. All right, let me, let me ask you this just so we can
8 be clear. When you said you saw a jacket and a hood.

9 A. Yeah.

10 Q. Was there somebody in that jacket and hood?

11 A. Sure was.

12 Q. Okay, all right. Makes me feel a little better ---

13 A. Yes.

14 Q. --- about you not talking just to clothes.

15 A. No.

16 Q. You called out to that person you better leave?

17 A. Yes, sir.

18 Q. Okay, and once you called out to that person, what
19 movements did that person make, if any?

20 A. None for probably about a minute.

21 Q. Okay.

22 A. Finally he got up this, and then that's when I
23 realized the hood was up over his head.

24 Q. Okay.

25 A. And only had a side view really of him. He, he didn't

1 face me.

2 Q. Okay.

3 A. And he turned and started to walk away.

4 Q. Started to walk away?

5 A. Yes, sir.

6 Q. To -- in what general direction?

7 A. Well.

8 Q. Towards what?

9 A. Towards the opening in the woods going in, inland from
10 where the golf course was.

11 Q. All right. Did you continue to watch him?

12 A. I certainly did.

13 Q. All right, and where did you see him go from that
14 point?

15 A. Well, about 150 yards or 100 yards out, I saw him make
16 a right-hand turn at the edge of the woods where I think
17 went around the corner.

18 Q. Okay.

19 A. And I just drove the golf cart around that perimeter
20 on my side.

21 Q. Okay.

22 A. The next hole was the fifth hole, which has a gated
23 driveway that goes up to a home up there. And I just
24 parked there I said, well, maybe he'll come around that way
25 because that was the way he was heading. I saw what looked

1 like a shed, when all of a sudden the door opened on it. I
2 realized it was a tractor, some tractor-trailer.

3 Q. Let me show you a series of photographs. I'm going to
4 show them, I'm going to show you four photographs: State's
5 37, 38, 39, and 40 for identification. First, can you
6 identify 37?

7 A. Yes, I can.

8 Q. What is that?

9 A. That's the tractor I saw.

10 Q. All right, let me show you 38 for identification.

11 A. That's the same one.

12 Q. And does it ---

13 The COURT: Sir, speak louder now. You've got to ---

14 BY MR. HUMPHRIES:

15 A. That's the same one.

16 Q. Is it a little closer?

17 A. Yes.

18 Q. State's 39.

19 A. Yes. Of, of course I didn't have a front view. I had
20 that side view, but yes.

21 Q. And State's 40 for identification purposes. Did you
22 ever approach the vehicle?

23 A. No. I certainly didn't.

24 Q. Very good.

25 MR. HUMPHRIES: Your Honor, at this time we move to

1 introduce State's 37 and 38.

2 MR. WILSON: Without objection, Your Honor.

3 The COURT: In evidence.

4 MR. HUMPHRIES: Thank you.

5 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
6 STATE'S EXHIBITS 37, 38.)

7 BY MR. HUMPHRIES:

8 Q. Now before I publish them to the jury, tell the jury,
9 where did you -- you said you saw him exiting the vehicle?

10 A. Yes, coming out of it.

11 Q. What side? The driver's side or ---

12 A. The passenger's side.

13 Q. The passenger's side?

14 A. Yes, sir.

15 Q. In fact, in State's 38 which is in evidence, the door
16 is pictured opened?

17 A. Correct.

18 Q. Okay, and is that the side that he came out of?

19 A. Yes, sir.

20 Q. Now this tractor-trailer rig, was it on the property
21 of Eagle's Nest, or was it just next to or adjoined to the
22 property?

23 A. Adjoined to. I don't believe it's on the property.

24 Q. Okay. When you saw this individual exit the passenger
25 side of that tractor-trailer rig, in what direction did he

1 go?

2 A. He, he turned and went to the right, which is heading
3 towards River Hills development.

4 Q. Okay.

5 A. I don't know if you're familiar with that.

6 Q. I'm with you, but River Hills is right next to Eagle's
7 Nest?

8 A. Yes, it is, and he had changed the jacket at that
9 point.

10 Q. That's what I wanted to talk about. When you saw him
11 first, what color jacket ---

12 A. I believe it was a gray hooded jacket.

13 Q. Okay, and when you saw him exit, do you recall how he
14 was dressed?

15 A. Yes. He had a black jacket on with no hood.

16 Q. No hood?

17 A. The other jacket he had on was with a hood.

18 Q. Okay. My wife says, she says I don't look. Showing
19 you State's 42.

20 A. It looked like that, yes.

21 Q. Looked like that?

22 A. Yes, sir.

23 Q. Okay. Where did that individual go next?

24 A. As I said, he started going towards River Hills, which
25 would be a southerly direction.

1 Q. Very good. What did you do as a result of that? Did
2 you say anything else to him?

3 A. No. He was too far away from me.

4 Q. All right.

5 A. I was waiting for a patrol car to come at that time.

6 Q. Well, let me, let me ask you. Did you or did you --
7 did you call law enforcement or did you ask someone to call
8 law enforcement?

9 A. I called the clubhouse and they called law
10 enforcement.

11 Q. Okay. Now, did you maintain your position there, or
12 did you go some place else before law enforcement arrived?

13 A. No, I maintained my position there. I sent the
14 beverage cart girl down to bring the police officer up.

15 Q. And very good, and did ultimately a police officer
16 come to your position?

17 A. Yes, he did.

18 Q. Okay. About what time of day was that? Was it...

19 A. It was after lunch. 12:30, 1:00 somewhere.

20 Q. Okay. Now, did you remain -- what happened to your
21 golf course once law enforcement showed up?

22 A. When the first officer came, I don't think that too
23 much. I think it was later on when the group of them came.

24 Q. All right, when a group of law enforcement came?

25 A. Yeah.

1 Q. Everybody finish their rounds?

2 A. Well, after that police officer arrived and went up to
3 the tractor area where he was, I left, I left there when he
4 came back because I had more -- another officer coming.
5 When I went down to bring that officer up, escort him up in
6 the golf cart, he was behind me. When I turned around,
7 probably about 200 yards up the first hole I had, probably
8 had about twenty cop cars beating me. The course was
9 pretty upset about it.

10 Q. I'll bet. I bet. In fact, did they close down the
11 course at that point?

12 A. No, no at that point.

13 Q. They didn't?

14 A. No.

15 Q. Okay, at some point?

16 A. Yes, we did.

17 Q. Okay.

18 A. Yes, sir.

19 Q. And were you there at the time of the defendant's
20 arrest?

21 A. I was, I was -- yes, I was working at the time he was
22 arrested. I didn't see him or ---

23 Q. Didn't see him again?

24 A. No, I didn't see it at the time.

25 MR. HUMPHRIES: Mr. Devin, I thank you.

1 WITNESS: You're welcome, sir.

2 The COURT: All right, cross-examination, Mr. Wilson.

3 MR. WILSON: Thank you, Your Honor. I just have a
4 couple of questions.

5 CROSS-EXAMINATION BY MR. WILSON:

6 Q. Now, sir, solicitor's asked you a whole bunch of
7 questions. Bottom line is you saw somebody you thought was
8 suspicious on your golf course. You called the police?

9 A. Yes, sir. Well, it was reported as suspicious, yeah.

10 Q. And you didn't see the person close enough to know who
11 it was, just that it was a person and that they were there?

12 A. Correct

13 MR. WILSON: I have no other questions.

14 The COURT: Anything else?

15 MR. HUMPHRIES: No, Your Honor. Thank you, though.

16 The COURT: You may step down, Mr. Devin. Thank you
17 very much.

18 WITNESS: Thank you.

19 (The WITNESS EXITS The STAND.)

20 MR. HUMPHRIES: State calls Scott Rutherford to the
21 stand.

22 WILLIAM SCOTT RUTHERFORD, BEING

23 DULY SWORN, TESTIFIES AS FOLLOWS:

24 CLERK OF COURT: Please have a seat. Please state
25 your name and spell your last for the record.

1 WITNESS: William Scott Rutherford,
2 R-u-t-h-e-r-f-o-r-d.

3 The COURT: Your witness.

4 MR. HUMPHRIES: Thank you, Your Honor.

5 DIRECT EXAMINATION BY MR. HUMPHRIES:

6 Q. How are employed?

7 A. Employed with Horry County Police Department.

8 Q. In what capacity are you employed with Horry County
9 Police Department?

10 A. Currently assigned as a captain to the Special,
11 Special Operations Division.

12 Q. And how long have you been employed by the Horry
13 County Police Department?

14 A. Sixteen and a half years.

15 Q. Let's tell the jury just a bit about what the Special
16 Operations Division is or entails at the Horry County
17 Police Department.

18 A. The Special Operations Division at the Horry County
19 Police Department consists narcotics and vice section,
20 warrant section, and all of the department's tactical or
21 special teams, which would include the warrant squad, SWAT
22 team, negotiations, and bloodhound tracking.

23 Q. And you're the captain of that division?

24 A. Yes, sir.

25 Q. Let me ask you, Captain Rutherford, in connection with

1 your responsibilities as the captain, and at that time were
2 you the captain of the Special Operations Division?

3 A. Yes, sir.

4 Q. In connection with your responsibilities as the
5 captain of the Special Operations Division of Horry County,
6 were you and your assets called upon to assist in the
7 apprehension and the arrest of Defendant Winkler?

8 A. Yes, sir, we were.

9 Q. And, in fact, how many times where your men and other
10 assets deployed during the two week period between the time
11 the murder occurred and the time of his arrest?

12 A. On three different occasions: March the 6th, March the
13 8th, and March the 20th.

14 Q. Let's go, if you will, to March the 20th. What of
15 your assets were employed on that day?

16 A. March the 20th we had six personnel from our
17 bloodhound tracking team, four personal from our SWAT team,
18 and we also we requested the assistance of SLED Aviation,
19 which they sent down two helicopter pilots that day.

20 Q. Did the, did the bloodhound teams search the
21 identified area that had been identified?

22 A. Yes, sir. We went to a location adjacent to Eagle's
23 Nest Golf Course at the end of Bloom Drive, I believe it
24 was, and started a track based on a possible sight of Mr.
25 Winkler that day.

1 Q. All right. Did there come a point that you were
2 notified of a subsequent or later sighting of Defendant
3 Winkler?

4 A. Yes. Yes, sir, there were two, two possible
5 sightings, sightings, yes, sir.

6 Q. All right, and let me refer you to the one from Toby
7 Boyd. Based on information you received from Toby Boyd,
8 what did you and your other men do?

9 A. Based on the information that was passed on to us from
10 the radio system by Detective Boyd, we had been in the
11 woods attempting to track the individual we believed to be
12 Mr. Winkler. It appeared through Detective Boyd's
13 observation that someone matching the same clothing
14 description and physical tried to breach the perimeter or
15 exit the perimeter of the wood line. And based on that
16 information, we tried to relocate to SLED helicopter over
17 that general area where Detective Boyd was and eventually
18 push our way through the wood line to that area where the
19 helicopter was hovering over this area.

20 Q. And tell the jury this. When you say push your, push
21 through that wood line, how, how do your men actually
22 deploy? I mean, are they side by side? Do they in it
23 random?

24 A. No, sir. When you identify an area that you're
25 tracking, it's basically spread out abreast, trying to keep

1 at least line of sight with the people beside you. You're
2 working off of a dog, following their tracking
3 responsibilities. But in this particular case, it was very
4 thick vegetation, pine thicket, and we were concentrating
5 based on his last sighting. We were concentrating on going
6 towards where we saw the helicopter hovering, trying to
7 spread out. Again, keeping people in sight, trying to push
8 that way and hopefully encounter this individual.

9 Q. Now, did you, in fact, encounter the individual you
10 were looking for?

11 A. Yes, sir.

12 Q. Tell the jury the facts and circumstances surrounding
13 that contact.

14 A. Like I said, once radio information was provided to us
15 that it appeared there was an individual that met the
16 physical description and the clothing description, we moved
17 in that direction. Wanting to say maybe ten or fifteen
18 minutes after started to move that direction, I heard two
19 of the individuals assigned to the bloodhound tracking,
20 Sergeant Green and Detective Larrimore, in a verbal yell
21 screamed contact, which for members on the woodland
22 tracking team, that tells us that they have made visual or
23 physical contact with somebody.

24 Q. What, what did you do then?

25 A. Based on hearing them identify them, that they had

1 made contact with someone, I went to the sound of where --
2 went in the direction of where I heard that sound come
3 from. And came upon them standing over, guns drawn, on an
4 individual that was laying face down the ground with his
5 hands behind his back.

6 Q. Now what, what was your responsibilities then after
7 approaching this individual who had guns drawn on him?

8 A. Based on what I saw when I approached this individual
9 laying on the ground, both of these tracking team members
10 had guns drawn on this individual, telling him to lay
11 still, I went up, put my hands on the individual's back,
12 retrieved a pair of handcuffs, handcuffed the individual,
13 and started patting him down looking for weapons and/or
14 contraband.

15 Q. Let's talk about that. When patting him down, did
16 you, in fact, recover a weapon or weapons?

17 A. Yes, sir, I did.

18 Q. Tell the jury what you what recovered.

19 A. In the process of patting him down, I don't know who
20 it was that, that said it, but someone in our group said
21 where's the gun. The individual made a comment that it's
22 in his pockets. At that time, I removed a Jennings firearm
23 .380 caliber pistol from the front right pants pocket of
24 this individual.

25 Q. Let me show you State's 36 for identification

1 purposes. Can you identify that firearm? You can take the
2 box.

3 A. Yes, sir. This matches the serial number and the make
4 and model of the one I depicted on the evidence sheet.

5 Q. Let me ask you. Did you -- after retrieving it and
6 after the defendant was brought out of the woods, did you
7 check that weapon to determine its status in terms of
8 whether it was loaded or not?

9 A. Yes, sir, I did.

10 Q. And what was the condition of the weapon?

11 A. It was -- it actually when it was taken off of the
12 defendant, it had the magazine still in the handle of the
13 weapon with five rounds of ammunition in the magazine.
14 There was not a live round in the port or tube of the
15 firearm, but there were five rounds in the magazine which
16 were in the handle on the weapon.

17 Q. Showing you State's 36-A, the five rounds.

18 A. Yes, sir.

19 MR. HUMPHRIES: Your Honor, at this time we move to
20 introduce State's 36 and 36-A into evidence.

21 CLERK OF COURT: Any objection?

22 MR. WILSON: My understanding is if -- it apparently
23 went to SLED at some point, and so the chain wouldn't be
24 complete.

25 MR. HUMPHRIES: No, sir.

1 The COURT: No, sir.

2 MR. HUMPHRIES: I'm sorry.

3 The COURT: I'll address him.

4 No, sir, the witness has identified this as the weapon
5 that he got off the defendant. As far as any analysis,
6 reports, or anything of that nature, that's something else.
7 But he has identified this as an item he got off, and he
8 says it's in the same condition it was when he got off, it
9 off of him as far as any tampering or any changing.

10 MR. WILSON: I understand and I understood him to say
11 that.

12 The COURT: Right.

13 MR. WILSON: What I'm saying, though, Your Honor, is
14 is that as I understand it, it went to SLED and it is
15 different, and I will do that on cross-examination, That's
16 fine.

17 The COURT: All right.

18 MR. WILSON: That's fine.

19 The COURT: Okay, in, in evidence. What numbers?
20 What numbers are they?

21 MR. WILSON: But ---

22 MR. HUMPHRIES: 36 and 36-A and ---

23 MR. WILSON: I am not consenting to it being admitted
24 at this point.

25 The COURT: Okay. In evidence.

1 MR. HUMPHRIES: All right, Your Honor, just, just for
2 the record's purposes, this is a firearm which has been
3 identified by serial number and is a non-fungible item and
4 therefore is not subject to the chain of custody.

5 The COURT: That's just what I ruled.

6 MR. HUMPHRIES: Yes, sir, I understand. Thank you,
7 Your Honor.

8 (PISTOL WITH CLIP MARKED INTO EVIDENCE AS STATE'S
9 EXHIBIT NUMBER 36.)

10 (FIVE CARTRIDGES MARKED INTO EVIDENCE AS STATE'S
11 EXHIBIT NUMBER 36-A.)

12 BY MR. HUMPHRIES:

13 Q. Did you ultimately have the ability to fully search
14 Defendant Winkler after his arrest?

15 A. Did a, an outside pat down of him and removed objects
16 from his pockets.

17 Q. Let me show you State's 44 for identification
18 purposes, and tell me if you can identify that.

19 A. Appears to be .380 caliber ammunition, which there
20 were eighteen rounds of .380 caliber ammunition removed
21 from the defendant's pants pockets.

22 Q. Are you ---

23 A. Also.

24 MR. HUMPHRIES: State's 44, move to introduce.

25 MR. WILSON: I have no objections.

1 The COURT: In evidence, 44.

2 (EIGHTEEN ROUNDS OF .380 AMMUNITION MARKED INTO

3 EVIDENCE AS STATE'S EXHIBIT NUMBER 44.)

4 BY MR. HUMPHRIES:

5 Q. Any other items of evidence?

6 A. Would you like me to read the entire evidence, list of
7 evidence that I took from him?

8 Q. Let me do this. Let me show you State's 45 for
9 identification purposes. Tell me if you can identify that
10 item.

11 A. Appears to be the guard lock-blade, lock-blade knife,
12 brown in color, that was also removed from the individual.

13 Q. From Defendant Winkler?

14 A. Yes, sir.

15 MR. HUMPHRIES: State's 45 we move to introduce.

16 MR. WILSON: No objections, Your Honor.

17 The COURT: In evidence.

18 (LOCK-BLADE KNIFE MARKED INTO EVIDENCE AS STATE'S
19 EXHIBIT NUMBER 45.)

20 The COURT: And just for record, the weapon has a
21 chain on it or cable that would prevent it from being
22 clicked by the trigger, and it's also unloaded.

23 MR. HUMPHRIES: Your Honor, that's correct. In fact,
24 that's been done by the Horry County Sheriff's Department
25 staff in order to secure the weapon consistent with their

1 protocol here in the courtroom.

2 The COURT: Just wanted to make sure the jury was
3 aware of that.

4 MR. HUMPHRIES: Yes, sir.

5 BY MR. HUMPHRIES:

6 Q. Showing you State's 46 for identification purposes.
7 Can you identify that item?

8 A. Yes, sir. It's a brown tri-fold wallet consistent
9 with the one that was also removed and indicated on the
10 evidence sheet.

11 Q. By whom?

12 A. I'm sorry, brown bi-fold wallet. By me.

13 Q. From the defendant?

14 A. Yes. Yes, sir.

15 MR. HUMPHRIES: State's 46, Your Honor.

16 The COURT: Any objection?

17 MR. WILSON: No objections.

18 The COURT: In evidence.

19 (WALLET AND CONTENTS MARKED INTO EVIDENCE AS STATE'S
20 EXHIBIT NUMBER 46.)

21 BY MR. HUMPHRIES:

22 Q. In State's 46 in evidence, in the picture window of
23 that wallet, what does that appear to be?

24 A. Appears to be a newspaper clipping, cutout of a
25 newspaper clipping.

1 Q. Article relating to what?

2 A. From the police blotter. It says: Little River woman,
3 fifty, shot and killed in condo.

4 Q. Whose identification is that?

5 A. It's a South Carolina driver's license belonging to
6 Louis Michael Winkler.

7 Q. Now, did you have occasion to collect other items of
8 evidence during your tracking of Mr. Winkler?

9 A. Yes, sir. As I mentioned earlier, there were two from
10 -- once our original track started, there were two
11 sightings, one prior to one that we've already talked with
12 Detective Boyd in which Officer Ed Gordon observed an
13 individual running into a block of woods. We went to that
14 location and retrieved a green knit cap and green knit cap
15 that was just found at the second entry point into the
16 woods. And I also believe there was a sweatshirt. Let me
17 look a second.

18 (A PAUSE.)

19 A. There was a rolled up sweatshirt that was laying just
20 inside the woods that was also pointed out for -- to be
21 picked up for evidence, evidence purposes also.

22 (SWEATSHIRT MARKED AS STATE'S EXHIBIT NUMBER 48 FOR
23 IDENTIFICATION.)

24 Q. Showing you State's 43 for identification purposes.
25 Can you identify that item?

1 A. Yes, sir. It's a green knit cap that was picked up
2 from the woods.

3 MR. WILSON: I have no objections.

4 The COURT: What number is that?

5 MR. HUMPHRIES: That is 43, Your Honor.

6 The COURT: State admits in evidence, in evidence.

7 (GREEN KNIT TOBOGGAN MARKED INTO EVIDENCE AS STATE'S
8 EXHIBIT NUMBER 43.)

9 BY MR. HUMPHRIES:

10 Q. And let me ask you about the sweatshirt. Did you have
11 any other description regarding the sweatshirt?

12 A. Based on where Officer Gordon indicated that he had
13 seen this individual run, we went into the block of woods
14 there. That's where the green knit cap was observed and
15 picked by myself. Approximately 50 yards further into the
16 woods, there was a rolled up gray sweatshirt that was lying
17 on top of some foliage and some leaves. Officer Gordon was
18 notified and told to mark that location so they could
19 retrieve the evidence at a later time.

20 Q. And are you aware of any other distinguishing factors
21 about that, that sweatshirt other ---

22 A. No, sir.

23 Q. --- than the fact it was rolled up?

24 A. Other than it was rolled up and we went, we went right
25 on by it.

1 MR. HUMPHRIES: Answer any questions defense may have
2 of you, sir.

3 The COURT: Mr. Wilson.

4 WITNESS: Yes, sir.

5 CROSS-EXAMINATION BY MR. WILSON:

6 Q. Officer Rutherford, as I understand it, you, you did
7 not have anything to do with the crime scene itself, right?

8 A. Yes, sir.

9 Q. Never went there, never saw what was there, right?

10 A. I don't believe I entered the crime scene, Mr. Wilson,
11 but I was at the Bay Tree condominiums on the night of
12 March the 6th.

13 Q. You were there on the night of March 6th. Did you
14 sign in on the sign-in sheet?

15 A. Like I said, I don't believe I went into the actual
16 crime scene, so no, sir, I probably would not have noted it
17 on the crime scene log.

18 Q. Okay, and what time were you there?

19 A. It was late, late evening. I'm not sure the exact
20 time, sir.

21 Q. Okay. Now, and other than being at the crime scene on
22 March 6th, did you have any other participation in the
23 gathering, collection, redistribution of any evidence that
24 might have been found at the crime scene?

25 A. No, sir, not at the original crime scene, no, sir.

1 Q. Did you do any interviews of any witnesses or anybody
2 who might be involved other than when you started the
3 search or was involved in a search?

4 A. No, sir.

5 Q. All right. So, you know nothing about it other than
6 the fact you went there that night and then began on March
7 the 8th when you started looking for the defendant, is that
8 right, and then again on the 20th?

9 A. Yes, sir.

10 Q. Now, I notice that you listed meticulously all of the
11 items that you say you found, right?

12 A. Yes, sir.

13 Q. And why do you do that? Why do you take the time to
14 meticulously lay out what you found and where you found it?

15 A. For documentation purposes in anticipation of ending
16 up in a courtroom.

17 Q. All right, and then you put that in your report,
18 right?

19 A. Yes, sir.

20 Q. And if it ain't in your report, you didn't do it, or
21 you sometimes just forget to put it in the report?

22 A. I try my best to document everything I did.

23 Q. Well, what about the bullets?

24 A. Excuse me, sir?.

25 Q. The bullets, the bullets that you say that you found,

1 what's -- I'm looking at what's marked as State's Exhibit
2 Number 44. You got a copy of your report there with you?

3 A. Got a copy of the evidence sheet where the notation of
4 the eighteen rounds ammunition was documented, yes, sir.

5 Q. Well, that's not my question. My question to you was
6 do you have a copy of your report that you did on this
7 case?

8 A. The investigative report?

9 Q. Yes, sir.

10 A. Yes, sir.

11 Q. Show me in that report where you found these bullets.

12 A. The notation of removing ammunition from the handgun
13 and/or Mr. Winkler's pocket's not noted on the incident
14 report or on the investigative report.

15 Q. So, there is no notation of this on your report and no
16 report of it in the incident report itself about any
17 bullets having been found on his person at the time he was
18 arrested?

19 A. Not other than the evidence sheet that I did when we
20 came out of the woods.

21 Q. All right. Now the evidence sheet, this is what
22 you're -- this is the form that you're talking about?

23 A. Yes, sir yes.

24 Q. And you're saying that you put it on this form and --
25 well, which, which one of these were done first?

1 A. The evidence sheet was done on the back of the patrol
2 car when we exited the woods.

3 Q. So, you did this form first?

4 A. Yes, sir.

5 Q. But then you didn't put it in the report?

6 A. No, sir. It's obviously not in the report.

7 Q. Okay. All right. Now, let me ask you in regards to
8 the green hat that you found, cap, knit cap I think is what
9 we called it marked State's Exhibit 43, right?

10 A. Yes, sir.

11 Q. Now, did you find this personally?

12 A. Yes, sir.

13 Q. All right, and did you find this on Mr. Winkler?

14 A. No, sir.

15 Q. Where did you find it?

16 A. In the woods.

17 Q. In the woods, and do you know long it had been there?

18 A. Based on the discussion with Officer Gordon, probably
19 thirty minutes, thirty to forty-five minutes.

20 Q. The green hat?

21 A. Yes, sir.

22 Q. All right, and you're saying to me, then, that you saw
23 Mr. Winkler or someone else saw him put it there? Is that
24 what you're saying?

25 A. Give me just a second, sir.

1 (A PAUSE.)

2 A. Yes, sir, Officer Gordon said that he saw the
3 individual throw it to the ground.

4 Q. Now, you then sent it to SLED, right?

5 A. I turned it over to an investigative detective once we
6 had exited the woods. I'm not sure exactly what's happened
7 to it after I turned it over to him, sir.

8 Q. All right. You find any other hats or caps?

9 A. No, sir.

10 Q. Now, the gun that you found was located where?

11 A. In his right front pants pocket.

12 Q. All right, and I understand you to say there was five
13 rounds in the magazine?

14 A. Yes, sir.

15 Q. But there were no rounds in the chamber?

16 A. Yes, sir.

17 Q. That's fair?

18 A. Yes, sir, that's right.

19 MR. WILSON: Just one second.

20 (DEFENSE COUNSELORS CONFER.)

21 MR. WILSON: I don't think I have any other questions.
22 I, I don't have any.

23 The COURT: Mr. Humphries?

24 MR. HUMPHRIES: Very briefly.

25 REDIRECT EXAMINATION BY MR. HUMPHRIES:

1 Q. You've got that evidence sheet we talked about?

2 A. Yes, sir, I've got a couple of it.

3 Q. Okay. Let's tell the jury just a little bit about
4 what that evidence sheet is supposed to accomplish. Why do
5 you do that evidence sheet?

6 A. Again like I explained to Mr. Wilson, it's
7 documentation while it's still fresh in your mind so that
8 if you ultimately end up sitting in this chair in a
9 courtroom, that you'll have the information in front of you
10 verbatim what you found so that it can be passed on to the
11 necessary people.

12 Q. Let me show ---

13 A. Also to establish a chain of custody.

14 Q. Very good. Let me show you this. Is this a true and
15 accurate copy of that evidence sheet?

16 A. Yes, sir. It's basically identical other than the
17 highlighting to the one I've got.

18 MR. HUMPHRIES: Move to introduce.

19 MR. WILSON: I object, Your Honor, but if you want to
20 admit it...

21 The COURT: Well, is there any controversy as to
22 what's on the evidence sheet?

23 MR. HUMPHRIES: Well, that's my point.

24 The COURT: I thought Mr. Wilson didn't intend to
25 present a controversy as to what's on the evidence sheet,

1 are you?

2 MR. WILSON: I'm not.

3 BY MR. HUMPHRIES:

4 Q. Let me ask it this way. Do you note on the evidence
5 sheet where you retrieved the eighteen live rounds of .380
6 ammunition?

7 A. Below the notation of the eighteen rounds of .380
8 caliber ammunition, there are astrix which indicate the
9 above items in the defendant's pants pockets when arrested.

10 MR. HUMPHRIES: Thank you. That's all, Your Honor.

11 The COURT: Okay, anything else, Mr. Wilson?

12 MR. WILSON: Well, there, there is something else
13 that's...

14 MR. HUMPHRIES: I can introduce it.

15 MR. WILSON: No, I'm not on that issue.

16 (EVIDENCE SHEET MARKED AS STATE'S EXHIBIT NUMBER 49
17 FOR IDENTIFICATION.)

18 RECROSS-EXAMINATION BY MR. WILSON:

19 Q. I'm asking you. In your report ---

20 MR. HUMPHRIES: That's not proper recross.

21 The COURT: Go ahead, Mr. Wilson. Ask your question.

22 BY MR. WILSON:

23 Q. In your report, did you also indicate that you had two
24 DVDs that you found?

25 A. In the report or on the evidence sheet?

1 Q. In the report.

2 A. Yes, sir, it indicated a clear plastic baggie with two
3 DVDs.

4 Q. And where were they found?

5 A. In -- on the evidence sheet that's showing the above
6 items were found in defendant's pants pockets.

7 Q. Two DVDs found in his pants pockets?

8 A. Yes, sir.

9 MR. WILSON: No other questions.

10 MR. HUMPHRIES: Nothing, Your Honor.

11 The COURT: Okay, step down. You have a piece of
12 evidence up here. If you would, hand that to the court
13 reporter.

14 MR. HUMPHRIES: I'll take it. Sorry.

15 (THE WITNESS EXITS THE STAND.)

16 The COURT: Will your next witness be a long witness,
17 Mr. Humphries?

18 MR. HUMPHRIES: No, sir. It will be a very short
19 witness.

20 The COURT: All right, let's bring him on around.

21 MR. HUMPHRIES: State calls Larry Graham.

22 LARRY GRAHAM, BEING DULY SWORN,

23 TESTIFIES AS FOLLOWS:

24 CLERK OF COURT: Please state your name and spell your
25 last for the record.

1 WITNESS: My name is Larry Graham, G-r-a-h-a-m.

2 The COURT: Please speak loud.

3 Your witness.

4 MR. HUMPHRIES: Thank you, Your Honor.

5 DIRECT EXAMINATION BY MR. HUMPHRIES:

6 Q. Mr. Graham, with whom are you employed?

7 A. Horry County Police Department.

8 Q. How long have you been so employed?

9 A. Ten years.

10 Q. And in what capacity are you now employed with the
11 Horry County Police Department?

12 A. Shift supervisor, assistant shift supervisor on the
13 road.

14 Q. On the road?

15 A. Yes, sir.

16 Q. What we call patrol?

17 A. Patrol division.

18 Q. Now, back in 2005 and 2006, in what position were you
19 employed with the Horry County Police Department?

20 A. I was a detective in the Violence Crimes section of
21 the police department.

22 Q. Now let me ask you.

23 MR. HUMPHRIES: And, Your Honor, this is a matter that
24 defense counsel and the state have previously talked about
25 in terms of parameters.

1 BY MR. HUMPHRIES:

2 Q. Let me ask you.

3 The COURT: Mr. Wilson, I assume you understand what
4 he's talking about?

5 MR. WILSON: I think so, yes, sir.

6 The COURT: Just let me know if you have any concern
7 with the state.

8 Proceed on.

9 BY MR. HUMPHRIES:

10 Q. Did you have an occasion to be present at a location
11 where a blood standard, among other items of evidence, were
12 collected from the defendant, Louis Michael Winkler?

13 A. Yes, sir, I did.

14 Q. And do you recall the nurse who collected those items
15 in your presence?

16 A. It's a nurse at the county hospital. I don't remember
17 the name at this time.

18 Q. But a medic, medical personnel collected an item of
19 evidence, this blood standard we referred to ---

20 A. Yes, sir.

21 Q. --- in your presence?

22 A. Yes, sir.

23 Q. And while observing that nurse, did you note whether
24 she changed it substantially as to form or content while in
25 her custody and control? Did she change the blood standard

1 that she took?

2 A. No, sir, not that I'm aware of.

3 Q. Not that you're aware of. Were you there the entire
4 time?

5 A. Yes, sir.

6 Q. And let me ask you this. What -- was that item, among
7 others, transferred to another detective in your presence?

8 A. Yes, sir.

9 Q. Okay, and who was that individual?

10 A. Detective Ann Pitts.

11 Q. Ann Pitts?

12 A. Yes, sir.

13 Q. And to the best of your knowledge, based on your
14 observations, was the blood standard of the defendant
15 transferred to Ann Pitts from the nurse in the same
16 condition in which it was received?

17 A. Yes, sir.

18 MR. HUMPHRIES: That's all we have for this witness.

19 The COURT: All right.

20 MR. WILSON: I have no questions.

21 The COURT: You may step down, sir. Thank you very
22 much.

23 (The WITNESS EXITS The STAND.)

24 The COURT: Okay, ladies and gentlemen, I'll let you
25 stretch your legs for a little bit. Please do not discuss

1 the case. We'll be back in just a short while. Step to
2 the jury room.

3 (The JURY EXITS AT 5:21 P.M.)

4 The COURT: I need some correction if I can. Somehow
5 I'm writing down the exhibits. Madame Court Reporter, when
6 Mr. Devin testified, what were the two numbers? I got 37
7 and what? Because I have 38 also on Rutherford.

8 COURT REPORTER: I have 37 and 38 with Mr. Devin.

9 The COURT: And with Mr. Rutherford?

10 If you would, everyone, please just a second.

11 COURT REPORTER: Mr. Rutherford 36, 36-A.

12 The COURT: Oh, I put 38, so it was 36-A?

13 COURT REPORTER: Yes, sir.

14 The COURT: That was the problem. I was wondering if
15 I had two 38s. Good, so that covers that.

16 And you still plan to stay with the same number that
17 you have on this list here?

18 MR. HUMPHRIES: Yes, sir.

19 The COURT: So, y'all are getting pretty close I would
20 say.

21 MR. HUMPHRIES: Say again, Your Honor?

22 The COURT: You're getting pretty close to your case?

23 MR. HUMPHRIES: Yes, sir.

24 The COURT: All right.

25 MR. HUMPHRIES: Well, yes, sir. We still -- I mean, I

1 would estimate we've at least got one and a half to two
2 hours of testimony.

3 The COURT: Okay, we might -- we'll get some of it
4 tonight. We won't get all of it tonight.

5 MR. HUMPHRIES: I appreciate it.

6 The COURT: All right, at this time we will adjourn.
7 Thank you, we'll be in adjournment, or recess rather.

8 (OFF THE RECORD.)

9 (HANDWRITTEN NOTE MARKED AS STATE'S EXHIBIT NUMBER 50
10 FOR IDENTIFICATION.)

11 (TAPE OF J [REDACTED] G [REDACTED]'S STATEMENT MARKED INTO
12 EVIDENCE AS STATE'S EXHIBIT NUMBER 51 FOR IDENTIFICATION.)

13 THE COURT: State's ready?

14 MR. HUMPHRIES: State's ready.

15 THE COURT: Defense ready? Where's Mr. Wilson?

16 MR. RATHBUN: They're going to get him right now.
17 They're going to get him right now.

18 (A PAUSE.)

19 THE COURT: All right, bring the jury in, please.

20 (THE JURY ENTERS AT 5:46 P.M.)

21 THE COURT: Okay, ladies and gentlemen, we'll continue
22 now. We're going to go maybe forty-five minutes, maybe it
23 will be a little longer. Let's wait and see. Then y'all
24 will be ready to have some good dinner, won't you?

25 All right, we're ready for the next witness. Next

1 witness, please.

2 MR. HUMPHRIES: State calls Ann Pitts.

3 THE COURT: Come around, Ms. Pitts, and I'll swear you
4 in. The clerk is doing some -- oh, there she is. I didn't
5 see you over there, Madame Clerk.

6 ANN H. PITTS, BEING DULY SWORN,
7 TESTIFIES AS FOLLOWS:

8 CLERK OF COURT: Please have a seat. Please state
9 your name and spell your last for the record.

10 WITNESS: Ann H. Pitts, P-I-t-t-s.

11 THE COURT: Ms. Pitts, you want to pull that down a
12 little bit? There you go.

13 Your witness.

14 MR. HUMPHRIES: Thank you, Your Honor.

15 DIRECT EXAMINATION BY MR. HUMPHRIES:

16 Q. Ms. Pitts, in March 2006 how were you employed?

17 A. I was employed with the Horry County Police Department
18 as a detective assigned to the Violent Crime Division.

19 Q. Now, are you employed in that capacity today?

20 A. I'm employed with the South Carolina Department of
21 Public Safety.

22 Q. Let me ask you. First of all, did you know the victim
23 in this case, Becky Winkler?

24 A. I did.

25 Q. Did you have an occasion on another matter to go to

1 her residence which was ultimately the murder scene some
2 time prior to the murder?

3 A. I did.

4 Q. And when arriving to that residence -- and do you know
5 the date?

6 A. It was I believe January 11th of 2006.

7 Q. Who was present when you are arrived that day?

8 A. Becky Winkler, J [REDACTED] G [REDACTED], and I believe her
9 daughter H [REDACTED] G [REDACTED] arrived after I arrived.

10 Q. Now when you were there, did Ms. Winkler, Becky, show
11 you anything?

12 A. She did.

13 Q. Let me show you what's been marked State's 10, which
14 is in evidence. Let me ask you. Can you identify that
15 item?

