

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

AUG - 5 2014

S.C. 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

LOUIS MICHAEL WINKLER, JR.,

Respondent/Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Petitioner/Respondent.

APPENDIX

EMILY C. PAAVOLA, ESQ.
Death Penalty Resource & Defense Center
900 Elmwood Avenue, Suite #101
Columbia, South Carolina 29201

JOHN R. MILLS, ESQ.
The Law Offices of John R. Mills
3145 Geary Blvd, Unit #213
San Francisco, California 94118

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney
General
No. 4425

J. ANTHONY MABRY
Assistant Attorney General

ALPHONSO SIMON, JR.
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEYS FOR
RESPONDENT/PETITIONER

ATTORNEYS FOR
PETITIONER/RESPONDENT

INDEX

INDEX	i
Record on Appeal	1
Notice of Appeal	3554
Final Brief of Appellant	3556
Final Brief of Respondent	3620
Final Reply Brief of Appellant	3708
Transport Orders	3717
S.C. Supreme Court Published Opinion	3721
Petition for Rehearing	3733
South Carolina Supreme Court Order Denying Petition for Rehearing	3749
Petition for Stay of Execution	3751
Return to Petition for Stay of Execution	3756
South Carolina Supreme Court Order Granting Stay of Execution	3767
Petition for Writ of Certiorari to the South Carolina Supreme Court	3769
Brief in Opposition	3827
Petitioner's Reply Brief	3849
United States Supreme Court Letter denying Petition for Writ of Certiorari	3863
Motion for a Stay of Execution and for the Appointment of a Post-Conviction Relief Judge	3864
Return to Motion for a Stay of Execution and for the Appointment of a Post-Conviction Relief Judge	3880
South Carolina Supreme Court Order Granting Stay of Execution	3885
Application for Post-Conviction Relief	3887

Return to Application for Post-Conviction Relief.....	3913
First Amended Application for Post-Conviction Relief	3958
Return to Amended Application for Post-Conviction Relief and Motion for More Definite Statement.....	3969
Order Regarding Respondent's Motion for More Definite Statement	4018
Second Amended Application for Post-Conviction Relief	4024
Return to Second Amended Application for Post-Conviction Relief and Motion for More Definite Statement.....	4029
Applicant's Notice of Intent to Rely on Affidavits	4088
Applicant's Motion to Limit Scope of Cross-Examination	4130
Order Regarding Applicant's Motion to Limit Scope of Cross Examination	4141
Respondent's Objection to Applicant's Notice of Intent to Rely on Affidavits and Respondent's Motion to Exclude Statements and Affidavits	4147
Respondent's Motion to Dismiss for Failure to State Facts Sufficient to Constitute a Cause of Action pursuant to Rule 12(b)(6), SCRCP.....	4153
Return to Respondent's Objection to Applicant's Reliance on Statements and Affidavits	4159
Reply to Applicant's Return to Respondent's Objection to Applicant's Notice of Intent to Rely on Affidavits and Respondent's Motion to Exclude Statements and Affidavits	4169
Return to Respondent's Motion to Dismiss for Failure to State Facts Sufficient to Constitute a Cause of Action pursuant to Rule 12(b)(6).....	4176
Reply to Applicant's Return to Respondent's Motion to Dismiss for Failure to State Facts Sufficient to Constitute a Cause of Action pursuant to Rule 12(b)(6), SCRCP	4181
South Carolina Supreme Court Order releasing Exhibits	4186
PCR hearing Transcripts and Exhibits Admitted into Evidence	4188
Order Granting Post-Conviction Relief	5206
Respondent's Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP	5219

Return to Respondent's Motion to Alter or Amend Judgment	5230
Supplemental Return to Respondent's Motion to Alter or Amend Judgment.....	5255
Reply to Applicant's Return to Respondents' Motion to Alter or Amend Judgment	5260
Notice of Appeal	5302
Notice of Cross Appeal.....	5304
Order Dismissing Respondent's Motion to Alter or Amend Judgment.....	5306
Respondent's Motion for Reconsideration of Order Dismissing Respondent's Motion to Alter or Amend Judgment.....	5312
Motion to Stay Appeal and Remand for Consideration of Post-Trial Motions.....	5317
Return to Petitioner-Respondent's Motion to Stay Appeal and Remand for Consideration of Post-Trial Motions	5436
South Carolina Supreme Court Order filed January 9, 2013	5482
Remittitur	5484
Order Denying Respondent's Motion to Alter or Amend Judgment.....	5486

This page is intentionally left blank

1 the end of the other phase, but at this phase also both you
2 and Mr. Wilson or Mr. Rathbun could make closing arguments
3 to the jury. You're eliminating one of those
4 opportunities, sir, because then instead of two, you and
5 the attorneys, it will just be you. So, you're losing that
6 opportunity also by not having an opportunity to have two
7 people address the jury at the end of the phase as opposed
8 to just one person. That's a very significant right you're
9 losing, as well as the right of the expertise of the
10 counsel and knowing the way to ask questions. And Mr.
11 Wilson, as you know, did a very admirable job, as Mr.
12 Rathbun did, in your first phase of this trial. So, having
13 counsel here is very, very important. And once again, I
14 want to tell you once again I advise you strongly against
15 this, Mr. Winkler.

16 The state wish me to pursue any other questions or
17 defense?

18 MR. HUMPHRIES: Your Honor, the state would request
19 that at the point at which the court determines whether or
20 not he is capable of representing himself and that it's a
21 knowing and intelligent waiver of his right to counsel,
22 that you engage in a discussion of all the factors under
23 *Faretta* just for the record.

24 THE COURT: Well, I was reviewing the factors under
25 *Faretta*, and I thought I had reviewed the factors under

1 Faretta. So, you know a page -- and Mr. Wilson may have
2 it, too -- that you wish me to go through in *Faretta*?

3 MR. HUMPHRIES: Well, what, what I -- and obviously,
4 Your Honor, I've been involved. I tried Johnny Brewer and
5 am very familiar with the issues.

6 THE COURT: I know. The *Brewer* matter, though, the
7 judge decided there that even, even though he found the
8 defendant made a knowing and intelligent decision to
9 represent himself, the judge said it would not be advisable
10 for you, so I'm not going to let you do it.

11 MR. HUMPHRIES: And that's, and that is what Judge
12 Peeples said. He was reversed by the Supreme Court and
13 ultimately Mr. *Brewer* did represent himself.

14 But in a number of these cases -- well, there's one
15 case where the, where the court engaged in general
16 discussions but not every specific factor *Faretta*, and the
17 Supreme Court said that while there was no specific
18 discussions, there was a general ---

19 THE COURT: You let -- Mr. Wilson, I'll be glad to
20 entertain from you and from, and from Mr. Humphries
21 specific requests of conversation with the defendant if you
22 want to put that in writing. I'm going to step off for a
23 minute just to consider the defendant's request, and I'll
24 come out with additional questions.

25 Mr. Winkler, I do want you to consider this very

1 seriously because this is a serious decision. If
2 ultimately, though, I determine that you've make that
3 decision and it is a knowing, intelligent and voluntary
4 decision and you made it pursuant to *Faretta vs. California*
5 standards and reviewing *Fuller* and *Brewer*, then it's
6 probable I'll permit you to do. Let me think further with
7 it.

8 DEFENDANT: Thank you, Your Honor.

9 MR. HUMPHRIES: Do you, do you want the state's
10 position regarding whether or not at this juncture in the
11 trial pursuant to *Fuller* and *Lawrence* that he is entitled
12 to dismiss his attorneys?

13 THE COURT: Well, that's -- *Fuller* indicates it's the
14 discretion of the judge.

15 MR. HUMPHRIES: Well, *Fuller*, I agree that that's what
16 it says and it cites *Lawrence*. But there was a distinction
17 in the *Lawrence* case. And the *Lawrence* case involved a
18 defendant represented by counsel, and while that he didn't
19 assert his right to proceed *pro se* prior to anything
20 occurring with that jury, they actually had begun a little
21 *voir dire*. The assertion of the right to proceed *pro se*
22 was asserted prior to the swearing of the jury. And in
23 that case, they said that there was no abuse of the court,
24 but it was in his discretion.

25 Clearly we're well beyond that point here. So,

1 there's a question in my mind as to whether or not
2 discretion continues to exist in the court in regard
3 to that matter in light of *Lawrence* in the consideration
4 of ---

5 THE COURT: But does everyone agree in reviewing
6 *Fuller* that, that at the very -- that the court, in the
7 most liberal view of Mr. Winkler at this time, the court,
8 if that's what he wants, the court has discretion? That
9 the court can deny his request and it would not be a
10 violation of *Brewer* or *Faretta* if it's the court's
11 discretion to deny his request?

12 MR. HUMPHRIES: I believe that if the court in their
13 discretion declines his assertion to proceed *pro se*, that
14 the court can find that that's appropriate and that it
15 meets the ends of justice to the administration of justice.

16 THE COURT: I'm aware of that. But -- so, you feel
17 *Fuller* and *Lawrence* clearly indicate since the trial has
18 begun, you feel, then, that his absolute right to continue
19 on *pro se*, even if it is is knowing, intelligent,
20 voluntary, it's not the same as it same as it did with his
21 right before the trial began?

22 MR. HUMPHRIES: Yes, sir, I do.

23 MR. WILSON: And I disagree with that and, and the
24 reason I disagree with that ---

25 THE COURT: Have you reviewed *Fuller* and before you

1 say that either/or, you can just feel that way.

2 MR. WILSON: Well, I just feel that way, and then let
3 me tell you why because my reason is this. This is a
4 bifurcated proceeding. And are you saying to me, then,
5 because the logic from what you're saying is ---

6 THE COURT: The jury's been selected.

7 MR. WILSON: I understand but, but, but courts have on
8 many, many occasions reversed the sentencing phase and let
9 the trial phase stay intact, and you come back and you get
10 a new chance to go forward. And the defendant would
11 certainly at that point decide whether or not he wanted to
12 represent himself, which simply is saying that -- that
13 having been said, well, we can't -- he doesn't have that
14 right simply because we are at this particular stage.

15 This is a, this is a separate and distinct proceeding
16 from the original proceeding. This is the sentencing
17 proceeding. This is the beginning of the sentencing
18 proceeding as opposed to the beginning of a trial.

19 Now, and there's a question, Your Honor, that if for
20 whatever reason this case was reversed and sent back, was
21 -- for resentencing, this defendant could certainly choose
22 to represent himself or have somebody else represent him if
23 that's what he wanted to do and, and -- irregardless and
24 irrespective of the fact that he did not represent himself
25 during the trial phase of the case. And I think that, that

1 this is different, and I think it is distinct, and I do
2 think that he has the right to defend himself if that's
3 what he wants to do, provided the court believes and
4 understands that this defendant is voluntarily making that
5 decision.

6 MR. HUMPHRIES: Your Honor, there is -- and I'd like
7 to direct the court's attention to the case of *State vs.*
8 *Reed*, which is also a capital case I believe out of
9 Beaufort, if I'm not mistaken. In any event ---

10 THE COURT: *State vs.* what?

11 MR. HUMPHRIES: *Reed*, R-e-e-d, and in that case, Your
12 Honor, the defendant elected to proceed *pro se* from the
13 very beginning. He was qualified to do that by the court,
14 allowed to do that. Through the guilt phase, he
15 represented himself. He was convicted. They moved to the
16 penalty phase, and at the beginning of the penalty phase he
17 requested the court reappoint his lawyers for the purpose
18 of representing him. And the court found, because he
19 represented himself in the guilt phase, that he was no
20 longer entitled to bring his lawyers back. That obviously
21 is the inverse of what we have here. But I'd ask the court
22 to consider *Reed*.

23 THE COURT: Was there a review of that decision by the
24 judge?

25 MR. HUMPHRIES: Yes, sir.

1 THE COURT: Supreme Court?

2 MR. HUMPHRIES: Oh, absolutely.

3 THE COURT: And the Supreme Court affirmed that
4 decision by the court?

5 MR. HUMPHRIES: Yes, sir, they did, and I, I'll try
6 and find you a cite of that.

7 THE COURT: I'll find it. What year was it?

8 MR. HUMPHRIES: Well.

9 THE COURT: Because I'm afraid there will be several
10 *State vs. Reeds*.

11 MR. HUMPHRIES: There, there, there, there are. There
12 are, but it would be the only one that has reference to *pro*
13 *se* representation.

14 THE COURT: You want to respond to that, Mr. Wilson?

15 MR. WILSON: Yes, sir, because the obvious
16 distinction, Judge, is is this. If, if a defendant
17 represents himself from the beginning of the trial on, and
18 obviously counsel's not prepared in the second phase of the
19 trial, but then just step in immediately and take over the
20 entire representation, because when I ---

21 THE COURT: From my understanding of what Mr.
22 Humphries says that Reed says, it's not the fact that
23 counsel was not ready because I'm sure counsel ---

24 MR. HUMPHRIES: They were standby counsel.

25 THE COURT: --- had gotten prepared for the trial, and

1 then they were relieved but they were there as
2 consultation. And there's no comment, from what he tells
3 me -- I'll look at the case myself -- though that the court
4 sort of considered whether the counsel was, were prepared
5 to come back again.

6 MR. HUMPHRIES: In *Reed*, he had standby counsel
7 throughout the guilt phase.

8 MR. WILSON: And -- but that, that's, and maybe I'm
9 not being clear because I think that the distinction is
10 that the difference is that the defendant was permitted in
11 the first phase of the trial to represent himself. He
12 waived his right to counsel in order to do that. And now
13 what, what you are being asked to do was to now, once he
14 had waived it, to allow him reinstate it. That's not
15 what's happening here.

16 This is his first waiver; this is his initial waiver.
17 He has now waived counsel to this point. And I think to
18 say that he doesn't have the right to do it at this point
19 simply because he elected not to do it at the first, at the
20 beginning of the trial, I don't know that that's...

21 THE COURT: Well, be honest with you, Mr. Wilson,
22 before I can even get to that point, I have not yet made a
23 finding that he's -- knowing and voluntary decision knowing
24 his rights. I have concerns about the medication. You
25 brought up the medication issue, and I'm concerned also

1 whether or not he fully understands what he's doing. I
2 haven't made that finding yet.

3 But how about if you would review *State vs. Fuller*.
4 Since y'all have the access to the computers, you'll get a
5 copy of it for him?

6 MR. HUMPHRIES: I'll get him a copy of it, Judge.

7 THE COURT: I've got it back there myself. I
8 researched and got it myself right there.

9 MR. HUMPHRIES: I've got more copies.

10 THE COURT: And I'm not sure this has precedent as far
11 as any of other capital case where the request to dismiss
12 counsel came at the conclusion of the guilt phase of the
13 trial. I assume neither one of you all have ever -- y'all
14 are not aware of any case where the court has reviewed this
15 issue?

16 MR. WILSON: I'm not.

17 MR. HUMPHRIES: Not the inverse, no, Your Honor.

18 THE COURT: Let me review it right quick. Again, I
19 want to just check, see if there's any national review of
20 it. If y'all would, be seated. I'm going to let the
21 foreman here know there's some problem, something I need to
22 review so that they can go outside.

23 Bring the foreperson in, please.

24 By the way, Mr. Wilson, I thought the sheriff told me
25 there'd be no problem on Sunday with the family to visit.

1 Was there problem yesterday with the family?

2 MR. WILSON: Yes, but we got it worked out.

3 THE COURT: So, he was able to visit with the family?

4 MR. WILSON: Yes, he did visit.

5 THE COURT: All right.

6 (The FOREPERSON ENTERS THE COURTROOM.)

7 THE COURT: Mr. Trout.

8 FOREPERSON: Yes, sir.

9 THE COURT: Mr. Trout, I know y'all have been back
10 there two hours now. There's some procedures here that I
11 am reviewing myself that's delaying matters, and I hate to
12 have you all back there and we've not been able to get out.
13 So, it's going to be fifteen or twenty more minutes. I'm
14 going to go ahead and let the bailiffs if y'all want to
15 walk outside or whatever and do so, but it will be another
16 twenty minutes or so. I should have brought you out before
17 now, but I was so engaged in what I was doing, I -- it was
18 my neglect, and I apologize.

19 So, we'll let y'all walk outside and that type of
20 thing, but it will be about twenty minutes, those of you
21 who wish to do, all right?

22 FOREPERSON: Yes, sir. Thank you.

23 THE COURT: Step back.

24 (THE FOREPERSON EXITS THE COURTROOM.)

25 (A PAUSE.)

1 THE COURT: Be back in a few seconds.

2 MR. HUMPHRIES: Thank you, Your Honor.

3 THE COURT: But I would like the state and the defense
4 positions regarding point, point, point, point written
5 factors.

6 MR. HUMPHRIES: And, Your Honor, the *State vs. Reed* is
7 -- I guess I should have waited and told you I just found.

8 THE COURT: All right.

9 MR. HUMPHRIES: *State vs. Reed* is 503 SE 2nd 747.
10 That's 1998.

11 THE COURT: Do you have the SC cite?

12 MR. HUMPHRIES: Yes, I, yes, do. It's 332 SC 35.

13 THE COURT: All right.

14 MR. HUMPHRIES: I believe that's the *Reed*. I would
15 have been better prepared had I know this issue would be
16 coming up, Your Honor.

17 THE COURT: All right, then, Mr. Wilson, do you need
18 access to computers or whatever to look things up? I know
19 the solicitor has computers here -- you do not -- because
20 their offices are here obviously. But I'm directing them
21 to give you whatever assistance you need in that regard.

22 MR. WILSON: Thank you, Your Honor.

23 THE COURT: You understand, Mr. Hembree?

24 MR. HEMBREE: Yes, sir, Your Honor.

25 (OFF THE RECORD.)

1 THE COURT: The research that I've done convinces me
2 that this is the continuation of a trial, and it is not a
3 separate trial. It is a separate proceeding in a
4 bifurcated trial. And pursuant my reviewing *Fuller* as well
5 as *State vs. Reed*, by the way, where they make a point of
6 saying that the defendant does not -- that the judge is not
7 required to permit hybrid representation so that part is
8 with counsel and part is without counsel.

9 Having said that, I do want to make sure, though, that
10 the defendant, that I consider his request in doing this
11 and make a decision that I feel is appropriate and that I
12 have some basis of making a decision.

13 One thing that I am little concerned with, I'm very
14 much concerned with whether or not the defendant's had an
15 adequate, adequate, adequate opportunity to review the
16 volumes of material that has resulted in the defense
17 preparing for this phase of this trial. As we all know,
18 the first phase -- I mean, the first trial we had scheduled
19 in July had to be, had to be continued because of a problem
20 with an expert for the defense regarding the mitigation.
21 That the defense was very much concerned that they had
22 someone who needed months and months of investigation to
23 adequately defend, to present the case for the defendant.
24 And subsequently found that expert witness had done in
25 essence nothing back in July. I agreed to continue the

1 case until October. And then after a request from the
2 defense, I agreed to continue it until now to make sure an
3 adequate opportunity had arose to -- or an adequate
4 opportunity had been given to fully research matters in
5 mitigation on behalf of the defendant.

6 And then I cannot imagine any way he would have had
7 opportunity to review all that material. Plus, you know,
8 you get an expert witness there. And Mr. Wilson and Mr.
9 Rathbun obviously know better how to examine them. And I'm
10 concerned about that, whether the defendant would
11 adequately do that.

12 Plus I, to do that I would think that, that my proper
13 discretion, if I permitted him to represent himself, would
14 require that I delay this case for a few days to give
15 opportunity to review all that. And I, I don't think that
16 that's appropriate or fair at this stage of the
17 proceedings, you know, to delay this matter to give him the
18 opportunity to review all the material necessary to do
19 that.

20 And I'm also concerned, not about his mental health
21 because obviously I made that determination he does
22 understand the nature of these proceedings, is able to
23 participate with his counsel, counsel, and knows
24 proceedings in a court of law. But what I am concerned
25 with, though, is there's been several, several comments

1 made regarding him getting his medication that, as I
2 understand it from defense counsel, is medication to keep
3 him calm because he does have anxiety problems.

4 And, and that, and, in fact, the defense requested
5 that before we had closing argument that we wait to give
6 him his medication because once the trial began, we began
7 medication three times a day as opposed to twice a day and
8 wanted medication in the middle of the day because the
9 defense said they were concerned about his ability to
10 maintain composure during the course of closing argument
11 without making sure he had the medication and time for it
12 to take effect. So, we delayed closing argument, goodness,
13 about forty-five minutes to an hour to get the person here
14 who could administer the medication for his anxiety.

15 I am concerned that if there is a problem in
16 medication, and the medication was given to keep his
17 composure during the course of him sitting there as a party
18 to the case but not one with active participation, where I
19 am sure that the state, in doing their representation of
20 their interest, of the state's interest, would be objecting
21 if questions are not asked appropriately, with the
22 presiding rules, court rules, court evidence rules, that I
23 would then look to the defendant to respond. He would have
24 to go ask counsel, who I would let be over there, which
25 would cause more concern of anxiety, I would think. And I

1 would think that would mean that we would maybe have
2 concern, additional medication.

3 Then if we had that, would that affect the situation
4 of maybe his senses being dulled since that it would make
5 him miss points that he would really need to make to help
6 himself. And that does concern me.

7 And I wanted also to talk with -- is the nurse here?
8 Ms. Hipp, is it? Nurse Hipp, could you come on up, please,
9 ma'am? Is the nurse practitioner the more appropriate ---

10 MS. HIPPI: Yes, sir.

11 THE COURT: --- term?

12 Would you please put her under oath for me, please?

13 DEBORAH HIPPI, BEING DULY SWORN,
14 TESTIFIES AS FOLLOWS:

15 EXAMINATION BY THE COURT:

16 Q. Now, Ms. Hipp, you can have a seat there, please. I
17 know that you are not his doctor and you're not his nurse
18 practitioner by choice. But your position is that you are
19 there hired by the county to administer drugs and
20 prescribed drugs for the benefit of the people who are
21 housed at the county detention center. Is that right?

22 A. That's correct.

23 Q. And your full name is?

24 A. Deborah Hipp.

25 Q. And you're a nurse practitioner?

1 A. Yes.

2 Q. And you're legally authorized to prescribe drugs?

3 A. Yes.

4 Q. Now, you are prescribing him drugs to help keep him
5 calm during the course of these proceedings, right?

6 A. That's correct.

7 Q. Is that based on him sitting there as a, as a person
8 not actively involved in -- as a lawyer would be?

9 A. That's correct.

10 Q. Well, would you be concerned if -- that maybe more
11 medication might be needed if he became actively involved
12 more so than he is now?

13 A. An increase in anxiety may require more medication.

14 Q. And more medication, although it might keep someone
15 calm, it may go at some point in time over the line, keep
16 him calm to the extent that they maybe are not quite as
17 alert as they would be without it?

18 A. That's true.

19 THE COURT: Okay, y'all want to ask her any questions?

20 MR. HUMPHRIES: State does not.

21 MR. WILSON: I don't have any questions for her,
22 Judge.

23 THE COURT: All right, you may step down. Thank you,
24 there.

25 (THE WITNESS EXITS THE STAND.)

1 THE COURT: And that does cause me a great deal of
2 concern about whether or not he can adequately represent
3 himself. And that does cause me great concern. I'll give
4 two more minutes to you, Mr. Wilson, before I make my
5 decision.

6 MR. WILSON: Thank you, Your Honor. Judge, you know,
7 I think that, and I, at least I believe that I see where
8 you're headed. But let me say a couple of things.

9 One, I don't think that there is -- that this
10 defendant is making this motion in order to delay this
11 trial or in any way impede justice in any way whatsoever.
12 And every indication is that he said to this court that he
13 is ready to go forward. He is willing to go forward. He's
14 indicated to this court that he has, he is familiar with
15 the materials and to be frank with you, he is. Every
16 expert that we have hired, he has met with on multiple
17 occasions; he has talked with them on multiple occasions.
18 They have given him whenever they have that they intend to
19 present, so he knows what that is.

20 Now, again, having said all that, am I saying do I
21 agree with his decision? No, and I put that on this record
22 clearly and loud. But at the same time, I think that
23 there's certainly no indication that he is mentally
24 incapable of not proceeding on his own if that's what he
25 elects to do. He has been here with me, and when the court

1 was talking just a second ago, he asked me, you know,
2 whether or not the court was denying his motion. And I
3 said, well, I don't know yet because the judge hasn't said.
4 I said, but it certainly sounds that that's where he's
5 headed. He said, well, then tell him that what I want to
6 do is dismiss my lawyers period if that's what he's going
7 to do.

8 And my, my point is is simply this. Is that I, you
9 know, my understanding of it is is that while I know that
10 in looking at these cases that there is this indication
11 that you're not supposed to have hybrid, you know,
12 proceeding where the lawyer represents a part of it, and
13 then he doesn't represent you at part of it. And I
14 understand the court's ruling, or at least belief seems to
15 be that this is a -- that would make it hybrid since we
16 represented him in the trial phase and we're not going to
17 represent him in the sentencing phase if that's what he
18 wants. But, on the other hand, I ---

19 THE COURT: Well, okay, Mr. Wilson.

20 Mr. Winkler, let me ask you a question. I'm just
21 curious. You familiar with 16-3-20?

22 DEFENDANT: No, I am not.

23 THE COURT: Are you familiar, familiar with the, that
24 the, the listed mitigating factors in the statute of law
25 far as mitigating factors in a murder trial ---

1 DEFENDANT: No, I'm not.

2 THE COURT: --- that you are permitted to bring?

3 Now, Mr. Wilson, you don't think I need to give him,
4 if I do this, give him time to review all those things so
5 he'd understand all that?

6 MR. WILSON: Judge, I'll read to you what's in -- and
7 of course you've already read it, I'm sure, but this is in,
8 in the *Brewer* case. I mean, they say:

9 The open test is whether defendant has made a
10 knowing and intelligent waiver of the right to
11 counsel is not the trial judge's advice but the
12 defendant's understanding.

13 THE COURT: Let's make sure that ---

14 MR. WILSON: The determination ---

15 THE COURT: Mr. Wilson.

16 MR. WILSON: The determine ---

17 THE COURT: Let's make sure we also do that to the
18 fullest.

19 MR. WILSON: Yes, sir.

20 The determination by the trial judge that the
21 accused lacks the expertise or technical legal
22 knowledge to proceed *pro se* does not justify a
23 denial of the right to self-representation. The
24 only relevant inquiry is whether the accused
25 made a knowing and intelligent waiver of the

1 right to ---

2 THE COURT: That is at the beginning of the trial.

3 MR. WILSON: Yes, sir, and, and, you know ---

4 THE COURT: If this was at the beginning of the trial,
5 Brewer would be right on point.

6 MR. WILSON: Well, let me ask the court this. Are you
7 saying, then, that the defendant cannot fire his lawyers at
8 any point in the trial? That he is ---

9 THE COURT: I'm concerned at this time for him to
10 dismiss y'all to proceed *pro se*, you are correct, would
11 result in a long delay in this case because I've got to
12 permit him to review the statutes of that so he'll know
13 what mitigating he may produce and he would know what
14 challenging -- if, if the state's attempts to introduce
15 aggravating factors that are not permitted under the law.
16 Number -- that's, I'm very concerned with that and other
17 issues. Although you say he's familiar with these, for him
18 to, say, to make -- he's been looking into this stuff, he's
19 familiar with it, not with intent that he was going to be
20 the attorney or representing him.

21 Number three, I'm very concerned, I'm very concerned
22 about the anxiety situation with his medication about
23 whether he needs more medication since he does have, in
24 your view and his view, that he needed medication even to
25 sit through the closing arguments. That if he didn't have

1 medication during closing arguments, him sitting there,
2 with your knowledge he was not going to make a closing
3 argument himself, you were concerned with his ability to
4 sit there and not have problems and -- with that, and he
5 was, too. So, we waited for him to get medication.

6 Now for him to be actively involved, it seems to me he
7 would need more medication. And then I'm concerned, as is
8 the nurse, that he then -- practitioner -- that he then
9 would maybe have so much medication, he might miss points
10 that he, that he should review. And although you all would
11 be sitting there, he might still miss an opportunity to
12 talk to y'all about that, or he might not understand fully
13 those situations.

14 And so I, I don't, I don't see how I can be fair to
15 this defendant to permit him to represent himself without
16 giving him an adequate opportunity to review the law, to
17 review all this law at this time. Plus, I am concerned
18 about whether he really understands the nature of
19 representing himself.

20 And I do believe that he understands that for him to
21 represent himself, this would require this judge, whether
22 he asked me to or not, it would require this court to give
23 him a long delay to review these matters. I think he's
24 aware of that, and I think that that would -- even if I
25 were looking at the beginning of the case, it would cause

1 me concern if right now about to start the trial, right
2 about to start it he requested this. I would have deep
3 concern there even looking at *Brewer*. But now after -- and
4 *Faretta* and the standards there.

5 But now after the trial has begun, I'm even more
6 concerned about a delay when we've got a jury sequestered,
7 a jury selected, and this jury is the jury to hear these
8 matters, and these jurors have been sitting there now for
9 three hours. And then to have them continue to sit maybe
10 for another day or so, I am concerned what that would mean
11 to his detriment or in any way would not be to the interest
12 of justice to do that. And so I am concerned about the
13 interests of justice as we proceed or not proceed with
14 letting him go on. So, even under the *Brewer* standard, I
15 would be concerned.

16 Number two, I'm seriously, sincerely concerned under
17 *Fuller* in the use of my discretion for the benefit of this
18 defendant, and also in the interest of justice. That's
19 what I wanted to say when you were quoting *Brewer*.

20 MR. WILSON: Yes, sir. Judge, he wants to be heard.

21 THE COURT: No. I think I've heard enough in that
22 regard.

23 Response from the state?

24 MR. HEMBREE: May we approach the bench, Your Honor?

25 THE COURT: Yes.

1 (OFF-THE-RECORD BENCH CONFERENCE.)

2 THE COURT: Defense is going to discuss a couple of
3 other matters with their client. Also going to check on
4 one other witness, and I will give the defense time to do
5 that.

6 Just for y'all's information here, it's probable then
7 because of that, I'm probably going to go ahead and let the
8 jurors have lunch. Lunch is on the way anyway, so it's
9 probable that one way or the other, we're not going to
10 start this proceeding as far as starting for another hour.
11 Just so y'all know.

12 (OFF THE RECORD.)

13 (IN-CAMERA TELEPHONE CONFERENCE.)

14 THE COURT: Now, Doctor, if you would, make sure she
15 can hear. Give me your full name again, Doctor.

16 DR. HALAVONICH: Okay, it's Rikki, R-i-k-k-i,
17 Halavonich, H-a-l-a-v-o-n-i-c-h.

18 THE COURT: That's not Serbian, is it?

19 DR. HALAVONICH: It's actually Czech.

20 THE COURT: Czech?

21 DR. HALAVONICH: Czechoslovakia, yes.

22 THE COURT: I spent a year in Serbia in Kosovo. In
23 fact, I know a judge with that same name, but I guess it's
24 in the Eastern European area in Czechoslovakia or the Czech
25 Republic now. It's right above Serbia.

1 DR. HALAVONICH: Oh, yeah.

2 THE COURT: So, I guess that's common. But, Doctor,
3 you and I were talking before the court reporter came in
4 here pursuant to Mr. Wilson getting you on the line,
5 talking about the danger of whether or not the medication
6 he is taking now, whether or not that would be effective to
7 keep him calm if he got actively involved in the trial and
8 began to be there asking questions, and having the state
9 ask questions, and me make rulings that he didn't do
10 appropriate questions or whatever they objected. And I
11 overruled and him maybe getting whatever, and sort of in
12 the arena. That the medications he's on now, although keep
13 him calm sitting there at the table, may not be successful
14 if he's actively involved. Did you express you had the
15 same concern also?

16 DR. HALAVONICH: Yes, I do.

17 THE COURT: And why is that again, if you would for
18 me?

19 DR. HALAVONICH: Well, I, you know, am concerned
20 frankly, regardless of whether they increased his
21 medication or not, of his ability to actively cross-examine
22 witnesses and that type of thing without getting frustrated
23 and, you know, worked up. It's his personality.

24 It's better, it's been better since he's been on the
25 medication, and it's been better since Dr. Smith increased

1 the medication at the beginning of the trial. He's, he's
2 been, from what I understand, you know, pretty, pretty
3 effective in at least discussing things with his attorneys
4 and keeping his anxiety at an appropriate level during the
5 trial.

6 So, I guess the biggest problem with these medications
7 is that the specific medication that he's increased over
8 the last few days, the Klonopin that works kind of acutely
9 to treat anxiety, is that it could also, like you said,
10 makes you think less clearly and less able to kind of
11 process what's going on and make good, clear decisions.

12 Like I was telling you earlier, it works on the same
13 receptors that alcohol works on. So, a little bit can kind
14 of relax you, but if you start getting too much, it can
15 make you, your judgement be impaired and make less
16 appropriate decisions.

17 THE COURT: And so what you're telling me, then, that
18 if you were, if -- because you want to lessen the danger of
19 his anxiety, if we were to permit him to represent himself,
20 that if I increased the medication, it, in fact, could make
21 it such that he would be like somebody that had too much
22 alcohol and would, would maybe not be able to think clearly
23 and would not be able to cite issues and do what he should
24 do that a normal, rational person could do thinking
25 clearly?

1 DR. HALAVONICH: Right. That's correct.

2 THE COURT: And yet if I don't -- if I do permit him
3 to represent himself and I don't increase the medication,
4 there is a, there is a likelihood because of his anxiety
5 and the fact that the medication he's on now is only there
6 because of him sitting at the table working, sitting at the
7 table working, that that medication might not be sufficient
8 if he's actively involved?

9 DR. HALAVONICH: Correct. Now, one thing that, that
10 is an option from a treatment standpoint, and I don't know
11 if it is, you know, in the setting of a courtroom. The
12 good thing about the Klonopin is it kicks in pretty
13 quickly. It kicks in in about fifteen to twenty minutes.
14 So, you know, sometimes when we have patients who have
15 significant anxiety, they take a standing dose. But if
16 they get, you know, if they get particularly worked up or
17 particularly anxious about something, they can take a small
18 dose, you know, smaller than their regular dose kind of as
19 needed. So, if that is a possibility in the courtroom,
20 that might be a solution. As things start getting heated
21 up or he starts getting really anxious, if there's a
22 possibility to take a, you know, a twenty-minute recess or
23 something in that time, let him take a really low dose of
24 it then, you know, could kind of ---

25 THE COURT: How would I know that low dose might have

1 dulled his senses to the extent that he may not been able
2 to actually -- I'm not an expert. How do I -- you don't
3 know that for sure, do you? That low dose may still be
4 enough to maybe ---

5 DR. HALAVONICH: Maybe, yeah.

6 THE COURT: --- make him feel dull.

7 DR. HALAVONICH: Yeah, it may be. You're right. I
8 mean, it would be kind of a clinical call. And, you know,
9 there would be the possibility, you know -- I'm of course
10 an expert witness in this part of the case. I don't know
11 if I could be the one to take a look at him then, you know,
12 give you an opinion on that. If you wanted me to, you
13 know, be there and do that, I, I could definitely do that
14 for you. The other possibility would be to ask Dr. Smith
15 to, to come and kind of be available as needed during the
16 trial. I think, you know, one of those could happen if you
17 need us to.

18 THE COURT: All right, do y'all have any questions,
19 everybody? Mr. Wilson, Mr. Hembree?

20 Listen, Doctor, thank you very much. I really
21 appreciate it.

22 DR. HALAVONICH: Okay, yes, you're very welcome. Let
23 me know what y'all need me to do.

24 THE COURT: All right, thank you.

25 DR. HALAVONICH: Okay, I will.

1 THE COURT: Bye-bye.

2 DR. HALAVONICH: Bye-bye.

3 (END OF IN-CAMERA TELEPHONE CONFERENCE.)

4 (OFF THE RECORD.)

5 THE COURT: Thank you. Be seated, everyone.

6 Everybody's coming in. We'll be get started in a minute.

7 (A PAUSE.)

8 THE COURT: All right, because on this matter of the
9 defendant's request at this stage to discharge his lawyers
10 and have them act as a consultant and represent himself, I
11 felt confident in my decision earlier. But because of the
12 fact of looking at what I'd seen at that point in time
13 seemed to be a novel request, I felt it appropriate that I
14 research it even further. And also in doing so, I not only
15 had the testimony in my mind of what Nurse Practitioner
16 Hipp said. I also put on -- contacted Ms. -- is it
17 Halavich?

18 MR. WILSON: Halavonich.

19 THE COURT: Halavonich, Dr. Halavonich and had her
20 statement on the record regarding the defendant's
21 condition. She stated, though, that -- and I am
22 considering and making my decision here -- that she was
23 also concerned about the fact that the defendant was given
24 medication to keep him calm during the course the trial as
25 a non-participant. But she would be concerned about his

1 anxiety levels if he came in the arena, say, and subject to
2 matters that we as lawyers always somehow get a little
3 frustrated when things we attempt to do end up being denied
4 by the judge for this or that, or the other side interfere,
5 interjects with objections here and there.

6 And that she also was very much concerned of adding
7 any medication because of -- it could very well get the
8 defendant to, to an extent that he would be almost like he
9 was drunk. She did say there could be a way of maybe
10 having some recesses and giving small doses. So, I
11 considered all that.

12 And as factual information, plus my, my concern about
13 this stage of the trial, but also I decided to do a great
14 deal of research and in doing so, I considered the United
15 States Supreme Court case as a basis, *Faretta vs.*
16 *California*, 442 US 806, a '75 case, that stands for the
17 proposition that before trial, the defendant has a right to
18 represent himself and just requires the court to make sure
19 they do the proper inquiry. That he knows what he's doing
20 and that he understands the danger of it. And, and *Faretta*
21 stands on that basic premise, which we all accept, that
22 under the Sixth Amendment you have a right to represent
23 yourself.

24 But also I have considered the Fourth Circuit U.S.
25 Court of Appeals case *State vs. Lawrence*, 605 Fed. 2nd,

1 1321. I've considered a South Carolina case, cases, *State*
2 *v. Fuller*, 523 SE 2nd 168. *State vs. McLaren*,
3 M-c-L-a-u-r-e-No, sir a 2002 case Court of Appeal, 349 SC
4 488. I have considered *State vs. Reed*, 332 SC 35, a 1998
5 case. I have considered *State vs. Brewer*, 328 SC 117, a
6 1997 case. In addition, I have considered a case out of
7 our sister state, North Carolina, that I found very
8 illuminating, *State vs. Walters*, a 2007 case cited in 641
9 SE 2nd 758. I've also considered a case in the state of
10 Maryland, *Grandison vs. Maryland*, 305 Maryland 685. By the
11 way, I also considered another U.S. Supreme Court case, too
12 -- I mean, another Fourth Circuit, *United States vs.*
13 *Dunlap*, 377 Fed 2nd, 1978, which I will get back to in a
14 second. I also -- as well as the dissent in that *Grandison*
15 case. Also considered an Indiana case, excuse me, yeah,
16 Indiana, Indiana case *Kubsch*, K-u-b-s-c-h, *vs. Indiana*, 806
17 NE 2nd 726. And *State vs. Bateman*, really for the *Faretta*
18 standard, 296 367, '88 case.

19 So, I've researched this matter thoroughly, and I feel
20 two things. One is that after researching this, it is
21 definitely in my consideration this is definitely one
22 trial. This is not two trials; this is not two
23 proceedings. It has one -- as I looked at some of these
24 other cases dealing with capital cases, they have one cite
25 to them, one cite to cover the entire trial, but it is a

1 bifurcated trial. It is not called two trials but one
2 trial that is bifurcated, meaning that you have two parts
3 to one trial. So, it is one trial.

4 So, the issue then comes before me then is that if in
5 the middle of trial can -- or in the midst of the trial
6 can, can a defendant discharge his attorneys and proceed
7 *pro se*. I've seen various situations that were maybe
8 similar but not exactly the same.

9 For example in the Reed case where the inverse was
10 attempted where for the defendant tried to get counsel back
11 after the first phase of the trial, and the decision made
12 when he waived it that way, that waiver was permanent. I
13 guess the defense would have me feel that's different than
14 here.

15 I also in *State vs. Walters* saw where they -- three
16 witnesses had testified, and the court said that at that
17 point in time the defendant could then proceed *pro se*.
18 Three witnesses for the state, nothing for the defense.
19 But I also saw the distinguishing factor in that case was
20 the fact that the defendant had all along wanted to proceed
21 *pro se*, and the court had denied him the right to proceed
22 *pro se*, and so it was just a continuation of his right.
23 And so the court really based that on his continuing
24 request, and the court continued to deny him.

25 So, this is one trial, and the question is in the

1 middle of a trial does the defendant had an absolute right
2 to discharge his attorneys and proceed *pro se*. I find
3 *Fuller*, it's clear on that proposition that that is not.
4 That is within the discretion of the trial court. And also
5 in *State vs. Walters* that was made clear, and made very
6 clear in the Fourth Circuit case *State vs. Lawrence*.

7 I also was very persuaded by the language of *U.S. vs.*
8 *Dunlap*, the case I cited earlier, that stated the
9 proposition that a defendant does not an absolute right to
10 dismiss counsel and conduct his own defense after trial had
11 begun because of the judge's requirement and obligation to
12 minimize disruptions, avoid inconvenience and delay, to
13 maintain continuity, and to avoid confusing the jury.

14 And, by the way, in the *Lawrence* case, interesting
15 enough in the *Lawrence* case the only thing that happened
16 had been the jury had been selected, and the trial had not
17 even had proceeded other than that the jury had been sworn.
18 And, and the judge said, the court said it was the judge's
19 discretion at that point in time, even though no witnesses
20 had been called, to proceed with letting him represent
21 himself if it was within the court's discretion.

22 Considering this here then, therefore, I determine and
23 find that under the law of this state, under the law of
24 this circuit in the federal system, and under the law of
25 probably most every state I've looked at so far -- which

1 really comprises, if you consider every state in this
2 circuit and every, the other states, probably more than
3 half a dozen states -- that, that it is in the discretion
4 of the court whether to permit the defendant to proceed
5 *pro se* at this time.

6 Now, therefore, I need to make sure whatever decision
7 I make is one that doesn't abuse that discretion and is one
8 that really considers the rights of the defendant, fairness
9 of the trial, the rights of the state, and the rights of
10 this jury to make sure that they are presented matters that
11 will let them make a decision after being presented
12 evidence on both sides and with an opportunity to decide,
13 decide those issues.

14 I am concerned with the defendant's ability to proceed
15 without the anxiety situation. If this were the beginning
16 of the trial, I would probably do this in making my
17 decision and considering the *Faretta* standards. I would
18 probably then have doctors look at the defendant. It would
19 probably take probably a few more days to make sure they
20 had the right medication that would let him proceed as his
21 own counsel, and make sure the medication wasn't too much
22 or too little. And I would make sure that was done if this
23 was the beginning of the trial.

24 Had I looked at the standards and felt like he had
25 made a willing and knowing and voluntary waiver, I would

1 give him more time to make sure that, that he was aware of
2 the full facets of both sides of this case, including the
3 mitigation factors and factors of aggravation, the
4 statutory factors which he himself admits he has not
5 reviewed in the law. But I'd give him that and do that.

6 There'd be a lot of other things that, that once I
7 decided he could represent himself that I would make sure
8 that I'd give him an opportunity to be ready. That would
9 only be fair, and I think would be required under the,
10 under my administering justice here.

11 However, here we have a jury out waiting. We have a
12 jury that's been selected, a jury that's heard the first
13 part of this, of this trial and now we're at the second
14 part. To do that now, to cause them to have two or three
15 more delays, that's an undue delay and that's, I would
16 think, would be improper in the administration of a
17 justice.

18 In addition, for the jury to hear the first part of
19 this case with counsel there and then to hear the second
20 part with no counsel there would maybe confuse them as to
21 what happened, especially seeing them sitting over there.
22 And they would, could wonder does he have a right to a
23 lawyer in the second part and, therefore, he's not, not
24 having the advantage of having the attorneys there. That
25 could cause them to feel one way or the other. Everybody

1 would have to explain to them that, I would think,
2 something of this nature since, since we would be in a part
3 now where we would be proceeding differently.

4 To explain it to them would mean that we'd get
5 involved with too many things I think the jury doesn't need
6 to be concerned with here regarding any disagreements with
7 counsel or with, or with his thoughts of knowing people
8 better than the counsel knows. And so I'd be concerned
9 that'd confuse the jury.

10 In addition, it would not be proper administrative
11 justice if, if I'm concerned about it, about his anxiety
12 and his ability to handle himself properly without first
13 having him fully evaluated by the medical people to
14 proceed, and that couldn't be done without, I'm sure, at
15 least a day or so delay.

16 So, because of my concern about the proper
17 administration of justice, the interest of justice, the
18 interest of the defendant, and my full confidence and my
19 review of the attorneys involved in this case to this
20 extent that they can fully represent his rights, fully
21 represent him in his interest in this phase of the trial,
22 it is my decision that, after considering all that, that it
23 would not, would not be proper. And it would be probably
24 an abuse of my discretion to permit him to go forward right
25 now, even if I went through with this, unless I gave him

1 that proper delay. And I'm not really -- I don't think
2 it's a delay that would be proper. So, in any event, in my
3 discretion and in my decision, he has counsel and his
4 counsel and has done a great, great job in representing
5 him. And we will proceed with counsel representing Mr.
6 Winkler. His request to have his counsel dismissed to
7 represent himself is denied.

8 State ready to proceed?

9 STATE: Yes, Your Honor.

10 THE COURT: Defense ready?

11 MR. WILSON: Judge, I apologize but I do need to -- I
12 understand the court's ruling. And for the record, though,
13 I do need to put some things in the record in regards to
14 the court's ruling.

15 Let me say that in regards to the defendant's
16 medications, the defendant has -- and he's telling me these
17 things as His Honor is talking, and his position is is that
18 if the court thinks that his medication is not working and
19 that he is not capable of handling that, then how can the
20 court believe that he is capable of sitting here and
21 participating in trial? And he says that he ---

22 THE COURT: I think I said on the record earlier, Mr.
23 Wilson, that the reports I got from you and from the
24 physician was that he's capable of being there. But once
25 you get in, as you know, once you get into the arena, when

1 you're there questioning witnesses here and there and all
2 that, then it becomes a more exciting area and one that
3 could be involving a lot more anxiety.

4 MR. WILSON: And, Your Honor, Your Honor, and, and on
5 another matter, one of the things that the court apparently
6 is concerned about is whether or not it would cause any
7 delay in the trial of this case. The defendant has
8 indicated to me and to the court that he is not requesting
9 a delay; he has never requested a delay, and he has said
10 that he is ready and willing and able to go forward as we
11 speak. He's not asked the court to give him additional
12 time to do anything. And in addition to that ---

13 THE COURT: So, Mr. Wilson, let me ask you this. I
14 know you're, you're saying what he's mentioned to you, but
15 from your view of the doctor, your hearing the doctor ---

16 MR. WILSON: Yes, sir.

17 THE COURT: --- your hearing the nurse practitioner,
18 do you not in your considered opinion feel that if we were
19 to proceed with him *pro se*, it would require that the
20 doctor at least evaluate him before we do that to determine
21 the proper dosage? Don't you feel we ---

22 MR. WILSON: I would certainly, I would certainly ask
23 the court to have the doctor be here so that she could
24 monitor him when he is participating. I would think that,
25 yes.

1 THE COURT: The doctor's not here now, is she?

2 MR. WILSON: She is not here as we speak, no, sir.

3 But -- and I would think that that would be appropriate to
4 do that, yes, sir. The other ---

5 THE COURT: She just came in? Doctor's here? Oh, the
6 nurse practitioner. We're talking about the doctor,
7 psychiatrist.

8 MR. WILSON: And, Your Honor, in addition, that the
9 court has indicated that this may confuse the jury. They
10 might somehow in some way not understand what is going on
11 if, if counsel is not doing it and the defendant is doing
12 it himself. And, and I would say while certainly that's a
13 concern, that that can certainly be remedied by the court
14 explaining to the jury that they have -- the defendant has
15 a right to represent himself if that's what he chose to do
16 and that's what the court agreed to do.

17 Additionally, I wanted to cite to the court a -- this
18 is *Burlington vs. Missouri*, which is a U.S. Supreme Court
19 at 451 430. The -- and language is fairly simple and it
20 just says that:

21 The court already has held that many of the
22 protections available to a defendant at a
23 criminal trial are also available at a sentencing
24 hearing similar to that required in Missouri in a
25 capital case.

1 And then they cite *Speck vs. Patterson*, which is 386
2 U.S. 605:

3 Due process protection such as the right to
4 counsel, the right to confront witnesses, the
5 right to present favorable evidence are available
6 at hearings -- at the hearing at which sentence
7 may be imposed.

8 And, and essentially all that's really saying is is
9 that at that sentencing hearing, the defendant is entitled
10 to those basic same protections.

11 One last thing and I'll be through and I'll sit down.
12 And that is this is that Indiana case that -- which is
13 cited at, I think it's Wayne Kubsch. I guess that's how
14 you pronounce it, *K-u-s-b-s-c-h, vs. State of Indiana*. And
15 this is opinion number 71 800-0507 and it says D.P. -- I
16 assume that's death penalty -- 333, which is a May 22,
17 2007, case, and this is a rehearing. And the only
18 important part of this case is is that it says the Sixth
19 Amendment does not force a lawyer upon a criminal defendant
20 and -- when he insists that he wants to conduct his own
21 defense. Of course they cite *Faretta*, but my point simply
22 is considering all those things, he asked me to put those
23 things in the record.

24 THE COURT: They're in the record.

25 MR. WILSON: Can you give me one second, Your Honor?

1 (COUNSEL CONFERS WITH DEFENDANT.)

2 MR. WILSON: He also wants me to ask you what
3 difference does it make if you turn me down or turn him
4 down.

5 DEFENDANT: It's a one-sided trial ever since the
6 first day.

7 THE COURT: Okay, thank you, Mr. Wilson.

8 MR. WILSON: Yes, sir.

9 THE COURT: And your very elegant eloquent argument.
10 The fact it's taken hours to make sure we do the research I
11 think shows even more so your very capable abilities in
12 this case.

13 Now I want to make some statements here before we
14 begin. Mr. Hembree, have you shared with -- did this on
15 Saturday, do it again -- shared the statutory aggravating
16 circumstances you contend are, that you intend to bring
17 evidence of in this case?

18 MR. HEMBREE: Yes, Your Honor. Those statutory
19 aggravating circumstances were filed on March the 12th,
20 2007 and provided to defense counsel at -- I believe within
21 a day or two of that.

22 THE COURT: You plan then to offer evidence in
23 aggravation?

24 MR. HEMBREE: Yes, Your Honor. We intend to -- well,
25 we have two statutory aggravators that we intend to submit.

1 THE COURT: Let's save, let's make a, a court exhibit
2 of that so that ---

3 And I'm going to give it to you, Madame Court
4 Reporter, so that there will be no doubt.

5 Do you contend the murder was committed while in the
6 commission of a burglary and two, that the murder of a
7 witness or potential witness committed at any time during
8 the criminal process for the purpose of impeding or
9 deterring prosecution of any crime. So, your aggravating
10 circumstances are A(1)(C) and 8-11. Is that right, sir?

11 MR. HEMBREE: That's correct, Your Honor.

12 THE COURT: Okay, I will give this to you, Madame
13 Court Reporter.

14 (NOTICE OF EVIDENCE IN AGGRAVATION MARKED INTO
15 EVIDENCE AS COURT'S EXHIBIT NUMBER 22.)

16 THE COURT: All right, Mr. Wilson, you acknowledge on
17 Saturday you were given a copy of that?

18 MR. WILSON: Yes, sir.

19 THE COURT: Shortly after it was filed. All right,
20 Mr. Wilson, for information purposes, do you plan to
21 introduce evidence in extenuation and mitigation?

22 MR. WILSON: We do, Your Honor, yes.

23 THE COURT: All right. Does the state request that we
24 at this time determine the statutory mitigating
25 circumstances that the defense intends on offering?

1 MR. HEMBREE: No, Your Honor.

2 THE COURT: Okay. Now, Mr. Wilson, as you understand,
3 and as Mr. Winkler I hope understands, I'm going to tell
4 him that he does, he will have a right in this proceeding
5 to testify as well as make a closing argument along with
6 you before or after you testify. You make a closing
7 argument or Mr. Rathbun does, as well as the right to
8 testify.

9 Are there any stipulations, are any stipulations
10 desired by the state in this case or defense? Any
11 stipulations? For example, previous evidence, anything of
12 that nature?

13 MR. HEMBREE: Your Honor, we were going to make this
14 motion with the jury present, but we would move that the --
15 all evidence submitted in the first phase of the trial be
16 incorporated by reference into the second phase.

17 THE COURT: All right. Any comment before I make my
18 ruling on that, Mr. Wilson?

19 MR. WILSON: Well, subject to any objections I would
20 make at the time, if any.

21 THE COURT: Subject to those, the jury will, then will
22 be able to consider all evidence admitted during the,
23 during the penalty -- guilt phase of this trial as part of
24 the record.

25 MR. HEMBREE: Thank you, Your Honor. Would the court

1 make that, make the jury aware of that by way of
2 instruction? I'd appreciate that.

3 THE COURT: I'm sure there are no requests to charge
4 at this time, so -- are there? Do y'all wish any at this
5 time? All right. I'm ready to bring the jury out, give
6 them opening comments.

7 Now, there were exhibits introduced by the state as I
8 understand without objection from the defense already in
9 this phase. What numbers are they?

10 MR. HUMPHRIES: No, they were marked for
11 identification.

12 THE COURT: Okay.

13 MR. HUMPHRIES: They have not been ---

14 THE COURT: All right.

15 MR. HUMPHRIES: --- admitted unless Mr. Wilson ---

16 THE COURT: Well, I'll ask Mr. Wilson. I
17 misunderstood the court reporter. I thought they were
18 exhibits that you all had agreed to introduce, but the
19 defense -- the state says no, there's no agreement on
20 these. They have just been marked for identification.

21 MR. WILSON: Yes, sir.

22 THE COURT: So, we'll proceed from there. I am ready
23 to proceed. If the jury -- if you don't get -- you told
24 them to go get the jury? Also, there's no need to further
25 swear the jury in this case either.

1 (JURY ENTERS THE COURTROOM AT 2:36 P.M.)

2 THE COURT: Ladies and gentlemen of the jury, the
3 defendant, Louis Michael Winkler, was convicted on February
4 the 2nd, 2008, of the offense of murder and of the offenses
5 of burglary in the first degree, and assault and battery of
6 a high and aggravated nature. It therefore becomes
7 necessary for us to hold this additional proceeding which
8 will determine the punishment that the court is to impose
9 upon the defendant.

10 Our law, section 16320 of the South Carolina Code of
11 Laws as Amended provides in part as follows:

12 A person who is convicted or pleads guilty to
13 murder must be punished by death or by
14 imprisonment for life.

15 That section as further amended also provides in part:

16 Upon conviction of a defendant of murder, the
17 court shall conduct a separate sentencing
18 proceeding to determine whether the defendant
19 should be sentenced to death or life
20 imprisonment.

21 So, ladies and gentlemen, our purpose in conducting
22 the proceedings in which we're now engaged is to determine
23 whether the defendant, Louis Michael Winkler, should be
24 sentenced by the court to death or to life imprisonment.
25 With respect to your particular role in this proceeding,

1 you will be asked to recommend to the court whether it
2 should sentence the defendant to death or to life
3 imprisonment. I say the word recommend, but as I will tell
4 you in my final charge to you, it really means that
5 whatever you recommend I will follow.

6 During the sentencing proceeding, the state and the
7 defendant will have an opportunity to introduce additional
8 evidence in aggravation, extenuation, or mitigation. And
9 both sides will have an opportunity to present arguments
10 for and against the death penalty. Should you recommend a
11 sentence of life imprisonment or should you recommend a
12 sentence of death, that is the only issue involved here at
13 this time.

14 After the last argument has been made to you
15 concerning the punishment that should be imposed upon the
16 defendant, the court will then give you certain
17 instructions, and you will then retire to determine whether
18 a death sentence or a life sentence is to be recommended.

19 Ladies and gentlemen, I want to say a couple of things
20 to you before we begin. Sorry you had to wait the number
21 of hours you had to wait, but I had some matters I needed
22 to handle. They are now completed. We're ready to
23 proceed. Please don't feel that delay in any way towards
24 this case -- you have a very serious duty to perform and,
25 therefore, that delay of hours you should accept as matters

1 that I deemed were necessary, were required to be done
2 before we proceed. Please don't let that in any way be
3 involved in your decision, your ultimate decision here.

4 Two is that I have introduced into evidence for your
5 consideration all the evidence that was presented in the
6 previous proceeding where you determined the guilt of the
7 defendant of the three crimes. So, that evidence is also
8 before you, so it doesn't require that evidence to be
9 re-presented to you. That's also in, in this proceeding,
10 in this proceeding because this is all part of one, one
11 trial, so you won't be -- feel that you have to have it all
12 re-introduced to you, reintroduced to you again. It is all
13 in this, in this proceeding here.

14 We'll start with an opening statement from each side,
15 and after that we'll then proceed with introduction of
16 evidence in aggravation and mitigation.

17 State ready? Any objection to opening comments to the
18 jury from the state or the defense?

19 MR. HUMPHRIES: None from the state.

20 MR. WILSON: I have no objection to the opening
21 comments, Judge.

22 THE COURT: All right. You may proceed, Mr.
23 Humphries.

24 MR. HUMPHRIES: May it please the court?

25 Mr. Foreman, ladies and gentlemen of the jury, we are

1 today in this place, set about this task for one reason and
2 for one thing. There is no question but that the state
3 sought an indictment against Louis Michael Winkler for
4 murder, burglary in the first degree, and assault and
5 battery of a high and aggravated nature. There is no
6 question but that the state noticed this defendant with
7 their intention to seek the death penalty. But I tell you
8 today that that is not the thing that brought us here
9 because truly what brought us here today is the character
10 and the conduct of Louis Michael Winkler, and it is about
11 his character and conduct that this part of the trial is
12 for.

13 When we started this process, we all met together
14 individually and we asked certain questions, certain very
15 relevant, central, basic questions. And each of you, to a
16 man, to a woman, said based on sufficient evidence, given
17 the right circumstances, the right facts, you could not
18 only consider the death penalty, you could impose it.

19 You have heard already. There is no question. There
20 will be no question but that Louis Michael Winkler shot and
21 killed his estranged wife after having committed burglary
22 and assault and battery of a high and aggravated nature.
23 That issue has been fairly and justly decided. About that
24 there is no question.

25 And you may say to yourself, what more do I need to

1 know? What more heinous offense do I need to know in order
2 to make such a decision? But most of you, really to a
3 person, said I want to hear it all before I make the
4 decision. I want to hear it all. And hear it all you
5 shall.

6 Well, there is a rest of the story in this case. What
7 you heard in the first part of the trial was confined by
8 time and space to a very brief period of time. And really
9 just a singular series of actions constituted the
10 defendant's conduct. A snapshot, if you will, of the
11 defendant and his character. But what you will hear in
12 this phase of the trial is that Louis Michael Winkler
13 didn't arrive March 6th, 2006, at that apartment with
14 malice in his heart and destruction in his hands as some
15 kind of exception, some kind of aberration to his character
16 of conduct. Not at all. What you will hear in this phase
17 of the trial is that is the man that Louis Michael Winkler
18 has been since he was a teenager.

19 His life has followed a pattern. A pattern which has
20 deviated very little. A pattern truly when understood will
21 make what happened ---

22 MR. WILSON: Your Honor, I, I apologize, but I need to
23 take up a matter with you.

24 THE COURT: Well, I think I know what it is, but you
25 can approach. Y'all approach.

1 Mr. Humphries, I apologize.

2 MR. HUMPHRIES: No, no, sir, not at all.

3 (OFF-THE-RECORD BENCH CONFERENCE.)

4 THE COURT: You may proceed, Mr. Humphries.

5 MR. HUMPHRIES: Thank you. What you will find during
6 the evidence in this courtroom, this phase of the trial is
7 that what happened to Rebekah Winkler was no surprise at
8 all based on his character, based on his conduct. The
9 surprise, ladies and gentlemen, was that it didn't happen
10 sooner, that it didn't happen to another woman. Because in
11 this phase of the trial can't hear from Rebekah Winkler,
12 but you can hear from two prior ex-wives. Louis Michael
13 Winkler is a serial domestic abuser. He has been. He was
14 on March 6th, and he continues to be.

15 The process that we'll go through, as the court has
16 explained to you, will begin with the state presenting
17 evidence in aggravation. Now, among the evidence that
18 we'll elicit from the witness stand regarding the
19 defendant's character and conduct is evidence regarding at
20 least two statutory aggravating circumstances, two upon
21 which the state relies. And the court will charge that in
22 order to even consider the death penalty, this jury will
23 have to unanimously find beyond a reasonable doubt the
24 existence of at least one of the two.

25 The first one is that the murder was committed while

1 in the commission of burglary in any degree. Now, of
2 course this jury has already found Louis Michael Winkler
3 guilty of burglary in the first degree. You'll be called
4 upon to make that decision once again.

5 The second one is that the defendant murdered a
6 witness, a potential witness, in a criminal case any time
7 during that process with the intent to impede or deter
8 criminal prosecution. Folks, that potential witness was
9 Becky Winkler because March 6th, 2006, was really the end
10 of Becky Winkler's life when he took Rebekah Winkler's
11 life.

12 I am always almost overwhelmed at this stage of the
13 proceedings with a, almost a, a compulsion to apologize.
14 And my momma always told me don't apologize for something
15 you didn't do. Number one, it's insincere; people don't
16 believe you when you do it. And number two, you take up
17 what you did, not what someone else did. It's a tragic
18 place. It's a tragic place we find ourselves in. The
19 state didn't do anything. Becky Winkler didn't do
20 anything. Folks, I submit to you I'm not going to
21 apologize for Louis Michael Winkler.

22 This part of the trial will test you. It will test
23 your limits. It will test your heart, but the state
24 believes that the people who sit in this box are up to the
25 task. The testimony that you hear will be difficult from

1 the very beginning it will be difficult to the very last
2 witness it will be difficult. But what I implore you to
3 understand is that it's necessary. It's necessary because
4 the state will not ask you to make a decision of this
5 importance without knowing everything we can permissibly
6 show you in the course of evidence. To do anything less
7 would be unfair to you.

8 At the end of the case we'll come back to you. And
9 consistent with the state's notice of intention to seek the
10 death penalty, we will ask to seek the death penalty, to
11 impose, to impose the death penalty. But, folks, by that
12 time in the case, by that time in the case, having heard
13 all the evidence in the case, while it may not be an easy
14 decision for you, it will be the decision I submit to you
15 that speaks justice. And that, ladies and gentlemen, is
16 your calling. Thank you.

17 THE COURT: Mr. Wilson.

18 MR. WILSON: Thank you, Your Honor.

19 Mr. Foreman and ladies and gentlemen, at this stage of
20 this proceeding you have made a decision. The defendant
21 has been found guilty of three offenses including murder,
22 burglary, and assault of a high and aggravated nature. Now
23 we come to the sentencing portion of the penalty phase of
24 this proceeding. You're going to have to make another
25 decision in this trial, and there are only two

1 possibilities: life or death. There is no middle ground.

2 Each of you testified when you were under oath that
3 before you wanted to make a decision and before you would
4 make a decision that you needed to hear everything. Not
5 just aggravating circumstances, not just the facts of the
6 crime itself, but that you wanted to hear everything,
7 including any mitigating factors or mitigating
8 circumstances.

9 You're going to hear from the state first. The reason
10 for that is is that they have the burden, as they do in all
11 criminal trials, to put up aggravating circumstances, one
12 of which they must prove to your satisfaction beyond a
13 reasonable doubt before you can consider the death penalty.
14 If they fail to prove an aggravating circumstance beyond a
15 reasonable doubt, then you would have no choice but not --
16 but to bring back a verdict of life.

17 If they prove an aggravating circumstance or more than
18 one aggravating circumstance, then you would be entitled to
19 consider the death penalty. You would then also consider
20 any mitigating circumstances. And even if the state proves
21 an aggravating circumstance or two aggravating
22 circumstances as they indicated they will attempt to do,
23 you would still be entitled to bring back a verdict of life
24 if that's what your conscience tells you.

25 I told you in the first phase of this trial that if

1 you listened to the evidence and the testimony as it was
2 produced from this witness stand, and that if you rendered
3 a verdict that speaks the truth based on how you saw it,
4 then no one can have any reason to complain about your
5 verdict. I said that then and I say that now.

6 You are the judges of the facts in the first phase of
7 this trial. You made your decision. Now we are here not
8 -- in the first phase of the trial, we're talking about
9 justice and what's fair, what's right based on the
10 evidence. Here we're talking about more what's merciful,
11 what is appropriate. Does the defendant deserve to die for
12 what he has been found guilty of? Does he deserve to die
13 for his character? Because those are the questions that
14 you are going to have to wrestle with.

15 Your decision, whatever it is, is going to be your
16 decision. What I say to you is this. During the course of
17 this process over the next two, three days, however long
18 we're going to be here, four days, however long we're going
19 to be here, you are going to hear a lot about the
20 aggravating circumstances in this case from the state.
21 You're going to hear a lot about the defendant. You're
22 going to hear a lot about where he grew up, how he grew up.
23 You're going to hear a lot about his relationships. You're
24 going to hear a lot about how he got to this stage. And I
25 hope that that information, I hope that those things will

1 help you in reaching a decision. And I hope that that
2 decision will be that you decide to spare his life.

3 Now, I learned a long time ago that justice is what's
4 fair and what's right. Mercy is not that because none of
5 us earn mercy. It's not earned. It's God given. And here
6 during this process as a lawyer who is standing here before
7 you, I am not asking for justice. I'm asking for mercy.
8 And I'm asking you to be merciful because that is the most
9 appropriate thing in this set of circumstances, I submit to
10 you.

11 Again, you have not heard any of the facts and
12 circumstances yet. You're going to hear that. And after
13 that, I just ask you, just as I asked you in the first
14 phase of this proceeding: keep an open mind. Don't make up
15 your mind after the state finishes its first witness or its
16 third witness or how many ever they have. I don't even
17 want you to make up your mind after you have heard the
18 first witness we put up or the second or the third or the
19 fourth until you have heard everybody and everything and
20 until His Honor has instructed you as to what the law is.
21 That's all anybody can ask.

