

VOL I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

Michael G. Nettles, Circuit Court Judge

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S.C. Supreme Court

CARMICHAEL FLOWERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000926

APPENDIX

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT (dated July 20, 2009)	1
APPLICATION FOR POST-CONVICTION RELIEF	530
RETURN	547
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated February 10, 2014).....	552
PLAINTIFF'S EXHIBIT# 1 (CLAIM ESTIMATE).....	652
PLAINTIFF'S EXHIBIT# 2 (INSURED'S STATEMENT OF CLAIM)	657
STATE'S EXHIBIT# 1 (COURT ORDER).....	667
COURT'S EXHIBIT#1 (PHOTOGRAPHS)	671
ORDER OF DISMISSAL	721
COURT OF APPEALS OPINION	730
INDICTMENT AND SENTENCE SHEETS.....	732

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

v.)

CARMICHAEL T. FLOWERS)

DEFENDANT.)

TRANSCRIPT OF RECORD
09-GS-21-126
July 20, 2009
Florence, South Carolina

BEFORE:

THE HONORABLE RALPH KING ANDERSON, JR., JUDGE;
AND JURY

APPEARANCES:

PATRICIA SINGLETON PARR, ESQ.
Assistant Solicitor

SCOTT P. FLOYD, ESQ.
Assistant Public Defender

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

INDEX

	Page
Jury qualifications	5
Preliminary remarks by the court	28
Motion to relieve counsel	40
Jackson v. Denno hearing:	
Timothy Compton	62
Felicia Watson Cox	80
Janel Namias:	
Direct examination by Ms. Parr	99
Cross-examination by Mr. Floyd	147
Redirect examination by Ms. Parr	173
Ana Andonie:	
Direct examination by Ms. Parr	182
Cross-examination by Mr. Floyd	194
Jimmy Lee Cantey:	
Direct examination by Ms. Parr	197
Cross-examination by Mr. Floyd	205
Samantha Baumbauch:	
Direct examination by Ms. Parr	207
Cross-examination by Mr. Floyd	225
Bobbie Jean Montgomery:	
Direct examination by Ms. Parr	227
Cross-examination by Mr. Floyd	233
Redirect examination by Ms. Parr	236
Fetisha Montgomery:	
Direct examination by Ms. Parr	237
Cross-examination by Mr. Floyd	245
Corbett Byrd:	
Direct examination by Ms. Parr	247
Daniel Namias:	
Direct Examination by Ms. Parr	254
Cross-examination by Mr. Floyd	259
Redirect examination by Ms. Parr	261
Heather Gainey:	
Direct examination by Ms. Parr	261
Timothy Compton:	
Direct examination by Ms. Parr	270
Cross-examination by Mr. Floyd	283
Scott Williamson:	
Direct examination by Ms. Parr	287
Cross-examination by Mr. Floyd	291
Felicia Watson Cox:	
Direct examination by Ms. Parr	294
Cross-examination by Mr. Floyd	315

1	Thomas "Bo" Meyers:	
	Direct examination by Ms. Parr	325
2	Michael Christopher Brandt:	
	Direct examination by Ms. Parr	343
3	Doris Yarborough:	
	Direct examination by Ms. Parr	348
4	Patricia Crooks:	
	Direct examination by Ms. Parr	352
5	Sheree Brown:	
	Direct examination by Mr. Parr	354
6	Jennifer Clayton:	
	Direct examination by Mr. Parr	357
7	Directed verdict motion	
	Rights of defendant	372, 385
8	Jason Catrell Jacobs:	
	Direct examination by Mr. Floyd	375
9	Cross-examination by Ms. Parr	381
	Redirect examination by Mr. Floyd	384
10	Carmichael Flowers:	
	Direct examination by Mr. Floyd	393
11	Cross-examination by Ms. Parr	417
	John Lockhart:	
12	Direct examination by Ms. Parr	444
	Closing argument by Ms. Parr	458
13	Closing argument by Mr. Floyd	463
	Reply argument by Ms. Parr	470
14	Jury Charge	481
	Notes by the jury	501
15	Verdict	511
	Post-trial motions	512
16	Sentencing of defendant	526

17

18

19

20

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22

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EXHIBITS**STATE'S:**

No.	Description	I.D./EVD.
1	Miranda warning	5/98
2	Waiver of rights form 10/10/08	5/99
3	Waiver of rights form 10/14/08	5/99
4A-D	Photos of Janel Namias	5/27
5	Audio CD of messages	5/27
6A-C	Photos of house	5/27
7A-D	Photos of back door	5/27
8A-D	Photos of kitchen	5/27
9	Photo of dining room	5/27
10A-B	Photos of master bedroom	5/27
11A-C	Photos of half bath	5/27
12A-C	Photos of office	5/27
13A-B	Photos of full bath	5/27
14A-F	Photos of living room	5/27
15A-E	Photos of storage unit	5/27
16A-F	Photos of exterior of truck	5/27
17A-M	Photos of interior of truck	5/27
18A-I	Photos of gun	5/27
19A-D	Smith & Wesson handgun, bag, bullets, box	5/337
20	Tax statement	5/27
21	Certified copy of deed	5/27
22	Insured statement	5/129
23	Ramsey adjustment estimate	5/252
24A-B	Buccal swabs	5/362

COURT'S:

1	Note from jury (insurance)	505
2	Note from jury (value of property)	506
3	Note from jury (kidnapping)	509
4	Note from jury (CDV charge)	510

1 (WHEREUPON, State Exhibits Nos. 1 through 24 were marked for
2 identification only.)

3 THE COURT: All right, Ms. Parr, you represent the
4 State?

5 MS. PARR: That's correct, Your Honor.

6 THE COURT: Would you call the case for disposition.

7 MS. PARR: Yes, Your Honor. Your Honor, may we
8 approach? I need to add somebody else to the witness list.

9 THE COURT: Sure, yes. Ms. Solicitor, you're
10 recognized. Would you call it please.

11 MS. PARR: Your Honor, at this time the State would
12 call Carmichael Flowers. It's indictment 2009-GS-21-126.

13 THE COURT: And let's see, where is the original
14 indictment please. Thank you. Mr. Floyd, you ready to
15 proceed?

16 MR. FLOYD: I am, Your Honor.

17 THE COURT: Okay. Mr. Bailiff, get the back door. No
18 one coming in, period, and no one going out.

19 Ms. Solicitor, I have one page okay. Here is the
20 other page. The paper that I hold in my hand, jurors,
21 contains four pending charges. The paper is not evidence.
22 It does not prove anything in the case. It is certainly the
23 charging paper bringing the matter for court action. The
24 pending charges are: Count one, malicious injury to real
25 property; count two, malicious injury to personal property;

1 count three, criminal domestic violence high and aggravated
2 nature; and count four, kidnapping. The defendant is
3 Carmichael Trevon Flowers.

4 Mr. Flowers, would you stand, face the jury panel
5 please.

6 Is there any member of the jury panel who is related
7 by blood or connected by marriage to the defendant
8 Carmichael Trevon Flowers? If so, please stand.

9 (There was no response.)

10 THE COURT: Is there any member of the jury panel who
11 has any direct or indirect connection of any nature
12 whatsoever with the defendant Carmichael Trevon Flowers? If
13 so, please stand.

14 (There was no response.)

15 THE COURT: Thank you, sir. Please be seated.

16 Witnesses for the State, I will identify them. If I
17 call your name and you're in the courtroom please stand and
18 remain standing until I posit the query. Please remain
19 standing. Felicia Cox, Jim Cantey, Sergeant Tim Compton,
20 Sergeant M. Brandt, Bo Meyers, Jennifer Clayton, Doris
21 Yarborough, Sheree Brown, Patricia Crooks, Janel Namias,
22 Brantley Adams, Doctor Stephen Skipper, Corbett E. Byrd,
23 Fetisha Montgomery, Daniel Namias, Heather Gainey, Ana
24 Andonie, Samantha Baumbauch, Bobbie Montgomery, Scott
25 Williamson. Is there any member of the jury panel or any

1 member of your immediate family who is related by blood or
2 connected by marriage to any of these prospective witnesses?
3 If so, please stand.

4 (There was no response.)

5 THE COURT: Is there any member of the jury panel who
6 has any direct or indirect connection of any nature
7 whatsoever with any of these witnesses? If so, please
8 stand.

9 Your name and number please.

10 PROSPECTIVE JUROR: Ana Conner, Number 32.

11 THE COURT: 32, yes, ma'am.

12 What is the connection please?

13 THE POTENTIAL JUROR: The children of Ms. Cox are in a
14 day care school that I work at.

15 THE COURT: Is that in place now?

16 THE POTENTIAL JUROR: Yes, sir.

17 THE COURT: I'm sorry, I can't hear.

18 THE POTENTIAL JUROR: Yes, sir.

19 THE COURT: And the children are in your care and
20 custody?

21 THE POTENTIAL JUROR: Not my custody, they go to the
22 school where I work.

23 THE COURT: I understand, okay. In regard to that
24 relationship are you able to say to the Court that you can
25 and will give both the State and the Defendant a fair and

1 impartial trial?

2 THE POTENTIAL JUROR: Yes, sir.

3 THE COURT: Will you do that?

4 THE POTENTIAL JUROR: Yes, sir.

5 THE COURT: Thank you. Please be seated.

6 Anyone else? Anyone else?

7 (There was no response.)

8 THE COURT: Thank you, please be seated.

9 The doctor is identified as Doctor Steven Skipper. Is
10 there any member of the jury panel, any member of your
11 immediate family who is now a patient of this physician or
12 who has in the past been a patient of Doctor Steven Skipper?
13 If so, please stand.

14 (There was no response.)

15 THE COURT: Witnesses for Defense, Julius Smith. In
16 the courtroom, please stand. Nat Mitchell, Jason Jacobs,
17 Starling Burgess, Joe Burgess, Leroy Brown. Is there any
18 member of the jury panel who is related by blood or
19 connected by marriage to any of these witnesses? If so,
20 please stand.

21 (There was no response.)

22 THE COURT: Is there any member of the jury panel who
23 has any direct or indirect connection with any of these
24 witnesses? If so, please stand.

25 (There was no response.)

8 (There was no response.)

12 (There was no response.)

16 Yes, your name and number please.

19 THE COURT: Hold it one second.

21 THE COURT: 84 is the number. Yes, Ms. May.

24 THE COURT: Yes, it does.

25 THE POTENTIAL JUROR: I have on record here at the

1 court a divorce case docket on physical and mental and ask
2 to disqualify myself for this particular case.

3 THE COURT: All right. That will be done. Have a
4 seat. Please mark that, Ms. Court Reporter and Ms. Clerk.
5 She will be excused in this case only, this case only she's
6 excused. Anyone else?

7 Thank you for responding. Thank you very much for
8 responding.

9 Anyone else? Yes, name and number please.

10 THE POTENTIAL JUROR: Willa Washington, 142.

11 THE COURT: 142, yes, Ms. Washington.

12 PROSPECTIVE JUROR: I just ask ---

13 THE COURT: I can't hear you.

14 PROSPECTIVE JUROR: My divorce was based on physical
15 cruelty and I just needed to know do I need to have myself
16 excused from this case.

17 THE COURT: Well, take a deep breath. Take a deep
18 breath. And I now present this to you: As a matter of
19 conscience, can you give both the State and the Defendant a
20 fair and impartial trial, yes or no?

21 THE POTENTIAL JUROR: Yes, sir.

22 THE COURT: Yes?

23 THE POTENTIAL JUROR: Yes, sir.

24 THE COURT: You'll do that?

25 THE POTENTIAL JUROR: Yes, sir.

1 THE COURT: Thank you. Thank you for responding.

2 Anyone else please?

3 (There was no response.)

4 THE COURT: Anyone else?

5 (There was no response.)

6 THE COURT: Is there any member of the jury panel or
7 any member of your immediate family who has been the victim
8 of a crime that involves injury to a person of any nature
9 whatsoever, if so, please stand now. I've already had some
10 response. Anyone else?

11 Your name and number?

12 THE POTENTIAL JUROR: I don't know my number but my
13 name is Avonelle Jackson.

14 THE COURT: Hold it one second.

15 THE DEPUTY CLERK OF COURT: 61.

16 THE COURT: 61. Yes, ma'am.

17 THE POTENTIAL JUROR: My son, he did a crime to
18 someone in...

19 THE COURT: In -- is it pending now or is it over?

20 THE POTENTIAL JUROR: Well, he's still on -- he's on
21 probation for it now.

22 THE COURT: In that regard, can you give both the
23 State and the Defendant a fair and impartial trial?

24 THE POTENTIAL JUROR: Yes.

25 THE COURT: Ma'am?

1 THE POTENTIAL JUROR: Yes.
2 THE COURT: You will do that in this case?
3 PROSPECTIVE JUROR: Uh-huh.
4 THE COURT: Ma'am?
5 THE POTENTIAL JUROR: Yes, sir.
6 THE COURT: Please be seated.
7 Your name and number please.
8 THE POTENTIAL JUROR: Natosha Frye, 46.
9 THE COURT: 46.
10 PROSPECTIVE JUROR: I've had personal injury done
11 against me. I was raped three times.
12 THE COURT: Are you able to give both the State and
13 the Defendant a fair and impartial?
14 PROSPECTIVE JUROR: Yes, sir.
15 THE COURT: You will do that?
16 PROSPECTIVE JUROR: Uh-huh.
17 THE COURT: Thank you. Anyone else?
18 (There was no response.)
19 THE COURT: Anyone else? Please, anyone else?
20 (There was no response.)
21 THE COURT: Any further voir dire requested by the
22 State?
23 MS. PARR: State doesn't have any, Your Honor.
24 THE COURT: Any further voir dire asked by the
25 Defendant?

1 MR. FLOYD: Nothing further, Your Honor.

2 THE COURT: Thank you. All right, Counsel, the
3 peremptory challenges are five and five. Five and five. I
4 am compelled by -- I am compelled by 14-7-1110, to rule that
5 the peremptory challenges are five and five. This is one of
6 these pending charges that I think should have been listed,
7 but the general assembly did not so that's just the way it
8 goes. 14-7-1110 is efficacious and it's five and five.
9 Now, here is the part that's changed, Counsel. In the past
10 we had used the rollover box with names in it. And after
11 rolling the box several times the clerk would pull from the
12 box one by one. Now under the CMS system ordained by the
13 Chief Justice of the State Supreme Court we will do it by
14 computer. And Ms. Clerk, as I understand it, the computer
15 is ready to go?

16 THE DEPUTY CLERK OF COURT: We think so.

17 THE COURT: Everybody pray. What I'm gonna do,
18 counsel is, listen to me now. Listen to me. There is some
19 disagreement among circuit judges -- and I know that
20 surprises you -- but there's some disagreement among circuit
21 judges as to exactly how we will do this. What I'm gonna do
22 is, I'm going to turn the system over to the clerk and she
23 will turn the computer on and I'm going to draw 40 names, 40
24 names. I then, in disputation to some circuit judges who do
25 not give you the list, I'm going to give you the list and

1 we're going to go down that list seriatim, one by one. And
2 so, Ms. Clerk, pump up the computer.

3 Counsel, it's my intent now once the computer gets a
4 list, is to once again go down the list. And after you've
5 had a moment or two to take a look at the list right there
6 at the table, we will begin the process of calling the
7 jurors forward just as we've done in days gone by which has
8 been approved by the United States Supreme Court based on at
9 least three cases that I tried that went to Washington. So
10 are we ready? Have we got the list?

11 THE DEPUTY CLERK OF COURT: Yes, sir.

12 THE COURT: May I have a copy. Thank you. Please
13 deliver the lawyers a copy.

14 Counsel, I am concerned about the confidentiality of
15 this procedure since I have given you the list. Use it and
16 utilize it in the drawing here, but it is not to be
17 disseminated in terms of any other entity beyond this
18 courtroom. Just simply this is one of those things that
19 does not need to be publicized because of the integrity of
20 the system and the confidentiality of the system.

21 MR CLEMENTS: Your Honor, I submit perhaps once we
22 draw the jury we pass our sheet up to you, that way we're
23 done with it.

24 THE COURT: I will accept that.

25 MR. FLOYD: I have no objection to that, Your Honor.

1 **THE COURT:** Okay, I'll become the custodian. Jurors,
2 how do we draw the jury? Here in the general sessions
3 court, which is criminal court, it's done differently than
4 in the civil court. If you've served on the civil court
5 jury it's called common pleas. We use a list procedure
6 there that's different from this where we put 20 names on a
7 list and we give it to the lawyers and then they strike
8 alternately leaving only 12. Here we do it one by one, and
9 we call you forward and ask you to stand in front of the
10 microphone here and we ask the State their desire. They
11 have the right to excuse you or to accept you. If they
12 excuse you please return to your seat. If the State accepts
13 you, we then go to Defense. Defense has the right to excuse
14 you or to accept you. If Defense excuses you please return
15 to your seat. If the Defense seats you, you've then been
16 accepted by both sides and have a seat in the jury box to my
17 right. Now in regard to that procedure, it's not done to
18 embarrass anyone. It's simply a public identification
19 procedure that I think is mandated by the constitution.
20 Historically in this state we've drawn the juries in general
21 sessions by that methodology. Don't be embarrassed if you
22 get excused. Don't go home and fret about the fact if you
23 are excused. Don't let it upset you; don't let it worry
24 you. They have some reasons in regard to exercising these
25 challenges. You might not have enough hair to suit them or

1 something like that. Just understand, folk, this is the way
2 the system works.

3 All right, Ms. Clerk, are you ready?

4 THE DEPUTY CLERK OF COURT: Oh, I guess.

5 THE COURT: The State ready?

6 MS. PARR: Yes, Your Honor.

7 THE COURT: Defense ready?

8 MR. FLOYD: Yes, Your Honor.

9 THE COURT: All right, here we go.

10 DEPUTY CLERK OF COURT: Jurors, as I call your name
11 please come to the center of the courtroom. Come to the
12 microphone and face the back of the courtroom.

13 86, William McAllister (white male). What say the
14 State?

15 MS. PARR: Please excuse Mr. McAllister from this
16 trial.

17 THE DEPUTY CLERK OF COURT: You've been excused from
18 this trial only. You may return to your seat.

19 121, Rhonda Ross (white female). What say the State?

20 MS. PARR: Please present Ms. Ross.

21 DEPUTY CLERK OF COURT: What say Defendant?

22 MR. FLOYD: Please excuse Ms. Ross for the purpose of
23 this trial.

24 DEPUTY CLERK OF COURT: You've been excused for this
25 trial only.

1 -10, Decima Benbow (black female). What say the State?
2 MS. PARR: Please present Ms. Benbow.
3 DEPUTY CLERK OF COURT: What say Defendant?
4 MR. FLOYD: Please swear the juror.
5 DEPUTY CLERK OF COURT: Please have a seat in the jury
6 box, ma'am.
7 133; Houston Stephens (white male). What say the
8 State?
9 MS. PARR: Please present Mr. Stephens.
10 DEPUTY CLERK OF COURT: What say the Defendant?
11 MR. FLOYD: Please swear the juror.
12 THE DEPUTY CLERK OF COURT: Please have a seat in the
13 jury box.
14 65, Brooke Jones (black female). What say the State?
15 MS. PARR: Please present Ms. Jones.
16 THE DEPUTY CLERK OF COURT: What say Defendant?
17 MR. FLOYD: Please swear Ms. Jones.
18 THE DEPUTY CLERK OF COURT: Please have a seat in the
19 jury box.
20 16, Daniel Brackett (white male). What say the State?
21 MS. PARR: Please present Mr. Brackett.
22 DEPUTY CLERK OF COURT: What say Defendant?
23 MR. FLOYD: Please excuse the juror for the purpose of
24 this trial.
25 DEPUTY CLERK OF COURT: You've been excused for this

1 trial only, sir. You may return to your seat.

2 46, Natosha Frye (white female). What say the State?

3 MS. PARR: Please present Ms. Frye.

4 THE DEPUTY CLERK OF COURT: What say Defendant?

5 MR. FLOYD: Please excuse the juror for purpose of

6 this trial.

7 THE DEPUTY CLERK OF COURT: You've been excused for

8 this trial only, ma'am.

9 113, James Robinson (white male). What say the State?

10 MS. PARR: Please present Mr. Robinson.

11 THE DEPUTY CLERK OF COURT: What say Defendant?

12 MR. FLOYD: Please swear Mr. Robinson.

13 DEPUTY CLERK OF COURT: Please have a seat in the jury

14 box.

15 83, Mark Matthews (white male). What say the State?

16 MS. PARR: Excuse Mr. Matthews for this trial only.

17 THE DEPUTY CLERK OF COURT: You've been excused for

18 this trial only, sir. You may return to your seat.

19 41, Rhonda Ellerbe (black female). What say the

20 State?

21 MS. PARR: Please present Ms. Ellerbe.

22 THE DEPUTY CLERK OF COURT: What say Defendant?

23 MR. FLOYD: Please excuse the juror for purposes of

24 this trial.

25 THE DEPUTY CLERK OF COURT: You've been excused for

1 this trial only.

2 67, Gail Jones (white female). What say the State?

3 MS. PARR: Please present Ms. Jones.

4 THE DEPUTY CLERK OF COURT: What say Defendant?

5 MR. FLOYD: Please swear the juror.

6 THE DEPUTY CLERK OF COURT: Please have a seat in the

7 jury box, ma'am.

8 150, Debra Bannister (white female). What say the

9 State?

10 MS. PARR: Please present Ms. Bannister.

11 THE DEPUTY CLERK OF COURT: What say Defendant?

12 MR. FLOYD: Please swear Ms. Bannister.

13 THE DEPUTY CLERK OF COURT: Please have a seat in the

14 jury box.

15 138, Deloris Tindal (black female). What say the

16 State?

17 MS. PARR: Please present Ms. Tindal.

18 THE DEPUTY CLERK OF COURT: What say Defendant?

19 MR. FLOYD: Please swear Ms. Tindal.

20 THE DEPUTY CLERK OF COURT: Please have a seat in the

21 jury box.

22 21, Teresa Brown (black female). What say the State?

23 MS. PARR: Beg the Court's indulgence one moment.

24 THE COURT: Yes.

25 MS. PARR: Excuse Ms. Brown for this trial only.

1 DEPUTY CLERK OF COURT: You've been excused for this
2 trial only. You may return to your seat.

3 151, Laurel Barrett (white female). What say the
4 State?

5 MS. PARR: Please present Ms. Barrett.

6 THE DEPUTY CLERK OF COURT: What say Defendant?

7 MR. FLOYD: Please swear Ms. Barrett.

8 DEPUTY CLERK OF COURT: Please have a seat in the jury
9 box.

10 166, Dean Wright (white male). What say the State?

11 MS. PARR: Please present Mr. Wright.

12 DEPUTY CLERK OF COURT: What say Defendant?

13 MR. FLOYD: Swear Mr. Wright.

14 DEPUTY CLERK OF COURT: Please have a seat in the jury
15 box.

16 154, John Dickinson (white male). What say the State?

17 MS. PARR: Please present Mr. Dickinson.

18 DEPUTY CLERK OF COURT: What say Defendant?

19 MR. FLOYD: Please swear Mr. Dickinson.

20 THE DEPUTY CLERK OF COURT: Please have a seat in the
21 jury box.

22 142, Willa Washington (black female). What say the
23 State?

24 MS. PARR: Please present Ms. Washington.

25 THE DEPUTY CLERK OF COURT: What say Defendant?

1 MR. FLOYD: Please excuse the juror for purpose of
2 this trial.

3 THE DEPUTY CLERK OF COURT: You've been excused for
4 this trial only.

5 43, Jimmy Evans (white male). What say the State?

6 MS. PARR: Please excuse this juror for this trial
7 only.

8 THE DEPUTY CLERK OF COURT: You'll be excused for this
9 trial only.

10 2, Kenneth Anderson (white male). What say the State?

11 DEPUTY CLERK OF COURT: Please present Mr. Anderson.

12 Does Defendant wish to challenge juror for cause?

13 MR. FLOYD: No cause.

14 DEPUTY CLERK OF COURT: Please have a seat in the jury
15 box, sir.

16 158, Adrian Mack Fling (black female). What say the
17 State?

18 MS. PARR: Please present Ms. Mack Fling.

19 DEPUTY CLERK OF COURT: Does the Defendant wish to
20 challenge this juror for cause?

21 MR. FLOYD: No.

22 DEPUTY CLERK OF COURT: Please have a seat in the jury
23 box.

24 THE COURT: Gail Jones, move down to seat number one
25 there and be the foreperson of the jury. Use that seat at

1 all times.

2 THE FORELADY: Right here?

3 THE COURT: Yes. Please sit in that seat as the
4 foreperson.

5 All right, we will have two alternates. We continue
6 to move down the list. Alternate one, one and two on
7 peremptory challenges. One and two under number 20, the
8 statute.

9 DEPUTY CLERK OF COURT: 79, Willie Mae Lightfoot
10 (black female). What say the State?

11 MS. PARR: Please present Ms. Lightfoot.

12 DEPUTY CLERK OF COURT: What say Defendant?

13 MR. FLOYD: Please swear the juror.

14 DEPUTY CLERK OF COURT: Please have a seat in the jury
15 box, ma'am.

16 THE COURT: Ms. Lightfoot, sit there at all times
17 since you're the alternate number one. Please sit there at
18 all times.

19 Go to alternate number two, one and two. One and two.

20 DEPUTY CLERK OF COURT: 9, Heather Barwick (white
21 female). What say the State?

22 MS. PARR: Please excuse Ms. Barwick for this trial
23 only.

24 DEPUTY CLERK OF COURT: You've been excused for this
25 trial only, ma'am.

1 6, Rose Bacote (white female). Does the State wish to
2 challenge this juror for cause?

3 MS. PARR: No.

4 DEPUTY CLERK OF COURT: What say Defendant?

5 MR. FLOYD: Please excuse the juror for purpose of
6 this trial.

7 THE DEPUTY CLERK OF COURT: You've been excused for
8 this trial only.

9 132, Carl Springs (white male). Does the State wish
10 to challenge this juror for cause?

11 MS. PARR: No.

12 THE COURT: What say Defendant?

13 MR. FLOYD: Please swear Mr. Springs.

14 THE DEPUTY CLERK OF COURT: Please have a seat in the
15 jury box.

16 THE COURT: Mr. Springs, sit there at all times.
17 You're number two alternate. Sit in that seat at all times.

18 The rest of you may sit at any location other than
19 those three designated seats.

20 Just give me a yes or no? Batson versus Kentucky?
21 Yes or no for the State?

22 MS. PARR: No, Your Honor.

23 THE COURT: For Defense?

24 MR. FLOYD: None. Your Honor.

25 THE COURT: Wonderful, okay. You jurors briefly go to

1 your jury room and let me take up some short matters with
2 the remaining jurors.

3 (WHEREUPON, the jury was removed from
4 the courtroom at 12:04 p.m., and the following proceedings
5 were had outside the juror's presence.)

6 THE COURT: Counsel, give me your attention please.
7 In order to expedite this case, 1 through 24 for the State
8 are marked for I.D. at this time. May we change the status
9 of some of that marking and put it in evidence with your
10 consent, Mr. Floyd?

11 MR. FLOYD: Your Honor, I'm not sure what the numbers
12 are.

13 THE COURT: Would you come forward. Just -- let's go
14 over them seriatim and then proceed whether there's any
15 objection.

16 MR. FLOYD: Your Honor, exhibits 1 through 3 appear to
17 be Miranda warning cards and waiver of rights form signed by
18 Mr. Flowers. And apparently, it's my understanding that he
19 at least made some sort of statements to some of the
20 officers that have not -- that were not recorded and that
21 they may be testifying to. Of course I don't want to waive
22 any Jackson versus Denno issues by, you know, allowing these
23 into evidence if that would happen but --

24 THE COURT: Well, suppose we just hold those out. I
25 don't want to have any difficulty in regard to the Denno

1 hearing.

2 MR. FLOYD: Exactly.

3 THE COURT: Okay.

4 MR. FLOYD: Your Honor, I've reviewed the photographs
5 which is Exhibits 4-A through 4-D. I don't have an objection
6 to the photograph.

7 THE COURT: All right, hold it. 4-A through 4-D.

8 MR. FLOYD: 4-D.

9 THE COURT: In evidence without objection. Okay.

10 MR. FLOYD: Your Honor, I've been — I was supplied
11 with an audio file which I believe contained 25 voice mail
12 messages that were transferred to a CD and I assume that's
13 what Exhibit 5 is.

14 MS. PARR: That's correct.

15 MR. FLOYD: Okay.

16 THE COURT: 5 is in evidence without objection.

17 All right.

18 MR. FLOYD: And Your Honor, Exhibits 6, 7, 8, 9, 10,
19 11, 12, 13, 14, 15, 16, 17, and 18 are all photographs which
20 I was supplied with and have reviewed. Of course, they are
21 subparts to those exhibits but I have no objections to the
22 photographs themselves.

23 THE COURT: 6 through 18 in evidence without
24 objection. All right.

25 MR. FLOYD: And I was also supplied with records from

1 our county tax assessor or treasurer and clerk of court
2 which consists of a certified copy of a deed and an original
3 tax receipt. I have no objections to that. That would be
4 Exhibit 20 and 21.

5 THE COURT: 20 and 21 in evidence without objection.

6 MR. FLOYD: Exhibits 22 and 23, Your Honor. Your
7 Honor, these are documents that were prepared apparently, I
8 think, for some sort of damage estimate. Your Honor, I
9 would prefer to withhold my objections until people testify
10 concerning those.

11 THE COURT: Yes, sir.

12 MR. FLOYD: Your Honor, I have no objections to
13 Exhibit 24-A which is a buccal swab kit.

14 THE COURT: 24-A?

15 MR. FLOYD: Yes, sir. Your Honor, I'm gonna need to
16 withhold my right to object to 24-B and 19-A, -B, -C, and
17 -D.

18 THE COURT: Withholding objection there?

19 MR. FLOYD: Yes, sir. I would like to reserve my
20 right to object to those.

21 THE COURT: Yes, sir. Okay, that will do it.

22 MR. FLOYD: I think that's it, Your Honor.

23 (WHEREUPON, State Exhibits Nos. 4 through 18, 20, 21 were
24 admitted into evidence.)

25 THE COURT: Okay, all right. All right, Counsel, it's

1 my intent to call the jury out, engage in a short
2 presentation from the Court, and then let you lawyers make
3 the opening statement and then we'll take a lunch hiatus.
4 Is that suitable with the State?

5 MS. PARR: Yes, Your Honor.

6 MR. FLOYD: All right, counsel.

7 MR. FLOYD: That's fine with me, Your Honor.

8 THE COURT: Bring the jury out. Folk, if you're in
9 the audience keep your seat. Keep your seat. Don't let
10 anyone come in, Mr. Bailiff, and no one goes out, leaving
11 that is.

12 THE BAILIFF: Yes, sir.

13 (WHEREUPON, the jury was returned to the courtroom at
14 approximately 12:12 p.m., and the following proceedings
15 commenced in open court.)

16 THE COURT: Ms. Clerk, you're recognized.

17 THE DEPUTY CLERK OF COURT: Members of the jury,
18 please stand, raise your right hand.

19 (WHEREUPON, the jury was sworn at 12:12 p.m.)