16 A. Yes.

17 Q. Before we go there, let me, let me go first to March
18 6, 2006. Were you at the crime scene on that evening?

19 A. I was.

20 Q. And did you observe what's pictured in State's 10 that
21 evening?

22 A. I did.

23 Q. Tell this jury. Did you ever have an occasion prior
24 to March 6, 2006, to see the handgun that's pictured in
25 State's 10?

1 A. I did.

2 Q. Tell the jury the circumstances under which you saw
3 the handgun and again the date.

4 A. On January 11, 2006, I went to Ms. Grainger's
5 residence, and when I arrived after a short while, she took
6 me into her bedroom and showed me that firearm. It was
7 under the pillow of the bed in her room.

8 Q. This same pillow?

9 A. Yes, sir, same ---

10 Q. This same bedroom?

11 A. Yes, sir.

12 Q. Almost two months before this incident?

13 A. Yes, sir.

14 Q. Did you have the opportunity, consistent with your
15 duties as a violent crime scene detective, to participate
16 in the search of Defendant Winkler's home on Bitter Spar on
17 March the 9th?

18 A. I did.

19 Q. Let me show you what's been marked State's 50 for
20 identification purposes. Can you identify that?

21 A. Yes, sir.

22 Q. What is it?

23 A. It's a piece of paper with a handwritten -- two
24 different addresses that are handwritten that was found at
25 his residence.

1 Q. Defendant Winkler's residence three days after the
2 homicide occurred?

3 A. Correct.

4 Q. Whose residence, that you're familiar with, whose
5 address is on this slip of paper?

6 A. One of them is Becky Winkler's address.

7 MR. HUMPHRIES: Move to introduce.

8 MR. WILSON: I have no objections.

9 THE COURT: And that is number?

10 MR. HUMPHRIES: That is number 50. In evidence
11 without objection.

12 (HANDWRITTEN NOTE MARKED INTO EVIDENCE AS STATE'S
13 EXHIBIT NUMBER 50.)

14 BY MR. HUMPHRIES:

15 Q. Ms. Pitts, let me ask you. We previously heard from
16 Larry Graham with the Horry County Police Department that
17 he was present at the collection of certain items of
18 evidence from the defendant, including a blood standard.
19 Were you present in the room at the time of the collection
20 of the blood standard?

21 A. No, sir.

22 Q. Tell the jury why you were not personally present.

23 A. Because as part of the protocol, they have to take
24 combings from a private area. Since he's male and I'm
25 female, it's not proper for me to be in the room. It's

1 proper for a male detective to be present, just as if it
2 was a female having the kit done, there would have to be a
3 female officer present. So, Detective Graham accompanied
4 me to the hospital and he was present when they did the
5 collection.

6 Q. After the collection, to whose custody would those
7 items, including the defendant's blood standard, transfer?

8 A. Directly from the nurse to me.

9 Q. While in your custody and control, did you
10 substantially change as to form or content the defendant's
11 blood standard?

12 A. No, sir.

13 Q. And to whom or to what department did you release or
14 transfer the defendant's blood standard?

15 A. To our evidence department.

16 Q. Now, on the evening of March 6, 2006, did you have
17 occasion to speak with J [REDACTED] G [REDACTED]?

18 A. I did.

19 Q. And in the context of speaking with J [REDACTED] G [REDACTED],
20 did you take an audio-recorded statement of his account of
21 what had occurred that evening?

22 A. Yes, sir, I did.

23 Q. Showing you State's 51 for identification purposes.
24 Can you identify that?

25 A. Yes, sir.

1 Q. What is it?

2 A. This is a copy of the original cassette tape of my
3 interview with J [REDACTED] G [REDACTED].

4 Q. And let me ask you. Have you had the opportunity to
5 fully review that cassette tape to determine its
6 authenticity?

7 A. Yes, as I have.

8 Q. And is it ---

9 A. Yes, it is.

10 Q. --- authentic?

11 A. Yes, sir.

12 Q. Does it fairly and accurately reflect the statement
13 you obtained from J [REDACTED] G [REDACTED] on March 6, 2006?

14 A. It does.

15 Q. At the time of the taping of this statement, who was
16 present, physically present in the room with you?

17 A. Just myself and J [REDACTED] G [REDACTED].

18 Q. Showing you a transcript. Have you had an opportunity
19 to review that transcript for accuracy compared to State's
20 51, the micro cassette recording of J [REDACTED] G [REDACTED]'s
21 statement?

22 A. Yes, sir, I have.

23 Q. And does it fairly and accurately transcribe that
24 statement?

25 A. Yes, sir, it does.

1 MR. HUMPHRIES: Your Honor, at this time we'd move to
2 introduce State's 51 for identification purposes.

3 MR. WILSON: For identification purposes, I have no
4 objection.

5 MR. HUMPHRIES: I'm moving -- beg the court's...

6 MR. WILSON: I object.

7 MR. HUMPHRIES: I'll just -- very good, and we can
8 take it up.

9 THE COURT: How do you address 801(d)(1)? You still
10 object?

11 MR. WILSON: Yes, sir.

12 THE COURT: (d)(1)(b).

13 MR. HUMPHRIES: That's the ground under which I ---

14 THE COURT: I'm asking Mr. Wilson this.

15 MR. WILSON: Yes.

16 THE COURT: Overruled under 801(d)(1)(b).

17 MR. HUMPHRIES: Thank you, Your Honor.

18 MR. HUMPHRIES: And, Your Honor, consistent with the
19 practice we've already begun in this trial, I would like to
20 mark the transcript as a court's exhibit. We have copies
21 prepared for court personnel and the jury which we would
22 like to provide to them during the playing of the
23 transcript.

24 THE COURT: All right, unless Mr. Wilson has objection
25 that the transcript is not accurate and what's on the tape.

1 MR. WILSON: Well, I don't know whether it is or is
2 not. I haven't read the transcript of it, so I don't know
3 if it's accurate or not accurate.

4 THE COURT: I will, the court reporter and I will go
5 along with it as it's being read.

6 If there's something there, Mr. Humphries, you do it
7 at your own peril. Do you want to wait to have someone
8 read it, or are you ready to go?

9 MR. HUMPHRIES: Your Honor, I've had this witness and
10 my administrative assistant go word for word.

11 THE COURT: And make sure I have a copy of this
12 transcript.

13 MR. HUMPHRIES: Yes, sir. Mark as a court's exhibit?

14 THE COURT: Yes. The tape is 51, right?

15 COURT REPORTER: Yes, sir.

16 (TRANSCRIPT OF J [REDACTED] G [REDACTED] S STATEMENT MARKED
17 INTO EVIDENCE AS COURT'S EXHIBIT NUMBER 20.)

18 THE COURT: And by the way, if y'all would so that ---

19 (COUNSELORS CONFER.)

20 THE COURT: For the record, if y'all would, Mr.
21 Humphries, you and Mr. Wilson approach here. And, Madame
22 Court Reporter, would you stand up here, please?

23 (THE FOLLOWING CONFERENCE IS HELD AT THE BENCH.)

24 THE COURT: I guess I should have required you to say
25 about attacking the [inaudible] ---

1 COURT REPORTER: I'm sorry. I can't hear.

2 THE COURT: Go ahead and say why you want me to state
3 why I shouldn't let you put that in.

4 MR. HUMPHRIES: Because there's two -- attacking the
5 credibility, specifically the allegation of recent
6 fabrication. These are prior consistent statements.

7 THE COURT: Is this about the dad did it? This about
8 the dad, stepdad thing?

9 MR. HUMPHRIES: Right. Exactly.

10 THE COURT: And what would you like to say, Mr.
11 Wilson?

12 MR. WILSON: Of course I said I object when he
13 testified. He, he testified that -- he said his story was
14 that -- what he said to me today was the first time that he
15 said it. That's what he said. I didn't make it up. He
16 said it.

17 THE COURT: Said what?

18 MR. WILSON: That, that what he said on the witness
19 stand was the first time he said that today.

20 THE COURT: Quiet, please.

21 MR. HUMPHRIES: I have no idea what he's talking
22 about.

23 THE COURT: I don't either.

24 MR. WILSON: When J [REDACTED] testified on the witness
25 stand, I asked him about what he, where he was and what he

1 saw. And he testified to me that he told the solicitor he
2 actually saw the shooting.

3 THE COURT: Oh, no, no, I'm not sure the statement's
4 about that, but if it is ---

5 MR. WILSON: It is.

6 MR. HUMPHRIES: It's particularly about his saying the
7 stepdad, dad. This is a prior consistent statement which
8 supports his testimony.

9 THE COURT: Anyway, I just want to get some stuff on
10 the record. 801(d)(1)(b) is what you are seeking?

11 MR. HUMPHRIES: Yes, Your Honor.

12 THE COURT: In evidence.

13 (END OF CONFERENCE AT THE BENCH.)

14 THE COURT: In evidence.

15 MR. HUMPHRIES: Thank you.

16 (TAPE OF [REDACTED] G [REDACTED]'S STATEMENT MARKED INTO
17 EVIDENCE AS STATE'S EXHIBIT NUMBER 51.)

18 MR. HUMPHRIES: At this time, the state requests
19 permission to publish State's 51 in evidence over
20 objection.

21 THE COURT: It's in evidence. You may.

22 (TAPE OF [REDACTED] G [REDACTED]'S STATEMENT PLAYED FOR THE
23 COURT.)

24 THE COURT: In making my ruling, by the way, of
25 801(d)(1)(b), I looked at the first sentence and thought

1 that he was here. I assume you'd have him ready if anyone
2 wishes to call him?

3 MR. HUMPHRIES: Yes, sir. No question. He's here.

4 BY MR. HUMPHRIES:

5 Q. One final thing, Ms. Pitts. When, when you went to
6 the crime scene March 6th and were able to enter the crime
7 scene, did you note whether the volume on the TV was on or
8 mute?

9 A. And last part of that trailed off.

10 Q. I'm sorry. You're right. I turned my back to you. I
11 apologize. Did you note whether the volume on the TV was
12 on or muted?

13 A. And television was on and the mute was in, in bold
14 letters on the screen.

15 MR. HUMPHRIES: Answer any questions defense may have.

16 THE COURT: Mr. Wilson?

17 MR. WILSON: Thank you, Your Honor.

18 CROSS-EXAMINATION BY MR. WILSON:

19 Q. Detective Potts [sic], you were actually the original
20 chief investigating officer on this case, right?

21 A. Yes. Yes, sir.

22 Q. And you are the one who signed off on this log with
23 all the people coming in and out of the crime scene, right?

24 A. No, sir.

25 Q. You didn't sign it?

1 A. I didn't fill it out.

2 Q. Well, I didn't ask you that. I asked if you're the
3 one that signed off on it. Did you or didn't you, or do
4 you know?

5 A. I can't recall if -- when the officer hands it to us.

6 Q. Well, let's show it to you so we can help you, okay?
7 That's you, right?

8 A. Yes, sir.

9 Q. All right, and at that time you were the chief
10 investigating officer in this whole crime scene. That was
11 your responsibility. No question but that, is there?

12 A. Just to sign a log?

13 Q. No, that's not what I asked you, ma'am. I simply
14 asked you whether or not you were the chief investigating
15 officer and you were responsible for this crime scene.

16 A. Yes, sir.

17 Q. All right, and you talked with J [REDACTED], right?

18 A. I did.

19 Q. You had been to the crime scene, right?

20 A. Yes.

21 Q. Did you ask J [REDACTED] anywhere other than where, ask
22 him where he was so that he could see this shot being
23 fired? Did you ever ask him that?

24 A. I asked him where he was.

25 Q. And what did he tell you?

1 A. That he was on the floor.

2 Q. Where on the floor?

3 A. He fell from the bar stool.

4 Q. I'm sorry?

5 A. He fell from a bar stool and was on the floor of the
6 living room.

7 Q. Where? Show me one picture, one photograph, one
8 statement showing, telling us where J [REDACTED] was at the
9 time this shot was supposedly and allegedly fired.

10 The kid told you he was on the floor, did he got?

11 A. He did.

12 Q. And you didn't think to ask him, well, J [REDACTED], could
13 you have seen? Where in the world were you laying on the
14 floor? If he's laying on his back, how in the world could
15 he have seen? Did you think to ask him that as the chief
16 investigation officer of this case? Don't you think that
17 might just be an important little detail?

18 And you're here today for what reason? You don't work
19 for the county police anymore, right?

20 A. That's correct.

21 Q. You work for another agency.

22 A. Correct.

23 Q. And did you hear J [REDACTED] testify in this court?

24 A. No, sir.

25 Q. You don't hear? So, you don't even know what he said,

1 do you?

2 A. No, sir.

3 Q. So, you don't know whether or not what he said is
4 consistent or inconsistent ---

5 MR. HUMPHRIES: Your Honor, I'm going to object as
6 to ---

7 THE COURT: If you would just ask her a question.

8 MR. HUMPHRIES: Thank you, Your Honor.

9 MR. WILSON: I apologize. He's absolutely correct,
10 Your Honor, and I apologize.

11 THE COURT: I was correct, too.

12 MR. WILSON: Yes, sir.

13 MR. HUMPHRIES: You were.

14 MR. WILSON: You're always correct, Your Honor. I
15 apologize.

16 BY MR. WILSON:

17 Q. But did you ever go to the house after J [REDACTED] told
18 you where he was laying? That he was on the floor? Did
19 you ever go back to that house and find out where he was
20 laying so you could measure maybe the height of the couch
21 or whatever it was that he was behind or near so that you
22 could make your determination for yourself as the chief
23 investigating officer as to whether or not this kid could
24 have seen what he told you he saw?

25 A. I didn't take any measurements, sir. Crime scene

1 processes the scene.

2 Q. And truth of the matter is you had a kid who said this
3 is what I saw. End of story. Didn't matter because you
4 had a kid who said this is what I saw. That's how we got
5 here, isn't it? That's a question.

6 MR. HUMPHRIES: Your Honor, we might ---

7 THE COURT: Need to approach?

8 MR. HUMPHRIES: We might need to approach.

9 THE COURT: All right, come on up.

10 (OFF-THE-RECORD BENCH CONFERENCE.)

11 MR. HUMPHRIES: Your Honor, we'd like the opportunity
12 to address the court outside to the presence of the jury.

13 THE COURT: Okay, ladies and gentlemen of the jury, I
14 don't want to let you go right now. I may end up letting
15 you go before you come back in, but I'm not sure. So, if
16 you would just step to the jury room a little bit, just for
17 a little bit.

18 (THE JURY EXITS AT 6:25 P.M.)

19 THE COURT: Now just for information purposes, is
20 there anyone in the courtroom who's here with a juror? I
21 mean, not here with a juror. Related to a juror or
22 anything of that nature? I just want to make sure I don't
23 have anyone here who's going to be on the phone with a
24 juror.

25 (THERE IS NO RESPONSE.)

1 THE COURT: Okay, all right.

2 Madame Court Reporter, just so we know what was said
3 at the bench, the state is concerned with the last question
4 Mr. Wilson asked about that's how we got here. That they
5 contend they have other reasons why we got here that they
6 have not introduced because of fear of being 403 or not
7 coming under 404(b) and -- I think it's 404(b), isn't it?

8 And so I, I also let Mr. Wilson know I haven't ruled
9 at all, but if he opens the door, then of course I have to
10 rule if they intend to do it. And he said, well, that he
11 was going to ask the questions that he felt appropriate.
12 And I said okay, you may continue then as long as you know
13 they have told you that that may end up with them
14 attempting to open the door to other acts, which I not
15 aware since I've not been aware of any -- or have not been
16 made aware of anything in any, in the other hearings.
17 These issues have not come up.

18 Now, Mr. Wilson.

19 MR. WILSON: Yes.

20 THE COURT: Mr. Hembree, Mr. Humphries, Mr. Rathbun,
21 since all four of y'all are here, does that accurately sort
22 of reflect what we discussed at the bench ---

23 MR. WILSON: Yes, sir.

24 THE COURT: --- off the record?

25 MR. HUMPHRIES: Yes, sir.

1 MR. WILSON: That does, Your Honor.

2 THE COURT: And then as y'all walked back, Mr.
3 Humphries said that he would like to discuss it on the
4 record outside the presence of the jurors. So, that's
5 where we are right now.

6 MR. HUMPHRIES: Thank you, Your Honor. This in my
7 mind is a critical juncture in terms of where we are in
8 this case. There is, and the court will hear should we
9 proceed to the second phase of this case, prior acts of
10 violence against this victim, including an extenuated
11 kidnapping situation and continuous raping of this victim
12 and beating of this victim by this defendant, substantiated
13 not only by that witness's statement but by photographs and
14 by DNA evidence.

15 This defendant was arrested. He was placed in the
16 detention center and after several, after two attempts to
17 have his bond reduced was granted bond. Initially denied
18 bond. He was on house arrest at the time of this incident.

19 He owed Becky Winkler \$1,000 which had just come due
20 that Friday which he had not paid in family court. There,
21 there are other acts of violence which would certainly ---

22 THE COURT: Mr. Humphries, I'm aware of what you're
23 saying there. The issue that I informed Mr. Wilson was
24 that if he makes a point of saying the only reason we're
25 here is because of the comments of J [REDACTED] G [REDACTED], that,

1 that -- and you argue it's not, that's one thing. I'm not
2 sure it goes to the extent you said. But if you have other
3 -- if he wants to proceed in that regard and if he is
4 making a case that the only reason that the officer did as
5 he did in charging Mr. Winkler is because only of the
6 statement of Mr. Grainger, if, if he is proceeding in that
7 regard, then all I can tell you is you have a right to
8 introduce evidence that contradicts that in your view.

9 If you intended to do that and he proceeds in that
10 regard, though, then I will strictly review the evidence
11 before you will introduce that evidence.

12 So, now that doesn't mean that everything you said is
13 relevant to the comment about or the focus of Mr.
14 G[REY]'s statement, young Mr. G[REY]'s statement as to
15 putting Mr. Winkler at the, at the building or at the room
16 at the condo on that particular day. But I think that's
17 the focus.

18 MR. HUMPHRIES: I understand that, Your Honor, but my
19 point is this. That's a question. He can ask any question
20 he wants, but that question elicits ultimately or
21 potentially evidence which could pollute this case.

22 THE COURT: All I can say, and I know you want to put
23 it on the record, but all I can say is this. That if he
24 proceeds with questions that in his line of questioning
25 that would be -- and in an effort to show that the only

1 evidence the state has of Mr. Winkler being there or doing
2 this act is Mr. G[REY]'s, young Mr. G[REY]'s comments,
3 then all I can say is you're entitled to put up evidence to
4 contradict that or to support your theory if it's under
5 attack. I cannot say what, what I will allow in until I've
6 heard it. So, I'm not saying that.

7 But you've put on the record that you've told them
8 that your position is if he introduces or opens the door,
9 in your view you're going to attempt to go through that
10 door.

11 MR. HUMPHRIES: Yes, sir.

12 THE COURT: All right.

13 MR. WILSON: Judge, just so I'm heard and my position
14 is clear. If I ask this witness about whether or not, and
15 I have tried to focus on the things that are relevant to
16 this homicide, and what they are talking about are prior
17 bad acts, not this homicide. I, I have not asked anything
18 about any prior bad acts. And they've come close to
19 eliciting information about prior bad acts. I am not
20 asking anything, and I've made a conscious ---

21 THE COURT: Mr. Wilson, I agree that you have not.
22 When you make a, when you ask the question is that the only
23 reason we are here, that I think, Mr. Wilson, does go
24 beyond just discussing the issue of crime scene and all
25 that. That in essence indicates that the only reason that

1 the police or anyone would have to suspect Mr. Winkler of
2 this crime or look for him would be because of Mr.
3 G[REY]'s comments.

4 MR. WILSON: But, Judge, prior bad acts wouldn't ---

5 THE COURT: I'm not saying prior bad acts is going to
6 come in.

7 MR. WILSON: Right, and ---

8 THE COURT: I haven't ruled they're coming in either.

9 MR. WILSON: My, my point is is this. My point is is
10 that prior bad acts wouldn't come in even if that were
11 true. That, that, that what they're, what they're
12 attempting, what they want to do is to put in prior bad
13 acts of this defendant, which I don't see how that's
14 relevant to whether or not he committed this crime or not.
15 He, you know, even if he, even if he assaulted her nine
16 hundred times -- which I don't know if they can prove it or
17 not -- but assuming that he did and assuming that it was
18 all true and they could prove it beyond a reasonable doubt,
19 what in the world does that have to do with whether or not
20 he murdered her, which is why we're here. That's the only
21 reason we're here.

22 THE COURT: Evidence of other crimes or wrongful acts
23 not admissible to prove the character of the
24 person in order to show acts performed therewith.
25 It may, however, be admissible to show motive,

1 identity, existence of a common scheme or plan.

2 MR. HUMPHRIES: Yes, sir, and let me be clear.

3 THE COURT: I don't need to read the last phrase
4 because that doesn't apply, but that's what I'm assuming --
5 I'm not saying it is admissible, Mr. Wilson. I'm not
6 saying that. Now, if y'all desire for us to have -- if you
7 want to proceed, you want me to have a hearing on a certain
8 thing you want to introduce and all, I'll have a hearing.

9 MR. WILSON: No, sir. It ain't that big; it's not
10 that important to me.

11 THE COURT: Well, it's very important, I think.

12 MR. WILSON: She, she -- well, no, I'm talking -- I
13 apologize. I didn't mean it that way, Your Honor. I'm
14 saying in, in terms of the question that I asked, I'm not
15 that concerned about the question. I -- you know, that's
16 fine. I withdraw the question if that, if that makes it
17 all ---

18 THE COURT: I'm not saying, I didn't say -- make
19 anything, Mr. Wilson.

20 MR. WILSON: No, I understand.

21 THE COURT: I've made no rulings.

22 MR. WILSON: No, I understand that. I understand. I
23 understand.

24 MR. HUMPHRIES: And, Judge, I want to be clear. The
25 state has zero desire to bring those facts before this jury

1 in the guilt phase. On the other hand, placed in a corner
2 unfairly, we may very well not have an option. That's my
3 point. I don't want, we don't want to ---

4 THE COURT: Mr. Humphries and Mr. Hembree, you all try
5 your case.

6 MR. HUMPHRIES: And we will.

7 THE COURT: That's up to you all. I'm not saying you
8 can't introduce it because no one's asked me to rule on it.
9 I'll be glad to rule on it if it comes up. You've put on
10 the record, once again, as Mr. Hembree did earlier that if
11 -- in your view if Mr. Wilson persists in his questions,
12 you all are going to attempt to introduce the information,
13 and I would make a decision under 404 and 404 if that were
14 to be done. Okay, is everyone clear?

15 MR. HUMPHRIES: Yes, sir.

16 MR. WILSON: I'm clear. Thank you.

17 THE COURT: So, do you want to ask other questions of
18 this witness?

19 MR. WILSON: I have a couple more questions.

20 THE COURT: All right, bring the jury back in. I am
21 going to tell the jury I sustain the objection on the last
22 question.

23 (A PAUSE.)

24 (THE JURY ENTERS AT the 6:36 P.M.)

25 THE COURT: Ladies and gentlemen of the jury, the last

1 question, I sustain the objection to the last question.

2 Please disregard.

3 Next question.

4 MR. WILSON: Thank you, Your Honor.

5 BY MR. WILSON:

6 Q. Now, ma'am, back to this whole thing with you going to
7 -- well, let me back up for just a second. Let me go back
8 to the crime scene. After you got the statement from
9 J [REDACTED], and you're the one who took it personally, right?

10 A. Yes, sir.

11 Q. And that's the statement you brought in here today?

12 A. Correct.

13 Q. And you know what it said, right?

14 A. Yes, sir.

15 Q. Tell me what you did to go back and investigate after
16 you got that statement at the crime scene.

17 A. I remained on scene until crime scene was finished
18 processing the scene, and I had already been to the crime
19 scene prior to interviewing J [REDACTED], so I'd already seen
20 the bar stools that were knocked down was consistent with
21 the statement.

22 Q. Okay.

23 A. They had fallen on the floor.

24 Q. Were you there when the crime scene guy took the
25 pictures?

1 A. Not the whole time. I was involved. I was
2 interviewing J [REDACTED].

3 Q. Well, did you see the pictures the next day?

4 A. I don't know if it was the next day.

5 Q. Well, when you got the pictures, did you go back to
6 J [REDACTED], say J [REDACTED], show me where you were in these
7 pictures and where you were standing or sitting or laying?

8 A. No, sir.

9 Q. Did you ever measure the height of any of the couches
10 in the home?

11 A. No, sir.

12 Q. Now, in his statement you said to the solicitor that
13 you had read his statement and compared it to the tape, and
14 word for word that was what it says, right?

15 A. Yes, sir.

16 Q. And he told you in that tape, did he not, or on that
17 statement he told you that he saw the defendant walk up to
18 his mom, put it right upside her head, and shoot her.
19 That's what he told you, is it not?

20 A. Yes.

21 Q. And you did nothing to determine whether or not that
22 was factual or not, did you?

23 A. I didn't take any measurements that day.

24 Q. Well, what else did you do to verify?

25 A. I relayed the information to crime scene on the scene.

1 Q. Relayed them?

2 MR. WILSON: I don't have any other questions.

3 MR. HUMPHRIES: Just briefly, Your Honor.

4 THE COURT: Yes, sir.

5 REDIRECT EXAMINATION BY MR. HUMPHRIES:

6 Q. Prior to interviewing J [REDACTED] G [REDACTED], did you to
7 have the opportunity to walk through and observe the entire
8 crime scene?

9 A. Yes.

10 Q. Having that knowledge, during the interview of
11 J [REDACTED] G [REDACTED] was there anything in that interview that
12 you found inconsistent with the crime scene that you had
13 just observed?

14 A. No, sir. Everything was consistent with what I found
15 inside that residence.

16 Q. Referring you to his interview and your questions:
17 After he hit you and you fell -- over on page 7 at the top
18 of the page -- what took place next? That would be his
19 second response. What did he say to you?

20 A. I was sitting on the floor and he was leaning
21 over me. He's, like, you're gonna -- you told
22 people you were gonna kick my butt or whatever.
23 And I'm, like, no, I never said that. And then
24 he just walked over to Mom, and she stood up off
25 the couch and he shot her and she fell down. He

1 walked back over to me and he just kept looking
2 at me and acting like he was going to shoot me.

3 And I just said don't shoot me, don't shoot me.

4 Q. Let me ask you this. This statement was taken on
5 March 6, 2006. Do you recall approximately what time that
6 statement was taken?

7 A. I don't recall when it started, but I do, I did have
8 an end time on the tape.

9 Q. 1924, what time is that?

10 A. That's military time, 7:28.

11 Q. Two hours after that shooting?

12 A. I'm sorry?

13 Q. Two hours approximately after?

14 A. Yes, sir.

15 Q. To your knowledge, was this the first opportunity he
16 had to give a full statement regarding what had happened?

17 A. Yes, sir.

18 MR. HUMPHRIES: Thank you.

19 MR. WILSON: I don't have any other questions. Thank
20 you, ma'am.

21 THE COURT: You may step down.

22 (THE WITNESS EXITS THE STAND.)

23 THE COURT: Can I see y'all at the bench for a second?

24 (OFF-THE-RECORD BENCH CONFERENCE.)

25 THE COURT: Okay, ladies and gentlemen, we are going

1 to break at this time. We'll start again tomorrow morning
2 at 9 am, starting at 9 am tomorrow morning. And please do
3 not discuss the case among yourselves. Do not watch any
4 news shows at all. If some question there's -- Mr. McLeod,
5 if there's a news show, you let me know. But anyway don't
6 watch any news shows and just enjoy your evening, and we'll
7 see you tomorrow morning.

8 Try to get them here around quarter of, ten minutes,
9 something like that. We'll get started.

10 I don't want to get started until I know y'all are in
11 that jury room, but we can do what need to do, and then
12 we'll bring y'all on out. See tomorrow morning. Leave
13 those papers there with you.

14 (THE JURY EXITS AT 6:44 P.M.)

15 THE COURT: Okay, now, as I understand it, you all
16 feel that you have about an hour left?

17 MR. HUMPHRIES: Your Honor, we have maybe an hour and
18 a half, hour and fifteen minutes to go.

19 THE COURT: All right.

20 (A PAUSE.)

21 THE COURT: We'll start them tomorrow morning at 9 and
22 we will, we will go from there.

23 By the way, we also want to make sure the record is
24 clear that my ruling on the 801 or 801 -- is it 801 or ---

25 MR. HUMPHRIES: 801, Your Honor.

1 THE COURT: 801(d)(1)(b) that I observed in the
2 courtroom that young Mr. G [REDACTED] was in the courtroom and
3 was available and subject to cross-examination. That he
4 was still here. And, Mr. Wilson, I'll make sure Mr.
5 Humphries knows that if you still wish to call him back, if
6 you wish to or at any time now have him come back, he's
7 available, and so I just wanted to make sure he's available
8 in that regard.

9 MR. WILSON: Thank you, Your Honor.

10 THE COURT: All right, you'll see you all then
11 tomorrow morning 9 am.

12 MR. HUMPHRIES: Thank you, Your Honor.

13 THE COURT: Good night.

14 (WHEREUPON, THE CASE IS AT EASE.)

15 SATURDAY, FEBRUARY 2, 2008

16 (COURT RESUMES AT 9:16 A.M.)

17 THE COURT: Be seated. State ready?

18 MR. HUMPHRIES: State's ready, Your Honor.

19 THE COURT: Defense ready?

20 MR. WILSON: As soon as the defendant comes out, we're
21 ready.

22 THE COURT: All right.

23 (A PAUSE.)

24 THE COURT: Just to make sure that my ruling was clear
25 yesterday -- not ruling, my lack of ruling was clear

1 yesterday that I in no way want to inhibit the defense from
2 asking whatever questions they wish to ask that are within
3 the rules. And in addition, though, I am in no way telling
4 the state that I would or would not rule regarding any
5 evidence they wished to introduce. What I was only doing
6 yesterday was making sure that each side noted the other's
7 position because the court has taken no position one way or
8 the other unless the issue is brought before me. As y'all
9 know, I make advisory rulings.

10 Please, Mr. Wilson, and please, Mr. Humphries, don't
11 take anything I said yesterday as a, as any sort of
12 projection of my rulings or decisions. Y'all have not
13 shared some information with me that the state contends
14 some door opening would introduce, and so I haven't
15 evaluated it.

16 And, Mr. Wilson, of course in your questions you have
17 you feel in defense of your client, no one wants to
18 prohibit you unless something happens, an objection's made,
19 and I will rule on it. So, I don't want the record to or
20 you all to feel that your question yesterday, that I would
21 have sustained the objection had you not said you withdrew
22 the question. So, the only reason I sustained the
23 objection was that you said you withdrew the question
24 voluntarily.

25 Now, any questions about what I just said from the

1 state?

2 MR. HUMPHRIES: No, Your Honor.

3 THE COURT: From the defense?

4 MR. WILSON: No, sir.

5 THE COURT: All right. Then let's go ahead then and
6 proceed. Is the next witness for the state ready?

7 MR. HUMPHRIES: Yes, Your Honor.

8 THE COURT: All right, bring them in, please. Bring
9 the jury in.

10 Cell phones off everyone. Everyone check, please.
11 Visitors, interested parties, media.

12 (THE JURY ENTERS AT 9:21 A.M.)

13 THE COURT: Good morning, ladies and gentlemen. I
14 understand fourteen of you had a good dinner at California
15 Dreaming last night. Sorry about the one that -- I hope
16 that's all right. Hope everything's okay and you got a
17 good breakfast this morning, and everybody's ready to go.

18 Before we, before we begin, did anyone discuss this
19 case with anyone, hear anything about it since we left last
20 evening? If so, let's me know now.

21 (THERE IS NO RESPONSE FROM THE JURY.)

22 THE COURT: Okay, any polling requested by the state?

23 MR. HUMPHRIES: No, Your Honor.

24 THE COURT: Any polling requested by the defense?

25 MR. WILSON: None, Your Honor.

1 THE COURT: All right, ladies and gentlemen, as you
2 recall we were proceeding with witnesses for the state. We
3 will proceed now with further witnesses for the state.

4 Next witness, please.

5 MR. HUMPHRIES: State calls Lori Rabon.

6 LORI RABON, BEING DULY SWORN,

7 TESTIFIES AS FOLLOWS:

8 CLERK OF COURT: Please have a seat. Please state
9 your name and spell your last for the record.

10 WITNESS: Laurie Rabon, R-a-b-o-n.

11 THE COURT: Thank you, ma'am.

12 Your witness.

13 MR. HUMPHRIES: Thank you, Your Honor.

14 DIRECT EXAMINATION BY MR. HUMPHRIES:

15 Q. Ms. Rabon, how are you employed?

16 A. I'm the property and evidence supervisor for the Horry
17 County Police Department.

18 Q. How long have you been so employed?

19 A. I've been employed by the police department for eleven
20 years.

21 Q. And in the evidence department how long?

22 A. I've been in evidence since 2000, eight years.

23 Q. Let's talk just a bit about the evidence department.

24 Tell the jury typically what function you serve in the

25 Horry County Police Department.

1 A. It is primarily our responsibility to inventory and
2 control all property and evidence turned in to our section.
3 Primarily our first responsibility is to ensure that all
4 forensic evidence is tested for the case file and case
5 work. And we safekeep the property and evidence for trial.

6 Q. While in your custody and control, and I'm speaking in
7 general, what is the evidence department's responsibility
8 regarding the integrity of the evidence that you maintain?

9 A. It's our responsibility to make sure that we are
10 accountable for all property and evidence that's turned in
11 to our section. Namely, making sure the integrity is, is
12 not compromised.

13 Q. Let me ask you. Did you have an opportunity to
14 receive certain items of evidence in connection with this
15 case into the evidence department?

16 A. Yes, I did.

17 Q. Is it common for the Horry County Police Department to
18 number their evidence, particularly when it comes to a
19 crime scene?

20 A. Yes, it is.

21 Q. And let me ask you if you know. Items that are
22 ultimately submitted to the South Carolina Law Enforcement
23 Division, do they have the same number typically as an item
24 number, or are those numbers sometimes different?

25 A. The numbers are typically different. When we collect

1 evidence from a crime scene or from any other scene, the
2 items are numbered for our department's purposes. When
3 they're transferred to SLED, they gain new numbers for
4 their department.

5 Q. Let me ask you. Did you have an occasion to receive a
6 fired projectile to be Horry County Police Department's
7 number 8?

8 A. Yes, I did.

9 Q. From whom did you receive it?

10 A. It was received from Investigator Andrew Cooper.

11 Q. And while in the custody and control of the evidence
12 department, Horry County Police Department, was it changed
13 substantially as to form and content?

14 A. No, it was not.

15 Q. Did there come a point at which you transferred that
16 item to a member of your department for transportation to
17 SLED?

18 A. Yes. It was transferred to the crime scene
19 investigator.

20 Q. Andy Cooper?

21 A. Andy Cooper.

22 Q. Let's talk about Horry County's item number 17, the
23 blood swabs from the counter at the murder scene. Did you
24 have occasion to receive those items or that item of
25 evidence from Andy Cooper after processing the crime scene?

1 A. Yes, I did.

2 Q. And in what condition was it when you received it?

3 A. Blood swabs were contained in a small carton, and both
4 ends were sealed with what we call evidence tape where
5 they're initialed and signed by the person who was
6 collecting the evidence.

7 Q. And upon receiving that item of evidence, did you
8 maintain it in your custody and control until you
9 transferred it again to Andy Cooper for transferral to
10 SLED?

11 A. Yes, I did.

12 Q. And while in your custody and control, did you change
13 it substantially as to form or content?

14 A. No, I did not.

15 Q. Did you maintain the integrity of that evidence while
16 it was in your custody and control?

17 A. Yes, I did.

18 Q. Let's go to the Jennings Bryco .380 handgun, which is
19 ultimately SLED's item 4, but in this case it is State's 36
20 and 36-A. Did you have an occasion to receive that item of
21 evidence into the -- in evidence at Horry County Police
22 Department?

23 A. Yes, I did.

24 Q. And did you maintain custody and control until
25 transferring it to another for transportation to SLED?

1 A. Yes, I did.

2 Q. And, in fact, did you transfer it to Andy Cooper?

3 A. Yes, I did.

4 Q. And while in your custody and control, did you change
5 it as to form or content in any fashion?

6 A. No, I did not.

7 Q. Did you maintain the integrity of that evidence?

8 A. Yes, I did.

9 Q. Let me ask you about the defendant's blood standard.
10 That's going to be SLED's item 2.4. Did you have an
11 occasion to receive the defendant's blood standard in a
12 package containing other items as well from Ann Pitts?

13 A. Yes, I did.

14 Q. While in your custody and control, did you change it
15 substantially as to form or content?

16 A. No, I did not.

17 Q. Did you subsequently transfer that item of evidence to
18 Andy Cooper for transportation to SLED for processing?

19 A. Yes, I did.

20 Q. And again, while in your custody and control, did you
21 change it substantially as to the form or content while in
22 your custody and control?

23 A. No, I did not.

24 Q. Did you also receive from Andy Cooper a handgun, an
25 Interarms Walther semiautomatic handgun in connection with

1 this case from the crime scene?

