

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

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

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S.C. Supreme Court

LOUIS MICHAEL WINKLER, JR.,

Respondent/Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Petitioner/Respondent.

APPENDIX

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1 A. Yes.

2 Q. All right, and where is it that you're going to have
3 to go to get the alcohol from?

4 A. To our house.

5 Q. To whose house?

6 A. My house on Bitter Spar Road.

7 Q. Headed to Bitter Spar Road?

8 A. At Stone's Edge, yes.

9 Q. All right. So, then you make a left on to 57. Is
10 that where you're going?

11 A. No.

12 Q. Where are you making -- you said you made a left.

13 A. We took a left out of Seacoast, went up to Bell and
14 Bell Pontiac.

15 Q. Okay.

16 A. At the light and took a right.

17 Q. All right, and that put you on 57?

18 A. Yes, it did.

19 Q. All right. Now tell us what happened. As you're
20 traveling 57, she's driving. You're in the passenger's
21 seat. What happens?

22 A. Well, it's about -- it is approximately a mile from
23 that light to Stone's Edge. We were about halfway. She
24 went -- I know that the left tires were completely over the
25 yellow line, and I yelled, I said, Becky, there's a

1 car coming right at us. I said, Becky, and she over
2 compensated and yanked the wheel. In the pictures, she --
3 we can put those in also. You can tell.

4 Q. Let me ask you this. When she yanked the wheel, then
5 what happened? Tell us what happened.

6 A. The car went straight off the road.

7 Q. All right.

8 A. Were no skid marks or anything. We jumped the ditch
9 and went right in and hit some trees.

10 Q. Okay. All right. So, you hit the trees. What do
11 y'all do then? She -- you're in the car. There's impact
12 and you're, you're the driver -- you're in the passenger's
13 side. She's on the driver's side. What do y'all do?

14 A. I had my seatbelt on. She slammed -- well, apparently
15 she slammed her head into the steering wheel and it was
16 dark, of course. The lights went out. It was dark, and
17 she said damn, like that and, you know.

18 Q. All right.

19 A. At first she yelled when we jumped.

20 MR. HEMBREE: Objection.

21 THE COURT: 803 that would be admissible, but excited
22 utterance.

23 BY MR. WILSON:

24 A. When we jumped the ditch, she, aaaaaa. You know.

25 Q. So, then what happened? Once you're in the woods, the

1 impact had occurred, and you said she hit her head on the
2 dashboard. Then what?

3 A. No, she hit her head on the wheel, on the steering
4 wheel, but we weren't in the woods. We were right at the
5 edge. There were smaller trees, I'd say maybe fourteen
6 inches in diameter, some of them, but we got -- we went
7 right into one where she's trying to put it in reverse and
8 it wouldn't go off.

9 So, I get out of the car. She's on the -- she's in
10 the driver's seat, and she actually opens the door about
11 this far, but there's a tree right next to her and she
12 can't get out, and she started crying: Mick, I can't get
13 out, I can't get out. I said, well, climb over the, climb
14 over the console, which she did. We got out. She said
15 Mick, get me out of here now.

16 Q. All right. So, she wants you to get her out of the
17 car. Was she referring to the car?

18 A. I said what's the problem. I said why ---

19 Q. That's not my question.

20 THE COURT: Remember, now, he's asking what you did.

21 BY MR. WILSON:

22 Q. She referring to the car or out of the woods?

23 A. Well, the yard that we were in is just on the edge of
24 those woods. Now we're standing in a yard.

25 Q. Okay. Okay. So, what happens now? Both of you are

1 out of the vehicle. Tell me, what's her physical
2 condition at this point?

3 A. She was staggering. I mean, she stood up and she said
4 get me out of here, Mick.

5 Q. I'm going to ask you to tell me what her physical
6 condition was. She's out of the car. Tell me about her
7 physical condition now, now that she's out of the car.

8 A. She was drunk and stumbling.

9 Q. All right.

10 A. She might have been delusional. I don't know.

11 Q. Was she bleeding?

12 A. I couldn't tell. It was dark.

13 Q. Okay. All right.

14 A. She touched her -- here, her nose a few times like
15 that and everything, but I couldn't really tell. I said we
16 got to see what you look -- she goes I'm okay, I'm fine.

17 Q. All right. What about you? Were you bleeding?

18 A. No.

19 Q. All right. So you both get out of the car, and what
20 do you do? It's dark and you're in the woods or in the
21 edge of the woods out of the car. What happens now?

22 A. Well, first we went out on to the road, and there
23 wasn't any traffic at first; then there were some lights
24 coming, and she said here comes a car. I went over the --
25 there's incline. It goes down the ditch, and it really

1 wasn't a ditch. Now, this is on the other side of the
2 road.

3 Q. Okay.

4 A. And we went and stepped about two, three feet into the
5 woods and a bunch of cars were going by.

6 Q. All right. So, what do you do? Did you ---

7 A. We didn't do anything at first.

8 Q. Well, did you try to flag down ---

9 A. I said we need to get up there, and she said oh my
10 god, if Jill, Jill finds out.

11 Q. I don't want you -- you can't tell me what she said.
12 I'm just trying to get you to tell ---

13 THE COURT: You can say she was afraid of this without
14 saying what she said.

15 WITNESS: Okay. I'm learning.

16 BY MR. WILSON:

17 Q. All right. Tell me, y'all are on the edge of the
18 road. It's dark. This is after the impact. Tell me what
19 y'all do. Do you try to flag down a vehicle, get a ride?
20 Were you trying to?

21 A. No, we did not. She was afraid of getting a DUI and
22 wrecking Jill's car. She kept mumbling Jill's going to --
23 oh, my god.

24 THE COURT: Sir, please not tell us what she said,
25 sir.

1 WITNESS: Well, I can't.

2 THE COURT: You can tell what happened, what occurred
3 and those things that resulted in this.

4 WITNESS: Okay. So, I can't say what she said?

5 THE COURT: Well, you can show -- you can say things
6 that, for example, you mentioned she was afraid in your
7 view of getting a charge and stuff like that. You can say
8 things of that nature, but you cannot say what she said,
9 sir, unless they consent to hearsay.

10 WITNESS: Can I say we went somewhere because she ---

11 THE COURT: Yes, if that ---

12 WITNESS: --- because she requested it?

13 THE COURT: Yes, you can.

14 Please continue, Mr. Wilson.

15 MR. WILSON: Thank you, Your Honor.

16 WITNESS: I'm sorry, Your Honor, but I didn't know.

17 BY MR. WILSON:

18 Q. All right. Mick, after y'all were on the road, were
19 you trying to get a ride or not?

20 A. No.

21 Q. You're not trying to get a ride? What are you trying
22 to do?

23 A. Get off the road.

24 Q. All right, and?

25 A. Away from -- away from the traffic on her request.

1 Q. And how do you intend to do that?

2 A. Stepped right into the woods.

3 Q. Okay. So, you went back into the woods?

4 A. Yes, we did.

5 Q. Both of you?

6 A. Yes.

7 Q. All right. Why were you going back into the woods?

8 A. I have no idea. That was her request.

9 Q. All right. So, y'all go back into the woods. Tell me
10 what happens now. You go back into the woods to do what?

11 A. Several cars stopped right away. We proceeded deeper
12 into the woods. I'd say twenty feet and stopped upon her
13 request. She -- wait. I had to pick her up twice because
14 she stumbled. Remember, this is, now it's 9:30 something,
15 and it's pitch dark and we are in a thick woods.

16 Q. Okay. So, you go deeper into the woods when you see
17 car lights. Why are you going deeper into the woods?
18 Because you see car lights?

19 A. On her request. She seen a police, police cruiser.

20 Q. Now, once you're in the woods, tell us what happens
21 while you're there.

22 A. We sat there for a little while. She was on her
23 haunches.

24 WITNESS: Am I allowed to say that?

25 THE COURT: Yes, sir.

1 BY MR. WILSON:

2 A. She was like this laying down like this.

3 Q. All right.

4 A. Watching what was going on. By then there were
5 several cruisers there and, I mean, she could have -- I
6 wanted to -- I said look, man, we need to, we need to call
7 them and tell them where -- she said I'm not getting a DUI.

8 MR. HEMBREE: Your Honor.

9 THE COURT: Sir?

10 BY MR. WILSON:

11 Q. You can't tell me what she said. Let me try to help
12 you. Y'all are in the woods and while you're there, you're
13 saying she's on her haunches. What are you doing?

14 WITNESS: Could you approach a second for me?

15 THE COURT: No, you cannot. ---

16 WITNESS: Okay.

17 THE COURT: --- on the record.

18 WITNESS: We need a recess. We need a recess.

19 BY MR. WILSON:

20 Q. When this is happening, what are you doing?

21 A. What am I doing?

22 Q. Yes, sir.

23 A. I'm complying to her. It was our anniversary and
24 she's -- I mean, she's wasted.

25 Q. Okay. All right, and what -- tell me what goes on

1 then after y'all see the police cruisers coming in the
2 area. Is that correct?

3 A. Well, I believe before we go any further, I need to
4 comply to -- I mean, I -- we need to show the jury some
5 things that characterize her that's -- has to do with the
6 next couple steps in this.

7 Q. All right. What things?

8 A. The DVD, the one section of the DVD that we talked
9 about.

10 MR. WILSON: Judge, can we have a moment before we --
11 you want to approach?

12 (OFF-THE-RECORD BENCH CONFERENCE.)

13 THE COURT: Ladies and gentlemen of the jury, please
14 step out a minute.

15 (THE JURY EXITS AT 7:22 P.M.)

16 THE COURT: Yes, Mr. Wilson. You asked me to ask the
17 jury to step out.

18 MR. WILSON: Yes, sir. Your Honor, what he's
19 referring to is at the time of the arrest, there were
20 two DVDs on his person. These DVDs, Your Honor, apparently
21 of explicit sexual conduct between him and his wife and
22 he's wanting to show those DVDs.

23 THE COURT: Under what theory would that be relevant
24 to this case, sir?

25 MR. WILSON: I'm not -- well, I'm not real clear on

1 exactly -- my understanding from, from talking to him is
2 that he wants to show the kind of person she was, and
3 that's his statement to me.

4 THE COURT: Is this a -- some video of that night in
5 the woods, sir?

6 MR. WILSON: No, sir. This is, this is something that
7 apparently was done at home between them over a period of
8 time before this incident occurred.

9 THE COURT: Has this got some sexual activity between
10 him and this lady?

11 MR. WILSON: Yes.

12 THE COURT: I would not permit that. That is
13 irrelevant to this matter at all. Do you have any other
14 questions?

15 MR. WILSON: I don't have any.

16 WITNESS: I'd like to consult with my attorney.

17 THE COURT: You can't discuss your testimony now
18 you're on the stand, Mr. Winkler. I told you that ---

19 WITNESS: Why is that?

20 THE COURT: --- when you came up.

21 WITNESS: Okay.

22 THE COURT: If you want to advise him of some
23 principle of law you want to use in objecting to these
24 things, I have no problem with you talking with him in that
25 regard.

1 WITNESS: Well, we had -- okay. Well, we had every,
2 every ---

3 THE COURT: Sir, no, you don't need to talk to me
4 about that. You want to talk to your attorney about an
5 issue of law, that you feel is relevant to this, I will let
6 you do that. You want to step down and do it, sir?

7 WITNESS: Well, am I going to be off the stand then?

8 THE COURT: Yes, sir.

9 WITNESS: Am I allowed to ---

10 THE COURT: No, no. You, you will be coming back,
11 yes, sir.

12 WITNESS: Oh, okay. That's what I meant.

13 THE COURT: You are still subject to
14 cross-examination.

15 WITNESS: Because I, I'm clearly not done.

16 THE COURT: Yes, sir. We are going to finish this.
17 No matter how long it takes, we're going to finish this
18 together.

19 All right. We'll recess and be back in about ten
20 minutes.

21 (OFF THE RECORD.)

22 THE COURT: Be seated.

23 Mr. Wilson, how long -- I have got to determine if I'm
24 going to bring the jury dinner in. About how long do you
25 anticipate the rest of your direct to be?

1 MR. WILSON: Well, judging by how long it's taken so
2 far, at least another hour.

3 THE COURT: All right, and the state wishes to do
4 their cross-examination tonight, too?

5 MR. HEMBREE: I will be glad to do it, Your Honor. It
6 would take, I would say, at least an hour and a half.

7 MR. WILSON: Judge, you know, we'd be here till 10:00.
8 What I'd ask you to do -- and I know this is at my request
9 because I'm the one who asked you not to separate the two.
10 But what I would ask you to do is let us work till 8:00,
11 and then let me come back in the morning and finish my
12 direct, and then let them do theirs in the morning, finish
13 theirs in the morning.

14 THE COURT: Well, the jury has been here all day
15 and...

16 MR. HEMBREE: Your Honor, I would request that he be
17 allowed to complete his direct examination tonight, not be
18 allowed ---

19 THE COURT: Well, if I do that, Mr. -- if I do that
20 then, Mr. Hembree, I probably will request you to --
21 require you to do your cross tonight, too.

22 Seems to me, it seems reasonable that if in half an
23 hour, forty-five minutes he's not through with his direct
24 -- I'm thinking about the interest of the jury. Either I'm
25 going to get them dinner, going to get them dinner, going

1 to do all of that. If I don't get them dinner, then I'm
2 going to let them go in about half an hour. So, either way
3 y'all wish to do it if you can, but 8:00 I'm going to order
4 them dinner, which means we're going to be here till this
5 whole thing is over, or 8:00 we're going to break. I'll be
6 glad to hear you all's preferences, but I will decide the
7 end.

8 All right, now take a break for just a minute. Well,
9 actually it's 8:00. Thirty minutes after we get back in
10 here, might be 8:15.

11 (A PAUSE.)

12 THE COURT: All right. We're going to go about thirty
13 more minutes or whenever you get a breaking point, Mr.
14 Wilson. Then we will come back and finish up your direct
15 and the cross-examination tomorrow. Logistics of the jury.

16 Ready to go forward?

17 MR. WILSON: Yes, I'm ready to go forward.

18 THE COURT: All right. Let's bring the jury in,
19 please.

20 Mr. Winkler, come on back up to the stand.

21 WITNESS: Yes, sir.

22 (THE JURY ENTERS AT 7:41 P.M.)

23 THE COURT: Just to let you know, we're going to go
24 about thirty more minutes. Now, the clerk told me you all
25 want to get dinner, not -- take it back to your rooms with

1 you, that's fine, but if you'd rather go out, that's all
2 right, too. That's your choice, Mr. Foreman. I want the
3 -- because like I told you all, want you all to be
4 comfortable as well as you can be. But if y'all want to go
5 out somewhere close by, that's fine, or you can go back to
6 the room with it. That's your choice. But just want to
7 make it your choice because I want you all to decide those
8 issues. Now, so we are going to go about thirty more
9 minutes, and then we'll start back again tomorrow morning.

10 The motion or the request I guess by the defense to
11 introduce the video that request is denied. Proceed on,
12 Mr. Wilson.

13 MR. WILSON: Thank you, Your Honor.

14 BY MR. WILSON:

15 Q. Now, I think when we stopped off we were talking about
16 y'all being in the woods. Is that right? All right, you
17 have to say yes or no for me because I can't...

18 A. Yes.

19 Q. All right, and now, go ahead and just tell me what,
20 what happened during that point.

21 A. About the 10/10 incident. Well, without -- without
22 that, I wanted to switch to something else because I'm not
23 prepared to continue talking about that because that was
24 what I was going to say and talk about, and without it I
25 have to -- I have to explain it some other way.

1 Q. Well, what, what, what does the -- what does the DVD
2 have to do with 10/10, 10?

3 A. The sex that we had in the woods.

4 Q. All right.

5 THE COURT: Let the record reflect I asked you, said
6 it was not a DVD of them in the woods.

7 MR. WILSON: No, sir.

8 THE COURT: Was not. All right, sir.

9 WITNESS: Well, we were going to move back to
10 something else.

11 BY MR. WILSON:

12 Q. All right.

13 A. Correct?

14 Q. What is it that you wanted to tell me about?

15 A. Well, there's some things that I can cover within that
16 time. I'm going by some testimonies that were brought up
17 here, very touching testimony by Tammy Cox.

18 Q. All right. Tell me what -- what is your concern about
19 Tammy Cox?

20 A. Apparently she was very close to Becky, although in
21 the time I was married to Becky and dated Becky, we only
22 seen her one time. We had four different parties on
23 different occasions: two Christmases on two different
24 occasions, one was her birthday. We invited her and her
25 husband to the parties. Never seen them, never got a -- we

1 can't make it, anything from them.

2 Q. So, you invited her to the party and they didn't come?

3 A. Yeah, and also there were times when we had them --
4 you know, she said yeah, let's ask them, fine with me,
5 let's ask them.

6 Q. You can't tell me what other people ---

7 THE COURT: We have already gone through that.

8 Continue on, Mr. Wilson.

9 BY MR. WILSON:

10 Q. Go ahead. Tell me what happened.

11 A. Okay. They never came to the parties.

12 Q. All right.

13 A. But being so close and heart touching as it was for
14 her, all I know is it was a work-related, work-related
15 relationship that went no further than that. And, and I
16 know -- I have sympathy, too. It was my wife.

17 But as far as that goes, there was, there was no cause
18 when -- she never discussed anything with me about Ms., Ms.
19 Cox or we'd go over there to their house to get some tapes
20 and she'd say just keep the car running. She'd run in, get
21 it, come right back out, and off we'd go.

22 Q. Okay.

23 A. There were never any discussions, or how you doing, or
24 anything like that.

25 Q. Well, how many times did you meet Ms. Cox?

1 A. About three times. I went -- that's when we went and
2 picked up the tapes. I did go in the house one time to see
3 her new baby.

4 Q. And how many times has she come over to your house?

5 A. Never.

6 Q. She was never there when you were there?

7 A. Never.

8 Q. Do you know whether she and Becky had frequent
9 telephone conversations?

10 A. Becky never mentioned it.

11 Q. So, you don't know if they were close outside of your
12 presence?

13 A. No, I do not.

14 Q. Okay. Anything else you want to tell us about your
15 relationship with Ms. Cox?

16 A. Well, there's some statements she made, but I'm not
17 going to go into them because I shouldn't. You know,
18 according to general consensus was that Becky wasn't
19 herself any more. She didn't go out and do anything and
20 she was scared to death, all this. On several occasions
21 when I had my time out and was driving, twice I seen her
22 with Archie Bethea, who was my neighbor for the entire time
23 I lived at Foxfire Village, eight years.

24 Q. Who was with Archie Bethea?

25 A. Becky.

1 Q. All right, and explain to us what you're talking about
2 when you say she was with Archie Bethea.

3 A. They were riding together in the car.

4 Q. All right.

5 A. But apparently she was very scared and we have a, we
6 have a young man coming in tomorrow who is my neighbor that
7 will testify.

8 MR. HEMBREE: Objection, Your Honor.

9 BY MR. WILSON:

10 Q. You can't tell me ---

11 THE COURT: So far -- he can say he -- he's going to
12 testify. He just can't tell what he's going to say.

13 MR. WILSON: Thank you.

14 BY MR. WILSON:

15 A. But I saw myself several times her and her friend
16 Kathy Craft come by my house. We live in a dead-end
17 street; it goes to nowhere. You turn right when you're
18 coming one way; you're coming the other way, you turn left.
19 There's no -- on the -- I was on the way to the store or I
20 was on the way here or there. They came parked once in the
21 driveway and over half a dozen times -- well, let me say a
22 half a dozen times in front of the driveway. And at that
23 time I would call my attorney, Scott Bellamy, and I asked
24 him, they're out in front of my driveway again, and he
25 said, Mick ---

1 THE COURT: Don't tell us what he said.

2 BY MR. WILSON:

3 Q. Are you saying that?

4 A. Oh, that's my lawyer.

5 Q. Becky was at your house. This is after y'all had
6 separated?

7 A. Yes.

8 Q. Okay, and when are we talking about in terms of time
9 frame?

10 A. After a, after the restraining order from family court
11 was on both of us.

12 Q. Okay.

13 A. Both of us had a restraining order from family court,
14 and -- okay, I can't say what Scott said, but let's see ---

15 Q. Did you see her at your -- in your driveway?

16 A. Absolutely.

17 Q. You saw her?

18 A. Yes, I did.

19 Q. On how many occasions?

20 A. I seen her myself three times.

21 Q. All right. Okay. Did you have a problem with that,
22 with the fact that she was coming in your yard?

23 A. Well, it rose my curiosity because apparently she had
24 charged me with things that were not true and I -- well,
25 she's -- wait. I caught myself that time. People that

1 told me ---

2 THE COURT: No, sir, don't -- can't say what somebody
3 said.

4 WITNESS: Right. Oh, ha ha.

5 THE COURT: I hold the state to the same rules, sir.

6 WITNESS: Right, you're right. I'm trying, Your
7 Honor. I haven't got there yet.

8 BY MR. WILSON:

9 Q. Just tell me, Mick. What was your understanding of
10 how she felt about being around you?

11 A. Well, at that time I wasn't quite sure because she's
12 riding by my house and coming by my house, and parking in
13 my driveway. And I never pushed it to a point to say,
14 look, we need to go ahead and call the cops, say she broke
15 that restraining order. It was beyond me why she was doing
16 that. I believe it was to bear trap me.

17 Q. How do you mean bear trap you?

18 A. Well, again the lawyer -- but I'm going to go by my
19 own good judgment. My own good judgment told me ---

20 Q. What I asked you was you said that she's been doing it
21 to bear trap you, and what I asked you was -- tell me what
22 it was -- how it is that she was trying to bear trap you.

23 A. Okay. Well, without saying my lawyer or anybody, I'm
24 going to say in my own good judgment. I thought that I
25 shouldn't leave the house because all she had to do was

1 take a picture of me behind her, and I'd be back in jail.

2 So, therefore, in my own good judgment I decided not to
3 leave the house on every occasion.

4 Q. All right. So then what? Go ahead.

5 A. Well, they kept -- those times kept coming and going.
6 I had, I had people down from Raleigh; other people seen
7 it, photographed it, video. Videotaped it, I mean. There
8 isn't any more proof that can be done on that behalf that
9 that's what she was doing, but I didn't do anything about
10 it because, I mean, what use would it have been, you know?
11 She breaks the restraining order.

12 Q. Well, did you ever go to the police to report that,
13 that she was coming around your house?

14 A. Well, there again I can't tell you because my lawyer
15 confirmed to me something.

16 Q. No, I'm not ---

17 A. And I can't tell you what he said.

18 Q. But I'm simply asking you is if -- at any point in
19 time, did you contact the police and say, look, she's
20 coming around my house in violation of the restraining
21 order?

22 A. Yes, as a matter of fact I did. I told Aaron Wilkes.

23 Q. Is he with the county police?

24 A. I just remembered that, yes, sir. He was in charge of
25 the monitor division of the Horry County Police Department

1 at that time.

2 Q. All right.

3 A. He was at my house several times.

4 Q. All right. Now, Mick, let's go on. You said you
5 wanted to talk about Tammy Cox, right? What else did you
6 want to talk about? Who else?

7 A. Well, actually the Jody of Chip and Jody Harrington
8 that left the room abruptly.

9 Q. You've already talked about Jody.

10 A. No, I didn't clear all that about Jody.

11 Q. All right. What is it about Jody that you wanted to
12 talk about?

13 A. Well, there were certain things that brought up some
14 very interesting things that -- well, for one thing, the
15 prosecution, they really, they went out of the way to avoid
16 those DVDs, which I understand we cannot use them now. But
17 they went out of their way to just -- because they, they
18 brought every piece of evidence out except them DVDs, which
19 they knew what was on them.

20 Now, Becky wanted those -- I can't say -- never mind
21 about that. Okay. I'll move on.

22 We had a -- we had taken the kids -- several of our
23 couple friends had children the same age as J [REDACTED], and
24 on Halloween of '04 we took them to one of the haunted
25 trails. It was the one by Tide Water in North Myrtle

1 Beach. It was at an old camp, encampment -- I forget what
2 it used to be called, but there are buildings like every
3 hundred yards and it was -- even at my age it was, it was
4 cool. It was quite, nice and the kids had a great time.

5 But anyway, Jody was with us that night and we all
6 went back to my -- our house, and all the couples that are
7 with us lived real close by, and we had a few drinks this
8 and that. And Jody decided she was going to leave. She
9 was not with Chip that evening. She got down as far as the
10 DMV, which is almost a mile from the house, and called the
11 house and said that she couldn't go any further. Would
12 someone please go and get her.

13 Me and another, and another friend drove down, got
14 her. He brought her car back to the house and she rode
15 back with me. Decided she should stay the night instead of
16 drive all the way to Loris.

17 Okay, we went to bed. At 3:30 in the morning, she
18 come bursting in our bedroom saying that, oh, my god.

19 MR. HEMBREE: Objection, Your Honor. Objection.

20 BY MR. WILSON:

21 Q. Can't tell us what she said.

22 A. Okay. At 3:30 in the morning I was awakened. Someone
23 said that J [REDACTED] was gone.

24 MR. HEMBREE: Objection, Your Honor.

25 THE COURT: Sir, do not tell us what anyone said, sir.

1 But if you were concerned that your son was gone because
2 someone burst in there and told you that, then what did you
3 do after that? You want to say what you did after that?

4 WITNESS: Yes.

5 BY MR. WILSON:

6 A. I jumped up and -- I mean, you know, I woke up out of
7 a dead sleep, and we were concerned that maybe he slipped
8 out of his window, which, you know, we thought about it
9 before, but never pushed it, and it turns out that
10 J [REDACTED] s sleeping on the couch in his living room, and
11 when I -- you know, I told her, I said, J [REDACTED] is right there.

12 THE COURT: Now, Mr. Wilson, how is this relevant
13 about someone else?

14 WITNESS: Well, Your Honor, I wasn't prepared to go
15 right into this, and we took a left turn when we got
16 rejected on the DVDs, so I'm trying to catch up and make
17 something -- I mean, and it is -- it is relevant to her.

18 It was Becky's friend that's doing this. It was her
19 that invited her into the house. We were wondering what
20 was wrong, why was she looking.

21 THE COURT: Ask the next question, Mr. Wilson.

22 BY MR. WILSON:

23 Q. Go ahead. All right. So, tell me what else happened
24 with you and Jody that night. Anything else happen with
25 you and Jody that night?

1 A. We wondered why she was looking for Jo [REDACTED] at 3:30
2 in the morning.

3 Q. All right. J [REDACTED] was home in bed?

4 A. She's a forty-something year old -- yes. He was on
5 the couch sleeping.

6 Q. All right.

7 THE COURT: Next question.

8 BY MR. WILSON:

9 Q. So, tell me from that point, what -- and I mean, when
10 did ---

11 A. I had to -- I had to tell her to leave the house.

12 Q. What I'm asking you is when is this in your
13 relationship with Becky? At what point in your
14 relationship with Becky does this happen?

15 A. That was about halfway through. It was October 31st
16 of -- well, actually it was November 1st then of '04.

17 Q. Talk about you and Becky's relationship. During the
18 times that y'all were married, tell us about how it was
19 that y'all got along and where you went and how, how much
20 y'all went out and that kind of stuff. Tell us about that,
21 your -- what you did.

22 A. Okay. It started out great. We, we had a lot in
23 common, both of us did. Our first couple dates is -- well,
24 as a matter of fact we met at HS on ---

25 Q. What is that?

1 A. 2nd Avenue. It's a club. Actually, it's a shag club
2 that I had never visited until that evening.

3 Q. How often would you and Becky go out at night on --
4 during the week or on weekends?

5 A. During dating?

6 Q. No, sir. Well, during dating and during your
7 marriage.

8 A. Three to four times a night -- I mean, a week.

9 Q. Three to four times a week?

10 A. Yes.

11 Q. Y'all would go out, and when you would go out three or
12 four times a week, where would you go?

13 A. We go to several different places for happy hour.

14 Q. Like where?

15 A. Poos, Eddie's, HD Spokes, Santa Fe Station.

16 Q. Are all those places that you named, are they bars?
17 Is that what they are?

18 A. They are bar and lounge, yes.

19 Q. All right, and when y'all would go out like that, tell
20 us about what y'all would do in terms of alcohol or drugs
21 or whatever it was that you were doing.

22 A. She drank, she drank Budweiser beer or Bud Light. I
23 had margaritas with no salt and no lime.

24 Q. All right, and when you would go out on a typical
25 night, how much would you drink?

1 A. Probably three to four of those.

2 Q. Okay, three to four margaritas?

3 A. Yes.

4 Q. All right, and y'all -- and you did that at least
5 three, four times a week you're saying?

6 A. Yes.

7 Q. All right, and anything else? You using any kind of
8 drugs?

9 A. Not during the week, no.

10 Q. All right.

11 A. Never on the week.

12 Q. Well, were you using drugs period?

13 A. On the weekend.

14 Q. Well, tell me about that. Tell us about that.

15 A. Well, Becky would always make ---

16 THE COURT: Stop that clicking. The court reporter
17 says that's getting on her tape.

18 WITNESS: That's me. I'm sorry.

19 BY MR. WILSON:

20 Q. Tell us about the drug use that you were involved
21 with.

22 A. Becky would usually line up hers, like, on Thursday
23 night so we had it on the weekend.

24 Q. Well, what I asked you was tell me about you.

25 A. About me?

1 Q. Yes.

2 A. What about me?

3 Q. What I asked you earlier was whether or not you and
4 Becky were using drugs. You said yes, and I was asking you
5 to tell me -- you told me about her. I was asking you
6 about you. What was your ---

7 A. On the weekend.

8 Q. Yes. Tell me about that. Tell us about that.

9 A. She had cocaine; we did cocaine.

10 Q. All right. Both of you did it?

11 A. Yes.

12 Q. All right, and how much cocaine were you using on a
13 given weekend?

14 A. I don't know. She always had an eight ball, which was
15 three and a half grams.

16 Q. All right, and three and a half grams. So, y'all
17 would consume the three and a half grams over the weekend?

18 A. Yes.

19 Q. All right, and much does three and a half grams of
20 cocaine cost?

21 A. She usually bought it. It was of -- it about 120 to
22 \$140.

23 Q. All right, and did y'all do that every Friday and
24 Saturday and Sunday or just on Friday and Saturday?

25 A. No.

1 Q. Or what?

2 A. No.

3 Q. What, explain it to us. That's what I'm asking you to
4 tell us about.

5 A. I'd say three times a month, three weekends a month.

6 Q. Three weekends a month?

7 A. Yes. Of course after the bills were paid. I, I was
8 adamant on that. We had a new house. I had my car was
9 paid for. House payments came first. Groceries were
10 second. Everything else was -- or it wasn't my money that
11 bought it, in fact, and to put it that way. If she wanted
12 it, she was paying for it.

13 Q. All right. All right. So, you telling us that you
14 never bought it?

15 A. No, I didn't.

16 Q. All right, and, and how long did y'all do that?

17 A. Ever since I -- well, no. When we were dating, she
18 didn't bring it up until about a month or so before, before
19 we got married.

20 Q. Well, how did cocaine affect y'all's relationship, the
21 use of cocaine?

22 A. Hardly any at all. She -- I never seen the woman that
23 could drink so much, and I believe it was because of that.

24 Q. Well, what I was asking, though, is how did cocaine,
25 if at all, how did it effect your relationship with your

1 wife?

2 A. Well, it increased the sex.

3 Q. And is that why you were using it?

4 A. I don't know why I was using it. I was going along
5 with it and it was working good for me for the -- for in
6 the bedroom.

7 Q. Well, did she force you to take the ---

8 A. No.

9 Q. --- cocaine?

10 A. No.

11 Q. I mean, you did it voluntarily.

12 A. No.

13 Q. All right, and had you used cocaine before you met
14 Becky?

15 A. On occasions, but I never liked it and I didn't -- I
16 never got into it. My thing was work.

17 Q. Let me ask you. In terms of -- was there ever a point
18 in time where you felt like the cocaine was becoming a
19 problem for you either financially or because of problems
20 that you were having in your relationship?

21 A. No.

22 Q. No?

23 A. Like I said, it wasn't -- I didn't pay for it. It
24 wasn't financial anything to me.

25 Q. All right. Well, you were placed on some medication

1 by doctors at some point, were you not?

2 A. Yes, I was.

3 Q. All right, and why were you placed on medication?

4 A. Well, that started in traffic a couple of times when -
5 - and now we're at 57 and to come out there, it's by the
6 new DMV. I don't know if y'all know where the new DMV is
7 in North Myrtle Beach by Bell and Bell. We come out of our
8 place, take a right, go towards 9, it's a mile to that
9 light. Some mornings and some afternoons and at happy
10 hour, the cars were lined up almost to our turnoff at
11 Stone's Edge.

12 So, I'd be sitting there: man, come on. You know,
13 peopled stall and, you know, they're lolly gagging around,
14 and we'd sit sometimes three or four lights, and I'd be
15 aggravated and she said, you know what, Mick ---

16 Q. You can't ---

17 A. Oh, that's right. I was introduced to a, a theory of
18 going to a doctor to help me for that, and it was Dr.
19 Sherm.

20 Q. You were introduced to going to a doctor to help you
21 to deal with ---

22 A. For a little bit of anxiety and, like, to slow down.
23 I was very anxious all the time. I was -- I mean, I
24 overdid my deck. I -- it didn't need to be that big, and I
25 just overdid it even. That's just how I am. I like to do,

1 okay.

2 Q. So ---

3 A. So, after doing that, the doctor prescribed something
4 for me. I started on them and one time while we were
5 sitting out there, I was complimented that, guess what, we
6 just sat through three lights and you didn't even notice
7 it, you know, so.

8 Q. So after you started taking your medication, you were
9 able to sit through lights? Is that what you're saying?

10 A. Yes. It was just one of the things that helped me.
11 It was good -- it was a good -- good advice.

12 Q. So, so you went to -- did you go to counseling also?

13 A. Yes, I did, one time.

14 Q. All right, and was that with a psychiatrist or with a
15 counselor or...

16 A. I'm not supposed -- if I say that, I have to say what
17 someone said.

18 Q. No, I just asked you whether the person that you went
19 to was a psychiatrist or a counselor.

20 A. A psychiatrist one time.

21 Q. All right. All right, and when would that have been?

22 A. Zero four.

23 Q. Okay, and did the psychiatrist give you any
24 medications?

25 A. No.

1 Q. And were you supposed to go back?

2 A. Yes.

3 Q. All right. You did not go back?

4 A. No.

5 Q. All right. Any particular reason that you didn't go
6 back?

7 A. I can't say that.

8 Q. Well, did you have a reason for not?

9 A. I'd like to say that but I can't say that.

10 Q. I'm not asking you what somebody else said. I'm
11 asking you what your reason for not going back was.

12 A. I made a comment that I was entwined in love and all
13 mangled up and that. And it was brought to my attention
14 that I had all my eggs in a Becky basket, and we will --
15 and I was supposed to discuss that the next time when I
16 revealed that to the person that requested me to do that.

17 Q. Well, I'm not asking you who you revealed it to. What
18 I was simply asking you is whether or not as a, as a result
19 of going to this person, this psychiatrist and whatever it
20 was that he or she said to you, you decided not to go back.
21 Is that what you're saying?

22 A. Correct.

23 Q. All right. Now, were you already on medication before
24 you went to the psychiatrist?

25 A. You know, I don't really know that. I think. I think

1 I went to Dr. Sherm after that at Access Medical.

2 Q. Okay.

3 A. If I remember right. I think I -- yeah.

4 Q. Maybe went to Dr. Sherm after that. Prior to your
5 relationship with Becky, were you on any medication for
6 anxiety?

7 A. No.

8 Q. Now, you ultimately lost your job. Is that right?

9 A. Yes. Well, you had asked me earlier what -- how our
10 relationship started and how we got along and that. Isn't
11 that what we were doing? You want me to continue on that
12 instead of jumping?

13 Q. Well, let me ask you about your job first. You
14 ultimately lost your job. How did you lose your job? Tell
15 us how you lost your job.

16 A. I failed to go -- let's see. They put it down --
17 well, I can't say that.

18 Q. Well, what -- just tell me why you lost your job, why
19 you were not employed there anymore. Were you fired, were
20 you laid off, did they move, did they change the ---

21 A. Changed the ---

22 Q. The job position?

23 A. I don't know the, the format and I really didn't -- I
24 really didn't care for it at that time.

25 Q. Didn't care for what?

1 A. Because I was going for a job at a high, high dollar
2 -- it's a high dollar job, about double the salary at a
3 high rise, any number of the high rises we were going to
4 put my applications in with.

5 Q. Had you started missing days from work?

6 A. Yes, I did.

7 Q. All right, and why were you missing days from work?

8 A. Just didn't go. I had been there for all that time
9 and never missed any work.

10 Q. Well, why weren't you going? You had been there for
11 nine years or better. Why weren't you -- why did you stop
12 going to work?

13 A. I didn't feel like it.

14 Q. Why?

15 A. I don't know.

16 Q. So, you just didn't feel like it so you just didn't
17 go?

18 A. No.

19 Q. All right. Well, how were you paying your bills if
20 you ---

21 A. I had money.

22 Q. All right. Where did you get money from if you
23 weren't working?

24 A. Savings.

25 Q. And how much money had you saved?

1 A. I don't know the exact amount. Becky took care of
2 almost all the accounting.

3 Q. Well, were you getting help from your family?

4 A. Yes.

5 Q. All right.

6 A. If I needed it.

7 Q. I'm sorry?

8 A. If I needed it.

9 Q. All right. All right, and ---

10 THE COURT: About five more minutes.

11 MR. WILSON: All right, sir.

12 BY MR. WILSON:

13 Q. In regard to the -- to your drug use, finish that up.

14 A. Well, we were at a point.

15 Q. Sir?

16 A. We were at a point, and I never got finished that
17 question as to what we were doing before -- and what
18 brought that on, the drugs.

19 We -- our favorite place to go is HD Spokes and we
20 went there often there and at Poos, but our main -- and
21 every time on the way home from there we -- if we were on
22 the south end, we'd pass Eddie's and we'd stop in at
23 Eddie's. And you were asking what we did and what our time
24 -- what we did with our time and them. We got -- and we
25 were sipping drinks at that time, and they had a

1 computerized game that we just loved. And we'd go there
2 and as soon as we'd get in there, they'd set the computer
3 boxes right in front of us, and we knew everybody in the
4 place. And we'd play that, you know, three or four games.

5 Q. How, how much -- you said that an eight ball cost
6 \$120, right? How many eight balls did y'all use in a
7 week?

8 A. One.

9 Q. One. All right, and that was -- you said ---

10 A. And it wasn't every week. It wasn't every week. It
11 was every -- about three times a month.

12 Q. How much did you spend on alcohol?

13 A. I don't know how much we spent on alcohol.

14 Q. Was it ---

15 A. We had a bar in the back yard.

16 Q. Was it more than the amount that y'all spent on --

17 A. No.

18 Q. --- cocaine?

19 A. No.

20 Q. Did there come a time, Mick, when y'all weren't able
21 to meet your responsibilities because of your consumption
22 of alcohol and, and drugs?

23 A. Never. My checks kept coming in. I was on, I was on
24 salary.

25 Q. What about after you lost your job?

1 A. Well, of course it went downhill.

2 Q. All right, and once things went downhill, tell me how
3 that started to affect your relationship, when you lost
4 your job and ---

5 A. Becky was moved out by then. There was no
6 relationship.

7 Q. All right.

8 A. I don't know where you're getting with this. I don't
9 know.

10 Q. So, after she moved out and there was no relationship?

11 A. Well, it depends on when you're talking about, what --
12 what relationship? Before 10/10 or after 10/10?

13 Q. You told me that y'all separated in September of
14 '05 ---

15 A. Yeah.

16 Q. --- correct? And what I'm simply asking you was if
17 y'all separated in September of '05.

18 A. I still had my job then.

19 Q. When did you lose your job?

20 A. I don't know the exact date. The -- it was in
21 October.

22 Q. So, you lost your job in October?

23 A. I think. I'm going to have to check on that but I
24 think it was.

25 Q. Now, let me ask you this ---

1 MR. WILSON: And, Your Honor, sorry. I can stop after
2 this.

3 BY MR. WILSON:

4 Q. At any point in time, did you or Becky get any help
5 for your drinking and for your alcohol?

6 A. No, we didn't.

7 Q. All right. I'm sorry. For your drinking and your
8 cocaine?

9 A. No, we didn't.

10 Q. And did that continue right on up until your
11 separation?

12 A. Yes.

13 Q. All right, but you don't believe that that affected
14 your separation?

15 A. Not at all.

16 MR. WILSON: Your Honor, could we...

17 THE COURT: All right. Ladies and gentlemen of the
18 jury, at this time we'll break for the evening. If you
19 would, I know that it's been a long day, but we really need
20 to get started early tomorrow.

21 Try to be back here at the courthouse around 8:45, and
22 I'll try to come on the bench about 9:00 so we can see if
23 we can somehow get, if not all, most of the evidence in to
24 you tomorrow. If not, we'll come over Thursday and finish
25 it then.

1 But do not discuss this case at all, please. Do not
2 discuss it at all. We'll see you tomorrow morning. We'll
3 start on the bench about 9:00. See you then.

4 (THE JURY EXITS AT 8:15 P.M.)

5 (A PAUSE.)

6 THE COURT: All right. If you would, Mr. Wilson, let
7 me see you at the bench here with Mr. Hembree on an
8 administrative matter.

9 (OFF-THE-RECORD BENCH CONFERENCE.)

10 THE COURT: Now, sir, you can talk with your lawyer.
11 Nobody prohibits that. But please understand you have an
12 absolute right to speak and discuss issues of the case with
13 your lawyer.

14 The only prohibition is working on testimony in the
15 sense of hey, did I bring this up right, did I bring that
16 up right, what you're going to ask me next, those type of
17 things. You should continue tomorrow just as if there was
18 no break in the testimony, okay?

19 WITNESS: All right.

20 THE COURT: All right. You may step down.

21 (THE WITNESS EXITS THE STAND.)

22 THE COURT: Everybody, we'll break and see everybody
23 tomorrow morning. Yes. Wait a minute.

24 (A PAUSE.)

25 THE COURT: All right, everyone, see you all again

1 tomorrow. Have a good evening.

2 (WHEREUPON, THE CASE IS AT EASE.)

3 WEDNESDAY, FEBRUARY 6TH, 2008

4 (COURT RESUMES AT 9:14 A.M.)

5 THE COURT: Everyone ready to proceed, sir? Mr.
6 Wilson, you ready?

7 MR. WILSON: I'm ready, Your Honor.

8 THE COURT: Is the state ready?

9 MR. HEMBREE: Yes, Your Honor, the state's ready.

10 THE COURT: All right. If you would, Mr. Winkler,
11 come back up forward to the witness stand.

12 While he's doing that, I want to see movement out
13 there: people checking cell phones, radios. All right.
14 Let's go ahead and bring the jury in, please.

15 (THE JURY ENTERS AT 9:17 A.M.)

16 THE COURT: As we recall, we're, as I recall,
17 somewhere around November -- October the 10th, 2005.

18 MR. WILSON: That's where we are, Your Honor.

19 (A PAUSE.)

20 THE COURT: Having my late dinner last night, trying
21 to stay awake while eating a late dinner, I get a phone
22 call thinking uh-oh, something is wrong with one of the
23 jurors, but it's Mr. McLeod calling while he's on the way
24 himself to the hospital, but he's okay now. So, I think we
25 are ready to go.

1 I know he's had very little sleep but, Mr. McLeod,
2 glad to have you back with us. Hope everything is going to
3 be fine.

4 All right, ladies and gentlemen, ready to proceed now
5 with our first testimony in the case.

6 Mr. Winkler, I remind you, sir, that you're still
7 under oath. Do you understand that, sir?

8 WITNESS: Yes, sir.

9 THE COURT: You may proceed, Mr. Wilson.

10 MR. WILSON: Thank you very much, Your Honor.

11 DIRECT EXAMINATION BY Mr. WILSON RESUMES:

12 Q. Mick, let's start back at -- I think we left off when
13 you were at 10/10, October the 10th of '05, and I want you
14 to go ahead and tell us what happened on that day, October
15 10th of '05.

16 A. Okay. I believe we have already -- we made it up to
17 the part where I was at the road at 10/10 on 10/10/05
18 behind Seacoast Medical Center when Becky pulls up and ran
19 into my car. There are police reports that say that.

20 THE COURT: No, you have to tell us, sir, what
21 happened in your view, sir. You don't need to tell what
22 other...

23 BY MR. WILSON:

24 Q. Just tell me what you did.

25 A. Okay. I was sitting in my car when she came around

1 the corner and slammed on her brakes. She was going way
2 too fast and banged into my car.

3 Q. Then what happened?

4 A. The rear passenger door right in front of the handle,
5 I believe we did show that picture. Did we?

6 Q. Put a picture ---

7 A. Okay, it's the only dent in my car, and it happened on
8 that -- on that evening.

9 Q. All right. Then what happens?

10 A. She pulled her car to the right and pulled off the
11 road. She went across the road then. This is a very
12 isolated road, by the way; it's hardly ever used. It's
13 like a service road for the hospital behind it. She pulled
14 over to the right off the road.

15 Q. Okay.

16 A. And she had her window halfway down, and I said what
17 are you doing? I said, you are drunk, and she said ---

18 MR. HEMBREE: Object.

19 BY MR. WILSON:

20 Q. Not what she said. After she ---

21 A. Okay.

22 Q. She made the statement what did you do?

23 A. I told her that.

24 Q. All right.

25 A. She didn't say that.

1 Q. What did you do then?

2 A. I was told if I wanted to go ---

3 MR. HEMBREE: Object.

4 THE COURT: He asked what you did.

5 BY MR. WILSON:

6 Q. What did you do? Just tell me what you did.

7 A. I got out of my car, went around the passenger's side
8 of her car and got in.

9 Q. Okay, and after -- where -- and once you got in the
10 car, where did y'all go or where did you intend to go?

11 A. Okay. I think we hit this road, then we went straight
12 ahead, took a right past the helipad at the Seacoast
13 Medical Center, and that road led to a stop sign or
14 stoplight that comes out on Route 9.

15 Q. Okay. Where were you headed to, Mick?

16 A. When we took the left off of there, we were on North 9
17 headed towards our house.

18 Q. Okay. Why were you going to your house?

19 A. We were going to get the bolt of tequila.

20 Q. And you were going to Bitter Spar Road?

21 A. Yes, we were. We went to Bell and Bell Pontiac and
22 took a right on that road and we went, we almost made it
23 halfway.

24 Q. Okay. So, did you make it to Bitter Spar Road?

25 A. No, we did not.

1 Q. Tell us what happened.

2 A. We, we had gone left of center.

3 Q. Okay.

4 A. Like I said, she was pretty intoxicated. She went
5 left of center and jerked the wheel back to the right.

6 There was a car coming head on, I mean, we were head-on
7 collision. It was go to happen. She over-compensated,
8 jerking the wheel, and we with -- we went straight off the
9 road at an angle that was real abrupt, and we jumped a
10 ditch and slammed into a thicket of trees. There were
11 smaller trees.

12 Q. All right.

13 A. I'd like to show the picture of the tracks that jumped
14 off the road. There's no skid marks or brake marks or
15 anything.

16 Q. Let me show you these photographs, which is State's
17 Exhibit Number 64.

18 A. Yes.

19 Q. All right, and State's Exhibit Number 63.

20 A. That's the ditch we jumped over.

21 Q. Okay.

22 A. No. No, no, no, no, no. This one here is wrong.
23 This one here is where they drove the car out from the...

24 Q. When you say this one here, you're referring to
25 State's Exhibit 63?

1 A. Yes.

2 Q. Okay.

3 A. Get my glasses on here.

4 WITNESS: May I stand with Mr. Wilson?

5 THE COURT: You may, but ---

6 WITNESS: Okay.

7 THE COURT: The first one, the one that you say is not
8 accurate as far as when the police got there, why don't you
9 put that one aside and just go to the ones that you're
10 saying are those ---

11 WITNESS: Okay ---

12 THE COURT: --- that happened.

13 WITNESS: Okay. The one is...

14 BY MR. WILSON:

15 Q. Have 63 back.

16 A. 63 is the one where they towed it out of there.

17 Q. All right.

18 A. This one is the direct route off the road that we took
19 when we jumped the ditch and went straight into it.

20 Q. Okay.

21 A. The other one is that -- they dragged it out of there
22 at a different angle.

23 Q. Let me show you ---

24 A. We sat and watched it.

25 Q. Let me show you State's Exhibit 62, and is that the

1 road that you're referring to?

2 A. Yes, that's the same one. This is a close-up of that
3 one.

4 Q. And this one also?

5 A. That is route 57, yes.

6 Q. And 62 also shows the roof?

7 A. Yes.

8 Q. All right. Okay.

9 A. What's the one in your hand there?

10 Q. These are the only two.

11 A. All right.

12 Q. All right. Go ahead. After you -- after the car
13 jumped off the road, went into the bushes, then what?

14 A. Then I proceeded to get out of the car.

15 Q. Okay. What did ---

16 A. And to our surprise ---

17 Q. Just listen to me. Tell me what you did once you got
18 out of the car, and tell me what you did.

19 A. I leaned back over into the car. I said you need to
20 take your, you know, get out of the car, and she said I
21 can't.

22 Q. All right.

23 A. Okay. She didn't say nothing. She was trying ---

24 THE COURT: I will -- wait a minute, sir. I will
25 permit that as a...

1 BY MR. WILSON:

2 Q. Go ahead.

3 A. She was trying to bump the door, and she -- the handle
4 was already pulled, but it wouldn't go because there was a
5 tree standing, like, right in the mid window part. The
6 door only opened three or four inches. From what I could
7 see from across the passenger side, she's hitting on it. I
8 said, well, you need to crawl across the console, and she
9 did.

10 Q. All right. So, what did you do as a result of that?

11 A. I helped her out of the car.

12 Q. All right, and you helped her out on which side?

13 A. The passenger's side.

14 Q. The passenger's side. So, once you get her out of the
15 car, you're out of the car, what do y'all do then? Tell me
16 what happens from that point.

17 A. There were several cars that came by and slowed down.

18 Q. Okay.

19 A. And she said, Mick, get me out of here.

20 Q. All right. Let me ask you this. Did y'all try to get
21 a ride?

22 A. No, sir.

23 Q. You said that several cars passed by. Why were you
24 not trying to get a ride?

25 A. They, they did not slow down. Several cars passed by.

1 We stood -- now remember, we're off the road and it's dark.
2 There's no lighting there at all. We were just, like,
3 standing in that person's yard.

4 Q. All right. Did you walk over to the road?

5 A. Yes, we did.

6 Q. The road's how far from you when you -- when you
7 impact into the woods, how far are y'all from the road?

8 A. That's -- I want to say 30 yards maybe.

9 Q. Okay. Did y'all walk those 30 yards and come back to
10 the road to try to ---

11 A. Not -- no, we didn't get close to the road.

12 Q. All right. So, what did you do? You didn't get close
13 to the road. What did you do?

14 A. No. I mean, we did eventually get to the road and
15 then crossed over the road.

16 Q. Went on the other side of the road?

17 A. Yes.

18 Q. All right. Why were you going on the other side of
19 the road?

20 A. Well, we were going to head for the house.

21 Q. Which house?

22 A. Our house which was down 57 another half mile to a
23 quarter mile.

24 Q. Okay. All right, but did you go to your house?

25 A. No, we did not.

1 Q. What did you do then?

2 A. We went right into the woods right where it was on the
3 other side of the street. We, we had crossed over the
4 street and when another line of cars started coming, we got
5 down over the embankment and stepped in maybe four or five
6 feet into the, into the woods.

7 Q. Okay. Now, did you stay over on that side of the
8 street in the woods?

9 A. Yes, we did.

10 Q. All right, and at some point in time did other
11 vehicles arrive to where the impact had occurred?

12 A. Yes, it wasn't too long. I don't know if a 911 call
13 from a passerby had seen the car, or if it was the people
14 that lived there or whatever. But nevertheless, a cruiser
15 came by and we got deeper into the woods.

16 Q. All right. How long had y'all been there in the woods
17 before the first cruiser came to the scene?

18 A. That couldn't have been no more than -- again, this is
19 just judging by -- from the time we got out of the car till
20 a cruiser came by, had to be like five minutes I'd say.

21 Q. Okay.

22 A. Or less.

23 Q. All right, and now you're not in the side where the
24 car is, you're on the other side?

25 A. Yes, we are.

1 Q. All right, and so what happens then?

2 A. Well, when other cars started coming and we went
3 further into the woods, furthest we got at that time was
4 probably from me to you. The woods were really thick at
5 the time.

6 Q. Okay. What are y'all doing in the woods? Now, the
7 police are out there because you -- and you see the police
8 cars, right?

9 A. Yes.

10 Q. All right. So, what are y'all doing in the woods?

11 A. She sit -- okay.

12 Q. Tell me what you said.

13 A. I'm not getting a DUI. You need to help me out here.

14 MR. HEMBREE: Object, Your Honor, hearsay.

15 THE COURT: Just proceed on. Let's -- don't tell us
16 what she said, sir.

17 WITNESS: Okay.

18 THE COURT: He said that last.

19 BY MR. WILSON:

20 A. To protect her, to protect her from that because I had
21 no -- I had nothing to worry about. I wasn't -- I wasn't
22 in any -- let's see. I couldn't have been arrested. I was
23 completely innocent of anything. I was a passenger in the
24 car.

25 Q. All right. So, the police are out there searching at

1 this point. Is that correct?

2 A. Yes.

3 Q. All right. So, what are y'all doing in the woods
4 while the police are out there searching, looking for the
5 vehicle and looking for her and for you?

6 A. Well, they found the vehicle right away, and we
7 watched them. She was laying flat on her belly on her
8 haunches like this.

9 Q. And what were you doing?

10 A. I was sitting up, and at one part I was told to get
11 down, get down.

12 MR. HEMBREE: Object, Your Honor, hearsay.

13 THE COURT: Let's proceed on.

14 BY MR. WILSON:

15 Q. Okay. So?

16 A. I mean, yeah, she's fifty years old. She knows
17 exactly what she's doing.

18 Q. All right. What are y'all doing when the police are
19 out there? You're saying that she's on her haunches.
20 She's on her haunches and you're sitting up. What else
21 happens in the woods? Tell me what happens, not what you
22 said but what happens.

23 A. What happened then?

24 Q. Yes.

25 A. More and more -- well, the fire department got there.

1 I think an EMS came in.

2 Q. Okay.

3 A. We seen Scott and Haley's car. Well, we seen Haley --
4 Scott's car, Haley's boyfriend come by and I don't remember
5 exactly what time that was after that happened or whatever.
6 But we seen them, and I don't remember. We seen trucks,
7 and again, I can't say...

8 Q. Well, let me ask you this. What were you and Becky
9 doing in the woods while the police are out there
10 searching, the rescue people are out there, the police are
11 out there? What are y'all doing?

12 A. Laying there watching them.

13 Q. All right. Now, do you watch all night the entire
14 time while they are?

15 A. No, but pretty much all night we watched them. Once
16 they came close with the camera -- not a camera, a
17 flashlight. They shined it through. We were within --
18 like I said, after we moved back a little further, I'd say
19 from me to the sheriff back, that's all the further we
20 were.

21 Q. All right.

22 A. At any time either one of us could have said, hey,
23 we're right here.

24 Q. All right. Now, once the -- during the course of the
25 night, tell me what else transpired between you and Becky.

1 You told me about the police and law enforcement. They're
2 searching and they're looking and they're shining lights.
3 What I'm asking you now is to tell me what you and Becky
4 did the remainder of the night.

5 A. Okay.

6 Q. Tell us what happened.

7 A. Well, before they close in -- again I have to say
8 something, but I can't say.

9 THE COURT: He asked you what you did, sir. He didn't
10 ask you about what anybody said. He asked you what you
11 did.

12 BY MR. WILSON:

13 A. Okay. She took my clothes off, she took her own
14 clothes off and we had sex right there.

15 Q. All right. Now, after that what?

16 A. Said we don't have nothing else to do. We -- she
17 said ---

18 MR. HEMBREE: I object, Your Honor.

19 THE COURT: Sir, quit telling us what she said, sir.
20 Just tell us what you did.

21 WITNESS: Okay.

22 BY MR. WILSON:

23 A. I complied with that. We had sex twice while we were
24 in that position, in that -- at that place watching them
25 and...

1 Q. All right. Then what? Then what did you do after
2 that? You had sex twice that ---

3 A. Then we moved. She didn't feel that comfortable there
4 because somebody came into the, into the woods with a
5 flashlight, probably five to ten feet, and she got nervous
6 and said let's go.

7 Q. All right.

8 A. And up we got and we moved.

9 Q. Well ---

10 A. We moved.

11 Q. What was she wearing when, when all this was
12 happening? What is she wearing?

13 A. She had -- at the beginning she had her shorts and her
14 shirt on, but she left right there on the scene. I said
15 you need your shorts and shirt, and she said ---

16 MR. HEMBREE: No, sir.

17 THE COURT: No, sir, don't tell us what she said.

18 BY MR. WILSON:

19 A. It was too late by then.

20 Q. Listen to my question. What, what I asked you was
21 just tell me what she was wearing. Tell me what she was
22 wearing. I don't want to know what she said. Just tell me
23 what she was wearing.

24 A. She had her shorts and her shirt on.

25 Q. Okay. Now, at some point in many time, did she take

1 off or did -- were the shorts ---

2 A. She did take ---

3 Q. Listen to my question. Just listen to my question.

4 At some point in time, was the shorts and the shirt
5 removed?

6 A. Yes.

7 Q. All right, and at any point in time once they were
8 removed, did she get them back on?

9 A. Not those clothes, no.

10 Q. Okay. How long was she without clothes?

11 A. About three minutes, three to five minutes.

12 Q. All right, and during those three to five minutes, she
13 had on no clothes?

14 A. Yes.

15 Q. What did you have on?

16 A. I had my clothes on.

17 Q. You had your clothes on?

18 A. I had shorts, a shirt, and some dock, dock shoes.

19 Q. All right. Now -- well, where did you leave her
20 clothes?

21 A. They were right there at the second spot, not more
22 than twenty feet, about twenty feet in.

23 Q. All right, and that was all of her clothing?

24 A. That's all she had on. It's usually all she wears.

25 Q. So, all the clothing that she had on is left in that

1 spot?

2 A. Yes, it was.

3 Q. Her shorts, her pants, her shorts, her shirt and her
4 underpants?

5 A. She didn't have any underpants on.

6 Q. She didn't have any underpants on?

7 A. No.

8 Q. All right, and you had on what?

9 A. Bicycle shorts and then jean shorts and a T-shirt.

10 Q. All right. Now, from the pictures -- apologize for
11 leading, but from the pictures there are a lot of bruises
12 and scratches on her back and stuff. How did that happen?

13 A. Probably during -- well, from what I saw because I
14 seen her and she goes, what's that on my back right there,
15 and I ---

16 THE COURT: Sir, don't tell us again what she said.

17 WITNESS: All right.

18 BY MR. WILSON:

19 Q. I just want you to tell me how it happened, not what
20 she said.

21 A. From being on her back.

22 Q. Now, at any point in time -- where did she get her
23 clothes -- at some point in time she ended up with a
24 T-shirt on. Is that correct?

25 A. Yeah. Yes.

1 Q. All right. Whose T-shirt was that?

2 A. Mine.

3 Q. All right, and when you gave her your T-shirt, then
4 you didn't have any shirt?

5 A. No, I did not.

6 Q. All right, and what about underpants? Did she have on
7 any underpants?

8 A. No, she did not.

9 Q. All right. Did you give her yours?

10 A. I gave her my bicycle shorts, yes.

11 Q. All right, and now when did that happen?

12 A. About three minutes after we moved -- we had to move
13 from the one spot because the flashlight came into the
14 woods. I said, I said we can just give -- you know, tell
15 them -- let's go, let's get out of here, go get in the car.

16 THE COURT: No, not what she said.

17 WITNESS: I'm not. I'm saying what I said. I said
18 it's a DUI, Becky. She said, I can't ---

19 THE COURT: No, sir. Don't tell us what she said.

20 WITNESS: Okay.

21 BY MR. WILSON:

22 Q. All right. All right. So ---

23 A. I'm sorry. I keep forgetting about that.

24 Q. All right. So, at some point in time y'all moved?

25 THE COURT: By the way, Mr. Wilson, I couldn't wait,

1 Mr. Hembree, for you to object, and I guess I shouldn't
2 because you may not object, but would you rather I do this
3 and continue a continuing objection, or you rather I wait
4 for you to object?

5 MR. HEMBREE: Your Honor, I move it be a continuance
6 -- a continuing objection.

7 THE COURT: All right.

8 MR. HEMBREE: I will probably jump in some.

9 WITNESS: I will try my best, Your Honor, not to do
10 that.

11 THE COURT: All right. Proceed on.

12 MR. WILSON: Thank you, Your Honor.

13 BY MR. WILSON:

14 Q. All right. So, at some point in time y'all move and
15 she's now wearing your T-shirt and the bicycle shorts?

16 A. Yes.

17 Q. Okay, and when y'all move, where did you go?

18 A. We moved a little deeper back.

19 Q. All right. A little deeper back into the woods?

20 A. Yes.

21 Q. All right. Now, do you stay in the woods all night?

22 A. No.

23 Q. Well, tell me what you did.

24 A. We went to the left. If you're looking at from where
25 we went off the road, if you're looking at it, across the

1 street. We went to the left. There was only a small patch
2 of woods there from here to the end of the wall.

3 Q. All right, and what time of night or morning was this
4 that you were going to, to the left?

5 A. Okay, I'm guess, I'm guessing from 9:30 when we got in
6 the car till the wreck was only two minutes later, we
7 stayed and watched ambulances and everybody come by and all
8 that for probably an hour. We moved and stayed there for
9 an hour, so I'm guessing it was near midnight.

10 Q. All right. Where did you go midnight? Where did you
11 go?

12 A. Okay, we came out of the woods and there was a field
13 there. We crossed across a field, and we stopped and
14 looked back and they're all right there; they're within a
15 very close distance.

16 Q. All right, where did y'all go is what I'm asking.

17 A. Okay, we passed that cornfield, and there was a small
18 thicket between a -- someone's house, which was no large --
19 no deeper than the jury box. We crossed through it and at
20 that time we came out at Alesco's, which is a company, a
21 lawn service company right there on 57.

22 Q. All right. Did you stay there for the rest of the
23 night?

24 A. No, we did not.

25 Q. Where did you go from there?

1 A. Well, first of all there was a hose there, and we
2 turned the hose on and both got a drink of water, and I
3 washed up. At one point there was a small, little creek
4 that -- and again it's pitch dark, and I forgot to say she
5 had fallen nearly a dozen times. Myself, I had fallen at
6 least four to five times. When she fell, I had to pick her
7 up, and I did. I picked her up, you know. It left bruises
8 on her, all over her, but I did have to pick her up. She's
9 not a small person, but I had to pick her up.

10 And while we were in the woods, when she was laying
11 down at one point, she had -- her hair came up and again it
12 was pure dark, but I said, your hair is a mess. She said,
13 well, I lost ---

14 THE COURT: No, sir, don't, don't...

15 WITNESS: Okay.

16 BY MR. WILSON:

17 A. She lost her hair clip and I said, well, it's a mess,
18 but it was matted, had pinesap in it, needles. I tried to
19 get most of the stuff out that I could, and she was like,
20 leave it go, leave it go. That's exactly how she does.
21 She was drunk, as, you know, as usual.

22 Q. All right. What I was asking you, though, was where
23 did y'all go? You said that you went ---

24 A. We went ---

25 Q. --- to Alesco's. Let me finish. When you said that

1 y'all went to Alesco's, where did you go after that?

2 A. To a warehouse that was empty, it was just being
3 built. There weren't even door frames on it yet, and I'd
4 like to see the -- there's some pictures of it.

5 Q. There's some pictures of the warehouse that's already
6 in evidence.

7 A. Yes.

8 Q. Is that what you're referring to?

9 A. Yeah.

10 Q. All right, and did y'all spend the night in the
11 warehouse, the remainder of the night or the morning at the
12 warehouse?

13 A. Yes.

14 Q. All right, and you stayed there until when?

15 A. Well, it was before the sun started coming up we did
16 leave and cross back across the road.

17 Q. All right. So before sun up or right at sun up you
18 went back across the road?

19 A. Right.

20 Q. Is this into the wooded area?

21 A. No.

22 Q. All right?

23 A. No more woods. We said we ain't going back in no more
24 woods.

25 Q. So tell me, when you leave the warehouse that morning,

1 where were you going?

2 A. Okay. Well, let me back up. We didn't go anywhere
3 then. We crossed the street first.

4 Q. Okay.

5 A. Went down a dirt road that led to nowhere. I think
6 now in fact it's probably a development. But it leaded
7 nowhere but to more woods behind River Hills Golf Course.

8 Q. All right.

9 A. Turned around and headed back to the warehouse.

10 Q. All right. So you come back to the warehouse. Now,
11 at some point when you come back to the warehouse, is there
12 someone at the warehouse?

13 A. No.

14 Q. All right. Do you see someone at the warehouse at
15 some point in time?

16 A. Yes, later on.

17 Q. All right. So you spend the night the rest of the
18 night at the warehouse?

19 A. Yeah, well we were there -- I want to say we got
20 thereafter we got -- we got to the water house at Alesco
21 was like 12:30 or so, we went into the warehouse and I fell
22 asleep. I don't know if she fell asleep or not but when I
23 woke up she was right there. There's rolls of insulation
24 stood about this high and they were stacked right close to
25 each other. She was spread out on them laying down, but I

1 don't think she was asleep.