20 DEPUTY CLERK OF COURT: Please be seated.

21 THE COURT: Jurors, please turn and face me now and
22 give me your attention. You have been selected as jurors in
23 this case. You know nothing about this case other than the
24 pending charges. Those pending charges are contained in
25 this paper called an indictment. The indictment does not

1 prove anything. It's not evidence in the case. It's simply
2 the charging paper that we use to bring the matter for court
3 action. To all charges the defendant has pled not guilty
4 and that plea of not guilty by the defendant places the
5 burden of proof upon the State to prove the defendant guilty
6 beyond a reasonable doubt, and you must consider each charge
7 separately and distinctly. Each charge is to be considered
8 and evaluated separately and distinctly.

9 I love Latin, and in the law today we use Latin in its
10 pure form to indicate doctrines and legal principles. The
11 word juror comes from Latin. The word juror comes from the
12 Latin word jurat. That word means an oath person. An oath
13 person, a person who has taken a solemn oath. And we are
14 giving you a solemn oath. We did not ask you to stand and
15 raise your right hand to go through the motions; it's not
16 that at all. It's a solemn obligation now thrust upon you
17 to bring your best talents and capabilities to the task of
18 arriving at a verdict, a verdict that is just, fair, and
19 true to the State and a verdict that is just, fair, and true
20 to the Defendant. The word verdict also comes from Latin.
21 It comes from two Latin root words. The first word in Latin
22 is verus; the word means truth. In the old Latin the
23 concept is pure truth. Verus, pure truth. The other word
24 in Latin is dicto. It means to speak. The two words are
25 combined in Latin the word is veredicto. The word verdict

1 means to speak the truth. And when the foreperson announces
2 that you have reached a unanimous verdict that verdict must
3 speak the truth in this case. The verdict must be
4 unanimous. All twelve jurors must freely and voluntarily
5 consent to the verdict. The foreperson is simply the person
6 who will write out the verdict on your behalf, and she will
7 preside as you deliberate. Her vote carries no more weight
8 than yours but she will be in charge of the written document
9 called the verdict form and she will preside as you
10 deliberate the case.

11 Jurors, the defendant is presumed to be innocent under
12 the constitution. That is a vital, important constitutional
13 rule. That constitutional rule says the defendant is
14 presumed to be innocent, and this presumption of innocence
15 remains with the defendant at all times from the moment that
16 we started the trial, and it continues throughout the trial
17 proceeding and goes into your jury room and remains with the
18 defendant there unless and until you, the jury, remove the
19 presumption of innocence by evidence satisfying you of his
20 guilt beyond a reasonable doubt, once again, separately and
21 distinctly considering these charges.

22 Now jurors, your role is to decide the facts. My role
23 is to decide the law. I cannot invade your role as you
24 decide the facts of this case. Conversely, you can't invade
25 the role of the Court. Under the constitution I am given

1 the duty and responsibility to decide the law of the case,
2 and I will make certain trial rulings on matters of evidence
3 in your presence. Please do not derive any inference from
4 any ruling I make in your presence as to any opinion or
5 feeling that I might have on the facts. I do not have an
6 opinion on the facts; but above that, under the constitution
7 I'm not entitled to an opinion on the facts. I am the judge
8 of the law. I will give you a detailed charge on the law
9 before I give you the case for decision. I look forward to
10 trying the case with you. The lawyers are officers of the
11 Court. They will from time to time bring matters to my
12 attention by way of objection. Please understand, the
13 lawyers not only have the right to do this, they have the
14 duty to try the case under the court rules. And as they
15 bring matters to my attention, please understand the lawyers
16 are just simply performing their role as officers of the
17 Court and advocates for these parties. Thank you for your
18 attention. Thank you for your presence.

19 Now there are two rules that govern your conduct.
20 One, from this point forward you can receive no information
21 about this case from any source outside this courtroom. All
22 of the facts are coming from this witness stand. No person
23 outside this courtroom can talk to you about this case,
24 absolutely no person. And you cannot talk to any person
25 about this case under any circumstances. We had a case

1 where a lady went to her minister. Well, you can't do that.
2 You can't talk to any person about the case; that is
3 prohibited. And that means you can't talk to your wife,
4 your husband, your child, your girlfriend, boyfriend, or
5 whatever. You can't talk about this case until I give you
6 the case for decision which will be in this courtroom. So
7 do not talk to anyone about the case. Tell your friends and
8 your family you're on the jury but you're not to talk about
9 the charges or anything about the facts. That goes
10 throughout the trial proceeding. If we take several days to
11 try the case do not talk to any person alive about this
12 case. And the second rule is this, you can't talk among
13 yourselves about the case as we proceed to try this case and
14 take breaks from time to time. For example, you'll be going
15 to lunch shortly. Don't talk to each other about the case.
16 Don't talk about the facts. Do not talk about the law.
17 Don't talk about anything in regard to this case until I
18 charge you the law. And that will be the last thing I do
19 before I give you the case for decision. Talk about
20 weather, sports, politics, gossip or whatever, but don't
21 talk about this case. Now jurors, that's a strict
22 principle. If it occurs, one, it affects the viability of
23 the verdict; and two, you can be held in contempt of court
24 for that. The state Supreme Court is very strict in regard
25 to the conduct of the jurors from this point forward. This

1 is serious business. This is serious business. I couldn't
2 emphasize that more, and I'll say it for the third time.
3 This is serious business. Now please abide by my
4 instructions. I respectfully request and beg you to comply
5 with my instruction because they are mandatory and they
6 relate to the viability of the verdicts. So please help me
7 as we try the case under the constitution and the rules of
8 court.

9 Ms. Solicitor, you're recognized for an opening
10 statement.

11 MS. PARR: May it please the Court, Mr. Floyd.

12 THE COURT: Yes.

13 MS. PARR: Good afternoon, ladies and gentlemen of the
14 jury, today we're here on this case against the defendant
15 Carmichael Flowers. He has been charged on indictments for
16 malicious injury of real property greater than five thousand
17 dollars as well as malicious injury to personal property
18 greater than five thousand dollars, criminal domestic
19 violence of a high and aggravated nature, and kidnapping.
20 The State intends to prove that on or about October 2nd,
21 2008 this is when this incident really started for why we're
22 here today. We intend to show that Janel Namias and the
23 defendant were living together. We also believe -- we also
24 intend to show that the defendant became enraged during this
25 time period. And on this particular evening, October 2nd,

1 2008, that it kind of capped off at that time. We believe
2 the evidence will show that he became to get out of control.
3 We also believe the evidence will show that he became
4 paranoid and thought somebody was coming into the house. We
5 also believe the evidence will show that on this particular
6 evening when he came back he was furious and at that time he
7 assaulted Ms. Namias by grabbing her and pushing her down
8 and starting pulling out the drawers. We also believe the
9 evidence will show that she sustained some bruising to her
10 arm, her biceps.

11 We also believe the evidence will show that he was so
12 enraged at that time that he retrieved a gun and knives and
13 put at — on the bed and would not let her leave. We also
14 believe the evidence will show that he kept her there all
15 night. We believe the evidence will also show that she was
16 finally able to leave that morning when she told him that
17 she had a meeting with the realtor for the house that she
18 intended to sell that they were living in. We also believe
19 the evidence will show that when she was able to leave she
20 came to the Florence Police Department immediately. We also
21 believe the evidence will show that the defendant was even
22 more enraged. We intend to show that by presenting to you,
23 playing to you telephone messages that he left on her
24 voice — on her cell phone, while she was at the police
25 department. We also intend to show that she refused to go

1 back to that house, and when she did, that made the
2 defendant even angrier. We believe that the evidence will
3 show that he was so angry that he demolished the house that
4 Ms. Namias owned. We believe the evidence will show that he
5 made statements to neighbors while they had come out to the
6 house and saw him. And you will hear testimony from persons
7 who saw him on this particular day which is the next day,
8 October 3rd, when she went to the police department and when
9 she refused to go home, go back to her home that on that
10 particular day is when the defendant literally destroyed the
11 house. We also believe the evidence will show that in
12 regards to Ms. Namias' personal property that the amount of
13 damage was in excess of 18,000-dollars. We will also show
14 that the damage to the house, the physical structure, the
15 real property, was in excess of 20,000-dollars.

16 Now ladies and gentlemen, we would ask that once
17 you've heard all the evidence that you will get and that
18 evidence will come by way of testimony on the stand and from
19 persons who had an opportunity to be there and to witness
20 what the defendant did by way of Ms. Namias, the victim in
21 this matter. You will also hear testimony from persons from
22 the Pee Dee Coalition against domestic and sexual assault
23 where Ms. Namias went to seek assistance. You will also
24 hear testimony from where the officers who investigated this
25 incident as well as persons from the State of South Carolina

1 Law Enforcement Division, better known as SLED, who analyzed
2 some physical DNA evidence in this matter. Now we would ask
3 that once you have had an opportunity to listen to all the
4 testimony, view all the exhibits that will be entered into
5 evidence, that you listen to the law that Your Honor will
6 charge you. He will charge you the substantive law in this
7 matter; and that concerns the law in regards to kidnapping,
8 malicious injury to real property, malicious injury to
9 personal property, as well as criminal domestic violence of
10 a high and aggravated nature.

11 Now I will tell you that you're not going to see
12 pictures of Ms. Namias that have all these massive injuries
13 to her. You will see some bruising to her arm. But you
14 will also hear about the gun he had that night as well as
15 the knives, and we believe those go to the assault and
16 battery, the criminal domestic violence of a high and
17 aggravated nature, and threatening to kill her. We also --
18 you will also not hear evidence that he bound her what you
19 oftentimes think of with kidnapping. But what you will hear
20 that she was not free to leave her own residence that
21 particular night because of his behavior and the fact that
22 he had a gun and knives.

23 Now once you've had an opportunity to listen to all of
24 the evidence and view all of the evidence and listen to the
25 law as Your Honor charge you, we would ask that you find the

1 defendant Carmichael Flowers guilty of criminal domestic
2 violence of a high and aggravated nature, kidnapping,
3 malicious injury to real property, and malicious injury to
4 personal property. Thank you.

5 THE COURT: Mr. Scott Floyd represents the defendant
6 in this case.

7 Mr. Floyd, you're recognized.

8 MR. FLOYD: Thank you, Your Honor. May it please the
9 Court.

10 THE COURT: Yes, sir.

11 MR. FLOYD: Ms. Parr. Good afternoon. My name is
12 Scott Floyd and I do represent Mr. Carmichael Flowers. He's
13 seated over here at the table behind me now and he'll be
14 sitting to my right during the trial. Have y'all ever
15 turned on a TV and heard the news or picked up a newspaper
16 where someone has been accused of doing something wrong.
17 You know, you kind of have a tendency for it to click in
18 your mind a person is automatically guilty. You think he
19 did in fact do something wrong just because you heard it or
20 you read it. And you know, that's the power that an
21 accusation has. We tend to believe things that we hear or
22 read, but mere accusation has absolutely no place in this
23 courtroom and during this trial. The reason for that is
24 because our constitution that we had in place now for a
25 little over two hundred years and serves us very well it

1 attaches presumption of innocence on a person that's charged
2 with a criminal offense, and it doesn't matter if it's a
3 speeding ticket or if it's murder. Every criminal defendant
4 in every courtroom in this country is entitled to that
5 presumption. And because we have that presumption, as the
6 Court informed you earlier, there's a burden of proof that
7 the State has to prove beyond a reasonable doubt, every
8 element of every single offense that the defendant is
9 charged with in any criminal case.

10 Now in the case before us there are four different
11 counts: Malicious injury to real property, malicious injury
12 to personal property, criminal domestic violence high and
13 aggravated nature, and kidnapping. And the Court will give
14 you the legal elements of each one of those charges, and the
15 State has to prove beyond a reasonable doubt each one of
16 those elements for each one of those charges. And there's a
17 reason that it's the State's burden to prove. You know, the
18 State has a vast amount of resource. They have police
19 officers, they have labs, they have lots of money and
20 manpower at their disposal in every case. Typically a
21 criminal defendant doesn't fair so well with his finances or
22 his resources, and so it's only fair that the State has this
23 burden. They're trying to take away someone's freedom or
24 give someone a criminal history; of course they should have
25 that burden. And in addition to the burden of proof the

1 Court also mentions to you the beyond a reasonable doubt
2 standard which is the standard of proof in this case.

3 Now this isn't a civil case. This isn't a case about
4 money. This isn't an automobile accident where someone is
5 claiming they got a back injury, okay. In a case of that
6 nature the party bringing the lawsuit would only have to
7 prove their case by preponderance of the evidence or just
8 slightly more on their side than the other, okay. Of
9 course, in a criminal case like we have here today, the
10 stakes are a lot higher. This isn't about money, okay.
11 It's potentially about someone's very freedom. And so the
12 burden or the standard of proof in this case is going to be
13 so lot higher and the Court will explain to you what that
14 is. And of course there's always two sides to every story,
15 and the State's outlined to you what they intend to show you
16 and they will produce witnesses and they'll say things that,
17 you know -- the defendant also gets a chance to
18 cross-examine those witnesses and to test their credibility
19 and to test their reliability. And we would just ask during
20 this process that you keep an open mind and until your hear
21 everything that goes on in this case and at the end render a
22 fair verdict. Thank you very much.

23 THE COURT: Jurors, we'll stop now for the lunch
24 recess. I'm gonna excuse you now until 2:00. Please
25 remember my instruction I just gave you. Don't discuss the

1 case with anyone and don't discuss it among yourselves. And
2 when you leave we'll catch the elevator for you. When you
3 come back just before 2:00 -- please be back at two because
4 we'll start right at 2, come to this door here. Someone
5 will be waiting for you. We'll take you on into the jury
6 room. Have a nice lunch. Come right through here.

7 Catch them the elevator please.

8 (WHEREUPON, the jury was removed from the
9 courtroom at 12:40 p.m, and the following proceedings
10 commenced in open court.)

11 THE COURT: Any matters the State needs to put on the
12 record before the lunch hiatus?

13 MS. PARR: Your Honor, I know we will have a Jackson
14 v. Denno hearing and I don't know what time you want to do
15 that.

16 THE COURT: Can we take some of that now? Would it be
17 lengthy in regard to the Jackson versus Denno hearing?

18 MS. PARR: Your Honor, I don't know how lengthy it
19 will be, but Your Honor, I know one of my witnesses need a
20 personal break before he can get on the stand.

21 THE COURT: Well, suppose -- we're coming back at 2:00
22 for the jury. Could we be here at quarter till and start
23 the Jackson versus Denno and just let the jury in from time
24 to time?

25 MS. PARR: Uh-huh.

1 MR. FLOYD: Yes, Your Honor.

2 THE COURT: All right. Have -- both you lawyers have
3 seen the documentation concerning the Miranda rights, the
4 Miranda warnings, and all like that so that we know what is
5 involved and then the statement so we're ready to proceed in
6 that regard?

7 MR. FLOYD: Yes, Your Honor, I'm ready to proceed with
8 the hearing, yes, sir.

9 THE COURT: All right, we'll be back then at a quarter
10 till two, quarter till two.

11 MR. FLOYD: Thank you, Your Honor.

12 (WHEREUPON, a lunch break was taken and court resumed at
13 1:45 p.m.)

14 THE COURT: Jackson versus Denno, 378 United States
15 36-884, Supreme Court 17-7-412, Lawyers Edition Second 908,
16 a United States Supreme Court decision that mandates a
17 hearing in regard to the admissibility of a statement or a
18 confession. State ready to proceed?

19 MS. PARR: State is ready, Your Honor.

20 MR. FLOYD: Judge Anderson, could I approach you one
21 moment.

22 THE COURT: Certainly.

23 (WHEREUPON, counsel approached the Bench for an
24 off-the-record discussion.)

25 THE COURT: All right, we're ready to proceed? State

1 ready?

2 MS. PARR: Yes, Your Honor.

3 THE COURT: Defense ready?

4 MR. FLOYD: Yes, Your Honor. I understand that
5 Mr. Flowers has a motion that he would like to make.

6 THE COURT: What is the motion please?

7 THE DEFENDANT: The motion is to relieve the public
8 defender's office from my case because we have a conflict of
9 interest, sir.

10 THE COURT: You have a what?

11 THE DEFENDANT: A conflict of interest.

12 THE COURT: What is that conflict of interest?

13 THE DEFENDANT: Well, there's several reasons. For
14 one, this — Mr. Floyd is an excellent attorney I'm sure,
15 but not for me. He's lied to me on occasion; and when you
16 do that it undermines any type of relationship, whether it's
17 intimate or business. And I can't trust the truthfulness of
18 what somebody says when there's no basis for that
19 relationship. So you know, at this point in time I'd like
20 to just terminate the relationship.

21 THE COURT: Well, if we engage in the termination of
22 his representation you will have to represent yourself.
23 That's called pro se representation.

24 THE DEFENDANT: Is that possible? Is that possible?

25 THE COURT: Let the record show that the motion

1 emanating from the defendant is to relieve counsel from
2 representation. Under State versus Brewer, 328 S.C. 117,
3 492 S.C. 2d 97, the law is that an accused may waive the
4 right to counsel and proceed pro se. Under Prince versus
5 State, 301 S.C. 422, 392 S.C. 2d 462, and Feretta versus
6 California, a United States Supreme Court case reported at
7 422 U.S. 806, 95 Supreme Court 2525. In order to waive the
8 right to counsel the accused must be: One, advised of his
9 right to counsel; and two, adequately warned of the dangers
10 of self-representation.

11 The South Carolina Supreme Court has articulated the
12 rule under State versus Dixon, 269 S.C. 107, 236 S.C. 2d
13 419, that the trial judge must determine whether there is a
14 knowing and intelligent waiver by the defendant. Under
15 Graves versus State, 309 S.C. 307, 422 S.C. 2d 125, the
16 ultimate test of whether a defendant has made a knowing and
17 intelligent waiver of the right to counsel is not the trial
18 judge's advice but the defendant's understanding.

19 Under the law extant in South Carolina and United
20 States Supreme Court precedent to determine if the defendant
21 had sufficient background to comprehend the dangers of
22 self-representation courts consider a variety of factors
23 including: One, the accused age and education, educational
24 background, and physical and mental health. I will stop and
25 address these seriatim.

1 How old are you please sir?

2 THE DEFENDANT: 53 -- 54.

3 THE COURT: 54?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: How far did you go in school?

6 THE DEFENDANT: I have at least four years of college.

7 THE COURT: Four years of college? Where did you
8 graduate from, what college?

9 THE DEFENDANT: Two years of nursing and I have two
10 years of regular college.

11 THE COURT: Did you get a degree?

12 THE DEFENDANT: No, sir.

13 THE COURT: What college did you attend?

14 THE DEFENDANT: Norfolk State.

15 THE COURT: I'm sorry?

16 THE DEFENDANT: Norfolk State.

17 THE COURT: And did you attend Norfolk State all four
18 years --

19 THE DEFENDANT: Yes, sir.

20 THE COURT: --or a different institution?

21 THE DEFENDANT: I went to California to Riverside City
22 College for nursing.

23 THE COURT: Did you hear that?

24 THE DEFENDANT: Riverside City College for nursing for
25 two years.

1 THE COURT: Where is Riverside?
2 THE DEFENDANT: It's in California, sir.
3 THE COURT: All right. What is your physical health?
4 THE DEFENDANT: Not well.
5 THE COURT: What are your problems? For example, do
6 you have heart problems?
7 THE DEFENDANT: Yes, I do.
8 THE COURT: Sir?
9 THE DEFENDANT: Yes, sir.
10 THE COURT: What is the nature of the heart problem?
11 THE DEFENDANT: I have congestive heart failure.
12 THE COURT: Okay. Any other physical problem?
13 THE DEFENDANT: I'm sure there's a few of them but
14 that's the major one.
15 THE COURT: Do what?
16 THE DEFENDANT: I'm sure there's some other ones but
17 that's the major one, sir. You know, I mean, all of us have
18 a little arthritis, a little —
19 THE COURT: A little malady from time to time.
20 THE DEFENDANT: Yes, sir.
21 THE COURT: What is your mental health? Have you ever
22 been treated for any mental disease or mental disorder?
23 THE DEFENDANT: Not lately.
24 THE COURT: When you say not lately tell me when
25 please.

1 THE DEFENDANT: I haven't, sir.

2 THE COURT: You have not, okay. Number two, whether
3 the accused was previously involved in criminal trials.
4 Have you ever been involved in a criminal trial before now?

5 THE DEFENDANT: I've had several of them.

6 THE COURT: Would you list them please one by one?

7 THE DEFENDANT: I didn't bring my rap sheet. Can I
8 borrow yours please. And this is where I have to represent
9 myself or where I just involved in the trial itself?

10 THE COURT: This is a factor that I need to know
11 concerning whether the accused was previously involved in
12 criminal trials so in participating in criminal trials and
13 tell me how. Just tell me each criminal trial, whether you
14 had a lawyer or represented yourself pro se.

15 THE DEFENDANT: Most of these I've had an attorney.

16 THE COURT: Most of them or all of them?

17 THE DEFENDANT: All of them.

18 THE COURT: All of them, okay. What were they
19 involving in terms of the pending charge in each one of
20 those cases?

21 THE DEFENDANT: Beg your pardon?

22 THE COURT: What was the pending charge in each one of
23 those cases?

24 THE DEFENDANT: There's four or five non-burglary and
25 there was -- let's see. There was federal charge of gun

1 running.

2 THE COURT: Yes, sir.

3 THE DEFENDANT: That was in 1974 I believe, '73.

4 Concealed weapon.

5 THE COURT: All right. What year was that?

6 THE DEFENDANT: That was -- well, it was dismissed but
7 it was in '73.

8 THE COURT: Okay, all right.

9 THE DEFENDANT: Had several property crimes out of
10 Santa Ana California, one in 1989, 1990, '91, and '92.

11 THE COURT: In regard to those trials did you go all
12 the way to the jury on any or all of those trials?

13 THE DEFENDANT: No, sir, I don't think I went to jury
14 on any of them. I think it was plea bargained out.

15 THE COURT: All of those charges were plea bargained?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Number three is whether the
18 accused knew the nature of the charges and the possible
19 penalties. In terms of the nature of the charges pending
20 against you here I tell you you have criminal domestic
21 violence of a high and aggravated nature, you have
22 kidnapping, you have malicious injury to real property and
23 malicious injury to personal property.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: The possible penalties are up to ten years

1 on criminal domestic violence of a high and aggravated
2 nature.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: On kidnapping up to 30 years. On
5 malicious injury to real property, mostly depending on
6 value, is up to ten years. And malicious injury to personal
7 property, depending on value, is ten years. I tell you now
8 those four charges are the nature of the charges pending
9 against you, and I have now given you the possible penalties
10 on those four charges. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Number four, whether the
15 accused was represented by counsel before trial and whether
16 that attorney explained to him the dangers of
17 self-representation. Counsel, you've been representing him
18 up to this particular moment; is that correct?

19 MR. FLOYD: Correct, Your Honor.

20 THE COURT: Sir?

21 MR. FLOYD: Yes, sir, that's correct.

22 THE COURT: And have you ever discussed with him the
23 dangers of self-representation?

24 MR. FLOYD: Your Honor, I have not up to this point.

25 THE COURT: All right. Sir, give me your attention.

1 The dangers of self-representation are as follows. One,
2 you're not trained in the law, are you?

3 THE DEFENDANT: No, sir.

4 THE COURT: You are not familiar with the procedural
5 requirements of a trial, are you?

6 THE DEFENDANT: No, sir. Some of it --

7 THE COURT: You are not trained in the law of
8 evidence, are you?

9 THE DEFENDANT: Some of it.

10 THE COURT: What training have you had in the law of
11 evidence?

12 THE DEFENDANT: Well, I don't remember right offhand
13 but I know there's a discovery. There's just like we having
14 to do with the gun here, an issue whether or not it should
15 be admitted into evidence. So I mean, there's some things I
16 do know.

17 THE COURT: Okay. You have no familiarity with the
18 order of presentation. That is, --

19 THE DEFENDANT: Right.

20 THE COURT: --the State presents matters and the
21 State's required to show evidence in regard to elements of
22 the offense and then we come to the defense. Do you have
23 any familiarity with the order of presentation?

24 THE DEFENDANT: Very little as far as South Carolina
25 is concerned. I've lived 30 something years in California

1 so it may vary.

2 THE COURT: Do you have any training or any experience
3 with the standard or burden of proof required of the State
4 insofar as what we call beyond a reasonable doubt?

5 THE DEFENDANT: I understand what beyond a reasonable
6 doubt is, yes.

7 THE COURT: Do you understand the constitutional
8 principle such as the presumption of innocence --

9 THE DEFENDANT: Yes, sir.

10 THE COURT: --under the constitution?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any familiarity with the kind
13 of motions that should be presented at certain times in the
14 trial?

15 THE DEFENDANT: To some degree, yes.

16 THE COURT: Do you have any kind of familiarity with
17 the grounds for objection to evidence such as the classic
18 quintessential rule of evidence known as the hearsay
19 evidence and other evidence that is to be considered by the
20 Court? Do you have any training in that regard?

21 THE DEFENDANT: No, sir.

22 THE COURT: Sir?

23 THE DEFENDANT: No, sir.

24 THE COURT: Do you have any training in regard to the
25 right of presentation of matters to the jury like the

1 argument by counsel or by a defendant at the end of a trial?

2 THE DEFENDANT: No, sir.

3 THE COURT: I tell you now under Feretta and the
4 classic case of Prince versus State in South Carolina.
5 Ferreta is United States Supreme Court case. Prince is a
6 case actually tried in this jurisdiction, not tried by me
7 but tried by another judge from Florence County. It went to
8 the state supreme court. And in Prince it said you must
9 warn the defendant of these dangers of self-representation.
10 I tell you now it's very, very dangerous to represent
11 yourself because you don't understand the legal proceedings
12 and you're —

13 THE DEFENDANT: Your Honor.

14 THE COURT: —going to be bound by those legal
15 proceedings.

16 THE DEFENDANT: Excuse me, Your Honor.

17 THE COURT: Yes.

18 THE DEFENDANT: I don't have a choice. I'm not going
19 to get a fair trial anywhere else.

20 THE COURT: In regard — if you'll let me finish I'll
21 let you address the Court.

22 THE DEFENDANT: Okay.

23 THE COURT: In regard to the dangers of
24 self-representation I'm required to warn you of those
25 dangers. It is very dangerous to represent yourself because

1 you go forward without any legal advice and you go forward
2 without any kind of familiarity with the rules of evidence
3 and the rules of procedure and the general rules of conduct
4 of a trial, very, very dangerous. I tell you now it's
5 probably not in your best interest to go forward without a
6 lawyer. I tell you now that's a very, very important
7 decision that you make when you waive the right to counsel.
8 You just give up the right to have counsel assist you and
9 aid you at the trial. It's a decision that should be made
10 only after serious contemplation and cogitation. Do you
11 understand now that these dangers I've talked to you about
12 in regard to representing yourself?

13 THE DEFENDANT: Yes, sir, I understand.

14 THE COURT: Okay. Number five, in terms of waiver of
15 Sixth Amendment right to counsel has to do with whether the
16 accused was attempting to delay or manipulate the
17 proceedings. And I tell you now, we're going forward. You
18 understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Number six is whether the Court
23 appointed standby counsel. Under certain limited
24 circumstances, very limited circumstances, I can appoint
25 standby counsel. The State Supreme Court does not give its

1 full approbation and imprimatur to standby counsel, but it
2 can be done under certain circumstances. That is, counsel
3 standing by to assist you. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Number seven, whether the accused knew he
8 would have to comply with the rules of procedure at trial.
9 You understand, I just told you you got to comply with the
10 rules of trial?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Number eight, whether the
13 accused knew of the legal challenges he could raise in
14 defense to the charges. You understand there may be
15 defenses that your experienced trial counsel knows about and
16 would raise in your defense. You of course don't understand
17 these legal challenges and you don't have familiarity with
18 defense as it could be raised. You understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And that's a dangerous, dangerous
21 component of representing yourself pro se. Do you
22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Number nine is whether the exchange
25 between the accused and the Court consisted merely of pro

1 forma answers to pro forma questions, and I want to explain
2 that to you. It means that we just had a little colloquy
3 back and forth idea/notion of pro se representation. I can
4 tell you that's not my purpose here. That's why I've gone
5 into some great specificity and detail in regard to this
6 matter. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And whether the accused waiver results
9 from any kind of coercion or any kind of compulsion, and
10 that is articulated and explicated in Gardener versus State,
11 351 S.C. 407, 570 S.C. 2d 184. Do you understand now that
12 you are making this decision in that you yourself are
13 responsible for this decision?

14 THE DEFENDANT: Yeah, yes, sir. I —

15 THE COURT: Well —

16 THE DEFENDANT: If you'll allow me to address the
17 Court.

18 THE COURT: Yes.

19 THE DEFENDANT: I have talked with Mr. Floyd a while
20 back. I even sent notes to Ms. Parr letting her know that I
21 was having a conflict of interest with the department. I
22 sent them via inmate request forms to your office but
23 obviously you never got them. And you know, at this point
24 in time I've been incarcerated ten months. Any chance of me
25 getting witnesses here slim and none, any chance of me

1 trying to convey my sentiments as to how I want to be
2 treated in this courtroom to him it seems to be oblivious to
3 him.

4 THE COURT: Well, I —

5 THE DEFENDANT: I don't —

6 THE COURT: Let's stop right there, sir. I have
7 conducted the jury selection process and I've done it under
8 the court rules. There's nothing, absolutely nothing that
9 is nefarious or negativistic about the jury selection
10 process. We did it with an open courtroom and everybody
11 understanding. I reject the notion and idea that we have
12 conducted the process to this point without your
13 participation and in any manner that is negativistic to
14 you. You contend it's negativistic —

15 THE DEFENDANT: I think you misunderstood what I said
16 as far as me trying to convey my feelings to him as how I
17 want, you know, I want to be treated, you know what I'm
18 saying. There was an issue of the gun. I didn't know
19 anything about it until today. There was a issue of
20 photographs. I didn't get them until yesterday. Rule 5 has
21 been how long?

22 THE COURT: Well, address the Court if you will.

23 THE DEFENDANT: How long?

24 MR. FLOYD: Thank you, Your Honor. Your Honor, we
25 were given Rule 5 along and along. Photographs were

1 supplied to me on a CD or DVD or whatever. The photographs
2 that I looked at this morning, okay, that are marked as
3 exhibits in evidence, and I think that actual thing was
4 given to me last week. I made copies of all those pictures,
5 all those photographs, and I went and visited Mr. Flowers.
6 I visit him -- I actually took the copies of the pictures to
7 him on Saturday. I went down to Effingham on Saturday and
8 gave him each one of the pictures. I printed them off I
9 think the sheets I gave him, I formatted them where they were
10 four on a page, four photographs on each eight-and-a-half by
11 eleven page. That's how I format them. But they were
12 pictures I guess like four-by-six, I guess, is what they
13 were. But at any rate, he had the pictures within, you
14 know, a couple of days after I had them. As far as the
15 issue with the gun, I mean, the -- I mean, he's had incident
16 reports from months ago that clearly make the allegations
17 that a gun was used in some form or fashion in this
18 incident. Why that should be a surprise that there's a gun
19 sitting up there, I don't know. However, I did not agree
20 for the gun to be admitted into evidence earlier because I
21 intended to make a motion to suppress the gun based on chain
22 of custody, which if the Court does relieve me Your Honor, I
23 would certainly ask Mr. Flowers to ask the Court to inquiry
24 into that matter.