2 A. Yes, I did.

3 Q. Did you maintain the integrity of that evidence while
4 in your custody and control?

5 A. Yes, I did.

6 Q. Did you change it substantially as to form or content?

7 A. No, I did not.

8 Q. Did you ultimately transfer that item of evidence to
9 Andy Cooper for transportation to SLED and further testing?

10 A. Yes, I did.

11 MR. HUMPHRIES: I don't have anything else. Thank
12 you.

13 THE COURT: Cross-examination, Mr. Wilson?

14 MR. WILSON: I just have a couple of questions.

15 CROSS-EXAMINATION BY MR. WILSON:

16 Q. Ma'am, you weren't present when any of these items
17 were collected at the crime scene, were you?

18 A. No, sir, I was not.

19 Q. And you don't know how they were packaged other than
20 how they were brought to you?

21 A. That is correct.

22 Q. And once they're brought to you, then you simply house
23 them, make sure that no one tampers with them, and then you
24 deliver them to whoever's going to take them to SLED?

25 A. That is correct.

1 Q. And that's what occurred?

2 A. Yes, sir.

3 MR. WILSON: Thank you so much.

4 THE COURT: You may step down, ma'am. Thank you very
5 much.

6 (THE WITNESS EXITS THE STAND.)

7 THE COURT: Next witness.

8 MR. HUMPHRIES: State calls Kimberly Hahn.

9 KIMBERLY HAHN, BEING DULY SWORN,

10 TESTIFIES AS FOLLOWS:

11 CLERK OF COURT: Please have a seat. Please state
12 your name and spell your last for the record.

13 WITNESS: My name is Kimberly Hahn, H-a-h-n.

14 THE COURT: Okay, Ms. Hahn, I'm sure you understand.
15 You need to always make sure you always speak into that
16 microphone and lean forward.

17 WITNESS: Yes, sir.

18 THE COURT: Okay, thank you. Your witness.

19 VOIR DIRE EXAMINATION BY MR. HUMPHRIES:

20 Q. Ms. Hahn, how are you now employed?

21 A. I'm a scientist in Texas for a biotechnology company.

22 Q. And in what field?

23 A. I do DNA and other genetic testing research and
24 development.

25 Q. Now, have you always been employed in the private

1 sector?

2 A. No. Before that, I worked at the South Carolina Law
3 Enforcement Division as a DNA analysis scientist.

4 Q. Let me ask you. How, how long were you employed with
5 SLED in that capacity?

6 A. I worked for SLED for two and a half years.

7 Q. Let's do this, Ms. Hahn. Tell the jury a bit about
8 your education and training as it relates to your position
9 as a DNA analyst scientist.

10 A. I have a Bachelor of Science degree in biology from
11 Old Dominion University in Norfolk, Virginia, with a minor
12 in chemistry. I have a Master's of Science degree in
13 biology -- well, microbiology from Old Dominion University
14 in Norfolk, Virginia. And I had intensive training in --
15 under the supervision of court-qualified analysts as -- in
16 both serology and DNA analysis, and attended several
17 training and classes and workshops in the areas of DNA
18 analysis and instrument analysis while at SLED.

19 Q. And let me ask you. Have you been offered and
20 accepted as an expert in courts of record in this state and
21 others in the field of DNA analysis?

22 A. Yes, I have. I've been considered an expert witness
23 for the South Law Enforcement system seven times now.

24 MR. HUMPHRIES: Your Honor, at this time we would
25 offer Ms. Hahn as an expert witness in the field of

1 forensic DNA analysis.

2 THE COURT: Any questions about qualifications?

3 MR. WILSON: I have no objection subject to
4 cross-examination. Thank you.

5 THE COURT: Ladies and gentlemen of the jury, you
6 heard me mention to you earlier about expert opinion
7 regarding the fact that you may accept it, reject it,
8 accept it fully, reject it in any way you wish. It becomes
9 evidence just like any other evidence. Because of this
10 witness's qualification, education and experience, I'll
11 qualify her to give opinion, to give opinion testimony in
12 the area of DNA and forensic analysis.

13 You may proceed.

14 MR. HUMPHRIES: Thank you, Your Honor.

15 DIRECT EXAMINATION BY MR. HUMPHRIES:

16 Q. Ms. Hahn, let's do this first. Let's tell the jury
17 briefly what DNA is.

18 A. DNA stands for deoxyribonucleic acid. It's a complex
19 molecule found in almost every cell in your body, and
20 that's what carries the genetic code from generation to
21 generation. DNA is found on chromosomes, and humans have
22 forty-six chromosomes: twenty-three of these you get from
23 your mother and the other twenty-three of these you get
24 from your father. And 99.95 percent of that DNA is the
25 same from person to person, and this is what codes for

1 things such as two eyes, one nose, one mouth, ten fingers,
2 and ten toes. The other 0.5 percent of that DNA is
3 different from person to person, and this is what's used to
4 develop the DNA profile.

5 Q. At SLED, the DNA department, are you called upon after
6 having received certain unknown samples and standards from
7 known people to develop for comparison purposes?

8 A. Yes, sir.

9 Q. Tell the jury very briefly of what process you go
10 through in order to conduct that comparison.

11 A. To develop a DNA profile, you look at thirteen
12 different locations along your DNA. And at these thirteen
13 different locations, there's different sized fragment
14 links. So, what we do is look at the thirteen different
15 locations for the evidence sample and determine what size
16 fragment links are at these locations. And then we also
17 look at these same thirteen locations on the known samples,
18 such as from a victim or a suspect, and then compare that,
19 those DNA profiles developed from them, to the evidence
20 samples to see if there's a match between them.

21 Q. Now, did you have an occasion to receive certain items
22 of evidence from the Horry County Police Department in
23 connection with this case for analysis and comparison?

24 A. Yes, I did.

25 Q. Specifically, I'm going to refer you to your SLED item

1 16, Horry County Police Department's item 17, blood swabs
2 from the counter.

3 A. Yes.

4 Q. Did you have an occasion to receive those items of
5 evidence?

6 A. Yes, I did.

7 Q. Let me ask you about your item 2.4, the defendant's
8 blood standard.

9 A. Yes.

10 Q. Did you have the opportunity to receive that item of
11 evidence which was, had been transferred from the Horry
12 County Police Department to SLED for comparison and
13 analysis?

14 A. Yes, I have. I had that profile.

15 Q. And did you conduct an analysis, an analysis and an
16 ultimate comparison of those two items?

17 A. Yes, I did.

18 Q. Tell this jury what results you obtained.

19 A. The DNA profile from item 16, which was the swab from
20 the countertop, matches the DNA profile of Louis Winkler.
21 And the probability of randomly selecting another person
22 from the population having the same exact DNA profile is
23 one in 24 quadrillion.

24 Q. What's a rough estimate of the number of people in the
25 whole world?

1 A. It's around 6.5 billion.

2 Q. How many zeros does quadrillion have?

3 A. Quadrillion has fifteen zeros.

4 Q. How about a billion?

5 A. Billion has nine zeros.

6 Q. Let me, let me take you to a slightly different topic.

7 In your work with SLED, have you been called upon to

8 attempt to retrieve DNA off a fired projectile?

9 A. No, I haven't.

10 Q. Are you aware of, based on your training, other

11 analysts within the DNA division at SLED having been called

12 upon to do that or attempt to do that?

13 A. They may have. I don't know. I just worked on my own
14 cases.

15 Q. Let's talk to the jury just a little bit about the

16 character of DNA and its -- as to whether or not it's

17 delicate or environmental or other factors, how it affects

18 DNA, okay? What factors can affect DNA as it relates to

19 degrading DNA?

20 A. DNA can be degraded. It depends on environmental

21 conditions. Extremes, heat and cold, if it's left out in

22 the sun. You know, basically how long it's -- well, not

23 how long it's been there, but basically what the conditions

24 were when it was exposed to is basically a lot of whether

25 or not you can get a DNA profile and whether -- how much

1 DNA degrades.

2 Q. Let me ask you this. Let's say, for instance, that
3 you had been called upon to attempt to retrieve a DNA
4 sample from a fired projectile. If you were unable by
5 visual inspection to see any material to collect, would you
6 attempt to collect a sample? Let me phrase it another way.

7 If there were not visual evidence of serological
8 material on a projectile, would your ability to collect and
9 ultimately analyze that item of evidence be compromised?

10 A. Yes. If nothing's, if you cannot see anything
11 visually -- if you see something visually, you have more of
12 a chance of getting something. If nothing's there, you
13 know, there's a really large chance that you're not going
14 to get anything.

15 MR. HUMPHRIES: Thank you, Ms. Hahn. Please answer
16 any questions the defense may have for you.

17 WITNESS: Yes, sir.

18 THE COURT: Mr. Wilson.

19 CROSS-EXAMINATION BY MR. WILSON:

20 Q. Ma'am, let's, let's, let's talk about your DNA
21 testimony, and let's first talk about DNA in general.

22 A. Yes, sir.

23 Q. Now, as I understand it from your testimony, certain
24 conditions, weather factors, heat, cold, all those things
25 can affect the preservation of DNA?

1 A. Yes.

2 Q. And you would agree with me that the sooner you can
3 get to it, the sooner that it's made available to you after
4 the DNA is placed on the item, the better your opportunity
5 is to find some DNA?

6 A. No, sir. Blood or other stains can be stable for
7 months. It just depends on the conditions they're exposed
8 to at the time. Like when something happens, just that a
9 -- far more conditions themselves. You could have
10 something and be stable for months, but if that same exact
11 sample was aside in the sun for months, it could degrade.

12 Q. Okay, I apologize to you. I probably wasn't real
13 clear. What I'm asking you is if there is an object, any
14 object, whatever it is, whether it's paper, with it's --
15 whatever the material, if there is some substance on that
16 item, the sooner it gets to you, the better chance you have
17 of trying to determine if there is, in fact, DNA present.
18 That's my question to you.

19 A. Well, again ---

20 Q. Or you ---

21 A. --- that depends on environmental conditions. I...

22 Q. Okay. So, you're telling me that it wouldn't matter
23 how quickly you got it, whether you got it a year later, or
24 whether you got it three years later, or whether you got it
25 the next day. Is that what you're saying?

1 A. There could be something on a piece of paper, and I
2 could get it tomorrow and test it, and I'd still get the
3 same results that I would get a month later if, depending
4 on the environmental conditions, the environmental
5 conditions or however it was stored.

6 Q. Okay.

7 A. Would cause damage in the beginning or a month later.

8 Q. All right. Well, what about the fact, what if, what
9 if an item is handled by several people before it comes in
10 to your possession for you to analyze? Are you less likely
11 or more likely to be able to find DNA after it's been
12 handled by other people before it gets to you?

13 A. The more people handle it, the more chance you have of
14 contamination.

15 Q. More people handle it, the more chance of
16 contamination and less chance that you're going to be able
17 to find anything on the item when you do get it because,
18 and that's in part because if it's a -- say, for instance,
19 the projectile we've been talking about. If I'm holding
20 it, if there is material on it and I'm holding it in my
21 hand and I'm rubbing it, or I'm taking it and then putting
22 it in a test tube, or I'm taking it out of a test tube, and
23 I'm very likely to remove some of the material that may be
24 there. May not be there, but that may be there. Would
25 that be a fair statement?

1 A. Yes.

2 Q. All right, and my point to you is if you'd gotten that
3 immediately, then before I handled it and before I tested
4 it for other things, then maybe you might have been able to
5 find something. Now, might not have been anything on
6 there, but there could have been, right?

7 A. Yes.

8 Q. All right. Now, ma'am, in regards to, to the blood
9 standard that you found with -- you said that you had two
10 swabs that were sent to you, and that you tested those two
11 swabs, and the DNA on those swabs belong to Louis Michael
12 Winkler. Is that fair?

13 A. Yes.

14 Q. All right, and now, and what you're telling us then as
15 a result of that is that whatever was on those swabs,
16 blood, what belong to Michael Winkler?

17 A. It matches Michael Winkler or Louis Winkler.

18 Q. Now, can you tell us when that blood sample that they
19 sent to you, those swabs, how long that, how long the blood
20 that was on those swabs were on the counter before you got
21 there?

22 A. I cannot say that. I don't know.

23 Q. Could it have been there for a month before?

24 A. I don't know.

25 Q. Could it have been there for a year?

1 A. I don't know.

2 Q. No way for you to tell us that whatsoever, is there?

3 A. No, there is not.

4 Q. You have absolutely no way of knowing that. Only
5 thing you know is, yeah, the swabs have his blood, and you
6 had a standard which was the sample and you matched it to,
7 and no question about the two match, right?

8 A. Yes.

9 Q. Now, in regards to -- well, let me back up. As I
10 understand you to say that earlier on that, that you never
11 actually tested a bullet or a projectile in order to
12 determine if DNA was on it, on it, right, during your time
13 at SLED?

14 A. Yes, during my time at SLED, I've never had to.

15 Q. Okay, you were never called upon to do it?

16 A. Correct.

17 Q. All right, and now and DNA doesn't just come from
18 blood, does it?

19 A. No, it does not.

20 Q. In fact, saliva, right?

21 A. Yes.

22 Q. What about sweat?

23 A. Sweat, skin cells.

24 Q. Semen?

25 A. Yeah.

1 Q. All those things would produce DNA that you, if you
2 had, you could match, right?

3 A. If I got a DNA profile, I could.

4 Q. If you had a DNA profile. So, not only must you have
5 a sample, but then you must also have an individual that
6 you're looking to match it to. Is that what you're saying?

7 A. Yes. I have to have a known standard sample to
8 compare to.

9 Q. Okay. So, if there were other DNA found but it wasn't
10 -- well, I withdraw that. Let me get to the next thing.
11 What about sheetrock? If, if, if there were DNA on a piece
12 of sheetrock from a wall, could you test that to determine
13 if there is DNA on it?

14 A. That depends on the conditions and also if there's
15 anything there.

16 Q. Okay.

17 A. You won't know until you test it.

18 Q. Okay. Well, all right, so you wouldn't know without
19 -- do you ever get a piece to be tested?

20 A. Sheetrock?

21 Q. In the this case, did you ever receive a piece of
22 sheetrock to test to determine whether or not there was any
23 DNA on that sheetrock?

24 A. No, I did not.

25 Q. Now, solicitor asked you about whether or not if you

1 were unable to see any visual -- I think his question was
2 if you're unable to see visual evidence of serology,
3 serological material, would your ability be inhibited from
4 determining DNA on it. And is your answer to that yes?

5 A. Rephrase that.

6 Q. He asked you earlier, and I don't want to misquote his
7 question, and I'm trying to get it right here. But I
8 thought he asked you if you were unable to see visual
9 evidence of serological material on an object, would your
10 ability to find DNA be inhibited.

11 A. No. There could be. It depends on...

12 Q. All right, the fact that you can't see it doesn't mean
13 it's not there, right?

14 A. You can't see DNA.

15 Q. Right, you can't see DNA. So, the fact that somebody
16 said, well, I don't see any DNA on here wouldn't mean
17 anything because they couldn't see it anyway, right? Now,
18 and now you might not see blood on there, but that, the
19 fact you don't see blood on there doesn't mean that there's
20 not DNA on there, fair?

21 A. Correct.

22 Q. All right, and, and, and, and because you never got
23 the projectile, you never got the sheetrock, you wouldn't
24 know one way or the other whether or not there was any
25 serological material or DNA?

1 A. Correct. I never got any of these items.

2 Q. And you'd agree with me, too, would you not, that even
3 if you can't see it with the naked eye, sometimes with a
4 microscope you could see it, the serological material, that
5 you can't see with the naked eye. Would that be ---

6 A. You may be able to see little pieces of tissue or
7 blood with a microscope.

8 Q. All right.

9 MR. WILSON: Court bear with me just one second,
10 please, Your Honor?

11 (A PAUSE.)

12 MR. WILSON: I don't think I have any other questions.
13 Thank you, ma'am.

14 THE COURT: Okay, Mr. Humphries.

15 MR. HUMPHRIES: I don't have anything further. Ask
16 that this witness be excused. She's coming a fair, fair
17 distance.

18 THE COURT: If you would, ma'am, would you go just in
19 the back of the courtroom? I'll let you know in just a
20 second. Let me see the attorneys up here a minute.

21 You can step down, if you would.

22 WITNESS: Thank you.

23 (THE WITNESS EXITS THE STAND.)

24 MR. HUMPHRIES: You need us up there?

25 (OFF-THE-RECORD BENCH CONFERENCE.)

1 THE COURT: All right, next witness.

2 MR. HEMBREE: Thank you, Your Honor. The state calls
3 Agent Vello Paavel to the witness stand.

4 VELLO PAAVEL, BEING DULY SWORN,
5 TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: Please have a seat. Please state
7 your name and spell your last for the record.

8 WITNESS: Good morning.

9 THE COURT: Good morning. If you would, just say into
10 the microphone.

11 WITNESS: Yes, sir.

12 THE COURT: Just give us your name again, sir.

13 WITNESS: My name is Vello Paavel. My last name is
14 spelled P-a-a-v-e-l.

15 THE COURT: First name is V-e-l-l-o, I think?

16 WITNESS: Yes, sir.

17 THE COURT: All right, your witness.

18 VOIR DIRE EXAMINATION BY MR. HEMBREE:

19 Q. Agent, Agent Paavel, who are you employed with?

20 A. I work for the South Carolina Law Enforcement
21 Division, which is commonly known as SLED. In particular,
22 I worked in the Forensic Services Laboratory in the
23 firearms department where I'm a firearm and toolmark
24 examiner.

25 Q. What is your rank, Agent Paavel?

1 A. I'm currently a lieutenant. My basic responsibility
2 right now is management and supervision of the department
3 and case work.

4 Q. And you are, as you testified, you're a specialist in
5 the field of firearms and toolmark identification with
6 SLED?

7 A. That's correct, sir.

8 Q. And if you would, please share your training and
9 experience in that field with the jury.

10 A. I attended University of South Carolina. I have a
11 Bachelor of Science degree and I majored in chemistry. The
12 bulk of my training is in firearm and toolmark
13 identification, which entails the microscopic examination
14 and comparison of fired bullets and fired cartridge cases
15 and comparing those to firearms, came from a training
16 program that was administered by SLED during my initial
17 employment. What I had to do was work under the
18 supervision of court-qualified firearm and toolmark
19 examiners. I assisted them at working cases. I was
20 getting reading assignments. I was tested on these
21 assignments. I also had an opportunity to attend schools
22 that taught me further how firearms work and how to repair
23 firearms. Later after my training program, I've had an
24 opportunity to attend the FBI school on specialized
25 techniques in firearms identification.

1 During my training program, I've had the opportunity
2 to actually assist the examiners in working cases. I was
3 given bullets and cartridge cases to compare. I was tested
4 on this information and after I successfully completed that
5 training program, I was allowed to work cases on my own and
6 to testify court.

7 Prior to my law enforcement career, I was actually in
8 the firearms business in Columbia for several years. I
9 worked in and then managed a gun shop in the Columbia area,
10 and my primary responsibility was buying, selling, and
11 repairing firearms.

12 Q. Lieutenant Paavel, thank you. You have been with SLED
13 for how many years?

14 A. Almost twenty-one years.

15 Q. And you have been qualified in courts of record in
16 South Carolina and possibly other states?

17 A. No other states. I've testified as an expert in South
18 Carolina General Sessions court and in federal courts
19 approximately three hundred times in the area of firearm
20 and toolmark identification.

21 Q. Thank you, Lieutenant Paavel.

22 MR. HEMBREE: At this time, we would offer Lieutenant
23 Vello Paavel as an expert in the field of firearms and
24 toolmark identification.

25 MR. WILSON: Judge, he's eminently qualified. No

1 objection.

2 THE COURT: All right, ladies and gentlemen, I will
3 qualify him to give opinion testimony in firearms and
4 toolmark identification with the same instructions I gave
5 you regarding opinion testimony.

6 You may proceed.

7 MR. HEMBREE: Thank you, Your Honor.

8 DIRECT EXAMINATION BY MR. HEMBREE:

9 Q. Lieutenant Paavel, were you called upon to conduct
10 certain analysis and testing in connection with the death
11 investigation of Becky Winkler?

12 A. Yes, sir, I was.

13 Q. What items were submitted to you for study and
14 comparison?

15 A. I ultimately received a Walther PPK pistol that was
16 .380 automatic caliber.

17 Q. And could you, could you tell us the serial number of
18 that weapon?

19 A. Yes, sir. The serial number was 1845500-S.

20 Q. Thank you.

21 A. And it had the magazine and it had seven unfired
22 cartridges in the magazine. I also received a Jennings
23 Bryco model .380 pistol and .380 auto caliber. Its serial
24 number was 424075, and it had a magazine -- excuse me --
25 containing five unfired .380 auto caliber cartridges. I

1 also received one fired bullet, and by bullet what I mean
2 is the projectile. That's the part of the ammunition that
3 goes down the barrel and travels toward the target.

4 Q. Were you also supplied with eighteen unfired
5 cartridges?

6 A. Yes, sir. I -- excuse me, I overlooked that. With
7 the Jennings Bryco, there were eighteen additional unfired
8 .380 auto caliber cartridges in the container with the
9 pistol and the magazine and cartridges.

10 Q. Lieutenant Paavel, if you would just sort of explain
11 your general procedure, the general testing method that you
12 use when you're called upon to conduct an examination of
13 this nature.

14 A. Yes, sir. Typically what happens is evidence is
15 received in our building. It is routed to a proper
16 examiner through our log-in personnel. And when I receive
17 the evidence, I, I look over the case file first to see
18 what evidence I'm supposed to receive and what type of
19 examinations are requested. Then I document the condition
20 of the package that it's in. Sometimes I'll photograph the
21 package, open the package, make sure that the items that
22 are supposed to be in the package are in the package. Then
23 I proceed with further detailed documentation of the items.
24 For instance with a pistol, its make, model, serial number,
25 caliber, how long is the barrel, any of the features that

1 may be important for me to later identify it. I look down
2 the barrel for the presence of any sort of material. I
3 count the number of lands and grooves in the gun barrel,
4 record all this information. I ultimately do a trigger
5 pull weight test, and I test fire the firearm to determine
6 whether it's working properly, and then I will have test
7 specimens for further comparison.

8 Q. What, what's sort of -- do you use special equipment
9 to conduct those test firings?

10 A. Test firing actually is, there is a specialized piece
11 of equipment, which is a bullet recovery tank. That's a
12 large cylinder. If you can imagine about 3 feet in
13 diameter, roughly 14 feet long. The opening of it is on
14 the second floor of our building where we're located. The
15 bottom of the tank is attached to the first floor. In that
16 cylinder, several hundred gallons of water. At the bottom
17 of this tank, although it's cylindrical for most of its
18 portion, the bottom of it tapers into a conical portion,
19 and at the bottom of that cone is a small metal cup which
20 is attached to a chain that goes up to the mouth of the
21 tank. So, literally when I test fire a firearm to collect
22 the bullets, I shoot into this tank of water. The water
23 slows the bullets down, and the reason we use water is that
24 the bullets won't mark the out -- the water won't mark the
25 outside of the bullets and won't damage the microscopic

1 markings that are present on the bullet itself. The
2 bullets fall into this cup. I simply pull up the chain
3 with the cup, and there I have my test bullets.

4 Now, for other parts of the examination I may use
5 magnifiers, hand magnifiers, stereoscopes, trigger pull
6 weights, rulers, and devices like that for documentation
7 purposes.

8 Q. Now, the -- you were also called upon to do an
9 analysis of a bullet or projectile in this case?

10 A. That's correct.

11 Q. Typically, what are your typical steps in, in that
12 process?

13 A. The general steps are approximately same. I, I gather
14 the evidence, make sure the package is sealed, open the
15 package, make sure the contents of the package matches or
16 is consistent with the items described that I'm supposed to
17 receive. Then I start documenting what I have.

18 In the documentation procedure, I will first examine
19 the bullet, usually under low-power magnification, for the
20 presence of any sort of trace materials. I also will then
21 clean or decontaminate the bullet so if there's anything on
22 that bullet that could, you know, harm me -- I don't want
23 to be handling this bullet if it has any sort of material
24 on it. Then I will weigh the bullet, measure the bullet,
25 photograph the bullet typically. I also will count the

1 number of land and groove impressions that are on the
2 bullet. And the land and groove impressions are caused by
3 the rifling that's inside gun barrel.

4 Inside most rifled gun barrels, you have lands and
5 grooves. These are placed into the barrel by the
6 manufacturer to cause the bullet to spin. Now, the
7 byproduct of that for me off is as the bullet travels
8 through that gun barrel, it is actually engraved or marked
9 by this rifling. And I can use a comparison microscope to
10 compare the markings on an evidence bullet to a test bullet
11 to try to determine whether or not a particular bullet was
12 fired by a particular firearm.

13 Q. Lieutenant Paavel, let me show you State's Exhibit 34
14 in evidence and ask if you can identify that item.

15 A. Yes, sir. This is the fired bullet that I examined in
16 reference to this case.

17 Q. Now, you indicated that you had a process that you
18 went through prior to comparing that bullet to the firearm
19 from an initial process. Did you undertake that process in
20 this case?

21 A. Yes sir, I did.

22 Q. Weighed the bullet?

23 A. Yes, sir. That bullet was weighed.

24 Q. Made sure that it matched what had been turned in in
25 the connection with this case to make sure that was the

1 actual bullet that was turned in in reference to this case?

2 A. Well, typically what I do is I make sure that the
3 description is, is consistent to what I find. If, if it
4 indicates that I should have a fired bullet or spent
5 projectile, I'll be looking for a bullet. If it's not a
6 bullet, then I'll have to find out whether there's --
7 somebody made a mistake or whether somebody's just simply
8 using the wrong terminology.

9 Q. And those, those bags are sealed, I notice, at SLED.
10 Isn't that correct? Isn't that how you maintain your
11 evidence?

12 A. Yes, sir. They all are sealed and typically what
13 happens is evidence that comes in to the building, in to
14 our central evidence and log-in area, all the evidence will
15 be sealed in some sort of container before it goes to any
16 other part of the building unless the evidence is so large
17 that it can't be placed into a container. We've had them
18 bring in large safes, doors and door frames. It's hard to
19 put that into a container. But any sort of a small
20 evidence will go into a sealed container.

21 Q. Understood. Now, this particular -- did you conduct a
22 visual examination of this bullet?

23 A. Yes, sir. I examined this bullet visually for the
24 presence of any sort of material, the damage, counting the
25 number of lands and grooves, impressions that were on

1 there, the direction of twist, and documented this in my
2 paperwork.

3 Q. And this visual examination, do you use any tools or
4 magnifying equipment to examine the, the projectile?

5 A. Yes, sir. I normally use some form of low-power
6 magnification to look at almost everything that I examine,
7 especially when I'm looking for -- counting number of lands
8 and groves, looking for trace material, recordings serial
9 numbers, and any sort of thing. I, I do look at these
10 under magnification.

11 Q. And you mentioned trace material, and I know what that
12 means and you know what that means, but I'm not sure this
13 jury knows what the, what we consider trace material.

14 A. When I refer to trace material, I'm looking for any
15 sort of debris that normally doesn't belong on the bullet,
16 whether that's blood or body tissue. It may be paint,
17 plaster, wallboard, asphalt, pieces of concrete, powdered
18 glass. And if you shoot a bullet through a window, you get
19 powdered glass imbedded into the bullet. So, those are the
20 things I'm looking for.

21 Q. And you mentioned that you don't want to be handling a
22 bullet that is contaminated by anything that could hurt
23 you, whether it be, could be glass, could be biohazard like
24 blood or some sort of genetic material, skin tissue. Those
25 would be the kinds of things that would be a red flag to

1 you. Is that fair to say?

2 A. Yes, sir.

3 Q. And when you -- well, let me ask you this. If you
4 have discovered based on your investigation or -- and
5 careful examination of this bullet, if you had discovered
6 any material that appeared to be blood, what would have
7 been your next step?

8 A. With biological materials, unless it's a bullet that
9 comes out of an autopsy, it's indicated as actually coming
10 out of a victim at autopsy, what I would do is collect that
11 biological material, whether it's blood, tissue, bone. I
12 would try to collect a sample of that. Normally that's
13 done by taking a cotton swab, moisten it with some sort of
14 sterile water, whether it's distilled water, de-ionized
15 water, or saline solution. Simply swab and collect that
16 material. The swab is packaged in a manner to protect it,
17 and then it's either stored with the bullet and I notify
18 the contributor in the report that this material was there.
19 If there is a request to actually have that analyzed, then
20 I would route that swab to the proper department.

21 Q. Did you find anything on this bullet, any sort of
22 foreign material that required you -- and please refer to
23 your notes -- that required you to collect evidence from
24 the bullet?

25 A. No, sir. My, my notes reflect that there was no

1 obvious blood or tissue on the bullet.

2 Q. Thank you. Now, let me take you to the Walther PPK
3 that you were called upon -- serial number 184550-S. You
4 conducted an examination and test fire for that weapon. Is
5 that correct?

6 A. That's correct.

7 Q. And what were the steps that you -- you've testified
8 generally what steps you take in examining a weapon, but
9 what steps did you take with the Walther?

10 A. Again, after doing the preliminary examination and
11 documentation of packaging and confirming that this is a
12 firearm and that the item numbers are consistent, I, I
13 would take the firearm and examine it for any trace
14 material. I record serial numbers, make, model, finish,
15 barrel length, look down the barrel for the presence of any
16 sort of material. Again, a trigger pull weight is done
17 later. I also would test fire the firearm, as I explained
18 before, and then obtain test specimens for comparison
19 purposes.

20 Q. Now, tell us any significant findings or conclusions
21 you reached regarding the barrel of the Walther PPK, your
22 examination of the barrel of the Walther.

23 A. Well, during my normal documentation of the condition
24 of the firearm, I noted that for the Walther pistol -- I
25 have an area on my form which indicates the condition of

1 the bore, and the bore is the inside of the barrel, the
2 part where the, where the bullet is actually traveling
3 through. I have on my notes that there was dust, lint, and
4 oil present in the bore of that particular firearm.

5 Q. What is the significance of that finding, Lieutenant
6 Paavel?

7 A. Well, it means there's dust, lint, and oil in it. It
8 tends to indicate to me that the firearm had not been fired
9 since the last time somebody cleaned the firearm or oiled
10 the barrel.

11 Q. Because had the gun been fired, would the oil have
12 been...

13 A. I would not expect to see oil in the barrel if
14 somebody had fired this firearm.

15 Q. Understood. So, and lint, is that -- does that
16 indicate anything to you?

17 A. It indicates to me that the firearm had been wherever
18 it was long enough so that lint could get inside the
19 barrel, same with the dust.

20 Q. Now, did you do a test firing of the Walther PPK?

21 A. Yes sir, I did. Using the bullet recovery tank, I
22 actually test fired this pistol four times.

23 Q. Was it in working order?

24 A. Yes, sir, it was.

25 Q. What was the -- did you take photographs of that

1 handgun?

2 A. I believe I did, sir. Yes, sir.

3 Q. What was color of that handgun?

4 A. This particular firearm has a blued finish, and that's
5 a firearm term which is almost, it could be almost black.

6 It could be dark blue. It's not a light blue normally.

7 It's usually a dark, almost black color or finish.

8 Q. What color was the handle, if you recall?

9 A. This has a wooden handle which is brown in color.

10 Q. Now, did you compare the test fired bullets in the
11 Walther to the projectile, the bullet that you were
12 provided for comparison?

13 A. Yes, sir, I did.

14 Q. And what were your conclusions?

15 A. This particular bullet was not fired by the Walther
16 pistol.

17 Q. Any question about that at all?

18 A. No question, sir.

19 Q. And tell this jury how you -- I know you mentioned
20 lands and grooves earlier but -- and the imprint that
21 makes. Explain to the jury how you make that judgment
22 based on those comparisons.

23 A. Yes, sir. Again, I briefly touched on the fact that
24 most handguns and rifles have rifling in the barrel.

25 Rifling is placed in the barrel by the manufacturer, and

1 normally what the manufacturer does is either remove metal
2 or forms these lands and grooves in the barrel. And
3 rifling is a series of parallel helical type grooves that
4 are inside that barrel. They also had a twist, meaning
5 they can either go clockwise or counterclockwise.

6 Now, the manufacturer puts rifling in a gun barrel to
7 cause the bullet to spin. And the reason for that is in
8 order for a bullet to travel accurately over an appreciable
9 distance, it must spin. It's, it's just like a football.
10 If you throw a football, it has to have pretty good spin on
11 it. Otherwise, it doesn't go as well if it's going end
12 over end. So, manufacturers put rifling intentionally into
13 firearms to cause the bullet to spin.

14 And as I said earlier, the benefit to me as a firearm
15 and toolmark examiner is that there are markings left on
16 the bullet as a result of the bullet being forced through
17 that gun barrel by the burning gunpowder. When the
18 cartridge ignites, the gunpowder burns; it generates a
19 tremendous amount of pressure. A cartridge like this,
20 somewhere around 20,000 pounds per square inch of pressure
21 is developed, and that forces that bullet through the
22 barrel or down the barrel. And the rifling, in particular
23 the lands which are raised portions of the rifling, those
24 will engrave or scratch the outside of the bullet that
25 comes in contact with the rifling.

1 Then when the bullet is recovered, I can take that
2 bullet and compare those markings to the markings that I
3 find on the test bullets. I will take the firearm, shoot
4 it in my water recovery tank, and compare those two bullets
5 microscopically to each other.

6 Now, the reason I can do that, the basis for this as
7 the firearms identification analysts over the years have
8 found that no two bullets will be marked exactly the same
9 from two different barrels. Each barrel has unique,
10 individual characteristics. And if those characteristics
11 are transferred to the bullet, you'll be able to properly
12 identify that bullet as being fired from that particular
13 firearm.

14 And this is also based on the fact that during the
15 manufacturing process, there are random, accidental
16 markings that are left on the inside of the barrel by the
17 tool that's used to either rifle that barrel or to drill
18 the hole in the barrel so that the barrel can be rifled.
19 Over the years, examination has shown that examiners can
20 compare bullets to each other and determine whether or not
21 the bullets were fired by a particular firearm.

22 Q. Thank you, Lieutenant. Let me, let me ask you one
23 last thing about the Walther, the black handgun or blue
24 handgun. Now, that, the magazine, that's just a
25 semiautomatic handgun?

1 A. That's correct, sir.

2 Q. And the magazine, so it has a magazine that slips into
3 the butt of the gun?

4 A. Yes, sir, it does.

5 Q. And that's where the shells are held?

6 A. Yes, sir. That's where the unfired ammunition -- with
7 a semiautomatic pistol, there will be, again, a magazine.
8 Some people call it a clip, which is a device that's
9 designed to hold the cartridges that are unfired
10 ammunition. In this particular firearm, it's inserted into
11 the handle area, and it's called the butt of the firearm.
12 There is a magazine well, so your magazine with cartridges
13 will be inserted into that magazine well and are held in
14 place so that the operator can get a round into the
15 chamber, and also you'll have cartridges ready in place as
16 you shoot the firearm. It literally fires and then reloads
17 itself and then fires and you fire again.

18 Q. How many, how many cartridges would the magazine in
19 the Walther, the black gun, hold?

20 A. It would hold seven cartridges in the magazine.

21 Q. And when it was turned in to you, how many cartridges
22 were turned in along with the handgun?

23 A. The magazine was loaded with seven cartridge when I
24 received it.

25 Q. Now, let me turn your attention to State's Exhibit 36,

1 36-A, and 44. Let me ask you to take a look at 36 and 36-A
2 and ask if you can identify that, those items.

3 A. Yes, sir, I recognize these items. This is the
4 Jennings Bryco with the magazine and the unfired cartridges
5 that were in that the magazine when I received it.

6 Q. I will just leave those with you, and I'll ask you to
7 identify State's 44 in evidence also.

8 A. Yes, sir. These are the unfired cartridges that were
9 in a separate container that came with the Jennings Bryco
10 pistol. There were eighteen cartridges.

11 Q. Thank you, Lieutenant Paavel. I'm just going to leave
12 these here. In case you need to refer to them, you'll have
13 them available for you.

14 A. Let me put that down so we don't block the view.

15 Q. Now, let's talk about the Jennings Bryco semiautomatic
16 handgun.

17 A. Yes, sir.

18 Q. It's -- tell us what your initial examinations
19 revealed.

20 A. As with the Walther, I simply take the firearm,
21 document its condition, look for the presence of trace
22 material, record serial numbers, model numbers, the number
23 of lands and grooves, any trace material in the barrel.
24 Then I will test fire, do the trigger pull weight. Then I
25 will have test specimens for comparison purposes. In

1 essence, I did the same thing with this one as I did for
2 the Walther pistol.

3 Q. And when you test fired that weapon, was it in working
4 order?

5 A. Yes, sir, it was.

6 Q. The examination of the barrel, if you will share with
7 the jury your findings on the examination of the barrel of
8 this gun.

9 A. When I looked in the barrel or in the bore of this
10 firearm when I received it, I noted that it was fouled.
11 And by fouled that means there was indications that it had
12 been fired at some time. That means there's debris or
13 carbon present or soot present that I could see, which
14 indicates to me that it had been fired.

15 I also have a note in question -- a question mark that
16 says dirt and question mark at the muzzle. Apparently,
17 there was a little bit of dirt or debris near the muzzle of
18 this end of the barrel when I received it.

19 Q. And would it be fair, is it a fair characterization to
20 say that the Walther had not been fired since it had been
21 cleaned?

22 A. Yes sir, I believe so.

23 Q. Based on your examination of the barrel?

24 A. Yes, sir.

25 Q. And that the Bryco had not been cleaned since it had

1 been fired?