2 Q. All right, so you stayed in the warehouse the
3 remainder of the night or the morning until someone showed
4 up?

5 A. Yes.

6 Q. All right, and then once that -- once someone showed
7 up, what did you do?

8 A. Well, the first man that got there, he was in the back
9 of the warehouse, and I need the pictures to show this to
10 the jury.

11 THE COURT: Try it first without. I think they have
12 seen -- try it first. If not, we'll get the pictures.

13 BY MR. WILSON:

14 A. Okay, a man pulled up behind. He was the first one on
15 the scene, and I told her that I was going to go use the
16 cell phone.

17 THE COURT: Don't tell us what she said.

18 A. All right, she remained where she was at the far side
19 of the warehouse. He pulled up in the back part and I went
20 -- had to walk across the warehouse which is a good 40 feet
21 or 40 yards I would say in width, and then I had to walk
22 out to his truck an additional 10 to 20 yards.

23 So, she's sitting right there and to make things
24 clearer, the entrance to the warehouse is like 20 feet from
25 the road 57 which at that time in the morning is backed up

1 from the light and it's only -- it's not even a quarter
2 mile to the light, all the way half -- almost to our house
3 a mile away, cars bumper to bumper.

4 And the -- there is no doors on the warehouse, just
5 the frame of the -- of a door. There's no doors locked
6 shut or open.

7 THE COURT: Ask your next question.

8 BY MR. WILSON:

9 Q. Now, you made the -- did you make a phone call that
10 morning?

11 A. Yes, I went and asked that gentleman for if I could
12 use his cell phone.

13 Q. And he let you?

14 A. And he was very polite and said, yeah, sure.

15 Q. And did you make a call?

16 A. Yes, I did. I made two calls.

17 Q. All right. You made two phone calls.

18 A. Yes.

19 Q. All right. What were you trying to accomplish by your
20 phone calls?

21 A. We were going to get a ride.

22 Q. All right, and did you get a ride?

23 A. No, we did not.

24 Q. All right. So you made the two phone calls, you did
25 not get a ride, then what did you do?

1 A. We had to -- well, there was another guy that pulled
2 in front.

3 Q. Okay.

4 A. And they started unloading their van and I said, well
5 look, well -- by that time she's sobering up. It's almost
6 7:00. She's pretty sober. Her attitude changed
7 dramatically. She had to figure out a way to get out of
8 this because she had wrecked Jill's car. She kept
9 repeating that.

10 Q. All right. So then?

11 A. Because that's ---

12 Q. So, so it's 7:00, she's sobered up, what are y'all
13 doing now?

14 A. The man told me, he said, well, you're not going to be
15 able to.

16 THE COURT: What did you do, sir?

17 WITNESS: What did I do? That's what I'm going to ---

18 THE COURT: Don't tell us what someone said. Tell us
19 what you did.

20 WITNESS: Okay.

21 BY MR. WILSON:

22 Q. I don't want you to tell me ---

23 A. Okay. I left the warehouse.

24 Q. All right. Did Becky leave with you or did you ---

25 A. No, she did not.

1 Q. All right. You left the warehouse. Where did you go?

2 A. I started walking right towards Bell and Bell heading
3 straight for the Revco that's across the street, I guess
4 that's at Stephen's Crossroads.

5 Q. All right, and where was your wife?

6 A. She was behind me, and I, I said, I'm going to get my
7 car.

8 Q. All right.

9 A. Because her attitude. I just said I'm going to get my
10 car. You go face what you did.

11 Q. All right. So, you walked on ahead of her?

12 A. Yes, I did.

13 Q. She was with behind you. Then what? Where do you go?
14 From there where do you go?

15 A. Went down to Revco.

16 Q. All right. All right, and you went to Revco for what
17 purpose?

18 A. Well, I was going to use the phone, but all I had on
19 was my shorts, and I was pretty cut up.

20 Q. All right.

21 A. So, I walked on down to 57 to our friend's house.

22 Q. Okay.

23 A. To see if I could get to them. Now, in the meantime
24 -- I have to jump back. In the meantime, they had towed my
25 car that evening. I seen my car get towed to the scene

1 where Becky wrecked us in the woods. So, they had my car.
2 For what reason I don't know because my car was parked off
3 the road.

4 Q. Okay. All right. Now, after you go -- you said you
5 go to Revco? What's the name of the store you go to?

6 A Revco I believe.

7 Q. Go to Revco, and do you make a phone call to get a
8 ride or get someone to pick you up?

9 A No, I did not.

10 Q. All right. Where did you go from Revco?

11 A Down 57 to [REDACTED].

12 Q. Were you still walking?

13 A. It was quite a ways down the road, yes.

14 Q. Were you walking still?

15 A. Yes.

16 Q. All right, and did you walk all the way to [REDACTED]
17 [REDACTED]?

18 A. Yes, I did.

19 Q. All right.

20 A. No one was home.

21 Q. All right. Is -- now, after you left Becky walking
22 away from the warehouse, correct?

23 A. Yes.

24 Q. That's the last time you saw her that day?

25 A. That is the last time I saw her.

1 Q. All right, and when you got to [REDACTED], tell us
2 what you did when you got there.

3 A. Well, no one was home, which was normal because it was
4 daytime, work -- it was work time, Tuesday. They both
5 worked. So, I cleaned up a little bit, and I fell asleep
6 on their cot in the yard.

7 Q. So, you went in their house?

8 A. Oh, no. I stayed -- I slept on their cot.

9 Q. What, you said you cleaned up. It was a workday?

10 A. Water hose.

11 Q. On the outside?

12 A. Cleaned up the cuts on my legs and on my arms. I
13 washed my face real good.

14 Q. All right. Did you get a shirt?

15 A. Not at that time I didn't.

16 Q. Okay. So, you cleaned up and just was -- stayed
17 around their house until they came home from work?

18 A. I fell asleep on the cot and stayed there till I heard
19 them, someone pull up.

20 Q. You say you fell asleep on the cot. Now, the cot
21 inside the house or outside the house or in the yard?

22 A. It's a swinging cot, the kind, the Pawleys Island kind
23 for outside.

24 Q. Okay. So, you went to sleep in that until they came
25 home?

1 A. Yes.

2 Q. All right, and then when they came home, they feed you
3 and give you some clothes?

4 A. I asked her for a shirt and she accommodated me.

5 Q. All right. Later that day, the police came to arrest
6 you?

7 A. Yes, it wasn't probably twenty minutes after they had
8 got home.

9 Q. Okay. The police came and arrested you and, and they
10 take you to the station?

11 A. I believe I went to ML Brown building right here in
12 Conway. I'm not sure, but I believe that's where it was.

13 Q. All right. Now, when you got to the station, did the
14 police ask you about giving a statement?

15 A. Yes, they did.

16 Q. All right, and did you give a statement?

17 A. I did.

18 Q. All right, and was it a videotaped statement?

19 A. As far as I -- yes, because I have seen it once.

20 Q. All right. Now -- and did you tell them anything
21 different from what you have told here?

22 A. No, I didn't. I told them that Becky was driving the
23 car, and I asked them what I was -- you know, what I was
24 being charged for and why I was being arrested.

25 Q. Okay. Now, after that you were arrested and you had a

1 bond hearing. Correct?

2 A. Yeah. Well, a lot of things happened before that.

3 Q. All right. Well, tell me what is it that happened.

4 A. Well, during the interview they are telling me that
5 I'm arrested for kidnapping, rape and attempted murder. It
6 was absurd. I, I jumped up and said what in the world are
7 you talking about? I mean, I told them that and think they
8 still charged me with it.

9 And my, my thing is is she's driving her daughter's
10 car and it's wrecked, why didn't they assume -- and she's
11 drunk. They didn't give her a breathalyzer or anything and
12 it's her daughter's car that she's responsible for. She's
13 driving. She wrecks it and they arrest me for it, and they
14 didn't even talk to her about being arrested. It was just
15 one-sided. It was completely a one-sided deal where they
16 told me ---

17 And I jumped up. I was furious. I said what are you
18 talking about? Rape, kidnapping, this is my wife. It was
19 our anniversary, and my wife doesn't do anything unless she
20 wants to do it, especially when she's drunk, and, and I
21 just told them that and they just proceeded with, well,
22 you're ---

23 Q. Well, you can't ---

24 A. --- you're under arrest.

25 Q. All right. But you had a bond hearing at some point

1 in time. Is that right?

2 A. Yes, I did.

3 Q. All right. Let's talk about the first bond hearing
4 you had. Tell me, at that bond hearing when you -- were
5 you represented by an attorney at that bond hearing, the
6 first one that you had?

7 A. Yes, I was.

8 Q. All right. Who represented you at the first bond
9 hearing?

10 A. It was a lady named Orrie West.

11 Q. All right, and she's a public defender?

12 A. As far as I know.

13 Q. All right, and ---

14 A. I, I was told ---

15 THE COURT: No, sir.

16 MR. WILSON: No. Sorry.

17 THE COURT: You may proceed on. You may lead a little
18 bit there.

19 MR. WILSON: Thank you.

20 BY MR. WILSON:

21 Q. Ms. West was the public defender. She was the one
22 that represented you at that hearing?

23 A. Yes.

24 Q. All right, and as a result of that, you did not get a
25 bond?

1 A. Well, I was called Dave by her.

2 Q. She called you Dave?

3 A. Absolutely.

4 Q. All right. All right, and -- but you, you did not get
5 a bond that day?

6 A. No, I did not.

7 Q. All right, and -- go ahead.

8 A. It was to my understanding that my mother had called
9 and hired her, and I said now wait -- this is just what I
10 said. I said now wait a minute. A public defender's
11 office, people don't get hired, do they? And she said ---

12 THE COURT: No, sir. Proceed on.

13 BY MR. WILSON:

14 A. Okay, and of course, we all know that public defenders
15 do not get paid. But she -- but that was -- I was told
16 that. Dave, it will be okay.

17 Q. All right, and the judge denied your bond that day?

18 A. Of course he did.

19 Q. All right, and then you hired an attorney. Is that
20 correct?

21 A. Yes. Yes, I did.

22 Q. All right, and that was Mr. Bellamy?

23 A. Yes, Mr. Scott Bellamy out of Morgan Martin's office.

24 Q. All right, and then do you have a second bond hearing?

25 A. Yes.

1 Q. All right, and that was actually in the circuit court?

2 A. Yes, it was.

3 Q. All right, and at that hearing did you get a bond?

4 A. Yes, I did.

5 Q. All right, and what was your bond then?

6 A. Was \$150,000.

7 Q. All right, and were there any conditions placed on the
8 bond?

9 A. At first -- when I left the courthouse, when I left
10 the courtroom, the judge banged his gavel, it was set that
11 I had \$150 -- \$150,000 bond. Nothing was mentioned at that
12 point about a monitor, an ankle bracelet or any such thing.

13 I left the courthouse, went back to my cell. I was
14 packing my stuff to go home. Then they called me and said
15 I have got a change of bond. I said all right. Well, I
16 want to see my lawyer. Well, my lawyer had already left.
17 Apparently an underhanded move BY Mr. Hixson went into a
18 judge's chambers and had that bond removed.

19 THE COURT: Next question.

20 BY MR. WILSON:

21 Q. Now, as a result of that, you had a third hearing?

22 A. Yes, we did.

23 Q. All right, and after the third hearing, you got a
24 bond?

25 A. During the third hearing, the judge was told -- I did

1 get a -- about the monitor. The judge was told that I
2 hadn't worked for two years on an attempt to lie to the
3 judge that I didn't work for two years. Therefore, I don't
4 need extra time out on my -- so, the two lawyers had to
5 call my work and verify that indeed I did work for the last
6 two years.

7 Q. But the judge did give you a bond?

8 A. Yes, after they straightened it out that I was working
9 right up until the day that happened.

10 Q. All right, and after that you were then released?

11 A. No, I was not released.

12 Q. All right. All right. Well, tell me -- tell us how
13 you got released.

14 A. All right. I was on ankle monitor from the second
15 bond hearing.

16 Q. Right.

17 A. This bond hearing was for more time. The first one
18 was for three hours, and they were only on the weekends.
19 You can't move, you can't leave your house and do this and
20 that, nothing. I never violated a single curfew or time
21 span or.

22 Q. The third bond hearing was for you to be able to go
23 find a job?

24 A. Exactly, to get more time to go do whatever I had to
25 do.

1 Q. All right, and the judge granted you two hours a day
2 to do that?

3 A. He did.

4 Q. All right. Now, after you got out on bond, tell us
5 kind of what happened in that period between the time you
6 got out on bond and March the 6th. What was going on with
7 you during that period?

8 A. Okay. First of all, every Tuesday I had report over
9 to Erin Wilkes' office, who runs the monitor device system.
10 Had to pay \$45 every week. I had to be there in person to
11 see him, and I had to give him the list from -- it was on
12 Tuesdays I'd come. I had to give him the list from the
13 remaining of that week from Wednesday all the way to the
14 next Monday on the hours that I would be gone.

15 Q. Okay.

16 A. And they can fluctuate. I actually I made the hours
17 up when I wanted to be off restriction where I could leave
18 the house.

19 Q. Well, during that period -- when did you get out of
20 jail? Do you remember the month?

21 A. It was the 24th of October.

22 Q. All right. You got out of jail on the 24th of
23 October, and between the 24th of October and March of '06
24 -- and that's October of '05. Between the 24th of October
25 of '05 and March 6th, did you ever find a job?

1 A. No, I did not.

2 Q. All right, and so how were you paying your bills and
3 things during that point?

4 A. My father paid bills.

5 Q. Your father was paying your bills during that point?

6 A. Yes.

7 Q. All right, and -- now, at some point in time were you
8 -- did y'all have some family court litigation going on
9 between you and Becky?

10 A. We had a family court hearing for temporary relief
11 order.

12 Q. All right. Now, did you have any contact with Becky
13 between October 24th when you got out on bond and March --
14 and before March 6th?

15 A. If you want to call contact. We were both on
16 restraint -- restraining order through the family court ---

17 Q. Okay.

18 A. --- hearing.

19 Q. So, you ---

20 A. I had ---

21 Q. Go ahead.

22 A. Contact? No, I had phone calls and hang ups, yes.
23 She pulled in front of my house and parked several times,
24 yes. She pulled in my driveway once and parked, yes.

25 Q. Okay.

1 A. If that's what you want to call contact. But she did
2 do those occasionally, more than occasionally, and to
3 continue what you asked me, what I did, I had several
4 friends that would come. I had some good friends from
5 Raleigh who came down and spent the night; they would stay
6 weekends or three to four days. I had other people that
7 came over.

8 I tried to continue on with the normal, my normal -- I
9 tried to keep myself busy. And, in fact -- and it was
10 getting cold, and I had had a whole entire load of lumber
11 brought in, in sections that were -- was dumped, that
12 someone donated to me for firewood, and I rolled them over
13 and I split wood for probably two hours every day. I was
14 out there doing that on my property to keep busy. I
15 fished, tinkered around in the house.

16 When I was off, I usually -- usually sometimes -- I
17 wouldn't go anywhere. The car was given to Becky on
18 temporary relief order, so I couldn't really go anywhere.
19 I'd shoot baskets with the kids in the neighborhood, play
20 football with them, et cetera. I just -- normal things. I
21 stayed around the house.

22 Q. Okay, and that's what you did during that interim
23 period?

24 A. Yes, and my -- also at that time, my dad came down and
25 visited twice I believe, and my brother and sister came

1 down once and visited. Another really good friend came
2 over several times.

3 Q. All right. Let's go now to March 6th of '06, and
4 let's talk about that morning, the morning of March 6th.
5 Tell us what you did that morning.

6 A. March 6th. March 6th was -- started out a normal day.

7 Q. All right. Well, tell us about it.

8 A. Well, I went over -- let's see, I was off from 4 to 6.
9 Now, my monitor sometimes would reach where I could go, and
10 it was right across the street with some friends that --
11 the neighbors, and I could go over pretty far into their
12 yard and actually into their house when -- and the monitor
13 wouldn't go off.

14 So, I mean, it was a little stretch, but I had a ham,
15 ham bone that -- I remember this specifically, and I came
16 to the door, knock and I stuck my head in and I said would
17 y'all like to have a ham bone? And the name of their dog
18 was Jill, and they said she'd love that. She loves you
19 anyway. Went out and gave the dog a ham bone, okay? Well,
20 the kids were all playing basketball; I stayed and played
21 with them.

22 Q. Stayed and played with who, the kids?

23 A. There were kids in the neighborhood, and where our,
24 our corner lot meets is -- it's abandoned. Like I said,
25 the road stops. It goes another twenty feet and stops in

1 the dirt and the other way it goes and stops in the dirt.

2 And there's a basketball goal there that Frank, the
3 neighbor, put up for the kids, and that is within range of
4 my, my range from the monitor device.

5 Q. All right. So, you played basketball and you went
6 over to see the dog earlier in the day.

7 A. Normal things.

8 Q. All right. All right. So from there, tell us what
9 happened. At some point you got a ride.

10 A. Well, I asked Jeff Joslin earlier that day if he would
11 be able to, and I just met him. I seen him going by every
12 single day. I'd wave at him and he'd wave back.

13 Q. Now, was he a friend of yours or just a ---

14 A. Not a friend, no. Just a friendly acquaintance that,
15 he lived in the neighborhood.

16 Q. All right, and so you asked -- go ahead and tell us
17 about your conversation with Jeff. Tell us what you asked
18 him, not what he said to you.

19 A. I asked him if he could give me a ride.

20 Q. All right, and where was it that you were having him
21 to take you?

22 A. Over to Becky's.

23 Q. All right, and what time of day or evening or morning
24 is it that you are having this conversation with Jeff
25 Joslin?

VOLUME SIX 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.,

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1 A. Around 2:00.

2 Q. 2:00 p.m. Is that correct? Are you saying yes?

3 A. Yes.

4 Q. All right. Now, go ahead and tell me what happened
5 from there. Did he give you a ride right then?

6 A. No.

7 Q. All right. Go ahead and tell me what happened.

8 A. He couldn't.

9 Q. He couldn't give you a ride at that point in time?

10 A. No, he ---

11 Q. He didn't give you a ride later on in the day?

12 A. Yes.

13 Q. All right. Tell me about that.

14 A. Well, I was playing basketball. At that time I had
15 gone in the house a few times. I ate lunch, came back out,
16 and was shooting basket again. I mean, this is a boring
17 life, I know, but it was what I did during that time.

18 I, I had two DVDs that I took with me over there, and
19 I'm going to explain why because I think it's important.

20 While me and her were seeing each other when we were
21 separated, she insisted on those -- on getting her copies.

22 I made five copies plus the original. I had two of them
23 with me. One was the whole DVD. The other was a cut down
24 version of it from two and a half hours down to, I don't
25 know, twenty to thirty minutes. I had those two with me.

1 I -- the whole time I'm thinking she's calling, that
2 -- she wanted to talk to me. That is, that is, that's my
3 opinion, when she'd come by and stop and park in my
4 driveway. I had called my lawyer several times, and I
5 will get back to your question, but this has to be
6 explained.

7 When she'd come by and stop, I had to call my lawyer
8 and say look, she's out there again. I was advised, do
9 not ---

10 MR. HEMBREE: Object, Your Honor.

11 THE COURT: Continue on.

12 BY MR. WILSON:

13 Q. You can't tell me what anybody else told you.

14 A. Okay.

15 THE COURT: Wait a minute. Advised, you may tell
16 them. Go ahead.

17 WITNESS: Yes. I advised.

18 THE COURT: Go ahead.

19 BY MR. WILSON:

20 A. I was advised: do not leave and follow them. All they
21 have to do is take a picture of you, and then they can say
22 they were following you, and I'd be right back in jail.
23 So, I'm thinking that -- I don't know if she wanted me to
24 come out of the house because she, she harped on getting
25 those DVD -- the DVD copies. She said I want those copies.

1 THE COURT: Don't tell us what she said.

2 WITNESS: Okay. She wanted those copies.

3 BY MR. WILSON:

4 Q. All right. How does she get word to you that she
5 wanted the copies?

6 A. Well, in the beginning she told me, and I said ---

7 Q. Hold on. What beginning?

8 A. When we were seeing each other in between.

9 Q. All right. After -- is this before or after October
10 10th?

11 A. After October 10th is when I copied the DVDs because I
12 didn't have access to anything.

13 Q. What I'm asking you is after October 10th, did she
14 ever contact you after October 10th about the DVDs?

15 A. No.

16 Q. All right, but you wanted to take them over to her on
17 this day?

18 A. Yes.

19 Q. All right. Go ahead.

20 A. On the curb I had set the two DVDs, a pack of
21 cigarettes, and a lighter there with my house keys and my
22 wallet. Just all sitting there because I was playing
23 basketball.

24 Q. Okay, and at some point Jeff Joslin comes back?

25 A. He came back and ---

1 Q. What time of day was it that he comes back?

2 A. He came back around 4:00 because ---

3 Q. All right.

4 A. Because at 2:00 I wouldn't have been able to go
5 anyways. I had just asked him at that time, and
6 fortunately for that time he came and it was right at 5:00.
7 And he came pulling right up. He said do you still want
8 that ride? I said sure.

9 Q. All right. So, he gave you a ride.

10 A. He did.

11 Q. All right. You got in his vehicle?

12 A. Yes.

13 Q. All right. Tell me what you were wearing when you got
14 in his vehicle.

15 A. I had a red T-shirt on with a pocket on it said Dale
16 Earnheart, Jr., on the pocket. I had my regular work jeans
17 on, full length work jeans, socks and white, white tennis
18 shoes, and I had a ball cap on.

19 Q. What kind of shirt?

20 A. The shirt was red T-shirt.

21 Q. All right. All right. Now, go ahead and tell us. He
22 gives you a ride. Where did he put you off at?

23 A. We arrived down there, couldn't have taken us more
24 than ten minutes to get there at Bay Tree, turned into Bay
25 Tree to the condos. And I said right there is my car, and

1 he pulled right beside my car and I got out. I said I
2 shouldn't be long.

3 Q. All right.

4 A. I had to drop these off and I had to explain to him
5 that I had to be home ---

6 Q. Okay.

7 A. --- by 6. He said we shouldn't have a problem with
8 that.

9 Q. All right. So, then you -- what do you do then? He
10 drops you off. He's parked. He drops you off. Then what?

11 A. I walk -- I open the door to the outside entrance that
12 is the entrance to three condos. Now that condo, it had
13 been brought up before, but I did a lot of work there in
14 that condo for Haley, a lot of work. Everything I -- I
15 installed the new door locks for them, did all this and
16 that. I had been there a lot of times.

17 Q. Okay.

18 A. So when you get to the top of the steps, to the right
19 is a neighbor, to the left is a neighbor. I mean, it's
20 their condo, and I -- the door frame, the doors are little
21 longer than this. Almost to where I could reach both of
22 them, but directly behind this door, which is Haley's door,
23 was another set of steps with a flight of steps that goes
24 up and takes a turn to an upstairs one, one-room apartment,
25 loft apartment. So, those are the three in that -- off of

1 that stairwell.

2 Q. Go ahead and tell me what you did once you went up the
3 stairs.

4 A. I knocked on the door. No one came to the door. I
5 knocked on the door again. J [REDACTED] came and opened the
6 door. It was ajar about that far. J [REDACTED] said -- he didn't
7 say anything.

8 MR. HEMBREE: Objection, Your Honor.

9 THE COURT: We are not -- be entering another area
10 now. You may proceed.

11 MR. HEMBREE: Thank you, Your Honor.

12 WITNESS: Pardon?

13 THE COURT: You may proceed, sir. You may proceed.

14 BY MR. WILSON:

15 Q. Go ahead.

16 A. Well, J [REDACTED] opened the door and he's, like, just glaring
17 at me, so I pushed my way into the door.

18 Q. How did you push your way in?

19 A. With my shoulder.

20 Q. All right.

21 A. And J [REDACTED] just kind of let it go, and I walked in and he
22 just walked over back over to the counter.

23 Q. All right. Go ahead and tell us what happened.

24 You're now inside the house, and J [REDACTED] is back over
25 toward the counter. Then what?

1 A. I looked over at Becky. She was standing straight up.
2 I never talked to Becky at all. I was going to talk
3 to Becky.

4 WITNESS: Am I allowed -- well, to say what was said
5 here or...

6 THE COURT: As far as Mr. J [REDACTED], I will permit you.

7 WITNESS: Okay.

8 BY MR. WILSON.

9 A. J [REDACTED] said what's going on. I said, J [REDACTED], why would
10 you send the neighborhood boys over to your Tiki bar to
11 destroy it because when I got home from bond, there were
12 some destruction done to our Tiki bar. And I learned there
13 one of the neighborhood kids that J [REDACTED] instructed them that
14 I was -- they could do whatever they wanted over there
15 because I wasn't allowed to go no further.

16 MR. HEMBREE: I object to the relevance of this.

17 THE COURT: Please proceed back to your discussions
18 with J [REDACTED]

19 BY MR. WILSON:

20 Q. Go ahead and tell us what happened with you and
21 J [REDACTED]

22 A. Well, that's why I was discussing that with J [REDACTED]
23 because obviously he had done that.

24 Q. Well, you can tell me what you said to J [REDACTED],
25 that's fine.

1 A. Okay.

2 Q. Go ahead.

3 A. I said why did you -- sorry.

4 THE COURT: You can also say what J [REDACTED] said.

5 WITNESS: Thank you.

6 BY MR. WILSON.

7 A. I said why would you send the neighborhood boys over
8 to trash your own Tiki bar? He said I, I didn't do that; I
9 didn't do that. Why would I do that? I wasn't even there.
10 I said okay, J [REDACTED]. You know, I knew he did it. It was
11 obvious and just -- I let it go.

12 I turned toward Becky I said -- well, actually I
13 turned away, came to the end of the couch and took that
14 left and started towards Becky. When she went like this,
15 just she went -- like that and to this day she wouldn't
16 have warned me, I'd be the one dead today instead of her.
17 It was Roger Grainger behind me with his hand straight out
18 like that with a pistol in his hand.

19 WITNESS: May I stand up, Your Honor, and show how?

20 THE COURT: Where you are, you may stand.

21 WITNESS: I won't go any further than that.

22 THE COURT: You may stand up.

23 BY MR. WILSON.

24 A. He was standing right behind me. That bullet was
25 intended to go directly into my head, and when I had seen

1 him, I went like that. And I gave him a jab and knocked
2 his butt right on the floor. He fell on the floor and
3 rolled over, and the gun was laying right beside me. Those
4 are the facts.

5 Q. All right. So, then what happened?

6 A. Well, then what happened? I, I seen him. I said what
7 in the hell are you doing. And I reached over and I picked
8 the gun up and looked to the left, and it was one of the
9 things that's been haunting me ever since then. I'm the
10 one that couldn't go to the funeral. I'm the one that was
11 sitting somewhere where I couldn't be anywhere near it.

12 I looked up and Becky's face was facing me flat down.
13 There was blood oozing from her ear, her nose, and it
14 appeared to be right from her face. Her eyes were closed,
15 but it was like she was looking straight at me, and I see
16 that almost every night. I seen her take her last breath.
17 It was my wife and despite we were broke up, I cared very
18 much for her.

19 And when I asked Roger what the hell are you doing
20 there, he just laid there. He rolled over once, and I
21 looked over at J [REDACTED], and he said I told him not to do
22 this. He said please don't shoot me, and I realized I had
23 the gun then. And I said, J [REDACTED], I'm not going to shoot
24 you, and I turned around and I looked at Roger again. He
25 just laying there. I stepped over Roger and I walked down

1 the hall and went outside the door, and I left, and I
2 started running towards the house and I kept running.

3 Q. Why were you running?

4 A. I didn't know what to do. I had just been shot at and
5 I just seen my wife get killed. The bullet was intended
6 for me; there's no doubt about that.

7 Roger had great motive for it. I was -- I, I was --
8 started dating Becky when she was married to Roger still
9 but separated, and we -- after she divorced him abruptly
10 after we started dating, I married her. Roger was furious.
11 Now he knows that she had been trying to get back with me,
12 he has all the motive in the world. That's the motive he
13 wanted; that's what he wanted. He knew one day if they
14 kept coming over, parking at my door, parking at my door,
15 that one day they'd lure me there.

16 I, I wasn't lured there. I was there to take what I
17 expected, what she wanted, the DVDs, her copies, and that's
18 it. I thought I had a fifty-fifty chance that day of
19 things going right. If she would have said okay, thanks,
20 you know, let's get this divorce going, get out of it and
21 move on with our lives. That is what happened on March the
22 6th.

23 There's some things that happened after that, but as
24 far as that when I left, that was it. If it wasn't for
25 Becky, I would have been dead today. I'd be on -- I'd be

1 the one dead.

2 Q. All right, and after you get the gun and you leave the
3 house, and where do you go? Tell us what you do from that
4 point.

5 A. I went straight to my house through the golf course.

6 Q. All right.

7 A. I went, I went through -- I had to go -- when I came
8 out of the -- down -- when I came down the steps, I took a
9 left and went around the far side of the building. I
10 didn't want to go out right there, and I came out, followed
11 the road down to the sign where the first -- the practice
12 tees are. Took a left there and it takes me right back.
13 It goes and empties out I want to say a hundred yards,
14 their last tee. The last hole on the far left side, I
15 think it's 15 or 16, I'm not sure. It dumps off right,
16 right into a little patch of woods that's a hundred yards
17 from 57.

18 Q. All right, and how long did you stay in that little
19 area?

20 A. I didn't. I continued through that area, and I got to
21 57, crossed 57 and got to my house.

22 Q. All right.

23 A. By then it was closing in on dark.

24 Q. Okay, and when you went to your house, what was the
25 purpose in going back to your house?

1 A. I sat there for a minute thinking. I got -- it
2 started getting cold, too, so I got some other things. I
3 got a hooded sweat shirt on, and I took a pocket knife. I
4 believe that's all I took with me. I had my keys to me, of
5 course, and my wallet, and I still had the DVDs in my back
6 pocket.

7 Q. All right. Now, when you -- how long were you at your
8 house that day after you left that?

9 A. I was in and out of there in five minutes.

10 Q. All right, and where did you go from there?

11 A. From there I went directly back the same way I came.

12 Q. All right, and you went into the wooded area?

13 A. Yes, but this time I went up number -- up number 9 tee
14 -- no, number 9 fairway that led to number 9 green, and
15 there's a thin -- woods right there, and I thought maybe I
16 could see what was going on from there, but Bay Tree had a
17 tall fence lining that side blocking the view. So, I moved
18 further left, and all I could see was EMS cars and patrol
19 cars coming in and out of Bay Tree.

20 Q. Now, you stayed in the woods for two weeks. Is that
21 right?

22 A. No.

23 Q. All right. Well, tell us about that.

24 A. No, that's all in the paper, the two weeks in the
25 woods. That was the made up thing that they put in the

1 paper to make it look like I was some kind of Jeremiah
2 Johnson or something.

3 Q. Well, tell us about it. What ---

4 A. First night I walked right up to a house that was
5 being constructed, and it wasn't finished. It was a lot of
6 shelter. It started raining that night, and I don't even
7 think I -- I did not get any sleep. I don't know if I was
8 in shock or whatever, but I had never been shot at before,
9 so I don't know exactly what was going through my mind.
10 This happened for quite a while.

11 Q. How did you eat and where did you sleep at night?

12 A. First morning I arrived at -- I went through River
13 Hills. I walked straight -- well, I found where the road
14 was. I went by where the clubhouse was and headed straight
15 around the roads that lead back to all the housing units
16 and walked right across the street to 17 and Little River.
17 There's a Shell station there at Coquina and Harbour. I
18 walked that golf course all night long.

19 Q. Did you ever find a place to sleep during the two
20 weeks that you were?

21 A. Well, I slept, I slept at that -- well, I didn't get
22 no sleep but at that abandoned house. It wasn't abandoned;
23 it was being built. It was a construction house.

24 Q. The house that was under construction?

25 A. Yes.

1 Q. And you were sleeping in there at night?

2 A. Yes.

3 Q. All right, and did you sleep in there the entire time
4 or at least the ---

5 A. Oh, no. I was only there one night.

6 Q. All right.

7 A. The next night I was already across the way at
8 Eastport Golf Course. That Tuesday morning I used the
9 phone that was right next to the road at that Shell station
10 at Coquina Harbour. I called a long-time friend, Pat
11 White.

12 Q. All right.

13 A. And...

14 Q. You could tell me what you said to her, but you can't
15 tell me what she said back. Just tell me what you told
16 her.

17 A. I said that I needed to get a hold of some people and
18 I needed a ride to do that, and she -- no.

19 THE COURT: Just answer the question. Say she did
20 something like agree, disagree, did this, that type of
21 thing. Just don't say.

22 WITNESS: Disagreed.

23 THE COURT: All right. Next question.

24 BY MR. WILSON:

25 Q. All right. Now, so you went back into the woods then?

1 A. No.

2 Q. Where did you go then?

3 A. Again, that's what the paper said: I went into the
4 woods.

5 Q. Well, I'm asking you.

6 A. I went to another construction house and I stayed
7 there. I didn't disturb anything or bother anything. I
8 actually was happy to be out of the weather. At one point
9 I made it -- from there it -- and we didn't go to those
10 other pictures that we were going to get to before. Now I
11 forget which pictures they were. I need to show the
12 diagram of where these golf courses are and what I did to
13 answer these questions, and I forgot now what pictures. We
14 didn't get to the pictures I wanted to show before.

15 Q. Pictures of ---

16 THE COURT: The warehouse.

17 WITNESS: The warehouse, and those are important, and
18 I don't want to pass by them.

19 THE COURT: Make sure the jury has those. At this
20 point, we are talking about during that period of time.

21 MR. WILSON: I will pull out ---

22 WITNESS: Well, Your Honor ---

23 THE COURT: Large charts and ariel photograph?

24 BY MR. WILSON:

25 Q. You want to look at the ariel photograph to ---

1 A. Yes, I do.

2 WITNESS: But, Your Honor, if I need to show the jury,
3 if they take them back to the room by themselves?

4 THE COURT: We will let you explain them.

5 WITNESS: Okay. I need to explain how close she was
6 to the road and everything.

7 THE COURT: Well, I think that the photographs depict
8 it themselves.

9 WITNESS: Well, sir, it doesn't show where she was
10 sitting and where I was.

11 MR. WILSON: Where who was sitting?

12 THE COURT: He's back at the warehouse now.

13 If you would, you have that large ariel photograph?

14 WITNESS: I believe that's it right there.

15 Mr. Hembree, do you have the -- that long poker?
16 Could I use that to tap, or he can get some...

17 THE COURT: Mr. Wilson, we were just going with the
18 ariel photograph?

19 Mr. WILSON: Yes, sir. I'm trying to find these
20 photographs of the warehouse.

21 (A PAUSE.)

22 THE COURT: We, we'll get those. We'll get those.
23 You get back to those later.

24 MR. WILSON: All right.

25 BY MR. WILSON:

1 Q. Okay, and you see this?

2 MR. WILSON: I apologize for blocking you off, Your
3 Honor.

4 THE COURT: And make sure the court reporter can hear
5 you.

6 BY MR. WILSON:

7 Q. Okay. You need to speak up real loud so that ---

8 THE COURT: I was talking to you, Mr. Wilson.

9 MR. WILSON: Well, I got a pretty big mouth. I think
10 she can probably hear me.

11 BY MR. WILSON:

12 Q. Anyway, I want you to show me where you say you were.

13 A. Is this 31 coming in right here? I can't tell from
14 here.

15 THE COURT: You can't tell? Use the ariel photograph
16 you have to just tell him, if you don't have another
17 diagram.

18 BY MR. WILSON:

19 Q. This is Golf Colony here. See Golf Colony?

20 A. This is Bay Tree.

21 Q. And this is Bay Tree here?

22 A. Okay. So, this is 17 and this is the end of 31 right
23 there.

24 THE COURT: Use that microphone now.

25 WITNESS: I got to stand up, Your Honor.

1 BY MR. WILSON.

2 A. This is where I think it is right here.

3 Q. What are you trying to find?

4 THE COURT: Mr. Wilson? Let's put this down a second.

5 What we can do, sir, is why don't you just tell us --
6 everybody knows, everybody has seen the general area in
7 this map here and other places, and it's in the local
8 county. So, just tell us what you did each night if you
9 wish, if you wish to, and we'll go from there.

10 BY MR. WILSON.

11 A. I was closing in on the spot there. I mean, where
12 were we?

13 Q. You were telling us where you were spending the night.

14 A. Yes. It was another construction close to that; it
15 was by the Dunkin Donuts in Little River. I don't even
16 know if they know ---

17 WITNESS: Anybody know where Little River is?

18 THE COURT: No. Just answer the question.

19 BY MR. WILSON:

20 Q. Go ahead. All right.

21 A. Well.

22 Q. How many nights did you stay there?

23 A. Want to say four nights.

24 Q. All right, and then where were you eating at during
25 the day?

1 A. Dunkin Donuts.

2 Q. All right. You just go there and buy a donut during
3 the day?

4 A. Walked in, walked out minding my own business, coffee
5 and donuts.

6 Q. All right. Any place else you stayed while you were
7 out?

8 A. Yes.

9 Q. Where else did you stay?

10 A. Well, I stayed there for about four days, then I left
11 and went to -- I crossed over the bridge after about six
12 days. I believe I made my way to Robbins -- the old
13 Robbers Roost Golf Course.

14 Q. All right, and where did you stay there when you were
15 there?

16 A. There was an abandoned warehouse. There were houses
17 there's being built, and one night I did actually stay in
18 the woods. Now, that area is right across the street from
19 the Outback, the Comfort Inn, Friday's. Santa Fe Station's
20 right there.

21 Q. So, did you eat ---

22 A. A lot of restaurants right there. I ate at the
23 Outback Steakhouse twice.

24 Q. All right. Now, how many days or nights did you stay
25 up in that area?

1 A. Six or seven.

2 Q. All right. Then where did you go?

3 A. Well, I, I was trying to figure out. I needed
4 somewhere to go to get some help to find out if they had
5 arrested Roger yet. Now, the reason I was on that run for
6 that long is I know through -- I had heard that Roger
7 Grainger is in hunt club. He has many guns. I was in fear
8 for my life and I knew they were looking for me. He knew I
9 could pinpoint him, and that's what I was going to do is
10 pinpoint him. That's why I stayed away. The paper said
11 they were looking for a suspect. One night I got the
12 paper; it said they were looking for a suspect. They did
13 not say Roger Grainger.

14 Q. Okay.

15 A. So, I went across the bridge to get close to -- and I
16 was in Robbers Roost to get close to another close friend.
17 Well, actually she, she lived at the condo complex that I
18 ran. She had just built a house off the property, off of
19 8th Avenue behind Wal-mart.

20 Q. All right. Did she give you any help?

21 A. No, she did not. I came to the door, it was around 10
22 I think at night, and I rang the bell and she said oh,
23 Mick, like that. And I said, Peg, open the door, I need
24 some help, and she said hold on a minute, and she went and
25 hit ---

1 THE COURT: You need to say whether -- what she did
2 sir. Did she let you in or not let you in?

3 BY MR. WILSON:

4 A. She did not. She walked over. She said, hold on a
5 minute.

6 THE COURT: No, that's good. Next question.

7 WITNESS: Well...

8 BY MR. WILSON:

9 Q. As a result of that, you didn't get any help and you
10 left on that?

11 A. No. She hit the panic button.

12 Q. All right, and you left?

13 A. Yes, I left.

14 Q. All right, and where did you go from there?

15 A. I went back to the same spot, Robbers Roost.

16 Q. All right. Now, where were you at when you were
17 captured?

18 A. Back over at the original place.

19 Q. What's the original place?

20 A. Well, Eagle's Nest, River Hills, and there's
21 another -- River Hills, Eagle's Nest, Arcadian Shore? No,
22 not Arcadian Shore. That's third golf course. They all
23 connect like in a triangular thing.

24 Q. All right. So, tell us about the day that you were
25 arrested.

1 A. I showed myself.

2 Q. All right.

3 A. I know it's too late. I knew they didn't arrest him,
4 so I showed myself. They keep saying how they went through
5 this great capture, but in, in reality I stood there. The
6 cart girl was there, and she told me you better leave, and
7 I just shook my head. Said are you Winkler? And I said
8 yes. Shook, shook my head yes. Said well, I'm going to
9 have to call the police. I said -- I shook my head yes.

10 At that time, at that time all the -- there was --
11 converging on the golf course and just like over at Peg's
12 house. I mean, I sat there, watch them all swarm her house
13 and, like, three or four of them would fly by me on their
14 cars doing sixty mile an hour. They like going fast, and
15 as soon as they'd pass, I just walked across the street.

16 Nobody was really looking, but they converged on the
17 golf course in the same manner. They weren't looking when
18 they're going there, but I was standing there in my -- and
19 I seen guys in camouflage. They were carrying what looked
20 to me was M16s, but you described to me that they're not
21 M16s, they're M something. I -- they were automatic, full
22 automatic assault rifles.

23 I seen all these guys get out. That's when I said oh
24 no, I am not going to give up myself under these
25 conditions. There's a helicopter up there. For god's

1 sake, they're acting like I'm some kind of a mass murderer,
2 and I, I didn't, in fact, didn't kill anyone. So, I said
3 oh no, so I -- and I was -- of course around every golf
4 course there's some woods, so I took to the woods again.

5 And after that, I mean, I got tired again, but it took
6 thirty of them six hours and they finally pinpointed me
7 and, you know, the helicopters up there and, you know. So,
8 I get down on my knees and put my hands up behind my head,
9 you know, showed them my hands and the whole deal. And
10 they come in like they captured me and they were all
11 heroes, but I actually, I turned myself in. They didn't
12 find me. I found them. It was time to come in; it was
13 time to get it over with.

14 Q. All right. Now, Mick, let's talk about after you --
15 your capture, after you were arrested. You were taken to
16 the police station, right?

17 A. No, I was not.

18 Q. All right. Well, first they fed you. They gave you
19 some food, did they not?

20 A. No, that's incorrect.

21 Q. All right. Well, tell me what happened after they
22 captured you.

23 A. There's a van that they call -- I don't know. Can you
24 help me there? What do they call the van that -- it's, --
25 it's a large van with computers in it and it's a home base,

1 a mobile home base for...

2 THE COURT: They use that vehicle.

3 WITNESS: Pardon?

4 THE COURT: Okay. They use that vehicle.

5 BY MR. WILSON.

6 A. They used that vehicle. They put me in that vehicle.

7 Q. All right.

8 A. It was dark at the time.

9 Q. All right.

10 A. When we pulled in there to it, Mr. Toby Boyd, I was
11 with him. He had a little pamphlet, something like this,
12 and said here, cover your face up. The cameras are all
13 right there for -- so, I covered my face up. They took me
14 in there, put me in this van.

15 Q. All right. What happened to you once you got inside
16 the van?

17 A. They sat me down, and we started talking about this
18 and that and where have you been and all of this, are you
19 hungry. I said sure, I'd love to eat. He said okay, well
20 we can arrange, that we'll get you something to eat. So,
21 about -- then they all left and left me in there by myself.
22 They came back with a Burger King bag with two -- what's
23 Burger King have? The Whoppers I guess? Who of those and
24 some french fries and a tall drink, which I started to eat.
25 I ate one burger, barely got it down because, you know, I

1 hadn't, I hadn't eaten a whole lot in that, in that time,
2 but when I ate, I did eat a lot. I ate that.

3 Then they all came in and John Lewis come in with
4 them, and he -- they told me that they were going to
5 transport me over to Conway, which is here, and I think
6 that is also the ML Brown building.

7 Q. And were you transported here?

8 A. Yes, I was. I was -- he told me also ---

9 MR. HEMBREE: Object, Your Honor, to any hearsay that
10 he might offer.

11 THE COURT: Don't ---

12 WITNESS: Offer what?

13 MR. HEMBREE: Hearsay.

14 THE COURT: No, sir. No, sir. Sir, your objection is
15 to me, sir.

16 Sir, just would point out that. Don't tell us what
17 someone said again.

18 WITNESS: Okay.

19 THE COURT: Let's proceed.

20 BY MR. WILSON.

21 A. Okay. I was given the same pamphlet.

22 Q. Okay. To ---

23 A. To cover my face because they had a little perimeter
24 set up once we got past -- there were cameras in front of
25 the car. They barely got out of the way, you know, trying

1 to -- they made a big to do about it.

2 Q. All right. So, they bring you to the ML Brown
3 building?

4 A. Yes.

5 Q. And you're now in custody. Did they take a statement
6 from you once you get to ML Brown?

7 A. On the way there I asked Mr. Toby Boyd, I said Scott
8 Bellamy is going to be over here, right? He said, oh,
9 you're not going to need a lawyer.

10 Q. So, you go on with him and once you're in the room at
11 ML Brown, tell me what happened then.

12 A. Then they, they did ask me if I would waive my Miranda
13 rights.

14 Q. They asked you if you wanted to waive your right to a
15 lawyer?

16 A. I believe that's exactly what they said.

17 Q. And you said yes?

18 A. I said yes.

19 Q. All right, and they had you sign a form agreeing to do
20 that?

21 A. Yes.

22 Q. All right. You signed it?

23 A. Yes.

24 Q. All right, and as a result of signing that, then you
25 gave a statement to them?

1 A. Yes, I did.

2 Q. All right, and was that a videotaped, recorded
3 statement?

4 A. As far as I know, yes, because I have seen the video.

5 Q. Okay, and did you tell them what you told the court
6 today, or did you say something different?

7 A. I told them -- the only other thing I told them --
8 well, I told them I didn't shoot Becky.

9 Q. What I asked you, though, was ---

10 A. And I did not tell them that I did not take the gun
11 over there.

12 Q. Well, what did you -- what did you tell?

13 A. In explanation of what, what -- to answer this
14 question, on the first set of charges on 10/10, I had told
15 them the truth. That, in fact, she was driving the car,
16 and they carried on as if I was driving the car and
17 arrested me. Oh, so this time I refused to tell them the
18 truth until my lawyer arrived, which he did not arrive. And
19 then later on I told them that Scott's going to be mad with
20 me for me talking to you this far.

21 Q. All right.

22 A. Then.

23 Q. Go ahead. Tell them, tell us what it was that you
24 told the police on that day in the interview. What did you
25 tell them?

1 A. He said ---

2 Q. What did you tell them happened?

3 A. He asked me what I did that day, and I went about
4 proceeded to telling them what I did, which I just told to
5 you what I did, and the, the morning, the afternoon, how I
6 got the ride. I didn't even know for sure I was getting a
7 ride, this and that. Didn't know if I was getting a ride.
8 He asked me if I took a gun over there, and I did tell him
9 yes.

10 Q. All right. You told?

11 A. But I did not take the gun over there.

12 Q. All right.

13 A. They now were -- the same condition, they were in the
14 same condition -- I was in the same condition I was before
15 when I told them the truth and nothing came about it. They
16 still charged me with these ridiculous charges of raping
17 my own wife, attempted killing her, and she didn't -- the
18 woman didn't even get a stitch and they said assault and
19 battery of a high and aggravated nature, and it...

20 Any time, any given day, any of you could be put in my
21 position because of them two men, gentlemen right there.
22 They could do anything they want, and I was innocent on
23 both charges, but yet it doesn't matter what you tell them.
24 I told them I was not driving that vehicle, yet I was still
25 charged and put in jail on a bond, had to pay money to get

1 out on that bond. They lied and said all kind of things to
2 keep me in jail, which didn't work because I got a lawyer.
3 I got a lawyer now and he did -- has done a terrific job,
4 but the wrong verdict came back. It's not your fault.
5 It's not his fault. It's my fault for going over there
6 that day. I knew that, but I did go on, on the premises
7 that I had a fifty-fifty chance of...

8 Becky herself came in front of my house, parked in the
9 driveway, came by more than once, came by at least eight
10 times. The neighborhood kids seen her. Pictures were
11 taken; videos were taken. So, when I got to that office,
12 they -- I'm not going to say that those policemen were my
13 enemies, but they already had me pegged as a murderer,
14 armed and dangerous. For two weeks I sat out there and
15 minded my own business the entire time. So, yes, I did
16 tell them that, and then when it got down to something
17 else, I said, no, I did not kill my wife. They didn't want
18 to hear this either. Mr. John Lewis, is that his name?
19 John Lewis, he comes in. He's with Special Victims Unit.
20 He came in with with these blown-up pictures of my wife,
21 who I had been having flashbacks and nightmares the whole
22 times in -- while I was out there, of seeing her die right
23 in front of me. This man, after I said something about my
24 lawyer -- now wait, because I had told him, I said my
25 lawyer was going to -- I needed to talk to my lawyer. He

1 come in. He didn't care. They walked out; they all walked
2 out and let me sit there for a while.

3 And I knew what they were up to, and I even told them,
4 I said I know what you're up to, these little tricks you're
5 going to play. So, he comes in playing bad cop, throwing
6 blown-up colored photographs of my wife right in front of
7 me when I said I do not want to see those pictures of my
8 dead wife, and they threw them in front of me not once, but
9 twice. And I said you have got to quit doing this because
10 I am not -- I know what you're up to, and I'm not going to
11 sit -- you know, sit here and explain to them -- I didn't
12 want to explain to them nothing until my lawyer got there.

13 And the very first time I seen my lawyer was a day
14 later, and that's when I told him. I said Scott, someone
15 else was there. That -- I think it was the same day the
16 rest of my family came down, and they were present. I said
17 someone was there; someone else was there. They had me
18 already in the papers guilty, death penalty without any
19 investigation of anyone else. The person with the most
20 motive was Roger Grainger.

21 I don't know if he knew -- I mean, someone testified
22 that, that Becky wasn't herself anymore, but yet I have
23 seen -- you know, she was out with two or three different
24 guys and her husband. She was herself. In fact, she was
25 having a real good time.

1 Q. Let me ask you to get back to the interview that you
2 gave to the police. Now, once you finished giving them the
3 interview, what did they do with you?

4 A. Oh, they -- everything changed then since I didn't
5 give them what they wanted, especially Lewis. They had me
6 chained in front at first. Then he, he turned me around
7 and put the cuffs on behind me and at -- when we pulled
8 into ML Brown building the first time, there was a
9 perimeter that the cameras or nothing were allowed near
10 where we parked. Now, as soon as I came out of that
11 building, there were five of them right in my face holding
12 microphones to my face and the cameras were right there:
13 Mr. Winkler, did you do this and do that. And I made no
14 comment whatsoever, and Mr. Lewis said ---

15 THE COURT: No, sir, don't tell us what he said.

16 WITNESS: Okay. I was told -- oh, okay.

17 THE COURT: Unless it was someone who testified.

18 WITNESS: Okay.

19 THE COURT: Inconsistent with what they testified, but
20 he didn't testify.

21 WITNESS: Could I say someone?

22 THE COURT: No, sir.

23 WITNESS: Okay.

24 BY MR. WILSON:

25 Q. Now, you have remained incarcerated since that time.

1 Is that correct?

2 A. Yes, I have.

3 Q. All right.

4 A. I have been -- I have been told by COs there that I
5 was ---

6 MR. HEMBREE: Objection, Your Honor.

7 BY MR. WILSON:

8 Q. I don't want you to tell me, don't want you to tell me
9 what anybody told you. Just asking you, you have remained
10 incarcerated since that date? Since March the 20th, the
11 day of your capture you have been in jail since that?

12 A. Yes, I have. They will not grant me bond.

13 Q. All right. Now, before I move to the next thing, I
14 know you wanted me to ask you, ask you about these two
15 pictures of the warehouse, and I ---

16 THE COURT: The numbers are?

17 Mr. WILSON: The numbers are, Your Honor, 107, State's
18 Exhibit 107 and State's Exhibit 106.

19 THE COURT: And just have him show you where she was
20 that night and in October.

21 MR. WILSON: Okay.

22 WITNESS: I know there's more than this.

23 THE COURT: If those are inadequate, sir, when we take
24 a break I'll see if someone can find better photographs.

25 BY MR. WILSON.

1 A. Okay. This one here is of the front of -- this one
2 right here.

3 Q. All right. You're referring to 106?

4 A. This is, yeah, 106. This is the front of the building
5 because this is the, this is the sign for it. Now, clear
6 down at this end, at the far end, the far left end is where
7 she was, and you can see the width of the building here.
8 That is the width of the building. On the corner of that,
9 and I will get the other pictures where the rolls of
10 insulation are, and you can tell that is the long width.
11 This is the back of -- I can tell now this is, is.

12 Q. Referring to 107 now which is the?

13 A. 107.

14 Q. All right.

15 A. This is the back of the building, and as you can see
16 there's no doors, and the, the gentleman's car, truck was
17 parked right here that, that morning, and I walked out of
18 there right through here.

19 Now, this, this -- the other picture I'm going to grab
20 is, it's going to show that the road is right -- that this
21 sign right here -- I'll get the other picture later. This
22 sign right here is right next to the road. So, we're
23 looking at this distance here to a backed up line of cars
24 bumper to bumper while I walked behind the building and
25 talked on the telephone with this gentleman present.

1 THE COURT: Mr. Wilson, another area?

2 BY MR. WILSON:

3 Q. Mick, let me ask you on another issue. There was a
4 letter introduced that you wrote to Jill.

5 A. Yes.

6 Q. Want to tell us about that?

7 A. Yes. I wrote that shortly after that first -- the
8 first bond hearing, which they did that because they knew I
9 didn't have a lawyer yet, and it was a big deal, and I knew
10 that Jill was behind it. I had already found out that she
11 had released the press release saying very nasty things
12 about me, and she's already said that she don't like me,
13 so. I mean, it doesn't matter to me whether she did or
14 not. It was her mother and I that were the -- that were
15 combined. No one else was involved in it.

16 I was very upset. I was thrown into maximum lock-up
17 with no clothes and a bumper of -- bumper suit, as in a
18 suicide suit, treated like a dog when here I have a, a
19 brand new home and I'm a working person just like anyone
20 else, and right away I was treated like a dog, like I was
21 guilty. I was thrown in.

22 I was very upset. I wrote Jill a letter and stated
23 facts to her. One of those facts is she knows that -- J
24 knows as well as I did that I did not kill her mother. I
25 stated the true facts: that Jill and Becky did not get

1 along. Jill's grandmother on several occasions told me
2 that.

3 MR. HEMBREE: Object, Your Honor. Hearsay.

4 BY MR. WILSON:

5 Q. Let me ask you this. Do you regret writing the letter
6 that you sent to Jill?

7 A. I, I do. I do. I realize they was upset and overdid
8 it, but it was -- so, the most part of it, it was true.
9 Jill's the cause of a lot of our problems.

10 Q. Now, let me show you this picture. Who is that a
11 picture of, that?

12 A. Is a picture of me and my wife, Becky.

13 Q. All right.

14 MR. WILSON: Your Honor, I want to offer this.

15 MR. HEMBREE: Without objection, Your Honor.

16 (PHOTOGRAPH MARKED INTO EVIDENCE AS DEFENDANT'S
17 EXHIBIT NUMBER 24.)

18 THE COURT: Defendant's 24.

19 BY MR. WILSON:

20 Q. Tell us about this picture. When was that taken?

21 A. Let's see. This picture was taken I believe shortly
22 after we were married, definitely happier times. I think,
23 I think her mother took this picture if I'm not -- we were
24 on our way somewhere and periwinkle was her favorite color,
25 and I believe that's what she's wearing, and she wanted a

1 picture taken of us. And I believe it's her mother that
2 took the picture. We had this framed. Her mother had it
3 framed sitting on a table in her dining room also.

4 MR. WILSON: Like to publish this.

5 THE COURT: You may publish it.

6 MR. WILSON: Thank you.

7 BY MR. WILSON:

8 Q. Mick, I just have a couple more questions. Did you
9 love your wife?

10 A. Yes, I did.

11 Q. And did you kill her?

12 A. Pardon?

13 Q. Did you kill her?

14 A. No, I did not.

15 Q. Do you regret that she's dead?

16 A. I certainly do.

17 MR. WILSON: I don't think I have any other questions,
18 Your Honor.

19 THE COURT: All right, we'll take a break now if you
20 want to. Where are the photographs? Leave it there where
21 you can have it next time when you come back. We will
22 take a break for ten or fifteen, come back. Please don't
23 discuss the case.

24 (THE JURY EXITS AT 10:50 A.M.)

25 THE COURT: Okay. Very good. Want to take break?

1 WITNESS: You say this is lunch?

2 THE COURT: No, just a break.

3 (OFF THE RECORD.)

4 THE COURT: Okay, be seated. Okay, ready?

5 MR. HEMBREE: State's ready, Your Honor.

6 THE COURT: All right. Bring the jury in, please.

7 (JOURNAL MARKED AS STATE'S EXHIBIT NUMBER 162 FOR
8 IDENTIFICATION.)

9 (THE JURY ENTERS AT 11:16 A.M.)

10 THE COURT: All right, ladies and gentlemen, now we'll
11 proceed with cross-examination.

12 MR. HEMBREE: Thank you, Your Honor. May it please
13 the court?

14 CROSS-EXAMINATION BY MR. HEMBREE:

15 Q. Mr. Winkler, I want to take you directly to October
16 the 10th of 2005. This was your second wedding
17 anniversary, correct?

18 A. Yes.

19 Q. And you had gone to see a friend of yours that day,
20 Scooter Brown?

21 A. Yes.

22 Q. Y'all were separated at the time. You and Becky
23 Winkler were separated?

24 A. Yes, for a couple of days.

25 Q. Well, she had separated with you, I believe, in

1 September, somewhere around September 17th?

2 A. Yes.

3 Q. And she was living with her daughter, Haley Grainger?

4 A. Right.

5 Q. At [REDACTED]?

6 A. Yes.

7 Q. Now, you had -- had you spoken to Becky that day?

8 A. No, I hadn't.

9 Q. Had you received a telephone call from Becky that day?

10 A. No.

11 Q. Do you recall if that day was a Friday?

12 A. The day was a Monday.

13 Q. Well, I have got a calendar, and let me see if this

14 will help you to refresh your recollection. I'm sorry,

15 you're right. It's a Monday. Now, do you recall that

16 Becky was scheduled to pick up J [REDACTED] from a school event

17 that day?

18 A. No.

19 Q. You had no knowledge of that?

20 A. No. Football games aren't on Monday nights.

21 Q. Were you aware that she frequently picked up J [REDACTED]?

22 You know where North Myrtle Beach High School is?

23 A. Yes, I do.

24 Q. And were you aware that she frequently picked up

25 J [REDACTED] on this back road behind Seacoast Hospital --

1 behind Seacoast?

2 A. No, he always walked home. He always walked home.

3 Q. What about at night?

4 A. He walked home.

5 Q. How do you know?

6 A. She told me.

7 Q. And she told you after they had moved back in with
8 Haley?

9 A. Yes. She was in my house four or five times.

10 Q. In this month-long period?

11 A. Yes.

12 Q. She ---

13 A. She told me he got suspended. That's how I knew.

14 Q. So, she would be missing -- J [REDACTED] and Haley would
15 be missing their mom some six times during this month
16 period that y'all had been -- no, not even a month. Y'all
17 had been separated about three weeks.

18 A. I have no idea. She didn't know -- worry about
19 J [REDACTED] and Haley knowing where she was at.

20 Q. You had been separated for three weeks, correct?

21 A. From the ---

22 Q. From the 17th?

23 A. From the 17th to the -- probably.

24 Q. Okay.

25 A. But I wouldn't really call it separated because she

1 was back with me whenever she came over.

2 Q. And it's your testimony that she was visiting you on
3 occasions, spending the night with you half a dozen times
4 during this three week period?

5 A. Correct.

6 Q. And gone from the house all night?

7 A. From her condo, you mean?

8 Q. Correct, from Haley Grainger's house, where she was
9 staying.

10 A. Yes.

11 Q. All right.

12 A. She would have had to been if she was in my house.

13 Q. Right, and did she call you or make contact with you
14 prior to?

15 A. No, she didn't. She came by, and then she'd say I'm
16 going to be back on Friday or Saturday or something like
17 that.

18 Q. All right. Now, going back to the 10th. You're not
19 aware that J [REDACTED] is supposed to be picked up at a school
20 event on this back road?

21 A. No. At the time, at the time we made those plans on
22 Friday.

23 Q. Now, you told me ---

24 A. We didn't ---

25 Q. Whoa, whoa, whoa. I don't believe there were any

1 plans made. You didn't actually talk to Becky?

2 A. Well, if you're not going to let me finish my question

3 ---

4 Q. Did you talk to Becky on Friday, the Friday before?

5 A. Am I finishing my question?

6 Q. I'm asking a question. Did you talk to Becky Winkler
7 on Friday before October --

8 A. No, she left a note.

9 Q. Okay. Now, back to October the 10th. I want to show
10 you State's Exhibit number 52. You recognize that?

11 A. No. It's dark. All I see is some lights.

12 Q. Does this vehicle look familiar to you?

13 A. That's a police car or four-wheel drive with four
14 lights on it.

15 Q. This vehicle right here?

16 A. That vehicle.

17 THE COURT: And you're showing him what exhibit?

18 MR. HEMBREE: State's Exhibit 52 in evidence, Your
19 Honor.

20 BY MR. HEMBREE:

21 A. Any objection to putting my glasses on?

22 Q. Take your time. Put your glasses on.

23 A. I see the license plate number is my license plate
24 number.

25 Q. Thank you, Mr. Winkler. That's your vehicle, isn't

1 it? Correct?

2 A. Yes.

3 Q. And what's the date on that photograph?

4 A. 10/10.

5 Q. 2000 and?

6 A. 2005. 1153.

7 Q. Correct, and your vehicle is pulled off on the right
8 side of the road?

9 A. Yes, it.

10 Q. Wasn't your testimony earlier that your vehicle was
11 pulled off on the left side of the road?

12 A. My vehicle was parked on the left side of the road.

13 Q. But now it's pulled off on the right side of the road.

14 A. Correct.

15 Q. So, would it be your testimony that this car has
16 moved? Did you move it?

17 A. That car had been moved, yes.

18 Q. And who moved it?

19 A. I don't know who moved it. My guess is J [REDACTED].

20 Q. J [REDACTED]?

21 A. J [REDACTED] was learning to run my stick shift.

22 Q. Well ---

23 A. He knew where my keys were.

24 Q. Is it ---

25 A. There's police that's -- there's police records on

1 that.

2 Q. And, Mr. Winkler, you're -- is it your testimony that
3 you saw J [REDACTED] out there on October the 10th?

4 A. No, I did not.

5 Q. So, you don't have any basis, any reason to believe
6 that J [REDACTED] moved your vehicle?

7 A. Do you?

8 Q. I'm asking you, Mr. Winkler.

9 A. No, I don't.

10 Q. Okay. So, you don't know if J [REDACTED] -- anything about who
11 moved this vehicle, if it was moved at all. Did you hear
12 the police testimony, Mr. Winkler, that the vehicle was
13 actually in the roadway when the police responded?

14 A. Yes, and I'd like to -- I can respond to that. I have
15 several of the police responses.

16 Q. And that the accident actually ---

17 WITNESS: And, Your Honor, for the record, I'd like to
18 bring them out and show them right now. He said he has
19 police records. I have one ---

20 THE COURT: Mr. Winkler, what he said was the
21 testimony in court. But after this, Mr. Wilson can, can
22 discuss that with you.

23 You may continue.

24 MR. HEMBREE: Thank you, Your Honor.

25 WITNESS: Because one said it was running. The other

1 said it wasn't.

2 BY MR. HEMBREE:

3 Q. Mr. Winkler, you heard the testimony that your vehicle
4 was in the roadway when the police found it, and the police
5 moved it off to the side of the road. Did you hear that
6 testimony?

7 A. No, I didn't. I might have been writing my, my notes
8 and that at the time.

9 Q. Fair enough, but it is pulled off to the right side of
10 the road, and you don't have any idea how it got there?

11 A. No, I don't.

12 Q. Mr. Winkler, let me ask you about State's Exhibit
13 number 56, along with 52, kind of looking at -- do you see
14 the side -- in the foreground in State's 52?

15 A. I do.

16 Q. What does that appear to you to be?

17 A. That you can't tell what it is.

18 Q. All right. Let me show you a close-up photograph of
19 that in State's Exhibit ---

20 A. That looks like a mud flap and a shoe.

21 Q. All right. Now, it looks like a, a particular kind of
22 shoe, doesn't it?

23 A. It's a...

24 Q. It's a sandal?

25 A. Yes.

1 Q. And it looks kind of like a Rainbow sandal, doesn't
2 it?

3 A. I can't tell that.

4 Q. And wasn't, wasn't ---

5 A. That's in, that's in a public road there. There's all
6 kind of garbage on the road.

7 Q. Didn't Becky Winkler frequently wear Rainbow sandals?

8 A. She said in her statement there she didn't have
9 clothes -- didn't have shoes on.

10 Q. Mr. Winkler, didn't Becky ---

11 A. You want to look it up?

12 Q. Didn't Becky Winkler frequently wear Rainbow sandals?

13 A. Yes, but that's not ---

14 Q. All right.

15 A. That's not a Rainbow sandal.

16 Q. And doesn't this appear to be -- doesn't this appear
17 to be a floor mat?

18 A. Looks like a mud flap.

19 Q. A -- well, could it be a floor mat?

20 A. That's your opinion.

21 Q. Well, I'm asking you. Could it be a floor mat?

22 A. No. It's a mud flap.

23 Q. What color is it?

24 A. Looks like it's white and black.

25 Q. All right.

1 A. Like it's pretty corroded up.

2 Q. What color was the interior of the, the Land Rover?

3 A. I don't know.

4 Q. Well, let me show you a picture of it. Maybe it will
5 refresh your recollection. State's 72 in evidence. What
6 color was the interior of that vehicle?