25 THE COURT: Continuing on with this idea/notion of

1 either pro se representation or representation by counsel,
2 one case that is inculcating from the South Carolina Supreme
3 Court is Watts versus State, 347 S.C. 399, 556 S.C. 2d 368.
4 It enunciates the following principle of law: "If the
5 record fails to demonstrate that the defendant made an
6 informed choice to proceed pro se with eyes wide open, then
7 he did not make a knowing and voluntary waiver of counsel
8 and the case should be remanded for a new trial."

9 Sir, I tell you now, Mr. Flowers, I want to make sure
10 your eyes are wide open. I don't recommend to you that you
11 proceed pro se and I tell you there are dangers in regard to
12 proceeding pro se. And I tell you the reasons for not
13 proceeding pro se have been identified in regard to this
14 record to you directly. And I ask you now, do you
15 understand and have you understood all of the statements
16 I've made to you?

17 THE DEFENDANT: If I may address the Court.

18 THE COURT: Yes.

19 THE DEFENDANT: Your Honor, kidnapping is a capital
20 offense.

21 THE COURT: No, and that's not correct.

22 THE DEFENDANT: Okay.

23 THE COURT: That's not correct. The maximum that can
24 be given on kidnapping is up to 30 years.

25 THE DEFENDANT: Thirty years, okay. Well, that's

1 pretty -- that's a long time.

2 THE COURT: Oh, yes, but it's not a capital offense.

3 You used that term; that's incorrect.

4 THE DEFENDANT: Okay, well, I just feel that maybe Mr.
5 Floyd and I don't agree and maybe I should have another
6 attorney.

7 THE COURT: I'm not going to give another attorney.
8 That's out.

9 THE DEFENDANT: All right.

10 THE COURT: That's definitely out because we're in the
11 middle of a trial.

12 THE DEFENDANT: Okay.

13 THE COURT: Your choice is this: Pro se or proceed
14 with Mr. Floyd. That's the choice. We're not going to have
15 another attorney brought in.

16 THE DEFENDANT: Okay.

17 THE COURT: And I would say to you, sir, Mr. Floyd is
18 one of the most experienced lawyers at this bar in criminal
19 law. He's appeared here numerous times over a period of
20 years. He understands the procedures. He is well versed in
21 trial procedures. Now Mr. Floyd can't perform a miracle.
22 For example, when the State presents evidence against a
23 defendant it's because the State has the evidence. It's not
24 because the lawyer wants it to come in or not come in. It's
25 because the State has evidence in regard to certain matters

1 that are admissible in a criminal trial. I would ask you in
2 your own interest to reconsider the idea/notion of the
3 motion to relieve Mr. Floyd. I know that you don't
4 necessarily agree on everything but he's very experienced.
5 He's here to aid and assist you. He's here to make sure
6 that matters are presented in the proper forum and in the
7 proper manner. I would encourage you to rethink your
8 position. I tell you now the dangers of pro se
9 representation are major, major. And once you get into that
10 zone and we proceed with a trial, once the evidence is
11 presented too late then to revisit, too late then.

12 I, of course, will abide by your final decision and I
13 am required to abide by your final decision, and I've done
14 everything I could to advise you of the dangers of
15 representing yourself. And I've done everything I could to
16 ask you to reconsider and let Mr. Floyd stay with the case.

17 THE DEFENDANT: Will the record reflect then that I'm
18 just — I asked the Court to relieve him and you said no.

19 THE COURT: No, I haven't come to that conclusion yet.

20 THE DEFENDANT: Okay.

21 THE COURT: It may be — once again, listen to me
22 Mr. Flowers. I was reared out in the country. And out in
23 the country in the farming entities when we used the phrase
24 eyes wide open, we mean you look at what's there, you
25 understand what's there, you appreciate what's there, and

1 then you proceed, and then you proceed. Your eyes are wide
2 open and you understand.

3 THE DEFENDANT: Let's proceed.

4 THE COURT: Sir?

5 THE DEFENDANT: Let's proceed.

6 THE COURT: Are you going to leave Mr. Floyd with the
7 case?

8 THE DEFENDANT: Yeah.

9 THE COURT: Are you going to leave him on the case?

10 THE DEFENDANT: I don't have a choice.

11 THE COURT: Your choice is I'm about to make a ruling
12 as to pro se representation. Now once again --

13 THE DEFENDANT: I can't -- I can't let the record --
14 you said, no, I couldn't let the record reflect so I mean
15 --

16 THE COURT: Go ahead, I'll let the record reflect.
17 What you want to do?

18 THE DEFENDANT: Let the record reflect that I asked to
19 have the Public Defender's Office relieved and --

20 THE COURT: And that's still your request?

21 THE DEFENDANT: Just let the record reflect that.

22 THE COURT: No, I'm going to rule on that.

23 THE DEFENDANT: Okay.

24 THE COURT: And then my ruling is dependent upon your
25 position. Do you want me to relieve Mr. Floyd?

1 THE DEFENDANT: Well, I mean, obviously it would tie
2 down the Court because I would have to go and do some
3 studying, Blacks law book and everybody else's books just to
4 kind of keep up, you see what I'm saying, and I don't want
5 to hold the trial up.

6 THE COURT: Would you please answer the query. You.
7 have made a motion to relieve Mr. Floyd.

8 THE DEFENDANT: I'll let him stay on.

9 THE COURT: You'll let him stay on?

10 THE DEFENDANT: Eyes wide open.

11 THE COURT: Eyes wide open, okay. All right.

12 Just one second lawyers, let me bring in the rest of
13 the jurors. Just one second.

14 (Pause.)

15 | **THE COURT:** Do we have them all, Ms. Bailiff?

16 THE BAILIFF: Yes, sir.

17 THE COURT: Okay. The State ready to proceed on the
18 Denno hearing?

19 MS. PARR: Yes, Your Honor, we're ready.

20 THE COURT: Defense ready?

21 MR. FLOYD: Your Honor, I am ready on that. And Your
22 Honor, I didn't know what order you wanted me to proceed in;
23 but I also have a motion in limine dealing with motion to
24 suppress, the introduction of the weapon, the gun and the
25 bullets, everything that's marked in that exhibit. I think.

SW - T. Compton - Direct

1
2 it's number 19. And I didn't know how, what, if you wanted
3 me to —

4 THE COURT: I want to wait until we get to the point.
5 Obviously she will be presenting the State's side of the
6 case concerning the weapon.

7 MR. FLOYD: Yes, sir.

8 THE COURT: And that relates to chain of custody.

9 MR. FLOYD: Yes, Your Honor.

10 THE COURT: And obviously I will be looking at that
11 from the standpoint of what we know in the law. And
12 Anderson has written on this principle — I didn't come to
13 the courtroom for the first time today — and my writing has
14 to do with the difference between fungibility and
15 non-fungibility. And historically, and to this very date a
16 weapon has been in the zone of non-fungibility and so we
17 will proceed in regard to non-fungibility and my ruling in
18 reference to the chain of custody will be bottomed and
19 premised upon non-fungibility.

20 MR. FLOYD: Yes, sir.

21 THE COURT: So we'll visit that at a later time. Now
22 we're going on Jackson versus Denno. Call your first
23 witness please.

24 MS. PARR: Your Honor, at this time we would call
25 investigator Tim Compton to the stand.

SW - T. Compton - Direct

1 THE DEPUTY CLERK OF COURT: If you would, please place
2 your left hand on the Bible, raise your right hand.

3 WHEREUPON,

4 TIMOTHY WADE COMPTON,
5 having been duly sworn by the Deputy Clerk of Court,
6 testified as follows:

7 THE DEPUTY CLERK OF COURT: Please be seated, state
8 your name for the record.

9 THE WITNESS: Timothy Wade Compton.

10 DIRECT EXAMINATION

11 BY MS. PARR:

12 Q Investigator Compton, where are you employed?

13 A Florence Police Department.

14 Q And what do you do for the Florence Police Department?

15 A I'm a detective sergeant with our criminal investigations
16 unit.

17 Q And how long have you been with the Florence Police
18 Department?

19 A Twenty-four years and eight months.

20 Q How many days? Please -- are you familiar -- what are
21 your present duties?

22 A My duties right now is I'm the supervisor of the
23 financial crimes unit. We -- all investigators are
24 specialized in certain area; mine is financial crimes. But
25 of course, when you're on call and duty you may get a

SW - T. Compton - Direct

1 robbery, murder, burglary, those sorts of things so we do
2 all general type investigations but my main investigation is
3 financial crimes.

4 Q Okay. Now are you familiar with the defendant and the so
5 called Miranda warnings?

6 A Yes, I am.

7 Q Did you have an occasion in your line of work to
8 administer those?

9 A Yes, I did.

10 Q And how do you administer those?

11 A I do both. When I read them Miranda warnings I read it
12 from my card and also I read the Miranda warnings, what we
13 call waiver of rights form.

14 Q Okay. Now were you employed in your present capacity on
15 or about October of 2008?

16 A Yes, I was.

17 Q Now did you have an occasion to become involved in the
18 investigation of this matter against Carmichael Flowers?

19 A Yes, I did. I was asked to help investigator Felicia Cox
20 with this case for the interview.

21 Q And what date did you become involved?

22 A October 10th, 2008.

23 Q And do you recall the time?

24 A I'm not -- I didn't put the time down, or Ms. Cox didn't
25 put the time down.

SW - T. Compton - Direct

1 Q Okay. Now how were you brought into the case?

2 A Investigator Cox asked me to help her interview the
3 defendant at the Florence County Detention Center. She went
4 over the case with me and I told her I would help her
5 with -- help her with the interview, and we drove to
6 Florence County Detention Center and interviewed the
7 defendant.

8 Q Okay. I'm gonna show you what's been marked for
9 identification as State's Exhibit Number 1. Do you
10 recognize this?

11 A Yes.

12 Q And how do you -- are you able to recognize it?

13 A This is Miranda warnings that we read to any individuals
14 that we want to question.

15 Q Okay.

16 MS. PARR: Your Honor, at this time I would show it to
17 defense counsel.

18 (Document shown to counsel for Defense.)

19 BY MS. PARR:

20 Q And are you familiar with State's Exhibit Number 1?

21 A Yes, I am.

22 Q Now ---

23 MS. PARR: Your Honor, at this time the State would
24 move to enter that into evidence.

25 THE COURT: I'll not make a ruling until I have

SW - T. Compton - Direct

1 conducted the full Denno hearing proceeding.

2 MS. PARR: Okay.

3 THE COURT: Proceed.

4 BY MS. PARR:

5 Q All right. And so you are able to recognize that?

6 A Yes.

7 Q Okay. And on October 10th, 2008 did you have an occasion
8 to use that, what's been marked State's Exhibit Number 1?

9 A Yes, I did.

10 Q And would you please demonstrate the manner in which that
11 was used?

12 A Basically when he got to the pod that the defendant was
13 in we told him -- I introduced myself and Investigator Cox
14 introduced herself and we asked him, we would like to talk
15 to him about this incident where he was arrested. And he
16 stated he understood. He sat down. And I told him before
17 we could ask him any questions or he say anything to us I
18 would have to read him his Miranda warnings to him, and at
19 the time I pulled out my card and I read him his rights.

20 Would you like for me to read them?

21 Q Yes, please.

22 A I read them always from my card and I say: "You have the
23 right to remain silent. Anything you say can and will be
24 used against you in a court of law. You have the right to
25 talk to a lawyer and have him present with you while you're

SW - T. Compton - Direct

- 1 being questioned. If you cannot afford to hire a lawyer one
2 will be appointed to represent you before any questioning if
3 you wish. You can decide at any time to exercise these
4 rights and not answer any questions or make any statements.
5 Do you understand each of these rights I have explained to
6 you?" And his answer was yes. And at that point I say:
7 "Having these rights in mind would you like to answer any
8 questions I may have for you and Investigator Cox may have
9 for you?" And again he answered yes, he would.
- 10 Q Okay. And where were you when this was done again?
11 A We were -- I'm not sure what pod we was in at that time,
12 but we was at the Florence County Detention Center in a pod,
13 what they call -- they got A, B, C, D-type pods and we're
14 actually in a little interview room. It's actually inside
15 that pod, has a couple of chairs and a table.
- 16 Q And who was present?
17 A Myself and Investigator Felicia Cox and the defendant.
- 18 Q Okay. Now describe the defendant's physical appearance.
19 A Fine, I mean, he was mentally, physically that I could
20 tell he was fine. He was very courteous, very nice. No
21 arguments, no fussing, or anything like that. We had a
22 conversation.
- 23 Q Now you indicate that you also read or mention what's
24 called a waiver of rights form.
25 A Yes, ma'am.

SW - T. Compton - Direct

1 Q Would you please tell us what that is?

2 A It's basically more detailed for your Miranda warnings
3 and I explained that to him in that way and I showed him the
4 form. I even turned it around and I said you can read along
5 with me if I like. But I read it to them and tell them if
6 you understand it, to sign, and then date it for me.

7 Q Okay. I'm gonna show you what's been marked, been marked
8 as State's Exhibit Number 2 for the record. Can you
9 identify that?

10 A Yes, ma'am, this is the waiver of rights form that I read
11 to the defendant and he signed and dated it.

12 Q Okay. And would you please read that form to us.

13 A Yes, ma'am. Basically I explained to him again that this
14 is his waiver of rights form, it's in more detail and he can
15 read along with me. Now at that point I read to him: "This
16 is a waiver of rights form, division of police, Florence,
17 South Carolina, date 10/10/08. Place is Florence County Law
18 Enforcement Center. I, Carmichael T. Flowers voluntarily
19 without threats, duress, force, promises of immunity or
20 reward agree to be questioned by the Florence Police
21 Department. I fully realize I have the right to remain
22 silent the entire time I'm here. Anything I may say can be
23 used against me in any court of law. I have the right to
24 have an attorney present and if I cannot afford an attorney
25 and desire to be represented one will be appointed for me

SW - T. Compton - Direct

1 prior to any questioning without cost to me. Even after
2 assigning this form I realize I have the opportunity to
3 exercise these rights at any time I wish to while I'm here.
4 Also realize I have the right first to consult with an
5 attorney or anyone else I wish to before signing this form
6 or answering any questions. Nevertheless, I voluntarily
7 question, authorize the Florence, South Carolina Police
8 Department to proceed with the questioning. In addition, I
9 represent I feel all right both mentally and physically and
10 I know of no mental or physical ailment which might be
11 impaired by any questioning. Important notice, if you do
12 not understand any part of this form do not sign until you
13 do." I asked him if he understood; he said yes. He signed
14 it and dated it, and then I signed it at the bottom.

15 Q Okay.

16 MS. PARR: Your Honor, the State would also move to
17 have this entered into evidence as State's Exhibit Number 2.

18 THE COURT: Once again, the ruling will be held in
19 abeyance until I make a determination under Denno.

20 MS. PARR: Okay.

21 BY MS. PARR:

22 Q Now Investigator, or Sergeant Compton, have you had in
23 your line of work have you dealt with persons who have been
24 under the influence of drug or alcohol?

25 A Yes, I have.

SW - T. Compton - Direct

1 Q Okay. Did the defendant appear to be intoxicated by drug
2 or alcohol on October 10th, 2008 when you —

3 A No, ma'am, he did not.

4 Q Did the defendant appear to understand your questions
5 regarding his rights?

6 A Yes, he did.

7 Q And did he respond to your questions when you read from
8 your exhibit card and your waiver of rights form?

9 A He responded both times as, yes, he understood.

10 Q Now was the speech, was the defendant's speech coherent?

11 A Yes, it was.

12 Q Did he respond when asked whether he wanted an attorney?

13 A He said he would be glad to talk to me. As a matter of
14 fact I was surprised of his demeanor.

15 Q Okay. And did the defendant ever invoke his right to
16 remain silent?

17 A No, he did not.

18 Q Did the defendant agree to answer your questions at the
19 time without an attorney?

20 A Yes, he did.

21 Q Did you promise the defendant anything in return for
22 making a statement?

23 A No, I did not.

24 Q Did you coerce the defendant into making a statement with
25 the intent of threat or any other actions?

SW - T. Compton - Direct

1 A No, ma'am, I did not promise him anything.

2 Q To the best of your knowledge was the defendant's
3 statement freely and voluntarily given?

4 A Yes, it was.

5 Q Did the defendant make a statement in response to your
6 questions?

7 A He made several statements.

8 Q Did the defendant ever refuse to answer any questions
9 further?

10 A He refused to give us an individual's name at the end of
11 the basically interview that we had with him.

12 Q Now the statement that the defendant gave, was it
13 recorded or was it an oral statement?

14 A It was an oral statement. He had -- the defendant had
15 agreed to talk to us further on a later date. I made the
16 decision to not tape it at that time due to some other
17 circumstances of investigate-- crime scene investigator Bo
18 Meyers was there to do swabs and I had another individual I
19 needed to interview, had to do that. And of course, the
20 defendant advised me he would talk to us again at later
21 date, and I advised Investigator Cox that the next time we'd
22 come down and talk to him, that once we get all the answers
23 we're hoping to get that we would take a taped statement at
24 that point in time.

25 Q All right. Now so the defendant did make an oral

SW - T. Compton - Direct

1 statement at that time; is that correct?

2 A He made several admissions during our interview.

3 Q And what were those, what statement did the defendant
4 make?

5 A Well, when -- to go back to what I said about his
6 demeanor, based on what he had told me or what I'd been told
7 about the incident I was kind of surprised of how cordial he
8 was to us. He was very nice, very calm, and so that's where
9 I was surprised about the demeanor. And first he sat down
10 after I read him his rights. He said that he wanted to talk
11 about his relationship with the victim, and he basically, he
12 actually led the interview. He did not want to discuss
13 anything until he told us the basis of his relationship with
14 the victim, how they met each other at work and in New
15 Jersey and then continued down to South Carolina. So he
16 basically started telling us a story, and I let him continue
17 at that point in time. Basically they said -- he said him
18 and the victim had met at work at UPS in New Jersey. They
19 started dating and then I believe she had family in South
20 Carolina here and they decided to make some money to come to
21 South Carolina and flip houses, buy a house, fix it up and
22 flip it and sell it for a profit. And that's how they ended
23 up in Florence, South Carolina.

24 And then after he told us about his relationship he
25 started talking about how bad the neighborhood was where

SW - T. Compton - Direct

1 they lived. And basically where they lived was a house that
2 he was actually going to try make a profit on after they
3 fixed it up. He talked about how Dixie Street was a bad
4 drug area and that across the street neighbors would sell
5 any kind of drug that you could look for or want. At that
6 point in time he said due to the fact that the neighborhood
7 was a bad neighborhood he decided to purchase a handgun for
8 protection. He said he went and got fifty dollars out of
9 cash out of the victim's purse, and he paid this subject for
10 a handgun at his house. He said he didn't even know the
11 person's name he bought the gun from. He continued on
12 describing the handgun as a .38 Special silver in color with
13 a brown grip. He stated he kept that gun in a nightstand or
14 nightstand drawer that was located on his side of the bed.
15 Also stated he kept knives in there as well.

16 Once, you know, he talked about that he talked about
17 he wanted to go into the incident that occurred on
18 October 2nd and October 3rd. He stated on October 2nd he
19 told the victim she did not need to drive anymore -- or
20 anywhere, excuse me, to her having a glass of wine. He did
21 not want her to go out due to her having a glass of wine.
22 He denied keeping the victim against her will in the house.
23 He stated that he had the victim's keys and pocketbook so
24 she would not drive due to her, again, her having a glass of
25 wine. He said the victim is the one who had the baseball

SW - T. Compton - Direct

1 bat when we asked him about the baseball bat. And he stated
2 he took it from her and he had threw it causing the lamp to
3 break.

4 I offered -- I won't go into that. He wanted to show
5 me a bruise that was on his left bicep, said the victim had
6 caused this bruise on his arm. We looked at it. We
7 couldn't determine -- it didn't appear to us that it was a
8 bruise caused by being grabbed. But we, me and Investigator
9 Cox, discussed it and it may have been where he talked about
10 how he destroyed the house with an ax handle and he possibly
11 bruised his arm in the middle of that but there's no way to
12 tell what the bruise -- how the bruise got there. He said
13 that he tried to call -- the victim left that morning on the
14 third of October, and he stated he tried to call her and she
15 would not answer the phone. He said he got angrier each
16 time he called, and she would not -- when she would not
17 answer. He said he went to the bank and got some money and
18 took his truck to get oil changed. Excuse me, the defendant
19 said that he then went to a bar and had some drinks and he
20 named the drinks as Jack Daniels. He said that after having
21 some drinks and the victim not answering his phone calls he
22 then went back to the house on Dixie Street.

23 He stated that he went to the storage building in the
24 back of the back and got an ax handle. He stated that he
25 went crazy in the house with the ax handle. He stated it

SW - T. Compton - Direct

1 was okay because he could destroy his property. He stated
2 there were people coming in and out of the house while he
3 was destroying the house with the ax handle. He stated --
4 well, at that point in time the defendant actually broke
5 down and started crying and stated -- well, he asked
6 Investigator Cox did she think that his relationship with
7 the victim was over at that point in time. We both
8 basically answered to him that that relationship has ended
9 due to what happened. He stated the victim misunderstood
10 what happened on October the 2nd and she would have never
11 gone to the police, that she shouldn't never have gone to
12 the police. The defendant was concerned about his clothing
13 and other property at the house on Dixie Street.
14 Investigator Cox offered the defendant to make some phone
15 calls for him to see if she could get someone to pick up his
16 personal property and help him gather up his things, and he
17 gave her two names and phone numbers to be able to call to
18 help the defendant out to try to get his personal property
19 and stuff since he was incarcerated and he had no way to
20 make contact with anyone to get his stuff. Then
21 Investigator Cox asked the defendant what did he do with the
22 handgun that he had talked about earlier, and he stated that
23 he had gave the handgun to someone in Darlington. But when
24 we asked him who the person was, he stated he did not want
25 to get this person involved in this situation so he refused

SW - T. COMPTON - CROSS

1 to give us the name of that individual.

2 And at that point just general small talk and told him
3 that we would come back and talk to him at a later date and
4 he said he would talk to us at a later date. And at that
5 point Investigator Bo Meyers with the crime scene unit was
6 there to do the swabs so at that point in time we ended the
7 interview and decided to come back on another day.

8 Q Would you please answer any questions —

9 THE COURT: Hold it here one second.

10 Ms. Bailiff.

11 THE BAILIFF: Yes, sir.

12 THE COURT: Please knock on the jury door and tell
13 them I am taking up matters of law here now and it will take
14 some time and for them to please, please, please be patient.

15 THE BAILIFF: Yes, sir.

16 THE COURT: Do that now while I'm waiting.

17 (Pause.)

18 THE COURT: Cross-exam, Mr. Floyd.

19 MR. FLOYD: Thank you, Your Honor. Your Honor, I want
20 to grab one of the exhibits here if I can.

21 THE COURT: Yes.

22 **CROSS-EXAMINATION**

23 BY MR. FLOYD:

24 Q The waiver of rights form that you earlier identified as
25 State's Exhibit Number 2, that's dated 10/10 and that's the

SW - T. COMPTON - CROSS

1 day that you went to the jail?

2 A Yes, sir.

3 Q With Investigator Cox?

4 A Yes, sir.

5 Q Is that right? Okay. Did you go back? You said you
6 were going back. Did you ever go back?

7 A I did not go back. Investigator Felicia Cox did.

8 Q Okay. But you weren't present at that time?

9 A No. She had advised me she wanted to go back and talk to
10 him particular day, and at that point in time I was involved
11 in another criminal investigation and I advised her I could
12 not go at that time and she went herself.

13 Q Okay. Did you know whether or not Mr. Flowers had
14 already been appointed a lawyer when you went to see him on
15 the 10th of October?

16 A No, I did not.

17 Q Did you check and see if he'd been appointed a lawyer?

18 A No, sir, did not.

19 Q Do you know if a magistrate appointed him a lawyer on
20 October 5th. Were you aware of that?

21 A No, not aware of that.

22 Q Well, if you had known he had been appointed the Public
23 Defender's office on October 5th would you have interviewed
24 him?

25 A No, sir. I would have went to whoever was appointed and

SW - T. COMPTON - CROSS

1 told him what we had and like to talk to him.

2 Q So did you or Investigator Cox discuss with Mr. Flowers
3 the fact that he had been qualified and appointed Public
4 Defender's Office at his bond hearing?

5 A As far as I know, I mean, we're not required to tell him
6 about -- they're required in a bond hearing, required to
7 read them their Miranda warning and do waiver of rights
8 form.

9 Q All right, okay, I mean, I'm just asking.

10 A No, no, I mean, to answer your question, I guess, shortly
11 is we did not know he had an attorney or was appointed one
12 by the magistrate.

13 Q Okay. And all the statements that you said he gave were
14 oral. In other words, well obviously they were oral
15 statements but they weren't recorded.

16 A No, sir, they weren't recorded.

17 Q Okay. And how long was it from the time he says what you
18 said the statements that he made and the time you actually
19 wrote your recollections down?

20 A I did not write the, I mean, type the supplemental
21 report. Investigator Cox, since she was chief investigator
22 on this case.

23 Q Uh-huh, okay.

24 A But I mean...

25 Q Were y'all taking notes in there when y'all were talking

SW - T. COMPTON - CROSS

1 to him?

2 A Investigator Cox did.

3 Q Okay. So this would have been about a week after he got
4 arrested when you took his statement; is that correct?

5 A I'm assuming, yes, sir.

6 Q Okay. When you said you saw him in the pod I believe, or
7 in the interview room inside one of the pods, you don't
8 remember which pod? It was certainly in the interview room
9 inside of a pod there.

10 A Yeah, it was in a pod. I can't remember exactly which
11 one it was but the little interview room, yes, sir.

12 Q Okay. You said he didn't appear intoxicated or
13 disoriented?

14 A No, he seemed very aware of his faculties and, like I
15 tell you, he was very nice and polite the whole
16 conversation.

17 Q All right. Did -- were there any complaints made by him
18 about his health or his physical well-being at that time?

19 A He told me that he did have some medical problems. He
20 did mention his heart. And again I told him, you know, I
21 asked him are you okay talking. He said that's fine, I want
22 to talk to you and tell you what happened.

23 Q All right. Did he express concerns to you at that time
24 that he wasn't getting his medications administered to him
25 that he needed?

SW - T. COMPTON - CROSS

1 A I'm not aware of that, no, sir.

2 Q Okay. But he did make complaint about his heart
3 condition?

4 A He told me about the health problem and the heart. Now
5 about his meds, I know he did talk about that to court one
6 time; but during the interview on that particular day, no,
7 he did not. Didn't complain about not getting his meds.

8 Q Okay.

9 A As a matter of fact, I'm sorry, as a matter of fact, I
10 think it was the preliminary hearing he said he had lost
11 weight and he wasn't getting proper medical care. I think
12 that was at the preliminary hearing where the courtroom.

13 Q Okay. Maybe a bond reduction hearing?

14 A Okay.

15 Q But at any rate y'all didn't have that conversation that
16 day —

17 A No, sir, we did not.

18 Q —on the 10th of October? Okay, all right.

19 MR. FLOYD: Can you give me one second, Your Honor.

20 THE COURT: Sure, yes.

21 MR. FLOYD: Your Honor, that's all that I have. Thank
22 you.

23 THE COURT: Redirect.

24 MS. PARR: Nothing else for this witness, Your Honor.

25 THE COURT: You may step down, sir.

SW - F. COX - DIRECT

1 Next witness please.

2 **MS. PARR:** Your Honor, at this time we would call
3 Felicia Cox to the stand.

4 **THE COURT:** All right.

5 **THE DEPUTY CLERK OF COURT:** Please place your left
6 hand on the Bible and raise your right hand.

7 **WHEREUPON,**

8 **FELICIA WATSON COX,**
9 having been duly sworn by the Deputy Clerk of Court,
10 testified as follows:

11 **THE DEPUTY CLERK OF COURT:** Please be seated
12 and state your full name for the record.

13 **THE WITNESS:** Felicia Watson Cox.

14 **DIRECT EXAMINATION**

15 **BY MS. PARR:**

16 **Q** Officer Cox, where are you employed?

17 **A** The City of Florence Police Department.

18 **Q** And what do you do for the Florence City Police
19 Department?

20 **A** My main role is the victim witness advocate with the city
21 and I'm also a sworn police officer.

22 **Q** Okay. And how long have you been with the Florence
23 Police Department?

24 **A** I been with them twelve-and-a-half years and I've been a
25 police officer for the last four.

SW - F. COX - DIRECT

1 Q Okay. And what are your duties as a police officer and a
2 victim advocate?

3 A As victim advocate I work with all the crime victims with
4 the City of Florence. As a police officer my duties have
5 increased where I can actually make arrests and do other
6 things and I do followup with some cases.

7 Q Okay. Now are you familiar with the so-called Miranda
8 warnings on a suspect's constitutional rights?

9 A Yes, ma'am.

10 Q Now did you have the occasion to advise the suspect of
11 those rights during the course of your work in law
12 enforcement?

13 A Yes, ma'am.

14 Q Okay. And how were suspects advised?

15 A I read my Miranda rights right from my card. I don't ad
16 lib it.

17 Q All right. And did you have an occasion to become
18 involved in the investigation of this matter that we're
19 before the court now?

20 A Yes, I did.

21 Q Okay. And what date did you become involved?

22 A I became involved the morning of October the 3rd, which
23 was a Friday morning.

24 Q Of what year?

25 A 2008.

SW - F. COX - DIRECT

1 Q Okay. And how were you brought into the case?

2 A As my role as a victim advocate the victim was down in
3 the basement of the complex filing a report from what
4 happened the night before, and I went down to assist with
5 her rights and explaining what she needed to do for the
6 domestic violence part of it. We file for an order of
7 protection.

8 Q Okay. Now I show you what has been marked as State's
9 Exhibit Number 1 for identification. Do you see that in
10 front of you?

11 A Yes, I do.

12 Q Okay. Are you familiar with that?

13 A Yes, I am.

14 Q And how are you able to recognize it?

15 A Actually I made this copy from the card of Miranda
16 warnings that I read and carry around whenever I'm working.

17 Q And now demonstrate to us the manner which you use
18 State's Exhibit Number 1.

19 A Before we are able to question anyone who's been arrested
20 we let them know that we have to read them their Miranda
21 warnings, and I pull out my card. And you want me to read
22 this as well?

23 Q Yes.

24 A Okay. We tell them: "You have the right to remain
25 silent. Anything you say can and will be used against you

SW - F. COX - DIRECT

- 1 in a court of law. You have a right to talk to an attorney
2 and have him or her present with you while you are being
3 questioned. If you cannot afford to hire an attorney one
4 will be appointed to represent you before any questioning if
5 you want. You can decide at any time to exercise these
6 rights and not answer any questions or make statements. Do
7 you understand these rights as I've explained them to you."
8 And then you say: "Having these rights in mind do you wish
9 to talk with us now." And the defendant agreed to speak
10 with me.
- 11 Q Okay. Now on October 8, 2008 did you have an occasion to
12 see the defendant that day?
- 13 A On October the 8th?
- 14 Q October 10th, I apologize.
- 15 A Yes, on October 10th, yes.
- 16 Q And where did you see the defendant?
- 17 A Sergeant Compton and I went to the jail in Effingham, and
18 we actually met with him in D-pod in the interview room that
19 was down in D-pod.
- 20 Q Okay. And who was present with you?
- 21 A It was Sergeant Compton, myself, and the defendant.
- 22 Q Okay. Now describe the defendant's physical appearance.
- 23 A He looked fine.
- 24 Q Okay. Did he make any complaints?
- 25 A Other than trying to show us the bruising on his arms

SW - F. COX - DIRECT

1 before we left he made no complaints.