2 A. Yes, sir.

3 Q. All right. The test firings, or you've already
4 testified that the gun was in working condition, no problem
5 there.

6 A. It was working, yes, sir.

7 Q. All right. Let me talk with you about semiautomatic
8 handguns in general and the way that they operate and some
9 of the problems that they can cause verses revolvers. I
10 know you've talked a little bit about how semiautomatics
11 operate in the sense that they reload themselves in a way,
12 and then you can pull the trigger again and fire again and
13 again.

14 A. Yes, sir.

15 Q. And continue to reload themselves. Explain to this
16 jury about -- some folks may know very well what we're
17 talking about, but some might not. So, explain to the jury
18 how that -- how the mechanic, the mechanics of that process
19 inside the gun.

20 A. Yes, sir. With the semiautomatic firearm, in
21 particular since we're talking about a semiautomatic
22 pistol, as I referred to earlier it uses a magazine or a
23 clip which is designed to hold the cartridge. In essence,
24 what you do is place cartridges in this magazine, and this
25 particular magazine holds up to six cartridges in it. Then

1 when the magazine has the cartridge ---

2 Q. Whoa, whoa, let me -- hold on. That one holds six
3 cartridges?

4 A. Yes, sir.

5 Q. And how many cartridges were in the magazine when it
6 was turned in to you?

7 A. When I received this firearm, there were five unfired
8 cartridges in the magazine.

9 Q. Only five?

10 A. Yes, sir.

11 Q. Please continue.

12 A. Again, you take your magazine with cartridges. I
13 cannot insert it now because it is -- this lock that's on
14 here. But the magazine will literally go into the magazine
15 well, which is in the handle of the firearm, and lock in
16 place. Then if the barrel is empty, you will have to pull
17 back on this slide. This slide moves back and forth, and
18 right now it won't go all the way back because of the
19 trigger lock in the way. But you pull the slide all the
20 way to the rear. It's under spring tension. You let go of
21 the slide and it goes forward because of the power of the
22 spring. And it literally strips a cartridge out of the
23 magazine and pushes into the rear of the barrel, which is
24 called the chamber. Now the firearm is ready to fire. It
25 has a manual safety which you can engage, but if you decide

1 to fire it, you simply point it at a target and pull the
2 trigger.

3 If the firearm works properly, what will happen is the
4 firing pin will strike the primer, which is the small
5 explosive cap on the bottom of the cartridge. That
6 literally explodes; the material inside the cap explodes.
7 It forces a jet of flame and material inside the cartridge
8 case, and it ignites the gunpowder. The gunpowder burns
9 very rapidly. It generates the pressure. I believe we
10 talked about that before. It causes the bullet to go out
11 the barrel, and at the same time it forces the slide and
12 the cartridge case toward the rear of the firearm because
13 the bullet's going out this way, the cartridge case and
14 slide go toward the rear because of the pressure that's
15 been generated inside this cartridge case. So, literally
16 this slide is being forced to the rear. It goes back to
17 the rear.

18 If the firearm functions properly, the fired cartridge
19 case is injected out of the ejection port. The slide will
20 stop. Then it's being forced forward again by the action
21 of the recoil spring. And then it strips another cartridge
22 off from the magazine and forces it into the back of the
23 barrel, the chamber. And then if you release the trigger,
24 it resets this mechanism and you're ready to fire it again.

25 Now, it doesn't fire like a machine gun. You have to

1 pull the trigger and release it, pull the trigger and
2 release it. That's how this particular firearm works.

3 Q. Now, is -- would you consider a Jennings Bryco, that
4 model, a high-quality firearm or low-quality firearm?

5 A. This, most, most examiners would consider this, and I,
6 I follow along with that. This is in the low quality of
7 firearm as compared to the Walther pistol that we have
8 here. In comparing these two pistols, the Walther is a
9 very high-quality pistol. The Jennings Bryco is a lower
10 quality pistol.

11 Q. Now, let's -- and just give you a hypothetical. Let's
12 hypothetically say that the -- when the gun fires, the
13 slide goes back, and for whatever reason it doesn't fully,
14 it doesn't reach its full extent on its backward motion.

15 A. Yes, sir.

16 Q. Okay, because there's, there's a bit of limit it has
17 to reach.

18 A. Yes.

19 Q. To fire properly, correct?

20 A. Well, in its, and its rearward motion, it has to go
21 back far enough to reset the mechanism so it can fire
22 again. It also has to go back far enough to eject or throw
23 out the fired cartridge cases.

24 Q. Right. So, you could fire the gun. If the slide
25 doesn't, doesn't operate properly for whatever reason.

1 A. Yes, sir.

2 Q. And this is a, this is a fairly common problem with
3 automatics. Is that fair to say?

4 A. I, I don't know how common it is. It depends on the
5 firearm and the person shooting and the type of ammunition.
6 It is a problem or a potential problem with semiautomatic
7 pistols as compared to revolvers.

8 Q. Fair enough, and that was sort of how I started this
9 whole approach, discussion was as compared to revolvers,
10 but thank you for bringing me back to that.

11 If the slide doesn't, doesn't fully extend -- I don't
12 know what the right term, the term you use -- but it
13 doesn't ---

14 A. It just doesn't reach the ---

15 Q. --- does not operate properly ---

16 A. It doesn't reach the end of its travel or doesn't come
17 back all the way toward the rear.

18 Q. Then what happens?

19 A. What you can have is a situation where the fired
20 cartridge case literally gets stuck in the ejection port.
21 It can flip around; it can get stuck. There's all sorts of
22 little things that can happen here, and then the pistol
23 won't fire again because now you have a fired cartridge
24 case that is stuck in here.

25 Also, you can have a situation with some pistols, you

1 fire it and the slide doesn't come back far enough and the
2 cartridge case stays in the barrel. It just comes back far
3 enough and is goes back forward, but the cartridge case did
4 not come out. So, now that cartridge case that you just
5 fired or cartridge you just fired leaves the cartridge case
6 in the barrel.

7 Q. Good. Fair enough. Now, and of course these are
8 hypotheticals. You weren't there when this gun was shot.

9 A. No, sir.

10 Q. At any crime scene.

11 A. No, sir.

12 Q. No question about that, and the four times, the four
13 times you fired it into the tank, it operated properly?

14 A. Yes, sir, it did.

15 Q. No doubt about that?

16 A. It worked fine.

17 Q. However, and I've just continuing to explore this. If
18 the, if the cartridge -- or, excuse me, the shell, the
19 fired a shell casing jams, then a new bullet would not have
20 the ability to advance into the chamber, would it?

21 A. That's correct. Most of the time what happens, the
22 cartridge case gets in the way and the new cartridge that's
23 in this magazine cannot get into the barrel. One, the
24 slide didn't come back far enough to eject that fired,
25 fired cartridge case and doesn't come back far enough to

1 pick up another round. Or that fired cartridge case is
2 literally sitting inside this ejection port stuck in here
3 and it's in the way.

4 Q. Okay, and it's all jammed up in there?

5 A. Yes, sir.

6 Q. Now, again, I know this is, and it's just the
7 hypothetical operation of a problem you can have a
8 semiautomatic handgun. If the cartridge case jammed or the
9 fired cartridge -- excuse me, cartridge case has jammed the
10 slide and a person were to clear the slide enough just to
11 get the cartridge case out but not pull it all the way
12 back, just, just pull it enough to get it loose, kind of
13 shake it out or ---

14 A. Yes, sir.

15 Q. --- pull it out, get it, get it free and let the slide
16 go back forward, would that pick up another shell to go
17 into the chamber?

18 A. It depends. It just depends on what -- how far you
19 pull this slide back. If you pull this slide back far
20 enough, what will happen is it will get to the point the
21 slide in its rearward travel comes behind the magazine and
22 the cartridge. It will try to pick up another cartridge if
23 you let the slide go forward. If the slide stops, say,
24 midway over here and that's sufficient room to allow a
25 cartridge case to come out in your, in your scenario, then

1 it wouldn't pick up a new cartridge to go into the barrel.

2 Q. So, you'd have a gun that has got five bullets --

3 well, a gun that has, has unfired cartridges in the

4 magazine but no cartridge in the barrel, in the chamber ---

5 A. In the chamber, that's correct.

6 Q. --- under that scenario?

7 A. That potentially could happen.

8 Q. And if that fired cartridge case was jammed, then if

9 it wasn't released, it would go wherever the gun went?

10 A. Yes, sir.

11 Q. And stay in the gun until, until at some point you

12 unjam it?

13 A. Yes, sir.

14 Q. Let me talk to you a little bit about the bullets that

15 were submitted to you, the unfired ---

16 A. Unfired cartridges, yes, sir.

17 Q. Unfired cartridges, I'm sorry, unfired cartridges.

18 The five that you have there, as opposed to the eighteen --

19 well, describe the five that you have that came in the gun.

20 A. These are .380 auto or .380 automatic caliber

21 cartridges. That is simply a cartridge or caliber

22 designation. They are marked R-P, which stands for

23 Remington Peters. That is a mark that is used by Remington

24 on many of their cartridges. That indicates who

25 manufactured or who assembles this particular cartridge.

1 The bullet or projectile that's loaded into this is what's
2 known as a copper jacketed full metal case round nose
3 bullet. And this sounds complicated, but it merely means
4 that the bullet or the projectile has a round nose. If you
5 look at this up close, you'll see that it's a rounded nose.
6 And the nose is the part of the bullet that's up front,
7 just like our nose. It goes toward the target, and it's
8 rounded. Bullets can have flat points. Bullets can have
9 hollow points. Bullets can have a combination of those.

10 But this particular one is a full metal case, and what
11 that means is this jacket or this exterior piece of metal
12 that covers the inside of the bullet covers all of the
13 bullet except at the base of the bullet. The bottom of the
14 bullet, the opposite end from the nose, the core or the
15 inside of the bullet is exposed.

16 Now, a jacketed bullet is typically made out of two
17 pieces. The inside is called core. It's normally made out
18 of lead with most American ammunition. The outside of this
19 bullet, which is called the jacket, is usually made out of
20 some sort of copper alloy. It is much, much harder than
21 the lead core, and it's designed not to deform or be
22 damaged when it's going through semiautomatic pistols.

23 Full metal jacketed bullets were generally designed
24 for use in semiautomatic firearms or any type of firearm
25 where you have a fairly high velocity bullet, a bullet

1 that's traveling at a high speed, so you need to have a
2 harder, more durable outer covering than just a plain lead
3 bullet.

4 Q. Very good, and the manufacturer of those bullets?

5 A. Again, they're marked R-P, and that means Remington
6 Peters or Remington. They could be marketed as UMC
7 Remington, but that's the manufacturer.

8 Q. And now let me draw your attention to State's 44,
9 which are the eighteen unfired cartridges. Describe the
10 type and caliber, manufacturer of those bullets.

11 A. These are the same. They are the same manufacturer,
12 same caliber. They have the same type of bullet, meaning
13 the full metal jacket, round nose copper jacketed bullet.

14 Q. Now, you mentioned there's some other kinds of bullets
15 or bullets, projectiles, bullets that are out there, types
16 of bullets. Hollow points?

17 A. Yes, sir.

18 Q. Combinations, different combinations of things, unique
19 types ---

20 A. Yes, sir.

21 Q. --- of bullets, but that is a full medal jacketed
22 bullet?

23 A. Yes, sir.

24 Q. Have you had occasion to examine other bullets and
25 observe genetic material on those bullets?

1 A. Yes, sir, I have examined bullets in other cases where
2 I did see blood, tissue, bone, or other debris on the
3 bullets.

4 Q. Now, would you, would you, would you be able to say
5 that, based on your observation and experience, that it is
6 more likely to find genetic, genetic material on a hollow
7 point bullet or a bullet that had been badly damaged than a
8 full metal jacketed bullet that, in this case, was not
9 badly damaged, or at least that's my characterization.
10 Appears not badly damaged.

11 A. I think I see what you're asking, sir. Yes, sir, I
12 see blood, tissue, bone more on hollow point type bullets
13 and badly damaged bullets as compared to non-hollow point
14 bullets or bullets that are not damaged as badly.

15 Q. And why is that?

16 A. Well, normally with a hollow point there's a large
17 opening or cavity in the nose of the bullet. And when it
18 strikes me, it literally, it goes -- that -- it's driven
19 inside that hollow point cavity. And if that bullet
20 expands or deforms, it opens up other little crevices and
21 places where blood and tissue can get stuck inside the
22 bullet. With a full metal jacketed bullet, a particular
23 round nose full metal jacket, you don't have such openings
24 in the front of the bullet. And unless the bullet is
25 damaged by striking bone or some other material, there is

1 no place for that material to be imbedded into the bullet
2 jacket where it can stay so it can be collected.

3 Q. And, Lieutenant Paavel, take a look at that bullet.
4 Is there any damage on the fired bullet in this case that
5 would, you would -- where you would expect to find, might
6 think you might be more likely to find genetic material?

7 A. No, sir. As I recall with this particular bullet, it
8 has damage on it, but it's mainly dented and deformed.
9 It's not like it's been gouged out and torn by something.
10 It's, it has what I consider to be fairly large dents in it
11 where it struck something. But the jacket was not torn or
12 broken open, so if it -- the genetic material, blood or
13 tissue wouldn't have a place to actually get stuck on the
14 bullet.

15 Q. Lieutenant Paavel, did you conduct an examination of
16 the Jennings Bryco test fires to this fired bullet?

17 A. Yes, sir, I did.

18 Q. And would you please share with the jury your findings
19 and conclusions as it relates to that comparison?

20 A. When I conducted a microscopic comparison of the test
21 bullets that were fired by the Jennings Bryco pistol with
22 this particular fired bullet, I, I concluded that the fired
23 bullet, which is indicated as State's Exhibit Number 34,
24 was fired by the Jennings Bryco pistol, which is State's
25 Exhibit Number 36.

1 Q. No question about it?

2 A. No question.

3 MR. HEMBREE: Please answer any questions that defense
4 counsel may have for you, Lieutenant. Thank you.

5 WITNESS: Yes, sir.

6 THE COURT: Mr. Wilson.

7 CROSS-EXAMINATION BY MR. WILSON:

8 Q. There ain't no question about one thing. That bullet
9 that we just described is dented and it's damaged, is it
10 not?

11 A. Yes sir, it is.

12 Q. And you're not a DNA expert?

13 A. No, sir, I'm not.

14 Q. And do you disagree that the appropriate protocol if
15 you're looking for serological information, if you're
16 looking for DNA is to send it to DNA before they send it to
17 ballistics because you are going to do what you said,
18 decontaminate it, which is what you did, didn't you?

19 A. Yes, sir.

20 Q. You decontaminated this bullet so when they sent it a
21 year later to have it tested, there wouldn't be anything on
22 it because you had already decontaminated it.

23 A. If there was anything on it, it would probably be my
24 DNA because I've handled it.

25 Q. That's exactly right, and that's the whole idea of

1 sending it to DNA first. And now you're in here testifying
2 oh, you know, I looked at it, right?

3 A. That's correct.

4 Q. I looked at it and I didn't see nothing before you
5 decontaminated it.

6 A. Yes, sir. That's my normal process and protocol we
7 use unless there's a request made to swab a particular
8 sample for DNA or blood. If I look at it and I don't see
9 any sort of material on it, I proceed with the firearms
10 examination.

11 Q. Well, but that's the whole idea. You can't always see
12 it, can you?

13 A. I don't know.

14 Q. Right. That's what we're talking about. You can't
15 always see it.

16 MR. HEMBREE: Your Honor ---

17 Q. Can you?

18 MR. HEMBREE: If Mr. Wilson has a question, I suggest
19 he asks it.

20 MR. WILSON: That is a question. That is a question.

21 MR. HEMBREE: Well, he's been asking it.

22 MR. WILSON: Can you always see it.

23 MR. HEMBREE: It has been asked and answered.

24 MR. WILSON: That is my question.

25 MR. HEMBREE: That's been asked and answered, Your

1 Honor.

2 THE COURT: Answer it again, Mr. Paavel, can you
3 always see it.

4 BY MR. WILSON:

5 A. Well, can you always see DNA?

6 Q. Yes, sir.

7 A. I don't know. I mean, I, I look at the bullet. If I
8 see obvious visible blood, I will collect it for analysis.
9 I don't know whether or not the DNA analyst can take a
10 bullet that has no obvious blood on it, swab it, and
11 collect the DNA.

12 Q. All right.

13 A. I don't know that.

14 Q. And no question about the fact the bullet that you're
15 talking about -- if you would for me.

16 A. Yes, sir.

17 Q. Take it out for me, please. The bullet that we're
18 talking about, this, the front end of this bullet is
19 damaged and it has dents, right?

20 A. Yes, sir. It has some large dents on it.

21 Q. And not only does it have that, in the back part of it
22 is hollow, right?

23 A. It has a slight recess in the back of it, yes, sir.

24 Q. That's right, and all of that is capable -- not that
25 it did or didn't -- but it's capable of housing or holding

1 material?

2 A. I would have to say that the potential is there.

3 Q. Yes. Now, let me ask you something else. You're not
4 standing here today telling us that this bullet that you're
5 holding in your hand is the bullet that killed Rebekah
6 Winkler, are you?

7 A. I'm ---

8 Q. That is not what you're saying.

9 A. No, sir. I'm saying that this particular bullet was
10 fired by this particular Jennings ---

11 Q. Fired by that gun.

12 A. --- Bryco pistol.

13 Q. Let's talk about the gun now.

14 A. Yes, sir.

15 Q. For a second. This particular gun you say was fired,
16 right, and the solicitor asked you a hundred questions
17 about, well, what if the slide it didn't work, or what if
18 -- but you tested the gun. You said how many times did you
19 fire that gun?

20 A. I fired it four times.

21 Q. Four times. Not one time did it misfire, did it?

22 A. No. It worked properly every time ---

23 Q. Worked properly ---

24 A. --- I fired it.

25 Q. --- every single time. Didn't misfire?

1 A. No, sir, it did not.

2 Q. And when that gun fires, it ejects a shell, does it
3 not?

4 A. Yes, sir. When I test fired it, a fired cartridge
5 case was ejected out of this firearm each time.

6 Q. Every single time you fired that gun, the shell
7 ejected, and does it eject to the left or to the right?

8 A. On this particular firearm, it typically comes out to
9 the right. Ejection port is on the right-hand side of the
10 firearm. Now, how far it goes or whether it goes up, down,
11 left, right I don't know because my testing area doesn't
12 allow me to determine that.

13 Q. All right. Now, the, the -- we talked about the --
14 you said that there was a Walther PPK in the -- that you
15 got and that there was some oil in it and there was dust in
16 it or some lint ---

17 A. Yes.

18 Q. --- I think was the word you might have used.

19 A. Dust, lint, and oil were present in the barrel when I
20 examined it.

21 Q. Dust, lint, oil?

22 A. Yes, sir.

23 Q. And now how long does it take for that to happen?

24 A. Well ---

25 Q. Is there any particular length of time?

1 A. The dust and the lint, I don't know. Oil, obviously
2 somebody had to put oil in it.

3 Q. That's right, and could it have been an hour?

4 A. Mr. Wilson, I truly don't know.

5 Q. Don't know. Can't tell us that, can you?

6 A. No, sir.

7 Q. Right, and you can't tell us when the lint got there?

8 A. No, sir.

9 Q. Could have been there for a day, a week, a month, or a
10 year?

11 A. Correct.

12 Q. Now, and let's be fair here. Sometimes as experts and
13 as scientists, things evolve, things change and we make --
14 we find out that what we thought we knew five years ago we
15 now find out is not correct, right?

16 A. That potential does exist, yes.

17 Q. In fact, let, let's talk about ballistics
18 specifically. You've been doing this for how many years?

19 A. I've been doing this for about nineteen years.

20 Q. And you recall, and let's be fair. Most of the
21 ballistic ideas and those things kind of originate with the
22 FBI, and the states and the different departments kind of
23 feed from that, and they go get trained by the FBI on how
24 to do all these things, right?

25 A. Well, the FBI provides limited training. The Alcohol,

1 Tobacco and Firearms provides some training. There are
2 some schools at some universities that provide training.

3 Q. Okay.

4 A. But the bulk of the actual training that occurs in the
5 firearms identification field is passed on by
6 court-qualified experts to trainees.

7 Q. All right, but my point is is that at one point, there
8 was this thought, especially in the FBI, right, and the
9 scientific community that you could take one bullet from a
10 batch, and that that bullet was going to be identical to
11 every other bullet in that batch.

12 A. Now, sir, you're talking about a different
13 examination.

14 Q. I am ---

15 A. You're talking about elemental bullet lead analysis.

16 Q. I'm simply ---

17 A. And not firearm and toolmark identification.

18 Q. I'm simply asking you about how it works in the
19 scientific community and how we learn things as we go
20 along.

21 A. Yes, sir.

22 Q. I understand, and I'm simply asking you. Isn't that a
23 fact that that was the thought, wasn't it?

24 A. Yes. For a number of years, the FBI conducted a test
25 which was bullet lead analysis or elemental composition.

1 What they would actually do is look at a bullet and
2 determine its elemental composition, meaning does it have
3 copper in it, does it have zinc in it, lead, tin, antimony,
4 all these different metals. And then what they would do is
5 compare other bullets with elemental composition, and they
6 would render some type of conclusion as to whether or not
7 those bullets could have had a common origin.

8 Q. That's right, and now we found out that ain't true and
9 that you can't do that. But for twenty years they did
10 that, didn't they?

11 A. Yes, sir, and I'd think what they found was they were
12 saying things that they really couldn't say. The science
13 of what they were doing was good, but I believe it got to
14 the point that their interpretation of what they found
15 probably overstepped the, the boundaries.

16 Q. Well, and speaking of scientific community, we did the
17 same thing with serology for years and years and years.

18 THE COURT: Now, now, wait a minute, Mr. Wilson. Are
19 you going to make a statement or ask him a question? When
20 he's not an expert in serology, how is he going to answer
21 it? So, I'm not going to permit you to ask that question.

22 MR. WILSON: I agree. He's not an expert in serology,
23 and I withdraw the question. You're absolutely right.
24 Thank you, Your Honor.

25 I don't think that I have any more questions. Thank

1 you, sir.

2 WITNESS: Yes, sir.

3 THE COURT: Redirect?

4 MR. HEMBREE: It very briefly, Your Honor.

5 REDIRECT EXAMINATION BY MR. HEMBREE:

6 Q. Agent Paavel, there is no elemental analysis. You
7 didn't conduct any kind of elemental analysis or anything
8 like that in this case.

9 A. No, sir. In its, in its simplest form, literally,
10 folks, what I do is I look at microscopic scratches that
11 are left on the bullet as a result of that bullet traveling
12 down the barrel. I don't do any elemental analysis for
13 comparison in that way. I do a physical comparison of
14 microscopic markings that were left by the rifling as that
15 bullet travels through the barrel. That's what I do. It's
16 been done since literally the early nineteen hundreds.

17 Q. And, Lieutenant Paavel, you conducted an examination
18 of this bullet with the aid of magnifying devices and
19 found, and you found nothing, no obvious blood or an
20 material ---

21 MR. WILSON: Your Honor, object.

22 Q. --- on the bullet?

23 MR. WILSON: The question first is misleading and
24 secondly that's not what he said. I never heard him ---

25 THE COURT: Well, let's see. What would you, how

1 would you ---

2 MR. WILSON: --- testify that he used any magnifying
3 information.

4 THE COURT: All right, thank you. Answer that
5 question.

6 BY MR. HEMBREE:

7 A. I believe I was asked about looking at the bullet for
8 trace material, and I said that I did examine it and I
9 didn't see any visible blood or obvious blood.

10 Q. Now, did you use any magnifying devices in your
11 examination of the bullet?

12 A. Yes, sir, I did. I typically use, and in this case I
13 did use, as I explained, a small hand-held magnifier. It's
14 a seven power magnifier that I have. It's a combination.
15 It can be three power, four power, or seven power
16 underneath a light. I have six light bulbs over my desk,
17 large fluorescent tubes, and I look at it for any sort of
18 obvious blood if -- or any other material. If I see
19 anything, I will go even to a higher power or to another
20 device to look at it if necessary.

21 Q. And you didn't go to a higher power because you didn't
22 see anything?

23 A. In my initial examination, I did not see any obvious
24 visible blood, body tissue, or bone on this bullet.

25 MR. HEMBREE: Thank you, Lieutenant Paavel. I greatly

1 appreciate your patience with us and ---

2 THE COURT: Mr. Wilson, you have any other questions?

3 MR. WILSON: I don't have any other questions, Your
4 Honor. Thank you.

5 THE COURT: All right. Thank you, Mr. Paavel.

6 WITNESS: Yes, sir.

7 MR. WILSON: Your Honor, I'd ask that Lieutenant
8 Paavel be excused and be permitted to return to his weekend
9 duties in Columbia.

10 THE COURT: Weekend duties in Columbia?

11 MR. HEMBREE: Whatever those weekend duties might be,
12 Your Honor.

13 THE COURT: Mr. Wilson, any objection?

14 MR. WILSON: I have no objection.

15 THE COURT: Mr. Paavel, you can leave the beach and go
16 to Columbia.

17 WITNESS: All right, sir. Thank you.

18 (THE WITNESS EXITS THE STAND.)

19 THE COURT: Now, was any -- I'm trying to remember
20 here. Was any evidence introduced and moved to introduce
21 in that witness?

22 MR. HEMBREE: No, Your Honor.

23 THE COURT: Okay. Then y'all want to approach then?
24 Y'all approach.

25 (OFF-THE-RECORD BENCH CONFERENCE.)

1 THE COURT: Okay, state.

2 MR. HEMBREE: Thank you, Your Honor. In the case of
3 *State vs. Louis Michael Winkler*, the State of South
4 Carolina rests in the guilt phase of the case.

5 THE COURT: All right. Now, ladies and gentlemen, at
6 this time I'm going to give you a break. I've got to do
7 some, some matters of law. If y'all wish some of you to
8 walk outside, that would be fine and all that. We should
9 start back, I would think, in about twenty-five minutes,
10 twenty-five minutes.

11 So, if you would, please do not discuss this case.
12 It's not yours yet. Please do not discuss the case. We'll
13 bring you back in about twenty-five minutes. Please step
14 outside.

15 Everyone else remain seated, please.

16 (THE JURY EXITS AT 10:51 A.M.)

17 THE COURT: Any motions on behalf of the state at this
18 time?

19 Before we do that, I just want to make sure I'm in
20 agreement with everybody as far as the exhibits that are in
21 evidence at this time. I have exhibit 1, exhibit 2, 3, 4
22 though 20. Then 21 it is not in. And I have 22, 23, 24,
23 25, 26, 27, 28, 29, 30, 31, 32, 33, 34. Court's Exhibit is
24 35. 36, 36-A, 37, 38. Then my next one goes up to 43, 44
25 -- I'm sorry, 42, 43, 44, 45, 46, 47. And then I go 50 and

1 51.

2 Madame Court Reporter, does that agree with your
3 analysis?

4 COURT REPORTER: It does.

5 THE COURT: All right, is that the state's, is that in
6 agreement with the state and the defense as far as what my
7 records are, the court reporter's records?

8 MR. HEMBREE: Yes, sir.

9 MR. HUMPHRIES: Yes, Your Honor.

10 THE COURT: Now, any motions by the state?

11 MR. HEMBREE: No, Your Honor.

12 THE COURT: Motions by defense?

13 MR. WILSON: Yes, Your Honor. Your Honor, at this
14 time we make a motion for a directed verdict in the -- for
15 the crime of murder, burglary in the first degree, and
16 assault and battery of a high and aggravated nature.

17 I think that in looking at the evidence that has been
18 produced, that there is no evidence that Michael Winkler
19 shot Rebekah Winkler to death, which is I think one of the
20 things that has to be proven if the state wants to get past
21 a directed verdict. And I don't think that's been proven.

22 I don't think that the elements of burglary have been
23 proven in the sense that there is, there needs to be a
24 breaking and entering, and then either some aggravating
25 circumstance such as having a weapon or having -- and even

1 if you listen to the testimony of, of J [REDACTED], what he
2 says is that once he -- that there was no gun, at least
3 when he came in that there was no gun and, and -- but I
4 think that you can't even listen to his story because his
5 story is completely tainted. And, and, he has given
6 inconsistent versions of his stories about what he says
7 happened. And then the same thing is true with the, with
8 the assault charge.

9 And I think that the only witness in this case is --
10 that, that in any way inculcates this defendant is J [REDACTED]
11 G [REDACTED]. And I think that J [REDACTED] G [REDACTED]'s testimony
12 is wholly inconsistent. I think it's inconsistent with the
13 facts and circumstances, and I think it's inconsistent
14 with, with -- within the record itself. I think he has
15 given multiple versions of what he says happened. You
16 know, from the transcript that he gave to the officer the
17 night that this happened, to the 911 call, to the testimony
18 that he gave in this courtroom. And, you know, both when
19 he told the solicitor one thing and he tells me another
20 thing when, when on cross-examination.

21 I think that when you consider all those things
22 collectively, that this matter should never go to this
23 jury, and this defendant should be acquitted as a matter of
24 law. And I would ask for a directed verdict in that
25 regard.

1 THE COURT: All right, after hearing the testimony and
2 evidence presented by the state, as to the charge of murder
3 your motion for directed verdict is denied.

4 Charge of burglary first degree, I do have concern
5 with element five you all gave the jury the opportunity to
6 consider. I don't know there's any evidence about the
7 nighttime ---

8 MR. HEMBREE: We would withdraw that, Your Honor, and
9 would ask that the jury not be asked to consider that.

10 THE COURT: All right, other than element five of the
11 burglary, the other four I find there is sufficient
12 evidence for a jury to consider whether the state's proven
13 beyond a reasonable doubt that the defendant went into the
14 dwelling of another without consent with the intent to
15 commit a crime therein. That, while he was there, he was
16 either armed with a deadly weapon or caused, and/or caused
17 physical injury to a person, and/or threatened the use of
18 an instrument, or used a dangerous instrument, and/or
19 displayed what was a pistol or a firearm.

20 As to the assault and battery of a high and aggravated
21 nature, I'm not sure if your, if your motion is directed to
22 that, Mr. Wilson. But I would note that it was and deny
23 that motion. I feel there's sufficient evidence of a, of a
24 circumstance of aggravation there, being that there was the
25 assault and battery while in the commission -- if it's

1 proven -- of a burglary. As well as there being a great
2 disparity in ages and physical conditions, the defendant
3 being a man over forty and the victim being someone at
4 fourteen, if the jury accepts the evidence of the state.
5 So, I would deny your motion on, on those three charges for
6 a directed verdict.

7 Other motions by the defense?

8 MR. WILSON: Yes, sir. Your Honor, at this time I
9 would ask the court to examine the defendant as to whether
10 or not defendant wants to take the stand at the end of
11 trial.

12 THE COURT: Before doing that, let me make sure that
13 we also agree that during the course of the trial, so far
14 defense has introduced into evidence Defense Exhibit 1 and
15 Defense Exhibit 2. Is that your records, Madame Court
16 reporter?

17 COURT REPORTER: Yes, sir.

18 THE COURT: All right, state?

19 MR. HEMBREE: Yes, sir.

20 THE COURT: Defense? All right, so defense has put in
21 evidence of two exhibits.

22 MR. WILSON: Yes, sir.

23 THE COURT: At that time.

24 All right, if you would, and I'm not sure why this
25 ringing is here today. The clerk and Mr. Daniel tried to

1 see if they could determine it through various people and
2 all that, but it's still getting -- they're still working
3 on it.

4 (COURT CONFERS BRIEFLY WITH THE CLERK.)

5 THE COURT: Mr. Winkler, would you stand up for me
6 please, sir? Counsel, y'all stand up with him.

7 DEFENDANT: Yes, sir.

8 THE COURT: Mr. Winkler, I just want to make sure you
9 understand, sir, that, that you in this case, sir, have no
10 duty at all to testify. The burden is upon the state to
11 prove your guilt beyond a reasonable doubt of these crimes.
12 The burden is not upon you to prove yourself innocent. So,
13 you have no duty to testify at all.

14 If you choose not to testify and you request me to do
15 so, I will be glad to charge the jury that you have no duty
16 to testify and that you, in fact, have a constitutional
17 right, which you do under the Fifth Amendment of the United
18 States Constitution and our corresponding provision in the
19 Constitution of the State of South Carolina, you have no
20 duty to testify, no obligation to testify. And if you
21 chose not to testify, once again and you requested that I
22 do so, I will be glad to tell the jury that they should
23 understand that the state has the burden of proving you
24 guilty beyond a reasonable doubt. You have no burden of
25 proving yourself innocent. And that, that the fact you did

1 not testify should in no way be held adverse to you,
2 considered adverse to you, or even discussed in the jury
3 room because you do have a right not to testify and that
4 does not lessen the burden of the state, and you have no
5 burden.

6 You have, though, sir, the right to testify if you
7 wish to testify. If you do testify, sir, you would be
8 under oath and subject to all relevant questions in this
9 case by, not only your counsel, but also by the state's
10 attorney. Further, if you were to testify, any convictions
11 you have which fit upon our -- fit under our Rule 609 would
12 be admissible. Not to prove whether you did this crime or
13 not, sir, but as -- in evidence regarding credibility, and
14 I would make sure it was limited to that.

15 For discussion purposes at this time, Mr. Hembree or
16 Mr. Humphries, do y'all have any 609 convictions if he were
17 to testify y'all would feel that would automatically be
18 admitted in evidence?

19 MR. HUMPHRIES: No, sir.

20 THE COURT: All right. So, therefore, now if there
21 are other crimes that you had been convicted of for which
22 they're not admissible, they could be admissible if the
23 door would be opened. But that's up for you to discuss
24 with your client -- I mean, with your lawyer about the door
25 being opened. But if you were to testify, I will not

1 permit the state to introduce anything, prior convictions
2 that you have unless for some reason the door were to open.

3 Does he have any prior convictions, Mr. Wilson?

4 MR. WILSON: I think there is a CDV.

5 MR. HEMBREE: Yes, Your Honor, he has some prior
6 convictions, but they're, they're ---

7 MR. WILSON: They're not ---

8 MR. HEMBREE: They wouldn't be admissible ---

9 MR. WILSON: They're not ---

10 THE COURT: Well, whatever. They're not admissible at
11 this stage.

12 MR. WILSON: That's correct.

13 THE COURT: Unless some door opened to that. But
14 there would be no prior convictions admitted against Mr.
15 Winkler.

16 So, Mr. Winkler, I also want you to understand, sir,
17 the choice and decision to testify, sir, is your decision.
18 Not your lawyer's decision, not your family, your friends'
19 decision. It is your decision. You need to consider it,
20 to think about it, and make your own decision. Now, of
21 course you should discuss it with your attorneys or anyone
22 else you wish to. But the ultimate decision, sir, is
23 yours.

24 Mr. Wilson, have you discussed with Mr. Winkler his
25 rights to testify or not to testify, you and Mr. Rathbun?

1 MR. WILSON: Judge, I have discussed this with him at
2 length on multiple, multiple occasions.

3 THE COURT: All right, and you wish for me to discuss
4 any further information with him regarding his rights to
5 testify or not testify?

6 MR. WILSON: No, sir, but what I would like for you
7 to do is to give me five minutes with him and let us come
8 back ---

9 THE COURT: I'm giving you more than that, Mr. Wilson.
10 Don't worry. You have time to talk about it. I just want
11 to make sure there's nothing ---

12 MR. WILSON: No, sir.

13 THE COURT: --- you wish for me to further inform the
14 defendant.

15 State feel there's anything else the court should
16 inform the defendant his rights?

17 MR. HUMPHRIES: No, Your Honor, but in connection with
18 that let me say this. We are prepared, should the
19 defendant wish to testify, to have a *Jackson vs. Denno*
20 hearing on his statement which would be used potentially in
21 cross-examination. We are prepared to do that at the call
22 of the court prior to his testifying.

23 THE COURT: Well, we'll let Mr. Winkler first make his
24 decision there. I make no ruling about that one way or the
25 other. I just note you said it for the record.

1 MR. HUMPHRIES: Thank you.

2 THE COURT: So, at this time, Mr. Winkler and
3 counselors, we'll take a, we'll take a break and at the
4 break, Mr. Winkler, you can discuss those, those issues.
5 We've still got plenty of time before the jury comes in.
6 If you need a little more time, let me know, but I plan to
7 come back on the bench, I'll say, say in, oh, twenty
8 minutes at the most. If you need more time, let me know.
9 But we'll need a decision from you when I come back, at
10 least a decision if you're ready to go forth with other
11 matters.

12 MR. WILSON: We ---

13 THE COURT: And we can make that decision later on.

14 MR. WILSON: I'll be ready, Your Honor.

15 THE COURT: All right, at this time we will be in
16 recess.

17 (OFF THE RECORD.)

18 THE COURT: Okay, Mr. Wilson, as you recall, I did
19 mention y'all had introduced two exhibits. So, you and the
20 defendant are aware of that?