22 And I say this to you. If I have said something or
23 done something during the course of this trial which has
24 caused you any concern, I ask you not to hold that against
25 this defendant but to judge him based on your fairness, on

1 your good judgment, and on your good common sense.

2 THE COURT: Thank you, Mr. Wilson.

3 First witness for the state?

4 MR. HEMBREE: Thank you, Your Honor. The state calls
5 Carla Kaiser to the witness stand.

6 CARLA KAISER, BEING DULY SWORN,
7 TESTIFIES AS FOLLOWS:

8 CLERK OF COURT: Please have a seat. Please state
9 your name for the record, and spell your last for the
10 record, and speak into the microphone.

11 WITNESS: Carla Kaiser, K-a-i-s-e-r.

12 THE COURT: All right.

13 DIRECT EXAMINATION BY MR. HEMBREE:

14 Q. Thank you, Ms. Kaiser. Good afternoon.

15 A. Hi.

16 Q. Carla, do you know the defendant in this case, Louis
17 Michael Winkler?

18 A. Yes, I do.

19 Q. How did you first become acquainted with the Defendant
20 Winkler?

21 A. We dated all through high school and into college,
22 into my college years.

23 Q. And ultimately y'all were married?

24 A. We were.

25 Q. And thereafter divorced?

1 A. Uh-huh.

2 Q. Tell this jury, Ms. Kaiser, when did you graduate high
3 school?

4 A. '81.

5 Q. '81. I don't want anybody doing the math on that.

6 And where did you graduate high school?

7 A. Doylestown.

8 Q. Doylestown where?

9 A. Ohio.

10 Q. Now, how old were you when you met Mr. Winkler? What
11 year in school were you?

12 A. I was a freshman.

13 Q. And he was in what year in school?

14 A. Senior.

15 Q. Now, you have indicated you dated some through high
16 school?

17 A. We did, most of high school, yes.

18 Q. And describe to the jury the nature of that dating
19 relationship through your high school years.

20 A. High school we pretty much got along. We didn't
21 really fight, didn't have any problems. I, I can't
22 remember that far back, but I think it was around the time
23 that I started going to college and things were changing a
24 lot between us.

25 Q. Where did you go to college?

1 A. Akron University.

2 Q. Akron University, and how far away was that from your
3 home in Doylestown?

4 A. It's about twenty, twenty-five minutes.

5 Q. Did you live on campus or?

6 A. No, I did not.

7 Q. Where were you living while you were in college?

8 A. I lived with my parents.

9 Q. And commuted every day?

10 A. Yeah.

11 Q. Now, you, you said just a few minutes ago that the
12 character of the, and the nature of your relationship with
13 the Defendant Winkler changed when you went to college.

14 A. Yeah, he started getting a lot more possessive. He
15 wanted to know what I was doing, where I was going all the
16 time. I had two jobs and I also went to college, so I was
17 pretty busy. And the more and more that I was gone, the
18 more jealous and, you know, kept calling, calling, calling.
19 Where are you, what are you doing, always questioned what I
20 was doing at that point.

21 Q. And how long did you attend college? How many years?

22 A. Two, two and a half.

23 Q. When you say he was calling, calling, like give me an
24 example. How many times in a day might he call you with
25 these?

1 A. He just didn't trust the fact that if I said I was
2 going to school, I was at school or if I was at work, I was
3 at work. He'd call. If I was at work, he would call and
4 he would call me five times in one night and say, well,
5 what are you doing? And I said I'm at work. You just got
6 me at work, and he would keep calling, you know. What are
7 you doing, what are you doing, and I said I'm at work,
8 Mick, I'm not doing anything. I'm at work.

9 Q. Were y'all, were y'all married at this time?

10 A. No.

11 Q. How about engaged?

12 A. No.

13 Q. What about dating other people, was that?

14 A. We probably dated, I don't know, three years and, and
15 then that we were broke up and back together, broke up,
16 back together, on and off for two years or so. I don't
17 know.

18 Q. Did you have other relationships or boyfriends during
19 this college years time frame?

20 A. I, I had a couple people that I kind of saw, but he
21 basically -- if -- when we were broke up, the times that we
22 were broke up, if we were in the bar or something like that
23 uptown, if someone came up and talked to me, he would go up
24 and, you know, grab them and say, what the hell you doing.
25 Don't talk to her. And it got to be where I couldn't talk

1 to anybody, I couldn't be with anybody, I couldn't -- he
2 was constantly just harassing everybody if they talked to
3 me. But we were broke up. We were not together again.
4 But he still harassed everybody that tried to talk to me or
5 would talk to me because he thought that we were having a
6 relationship, but we were broke up.

7 Q. And this, this would just be somebody talking to you?

8 A. Just somebody talking to me.

9 Q. All right.

10 A. He didn't like it.

11 Q. Now, and then you'd get back together and -- well, was
12 he, was the Defendant Winkler, could he be nice?

13 A. Yes, he could.

14 Q. So, it wasn't like that he was in this mode 24-7?

15 A. No, he just, he started to get -- he was just very,
16 very jealous of everything. And it got to the point where
17 it just, you know, for me it pushed me away. I didn't want
18 to deal with it any more. It just got to be everything was
19 a hassle, and I didn't really want it any more.

20 Q. Well, what about him dating other people?

21 A. He dated a lot of people.

22 Q. Now, let me take you to your twenty-first birthday.
23 Do you remember your twenty-first birthday?

24 A. Yeah.

25 Q. And what did you do? Some people kind of celebrate

1 their twenty-first birthday in sort of a special way.

2 A. Some, some of my friends had taken me to a bar. I
3 don't remember. I think it was outside of Doylestown, to
4 listen to a band that was from Doylestown. Mick knew the
5 guys in the band. He grew up with them. We went there
6 basically to listen to the band. And I was with my
7 girlfriends and her boyfriend came with some of his friends
8 and we were all just there listening to the music.

9 He basically came into the bar, grabbed me, took me
10 outside and said what the hell do you think you're doing?
11 I said I'm just, I'm up here celebrating my birthday, and
12 he punched me square in the face and knocked me out on the
13 ground in front of the bar. And when people started to
14 come out, then he took off at that point. Broke my nose.

15 Q. He ran off?

16 A. Yeah.

17 Q. And what was -- did you suffer injuries from this,
18 this assault?

19 A. I had a broken nose.

20 Q. Did you report it to the police?

21 A. I didn't.

22 Q. Now, did you have contact after that?

23 A. No, not directly after that, no.

24 Q. Okay. So, it kind of slowed down, the relationship,
25 or did he continue to try to ---

1 A. We weren't dating then.

2 Q. Okay.

3 A. Yeah.

4 Q. But at some point, you did have another meeting with
5 him at that stage in your life?

6 A. Yes.

7 Q. Tell the jury about -- well, did you learn that he was
8 dating another girl?

9 A. He was dating another girl who had a baby.

10 Q. Okay.

11 A. And basically I didn't care, but I had some coats and
12 some things up at the apartment and I just wanted them
13 back.

14 Q. And when you said the apartment, whose apartment was
15 that?

16 A. It was Mick's apartment.

17 Q. And, and you weren't living with him at the time?

18 A. No.

19 Q. Had you ever lived with him?

20 A. No.

21 Q. He just had a couple of things of yours in the
22 apartment, is that ---

23 A. Yeah. Yeah.

24 Q. All right. Tell this jury the circumstances of that
25 meeting with Mr. Winkler when you went to the apartment.

1 A. I went up and I asked him, I said, you know, I
2 understand that you're seeing somebody and everything. And
3 I said -- at the time it was stupid. I was, I don't know
4 how old I was, twenty-one, I guess. And I said I just came
5 up to get my things, my coats and stuff. I don't want her
6 wearing my stuff and I want it back.

7 Q. You didn't want his new girlfriend to wear your stuff?

8 A. My stuff, yeah.

9 Q. Okay.

10 A. And.

11 Q. What happened?

12 A. He kept talking and we talked about -- he kept saying,
13 you know, he says, well, don't you want to get back
14 together and stuff? And I said no. I said I just came up
15 to get my stuff, and we had a conversation about the girl
16 and, and things. One thing led to another and he basically
17 forced himself on me to -- and that was when I got pregnant
18 with my daughter Tiffany.

19 Q. So, you had a sexual relations with him against your
20 will?

21 A. Yes. I told him I wasn't on anything and I didn't
22 want to do it and I, I wasn't there for that, and he just
23 kept saying, yeah you are, and...

24 Q. You had had a physical relationship with him before
25 this time frame. Is that fair to say?

1 A. Uh-huh.

2 Q. Okay, from time to time, but that was not your
3 intention that night?

4 A. No, it was not my intention that night.

5 Q. You testified you became pregnant.

6 A. Yes.

7 Q. All right. What, what decision did you make when you
8 found out that you were pregnant with Defendant Winkler's
9 child?

10 A. I didn't want to do it by myself. I didn't want to
11 raise her by myself. I didn't think I could at that point.
12 I was finishing up my degree at Akron U, and I just didn't
13 think I could do it by myself and we -- I told him what had
14 happened and everything, and he -- that's what he wanted.
15 So, he was -- you know, I -- he said if you want to get
16 married, we'll get married. We'll work it out, you know.
17 I will, I will get my act together and, and we basically
18 agreed to.

19 At that point I really didn't want to get married, but
20 I didn't want to raise her by myself. I wanted her to be
21 with him and me and, you know, together as a family, and we
22 agreed to that and got married.

23 Q. You had hope?

24 A. Yes, I did.

25 Q. Well, what were you hoping?

1 A. I was hoping that the drinking and the, the
2 possessiveness part of it would just, you know, go back to
3 the way it was before. I wanted things to calm down a
4 little bit.

5 Q. Tell me about or tell this jury about the first few
6 months of your marriage.

7 A. The first few months was fine. We seemed to get along
8 and things were good, and he seemed to be happy to be
9 married, and we were getting along at that point.

10 Q. And you got married. How far along were you in your
11 pregnancy when you got married?

12 A. I think it was like two months.

13 Q. Where did you live?

14 A. We lived in Doylestown.

15 Q. Doylestown. You mentioned that apartment.

16 A. Apartment.

17 Q. That same apartment that you had, had gone to retrieve
18 your belongings?

19 A. Yeah.

20 Q. The same place?

21 A. Yeah.

22 Q. What sort of work was Defendant Winkler doing at this
23 point in time?

24 A. He was, I believe he was working for an auto parts
25 store, racing parts. They sold racing parts to cars and

VOLUME FIVE OF EIGHT

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

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

HENRY DARGAN MCMASTER
Attorney General

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

JOHN W. MCINTOSH
Chief Deputy Attorney General

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

DONALD J. ZELENKA
Assistant Deputy Attorney General

Attorneys for Appellant

ALPHONSO SIMON, JR.
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

VOLUME FIVE
PAGES 2001 - 2500

J. GREGORY HEMBREE
Solicitor, Fifteenth Judicial Circuit
Post Office Box 1276
1301 2nd Ave.
Conway, SC 29528-1276
(843) 915-5460

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
COURT REPORTER'S INDEX.....	2

MONDAY, JANUARY 28, 2008

PRE-TRIAL MATTERS	23
<i>EX PARTE</i> HEARING	30
JURY VENIRE.....	45
JURY <i>VOIR DIRE</i>	
JUROR #313	
Examination by the Court.....	260
Examination by Mr. Humphries.....	272
Examination by Mr. Wilson.....	279
JUROR #242	
Examination by the Court.....	287
Examination by Mr. Hembree	297
Examination by Mr. Wilson	301
JUROR #138	
Examination by the Court.....	309
JUROR #19	
Examination by the Court.....	317
Examination by Mr. Wilson	324
Examination by Mr. Hembree	328
Examination by the Court.....	329
JUROR #200	
Examination by the Court.....	331
Examination by Mr. Wilson	343

JUROR #378	
Examination by the Court.....	349
Examination by Mr. Wilson.....	357
Examination by the Court (Continues)	360
Examination by Mr. Wilson	382
Further Examination by the Court.....	384

JUROR #414	
Examination by the Court.....	389
Examination by Mr. Wilson	399

JUROR #345	
Examination by the Court.....	403

JUROR #374	
Examination by the Court.....	406
Examination by Mr. Rathbun	418

TUESDAY, JANUARY 29, 2008

JUROR #426	
Examination by the Court.....	423
Examination by Mr. Hembree	430
Examination by Mr. Wilson	433

JUROR #9	
Examination by the Court.....	445

JUROR #335	
Questioned by the Court	465

JUROR #368	
Examination by the Court.....	467
Examination by Mr. Wilson	478
Further Examination by the Court.....	481

JUROR #454	
Examination by the Court.....	484
Examination by Mr. Humphries.....	494
Examination by Mr. Wilson	496

VOLUME TWO

JUROR #467	
Examination by the Court.....	501
Examination by Mr. Hembree	510
Examination by Mr. Rathbun	512

JUROR #253	
Examination by the Court.....	517
Examination by Mr. Wilson	526
Examination by the Court.....	529
JUROR #438	
Examination by the Court.....	532
JUROR #10	
Examination by the Court.....	543
JUROR #255	
Examination by the Court.....	549
Examination by Mr. Wilson	559
JUROR #474	
Examination by the Court.....	567
Examination by Mr. Wilson	576
JUROR #33	
Examination by the Court.....	595
Examination by Mr. Humphries.....	605
Examination by the Court.....	620
JUROR #47	
Examination by the Court.....	634
JUROR #469	
Examination by the Court.....	645
JUROR #101	
Examination by the Court.....	661
Examination by Mr. Humphries.....	671
Examination by Mr. Wilson	673
JUROR #450	
Examination by the Court.....	675
Examination by Mr. Rathbun	685
JUROR #496	
Examination by the Court.....	689
Examination by Mr. Wilson	697
JUROR #496	
Examination by the Court.....	702
Examination by Mr. Hembree	712
Examination by Mr. Wilson	713

JUROR #28	
Examination by the Court.....	723
Examination by Mr. Rathbun	733

JUROR #390	
Examination by the Court.....	740
Examination by Mr. Rathbun	750
Further Examination by the Court.....	765

JUROR #38	
Examination by the Court.....	778

JUROR #108	
Examination by the Court.....	789
Examination by Mr. Humphries.....	799
Examination by Mr. Wilson	803
Further Examination by the Court.....	807

WEDNESDAY, JANUARY 30, 2008

JUROR #363	
Examination by the Court.....	822
Examination by Mr. Rathbun	830

JUROR #66	
Examination by the Court.....	833
Examination by Mr. Wilson	839
Further Examination by the Court.....	842
Examination by Mr. Humphries.....	854
Examination by Mr. Wilson	856

JUROR #84	
Examination by the Court.....	866
Examination by Mr. Wilson	874

JUROR #486	
Examination by the Court.....	877

JUROR #62	
Examination by the Court.....	888
Examination by Mr. Wilson	895

JUROR #225	
Examination by the Court.....	897

JUROR #68	
Examination by the Court.....	907
Examination by Mr. Rathbun	915

JUROR #79	
Examination by the Court.....	918
Examination by Mr. Hembree	924
Examination by Mr. Rathbun	927

JUROR #930	
Examination by the Court.....	930
Examination by Mr. Wilson	938

JUROR #455	
Examination by the Court.....	946
Examination by Mr. Humphries.....	956
Examination by Mr. Wilson	962

<i>IN CAMERA</i> CONFERENCE (Juror #431 Ronnie Stackhouse and David white)	967

JURY VOIR DIRE

JUROR #234	
Examination by the Court.....	984
Examination by Mr. Wilson	992

VOLUME THREE

JUROR #234	
Further Examination by the Court.....	1001

JUROR #170	
Examination by the Court.....	1006

JUROR #20	
Examination by the Court.....	1018
Examination by Mr. Hembree	1026

JUROR #470	
Examination by the Court.....	1035
Examination by Mr. Rathbun	1042
Further Examination by the Court.....	1044

JUROR #294	
Examination by the Court.....	1048
Examination by Mr. Rathbun	1058

JUROR #402	
Examination by the Court.....	1060
Examination by Mr. Humphries.....	1071
Examination by Mr. Wilson	1074

JUROR #115	
Examination by the Court.....	1087
Examination by Mr. Wilson	1092
JUROR #398	
Examination by the Court.....	1094
Examination by Mr. Wilson	1104
JUROR #464	
Examination by the Court.....	1108
Examination by Mr. Hembree	1116
Examination by Mr. Wilson	1118
JUROR #466	
Examination by the Court.....	1122
JUROR #300	
Examination by the Court.....	1136
Examination by Mr. Rathbun	1145
JUROR #434	
Examination by the Court.....	1149
Examination by Mr. Humphries.....	1161
Examination by Mr. Wilson	1165
JUROR #320	
Examination by the Court.....	1171
Examination by Mr. Rathbun	1178
JUROR #259	
Examination by the Court.....	1182
Examination by Mr. Wilson	1190
Further Examination by the Court.....	1192
JUROR #395	
Examination by the Court.....	1195
JUROR #436	
Examination by the Court.....	1207
Examination by Mr. Wilson	1214
JUROR #419	
Examination by the Court.....	1215
Examination by Mr. Rathbun	1222
Further Examination by the Court.....	1224

JUROR #125	
Examination by the Court.....	1228
Examination by Mr. Wilson.....	1238
Further Examination by the Court.....	1243

TONY HAYES	
Examination by the Court.....	1249

JUROR #399	
Examination by the Court.....	1254
Examination by Mr. Rathbun.....	1263

JUROR #439	
Examination by the Court.....	1269
Examination by Mr. Wilson.....	1278

JUROR #317	
Examination by the Court.....	1284

JUROR #217	
Examination by the Court.....	1290

DEFENSE COUNSELORS CONFER.....	1301

JURY VOIR DIRE

PHILLIP THOMPSON	
Examination by the Court.....	1334

JUROR #434	
Examination by the Court.....	1339

THURSDAY, JANUARY 31, 2008

MOTIONS	1341
JURY SELECTION	1347
MOTIONS	1359
EX PARTE IN-CHAMBERS HEARING	1375
OPENING REMARKS BY THE COURT	1385
OPENING STATEMENT BY MR. HEMBREE.....	1392
OPENING STATEMENT BY MR. WILSON.....	1401

TESTIMONY

SHARON RENEE HARDWICK

Direct Examination by Mr. Hembree.....	1406
Cross Examination by Mr. Wilson.....	1411
Redirect Examination by Mr. Hembree	1416

J [REDACTED] G [REDACTED]

Direct Examination by Mr. Hembree.....	1418
Cross Examination by Mr. Wilson.....	1445
Redirect Examination by Mr. Hembree	1466
Recross Examination by Mr. Wilson	1469
Further Direct Examination by Mr. Hembree.....	1472

DEPUTY CHRIS GRAHAM	1473

FRIDAY, FEBRUARY 1, 2008

MOTIONS	1481

TESTIMONY

RICK MCLEOD

Examination by the Court.....	1495

VOLUME FOUR

M [REDACTED] E [REDACTED] C [REDACTED]

Direct Examination by Mr. Hembree.....	1507
Cross Examination by Mr. Wilson.....	1513
Redirect Examination by Mr. Hembree	1520

THOMAS KNOCH

Direct Examination by Mr. Hembree.....	1523
Cross Examination by Mr. Wilson.....	1539

ANDREW COOPER

Direct Examination by Mr. Humphries.....	1545
Cross Examination by Mr. Wilson.....	1573
Redirect Examination by Mr. Humphries	1606
Recross Examination by Mr. Wilson	1620
Further Examination by Mr. Humphries.....	1629

EDWARD L. PROCTOR, JR.

Direct Examination by Mr. Humphries.....	1630
Cross Examination by Mr. Wilson.....	1639

TOBY BOYD

Direct Examination by Mr. Humphries.....	1645
Cross Examination by Mr. Wilson.....	1657

CHARLES DEVIN

Direct Examination by Mr. Humphries.....	1670
Cross Examination by Mr. Wilson.....	1681

WILLIAM SCOTT RUTHERFORD

Direct Examination by Mr. Humphries.....	1682
Cross Examination by Mr. Wilson.....	1694
Redirect Examination by Mr. Humphries	1698
Recross Examination by Mr. Wilson	1700

LARRY GRAHAM

Direct Examination by Mr. Humphries.....	1702

ANN H. PITTS

Direct Examination by Mr. Humphries.....	1707
Cross Examination by Mr. Wilson.....	1717
Redirect Examination by Mr. Humphries	1731

SATURDAY, FEBRUARY 2, 2008

LORI RABON

Direct Examination by Mr. Humphries.....	1737
Cross Examination by Mr. Wilson.....	1742

KIMBERLY HAHN

<i>Voir Dire</i> Examination by Mr. Humphries	1743
Direct Examination by Mr. Humphries.....	1745
Cross Examination by Mr. Wilson.....	1749

VELLO PAAVEL

<i>Voir Dire</i> Examination by Mr. Hembree	1757
Direct Examination by Mr. Hembree.....	1760
Cross Examination by Mr. Wilson.....	1788
Redirect Examination by Mr. Hembree	1796

MOTIONS BY THE DEFENSE.....	1800

COURT CONFERS WITH THE CLERK	1814

MOTIONS	1816

CLOSING ARGUMENTS BY MR. HUMPHRIES	1842

CLOSING ARGUMENTS BY MR. WILSON.....	1861
JURY CHARGE.....	1876
POLLING OF THE JURY.....	1903
MATTERS OF LAW	1907

MONDAY, FEBRUARY 4, 2008

PENALTY PHASE

PRELIMINARY MATTERS.....	1913
TESTIMONY	
DEBORAH HIPP	
Examination by the Court.....	1951
<i>IN CAMERA</i> TELEPHONE CONFERENCE.....	1959
OPENING STATEMENTS BY MR. HUMPHRIES.....	1982
OPENING STATEMENTS BY MR. WILSON	1987
TESTIMONY	
CARLA KAISER	
Direct Examination by Mr. Hembree.....	1991

VOLUME FIVE

CARLA KAISER	
Direct Examination by Mr. Hembree (Continued)	2001
Cross Examination by Mr. Wilson.....	2021
DENISE RICKETTS	
Direct Examination by Mr. Humphries.....	2043
Cross Examination by Mr. Wilson.....	2058
JEFF CAUBLE	
Direct Examination by Mr. Humphries.....	2067
Cross Examination by Mr. Wilson.....	2071
Redirect Examination by Mr. Humphries	2075

ALLEN LARGE	
Direct Examination by Mr. Hembree	2076

PHYLLIS RICHARDSON	
Direct Examination by Mr. Hembree	2096
Cross Examination by Mr. Wilson	2110

CURTIS L. THOMPSON	
Direct Examination by Mr. Hembree	2116
Cross Examination by Mr. Wilson	2126

TUESDAY, FEBRUARY 5, 2008

ANDREW COOPER	
Direct Examination by Mr. Humphries	2136
Cross Examination by Mr. Wilson	2152
Redirect Examination by Mr. Humphries	2159
Recross Examination by Mr. Wilson	2160

HALEY GRAINGER	
Direct Examination by Mr. Hembree	2161

JEFF GAUSE	
Direct Examination by Mr. Hixson	2175
Cross Examination by Mr. Wilson	2181

NEIL LIVINGSTON	
Direct Examination by Mr. Hixson	2183
Cross Examination by Mr. Wilson	2193

LISA GORE	
Direct Examination by Mr. Hixson	2195
Cross Examination by Mr. Wilson	2216

ANN H. PITTS	
Direct Examination by Mr. Hixson	2220
Cross Examination by Mr. Wilson	2238

LORI RABON	
Direct Examination by Mr. Hixson	2241

MANUEL JOHN ORTUNO	
<i>Voir Dire</i> Examination by Mr. Humphries	2244
Direct Examination by Mr. Humphries	2245
Cross Examination by Mr. Wilson	2251
Redirect Examination by Mr. Humphries	2255

EDWARD PROCTOR	
Direct Examination by Mr. Humphries.....	2257
TAMMY COX	
Direct Examination by Mr. Hembree.....	2262
JILL SHELLEY	
Direct Examination by Mr. Hembree.....	2277
MOTIONS	2303
JACKSON V. DENNO HEARING	2314
TESTIMONY	
TOBY BOYD	
Direct Examination by Mr. Humphries.....	2315
Examination by the Court.....	2323
Cross Examination by Mr. Rathbun.....	2324
DR. RICHARD FRIERSON	
<i>Voir Dire</i> Examination by Mr. Wilson	2338
Cross Examination by Mr. Hembree.....	2346
LOUIS M. WINKLER, JR.	
Direct Examination by Mr. Wilson.....	2365

WEDNESDAY, FEBRUARY 6, 2006

LOUIS M. WINKLER, JR.,	
Direct Examination by Mr. Wilson (Continues).....	2462

VOLUME SIX

LOUIS M. WINKLER, JR.,	
Direct Examination by Mr. Wilson (Continues).....	2462
Cross Examination by Mr. Hembree.....	2537
Redirect Examination by Mr. Wilson	2633
RIKKI HALAVONICH	
<i>Voir Dire</i> Examination by Mr. Rathbun	2655
<i>Voir Dire</i> Examination by Mr. Hembree	2657
Direct Examination by Mr. Rathbun	2658
Cross Examination by Mr. Hembree.....	2682
Redirect Examination by Mr. Rathbun	2693

WILLIAM ALEXANDER MORTON, JR.

<i>Voir Dire</i> Examination by Mr. Rathbun	2695
Direct Examination by Mr. Rathbun	2697
Cross Examination by Mr. Hembree	2743

TE ANNE OEHLER

<i>Voir Dire</i> Examination by Mr. Wilson	2745
Direct Examination by Mr. Wilson	2749
Cross Examination by Mr. Hembree	2775

ROSEMARY WOLFE

Direct Examination by Mr. Wilson	2782
Cross Examination by Mr. Hembree	2785

KAREN REEVES

Direct Examination by Mr. Wilson	2790
Cross Examination by Mr. Humphries	2795

RICK WINKLER

Direct Examination by Mr. Wilson	2796

JODY MCDUGAL

Direct Examination by Mr. Wilson	2801

JOANNE WINKLER

Direct Examination by Mr. Wilson	2805

SHARON MYERS

Direct Examination by Mr. Wilson	2811

THURSDAY, FEBRUARY 7, 2008

CLOSING ARGUMENT BY MR. RATHBUN	2827
CLOSING ARGUMENT BY MR. HEMBREE	2830
CLOSING ARGUMENT BY MR. WILSON	2883
JURY CHARGE	2896
ATTORNEYS CONFER WITH DEFENDANT	2927
FURTHER JURY CHARGE	2928

FRIDAY, FEBRUARY 8, 2008

VERDICT	2940

POLLING.....	2941
SENTENCE OF THE COURT	2949
JANUARY 3, 2006 TRANSCRIPT	2957
JUNE 15, 2006 TRANSCRIPT	2983

VOLUME SEVEN

JUNE 15, 2006 TRANSCRIPT (CONTINUE).....	3001
FEBRUARY 16, 2007 TRANSCRIPT.....	3005
COURT REPORTER'S INDEX.....	3006
<i>BLAIR</i> HEARING	3007

TESTIMONY

DR. RICHARD GRAHAM DWYER

Direct Examination by Mr. Humphries.....	3011
Cross Examination by Mr. Wilson.....	3018
Redirect Examination by Mr. Humphries	3035
Recross Examination by Mr. Wilson	3038
COURT'S RULING ON COMPETENCY	3041
DISCUSSION OF SCHEDULING DATES	3050
COURT'S RULING ON DEFENSE MOTION FOR CONTINUANCE	3064
DEFENSE REQUEST FOR FOLLOW-UP MENTAL HEALTH TREATMENT AT DETENTION CENTER	3065
COURT'S RULING	3067
APRIL 26, 2007 HEARING.....	3073
JULY 3, 2007 HEARING	3204
JULY 6, 2007 HEARING	3270
DECEMBER 13, 2007 HEARING.....	3300
JANUARY 11, 2008 HEARING.....	3322

JANUARY 24, 2008 HEARING	3385
JANUARY 26, 2008 HEARING	3417
INDICTMENT	3458
STATE'S EXHIBIT 35 (911 CALL)	3461
STATE'S EXHIBIT 70 (NOTICE OF CONVICTION)	3468
STATE'S EXHIBIT 148 (BOND ORDER)	3470
STATE'S EXHIBIT 149 (ORDER AMENDING BOND)	3471
STATE'S EXHIBIT 159 (LETTER)	3472
COURT'S EXHIBIT 18 (911 CALL)	3473
COURT'S EXHIBIT 20 (J [REDACTED] G [REDACTED] INTERVIEW)	3480
COURT'S EXHIBIT 21 (JURY NOTE)	3492
COURT'S EXHIBIT 24 (INTERVIEW WITH LOUIS MICHAEL "MICK" WINKLER)	3493

VOLUME EIGHT

COURT'S EXHIBIT 24 (INTERVIEW WITH LOUIS MICHAEL "MICK" WINKLER) CONTINUED	3501
ORDER FROM JUDGE LOCKEMY DATED AUGUST 20, 2007	3548
ORDER GRANTING CONTINUANCE	3549
SUBPOENA DEUCES TECUM	3552
CERTIFICATE OF COUNSEL	3553

1 stuff like that.

2 Q. All right. Now, at some point in that, in that early
3 part of your relationship, did the -- did things go bad?

4 A. Yes. He lost his job. He wasn't coming around the
5 house very much at all. He started working construction
6 with one of his buddies whose dad had a construction
7 business. And basically they started just going to the bar
8 after work, and I wouldn't see him till 1:00 in the
9 morning, maybe 2:00. When the bars were done and closed,
10 he would come home drunk.

11 Q. Now, when he would come home, did trouble start
12 sometimes?

13 A. Yes. He, he blamed me, like I went out and did
14 something while he was in the bar, that I was with somebody
15 or did something, and he would get very angry and start to
16 kick me and throw me around and kind of just, you know.

17 Q. So ---

18 A. Get physical with me.

19 Q. Physical violence became part ---

20 A. Yes.

21 Q. --- of the relationship?

22 A. Yes.

23 Q. How often would, would he commit these acts of
24 physical violence upon you? Say, once a month?

25 A. Sometimes once a week, sometimes twice a week,

1 sometimes three. I don't -- it just -- whenever he was in
2 that mood and, you know, it just -- he was that way. It
3 would start.

4 Q. Now this was, you say, once, twice, three times a week
5 sometimes?

6 A. Sometimes. Not all the times.

7 Q. Describe to this jury what types of acts of physical
8 violence Louis Winkler committed against you during this
9 time frame.

10 A. Sometimes he would hit me. A lot of times he would
11 throw me up against the wall or kick me while I was up
12 against the wall. Just kind of, you know, throwing me
13 around and smacking me and stuff like that at first.

14 Q. All right, at first, and then did it get progressively
15 worse?

16 A. It was getting worse. The more he drank and the, the
17 longer the drinking went on, it -- the worse it got.

18 Q. And it exhibited -- he exhibited as it got worse what
19 types of violence did he grow into?

20 A. He had a shotgun next to the bed, a rifle. I don't
21 know what you call it, like a hunting gun.

22 Q. A long gun?

23 A. Yeah, a long gun. Sometimes he would point it at me
24 and ask me if I wanted to die that day. He would accuse me
25 of being with somebody, and I was there at the house the

1 whole time pregnant. Girls would come up to the apartment
2 and ask for him and say that they were supposed to be with
3 him and wanted him to go to the bar with them.

4 Q. I'm sorry, the girls would come up?

5 A. Girls would come to the apartment and ask.

6 Q. These were not friends of yours?

7 A. No.

8 Q. They would come to the apartment looking for him?

9 A. Yeah, and he wouldn't tell them to leave. He'd say
10 I'll take care of this. I'll meet you later.

11 Q. And through this whole time frame that we're talking
12 about, how many months is this -- does this go on?

13 A. It was probably over the summer, most of the summer.

14 Q. Three or four months?

15 A. Three months.

16 Q. You're pregnant this entire time?

17 A. I'm pregnant.

18 Q. With his child?

19 A. Yes.

20 Q. The -- you mentioned that he pointed a shotgun at you.
21 Could you, could you tell this jury, just estimate how many
22 -- on how many occasions he did that?

23 A. Probably three different times.

24 Q. Now throughout this process, throughout this time
25 frame, did you, did you -- this time did you call the

1 police?

2 A. No, I didn't. I just kind of handled it and dealt
3 with it the best I could at that point.

4 Q. All right. You know, that's got to leave people
5 wondering why. You know, can you say why you, you didn't
6 do that?

7 A. I don't know. I didn't.

8 Q. Let's -- at some point did you -- tell us about
9 September of '84. Your daughter was born September 10th of
10 '84, I believe. Is that correct?

11 A. Yes.

12 Q. Tell this jury the circumstances that occurred in your
13 apartment with the defendant the night before you went to
14 the hospital to have your daughter.

15 A. He came home about 1, 2 in the morning, stumbling
16 around, yelling at me, coming at me. He had me up against
17 the wall. He said you're, you're just a bitch, and he had
18 square-toed boots on and he kicked me in the stomach six
19 times.

20 Q. Kicked you in the stomach how many times?

21 A. Six times to the point where I was on the ground in a
22 ball waiting to see if she was moving at that point. In
23 the meantime, he ran into the other room. He called my,
24 called my mom and said Carla is getting ready to have the
25 baby. You got to go to the hospital. Came back in and

1 said you need to go to the hospital. Your mom is waiting
2 for you to have the baby, and went to bed.

3 Q. What did you do?

4 A. I got in the car and I went down to Barberton and
5 Citizens Hospital and trying to find my mom. I told her I
6 was not in labor, that I was having severe pains but I was
7 not in labor. And I didn't tell her what had happened at
8 that point. I did have severe cramps and the nurse said,
9 well, I want you to stay and I want to check you, and she
10 determined that I was going into labor and she, she
11 admitted me and that's when I had Tiffany.

12 Q. Did they induce labor?

13 A. They broke my water and went ahead with it.

14 Q. But the baby was full term at that point ---

15 A. Yes.

16 Q. --- anyway?

17 A. Yes.

18 Q. Did the defendant ever arrive at the hospital during
19 the course of your labor?

20 A. No. He, he got there I think right when I was ready
21 to have her. He looked at her for a couple of minutes and
22 went back home, didn't stay.

23 Q. Now, you're in the hospital for a couple of days, I
24 guess?

25 A. Day or two.

1 Q. After you were released from the hospital, where did
2 you go?

3 A. I went back to the apartment and everything went okay
4 for a couple of weeks. He said that he did not want my
5 friends there to see the baby; he didn't want anybody there
6 to visit the baby while he was gone. He -- I would try to
7 get money. I didn't have -- I wasn't working at the time,
8 at that point. I told him I had to go get formula and
9 diapers and stuff at the store, and I didn't have any gas
10 in my car. I was afraid I'd run out of gas and he'd give
11 me maybe \$10 and say here you go. That should do it. And
12 that was the only money I ever got.

13 Q. Just a few bucks here and a few bucks there?

14 A. Yeah.

15 Q. But the violence slowed down initially right after you
16 got home with the baby?

17 A. Initially, yeah, when I got home it did.

18 Q. Let's take you up to, up to October, about a month
19 after your daughter was born. Did things get back to the
20 way they had been before?

21 A. Pretty much. He was still drinking every night. He
22 came home. I don't know what date or when it was, but he
23 punched me in the face and broke my lip open. And I went
24 to my mom's house and I was real upset because I had
25 thought it was starting again.

1 Q. Did you take your baby with you?

2 A. I did. We talked to his mom. I didn't want to -- I
3 was afraid. I didn't want to go back just yet. I wanted
4 time to think.

5 Q. Was -- had you told your parents about the violence
6 that existed in this relationship prior to this point in
7 time?

8 A. Not everything.

9 Q. Kept it all to yourself?

10 A. Yeah.

11 Q. About how old were you?

12 A. Twenty-two.

13 Q. 1984? Twenty-two years old?

14 COURT REPORTER: Excuse me, Judge.

15 THE COURT: I'm sorry. You need to answer the
16 question with a verbal response so she can take it down.

17 WITNESS: Yes.

18 BY MR. HEMBREE:

19 Q. After you had talked to your mom about it, you said
20 you talked to the defendant's mom about the problems?

21 A. Yeah. She came over and we were talking with her
22 about it.

23 Q. What did you, what did you do for the next week or so?

24 A. I went away and just kind of thought things through,
25 was trying to think about, you know, everything. And he

1 would call and we would talk every day, and he said that he
2 missed me. He wanted this to work. He was, he was not
3 going to drink any more, you know. We were going to make
4 this work, and he was going to work on that. If I came
5 back, that he would stop the drinking and try to get it
6 together. And at that point I went back.

7 Q. How long had you stayed away from home?

8 A. A week, ten days maybe.

9 Q. Tell this jury about how things were when you got back
10 home.

11 A. When I got back home, he was nice to me. He had
12 stopped drinking. I don't think he drank for a month in
13 between there. The next time he drank was Christmas Eve,
14 and we had went to -- the person who was our landlord had,
15 like, a Christmas get together for all his renters that was
16 for Christmas. We went down there.

17 Q. Who was -- was your daughter with you?

18 A. My mom had Tiffany.

19 Q. Okay. So, she's babysitting your daughter?

20 A. Well, we'd go -- yeah.

21 Q. Two of y'all went to the party. About what time of
22 the day was it when you went?

23 A. It was, like, from 4 to 6 type thing. I left. I was
24 going to go get Tiffany because we were supposed to be at
25 his mom's for Christmas. I asked him to come with me and

1 he didn't want to come, so I said, well, I'm going to get
2 her because we've got to be at your mom's, and I went to
3 get her. Was gone maybe forty-five minutes about.

4 Q. Let me make sure I got this right. You're at the
5 landlord's party. You leave to go get, pick up Tiffany
6 from your mom's house?

7 A. Uh-huh.

8 Q. Babysitting her. You're going to go back to the
9 Winklers' house for Christmas Eve at their house?

10 A. I went back to the party to get Mick.

11 Q. Right. Okay. Back.

12 A. He wouldn't leave.

13 Q. Then you were going to go back?

14 A. Then we were supposed to go to his mom's about 6:30
15 like we usually did for Christmas.

16 Q. I gotcha. So, you picked up your daughter.

17 A. I told him that I was going. I had to get her ready
18 and I had things that I needed to -- I needed to change her
19 and everything, and I went up to the apartment. He came up
20 about maybe a half hour later and kind of cocked his head
21 at me and he said you're such a bitch. And I said I didn't
22 -- Mick, what did I do? And he said, well, he said where
23 did you go while you were gone? I said I went and picked
24 up Tiffany and I came back. I was gone forty-five minutes.
25 I picked up Tiffany and I came back. And he got into this

1 rage again and started throwing me up against the wall.

2 We had -- I didn't have any money. We had had her
3 pictures made and had them framed for my mom, his mom and
4 the family, and I had wrapped them and they were on the
5 bed.

6 Q. These are pictures of whom?

7 A. Tiffany. I was trying to get her ready and he, when
8 he started fighting me with me, I put her in the living
9 room and I went back in the bedroom, and he started
10 throwing the pictures at me. And he was throwing them at
11 my head, so I put my hands up to block the picture frames,
12 which cut my hands and my arms from the glass. I don't
13 remember how many pictures were there. They were pretty.
14 They were 8 by 10 pictures. There was a lot of glass.

15 He grabbed me and threw me up against the wall, took
16 the gun out again, cocked it, and said, he said, I'll shoot
17 you right now. And I said I didn't do anything. I said
18 what did I do? And he said you did it. And I said I
19 didn't do anything. I picked her up, I came home, we're
20 supposed to go to your mom's for Christmas, and it was on
21 at that point.

22 Just started beating on me. He put the gun down. I
23 went into her bedroom to get some stuff to take to his
24 mom's. he threw me up in the corner and started just
25 kicking me in my leg like I don't know how many times. I

1 had a bruise about that big on my leg. He kicked and
2 kicked and kicked, and he stopped and went to the bedroom
3 and when he stopped, I just -- I had a voice in my head and
4 it said get out now. And I ran to the kitchen and I got
5 some towels to wrap my hands up with because I had blood
6 all over my shirt and my hands. I grabbed my purse and I
7 ran out of the apartment.

8 Q. What about Tiffany?

9 A. I couldn't get to Tiffany. And I didn't know if he
10 was coming back to, to hurt me some more, and I left.

11 Q. Where did you go?

12 A. I went to his mom's house, and I said Mick has done
13 this to me. He's in one of his ---

14 MR. WILSON: Your Honor, I'd object to any
15 conversation she had with his mother, but ---

16 MR. HEMBREE: Your Honor, she's testifying to what ---

17 THE COURT: Wait just a second. Is that the extent of
18 your objection?

19 MR. WILSON: Yes.

20 THE COURT: All right. Well, just don't tell us what
21 the mother said unless you feel it's an exception to the
22 hearsay rule. I'll want to hear it ---

23 WITNESS: Well, she didn't say anything. I went to
24 tell her what had happened.

25 THE COURT: Ma'am, ma'am, let me just finish. You may

1 proceed to say what you said and what you did. You may
2 proceed. You may proceed.

3 BY MR. HEMBREE:

4 Q. Go ahead, Carla. What did you tell, tell the
5 defendant's mother?

6 A. I told her what had happened and that I needed to go
7 to the hospital and get stitches for my hands. I did not
8 want Mick driving around with her in the car that way. And
9 I said if he comes here, please keep Tiffany here. Don't
10 let him drive around with her, and I -- Karen, his sister's
11 husband offered to drive me to the hospital, and I really
12 didn't want to be around anybody. I just wanted to, to go,
13 and I drove myself down to the hospital.

14 When I got to the hospital, they called the police.
15 They proceeded to put needles in between each of my fingers
16 to numb my hands so that they could stitch my hands and my
17 arms from the glass. And they taped them up basically.
18 They asked me if I wanted to press charges, and I said I
19 don't know what I'm going to do. And I left.

20 I went back to his mom's and I wanted to hold Tiffany,
21 and they had her and was holding her, and she said you need
22 to go talk to Mick. He's upstairs and he's upset and he
23 wants to talk to you. And at that point I just, I, I
24 couldn't do it any more.

25 I -- when I was in the hospital having those needles

1 put in my hands not knowing that, you know, is he going to
2 hurt me more, is he going to kill me, I didn't want Tiffany
3 to get raised in that environment. I, I wanted a good life
4 for her, and he wasn't changing. He kept promising me that
5 he would change, but it just started, it would start and it
6 would be worse, and I couldn't take it any more. I just
7 couldn't.

8 And the next day I wanted Tiffany for Christmas
9 because I didn't see her Christmas Eve, and I didn't go
10 home. I went and stayed with some family, friends, and I
11 didn't want to go back, and I went to the Police Department
12 and I said I want to press charges. I said he's assaulted
13 me severely. I'm afraid he's going to kill one one day,
14 and I just don't want this. I don't want to have to deal
15 with this any more in my life. He -- I said I didn't want
16 to go up there by myself.

17 He went up to the apartment with me, got Tiffany's
18 stuff, and I left with Tiffany and when I left, he arrested
19 Mick for the assault charges.

20 Q. What did you tell -- when you went back to the
21 apartment, would that have been Christmas Day of?

22 A. That was Christmas Day.

23 Q. Christmas Day of?

24 A. He acted like nothing had happened. He had everything
25 cleaned up. He had presents under the Christmas tree and

1 he was ready to have Christmas. He wanted us to have
2 Christmas.

3 Q. What ---

4 A. And I, I just couldn't.

5 Q. What ---

6 A. He wanted to pretend that it wasn't there and it
7 didn't exist, and it did. And I, I couldn't do it. He
8 wanted to act like it was -- every time he did that, the
9 next day he would act like it just didn't ever -- he never
10 did that, he didn't. It didn't happen.

11 Q. What did you tell him, because as I understand, your
12 daughter, was your daughter at the apartment with?

13 A. She was with Mick at the apartment that morning.

14 Q. Okay, on Christmas morning.

15 A. Yes.

16 Q. And how did you get your daughter away from the
17 defendant?

18 A. I said that I was taking her for the day.

19 Q. Just for the day?

20 A. He had her all Christmas Eve and I wanted her to be
21 with me.

22 Q. And you said you packed some of her things.

23 A. Her diaper bag.

24 Q. How many things did you pack and how much?

25 A. Enough for her milk and diapers that she needed that

1 day and stuff like that, just what you would normally put
2 in a diaper bag.

3 Q. Are you intending to bring her back at the end of that
4 day?

5 A. I wasn't sure.

6 Q. Now, after you left you said the police officer did
7 what with Mr. Winkler?

8 A. He handcuffed him and arrested him for the abuse.

9 Q. After he was arrested as a result of the assault that
10 occurred on Christmas Eve, how long did he stay in jail?

11 A. He was in there maybe ten days.

12 Q. And while he was in jail, what actions did you take?

13 A. I decided that I needed some space between us because
14 I was afraid that when he got out, he was going to be
15 furious, that he was going to come after me, and I left the
16 state.

17 Q. What about your daughter's things and your things?

18 A. I took what I needed for her and I left.

19 Q. And you moved where?

20 A. I went to North Carolina.

21 Q. And at that time, who was living in North Carolina?

22 A. My parents were in North Carolina.

23 Q. Did you inform, in any way inform the defendant where
24 you were going?

25 A. No.

1 Q. Once he got out of jail, did you have contact with
2 him?

3 A. No. I heard he was mad. He was going around ---

4 MR. WILSON: Your Honor, I object.

5 THE COURT: Sustained. Sustain the objection.

6 BY MR. HEMBREE:

7 Q. Ms. Kaiser, that might be -- the way you heard things
8 was probably hearsay, so we'll just move on past that.
9 Now, did you have occasion to return to North Carolina for
10 any -- excuse me -- return from North Carolina to Ohio for
11 any legal proceedings?

12 A. We went back to court in January for the assault
13 charges.

14 Q. And when you say we went back to court, who went with
15 you?

16 A. My mother went with me.

17 Q. Tell the jury about that experience.

18 A. As soon as I got to the courthouse, Mick was saying,
19 asking me why I did it and was she making me do this
20 because ---

21 Q. She being who?

22 A. My mom, and he said I know you're not doing this. It
23 has to be her that's doing this. And I said I'm doing
24 this. And he said no, you're not. You wouldn't do that to
25 me. And I said, Mick, I'm not doing this anymore. And he

1 still -- he didn't think it was my idea, and it was totally
2 my idea and my decision to do it.

3 Q. Was there a trial?

4 A. There was a little court hearing.

5 Q. With a judge?

6 A. Yeah.

7 Q. And you testified?

8 A. Yes.

9 Q. And what were the results of that trial?

10 A. He served, I think it was forty days. I don't
11 remember.

12 Q. Was found guilty?

13 A. He was found guilty and served some more days in jail
14 and was fined for it.

15 Q. Okay. Was there an occasion when you were back in, in
16 Ohio for a court hearing and you had a -- some contact with
17 the defendant and his father?

18 A. Well, after -- during the hearing they were told that
19 they were both to stay away from me.

20 Q. They being whom?

21 A. His father and him. That he was -- Mick was to stay
22 away from me, not have any contact with me. I don't
23 remember all the, the details around it, but he was
24 supposed to, you know, not be close to me.

25 Q. Like a restraining order?

1 A. Kind of, yeah.

2 Q. And as well as his father?

3 A. Yes.

4 Q. What happened after that hearing?

5 A. Right after the hearing we -- me and my mom got in the
6 car to go to her house, which he still had in Ohio to check
7 on it. It was for sale, and they had moved. And the whole
8 way from the courthouse to our house, him and his dad
9 followed, like, right behind our car the whole -- followed
10 us to the -- followed us to her house and got out and
11 started yelling at us at her house. They ended up getting
12 back in the car and they finally left.

13 Q. You and your mom were together?

14 A. We were.

15 Q. Now, after January where did you go back to live?

16 A. I stayed with them in North Carolina.

17 Q. And for a period of time after you moved back from
18 North Carolina, January of '85, I think that -- would that
19 be about right?

20 A. Yes.

21 Q. Your daughter was born in '84?

22 A. Yes.

23 Q. So, at this point your daughter is ---

24 A. Four months old.

25 Q. --- four or five months old? Excuse me. After you

1 moved back to North Carolina, did you begin divorce
2 proceedings?

3 A. I did.

4 Q. Did you continue to have contact by the defendant?

5 A. He got the number for my mom and dad's house.

6 Q. That's where you were living?

7 A. Yeah. He was still going out drinking because he
8 would call at 1, 2 in the morning just ranting and raving
9 about how he was going to get us back. He was going to
10 kill us all. He was coming for her. He was, you know, he
11 would always say are you -- are you right with God because
12 I'm going to blow your head off. I'm coming. And that
13 went on until I finally got an unlisted number and we
14 moved, all of us moved.

15 Q. So, your family moved and got unlisted numbers?

16 A. Yeah.

17 Q. And that's when it stopped?

18 A. Yeah.

19 Q. Did you have occasion -- did he ever call and indicate
20 that your daughter was not safe?

21 A. He would call when I was at work and he'd say do you
22 have Tiffany? And I said no. And he said, well, I got her
23 and she's gone, and I would run down to the daycare and she
24 was there. He was not in Charlotte, but he just, he just
25 wanted to torment you with this all the time.

1 We lived in fear for probably a year not knowing what
2 would happen, not knowing what he would do. Just, you
3 didn't know.

4 Q. When you say we lived in fear, who are you talking
5 about?

6 A. My whole family.

7 Q. Mom and dad?

8 A. He threatened everybody.

9 Q. Ultimately did you obtain a divorce?

10 A. I did.

11 Q. Did you request child support as part of that divorce?

12 A. No, I didn't want it.

13 Q. And ---

14 A. The court had, you know, said that he should pay so
15 much, but he never did.

16 Q. And you never tried to get anything from him?

17 A. No, I never pushed it or enforced it.

18 Q. Now, that was in 19 -- well, the last you saw him was
19 1985 at the trial?

20 A. At the trial was the last I saw him in Ohio.

21 Q. Since January of 1985?

22 A. Yes.

23 Q. And your daughter, does she ever see him?

24 A. No. I never heard from him since that time.

25 Q. Been twenty-three years ---

1 A. Yeah.

2 Q. --- since you last saw him?

3 A. Yeah.

4 Q. Does that fear still exist?

5 A. It does.

6 MR. HEMBREE: Thank you so much, Ms. Kaiser. Please
7 answer any questions that the defense counsel might have
8 for you.

9 THE COURT: Mr. Wilson?

10 CROSS-EXAMINATION BY MR. WILSON:

11 Q. Ma'am, just, I don't know where to start with this,
12 but let's go back. Now as I understand it, you indicated
13 to the court that you never requested child support, right?

14 A. Right.

15 Q. From -- that's not really true, is it?

16 A. Well, it was in the divorce papers, but I never forced
17 him to pay for it.

18 Q. Well, ma'am ---

19 A. It's always part of the divorce papers, but he wasn't
20 -- I didn't go after him for it, no.

21 Q. Well, you filed a lawsuit and asked for child support,
22 right?

23 A. No.

24 Q. That's the truth of it, right?

25 A. I don't remember.

1 Q. Well, let me show you this. Take a look at it. And
2 you can read through, take the time you want.

3 (A PAUSE.)

4 THE COURT: You want to go ahead and call attention to
5 a part?

6 MR. WILSON: Yes, sir, I think so.

7 BY MR. WILSON:

8 Q. It's on the second page.

9 A. Oh, this was probably for the divorce hearing.

10 Q. Well, that's what I'm asking. You got a divorce from
11 him and then you asked for child support. You told the
12 solicitor that you never asked for any.

13 A. It was part of -- they, they state how much the child
14 support will be.

15 Q. Okay.

16 A. In the divorce hearing.

17 Q. Specifically from -- there is an allegation telling
18 them how much money you need for support.

19 A. Right. The courts decide that.

20 Q. Well, no. This is your petition that you filed with
21 the court saying that, that you needed \$777 per month for
22 health, education and maintenance.

23 A. Right. That's what they came up with.

24 Q. All right, and that's what you filed, you and your
25 lawyer in court, to ask for child support.

1 A. It is part of the divorce, yes.

2 Q. Now, ma'am, let's go back and let's talk about how you
3 and Mick got to where you got to. The -- y'all dated in
4 high school, right?

5 A. Uh-huh.

6 Q. And your trouble really started when the pregnancy
7 occurred?

8 A. No, it started before that.

9 Q. Started before the pregnancy, and -- but you got
10 pregnant, as I understand, it in -- when you were twenty-
11 one?

12 A. Uh-huh.

13 Q. Is that right? Okay, and ---

14 THE COURT: Say yes or ---

15 WITNESS: Yes.

16 BY MR. WILSON:

17 Q. Now, he was concerned about that, was he not?

18 A. Concerned about?

19 Q. Well, y'all had a disagreement about the pregnancy
20 and, and about whether or not it was, in fact, his child,
21 which is when all the trouble started?

22 A. No, it was his. I wasn't seeing anybody and I wasn't
23 on anything, and I told him that when he did that.

24 Q. Well, do you know who Gregg Lindleman is?

25 A. Yes, I do.

1 Q. All right, and Gregg Lindleman?

2 A. I was not seeing him then.

3 Q. Y'all had a big dispute about whether or not the child
4 belonged to Gregg Lindleman?

5 A. No.

6 Q. Which is why he wouldn't pay support?

7 A. No. No. No.

8 Q. No, that never happened?

9 A. No.

10 Q. Now, let me ask you this. You said that he -- the --
11 I think you said that when you were -- the day before your
12 delivery, right?

13 A. Uh-huh.

14 Q. The day before your delivery of the child that you and
15 Mick had a fight?

16 A. Yes.

17 Q. Where he beat you I guess is a better term. Is that
18 what your testimony was?

19 A. Yes.

20 Q. And that he had on hard-toed shoes, right?

21 A. Yeah. He ---

22 Q. And then ---

23 A. --- always wore cowboy boots.

24 Q. I'm sorry.

25 A. He wore square-toed cowboy boots.

1 Q. Square-toed cowboy boots. All right. He kicked you
2 in the stomach?

3 A. Yes.

4 Q. Six times?

5 A. Yes.

6 Q. With those, with those square-toed cowboy boots,
7 right?

8 A. Right.

9 Q. Now, is there -- did you look at your hospital records
10 from where you went for the delivery?

11 A. No, I have not seen them.

12 Q. You haven't looked to see if there was any notation
13 anywhere in those records that that ever happened?

14 A. I didn't tell them that. I told them that my husband
15 had sent my mom down there and I was not in labor.

16 Q. Okay.

17 A. I was there to get her. I wasn't there to have the
18 baby.

19 Q. But what I'm asking is in your records, in your
20 hospital records, is there any indication of any bruises,
21 any contusions, any kind of -- anything other than the fact
22 that you were having contractions ---

23 A. No.

24 Q. --- in your hospital records from that day before the
25 delivery?

1 A. I, I don't know. I don't think so. I didn't have
2 bruises.

3 Q. And now you also said that, if I make no mistake, that
4 when y'all had a hearing, I think this would have been
5 after the Christmas fiasco that y'all had a hearing in
6 January of that year at court, correct?

7 A. Yes.

8 Q. And you testified that, that at that hearing that Mick
9 was found guilty of assaulting you, right?

10 A. Yes.

11 Q. All right, and that as a result of that that he got
12 forty days?

13 A. Yes. I don't remember exactly. I think it was around
14 there somewhere. I don't really remember.

15 Q. Well, that's not true either, is it?

16 A. What do you mean?

17 Q. Well, what I'm asking you is whether or not that's
18 actually true.

19 A. He served around forty days. It was twenty-three
20 years ago. I don't remember how many days.

21 Q. Well, let me ask you this. You said to the solicitor
22 that after the hearing, you and your mom were going
23 someplace, right?

24 A. Uh-huh.

25 Q. Where were y'all going?

1 A. We were going by her old house to check on it.

2 Q. All right, and Mick was with his father. Is that what
3 your testimony is?

4 A. Yes.

5 Q. And they were following y'all?

6 A. Yes.

7 Q. Well, my question is if he got forty days, how was he
8 following you and your mom?

9 A. It didn't start right then. He was to come back and
10 go to -- afterwards.

11 Q. Well, ma'am, I thought you told us earlier that what
12 he did was after, after y'all had the fight, he went to
13 jail, that you then got your stuff and you moved to North
14 Carolina to get away from him because you ---

15 A. He went to jail twice.

16 Q. Well, I'm specifically talking about the January
17 incident that now you have the baby, and you are saying
18 that you got away from him and you moved to North Carolina
19 to be with your parents so he wouldn't be around them, he
20 wouldn't be around you.

21 A. Right.

22 Q. And my question to you is if he was in jail in
23 January, which you testified, when you came back in
24 January, y'all went to court, right? You went to court in
25 January because that's what you said, and then he went to

1 jail for forty days. My question is how was he following
2 you and your mom?

3 A. He was supposed to report to the jail on a certain
4 date for his -- however many days he had to serve.

5 Q. All right. So, they didn't put him in jail then?

6 A. They didn't take him to jail right from the
7 courthouse, no.

8 Q. Well, all right.

9 A. He was to serve so many days and pay a fine.

10 Q. All right. So, they told him -- well, when was he
11 supposed to go back as far as serving the jail time?

12 A. I don't know. I didn't -- I don't know.

13 Q. And the date that you say that he followed you, is
14 that the day that you left the courthouse?

15 A. Yes.

16 Q. All right. So, you're saying that the judge let him
17 go home that day, and then he was just going to report back
18 at a later date and go serve his forty days?

19 A. I don't remember what the arrangements were.

20 Q. All right. Ma'am, the truth of the matter is is that
21 you and Mick got along fine until you got pregnant.

22 A. No.

23 Q. And then you got pregnant.

24 A. No.

25 Q. Ma'am?

1 A. It's not true.

2 Q. Okay, and when you got pregnant, there was all these
3 issues about whether or not the child was his or not his?

4 A. No.

5 Q. That's not ---

6 MR. HEMBREE: I'm going to have to object. These
7 questions have been asked and answered.

8 THE COURT: Overruled. You may proceed.

9 BY MR. WILSON:

10 Q. He was very upset about it?

11 A. No, he wanted to get married. We talked about it and
12 he wanted to get married.

13 Q. Well, let me ask that question. I'm -- if he, if he
14 was wanting to get married but he was already fighting you
15 is what you're saying, he was already fighting you, he was
16 already pushing you up against the wall ---

17 A. Yes.

18 Q. --- doing all these horrible things to you ---

19 A. Yes.

20 Q. --- why would you marry him?

21 A. Because I was pregnant and things were going to -- I
22 was pregnant with a baby that -- and I wanted us to try to
23 work things out and be together.

24 Q. Okay. Well, but let me ask the next question then.

25 A. Hoping it would work.

1 Q. During that year when y'all were married for what, a
2 year and six, seven months before you left and went to
3 North Carolina?

4 A. I think it was more like nine months.

5 Q. Okay. Like, more like nine months total?

6 A. Yeah.

7 Q. All right, and during that nine months that y'all were
8 married -- because you were three months pregnant when you
9 got married, right?

10 A. Two or three, yeah.

11 Q. Two or three months pregnant when you got married.
12 And then the baby was born in, what, September or October?

13 A. September.

14 Q. September, and then you actually moved to North
15 Carolina in December or January?

16 A. I left in December.

17 Q. Okay. All right. All right, and now during the time
18 from, from the time you got married that whole nine months
19 time, how many fights would you say y'all had?

20 A. I don't know.

21 Q. Ten, eight, thirty?

22 A. Eight or ten maybe.

23 Q. Okay, eight or ten. So -- well, then it wouldn't have
24 been every two or three days like you told the solicitor if
25 you only had eight or ten in the nine months, right?

1 A. I didn't say we fought every day when we were married.

2 Q. Well, did you not tell the solicitor that it was two
3 or three times a week?

4 A. Yeah.

5 Q. The matter is ---

6 A. It wasn't always a lot of -- I mean, it would be smack
7 me or something. It wasn't always like really intense.

8 Q. The other thing is when you left, you say that Mick
9 kept calling you and wanting to get back together and, and
10 stuff, right?

11 A. He didn't want to get back together. He would just
12 call and just scream.

13 Q. Just call and scream?

14 A. In the phone and threaten us.

15 Q. All right. Well, ma'am, the truth of it is even in
16 your affidavit to the court, didn't you say that he -- you
17 didn't have any contact with him? In fact, you didn't even
18 know where he was living ---

19 A. I didn't know--

20 Q. --- couldn't find an address for him, and his family
21 nor him would give you one?

22 A. That was later when I was trying to get the divorce.

23 Q. This is -- right. This is when you were in North
24 Carolina, right after you moved to North Carolina?

25 A. Right.

1 Q. You filed for divorce?

2 A. He called me. I didn't know where he was.

3 Q. All right. So, he called you but you didn't know
4 where he was and -- all right. Now, are you married now?

5 MR. HEMBREE: Relevance, Your Honor.

6 MR. WILSON: It's not irrelevant. Your Honor, she,
7 she's ---

8 MR. HEMBREE: Well, I want to proffer an objection,
9 Your Honor. Let's approach.

10 THE COURT: Come up here.

11 (OFF-THE-RECORD BENCH CONFERENCE.)

12 THE COURT: You may proceed.

13 BY MR. WILSON:

14 Q. Ma'am, what I wanted to ask you is, I'd asked you
15 earlier about Gregg Lindleman and are y'all married?

16 A. No.

17 Q. You and he?

18 A. No.

19 Q. You're not? Now, and your daughter -- well, let me
20 ask it this way. Is it -- you're saying that the child
21 belongs to Mick?

22 A. Yes.

23 Q. But you didn't have conversation with his parents and
24 with his family and with him when you told them that that
25 was not true, that it was not his child?

1 A. Say that again.

2 Q. Did you ever have a conversation with him and his
3 family members telling them that it was not his child?

4 A. No.

5 Q. You never had that conversation?

6 A. No.

7 MR. WILSON: Court bear with me one second, Your
8 Honor.

9 (A PAUSE.)

10 BY MR. WILSON:

11 Q. One question and I'll be through, ma'am. You said
12 that when you left the house, I think this would have been
13 I guess in December because you said you got the child back
14 Christmas Day. Now, your child was how old at that point?

15 A. Four months old.

16 Q. Two months, three months?

17 A. Four.

18 Q. Four months, and you left the child with Mick?

19 A. I had to, yes.

20 Q. But you were afraid to death of him, but you would
21 leave your child, two months old, three months old with
22 him?

23 A. Yes.

24 MR. WILSON: I don't have any ---

25 A. I had to go the hospital.

1 Q. I'm sorry?

2 A. I had to get to the hospital.

3 MR. WILSON: I don't have any questions.

4 THE COURT: Redirect?

5 MR. HEMBREE: Nothing on redirect, Your Honor. We'd
6 ask that this witness be excused and allowed to return
7 home.

8 THE COURT: Any objection?

9 MR. WILSON: Judge, I may want to recall her at a
10 later time.

11 THE COURT: I'll give you a chance in the next day or
12 so. Let me know.

13 MR. HUMPHRIES: We have another matter.

14 THE COURT: Okay. If you would ma'am, step down if
15 you would. I'm going to let the jury ---

16 MR. HUMPHRIES: Very good. Thank you, Your Honor.

17 THE COURT: Just step down. Have a seat out in the
18 audience.

19 (THE WITNESS EXITS THE STAND.)

20 THE COURT: Ladies and gentlemen of the jury, I'm
21 going to let you take a break at this time. We'll call you
22 back in a short while. Please do not discuss the case.
23 You may go.

24 (JURY EXITS THE COURTROOM AT 4:00 P.M.)

25 THE COURT: The audience please be seated. Let's go

1 ahead and put it on the record, you wanted to do that, of
2 our conversation.

3 Here at the bench, had a motion at the bench, his
4 cross-examination. His only question to her was going to
5 be whether or not she married a gentleman. Lindleman is
6 it, the last name?

7 MR. WILSON: Lindleman.

8 THE COURT: Lindleman and I decided to permit that
9 question.

10 The prosecutor wanted to make sure I was aware that
11 they had agreements with the other state to get her as a
12 witness. What matters is -- has witness got some plane
13 reservations or something or like? Is that what you want
14 to bring up as far as her not staying around for a while?

15 MR. HUMPHRIES: No. We were under very specific
16 instructions from the North Carolina court. We actually
17 had to go to two court hearings, very unusual process. I
18 had to actually go to North Carolina to testify in order to
19 get her to return. And the, the court, and I spoke with
20 the judge personally and he said that we were to bring her
21 down by armed guard.

22 We have driven her down. We have kept her under an
23 armed guard the entire time she has been here, and we were
24 to take her out of the courtroom by armed guard directly
25 back home after her testimony.

1 THE COURT: All right. Well, I can understand that.
2 However, within reason. Obviously I'm not subject to that
3 order. But, however, within reason I will give the defense
4 the opportunity if they wish to consider calling her back.
5 I said he would have till the end of the day.

6 Now, she's got some plane reservations or something
7 else, I will be glad to consider it. If not, I'm going to
8 give him a couple of hours to think about that. Then after
9 that if he hadn't made a decision, then of course I will
10 then let her go unless there's something saying otherwise
11 right now. I mean, she's got some plane that -- now I
12 don't want to know, need to know anything else, but hearing
13 both sides, I feel that Mr. Wilson has a right to think
14 about the matter before he decides he wants to call her
15 back or not. Discuss it with his client, everything else.
16 That's all within reason, and I'm going to follow that.
17 So, she is under subpoena until I release her.

18 Now, make sure I have no misunderstanding, and that
19 doesn't mean I'm going to make her stay until tomorrow. I
20 just want to give them an opportunity during this break,
21 maybe a little while longer to think about it. If there's
22 anything else he wants to ask her before she leaves the
23 jurisdiction, that's permissible. This is a very serious
24 situation in this phase of the trial. You want to ask her
25 about -- know of any problem with her following that, or do

1 I need to let her know that?

2 MR. HUMPHRIES: I will speak with her.

3 THE COURT: All right.

4 Now ma'am, if you would, please do not leave the area
5 as far as this courtroom court until I get back. Now,
6 nobody is going to hold you, anything like that. I just
7 want to make sure all the questions have been asked of you.
8 It doesn't mean you're going stay here till tomorrow. I
9 just want to make sure we give the defense an adequate
10 opportunity to think about these matters before they say
11 they are through with questioning.