7 A. It looks caramel.

8 Q. Caramel, kind of brown. Tell me about the color you
9 see here in State's 56 of the -- what you describe as mud
10 flap?

11 A. That's not the same color.

12 Q. It's similar?

13 A. Not even close.

14 Q. Not even close?

15 A. You mean -- you're saying that the mud flaps are going
16 to match the interior?

17 Q. No, sir.

18 A. They don't on my car.

19 Q. Let me ask you this, Mr. Winkler. In State's 72, do
20 you see a floor mat?

21 A. No.

22 Q. That's in the driver's side?

23 A. Wait, yeah. There is a floor mat right there.

24 Q. All right. Is there a full carpeted floor mat?

25 A. Yeah, it's a rectangular shaped floor mat.

1 Q. Little rubber one, isn't it?

2 A. Yeah.

3 Q. Okay, but it's not a big -- you know how they have
4 carpeted floor mats, you know, the longer ones shaped kind
5 of like this? You seen those in vehicles, haven't you?

6 A. Not like that, but...

7 Q. But you have seen?

8 A. That's rectangular.

9 Q. Okay. Let's take a look. You see -- you're telling
10 me you're seeing a little rectangular, looks like a rubber
11 floor mat?

12 A. It is a rubber floor mat.

13 Q. Right. Now let's take a look at the passenger's side.
14 That's on the driver's side.

15 A. Right.

16 Q. All right. Let's take a look at the passenger's side
17 of the Trooper. Take a look in there on the floorboard.
18 The passenger?

19 A. Here.

20 Q. The passenger's side floorboard. You see that?

21 A. Yeah, I see.

22 Q. That's in State's ---

23 A. I see a purse.

24 Q. That's State's 74.

25 A. Two other things and it looks like a piece of carpet.

1 Q. Okay. Looks like a piece of carpet, maybe a floor
2 mat?

3 A. A carpet, yeah.

4 Q. Right.

5 A. Could be.

6 Q. Could be, and now tell me what else you saw on the
7 passenger's side of this floorboard.

8 A. A -- that's a rectangular rubber floor.

9 Q. I'm talking about the passenger's side.

10 A. Oh, the passenger's side.

11 Q. Tell me what else you see in that picture on the
12 passenger's side.

13 A. Looks like her purse.

14 Q. Whose?

15 A. Becky's.

16 Q. On the passenger -- on the?

17 A. On the -- I can't see.

18 Q. On the passenger's side, right?

19 A. Yeah.

20 Q. All right.

21 A. Up on top, I can't -- is that a wallet? I don't know.

22 Q. Could be.

23 A. I don't know what the pink thing is there, but I see
24 her checkbook.

25 Q. Uh-huh.

1 A. It's where she would have put her purse, but she's
2 driving.

3 Q. Now, Mr. Winkler.

4 A. That's all I see is a purse, and I don't know what
5 else is -- it is.

6 Q. Mr. Winkler, that's lot of material in that front seat
7 that's going to identify whose car that is, isn't it?

8 A. It's not her car. That's Jill's car.

9 Q. But it's going to identify who is driving that car.

10 A. That's right.

11 Q. Her purse, her checkbook?

12 A. That's what the police should have looked at when they
13 found it wrecked.

14 Q. It's all right there, isn't it?

15 A. It's sure is.

16 Q. It's not a very good plan for somebody who is just
17 trying to avoid getting caught, is it, to leave all that
18 identifying material back behind ---

19 A. You're forgetting that she was dead drunk.

20 Q. Well, you weren't, and you were trying to help her,
21 weren't you?

22 A. I had a few drinks. I never denied that. At Scooter
23 Brown's.

24 Q. A few drinks but you said you were fine ---

25 A. At 5:30 in the afternoon she was 2.64. Just think how

1 drunk she was at 9:00 at night.

2 Q. You, you testified earlier, Mr. Winkler, that you
3 weren't having any problem with your, with your being
4 intoxicated but ---

5 A. I wasn't.

6 Q. --- you were fine, that you were ---

7 A. I wasn't.

8 Q. --- fine, you weren't under the influence of alcohol.

9 A. That's absolutely right.

10 Q. All right. So, you're, you're there trying to help
11 her avoid criminal prosecution in some, in some manner. Is
12 that not true?

13 A. Correct.

14 Q. Okay. Tell me about this hat. That's your hat?

15 A. That's a Dale Earnheart hat. That's the one that she
16 wear -- used to wear, pull her hair.

17 Q. That's not your hat?

18 A. No, it was -- it was my hat and she took it, yeah.
19 She wears it.

20 Q. Now, you testified to this jury that you left behind
21 Seacoast here. You traveled up to Stephen's Crossroads,
22 Highway, the intersection of Highway 57 and Highway 9 and
23 turned right, correct?

24 A. Bell and Bell Pontiac.

25 Q. Bell and Bell Pontiac is at the corner there, correct?

1 Turn right on Highway 57 to go back to your house?

2 A. Correct.

3 Q. And that's -- the vehicle went off the road about,
4 would you say it's fair to say it's about halfway between
5 Highway 57?

6 A. I thought it was pretty much half. Is that my house
7 up there, the other dot?

8 Q. This, this is the -- I'll just ---

9 A. Yeah ---

10 Q. --- this is the entrance?

11 A. --- that's pretty much halfway, yeah.

12 Q. Comes in it right there?

13 A. Yeah. It's pretty much halfway, yeah.

14 Q. So, the vehicle goes off the road here?

15 A. Yeah, that was my guess and ---

16 THE COURT: All right, let's stop for a second. Mr.
17 Winkler.

18 WITNESS: Yes.

19 THE COURT: Please understand, this lady here can only
20 take one person at a time. Let him finish his question
21 before you begin answering, okay?

22 WITNESS: All right.

23 THE COURT: All right. Let's proceed.

24 BY MR. HEMBREE:

25 Q. Mr. Winkler, the vehicle goes off the road on the

1 right-hand side of Highway 57 about halfway between the
2 intersection of Highway 9 and the entrance to Stone's Edge.
3 Is that fair to say?

4 A. Correct.

5 Q. And this map has a scale on it, and it looks to me,
6 would you say it's, it's a fair, a fair estimate to say
7 that where the vehicle went off the road is just over half
8 a mile to your house?

9 A. That's what I said earlier, yes.

10 Q. That was your estimate even before?

11 A. About halfway, yes.

12 Q. That was your estimate before we looked at the scale?

13 A. Yeah.

14 Q. So, you're only a half a mile from home when the
15 vehicle goes off the road?

16 A. Right.

17 Q. Now, you stayed in the woods for a period of time.
18 The police came. Other vehicles came. The police left.
19 Correct?

20 A. I don't know when the police left. We weren't in view
21 of the police when they left.

22 Q. Well, at some point they left?

23 A. Sure.

24 Q. Could you hear them?

25 A. No.

1 Q. You couldn't hear cars moving and sounds, so you must
2 have been quite deep in the woods by that point if you
3 couldn't ---

4 A. No.

5 Q. --- hear the ---

6 A. We were never quite deep in the woods.

7 Q. You couldn't even hear the traffic out on the highway,
8 on Highway 57?

9 A. Yes, we could hear the traffic, but you can't
10 distinguish a car, a regular car from a, a police cruiser
11 just by sound. They all have four tires.

12 Q. Now, Mr. Winkler, you have, you have seen the
13 photographs of the interior of the Trooper, correct?

14 A. Yes, I believe I have seen them, the black, the black
15 and white ones.

16 Q. And the vast majority of the blood, do you -- well,
17 the color was in evidence, but the vast majority of the
18 blood in the car, would you agree, is on the passenger's
19 side of the compartment?

20 A. I don't know because black and white, you can't tell.

21 Q. Did you hear the testimony yesterday from the DNA
22 expert who tested the blood that was recovered from the
23 interior of the Trooper -- of the Land Rover indicate that
24 the majority of the blood that tested as Becky Winkler's
25 blood was on the, the interior passenger's side of the

1 compartment?

2 A. No, there -- it was my understanding that there was
3 her blood on both passenger and driver's side.

4 Q. Majority of the blood, Mr. Winkler, the majority of
5 the blood that was there was located?

6 A. No, I don't remember him saying the majority.

7 Q. And that there were actually only two places on the
8 driver's side, one being on the door?

9 A. No. I'd like to see the pictures before I...

10 Q. Listen to my question, Mr. Winkler. Do you recall if
11 there was one, one blood mark of a mixture on the door
12 handle and one blood on the steering wheel that was a
13 mixture? Do you recall that testimony?

14 A. No, I do not.

15 Q. Becky's and somebody else's?

16 A. Was it my blood? It couldn't have been my blood. I
17 don't think I was bleeding at that time.

18 Q. Now ---

19 A. Did you test it to see whose else it was?

20 Q. Clearly, Mr. Winkler, you don't recall the DNA analyst
21 ---

22 THE COURT: Let's proceed on with the question.

23 MR. HEMBREE: Thank you, Your Honor.

24 BY MR. HEMBREE:

25 Q. Now, it's further your testimony that you went into

1 the woods, and at some point Becky Winkler takes your
2 clothes off and takes her clothes off, and these are thick
3 woods now, true?

4 A. Yeah. You couldn't see through them until a
5 flashlight came there.

6 Q. I mean, they are full of brambles and briars and -- I
7 mean, it was rough.

8 A. Right.

9 Q. I mean, that's State's Exhibit Number 105?

10 A. Because I couldn't say what she said. I said ---

11 Q. I'm ---

12 A. I said I ---

13 Q. I'm ---

14 A. Her --

15 Q. I'm asking you, Mr. Winkler.

16 A. What's your question?

17 Q. What were the conditions of the foliage around there?
18 It was rough, it was?

19 A. When you entered it, it was real thick, and then it
20 opened up. As you can see in a couple of the pictures,
21 it's pretty open.

22 Q. And but in this area where Ms. Winkler's clothing was
23 found, it was thick?

24 A. No. There was openings.

25 Q. All right.

1 A. She just tossed her clothes.

2 Q. And she took her clothes off, took your clothes off,
3 and proceeded to?

4 A. She said come on.

5 Q. Engage in sexual relations with you?

6 A. She did.

7 Q. This is, what, 10:30 at night?

8 A. I can't give an approximate time, neither one -- I
9 don't think we had, either one of us had a watch on.

10 Q. Mr. Winkler ---

11 A. She kept -- oh, I'm not going to say nothing else.

12 Q. You said that after you engaged in these relations in
13 there in the trees, that y'all moved. She abandoned her
14 clothes, her clothing. Y'all moved and you gave her your
15 underwear?

16 A. Of course I did. She was naked.

17 Q. And your T-shirt?

18 A. I did.

19 Q. She didn't have shoes on at this point?

20 A. She never had shoes on.

21 Q. I'm asking if she had shoes on at this point.

22 A. No.

23 Q. Mr. Winkler, I'm going to show you State's Exhibit 139
24 that's in evidence. Can you identify that for me, Mr.
25 Winkler?

1 A. I don't, I don't, I don't think I have ever seen that
2 shirt. If that's the one that she was wearing, I don't
3 remember ever seeing it. She may have borrowed it from
4 Haley or Jill, but I -- that wasn't in her wardrobe when
5 she was married to me.

6 Q. All right.

7 A. No.

8 Q. Let me ask you. So, you can't say whether or not --
9 she might have been wearing this shirt that night, she
10 might not have. You can't say?

11 A. That's possible, yeah.

12 Q. All right, and can you tell me what you observe here
13 under the right arm?

14 A. I don't see any -- I don't see any blood.

15 Q. Do you see any damage to the shirt, Mr. Winkler?

16 A. It looks like it's ripped, yeah.

17 Q. Looks like it's ripped?

18 A. How long was it in the woods, for nine days?

19 Q. It's quite a rip, isn't it, Mr. Winkler? It's quite a
20 tear. It's very obvious.

21 A. Yes, it is.

22 Q. Now let me ask you this, Mr. Winkler.

23 A. Did you tear it?

24 Q. Did you look -- can you look at the front of the
25 shirt? Does there appear to be stains on it that may be

1 blood?

2 A. No.

3 Q. All right, and how about this material up around the
4 neck, Mr. Winkler? What is ---

5 A. That's hair.

6 Q. That's hair. What color hair, Mr. Winkler?

7 A. Looks blond or gray.

8 Q. Uh-huh. What color hair did Becky Winkler have before
9 she was killed?

10 A. She had blond hair. Some of it was black.

11 Q. Long blond hair, rather long blond hair?

12 A. Well, her hair was black, too. The roots were showing
13 and everything.

14 Q. But when she, but she kept it -- she dyed it
15 frequently or dyed it from time to time, would that be fair
16 to say?

17 A. Right, but it had been a long time, so I don't see any
18 black hair in there.

19 Q. And she ---

20 A. But, you know...

21 Q. She kept it -- on October the 10th of 2005 ---

22 A. Well, it's my understanding that nine days went by
23 before you found the clothes.

24 Q. Mr. Winkler, on October the 10th of 2005, she kept her
25 hair long and she kept her hair blond, true?

1 A. Her hair was in a, a bun.

2 Q. All right.

3 A. With a clip in it.

4 Q. But it was long. If she had let it out, it was long?

5 A. Yes, but it was in a clip.

6 Q. Mr. Winkler, let me ask you if you recognize these
7 shorts.

8 A. Never seen, never seen them before either.

9 Q. Okay.

10 A. She never wore them when I have seen her.

11 Q. Gotcha. How about this pair of underwear?

12 A. You're shaking them. I can't see them. I bought her
13 a bunch from Victoria's Secret, but those aren't it. I
14 have never seen that.

15 Q. You can't -- you don't recognize those?

16 A. No.

17 Q. And how about this hair clip? Does that look ---

18 A. That looks like her. She had several of those, yes.
19 She always kept those.

20 Q. And you stayed out all night, correct? That's your
21 testimony, that y'all, y'all stayed out all night in the
22 woods?

23 A. Yes. No, we weren't in the woods all night, no.

24 Q. You went to a warehouse at some point?

25 A. Yes, and I can see now where the place is that we hid.

1 Q. And?

2 A. Because we.

3 Q. I appreciate it, and I'll ask you about that if I need
4 to, but at some -- I will ask you about that in just a
5 minute, about the warehouse, but you stayed at a warehouse
6 at some point. You stayed outside some of the time,
7 correct?

8 A. Yes.

9 Q. And this happened -- this, this began at 9:30 roughly,
10 9:40?

11 A. Roughly, yes.

12 Q. And ended around 7:30 the next morning. Would that be
13 fair to say?

14 A. No, because I think the first worker got there at
15 6:45.

16 Q. That was -- got to the warehouse?

17 A. Yeah.

18 Q. Now ---

19 A. I believe from his statement on paper.

20 Q. And this entire time you never -- I mean, ever were
21 more than -- well, you were less than a mile away from your
22 house the entire time?

23 A. Correct.

24 Q. Never went back to the house?

25 A. No.

1 Q. How long does it take you to walk a mile, Mr. Winkler?
2 Twenty minutes, fifteen minutes?

3 A. Not long.

4 Q. Not long. Fifteen minutes. Let's talk a little bit
5 about, about the warehouse real quick. Now, in the
6 warehouse there were a couple of items of jewelry found
7 that had been identified as belonging to Becky Winkler.

8 A. Yes.

9 Q. State's 112 and 111.

10 A. Right.

11 Q. Do you recognize those items, Mr. Winkler?

12 A. Those are -- I don't know if those are hers for sure,
13 but that's a toe ring and an earring.

14 Q. Do they look like items that Becky owned?

15 A. Yes.

16 Q. And they were found in the warehouse?

17 A. I don't know.

18 Q. You didn't hear any testimony about that?

19 A. I don't know if they -- anything was found in the
20 warehouse.

21 Q. Now, let me ask you about Becky's condition.

22 A. Uh-huh.

23 Q. After she left you, after, after y'all were in the
24 warehouse and she went one way and your testimony is you
25 went another?

1 A. Uh-huh.

2 Q. Is that your testimony?

3 A. Yup.

4 Q. It's your testimony you did not?

5 A. They headed out toward Bell and Bell.

6 Q. Did you follow her?

7 A. Told her she -- I said I'm going to get my car.

8 Q. Did you follow her at any time?

9 A. Follow her? No.

10 Q. Follow her.

11 A. No.

12 Q. Were you behind her talking to her, walking behind
13 her, following?

14 A. No.

15 Q. And now you didn't have a shirt on?

16 A. Nope.

17 Q. You had on shorts, right?

18 A. Yup.

19 Q. And that's all you had.

20 A. Yup.

21 Q. You weren't waiving your arms around?

22 A. The gentleman at the warehouse said I went up first
23 and she was just walking behind. I don't know what she
24 did.

25 Q. And?

1 A. That picture looks exactly the way she looked that
2 morning, but at night she didn't. I see my wedding ring is
3 on her.

4 Q. Yeah?

5 A. Finger. She has it turned around, though.

6 Q. We're looking ---

7 A. At this point.

8 Q. We are looking at State's 115. This was the condition
9 she was in when she was in the warehouse?

10 A. Oh, yeah. She hit the steering wheel pretty hard.

11 Q. And there's a significant amount of hair missing?

12 A. She got that caught, oh, yes.

13 Q. From the back of her head?

14 A. That's right.

15 Q. A lot of hair missing?

16 A. Yeah.

17 Q. Big bald spot?

18 A. Yeah.

19 Q. Was that from the steering wheel, or would that have
20 been ---

21 A. No, no, no that was ---

22 Q. --- friction of ---

23 A. She was laying down. She got a bunch of sap in it and
24 tried to yank it out. That's just ---

25 Q. She yanked ---

1 A. Her hair. She had real thin hair.

2 Q. Mr. Winkler, is it your testimony to this jury that
3 she, she herself ---

4 A. I didn't ---

5 Q. --- yanked that, that ---

6 A. I didn't say that.

7 Q. Okay.

8 A. But you can see the black hair, though, that you -- I
9 was talking about earlier.

10 Q. That's true, Mr. Winkler.

11 A. It's not blond hair on her. It's black hair.

12 Q. No question she's got some black roots in there.

13 A. You bet.

14 Q. Now, she's also got abrasions to her neck, both on the
15 front and the back. Can you -- do you have any explanation
16 for those?

17 A. Yeah. Those look like the exact same kind that are on
18 me.

19 Q. On your neck?

20 A. On me everywhere: scratches, belly rubs, cuts on my
21 legs.

22 Q. These are longitudinal abrasions. Do you notice that,
23 that they cut across like that?

24 A. Yeah.

25 Q. Sort of in a ---

1 A. --- she fell ---

2 Q. --- the bruising--

3 A. She fell over a dozen times, yeah. Those are -- those
4 are not, those are not from me. Are you trying to tell me
5 that those scratches there, I put them on her leg? No,
6 that's from her falling.

7 Q. And these, all these bruises?

8 A. You can show that to the jury and, and they're going
9 to see that -- you know, what did I do, take a swig [sic]
10 and etch into her a scrape?

11 Q. Mr. Winkler, my question to you is, is this the
12 condition that your wife was in that morning?

13 A. Yes. I told her I said, Becky, you look like hell.
14 That's when she -- her whole attitude changed.

15 Q. When you told her she looked like hell?

16 A. Oh, yeah.

17 Q. She must have...

18 A. That was on her own account.

19 Q. And, Mr. Winkler, those were pictures taken right
20 after you were arrested?

21 A. That's that fresh shirt that someone gave me. I was
22 already cleaned up.

23 Q. The shorts are the shorts that you had on in the
24 woods?

25 A. Exactly.

1 Q. And they?

2 A. That's about what I looked like.

3 Q. They're nasty?

4 A. Oh, yeah.

5 Q. No doubt about that?

6 A. See, I was laying down on my belly. You can see that.

7 Q. And, Mr. Winkler, the shirt you had on is clean, but
8 that was given to you by your friend?

9 A. Yes.

10 Q. Was that Mr. Waylon?

11 A. Ms. Waylon.

12 Q. Ms. Waylon gave you the shirt. Mr. and Ms. Waylon
13 lived at [REDACTED]?

14 A. Yes.

15 Q. How were you acquainted with them?

16 A. I know them. We used to go camping and we'd go out
17 with them.

18 Q. Yeah. Now, and then, of course, this is a photograph
19 of your left hand that has some pretty, pretty severe
20 abrasions on your, on your left knuckles?

21 A. Yeah, that's scabbed over. Those were previous from
22 construction that I did at the house. That's scabbed over.
23 That is not overnight scab.

24 MR. HEMBREE: And that's on State's 100.

25 THE COURT: 100 is in evidence?

1 MR. HEMBREE: Yes.

2 BY MR. HEMBREE:

3 A. But you didn't show the rest of my body.

4 Q. Mr. Winkler, you, you testified that you were in this
5 area off Highway 57 at the car wreck, that you somehow made
6 your way down to this area where this warehouse is. Is
7 that fair to say, close or is?

8 A. In my ---

9 Q. Right across the street?

10 A. From what I can see now where it is, my, my -- oh, my
11 testimony earlier is exact in that there's a cornfield
12 there plowed under that we cut through right there where
13 your pointer is -- no.

14 Q. This is the warehouse, is it not, Mr. Winkler?

15 A. No, it is not. Back up to the point -- to the arrow
16 -- I mean to the red dot, the first red dot. Where the
17 wreck happened.

18 Q. Right here?

19 A. No, where the wreck happened.

20 Q. Right here?

21 A. Yeah.

22 Q. All right.

23 A. We went in them woods right there. They were real
24 thin to the left.

25 Q. On this side?

1 A. Uh-huh, and we came into that cornfield, the brown
2 spot. There's a plowed under cornfield.

3 Q. And?

4 A. And then we went through that short thicket of woods
5 right there and came out right at.

6 Q. Came out here?

7 A. That's it.

8 Q. All right, and then -- and your house still is right
9 here?

10 A. That's correct.

11 Q. Okay, and your car is right here?

12 A. Yup. Well, I would have definitely had to get a ride
13 to get the car.

14 Q. Mr. Winkler, instead of going home, you head this
15 direction.

16 A. Upon request, there was no way we were going home.

17 Q. Well, now, you were already split up. You headed down
18 to the -- you headed down?

19 A. No, I'm talking about when we first wrecked, she said
20 we are not going there. They are going to be there.

21 Q. What did you have to fear, Mr. Winkler?

22 A. I didn't have anything to fear.

23 Q. All right.

24 A. I didn't wreck.

25 Q. You now left your wife.

1 A. What would -- what would have I had to fear?

2 Q. Mr. Winkler, you now left your wife.

3 A. Yup.

4 Q. You headed down the road. You're going to make it on
5 your own. You head to the CVS to make a phone call or try
6 to get a ride?

7 A. All right, well, if -- without explaining that, I'm
8 not going to answer any more questions because she ---

9 Q. You're on ---

10 A. --- she -- her attitude changed dramatically when she
11 became sober ---

12 Q. You testified--

13 A. --- and started blaming me for things.

14 Q. And you headed, you headed in this direction toward
15 the CVS?

16 A. Yes. I said I'm going to go get my car.

17 Q. Away from your house and you go -- did you walk all
18 the way down here?

19 A. No. That's three or four miles.

20 Q. Well, maybe it is, but you, you were going to go get
21 your car. Now, so to get your car, instead of going home,
22 calling for a ride, you head to CVS and then you head to

23 [REDACTED] ?

24 A. Correct.

25 Q. Why in the world? Why in the world would you walk

1 just -- it takes just as long to get to [REDACTED]. It's
2 all the way over here if you take that.

3 A. Walked straight down the road.

4 Q. It is further -- it is as far, if not farther, from
5 your home. Tell this jury why you went to [REDACTED] and
6 stayed away from your house.

7 A. Because my family, my -- not my family, my friends
8 lived down on [REDACTED], and I wasn't going to go there
9 because I know how the police act. If I would have showed
10 up there, they would, they -- and you can't tell me that
11 they were already looking for me, that I had done that even
12 though it's the car she's driving and she wrecked and -- I
13 mean, that's the exact reason. You already had me pegged
14 as being guilty just like in this case. There's no
15 difference in ---

16 Q. So, Mr. Winkler, it's your testimony that you were
17 afraid ---

18 A. No, her daughter.

19 Q. Mr. Winkler, let me finish my question. You were
20 afraid that the police were going to arrest you for the
21 assault, for the beating, for the rape, and for the
22 kidnapping of your wife?

23 A. That's what you say.

24 Q. And that's why you stayed away?

25 A. You're putting words in my mouth. I didn't say that.

1 Q. You were afraid you were going to get arrested?

2 A. No, I wasn't.

3 Q. You said you knew how the police ---

4 A. I was going to go get my car one way or another, but
5 you put them words in my mouth just now. I didn't say
6 anything like that.

7 Q. You were afraid of the police.

8 A. No, I was not afraid of the police.

9 Q. Then why didn't you call them?

10 A. Why didn't she call them? She's fifty years old.

11 Q. Why didn't you call them, Mr. Winkler?

12 A. I called -- first I -- well, first I called Scooter
13 Brown to see if we could get a ride and, in fact, I made
14 two calls to him, but he only let the police hear one.

15 Q. You're trying to get your car, Mr. Winkler?

16 A. That's correct.

17 Q. Why don't you call the police to see if you could find
18 your car?

19 A. I had to get to a phone first.

20 Q. All right. How many phones did you pass on the way to
21 your friend's house?

22 A. There weren't any.

23 Q. When you got to your friend's house, did you go inside
24 the house?

25 A. Yeah.

1 Q. Did they have ---

2 A. They had just ---

3 Q. --- a telephone, Mr. Winkler?

4 A. They had just got home, and five minutes later the
5 police came rolling up.

6 Q. Did they have a telephone, Mr. Winkler?

7 A. They did.

8 Q. Did you call the police?

9 A. No.

10 Q. Do you have a telephone in your home, Mr. Winkler?

11 A. Yes.

12 Q. Did you return home and call the police?

13 A. No. Has nothing to do with what she did. Has
14 absolutely nothing to do with what she did. She wrecked us
15 and then blamed it on me.

16 Q. You testified earlier that the victim called you
17 numerous times and did hang ups.

18 A. Oh, yeah, and I wrote those numbers down and the
19 dates, not the numbers. I wrote the dates and the times
20 down.

21 Q. All right. Can you show me the cell phone records or
22 the phone records?

23 A. Well, I turned them in to my attorney, the
24 investigator at least three months ago. Maybe she has
25 them.

1 Q. Well, Mr. Winkler?

2 A. Do you want them?

3 Q. If they don't exist, she wouldn't have them, would
4 she?

5 A. Did the -- well, okay, Ms. -- is she in the courtroom?

6 THE COURT: We will find out later, sir. Just finish
7 answering the questions.

8 BY MR. HEMBREE:

9 Q. Have you seen -- I will ask it this way, Mr. Winkler.
10 Have you seen cell phone records, telephone records that
11 indicate Becky Winkler ever called you after October the
12 10th of 2005?

13 A. After October the 10th?

14 Q. Correct.

15 A. No, that's what we are looking for. I wrote the
16 dates and numbers down. They have them. They, they'll be
17 there.

18 Q. But you have not seen them yourself, have you?

19 A. No. L[REDACTED], L[REDACTED]'s calls don't show up either.
20 They don't even show up on my phone or her phone or
21 J[REDACTED]'s phone. That call never happened.

22 Q. Thank you, Mr. Winkler. Let me ask you about ---

23 A. You're welcome.

24 Q. --- March 6th, 2006. It's a normal day.

25 A. Started out, yes.

1 Q. You're out on bond.

2 A. Yes.

3 Q. You had permission to leave your house. You were on
4 electronic monitoring?

5 A. Yes.

6 Q. And you had permission to leave your house at 4:00 in
7 the afternoon till 6:00 in the afternoon. Right?

8 A. From when?

9 Q. From 4:00 in the afternoon until 6:00 in the
10 afternoon?

11 A. On that day? Yes.

12 Q. Yeah.

13 A. On Monday, yes.

14 Q. On that day. Now, at some point -- did you do
15 anything unusual that day?

16 A. No.

17 Q. Did you write anything unusual that day?

18 A. No.

19 Q. The -- about 5:30, 5:25, you leave your house. You
20 get a ride with Jeffrey Joslin, right?

21 A. Around 5. I don't know exactly what time it was. I
22 didn't have my watch on.

23 Q. Well, let me ask you this, Mr. Winkler.

24 A. He wrote on it, he wrote on it it was 5:00, but...

25 Q. Was that -- it was between 4 and 6, was it not?

1 A. Yes.

2 Q. And 5, sometime between 5 and 5:30, that sounds about
3 right to you, doesn't it?

4 A. Yes.

5 Q. And it's your testimony today that the only thing you
6 had with you was two DVDs?

7 A. That's not correct.

8 Q. What else did you have with you?

9 A. I had my keys.

10 Q. Had your keys.

11 A. Pack of cigarettes.

12 Q. Fair enough.

13 A. And a lighter.

14 Q. Okay. Wallet?

15 A. I had a bandana with me I usually carried, a
16 handkerchief of different colors with me.

17 Q. Okay.

18 A. And my wallet.

19 Q. And your wallet. So, you walk out the door. Now, you
20 don't have any -- you don't have any gun?

21 A. No.

22 Q. Don't have any bullets?

23 A. No.

24 Q. Don't have any knife?

25 A. No.

1 Q. Just DVDs?

2 A. Yes.

3 Q. And it's your intention to go to Becky Winkler's house
4 and give her these two DVDs?

5 A. Yeah. It didn't matter if I just had to leave them
6 with her and leave or not. It was just...

7 Q. You just wanted to drop them off?

8 A. Yes.

9 Q. Could have slid them under the door.

10 A. Right, because she tried to drop the charges, and I
11 just was trying to give them to her to be on that peace
12 treaty because she tried to drop the charges. But y'all
13 wouldn't let her because she said she didn't say
14 kidnapping, she didn't say rape, and she didn't say ---

15 THE COURT: If you would just answer the, the
16 question.

17 WITNESS: All right.

18 BY MR. HEMBREE:

19 Q. And you could have slid these DVDs under the door for
20 all we care, wouldn't you?

21 A. Yes, I could have, but I chose to knock on the door
22 like a human being does.

23 Q. This was an -- this was an absolute utter complete
24 violation of your conditions of bond. You had been ordered
25 as a condition of bond to stay away from Rebekah Winkler,

1 true?

2 A. True.

3 Q. You knew this?

4 A. I knew that.

5 Q. You knew that if you violated that order, that you
6 could go back to jail?

7 A. Well, see, she did it at least a dozen times and
8 didn't go to jail.

9 Q. Mr. Winkler, you knew ---

10 A. Now, fair is fair.

11 Q. You knew that if you violated that order, you would go
12 to jail?

13 A. Okay. Like I said, fifty-fifty chance things would go
14 good that she wouldn't call the police.

15 Q. And they didn't go good, did they?

16 A. No, it didn't.

17 Q. Now ---

18 A. Because her husband showed up and tried to kill me.

19 Q. Mr. Winkler?

20 A. He's sitting right back there in the back hiding.

21 Q. You were under a family court, you were also under a
22 family court order, mutual restraining order. Very common
23 in family court when you file divorce proceedings, right?

24 A. Yes, they put ---

25 Q. You've been ---

1 A. --- a restraining order on both of us.

2 Q. On both of you. It's a mutual kind of thing?

3 A. Absolutely.

4 Q. But, but you have an additional order on you, a
5 condition of your bond that would send you back to jail if
6 you violated it, correct?

7 A. It's the same, it's the same restraining order as the
8 family court. The same, same exact.

9 Q. But, Mr. Winkler, the consequences are much different.
10 You appreciate that?

11 A. I did not know that.

12 Q. You knew that you -- now, you did know you had a
13 condition ---

14 A. I didn't know that the consequences were different.

15 Q. You knew that you violated that order and you could go
16 back to jail? You knew?

17 A. Correct.

18 Q. You knew that?

19 A. Right.

20 Q. Yet you chose to go over there anyway.

21 A. Right.

22 Q. In the hopes of accomplishing something?

23 A. Yes.

24 Q. In addition to just turning in these two DVDs?

25 A. Yes, but she kept asking for them every time she'd

1 come over. And we discussed it and I said, well, I don't
2 have a way of -- to tape them, and then finally I found a
3 way. I got somebody to tape them.

4 Q. But these conversations had happened way in the past.
5 They hadn't occurred?

6 A. A couple months earlier, yes.

7 Q. Months before?

8 A. Well, see, the reason I thought that is because she
9 kept coming over and parking in the driveway.

10 Q. Prior to, prior to October, that's when -- if any
11 conversations were had about this, they were prior to
12 October 10th, were they not?

13 A. Prior to October 10th?

14 Q. Right. Yes. So, it had been at least five months
15 since there had been any conversation about ---

16 A. Yes.

17 Q. --- DVDs.

18 A. But multiple phone calls and drive-byes.

19 Q. And you, and you ---

20 A. I really didn't know what she wanted.

21 Q. Decided that day that today's the day that I'm going
22 violate a condition of my bond?

23 A. Oh, no.

24 Q. Slip over to Becky's ---

25 A. You're putting words in my mouth.

1 Q. Slip over to Becky's and give her the DVDs?

2 A. Is that a question?

3 Q. Yes.

4 A. Well, you're putting words in my mouth because I
5 didn't even know if I getting a ride or not that day. I
6 was -- my hands are tied there because I didn't have a
7 vehicle at the, the time that -- that the court through
8 Family Relief Fund gave her temporary relief of the car,
9 and I didn't know if I'd even get a ride that day. So, why
10 would I all of a sudden out of a normal day decide I'm
11 going to go over and kill my wife?

12 Q. Mr. Winkler, you had seen this gun prior to March the
13 6th, 2006, hadn't you?

14 A. That is -- that looks like the gun, yes. That's,
15 that's Becky's gun, the gun ---

16 Q. All right. Let's talk ---

17 A. --- we had at our house.

18 Q. This is the gun you had at your house?

19 A. Yes, it is.

20 Q. J [REDACTED] had seen this gun?

21 A. J [REDACTED], I never showed J [REDACTED] that gun, no. I
22 wouldn't bring that gun out in front of J [REDACTED] for no
23 reason because J [REDACTED] was a dangerous -- he was
24 dangerous. He liked to light fires and -- he -- I wouldn't
25 show him a gun if I had ---

1 Q. We'll talk about J [REDACTED] in a minute because you
2 talked a little bit about J [REDACTED] in your statement to the
3 police, didn't you?

4 A. Uh-huh.

5 Q. Now, this was that gun that you kept in your house at
6 Bitter Spar?

7 A. Yes, it was.

8 Q. All right, and you don't remember a fellow named
9 Charlie Brisson?

10 A. Brisson?

11 Q. Brisson?

12 A. Yes.

13 Q. Yes. Do you remember Charlie Brisson?

14 A. I do.

15 Q. And?

16 A. I -- her -- his daughter and his son-in-law are like
17 my closest friends. They came to, they came to my house
18 and stayed, as a matter of fact, through those months in
19 between October and March.

20 Q. Okay, and the Brissons, you had known Mr. Brisson
21 because you had done some work for him. He lived in North
22 Carolina?

23 A. I knew him. I knew him through his daughter.

24 Q. Okay, he's an older fellow.

25 A. Yes. He used to drive -- actually, he used to drive

1 me -- I used to ride with him up to long -- up to Raleigh
2 to see them.

3 Q. So he lived in, he lived in North Carolina and you
4 worked with him some?

5 A. I never worked with him, no.

6 Q. Didn't do any work for him?

7 A. It is gram -- at his mother's house I was -- I sub-ed
8 out the roof. They put new roofing on; I sub-ed it out.

9 Q. Would it surprise you, would it surprise you that this
10 gun is actually registered to Charlie Brisson?

11 A. I knew it was registered to him. Me and him shot it
12 out behind his grandmother's house.

13 Q. So, you had shot this gun previous to -- well,
14 previously?

15 A. Yes.

16 Q. With Mr. Brisson?

17 A. I did.

18 Q. With ---

19 A. Only on one occasion.

20 Q. How long ago had that been?

21 A. Well, it was when I -- was '89, '90.

22 Q. Long time ago?

23 A. Long time ago.

24 Q. And it ended up in your house?

25 A. Yes. The day after we were shooting it, Mr. Brisson

1 said would you like that gun. I said sure, and he gave me
2 that and a box of shells with it.

3 Q. I got you. So, this was a gift to you?

4 A. He had many guns and he gave it to me.

5 Q. A gift to you from Charlie Brisson that you had at
6 your house?

7 A. Yes.

8 Q. It's your testimony that when you left your house that
9 day on March the 6th, 2006, you were not armed with
10 anything?

11 A. Correct.

12 Q. Got a ride with Jeffrey Joslin, right?

13 A. Yes.

14 Q. Went to Becky's house?

15 A. Yes.

16 Q. Now, you actually had been doing a little writing that
17 day, hadn't you?

18 A. Writing?

19 Q. Writing. Writing. Writing.

20 A. Not that I know of.

21 Q. Journal?

22 A. No.

23 Q. Well, let me show you State's Exhibit 162 for
24 identification purposes and ask if you can identify this
25 book, this journal.

1 A. Looks like a, a record book of some sort. Yeah, I
2 might have written in this, this book, yeah.

3 Q. Yeah. Well, and I have got it clipped. Let me let
4 you look at the rest of it. I don't mean to hide pages
5 from you. Take a look at -- just start from the beginning
6 and tell us if that, in fact, is -- or some of the notes
7 that you were taking maybe about your divorce, maybe about
8 your -- just things that were going on. Please, you can
9 take your time.

10 A. Yes, these are some notes that I had put down per
11 being asked Mr. Bellamy to jot down things.

12 MR. HEMBREE: And, Your Honor, at this time I'd go
13 ahead and move this into evidence as State's 162.

14 THE COURT: Have you seen this book?

15 Mr. WILSON: I have, Your Honor. I have, I have seen
16 it, I have.

17 WITNESS: Your Honor, could I ask -- could you ask the
18 nurse, Ms. -- if my medication is here yet?

19 THE COURT: If y'all would, ladies and gentlemen, just
20 for a minute, it won't be more than five minutes. If you
21 need to use the restroom, come back, do that, go use the
22 restroom and come back.

23 WITNESS: Thank you, Your Honor.

24 (THE JURY EXITS AT 12:05 P.M.)

25 THE COURT: The defendant asked could he have his

1 medication, supposed to get for anxiety medication. He
2 asked me to ask Ms. Hicks to give it to him.

3 Ms. Hicks, do you have that with you? All right. We
4 only going to take enough time for you to get your
5 medication and come back, and do not discuss your
6 testimony. It's in evidence. 62 is in evidence.

7 MR. HEMBREE: 162, okay.

8 (JOURNAL MARKED INTO EVIDENCE AS STATE'S EXHIBIT
9 NUMBER 162.)

10 THE COURT: Everyone, don't go too far. Going to get
11 the medication, come back and...

12 (OFF THE RECORD.)

13 THE COURT: All right, be seated. Everyone ready?

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

15 THE COURT: Bring the jury back in.

16 (THE JURY ENTERS AT 12:09 P.M.)

17 THE COURT: We will proceed now with further
18 cross-examination.

19 MR. HEMBREE: Thank you, Your Honor.

20 BY MR. HEMBREE:

21 Q. Mr. Winkler, when we left last, we had -- took the
22 break. I had asked you about this booklet that's called --
23 it says record on the front, State's Exhibit 162 in
24 evidence now, and asked if you had done some writing on
25 March the 6th of 2006. Had you?

1 A. I don't think I wrote -- I don't think I wrote on the
2 6th.

3 Q. Well, let me draw your attention to this, this page,
4 and if you will, can you tell me what date is at the top of
5 that page?

6 A. There is a date of 3/6/06. It's the only page that
7 has that, and it's in the middle of the book.

8 Q. Right. Well, it's actually the next -- there's some
9 writing on the previous page?

10 A. No. There's about six pages. Then there's that.

11 Q. Right.

12 A. Then there's about six pages.

13 Q. There's plenty of writing here, and then you have a
14 date at the top of 3/6/06?

15 A. Uh-huh. That's correct.

16 Q. And did that -- wouldn't that normally indicate that
17 you were writing on that date?

18 A. No.

19 Q. Well, let me ask you this. Read to the jury -- well,
20 the...

21 A. We have a, we have a diary of hers that we couldn't
22 put into evidence, Mr., Mr. ---

23 Q. We have six pages.

24 WITNESS: Mr. Wilson, are we objecting to this?

25 BY MR. HEMBREE:

1 Q. We have six pages.

2 THE COURT: Mr. Winkler, this is in evidence at this
3 time.

4 BY MR. HEMBREE:

5 Q. Mr. Winkler, I want you to read pages 1 through 6.

6 THE COURT: Any objection will be overruled. That's
7 in evidence. You may publish.

8 BY MR. HEMBREE:

9 Q. Certainly use your glasses if you need them.

10 A. Well, from reading that, just read the whole thing?

11 MR. HEMBREE: Your Honor, I mean, Mr. Winkler...

12 THE COURT: Under cross-examination, if Mr. Wilson
13 wants you to read other parts, you can. But right now just
14 read what the state is requesting, 3/6/06. And if you
15 don't want to read it, then, Mr. Hembree, you read it.

16 BY MR. HEMBREE:

17 Q. Please read it out loud, Mr. Winkler. I'm sorry, Mr.
18 Winkler.

19 A. What?

20 Q. Would you please read it out loud?

21 A. Please don't yell at me.

22 Q. I was trying to get your attention. Would you please
23 read the document out loud so the jury can hear it?

24 A. Well, I will in a second.

25 Q. Take your time.

1 A. Yeah, you can read it if you want.

2 Q. Mr. Winkler, if you would, go ahead and read the first
3 six pages to the jury.

4 A. First six pages?

5 Q. The six pages dated March the 6th of 2006. You're
6 right, that's it. Go back. That's page 3. That's
7 starting right there. If you'll begin reading here, Mr.
8 Winkler, and continue until ---

9 A. Okay. This is no lie. Because of Becky's lies,
10 lies, I have lost my job, all dignity, some
11 friends and family. No money. Both judges so
12 far have given Becky everything she wants. She
13 was driving the car the night in question,
14 wrecked it and blamed it on me. There was no
15 rape, no attempted murder. She was -- she was --
16 she had made me out to be a monster, which I am
17 not. She is now driving around in my car, going
18 to the bars, telling her lies and laughing about
19 it. The court system has now turned me into that
20 monster. Judge Russo has already told me that
21 motion -- the motion to take off the monitor
22 device, you will spend the rest of your life in
23 prison. This is before he saw any evidence has
24 ever been released -- any evidence has ever been
25 released. That's what I mean. The choice, what

1 choice do I have?

2 Q. Sorry, could you read that line again?

3 A. I've spent four months. What choice do I have?

4 It's been four months and they have not given me
5 any evidence which they do not have -- which they
6 -- they do have, but they are not going to give
7 us because they know it, it because it reveals
8 the truth.

9 The blood work, explaining that, the blood work in ---

10 THE COURT: No, read the -- sir, read the whole thing.

11 Then you can explain later.

12 WITNESS: Okay.

13 BY MR. HEMBREE:

14 A. The lawyer Scott -- my lawyer Scott Bellamy has
15 not interviewed anyone or for that matter done
16 anything but blow smoke up my butt. My neighbor
17 has been writing for -- waiting for three months
18 to talk to him.

19 Meaning Bellamy.

20 But nothing he told me he would do. He hasn't
21 done anything he told me he would do. He's not
22 -- wait. He has not. Excuses are, are, are --
23 and lies are the best things. Before

24 Thanksgiving he told me Jody and Rick ---

25 Who are my brother and sisters.

1 --- that he needed was the interview. Well, we
2 got the interview, but now he says we need the
3 blood evidence, and wondering what then will he
4 ask for. The only thing that has helped is dad,
5 Lou's devotion for me. I love my father. Thank
6 you, Dad. Norton is no lawyer.

7 And that's pertaining to my divorce lawyer.

8 He took the money from me and he lost my car. I
9 had to pay \$1000 of her attorney fees. He
10 misrepresented me and she -- and should be looked
11 into. I am caught up in a system that took me
12 from being on top of the world, which did not
13 take much for me to be happy, and put me into the
14 lowest form of humanity. That's what your office
15 did. I am not trash. I do not come from trash.
16 They have made me guilty from the start, all on
17 her lies. I mean, why didn't they assume she was
18 driving her own car in the first place? She was
19 drunk and would have gotten away with this whole
20 thing because of this system. I say to Judge
21 Russo it is your fault. Aaron Wilkes is a good
22 and honest man.

23 Now, Aaron Wilkes is the man who ran the monitor
24 device. Now, at the beginning of this is a ---

25 BY MR. HEMBREE:

1 Q. Do you, do you ---

2 WITNESS: Now, that's into evidence, right, Your
3 Honor?

4 THE COURT: Yes, sir.

5 WITNESS: Thank you.

6 BY MR. HEMBREE:

7 Q. Do you recall if these, do you recall if these things
8 were on your mind on March 6th when you went to your wife's
9 home?

10 A. No, I do not.

11 THE COURT: If you would, Mr. Hembree, unless you're
12 going to use it again, bring it back up here to the court
13 reporter.

14 MR. HEMBREE: Thank you.

15 BY MR. HEMBREE:

16 Q. Is your testimony today, Mr. Winkler, that you went
17 over there to return DVDs, correct?

18 A. Not to return them, just to give them to her.

19 Q. To give them to her, I'm sorry.

20 A. She never did have them.

21 Q. It was my poor choice of words. To give her, to give
22 Becky two DVDs that -- it's your testimony that J [REDACTED]
23 G [REDACTED] came to the door. You knocked two times. On the
24 second knock, J [REDACTED] G [REDACTED] came to the door. He
25 didn't permit you in the door, but you, you -- but the door

1 was open partially, and you pushed your way on in?

2 A. Yeah. He didn't shut and lock the door, no.

3 Q. Right, but he push -- you pushed the door on in?

4 A. Correct.

5 Q. Right, and that J [REDACTED] just sort of moved back out
6 of the way?

7 A. Correct, and just walked back to the counter.

8 Q. Walked over to the counter.

9 A. That's correct.

10 Q. And that at that point?

11 A. It was like he knew I was coming or he was there.

12 Q. Was he on the telephone?

13 A. No, he was not on the telephone.

14 Q. Was he eating dinner?

15 A. No, he was not.

16 Q. Was there a plate of food at the ---

17 A. There was an uneaten plate of food. The jury has seen
18 that. Not a speck of food been eaten off that plate. That
19 was Roger's plate.

20 Q. And the plate that was there, the plate that was there
21 was just sitting there on the counter?

22 A. Sure was.

23 Q. And J [REDACTED] moved back over close to the counter,
24 correct?

25 A. No. He didn't, he didn't go right there to the food,

1 no.

2 Q. Where did he -- he was heading back towards the
3 computer, which is right?

4 A. From what I -- not next to it, about 8 feet away.

5 Q. Okay, just a few feet away. He moves around but he
6 moves in past the doorway?

7 A. Right.

8 Q. Comes around?

9 A. We can get one of the photos; I can show you exactly
10 where he was.

11 Q. And -- that's all right. We understand where -- we
12 have seen where the computer area is. He moves back, and
13 Becky is standing?

14 A. Yeah.

15 Q. She ---

16 A. She wasn't just standing up. She stood up as soon as
17 I walked in the door.

18 Q. She stood up and she covered her mouth?

19 A. No, she didn't cover her mouth right then.

20 Q. Okay, that came later. She stands up?

21 A. She -- if she wouldn't have warned me, I'd be dead
22 today. That's my testimony.

23 Q. She stands up?

24 A. All right.

25 Q. And as you walk in the door, she comes off the couch.

1 That's your testimony today?

2 A. And faced, and faced me. Yes, it is.

3 Q. Right, and you began to walk around the couch toward
4 Becky?

5 A. Yes.

6 Q. Is that correct?

7 A. Correct.

8 Q. Now ---

9 A. There were no overturned chairs or anything like that.

10 Q. All right. All those overturned chairs, broken
11 telephone, none of that was -- you saw none?

12 A. It was absolutely -- when I left, he shut and locked
13 that door. He made -- he made the comment that he shut and
14 locked the door. If you look at the one, the one -- if you
15 look at the one chair, it would have never been tipped over
16 without hitting the computer keyboard. It was all in
17 place. Nothing was disturbed.

18 Q. Mr. Winkler.

19 A. You know as well as I do that that's how that scene
20 was.

21 Q. Mr. Winkler, my question is.

22 A. Yeah.

23 Q. When you left, the chairs were in good shape? They
24 weren't turned over?

25 A. Not a single chair was tipped over.

1 Q. The phone was not broken?

2 A. No. Roger Grainger was the only thing laying on the
3 floor.

4 Q. Okay, and you came around the -- you came around to,
5 to do what? To give Becky the DVDs?

6 A. Sure.

7 Q. Okay.

8 A. That's what I went there for.

9 Q. And how close were you?

10 A. I had a ride out in front waiting for me to leave.

11 Q. And how close were you?

12 A. I didn't get -- I didn't get a -- I didn't get -- I
13 didn't get within -- I don't know, I didn't get within 5
14 feet probably ever.

15 Q. Okay.

16 A. I don't know the exact thing because we didn't get a
17 chance to measure it.

18 Q. So ---

19 A. I don't know how long it was.

20 Q. Would you say no closer than 5 feet?

21 A. Right.

22 Q. Maybe a little farther?

23 A. Could have been.

24 Q. Okay, and that she put her hands up?

25 A. No.

1 Q. Okay. Tell us what she did.

2 A. You said hands.

3 Q. Okay. What did she do that alerted you that there was
4 some problem?

5 A. She made a gesture of -- she went -- took a deep
6 inhaled breath ---

7 Q. Okay, and ---

8 A. --- put her hand up to her face like that.

9 Q. --- and at that point?

10 A. Like, oh my god.

11 Q. At that point, what did you do?

12 A. I noticed someone behind me, and I turned and reacted.

13 Q. Okay.

14 A. The gun actually went off right beside my ear. That
15 gun was in that box.

16 Q. This gun right here?

17 A. That's the one I picked up off the floor.

18 Q. All right, show ---

19 A. I believe that's the one. Yeah, that's...

20 Q. This gun went off right beside your ear?

21 A. Right beside my ear.

22 Q. Now, how close?

23 A. I'd like to know what happened to the shell casing,
24 but apparently it just disappeared.

25 Q. Now, how close -- you reacted?

1 A. Sure did.

2 Q. You stepped back like this?

3 A. Right into him.

4 Q. And used an elbow and elbowed -- your testimony is you
5 elbowed Roger Grainger?

6 A. Yes.

7 Q. And that when you elbowed Roger Grainger -- now, he's
8 behind you, true?

9 A. Yes.

10 Q. Okay, and he's got the gun pointed, right?

11 A. Yeah.

12 Q. And he's behind you, and you back into him, hit him,
13 and the gun discharges?

14 A. He spun, he spun a little bit and it -- the gun ended
15 up right beside my ear to -- I mean, that's where it went
16 off at, and I was, like, in just total black.

17 Q. When you hit Roger Grainger, were you farther away
18 from Becky than where you had begun? Did you have to move
19 backwards into him?

20 A. I took a step back. Well, actually, like, my left
21 foot was planted.

22 Q. Left foot planted, but your right, this side of your
23 body is going backwards?

24 A. Yes.

25 Q. So, you're maybe another -- at least this part of your

1 body is maybe another 3 feet ---

2 A. I can't ---

3 Q. --- from where you were?

4 A. I can't be sure. We never measured anything.

5 Q. Understood, but fair to say a step, an adult step, 3
6 feet, 2 and a half?

7 A. Not backwards.

8 Q. Okay. Now, Mr. Winkler, you heard the testimony of
9 Dr. Proctor.

10 A. Yes.

11 Q. And you heard Dr. Proctor explain stippling.

12 A. Yes.

13 Q. You understand that concept?

14 A. Yes.

15 Q. And that you can actually, looking at state's 160 ---

16 A. Yes.

17 Q. --- in evidence.

18 A. And I'd like -- yeah, I have seen it.

19 Q. And you ---

20 A. I don't need to see it anymore.

21 Q. And you can see the stippling around the wound, the
22 wound site, correct?

23 A. Correct.

24 Q. And that's caused -- you understand that that's caused
25 by gunpowder and, and flame coming out of the barrel of the

1 gun and causing burns in the actual ---

2 A. The little bit about it that I know is is that, yes,
3 that it's stippling.

4 Q. And that -- do you understand why it was caused ---

5 A. Yes, and I also understand that if J [REDACTED] would have
6 said I didn't walk over towards Becky, that Mr. Proctor
7 would have had to have changed his testimony of how far
8 that shot was because if J [REDACTED] said it was a 10-foot
9 shot, Mr. Proctor couldn't say it was a 3-foot shot, and
10 that's a fact because ---

11 Q. Mr. Winkler ---

12 A. --- J [REDACTED] wouldn't have said I walked around that
13 couch. He couldn't have said it was a 3 to 4-foot shot.

14 Q. Well, you heard his testimony?

15 A. I sure did, twice.

16 Q. That you put the gun just to your mom's face, pulled
17 the trigger, and fired at close range?

18 A. My mom's face? What?

19 Q. That you put, that you put the gun at his mom's face
20 at close range and fired. That was his testimony, was it
21 not?

22 A. No, I don't, I don't understand what you just said.
23 Whose mom's?

24 Q. J [REDACTED] G [REDACTED] mother. In J [REDACTED]'s testimony
25 -- do you recall J [REDACTED] testifying? That his testimony

1 was that you went around the couch, you took the gun, you
2 raised it, put it to the face of his mother, and pulled the
3 trigger?

4 A. Well, sure. That's, that's a complete lie.

5 Q. But that's the testimony that he offered?

6 A. Yes.

7 Q. And that was a close-range wound that -- the close-
8 range shot that he described, was it not?

9 A. That's what they say. I'm not an expert.

10 Q. And ---

11 A. But if it was -- if I wouldn't have -- if he wouldn't
12 have said that, Proctor wouldn't have had to say it was a
13 10-foot shot. But in other words, he can't -- he wouldn't
14 be able to explain the stippling then, then would he?

15 Q. Well, all he's saying, if you recall -- tell me if
16 this is your understanding.

17 A. He don't even know the exact time of death.

18 Q. Tell me if this is your understanding. That all Dr.
19 Proctor said was that stippling can't occur outside of 24
20 inches, that stippling occurs between 6 inches and 24
21 inches. Do you recall that testimony from Dr. Proctor?

22 A. I do. Becky is an adult woman, fifty years old, and
23 she had a can of mace like they say she had, why didn't she
24 use it?

25 Q. Mr. Winkler, you don't deny that there is ---

1 A. Why, I'm telling you what ---

2 Q. Mr. Winkler, you don't deny that there's obvious
3 stippling on the face of Becky Winkler, do you?

4 A. I don't know anything about stippling except for what
5 they told me.

6 Q. You want to take another look at the photograph?

7 THE COURT: Proceed on.

8 MR. HEMBREE: Thank you, Your Honor.

9 BY MR. HEMBREE:

10 Q. Now, this, this testimony today about what happened in
11 the, the condo, you have actually given a statement before,
12 haven't you?

13 A. Which statement?

14 Q. You gave a statement, a rather lengthy fifty-page
15 statement to the police on the day that you were arrested.

16 A. A fifty page?

17 Q. It's ---

18 A. I don't know how long it is.

19 Q. Transcribed, a lengthy statement?

20 A. The day at ML Brown?

21 Q. Yes, sir.

22 A. I have glanced at it, but I didn't read -- yeah, I
23 probably read the whole thing, but...

24 Q. Okay. I want to show you Court's Exhibit number 23.
25 Do you remember signing that document?

1 A. I do.

2 Q. And this is an advice of your Miranda rights?

3 A. Correct.

4 Q. And you indicated that you understood your rights
5 here?

6 A. Uh-huh.

7 Q. True?

8 A. True.

9 Q. And you signed that? You actually in your handwriting
10 wrote yes?

11 A. I did.

12 Q. You understood your rights?

13 A. I did.

14 Q. And that you understood that you -- that you
15 understood your rights and you did want to give a
16 statement, and you signed yes there also, correct?

17 A. Correct.

18 Q. And this is your name here?

19 A. Oh, yeah.

20 Q. And this was done at 1750 hours, which would be --
21 excuse me, 1950 hours, which would be 7:50.

22 A. 7:50.

23 Q. Sound about right?

24 A. Yeah.

25 Q. Fair enough? Now, I have a transcription of that

1 statement. State's -- excuse me, Court's Exhibit 24 just
2 for your review. It's not in evidence for the jury, by it
3 is -- you're able to review it. If you will, Mr. Winkler,
4 draw this jury's attention to the part in this statement
5 where you tell the police about Roger Grainger killing your
6 wife.

7 A. There is none in that statement, I don't believe.

8 Q. You ---

9 A. There is none because I, I didn't trust anybody in
10 that room and the first person I trusted, who was Scott
11 Bellamy, I told him. But to tell any of you, that was --
12 that's not -- you were already after me. For two weeks you
13 said it was me, correct?

14 Q. Never mentioned -- in this statement never mentioned
15 the name Roger Grainger at any time?

16 A. No, I did not.

17 Q. But you did mention the gun.

18 A. Yes, I did.

19 Q. You mentioned this gun.

20 A. Yup, and I mentioned that I did not shoot my wife.

21 Q. You repeatedly mentioned that gun, didn't you? Mr.
22 Winkler, did you repeatedly talk about the gun?

23 A. I don't know if it was me or Toby Boyd.

24 Q. Well, I'll help to refresh your recollection. Take a
25 look at page 9.

1 A. Page 9.

2 Q. Fourth from the bottom.

3 Boyd: Okay, did you -- where was, where was the
4 gun at? In your pocket when you got out of the
5 car, walk into the building? Did you have a gun
6 in your pocket or was it in your hand?

7 And you responded?

8 A. In my pocket.

9 Q. Switch over to another spot. Page ---

10 A. I have already told you that I said this.

11 Q. Page 13.

12 A. Yup.

13 Q. Middle of the page, and again still talking about the
14 gun. Boyd says:

15 Okay, so is it at your house, right? It stayed
16 at your house where you live at Stone's Edge?

17 And you said, you said yeah?

18 A. Want me to answer that?

19 Q. Yeah.

20 A. Yeah.

21 Q. You agree? Let's keep talking about the gun. Take
22 you to the top of page 23.

23 A. You're skipping a lot of the stuff here where I said
24 that I didn't shoot my wife.

25 Q. I'm going to talk about that in a minute.

1 A. Okay. Well, you keep saying we're going back to that
2 book, too, and -- I mean, you have already -- I have
3 already explained that I said that.

4 Q. Page 23. Page 23, please.

5 A. That I had to -- that I told them I had the gun. This
6 is all you got?

7 Q. Page 23, Mr. Winkler.

8 A. I'm getting there.

9 Q. Okay, and Boyd says at the very top of the page:
10 Well, why would you arm yourself before you leave
11 home to go to go speak to your wife simply about
12 money or about ---

13 And you say?

14 A. I know it -- I know that don't sound right but
15 it's just, I don't know.

16 Q. And then a couple of paragraphs down this big
17 paragraph at the end, the last sentence he says:

18 And I don't think you would worry about
19 protecting yourself from her, right?

20 And you said?

21 A. Well, I didn't know whether she'd have a
22 boyfriend or not. I don't know. See, I don't
23 even know.

24 Q. And he says ---

25 A. I didn't know. I kept telling them I didn't know

1 anything.

2 Q. And he said: I don't know either. And you said?

3 A. I have never called her, never seen her.

4 Q. Well, why would you put that gun in your pocket to
5 start with?

6 A. I didn't put the gun in my pocket. I already told you
7 that.

8 Q. I'm asking you what -- I'm asking you what ---

9 A. This here on paper.

10 Q. Mr. Winkler, let me ask you the question here, and if
11 you will answer it.

12 A. Okay.

13 Q. Boyd says: Well, why did you put that gun in your
14 pocket to start with? And you said?

15 A. Where are you at?

16 I didn't know why. I didn't know why I put the
17 gun in my pocket.

18 Q. I really don't know why I put the gun in my
19 pocket?

20 A. Well, you got to remember ---

21 Q. Now, next, next line by Boyd ---

22 WITNESS: Mr. Wilson, are you going to object to any
23 of this?

24 THE COURT: Sir, if you want to -- let's stop. Do you
25 want to explain that, right?

1 WITNESS: Yes, I do, and if my lawyer's going to just
2 sit there and let this go on without objections, I want a
3 new lawyer.

4 THE COURT: This is in evidence, but if you want, I'll
5 stop. If you want to say why you said that ---

6 WITNESS: Well, I continue -- I continued to say that
7 I don't remember any of that, any of it. They are putting
8 words in my mouth the entire time after I told Mr. Boyd on
9 the way over there to ML Brown's -- I said, is Scott
10 Bellamy going to be there? And he said you don't have to
11 worry about that. Then you give me the Miranda, and I did
12 sign it.

13 You have got to remember there were over twenty
14 policemen within an hour earlier with assault rifles aimed
15 at me on -- at my head, my chest. They're all over the
16 place going to kill me ---

17 THE COURT: All right. Now ---

18 WITNESS: --- within twenty minutes.

19 THE COURT: Thank you, sir. Now, let's get back --
20 just read what's on the statement there.

21 BY MR. HEMBREE:

22 Q. And Mr. Winkler, I'm going to, I'm going to pick this
23 up a bit because we could go through this thing and through
24 this thing *ad nauseam*.

25 A. Right.

1 Q. And there's no need for that.

2 A. Right because I have already told you what I said.

3 Q. Tell me if this is a fair characterization of, of at
4 least portions of your testimony in this statement.

5 First, throughout the statement you admit to the
6 police repeatedly that you took the gun, that gun, with you
7 to Becky's.

8 A. Yes. I, I, I said it a couple of times, yes ---

9 Q. A number ---

10 A. --- but I'm telling you right now, the reason why I
11 did that -- and I didn't take that gun. They had, they ---

12 WITNESS: And I'd like to explain something else
13 further, if I may?

14 THE COURT: If you would, please finish his question.
15 Answer the question first.

16 WITNESS: Okay. I have to write it down because I'll
17 get...

18 BY MR. HEMBREE:

19 Q. You repeatedly admitted -- let me just clarify this.
20 You repeatedly admitted ---

21 A. Hold on a second, please.

22 (A PAUSE.)

23 A. Okay.

24 Q. You repeatedly admitted to having -- to taking the gun
25 with you to Becky's?

1 A. Yes, I did. You've asked me that six times now.

2 Q. And thank you for your answer. You -- and throughout
3 this testimony, you deny knowing anything about the
4 shooting, saying that you, you essentially blacked out?
5 That you remember going to the door and that you can't
6 really remember. You might have knocked, and then after
7 that, it's all a blur?

8 A. I told them whatever they wanted to hear.

9 Q. Now ---

10 A. And to a point where I said look, I don't remember
11 anything.

12 Q. Now, Mr. Winkler, isn't it ---

13 A. There was a point where I said look, I don't --
14 because I said I know what you're up to. You want me to
15 say this; you want me to say that. It's an old trick.

16 Q. Please answer my question, Mr. Winkler. My question
17 is this. Throughout this, this statement over and over and
18 over again don't you continually tell the police that you
19 remember going there ---

20 WITNESS: Okay. For the seventh time, Your Honor,
21 same question.

22 THE COURT: Hold on one second.

23 MR. HEMBREE: Let me finish my question.

24 WITNESS: Seventh time today.

25 THE COURT: All right, sir, let's wait and get the

1 question over with and there will no other questions.

2 BY MR. HEMBREE:

3 Q. You remember going there. You caught a ride from
4 Jeffrey Joslin. You armed yourself before you left.

5 A. No, I didn't.

6 Q. I ---

7 THE COURT: Finish your question, Mr. Hembree.

8 BY MR. HEMBREE:

9 Q. This is what you have told the police in this
10 statement. Do you understand that? What I'm -- my
11 question to you is, is this a fair characterization of your
12 testimony? That you, you left your -- you left your -- you
13 armed yourself, you got a ride with Jeffrey Joslin to Becky
14 Winkler's, you walked up the stairs, went to the door, you
15 might have knocked, and then everything is a blur
16 thereafter until after you left the apartment?

17 A. That is not a fair characterization.

18 Q. In what way?

19 A. Because I also said I didn't shoot my wife. I would
20 never do that.

21 Q. Well, you have also ---

22 A. That's you -- I have answered your question. You
23 said is that a fair characterization. It is not because
24 you're leaving a lot of things out just like you left them
25 out of that memo.

1 THE COURT: He's answered your question, Mr. Hembree.
2 What's your next question?

3 MR. HEMBREE: Thank you, Your Honor.

4 BY MR. HEMBREE:

5 Q. And on page 21, the bottom of the page about six lines
6 up: there's a blur. You see that? But this is, and this
7 is Boyd: But there's a blurry vision in your head, right?
8 And you say?