2 Q Okay. Have you ever dealt with people in your line of
3 work who had been under the influence of drugs or alcohol?

4 A Yes, I have.

5 Q Okay. Did the defendant appear to be under the influence
6 of drugs or appear to be intoxicated by alcohol or drugs?

7 A No, he did not.

8 Q Did the defendant respond to your questions when you read
9 the exhibit card or when it was read to him?

10 A Yes.

11 Q Did the defendant appear to understand the questions
12 regarding his rights?

13 A Yes.

14 Q Was the defendant speech coherent?

15 A Yes, it was.

16 Q Did the defendant respond when asked whether he wanted an
17 attorney?

18 A He didn't ask for an attorney, no. He wanted to just
19 talk.

20 Q And did the defendant ever invoke his right to remain
21 silent?

22 A Not during the interview on October the 10th of 2008.

23 Q Okay. Did the defendant agree to answer any questions
24 that you had?

25 A Yes, he did.

SW - F. COX - DIRECT

1 Q And did he agree to do that without an attorney?

2 A Yes, he did.

3 Q Now did the defendant make a statement in response to
4 your questioning and Sergeant Compton?

5 A Yes, ma'am.

6 Q And was that statement oral or written?

7 A It was oral.

8 Q And what, if anything, the defendant said other than what
9 has already been relayed to the Court?

10 A I think Sergeant Compton covered everything in that first
11 interview.

12 Q Would you please answer -- no, one other question. Now
13 did you have another occasion to talk with the defendant?

14 A Yes, I did.

15 Q Okay. And I'm gonna show you what has been marked as
16 State's Exhibit Number 3 for identification. You recognize
17 that?

18 A Yes, I do.

19 Q And would you please tell the Court what that is.

20 A This is a waiver of rights form that the police
21 department has when you interview the defendant before any
22 questioning.

23 Q Okay. And now did you have an occasion to use that form
24 on October the 14th, 2008?

25 A Yes, I did.

SW - F. COX - DIRECT

1 Q Would you please tell us when did you use that form and
2 where?

3 A I went back to see the defendant at the jail on
4 October 14th. The victim had been by my office and given me
5 letters that the defendant had been sending, and the victim
6 had received an order of protection. So I went back to talk
7 with him in reference to having him contact with the victim.
8 And that day I went by myself because Sergeant Compton was
9 not available and went down to the D-pod as well.
10 Mr. Flowers was a little bit agitated to see me that
11 particular day, and but he did agree to go into the room and
12 talk with me. We went in there. I told him that I would
13 need to read him his Miranda warnings and waiver of rights
14 form. He told me I didn't have to, he already understood
15 that. I said I have to do it anyway. So I pulled my card
16 out, my Miranda warnings card, and I read the Miranda
17 warnings.

18 Q Okay. Would that have been State's Exhibit Number 1?

19 A Yes. And then I read him the waiver of rights form.
20 Once I completed that he signed it and dated it and he wrote
21 on there that he has allergies today. Now my waiver of
22 rights form is not signed in the notary spot because I'm not
23 a notary, but I am the one who did this form with
24 Mr. Flowers.

25 Q And did he ever indicate that he did not understand the

SW - F. COX - DIRECT

1 contents of that form?

2 A No, he did not.

3 Q Now after giving -- having the defendant sign that, did
4 you have -- did you question him?

5 A I did. The first part of the interview I talked with him
6 about having contact with the victim. He did not act like
7 he understood it at the beginning when I was trying to tell
8 him there was an order of protection and the order of
9 protection says no contact, your can't send her letters, you
10 can't make phone calls, you cannot have someone on your
11 behalf to contact her. I also told him it was part of his
12 bond stipulation. And after we talked about that briefly he
13 finally said that he understood that and that he would have
14 no more contact. And I advised him that, you know, if he
15 did then additional warrants could be signed for violating
16 the order of protection. Once we went through that I talked
17 with him about making contact with his friend Wilmo in New
18 Jersey in reference to this clothing and that kind of stuff.
19 I actually had to call the victim to get the phone numbers
20 and to call -- and only name I have is Wilmo and that's the
21 one that he gave me. And I advised him that his friend said
22 that he would try to come here to get his belongings.

23 Once we did that -- okay. I asked the defendant what
24 happened to the victim's clothing. During that time he
25 said, well, when he was in the house with the handle, ax

SW - F. COX - CROSS

1 handle destroying it, people were coming in and out of the
2 house taking things. And I looked at him and said, I find
3 it hard to believe that there would be people coming in and
4 out of the house while you're carrying an ax handle
5 destroying the house. He made no -- he would not respond to
6 that. And then of course I asked the defendant if -- what
7 would he say if I told him I had the gun. At that point in
8 time he got really upset, wanted to know if I was planning
9 on charging him with the gun. And I just asked him what
10 would I tell -- you know, what would you say if I told you I
11 had the gun. And he still stated at that point he gave it
12 to someone in Darlington, that he did not want to tell me
13 who the person was, and then he got upset and he said he
14 didn't want to discuss the gun anymore. At that point I
15 concluded the interview. I reiterated to him to have no
16 contact with the victim and I left.

17 Q Would you please answer any questions that Mr. Floyd may
18 have for you.

CROSS-EXAMINATION

19
20 BY MR. FLOYD:

21 Q Investigator Cox, the first visit that you made to the
22 pod to speak with Mr. Flowers, that was made with
23 Investigator Compton; is that correct?

24 A Yes.

25 Q Okay. And that was the visit that Investigator Compton

SW - F. COX - CROSS

1 went over his Miranda rights; is that right?

2 A Yes.

3 Q You didn't do it at that time?

4 A No, sir.

5 Q He did it?

6 A Yes.

7 Q And the second time you went to see him on the 14th that
8 was -- you were alone with the defendant on that day?

9 A Yes.

10 Q Okay. There was no one else present with you on that
11 day?

12 A No.

13 Q Okay. So you would have been the one to read any Miranda
14 warnings or anything of that sort?

15 A Right, yes.

16 Q All right. How do you go about doing that when you read
17 that waiver of rights form? Do you -- tell me how you do
18 it. Do you read the whole thing at one time or do you
19 break, you take breaks after you read each sentence and ask
20 if they understand it? How do you do that?

21 A Yes. With the Miranda warnings I take a break after each
22 one. With the waiver of rights I just read the whole thing
23 before we took a break.

24 Q Okay. So you read the whole form and then what do you
25 say?

SW - F. COX - CROSS

- 1 A I -- once I read it and asked him if he understood it and
2 he said yes. I ask him to sign and date it.
- 3 Q And did he?
- 4 A Yes, he did.
- 5 Q You said you wrote down at the bottom of the form I have
6 allergies today.
- 7 A Yes, he did.
- 8 Q Okay.
- 9 A And he stated it to me as well.
- 10 Q Okay. Did he make any statements on the 14th about his
11 health situation other than the fact he had allergies?
- 12 A No, he did not.
- 13 Q Okay. Did he mention his heart condition that day or
14 anything of that nature?
- 15 A I don't think so, no, sir.
- 16 Q Did he mention he was on any medication at that time?
- 17 A No, sir.
- 18 Q Did he mention he needed medication at that time?
- 19 A No, sir.
- 20 Q The first time that you went to see him on the 10th when
21 you were in the room with Investigator Compton he mentioned
22 his bruises, correct?
- 23 A Yes.
- 24 Q Okay. He did have bruises on his arm, right?
- 25 A Yes.

SW - F. COX - CROSS

- 1 Q Okay. And where were they on his arms?
- 2 A It was on his bicep up in this area (indicating).
- 3 Q Up here?
- 4 A Yeah.
- 5 Q Okay, all right. Who made the determination that it
- 6 wasn't from being grabbed?
- 7 A Sergeant Compton and I both looked at the bruising and it
- 8 wasn't consistent with fingers. It was a larger bruise that
- 9 didn't look like a hand.
- 10 Q Okay. Could have been consistent with being struck with
- 11 something, an object?
- 12 A It could have been.
- 13 Q Okay. Did y'all take pictures of it?
- 14 A We didn't have a camera.
- 15 Q Okay. Did you get a camera and have anybody take -- or
- 16 did you ask anybody to go take pictures of it afterwards?
- 17 A No, I didn't.
- 18 Q Okay. Did he appear -- did he have bruises anywhere else
- 19 on his body that you could see on either day that you went
- 20 to see him?
- 21 A No, sir.
- 22 Q Did he attempt to show you any other bruises other than
- 23 the ones on his biceps?
- 24 A No, sir.
- 25 Q Okay. On either one of the days that you were taking

SW - F. COX - CROSS

-1 statements from him in October 10th or 14th did his speech
2 appear slurred or anything like that?

3 A No, sir.

4 Q He didn't appear groggy or sleepy?

5 A No, sir.

6 Q All right. That's all that I have. Thank you.

7 THE COURT: Redirect.

8 MS. PARR: Nothing further for this witness, Your
9 Honor.

10 THE COURT: You may step down. Next witness please.

11 MS. PARR: Your Honor, the State has no further
12 witnesses. That will conclude the State's.

13 THE COURT: All right, Defense.

14 MR. FLOYD: Your Honor, we don't have any witnesses to
15 call.

16 THE COURT: All right.

17 MR. FLOYD: Thank you.

18 THE COURT: Argument, Counsel, State.

19 MS. PARR: Your Honor, the State has moved for earlier
20 would move that State's Exhibit 1, 2 and 3 be admitted into
21 evidence. Your Honor, we believe that the State has put on
22 sufficient evidence to show that the defendant's statements
23 have been freely and voluntarily given. He was given his
24 Miranda warning on both occasions October 10th, 2008 as well
25 as October 14th, 2008. The -- both officers indicated and

1 testified under oath that the defendant's Miranda warnings
2 were read to him from the Miranda card, a copy of which has
3 been offered into evidence today. The defendant in addition
4 to being read Miranda warnings card was also read a waiver
5 of rights form on both occasions, October 10th, 2008 and
6 October 14th, 2008. The defendant indicated to the officers
7 that he understood those rights and so indicated by signing
8 the form itself, and so we would ask that the Court to find
9 that the defendant's statement was freely and voluntarily
10 given and also he was not impaired on either one of those
11 days and that he was coherent and understood his rights.

12 THE COURT: Mr. Floyd?

13 MR. FLOYD: Thank you, Your Honor. Your Honor,
14 obviously I don't think there's any question the defendant
15 was in custody when these statements were made. He was at
16 the detention center in a pod, lock down in a pod, so
17 certainly we have custodial situation. Your Honor, I did
18 review the paperwork from the defendant's bond here. I
19 believe it's on file with the clerk of court. Looks like it
20 was filed on October 15th, which is actually the day that
21 our office would have received it. It appears that the
22 defendant actually was appointed to the Public Defender's
23 Office on October 5th. In other words, he already had a
24 lawyer appointed to him by the city court judge Judge
25 Hewitt. She signed the form, which I believe is in the

1 clerk's file. The Miranda warnings and the — or the waiver
2 of rights form that they use there that are marked as
3 exhibits in this case, I think they tell the defendant that
4 he has a right to have a lawyer appointed if he wants one
5 and that that can be done and then if he doesn't want to
6 make the statement, or if he wants to make the statement
7 without a lawyer, whatever it says Your Honor particularly.
8 But at any rate, the fact of the matter is he already had
9 legal counsel appointed. I don't think he — I'm not sure
10 that he knew that at the time. It may have made a
11 difference to him if he had known that he did in fact
12 already have legal counsel appointed. He might have thought
13 that there was, you know, some type of delay in saying what
14 he wanted to say; I don't know. But at any rate it
15 certainly could have made a difference to him and I think he
16 did in fact have legal counsel appointed at the time and I
17 think he should have been made aware of that before he was
18 questioned. And I think our office should have been made
19 aware of it, quite frankly, before he was visited and
20 questioned. So in other words, I think we should have the
21 opportunity to speak to him so I would ask that you exclude
22 the statements, Your Honor.

23 THE COURT: All right. Anything further from the
24 State?

25 MS. PARR: Your Honor, only that from what we have

1 the -- it says that you've been approved for an attorney
2 from the Public Defender's Office and he, the defendant,
3 signed this indicating that he knew this. Your Honor, the
4 defendant had a right to give a statement if he wanted to
5 and he so did on those particular occasions. And he was
6 given his Miranda warnings on both times and he signed
7 waiver of rights form.

8 THE COURT: All right. Any further argument,
9 Mr. Floyd?

10 MR. FLOYD: Nothing further, Your Honor.

11 THE COURT: Order: The Court has conducted a hearing
12 pursuant to Jackson versus Denno, cite omitted. The hearing
13 is bifurcated in regard to the issues posited by Jackson
14 versus Denno: One, the applicability of Miranda; and two,
15 the voluntariness of any proffered statement. A statement
16 obtained as a result of custodial interrogation is
17 inadmissible unless the suspect was advised of and
18 voluntarily waived his rights. Miranda versus Arizona, 384
19 U.S. 436, 498 Supreme Court 1602, 16 Lawyers Edition 2d 694,
20 State versus Saltz, S-A-L-T-Z, 346 S.C. 114, 551 S.C. 2d
21 240. If a suspect was advised of his Miranda rights but
22 made a statement the burden is on the State to prove by a
23 preponderance of the evidence that his rights were
24 voluntarily waived. A statement is not admissible unless it
25 was voluntarily made. The voluntariness requirement is in

1 addition to the intelligent waiver mandate of Miranda.

2 Concomitantly, we examine: One, the issue of Miranda; and
3 two, the issue of voluntariness.

4 This Court visits the writing contained within the
5 case of State versus Miller, 375 S.C. 370, 652 S.C. 2d, 444.

6 Addressing the issue of Miranda, the State has
7 affirmatively shown that Miranda rights were in fact given
8 to the defendant by virtue of the publication of a Miranda
9 rights form and the execution of a waiver of rights by the
10 defendant. Thus, the Miranda prong has been complied with
11 in specificity.

12 Under Jackson versus Denno a defendant is entitled to
13 a reliable determination as to the voluntariness of his
14 statement by a tribunal other than the jury charge with
15 deciding his guilt or innocence. In South Carolina the
16 judge makes the initial determination of voluntariness
17 required by Jackson versus Denno. A defendant in a criminal
18 case is entitled to an independent evidentiary hearing to
19 determine the voluntariness of statements made by the
20 defendant prior to the submission of such statements to the
21 jury. In State versus Washington, 296 S.C. 54, 370 S.C. 2d
22 611, the State Supreme Court addressed the issue of standard
23 of proof applicable to the Jackson versus Denno hearing in
24 regard to the bipartite analysis, i.e., the consideration
25 initially of the issue by the trial judge; and two, the

1 issue of the consideration of the statement in finality by a
2 jury. Washington inculcates the Bench and Bar. The burden
3 is on the State to prove by a preponderance of the evidence
4 that his rights were voluntarily waived. The prosecution
5 must prove by a preponderance of the evidence that the
6 statement was voluntary. The trial judge must examine the
7 totality of the circumstances surrounding the statement and
8 makes a determination by a preponderance of the evidence in
9 regard to admissibility. If the judge concludes that the
10 statement is in fact admissible the statement will be
11 presented to the jury so that the burden is beyond a
12 reasonable doubt. The writing in Miller is edifying. It
13 reads: "Once a trial judge determines that the statement is
14 admissible it is up to the jury to ultimately determine
15 beyond a reasonable doubt whether statement was voluntarily
16 made."

17 In summation this Court concludes that the Miranda
18 prong has been fully and completely complied with by the
19 State. And two, the Court concludes that the State has
20 shown by a preponderance of the evidence that the statement
21 emanating from the defendant was voluntarily made. The
22 issue of the voluntariness of the statement will be
23 submitted to the jury on a standard of burden of proof
24 beyond a reasonable doubt. All rights are reserved. All
25 rights are protected for purposes of appellate review. And

1 it is so ordered.

2 And it is now time for a break, 20 minute recess.

3 (WHEREUPON, a recess was taken from the proceedings.)

4 THE COURT: Are we ready to proceed now?

5 MS. PARR: Yes, Your Honor. We have a matter I
6 brought up earlier. Is it my understanding that the Court
7 still going to hold off on ruling on the admissibility of
8 State's Exhibit 1, 2 and 3.

9 THE COURT: No, I'm ready to rule on that right now.

10 MS. PARR: Okay.

11 THE COURT: State's Exhibits 1, 2 and 3 are now
12 admitted into evidence over objection. Rights are reserved,
13 rights are protected, and you may offer those in front of
14 the jury. And offer those into evidence in front of the
15 jury. Bring the jury out.

16 MS. PARR: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 (WHEREUPON, State Exhibits Nos. 1, 2, 3 were admitted into
19 evidence.)

20 (WHEREUPON, the jury was returned to the courtroom at
21 approximately 3:47 p.m., and the following proceedings
22 commenced in open court.)

23 THE COURT: Thank you, jurors, for your patience.

24 Please understand that I try these cases under rules of
25 court and decision of the South Carolina Supreme Court and

SW - J. NAMIAS - DIRECT

1 of the United States Supreme Court. I have been involved in
2 legal matters now that are mandated in regard to decisions
3 of the United States Supreme Court so please be patient with
4 the Court. I've got to try the case under the
5 constitutional rules; please understand that.

6 All right, Ms. Solicitor, proceed.

7 MS. PARR: Your Honor, at this time we would call
8 Janel Namias to the stand.

9 DEPUTY CLERK OF COURT: Please place your left hand on
10 the Bible and raise your right hand.

11 WHEREUPON,

12 JANEL ELAINE NAMIAS,
13 having been duly sworn by the Deputy Clerk of Court,
14 testified as follows:

15 THE DEPUTY CLERK OF COURT: Please be seated and state
16 your full name for the record.

17 THE WITNESS: Janel Elaine (ph) Namias.

18 **DIRECT EXAMINATION**

19 BY MS. PARR:

20 Q Ms. Namias, where do you live? Or if you don't want to
21 tell us the specific place, are you in this area still?

22 A Yes.

23 Q Okay. And how long have you -- are you from this
24 particular area?

25 A Yes.

SW - J. NAMIAS - DIRECT

- 1 Q And how old are you?
- 2 A 42.
- 3 Q And are you married?
- 4 A No.
- 5 Q Were you married and what time?
- 6 A Yes.
- 7 Q And who were you married to?
- 8 A Stewart Namias.
- 9 Q And are you divorced now?
- 10 A Yes.
- 11 Q When did you get divorced?
- 12 A May of '08.
- 13 Q Now do you have any children?
- 14 A I do.
- 15 Q And how many children do you have?
- 16 A Two.
- 17 Q And how far did you go in school?
- 18 A Two years of college.
- 19 Q Now are you employed?
- 20 A I am not. No.
- 21 Q Okay. Were you employed at one time?
- 22 A Yes.
- 23 Q And where were you employed?
- 24 A At UPS.
- 25 Q And how long were you employed at UPS?

SW - J. NAMIAS - DIRECT

- 1 A Ten years.
- 2 Q Now what did you do for UPS?
- 3 A I was a human resources supervisor.
- 4 Q And where was that?
- 5 A In New Jersey.
- 6 Q Now did you have an occasion to move back to this area?
- 7 A Yes.
- 8 Q And when did you move back to South Carolina?
- 9 A November of '06.
- 10 Q Okay. And now at that time when you moved back to South
- 11 Carolina have you been employed since then?
- 12 A No, I have not.
- 13 Q Now what was the nature of you leaving your employment
- 14 with UPS?
- 15 A I went on disability.
- 16 Q And so you are on a medical disability from UPS?
- 17 A Yes, ma'am.
- 18 Q Now did you have an occasion to meet the defendant?
- 19 A Yes, I did.
- 20 Q Okay. Where did you meet him?
- 21 A At UPS.
- 22 Q And do you recall when you met him?
- 23 A Maybe '05.
- 24 Q Okay. Now at some point did you have an occasion to
- 25 become involved with the defendant?

SW - J. NAMIAS - DIRECT

1 A I did.

2 Q Okay. Do you recall when that was?

3 A Well, we were friends and then we became more involved.

4 He actually moved in with me here in Florence.

5 Q Okay. Now when you first moved back to Florence did he
6 come, did he move with you at that time?

7 A He went to Myrtle Beach looking for work. I came back
8 here to be with family and live with my mom. And both my
9 kids came as well and then I ended up renting a place and he
10 didn't have work at the beach so he moved in too.

11 Q Okay. And do you remember when that was?

12 A I believe it was February of '07.

13 Q Okay. Now so at that time you were living in a rental
14 place; is that correct?

15 A Yes, ma'am.

16 Q And then how long did you rent someplace?

17 A Almost a year, maybe eight months, nine months.

18 Q Okay. And then what did you do after that?

19 A Then I bought a house in Florence for a rental
20 investment. I was going to go in, fix it up, and then sell
21 it, flipping houses, to make some money. Once we got it
22 fixed up we decided to live in it until it sold.

23 Q Okay. And so, and where was that house located?

24 A

25 Q Okay. And when did you move in? When did you purchase

SW - J. NAMIAS - DIRECT

1 that house?

2 A In July of '08 -- no, '07, sorry.

3 Q And so you repaired that house; is that correct?

4 A Yes, ma'am.

5 Q And who purchased the house?

6 A I did.

7 Q And whose name is this house in?

8 A My name.

9 Q Now did you make repairs on this house?

10 A Yes, ma'am.

11 Q And who paid for those repairs?

12 A Me.

13 Q And but you indicated the defendant was staying there as
14 well?

15 A He was.

16 Q Now why didn't he make any payments on it?

17 A He wasn't working.

18 Q And what was the source of your income?

19 A I cashed out my 401-K plan and stocks and I was receiving
20 long term disability from my employer.

21 Q Okay, all right. Now going back to the events that
22 happened around October 2nd of 2008, would you please tell
23 us what was going on around that particular time.

24 A Well, a couple of days prior to that, well, I guess I
25 should back up. A couple of weeks prior to that I noticed a

SW - J. NAMIAS - DIRECT

1 change in the defendant's behavior. He became aggressive,
2 paranoid, and started drinking more, and I really wasn't
3 sure what was going on with him. I know that he did tell me
4 that he had a lot of pain and that's why he was having
5 problem finding work. And I thought maybe that the change
6 in his behavior was because he started drinking more. And
7 then on the 29th -- well, I'll back up. On the 26th of
8 December is when I received my very last paycheck from the
9 long term disability.

10 Q You say December?

11 A No, September, I'm sorry. That created a lot of stress
12 because we were gonna not have anymore money coming in and
13 he wasn't working; and I wasn't going to be receiving any
14 more pay, basically how were bills going to get paid. On
15 the 29th, three days later, there was a -- a person from the
16 neighborhood that came into our yard, which normally if that
17 happened, you know, the defendant or myself would go out and
18 immediately find out what they're doing in our yard and ask
19 them to leave. In this particular case that didn't happen.
20 I saw that someone was in our front yard and I knew who the
21 person was and I knew it was a person we wouldn't normally
22 associate with, and the defendant was outside talking to
23 her. When he came inside I asked him what did she want, and
24 he said it's none of your business. And I said, well, it is
25 my business, it's my house, I want to know why they're

SW - J. NAMIAS - DIRECT

1 there. And he basically just screamed at me, bode up and
2 got in my face and said, I can't stand you. And I said,
3 well, if you can't stand me then why don't you just leave.
4 And he just said, I hate you, I'll put you on the ground,
5 I'm gonna kill you. And he pushed me into another room. At
6 that point after being threatened to be killed, and it was
7 the first to my knowledge he'd ever actually put his hands
8 on me, I got very scared. And the next day I went to Pee
9 Dee Coalition to talk to them about what had happened and to
10 find out what I needed to do next. So they advised me to
11 speak to the police and they actually did have a couple of
12 officers come to Pee Dee Coalition to talk to me. The
13 entire time the defendant was calling me and leaving me
14 messages, I don't know what you're doing, I don't know where
15 you are but you need to get home right now, I mean,
16 screaming. And I was getting more, more scared. And at
17 that point I just -- I told the officers at the Pee Dee
18 Coalition I can't do anything right now, I've got to get
19 home. I was terrified. So I left and I went home.

20 And the defendant was very angry and was extremely
21 paranoid. Again, like I said, he had a purchased a gun and
22 he became -- began walking around the house all night long
23 at the windows, at the doors, just listening, watching. He
24 wasn't sleeping at night. He wasn't sleeping during the
25 day. And I was terrified. I didn't know what he might do

SW - J. NAMIAS - DIRECT

1 if I went to sleep. I mean, I've never been -- I've never
2 had my life threatened before and I've never had anyone put
3 their hands on me before. And I was basically just
4 terrified. He started with other paranoid behavior such as
5 vacuuming every inch of carpet in the house every day.
6 Every time we would come in or go out looking for footprints
7 because he thought someone was coming in the house and
8 moving things around. Although nothing was ever taken he
9 swore someone was coming in the house and moving things
10 around. He then accused me of doing it. And I said to him,
11 well, why would I do it, it's my house, I know what's in it,
12 there's no reason for me to move things around. I mean,
13 we're talking about things like clothes that are inside
14 drawers and moving a bag of tools from one side of the room
15 to the other. I mean, things that just didn't make sense to
16 me.

17 And then on the second, I was watching TV in the
18 bedroom and he came in and he picked up my pocketbook and my
19 keys and my cell phone and started to walk out the room.
20 And I said, where are you going with my stuff. And he said
21 don't worry about it. And I got up off the bed and I
22 started following and said, what are you going with my
23 things. And basically he turned around and grabbed my arms,
24 pushed me back into the room, and he said you're gonna pay
25 for lieing to me, I told you you would pay. I'm gonna put

SW - J. NAMIAS - DIRECT

1 you in the ground and I will kill you. And I said, I didn't
2 lie to you, what are you talking about. And he then pushed
3 me against the dresser and then pushed me against the wall
4 and I fell on the floor between the wall and the bed. And
5 then — I'm sorry. He started screaming get up, get up, and
6 I just was, you know, crying and covering my head. I'm
7 like, please don't hurt me, please just let me leave, just
8 let me leave, just don't hurt me. And he walked into
9 another room and he grabbed a baseball bat and a hammer and
10 he came towards me and he said, get up, get up, and was
11 screaming at me. So I stood up. When I stood up he pushed
12 me on the bed and then he swung the bat on top of my head
13 and he broke the lamp that was on the nightstand right
14 beside me. And he said, I dare you to move off this bed,
15 your car is next. He started walking towards the front door
16 with my pocketbook, my keys, my phone, the bat and the
17 hammer. And but he never walked out that front door. He
18 came back and he's screaming at me, stop crying, stop
19 crying, and he went to a jewelry armoire that I had and took
20 the drawer out of it and dumped the jewelry that was in it
21 out on the bed and threw the drawer at me and hit me in the
22 left arm. He did the same thing with the second drawer and
23 I moved out of the way so it wouldn't hit me. And then he
24 just kept saying, you're gonna pay, you're gonna pay, you'll
25 never leave this room again. And he started picking the

SW - J. NAMLIAS - DIRECT

1 jewelry back up off the floor putting it back in the
2 drawers, putting the drawers back, and then told me to clean
3 up the broken lamp and mess that he had made on the floor.
4 So I got the vacuum cleaner and he got a vacuum cleaner. I
5 started cleaning up the mess and he went into another room
6 and started vacuuming again for the footprints. He wanted
7 the carpet to be perfect so he could see the next time
8 somebody walked through the house. So he came back in. He
9 said, get in that bed and go to sleep and I dare you to
10 move. And so I laid down. And he's just, stop crying, stop
11 crying, and he took the gun and the knives and he laid them
12 out in straight line on his side of the bed. And then he
13 walked through the house just like he always did every
14 single night back and forth, back and forth, standing in the
15 hallway listening, watching, listening, watching. I guess
16 that was probably about 11:30 at night. Around 3:00 I asked
17 him if I could go to the bathroom. He said yes. I went to
18 the bathroom, came back to bed. Of course I couldn't sleep,
19 I was terrified, but I pretended like I was asleep. He came
20 in, it was around four, and took the gun and the knives and
21 moved them off the bed and put them on his nightstand or in
22 the nightstand drawer, one. I was trying not to let him see
23 my eyes open. He went to sleep. And around 6:30 I asked
24 him if I could get up and take a shower and go to the
25 realtor's office because this house was up for sell and it's

SW - J. NAMIAS - DIRECT

1 not in great neighborhood and we finally had someone that
2 was looking to buy it. I was supposed to be meeting the
3 realtor and the respective buyers that day and he knew that.
4 And he told me, yes, you can go, and I know in my heart the
5 reason he said that was so that more money would be coming
6 in. I'm sure that's all he was concerned with. So he went
7 and got my pocketbook and keys and the cell phone, gave it
8 to me, and I left and went straight to the police station.
9 I filled out my report there.

10 Q Now going back, you indicated that he got a knife and
11 some knives and a gun?

12 A Yes, ma'am.

13 Q Where did he get those things from? Where in the house
14 were they?

15 A In drawers.

16 Q Okay. Do you know where he kept those?

17 A He kept the gun in his nightstand drawer and the knives
18 were in the bedroom drawers, just a couple of different
19 drawers.

20 Q Okay. And how many knives were there?

21 A Four or five, I'm not sure exactly.

22 Q And what kind of knives? Can you describe them?

23 A I call them hunting knives. Probably maybe, maybe like a
24 six inch handle with six or eight inch blade.

25 Q Okay. Now were those knives -- and specific, where were

SW - J. NAMLAS - DIRECT

1 those knives placed?

2 A On his side of the bed laid out straight in a row with me
3 in the bed.

4 Q Okay. Now —

5 A Like there's a warning, don't you dare move.

6 Q Now where was he in relations to those weapons?

7 A He was in — he kept going back and forth from the
8 bedroom to the hallway, dining room, living room, just like
9 almost like making a circle throughout the house just
10 constantly doing that, going to each window in the house,
11 two doors to the house, back and forth, just listening and I,
12 guess watching and trying to, just it was just paranoia. It
13 was ridiculous.

14 Q Okay. Now when did you notice this behavior beginning?

15 A I would say probably, probably around the middle of
16 September.

17 Q Okay. Now did you try to talk to him about it?

18 A Yeah. I told him that this wasn't going to work. You
19 know, what's wrong with you, you're so paranoid. And he
20 says, no, I'm not, that we're just in a bad neighborhood
21 and, you know, I'm trying to watch out for things. And at
22 first I believed that but then when he got so paranoid and
23 was vacuuming the carpet all the time and started having
24 association with people in the neighborhood that we normally
25 did not have associations with, more and more people coming

SW - J. NAMLAS - DIRECT

1 over late at night in the yard and asking for him to come
2 out and more and more calls to him late at night to meet
3 someone somewhere or take someone somewhere, I told him that
4 it wasn't going to work and that he just needed to leave.
5 And he said he wasn't leaving, that if anybody was leaving
6 it was me. And I said, well, this is my house; and he goes,
7 well, I'm not going anywhere.