12 All right, let's take a break. We'll be back in ---

13 Now, Mr. Humphries.

14 MR. HUMPHRIES: Yes.

15 THE COURT: If there's any concern about that
16 situation being followed, you need to let me know right
17 away.

18 MR. HUMPHRIES: In what regard, Your Honor? She's in
19 our charge. We have her under armed guard at this time.

20 THE COURT: All right. So, it's your armed guard.
21 Just make sure that everyone's clear by my rule.

22 All right. Take a break for a few minutes.

23 (THE WITNESS EXITS THE STAND.)

24 (OFF THE RECORD.)

25 THE COURT: Now, Mr. Wilson, as far as the last

1 witness, can you think of a reason why you would need her
2 further?

3 MR. WILSON: No, sir, I, I don't think I need her. I
4 do not.

5 THE COURT: By the way, it's this jurisdiction's
6 decision to have a witness with reasonable restrictions
7 sent to another jurisdiction if that witness is relevant
8 and material to the case. Obviously I would have faith in
9 other judges that they would not do anything to put a
10 witness in perceived or unperceived or reasonable danger,
11 so I'm sure that judge had special need to do as he did.

12 MR. HUMPHRIES: Yes, sir.

13 THE COURT: And I would in no way -- but once they are
14 in this jurisdiction, they are in the jurisdiction.

15 MR. HUMPHRIES: No question, judge, and I certainly
16 didn't mean to imply that this court wouldn't take ---

17 THE COURT: I know, but I didn't want you to imply
18 either that the conditions set beyond those conditions that
19 are generally set by interpretation of full faith and
20 credit of the Constitution that this court had some, some
21 duty to necessarily follow something that was unreasonable
22 from another state. But this state -- this court would
23 not, this court would not assume another state would do
24 anything unreasonable because this court has faith in all
25 people who have been given authority by the people through

1 whatever choice to come ---

2 MR. HUMPHRIES: I didn't mean to imply that this court
3 -- that this lawyer promised a North Carolina judge what
4 we'd do, so.

5 THE COURT: That lawyer would have to explain to the
6 judge.

7 MR. HUMPHRIES: That was my ---

8 THE COURT: The lawyer would have to be between a rock
9 and a hard place.

10 MR. HUMPHRIES: Yes, sir, no question.

11 THE COURT: At this time, Mr. Wilson indicates he does
12 not need the witness, so the witness can be excused.

13 MR. HUMPHRIES: Been released, Judge.

14 THE COURT: Really? When did that happen?

15 MR. HUMPHRIES: Just then.

16 THE COURT: All right. Just make sure it was after I
17 made my decision.

18 MR. HUMPHRIES: Oh, absolutely.

19 THE COURT: All right. State ready?

20 MR. HEMBREE: State's ready Your Honor.

21 THE COURT: The defense ready? Mr. Wilson, also let's
22 go ahead and do something else. During the course of the
23 opening statements, especially opening statements of the
24 state, Mr. Winkler was obviously talking a great deal to
25 his attorney, Mr. Wilson. And there's obviously nothing

1 wrong with that. That is totally his prerogative.
2 However, he got to the point of it being a little bit such
3 it was louder and I noticed jurors were observing and the
4 court reporter was having a little trouble making sure that
5 what he was saying wasn't recorded so that it would protect
6 his rights to have his communication with his attorney to
7 be privileged.

8 And then, Mr. Wilson, also I think I'm concerned that
9 his comments to him requiring him to not pay full attention
10 to the opening argument of the state so that he could be
11 ready to make his own opening statement for Mr. Winkler.

12 They came forward here to the bench and when they came
13 to the bench, Mr. Wilson indicated that -- what Mr. Winkler
14 was doing, and I noted that I observed the court reporter
15 seem concerned that she may be picking some of that up, but
16 I was -- couldn't hear the words. I could hear mumblings
17 over there, so I informed Mr. Wilson to let Mr. Winkler
18 know that this trial will be conducted civilly. And that I
19 have no problems with him talking with his attorney, but he
20 needs to keep it down such that no one else can hear him.

21 And in addition, if he got to a point where this court
22 would have to, then the court would obviously have a
23 hearing about whether or not Mr. Winkler went to the extent
24 to forfeit any rights in the courtroom. I don't think he's
25 anywhere close to that, so I'm sure it won't get to that.

1 But got to make sure that during the course of trial that
2 there's nothing distracting to the jury or there's nothing
3 adopted or captured on the recordings that Ms. Harris has
4 here that would end up compromising the rights of the
5 defendant. So, after Mr. Wilson talked to Mr. Winkler, I
6 noticed a sizable reduction in noise from that area.

7 But, Mr. Wilson or Mr. Hembree, y'all wish to put
8 anything else in this the record about that?

9 MR. HEMBREE: Nothing from the state, Your Honor.

10 MR. WILSON: Yes, sir. Judge, Your Honor, I know and
11 we have beat this horse to death, but my concern is that I
12 am still trying to represent this defendant, and I'm
13 concerned now that he's drawing a lot of attention to
14 himself from the jury, unwanted attention I might add, with
15 his demeanor. And I don't know exactly how to deal with
16 it or how to handle it. I'm trying to do the best I can,
17 but ---

18 THE COURT: That's all you can do, Mr. Wilson. Mr.
19 Winkler's aware that you're concerned he's hurting his own
20 interest by doing that. The court has told him that he's
21 endangering his own interest by doing that. I noticed -- I
22 thought I noticed it had lessened but that he's aware that
23 if he chooses to do it or gets to the point this court's
24 got to take control and make sure this jury is able to pay
25 attention to the trial, then he's doing at his own peril.

1 That's his choice. Gets to the point again where I feel
2 it's going to cause a disturbance and cause the jurors not
3 to be able to pay attention, then I have to note it during
4 the course of the testimony in the middle of the trial, I
5 will. Then if I have to send the jury out to discuss it
6 further, I will. And if it ever got to the point that I
7 had to make other measures, then I would do that also.

8 MR. WILSON: All right, sir. Thank you.

9 THE COURT: All right. Let's bring the jury in,
10 please.

11 MR. WILSON: Before you do that, I apologize again.
12 Says he wants to say something to you, and I don't -- I
13 don't know what it is.

14 THE COURT: Then you just note it, indicate he wants
15 to say something and I will bring the jury out. And I
16 don't need to hear from Mr. Winkler any further at this
17 time.

18 Bring the jury in.

19 (JURY ENTERS THE COURTROOM AT 4:30 P.M.)

20 THE COURT: Okay, we'll now proceed with another
21 witness from the state.

22 MR. HUMPHRIES: Thank you, Your Honor. The state
23 calls Denise Ricketts.

24 DENISE RICKETTS, BEING DULY SWORN,
25 TESTIFIES AS FOLLOWS:

1 CLERK OF COURT: Please have a seat. Please state
2 your name and spell your last for the record, and please
3 speak into the microphone.

4 WITNESS: Denise Ricketts, R-i-c-k-e-t-t-s.

5 THE COURT: Your witness.

6 MR. HUMPHRIES: Thank you, Your Honor.

7 DIRECT EXAMINATION BY MR. HUMPHRIES:

8 Q. Good afternoon, Ms. Ricketts.

9 A. Good afternoon.

10 Q. Do you presently reside in South Carolina?

11 A. No.

12 Q. Another state?

13 THE COURT: Have to answer.

14 WITNESS: Yes.

15 THE COURT: Did you say yes?

16 WITNESS: Yes.

17 THE COURT: Okay.

18 BY MR. HUMPHRIES:

19 Q. Tell the jury, do you know the defendant in this case,
20 Louis Michael Winkler?

21 A. Yes.

22 Q. How do you know him?

23 A. I was married to him.

24 Q. Tell the jury, if you will, when you first came to
25 meet Defendant Winkler.

1 A. I met him at the Radisson hotel. We were both
2 employed there.

3 Q. Is that here at the beach?

4 A. Yes.

5 Q. Do you know approximately when that was.

6 A. January of '95.

7 Q. Did you, after having met him, ultimately have a
8 relationship with him?

9 A. Yes.

10 Q. Tell the jury just a little bit about how that
11 developed.

12 A. We started dating and then we moved in together about
13 six months later.

14 Q. Six months after you started dating?

15 A. Uh-huh.

16 THE COURT: Be sure and answer, ma'am.

17 WITNESS: Yes.

18 THE COURT: The reason I say that, ma'am, just let me
19 explain the reason. See this lady over there?

20 WITNESS: Uh-huh.

21 THE COURT: See, she's got to take down what you say,
22 and if you say uh-huh and huh-uh, it might be miss
23 interpreted whether it's a yes or no, so that's why we need
24 you to give a verbal answer to the questions; okay?

25 WITNESS: Okay.

1 THE COURT: All right. You may proceed.

2 MR. HUMPHRIES: Thank you, Your Honor. BY MR.

3 HUMPHRIES:

4 Q. Now, during the initial dating period prior to moving
5 in together, were there any significant problems between
6 you and the Defendant Winkler?

7 A. No.

8 Q. Did you find him to be charming young man?

9 A. Yes.

10 Q. When you moved in together, did the character of the
11 relationship immediately change?

12 A. No.

13 Q. In fact, did you have children from another marriage?

14 A. Yes.

15 Q. Did you and he and your children spend time together?

16 A. Yes.

17 Q. Did there, however, come a time when the character of
18 that relationship changed?

19 A. Yes.

20 Q. If you will, Ms. Ricketts, tell the jury just a bit
21 about how that developed.

22 A. He started being controlling, verbally abusive,
23 physically abusive.

24 Q. Let's do this. Did it, did all of that happen at one
25 time?

1 A. No.

2 Q. Tell the jury how it evolved. What happened first?

3 A. We were going to go to a Super Bowl party once and I
4 didn't want to go, so he grabbed me any the neck and threw
5 me to the floor.

6 Q. How long into the relationship -- how long after you
7 began living together do you believe this would have
8 happened?

9 A. About a year.

10 Q. Do you remember what kind of Super Bowl party it was,
11 at someone's house, bar?

12 A. It was down at someone's house.

13 Q. And this fight resulted as a result of your not
14 wanting to go to the Super Bowl party?

15 A. Right.

16 Q. Do you recall why?

17 A. I just didn't want to go.

18 Q. That didn't suit Mr. Winkler?

19 A. No.

20 Q. As a result of that altercation, did you go to that
21 party?

22 A. Yes.

23 Q. Did you have to take any particular steps to cover up
24 any injuries when you went to that party?

25 A. I had to put some makeup on my neck, cover some marks.

1 Q. You weren't married at this time?

2 A. No.

3 Q. But you remained with him?

4 A. Yes.

5 Q. Tell the jury why.

6 A. I forgave him. I tried to see the good in him.

7 Q. After this incident in particular -- well, let's,
8 let's go back. Were there incidents of prior verbal
9 abuse ---

10 A. Yes.

11 Q. --- before that?

12 A. Yes.

13 Q. You mentioned that he was controlling. In what way?

14 A. He just tried to keep me from my family and my
15 friends.

16 Q. Was he successful at that?

17 A. Some ways, yes. Not completely.

18 Q. You met in '95.

19 A. Right.

20 Q. Let's go to April of 1997. You would have been
21 together almost two years by now?

22 A. Right.

23 Q. Were you married by then?

24 A. No.

25 Q. Living together?

1 A. Yes.

2 Q. Were you working at the time?

3 A. Yes.

4 Q. Was Mr. Winkler working at the time?

5 A. Yes.

6 Q. Let me take you to that evening, April 13th. Do you
7 recall anything significant that would have happened that
8 evening?

9 A. Oh, yeah. He was out that night and I went to bed
10 early because I had to work the next day. And then he came
11 in about 1:30 in the morning, came into the bedroom, cut
12 the light on, and wanted to argue. And I screamed back at
13 him and told him to cut the light out, and he snatched me
14 out of bed and...

15 Q. Well, how did he snatch you out of bed?

16 A. He just grabbed me and pulled me out of bed.

17 Q. Okay. What happened after that?

18 A. He threw me to the floor. He put a pillow over my
19 face, and he drug me around the house and pulled my hair
20 and kicked me in the legs, just drug me around the house
21 for a while.

22 Q. Do you know about how long this would have taken
23 place?

24 A. Seemed like about an hour to me.

25 Q. What was the end result of that assault?

1 A. He threw me out the back door with hardly no clothes
2 and locked the door.

3 Q. When you say hardly no clothes, you mean the ones you
4 were wearing?

5 A. Uh-huh, yes.

6 Q. Had you been dressed for bed?

7 A. Yes.

8 Q. Now, did you go to the police that evening?

9 A. No.

10 Q. Where did you go?

11 A. I went to my brother's house.

12 Q. How did you get there?

13 A. I drove my car.

14 Q. Were you able to take your keys when you left the
15 house?

16 A. No. He threw them out the window, out of the front
17 porch, so I had to go around the house to get them.

18 Q. You went to your brother's. Did you subsequently go
19 to law enforcement to report it?

20 A. Yes, the next day.

21 Q. As a result of that, at that reporting, was Defendant
22 Winkler arrested?

23 A. Yes.

24 Q. After his arrest, where did you go?

25 A. Went to my mother's house in North Carolina.

1 Q. How long did you stay there?

2 A. Two weeks.

3 Q. What was the purpose of your returning after two
4 weeks?

5 A. I went over there to get some of my stuff.

6 Q. Let me ask you this. Was there a court date?

7 A. Yes.

8 Q. And that court date, what was it in connection to?

9 A. That was from him attacking me that night.

10 Q. He was charged with criminal domestic violence?

11 A. Right.

12 Q. And do you know what the result of that court date
13 was?

14 A. No.

15 Q. Do you know what the court ruled as a result of the
16 court date?

17 A. No.

18 Q. Was there -- well, let me ask you this. Well, let me
19 do.

20 MR. HUMPHRIES: This is pursuant to rule 902. I have
21 got a self-authenticating document.

22 THE COURT: Shown it to Mr. Wilson?

23 MR. HUMPHRIES: I have given him a copy, Your Honor.

24 MR. WILSON: No objection, Your Honor.

25 THE COURT: Plan to move that into evidence?

1 MR. HUMPHRIES: Yes, Your Honor.

2 THE COURT: What number is it?

3 COURT REPORTER: 69.

4 THE COURT: All right, State's 69 in evidence.

5 (NOTICE OF FINAL DISPOSITION MARKED INTO EVIDENCE AS
6 STATE'S EXHIBIT NUMBER 69.)

7 MR. HUMPHRIES: Request to publish at this time, Your
8 Honor.

9 THE COURT: You may do so.

10 MR. HUMPHRIES: This is from the City of North Myrtle
11 Beach regarding warrant number F289070, date of offense
12 April 13th 1997. Description of offense, criminal domestic
13 violence. Bond was \$170. It's a bench trial. Was found
14 guilty and paid the fine of \$170.

15 BY MR. HUMPHRIES:

16 Q. That was in connection with the assault on you?

17 A. Right.

18 Q. That was April of 1997?

19 A. Right.

20 Q. That was the last time you saw him?

21 A. No.

22 Q. When did you see him again?

23 A. I went back two weeks later.

24 Q. What was the purpose for your going back two weeks
25 later?

1 A. I went to get some of my stuff.

2 Q. And did you have any intention upon returning to
3 reunite with Mr. Winkler?

4 A. No, not when I went there.

5 Q. Tell the jury how that meeting went.

6 A. Well, when I got there, he said he was sorry and he'd
7 never do it again, so I forgave him.

8 Q. And then you subsequently moved back in with him?

9 A. Yes.

10 Q. How soon after that?

11 A. The day later.

12 Q. April of 1997, I guess May almost by this time?

13 A. Right.

14 Q. How did the months after that go in terms of your
15 relationship with Mr. Winkler?

16 A. They went fine for a while.

17 Q. Was there a point in which it was no longer going
18 fine?

19 A. Yes.

20 Q. Tell me about that.

21 A. Well, he started same thing over again. He drank a
22 lot, he laid out a lot, and he came home and he was mean to
23 me.

24 Q. Well, now after you had him charged and he was
25 subsequently convicted, were there any acts of physical

1 abuse against you?

2 A. No.

3 Q. Of course you already charged him once.

4 A. Right.

5 Q. Tell the jury when you ultimately married Defendant
6 Winkler.

7 A. Married in September, 2001.

8 Q. Four years later?

9 A. Right.

10 Q. How long did that marriage last?

11 A. One year.

12 Q. Almost to the day?

13 A. Almost to the day.

14 Q. Were things fine leading up to the marriage?

15 A. No, not really. We had some trouble right before the
16 marriage. I actually wanted to cancel. He talked ---

17 Q. Why?

18 A. --- he talked me into going on with it.

19 Q. And why did you not cancel it at that time?

20 A. We had plans made and I went ahead with it.

21 Q. During the course of this marriage, approximately one
22 year, tell the jury how your life with Defendant Winkler
23 was.

24 A. It was bad.

25 Q. Tell them why.

1 A. Because he, he drank a lot. He didn't come home from
2 work. He verbally abused me.

3 Q. When you say he verbally abused you, can you be
4 specific regarding what he said to you?

5 A. Just calling me names, telling me to get out of his
6 house and threatening me.

7 Q. You had mentioned earlier that he had been
8 controlling. Did that continue?

9 A. Yes.

10 Q. How so?

11 A. He just wanted to know where I was at all times. He
12 was suspicious all the time, listened in on phone calls.

13 Q. Did the two of you purchase a vehicle together?

14 A. Yes.

15 Q. What were the financial arrangements of that vehicle?

16 A. Well, it was in his name, but I paid him the money
17 every month for it.

18 Q. How long did you pay for that vehicle?

19 A. Two years.

20 Q. Did there come a time when you ultimately left Mr.
21 Winkler?

22 A. Yes.

23 Q. Can you tell the jury why you left Mr. Winkler?

24 A. He was not a good husband.

25 Q. You already testified that he did not actually

1 physically abuse you. Were you ever in fear that he would
2 physically abuse you?

3 A. Yes.

4 Q. Why?

5 A. Because he was always threatening me. He would raise
6 his hand to hit me, but he wouldn't because he was already
7 arrested for it.

8 Q. Let me show you State's 12 in evidence. Do you
9 recognize that vehicle?

10 A. I sure do.

11 Q. Whose vehicle is that?

12 A. It's mine. It was mine.

13 Q. Now, when you left ---

14 THE COURT: State's 12 from the first phase of the
15 trial.

16 MR. HUMPHRIES: That's correct, Your Honor.

17 THE COURT: In evidence.

18 BY MR. HUMPHRIES:

19 Q. You left him in September?

20 A. Right.

21 Q. Of 2002?

22 A. Right.

23 Q. After you left him, what contact, if any, did you have
24 with him?

25 A. I tried to stay away from him. He was calling people

1 that I worked for and my family and me and watching
2 everywhere I was.

3 Q. How do you know he was watching?

4 A. He left notes in my car, and he would call me on the
5 cell phone.

6 Q. Do you recall an incident when, when you went to the
7 dentist?

8 A. Yes, I do.

9 Q. Tell me about that.

10 A. I was in the dentist office getting some dental work
11 done, and I had parked across the street at the library.
12 And he called the dentist's office and told them I was not
13 covered under his insurance.

14 Q. While you were...

15 A. While I was in the dentist's chair.

16 Q. Did there come a point in which he was no longer
17 calling and following you as far as you knew?

18 A. Yes.

19 Q. During the fall?

20 A. Yes.

21 Q. Did you have any other contact with him, say, a few
22 months later.

23 A. No.

24 Q. Let's get back to the vehicle. Who actually had
25 possession of the vehicle at the time?

1 A. He did.

2 Q. Were you still paying for the vehicle?

3 A. I had went out to where he works to pay payments, and
4 he was supposed to sign a book to show where I was paying
5 him, but he had only signed it twice.

6 Q. Okay. Was there a point in December when you met with
7 him to make payment for that vehicle?

8 A. Yes.

9 Q. Tell the jury about that.

10 A. I went out to where he works to pay him a payment, and
11 he came up to the truck and took the payment, and then he
12 looked in the back of my truck and saw a suitcase. And I
13 was staying down at the beach because I was working down
14 here, and he accused me of having an affair and he was --
15 threatened to kill me and my boyfriend.

16 Q. After that occurred, what action did you take?

17 A. I went to the police station and took out a
18 restraining order.

19 Q. And since that time, have you had any meaningful
20 contact with Defendant Winkler?

21 A. No.

22 Q. Had any contact with his family?

23 A. No.

24 Q. Do you know his sister?

25 A. Yes.

1 Q. The one that lived down at the beach?

2 A. Yes.

3 Q. Was there a point in which you would have considered
4 her your friend?

5 A. Yes.

6 MR. HUMPHRIES: Answer any questions the defense may
7 have. Thank you, ma'am.

8 THE COURT: All right. Mr. Wilson?

9 CROSS-EXAMINATION BY MR. WILSON:

10 Q. Ma'am, as I understand it, y'all dated for a number of
11 years before you got married?

12 A. Right.

13 Q. And during your early years of your relationship with
14 him, was he married to someone else when y'all got
15 involved?

16 A. No.

17 Q. All right. Were you married to anyone else?

18 A. Yes.

19 Q. All right, and so at that time, you were married and
20 he was single and y'all started having a relationship?

21 A. Right.

22 Q. And that's kind of how it got started. And now both
23 of you drank a good bit, right?

24 A. No. He did.

25 Q. Well ---

1 A. I drank very little.

2 Q. You drank very little.

3 A. Yes.

4 Q. Well, when you say very little, would that be three,
5 four times a week?

6 A. No.

7 Q. Five times a week?

8 A. No. Maybe once.

9 Q. Y'all went out to bars just about every weekend,
10 right?

11 A. Not every week. He went out. I stayed home.

12 Q. During the eight years of y'all together, were there
13 ever less than three weekends a month, four weekends a
14 month that you didn't go to a bar, the two of you together,
15 and drink the whole weekend?

16 A. That's not true.

17 Q. That's not true?

18 A. No.

19 Q. Now, you said that you were concerned about the fact
20 that he was following you, and he was accusing you of
21 having an affair or having relationships with other men,
22 and that wasn't true, right?

23 A. No.

24 Q. Well, the truth of the matter is, ma'am, you ended up
25 with his best man at his wedding.

1 A. That was eight months after we were divorced --
2 getting divorced.

3 Q. Well, but that's who he was accusing you of the entire
4 time, and you ended up with the very fellow that he was
5 saying that you were having the affair with.

6 A. He was jealous of everyone.

7 Q. But he was particularly jealous, and let me see what
8 the name was here. Is his name Molinari? Is that his
9 name?

10 A. Mike Montinari.

11 Q. Mike Mont, Montinari?

12 A. Right.

13 Q. Yeah, and he was Mick's best man at y'all's wedding?

14 A. Right.

15 Q. And within a few months, you were with him after y'all
16 got your separation. But he thought that there was
17 something going on with you two, which is why he was so
18 suspicious of you and which is why he was trying to keep up
19 with where you were and what you were doing.

20 A. Well, that's not true. We were just friends.

21 Q. All right. Y'all just friends.

22 A. Right.

23 Q. All right. Now, you have two children?

24 A. Yes.

25 Q. All right, and during the time that you and Mick were

1 together, were those children in your custody, or were they
2 with your -- with the fathers?

3 A. My daughter was with her moth -- with my mother and my
4 son was with his father.

5 Q. Okay. So, you didn't have custody of either of those
6 children?

7 A. No.

8 Q. All right. How old were your children then at that
9 time?

10 A. Well, when I met him they were seven and nine years
11 old.

12 Q. Okay and, ma'am, but you would get the children on the
13 weekends and things like that from time to time, right?

14 A. Right.

15 Q. And during that time, was Mick good to your children?

16 A. Yes.

17 Q. Did he ever abuse your children in any way whatsoever
18 physically, verbally, in any way?

19 A. No.

20 Q. The problems that y'all had were between you and him,
21 right?

22 A. Right.

23 Q. All right. Now, you said that you didn't have any
24 contact with Mick's family after, after y'all's separation
25 and divorce and such. Is that right? Is that what you

1 said?

2 A. Right.

3 Q. Well, is that really true?

4 A. I had contact with Laura. That was all.

5 Q. And Laura is his sister, right?

6 A. Right.

7 Q. All right, and you had contact with Laura on more than
8 one occasion, right?

9 A. Yeah, there for a little while.

10 Q. All right. In fact, in fact, ma'am, you wanted to
11 gloat to her after he got arrested. You called her about
12 it, did you not?

13 A. I did not call her to gloat, no.

14 Q. You called her and told her that you were glad when he
15 got arrested, and that you couldn't wait to come testify.

16 A. That's not true.

17 Q. But you did call her?

18 A. I even told her I was -- I felt very sorry for her and
19 her family.

20 Q. Did you call her or not?

21 A. Yes, I did call her.

22 Q. All right. Needless to say, the two of you guys
23 didn't end on particularly good terms, right?

24 A. Right.

25 Q. Now, the car you said that y'all had purchased, the

1 car, y'all had purchased it together. He was paying some
2 and you were paying some, right?

3 A. I paid all the payments until the day he took it.

4 Q. Okay. Well, well, when you say he took it, did the
5 court give it to him, or did he just take it from you?

6 A. The court gave it to him.

7 Q. Right, the court gave it to him. So, he didn't take
8 it from you.

9 A. The truck was never brought up in court. I was not
10 allowed to mention the truck.

11 Q. But be that as it may, the court -- there was a
12 hearing. The court gave him or awarded him, whatever you
13 want to call him, the vehicle.

14 A. That's because he lied and said I hadn't made any
15 payments.

16 Q. Okay. Were you upset about the fact that he lied to
17 the court and said that? Is that why you're coming to say
18 these things about him?

19 A. No.

20 Q. Ma'am?

21 A. Not at all.

22 Q. Now, you also told about an incident, an incident, I
23 think you said it was in April, April 13th I think is what
24 you said. That he came into the bedroom and that you were
25 already laying down, and you were asleep and that he

1 attacked you, right?

2 A. Right.

3 Q. And that was for no reason whatsoever?

4 A. Right.

5 Q. Well, was it not about discussion -- didn't y'all have
6 an argument, ma'am, about your daughter who was at the time
7 I think thirteen, and the fact that she was dating a guy
8 who was twenty, twenty-one years old? And he was upset
9 about it and he was asking you about it, which is what
10 caused the argument?

11 A. No, that had nothing to do with that night. I -- to
12 this day I don't know what his reason was for that.

13 Q. So, that wasn't that night?

14 A. No. This was years later about my daughter.

15 Q. You sure it wasn't ---

16 A. She was sixteen and her boyfriend was only a couple of
17 years older than her. He wasn't twenty-some years old.

18 Q. He was a freshman in college, was he not, and she was
19 thirteen?

20 A. She was not thirteen. She was fifteen.

21 Q. Well, now, as I understand it when you say -- when you
22 met Mick and y'all were only together total for, what, five
23 or six years?

24 A. We were together for seven years and nine months to
25 be exact.

1 Q. Seven years and nine months, and it was during that
2 seven years and nine months that -- how -- you said your
3 children were six and eight when y'all met?

4 A. They were seven and nine.

5 Q. Oh, so they were seven and nine. Well, so then they
6 would be -- for her to be sixteen -- how old did you say
7 she was?

8 A. She was fifteen when she was dating her boyfriend.

9 Q. Well, my point is if she's fifteen, that would have
10 been the last year that you guys would have been together.

11 All right, ma'am, the bottom line is is that you and
12 Mick have some problems in your relationship, and he got
13 the better of the deal as far as you were concerned in
14 terms of the divorce and the settlement. You have not been
15 happy about that since then.

16 A. No.

17 Q. And because of that, you called his sister, had that
18 conversation with her, and that's why you're here today.

19 THE COURT: Is that a question, Mr. Wilson?

20 MR. WILSON: Yes, sir, that was.

21 WITNESS: That's not why I'm here today.

22 MR. WILSON: All right. Just bear with me one second,
23 Your Honor.

24 (A PAUSE.)

25 THE COURT: All right, I've said that before.

1 DEPUTY: Who has a cell phone?

2 THE COURT: Hand it to the officer.

3 BY MR. WILSON:

4 Q. Just one last thing and then I'm going to be through.
5 In getting here to testify, did you call the solicitor's
6 office and offer your testimony, or did they come find you
7 and subpoena you and bring you in?

8 A. They come find me, but they didn't subpoena me.

9 Q. Right, because you wanted to be here.

10 A. Right.

11 MR. WILSON: No other questions.

12 THE COURT: Redirect?

13 MR. HUMPHRIES: No, Your Honor. Thank you.

14 THE COURT: You may step down.

15 MR. HUMPHRIES: Ask the witness be excused.

16 THE COURT: Any objection?

17 MR. WILSON: No objection.

18 THE COURT: You may be excused.

19 (THE WITNESS EXITS THE STAND.)

20 THE COURT: Next witness.

21 MR. HUMPHRIES: Jeff Cauble.

22 THE COURT: Jeff Cauble?

23 MR. HUMPHRIES: C-a-u-b-l-e.

24 JEFF CAUBLE, BEING DULY SWORN,

25 TESTIFIES AS FOLLOWS:

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

4 WITNESS: It's Jeff Cauble, C-a-u-b-l-e.

5 THE COURT: Your witness.

6 MR. HUMPHRIES: Thank you.

7 DIRECT EXAMINATION BY MR. HUMPHRIES:

8 Q. Office Cauble, how are you employed?

9 A. Through -- I'm a Patrolman First Class Horry County
10 Police Department.

11 Q. How long have you been so employed?

12 A. Since 2003.

13 Q. In connection with your responsibilities as patrolman
14 with the Horry County Police Department, did you have an
15 occasion to respond on a call through dispatch to a
16 residence where Mr. Winkler was present?

17 A. Yes.

18 Q. As a result of your response there, did you then have
19 an occasion to arrest Defendant Winkler?

20 A. Yes, sir.

21 Q. Whose duty was it at that time to transport Defendant
22 Winkler?

23 A. It was mine.

24 Q. And how was that, how was that done? In your patrol
25 car?

1 A. Yes, sir.

2 Q. Where would the defendant have been seated?

3 A. In the rear passenger's side.

4 Q. Now, did you take him straight to J. Ruben long
5 Detention Center?

6 A. No, sir. I was actually going to be taking him to
7 North Myrtle Beach Police Department.

8 Q. All right, and did you do that straight away?

9 A. No, sir.

10 Q. Why not?

11 A. Shortly after we left his residence, he started
12 gasping for air in the back of my police car, stating that
13 his chest was hurting. And at that time I decided it would
14 be best if I go on to Seacoast Medical Center with him.

15 Q. And is that what you did?

16 A. Yes, sir.

17 Q. Now, tell the jury, if you will, a little bit about
18 his condition.

19 A. His condition was he had been, he had been drinking.
20 And he was very, very angry with me. And when we got to
21 the hospital, I think it took a couple of us to get him out
22 of the vehicle. Got him to the room. The nurse was in
23 there for a couple of minutes. And when she left, he
24 raises up out of his bed and he spit on me.

25 Q. And where on you did he spit?

1 A. It hit me. I was wearing a sweater at the time. It
2 hit me through this area right here, and some of the spray
3 got on my face.

4 Q. What did you do immediately after that?

5 A. I looked at him, the first thing I did. Then I
6 basically -- at that time he started yelling and screaming
7 that I had spit on him. I just opened up the door and
8 looked at the nurse. I wanted her to see what was on my
9 sweater, and she actually cleaned me up at that time.

10 Q. As a result of that, was the Defendant Winkler charged
11 with simple assault and battery?

12 A. Yes, sir.

13 Q. And do you know, Officer Cauble, whether that charge
14 resulted in a conviction?

15 A. He forfeited his bond on it, yes, sir.

16 Q. And that is a conviction?

17 A. Yes, sir.

18 MR. WILSON: I have no objection.

19 MR. HUMPHRIES: Your Honor, at this time we move to
20 introduce pursuant to 901 certified true copy of that
21 conviction.

22 THE COURT: What number will that be?

23 COURT REPORTER: 70.

24 THE COURT: Okay. State's 70 in evidence.

25 (NOTICE OF CONVICTION MARKED INTO EVIDENCE AS STATE'S

1 EXHIBIT NUMBER 70.)

2 BY MR. HUMPHRIES:

3 Q. Now officer, did you subsequently after this -- after
4 the point at which the defendant spit on you, did you then
5 take him to North Myrtle Beach Police Department?

6 A. No, I did not.

7 Q. Another officer had to do that?

8 A. No.

9 Q. Go ahead.

10 A. What happened then is since there was some spit that
11 actually got on my face and pretty close to my eye, we then
12 had to leave Seacoast and go to Conway Hospital to have
13 blood work done, both of us.

14 Q. Is that done for your protection?

15 A. Yes, sir.

16 Q. After that?

17 A. After that, I took him to J. Ruben Long Detention
18 Center.

19 Q. Turned out to be a long night for you?

20 A. Yeah, very long night.

21 MR. HUMPHRIES: Thank you, Officer. Answer any
22 questions the defense may have.

23 THE COURT: Anything, Mr. Wilson?

24 MR. WILSON: Yes.

25 CROSS-EXAMINATION BY MR. WILSON:

1 Q. Now, Officer, you said that you had -- he was under
2 arrest at the time you went to pick him up or the time you
3 went there, and you got him and you placed him under arrest
4 for something I assume?

5 A. Yes, sir.

6 Q. All right, and that's why you were transporting him?

7 A. Yes, sir.

8 Q. Those charges were dismissed?

9 A. Yes, sir.

10 Q. Now, the, the spitting incident when -- as I
11 understand it, when -- well, let me back up. The time --
12 while he was in your vehicle from the time he left the
13 house, were you alone?

14 A. Yes, sir.

15 Q. At the house?

16 A. Was I alone at the house?

17 Q. Yes, sir.

18 A. You mean was there another officer there?

19 Q. Yes, sir.

20 A. Yes, sir.

21 Q. There was another officer there?

22 A. Yes, sir.

23 Q. All right, and how many?

24 A. One.

25 Q. All right, and was there, was there any problem with

1 the arrest?

2 A. No, sir.

3 Q. He resist in any way whatsoever?

4 A. No, sir.

5 Q. Give you any difficulty when you put him in the car?

6 A. No, sir.

7 Q. All right, and got him in the car. He was cuffed,
8 right?

9 A. Yes, sir.

10 Q. And then you transported him. Was there any problem
11 during the time that you left the house till the time you
12 got to the hospital other than him saying he had chest
13 pains?

14 A. No.

15 Q. All right. All right. So, that was in -- and then
16 you get to the hospital. Now, what you -- the solicitor
17 asked -- well, in talking to the solicitor, you indicated
18 that he had been drinking. Is that right?

19 A. Yes, sir.

20 Q. Well, now, was he drinking or was he drunk?

21 A. I'm -- he had been drinking. That's -- you know, I,
22 it's not my determination to make, to say that he was
23 actually drunk, no.

24 Q. But there's no question -- well, let me ask you this
25 way. In your mind, since you were there and we weren't,

1 was he intoxicated?

2 A. Yes.

3 Q. And when you got him to the hospital, he was
4 complaining that he had chest pains, and you got him to the
5 hospital, and they had him on a gurney in the hospital?

6 A. Yes.

7 Q. Is that where he was?

8 A. Yes, sir.

9 Q. All right, and any medical personnel in the room with
10 you and he at the time?

11 A. No. I said the nurse had just stepped out.

12 Q. Okay, so that just the two of you in the room?

13 A. Yes.

14 Q. And, and you're saying he spit on you?

15 A. Yes, he did.

16 Q. All right. Now, when you went to the nurse to tell
17 her about it, was it on your sleeve? Is that where it was
18 at?

19 A. It was actually, more of it was right here close to
20 the shoulder area.

21 Q. Did you get an affidavit from the nurse that night?

22 A. Yes, we did.

23 Q. Take a look at that and see if that's the affidavit
24 you got from the nurse that night.

25 A. Yes.

1 Q. All right, and does that help refresh your memory
2 about where it was?

3 A. It's saying that on the front and the sleeves.

4 Q. Now, then as I understand it, y'all stayed there until
5 they checked them out to determine whether or not he had
6 any serious medical problems in terms of chest pains. Is
7 that correct?

8 A. Yes, sir.

9 Q. And then y'all went to which hospital, Conway?

10 A. Conway.

11 Q. Conway hospital and then they did the blood work to
12 make sure you were okay and make sure he didn't -- there
13 wasn't something wrong that might cause you some problems
14 down the road?

15 A. Exactly.

16 Q. And did it? Was there any problems?

17 A. No.

18 Q. As far as the test results were concerned?

19 A. No.

20 Q. All right, and other than that, have you had any
21 contact with him other than that?

22 A. No.

23 MR. WILSON: Thank you.

24 THE COURT: Anything else?

25 MR. HUMPHRIES: Just briefly.

1 REDIRECT EXAMINATION BY MR. HUMPHRIES:

2 Q. Let me show you I believe a copy of what Mr. Wilson
3 has just shown you. Do you recognize it?

4 A. Yes.

5 Q. Is that the statement of the nurse that Mr. Wilson
6 just asked you to publish a portion of?

7 A. Yes.

8 MR. WILSON: No, sir, I ---

9 MR. HUMPHRIES: Your Honor, at this time ---

10 MR. WILSON: --- didn't ask him ---

11 MR. HUMPHRIES: At this time ---

12 MR. WILSON: I didn't ask him to ---

13 MR. HUMPHRIES: Yes, you did. We move to introduce
14 based on Rule 106.

15 MR. WILSON: I did not. I did not ask him to publish
16 anything. I asked him ---

17 THE COURT: Denied. Motion denied. Let's go on.

18 MR. HUMPHRIES: Thank you, Your Honor.

19 BY MR. HUMPHRIES:

20 Q. Well, let me ask you this. Relating to the nurse
21 statement, was the nurse -- did the nurse comment on his
22 conduct while at the ER? I didn't ask what she said. I
23 asked did she comment on it at all. In her affidavit, did
24 the nurse remark regarding the defendant's conduct toward
25 you and the ER staff in her statement? Don't tell me what

1 she said. Just tell me if she made a comment of it.

2 A. Yes.

3 Q. Significant enough to put in her statement?

4 A. Yes.

5 MR. HUMPHRIES: Thank you.

6 THE COURT: Any other questions?

7 MR. WILSON: I have no other questions.

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

9 (THE WITNESS EXITS THE STAND.)

10 THE COURT: Next witness, please.

11 MR. HEMBREE: The state calls Detective Allen Large to
12 the witness stand.

13 ALLEN LARGE, BEING DULY SWORN,
14 TESTIFIES AS FOLLOWS:

15 CLERK OF COURT: Please have a seat. Please state you
16 name, and spell your last for the record.

17 WITNESS: My name is Troy Allen Large, L-a-r-g-e.

18 THE COURT: All right. Thank you, sir. Your witness.

19 DIRECT EXAMINATION BY MR. HEMBREE:

20 Q. Detective Large, with whom are you employed?

21 A. I'm employed with the Horry County Police Department.

22 Q. And how long have you been with Horry County PD?

23 A. Twenty years.

24 Q. And in what capacity do you serve the police
25 department?

1 A. I'm currently assigned to the violent crime section
2 which is in the Criminal Investigative Division.

3 Q. And you're a detective?

4 A. Yes, sir.

5 Q. You were in -- were you in violent crimes back in
6 October of 2005?

7 A. Yes, sir.

8 Q. Now, did you happen to be on call October -- well,
9 tell me how that works. Do you stay on call, or kind of
10 how does your daily routine go?

11 A. Yes, sir. There's about six or seven of us assigned
12 to the violent crime section. We take turns as call out in
13 case something happens after hours.

14 On October 10th of 2005, it was a Friday evening. I
15 was on call. I received a page from our dispatch to inform
16 me that we had a missing person reference to possible
17 domestic incident. So, I was called out that evening
18 probably after 11:00, somewhere between 10:30, 11:00 that
19 evening. Responded to the North Myrtle Beach section of
20 Horry County.

21 Q. Now, the, the persons or person that you, was involved
22 potentially -- well, who was the missing person?

23 A. Rebekah Winkler.

24 Q. Now, do you know who had called in?

25 A. No, not at the time. Like I said, I, I had started

1 responding to the Little River section halfway -- I live on
2 the south end of Horry County, Garden City section. As I
3 was in route to North Myrtle Beach, I received information
4 from dispatch that a vehicle ---

5 MR. WILSON: Objection, Your Honor. I don't know what
6 he received and who he received it from, but I object to
7 it, whatever it is that he received.

8 THE COURT: Well, he can state things that are
9 directional to him that form the basis of why he did
10 something, whether it was true or not, what's told to him.
11 You may, may continue.

12 BY MR. HEMBREE:

13 A. I was informed that a vehicle related to the Winklers
14 had been located behind Seacoast Medical Center, which is
15 in the Little River section, so that was a first point that
16 I went to when I responded based on that information. I
17 started obtaining information in reference to an
18 investigation. I didn't have a complainant when I was
19 first called out. With that information, I went to that
20 location.

21 Q. Let me show you a couple photographs that have been
22 marked for identification purposes only, and ask if you can
23 identify first State's Exhibits 52, 53, 54, 55 and 56. So,
24 52 through 56 for identification purposes only, identify
25 those photographs for us if you will, Detective Large.

1 A. These are the photographs that I took when I arrived
2 at the street that runs between Highway 9 and Sea Mountain
3 Highway. There's a road that runs directly behind Seacoast
4 Medical Center where the vehicle was found. That vehicle
5 there belonged to Mr. Winkler.

6 Like I said, I had arrived at that scene. The officer
7 had located the vehicle and had that secured. I got there.
8 Wanted to document the conditions. There was a floor mat,
9 cigarette butt, and a shoe that I took into evidence, and
10 then we had the vehicle towed from that location back to
11 the police department so we could obtain a search warrant.

12 Q. Now, these photographs, 50 through -- 52 through 56
13 for identification purposes, do these photographs fairly
14 and accurately represent this scene as you found it when
15 you arrived that night?

16 A. Yes, sir.

17 Q. Now, I ask you to identify 57, 58, 59 and 60 for
18 identification purposes also. Take a look at those.

19 A. That was the vehicle.

20 Q. But this is, this, these photographs were taken in the
21 daytime?

22 A. Right, yes, sir. That's our -- this is where the
23 Horry County police impound lot is. It's a fenced in,
24 secured in area where we keep property or do our -- if --
25 we have a bay back there where we can put items to process

1 vehicles that have been towed in so they can be processed
2 by our crime scene unit.

3 Q. And these are photographs 57 through 60 for
4 identification, are photographs of the vehicle that was
5 towed in from the road behind Seacoast Hospital?

6 A. Yes, sir.

7 MR. WILSON: I don't have any objections to the
8 photographs, Your Honor.

9 MR. HEMBREE: Thank you, Mr. Wilson. Your Honor, we
10 would now move State's 52 through 60 into evidence without
11 objection.

12 THE COURT: In evidence. They were marked for ID.
13 She just has to take the word ID off and put it in
14 evidence.

15 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
16 STATE'S EXHIBITS 52, 53, 54, 55, 56, 57, 58, 59, 60.)

17 THE COURT: The court reporter is ready.

18 MR. HEMBREE: Thank you, Your Honor. And for purposes
19 of the record, we have an ariel photograph that we're going
20 to use in a few minutes to assist Detective Large in
21 explaining his testimony to the jury. It's State's 68 for
22 identification purposes. Mr. Wilson has indicated he has
23 no objection.

24 MR. WILSON: I have no objections to 68.

25 THE COURT: 68 in evidence.

1 MR. HEMBREE: Thank you, Your Honor.

2 (ARIEL PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S
3 EXHIBIT NUMBER 68.)

4 BY MR. HEMBREE:

5 Q. Detective Large, if you would, step down off the
6 witness stand. I want to bring you down here and let you
7 use these photographs and this ariel photograph. Do you
8 recognize this ariel photograph, State's 68 in evidence?

9 A. Yes, sir.

10 THE COURT: Detective Large.

11 WITNESS: Yes, sir?

12 THE COURT: Have you stand on the other side. You
13 have got to be speaking so she can hear you.

14 WITNESS: Okay. Yes, sir.

15 MR. HEMBREE: Right here. Madame Court Reporter, is
16 that going to be enough?

17 BY MR. HEMBREE:

18 Q. Let me allow you to use this pointer. First I want to
19 take you to -- you received the call out and you had
20 testified that you responded to a location behind Seacoast
21 Hospital.

22 A. Yes, sir.

23 Q. If you would, indicate to the jury where you
24 responded.

25 A. Here is Number 9 that runs out, you know, Seacoast

1 Hospital and the high school over here. There's a roadway
2 that runs in between be right in this back area here on
3 this curve. That's where I, I was headed, Little River
4 section and that's where -- or had made contact with Mr.
5 Winkler's vehicle, and this is where I responded and
6 testified that was...

7 Q. Now, and you testified Mr. Winkler's vehicle was
8 located there. I have got a label that says the drive
9 behind Seacoast Hospital, defendant's car located. Could
10 you put that label near that point of reference?

11 Thank you. Now, tell this jury the condition that
12 you, that you found the car in when you arrived that night.
13 And approximately what time was it when you arrived on the
14 scene?

15 A. It was probably 11 -- probably 11:30, I believe,
16 between 11:30 and 11:40 I arrived there. Like I said, the
17 vehicle was off the roadway. I believe the officer had
18 moved it out of the roadway prior to me getting there, and
19 security was standing by. Like I said, the floor mat or a
20 floor mat and a shoe and cigarette butt were in the roadway
21 which is -- was in the vicinity. I went ahead and
22 documented that and took that into evidence. I did not go
23 into the vehicle because it -- the expectations of privacy.
24 Took the pictures, had towed it to the police department.
25 We obtained a search warrant the next day I believe.

1 Q. Let me show you State's Exhibit Number 54 in evidence
2 and ask if you could tell this jury what that is a
3 photograph of.

4 A. That's a photograph of the vehicle that was located
5 on the roadway when I arrived there that evening.

6 Q. It was located on the roadway, but at this point it
7 had ---

8 A. Pulled off the roadway, yes, sir.

9 Q. And then from another vantage point, 53, just describe
10 to the jury what that is a photograph of.

11 A. That was just again trying to get the vehicle
12 photographed showing where it was in location to the
13 roadway, and you can see it's pulled off in the area, the
14 grassy area.

15 Q. Which is also shown in 54. Now, let me take you to
16 State's Number 52 and have you describe what this
17 photograph -- well, show the jury.

18 A. Basically my vehicle is back behind me and I -- that's
19 where the officer was parked, and that just gives the
20 guardrail, the roadway, Mr. Winkler's vehicle, and how far
21 away the mat and items were that I collected. They were in
22 the roadway there.

23 Q. Okay. So, these items that you're pointing at sort of
24 in the foreground here of the photograph, that's the car,
25 that's the car mat?

1 A. Yes, sir.

2 Q. This is Mr. Winkler's vehicle?

3 A. Yes, sir.

4 Q. Here it has been pulled off the roadway ---

5 A. And the patrol officer that had responded to the scene
6 that ---

7 Q. His vehicle here?

8 A. Yes, sir.

9 Q. And there's another item. I think this would be...

10 A. There was a shoe and a cigarette butt that was
11 collected.

12 Q. Show you State's 55 in evidence, along with 56. They
13 sort of go together, and ask if you can just hold those up
14 and describe to the jury what you see in those photographs.

15 A. Right here is the cigarette butt was found on the
16 ground, and it's in the proximity of the floor mat and the
17 shoe was up above it. Those were the three items that I
18 collected and documented before I moved it. Took this
19 photograph little bit up closer to document the floor mat,
20 and the shoe is actually a flip flop.

21 Q. It appears that ---

22 A. Or sandal.

23 Q. What color on that photograph can you, can you say
24 that the floor mat is?

25 A. You know, with the -- like the black matting in the

1 back. It appears to be tan.

2 Q. Now, the matting appears to be sort of even partially
3 gone or pulled off ---

4 A. Yes, sir.

5 Q. --- or somehow rubbed off. And these items were found
6 actually in the roadway?

7 A. Yes, sir.

8 Q. Detective Large, once you completed your documentation
9 of these items at the scene, was there anybody present at
10 the scene? I know there were other officers there, the
11 other car, but anything related to this case other than law
12 enforcement at the scene?

13 A. Not, not at this, this scene here.

14 Q. Now, you documented it, collected some evidence, a few
15 pieces of evidence?

16 A. Yes, sir.

17 Q. Photographed?

18 A. Yes, sir.

19 Q. Arranged to have the car towed?

20 A. Yes, sir.

21 Q. Did you stay around till the car was towed later?

22 A. No, sir. Officers stayed there. At the time that I
23 was doing, processing this scene, we -- dispatch informed
24 me of Ms. Winkler, Rebekah's car being located off 57. EMS
25 and fire and rescue responded in reference to a car being

1 found off the roadway. It come back to the victim. Once
2 that was secured, the vehicle was going to be towed in, an
3 officer was on scene to -- I left there to further the
4 investigation and responded to Highway 57, which is on down
5 this way here.

6 There was a -- the way -- Mr. Winkler lives in a
7 residence up here, so it was between Number 9 and Highway
8 57, the residence, which was right about here. There was a
9 house to this, what I would call the south because you're
10 heading north. That Ms. Winkler's car. Rebekah's car was
11 found in the wooded area. Went off at a high rate of
12 speed, was up in the trees. So, I responded there.

13 Nobody, nobody from the vehicle was there. Fire and
14 rescue had come there to secure the scene, but nobody --
15 there was nobody in the trees. We found the vehicle in, in
16 the woods.

17 Q. I have got a label here, off Highway 57, Becky
18 Winkler's car located. I'd ask you to, just so the jury
19 will know what we are talking about, mark the spot or put
20 it near the marking where you observed Becky Winkler's car
21 off Highway 57. Thank you very much, Detective. Not even
22 going to -- I won't put you back.

23 MR. WILSON: No objection.

24 MR. HEMBREE: Your Honor, we have State's 61 through
25 67 for identification purposes. We would offer them into

1 evidence at this time without objection.

2 THE COURT: In evidence. 61 through 67.

3 MR. HEMBREE: Thank you, Your Honor.

4 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
5 STATE'S EXHIBITS 61, 62, 63, 64, 65, 66, 67.)

6 BY MR. HEMBREE:

7 Q. Detective Large, describe, if you will, in detail the
8 scene as you found it when you responded to the area off of
9 Highway 57 where Becky Winkler's car was located.

10 A. The vehicle, Rebekah's car had left the roadway at a
11 high rate of speed. You could see where the tire
12 impression went across the yard, and you could barely see
13 the rear end of the vehicle because it was all the way up
14 into the tree, the tree or wooded line where the bush and
15 shrubbery were at. It was dark but like I said, it
16 appeared to have left at a high rate of speed, no braking
17 on the roadway, and went into the wooded brush area.

18 Q. No one was around again?

19 A. No one there. The only people around were people in
20 the house that heard the noise and I believe made a call in
21 reference to the crash they heard, but nobody that was in
22 the vehicle.

23 Q. Let me show you State's 61 in evidence. Now these --
24 of course, it was dark when you responded.

25 A. Yes, sir.

1 Q. Now, these photographs were taken the daylight ---

2 A. Right. I was out there until the daylight and those
3 were taken later -- far later from my first arrival on that
4 particular location.

5 Q. What were the lighting conditions like in that
6 particular area?

7 A. It was dark, no lights.

8 Q. If you will, describe to the jury what we see in
9 State's 61.

10 A. This is the one residence that's located here as you
11 were headed -- you were headed north would be to the right
12 right here or to the left where the car went into the
13 woods. This is their mailbox documenting the actual
14 closest residence.

15 Q. Reference point?

16 A. Right, reference point, yes, sir.

17 Q. Now, let me take you to State's 62. Describe what
18 we're seeing in this photograph. And I tell you what. I'm
19 going to give you 62, 63 and 64; they're all part of a
20 series.

21 A. This is the documentation that tells the vehicle had
22 left the roadway and continued to go all the way up into
23 this wooded area here. This is a part -- a little ways
24 distance indicating the road and the tire tracks going into
25 the wooded area. This is another photograph showing a

1 little bit closer the tire impressions as they cut across
2 the grass and go into the woods. And again, this is
3 showing the ditch that wood -- that where the car went over
4 and continued into the wood line.

5 Q. Now, when these photographs were taken, was the car
6 still at the scene or had it been---

7 A. It had been towed, towed away, taken to the police
8 department and our impound lot.

9 MR. HEMBREE: Publish State's 62, 63 and 64.

10 BY MR. HEMBREE:

11 Q. Detective Large, I'm going to draw your attention now
12 to State's 65, 66 and 67 in evidence. If you will,
13 describe for the jury what we see in these photographs.

14 A. This is the vehicle that was towed from the wooded
15 area ---

16 THE COURT: Your voice.

17 BY MR. HEMBREE:

18 A. This was the vehicle that was towed from the incident
19 location here off of 57 that belonged to the victim,
20 Rebekah. It's taken to the Horry County Police Department
21 and placed in the bay to let our crime scene process it.

22 Q. And if you will, we got three different vantage points
23 here, the front and both sides of the car. Do you note
24 anything, anything about the condition of that vehicle
25 that's significant to you in this, as it relates to this

1 case?

2 A. It just significant that it was again entered the
3 woods at a high rate of speed. You see the damage which
4 trees, vegetation left on it. It damaged to where it ran
5 into a tree in the wood line right here.

6 Q. Front-end damage?

7 A. Yes, sir.

8 Q. The condition of the tires, did you note the condition
9 of the tires?

10 A. Yeah, they -- very muddy, damaged from where the
11 vegetation had gone up in them. I said, just indicates
12 both from the condition of the vehicle and the ruts that
13 were left by the vehicle going in to, to the woods and the
14 distance from the roadway into the woods that it ran into
15 it at a high, high rate of speed.

16 Q. And detective, did you have a chance -- did you have a
17 chance to actually get up into the woods and take a look at
18 the condition of the trees there in the wood line?

19 A. Basically that's how the vehicle stopped there. That
20 caused the vehicle to stop.

21 Q. Did you observe any damage to ---

22 A. Yeah.

23 Q. --- any of the vegetation or other ---

24 A. Yeah. Like I said, there was actually the, the wood
25 line is what stopped the, the forward motion of the

1 vehicle.

2 Q. Detective Large, did you -- you stayed with the case
3 throughout the night?

4 A. Yes, sir. At, at that time when we had two -- well,
5 we had two vehicles and now we felt like we had two missing
6 persons. At that time I stayed out. The Horry County dog
7 team was activated to try to locate, secure the scene,
8 check the -- Mr. Winkler's residence, see if anybody was
9 home there.

10 As, as morning came out, Detective Lloyd, Detective
11 Hayes, Pitts, other detectives, Sergeant Maurice Jones, all
12 of us started working. We had more coming to us because we
13 still had an active case going, two missing persons, and it
14 started adding more people to help. During the a.m. hours
15 we had -- were working, canvassing the area, following up
16 any kind of leads, trying to gather information. At that
17 time in a.m. daylight, Rebekah emerged down here next to
18 the Stephen's Crossroads, what we call down --

19 MR. WILSON: Your Honor, I'm going to object unless he
20 knows this of his own knowledge. He's talking about she
21 emerged and I don't know that he knows that. I don't even
22 know how he could possible know that.

23 WITNESS: I, I was there.

24 MR. HEMBREE: Okay.

25 THE COURT: You were there, continue on.

1 WITNESS: Yes, yes.

2 BY MR. HEMBREE:

3 Q. But you were, you were working the case.

4 A. I was there, right, over in this area where a building
5 was construction over there where the magistrate's complex,
6 library ---

7 Q. Ralph Ellis Building?

8 A. Yes, sir. Ann Pitts went with the victim and my last
9 thing was to helping Neil Livingston and Boyd ---

10 THE COURT: Louder, please, sir.

11 BY MR. HEMBREE:

12 A. My last thing doing it in that particular case was,
13 like I said, document the area that's under construction
14 and pass the case on to Ann Pitts at the time because I was
15 going on vacation.

16 Q. You wrapped up your involvement?

17 A. Right.

18 Q. Passed over control to Detective Pitts?

19 A. Right.

20 Q. Please have a seat back on the stand.

21 MR. HEMBREE: Detective Large, thank you for your
22 patience with us today and please answer any questions
23 defense counsel might have for you.

24 THE COURT: Whenever you're ready.

25 MR. WILSON: I'm sorry?

1 THE COURT: Do you have any questions?

2 MR. WILSON: I don't think I have any. Just give me
3 one second.

4 (A PAUSE.)

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

6 THE COURT: All right. You can step down, officer.

7 WITNESS: Thank you.

8 (THE WITNESS EXITS THE STAND.)

9 THE COURT: I'd like the jury to take a break unless
10 you have got a very, very short witness.

11 MR. HEMBREE: She's fairly short, Your Honor, but ---

12 THE COURT: Let's take a break because I want to do
13 one more segment.

14 I know it's getting late, ladies and gentlemen, and I
15 know that I'm keeping you all here later than, than you
16 want to be here, but that's all because I made you wait
17 this morning. All my fault. But if you would please, I
18 want to do one more segment so if y'all would, let's take
19 no more than ten and we'll get started back.

20 Oh, by the way, I'm sorry, before you go, Clerk, Mr.
21 Foreperson, when you returned the -- when you returned your
22 verdict, you did not date, so if this is exactly the way
23 you returned it, would you put the date on it of February
24 the 2nd, 2008? You have a pen there? See the words above
25 the word, date?

1 MR. HUMPHRIES: Judge, can we approach on a scheduling
2 matter after the jury is excused?

3 THE COURT: Sure.

4 (THE JURY EXITS THE COURTROOM AT 5:43 P.M.)

5 THE COURT: Let me just for the record, the bench
6 conference, the bench conference was -- Mr. Wilson said
7 that Mr. Winkler wanted to ask questions about the police
8 report, and he was concerned it might open the door to too
9 many other things, be detrimental to the defendant. I told
10 Mr. Wilson that this court could not in any way be involved
11 with that. Discussed that with his client and make -- make
12 his decision. So, really I gave him no answer. Is that
13 pretty much accurate of what we discussed at the bench from
14 the state?

15 MR. HUMPHRIES: Yes, Your Honor.

16 THE COURT: The defense?

17 MR. WILSON: Exactly.

18 THE COURT: All right. Yes, scheduling.

19 MR. HUMPHRIES: Well, Your Honor, we are just
20 interested in knowing how long the court wishes to go this
21 evening so we can make sure we have the witnesses here for
22 that.

23 THE COURT: I would like to go till 7:00, one hour and
24 fifteen minutes or somewhere in that area that you have a
25 witness and ends up about that time. That answer your

1 question?

2 MR. HUMPHRIES: Yes, sir. That -- then we will, we
3 intend to call three more witnesses. That should be
4 sufficient.

5 THE COURT: All right, and ends up a quarter till, ten
6 till, five till, then you -- go to seven. I just don't
7 want to go past seven.

8 MR. HUMPHRIES: Very good.

9 THE COURT: All right. So, y'all make your decision
10 on that.

11 MR. HUMPHRIES: Thank you, Your Honor.

12 (OFF THE RECORD.)

13 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
14 71 THROUGH 101 FOR IDENTIFICATION.)

15 (MEN'S CLOTHING MARKED AS STATE'S EXHIBIT NUMBER 102
16 FOR IDENTIFICATION.)

17 THE COURT: Telephones off? Bring in the jury.

18 (A PAUSE.)

19 (THE JURY ENTERS THE COURTROOM AT 6:03 P.M.)

20 THE COURT: Next witness, please.

21 MR. HEMBREE: State calls Phyllis Richardson to the
22 stand.

23 PHYLLIS RICHARDSON, BEING DULY
24 SWORN, TESTIFIES AS FOLLOWS:

25 CLERK OF COURT: Please have a seat. Please state

1 your name for the record and spell your last for the
2 record, and speak into the microphone.

3 WITNESS: Phyllis Richardson, R-i-c-h-a-r-d-s-o-n.

4 THE COURT: Your witness.

5 MR. HEMBREE: Thank you, Your Honor.

6 DIRECT EXAMINATION BY MR. HEMBREE:

7 Q. Ms. Richardson, where do you work?

8 A. I am retired.

9 Q. Retired, and what are you retired from?

10 A. Horry County Probate Court.

11 Q. How long did you work for the probate court?

12 A. Approximately twenty-six years.

13 Q. And when did you retire?

14 A. October of 2007.

15 Q. Were you working for the Horry County Probate Court
16 October the 11th?

17 A. Yes.

18 Q. October the 11th of 2005?

19 A. Yes.

20 Q. And the probate court has an office here in ---

21 THE COURT: Back up just a little bit from the
22 microphone, please, ma'am.

23 BY MR. HEMBREE:

24 Q. The probate court I believe has their main office here
25 in the courthouse in Conway?

1 A. That's correct.

2 Q. But I'm sure some, some satellite offices also?

3 A. That is correct.

4 Q. Where are the satellite offices for the probate court?

5 A. There is one at the Ellis Building at the North Strand
6 and one at South Strand.

7 Q. Okay. Now, the Ellis Building is located where?

8 A. On Highway 57.

9 Q. And it's almost up to what's called Stephen's
10 Crossroads, Highway 57 and Highway 9?

11 A. That is correct.

12 Q. Where Bell and Bell Pontiac?

13 A. That is correct.

14 Q. Now, where were you assigned your duties, in carrying
15 out your duties? Where were you assigned back in October
16 of 2005?

17 A. I was working at the Ellis Building.

18 Q. Now, how many probate court employees work at the
19 Ellis Building?

20 A. At that time, one.

21 Q. You?

22 A. Yes, sir.

23 Q. And how long had you been working at the Ellis
24 Building at that point in time?

25 A. Since May of 2000.

1 Q. Now, tell this jury. Do you recall when you arrived
2 for work on October the 11th, 2005?

3 A. Yes, sir.

4 Q. Did something unusual happen that day that you
5 recall?

6 A. When I pulled into the parking lot, I saw a man and a
7 woman walking into the parking lot.

8 Q. Now, just so this jury can sort of be oriented, about
9 what time of day was it?

10 A. Approximately 7:30.

11 Q. And you entered the parking lot, you pulled in off of
12 Highway 57. How would you get to your office?

13 A. Once I pulled off of 57 into the parking lot, I would
14 take a right, circle the parking lot, go all the way around
15 to the back of the building.

16 Q. And pull in the back side?

17 A. That is correct.

18 Q. Now, as you pulled in the parking lot, at what point
19 did you first see a man and a woman coming -- were they in
20 the parking lot by the time you saw them?

21 A. The woman was. The man was not on the concrete at the
22 time that I saw him.

23 Q. Where was he?

24 A. There's a little streak of grass between the Ellis
25 Building and the VFW, and he was on the grass coming across

1 into the parking lot. The lady was already in the parking
2 lot.

3 Q. Now, let me have you just sort of continue to describe
4 the scene a little bit. What was -- at the time, what was
5 across the street from the VFW?

6 A. In front of the VFW?

7 Q. Yes, ma'am, across Highway 57 from the VFW?

8 A. If I remember correctly, there's a cement type place
9 that may have been across there.

10 Q. Okay, and any projects under construction over there?

11 A. There have been some construction, yes, going on.

12 Q. Like a warehouse or ---

13 A. Yes ---

14 Q. --- something like that?

15 A. --- behind the VFW hut.

16 Q. Gotcha. Now, when you saw this woman, can you say how
17 close you passed to her when you were in the car?

18 A. Approximately maybe 25 to 30 feet.

19 Q. Okay. A little farther than maybe this bar, something
20 like that?

21 A. Yes. When she was walking in, I was -- I really
22 passed her because she was walking up as I was driving that
23 way.

24 Q. And how was she dressed?

25 A. She had on a long shirt. It didn't go down to her

1 knees, about half-way between her hips and her, and her
2 knees, yes, sir.

3 Q. Like this?

4 A. Yes, sir.

5 Q. All right, and what else?

6 A. That was all that I could see.

7 Q. How about the shoes?

8 A. She did not have on shoes.

9 Q. What was her general condition?

10 A. She appeared to be very distraught, very disoriented.
11 She, she acted confused.

12 Q. Did you recognize her at that initially?

13 A. No, sir.

14 Q. What color hair did she have?

15 A. It was dark looking, brown maybe.

16 Q. And as she's coming across the parking lot, how fast
17 was she moving?

18 A. She was walking slowly and her head was tilted down
19 somewhat.

20 Q. Okay. Now, how far behind her was the man?

21 A. Maybe about 30 feet.

22 Q. Okay.

23 A. He was walking much faster.

24 Q. All right. What was he doing? Well, let me ask you
25 this. How was he dressed?

1 A. He just had on a pair of shorts.

2 Q. And any shirt?

3 A. No, sir.

4 Q. 7:30 in the morning?

5 A. No shirt.

6 Q. Okay, and how fast was he moving?

7 A. He was walking much faster.

8 Q. Coming after her?

9 A. Behind her, yes, sir.

10 Q. All right.

11 MR. WILSON: I object, Your Honor. I object to him
12 leading her. If -- this is his witness and he has the
13 right to ask her questions, but he's leading her. He's
14 asking her ---

15 THE COURT: Well, I think the other ones may have
16 approached leading. The last one was. Be careful with
17 your questions.