9 A. That I can't tell you. I don't know what to say.

10 Q. You need to speak into the microphone.

11 THE COURT: Just read and see if that's what it says.

12 MR. HEMBREE: I will ask it -- thank you, Your Honor.
13 I will.

14 THE COURT: Read it and ask him if that's what it
15 says.

16 BY MR. HEMBREE:

17 Q. Does it say ---

18 A. It says: I know you want me to say I shot her.

19 Q. Let me say it, and you tell me if this is accurate or
20 not, but there's a...

21 Boyd: But there's a blurry vision in your head,
22 right?

23 Winkler: That I can't tell you. I know you want
24 me to say I shot her, and I don't remember if I
25 did or not.

1 A. I don't remember that, no.

2 Q. And Boyd: I want you to tell me what you did.

3 I don't remember.

4 I'm assuming -- stop right there, and you're actually
5 on page 46, Mr. Winkler?

6 A. Well, no. Right after that I said: Well, what do you
7 want me to say, Toby?

8 Q. On page 46, Mr. Winkler.

9 A. Well, if you're going to ask the question ---

10 THE COURT: Sir, I will let you publish that. You
11 just ---

12 WITNESS: Cover all of it.

13 THE COURT: --- you said it.

14 BY MR. HEMBREE:

15 Q. Page 46 at the top of the page.

16 Winkler: I don't remember.

17 Jones: You don't remember that at all?

18 Winkler: I have been telling you that. I don't
19 remember how I got in the door. Did they let me
20 in?

21 Well, I'm asking you. You tell me.

22 And Winkler: You tell me what J ■ said and that's
23 probably what happened.

24 Is that what you said, Mr. Winkler?

25 A. Yup, probably, but because in the newspapers they

1 already have me pegged for doing it. The truth is coming
2 out in this trial.

3 Q. Anything, Mr. Winkler, in that statement about DVDs?

4 A. No, there isn't. They never asked me about anything.

5 Q. You fled into the woods afterward, didn't you?

6 A. No, I didn't.

7 Q. Where did you go afterwards?

8 A. To the golf course.

9 Q. Well, did you hide out at the golf course?

10 A. No, I didn't.

11 Q. Where ---

12 A. No, I didn't. I went to my house.

13 Q. That's right, you went to your house and then left
14 your house.

15 A. Yes.

16 Q. Now, did you call the police from your house?

17 A. No.

18 Q. You got a telephone that's working there?

19 A. No.

20 Q. You didn't have a phone that was working at your house
21 at that time?

22 A. No cell phone. You said cell phone.

23 Q. No. Tele.

24 A. No.

25 Q. Didn't have a telephone at all?

1 A. Yes, I had a telephone.

2 Q. Okay. Did you call the police from your telephone
3 at ---

4 A. No, I didn't.

5 Q. At your home?

6 A. No, I didn't. I wanted to get back to Bay Tree.

7 Q. Now, where was Jeffrey Joslin? Did he give you a ride
8 home?

9 A. When I came out the door, he was gone. I don't know
10 if he heard the shot or seen Roger run up the steps or
11 what. And I have no idea where he's at, and we have two
12 investigators hunting him down, and you guys have him hid,
13 hid somewhere.

14 Q. And you ---

15 A. Is that true or not?

16 Q. --- you were afraid, you testified ---

17 A. Because he knows I didn't have a gun when I went over
18 there.

19 Q. You testified, Mr. Winkler, that you hid out for two
20 weeks because you were scared of Roger Grainger because
21 he's in a hunting club.

22 A. Well, the first, first part of the time I was, yes,
23 that they were looking for me because I know that he wasn't
24 being arrested. He's getting away with murder.

25 Q. So ---

1 A. His whole family has been -- they have been shot,
2 arrested.

3 Q. Roger Grainger. So, you're afraid of Roger Grainger?

4 A. Really, I knocked him on his ass. Why would I be
5 afraid of him?

6 Q. Well, I don't know. I'm trying ---

7 A. All right, I will tell you this ---

8 Q. --- because you ---

9 A. --- one time, one time that on the phone when Becky
10 was getting kind of tired of Roger calling and harassing
11 her, she said Mick, pick the phone up, and at that time he
12 was saying you bitch ---

13 MR. HEMBREE: Objection. I have got to object.

14 A. And I took over the phone call and I told him ---

15 THE COURT: Sir, you can say what you said.

16 BY MR. HEMBREE:

17 A. And I told him I'm the, I'm the easiest man in North
18 Myrtle Beach to find. Any time you want, you can come down
19 and see me, but you will not talk to my wife like that
20 again.

21 Q. Mr. Winkler, this is your wallet, is it not?

22 A. Yes.

23 Q. State's ---

24 A. Yes, it is.

25 Q. --- 46 in evidence?

1 A. Yes, it is.

2 Q. And in the window portion of that wallet, you have
3 clipped an article and kept it there.

4 A. That's incorrect. I, I didn't put that in that
5 window. You know, we could get fingerprints and find out
6 who put that in that window.

7 Q. Now.

8 A. This is getting ridiculous. I've got pictures of my
9 family in that.

10 Q. At what point ---

11 A. That I kept in that window.

12 Q. At what point did you become no longer fearful of
13 Roger Winkler?

14 A. Well, I'd like to see the wallet again and examine
15 that wallet.

16 THE COURT: Sir, you have already answered you did not
17 put it in there. That was your answer.

18 MR. HEMBREE: Thank you.

19 THE COURT: You may proceed to the next question.

20 BY MR. HEMBREE:

21 Q. At what point did you become ---

22 A. You're covering a lot of things up there, Mr. Hembree.

23 Q. At what point, Mr. Winkler, did you become less
24 fearful of Roger Winkler?

25 THE COURT: Roger who, sir?

1 MR. HEMBREE: Excuse me, Roger Grainger. Thank you,
2 Your Honor.

3 BY MR. HEMBREE:

4 A. Well, when I went for help twice, two different times.

5 Q. And ---

6 A. I figured the only way I would have been able to get
7 out of town or anything, I would have had to commit a crime
8 and I'm not a commit -- I'm not a criminal. I would have
9 had to hijack a car or do something like that, and I would
10 never do that.

11 Q. Mr. ---

12 A. I minded my own business and avoided any trouble
13 whatsoever.

14 Q. Mr. Winkler, you testified that at some -- that you
15 were fearful of Roger Grainger because he belonged to a
16 hunting club and had weapons.

17 A. I knew he had a lot of weapons, and yes, I was.

18 Q. You were fearful?

19 A. I was by myself.

20 Q. You were afraid he might come and kill you because
21 you ---

22 A. Exactly.

23 Q. --- you testified because you were a witness to this.

24 A. Exactly. I was the only one that could pinpoint him
25 at the scene of the crime.

1 Q. On which occasion did you contact law enforcement to
2 report this to them about ---

3 A. I did not.

4 Q. And you went for help to a friend's house?

5 A. I turned myself in is what I did.

6 Q. You went for help at a friend's house in North Myrtle
7 Beach, correct?

8 A. Yup.

9 Q. And she hit the panic button on her house?

10 A. She did.

11 Q. Which means the police are coming?

12 A. She did.

13 Q. The very people you need to inform about Mr.
14 Grainger's ---

15 A. I wasn't ready -- I was not ready to come in yet.

16 Q. I see.

17 A. I was waiting for them to arrest Roger Grainger. You
18 guys -- it turned out they weren't even looking for him.

19 Q. And ---

20 A. They were listening to people like Scooter Brown and
21 -- I mean, complete alcoholic people like Scooter Brown or
22 convicted, convicted drug trafficker Archie Bethea, they're
23 listening to him, who has been to the VA so many times they
24 won't let him back in.

25 Q. Mr. Winkler, do you know a Cecelia Willis?

1 A. Yes, I do.

2 Q. Tell this jury who Cecelia Willis is.

3 A. Cecelia Willis is a girl that I was with back in high
4 school who had a child that was supposedly mine and I paid
5 child support from, jeez -- and I guess the child turned
6 eighteen about four years ago, and I paid complete child
7 payments all the, all the way through.

8 Q. Now, Ms. Willis was a girl that -- you never married
9 Ms. Willis?

10 A. I never seen her after she had the child, as a matter
11 of fact.

12 Q. Okay.

13 A. I don't even know if it was mine or not. I didn't
14 want to have anything to do with it, but I just paid it.

15 Q. So, you agreed to paternity and just paid out of the
16 goodness of your heart?

17 A. Not out of the goodness of my heart because there was
18 a court order. I made the court order.

19 Q. All right.

20 A. I don't break the law.

21 Q. Now, Mr. Winkler, Cecelia Willis, was she someone you
22 were acquainted with, a girlfriend with a baby when you
23 were dating Carla Kaiser? It was during the same time
24 frame?

25 A. I don't, I don't know if it was when I was dating

1 Carla or not or if it's after.

2 Q. Mr. Winkler, when you were married to Carla Kaiser,
3 you possessed a long gun?

4 A. No, I didn't.

5 Q. Didn't have a shotgun?

6 A. I never had a shotgun or a rifle.

7 Q. Just handgun?

8 A. In my entire life.

9 Q. Just handguns?

10 A. I only had that handgun when Charlie Brisson gave me
11 that in '80, '80 or '89.

12 Q. Now ---

13 A. Never had a long rifle or a shotgun.

14 Q. The, the injuries that Carla Kaiser described that she
15 received on Christmas Eve, those were as a result -- those
16 were her fault?

17 A. Well, it was a cut on her finger, yes.

18 Q. And she went to the hospital to get treatment?

19 A. Yes. Yeah. Well, you can clearly tell that -- you
20 know, if what you're getting at is I beat on her, I never
21 beat on no woman.

22 Q. And ---

23 A. So, if that's where you're leading, you can just quit
24 right there because you are leading into something that you
25 cannot win. She cut her hand on a piece of glass and

1 that's what happened, and she said that's what happened.

2 Q. Yes, she did.

3 A. She sure did.

4 Q. And she ---

5 A. She didn't want to come down here. You made her come
6 down here to testify to that fact.

7 Q. Mr. Winkler, the police were called as a result
8 of ---

9 A. No, no.

10 Q. --- this ---

11 A. No, you made her come down here.

12 Q. Mr. Winkler, the police were called as a result of the
13 injuries she received on Christmas Eve, correct?

14 A. She didn't call the police.

15 Q. So, that was the hospital's fault?

16 A. The hospital called the police, yes, sir.

17 Q. All right, and then she -- your marriage broke up, and
18 that was after you found out or you testified that the
19 father of her child was this Lindleman fellow?

20 A. Exactly.

21 Q. So, the marriage broke up. That would have been
22 Lindleman and Carla's fault?

23 A. Well, I don't know who to blame for it. It was just
24 an unfortunate incident, and I'm glad I found out about it,
25 and that we carried on with our lives.

1 Q. And, Mr. Winkler, when Carla left you and moved to
2 North Carolina, and you have testified that she wanted to
3 come back, she wanted to get back with you?

4 A. When did I testify to that?

5 Q. Yesterday.

6 A. I didn't say she wanted to come back. She told me
7 that she wished I was there with her several times.

8 Q. And that's ---

9 A. Never said she wanted to come back..

10 Q. That her parents were the ones that were prohibiting
11 her from ---

12 A. Well, again that would be hearsay because she told me
13 several things, but...

14 Q. It was her parents' fault?

15 A. No, she didn't say it was their fault.

16 Q. Okay.

17 A. She just said they didn't think I should go back, you
18 know, but...

19 Q. Denise Ricketts, the fight or the confrontation on
20 April 13th of '97 and the arrest that led to your arrest
21 for criminal domestic violence, that was -- what were the
22 circumstances that led to that?

23 A. Well, she was afraid of me is what it came down to,
24 and I forfeited bond on that.

25 Q. So, whose fault was that?

1 A. That was mine; I admitted it.

2 Q. Marriage ended because of her crack cocaine use?

3 A. Absolutely.

4 Q. So, that's Denise's fault?

5 A. Yes.

6 Q. Now, let's talk about ---

7 A. It's my fault for letting it get that far.

8 Q. Let's talk about Becky. Let's go to January 27th of
9 2004, the CDV and simple assault arrest at your home on
10 Bitter Spar.

11 A. Yes, a misdemeanor that was dropped.

12 Q. That was, that was ---

13 A. She dropped it.

14 Q. That began with her going to the computer and ---

15 A. She tripped and cut her little finger on a -- no, and
16 barely needed a band-aid, and she told them she didn't want
17 no one arrested. And, in fact, she came out the next day
18 to bail me out, and they wouldn't let her bail me out.
19 They said she couldn't. She had to go back and get
20 somebody else to come out here and bail me out because she
21 dropped the charges. She -- it was a foolish thing that
22 she didn't want to do.

23 Q. So, who called the police?

24 A. It was a misunderstanding.

25 Q. Who called the police?

1 A. Who called the police? I don't know if it was
2 J [REDACTED] or her.

3 Q. Okay.

4 A. I really don't; I don't know.

5 Q. Either J [REDACTED] or her fault?

6 A. Yes.

7 Q. Now, they took you -- they arrested you that night.
8 You went to the hospital?

9 A. Yes.

10 Q. And because you had chest pains but with Officer
11 Cauble?

12 A. If that's his name, yeah.

13 Q. And you spit on his uniform?

14 A. Yes, I did.

15 Q. And that was Officer Cauble's fault?

16 A. That does not mean I killed my wife. You know, that's
17 a cop who acted like he was somebody and he wasn't.

18 Q. September ---

19 A. That has nothing to do with this whatsoever.

20 Q. September 17th of ---

21 A. You have been -- well, you know, we can get into your
22 office, too, but I don't think you want to go there.

23 Q. September 17th of 2005, Becky Grainger -- Becky
24 Winkler leaves ---

25 A. What date?

1 Q. September 17th of 2005. Becky Winkler leaves you,
2 moves in with her daughter.

3 A. Yes, temporarily. She told me same thing her mother
4 did.

5 Q. And that was Jill's fault?

6 A. She -- no. She said as soon as I get the children
7 straight -- well, she didn't say children. She said as
8 soon as I get this straightened out, we'll be okay.

9 Q. You said when -- you wanted Jill to cool off, didn't
10 you?

11 A. I didn't say nothing about Jill. That's not my --
12 she's not my child. It's -- and she wasn't my problem.

13 Q. Well, wasn't it ---

14 A. I've been nothing but nice to Jill.

15 Q. But wasn't it your testimony that Jill was the one
16 that was at y'all's house that day that started this whole
17 problem, that called the police on you?

18 A. The 17th?

19 Q. Yes.

20 A. No.

21 Q. Now ---

22 A. That was like the 18th or 19th. That was after, that
23 was after Ms. Scoggins, her mother, Becky's mother, already
24 put me up in the Comfort Inn.

25 Q. October the 10th ---

1 A. I just came by to get some equipment I needed for
2 work.

3 Q. October the 10th of 2005, Becky, Becky wrecks into --
4 wrecks the car. She was drunk. That was Becky's fault?

5 A. At first she ran into my car.

6 Q. You were complete -- as you said, you were completely
7 innocent of anything related to that incident?

8 A. Yeah. She's told them that she -- that I slammed into
9 her car.

10 Q. And that was Becky's fault?

11 A. She said she -- I slammed into her car and, in fact,
12 she hit my car. It's evident in -- look at the photos.
13 It's evident.

14 Q. You've testified that y'all had sexual relations in
15 the woods out there.

16 A. Yes, we did.

17 Q. She took your clothes off and she took her clothes
18 off, and that was her fault. That was her doing?

19 A. Why would you call it a fault? We're husband and
20 wife. We had sex. She was drunk and wanted to go, and
21 away we went.

22 Q. And you have testified that Becky hid out from the
23 police and hid in the woods because she was afraid of what
24 Jill's response would be to that. So, that was Jill's
25 fault?

- 1 A. Oh, right. In the morning her attitude changed
2 dramatically. She started saying this is your fault. You
3 did it. She went -- she took a journal that I had filled
4 with all my friend and phone numbers I've had ever since I
5 left Ohio and called every single person in the book.
6 Several of them she started to explain what happened and
7 they said look, Becky, if you're wanting somebody to be on
8 your side, I don't believe you. And then she started to
9 tell them, well, you know, he's a good guy, so she backed
10 up. She just wanted everybody to know and be on her side
11 because she's getting away with a lie.
- 12 Q. Now, Mr. Winkler ---
- 13 A. She's getting away with a lie.
- 14 Q. Now let's go to the bond hearing, your initial bond
15 hearing. You were denied bond originally, correct?
- 16 A. Yes, because I didn't have representation.
- 17 Q. Well, you had a lawyer. That was Orrie West?
- 18 A. Yeah, who called me Dave.
- 19 Q. Who called you Dave. So, that was Orrie West's fault?
- 20 A. Well, of course.
- 21 Q. Now, let me get to ---
- 22 A. Well, she also said that my mother hired her.
- 23 Q. And on the -- talking more about the bond hearing,
24 the electronic monitoring was, was, as you stated, was
25 applied sort of after the fact, and that was Scott Hixson's

1 fault?

2 A. Scott Hixson?

3 Q. Hixson, prosecutor Scott Hixson.

4 A. Well, I left the courthouse knowing I was going to get
5 bond. They knew I was going to get out, and then about
6 three hours later I got a call. I was in the cellblock and
7 they said you have a change of bond. So, I went up there
8 and they explained my lawyer was gone, everybody was gone.
9 Scott Hixson's name was on there and he, I guess he went to
10 the judge afterwards and had them put a monitor on me.

11 Q. And you related the writings of March 6, 2006, and you
12 indicated in this book that the situation you find yourself
13 in is Judge Russo's fault, the last line, the next to last
14 line. I've ---

15 A. You want to look it up in the court document, Judge
16 Russo said you will spend the rest of your life behind
17 bars.

18 Q. So, it was Judge Russo ---

19 A. Over was a lie.

20 Q. So, it was Judge Russo's fault?

21 A. Oh, yeah, and another thing that was released ---

22 Q. How about the family court judge?

23 A. It was released into the newspaper by your office that
24 I had put out a hit list, and this book, they said it was
25 in a record book. Can you explain that? You put it out

1 that there's a hit list in this book from me. So, in other
2 words, you were endangering my life by putting that in the
3 paper because people are going to think I'm armed and
4 dangerous, and they're going to kill me because I have a
5 hit list.

6 Q. And ---

7 A. And you're apparently saying it was Judge Russo that
8 was top of that hit list, correct? I mean ---

9 Q. Mr. Winkler ---

10 A. --- it's a simple question.

11 THE COURT: No, no, sir. Just answer the question.

12 BY MR. HEMBREE:

13 Q. Mr. Winkler, you ---

14 A. There's no hit list.

15 Q. But you have indicated in that book that it was Judge
16 Russo's fault?

17 A. Judge Russo said that I would spend the rest of my
18 life behind bars.

19 Q. And March 6th, 2006, today your testimony is that it
20 is Roger Grainger's fault, J [REDACTED] G [REDACTED] fault, and
21 Rebekah Winkler's fault?

22 A. For what? It's their fault for what?

23 Q. For the murder.

24 A. I'm not, I'm not blaming anybody but Roger Grainger.
25 He's the one that shot the gun that killed her.

1 Q. So, it's Roger Grainger's fault?

2 A. It absolutely is, and he won't get away with it. He
3 won't get away with it, and I will fight it till the last
4 day.

5 Q. And in this letter that you wrote to Jill?

6 A. All truth.

7 Q. Mother's Day?

8 A. I don't know. I don't know if it was Mother's Day.
9 Mother's day is...

10 Q. This says it was Jill's fault.

11 A. Jill's fault what? It's Jill's fault that we
12 initially broke up, yes, and I'd like to explain that, too,
13 if I could.

14 Q. Let me read this line to you and see if this is a fair
15 characterization of your writing.

16 A. Okay.

17 Q. You know if you wouldn't have stuck your fat ass
18 in your business, she would be alive to see her
19 fifty-first birthday and her granddaughter.

20 A. That's true.

21 Q. That's making it Jill's fault?

22 A. No. Well, Jill started it. She sure did and Jill
23 knows it, and every time that Mildred looks at her, she can
24 realize that Jill is the one, the reason why her daughter
25 is dead.

1 Q. And, Mr. Winkler, the reason ---

2 A. I'm not slamming that family. I love that family.

3 Q. Mr. Winkler ---

4 A. I loved Mildred. I loved Haley. I loved J [REDACTED] and
5 I loved Becky. It's not my fault that Jill didn't like me.
6 I'm a likable. Everybody like -- you know, I'm just --
7 I'll just stop there, but I mean, I loved that family.

8 Q. Mr. ---

9 A. They were my family. My family, the rest of my family
10 is in Ohio.

11 Q. Mr. Winkler ---

12 A. They were all I had.

13 THE COURT: No, sir. Now, at this time just let him
14 ask the question, okay?

15 BY MR. HEMBREE:

16 Q. Mr. Winkler, the disgrace that has been brought on
17 your family's name is my fault?

18 A. Well, you're a man -- you're a man to admit it.

19 MR. HEMBREE: Please answer the questions Mr. Wilson
20 has.

21 THE COURT: Mr. Wilson, do you think your redirect
22 will take a long time?

23 MR. WILSON: Might want to take a break. Want to take
24 lunch now or...

25 THE COURT: Well, ladies and gentlemen of the jury,

1 they brought your lunch a long time ago, but I wanted to
2 finish this part the best I could. I'm going to go ahead
3 and let y'all take a brief lunch. We're going to start
4 back in about thirty-five minutes. So, eat up what you got
5 and we'll start back.

6 Order in court, please. Jury leave, please. We're
7 not in recess yet.

8 (THE JURY EXITS AT 12:57 P.M.)

9 THE COURT: Now, when you're in your redirect, Mr.
10 Wilson, of course there are matters you wish to rebut
11 from the state, that's fine. But we don't need to go over
12 the same ground again unless it's necessary to rebut
13 something.

14 MR. WILSON: All right.

15 THE COURT: We'll start back at 1:30. Okay, if you
16 would, do not discuss your testimony. Be back at 1:30.

17 (THE WITNESS EXITS THE STAND.)

18 (OFF THE RECORD.)

19 THE COURT: Mr. Wilson, is this something you want to
20 do with the next witness?

21 MR. WILSON: Yes, sir.

22 THE COURT: Okay, but you need the dark now?

23 MR. WILSON: No, sir. I think what it is, Your Honor,
24 is screen came down and...

25 THE COURT: Well, the screen is back up.

1 MR. WILSON: I understand.

2 (OFF THE RECORD.)

3 THE COURT: Bring the jury in, please. Mr. Wilson, do
4 not need to go over matters we are already been over.

5 MR. WILSON: Yes, sir, I understand. Judge, before
6 the jury comes in, I'll go ahead and ask you. What the
7 defendant wanted to know was if he does his closing
8 statement, if he has some pictures that he wanted to ---

9 THE COURT: We can discuss those later obviously, but
10 obviously he can have anything in evidence.

11 (THE JURY ENTERS AT 1:45 P.M.)

12 THE COURT: Ladies and gentlemen of the jury, the
13 reason the lighting is different here is that the defense
14 is going to show a video shortly, but the test that they
15 brought the screen down to -- brought the screen down,
16 automatically when the screen comes down these lights go
17 off. When you put it back up, it takes a while for the
18 lights to warm up. So, these lights will be warming up
19 about the, the time we're ready to bring the screen back
20 down, and they'll go back off. That's where we are.

21 All right. Redirect.

22 MR. WILSON: Thank you, Your Honor.

23 REDIRECT EXAMINATION BY MR. WILSON:

24 Q. Mick, let me ask you. The solicitor asked you about
25 this diary. Is that right?

1 A. Yes, he did.

2 Q. All right, and this is your diary from when?

3 A. Actually, I normally don't keep a diary. I just
4 started writing it.

5 MR. WILSON: This is State's Exhibit 162, Your Honor,
6 for the record.

7 BY MR. WILSON:

8 Q. All right. That diary is from when?

9 A. Was in between the October 10th and the March
10 incident.

11 Q. All right, and you read from a portion of that diary,
12 did you not?

13 A. Yes, I did.

14 Q. To the solicitor?

15 A. The last half.

16 Q. All right. Now, are there some other portions to that
17 diary?

18 A. Yes, there are.

19 Q. Before that?

20 A. Yes, there is.

21 Q. All right, and how many pages are there from the
22 beginning?

23 A. Three, four, five, six, eight.

24 Q. All right.

25 THE COURT: If you would, Mr. Wilson, let's wait a

1 second for everybody to get in.

2 (A PAUSE.)

3 THE COURT: All right. I assume that's the last of
4 the big group coming in. Go ahead and proceed.

5 MR. WILSON: Thank you, Your Honor.

6 BY MR. WILSON:

7 Q. Mick, if you would -- Mick, if you would, in regards
8 to the diary tell me what is in the beginning of the diary,
9 what the beginning of the diary is about.

10 A. Well, Mr. Bellamy had asked me to jot down ---

11 Q. You can't tell me what anybody asked you to do.

12 A. Okay.

13 Q. All I want to know is tell me what the beginning of
14 the diary is about.

15 A. About several things about my wife that I needed to
16 jot down to keep in memory for a trial.

17 Q. All right, and what were those things that you jotted
18 down?

19 A. They're all things pertaining to that.

20 Q. Well, that's what I'm asking you. What are they from
21 the diary?

22 A. You want me to read them?

23 Q. You can read it or tell me, either one.

24 A. Well, I can read them; I can read it.

25 Q. Well, if you're going to read it, read it. If you

1 want to tell me, tell me. Either one is fine.

2 A. Okay. I'll read -- this is the very first page of it,
3 and I -- I put at the heading Becky. Defying the law. I
4 had that underlined.

5 Carrying her brother's insurance on a car with
6 Geico. He hasn't had a license in five years.
7 He's had four more DUIs.

8 THE COURT: Sir, if you're going to read, you're going
9 to read.

10 WITNESS: I'm reading.

11 THE COURT: So, what you read was in there?

12 WITNESS: Yes, sir.

13 THE COURT: You -- go ahead.

14 WITNESS: Yes, sir.

15 BY MR. WILSON:

16 A. His name is Mark Scoggins. He has a maroon,
17 maroon Dodge. I thought it was a Dodge.

18 Q. Just read what you have in the diary.

19 A. That's what it says.

20 He works at Beachco. They failed to notify the
21 fire department that son ---

22 Their son, J [REDACTED].

23 --- had lit a field fire beside the residence in
24 Loris three years ago.

25 That's what it says.

1 Q. Just -- Mick, just read the diary.

2 A. Defying court orders for son's child support from
3 her ex-husband. 307 -- \$17 a month was, it was
4 on the court record subpoena. He pays \$100 or
5 \$50 a month is all. That's all she made him pay
6 out of 317. She took out my prescription at Bi-
7 lo on Xanax prescribed to me after the
8 separation. She signed for them. She took my
9 medication and signed for them, never gave it to
10 me. Manipulative. She still calls ex-husband
11 Roger's bank to see where he was writing checks.

12 Q. Just read what's in the diary.

13 A. That's what it says. I'll read it again.

14 THE COURT: Continue on, sir.

15 WITNESS: Okay.

16 THE COURT: Sir, you don't have to read all of it.

17 Just read what you feel is -- what you feel is pertinent in
18 this case.

19 WITNESS: Okay.

20 BY MR. WILSON:

21 A. He is still writing checks -- okay. She -- okay.
22 The bank where he was still writing checks. Five
23 phone numbers in her name in the phone book. She
24 held child support over him, so he did what she
25 said.

1 That's what it says.

2 The post office. Becky forged my signature to
3 move the mail. The PO of the post office has the
4 card where she forged my signature to move the
5 mail after she ---

6 THE COURT: Sir. Sir, read, sir.

7 WITNESS: I'm reading it.

8 THE COURT: You don't need to add comments. Just read
9 it, sir. You can add comments later.

10 WITNESS: Your Honor, I haven't said anything that
11 hasn't been written in.

12 THE COURT: Then I apologize. Continue on.

13 BY MR. WILSON:

14 A. The pattern. She hid the money. Journal. I put
15 journal. I paid for the pool. Did not get the
16 child support for J[REDACTED]. I supported him and
17 Haley. Every day Haley and her friends ate, ate
18 at the house. She took all of her belongings,
19 including my couch plus my, my stuff. She had
20 two trips.

21 Q. Just all you're doing is reading the diary?

22 A. That's what I'm reading.

23 Q. Go ahead.

24 A. It was 150-foot trailer. She made two trips.

25 She took \$1200 out of my drawer. Had three

1 computers -- we had three computers. She took
2 all three. Spent her money on her bills and
3 drinking. From the previous marriage.

4 And then I have the journal in parenthesis.

5 Her journal. \$20,000. She paid phone bills,
6 electric bill only. \$20,000 is what she owed
7 from the previous marriage. I gave her \$1100 per
8 month. She never once bought me any clothes,
9 shoes, et cetera. Ever. At Christmas I paid for
10 all of J [REDACTED]'s gifts, guitar, amp, video.
11 This is all on, on a video where he opened them
12 up on Christmas. The guitar, the amp, his golf
13 clubs, leather jacket, tapes. She never paid for
14 anything for home improvements. I have done all
15 the work myself. Concrete. Paid for the sale of
16 my ex-trailer. She sold her car against my will.

17 That means we only have one car after the -- I'm
18 sorry, that I didn't read. I -- that -- she saw ---

19 Q. Just read what ---

20 A. She saw -- okay.

21 Sold her car against my will. Weekend Jill's --
22 has her car in her name. Mark drives. He's on
23 our insurance. The title is on Becky. He has no
24 license, DMV.

25 That's all I put was the DMV.

1 Constantly drunk. Fell down at the bars and at
2 parties. Have her on tape. Video. Fell in
3 driveway number of times where the neighbors seen
4 it. She never cooked dinner.

5 It's in the journal. That was the journal in
6 parenthesis.

7 She hid the phone bill from the start and the
8 money from me. Constantly flirted at the bars at
9 all times. Saying she did with ex-husband,
10 journal. That's also in her -- her journal. The
11 subpoena, we needed a subpoena for the Geico car
12 insurance. I didn't know it, but she put Haley
13 and Mark on them and the DUI and the speeding
14 tickets added up, and of course Geico insurance
15 went up. I didn't know anything about that. She
16 is paying mortgage on her ex-husband's house.

17 That is Roger.

18 That he is living in and he is -- she is not
19 collecting the child support ordered by the court
20 of \$317 a month.

21 And I put in parenthesis subpoena.

22 That we would need to subpoena that -- those
23 records. There's a pattern here. When she'd
24 come to see me during the separation, 10/7/05.

25 Or something like that. It says right there, she --

1 okay, she also watered the plants. This is at our house.

2 Told me that she was -- she would be back soon.

3 Had to straighten out kids about the first --

4 about me first. I told her to tell the truth

5 about the bruises. It would be simpler, and then

6 it -- and that our sex was none of their

7 business. She said she -- she could not tell

8 them that.

9 Then it goes to another paragraph.

10 She came back on Friday, October 7th, and spent

11 the night. Neighbors seen her wearing the ball

12 cap. Jill seen bruises before that. Becky would

13 not -- would not tell her they were due to sex.

14 As soon as she got away from Jill, she came back

15 to me.

16 I mean, as soon as Jill left her presence.

17 THE COURT: Read.

18 BY MR. WILSON:

19 Q. Read what's in the document there, please, sir.

20 A. Counter-suit, and I put a question mark there.

21 Alcoholism, abandonment, pay her own taxes,

22 restraining order, contents of the home already

23 divided, there are no assets, pay attorney fees.

24 Her car in her name, brother without license

25 drives, DMV records.

1 In parenthesis supported her and her family. Then it
2 says:

3 Break up over her daughter Jill continue -- to
4 continuously entering our bedroom while the door
5 was shut. After many times, Becky told her not
6 to. Finally I did. Becky took -- says seen sex
7 bruises. Becky took all tax returns.

8 Q. Is that the last page?

9 A. No.

10 Q. Says -- then it says -- I must have taken this to Mr.
11 Norton's office, who was my divorce attorney. It says:

12 Bring to Norton's office the title to the car,
13 the purchase date, any tax information I had,
14 bankruptcy information, witness testimony,
15 affidavit, written statements, notarized before
16 them, and has a list of Pat White's dad, Jody,
17 Rick, Jeff, Waylon, Frank and Cathy and
18 neighbors. They were to fill out papers ---

19 THE COURT: Is there anything else in there pertinent
20 to this case, sir?

21 WITNESS: I'm -- yes.

22 THE COURT: You want to read it, read it, sir. It's
23 in evidence.

24 WITNESS: It says Norton. Yes, this, this came up.

25 THE COURT: Read it, sir. Go ahead.

1 BY MR. WILSON:

2 A. The Comfort Inn receipts where her mother paid
3 for me to stay. She knew it was due to Jill.
4 Becky came home on October 7th and stayed and
5 neighbors saw her after alleged abuse. Set up
6 meeting on 10/10/05.

7 That's our anniversary; that's right here.

8 She quit typing the account before we split up.

9 Then she lied on the subpoena pay -- that her --

10 we needed to subpoena her payroll from Metram at

11 Seacoast Cardiology. Clear up the fact about the

12 running of her car, abuse my car -- obviously my

13 car was struck. Her driving when wreck occurred.

14 The blood work on the, on the Land Rover. Drunk

15 the evening of September, of September 16th.

16 Gave -- need -- neighbor Nicy a ride. Becky fell

17 down getting out of the car. Interview neighbor,

18 Nicy. There's a tape recording of J. [REDACTED]

19 saying his mother was drunk. It's on audio tape.

20 Her brother's DMV record. Signed out my

21 prescription at Bi-lo. I want my one computer,

22 the three back. I want my \$1200 from the house

23 -- that she took from the house while I was in

24 jail. She also forged my post office change.

25 She said we had sex fifteen times in the woods

1 that night in a span of three hours.

2 And I put negative.

3 Video of her drunk all -- also missed tequila
4 video.

5 Which we were going to do and was overruled.

6 Q. Just read what's in the diary.

7 A. She came back to me. Her restraining order
8 violations, calling, hang-ups, January 23rd at
9 1:15 p.m., HTC record, 9:55 February, Saturday,
10 18th. Saturday the 18th.

11 And that was that -- that's it for that.

12 Q. All right. Mick, I just have one other question. The
13 solicitor asked you about blood on the dashboard of the car
14 and about where the most blood was.

15 A. Yes.

16 Q. Is that -- and let me show you State's, what's marked
17 as State's Exhibit number 60 and State's Exhibit number 75
18 -- 73. Are those pictures of the dash?

19 A. This is my car.

20 Q. All right.

21 A. That's my car. We need the ones of her car.

22 Q. All right.

23 A. This is of her car.

24 Q. All right and, and what was your point with the fact
25 that there was blood on the...

1 A. If you give me the dashboard of her car, I'll show
2 you ---

3 Q. All right.

4 A. --- what I meant.

5 Q. All right. Just tell me what it is that you want
6 to...

7 A. Well, they marked them with -- when they find
8 evidence, they mark them with a sticker or whatever.

9 Q. Uh-huh.

10 A. And there are stickers right next to them right on the
11 speedometer glass in front of the windshield.

12 Q. All right, and the picture is in evidence?

13 A. Yes.

14 Q. Okay. All right. Anything else?

15 A. Are you going to get that? I'd like to get it and
16 show it to them while it's fresh -- while we're on this
17 subject.

18 THE COURT: Does the state have ways of assisting in
19 trying to get...

20 BY MR. WILSON:

21 A. And the reason I'm bringing this up is if you're
22 driving a car, you wreck it, and I'm not an expert at it,
23 but when you hit your head on a steering wheel, your blood
24 is going to fling forward. If you were not driving that
25 car, I don't see how anything possibly could have -- your

1 blood could possibly get put in front of that where the
2 speedometer is on the glass.

3 This whole thing is based on a lie. She tried to get
4 it away from her daughter. That's understandable by me. I
5 went along with it and tried to cover up for her. In the
6 morning she changed her mind about the entire thing, and
7 that's when I told her, look, I'm going to get my car. You
8 do what you want. That's when she ---

9 THE COURT: What have you found out, Mr. Wilson?

10 MR. WILSON: These are state's exhibits. Apologize.

11 BY MR. WILSON:

12 A. If I was driving the car, my blood would be there.

13 But there's no blood of mine anywhere in the car.

14 Q. State's Exhibit 72 and 74. Take a look at those and
15 see if those are pictures.

16 A. The dash. That's -- the dash is clearly in one of the
17 pictures. I have the pictures. I'll show you.

18 THE COURT: Just say what you want to say about it.
19 What do you want to say about it?

20 MR. WILSON: Well ---

21 THE COURT: If you want something else to say you
22 haven't said.

23 WITNESS: Well, the pictures haven't been found yet.

24 BY MR. WILSON:

25 Q. This is a picture of the dash.

1 A. Well, I'm talking -- did you see the one that he gave
2 me of my dash? It's a picture just like that.

3 Q. All right, but what -- all right, but what -- just
4 point out to us on this dash what you're talking about.

5 A. All right. Grab mine again. It's easier to show you.

6 Q. We are now referring to State's Exhibit 60.

7 A. Okay, her blood spots were all over right in here on
8 -- where the speedometer and the RPM digitals are, and
9 here's the steering wheel. Her steering wheel is a little
10 different. It has a, a wrap around stick thing on it where
11 you grab hold of the grip of it, and it comes down like
12 this. But in front of it there is -- is state's exhibits
13 where they put stickers in it for evidence of her blood
14 splattered on the dash right there.

15 Q. Okay.

16 A. And show them that, what I'm talking about. That is
17 my car, not hers now.

18 MR. WILSON: Your Honor, I'm also handing them State's
19 Exhibit 72.

20 THE COURT: What, you want to walk down with it so
21 don't have to worry about it?

22 WITNESS: Okay. Also, Your Honor.

23 THE COURT: Wait one second. Let him finish.

24 (A PAUSE.)

25 THE COURT: Okay. Is there another question?

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

3 WITNESS: We do.

4 THE COURT: All right, questions from the state?

5 MR. HEMBREE: No, Your Honor, nothing on re ---

6 WITNESS: Whoa. Whoa. We have question. We have
7 another question.

8 MR. WILSON: I don't have any other -- I don't have
9 any other questions at this time.

10 WITNESS: Well, there were points that I need to bring
11 up that I was told that I can -- I could get to them later.

12 THE COURT: All right.

13 WITNESS: When Mr. Hembree brought up.

14 MR. HEMBREE: Your Honor, this needs to be taken up
15 outside the presence of the jury.

16 MR. WILSON: Yes, sir, probably.

17 THE COURT: Ladies and gentlemen of the jury, please
18 step back. Not too far, ladies and gentlemen. It won't
19 take too long.

20 (THE JURY EXITS AT 2:06 P.M.)

21 THE COURT: And Mr. Wilson, I will let -- matters that
22 he has not already commented on, this is something new?
23 Are you aware of something new you want to comment on?

24 MR. WILSON: Judge, my understanding is what -- two
25 things. One, he wants to, he wants to admit copies of

1 statements from police officers who were involved in the
2 investigation of one or both of these, the homicide and the
3 October 5th incident, and -- which are not admissible. And
4 I certainly made an effort to explain that to him, that
5 that, those -- those statements from the police officers
6 would not be admissible.

7 WITNESS: That's not it at all.

8 MR. WILSON: And said that before.

9 THE COURT: He said no, he doesn't want to introduce
10 those statements. So, some -- he doesn't want to -- he
11 just said he did not want to introduce those statements.

12 WITNESS: May I, Your Honor?

13 THE COURT: Do you have anything you haven't said
14 already, sir? What area, what area do you want to go into
15 that you haven't already commented on?

16 WITNESS: It's the area, it's the area where Mr.
17 Hembree brought up about where my car was and what the
18 state -- the state trooper or whoever was on the scene
19 there had established that -- where my car was. I have
20 several other statements by the police, and you said I ---

21 THE COURT: Sir, that would not be admissible, what
22 police reports have in them. If you had a policeman that
23 you say is saying something untrue, then you bring the
24 policeman up and let him deny it. Then you show it. But
25 if you wish to call one of the policemen, that's fine. But

1 police reports themselves aren't admissible.

2 WITNESS: Right, Your Honor, and I asked Mr. Wilson
3 this when?

4 THE COURT: What other area do you have, sir?
5 Anything else you haven't covered or discussed already?

6 WITNESS: Yes.

7 THE COURT: What? What area is that, sir?

8 WITNESS: The warrants of my house and the search of
9 my house.

10 THE COURT: You mean after you were arrested for?

11 WITNESS: The first time at the 10/10. It has
12 pertaining to the gun.

13 THE COURT: All right. Mr. Wilson, what is that
14 about?

15 MR. WILSON: Well, I'm not real certain. To -- try to
16 talk to me about that when we went back for lunch, and I
17 told him that I can't discuss his testimony with him once
18 he's...

19 THE COURT: If you want to ask him about that
20 question, about a gun, it's up to you.

21 MR. WILSON: Well, I can ask him and you -- I can ask
22 him. Not sure...

23 THE COURT: It's up to you now, Mr. Wilson. I'm not
24 saying you have to.

25 MR. WILSON: If I know what it is that he's trying to

1 do, but I can't discuss with him what it is he wants me to,
2 to ask him. So, I don't know what it is that he's trying
3 to get me to ask him.

4 WITNESS: Well, as my attorney I'd ask you to ask me.

5 MR. WILSON: Judge, the only thing I can -- I mean,
6 I'm assuming, I'm guessing this, is that he's saying that
7 he wants to go into the fact that there was a search
8 warrant at his house executed at his house, and -- but he
9 wasn't, he wasn't there. So, he wouldn't know that there
10 was a search warrant because he can't testify to it. But
11 -- and because they went to his house and they searched the
12 house in October after his arrest while he was in jail,
13 that therefore they didn't find the gun in October of '05
14 there. Therefore, he wouldn't have the gun in March of '06
15 because ---

16 THE COURT: Well, what's wrong with that question?

17 WITNESS: Yeah, why are you fighting me on it?

18 THE COURT: State?

19 MR. HEMBREE: Yes, Your Honor. He would have to call
20 the officers that conducted the search warrant to ---

21 THE COURT: He can say, he can say he had no gun in
22 the house in October when they searched his house. He
23 wishes to say there was no gun in my house when y'all
24 searched it in October.

25 MR. WILSON: Well, how would he ---

1 MR. HEMBREE: Well, Your Honor ---

2 THE COURT: Well, if he wants to say that, he can say
3 that. I -- he can't say the officers didn't find one. He
4 can say there was not one there.

5 MR. WILSON: Well, that's fine with me. I don't have
6 any ---

7 WITNESS: Well, no, it's ---

8 THE COURT: Well, no, sir, you don't say a thing, sir.
9 Yes, sir, Mr. Hembree.

10 MR. HEMBREE: Your Honor, I would -- I was informed
11 about one particular fact and now I'm not sure about, so
12 I'm going to -- I'm sitting back down and I'll wait.

13 THE COURT: I'm only saying that if this gentleman
14 wants to say, the witness wants to say that I had no gun in
15 my house in October, I had no gun in my house when they
16 were searching my house in October -- he can't say what the
17 results of the search were, but if he wants to make a
18 statement of that nature, he can make the statement. He
19 can always say I had no gun in my house.

20 MR. WILSON: Judge, just so I'm clear. It's all right
21 for him to testify, then when -- it's one thing -- he's not
22 trying to say that he didn't have the gun in his house in
23 October. What he's saying, as I understand it just so the
24 court's clear, he's saying that when the police came to
25 search, that they didn't find a gun there.

1 THE COURT: I'm not, I'm not going to permit him to
2 say -- he was not there. He doesn't know what they found.

3 MR. WILSON: Well, but that's what he wants to say.

4 WITNESS: No, it isn't.

5 THE COURT: All I thought he wanted to say was that he
6 had no gun in his house in October of '05.

7 MR. WILSON: No, sir, he wanted to go a step beyond
8 that.

9 THE COURT: All right. So ---

10 MR. WILSON: He wants to say ---

11 THE COURT: Listen. I'm only saying he's your
12 witness, sir, your client. If he wants to say that, I'll
13 permit him to say something he knows or says he knows point
14 blank, that he had no gun in his house.

15 MR. WILSON: All right. I'll ask him that. I can ask
16 him the question.

17 THE COURT: All right. One other area. That's it and
18 as I understand it, you'll stop your redirect at that time.
19 Is that right?

20 MR. WILSON: Yes, sir. I'm, I'm ---

21 THE COURT: All right.

22 THE COURT: Bring the jury back in.

23 Mr. Wilson, once again, that's up to you whether you
24 want to ask that question. I'm only saying that if that
25 were your question, if you want to answer that, that's up

1 to you all. But want to ask it or not, leave that totally
2 up to you. He's got to realize the state may or may not
3 have evidence otherwise.

4 (THE JURY ENTERS AT 2:13 P.M.)

5 THE COURT: Now, Mr. Wilson, do you wish to ask any
6 other questions?

7 MR. WILSON: Yes, sir. Just...

8 REDIRECT BY MR. WILSON RESUMES:

9 Q. Mick, let me ask you. In October of '05 did you have
10 a gun at your house?

11 A. No, I did not.

12 Q. All right, and from October of '05 to March of '06,
13 did you ever have a gun at your house?

14 A. No, I did not.

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

16 THE COURT: Anything else from the state?

17 MR. HEMBREE: No, Your Honor.

18 THE COURT: You may step down, sir.

19 WITNESS: Your Honor, I'd like to reflect at this
20 point.

21 THE COURT: No, sir. You may step down.

22 WITNESS: Then I want a new lawyer.

23 THE COURT: Sir, you need to step down, sir.

24 WITNESS: I want a new lawyer. He's not doing
25 anything for me that I asked him to do. I want to reflect

1 that to the jury.

2 THE COURT: Thank you, sir.

3 (THE WITNESS EXITS THE STAND.)

4 THE COURT: Other witness from the defense? Mr.
5 Wilson?

6 MR. WILSON: Yes. The defense calls Dr. Halavonich.

7 RIKKI HALAVONICH, BEING DULY
8 SWORN, TESTIFIES AS FOLLOWS:

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

12 WITNESS: Okay, my name is Rikki Halavonich,
13 H-a-l-a-v-o-n-i-c-h.

14 THE COURT: Your witness.

15 MR. RATHBUN: Thank you, Your Honor.

16 VOIR DIRE EXAMINATION BY MR. RATHBUN:

17 Q. Doctor, would you share with the court what it is you
18 do and what your qualifications are?

19 A. Sure. I'm a forensic psychiatrist. I work at the
20 Medical University of South Carolina now. I attended
21 college at the University of Tennessee in Knoxville.

22 THE COURT: Ma'am, I'm sorry. That mic, get real
23 close to it. There you go. On this side.

24 WITNESS: Okay.

25 BY MR. RATHBUN:

1 A. I attended college at the University of Tennessee in
2 Knoxville, where I majored in psychology and was pre-med.
3 I then went to UAB, University of Alabama, in Birmingham
4 for medical school. I graduated and got my MD. At that
5 time I went to the Medical University of South Carolina and
6 did a residency in general psychiatry. After I completed
7 my residency in general psychiatry, I did a year of
8 specialized training in forensic psychiatry. Since then,
9 finishing up my fellowship in forensic psychiatry, I have
10 been board certified in general psychiatry and in forensic
11 psychiatry. I'm currently the director of the Forensic
12 Psychiatry Department at the Medical University of South
13 Carolina.

14 Q. When were you board certified in that?

15 A. I was board certified in general psychiatry in 2006 in
16 forensic psychiatry in April of 2007.

17 Q. Were you given any awards during your college or
18 medical school career?

19 A. Yes. I, I was the valedictorian of my graduating
20 class in college and medical school I, I got -- had a
21 scholarship a couple of years. I was the -- got the senior
22 award for excellence in pediatrics and in psychiatry my
23 senior year of medical school.

24 Q. Okay. Have you ever been qualified as an expert in
25 any general sessions court, in South Carolina courts?

1 A. Yes.

2 Q. How many times?

3 A. Approximately ten times excluding probate court.

4 Probate court probably forty or so times, but other than
5 probate, about ten times.

6 MR. RATHBUN: We'd like to submit Dr. Halavonich as an
7 expert in forensic.

8 THE COURT: Any objection?

9 MR. HEMBREE: Just one question, Your Honor.

10 VOIR DIRE EXAMINATION BY MR. HEMBREE:

11 Q. Doctor, how many times have you been qualified as a
12 forensic psychiatrist in courts of this -- in courts in
13 this state?

14 A. In -- other than probate court, I do a lot of
15 commitment hearings, and it's a little bit different, so in
16 probate probably forty or so times. Other than that, about
17 ten.

18 Q. Okay, in forensic psychology?

19 A. In forensic psychiatry, yes.

20 Q. Very good.

21 MR. HEMBREE: No, Your Honor we have no ---

22 THE COURT: All right, ladies and gentlemen, you
23 remember my comments to you regarding opinion testimony.

24 You may proceed, Mr. Rathbun.

25 MR. RATHBUN: Thank you, Your Honor.

1 DIRECT EXAMINATION BY MR. RATHBUN:

2 Q. Doctor, how did you become involved in -- with this
3 case?

4 A. Approximately a year, a year or so ago I was contacted
5 by your office and asked to perform a psychiatric
6 evaluation on him in addition to monitoring his progress
7 and, and how he was doing between then and when he came to
8 court.

9 Q. Okay. To be perfectly clear, Mr. Wilson's office?

10 A. Correct.

11 Q. All right.

12 A. Correct.

13 THE COURT: Mr. Rathbun, you have got to speak louder.
14 The court reporter said she cannot hear you. Try not to
15 look down and around and away. Keep it straight.

16 MR. RATHBUN: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 BY MR. RATHBUN:

19 Q. And you have a evaluated Mick?

20 A. Yes.

21 Q. How many times?

22 A. Multiple times for a total of approximately twenty
23 hours. I would say probably eight or nine times, different
24 occasions.

25 Q. Can you tell this court what an evaluation consisted

1 of?

2 A. Uh-huh. I met with him and interviewed him multiple
3 times. I also reviewed a lot of records. I reviewed the
4 witness statements and incident reports, everything from
5 the crime in 2006 as well -- in 2005 as well as 2006,
6 hospital records that I had from when he was in the
7 detention center, any records from the detention center. I
8 got information from some collateral courses, including
9 speaking with some of his family members.

10 Q. Through this evaluation process and the review of
11 records, were you able to form an opinion?

12 A. Yes.

13 Q. And what were those opinions?

14 A. Through the, through the course of my evaluation with,
15 with Mick, at any time if I had had concerns about
16 competency to stand trial, I would have given those
17 opinions to him. It was always my opinion that he was
18 competent to stand trial. I would have given any opinions
19 had I felt that he was not criminally responsible, not
20 guilty by reason of insanity, or didn't have the capacity
21 to conform his conduct. I didn't feel like that was the
22 case, so I formed those opinions. Had I felt otherwise, I
23 would have passed that along to your office. The opinions
24 that I formed in this case have to do with diagnoses and
25 treatment for those diagnoses in Mr. Winkler.

1 Q. And what psychiatric diagnoses did you come up with?

2 A. The diagnoses that I assigned to Mr. Winkler are
3 borderline personality disorder, major depressive disorder,
4 alcohol dependence and cocaine abuse.

5 Q. Do you have some slides that you wish to ---

6 A. Yes.

7 Q. --- show to the jurors to demonstrate that?

8 A. Sure. Lower the screen.

9 THE COURT: We use the screen or -- wait a second.
10 Wait a second.

11 MR. HEMBREE: If I may, if they're going to display
12 this, display this, is there a copy that's been made
13 available to the court, what's in this presentation or
14 introduced as an exhibit? I know I'm, I'm sure if I
15 received this ---

16 THE COURT: Well, the rule, as you know, do not
17 require treatises to be introduced as exhibits to the jury,
18 but if you would like a copy for to you go over. Provide
19 at least copies to the state.

20 WITNESS: Dr. Mullberry can grab a copy, if that's
21 okay and...

22 MR. RATHBUN: I've got a copy I can give the state
23 right here. I believe that there was one that we're going
24 to...

25 May I approach the witness?

1 THE COURT: Well, sir, aren't you going to be
2 presenting the slides?

3 MR. RATHBUN: Yes, but there's one that was not going
4 to be presented, and I don't want to provide that up.

5 THE COURT: Well, ask her to take out the one that she
6 is not going to present.

7 MR. RATHBUN: She's not going to present.

8 THE COURT: If it's her report, then she's reported to
9 you all?

10 MR. RATHBUN: This is -- she and I went over what her
11 evidence is going to be.

12 MR. HEMBREE: This is written in the document.

13 THE COURT: In your cross-examination -- he'll be able
14 to ask her on cross-examination anyway.

15 MR. RATHBUN: That's fine.

16 WITNESS: It's fine. I -- it doesn't matter to me.
17 It was kind of in the interest of time that I took those
18 out. That's fine.

19 (COUNSELORS CONFER.)

20 MR. HEMBREE: Your Honor, included with this witness
21 testimony, I will make this a part of the record. Just
22 like to make a copy.

23 THE COURT: All right. You all get the screen down
24 here? All right. What's your question, Mr. Rathbun?

25 BY MR. RATHBUN:

1 Q. Doctor, could you explain your diagnosis using this
2 audiovisual?

3 A. Sure. The reason I put this one up there what is --
4 as mental health professionals we typically refer to this,
5 this text, it's called the *Diagnostic and Statistical*
6 *Manual of Mental Disorders*. We refer it to as the *DSM*.
7 It's a manual that's published by the American Psychiatric
8 Association, and it provides a standard classification of
9 symptoms of diagnostic criteria for certain disorders, and
10 the purpose of referring to this book in general is so
11 that, you know, a psychiatrist in California might come up
12 with the same diagnosis for the same person as I would.
13 And so typically we, we pull diagnoses out of this book and
14 use them as, as a routine. You can go to the next slide.

15 These are -- listed at the bottom are the diagnoses
16 that I assigned to Mr. Winkler. The reason I stuck this
17 line in here, it kind of gives, it kind of gives an
18 overview as a psychiatrist or a mental health professional
19 how we look at a patient and assign diagnoses to them. We
20 use different axis, and I'm not going to go through them
21 specifically.

22 But in the middle where it's labeled axis one, that's
23 where we give diagnosis like depression or anxiety,
24 clinical diagnoses that we can look at and see and that
25 are, are kind of a focus of treatment at the time. Like I

1 said, major depression or anxiety. For physical disorders
2 you might see a fever or a cough or the flu. It's kind of
3 what you would -- what would correlate that to.

4 On axis two, and that -- all three of the bottom
5 diagnoses I have given him, major depressive disorder,
6 alcohol dependence, and cocaine abuse fall in axis one.
7 Those are our clinical syndromes that we can look at and
8 diagnose and -- in a patient. Axis two is where we put
9 what we call personality disorders. I have assigned a
10 diagnosis to Mr. Winkler of borderline personality
11 disorder.

12 And, and in general you look at a personality disorder
13 and it's kind of similar to a person's immune system. It's
14 similar to our, our vulnerabilities and our weaknesses.
15 Somebody kind of has a weak immune system or certain, you
16 know, has HIV or something, I can set them up for certain
17 acute illnesses like a depression or anxiety.

18 What's on axis four around the outside is what we call
19 psychosocial stressors, and that's any stress that's gone
20 on in your life that can, can add to or bring out a
21 clinical syndrome.

22 Q. All right. Now, Doctor, you've shown those delineated
23 certainly. But isn't it a fact they interact with each
24 other?

25 A. Sure.

1 Q. Okay. Would you explain to us what borderline
2 personality disease -- disorder is? What does that mean to
3 somebody like Mick?

4 A. I can -- first, if it's okay, I was just going to kind
5 of quickly go through, and these are, these are the slides
6 that I took out kind of in the interest of time. I had
7 made slides that had the criteria for the major depressive
8 disorder, the alcohol dependence and the cocaine abuse.
9 They're directly out of the *DSM-IV*, the book that we use to
10 look at criteria.

11 In my opinion, he met the criteria for those, for
12 those disorders. Major depressive disorder, you have to
13 have five out of nine symptoms that are listed for a two-
14 week period or greater. Mr. Winkler had, in my opinion,
15 had five of those symptoms, and in the interests of time, I
16 -- unless you'd like for me to, I won't go through those,
17 but those, you know, include things like hopelessness,
18 suicidal ideation, and that sort of thing, difficulty
19 sleeping, concentrating.

20 The alcohol dependence diagnosis I gave him, you have
21 to have three out of seven symptoms, and those are listed
22 on one of the slides that I took out. But in general, Mr.
23 Winkler had a tolerance to alcohol. Over years he got to
24 where he was needing to drink more and more alcohol to get
25 the same effect. He had negative effect in his life from

1 alcohol. It was negatively affecting various areas of his
2 life. He, he was drinking fairly heavily prior to his
3 incarceration.

4 The cocaine abuse, you have to meet one out of four
5 criteria to meet abuse. It's kind of a step down lower
6 from dependence. You don't have the, the withdrawal
7 symptoms and the tolerance symptoms to the substance, but
8 it's causing a negative impact on one's life.

9 So, just to kind of give it, since I took the slides
10 out, an overview of where those diagnoses came from, if
11 y'all want to go into those further we can, but...

12 Q. Well, you said that he met five out of nine for the
13 major depressive disorder or the borderline personality?

14 A. For the major depressive disorder to meet the *DSM-IV*
15 criteria, you have to have five of -- at least five of the
16 main symptoms to meet the criteria.

17 Q. Do you have a slide that does reflect those five?

18 A. I do. It's not on here, but we could get it if you
19 need me to.

20 Q. Do you recall what they are? Could you tell us?

21 A. Sure, and I have it in front of me also. For the
22 depression, the major depressive disorder?

23 Q. Yes, ma'am.

24 A. Okay. The first criteria is depressed mood most of
25 the day nearly every day. The second is markedly

1 diminished interest or pleasure in all or almost all
2 activities most of the day nearly every day. The third one
3 hasn't -- I won't read them word for word unless you want
4 me to. The third one has to do with appetite, having
5 either an increase -- and people have an increased appetite
6 when they are depressed, and others have a decreased
7 appetite with or without weight change. The fourth one has
8 to do with sleep disturbance. Some people sleep more when
9 they're depressed; some people have insomnia when they're
10 depressed. The fifth one has to do with what we call
11 psychomotor agitation or retardation; being kind of
12 lethargic, moving slowly and that sort of thing is
13 psychomotor retardation which a lot of people show when
14 they're depressed. Other people who have more irritable
15 type depressions get what we call psychomotor agitation.
16 They get kind of agitated and physically, and the sixth one
17 is fatigue or loss of energy. The seventh is feelings of
18 worthlessness or excessive or inappropriate guilt. The
19 eighth is diminished ability to think or concentrate. The
20 ninth is recurrent thoughts of death, recurrent suicidal
21 ideation without a specific plan, or suicide attempt or
22 specific plan for committing suicide.

23 Q. All right, and which of those, in your opinion, did
24 Mick fit?

25 A. It, it kind of depends on which, which time period

1 we're looking at. When I first saw him was about a year
2 ago and he, he had the depressed mood. He had a lot of
3 sleep difficulties. He had a lot of psychomotor agitation.
4 He had a lot of difficulty concentrating, a lot of trouble
5 keeping his thoughts straight and focusing on things. He
6 had a lot of suicidal ideations. It was shortly after his
7 hospitalization for forty days for the suicidal ideations,
8 so he was still having those at that time.

9 Q. All right. Thank you, and on the borderline
10 personality disorder, what does that mean for Mick? How
11 does that affect him?

12 A. I have a slide that I was going to just kind of
13 discuss personality disorders in general and then go into,
14 to borderline personality disorders specifically.

15 We all have personality traits. We all know people
16 who are shy or who are outgoing or who tend to be more
17 aggressive or tend to be certain ways. So, we all have of
18 course personality traits.

19 Personality disorders -- and again, this is out of the
20 *DSM-IV*. They have very specific criteria for meeting the
21 diagnoses of a personality disorder. In general,
22 personality disorders, it's a pattern of inner experience
23 and behaviors, so the way we feel and the way we act
24 outwardly that affects four major areas.

25 The first is our cognition or what we think, how we

1 think about things. The second is our inner personality
2 functioning, so how we relate to other people. The third
3 is what we call affectivity: what we feel, how we
4 experience emotions. And the fourth is impulse control,
5 which has to do with how we control our behavior or our
6 abilities to control our behaviors.

7 The pattern is very rigid. It's inflexibility.
8 People with personality disorders have a very difficult
9 time reacting to things differently in different
10 situations. They see things a certain way, and they have
11 trouble seeing them another way. The pattern has to lead
12 to the stress or impairment and it's stable, it's of long
13 duration, and you can see it back at least to young
14 adulthood. So, that's personality disorder.

15 You had asked me about borderline personality
16 disorder. The next -- go to the next slide. This one is
17 based pretty much off the *DSM-IV* criteria. It's worded
18 slightly differently. I have the criteria also word for
19 word but in general, this, this can kind of give an
20 overview of the main symptoms that we see in someone with
21 borderline personality disorder.

22 The, the core of borderline personality disorder is
23 impulsivity and emotional instability, particularly
24 surrounding interpersonal relationships. They have -- we
25 referred to as kind of frantic efforts to avoid being

1 abandoned, fears that someone they love is going to leave
2 them, someone they love is going to, going to abandon them
3 and not be there for them as being unfaithful, as not
4 caring for them the way that they should. They have a lot
5 of emotional instability and overreactivity.

6 A lot of times they will misinterpret things from
7 other people, misinterpret comments from other people or
8 behaviors from other people in ways that can lead them to
9 strike out verbally, times physically or aggressively.
10 They, they often have a lot of impulsivity and responses to
11 what most people would see as a very minor insult in a very
12 exaggerated and unpredictable way.

13 Very frequently they have suicidal gestures and
14 actually completed suicide in many cases. The -- for
15 people who meet the criteria for borderline personality
16 disorder, the, the rate of completed of successful suicide
17 is eight to ten percent, so it's about fifty times higher
18 than the general population.

19 They also have a, a very high incidence of -- they
20 have a very high incidence of major depressive disorder in
21 general. Approximately fifty percent of people with
22 borderline personality disorder at some point in their life
23 have major depressive disorder, and over eighty percent at
24 some -- at some time meet the criteria for a substance
25 abuse disorder, either dependence or abuse. A lot of

1 difficulty controlling, controlling anger.

2 Another thing that -- that we see very frequently in
3 people with borderline personality disorder is a very rapid
4 change from liking someone, being very happy with someone,
5 to being very offended by something they have done or very
6 angry at them. They tend to change very quickly, whereas
7 in things like bow -- in bipolar illness, we will see mood
8 swings that last for, you know, at least days to weeks. In
9 borderline personality disorder, you usually see a very
10 rapid change over, you know, sometimes even minutes, but
11 minutes to hours to a day at the most. So, you're going to
12 see a lot of emotional instability, a lot of impulsiveness,
13 a lot of overreactivity to what others might see as a, a
14 minimal insult.

15 Q. In your review of Mick's screening and your evaluation
16 of him, did he pretty much hit on all of these areas?

17 A. A lot of them. Similar to, to the major depressive
18 disorder, you have to have five out of nine specific
19 criteria to meet this and he met at least five, well over
20 five of them.

21 Q. Do you know in your studies and your work what would
22 cause borderline personality disorder?

23 A. Again, go to the next slide. This is pretty, pretty
24 basic, but it's, it's kind of the way we think about most
25 things in general. Sort of like the cholesterol ads that

1 talk about, you know, is it due to what you eat, is it due
2 to your genes, and that's what we know. I mean, there's a
3 lot of things in peoples' past, in their environment that
4 have been tied to a higher incidence of borderline
5 personality disorder, things like childhood sexual abuse or
6 significant trauma, physical abuse, abandonment as a child.

7 There are also, there are also biological -- there's
8 research being done that shows certain neurotransmitters,
9 certain areas of the brain that tend to be different in
10 people who have been diagnosed with borderline personality
11 disorder. So the, the theory is that we all have a certain
12 biological predisposition based on our genes, based on our
13 wiring, to be more or less likely to develop something like
14 borderline personality disorder. And then based upon your
15 environment and what things we go through in our life or
16 encounter in our life, drugs or alcohol or abuse or
17 whatever, can be enough to -- if someone's very genetically
18 loaded to have it, it doesn't take much. If they are not
19 as genetically loaded yet they have a lot of significant
20 environmental stressors, then that can bring it on.

21 So, it's again kind of similar to, you know, high
22 cholesterol or high blood pressure if any of you, you have
23 really bad family history or bad genes for having high
24 blood pressure, you can eat everything just perfectly and
25 you're still going to get it. You may not be set up for

1 it, but if you don't exercise and you eat horribly, you
2 might end up with high blood pressure anyway. So, it's,
3 it's kind of similar to that.

4 Q. Is it a fair statement to say that although siblings
5 come from the same family, related, they may both have a
6 predisposition, but one's coping skills is better than the
7 others?

8 A. Sure. There's a, there's an increased percentage of
9 family members with -- I mean, if you have a family member
10 with a personality disorder, you're at slightly higher risk
11 for having one yourself, but that's definitely not the only
12 factor involved. There's a, there's another slide if you
13 go to the next one, just kind of briefly touching on some
14 of the, the areas of the brain that, that they have shown
15 to be different in people with borderline personality
16 disorder.