8 Q Okay. Now why on this particular night, why didn't you
9 leave?

10 A The 2nd?

11 Q Yes, on the 2nd, October 2nd?

12 A I was terrified. I -- first of all, he was in the house.
13 He had the gun and the knives out. He told me already he
14 was gonna kill me more than once. And there was -- I
15 couldn't move. If he told me to sit on that bed I wasn't
16 moving. I was not ready to die and there's no doubt in my
17 mind if I tried to move I would have been dead no doubt.
18 I've never been that scared in my life.

19 Q Now so when you got up on October 3rd was that a Friday
20 morning?

21 A Yes, ma'am.

22 Q Okay. And where did you go?

23 A To the police station.

24 Q And what happened when you came to the police station?

25 A They took a report. They took pictures of the bruises.

SW - J. NAMIAS - DIRECT

1 Officer Cox came in and talked to me. We talked about
2 meeting to go to the house, have an officer take me to the
3 house to get some clothing, and you know, medicine, things
4 like that that I might need for the next couple of days.
5 And an officer did take me out there and another officer met
6 us out there. I went in the house, and of course he wasn't
7 there. But I went in the house and noticed that my computer
8 with all my banking information, personal files, and things
9 was missing along with my medication that I have to take
10 every day. And the gun was not there. The officer asked me
11 to look for it and it wasn't there so I'd assumed he took it
12 with him and also some personal files and a filing cabinet
13 that I had were missing. So I got, you know, some clothes
14 and they took me back to the police station. Then I was
15 escorted over to the Pee Dee Coalition to fill out paperwork
16 for order of protection.

17 And after that my son picked me up and took me
18 somewhere I'd be safe that was unknown, and I left my
19 vehicle at the police station. And then later on that --
20 well, throughout that entire day I was receiving voice mails
21 and text messages from the defendant getting more and more
22 and more angry as the day proceeded so that night we went
23 back. My son and his fiance took me back to the police
24 station to file a report for phone harassment. And when we
25 got there Officer Cox came in and listened to the voice

SW - J. NAMIAS - DIRECT

1 mails, noted the text messages, and the defendant was
2 actually calling while she was there writing a report so she
3 answered my phone and advised him not to call this number
4 anymore and that just continued to escalate. So I don't
5 know how much you want to elaborate on that.

6 Q Just go on, just tell us.

7 A Okay. Well, he had stated that he had done
8 55,000-dollars worth of damage to the house; that there was
9 nothing left of it because of my stupidity because I
10 wouldn't call him or come home or answer the phone. So I
11 asked Officer Cox to have someone please go check on the
12 residence and they did, and said that it was true, that it
13 was -- it was pretty bad. So he, you know, they went out
14 and did what they had to do at the residence and we stayed
15 at the police station with Officer Cox while he continued to
16 let her know that he was bleeding to death and he had cut
17 his arm breaking a window and he couldn't get served in a
18 restaurant because of his bleeding. In all honesty he
19 sounded to me as if he was very drunk or something was very
20 wrong. And then he started -- I mean, numerous times
21 Officer Cox asked him not to call this number again and he
22 continued to do so and even started leaving voice mails on
23 my phone for her. So after all of that report was done my
24 son picked up his fiance and I drove the vehicles out of the
25 city limits. Officer Cox escorted us to the city limits and

SW - J. NAMIAS - DIRECT

1 then I stayed at a safe place until further notice.

2 Q Okay. Now -- Your Honor, if I can have the Court's
3 indulgence for, you know what I mean, go get the screen
4 right there.

5 THE COURT: Yeah, proceed.

6 BY MS. PARR:

7 Q Ms. Namias, I'm going to show you what has been entered
8 into evidence as State's Exhibit 4-A, -B, -C, and -D. And
9 would you please tell us if you recognize that.

10 A Yes, that's the bruise on my left arm.

11 THE COURT: Ms. Solicitor, as she looks at the
12 photographs she needs to identify the photograph by the
13 exhibit number please for the record.

14 BY MS. PARR:

15 Q And if you'd talk nice and loud so.

16 A So Exhibit 4-A is a picture of the bruise on my left arm.

17 THE COURT: Can you see, Counsel?

18 THE WITNESS: Exhibit 4-B is a closer view of the same
19 thing.

20 MR. FLOYD: Your Honor, I cannot see.

21 THE COURT: Okay. What number please, Ms. Solicitor?

22 MS. PARR: Your Honor,

23 THE COURT: 4-A?

24 BY MS. PARR:

25 Q Is that?

SW - J. NAMIAS - DIRECT

1 A Yes, it is.

2 Q Okay. State's Exhibit 4-A. And where is the injury to
3 your arm there?

4 A Where the light is like shining and reflecting it's a
5 bruise.

6 Q And State's Exhibit 4-B, and which arm is that?

7 A That is also the left arm. Right where that little
8 square that said like 125 percent, that's a closer view of
9 the bruise and swelling.

10 THE COURT: Let me advise the jury, these photographs
11 will be with you in the jury room when the case is given to
12 you for decision.

13 Proceed.

14 BY MS. PARR:

15 Q And State's Exhibit 4-C.

16 A This is my right arm. The bruise is right where those
17 numbers were right in the middle. It went just above it.

18 Q Okay. And State's Exhibit 4-D.

19 A It's just a closer view of the right arm.

20 Q Okay. Now you indicated that you were at the — you came
21 to the jail; is that correct?

22 A Yes, ma'am.

23 Q I mean to the —

24 A To the police station.

25 Q And when you received the phone messages where were you

SW - J. NAMIAS - DIRECT

1 specifically?

2 A I started getting messages while I was at the police
3 station that morning.

4 Q Okay.

5 A And it continued all day long all the way up until
6 Officer Cox was writing her report on those messages.

7 Q Okay. And so that was on October 3rd of 2008?

8 A Yes, ma'am.

9 Q Okay, all right.

10 MS. PARR: Your Honor, at this time the State would
11 ask permission to play for the jury what has been entered
12 into evidence as State's Exhibit Number 5.

13 THE COURT: You may proceed.

14 (State's Exhibit Number 5 was played for the jury.)

15 THE COURT: What exhibit number is that,
16 Ms. Solicitor?

17 MS. PARR: Your Honor, that's State's Exhibit Number
18 5.

19 THE COURT: Number 5 has been published to the trial
20 jury.

21 Proceed.

22 BY MS. PARR:

23 Q Now Ms. Namias, as a result of getting those messages
24 what did you do?

25 A I went to the police station to report it to say that,

SW - J. NAMIAS - DIRECT

1 you know, he won't stop calling, leaving messages, and he
2 said now that he has destroyed my house and somebody go
3 check, somebody do something, you know. And Officer Cox
4 came right away and she listened to them and had someone
5 check on the house and found that it was true.

6 Q Okay. I'm gonna show you what has been entered into
7 evidence as State's Exhibit Number 6-A, -B, and -C. And if
8 you would please, as you're looking at each one if you would
9 identify the picture, tell us whatever you can, and please
10 state what the exhibit number is. And I'm gonna leave all
11 of them here for you and then that way I don't have to walk
12 back.

13 A This is Exhibit 6-A. It's the front of the property with
14 a piece of furniture sticking out the front window.

15 Q And the next exhibit, can you just...

16 A That doesn't -- that's a -- I can tell you what that is,
17 but that's not what I have as Exhibit 6-B.

18 Q Okay, what --

19 A That's just a closer view of the window that they're
20 showing the furniture sticking out of.

21 Q Okay, just show us the next picture.

22 A Me?

23 Q Yes. Now what exhibit is that?

24 A That is again the front of the house.

25 Q What is the exhibit number?

SW - J. NAMIAS - DIRECT

1 A I'm sorry, 6-B. That's a picture of the window broken
2 out with the furniture sticking out of it and the top left
3 of the screen, and the pieces of the window frame and glass
4 and debris laying out on the front porch.

5 Q Okay. If you would show us the next picture, 6-C.

6 A 6-C, and that's a picture of the side of the house with
7 the window screen about almost off. That window is also
8 broken.

9 Q Okay. And the next exhibit?

10 A This will be 7-A.

11 Q Okay.

12 A That's a picture of the back door, back entrance to the
13 house, with the glass busted out. What you -- the white
14 cabinet looking thing you see on the ground there is
15 something that used to be in the bathroom. A table is what
16 you see leaned up against the side of the house. And the
17 glass all over the floor from the door and also the frame to
18 the actual door itself is broken as well.

19 Q And State's Exhibit ---

20 A 6-B is what we're looking for. I mean, 7-B, I'm sorry.
21 That's just showing the same door, but you can see how the
22 frame is actually broken in. That's looking into the
23 kitchen. Yeah. That is Exhibit 7-C. That's just a closer
24 view of all the glass from the door being broken. And 7-D
25 is just a closer view so that you can see not only was the

SW - J. NAMIAS - DIRECT

1 glass broken but the frame is broken as well on the door.
2 I'm gonna go to 8-A. That is looking in. The door that you
3 just saw was broken. That's the kitchen where you walk in
4 from the outside of the house. That's the kitchen floor.
5 There's a cooler to your right. Above that is the
6 refrigerator door that's been broken outwards. To your far
7 left is the side of the stove and you can just see all of
8 the mess on the floor.

9 This should be 8-B. That is also standing in the door
10 way of the door that was broken what you're seeing in the
11 bottom left is a stove, or what's left of it. A lot of
12 the -- that's a gas stove. You can see the gas whatever
13 those are called pulled up. The top is ripped off and
14 laying over by the refrigerator. On top of the screen you
15 see obviously the sink, and the cabinet doors are ripped off
16 from underneath. A lot of the things that were in the
17 kitchen are now all over the floor. If you look above the
18 sink you'll see the window to the kitchen is also broken
19 out, blinds hanging down in the sink. And the stove is
20 actually taken off of the -- taken away from the wall. This
21 is Exhibit 8-C. This is a closer view of the stove. On
22 your bottom left and underneath the kitchen sink cabinets
23 ripped off plumbing is actually ripped out of the walls. Up
24 above the stove you can see where there used to be a range
25 hood. A fan has been flattened. Above the kitchen sink you

SW - J. NAMIAS - DIRECT

1 see the window again, and beside that you see the top
2 cabinet doors are ripped off as well. 8-D is a picture of
3 the -- that's the refrigerator door that everything's been
4 ripped off of and turned backwards. The top of your screen
5 you see a couple of pictures and a magnet. That's the side
6 of the refrigerator. What you see in the front of the
7 refrigerator is what's left of the microwave, and what you
8 see in the back of the screen is a bench and a chair that
9 was in the kitchen and just more debris all over the floor.

10 This is Exhibit 9. There's no letter. That is
11 looking out of the kitchen door into a dining room. You see
12 the dining room table is laying on its side. You can see
13 the dining room window has also been broken, not just the
14 blinds but the window itself was broken. This is a console
15 TV. In very front bottom left corner baskets turned upside
16 down, chairs piled up in the back that went to the dining
17 room table. But that's the dining room.

18 Q Now please tell us about those bins of things in it.

19 What are those?

20 A Those bins are clothes that we would sell, have yard
21 sales and go to the flea market to try to earn money to pay
22 the bills.

23 Q Okay.

24 A Okay, this is the master bedroom.

25 THE COURT: What number is that one?

SW - J. NAMIAS - DIRECT

1 THE WITNESS: I'm sorry, Exhibit 10-A. This is the
2 master bedroom. What furniture you see on the left-hand
3 side is a TV cabinet, entertainment center. You can see the
4 mattresses to the bed there. What you see in the background
5 is the headboard. This was a king-sized bed, wooden
6 headboard that's actually was thrown up into the ceiling for
7 the posts on the side made holes in the ceiling. The
8 nightstand you see with the lamp on it, that was on his side
9 of the bed. You can see a window behind that lamp also
10 broken.

11 BY MS. PARR:

12 Q Now I'm going to stop you here. Where did he keep the
13 gun and his knives?

14 A In that -- in those drawers of that nightstand.

15 Q One that's showing there?

16 A Yes, ma'am.

17 Q Okay.

18 A And it's just a disarray of bedding and clothes hangers
19 and belts and stuff all over the floor in the master
20 bedroom. This Exhibit 10-B, this is another angle of the
21 same bedroom. Piece of furniture you see on the left is the
22 entertainment center that the television was in. The window
23 that you see there was the other window in the bedroom also
24 broken out. You can see the bed is torn apart. The mirror
25 that you see that's broken is connected to the dresser that

SW - J. NAMIAS - DIRECT

1 I was actually thrown against. What you see laying on top
2 of the mattress to the right bottom of the screen, the white
3 thing is actually a closet door, bifold door.

4 Okay, this is Exhibit 11-A. This is what you can see
5 of the master bathroom. What you see in the bottom
6 left-hand corner is the corner of the defendant's
7 nightstand. The sink, as you can see, has been busted off
8 the wall, and the white on the right-hand side of the screen
9 is the bathroom door.

10 This is Exhibit 11-B. It's basically a picture of all
11 of glass and different items on that same master bathroom
12 floor. Not quite sure what else that is in the bottom of
13 the picture myself. Exhibit 11-C is the same bathroom. You
14 can see the pipes out of the wall going in to where the sink
15 was supposed to be. If you look real close beside the sink
16 you can see the busted up toilet. Right above that was
17 another window that was broken, and again, the white on the
18 right-hand side of the screen is the door. You couldn't
19 open, close it, do anything with it.

20 No, sir. There we go. This is Exhibit 12-A. That is
21 the second bedroom or what we used as an office. That is
22 the hallway looking into that bedroom. What you see there
23 is the side of a dresser with the beer can sitting on top of
24 it, a fax machine laying on the floor, a lot of personal
25 papers on the floor. The other piece of furniture that you

SW - J. NAMIAS - DIRECT

1 see there is a chest, like a hope chest. And again,
2 containers on top were just -- some of them were our, like
3 office supplies, and some of them were items that I would
4 take to the flea market and sell. You can see on the top
5 left corner the damage to the wall where the walls actually
6 been busted through from the other side. And again, the
7 window, one of the windows in that room you can tell is
8 busted as well.

9 This is another view of the same room, just a closer
10 shot. You see the filing cabinet is laying down, been
11 knocked over, on the right-hand side the desk, chair. The
12 dresser again. That's basically all.

13 This is a closeup view of the wall I was telling you
14 that was over top of that dresser that you could see had
15 been busted in from the other side.

16 Q What exhibit is that?

17 A This is gonna be Exhibit 13-A. This is from the hallway.
18 This is the main bathroom of the house. To the left of this
19 picture is the entry door to the room you just looked at.
20 This is the master bathroom. You can see in the hallway
21 there's a big hole in the wall. You can see that that
22 bathroom has been destroyed, shower curtains, towels, all
23 the toiletries. You can maybe see it in this picture, but I
24 know there are better pictures. Toilets been broken
25 completely in half. Plumbing's been pulled out of the wall.

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1 The bath tub is the blue in the background that you see.
2 And up above the bath tub where you see the light reflexion
3 right beside it, that's some of the blood where the damage
4 was being done. That's another shot of the same bathroom.
5 Again, the sink is busted out; toilet is busted in half.
6 Doors off the cabinet. Plumbing has been pulled out of the
7 bath tub, out of the wall completely.

8 Q What exhibit number is that?

9 A Oh, I'm so sorry, that's 13-B, I apologize. And just a
10 mess. This is going to be Exhibit 14-A.

11 You're going backwards. I think you just passed it.
12 Right there.

13 This is Exhibit 14-A. This is from that same hallway
14 that you were looking into the bathroom. The bathroom would
15 be to your right. What you see in front of you is the
16 entrance way to the living room. The piece of furniture
17 with the hat on it that you see is just a cabinet that I
18 kept towels and sheets and things in, but you can see the
19 wall's been busted in again from the other side. What
20 you're looking at in the next room is just -- I -- it's the
21 living room. It leads out to the front of the house. I see
22 the stereo speakers. I mean, I'm sure we have other
23 pictures of that. I see a lot of clothes all over the floor
24 in there as well.

25 This is Exhibit 14-B. This is a closeup shot of the

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1 damage that you were just looking at. That piece of
2 furniture is the cabinet that I said I kept the towels and
3 sheets in just to show how extensive the wall damage
4 actually was. This is Exhibit 14-C. This is my living
5 room. That window is the window that you saw from the house
6 with the coffee table sticking out of it. Clothes all over
7 the floor. Ceiling fan is broken down. The -- what you see
8 there beside the stereo speakers on the right-hand side and
9 the front door is a clothing rack like you see to the left
10 only it's broken and down on the floor. That's where all
11 the clothes were before he demolished it. Now the reason
12 there's clothing racks in my living room is because I would
13 have yard sales or go to the flea market with these items to
14 try to earn money.

15 14-D is the exhibit. This is just a closeup view of
16 the ceiling fan from the living room and what I believe what
17 you're seeing on that blade is some more blood. This is
18 Exhibit 14-E. This is one of the living room walls. What
19 you see to the left of the screen is the doorway that leads
20 back into the hallway towards the back the main bathroom,
21 but you can see the damage to the walls with the holes in
22 the walls. This is Exhibit 14-F. This is another wall in
23 the living room over top of the stereo speakers. You can
24 see the damage that was done to the walls.

25 I believe I need to speak to you for a minute, Ms.

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1 Solicitor.

2 MS. PARR: Okay, that's okay at this point. You can
3 turn the lights on.

4 BY MS. PARR:

5 Q Now and that was all the damage to your house; is that
6 correct?

7 A Well, that's a good portion of it, yes, ma'am.

8 Q Now when did you purchase your house?

9 A I purchased it in July of '07.

10 Q Okay. I'm gonna show you what has been entered into
11 evidence as State's Exhibit Number 21. Would you please
12 tell us what that is.

13 A This is the deed to my house.

14 Q And who is that -- and who was that house sold to?

15 A Janel Namias. I'm sorry, Janel Namias, myself.

16 Q All right. And who purchased that house?

17 A Me.

18 Q Okay. And who paid for it?

19 A I did.

20 MS. PARR: Your Honor, the State would ask permission
21 to publish that exhibit to the jury.

22 THE COURT: You may do so.

23 BY MS. PARR:

24 Q I'm gonna show you what's been entered into evidence as
25 State's Exhibit Number 20. Do you recognize that?

SW - J. NAMIAS - DIRECT

1 A Yes, ma'am.

2 Q And what is that?

3 A It's my tax notice for the house.

4 Q Okay. And who is that tax notice to?

5 A Janel Namias.

6 Q And who paid that tax notice?

7 A Janel Namias.

8 Q Okay.

9 MS. PARR: Your Honor, the State would also ask
10 permission to publish this to the jury.

11 THE COURT: You may do so.

12 BY MS. PARR:

13 Q Ms. Namias, I'm going to show you what's been marked as
14 State's Exhibit Number 22 for identification at this time.

15 Do you recognize this?

16 A Yes, ma'am.

17 Q Would you please tell us what that is.

18 A This is a list of the contents of the house given to the
19 appraiser.

20 Q Okay. Now would you please — and who prepared that?

21 A I did.

22 Q All right. And now, is that an accurate listing of the
23 contents of your home that were damaged or missing?

24 A Yes, ma'am.

25 Q Okay. And who prepared it you said?

SW - J. NAMIAS - DIRECT

1 A I did.

2 THE COURT: Yes, Counsel.

3 MR. FLOYD: Your Honor, I wasn't interrupting. I just
4 need to stand a minute, I'm sorry. I apologize.

5 BY MS. PARR:

6 Q Go on. Okay, and so you prepared that; is that correct?

7 A Yes, ma'am.

8 Q All right. And would you please tell us -- I know it's
9 voluminous, but how many pages of items did you have on
10 there?

11 A Ten.

12 Q Okay. And what is the total of the contents of your
13 house, your personal property that was destroyed?

14 A 18,910-dollars.

15 Q Okay. And were you, in fact, reimbursed from your
16 insurance for this property?

17 A Yes, I was.

18 Q Okay. And what was the amount of that, the
19 reimbursement?

20 A 13,411-dollars.

21 Q Okay. And that was made payable to who?

22 A Janel Namias.

23 MS. PARR: Your Honor, the State...

24 THE WITNESS: What do you want, the pictures or this?

25 MS. PARR: No, this.

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(Document shown to Mr. Floyd.)

MS. PARR: Your Honor, the State would move to enter into evidence State's Exhibit Number 22, which is the insurance statement of claim.

THE COURT: 22.

MR. FLOYD: That's without objection, Your Honor.

THE COURT: In evidence without objection. You may proceed.

(WHEREUPON, State Exhibit No. 22 was admitted into evidence.)

MS. PARR: Your Honor, permission to publish to the jury.

THE COURT: You may do so.

BY MS. PARR:

Q Ms. Namias, I'm gonna show you what has been marked for identification as State's Exhibit Number 23. Do you recognize this document?

A Yes, I do.

Q And would you please tell us what that is.

A That is an estimate of the damage to the physical property itself, the house itself.

Q Okay. Which would be the real property; is that correct?

A The real property, yes.

Q Okay. And would you please tell us the amount of damages to your house, to the actual structure itself?

SW - J. NAMIAS - DIRECT

1 A 24,703-dollars and 49 cents.

2 Q Okay. And were you paid for damages for that by your
3 insurance company?

4 A Yes, ma'am.

5 Q And how much were you paid?

6 A 23,703-dollars and 49 cents because I had to pay a
7 thousand dollar deductible.

8 Q Did they take that off the top?

9 A Yes, ma'am.

10 Q All right.

11 MS. PARR: Your Honor, publish this.

12 (Document shown to Mr. Floyd.)

13 THE COURT: You offering it into evidence?

14 MS. PARR: Yes. The State moves to put it in
15 evidence.

16 MR. FLOYD: Your Honor, I will object to that
17 document. I don't think the person who prepared this is
18 here to talk about it.

19 THE COURT: What about that, Counsel?

20 MS. PARR: Your Honor, the person who -- I can wait
21 and put it in tomorrow. He will be here tomorrow morning.

22 THE COURT: Very good, let's wait.

23 BY MS. PARR:

24 Q But Ms. Namias, how much damage did -- was determined was
25 made to the dwelling itself?

SW - J. NAMIAS - DIRECT

1 A 24,300, whatever it was.

2 Q Okay. And were you, in fact, paid a check for 23,000 and
3 some odd?

4 A I was given the check to give to contractors, yes.

5 MS. PARR: Beg the Court's indulgence.

6 THE COURT: Yes.

7 BY MS. PARR:

8 Q Now Ms. Namias, when you -- going back to the, that night
9 of the incident, or did you go to the house on that
10 particular evening when you left Officer Cox?

11 A No, ma'am.

12 Q Okay. Tell us, what did you do?

13 A You're talking about the night that the house was
14 destroyed?

15 Q That's correct.

16 A I left the police station after making a report of the
17 voice mail and text messages with my son and his fiance to a
18 safe location.

19 Q Okay.

20 A Not within the city limits.

21 Q Okay, all right. Now when was the next time you heard
22 anything about what was going on with your property?

23 A That I got a message left from Officer Cox that an arrest
24 had been made and that there was going be a bond hearing and
25 what time it was going be if I wanted to be there; and that

SW - J. NAMIAS - DIRECT

1 the vehicle had been towed, where the vehicle was if I
2 wanted to go get it, and that since the defendant was in
3 custody if I wanted to go over to the house I could. I went
4 to the house. I asked for an officer that was on patrol in
5 that area to meet me over there just to be on the safe side.
6 Went in and fell apart. That's basically what happened. I
7 went in. I cried. I got angry. I just kept walking in and
8 out. I could not believe what I'd seen. I couldn't believe
9 that kind of damage was done especially not by someone that
10 I thought cared about me and loved me and knew how much
11 money and time and effort had been put into purchasing this
12 house in hopes of flipping it and making money off of it
13 knowing that there was no other income to come in. This
14 house was right on the verge of being sold and now that this
15 had happened the buyer was no longer interested.

16 On top of that, when I walked in and looked at it I
17 had no place to live. That was my home; I could no longer
18 live there. It was uninhabitable. There was no food left;
19 the freezer had been cleaned out. It was just — I was
20 terrified. I was so angry; I was so upset. I was left
21 homeless with no food, no money, no place to live, and
22 nothing but bills facing me. I had to find a place to live.
23 I had to get that place fixed back up. I had lost the only
24 buyer that I had in a long time, potential buyer. My last
25 check had come and gone, where was I gonna buy — how was I

SW - J. NAMIAS - DIRECT

1 going to buy food. I just filled up the freezer and
2 refrigerator. I had a dog that I had to take to the pound
3 that was outside of the house that was so terrified and
4 cowering down that was chained up, and in my own mind I
5 believe was beaten severely. I just was left with such a
6 destruction. My whole life was in that house, and it was
7 gone. And I didn't know what I was gonna do next. I didn't
8 have a place to live. You know, here I gave him a place to
9 live but what did he leave me? With no place to live, no
10 food, no money, and fearing for my life. And on top of that
11 now there's a 17,000-dollar vehicle that I need to get out
12 of impound that I'm not gonna pay for that either. You
13 know, my whole life was destroyed with this and it was
14 senseless. It was for no reason. Because he's paranoid
15 someone coming in the house and he has to take that out on
16 me because he gets mad that I won't call him back or come
17 home.

18 MR. FLOYD: Your Honor, I object.

19 THE COURT: All right, let's -- I will sustain the
20 objection, Counsel. And also, may we cut off this machine
21 here. Are you through with that?

22 MS. PARR: We're gonna use it again in one minute if
23 I, Your Honor. I'm sorry. All right.

24 THE COURT: Proceed.

25 BY MS. PARR:

SW - J. NAMIAS - DIRECT

1 Q Ms. Namias, now you said that you were told that the
2 vehicle had been towed; is that correct?

3 A Yes, ma'am.

4 Q Okay. Please tell us what vehicle that was.

5 A It was a vehicle that was the defendant was driving. It
6 was 2006 Chevy Silverado that I signed for him to be able to
7 have. I put his name on the title; however, his name was
8 not on the loan. It was my responsibility to make sure that
9 that vehicle is paid for. He did not have good enough
10 credit to be put on the loan. So when that vehicle was
11 purchased it was for him to get back and forth to work. At
12 the time he did have a job and that was in 2006.

13 Q Where was he employed in 2006?

14 A In Virginia Beach.

15 Q Oh. Okay.

16 A And that's the vehicle we're talking about.

17 Q All right. And so where was that vehicle? Did you end
18 up getting the vehicle?

19 A Yes, ma'am, I did. It was at a. I believe it was called
20 Milligan's Towing in Darlington, and my son's fiance took me
21 over to pick it up.

22 Q Okay. And when did you pick it up?

23 A The 4th.

24 Q Okay. Which is that Saturday?

25 A Yes, ma'am.

SW - J. NAMIAS - DIRECT

1 Q Okay. And then what did you do with the vehicle when you
2 picked it up?

3 A I brought it back to the house.

4 Q And then what happened?

5 A Well, first of all, the inside of it was completely hack
6 packed full. There was blood in the vehicle. My computer,
7 medication, and personal files that were missing were in the
8 truck, and it was just a bunch of trash and just an array of
9 things in the bed of the truck. I took what I considered to
10 be trash and broken glass and bags and things out of the bed
11 of the truck and tried to see what was left in the house
12 that I might be able to still use. So then I took the
13 vehicle and I put it in storage.

14 Q Okay. Now what were you able to recover out of the
15 vehicle? You said that -- did you clean the vehicle out or
16 --

17 A Yes, ma'am.

18 Q Please tell us what you got out of it.

19 A I got my computer and my medicine and my personal papers
20 from the filing cabinet. I mean, those are the things that
21 I needed once I got it to storage. Then I started to really
22 clean it out, get rid of everything else that was in it and
23 that's when I discovered that there was a gun in the
24 vehicle.

25 Q Now I'm going to show you what's been entered into

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- 1 evidence as State's Exhibit, a pack of Number 15. State's
2 Exhibit Number 15. Do you recognize this?
- 3 A Yes, ma'am.
- 4 Q And what exhibit is that?
- 5 A 15-A.
- 6 Q And tell us about that.
- 7 A Well, that's a rental storage room, huge room there to
8 store the vehicle in.
- 9 Q Okay. And what's the next one?
- 10 A This is Exhibit 15-B. It's just another shot of the
11 storage facility.
- 12 Q All right. And where is that storage facility located?
- 13 A On Cashua in Florence. This is Exhibit 15-C. This is
14 the gate that you would enter and exit out of the storage
15 facility.
- 16 Q Just tell us what...
- 17 A What you're seeing there I don't have an exhibit number
18 for but that's building F. What I have as Exhibit 15-D is
19 building FF, and this is the unit that the vehicle was
20 stored in.
- 21 Q Okay, all right, go on to the next one.
- 22 A This is Exhibit 15-E. This is building FF, unit number
23 one, this is where the vehicle was kept.
- 24 Q And what exhibit is this one?
- 25 A This is Exhibit 16-A. This is the unit with the door

SW - J. NAMIAS - DIRECT

1 open and the vehicle inside. This is Exhibit 16-B. This is
2 another picture of the vehicle inside the storage room.
3 16-C is a picture of the license plate and the bumper,
4 tailgate. 16-D is a picture of the VIN number of the
5 vehicle. Exhibit 16-A is a shot of how destroyed the
6 vehicle actually is on the outside. And Exhibit 16-F is
7 another picture of it.

8 I have 17-A, which is a picture from the passenger
9 door. Both the passenger front door and rear door are open
10 after my property had been removed. Exhibit 17-B is a
11 closer shot of the same. You can see that the back seat is
12 actually lifted up against the back rest of the seat where
13 the roll of paper towels are. And right where those paper
14 towels are to the front side down in between the seat and
15 the back is where I found the gun. Exhibit 17-C is a closer
16 view of that. Exhibit 17-D is also a shot of the same thing
17 with the paper towels removed.

18 I'm sorry, is that what you have up there? No.

19 This is Exhibit 17-C. I can tell that it's a picture
20 of the seat and the blue thing is a tarp. That's all I can
21 tell. This is Exhibit 17-F. You see the seat, the blue
22 tarp, and right next to it is a yellow bag, that's the gun.
23 This is Exhibit 17-G, I'm sorry. Seats been pulled down and
24 there's another view of it. 17-H, another view. 17-I,
25 again another view. 17-J, it's the bag that the gun was in.

SW - J. NAMIAS - DIRECT

1 This is a view from the driver's side. Driver's door is
2 open part way. Driver's backpack -- wow, excuse me. The
3 back door drivers side is also open. This is looking at the
4 vehicle through the other side. This is a closer view from
5 the back door of the driver's side.

6 Q What's the exhibit number?

7 A Exhibit Number 17-M is what we're looking at right now.
8 That's the driver's seat.

9 Q Now would you please tell us where you identified
10 Exhibit 18-A through I.

11 A I'm sorry, repeat the question.

12 Q Exhibit 18.

13 A Yes, ma'am. What about it?

14 Q Would you please tell us what those are.

15 A I have 18-A.

16 Q That's correct.

17 A 18-A is his -- the gun that he had, bullets.

18 Q Okay. And what exhibit is that?

19 A This is 18-B that we're looking at now. Bullets. 18-C,
20 gun.

21 Q And do you recognize that?

22 A Yes, ma'am.

23 Q What is it?

24 A The gun that he had. It was his gun.

25 Q Okay.

SW - J. NAMIAS - DIRECT

1 A It's almost the same.

2 Q What exhibit is that?

3 A This is Exhibit 18-D. But what you're looking at —

4 whoop, if you go back one that's D. That's Exhibit E.