18 MR. HEMBREE: Thank you, Your Honor. Thank you.

19 BY MR. HEMBREE:

20 Q. And can you describe his -- what was he doing as he
21 was walking behind her?

22 A. His hands were in the air as though he were raging and
23 agitated, yes, sir.

24 Q. Could you, could you hear anything?

25 A. No, sir.

1 Q. Could you, could you tell if he was saying anything?

2 A. His mouth was moving like he was talking, but I heard
3 nothing.

4 Q. Did you stop?

5 A. No, sir.

6 Q. And did you initially recognize him?

7 A. No, sir.

8 Q. Where did you go after you passed by these folks?

9 A. I turned on -- continued through the parking lot to
10 the back of the Ellis Building.

11 Q. Okay.

12 A. And that's where I parked.

13 Q. Was that normal for you?

14 A. Yes, sir.

15 Q. Same place you always parked?

16 A. Yes, sir.

17 Q. What did you do next?

18 A. I went inside the building and unlocked and went into
19 my office.

20 Q. And where was your office located in the building?

21 A. When you walk in the back door, it's the first office
22 on the right.

23 Q. And what other offices are back in that -- it's kind
24 of the back of the ---

25 A. Yes, sir.

1 Q. What other offices are located in that Ellis Building?

2 A. Across the hall was Judge Whitley, the magistrate.

3 Down the hall was four county police office and a restroom.

4 Q. Now, the county police office, did you have occasion

5 -- and was, was some -- was that manned all the time?

6 A. No, sir.

7 Q. And do other departments use that office from time to
8 time?

9 A. Yes, sir. There was an office on the right in the
10 back corner that the probate court was using at that time
11 to perform wedding ceremonies in.

12 Q. So, it really wasn't your space, but it was kind of on
13 loan to you?

14 A. That's right. It belonged to the county police.

15 Q. What was located in that office?

16 A. A desk, couple chairs, telephone.

17 Q. Now, after you unlocked the door and you went into
18 your office, what was your next course, what was your next
19 course -- what's your habit and routine in a day?

20 A. I usually turn on my computer, laid my things down,
21 and I always had a water bottle that I would pick up, go to
22 the restroom on my way to the break room to get ice and
23 water.

24 Q. And how long does it usually take before you head down
25 the hallway?

1 A. Within ten minutes.

2 Q. Now, did you, in fact, go get your water bottle and
3 go, go through your normal routine that day?

4 A. Yes, sir.

5 Q. Did you observe anything unusual when you went to get
6 your water?

7 A. Before I went to get the water, I went to the
8 restroom, and the restroom is located where the four county
9 police offices were located. And when I went to the
10 restroom, I noticed there was a light on in the room that I
11 performed the ceremonies in, which was unusual for the
12 light to be on. And I heard some mumbling. And I looked
13 and there was a lady in that office on the telephone with
14 her back to me.

15 Q. Had you seen this person before?

16 A. I recognized her to be the lady that I had just seen
17 in the parking lot.

18 Q. What was she wearing again?

19 A. She just had on a shirt.

20 Q. Could you hear what she was saying on the telephone?

21 A. No, sir.

22 Q. Now let me ask you about this police office. Was it
23 normally locked?

24 A. Sometimes it was and sometimes it was not. I had
25 requested it not be locked.

1 Q. So y'all could get in there when you needed to?

2 A. That's correct. Usually the lights were off.

3 Q. Gotcha. As you -- after you saw her back there, did
4 you say anything to her?

5 A. No, sir.

6 Q. What did you do?

7 A. When I knew that she was in the building, then I
8 immediately assumed, well, if she got in the building, this
9 gentleman must have come into the building, too. So, I
10 proceeded to go look for two ladies that work in the
11 building in the maintenance department to make sure they
12 were okay. They were my friends and I was just looking for
13 them.

14 Q. It's still pretty early in the morning.

15 A. Yes, sir.

16 Q. Not much activity around.

17 A. No, sir, none at all.

18 Q. Did you find the ladies from maintenance?

19 A. Yes.

20 Q. Checked on them?

21 A. They were fine.

22 Q. Did you ever see the, the man again as far as in the
23 building? Did you see him that, that morning?

24 A. No, sir, I never saw him again.

25 Q. Now, let me show you this diagram, State's Exhibit 68

1 in evidence, and ask you to point out, and I know it's a
2 long way -- it's not -- the detail is not that important,
3 just point out to the jury. This is Highway 9 and Highway
4 57. Point out to the jury the area of the Ralph Ellis
5 Building.

6 THE COURT: Speak real loud now, ma'am, when you're
7 not over there by the mic.

8 BY MR. HEMBREE:

9 A. There's ---

10 Q. There's a mic.

11 THE COURT: Speak loud where I can hear you.

12 WITNESS: Yes, sir.

13 BY MR. HEMBREE:

14 A. There's the Ellis Building.

15 Q. And I'm going to ask you to label that Ralph Ellis
16 County Building. Becky, Becky Winkler calls police,
17 defendant seen. Would this be a fair place to put it?

18 A. Yes, sir.

19 THE COURT: She said yes, sir?

20 WITNESS: Yes.

21 BY MR. HEMBREE:

22 Q. Now on this ariel photograph, and again I'm not going
23 to make you come down and show it to the jury at this time,
24 but I see that there are parking lots in front and in the
25 back of the building. And you parked in the back parking

1 lot here?

2 A. That's correct.

3 Q. And if you could just sort of point out where the,
4 where is the -- was it the VFW Club?

5 A. VFW Hut, yes.

6 Q. VFW Hut. Where is it located in relation to the Ralph
7 Ellis Building?

8 A. It would be on the right side.

9 Q. So, this building right here?

10 A. That's correct.

11 Q. Okay.

12 THE COURT: Can you hear her?

13 MR. WILSON: Your Honor, no, sir. I think I have an
14 objection, but I'm not real sure. Maybe I misunderstood
15 the witness. Did I understand her to say that there was a
16 police -- call to the police? That she was present when
17 there were calls made to the police? Is that her
18 testimony?

19 MR. HEMBREE: She was present when there was a call
20 made and there will be subsequent testimony ---

21 MR. WILSON: I can ---

22 THE COURT: And I agree. Just don't show the sticker
23 to the jury.

24 Please, ladies and gentlemen, disregard that comment
25 at this time.

1 MR. HEMBREE: Thank you, Your Honor. That is all the
2 questions I have of this diagram.

3 THE COURT: All right. You have any questions, Mr.
4 Wilson?

5 MR. HEMBREE: No, I have a couple.

6 THE COURT: Oh, I'm sorry. Go ahead, sir.

7 MR. HEMBREE: I'm wrapping it up.

8 BY MR. HEMBREE:

9 Q. Had you known Rebekah Winkler prior to October the
10 11th, 2005?

11 A. Yes, sir.

12 Q. How did you know Ms. Winkler?

13 A. She and my sister were best friends.

14 Q. And you had seen her on how many occasions?

15 A. Probably maybe eight to ten times.

16 Q. Spoken to her?

17 A. Yes, sir, numerous times.

18 Q. Were you aware that she was married?

19 A. Yes, sir.

20 Q. Did you know who she was married to?

21 A. Yes, sir.

22 Q. Tell this jury how you knew who Rebekah Winkler was
23 married to.

24 A. I performed their ceremony through the probate court.

25 Q. And I believe that was on or October the 10th of 2003?

1 A. I'm not sure of the exact date of the ceremony.

2 Q. The -- where was that ceremony performed?

3 A. It was performed in the office of the county police
4 office that we used.

5 Q. Was that the same office that you saw the woman making
6 the phone call from?

7 A. Yes, sir.

8 Q. Did you recognize who that person was?

9 A. No, sir.

10 Q. On October the 11th, 2005?

11 A. No, sir.

12 Q. If you would, describe to me her facial condition or
13 hair.

14 A. Her hair is very matted, very tangled looking. It
15 appeared to be bald spots. Like I could see, like skin. I
16 could see her, her head.

17 Q. What happened after you went back to your office? Did
18 there come a point in time that the building, that the
19 building became quite active?

20 A. Yes.

21 Q. What, what type of activity?

22 A. There was police officers there, ambulance I think had
23 come, some EMS workers were in the building.

24 Q. Did you subsequently learn who the person was on the
25 telephone?

1 A. Yes, sir.

2 Q. Who was that person?

3 A. Becky.

4 MR. HEMBREE: Thank you. Please answer any questions
5 the defense counsel may have.

6 THE COURT: Okay. Mr. Wilson?

7 MR. WILSON: Your Honor, I think I just have a couple
8 of questions.

9 CROSS-EXAMINATION BY MR. WILSON:

10 Q. Ma'am, as I understand it, you had seen -- you had
11 performed the marriage ceremony I guess earlier in, say,
12 2003?

13 A. I don't remember the exact year, but I did perform the
14 ceremony.

15 Q. Okay, and, and as I understood, you told the solicitor
16 that Ms. Winkler had been friends with your sister?

17 A. That's correct.

18 Q. Okay, and had you seen her on many occasions before
19 that then with your sister?

20 A. Before the ceremony?

21 Q. No, before the day that you're telling the solicitor
22 about a second ago.

23 A. Yes, sir.

24 Q. All right, and would that have been at your home or at
25 her home or where?

1 A. I had seen her at the Ellis Building.

2 Q. Yes, ma'am.

3 A. I had seen her at restaurant and I had seen her at my
4 sister's home.

5 Q. Okay, and, and what I'm asking I guess is at your
6 sister's home, had you seen her on more than one occasion
7 there or just once or?

8 A. One occasion.

9 Q. All right?

10 A. Is all I remember.

11 Q. So, you had seen her three or four times before you
12 saw her this particular -- is that what you're saying?

13 A. No, I saw probably about eight times or so.

14 Q. So, seven or eight times?

15 A. Yes, sir.

16 Q. Or eight or nine times. All right, and each of those
17 times that you had seen her in the past were for short
18 periods?

19 A. Well, there were sometimes that were longer than other
20 times.

21 Q. Well, what's the longest period of time that you would
22 have been in her presence?

23 A. When she ---

24 Q. That you can recall?

25 A. Forty-five minutes to an hour.

1 Q. Okay, and, and you had known her since what year?

2 A. I don't recall the year. Whenever she and my sister
3 became friends.

4 Q. Okay. So if in 2000 and whatever year it was that you
5 performed the marriage ceremony in 2003, '4, whenever it
6 was, you had known her for several years before that. Is
7 that what you're saying?

8 A. A couple of years.

9 Q. All right. So, you had known her a couple of years
10 prior to the marriage ceremony?

11 A. That's correct.

12 Q. All right, and after the marriage ceremony, how many
13 times did you see her you think before the morning in
14 question?

15 A. Maybe four or five times.

16 Q. Okay. So, you had only seen her for two or three
17 times before that. Is that what you're saying?

18 A. Yes, sir.

19 Q. All right. Now, on that morning did she see you?

20 A. A little later she did.

21 Q. All right, but you didn't know that morning that she
22 saw you?

23 A. No, sir.

24 Q. And you didn't go to her that morning?

25 A. No, sir.

1 Q. All right, and you saw her but you didn't go to her
2 and you didn't say anything to her?

3 A. No, sir.

4 Q. All right, and you said that you saw a man behind her.
5 Now, you -- now, this is the -- was this the same man that
6 she married at the ceremony, or do you know?

7 A. I do not know.

8 Q. Okay, all you know about is a man?

9 A. That's correct.

10 Q. All right, and the -- as I understand your testimony,
11 she was dressed, she had on a shirt of some type?

12 A. That's correct.

13 Q. All right, and no shoes?

14 A. No shoes.

15 Q. All right, and the man had on what?

16 A. I just recall a pair of shorts.

17 Q. Okay, and no shirt as you can tell?

18 A. He had on no shirt.

19 Q. All right, and, and you said that the man -- they
20 weren't walking together, one was ahead of the other?

21 A. That's correct.

22 Q. She being ahead of him. And how far ahead of the man
23 would she have been?

24 A. Maybe 25 to 30 feet.

25 Q. Okay. Here to where the cameras are?

1 A. Yes, sir. Not any further than that.

2 Q. Okay, and, and could you tell -- you said at one point
3 I think in your conversation with the solicitor that she
4 was waving her arms or flailing -- he was waving his arms
5 or flailing his arms. Could you hear any conversation?

6 A. No, sir, I heard nothing.

7 Q. All right, and you went on into the, to the complex
8 and went about your daily routine, right?

9 A. Yes, sir.

10 Q. And as you did, you went to get some coffee or to get
11 some water I think is what you're ---

12 A. That's correct.

13 Q. And when you were doing that, that's when you say you
14 saw her in the little room?

15 A. On my way to the restroom. I went to the restroom
16 first.

17 Q. And did you ever see the man in the building?

18 A. No, sir.

19 Q. Okay. Did you ever see the two of them -- that is,
20 the man and the woman that you saw -- did you ever see the
21 two of them have any contact whatsoever?

22 A. That particular morning?

23 Q. Yes, ma'am.

24 A. No, sir.

25 Q. All right. Now, you were not present when any phone

1 -- when you were, you were being asked I think you said
2 that she was on the phone and you could hear mumbling?

3 A. Mumbling, yes, sir.

4 Q. Okay, but you don't know what the mumbling was or who
5 she was talking to?

6 A. No, sir.

7 Q. All right.

8 MR. WILSON: Bear with me for just one second, Your
9 Honor.

10 THE COURT: All right.

11 (A PAUSE.)

12 MR. WILSON: I don't have any other questions. Thank
13 you, ma'am.

14 THE COURT: Redirect?

15 MR. HEMBREE: No redirect, Your Honor.

16 THE COURT: Retired lady, you may return to
17 retirement.

18 WITNESS: Thank you, sir.

19 (THE WITNESS EXITS THE STAND.)

20 THE COURT: Next witness, please.

21 MR. HEMBREE: The state calls Officer C.L. Thompson to
22 the stand.

23 CURTIS L. THOMPSON, BEING DULY
24 SWORN, TESTIFIES AS FOLLOWS:

25 CLERK OF COURT: Please have a seat. Please state

1 your name. Spell your last for the record.

2 WITNESS: Sure.

3 CLERK OF COURT: Please speak into the microphone.

4 WITNESS: Okay. First name is Curtis, last name is
5 Thompson, T-h-o-m-p-s-o-n.

6 THE COURT: Speak into the microphone. Thank you,
7 Officer.

8 WITNESS: Okay.

9 THE COURT: Your witness.

10 MR. HEMBREE: Thank you, Your Honor.

11 DIRECT EXAMINATION BY MR. HEMBREE:

12 Q. Officer Thompson, you work for the Horry County Police
13 Department?

14 A. That is correct.

15 Q. For how long?

16 A. Four and a half years.

17 Q. In what capacity?

18 A. I am what's called on the COT team at this time.

19 Q. The COT team?

20 A. Yes.

21 Q. What does that stand for?

22 A. Community Outreach Team.

23 Q. And back in 2005, October the 11th were you -- what
24 were your duties with the Horry County police at that time?

25 A. I was assigned to the uniform patrol D Squad.

1 Q. D Squad?

2 A. That's correct.

3 Q. And did you have a particular part of the county that
4 you specifically patrolled at that time?

5 A. That would be north end, Little River.

6 Q. Good enough. Were you on patrol on October the 11th,
7 2005?

8 A. Yes, sir, I was.

9 Q. Were you dispatched to the Ralph Ellis Building early
10 that morning?

11 A. That is correct.

12 Q. What was the purpose of your dispatch?

13 A. I was to meet with a possible missing person from a --
14 the previous night.

15 Q. From the previous night?

16 A. That's correct.

17 Q. Had you already been briefed on the developments in
18 the case from the prior night?

19 A. Yes, I was briefed from the, the officer that I
20 relieved.

21 Q. Regarding two vehicles and so forth?

22 A. That's correct.

23 Q. Did you know who you were looking for?

24 A. Not at the time.

25 Q. Now, who did you go -- did you go to the Ralph Ellis

1 Building with anyone else?

2 A. No, I was dispatched by myself.

3 Q. Okay. When you arrived, what did you find?

4 A. A white female that was very afraid that had been,
5 been into some type of altercation, at which time we
6 confirmed that she was the person that was missing from the
7 previous night.

8 Q. And tell me the name of the person that was missing
9 from the previous night.

10 A. Rebekah Winkler.

11 Q. When you, when you first made contact with her, where
12 did you meet with her?

13 A. Actually it was in the old police department which is
14 now the office of Lieutenant Duke on Highway 57 North.

15 Q. In the Ralph Ellis Building?

16 A. That is correct.

17 Q. Y'all had some space in that building that you sort
18 of used from time to time?

19 A. Yeah, it was a couple desks and some chairs and
20 things like that.

21 Q. Telephone?

22 A. Yes, telephone.

23 Q. Tell the jury, if you can, and just describe Ms.
24 Winkler's physical condition.

25 A. I believe her left side of her hair was -- looked like

1 it had been ripped out. Black eyes and abrasions where she
2 had been dragged through the woods, things like that.

3 Q. Scratches?

4 A. Yes.

5 MR. WILSON: Your Honor, I object to his concluding
6 anything. I mean, he, he asked him to describe the
7 physician condition, I think, which is appropriate. But
8 that's not what he's doing. He's going beyond her physical
9 condition. He's testifying now about his conclusion about
10 what he says he thought he saw, and I ---

11 THE COURT: Other than the issue of woods, I would
12 admit it. I guess there's no way he can -- he can give his
13 impression but as far as where it would have happened, I
14 would sustain that. But the other matters I would overrule
15 the objection.

16 MR. WILSON: Your Honor, specifically what I'm
17 referring to is that his reference to her having been drug.
18 That's what I am specifically referring to. That's
19 obviously his conclusion and not the necessarily a fact.

20 MR. HEMBREE: I'll try -- I can rephrase the question,
21 Your Honor.

22 THE COURT: Go ahead. Proceed on.

23 MR. HEMBREE: Thank you, Your Honor.

24 THE COURT: I overrule the objection.

25 MR. HEMBREE: Thank you.

1 BY MR. HEMBREE:

2 Q. And, and you don't know if she was dragged through the
3 woods or any other place. You can't say that.

4 A. No, I can't say that, no.

5 Q. But you can describe the nature of her injuries?

6 A. That is correct.

7 Q. And if you would and in detail, describe that, those
8 injuries that you observed on her to this jury.

9 A. There were cuts on her arm, cuts on her head, things
10 like that.

11 Q. Legs?

12 A. Abrasions, yes.

13 Q. I want to show you what's been marked for
14 identification purposes only as State's 102 for ID and ask
15 if you can identify these items.

16 A. Yes, I can.

17 Q. What is that?

18 A. That was the shirt that Ms. Winkler had on at the time
19 I responded to the Ralph Ellis Building.

20 Q. And this item?

21 A. Some shorts that she was wearing as well.

22 Q. Was Ms. Winkler wearing any shoes?

23 A. I don't recall.

24 Q. What was Ms. Winkler's, her demeanor, just her general
25 demeanor?

1 A. Afraid, distraught.

2 Q. What actions did you take with her?

3 A. I secured her because she was afraid that the
4 defendant was actually possibly inside the building. I
5 didn't leave her side at, at her request.

6 MR. WILSON: Your Honor, I, I ---

7 THE COURT: I waited for your objection. You didn't,
8 but I -- anyway, comes too late. Proceed on.

9 BY MR. HEMBREE:

10 Q. And you stayed with her. What happened next? Did
11 you, did you conduct any further investigation at that
12 point?

13 A. No, I didn't.

14 Q. What did you do just, wait?

15 A. I waited for the detectives to respond. I just
16 secured her until the EMS transported her to Seacoast ER.

17 Q. And did you call the ambulance?

18 A. No. Actually, EMS was on location just standing by.

19 Q. What detectives arrives, if you recall?

20 Q. Detective Large and Detective Pitts went to the ER at
21 Seacoast where she met up.

22 Q. And that ended your involvement with this case, at
23 least at that stage?

24 A. At that stage.

25 Q. Now, during the course of the day, did you, were you

1 requested to do other things in connection with this case?

2 A. Yes. After Ms. Winkler was transported to Seacoast,
3 myself and Officer Hemingway attempted to locate the
4 suspect, which wasn't -- unsuccessful at the time.

5 Q. Where did you go to try to locate the suspect?

6 A. One location was Bitter Spar, which is also in the
7 Little River section of Horry County.

8 Q. And were you familiar with that section of the county?

9 A. Yes.

10 Q. Let me show you State's Exhibit 68 in evidence and if
11 you will, show us the location where you went to look for
12 the defendant, for the suspect.

13 THE COURT: Real loud now, Officer. Remember the
14 microphone is to your back.

15 WITNESS: I'm sorry. I'm turning back around.

16 BY MR. HEMBREE:

17 Q. What did the defendant know, where did defendant live.
18 Check his location first.

19 THE COURT: No, no talking, sir, unless you speak
20 loud.

21 WITNESS: Okay.

22 BY MR. HEMBREE:

23 A. This is the main entrance to Stone Edge Boulevard, and
24 this road right here is Bitter Spar.

25 Q. I've got -- and that was whose residence?

1 A. Louis Winkler.

2 Q. And would it be fair for me to -- I've got a label
3 here, 2408 Bitter Spar Road, Louis Winkler's house.

4 A. Yes, it's the first house on that corner.

5 Q. I'll place it next to that location that you've
6 identified. Is that a fair spot?

7 A. Yes.

8 Q. Now, you said that was unsuccessful.

9 A. That is correct.

10 Q. How many times did you stop by the house that day?

11 A. Just once that day.

12 Q. Throughout the day, did you -- were you called upon to
13 look at any locations for the suspect, Louis Winkler?

14 A. That is correct.

15 Q. What other, what other locations did you visit?

16 A. The location off of Tall Wood Avenue, which is located
17 also on 57 South. That was later on in the afternoon.

18 Q. All right, and was, was the defendant located?

19 A. Yes, he was at that time.

20 Q. Tell the jury the circumstances under which the
21 defendant was located, the suspect was located later that
22 afternoon.

23 A. Okay. Myself and Officer Hemingway responded to an
24 address off of Redtip, which is off of Tall Avenue off 57
25 South. I respond to a residence, at which time we was met

1 by the residence owner. Officer Hemingway did advise the
2 owner why we were at the location, and shortly after the
3 resident owner did say that Mr. Wilson was inside.

4 MR. WILSON: Objection.

5 THE COURT: Please don't ---

6 WITNESS: Okay. I'm sorry.

7 THE COURT: --- tell us what someone said.

8 WITNESS: Yes.

9 THE COURT: You can say what you learned, not what
10 someone said.

11 WITNESS: Right.

12 BY MR. HEMBREE:

13 Q. You, how were you, how were you -- how did you know to
14 go to [REDACTED]?

15 A. Detective Ann Pitts contacted Office Hemingway.

16 Q. Okay. So, somebody somewhere, you don't know ---

17 A. No.

18 Q. --- why you were told to go there?

19 A. No. Just responded.

20 Q. Just told to go there and see if he was there?

21 A. That is correct.

22 Q. And you did?

23 A. That is correct.

24 Q. About what time of the day was that, if you recall?

25 A. I want to say it's close to shift, so maybe between

1 4:30 and 5:30, somewhere along in there.

2 Q. And you got to the -- how many -- you had two officers
3 there?

4 A. Yes, myself and Officer Hemingway.

5 Q. Two vehicles?

6 A. Yes, two vehicles.

7 Q. You indicated you met the owner.

8 A. Yes.

9 Q. Where? What part of the yard or house did you
10 meet ---

11 A. At the front porch. At the front door, I'm sorry.

12 Q. Without saying what the owner said, ultimately what
13 did you do as a result of that conversation with the owner?

14 A. We went in, went into the house, at which time we
15 found Mr. Winkler sitting at a table.

16 Q. And where? What part of the house?

17 A. Being the dining area.

18 Q. And kitchen table?

19 A. Yeah, kitchen table.

20 Q. What was he doing?

21 A. Eating a sandwich.

22 Q. And what did you do with him?

23 A. At the time he was detained.

24 Q. Placed under arrest?

25 A. Placed under arrest.

1 Q. And transported to?

2 A. Officer Hemingway transported him to the M.L. Brown
3 Building.

4 Q. And that concluded your involvement?

5 A. That is correct.

6 Q. Only other thing I wanted to do is have you identify
7 that final location publication, [REDACTED]. This
8 label says [REDACTED], Louis Winkler arrested
9 10/11/05. Is that a fair characterization of your
10 testimony?

11 A. That is correct.

12 Q. I'm going to let you take a look at that diagram.

13 A. It would be this road that's right here.

14 Q. And I would -- that residence right there?

15 A. That is correct.

16 Q. I'm placing the corner of this label next to that
17 residence. Is that fair?

18 A. Yes, it is.

19 Q. That indicates the house where you found him?

20 A. That is correct.

21 MR. HEMBREE: Officer Thompson, please answer any
22 questions Mr. Wilson has for you.

23 WITNESS: Okay.

24 THE COURT: Okay, Mr. Wilson.

25 CROSS-EXAMINATION BY MR. WILSON:

1 A. Let me ask you. On the morning you got the call to go
2 to Ralph Ellis Center.

3 A. Yes, sir.

4 Q. You went alone?

5 A. That is correct.

6 Q. All right, and as I understand it, when you got there
7 there was a lady there and she was wearing these items that
8 you pointed out to us?

9 A. That is correct, sir.

10 Q. So, she had a shirt on or a T-shirt and she had a pair
11 pants or some kind of underpants. Is that -- shorts, some
12 type ---

13 A. Shorts, that's correct.

14 Q. All right, and was -- when you arrived that -- you
15 know what time it was that you got there?

16 A. It was early in the morning, but I cannot recall the
17 actual time.

18 Q. Was it before 8?

19 A. Possibly before 8, around 8, 8:30.

20 Q. Okay, and when you arrived, she was there. Was she
21 alone at that time?

22 A. No, she wasn't.

23 Q. All right. Who would have been with her at that time,
24 the time you arrived?

25 A. I believe there was some fire fighters that were

1 assisting her.

2 Q. Okay, so there was some other people already there
3 when you arrived is what you're saying?

4 A. That's correct.

5 Q. All right. Now, did you transport her to ---

6 A. No, I did not.

7 Q. So, you went there and you took a police report? Did
8 you do a police report?

9 A. I did a, I did a supplement to the actual original
10 report, that is correct.

11 Q. All right, and, and when you left, was she still there
12 at ---

13 A. No. I did not leave her side until she was
14 transported to EMS, to the Seacoast ER.

15 Q. All right. At any point in time that morning when you
16 were there at the Ralph Ellis Center, did you see Mr.
17 Winkler there?

18 A. No, I didn't.

19 Q. Now later that morning you then, after she was
20 transported, you went to look for him, correct?

21 A. That is correct.

22 Q. All right, and as I understand it, you ultimately did
23 find him, and he was at Bitter Spar Road?

24 A. No, he was not.

25 Q. I'm sorry, [REDACTED], [REDACTED]?

1 A. That's correct.

2 Q. All right, I, I apologize, and when you got to [REDACTED]
3 [REDACTED], he was there and he was eating?

4 A. Yes, he was.

5 Q. All right, and you went into the house?

6 A. Yes, we did.

7 Q. All right. Did anybody try to keep you from coming
8 in?

9 A. Initially they did.

10 Q. Who did?

11 A. The residence owner.

12 Q. They wouldn't let you come in the house?

13 A. No, it wasn't that they wouldn't let us come in the
14 house. It was that they were trying to delay us from going
15 in the house.

16 Q. Delay you from going in the house, but you didn't have
17 a search warrant?

18 A. No, we did not.

19 Q. All right, and when you went to the door, who -- did
20 you ask for Mr. Winkler?

21 A. No, we did not. Actually, resident owner met us
22 outside.

23 Q. So, they were wanting to find out why you were there?

24 A. That is correct.

25 Q. All right, and once they found out what, why you were

1 there, they let you in?

2 A. Yes. They gave us consent to go in.

3 Q. And when you got in on, he was sitting there at the
4 table and he was eating. Did he give you any resistance?

5 A. No, he did not.

6 Q. And you arrested him at that time?

7 A. Yes. Office Hemingway actually was the one.

8 Q. All right.

9 A. That arrested.

10 Q. All right, who transported him, you or ---

11 A. Officer Hemingway.

12 Q. All right, but you got the chance to see him that
13 morning, did you not, before he was transported?

14 A. That afternoon I did. I didn't see him that morning.

15 Q. You didn't see him that morning? Well, the arrest at
16 Redtail, was that in the afternoon?

17 A. That was in the afternoon, that's correct.

18 Q. All right. So, you did see him when you were at
19 Redtail?

20 A. That is correct.

21 Q. All right. Tell me about his -- how was he at that
22 time? You described the condition of Ms. Winkler at the
23 time. What was his physical condition?

24 A. His condition was at -- clean.

25 Q. What was he wearing?

1 A. That I did not recall.

2 Q. Well, you wouldn't have made a report of that that
3 morning, that ---

4 A. No, I wouldn't.

5 Q. --- afternoon about what he was wearing when ---

6 A. That morning?

7 Q. --- you arrested him? No, in the afternoon when you
8 arrested him.

9 A. No, sir. I did not do a report. Officer Hemingway
10 just transported him to Detective Ann Pitts.

11 Q. Okay. Well, did he have any scratches or bruises that
12 you could see?

13 A. None that I could see.

14 Q. And was -- but you don't know what he was wearing?

15 A. No, I do not.

16 Q. Do you know whether he had on long sleeves or short
17 sleeves, or whether he had on pants or long pants or short
18 pants, or if he had on shoes, for instance? Do you know
19 any of those things?

20 A. Short sleeve shirt.

21 Q. You sure? If you don't know, I'm just asking. I'm
22 not -- I don't -- I'm just asking you ---

23 A. No, I actually don't recall.

24 Q. All right.

25 MR. WILSON: I apologize, Your Honor. If you could

1 bear with us one second?

2 THE COURT: Yes.

3 (A PAUSE.)

4 BY MR. WILSON:

5 Q. Just let me show you these photographs, ask you take a
6 look at them. Is that how he looked that morning, or do
7 you not remember at all?

8 A. I don't.

9 Q. Just don't recall?

10 A. Yes, sir.

11 Q. Okay.

12 MR. WILSON: No other questions. Thank you, sir.

13 THE COURT: Redirect?

14 MR. HEMBREE: None. No redirect, Your Honor. We'd
15 ask that Officer Thompson be excused.

16 MR. WILSON: No objections, Your Honor.

17 THE COURT: You may return to your duties.

18 WITNESS: Thank you.

19 (THE WITNESS EXITS THE STAND.)

20 MR. HUMPHRIES: May we approach, Judge, briefly?

21 THE COURT: You may.

22 (OFF-THE-RECORD BENCH CONFERENCE.)

23 THE COURT: Ladies and gentlemen of the jury, I'm
24 discussing with them. The next witness would take more
25 than fifteen minutes or so. So, we will end for the day at

1 this time. We've done at this time six witnesses, seven
2 more witnesses. We will convene tomorrow.

3 If you would, to make sure I'm not having y'all wait
4 and make sure we pretty much get started on time, tomorrow
5 morning I'm not going to start until 9:30 for you, okay,
6 since you had to wait so much. So, you'll get a little
7 longer sleep or whenever, but we'll see you then tomorrow
8 morning.

9 Please do not discuss this case. Don't look at any
10 local news, see any local newspapers. See you at 9:30
11 tomorrow morning. See you then.

12 (THE JURY EXITS AT 6:48 P.M.)

13 THE COURT: Mr. Wilson, somehow I've been informed
14 that while you were attempting, you know, to get that
15 picture in, which you probably can get those pictures in.
16 You know you can some other ways. This gentleman just
17 didn't remember.

18 MR. WILSON: Yes, sir.

19 THE COURT: But that Mr. Winkler made -- I didn't see
20 it, so I don't know -- but made some effort to make sure
21 the jurors saw the photographs. It's obvious they couldn't
22 see from that distance anyway, and I'm not as concerned
23 about that as I am concerned about other matters that may
24 be highly contested that may or may not be admitted.

25 MR. WILSON: Yes, sir.

1 THE COURT: So, I'm not going to say he did or didn't
2 do it because I didn't see it. But I sure hope Mr. Winkler
3 is aware that if I don't admit evidence, for me to decide
4 it's not going to be shown to the jury. I made it clear to
5 Mr. Hembree that that board wouldn't be shown to the jury.
6 He made the objection about the police, although now you
7 got evidence that she was calling the police. But, but
8 it's very important that people follow my directions.

9 MR. WILSON: Yes, sir.

10 THE COURT: And I'm sure you would.

11 MR. WILSON: Yes, sir.

12 THE COURT: If he does something that would be in
13 violation of a directive of mine, he needs to be aware that
14 carries other type of situations. So, please be aware of
15 that.

16 Now, as I understand, y'all told me here at the bench,
17 the only thing y'all discussed at the bench was the next
18 witness for they state they felt would probably with cross
19 and direct, take more than thirty minutes or at thirty
20 minutes. And so for that reason I decided to bring the
21 jury back tomorrow.

22 Does the state or defense know of any issues we need
23 to discuss before we get started tomorrow? If so, we're
24 going to discuss them now.

25 MR. HEMBREE: No, Your Honor.

1 MR. WILSON: He, Judge, he says he wants new lawyers.
2 I'm not doing anything he's asking me to do, and he wants
3 new lawyers.

4 THE COURT: All right, I find that, that Mr. Wilson
5 and Mr. Rathbun are executing their duties not only at the
6 standard but way above the standard with respect to
7 attorneys and I see no reason, have no evidence any other
8 attorneys would be doing any better than them, and we will
9 proceed tomorrow. I will just take that as a continuing
10 request, and so that's on the record.

11 MR. WILSON: Thank you.

12 THE COURT: All right, everyone, everyone have a good
13 evening, and we'll see you tomorrow.

14 (WHEREUPON, THE CASE IS AT EASE.)

15 TUESDAY, FEBRUARY 5, 2008

16 (COURT RESUMES AT 9:48 A.M.)

17 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
18 103 THROUGH 137 FOR IDENTIFICATION.)

19 THE COURT: Bring the jury in, please.

20 (THE JURY ENTERS AT 9:52 A.M.)

21 THE COURT: Good morning, everyone. I hope you had a
22 pleasant evening last night. We're ready now to proceed
23 with further evidence in this phase of the trial.

24 As you recall yesterday, seven witnesses were
25 introduced, and we'll now proceed with further witnesses

1 for the state.

2 Next witness.

3 MR. HUMPHRIES: State calls Andrew Cooper, recalls
4 Andrew Cooper.

5 THE COURT: Different phase of the trial. Has to be
6 sworn in.

7 MR. HUMPHRIES: Yes, Your Honor.

8 ANDREW COOPER, BEING DULY SWORN,
9 TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: Please have a seat. Please state
11 your name and spell your last.

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

13 DIRECT EXAMINATION BY MR. HUMPHRIES:

14 Q. Deputy Cooper, would you remind the jury in March of
15 2006 and going back to October of 2005 with whom you were
16 employed?

17 A. I was employed with the Horry County Police Department
18 as a crime scene investigator.

19 Q. In connection with your duties as a crime scene
20 investigator, did you have an occasion to conduct a search
21 of an Isuzu Rodeo in connection with this case?

22 A. Yes, I did.

23 Q. Let me show you State's 57, 58, 59, 60. These are in
24 evidence. Do you recognize those photos?

25 A. Yes, I do.

1 Q. And these are photographs of ---

2 A. An Isuzu Rodeo that I processed.

3 Q. Now, you processed this vehicle. Tell the jury
4 generally what you do in processing the vehicle.

5 A. In doing a processing of a vehicle, you start off
6 doing ---

7 Q. Yes.

8 A. Depending on what kind of crime it is, you look for
9 any kind of physical evidence on serological, serological
10 evidence that you collect, depending on what type of crime
11 it is. For instance, if you searched it before, process it
12 for latent prints.

13 Q. Did you do that in this case?

14 A. Yes, I did.

15 Q. And tell this jury, in your processing of this Isuzu
16 Rodeo, did you find any evidence that you ultimately
17 collected for later examination?

18 A. None in the Isuzu Rodeo, none.

19 Q. Now, let's be specific. Did you look for serological
20 or blood evidence in the Isuzu Rodeo?

21 A. Yeah, I did. I looked all throughout the vehicle,
22 exterior and interior.

23 Q. And based on that search, did you see any either in
24 the exterior or the interior of that vehicle?

25 A. It was -- there was none located.

1 Q. Were you later called upon to conduct a search of a
2 Land Rover in connection with this case?

3 A. Yes, I did.

4 Q. Let me show you State's 65 -- I'm sorry. Yeah, 65, 66
5 and 67, which are in evidence. Tell me if you can identify
6 what's pictured in those photographs.

7 A. Yes.

8 Q. What is it?

9 A. A Land Rover I took photographs of.

10 Q. Now, tell the jury where -- where are these
11 photographs taken of the Land Rover?

12 A. That's in -- over behind our police department, the
13 Horry County Police Department in a shelter where we
14 process the vehicles.

15 Q. And is that the usual place that you process vehicles
16 when they are brought to the police department?

17 A. Yes, it is.

18 Q. And what's the reason for you, at that particular
19 location, to process the vehicles?

20 A. Well, it's got a shelter over it in case it rains. We
21 can get out. We can stay out of the rain in the weather,
22 get up under the shelter. It's also in a secured facility
23 behind the police department.

24 Q. Now when processing this vehicle, did you take
25 photographs?

1 A. Yes, I did.

2 Q. And in taking photographs, I believe you have
3 testified previously that when processing a scene, for
4 instance, you start on the exterior and move to the
5 interior?

6 A. That's correct.

7 Q. Midrange to close up?

8 A. That's right.

9 Q. Let me show you State's 71 to 93 for identification
10 purposes. Take your time. I want you to look through all
11 those photographs. Tell me who took those, and tell me if
12 they fairly and accurately represent the condition of the
13 vehicle on the day that you searched it.

14 (A PAUSE.)

15 A. Yes, they are.

16 Q. Let me ask you in connection with those photographs.
17 Do each of those photographs show a slightly different
18 vantage point and/or a different range? That is, midrange
19 or close up of the items that you processed in the vehicle?

20 A. Yes, they do. They do.

21 MR. HUMPHRIES: We'd move to introduce 71 through 93,
22 Your Honor.

23 MR. WILSON: Your Honor, I have no objections except
24 that I think that the photographs are accumulative in the
25 sense that they are multiple shots of the same vehicle.

1 Other than that, I have no objections, so my objection is
2 cumulative.

3 THE COURT: I overrule the objection. 71 through 93?

4 MR. HUMPHRIES: Yes, sir, Your Honor.

5 THE COURT: In evidence.

6 MR. HUMPHRIES: Thank you.

7 (PHOTOGRAPHS MARKED INTO EVIDENCE INDIVIDUALLY AS
8 STATE'S EXHIBITS 71 THROUGH 93.)

9 BY MR. HUMPHRIES:

10 Q. What I'd like to do, I want you to stay on the stand,
11 Deputy, but I'm going to show you each photograph. I want
12 you to describe what's displayed there. This is State's
13 71, and then I'll publish it to the jury.

14 A. This is the rear of the vehicle. The Land Rover
15 itself was photographed with the license plate that was on
16 the vehicle.

17 Q. And do your records reflect to whom this vehicle was
18 registered?

19 A. To the victim.

20 Q. When you say victim, are you referring to Becky
21 Winkler?

22 A. Becky Winkler, Rebekah Winkler.

23 Q. Thank you. Tell me a little bit about the general
24 condition of the exterior of the vehicle.

25 A. It had some damage, appeared to be wrecked, damage to

1 the exterior where there were limbs, tree limbs, grass,
2 mud, dirt, like it had been run through the woods.

3 Q. I'm showing you State's 72 in evidence. Tell me
4 what's pictured there.

5 A. Those are photographs taken on the outside looking
6 into the driver's side of the vehicle. That's some grass
7 and some other objects and some blood on the driver's side
8 of the seat.

9 Q. Can you tell me in State's 72 in evidence whether
10 there is a floor mat under the -- or in front of the
11 driver's seat?

12 A. That one was missing on the driver's side. The floor
13 mat itself was missing.

14 Q. Did you recover that missing floor mat?

15 A. No, I did not. It was missing.

16 Q. I'm showing you State's 73 which is in evidence.

17 A. This, this is if you're looking in the interior of the
18 vehicle looking at the center console, looking at some,
19 some blood around the seats and the center console, the
20 blood spots.

21 Q. What else is pictured in the driver's side of the
22 front seat?

23 A. There's grass. There's grass and leaves also on the
24 driver's side, driver's side front seat, along with the
25 blood stains.

1 Q. Now State's 74, what's pictured in 74 in evidence?

2 A. Looking at the passenger's side of the vehicle, the
3 Land Rover in the front, some female articles on the
4 floorboard. There's a pocketbook, and there's some
5 articles scattered about the floorboard like the wallet
6 itself. And on the seat, there's checkbooks. There's some
7 other items laying on the passenger -- driver's seat.

8 Q. I'm showing you State's 75 in evidence. What's
9 pictured in that photograph?

10 A. This is on the driver's -- passenger's side. This is
11 still on the passenger's side looking at the door. I
12 opened up the door, and then the door panel itself, you
13 have several blood smears and spots on the interior panel
14 of the door.

15 Q. State's 76 in evidence, what's pictured in that
16 photograph?

17 A. Looking at the backseat of the -- still the Land
18 Rover, and on the passenger's front seat on the right on
19 the outside of the seat itself, you can see a blood smear.

20 Q. Do your records indicate when you processed this
21 vehicle, what date?

22 A. What date?

23 Q. Yes, sir.

24 A. It was on the, the 13th.

25 Q. What month?

1 A. Of October.

2 Q. What ---

3 A. 2005.

4 Q. 2005. Referring you now to State's 77 in evidence.

5 A. Looking at the -- in the backseat of the vehicle now,
6 the driver's side in the floorboard, looking at a white
7 color baseball hat. It's Dale Earnhardt, Jr., embroidered
8 across the front of it.

9 Q. Do you know who Dale Earnhardt, Jr., used to race for
10 before this year?

11 A. No, sir, I don't.

12 Q. I bet somebody does.

13 Now, after you took these overall photographs, did
14 you, in processing the vehicle, identify various possible
15 blood by means of using some evidence stickers, if you
16 will?

17 A. Yes, I did.

18 Q. And were they numbered?

19 A. It was numbered, yeah, collection.

20 Q. And what was your process in terms of photographing
21 these particular areas?

22 A. First of all, I took an overall view of where the
23 areas are of the blood smears or the blood spots. I take
24 an overall so you can get a general idea of where it's at.
25 Then before I collected it, I took a close up shot of it, a

1 close up photograph of it.

2 Q. I'm showing you State's 78 in evidence.

3 A. This, this is a blood smear and a blood collection. I
4 collected two blood swabs from this location, which was the
5 door handle on the interior driver's side right on the door
6 handle.

7 Q. What was the item number for you on that photograph?

8 A. That would have been item number two.

9 Q. I'm showing you State's 79 in evidence.

10 A. That will be ---

11 Q. Go ahead.

12 A. Item number three. I collected two blood swabs. This
13 would have been on the driver's side still, but it was on
14 the outside edge of the driver's side front seat.

15 Q. State's 80 evidence, tell me what's pictured in that
16 photograph, please.

17 A. It's item number four, two blood swabs collected. It
18 was on the exterior of your steering wheel, around the edge
19 on the outside of it. It had a large amount of blood
20 smeared there.

21 Q. Do you know what position of the steering wheel was
22 this blood?

23 A. It was on the outside, outside of the steering wheel.

24 Q. On the left or right side of the steering wheel as you
25 face it?

1 A. As you're sitting on the driver's seat, it would be on
2 the left side of the -- where your left hand would be.

3 Q. State's 81?

4 A. That would be number five for evidence collection of
5 blood swabs. That's the back support itself. Odometer
6 reading, there would be some blood spots on the dash.
7 That's where I collected those swabs.

8 Q. Are those commonly called blood spatter?

9 A. Blood spatter.

10 Q. I'm showing you State's 82 in evidence. Can you
11 identify that photograph, tell me what's pictured there?

12 A. This is my evidence number six, two blood swabs
13 collected. If you're still sitting in the driver's seat,
14 it would be the area between the center console and the
15 edge of the driver's front seat and where you latch your
16 safety belt.

17 Q. State's 88 in evidence?

18 A. This is blood swab collection also, number eleven. It
19 looked like the passenger's side -- on the passenger's side
20 is this front seat. It was on the edge on the outside.
21 Near the doorframe itself, there's a blood smeared area. I
22 collected two blood swabs from that.

23 Q. State's 89.

24 A. These are items in the front seat: a checkbook, a blue
25 jean pocketbook, a little purse. There was some -- a leaf.

1 It came out of some kind of a tree or a plant, and the
2 checkbook had Mid Tran, Incorporated and Rebekah S. Winkler
3 on the checkbooks. All of that was collected as evidence.

4 Q. State's 90 in evidence?

5 A. This is the passenger's side door on the interior of
6 it. You're looking at the -- inside the glass rolled up
7 window and the doorframe itself. Nineteen and twenty,
8 those are blood swabs I collected. They had smeared along
9 the door panel where you probably put your arm.

10 Q. Let me show you State's 91 and 93 in evidence. Tell
11 me what's pictured in those photographs.

12 A. 91 is a closeup view of the photograph of number
13 nineteen, the evidence I collected, of the blood smears on
14 the window itself. And number twenty would be the blood
15 smears where I pulled the blood swabs off the door, the
16 interior doorframe.

17 Q. State's 92 in evidence?

18 A. That would be the passenger's side on the floorboard
19 where the -- blue jean pocketbook, also the wallet.
20 There's several items looked like it came from inside
21 of it. It was scattered about the floorboard -- a pack
22 of cigarettes, a small wallet -- and it was opened up.
23 There were some more blood smears along the bottom of the
24 seat.

25 Q. Now, particularly as to these area that you suspected

1 to be blood, you say that you took swabs of those.

2 A. Sterile cotton tipped swabs, yes, sir.

3 Q. And let me ask. Were you able to retrieve those or
4 collect those by means of a swab versus having to scrape
5 those particular areas?

6 A. I did all of those collections from cotton tip
7 swabbed.

8 Q. And how did you then contain those swabs once you
9 collected them?

10 A. I packed them into a little package of packing box so
11 they could be air dried and sealed up before I sent them
12 off to the lab.

13 Q. Let me ask you specifically as it relates to those
14 swabs. While in your custody and control, did you change
15 them substantially as to form or content?

16 A. No, sir, I did not.

17 Q. Did you maintain the integrity of those items of
18 evidence while in your custody and control?

19 A. I did.

20 Q. And to whom did you deliver those items?

21 A. I put them in my -- placed in our property at the
22 evidence section. That's where we would lock them in, to
23 keep our evidence.

24 Q. A secure area?

25 A. It's a secure area at the police department.

1 Q. Did that conclude your processing of the vehicle?

2 A. Yes, sir, that was it. That was it of the Land
3 Rover.

4 Q. Now, let me ask you. Were you called upon at any time
5 to take photographs of the defendant in this case?

6 A. Yes, I did.

7 Q. And I want to show you a series of photographs.

8 MR. HUMPHRIES: And I believe State's 94 through 101
9 have been introduced into evidence without objection.

10 THE COURT: Not yet, but continue on.

11 MR. HUMPHRIES: I'm asking.

12 MR. WILSON: Sorry. I have no objections to those.

13 THE COURT: Is that the 94 through 101?

14 MR. HUMPHRIES: That's correct, Your Honor.

15 THE COURT: In evidence.

16 (PHOTOGRAPHS MARKED INTO EVIDENCE INDIVIDUALLY AS
17 STATE'S EXHIBITS 94 THROUGH 101.)

18 BY MR. HUMPHRIES:

19 Q. At whose request were you called upon to take these
20 photographs? Do you recall who asked you to take the
21 photographs of the defendant?

22 A. Not right offhand. It was probably one of the
23 detectives. I'm not sure. I don't know.

24 Q. Let me ask you. Are those photographs date stamped as
25 to the date and time they were taken?

1 A. Yes, they are.

2 Q. And what is the date stamp?

3 A. October 11, 2005, 1845, which would be the time --
4 this would be 6:45 in the afternoon.

5 Q. State's 94, can you tell me what's pictured in that
6 photograph?

7 A. This is a front, front view of Mr. Winkler.

8 Q. Again, this was at 6, approximately 6:45 when you took
9 this photograph?

10 A. Yes.

11 Q. In the evening?

12 A. In the evening time.

13 Q. State's 95?

14 A. This is a photograph of the shorts that Mr. Winkler
15 was wearing that afternoon. They removed them, took his
16 shorts from him, and I took a photograph of the front of
17 his shorts.

18 Q. State's 96?

19 A. This is just the back of the shorts, same pair of
20 shorts, just I turned them over. I took a photograph of
21 the backside of them.

22 Q. Would you describe those as being clean or dirty or
23 soiled?

24 A. It was filthy at the time.

25 Q. I'm showing you State's 97 in evidence.

1 A. This is a closeup photograph of Ms. Winkler's face.

2 It shows the abrasions and scratches on her around the face
3 area.

4 Q. State's 98 in evidence?

5 A. This is a photograph of his left arm showing abrasions
6 and scrapes and scratches on his arms and wrist and his
7 hand.

8 Q. State's 99 in evidence?

9 A. This is a photograph of his -- he had his arm up, held
10 left his arm up, turned it over. This showed scratches,
11 abrasions, and marks on the interior of his arm, of his
12 left arm.

13 Q. Let me show you State's 101 in evidence. Can you
14 identify it?

15 A. This is the legs of Mr. Winkler, and it showed the
16 bottom part of his legs where he had several scratches or
17 abrasions around his feet and his ankles, the upper part of
18 his legs.

19 Q. State's 100?

20 A. This is a photograph of Mr., of Mr. Winkler's left
21 hand with a ruler or what you call a -- what we refer to as
22 a scale showing the length and the size of the injury or
23 the abrasions that's on his hand.

24 Q. And primarily, where are the injuries located on Mr.
25 Winkler?

1 A. It's around his knuckles mostly, around the knuckle
2 part of his left hand.

3 Q. Do you know if Mr. Winkler is left handed or right
4 handed?

5 A. No, sir, I have no idea.

6 Q. Deputy Cooper, you mentioned your responsibilities.
7 As an evidence technician or a crime scene technician, is
8 it also your responsibility on occasion to transport items
9 of evidence to the South Carolina Law Enforcement Division
10 for further processing and analysis?

11 A. Yes, it was. It was.

12 Q. Let me ask you. As it relates to the swabs which you
13 previously testified you transferred into the secured
14 evidence of Horry County Police Department ---

15 A. Uh-huh.

16 Q. --- did you later have an occasion to retrieve those
17 items from evidence and transport them to SLED?

18 A. I did.

19 Q. And upon receiving those items of evidence and while
20 in your custody and control and up to the point of
21 delivery, did you change those items substantially as to
22 form or content?

23 A. I did not.

24 Q. Did you maintain them in a sealed condition?

25 A. Sealed condition.

1 Q. Did you also have an occasion on the same day, I
2 believe, to receive from the Horry County Evidence
3 Department what's commonly called a rape kit in this case,
4 the rape kit of Rebekah Winkler?

5 A. I did.

6 Q. And did you transport that item, or those items of
7 evidence, to the South Carolina Law Enforcement Division
8 for further processing?

9 A. Yes, I did.

10 Q. And while in your custody and control, did you change
11 them substantially as to form or content?

12 A. No, sir, I did not.

13 Q. Did you maintain the evidence -- or maintain the
14 integrity of that evidence while in your custody and
15 control?

16 A. No, sir.

17 Q. And did they remain in a sealed condition while in
18 your custody and control?

19 A. They did.

20 MR. HUMPHRIES: Please answer any questions the
21 defense may have for you.

22 THE COURT: Mr. Wilson?

23 CROSS-EXAMINATION BY MR. WILSON:

24 Q. When you went out on the 11th -- well, let me back up.
25 On the 13th, as I understand it, you actually took these

1 photographs. I don't know -- where are they?

2 (A PAUSE.)

3 Q. Let me show you these photographs that the state
4 handed you earlier which would be a state's exhibit.

5 A. Yes.

6 Q. Now as I understand it, you took these photographs on
7 the 13th?

8 A. No, sir. Can I make a correction on that?

9 Q. Yes, sir.

10 A. It was the 11th when I took it.

11 Q. Oh, okay.

12 A. I took the photographs on the 11th, and I was looking
13 at the wrong date. I returned the search warrant to the
14 magistrate's office which it was issued from on the
15 13th ---

16 Q. Okay.

17 A. --- of October.

18 Q. Okay.

19 A. Correction on that.

20 Q. I apologize. So, you actually took it on the 11th?

21 A. Yes, sir.

22 Q. Not on the 13th ---

23 A. No, sir.

24 Q. --- that you testified to earlier?

25 A. Yes.

1 Q. Now, I noticed that in your conversation, you showed
2 several pictures of the interior of the vehicle.

3 A. Yes, sir.

4 Q. Which showed blood spots, you say, throughout the
5 vehicle, correct?

6 A. Correct.

7 Q. Did you take any photographs of the exterior of the
8 vehicle to show the physical damage to the vehicle showing
9 that it had been in some kind of impact?

10 A. I did, all four corners.

11 Q. All right, and was there impact injury to the --
12 damage to the vehicle itself?

13 A. The Land Rover there was, yes.

14 Q. All right. Indicating to you that what, that it had
15 been in an automobile accident of some type?

16 A. Some type of accident of some kind.

17 Q. And did you go out to the area where the impact
18 actually took place so that you could take pictures of that
19 to see what kind of impact actually took place, to see
20 whether or not as a result of that impact there would be
21 any other physical evidence that you might need to gather
22 there?

23 A. No, sir. I did not.

24 Q. All right. Now, did you do an estimate, or did you
25 somehow collect any evidence in order to determine whether

1 or not what the amount of damage to the -- physical damage
2 to the vehicle itself was?

3 A. No, sir. I didn't put appraisal value on it, no, sir.
4 I just took photographs of it.

5 Q. Well, did you make any attempt to determine what speed
6 or rate of speed the vehicle would have to be traveling at
7 the time of impact?

8 A. I'm not qualified to do that kind of ---

9 Q. Well, what I'm asking you, though ---

10 A. No, sir.

11 Q. --- is did you do -- did you gather information to
12 give to someone, some other expert at SLED or wherever, to
13 make that determination?

14 A. No, sir, I didn't do that.

15 Q. What about the, the -- you said that there was blood
16 on the seats and on the dashboard of the door and several
17 other places in the vehicle, right?

18 A. Correct.

19 Q. All right. Now, at the time you were gathering it,
20 did you know who the blood belonged to?

21 A. No, sir, not at the time, I did not.

22 Q. All right, and as I understand it, when you went, took
23 some pictures of Mr. Winkler, Mick Winkler, later in the
24 afternoon on the 11th, right?

25 A. Yes, sir.

1 Q. All right. Now, where did -- you took those pictures
2 where?

3 A. That would be at the police department.

4 Q. All right.

5 A. In one of the interview rooms.

6 Q. And at the time you took those pictures, do you know
7 what time -- I think you said that they were time marked,
8 right?

9 A. Yes, sir.

10 Q. Or stamped. What time in the afternoon did you take
11 those pictures?

12 A. I believe it had 6, 6:45 on them ---

13 Q. Okay.

14 A. --- in the afternoon.

15 Q. And what time did you take the pictures of the vehicle
16 that day on the 11th?

17 A. Within -- 1644 would have been 4 -- a quarter to 5.

18 Q. So, a couple of hours to an hour-and-a-half, two hours
19 between the time you took the pictures there and the time
20 you took Mr. Winkler's photographs?

21 A. Yes, sir.

22 Q. Is that correct?

23 A. Yes.

24 Q. All right. Now, when you were taking the photographs
25 of Mr. Winkler, was he -- what condition, what condition

1 was he in at that time? Physical condition I guess is what
2 I'm asking you.

3 A. He was stable on his feet; he was stable on his feet.

4 Q. All right. What I'm asking you is he was at the
5 police station at that time?

6 A. Yes, sir.

7 Q. All right.

8 A. Yes, sir.

9 Q. And now when he came to the police station, did you
10 see him come there? Do you know what state he came in, or
11 was he cleaned up by the time you got there, or do you
12 know?

13 A. I was -- came and retrieved from my office to go take
14 some photographs. He was already in the interview room
15 when I got there.

16 Q. Okay. All right. Is it normal practice when a person
17 is arrested or when they're brought in that you take a
18 picture of them immediately upon their arrival at the jail
19 or at the police station?

20 A. Not always, no, sir.

21 Q. All right. So, how long had he been there before you
22 arrived to take the pictures?

23 A. Oh, I don't -- I have no earthly idea.

24 Q. Okay. Had he changed clothing before you got there,
25 or do you know?

1 A. That was the first time I saw him, when I took the
2 photographs.

3 Q. Do you know whether or not he had washed, taken a
4 shower and everything before you got there?

5 A. No, sir.

6 Q. You don't know?

7 A. No, sir. It didn't appear to be because he was filthy
8 and dirty, and his clothes were dirty, so I -- it didn't
9 appear that he took a bath.

10 Q. Clothes were dirty. What kind of shirt did he have
11 on?

12 A. It was a T-shirt.

13 Q. All right, and what color was it?

14 A. I think it was white.

15 Q. And it was dirty?

16 A. There were some dirty spots on it. His pants were
17 dirty.

18 Q. All right, and what about shoes? Did he have shoes
19 on?

20 A. Yes, he did. I think it was leather loafers.

21 Q. All right. Now, did you check -- did you take the
22 shoes also?

23 A. Yes, yes, sir.

24 Q. And when you saw the shoes, did they have mud or dirt
25 or debris on them?

1 A. No. They were kind of dirty and -- to appearance,
2 they were kind of dirty.

3 Q. Okay. Well, was it dried mud, or was it just dirt or
4 just dusty or just old and...

5 A. Just old.

6 Q. All right. Specifically, I'm asking you whether or
7 not there was any wet mud or wet dirt on the shoes that you
8 took in.

9 A. I think there was some dried, dried mud that was on
10 them.

11 MR. WILSON: Beg the Court's indulgence just one
12 second.

13 (A PAUSE.)

14 MR. WILSON: I have no other questions. Thank you,
15 sir.

16 THE COURT: Any redirect?

17 MR. HUMPHRIES: Very briefly.

18 REDIRECT EXAMINATION BY MR. HUMPHRIES:

19 Q. I'm showing you State's 67 which is in evidence. How
20 would you characterize that damage to the vehicle? What
21 part of the vehicle was it?

22 A. I looked at -- this is the front of the Land Rover,
23 and there's severe damage to the front end of it.

24 Q. Now, let me ask you. In processing the vehicle,
25 State's 74 and 75, can you take a look at State's 74 and 75

1 and tell me if you were -- if you observed any or were able
2 to collect any blood or serological evidence from the
3 dashboard of the front of the passenger's seat of that
4 vehicle?

5 A. Now, I didn't collect any off the dashboard. It was
6 on the door itself, but none off the dashboard.

7 Q. None off the dashboard. Is that because you didn't
8 observe any there?

9 A. There was some on the driver's side dash ---

10 Q. All right.

11 A. --- but none on the passenger's side dash, no, sir.

12 MR. HUMPHRIES: Thank you. I don't have any further
13 questions.

14 THE COURT: Anything else?

15 MR. WILSON: Just one follow up.

16 RECROSS-EXAMINATION BY MR. WILSON:

17 Q. Just let me ask you. You said that you found blood on
18 the driver's dash. Is that correct?

19 A. Yes, sir. It was on the dashboard or in the odometer,
20 the gas gauge on the plastic.

21 Q. And did you take swabs of that?

22 A. Yes, sir.

23 Q. All right, and you sent that to be tested?

24 A. Yes, sir.

25 MR. WILSON: All right. Thank you.

1 THE COURT: You may step down.

2 (THE WITNESS EXITS THE STAND.)

3 THE COURT: Next witness, please.

4 MR. HEMBREE: The state calls Haley Grainger to the
5 witness stand.

6 HALEY GRAINGER, BEING DULY SWORN,
7 TESTIFIES AS FOLLOWS:

8 CLERK OF COURT: Please have a seat. Please state
9 your name and spell the last for the record and speak into
10 the microphone.

11 WITNESS: Haley Grainger, G-r-a-i-n-g-e-r.

12 DIRECT EXAMINATION BY MR. HEMBREE:

13 Q. Good afternoon, Ms. Grainger.

14 THE COURT: Why don't you pull that microphone down a
15 little bit so we can hear you.

16 All right, solicitor.

17 MR. HEMBREE: Thank you, Your Honor.

18 BY MR. HEMBREE:

19 Q. Good morning, Haley.

20 A. Good morning.

21 Q. Haley, did you know the, the victim in this case,
22 Becky Grainger?

23 A. Yes.

24 Q. And what was your relationship with Becky, Becky
25 Winkler -- I'm sorry, with Becky Winkler?

1 A. She is my mom.

2 Q. How old are you, Haley?

3 A. Twenty-three.

4 Q. And where do you live?

5 A. Right now I live in Calabash.

6 Q. Haley, let me take you to, back to 2003. Do you know
7 the defendant in this case, Louis Winkler?

8 A. Yes.

9 Q. And do you remember the first time that you met him?

10 A. Yes.

11 Q. What was -- what were the circumstances of that
12 meeting?

13 A. He was over at the house my mom, my sister, and my
14 brother and I lived.

15 Q. Where were y'all living at the time?

16 A. We were living in Loris.

17 Q. All right. He was visiting at your, at your mom's
18 house?

19 A. Yes.

20 Q. Had they been married at that time?

21 A. No.

22 Q. What was their relationship at that time?

23 A. They were seeing each other, dating.

24 Q. And what were your general impressions in the early
25 stages of the relationship of the defendant, Louis Winkler?

1 A. I don't ---

2 MR. WILSON: I'm going to object to that particular
3 question. I don't understand the relevance of what she
4 pointed out, if at that point whether or not -- what her
5 opinion of him was at that particular point.

6 THE COURT: Was your question what was your opinion of
7 him or what was her relationship?

8 MR. HEMBREE: Well, what were her general impressions
9 of him, Your Honor, and we would contend that his character
10 is in evidence, or is at issue in this phase of the trial.
11 This will go directly to his character.

12 THE COURT: Mr. Wilson, I think at this phase, that
13 would be ---

14 MR. WILSON: Well, my ---

15 THE COURT: --- evidence for whatever weight the jury
16 wants to give it. You'd be able to cross-examine. I mean,
17 clearly.

18 MR. WILSON: Well, my concern is she says she just met
19 him. She didn't know him. She had no relationship with
20 him. Nothing had -- no real ---

21 THE COURT: You can point it out in your
22 cross-examination.

23 MR. WILSON: Thank you, Your Honor.

24 THE COURT: You may proceed.

25 MR. HEMBREE: Thank you, Your Honor.

1 THE COURT: You may proceed.

2 BY MR. HEMBREE:

3 Q. Haley, what were your general impressions of the
4 defendant, Louis Winkler, at the early stages of the
5 relationship between Louis Winkler and your mom?

6 A. At the early stages, he was okay. I didn't really
7 talk to him that much, but he was fine, seemed to be.

8 Q. Now, how long did they date or see each other before
9 they got married, if you recall?

10 A. I don't know. It was less than a year, but I don't
11 know how many months.

12 Q. Do you remember when they got married?

13 A. I wasn't there, but I don't know when they got
14 married.

15 Q. October 10, 2003?

16 A. That sounds, right.

17 Q. And do you remember what type of service they had?

18 A. I wasn't there, but I learned later that they were
19 married at the courthouse or...

20 Q. Probate court?

21 A. Wherever people get married other than a church.

22 Q. After they got married, where did your mom -- well,
23 what -- when did y'all move out of the house in Loris?

24 A. I think it was before they got married, right before.

25 Q. And where did you move?

1 A. Mom and my brother moved in with me where he was
2 living at the time. I moved to Aynor, I think.

3 Q. Did you have an apartment or a...

4 A. It was a home.

5 Q. Okay, and the place where -- the first place, if you
6 remember where your brother, your mom and the defendant
7 lived, where was that?

8 A. It's off of 2nd Avenue in North Myrtle Beach.

9 Q. Uh-huh

10 A. Fox Fire or something.

11 Q. Fox Fire, gotcha, and that's a mobile home park?

12 A. Yes.

13 Q. And they ultimately moved away from that location?

14 A. Yes.

15 Q. Where did they more? Do you remember where they moved
16 to?

17 A. Stone's Edge.

18 Q. Bitter Spar is the address?

19 A. Yes.

20 Q. But Stone's Edge the neighborhood?

21 A. Yes.

22 Q. Located off Highway 57?

23 A. Uh-huh, yes.

24 Q. Now, let me take you up to the point in time they were
25 married for a couple of years. At some point during the

1 relationship, did the living arrangements for them change,
2 for Becky Winkler and the defendant, Lewis Winkler?

3 A. Yes.

4 Q. What happened?

5 A. She moved out.

6 Q. All right, and moved in where?

7 A. With me in my condo.

8 Q. Do you remember about when that was?

9 A. Around September.

10 Q. All right.

11 A. Of '05, '05, yes.

12 Q. Now, where were you living at the time?

13 A.

14 Q. And what was the unit number?

15 A.

16 Q. How many bedrooms did that apartment have?

17 A. Two.

18 Q. And what were the sleeping arrangements? Who all
19 moved in with you?

20 A. My mom and my brother.

21 Q. And what were the sleeping arrangements for everybody?
22 Only two bedrooms?

23 A. My mom, she slept in the room to the left when you
24 walked in, and my brother slept on the couch most of the
25 time. When I wasn't there, he would sleep in my, my

1 bedroom upstairs.

2 Q. Okay. You got him the loft ---

3 A. Yes.

4 Q. --- upstairs? Were you -- did you help your mom move
5 in?

6 A. I didn't help her move in, but I helped her after she
7 got everything there. I think she got a moving company to
8 move her in.

9 Q. Got you. Okay. She got her things arranged when she
10 got there?

11 A. Yes.

12 Q. Now in October, October 10th, did you become aware
13 that there was some concern about your mom's whereabouts?

14 A. Yes.

15 Q. And where did you move -- where -- how did you get
16 this concern? Who contacted you?

17 A. My sister.

18 Q. What's her name?

19 A. Jill Shelley.

20 Q. When did you -- what time of the day did you first
21 hear from her concerned about your mom's whereabouts?

22 A. I don't know exactly what time. It was the evening.

23 Q. And how late?

24 A. It was dark outside; it was pretty dark.

25 Q. Now, what did you do in response to that? Did you

1 take any action, or what did you do that evening?