17 The two that have been looked into the most -- and
18 this is still fairly, you know, research over the last
19 several years -- is the prefrontal cortex in the amygdala,
20 which are the two points, two spots pointed out. In
21 general, the prefrontal cortex is associated with
22 suppressing urges and suppressing impulses. It's kind of
23 like a brake. It puts the brakes on. It's also where we
24 plan things, something we call executive functioning,
25 planning how we're going to do things, using our judgment

1 for the best way to go about doing things. Associated with
2 expressing our personality, with having appropriate social
3 interactions with other people. It's also associated with
4 attention and decision making.

5 The amygdala is -- receives input from the pre-frontal
6 cortex. So, where the pre-frontal cortex, I guess that can
7 kind of put the brakes on -- one of the things it puts the
8 brakes on is the amygdala, and the amygdala we associate
9 with arousal and fear for the most part. It controls
10 physical symptoms of fear: increasing our heart rate,
11 making us sweat, making us nervous when we, when we
12 encounter something that's anxiety provoking. It also has
13 been associated with kind of processing the emotional
14 significance of stimuli, so if we see somebody else with
15 actions as aggressive or as threatening, it also has to do
16 with reading nonverbal signs of other people.

17 And again, these, these have been shown to be
18 different in people with borderline personality disorder.
19 The reason for them being different is -- isn't known.
20 It's not known if it's -- you know, if you act in a certain
21 way and that happens, or if that happens because -- you
22 know and leads you to act in a certain way, but these are
23 just correlations that have been identified.

24 Q. Doctor, you said they have been shown to be different.
25 Is that in size or through, through tests or...

1 A. Some of both. Some studies have shown -- like there's
2 a study that showed a smaller pre-frontal cortex in men
3 that had committed violent crimes. Others are, you know,
4 doing PET scans or doing scans to look at activity in
5 certain areas of the brain and how they differ between
6 different groups of people.

7 Q. Has the medical community, community, particularly
8 the, the psychiatric community, developed a treatment plan
9 to help people with these problems?

10 A. Yeah, we, we do have treatment for borderline
11 personality disorder. In general, you're going to treat it
12 in two ways. You're going to treat it with medications,
13 and you're going to treat it with therapy. The medications
14 for the, the best and the, the best treatment for
15 borderline personality disorder in the long run is
16 psychotherapy. You want to use the medications to control
17 the symptoms that are giving you problems at the time. So,
18 with, with the medications, you can treat depression with
19 antidepressants, you can treat anxiety with
20 antidepressants.

21 If someone is particularly, like in Mick's case, is
22 having an episode of, of major depression, then you're
23 going to treat the depression with, with antidepressants. As
24 I said, you can also treat anxiety with antidepressants.

25 Mood stabilizers are frequently used in people with

1 borderline personality disorder to target their
2 irritability and their anger, their impulsivity and their,
3 their mood swings. And very frequently we see paranoia and
4 distortions in thinking with -- in people with borderline
5 personality disorder and antipsychotics can be used to, to
6 help that.

7 Anxiolytics are anxiety medications that can be used
8 acutely to treat anxiety. The antidepressants are great
9 treatments for anxiety for the long term, but they, they
10 take a while to kick in. You have to take them regularly
11 to kick in. The anxiolytics are the kind that, you know,
12 you are feeling really anxious and you take it and it helps
13 in ten or fifteen minutes, so you can use those for acute
14 anxiety.

15 Psychotherapy with borderline personality disorder,
16 individual therapy can, can look at the cognitive
17 distortion that, that I was mentioning. They frequently
18 have. They tend to see things as black or white. They
19 tend to, to see things as all good or all bad. They
20 frequently, you know, jump to conclusions. They
21 catastrophize; they, you know, read one small thing as
22 being a horrible event and jump to the worst of all
23 possible conclusions. And going through their, their
24 thought processes and their ways of thinking about things
25 can be helpful. Obviously focusing on their destructive

1 behaviors can be helpful, particularly when it comes to
2 suicide. Like I said, there's a really high rate of
3 suicide in people with borderline personality disorders, so
4 kind of understanding why they do the destructive behaviors
5 that they do and addressing those can be done in individual
6 therapy.

7 Group therapy is good in a couple of ways. You can
8 get support. You can be around other people that have the
9 same illness that you do, and that's helpful in and of
10 itself, but it also gives an opportunity to learn to relate
11 to other people better. To, to enhance your interpersonal
12 skills.

13 DBT is something that has been developed over the last
14 twenty years or so. It's called dialectical behavioral
15 therapy, and it's specifically been developed for people
16 with borderline personality disorder, mostly to teach kind
17 of social skills, training, and improve coping skills that
18 are, that are often lacking, and to focus on something that
19 we, we call distress tolerance. And in general, small,
20 small things are very hard for people with borderline
21 personality disorder to, to address and to, to deal with,
22 and so learning to tolerate lower levels of distress and
23 not panic or, you know, break down or decompensate can be
24 really helpful. That's something that's typically done in
25 groups and in individual, but parts of that, pieces of that

1 can be integrated into individual therapy also.

2 Q. One without the other, is that going to be a problem
3 if you're medicating yourself, not getting therapy?

4 A. Uh-huh. Ideally you'd get both. Ideally you would do
5 both. If -- you know, it really depends on the situation.
6 Ideally you'd do both, but at times it -- you know, if
7 that's not appropriate, you, you want to go ahead or -- or
8 not possibly, you want to go ahead and treat the depression
9 if it's there with medications or treat the distortions in
10 thinking with medication, but ideally you'd want to do
11 both.

12 Q. And you're aware of what treatments that Mick has had
13 in the past?

14 A. Yeah.

15 Q. And has he gone to a regular medical practitioner?

16 A. Right, correct. Yeah, he had -- in 2003 he was having
17 some anxiety. That was another thing that I wanted to
18 mention. He had anxiety, a good bit of anxiety in the
19 past, and he still struggles with a good bit of anxiety. I
20 didn't assign him a diagnosis of a specific anxiety
21 disorder. Really frequently you see anxiety along with
22 depression, and in my opinion his anxiety went along more
23 with his -- or was more a result from his depression and
24 his personality structure.

25 But he did, he did go see a primary care physician

1 when he was having some trouble with anxiety in 2003. The
2 primary care physician prescribed an Alprazolam or Xanax,
3 which he took. That's one of the, the short-acting anxiety
4 medications. Prescribed him that, which he took
5 intermittently for a couple of years. Around that same
6 time he was prescribed Paxil, which is an antidepressant,
7 to address the anxiety. He had some side effects from it
8 and discontinued it pretty quickly. He was also prescribed
9 Welbutrin around that same time, which is another
10 antidepressant, and only took it for a few days because he
11 had headaches from it.

12 Prior to -- he also, he also went one time to a
13 counselor with, with Becky when he was, when he was with
14 Becky with, with -- my understanding of that was it was to
15 address some difficulties that they were having. He didn't
16 get any medications, and he didn't go back after the one
17 visit.

18 Since that time, he was hospitalized after he was
19 incarcerated. He was having some suicidal thoughts and,
20 and had made some suicidal comments and they put him in the
21 hospital for about forty days. When he was in the hospital
22 during that time, they tried him on a variety of
23 medications, including every, every group up there.

24 What they ended up discharging him back to the
25 detention center on was an antidepressant and an

1 anxiolytic. He was on Lexipro, which is an antidepressant
2 and Ativan, which is an anxiety medication, and since that
3 time he's been seeing a psychiatrist on a regular basis in
4 the detention center. It's my understanding that he's
5 currently taking Lexipro, which is an antidepressant,
6 Seroquel twice a day, which is an antipsychotic, and
7 Klonopin three times a day, which is an anxiety medication.

8 Q. Is it typical for people who suffer from this disorder
9 to seek medical prescriptions for a symptom as they see it?

10 A. Sure, yes.

11 Q. And is it also typical for them if they do get
12 introduced to a counselor not to continue to go to the
13 counselor?

14 A. Sure.

15 Q. And why would that be?

16 A. A few reasons. With Mr. Winkler, and if you remember
17 the first, first or second slide I showed you where you
18 have the kind of clinical syndromes in the middle, that's
19 what you see and what you're treating kind of here and now,
20 what's bothering the person now. The outer ring is the
21 personality structure, which in some cases includes a
22 personality disorder.

23 Very rarely do -- did somebody come in and say, you
24 know, my immune system is weak or my personality structure
25 is, is not working and ask for treatment for that. Usually

1 people come in and say I'm having anxiety, I'm feeling
2 depressed, or they are having specific symptoms that they
3 ask for treatment for. So, you know, you have to see
4 somebody for a long time, or you have to have a lot of
5 history to diagnose a personality disorder, much less to
6 have somebody come to you and say this is, this is what my
7 problem is. I have, you know, difficulty with impulsivity
8 and dealing with other people and, you know, I have
9 cognitive distortions and that sort of thing. So, yeah,
10 usually they come to you and they say I'm feeling really
11 anxious, or I'm feeling really depressed, or I am having
12 anxiety.

13 Q. You, you mentioned that -- I had it and lost it.
14 Well, had they, had they stayed in counseling with a
15 trained psychiatrist or psychologist, would their disorder
16 have been discovered earlier on rather than just going to a
17 family doctor and getting something for anxiety?

18 A. When you say they, are you just talking about one in
19 general or?

20 Q. The borderline disorder.

21 A. Yeah. I mean, usually if you -- if, if a person who
22 has borderline personality disorder going to a primary care
23 doctor and complains of anxiety, understandably they are
24 going to get treated for anxiety. And if they were to, to
25 get -- you know, the anxiety wasn't getting better and the

1 doctor referred them to a psychiatrist and they started
2 seeing them more regularly and started seeing that, you
3 know, the anxiety was treated, but there was a different
4 problem, or there were other indicators that there was
5 something underlying the anxiety, they would be at a, a
6 better chance of having that diagnosed.

7 Q. Okay, and you mentioned about having your history, and
8 would it tend to be typical for somebody with his disorder
9 to cloud their history or not completely forthright in
10 giving their history?

11 A. Yes.

12 Q. Now, do you know whether Mick's gotten into
13 altercations, fights while he's been incarcerated?

14 A. It's my understanding that he hasn't.

15 Q. Since he has not had disciplinary actions like that,
16 what is your opinion about his ability to -- in your
17 professional opinion to do well in a penitentiary setting?

18 A. I, I think Mick would do fine in a prison setting. He
19 -- with the diagnosis of borderline personality disorder,
20 usually where a problem arises is in stormy, intense
21 interpersonal relationships. Sometimes where you're trying
22 to, to hang on to somebody that you, you really want to
23 hang on to and things are slipping away or things aren't
24 going the way that you want them to and they get very
25 heated up. When you see violent acts and in people that

1 have borderline personality disorder, the majority of the
2 time they're related to, to that, to kind of an intense
3 interpersonal situation that's not going the way that they
4 want it to.

5 To, to add to that, he was drinking alcohol every day
6 and he was using cocaine on a fairly regular basis, and
7 those things were not going to help: not going to help the
8 anxiety, not going to help the personality disorder, not
9 going help the depression, not going to help his judgment
10 or his impulse control. He's, you know, he's in an
11 environment where access to those things is restricted.
12 So, that's going to lower his chances of acting out
13 violently in prison.

14 Q. Doctor, is there anything that I have not asked you
15 that you need to tell this jury and this court about Mick
16 Winkler?

17 A. Not that I can think of.

18 MR. RATHBUN: Thank you, Doctor. Answer any questions
19 the state may have.

20 THE COURT: All right, Mr. Hembree, you want the
21 lights off, you want them ---

22 MR. HEMBREE: I would prefer to have the lights on.

23 THE COURT: All right.

24 MR. HEMBREE: Thanks.

25 CROSS-EXAMINATION BY MR. HEMBREE:

1 Q. Dr. Halavonich?

2 A. Uh-huh.

3 Q. Am I saying that right?

4 A. Yup, you are.

5 Q. Doctor, you had the opportunity to review the report
6 of the forensic psychiatrist that the court appointed, the
7 court's psychiatrist that did an evaluation of competency
8 and capacity to conform to the law?

9 A. Yes.

10 Q. And their diagnosis was not far off from yours. Is
11 that fair to say?

12 A. Correct.

13 Q. And they also found that, that Mr. Winkler had
14 personality disorder traits?

15 A. Uh-huh. Right.

16 Q. That he had a depressive disorder not otherwise
17 specified?

18 A. Correct.

19 Q. They also found an anxiety disorder by history, which
20 that would be something that you differ in some degree as
21 to their diagnosis there?

22 A. To an extent. I -- and I was here yesterday when Dr.
23 Frierson testified. That was when he saw his primary care
24 physician and was treated for anxiety and some panic
25 symptoms. You know, I wouldn't, I wouldn't necessarily

1 disagree with saying anxiety disorder by history. So, I,
2 I, you know, I don't think it's a significant. I don't
3 specifically ---

4 Q. It's not a significant difference to you one way or
5 the other. Is that what you're saying?

6 A. Not particularly. Yeah, yeah, that's fair.

7 Q. Okay, and now he found -- he did not find cocaine
8 dependence. You mentioned something and I'm -- let me make
9 sure I -- did you diagnose him with, diagnose him with
10 cocaine abuse?

11 A. Correct.

12 Q. Not cocaine dependence?

13 A. Correct.

14 Q. So, he didn't have the symptoms for cocaine
15 dependence?

16 A. Correct.

17 Q. And cocaine abuse is classified as what, just using
18 it?

19 A. It's classified as, as using the substance. There's,
20 there's four criteria for cocaine abuse, for substance
21 abuse, and you only have to meet one of the four. You, you
22 can have a legal difficulties from the cocaine use; you can
23 have physical or psychological conditions that are worsened
24 by the cocaine use. In Mick in particularly, I felt like
25 his anxiety that he was describing starting around 2003

1 when his cocaine use increased was very likely related to
2 his cocaine use and...

3 Q. So, his anxiety, you diagnosed him with cocaine abuse
4 based on the fact that his anxiety seemed to manifest
5 itself in 2003 more clearly?

6 A. That, that was.

7 Q. Go ahead.

8 A. Yeah, that was one of the things that, that I thought
9 about when I was, when I was looking at that diagnosis, and
10 I, I have got them in front of me now. There's four of
11 them. One is failure to fulfill major role obligations.
12 Another is ---

13 Q. Let me stop -- let me slow you down there.

14 A. Okay.

15 Q. Failure to fulfill major role obligations. Did you
16 find that he in any way met that criteria?

17 A. It wasn't real clear.

18 Q. He kept a job.

19 A. He kept a job. He, he didn't towards the end for a
20 variety of reasons. I think the cocaine wasn't helping. I
21 wouldn't, I wouldn't have enough information to directly
22 attribute it to the cocaine. But yeah, he kept a job for,
23 for a while.

24 Q. The second one, recurrent cocaine use in situations in
25 which it is physically hazardous, would that mean like

1 getting behind the wheel of a car or?

2 A. That's ---

3 Q. You know, to doing something, operating an airplane
4 while you're on the -- on cocaine, something like that?

5 A. Sure. It could be. We think of that within two ways.
6 One, one can be, one can be that it's physically hazardous
7 because say you're pregnant and it could harm your baby, so
8 you're -- you could physically harm your child. Or you
9 have a heart condition that, you know, so that, that can
10 be ---

11 Q. Did you find that that?

12 A. No.

13 Q. He didn't meet that provision?

14 A. No. He was while he was driving when he was using, so
15 that was, you know, a thing that, that kind of went into my
16 thinking about the cocaine abuse.

17 Q. Recurrent cocaine related legal problems. He was not
18 under arrest for cocaine abuse or anything like that.

19 A. No, no.

20 Q. Now, the fourth one, that there was such interpersonal
21 problem that may have exacerbated by the effects of
22 cocaine.

23 A. Uh-huh.

24 Q. You believe that that was?

25 A. Uh-huh.

1 Q. It existed here?

2 A. He -- I did to an extent. In other words, it's kind
3 of clouded by the personality disorder also because I think
4 he was very paranoid. He's, he's got a paranoid flair to
5 his personality. He was very paranoid and, and concerned
6 about Becky, and they had a lot of difficulties and had a
7 lot of interpersonal problems based upon that. And I think
8 the cocaine negatively impacted that.

9 Q. And I'm not trying to mince words with you, Doctor,
10 but it sounds like that cocaine abuse is a little bit
11 murky. I mean, it's not as clear as some of your other
12 diagnoses. Is that fair to say?

13 A. No. I feel, I feel confident about the diagnosis.
14 You have to, you have to meet one out of the four. All of
15 the four he sort of had signs and symptoms of, so, you
16 know, I, I didn't feel really uncertain about that.

17 Q. And the borderline personality disorder is -- that
18 implies that there are personality disorders that are much
19 more problematic, much more serious from your standpoint as
20 a psychiatrist that are worse than a borderline personality
21 disorder. There are lots of different personality
22 disorders?

23 A. I.

24 Q. Let me ask you. Are there other kinds of personality
25 disorders?

1 A. Yeah, there are, there are ten personality disorders.
2 That's one of the ten.

3 Q. And of -- a borderline personality disorder, I guess
4 I'm just using kind of layman's terms. It sounds to me
5 like that's a personality disorder that is on the
6 borderline. It's not as -- you know, it's not as, as
7 problematic or as serious as some other personality
8 disorder?

9 A. I think I understand what you're asking, and that's
10 not -- the terminology came from originally they saw people
11 with this personality disorder as being on the borderline
12 between psychosis and neurosis, so the word borderline came
13 from that.

14 Q. Okay. That answers my question.

15 A. So, it doesn't have anything to -- yeah.

16 Q. And -- but it really grows out of someone who, who had
17 instability in maintaining their relationships and a
18 certain impulsivity?

19 A. Yes, those are two characteristics.

20 Q. And that's, in a nutshell, that's what a borderline
21 personality disorder is?

22 A. Those are, those are two of the nine characteristics.
23 You have to meet five of them to meet the criteria. But
24 that's, that's a big part of people with borderline
25 personality disorders, and it's emotional instability and

1 impulsivity.

2 Q. Gotcha, and then major depressive disorder. When you
3 began your consultations with Louis Winkler, he was already
4 under arrest and had been served notice of intention to
5 seek the death penalty. He was facing the death penalty at
6 that time.

7 A. Correct.

8 Q. Do you find that that could have been a significant
9 factor in contributing to his, his mood and feelings at
10 the, the time that led to this depression?

11 A. I'm sure it was a factor, yes.

12 Q. The -- you talk a little bit about how you have got --
13 and I think it was personality disorder -- that you -- that
14 the frontal part of the brain, which is the executive
15 functioning part of the brain, may be different or have
16 some, have sort of the physiological, potential
17 physiological problems?

18 A. Right.

19 Q. And then the other side of it, if you look at the
20 environmental problems, that there could have been issues
21 like child abuse, things like that that may have
22 contributed to this, this, this problem later on?

23 A. Correct.

24 Q. Based on the social history that you collected on
25 defendant Louis Winkler, were there any environmental

1 childhood kind of things that contributed to this, in your
2 view, contributed to this personality disorder?

3 A. Nothing that slapped me in the face. He, he doesn't
4 have a history, didn't report to me a history of physical
5 abuse. He didn't report a history of sexual abuse. He --
6 his family described a fairly rigid home. Father was gone
7 a lot.

8 Q. They had rules, kind of rule, kind of a rule-oriented
9 family?

10 A. Well, the way it was described to me was that Mom
11 wasn't allowed to work. Mom got an allowance, a certain
12 amount of money that she could spend on certain things.
13 That it was a very male run home growing up. When he was
14 growing up, Dad really ran the family and ran Mom and, and
15 was the one that kind of kept things, you know, kept a taut
16 ship. No. No, you know, evidence or indication that Dad
17 beat him or abused him in any way.

18 Q. And, Doctor, do you have anything on the physiological
19 side, PET scans, any other tests that you ran or someone
20 else ran on your behalf that would indicate some sort of
21 physical problem with the defendant's frontal brain that
22 you might attribute to this problem?

23 A. No. He, he meets the criteria for the diagnosis and
24 those are, are research studies that have shown a
25 correlation between the two, but I didn't do any kind of

1 tests like that on him, and they are not used for that at
2 this point.

3 Q. The, the pre-frontal cortex used for planning --
4 actually, in this case would you agree -- have you reviewed
5 police reports, statements, even published -- some
6 photographs of physical evidence in connection with
7 preparing your testimony today and your diagnosis?

8 A. No physical evidence but photographs, yes.

9 Q. Photographs?

10 A. Yes. Uh-huh.

11 Q. And, and would it indicate to you -- well, with -- let
12 me give it to you as a hypothetical. That someone who arms
13 themselves, brings along extra ammunition, brings along
14 DVDs that they intend to use in some sort of manner of
15 gaining an advantage, they have a time limit because they
16 have a, an ankle bracelet on them, they are on electronic
17 monitoring, they can't leave the house except between 4 and
18 6, so they leave the house at -- during that time frame,
19 obtain a ride, drive -- catch that ride, get that ride to
20 their, their ex, their estranged wife's home, kick in the
21 door, go in and shoot her and then flee and stay hidden for
22 two weeks. To me this indicates -- to, to me this
23 indicates someone that has -- is very intentional, that has
24 put some planning, some effort into this, into this, into
25 this crime. Would that -- would you agree with me about

1 that?

2 A. As -- it's hard for me to answer that because I don't
3 know what he was planning to do when he went over there.
4 If that were his plan and he carried it out as planned,
5 yes.

6 I, I guess I can say from my own personal experience
7 interviewing him and evaluating him and, you know, watching
8 him prepare for the case with, with his attorney, planning
9 has been difficult. Planning, you know, how, how to
10 prepare was very difficult for him. So, I have seen some
11 evidence of difficulties in that with him. You know, to
12 say whether or not he planned out those actions that day
13 very meticulously, I just don't know because I don't know
14 what his plan was when he went over there.

15 Q. But it does -- would you agree with me, Doctor, that
16 it does look more planned than completely impulsive?

17 A. Sure. I mean, yeah, the fact that he -- if, in fact,
18 he took a gun over there and, and carried it out, it looks
19 as if he planned that particular act, so...

20 Q. And, Doctor, he has -- he certainly is competent.

21 A. Correct.

22 Q. And he is criminally responsible for his actions?

23 A. In my opinion he is, yes.

24 MR. HEMBREE: Thank you, Doctor.

25 THE COURT: Any questions, Mr. Rathbun?

1 MR. RATHBUN: Just a couple, Your Honor.

2 REDIRECT EXAMINATION BY MR. RATHBUN:

3 Q. Doctor, for the major depressive disorder, there are
4 other factors other than just being nervous, life is
5 forfeit if I'm found guilty, are there not?

6 A. Yes.

7 Q. And is this a disorder that would have come on just
8 upon his incarceration, or is it more likely to be a
9 long-term disorder?

10 A. It's more likely to be a long-term disorder in --
11 actually the, the rates of depression in people that are
12 incarcerated are a lot lower than expected. People are,
13 are anxious or sad about their situation, but actually
14 being diagnosed with a depression, a major depressive
15 disorder is not -- it's less common than, than you might
16 suspect, you know, than we might suspect looking at the
17 situation. Yeah.

18 Q. Were you able to determine when Mick Winkler became
19 subject to the borderline personality disorder?

20 A. You know, by definition that's a life-long illness.
21 It's a pattern that -- or that develops by early adult --
22 adulthood. It's, it's stable. It's long-standing. You
23 know, I, I see evidence looking back on, on his
24 interpersonal relationships and how they had progressed of
25 the years that it's -- you know, there's been evidence of

1 it for many years.

2 Q. And being a life-long disorder, he's not going to get
3 well. The only thing that can happen is that he receives
4 medication and psychotherapy?

5 A. Well, it's a, it's a life-long illness and he's, he's
6 not going to not have it -- but it can be treated. You
7 know, again similar to hypertension. You can keep your
8 blood pressure under control if you do the things that you
9 need to do, take your medications and do the things that
10 you need to do, but you're still always going to have it.

11 MR. RATHBUN: Thank you, doctor.

12 WITNESS: Uh-huh.

13 THE COURT: Anything else?

14 MR. HEMBREE: No, sir Your Honor.

15 THE COURT: You may step down, Doctor. Thank you very
16 much.

17 (THE WITNESS EXITS THE STAND.)

18 THE COURT: All right, ladies and gentlemen, let's
19 take ten at this time. Please don't discuss the case. I
20 need to see the -- y'all may leave to your jury room. Need
21 to see attorneys up here.

22 (THE JURY EXITS AT 3:09 P.M.)

23 (OFF-THE-RECORD BENCH CONFERENCE.)

24 THE COURT: Please, we're not in recess yet, everyone.

25 (OFF-THE-RECORD BENCH CONFERENCE.)

1 THE COURT: In evidence.

2 MR. HEMBREE: Without objection.

3 MR. RATHBUN: Thank you.

4 (EXCERPTS FROM DSM-IV MARKED INTO EVIDENCE AS
5 DEFENDANT'S EXHIBIT NUMBER 25.)

6 (OFF THE RECORD.)

7 THE COURT: Be seated. Your next witness in the
8 courtroom? Your next witness in the courtroom?

9 MR. RATHBUN: Yes, Your Honor.

10 MR. WILSON: Yes, sir.

11 THE COURT: All right. Good. Let's bring the jury
12 in, please.

13 (THE JURY ENTERS AT 3:39 P.M.)

14 THE COURT: Okay, your next witness, please.

15 MR. RATHBUN: Call Dr. Morton.

16 WILLIAM ALEXANDER MORTON, JR.,
17 BEING DULY SWORN, TESTIFIES AS FOLLOWS:

18 CLERK OF COURT: Please have a seat. Please state
19 your name for the record. Spell your last for the record,
20 and please speak into the microphone.

21 WITNESS: Good afternoon. My name is William
22 Alexander Morton, Jr. That's M-o-r-t-o-n.

23 THE COURT: Your witness.

24 VOIR DIRE EXAMINATION BY MR. RATHBUN:

25 Q. Good afternoon, Doctor. Could you tell us what your

1 profession is?

2 A. I am professor emeritus pharmacy practice and clinical
3 associate professor of psychiatry in behavioral sciences at
4 the Medical University in Charleston, South Carolina.

5 Q. Are you still teaching?

6 A. I teach some. I have retired from full-time teaching
7 about four years ago. I was there twenty-eight years, and
8 currently I consult there. I meet with resident students,
9 attending psychiatrists, attending pharmacy people, but not
10 on a regular basis.

11 MR. HEMBREE: Your Honor, not to -- I don't mean to
12 interrupt Mr. Rathbun, but I have had the opportunity --
13 defense counsel has provided me with Dr. Morton's
14 *curriculum vitae*. I have had a chance to review that. If,
15 if I knew the specific areas that he was offered as an
16 expert in, I may be able to stipulate to that.

17 BY MR. RATHBUN:

18 Q. Could you answer the state's inquiry?

19 A. And the specific question?

20 MR. HEMBREE: Areas of expertise that you wish to be
21 qualified in.

22 WITNESS: Psychopharmacology and substances of
23 addition.

24 MR. HEMBREE: Psychopharmacology. Your Honor, I ---

25 THE COURT: Any objection?

1 MR. HEMBREE: No objection, Your Honor.

2 THE COURT: All right, ladies and gentlemen, I'll
3 permit him to give opinion testimony in that area.

4 You may proceed.

5 DIRECT EXAMINATION BY MR. RATHBUN:

6 Q. One other thing, Doctor. How many other folks who do
7 what you do are there in the world?

8 A. There are 490 people that are board certified in
9 psychiatric pharmacy practice in the world. I was board
10 certified in, in '96 and recertified in 2004.

11 Q. Okay. Now you have been qualified. Is this a
12 presentation that's similar to one that you have used
13 before?

14 A. Yes, there is a presentation very similar to what I
15 might use with students and residents when introducing them
16 to how drugs affect the mind and behavior of, of people.
17 That would include drugs that are prescribed as well as
18 substances of abuse.

19 Q. And, Doctor, you have got a specific area at MUSC
20 where you teach and you work?

21 A. Yes. I work mainly in the area of, of substance abuse
22 and I worked in the substance abuse unit there for a number
23 of, of years as well as the clinical research section. I
24 actually put together a slide -- if you have the next slide
25 -- which outlines what I did of the twenty-eight years that

1 I was there because I could have been in a number of places
2 at one time. For, for instance if you look at 1991, I
3 would consult at Charleston County Psychiatric Unit. I
4 would ---

5 Q. May I interrupt you?

6 A. Yes.

7 Q. Those dates across the top of the slide?

8 A. Yes, sir, I'm sorry, there are dates going across the
9 top where I started in 1976 and worked full-time from '06.
10 So, at times I would be supervising residents in MUSC
11 psychopharmacology clinic. Fenwick Hall is a private
12 alcohol and drug treatment center where I worked for
13 fourteen years. I was involved with clinical research
14 where I was involved with about eighty clinical trials
15 where we're looking at treating anxiety, depression,
16 bipolar disorder. And I could have also been on the
17 in-patient unit, and so I could have been at five different
18 places in a week, maybe two, two places on a particular
19 day. So, had the advantage of seeing in some places where
20 we were treating alcoholics, and then this -- other places
21 alcoholics could not participate because they had that
22 particular disorder. So, I had to -- the advantage of
23 seeing a wide spectrum of problems.

24 Q. All right. Is that the limit of your professional
25 activities?

1 A. No. I mean, it's teaching, research, and, and
2 service. I have worked pretty much on most of the
3 in-patient and out-patient units at the Medical University
4 in the Department of Psychiatry. Published a number of
5 journals -- in a number of journals, probably forty-six
6 publications: fourteen in the area of substance and
7 anxiety, ten in substance abuse, about seven in depression.
8 So, there's a board -- but those are articles which are
9 peer reviewed and been published specifically in those
10 areas.

11 Q. Today I'd like to talk to you about some areas of the,
12 the brain and how these affect that.

13 A. Yes, sir.

14 Q. Got a slide?

15 A. I did have some slides. Basically we know that these
16 drugs have pretty profound affects on the brain. This is a
17 slide looking at the side view of a brain and we, we know
18 that certain areas of the brain affect certain functions
19 such as how you feel things, the way you move, areas of the
20 brain that affect the judgment, vision, coordination,
21 memory, and more specifically I'll be referring to the
22 reward center, which is right in the middle. But of --
23 I'll be referring to this slide later on as far as looking
24 at how some of the drugs that we prescribe as well as some
25 of the drugs that people take, how it affects certain areas

1 of the brain.

2 Q. Could you tell the jury where the front and the back
3 of the brain is on there?

4 A. Front is up here to -- I'm sorry. The, the front is
5 up to the left and to the back, so to the right. So, when
6 we talk about frontal lobe as Dr. Halavonich was talking
7 about as far as frontal decision making, that would be in
8 the judgment area of the brain.

9 Q. Doctor, to your knowledge was Mick being treated for
10 anxiety?

11 A. Yes, he was treated for anxiety as well as some other
12 issues. Can I have the next slide? Mick had a number of
13 anxiety symptoms, and his -- when I looked at the records
14 that I looked at, which included this out-patient and
15 in-patient records as well as talking with his family as
16 well as talking with Dr. Halavonich, Te Anne Oehler the
17 social worker, Dorian Hall, social worker, and -- in Ohio,
18 as well as talking to a number of his family members, it
19 helped me get a sense of some of the symptoms that he had
20 over a long period of, of time.

21 But Mick had a number of anxiety symptoms, and what it
22 was exactly from it's not clear. It could have been
23 related to his borderline personality disorder, from his,
24 his depression, or it could have been related to his
25 substance use, too. Maybe the next slide.

1 One of the things I learned working in the area of the
2 clinical research section, I probably saw between two and
3 400 patients that had panic disorder, and that it was hard
4 for people to really get a understanding of what it's like
5 to have a panic attack. Now, Mick has had panic attacks.
6 He doesn't have panic disorder, but that's one of the
7 symptoms that his doctor, Dr. Sherm at Access Medical
8 Center, was helping him with and treating him.

9 What it's like to have a panic attack is really hard
10 to explain to people. It's not something that's kind of a
11 cute little thing that people have happen to them, but it's
12 something that can have pretty dramatic effects on someone.
13 There are a number of theories, and I think the next slide.

14 Q. Can I interrupt you?

15 A. Sure.

16 Q. Could symptoms of having a heart attack be something
17 that somebody is having a panic attack which would feel?

18 A. Yes, it -- it's not unusual that people that do have a
19 panic attack would think that they're having a heart attack
20 and most often go to the emergency room. I remember
21 specifically having one of my patients, he was a twenty-
22 seven year old man. The fact that he had gone to the
23 emergency room four times, and he kept saying why don't you
24 teach the doctors at the emergency room about, about panic
25 because after you go there four times, usually you don't

1 get much empathy from someone because you're essentially
2 normal and they can't find any abnormalities on your EKG or
3 your heart tracing.

4 But one of the, one of the theories that made most
5 sense to me about panic disorder is that it's a false
6 signal theory, and that is constantly -- our brain is
7 measuring how much carbon dioxide is in our blood, and
8 from that it tells us how much oxygen we have. Well,
9 there's a signal that goes -- that says maybe there's sixty
10 percent carbon dioxide now in your blood, which means that
11 you don't have much oxygen and consequently if you continue
12 that way, you will die in about three minutes.

13 So, that signal is sent to the brain, kind of
14 emergency, and what will happen traditionally is that
15 people will start trying to get air. I think we all take
16 that for granted, but getting air is real easy. But we all
17 know that if someone was to put your hand over your mouth,
18 pretty quickly you would get very scared and panic, and
19 panic disorder's not rare at all, as well as panic attacks.

20 But what happens is the signal is sent to the brain
21 that says you do not have enough oxygen, so do something.
22 So, one thing you might start doing is start breathing
23 faster. The other is start pumping the blood. The other
24 might be to cool off the body because you're in an
25 emergency situation and whatever you doing, do something

1 different like get out, leave. If it's in a car, stop the
2 car. If it's in a house, get out of the house. It's a,
3 it's kind of a panic sensation.

4 Some people might have just one or two of those
5 symptoms. Other people might have six or seven of those
6 symptoms. The difficult thing is that it's just a false
7 signal. Your oxygen is fine. Your, your carbon dioxide is
8 fine, and it's just the signal saying that it's an alarm
9 going off, but still the fight or flight system has been
10 set off. Adrenaline is being -- pumping through the bunny
11 -- through the body and you're waiting, kind of preparing
12 yourself for something horrible about to happen because
13 you're, you're about to die essentially.

14 Next slide. People will have a number of symptoms,
15 and again I said the message was false and it was based on
16 incorrect information. Maybe the next slide.

17 Some of the symptoms of anxiety can include
18 palpitations of the heart, shaking or trembling, sweating.
19 And sweating essentially is cooling off the body because
20 you're starting to pump blood so quickly, you're short of
21 breath. You might feel like you're choking, you might have
22 some nausea, you might have dizziness, a sense of things
23 not being really real; people could be, like, way off in
24 the distance, or they could feel like you're right in my
25 face. You could have feeling like that you're going to

1 lose control or that you're going to die or that you're
2 going to have some tingling in your hands or hot or cold
3 flashes.

4 Now, Mick had some of these symptoms and the next
5 slide I think looks at the ones that he endorsed to me as
6 well as some others: a sense that he was really going to
7 die when, when this happened, a sense that things weren't
8 real. He would sometimes get very paranoid, which could
9 also be a symptom of this, but there's symptoms of other
10 disorders also. But he would, he would have chest pain,
11 and he would have some shortness of breath and some
12 tightness.

13 Q. I think you answered my next question. Do you know,
14 do you know to your knowledge if Mick did think he was
15 having a heart attack?

16 A. Yes, I do, and I looked at that, that note, and he was
17 evaluated and the doctor thought it was anxiety related.
18 That doesn't mean it's an insignificant thing by any means.

19 If we take a look at the next slide, I think what we
20 see is patients go to a lot of different doctors. They go
21 to cardiologists for -- thinking that they are having a
22 heart attack. They go to pulmonologists because they think
23 they are having asthma. They go to a GI doctor or
24 gastroenterologists with chronic diarrhea. They often will
25 go to a gynecologist with thoughts of having hot flashes or

1 are they going through menopause, oncologists for maybe
2 they have a brain tumor, neurologists that think they are
3 having a seizure, family medicine for vague complaints, EMT
4 doctors for Meniere's Syndrome.

5 The fact is, we spent a lot of time at the Medical
6 University treat -- training family practice doctors how to
7 treat panic attacks because seldom do patients come to
8 psychiatrists for treatment of their panic disorder. One
9 study I was looking at, it took people about nine years to
10 come visit us before they got diagnosed as having a panic
11 disorder. They'd seen eleven -- on average they'd seen
12 eleven other doctors before they started getting adequate
13 treatment. So, we try to make family practice doctors
14 aware of how it can present and not to diminish when people
15 are having these symptoms because they are very intense,
16 and they are very real, and people do think they're having
17 heart attack. Even a young person twenty-five could, could
18 be having one, and people know -- and in the emergency room
19 they know that this twenty-five year old is probably not
20 having a panic attack, but the twenty-five year old
21 doesn't. And I think, think giving them some information
22 and some reassurance and direct them to appropriate
23 treatment is really important.

24 Q. I may have misunderstood you. You said the twenty-
25 five year old?

1 A. A twenty-five year old, yeah.

2 Q. People would be -- in the ER knew he wasn't having a
3 panic attack I think is what you said. But you meant a
4 heart attack?

5 A. Yes, a, a heart attack because they'll check his heart
6 rate, and they'll check his EKG and enzymes, and it's not a
7 heart attack, but it sure feels like one to him.

8 Q. To your knowledge, did Mick also have some symptoms of
9 depression?

10 A. He does have symptoms of depression, and he doesn't
11 endorse a lot of them. In fact, I think Mick will minimize
12 some of these symptoms, but the next slide I put up here,
13 some depressive symptoms that he has had, and Dr.
14 Halavonich talked some about depression. He was more
15 forthcoming with her than, than in the times I met with
16 Mick, and addressing these.

17 But a depressed mood, a lack of interest, a sense of
18 feeling hopeless and helpless, sleep disturbances, he
19 definitely has a number of depressive symptoms for which
20 he's received treatment and hasn't really responded
21 particularly well to some of the medicines, partly, I
22 believe, because of certain side effects.

23 One of the things I, I was very involved in at the
24 Medical University when I was working and teaching there
25 was how to start someone off on a dose of an antidepressant

1 such that it wouldn't lead them to quit taking it because
2 people have anxiety disorders, and there are five or six
3 specific anxiety disorders. If you give them an
4 antidepressant in a normal dose, they will take one or two
5 doses and then literally want to throw the medicine back at
6 you because they, they almost feel like why did you give
7 that medicine to me, that it almost killed me. It gave me
8 a panic attack. So, we have learned that we often have to
9 start someone off at a dose about a fourth of what you
10 would use to treat depression. So, if someone was taking
11 Prozac, you might start them off at 5 milligrams a day and
12 gradually increase it over, over two or three months
13 sometimes.

14 And I know when we look -- when I looked at Mick's
15 medications, there were several time that's he had pretty
16 intense side effects. And unless you counsel people pretty
17 closely about that's expected and how long it's going to
18 last and try to put up with it and hang with it, a lot -- a
19 good half of people will quit taking these medicines and
20 not get adequate treatment. Next slide.

21 These were some of the symptoms that, that Dr.
22 Halavonich talked about with depression, and the next slide
23 shows some of the symptoms that at least I heard from Mick
24 that, that he's had over a period of time, depressed mood.
25 At the time I was seeing him -- and there's really not a

1 decrease in sort of pleasuring activities, but he did have
2 problems sleeping, be very restless, difficulty focusing
3 and concentrating, and recurrent thoughts of death even
4 though he did not have a plan, but he did think that he
5 would be better off dead at certain times.

6 Q. How would depression affect Mick's perception?

7 A. The way people perceive the world is pretty important,
8 and I think when people get depressed, it can affect the
9 way they see things. Essentially, it's almost a world
10 without color. It's a world without hope. I have a slide
11 here hopefully that can demonstrate some of the concepts of
12 that.

13 I'm -- I taught scuba diving before and I used to use
14 the slide to emphasize the importance of, of things at
15 depth. But things at depth are different than at the
16 surface and -- especially colors, and I have got a slide
17 here, I think, that -- maybe it's the next slide. The
18 slide in the top left-hand corner is a slide that's taken
19 underwater, and you can see with a flashlight there are
20 certain colors. And as, as you go deeper, you notice that
21 light is, is filtered out such that in the, in the bottom
22 left-hand corner you can still see a little bit of yellow.
23 But as you get down to about 90 feet under water, you
24 really only starting to see blue, and then when you start
25 to get about 200 feet to a thousand feet where I -- no one

1 would dive, it would be essentially black. Those colors
2 are there. You just can't see them.

3 And I think that's one way I, I see people's
4 perceptions when they're depressed, that they just don't
5 see any hope. They feel like they would be better off
6 dead. They see -- they feel no enjoyment. They see no
7 real color in the world. It's a very black place because
8 people's biochemistries change pretty dramatically.

9 Q. To your knowledge, Doctor, was Mick being treated for
10 any medications for his anxiety and depression?

11 A. He was receiving a number of medications. Initially
12 he was treated with, with Alprazolam, which is quite an
13 effective medicine. He might have benefitted best if he
14 was taking it on a regular basis rather than on a PR, when
15 he needs it basis. He took Welbutrin and only took it for
16 about four days before the headaches were just too intense.
17 Now, Welbutrin can be used for both depression and anxiety.
18 The same as Paxil. Paxil can be used for both treatment of
19 anxiety and depression. However, I have learned that if
20 you're going treat someone with Paxil, you probably need to
21 wait about twelve weeks before you say okay, it should be
22 working now.

23 It's almost like the season. I mean, if you go out
24 now. I don't know what it's like right now outside, but to
25 wait for spring, I'm pretty sure spring is going to come

1 here in August -- not August, in April or May, and I can
2 confidently predict that those trees are going to have
3 leaves on them, and that's the way I would counsel a
4 patient taking a medication for their anxiety. We're
5 starting it today, and guess what? It's going to be April
6 before you get any beneficial effects, and you might get
7 side effects tomorrow and the next couple of days.

8 Q. Did Mick experience some of these side effects?

9 A. Mick did experience some side effects that were just
10 not tolerable, and I can understand that. Sometimes it's a
11 matter of trying to find the right medicine for Mick. Mick
12 has a different biochemistry than, say, me or you. So,
13 what you start off with is what you might be most familiar
14 with. He's currently taking Lexipro and Seroquel right
15 now, and those medicines have helped quite a bit to help
16 depress his depression and decrease his anxiety symptoms.

17 Q. In your discussions with Mick, did you discuss his
18 drug use?

19 A. Yes, I did. He does -- maybe next slide. He does
20 have drug use and in my experience if you have drug use,
21 you will have some withdrawal symptoms. Now, they might
22 not be severe withdrawal symptoms, but you will, you will
23 have some withdrawal symptoms.

24 For instance, it took me a good while to learn that
25 people drink in the morning not to get drunk in the morning

1 but so they can go to work basically to do what they, they
2 do. Most alcoholics are functional alcoholics. They're at
3 work today; they are doctors, pharmacists, nurses, judges,
4 attorneys that are working, doing their job. They might
5 have a high incidence of, of alcohol problems than the
6 normal, than the regular population. That's true in the
7 area of pharmacy and true in the area of medicine and it's
8 -- the numbers for lawyers are kind of hard to get a hold
9 of, but they have their own organization that deal with
10 some of those, those issues.

11 THE COURT: So do doctors.

12 WITNESS: Oh, yes, yes. Doctors have about fifteen
13 percent incidence of addiction. No, I didn't want to
14 exclude them. I spent quite a bit of time working with
15 impaired healthcare professionals.

16 BY MR. RATHBUN:

17 A. But Mick did use primarily alcohol and, and cocaine
18 and he had used some other substances, too, in the past.

19 Q. And why do you think that with -- withdrawal is one of
20 Mick's problems?

21 A. Some of the symptoms that he reports, some of the --
22 he, he has increased in tension, increase irritability,
23 increase in some of his anxiety symptoms, drinking on a
24 regular basis. Usually people are drinking fairly
25 regularly so they don't go through withdrawal.

1 Q. Now, does everybody experience the same withdrawal
2 symptoms?

3 A. No, not everyone, but I think everyone can have some
4 mild withdrawal symptoms. Sometimes they're not
5 noticeable. Sometimes it's just a slight increase in blood
6 pressure or pulse after drinking a small amount. But it,
7 it varies from, from person to person. I, I think Mick did
8 have some withdrawal symptoms that were not substance --
9 needed to be treated, but they were present and made some
10 of his psychiatric disorders worse.

11 Q. Is this more specific to chronic user than it is to
12 say a, what we call a social drinker or somebody who has a
13 drink on Friday night?

14 A. Well, you can see -- it's more, more specific there,
15 but you can see some mild withdrawal just after one drink.
16 Most people don't have one drink and look at how they feel
17 four to six hours after they have a drink, but there's --
18 usually people are not relaxed four to six hours after one
19 drink in my experience. I usually will ask that of people
20 when I'm assessing them, but it's not something that you'd
21 ever seek treatment. But you can see it and you can
22 demonstrate it in the laboratory that you can see some
23 very, very mild hyper stimulatory effects after one drink
24 of alcohol.

25 Q. Now, some areas of the brain that have to do with drug

1 desire and use?

2 A. There is. I was talking about the reward system, and
3 the reward system right in the middle, it's a little bit
4 hard to see I think from here, but I don't know if you dim
5 the lights.

6 MR. RATHBUN: Can the jury see it? They're indicating
7 they can see it.

8 BY MR. RATHBUN:

9 A. It's right in the middle. It's the reward center.
10 It's an area that's been demonstrated. We now learned
11 where drugs work, how they work for the most part. Maybe
12 the next slide shows this in a little bit more detail.

13 What I do know is that just as Dr. Halavonich was
14 talking about in the area of borderline personality
15 disorder, that there are changes in the brain, there's
16 tremendous amount of information that states that the brain
17 of someone that's addicted to drugs is different than a
18 non-addicted brain. That's clear that it has different
19 size and different function -- functionality. There's
20 certain areas of the brain that are hyperactive and certain
21 areas of the brain that are slowed down if people have been
22 using drugs for a period of time. It's different with
23 each, with each drug, whether it's a stimulant like cocaine
24 or depressant like alcohol.

25 Q. All right. Don't people use drugs just to get high

1 and have a good time?

2 A. That is often a perception of my students and
3 residents. I have not met people that don't have a pretty
4 good idea of why they think people use. Next slide. I, I
5 think why people use initially is a lot different than why
6 people use chronically. Drug use is almost always
7 voluntary by -- when someone starts off using. It's been
8 my experience that people later on are not so much using it
9 on a voluntary basis, and I will try to explain that in
10 more detail later. But initial use, why someone uses and
11 chronic use is quite different than the, the reasons why
12 people use. I think the next slide looks at that.

13 There. I looked at a review paper which looked at why
14 people list the reasons they use drugs, and I'll just go
15 through this real quickly. It could be to alter their
16 mood, to treat disease. Sometimes people are bored.
17 Sometimes people feel like they interact more with other
18 people. Sometimes some people are looking for a different
19 sense of -- different sensory experience. Some people
20 think it stimulates creativity and performance. Some
21 people do it to have better physical informants. Some
22 people do it because you're not supposed to do it. Some
23 people do it because everyone else is doing it. Some
24 people do it because they feel they now have an identity
25 because that's what they do, and then in certain areas they

1 might be religious practice and that might be how some
2 people get introduced to the way people start using drugs.

3 Q. And why do most people use?

4 A. I think in my experience, most people are using it
5 chronically for two reasons, and that's the people I see
6 coming in for treatment. They are coming in -- either they
7 are self-treating a psychiatric disorder, or they are
8 treating their withdrawal. The people I work with are
9 generally not having a lot of fun enjoying their substance
10 use, but they are using it still on a regular basis for a
11 number of reasons. One being that they're physically
12 dependent, and two, having to do with this reward center of
13 the brain.

14 Q. Can you talk to us about Mick's drug use over the
15 years?

16 A. Yes. I think the next slide has some of his, his drug
17 use. In 2005 to 2006 he was using alcohol on a regular
18 basis, somewhere between three and five drinks a night.
19 His history varies from people to people about the history.
20 His cocaine use, sometimes he would endorse they did use
21 cocaine. Sometimes he would, he would not report that from
22 the people -- Dr. Frierson, who presented yesterday,
23 testified yesterday, and what I, I got from him was that --
24 basically the same. That he would use an eight ball of
25 cocaine on the weekends with his wife Becky. That between

1 them on Friday and Saturday night they would use 140, a
2 hundred dollars, what's generally considered eight ball of
3 powder cocaine, which is an eighth of an ounce. And he, he
4 didn't describe to me any particular problems with that
5 except I, I know he had some other problems that were
6 ongoing.

7 For instance, his paranoia is been an ongoing symptom
8 that he's reported, as well as a number of clinicians have
9 looked at. And one thing I'm quite certain of and see it
10 frequently is that cocaine will make you paranoid, or it
11 makes you more paranoid.

12 Q. Now, I'm not -- an eighth of an ounce doesn't seem
13 like very much.

14 A. It's -- it may not seem like a lot, but it's, it's
15 quite a bit when we're talking about cocaine, which is just
16 a small amount can cause extreme stimulation, euphoria,
17 pleasure. For some people, it makes everything more
18 pleasurable; for some people, it can make them more
19 anxious.

20 I was surprised that it did not make Mick more anxious
21 because a lot of the people I would see in, in anxiety
22 disorders clinic would often say that their anxiety started
23 with their cocaine use. But he, he would use pretty much
24 on a regular basis for the last two years on. And I think
25 his last cocaine use that he reported to me was in

1 September of 2005. That's when the -- he said was his last
2 use of cocaine, although he did continue to drink on a
3 regular basis and increasingly using I think rather than
4 drinking tequila kind of and margaritas. He started
5 drinking it more straight.

6 Q. Now, did you construct a slide that shows Mick's drug
7 use?

8 A. Yes, I did. This is his age starting when he was born
9 in 1960, and the years go across the top and the age goes
10 across the top. His first drinking he reports to me at age
11 thirteen. He didn't start drinking regularly probably
12 until he was about sixteen drinking on the weekends. And
13 then on a nightly basis probably when he was eighteen to
14 twenty he was using. Not every night, but probably five
15 out of seven nights a week.

16 He did smoke cannabis which is -- it doesn't show up
17 very good with the lights, but he smoked marijuana just
18 briefly but did not like it because that did increase his
19 anxiety, which is not unusual. Somewhere between twenty
20 and thirty percent of people that smoke marijuana the first
21 time will have a panic attack, and usually that's it for
22 them; they will seldom smoke anymore because they see
23 absolutely no reason why anyone would ever want to use
24 marijuana.

25 He did use a hallucinogenic drug as far as psilocybin

1 and mushrooms twice he reported, and his cocaine use was
2 relatively infrequent initially. He tried it probably when
3 he was eighteen to twenty several times.

4 While his family never saw him using, they suspected
5 that he perhaps was using. A number of family members
6 thought that he was hanging out with people that were known
7 to be drug user, smoking marijuana, smoking cocaine. No
8 one ever saw Mick using cocaine at a early age. I believe
9 his mother did confront him about marijuana one time at a
10 early age, and that's about the only time I think a family
11 member has seen him using illicit drug, although it's not
12 unusual for his family members to see him drinking on a
13 regular basis.

14 Q. Do you have any professional opinion as to why he
15 started using alcohol and cocaine?

16 A. I do, and I, I think it was treating basically his
17 anxiety and depression, which is never really been
18 adequately treated. That's -- as well as treating some of
19 the withdrawal symptoms. What do I have for the next
20 slide? I think treating, again treating, self-medicating,
21 treating depression and self-medicating his anxiety,
22 treating alcohol withdrawal.

23 Again, people will have a drink in morning, a Bloody
24 Mary, Screwdriver. Start the day off after a lot of heavy
25 drinking the night before and they feel better. They

1 normalize; it treats some of their withdrawal. So, they
2 get along about what they are doing.

3 Cocaine, the same way. Cocaine would leave one not
4 stimulated but, but slowed down and irritable and tired,
5 worsening maybe some of the depressive symptoms. So,
6 sometimes people would either use cocaine in the morning or
7 use another stimulant.

8 I did not get any symptom -- sense that, that Mick was
9 ever using cocaine in the morning. He just lived through
10 some of the withdrawal symptoms which was relatively mild
11 but contributed to his anxiety and depression.

12 Q. And at one point did he seek medication for these
13 anxiety and for the depression?

14 A. For his anxiety and depression, yes, he was seeking
15 treatment. He sought treatment with Dr. Sherm, and he's
16 been treated while he's been in the detention center for --
17 for both those.

18 Q. Do you have an opinion as to why he turned to alcohol
19 and cocaine?

20 A. Well, I, I think these two drugs work quite quickly.
21 I think the next slide might give you some idea. I was
22 talking about Paxil working in twelve weeks. Cocaine works
23 in minutes. I mean, it's nothing really any faster than
24 cocaine, and for some people that's, that's it. That's the
25 thing that catches the brain's attention. Alcohol works

1 fairly quickly, five to thirty minutes, and if you had a
2 drink and it made you relaxed in one or two hours, people
3 would probably not drink as, as much as they do.

4 But these two drugs, and they are both drugs, work
5 pretty quickly. However, they do make some of the symptoms
6 worse overall. They do make the condition of anxiety worse
7 overall; they do make the condition of depression worse
8 overall.

9 Q. And what happens when someone stops using these drugs?

10 A. When you stop using -- next slide I think -- what
11 you're going to have is withdrawal, so you get a rebound
12 effect. If you're using a depressant drug, what happens is
13 the nervous system bounces up, and if you are using a
14 stimulant drug, the nervous system bounces down. And they
15 don't counter act each other so much as far as side
16 effects. This would be an example of some of the symptoms
17 that you might see in alcohol and cocaine withdrawal: being
18 irritable, impulsive, anxious, restless, not being able to
19 focus, and, and probably having a hard time keeping a, a
20 firm hand so you might have a little, fine tremor or larger
21 tremor.

22 Mick had a number of these symptoms and they're --
23 essentially all of them that increases irritability, which
24 is -- could have been a symptom of his anxiety, could have
25 been a symptom of his depression. It was quite hard to

1 tell. But it did appear that, that some of his symptoms
2 would get worse when he, when he used over a period of
3 time.

4 Q. So if he's experiencing these symptoms, what would
5 happen if he went back to using again?

6 A. You go back to use and generally the symptoms resolve.
7 They go away. They diminish. Reward.

8 Q. I'm sorry?

9 A. There's a reward there. I think there's a reward in
10 that there's a lack of uncomfortable symptoms. There's
11 also a -- it affects the reward system, which I did want to
12 mention because it helps me understand why people do some
13 of the things they do. Maybe the next slide.

14 The idea of how someone -- not everyone goes on to
15 have problems with drugs, and how it is some people cross
16 this line, it's unclear to any researcher or any clinician
17 exactly what causes one person to not be able to control
18 what they take in versus other people not having problems
19 and can control it.

20 It's clear to most clinicians that this is a full-
21 blown biological disorder. It is a disease. It has a
22 clearly defined outcome. We understand a number of aspects
23 about it, and we have some ideas about how to treat it.

24 Q. Now, what were some of the factors are that you
25 believe led to Mick crossing into the line -- over the line

1 into addiction?

2 A. I was looking at some, what are some of the factors
3 that led to Mick's excessive use and next slide. I think
4 the fact that alcohol is available to him early. I
5 consider thirteen to be relatively early. Some people
6 might say it's the norm, but I think that's an early period
7 of time.

8 His environment both at home and sometimes with, with
9 Becky was a stressful situation. I think adapting to other
10 families, other kids coming into your household is, is
11 always a juggling act for at least my friends, colleagues
12 that enter a second and third marriages. It's a stressful
13 type situation.

14 Mick's, Mick had a lot of peer pressure amongst his
15 friends, his, his, his spouses that -- that they use
16 substances and wanted to use. People generally do not like
17 to use alone, and so there is that, there is that peer
18 pressure, as well as people that you work with would often
19 like to -- for you to drink. And then again, anxiety and
20 depression.

21 This doesn't explain it all. I was just looking at
22 some of the risk factors that, that led to Mick's use.

23 Q. What is it about his environment that you found
24 interesting? It says this: drug use.

25 A. I think -- well, both, both early on what caught my

1 attention because that sometimes communication in the
2 family was somewhat strained. People don't -- people in
3 his family don't like to talk about that, but his mom and
4 dad were not getting along for a significant period of
5 time. And my experience is that kids that experience
6 negligence families like to get out of that family and, and
7 be able to relax, and usually that's with alcohol. So,
8 that's just something that caught my attention there.

9 And then with other -- later as an adult, again, just
10 the, the families, the new families that he would come in
11 contact with. Again, they're kind of a challenge, I think,
12 and it's a stressful -- can be a stressful environment.

13 That's not to say that that causes addiction in every one,
14 but it's, it was just something that caught my attention.

15 Q. So, coping mechanism?

16 A. Well, lack of coping mechanism, sure.

17 Q. Lack of coping skills?

18 A. Coping skills, yes.

19 Q. And do they have some information on addiction and the
20 brain and how they interact?

21 A. Yes, I do. Again, that's when we look at the reward
22 center, again, right in the middle, and maybe the next
23 slide illustrates this.

24 This slide reminds me that it's a chronic relapsing
25 brain disease, essentially meaning that once you have it,

1 you have it for the rest of your life. People do slip;
2 they do go back in using it. It's very similar to diabetes
3 in some ways. It certainly can be controlled, but people
4 do have problems with it.

5 Q. What happens to the disease addiction?

6 A. The disease of addiction, people chronically think
7 about the drug, chronically meaning long-term. They are
8 obsessed with it. They use, they use compulsively, they
9 use despite serious consequences in their life and
10 catastrophic circumstances. And why people continue to
11 use, I think there are two main reasons, and, and one has
12 to do with that frontal lobe, exactly what Dr. Halavonich
13 was talking about.

14 It's clear that people that use alcohol and cocaine do
15 not have that functioning capability to make sense out of
16 planning and executing various functionings. Next slide.
17 One thing that, that I frequently see is that people say
18 why did she do that? Why did he use that? That doesn't
19 make sense. Absolutely it doesn't make sense. Addiction
20 is not a logical illness, and because the logic part of the
21 brain has really been slowed down. So, it's not unusual
22 that people do make really stupid decisions when they're,
23 when they're using.

24 The other reason has to do with the profound effects
25 it has on the reward system, and I think the next slight

1 might show that, the reward pathway. The reward pathway,
2 we know that there are certain areas where these drugs
3 work, and they work by releasing a brain chemical called
4 Dopamine. We're -- that's one of the brain chemicals that
5 it releases. Dopamine is the brain chemical of reward and
6 reinforcement and pleasure, and without it being in our
7 brain and periodically being released, a lot of us would
8 not do certain things. The next slide.

9 These four things are what humans have to do to
10 survive. They have to eat regularly, they have to drink
11 water regularly, they have to have reproduction, and they
12 have to take care of their young, and without doing these
13 four things, human race would stop.

14 Now, when they do these four things, they are
15 essentially rewarded with a pleasurable experience, so it's
16 not something you would do randomly. It's not like you'd
17 say, oh, I'm going to eat maybe once a month. If that
18 happened, you'd die. Maybe we'll just have sex once every
19 three years. There probably would not be very many kids
20 around, and if it wasn't nurturing and feeling good to rock
21 your baby and hold your baby, you might not pay attention
22 to your baby and the baby might wonder off. So all four of
23 these things are associated with a release of, of the brain
24 chemical Dopamine. So, it's more likely that you will do
25 it again.

1 What happens with, with cocaine and other drugs is
2 that -- next slide demonstrates this -- is that essentially
3 -- maybe it's the next slide. The addicting drug -- back
4 up one with -- the addicting drug really becomes the top
5 priority in someone's life such that that's their main
6 focus, their main priority, because the brain says
7 essentially I have to have it. I need to get it. Without
8 it, you're basically going to die. That's not true, but
9 that's the message that -- that's being sent.

10 So, what you see is people doing things that cause
11 them to lose their jobs, lose their professions, lose their
12 spouses, lose their children, lose everything that's meant
13 anything to them, lose their health. And, and the doctor
14 will say if you continue to drink, your liver will quit.
15 You cannot have a drink, and people will drink again, and
16 they know that their liver is going to stop, and the way to
17 understand -- the way this -- I help understand this and
18 help other people understand it is looking at how
19 essentially this drug hijacks the brain because it releases
20 Dopamine.

21 Q. That, that's what I wanted to ask you. The four
22 things that you talked about, food, water, reproduction and
23 nursing, those are things that are endowed on us by our
24 creator and, and that's where we get the warm, fuzzy
25 feeling?

1 A. Right, yes.

2 Q. And the drugs hijack that center and, and give us the
3 same things for a while?

4 A. If not, if not more intense. It, it might take an
5 hour or so to get those effects from drinking and having a
6 good dinner or it -- you might get it fairly rapidly with,
7 with sex or with nurturing. Typically people that use
8 cocaine will describe the cocaine as being much more
9 pleasurable than sex, and sex becomes less of a goal issue.
10 Some people would like to use it both together to try to
11 combine those, those benefits. But it's almost immediate
12 that you get that reward and it really does hijack the
13 brain I think.

14 Q. All right. Alcohol, cocaine are very different in how
15 they affect us, are they not?

16 A. They are different in how they affect the body and the
17 brain. They, they affect different areas of the reward
18 system, but they both -- we found out they both work on
19 that reward system in different areas of it.

20 Q. Now, there was some research done some years ago that
21 you were familiar with, I believe, and -- do you have a
22 quote that will help you summarize that?

23 A. Yes. This quote is from Dr. Sydney Cohen, and it
24 talks about cocaine use and it talks about some of the
25 research that's been done with animals and, and then asks

1 us to reflect on it, on its use in humans. Next slide.

2 It talks about -- I think the next slide probably
3 covers that. That animals will work more avidly -- that
4 is, by pressing a bar repetitively -- to obtain an
5 intravenous fix for cocaine than any other drug, than any
6 other drug. If you give animals an unlimited amount, an
7 unlimited access situation such as you put a needle in
8 there, in the back of their back into the vein or into
9 their brain, monkeys will self-administer cocaine by
10 pressing the bar for it until they die in *status*
11 *epilepticus*.

12 To get an idea of how important cocaine becomes in one
13 study, primates bar pressed 12,800 times in order to get,
14 get the single dose of cocaine. So, that's -- for example,
15 that's like me asking someone for a date and they say no.
16 Would I then ask them 12,799 more times? Probably not. I
17 might ask them a second time, but would I continually ask
18 12,000 times? No. Cocaine makes that big an impression
19 that an animal continue to bar press before it finally
20 gives up. So, it really ingrains that experience in the
21 brain.

22 Q. So, you're saying they're not getting the reward, they
23 just keep pressing that bar?

24 A. Not getting the reward. You keep pressing and hoping
25 for that reward. You want it because it felt so good the

1 first time, you want to press and press and press.

2 Q. So, you really want that cocaine?

3 A. Yeah. Next one. They'll work for cocaine in
4 preference to food even though they're starving. Male
5 animals that will continue to bar press even though a
6 receptive female is in the cage. So, if an animal is in
7 heat and they would involve in procreation, the animal
8 would rather use cocaine than engage in sex. They'll
9 prefer an electric shock in order to obtain a larger dose
10 of cocaine despite the fact that they could have gotten a
11 smaller dose without a shock. So, it's, it's a pretty
12 profound effect, cocaine. Animals want cocaine.

13 Q. And we're primates?

14 A. We're primates, yes.

15 Q. And you work with people that ---

16 A. We're talking about, we're talking about monkeys
17 generally when we're talking about primates.

18 Q. All right. I understand. You have worked with
19 people?

20 A. I have worked with people, yes. I have done a number
21 of clinical studies with people where we look at how, how
22 to keep them from having this craving. Next slide.

23 They talk about this research. It says such animal
24 cravings take place in the absence of personality disorder,
25 situational stresses, or some characteristic logical

1 inadequacies. All monkeys respond this, this compulsive
2 manner. If humans had unlimited access to cocaine, they'd
3 probably behave in a similar manner, and it's usually
4 access that limits how much people get.

5 Q. And who is susceptible to being addicted to cocaine?

6 A. I'm sorry?

7 Q. Who is susceptible to being addicted to cocaine?

8 A. I think anyone that uses is susceptible. Some people
9 say I knew I could never use this again because I
10 essentially would fall in love with it, and they said they
11 would never use it again because they liked it that much.
12 Others, if they're healthy, if they have got a lot of
13 money, they don't have a significant other, that they're
14 the hardest people that go down pretty quickly because no
15 ones going to tell them no. That's -- they don't see the
16 physical effects or the psychological effects.

17 But I would say just about everyone is susceptible.
18 It crosses all economic lines, all social strata, all -- it
19 doesn't have anything to do with your IQ.

20 Q. Are they able to continue to work?

21 A. More so with alcohol than cocaine. Alcoholics seem to
22 have a long progressive picture. Most people, their
23 alcoholism manifests itself after thirty to fifty years.
24 Cocaine, my experience is somewhere between three and five
25 years of use their life starts coming apart.