5 Closer shot of the gun. Exhibit 18-F is the serial number

6 of the gun. Exhibit 18-G is where the bullets go. 18-H is

7 another view of the same gun, and Exhibit 18-I is another

8 closer view of the gun.

9 Q Now when you saw the gun in the vehicle did you ever —

10 did you touch the gun?

11 A No. What I did was I was putting my hand down in between

12 the seat and the back of the seat and I felt — and when I

13 felt a bag I felt something really hard and I'm like, I

14 don't know what that is but I don't want to pull it out just

15 in case it was the gun. So no, I did not touch it. I did

16 not pull it out. I didn't do anything. I called —

17 Q So what did you?

18 A I called Officer Cox, told her that I believe I found it,

19 and she — and she and another officer came out and they

20 took the pictures. And they took the gun?

21 Q Would it be Officer Meyers?

22 A Yes, ma'am.

23 Q And where did they respond to take the pictures?

24 A At the storage facility where the truck was.

25 Q Okay. And did they come immediately?

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1 A Yes, ma'am.

2 Q All right. Now you can turn the lights on. I'm gonna
3 show you what has been marked for identification as State's
4 Exhibit 19-A through D. Do you recognize these items?

5 A It looks like his gun, yes, ma'am.

6 Q Okay. And how is it that you're able to recognize it?

7 A Well --

8 Q Let's start first, I want to show you what's been marked
9 as State's Exhibit A for identification. Do you recognize
10 that?

11 A Is that the gun? I can't read it, I'm sorry. Is that
12 the gun itself?

13 Q Yeah.

14 A Yes, ma'am.

15 Q Okay. And State's Exhibit B, that's closeup?

16 A I guess, what, there's bullets in there?

17 MS. PARR: Your Honor, permission to open.

18 THE COURT: Yes, you may do so.

19 BY MS. PARR:

20 Q If you will just pull the tab.

21 A (Complies.)

22 Q Okay. Do you recognize?

23 A It looks like they go to that gun.

24 Q Okay. And do you recognize State's Exhibit 19-C?

25 A Yes, ma'am.

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1 Q And what is that?

2 A That's the bag the gun was in.

3 MS. PARR: Beg the court's indulgence one moment.

4 THE COURT: Yes. Ms. Solicitor, if this is a good
5 stopping place I would like to stop court now. Do you --
6 that --

7 MS. PARR: Your Honor, I'm getting ready to finish
8 this witness. If I can ask her one question --

9 THE COURT: Sure.

10 MS. PARR: Then I'll be finished.

11 THE COURT: Okay.

12 BY MS. PARR:

13 Q You indicated that you at some point you called -- you
14 told Officer Cox that they found -- you found a gun; is that
15 correct?

16 A Yes, ma'am.

17 Q Okay. And did they respond on October 7th in order to to
18 get it done, or do you recall the date? If you don't that's
19 all right.

20 A I really don't recall the date it was.

21 Q But they did come out there?

22 A Yes, ma'am.

23 Q Okay. At any point did you ever remove the gun or
24 anything?

25 A I did not.

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1 Q Okay. And who secured the storage unit, that particular
2 unit when you -- after you found the gun?

3 A You mean who locked it back up?

4 Q Yes.

5 A The officers, the officer that I guess you call it
6 recovered the gun, the one that's not here right now.

7 Q But now when you first found it did you lock the door up
8 until the officers could come?

9 A No, I stayed there with it. They came that fast.

10 Q All right.

11 MS. PARR: Your Honor, nothing else for this witness,
12 your Honor, and we could stop here.

13 THE COURT: All right. Cross-examination will be
14 conducted tomorrow morning, Mr. Floyd.

15 MR. FLOYD: Yes, Your Honor.

16 THE COURT: Jurors, give me your attention please.

17 Remember my instructions to you about not discussing the
18 case with any other person under any circumstances. Please,
19 please abide by that instruction and also please remember
20 you can't discuss the case among yourselves. As you leave
21 or as you come back in the morning do not talk about the
22 case. Do not talk about this testimony to this point.

23 Please, please have no conversations about the testimony at
24 this point. I would like to start at 9:00 in the morning.

25 Can everyone be here 9:00 in the morning? 9:00?

1 THE WITNESS: Yes, sir.

2 THE COURT: We'll have you some hot coffee ready and
3 waiting for you. All right, catch them the elevator Mr.
4 Deputy.

5 THE BAILIFF: Come right through here.

6 THE POTENTIAL JUROR: Your Honor, I have a question.

7 THE COURT: Yes, your name and number.

8 THE JUROR: Number 2. If we have any questions about
9 anything who do we ask?

10 THE COURT: You have to ask me. Under the -- let me
11 explain that to you. The state Supreme Court has set a rule
12 and procedure before the jury may participate in the
13 questioning and the rule is this: First and foremost, the
14 state Supreme Court has emphasized that the jury must stay
15 in its fact finding role and not be involved in the
16 adversarial procedure. But after all of the matter has been
17 concluded in the way of direct examination,
18 cross-examination, you feel that you want to propose a
19 question I must give you the opportunity by passing you a
20 pad and pen and letting you write it down. I then am
21 required under the procedure to look at the question, to
22 evaluate the question, and first to determine if that is a
23 kind of question that should be asked. I then am required
24 to allow counsel to confer with the Court as to the question
25 and its contents. At that point I will make a ruling. And

1 the state Supreme Court has required that I make a
2 preliminary ruling as to the viability of the question, and
3 at that point I will then decide yes or no that question can
4 be asked. It is a rather cumbersome procedure. It is a
5 thorough procedure. And the state Supreme Court has
6 absolutely mandated that I abide by that procedure so please
7 understand that's the way it works, if you understand that
8 now.

9 THE JUROR: Yes, Your Honor, okay, yes.

10 THE COURT: Thank you. Thank you for that question.
11 All right. 9:00 in the morning. Everyone be here. 9:00.
12 Okay, thank you. Good night.

13 (WHEREUPON, the jury was removed from the
14 courtroom at 5:30 p.m., and the following proceedings
15 commenced in open court.)

16 THE COURT: Counsel, give me your attention. I hope
17 you have understood what I have relayed to this juror. That
18 is a procedure that is articulated with certitude by the
19 state Supreme Court. Do you agree with that, Ms. Solicitor?

20 MS. PARR: Yes, Your Honor.

21 THE COURT: Do you agree, Mr. Floyd?

22 MR. FLOYD: Yes, Your Honor.

23 THE COURT: Thank you. All right, anything we need to
24 put on the record for the State?

25 MS. PARR: Nothing that I'm aware of, Your Honor.

1 THE COURT: For the Defense?

2 MR. FLOYD: Nothing, Your Honor.

3 THE COURT: We take the nighttime lacuna. Good
4 night's rest for everyone. 9:00 in the morning.

5 (WHEREUPON, the proceedings were concluded for the day to be
6 reconvened on July 21, 2009 at 9:00 a.m.)

7 THE COURT: On yesterday we had a juror who stood,
8 raised his hand, and asked if he could ask a question.
9 Despite my age I did remember the procedure to be utilized,
10 and although not entered into the record in haec verba I
11 came fairly close to the writing of Chief Justice Toal, and
12 the case of course is Jack Theodore Day versus Chalice L.
13 Kilgore. The Supreme Court says, quote: "Accordingly, we
14 adopt the following procedure for use by the trial judge
15 when confronted with juror questions. When a juror wishes
16 to ask a question of the witness the trial judge shall
17 immediately send the jury to the jury room with instructions
18 not to begin deliberations. The question shall be written
19 on a piece of paper and given to the jury foreman who shall
20 in turn deliver the question to the bailiff. The bailiff
21 shall deliver the question to the trial judge. The trial
22 judge shall then read the question on the record outside the
23 presence of the jury. The trial judge will then entertain
24 any objection to the question from either counsel. The
25 trial judge shall consistent without general law make a

1 ruling on whether the question from the jury is relevant and
2 competent. Of course, if the question is improper the trial
3 judge will not allow the question. If however, the question
4 is proper the trial judge must independently review the
5 question and make a determination of whether the question
6 may lead the jury out of their normal role of passive
7 finders of fact and into the role of advocate. Ultimately,
8 it is the trial judge who possesses the power and the
9 responsibility to maintain the adversarial system during
10 trial. We believe this method will effectively eliminate
11 the dangers inherent in allowing the jury to question
12 witnesses while maintaining the trial judge's discretionary
13 powers over the evidentiary process at trial."

14 I complied I think with that rule on yesterday. Does
15 the State wish to put anything on the record in regard to my
16 response to that trial juror who stood and raised his hand?

17 MS. PARR: No, Your Honor.

18 THE COURT: Defense?

19 MR. FLOYD: No, Your Honor..

20 THE COURT: Thank you very much. All right, are we
21 ready to proceed?

22 THE DEPUTY: Judge, I think we have one juror in the
23 hallway.

24 THE COURT: Okay, bring him in.

25 (At 9:07 a juror is brought through the courtroom.)

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1 **THE COURT:** Bring them out please.

2 **MS. PARR:** Your Honor, do you want Ms. Namias to get
3 back on the stand?

4 **THE COURT:** I do.

5 (WHEREUPON, the jury was returned to the courtroom at
6 approximately 9:07 a.m., and the following proceedings
7 commenced in open court.)

8 **THE COURT:** Good morning, jurors. Hope you had a good
9 night's rest. We are ready to proceed.

10 You remain under oath. You understand?

11 **THE WITNESS:** Yes, sir.

12 **THE COURT:** All right. Cross-exam.

13 **MR. FLOYD:** Thank you, Your Honor, may it please the
14 Court.

15 **CROSS-EXAMINATION**

16 **BY MR. FLOYD:**

17 Q Good morning, Ms. Namias. Am I saying that correctly?

18 A Namias. Good morning.

19 Q Namias, I'm sorry.

20 A That's fine.

21 Q I'm gonna go over some questions with you and I'm gonna
22 get over here so you — it may be a little easier to go back

23 and forth from this direction. Tell me when you and

24 Mr. Flowers first met.

25 A In New Jersey.

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1 Q Okay. And approximately when was that?

2 A I believe it was at some point in 2005.

3 Q 2005. Okay, all right. And y'all -- were y'all both
4 working at UPS at the time?

5 A Yes, we were.

6 Q Okay. And then you struck up a friendship --

7 A Yes.

8 Q -- at that time? And at some point you became
9 romantically involved?

10 A Yes.

11 Q Is that fair to say? When was that?

12 A I honestly don't remember.

13 Q Okay. Was it in within a year after you met him maybe?

14 A I'd say, yes.

15 Q All right. And so you were both still living in New
16 Jersey at the time; is that right?

17 A When we met, yes.

18 Q Right, okay. When you became romantically involved you
19 were still living in New Jersey; is that right?

20 A No.

21 Q No, okay. And when did y'all -- or when did you leave
22 New Jersey?

23 A In January of '06.

24 Q January of '06, okay. And where did you go when you left
25 New Jersey?

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1 A Well, I went back and forth from Virginia Beach to New
2 Jersey back and forth, back and forth for a few months.

3 Q Okay. Now did Mr. Flowers go with you to Virginia Beach?

4 A He went before me.

5 Q He went before you, okay. So he left New Jersey and went
6 to Virginia Beach and then you went after that?

7 A Yes.

8 Q Okay. And were y'all living together in Virginia Beach
9 at any time?

10 A Yes.

11 Q Okay. How long did y'all live together in Virginia
12 Beach?

13 A Like I said, I went back and forth from Virginia Beach to
14 New Jersey, Virginia Beach to New Jersey. When we were in
15 Virginia Beach we were staying together.

16 Q Okay. And when you — and then when you moved
17 permanently from Virginia Beach you came here?

18 A Yes, sir.

19 Q To South Carolina?

20 A Yes, sir.

21 Q And you had family here?

22 A Yes.

23 Q Okay. When you came to South Carolina Mr. Flowers came
24 down here too?

25 A Yes.

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1 Q Okay. And how long did you live here in South Carolina
2 before you purchased the house on Dixie Street?

3 A I moved here in November of '06 and purchased the home in
4 July of '07.

5 Q Okay. And when you purchased the home you and
6 Mr. Flowers moved into that home?

7 A Yes.

8 Q Together? Okay. Now you had referenced, I believe,
9 yesterday that you left your employment with UPS. You had
10 some sort of disability; is that right?

11 A Yes.

12 Q Okay. And were you on social security disability or was
13 it just company disability?

14 A It was company disability.

15 Q So you never qualified for social security disability?

16 A Not at that time.

17 Q Okay. And what type of disability did you have? I mean,
18 was it physical or was it?

19 A It was physical and emotional.

20 Q Okay. And were you on medications for that?

21 A Yes.

22 Q And specifically what kind of medications or what type of
23 emotional disability did you have?

24 A Depression, anxiety.

25 Q Okay, all right. And are you still being treated for

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- 1 that?
- 2 A Yes.
- 3 Q Now y'all moved to Dixie Street right here in Florence;
- 4 is that correct?
- 5 A Yes.
- 6 Q And I think I heard you say yesterday it was a bad
- 7 neighborhood.
- 8 A Yes.
- 9 Q What types of things made you think it was a bad
- 10 neighborhood?
- 11 A It's a high crime and drug area.
- 12 Q Okay. So did you have a gun in the house?
- 13 A Yes.
- 14 Q Okay. Did you think that was a good idea to have a gun
- 15 in the house where you lived?
- 16 A For protection, yes.
- 17 Q Okay. Did you — you yourself, did you have a gun?
- 18 A I did have a gun, yes.
- 19 Q Okay. What type gun did you have?
- 20 A A 22 rifle.
- 21 Q A rifle?
- 22 A Uh-huh.
- 23 Q And that was the only gun that you had?
- 24 A Yes.
- 25 Q Okay, all right.

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1 MR. FLOYD: Your Honor, could I indulge one second. I
2 want to get something out my file.

3 THE COURT: Yes.

4 BY MR. FLOYD:

5 Q When you bought the house on Dixie Street you said it was
6 refurbished; is that right?

7 A Yes, sir.

8 Q Was it in bad shape when you bought it or?

9 A Fairly bad.

10 Q All right, okay. And so you certainly felt the need to
11 refurbish it?

12 A Yes.

13 Q And your intention was to flip it?

14 A Yes.

15 Q Live in it, fix it up, and then sell it?

16 A Yes.

17 Q That's it. Okay, all right. And who's the realtor that
18 you used?

19 A Shirley Morelle with Nationwide.

20 Q Okay. And during the time you were living in that house
21 I believe you said your divorce became final?

22 A The divorce became final before I moved into that house.

23 Q Before you moved in?

24 A It became final in May.

25 Q In May of '07?

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- 1 A No, I'm sorry, I believe it was '08.
- 2 Q It was in '08, all right. And you moved into the house
- 3 when?
- 4 A '07 July, yeah, I believe I have my dates right.
- 5 Q What state was your divorce granted in?
- 6 A New Jersey.
- 7 Q New Jersey. Did you file for that or?
- 8 A Yes, I did.
- 9 Q Okay. Now during the time that you were dealing with a
- 10 realtor. Ms. Morelle. Let me ask you this, was she the
- 11 realtor when you bought it?
- 12 A Yes.
- 13 Q And she was also the realtor when you decided to put a
- 14 for sale sign on it --
- 15 A Yes, sir.
- 16 Q --to try to sell it?. So you kept your relationship with
- 17 her throughout the whole process?
- 18 A Yes, sir.
- 19 Q Okay. Now during this time did you -- did you hold
- 20 yourself out to her as being married to Mr. Flowers?
- 21 A No, sir.
- 22 Q Okay. How about in the neighborhood with the neighbors,
- 23 did you hold yourself out as being married to Mr. Flowers to
- 24 them?
- 25 A I did not tell anyone that we were married. They -- a

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1 lot of people in the neighborhood just called me Ms. Flowers
2 because they knew Flowers was his last name and that's what
3 they assumed.

4 Q All right. When they called you Ms. Flowers did you
5 correct them?

6 A In the beginning I did and it didn't matter; they just
7 kept calling me that.

8 Q So in addition to the house that you bought I believe you
9 said you also purchased the truck; is that right?

10 A Yes.

11 Q Where was that truck purchased?

12 A In Virginia.

13 Q In Virginia is where it was purchased?

14 A Yes.

15 Q How was that truck titled?

16 A It was titled to me and Carmichael Flowers.

17 Q That was jointly. Did y'all open up bank accounts here?

18 A I did.

19 Q After you moved here?

20 A I did.

21 Q What bank did you use for that?

22 A I had two different banks.

23 Q Okay. What were those?

24 A Wachovia and Williamsburg First National.

25 Q Okay. And how are your accounts titled there?

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1 A The Wachovia is just mine and the Williamsburg First
2 National had Carmichael on it as well.

3 Q Okay, so that was a joint account. Was that just
4 checking account?

5 A Yes.

6 Q Okay. I believe yesterday you talked about a incident
7 that occurred on the 29th of September 08; is that right?

8 A Yes, sir.

9 Q 2008, okay. And there was an argument you said between
10 you and Mr. Flowers involving a female; that's correct?

11 A Yes.

12 Q And was that your neighbor?

13 A Yes.

14 Q And what was your neighbor's name?

15 A I only know her first name and it was Vonne.

16 Q Vonne? She lived across the street from you?

17 A Yes, sir.

18 Q Okay. Now you said you saw her in your yard; ---

19 A Yes.

20 Q ---is that correct? And she was talking to Mr. Flowers;
21 is that right?

22 A Yes.

23 Q And isn't it true that you accused him of having some
24 sort of sexual relationship with her ---

25 A No.

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- 1 Q ---at that time? Okay. And after your argument on the
2 29th which centered around your neighbor Vonne, or at least
3 it was fair to say that's how it got started; is that
4 correct?
- 5 A Yes.
- 6 Q You went to Pee Dee Coalition the next day; —
- 7 A Yes.
- 8 Q ---is that right, on the 30th?
- 9 A Yes, sir.
- 10 Q And what time did you go there?
- 11 A I don't remember.
- 12 Q Okay. You had the argument on the 29th. That was in the
13 morning, right?
- 14 A Yes, sir.
- 15 Q It was before lunch?
- 16 A Yes, sir.
- 17 Q Okay. It was about 9 or 10, 11 in the morning, somewhere
18 in that range?
- 19 A Yes, sir.
- 20 Q Okay. And so -- and you said yesterday he threatened to
21 kill you at that time?
- 22 A Yes, sir.
- 23 Q Is that right? And he used the words, I'll put you in
24 the ground, I'll kill you. Is that what you said?
- 25 A Yes, sir, yes, sir.

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1 Q And so that was 9, 10, 11 in the morning on the 29th.

2 And what did you do after that on the 29th?

3 A I don't remember.

4 Q Did you -- you think you stayed home?

5 A I don't remember. I may have. I may not have. I don't
6 remember.

7 Q So you have no memory of what you did after he
8 threaten -- after you say he threatened to kill you on the
9 29th.

10 A Well, I know I was terrified in my mind trying to figure
11 out what my next move needed to be.

12 Q All right. And so 24 hours at least 24 hours later,
13 maybe longer than that, you went to Pee Dee Coalition; is
14 that correct?

15 A I did go to Pee Dee Coalition.

16 Q And who did you talk to there?

17 A Ana.

18 Q And that was a counselor?

19 A Yeah.

20 Q Yeah. And when you got there did they give literature to
21 read?

22 A They went over it with me, yes.

23 Q And did that literature, did it contain information about
24 criminal domestic violence?

25 A Yes.

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1 Q Okay. And did that discuss with you what legal
2 requirements of — what constituted criminal domestic
3 violence?

4 A Yes.

5 Q Okay. And did they tell you that that literature, and
6 that literature, somebody tell you that a threat could
7 constitute criminal domestic violence?

8 A I don't remember.

9 Q All right. Okay, so after you talked to your counselor
10 there initially or you talked to somebody named Ana, did you
11 talk to anybody else there?

12 A Yes.

13 Q Okay. Who did you talk to?

14 A Excuse me. Another lady was there talking to me. I
15 don't remember her name. I know they made a phone call
16 to — I don't know if it was an officer or it was some
17 official person who spoke to me on the phone and made sure
18 that I understood, you know, what rights I have, what steps
19 needed to be taken and...

20 Q Okay, all right. Now you filed or you contacted the
21 police after that meeting; is that correct?

22 A Well, they contacted the police to come out to Pee Dee
23 Coalition and spoke to me.

24 Q Okay. And then you spoke to the police and you basically
25 told the police that there'd been a verbal threat; is that

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1 correct?

2 A Yes.

3 Q And a threat that said I'll put you in the ground and
4 I'll kill you.

5 A Yes.

6 Q Yes. Is that what you told them?

7 A Yes.

8 Q Okay, all right. And so after you talked to them on the
9 30th what did you do at that point? After you left there
10 what did you do?

11 A Went back home.

12 Q Okay, all right. So you went back to the house?

13 A Yes, I did.

14 Q On Dixie Street? Okay. Was Mr. Flowers there?

15 A I don't remember if he was there or when I got back or
16 not, but he was still staying there.

17 Q He was still there, I mean, residing there.

18 A Yes.

19 Q All right. So you continued to stay there over the next
20 few days?

21 A I did.

22 Q Okay. Mr. Flowers staying there too?

23 A Yes.

24 Q All right. Y'all were eating meals together I assume.

25 A No, I wouldn't assume that. We ate whenever we wanted to

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1 whether it was separate or didn't -- sometimes we weren't
2 home together when we ate; it didn't matter. Just I went
3 home because I was very scared when I was at Pee Dee
4 Coalition and they told me that I should be trying to
5 prepare things that I needed, important things from the
6 house, for if something else were to happen since I wasn't
7 -- I was too scared to press the charges at that time so I
8 went back to get some important items together.

9 Q Okay. And then on October the 2nd, I believe you
10 testified there was another argument; is that right?

11 A Yes, sir.

12 Q On October the 2nd?

13 A Yes, sir.

14 Q Do you recall what time that argument began?

15 A Around 8:30 at night.

16 Q 8:30 p.m.?

17 A Yes, sir.

18 Q On the 2nd? Okay.

19 A Yes, sir.

20 Q All right. And that argument, isn't it true that also
21 got -- Ms. Vonne got brought up in that argument?

22 A No, sir.

23 Q Okay. So you didn't accuse Mr. Flowers of having an
24 affair with her?

25 A No, sir.

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1 Q Okay. Had you both been drinking?

2 A No, sir.

3 Q Okay. So you hadn't had anything to drink?

4 A No, sir.

5 Q Okay. And do you deny that during that argument you

6 talked about leaving the house and your car, or you got

7 ready to leave the house and your car?

8 A I'm sorry, could you repeat that.

9 Q Do you deny that you mentioned that you were going to

10 leave the house in your car, that you were going to get in

11 your car and leave?

12 A I begged him to let me leave instead of hurting me.

13 Q And isn't it true that during that argument that you

14 actually had a bat in your hand?

15 A No, sir.

16 Q Okay. And isn't it true that you struck Mr. Flowers —

17 A No, sir.

18 Q —because you were angry?

19 A No, sir. I was not angry; I was terrified.

20 Q Now after you had your argument on the 2nd did

21 Mr. Flowers — didn't he leave the house in his truck?

22 A I went to the police station on the 3rd. I don't know

23 what he did while I was at the police station other than

24 leave messages on my phone.

25 Q Well, I'm asking about the night of the 2nd.

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1 A No, sir.

2 Q He -- you're saying he didn't leave the house in his
3 truck?

4 A No, sir.

5 Q Okay. Now according to your testimony that you gave
6 yesterday and we're -- I'm once again referring to the 2nd,
7 October the 2nd, --

8 A Yes, sir.

9 Q --the argument. What -- during that argument I believe
10 you testified he said, I'll put you in the ground, I'll kill
11 you?

12 A Yes, sir.

13 Q So he used the exact same words that he used three days
14 before when you had your first argument?

15 A Yes, sir.

16 Q Okay. And so after you had your initial argument you
17 said he pulled out some knives and a gun and laid them on
18 his side of the bed; is that right?

19 A Yes, sir.

20 Q And you said he told you not to leave?

21 A Yes, sir.

22 Q Okay, all right. Now but he didn't stay in the bedroom?

23 A No, sir, he walked back and forth.

24 Q He got out -- and he was walking out of the house or
25 walking around the house at least, according to your

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1 testimony?

2 A Yes, sir.

3 Q Okay. And he left a gun and knives laying beside you?

4 A Yes, he did.

5 Q Okay. And you felt powerless to get up and leave and you
6 had a gun and knives laying beside you?

7 A Yes, sir.

8 Q Okay.

9 A I was terrified to move. I don't -- if I had tried to
10 pick up the gun to defend myself and missed, I know that
11 would have been the end of me. I was terrified. I was
12 terrified to do anything other than exactly what he said to
13 do.

14 Q All right. Now the following morning I believe you said
15 you left the house; is that correct?

16 A Yes.

17 Q And where did you go after you left the house?

18 A To the police station.

19 Q Went straight to the police station?

20 A Yes, sir.

21 Q All right. And basically you spent the whole day of the
22 3rd either talking to the police or going with your son and
23 daughter to a different location and maybe back and forth
24 kind of?

25 A And Pee Dee Coalition, yes.

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1 Q All right. And you entered, you finally reentered the
2 house, was it on the 3rd, late, late on that night or was it
3 on the 4th?

4 A I had — there was an officer who escorted me to the
5 house to get some clothing for the next few days and to —
6 when we entered the house he asked me to look for the gun,
7 it wasn't there.

8 Q Okay. Was the 22 that you said —

9 A Yes.

10 Q —that you own in the house?

11 A Yes.

12 Q Okay. Was that taken out?

13 A Yes.

14 Q Okay. Do you remember which officer was with you?

15 A No, sir.

16 Q Was it just one?

17 A One escorted me there and another one met us at the
18 location.

19 Q Do you know who that was?

20 A The one that met us at the location was Officer Lockhart.

21 Q Okay. Did you know Officer Lockhart?

22 A I did.

23 Q And how did you know him?

24 A He came to the neighborhood a lot, stopped and talked to
25 us every once in a while.

SW - J. NAMIAS - CROSS

1 Q Okay. Was he, I mean, was he friends with Mr. Flowers
2 and you?

3 A I don't know if you'd say friends. We've never been
4 anywhere with each other, gone over to anybody's houses or
5 whatever but he would stop and say hello, is everything
6 going okay, which he was on patrol.

7 Q Okay. And did he make any calls to Mr. Flowers while he
8 was -- he was in your presence? Mr. Lockhart, I mean,
9 Officer Lockhart, did he make any telephone calls to
10 Mr. Flowers while you were with him?

11 A I mean, not in front of me and not that I know of.

12 Q Okay. Of course I'm only asking what you know.

13 A Yes, sir.

14 Q I'm not asking you to speculate. All right. Now so you
15 went there one time with the officer who escorted you and
16 Officer Lockhart met you there?

17 A Yes, sir.

18 Q All right. And then you left?

19 A Yes, sir.

20 Q Is that right? And what time did you -- what was the
21 next time that you actually in the house? What --

22 A The morning after he had been arrested.

23 Q Okay. So that would have been the morning of the 4th; is
24 that right? 4th of October?

25 A Yes, sir.

SW - J. NAMIAS - CROSS

- 1 Q Okay. Now when were you told that the truck that
2 Mr. Flowers was driving, the one I believe -- that was the
3 one that was titled jointly, is that right, the one that he
4 drove?
- 5 A Yes.
- 6 Q When were you told that that truck was available for you
7 to pick up?
- 8 A The morning of the 4th.
- 9 Q That morning?
- 10 A Yeah.
- 11 Q Did you go get it that morning?
- 12 A Yes, I did.
- 13 Q And that was the morning of the 4th?
- 14 A Yes, sir.
- 15 Q Do you remember where you got it from?
- 16 A Milligan's Towing in Darlington.
- 17 Q So it was over in the city of Darlington?
- 18 A I don't know if it's city or county. I just...
- 19 Q Across county line, is that where you went?
- 20 A I know that I went to Milligan's. I couldn't tell you
21 exactly where it is. I just know it's in Darlington.
- 22 Q So you went and picked it up?
- 23 A Yes, sir.
- 24 Q Okay. And was anybody with you when you picked it up?
- 25 A Yes, sir.

SW - J. NAMIAS - CROSS

1 Q Who was?

2 A My son's fiance drove me over there. She knew where
3 Milligan's was.

4 Q Okay, all right. So you rode with her and that was --
5 that was it. There was no police officers there?

6 A No, sir.

7 Q Okay. And you got in the truck and you did what with it
8 after you cranked it up?

9 A Drove it back to the house.

10 Q So you took it to the house?

11 A Yes.

12 Q Okay. You're talking about the house on Dixie Street?

13 A Yes.

14 Q So the morning of the 4th you had access to the house?

15 A Yes.

16 Q And you could go in and leave as you pleased; is that
17 right?

18 A Yes.

19 Q At that time when you got back to the truck were there
20 still officers there or was it empty?

21 A There were not officers inside the house, but we had the
22 officers that were patrolling that area that day continue to
23 ride by and make sure that we were okay while we were there.

24 Q All right. And so you how long did you stay at the house
25 after you got back with the truck?

SW - J. NAMIAS - CROSS

- 1 A I don't know, maybe a couple of hours.
- 2 Q Now what did you do with the truck after you left your
- 3 house?
- 4 A Took it to the storage room.
- 5 Q Okay. And was that the storage facility that we saw the
- 6 pictures of yesterday?
- 7 A Yes.
- 8 Q And you parked it there?
- 9 A Yes.
- 10 Q Now on the 5th, I guess which would have been the day
- 11 after you retrieved the truck; is that right?
- 12 A Yes.
- 13 Q The 5th of -- that would have been October?
- 14 A Yes.
- 15 Q All right. You called -- did you call Officer Cox?
- 16 A I did.
- 17 Q And did you ask her a question about what do I if I find
- 18 the gun?
- 19 A Yes.
- 20 Q So you made that call on the 5th? Okay.
- 21 A I don't -- honestly I don't know if I made the call on
- 22 the 4th or 5th but I know I made the call.
- 23 Q So you had the truck in your possession for, what was it,
- 24 two days?
- 25 A Yes.

SW - J. NAMIAS - CROSS

1 Q Okay. And your testimony or your claim was that you
2 found the gun in the truck on the 6th?

3 A I don't know what day it was but—

4 Q Okay. Well, well it was certainly after you made the
5 call to Officer Cox asking her what you should do if you
6 found the gun?

7 A Yes.

8 Q Now did you speak to -- well, let me ask you this, do you
9 know Julius Smith?

10 A Yes.

11 Q All right. How do you know him?

12 A He was a friend of the defendant's.

13 Q All right. And was he your friend as well?

14 A I talked to him when he came over to the house. I've
15 been to his house, yes.

16 Q Okay, all right. Did you speak to him immediately after
17 or within a day or so after October 3rd?

18 A When I was at the house for the first time after the
19 defendant was arrested him and his girlfriend drove by the
20 house and I came outside, and he says, I'm really sorry that
21 this happened to you and if there's anything you need just
22 let me know.