21 MR. WILSON: Yes, sir.

22 THE COURT: All right. Mr. Wilson, has your client
23 made a decision yet?

24 MR. WILSON: He has, Your Honor.

25 THE COURT: Mr. Winkler, you have made a decision?

1 DEFENDANT: Yes, sir, I have.

2 THE COURT: And what is your decision, sir? To
3 testify or not to testify?

4 DEFENDANT: Your Honor, at this time I wish not to
5 take the stand.

6 THE COURT: All right. So, you wish not to testify.
7 That is your choice?

8 DEFENDANT: Yes, sir.

9 THE COURT: It's not your lawyer's decision?

10 DEFENDANT: Correct.

11 THE COURT: Okay, you made this after talking with
12 people, but it is your decision?

13 DEFENDANT: Yes, sir.

14 THE COURT: All right. No one has forced you or
15 anything of that? You've listened and you've made your
16 decision on your own. Is that correct?

17 DEFENDANT: Yes, I did it.

18 THE COURT: All right, and you understand your rights
19 to testify and your rights not to testify? You understand
20 that?

21 DEFENDANT: Yes, I do, Your Honor.

22 THE COURT: All right. I find you make a free and
23 voluntary decision not to testify, and knowing decision not
24 to testify. You may be seated, sir.

25 Mr. Wilson, other than two exhibits, do y'all plan to

1 introduce other evidence?

2 MR. WILSON: I do not.

3 THE COURT: All right. Before we bring the jury in
4 before lunch, what is the position of the state and defense
5 regarding 16-3-28? Everyone agrees that still applies in
6 this phase of the trial, too?

7 MR. HUMPHRIES: Yes, sir.

8 THE COURT: Defendant's right to make a statement.

9 MR. WILSON: I'm sorry? What now?

10 THE COURT: Upon 16-3-28 provides that in this phase
11 of the trial, you and your client have a right to make a
12 statement.

13 MR. WILSON: Yes, sir.

14 THE COURT: Has your client made a decision in that
15 regarded? Have you explained it to him?

16 MR. WILSON: I, I have, but he's not. You might want
17 to ---

18 THE COURT: All right, Mr. Winkler, your -- Mr. Wilson
19 has discussed with you under our law you have a right to
20 make an argument, last argument to the jury also as well as
21 him. Both of you have a right to do it. You understand
22 that?

23 DEFENDANT: Yes, sir. I, I was not aware of that.

24 THE COURT: All right. Then, Mr. Wilson, let's take a
25 minute, sir. I want you to go back and explain. You need

1 a copy of the statute?

2 MR. WILSON: All right, sir, I don't need it. I, I
3 don't need the statute.

4 THE COURT: All right, then I'll wait. Y'all go out
5 and talk. If you need more time, let me know.

6 MR. WILSON: All right sir.

7 MR. HUMPHRIES: Your Honor, could I, could I ask the
8 court, could I ask the court at least at some critical
9 juncture to explain to the defendant the parameters under
10 which he can make a closing statement?

11 THE COURT: Well, I was wanting honestly for Mr.
12 Wilson to discuss it with him first. Then I was going
13 to ---

14 MR. HUMPHRIES: And very good. I just wanted to make
15 sure.

16 THE COURT: And, Mr. Wilson, you know the only
17 parameters are he can only discuss evidence introduced in
18 the trial just like any lawyer could regarding -- and he
19 could not add additional evidence that has not been
20 introduced in the trial. He can only make an argument to
21 the jury regarding the view of evidence introduced in the
22 trial.

23 MR. WILSON: Yes, sir.

24 THE COURT: He would be, he would be limited to what
25 anyone would be limited in making an argument before the

1 jury. But he would be able to do that as well as you. In
2 other words, both y'all.

3 MR. WILSON: That's correct.

4 THE COURT: Not either but both.

5 MR. WILSON: Right.

6 THE COURT: All right, anything else you want me to
7 say in that regard?

8 MR. HUMPHRIES: Thank you, Your Honor.

9 THE COURT: All right, you may proceed and talk.

10 (OFF THE RECORD.)

11 THE COURT: All right, Mr. Winkler, if you would,
12 stand up for me, please, sir.

13 Mr. Wilson, you and Mr. Winkler have talked about his
14 rights to make an argument to the jury as well as you?

15 MR. WILSON: We have discussed that, Your Honor.

16 THE COURT: All right, and he understands that you
17 both can make arguments, not either but both of you?

18 MR. WILSON: Yes, sir.

19 THE COURT: Or either, either one, and has he made a
20 decision in that regard?

21 MR. WILSON: He has.

22 THE COURT: What's that, sir?

23 MR. WILSON: That he does not want to make a
24 statement.

25 THE COURT: All right, Mr. Winkler, is that your

1 decision, sir?

2 DEFENDANT: That's correct.

3 THE COURT: All right, so you do understand the
4 implications of 16-3-28 and if you wish at this time, you
5 may make an argument to the jury as well as Mr. Wilson.
6 And by not doing it at this time does not preclude, if
7 there comes another occasion, you then -- that you'd have
8 the argument at the other occasion also. You understand?

9 DEFENDANT: Yes, sir.

10 THE COURT: And so your choice is, sir, not to make a
11 closing statement to the jury. Is that right, sir?

12 DEFENDANT: That's correct.

13 THE COURT: And it's your decision?

14 DEFENDANT: Yes, sir.

15 THE COURT: Find you make a knowing and voluntary
16 decision not to make a closing statement to the jury. You
17 may be seated, sir.

18 Now, other issues? It is quarter to 12. I'll be glad
19 to see if Ms. Huggins, and I've already discussed it with
20 her, see if we could get the jury out to have a quick lunch
21 and get back. Or if y'all wish to, depending on how long
22 do you think your arguments would be. Mr. Wilson, you
23 would go first since y'all have introduced evidence.

24 MR. WILSON: No, sir. Your Honor, my understanding is
25 I get the last argument. This is a death penalty trial.

1 THE COURT: Oh, you're right.

2 MR. HUMPHRIES: He's correct.

3 THE COURT: He's right. I'm sorry, sir. You are
4 correct, Mr. Wilson. I forgot totally.

5 All right, Mr. Humphries, you'd go first.

6 MR. HUMPHRIES: Yes, sir.

7 THE COURT: And, Mr. Wilson, then you, but do y'all
8 feel y'all could do your arguments in, say, an hour and
9 fifteen minutes, or y'all would rather we let the jurors go
10 out and get a little lunch and come back? Because I don't
11 want them to sit there till 2:00. Obviously it wouldn't be
12 fair to either one of you.

13 MR. WILSON: Judge, it would take me at least an hour
14 on my own. I don't know about Mr. Humphries.

15 THE COURT: All right. Then what I may do then, let
16 me talk to Ms. Huggins a second.

17 (THE COURT CONFERS WITH THE CLERK.)

18 THE COURT: All right, bring the jury out, please.
19 I'm going to send the jury out. Hopefully we'll get them
20 there and get them back by 1:00. We're going to go ahead
21 and send them out. That way, we can have the arguments all
22 at one time.

23 Bring the jury out, please.

24 THE COURT: Let's have order, please.

25 Mr. Wilson, I will recognize you in a second to make

1 your statement.

2 MR. WILSON: Yes, sir.

3 (THE JURY ENTERS AT 11:49 A.M.)

4 THE COURT: All right, Mr. Wilson, for the defense.

5 MR. WILSON: Your Honor, the defense would rest.

6 THE COURT: All right.

7 All right, ladies and gentlemen, that will conclude
8 the evidence in the case, so at this time what I'm going to
9 do is I've arranged with the clerk and Mr. McLeod. And
10 he's going to make sure he does a head count, make sure
11 he's got everybody. We're going to let y'all go to lunch
12 at a restaurant. I don't want to announce that here in the
13 open, but it should be a private area for y'all to go back
14 have a seat.

15 But please, there's no way it's not going to have
16 people around you. In fact, I'm going to tell everybody in
17 this room, I'm going to tell them not to go to that
18 particular place, but who knows who goes there. So, if you
19 would, ladies and gentlemen, please do not discuss this
20 matter. If you hear anything about it anywhere by anyone,
21 step away right away. Let someone know, and then report to
22 me, all right?

23 We're going to do our best to get you there and get
24 you back in about an hour and ten or fifteen minutes. And
25 so hopefully we can start the closing arguments a little

1 after, a little after 1, okay?

2 Just enjoy your lunch. Do not discuss the case. It's
3 not yours yet. And we'll have you back and as soon as you
4 get back, we'll be ready to go. We'll go on your
5 timetable. I've told Mr. McLeod to try to be back
6 somewhere around 1, so I hope that's when we get back here.
7 If it's 1:10, 1 whatever, 1:15, we'll do that. But I'd
8 like to get things going with the closing arguments. I'd
9 rather do that now instead of starting closing arguments
10 now, then have y'all have lunch in between them and then
11 come back. Let's get it all done at one time, okay?

12 So, did not discuss the case. Go and have lunch.
13 Come back, and we'll start the closing arguments. You may
14 leave at this time.

15 Mr. McLeod, in your care.

16 (THE JURY EXITS AT 11:51 A.M.)

17 THE COURT: Okay, at this time any motions by the
18 state?

19 MR. HUMPHRIES: No motions by the state. I don't know
20 if the defense intends to renew their motions at the close
21 of their case.

22 THE COURT: That's what I'm going to ask them now, but
23 I gave you the first option.

24 MR. WILSON: Yes, sir.

25 THE COURT: Motion by the defense?

1 MR. WILSON: Yes, sir, Your Honor. I would just renew
2 the motions that I made at the end of the state's case on
3 the same grounds that I enumerated at that time.

4 THE COURT: All right. I respectfully deny the
5 motions as I did at the end of the state's case.

6 And now as far as 16-3-28, your client still stands on
7 the decision he wishes not to make a statement? Now that
8 we're officially at the end of the case, I guess we need to
9 make sure that decision is made.

10 Mr. Winkler, we're now at the end of the case. The
11 next step is the closing arguments. You'd said that you
12 don't wish to make a closing argument. Is that true, sir?

13 DEFENDANT: Yes, sir.

14 THE COURT: All right. I find you free and make --
15 free and voluntarily make that decision, sir. You may be
16 seated, sir.

17 Now, any request for charge from the state?

18 MR. HUMPHRIES: None other than those that we
19 discussed previously in your chambers. That is, the charge
20 on murder, burglary in the first degree, assault and
21 battery of a high and aggravated nature, no lesser
22 includeds, the circumstantial evidence obviously.

23 THE COURT: *State vs. Grippon?*

24 MR. HUMPHRIES: Absolutely, Your Honor, and your other
25 standard charge, with the exceptions experts need to be

1 included.

2 THE COURT: I'm going to include the experts, plus the
3 -- well, upon the request of the defense on the testimony.

4 MR. HUMPHRIES: Yes, sir.

5 THE COURT: All right, Mr. Wilson.

6 MR. WILSON: Your Honor, first I obviously disagree
7 and I ---

8 THE COURT: Disagree on what, sir?

9 MR. WILSON: On, on what should be charged.

10 THE COURT: All right, tell me what you require to be
11 charged.

12 MR. WILSON: Well, what I would ask to be charged is
13 on the, on the crime of murder to also charge the lesser
14 included of manslaughter. And the reason I, I, ask for
15 that charge, Your Honor, is is that I think that obviously
16 the question is whether or not there is any evidence, not
17 whether or not there's some proof of it. But I think that,
18 that from -- a reasonable inference could be drawn from the
19 evidence and the testimony thus far that there may have
20 been a fight or struggle or something there, and the
21 shooting occurred as a result of that. Now, whether or not
22 that could be proven or not proven I don't think is really
23 the issue.

24 THE COURT: Well, give me the evidence of something
25 that would put someone in a rage.

1 MR. WILSON: Well, I, I -- for instance, there is a
2 plate of food which is on the table there. The question is
3 who does that plate of food belong to.

4 THE COURT: I thought the young man, didn't he say he
5 was eating the food?

6 MR. WILSON: I'm, I'm coming to that.

7 THE COURT: Okay.

8 MR. WILSON: His testimony was was that his dad, who
9 is, who is the ex-husband of the victim, was coming over to
10 the house. Now, I'm not saying he was there at that
11 moment. I don't -- obviously I wasn't there, but there's
12 certainly an inference that he could have been there. And
13 they were, they were ---

14 THE COURT: Give me the inference he could have been
15 there at the time while he was there.

16 MR. WILSON: Well, my point, Your Honor, what I'm
17 saying is this. That his, his testimony was was that I
18 asked him when he was on the stand whether or not his dad
19 was -- had been spending some nights there. He said yes.
20 I asked him whether or not his dad was supposed to be
21 coming over that very evening to spend the night. He said
22 yes.

23 THE COURT: Yes.

24 MR. WILSON: And my point is is that -- and there is a
25 plate of food there. He says, and by his own testimony he

1 says he was eating when the, when the knock came at the
2 door. Well, there -- the food is clearly on the table.
3 It's not been eaten. It has not been eaten at all. And so
4 the question I think arises from that, an inference from
5 that is, well, it couldn't have been his food because he
6 said he was eating and he was talking on the phone with his
7 friend at the time he was eating. Well, the food has not
8 been eaten, and you can look at the pictures and tell that
9 it's not been eaten. I mean, I think that ---

10 THE COURT: Now, is the word eating and the word
11 completed the same thing?

12 MR. WILSON: No, sir, but, but eating denotes the fact
13 that there, at least you've done something with the food,
14 and the food is there on the table undisturbed in its
15 entirety. And, and my point simply is is that that -- is
16 that proof that there was somebody else there? No. Is
17 that -- but can the inference -- the question is whether or
18 not can an inference arise from that, and I'm suggesting to
19 the court that, yeah, I think it can arise from that.

20 I think that there can arise inference from the other
21 circumstances. For instance, the turned over chairs in
22 the, in the apartment, the bruises on the lady's hands, on
23 the victim's hands. All those things can arise, can make
24 an inference and cause, and cause a reasonable inference or
25 at least some inference that perhaps there was a struggle.

1 Perhaps there was a fight. Now, maybe there was not a
2 fight. But the question is not whether there was or
3 wasn't. But whether or not an inference can be drawn or
4 possibly drawn from those facts and circumstances. And I
5 believe that they can.

6 THE COURT: All right. Well, let me make sure I get
7 your argument. Your argument is there's an inference that
8 someone was in the home. I'm not saying that I agree or
9 disagree with that, but how does that tie into a charge of
10 manslaughter?

11 MR. WILSON: Well, I'm, I'm suggesting that there was
12 a fight or a struggle or some kind of -- because of the
13 other inferences. As I said, looking at all the evidence
14 as a whole, looking at the fact that there are turned over
15 chairs in the apartment, looking at the fact that there is
16 bruises on the, on the hand of the victim which nobody has
17 been able to account for, looking at the fact that the
18 gunshot wound was apparently a close gunshot wound, the
19 fact that the young man says that he didn't actually see
20 the shooting. I mean, I think all those things create that
21 inference. And I think the benefit of any doubt about
22 whether it did or did not should be resolved in favor of,
23 of the defendant, at least in this stage. And the
24 inclusion of manslaughter should be put on, on the form to
25 be sent to the jury.

1 THE COURT: State.

2 MR. HUMPHRIES: The rule is, and I don't have to tell
3 court this, is there any competent evidence to support that
4 lesser included offense. This is, the argument by defense
5 counsel is pure fantasy.

6 There is, there is direct testimony regarding each and
7 every one of the things with the exception of the abrasion.
8 It's not a bruise on both hands. It's an abrasion at the
9 top of the thumb which the pathologist said I cannot tell
10 you to a reasonable degree of medical certainty how that
11 occurred. It could have occurred prior to that time. It
12 could have occurred when she got shot. It could have
13 occurred when she fell. It could have occurred with a
14 struggle. But all of those inferences do not lead this
15 court to a position where they are required to provide this
16 jury with a charge of voluntary manslaughter.

17 This is no competent evidence to support that charge.
18 There is really no reasonable inference to support that
19 charge if you go to the -- to a lesser standard, one that
20 is not required. There is simply nothing in this record to
21 reduce this case from murder. Either defendant committed
22 this murder or he did not. But there is no evidence to
23 suggest that this defendant committed voluntary
24 manslaughter. None.

25 Well, and let me do this. Let's think about what the

1 elements of voluntary manslaughter are.

2 THE COURT: That's what I'm doing right now, Mr.
3 Humphries. Yes, go ahead.

4 MR. HUMPHRIES: Well, I mean, the court's engaging in
5 the same -- you're mentally, you're engaging in the same
6 discussion that I'm about to have with you. You've got to
7 have heat of passion based on sufficient, legal
8 provocation. Let's say, let's say that the abrasion on her
9 wrist gives this heat of passion. Certainly nothing in the
10 record would support sufficient legal provocation which
11 would reduce this case from murder to manslaughter. There
12 is no inference, no evidence, no nothing to reduce it to
13 meet that element.

14 THE COURT: All right, reply, Mr. Wilson?

15 MR. WILSON: One last thing, judge, and, and this is
16 -- the other thing that occurred is that the Officer Knoch,
17 Knocks, whatever his name was, testified that when he came
18 upstairs that the defendant told him that ---

19 THE COURT: Whoa, whoa.

20 MR. WILSON: I'm sorry. I apologize. The witness
21 told him that it was my dad, my dad. My dad just left or
22 my, it was my dad. And that -- and obviously the defendant
23 is not his dad. He even says the defendant is not his dad,
24 and I think that again raised the issue about whether
25 somebody else was there, what went on in that house. And

1 my point is ---

2 THE COURT: I know, but that's -- it's, once again,
3 that's an argument I would assume to the guilt or innocence
4 of the actual killing of the individual. But how does that
5 go to voluntary manslaughter other than conjecture to have
6 a sufficient legal provocation in there? Or anything that
7 would be immediate enough where there would even be a
8 cooling off period involved that what happened that would
9 cause someone to get into a rage, either one of those
10 standards? Whether or not what the young man -- he says he
11 says it's his stepdad. The officer says he may have said
12 stepdad. I wrote down he said dad. But how does that go
13 into voluntary manslaughter?

14 MR. WILSON: Well, if, if -- again, considering all
15 the facts and circumstances that are there, the turned over
16 chairs, the plate of food on the table, the bruise on, on
17 the victim's hand, the fact that the kid is saying my dad
18 just left or my dad just left or whatever the wording was
19 that he used, and if, if this defendant was there, which is
20 what the state is suggesting happened, and the dad was
21 there then, and all these other circumstances are there
22 with the turned over chairs and the bruises and blood on
23 the counter ---

24 THE COURT: But the only evidence, the only evidence
25 in this record about turned over chairs is the evidence of

1 the young man saying I fell after he hit me. That's the
2 only evidence we've gone of turned over chairs. What other
3 evidence is in the record about turned over chairs?

4 MR. WILSON: I agree with you. That, that is -- but,
5 but the point is the chairs are turned over. They, they
6 are, which indicates some kind of struggle. I mean, I
7 think that goes to my very point. The fact that those
8 chairs are turned over, those things are disturbed points
9 to the fact that there was something going on. There was
10 blood on the counter of the defendant. Why would there be?
11 What possible reason would there be? If there wasn't some
12 kind of a fight or struggle, why would it be blood of the
13 defendant on the counter?

14 All those things together in my, in what I'm saying,
15 together -- not one of those pieces individually, I agree
16 with you. Individually, those pieces have absolutely no
17 meaning. Collectively when you look at them, then that
18 inference then starts to appear or arise. And that's what
19 I'm saying. When you put all these pieces together, then I
20 think that that inference is not out, out of the question.

21 THE COURT: All right. Putting aside everything,
22 what's your argument about blood on the counter, Mr.
23 Humphries? He says the fact that the defendant's blood is
24 on the counter means he had some kind of struggle with
25 someone.

1 MR. HUMPHRIES: Certainly, Your Honor. He struck
2 J [REDACTED] while he's holding the phone. The phone breaks.
3 That's as reasonable an explanation and, and, quite
4 frankly, the only one to which there is testimony, the only
5 one to which there is evidence.

6 THE COURT: All right, thank y'all. I have listened
7 to every witness intently. I've considered all the
8 testimony of all the witnesses. I considered all the
9 testimony, all the evidence here. I anticipated at some
10 point in time a motion or a request to charge in that
11 regard, and I, I reviewed the testimony of any witness that
12 could lead to me charging that or to me not charging that.
13 And, and I do know that this is a key situation in this
14 trial because depending on the decision of the jury, the
15 decision on this issue is very, very important. And it
16 would be very easy to go ahead and decide to charge the
17 manslaughter and let the jury decide that.

18 But I'm under a duty as a judge to only charge the
19 jury things that can be inferred from the evidence. And I
20 would think that, with all due respect, Mr. Wilson, the
21 charge of voluntary manslaughter have the jury engaging in
22 conjecture or, or have the jury engaged in the what ifs,
23 the what ifs, the what ifs. I mean, they, they have a
24 right not to believe the witnesses that testify. And if
25 they don't believe some of what they say, all of what they

1 say or whenever, they can determine that your client didn't
2 do this crime.

3 But I'm trying to see under what scenario from the
4 evidence introduced, without introducing matters for the
5 jury to consider that wasn't introduced into evidence, they
6 could in any way come back with voluntary manslaughter. As
7 far as this food thing, I'm not sure that matters at all.
8 But I don't know how you take a picture of a plate of food
9 and know whether somebody ate a morsel of food or not.

10 But with all due respect, I will not charge the charge
11 of voluntary manslaughter. I know it would be easier to do
12 that, but I just don't see how I can do it and follow the
13 law as the law is, and as my duties as a judge compel me to
14 be involved in the jury engaged in with only making
15 decisions on the evidence in the case. So, as far as your
16 request to charge voluntary manslaughter, that request is
17 denied.

18 Other requests for charge?

19 MR. WILSON: I have no others.

20 THE COURT: Do you have any objection to the charge?
21 Do you have any objections to the three charges, Mr.
22 Wilson?

23 MR. WILSON: I'm sorry?

24 THE COURT: Three charges on the crime, and I'll be
25 glad for you all to go back and let's look at the charge

1 we're going to do on the crimes themselves. My general
2 charge, which I know you've heard before on both sides of
3 the aisle, but I'll be glad to let you review it, as well
4 as the *State vs. Grippon* charge. And do you request I
5 charge your client's not testifying?

6 MR. WILSON: Yes, sir.

7 THE COURT: Okay, you discussed that with Mr. Winkler?

8 MR. WILSON: Yes.

9 THE COURT: And that's what your request is?

10 MR. WILSON: Just one second.

11 (COUNSEL CONFERS WITH DEFENDANT.)

12 MR. WILSON: Yes, sir.

13 THE COURT: Let the record reflect he did discuss that
14 with Mr. Winkler before he responded. And, of course,
15 expert witness. So, you've got those. Anything else from
16 defense?

17 MR. WILSON: No, sir.

18 MR. HUMPHRIES: Your Honor, in regard to your charge
19 on malice, the state would request -- I don't know what the
20 court's ---

21 THE COURT: Well, what you all need to do is get what
22 you want to me in the chambers. I'll review it, and I'll
23 let you know if I'll charge it or not. You can come back.
24 Y'all are welcome to come on back and look at those things.

25 MR. HUMPHRIES: We'll be glad to do that.

1 THE COURT: And then we can have sort of a charge
2 conference.

3 MR. HUMPHRIES: The only, the only issue I just want
4 to raise is the inference of malice with the use of a
5 deadly weapon. And I believe that's in your standard
6 charge.

7 THE COURT: Of course.

8 MR. HUMPHRIES: Yes, sir, that one.

9 THE COURT: Now, to make sure I don't get objections
10 on this, does everyone agree, Mr. Wilson and state, does
11 everyone agree regarding the parameter of the argument of
12 flight?

13 MR. HUMPHRIES: I can argue it.

14 THE COURT: I know that, but ---

15 MR. HUMPHRIES: There won't be a charge on it.

16 THE COURT: Sir?

17 MR. HUMPHRIES: There won't be, and I understand there
18 won't a charge on it.

19 THE COURT: I know there won't be a charge on it, but
20 I'm trying to avoid interruptions during the, during the
21 closing arguments. I know the judge, the court does not
22 charge on it. The state can argue it. I just want to make
23 sure we don't end up with disagreements regarding the
24 state's arguing for it or the defense arguing and you end
25 up interrupting each other.

1 MR. WILSON: Judge, I, I know that he can argue
2 flight. I don't have a problem with that, I guess, but I
3 can't -- I don't know how far he's going to go with it.
4 So, I can't at this point tell you that I'm not going to
5 object. I mean, obviously I'm not going to object if he
6 covers what he covered in his testimony. But if he goes
7 beyond that, then I may very well object. I don't know
8 until I hear what he says.

9 THE COURT: All right. Everyone knows you can argue
10 again the inferences, but you've got to make sure you
11 discuss the evidence that has been introduced only.

12 MR. HUMPHRIES: Yes, sir.

13 THE COURT: Just want to make sure everybody's aware
14 of that.

15 All right, other than that, if y'all would, y'all want
16 to get a sandwich and relax first before you come back and
17 discuss potential charges? I'm going to be back in my
18 office. Why don't y'all just come back there let's say at
19 1:00, and we'll then go over what I've got and what y'all
20 want me to do, and we'll go from there.

21 Now, everyone else in this audience, this is a very
22 important stage of this trial for everyone. If for some
23 reason you go to a restaurant and you see the group of
24 people that we have here that are our jurors -- you will
25 recognize them and you'll recognize Mr. McLeod and

1 recognize those other people I swore. If you see them, I
2 would advise you to quickly change your mind and go
3 somewhere else. If for some reason you see them and it's
4 already too late, and you're sitting down having a meal, I
5 advise you to make sure you're as far away as you can.

6 If I have any indication of anyone here having any
7 contact, waving at, saying hello to, tipping their hat or
8 any other gestures or words whatsoever to anybody who is a
9 juror in this case, I assure you whether it be officer,
10 whether it be lawyer, whether it be individual, I will deal
11 with it, or media, although I'm sure it would not be. But
12 if it is even media, I assure you that I'll do my duty in
13 handling that because there can be no excuse of saying all
14 I did was waved. All I did was say it's a nice day. I
15 don't care what the words are. You're to say nothing and
16 make no gestures whatsoever.

17 And if you see a restaurant that you notice my jurors
18 are there, you are to leave. And I may understand if
19 you're already there having your meal, but if it's just
20 when you're just getting in there, I advise you the best
21 thing to do is probably to leave, to leave. That's
22 probably the best thing. Now, I can handle that if you're
23 inadvertently there and they show and you're already there.
24 But the best thing to make sure you don't have any problems
25 is not to be there. Let's not have anyone get in any

1 trouble for something that is obviously of avoidable.

2 With that, you all have a pleasant lunch and we'll
3 probably -- so everyone won't be walking in and out, let
4 you know this. The minute, the minute Mr. Humphries or Mr.
5 Hembree stands up for closing argument, the minute they do,
6 from that point on that door is closed. Nobody comes in,
7 nobody leaves. For that reason, I can tell you I won't let
8 that happen until around 1:15. So, if you want to be in
9 here, the best gauge is to be in here at 1:15 because the
10 minute the first attorney stands up to make the first
11 comment, that's when the doors are closed. And they will
12 be closed probably until, until we take another break. So,
13 please be aware of that. That's going to be a little
14 different than we're doing on the testimony. With that,
15 we'll see y'all after lunch.

16 (OFF THE RECORD.)

17 THE COURT: All right, Mr. Wilson, Mr. Hembree, Mr.
18 Humphries, Mr. Rathbun, y'all need to talk to me?

19 MR. WILSON: Yes. May we approach?

20 (OFF-THE-RECORD BENCH CONFERENCE.)

21 THE COURT: Mr. Wilson, if you are through with my
22 proposed charges, I just want to make -- that's my copy.
23 I'll make another copy. Take your time. We, we got a
24 couple of minutes anyway. Just when you finish, I'll be
25 glad to make a copy if you wish.

1 MR. WILSON: Well, it's not in order, Judge.

2 THE COURT: No, I don't need it in order. Do you need
3 more time?

4 MR. WILSON: No, sir.

5 (A PAUSE.)

6 THE COURT: Mr. Wilson, I know you mentioned your
7 client is waiting for something for the sheriff to bring
8 up, some medication. Do you want to proceed with the
9 closing arguments, or you want to wait a few minutes? I'm
10 very concerned about why it wasn't here already.

11 MR. WILSON: Judge.

12 THE COURT: You don't have to explain. Just tell me
13 you want to wait or you don't want to wait.

14 MR. WILSON: I would rather wait.

15 THE COURT: We will wait. Since if there is
16 medication, he's going to have to leave the room to do it,
17 so why don't we just step off, and I would assume that that
18 will be here within ten minutes. If it's not here and we
19 are back out here in ten minutes, I want someone to come to
20 my chambers, deputies, and explain to me why. Let's have
21 it done within ten minutes. I don't care what it takes.
22 Get it here. All right, I'll come back in a minute.

23 (OFF THE RECORD.)

24 THE COURT: Be seated everyone. As I understand it,
25 there has been misunderstanding between the sheriff, the

1 nurse, and the defense regarding some medication for the
2 defendant. The sheriff is on the way now to get the person
3 with the medication, which will be here.

4 Everyone agrees, both the state and the defense agrees
5 that it is better that before we do the final stages of
6 this trial that the defendant be provided with his
7 medication. As I understand, both sides agree that's the
8 best thing to do.

9 Is that right, Mr. State, Mr. Defense?

10 MR. HEMBREE: That's correct, Your Honor.

11 MR. WILSON: Yes, Your Honor, that is.

12 THE COURT: All right, the sheriff is hurriedly back
13 there doing what they can to get the nurse here. It can't
14 be administered until she gets here.

15 I'm going to bring, with approval of both sides, I'm
16 going to bring the foreperson out here because I don't want
17 these citizens to be held in room without knowing that
18 there's a reason for it. And if they want to walk outside,
19 let them walk outside with sheriff's deputies making sure
20 no one gets close to them at all. And so any objection to
21 me bringing the foreperson out, to not explain him the
22 details but explain to him due to a matter, it's going to
23 be about twenty to thirty minutes before we get started?
24 Objection from the state?

25 MR. HEMBREE: No objection from the state.

1 THE COURT: Defense?

2 MR. WILSON: No objections, Your Honor.

3 THE COURT: If you would, bring, bring my foreperson
4 out, please, Mr. Trout.

5 (THE FOREPERSON ENTERS THE COURTROOM.)

6 THE COURT: Mr. Trout.

7 FOREPERSON: Yes, sir.

8 THE COURT: Something has come up that has nothing to
9 do with the trial, but that requires us all to wait about
10 thirty minutes before we can begin this final stage. I do
11 not want you all to have to be in the room if you don't
12 want to be in that room and wondering why am I, why did I
13 get you back here after lunch and yet not going. Something
14 beyond all our control, so we're going to have to wait
15 about that. I just ask you to ask your jury to please
16 understand.

17 Now, if y'all wish to walk outside or anywhere else,
18 feel free to do so with the, with the bailiffs or with the
19 attendants I have for you. Now, please, it is very
20 important as the foreperson of this jury you make sure none
21 of your jurors get anywhere out of the range of people with
22 them if they go outside. That's very important. We're
23 almost here towards the end of the trial, and so please
24 make sure everyone stays where they're supposed to stay.

25 But I, I am right now -- it could very well be before

1 2:30, but I'm more likely thinking it's going to be 2:30 or
2 in that range. So, if some of them want to go outside,
3 that's fine, but it will be about thirty minutes then,
4 okay? I didn't want you to sit there without me explaining
5 that to you.

6 FOREPERSON: Thank you.

7 THE COURT: All right, we're see you in a little bit
8 then.

9 (THE FOREPERSON EXITS THE COURTROOM.)

10 THE COURT: Might as well do this while we're here,
11 though. I don't think I asked, though, on the record. I
12 have shown y'all my charges. Any objection from the state
13 to the charges as I've let you read every charge I have?

14 MR. HEMBREE: No objection to the charge, Your Honor.
15 We did have that one recommendation as the form question.

16 THE COURT: Oh, as far as when I tell them that the
17 indictments in this case, say the word indictment, allege
18 several different offenses against the defendant. Instead
19 of putting the various three indictments, a count on the
20 one indictment, and that's the only change you have?

21 MR. HEMBREE: Yes, Your Honor, just to conform it to
22 the form of the indictment.

23 THE COURT: All right. Any objections to the charge
24 from the defense?

25 MR. WILSON: Your Honor, the only objection that I

1 have obviously is the one I made regarding involuntary
2 manslaughter -- I'm sorry, I apologize, voluntary
3 manslaughter. Other than that, I have no objections.

4 THE COURT: All right. Also I have a redacted
5 indictment which not only removes the fourth count that was
6 there that wasn't read to the jury. It also removes the
7 fifth element on the charge of burglary and, and which
8 alleges that to prove burglary, they have to prove the
9 elements of without consent, the intent to commit a crime
10 therein, and entering the dwelling of another. And that
11 they'd have to add one of the four elements or all four,
12 but at least one of the four elements. So, but they
13 redacted the fifth element by being in the nighttime. So,
14 murder, burglary first degree, assault and battery high and
15 aggravated.

16 I have on the back of it the word verdict. I will put
17 count one, CT one, CT two, CT three, and they would have a
18 choice of not guilty/guilty, or guilty/not guilty and a
19 place for the foreperson to sign the verdict form.

20 Any objection to this copy of this indictment going to
21 the jury with their decision to be on the back of it under
22 the word verdict?

23 MR. HEMBREE: None from the state, Your Honor.

24 MR. WILSON: None, Your Honor.

25 THE COURT: Okay, Mr. Wilson, have you had a chance to

1 look at this?

2 MR. WILSON: I've seen it, yes, sir.

3 THE COURT: Okay. Good, okay. All right, good. Then
4 we'll use this verdict form, the charges as I have them
5 right here. I have the original indictment I'm going to
6 hand back to the Clerk of Court because I won't need that
7 now for a while. What we may do, depending on the verdict,
8 we'll have the original made on a line or have the
9 foreperson put the original, same words, copy what they put
10 on the copy once they do come to a decision.

11 Other than that, then, charges are ready, arguments
12 are ready. If we can get matters we need to get for the
13 defendant, we'll be ready to go.

14 Both sides, y'all both feel it's going to be 2:30.
15 You're probably going to be right. I've got someone
16 picking up the nurse so that we can get that here and
17 hopefully it will be quicker that way. Other than that,
18 I'll be in my chambers.

19 Those of you in the audience, I told you to be ready
20 at 1:15. As always, my predictions are true and accurate,
21 but we'll see y'all probably at 2:30, all right? We'll be
22 in recess until then.

23 (OFF THE RECORD.)

24 THE COURT: Mr. Rathbun, you asked for a copy of my
25 charge. Did you get them?

1 MR. RATHBUN: I did, Your Honor.

2 THE COURT: Okay, very good, and I think he even gave
3 y'all a copy also.

4 MR. HEMBREE: Your Honor, I've got a copy as well.
5 Thank you.

6 THE COURT: All right. Of course I'll be reading or
7 speaking these charges to the jury. Just to let you know,
8 I would much rather speak to the jury then read, so those
9 are the charges but one article or preposition or something
10 else may change but the substance, the -- not only the
11 substance but, in essence, that charge will be what I gave
12 the jury.

13 So, is the state ready?

14 MR. HEMBREE: State's ready to proceed, Your Honor.

15 THE COURT: Defense ready?

16 MR. WILSON: We're ready, Your Honor.

17 THE COURT: Okay, just for fairness, check out in the
18 hallway. Give everybody a minute to get in here. Go ahead
19 and bring the jury in, please. Once that jury gets here,
20 as I said, once that occurs, no one is to leave. So, if
21 you need to leave for restroom reasons or whatever else,
22 you need to do it now.

23 (A PAUSE.)

24 DEPUTY SHERIFF: Everybody's in.

25 THE COURT: Okay, officer, no one comes in, no one

1 goes out.

2 DEPUTY SHERIFF: Yes, sir.

3 THE COURT: You got someone back there to avoid people
4 knocking and all that, don't you, to make sure someone
5 doesn't try to open the door? Okay.

6 (THE JURY ENTERS AT 2:41 P.M.)

7 THE COURT: Ladies and gentlemen of the jury, I
8 apologize for having you wait so long after lunch, getting
9 you to lunch and back. And please don't in any way be
10 concerned with that other than concerned with my planning.
11 That was my fault. So, if it caused you any concern, then
12 one thing is after everything is over, you get to throw
13 cabbages at me and I'll just stand there.

14 But anyway, we're ready now to proceed with the final
15 stage of this trial. You all have listened attentively.
16 You've paid attention as the evidence has been submitted to
17 you, as the attorneys have asked their questions, and so
18 please continue to do so.

19 I've tried to adjust to the temperature in here as
20 best we can, and I think that we have.

21 (A PAUSE.)

22 THE COURT: But I hope that it's within your comfort.
23 But even if it isn't, remember. This is a very, very
24 important case to the State of South Carolina. This is a
25 very important case to the defendant. So, please listen

1 attentively now as we go through the final stages of this
2 trial because within two hours, this case will be in your
3 hands for your decision.

4 And remember the only decision we are making at this
5 time is you're determining whether or not the defendant is
6 guilty of the crimes of murder and/or burglary in the first
7 degree and/or assault and battery of a high and aggravated
8 nature. Those are the three matters before you at this
9 time. So, when it is submitted to you, I'll be asking you
10 to make your decision of not guilty or guilty, guilty or
11 not guilty. And those will be the questions before you.