1 Q. So, there are such things as a functional alcoholic?

2 A. Absolutely. Again, I think most alcoholics are at
3 work today and probably not doing a very good job, but
4 doing an adequate job.

5 Q. Have you published any papers on alcohol use, abuse?

6 A. Yes, I have. I have published a number of articles
7 trying to predict who is going to have withdrawal,
8 withdrawal seizures, which is very hard to predict.
9 Surprisingly, how much you drink and how long you drink did
10 not correlate with if you were going to have a seizure,
11 which is one of the severe signs of alcohol withdrawal.
12 And I published some other articles looking at some of the
13 physical symptoms of alcohol.

14 Q. Are those the only other, are those the only problems
15 with, with alcohol abuse that you summarized?

16 A. I listed them here, some of the psychiatric effects of
17 alcohol: causes anxiety, panic, hostility, restlessness,
18 aggressiveness, depression, thought disturbances, mood and
19 cognitive disturbances. These are just some of the
20 psychiatric effects from alcohol, the numerous
21 physiological effects of alcohol.

22 Q. And what symptoms do you -- you have seen when someone
23 stops using alcohol?

24 A. Generally the withdrawal symptoms would be some mild
25 irritability, some restlessness, some uncomfortableness

1 which would last for anywhere from two to eight hours
2 before people would, would normalize. That would be with
3 just small amounts of alcohol. Next slide might show some
4 of this, some of the withdrawal symptoms that I wrote and
5 published talking about alcohol. Could you back up a
6 little bit? Excuse me, Mr. Rathbun, can you move back?

7 Okay, in this paper, adverse consequences of alcohol
8 abuse and dependence, looking at some of the withdrawal
9 symptoms that you could see. Some of the mild withdrawal
10 symptoms, certainly alcohol hallucinosis, alcohol seizures.
11 Up to ten people -- ten percent of people that go into
12 severe alcohol withdrawal, and if they're untreated, they
13 die. We pretty much learned that, that you can't let
14 someone just go through alcohol withdrawal without
15 treatment because they'll have pretty severe consequences,
16 and that's why we'll, we'll try to treat someone with a
17 safer drug than, than what they were using.

18 Q. Now, Doctor, you mentioned earlier it doesn't
19 necessarily matter how much alcohol there is for the
20 withdrawal. That's got to do with the blood alcohol
21 content?

22 A. It doesn't -- blood alcohol does correlate with some
23 of the intoxication symptoms. It's one of the few drugs
24 that you can correlate how much is in the blood, how much
25 is -- the clinical effects that you see. I think I have

1 some slides that look at this briefly.

2 When you look at a blood alcohol level of, say, .03 to
3 .13 and .8 -- .08 is currently the legal limit in all
4 states now. What you can see is people being mildly up,
5 feeling good, social, talkative, more self confidence,
6 saying things that they normally might not say. They won't
7 have as much attention -- that judgment control might be
8 decreased a little bit. They might not have as much
9 impairment initially, but they -- they'll not be able to
10 walk as, as well.

11 Your airline pilots can make errors as low as .04, so
12 you don't want your airline pilots using. On the other
13 hand you might not want them in withdrawal either, so it's
14 a real, it's a real dilemma.

15 Other higher levels you can see more discoordination.
16 People will disperceive things. They'll be overly excited
17 or overly slowed down. Next slide. As the blood level
18 increases, you can see some confusion, disorientation, some
19 dizziness up to a level where people will just pass out.

20 Passing out and having a blackout is different. A
21 blackout is when you don't remember doing something, but
22 you didn't fall asleep. You were able to ride back up and
23 park your car; you just don't remember driving that, that
24 direction.

25 People can die at a level of .35 or up to .5. .5 is

1 generally the level that we think about causing death, but
2 you can become tolerant to these drugs, and I think the
3 highest level I have seen someone walking in with was a .39
4 at the Medical University, so that was pretty high and
5 that's -- that gives you some idea of the tolerance. But
6 that person is probably not close -- I mean, they were
7 probably close to shutting down their brain, which controls
8 their respiratory center.

9 Q. And we don't have a blood alcohol on Mick or ---

10 A. No, we do not have a blood alcohol.

11 Q. You could not give an opinion as to where he'd fit in
12 this?

13 A. No. There was not any blood alcohol done on him.

14 Q. About how many patients have you seen over the course
15 of your career at MUSC? Can you recall?

16 A. Depending with, with what specific diagnosis would
17 you...

18 Q. Well, the psychiatric effects from cocaine?

19 A. With cocaine it's probably in the low thousands,
20 probably between one and 2000. As far as alcohol, I know
21 I, I did a couple of studies where I looked at least 2000,
22 and one patient I can recall looking at their records and
23 interacting with them, so it's in the thousands.

24 As far as panic, panic disorder, I would see patients
25 on my own under the supervision of psychiatrists, and I

1 probably had over that seventeen-year period of time,
2 probably I'd say on a regular basis maybe 200 patients and
3 probably screened another three to 400 patients, so...

4 Q. And that's on alcohol or...

5 A. That was with panic. With alcohol probably in the
6 range of, of four to 5000 patients, and with cocaine
7 probably about 2000 patients if you take those twenty-eight
8 years at all the sites that I worked at.

9 Q. And you have written papers on cocaine abuse and that
10 type of thing as well?

11 A. Yes, sir. Yes, sir.

12 Q. What usually happens when somebody stops using
13 cocaine?

14 A. Typically there is a crash you do see. The question
15 is, is the intoxication or the withdrawal the worst? I
16 think just using it, you can see some of these side effects
17 such as being agitated, paranoid. You can have
18 hallucinations. You can have delusions, which is just a
19 belief system. Your thoughts are such that it's hard to
20 get a -- agreement with other people that this is reality.
21 You can see some homicidal and suicidal behavior and some
22 pretty severe withdrawal. All these are well documented
23 with, with cocaine use.

24 Mick had some of these symptoms. Certainly his
25 paranoia seemed to increase. By history, he had some

1 paranoid symptoms it sounded like through his young adult
2 life for -- his age now, and I think the cocaine probably
3 contributed to that.

4 Q. You have got a slide that demonstrates some of the
5 problems with withdrawal?

6 A. Yes, I believe I do. There's this crash that occurs;
7 people might feel tired. Some of the same symptoms of
8 depression as well as some worsening of anxiety, hostility,
9 and again the paranoia.

10 Q. Are there some symptoms, Doctor, which can continue on
11 after one's stopped using cocaine?

12 A. I'm sorry, I...

13 Q. Are there symptoms that can be seen in a patient long
14 after they stopped using cocaine?

15 A. There are, and the one that I see the most frequently
16 is the paranoia. The paranoia seems to stay, as well as
17 the difficulty of focusing and making decisions. We have
18 sort of -- recognizing that in our recovering cocaine
19 patients because we give them instructions, and they just
20 can't seem to follow them. They don't comprehend them as
21 well as they, they appear to.

22 And, and so you almost have to have some people walk
23 them through certain situations as compared to -- here's
24 the bus schedule. You say okay, here's the bus schedule.
25 Here's 3:00. Here's the time the bus comes. What time is

1 it now? Okay, it's 2:30. That means the bus would be, be
2 coming soon, wouldn't it? Okay, and you would say in
3 thirty minutes the bus would be here. You'd have to work
4 with people like that so that people would not be able to
5 snap to. Here's the bus schedule; you can catch a bus.
6 They don't seem to be able to think that way.

7 Q. You got a slide that shows some of the residual
8 effects?

9 A. Yes. Some of the residual effects, after the brain
10 has gotten rid of the cocaine, you can still see some
11 impulsivity, some irritability, aggressiveness, agitation,
12 poor thinking, increased anxiety, distorted perceptions,
13 paranoia. Psychosis can last for a good while. That, that
14 feeling like you need to run can be present there.

15 Q. Do you believe that Mick suffered some of these
16 symptoms?

17 A. I think he did have some of those symptoms. Next
18 slide. I think his irritability was an issue. I think his
19 -- again, his paranoia and his anxiety, which fluctuates
20 quite a bit, I think have been affected by his cocaine use
21 even though it was only for about two years that he used on
22 a regular basis.

23 Q. Now, Doctor, do you think that Mick was completely on
24 the up and up when he reported his alcohol and cocaine use
25 to you or to other experts?

1 A. I think Mick minimized his alcohol use and his cocaine
2 use, which is not unusual for people to try that. That's
3 an area that I'm interested in is how do you accurately
4 collect what people have actually been using. Some people
5 will over report how much they use; some people will under
6 reports. Some people are accurate. Sometimes people are
7 as accurate as they think they -- what they can remember,
8 because they, they think they are reporting it correctly.

9 I do not -- my impression is that Mick does not want
10 to appear bad in anyone's eyes, and reporting his alcohol
11 and cocaine use produces a reaction I think in most
12 clinicians, and I think he, he underreports. I have seen
13 at least three or four different reports that vary.
14 Sometimes he'll say I drink occasionally, I drink socially.
15 I don't know what social drinking is sometimes. It can
16 mean -- it means I'm not in a treatment program, but I
17 drink a lot or it can mean I just have a drink. So, I
18 think he does minimize his use.

19 Q. Okay, we don't know how much?

20 A. Dr. Frierson seemed to think that he drank about five
21 drinks a day most, most days. In the in-patient
22 assessment, the social worker seemed to think that he had
23 chronic alcohol use for about thirteen years. He had some
24 physical problems that was possibly related to his alcohol
25 use affecting his pancreas. It was not clear in the

1 hospital. He does have something called GERD, gastro
2 esophageal reflux disease, which is often made worse by
3 alcohol.

4 One of the big things I did at Fenwick Hall is
5 essentially stop medicines for people when they came in
6 because they were on all these medicines that they were
7 taking for their alcohol use. You drink alcohol, it's
8 going to corrode your stomach and you might not need to
9 take Tagamet and Pepcid and these drugs if you quit
10 drinking because you may not have an ulcer. So, I would --
11 I would suspect that his, his stomach will improve as he
12 continues to not drink.

13 Q. Okay, and you have been at this a long time?

14 A. Pretty long.

15 Q. How long did it take you to, well, start to understand
16 the effects of withdrawal on somebody who is addicted?

17 A. I think you can say I'm a slow learner. I think it
18 took me about a year and a half to really understand what's
19 going to happen when someone is going to quit using
20 alcohol, and everyone is different. It -- it's -- it seems
21 to be a -- an ongoing process. It took me I would say four
22 to five years to really, truly appreciate that this is a
23 disease, and I often find it a challenge educating
24 healthcare professionals in, say, thirty minutes or in
25 thirty minutes here giving these people this information

1 that it would change their perception on alcohol and drug,
2 drug use because almost everyone does have a perception of
3 alcohol and drug use. But there's no question in my mind
4 that this is a full-blown biological disease that has
5 physical and mental effects and can be treated.

6 Q. And do you have an opinion as to what Mick's
7 withdrawal symptoms are upon his alcohol, cocaine use?

8 A. Yes. I think the next slide shows some of these.
9 Increase impulsivity, being irritable, not being able to
10 focus, more anxious, having some tremor, and not being able
11 to sit back and relax. Again, there's a lot of overlap
12 because he's got three other psychiatric disorders.

13 Borderline personality disorder, anxiety symptoms. Some,
14 some people diagnosed him with anxiety disorders, some
15 people didn't, and -- as well as depressive disorder.

16 Q. So, these would all work together to make the
17 condition worse or...

18 A. Make them worse. I think Dr. Frierson mentioned that
19 yesterday how these drugs would be expected to make his
20 depression and anxiety worse.

21 Q. And do you have an opinion regarding his use of drugs
22 and their effects on him?

23 A. I think the -- affects his perception. I think they
24 do relieve his symptoms temporarily. I think they make his
25 depression and anxiety and borderline symptoms worse, and I

1 think it causes some changes in his behavior.

2 Q. And you have got a slide to shows the alcohol, cocaine
3 effect on his brain?

4 A. Yes. Yes. Next one. Again, the effects that I, I
5 found is that increased irritability, feeling irrational,
6 irrational thinking, his perception or increasingly
7 paranoid, feeling hopeless, and some of the perceptions are
8 distorted and inaccurate. I, I have often -- I have
9 consulted with Dr. Halavonich several times, and she
10 assures me he is competent to stand trial. My question
11 was, when I observed his planning and his decisions to do
12 some of the things he did, it did not appear to me, to me
13 that it was rationally thought out, and that it was in his
14 best interest and he was using very good judgment, and I
15 just wondered how much his -- of his drug use was affecting
16 this thinking process.

17 Q. Doctor, what do you, in your professional opinion,
18 feel is best for Mick?

19 A. I think his disorders can be treated. I think there
20 are pharmacologic treatments. And just as Dr. Halavonich
21 said, there's various therapies that can be done, whether
22 it's in a, a structured setting that people give him
23 information, or whether he does it on his own if he so
24 chooses. I think a controlled setting, he will continue to
25 get better. I think without access to alcohol and drugs,

1 his brain will continue to improve over time. I think with
2 right amount and the right kind of medication, his anxiety
3 and depression will improve. I think his borderline
4 symptoms will improve over a long period of time. An
5 improvement might mean ten or twenty-five percent better.
6 It -- I'm not saying that all his symptom also go away, but
7 I would expect them to improve.

8 Q. I believe you answered my next question. He's been
9 incarcerated for almost two years, and you just said that
10 it's going to take a long time for him to improve ten or
11 twenty percent. Is that right?

12 A. I think so. I, I think the setting he's in now is, is
13 different than the setting he would be in a prison for
14 sure.

15 Q. Is there anything you'd like to tell this court, the
16 jury, that I haven't asked you?

17 A. I, I think Mick's confused. It's not a great deal of
18 confusion, but his -- the way he sees the world is
19 certainly not the way I see the world in many areas. And
20 we would differ in, in very much in the areas of judgment
21 just what, what I would have recommended that he reported
22 today. But that was his decision and I, I guess the court
23 can allow -- makes room for poor judgment.

24 MR. RATHBUN: Thank you, Doctor.

25 WITNESS: Sure.

1 MR. RATHBUN: Answer any questions the state may have.

2 THE COURT: Okay. Mr. Hembree?

3 MR. HEMBREE: Thank you, Your Honor.

4 CROSS-EXAMINATION BY MR. HEMBREE:

5 Q. Hi, Dr. Morton.

6 A. Hi.

7 Q. Mick reported to you, I believe you testified, that
8 the last time he used cocaine was September of 2005?

9 A. Yes, sir. Mid-September, 2005.

10 Q. And did Mick report to you that he did not use alcohol
11 on the day of the murder?

12 A. He did report that his last use was the day before
13 Becky was murdered, and so consequently I think he would
14 probably be in some withdrawal.

15 MR. HEMBREE: Thank you, Dr. Morton.

16 WITNESS: Sure.

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

18 WITNESS: Thank you, sir.

19 (THE WITNESS EXITS THE STAND.)

20 THE COURT: Just for a couple of minutes, five, ten.
21 Use the restroom and hurry back. Step to the jury room.

22 (THE JURY EXITS AT 4:54 P.M.)

23 THE COURT: Mr. Rathbun, I notice both of our good
24 doctors are still here. Did you want them to stay or...

25 MR. RATHBUN: I ask they be allowed to leave if they

1 wish to.

2 THE COURT: If they wish to. They're welcome to stay.
3 Didn't want them to think that I was doing -- holding them
4 here, but they are welcome to stay. I assume the state has
5 no objection.

6 MR. HEMBREE: No objection, Your Honor.

7 THE COURT: You can stay or you can leave. Feel free.
8 We will take about ten. Don't go too far. Be back in
9 about ten minutes.

10 (OFF THE RECORD.)

11 (THE JURY ENTERS AT 5:14 P.M.)

12 THE COURT: Okay, thank you. We'll proceed now with
13 further witnesses from the defense.

14 Mr. Wilson, your next witness.

15 MR. WILSON: Te Anne Oehler.

16 TE ANNE OEHLER, BEING DULY SWORN,
17 TESTIFIES AS FOLLOWS:

18 CLERK OF COURT: Please state your name and spell your
19 last for the record, and please speak into the microphone.

20 WITNESS: My name is Te Anne Oehler, and my last name
21 is spelled O-e-h-l-e-r.

22 THE COURT: Ma'am, could you spell your first name,
23 too, to make sure we got it right?

24 WITNESS: Yes, sir. T-e space, capital A-n-n-e.

25 THE COURT: All right. Go ahead.

1 VOIR DIRE EXAMINATION BY MR. WILSON:

2 Q. Ms. Oehler, if you would, what kind of work do you do?

3 A. I'm a licensed independent social worker; I'm a
4 clinical social worker in private practice.

5 Q. All right, and if you would, give us the benefit of
6 your education and professional training.

7 A. I received my Master's of Social Work in medical care
8 and health services from the University of North Carolina
9 at Chapel Hill, and completed my clinical training at Duke
10 University Medical Center and Comprehensive Cancer Center.
11 I completed post-graduate work at Memorial Medical Center
12 in Savannah, Georgia, and I have completed post-graduate
13 work in London, England, at St. Josephs Hospice, and in
14 France at American University Hospital.

15 Q. And, ma'am, do you have any type of specialty that you
16 do?

17 A. Yes. Yes, sir. In private practice, my specialty is
18 in individual and family therapy.

19 Q. Now, if you would, just tell the jury what a social
20 worker is and what it is that he or she does.

21 A. A social worker is a professional who by virtue of
22 their education and their training and their experience has
23 the tools to evaluate an individual and to work with
24 individuals and with families and to give information from
25 those evaluations to -- give information to make

1 recommendations regarding their behavior and their family
2 relationships.

3 Q. Okay, and when you say evaluation, you're speaking of
4 a psychosocial evaluation?

5 A. Yes, sir, I am.

6 Q. All right. Now, would you explain to us then what
7 that is?

8 A. A psychosocial evaluation is one of the tools that a
9 social worker uses. In that psychosocial evaluation we
10 look at family history, we look at personal history, we
11 look at social history. We also review records which may
12 include medical records or mental health records and would
13 include interviews with family members, interviews possibly
14 with co-workers, or with other people who know the
15 individual who is being interviewed.

16 Q. And, ma'am, what, what specific experience have you
17 had in your profession in conducting clinical assessments
18 in terms of your testing -- your testifying before courts?

19 A. I have testified many times in family court in South
20 Carolina and in North Carolina and in Georgia. I have
21 testified as an expert witness in over twenty trials for
22 the defense and five trials for the solicitor's office. I
23 have also provided consultation to the public defender's
24 office and to the solicitor's office.

25 Q. And when you testify, what is the purpose of, of your

1 testimony in -- I think you said you testified in family
2 court, and you have also testified, I assume, in circuit
3 court in the past?

4 A. Yes, sir, I have.

5 Q. Circuit court meaning criminal court.

6 A. Yes, sir.

7 Q. All right, and what is the purpose -- let's take
8 family court first. When you testify in family court, what
9 would be the purpose of your testifying in family court?

10 A. Might be to evaluate a child or a couple or an
11 individual, and then to provide information in seeking the
12 truth regarding those family relationships, and sometimes
13 the ability of which parent was better suited to rear a
14 child.

15 Q. And how many times do you think you have testified in
16 family court?

17 A. Maybe now it would be over, over a hundred times.
18 Quite a few years.

19 Q. Now, ma'am, let me ask you, do you have direct
20 experience both on the issue of child welfare as well as
21 parenting skills?

22 A. Yes, sir, I do. In fact, I am a certified parent
23 trainer and a certified adoption investigator. Have been
24 certified by the South Carolina Department of Social
25 Services to evaluate children and to conduct home studies.

1 Q. All right. Now, as I understand it from, from what
2 you're saying, you have testified both for the defense and
3 for the prosecution. Is that correct?

4 A. Yes, sir, it is.

5 Q. Now, have you testified in any death penalty cases
6 prior to this?

7 A. Yes, sir.

8 Q. All right. How many death penalty cases have you
9 testified in before this?

10 A. Over twenty cases. Over twenty-five altogether.

11 Q. All right, twenty-five death penalty cases?

12 A. Yes, sir. At least.

13 Q. All right, and you said that five of those were for
14 prosecution and twenty was for defense. Is that correct?

15 A. Yes, sir, that's correct.

16 Q. All right. Now, let me ask you this. In terms of
17 your psychosocial evaluations, how do you go about doing
18 the evaluation?

19 A. First I conduct a -- an evaluation of the individual
20 and I talk with them. Then after gathering information
21 from them in a series of interviews, I seek collateral
22 sources of information. That is, that I interview other
23 individuals, which may be other family members, but I also
24 review records. If available, I talk with friends or with
25 co-workers or other people who might know the individual.

1 Q. All right.

2 MR. WILSON: Your Honor, at this time I would like to
3 offer Ms. Oehler as an expert in the field of clinical
4 social work.

5 MR. HUMPHRIES: Without objection.

6 THE COURT: You may give opinion testimony in that
7 regard.

8 DIRECT EXAMINATION BY MR. WILSON:

9 Q. Now, ma'am, if you would, when you go about doing
10 your evaluations, do you do anything in order to
11 corroborate the information that you have been provided by
12 the client or by the defendant or by the person that you're
13 evaluating?

14 A. Yes, sir, I do. One of the tools that I use that
15 helps me to verify or validate what an individual is
16 telling me is the review of records. And in this
17 particular evaluation of the defendant, I reviewed quite a
18 few records.

19 Q. All right, and once you complete your review of the
20 records, then what do you do, or what outcome do you arrive
21 at after that?

22 A. At that point, then I seek other individuals that I
23 can talk with to gather information who may be family
24 members or who may be co-workers. And then, then I sit
25 down, and then I go through all the information I have, and

1 then I come to some type of finding.

2 Q. All right. Now, let me specifically direct your
3 attention to the defendant, Louis Michael Winkler, in this
4 particular case, Jr., and ask you if you had occasion to
5 conduct such an evaluation process with him or on him.

6 A. Yes, sir, I did.

7 Q. All right, and how, how were you referred to Mr.
8 Winkler?

9 A. Mr. Wilson, you referred me to evaluate him.

10 Q. All right, and, and did you make any findings as a
11 result of that?

12 A. Yes, I did.

13 Q. All right. Now, let's start with the first, with his
14 family history, and can you just start by giving me --
15 well, first I guess the best thing would be to tell the
16 jury what a family history would be and what that would
17 encompass.

18 A. One of the things that I do is I look at a family
19 history. I look at a person's family of origin -- that is,
20 the family that they grew up in. Then I also look, in
21 addition to that, to the relationships they have as they
22 grow older, the relationships that they have with other
23 people, people they may date or people they may be involved
24 with, or later people that they may marry.

25 And in gathering that family history, I look at some

1 of the values and some of the, the traditions that a family
2 may have. In addition to that, I may look at certain
3 problems that a family may have or what, what it's involved
4 in some of their relationships. That is looking at their
5 history.

6 Q. Can you tell us why family history, why family history
7 is significant?

8 A. Family history is significant because the way we grew
9 up in our families shapes the people that we are because
10 those are the earliest role models that we have, and those
11 are the earliest behaviors that we observe in how we learn
12 to get along with other people, whether it's in school or
13 in relationships or in our work life.

14 Q. Okay. Now, if you would, what assessments did you
15 make in the area about his mother's child rearing, his
16 father's role, and his grandparents' role in their
17 relationship with him?

18 A. One of the things that I saw about his mother is that
19 she came from a very loving family that was very outgoing
20 and believed in education for their children. She was a
21 high school graduate. She came from a family that
22 encouraged her to work, and after high school, one of her
23 first jobs was for the Atomic Energy Division with Babcock
24 at Willcox -- excuse me -- in Ohio. She was working there
25 when she met Mr. Winkler, Sr., and he was working for a

1 family owned business. But the mother, his mother's
2 influence on him, she was a woman who was working and who
3 was working outside the home, but when she became engaged
4 and got married, her husband wanted her to stop working and
5 to stay home. In fact, he insisted on it.

6 Q. Okay, and what about his -- the role of his
7 grandparents, if any?

8 A. When Mr. and Ms. Winkler first married, when Mick's
9 parents first married, they moved in with his parents, who
10 were of Hungarian descent and who believes that the family
11 should stay very close and should stay home. It was at
12 that point that Mr. Winkler made his wife quit her job and
13 to stay home. But they didn't have any children, and so
14 she was there during the day and she wasn't working, and
15 she wasn't very happy.

16 He would go to work. He worked in a bar, in a family-
17 owned bar, and he would come home late at night and he
18 would be there, but he was very controlling of her and
19 would not let, let her have any money of her own.

20 About the time that their second child was born, she
21 was very frustrated, or actually had been for a while, and
22 was real emphatic to her husband that they move out into
23 her own home, which they did at that point. But because of
24 that ancestry of the very strict Hungarian background of
25 Mr. Winkler, he was very controlling toward his wife.

1 Excuse me.

2 Q. Now, ma'am, who would have been the primary caregiver
3 of ---

4 THE COURT: Hold on one second.

5 WITNESS: There's water in it. May I help myself?

6 THE COURT: Yes, you go right ahead. Got enough in
7 there?

8 WITNESS: Yes, sir. Thank you very much.

9 BY MR. WILSON:

10 A. I'm sorry.

11 Q. It's okay. Thank you. Who would have been the
12 primary caregiver and role model in his early years?

13 A. Well, his mother was his primary caregiver because she
14 was the person who was home during the day, and she was the
15 person who was home in the evening. Mick is one of six
16 children, and he's the fourth child among six. The family
17 had a tradition that everyone had to be at home at night at
18 between 5:30 and 6 to eat dinner, which is a good tradition
19 to have. His father was gone during the day, so his mother
20 was essentially the person who was involved with the school
21 work and supervising that and being involved with him.

22 His dad coached all the boys in that family in their
23 ball teams. But after dinner at night, his father would
24 leave and go out and not come back until 1 or 2 or 3 in the
25 morning, and was frequently when he came back at night had

1 been drinking a lot. So, essentially the role model that
2 he had from his mother is that she was very loving and
3 tried to be protective of him and to encourage him in
4 school, but then he had the role model of a father who
5 wasn't always present in the home. He had a father and his
6 parents were married to each other, but his father when he
7 was there was very controlling toward the family members.

8 Q. How would you describe his father's parenting skills
9 then?

10 A. His father had very poor parenting skills. He was, he
11 was very authoritative in setting certain guidelines and
12 rules for the family. When the two oldest children
13 differed with him or argued with him, both had reported
14 that he beat them at times and they -- the two children who
15 were older than Mick is.

16 Mick denies that any point that his father beat him,
17 but there was an exception of when Mick was about a junior
18 in high school when his mother found some marijuana in the
19 bathroom and confronted him with it. And then when his
20 father came home from work, she told him and he, he grabbed
21 Mick around the throat and started choking him and pushed
22 him up against a refrigerator. And his mother related to
23 me that at that point she became so fearful of what he
24 would do, that he might hurt Mick worse, that at that --
25 from that point on she didn't tell him any of the things

1 that the, the children did when they got into trouble.

2 And from pretty much from that point on, Mick, who had
3 begun to drink at the age of thirteen, started with the
4 first drink of alcohol on a camping trip given to him by
5 his father. Then later he experimented with marijuana when
6 he was sixteen. That was given to him by a friend, and
7 then later cocaine at age seventeen, given to him by
8 somebody else. By the time he was getting toward his later
9 high school years and toward graduating, he had begun to
10 use alcohol and marijuana quite frequently.

11 Q. What was his home life like during his teenage years?

12 A. During his teenage years his father -- when he had
13 been a little boy, his father had coached the children, the
14 male children, the boys, in their baseball, but was not
15 present in the home. During his teenage years, his father
16 was out of the home more working with his business, being
17 gone during the day on sales calls with his insurance
18 business, coming home for dinner, being gone at night, and,
19 and not being there.

20 As I said earlier, if there was a problem with one of
21 the children, the mother would address it with the
22 children, and then she would mention it to their father
23 when he came home at night. But after the episode with his
24 choking Mick, after that point she didn't share with him
25 any more of what was going on with the other children when

1 they were getting into trouble.

2 Q. Can you tell me what a personal history is?

3 A. Could I go back a minute and talk a little bit about
4 Mick's marriages as part of the family history? I told you
5 a little bit about when he was -- during his growing up
6 years, and about the time when he was eighteen years old,
7 he met Carla and dated her for a while. And they married
8 and she was pregnant and she was going to have a baby, she
9 was working outside the home and trying to go to school at
10 the same time. And there was a lot of conflict in that
11 relationship because Mick wanted her to stay home. He
12 didn't want her to go to school; he didn't want her to
13 work.

14 In interviewing Mick's father, he said, well, that
15 wasn't Mick's child anyway. And I said, well -- and I
16 said, it wasn't? And he said no. He said that he heard
17 around town from someone that that wasn't Mick's child. He
18 said -- so, he shared that information with Mick.

19 And then, of course, there was conflict in the
20 marriage already because of Mick's alcohol use and because
21 of his drug use, and then he abused his wife. When she
22 went to his mother to say that Mick had hurt her, that he
23 had abused her, and that she was at her wit's end and she
24 didn't know what to do, Mick's mother advised her to be, to
25 be glad she was married and that she had a husband and to

1 go back home and stay with him.

2 The, the domestic violence in that family and the
3 abuse that Carla suffered from him was not the first time
4 that one of his wives would suffer abuse from him. After
5 Carla left him and moved and took their child and went to
6 another state, he lived in that area for a while longer and
7 had a series of relationships with other women.

8 He moved to the North Carolina, South Carolina area
9 about -- after Hurricane Hugo about in 1989 or in that
10 area, and it was after that time that he met Denise, his
11 second wife. And in that relationship there was also
12 alcohol and there was drug use, and there was a conflict
13 between the two of them.

14 And Mick's father said to him at another time now you
15 need to watch that. She's got a couple of children of her
16 own, and that's not a relationship you want to get involved
17 with. But Mick was in the, the relationship. We know that
18 his family visited at times during the years after he moved
19 to this area, coming to visit two or three times a years --
20 a year, excuse me.

21 His parents divorced when he was about twenty-one or
22 twenty-two years old, and their divorce has been quite
23 bitter. Even though they have been divorced since 1982,
24 there's still occasionally is conflict between the two
25 parents.

1 Q. Now, you want to let's go back and talk now about
2 personal history?

3 A. Yes, sir. Yes, sir, I'm sorry.

4 Q. That's okay. Let's go back to that, to personal
5 history, and just explain to us what the personal history
6 is and then how that applied.

7 A. In personal history, I looked at the history of, his
8 history of chemical dependency. That is his addiction. I
9 looked at his history of depression, anxiety and his sexual
10 history, and also looked at his psychiatric history. In
11 terms of that, I believe when I evaluated him in July that
12 he had characteristics of or traits of a borderline
13 personality disorder.

14 Q. All right, and why is personal history significant to
15 his development?

16 A. Personal history is significant to his development
17 because it is the way that shaped his behavior not only
18 during the time that he was growing up in his family, but
19 after he left his family, family, his young family and
20 started his own family.

21 In each of his later relationships, he seeks out women
22 -- a woman with children. Carla was going to have a baby,
23 Denise had children, and Becky had children. But the
24 personal history is significant because it shows how he
25 began to live his life and to shape his own life after

1 leafing his own family that he grew up in.

2 Q. Now, tell us about the, I guess, about the alcohol and
3 drug use.

4 A. When I interview someone and I ask about their alcohol
5 and their drug use, one of the things that I look at is
6 when is the first time that someone used alcohol or drugs
7 and who gave it to them because that's significant. And
8 what's significant about this is that his first use of
9 alcohol was at age thirteen. What's even more disturbing
10 is that his first use of alcohol was given to him by a
11 family member, by his father. He was given that alcohol on
12 a camping trip and during his teenage years drank more,
13 sometimes four or five nights a week, sometimes on the
14 weekends.

15 I was interested, since he lived in a family where
16 there was a mother and a father present, how he was able to
17 get away with that. He said that often he would go out at
18 night. His mother went to bed early, about 9:00 or so, and
19 his father would be out. He thought, he said, on sales
20 calls, and at that time he would go out drinking with his
21 friends or hanging out all night and coming back before his
22 father came back.

23 Q. Based on those findings, what were your concerns, if
24 any, about his alcohol and drug use?

25 A. I had great concern about his alcohol use. It started

1 when he was thirteen years old. He began to be a chronic
2 or an everyday drinker as a teenager. His alcohol use
3 continued through the years. It worsened as he was in
4 stressful situations, stressful relationships. It affected
5 his ability to hold down a job. He worked in construction
6 and property management, sometimes holding a job for two or
7 three years. He started out in insurance and worked in
8 that for about six months, then changed and did
9 construction work. But through the years the, the job that
10 he held and the longest duration was the last job that he
11 held with Tillman Property Management.

12 He -- his alcohol use not only affected his, his work
13 performance in the different jobs he had. It affected
14 every relationship he had, combined with his marijuana use
15 at an early age, but later on his cocaine use, which was
16 significant from the time he was seventeen, but really
17 increased significantly in 2003. In 2003 he started using
18 cocaine not only during the week but on the weekend as
19 well. He told me sometimes spending up to a hundred to
20 \$140 a night on his cocaine use, and that mixed with the
21 alcohol certainly contributed to some of his problems of
22 depression and his life-long anxiety.

23 He became paranoid in relationships that he had with
24 others, feeling that others were talking about him or that
25 they were saying things about him behind his back. And

1 that his feeling about people when he met them is that he
2 did not instantly trust people. On first meeting people,
3 he was suspicious of people until they proved otherwise.

4 Q. Let me ask you about depression. You mentioned
5 depression. Based on your findings, did you find anything
6 consistent with depression in his history?

7 A. Yes, I did. From his early teenage years, the anxiety
8 that he had almost went hand in hand with his depressive
9 symptoms. He had difficulty sleeping at night. He was
10 irritable. He had anxiety. He had restlessness. He
11 frequently would have tremors of his hand and of his feet.
12 His depressive symptoms I won't say were low grade but they
13 were only present -- that is, his depressive symptoms were
14 always with him. They never went away.

15 When evaluated by a doctor and when treated for
16 depression, the medication might help for a while, but he
17 frequently changed medications because he didn't feel that
18 they gave that quick a response to treating the depression
19 that he felt. So, his depressive symptoms continued. They
20 were combining that with his alcohol use and with his drug
21 use.

22 Q. Let me ask you. In his history, is there any
23 indication of sexual or physical abuse?

24 A. I questioned the sexual abuse, but he denied that. He
25 grew up in a, in a strict Catholic home where his father

1 was very rigid. He attended Catholic school from the first
2 through the eighth grade. He was an altar boy going to
3 mass every day. He attended a public high school, later
4 transferred to a public high school and graduated from a
5 public high school. Although he denies any history of
6 sexual abuse, I did not find any evidence of that, but I
7 question that and I evaluated it.

8 I also definitely say that there was physical abuse.
9 There was a physical abuse toward him from his father in,
10 in his early years. But not -- but not later on through
11 his adulthood.

12 One of the ways that his father controlled not only
13 his wife but his children was through finances or through
14 money. That is, whenever Mick needed help with something
15 financially, his father would help him out with that.
16 Whether it was helping to -- him with a car or helping him
17 with buying one of his homes or both of his homes or
18 actually with each of the other children in times when they
19 had needed financial help, their father has helped them out
20 significantly. But his -- the father's way of handling
21 that is I'm going -- I'll give you money, but you have to
22 do what I say or you have to follow through with me. So,
23 through that, there has been conflict in the family among
24 the adult children, the other adult children with their
25 father. But with Mick, there has not been conflict with

1 his father regarding that because at different times,
2 his father helped him out financially every time he asked
3 him.

4 Q. What significant findings did you find in his personal
5 history regarding his mental health history, and why is
6 that significant?

7 A. That's significant because it seems that he starts out
8 as a happy-go-lucky little boy who just enjoyed his family,
9 and especially enjoyed holidays around Christmas and
10 enjoyed family vacations that the family went on, trips
11 that his father won through his insurance agency. But then
12 later on the -- some of the, the behaviors that he
13 exhibited, he would -- he sought to try to replicate that
14 family feeling again and again by seeking out women who had
15 children.

16 Q. Now, let's talk about his social history for a minute,
17 and just tell the jury what that is and what -- sorry, and
18 what the significance of that would be.

19 A. His social history looks at his educational
20 background, his, his work experience, his relationships
21 with friends, and, and his mental status. The -- I have
22 mentioned to you earlier that his social history involves
23 not only his schooling, that is that he grew up in Catholic
24 school and was an altar boy and was active in the church.
25 The mother took all the children to school every -- excuse

1 me -- took all the children to church every Sunday morning
2 and father went also, but he went to a different service.
3 He didn't go to church with the children.

4 He, Mick, was active in sports, not only in -- while
5 he was in Catholic school but also in high school. Played
6 on the football team, was very outgoing, and really enjoyed
7 the praise and the, the comments and the affirmations or
8 the praise, the positive things that people said about him.
9 That is, that he really glowed when other people praised
10 him or said things about him.

11 His feeling of his own value or his own self image did
12 not come from inside of himself about how he would feel
13 about doing a good job on a chore or with his work or
14 feeling good about himself because he did something really
15 good. He looked to other people to give him praise for the
16 things that he did. In fact, he was dependent on what
17 other people said about him.

18 He was active, as I said, in school. He was an A and
19 B student in his early years. In fact, pretty much an A
20 and B student until he was about a junior in high school,
21 which was when he started using pot and drinking alcohol,
22 and then his grades dropped to D's, C's and F's.

23 And when he finished high school, he was not
24 interested in going to college. He wanted to go to work,
25 and so as I mentioned earlier, he tried the insurance

1 business for a little while. Then later on went into other
2 types of work like construction or handyman type work, and
3 then later working with property management chores in this
4 area. He worked for a brief while as a brick mason and did
5 an apprenticeship in that, but later did not do much more
6 work in that area, rather working in areas of carpentry and
7 construction work.

8 He -- in his social history, one of the things that I
9 looked at besides his work relationships which he had
10 difficulty with -- I asked him, for instance, when I
11 interviewed him, if he could give me names of friends that
12 I could interview and people they could talk with. And the
13 names of people that he gave me were people who were the
14 property owners or people that he worked with or
15 co-workers. When I went back again and I said, well, these
16 are people that you're employed by, could you give me the
17 name of some friends, it turns out that most of the people
18 that he knew or that he had relationship were with the
19 people that he did work for or that he worked with.

20 He tried to be family-focused, trying to hold tight to
21 that relationship with each of his wives and with Becky and
22 -- but wanting the children in that relationship to be,
23 quote, like his own children. And for a while felt like
24 they were their own children but definitely had conflict
25 with the children because -- not because they were his

1 children or not because they weren't good children but
2 because they were Becky's children.

3 He had difficulty in relationships with peers because
4 he often sought to be the center of attention and wanted
5 affirmation from others, and just had difficulty with a
6 normal give and take in relationships. That is, in his
7 interpersonal relationships.

8 Q. What about his relationship with his friends? Men
9 friends, male friends or female friends?

10 A. With his male friends, it seems that most of those
11 relationships were focused around drinking, partying
12 together, or perhaps when they were with men and women.
13 They were relationships that he had with other couples
14 where they would party together. They would have
15 barbeques.

16 If I backtrack a minute, then I'd say his
17 relationships with his family, some of his family
18 relationships were focused around holiday times. One of
19 his brothers does an annual barbeque in the summer. And
20 Mick would, after he moved to this area, would try to go
21 back to that area at least once a year to participate in
22 that family barbeque and try and go back at Christmastime
23 to participate in the gathering.

24 It seems, not only in my interviews him but in
25 photographs, that he is always surrounded by children, not

1 only Becky's children, but other children that he met in
2 the neighborhood who would come over and would shoot
3 basketball, or children when he was in Ohio. Has a child
4 who hung around him because they wanted to come out to the
5 Winkler's farm to play at the pond or to ride the pony or
6 to do some fun things like that. But as an adult, his
7 relationships with, with men and with women were centrally
8 focused around drinking and partying.

9 Q. In regard to his activity in the community, was he
10 actively involved in the community or in church in any way?

11 A. After he moved to this area, he was not active in the
12 community or in church. He stayed focused on his work or
13 focused on his relationship almost to the point of being
14 obsessive about his relationship with Denise and with Becky
15 during each of those marriages in this area.

16 He stayed -- he didn't necessarily stay close to home,
17 but when he was with his spouse he would be out. He would
18 be visiting with other people; he would be partying.

19 During the years that he did work, he would go to work
20 and would come home from work and then start drinking. He
21 would then drink pretty much through the night and would
22 use cocaine.

23 Q. What type of work did he do?

24 A. Worked in property management for Tillman Property
25 Homeowners or for a homeowners association, and, and some

1 of his duties involved landscaping, some of them involved
2 keeping the pool clean, some of them involved mild
3 carpentry work or painting. He sometimes was working with
4 one of his friends who he met in the North Carolina area to
5 do some roofing and to do some general construction work.
6 Again, that's part of the reason he came to this area was
7 after Hurricane Hugo because of the work that he felt would
8 be here that he would be able to do.

9 Q. What is the significance then of his work history, if
10 any?

11 A. That he was not able to hold a job for very long at
12 any time with the exception of this last job, where the
13 last job he was with them approximately eleven years, I
14 believe, and at the time he left them he was making about
15 \$40,000 a year. Through the years prior to that, his time
16 in working in, in insurance was very brief, about six
17 months. His time working as a brick mason was very brief.
18 He worked for a couple of other construction groups in the
19 area or did handyman work on the side. But periodically
20 through his life did not have the stability of one single
21 job during all of that time.

22 Q. You said that he had graduated from high school. Did
23 he have any education beyond that?

24 A. The only education he had beyond high school is he did
25 an apprentice as a brick mason.

1 Q. Now, did you review his judicial records?

2 A. Yes, sir, I did.

3 Q. All right, and just let me ask you. Are there any
4 other findings you want to share regarding his social
5 history?

6 A. I think the only other thing, and I have spoken about
7 it a little bit earlier, is in the -- in talking to him and
8 evaluating his mental status. And that is looking at
9 things like his reality orientation: do you know what day
10 it is, do you know what month it is, do you know what the
11 year is, asking him about his view of himself and how he
12 feels about himself and the circumstances he's in. And
13 once again it was interesting because his view of himself
14 or his self image comes from how other people feel about
15 him or how other people tell him that he is. That's very
16 significant. Goes back to his childhood, where the message
17 is that he was sent both verbally and nonverbally from
18 family members, and then through the years in his
19 relationships with women. That the way he feels about
20 himself comes from the verbal comments that are made from
21 others to him about him and his behavior.

22 Q. Let me ask you, in regards to -- let me ask it this
23 way I guess. Are there any other significant findings that
24 you made regarding Louis Michael Winkler?

25 A. In his social history, one of the other things I saw

1 is that he had made several suicide gestures. Certainly he
2 had thoughts where he talked about that he wished that he
3 were dead, and some of those thoughts and comments are what
4 precipitated his, his, his stay at William S. Hall. He
5 also was seen in outpatient therapy in -- and also
6 outpatient for his anxiety, but those -- the only -- the
7 suicidal gesture that he made was when he tried to hang
8 himself with a -- with the socks.

9 He -- as a result of that, and through the years
10 because of the depressive symptoms and because of his
11 anxiety, he frequently experienced paranoia, feeling that
12 others were talking about him, that others were saying
13 things about him, that other people were thinking things
14 about him.

15 Q. Let me ask you this. Lots of people have difficult
16 backgrounds and upbringings, and they go through all kind
17 of trauma and they don't get arrested and they don't get
18 charged and or convicted of murder. Can you explain to us
19 how all this would impacted him, his mental state? How
20 that would have impacted him or his addictions?

21 A. Yes. The, the combination of his early alcohol use,
22 the rigid family structure that he was raised in, the
23 alcohol use of his father, the tension, the relationships
24 that his father had outside the home with other women, the
25 controlling nature of his father's relationship with his

1 wife, Mick's mother, those early role models set the stage
2 for his later continued use of alcohol, his use of cocaine,
3 his marijuana use, early marijuana use, and then later the
4 instability of the pattern of the relationships that he
5 had.

6 He moved from one unstable relationship to another.
7 He had difficulties with the feelings that he had that he
8 was able to pull from all of those, that combination of
9 alcohol, marijuana use, cocaine use. And those contributed
10 to the feelings he had of paranoia, of jealousy, of
11 frustration, of restlessness. And after being convicted of
12 the, the rape and/or after the rape and the kidnapping in
13 2005, he was beginning to spiral down, and he was fired
14 from his job. And the combination of all those things
15 brought him to this point.

16 Q. Let me show you some photographs and ask you if you
17 would take a look at them. These photographs are marked
18 for ID 3 through 3 -- 3 to 18.

19 A. It's ---

20 Q. I just want you to look at them and tell me if you
21 recognize them and can identify them.

22 MR. WILSON: Your Honor, I would like to offer these.
23 I don't think there is any...

24 MR. HUMPHRIES: There is no objection, Your Honor.

25 THE COURT: You can, you can -- the court reporter can

1 mark that off.

2 MR. WILSON: Thank you very much.

3 (PHOTOGRAPHS MARKED INTO EVIDENCE INDIVIDUALLY AS
4 DEFENDANT'S EXHIBITS 3 THROUGH 18.)

5 BY MR. WILSON:

6 Q. Would you want to go through with these with us and
7 just kind of tell us what they are?

8 A. Yes, sir. May I, may I step from the box, or do you
9 want me to sit here?

10 MR. WILSON: Yes, can she come down?

11 THE COURT: Yes, she can. Speak very loudly, ma'am.

12 WITNESS: Yes, sir.

13 BY MR. WILSON:

14 Q. Well, I will do it a different way. It will be easier
15 if she stays here. Let me show you what's marked as
16 Defendant's Exhibit 3 now and just ask you to tell me what
17 that is.

18 A. This is a picture of Mick Winkler as a little boy.

19 Q. All right.

20 WITNESS: This -- all right to give them to the
21 jurors?

22 THE COURT: Ask Mr. Wilson.

23 BY MR. WILSON:

24 Q. Yes. I will do that in just a second, and then what
25 is State's Exhibit -- I'm sorry, Defendant's Exhibit Number

1 4?

2 A. This is a picture of Mick Winkler as a baby.

3 Q. All right, and Defendant's Exhibit Number 5?

4 A. This is a picture of the Winkler children at a family
5 Christmas when they were little.

6 Q. And Defendant's Exhibit Number 6?

7 A. This is a picture, a family portrait of the Winkler
8 family when the children were in their early teenage years.

9 Q. And this is Defendant's Exhibit Number 7.

10 A. This is a picture of Mick Winkler with J [REDACTED] and
11 some of the neighbor kids who were at the condo playing
12 cards.

13 Q. Okay, and Defendant's Number 8?

14 A. One of the family members had an annual summer
15 barbeque at their house, and this is in Ohio where all the
16 family members gathered together for a family reunion, and
17 Mick and other family members are in this picture.

18 Q. And let me show you Defendant's Exhibit Number 9.

19 A. This is a picture of Mick and his family members as
20 adults.

21 Q. And Defendant's Exhibit Number 10?

22 A. And this is a picture of Mick and his family members
23 with his father.

24 Q. Let me show you Defendant's Exhibit Number 11.

25 A. This is a picture of Mick with some of the children in

1 the family who were some of the younger members. He often
2 surrounded himself with children.

3 Q. And this is Defendant's Exhibit Number 12.

4 A. And this is a picture of a family when they were on
5 one of their family vacations. It's a picture of Mr.
6 Winkler with the children.

7 Q. Let me show you what's marked as Defendant's Exhibit
8 number 13.

9 A. This is a picture of Mick with his mother.

10 Q. And Defendant's Exhibit 14?

11 A. This is one of Mick's happy times when he was with
12 some of the younger children in the family.

13 Q. Now let me show you Defendant's Exhibit 15.

14 A. This is a picture of Mick and the family with Bonnie.
15 I'm not sure where this occurred, where the location was.

16 Q. And this is Defendant's Exhibit Number 16.

17 A. And this is a picture of Mick horsing around with some
18 of the children.

19 Q. All right. Now, let me show you what's marked as
20 Defendant's Number 17.

21 A. Mick in the first two years of his marriage to Becky.
22 Happy time with their...

23 Q. And Defendant's Number 18.

24 A. And Mick at a happy time in his marriage with all the
25 children surrounding him.

1 Q. Are there any other significant findings that you made
2 regarding Mick Winkler that you want to share with us?

3 A. My concerns about his alcohol use, his cocaine use,
4 that depressive history that he had, the history of
5 depression, the anxiety, the characteristics of his
6 borderline personality disorder, all those culminated
7 together to bring him to this point. He frequently has
8 difficulty in accepting help from others because he's very
9 suspicious and just has a very difficult time trying to
10 help himself and to accept help from others.

11 MR. WILSON: Thank you so much. Answer any questions
12 the solicitor has for you.

13 CROSS-EXAMINATION BY MR. HUMPHRIES:

14 Q. Good afternoon, Ms. Oehler.

15 A. Good afternoon, sir.

16 Q. The background investigation that you did -- maybe
17 investigation is not the right word, but the inquiries that
18 you made in regard to the Defendant Winkler regarding each
19 of the histories you testified about, much of that
20 information came from individuals as sources. Is that
21 correct?

22 A. I would say that it was equally balanced between what
23 Mr. Winkler gave me. Then there were interviews with the
24 family, interviews with one of his friends and a former
25 co-worker, the therapist who saw him in 2003, the

1 psychiatrist who evaluated him, Dr. Halavonich -- sorry
2 pronouncing -- Dr. Morton, and also the review of records,
3 which included his mental health records at Waccamaw Center
4 for Mental Health, in North Carolina at Robeson County
5 Mental Health Center, Grand Strand Memorial ER, the state
6 of North Carolina's judicial records, in addition to South
7 Carolina's judicial records, the William S. Hall forensic
8 evaluation, the EMS tape, the records, his employment
9 records from Kingston Plantation, and the DSS records
10 regarding his child support. So, I would say it's equally
11 balanced between a records review and interviews and
12 evaluation.

13 Q. And that's, and that's the protocol that the good
14 licensed social workers engage in this practice will engage
15 it in every, every case if they are able to?

16 A. Yes, sir. That's a tool that is used for, for a
17 psychosocial evaluation.

18 Q. Let me ask you. I know you can -- will you please
19 name for us the individuals within the immediate family
20 that you spoke with as a source in order to gain this
21 information?

22 A. I'd be glad to.

23 Q. Thank you.

24 A. I spoke with Mr. Winkler, Mick's father. I spoke with
25 Ms. Winkler, his mother. I spoke with his brother Rick. I

1 spoke with his sister Laura. I spoke with his brother
2 Jeff. I spoke with his sister Jody.

3 Q. You had mentioned, and I believe you prefaced it in
4 this way, that Becky was not the first wife that he abused.

5 A. That's correct.

6 Q. And of course he has had two other wives, Carla and
7 Denise. I assume then -- and of course you did speak
8 specifically about abuse to Carla on your, and your
9 findings were similar in regard to Denise, that he -- there
10 was some physical abuse at the hand of Defendant Winkler to
11 Denise as well?

12 A. Yes, there was.

13 Q. Tell me, did -- you mentioned a series of
14 relationships, and this was a period of time while he
15 remained, I believe, in the Ohio area before he came down
16 to North Carolina, South Carolina, where he was engaged in
17 a series of relationships I believe you characterized it.
18 Were there any significant relationships during that period
19 of time, because I think we're talking about a fairly
20 significant period of time.

21 A. Yes.

22 Q. Ten, twelve years?

23 A. It seems that there were two, and one was with Carla
24 Willis, and I'm sorry. My memory fails me. I can't
25 remember.

1 Q. Cecelia Willis?

2 A. Cecelia Willis. I'm so sorry, Cecelia Willis, and my
3 memory fails me. I cannot remember.

4 Q. That's all right.

5 A. Who the other person was.

6 Q. And I wanted to mention Cecelia Willis. Cecelia
7 Willis was, in fact, the woman with whom he had a child but
8 never married.

9 A. That's correct.

10 Q. Okay, and you have got the support records from the
11 Department of Social Services or some other agency
12 regarding the support he provided Ms. Willis for that
13 child?

14 A. Well, some of the records are from social services and
15 some are from a court in Ohio, and then through Child
16 Support Enforcement in South Carolina.

17 Q. And tell me. What, what do your records reveal
18 regarding his support of that child?

19 A. That he was required to pay, I believe it was between
20 217 and \$300 a week and that his wages were garnished for
21 that amount, but he was in arrears. If I'm not mistaken,
22 the figure is \$40,000.

23 Q. I have got just a couple more questions. I think it's
24 fair to say based on, on your testimony today that what
25 others think of Defendant Winkler is very important to him.

1 A. Yes. Yes, it is.

2 Q. And folks are different. Some folks receive their --
3 or estimate their self-worth internally, and some folks
4 estimate or develop their self-worth by how people view
5 them or how they're received or -- isn't that true?

6 A. Yes, sir, that's correct.

7 Q. Okay, and clearly Defendant Winkler is one who as yet,
8 I think you said, thrives on acclamations or affirmations
9 from others. Is that fair to say?

10 A. Yes, sir, that's true.

11 Q. Let me do this first, and I apologize for skipping
12 around. When you engage in this kind of inquiry
13 investigation about a particular person, is it important to
14 know a little bit about his siblings as well?

15 A. Yes, sir, it is.

16 Q. And certainly I have got no interest in being very
17 specific about what you found out about his siblings, but
18 let me ask you generally. Of his siblings, did you find in
19 inquiring and learning about them that there was anything
20 so striking and so concerning as you found with Defendant
21 Winkler as opposed to them?

22 A. I found that two of his older siblings had been beaten
23 more, more than he had, and that had occurred over a period
24 of time that they were still in the home, and both of those
25 individuals have had conflictual relationships with their

1 father since that time. In fact, one of the -- one of
2 those children went for over a year and didn't speak to his
3 father over some financial dealings.

4 Q. Well, let me ask you this. In connection with his
5 other siblings, have they had serious problems with the
6 criminal justice system either as a result of those issues
7 or independently, any of his siblings?

8 A. None -- none of his siblings have.

9 Q. Let me ask you. Based on your findings regarding
10 Defendant Winkler, clearly three of his wives left him.
11 Fair to say?

12 A. Yes, sir.

13 Q. And would you say that having his wives leave him
14 would, particularly to him, being concerned about what
15 others think, that he would have felt that would portray
16 him in a having negative light, the inability to maintain a
17 relationship with his wife?

18 A. Yes.

19 Q. And do you believe that that would have been a very
20 frustrating experience for Defendant Winkler to lose three
21 wives?

22 A. Yes, of those especially Becky because he felt that he
23 was on top of the world when he was married to her. That
24 he loved her, that they had their own home, that he had a
25 job that he really liked.

1 Q. Let me ask you. Did you have the ability to review a
2 record book, some entries, particularly the entry by
3 Defendant Winkler on the day that he murdered Becky
4 Winkler?

5 A. Yes, sir, I did review the record book.

6 Q. I think if you will recall that -- did he actually use
7 that term, top of the world, at one point characterized his
8 relationship with Becky?

9 A. He used that phrase when I interviewed him.

10 Q. He did? So, it's a consistent phrase that he uses.
11 Did you note -- give me just a second -- where he expressed
12 on that day that he had no other choice?

13 A. Yes, I read that.

14 Q. And that he had been put into the lowest form of
15 humanity?

16 A. Yes, sir, I read that.

17 Q. Which really goes beyond being characterized as
18 frustrating, doesn't it?

19 A. Yes, sir.

20 MR. HUMPHRIES: Thank you, ma'am.

21 MR. THE COURT: Redirect, Mr. Wilson?

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

23 THE COURT: You may step down.

24 WITNESS: Thank you.

25 (THE WITNESS EXITS THE STAND.)

1 THE COURT: Let's begin with another witness, please.

2 MR. WILSON: Ms. Wolfe.

3 Your Honor may we approach?

4 (OFF-THE-RECORD BENCH CONFERENCE.)

5 ROSEMARY WOLFE, BEING DULY SWORN,
6 TESTIFIES AS FOLLOWS:

7 CLERK OF COURT: Please state your name and spell your
8 last for the record, and please speak into the microphone.

9 WITNESS: My name is Rosemary Wolfe, W-o-l-f-e.

10 DIRECT EXAMINATION BY MR. WILSON:

11 Q. Ms. Wolfe, if you would, tell us where you live now.

12 A. I live in North Myrtle Beach. I currently live at
13 [REDACTED] at [REDACTED], about a block and
14 a half from the ocean.

15 Q. All right. How long have you lived there?

16 A. For two years.

17 Q. All right. Where did you live before that?

18 A. Before that we lived at [REDACTED]. We have owned
19 the condo for many years, and came down over the course of
20 time. We retired four years ago. Came down here and spent
21 two years living at [REDACTED] before we moved to our
22 current address.

23 Q. All right, and ma'am, where did -- you say you moved
24 down here. Where did you move down here from?

25 A. From Alexandria, Virginia.

1 Q. Okay, and you lived in Tillman Lakes for how many
2 years?

3 A. We lived there permanently for two years, and prior to
4 that came down eight years. Often.

5 Q. All right. Now, ma'am, did you know Mick Winkler?

6 A. Yes.

7 Q. All right. Tell us how you knew him.

8 A. We knew Mick because he was our landscaping person
9 and handyman and had done a wonderful job for, for all of
10 us. He, he was very responsible. Hard worker. He would
11 be -- sometimes he would be there at 8:00 in the morning
12 doing work on the property. He kept it in great shape.
13 He would always do extra things. If you had something that
14 needed to be done, he would do it. He was just someone
15 who enjoyed his job and took great pride in what he was
16 doing.

17 Q. And ma'am, during the number of years that you were
18 there, he was there that entire time that you were there?

19 A. Yes.

20 Q. And, ma'am, during that time, did he have to come in
21 your unit to make repairs or to do things like that?

22 A. He did a few times because we asked him to. It wasn't
23 part of any official duties of his, but there were a few
24 things that we did need to have done, and Mick was very
25 willing to help us, and he did.

1 Q. Now, in terms of the kind of person he was, can you
2 just kind of share with the jury, you know, how Mick was as
3 a -- one human being to another?

4 A. Yeah. Mick was a very affable person. You know,
5 we'd have discussions about lots of different things. He
6 was always friendly and was just, you know, a guy who took
7 great pride in his work, and we -- you know, he used to
8 tell us about his family. And he was just, he was just a
9 regular guy who, you know, was doing landscaping work and
10 handyman things for us.

11 Q. And ma'am, you're not related to him in any way, are
12 you?

13 A. Oh, no. No.

14 Q. All right, and tell the jury how you came to be here
15 today.

16 A. Well, I, I called Mr. Wilson. I told him that we had
17 known him for many years and that -- and I didn't think
18 that he deserved to die. He has many redeeming qualities.
19 He cares about people. He's a hard worker. He's
20 responsible, and I -- you know, I just want to urge you not
21 to, not to do this, and that's why I called Mr. Wilson,
22 because I felt that I had to come and, and let the jury
23 know and other people know that, that he's a person who
24 should be able to live out his life.

25 MR. WILSON: Thank you so much. Answer any questions

1 the solicitor might have.

2 THE COURT: Mr. Hembree?

3 MR. HEMBREE: Thank you, Your Honor.

4 CROSS-EXAMINATION BY MR. HEMBREE:

5 Q. Afternoon, Ms. Wolfe. In the time that you lived in
6 [REDACTED] and Mr. Winkler was working there, did you
7 ever see his performance, his work performance suffer
8 because he was chronically late or not in the condition to
9 work?

10 A. No, I have never saw any evidence of that at all.

11 Q. Ever seen him drunk?

12 A. Never.

13 Q. So hung over he couldn't work?

14 A. No.

15 Q. So anxious from withdrawal that he was unable to
16 complete tasks that were assigned to him?

17 A. No.

18 Q. Okay. He was a good worker.

19 A. He was a good worker, yes.

20 Q. At least from your observation, there on time and
21 ready to go?

22 A. Yeah, but there were times when he, you know, was
23 absent in the middle of the day and, you know, didn't
24 necessarily know why. But, you know, outside of, outside
25 of that, the property always looked good, and, and he cared

1 about what he did.

2 Q. Now, let me ask you about -- I know that he was
3 affable and friendly towards you.

4 A. Uh-huh.

5 Q. During this time, were you -- did he ever discuss with
6 you or chat with you about, about the child he had with
7 Cecelia Willis that he was paying child support for?

8 A. No. No.

9 Q. Were you aware that he was \$40,000 in arrears on his
10 child support?

11 A. No, I -- no, I wasn't.

12 Q. Were you aware that, that he -- his first wife left
13 him because he abused her, and she left with a three month
14 old baby?

15 A. No, I did not know that.

16 Q. Had he ever discussed this child with you?

17 A. No.

18 Q. How about a lady named Denise Ricketts? Did he ever
19 discuss with you his abuse of her and the problems
20 they had ---

21 A. No.

22 Q. --- and the fact that she had left him also?

23 A. No, we did not know that. In fact, we went to his
24 wedding, along with a number of other families at [REDACTED]

25 [REDACTED]

1 Q. And then the, the rape and kidnap, the assault of
2 his third wife, Becky Winkler, did he discuss that with
3 you?

4 A. No. Well, when he was -- after he had been arrested,
5 he -- my husband and I were just so stunned because we
6 could not believe that -- we could not believe what we were
7 reading in the *Sun News*. So, we went to the, we went to
8 the detention center and talked with Mick, and that was the
9 last time that I saw him until today.

10 Q. A lot of folks are different at home than they are out
11 in the working place, aren't they?

12 A. Well, I think that's probably true of, of all of us,
13 but we all have many sides.

14 MR. HEMBREE: Thank you, Ms. Wolfe.

15 THE COURT: You may step down, ma'am. I'm sorry, Mr.
16 Wilson. Did you have a question?

17 MR. WILSON: No, sir.

18 THE COURT: You may step down, ma'am. Thank you very
19 much.

20 MR. WILSON: I'd ask that she be released, Your Honor.

21 (THE WITNESS EXITS THE STAND.)

22 THE COURT: No objection. You're released. Thank
23 you.

24 MR. HEMBREE: No objection.

25 THE COURT: Ladies and gentlemen, I'm going to still

1 try to stay here pretty good amount of time tonight, see
2 how much evidence we get in, so let's just take about ten
3 and come back. Please, ladies and gentlemen, don't discuss
4 the case.

5 (THE JURY EXITS AT 6:23 P.M.)

6 MR. WILSON: I guess I can, I got some matters to put
7 on the, the record, but I can do it when you come back or
8 -- if that's all right.

9 THE COURT: That's fine. Therefore, be back at no
10 later than twenty-five till, then.

11 (OFF THE RECORD.)

12 THE COURT: Mr. Wilson?

13 MR. WILSON: As you know, the record will reflect that
14 I put up a social, social history through a sociologist,
15 Ms. Oehler, in -- regarding the defendant and his history
16 and his family. And the defendant wants me to let the
17 court know that he had asked me not to put up any social
18 history and that I put that up in spite of his objections.
19 And for the record, I'm noting that he did ask me not to
20 put any social history in because he didn't want anything
21 derogatory said about his family. But in my judgment as a
22 lawyer, I felt it was the appropriate thing to do and I did
23 it.

24 THE COURT: All right. That's noted. Be noted.
25 Thank y'all very much. All right.

1 THE DEFENDANT: Sir, I'd like to also again put for
2 the record that, that again disobeying what I, I asked him,
3 what I -- you know, I told him specifically that I did not
4 want my family dragged through the mud, and he did it
5 anyway.

6 I'm asking again for a new lawyer. This is the third
7 time that he's done that. He did it on the witness stand
8 earlier today, and it's -- everything I'm asking him to do,
9 he's going against me. I asked him for a recess, he
10 ignored me while that was going on, while his, while his --
11 Ms. Te Anne was doing that, and he ignored me.

12 THE COURT: All right. That's noted. That's noted,
13 Mr. Winkler. Noted for the record.

14 THE DEFENDANT: Thank you.

15 THE COURT: All right. Do you have your next witness
16 in the courtroom, Mr. Wilson?

17 MR. WILSON: Yes.

18 THE COURT: Okay. Bring the jury in, please.

19 (THE JURY ENTERS AT 6:36 P.M.)

20 THE COURT: All right, we will proceed with further
21 witnesses in the case. Whenever you're ready, Mr. Wilson.

22 MR. WILSON: Thank you, Your Honor. Karen Reeves.

23 KAREN REEVES, BEING DULY SWORN,
24 TESTIFIES AS FOLLOWS:

25 CLERK OF COURT: Please state your name and spell your

1 last for the record, and please speak into the microphone.

2 WITNESS: Karen Reeves, R-e-e-v-e-s.

3 THE COURT: All right.

4 DIRECT EXAMINATION BY MR. WILSON:

5 Q. Karen, if you would, what is your relationship to the
6 defendant, Mick Winkler?

7 A. He is my brother.

8 Q. He's your brother. All right, and if you would, how
9 many brothers and sisters do you have?

10 A. Five. There's six in the total.

11 Q. There's six of y'all total?

12 A. Yes.

13 Q. All right, and where are you in relationship in the
14 hierarchy of age? Where are you with Mick versus the other
15 children?