23 Q And when did you -- when did you last talk to him?

24 A That was the last time.

25 Q You haven't seen him since?

SW - J. NAMIAS - CROSS

1 A No, sir.

2 Q So you deny that Mr. Smith gave you a gun that day?

3 A He did not.

4 Q Okay. Now -- excuse me one second. Yesterday I believe
5 we had an inventory that you completed of personal items
6 that were in your house; --

7 A Yes.

8 Q --is that correct? And you filled that out; is that
9 correct?

10 A Yes.

11 Q Was that everything that was in the house or?

12 A That was everything that was destroyed in the house.

13 Q Okay. How long had you and Mr. Flowers been living
14 together at that time?

15 A Well, we lived in that house since I bought it.

16 Q Right.

17 A And he lived with me when I went to the house prior to
18 that.

19 Q Okay, all right. So none of these items were his?

20 A They were all purchased with my money.

21 Q Okay. So he, I mean, he never bought any furniture
22 either?

23 A No, sir.

24 Q Well, he did work at times; didn't he?

25 A He worked for a week at QVC.

SW - J. NAMIAS - CROSS

1 Q And he did construction type work at times; is that
2 correct?

3 A On the

4 Q The house that you lived in?

5 A Yes.

6 Q He did labor there after you bought the house?

7 A Yes.

8 Q Is that right? Okay. What type things did he do?
9 Paint, —

10 A Paint.

11 Q Did he do dry wall?

12 A No, we had someone else come in and do that.

13 Q Carpentry work of some sort?

14 A Maybe a little, not extensively.

15 Q And so but he performed labor to rehab the house?

16 A Yes, he did.

17 Q Okay. I wanted to ask you about the knives that you
18 claim were laid on the bed. Where are they?

19 A Where were they?

20 Q When you went back to the house after the incident on the
21 3rd.

22 A I believe there were a couple in the nightstand drawer,
23 and I don't actually remember how many I found in different
24 places but I know there was at least a couple.

25 Q Now, and you said you told the police officers about

SW - J. NAMIAS - CROSS

1 those knives; is that right?

2 A Yes.

3 Q Okay. Did anybody get them?

4 A No.

5 Q Okay. So as far as you know they were still sitting
6 there in the drawer in the house?

7 A Well, they weren't there when the police escorted me to
8 the house on the morning of the 3rd when we looked for the
9 gun, but after the house was destroyed that's when I found a
10 couple of the knives.

11 Q Okay, all right. Did you report that to the police that
12 you located the knives?

13 A I don't remember.

14 Q But certainly you -- you did report the gun?

15 A Yes.

16 Q Or the gun that you said you found in the truck?

17 A Yes.

18 MR. FLOYD: Your Honor, could I have one minute?

19 THE COURT: Sure.

20 MR. FLOYD: Your Honor, that's all the questions I
21 have.

22 THE COURT: Redirect.

23 MS. PARR: Yes, Your Honor.

24 **REDIRECT EXAMINATION**

25 **BY MS. PARR:**

SW - J. NAMIAS - REDIRECT

1 Q Ms. Namias, you indicated that you purchased the truck
2 that the defendant was driving in Virginia Beach; is that
3 correct?

4 A Yes.

5 Q And why did you purchase that truck for him?

6 A He had a vehicle that his ex-girlfriend had taken away
7 from him and he was working at the time. He did not have
8 good enough credit to get a vehicle himself so I agreed to
9 sign for him to get the vehicle. He had a job. He intended
10 to make the payments on it so I agreed to have his name
11 added to the title as other owner. However, the financing
12 was in my name alone.

13 Q Okay. And who made -- who ended up making the payments
14 on the truck?

15 A When he was working in Virginia Beach he did make the
16 payments. When he left there then I had to start making the
17 payments and I made them -- I kept the vehicle up until last
18 month still trying to make the payments on it to keep my
19 credit good, and I ran out of money and was no longer able
20 to do that.

21 Q And what about the insurance on the truck?

22 A I paid for it.

23 Q And why did you make -- why did you pay for the insurance
24 on the truck?

25 A He didn't make enough money to pay for both.

SW - J. NAMIAS - REDIRECT

1 Q Okay. Now Mr. Floyd asked you about bank accounts. And
2 you said you had two bank accounts, Williamsburg Bank and
3 Wachovia; is that correct?

4 A Yes, ma'am.

5 Q Okay. Which was -- which account was it that you used
6 primarily?

7 A I used Wachovia primarily to pay the bills. I used
8 Williamsburg First National primarily for flipping houses,
9 money that was supposed to be just for working on purchasing
10 whatever the houses.

11 Q Okay. Now you indicate that the defendant's name -- you
12 put the defendant's name on one of the accounts. Which
13 account was that?

14 A Williamsburg.

15 Q And why did you put Defendant's name on that account?

16 A Because he got the job at QVC. They needed to direct
17 deposit his checks and he was unable to open his own bank
18 account.

19 Q And why was he unable to open his own bank account?

20 A Because he had too many overdrawn problems with other
21 banks. He couldn't get his own account.

22 Q Now when did you put his name on the Williamsburg or open
23 that Williamsburg account with his name on it, or did you
24 have the account first before?

25 A No, when I opened it I put his name on it.

SW - J. NAMIAS - REDIRECT

1 Q And was that when he got the job at QVC?

2 A I can't remember exactly when that was.

3 Q And how long did he work at QVC?

4 A About a week.

5 Q Okay. And has he had a job since then?

6 A Not on record, no.

7 Q Okay. Now you indicated that going back to the incident
8 that happened on September 29th, 2008, now on that
9 particular day you indicate that you did not report it that
10 day; is that correct?

11 A That's correct.

12 Q And why didn't you report it that particular day?

13 A Honestly I was scared and I didn't know what to do. I
14 was trying to think about it and figure what I needed to do.

15 Q Now on September 30th that's when you went to the Pee Dee
16 Coalition; is that correct?

17 A Yes, ma'am.

18 Q And why didn't you allow the police to take action on
19 that particular day?

20 A While I was at Pee Dee Coalition talking to the different
21 people including police he was calling me nonstop and I was
22 getting terrified and I just panicked and I said I can't do
23 it right now, I've got to go home, I've got to see what's
24 gonna happen to my stuff and I have to try to get my stuff
25 out. I was just honestly I was terrified.

SW - J. NAMIAS - REDIRECT

1 Q Okay, all right. Now Mr -- then a couple of days later
2 an incident occurred again; is that correct?

3 A Yes, ma'am.

4 Q Now I think Mr. Floyd asked you or referred to it as an
5 argument; is that correct?

6 A He did.

7 Q Okay. But what was it actually?

8 A It was actually threatening to kill me, abusing me,
9 kidnapping me.

10 MR. FLOYD: Your Honor, I object.

11 THE COURT: On what grounds?

12 MR. FLOYD: Your Honor, she's drawing a legal
13 conclusion.

14 THE COURT: I sustain the objection as to any
15 conclusory aspect of the answer. Let the answer just
16 proceed to state factually.

17 MS. PARR: Okay.

18 BY MS. PARR:

19 Q Would you tell us in facts what is actually -- what
20 actually occurred.

21 A My -- we -- he took my pocketbook, my phone, my keys,
22 would not let me have them, grabbed me, threw me to the
23 dresser, threw me on the ground.

24 Q Now when you say on the ground what do you mean?

25 A After I had hit the dresser he then grabbed my arms and

SW - J. NAMIAS - REDIRECT

1 threw me against the wall and I fell on the ground on the
2 floor.

3 Q Okay.

4 A Would not allow me to leave, would not give me back my
5 possessions, and told me he would kill me, he would put me
6 in the ground. And I was not gonna leave, and I mean,
7 that's what happened.

8 Q Now Mr. Floyd asked, also asked you, about the knives and
9 the gun on the bed. Why, given those things by you, you
10 didn't -- you didn't take them?

11 A I'm sorry, I don't understand the question.

12 Q I'm sorry. Mr. Floyd asked you why with the gun and the
13 knife on the side of the bed where you were, why you still
14 did not take possession of those items?

15 A I was scared. I had been threatened that I would be
16 killed. I don't know how to use a gun and what if I tried.
17 What if I tried and missed, I was going to be dead for sure
18 in my mind. I was scared to move. He said don't move; I
19 didn't move.

20 MS. PARR: Beg the Court's indulgence.

21 THE COURT: Sure.

22 BY MS. PARR:

23 Q Okay. And now why did you stay at the house that night?

24 A Because he wouldn't let me leave.

25 Q And when did you finally feel that you could leave?

SW - J. NAMIAS - REDIRECT

1 A Well, at 6:30 the next morning I asked him if I could so
2 that this house could be sold. I had a meeting with the
3 realtor that morning. Buyers were there to hopefully sign
4 the papers to buy the house.

5 Q Okay. And did the defendant know that you had a meeting
6 with the realtor?

7 A He did.

8 Q And did you go to the realtor's that morning?

9 A No.

10 Q Where did you go?

11 A To the police station.

12 Q And why did you go to the police, to the station at that
13 time?

14 A Because I was terrified. I had just been held against my
15 will in my own house with no way to leave, threatened to be
16 killed, and had items thrown at me, hit with items, thrown
17 against furniture and wall. I was scared. I needed to go
18 to police; something had to be done.

19 Q Now was that the first opportunity you could get away?

20 A Yes, ma'am.

21 Q Would you please answer any recross defense may have.

22 MR. FLOYD: I don't have anything further, Your Honor.

23 THE COURT: You may step down.

24 MS. PARR: Your Honor.

25 THE COURT: Just one second. Something unusual has

1 occurred.

2 You may step down, ma'am.

3 The Chief Justice has issued an order in regard to
4 jurors and has given an unusual provision in regard to this
5 order. The last sentence in the order issued by the Chief
6 Justice of the state supreme court says: Notice of the
7 contents of this order shall be given to jurors, period.

8 So Jurors, give me your attention. The Chief Justice
9 runs the system. The Chief Justice is in charge of the
10 system. Some time ago the Chief Justice issued a detailed
11 order about cell phones and cell phones cannot be used in
12 the courtroom cannot be possessed in the courtroom. There
13 were several cases that have caused consternation in the
14 judicial system in the last year. One was a juror who went
15 home and got on the internet and started looking up the law
16 about the charge that was involved in the case. Anyway, we
17 had several more instances so now I'm going to do two
18 things. One, I'm going to publish the order itself. And
19 then I'm going to do what the Chief Justice said.

20 Notice of the contents of this order shall be given to
21 jurors. I'm going to give it to you. The Supreme Court of
22 South Carolina, re: Juror use of personal communication
23 devices. Order, the use of personal communication devices
24 has continued to increase dramatically. Accordingly, I find
25 it necessary to supplement my order of August 25, 2000

1 related to the use of pagers, cell phones, and other
2 personal communication devices in courtrooms to include the
3 following direction to the Court. The Court shall instruct
4 jurors selected to serve on a jury that until their jury
5 service is concluded they shall not: (a) discuss the case
6 with others, including other jurors except otherwise
7 authorized by the Court; (b) read or listen to any news
8 reports about the case; (c) use a computer, cellular phone,
9 or other electronic device with communication capabilities
10 while in attendance at trial or during deliberation. These
11 devices may be used during lunch breaks but may not be used
12 to obtain or disclose information prohibited in subsection D
13 below. Subsection D: Use a computer, cellular phone, or
14 other electronic device with communication capabilities or
15 any other method to obtain or disclose information about the
16 case when they are not in court. Information about the case
17 includes, but is not limited to the following: (i)
18 information about a party, witness, attorney, or court
19 officer; (ii) news accounts of the case; (iii) information
20 collected through juror research on any topics raised or
21 testimony offered by any witness; and four, information
22 collected through juror research on any other topic the
23 juror might think would be helpful in deciding the case.
24 Last sentence, notice of the contents of this order shall be
25 given to jurors. It is so ordered. Jean Hoefer Toal, Chief

1 Justice, Columbia, South Carolina. A very strict order.

2 Ms. Bailiff.

3 THE BAILIFF: Yes, sir.

4 THE COURT: Pass this to the jurors pursuant to the
5 order of the Chief Justice. Just read it when you go back
6 to your jury room. It's simply one of those updates in
7 regard to juror conduct while you consider a case.

8 Next witness, or is the next witness going to be
9 lengthy? If so, we'll take a respite.

10 MS. PARR: I don't think the witness is going to be
11 that lengthy but maybe we might -- may be a good time to
12 take a little break.

13 THE COURT: 15 minute recess for everybody.

14 (WHEREUPON, a recess was taken from the proceedings.)

15 THE COURT: Are you ready to proceed, Ms. Solicitor?

16 MS. PARR: Yes, Your Honor, State is ready.

17 THE COURT: Defense ready?

18 MR. FLOYD: Yes, Your Honor.

19 THE COURT: All right, bring the jury out.

20 (WHEREUPON, the jury was returned to the courtroom at
21 approximately 10:34 a.m., and the following proceedings
22 commenced in open court.)

23 THE COURT: All right, thank you. Next witness
24 please.

25 MS. PARR: Your Honor, at this time we call Ana

SW - A. ANDONIE - DIRECT

1 Andonie.

2 **THE COURT:** Okay, come forward please.

3 **THE DEPUTY CLERK OF COURT:** Please place your left
4 hand on the Bible and raise your right hand.

5 **WHEREUPON,**

6 **ANA ANDONIE,**

7 having been duly sworn by the Deputy Clerk of Court,
8 testified as follows:

9 **DEPUTY CLERK OF COURT:** Please be seated and state
10 your full name for the record.

11 **THE WITNESS:** Ana Andonie.

12 **DIRECT EXAMINATION**

13 **BY MS. PARR:**

14 **Q** Ms. Andonie, where are you employed?

15 **A** I'm employed with Pee Dee Coalition against domestic and
16 sexual assault.

17 **Q** And how long have you been ---

18 **THE COURT:** Just one second now. One, you got to
19 speak a little slower and a little louder. The court
20 reporter must take down every word you say on the witness
21 stand so give me a little more volume and a little slower.

22 **BY MS. PARR:**

23 **Q** All right. You want to do that again.

24 **A** I work with the Pee Dee Coalition against domestic and
25 sexual assault.

SW - A. ANDONIE - DIRECT

1 Q And Ms. Andonie, how long have you been employed with Pee
2 Dee Coalition?

3 A Five years.

4 Q And what is the Pee Dee Coalition?

5 A The Pee Dee Coalition is a nonprofitable organization
6 dedicated to serve victims of domestic violence and sexual
7 assault and child abuse.

8 Q All right. And what do you do for the Pee Dee Coalition?

9 A Basically my responsibilities is to coordinate victim
10 services such as crisis intervention, counseling, offer
11 information, and referral to local resources, assessments
12 for local resources and intake interviews.

13 Q Okay. And how long has this program been in existence?

14 A Since 1986.

15 Q And have you had any special training for your job?

16 A Yes.

17 Q And first of all, would you please tell us your
18 educational background?

19 A I have a bachelor degree in education.

20 Q Okay. And where did you obtain that bachelors?

21 A In Honduras, in my country.

22 Q All right. And have you had any specific training in
23 regards to domestic violence and sexual assault?

24 A Not in my country.

25 Q Okay.

SW - A. ANDONIE - DIRECT

1 A I have here in the United States.

2 Q And what training have you received as it relates to that
3 in the United States?

4 A Well, at the Pee Dee Coalition when I was hired we do
5 have mandate training and it is a 48 hour training. Plus I
6 did the Attorney General's RDV. That is rural domestic
7 violence. And I was training law enforcement and attorneys
8 around the Pee Dee area about immigration and battered
9 spouses.

10 Q Okay. And so you are actually a trainer; is that
11 correct?

12 A Correct.

13 Q Okay. And how long have you been giving training?

14 A Four years.

15 Q Four years. Now are your services solely for victims of
16 abuse?

17 A Yes.

18 Q Now how many do you directly -- how many victims of
19 domestic violence do you directly come in contact with
20 yearly?

21 A I think we see a month, in a month base, because I do the
22 stats in Florence County I can say between 48 and 56 in
23 Florence.

24 Q In Florence County alone?

25 A Yes.

SW - A. ANDONIE - DIRECT

1 Q And how many -- in which areas does the Pee Dee Coalition
2 service?

3 A We serve seven counties.

4 Q Okay.

5 A That is Marlboro County, Dillon County, Darlington,
6 Marion, Marlboro, Chesterfield, Williamsburg, and Florence.

7 Q Now do you have direct contact with the domestic violence
8 victims?

9 A Yes.

10 Q And how long have you had direct contact with victims?

11 A How long is --

12 Q Yes. How long have you been working directly with
13 victims?

14 A Four years.

15 Q Now and what is the nature of your contact with victims?

16 A Basically is to advocate and when they come -- it's a two
17 phase. When they come to the office it is called a face to
18 face and it's called a intake, and that will be your direct
19 victim. And direct victims are called when you just receive
20 a call or if this lady or person that the victim has
21 children so those are gonna be the indirect victims.

22 Q Now do you or your program conduct interviews with
23 victims?

24 A Yes.

25 Q Okay. And what's the purpose of the interview?

SW - A. ANDONIE - DIRECT

1 A To obtain information.

2 Q Now are interviews conducted with both prices, cause, and
3 clients?

4 A Yes.

5 Q Now how long do interviews normally last?

6 A It just depends on the crisis.

7 Q Now do you maintain statistics as a result of these
8 interviews?

9 A Yes.

10 Q And what are the purposes of to maintain statistics?

11 A Well, basically is to have the South Carolina Coalition
12 know the numbers of the women that I have receiving
13 counseling or that they are in a situation of abuse in the
14 state of South Carolina. And the other one, reason, we're
15 before our grantors.

16 Q Now are you -- do you belong to any professional
17 affiliations in the area of domestic violence?

18 A I am a member of the SCCADSA. That is the South Carolina
19 Coalition Against Domestic and Sexual Assault. I am a
20 member of the office, the governor's office, for to be an
21 advocate.

22 Q And are you certified to be an advocate?

23 A Yes.

24 Q And when did you receive your certification?

25 A They just implemented last year so I got it since last

SW - A. ANDONIE - DIRECT

1 year.

2 Q Now did you have an occasion to become involved with
3 Ms. Janel Namias?

4 A I did.

5 Q And when did you become involved? When did you first
6 become involved?

7 A On September 30th, 2008.

8 Q And would you please tell us how it is that you became
9 involved at that particular time?

10 A Janel came to the office and that will be walk-in like we
11 call them. And she came at 3:45 that afternoon on the 30th;
12 and she just wanted to talk, to talk to see options, to see
13 what options she had. She was -- I remember she was very
14 upset when she came in. She was very nervous. We -- what
15 we do first of all is to discuss a safety plan with victims.
16 And basically a safety plan is to, if you have people living
17 at your house like your children or something, do a code
18 with them when you think you're going, something has gone
19 wrong or you're in danger. There's a code that they can be
20 said so they can, if you're not able to call the police
21 somebody else will do it for you. Or we design to that a
22 victim has to have a second spare of keys if they need to go
23 somewhere. If they are not allow -- if somebody takes their
24 keys they will have another spare key. We do have a -- and
25 the safety plan is involved. And every document, important

SW - A. ANDONIE - DIRECT

1 documents has to be kept like in your reach or already
2 inside your car. You -- another thing we encourage is to
3 have some type of a little luggage with clothes inside and
4 some money set aside if you need to leave immediately a
5 house that you are, or a situation or a place that you're in
6 danger.

7 Q And did you discuss these options with her?

8 A Yes.

9 Q Okay. And what is the purpose of having a safety plan in
10 place?

11 A Just, number one to leave a dangerous situation.

12 Q Now you indicate that she appeared -- what was her
13 demeanor?

14 A She was very upset. She was very upset, very nervous,
15 very confused.

16 Q Okay. And so what did you do after giving her her safety
17 options?

18 A I decided to call a sheriff friend of mine in that he's
19 the criminal domestic violence investigator for the sheriff
20 county. Even though I knew this was Florence case I just
21 wanted to take -- to ask some advice.

22 Q Okay, all right. And so and who did you call?

23 A Jamie Cooper.

24 Q Okay. And then did Deputy Cooper come to the sheriff's
25 -- Investigator Cooper come to --

SW - A. ANDONIE - DIRECT

1 A No, he did talk to Janel on the phone.

2 Q And did you talk with, call anyone else?

3 A Yes. Immediately we called the police. Jamie advised us
4 to call the police, Florence Police. We did call. And two
5 officers got there, Officer Cantey and Corporal Miles. They
6 got there and they took out police report about the incident
7 and the incident was that there was a woman in the yard and
8 when she say why he was there.

9 MR. FLOYD: Your Honor, I object to any Hearsay. She
10 has testified —

11 THE COURT: I sustain the objection, Counsel.

12 BY MS. PARR:

13 Q Just tell us as a result of the information you obtained
14 what you did.

15 A We proceed to contact the police. The police got there
16 and they took a report. I did -- when the police told
17 Ms. Janel that they were going to question him that they
18 were going to go and take his part, like for him to respond
19 what she was saying, she got even more nervous because she
20 didn't want him to know that she was there.

21 Q All right. And while she was there talking with him, I
22 mean with you all, to your knowledge did she have any
23 contact with the defendant?

24 A No, but he constantly was calling her.

25 Q Okay.

SW - A. ANDONIE - DIRECT

1 A The telephone was —

2 MR. FLOYD: Your Honor, I object. I think that's
3 speculation.

4 THE COURT: All right, Counsel.

5 MS. PARR: Your Honor.

6 THE COURT: Yes.

7 MS. PARR: I can go in further and lay the foundation.

8 THE COURT: All right. At this point I sustain the
9 objection.

10 MS. PARR: Okay, all right.

11 BY MS. PARR:

12 Q Did Ms. Namias receive any calls while you were there?

13 A Yes.

14 Q While she was with you?

15 A Yes.

16 Q And how did you know this?

17 A Because her cell phone was ringing and she kept saying,
18 oh it's him, and then she kept —

19 MR. FLOYD: Objection.

20 THE COURT: All right. What can be done is she can
21 say what happened but not the contents. That violates the
22 hearsay rule.

23 BY MS. PARR:

24 Q And so what happened while she was there?

25 A He constantly was -- he -- somebody was calling on her

SW - A. ANDONIE - DIRECT

1 phone.

2 Q Okay.

3 A And she got more nervous.

4 Q And were you able to determine who it was that was
5 calling?

6 A Yes.

7 Q Okay. And how were you able to determine who was
8 calling?

9 A The caller ID.

10 Q Okay. And did you see the caller ID?

11 A Yes.

12 Q And who was it that was calling her?

13 A The defendant.

14 Q And as a result of that what was -- how did she act?

15 A She got even more anxious.

16 Q And then what -- what did she -- what did she do when he
17 kept calling?

18 A She was like she didn't know what to do. She was like so
19 anxious. She wanted to go home because she didn't want
20 nothing to happen because she could not explain why she was
21 delaying so much to get home. And she was just very
22 anxious.

23 Q Okay. And so what did you do or what did you tell her as
24 a result of?

25 A Well, we established a plan and she was going to go home

SW - A. ANDONIE - DIRECT

1 and get her medication and important documents, her ..
2 documents important from her house, and she was going to --
3 she had a plan.

4 Q Okay, all right. And when she left -- about how long did
5 she stay talking with you all that day?

6 A Almost two hours.

7 Q And then did you ever contact with her after that?

8 A Yes.

9 Q And when was this?

10 A This was on October 3rd.

11 Q Okay. And do you recall what time?

12 A It was at 2, like 2 p.m.

13 Q So that would be in the afternoon of?

14 A Of October 3rd, 2008.

15 Q Okay. And would you please tell us how did you all have
16 contact with her on October 3rd?

17 A She came to the office to help -- help her file an order
18 of protection.

19 Q Okay. And as a result of that what did you do?

20 A We did file an order of protection. Well, we did file
21 for her. We assist her to file an order of protection.

22 Q Okay, all right. Now at that time would you please tell
23 us her demeanor when she came back on October 3rd.

24 A Well, she was very, very, very upset.

25 Q Okay. Did you have an occasion to view any injuries that

SW - A. ANDONIE - DIRECT

1 Ms. Namias had?

2 A Yes.

3 Q Okay. And can you describe those, what you saw?

4 A It's a policy for the Coalition to take pictures, and I
5 did saw some minor bruising —

6 Q Okay.

7 A —in her left arm. And actually I, she even took her
8 shirt off and she had some minor bruising in her back.

9 Q Okay. And those were things that you observed?

10 A Yes.

11 Q And as a result of that what did you do if anything?

12 A I took pictures.

13 Q All right. Now did you have any contact with Ms. Namias
14 after October 3rd?

15 A Yes, I did. I did go to court with her. We kept — she
16 kept calling us and that would be a telephone information
17 referral, and basically was to tell us when was the court
18 day, the hearing day. And I did went to court with her on
19 the 7th, October the 7th, 2008.

20 Q All right. So your involvement with her was more than
21 just a one time?

22 A Yes, correct.

23 Q Okay.

24 MS. PARR: Beg the Court's indulgence a moment.

25 THE COURT: Yes.

SW - A. ANDONIE - CROSS

1 BY MS. PARR:

2 Q Ms. Andonie, would you please answer any questions that
3 Mr. Floyd may have for you.

4 MR. FLOYD: May it please the Court, Your Honor.

5 THE COURT: Yes.

6 CROSS-EXAMINATION

7 BY MR. FLOYD:

8 Q Ms. Andonie, when you first talked to Ms. Janel, that was
9 on the 30th of September?

10 A Yes.

11 Q Okay. And then you talked to her again on the 3rd of
12 October?

13 A Yes.

14 Q And you talked to her on the 7th and went to court; is
15 that right?

16 A We did have more contact with her on the 6th, but it was
17 to referring to court hearing, yes.

18 Q All right. But you didn't -- you only saw her either in
19 your office or up here at the courthouse, I assume.

20 A Correct.

21 Q Or -- where was -- the hearing was held on the 7th, okay.
22 And of course you didn't never talk to Mr. Flowers?

23 A No.

24 Q Okay. So basically information, any information you got
25 came directly from her?

SW - A. ANDONIE - CROSS

1 A Yes.

2 Q Is that right? Okay. So you heard what she told you?

3 A Yes.

4 Q Is that right? Okay, all right. And other than what she
5 told you you have no knowledge of the situation other than
6 what you were told?

7 A Correct.

8 Q Is that right? Okay, all right. Now do you have medical
9 doctors on staff there or at the Coalition?

10 A No.

11 Q Okay. So y'all don't have anybody there dispensing
12 medication or anything?

13 A No.

14 Q Okay. So you never dispensed her any medication?

15 A No.

16 Q And tell me about your referral (ph) ap. What did you do
17 with them?

18 A I have them with me. That is the property of the Pee Dee
19 Coalition.

20 Q Right. So you keep those; is that right?

21 A Yes.

22 Q Okay. You didn't -- you didn't turn those over to law
23 enforcement?

24 A No.

25 Q Okay, all right. Thank you very much.

SW - A. ANDONIE - CROSS

1 A I'm sorry, we did turn them in for the order of
2 protection.

3 Q You're talking about at the hearing?

4 A At the hearing, yes.

5 Q Okay, all right, thank you very much.

6 THE COURT: Redirect.

7 MS. PARR: Nothing further for this witness. And Your
8 Honor, we would ask for permission for this witness to be
9 released.

10 THE COURT: Is that suitable, Counsel?

11 MR. FLOYD: Your Honor, I'm sorry, I was speaking to
12 the —

13 THE COURT: She wants to excuse the witness.

14 MR. FLOYD: That's fine, Your Honor.

15 THE COURT: All right. Thank you. She's excused.
16 Next witness please.

17 MS. PARR: Your Honor, at this time we would call
18 Jimmy Cantey to the stand.

19 THE DEPUTY CLERK OF COURT: If you would, sir, place
20 your left hand on the Bible, raise your right hand.

21 WHEREUPON,

22 JIMMY LEE CANTEY,
23 having been duly sworn by the Deputy Clerk of Court,
24 testified as follows:

25 DEPUTY CLERK OF COURT: Please be seated. State your

SW - J. CANTEY - DIRECT

1 full name for the record.

2 THE WITNESS: Jimmy Lee Cantey.

3 **DIRECT EXAMINATION**

4 BY MS. PARR:

5 Q Officer Cantey, where are you employed?

6 A City of Florence Police Department.

7 Q How long have you been with the Florence Police
8 Department?

9 A Going on three years.

10 Q And have you had any previous law enforcement experience?

11 A I have worked in security and loss prevention prior to
12 this.

13 Q Now have you had any special training for your job?

14 A Yes. We go through nine weeks of academy up in Columbia
15 and then it's ongoing training throughout the year with the
16 police department.

17 Q Okay. And so you're required to take continuing training

18 —

19 A Yes, ma'am.

20 Q —every year? And are you a certified law enforcement
21 officer?

22 A Yes, I am.

23 Q Now what are your duties as a police officer of Florence
24 Police Department.

25 A I am a patrolman. I answer calls for assistance,

SW - J. CANTEY - DIRECT

1 traffic. Anything that encompasses police work we try to
2 handle it.

3 Q Okay. Now did you have an occasion to become involved in
4 a matter involving Ms. Janel Namias as a victim?

5 A Yes, I did.

6 Q Okay. And now when was your first contact with Ms.
7 Namias?

8 A The first contact I had with her was on September 30th.

9 Q Okay. Of what year?

10 A Of 2008.

11 Q And would you please tell us how you became in contact
12 with her on that day?

13 A I received a call to go to the Pee Dee Coalition in
14 reference to a domestic dispute that occurred in the City of
15 Florence.

16 Q Okay. And do you recall what time you responded to the
17 Coalition?

18 A It was at -- the dispatch time was 3:47.

19 Q Okay. And when you got to the Coalition would you please
20 tell us what you found.

21 A I made contact with the victim Ms. Namias, and she did
22 tell me that an incident occurred the day before between her
23 and her boyfriend, the defendant. She said there was a
24 female in the yard.

25 MR. FLOYD: Your Honor, I object.

SW - J. CANTEY - DIRECT

1 THE COURT: I sustain the objection.

2 BY MS. PARR:

3 Q Don't tell me what she said but what you did as a result
4 of the information you got.

5 A The information she gathered I offered her assistance
6 reference to taking her to get some belongings and some
7 other things. She was afraid to do anything. She appeared
8 a little nervous. She didn't want a paper trail or anything
9 that possible trace back to her. She didn't want anything
10 to do at the moment and she was just really eager to go.

11 Q And but as a result of getting this information from her
12 what did you do?

13 A I contacted my supervisor and for further assistance on
14 what we needed to do about the situation since she didn't
15 want to proceed with anything.

16 Q Okay. And did you file a report?

17 A Yes, I did.

18 Q And why did you file a report?

19 A We're required to file a report for any domestic that we
20 go to that we see, needs a report filed, and I felt she
21 needed a report filed at least for documentation purposes if
22 she ever decided to change her mind and come back and pursue
23 anything further.

24 Q Okay. And would you please describe her demeanor that
25 day.

SW - J. CANTEY - DIRECT

1 A As I said, she — she appeared just, she was really
2 nervous is what she appeared to me. She wasn't upset at the
3 time that I talked to her but she did become upset later.