12 The procedure will be as follows. The state will give
13 its closing argument. Then the defense will give its
14 closing argument, and then I will charge you on the law.
15 My charge on the law I think will probably last somewhere
16 between twenty-five and thirty, thirty-five minutes at the
17 most. I do not know how long each one of their closing
18 arguments or statements will be, and as I told you in the
19 beginning, I'm not going to limit them in that regard. If
20 the state's argument is somewhere in the neighborhood of
21 thirty to forty minutes, we'll probably stand up and sit
22 back down, and I will proceed with the defense argument. I
23 will not keep you here more than an hour and a half before
24 I let you take a break. So, please know I will be
25 cognizant of that. But I'd like to see, though, if we can

1 say somewhere close to an hour or so before we take a
2 break. But if, say, the state's argument is closer to an
3 hour, we'll probably take a break before we go to the
4 defense argument.

5 Once the case is in your hands, of course you will
6 begin your deliberations. My alternates, once that
7 happens, we'll have you in a separate place, but you'll
8 stay with us. So, as I stated a few minutes ago, please
9 maintain your attendance. Please maintain your willingness
10 to listen and pay attention to the arguments as we proceed.

11 State ready?

12 MR. HUMPHRIES: State's ready to proceed, Your Honor.

13 THE COURT: Mr. Humphries, I recognize you for the
14 argument for the state.

15 MR. HUMPHRIES: Please the court?

16 THE COURT: Yes, sir.

17 MR. HUMPHRIES: Mr. Foreman, ladies and gentlemen of
18 the jury, it is never enough. It is never enough for this
19 defendant, for his appetite for destruction. It's not
20 enough, and that really is what this case is about. More
21 so, it's what this trial is about.

22 The judge has told you we have three charges. Murder,
23 the unlawful killing of one human being by another with
24 malice aforethought. We understand a few of those terms
25 because they're common terms: the killing of one human

1 being by another.

2 Malice, that is the term of art. Malice means
3 wickedness, a depraved spirit, a heart fatally bent on
4 mischief, the intentional doing of a wrongful act. Malice.

5 Aforethought, aforethought means that the malice must
6 have been in the mind of the killer just prior to the
7 striking of the fatal blow, the firing of the fatal shot.
8 There may have been some talk either in qualifications or
9 even during the trial, some talk about premeditation.
10 Well, folks, let me tell you. The state doesn't have to
11 prove to you any extended period of premeditation in order
12 to establish murder, but we could. But we could.

13 Burglary in the first degree is the entering of a
14 dwelling a without consent with an intent to commit a crime
15 therein with one or more aggravating circumstances. Arming
16 yourself with a weapon, displaying what appears to be a
17 weapon, causing physical harm to one not a participant in
18 the crime.

19 Assault and battery a high and aggravated nature.
20 Assault, present ability to commit a battery. The battery,
21 an offensive touching of a high and aggravated nature. In
22 this case, we allege the battery, the assault and the
23 battery occurred during the commission of a felony, in this
24 case burglary. Or the disparity of age and/or size between
25 the victim and offender.

1 They're very basic charges, very simple charges to
2 understand. The task before you, I submit, in terms of
3 matching evidence to elements is relatively simple. Why is
4 it simple? Is it because of what the state did? No. It's
5 because of what the defendant did.

6 When the solicitor you spoke to you in opening at the
7 very beginning of this case, he basically told you this.
8 That on the evening of March 6, 2006, this defendant, Louis
9 Michael Winkler, forced the door of apartment [REDACTED]
10 shattering that door frame. And after gaining entry
11 approached J [REDACTED] G [REDACTED], fourteen years old, slight of
12 build, talking on the phone. Struck him under the right
13 eye, knocking him to the ground, walking over to his
14 mother, Becky Winkler, placing a gun in front of her face,
15 discharging one round, leaving her fatally and instantly
16 shot and dead. Going back to J [REDACTED] G [REDACTED] and
17 ultimately walking out.

18 I submit to you folks, and we'll discuss it. The
19 evidence in this case and the reasonable inferences from
20 the evidence support that and only that set of facts. You
21 know, unfortunately in this case for the defendant, that's
22 what we're confined to. Fortunately for the State of South
23 Carolina and for the people of South Carolina, jurors are
24 confined to the facts, and isn't that really the way it
25 should be?

1 It's not enough. It's not enough. It is never
2 enough.

3 There are those murder cases where there are no living
4 eyewitnesses. Those cases present their own set of
5 difficulties in terms of proof. Are they established?
6 Absolutely every day in courts across this nation, but they
7 do present some challenges. But in this case there is no
8 such challenge.

9 J [REDACTED] G [REDACTED]. For the defendant, it is never
10 enough. It is not enough that Louis Michael Winkler shot
11 and killed his birth mother in his very presence. It's not
12 enough. Why do I say that? Not only has he shot and
13 killed his mother, but what has he done in this trial to
14 that child? He has suggested to you, he has encouraged you
15 to believe that J [REDACTED], J [REDACTED] G [REDACTED] would
16 lie to you about who shot and killed his mother. It's not
17 enough. It's not enough.

18 And then at the end of the cross-examination, it's not
19 enough to call him a liar. It's not enough. He has to
20 malign this young teen's account of the crime. It's not
21 enough. He's a Goth. Well, he's not, and he said he
22 wasn't. That's another thing I want you to understand
23 about the way a case proceeds, and the judge is going to
24 tell you and he has told you. The questions, the
25 suggestions of the lawyers, that's not evidence. The

1 arguments you hear today from me, from Mr. Wilson, that's
2 not evidence. Unfortunately for the defendant, you're
3 confined to the evidence.

4 Now, I'm child of the seventies, late seventies, but I
5 know what a hair band is. I know it ain't Gothic. That's,
6 those are just posters. He's even got Stevie Ray Vaughn on
7 the wall. He's not -- but that's what he brings to you in
8 this courtroom. It's not enough. It's not enough.

9 J [REDACTED] G [REDACTED], he says you got to live and die by
10 J [REDACTED] G [REDACTED]'s testimony. Well, that's not true but
11 if it were, I'd take it. I'd take it every day, twice on
12 Sunday.

13 Tom Knoch, the first responding officer, let's think
14 about it. He's an officer and by his testimony, he's
15 showing up to a shooting scene alone in the early evening.
16 He opens the door and sees before him a stairway, and from
17 the bottom of that stairway he calls out. He calls out to
18 young J [REDACTED]. Are you okay? Yes. Is he gone? Yes.
19 And Knoch says he said my dad's gone. My dad's gone. Some
20 time -- and that's, that's the substance, that is the
21 extent of that conversation. This isn't sitting down on
22 the couch talking about what happened, okay?

23 After he hears that statement, he then has to enter a
24 residence and has no idea what harm could possibly befall
25 him. With his weapon unholstered, he has to clear that

1 house and ensure his safety. You recall his testimony. He
2 wasn't even sure, and rightfully so, that J [REDACTED] was not
3 a threat to him. Now in that context, having heard what he
4 believed to be that statement, some time later he sits down
5 to write his report, and without question he references dad
6 verses stepdad. And he testified: could he had said
7 stepdad? Yeah.

8 Now, here is the distinction, folks, and let me tell
9 you something. The case rises and falls on Tom Knoch's
10 recollection of what J [REDACTED] G [REDACTED] said that evening
11 for the defendant. We have -- we are so fortunate, we are
12 so fortunate that we have two recorded statements from
13 J [REDACTED] G [REDACTED], both of which are in evidence, both of
14 which are there for your review, and both of these
15 statements bookend this statement that Tom Knoch's believed
16 he heard. The 911 call and the full interview some two
17 hours later after the murder, J [REDACTED]'s own words. No
18 question about interpretation, no question about what you
19 heard. J [REDACTED]'s words.

20 There is no question that in the 911 call, he
21 identified his stepdad, Louis Michael Winkler. G [REDACTED]
22 okay, this is the fourth line, the second exchange.
23 J [REDACTED]: Okay, my stepdad is, like, crazy; he just broke
24 in and he shot my mom and I'm here alone.

25 It was the first time J [REDACTED] G [REDACTED] had an

1 opportunity to talk to anybody about this, and this was
2 under the stress of having just seen his mother shot and
3 killed.

4 Two hours later, two hours later, is there any
5 question, folks? Did he ever mention, did he ever suggest,
6 did he ever leave it open for reasonable doubt who broke
7 into their home and shot his mother?

8 About these two statements. We do not have to rely on
9 the recollections of a fine officer under the most
10 stressful of circumstances. We don't. To believe, to
11 believe the defense's case, we would have to believe that
12 somehow that conspiracy -- because that's what we're
13 talking about -- that conspiracy formed after the 911 call
14 and before the time Tom Knoch arrived. Well, actually,
15 it's right on the end of the 911 call because that 911 call
16 ends when Tom Knoch arrived.

17 The reason each and every one of you were seated,
18 because you were reasonable. You're not all the same. You
19 don't come from the same walks of life. You don't have the
20 same education, professional background, but you're members
21 of this community, and you will be the conscience of the
22 community in the court today.

23 A conspiracy, and imagine how grand this conspiracy
24 has to be. Think about it. J [REDACTED] G [REDACTED] had to
25 conspire with his father concerning the killing of the

1 woman who gave him birth. Think about it. That is what
2 the defense will ask you to vote for.

3 There was a suggestion in opening that the defense
4 wanted you to hear the 911 call because the tenor, the
5 tenor of that call was somehow supposed to shock you.
6 Folks, can anyone, can anyone predict how a fourteen year
7 old child will react after he sees his mother shot in cold
8 blood? Was he crying? No. Was he strangely calm?
9 Anybody want to guess if that's appropriate? Anybody want
10 to trade places with J [REDACTED] G [REDACTED] to find out if
11 that's the way you're supposed to act? That's what they
12 want you to do. It's not enough. It's never enough.

13 J [REDACTED] testified. You saw his demeanor; you saw the
14 tenor of his testimony. Does he appear to be to you
15 someone different than the individual you heard on the 911
16 call than the individual that you heard on the recorded
17 statement? He hadn't changed. He hadn't changed.

18 Some of us wear our emotions right here, just like the
19 clothes we wear. And there are others from whom we never
20 see a blip. We never see a ray. It's never enough.

21 Start with assault and battery of a high and
22 aggravated nature. That was J [REDACTED] on March 2006, a
23 slight, fourteen year old child. This is physical
24 evidence. There's a thing about physical evidence. It
25 can't lie; it can't lie to you. It does not have the

1 ability to lie. Is there any question? Is there any
2 question?

3 Burglary in the first degree, the entering of a
4 dwelling without consent with the intent to commit a crime
5 therein. Did you hear the question? Did you, did you hear
6 the question? Well, now we've got this shattered door
7 frame. But now, Officer Knoch, you're not telling me that
8 forced entry is the only way that could have occurred. Are
9 you kidding me? Are you kidding me?

10 With the intent to commit a crime therein. Folks, you
11 don't walk -- you don't break in the door of someone's
12 residence unless you intend to commit a crime therein. You
13 don't break through someone's door armed with a weapon if
14 you don't intend to commit, intend to commit a crime. And
15 did he? Yes, sir. Yes, ma'am. Was he armed with a deadly
16 weapon? Yes. Did he display what appeared to be a pistol?
17 Yes. Did he cause physical injury to one not a participant
18 in the crime? Yes. You can pick all four because they're
19 there. About that, there's no question.

20 Murder. First, we've got to prove the defendant was
21 there. Of course, J. [REDACTED] testified that's the
22 defendant's hat. It was there outside the door. I wonder
23 how that happened. You think maybe when he is forcing on
24 the door, he lost his hat? We got to prove he was there.

25 Blood on the counter, no question it was Louis Michael

1 Winkler's. One in 24 quadrillion, fifteen zeros. There's
2 no question about that.

3 Wait a second. We've got all this, we've got all this
4 problem with the crime scene. We got all these people
5 trampling through the crime scene. Now, you heard the
6 testimony. The only other time Louis Michael Winkler had
7 been in that residence was banging on the door about
8 midnight one night. He never walked through the threshold
9 of that door. The crime scene technician said this was a
10 fresh blood spot.

11 Now, conspiracy gets just a bit more. It's just a
12 little bigger because, you see, the solicitors were at that
13 crime scene. So, maybe we put it there. And I suppose we
14 would have had to put it there with our nose, I guess,
15 because our hands were in our pockets. We are a fortunate
16 country when it comes to the evidence. We can find people
17 with good common sense.

18 In talking about the crime scene, in talking about the
19 crime scene, let's talk about who was there. Let's talk
20 about if any essentials personnel was not there. First
21 four names: responding patrol officers. They got a job.
22 They protect and serve, folks. That's what they do. They
23 clear a house, they make sure it's safe, they secure it.
24 They've got a job. EMTs, four of them. They've got the
25 job. In this case unfortunately they responded to a

1 lifeless body of Rebekah Winkler, but they had a job. A
2 detective, they got a job. And then the crime scene tech.
3 Tell me, who out, who out of those nine people shouldn't
4 have been at that crime scene? Who's just trampling
5 through? Who doesn't have a job, an essential job? Not a
6 soul. And once crime scene gets there, who did the
7 immediate crime scene belong to? Crime scene technicians.
8 Who has entry or exit of the immediate crime scene after
9 crime scene gets there? Only those authorized by the crime
10 scene technicians. Why? They're securing the scene;
11 they're preserving the evidence.

12 It would be sort of tough to trample that round into
13 that wall, wouldn't it? Wouldn't it? And that, folks, is
14 the other reason we know that Louis Michael Winkler was
15 there. Because this fired projectile was fired by this
16 gun. And there is no question but that this gun was
17 recovered two weeks later in the pocket of Louis Michael
18 Winkler.

19 There was a lot of talk, lots and lots and lots of
20 talk from the state, too -- probably too much -- about the
21 projectile and whether it had blood on it, whether it was
22 tested for blood, whether it should have been tested for
23 blood, whether there would have been blood even if they'd
24 tested for it, why they waited a year to test for it.
25 Well, you had the opportunity to hear from the experts.

1 These are people who are highly trained, highly qualified,
2 and they explained to you.

3 First of all, Vello Paavel, that a round of this type,
4 a fully jacketed round nose projectile is unlikely to bear
5 upon it any serological evidence. Unlikely. More likely
6 if it was a hollow point or a flat nose, or if it has some
7 gouges or gashes which catch those things if it's not
8 smooth. And, in fact, he checked it under magnification,
9 the first guy to look at. Wasn't there. And we talked a
10 lot about that, and we talked a lot about the sheetrock,
11 condition of the sheetrock.

12 There's one thing about J [REDACTED] G [REDACTED]'s testimony
13 that is consistent through and through and that is
14 consistency. Detective Ann Pitts told you that after doing
15 a thorough walk through of the crime scene, she interviewed
16 J [REDACTED] G [REDACTED]. And nothing, nothing about his
17 statement was contradictory or inconsistent with the crime
18 scene she observed.

19 But, folks, let's do this. Becky Winkler, sitting on
20 the couch. They hear the kick at the door. She says
21 what's that. TV's mute. I wonder when that happened. She
22 begins to stand upon as Winkler approaches. He's facing
23 her. He raises the gun, and he shoots her. This is the
24 couch. This is the wall, and the hole is directly behind
25 her, directly behind her. That wall, I'm Winkler, and

1 Becky's getting up.

2 Now, do we have to, do we have to stretch our
3 imaginations to make those pieces fit? Do we have to
4 engage in fantasy to make those pieces fit? Or do we hear
5 them and we go yeah. But after all that talk about whether
6 the only projectile recovered in the house, whether that
7 was the projectile that went through the brain of Becky
8 Winkler, we really come back to one thing which makes all
9 that talk not quite so important because this gun, the
10 Walther found under her pillow, did not fire a shot.
11 Didn't fire a shot.

12 All of that talk about this projectile and the damage
13 it caused is answered by this gun because this gun had been
14 cleaned. Had dust. Had lint. Think you might be able to
15 get a little bit of lint under a pillow? It had not been
16 cleaned -- or it had been cleaned and oiled since the last
17 time it was shot.

18 Now, you're allowed to use your common sense and your
19 common life experiences. If you fire a round through a
20 barrel that's been cleaned, when it comes at the end of
21 that barrel, you won't have any more oil in that barrel.
22 It just doesn't work that way.

23 But about this gun, it was fouled. It had been shot
24 since it had been cleaned. There was only one gun that
25 night, folks, and there was only one hand that held it:

1 Louis Michael Winkler.

2 The question was asked more than once, more than once.
3 How, could you see what you say you saw? How? In
4 J [REDACTED]'s statement to Detective Pitts two hours after the
5 murder of his mother, he said I was sitting on the floor,
6 and he was leaning over. He's, like, you're going to --
7 you told people you're going to kick my butt, or whatever.
8 And I'm, like, no, I never said that. And then he just
9 walked over to Mom and she stood up off the couch and he
10 shot her, and she fell down. Then he walked back over to
11 me, and he just kept looking at me, acting like he was
12 going to shoot me and I just said don't shoot me, don't
13 shoot me.

14 Did your mom make any move? No, she didn't. She was
15 just barely even up. She just started to get up.

16 You remember the testimony from Detective Cooper,
17 crime scene tech who said the bullet hole was 4 feet 1
18 inches into the wall when she had just started to get up?
19 She wasn't even up.

20 What are we to think about that really? What are we
21 to think about that? Can we attribute that J [REDACTED]
22 [REDACTED] G [REDACTED], fourteen years of age, alone -- that
23 statement was taken alone. His daddy wasn't standing
24 beside him. Are we to attribute to J [REDACTED]
25 G [REDACTED] a heart so callous, a mind so plotting and devious

1 that he could give the same account twice to different
2 people, knowing all along that his father had shot and
3 killed his mother? Is that reasonable? Is that logical?
4 It is unthinkable. It is unthinkable.

5 When did Ann Pitts, Detective Pitts say she saw this
6 gun in this exact location? January 11th, almost two
7 months before. I submit to you Rebekah was scared. I
8 submit to Becky was scared. I submit to you Becky was
9 scared of Louis Michael Winkler. I submit to you she had
10 cause to be scared. Why did it happen? Why did it happen?
11 Why, in the safety of your own home behind a locked door in
12 the company of your child do you have with you a can of
13 mace?

14 Now, here's what we've sort of got to get over
15 somehow, somehow. Why Louis Michael Winkler would not only
16 arm himself with this handgun, loaded, but have also in his
17 possession eighteen additional rounds, and not about as big
18 as your arm. Wasn't going there just to talk, folks. In
19 fact, he did very little talking. What he said spoke
20 volumes. And he gave to you, this jury, insight into the
21 deepest, darkest recesses of that man's heart because it's
22 never enough. It's never enough.

23 Pitts: Okay, did he say anything or did you say
24 anything? What happened next? I said what are
25 you doing, and he says I'm here now. And he was

1 just cussing and he just kept saying I'm here
2 now. I'm here now.

3 Because, you see, it's never enough. It's never
4 enough. We can talk a lot about a lot of motives. We can
5 engage in fantasy if we're inclined. That's not your
6 obligation. But what happened here in this case, what has
7 happened in this trial is that Louis Michael Winkler,
8 estranged from his wife, would not have it. That woman
9 would not leave him and live to tell about it. Not him, oh
10 no. It's not enough. It's never enough.

11 Is what J [REDACTED] tells us corroborated? Yes, sir.
12 Yes, ma'am. By physical evidence, testimonial evidence,
13 L [REDACTED]. He is wholly supported by the evidence.

14 Can he see what's happening? Can he see his mother
15 get shot? You know, that was asked of him a number of
16 ways. Did you see? Yes, I saw. That was his testimony.
17 When asked again, did you see? Well, I saw him walk over.
18 I saw him raise the gun. I saw her get up off the couch.
19 I heard the shot. Did you look? What's a fourteen year
20 old boy supposed to do?

21 Tell you this. There was one other man. There was
22 one gun, and that man with that gun walked over to his
23 mother, pointed the gun. That gun discharged, and his
24 mother dropped dead. Did he see it? Absolutely.

25 He was sitting up. A lot was made, and I hate to even

1 dwell on this, but a lot was made about his position, his
2 relative position to the shooting of his mother and whether
3 or not he could see. Were you on your back? Yeah, I was,
4 I was on my back. Well, that's where he got hit. Let's
5 use our common sense. If someone has just knocked us to
6 the ground and walked away from us over towards our mother
7 raising a handgun, what are you going to do? Are you going
8 to lie back, or are you going to sit up to see what's about
9 to happen to your mother?

10 I submit to you, folks, that the statement taken two
11 hours, two hours after the murder is the most accurate
12 account you will ever get: I was sitting along the floor;
13 he was leaning over. Is there any doubt at all about
14 whether or not he saw what he said he saw? And what, what
15 would it matter? What if he had closed his eyes from the
16 time he was struck and knocked down and did not open them
17 again until Louis Michael Winkler walked out of that house?
18 What would that matter? He's the only one there. He's the
19 only one with a gun, and he's got that same gun two weeks
20 later. What are we doing? What are we doing to this
21 child?

22 Found in the search of Louis Michael Winkler's house
23 three days after the murder, just a simple slip of paper.
24 No editorial comments because none are needed:
25 

1 That's the man. That's the man. There is no, no
2 evidence to the contrary. That's the man. And in his
3 wallet at the time of his arrest two weeks later:

4 Little River: Woman, fifty, shot and killed in
5 condo. A woman was fatally shot Monday in a
6 Little River condo. Police were searching Monday
7 night for the person they believe responsible,
8 said Horry County coroner Robert Edge. Rebekah
9 Winkler, fifty, was killed about 5:50 p.m. at the
10 on

11 South Carolina 9, Edge said, and a witness called
12 911. The autopsy will be performed today.

13 It's never enough. For a brief period of time, for a
14 brief period of time, it almost was because Louis Michael
15 Winkler got what he wanted. And just the thought of it
16 wasn't quite enough. He had to keep a trophy. This is a
17 fellow for whom it is never enough. Who is proud. Can you
18 imagine, can you imagine after having killed your estranged
19 wife in front of her fourteen year old child to make the
20 effort while on the run for two weeks to cut out the
21 article of her death? His handiwork. It's not enough.
22 It's not enough. It's never enough. Folks, today, today
23 in this courtroom it's enough. It's enough.

24 As a practice over the last twenty years, I've not
25 told a jury you need to return this verdict. If I thought

1 in selecting you that I would have to tell you after you
2 heard all the evidence what the appropriate verdict was,
3 we'd have never put you in that box. I want you to return
4 a verdict that speaks justice: justice for the State of
5 South Carolina, justice to that defendant. And I submit to
6 you folks that is the last thing we ask.

7 THE COURT: Thank you, Mr. Humphries.

8 Ladies and gentlemen of the jury, I think at this time
9 I'm going to have you go to your jury room. Now, refresh
10 yourself and be ready to come back. As soon as Mr. Trout
11 knocks on the door, we're going to bring you back. So,
12 refresh yourself and come on back and we'll get the defense
13 argument.

14 Do not discuss this case. It is not yours yet. So if
15 you would, please proceed to the jury room.

16 (THE JURY EXITS AT 3:38 P.M.)

17 THE COURT: Okay, now, I anticipate them out about ten
18 minutes, maybe fifteen, but I'm going to go on their
19 schedule. Myself, I'm just going to step back in the
20 courtroom at ten minutes till by that clock. So, I'll be
21 back here then, and so when the jury's already to come out
22 after that, you need to be ready. So, everyone else be
23 ready. We'll take ten.

24 (OFF THE RECORD.)

25 THE COURT: The jurors have not knocked yet. I told

1 the bailiff to check on them. If you would, go let the
2 jurors know that if they're ready, we're ready.

3 Check the door for me, one more time, Officer. I want
4 to be sure no one is left out that wants to come in.

5 DEPUTY SHERIFF: Yes, sir.

6 THE COURT: Mr. Wilson, are you ready?

7 MR. WILSON: Yes, sir.

8 (THE JURY ENTERS AT 3:55 p.m.)

9 THE COURT: Okay, ladies and gentlemen, now we'll have
10 the closing arguments of the defense.

11 Mr. Wilson.

12 MR. WILSON: Thank you very much, Your Honor.

13 Ladies and gentlemen, Mick Winkler is not guilty. He
14 was not guilty when we walked into this courtroom. He is
15 not guilty as we speak. Having said that, the burden is
16 not on the defendant. It's not on the defendant to prove
17 himself innocent. That is not the burden. It is not his
18 responsibility to come in and disprove anything. It is
19 their responsibility to prove every element of every crime
20 for which they charged this defendant. And not only must
21 they prove it, folks, but they must prove it beyond a
22 reasonable doubt. And therein lies the problem.

23 And they said, oh, you know, they're bad-mouthing
24 J [REDACTED]. Well, folks, this ain't about [REDACTED]. It's
25 not about J [REDACTED]. I regret that his mother is dead. I

1 regret that he is a witness in this trial, but this case is
2 not about J [REDACTED]. This case is about whether or not the
3 South Carolina can prove that this defendant murdered this
4 lady. That's what this trial is about. How they choose to
5 bring you the proof is their problem.

6 This defendant never chose to be here. He didn't
7 choose who the witnesses the state was going to bring in
8 here to testify. He had no part in any of that. And they
9 want you -- oh, you know, he's fourteen years old, so let's
10 give him a pass and let's go ahead and convict him, you
11 know, of murder because he's fourteen years old. We don't
12 want to talk about whether he could see or he couldn't see
13 or whether he's telling the truth or whether he's not
14 telling the truth. That ain't important, folks. He's
15 fourteen years old. Forget about it and let's just go
16 ahead and convict him and be done with it. But it doesn't
17 work that way, which is why we have trials, which is why we
18 have juries.

19 Let's talk about it a minute. Let's talk about what
20 we know. We know, we know for a fact that J [REDACTED] has
21 changed his story. Now, whether he's Goth or whether he
22 reads Satanism books, I don't care. I don't even know that
23 that's important. What I do know for a fact -- and that's
24 what we're here about, facts -- what we do know without a
25 doubt is that he took this the witness stand and he told

1 you a totally different story than what he told the
2 investigators on the night this crime occurred. Just
3 forget that, and it's a critical difference because what he
4 testified to in this stand, from this witness stand was
5 that he was lying flat on his back on the floor.

6 And you say, well, Mr. Wilson, why is that important?
7 Well, it's important, folks, because if he is not telling
8 the truth about that, then what else is he not telling the
9 truth about, because you have to judge their credibility,
10 the believability of every person who testifies. And if
11 they tell you something that is not true about one thing,
12 then how in the world do you know that they're not telling
13 you something that's not true about something else? That's
14 why it's important. That's why it's important.

15 The 911 tape, you listened to it. You heard it
16 already. There was a point on the tape where the operator
17 is asking him who else is present or is there anyone else
18 present. Now, when I heard that tape, I never heard an
19 answer. You listen to it. You'll have it. See if you
20 ever get an answer.

21 Another thing you'll notice about that tape is that
22 several times, two or three times during the course of that
23 conversation she's trying to either get information from
24 him and he's incorrect about the information he's giving
25 her. And the question is is somebody there giving him

1 answers to that questions which is when she asked him is
2 there anyone else there? And I'm going to connect all the
3 dots about why is there an inference that someone else was
4 there based on what they have proved and what they have
5 presented.

6 Let's talk about what else we know. We know for a
7 fact that -- it's uncontradicted by Detective Pitts that
8 she never made any effort, not one, not one effort was made
9 by the lead detective in the case to try to determine
10 whether or not J [REDACTED]'s statement was true or false,
11 whether he could actually see what he said he saw because
12 wouldn't that help. If he could see what he saw, what he
13 says he saw that might very well be important.

14 Well, the problem is, and you're going to have these
15 photographs. If he is lying flat of his back behind the
16 couch, which I submit to you is not true in the first place
17 because if you look at these pictures, you'll see there is
18 no way he could have been laying behind the couch. It's
19 physically impossible because there's a table behind the
20 couch and two chairs were turned over. It's not possible.
21 His story is not true. As sad as that might be, as
22 egregious as that might be, it's not true.

23 What happened at the house that day? Let's listen to
24 what J [REDACTED] said, and then think about it for a minute.
25 His story is, his story is that he is eating and that he

1 had been on the phone for five to ten minutes with a
2 friend. Eating at the counter. That's what he said. The
3 plate of food is never touched. You have a picture of it,
4 you look at it. That's food's never been touched. There
5 is a set of shades sitting at the table right around the
6 plate. I asked him, those your shades. I don't really
7 know. I asked him about his dad. He said yeah, his dad
8 had been spending some nights and his dad was expected to
9 come over that night. Now, we don't know if the shades
10 belonged to dad. Why? Because nobody bothered to find
11 out.

12 This case is about a rush to judgment. It's about a
13 rush to judgment, folks, the judgment being that fourteen
14 year old boy. The police, instead of doing their job,
15 instead of doing what was necessary to prove beyond a
16 reasonable doubt whoever it was that killed Ms. Rebekah,
17 they decided that a fourteen year old told them something.
18 They left it unchecked, they didn't investigate it, and
19 they just assumed it was true. And because of that, they
20 went on the manhunt for Louis Winkler.

21 Well, you know, they presented more witnesses in this
22 trial about looking for him than they have on any other
23 issue in this trial because what they want -- oh, we were
24 looking for him, so he must be guilty because if he weren't
25 guilty, we wouldn't have been looking for him. So, if we

1 don't have anything else, let's just bring him in here and
2 we can tell you guys, hey, look, we were looking for him.
3 We had all these people. We had helicopters and we had
4 bloodhounds. We were looking for him. Well, folks,
5 looking for somebody doesn't make them guilty of anything.

6 Let's talk about something else. The first officers
7 to arrive, the first officer. The very first officer to
8 arrive, J [REDACTED] tells him, he doesn't say Mick Winkler ran
9 out the door. Mick -- now, this is the man who has only
10 been with his mom for two years. This kid's fourteen years
11 old. Well, do you honestly believe he's calling him dad?
12 Especially after he just shot his mom? Do you honestly
13 believe that for one second? He says my dad just left.
14 Now, you've not heard one iota of testimony in this record
15 J [REDACTED] G [REDACTED] ever called Mick Winkler dad.

16 Another thing is when J [REDACTED] s in the backseat of
17 the police car, the first officer talked about that. And
18 the solicitor asked about, well, you know, this officer
19 took him down to the station and talked to him. That was
20 Detective Pitts, and he gave a statement and nobody else is
21 with him. Well, folks, it ain't true. In fact, his father
22 was with him when Detective Pitts took the statement.

23 THE COURT: Excuse me. Yes, sir?

24 MR. HEMBREE: Your Honor, we need to approach.

25 THE COURT: Mr. Wilson.

1 MR. HEMBREE: I object to the mischaracterization of
2 the evidence that's not supported by the record. Not
3 anywhere.

4 THE COURT: Ladies and gentlemen of the jury, if you
5 would, please, as I told you, the attorneys, what the
6 attorneys say is not evidence. Take the evidence as you
7 remember it, ladies and gentlemen. Take the evidence as
8 you remember it. If you wish to have evidence played back,
9 you can have evidence played back. Take it as you remember
10 it. Let's proceed.

11 MR. WILSON: Thank you, Your Honor.

12 Folks, let's talk about something else in this trial.
13 The bullet. You know there's all this talk about this
14 projectile. Well, they didn't tell you about it. It
15 wasn't until I got up and started asking questions about
16 it. The projectile never went to SLED, ever, for a year
17 until who? I asked them about it. Why didn't you send it?
18 Well, by then it was too late because what have they done?
19 They had already sent it to the ballistics guy who then
20 tested it, and he said, well, I looked at it. And then the
21 solicitor kept pressing him and pressing him and finally he
22 said, oh, yeah, I looked at it and I knew it had a -- what
23 I would call a looking glass or mirror or whatever. And at
24 seven times magnification I looked at it and I didn't see
25 anything on it.

1 Well, the problem with that is that is not how it's
2 done. Now, the reason that's important about the bullet or
3 the projectile is because they can't prove that that's the
4 bullet that killed Rebekah Winkler. Show me one piece of
5 testimony in this record anywhere at any time that says
6 that's the bullet that killed Rebekah Winkler. That's the
7 bullet from the gun that they brought in here killed
8 Rebekah Winkler.

9 That's what they have to prove. Not that Mick Winkler
10 was there. Not Mick Winkler was there, but that Mick
11 Winkler fired a particular bullet that hit her and killed
12 her. There is zero proof in this record that that bullet
13 ever struck that victim. Reasonable doubt.

14 Now, was more than one gun there? We know at least
15 one more was there. Was it fired? I don't know, but it's
16 not my responsibility to prove to you that. That's their
17 responsibility. If they want you to find this man guilty
18 of murder, then they must prove that he fired the shot,
19 that that shot hit her, that that shot killed her, and that
20 is proof. There is no proof.

21 J [REDACTED] told you -- now, originally he had told Ms.
22 Pitts that, oh, yeah, well, I saw the whole thing. I saw
23 it, and he walked right up to her, took that gun, put it
24 right to her face and pulled the trigger. Read his
25 statement. That's what he said. Detective Pitts came in

1 here and said, oh, yeah, that's what he told me. That
2 ain't what he testified to. That's not what he got on this
3 stand and raised his right hand to the Good Lord and
4 testified to. He said I was laying flat on my back. I did
5 not see it.

6 Let me say something else which is strange about
7 reasonable doubt. Think about it for a second. If
8 J [REDACTED]'s story is true, he is seated, he says, seven feet
9 or eight feet from the door. There comes a bam on the
10 door. I think the solicitor was very dramatic about it.
11 Said it was bam. And five second later the solicitor
12 counts, one, two, three, bam.

13 Now, folks, you're at home. You're at home. You're
14 sitting down eating your dinner because that's what you've
15 got to believe, and somebody takes their foot or arm or
16 shoulder or leg or whatever it is and they're kicking in
17 your door, and you're on the phone with a friend, your best
18 friend, and you don't say, hey, somebody's breaking in my
19 house. You don't say a single word, nothing. Your mom is
20 on the couch just feet from where you are, but she doesn't
21 say anything either. You sit there and then the intruder
22 walks from the doorway inside your house over to J [REDACTED],
23 according to -- this is his story. This is what you've got
24 to believe. That an intruder walks all the way across the
25 room from the door into the stool over to where he is

1 seated at the counter eating. Knocks him off of the
2 counter. Plate doesn't get disturbed, fork still on the
3 tray, shades still across the top of the plate. There is a
4 table right behind -- it's in the pictures -- there's a
5 glass table right behind where the chairs are and at the
6 back of the couch we've been talking about. None of that's
7 disturbed. And still mom doesn't get off the couch.

8 And here is a man who just kicked in her door, kicked
9 in J [REDACTED]'s door. Nobody calls 911. He's still on the
10 phone with his friend. Nothing. Absolutely nothing. Does
11 that make sense? It does not.

12 What makes a lot more sense is that Roger Grainger was
13 there eating dinner. Just gotten off work. It was 5:30.
14 There's an altercation between them. Husband and
15 ex-husband. Nothing else makes any sense. And, see, the
16 problem they've got is they have to prove to you beyond a
17 reasonable doubt that it happened the way that they said it
18 happened, which they can't do and which they have failed to
19 do.

20 Now, during the course of the trial, there was a lot
21 of talk about what the police did and what they didn't do.
22 And let me say this before I go into it. We have a lot of
23 fine officers who do a really good job. And that's great,
24 and that's wonderful. And I have great respect for people
25 in law enforcement. Don't know that I'd want to do the job

1 myself, but they're like the rest of us. They make
2 mistakes. Lord knows I make my share. They make mistakes.
3 They made mistakes in this case, and those mistakes have
4 created problems for us in this case.

5 We don't know, we don't know how long the blood was
6 there. We don't know if it was there for a minute.

7 Another thing, which is a good point. The blood. Think
8 about it. There's blood on the counter, remember? Blood
9 on the counter. The defendant's blood is on the counter.
10 Well, folks why would his blood be on the counter if there
11 wasn't a fight? Why would it be there? Wouldn't make any
12 sense. If all that's happened is he came in, kicked the
13 door in, comes in, slaps J [REDACTED] up side his head, knocks
14 him off the counter and then -- where did the blood come
15 from?

16 Reasonable doubt. Reasonable doubt. It's their
17 responsibility to prove to your satisfaction beyond every
18 reasonable doubt that it happened the way they said it
19 happened, and they have not done that in this trial.
20 Nobody says, have you heard one witness say, oh, yeah, he
21 was bleeding when he came in the door. No. The blood had
22 to come from somewhere. It didn't just magically appear.

23 Let me talk for a minute about the officers. I know
24 that Detective Pitts came in and the reason she was brought
25 back is because when I cross-examined J [REDACTED] and he

1 changed his story about what he had said happened, and they
2 wanted to try to get her to say, oh, well, yeah, but he
3 told us what is more consistent early on. The problem for
4 her is this. Is that when I asked her, well, then, if he
5 told you he was behind the couch, whether he was seated or
6 whether he was standing, it doesn't really matter. Could
7 he see? Could he see from where he was what he says he
8 saw? Well, I never went to find out. I never went to
9 check. I never went back and measured. He told me and
10 that was enough for me. That's what she said, essentially
11 in a nut shell because they had a name and once you get a
12 name, why have evidence? Why get evidence? You've got a
13 name.

14 What I want to do for the next couple of seconds is
15 talk with you about the DNA and the ballistics report.
16 Now, let's talk about the DNA first. The young lady from
17 the DNA said, well, you know, yeah, we got blood and we, we
18 measured against the standard and it was his blood. I
19 don't know where -- how long it had been there, I don't
20 know who put it there. All I know is it was there. It's
21 his blood. Fine.