16 A. I have an older sister, an older brother, and then me,
17 and then Mick.

18 Q. All right. So, Mick would be the fourth or fifth?
19 Fourth?

20 A. Fourth.

21 Q. All right, and you're the third?

22 A. Yes.

23 Q. And in the line of age. Now, what is the number of
24 years difference between you and Mick? I'm not trying to
25 ask your age or anything, but...

1 A. One year.

2 Q. All right, one year, and so during the time that y'all
3 were growing up, you and Mick would have been in the house
4 together?

5 A. Yes, that's correct.

6 Q. All right. Now, let me ask you. If you would, just
7 kind of tell me a little bit, if you would, about y'all
8 growing up together, you and Mick, and your home just in
9 general. Just kind of tell us what it was like and what it
10 was about.

11 A. Childhood memories were very special. We, as six of
12 us, we were very, very close. We shared moments of ice
13 skating, baseball with the neighborhood, special moments of
14 babysitting together. We loved each other very much and
15 stuck close to each other. Many special memories of
16 Christmases and special holidays together.

17 Q. Now, let me ask you. At some point in time your
18 parents separated?

19 A. That is correct.

20 Q. Were you still at home during that time, or had you
21 already moved out?

22 A. I was still at home.

23 Q. All right, and was Mick also at home during that time?

24 A. Yes, he was.

25 Q. And now after the separation, did things change or did

1 things stay pretty much as they were in terms of y'all --
2 of your activities as a family?

3 A. We stuck together pretty close. Family to us was
4 very, very important. Mick loved the family being
5 together. A lot of our vacations, I mean, that was just
6 kind of a comfort for all of us to, to be together and to
7 be a family. That was very, very special to us.

8 Q. And do y'all still do that now? Do y'all have annual
9 occasions when you all get together ---

10 A. Yes, we do.

11 Q. --- try to get together as a family?

12 A. Yes, we do.

13 Q. All right, and have you always done that, or is that
14 something that you recently started doing?

15 A. We have always done that.

16 Q. All right, and tell us about that. What do y'all do
17 annually, semi annually, however, to get together?

18 A. My brother has a barbeque or a pig roast every summer,
19 and Mick would make it a point to be home with his family.
20 I could always remember -- or even just seeing him and just
21 hugging him because he was so special to us and to have him
22 home was just like I said, a comfort. We were all together
23 again.

24 Q. Now, when is the last time that y'all had a family
25 gathering before this happened?

1 A. I don't recall the last time he came up. He tried
2 every summer, but sometimes work would -- he wouldn't be
3 able to. He was very dedicated to his job.

4 Q. Now, what about when Mick was living here in South
5 Carolina? Did you ever come down here to visit him while
6 he was here?

7 A. My husband and I and our children would frequent
8 Myrtle Beach every summer, and we would visit him and again
9 it was very special to see him and to see him with my
10 children because he loved family. He wanted a family of
11 his own, and he was a very special uncle. My kids loved
12 him and still do.

13 Q. Now, after he was married to Rebekah, did, did you
14 ever come down or did she ever come up there to visit
15 y'all?

16 A. She would come up with J [REDACTED] in the summer, and we
17 had such a great time. She was, she was very beautiful.
18 In fact, I, I'm very sorry for what happened to her. That
19 -- as a mother, as a friend, a daughter, I can -- can't
20 even imagine losing her like that. Mick loved her very
21 much, too.

22 And the last time we came to visit down here with
23 them, I remember him being so proud of her, and special
24 moments with J [REDACTED] because that was his family now, and
25 he was so proud of that, and he wanted to display that to

1 me and my family. He would work during the day and would
2 tell us that he'd see us every evening, which we did. We'd
3 stay down here at a hotel for a week and like I said, this
4 was a couple of years ago.

5 And, in fact, I remember him asking if we'd attend the
6 church that Sunday with him and Becky and J [REDACTED]. And we
7 met them in a parking lot and followed them to his church,
8 their church, and I can remember looking over and as he
9 worshiped with his family. I thought he finally had what
10 he wanted. I was proud of him. He was proud of what he
11 had, his home and what he had right in front of me and my
12 husband and my children. He proved to us that he had
13 finally had a family of his own.

14 Q. Now, Karen, let, let me ask you. You are married
15 yourself, right?

16 A. Yes.

17 Q. How long have you been married?

18 A. Twenty-five years.

19 Q. Twenty-five years, and how many children do you have?

20 A. Four.

21 Q. Do you have any at home?

22 A. Yes, all four.

23 Q. I'm sorry, all four?

24 A. Yes.

25 Q. And what are the ages of your children?

1 A. Twenty-two, nineteen, sixteen and thirteen.

2 Q. And when does your husband do?

3 A. He is an associate pastor at our local community
4 church.

5 Q. Okay, and do you do something similar to that, or do
6 you work with him, or what do you do?

7 A. I work in an elementary school as a secretary.

8 Q. Now in regards to Mick, is there anything that you
9 want to say in particular?

10 A. Family to him was, is and was very special, and he
11 loved that Becky very much and was proud of J [REDACTED] and --
12 to have his family, and that's all he ever wanted. And he
13 wanted to show his family that, that he had a family of his
14 own, and he was very proud of that. He's a very loving,
15 very caring, very special person, and I'm begging not to
16 take his life from us and our mother. He is a son...

17 THE COURT: Ma'am, would you like a minute?

18 WITNESS: I'm fine.

19 MR. WILSON:

20 A. He is a special uncle. My kids love him dearly, and
21 to take his brother from him and his life from him, I can't
22 even -- that loss.

23 MR. WILSON: Ma'am, if you would just answer any
24 questions the solicitor might have for you, please.

25 CROSS-EXAMINATION BY MR. HUMPHRIES:

1 Q. Ms. Reeves, you have been here throughout most of the
2 trial?

3 A. Yes, I have.

4 MR. HUMPHRIES: I don't have any questions.

5 WITNESS: Thank you.

6 THE COURT: You may step down.

7 (THE WITNESS EXITS THE STAND.)

8 THE COURT: Okay. Next witness, please.

9 MR. WILSON: Rick Winkler, please.

10 RICK WINKLER, BEING DULY SWORN,
11 TESTIFIES AS FOLLOWS:

12 CLERK OF COURT: Please state your name and spell your
13 last for the record, and please speak into the microphone.

14 WITNESS: Rick Winkler, W-i-n-k-l-e-r.

15 THE COURT: Okay, sir. Go ahead.

16 DIRECT EXAMINATION BY MR. WILSON:

17 Q. Rick, if you would, you're the brother of Mick?

18 A. Yes.

19 Q. And there is one other brother, and that's Jeff?

20 A. Yes.

21 Q. All right. Now, where do you live?

22 A. Doylestown, Ohio.

23 Q. And is that where you grew up and you just stayed
24 there?

25 A. Yes, my whole life.

1 Q. All right. Now, if you would, tell us about your
2 relationship with Mick and just kind of give us an
3 understanding of what your relationship with him is and has
4 been over the years.

5 A. Well, we, you know, we're pretty close family and got
6 along good, and, and all. Played lot of sports together
7 and...

8 THE COURT: Could you get a little bit closer?

9 WITNESS: Okay.

10 BY MR. WILSON:

11 A. Played a lot of sports together and, you know, had
12 good times as kids. And then pretty much when he got in
13 high school, I kind of -- I was five years older or so. I
14 moved out and kind of drifted apart, but went and saw him,
15 you know, play sports and stuff like that, so...

16 Q. What kind of sports did he play?

17 A. Football and baseball.

18 Q. And you had moved out because you were five years
19 older than him?

20 A. Yes.

21 Q. Would you go to ---

22 A. Yes.

23 Q. --- football games and that kind of thing?

24 A. Right.

25 Q. All right. Now, what about after Mick moved away and

1 moved to South Carolina? How -- what, how did that change
2 your relationship?

3 A. Well, we, we, you know kept, in touch pretty much
4 through the years, you know. He'd come back up for
5 Christmases and stuff like that. You know, I got married
6 and had a family, so he, you know, come up for that.

7 Q. Are you married?

8 A. Yes.

9 Q. All right. How long have you been married?

10 A. Be twenty years in June.

11 Q. Okay. How many children do you have?

12 A. I have four children.

13 Q. And are they all at home?

14 A. Yeah. Well, no. My older two are -- they have their
15 own place, their own house. I have seventeen and eighteen
16 year old at home.

17 Q. Okay, and what does your wife do? She work?

18 A. She's a graphic artist for Altman Hospital.

19 Q. Now, and, Rick, what kind of work do you do?

20 A. I'm an insurance agent.

21 Q. And is that what you have been doing ever since you
22 kind of went out, too?

23 A. Twenty -- twenty-seven years.

24 Q. Let me ask you, if you would. Once Mick moved to
25 South Carolina, did you ever come down and visit, or did

1 you get together with him when they had the family
2 gatherings? Just kind of tell us about your relationship
3 after he moved from Ohio.

4 A. Yeah, I would bring my family down. We, you know, go
5 on vacations, and I had a big roast every year and he, he
6 would come up.

7 Q. And when you had the pig roast, was that a certain
8 time of year or ---

9 A. Yeah. No. September of every year, August,
10 September.

11 Q. And how long have y'all been doing that?

12 A. Twelve years now since I -- we moved into that house,
13 built that house.

14 Q. All right, and when you have the roast, all your
15 family would come and ---

16 A. Yes.

17 Q. --- be there?

18 A. Yeah, and family and friends. It was a pretty big get
19 together.

20 Q. All right. Now, let me ask you. When Mick moved to
21 South Carolina, did he continue to come back after that?

22 A. Yes. Yeah, he'd come up, brought J [REDACTED] and Becky a
23 couple of times and, you know, had a good time, everybody.

24 Q. And when you saw him with Becky, what was their
25 relationship as best you could tell?

1 A. They were happy. I mean, he was real happy with her.
2 She was real nice. I liked her. You know. Met Haley at
3 his house when we visited down but, you know, he seemed
4 real happy.

5 Q. Now, did you ever come down to South Carolina to visit
6 them?

7 A. Yeah. I -- you know, sometimes two years in a row,
8 sometimes we'd miss a year, just all depended but yes, we
9 -- I brought my family down and, and, you know, we got
10 together with them over at their house and, you know,
11 everybody was there, J [REDACTED], Haley and -- you know, had a
12 picnic and swam and, you know, played volley ball and had a
13 good time.

14 Q. Now, let me ask you if there is anything that you want
15 to ask of this court.

16 A. Sure. You -- I mean, I don't know what, what happened
17 but to -- what happened with them, but I know Mick loved
18 her. I mean, we accepted her as part of our family, and I
19 don't know what happened, but there's something that -- I
20 mean, he's -- obviously from all this, he needed medication
21 or something.

22 I don't know what happened. I didn't know they were
23 that heavy into, you know, cocaine or whatever, what type
24 of drugs, but I knew they drank a lot. They were always,
25 you know, drinking and -- but they were happy when I saw

1 them.

2 But I just, I would like to ask them please don't take
3 my brother's life. I don't think he deserves to die.
4 There's something wrong that -- I don't know. I just --
5 please don't take his life. He -- I mean, the longer he's
6 going to be in there and you know nothing else will ever
7 happen, but he doesn't deserve to die.

8 Q. Thank you very much, Rick.

9 MR. WILSON: Answer any questions the solicitor has.

10 THE COURT: Mr. Hembree.

11 MR. HEMBREE: Mr. Winkler, I'm very sorry that you
12 have to be here. I don't have any questions.

13 THE COURT: Thank you, sir. You may step down, sir.

14 (THE WITNESS EXITS THE STAND.)

15 MR. WILSON: Jody McDougal, please.

16 JODY MCDUGAL, BEING DULY SWORN,

17 TESTIFIES AS FOLLOWS:

18 CLERK OF COURT: Please state your name and spell your
19 last for the record, and please speak into the microphone.

20 WITNESS: Jody McDougal, M-c-d-o-u-g-a-l.

21 THE COURT: Your witness.

22 DIRECT EXAMINATION BY MR. WILSON:

23 Q. Jody, what is your relationship to Mick Winkler?

24 A. He is my brother.

25 Q. And where do you fit amongst the children?

1 A. I'm the youngest of six.

2 Q. You're the youngest of six, and what is the age
3 difference between you and Mick?

4 A. He is eight years older than me.

5 Q. Now, are you married?

6 A. Yes, I am.

7 Q. And do you have children?

8 A. Yes, I do.

9 Q. How many children?

10 A. Seven all together.

11 Q. Seven? Including a set of triplets?

12 A. Yes.

13 Q. All right. Now, do you work outside of the home or do
14 you?

15 A. Not currently, but I am a nurse practitioner,
16 certified nurse practitioner.

17 Q. Certified nurse practitioner, and how long did you do
18 that work before you started taking care of children?

19 A. About -- I worked as an RN for about eleven years.

20 Q. Now, if you would, just tell me a little bit about
21 your relationship with Mick. What is your relationship
22 like with him?

23 A. Being my older brother, he was a great big brother. I
24 could always turn to him growing up. I brought pictures of
25 us when we were younger. I was always on his lap. He

1 taught me a lot of things. He was first person ever teach
2 me to drive. Once he moved out of the house, we weren't
3 that close, but after I got married and he married, we get
4 together quite a bit.

5 Q. Once Mick, once Mick moved to South Carolina, did you
6 continue -- did y'all's relationship change? Or explain to
7 me kind of how your relationship developed after he moved
8 away and came to South Carolina.

9 A. I would say we actually got closer. He was proud of
10 his family down here, and he always wanted my family to
11 come join him down here. So, my husband and I would bring
12 our children down once, twice a year, and over the winter
13 months we would come down. Then we usually came back down
14 in the summer.

15 Q. And when you'd come down, did you come down during the
16 time that he was married to Becky?

17 A. Yes, I did.

18 Q. All right, and when you came down, did y'all -- just
19 kind of describe to us what that was like, that
20 relationship was like during that time.

21 A. They were very happy. He was very proud of her,
22 J [REDACTED], Haley, the family they had together. He loved
23 them, showing off his home, the deck he built, the pool.
24 He always had us over for cookouts, and we would stay at a
25 condo at the beach, but he always wanted us to come be with

1 his family at his home.

2 Q. At that time did he have a pool and everything in the
3 back yard by then?

4 A. Yes.

5 Q. And what was his feeling about all of that with the
6 house and the pool and...

7 A. So proud of it. He couldn't say enough about Becky
8 and the kids and family life that they had, and he was the
9 first person to teach my young kids how to fish in his back
10 yard. He loved being around my kids. He -- when we were
11 still in Ohio he'd come up for birthday parties even so
12 that he could be around family. He loved being surrounded
13 by my kids. They absolutely adore him. He is, he's Uncle
14 Mickey or Uncle Mickey Mouse.

15 Q. Let me ask you this. Is there anything in specific
16 that you want to say regarding your brother?

17 A. I love my brother with all my heart and I know he
18 loved Becky with all of his heart. And all I could ask is,
19 is a life worth sparing? He is human. He's our brother.
20 He's a son. He's a friend. He's an uncle. His life is
21 worth saving.

22 MR. WILSON: Thank you very much.

23 MR. HUMPHRIES: I have no questions.

24 THE COURT: Thank you. You may step down.

25 (THE WITNESS EXITS THE STAND.)

1 MR. WILSON: Joanne Winkler.

2 JOANNE WINKLER, BEING DULY SWORN,
3 TESTIFIES AS FOLLOWS:

4 CLERK OF COURT: Please state your name and spell your
5 last for the record, and please speak into the microphone.

6 WITNESS: Joanne Winkler, W-i-n-k-l-e-r.

7 DIRECT EXAMINATION BY MR. WILSON:

8 Q. Ms. Winkler, where do you live, ma'am?

9 A. In Wadsworth, Ohio.

10 Q. And don't normally I will ask this, but I guess I
11 should ask you. How old are you?

12 A. Seventy-four. Seventy-five next month.

13 Q. And what is your relationship to Mick Winkler?

14 A. That's my son.

15 Q. And among your children, where does he range in, in
16 age?

17 A. He's the fourth.

18 Q. And how many children do you have?

19 A. Six.

20 Q. Now, tell me about Mick as a child. Just kind of
21 generally what kind of child he was when he was growing up
22 and y'all were living in Ohio?

23 A. He was a wonderful child. He was happy-go-lucky and
24 always on the go, doing things like any normal boy. He
25 just was, he was a good kid. He really was. He never gave

1 me any trouble ever, and he just went about and laughed,
2 carried on. I was blessed with six of them like that
3 really. They were -- they were all very good.

4 Q. Now, at some point in time Mick left home and then
5 moved to South Carolina?

6 A. Yes.

7 Q. Once he moved away to South Carolina, kind of tell
8 me what y'all's relationship was, you and his, after he
9 moved.

10 A. Well, we kept in touch by phone. He came home a few
11 times, and I went down a few times to see him, too.

12 Q. Did you come to South Carolina when he was married to
13 Becky?

14 A. Yes, twice.

15 Q. And when they were married, did you stay at their home
16 or did you stay ---

17 A. Yes.

18 Q. --- in a hotel?

19 A. They'd -- in their home.

20 Q. And just kind of tell me about that experience those
21 two times this you came down, just kind of how that was.

22 A. It was a wonderful experience. They were very much in
23 love.

24 And I want to say to the family I am very sorry for
25 this. I mean, it, it was a terrible tragedy and she was

1 part of my family, too, and I loved her.

2 But they, they got along well. We had a wonderful --
3 actually twice we were down there for a week, and we had a
4 wonderful time.

5 Q. What kind of things did y'all do when you came down
6 those two times that you and Mick and Rebekah and the
7 children, what kinds of things did y'all do?

8 A. We played cards a lot, and J [REDACTED] loved to play
9 cards, so he cornered us the minute we come in, play cards.
10 We went out to eat and we went to a picnic, and just
11 different things. Went swimming in his pool, and basically
12 a lot of times just sat around and talked and enjoyed each
13 other's company.

14 Q. Did Rebekah and Mick ever come up to Ohio?

15 A. Yes.

16 Q. And when they came, did they stay with you, or did
17 they stay with one of your other children?

18 A. No, they stayed with Rick.

19 Q. Rick?

20 A. J [REDACTED] was with them, too.

21 Q. Okay, and did you get to interact with them during
22 that time?

23 A. With J [REDACTED]?

24 Q. With, with Mick, and Rebekah and ---

25 A. Oh, yes. Yeah, we were all -- we were all together.

1 Q. Ma'am, let me ask you this. In terms of -- once Mick
2 moved to South Carolina, like for Mother's Day and
3 Christmas and Easter and things like that, did he come back
4 home or, or how was that? What kind of things ---

5 A. No, he didn't come back that often because he had his
6 work, and come up as often as he could.

7 Q. How often ---

8 A. He come up for Christmas. I really don't know.

9 Q. How often did you talk with -- in terms of
10 communicating, how often would the two of y'all talk?

11 A. I don't really know. Maybe once a month or -- been a
12 long time ago. I...

13 Q. Now, let me ask you this, if you would. Is there
14 anything that you want to ask this court or say to this
15 court ---

16 A. Yes.

17 Q. --- regarding Mick? If you would, just go ahead.

18 A. He is my son. I know you judged him guilty, but I
19 love him dearly. Our family loves him dearly. I don't
20 want you to take his life. He's still part of my family no
21 matter what. No matter how much -- he's my son and I will
22 love him forever, and I don't think he deserves to die. I
23 don't think I could go on with losing one of them. Just
24 can't.

25 MR. WILSON: Thank you, ma'am. Answer any questions

1 the solicitor might have?

2 THE COURT: Any, Mr. Hembree?

3 MR. HEMBREE: Ms. Winkler, I don't have any questions.

4 THE COURT: You may step down, ma'am.

5 WITNESS: Thank you.

6 (THE WITNESS EXITS THE STAND.)

7 THE COURT: Yes, sir. Ladies and gentlemen of the
8 jury, I think we're going to get all the evidence in today.
9 It's just a short bit left, but we need just a bit of a
10 break to get that together, and when you come back, I think
11 you'll be -- as far as out of here tonight probably within
12 thirty minutes or so, thirty or forty minutes. But if you
13 would, please don't discuss the case. Just step back in
14 the jury room. Step back out of the room.

15 (THE JURY EXITS AT 7:11 P.M.)

16 THE COURT: At the bench, Mr. Wilson just wanted to
17 bring up the fact that he wanted to get some things
18 together, and he realized that he might want to put some
19 records in from the county jail.

20 MR. WILSON: Yes, sir.

21 THE COURT: Shows the defendant's conduct down there.
22 Anything else you find out sir?

23 MR. WILSON: The records custodian is on the way now.

24 THE COURT: Okay. On the way?

25 MR. WILSON: Yes, sir. They said she -- they called

1 her an hour ago and...

2 MR. HEMBREE: Your Honor, we have got the records. We
3 may be able to stipulate to her introduction.

4 THE COURT: The person is not going to testify to
5 anything? That person is just going to...

6 MR. WILSON: Just going to ---

7 THE COURT: So if they stipulate to them, this person
8 really is not necessary. The state and the defense not
9 going to have any other evidence either, right?

10 MR. HEMBREE: No, Your Honor. Nothing in reply.

11 THE COURT: I think the state would agree that if for
12 some reason the information you have there is not complete,
13 they would probably not oppose supplementing it.

14 MR. HEMBREE: We would not, Your Honor.

15 THE COURT: When the person gets here, but we're not
16 going to be -- you're not going to publish the whole thing
17 to the jury tonight, were you?

18 MR. WILSON: No, sir.

19 (A PAUSE.)

20 (THE JURY ENTERS AT 7:29 P.M.)

21 THE COURT: Thank you. We'll now proceed with I think
22 the last witness for the day.

23 MR. WILSON: Yes, sir.

24 THE COURT: Come around here. Ma'am, be sworn over
25 here, please.

1 SHARON MYERS, BEING DULY SWORN,
2 TESTIFIES AS FOLLOWS:

3 CLERK OF COURT: Please state your name and spell your
4 last for the record, and please speak into the microphone.

5 WITNESS: Sharon Myers, M-y-e-r-s.

6 THE COURT: Your witness.

7 DIRECT EXAMINATION BY MR. WILSON:

8 Q. Ms. Myers, you're with the Horry County Sheriff's
9 Department?

10 A. Yes, I am, sir.

11 Q. All right, and how long have you been with the
12 sheriff's department?

13 A. Since twenty-two years.

14 Q. Twenty-two years, and in what capacity are you there?

15 A. I hold the rank of lieutenant over the Classification
16 Division.

17 Q. Okay, and Classification Division, does this include
18 documents and records of the department?

19 A. Yes, it includes all inmate records.

20 Q. All right, and is it your responsibility to maintain
21 custody, control, and care of any documents or records that
22 would belong the sheriff's department, which would include
23 the detention center?

24 A. Yes, sir.

25 Q. All right, and would you have the official records of

1 the detention center, J. Ruben Long Detention Center,
2 regarding Mick Winkler?

3 A. Yes, I would.

4 Q. All right, and do you have a copy of those records or
5 the original of those records there with you?

6 A. Yes, I do.

7 Q. All right, and -- all right. I'd ask -- are those the
8 records that are normally kept in the normal course of
9 business at J. Ruben Long?

10 A. Yes.

11 Q. All right. Now, I notice you got a full stack of
12 other stuff there, too. Now, what, what is that?

13 THE COURT: Ma'am, remind you to speak into the
14 microphone.

15 WITNESS: I'm sorry, Judge.

16 BY MR. WILSON:

17 A. It contains the subpoenas, of course, from your office
18 for the records, records from when he was on home detention
19 after the initial arrest back in I believe '05, and the --
20 any fifteen minute, keep check logs where he was on any
21 kind of a watch.

22 MR. WILSON: Your Honor, I'm going to ask that her
23 entire record be made a part of the record and that it be
24 introduced, and I'm going to have her publish this once I
25 place it into evidence.

1 THE COURT: Publish what?

2 MR. WILSON: This is, this is a -- well, I will let
3 her tell you.

4 THE COURT: Well, any objection?

5 MR. HEMBREE: No objection, Your Honor.

6 THE COURT: All right. You may do so. That way
7 introduce some evidence, too. What would you like for her
8 to publish?

9 BY MR. WILSON:

10 Q. All right. If you would, ma'am, do y'all keep a list
11 of any infractions or disciplinary measures that, that
12 would occur with any particular prisoner who is in your
13 custody?

14 A. Yes, we do.

15 Q. All right, and when did Mick Winkler come into your
16 custody?

17 A. March 20th of 2006.

18 Q. All right, and after March 20th of 2006, has he had
19 any infractions since he's been with you?

20 A. He has had two.

21 Q. All right, and what were the two that he had?

22 A. The first one was as a result of him being arrested on
23 -- he was on electronic monitoring. When someone is placed
24 on electronic monitoring, they sign paperwork that they are
25 responsible for maintaining the equipment and that they

1 will be responsible for reimbursement if the equipment is
2 damaged or lost.

3 When Mr. Winkler was arrested on March 20th, he did
4 not have his transmitter on his ankle; therefore, the
5 officer over home detention submitted an incident report
6 for the loss of the property. And Mr. Winkler and I held a
7 hearing for loss or destruction of county property in which
8 Mr. Winkler was found guilty, and he was sentenced to
9 payment of restitution for the cost of the bracelet, which
10 was \$575.

11 Q. Okay, and did he pay any portion of that?

12 A. I believe he has a negative balance of \$441.

13 Q. That ---

14 A. The last time I checked.

15 Q. --- what's left over from the bracelet?

16 A. Yes.

17 Q. And that would have been from his arrest?

18 A. Yes.

19 Q. Now, after he was arrested and brought to the jail,
20 was there any infractions?

21 A. He has had one which is written on a disciplinary
22 ticket. It was for a seventy-two hour lock down for being
23 out of his cell when he's not supposed to be.

24 Q. Being out of the cell when he was not supposed to?

25 A. Yes, sir. It's dated June the 20th, 2006.

1 Q. Any infractions other than -- that was when?

2 A. June the 20th of 2006.

3 Q. June the 20th of 2006?

4 A. Uh-huh.

5 Q. And since June the 20th of 2006 until today, have
6 there been any other infractions by him in any way that,
7 that your records reflect?

8 A. No, sir.

9 Q. All right. If he had been disciplined by any person,
10 would that be reflected in your record?

11 A. Yes, it would.

12 Q. All right, and there are none?

13 A. No, sir.

14 Q. Thank you very much.

15 MR. WILSON: Your Honor, I'd still like to have these
16 marked.

17 THE COURT: You can do this and substitute copies
18 later.

19 MR. WILSON: Thank you, Your Honor.

20 THE COURT: Want to mark the whole file as one
21 exhibit?

22 MR. WILSON: Yes.

23 THE COURT: Twenty-five is it?

24 COURT REPORTER: Twenty-six.

25 THE COURT: Twenty-six.

1 MR. WILSON: Thank you.

2 (RECORDS FROM DETENTION CENTER MARKED INTO EVIDENCE AS
3 DEFENDANT'S EXHIBIT NUMBER 26.)

4 THE COURT: Any questions?

5 MR. HEMBREE: No, Your Honor. Thank you.

6 THE COURT: You may step down.

7 WITNESS: Thank you, Judge.

8 (THE WITNESS EXITS THE STAND.)

9 THE COURT: Okay, any other witnesses?

10 MR. WILSON: That was my last witness, Your Honor, and
11 we, we would rest.

12 THE COURT: Okay. Anything else from the state?

13 MR. HEMBREE: Nothing. Your Honor, the state has
14 nothing in reply.

15 THE COURT: All right. Ladies and gentlemen of the
16 jury, I'm going to let you go now, and that will be all the
17 evidence. Tomorrow morning the attorneys also do their
18 closing arguments, I will do my closing charge, and we'll
19 proceed at that time, and then it will be in your hands I
20 would think somewhere by 11 or 12:00.

21 So, if you would, please don't discuss the case
22 tonight, and we'll come back tomorrow morning at 9 and
23 proceed at that time. We'll see you then. You may leave
24 at this time.

25 (THE JURY EXITS AT 7:35 P.M.)

1 THE COURT: Any motions by the state?

2 MR. HEMBREE: None from the state, Your Honor.

3 THE COURT: Any motions by the defense?

4 MR. WILSON: Yes, sir. Your Honor, I know that at the
5 end of the state's presentation of aggravating
6 circumstances I made a motion at that time, and I would
7 renew that motion at this time and ask the court to direct
8 a verdict as to the aggravating circumstances number 11, I
9 think, which is -- which the state relies on. Think it's
10 number 11.

11 THE COURT: You mean statute?

12 MR. WILSON: Yes.

13 THE COURT: And I, I considered that again and based
14 on the evidence and also because of the circumstantial
15 evidence, I would respectfully deny that motion. I don't
16 have an exhibit. Do you have Exhibit 25?

17 COURT REPORTER: Excerpts from the ---

18 THE COURT: Okay, I got it, DSM excerpt was 25. All
19 right, that came in through Mr. -- Ms...

20 All right. Any other motions by the defense?

21 MR. WILSON: No, sir.

22 THE COURT: All right. Now, as far as statutory
23 aggravating circumstances, I have decided that those are
24 the only two they're on notice -- you're on notice of. So,
25 because I denied your motion on the second one, those two

1 will go in.

2 As to the mitigating circumstances, any comments,
3 motions, requests either way?

4 MR. WILSON: Yes, sir. I gave a list.

5 THE COURT: I got them. I know. I was talking about
6 as far as anybody having any problem with the seven that I
7 have.

8 MR. HEMBREE: No objection from the state, Your Honor.

9 THE COURT: Okay. So, no objections to number three
10 or seven?

11 MR. HEMBREE: No, Your Honor.

12 THE COURT: Okay.

13 MR. HEMBREE: We don't have any objection to anything.

14 THE COURT: Okay, notice amended.

15 Now, I will give a charge to the jury tomorrow. I
16 will then send in instructions. My instructions will
17 include the aggravating circumstances listed by the state,
18 mitigating circumstances, and also I will state
19 non-statutory mitigating circumstances. I will submit them
20 -- form to them to determine whether or not they have
21 determined there were aggravating circumstances beyond a
22 reasonable doubt. I will send them in two verdict forms.
23 One would be recommendation of life, and the other would be
24 the recommendation of capital punishment. And then I will,
25 of course before I do that, give my general charge, which I

1 will repeat my general charge before. Tell them also I'm
2 incorporating other matters regarding burglary that I did
3 before unless y'all wish for me to restate burglary again,
4 restate burglary factors again.

5 MR. HEMBREE: Yes, Your Honor. If you would, if you
6 would, we would ask, the state would request that you at
7 least state the elements of burglary being ---

8 THE COURT: All right. As a general matter then I
9 will also do the matter regarding reasonable doubt and, and
10 expert witnesses, *State vs. Grippon*, and I will -- does the
11 defense request that I tell them what life means in this
12 state?

13 MR. WILSON: Yes, sir.

14 THE COURT: I will do that. Any other special
15 requests from either side? Anything, anything else from
16 the state far as instructions?

17 MR. HEMBREE: No, Your Honor, I ---

18 THE COURT: Or the charge?

19 MR. HEMBREE: I can't think of any charge we would
20 request.

21 MR. WILSON: I don't have any other request regarding
22 charge. I do have a question I guess, though, regarding
23 the procedure once the court has.

24 THE COURT: State says you, if you wish to, you can
25 open and close.

1 MR. WILSON: Well, what I, I'm concerned about, what
2 I'm asking about is in regard to the defendant. He's
3 indicated that he wants to make the last argument, and what
4 I would like to do, if it's all right with the court, is he
5 has some exhibits that he wants to use in his presentation
6 up there, and I'd like to have those set aside specifically
7 so that ---

8 THE COURT: Well, tomorrow morning you or tonight --
9 bring it to me tomorrow so I don't keep the court reporter
10 here any longer or the clerk. But you can set those aside,
11 but make sure Mr. Winkler is aware that the only thing he
12 can discuss are exhibits that are in the trial first phase
13 and the trial of this phase.

14 MR. WILSON: Yes, sir.

15 THE COURT: Those are exhibits that can be discussed
16 and he can discuss them.

17 By the way, do you plan to open, or do you plan to
18 just do the last argument? You and Mr. Winkler, of course,
19 you both can do an argument, but how do you plan to do
20 that?

21 MR. WILSON: Well, I don't think that we're going to
22 open. I'll discuss that.

23 THE COURT: You need to, you need to decide whether
24 you want to go first, him go first, you go both. Both you
25 go, one go, whatever. Either way you want to.

1 MR. WILSON: I will discuss it with him tonight as to
2 how we're going to do it, but my understanding is he wanted
3 to do last.

4 THE COURT: Okay. Now, if y'all would please, how
5 about being in my chambers at about quarter till, ten till,
6 tomorrow morning and let's go over everything, make sure
7 that there's no objections to what I have and you all are
8 ready. And if you have objections then we will do that.

9 It's probable -- I know that we had various
10 suggestions to charge, but my, my general charge will
11 probably be the same general charge I did with them
12 regarding reasonable doubt, *Victor vs. Nebraska* and those
13 things, and the credibility and those type of things. May
14 look at other things regarding...

15 All right. Anything before we end for the evening?

16 MR. HEMBREE: No, Your Honor.

17 MR. WILSON: Nothing from the defense.

18 THE COURT: All right. Have a good evening, and we
19 will see everyone tomorrow morning. We're in recess.

20 (WHEREUPON, THE CASE IS AT EASE.)

21 THURSDAY, FEBRUARY 7, 2008

22 (COURT RESUMES AT 9:29 A.M.)

23 THE COURT: Okay, we'll go ahead and proceed to final
24 arguments. Under the rules, the defense can open and close
25 or just close. The defendant has the right to make it an

1 argument to the jury also. Mr. Wilson, what is your
2 request? How are y'all going to handle this?

3 MR. WILSON: Mr. Rathbun is going to do the opening.

4 THE COURT: Just tell me your proposal. Then we'll
5 see what's his problem.

6 MR. WILSON: Mr. Rathbun is going to do the opening,
7 and the defendant wants to do the last argument, and I will
8 do the last argument before his.

9 THE COURT: So, therefore, we'd have Mr. Rathbun, the
10 state, then you, then Mr. Winkler?

11 MR. WILSON: That's correct.

12 THE COURT: Now, the proposal I have is that, Mr.
13 Winkler, you do have the restraints on. I don't want to
14 restrain you. You have to have the restraint as far as the
15 electronic restraint. I don't want to restrain you to make
16 your argument obviously. But what I'd like to do is to
17 have you use the podium here to do it. You can have
18 assistance from anyone there at the table, the paralegal,
19 one of the attorneys. While you're doing the argument, you
20 want to show an exhibit or whatever else, you can get the
21 exhibit, show it to them, then show it to the jury or
22 whatever, that type of thing. We'll adjust the podium
23 there. We need the podium.

24 Mr. Rathbun, you want to use the podium? Is that why
25 you have it there?

1 MR. RATHBUN: No, Your Honor.

2 MR. HUMPHRIES: The solicitor is using it.

3 MR. HEMBREE: I intend to use it, Your Honor.

4 THE COURT: Now as far as time, I know this is very
5 important to everyone. Mr. Wilson, I'd like to allocate
6 between you all a total of about an hour and a half total.

7 MR. WILSON: Yes, sir.

8 THE COURT: Think we can do it that way?

9 MR. WILSON: Yes, sir.

10 THE COURT: And about an hour for the state. You need
11 more time?

12 MR. HEMBREE: That will be sufficient, Your Honor.
13 Thank you.

14 THE COURT: All right. It's probable I'll take a
15 break after the opening, closing, first closing before we
16 get to the last closing time wise if, if we get all that in
17 in about an hour and a half. We'll wait and see where we
18 are.

19 All right, does the defense request I tell the jury
20 what life means?

21 MR. WILSON: Yes, sir.

22 THE COURT: I will propose to tell the jury that life
23 means life without parole. It means life imprisonment to
24 death.

25 MR. WILSON: Judge, that's ---

1 THE COURT: Is that agreeable with you?

2 MR. WILSON: That is.

3 THE COURT: State have any legal concern for that?

4 MR. HEMBREE: No, Your Honor.

5 THE COURT: Anything anyone wishes to discuss
6 regarding the charges? Everybody else understands I'll be
7 giving the jury five sheets of paper. One will be a sheet
8 of paper indicating the aggravating circumstances the state
9 alleges. One would be the mitigating circumstances the
10 defense alleges. There will be a sheet for them to
11 determine whether they find beyond a reasonable doubt
12 aggravating circumstances and what they are. There will be
13 a sheet, and that will have twelve signatures on it. They
14 must all twelve find it. There will be the verdict for
15 death. They don't have to sign on the verdict form for
16 life which the, which the foreperson only has to sign.
17 Those will be the five sheets. State agrees, defense
18 agrees?

19 MR. WILSON: Yes, sir.

20 THE COURT: All right. I've showed you, I've shown
21 y'all my proposed charges. Of course y'all still have a
22 right if you wish to object to something after it's all
23 over, but I think it's pretty much all within the law.

24 So, who's going first, Mr. Wilson?

25 MR. WILSON: Mr. Rathbun.

1 THE COURT: Mr. Rathbun, you ready?

2 MR. RATHBUN: I am, Your Honor.

3 THE COURT: Bring the jury in, please.

4 All right, now, Officer, I need you to make sure that
5 once Mr. Rathbun stands up, nobody comes in, nobody goes
6 out. You wish to go out within the next hour and a half,
7 it might be good if you were to leave now. If not, Mr. --
8 Officer, you might want to see, Gene, if anybody's in the
9 hall out there. Tell them if they're coming in, they need
10 to come on in.

11 I assume y'all have got the exhibits organized where
12 you can find what you need to find.

13 MR. HEMBREE: Yes, Your Honor. The state's gone
14 through the exhibits.

15 THE COURT: Mr. Rathbun, is there anything you need to
16 find? You've got -- you know where it is?

17 MR. RATHBUN: I've got the numbers, Your Honor. I'd
18 like to pull them.

19 THE COURT: Well, I'm just concerned about you going
20 through all this stuff.

21 MR. WILSON: Well, I need to pull the ones -- there's
22 some I know the defendant wants to use, and I ---

23 THE COURT: We'll take to a break before that.

24 MR. WILSON: All right, sir.

25 (A PAUSE.)

1 (THE JURY ENTERS AT 9:36 A.M.)

2 THE COURT: Good morning, ladies and gentlemen. We
3 will now proceed to the final, the final phase of this
4 trial where the parties are able to present a final
5 argument to you, and I will charge you on the law and give
6 you various instructions, written instructions to take back
7 with you, including the two verdict forms, these verdict
8 forms.

9 Please listen attentively as we go through this. We
10 will permit the attorneys as well as the defendant to make
11 a final argument. What the attorneys say and what the
12 defendant says at this stage is not evidence. The evidence
13 came from the witness stand. They will be able to comment
14 on the evidence submitted to you and comment on the case
15 as, as it's been presented to you. I'm not exactly sure
16 how long this process will take, but I'm assuming this case
17 will be in your hands somewhere close to noon or before.
18 But listen attentively.

19 The process will be as follows. Under our law, the
20 defense is permitted to open, the state then is permitted
21 to give an argument, the defense then is permitted to
22 close. The law also provides that the defendant himself,
23 in addition to his lawyers, can make a final argument to
24 you, the jury. So, the course of things will be Mr.
25 Rathbun for the defense, Mr. Hembree I think for the state,

1 then Mr. Wilson for the defense, and then the defendant,
2 Mr. Winkler. Then after that, I will -- my brief
3 instructions on the law. My instructions on the law will
4 be about, be about twenty minutes, maybe twenty-five, and
5 then the case will be before you.

6 Don't worry. There will be breaks in between this to
7 make sure that your attention span and everything else will
8 be taken care of. So, I usually try to go around an hour
9 and a half unless I think the next person will go beyond an
10 hour and a half a long way. So, we've ready to proceed.

11 Before we proceed, anybody discuss this case with
12 anyone, hear about it at all? If so, let me know now.

13 (THERE IS NO RESPONSE BY THE JURY.)

14 Okay, any polling requested by the state?

15 MR. HEMBREE: None, Your Honor.

16 THE COURT: By the defense?

17 MR. WILSON: None, Your Honor.

18 THE COURT: All right. Then, ladies and gentlemen, if
19 you would, we will now proceed with the closing arguments.

20 Mr. Rathbun for the state -- for the defense.

21 MR. RATHBUN: May it please the court?

22 Good morning, Mr. Foreman, ladies and gentlemen of the
23 jury. When the case started, Mr. Wilson told you that we
24 would be happy with the verdict that you came to. We
25 believed that you would listen to the evidence, and you'd

1 get a just and fair verdict, and you did that. We've moved
2 on now to another phase of the trial.

3 In this phase of the trial, you will have an even
4 greater decision to make: does Mick serve life in prison,
5 or is the state going to put him to death. You saw
6 evidence from the evidence stand in aggravation. You saw
7 evidence in mitigation. We put up two psychiatrists who
8 have told you that Mick suffers from borderline personality
9 disorder, and they told you what that was. It causes him
10 to be paranoid. It causes him to be depressed. It causes
11 anxiety, and he has trouble making rational decisions.

12 You heard from Ms. Oehler. She told you about his
13 upbringing, the interactions he had with his family. The
14 fact that Mick Winkler doesn't have a core belief in
15 himself, that he get his image from external sources. He
16 gets atta boys. That's what he likes.

17 You're going to have all this evidence to review with
18 you. One thing that you're not going to have in the jury
19 room during deliberation is Mick Winkler and your
20 observations of him over the last week. I ask you to
21 remember how he acted. Remember what he said. Remember
22 the contradictory statements that he made. Remember that
23 Mick Winkler is not a mentally well person.

24 Something happened between the time this picture was
25 taken and the time this picture was taken. Mick had three

1 relationships that were brought to the witness stand, three
2 different women. At no time did he ever seek continued
3 sustained psychological, psychiatric treatment. At no time
4 did his family recognize or want to recognize what happened
5 and what was happening in his life. He did not have that
6 safety net.

7 We ask you to consider all of this in your
8 deliberations. There is an adage: an eye for eye, a tooth
9 for a tooth. A lot of people believe that, but there's
10 another section of that book, a newer section of that book
11 that talks about forgiveness. It talks about turning the
12 other cheek. I know that it's going to be a terrible
13 burden on Becky's family to do that, but I think that they
14 may eventually. We can hate the sin. Do we have hate the
15 sinner? Do you have to put the sinner down? Do we have to
16 kill him?

17 You had testimony that he could do well in prison. He
18 would adapt; he has adapted. He's been in jail for two
19 years. I ask that you deliberate well. I ask that you
20 respect each other's opinions. I ask that you think about
21 Becky Grainger Winkler. I ask that you think about the
22 Winkler family, who are going to bear some of this burden
23 as well. Becky was a daughter-in-law. She was a sister-
24 in-law. She was a friend.

25 I ask you to think about Mick Winkler. It's easy to

1 dislike Mick Winkler, but is that enough? I ask you to
2 save his life. Thank you.

3 THE COURT: Thank you, Mr. Rathbun.

4 Mr. Hembree for the state?

5 MR. HEMBREE: Thank you, Your Honor.

6 There was no surprise when Louis Winkler's lawyer
7 stood up before you several days ago and in his opening
8 argument in the penalty phase, he looked at you and he said
9 Louis Winkler does not want justice. Louis Winkler wants
10 mercy. This is no surprise because Louis Winkler has
11 demanded mercy from others again and again and again and
12 again throughout his life.

13 There's another reason it's no surprise. Louis
14 Winkler knows and I know and now you know the penalty that
15 justice demands in this case. When you began this process
16 weeks ago, seemed even longer maybe, you really could have
17 had no idea the journey that you would begin. It was
18 explained to you that there would be a bifurcated trial, a
19 divided trial with a guilt phase and a penalty phase, two
20 parts. You've concluded your service on the first part.
21 That's behind you; that's completed. Justice has spoken.
22 You've discharged your responsibilities.

23 In the second phase, though, in the penalty phase
24 there really are two parts, or you will be called upon to
25 answer two questions in this phase. The first question,

1 you have to make a decision whether there exists any
2 statutory aggravating circumstances, the state has proven
3 any statutory aggravating circumstance before you move on
4 to the next question. The next question is what is the
5 appropriate punishment in this case. Let me get to the
6 part that I submit to you is a very, very easy part of this
7 case, the statutory aggravating circumstances.

8 The state has alleged two statutory aggravators. The
9 first, that the murder was committed during the commission
10 of a burglary in any degree. If the murder is committed
11 during the commission of a burglary, that alone is proof of
12 a statutory aggravating circumstance that moves you on to
13 the second question.

14 Why is this so easy? Ladies and gentlemen, you have
15 already found Defendant Louis Winkler guilty of burglary.
16 As a technical matter, you will have to find him guilty a
17 second time. You may recall at the beginning of the case,
18 the state incorporated all the evidence from the first
19 phase of the case into the second phase. So, it is as if
20 you have already -- that has already been presented to you.
21 That's not separated. That's been brought together in this
22 second phase. Therefore, I submit to you that the
23 answering of that first question is quite easy. As a
24 matter of fact, it's already been answered.

25 The second statutory aggravating circumstance is that

1 the murder was of a witness, a critical witness in a
2 pending criminal matter and that the murder was committed
3 for the purpose of impeding that prosecution.

4 Now, that leads us to a question of fact, and that's
5 why we spent a great deal of time talking about kidnapping,
6 assault and battery with intent to kill, and criminal
7 sexual conduct in the first-degree cases that were pending
8 when Defendant Winkler killed the victim, the key witness,
9 the essential witness in that case when he murdered his
10 wife, Becky Winkler.

11 There's no doubt that she was the critical witness.
12 There is no doubt that he was in the, in the process of
13 being prosecuted for that charge. He had had bond set, he
14 was out on bond, and the charge was a pending criminal
15 charge at the time. There is no doubt that by her murder,
16 he impeded the prosecution of that case. This a question
17 of fact but once again I submit to you, ladies and
18 gentlemen, this is not a difficult question.

19 You're struggling. May and even should, even should
20 come to this second question: what is the appropriate
21 punishment. It's a grave responsibility. Taken seriously.
22 Taken seriously by the State of South Carolina, by the
23 court, and by you. But it's a question that is a question
24 of justice.

25 I want to review some of the facts of the case.

1 You've spent a -- you've been very patient. You've spent a
2 lot of time listening to a lot of testimony and reviewing a
3 lot of evidence. I think there are over, I believe there
4 are over 160 exhibits in this case. It's a lot of stuff.
5 I will attempt to winnow this down to a digestible level.
6 But there are some things about, particularly about the
7 assault of October 10, 2005, that bears review.

8 First off, and this, this reflects on the character of
9 Defendant Winkler. It's they're separated. Becky Winkler
10 has left him, but guess what? Happy anniversary. Have I
11 got a plan for you on our second anniversary. I am a
12 romantic sort of a fellow, and I'm going to run you down in
13 traffic, drag you out of your car, haul you into the woods,
14 rip your clothes off of you, beat you, rape you, tear the
15 hair out of your head, drag you through the woods all night
16 long half a mile from his house. Happy anniversary.

17 State's 56, the floor mat and the shoe left in the
18 road. We don't have Becky Winkler here to tell us what
19 happened that night on the road. We know this. We know
20 that Becky Winkler was supposed to pick up her son after a
21 school event. She didn't show up. Jill Shelley got
22 concerned. She called the police. The police find the
23 defendant's car, Mick Winkler, sitting in the roadway on a,
24 on a little used road behind Seacoast Hospital. They move
25 the car off the roadway. In the roadway, they find a floor

1 mat and a Rainbow show, a floor mat same color as the
2 passenger side floor mat in Becky Winkler's car.

3 Shortly thereafter, they find Becky Winkler's car.
4 They begin searching for her; they begin searching for him.
5 They've got missing persons. They know it's a domestic
6 violence situation. They know they're separated. There's,
7 they're reason to have concern here. It gets more
8 intensive in the car.

9 And you know what, folks? I don't know if Becky
10 Winkler was driving or not driving. I know that it looks
11 like she was yanked out of the driver's side of the car
12 because the car mat's on the ground and the shoe's on the
13 ground, but I don't know that. I know this. There's a
14 whole lot more of her blood on the passenger's side of that
15 car than the driver's side. I know this. Her pocketbook
16 and all her personal belongings are on the passenger's side
17 of that car.

18 He drags her into the woods, and his testimony is that
19 while the police are out looking for her and she -- it's in
20 October. She's got on a shirt, a pair of little tiny
21 shorts, underwear, and no shoes in the woods. And she's
22 wanting have -- wanting to have a little, little --
23 relations for the anniversary. That's the craziest thing
24 I've ever heard of. And she must have been so eager that
25 she ripped her own shirt. You take a look at that. There

1 is her hair that is still stuck to the blood on that shirt.

2 It goes on for some period of time. We don't really
3 know how long, but at some point early in the morning, they
4 find their way to a warehouse that's under construction,
5 and Becky leaves her jewelry. She takes, leaves an earring
6 there. She leaves a toe ring. Folks, Becky Winkler knew
7 that she might die; she know she might die that morning.
8 She was leaving a trail of breadcrumbs.

9 This is the happy anniversary that this defendant gave
10 Becky Winkler. From her head to her arms to her body to
11 her legs down to the very bottom of her feet, that was the
12 gift that Louis Winkler gave his wife on their second
13 anniversary.

14 Let me touch on one thing about the murder. Now, the
15 murder, the question, any question about the murder you
16 have resolved. That is concluded, and we are not going to
17 argue about that. It's not appropriate to argue about that
18 because we're finished with that. But there were some
19 facts that came out. Even if with the defendant's
20 testimony, even if -- how implausible, how impossible that
21 story was and I'm going to tell you why, a couple of key
22 things, and you probably already know it.

23 First, Defendant Winkler says this is his gun. I got
24 this gun from Charlie Brisson in North Carolina, and I've
25 had it for a long time. He gave it to me. And I had it at

1 the house there for some period of time.

2 Now, it's his testimony that somehow this gun gets
3 from him to Roger Grainger. Roger Grainger comes in behind
4 him and is going to shoot him with his gun, and he gets the
5 gun from Roger -- he hits Roger. Roger shoots Becky by
6 accident some, at least 5 feet away. But had to be a lot
7 farther than 5 feet away, but Winkler says he was at least
8 5 feet away from Becky and Grainger was behind him,
9 according to his story. That he by accident shot her
10 instead. She went to the ground. He knocked Roger to the
11 ground with one blow, the gun went across the floor, he
12 picks it up, walks out the door and, you know, we all know
13 the rest.

14 His gun and, quite honestly, in his statement to the
15 police on the statement, the one given the night of his
16 arrest, he said oh, yeah, I armed myself before I went over
17 there numerous times over and over and over again. And I
18 know that testimony was tedious and for me to read through
19 the stand with him was rather, you know -- would try your
20 patience. But it was important because he told the police
21 that night he had the gun. There's no doubt about that;
22 there's no issue about that. That's something that's
23 developed in the last two days.

24 He carries the gun. Two big problems with that plan.
25 Two huge physical evidence problems with that little story.

1 One is Dr. Proctor said Becky Grainger's wound had
2 stippling around the wound site, the little specks of
3 powder that embed in the flesh of the victim. That
4 stippling cannot occur outside of, he said, 20, at a max 24
5 inches. He expects to see stippling like that 6 inches to
6 20 to 24 inches. Physically impossible. The defendant's
7 story as much fantasy and as ridiculous and it is obviously
8 disproven by physical, objective expert evidence.

9 But there is another practical problem with that
10 story: eighteen bullets, eighteen bullets in addition to
11 the bullets that were in the gun, the five that were in the
12 gun when Mr. Winkler was arrested. The defendant had
13 eighteen more rounds in his pocket. Now, that's, that's
14 going to be tough for him. I don't remember his testimony
15 that he knocked the gun out of Rogers Grainger's hand,
16 picked it up, and then reached into Roger Grainger's pocket
17 and fished around until he dug out eighteen additional that
18 just happen to exactly match the caliber, the make, the
19 design of the bullets that were in the gun. Ridiculous.
20 Offensive. Pure fantasy is the defendant's version of this
21 case.

22 But, folks, this case is, it's not just about
23 statutory aggravating circumstances. It's not just about
24 the facts or the crimes. You know, it really grows into
25 what we might know about Louis Winkler's character. What

1 do we know about him? What have we learned about him in
2 the last few days?

3 Well, we've learned this one thing. We've learned
4 that the defendant, Louis Winkler, is a liar. He tells
5 stories. He engages in fantasy. He, he makes things up as
6 he goes along and then when he gets caught, he changes and
7 makes other things up, and then when he gets caught again,
8 he'll make other things up. He is the, he is -- he doesn't
9 even know what the truth is, but he does know the real
10 truth is. He can't keep track of the lies that he's told
11 upon lies that he's told upon lies. He's told a different
12 story to the police than he did in court than he did -- you
13 know, it's just a moving target all the time, constantly a
14 moving target. You watch him; you listen to him. He, he
15 may take the opportunity to address you at the conclusion
16 of this trial.

17 You know, we know, we know that the defendant, Louis
18 Winkler, it's never his fault. It is never Defendant Louis
19 Winkler's fault. If it's, if it's a fight with your wife
20 that ends up with her getting her hands cut to pieces and
21 she has to go to the hospital, that was her fault. That
22 was her fault. Split up the marriage? That was her fault,
23 oh, yeah. The police are called after they observe the
24 injuries to Carla's hands. What? That was the hospital's
25 fault. Carla would have never called the cops on me, no,

1 no, no. No, not, not one of my women. They know how, they
2 know how to stay in line. I got them, I got them lined
3 out. No, that was the police's fault. That was the, that
4 was the doctor's fault.

5 Denise Ricketts, she gets kicked out of the house.
6 Police have to come. He gets arrested. Pleads guilty
7 ultimately, but that was her fault. I caught her, you
8 know, I caught her and throw her out, had trouble with her.
9 That was her fault, not my fault. I didn't do anything.
10 Marriage end. She was smoking crack cocaine. That was
11 what she was doing, yes, sirree, and I'm not going to
12 tolerate that, no, no, no, not me. Not Louis Winkler. I
13 don't, I don't put up with that cocaine business. I kicked
14 her out, yes, sir, and I divorced her. That was her fault.
15 That was her fault.

16 Now, how about -- oh, yeah, the assault January of,
17 January of '04. Well, Becky came in and turned off the
18 computers. You know, that's going to call for me to take
19 care of some business. That was Becky's fault, and
20 J [REDACTED] called the police. Well, that was his fault.
21 And, you know, the policeman took me to the hospital
22 because I'm complaining of chest pains and, you know, I
23 just didn't like the way he looked. I thought he was being
24 ugly to me, so I spit on him. That was the policemen's
25 fault.

1 How about September? Just about the time that Becky
2 finally, finally said enough is enough, Jill's there. Sees
3 the bruises. You know, got to do something, got to make a
4 change. This is not going well. She leaves home, moves
5 out. Children to take care of. Moves into her daughter's
6 apartment and crashes in with just a little more than a
7 teenager. I mean, that's a desperate act; that's rough.
8 It was desperate. Whose fault was that? Well, that was
9 Jill's fault. Yes, sir, that was Jill's fault. She
10 encouraged her to -- my wife never would have -- that was,
11 that was all about Jill. She did that to me.

12 What about the rape 10/10/05? Whoa, whoa, that's
13 Becky's fault. She showed up drunk, crashed the car.
14 Becky's fault. I would have gone home, but she said we got
15 to stay in the woods. That's Becky's fault. Matter of
16 record: we're going to have sex in the woods. That's
17 Becky's fault. Her hair got pulled out? Oh, that, that's
18 Becky's fault. That's Becky's fault. It's Judge Russo's
19 fault. It's Judge Russo's fault. It's Public Defender
20 Orrie West's fault. We went over it down the line after --
21 one after other, after the other, after the other, after
22 the other. It's always somebody else's fault.

23 The very last one, his fault. The very reason any of
24 us are here today, the reason that the good name of his
25 namesake and his family has been dragged through the mud he

1 said was my fault. No, ma'am. No, sir. It's the fault of
2 Louis Michael Winkler and his conduct. He has brought us
3 here today for without him, without his acts, we'd all be
4 going about our business. And Becky Winkler would be
5 getting ready for the birth of her second grandchild.

6 We know, we know that this defendant right here is a
7 coward. He beats up women, and he's a serial abuser. He
8 punches, sucker punches fourteen-year-old kids in the face.
9 He shoots defenseless, unarmed women.

10 Tell you how I know he's a coward. That's enough.
11 When he gets to jail at the J. Rubin Long Detention Center
12 where the boys are, the men are, other men that are -- have
13 the same arms that he has. No guns, no knives, we're all
14 on equal footing. Guess what? All of a sudden, all that
15 anxiety, all that depression, all that irritability seems
16 to settle right out. No trouble at all. No disciplinaries
17 at the jail. He gets along fine. He gets along with
18 somebody that can fight back because he's scared of them.
19 He's going to stay away from them. He's going to behave
20 around them. He's going to figure out a way to keep his
21 irritability in check. He can when he wants to, when he
22 needs to. He doesn't want to, well, that's a whole other
23 story.

24 We know that when Mick beats you, when he kicks you,
25 when he chokes you, when he pulls your hair, we know that

1 when he punches you, when he pulls your hair out, when he
2 spits on you, when he rapes you, when he breaks into your
3 house, when he kills you that he demands. He doesn't ask.
4 He doesn't plead or beg. He demands and he expects mercy,
5 and he's got it over and over.

6 Carla Kaiser, his first wife, a teenage -- young girl,
7 desperate. He gets her pregnant. She wants to do the
8 right thing. She wants to build a family like her family.
9 She wants it to be like *Leave It to Beaver*, you know? She
10 doesn't talk about it; she doesn't talk about the abuse.
11 She wants to make it work. It finally gets so bad that she
12 goes to her mother. She tells her mother, and she leaves
13 him for a week or ten days. I'll do better; I'll get help.
14 I'll act right. Give me one more chance. She gave him
15 mercy. She gave him mercy again and again.

16 That mercy, how was it rewarded? This is Louis
17 Winkler's form of mercy. His form of mercy is on Christmas
18 Eve to take the very Christmas presents that your poor wife
19 has wrapped for your parents, photographs of a three-month-
20 old baby, their newborn baby, and to take those photographs
21 and beat her in the face and hands until the glass breaks
22 and she's cut to pieces and has to go to hospital on
23 Christmas Eve. Abandon her child. She, she fled for her
24 life.

25 That's the kind of mercy Louis Winkler knows; that's,

1 that's the kind of mercy he shows people. Forced her --
2 she was so scared. She was so scared, twenty-one, twenty-
3 two years old. Tiny baby. Doesn't know what to do. No
4 money, you know, no options. She had some good parents.
5 That was her, that was her, that was her safety net. Thank
6 God she had that.

7 She had to leave her home. She had to leave her
8 state. She had to move away. She had to move again and
9 change her numbers to unlisted numbers to finally, to
10 finally put distance between Defendant Louis Winkler and
11 herself. Raised a child who's now twenty-two, twenty-one,
12 twenty-two years old by herself. Grown woman now, grown
13 woman now, the same age that she was when she escaped. She
14 got out just at the right time.

15 And Ms. Ricketts, threw her out. Choked her. Pillow
16 over her face. Threw her out in her underwear outside the
17 house. Threw her keys at her. Don't come back. She goes
18 to the police. He's convicted of domestic violence, but
19 she went back to him. I'll do better. Just give me one
20 more chance; I promise I'll do better. She got it. She
21 got it. He remained abusive, he was a bad husband, but he
22 did quit beating her after he went to jail on that
23 occasion, and that's about the time that Becky Winkler came
24 into this defendant's life.

25 We've seen the mercy that she gave Defendant Winkler,

1 but she reached a point when she said no. And this
2 defendant demands mercy. We know that when this defendant
3 doesn't get mercy that he expects, first he turns to terror
4 and intimidation. And if that doesn't work, he turned to
5 violence. It's in stages. We can see it with Carla,
6 somewhat with Ricketts, but with Becky it came to its full
7 conclusion.

8 She told him. September of 2005, Becky Winkler had
9 had enough. She took the really desperate act of leaving
10 home. Moved in with her daughter, but that wasn't enough.
11 That wasn't enough. What, what, what mercy did Louis
12 Winkler show her? She said no. She said no. You're going
13 to be held accountable. I'm not going to tolerate it.
14 Violence, terror, intimidation, he wanted to give her a
15 little taste of just what he was capable. He could get her
16 lined out, get her back on the plan. She finally says no,
17 and you know, folks? I think that -- and somebody else
18 said this, one of the -- it might have been Tammy Cox, the
19 friend of Becky Winkler's that said, you know, he, he
20 really killed her in October. He killed her spirit. He
21 killed her personality. He changed her.

22 He -- I think when it happened was at that point after
23 she had left the warehouse. He's on a cell phone or gotten
24 on a cell. He was distracted and she walked out and she
25 started walking to a place that she knew of, a place that

1 meant security to her, of hope. A place that might give
2 her some relief from the horror that she had suffered that
3 entire night of her anniversary. No shoes, his T-shirt,
4 his underwear, and she starts across that street. She gets
5 into the parking lot of the county complex there at
6 Stephens Crossroads.

7 He's behind her walking faster, arms flailing, mouth
8 moving, no shirt, shorts on, yak, yak, yak, yak. People
9 are starting to pull into work. At that point when she had
10 gotten close enough to a safe place and he became fearful
11 that there may -- there are police in that place. There
12 are people I don't want to -- there are authorities in that
13 place that I don't want any part of, and he broke off and
14 she went on in.

15 That was the point. That was the time because she had
16 not only told him no once now. She told him no the first
17 time when she left him. Her final no, her last no was when
18 she walked into that county complex, and he knew exactly
19 what was about to take place. He knew that the police
20 would be called. He knew there would be an investigation.
21 He knew that he had raped and brutalized his wife, had
22 sodomized his wife. He knew that, and he knew he didn't
23 want to come. He knew he'd best find some place to hide
24 for a while. Maybe, just maybe she won't turn him in.
25 Relying, no, demanding even in his absence that she give

1 him mercy, that she not tell the truth. She denied mercy
2 on that occasion, and it cost her her life.

3 J [REDACTED], as I think about that concept, the
4 undeserved gift, unearned, you know, I can't help but think
5 of the mercy on those that are left behind. What mercy for
6 a teenaged boy who's got his whole life ahead of him to in
7 cold blood murder a child's mother in front of him and walk
8 out like you're gone for a trip to the grocery store?
9 That's Louis Winkler's mercy.

10 You know, Haley, Haley Grainger, the middle daughter,
11 she's in a relationship. She's kind of getting started
12 with her adult life. Taken, taken her mother away also.

13 And finally, finally Jill Shelley, the oldest. What
14 sort of mercy has he showed to Jill Shelley? Jill
15 Shelley's got a baby. Becky was a first-time grandmother.
16 It was a new experience for her; it was a hopeful
17 experience for her, a new chapter in her life. Jill needed
18 her momma. She's learning how to be a momma, and now she's
19 going to learn how to be a momma again, second, a momma of
20 two, which is whole different thing. She needed her momma.
21 She talked to her a lot. She wanted to take care of her
22 mom. She was interested in her mom, looking out for her
23 mom. She still needs her mom. That's the mercy of Louis
24 Michael Winkler.

25 His mercy, his mercy took this person, beautiful Becky

1 Winkler. Smart, hard-working, funny, person of deep faith,
2 deep conviction. And first he changed her into this
3 person. A lot shorter hair but change. Different, scared,
4 fearful, depressed, anxious. But as we know, for defendant
5 Louis Michael Winkler there's never enough. That we know
6 about Louis Michael Winkler. There's never enough. And
7 that's how it ends. That's how it ends for Becky Winkler.

8 It struck me when I went to the crime scene in this
9 case, and it still does, that we had a grown woman in her
10 home minding her own business 5:30 on a Monday night
11 watching television with her fourteen-year-old son sitting
12 just feet from her eating his dinner, getting ready to go
13 out, trying to make plans to go out. As normal a picture
14 as one could have of a single, kind of a single parent.
15 Wasn't single yet, but single parent home on a Monday
16 night. But right next to her leg was a can of mace.
17 Folks, that's terror. That is stark terror to be sitting
18 with a can of mace while you watch TV in your home because
19 you're scared that Louis Michael Winkler is going to break
20 in any minute and kill you. What a, what a horrible
21 existence. It's never enough.

22 And, you know, we turn to the arrest. Hides for two
23 weeks. He's in jail. He doesn't get bond after the
24 murder. You'd think you'd be safe. You should feel safe.
25 I shouldn't feel this fear. Not for Louis Michael Winkler.

1 No, folks. Still striking out, still trying to hurt, still
2 trying to intimidate, still destroying. He writes a letter
3 to the oldest daughter of the woman he has murdered and in
4 the very first line says:

5 Hey, Jill, it's a shame a few bruises on your
6 mother's arm led to her death. You know, if you
7 wouldn't have stuck your fat ass in our business,
8 she would be alive to see her fifty-first
9 birthday and her granddaughter.

10 That is one evil man. That is hatred. That's evil.
11 That is slow, persistent, every single day evil. That's
12 not going away, and I'll tell you something about that
13 letter. Louis Michael Winkler will stand behind it to this
14 day. He'll get on that witness stand. He will put his
15 hand on the Bible, and under oath he'll tell you oh, that
16 letter, it's all true. He will reach out.