2 A. I went to look for her.

3 Q. Who went with you?

4 A. My boyfriend, Scott.

5 Q. Okay. What did y'all do? Tell the jury what steps
6 you took. Where did you go? Where did you look?

7 A. We went to Mick's house on Bitter Spar, looked around
8 there. No one was there, and then ---

9 Q. What about -- now, at that point, did the defendant,
10 Louis Winkler, have a car?

11 A. Yes.

12 Q. Which one?

13 A. The Rodeo.

14 Q. The Isuzu Rodeo?

15 A. Yes.

16 Q. A little silver looking ---

17 A. Yes.

18 Q. Was his car there?

19 A. No.

20 Q. Now, where else did you look?

21 A. We left there and drove down 57, and I spotted the
22 Land Rover in the woods. We stopped there, and then the
23 police arrived soon after that.

24 Q. Once you spotted the Land Rover -- the Land Rover,
25 whose vehicle was that?

1 A. My mom was driving it. It belonged to my sister or
2 actually her husband, I think.

3 Q. But your mom had the use of it?

4 A. Yes.

5 Q. Did you, did you contact anyone when you found -- saw
6 the Land Rover?

7 A. I don't remember. I probably called my sister.

8 Q. You didn't call the police?

9 A. No. Actually, they had met us -- actually, I think an
10 ambulance came when we were over at Bitter Spar. While we
11 were there, I don't remember if it was an ambulance or the
12 police, but someone came. Then we left there and went, and
13 they followed us there.

14 Q. Got you. So, did you see the Land Rover first, or did
15 you go to Bitter Spar first?

16 A. Bitter Spar first.

17 Q. All right, and when you're coming back from Bitter
18 Spar, that's when you spotted the Land Rover?

19 A. Yes.

20 Q. And you -- were there other vehicles already on the
21 scene or ambulance or police or somebody that was there
22 when you got there?

23 A. No. They were right behind me.

24 Q. Oh, I got you.

25 A. Coming right behind us.

1 Q. Now, when was your mom found? Well, let me ask it
2 this way. When did you first see your mom?

3 A. The next morning.

4 Q. Where was that?

5 A. Seacoast Medical Center.

6 Q. And what was her condition?

7 A. Pretty bad. Her face was really messed up.

8 Q. What about her hair?

9 A. It was all tangled and looked horrible.

10 Q. How about her arms and legs?

11 A. She had scratches all over, and her face look pretty
12 bad, though.

13 Q. How about her general deportment? How was she acting?

14 A. Well, at first she didn't want us to see her, but we
15 talked her into it. She was crying, and she didn't really
16 want to talk about it.

17 Q. She didn't want to see you?

18 A. She didn't want us to see how she looked.

19 Q. Now, I want to show you a couple of items and ask if
20 you can identify these items..

21 MR. HEMBREE: Madame Clerk, if I could have this
22 envelope marked as -- for identification. At this time,
23 I'd also like this item marked for identification.

24 (TOE RING, EARRING MARKED AS STATE'S EXHIBIT NUMBER
25 138 FOR IDENTIFICATION.)

1 (VICTIM'S CLOTHING MARKED AS STATE'S EXHIBIT NUMBER
2 139 FOR IDENTIFICATION.)

3 BY MR. HEMBREE:

4 Q. Haley, I want to show you what's contained in State's
5 Exhibit 138 for identification only. There are two items.
6 Can you identify those two items, please?

7 A. Yes. One is a toe ring, and the other is one earring
8 of my mom's.

9 Q. It belonged to your mom?

10 A. Yes.

11 Q. Now, I'd like to show you the items contained in
12 State's 139 for identification purposes. Once again, I'm
13 going to ask if you can identify these. Can you identify
14 these, please?

15 A. Those are her shorts.

16 Q. Can you identify this item?

17 A. That's her shirt with her hair still on it kind of,
18 and that's her hair bow.

19 Q. Did she frequently wear hair clips of this type?

20 A. She pretty much always wore a hair clip like that.

21 Q. She had long hair?

22 A. Uh-huh, yes.

23 Q. At this time?

24 A. Long hair.

25 Q. Haley, after your mom got out of the hospital,

1 Seacoast, where did she, where did she live?

2 A. She stayed with me.

3 Q. At that point in time, did her demeanor, her general
4 mood change? Did you observe any changes in her general
5 mood?

6 A. Yes.

7 Q. In what way?

8 A. She was very depressed. She couldn't sleep. She
9 would sleep during the day while someone was there, just
10 very depressed acting.

11 Q. Did she have any anxiety?

12 A. She was always scared. I don't know if you could call
13 that anxiety, but she seemed to always be scared.

14 Q. And did she take any steps or do anything different as
15 a result of this change in her outlook?

16 A. I don't, I don't think so.

17 Q. Did she take any steps to protect herself?

18 A. Yes.

19 Q. What did she do?

20 A. She -- well, my grandmother bought her a can of mace,
21 and my dad let her borrow his gun for protection.

22 Q. Was she at a -- as far as you know, was she trained to
23 use a gun?

24 A. No.

25 Q. Where did she keep the gun?

1 A. Under her pillow in her bedroom.

2 Q. The downstairs bedroom?

3 A. Yes.

4 Q. I'm going to show you State's 56 that's in evidence.

5 It's a photograph of a floor mat, that's already been
6 testified to as a floor mat, and a Rainbow shoe.

7 A. Yes.

8 Q. I would ask you. Did your mom own any shoes of that
9 type?

10 A. Yes. She wore Rainbows quite often.

11 Q. Haley, do you know -- your mom continued to live with
12 you after the assault on October 10th?

13 A. Yes.

14 Q. She didn't move away?

15 A. No.

16 Q. Do you have any reason -- any idea why that is?

17 A. Well, for one, she didn't have anywhere to go really,
18 and my brother was going to school, North Myrtle Beach High
19 School. She didn't want to uproot him and make him change
20 everything.

21 MR. HEMBREE: Haley, just answer any questions Mr.
22 Wilson may have for you.

23 MR. WILSON: Thank you, but I have no questions.

24 THE COURT: You can step down.

25 (THE WITNESS EXITS THE STAND.)

1 THE COURT: The court reporter needs to change the
2 computer equipment. I'll let y'all take a short break now.
3 We'll do that here and see you in about fifteen minutes.
4 Don't discuss the case.

5 (THE JURY EXITS AT 11:06 A.M.)

6 THE COURT: Off the record.

7 (OFF-THE-RECORD BENCH CONFERENCE.)

8 THE COURT: We'll take ten or fifteen minutes.

9 MR. HEMBREE: Thank you, Your Honor.

10 (OFF THE RECORD.)

11 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
12 140 THROUGH 143 FOR IDENTIFICATION.)

13 (VICTIM'S HAIR MARKED AS STATE'S EXHIBIT NUMBER 144
14 FOR IDENTIFICATION.)

15 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
16 145, 146 FOR IDENTIFICATION.)

17 (RAPE KIT MARKED AS STATE'S EXHIBIT NUMBER 147 FOR
18 IDENTIFICATION.)

19 (BOND ORDER MARKED AS STATE'S EXHIBIT NUMBER 148 FOR
20 IDENTIFICATION.)

21 (ORDER AMENDING BOND MARKED AS STATE'S EXHIBIT NUMBER
22 149 FOR IDENTIFICATION.)

23 THE COURT: Ready?

24 MR. HUMPHRIES: The state's ready.

25 MR. WILSON: We're ready, Your Honor.

1 THE COURT: Bring the jury in.

2 (THE JURY ENTERS AT 11:35 A.M.)

3 JEFF GAUSE, BEING DULY SWORN,
4 TESTIFIES AS FOLLOWS:

5 CLERK OF COURT: Please have a seat. Please state
6 your name and spell your last for the record, and please
7 speak into the microphone.

8 WITNESS: My name is Jeffery Wendell Gause, G-a-u-s-e.

9 THE COURT: All right. Your witness.

10 DIRECT EXAMINATION BY MR. HIXSON:

11 Q. Good morning, sir.

12 A. Good morning.

13 Q. Thank you. In case we don't already know, what do you
14 do for a living?

15 A. I am a sergeant with the Horry County Police
16 Department assigned to the Unified Patrol Division.

17 Q. And about how long have you been a police officer?

18 A. This month makes me twenty years.

19 Q. And were you a police officer, I guess, around October
20 2005?

21 A. Yes, I was.

22 Q. And were you working on October 10, 2005?

23 A. Yes.

24 Q. Are you familiar with the facts and circumstances
25 surrounding this missing person report that was generated

1 by your department on that day?

2 A. Yes, I was.

3 Q. And did you play any role in the investigation of that
4 incident?

5 A. Somewhat, yes, sir.

6 Q. Okay. Were you working specifically on -- I'll direct
7 your attention to October 19th of 2005.

8 A. Yes, I was.

9 Q. And please tell the jury what you did on that day.

10 A. At the time in question, I was currently assigned to
11 the Crime Scene Investigation Unit, and I was contacted by
12 other investigators within the department that we were to
13 go out and canvass an area in search of clothing in which
14 an assault had taken place. Basically, we were going out
15 looking for evidence.

16 Q. I draw your attention to an item that's already placed
17 in evidence.

18 MR. HIXSON: Your Honor, specifically I'm referring to
19 State's 68 that's in evidence.

20 MR. WILSON: Yes, it is.

21 BY MR. HIXSON:

22 Q. Please speak loudly. Let me see if I can use that
23 pointer. Do you have a general frame of reference as it
24 relates to State's 68?

25 A. This area ---

1 Q. Does that help you?

2 A. This is in the area of Highway 57, Highway 9, in the
3 North Myrtle Beach, Little River, Longs area of the county.

4 Q. And could you point out to the jury where specifically
5 you responded to in reference to this investigation?

6 However you'd like to.

7 A. It would be in this general location here. *

8 Q. Was that a wooded area?

9 A. Partly wooded, part field. It's in the country.

10 Q. Please, if you can, tell the jury what you found at
11 that location.

12 A. During the canvassing of the area, it was brought to
13 my attention that the -- that some clothes had been
14 located, and I came to the area, photographed it and took
15 in possession some shorts and a shirt.

16 Q. There were photographs taken of that location?

17 A. Yes, sir, in the wooded area.

18 MR. HIXSON: Your Honor, I'd like to present the
19 witness with what's been marked State's 103, 104 and
20 State's 105 for identification.

21 THE COURT: Show them to Mr. Wilson.

22 (A PAUSE.)

23 BY MR. HIXSON:

24 Q. Do you recognize those items?

25 A. Yes, sir.

1 Q. And what is it that you see in those photographs?

2 A. Those are clothing, shorts, shirt, clothing.

3 Q. Are those photographs, is that a fair and accurate
4 representation of that scene that you saw on that day?

5 A. I took these photographs.

6 Q. Okay. So, it is a fair and accurate representation?

7 A. Yes, sir.

8 MR. HIXSON: Thank you, Your Honor.

9 MR. WILSON: I have no objections, Your Honor.

10 MR. HIXSON: Your Honor, at this time the state would
11 move State's 103, 104 and 105, photographs, in evidence.

12 THE COURT: In evidence.

13 (PHOTOGRAPHS MARKED INTO EVIDENCE INDIVIDUALLY AS
14 STATE'S EXHIBITS 103 THROUGH 105.)

15 BY MR. HIXSON:

16 Q. Now, did you recover the items that were located, that
17 are depicted in these photographs?

18 A. They're clothing, yes, sir.

19 MR. HIXSON: Your Honor, the state would like to
20 publish these to the jury at this time.

21 MR. WILSON: No objection.

22 BY MR. HIXSON:

23 Q. I apologize for interrupting. I believe you indicated
24 you did recover some items ---

25 A. Yes, sir.

1 Q. --- at that location? Do you recall what clothing
2 that you recovered?

3 A. Shorts and a shirt, clothing.

4 MR. HIXSON: Your Honor, approaching the witness with
5 what's been marked State's 139? I believe that's for
6 identification only. Correct.

7 BY MR. HIXSON:

8 Q. Do you recognize these?

9 A. Yes, I do.

10 Q. And what is that number we're looking at, that you're
11 looking at?

12 A. Pair of shorts that were located in a wooded area.

13 Q. And that?

14 A. The shirt that was found along with the shorts.

15 Q. And what does that appear to be on that?

16 A. It's a, a wad of hair on the back of that shirt there.

17 Q. What does that appear to be?

18 A. That looks like underwear of some sort. A hair clip.

19 MR. HIXSON: Your Honor, at this time the state ---

20 BY MR. HIXSON:

21 Q. And these are substantially in the same condition you
22 recall finding them in the woods?

23 A. Yes, sir. It appears to be in the same condition.

24 MR. HIXSON: Your Honor, at this time the state would
25 move State's 139, all of these items into evidence.

1 THE COURT: Any objection?

2 MR. WILSON: I don't have any objections.

3 THE COURT: 139?

4 MR. HIXSON: 139. That's all -- Your Honor, they're
5 all ---

6 THE COURT: 139 in evidence.

7 (VICTIM'S CLOTHING MARKED INTO EVIDENCE AS STATE'S
8 EXHIBIT NUMBER 139.)

9 MR. HIXSON: And publish these to the jury, Your
10 Honor?

11 THE COURT: Well, yes, but when you say publish, since
12 you have on gloves, you need to show them, just...

13 BY MR. HIXSON:

14 Q. Simply show them to them. That's all you need to do.

15 (A PAUSE.)

16 Q. Officer, when you recovered these items, ultimately
17 what did you do with them?

18 A. At the time we just basically collected them, put them
19 in a paper bag and brought them back to the office.

20 Q. Did you secure them in property evidence at the Horry
21 County Police Department?

22 A. Placed them in the evidence section, yes.

23 MR. HIXSON: Your Honor, I have no further questions
24 for this witness.

25 THE COURT: All right, examination.

1 MR. WILSON: Thank you, Your Honor.

2 CROSS-EXAMINATION BY MR. WILSON:

3 Q. What, what day did you collect those items? Was it
4 the 10th?

5 A. I'd have to check the evidence log there to give ---

6 Q. Where is that?

7 A. Right there on the box.

8 THE COURT: I think on the other side of the box over
9 on this side there's a yellow sheet.

10 BY MR. WILSON:

11 A. I collected them on the 19th.

12 Q. The 19th, okay. Now, on the 10th -- you collected
13 these on the 19th. On the 10th, did you go out to this
14 area on the 10th?

15 A. No, sir.

16 Q. You weren't ---

17 A. I don't recall, no, sir. I don't recall going out on
18 the 10th. I collected the clothing on the 19th.

19 Q. All right. So, so the first opportunity you had to go
20 out to this area to look for anything would have been on
21 the 19th, or had you gone out before the 19th and this was
22 another trip?

23 A. I went out on the 19th and collected the clothing. I
24 didn't go out on the 10th.

25 Q. All right, and that's my question. So, you had not

1 gone out at any point in time prior to the 19th?

2 A. No, sir.

3 Q. To this particular location?

4 A. No, sir.

5 Q. All right, and when you went out on the 19th, did you
6 go out by yourself, or were you with other individuals?

7 A. There were several other officers.

8 Q. All right, and your specific mission was to look for
9 any clothing items and then collect those items. Is that
10 correct?

11 A. Well, any -- anything that would play into as
12 evidence. That could have been clothing or any -- anything
13 that could be used as evidence.

14 Q. Did you collect anything then other than clothing?

15 A. Other than -- I only collected clothing.

16 Q. All right. Now, when you arrived on the 19th,
17 obviously the vehicle wasn't there anymore. You didn't ---

18 A. No, sir.

19 Q. --- see it? All right.

20 MR. WILSON: Beg the Court's indulgence one second.

21 (A PAUSE.)

22 BY MR. WILSON:

23 Q. Just one last question. As I understand it, you had
24 not been out before there. Do you know, to your knowledge,
25 had any other officers been out before this to search this

1 area?

2 A. Not that -- I...

3 Q. You don't know?

4 A. No, sir.

5 MR. WILSON: No other questions.

6 THE COURT: Any redirect?

7 MR. HIXSON: No, Your Honor.

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

10 (THE WITNESS EXITS THE STAND.)

11 THE COURT: Next witness, please.

12 MR. HIXSON: Detective Neil Livingston from the Horry
13 County Police Department.

14 THE COURT: Officer Livingston, come on down this way.

15 NEIL LIVINGSTON, BEING DULY SWORN,

16 TESTIFIES AS FOLLOWS:

17 CLERK OF COURT: Please take the stand.

18 WITNESS: Thank you.

19 CLERK OF COURT: Please state your name and spell your
20 last for the record, and please speak into the microphone.

21 WITNESS: Okay. My name is Neil Livingston,
22 L-i-v-i-n-g-s-t-o-n.

23 THE COURT: Your witness, Mr. Hixson.

24 DIRECT EXAMINATION BY MR. HIXSON:

25 Q. Good morning, sir.

1 A. Good morning.

2 Q. What do you do for a living?

3 A. I'm a detective with the Horry County Police
4 Department.

5 Q. And how long have you maintained that position?

6 A. I've been in investigations for approximately fourteen
7 years.

8 Q. And specifically, what department within the Horry
9 County Police Department are you assigned?

10 A. The Violent Crimes Unit.

11 Q. And so with that much time, then, I guess were you
12 working for the Horry County Police Department back on
13 October 10th, 11th of 2005?

14 A. Yes, sir, I was.

15 Q. And do you specifically have any personal knowledge of
16 the facts concerning a missing person's report generated by
17 your department?

18 A. Yes, sir, I do.

19 Q. Were you working on October 11, 2005?

20 A. Yes, sir.

21 Q. Please tell the jury what your responsibilities were
22 that day.

23 A. I responded to a location on Highway 57 north, which
24 is in the Little River section of Horry County, in regards
25 to a crime scene I processed.

1 Q. And what specific crime scene are you referring to?

2 A. There was a call for an assault, kidnapping, sexual
3 assault, at a building that was under construction.

4 Q. Is that building located somewhere around the vicinity
5 of Ready Mix Road, in that area?

6 A. Yes, sir, it is.

7 Q I'd like for you to refer to what's already been
8 placed into evidence.

9 MR. HIXSON: Your Honor, as State's Exhibit 68.

10 Q. I'm going to use this numerous times, Detective. If
11 you can, look at that if that will help your testimony in
12 any way. Please point out for the jury what location you
13 responded to, both generally and specifically.

14 A. This is Highway 9; this is Highway 57. There is -- as
15 soon as you come in, there's a magistrate's office that was
16 adjacent to that. It was a warehouse or a building or some
17 construction right beside it.

18 Q. Okay. Could you describe what -- the condition that
19 building was in when you responded to it?

20 A. As I said, it was under construction. It had a roof
21 and walls, but it hadn't been finished yet. Doors hadn't
22 been put on some of it. It was still barren some.

23 Q. Was it a commercial structure?

24 A. Yes, sir, it was.

25 Q. All right. I'd like to draw your attention to -- did

1 you take any photographs while you were there?

2 A. Yes, sir, I did.

3 MR. HIXSON: I'd like to draw your attention, Your
4 Honor, to State's exhibit 106, 107, 108, 109, 110, 111, and
5 112. These are all marked for identification only, Your
6 Honor.

7 BY MR. HIXSON:

8 Q. Could you look through those ---

9 A. Yes.

10 Q. --- en masse and see if you recognize those items?

11 (A PAUSE.)

12 A. Yes, sir. These are pictures I took early in the
13 morning of October 11, 2005, of the building and obviously,
14 some contents or some items that I retrieved from it.

15 Q. Now, do those photographs fairly and accurately
16 represent the scene that you saw on that date and time?

17 A. Yes, sir, they do.

18 Q. Okay.

19 MR. WILSON: I have no objections, Your Honor.

20 MR. HIXSON: Your Honor, at this time the state would
21 move State's 106 through 112, specifically 106, 107, 108,
22 109, 110, 111, and 112 into evidence.

23 THE COURT: In evidence.

24 MR. HIXSON: Thank you.

25 (PHOTOGRAPHS MARKED INTO EVIDENCE INDIVIDUALLY AS

1 STATE'S EXHIBITS 106 THROUGH 112.)

2 BY MR. HIXSON:

3 MR. HIXSON: May I publish these to the jury during
4 the course of his testimony?

5 THE COURT: Yes.

6 (DIAGRAM MARKED INTO AS STATE'S EXHIBIT NUMBER 150 FOR
7 IDENTIFICATION.)

8 BY MR. HIXSON:

9 Q. Could you please describe this photograph? Is that
10 the building you looked through?

11 A. Yes, sir. That's the front and one of the corner
12 sections of the building that I was at.

13 THE COURT: Do me a favor there, witness. Try to
14 speak a little louder so we can hear you.

15 WITNESS: Yes, sir.

16 THE COURT: Clearer, too.

17 BY MR. HIXSON:

18 Q. And could you describe 107 and 108 for the jury?

19 A. 107 represents the same building, but that's viewed
20 from the back of the building. 108 shows the interior
21 where it's not finished yet. And also in the center of the
22 picture, you'll see a ruler stretched out to one of the
23 items I retrieved.

24 Q. Okay. Now, could you describe the nature of the doors
25 in this facility?

1 A. There are doors in the front for the entry as they
2 were going to be separated for whatever businesses that
3 were to come, and then the back had some larger doors for a
4 truck to pull in or whatever the case may be.

5 Q. I think you indicated earlier, didn't you, that this
6 building was under construction?

7 A. Yes, sir, it was.

8 Q. Had the doors been installed yet?

9 A. Some had, some hadn't, so yes.

10 Q. Would anyone walking by be able to walk in there
11 without actually opening a door?

12 A. Yes, sir.

13 Q. Ultimately, did you determine anything of evidentiary
14 value in that building?

15 A. Yes, sir. I retrieved two items off the floor. One
16 was an earring, and one was another curved type piece of
17 jewelry with a chain.

18 Q. Okay, and I'd direct your our attention specifically
19 to 109.

20 A. Correct. That's an opening of a door, and there again
21 shows the tape measure marketing where one of the items was
22 as a reference point.

23 Q. Would you point out -- it's a little difficult to see.
24 Can you point out what you're referring in that picture
25 once I ---

1 A. Yes, sir. There's an extending tape measure right
2 there that's in the middle of the concrete floor. It
3 didn't really show up in the photograph.

4 Q. Okay.

5 A. From that distance.

6 Q. Okay. Also, State's 110, excuse me, what is that?

7 A. That's the piece of jewelry I was referring to that's
8 right on the edge of the threshold of the door. There's a
9 curved piece of jewelry item of the chain. I'm not sure
10 what it is.

11 Q. And can you reference that location on this photograph
12 also?

13 A. It would be by the threshold of the door.

14 Q. I think you indicated you recovered an earring. Did
15 you recover another item also?

16 A. The other item I was talking about, the curved piece
17 of jewelry with a chain to it.

18 MR. HIXSON: And specifically, I'm referring to
19 State's 111, Your Honor, in evidence.

20 BY MR. HIXSON:

21 A. Yes.

22 Q. Was that the toe ring?

23 A. I'm not sure exactly what that was.

24 Q. That's fine. That's fine, and this photograph?

25 A. Yes, sir. Both of those were taken in place. Those

1 were with the ruler with the scales to indicate how big
2 they were.

3 Q. Ultimately, did you recover those items?

4 A. Yes, sir, I did.

5 Q. And what did you do with them once you recovered them?

6 A. Showed them to the victim to identify them, and they
7 stayed in my possession until they were turned in to the
8 Horry County Police Department.

9 Q. Detective, I want to show you what's been marked as
10 State's Exhibit 138. That's for identification only. See
11 if you recognize these items.

12 A. Yes, sir. Those are the items I collected, took to
13 the police department.

14 Q. From that location you took the photographs from?

15 A. Yes, sir.

16 MR. HIXSON: Your Honor, at this time the state would
17 move State's 138 into evidence.

18 THE COURT: Any objection?

19 MR. WILSON: I have no objection.

20 THE COURT: 138 in evidence.

21 (TOE RING, EARRING MARKED INTO EVIDENCE AS STATE'S
22 EXHIBIT NUMBER 138.)

23 BY MR. HIXSON:

24 A. It also bears my initials where I sealed it.

25 Q. I know those pictures are a little hard to look

1 through. Did you do a crime scene sketch of that location?

2 A. Yes, sir, I did.

3 Q. And specifically, I'm referring to what's been marked
4 as State's Exhibit 150.

5 MR. HIXSON: That's not in evidence, Your Honor. Just
6 for identification.

7 BY MR. HIXSON:

8 Q. Do you recognize that item?

9 A. Yes, sir, I do.

10 Q. And what is it?

11 A. It's a crime scene sketch I drew. I believe it's been
12 blown up from the original one I have.

13 Q. And is that a fair and accurate representation,
14 although in larger form, of the crime scene sketch you did
15 that day?

16 A. Yes, it is.

17 MR. HIXSON: At this time, the state would move 150
18 into evidence.

19 MR. WILSON: Your Honor, I would, I would object
20 because to it because of -- there is some writing and
21 things at the bottom of the ---

22 THE COURT: I tell you what. Let me look at it.
23 Y'all come up here, please.

24 (OFF-THE-RECORD BENCH CONFERENCE.)

25 THE COURT: 150 admitted into evidence. However, the

1 bottom, that, as you look at it, the last two lines at the
2 bottom will be redacted before showing it to the jury. 150
3 in evidence.

4 (DIAGRAM MARKED INTO EVIDENCE AS STATE'S EXHIBIT
5 NUMBER 150.)

6 MR. HIXSON: Thank you, Your Honor. I'll publish that
7 to the jury.

8 BY MR. HIXSON:

9 Q. Detective, is that the extent of your activities
10 concerning this case on that day?

11 A. Yes, sir, it was.

12 Q. That was after this, some period of time after that
13 that you ultimately served arrest warrants to the
14 defendant?

15 A. Yes, sir, I did.

16 Q. And do you recall what date that was specifically?

17 A. I believe it was that same day, later on.

18 Q. Where did you serve those arrest warrants on him?

19 A. The police department.

20 Q. And do you recall what specific charges he was charged
21 with on that day?

22 A. I believe it was kidnapping, CSC and ABHAN.

23 Q. Now, when you say CSC, what are you referring to?

24 A. Criminal sexual conduct.

25 MR. HIXSON: Beg the Court's indulgence, Your Honor.

1 (A PAUSE.)

2 MR. HIXSON: Your Honor, I have no further questions.

3 THE COURT: Cross-examination, Mr. Wilson?

4 CROSS-EXAMINATION BY MR. WILSON:

5 Q. Did I understand that you went to the warehouse that
6 was in the photographs that you just showed us? Is that
7 correct?

8 A. Yes, sir.

9 Q. All right, and what you're telling us, as I understand
10 it, is that you found at that location an earring and a toe
11 ring?

12 A. Two pieces of jewelry. I'm not sure exactly what they
13 were.

14 Q. Two pieces that you just identified?

15 A. Yes, sir.

16 Q. All right. Anything else that you found there of any
17 value that you collected that you thought was important?

18 A. No, sir.

19 Q. All right. Any blood there?

20 A. No, sir.

21 Q. Find any clothing there?

22 A. No, sir.

23 Q. Find any physical evidence of a scuffle there?

24 A. No, sir.

25 Q. And so you found these two pieces of -- these two

1 items that you say you found and then went and got an
2 arrest warrant and charged the defendant. Is that what
3 you're saying?

4 A. I served an arrest warrant on that date.

5 MR. WILSON: I don't have any other questions. Thank
6 you.

7 THE COURT: Anything else?

8 MR. HIXSON: Nothing further, Your Honor.

9 THE COURT: You may step down. Thank you for your
10 duty, sir.

11 WITNESS: Thank you, Your Honor.

12 (THE WITNESS EXITS THE STAND.)

13 THE COURT: Next witness, please?

14 MR. HIXSON: Lisa Gore, Your Honor.

15 THE COURT: Come on up this way, please, Ms. Gore.

16 LISA GORE, BEING DULY SWORN,

17 TESTIFIES AS FOLLOWS:

18 CLERK OF COURT: Please have a seat. State your name
19 and spell your last for the record, and please speak into
20 the microphone.

21 WITNESS: My name is Lisa Gore, G-o-r-e.

22 THE COURT: Now, Ms. Gore, what you're going to have
23 to do is when you answer, lean towards that microphone,
24 okay?

25 WITNESS: Yes, sir.

1 THE COURT: All right.

2 DIRECT EXAMINATION BY MR. HIXSON:

3 Q. Good afternoon, ma'am.

4 A. Hi.

5 Q. What do you do for a living?

6 A. I'm a staff nurse at Seacoast Medical Center,
7 registered nurse.

8 Q. And where is Seacoast Medical Center in relation to
9 Horry County?

10 A. Highway 9, Little River, South Carolina.

11 Q. And how long have you been employed in that area?

12 A. Seacoast opened in 2007, and I was there opening day,
13 October ---

14 Q. And how long ---

15 A. --- 22nd.

16 Q. --- have you been a nurse?

17 A. I've been nursing for eleven years, eleven plus.

18 Q. Okay. Can you describe what your duties are currently
19 at Seacoast Medical Center? More specifically, what your
20 duties were October 10th? More specifically October 11th,
21 2005?

22 A. I'm a staff nurse, which your duties are you take care
23 of patients that come in. I was assigned to the back that
24 day, so I was working in the back. The nurses' triage was
25 up front. So, I was doing patient care.

1 Q. So on October 11th, 2005, did you come in contact with
2 an individual named Becky Winkler?

3 A. Yes.

4 Q. And please tell me, please the jury the nature of the
5 nature of the contact, how it all happened, how it all
6 started.

7 A. She was brought into the back ambulance entrance by
8 EMS, along with Detective Pitts I believe was with her, and
9 they gave the nature of the reason why they were there. We
10 took her to our room to do an examination.

11 Q. Please tell the jury what your normal procedure would
12 be when you take a patient back.

13 A. We check them. Of course get their name, date of
14 birth, that kind of stuff. We checked their vital signs.
15 We determine if there's anything that's acutely emergent
16 going on with them. Do they need treatment right away.

17 In this case, she was very stable. So, we then get
18 into the reason of why you're here and what can we do for
19 you.

20 Q. I want you to tell this jury, though I want you to be
21 very careful concerning that. Did she tell you what the
22 nature of her injury is?

23 A. She said that she had been beat.

24 MR. WILSON: Your Honor, I, I, I object to what she
25 said, and I object to what she said.

1 THE COURT: Well, was your -- were you seeking a just
2 a yes or no answer, or were you seeking her to say
3 something?

4 MR. HIXSON: Your Honor, it's the state's
5 understanding that based on the sexual assault ---

6 THE COURT: My, my, my question was are you seeking a
7 yes or no, or are you seeking an answer of I guess under
8 8-0, 801 is it? Let's see here.

9 MR. HIXSON: Specifically, there's concerns over
10 allegations of sexual assault. I believe we're allowed to
11 elicit what, where, and when but nothing further.

12 THE COURT: Mr. Wilson, then, he is seeking a response
13 pursuant to 801(d)(1)(d). Is that right?

14 MR. HIXSON: That's correct, Your Honor.

15 THE COURT: In that regard, she can, she can, she can
16 say time and place what she was told by the declarant.

17 MR. WILSON: Time and place, I have no objection to
18 time and place.

19 THE COURT: So, we're now cleared up. Let's see if
20 that's what she does. Anything further, I'll sustain the
21 objection.

22 BY MR. HIXSON:

23 Q. And, Ms. Gore, you heard the judge's admonition. So,
24 did she indicate to you when this happened to her?

25 A. The previous night. I don't recall the exact date,

1 but you have that information.

2 Q. Did she indicate to you where this happened?

3 A. Somewhere between Highway 57, I believe.

4 Q. Did you observe her physical condition during this
5 period of time?

6 A. Yes, sir, I saw her.

7 Q. Okay.

8 MR. HIXSON: Your Honor, I want to approach the
9 witness with what's been marked State's Exhibit 113 through
10 137, then there's a break in the numbers, Your Honor. It
11 goes from -- excuse me, 136 through 137, then it jumps to
12 140 and 143. We'll just start with the first group, Your
13 Honor.

14 THE COURT: 138 is already in evidence.

15 MR. HIXSON: That's correct, Your Honor.

16 THE COURT: 139 is already in evidence.

17 BY MR. HIXSON:

18 Q. Could you take your time? Just briefly, have you
19 looked at these before?

20 A. Yes, sir.

21 Q. Okay. Could you look at these just briefly?

22 MR. HIXSON: I'm handing her 113 through 136 and 137.
23 I apologize.

24 BY MR. HIXSON:

25 Q. And see if you recognize those items.

1 (A PAUSE.)

2 Q. Do you recognize those items?

3 A. Yes, sir.

4 Q. Generally speaking, what are those items?

5 A. These are pictures of Ms. Winkler the day she was
6 brought in.

7 Q. Did you personally observe those injuries yourself?

8 A. I saw most of them.

9 Q. Were you -- let me ask you this. Are those
10 photographs a fair and accurate representation of the
11 injuries you observed of her on that day?

12 A. Yes.

13 Q. Also, let me hand you 140 through 143. Take a look at
14 those also.

15 A. Yes, sir.

16 Q. Okay. Are those photographs a fair and accurate
17 representation of the condition you saw Ms. Winkler on that
18 day?

19 A. Yes.

20 Q. October 11, '05?

21 A. Yes.

22 MR. HIXSON: Your Honor, at this time the state would
23 like to move these items into evidence. Let me show Mr.
24 Wilson.

25 MR. WILSON: I would object. Your Honor, now as I

1 understand the witness's testimony, she saw most of it. I
2 have no objection ---

3 THE COURT: I heard her say that.

4 MR. WILSON: --- to those that she says that she
5 actually did see. I have no objection.

6 THE COURT: Mr. Hixson, your witness did say most of
7 them. So, you need to find out which ones she saw and
8 which ones she didn't see.

9 MR. HIXSON: Yes, Your Honor.

10 MR. WILSON: Your Honor, and while we're at it, let me
11 go ahead and make another objection now so we can try to
12 get this sorted out.

13 I would also object to the fact that these photographs
14 are cumulative. They go over the same injuries or the same
15 bruises or whatever they are. I would suggest that because
16 they are cumulative, it gets inflammatory, and that they
17 need to select.

18 THE COURT: All right, let's first let her sort
19 anything out she wishes to remove. Then you show me the
20 photographs. I'll let you know.

21 BY MR. HIXSON:

22 Q. Ms. Gore, could you look at these? I know you have
23 several times. All right, please remove any of those that
24 you don't have personal knowledge of.

25 THE COURT: What I want the witness to do show

1 photographs she can say are accurate reflections of the
2 appearance of the person that she saw.

3 (A PAUSE.)

4 BY MR. HIXSON:

5 Q. Don't let the jury see them. You can hold them down
6 in your lap.

7 A. I'm familiar with all of those.

8 THE COURT: No, ma'am. When you speak, you have to
9 speak into the microphone.

10 BY MR. HIXSON:

11 A. I'm familiar with these.

12 THE COURT: Hand those back to him. Why don't you
13 bring them up to me so I can start looking through them?

14 The ones she said she was familiar with are 113
15 through 120.

16 (A PAUSE.)

17 BY MR. HIXSON:

18 A. I'm familiar with all of these.

19 Q. Including that one as well?

20 A. Sure.

21 THE COURT: Are there any there that she is not
22 familiar with?

23 MR. HIXSON: No, Your Honor. Your Honor, Ms. Gore,
24 after looking through those items ---

25 BY MR. HIXSON:

1 Q. Each one of those photographs represents a different
2 vantage point or a point of view as it relates to the
3 victim injuries on that day?

4 A. Yes, sir.

5 (A PAUSE.)

6 THE COURT: Mr. Wilson, I'll be glad to let you come
7 look, and if you wish to make an argument outside the
8 presence of the jury, I'll be glad to hear you, sir. But
9 what the witness just answered, that each one is a separate
10 vantage point. If you wish to come look and present to me
11 ones you feel are cumulative, I'll be glad to hear from
12 you, sir.

13 MR. WILSON: I'll be happy to do that, Your Honor, and
14 I think the pictures speak for themselves. Whether or not
15 the witness says that they're from ---

16 THE COURT: I, I know, but -- well, I just didn't want
17 to say anything, but I'll let you look at them. Go ahead
18 and take out the ones you think are cumulative.

19 (A PAUSE.)

20 THE COURT: All right, 130, 113, 118, 117 and 140 are
21 admitted over the objection of the defense. 124 I will
22 sustain as cumulative. The rest I will admit into
23 evidence.

24 Mr. Hixson, do you remember, are these in sequence?

25 MR. HIXSON: They're 1 -- as I recall 114 to 137 would

1 be -- it was 113 to 137 are in sequence.

2 THE COURT: 113 to 137 and then 140?

3 MR. HIXSON: 140 to 143, Your Honor.

4 THE COURT: 140 to 143. 124 coming out. All right,
5 in evidence.

6 MR. HIXSON: Thank you, Your Honor.

7 (PHOTOGRAPHS MARKED INTO EVIDENCE INDIVIDUALLY AS
8 STATE'S EXHIBITS 113 THROUGH 137.)

9 (PHOTOGRAPHS MARKED INTO EVIDENCE INDIVIDUALLY AS
10 STATE'S EXHIBITS 140 THROUGH 143.)

11 MR. HIXSON: May I publish these to the jury at this
12 time?

13 THE COURT: You may do so if you don't need to ask the
14 witness any questions, but you just want to show it. You
15 may show them, sir. I just wanted to move on if we can
16 here.

17 MR. HIXSON: Your Honor, can I ask permission to have
18 the witness come around in front of the jury box to help
19 explain and orient the pictures to the jury?

20 THE COURT: Well, Ms. Gore, let me tell you my concern
21 of that. You don't speak very loud. That's not your
22 fault, but I'm just concerned. If you go around here, you
23 think you can speak loud enough we all can, can hear you?
24 Because that mic is not over there. There's one on the
25 end, but then when you start walking this way, you'll be

1 walking away from that mic. I'll let you try it, but
2 please speak very loud because this lady right here has got
3 to hear everything you say. So, why don't you be speaking
4 to her, this lady right here, okay?

5 WITNESS: Okay.

6 THE COURT: See, I didn't hear you then.

7 WITNESS: Okay. I'll try.

8 THE COURT: You say step down.

9 BY MR. HIXSON:

10 Q. Ms. Gore, I ask that you stay right here and use this
11 microphone. Stay right here. Stand, face that way.

12 MR. HIXSON: Beg the court's indulgence for a moment,
13 Your Honor.

14 (A PAUSE.)

15 MR. HIXSON: I'm showing the witness what's been
16 marked as State's 13.

17 BY MR. HIXSON:

18 Q. What is that?

19 A. This appears to be -- well, it is a picture of facial
20 trauma.

21 Q. And can you please describe to the jury some of the
22 injuries that you observed on Ms. Winkler?

23 THE COURT: You, too, Mr. Hixson.

24 BY MR. HIXSON:

25 Q. Could you please describe to the jury some of the

1 injuries that are obviously pictured in this, in this
2 photograph?

3 A. She had some injuries to the left eye, to the left eye
4 or a bit just underneath around the eye. She appears to
5 have some swelling to the jaw area. She has bruising to
6 the neck area.

7 THE COURT: These will be with you in the jury.

8 BY MR. HIXSON:

9 A. And dried blood about the face.

10 Q. Were you able to determine the condition of her nose?

11 A. She had an x-ray of the nose, which I do believe came
12 back as a fractured nose.

13 Q. She had a fractured nose?

14 A. Yes, sir.

15 THE COURT: Now, when you talk to her ---

16 MR. HIXSON: Very well, Your Honor.

17 BY MR. HIXSON:

18 Q. I'm also referring to what's been marked as State's
19 115. Tell the jury what is shown in that photograph.

20 A. This picture is showing a lip, upper lip injury.

21 Q. Ms. Gore, I notice what appears to be a redness of her
22 right eye. What injuries did she sustain there? That's
23 correct, her right eye?

24 A. Okay.

25 Q. You need to speak up.

1 A. There's redness under the right eye. There's bright
2 bruising to the left eye.

3 Q. Did she sustain any corneal abrasions?

4 A. The chart revealed so.

5 Q. I'm referring to State's 114. Would you look at that
6 also? Is there anything that is somewhat unique that
7 relates to her facial area that's not normal on there?

8 A. She has got multiple bruises, contusions.

9 Q. And did your chart indicate a bite mark to the face?

10 A. Yes, it did.

11 Q. I'd like to show you what's been marked State's 116
12 and 117. Generally, what are those?

13 A. It's showing a very large amount of hair being removed
14 from the patient's head. A lot of matting and
15 disarrangement of her hair.

16 Q. Did you observe the condition of her hair at this
17 time?

18 A. Yes.

19 Q. What was her existing hair? What, what was the nature
20 of her hair?

21 A. Well, to that area she was balding in that area.

22 Q. More specifically, were there any foreign objects in
23 her hair?

24 A. Oh, she had multiple leaves and debris found in the
25 hair.

1 Q. Was her hair sticky?

2 A. I don't recall.

3 MR. HIXSON: Your Honor, I'm showing her what's been
4 placed into evidence. That's State's 128 and 126.

5 BY MR. HIXSON:

6 A. Bruising and scrapes to the arms.

7 Q. Are these photographs to the inside of her arms?

8 A. Yes.

9 MR. HIXSON: I'm showing the witness what has been
10 marked 129 into evidence and 131 in evidence.

11 BY MR. HIXSON:

12 Q. What are these?

13 A. A bruising, contusions, scrapes to the wrist area.

14 MR. HIXSON: I'm showing the witness what has been
15 marked State's 130 and 127.

16 BY MR. HIXSON:

17 A. Bruises and contusion to the tops of the hands.

18 MR. HIXSON: Your Honor, showing the witness what's
19 been marked as State's 119 and 118.

20 BY MR. HIXSON:

21 Q. What are those?

22 A. Contusions, bruises to the neck area.

23 Q. And could you please describe the nature of these
24 contusions to the victim's neck? Are they longitudinal?

25 A. Yes.

1 MR. HIXSON: Your Honor, showing the witness 120 and
2 120 -- 105 -- excuse me, 125.

3 BY MR. HIXSON:

4 A. 125 appears to be an inner arm bruise, and 120 appears
5 to be another bruise to the back of the neck.

6 Q. Now, I noticed there's some clothing indicated in this
7 photograph. Do you recall the nature of the clothing she
8 was wearing at that time?

9 A. It was a, a T-shirt.

10 THE COURT: Speak loudly for the court reporter.

11 BY MR. HIXSON:

12 A. A T-shirt.

13 Q. Does that fairly reflect the injuries to the victim's
14 arms?

15 A. Yes.

16 Q. Do you recall? Just her arms?

17 Do you recognize that? What is that?

18 A. That is a scrape to the torso or belly.

19 Q. Of Ms. Winkler?

20 A. Yes.

21 THE COURT: Do you have that number, Mr. Hixson?

22 MR. HIXSON: I apologize, Your Honor. That's number
23 121. And, Your Honor, these, I'm showing the witness 122
24 and 123.

25 BY MR. HIXSON:

1 Q. What are these?

2 A. These are pictures of scrapes and bruising to the
3 patient's back.

4 Q. Ms. Gore, go on to ---

5 THE COURT: I can't hear you.

6 MR. HIXSON: Moving on to the victim's legs, Your
7 Honor. I'm showing her photograph 132 and State's 140,
8 both of these in evidence.

9 BY MR. HIXSON:

10 A. These are showing contusions and scrapes to the
11 patient's bilateral lower legs.

12 Q. And what's the difference in reference points between
13 these two photographs?

14 A. One is taken from the right side, and the other is
15 taken from the left side.

16 MR. HIXSON: Your Honor, I'm showing the witness
17 State's 134 as well as State's 135.

18 BY MR. HIXSON:

19 Q. What does that depict?

20 A. 134 is a more in-depth view of a scrape or a cut to
21 the leg, the thigh area. 135 is showing scrapes and
22 bruising to the knee area.

23 MR. HIXSON: Your Honor, I'm showing her State's 133
24 and 131 in evidence.

25 BY MR. HIXSON:

1 A. These are shots of the upper thigh area of contusions,
2 scrapes.

3 MR. HIXSON: Your Honor, I'm showing the witness
4 State's 142 and 136.

5 BY MR. HIXSON:

6 Q. Please describe those.

7 A. These are shots of the lower area of the leg. Looks
8 like the shin and ankle, of scrapes and contusions.

9 Q. The victim's feet.

10 MR. HIXSON: I'm showing the witness State's 137 and
11 143.

12 BY MR. HIXSON:

13 Q. Can you describe the injury in 137?

14 A. She appears to have a small cut or a scrape to the
15 bottom of the foot with more abrasions and contusions.

16 Q. What was the general condition of her feet, as you
17 recall it, when you observed her?

18 A. Dirty, sand, leaves, debris.

19 Q. And 143?

20 A. It's a contusion to the top of her foot.

21 Q. Ms. Gore, have a seat. I appreciate that.

22 THE COURT: Remember to keep your voice up.

23 BY MR. HIXSON:

24 Q. Now, in the event a patient comes into the Seacoast
25 Medical Center and you have a suspicion of some type of a

1 sexual assault, what would your protocol be in dealing with
2 a patient like that?

3 A. We do the sexual assault kit, collection kit.

4 Q. Okay. Can you describe to the jury what that entails?

5 A. It's a detailed process of collecting samples,
6 multiple different samples in order to hopefully gather
7 enough evidence to prosecute the assailant.

8 Q. Now, you said something about samples. What do you
9 mean by samples?

10 A. Well, you're collecting their clothing. You're
11 clothing hair samples. You're collecting any type of --
12 they also collect blood samples. They collect urine
13 samples, any type of -- semen collection. Anything that is
14 available, we collect.

15 Q. Okay. Now, you said these samples or swabs, are they
16 taken from various locations on the patient's body?

17 A. Yes.

18 Q. And please describe what is -- your standard protocol
19 would be to collect those samples.

20 A. Well, basically there's a checklist in the kit, and I
21 go word by word by the checklist and collect everything
22 that they need. Everything that's appropriate and that can
23 be collected gets collected.

24 Q. I know you don't have your checklist in front of you,
25 but do you recall some of the items on that checklist?

1 A. General, we do known hair samples, fingernail
2 scrapings. We do oral, saliva samples, blood samples, even
3 pubic hair samples. We do debris collection. Like Ms.
4 Winkler had leaves in her hair.

5 Q. All right.

6 A. We collect anything. We collect the clothing that
7 they have on. That gets put into the kit.

8 Q. Do you do vaginal swabs?

9 A. The doctor does the vaginal swabs, but yes, that's
10 collected.

11 Q. Do they get rectal swabs?

12 A. Yes.

13 Q. And you're present during that procedure with the
14 doctor?

15 A. Yes.

16 Q. Do you know in this case if these procedures were
17 followed?

18 A. Yes.

19 Q. So, in fact, a rape kit was done on Ms. Winkler that
20 day?

21 A. Yes.

22 MR. HIXSON: Your Honor, I'd like to show the witness
23 what has been marked as State's 147 for identification.

24 BY MR. HIXSON:

25 Q. Do you recognize that item?

1 A. Yes.

2 Q. And what is that?

3 A. This is a sexual assault evidence collection kit.

4 That ---

5 Q. Is it specific to this case?

6 A. Yes. It specifically was collected from Becky
7 Winkler.

8 Q. Now, how do you know it's specific to Ms. Winkler?

9 A. It's labeled the victim's name and who -- the doctor's
10 name, the nurse's name, the hospital's name, the name of
11 the investigating officer, the date of collection. All of
12 that is on here.

13 Q. Okay. Now, are there any special security features as
14 it relates to that kit?

15 A. Yes, sir. It's sealed prior to opening it so you know
16 it hadn't been tampered with. Once you collected your
17 data, you then reseal it back so that nothing can be
18 tampered with.

19 Q. Okay. I need to point out a couple of items as it
20 relates to that. It looks like this has been cut, some
21 type of seal. What is that? What's the explanation for
22 that?

23 A. That's the pre-seal. That's the kit as we see -- as
24 we find it. We have to open that seal.

25 Q. Okay.

1 A. Okay.

2 Q. And when you open it, it's empty. Is that correct?

3 A. No. You have your ---

4 Q. I mean, there's no samples in it?

5 A. No, no. There's no samples, but you have the
6 collection stuff.

7 Q. Now as it relates to the contents, what are the
8 contents of a typical rape suspect kit -- or, excuse me,
9 evidence kit?

10 A. Yeah. Well, there's several different bags that you
11 place those specimens in. You get -- it comes with the
12 swabs that you use. It comes with the lab tubes that the
13 blood is drawn through. Just the microscopic slides are
14 all included there.

15 Q. Are the individual items inside also sealed and
16 secured?

17 A. Yes, they are.

18 Q. Okay, and then ultimately once your complete -- you
19 complete -- you have completed taking them, is this entire
20 unit sealed into one package?

21 A. Yes.

22 Q. Now, I think I asked you this question. Let me make
23 sure that I understand. You did perform one of these
24 suspect kits on Ms. Winkler?

25 A. Yes.

1 Q. And you sealed those items?

2 A. Yes.

3 Q. What did you do with those items after you were -- had
4 finished sealing them up?

5 A. They were turned over to the detective.

6 Q. Okay, and when they were in your custody and control,
7 did you tamper with those items?

8 A. No.

9 Q. Did you let anybody else tamper with them?

10 A. No.

11 Q. Did you maintain the integrity of those items?

12 A. Yes.

13 Q. And did you make sure that they were the same in form
14 and content that you -- that they were in when you handed
15 them to Deputy Pitts as when your doctor, the doctor
16 collected them?

17 A. Yes.

18 Q. And you witnessed him collect those items and place
19 them in that container?

20 A. Yes.

21 MR. HIXSON: I beg your indulgence, Your Honor.

22 (A PAUSE.)

23 MR. HIXSON: Ma'am, I have no further questions for
24 you at this time. If I could answer anything Mr. Wilson
25 has.

1 THE COURT: Mr. Wilson, do you have questions?

2 CROSS-EXAMINATION BY MR. WILSON:

3 Q. As I understood it, you said you been a nurse for how
4 many years, twenty?

5 A. No, sir, eleven.

6 Q. Eleven years. Did you work in the ER, or did you just
7 work in a private -- Seacoast is a private facility?

8 A. I've been working in the ER for -- since 2007.

9 Q. Okay, and -- since 2007?

10 A. Excuse me, 2000, I apologize.

11 Q. All right. This is 2000, so you've been working in
12 the ER for probably five years or so by the time Ms.
13 Winkler came there?

14 A. Yes.

15 Q. All right, and now had you worked in situations where
16 you seen pictures of automobile accidents and things?

17 A. Yes.

18 Q. And it would not be uncommon for a person who has been
19 in an automobile accident to have facial contusions and
20 bruises on their bodies, faces, arms, would it?

21 A. No.

22 Q. Now, did you do anything to determine whether or not
23 there was any alcohol involved? Did you do anything to
24 determine the level of sobriety at the time Ms. Winkler
25 came to see you?

1 A. I don't recall. You'll have to check the chart.

2 Q. Now, would not be a -- is that not a part of your
3 standard procedure, trying to determine how to treat an
4 individual?

5 A. Not in every case, no.

6 Q. All right. Well, what about if it involved an
7 automobile accident? Could you want to know that?

8 A. That's up to the doctor to decide, sir, not me.

9 Q. Okay. And, ma'am, in terms of -- let me back up and
10 ask you. How long was Ms. Winkler there that day at the
11 hospital? Did you keep her, admit her for treatment and
12 everything?

13 A. No, sir.

14 Q. Well, how long was she there?

15 A. A couple of hours.

16 Q. So, she was there a couple of hours and released. All
17 right. Was there any life-threatening injuries that you
18 saw on her?

19 A. Not life threatening.

20 Q. You said that you did some swabs, vaginal swabs,
21 rectal swabs. Did you do a swab of a bite mark or
22 something on her arm?

23 A. I believe that was collected, according to the chart.

24 Q. Okay. Did you preserve that, too, to send it?

25 A. Yes.

1 Q. Now, once this -- at Seacoast, you do not actually
2 test the substances once you collected them. You gave them
3 to law enforcement, correct?

4 A. Correct.

5 Q. And then law enforcement would send it to SLED or to
6 whoever they choose to send it to be tested further,
7 correct?

8 A. Correct.

9 Q. So, you don't know when you complete your kit -- your
10 rape kit I think is what you called it. Once you complete
11 that, you don't know the results in terms of if she had sex
12 or, or if she did not?

13 A. No, I don't.

14 Q. All right. Now, in terms of examination -- well, let
15 me back up and ask you this way. Did you physically
16 examine Ms. Winkler yourself? I mean, I'm talking about
17 for sexual assault. Did you do that yourself? Did you
18 physically do that?

19 A. No.

20 Q. Bear with me just one second.

21 (A PAUSE.)

22 Q. One last question. Well, two, actually. Do you know
23 whether or not when -- when she left, Rape Crisis was
24 called to the hospital?

25 A. They were called. Ms. Winkler refused to see them.

1 Q. All right, and one last question. Did she have any
2 stitches or any -- did she have to have any kind of
3 surgery, anything like that that you know of while she was
4 there?

5 A. Not while she was in our facility. She was told to
6 follow up with the appropriate people.

7 Q. Okay, but if someone was bleeding or they have a
8 serious injury, they needed stitches, would you let them --
9 would you all let them leave without stitches?

10 A. No.

11 Q. Okay. I was just asking you that.

12 MR. WILSON: Thank you.

13 THE COURT: Any redirect?

14 MR. HIXSON: No, Your Honor.

15 THE COURT: You may step down, ma'am.

16 (THE WITNESS EXITS THE STAND.)

17 THE COURT: Any reason for her not to return to the
18 hospital?

19 MR. HIXSON: I have no objection, sir.

20 MR. WILSON: No, sir.

21 THE COURT: All right. Call your next witness.

22 MR. HIXSON: Detective Ann Pitts, Your Honor.

23 ANN H. PITTS, BEING DULY SWORN,

24 TESTIFIES AS FOLLOWS:

25 CLERK OF COURT: Please have a seat. Please state

1 your name and spell your last for the record, and please
2 speak into the microphone.

3 WITNESS: Ann H. Pitts, P-i-t-t-s.

4 THE COURT: Thank you, Ms. Pitts.

5 Go ahead.

6 MR. HIXSON: Thank you, Your Honor.

7 DIRECT EXAMINATION BY MR. HIXSON:

8 Q. Good afternoon, Detective.

9 A. Good afternoon.

10 Q. What do you do for a living? I believe you've already
11 testified.

12 A. Yes, sir. I work for the South Carolina Department of
13 Public Safety.

14 Q. And were you working for them back in October of 2005?

15 A. Yes, sir, I was.

16 Q. And at some point in time around October 10, 2005, did
17 you become aware of a missing person's report generated by
18 your department?

19 A. Not on the 11th.

20 Q. That day -- let's tell the jury about your involvement
21 beginning on the 11th.

22 A. I was contacted by the violent crime's Sergeant
23 Maurice Jones to respond to Stephen's Crossroads Complex,
24 Highway 57. A lady who didn't give me any information when
25 she called me told me to respond to the complex.

1 Q. And did you then respond?

2 A. I did.

3 Q. And when you got there, what did you learn?

4 A. I learned from him that a lady was missing overnight,
5 and he had asked me to respond to ---

6 MR. WILSON: Objection to what he asked her.

7 THE COURT: You can tell what you did in regard --
8 after that, what you did as a result.

9 WITNESS: Yes, sir.

10 BY MR. HIXSON:

11 A. After meeting with my sergeant, I responded to
12 Seacoast Medical Center to interview the victim.

13 Q. And did you, in fact, do that?

14 A. Yes, I did.

15 Q. All right, and the victim that we are referring to,
16 specifically, who did you talk to?

17 A. Becky Winkler.

18 Q. And did you observe her physical condition?

19 A. I did.

20 MR. HIXSON: Your Honor, referring the witness to
21 what's been marked as State's 114, 113 and 115.

22 BY MR. HIXSON:

23 Q. Do you recognize those? These are in evidence. Do
24 you recognize those items?

25 A. Yes, sir, I do.

1 Q. Is that what Ms. Winkler looked like when you
2 interviewed her?

3 A. Yes, sir. I took these photographs.

4 Q. You took these photographs?

5 A. Yes, sir.

6 Q. Now, you indicated that you interviewed Ms. Winkler?

7 A. Correct.

8 Q. Was that interview recorded in any way?

9 A. Yes, it was videoed, recorded.

10 Q. As well as audio?

11 A. Yes, sir.

12 Q. Is that while she was in the hospital?

13 A. Correct.

14 Q. Could you please describe to the jury what her
15 demeanor was when you interviewed her?

16 A. She seemed to be in shock, very afraid. How best to
17 say? Wounded, embarrassed to tell me what happened.

18 Q. Did she, in fact, tell you what happened?

19 A. Yes did.

20 Q. Did she tell you -- I want you to listen carefully.
21 Did she tell you where what happened to her, where that
22 occurred?

23 A. In a wooded area.

24 THE COURT: No, no. The question is did she.

25 WITNESS: Yes, she did.

1 BY MR. HIXSON:

2 Q. And, and where was that?

3 A. In a wooded area off of Highway 57.

4 MR. WILSON: Your Honor.

5 THE COURT: Mr. Hixson, I sustain as to the last
6 question. If you're seeking to get anything else other
7 than results as far as any comments, we need to approach
8 and have a discussion.

9 MR. HIXSON: That's fine, Your Honor.

10 BY MR. HIXSON:

11 Q. Did she tell you when it happened?

12 A. Yes.

13 Q. When you saw her in the hospital, do you recall what
14 she was wearing?

15 A. Yes.

16 Q. And what was she wearing?

17 A. She was wearing a gray T-shirt and gray -- it appeared
18 to be shorts.

19 MR. HIXSON: Your Honor, I'm going to show the witness
20 what's been marked for identification only, I believe, as
21 State's 102. I believe that's just ID.

22 THE COURT: Exactly right.

23 BY MR. HIXSON:

24 Q. Do you recognize these items?

25 A. Yes, sir, I recognize it.

1 Q. Do you recognize this item?

2 A. Yes.

3 Q. What are these items?

4 A. That's the clothing that Ms. Winkler was wearing when
5 I interviewed her at Seacoast.

6 Q. Did you take these into your custody?

7 A. Yes, I did.

8 MR. HIXSON: Your Honor, at this time the state would
9 like to move State's 102, a gray T-shirt and shorts, into
10 evidence.

11 THE COURT: Any objection?

12 MR. WILSON: No, sir, I have no objections.

13 (MEN'S CLOTHING MARKED INTO EVIDENCE AS STATE'S
14 EXHIBIT NUMBER 102.)

15 MR. HIXSON: Display these to the jury, Your Honor?

16 THE COURT: Yes, you may.

17 BY MR. HIXSON:

18 Q. When you took these items from the victim in this
19 case, what did you do with them?

20 A. Returned them to the evidence department, the police
21 department.

22 Q. While you were at Seacoast Medical Center, did you
23 receive any type -- any object from Lisa Gore, a nurse
24 there?

25 A. Yes, I did.

1 Q. What was that item?

2 A. It was a CSC kit, a sexual assault kit.

3 Q. Specifically referring to 147 for identification only,
4 do you recognize that?

5 A. Yes, I do.

6 Q. And what ultimately did you do with this sexual
7 assault evidence kit?

8 A. I brought it back to the police department, returned
9 it to the Evidence Department, and later filled out a chain
10 of custody and requested it go to SLED to be tested.

11 Q. While that item was in your custody and control, did
12 you tapper with that evidence?

13 A. No, sir.

14 Q. Did you change or alter its integrity in any way?

15 A. No, sir.

16 Q. Did you maintain its integrity in the same form and
17 content as when you received it?

18 A. Yes, sir.

19 Q. And maintained that through the time you gave it
20 ultimately to Horry County evidence. Is that correct?

21 A. Correct.

22 Q. Based on the information that you obtained from
23 Seacoast Medical Center, I guess through the interview with
24 the victim, did you have occasion to return to the wooded
25 area off Highway 57?

1 A. Yes, sir.

2 Q. And what was the purpose for going to that wooded
3 area?

4 A. To search for her clothing.

5 Q. Did you, in fact, return to that area?

6 A. Yes, sir.

7 Q. And what were the results of those efforts -- or
8 please describe those efforts.

9 A. The first time I went back with, with Ms. Grainger and
10 Detective Livingston and try to locate the area where the
11 clothing might be located. We searched the area but at
12 that time produced no results. Another point in the
13 backwoods, some members of the dog team and crime scene and
14 did, in fact, locate the clothing matching the description
15 she had given.

16 Q. I think you indicated the victim in this case, Ms.
17 Winkler, accompanied you on one occasion?

18 A. She did.

19 Q. And tell and describe that, what you did on that
20 occasion?

21 A. She wouldn't even get out of the car. Was -- clearly
22 didn't want to be there. We couldn't spend a great deal of
23 time there. It was pretty much we went back out to the
24 area. She agreed to go back out to the area, and then was
25 normally saying ---

1 MR. WILSON: I object at this point.

2 BY MR. HIXSON:

3 Q. If we could just stick with her demeanor.

4 A. We didn't stay very long. We returned her back to her
5 mother's residence.

6 Q. Now, at some point in time was Mr. Winkler -- were
7 arrest warrants taken out for him?

8 A. Yes.

9 Q. And what were those warrants for?

10 A. For criminal sexual conduct in the first degree,
11 kidnapping, and assault and battery with intent to kill.

12 Q. Now, at some point in time on October 11th, was Mr.
13 Winkler ultimately arrested?

14 A. He was.

15 Q. Can you please describe to the jury the steps leading
16 up to his arrest?

17 A. During, during the interview, during the interview
18 with several people, I obtained some information on persons
19 that Mr. Winkler knew, and none of the names -- I was given
20 a phone number associated with that person. And I called
21 and got an address for that phone number and sent two
22 uniformed officers to that address in an attempt to locate
23 Mr. Winkler. And they did, in fact, locate him at that
24 address.

25 Q. And he was placed into custody at that time?

1 A. Yes, he was.

2 Q. And what -- are you aware of just generally in the
3 basis of your investigation where they took Mr. Winkler?

4 A. Where they took him from?

5 Q. Yeah.

6 A. [REDACTED]

7 Q. Okay.

8 A. [REDACTED] I believe it's called.

9 Q. And where did they transport him to?

10 A. To the Horry County Police Department.

11 Q. Were you present at the Horry County Police
12 Department?

13 A. I was.

14 Q. Did you observe the defendant?

15 A. I did.

16 Q. And did you have an opportunity to see his physical
17 characteristics at that time?

18 A. I did.

19 Q. And what he was wearing?

20 A. Yes, sir.

21 Q. Could you describe what he was wearing when you saw
22 him?

23 A. He had on a white T-shirt with some type of printing
24 on it, blue jean shorts and brown shoes.

25 MR. HIXSON: I'm referring the witness to what's been

1 marked as State's 94. That's in evidence, I believe, Your
2 Honor.

3 THE COURT: 94 is in evidence.

4 BY MR. HIXSON:

5 Q. Do you recognize that?

6 A. Yes, sir, I do.

7 Q. And what is that?

8 A. This is a photograph taken of Mr. Winkler on that day.

9 Q. Could you describe the condition of his T-shirt?

10 A. The T-shirt was relatively clean, a little bit
11 wrinkled.

12 Q. How about his shorts?

13 A. His shorts were dirty.

14 Q. While you were working at the Horry County Police
15 Department, did you take the clothing that Mr. Winkler was
16 wearing into evidence?

17 A. Yes, I did. Investigator Cooper collected it, and I
18 looked at it.

19 Q. And why didn't you collect it instead of investigator
20 Cooper?

21 A. Because he was a male. He had to remove all of his
22 clothing, so I couldn't be present in the room while that
23 was taking place.

24 Q. Are you aware of what items were collected from him
25 and what items were not?

1 A. Yes, sir.

2 Q. And what were those?

3 A. The white T shirt, the blue jean shorts, and the brown
4 shoes he had on.

5 Q. Were any men's underwear collected?

6 A. No.

7 Q. Now, let's step forward one day to October 12th, 2005.
8 Were there any proceedings that you handled that Mr.
9 Winkler was present at also?

10 A. Yes, sir.

11 Q. And what was that?

12 A. That was his first bond hearing after arrest.

13 Q. And could you please describe to the jury what the
14 nature of a bond -- what is a bond hearing?

15 A. After someone is arrested, they have the legal right
16 to go to what's called a bonding hearing. That's where
17 they appear before a judge. The judge makes a
18 determination if they're going to be let out of jail, or if
19 some amount of bond is going to be set for them to get out
20 of jail, or they can deny their bond.

21 Q. And did this process actually take place?

22 A. It did.

23 Q. And were the victims -- was the victim present? Was
24 Ms. Winkler present?

25 A. Yes, she was.

1 Q. How about the family members at this point?

2 A. Yes, they were.

3 Q. And of course the defendant was present?

4 A. Yes, sir.

5 Q. Was the judge there?

6 A. Yes.

7 Q. Were there arguments made in relation to other
8 conditions or whether the defendant should have bond or
9 not?

10 A. There were.

11 Q. And what was the ultimate result of that hearing?

12 A. His bond was denied.

13 Q. And when you say bond was denied, what does that mean?

14 A. That he is to remain in the custody of the sheriff's
15 department at the jail. He was not let out.

16 Q. Ultimately, was there an additional bond hearing?

17 A. Yes, there was.

18 Q. Do you recall the date that that second bond hearing
19 was held?

20 A. I believe it's October 24th.

21 MR. HIXSON: Your Honor, I'm looking at what's been
22 marked as State's 149 for identification only, and the
23 state would move to introduce this into evidence. This is
24 a document under seal from the Clerk of Court's office,
25 Your Honor.

1 THE COURT: And there are two documents?

2 MR. HIXSON: There are two. This is -- I apologize.
3 We've got 148 first, Your Honor, and then 149.

4 THE COURT: You've seen 40 -- 148, 149.

5 MR. WILSON: I have.

6 THE COURT: Any objections?

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

8 THE COURT: 148 and 149 you move into evidence, Mr.
9 Hixson?

10 MR. HIXSON: That's correct, Your Honor.

11 THE COURT: In evidence.

12 (BOND ORDER MARKED INTO EVIDENCE AS STATE'S EXHIBIT
13 NUMBER 148.)