22 So then the question comes up with her about, well,
23 what about the projectile? Did you ever get the
24 projectile? No, I never got the projectile. Nobody ever
25 sent it to me so I never examined it. She said, well, in

1 fact, she had never even examined any projectile ever for
2 blood. But she admits that you can get DNA off it perhaps.

3 Now the ballistics guy, Mr. Paavel comes in and he
4 testifies. He said, oh, yeah, you know, this gun that was
5 found on Mr. Winkler at the time of his arrest fired this
6 projectile. Well, my problem is the projectile was found
7 in the wall, not in the victim. So that was fired. He
8 also makes a big deal about it. Said, well, you know, can
9 -- if you, if you slide this slide back on top of the gun,
10 will, will -- it sometimes jam and you'll have the
11 cartridge still lodged in or the shell still lodged in the
12 gun. Oh, why is that important? It's important because
13 they need to create a story for the shell casing that
14 nobody can find. Nobody said the defendant got it.

15 Unfortunately for them, what does he say? He says,
16 no. I fired this gun four times. It never misfired. It
17 never misfired. And if the gun didn't misfire, then the
18 shell casing was on the floor because it ejects a shell.

19 Why is that important? Well, it's important because
20 one of two things happened with that shell. Either the
21 police missed it in looking for it, or somebody picked it
22 up. There is no testimony the defendant picked it up.

23 Now, all I'm trying to do is show you all these things
24 fit together which puts doubt about what really happened
25 there that day, things they can't explain. They don't know

1 what happened, but they want you to guess. They want you
2 to accept on faith that it must have happened the way we
3 said it. Must have. And if we can't convince you with
4 that evidence, then what we'll convince you with is the
5 idea and the fact that we have a lady who is dead and a
6 fourteen year old son who says he saw it. And that ought
7 to be enough for you. How dare you ask for more.

8 Every defendant comes into this courtroom is presumed
9 to be innocent. That's just not because I say it. It is
10 not just because His Honor says it. It's because law of
11 this state and every state in this nation says that, that
12 the defendant is presumed to be innocent. And what that
13 means is folks, is that the state has to overcome that.
14 Not the defendant, not the other way around. He -- they
15 have to present sufficient information to overcome that
16 beyond a reasonable doubt. Otherwise, you have to find the
17 defendant not guilty.

18 And let me say this. It's not my fault that they
19 didn't prove their case. It's not your fault. It's not
20 the defendant's fault. It's not J. [REDACTED] G. [REDACTED]'s fault.
21 It's the state's fault. And what they want is for you to
22 do what they haven't been able to do. But they want you to
23 do it based on conjecture, based on innuendo, based on no
24 evidence, and based on a fourteen year old who has given
25 you inconsistent stories. That's what you've got. That's

1 all there is. And they want you to find this man guilty of
2 murder beyond a reasonable doubt based on that.

3 I have done my job the last year and a half with this
4 case, and now it's your responsibility once His Honor
5 instructs you as to the law, but I tell you this. The same
6 justice that the state wants, the defendant is entitled to.
7 Same fairness that the state wants, the defendant is
8 entitled to. But not only is he entitled to that. He is
9 entitled to the benefit of every reasonable doubt that you
10 might have. He's entitled to that by law, and by justice.

11 In closing, I want to say to you that I have
12 appreciated the fact that you have been attentive. That
13 you have listened and that you have been extremely
14 attentive throughout this process. I know that all of you
15 serve at great inconvenience to yourselves and to your
16 families. And it is important that you're here because
17 it's what makes this process work. I told you at the
18 outset that justice is not in the walls of the courthouse.
19 It's not in the robe that His Honor wears. It's not the
20 voice of the lawyers who represent the state and
21 defendants. It's in the hearts and minds of the jurors who
22 sit in judgment. That's where it is. If it doesn't exist
23 there, then it doesn't exist.

24 All of you said that you could set aside anything that
25 you might have heard, anything that you might have read,

1 anything somebody told you, any opinions you've formed, and
2 that you could be fair and impartial and base your decision
3 solely upon the evidence that was produced in this
4 courtroom and nothing else. And if you do that, no one,
5 not the defendant, nor the State of South Carolina have any
6 reason to complain or be dissatisfied with your verdict. I
7 Thank you.

8 THE COURT: Thank you, Mr. Wilson.

9 All right, ladies and gentlemen, stand up. Stretch as
10 you will just for a minute, here. I'd like to go ahead and
11 give you my charge on the law because it will not be very
12 long, and I think it will be appropriate at this time for
13 me to give it to you. So, sit down when you're ready,
14 okay? When you're ready be seated.

15 Mr. Foreperson, members of the jury, the State of
16 South Carolina charges the defendant, one Louis Michael
17 Winkler, with the offense of murder, burglary in the first
18 degree, assault and battery of a high and aggravated
19 nature. These charges are brought to you by what's called
20 an indictment, a sheet of paper. You should understand
21 that this indictment is not evidence. It contains only
22 allegations on the part of the state and in no way is it to
23 be considered as evidence. In addition, what the lawyers
24 has told and talked to you about is not evidence. The only
25 evidence in this case is the testimony from the witness

1 stand and the exhibits that have been introduced in this
2 case.

3 Now, to this indictment, these charges, the defendant
4 has pled not guilty. And so that places upon the state the
5 burden of proving guilt beyond a reasonable doubt. A
6 person charged with a criminal offense, ladies and
7 gentlemen, is presumed innocent. And the burden is upon
8 the state of prove guilt beyond a reasonable doubt. A
9 person is not required to prove himself innocent. I charge
10 you that's a vital and important rule of law, that this
11 presumption of innocence stays with an individual
12 throughout all the proceedings and is not removed unless
13 guilt has been proven beyond a reasonable doubt. So, as I
14 said, the burden of proof is upon the state to prove guilt
15 beyond a reasonable doubt.

16 Some of you may have been involved at some point in
17 time in the other -- I think I saw on some of your sheets
18 that some of you were in a civil case, civil cases where
19 people are suing each other and things of that nature.
20 They're involved as a witness, a jury or a party or
21 whatever. If you were, you probably heard the judge tell
22 the jury that the person bringing the lawsuit, the person
23 bringing the claim had the burden of proving if something
24 was more likely true than not. And that is the standard in
25 a civil case. In criminal cases, however, the government,

1 their proof must be more powerful than that. It must be
2 beyond a reasonable doubt.

3 Now, proof beyond a reasonable doubt, that's proof
4 that leaves you firmly convinced of the defendant's guilt.
5 Our courts have decided that a reasonable doubt is a doubt
6 that would cause a reasonable person to hesitate to act.
7 Having said that, ladies and gentlemen, let me also say
8 this. There are few things in this world that we know with
9 absolute certainty and in criminal cases, the law does not
10 require proof that overcomes every possible doubt. The
11 burden is proof beyond a reasonable doubt.

12 Reasonable doubt may arise from evidence in the case
13 or absence of evidence in the case. You, the jury, you
14 determine from the evidence introduced to you whether you
15 have any reasonable doubt in this case. If, based on your
16 considerations of the evidence, you are convinced beyond a
17 reasonable doubt of the guilt of the defendant, then you
18 should find him guilty. If, on the other hand, you have a
19 reasonable doubt as to his guilt, then you should find him
20 not guilty.

21 Mr. Foreman, ladies and gentlemen of the jury, under
22 the Constitution of the State of South Carolina, you are
23 the finders of fact. Not I. I'm not permitted to get
24 involved in the decision on the facts at all. If for some
25 reason because of something I may have said, some ruling I

1 may have made or anything else, you have a thought that I
2 have an opinion on the fact, I do not. I leave that solely
3 up to you. You decide the facts from the evidence and you
4 may accept evidence totally, reject it totally, accept it
5 in part, reject it in part. In other words, you give the
6 evidence the weight and consideration you deem and you
7 decide it should receive. Evidence, of course, once again,
8 is testimony and exhibits that have come in this case.

9 In addition, ladies and gentlemen, the law does not
10 require nor does the law desire that you leave your common
11 sense at home. The law wants the benefit of your
12 individual and your collective common sense as you come
13 into a court of law and you decide these issues. So, in
14 the deliberations you are free and encouraged to use your
15 common sense as you decide these issues.

16 You're also judges, ladies and gentlemen, of the
17 believability, the credibility of the evidence presented
18 before you, and you must necessarily then make decisions on
19 that. And in doing so you can consider several things,
20 such as the demeanor of the witness, the manner of
21 testifying. Was the witness forthright or hesitant?
22 Whether the witness had a reason to be biased or prejudiced
23 in the testimony that was given. Whether a witness's
24 testimony is contradictory on the one hand or was it
25 supported or corroborated on the other? Was the testimony

1 consistent? What was the witness's opportunity for
2 knowledge and observation of the matters about which he or
3 she testified? You certainly do not determine this matter
4 of credibility by counting the number of witnesses on each
5 side. You may believe a small portion of a witnesses
6 testimony and disregard the larger or vice-versa. You can
7 believe one witness against many or many against one,
8 bearing in mind you should give the defendant the benefit
9 of every reasonable doubt.

10 Now, by the same constitution that says you are the
11 deciders of the facts, the constitution also says I am the
12 judge in the case as the instructor on the law. You must
13 accept the law as I give it to you. Under your oath, you
14 said you would accept the law as I give it to you to apply
15 to this case. Disregard then any thoughts you may have had
16 about what the law was before you came in here. Disregard
17 what you think the law should be, but accept the law as I
18 give it to you and apply it to this case.

19 This indictment alleges several different offenses
20 against the defendant. The charges are murder, burglary in
21 the first degree, assault and battery of a high and
22 aggravated nature. Each count charges a separate and
23 distinct offense. You must decide each charge separately
24 on the evidence and the law applicable to it uninfluenced
25 by your decision as to any other charge. The defendant may

1 be convicted or acquitted on any or all of the offenses
2 charged. I'll ask you to write a separate verdict of
3 guilty or not guilty as to each of the charges.

4 In almost all cases in a court of law, ladies and
5 gentlemen, there are two types of evidence: direct evidence
6 and circumstantial evidence. Direct Evidence is the
7 testimony of a person who claims to have actual knowledge
8 of a fact, such as an eye witness. It is evidence which is
9 intended to immediately establish the main fact to be
10 proven.

11 Circumstantial evidence is proof of a chain of facts
12 and circumstances indicating the existence of a fact. It
13 is evidence which immediately establishes collateral facts
14 from which the main might be inferred. Circumstantial
15 evidence is based on an inference and not on personal
16 knowledge or observation.

17 The law makes absolutely no distinction between the
18 weight or the value to be given to either direct or
19 circumstantial evidence. Nor is a greater degree of
20 certainty required of circumstantial evidence or direct
21 evidence. You should weigh all of the evidence in the case
22 and if after weighing all of the evidence in the case, if
23 you're not convinced of the guilt of the defendant beyond a
24 reasonable doubt, you should find him not guilty. However,
25 after weighing all the evidence in the case, if you are

1 convinced of the guilt of the defendant beyond a reasonable
2 doubt, you should find him guilty.

3 The rules of evidence, as I told you earlier, do not
4 permit a witness only to come in and testify to opinions or
5 conclusions. An exception to this rule exists with
6 witnesses we call expert witness. A witness who by
7 education and experience has become expert in some art,
8 science, profession, or calling may state an opinion as to
9 relevant and material matter in which the witness claims to
10 be an expert. They may also state the reasons for that
11 opinion. You should consider any expert opinion received
12 as evidence in the case like any other evidence and give it
13 the weight you think it deserves. If you decide the
14 opinion of an expert witness is not based on sufficient
15 education or experience or if you conclude that the reasons
16 given that formed the opinion are not sound, or that the
17 opinion is outweighed by other other evidence, you can
18 disregard the opinion entirely or you can accept it
19 entirely if you feel it is sound and based on sufficient
20 education, experience, and knowledge.

21 An expert witness's testimony is to be given no
22 greater weight than that of other witnesses simply because
23 that witness is an expert. Further, you're not required to
24 accept an expert's opinion even though it may not be
25 contradicted.

1 I instruct you, ladies and gentlemen, and I emphasize
2 to you that the fact that the defendant in this case did
3 not testify is not a factor to be considered by you in any
4 way in your deliberation and in your consideration of the
5 question of the guilt or innocence of the accused. It must
6 not be considered by you in any manner whatsoever. A
7 defendant has the constitutional right to remain silent,
8 and the assertion of that right must not be considered by
9 you in your deliberation. I repeat that: under your oath,
10 you are to draw no conclusion whatsoever from the fact that
11 the defendant in this case did not testify.

12 The fact that this defendant did not testify should
13 not even be discussed in the jury room. The burden of
14 proof, as I stated to you is on the state. The defendant
15 is not required to prove his innocence. The burden of
16 proof remains on the state to prove guilt beyond a
17 reasonable doubt.

18 Now, I told you the first charge the state charges is
19 the crime of murder. The state must prove beyond a
20 reasonable doubt that the defendant killed another person
21 with malice aforethought. Malice is hatred, ill will, or
22 hostility towards another person. It is the intentional
23 doing of a wrongful act without just cause or excuse and
24 with an attempt to inflict and injury or under
25 circumstances that the law will infer an evil intent.

1 Malice aforethought does not require that malice exist for
2 any particular length of time before the act is committed,
3 but malice must exist, ladies and gentlemen, in the mind of
4 the defendant just before and at the time of the act.
5 Therefore there must be a combination of a previous evil
6 intent and the act.

7 Malice aforethought may be expressed or inferred.
8 These terms expressed and inferred do not mean different
9 kinds of malice, but they only mean the manner in which
10 malice may be shown to exist. That is either by direct
11 evidence or by an inference from the facts and
12 circumstances which are proven. Expressed malice is shown
13 when a person speaks words which express hatred or ill will
14 for another or when a person prepared beforehand to do the
15 act which was later accomplished. For example, lying in
16 wait or any other act in preparation going to show that the
17 deed was within the defendant's mind, and that would be
18 expressed malice.

19 Malice may also be inferred from conduct showing a
20 total disregard for human life. Inferred malice may also
21 arise when the deed is done with a deadly weapon. A deadly
22 weapon is any article, instrument or substance which is
23 likely to cause death or great bodily harm. Whether an
24 instrument has been used as a deadly weapon depends on the
25 facts and circumstances of the case. The following, ladies

1 and gentlemen, are examples of a deadly weapon: pistol,
2 shotgun, rifle, dagger, knife, razor, gasoline. A gun may
3 be a deadly weapon even if it is not operated.

4 The state also charges defendant with the crime of
5 burglary the first degree. The state must prove beyond a
6 reasonable doubt that the defendant entered a dwelling
7 without consent. A dwelling is any building, a portion of
8 a building in which a person ordinarily sleeps. In order
9 to prove that a defendant entered the dwelling, the state
10 does not have to show that the defendant's entire body
11 entered the dwelling. The smallest entry is sufficient.
12 In addition, the state does not have to prove that force
13 was used to gain entry if a person enters a building by
14 using deception or trick or misrepresentation to get
15 consent. That is an entry without consent.

16 Next the state must prove beyond a reasonable doubt
17 that the defendant intended to commit a crime inside the
18 dwelling, either a felony or a misdemeanor at the time of
19 the entry. The mere entry into a dwelling without consent
20 is not burglary. If the intent to commit a crime is formed
21 after the entry, it is not burglary. On the other hand, if
22 the defendant intended to commit a crime at the time of
23 entry, it is burglary even if that intent was abandoned
24 after the entry. It does not matter that the intended
25 crime was not completed. Intent may be shown by acts and

1 conducts of the defendant -- conduct of the defendant and
2 other circumstances for which you may naturally and
3 reasonably infer intent.

4 Finally, the state must prove beyond a reasonable
5 doubt that at least one of the following exists. That when
6 entering or while in the dwelling or when fleeing, that the
7 defendant was armed with a deadly weapon. A deadly weapon
8 is any article, instrument, as I told you, which is likely
9 to cause death or great bodily harm. I told you examples
10 of deadly weapons are things like a pistol, shotgun, rifle,
11 dagger. And a gun may be a deadly weapon if not operating.
12 So, they can show that or they can show that when entering
13 the dwelling, or while in the dwelling, or when fleeing the
14 defendant or accomplice caused physical injury to anyone
15 not participating in the crime.

16 Or when entering and while in the dwelling or when
17 fleeing, the defendant or accomplice used or threatened to
18 use a dangerous object or while entering or while in the
19 dwelling. Or when fleeing, the defendant displayed what
20 appeared to be a deadly weapon like a knife, pistol,
21 revolver, shotgun. Those are the elements of burglary.
22 Defendant enters a dwelling without consent with the intent
23 to commit a crime therein, and then one of those four
24 things I mentioned.

25 Assault and battery of a high and aggravated nature.

1 In order to prove assault of a high and aggravated nature
2 the state must prove beyond a reasonable doubt that the
3 defendant unlawfully attempted or offered to commit a
4 violent injury upon another and had the present ability to
5 complete the attempted injury. An assault is the
6 intentional creation of a reasonable fear of immediate
7 bodily harm. That's the assault. The battery, the battery
8 is when someone actually completes the assault. When
9 someone acts and then their body or whatever thing they put
10 in motion hits the other person, that's the battery. So,
11 the assault is when someone is attempting to or offers to
12 commit a violent injury upon another person, and the
13 battery is when that is carried forth.

14 To make assault and battery into one high and
15 aggravated, the state must also prove beyond a reasonable
16 doubt a circumstance of aggravation. Circumstance of
17 aggravation could include the use of a deadly weapon, the
18 intent to commit a felony, the infliction of serious bodily
19 injury, a great disparity between the ages, or great
20 disparity between the physical conditions of the parties.
21 These are merely examples of aggravation. So, that's
22 assault and battery of a high and aggravated nature.

23 Several days ago, you first showed up here in this
24 room. You were there with a great number of people, over
25 150 some people there. You were sitting there not knowing

1 where you would be in a couple of days. Then all of a
2 sudden, names were drawn in one panel or another panel and
3 I came out and talked to you individually. You still
4 didn't know what your future was going to be involving
5 these circumstances, these allegations, this trial. Then
6 just a couple of days ago your name was called to come sit
7 here in this jury box, and I gave you some opening
8 instructions and asked you to pay attention and listen and
9 observe. The clerk came around. She asked you to stand
10 and raise your hand and take another oath to well and truly
11 try to do what you felt spoke the truth. You heard the
12 evidence in the case, you heard the statements, the
13 arguments of lawyers, and in just a few moments my charge
14 and my instructions on the law will be over. And then my
15 statement to you to not discuss this case, draw no
16 conclusions, wait until you heard everything, that ends.

17 Then it becomes your job to discuss the case. It
18 becomes your job to consider and to talk about it with
19 other people, your fellow jurors. So, when you go in that
20 jury room, ladies and gentlemen, consider everything you've
21 heard. Take the law and apply it as I've instructed it to
22 you. Once you've done that, then reach a decision.

23 Your decision must be unanimous. All twelve of you
24 must agree on your verdict, all twelve of you. All twelve
25 of you should be involved in the deliberations and in the

1 discussions regarding this matter. All the law wishes you
2 to do is reach a decision that you feel speaks the truth.
3 You have no friends to reward, no enemies to punish.

4 Ladies and gentlemen and Mr. Foreman, especially, I
5 have here a copy of what I call and showed you was the
6 indictment. Once again, this is not evidence. This is the
7 procedure to bring before you for you to decide the issue.
8 On the back I have count one, count two, count three.
9 Count one, you will see, says murder. Count one, you will
10 see, says burglary in the first degree. Count three says
11 assault and battery of a high and aggravated nature. On
12 each of those counts you have only one of two verdicts:
13 guilty or not guilty, not guilty or guilty. No preference
14 in the way I say the words.

15 Once you have reached a decision on these matters you
16 write it down. Write whichever the verdict is for count
17 one, count two, count three. Then you would sign the
18 verdict form and date it today, February 2, 2008. So, make
19 your decision and then you would sign it. Once you have
20 done that, knock on the door and we'll bring you back out
21 and we will receive your verdict.

22 Now, ladies and gentlemen, if during the course of
23 your deliberation you wish for us to find something in the
24 testimony, we will do so. If we can, we will have the
25 court reporter look and see if we can answer a question

1 that you have about evidence presented. There's no more
2 evidence to present to you now, ladies and gentlemen. You
3 should decide the case based on the evidence presented. If
4 there's something you wish for the court reporter to try to
5 find that was presented, we'll be glad to see if we can
6 find it for you.

7 In addition if there's some additional -- if you wish
8 for me to recharge you on some area of the law, I'll be
9 glad to recharge you on the area of the law that you ask.
10 If so, please write down any question you may have to the
11 foreperson. Then I'll consider it and see if we can find
12 it on the tape or something, or I can reinstruct you from
13 the law. If you have no questions, if you have no
14 questions, then once you reach your verdict, like I said,
15 knock on the door.

16 Now, we're going to get all these exhibits together.
17 We're going to get all the exhibits together. They'll be
18 in the jury room with you, as I said. The tapes, they will
19 be there in the tape form. If you wish to have a recording
20 or whatever, I'll probably bring you back out and play the
21 recordings out here instead of having them there in the
22 room. That's probably what I'll do. So, but if you wish
23 to have a tape replayed, let me know and we'll try to
24 replay a tape. Other than that, I think we have everything
25 else put in a method there that you could probably consider

1 it there.

2 Now, when I send you to the jury room do not, do not
3 begin your deliberations until I send the exhibits and this
4 indictment in there. At that point in time, I will take
5 out my three alternates. We'll place you all in another
6 room because you need to stay with us. We'll place you in
7 another room awaiting their decision. And then after that,
8 we'll come out here and get your decision.

9 Ladies and gentlemen, at this time, if you would stay
10 there and let me talk to the attorneys just briefly before
11 I let you go.

12 Counsel y'all approach, please.

13 (OFF-THE-RECORD BENCH CONFERENCE.)

14 THE COURT: Now, my alternates. We're going to
15 prepare another place for you, another room. You'll have
16 your own room, the three of you and while we await their
17 decision. So, you'll be going into another room. While
18 you're in that room, I'm going to go ahead and have the
19 clerk go ahead and arrange that and let y'all leave the
20 room here. Please do not discuss this case at all. Do not
21 discuss it at all. You're still under that rule. So, you
22 wait until after this verdict comes out and then we'll
23 decide about your further service, okay? But do not
24 discuss this case at all. Just relax in the room there and
25 enjoy -- they have some snacks for you, also.

1 So, ladies and gentlemen, like citizens of this
2 country have done for over two hundred years, citizens of
3 this community, I'm going to send you back to the jury room
4 and when those exhibits get there, you'll begin your
5 deliberations and make your decision regarding this matter.
6 If you would, please go to the jury room.

7 (THE JURY EXITS AT 4:56 P.M.)

8 THE COURT: All right, let's let the door close first.
9 Any exceptions from the state on the charge of the court?

10 MR. HEMBREE: No, Your Honor.

11 THE COURT: Any exceptions from the defense?

12 MR. WILSON: I have no exceptions to His Honor's
13 charge.

14 THE COURT: All right. If you would, please, let's
15 make sure we all agree on the exhibits. Come forward and
16 get the exhibits that the court reporter has gathered and
17 make sure we all agree. I need some assistance from people
18 to get the exhibits back to the courtroom.

19 And, Madame Clerk, can you -- go ahead and get them
20 out as soon as you can. I need verification from you the
21 names of the three people you took out so I'll know what
22 three they are.

23 (A PAUSE.)

24 THE COURT: Go ask Ms. Huggins to bring those three
25 alternates to the door. I want to see with my own eyes

1 that you've got the right three.

2 (A PAUSE.)

3 THE COURT: Okay, let me see my three -- okay, one,
4 two, three. All right. You got a room for them?

5 CLERK OF COURT: Yes, sir.

6 THE COURT: All right, if you would, she will now take
7 you all to another room. Ms. Huggins, they're in your
8 charge at this time.

9 And also here's -- want everybody to just look at
10 that, just to make sure. All right, everyone agrees what's
11 before the court reporter now that we're now going to give
12 into the custody of these officers? These are the exhibits
13 to go to the jury room. We're in agreement?

14 MR. WILSON: We agree.

15 MR. HEMBREE: State agrees, Your Honor.

16 THE COURT: All right. Do you have any objections to
17 these people taking them back to the jury room?

18 MR. HEMBREE: No objection.

19 MR. WILSON: No objection.

20 THE COURT: All right. Ms. Huggins.

21 CLERK OF COURT: Yes, sir.

22 THE COURT: How can you get all this stuff together?

23 CLERK OF COURT: We've got a box.

24 THE COURT: All right. Once you give it to the
25 foreperson, tell them to begin their deliberations.

1 Everybody just say in place until we do that.

2 (DELIBERATIONS BEGIN AT 5:15 P.M.)

3 THE COURT: There are times in the course of jury
4 deliberations every once in a while we have questions. If
5 they ask questions, we have to bring the attorneys in to
6 respond to the questions. And I don't know if that may
7 happen in this case or not. What I do know is that if that
8 occurs, you come back in, but we don't need crowds coming
9 in and out too much. So, try -- if y'all wish to stay
10 that's fine, and I don't close the courtroom, but I believe
11 though there might be time to come in and address something
12 right away. So if you're interested, you may want to stay
13 close by. If not, then whatever, but other than that, we
14 are not in recess and we'll wait for the decision of the
15 jury.

16 (OFF THE RECORD.)

17 THE COURT: Be seated. Y'all have reviewed the
18 question from the jury?

19 MR. HEMBREE: Yes, Your Honor.

20 THE COURT: Could we please read over the 911
21 transcripts.

22 I think I told them that the transcript wouldn't be
23 going back in the jury room. They want to read over the
24 transcripts. My explanation is you all can't read them.
25 What we can do is bring them out, play a tape and do what

1 we did during the trial.

2 MR. HEMBREE: Your Honor, we sent downstairs for a
3 tape recorder as well as the transcripts, so they should
4 be --

5 MR. WILSON: Judge, you know, it's my concern with the
6 transcripts is that I believe there's some inaccuracies in
7 the transcript, which is what my concern is.

8 THE COURT: Mr. Wilson, this is the transcript that
9 was introduced without objection.

10 MR. WILSON: Well, I'm just telling you that when I
11 look at it -- that's why I'm not wanting it -- as long as
12 they're listening to the tape, then I'm fine. But I don't
13 like the way -- I don't -- I believe that there's some
14 inaccuracies in the transcript, and I'm not really prepared
15 to say that the transcript can go back to them alone.

16 THE COURT: Well, Mr. Wilson, I'm not sending the
17 transcript back.

18 MR. WILSON: No, I'm saying -- I'm just explaining to
19 you my position it. I'm not saying that you're sending it
20 back alone. I'm just saying where I am.

21 THE COURT: Okay, but if I bring the jury out and they
22 do the same thing they did during the course of the trial,
23 you don't object to that? They did that during the trial
24 without objection.

25 MR. WILSON: Well, I know they did during the trial

1 without objection, but this is -- the trial is over now.
2 The document is not in evidence and the jury is already in
3 the process of deliberating, and I don't understand --
4 they're not supposed to get the document again.

5 I mean, the understanding I had when we did this was
6 that they were going to get the document to go over the
7 transcript with the tape, and we did that. The document
8 was never entered in evidence. The trial is now concluded,
9 and I don't think that it's now appropriate to take the
10 transcript that is not in evidence and give it back to them
11 again and have them review it.

12 THE COURT: So, you wish for them to listen to the
13 tape without the transcript. My concern about that is then
14 they're going to think there's something we hiding from
15 them because we won't do it the same way we did during the
16 course of the trial, that we're adding too much emphasis on
17 something one way or the other. To me, I feel that the
18 only way to make sure the jury has no preference one way or
19 the other is to do it the same way we did during the course
20 of the trial. How else would it not make the jurors wonder
21 why we're doing it different?

22 MR. WILSON: I think you say to them what you said to
23 them at the end of the trial, which is that the document
24 was not in evidence. It won't be back there. Only those
25 documents that are in evidence will go back there, which

1 means that they can view items that are in evidence.

2 THE COURT: Oh, you want me to send the tape and ---

3 MR. WILSON: Yes, sir.

4 THE COURT: --- tape back there is what you want me to
5 do?

6 MR. WILSON: Send the tape to them and the tape
7 recorder and let them have at it as long as they want to.
8 They can play it as slow or as fast as they want to. I
9 have no problem at all with that.

10 MR. HEMBREE: My concern, Your Honor, with that idea
11 is that the tape is still not the greatest quality. It's
12 difficult to hear. That's the entire -- that's the reason
13 why we do a transcript at all is so we can take the time to
14 make sure that the words are accurate and get that -- so we
15 can clearly present the truth to this jury, not have them
16 subject to misunderstanding and a lot of confusion. And
17 that's the worst of the worst.

18 And, Your Honor, I agree with the court. I think that
19 it's very -- it's going to be very curious to this jury and
20 probably lead to more confusion than help to present it to
21 them in a way different than it was presented at trial.
22 Every tape that we've given them, they have had a
23 transcript with that tape.

24 So -- not that, not that that's the only way to do it,
25 but I think that's the way this jury has been trained in a

1 sense to listen to those tapes. They've gotten, they've
2 gotten a clear picture and a good understanding of what's
3 in there, and I think to be fair with that jury is to
4 present it to them exactly the same way.

5 THE COURT: Here's another concern I have. I assume
6 the jury room is not wired as this room so that if they
7 play the tape in that tape recorder you've got, I don't see
8 how they can all hear it hovering around where there's no
9 big speakers. Here you have the speakers in the room, and
10 so they can hear it better out here.

11 And I, I don't -- I'm still wondering how there's a
12 proper objection, anyway, to have them do it the same way
13 they did it during the course of the trial. Send it back
14 there -- I told them and I told them when I charged them
15 without any objection from you that if they wanted to hear
16 the tape, I'd bring them back out to hear the tape.

17 MR. WILSON: Yes, sir.

18 THE COURT: I told them that. Now if I change it,
19 it's going to look like something's odd about it. Plus, if
20 the fact that they want the transcript and I say no, I'm
21 not going to bring the transcript out and, in fact, I'm not
22 going to let you look at the transcript anymore and, in
23 fact, I'm not going to let you listen out here like I said,
24 I'm going to send it back there without the transcript.

25 MR. WILSON: Judge ---

1 THE COURT: It just looks like I'm doing something odd
2 and it may be in favor of the state or in favor of the
3 defense, or in favor of somebody. But it's, it's just not
4 fair for justice to make it look different.

5 MR. WILSON: Judge, I understand what you're saying.
6 My concern is this. The trial is over. The document is
7 not in evidence; it is not a part of this trial record.

8 THE COURT: It is. It is a part of it in the sense
9 they read the transcript. What was on the transcript, they
10 read during the course of the trial. Their memory of
11 what's on that transcript is evidence.

12 MR. WILSON: The transcript was offered as an aid to
13 the tape recording. It was never put into evidence. The
14 jury is only entitled, at least in my opinion, to review
15 evidence. Not documents which have not -- and the trial
16 has been concluded. The trial is over. They're in
17 deliberation. We're not talking about a situation where
18 they're still deliberating with -- I'm sorry, where they're
19 still in the process of a trial, and we're bringing them
20 back and they want to hear a piece. This is -- the trial
21 is concluded. The state has rested. Defense has rested.
22 All the evidence has been sent back to the jury. This
23 transcript was not sent back to the jury.

24 THE COURT: Mr. Wilson.

25 MR. WILSON: Yes, sir.

1 THE COURT: If they wished, I could have the court
2 reporter, if I wanted to go to the trouble to do it, read
3 to them everything that was on that tape because she's got
4 it and she could read what was on the tape. There's no
5 difference in her reading it, what's on that tape, and them
6 having something and reading along as they listen to it.
7 She could, if she wished, she could go ahead and it would
8 take a while to do it. She could type up what was on that
9 tape and then they could read that. We could read it out
10 loud to them if we wanted to. But that would take too long
11 and it would take -- be too much trouble to do it.

12 That tape and them reading it is as it was put in,
13 them reading it, the words there that were put before them
14 -- and you note your objection -- I'm going to permit them
15 to do it that way. Come out here, as I told them they
16 would do with the tape, and I'm going to play it with the
17 transcript in their hands, and then we'll send them back.
18 I need to let them know this, though.

19 MR. HEMBREE: Your Honor, this will be, this will be
20 ready in ---

21 THE COURT: I know, but I need to let them know,
22 though. Off the record.

23 (OFF THE RECORD.)

24 THE COURT: As I stated to you earlier, you may
25 come out and hear the tape and have the

1 transcript in front of you.

2 Take this to them and see if that's what they want.

3 If so, tell them we'll load the tape and bring them out.

4 (OFF THE RECORD.)

5 (THE JURY ENTERS AT 6:41 p.m.)

6 THE COURT: Okay. The jury has asked to have the 911
7 tape played and so we're going to play back the 911 tape,
8 just as we did during the course of the trial. Okay, let's
9 proceed with it.

10 (911 TAPE IS REPLAYED FOR THE JURY.)

11 THE COURT: Now, if y'all wish to listen to it again,
12 Mr. Foreman, let me know. If not, then if you would leave
13 the transcripts there and head back into the jury room.
14 Alternates, you go back in your room, okay. Leave the
15 transcripts there.

16 CLERK OF COURT: I'll take the evidence back?

17 THE COURT: Yes.

18 (THE JURY EXITS AT 6:55 P.M.)

19 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
20 NUMBER 21.)

21 THE COURT: Okay, Ms. Huggins, you're assured that the
22 alternates went to their place?

23 CLERK OF COURT: Yes, sir.

24 THE COURT: Okay. Thank you. Okay. We'll be in
25 recess waiting on the jury.

1 MR. WILSON: Judge, just for the record, my exception
2 is noted for the record.

3 THE COURT: Yes, sir.

4 MR. WILSON: Thank you.

5 (OFF THE RECORD.)

6 THE COURT: All right, be seated everyone, be seated,
7 everyone. The clerk says that they have a verdict. There
8 are officers around so listen, ladies and gentlemen. I
9 don't know what the verdict is, but whatever it is, we've
10 got to make sure the law is followed. And so I don't want
11 any outbursts from anyone anywhere. Let's not let whatever
12 they do decide what other people -- having some problems.
13 So, please everyone stay orderly.

14 Officers, use your discretion. If anybody has any
15 problems, let's make sure that everybody stays calm.

16 Okay, state ready?

17 MR. HEMBREE: State is ready, Your Honor.

18 THE COURT: Defense ready?

19 MR. WILSON: Yes, sir.

20 THE COURT: And, Mr. Wilson, when the verdict is read,
21 I'd appreciate if you and your client and Mr. Rathbun would
22 stand.

23 MR. WILSON: Yes, sir.

24 THE COURT: And by the way, since the verdict is about
25 to be read, you step on the other side.

1 All right, bring the jury in and if you would, let's
2 go ahead and bring the three alternates in, also, if you
3 would, please.

4 (THE JURY ENTERS AT 8:07 P.M.)

5 THE COURT: Mr. Foreperson, have you reached a
6 verdict?

7 MR. FOREPERSON: Yes, sir, we have, Your Honor.

8 THE COURT: Hand the document to the clerk. Okay, if
9 you would, Mr. Wilson, Mr. Winkler, and Mr. Rathbun.

10 CLERK OF COURT: 2002-GS-26-2101, *State vs. Louis M.*
11 *Winkler*, indictment for count one, murder. Verdict:
12 guilty. Count two, burglary first degree. Verdict:
13 guilty. Count three, assault and battery of a high and
14 aggravated nature. Verdict: guilty. Signed by the
15 foreman, Christopher Trout.

16 THE COURT: You may be seated. Any polling requested
17 by -- of the twelve main jurors? If this is your verdict,
18 please raise your right hand.

19 (THE JURORS COMPLY.)

20 THE COURT: Okay, put it down. Any polling requested
21 by the state?

22 MR. HEMBREE: No, Your Honor.

23 THE COURT: Polling requested by the defendant?

24 MR. WILSON: Yes, sir. I request individual polling.

25 THE COURT: All right. Madame Clerk, do you have a

1 list?

2 CLERK OF COURT: Yes, sir.

3 THE COURT: Ladies and gentlemen of the jury, what is
4 going to occur is this. The clerk will read your name.
5 When she reads your name ---

6 And, Madame Clerk, I'm sure you've got the first
7 twelve.

8 When she reads your name, please stand up. She'll
9 then ask you two questions. She'll ask you is this your
10 verdict, that's a yes or no. Is it still your verdict.
11 Answer yes or no. Then you may be seated.