17 Folks, we know that for Louis Michael Winkler, there's
18 never enough. The time for mercy has passed for Louis
19 Michael Winkler. That time has passed him.

20 You in a few minutes, a few minutes you'll be called
21 upon for your final responsibilities in this long process.
22 It will be your role in this really magnificent -- it's a
23 magnificent process. You will play a very -- well, maybe
24 the most essential role in that process when you begin your
25 deliberations.

1 You -- well, I want to take just one minute and say
2 truly from the Grainger family, from Becky's friends, folks
3 that know her, people in the community, from the State of
4 South Carolina, I want to thank you. Thank you, thank you
5 for your service. It has been a difficult process; it is
6 going to continue to be a difficult process. But we don't
7 take that for granted. We appreciate each and every one of
8 you, and being sequestered especially is difficult, so I
9 thank you.

10 Your role or your responsibility really began, really
11 began when you got your notice and you filled out that,
12 that rather invasive questionnaire. You came to court, got
13 through the first qualification process and brought you
14 back in panels, and then we put you through another
15 qualification process where we asked, asked each, each and
16 every one of you critical question, the question that now
17 is not a hypothetical question. It's a very real question.
18 Each one of you answered that question the same way in one
19 form or another. Not only given sufficient evidence of
20 aggravating circumstances, not only could you consider all
21 that evidence, all the mitigators, everything involved.
22 Not only could you consider the death penalty, but could --
23 no, would you impose the death penalty given the facts,
24 evidence, and circumstances. Every man, every woman said
25 yes. That's your oath. That's your responsibility. And

1 the judge will tell you more about that. He'll lay that
2 out for you very clearly.

3 I have no concern that each and every one -- I know, I
4 know because it has already happened in this courtroom. I
5 know that each and every one of you takes that
6 responsibility serious and that you will discharge that
7 responsibility. It's important that we find justice and
8 it, it is about justice. That's what we're here for. You
9 really kind of stand on the rock; as a jury, you stand on
10 the rock of justice.

11 In a few, couple of minutes I'm going to sit down for
12 a minute, but I just want to say this is an important,
13 important day because this, ladies and gentlemen, this is
14 the day that it stops. This is the day that the beatings
15 stop. It's the day that the intimidation stops. It's the
16 day that the rape stops. The murder stops. Because this
17 is the day, this is the day that we have the opportunity to
18 provide the full measure of justice, the full measure of
19 justice, the earned measure of justice to this defendant,
20 Louis Michael Winkler. Ladies and gentlemen, the day for
21 mercy has passed us by. Today is the day for judgment and
22 may your verdict flood, flood this courtroom with justice.

23 THE COURT: Thank you, Mr. Hembree.

24 You ready to go now, Mr. -- you need a break? We'll
25 break for a minute, just for a minute and we'll come back

1 and do the final arguments. Ten minutes and we'll be ready
2 to go now. See you in a few minutes.

3 Do not discuss the case. It is not yours yet.

4 (THE JURY EXITS AT 10:34 A.M.)

5 THE COURT: We're not in recess yet.

6 Now, Mr. Wilson, you may want to work it out so that
7 you know where the podium's going to be. When you finish,
8 I'll recognize Mr. Winkler, so get the podium ready in that
9 regard. I'll have a couple comments when we come back, and
10 I hope to have both your argument and his argument in the
11 next segment.

12 MR. WILSON: All right, sir.

13 THE COURT: All right, we're in recess.

14 (OFF THE RECORD.)

15 THE COURT: All right, Mr. Wilson, you ready?

16 MR. WILSON: Your Honor, the defendant's going to go
17 first.

18 THE COURT: Okay, Mr. Winkler, you decided you'll go
19 first, sir? All right.

20 Now, Mr. Wilson, Mr. Winkler, since y'all are doing
21 opening arguments, please remember your arguments are
22 limited to matters that have been put in evidence. No new
23 matters are to be discussed that have not been put in
24 evidence. The issue of guilt or innocence of the murder
25 has already been decided by the jury, and although some

1 comment can be made of it, that is not the main the focus
2 of the jury at this time. The main focus of the jury is
3 what punishment, what sentence they will give as result of
4 the conviction and whether they find aggravating
5 circumstances or mitigating circumstances and what their
6 decision is, and let's limit everything to that.

7 Mr. Winkler, Mr. Wilson, do you know how long Mr.
8 Winkler said he will be, thirty minutes, thirty-five?

9 MR. WILSON: He said a half hour to forty-five
10 minutes.

11 THE COURT: All right, that will be fine. All right,
12 everyone's in who wants to stay? All right, bring the jury
13 in, please. Mr. Wilson, I'll be glad to have you argue
14 after he argues.

15 MR. WILSON: Yes, sir.

16 THE COURT: Mr. Winkler, make sure, now, at the podium
17 there, okay?

18 DEFENDANT: Yes, sir. Yes, sir.

19 (THE JURY ENTERS AT 10:59 A.M.)

20 THE COURT: Ladies and gentlemen of the jury, we will
21 now proceed to the arguments for the defense. I had told
22 you that Mr. Wilson would go, then Mr. Winkler would go.
23 They've now decided Mr. Winkler will go first. He says he
24 needs thirty minutes, maximum forty-five and then Mr.
25 Wilson. So, we should be able to get both those arguments

1 in in this segment and then after that, depending how long
2 it takes, I will either charge you then on the law, or
3 I'll, I'll give you a few minutes before I do my charge on
4 the law. Once again, my charge on the law will not take
5 more than about twenty minutes.

6 All right, we're ready to proceed. Mr. Winkler, you
7 may be recognized. Come to the podium, sir.

8 DEFENDANT: Thank you, Your Honor. Good morning.
9 This is still morning; we have an hour left.

10 Ladies and gentlemen of the jury, I didn't come here
11 to call anyone names or anything like that like Mr. Hembree
12 did. How convenient it is for him to sit and call me
13 coward when he sits behind police and behind his words. As
14 a matter of fact, yesterday when he came to the stand, he
15 was shaking his hands. So, calling me a coward is beyond
16 me. He wouldn't -- as far as that goes, you wouldn't last
17 a day in jail, you know, and he came here to attack me.
18 And I guess that is his job, to attack me. And, you know,
19 he's saying I, I was a coward, didn't stand up to men, only
20 to the women I took care of.

21 There's never been a time, any of the witnesses that
22 he brought forward, my ex two wives that I didn't say that
23 I did what I did. I was at fault. I admitted what I had
24 did wrong. He's putting words in my mouth, and he's
25 putting thoughts in your head. That is his job. That's

1 because -- and he made that, too, that job because he is
2 underhanded and deceitful. So deceitful that ---

3 And if I could get Danielle to show the jury
4 something? This is the log book of the incident of 10 ---

5 THE COURT: Now, is this is something in evidence?

6 DEFENDANT: Yes, sir, it is.

7 THE COURT: What exhibit number is it?

8 DEFENDANT: Yeah, it's the, it's picture, picture
9 number is number 20.

10 THE COURT: And that's in, that's in evidence?

11 DEFENDANT: Evidence.

12 THE COURT: And you can show the picture, but it's got
13 to be something in evidence. What number is that, please,
14 ma'am?

15 UNIDENTIFIED FEMALE SPEAKER: State's 20.

16 THE COURT: State's 20. You want to show State's 20?

17 DEFENDANT: State's 20. This is an exhibit of one
18 drop of blood, and I believe that the words, the numbers
19 they used was one in 24 quadrillionths of a great chance
20 that that was my blood on that counter, one single drop of
21 blood.

22 Now here, here's the -- this is a log book and at the
23 end of the night, at the end of the evening toward 10:00 --
24 as a matter of fact, at 10:33, Mr. Hembree, Fran Humphries,
25 Scott Hixson, they all arrive at the scene five hours

1 later, and we've heard testimony that no one's seen that,
2 that drop of blood on the counter, and it wasn't, it wasn't
3 seen at all. No one photographed it. In fact, until ---

4 And, and if I could? I'm sorry, I need one more
5 picture, the one with a digital in the corner. That is --
6 I'm sorry, that is the one.

7 There's a digital number in the corner of what time
8 that's ---

9 I'm sorry. Could you show that to them again, please?

10 At 10:49. Now, Mr. Hembree, Mr. Humphries, Mr.
11 Hixson, they all arrive at 10:33 and 10:35. Now, this one
12 picture was taken at 10:49. They left the scene at 10:45.
13 How cowardice is that of them to put one drop of my blood
14 on a countertop to prove that I was there? They were not
15 on the scene earlier. There were -- the detectives have
16 said they searched for more blood of mine and could not
17 find it. There was no blood. In fact, the counter ---

18 If I may, Your Honor?

19 I'm just going to point to the edge corner of this
20 where there was a TV sitting and a plate of food that was
21 from Roger Grainger. It was longer than, it was longer
22 than this.

23 May I, Your Honor, step back?

24 THE COURT: Yes.

25 DEFENDANT: This counter was from the edge where that

1 comes to a point to about here. Now, no one was able to,
2 no one was able to ---

3 MR. HEMBREE: Your Honor, I'm, I'm going to have to
4 object. I believe Mr. Winkler's arguing residual doubt.
5 He's arguing the -- arguing guilt.

6 DEFENDANT: This was brought up and -- this was
7 brought up.

8 THE COURT: I'll permit him somewhat to do that.

9 MR. HEMBREE: Thank you.

10 THE COURT: Remember the main focus here is the issue
11 I discussed.

12 DEFENDANT: I, I, I am, Your Honor. Okay.

13 THE COURT: Proceed on.

14 DEFENDANT: I'll get to the point quickly.

15 It was about this far. No one did measure it because
16 of the clumsy police work that was done, and I'm getting to
17 that. The TV was sitting there. Down here was a basket of
18 something that spun around. You put papers, envelopes,
19 whatnots in. Next to that was where this blood was.

20 J [REDACTED] never says anything. This is J [REDACTED]'s
21 version. He was sitting here at the, at this juncture
22 right here. He says I came and hit him. I struck him and
23 knocked him out of the chair. He said I hit him twice, but
24 he didn't say did he get hit the first time, knocked out of
25 the chair, or did he get hit the second time and knocked

1 out of the chair. Either way -- that is his story. Either
2 way, one speck of blood. And as we've noticed, J [REDACTED]
3 G [REDACTED] had a white T-shirt on. There was no blood on
4 that T-shirt. I was not bleeding.

5 The fact of the matter is is they got there late, five
6 and a half hours after the incident happened. If you want
7 to look again at that, that blood is bright red. Five and
8 a half hours later, it would have been semi-dried brown,
9 more brown.

10 But for them to be -- they didn't -- for one thing,
11 they didn't know that I was a truthful person. I, I was, I
12 told them I was on the scene, but by doing this underhanded
13 and deceitful thing, they put me on the scene on purpose.
14 They had access to my blood from the previous time they
15 took it. They took vials of my blood.

16 These four gentlemen and the fourth one that I see is
17 Robert Edge, they all arrived at once at the scene. They
18 were only there for ten -- they were only there for eight
19 to ten minutes was it? Five minutes later, guess what?
20 They take a picture of my blood on the counter. Cowardice,
21 deceitful, and underhanded. They have a record of it.

22 They were only after one person: me. They didn't look
23 into Roger Grainger. They didn't look into anybody. They
24 wanted me. In fact, they went as far as to put a drop of
25 blood on that counter that I wasn't even close to. And let

1 me remind you again J [REDACTED] had a white T-shirt on and no
2 blood. Detectives have said they looked everywhere. There
3 was no other signs of my blood anywhere: on the door going
4 out, on the door going down on the steps that you have to
5 push to go out of. There's no blood anywhere except for
6 where they put it. Cowardice. I think that speaks for
7 itself. This log book.

8 And may I show them the log book, Your Honor?

9 THE COURT: No. That's not in evidence.

10 DEFENDANT: Okay. I'm sorry.

11 But it is at the bottom and if I, if I could, they are
12 the last ones at the scene, by the way, right before this
13 picture's taken. As a matter of fact, they left and that
14 picture was taken three minutes after they left. Three
15 minutes. They came in and said look, this was, Mick
16 Winkler did this. Or, as he puts it, Louis Michael Winkler
17 did this. We know he did this. Clear out. All you
18 officers, now, clear out, you know, whatever, move to the
19 side. One drop of blood. That's all it, that's all it
20 was. They didn't have enough sense to put a few here and
21 there and there and there. Maybe they didn't have the
22 time. Maybe, maybe someone seen them do it.

23 And I know that the jury has already convicted me.
24 It's too late now. But the fact of the matter is -- and
25 it's not on the jury to do that. You, you based it on --

1 and I, I respect your, your verdict. But the kind of thing
2 that Becky Winkler did, my wife, it goes back to -- a
3 decade back where Susan Smith completely fooled the whole
4 state law enforcement in South Carolina.

5 MR. HEMBREE: Your Honor, I've got to object to that
6 line of argument.

7 THE COURT: Okay.

8 MR. HEMBREE: I'm ---

9 THE COURT: Yes, sir, we, we don't need to get into
10 other cases, sir.

11 DEFENDANT: Okay.

12 THE COURT: Stay with this case.

13 DEFENDANT: Okay.

14 Fooled them completely because they told her we're
15 going to get him to do it. We will make sure he gets it.
16 In fact, COs where I am at, it's J. Rubin Long, call me
17 Dead Man Walking. That only comes from the solicitor.
18 This was months ago.

19 Is it true that everybody knew I'd be convicted? I
20 didn't -- they didn't know I'd put -- I'd say I was there.
21 I'm a truthful person. I said I was there. I was there.
22 I made that mistake of going. And, in fact, I'm the one
23 that should be dead, and I am very sorry that it's my wife,
24 Becky, that is. I stated that on the stand, and I
25 apologize to Mildred Scott for that, just for me being

1 there cause, caused that.

2 But they've had me pegged from the beginning that I
3 did it, just flat out I did it in the papers and everything
4 else. It, it's incredible how they can get away with it,
5 and they have got away with it.

6 This is another exhibit. It's marked 22. Now, it is
7 going to show the counter from -- let, let me back up just
8 one more second. That, by the way, they went to my house
9 for a warrant, a warrant. They took thirty-five pictures
10 of my backyard. My backyard is what -- I don't know if I
11 testified there. I put a Tiki bar in with a huge deck and
12 a pool, and we also had a pond back there. They took
13 thirty-five pictures of that. There is only one picture,
14 one angle. Not a top view. Not of any other angle but
15 that angle there. There's only one. I know there's got to
16 be at least five. Why would they take one picture of it
17 and that's at 10:49, five and a half hours later? There's
18 no picture. Even all these pictures, they're taken from
19 different angles. You agree. Anybody agrees with that.
20 They, they take a picture. They move over, take another
21 picture. They move behind the podium here and take another
22 picture of this angle. The living room, all around
23 pictures. The closet, two different angles, okay? That is
24 the only, only picture in evidence of that drop of blood
25 putting me on the scene that I already said I was going to

1 be at. They didn't know I was going to say that, by the
2 way. They didn't know I was a truthful person. One
3 picture, but of my backyard thirty-five and it didn't even
4 happen in my backyard.

5 This exhibit, this exhibit is number 22, Your Honor.

6 This is the one where there are two pictures and, and
7 just go slow for a second. There are two pictures -- I
8 mean, two chairs tipped over. One of them is completely
9 under the computer board. If you sat that, if you sat that
10 chair up where it was sitting and just push it over, it's
11 going to hit the keyboard at least. Now, if you see the
12 keyboard, it is in perfect alignment. There's a pad
13 sitting there maybe a little bigger than this one. It's
14 white and has a pencil -- has a pen on it. Nothing on that
15 desktop is disturbed.

16 MR. HEMBREE: Your Honor, I'm sorry. I'm going to
17 have to object again. He's once again arguing residual
18 doubt, going back into the murder case that's been
19 resolved.

20 DEFENDANT: Your Honor, he brought, he brought it up.

21 THE COURT: I know he did, Mr. Winkler. I know he
22 did, Mr. Winkler, but you said you needed around forty-five
23 minutes. You're taking a lot on this issue, but it's up to
24 you, sir.

25 DEFENDANT: Well, can I take an hour?

1 THE COURT: But, sir, you're really devoting a lot,
2 sir, to what -- our main focus here, sir, is, is the
3 sentence from the jury. The issue ---

4 DEFENDANT: Well, I'm trying to put that doubt in
5 their mind. I'm trying to save my life.

6 THE COURT: Sir, I understand, but the issue of guilt
7 of murder or not has already been resolved by the jury;
8 there's no issue regarding that before them now. The issue
9 is the issue of punishment. I'm just letting you know,
10 sir, but some point in time we've got to stop that
11 argument. I wanted you to be able to say something because
12 you're right. Mr., Mr. Hembree did mention it some, but we
13 can't go through the entire argument again on that, sir.
14 You may proceed.

15 DEFENDANT: You see now you're hiding behind the
16 judge, you coward.

17 THE COURT: Mr. Winkler, Mr. Winkler.

18 DEFENDANT: Yes, sir.

19 THE COURT: There's a proper decorum in this court,
20 sir. My -- I have a lot of patience. But, sir, please
21 understand I'm going to give you your rights, but you have
22 to have a little bit of respect, too, sir. Let's proceed.

23 DEFENDANT: Well, Your Honor, he called me ---

24 THE COURT: Continue on.

25 DEFENDANT: --- a coward.

1 THE COURT: Continue on, sir.

2 DEFENDANT: I will.

3 THE COURT: But at some point we're going to have to
4 get ---

5 DEFENDANT: Okay. So ---

6 THE COURT: --- this over with.

7 DEFENDANT: Pointing out -- I mean, should I finish
8 with that picture?

9 THE COURT: You decide what you want to do. However,
10 once again we finished with the issue of whether or not the
11 jury has found you guilty of murder or not. You've done
12 that. You may continue on with it, sir. Then you need to
13 go to something else.

14 DEFENDANT: What -- okay, Your Honor, what I'm trying
15 to prove is, is their, their, their entire case is based on
16 lies.

17 THE COURT: Sir, that issue was decided a couple of
18 days ago, sir. The issue now is the issue of punishment.
19 Continue on, sir.

20 DEFENDANT: Okay. All right, so do I still use that,
21 or I can't use it?

22 Anyway, the chair could have never done that, and so
23 we're done.

24 Or is she allowed to show them that, the rest of that,
25 sir? I, I, I don't know ---

1 THE COURT: If you want her to walk down in front of
2 the jury.

3 DEFENDANT: Yeah.

4 The -- you know, it wasn't, the chair couldn't have
5 made it underneath there without disturbing anything on the
6 desk.

7 Okay, Your Honor, can I ask you a question?

8 THE COURT: Continue on, sir.

9 DEFENDANT: Yeah. All right.

10 They brought up, he brought up in his closing that --
11 the warehouse and so forth, the warehouse, how I beat her
12 and everything else, but there's just one, one photo here
13 of the size of that, that warehouse from the inside.

14 May I?

15 Now, in the middle of the picture there is some rolls
16 of insulation. That's where we were. To the left is the
17 front where the road is 20 feet away. That's how wide that
18 was. To the right is where I went. I went out and used
19 the phone. He said in his closing, and that's how I came
20 up with this, that I came out after her flailing my arms.
21 Well, that gentleman used -- I used his phone, and he
22 states that I walked away that day, and he never seen
23 anyone with me. How, how on earth could this woman who
24 testified say that I was running after her flailing my
25 arms? I, I'm just trying to state the obvious, obvious

1 things and I'll move on. That's how big that warehouse
2 was. She was 20 feet from the road where it was bumper-to-
3 bumper cars.

4 It was also brought up that I, I was left-handed, and
5 I'm right-handed and I've always been right-handed. I golf
6 right-handed, I bat right-handed, I throw right-handed.
7 Everything I do right-handed.

8 State's evidence 3 is...

9 (A PAUSE.)

10 DEFENDANT: That's the right side J [REDACTED] G [REDACTED]'s
11 face. His father's left-handed; I'm right-handed. It
12 looks more like a slap to me, but I don't know. He's says
13 I hit him. If I'd hit him, it'd have looked a lot worse
14 than that. He had forgotten that I'm right-handed. Thank
15 you.

16 The rest of these pictures were just of the warehouse,
17 which I doubt would be -- oh, oh, wait. Exhibit 80, this
18 is the steering wheel of the car we were in 10/10/05.
19 There's blood all over it. Very consistent with the, with
20 the bruise on her nose on that side where she slammed her
21 face into that steering wheel. Now, remember none of the
22 blood in there was mine. How could it have been none of
23 the blood was mine? Thank you.

24 Your Honor, if you would, just a second?

25 (A PAUSE.)

1 DEFENDANT: I know the verdict has been put in, and he
2 sat there and he actually yelled at you that Louis Winkler
3 murdered Becky, Becky Winkler, and that's hard for me to
4 say. And I'm not going to yell, but Roger Grainger killed
5 his ex-wife.

6 MR. HEMBREE: Object, Your Honor. Residual doubt.

7 THE COURT: Continue on, Mr. Winkler, with your
8 argument regarding sentence.

9 DEFENDANT: How convenient is it for the defense to
10 lose Jeffrey Joslin who took me to the scene? How can they
11 lose a main suspect? He made a statement he didn't see no
12 gun on me.

13 THE COURT: Sir.

14 MR. HEMBREE: Object, Your Honor.

15 THE COURT: Sir, you can only argue stuff that's in
16 evidence, sir. Please only argue stuff that's been
17 introduced into evidence, sir. You can't introduce things
18 that hadn't been introduced into evidence ---

19 DEFENDANT: Well, I thought that ---

20 THE COURT: --- such as the statement.

21 DEFENDANT: I thought ---

22 THE COURT: No, sir. You may proceed on, sir.

23 Please disregard the last comment.

24 DEFENDANT: Okay.

25 THE COURT: Ladies and gentlemen of the jury, please

1 disregard.

2 DEFENDANT: Okay, they called L[REDACTED], L[REDACTED] C[REDACTED].
3 That, that was -- is that -- she took the stand. Is that
4 considered in evidence?

5 THE COURT: She was, she was on the stand. Yes, sir,
6 you may comment on her testimony.

7 DEFENDANT: Yes?

8 THE COURT: Yes, sir.

9 DEFENDANT: So, I can make a comment?

10 THE COURT: On her testimony, yes, sir.

11 DEFENDANT: Okay, she said that she was on the phone
12 with J[REDACTED]. She stated that J[REDACTED] didn't say
13 anything. Said she heard me come in and say something
14 about I'm not going to jail. I'm not going to jail. On
15 the other hand, J[REDACTED] states he asked me what am I doing
16 there. What are you doing here. How convenient that on
17 five phone records that call doesn't exist not on any of
18 them. All the cell phones and all the land lines between
19 them two homes is a call that doesn't exist. Here ---

20 MR. HEMBREE: Your Honor, I object. This is not in
21 evidence.

22 THE COURT: No, sir, we've not had no evidence of
23 that, sir.

24 DEFENDANT: We don't?

25 THE COURT: And, sir, honestly, sir, at some point in

1 time, Mr. Winkler -- you have a right to make a final
2 argument to the jury regarding punishment. At some point
3 in time, sir, I'm going to have to assume that you don't
4 wish to make an argument in that point. You're arguing the
5 other case, sir. You need to get to this phase of the
6 trial.

7 DEFENDANT: I understood -- misunderstood it then.
8 I'm sorry.

9 Okay, so let's just talk about me then I guess. I
10 admitted going over there. I did something wrong. That
11 doesn't mean I -- that doesn't mean that I murdered my
12 wife. That's the last thing I'd ever do.

13 I had two other wives. I had a wife, my second wife
14 ended up with the best man at my wedding, the best man, and
15 I walked away. I told them good luck. I mean, I didn't
16 even as much as have words with her or him. If she's still
17 back there, I don't know if she is, but I, I let it go.
18 She actually came to my work several times and we did have
19 conversation. Good luck, I said.

20 My first wife, he talks, talked about an altercation.
21 I didn't beat no one. I've never hit a woman in my life.
22 He's talking about a cut on a finger that needed stitches.
23 That's all he's talking about, and I did not deny it like
24 he said. He said I denied it. I didn't deny any of that.
25 I sat right there on the stand and I said yes. That's what

1 happened, it surely was. Does that make me a murderer? I,
2 I would hopefully certainly think it doesn't.

3 Now, there were a lot of things that -- well, my
4 family, of course, and anyone's family would come forward
5 and speak for, for a sibling or a son or a daughter,
6 daughter. I have a big family and many, many nieces and
7 nephews. I had a job at the same place for nine years. I
8 was a citizen of Horry County and as far as I was concerned
9 upstanding. I had one incident with the police and that
10 was it. I mingled with people like Harold Whirley, many
11 people that, many people that were outstanding citizens. I
12 had a few get togethers at my house where a lot of them
13 people came to my house.

14 There were no -- they're thinking -- you know, people
15 that, people that can call someone a coward is just -- and
16 not even know them is really something because -- and it's
17 -- I hate going back to that because it's -- this is my
18 closing. And I'm not a coward. I didn't hit any woman and
19 I never would.

20 It's not I'm pleading for my life here because, you
21 know, I have Mr. Wilson to make a closing for me. He has
22 another closing to save my life. I know you've convicted
23 me. If you're going to put me to death, so be it. The
24 only person you're going -- people you're going to hurt is
25 my family. There might be cheers over here. I don't care

1 if they cheer, but one thing's for certain. There's a man
2 that's going to get away with murder, and only God will
3 come down and strike that man himself. Only God can judge
4 that.

5 Now, of course they're saying I have appeals, okay?
6 Appeals could last three to five years, three to five
7 years. Life in prison, forty-seven years old. At any
8 time, I could have been the site manager in any of your
9 condo complexes. All these people, we had one of them come
10 in, and I understand why a lot of them didn't come, but I
11 -- and it's because of the news coverage. I have one very
12 close, close friend that didn't come because of the news
13 coverage. She didn't want to be implied because she is
14 just like me. In around the whole North Myrtle Beach and
15 Little River area, we were known very well. I knew a lot
16 of people in and out of the Surf Club. My condo complex
17 was right in front of the Surf Club. If you don't know
18 that, it's one of the most prestigious golf clubs on the
19 strand. They were close to them, a very nice place. As a
20 matter of fact, Denise and I were married there. Well,
21 actually we were married on the beach and had our reception
22 there, where it was very nice.

23 I'm not trash. I did not come for trash, and I think
24 you can see that by looking at my family members. I love
25 every one of them, and they came down here not only just to

1 come with me. They sacrificed. They all have jobs. My
2 little sister Jodie has seven children. My sister Karen
3 has four. My brother Rick has four. My brother Jeff has
4 four. My mom and dad have six kids. They gave up their
5 jobs. They didn't give them up of course. They took their
6 vacation time for it, and they didn't know how long this
7 was going to take; they didn't. They didn't know how long
8 this was going to take. But not only that. They had to
9 find people to take care of their children. My sister
10 Jodie has triplets.

11 And I don't know many of you, the women on the -- you,
12 you have children or had children, children you raised. It
13 takes a lot to raise one. She has three plus one a little
14 over a year later. Constantly on the run. So, I, I, I'd
15 like to commend them for coming to -- sticking up for their
16 brother.

17 And it's nobody's fault but mine. It's no -- I, I
18 don't blame anyone, unlike Mr. Hembree said, I blamed
19 Denise or Carla. I don't blame Denise for a single thing
20 that happened between me and her. I never have, but he sat
21 here and said I did. Carla came because he made her come.
22 People talked to Carla. She didn't want to come. She was
23 crying. Mr. Hembree made her come down here and testify at
24 this. He didn't ask her if she wanted me to die -- her to
25 -- she -- he, he didn't ask her that because he's afraid

1 to. He was afraid because he knows how underhanded this
2 whole thing is, and now he wants to put me to death. He
3 don't even know me.

4 Take just a second here.

5 Well, getting back, and I only jotted notes down
6 because he brought them up in his, in his closing. But,
7 you know, he went as far as to talk about where her purse
8 was, where Becky's purse was on the floorboard on the other
9 side of the car. Where was she supposed to put it? Under
10 her leg when she's driving? I don't get where he was going
11 with that, but it didn't go nowhere.

12 And, well, could I approach this, Your Honor? He
13 accused me of doing something. May I ---

14 THE COURT: You may say what it is.

15 DEFENDANT: Okay, he said I reached down and took the
16 gun from Roger Grainger and I reached in his pocket and
17 pulled bullets out. Where did we hear testimony on that?
18 I don't think we did, that I reached in his pockets and
19 took bullets out of his pocket. That's a blatant lie. No
20 one testified to that. He was not there at that scene. I
21 was there, J [REDACTED] G [REDACTED] was there, and Roger Grainger
22 was there. A blatant lie just to get -- it's the same
23 story over and over. He's piling things on just to make me
24 look bad.

25 I'm not a bad guy. Believe me, I'm not. Seventy-two

1 people at my association, and I speak -- I started to talk
2 of it earlier. I had the key to every nook and cranny on
3 that property. A lot of them called me from out of state
4 because there were only three residents on the property.
5 That means three people lived there out of seventy-two.
6 Everybody else lived, I'd say fifty percent of them were on
7 North Carolina, another five percent in South Carolina; the
8 rest are all up North, spread out through New York, Ohio,
9 Pennsylvania, Maine and that.

10 These people would call me and say hey, would you go
11 check the power for us, make sure everything's working,
12 turn on my water heater. We're coming in this weekend.
13 They had my number; they had my home phone number. I mean,
14 I gave my home phone number to all these people. Not only
15 did I know them. It was their wives, their children.
16 Their relatives, their friends came down. If you need
17 something, they'd tell them -- they'd come up to me and say
18 you must be Mick, and I said I am. They said you're just
19 the one I want to talk to. A lot of my work was PR work,
20 public relations, and I'd tell them what was going on. I'd
21 send them places: the best restaurants, go see a show, this
22 and that. The next day they'd come to tell me thank you
23 very much.

24 Rosemary Wolfe came and spoke yesterday. I mean, a
25 lot of them, a lot of them are very elderly, and they

1 depended on me, and I took care of them. But not once, not
2 ever, like it was suggested, did I ever drink. I would
3 never drink when I was on the job. You don't do that. I
4 operated machinery every day, whether it be hedge trimmers,
5 the lawn mower, any, anything you use in the yard. I had a
6 golf cart. I had, I had riding tractors. You don't drink
7 when you go to a job like that. And besides that, I didn't
8 have weekends off unless I had someone cover for me because
9 why? Because the pools had to be done.

10 My family came and stayed at my second wedding.
11 Almost every, almost one of them were put up by some of my
12 homeowners. They said your family's coming down. Do they
13 need a place to stay? Sure. They said -- I said how much
14 you want? Nothing. I got Christmas bonuses every year
15 from these people, and I got raises. I just had -- it's
16 just -- and it was nine years. What I'm trying to say was,
17 and, and -- I miss my work. I know that. I thrived off
18 that.

19 And now this gentleman here not only lied to you
20 throughout the rest -- the first part of the trial and
21 apparently he convinced you. Myself, I think Mr. Wilson
22 did a great job, and I was very shocked at the verdict.
23 Now this man, not only did he get that, I mean, Mr.
24 Humphries spoke of not, it's not enough, it's not enough.
25 It's not enough that they lied to you and convinced you

1 that I came up to my wife and shot her in the face. I
2 didn't even know I was getting a ride that day. Again, I'm
3 going to say he's sitting in the back there and he's
4 getting away with this. But not only did they do that
5 successfully and grin at me. And, you know, like I said,
6 they wouldn't last a day in prison or -- I mean, and you're
7 calling me a coward? But they sit there and grinned at me
8 all the time. There was a man over here in the back before
9 they moved to the back corners there that flipped me off.
10 Why? Because this man said I killed my wife.

11 But that's not enough. Now they want to kill me.
12 They want you, they want, they, they -- this is the, this
13 is the main thing. They're going to charge you to do it.
14 What's that word he used again? Coward. He don't want to
15 do it. He wants you to do it. He's not going to do it.
16 He's going to use all the words he has to convince you to
17 kill me while he sits back and grins. He's not doing it
18 now, but he did it for the last five days. I don't know.
19 Some of you might have noticed it, especially Mr.
20 Humphries. They are underhanded and deceitful. They have
21 ruined my life. They took everything that I had going for
22 me.

23 And believe me, it didn't take much for me to be
24 happy. I was very happy. Becky and I were happy.
25 Everyone knew that we were happy. We had a problem.

1 There's, there's not anybody I know that didn't have
2 problems with their life, their marriages. Me and her were
3 on the right track. There was an obstacle, but I'm not
4 going to bring that up because I do feel sympathy for Jill,
5 Haley, J [REDACTED] and Mildred Scott, Mark Scott, her brother. I
6 feel great sympathy for them. I'm sorry that my wife is
7 dead, and I truly mean that, especially you, Mildred. I'm
8 very sorry. I respect her as much as you. I couldn't
9 attend her funeral, and I am sorry with all my heart.

10 There's not much more I can say about that. If I
11 would have done that -- I haven't, I haven't lied to
12 anybody about anything. They want to bring in wives, ex-
13 wives to prove nothing, to prove nothing. And they make
14 you poor people sit here through all this, and now you're
15 going to be charged with killing me. Forty-seven years
16 old, peak of my life. I had a home, beautiful home. If
17 Becky would have ended up leaving me, and although -- in
18 the pictures if you see the pictures that they kept out of
19 evidence a question, a question and answer thing of her on
20 a gurney in a hospital cuts and bruises, same kind of cuts
21 and bruises I had on me, which they failed to show which I
22 can't show you because they were after me, and that was the
23 only thing.

24 I'm sorry she wrecked that car that night because if
25 she wouldn't have over steered, we were headed on into

1 another car. Then we both would have been dead. But yet
2 he wants to blame me for it, and he's not going to be the
3 one that does anything. He wants to put it on you.

4 And I know you're all good people. You all look like
5 ordinary people just like me. I was a, I was a blue-collar
6 worker. I don't wear suits very often. Only at weddings
7 and so forth. I don't want to fool anybody far as
8 anything. But I do want you to see how I was, the real me.

9 And one my sisters, I believe -- maybe all of them and
10 my mom. My brother Rick, my oldest brother Rick always had
11 a, down here we call them a pig picking. Up there we call
12 it a pig roast, and it was quite an event. Not only did
13 family and friends that you're going to see in this picture
14 here -- there were a lot of other people came on to this
15 later in the day. Me and my brothers invented a game in
16 our backyard way before it was a game invented. It was our
17 version of the home run derby, and every -- and this is
18 invitations and he would send out to people. It said home
19 run derby starts at 1:00. That means come on, guys.
20 Let's, let's go. Let's do this. But, but the main thing
21 was the family reunion, and to this day they still play it.

22 This picture here when I, and I'd rather have you show
23 -- each one of you pass it along. In it, you will see me
24 in the front row. I'm not standing beside any adult. This
25 wasn't planned for this, this hearing today or anything.

1 This is just me. You'll see me. I have a ball cap on and
2 a bathing suit. You will see all the children around me.
3 You'll see my sister Jodie. You'll see, see my sister
4 Karen in a full laugh. That's how I like to see Karen.
5 She always laughed like that. My brother Rick, whose house
6 we're at, standing proud as he can be. My brother Jeff and
7 his wife standing as proud as they can be. My mom, you met
8 my mom. My dad, who always had a smile on his face, he's
9 looking down at one of my nephews who's doing something to
10 one of the nieces, had made him laugh. But it, it's not
11 just that. This is me right here.

12 Danielle, I'd like for them to look at it.

13 In the meantime, this man here wants to say that I'm a
14 killer. I am not a killer. He showed up on that scene
15 that day, and it's, it's like -- and it is, the verdict is
16 in. There is no explanation for one drop of blood to be
17 there. It's real convenient for this man to do that. He
18 didn't know, again he didn't know I would say I was there.

19 Of course I said I was there because I was there. I
20 did not know that was going to go like that. I had no
21 idea. If the son has a gun under his pillow, the father's
22 going to have a gun. He had the gun that I gave Becky. He
23 knows that.

24 As you can see in that picture, I was the one that
25 rounded that up. I took the home video of it, as a matter

1 of fact, and it took ten minutes just to get all the kids
2 together. Those are all my nieces and nephews. I love the
3 family. I still do.

4 Excuse me, are they still, they still looking at that?
5 Some have them.

6 THE COURT: They're still passing them around.

7 DEFENDANT: If you notice in there also, that is
8 midsummer. There's only one person in that picture with
9 black on.

10 (A PAUSE.)

11 DEFENDANT: I wanted to remind you, too, also one, one
12 little thing that was brought up about how I am right-
13 handed.

14 (A PAUSE.)

15 DEFENDANT: By the way, since this has happened, of
16 course I've been incarcerated and I'm again going back to
17 what he said. Hey, when I get to jail, I'm a cool, calm
18 person and everything and I'm a coward because I beat
19 women. Scrape, really scraping it now. Coward.

20 Finally, the evidence, the evidence and finding that
21 we have in these trials is only as reliable as the people
22 who gather. These people right here, detectives,
23 solicitors, they gather it. It's in their possession.
24 They can go look at it. They can go get it. They sign a
25 little thing or they don't sign a little thing like this, a

1 log book. They can do whatever they want. This thing
2 happened at 5:30. These guys didn't show up until 10:30,
3 you know. Well, maybe you can call them the big three
4 here, okay, the three top ones. We've got Greg Hembree,
5 Scott Hixson, Fran Humphries. This happened at 5:30. I'm
6 sure they were contacted right away. What'd they do for
7 five hours? One of them slipped into that evidence locker.
8 That's what I'm saying.

9 How can only one -- and I know I've already brought
10 this up, and I'm about to finish. Only one spot of blood,
11 you've got to take that into consideration. But it is so
12 underhanded that it, it -- how could you miss that it?
13 Like I said, the evidence and the finding in these trials,
14 it's, it's only as reliable as the people who gather, log
15 it, and present to it us at these trials. That's it.
16 They're told it's reliable. That's all.

17 It's obvious the investigation was on one track path,
18 and that led to me, and they botched it. They overlooked
19 the crucial points. You know, this constant trickery is,
20 is something that we have to put up with. It's
21 underhanded. They've been charged with it before. I don't
22 think I -- I don't know if I'm allowed to talk about it,
23 but they sure have been caught.

24 For once, Becky was clear of that DUI, and they blamed
25 me. She was in the clear. That's all it was, clear and

1 simple. She would have -- you know, and that's how people
2 say if, if, if. If I would have said no, Becky, I told you
3 not to drive, I'm driving, it never would have happened.
4 10/10 never would have happened, and I'd be at work today.
5 Everybody in this room would be at work today.

6 But no, they took it and blamed it on me right away on
7 a car she had in her possession and wrecked it herself, not
8 me. Her blood was on the steering wheel. It's in the
9 front. It's a hoax, the whole thing, and it was swallowed
10 up and taken because they could take pictures of me and
11 make me look real bad. That's it.

12 They, when they take your picture in that room, they
13 take a picture, it's a moving picture and they find the
14 worst possible picture they can find of you while you're
15 standing there. You might be moving around, your head low,
16 but they'll find the -- and, and, and it's instilled in it.
17 They'll find the worst picture of you they can do out of
18 that whole motion of your picture and stamp it and put in
19 the papers, make you look like the devil. That's what they
20 do to everyone.

21 Okay, there are some criminals, there are criminals,
22 but I am not one. I did make a mistake by going over
23 there. I broke the restraining order, which she broke the
24 restraining order over eight times. We had a witness to
25 prove it. Didn't make it in time, a young man who

1 videotaped her in front of my house breaking the
2 restraining order. However, I was on a monitor. I never
3 broke curfew, not one time. Mr. Aaron Wilkes, who's in
4 charge of that, came to the house several times, seen I was
5 there, sat and chatted with me, went. I clocked in and out
6 every time I was supposed to. That day, I didn't. I did,
7 I did something wrong. I admitted it. I've never not
8 admitted it.

9 This man sat there and told you that I lied about all
10 of it. That's not true. I didn't. I didn't lie about
11 anything. I told you anything about these. I told you
12 anything about Carla. I told you everything about Becky.

13 Now these men want you, want to charge you to kill me,
14 to put me on death row. Of course I want to live. I'm
15 asking you to spare my life. If he wants to pull the
16 switch, let him do it. Don't let him be a coward. He
17 wants you to do the dirty work, and I know you're all good,
18 upstanding citizens. I apologized to her family, and I'd
19 like to do it again. If he wants to do it, let himself do
20 it himself, but he won't because he's a coward.

21 I told the truth about everything that I could. I
22 haven't lied about anything. I did so something wrong, but
23 I did not shoot my wife. And I ask you for my life, a
24 chance for that appeal, and I appreciate it. Thank you
25 very much.

1 Thank you, Your Honor.

2 THE COURT: Mr. Wilson.

3 Ladies and gentlemen of the jury, while Mr. Wilson is
4 coming up, want everyone just stand up a minute, stretch a
5 bit.

6 (A PAUSE.)

7 THE COURT: All right, everybody ready?

8 MR. WILSON: Mr. Foreman and ladies and gentlemen,
9 we've been here now ten, eleven days and we successfully
10 completed the first phase of the trial, and we're now the
11 second phase, penalty phase. And I come today with a heavy
12 heart because no matter what we do, no matter what we say,
13 one person is dead and another will at least be in prison
14 for the rest of his life, if not death. That won't change
15 no matter what happens here today.

16 But I do need to say my heart is heavy, but not just
17 for Mick Winkler. I feel hurt for Jill because no child
18 should have to read a letter like the one that was read;
19 that should never happen. I feel heaviness for J [REDACTED].
20 No child should ever have to see his mother or his father
21 die. I hurt for her mother because she's lost her child,
22 and no mother should ever have to suffer that loss. I hurt
23 for her friends who come in here, told you the pain and the
24 hurt that they feel. The sad part, the unfortunate part is
25 that no matter what we do here today, it won't change. Her

1 mom will forever feel that loss; her children will forever
2 feel that loss.

3 But more than that, we have to know that somewhere,
4 someplace there's a greater power. There's a greater
5 understanding of why things happen. I don't claim to have
6 all the answers. I don't know why things happen. I don't
7 know why good people die early. I don't know.

8 I know that you have listened. I know that you have
9 paid very close attention throughout this trial. You did
10 in the first phase. You have in this second phase.

11 I told you at the outset of this trial, and I say it
12 to you again. As long as you do your responsibility --
13 that is, you sit, you listen, you evaluate the evidence --
14 and you render a verdict that speaks the truth, nobody, not
15 the State of South Carolina, nor the defendant has any
16 right to complain.

17 You see, the system works for a reason, and I told you
18 at the outset in my opening statement that justice varies,
19 only lives if it lives in your hearts and in your minds.
20 That's it. It's not in the walls of this courthouse. It's
21 not in the floorboard that we walk on. It's not in me or
22 the solicitor or any of us. It's you. You're justice;
23 you're it. It's your hearts and your minds and when you
24 come to jury service, you bring that with you. You bring
25 your good common sense. You bring your understanding. You

1 bring your life experiences, and then you use those things
2 when you sit in judgment to help you arrive at the
3 appropriate decision.

4 Mr. Rathbun told you that in his opening statement
5 that we all hate sin. We all do, but it doesn't
6 necessarily mean that we have to hate the sinner. Rebekah
7 Winkler deserved to live. Nobody, nobody on God's green
8 earth had the right to take her life, nobody for any
9 reason. She had the right to live as she chose, to be in
10 her own home, no question about that. She had those
11 rights, and nobody had the right to take those things from
12 her.

13 You have answered that question because you have found
14 this defendant guilty of having taken those things from
15 her. The question now is what do we do with or about him.
16 An even greater question is how did we get to this point
17 today? How did we get to this point?

18 Well, let's talk about back for a second. Mick
19 Winkler was at one point like every other child, and I want
20 to show you a picture. He was like every child who grows
21 up in America in what appeared to be a normal family,
22 normal school in every way. He was this child. The
23 question is what happened between this child and this man
24 because something went wrong. Something went horribly
25 wrong, like a freight train without brakes going downhill

1 in his life. And nothing stopped until now, now.

2 And we can say all day, well, maybe he should have got
3 some help after his marriage to Carla. Maybe he should
4 have got some help after his marriage to Denise. Certainly
5 he should have gotten some help before he married Becky,
6 but none of us can change what has already happened. We
7 can't go back. Why nobody saw it coming, I don't know.

8 You heard the doctors testify Mick has a mental
9 illness. Is that an excuse? No, of course not. It's not
10 an excuse. Is it a defense? No, it's not a defense
11 either, but we don't choose to have mental illnesses. They
12 happen to us. Some of us are fortunate. We recognize them
13 and we try to correct them as best we can. Sometimes that
14 doesn't happen. Sometimes they're made worse by the things
15 we do and the choices we make like cocaine and alcohol,
16 things we choose to do.

17 The question becomes does Mick Winkler need to die for
18 what he did, for what you have found him guilty of. That's
19 the real question, does he need to die. I don't think that
20 any of us would disagree that he wouldn't need to die even
21 if everything were true about what Carla said. Let's
22 assume that everything was true. Would any of us say that
23 he should die for that? Probably not. If everything that
24 Denise said was true that happened to her, would any of us
25 say that he deserved to die for that? And even if all the

1 things they said was true in October, would he deserve to
2 die for that?

3 The problem with the death penalty, the problem with
4 death is it's final. There's no tomorrow. There's no
5 second guessing. When it's done, it's done. It's over.
6 It's through. The end of the story.

7 Now, I think you've had a unique opportunity because
8 you don't have to rely on what I am saying to know that
9 Mick Winkler is ill. You have watched him in this
10 courtroom over the past week and a half, almost two weeks
11 now, and I say to you think about this. If he is here in
12 the condition that he's in today, how must he have been on
13 alcohol and drugs when he was out? Can you imagine?

14 To show you how his thinking is not right, his
15 thinking is inappropriate, and I tell you that from his
16 testimony on the witness stand. I tell you that from his
17 standing before you here today. I don't even know if you
18 remember when the solicitor made his argument, when the
19 solicitor was making a point about some bullets and he said
20 oh, well, you know, and he was being sarcastic in his
21 argument. He was saying that the bullets, eighteen bullets
22 was found in the pocket of Roger Grainger and that
23 defendant had taken those bullets out, and he was being
24 sarcastic, meaning that the defendant had actually brought
25 the bullets with him. Well, he didn't understand that. He

1 thought that the solicitor was actually saying that he'd
2 taken the bullets out of Roger Grainger's pocket that day,
3 and he got up and talked about it.

4 I point that out to point out to you that his thinking
5 is not like ours. Is that a defense? No. I'm not saying
6 it is. Is it an excuse? No. Not saying it's an excuse,
7 but it is what it is. Not every crime of murder deserves
8 the death penalty.

9 Not every defendant who's accused of murder and even
10 an aggravating circumstance beyond that needs to die. Let
11 me tell you something that I heard him say, and I don't
12 know if you caught it in his testimony. But when he was on
13 the witness stand early on, one of the things he said was I
14 dream about Becky every night. I have these visions about
15 her every night. Well, you know, that may be a good thing
16 if you have a life imprisonment because if he has those
17 visions every night, then he'll have them every night for
18 the rest of his life, however long that might be.

19 Sometimes the death penalty can actually be a way, a
20 cop out, an easy way out. Sometimes it's harder to live
21 with something than it is to die. Thing about dying is you
22 don't have any control over it. Somebody else does it all.
23 But when you wake up every single morning for the rest of
24 your life having to live with whatever it is that you did,
25 that can be sometimes a lot more painful and a lot more

1 difficult and a lot more punishing.

2 Then I say to you that I wish that that at some point
3 somebody somewhere somehow had taken the time -- maybe it
4 should have been one of his brothers, maybe should have
5 been one of his sisters -- to say look, you need some help.
6 It's too late now. We can't do anything about any of it.
7 It's all too late now.

8 We're all taught that we are responsible for our own
9 actions, and rightly so. We should be. But one of the
10 things that I believe is that we all want justice. We all
11 want fairness. But then you ask yourselves what is
12 fairness and what is justice if there's no mercy?

13 Mercy is not earned; by its very definition, it is not
14 earned. None of us earn mercy. It's given from the heart.
15 What, we ask, what distinguishes us from those people who
16 commit murder, from those people who rape, from those
17 people who kill? What distinguishes us? Mercy. That's
18 what distinguishes us from them because if vengeance is the
19 order of the day, if revenge is where we're headed, how are
20 we any different? How are we any different?

21 Mick Winkler is here by his own hand; you have made
22 that determination. And let me say this. I know that in
23 the first phase of this trial and in the second phase I've
24 gotten up. I've cross-examined a lot of people, and I've
25 said things. And I urge you and I beg you if I have said

1 something or if I've done something during the course of
2 this trial which have upset or you think was unfair or you
3 thought was improper, whatever, I ask you not to hold that
4 against Mick Winkler.

5 When we started this process, each of you were
6 examined under oath, and each of you testified that yeah,
7 under the appropriate circumstances I could give the death
8 penalty if I believe that it is warranted. Each of you
9 also testified that you understood that you can give life
10 for any reason or for no particular reason, and that still
11 holds true. Each of you will have to live your
12 convictions, and you will have to vote your convictions.

13 If you recall, and I think that this is a telling
14 thing about Mick Winkler. Remember Ms. Wolfe, the lady who
15 came in from the housing development, [REDACTED] where
16 Mick used to work, and she told you that she volunteered to
17 come. And the question was, well, why? This man's accused
18 and had been convicted of a very horrendous crime. Why
19 would you come? Why would you come in here, and she says
20 because I believe that there is something worth saving in
21 this person. I believe there's something worth saving in
22 this human being, just as one human being to another. She
23 had no personal relationship with him, no personal
24 relationship with his family. No axe to grind with anyone
25 or anything.

1 You heard two psychiatrists, two come to tell you and
2 testify about his illness. Now, the court will read to you
3 both the aggravating circumstances that the state is
4 relying on and the mitigating circumstances that the
5 defense is relying on, and there are seven mitigating
6 circumstances, and the court read them to you. And even if
7 you don't agree with them, you don't have to give him life
8 sentence. And I say give because that's what it is. It's
9 mercy.

10 Now, I want to say to you that I said earlier about
11 the family of Ms. Rebekah, but Mick has a family, too.
12 They didn't have any part in whatever happened. They love
13 him just as Rebekah's family loves her. You know, that's
14 the thing about mothers especially. No matter what you do,
15 no matter what you're accused of, they're going to love you
16 anyway. They may not agree with what you've done, but they
17 love you. And it hurts and it's painful to lose a child,
18 whether the child is executed or whether the child is
19 murdered. It's no less painful. Doesn't hurt any less.

20 It is times like these that being a lawyer is the most
21 difficult because I don't know the exact words to say. I
22 know what's in my heart. I know what the evidence and
23 testimony has been, but it's a tough place to stand.
24 Probably the only tougher place is where you sit.

25 I have carried this, as I told you in the opening

1 statements, for a year and half, almost two years now, and
2 I have to turn it over to you and it will become your
3 responsibility to carry it from this point. Mick's life
4 will be in your hands to do with as you see fit. The only
5 thing that I ask you. You have done justice. I ask you
6 now to show mercy. Thank you.

7 THE COURT: All right. Now, ladies and gentlemen,
8 what I wish to do is to go in there and take a minute, and
9 then we'll proceed to closing, my instructions. I want to
10 have this case in your hands by 1. So, please step to the
11 jury room, refresh yourself for a minute. We will bring
12 you back out. Be sitting in your chairs at twenty minutes
13 till, so be ready then.

14 Please step to the jury room. Do not discuss the case
15 yet.

16 (THE JURY EXITS AT 12:28 P.M.)

17 THE COURT: Wanted to note one thing, if I could, and
18 -- when I charge. In the -- y'all be seated. In the last
19 paragraph of the recommended *Grippon* charge, it also says:

20 Now I further charge you the evidence required in
21 the crime and misconduct by the defendant should
22 not be considered and may be -- not be used as
23 proof of any statutory aggravating circumstances
24 about which I will instruct you shortly.

25 Obviously the state does wish for the jury to consider

1 the incident in October of '05 as evidence of the statutory
2 aggravating circumstance because it is that crime they
3 allege he committed that he says is the reason, one of the
4 reasons he killed the victim. So, I propose to put:

5 Now I further charge you that evidence of prior
6 crimes or misconduct not related to the October
7 10, 2005, incident or the March 6, 2006, incident
8 by the defendant should not be considered and may
9 not be used as proof of any statutory aggravating
10 circumstances about which I will instruct you
11 shortly.

12 Now, the next sentence is:

13 However, you may consider such evidence as to the
14 -- only as to the defendant's character, his
15 characteristics, but not as proof of the alleged
16 statutory aggravating circumstance.

17 Any objection to that inclusion to conforming to this
18 case?

19 MR. HEMBREE: No, Your Honor. That's very appropriate
20 under the particular facts of this case.

21 MR. WILSON: The only concern I have, Judge, and I, I
22 guess it's my -- I probably should say yes, I do have an
23 objection. My concern is when -- singling out the October
24 incident by name I think is ---

25 THE COURT: What I'm trying to do, Mr. Wilson, really

1 is in benefit to your client. If I would have just said
2 you -- prior crimes and misconduct, you want me not to say
3 it at all?

4 MR. WILSON: No, sir. I, I want you to say it. I
5 mean, I want you to say it. I just, I, I think I'm more
6 concerned about how you say than I am about your saying it.

7 THE COURT: You want to come up with some way of doing
8 it in the next couple of minutes, let me know.

9 MR. WILSON: All right, sir.

10 THE COURT: I was just doing that trying to -- because
11 the state's position is that the aggravating circumstance
12 number two is that the victim was killed because she was a
13 material, important witness to a crime that occurred in
14 October of '05.

15 MR. WILSON: That's correct.

16 THE COURT: So, therefore, allegations of the October
17 of '05 evidence of that is evidence that they intend to
18 show as to proof of their statutory aggravating
19 circumstance number two.

20 MR. WILSON: Yes, sir. I understand.

21 THE COURT: So, and so anyway, I just want to ---

22 MR. WILSON: Well, I will, I will try to see if I can
23 find a way to restate it. It's just, the reference to the
24 '05 incident is, is my concern.

25 THE COURT: Now, I didn't say that he did it.

1 MR. WILSON: No, sir, I understand.

2 THE COURT: I said to the incident.

3 MR. WILSON: Yes, sir. Yes, sir.

4 THE COURT: All right. Everyone, now, when I start
5 the charge, no one can come in or go out. If you wish to
6 hear it, be back in ten minutes.

7 (OFF THE RECORD.)

8 THE COURT: Be seated, everyone. Okay, I'm ready.
9 Have y'all seen the closing instructions?

10 MR. WILSON: Yes, Your Honor.

11 MR. HEMBREE: Yes, Your Honor.

12 THE COURT: Everybody ready? Are there any objections
13 I'm giving to the court? The state?

14 MR. HEMBREE: None from the state, Your Honor.

15 THE COURT: Defense?

16 MR. WILSON: None.

17 THE COURT: All right, giving y'all copies to follow
18 along. By the way, also y'all have copies of my
19 instructions. Then, therefore, look at the page that
20 begins at number 3 where it says: Life means life without
21 parole. I'm going to say: It means life in prison until
22 the death of the offender. So, add that in.

23 MR. HUMPHRIES: Thank you, Your Honor.

24 MR. WILSON: Yes, sir.

25 THE COURT: And I'm going to add at the end of the

1 last paragraph, *State vs. Grippon*, I'm going to add:

2 However, you may consider all conduct of the
3 defendant that relates ---

4 Not however. Moreover.

5 Moreover, you may consider all conduct of the
6 defendant that relates to the alleged aggravating
7 circumstances.

8 That will go after the sentence that began with
9 however.

10 Here we go. Bring them in.

11 (THE JURY ENTERS AT 12:52 P.M.)

12 THE COURT: Okay, ladies and gentlemen of the jury, I
13 will now begin my final instructions to you and my charge
14 on the law. In addition, Mr. Foreman, I will be handing
15 you some documents shortly that -- copies of document of
16 the originals that you will have in the jury room that will
17 go over the various forms you'll have there, statute and
18 instructions.

19 What I'm going to be telling you today, I may have to
20 read some of it, and some of it will be a repeat of what I
21 mentioned to you a couple of days ago. Please know,
22 though, I must do that. A couple of days ago I tried not
23 to read very much, but I want to make sure I don't leave
24 anything out here, so I will be reading some things. I
25 will try to keep it as clear as possible, but you continue

1 to pay listen and attention.

2 Mr. Foreman and members of the jury, you've heard the
3 testimony and the evidence and arguments of the state and
4 the defendant. I will now explain to you the law that
5 applies in this case.

6 Under the Constitution and laws of the State of South
7 Carolina, you're the finders of facts in this case. I do
8 not have a right to pass upon the facts or even express an
9 opinion that I may have as to them. You're also the
10 judges, the sole judges of the credibility, the
11 believability of the witnesses who have testified and the
12 evidence that's been submitted in this case in passing upon
13 their credibility. You may take in consideration many
14 things such as the demeanor or manner of testifying,
15 whether the witness had a reason to be biased or
16 prejudiced, whether a witness's testimony contradicted on
17 the one hand or supported and corroborated on the other.

18 You certainly do not determine this credibility or
19 believability by counting the number of witnesses on either
20 side. You may believe a small portion of a witness's
21 testimony and disregard the larger or vice versa. You may
22 believe one witness against many or many against one. All
23 these things you will consider, bearing in mind that the
24 defendant is to be given the benefit of every reasonable
25 doubt.

1 I want to mention to you expert witness again. The
2 rules of evidence ordinarily do not permit witnesses to
3 testify as to their opinion or conclusions. An exception,
4 however, to this rule does exist as those whom we call
5 expert witnesses. Expert witnesses are witnesses who by
6 education and experience have become expert in some art,
7 some science, profession, or calling. These witnesses may
8 state their opinion as to the relevant, and as to relevant
9 material matter in which they profess to be an expert.
10 They may also state their reasons for that opinion. You
11 should consider expert opinion received in evidence in this
12 case and give it such weight as you may think it deserves.

13 If you should decide that the opinion of an expert
14 witness is not based on sufficient education or experience,
15 or if you have -- or should conclude that the reasons given
16 in support of the opinion are not sound, or if you feel it
17 is outweighed by the other evidence, you may disregard the
18 testimony or opinion entirely.

19 As I told you, you're the sole finders of the fact.
20 By the same Constitution, I am the instructor of the law.
21 I am, I am the sole and only instructor in the law. You
22 must accept as correct the knowledge which I charge, and
23 apply it to the evidence as you find it and reach your
24 verdict.

25 And finally, I charge you in this regard that you, or

1 for that matter I, we should not be concerned about what we
2 think the law ought to be but rather I charge you what the
3 law is.

4 There are two types of evidence, as I told you earlier
5 in my former charge, which you may consider in a trial, as
6 in this trial, too: direct evidence and circumstantial
7 evidence. Direct evidence is the testimony of a person who
8 asserts or claims actual knowledge of a fact, such as an
9 eyewitness. Circumstantial evidence is proof of a chain of
10 facts and circumstances indicating the existence of a fact.
11 The law makes absolutely no distinction between the weight
12 or the value to be given by the direct or circumstantial
13 evidence. Nor is there a greater degree of certainty
14 required of circumstantial evidence than of direct
15 evidence. You weigh all the evidence in the case.

16 After weighing all the evidence, the aggravating
17 circumstances, if you're not convinced of the guilt of
18 aggravating, aggravating circumstance of the defendant
19 beyond a reasonable doubt, then the law would require that
20 you sentence the defendant to life imprisonment. However,
21 if you to do find beyond a reasonable doubt that the
22 defendant committed an aggravating circumstance, you may
23 consider whether the sentence of death should be imposed.

24 Now, I further charge you that evidence of prior
25 crimes or misconduct by the defendant should not be

1 considered and may not be used as proof of any statutory
2 aggravating circumstances, of which I will instruct you
3 shortly. However, you may consider such evidence only the
4 as to defendant's character, his characteristics, but not
5 as proof of the alleged statutory aggravating
6 circumstances. Moreover, you may consider, though, all
7 conduct of the defendant that relates to the alleged
8 aggravating circumstance.

9 Mr. Foreperson, members of the jury, it now becomes
10 your duty to decide what sentence you will, you will
11 recommend that this court impose upon the defendant, Louis
12 Michael Winkler. There are two verdicts you are to
13 consider in this case. One is the death penalty, which is
14 in this state by electrocution or by lethal injection, and
15 the other is life imprisonment.

16 I tell you now that life means life without parole; it
17 means life in prison until the death of the offender.
18 Please understand your sentencing recommendation will be
19 followed by this court.

20 The order in which I explain these two sentences is in
21 no way a recommendation by this court as to which sentence
22 you should choose to recommend. It is simply that one must
23 be stated first.

24 The death penalty. By this recommendation, a sentence
25 -- and I have these forms here which I will go over with

1 you, but, but I'll show them to you in second. But the
2 recommendation of the sentence of death, that form which I
3 hold before me now, the jury may recommend that this court
4 sentence the defendant to death. Please observe that
5 immediately below the body of the recommendation, there are
6 twelve lines. This is where should you decide to recommend
7 the death penalty, each one of you would sign your name.
8 It is the law in this state, Mr. Foreman and members of the
9 jury, that a recommendation for the imposition of the death
10 penalty be unanimous recommendation, and that each and
11 every juror sign on his or her name to the recommendation
12 form. I will now read you the rest of the form:

13 We the jury in the above-entitled case, having
14 found beyond a reasonable doubt the existence of
15 the following statutory aggravating circumstances
16 or circumstances, to wit ---

17 And at this point you then, there you provide, you
18 must write down what circumstances you find. I'll instruct
19 you further on that:

20 Now recommend, now recommend to the court that
21 the defendant, Louis Michael Winkler, be
22 sentenced to death.

23 Now, for this recommendation to be made, ladies and
24 gentlemen -- that is, that the defendant be sentenced to
25 death -- you must first find statutory aggravating

1 circumstance existed beyond a reasonable doubt. What is a
2 statutory aggravating circumstance? It is a fact, an
3 incident, or a detail or occurrence which the South
4 Carolina legislature has declared by statute would make
5 worse -- that is, aggravate the offense of murder when the
6 two occur together. In other words, it's something which
7 increases the enormity or adds to the injurious
8 consequences of the offense.

9 I'll have a form for you that says also that -- and
10 that sheet of paper, you will have that sheet of paper in
11 your jury room. The body of the form states in determining
12 whether to recommend the defendant, Louis Michael Winkler,
13 be sentenced by the court to life imprisonment or to death,
14 you may consider the following statutory aggravating
15 circumstances.

16 The two that the state alleges, according to what's in
17 our code of laws -- there's several. The state has picked
18 out two. One, that the murder was committed while in the
19 commission of a burglary in any degree. And/or two, that
20 the murder of a witness or potential witness committed at
21 any time during the criminal process for the purpose of
22 impeding or deterring of any crime.

23 Let me emphasize to you that these are the only
24 circumstances you may consider as aggravating
25 circumstances. Should you find -- and it must be a

1 unanimous finding -- that it is a finding of each and every
2 one you, should you find that the state has proven beyond a
3 reasonable doubt the existence of one or more of the
4 circumstances listed on the sheet of paper, then you would
5 be authorized, which is to say permitted, to consenting to
6 recommend, recommending to this court that the defendant be
7 sentenced to death.

8 What do I mean by the term proven beyond a reasonable
9 doubt? I explained that to you earlier. Our courts have
10 decided a reasonable doubt is the kind of doubt that would
11 cause a reasonable person to hesitate to act. Also
12 explained to you further that the court, the courts have to
13 also stated that, that you're not required to prove
14 something beyond every possible doubt but beyond a
15 reasonable doubt.

16 Now, please pay, pay particular attention to this.
17 You're never required to recommend the death penalty, even
18 if you find that the statutory aggravating circumstances
19 existed at the time the offense occurred. However, if you
20 do find beyond a reasonable doubt that one or both of the
21 aggravating circumstances exist, you would list those
22 circumstances on the form entitled Aggravating
23 Circumstances, and all twelve jurors would sign that form.
24 By doing that, you would find that the state has proven an
25 aggravating circumstance, one or two.

1 I instruct you further that should you find the state
2 has not proven that such a circumstance existed -- that is
3 to say you find you still have a reasonable doubt as to the
4 existence of one of those circumstances -- then you are not
5 authorized to recommend the death penalty, and your
6 recommendation must be life imprisonment.

7 So, therefore, to recommend the death sentence, you
8 must determine if there were aggravating circumstances
9 proven beyond a reasonable doubt. So, should you find
10 beyond a reasonable doubt that one or more of the
11 aggravating circumstances listed on the sheet of paper
12 entitled the Statutory Instructions existed at the time of
13 the murder, and should you then decide after considering
14 the elements in favor of recommendation of life
15 imprisonment, about which I will instruct you later, that
16 the recommendation of the jury is to be that the defendant
17 be sentenced to death, then it'd be your duty, Mr. Foreman,
18 to write on the recommendation of the sentence form the
19 statutory aggravating circumstances or circumstances which
20 you have found. Then you and each and every juror should
21 sign your name in the place provided for that. And I'll
22 show that to you in a second.

23 The next form -- and once again, no preference in the
24 way I go with them -- is if you decide to recommend,
25 recommendation of life imprisonment. I will now read you