14 (ORDER AMENDING BOND MARKED INTO EVIDENCE AS STATE'S
15 EXHIBIT NUMBER 149.)

16 BY MR. HIXSON:

17 Q. State of South Carolina, County of Horry. State
18 of South Carolina vs. Louis M. Winkler. We ---

19 THE COURT: What are you reading from?

20 MR. HIXSON: I apologize, Your Honor. I am reading
21 from this self-authenticating document. This is an order
22 ---

23 THE COURT: Just the number.

24 MR. HIXSON: I apologize, Your Honor, 148.

25 THE COURT: 148. Go ahead.

1 BY MR. HIXSON:

2 Q. Now comes the defendant, by and through his
3 attorney, G. Scott Bellamy, moves this court to
4 set a surety bond of \$150,000 as to the above-
5 referenced warrant numbers. The defendant will
6 wear an electronic monitor while out on bond. He
7 is to have no contact with the victim and must be
8 present for any and all court appearances as
9 scheduled. It is so order this 24th date of
10 October, 2005.

11 Subsequent to that, Detective Pitts, are you aware of
12 a third bond proceeding?

13 A. Yes, sir.

14 Q. And do you recall the nature of that third bond
15 proceeding?

16 A. It was another -- well, I think that original bond
17 hearing -- there were bond reduction hearings to determine
18 whether or not the status should be changed.

19 Q. And ultimately was that bond reduction hearing held?

20 A. Yes. He was granted bond.

21 MR. HIXSON: Okay, and specifically, Your Honor,
22 referring to what's been marked into evidence 149.

23 BY MR. HIXSON:

24 The State of South Carolina, County of Horry,
25 State of South Carolina vs. Louis M. Winkler,

1 order amending bond conditions. The defendant,
2 by and through his attorney, G. Scott Bellamy,
3 appeared before this court on Tuesday, December
4 6th of 2005 requesting an order amending the
5 conditions, bond conditions, previously set on
6 this defendant. Bond is to the above-referenced
7 warrant numbers. This hereby orders that the
8 defendant, Louis M. Winkler, will be allowed to
9 be off of the electronic monitor that he
10 presently wears for a period of two hours on a
11 daily basis to seek employment while out on bond.
12 As was stated in the original order, he is to
13 have no contact with the victim and must be
14 present for any and all court appearances as
15 scheduled.

16 Detective Pitts, are you aware of what two hours the
17 defendant was allowed to be away from his home on the
18 electronic monitoring?

19 A. Yes, sir.

20 Q. And what two hours? What frame of two hours was he
21 allowed to be off his home?

22 A. From 4:00 p.m. to 6:00 p.m.

23 Q. And approximately what time did you arrive at the
24 crime scene on 20-J the 911 call -- when the 911 call came
25 in?

1 A. I arrived on -- what time did I arrive?

2 Q. What time did the 911 call come in?

3 A. Approximately 5:37 p.m.

4 Q. Now, prior to March 6th of '06 and after all these
5 bond hearings and all the stuff we talked about, did you
6 have an occasion to go visit with Ms. Winkler?

7 A. I did.

8 Q. Did you go to her home?

9 A. I did.

10 Q. And what was the basis for going there?

11 A. To collect some hair.

12 MR. HIXSON: I'm showing the witness, Your Honor,
13 what's been marked as 116. That's in evidence.

14 BY MR. HIXSON:

15 Q. Do you recognize that?

16 A. Yes, I do.

17 Q. And could you please describe -- that's in evidence.

18 We can show that to the jury. Can you describe the
19 victim's hair as you saw her at Seacoast Medical Center, as
20 well as what's depicted in this photograph?

21 A. There was, there was a -- what appeared to be a large
22 area of hair missing on the back of her head, the back,
23 right part of her head, and into the left of that, her hair
24 was in a large clump.

25 Q. Was there anything unusual in that clump still there?

1 A. It was debris. There was some debris in her hair.

2 Q. When you went to Ms. Winkler's residence, did she
3 ultimately give her hair to you?

4 A. She did.

5 MR. HIXSON: Permission to approach the witness, Your
6 Honor?

7 BY MR. HIXSON:

8 Q. I show you what's been marked as State's 114. Do you
9 recognize that item?

10 A. Yes, sir, I do.

11 Q. And how do you recognize that item?

12 A. That was the hair I collected from her the day I went
13 to her apartment.

14 Q. Do you recognize the bag it was in?

15 A. Yes, sir, that was the bag it was in. I left it as it
16 was.

17 MR. HIXSON: And at this time, the state would move
18 114 into evidence.

19 MR. WILSON: No objection.

20 THE COURT: One second.

21 COURT REPORTER: It's 144.

22 MR. HIXSON: 144. Thank you, Madame Court Reporter.
23 If you could ---

24 THE COURT: I started to say I had 113 through 137
25 already in evidence.

1 MR. HIXSON: Thank you, Your Honor. It's 144. Thank
2 you very much.

3 MR. WILSON: No objection.

4 THE COURT: It's in evidence.

5 (VICTIM'S HAIR MARKED INTO EVIDENCE AS STATE'S EXHIBIT
6 NUMBER 144.)

7 THE COURT: Any further questions?

8 MR. HIXSON: Thank you, Your Honor.

9 BY MR. HIXSON:

10 Q. While you were in her residence, the victim's
11 residence, Ms. Winkler, to secure her hair, did she show
12 you another item?

13 A. She did.

14 Q. And what did she show you?

15 A. A gun.

16 Q. I'm referring to what's been marked as State's 10 in
17 evidence. Do you recognize that?

18 A. Yes, sir.

19 Q. Is that the gun she showed you on that day when you
20 went to pick up her hair?

21 A. Yes, sir.

22 Q. And where was that?

23 A. Under the pillow in her bedroom of the apartment.

24 Q. Did you receive something from the state Law
25 Enforcement Division, SLED, on March 20, 2006?

1 A. I did.

2 Q. And what was that?

3 A. The DNA report from SLED.

4 Q. From the evidence kit that you sent to SLED to test?

5 A. Yes, sir. That wasn't the only thing I sent, but yes,
6 sir, the DNA report.

7 Q. You received a final report on March 20th, 2006?

8 A. That's correct.

9 Q. This March 20, 2006, is that a significant date in
10 this case?

11 A. The date he was captured, Mr. Winkler was captured.

12 MR. HIXSON: I have no further questions, Your Honor.

13 THE COURT: Mr. Wilson, if you feel you can do your
14 cross in fifteen, we'll do it. If not ---

15 MR. WILSON: Yes, sir, I don't think I'll be very
16 much.

17 THE COURT: Ladies and gentlemen of the jury -- oh,
18 you say you want to?

19 MR. WILSON: I don't think I'll be very long.

20 THE COURT: Okay, go ahead. Yes, sir.

21 CROSS-EXAMINATION BY MR. WILSON:

22 Q. Detective, let me ask you. As I understand it,
23 you also had a conversation with the defendant, did you
24 not?

25 A. Yes, sir.

1 Q. All right, and let's go back to the bond hearings
2 first. Now at the bond hearing, the first bond hearing, he
3 didn't have a lawyer, did he?

4 A. I don't believe so.

5 Q. All right, but you were there and a lot of other
6 people were there. He didn't have a lawyer, and the judge
7 denied his bond, right?

8 A. Yes, sir.

9 Q. And he got a lawyer and then he got bond, right?

10 A. Yes, sir.

11 Q. All right. Now, but even before that, after he was
12 arrested, you met with him, right?

13 A. I met with him?

14 Q. Yes, ma'am.

15 A. After his arrest, yes, sir.

16 Q. All right. He waived his right to a lawyer?

17 A. Yes, sir, yes.

18 Q. And he gave you a videotaped statement, did he not?

19 A. He did.

20 Q. No question about that, is there?

21 A. No, sir.

22 MR. WILSON: All right, I don't have anything else.

23 THE COURT: Anything else?

24 MR. HIXSON: No, Your Honor.

25 THE COURT: You may step down, Ms. Pitts. Thank you

1 very much.

2 (THE WITNESS EXITS THE STAND.)

3 THE COURT: Ladies and gentlemen of the jury, I'll let
4 you go about ten minutes. If you would, we have lunch now.
5 What I'd like to do is let's start back in about fifty
6 minutes. You can kind of have your lunch, walk outside for
7 a minute, that type of thing, and then we'll get started
8 back soon, about ten after 2. We'll see you all then. Do
9 not discuss the case.

10 (THE JURY EXITS AT 1:19 P.M.)

11 THE COURT: Just for the record, Exhibit 124 which I
12 sustained defense on, I gave that back to the state. So,
13 y'all have 124.

14 MR. HIXSON: We do, Your Honor.

15 THE COURT: I just wanted to make sure.

16 Anything before we break for lunch? If not, let's be
17 back ready to go at ten after 2, ten after 2.

18 (OFF THE RECORD.)'

19 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
20 151 THROUGH 158 FOR IDENTIFICATION.)

21 (LETTER MARKED AS STATE'S EXHIBIT NUMBER 159 FOR
22 IDENTIFICATION.)

23 THE COURT: Counsel, are you ready?

24 MR. HIXSON: The state is ready, Your Honor.

25 THE COURT: Let's bring the jury in.

1 (THE JURY ENTERS AT 2:26 P.M.)

2 THE COURT: We will now proceed with the next witness
3 in the case.

4 Okay, Mr. Hixson.

5 MR. HIXSON: Thank you, Your Honor. The state calls
6 Lori Rabon.

7 THE COURT: Come around, Ms. Rabon, and be sworn in.

8 LORI RABON, BEING DULY SWORN,
9 TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: Have a seat. State your full name.
11 Speak into the microphone.

12 WITNESS: Lori Rabon, R-a-b-o-n.

13 THE COURT: Your witness.

14 DIRECT EXAMINATION BY MR. HIXSON:

15 Q. Good afternoon, ma'am.

16 A. Good afternoon.

17 Q. What do you do for a living?

18 A. I'm a property and evidence supervisor for the Horry
19 County Police Department.

20 Q. And I believe earlier you explained what your duties
21 are at the Horry County Police Department. Is that
22 correct?

23 A. Yes, I did.

24 Q. And were you working for the Horry County Police
25 Department back around October 11th of 2005?

1 A. Yes, I was.

2 Q. And at some point in time, did you receive items in
3 evidence stemming from an investigation of a missing person
4 generated by your agency?

5 A. Yes, I did.

6 Q. Did you, in fact, receive an item from Ann Pitts, a
7 rape evidence kit?

8 A. Yes, I did.

9 Q. And what did you do with that when you received it?

10 A. The rape kit was pulled out of the refrigerator which
11 is -- was locked as soon as the officer puts the rape kit
12 into the refrigerator. I placed it into the holding
13 refrigerator in front of our vault.

14 Q. What did you do with that rape evidence kit?

15 A. It was ultimately transferred to crime scene
16 Investigator Cooper to be transported to SLED.

17 Q. Now, while that item was in your custody and control,
18 did you tamper with that in any way?

19 A. No, I did not.

20 Q. Did you alter its contents as to form or the nature of
21 the material in evidence?

22 A. No, I did not.

23 Q. Did you allow anybody else to tamper with it?

24 A. No, I did not.

25 Q. Did you also during that period of time receive some

1 evidence swabs from a vehicle direct of that investigation?

2 A. Yes, I did.

3 Q. And who did you receive those from?

4 A. Those were received from crime scene Investigator
5 Cooper as well.

6 Q. And you took those into your custody and control?

7 A. Yes, I did.

8 Q. And then ultimately what happened with those items?

9 A. Those were also transferred to SLED.

10 Q. Now, during the time they were in your custody and
11 control, did you tamper with those in any way?

12 A. No, I did not.

13 Q. Did you protect the integrity as to form and content?

14 A. Yes, I did.

15 Q. Did you alter them in any way?

16 A. No, I did not.

17 MR. HIXSON: Beg the court's indulgence. Please
18 answer any questions the defense counsel has.

19 THE COURT: Mr. Wilson?

20 MR. WILSON: I don't have any questions.

21 THE COURT: You may step down, ma'am.

22 WITNESS: Thank you.

23 (THE WITNESS EXITS THE STAND.)

24 THE COURT: Call your next witness, state.

25 MR. HUMPHRIES: The state calls John Ortuno.

1 THE COURT: Come around this way.

2 MANUEL JOHN ORTUNO, BEING DULY
3 SWORN, TESTIFIES AS FOLLOWS:

4 CLERK OF COURT: Please have a seat. Please state
5 your name and spell your last for the record, and please
6 speak into the microphone.

7 WITNESS: Manuel John Ortuno, O-r-t-u-n-o.

8 THE COURT: Make sure you speak into that microphone.

9 WITNESS: Yes, Your Honor.

10 VOIR DIRE EXAMINATION BY MR. HUMPHRIES:

11 Q. With whom are you employed?

12 A. The South Carolina Law Enforcement Division, commonly
13 referred to as SLED.

14 Q. How long have you been so employed?

15 A. Seventeen-and-a-half years.

16 Q. And in what capacity are you now employed with SLED?

17 A. I am a forensic DNA analyst.

18 Q. How long have you held that position?

19 A. Nine-and-a-half years.

20 Q. Have you been offered as an expert in courts of record
21 in this state?

22 A. Throughout this state, yes, sir, forty-one times in
23 DNA, just in DNA.

24 MR. HUMPHRIES: Your Honor, at this time, we'd offer
25 Mr. Ortuno as an expert in the field of forensic DNA

1 analysis. I believe the defense stipulates to subject
2 matter ---

3 MR. WILSON: I do, Your Honor. I have no objection.

4 THE COURT: You have had instructions on expert
5 testimony. Keep those instructions in mind. I will
6 qualify him to give opinion testimony in DNA analysis.

7 MR. HUMPHRIES: Thank you, Your Honor.

8 DIRECT EXAMINATION BY MR. HUMPHRIES:

9 Q. Just for a refresher, will you tell the jury very
10 basically what DNA is and what you do with DNA?

11 A. Gladly. We receive evidence from different agencies
12 regarding incidents that have occurred throughout the
13 state. Our first question that we pose is is there any
14 human body fluid. Typically we're looking for human blood,
15 saliva, semen, or hair roots or skin cells, most common
16 being blood and semen.

17 Once we identify how many body fluids, what we do then
18 is we take it through a series of chemical steps that
19 allows us to develop what is called a DNA profile. This
20 DNA profile allows us to identify the origin of the source
21 of this human body fluid to the exclusion of all other
22 people on the planet if it is, in fact, sufficient to do
23 that.

24 So, we take the DNA profile developed from unknown
25 pieces of evidence, unidentified items that are found at a

1 crime scene, develop DNA profiles from individuals believed
2 to have been involved in a crime scene, and set to compare
3 the profiles of the known samples to the unknown samples
4 from the crime scene and determine whether people are
5 either included or excluded.

6 Q. Let me ask you. In connection with your duties as a
7 forensic scientist there with the South Carolina Law
8 Enforcement Division in the DNA department, did you have an
9 occasion to receive certain items of evidence for analysis
10 and comparison?

11 A. Yes, sir, I did.

12 Q. Let me ask you specifically. Did you have an occasion
13 to receive a sexual assault evidence collection kit from
14 Rebekah Winkler, which I believe is your item one?

15 A. Yes, sir, I did.

16 Q. Contained in that sexual assault evidence collection
17 kit, did you also receive a blood standard from the victim?

18 A. Yeah.

19 Q. Item 1.2?

20 A. Yes, sir.

21 Q. Vaginal swabs from the victim, your 1.4?

22 A. Yes, sir.

23 Q. Rectal swabs from the victim, item 1.6?

24 A. Yes, sir.

25 Q. Fingernail scrapings, 1.7?

1 A. Yes.

2 Q. And bite mark swab, 1.8?

3 A. Yes.

4 Q. Did you also receive into evidence a suspect evidence
5 collection kit from Louis Winkler?

6 A. Yes.

7 Q. Your item two?

8 A. Yes.

9 Q. In connection with item two contained within that kit,
10 did you receive a blood standard from the defendant, Louis
11 Winkler, in your item 2.4?

12 A. Yes.

13 Q. Also in connection with this case, did you receive a
14 series of swabs from the interior of the vehicle, your
15 items three, four, five, six, seven and eight?

16 A. Yes.

17 Q. Upon receiving those items, did you perform your
18 analysis and come to any conclusions as a result of your
19 analysis?

20 A. I did.

21 Q. Please tell the jury, if you will, the results of your
22 analysis.

23 A. As I mentioned earlier, the first thing we do is
24 determine if, in fact, there's human body fluid.

25 Specifically on the vaginal swabs, as well as the rectal

1 swab, we identified semen. Well, I identified semen, and
2 on the five, six items, the six swabs from the vehicle, the
3 question was, was there any blood, and blood was indicated
4 on all of these items.

5 Was there another item besides those that you wanted,
6 as well?

7 Q. You also received fingernail scrapings ---

8 A. Fingernail scrapings.

9 Q. --- and a bite mark swab.

10 A. The fingernail scrapings go directly to DNA because we
11 do not want to use up any potential evidence to determine
12 whether, in fact, there's skin cells, which we, of course,
13 assume there's going to be. So, the fingernail scrapings
14 go directly to DNA analysis. The last one is the bite mark
15 swab. Is that correct?

16 Q. Yes.

17 A. The bite mark swab for the same reason. In a bite
18 mark, what we're looking for is saliva. We don't want to
19 consume -- we can do a test to determine whether there's
20 saliva, but it's more important to find an unknown DNA
21 profile on the bite mark than it is to identify saliva, so
22 it goes directly to DNA.

23 My results for these are as follows. On the two
24 items, both the vaginal swabs and the rectal swab on which
25 semen was found, there was a DNA profile developed. That

1 DNA profile was found to match the DNA profile of Louis
2 Winkler.

3 Q. And in what relation -- what -- typically, you
4 quantify that by a ratio. Can you tell the jury what that
5 was?

6 A. Yes. The frequency of occurrence with the rarity of
7 this profile that was found to match Louis Winkler is
8 approximately one in 24 quadrillion individually.

9 Q. Please continue.

10 A. On item 1.8, which says item 1.8, which is the bite
11 mark swab, once again we're looking for DNA that originated
12 probably from saliva. We found in the -- what's called a
13 DNA mixture. That means in this particular case, we have
14 one person that is very strong. There's a lot of DNA
15 present there.

16 If there's somebody else, we call it a minor
17 contributor. What that means is it's much less than the
18 major contributor.

19 And in this particular case, that minor contributor is
20 so weak that we aren't able to determine whose DNA that
21 was. The major contributor, however, was Rebekah Winkler.
22 Once again, this being -- the bite mark swab was a swab
23 that was collected from her body, so it's not unusual to
24 find her DNA on her body.

25 Q. Let me ask you. There is no question but that you

1 found another individual's DNA in connection with that bite
2 mark, someone other than Rebekah Winkler?

3 A. That's correct.

4 Q. But you cannot identify who that person is through DNA
5 analysis because of the, the very small sample that you
6 had?

7 A. That's exactly right, of that second person.

8 Q. Correct. Please continue.

9 A. SLED's items three and four, which are swabs from the
10 driver's side door handle and swabs from the driver's
11 steering wheel, were also found to be mixtures. And it was
12 a similar distribution from what I just mentioned. We have
13 a very strong profile that was found to match Rebekah
14 Winkler, and then we have a minor profile which -- in both
15 of these that was too weak to reliably interpret.

16 Q. And when you say it was too, too weak to reliably
17 interpret, could you even determine whether or not the
18 contributor was a male or a female?

19 A. I could not.

20 Q. Suffice it to say on swabs three and four, the major
21 contributor was Rebekah Winkler?

22 A. Yes, that's correct.

23 Q. All right. Will you please continue?

24 A. On items -- SLED's items five, six, seven, and eight,
25 which are swabs from the driver's seat near the console,

1 swabs from the passenger side seat, swabs from the
2 passenger side window, and swabs from the passenger side
3 door panel, I found a single profile on each of these
4 items, all of which matched Rebekah Winkler.

5 Q. And in those cases you found no minor contributor, no
6 mixture?

7 A. That's correct, and then there was a fingernail
8 scraping which went directly to DNA. And in that profile,
9 the only profile that was found was that belonging to the
10 victim, Rebekah Winkler.

11 MR. HUMPHRIES: Thank you Mr. Ortuno. Answer any
12 questions Mr. Wilson might have.

13 THE COURT: Mr. Wilson?

14 CROSS-EXAMINATION BY MR. WILSON:

15 Q. Thank you. I just have a couple of questions. The,
16 the, the -- let me ask you about the bite mark first. As I
17 understand it, you're saying that since the bite mark was
18 on her, that there was a contributor, but you can't tell us
19 who the contributor was. Is that right? And that's 1.8.

20 A. That's 1.8. That's right. There's somebody there
21 besides her, but I cannot even tell the sex.

22 Q. All right, and when you say there's somebody there,
23 you're not saying when that other person was there?

24 A. That's correct.

25 Q. Because it could have been somebody from a day earlier

1 or a day later?

2 A. That's correct.

3 Q. All right, and, and when you testify that you, that
4 you found semen on the vaginal swab, which is 1.4, and
5 semen on the rectal swab, which is 1.6, is your testimony
6 that she was raped? Or is your testimony that she had sex?

7 A. I cannot say, I cannot say that she was raped.

8 Q. Okay.

9 A. What I can say is that semen belonging to Louis
10 Winkler was present on these swabs.

11 Q. All right. Now, it also said that, that there was
12 blood -- that you had swabs from the driver's side door
13 handle, which was three, and then swabs from the driver's
14 steering wheel, correct, which is four?

15 A. That's correct.

16 Q. And both of those belonged to Rebekah Winkler?

17 A. That's correct, with a minor contributor of both.

18 Q. And that -- both of those are from the driver's side.
19 There was also a swab from the driver's side seat rear the
20 console. Who did that belong to, which is SLED's five.

21 A. SLED's item number five belonged solely to Rebekah
22 Winkler.

23 Q. Okay. Now, there was a mixture in three and four?

24 A. That's correct.

25 Q. Which is from the driver's side door handle and the

1 driver's steering wheel, correct?

2 A. Correct.

3 Q. But you couldn't tell us who that person was?

4 A. That's correct.

5 Q. Now, could it be a person that had touched the
6 steering wheel or handled the steering wheel a week
7 earlier?

8 A. That's very possible.

9 Q. All right. Now, in regards to the six, seven and
10 eight, which you say was found on the passenger's side
11 seat, I think it's six, swabs from the passenger's side
12 window, which was seven, and eight, passenger's side door
13 panel, those are all Rebekah's alone?

14 A. That's correct.

15 Q. Okay. Now, when you would have had a -- well,
16 actually I guess from 2.4, which is your blood standard,
17 which was the blood standard that you had from Louis
18 Winkler, correct?

19 A. Yes, sir.

20 Q. And then that's what you used in order to, to
21 determine if the substance that you found on the rectal
22 swabs and the vaginal -- I'm sorry, the rectal swabs and
23 the vaginal swabs were, in fact, consistent with his blood
24 type or his DNA?

25 A. Whether their -- the profile developed from those

1 samples was the same profile as his sample, yes.

2 Q. Okay. Now with the bite mark, did, did -- was there
3 any further testing done to determine like, for instance,
4 teeth print or anything to determine if, in fact, the teeth
5 marks were his?

6 A. I would not know that.

7 Q. Okay, but you didn't do it?

8 A. I certainly did not do it, no.

9 Q. Okay. Now, fingernail scrapings which is 1.7, now
10 what they did was they took the -- whatever debris was
11 under her nails, correct?

12 A. That, that is -- yes.

13 Q. And then they package that, and they sent to it you
14 for you to test. The reason for that is so that you can
15 determine whether or not she scratched somebody or pinched
16 somebody or fought with somebody and got their blood on her
17 hands or under her nails or any kind of DNA from them under
18 her nails, right?

19 A. That's the purpose of that sample, yes.

20 Q. And, and in regards to that, you found what?

21 A. No DNA profile forward to the victim, meaning that the
22 profile matched the victim.

23 Q. So, the only DNA that you found in any degree that was
24 under her fingernails belonged to her?

25 A. That's correct.

1 Q. All right.

2 MR. WILSON: Court bear with me just one second,
3 please?

4 (A PAUSE.)

5 MR. WILSON: I have no other questions. Thank you so
6 much.

7 THE COURT: Any redirect?

8 MR. HUMPHRIES: Very briefly.

9 REDIRECT EXAMINATION BY MR. HUMPHRIES:

10 Q. Now, as to SLED items three and four, that was the
11 mixture?

12 A. Yes, sir.

13 Q. That came from swabs for -- from the steering wheel?

14 A. Yes.

15 Q. And the driver's side door?

16 A. That's correct.

17 Q. Mr. Wilson asked you if it is possible that that minor
18 contributor could have come from one who had touched or
19 held those items some time in the past?

20 A. That's possible.

21 Q. Possible. Is it also possible that the major
22 contributor's blood was transferred to those locations by
23 the hand of the minor contributor?

24 A. Yes.

25 Q. Do you understand my question?

1 A. Yes. Yes. Obviously if you had blood on, on a hand
2 and I touch this, that blood transfers to what I touch.

3 Q. And could that, could that account for the minor
4 contributor?

5 A. Yes, that's also possible. Skin cells are sloughing
6 off all the time. That's another possibility.

7 MR. HUMPHRIES: Thank you.

8 THE COURT: Anything else, Mr. Wilson?

9 MR. WILSON: No, sir.

10 THE COURT: You may step down, sir.

11 (THE WITNESS EXITS THE STAND.)

12 THE COURT: Any objection to this witness leaving to
13 return to Columbia?

14 MR. WILSON: No.

15 WITNESS: Thank you, Your Honor.

16 THE COURT: Next witness, please.

17 MR. HUMPHRIES: I call Dr. Proctor. Your Honor, at
18 this time, we'd ask permission to have members of the
19 family excused from the courtroom for his testimony.

20 (PHOTOGRAPHS MARKED INDIVIDUALLY STATE'S EXHIBITS 160,
21 161 FOR IDENTIFICATION.)

22 EDWARD PROCTOR, BEING DULY SWORN,
23 TESTIFIES AS FOLLOWS:

24 CLERK OF COURT: Please have a seat. Please state
25 your name and spell your last for the record and please

1 speak into the microphone.

2 WITNESS: Yes, ma'am. I am Edward Leroy Proctor, Jr.
3 That's P-r-o-c-t-o-r.

4 MR. HUMPHRIES: I assume his expert qualifications
5 continue throughout this proceeding?

6 MR. WILSON: Absolutely.

7 THE COURT: All right. As you recall, ladies and
8 gentlemen, I gave him -- I permitted him to give opinion
9 testimony in the area of pathology and forensic pathology.
10 We'll continue in that regard.

11 MR. HUMPHRIES: Thank you, Your Honor.

12 DIRECT EXAMINATION BY MR. HUMPHRIES:

13 Q. Going back to the autopsy you performed on the victim
14 in this case, Rebekah Winkler.

15 A. Yes, sir.

16 Q. You talked to the jury a bit about your significant
17 findings, particularly the gunshot wound to the gun?

18 A. Yes, sir.

19 Q. Let me show you two photographs. Tell me if you can
20 identify them without displaying them to the jury at this
21 time.

22 A. Yes, sir, I can.

23 Q. And they are?

24 A. They are pictures of Rebekah Winkler taken at the time
25 of autopsy by the Horry crime scene.

1 Q. And let me ask you. Would they assist you in
2 explaining your findings to the jury?

3 A. Yes, sir, they can certainly illustrate it.

4 Q. That's great.

5 (A PAUSE.)

6 MR. WILSON: Your Honor, I would object to what's been
7 marked I guess for identification purposes as State's
8 Exhibit 160 and 161. I think that, one, they're
9 cumulative. I think two, the doctor has already testified
10 about these particular issues. On top of that, I think
11 they're highly, highly prejudicial and highly inflammatory.

12 THE COURT: Mr. Humphries, we can take it out of the
13 presence of the jury, but before I decide to admit it, do
14 you want to ask the doctor some questions first to see if
15 he can -- if they're relevant at this time? Do you have
16 any additional questions to ask him?

17 MR. HUMPHRIES: I'll be glad to ask him additional
18 questions.

19 THE COURT: There was no objection on the -- anything
20 other than that?

21 MR. HUMPHRIES: No, and let me go back through that
22 with Dr. Proctor.

23 BY MR. HUMPHRIES:

24 Q. Dr. Proctor, are these photographs taken at the time
25 of autopsy?

1 A. Yes, sir, they are.

2 Q. And do they exhibit the wound that you found in your
3 autopsy?

4 A. Yes, sir, they do.

5 Q. And are these pictures -- first of all, do they fairly
6 and accurately represent the condition of Rebekah Winkler
7 at that time?

8 A. Yes, sir.

9 MR. HUMPHRIES: And, Your Honor, as a ---

10 THE COURT: Can I see it, please?

11 MR. HUMPHRIES: Yes, sir.

12 THE COURT: These are just two?

13 MR. HUMPHRIES: Yes, sir, Your Honor, just two.

14 THE COURT: Considering the phase of the case we're
15 in, I overrule the defense objection, and they'll be what
16 number?

17 MR. HUMPHRIES: Your Honor, they are 160 and 161.

18 THE COURT: They're in evidence.

19 MR. HUMPHRIES: Thank you, Your Honor.

20 (PHOTOGRAPHS MARKED INTO EVIDENCE INDIVIDUALLY AS
21 STATE'S EXHIBITS 160, 161.)

22 BY MR. HUMPHRIES:

23 Q. Now, showing you State's 160 in evidence. Describe
24 that, if you will, for the jury, what you see there and how
25 it relates to your findings.

1 A. This photograph is a photograph of the face of Rebekah
2 Winkler. It shows an entrance side in her left cheek with
3 the surrounding areas of stippling, which is the actual
4 burning of the powder to the skin.

5 Q. State's 161 in evidence?

6 A. This exhibit, number 161, is the same photograph other
7 than it is a much closer view of -- a close up of the
8 actual entrance site with the surrounding areas of
9 stippling.

10 Q. Tell the jury just about what actually is pictured
11 here. When we refer to stippling, what is stippling in
12 actuality?

13 A. What this photograph illustrates is various entrance
14 sites in the middle and what we call stippling around this
15 entrance site. Stippling of the skin as a result of a
16 gunshot wound is actually burning of the skin as a result
17 of the fire and the burning powder that comes out of the
18 end of the gun.

19 Up to a distance of about 6 inches you see the
20 stippling, as well as the dark, smoky soot around the
21 entrance site from about 6 to 18, 20, 24 inches,
22 thereabouts. You can still see stippling, which is the
23 actual burning powder that hits the skin and burns the skin
24 around the wound site.

25 Q. And what is your opinion to a reasonable degree of

1 medical certainty regarding the range of this particular
2 gunshot wound?

3 A. Based upon what I found at autopsy, I would say the
4 range of this gunshot wound is somewhere between 6 and 20
5 to 24 inches max.

6 Q. Finally, Doctor, to a reasonable degree of medical
7 certainty, tell this jury again the cause of death of Ms.
8 Rebekah Winkler.

9 A. The cause of death of Ms. Rebekah Winkler was a
10 gunshot wound to the head with massive trauma to the brain,
11 particularly the brain stem area. Manner of death, of
12 course, being homicide.

13 MR. HUMPHRIES: Thank you, Doctor. Answer any
14 questions the defense may have.

15 THE COURT: Any questions?

16 MR. WILSON: I have no questions, Your Honor.

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

19 (THE WITNESS EXITS THE STAND.)

20 THE COURT: Do we need his services further in the
21 trial?

22 MR. HUMPHRIES: Free to leave.

23 MR. WILSON: Free to leave.

24 WITNESS: Thank you, sir.

25 THE COURT: Next witness?

1 MR. HEMBREE: The state calls Tammy Cox to the witness
2 stand.

3 THE COURT: Come on over here, Ms. Cox.

4 TAMMY COX, 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, and please
8 speak into the microphone.

9 WITNESS: Tammy Cox, C-o-x.

10 DIRECT EXAMINATION BY MR. HEMBREE:

11 Q. Good afternoon, Tammy.

12 A. Hey.

13 Q. Tammy, where are you from?

14 A. Loris.

15 Q. You grew up there?

16 A. Aynor. I grew up in Aynor.

17 Q. You live there now?

18 A. Yes, sir.

19 Q. And where is it you work?

20 A. I'm self-employed. Medical transcriptionist for Pee
21 Dee Cardiology.

22 Q. Do you have children?

23 A. Yes, sir.

24 Q. How many?

25 A. Two.

1 Q. What are their names?

2 A. Br[REDACTED] C[REDACTED] and Al[REDACTED] C[REDACTED].

3 Q. And how old are they?

4 A. Fourteen and five.

5 Q. Are you married?

6 A. Yes, sir.

7 Q. Your husband is?

8 A. Dale Cox.

9 Q. Is he in the courtroom today?

10 A. Uh-huh.

11 Q. Tammy, were you acquainted with Becky Winkler?

12 A. Yes, sir.

13 Q. When did you first meet Becky?

14 A. I don't remember when I first met her. I really got
15 to know her in '98.

16 Q. And tell the jury how you got to know Becky.

17 A. I was wanting to go home and do work, and Becky was a
18 medical transcriptionist who worked from home, and she had
19 work that she needed help with, so she trained me how to do
20 transcribing.

21 Q. And where were you working prior to going home and
22 working as a medical transcriptionist?

23 A. I was the bookkeeper at Green Sea Point Elementary.

24 Q. Now, why did you want to go home to work?

25 A. I don't know. I just wanted to work at home.

1 Q. I see. Now, tell me about Becky training you to be a
2 medical transcriptionist. Tell the jury a little bit about
3 that experience.

4 A. Well, she would give me tapes that I would listen to,
5 and I would try to type them. They weren't real good to
6 start off with, and Becky would correct them and go over
7 them with me.

8 I would try to pay her for taking her time to proof my
9 work, but she would never take any money at all. She said
10 it was just a help to her for her to get it done, even
11 though she was having to do the corrections. She would
12 never take any money or let me pay her for it.

13 Q. So, this relationship that sort of started as a
14 professional relationship, did it grow into a closer
15 friendship?

16 A. Yes, sir.

17 Q. And was she one of your best friends when she died?

18 A. Yes, sir.

19 Q. Tell the jury just a little bit about Becky's
20 personality. You came to know her as a friend. What was
21 she like?

22 A. She was real shy, meek. Not meek once you got to know
23 her, but until you got to know her, she was just real
24 bashful, and if she would walk in now, she would have her
25 head down. She wouldn't really look you in the eye until

1 she got to know you, but very sweet, caring person.

2 Q. How about -- what was her work ethic? What kind of
3 worker was she?

4 A. Oh, she worked all the time. She worked a lot.

5 Q. Let me show you State's Exhibit number 157.

6 MR. HUMPHRIES: This is in evidence. I've checked
7 with Mr. Wilson. He has indicated ---

8 MR. WILSON: No objection, Your Honor.

9 MR. HUMPHRIES: --- both 157 and 158 are in evidence.

10 THE COURT: Now, wait a minute. Hold on. Do you have
11 that, Madame Court Reporter? I do not have that.

12 COURT REPORTER: I just have them for ID.

13 THE COURT: So, ID.

14 Do you move to put them in evidence?

15 MR. HUMPHRIES: Yes, Your Honor.

16 THE COURT: 157, 158 into evidence without objection.

17 (PHOTOGRAPHS MARKED INTO EVIDENCE INDIVIDUALLY AS
18 STATE'S EXHIBITS 157, 158.)

19 BY MR. HEMBREE:

20 Q. Let me show you a photograph, 158. Do you remember
21 that picture?

22 A. Yes, sir.

23 Q. Tell the jury about that.

24 A. That was a day I was over at her house and she was
25 typing, working.

1 Q. It looks like she didn't want you to take her picture.

2 A. No. She never wanted her picture taken; she didn't
3 like to have her picture took.

4 Q. She taught you how to do your job. Is that what you
5 still do today?

6 A. Yes, sir.

7 Q. Now, did you have occasion -- you had two children?

8 A. Uh-huh.

9 Q. With your -- didn't you have some trouble with one of
10 your pregnancies?

11 A. Yes. It was my second pregnancy. I was just really
12 sick day and night, just nauseated, and I stayed most of
13 the event.

14 Q. Did you have to go on bed rest and really take it
15 easy?

16 A. Well, I didn't have to go on bed rest, but I stayed
17 just so nauseated. Becky would try to help me keep my work
18 up and pick my work up for me.

19 Q. How about was there something that -- it wasn't
20 medicine. I guess it might have been like, kind of like
21 chicken soup?

22 A. Yeah.

23 Q. But something that she was able to provide for you
24 that gave you some relief?

25 A. Yeah. I was -- I couldn't eat anything, but Becky

1 made the best collards. I was just thinking I could eat
2 some of her collards if she would fix me some. I called
3 her, and she made me collards and some cornbread fritters,
4 and she brought them over to the house and I ate them.

5 Q. So, you called her up and just said look, I've got to
6 have some collards. I've got to have them now.

7 A. Yeah.

8 Q. So, did it help?

9 A. Yeah.

10 Q. All right. Now, you got through the second pregnancy?

11 A. Uh-huh.

12 Q. Everything was okay.

13 A. Uh-huh.

14 Q. Let me show you State's 157 in evidence. Tell the
15 jury a little bit about that photograph. I'm sorry. Just
16 take your time. It's okay.

17 (A PAUSE.)

18 A. This was the day I had my second child.

19 Q. Which hospital did you go to?

20 A. Loris.

21 Q. Is that where you had your first one?

22 A. No, sir.

23 Q. Well, that was handy then. Had y'all moved?

24 A. No. I just went to Marion with the first one.

25 Q. Who is in that picture?

1 A. Becky, Haley, J [REDACTED] and A [REDACTED].

2 Q. That little fellow standing behind Becky is J [REDACTED]?

3 A. Uh-huh, yeah.

4 Q. How was Becky with the babies?

5 A. I'm sorry?

6 Q. How did Becky do with the babies? Sometimes some
7 people are comfortable. Some are uncomfortable. How did
8 she do with the babies?

9 A. She did good. Yeah, she is sweet.

10 Q. Now, she looks pretty comfortable in that photograph.

11 A. Uh-huh.

12 Q. Handling your one or two-day-old baby.

13 A. Yeah.

14 Q. Did she ever babysit for you on occasion?

15 A. No, because I think then she had already moved or
16 shortly after that.

17 Q. Had moved to -- moved away from Loris?

18 A. Uh-huh.

19 Q. Now, she was -- she had been married before being
20 married to the defendant?

21 A. Uh-huh.

22 Q. And that was to Roger Grainger?

23 A. Uh-huh.

24 Q. Do you remember when they split up?

25 A. Uh-huh.

1 Q. And about what -- do you remember what year it was?

2 A. It was in '01, I think. It was -- because I think it
3 was when I was pregnant. It was the year I was pregnant.

4 Q. And did you, did you -- were you still friends with
5 Becky when she met the defendant, Louis Winkler?

6 A. Uh-huh.

7 Q. And you learned of their relationship?

8 A. Yes, sir.

9 Q. What were your observations? Were you ever around
10 them together?

11 A. Uh-huh.

12 Q. Tell the jury a little bit about your observations
13 when they first started dating.

14 A. I never saw them that much out. Becky would have to
15 come by my house to bring work or pick up work, and he
16 would come. Most of the time he just sat in the car. I
17 think he came inside the house maybe once or twice.

18 Q. But you didn't know of any problems that they were
19 having throughout the early stages of their relationship?

20 A. No, sir.

21 Q. Were you there when they got married?

22 A. I wasn't there at the ceremony, you know.

23 Q. You were aware of it?

24 A. Uh-huh.

25 Q. Now, were you seeing Becky as much after she got

1 married?

2 A. Not -- I hardly ever saw her anymore.

3 Q. How did y'all stay in contact?

4 A. Over the phone only during the day when he was at
5 work.

6 Q. And Becky was still working at home?

7 A. Uh-huh.

8 Q. Did she continue to work at home throughout this time?

9 A. Yes, sir.

10 Q. Now, at some point did you become aware that there
11 were problems in the relationship?

12 A. Yes. I can't remember if it was in August or
13 September. Becky called me and told me ---

14 MR. WILSON: Objection, Your Honor.

15 THE COURT: Yes. Don't do that.

16 BY MR. HEMBREE:

17 A. I can't say it?

18 Q. Say exactly -- you can't say what Becky told you, but
19 you became aware that there were problems in the
20 relationship at that time. Is that correct?

21 A. Uh-huh.

22 Q. And what did Becky do about that? Did she do anything
23 about it?

24 A. She had movers to come move her out, and she was
25 moving in with Haley.

1 Q. Did you have occasion to, to see her or talk with her
2 or be around her at all through the time she was living --
3 well, when she first moved in with Haley?

4 A. I didn't see her, but we would talk on the phone.

5 Q. Now, did you learn of her assault that occurred in
6 October of 2005?

7 A. Uh-huh.

8 THE COURT: You need to say yes or no.

9 WITNESS: Sorry. Yes, sir.

10 BY MR. HEMBREE:

11 Q. And between October and March of 2006, did you have
12 occasion to be around Becky any, talk with her, spend time
13 with her?

14 A. Yes, sir.

15 Q. Did you notice any changes in her personality during
16 that time?

17 A. Yes, sir.

18 Q. Tell the jury about that.

19 A. Becky had asked me ---

20 THE COURT: No, you can't do that.

21 WITNESS: I'm sorry.

22 BY MR. HEMBREE:

23 A. I had taken completely over the account that she and I
24 did together. She wasn't going to type for them anymore.
25 She wanted it to just be in my name, and I had another at

1 Seacoast Medical Center. I didn't have time to do it
2 anymore, and I tried to get her to take that account
3 because it was just right across the street from where she
4 was living, but she couldn't work anymore.

5 After October, she didn't want to do anything anymore.
6 She didn't work. She didn't go out. She lived in fear
7 just every day. She couldn't sleep at night.
8 She knew -- I don't know if I can say that. I don't know
9 if I can say she ---

10 Q. Say what you knew or what you thought.

11 A. That he was going to kill her. At ---

12 MR. WILSON: Your Honor, I'm, I'm, I'm objecting and
13 ask that it be stricken from this record. I think that's,
14 that's ---

15 THE COURT: I would sustain, I would sustain the
16 objection. Disregard the last comment.

17 MR. WILSON: I also ask that it be stricken, and I ask
18 that the jury be ---

19 THE COURT: I just asked them disregard it.

20 MR. WILSON: -- disregard it.

21 THE COURT: I did ask them to disregard it.

22 BY MR. HEMBREE:

23 A. Her spirit, she was a totally different person. She
24 wasn't Becky anymore. When he did what he did to her in
25 October, he killed her emotionally and entirely. Becky was

1 never the same person.

2 She was a very strong person. She had been through
3 things in her life. Breast cancer, just different things
4 she had come through, but she was never able to get over
5 what he did to her in October.

6 Q. Tammy, do you remember the night that you found out
7 that your friend, Becky Winkler, had been killed?

8 A. Yes, sir.

9 Q. How did you find out?

10 A. When I got home from church, I had a phone call from
11 Nancy Monroe.

12 Q. She was a friend of yours?

13 A. Yes, we met through Becky.

14 Q. And you learned from Nancy Monroe that your friend had
15 been killed?

16 A. Yes, sir.

17 Q. What, what went through your mind?

18 A. Anger. I'm very, very mad because ---

19 MR. WILSON: Your Honor, I object to what went through
20 her mind. I mean, how is what went through her mind
21 relevant?

22 MR. HEMBREE: If we could approach?

23 (OFF-THE-RECORD BENCH CONFERENCE.)

24 BY MR. HEMBREE:

25 Q. Once again, Tammy, when you learned that your friend

1 had been killed, how did you feel?

2 A. Just angry that he was out of jail, and that he was
3 even allowed -- I was just angry. I don't think he should
4 have been out. I don't think anybody should have to live
5 in fear twenty-four hours a day the way she was having to
6 live, and I was angry that I felt like the system had
7 failed her, angry that maybe I could have done something.
8 I don't know. I was just mad.

9 Q. Tammy, since that time, has this experience, the loss
10 of your friend, affected you?

11 A. Yes.

12 Q. Tell this jury how.

13 A. I don't really know. After Becky got killed, before
14 they cut her phone out...

15 THE COURT: Do you have some water there, ma'am?

16 BY MR. HEMBREE:

17 A. I, I would call Becky's phone just so I could hear her
18 voice from her answering machine because I wanted to just
19 be able to talk to her one more time, and I dream about
20 her. I just wish that I could just talk to her just one
21 more time. She was just such a good person, and she didn't
22 deserve anything that got done to her, anything.

23 MR. HEMBREE: Take your time. Just answer any
24 questions Mr. Wilson has for you.

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

1 THE COURT: Thank you.

2 (THE WITNESS EXITS THE STAND.)

3 THE COURT: Does the state have another witness?

4 MR. HEMBREE: Yes, Your Honor. The state calls Jill
5 Shelley, please.

6 JILL SHELLEY, BEING DULY SWORN,
7 TESTIFIES AS FOLLOWS:

8 CLERK OF COURT: Please have a seat. If you would,
9 please state your name and spell your last for the record,
10 and please speak into the microphone.

11 WITNESS: Jill Shelley, S-h-e-l-l-e-y.

12 THE COURT: Ms. Shelley, I know this is an emotional
13 time for you. Would you rather take a break before you
14 testify, or are you ready to go forward?

15 WITNESS: If that's okay.

16 THE COURT: Do you want to take a break?

17 WITNESS: Yes.

18 THE COURT: All right, we'll take a break at this
19 time. Please step to the jury room. We'll only be gone
20 a short period of time, and we'll come back to the
21 courtroom.

22 (THE JURY EXITS AT 3:15 P.M.)

23 THE COURT: Ma'am, if you want to step down, get a
24 drink of water or whatever. Let's see, we'll give them
25 enough time just to relax for a minute, but let's try to

1 start back in fifteen minutes.

2 (THE WITNESS EXITS THE STAND.)

3 THE COURT: Mr. Wilson, let me see you up here for
4 just a minute.

5 (OFF THE RECORD.)

6 MR. HUMPHRIES: Judge, as a housekeeping matter, we've
7 got State's 151, 151 through 156 that we're moving into
8 evidence without objection.

9 THE COURT: Mr. Wilson, the state has 151 to 156. Do
10 you have any objection to those photographs?

11 MR. WILSON: No, sir. No, sir. We discussed them. I
12 have none.

13 (PHOTOGRAPHS MARKED INTO EVIDENCE INDIVIDUALLY AS
14 STATE'S EXHIBITS 151 THROUGH 156.)

15 THE COURT: All right. Now, so we don't have to have
16 too many commotions here on the back end, everyone, I'll be
17 back on the bench in nine minutes. Please, I don't want
18 people to be walking in and out. Try to be back here. If
19 you're going to step outside, try to be back in about nine
20 minutes, about 3:25.

21 (OFF THE RECORD.)

22 THE COURT: Ms. Shelley, are you ready? Come on back
23 around, please.

24 If you would, go get the jury. Bring the jury.

25 (THE JURY ENTERS AT 3:29 P.M.)

1 THE COURT: Okay, if you recall, this witness was
2 sworn. We're ready to proceed.

3 Solicitor?

4 MR. HEMBREE: Thank you, Your Honor.

5 DIRECT EXAMINATION BY MR. HEMBREE:

6 Q. Jill, where do you live?

7 A. Pleasant View, South Carolina.

8 Q. Pleasant View?

9 A. Uh-huh.

10 Q. And are you married?

11 A. Yes.

12 Q. Who is your husband?

13 A. Cam Shelley.

14 Q. Do you have any children?

15 A. One.

16 Q. And you got plans for another one?

17 A. Right.

18 Q. About how soon?

19 A. Five weeks.

20 Q. Now, your first baby, a boy or a girl?

21 A. Girl.

22 Q. How old is she?

23 A. Three.

24 Q. And you were obviously Becky Winkler's oldest
25 daughter?

1 A. Yes.

2 Q. Tell me, Shelley, you have a brother and sister?

3 A. Haley and J [REDACTED].

4 Q. Tell us a bit about them.

5 A. Haley is two years younger than me. J [REDACTED] is nine
6 years younger than me, and they're great.

7 Q. And who is your dad?

8 A. Roger Grainger.

9 Q. Where is he?

10 A. Easley, South Carolina.

11 Q. Now, your mom and dad were married until what year?

12 A. I'm not sure on the year, but I know that I was in my
13 first year of college, I think, when they split up. So
14 that would be about 2000, 2001.

15 Q. Okay, and you were in college?

16 A. Uh-huh, yes.

17 Q. After your mom and dad split up, where did your mom
18 live? Who kept your sister and your brother?

19 A. My momma.

20 Q. And where did y'all -- where did y'all live? Where
21 did they live?

22 A. At first?

23 Q. Yeah, at first.

24 A. They moved into a little house down the road. That's
25 where -- well, actually, J [REDACTED] lived there with Momma,

1 and Haley stayed home with Daddy.

2 Q. They were close by?

3 A. Yeah, right down the road.

4 Q. Even though they were divorced, they got along?

5 A. Yeah.

6 Q. When did they -- I know you said your mom had moved
7 some time after that.

8 A. Yeah, they moved to Loris, into a place in Loris. Me,
9 J [REDACTED], Haley, and Momma all lived there.

10 Q. Now when you were little, where did y'all live?

11 A. With my dad, all of us.

12 Q. In what part of the county?

13 A. Finklea.

14 Q. In Finklea?

15 A. Uh-huh.

16 Q. Just tell us about your house. What was your house
17 like?

18 A. It was a three bedroom house. You want me to describe
19 the house?

20 Q. It was just three bedrooms. Was it in the country, in
21 the city?

22 A. Country.

23 Q. In the country?

24 A. On a dirt road.

25 Q. All right. What did y'all do for fun?

1 A. Me and Haley played softball. J [REDACTED] played T-Ball.
2 We went to the beach all the time, went shopping, always...

3 Q. Now when you were growing up, what do you remember
4 about your mom? What was she like when you were a little
5 kid kind of getting older and older? What keep of momma
6 was she?

7 A. She was very good, very attentive, loved her children,
8 beautiful.

9 Q. Did she spoil y'all?

10 A. My grandma would say she did.

11 Q. Your grandma would say that she spoiled y'all?

12 A. Yes.

13 Q. You wouldn't say that she spoiled you?

14 A. A little bit.

15 Q. Maybe a little bit. Okay. That's fair enough. Let
16 me -- is your grandma here today?

17 A. Yes.

18 Q. Thank you. I'm going to show you a couple of
19 pictures. The first one is State's Exhibit 151 in
20 evidence. Tell me what you see in that picture.

21 A. That's Haley, Momma and me.

22 Q. And where are y'all?

23 A. We're at the church fellowship hall on a Sunday
24 afternoon for dinner.

25 Q. And which one is -- which one is you?

1 A. The one behind Momma.

2 Q. The one behind Momma, the one that looks kind of
3 serious?

4 A. Uh-huh.

5 Q. And this is Haley holding onto your mom?

6 A. Yeah.

7 Q. What does she have in her hand?

8 A. She has a shoe.

9 Q. Okay. What is she carrying? Why does she have a shoe
10 in her hand for?

11 A. She didn't carry around her baby dolls. She carried
12 around a shoe, her favorite shoe.

13 Q. She still has a shoe?

14 A. Yeah.

15 Q. Is she still carrying it?

16 A. No.

17 Q. Now, this was before -- this picture was before
18 J. [REDACTED] was born?

19 A. Yes.

20 Q. I'm going to show you a picture, State's 152 in
21 evidence. Tell us about that picture.

22 A. That was when J. [REDACTED] dedicated to church.

23 Q. Now, where were y'all going to church at the time?

24 A. We went to First Assembly of God in Loris, South
25 Carolina.

1 Q. The -- who all -- who else is in that picture? Just
2 kind of point. Tell me who all is in it.

3 A. Haley, Danny, Momma, me, and J [REDACTED].

4 Q. And then the fellow in the gray coat, that's the
5 pastor. Do you remember his name?

6 A. Tony.

7 Q. Pastor Tony. The first two pictures were pictures
8 that were in church?

9 A. Yeah, yes.

10 Q. Was that something that was important to your momma?

11 A. Yeah. We always go to church Sunday mornings, Sunday
12 night, Wednesdays. I went to youth choir. I went to youth
13 church. We went to church camp, all those in church.

14 Q. And -- now, did you do that because that's what you
15 always wanted to do, or that was just what was done?

16 A. That's what was done, and you know, we enjoyed it,
17 too. We all did.

18 Q. How about your mom? What was her -- did she have
19 involvement in church on her own?

20 A. Yeah. She taught Sunday school and if any of kids
21 ever needed a ride to school, she would -- not to school,
22 to church. She would pick them up and take them, a lot of
23 my friends.

24 Q. Now, she was -- she worked when you were children,
25 when you lived at home?

1 A. Yes.

2 Q. What kind of jobs did she have when you were growing
3 up?

4 A. When I was in kindergarten, she was a bookkeeper at
5 the First -- Loris First Church Baptist church in Loris.

6 Q. And did y'all go to church there at the time, or did
7 she just work there?

8 A. No, we didn't go to church there. That's just where
9 she worked.

10 Q. And then did she get another job after that?

11 A. Yeah. She used to work for the For You Skin Care
12 Company in Loris. They took, like, makeup and all kinds of
13 stuff.

14 Q. What kind of job did she do for the for the skin care
15 company?

16 A. I'm not -- I think she just sold it. I'm not sure,
17 but she worked there.

18 Q. I gotcha.

19 A. I was young.

20 Q. Now, at some point did she become a medical
21 transcriptionist?

22 A. Yes.

23 Q. Do you know why she did that? Do you have any idea?

24 A. She wanted to stay at home with her kids, to make more
25 money.

1 Q. Two good reasons. State's 153 in evidence, let me
2 show you that photograph.

3 A. Uh-huh. That's her at work typing, as she always did.

4 Q. Now, this was at work. She was working, but where was
5 she?

6 A. At home.

7 Q. This is at home. I've got to ask. Tell me about that
8 really, I don't know what you call it, really fashionable
9 outfit that she's got on there.

10 A. I'm not sure.

11 Q. Okay.

12 A. It's...

13 Q. Through high school, was she involved in you -- with
14 you at school?

15 A. Yeah.

16 Q. Where did you, where did you end up graduating? Where
17 did you graduate high school?

18 A. Green Sea-Floyds High.

19 Q. And you went to the prom and all that kind of stuff,
20 graduation?

21 A. Yes.

22 Q. Real involved in that?

23 A. Yes.

24 Q. Did they have any party or anything about that?

25 A. Not a party.

1 Q. Well, like a graduation party?

2 A. Yes.

3 Q. That's a fair question.

4 A. Like dinner or something, yeah.

5 Q. A dinner, you had a graduation dinner. Then you went
6 on to college?

7 A. Yes.

8 Q. Where did you go to college?

9 A. Coastal Carolina University.

10 Q. Now, what kind of things did your mom like to do or
11 did you like to do together, just hobbies or fun things
12 that ---

13 A. We would always go to the beach and lay out, and my
14 grandmother worked at a motel where we used to go all the
15 time and swim, lay out, go shopping.

16 Q. Here is a, here is one, State's 154. Do you remember
17 that picture?

18 A. Yes.

19 Q. And when was that taken?

20 A. I believe ---

21 Q. What were you doing what that was taken? That's what
22 I meant to say.

23 A. Oh, we were at the beach where my grandmother worked,
24 at Peppertree at Ocean Club.

25 Q. Peppertree at Ocean Club?

1 A. Uh-huh.

2 Q. Where is -- what part of the beach is that located?

3 A. Cherry Grove.

4 Q. Let's see, you got married. Tell us about your mom's
5 personality. What was she like to be around?

6 A. She was very funny, very sweet, loved her friends.

7 Q. Did she like to cook?

8 A. Yes.

9 Q. Collard greens?

10 A. Yes.

11 Q. Brussels sprouts?

12 A. Yes.

13 Q. How about the brussels? Did you like the brussels
14 sprouts?

15 A. No, no.

16 Q. You just had -- you had gone through -- did you finish
17 college?

18 A. No. I, I did two years.

19 Q. Two years in college?

20 A. Uh-huh.

21 Q. And when did you get married?

22 A. In '04, September of '04.

23 Q. Tell us about your wedding day. Did you have a big
24 wedding here in Horry County?

25 A. No.

1 Q. No? What did you do?

2 A. We just went to the courthouse.

3 Q. Here in town?

4 A. Yeah. I don't like big crowds.

5 Q. Well, at the courthouse you might find a big crowd
6 there, but they weren't coming to your wedding.

7 A. No.

8 Q. And after you were married, what kind of relationship
9 did you maintain with your mom? Were you close?

10 A. Yeah, we were close.

11 Q. How often would you say you would see her or talk to
12 her?

13 A. Every day. At least I talked to her every day.

14 Q. Now, at some point she met the defendant, Louis
15 Winkler?

16 A. Yes.

17 Q. And you got to know him or got to meet him?

18 A. Yes.

19 Q. What were your general impressions? What were your
20 thoughts about him and this relationship that started to
21 obviously grow deeper or more serious?

22 A. I didn't like it. I didn't like him.

23 Q. Were you ugly to him?

24 A. No. I wouldn't say ugly. I just -- I didn't care for
25 him. I didn't care that he dated my mother, that he --

1 just, he took her away from us.

2 Q. And you say he took her away from you. In what way?
3 Were you not in as much contact? Did you not get to see
4 her as much? In what way did that happen?

5 A. When they met, we were all living together, and I
6 think they met and it was just a few months later he had
7 already asked her to move in with him. And I knew right
8 then something wasn't quite right. Just always -- not very
9 friendly. You know, we would visit. Not very friendly.
10 And he would kind of make the attempt, but you always felt
11 unwelcome. I always did.

12 Q. You did?

13 A. Yeah.

14 Q. Not -- no conflict? There wasn't any open conflict at
15 this early stage?

16 A. Not now, no.

17 Q. And ultimately they married?

18 A. Right.

19 Q. Now, they married October 10, 2003, I believe?

20 A. Yeah, I think so.

21 Q. And when was your first daughter born?

22 A. [REDACTED] of '05.

23 Q. [REDACTED] of '05?

24 A. Uh-huh.

25 Q. So, they were already married by the time you had your

1 baby?

2 A. Yeah, yes.

3 Q. Tell me, how did -- how did your mom do with this
4 grandmother thing?

5 A. She loved J[REDACTED]. She loved babies. She was there
6 during the whole thing.

7 Q. She wasn't stressed out about I can't believe I'm
8 going to be a grandmother now. I'm not that old. I can't
9 be old enough to be a grandmother, that kind of stuff?

10 A. Not at all.

11 Q. Okay. She is -- I show you State's 155 in evidence.

12 A. That was my mother holding J[REDACTED] when she was about
13 six months.

14 Q. About six months old, so about June, May, of ---

15 A. May or June.

16 Q. Of '05, yeah, June or July of '05. Did she spoil your
17 baby?

18 A. As much as she could.

19 Q. What do you mean?

20 A. Well, Mick didn't really want us around very much or
21 wouldn't never come -- she loved J[REDACTED] and she wanted to do
22 for her, do what she could because Mick wouldn't never let
23 her leave the house or let her come see us. And any time I
24 always come and pick her up, she would try to get -- she'd
25 never want to leave far from his side. So, I just, I

1 didn't know they had much trouble now, but I knew something
2 wasn't right because my mother always, always did stuff
3 with us. Then she didn't after they got married.

4 Q. Now, you just said, you just said, Jill, that you
5 didn't know about the trouble, that there was any kind of
6 -- you really didn't -- she hadn't told you anything about
7 it?

8 A. No. She didn't tell me anything about her and Mick.

9 Q. You felt like something wasn't right, but there was no
10 conversation about it?

11 A. No.

12 Q. That's fair to say?

13 A. She was very private.

14 Q. In September of 2005 ---

15 A. Yes.

16 Q. --- did you have occasion one day to be at, at the
17 defendant and your mom's home and J [REDACTED]'s home at that
18 point in time on Bitter Spar?

19 A. Yes.

20 Q. Tell the jury about that, that experience.

21 A. I went over to -- I was trying to go -- I went
22 shopping that day.

23 Q. Was it -- do you remember if it was a weekend or ---

24 A. It was a weekend. I think it was a Saturday or
25 Friday. I'm not sure. I couldn't get my momma on the

1 phone. I call her every day, so I just decided to ride
2 over there.

3 When I did, I went in and she was covered in bruises
4 all over her arms and just beat up. I wanted to know what
5 happened, and -- well, anyway, the phone kept ringing and
6 ringing and ringing, and it was -- Mick had called her
7 because he had -- she made him leave.

8 Q. How do you know it was, it was Louis Winkler that was
9 calling at the house?

10 A. Caller ID. It was him.

11 Q. And who was there when you got -- who was there when
12 you got there?

13 A. Momma.

14 Q. Just your mom?

15 A. Yeah.

16 Q. And who was with you?

17 A. And my baby, my baby J [REDACTED].

18 Q. I was going to say who was with you when you, when you
19 arrived at the house?

20 A. J [REDACTED].

21 Q. Afternoon or evening?

22 A. Early afternoon, maybe.

23 Q. And the phone is ringing and ringing. How many times
24 is the phone ringing while you were there?

25 A. Numerous times.

1 Q. What happened next?

2 A. What happened next was Mick came and started -- he
3 pull up in the driveway very mad, and we had the doors
4 locked. He started kicking in the door.

5 Q. Which door was he kicking in?

6 A. Just the side door everybody comes in. He started
7 kicking it in and screaming let me in. Let me in. Then
8 finally my momma unlocked the door.

9 She was holding my baby, and he came in and started
10 screaming, grabbed the, grabbed the house phone. I told
11 him I was going to call the police. He said you know what,
12 you know what. He looked at Momma and said you know what's
13 going to happen if you call the police. I called them
14 anyway. Then -- well, you know, he got mad and left.

15 Q. You called the police?

16 A. Yes.

17 Q. And he left?

18 A. Uh-huh.

19 Q. Did the police come?

20 A. No, because I didn't -- I just told him and he left.

21 Q. Okay. So you had the phone, or had somebody on the
22 phone?

23 A. Yeah.

24 Q. As a result of that confrontation.

25 A. Uh-huh.

1 Q. What did your mom do?

2 A. She moved out.

3 Q. Where did she move to?

4 A. She moved in with my little sister, Haley.

5 Q. Okay.

6 A. [REDACTED].

7 Q. [REDACTED] moved with her?

8 A. Yes.

9 Q. And they moved into the apartment, I think Haley
10 testified earlier today, at [REDACTED] ?

11 A. .

12 Q. ?

13 A. Yes.

14 Q. Thank you. Now, let me take you back to October 10th
15 of 2005. That evening, did you have occasion to become
16 concerned about your mom's safety?

17 A. Yes.

18 Q. Tell the jury why you got concerned.

19 A. My brother had called and said he ---

20 MR. WILSON: Objection.

21 THE COURT: Don't tell us what he said.

22 BY MR. HEMBREE:

23 Q. Without telling us what he said, why did you grow
24 concerned?

25 THE COURT: You can say it as a result of a phone

1 call, something, he may have called or whatever.

2 BY MR. HEMBREE:

3 A. Okay. As a result of a phone call, I found out he
4 wasn't picked up and ---

5 Q. Where was he ---

6 A. And Mick's car ---

7 Q. Where was he supposed to be? Where could he be?

8 A. He was at the football game, and Momma was supposed to
9 pick him up, and her car was found, so...

10 Q. Now before her car was found, after you heard -- you
11 knew there was some kind of problem, what did you do first?

12 A. I called the police. Is that what you mean?

13 Q. Well, did you call them? Who did you call? What did
14 you do?

15 A. Yeah, yes. I called as soon as my brother called me
16 yes.

17 Q. Contact your sister also?

18 A. Yes.

19 Q. And reported it to the police?

20 A. Yes.

21 Q. Then what did you do? What did you do after that,
22 that night?

23 A. Well, I went there.

24 Q. Okay. Who was with you?

25 A. Cam, my husband Cam in Cam's truck.

1 Q. How about your baby? Where was she?

2 A. She was with my mother-in-law.

3 Q. And where did y'all go?

4 A. We went to where the Land Rover was.

5 Q. And when you got there, who was -- did you see anybody
6 that you knew when you got there?

7 A. Haley and her boyfriend.

8 Q. No sign of your momma?

9 A. No.

10 Q. No sign of Louis Winkler?

11 A. No.

12 Q. And for the next few hours, what did you do?

13 A. Just -- we couldn't really do anything but just stay
14 there with the police and hope they found her. They had
15 the police dogs and...

16 Q. And how late were you out that night?

17 A. Not real late. Probably about past 12 or 1. I'm not
18 quite sure. I don't remember. It was real late.

19 Q. You finally went home?

20 A. Yeah.

21 Q. When did you next see your momma?

22 A. At Seacoast Hospital that next morning.

23 Q. Tell this jury the condition your mom was in when you
24 saw her at Seacoast that next day?

25 A. She was very beat up, dirty. Just, just a mess. Her

1 face was all -- her eye was very swollen. Her hair was
2 matted with sand spurs and twigs and leaves. It just
3 looked terrible.

4 Q. How was her demeanor, her attitude?

5 A. Just kind of nervous, wanting them to find him before
6 she could -- she wanted the police to find him and do
7 something with him, get him away from her, I guess.