12 Madame Clerk, You may proceed.

13 CLERK OF COURT: Christopher Trout, is this your
14 verdict?

15 JUROR: Yes, ma'am.

16 CLERK OF COURT: Is this still your verdict?

17 JUROR: Yes, ma'am.

18 CLERK OF COURT: Vicki Belk, is this your verdict?

19 JUROR: Yes, ma'am.

20 CLERK OF COURT: Is this still your verdict?

21 JUROR: Yes, ma'am.

22 CLERK OF COURT: Thomas G. Hardwick, Sr, is this your
23 verdict?

24 JUROR: Yes, ma'am.

25 CLERK OF COURT: Is this still your verdict?

1 JUROR: Yes, ma'am.

2 CLERK OF COURT: Stephanie Morris, is this your
3 verdict?

4 JUROR: Yes, ma'am.

5 CLERK OF COURT: Is it still your verdict?

6 JUROR: Yes, ma'am.

7 CLERK OF COURT: Philip Randal, is this your verdict?

8 JUROR: Yes, ma'am.

9 CLERK OF COURT: Is this still your verdict?

10 JUROR: Yes, ma'am.

11 CLERK OF COURT: Kevin Brown, is this your verdict?

12 JUROR: Yes, ma'am.

13 CLERK OF COURT: Is this still your verdict?

14 JUROR: Yes, ma'am.

15 CLERK OF COURT: Sandra Thompson, is this your
16 verdict?

17 JUROR: Yes, ma'am.

18 CLERK OF COURT: Is it still your verdict?

19 JUROR: Yes, ma'am.

20 CLERK OF COURT: Lorene Wright, is this your verdict?

21 JUROR: Yes, ma'am.

22 CLERK OF COURT: Is this still your verdict?

23 JUROR: Yes, ma'am.

24 CLERK OF COURT: Lauren Roughton, is this your
25 verdict?

1 JUROR: Yes, ma'am.

2 CLERK OF COURT: Is this still your verdict?

3 JUROR: Yes, ma'am.

4 CLERK OF COURT: JohnPaul Plewa, is this your verdict?

5 JUROR: Yes.

6 CLERK OF COURT: Is it still your verdict?

7 JUROR: Yes.

8 CLERK OF COURT: Glenn Cole, is this your verdict?

9 JUROR: Yes, ma'am.

10 CLERK OF COURT: Is it still your verdict?

11 JUROR: Yes, ma'am.

12 CLERK OF COURT: Jeron Wallingford, is this your
13 verdict?

14 JUROR: Yes, ma'am.

15 CLERK OF COURT: Is this still your verdict?

16 JUROR: Yes, ma'am.

17 THE COURT: If you would at this time, ladies and
18 gentlemen of the jury, if y'all would return to your jury
19 room. For right now, alternates you return to your
20 alternate room, please. Please do not discuss the case any
21 further. I'll bring y'all back out in a little bit.

22 (THE JURY EXITS AT 8:11 P.M.)

23 THE COURT: Now, make sure the three alternates are
24 still supposed to be separated.

25 Okay, any motions or matters from the state?

1 MR. HEMBREE: The only matter from the state, Your
2 Honor, is for the purposes of the record, we would like to
3 note that the verdict was delivered at 8:10 p.m. on
4 February 2, 2008.

5 THE COURT: Okay. Any matters for the defense?

6 MR. WILSON: Yes, sir. Your Honor, at this time I
7 would make the motion for a judgment of acquittal not
8 withstanding the verdict, and in the alternative for a new
9 trial. I make that on several grounds.

10 One, I think that the verdicts are inconsistent with
11 the evidence that has been produced at trial. And in
12 addition to that, I think that the verdicts are the result
13 of passion and caprice on the part of the jurors which I
14 think rises from the fact that the -- in part in closing
15 argument of the state, there is this reference to the
16 fourteen year old and the fact that this was his mom that
17 has died, and I think that that has caused a sense of
18 passion and caprice on the jurors and that's what caused
19 this particular verdict. And as a result of that I'm
20 asking the court to set aside the verdict.

21 THE COURT: As far as the basis for the motion and
22 during closing argument, I'll deny. And also any other
23 matters that you brought up in that regard, I respectfully
24 deny.

25 Mr. Wilson, I think no one can deny that at this

1 phase, at this point you have done, I think, and admirable
2 job for your client. You've done a very good job and
3 you've worked hard, as has Mr. Rathbun. The jury got the
4 case over three hours ago. But in any event, they had the
5 evidence their decision either way and then make decisions
6 as they did, and I would respectfully deny your motions.

7 As to where we're going from here, I do not intend to
8 proceed at 8:00 tomorrow night or 9:00 tomorrow night. Oh,
9 yeah, for the record, I looked through my information. Do
10 y'all have on file the notice to the defense of matters in
11 aggravation?

12 MR. HEMBREE: Yes, we do, Your Honor. I don't have
13 it --

14 THE COURT: I couldn't find it in my file earlier
15 tonight. Do y'all have that with the clerk?

16 MR. HEMBREE: I'm sure that we do, but I ---

17 MR. WILSON: Yes.

18 THE COURT: Mr. Wilson, do you have it in your file,
19 sir?

20 MR. WILSON: Yes.

21 THE COURT: Matters they intend to allege and present
22 in aggravation.

23 Madame Clerk, if you've got it, I would like to have a
24 copy of it. I just want to make sure there isn't some
25 misunderstanding as to that.

1 Mr. Wilson, you have that in your file?

2 MR. WILSON: I have it.

3 THE COURT: You have it?

4 MR. WILSON: Yes, sir.

5 THE COURT: All right. Would y'all -- the jury, we'll
6 have them tomorrow -- I'm going to have them, basically
7 have the day off tomorrow because I do see no reason to
8 begin tomorrow night, unless we could get them at 8:00
9 tomorrow night, and I really think that would not be fair
10 to the jury to start that late. Obviously, you couldn't
11 complete your case.

12 As a matter of scheduling, Mr. Hembree, as far as your
13 part of the next phase, how long did you intend it to be,
14 one day, day and a half?

15 MR. HEMBREE: I would expect a day and a half.

16 THE COURT: Okay. Is 9:00 Monday morning fine for
17 everyone?

18 MR. HEMBREE: Fine with the state, Your Honor.

19 MR. WILSON: Yes, sir.

20 THE COURT: All right. Anything else y'all want me to
21 tell the jury? Just to go relax and do not discuss this
22 case with anyone or among themselves any further right now.
23 Just to enjoy tomorrow. Anything else y'all wish me to do
24 or say at this time, any other matters?

25 MR. HEMBREE: None from the state.

1 MR. WILSON: Nothing from defense.

2 THE COURT: All right. If y'all would stand, please.
3 Bring the jury back out.

4 (THE JURY ENTERS AT 8:16 p.m.)

5 THE COURT: Ladies and gentlemen of the jury, as I
6 told you when each of you were qualified that if your
7 verdict in the case was guilty, we would move to another
8 phase. The law requires that you cannot move to that next
9 phase until at least twenty-four hours. That means it
10 would be after 8:00 tomorrow night, and it's no use to
11 begin it after 8:00 tomorrow night. So, we will begin
12 Monday morning. That means tomorrow you'll have basically
13 the day off in the hotel area.

14 Now, it is very, very, very important that not only
15 you all don't discuss this case among yourselves or with
16 the alternates either. I know that's very difficult. I
17 understand that because y'all have been talking now over
18 three hours about the matter, but at this stage you need to
19 just basically put that behind you now, and let's get ready
20 for next phase. And we'll start that at 9:00 on Monday
21 morning, 9:00 on Monday, and we will begin the next phase.

22 I will, as I told you when the case began, I've
23 instructed the agents and all with you, they'll make sure
24 that tomorrow you have a breakfast, lunch, and well as
25 tomorrow night. If anyone wishes to watch television,

1 whatever, those things will be available. Just not local
2 news. Another thing is that tomorrow ---

3 Mr. McLeod, I'd like for you to make an area tomorrow
4 in one of the television rooms tomorrow between the hours
5 of 9:00 and 12:00. That room will be no television.
6 Whatever y'all wish to use in any way you want to. No
7 television in one of the rooms between 9:00 and 12:00
8 tomorrow morning, all right, so it will be quiet, whatever
9 quiet area you want to go in or whatever else.

10 Okay, does everyone -- hope you understand my
11 instructions. Do not discuss this case at all among
12 yourselves.

13 Mr. McLeod, Ms. Huggins, you're got a place for them
14 to go to dinner I hope tonight. You want to talk to me
15 about that? We can probably take y'all directly to dinner
16 at this time.

17 (A PAUSE.)

18 All right. Good. All right. They've got a place
19 there. Enjoy your dinner, ladies and gentlemen. I know
20 these decisions are not easy, and enjoy your dinner tonight
21 and we will see you then tomorrow at 9:00 -- I mean, Monday
22 at 9:00.

23 I will let you know this. Mr. McLeod has my cell
24 phone number. If any problems arise, y'all got problems,
25 ask him to call me or whatever, that type of thing. I'll

1 get the people together if we need to if you have any
2 problems regarding accommodations here or whatever else,
3 okay? I think they've done a pretty good job so far, but
4 -- and I hope everything goes fine tomorrow.

5 Okay, we'll see you then Monday morning. Have a good
6 evening tonight and a good day tomorrow. We'll see you
7 Monday morning. You may leave at this time.

8 (THE JURY EXITS AT 8:20 P.M.)

9 THE COURT: Anything else from the state or from the
10 defense?

11 MR. HEMBREE: No, Your Honor.

12 MR. WILSON: No, sir.

13 THE COURT: I've got this matter of -- was filed on
14 the 12th of March of '07, dated 9th of March of '07.
15 That's the one that -- at this time, right? Mr. Wilson,
16 I'm sure you've got one also?

17 MR. WILSON: Yes, sir.

18 THE COURT: We'll see you all then -- what I'd like
19 for you all to do is, if y'all would, just a short
20 pre-conference. Let's get together around 8:45 Monday
21 morning, okay, for a short pre-conference. At this time
22 with this, court will be in recess until 9:00 Monday
23 morning. And don't forget you all are not to discuss this
24 case with any media. That order still applies.

25 (WHEREUPON, THE CASE IS AT EASE.)

1 MONDAY, FEBRUARY 4, 2008

2 (COURT RESUMES AT 9:34 A.M.)

3 THE COURT: Good morning, everyone. Be seated,
4 please.

5 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
6 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66,
7 67 FOR IDENTIFICATION.)

8 (ARIEL PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 68
9 FOR IDENTIFICATION.)

10 THE COURT: Let the record reflect that this trial in
11 the first phase where the jury determined the defendant
12 guilty of murder, burglary, assault and battery high and
13 aggravated nature, that it completed on Saturday, February
14 2, 2008.

15 Madame Court Reporter, do you have the exact time that
16 the clerk read the verdict?

17 COURT REPORTER: I didn't record it, but Mr. Humphries
18 stated it on the record.

19 THE COURT: Wasn't it 8:11, I think is was.

20 MR. HEMBREE: Your Honor, my records reflect 8:10.

21 THE COURT: 8:10, 8:10 p.m. It is now February 4,
22 2008, and it is 9:35 a.m. and we're ready to proceed. The
23 court is ready to proceed in the next phase with the trial,
24 the phase where the jury will determine what penalty to
25 impose as a result of their verdict in the guilt phase.

1 Before we get started, any matters? I see the defense
2 attorney Mr. Wilson standing.

3 MR. WILSON: Yes, two things, Your Honor.

4 One, I visited the defendant last night out at the
5 jail, and again he hadn't received his medications. And he
6 got ---

7 THE COURT: Well, Mr. Wilson, I just talked with the
8 sheriff about that three or four minutes ago. He assured
9 me everything was going fine in that regard.

10 MR. WILSON: Well, it did not and I went out last
11 night. I met with him last night. This is probably 7,
12 between 7 and 8:00 last night. He had not had his
13 medication since early in the morning. And, and
14 unfortunately when that happens, Your Honor, it can really
15 cause a problem for me and for him, too, because it makes
16 it really difficult to get anything accomplished.

17 I stayed there with him I guess about an hour. They
18 had told me that they were going to get it to him, and they
19 never did. When I left, they were giving it to him.
20 Again, that was a little after 8 p.m. last night. So, he
21 missed the second ---

22 THE COURT: Do you have a chart which states the time
23 he is to receive his medication?

24 MR. WILSON: No, sir. The only thing I can ---

25 THE COURT: Well, how can I -- I need to know to

1 instruct the sheriff to make sure certain times he gets it.
2 Could you tell me the time ---

3 MR. WILSON: Yes, sir.

4 THE COURT: --- that you want to make sure he gets it?
5 What are those times?

6 MR. WILSON: The times are before he comes to court in
7 the morning, which is usually around 7:30 in the morning.
8 And then again around noon or 1:00. And then again at 6 or
9 7 in the afternoon.

10 THE COURT: What time did he get it last night?

11 MR. WILSON: Well, he, he got one in the morning.
12 Never got another one until after 8-something at night.

13 THE COURT: The sheriff has gone down; he's coming
14 back up.

15 So he got, he got his medication this morning?

16 MR. WILSON: Yes, he did. That, that's the first
17 matter. Your Honor, the second matter is is that the
18 defendant has, has indicated to me both last night and this
19 morning that he wants to participate in the cross-
20 examination of witnesses in the trial, in this phase of the
21 trial. I, I would like the court to discuss that with him
22 and, and the pitfalls of doing that with him. And I have
23 done that, and what I would ask the court to also ---

24 THE COURT: Well, Mr. Wilson.

25 MR. WILSON: Yes, sir.

1 THE COURT: I will discuss, I will be glad to let Mr.
2 Winkler know, if Mr. Winkler at some point in time wishes
3 to represent himself, I'll discuss the pitfalls, pitfalls
4 in regard to that and see if he is making a knowing and
5 voluntary decision to do that. But you represent him, Mr.
6 Rathbun represents him, and you all are there to do the
7 questioning.

8 Mr. Winkler needs to be aware, though, that in this
9 phase he has a right at the end of the case to address the
10 jury, as he did have that same right at the end of the
11 other phase. And at that point in time I would be glad and
12 the law requires that he be given that opportunity. So, he
13 does have that opportunity, but as far as questioning
14 witnesses, that is the position of the attorneys to do so.
15 Not only that, it could rather dangerous for him to do so
16 in the sense of him not realizing some of the things he may
17 say in questioning which may be detrimental to him and him
18 not realizing that.

19 MR. WILSON: Yes, sir.

20 THE COURT: And the doors he may open further by
21 bringing in questions that you as a defense attorney may
22 know are not -- that you can -- like you did in the other
23 phase, keep out. But if Mr. Winkler wishes to address the
24 court, wishes to dismiss you all as his attorneys, I guess
25 we can discuss that and he can represent himself. But

1 other than that, I intend for you and Mr. Rathbun to be the
2 ones asking the questions.

3 Okay, Mr. Winkler.

4 (COUNSEL CONFERS WITH DEFENDANT.)

5 MR. WILSON: Ask the judge.

6 DEFENDANT: As they call witnesses and, and start the
7 testimony, I have a chance with each witness to discuss
8 matters with them?

9 THE COURT: As -- with Mr. Wilson and Mr. Rathbun
10 representing you, they'll be the ones asking the questions,
11 sir.

12 MR. WILSON: He wants, he wants, Judge, he wants to be
13 able to do that.

14 THE COURT: Well, Mr. Winkler, you always have the
15 opportunity, sir, if you wish to to represent yourself,
16 sir. And if you want to represent yourself, we'll go
17 through another dialogue here to make sure that's what
18 you're doing.

19 That would be very, very, very dangerous, sir, at this
20 stage of this proceeding for you to do that, sir. That's
21 something that would be -- well, just be very dangerous for
22 you to do this stage, sir, but if you wish to discuss that
23 with me, fine. But as far as your participation in this,
24 this phase, you have a right to testify and we'll discuss
25 that later. You also have the right to make a closing

1 argument to the jury, and I will make sure that Mr. Wilson
2 or Mr. Rathbun, who's ever questioning witnesses, that they
3 go and talk with you before they conclude their questions
4 with the witnesses, so they will be consulting with you.

5 DEFENDANT: Are we talking about every witness
6 individually?

7 THE COURT: Yes, sir.

8 DEFENDANT: Okay.

9 THE COURT: Mr. Wilson, you have no problem ---

10 DEFENDANT: So, some witness, some witnesses ---

11 THE COURT: Wait, sir. Mr. Wilson, you have no
12 problem going over to the table before you -- I think I've
13 noticed you do that, doing that already.

14 MR. WILSON: Judge, I do that, but that's the problem.
15 That is where the problem is, and that is where his concern
16 is is that I come back to the table, and I will ask to try
17 to find out what it is that he wants me to ask or other
18 counsel want me to ask. But then I have to make a
19 determination as to whether or not I believe that that's
20 appropriate.

21 THE COURT: Well, you make that determination, can't
22 you?

23 MR. WILSON: And, and that's what the problem is,
24 though, because I'm not doing what he wants me to do. I'm
25 not asking some of the questions that he wants me to ask

1 because in my professional judgment, they're not
2 appropriate and I don't ask them. And that's what the
3 problem is, and that's what we're having a problem with
4 now. And my concern is is that -- I mean, this has gone on
5 through the, almost through the entire trial phase. And
6 now we're in the sentencing phase, and he has said to me
7 again last night and said it to me again this morning that
8 he wants to ask certain questions and I am, as a lawyer, I
9 don't think I can ask. And I am not comfortable doing it.
10 I tell this court that in all candor.

11 THE COURT: Well, Mr. Winkler, I don't know, I'm not
12 sure what those questions are. We don't need to hear them.
13 But there are certain questions that, whether you want to
14 ask them or not, if they are not questions that the court
15 deems proper, they wouldn't be permitted anyway. But if,
16 with you having attorneys representing you, which is
17 advisable you continue to do so, but the attorneys decide
18 what questions they are going to ask, but you have a right
19 to consult with them before they conclude their
20 questioning. But as far as the final decision, your
21 counsel make the final decisions to the questions. So, you
22 have any other questions of me, Mr. Winkler?

23 DEFENDANT: Yes, I do. Well, as, as pertaining to
24 yesterday, like you said, I had a chance to talk to the
25 jury before they went out. Also after he, after he did his

1 closing. I did not know that. I did ---

2 THE COURT: Sir, you did, sir. I told you that.

3 DEFENDANT: I didn't know if he -- after he was done I
4 could do that. If I would have said yes, sir, talked to
5 them, I would have talked to them.

6 THE COURT: Sir, I told you that clearly, clearly on
7 the record I told you that. And, in fact, I even took a
8 recess to permit Mr. Wilson to discuss it with you further
9 and ask if you understand you had a right to make a closing
10 argument yourself to this jury. You and Mr. Wilson have a
11 right to make a closing argument to that jury. I said that
12 to you very clearly, sir.

13 MR. WILSON: He says he wants to talk to each juror --
14 he's wants -- I'm sorry.

15 DEFENDANT: Not -- witness, witness.

16 MR. WILSON: He wants to question each witness. And,
17 Your Honor, that, and that's fine. I just think that,
18 that ---

19 THE COURT: No, sir, it's not fine if you're
20 representing him, sir.

21 MR. WILSON: Well, but, but, but, Judge, the concern
22 that I'm having is is that I have a defendant who's telling
23 me that he wants to question each witness, and he's not
24 obviously satisfied with what I'm doing. And, and, and
25 that's his right and I'm, I'm -- if he -- if it's what he

1 wants to do, whether I agree with it not, don't agree with
2 it, which I do not obviously, it's still his right. And I,
3 you know, I -- my job is to represent him, and I have tried
4 to do that as best I know how. But he is telling me that
5 he wants to do this. He said that to me last night; he
6 said that to me again this morning. I brought that to this
7 court, you know, and I am -- I think that he, if he wants
8 to do it, then I think the court, you know, should at least
9 examine him and make sure that's what he wants to do and
10 allow him to do it if that's what he wants to do.

11 I will be happy to sit here and help him every way I
12 know how. I will give him, you know, the benefits of
13 whatever information, knowledge I have. And, and if we get
14 to a point where -- and I, again, this will be up to the
15 court at that point if they're -- you know, when we get to
16 the -- and I think particularly he's concerned about the
17 cross-examination of the state's witnesses. That that's
18 where he really wants to do his own examination. And I,
19 all I can do is take it to you and tell you that's where we
20 are and...

21 THE COURT: It's highly, highly inadvisable, Mr.
22 Winkler. You would be restrained to the same rules as
23 anybody else as far as your questions, sir. And you cannot
24 make statements at all. It's not -- you can't make
25 statements at all.

1 What's the position of the state on this issue?

2 MR. HEMBREE: Your Honor, our position is if Mr.
3 Winkler chooses to represent himself, if he wants to
4 conduct cross-examinations, the only, the only process that
5 he can go through to accomplish that is to, is to
6 essentially let his lawyers go and represent himself from
7 this, from this stage forward. He has that right, and we
8 recognize that. Of course we agree with the court. It
9 seems like a hazardous course, but there's -- and *Faretta*
10 warnings are out there. They're available. It does look
11 like that based on the information presented by Mr. Wilson
12 and the defendant that *Faretta* warnings may be -- that that
13 charge, those warning may be appropriate at this time.

14 THE COURT: Well, I didn't bring that out with me. I
15 just know this, Mr. Winkler. That if you wish to represent
16 yourself, it is very dangerous, not advisable, and this is
17 a very crucial stage in this proceeding.

18 You do have a right to represent yourself, but it is
19 always better for people to have the attorneys there. Let
20 me -- but as far as you questioning some witnesses, Mr.
21 Wilson questioning witnesses, Mr. Rathbun, you questioning
22 some part way, Mr. Wilson part way, sir, I can't permit
23 that.

24 Mr. Hembree?

25 MR. HEMBREE: Your Honor, that's exactly the only

1 other point I wanted to clarify was it's a situation that
2 if Mr. Winkler represents himself on one witness, he
3 represents himself on all witnesses and all other aspects
4 of this case to its conclusion. If he chooses to allow Mr.
5 Wilson, Mr. Rathbun to continue to represent him, then he
6 will not have an opportunity to actively participate in the
7 trial other than testifying, if he chooses to do so, and
8 allocution as the court has already, already ---

9 THE COURT: Let me address -- let you think about that
10 for a minute and if you want, if you say you feel you want
11 to represent yourself, let me know and I will then get into
12 the appropriate charge. But let me address your
13 medication.

14 Sheriff.

15 SHERIFF THOMPSON: Yes, sir.

16 THE COURT: Sheriff, Mr. Wilson tells me yesterday
17 there was a problem with medication. How about, if you
18 would, get -- until this matter is concluded, please have
19 someone having a chart to make sure Mr. Winkler gets his
20 medication in the morning somewhere between 7:30 and 8 or
21 so, and around noon, and at night around 8 p.m. Mr.
22 Wilson says yesterday he got medication in the morning but
23 did not get medication again until late at night.

24 Is that right, Mr. Wilson?

25 MR. WILSON: That is correct, sir.

1 THE COURT: That's what he told you?

2 MR. WILSON: Your Honor, that's what he told me. I, I
3 talked to the jailers. I was there. They said that that
4 was, in fact, correct, that they did not ---

5 THE COURT: Yesterday they did not give him the mid,
6 midday medication.

7 MR. WILSON: They didn't give the midday one.

8 SHERIFF THOMPSON: If I understand correctly, Your
9 Honor, and, and, and I'll check and verify, the only time
10 he's been getting it in the middle of the day has been
11 since court's been going on.

12 MR. WILSON: Well, but that's because we hadn't had a
13 weekend until now. If the court will recall, this all
14 started on Monday when we had Dr. Hipp come over.

15 THE COURT: I know, but the sheriff is saying, and I
16 think he's got a good point, that when we had Dr. Hipp come
17 over, you discussed that because it was the anxiety of the
18 trial.

19 MR. WILSON: Yes, sir.

20 THE COURT: Well, the trial was not going on
21 yesterday. So, the sheriff, they assumed that he only
22 needed it the way he was getting it before trial began,
23 which was twice a day. And there was no trial going on
24 yesterday, and that's why they felt he didn't need it
25 during the midday or that it wasn't prescribed to him

1 during the midday.

2 But in any event, now we have the trial going on
3 again. We'll go on to the conclusion, so we'll make sure
4 he gets it three times a day.

5 MR. WILSON: Yes, sir.

6 SHERIFF THOMPSON: Yes, sir. Matter of fact, Your
7 Honor, I have spoken with her this morning and I will get
8 back with her shortly. I was speaking with her when I
9 found out you needed me up here. I'm going to call her
10 back, and we'll make sure it's here in the midday.

11 THE COURT: So, anyway, that will be handled.

12 MR. WILSON: All right, sir. Thank you, Sheriff.

13 THE COURT: That clears up everything.

14 Mr. Winkler, is it your desire to discharge your
15 attorneys and you represent yourself, sir?

16 MR. WILSON: Judge.

17 DEFENDANT: I haven't had a chance to speak with them.

18 MR. WILSON: Judge, when, when -- I think one of the
19 things that he is concerned about is he wants to -- us to
20 be here as a resource for him.

21 THE COURT: That would be fine.

22 MR. WILSON: And I think that is permissible.

23 THE COURT: That would be fine.

24 MR. WILSON: Under the rules.

25 THE COURT: How about if y'all would step back there

1 and if he wishes, then I'll -- you got a few, just a few
2 minutes now. Y'all have had all morning to be discussing
3 this.

4 MR. WILSON: I, I understand. All right.

5 (OFF THE RECORD.)

6 THE COURT: Okay, we had a recess. It's time for
7 everyone to consider matters. Mr. Winkler, are you
8 requesting that this court let you proceed *pro se* or want
9 you another lawyer? What are you asking?

10 DEFENDANT: Yes, sir. We're going to proceed in the
11 way that we asked. That I would question the witnesses.

12 THE COURT: My question, sir, is this. Are you
13 requesting that I dismiss your attorneys and permit you to
14 proceed *pro se*, or are you asking me to appoint you new
15 lawyers, or are you asking for you to proceed *pro se*? I
16 mean, by yourself.

17 DEFENDANT: I, I definitely don't want -- I, I'm not
18 -- I do not want them to be dismissed, no.

19 THE COURT: So, you want them to represent you?

20 DEFENDANT: Well, I'm not sure that's a -- that
21 question is ---

22 THE COURT: Let me let you know.

23 DEFENDANT: I, I do want -- that question ---

24 THE COURT: Let me, sir, make sure, let me ---

25 DEFENDANT: I do not want to abandon them.

1 THE COURT: Let me give you parameters, sir. As long
2 as you have attorneys representing you, sir, I am not going
3 to permit you to ask witnesses questions and the attorneys
4 ask witnesses questions. Other words, if you have
5 attorneys representing you, sir, the attorneys are going to
6 ask the questions. Once again, you will be permitted to,
7 to make closing statement to the jury just as you were
8 entitled to do so, as I explained to you fully at the end
9 of the other phase in this trial. You were permitted to do
10 that, as well as be a witness yourself. But as long as you
11 have attorneys representing you, sir, I'm not going to
12 permit you to ask questions of some witnesses and the
13 attorneys ask questions of other witnesses, that type of
14 thing. So, if you're, if you're asking permission to do
15 that and keep your counsel as your counsel, I'm not going
16 to permit that, no, sir.

17 MR. WILSON: Judge, just so the record's clear, I
18 don't think he understood your -- you used the word *pro se*,
19 and I don't know that he really understands ---

20 THE COURT: *Pro se* means to represent yourself.

21 MR. WILSON: Yes, sir, but what he, what he, what he
22 wants to do, and he'll tell you if I'm correct. What he
23 wants to do is to represent himself, but he wants to make
24 sure, and you say dismiss your attorneys, and that's the
25 other word that's confusing him.

1 THE COURT: All right.

2 MR. WILSON: He wants, what he wants is for -- and he,
3 he wants to be able to do the cross-examination of the
4 witnesses and represent himself. But he wants me and Paul,
5 Mr. Rathbun, to stay here with him and give him advice,
6 give him information, and assist him during his doing those
7 things.

8 THE COURT: All right, let me question you in that
9 regard, Mr. Winkler. I hear Mr. Wilson saying it. I got
10 to make sure that's what you're saying.

11 If you're saying that you want to represent yourself
12 with Mr. Wilson and Mr. Rathbun to stay there as
13 consultants for you to consult with during the course of
14 this phase of the trial, but not to be your attorneys who
15 ask questions or make closing arguments to the jury, is
16 that what you're requesting?

17 DEFENDANT: Yes, sir.

18 THE COURT: You're requesting, sir. You, are you sure
19 you want to do that, Mr. Winkler?

20 DEFENDANT: Yes, sir.

21 THE COURT: That is a very, very dangerous thing to
22 do, sir. Because once you do that, sir, you're basically
23 representing yourself. You're going to be required to
24 follow procedures as anybody, as lawyers would be required
25 to do in the sense following the rules of evidence,

1 following the restraints on how and what questions are
2 permitted and how they're permitted to be asked. All those
3 requirements you're going to have to follow, sir, and you
4 don't have any training in that regard, do you, sir?

5 DEFENDANT: No, I do not.

6 THE COURT: Well, sir, aren't you concerned? I mean,
7 I'm not sure why you would not be concerned, sir, that in
8 doing that, you would not be able to bring out points that
9 could be brought out by a skilled attorney that you,
10 without the ability to know how to do those, point and
11 bring them out by proper questioning, are going to
12 prejudice and it's going to be to your detriment. That is
13 a very dangerous thing to do, sir.

14 And I just wonder. Have you had enough time to
15 consider that? You're going have to ask questions right.
16 You're going to have to -- another thing, sir. You would
17 not -- I'm concerned about whether or not you would know
18 when to make proper objections when the other side is
19 asking questions, or when the other side is making argument
20 to the jury if you didn't know what proper objections to
21 make.

22 You would be treated just like anyone else in a court
23 of law. And obviously I would respect you and treat you
24 like anyone else, too. But you would be limited to the
25 same rules as any lawyer would be limited to. And you're

1 going to be held to ground rules, sir, that you don't even
2 know because you told me you're not familiar, so you don't
3 even know the ground rules, sir. Sir, I just want to make
4 sure you understand the danger of doing this, sir.

5 DEFENDANT: I do understand.

6 THE COURT: You do understand, sir, the issue of guilt
7 or innocence of these crimes as far the trial of them,
8 those issues and decisions have been made. So, we're not
9 going into whether you did this crime or not in this phase
10 of the trial as far as the crime of murder. But we're
11 going into the issues of mitigating and aggravating
12 circumstances. So, this is not a phase where we're going
13 into evidence of whether you've committed murder or not.
14 You understand that, sir?

15 DEFENDANT: Yes, sir.

16 THE COURT: And you would not be able to bring those
17 issues up. You understand?

18 DEFENDANT: Yes.

19 THE COURT: And you want me to dismiss them as your
20 attorneys but let them sit there at the table with you for
21 consultation?

22 DEFENDANT: Yes.

23 THE COURT: That's what you want me to do, sir?

24 DEFENDANT: Yes.

25 THE COURT: Let the record reflect in discussing these

1 matters with Mr. Winkler, I am reviewing *Faretta vs.*
2 *California*, 420, 422 U.S. 806, and I am also reviewing
3 *State vs. Brewer*, and *State vs. Fuller*.

4 Mr. Winkler, another thing. Mr. Wilson brought up the
5 fact of the problem with medication yesterday. Are you
6 confident one hundred percent that the lack of getting the
7 medication yesterday as often as you feel you need it, that
8 that in any way may be affecting your decision here today?

9 DEFENDANT: No, sir, Your Honor, not if they get here
10 at the appropriate ---

11 THE COURT: No, sir, your decision right now.

12 DEFENDANT: No. No, sir, Your Honor. I was already
13 given my medication this morning.

14 THE COURT: Mr. Wilson, have you got concern with
15 that?

16 MR. WILSON: Frankly, I've been concerned throughout,
17 but yes, sir, I can't stand here and say no, I'm -- that
18 doesn't cause me some concern because it does. And his
19 medication, he is a totally different individual when he is
20 on his medication and when it's in his system
21 appropriately. When it's not, Judge, he does, he gets
22 extremely anxious, he gets extremely combative,
23 argumentative. And, and now can I stand here and tell you
24 that, that, that missing that one dose on yesterday has --
25 no, I can't say that. That that in and of itself is -- has

1 made him unable to make a decision? I am not saying that
2 because I don't think I can say that. The answer to that
3 part would be no.

4 Am I concerned about that fact of making this decision
5 at all? Absolutely I'm concerned about it, and I don't
6 agree with. I would prefer he not make it. I would prefer
7 he let me and Mr. Rathbun continue to do this. He has
8 indicated to me on more than one occasion this is what he
9 wants to do. So, you know, I'm abiding by that.

10 THE COURT: The *State vs. Brewer* talks about the
11 beginning of the trial, the judge has -- should go through
12 the discussions with the defendant. Of course under the
13 Sixth Amendment, the defendant a right to represent
14 himself.

15 And by the way, Mr. Winkler, this is not a request to
16 have new lawyers replaced I assume, is it, sir?

17 DEFENDANT: No. I've got -- no, no, Your Honor. I've
18 already asked that eight months ago.

19 THE COURT: Well ---

20 DEFENDANT: I'm not asking that.

21 THE COURT: --- if you were asking it today, I'm
22 letting you know that I have -- I find that Mr. Wilson and
23 Mr. Rathbun have done an admirable job, have gotten matters
24 together for you.

25 Mr. Winkler, have you had a chance to review all the

1 matters that Mr. Wilson has gathered by investigators in
2 mitigation which has taken months to do, to gather all this
3 information? Have you had a chance to review all that, Mr.
4 Winkler?

5 DEFENDANT: Yes, Your Honor. If I wouldn't of, we
6 wouldn't be ready for trial.

7 THE COURT: So, you had an opportunity to review all
8 the evidence Mr. Wilson and Mr. Rathbun are ready to
9 introduce in this phase of the trial?

10 DEFENDANT: Correct.

11 THE COURT: Do you understand the nature of the term
12 leading question?

13 DEFENDANT: Yes.

14 THE COURT: What is it?

15 DEFENDANT: It's trying to get someone to say
16 something that you want them to say, putting words into
17 their mouth.

18 THE COURT: All right. You understand the nature of
19 a, the rules of our -- have you reviewed the rules of
20 evidence for South Carolina?

21 DEFENDANT: No, I have not. I have several law books
22 at, at J. Ruben Long that I had gone through.

23 THE COURT: Do you understand the various exceptions
24 to hearsay?

25 DEFENDANT: To hearsay? Yes, sir.

1 THE COURT: So, you know what excited utterance in
2 presence ---

3 DEFENDANT: Pardon? Pardon?

4 THE COURT: Excited utterance is?

5 DEFENDANT: No, I do not.

6 THE COURT: Aren't you concerned that they might get
7 things in, sir, that you wouldn't know to object to?

8 DEFENDANT: Your Honor, my view of it is yesterday we
9 won that trial. We got the bad verdict. I did not have my
10 day in court. I did not take the stand, which we were
11 trying to fit in.

12 THE COURT: But, sir, that has -- that, as far as your
13 decision to represent yourself with attorneys or with
14 attorneys is not involved in as far as what we're doing
15 now.

16 DEFENDANT: Okay, Your Honor, if I may?

17 THE COURT: Yes, sir.

18 DEFENDANT: Most of these witnesses that they're going
19 to call today, what I understand, there's nobody that knows
20 them better than myself. They were supposedly my friends
21 who turned against me to keep me with my wife, who they
22 only met several times. I know them better than anybody in
23 this room, Your Honor, and ---

24 THE COURT: But, sir, that's ---

25 DEFENDANT: --- Mr. Wilson does not know them.

1 THE COURT: But that's a different factor than who
2 questions them, sir.

3 DEFENDANT: Your Honor, I'm confident in taking,
4 taking care of this, this business.

5 THE COURT: Well, *Brewer* says that you have to make
6 the decision before trial. But the *Fuller* indicates it's
7 the discretion of the judge. I need to review that one
8 more time, then, whether or not at this phase it's in my
9 discretion since the trial has already begun.

10 I'd ask both counsel look at *State vs. Fuller*. *State*
11 *vs. Brewer*, of course -- wait a minute. *State vs. Brewer*,
12 of course, is 328 SC 117. Looking at *State vs. Fuller*, 337
13 SC 236, 1999 case. How about y'all reviewing that because
14 *Brewer* indicates that the decision must be made before
15 trial. Of course, one could assert this is a trial.

16 And let me just review these one more time. Let me --
17 but you understand the dangers, the pitfalls? You
18 understand it's not that, that -- it's very dangerous to do
19 this, and you understand at this phase of the trial, sir,
20 this jury is going to decide whether or not you would
21 receive life imprisonment or the death penalty? You
22 understand that, sir?

23 DEFENDANT: Yes, Your Honor.

24 THE COURT: That's the only question before this jury
25 at this time, one of those two questions. You understand

1 that?

2 DEFENDANT: Yes, Your Honor, I do.

3 THE COURT: So, you do understand the danger of this?

4 DEFENDANT: Yes, Your Honor.

5 THE COURT: You appreciate it?

6 DEFENDANT: Yes, I do, Your Honor.

7 THE COURT: And the decision that you wish to make is
8 your decision?

9 DEFENDANT: Yes, it is, Your Honor.

10 THE COURT: It's not that of your family or the
11 attorneys or whatever else?

12 DEFENDANT: None of them.

13 THE COURT: In fact, sir, I'm wondering. Do you have
14 anybody advising you to do this?

15 DEFENDANT: No. I haven't had a chance to talk to my
16 family. I'm not permitted to talk to my family.

17 MR. WILSON: Judge, just for the record, his family
18 has advised him against this. Mr. Rathbun and I have
19 advised him against this.

20 (COUNSEL AND DEFENDANT CONFER BRIEFLY.)

21 MR. WILSON: We, we do not -- his family does not
22 support him doing this, and neither do I, neither do we.

23 THE COURT: All right. So, sir, also what you do, I
24 want to make sure you realize in this phase at the end,
25 both Mr. Wilson, and as I told you could have occurred at