8 Q. Was she depressed?

9 A. Yes, she was very depressed.

10 Q. Anxious?

11 A. Yes.

12 Q. They ultimate caught or took Louis Winkler into
13 custody that day?

14 A. Right.

15 Q. Were you made aware of that?

16 A. Yes.

17 Q. What was the feelings that you had when you learned
18 that?

19 A. Relief.

20 Q. Mr. Winkler was held in jail for a period of time?

21 A. Yes.

22 Q. And there's been testimony today that he was
23 ultimately released on bond?

24 A. Yes.

25 Q. Were you present for those bond hearings?

1 A. Yes.

2 Q. With your mom?

3 A. Yes.

4 Q. And when he was released, what was her demeanor?

5 A. I knew, I knew it was just a matter of time.

6 Q. Jill.

7 A. Yeah.

8 Q. Let me show you State's 156 that's in evidence, and
9 tell me what that's a picture of.

10 A. That's a picture of our last Christmas with Momma.

11 Q. Whose house were you -- was that taken in?

12 A. My grandmother's.

13 Q. Okay. Jill, I can't but notice that your mom has got
14 a much different hairstyle in that photograph?

15 A. Yes. She had to cut all her hair off after the
16 kidnapping.

17 Q. Why was that?

18 A. Because it had sand spurs, and it was matted from the
19 dirt and everything. They couldn't do anything with it, so
20 she had to cut it all off.

21 Q. Did your mom change in other ways?

22 A. Yes.

23 Q. In what ways?

24 A. She lived in fear all the time and was scared. She
25 didn't go anywhere; she didn't do anything. She couldn't

1 work. She always worked. She was never the same, ever.

2 Q. The night you learned that your mom had been killed,
3 how did you find out?

4 A. What led to it or when? When I found out?

5 Q. Yes. Tell me how you found out.

6 A. I, I, I had gone to -- I knew something happened, but
7 they wouldn't tell me over the phone. So, I went to the
8 [REDACTED] and that's when they told me that he had
9 killed her.

10 Q. Who told you?

11 A. Haley.

12 Q. Since, since then, Jill, how has your mom's loss
13 affected you?

14 A. I miss her. A piece of me, a piece of me went with
15 her. I loved her very much. It's affected my whole
16 family. J [REDACTED] doesn't have a -- another grandmother. She
17 won't be at my sister's wedding or when she has her baby.
18 She won't be with J [REDACTED] at his graduation from high
19 school next year. He was closest to her, I think. He was
20 the most like her. It shouldn't have happened to her. She
21 was beautiful and just loved everybody. It wasn't fair.
22 We all miss her very much.

23 Q. Jill, Mother's Day weekend 2006.

24 A. Yeah.

25 Q. Did you receive a letter from the defendant, Louis

1 Winkler?

2 A. Yes.

3 Q. I'd like to show you what's been marked for
4 identification as State's 159 and ask you to identify that
5 document.

6 A. That's a letter he wrote me from jail, Mick Winkler, a
7 letter from jail.

8 MR. HEMBREE: Your Honor, we would move this into
9 evidence at this time.

10 THE COURT: Any objection?

11 MR. WILSON: I have none.

12 THE COURT: All right. In evidence, Exhibit 159 or
13 160.

14 MR. HEMBREE: The 159, Your Honor.

15 THE COURT: 159.

16 (LETTER MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
17 159.)

18 MR. HEMBREE: Jill, thank you have much.

19 WITNESS: Thanks.

20 MR. HEMBREE: Please answer any questions that defense
21 counsel may have.

22 THE COURT: Any questions of this witness?

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

24 THE COURT: You may step down.

25 WITNESS: Okay.

1 (THE WITNESS EXITS THE STAND.)

2 MR. HEMBREE: Your Honor, at this time, I'd like to
3 publish State's Exhibit 159 in evidence, and I would ask
4 that the family be permitted to leave the courtroom, if
5 they so choose, during this portion of the presentation.

6 THE COURT: If you wish to, you may leave, anybody in
7 the audience.

8 You may proceed, sir.

9 MR. HEMBREE: Thank you, Your Honor.

10 Hey Jill, it's a shame a few bruises on your
11 mother's arm led to her death. You know, if you
12 wouldn't have stuck your fat ass in our business,
13 she would be alive to see her fifty-first
14 birthday and her granddaughter. Becky never did
15 like you. She told me many times that you were
16 the only Grainger in the family. Haley and J [REDACTED]
17 had her build. You didn't. That's why you're
18 the only one overweight. She said also that you
19 cried and were unhappy all the time just like
20 your daddy. You called almost every night to cry
21 about your cheating husband, and she always told
22 J [REDACTED] and I not to answer the phone if it was you.
23 It's also obvious your own grandmother didn't
24 like you either. I was wondering who you cry to
25 now. I guess you know that the Shelleys aren't

1 such big shots in this county like you were
2 hoping. See how I got out of jail so easy? I
3 loved seeing Johnny Shelley's face when I got
4 bond. You really should mind your own business,
5 Ill Jill. That's what J ■ calls you. You're a
6 pitiful, stuck-in-the-country fat girl, and when
7 Cam finally wises up and leaves you and you need
8 your mommy, just think. If only I wouldn't have
9 stuck my nose in her marriage. As for your
10 mother, who ended up ---

11 Your Honor, I apologize. This is very graphic.

12 THE COURT: It's in evidence.

13 MR. HEMBREE: Who ended up fucking everyone, I want
14 you to know that word got to me because of your
15 mouth. You told the wrong people. Also, for the
16 little stunt you had the prosecutors pull before
17 I got my lawyer paid at the death penalty
18 hearing, I thought you should know that I have
19 several copies of DVDs of home video of me and
20 your mom. You've heard of Pamela and Tommy Lee.
21 Well, your mother and I made that look like an
22 amateur video. Two hours over two years of
23 her ---

24 I apologize, Your Honor.

25 --- sucking my fat cock. After all, she was a

1 real whore in bed. She even says in one segment
2 I love your peter, Daddy. Don't worry, you'll
3 see it on the internet, just like I was on TV and
4 in the newspapers. You can ask Detective Toby
5 Boyd who has the copies I had on me when I was
6 arrested. I'm sure he enjoyed seeing me fucking
7 your mom and into her mouth every time. She
8 liked to swallow. Is that what you wanted to see
9 when you always came into my bedroom? Did your
10 mom tell you my cock was huge? All you have to
11 do is look on the video. By the way, you know as
12 well as J ■ that I did not shoot my wife. My
13 family, unlike your pitiful loser family, will
14 see to it that the truth comes out. I'm sure
15 they have told you that the evidence is in on the
16 first charges. Clearly shows that your mom was
17 driving and did wreck your car. She was so
18 afraid to tell you because you're such a bitch.
19 She lied to the police, then it all took off.
20 She also did not tell you she spent the night
21 several times behind your back during the
22 separation. You see, if it wasn't for you, she
23 would be alive. In the long run, Becky told me
24 that those first two years with me were the best
25 in her life. Everyone knew that but you. We

1 loved each other. Jill, people do fight and have
2 problems. Those are the facts of life. If you
3 would not have butted in and called the police,
4 which I heard Becky tell you not to do, this
5 whole tragedy could have been avoided. As for
6 J■ and Haley, I did love them. See you on the
7 internet, Your Mother's Husband. PS, no one
8 wins. Me and my wife both lose. Fuck you, Jill,
9 little fat girl.

10 The state rests.

11 THE COURT: All right. Ladies and gentlemen of the
12 jury, we'll take a break now. We'll start back in about
13 fifteen, twenty minutes. Do not discuss the case. Back in
14 a little bit.

15 (THE JURY EXITS AT 4:04 P.M.)

16 THE COURT: Okay, motions from the state at this time?

17 MR. HEMBREE: No motions from the state, Your Honor.

18 THE COURT: Motions from the defense?

19 MR. WILSON: Yes, sir, Your Honor. Your Honor, a
20 couple of things.

21 One, I know at the beginning of this trial during the
22 *voir dire* phase of it, I made an objection to the court
23 qualifying Mr. Hardwick, who is one of members of the jury
24 panel. The reason for that was the fact Mr. Hardwick
25 indicated in the *voir dire* that he knew or had contact with

1 two particular witnesses of state. One is -- was Ms.
2 Phyllis Richardson and this Cam Cox, both of whom he
3 indicated that he had some contact with or at least that he
4 knew.

5 I recall making an objection at that time. I'm now
6 renewing that objection, and I'm renewing it because I
7 think there's testimony -- both witnesses' testimony is
8 very important in the state's case in this second phase.
9 I think that -- I understand that Mr. Hardwick indicated
10 that he would set that aside and be fair. I understand
11 that. I just think that now, considering everything, that
12 I would have serious doubts as to whether or not he can do
13 that.

14 Because of that, I would ask the court to declare a
15 mistrial in this particular case and grant us a new
16 sentencing hearing in that regard.

17 THE COURT: Now, granting a new trial because he said
18 he knew these people? Now, Ms. Richardson really was
19 giving her observations about that one day, that they
20 performed the wedding ceremony.

21 MR. WILSON: Yes, sir.

22 THE COURT: But I'm, I'm trying to remember.

23 Do you have that sheet, Madame Court Reporter, I guess
24 the one that I gave you one with circles, but I, I don't
25 recall him circling those names on the -- can we accept

1 that he did, or do you want me to see the sheet? I had her
2 mark every time someone marked when they...

3 Could you check, Madame Court Reporter, just check the
4 sheet?

5 MR. HEMBREE: Oh, I've got it.

6 THE COURT: Mr. Hardwick. It's number 85. Oh, no,
7 excuse me, juror's number 200. It was in group A, number
8 five.

9 (A PAUSE.)

10 THE COURT: Yeah, he circles four people: Phyllis
11 Richardson, Renee Hardwick, Edward L. Proctor, and Tammy
12 Cox.

13 But any reply from the state regarding Mr. Wilson's
14 motion for a mistrial?

15 MR. HEMBREE: Well, Your Honor, Mr. Hardwick was
16 thoroughly examined on those issues. He clearly indicated
17 that he could be fair and impartial.

18 My recollection was he wasn't even sure which Tammy
19 Cox it was. He knew somebody named Tammy Cox ---

20 THE COURT: He said he knew someone named Tammy Cox in
21 her thirties.

22 MR. HEMBREE: And it was pretty -- he didn't really
23 know much about it other than there was -- yeah, he
24 couldn't remember what color hair she had, I believe. That
25 was...

1 THE COURT: I think you're right. Yes, he did say he
2 knew someone named Tammy Cox in her thirties and didn't
3 know her that well.

4 MR. WILSON: Well, my under -- and maybe I wrote it
5 down wrong, but my recollection was that he indicated that
6 she might -- she was -- if it was her, then she would be a
7 former neighbor.

8 THE COURT: Former neighbor?

9 MR. WILSON: Right, but she wasn't living next to him
10 now but apparently had lived, had been a neighbor at some
11 point if that was, in fact, her.

12 THE COURT: Well, I think based on my previous
13 questioning of Mr. Hardwick and my decision after viewing
14 and talking with him that that would have no effect.
15 In fact, I'm sure I asked him would that have any affect on
16 your verdict or your decision whatsoever. I asked each one
17 about that question that -- your motion for mistrial is
18 denied.

19 MR. WILSON: Thank you, Your Honor.

20 THE COURT: Based on that.

21 MR. WILSON: Your Honor, the second motion I have is
22 the fact the state could provide only two aggravating
23 circumstances, one of which is obviously the burglary, and
24 obviously the burglary that the jury found in the first
25 phase of the trial, that the burglary was proven beyond a

1 reasonable doubt, and they found him guilty of it.

2 I make no motion in that regard.

3 But on the second issue, my understanding is they're
4 relying on number 11 of the 16-3-20, which is the murder of
5 a witness or potential witness committed at any time during
6 the criminal process for the purpose of impeding or
7 deterring the prosecution of any kind.

8 I would submit to the court that while there has
9 certainly been evidence produced of a crime, there has been
10 no evidence produced that it was for the purpose of
11 deterring or impeding the criminal procedure which would
12 have followed.

13 And, and, and because of that, I would think that they
14 failed, then, to have proven this particular statutory
15 aggravating circumstance as a matter of law. And I would
16 ask the court to rule as a matter of law that the state has
17 failed to prove that as an aggravating circumstance.

18 THE COURT: I was thinking that also, Mr. Wilson, that
19 -- what was going to be introduced in that regard. They
20 have introduced evidence that there was an allegation and
21 Mr. Winkler was arrested for several charges: kidnapping,
22 assault and battery with intent to kill, and criminal
23 sexual conduct first degree. There was evidence introduced
24 that this person was a witness to that crime, and so I
25 think based on such circumstances, the death of Ms. Winkler

1 would have been the death of the witness of prosecution.

2 And so I assume the state's going to say
3 circumstantially that the death of Ms. Winkler would have
4 been the death of a witness would be -- prosecution, hear
5 what they have to say. Mr. Humphries?

6 MR. HUMPHRIES: Your Honor, that's exactly what I'd
7 have to say.

8 You know, if you take this argument to its reasonable
9 and logical conclusion, the state would never be able to
10 prove directly that it was for the purpose of impeding or
11 deterring the prosecution unless the defendant himself said
12 I killed her so she couldn't testify against him.

13 Circumstantially, it's proven by the fact that he has
14 killed her, and further by the fact that not only had he
15 killed her, had he remained on the scene, maybe we would
16 have -- well, we still would have a different situation.
17 But in this case, he killed her and then he absconded and
18 stayed -- he was in flight for two weeks before he was
19 arrested and never surrendered but had to be caught by law
20 enforcement. Clearly, it's for the purpose of impeding or
21 deterring the prosecution.

22 THE COURT: I think there's sufficient evidence, Mr.
23 Wilson, circumstantially for a jury to accept beyond a
24 reasonable doubt. They may not, but they could find that's
25 an aggravating circumstance based on circumstantial

1 evidence.

2 MR. WILSON: Thank you, Your Honor.

3 THE COURT: Any other motion?

4 MR. WILSON: No, sir, except that again I would renew
5 any motions that I made at the end of the first phase of
6 the trial, and I ask the court to let the record reflect
7 that.

8 THE COURT: All right.

9 Now, if you would, Mr. Winkler, would you please stand
10 for me, please, sir. Mr. Winkler, I want to make sure you
11 understand, sir, at this stage, in this stage you have a
12 right to testify or not testify. That right, sir, is
13 yours. No one can make you take the stand. That's totally
14 up to you, sir. And also know that you do have that right
15 to make a final argument to the jury. The choice to
16 testify will be yours but if you do, you would be under
17 oath, sir, and, and required to answer any and all
18 questions the court would deem relevant to this case.

19 Once again, no one can make you testify, and if you
20 chose not to testify and wanted me to do, do so, I'd tell
21 that jury not to hold that against you. But just as I told
22 you in the first phase of this trial, that to prove
23 aggravating circumstances beyond a reasonable doubt is up
24 to the state. And you do have evidence, I'm sure, and
25 you're going to introduce evidence of mitigating

1 circumstances, but I just want to make sure you understand
2 you have no duty or obligation to testify. Do you
3 understand, sir?

4 THE DEFENDANT: Yes, Your Honor. Do I understand,
5 though, that that not only can I be a witness, but I will
6 be able to ---

7 THE COURT: Make final argument?

8 THE DEFENDANT: Make final argument.

9 THE COURT: You can do that whether you're a witness
10 or not.

11 THE DEFENDANT: Oh.

12 THE COURT: Also, whether you testify or not, you may
13 also make a final argument to the jury.

14 THE DEFENDANT: Thank you, Your Honor. I do
15 understand.

16 THE COURT: Does the state or defendant wish for me to
17 explain to him his right to him further, rights to him
18 further?

19 MR. WILSON: Yes, sir, and, and, and, and for the
20 record so I can be clear, this is against my advice and
21 against my admonition, and -- but he has indicated to me
22 that he wants to testify.

23 THE COURT: Well, he's got -- and I'm going to give
24 y'all a break and let y'all think about that further, but
25 that's his choice. It's your choice, Mr. Winkler, not your

1 family, not your lawyers'.

2 Anything else from the state? Is there anything else
3 you wish for me to discuss?

4 MR. HEMBREE: No, Your Honor.

5 THE COURT: All right. Mr. Wilson, I'm going to give
6 you a few minutes to get your case ready. We'll start
7 back. We'll start back at 4:30. Everybody be around.
8 We'll start about 4:30 with this case for the defense.

9 Mr. Wilson and Mr. Hembree, could I see you two?

10 MR. HEMBREE: Yes.

11 THE COURT: Come on back.

12 (OFF THE RECORD.)

13 THE COURT: Mr. Wilson, Mr. Winkler, if you would
14 please stand, please. Once again, Mr. Winkler, I want to
15 make sure you understand, sir, you have the right not to
16 testify. No one is making you testify in this phase of the
17 trial. The burden of proving aggravated circumstance is on
18 the state beyond a reasonable doubt, and Mr. Winkler, you
19 don't have to testify if you don't wish to testify.

20 And if you don't testify, and you want me to tell the
21 jury such, I'll tell the jury not to hold that against you,
22 not to even consider that in their deliberations on these
23 issues. And I would remind them the burden upon the state
24 to prove aggravating circumstances beyond a reasonable
25 doubt and not upon you to prove they don't exist.

1 And Mr. Winkler, your rights are yours. If you want
2 to testify, certainly you may testify if you wish to, and
3 that's up to you. It's your choice. If you do testify,
4 you would be under oath and you would be required to answer
5 any questions that are relevant to this part of the case.

6 So, do you understand your rights to testify and your
7 rights not to testify, Mr. Winkler?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Mr. Wilson, have you had -- have you and
10 he gone over it during the break?

11 MR. WILSON: Yes, sir.

12 THE COURT: Has your client made a decision at this
13 time?

14 MR. WILSON: He has.

15 THE COURT: Mr. Winkler, what is your decision?

16 THE DEFENDANT: Go ahead and testify.

17 THE COURT: All right. Then you understand your
18 rights?

19 THE DEFENDANT: I do.

20 THE COURT: You understand you're under oath and
21 subject to cross-examination?

22 THE DEFENDANT: Yes, I do, Your Honor.

23 THE COURT: All right. That is your decision, not
24 your lawyers', not the family's, but it is your decision.

25 THE DEFENDANT: That's correct.

1 THE COURT: You're standing, Mr. Humphries. For any
2 particular purpose?

3 MR. HUMPHRIES: After you finish.

4 THE COURT: Okay. I make a finding that you make a
5 knowing, voluntary decision to testify. You have an
6 understanding of your rights to testify or not testify, and
7 you'll be permitted to testify.

8 You may be seated, Mr. Winkler.

9 MR. RATHBUN: Your Honor?

10 THE COURT: Yes, sir.

11 MR. RATHBUN: I'd like to place on the record that I
12 also believe that this is a detriment to my client's case,
13 and I understand that he wants to go forward and do it, and
14 as his lawyer, we follow his wishes.

15 THE COURT: Thank you.

16 Mr. Wilson, have you decided what point he'll come
17 yet, or have y'all decided that?

18 MR. WILSON: Yes, sir.

19 THE COURT: Will it be this evening or later on?

20 MR. WILSON: I have one witness which won't be very
21 long that I will probably put up first.

22 THE COURT: And, therefore, it will probably be in the
23 next segment that he testifies?

24 MR. WILSON: Yes, sir.

25 THE COURT: Now, Mr. Winkler, I want you to

1 understand, sir, the jury doesn't know this, but you know
2 it and everyone else is aware that you have this apparatus
3 on, sir, that is sort of an invisible string. The sheriff
4 has told us that because of their duties in the courtroom,
5 that while you're, while you're testifying, sir, please
6 don't stand up and walk over to the jury. You let me know,
7 okay? In other words, don't just get up and start walking
8 to the jury. Like Mr. Wilson ask you to walk, go to the
9 jury, let me first make a decision upon that and -- because
10 I don't want to have anything happen and misunderstood,
11 ends up with, you know, something happening.

12 THE DEFENDANT: Yes, sir, Your Honor. I understand.

13 THE COURT: Just be aware of that, Mr. Winkler.

14 THE DEFENDANT: Yes, sir. Yes, sir.

15 (PHOTOGRAPHS MARKED INDIVIDUALLY AS DEFENDANT'S
16 EXHIBITS 3 THROUGH 18 FOR IDENTIFICATION.)

17 (MIRANDA WARNING MARKED INTO EVIDENCE AS COURT'S
18 EXHIBIT NUMBER 23.)

19 THE COURT: All right. Yes, sir?

20 MR. HUMPHRIES: Your Honor, the state is prepared to
21 go into a *Jackson vs. Denno*. If we can do that out of an
22 abundance of caution? The defendant did make a statement
23 which was the subject of Miranda.

24 THE COURT: Call your first witness.

25 MR. HUMPHRIES: The state calls Toby Boyd.

1 TOBY BOYD, BEING DULY SWORN,
2 TESTIFIES AS FOLLOWS:

3 CLERK OF COURT: Please have a seat. Please state
4 your name, spell your last for the record, and please speak
5 into the microphone.

6 WITNESS: My name is Toby Boyd, B-o-y-d.

7 THE COURT: All right, Mr. Humphries.

8 DIRECT EXAMINATION BY MR. HUMPHRIES:

9 Q. With whom are you employed?

10 A. Horry County Police Department.

11 Q. How long have you been so employed?

12 A. Nine years.

13 MR. HUMPHRIES: And Your Honor, at this time, I'm
14 going to show Detective Boyd what's been marked as Court's
15 Exhibit 23 for the purposes of this hearing.

16 BY MR. HUMPHRIES:

17 Q. Can you identify that document?

18 A. Yes, sir. It's a Miranda right form, advisement of
19 rights standard form that we use in our department to
20 advise a subject of his Miranda rights.

21 Q. And is this the original form used on Mr. Winkler?

22 A. Yes, sir.

23 MR. HUMPHRIES: Show it to defense counsel.

24 (A PAUSE.)

25 BY MR. HUMPHRIES:

1 Q. Again, this is just for the purposes of this hearing.
2 Let me ask you. Did you have an occasion to interview the
3 Defendant Winkler after his arrest for the murder of
4 Rebekah Winkler?

5 A. Yes, sir.

6 Q. On what date?

7 A. March 20, 2006.

8 Q. At approximately what time?

9 A. The interview?

10 Q. Yes.

11 A. Approximately 8:00 p.m.

12 Q. In what location was the interview conducted?

13 A. We were in an interview room at the Horry County
14 Police Department.

15 Q. Let me ask you. This would have been two weeks,
16 approximately two weeks after the murder of Becky Winkler.
17 Is that right?

18 A. Exactly. Exactly two weeks.

19 Q. Let me ask you. Did -- prior to taking the statement,
20 did you offer Defendant Winkler food?

21 A. Yes, sir, we did. We fed him.

22 Q. Were any other needs, physical needs that he expressed
23 to you that you or other officers did not meet prior to
24 taking the statement?

25 A. No, sir. We accommodated him.

1 Q. Now, where, where in the police department did the
2 interview take place?

3 A. We have interview rooms in the Criminal Investigations
4 Division section that are equipped with video and audio
5 equipment with the table and chairs, and it was in one of
6 those rooms.

7 Q. Let me ask you. Was this interview recorded by audio
8 and video?

9 A. Yes, sir.

10 Q. And do you know, has that audio or video recording
11 been transcribed?

12 A. Yes, it has.

13 Q. Have you reviewed that transcript to the video and
14 audio?

15 A. Yes, sir.

16 Q. Is it accurate?

17 A. Yes, sir.

18 Q. Now, who was present in the interview room when you
19 first began to speak with Mr. Winkler?

20 A. Mr. Winkler was and I was.

21 Q. And were there any other officers ---

22 A. I think Detective Larry Graham was there, as well.

23 Q. Very good.

24 A. He was -- he didn't say anything, but he was present.

25 Q. Prior to beginning the interview, did you advise

1 Defendant Winkler -- well, first of all, let me -- tell me
2 very briefly what you did or what questions you requested
3 Mr. Winkler in preparation for advisement him of his
4 warning pursuant to Miranda regarding ---

5 A. I asked him about if he was under the influence of
6 alcohol.

7 Q. His response?

8 A. No.

9 Q. Continue.

10 A. How far he had gotten in school.

11 Q. And his response was?

12 A. Graduated. I asked him about drugs. He said no and
13 no medication.

14 Q. Very good. Now, you had an opportunity to -- in fact,
15 you had seen him earlier that day prior his arrest. Is
16 that correct?

17 A. Prior to -- oh, yes, sir, in the wood line?

18 Q. Yes.

19 A. Yes, sir.

20 Q. Okay. While in your presence immediately preceding
21 this interview, did -- what were your observations about
22 Mr. Winkler? Was he oriented in terms of where he was, who
23 was there with him?

24 A. Yes.

25 MR. WILSON: Your Honor, the defendant has informed me

1 that he wants to waive the *Jackson* hearing.

2 THE COURT: Well, the court is the one that's got to
3 make a finding, so I'm going to have a *Jackson* hearing so I
4 can make a decision that whether or not the statement was
5 given with him voluntarily and if necessary that he was
6 given his Miranda warning.

7 MR. WILSON: All right, sir.

8 THE COURT: Proceed on.

9 MR. HUMPHRIES: Thank you, Your Honor.

10 BY MR. HUMPHRIES:

11 Q. Was he able to respond appropriately to your
12 questions?

13 A. Yes, sir.

14 Q. Did he appear at any time to be confused, or at any
15 point did he fail to understand the nature of your
16 questions?

17 A. Didn't appear to.

18 Q. Now, you have a form before you which is Court's 23
19 for the purposes of this hearing. Is that the original
20 Miranda form that you used in advising this defendant of
21 the warnings pursuant to Miranda?

22 A. Yes, sir.

23 Q. Please tell the court, if you will, what warnings you
24 provided Defendant Winkler.

25 A. Basically provided him with this form in front of him,

1 and you go line by line, keep one in front of me as well,
2 read it word for word.

3 Q. And is that what you did?

4 A. Yes, sir.

5 Q. If you will, publish exactly what you told Defendant
6 Winkler in advising him of his warnings pursuant to
7 Miranda.

8 THE COURT: I will interject this, sir, the document
9 that you have in front of you, did you read that to him
10 word for word?

11 WITNESS: Word for word, yes, sir.

12 THE COURT: Then I'll -- any objection to the fact
13 that occurred?

14 MR. RATHBUN: No, sir.

15 THE COURT: All right. I'll accept that what's on
16 Court's Exhibit Number...

17 WITNESS: 23.

18 THE COURT: 23 was read to you. All right. Next
19 question.

20 MR. HUMPHRIES: Thank you.

21 BY MR. HUMPHRIES:

22 Q. I note that there's some initials by each of the
23 warnings.

24 A. Yes.

25 Q. Can you tell what the significance of those initials

1 are?

2 A. They are to signify that he understands each right,
3 each right individually as I read them to him aloud.

4 Q. And whose notations are those?

5 A. They are, the initials are M.W., and they are Mr.
6 Winkler's.

7 Q. And he actually wrote those initials?

8 A. He did, yes, sir.

9 Q. Okay. Does it indicate that he understood each and
10 every one of the warnings pursuant to Miranda?

11 A. Yes, sir.

12 Q. Now at the bottom of the form, or towards the bottom
13 of the form, there are a couple of boxes. What's the
14 significance of those boxes?

15 A. To be, to be very clear. The first one says:

16 Do you understand your rights as I have read them
17 to you?

18 He wrote the word yes in the yes box.

19 Q. Okay.

20 A. The second one says:

21 Understanding your rights, do you wish to waive
22 them and make a statement or answer questions at
23 this time?

24 He wrote yes in the yes box.

25 Q. All right, and is there a signature line?

1 A. Yes, sir.

2 Q. And whose name appears on that signature line?

3 A. The signature is Louis M. Winkler, Jr.

4 Q. And in whose hand is that?

5 A. Louis M. Winkler, Jr.

6 Q. Were these rights witnessed by anybody?

7 A. Larry Graham was in the room as well.

8 Q. Okay.

9 A. But this is my signature on the witness.

10 Q. Very good. Now, let me ask you. Did you subsequent
11 to advising him of his warnings pursuant to Miranda right,
12 obtain a statement from Defendant Winkler?

13 A. Yes, sir.

14 Q. And in doing so, did you promise him anything in
15 return for speaking with you?

16 A. No, sir.

17 Q. Did you threaten or coerce him?

18 A. No, sir.

19 Q. Did he speak with you freely and voluntarily based on
20 your observations of him?

21 A. Yes, sir.

22 MR. HUMPHRIES: Your Honor, that's all we have.

23 THE COURT: All right. Could I see the document, the
24 court's exhibit?

25 EXAMINATION BY THE COURT:

1 Q. Now, Officer Boyd, at the time, how long after you
2 placed him under arrest when he was in the wooded area was
3 it when you got this -- when you discussed these matters
4 with him? How long had he been under arrest?

5 A. Approximately, I would guess two hours, two-and-a-half
6 hours.

7 Q. Well, since -- in your previous testimony you said it
8 was obvious he had been outside for ---

9 A. Yes, sir.

10 Q. --- a good period of time.

11 A. Yes, sir.

12 Q. And you said it or one of the other officers said it.

13 A. I did.

14 Q. Well, did he appear to be calm enough to talk with you
15 and understand his rights?

16 A. Yes, sir. We bought, we bought some food for him and
17 allowed him time to consume that food and use the
18 facilities and recover.

19 Q. Did he seem resistant at all about cooperating with
20 you?

21 A. No, sir. He wasn't resisting at all.

22 THE COURT: Any questions, Mr. Wilson?

23 MR. WILSON: No, sir. Mr. Rathbun has some.

24 THE COURT: Oh, I'm sorry. Mr. Rathbun, any
25 questions?

1 MR. RATHBUN: Regarding what the court just asked
2 Detective Boyd?

3 THE COURT: About whether it should be admitted or
4 not.

5 MR. RATHBUN: I don't have any.

6 THE COURT: All right. Do you have any questions
7 concerning the rights that were given and the rights were
8 understood and whether rights were waived?

9 MR. RATHBUN: None, Your Honor.

10 THE COURT: All right. The statement he is referring
11 to, have you heard the statement, seen it in writing also?

12 MR. RATHBUN: I've heard and I've read it and I have a
13 copy of it.

14 THE COURT: Do you have any objection to that
15 statement coming into evidence?

16 MR. RATHBUN: I, I do, Your Honor.

17 THE COURT: Okay. Well, we'll discuss that later on.
18 Thank you, sir. You may step down.

19 MR. RATHBUN: Your Honor, may I be permitted to
20 question the witness?

21 THE COURT: Oh, I'm sorry. Yes, sir. I, I thought I
22 gave you the opportunity. Yes, sir.

23 CROSS-EXAMINATION BY MR. RATHBUN:

24 Q. Detective Boyd, were you present when Mr. Winkler was
25 arrested?

1 A. Yes, sir.

2 Q. And who else was there?

3 A. There were dozens of people there, sir.

4 Q. All right.

5 A. Captain Rutherford, Sergeant Luke Green, Larry Graham.

6 Q. At one point, did you, Larry Graham and someone else
7 take custody of Mr. Winkler?

8 A. I took him from there, yes, sir. From the place where
9 he was actually taken into custody, I took him in my car.

10 Q. In your car?

11 A. Yes, sir.

12 Q. And where did he go from your car?

13 A. We had our mobile command center bus or RV set up over
14 at Eagle's Nest Golf Course. I took him there, and from
15 there we went inside and ---

16 Q. All right, and were you alone with Mr. Winkler in your
17 car?

18 A. No, sir.

19 Q. Who else was in the car?

20 A. I believe Maurice Jones was in there. Maurice Jones
21 was the sergeant at the time over our division.

22 Q. At any time then did you have Mr. Winkler in handcuffs
23 in custody in your car? Did you give him his Miranda
24 rights?

25 A. No, sir.

1 Q. Did you speak to him?

2 A. Certainly I spoke to him, sir.

3 Q. All right. Did he speak back to you?

4 A. Absolutely.

5 Q. All right. When you got to your command post, what
6 happened then?

7 A. We -- I asked him prior to leaving the woods what he
8 wanted to eat because I was sure he was hungry. My captain
9 went to a local fast food restaurant and bought some food
10 for him, and he sat there on the bus. We talked while he
11 ate.

12 Q. All right, and was Detective John Lewis present at
13 that time?

14 A. I don't recall, sir. He could have been in and out.
15 I don't think so.

16 Q. Okay. Do you recall Detective Lewis responding to Mr.
17 Winkler when he asked if his lawyer should be present, not,
18 not to worry about it anymore at this time?

19 A. No, sir, I don't know anything about that.

20 Q. Do you recall any kind of conversation like that at
21 all?

22 A. No, sir.

23 Q. Where did you go from the command post?

24 A. After he had finished his meal, after he ate all he
25 wanted to eat, we wrapped the rest of it up and got back in

1 my car, and I transported him at that point to the M.L.
2 Graham Building to our office.

3 Q. All right, Detective, and about what time did you get
4 there?

5 A. Oh, I'd -- roughly 7:00. I'd say p.m., 1900.

6 Q. And that's about an hour and fifty minutes after he
7 was found in the woods?

8 A. Right, and we were 35 miles from...

9 Q. Right, and you spoke to him on the trip from ---

10 A. Yes, sir.

11 Q. --- there to back?

12 A. Right.

13 Q. At any point did he get his Miranda warnings?

14 A. No, no.

15 Q. At any point during that trip, did he ask you if Mr.
16 Scott Bellamy would be present during the questioning?

17 A. No, sir.

18 Q. He never brought that up?

19 A. No, sir.

20 Q. Do you know why Mr. Bellamy would have been brought
21 up?

22 A. I do now.

23 Q. All right.

24 A. I know that he had represented him at some point for
25 something.

1 Q. But you didn't know that before March 20, 2006?

2 A. No, sir.

3 Q. You weren't part of the search for him?

4 A. Yes, sir, let me back up. I did. I saw a document
5 that he had written that -- the name was Mr. Bellamy. Is
6 that what you're referring to?

7 Q. No. I'm referring to the October 10th ---

8 A. No, sir.

9 Q. --- 2005 incident. You had no part of that?

10 A. No, sir.

11 Q. All right. What was ---

12 A. I was, I was in just the -- on the homicide. I didn't
13 have anything to do with the kidnapping.

14 Q. What were the Horry County Police Department's
15 policies and procedures when questioning, interviewing
16 detainees?

17 A. Prior to any -- anything beyond administrative
18 questioning, Miranda must be given freely and voluntarily
19 to the defendant.

20 Q. Can you recall the -- what you, the first words out of
21 your mouth in the interview process would have been?

22 A. Yes, sir. I've got it in front of me.

23 Q. Okay.

24 A. I asked him if he was finished eating.

25 Q. Right. At any point in time, did you place the day,

1 the time of the interview, where the interview was being
2 held?

3 A. No.

4 Q. Who was present there?

5 A. No.

6 Q. So, we don't know when this interview was taken, do
7 we?

8 A. March 20th.

9 Q. Where is it in this interview that says it was taken
10 on March 20th?

11 THE COURT: Now, Mr. Rathbun, this document here, this
12 document here wasn't done just before the interview?

13 WITNESS: Just prior, yes, sir.

14 THE COURT: Well, this document has got a date, time
15 and place on it.

16 MR. RATHBUN: Yes, sir. I've got that, but I'm asking
17 him if in the body of interview ---

18 THE COURT: Oh, okay. All right.

19 MR. RATHBUN: --- is there any indication when the
20 interview was taken.

21 WITNESS: No, sir.

22 BY MR. RATHBUN

23 Q. So, we don't know if this interview was taken
24 immediately after this document was ---

25 A. Except, except by my testimony.

1 Q. Weren't there a number of occasions during the
2 interview that Mr. Winkler, Mick, brought up the
3 relationship he had with Scott Bellamy?

4 A. There was one, yes, sir, at the end.

5 Q. But before that, did he ask you if the statement,
6 Scott would be able to sit with him?

7 A. That was when I stopped the interview. If you recall,
8 he did, he made a mention of -- I think something along
9 those lines, Scott may be mad at me for this. I asked --
10 at that point, Mr. Jones was in the room with me. I was, I
11 was conducting the interview still. I told Mr. Jones to
12 speak with me outside, Sergeant Jones.

13 When we came back in, I told him I felt like we needed
14 to make sure that Mr. Winkler was clear, that he made some
15 mention of an attorney. I came back in, and I asked him in
16 the interest of being legal, that we needed him to clarify
17 his position on that statement. He wasn't exactly clear
18 until I -- and I asked him specifically: do you want to
19 let's stop at this time so you can speak to an attorney?
20 His answer was yes. At that point, the interview
21 concluded.

22 Q. That was the first time you got that information?

23 A. Yes, sir. I think, I think it was. I don't recall
24 any other time other than -- when he brought it up, that
25 was when we discussed it outside of the room. I came back

1 and asked for clarification with him. I asked him
2 directly: do you want to stop? He responded with a yes.

3 Q. And you stop the interview at that time?

4 A. Yes, sir.

5 MR. RATHBUN: Beg the court's indulgence.

6 (A PAUSE.)

7 MR. RATHBUN: Nothing further. Thank you, Your Honor.

8 THE COURT: Anything on redirect?

9 MR. HUMPHRIES: No, Your Honor.

10 THE COURT: All right, sir. You may step down.

11 (THE WITNESS EXITS THE STAND.)

12 THE COURT: Any other witnesses?

13 MR. HUMPHRIES: No, Your Honor.

14 THE COURT: Any witnesses for the defendant?

15 MR. RATHBUN: No, Your Honor.

16 THE COURT: Okay. Any -- the state moves the
17 introduction of the statement and the exhibit indicating he
18 signed understanding and acknowledging his rights, I
19 assume, Mr. Humphries?

20 MR. HUMPHRIES: Your Honor, what we'd do is we'd just
21 ask for a ruling from the court, obviously.

22 THE COURT: Decide whether it was made voluntarily and
23 advised of his rights?

24 MR. HUMPHRIES: Very good.

25 THE COURT: In case you want to use it for impeachment

1 purposes or otherwise?

2 MR. HUMPHRIES: Yes, Your Honor.

3 THE COURT: All right. Any position from the defense
4 in that regard?

5 MR. RATHBUN: Your Honor, we'd move that the statement
6 was not voluntarily made. That the -- Mr. Winkler did, in
7 fact, introduce the lawyer who was representing him on the
8 earlier charges and ask whether or not he should be
9 available for him. So, we object.

10 THE COURT: As I understand it in hearing the
11 testimony of the officer, the minute that name came up,
12 they stopped the interview.

13 MR. RATHBUN: Well, it wasn't exactly the minute, Your
14 Honor. It was the time frame afterwards that people --
15 that questions were asked. I think Boyd mentioned that he
16 had asked him about it in the hallway.

17 THE COURT: Well, was there any other information
18 obtained from Mr. Winkler after he mentioned the name of
19 his attorney? Although the attorney did not represent him
20 officially at that time on this charge -- this is a totally
21 separate charge. Just to discuss the matter with him. Was
22 there anything after that?

23 MR. RATHBUN: I believe there was, Your Honor. I'm
24 trying to find it, and I understand in South Carolina
25 because Mr. Bellamy back on November 5, 2000 -- 10, 2005

1 charges, it doesn't necessarily mean he's going to
2 represent him on these charges. It doesn't necessarily
3 obtain -- that he, that he was going to represent him on
4 these charges.

5 THE COURT: Some other state that it does?

6 MR. RATHBUN: I'm just stating ---

7 THE COURT: I mean, I don't think it does in the
8 nation. I mean, you represent someone on one charge
9 doesn't automatically mean if they get arrested for
10 something else, you're automatically their lawyer. In
11 fact, I don't think the lawyers want it to be that way
12 either.

13 But you were going to say something, Mr. Humphries?

14 MR. HUMPHRIES: I was, Your Honor. Just so we can be
15 very clear about -- on the record, and I don't know that
16 the court -- I don't believe you have a copy of the
17 transcript of -- let me see if I've got an extra.

18 THE COURT: Well, my question is, is there going to be
19 anything that was obtained from the defendant after he
20 mentioned his attorney ---

21 MR. HUMPHRIES: Your Honor ---

22 THE COURT: --- that you wish to use? Is this a
23 transcript of it?

24 MR. HUMPHRIES: No, sir. This ---

25 THE COURT: Is this a transcript?

1 MR. HUMPHRIES: No. That's the transcript.

2 THE COURT: All right.

3 MR. HUMPHRIES: No, sir. I mean, there's nothing
4 after he mentions an attorney that we want to use. If
5 you'll look on page 50, the one, two, three, four, the
6 fifth exchange, this is when Maurice Jones and Detective
7 Boyd and Winkler went in a room. And I believe Sergeant at
8 that time Jones was talking with him, and Defendant Winkler
9 said: And I want to see my lawyer because he's trying to
10 put them in front of me. Talking about pictures of his
11 dead wife. Sergeant Jones has said: You want to see who?

12 THE COURT: Well, from that point on, do you have
13 anything you wish to introduce?

14 MR. HUMPHRIES: No, sir. That's my point. From that
15 point on, we will not attempt to elicit anything in
16 cross-examination.

17 THE COURT: All right.

18 Mr. Rathbun, do you have any objections to anything
19 before that line there on page 50?

20 MR. RATHBUN: I do, Your Honor. On page 47, the sixth
21 line down -- I'm sorry, the second line down, Mr. Winkler
22 states, and I quote:

23 Okay, it's a door that's busted. I'm
24 guaranteeing you Scott is going to be mad at me
25 for letting me do this, letting me do this this

1 far.

2 MR. HUMPHRIES: And, of course, Your Honor, it has to
3 be an unequivocal assertion of his right to counsel by
4 saying that his former lawyer was going to be mad at him.

5 THE COURT: Well, he's still his lawyer.

6 MR. HUMPHRIES: Well, he's his lawyer, but he's not on
7 this case.

8 THE COURT: Right.

9 MR. HUMPHRIES: He said he is going to be mad at him.

10 MR. RATHBUN: Where?

11 MR. HUMPHRIES: I would submit it's not an unequivocal
12 assertion of his right to counsel at the time of this
13 interview.

14 MR. RATHBUN: My understanding is Mr. Bellamy was on a
15 retainer, Your Honor, and I would believe that that would
16 make him his counsel for any offense.

17 MR. HUMPHRIES: No, sir. The sixth amendment right is
18 specific to defendants.

19 (A PAUSE.)

20 THE COURT: All right, note your exception. I just
21 read over matters. Note your exceptions, Mr. Rathbun, but
22 from page 50 on where he clearly asserts that he wanted to
23 see Mr. Bellamy, that portion from there will not be
24 admitted. You say you have no witnesses, right?

25 MR. RATHBUN: No witnesses.

1 THE COURT: All right, but the -- I will permit the
2 defendant, if he testifies, to be cross-examined on this
3 statement up to the point where he asserts his right to an
4 attorney, which is about five lines down on page 50.

5 MR. RATHBUN: Thank you, Your Honor..

6 THE COURT: And I've marked this thing here.

7 I find he made a free and voluntary and knowing waiver
8 of his rights. I find that he has, that he made also a
9 voluntarily decision to the police and did not assert his
10 rights until where I previously noted. So, those matters
11 will be available for whatever purpose you decide as far as
12 the state, as far as this proceeding.

13 MR. HUMPHRIES: Your Honor, we would like to mark this
14 as a court's exhibit, the transcript, and I believe it's
15 Court's Exhibit Number 24.

16 (INTERVIEW TRANSCRIPT OF DEFENDANT WINKLER MARKED INTO
17 EVIDENCE AS COURT'S EXHIBIT NUMBER 24.)

18 (END OF JACKSON VS. DENNO HEARING.)

19 THE COURT: Now, with this document in evidence, Mr.
20 Wilson, please make sure Mr. Winkler is aware that, you
21 know, his decision to testify, he can change his mind at
22 any time until he is called and put under oath. That I'm
23 not sure what effect, if any, this would have, but I just
24 wanted to make sure he was aware. I just want to make sure
25 that he's aware he can change his mind at any time up until

1 the time he comes up to be sworn.

2 MR. WILSON: Judge, just for the record, so the record
3 is clear, we have advised him that if he testifies, that in
4 all likelihood -- there's a great likelihood that the court
5 will admit the document and that he would be cross-examined
6 on it.

7 THE COURT: Okay. All right, bring in the jury.

8 Everyone has the notice of mitigating circumstances?

9 MR. HEMBREE: No, Your Honor. We did not receive any
10 notice of mitigating circumstance.

11 THE COURT: Is there a requirement he give it to you?

12 MR. HUMPHRIES: Well, let me say this. There is no,
13 there is no requirement in ---

14 THE COURT: You don't have to them. You don't have to
15 if you don't want to.

16 MR. WILSON: That's fine. We don't have any problem.

17 MR. HUMPHRIES: Very good.

18 (THE JURY ENTERS AT 5:06 P.M.)

19 THE COURT: Ladies and gentlemen of the jury, the
20 first part of this phase, the state has the burden of
21 proving beyond a reasonable doubt there are aggravating
22 circumstances, introduced evidence in regard to aggravating
23 circumstances. At this time, the defense has a right to
24 introduce any evidence they wish regarding mitigating or
25 extenuating issues or fact.

1 Mr. Wilson?

2 MR. WILSON: May it please the court, Your Honor? I
3 call Dr. Frierson.

4 THE COURT: You affirm, don't you doctor?

5 WITNESS: Yes.

6 RICHARD FRIERSON, AFTER DULY
7 AFFIRMING, TESTIFIES AS FOLLOWS:

8 CLERK OF COURT: Please have a seat. Please state
9 your name and spell your last for the court, and please
10 speak into the microphone.

11 WITNESS: My name is Richard Lasane Frierson.

12 THE COURT: All right.

13 WITNESS: F-r-i-e-r-s-o-n.

14 THE COURT: Go ahead.

15 VOIR DIRE EXAMINATION BY MR. WILSON:

16 Q. Doctor, if you would, where are you employed?

17 A. I am a professor of psychiatry at the University of
18 South Carolina School of Medicine in Columbia.

19 Q. All right, and have you been a professor or an
20 associate professor?

21 A. I've been on the faculty since 1992. I was promoted
22 to full professor in December.

23 Q. And, Doctor, what is your area of expertise?

24 A. I am a forensic psychiatrist.

25 MR. HEMBREE: Your Honor, we'll stip -- oh, I'm sorry.

1 We'll stipulate to Dr. Frierson's qualifications in the
2 field of forensic psychiatry.

3 THE COURT: All right. You'll be able to give opinion
4 testimony in that regard, but you may introduce further, if
5 you wish to.

6 MR. WILSON: Thank you very much, Your Honor.

7 DIRECT EXAMINATION BY MR. WILSON:

8 Q. Doctor, just so we have a little bit better
9 understanding, explain to us when we say forensic
10 psychiatry what we're referring to.

11 A. A forensic psychiatrist is someone who has been, first
12 of all, to medical school for four years. They have
13 completed four years of residency training in general
14 psychiatry, and then completed a year of extra training in
15 forensic psychiatry, which is a subspecialty of psychiatry
16 that deals with the interface between psychiatry and the
17 legal system, both criminal law, as this case is about, and
18 civil law.

19 Q. And, Doctor, being a forensic psychiatrist, how many
20 criminal cases would you say you have worked on in your
21 years as a psychiatrist?

22 A. I've been doing this full-time since 1992, and I've
23 evaluated for the criminal court system in South Carolina
24 over 1500 ---

25 Q. Okay.

1 A. --- criminal defendants.

2 Q. 1500 criminal cases, and how many times have you
3 testified in courts in the State of South Carolina
4 regarding such offenses?

5 A. Several hundred.

6 Q. Several hundred times, and in those several hundred
7 times, have you been qualified as an expert in forensic
8 psychiatry on all those occasions?

9 A. Yes.

10 Q. Now, do you work for any other agency now other than
11 the university?

12 A. It's a complicated question. I'm paid by the
13 university, but the university has contracts for my time
14 both with the South Carolina Department of Mental Health
15 and the South Carolina Department of Corrections. So, I do
16 some work both at the Department of Mental Health and the
17 Department of Corrections even though I'm paid by the
18 university.

19 Q. So, even though you're paid by the university, you're
20 actually -- you do contract work for the State of South
21 Carolina with mental health and for -- what's the other
22 agency?

23 A. Corrections.

24 Q. And ---

25 A. Yes.

1 Q. --- the Department of Corrections. All right, and how
2 long have you been doing that?

3 A. Well, I was full-time with the Department of Mental
4 Health and then went to the university full-time in 2003.

5 Q. And, Doctor, let's talk a little bit about whether or
6 not you have ever seen the defendant, Mick Winkler. Have
7 you ever had an occasion to examine him or be present while
8 he was being examined?

9 A. Yes.

10 Q. And tell us how that came about.

11 A. Part of the work that I do at the Department of Mental
12 Health involves doing evaluations for the courts throughout
13 South Carolina. So, the Department of Mental Health will
14 receive an order signed by a circuit court judge that will
15 order a defendant to have an evaluation at the Department
16 of Mental Health. So, I have served as a court-appointed
17 examiner for many of those evaluations.

18 Q. All right, and, Doctor, can you tell us the -- on how
19 many occasions you have had to examine the defendant, Mick
20 Winkler?

21 A. I first saw Mr. Winkler on October 4, 2006. I saw him
22 again October 18, 2006, and that was for the initial
23 evaluation. I also have seen him two other occasions.
24 Once, I don't recall the day. It was a *Blair* hearing in
25 Charleston. Then December 13, 2007, I saw him briefly

1 before a hearing in Dillon.

2 Q. So, you seen him on four separate occasions and
3 actually examined him on two of those four?

4 A. Yes. Well, I was part of all four examinations.

5 Q. All right. Now, Doctor, if you would, in examining
6 Mr. Winkler, did you reach any conclusion or any diagnosis
7 as to if there's any -- first of all, did you make a
8 determination as to whether or not he could stand trial?

9 A. Yes.

10 Q. Did you make ---

11 A. Yes, I did.

12 Q. All right, and you made that determination and
13 submitted that in the report to the court?

14 A. Yes.

15 Q. All right, and what were your findings in that regard?

16 A. It was my finding that in my opinion, that Mr. Winkler
17 was competent to stand trial, meaning he could understand
18 what happens in court, assist his attorney.

19 Q. Okay.

20 A. And participate in his defense.

21 Q. All right, and did you also make any finding, Doctor,
22 as to criminal responsibility? That is, as to whether or
23 not at the time of the commission of the offense, whether
24 or not the individual would have been able to understand
25 the wrongness or the criminality of his act?

1 A. Yes.

2 Q. All right, and tell us, tell us what you found in that
3 regard.

4 A. It was my opinion that Mr. Winkler would have been
5 able to distinguish legal or moral right from wrong or to
6 recognize the particular acts that he was charged with as
7 being legally or morally wrong at the time of the alleged
8 offenses.

9 Q. All right, sir. Now if you would, tell us, Doctor,
10 whether or not you made a determination as to whether or
11 not the defendant has any mental illness of any kind.

12 A. Yes.

13 Q. All right, and if you would, tell us what that mental
14 illness is, and then help us by explaining it to us, if you
15 would.

16 A. Okay. There were several diagnoses contained in my
17 report back to the court. The first was depressive
18 disorder not otherwise specified, which was a form of
19 depression.

20 The reason we say not otherwise specified is because
21 we don't have sufficient information to determine whether
22 it is what we call major depression or whether it is a
23 depression that is a reaction to being incarcerated or to
24 some other tragic event in one's life. But he had
25 depressed mood, a sleep disturbance, and had experienced

1 suicidal thoughts. In fact, we were significantly
2 concerned after the first evaluation of him that we had him
3 involuntarily hospitalized for treatment.

4 Q. How long did he stay in that hospitalization?

5 A. He was at the hospital from October 4, 2006, through
6 November 14 of 2006.

7 Q. And, Doctor, when you say he was hospitalized now, he
8 still is in custody at that time. Is that correct?

9 A. Yes. It's a special hospital; it's a forensic
10 hospital which is surrounded by barbed wire, high fences,
11 very secure.

12 Q. All right. Now, any other diagnoses that you recall?

13 A. Yes. He had a history prior to the alleged offense of
14 having been treated by a primary care doctor for anxiety
15 and prescribed Alprazolam, otherwise known as Xanax, for
16 treatment of his anxiety. He wasn't reporting those
17 symptoms to us, but we made a note of it, that he had that
18 history.

19 He also had a history of alcohol abuse. He had one
20 prior arrest for DUI. That represents legal difficulties
21 related to drinking, qualifies someone for diagnosis of
22 alcohol abuse.

23 Finally, we diagnosed him with someone having paranoid
24 personality traits, and that comes from a long-standing
25 history of paranoid thinking. That's not out of context

1 necessarily with reality. Chronic suspicious is
2 questioning the faithfulness of spouses, always feeling
3 they may be cheating on them, feeling that other people are
4 talking about them, feeling that other people can read --
5 very paranoid things into very benign remarks that people
6 can make.

7 For example, if an attorney said okay, I'm going to be
8 back to see you next week and the attorney doesn't come
9 back to see him that next week but it's two weeks, then
10 there's malicious intent on the part of the attorney. You
11 know, he can't fathom that maybe the attorney had a big
12 case that went on, couldn't get back to see him. It's
13 always a very paranoid interpretation of the actions of
14 others.

15 Q. Doctor, in regards to these paranoid thoughts, does
16 medication control that or help it, or would he still have
17 it even if he's taking medication for it?

18 A. He would still have it. This type of suspiciousness,
19 paranoia is not really amenable to treatment. It's part of
20 a basic personality which is influenced, of course, by the
21 temperament you're born with, combined with things that
22 happened while you're growing up. It's not generally
23 amenable to any sort of treatment.

24 Q. What effect, if any, would alcohol and drugs have on
25 that, if any?

1 A. Well, it could cause it to worsen, both -- cocaine
2 especially. If there's a history of using cocaine, it can
3 cause people to become more paranoid.

4 Q. And the only other thing was -- the last one was what
5 now, diagnosis that you made?

6 A. The paranoid personality traits. There's a medical
7 diagnosis, but I don't think he has it, gastroesophageal
8 reflex disease or GERD.

9 MR. WILSON: Doctor, answer any questions the state
10 may have.

11 THE COURT: Cross-examination?

12 MR. HEMBREE: Thank you, Your Honor.

13 CROSS-EXAMINATION BY MR. HEMBREE:

14 Q. Good afternoon, Dr. Frierson.

15 A. Good afternoon.

16 Q. Good to see you again. You got involved in this
17 case as a result of a court-ordered evaluation of the
18 defendant for criminal responsibility and competent to
19 stand trial?

20 A. Yes.

21 Q. So, essentially you would be -- is it fair to say that
22 you're the doctor appointed by the court to evaluate this
23 defendant to make those determinations?

24 A. Yes.

25 Q. You had that occasion on -- there were four occasions,

1 actually, but the two longest evaluations, if I understand
2 your testimony, were on October 4, 2006, and October 18th?

3 A. Yes.

4 Q. Now, let me go through a little bit of this report
5 with you, if you have it handy there. Let's talk a little
6 bit about Mr. Winkler's history because that can be
7 important in making your diagnosis.

8 A. Yes.

9 Q. He was -- he reported -- and you obtain his history.
10 Was that self-reported from him?

11 A. It was initially self-reported by Mr. Winkler, but
12 then we spoke with his sister.

13 Q. Okay.

14 A. And she didn't contradict the information that he had
15 told us.

16 Q. Did he have any history of childhood physical abuse?

17 A. No.

18 Q. Any history of childhood sexual assault?

19 A. No.

20 Q. Any history of childhood neglect?

21 A. No.

22 Q. Grew up in Medina, Ohio, with a mother and father and
23 five brothers and sisters?

24 A. Yes. He was the fourth of six.

25 Q. Did he have any history of childhood trauma?

1 A. No.

2 Q. A history of running away?

3 A. No.

4 Q. A history of animal cruelty?

5 A. He was not cruel to animals.

6 Q. History of setting fires?

7 A. No.

8 Q. So, based on at least these factors, the social
9 history, he appeared to be normal in every way?

10 A. From the history that we got, there were no red flags
11 from his childhood.

12 Q. Thank you. That's a better way to say it.

13 Now, he graduated twelfth grade?

14 A. Yes.

15 Q. Attended school there in Ohio?

16 A. Yes.

17 Q. Was he ever expelled from school?

18 A. He was never suspended or expressed.

19 Q. Was he ever truant?

20 A. No.

21 Q. Did he ever have to repeat a grade?

22 A. Never repeated.

23 Q. Now, let's take -- kind of move into his adult life.

24 He was employed, I believe, in the -- when he moved to

25 Horry County, he was employed as a condominium complex

1 manager, correct?

2 A. Yes.

3 Q. For a period of how long?

4 A. Twelve years.

5 Q. Okay. Had he ever been fired from a job?

6 A. He has never been fired or resigned from a job, to my
7 knowledge.

8 Q. Now, let's talk a little bit about his depressive
9 symptoms. I understand that you said that you, you said
10 that you, you diagnosed him as depressive disorder not
11 otherwise specified?

12 A. Yes.

13 Q. And you indicated that you didn't have enough
14 information to determine if it was some sort of chronic
15 depression, how to categorize that form of depression
16 because there are many forms of depression?

17 A. Yes.

18 Q. And the depression that he had was -- is it fair to
19 say, I think it says in the report that in him describing
20 his depressive symptoms, he was inconsistent in describing
21 those to you?

22 A. He was inconsistent as to when they actually started.
23 There were some history of him going to see a therapist
24 prior to any of this happening because his wife was
25 concerned about jealousy, about his being jealous all the

1 time.

2 Q. And what year, what year was you he, if you recall?

3 A. I don't know because he didn't really recall. He
4 could not provide us with the actual name of the person, so
5 we were not able to get those records.

6 Q. Do you recall if that was in recent history or in
7 distant history? It might help. I'll draw your attention
8 to page 4 of the criminal responsibility report.

9 A. Uh-huh.

10 Q. Pertinent statements.

11 A. 2003.

12 Q. 2003, and his wife in 2003 encouraged him to get
13 treatment?

14 A. Yes.

15 Q. Now, you indicated that, that it was hard to tell when
16 this depression began or came, came on.

17 A. Right.

18 Q. And you really can't say that it started in 2003.
19 That's -- I don't believe that was your testimony.

20 A. No. He reported there were times that -- under
21 stress. He would feel depressed in the past, but it never
22 rose to a level where we could find that he really sought
23 treatment or hospitalization. And then later he said that
24 before his arrest, he felt sort of good, normal, on top of
25 the world, not depressed. So, it's unclear the actual

1 course of, of things.

2 Q. So, it's just as likely that the reason for his
3 depression was his arrest and the legal complications and
4 potential consequences he may be facing?

5 A. I'm -- certainly that contributes to his depression,
6 yes. Whether or not that could be the sole cause, it could
7 be. That's why I mentioned the term adjustment disorder
8 and depressed mood. If you recall that, it's already
9 related to a large stressor. For him, it was really not
10 clear. So, when it's not clear, you assign a diagnosis of
11 depression not otherwise specified.

12 Q. Understood, and you couldn't assign that depression or
13 that diagnosis to any cause that he shared with you other
14 than possibly the arrest. Were there others?

15 A. As far as a cause, that's correct, but you've got to
16 understand depression doesn't always have a cause.

17 Q. Gotcha.

18 A. There's biological components that play into people
19 becoming depressed. There's not always a reason.

20 Q. Now, the -- are there any other reasons why you
21 reached the conclusion that he -- or diagnosed him with a
22 depressive disorder not otherwise specified?

23 A. I think you covered most of it. I mean, the suicidal
24 ideation and the sleep disturbance, which implies some
25 biological potential mechanism when you have sleep and

1 appetite disturbance.

2 Q. So, those were the two kind of key factors?

3 A. Right, but he didn't meet the full criteria for major
4 depression, which requires more than that.

5 Q. Fair enough. So, he was having some trouble sleeping,
6 difficulty sleeping?

7 A. Yes.

8 Q. And he was, he had expressed to you some suicidal ---

9 A. Thinking.

10 Q. --- thinking?

11 A. Depressed mood and tearful. He was very tearful at
12 times.

13 Q. Is it fair to say that he expressed this suicidal
14 thinking in relation to the criminal charges that he was
15 facing and the potential penalty?

16 A. He mentioned it in relationship to two things. Number
17 one is he felt threatened by his cell mates in the J. Rubin
18 Long Detention Center and thought that his two cell mates
19 were going to kill him, and thought that he might as well
20 kill himself first before they kill him.

21 The other one was related to the death penalty, if I
22 get the death penalty, I might as well kill myself. Those
23 were the two circumstances with which he mentioned his
24 reasoning behind the suicidal ideation.

25 Q. Let's talk about, move on to the diagnosis of anxiety

1 disorder not otherwise specified, and then you note here by
2 history.

3 A. By history.

4 Q. Now, was there anything in your evaluation, your
5 evaluation or Dr., I believe it was Dr. Dwyer?

6 A. Yes. We did it together.

7 Q. It was done jointly. Anything in your or Dr. Dwyer's
8 valuations that you found independent evidence to believe
9 that he suffered from this anxiety disorder not otherwise
10 specified?

11 A. He was not having symptoms of that at the times that
12 we saw him.

13 Q. Okay. So, he's not having symptoms of anxiety
14 disorder?

15 A. Right.

16 Q. But he reported that he had gone to a doctor
17 previously and been prescribed Xanax?

18 A. Correct.

19 Q. And Xanax is a pretty common prescription, pretty
20 widely prescribed, at least at that time?

21 A. It's prescribed a lot by family practitioners and
22 general docs for anxiety.

23 Q. And, in fact, wasn't the doctor he went to go see back
24 in 2003 and obtained the Xanax, wasn't that a general
25 practitioner?

1 A. Or a primary care physician, yes.

2 Q. Okay.

3 A. Not a psychiatrist.

4 Q. Not a psychiatrist?

5 A. Correct.

6 Q. He didn't go through the exam -- nearly the extent of
7 examination that you and Dr. Dwyer put him through to
8 determine his criminal responsibility or his competence?

9 A. I doubt he was seen for hours at a time. Most family
10 practitioners that I know don't have time to do that.

11 Q. Fair enough, and actually they're not, they're not
12 trained to the degree that you and Dr. Dwyer were to
13 conduct this kind of examination.

14 A. Correct.

15 Q. Typically?

16 A. Yes.

17 Q. And there's nothing what -- well, you never testified
18 that there was anything in your evaluation that indicated
19 he had any kind of anxiety disorder other than what he
20 reported to you from this one visit that he reported to a
21 doctor in 2003 where he got Xanax?

22 A. That's what we put by history.

23 Q. Understood. Now, let me go now into the alcohol. You
24 indicated alcohol abuse by history?

25 A. Yes.

1 Q. Again, this is something that was self-reported,
2 reported by the defendant himself to you?

3 A. Yes. He reported he began drinking around sixteen or
4 seventeen, drank alcohol at happy hour during the week. He
5 was first intoxicated around age eighteen or twenty and
6 became intoxicated four or five times a week prior to being
7 arrested. But he denied, interestingly enough, having
8 problems with relationships, losing jobs. No one
9 complained about his drinks.

10 He did have a DUI around age twenty, and when you have
11 legal difficulties related to drinking, then that qualifies
12 you for a diagnosis of alcohol abuse. But we noted by
13 history, since we didn't have any more recent things, legal
14 difficulties.

15 Q. So, let me make sure I understand this. So, you
16 diagnosed him as, as alcohol abuse by history. He clearly
17 drinks a lot ---

18 A. Yes.

19 Q. --- under anybody's definition, but he denies having
20 difficulties with relationships or his job as a result of
21 his drinking, correct?

22 A. Correct.

23 Q. And actually, he didn't -- apparently did not have
24 difficulty with his job from his drinking for twelve years.
25 I mean, assuming that he was telling the truth about that,

1 that he kept a job for twelve years, that would indicate
2 that he was able to ---

3 A. Function.

4 Q. --- function even drinking at this rather regular
5 pace.

6 A. Yes.

7 Q. Now, Doctor, you're -- I just want to make sure that I
8 understand that had he not been arrested for the DUI, would
9 he have been -- would you have diagnosed him with an
10 alcohol abuse issue, an alcohol abuse diagnosis?

11 A. Probably not given the other information we had,
12 unless we had some information that it impaired
13 relationships, like a wife left him because of his
14 drinking, or he had legal difficulties or occupational
15 difficulties. Or, in the case of a younger person,
16 academic difficulties.

17 Q. So, the only thing that pushes him from not having
18 this diagnosis to having this diagnosis by history is not
19 only what you're having the defendant tells you, is this
20 one arrest for DUI when he was twenty?

21 A. Yeah, and it's not an amount issue. You know, we
22 don't make this diagnosis by the amount that someone
23 drinks. Although the amount that they drink may have
24 relevance into, you know, their mental functioning, but we
25 don't -- it's based -- two diagnoses: alcohol abuse and

1 alcohol dependence.

2 If you have to continue escalate the amount of alcohol
3 you drink to get the same effect, people that are drinking
4 half a gallon of alcohol a day, we would call that
5 tolerance. They can -- if I tried to drink that much
6 alcohol, I would have long have passed out, probably after
7 the third drink, but you know, if you are -- have
8 tolerance, that's a symptom of alcohol dependence.

9 The other thing that's a symptom of alcohol dependence
10 is withdrawal, that you shake if you don't get a drink.
11 You may have the DTs. When you undergo withdrawal or have
12 tolerance or are unable to stop drinking, even though
13 you're trying, that's alcohol dependence. Alcohol abuse is
14 when you drink, you don't have tolerance or withdrawal, but
15 you have some problems in your life from it, like legal,
16 social, occupational.

17 Q. Something.

18 A. Something.

19 Q. And in this case, that something was a DUI arrest when
20 he was twenty?

21 A. Yes.

22 Q. Now, the -- had he ever experienced withdrawal?

23 A. No.

24 Q. Blackouts?

25 A. No.

1 Q. Now, finally, I know Mr. Wilson asked you about
2 cocaine dependence or about his -- excuse me. You
3 mentioned his use of cocaine.

4 A. Yes.

5 Q. He was not diagnosed with any sort of cocaine
6 dependence, was he?

7 A. No.

8 Q. Cocaine?

9 A. No.

10 Q. But he did report using cocaine?

11 A. He used cocaine only on the weekends.

12 Q. But said he never had employment or legal problems as
13 a result of using cocaine?

14 A. Correct. He's never been arrested, never lost a job,
15 never had withdrawal or tolerance.

16 Q. Did he report ever having any surgery?

17 A. No, never had surgery.

18 Q. How about did he ever report having any seizures?

19 A. Never had a seizure.

20 Q. I noted, Doctor, that he, he reported to you that he
21 intended to use a DVD to put on the internet if his wife
22 didn't change her testimony or her story about what
23 happened in October of 2005.

24 A. Those are your words. His words were if she didn't
25 tell the truth ---

1 Q. Fair enough.

2 A. --- about that happened in 2005.

3 Q. Now, it also noted that he gave you, in his forensic
4 interview, his recollection of the events that led to Becky
5 Graing--- excuse me, Becky Winkler's death were different
6 than previous statements he had made.

7 A. I think that's fair to say, yes.

8 Q. And like I said, I draw your attention to page 8 of
9 the criminal responsibility report

10 A. Let me get the right report.

11 Q. I know it's ---

12 A. I have two.

13 Q. It's jumping all over the place, so I apologize.

14 A. Page 8?

15 Q. Yes, sir, page 8 in the first full paragraph.

16 A. Yes. Do you want me to ---

17 Q. Did he give a fairly dramatically different story than
18 he provided to the police on March 20, 2006, based on your
19 review of the records?

20 A. Yes. He recalled more things than he alleged he could
21 recall during the police interview.

22 Q. And during the police interview, do you have any
23 reason to believe that he was suffering some sort of
24 amnesia or blackout?

25 A. I have no opinion about the police interview.

1 Q. Fair enough.

2 A. I was asked to evaluate his mental state at that time.

3 Q. Did you, did you have the -- were you able to see the
4 video?

5 A. Yes.

6 Q. Did you actually watch the video?

7 A. Yes.

8 Q. And was there anything in the course of the video, if
9 you recall, that indicated to you some sort of
10 psychological, psychiatric, physiological problem that
11 would have let him to a place where he was unable to recall
12 as he did with you?

13 A. I didn't see any -- anything that would influence
14 that, but people ---

15 Q. A red flag, maybe a red flag?

16 A. No, no, I didn't see any red flag. There was nothing
17 to indicate that he was intoxicated or there would be an
18 obvious reason.

19 However, you know, memory is contextual. For example,
20 I might ask you today some question about your past or if
21 you knew somebody you don't remember. I might ask you
22 three days later, and for some reason in a different
23 context you can remember. That happens, but I didn't see
24 any reason of a mental illness or anything that would make
25 him not able to remember.

1 Q. Doctor, isn't it -- but, I mean, I appreciate that
2 your memory is contextual and that you can forget things
3 and then remember them later.

4 A. One would think if, indeed, he had committed this type
5 of event, that's not something that one would forget.

6 Q. Right. That was going to be my next question. You
7 would not expect him to just sort of let ---

8 A. Unless ---

9 Q. --- this, this let it slip his mind and then come back
10 to it.

11 A. And I don't have an opinion about this. The only
12 exception would be sometimes people can do something very
13 traumatic and not remember it because not only is it
14 violent, it's traumatic for them.

15 For example, people on the battlefield, soldiers will
16 come back and say -- they may have killed several people.
17 They can't remember doing that. Their mind, as defense,
18 blocks it out. I don't have an opinion whether or not that
19 happened in this case.

20 Q. Well, let me -- I appreciate that, and you done many,
21 many, many forensic evaluations, psychiatric revaluations
22 for the courts ---

23 A. Yes.

24 Q. --- of South Carolina for many years. I appreciate
25 that people can suffer from, like, a post-traumatic stress

1 type of a disorder that would lead one to lose their memory
2 of a traumatic event. That's -- is that what you're
3 talking about, sort of thing?

4 A. That's, that's to a degree, yes, but you know, I'll
5 see murder defendants many times tell me -- obviously,
6 murder defendants aren't denying they did what they did.
7 They have to say I looked at the evidence. I had to have
8 done this. It's all pointing to me. I can't deny that,
9 but I don't remember it.

10 I'll talk to them when that happens. I think for some
11 people, they've done something violent, and they have a
12 hard time believing that they're really capable of doing
13 that, and their mind, as a defense, blocks it out. They're
14 not trying to say I didn't do it or get -- use lack of
15 memory as an excuse or what have you. They just simply say
16 they cannot remember.

17 Q. And you didn't render an opinion about Mr. Winkler's
18 ability to remember this event?

19 A. No.

20 Q. Is it fair to say, Doctor, that that is -- oftentimes
21 when you talk to murder defendants that report I must have
22 done it, but I can't remember, that they're malingering?

23 A. Usually, the difference between that and malingering
24 is that with malingering, they're saying they don't
25 remember thinking that's going to make me incompetent to

1 stand trial, or that's going to help me with an insanity
2 defense, or that's going to give me something.

3 Q. But they oftentimes are not telling you the truth?

4 A. Yeah. We have people that do it for secondary gain.
5 Malingering is when you fake. Like I can't remember for
6 some sort of -- you expect to get something from faking:
7 disability, get out of jail free, you know, something, get
8 out of the hospital, you know. In the cold months,
9 patients come in the hospital all the time saying they're
10 -- can't remember or they're hoping for three hots and a
11 cot. It's some sort of secondary gain.

12 My point being is that occasionally I see murder
13 defendants that might not remember a very violent thing
14 that they allegedly committed, but they're saying I'm
15 guilty. I'm not taking this to trial; I plead guilty. You
16 know, I'll take my lumps as they come. I know I had to
17 have done this, and I am competent to stand trial. There's
18 nothing wrong with me. You know, I just can't remember.

19 Q. That was not the case with Mr. Winkler?

20 A. No.

21 Q. He didn't take that approach?

22 A. No.

23 Q. And just to make it crystal clear for jury, it is not
24 your opinion that he is in -- that he is not criminally
25 responsible, otherwise not guilty by reason of insanity.

1 You are not saying that at all?

2 A. No.

3 Q. These are just issues, these are psychiatric issues
4 that, that he, he suffers from?

5 A. Yes.

6 Q. He's competent to stand trial and responsible for his
7 actions?

8 A. That was my opinion, yes.

9 MR. HEMBREE: Thank you, Dr. Frierson. Please answer
10 any questions of ---

11 THE COURT: Anything further of this witness?

12 Mr. Wilson, anything further, questions?

13 MR. WILSON: No, sir. I have no additional questions
14 of this witness.

15 THE COURT: You may step back ---

16 MR. WILSON: May he be excused, Your Honor?

17 THE COURT: Any objection? No objection to him being
18 excused? Thank you very much.

19 (THE WITNESS EXITS THE STAND.)

20 MR. WILSON: Your Honor, may I approach one second?

21 THE COURT: Yes.

22 (OFF-THE-RECORD BENCH CONFERENCE.)

23 (A PAUSE.)

24 LOUIS M. WINKLER, JR., AFTER BEING
25 DULY SWORN, TESTIFIES AS FOLLOWS:

1 CLERK OF COURT: Have a seat. State your name, spell
2 your last name for the record, and speak into the
3 microphone.

4 WITNESS: My name is Louis Michael Winkler, Jr.,
5 W-i-n-k-l-e-r.

6 THE COURT: Your witness.

7 DIRECT EXAMINATION BY MR. WILSON:

8 Q. How old are you?

9 A. Forty-seven years old.

10 Q. All right, and if you would, I'd like to start out, by
11 you telling me where you grew up.

12 A. I grew up in Wayne County in Ohio in north -- mid,
13 midwest Ohio.

14 Q. All right, and do you have any brothers and
15 sisters?

16 A. Yes, I have five siblings: three sisters and two
17 brothers.

18 Q. All right, and what are their names?

19 A. There's Laura, Rick, Karen, and there's myself, and
20 there's Jody and Jeff.

21 Q. Okay, and where do you fit in, Mick, in those
22 children?

23 A. I was right in the middle.

24 Q. All right, and now what was your father's name or what
25 is your father's name?

1 A. Louis Michael Winkler.

2 Q. All right.

3 A. Which I'd like to in some way address that. And I'm
4 sorry to my father because through all this, these words of
5 death, life, death, this and that, no one is born look --
6 no one is born a senior until their son, a junior, is born.
7 He is Louis Michael Winkler. I am Louis Michael Winkler,
8 Jr. I apologize for that to my father for the prosecution
9 using his name throughout this trial.

10 Q. Okay. Now, Mick, let me ask you this. What is your
11 mother's name?

12 A. Joanne Winkler.

13 Q. All right, and now are your parents still living
14 together?

15 A. No, they are not.

16 Q. All right, and when did they get divorced?

17 A. They were divorced I want to say in the early eighties
18 maybe. It could be in '79. I'm not exactly sure.

19 Q. And at the time they were divorced, were you living at
20 home?

21 A. I was.

22 Q. All right, and tell me about that. How did that
23 affect you, if at, if at all?

24 A. Oh, I was upset. I didn't really know any of the
25 circumstances, and it just upset me that the fact we --

1 that I thought we had a -- the perfect family. We were --
2 I was very happy and it, it, it seemed that everyone was
3 happy. I had a great childhood.

4 Q. How old, how old were you, Mick, when your family
5 separated?

6 A. I think I was eighteen.

7 Q. All right.

8 A. Tell you the truth, and I believe I did say the early
9 eighties or late seventies, and that would have been '78.
10 I believe that's it. I could be off a year.

11 Q. Now when you were in school, let's talk for a minute
12 about when you were growing up in Ohio. When you were in
13 school, how were your grades?

14 A. My grades were mid to -- well, average to higher.

15 Q. And?

16 A. B's and C's.

17 Q. Did you participate in any extracurricular activities
18 while you were in school?

19 A. Every one that I could.

20 Q. All right. Such as what?

21 A. Football mainly, basketball. I was actually on the
22 tennis team. We -- I was on the, the play cast committee.
23 I was in the ski club.

24 Q. All right.

25 A. Baseball.

1 Q. When you went to -- in your early years of education,
2 where did you go to school?

3 A. Saints Peter and Paul School, first through eighth
4 grade.

5 Q. And what kind of school is that?

6 A. That is a Catholic school.

7 Q. All right. Was that a private school?

8 A. I wouldn't really say it's private. It was a
9 community church, Catholic school.

10 Q. Okay, and now -- and then you went to a public high
11 school?

12 A. I did.

13 Q. All right. Now, Mick, at some point in time, did you
14 leave home and move to South Carolina?

15 A. I did.

16 Q. All right. Before we go there, let's go back for a
17 minute and let's talk about your dating in high school.
18 Eventually started dating Carla?

19 A. I did, Carla Kaiser.

20 Q. All right. You want to tell us about that?

21 A. Yes. I hadn't seen Carla in I don't know how many
22 years it was until yesterday. If I may, talking about her,
23 she was in -- she was correct. We did date off and on, but
24 mostly it was a high school sweetheart deal. I can't deny
25 we had some rocky times. There was couple incidents where

1 she would always come back.

2 I -- like she had mentioned, I mean, women would come
3 up to my door, be in my apartment that I had, after I moved
4 out. Knock on the door and, you know, and, and Carla would
5 happen to be there. She was the one that kept coming back.
6 And...

7 Q. Were y'all married then or was ---

8 A. No, we were not; no, we were not.

9 Q. Y'all were dating?

10 A. We were dating.

11 Q. When you started dating Carla, did y'all live together
12 for a period before you got married, or did you just date
13 and then...

14 A. As a matter of fact, we did, we did live together for
15 a little while, yes. I can't, I can't remember how long it
16 was that we lived together.

17 Q. All right. So go ahead. Tell us about your marriage
18 Carla then.

19 A. The marriage to Carla, I weren't ready, you know. I
20 was working at the time. I was doing masonry at the --
21 during the summers, the spring, summer and fall, and every
22 winter I would usually get laid off and I would work at
23 Summit Racing Equipment in Acron or pouring concrete during
24 that layoff period. It was around that time I believe --
25 yes, in September is when we got married, when she

1 announced after about a month that she was, in fact,
2 pregnant.

3 Q. Okay. All right. Now, tell us about that, about the
4 fact that she came to you and told you that you were
5 pregnant, that she was pregnant.

6 A. I was very happy. It would have been the first child
7 I believe in our family, if I'm not mistaken, except Laura
8 -- Tara. I forget how old Tara is right now, but I think
9 it was the first or second child to the -- to be born the
10 Winkler -- our immediate family.

11 Q. All right. So, you were happy about that?

12 A. Oh, yes.

13 Q. All right, and the two of y'all got married?

14 A. We did.

15 Q. And did you have a wedding or did you go to the
16 courthouse or...

17 A. It -- we did not go to a courthouse. Actually, it was
18 at a church and it was a small ceremony, her family, my
19 family and some friends of the families.

20 Q. All right, and do you recall, Mick, the date of your
21 wedding, of your marriage? What about the year?

22 A. Year was '83.

23 Q. Okay, and once y'all got married, where did you live?

24 A. We lived in my apartment where I lived for -- I think
25 it was two or three years prior.

1 Q. All right, and tell us about your marriage to her,
2 Mick. How did that go? Once y'all got married and moved
3 in together, tell us how it went.

4 A. I'd say it was a normal thing, and I worked
5 construction, like I said, and the truth is, after work
6 there were -- there was a bar right on Main Street in town
7 where all the construction people went, and we'd have a
8 drink or two, and Carla was well aware of where I was. And
9 I was usually home for dinner, and it wasn't every night.
10 It was an occasional stop in, go home and take care of
11 family duties.

12 Q. Okay. That cause problems in your relationship?

13 A. No, not at all because all of Carla's friends were
14 friends with all of my buddies that were dating or married,
15 and they all knew where we were. They'd come down and find
16 us sometimes, and we'd all sit and have a drink together.

17 Q. Well, tell me what kind of things you and Carla did
18 together as a husband and wife during the early months of
19 her pregnancy.

20 A. Her early months of her pregnancy? Actually, I took
21 on a -- at Saints Peter and Paul School where I was, where
22 I graduated from earlier, my cousin had a son that was on
23 one of the teams, and I coached a football league during
24 her pregnancy. I coached one of the teams that was in that
25 Catholic school facility.

1 Q. What about, what about any physical contact between
2 you and Carla during the course of your relationship? Tell
3 us about that.

4 A. If you're talking about that -- if you're talking
5 about what we -- we had a normal, normal life as far as
6 that goes.

7 Q. Well, did she ever call the police on you?

8 A. Oh, yes. Oh, I didn't know if you were talking about
9 that or not. There was an incident that it was shortly
10 after, and if I could back up just a second?

11 Q. Yes.

12 A. Was shortly after that that I had learned, and I had
13 -- I had had suspicions before, but she had come to me very
14 concerned about something. In fact she was crying, and I
15 asked her what was wrong, and we sat down and ---

16 MR. HEMBREE: Objection, Your Honor, hearsay.

17 MR. WILSON: She's already ---

18 THE COURT: Mr. -- you, you want to approach, I'd be
19 glad for you to approach.

20 (OFF-THE-RECORD BENCH CONFERENCE.)

21 BY MR. WILSON:

22 Q. Go ahead, Mick, tell me your relationship with Carla.

23 A. Okay. There was -- everything was going pretty good.
24 We had our little spats here and there, but it was nothing
25 big until Gregg Lindeman came into the picture. I found

1 out that he was actually the father of the child.

2 Q. All right. Did you find that out from Carla or from
3 some other person?

4 A. I did. She told me.

5 Q. Okay, and tell us how things changed after -- and look
6 -- back up and let me ask you when -- at what point in the
7 relationship did you find that out?

8 A. It was at a Christmas party for the renters that Mr.
9 and Ms. Clark, an insurance agency, their daughter was
10 very good friends with my best friend, and we were one of
11 their renters and we, we attended one of their Christmas
12 parties.

13 Q. Okay, and how did it come up at the Christmas party?
14 She just came?

15 A. Oh, no, no. It had happened before that, and...

16 Q. Well, what I'm asking you is maybe you didn't
17 understand what I was asking. What I was asking is, tell
18 us how it was that she came to tell you that -- that the
19 child didn't belong to you.

20 A. Well, at that time it was like a couple of weeks
21 before, and she said she couldn't go on no longer trying to
22 fool me, and that it would come out sooner or later. I had
23 had suspicions of it before.

24 Q. Okay.

25 A. And that evening.

1 Q. How old was the child at that point?

2 A. Three months.

3 Q. All right. Now, how long did y'all stay together
4 after that?

5 A. Not very long.

6 Q. Well, could you give me an idea?

7 A. We made it, we almost made it through Christmas.

8 Q. All right. The baby was born in what month?

9 A. I believe it was [REDACTED] [REDACTED].

10 Q. All right, and then y'all made it till Christmas?

11 A. No, it was [REDACTED] [REDACTED] -- I'm sorry, her birthday
12 was the [REDACTED]

13 Q. And then y'all separated just before Christmas?

14 A. Actually, it was right on -- around Christmas, yes.

15 Q. All right. Now, did you ever physically assault her?

16 A. No, I did not.

17 Q. Now, let me ask you this. After the two of y'all
18 separated, what happened then with you and her?

19 A. Are you talking about the evening of the -- of the
20 alleged...

21 Q. Well, at some point in time, the two of y'all
22 separated.

23 A. Yes, we did separate on that night.

24 Q. Right.

25 A. We were actually wrapping presents and we, we were

1 wrapping framed photos of Tiffany. I named the child and I
2 was really upset about it but we, we were wrapping picture
3 frames of Tiffany when she got mad. She slung the picture
4 at me and I blocked it. It cut her finger. It, it doesn't
5 matter if it was me that slung it or that she slung it, but
6 she slung a picture and it shattered and it had cut her
7 finger. She wrapped it with a cloth and went to the
8 hospital with it.

9 I said let me drive and she said, no, you stay with
10 the baby. I said, okay, fine, and -- you know I was
11 concerned about it. I knew our marriage was over, but when
12 she had to get stitches, I believe they had to call the
13 police. And she said I didn't mean for them to call the
14 police and this and that, and I took the blame.

15 But I -- for the record, she stated I had forty days.
16 The judge just told me he goes thirty days -- three days
17 suspended and there was no forty days. You can check it,
18 if -- anywhere, anywhere up in the county. It's -- I never
19 went to jail.

20 Q. Now, at ---

21 A. And I'm sure and I know that she had said she didn't
22 want to come and do this, but she was forced to come and do
23 this by the prosecution.

24 Q. Let me ask you this. After you and Carla separated at
25 Christmas, did you ever get back together with her?

1 A. No, I did not, no. Except it -- in a -- in a
2 convenient time at that point of it, her father, who worked
3 for the PPG which is Pittsburgh Paint and Glass, pretty big
4 company in our area, got transferred to Charlotte to a
5 sister company of the PPG, and her family moved. While the
6 house was being sold, her and her brother Mark stayed there
7 while her parents went down and set up new house, new
8 housing. But Carla and I were together at the time, so it
9 was actually just Mark by himself, and I was -- and Carla
10 was living with me.

11 Q. Now, once she left you and moved to North Carolina or
12 with her family, did you have any further contact with her
13 after that?

14 A. I called her several times asking her how she was
15 doing. She would tell me, I wish you were -- would come
16 down, you know. Things aren't going to calm down; my
17 parents are really mad. I said, Carla, I told -- I told
18 her one time, and I got this advice from my mother and it's
19 probably the best advice I have ever had. She told me,
20 Mick, do you love her? I said, of course I do. I wouldn't
21 have ever married her. She said can you forgive her for
22 her telling you that was your child and it is not your
23 child? I said, Mom, I don't believe I can. She said,
24 Mick, cut it loose, and I did.

25 WITNESS: Thank you, Mom.

1 BY MR. WILSON:

2 Q. All right.

3 A. My mother is here, by the way.

4 Q. Mick, let me ask you this. So, and that was the last
5 contact you had with Carla?

6 A. It is.

7 Q. All right, and did you ever pay any child support?

8 A. No, I did not.

9 Q. All right. Were you ever ordered by any court to pay?

10 A. I never received anything. She didn't pursue it
11 because she knew it wasn't my child.

12 Q. All right. Now, let's, let's move on. After your
13 relationship with, with, with Carla, and when you were with
14 Carla you were in Ohio. Is that correct?

15 A. Yes.

16 Q. Okay, and, and then at some point after she left and
17 moved to North Carolina, you came to South Carolina?

18 A. I did.

19 Q. All right. How long later, how much later was it when
20 you moved to South Carolina?

21 A. It was, in fact, the year of -- okay, my sister had
22 sent me Christmas pictures of snow on the beach where the
23 kids built snowmen, and it was also the year of Hugo, which
24 was 1989.

25 Q. Okay. So, that year you moved to South Carolina?

1 A. I did.

2 Q. Okay, and, and you and Carla separated when? What
3 year would that have been?

4 A. Oh, that was back, that was '84, '83 or '84.

5 Q. Okay. So, several years passed from the time you
6 and Carla separated till the time you moved to South
7 Carolina?

8 A. Many years.

9 Q. All right, and when you moved to South Carolina, did
10 you immediately meet Denise or did you ---

11 A. Oh, no.

12 Q. All right.

13 A. No, I, I moved down. I was -- I had some construction
14 friends of mine that lived in the area. We did some
15 siding, this and that, and I met Ms. Pat White, who worked
16 at the Radisson and Kingston Plantation. She got me a job
17 in the engineering department, which is generally
18 maintenance but they call it engineering.

19 Q. And she got you a job where?

20 A. At the Radisson Hotel.

21 Q. Radisson Hotel.

22 A. 740 units.

23 Q. How long you work there? How long did you stay there?

24 A. I believe I was there two and a half, almost three
25 years.

1 Q. All right. All right, and when you moved down here,
2 did you find you a place to live?

3 A. No, I didn't. Actually, Pat offered her residence and
4 I took residence up with Pat.

5 Q. Okay. All right. Did you stay at her house for a
6 period of time until you were able to find your own place?

7 A. Yes.

8 Q. All right, and eventually you found your own place?

9 A. I did.

10 Q. All right. Now, after the job at the Radisson, you
11 said you worked there two and a half years. Did you meet
12 Denise before you left the Radisson or after?

13 A. During.

14 Q. You met her while you were working at the Radisson?

15 A. I did.

16 Q. During that time. Tell us about your meeting, how you
17 met Denise and how that came about.

18 A. Denise was in housekeeping; I was in engineering. I
19 believe it was me who corroborated it. I asked her where
20 she -- what part of the beach she lived at, and she told me
21 on the North Myrtle Beach section. And I asked her if she
22 knew where Hooties was, which was a bar on the beach. I
23 told her I stop occasionally and had a beer there, and if
24 she would come. And I believe the first time she didn't
25 come. I, I don't think she made it the first time, but the

1 second time she met me there.

2 Q. Okay, and that's kind of how your relationship
3 started?

4 A. Yes.

5 Q. Now, and do you know what year that would have been or
6 about what year?

7 A. That would have been '90, '91.

8 Q. Okay.

9 A. Again, I'm -- this is, this is guessing and I'm -- I
10 know I'm pretty close there.

11 Q. All right, and at some point you left your job at the
12 Radisson?

13 A. Yes, I did.

14 Q. And where did you move to? Where did you go to for
15 your new job?

16 A. I worked a little bit of construction and then I got a
17 job, or I answered an ad at the Maritime Condo Complex in
18 North Myrtle Beach, which was closer to home per se, to the
19 construction job that took me everywhere on the beach.

20 Q. Okay. How long did you do that?

21 A. It wasn't long. I didn't want to -- actually I left
22 Ohio to get away from that, but when a job came clear,
23 open, I took that job.

24 Q. All right, and, and what was your next job after
25 that? Said you didn't stay there very ---

1 A. Next time after the Maritime was only six months.

2 That was like an in between job, and I started working at
3 Tillman Lakes By the Sea.

4 Q. All right, and you ended up staying at Tillman for how
5 long?

6 A. Until this happened.

7 Q. All right. For how many years?

8 A. It was nine and a half, almost ten years I believe.

9 Q. You stayed at Tillman for nine and a half, almost ten
10 years?

11 A. I did.

12 Q. Now, let's go back to Denise and let's talk about your
13 relationship and how it progressed with Denise. You said
14 that you met her while you were working, right?

15 A. Uh-huh.

16 Q. All right. Tell me -- y'all started dating. Just
17 kind of tell us what happened after that with you and
18 Denise.

19 A. Well, we started dating and it was a regular thing.
20 We, we had drinks a few times and went out a few times.
21 She introduced me to her children, who were some of the
22 nicest kids I have ever met, especially K[REDACTED]. I got along
23 really good with K[REDACTED]. I actually miss K[REDACTED]. But she
24 had -- she didn't have -- she was not, what's the word?
25 She didn't have custody of either child. She was...

1 Q. Who had custody of the children?

2 A. Well, first I found out that her mother adopted her,

3 her daughter Mi [REDACTED] when she was an infant, and Ke [REDACTED]

4 lived -- they both had separate -- different fathers.

5 Ke [REDACTED] lived with his dad in Sandy, Sandy Plains in the

6 Longs area, I believe is what it's called. Mi [REDACTED] lived

7 in Beaver Dam with her mother -- I mean her grandmother,

8 but.

9 Q. In Beaver Dam?

10 A. That's on 410 in between Haber City and Chadman.

11 Q. Okay. All right. Now, at this time when you're
12 talking about meeting her children, were y'all -- had y'all
13 moved in together yet, or y'all still were just ---

14 A. Yes.

15 Q. --- seeing each other?

16 A. Yes. I had, I had bought a mobile home. I just got
17 lucky. It was opened and I had been looking in that area.
18 It was on Second Avenue right two blocks from Main Street
19 in North Myrtle Beach. It was perfect. It was a
20 neighborhood full of kids and activities going on, and you
21 take one block and you're right there on Main Street, and
22 we really enjoyed living there, yeah.

23 But when I bought that, the day -- well, she was
24 living with her brother. The day I closed on that, I
25 couldn't move in it because I had a dog, for one thing,

1 and, and pets and I didn't have anything packed. I didn't
2 know it was going to happen that quick. Well, the very
3 night she moved in and slept there with me, there wasn't
4 anything in the house.

5 Q. All right.

6 A. Wasn't anything in the house.

7 Q. So as soon as you bought the house, the two of y'all
8 moved in together and you're saying this, what, '91, '92,
9 what?

10 A. Yes.

11 Q. '93? All right, and how long had the two of y'all
12 stayed together till -- you and Denise?

13 A. I think we were together eight and -- eight and a half
14 years, and then -- well, seven and a half years, and then
15 we got married and it ended after a year, so.

16 Q. You stayed together or lived together for seven years
17 better. And then after you got married, y'all got divorced
18 within a year?

19 A. Yes.

20 Q. Okay. Tell me about your marriage with Denise and --
21 well, let's talk about the time you lived together first.
22 How was that? Kind of describe to us, tell us about that.

23 A. It was fine. I was in a good atmosphere the way I
24 liked it. The children and I did a lot of things
25 together. Denise did not participate in a lot of things,

1 which is one of our clashes. She was content where we
2 were. I would always take the kids on bike rides on the
3 beach, up and down the beach, doing this and that. She was
4 content staying at home and smoking her pot.

5 Q. All right. Now, Mick, once -- let me ask you this
6 way. Was there any physical violence between you and
7 Denise?

8 A. Yes, there was. At one night, one night -- well, I
9 wouldn't call it physical violence. Came home one evening
10 and she was smoking crack cocaine. I went about picking
11 her up, trying not to hurt her, picking her up and removing
12 her from the house and told her not to come back. That I
13 will not put up with. I put up with the pot for as long as
14 I could, but when I found out she was smoking crack
15 cocaine, that was the end of it, period.

16 Q. Did y'all get back together after that?

17 A. No, we did not.

18 Q. When you put her out that night, y'all never got back
19 together?

20 A. No. Now, that night that I'm talking about, that was
21 in -- I cannot think of the date that was. I cannot think
22 of the date it was.

23 Q. After y'all had gotten married or before?

24 A. It was -- we were married at the time.

25 Q. You were already married at that point?

1 A. Yes.

2 Q. So, you had been together now better than seven years?

3 A. Yes.

4 Q. All right. So prior to that incident after you were
5 married, was there ever an occasion where there was ever
6 any physical altercation between the two of you?

7 A. Yes, there was, there was a -- it was like four years
8 earlier we had an altercation about something and...

9 Q. Do you recall what it was, what happened?

10 A. Regular argument, and they did come to the house and
11 arrest me and I told the judge, well, I never touched her,
12 and he just blames -- this was just at the Myrtle Beach,
13 North Myrtle Beach Police Station. He had told me that ---

14 Q. You can't tell me what the judge told you.

15 A. Okay, but ---

16 Q. What ---

17 A. Well, it came down to the fact that you don't have to
18 touch her to -- for her -- if she's afraid of you, then you
19 can be charged.

20 Q. You can't tell me what the judge told you.

21 A. Okay. Sorry.

22 Q. Tell me what you did and what she did, okay? So
23 what, you went to court. Then what happened to the
24 charges?

25 A. There was no court.

1 Q. There was no court.

2 A. No.

3 Q. All right.

4 A. I forfeited, I think it was \$75 and they told me to go
5 home.

6 Q. Okay. Now, anything else with you and Denise that you
7 ---

8 A. No.

9 Q. --- want to tell us about? All right.

10 A. No.

11 Q. Now, let's ---

12 A. You mean -- how about some good things or, those were
13 the only things that I ever, you know...

14 Q. What good things do you want to tell me about?

15 A. Good things, we did a lot of things together. We,
16 like I already mentioned, we'd take the kids and I would
17 take bike rides miles down the beach to Ocean Creek where
18 you couldn't go any further or you had to go through the
19 water out and around. There was actually a creek that
20 comes out of there which is quite a way from Main Street
21 and North Myrtle Beach. We'd do that and go get ice cream
22 and that. Took vacations, which I don't believe either one
23 of the children ever took vacations before. We went to
24 Hilton Head; we went to Ohio a couple of times; we went to
25 Disney World. A lot of things happened.

1 There's another reason why the thing with the crack
2 came up. She did not pay attention to her daughter.

3 Mi [REDACTED] was in eighth grade when she started dating a
4 freshman boy in college, and I did not approve of him one
5 little bit, and I brought that up to her, too.

6 Q. Okay.

7 A. And, and that's probably one -- that's one of the
8 reasons why she probably didn't have custody of either one
9 of her children, and the facts are the facts. She can come
10 in and say all she wants, but she never had custody of
11 either child and I pretty much -- I have films of me and
12 Ke [REDACTED] playing basketball. I filmed it with my home video
13 camera. And I'm sorry I missed his high school playing
14 time because he was a very good basketball player, and I
15 played almost every night with him. They spent every
16 weekend they could with us and mostly every day of the
17 summer with us.

18 Q. So, you had a good relationship with her children?

19 A. I did, and actually I'm not trying to -- I loved
20 Denise, too. I really did, but, you know, maybe we
21 shouldn't have got married, but I was -- I wasn't content.
22 I wanted to move up. I wanted to do things. Staying in a
23 single-wide mobile home wasn't my idea of the, the
24 fantastic life, although we did make the best of it. We
25 really did.

1 Q. All right. Let's move on now and talk about at the
2 end of your relationship with Denise. Now, at some point
3 in time you said after your marriage, the two of y'all
4 decided to go your separate ways?

5 A. We did.

6 Q. And, and who filed for divorce, you or her?

7 A. Actually, I will have to go backwards to where I met
8 Becky to do that.

9 Q. All right. So, let me back up with, with you then.

10 A. Okay.

11 Q. At the time you ---

12 THE COURT: Mr. Wilson, y'all mind us taking ten?
13 About right now be a good breaking point.

14 Ladies and gentlemen of the jury, just want to finish
15 at least this witness, if not another, before the break.
16 We will come back in a little bit, but only take ten. Be
17 back here at 6:25.

18 (THE JURY EXITS AT 6:14 P.M.)

19 THE COURT: We are going to take a break. But please
20 understand during the course of this break you can talk to
21 your lawyer or your witness. It's just you can't say, ask
22 am I leaving something out, putting something in or
23 whatever that -- just don't discuss the testimony. But you
24 can talk to your attorney. No problem with that, okay?

25 WITNESS: Don't discuss what with him, though?

1 THE COURT: Do not discuss -- do not ask him how
2 you're doing on the stand.

3 WITNESS: Oh, okay.

4 THE COURT: Shouldn't say anything else.

5 WITNESS: All right.

6 THE COURT: Continue on just as if you were -- or we
7 never took a break, all right?

8 WITNESS: All right. Okay.

9 THE COURT: All right. Everybody now, please,
10 everybody.

11 WITNESS: Actually ---

12 THE COURT: You ---

13 WITNESS: Can I stay here?

14 THE COURT: If you going to the restroom, you can't.
15 I asked Mr. Wilson before we did this, Mr. Winkler has got
16 the proper medication?

17 MR. WILSON: Yes.

18 THE COURT: All right. We'll start back at 6:25.

19 (OFF THE RECORD.)

20 THE COURT: Have a seat everyone.

21 Mr. Winkler, you sure you don't need a restroom break?

22 WITNESS: No, I'm fine.

23 THE COURT: Okay. Mr. Wilson, you ready?

24 MR. WILSON: I'm ready, Your Honor.

25 THE COURT: All right. If you would ask the jury to

1 come on in, please.

2 By the way, on the record, too, though, when Mr.
3 Hembree approached regarding the statement he was going to
4 make about Ms. Kaiser. I ruled that 801(d)(1) was
5 effective. They're the ones who had her here. Anyway, I
6 ruled that in my mind she was here and they let her go.
7 So, I let the -- Mr. Winkler answer the question, and the
8 statement was permitted. Using my discretion.

9 WITNESS: Your Honor, Your Honor?

10 THE COURT: Yes, sir.

11 THE COURT: What you want, sir?

12 WITNESS: I'm, I'm sorry. I didn't hear what you was
13 just saying.

14 THE COURT: It was just an evidentiary ruling about --
15 on the -- having -- they came up here, and they did not
16 want you to be able to say what Ms. Kaiser said.

17 WITNESS: Oh. Okay.

18 THE COURT: Made a statement about what evidentiary
19 rule I used.

20 WITNESS: Okay. Thank you. I just didn't hear you.
21 Okay. Thank you.

22 (THE JURY ENTERS AT 6:29 P.M.)

23 THE COURT: Okay, we will proceed with further direct
24 examination.

25 MR. WILSON: Thank you very much, Your Honor.

1 BY MR. WILSON:

2 Q. Okay, think we stopped at the point where we were
3 discussing your relationship with Denise and your break up
4 with her. Do you recall that?

5 A. Yes.

6 Q. All right. Now, before I go on back, let me go back
7 and ask you about Carla. One of the things that -- you
8 were in the court obviously when she was testifying,
9 correct? Was there ever an occasion where you kicked her
10 for any reason?

11 A. No.

12 Q. Do you recall the incident that -- well, let me ask it
13 this way. Did y'all have -- the day before she gave birth,
14 was there any kind of physical altercation between the two
15 of you?

16 A. No, there was not.

17 Q. What about going to the hospital when she had the
18 baby? Did you go to the hospital that day?

19 A. Yes, I did go to the hospital.

20 Q. How did you get to the hospital?

21 A. I went to the hospital with my sister Karen. I had
22 called her and asked her to take me to the hospital.

23 Q. Well, how ---

24 A. She went.

25 Q. How ---

1 A. She went -- Becky -- Carla drove herself there and
2 asked her mom to meet her there, and I told her I'd be in
3 pursuit afterwards. I spent the entire night there with
4 her. I believe she said I wasn't there at all. I think we
5 have even pictures of me there, but...

6 Q. All right.

7 A. I mean, I was definitely there.

8 Q. You went to the hospital that night. Now, was there
9 any particular reason you didn't take her to the hospital?

10 A. I had been drinking and I didn't feel safe enough to
11 drive my family in my car, too. So, I took a different
12 route and asked her mother about it, and I had to call my
13 sister Karen to come get me.

14 Q. Now, let's go back to Denise. After you and Denise
15 separated, was there ever an occasion where you threatened
16 to kill her or kill her and her boyfriend?

17 A. Never. I would never think that she would be worth
18 that, and in -- the fact of the matter is, her statement in
19 that fact is trying to cover up herself, the fact that she
20 lived with my best man at our wedding a year before that.
21 They were not just friends. They moved in together.

22 In fact, she had come to me at work when she bought a
23 different Blazer and told me this is my new truck.
24 Something about a accident or something, and she had just
25 got it. And excuse any ladies in here, but she told me

1 that Mike was good but never as good as me, and I just told
2 her, look, I don't even want to hear about it because I
3 hope you two have a good relationship together, and I --
4 you know, see ya.

5 Q. So after the two of y'all separated, how long was it
6 before she moved in with, with this guy that was best man
7 at your wedding?

8 A. I can't give the direct date or anything on that, but
9 it wasn't long.

10 Q. Was it before?

11 A. When I found out I was just disgusted with it, just
12 the heck with it.

13 Q. Was it before your divorce was final?

14 A. No. In fact, would you like me to go through that,
15 how that happened or -- I met Becky. I'm -- if I could,
16 Mr. Wilson, can we, can we go to that direct question after
17 I give a statement here that I been dying to give ---

18 Q. Go ahead.

19 A. --- to the jury and everyone else in here. For two
20 years I've waited. My family wasn't able to make a
21 statement. I never made a statement. No press ever came
22 and asked me a single thing about this, although
23 prosecution did a good job, the family did a good job of
24 dragging my name, Mick Winkler, through the mud with
25 pictures, anything they could dig up on me, lies,

1 accusations. They forgot the fact that Becky and I had the
2 two best years of our lives, and in the next two days my
3 family and friends that actually went out with us, were
4 with us are going to testify how happy me and Becky were up
5 until a point, which there's a -- an explanation for that
6 point. But anyone on this side of the courtroom behind the
7 bar where the sheriff is sitting.

8 THE COURT: No, sir, please, sir.

9 WITNESS: Yes, Mr.---

10 THE COURT: Don't address anyone in the court.

11 WITNESS: I'm not.

12 A. I -- the people there, I have complete sympathy for
13 the family. She was my wife; she was my wife. I have
14 complete sympathy for the family. But the fact of the
15 matter is the person that killed her is sitting among them.
16 I am not the guilty party.

17 I know and I respect the jury's verdict. I do. The,
18 the -- my lawyer did a great job and I commend him for it.
19 The jury came in. The verdict, I should say, came in
20 wrong. The man will get away with murder until my appeal.

21 And I have waited for two years. The first person I
22 ever told that to that I could trust was my attorney at the
23 time, Scott Bellamy, when he visited me several days after
24 my arrest.

25 And I said, Scott, tell my family someone else was

1 there, and I thought the evidence was very clear, and I
2 don't know how much more I can say about it. But I have
3 been waiting for two years to make that statement.

4 And next day or so you're going to find out what the
5 real Mick Winkler was made of. I worked at a place where
6 there's seventy-two unit condo complex. I worked there for
7 nine, almost ten years.

8 These people trusted me. I had a key to every single
9 nook and crannie and door at that place. I took care of
10 everything, from complaints to people. I was, I was a
11 certified in pools, I was a CPR, I took training in several
12 different things to -- for lifeguard. It was more or less
13 my property, and I took care of it. I loved my job.

14 Since then I have lost my job. I was sitting on -- if
15 there ever is something -- sitting on top of the world. I
16 had a brand new house, a new family, wife, my job was
17 great, future to that job was great.

18 I got salary; I was on salary. I had raises every
19 year, bonuses every year. I'm talking big bonuses. These
20 people loved me there. They wanted me there. I was there
21 every day. They asked even me, Mick, why don't you get
22 somebody to help you?

23 And it wasn't even the money that I'd have to pay
24 them. I enjoyed doing it and I was there. They liked
25 seeing me there at eight hours or everyone just six hours,

1 sometimes only five hours a day I was there, but when they
2 seen me there, they knew everything was okay. I was
3 meticulous. I took care of things. The place looked
4 perfect every time I left that property.

5 And I -- and more or less and I'm sure -- I don't want
6 to brag on myself and of course I'm not perfect, but my
7 family and the rest of my, my defense team is going to
8 bring that out. I never caused any trouble with anyone
9 else.

10 I'm, I'm not a criminal, and I'm certainly not -- they
11 said I was armed and dangerous. I have been told that
12 during that time when I was out, that if someone would have
13 been murdered, they would have pinned it directly with me.
14 No questions asked.

15 But in order for me to leave North Myrtle Beach, to
16 leave and go anywhere, just to leave, I would have had to
17 have to someone, a friend, and I did not want to do that.
18 I did not want to put someone in that circumstance.

19 Another option I had was to steal a car or something.
20 I wouldn't even know how to go about that, or I would have
21 had to kidnap someone to take me somewhere.

22 I, I minded my own business. They did not find me. I
23 showed myself, and later I will testify to that in, in more
24 detail. I will -- it was a little more here and I got
25 caught up in my, my little speech here, if you'd just...

1 Q. You want to read?

2 A. Well, it's nothing that I have to read off of. It's
3 points that I wanted to make, and I have been making them.

4 WITNESS: But this is the story about the future, Mr.
5 Humphries. Like you, like you brought out, there's never
6 enough, and that's a good theory.

7 A. Because when Becky and I met and got -- when we met on
8 Valentine's Day, February 14th, and eight months later,
9 10/10/05 -- or '03, we were married eight months later. I
10 bought a new house, a four bedroom. Both her, both her
11 daughters and her son, we bought that with -- we bought
12 that size house just so there -- we would make sure that
13 there was room for both daughters and J [REDACTED], and of
14 course us. Jill chose not to move in with us. Haley did
15 and J [REDACTED] did. They had it made -- and if I make -- I
16 don't know how about going putting pictures in evidence.
17 If I could get some help from Mr. Wilson, I'd just like to
18 show a few things.

19 Q. Which pictures do you want?

20 A. I have them here, Mr. Wilson. They're ---

21 WITNESS: If I may, could I stand up, Your Honor?
22 Right here, stay right here?

23 THE COURT: Stay right there.

24 WITNESS: Yup.

25 A. They're the pictures of the back yard. Find them

1 first.

2 (COUNSEL CONFERS WITH DEFENDANT.)

3 THE COURT: Are you talking? You have got to talk.

4 WITNESS: Oh, I'm sorry. I was asking him. I said I
5 wish they were better quality of....

6 THE COURT: All right.

7 WITNESS: If we can mark as exhibits, Your Honor?

8 MR. WILSON: We will mark them for identification.

9 WITNESS: Here, there's one more.

10 THE COURT: I assume the state doesn't have any
11 objection?

12 MR. HEMBREE: I haven't seen them, Your Honor.

13 WITNESS: I don't think there's any more of the back
14 yard.

15 THE COURT: They haven't been through those
16 photographs?

17 MR. HEMBREE: No, Your Honor. None of these that have
18 been provided to me by Mr. Wilson, there would be no
19 objection at all.

20 MR. WILSON: They have all been provided to me by the
21 state, so...

22 THE COURT: Mark them as defendant's exhibits
23 whatever the numbers are, 3, 4, 5, 6.

24 (TWO PHOTOGRAPHS MARKED AS DEFENDANT'S EXHIBIT NUMBER
25 19.)

1 (TWO PHOTOGRAPHS MARKED AS DEFENDANT'S EXHIBIT NUMBER
2 20.)

3 (TWO PHOTOGRAPHS MARKED AS DEFENDANT'S EXHIBIT NUMBER
4 21.)

5 (TWO PHOTOGRAPHS MARKED AS DEFENDANT'S EXHIBIT NUMBER
6 22.)

7 THE COURT: They are 19, 20, 21, 22.

8 WITNESS: Now, Mr. Wilson, if you would, you're going
9 to show them a little bit to them? Those will be in there.

10 BY MR. WILSON:

11 Q. Let me help you. Let me ask you. In regards to
12 what's marked now as Defendant's Exhibit number 19, which
13 is -- shows two photographs, tell me what those photographs
14 are.

15 A. Okay. The top one is the deck that I built on to the
16 house. It goes right into the sliding door. The bottom
17 one is the deck from inside a Tiki hut that I built, and
18 the pool and the fence.

19 MR. WILSON: May I publish these, Your Honor?

20 THE COURT: Yes.

21 WITNESS: The pool itself is half in the ground and
22 half above the ground.

23 BY MR. WILSON:

24 Q. All right. Now, let me also show you what's marked as
25 State's Exhibit -- as Defendant's Exhibit Number 20.

1 A. And actually the police took all these pictures. Why,
2 I don't know, but they did. This is just another angle of
3 the, the pool with the Tiki bar in the background. The
4 other is the far -- the southern end of the backyard which
5 inclines down to a pond which is -- it's pretty nice to
6 have that with the deck. A Tiki bar, a pool and a pond in
7 the back yard also. Becky is actually the one that picked
8 out that corner lot for that reason.

9 Q. Let me show you what's marked as Defendant's Exhibit
10 Number 21 next.

11 A. And this is something we seen, that Becky and I had
12 seen in a magazine and she asked me, can you build one of
13 them Tiki huts? And I said I can build you whatever you
14 want, Becky, and that's what I did. The top one is a close
15 up of it. The bottom one is just the back side of it.

16 Q. Let me show you now what's marked as Defendant's
17 Exhibit number 22.

18 A. This is just our living room and the dining room with
19 the slider in the background that goes out to the outside,
20 and the other is the fireplace with the living room, the
21 other side of the living room.

22 Q. Okay. Now?

23 A. Now while you're looking at those, getting back to
24 what my statement was, you know, it's never enough. Becky
25 worked every day until noon. Her job was very pleasant.

1 She could get her typing done. She actually -- I don't
2 know if it's been brought up. She was a typist, a
3 transcriptionist for doctors. She could be done by 12:00
4 usually, and then she was on call if there was an emergency
5 and the doctor or somebody wanted a particular patient's
6 transcripts, she would do it real quick. But usually she
7 was done by noon. I would get home around 3:30.

8 Becky would drink every day, and when she wanted to go
9 out, I didn't mind because she is -- she did work at home,
10 and I didn't mind because if she wanted to go out, she's
11 fifty years old. I was forty-five. She's an adult woman;
12 she doesn't do anything that someone tells her what to do.
13 She did what she wanted, and along with me, we made a great
14 couple. But it wasn't enough. And when I was about ten
15 minutes into my testimony, there was a young lady who
16 popped up over here behind us and high-tailed it out of
17 here. Her name was Jody. She was Becky's cocaine
18 connection, and this was one of the things that, it just
19 wasn't enough for Becky.

20 When she would be drunk and too drunk, she wouldn't
21 have stopped until she got her line, until she got enough
22 of what she wanted. We would go out almost every night and
23 leave her thirteen -- well, at the time twelve, then
24 thirteen and fourteen-year-old son home to fend for
25 himself.

1 But J [REDACTED] was a good kid. We never had any trouble
2 with J [REDACTED]. He had it made. In my opinion, he had it
3 made because we gave him leeway. He was the kid in the
4 neighborhood that all the kids in the neighborhood came to
5 our house. We had a swimming pool. J [REDACTED] was popular with
6 them, and everybody pretty much came to our house. That
7 was our house was the house everyone came to. And that --
8 that's how it was, and it made me feel good because I loved
9 my childhood. I'd never give my childhood up for nothing,
10 and I did want that for J [REDACTED].

11 And he had it made except there were a lot of times
12 when Becky would tell me, I'd say well, you going to -- you
13 know, we'd be sitting at the Tiki bar and we'd have our
14 couple little drinks and relax, and she'd say, well, where
15 are we going? Okay. Well, if we are going, we'll go.
16 She'd say, well, you go tell J [REDACTED] we're going, and a
17 lot of times I did. There was never enough. Sometimes we
18 had sex and it wasn't enough. She'd say, where are we
19 going? I'd be dead tired and I said I'm tired, and she'd
20 say, oh, come on, and off we'd go.

21 I was no angel, Becky was no angel, but Becky was
22 fifty years old. She did what she wanted to do. She was
23 manipulative, though. Once while dating, she told me ---

24 MR. HEMBREE: Your Honor, I've got to object. I have
25 allowed this to go on.

1 THE COURT: Mr. Wilson, you understand that would be
2 hearsay.

3 MR. WILSON: I understand.

4 THE COURT: I will limit it to the statement, not the
5 statement he was making.

6 MR. WILSON: I understand.

7 BY MR. WILSON:

8 Q. Mick, let me try to get you back on where we need to
9 be here. Let's go back to the part about after you and
10 Becky moved into your home, correct, what year was that
11 that you moved in -- back into your new home?

12 A. It was November 10th of 2003.

13 Q. Okay, and both of y'all were excited about the fact
14 that you had gotten this new house and?

15 A. Oh, yeah.

16 Q. Moved into it and you had a pool and your deck and the
17 other things that you had. Is that correct?

18 A. It took me about a year to build the deck, but I just
19 did it as I went along.

20 Q. All right. During the time that you and Becky were
21 living together as husband and wife, J [REDACTED] lived with
22 y'all?

23 A. Yes.

24 Q. The entire time?

25 A. Yes.

1 Q. All right. Now, did anyone else, any other children,
2 any of the other children live with the two of you?

3 A. Haley lived with us for about, I don't know, three or
4 four months I believe it was.

5 Q. Okay.

6 A. Maybe longer.

7 Q. All right. All right, and what about Jill, did she
8 ever?

9 A. Jill never lived with us.

10 Q. Now, was she already out of the house by the time you
11 and Becky got together?

12 A. No, and when I met Becky, she was living in -- up in
13 Loris there with all three of the children.

14 Q. Okay. Now, did there come a point in time in your
15 relationship with Becky where the two of y'all started to
16 have some marital difficulties?

17 A. Yes.

18 Q. Tell us about the marital difficulties.

19 A. Well, it start -- it mainly came from drinking. But
20 with the money being in, in question, on the evening that
21 we had -- we got home one night and she ran into her office
22 quick and click clicked both, both computers, click, click
23 them off. And I asked her what that was all about. Why
24 are you running in here hiding something, click clicking.
25 I know what she did with me and Roger. I figured, look,

1 she's doing something with me.

2 Q. All right.

3 A. With, with someone, so that started an argument.

4 Q. All right. So she came home, she turned off the
5 computer, and you thought that she was turning it off in
6 order to hide something from you?

7 A. Yes, I did.

8 Q. All right, and so then what?

9 A. We had a little altercation.

10 Q. Okay. Tell us about the altercation.

11 A. Okay. There's a fireplace right -- there's a stoop
12 fireplace. It grazes off the ground about that high, the
13 hearth of it. Me and her were right there, and she tripped
14 over it and caught herself on the stone of the fireplace
15 and cut her little finger. J [REDACTED] thought that I had
16 pushed her and stood up, and I just pushed him back out of
17 the way.

18 Q. So, what happened after that?

19 A. I don't know who called 911. I think, I think
20 J [REDACTED] did.

21 Q. Did the police come?

22 A. They did.

23 Q. All right, and were you arrested?

24 A. I was.

25 Q. All right, and was that Officer Cauble who testified

1 earlier?

2 A. He didn't look the same, but I guess that was him.

3 Q. All right, and, and when he took you -- tell us what
4 happened once he came and he got ---

5 A. I had some heart pains which I had had before and I
6 told him about them, and he took me to Seacoast Medical
7 Center for check ups.

8 Q. Tell us about that. What happened when you got there?

9 A. They checked me up, and there was another officer that
10 came in and unhooked my, my handcuffs so they could do
11 what they had to do to me, and he came in. I don't know.
12 He was acting tough guy or whatever and said no, you're
13 putting them back on. Slammed them back on me, and he sat
14 there and grinned and I spit on him.

15 Q. Spit on him because he was grinning at you?

16 A. Well, no, not because he was grinning at me. It was
17 because the -- more or less when he walked into my house,
18 and Becky would have told you that he pushed her out of the
19 way to get to me. And she told -- it was Louis Cook that
20 was our -- she went down and seen him and Louis Cook went,
21 of course, to the trial date that day where it was thrown
22 out. And the only thing that I was charged with was that
23 -- with the officer, and that was a forfeit.

24 Q. All right.

25 A. He wanted me to spend thirty days in jail for that,

1 but, in fact, he was the one that roughed up anybody.

2 Q. All right. Mick, let's go on and talk about the
3 October 2005 incident, okay?

4 A. Okay.

5 Q. Now, you said that you and Becky were married in
6 October of 2003?

7 A. Yes.

8 Q. All right, and this is October of 2005. Now, at this
9 time, the two of you had separated?

10 A. Yes, we did.

11 Q. All right, and what month did you separate?

12 A. It was September 17th.

13 Q. Of 2000 what now?

14 A. 2005.

15 Q. And what prompted the actual separation? What was the
16 last thing that happened before the two of you went your
17 separate ways in, in September?

18 A. The first thing that happened, well, we were on the
19 island at Bird Island with some friends and in the water
20 playing around and stuff, and I believe everyone of the --
21 and that's another thing. That there's no one in this
22 courtroom that ever went with us anywhere camping, to
23 dinner, or knew us the way these people did.

24 We went camping, spent the weekend at Bird Island to
25 the race and this and that. We went there. Becky had

1 bruises on her arms, which was directly from playing around
2 in the water. The other women had them, too. There was a
3 joke about it. Everybody was, you know, fine with it.

4 But Jill came to the house one day, and Jill and I
5 never got along. Jill didn't get along with her mother.
6 She called us every night, and not to elaborate too much
7 but when we were at home and the phone would ring, she said
8 if that's Jill, don't get it. She told J ■ that; she told
9 me that.

10 Lot of times we wouldn't answer the phone because from
11 one thing, Becky didn't like the idea that Jill didn't like
12 me because it wasn't -- I mean, she was trying to tell her
13 that, Momma, you're too beautiful for him; you don't need
14 to be with him. And that was just about the bottom line of
15 it, and I believe Jill covered that when she was up here.
16 I mean, that was about the bottom line. Everybody knew
17 that me and Becky were getting along very well except her.

18 Q. Go ahead and tell me about what caused the separation.

19 A. The separation was that Becky, Becky told me and, in
20 fact, we, we ---

21 MR. HEMBREE: Object, Your Honor, hearsay.

22 THE COURT: Yes, it would be hearsay as ---

23 WITNESS: Why we broke up?

24 THE COURT: Why you broke up.

25 BY MR. WILSON:

1 A. Why we broke up? Well, I don't know how else to put
2 it. How we broke up, okay, I decided to let things simmer
3 down with Jill. Okay.

4 In the mean time, Mildred, her mother, Becky's mother,
5 didn't think it was appropriate that we brought other
6 people into it when she knew that it was Jill's doing,
7 period.

8 I said, well -- and I ran a seventy-two unit condo
9 complex. A lot of those -- I only have three permanent
10 residents that live there. The rest of them are empty. I
11 could have called one of my homeowners at any time and they
12 -- and they often did let me or my family when they came
13 down use them if they were emptied. I could have done
14 that.

15 But Mildred said no. She said I'm going to put you in
16 the Comfort Inn. I said I have my own money. She said I'm
17 putting you in the Comfort Inn because -- until we get this
18 straightened out with Jill.

19 Q. All right. So, so, so, she got you a room at the
20 Comfort Inn?

21 A. Yes. She paid with her credit card.

22 Q. All right, and how long did you stay at the Comfort
23 Inn?

24 A. Four days I believe it was.

25 Q. Okay. When you left the Comfort Inn, where did you

1 go?

2 A. I went back home.

3 Q. By that time, was Rebekah already out of the house?

4 A. Yes.

5 Q. Okay. All right, and so then you stayed in the house.

6 This is the house at Bitter Spar?

7 A. Yes.

8 Q. All right, and then Becky moved?

9 A. To Haley's.

10 Q. To Haley's house. All right. Now, tell us about that

11 period between the time you separated in September and

12 October the 5th, October the 10th.

13 A. Let me find all my notes here. Well, first of all,

14 Becky and I -- and she had camouflage. She never wore a

15 hat, but -- and since we only had the one vehicle at the

16 time, Jill lent her one of her -- I think it was her Land

17 Rover, her white Land Rover. So, on several occasions

18 without calling or anything, Becky just popped in and she'd

19 have a baseball cap on with her ponytail pulled through the

20 back of it, and the neighbors seen her. And the next day

21 they said we seen Becky over there. She can't fool us, and

22 I just laughed about it.

23 Q. Can't tell me what the neighbors said, but go ahead

24 and tell me what happened.

25 A. Okay. I'm sorry. She would come and we would talk,

1 and she would spend the night, and I got to make sure Jill
2 don't know about this, this and that. And of course
3 J [REDACTED] would have had to know that she was gone all
4 night, so I don't know if he knew or not.

5 Q. So, you're saying that y'all got together sometime
6 between September and October 10th that y'all spent some
7 of the nights together at your place? Is that what you're
8 saying?

9 A. Oh, yeah.

10 Q. All right, and how many times would you say y'all were
11 together between September when you separated and October
12 10th when you -- October 10th?

13 A. I'd say half a dozen times.

14 Q. All right. Now, tell us about -- let's go to October
15 the 10th, and what, what is the significance of the October
16 10th date?

17 A. On Friday the -- what would that be, the 6th? Friday
18 before that?

19 Q. Friday before the 10th.

20 A. She brought some mail. Becky has the account number
21 for her business and directly had the mail transferred to
22 there. A lot of it she -- it was transferred. It was --
23 stayed the same, came to my house. But she said I got --
24 you know, she'd bring over the mail I'd have and if I was
25 at work, she just put it in the screened door. Our

1 anniversary was 10/10. It would have been our second year
2 anniversary, and she said meet me Monday, 9:30, you know
3 where.

4 Q. Don't tell me what she said to you. Just tell me. As
5 a result of the conversation you had with Becky, what was
6 your plans?

7 A. I didn't have a conversation with her. She left a
8 note.

9 Q. Okay. Well, as a result of receiving the note, what
10 did you plan?

11 A. I was going to meet her at 9:30.

12 Q. Meet her at 9:30 where?

13 A. Behind the Seacoast Medical Center where we, we had
14 met people before.

15 Q. All right. Go ahead. You were going to meet her at
16 9:30 behind the Seacoast.

17 A. Yes.

18 Q. Go ahead.

19 A. Went over to -- I was out trying to kill time that
20 day, and I stopped over at a so-called friend, Scooter
21 Brown, Bill Brown, who I have known for ten years. He met
22 Becky twice over the time we were married, and ever since
23 that happened, he swayed to Becky's side. For what reason,
24 I have a pretty good idea, but I stopped at his house that
25 day to have a drink with him, and I did.

1 Q. Okay. Go ahead.

2 A. Well, I found out later even after I called him one
3 time that he had, had gone as far as to tape record my
4 conversation with him, and there's only one reason for that
5 because I did all the work on Mr. Brown's pool. He had a
6 small pool in the back yard. I did anything he -- he'd
7 call me and I would be there that day. He had a problem
8 with the pump to his pool; I'd be there this day. He ran
9 out of Chlorine; I'd be there that day. He always called
10 me, and I would go over there.

11 So any way, I was sitting there talking with him, and
12 all of a sudden the time came and I up and left. It was
13 about 9:00 when I left.

14 Q. So, you left Scooter Brown's house at around 9:00, and
15 then where did you go?

16 A. Seacoast Medical Center.

17 Q. All right. Tell me what happened when you got there.

18 A. When I got there -- and there are some pictures again
19 that I'm going to have to put out if I can find where they
20 are at. If you give me just a minute. It might take a
21 second here. Forget where they're at.

22 (A PAUSE.)

23 Here is one, and actually we'll just use this one for
24 now. They may have a better picture, a singular picture on
25 one of their -- it's the right side of my car. I'm going

1 to need a diagram of some kind, and I don't think we're
2 prepared for that diagram right at this moment. I didn't
3 know we'd get right into that.

4 MR. WILSON: We'd offer this.

5 THE COURT: Any objection?

6 MR. HEMBREE: No objection, Your Honor.

7 THE COURT: Defendant's Exhibit 23 in evidence.

8 (FOUR PHOTOGRAPHS MARKED AS DEFENDANT'S EXHIBIT 23.)

9 WITNESS: Mr. Wilson, I think they have a bigger
10 picture of the right side of the car.

11 THE COURT: Jury has all the -- the pictures that have
12 already been put in?

13 WITNESS: Yes, sir.

14 THE COURT: All the ---

15 WITNESS: Yes, sir.

16 BY MR. WILSON:

17 Q. This is Defendant's Exhibit 23.

18 A. The bigger one will show it more, but it's right in
19 front of the rear door handle on the right side where the X
20 -- it's on the picture where the X is.

21 Q. You're referring to the picture on the top left where
22 the X is?

23 A. Top right.

24 Q. Top right where the X is?

25 A. Yes. It's right in front -- it's a dent right in

1 front of the passenger.

2 Q. This one?

3 A. Yes, the passenger door.

4 Q. Okay.

5 A. The back, you see the dent?

6 Q. Yes.

7 A. Okay.

8 MR. WILSON: May I publish, Your Honor?

9 THE COURT: Yes.

10 BY MR. WILSON:

11 Q. Okay. Go ahead.

12 A. I was parked -- well, we're going to need -- I need
13 some kind of a -- to show them how it happen. Where the
14 road is, the S on it, the curve, I don't think we're
15 prepared for that at this moment.

16 Q. Okay.

17 A. I want to show them exactly how it happened.

18 Q. Just go ahead and tell me and let me.

19 A. Okay. I was parked on the left side of the road. The
20 road comes down. It's right behind Seacoast Medical
21 Center, and it's like an S turn. I was parked on the
22 left-hand side. Now again, this is where I'm going to have
23 to say that she told people that this or that. She told
24 the police this. It's in the report.

25 MR. HEMBREE: I have to object to any statement of

1 that picture.

2 WITNESS: That's why I'm bringing it up to you, Your
3 Honor.

4 THE COURT: Sustained.

5 WITNESS: But can I put a police -- can I put the
6 police statements in for evidence?

7 MR. HEMBREE: No, Your Honor. I would object.

8 WITNESS: Well, who's making the decisions here?

9 THE COURT: I'm making the decision, Mr. Winkler.
10 However, I have to see those documents before I make a
11 decision in ruling before or against it. So, you've
12 documents you wish to show me, I'll be glad to rule on
13 them.

14 WITNESS: We do have documents, though.

15 MR. WILSON: What, Your Honor, what he's referring to
16 is police reports and police incident reports.

17 THE COURT: They're specifically excluded.

18 MR. WILSON: Right, yes, sir, which would not be
19 admissible.

20 THE COURT: Well, I'm only telling you if you have
21 something you want to submit that you feel are admissible,
22 let me know.

23 MR. WILSON: Yes, sir, I understand that.

24 BY MR. WILSON:

25 Q. But anyway, go ahead and tell me what, what happened

1 there that night. This is October 10th. You're saying
2 that you left Mr. Brown's house around 9:00?

3 A. That's right.

4 Q. To go to Seacoast.

5 A. That's right.

6 Q. Tell us what happened when you get to Seacoast.

7 A. Okay. I parked to the left off the side of the road.

8 Q. Okay.

9 A. And I seen a car coming from behind me off the first
10 part of the S, and it was coming really fast and it come to
11 a halt real quick. Bumped right into my car.

12 Q. All right. Were you already stopped, completely
13 stopped?

14 A. I was, yes. I was sitting in the car waiting.

15 Q. All right, sir, and were you on the road or off the
16 road?

17 A. I was off the road.

18 Q. All four tires off the road?

19 A. Yes.

20 Q. All right, and was your ignition on or off?

21 A. Off.

22 Q. The ignition was off?

23 A. Yes.

24 Q. And you were sitting there waiting for Becky, too?

25 A. Yes, I was.

1 Q. All right, and then this car comes and hits you?

2 A. Yes.

3 Q. All right. Then what?

4 A. It was Becky's. it was the white Land Rover.

5 Q. Okay.

6 A. She, she turned the wheel to the right, came off me
7 and went over to the right side of the road, off the road
8 and stopped.

9 Q. All right. So, once the, the two cars collided, did
10 she back up or come forward, or what happened at that
11 point?

12 A. She pulled forward to the road.

13 Q. All right. Then what? Go ahead.

14 A. I got out of the car and I said Becky, you're drunk.
15 Usually when me and her go out, I always did the driving
16 because she would get tore up. She's not used to driving.

17 Q. Okay.

18 A. That night she was pretty tore up.

19 Q. So, those -- so what happened? You get there. She's
20 intoxicated. She's driving. What happens from that?

21 A. She rolled the window down and she said if you're
22 coming with me, get in.

23 Q. All right.

24 A. I said Becky, you're drunk.

25 Q. So, what do you do?

1 A. I got in the car.

2 Q. All right. Where did you get into the car?

3 A. Passenger's side.

4 Q. All right, and what was the status of your car as you
5 exited your car and leave it there?

6 A. I hid my key.

7 Q. Where?

8 A. We were just going to go to the house and get a bottle
9 of tequila.

10 Q. Where did you find your keys?

11 A. In the console.

12 Q. Okay.

13 A. My console had a bunch of things in it and on the very
14 bottom.

15 Q. Was your doors locked?

16 A. No, they were not.

17 Q. Okay. Then what?

18 A. We started -- we came out of -- we went straight ahead
19 there, and there was another turn that goes from Seacoast,
20 from behind Seacoast past the helipad and back out to
21 Number 9.

22 Q. All right, and you're getting into the driver's side
23 or the passenger's side?

24 A. I'm in the passenger's side.

25 Q. You're in the passenger's side. She's driving the

1 vehicle?

2 A. Yes.

3 Q. All right. So, where are you heading to? Where are
4 you going?

5 A. We took a left out of Seacoast.

6 Q. Why? Where are you going?

7 A. Towards 57.

8 Q. Why?

9 A. That's where we lived.

10 Q. Okay.

11 A. Where we were heading. She just wanted to go get
12 that, and she was going to take the car and park it
13 somewhere. She didn't want to leave it at the house. She
14 said Jill can't see this house -- this -- she didn't know,
15 she said.

16 THE COURT: Just tell us what you did. Don't need to
17 tell us ---

18 WITNESS: I keep forgetting about that, but I'm -- you
19 know, it's just...

20 BY MR. WILSON:

21 Q. All right. You went -- let me try to help you here.

22 A. Sorry.

23 Q. You head to the, to the location. She gets -- you get
24 in the car with her. Then y'all are heading to go get some
25 alcohol.