4 Q Okay. And at what point did she become upset later?

5 A She started receiving phone calls constantly, and the
6 more the phone calls came in the more upset she became.

7 Q And now after this particular incident did you have
8 another occasion to see Ms. Namias?

9 A Yes, I did.

10 Q Okay. And when was that?

11 A This was October the 3rd, 2008.

12 Q Okay. And how did you come in contact with her at that
13 time?

14 A I made contact with her at the City-County Complex
15 downstairs at the basement. She was down talking to another
16 officer about a domestic dispute and I took the
17 investigation over.

18 Q Okay. And would you please tell us what you found at
19 that time?

20 A In speaking with her an incident had occurred the night
21 before. She did have some injuries that I did observe and I
22 took pictures of and logged them into evidence.

23 Q And I'm gonna show you what has been entered into
24 evidence as State's Exhibit Number 4-A, -B, -C, and -D. Do
25 you recognize each exhibit and would you please make

SW - J. CANTEY - DIRECT

1 reference to the exhibit number and letter?

2 A Exhibit 4-A is a photo of Ms. Namias left arm that I took
3 a photo of. Exhibit 4-B is also a photo of her left arm I
4 took a photo of and injury of a small bruise. Exhibit 4-C
5 is another photo I took of Ms. Namias right arm with a small
6 bruise on the bicep area. And also 4-D is another photo I
7 took of the injury of her right arm.

8 Q Okay, all right. So as a result of observing the
9 injuries what did you do?

10 A I immediately took photos of the injuries and the
11 investigation was kind of then turned over to Investigator
12 Cox.

13 Q Okay, all right. And so then you brought Investigator
14 Cox into it; is that correct?

15 A Yes.

16 Q All right. And then did you end up coming back and
17 meeting with the victim again?

18 A I did. I took her to her residence, to
19 retrieve some of her belongings.

20 Q And is this in the city limits of Florence?

21 A Yes, it is.

22 Q And so when you -- tell us what happened when you got to
23

24 A We took her to I took her to
25 to get some belongings. We went inside the house for her to

SW - J. CANTEY - DIRECT

- 1 retrieve the items. The defendant was not home at the time.
- 2 There was a gun that was supposedly involved in the
- 3 incident. I asked her if she could retrieve the gun and for
- 4 safekeeping. She could not find it at the moment.
- 5 Q Okay. Did she look for the gun?
- 6 A She did.
- 7 Q Were you there when she was looking?
- 8 A Yes, I was.
- 9 Q Okay.
- 10 A She went to go get some paperwork, advised me the
- 11 paperwork was missing and a computer was also missing.
- 12 Q And did you, in fact, get the serial number for the
- 13 computer?
- 14 A Yes, I did.
- 15 Q Okay. And what kind of computer was it?
- 16 A It was a black Hewlett Packard desk top computer.
- 17 Q Okay. And did you get the serial number?
- 18 A Yes, I did.
- 19 Q And what serial number was that?
- 20 A Serial number is: C, Charlie; N, November; X, x-ray,
- 21 72216; N, November F, fox.
- 22 Q Okay. And did you all look through the whole house for
- 23 these items?
- 24 A She looked through the house for them. We didn't go
- 25 through it and touch anything and remove anything, but she

SW - J. CANTEY - DIRECT

1 did look and she could not locate any.

2 Q Okay, all right. And so after she -- how long -- do you
3 recall how long you stayed at the house?

4 A Maybe 20 minutes.

5 Q Okay. And then what did you do at that time?

6 A She was then escorted back to the complex to meet with
7 Investigator Cox again and then she was -- someone took her
8 to Pee Dee Coalition.

9 Q Okay. Now when you were at the house would you please
10 describe the condition of the house at that time.

11 A The house appeared to be neat and in order. Everything
12 was in place. It was really clean. Nothing was thrown
13 anywhere, out of place, or anything.

14 Q Okay. And you said it was neat?

15 A Yes, ma'am.

16 Q Okay. And did you go through the whole house?

17 A I did. I followed behind her. Wherever she went I was
18 there with her.

19 Q Okay, all right. Did you see anything out of place at
20 that time?

21 A No, ma'am.

22 Q Now did you have an occasion to return back to the house
23 after this?

24 A I did. It was the following morning of October 4th,
25 2008.

SW - J. CANTEY - DIRECT

1 Q Okay. And would you please tell us what you found when
2 you returned?

3 A Well, first thing I noticed when I drove up I noticed
4 that the front window was broken out, had a coffee table was
5 sticking through the front window.

6 Q Okay. Now was that like that when you left the day
7 before?

8 A No, it wasn't.

9 Q Go on.

10 A We then proceeded to the back door to make entry into the
11 house that I was asked by Investigator Cox to go look at the
12 house because I was there the day before. So I went to the
13 back door where I entered the day before. The back door was
14 broken out. The glass was broken. The hinges were all torn
15 up on the storm door. We walked into the back door, entered
16 the kitchen area. It was completely destroyed. The stove
17 was ripped out of the wall. The door was busted off of it.
18 The doors off the refrigerator were busted off. There was
19 food on the floor. The cabinets were destroyed. The sink
20 was all destroyed. After leaving the kitchen area we went
21 into the bedroom. The bedroom, the bed was overturned. The
22 nightstands were tore up. The bathroom in the bedroom was
23 also destroyed. The sink and toilet was, everything was
24 busted up. Went to the next bedroom which originally was a,
25 I think it was office area they were using. The desk in

SW - J. CANTEY - CROSS

1 there was torn apart. There was papers strown on the floor.
2 Went to the living room area, and like I say, it was also
3 destroyed. The fan was ripped partially out the ceiling;
4 the blades were bent. The tables were broken. Things were
5 thrown everywhere in there. It -- there was a hole in every
6 wall of the house had a hole in it, had large holes.

7 Q Now after going there on October 4th did you have any
8 further contact?

9 A I did not.

10 Q Okay, all right.

11 MS. PARR: Beg the Court's indulgence.

12 BY MS. PARR:

13 Q All right. Officer Cantey, would you please answer any
14 questions Mr. Floyd may have for you.

15 MR. FLOYD: Thank you, Your Honor.

16 **CROSS-EXAMINATION**

17 BY MR. FLOYD:

18 Q Officer Cantey, you met with Ms. Namias on the 30th, the
19 3rd and the 4th? 30th of September, the 3rd of October, and
20 the 4th of October; is that right?

21 A Yes.

22 Q Okay. Those are the only times you met with her?

23 A Yes.

24 Q Okay, all right. And did you ever speak to Mr. Flowers?

25 A I did not.

SW - J. CANTEY - CROSS

- 1 Q At all?
- 2 A No, sir.
- 3 Q So you didn't ask him any questions?
- 4 A No, sir.
- 5 Q So any information you obtained you obtained from Ms.
- 6 Namias; is that correct?
- 7 A Yes, sir.
- 8 Q All right. And after the initial report on the 30th you
- 9 decided just to file a report; is that right?
- 10 A Yes, sir.
- 11 Q Okay. You didn't -- you made a decision not to ask any
- 12 questions of Mr. Flowers or try to ask any questions of him?
- 13 A Yes, sir, at the request of the victim we did not.
- 14 Q Okay, all right. Now, and you took photographs that are
- 15 in evidence?
- 16 A Yes.
- 17 Q You were the photographer on those?
- 18 A Yes, sir.
- 19 Q Okay. There's some other photographs over there at the
- 20 house. Were you the photographer on --
- 21 A No, sir.
- 22 Q --those? Okay. So did you -- the observations that you
- 23 made about the house you're doing that from your memory?
- 24 A Yes, sir.
- 25 Q All right. Thank you very much, Officer.

1 THE COURT: Redirect.
2 MS. PARR: Nothing further for this witness, Your
3 Honor, and we would ask that he be allowed to...
4 MR. FLOYD: I don't have any objection.
5 THE COURT: He is excused.
6 THE WITNESS: Thank you, sir.
7 THE COURT: Next witness please.
8 MS. PARR: Your Honor, Samantha Baumbauch.
9 DEPUTY CLERK OF COURT: Place your left hand on the
10 Bible, raise your right hand.
11 WHEREUPON,
12 SAMANTHA HARDEE BAUMBAUCH,
13 having been duly sworn by the Deputy Clerk of Court,
14 testified as follows:
15 DEPUTY CLERK OF COURT: Please be seated, state your
16 full name for the record.
17 THE WITNESS: Samantha Hardee Baumbauch.
18 **DIRECT EXAMINATION**
19 BY MS. PARR:
20 Q Ms. Baumbauch, where are you employed?
21 A I'm employed with the Pee Dee Coalition Domestic
22 Violence against domestic violence and sexual assault.
23 Q Okay. What do you do for the Pee Dee
24 Coalition?
25 A I'm the director of community victim services.

Sample footer

SW - S. BAUMBAUCH - DIRECT

1 Q Okay. And what are your responsibilities in that
2 position?

3 A I coordinate the seven county coordinator advocates of
4 the seven counties in which we service. I'm the supervisor
5 of all counties.

6 Q And how long has this program been in existence?

7 A Since 1998.

8 Q And what services does the Pee Dee Coalition offer?

9 A We offer services for victims of abuse in crisis
10 intervention. We offer information and referral, individual
11 counseling, group counseling. We have two shelters for
12 women who need to escape. We also offer assessments for all
13 indirect victims which are family members of these abuse
14 victims. And we offer them the counseling in the groups as
15 well and shelter. We also have an alternatives to violence
16 program for the batterers.

17 Q Okay. And do you supervise?

18 A I do.

19 Q Okay. And do you train staff?

20 A I do.

21 Q Okay. What is the total number of staff members at the
22 Coalition?

23 A We have 48 staff members and 47 volunteers because we are
24 a volunteer based organization.

25 Q Okay. And you say that you do have a shelter; is that

SW - S. BAUMBAUCH - DIRECT

1 correct?

2 A We have two shelters.

3 Q Okay. And how many contacts do you receive yearly from
4 women identifying themselves as having experienced violence?

5 A Throughout the Pee Dee region approximately 1400 women in
6 the year of 2008.

7 Q Okay. And how many crisis calls do you receive yearly?

8 A Approximately 2100.

9 Q And how many residents are in your shelter at any given
10 time?

11 A Each shelter can house 25 mem-- family women and children
12 for a minimum of 60 days.

13 Q Okay. And how many residents do you -- have you had or
14 do you have yearly in terms of adults and children?

15 A In the year 2008 we had 107 adults and 92 children.

16 Q Okay. Now does the Coalition provide counseling and
17 support services?

18 A Yes, we do.

19 Q Now are your services solely for victims of abuse?

20 A They are for indirect as well as direct victims.

21 Q Okay. And are your services solely for women?

22 A No.

23 Q How many persons are served by this program yearly?

24 A Approximately 1500.

25 Q Okay. Now you talk about indirect victims. Who would

SW - S. BAUMBAUCH - DIRECT

1 indirect victims be?

2 A Indirect victims would be anyone who's involved in any
3 situation where abuse has occurred. It can be children. It
4 can be elder relatives that are living in the home. It
5 could be friends, depending on the type of abuse that you
6 have, non-offending caregivers for children, anyone who is
7 touched by the abuse.

8 Q Now you also indicated that the Coalition also has a
9 program for batterers; is that correct?

10 A Yes, we do.

11 Q And what's the name of that program?

12 A The Alternatives to Violence Program.

13 Q And how many persons are served in that program, if you
14 know?

15 MR. FLOYD: Your Honor, I object to the relevance.
16 I'm not ---

17 THE COURT: What is the relevance of that, Counsel?
18 We are going a little far-field.

19 MS. PARR: Your Honor, what I'm trying to do is to go
20 through her qualifications of all the programs that she is
21 involved with the Coalition and order to have her declared
22 an expert.

23 THE COURT: I will allow her to proceed in that
24 regard.

25 Proceed.

SW - S. BAUMBAUCH - DIRECT

1 BY MS. PARR:

2 Q If you would answer the question.

3 A I cannot answer the specific question. I can tell you
4 where we get -- where the men come from or the women come
5 from that participate. They have been involved usually in
6 some way, shape, or form with the law. They received a CDV.
7 charge and as part of their plea to go to the Alternatives
8 to Violence. However, we do have them also voluntarily
9 enter the program when they know that they're going to be
10 charged or they know they have a problem. I cannot give you
11 a direct answer, but we do have the program in each county,
12 several programs in each county.

13 Q Now do you have direct contact with victims of domestic
14 violence?

15 A I do.

16 Q Now how many do you directly come in contact with yearly?

17 A I probably would say 50 for me due to supervising the
18 different counties, and I usually get involved with the
19 cases that are a little more extensive.

20 Q Now do you or your program conduct interviews with
21 victims?

22 A We do.

23 Q And what is the purpose of the interview?

24 A The interview is to maintain and obtain any type of
25 information that we need in order to provide proper services

SW - S. BAUMBAUCH - DIRECT

1 for that person and anyone who -- anyone else that may need
2 our services that's indirectly involved.

3 Q Okay. And do you maintain statistics as a result of
4 these interviews?

5 A We do.

6 Q And what's the purpose of these statistics?

7 A The statistics are to serve several purposes. One would
8 be our grantors need to know how many people we serve.
9 Also, the State collects the information on a statewide
10 basis to be able to keep up with that. And we do in order
11 to be able to tell what services we need to improve, where
12 we need to service a person more where we're not, some of
13 our strengths and weaknesses, so some quality assurance as
14 well on the part of the Pee Dee Coalition.

15 Q Okay. Now I believe you said that you have been in this
16 position for about four years; is that correct?

17 A I've been in this position for two years. I've been with
18 the Pee Dee Coalition for two years.

19 Q Okay. Now would you please tell us your educational
20 background.

21 A I have a -- my bachelors in sociology and criminology and
22 I will complete my Masters in December, my Masters in social
23 work.

24 Q Okay. And in what were your areas of concentration?

25 A In?

SW - S. BAUMBAUCH - DIRECT

1 Q In high -- I mean in --

2 A Undergrad?

3 Q Yes, undergrad.

4 A Sociology and criminology.

5 Q Okay. Now did you conduct any field work related to
6 domestic violence?

7 A I have. I have extensive, an extensive history in
8 working in the field of abuse, in child abuse, sexual
9 assault and domestic violence of 22 years experience.

10 Q Okay. And where did you obtain that experience?

11 A I have worked with the Billy Hardy Home for Boys. I also
12 was a coordinator for the Guardian Ad Litem program in the
13 Fifth Judicial Circuit. I helped develop a child advocacy
14 center in Winston, Georgia. I came back here, was an
15 executive director of a child advocacy center for a brief
16 time and I've been with Pee Dee Coalition. And then there's
17 probably other things in the middle I can't really think of.

18 Q Now have you conducted any research in the area of
19 domestic violence?

20 A Only for educational purposes, no published.

21 Q Now do you belong to any professional affiliations in the
22 area of domestic violence?

23 A I am in the -- I'm also a member of the South Carolina
24 Coalition against Domestic Violence and Sexual Assault and a
25 member of the National Association of Social Workers.

SW - S. BAUMBAUCH - DIRECT

1 Q And what is the nature and purpose of these
2 organizations?

3 A South Carolina Coalition Against Domestic Violence and
4 Sexual Assault, they are a coalition that works for
5 legislature to protect women and children and men of
6 domestic violence and sexual assault. They're also our
7 state coalition that collects the numbers throughout the
8 state to know where we stand nationally. They train anyone
9 who will be working with domestic violence and sexual
10 assault. They offer trainings on a yearly basis and keep us
11 accredited. I'm also accredited as a victim service
12 provider through the office of the governor. And the
13 National Association of Social Work, this is -- National
14 Association of Social Workers, we meet and also work with
15 legislature on behalf of anyone who will be receiving
16 services of social workers nationally.

17 Q Are you involved with any committee work of these
18 organizations?

19 A Not at this time.

20 Q Now when you began your work at your program did you
21 receive any training in the issue of domestic violence?

22 A Yes, ma'am.

23 Q Now would you please describe that training you received.

24 A I received 48 hours of training from the Pee Dee
25 Coalition in the local laws, state laws, and I've also

SW - S. BAUMBAUCH - DIRECT

1 received training from the South Carolina Coalition Against
2 Domestic Violence and Sexual Assault. That was another 36
3 hours.

4 Q Now have you received any additional training in domestic
5 violence issues since that time?

6 A If you want to include master level classes, I have taken
7 a couple of classes in domestic violence.

8 Q Now have you conducted any training yourself?

9 A Yes.

10 Q And for whom did you conduct the training?

11 A I trained -- I have trained medical professionals, law
12 enforcement, municipal court judges, and volunteers and
13 staff of the Pee Dee Coalition.

14 Q And how often do you conduct such training?

15 A We conduct volunteer training every quarter. This year
16 we -- I have had at least two trainings a month of
17 professionals who work with victims in the different
18 counties where there's medical, law enforcement, or judicial
19 employees so twice a month for this year. And then
20 quarterly.

21 Q Now have you attended state--

22 A Year.

23 Q I'm sorry, go ahead, I apologize.

24 A Go ahead.

25 Q Have you attended state or national domestic violence

SW - S. BAUMBAUCH - DIRECT

1 conferences?

2 A Only state.

3 Q And who sponsors those conferences?

4 A It could be the -- mainly the ones that we attend are the
5 ones through South Carolina Coalition Against Domestic
6 Violence Sexual Assault as well as the National Association
7 of Social Work. They also have some.

8 Q Okay. Now have you testified in court previously?

9 A No, not as an expert witness.

10 Q Okay.

11 MS. PARR: Your Honor, at this time the State would
12 move to have Ms. Baumbauch considered a expert in the area
13 of domestic violence.

14 THE COURT: There is one caveat, Counsel. As you are
15 aware I wrote an extensive opinion on behalf of the South
16 Carolina Court of Appeals in my former life in Columbia, and
17 it dealt with forensic interviewing in regard to domestic
18 violence. I concluded on behalf of three members of the
19 Court of Appeals that that was a proper subject for review
20 by an expert. My colleagues on the the State Supreme Court
21 disagreed. They agreed that the testimony would be
22 admissible but not within the penumbra and rubric of an
23 expert witness so I am certainly constrained by what they
24 did in that case and we will take it query by query because
25 I'm not going to brought to the table again in regard to

SW - S. BAUMBAUCH - DIRECT

1 that. I disagree with them and so be it. But we'll proceed
2 query by query counsel.

3 MR. FLOYD: Yes, Your Honor.

4 BY MS. PARR:

5 Q Now in your presentations at conference or training or
6 speeches to various groups have you found the public to be
7 very well informed about domestic violence?

8 A No.

9 Q What are some of the most common misconceptions you've
10 encountered?

11 MR. FLOYD: Your Honor, I object.

12 THE COURT: I'm going to allow that as background,
13 Counsel. I would respectfully overrule that objection.
14 Proceed.

15 THE WITNESS: In my experience I think that the -- or
16 what I've seen, is the misconception of criminal domestic
17 violence and the way it's perceived. You know, there's been
18 criminal domestic violence is any time a crime is a
19 household member and I think maybe there's a misconception
20 as to what a household member is or if there's a lot of
21 victim blaming. You know, that there's a misconception that
22 the person deserved that or if the person, if this is
23 what's happening to this person why is she not leaving, you
24 know, why does she stick around or he stick around for this.
25 Or even on the male -- if a male is a victim why did he

SW - S. BAUMBAUCH - DIRECT

1 allow her to do that. So those are some of the
2 misconceptions as to a person can just up and go whenever
3 this just starts happening, why don't they just leave. And
4 that's a misconception of the public that a person doesn't
5 just get up and leave. It's a process.

6 Q And what is that process?

7 A Well, when a person is — there's three stages of
8 criminal domestic violence. You have the tension building
9 where there's a lot of intimidation. Criminal domestic
10 violence is not about hitting and it's not about abuse.
11 It's about power and control. And the person gaining power
12 and control in any way, shape, or form that they can in
13 order to control this person and to get what it is they
14 need. And through power and control they use intimidation.
15 They make the person fearful. They don't want to leave.
16 They isolate them and the person may not have anyone to turn
17 to over a period of time. So you have a period of time
18 where there's tension building, there's a lot of
19 intimidation going on, and there's a lot of fear factors
20 going on. And then you come to the acute battering stage
21 where the person is actually abused. There's something that
22 happens and abuse can be in any shape or form of physical,
23 emotional, verbal, in any way. And during that time that's
24 when abuse happens but normally and that's when law
25 enforcement is called in. We're training over and over this

SW - S. BAUMBAUCH - DIRECT

1 is one of the most dangerous situations that law enforcement
2 person can be called into because of the power and control.
3 When power and control seems to be taken from the person who
4 wants the power and control it becomes dangerous and that's
5 when the battering thing can start. Once law enforcement is
6 called in or Pee Dee Coalition is called in or someone has
7 gone to get help or, you know, then there could be a
8 potential honeymoon stage where everything is great, I won't
9 do this again, and it's generally meant I won't do this
10 again. But it's a cycle, and it's about power and control.
11 It is not about being beaten. It is about gaining power and
12 control over that person.

13 Q Now can you provide us with some -- or do you have some
14 statistics for South Carolina or the local area in terms of
15 domestic violence?

16 A I do not have our Pee Dee region; however, South Carolina
17 is number nine in the nation of criminal domestic violence.
18 And we're number two in the nation of homicides by intimate
19 partners.

20 Q Can you describe the effect of cultural economic class or
21 race on the incident of spouse abuse or domestic violence?

22 A Domestic violence doesn't discriminate against any of
23 that. It occurs in all races. It occurs in all -- it
24 occurs throughout genders. The numbers of women being
25 beaten being higher is because they report. Race,

SW - S. BAUMBAUCH - DIRECT

- 1 economical status, we may have higher numbers of lower
2 economical status but that's who reports and who receives
3 services that are available to them. It happens with in
4 any -- it can happen in any household, any amount of money,
5 any amount of opportunities. It does not discriminate
6 against any -- criminal domestic violence does not
7 discriminate. It's again about power and control.
- 8 Q Now have you observed a pattern to abuse?
- 9 A Are you referring to the phases of abuse or the cycle?
- 10 Q Yes.
- 11 A Again, your three phases, you've got your tension
12 building and then that's whenever things are starting to
13 maybe some names are called or I told you, you know, they
14 make comments of things they wanted them to do, that wasn't
15 done. And that can lead into the acute battering phase
16 where abuse occurs. And then your honeymoon phase. And not
17 any of those have certain time limits on them. And you may
18 not even get from tension building to acute. You may skip a
19 phase in the middle of that. There may never be a honeymoon
20 phase after, you know, the acute battering phase but that is
21 the -- those are the three phases of criminal domestic
22 battery, criminal domestic violence.
- 23 Q Is that synopsis with the cycle of violence?
- 24 A It is.
- 25 Q Now have you personally, personally observed the cycle of

SW - S. BAUMBAUCH - DIRECT

1 violence and its effect on victims of abuse?

2 A Yes, ma'am.

3 Q Okay. And do victims commonly react as each step of the
4 cycle?

5 A No. Each person is gonna act differently. You have --
6 you have defense mechanisms and you have times that you have
7 to -- you have to survive. And how someone decide -- how
8 someone has to determine how to survive is how they're going
9 to have to defend themselves. Not everyone is gonna pick up
10 a gun and shoot someone. They're gonna have to play by the
11 rules of their abuser. That is why it's so that we have
12 extensive safety plans for the women who come in. Women who
13 come into Pee Dee Coalition come in at different stages of
14 leaving. It can take a woman up to nine times to leave a
15 situation. And the person coming in could be, you know,
16 leaving and going back and they will tell us we have -- I
17 have small children, I can't afford to be out on my own, I
18 need to put money away, I need to do this. So we try our
19 best to give them a safety plan that's gonna fit where they
20 are in their escape or in their abuse. Women don't always
21 want to leave. They just want the abuse to stop, you know,
22 so they're not always willing to leave. They just want us
23 to help them in the event that they find out they're in
24 danger. And a lot of times we tell them they're in danger.
25 They didn't realize they're in danger. They're in denial.

SW - S. BAUMBAUCH - DIRECT

1 It's gonna stop because the last time I got a diamond ring.

2 So there's different phases that come into play that a woman
3 just has to survive in order to be safe.

4 Q Now are you familiar with the power and control wheel?

5 A Yes.

6 Q Okay. Would you please tell us what that is.

7 A That is how an abuser gains their power and control. It
8 goes back to the cycle of violence, and it goes back to
9 gaining power and control. It is a -- it was created by the
10 domestic violence project out of Duluth, Minnesota, and it's
11 using whatever they can, whatever a person can to gain power
12 and control, whether it's coercion or threats, minimizing,
13 denying and blaming that person for causing the abuse to
14 happen, using intimidation and emotional abuse, isolation.
15 They may isolate them. And another one would be using the
16 children. You know, I'll take the children if you leave,
17 you won't ever give it, be able to have the children. Other
18 things, another one that's huge is economical abuse. If
19 you're isolated and you're unable to work you're relying on
20 that person for financial status, stability, and you know,
21 and that's one of them.

22 Q Now do you actually have a poster to indicate that?

23 A I do.

24 Q Did you -- can you identify this?

25 MS. PARR: Your Honor.

SW - S. BAUMBAUCH - DIRECT

1 THE WITNESS: This is the power and control wheel.
2 I've got one. Do you want a copy of it?

3 MR. FLOYD: That will be great. Thank you. I
4 appreciate it.

5 THE WITNESS: These are the different ways in which
6 someone can maintain or gain control of someone, and they're
7 basically what I just explained to you. And they're giving
8 examples. For economic abuse, preventing her from getting
9 or keeping a job, making her ask for money, giving her an
10 allowance. Taking money from her, not allowing her to know
11 about her or have access to family income. The minimizing,
12 blaming, and denying, that's blaming the person. That
13 wasn't anything but a little old bruise, those types --
14 that's an example. Intimidation, making her afraid by using
15 looks, actions, gestures, smashing things, destroying her
16 property, abusing pets, and displaying weapons. Using
17 coercion and threats. Making and carrying out a threat to
18 do something to hurt her, threaten to leave her, commit
19 suicide, to report her to welfare, making her drop charges,
20 making her do illegal things. These are just some of the
21 ways in which someone can gain power and control over
22 another person in order to keep them when they want them.

23 BY MS. PARR:

24 Q Now have you had an opportunity to become -- an occasion
25 to become involved with this particular case?

SW - S. BAUMBAUCH - DIRECT

1 A I have been briefed on this case as it gets a little more
2 involved.

3 Q Okay. Now in this -- so you have been briefed on this
4 particular case; is that correct?

5 A Uh-huh. Yes, ma'am.

6 Q And have you had an opportunity to --

7 A Yes, sir.

8 Q --review your officer's file?

9 A Yes, I have.

10 Q Okay. Now in your opinion are these facts consistent
11 with someone who has experienced abuse?

12 A Yes.

13 Q Now are you -- you are aware that of Ms. Namias stating
14 that the defendant had knives and guns on the night of this
15 particular incident of October 2nd; is that correct?

16 A Yes.

17 Q Okay. And she did not leave; is that correct? She did
18 not leave that particular night?

19 A Right.

20 Q Okay. And is that common or uncommon?

21 A That is common for a woman not to leave immediately.
22 Again, they're in survival mode and needing to know what
23 they need to do to survive.

24 MS. PARR: Beg the Court's indulgence.

25 BY MS. PARR:

SW - S. BAUMBAUCH - CROSS

1 Q Now is it common for victims to come a day or two later?

2 A Yes.

3 Q And was Ms. Namias' actions consistent?

4 A Yes.

5 Q Would you please answer any questions Mr. Floyd may have
6 for you.

7 A Yes.

CROSS-EXAMINATION

8
9 BY MR. FLOYD:

10 Q I want to make sure I'm saying your last name. Was it
11 Baumbar or Bambauch?

12 A Baumbauch.

13 Q Okay, thank you. My eyes have started going and I think
14 my hearing is now starting to go too. I guess that's age
15 creeping up on me. But Baumbauch.

16 THE COURT: Shall we put your age on the record here?

17 MR. FLOYD: Your Honor, I'm now 46 so I'm starting to
18 climb.

19 THE COURT: Downhill from there, Buddy.

20 MR. FLOYD: You're right.

21 BY MR. FLOYD:

22 Q But Ms. Baumbauch, the information, any information you
23 received about this case you didn't get firsthand from
24 Ms. Namias; is that right? In other words, you didn't --

25 A I worked with the advocate on this case.

SW - S. BAUMBAUCH - CROSS

1 Q Okay, all right. So any facts that you got were in that
2 file recorded by somebody else; is that right?

3 A Right.

4 Q Okay, all right. So any opinion that you made or have
5 that were formed were formed by things that are written down
6 by other people; is that correct?

7 A Yes.

8 Q Okay. And of course, as to the ultimate truth of those
9 facts you don't know. You don't know whether they are true
10 or not, do you? I mean, what's written down in that report
11 because you weren't there; is that correct?

12 A The information I've maintained are from the reports,
13 right.

14 Q Right, okay. All right. I think that's all I have,
15 Ms. Baumbauch, I appreciate it.

16 THE COURT: Redirect.

17 MS. PARR: I have nothing further for this witness,
18 Your Honor, and we would ask permission for her to be
19 relieved as well as Ms. Andonie.

20 THE COURT: They're excused. Thank you very much.

21 MS. PARR: Your Honor, may we approach?

22 THE COURT: Sure.

23 (WHEREUPON, counsel approached the Bench for an
24 off-the-record discussion.)

25 MS. PARR: Your Honor, at this time I'd like -- we

SW - B. MONTGOMERY - DIRECT

1 will call Bobbie Jean Montgomery to the stand.

2 **DEPUTY CLERK OF COURT:** If you would, ma'am, stop right
3 there. Place your left hand on the Bible, raise your right
4 hand.

5 **WHEREUPON,**

6 **BOBBIE JANE MONTGOMERY,**
7 having been duly sworn by the Deputy Clerk of Court,
8 testified as follows:

9 **THE DEPUTY CLERK OF COURT:** Please have a seat. State
10 your name for the record.

11 **THE WITNESS:** Bobbie Jane Montgomery.

12 **DIRECT EXAMINATION**

13 **BY MS. PARR:**

14 **Q** Ms. Montgomery, where do you live?

15 **A** I live at Avenue, Apartment No.

16 **Q** And how old are you?

17 **A** I'm 66.

18 **Q** Okay. And are you employed?

19 **A** No, I'm totally disabled.

20 **Q** Okay. Now have you been employed in the past?

21 **A** The last time I worked -- yes, I've been employed in the
22 past but not in South Carolina.

23 **Q** Okay. And where were you employed before?

24 **A** Laguardia Airport, New York City.

25 **Q** And how long did you work for Laguardia?

SW - B. MONTGOMERY - DIRECT

- 1 A Laguardia Airport, six years, almost seven straight.
- 2 Q And how long have you been in South Carolina?
- 3 A This year will be eight years since I came back down
- 4 after 9-1-1.
- 5 Q Okay. Now where did you live prior to living on Conyers
- 6 Avenue?
- 7 A Street in Florence.
- 8 Q Okay. And is that in west Florence?
- 9 A Yes, ma'am, west Florence.
- 10 Q Okay. And who did you live with at that time?
- 11 A Me, my son-in-law and my daughter and her children.
- 12 Q Okay. And do you know Janel Namias?
- 13 A Yes, I do.
- 14 Q Okay. And where was Simmons Street in relations to where
- 15 Ms. Namias' house was?
- 16 A Well, it's Dixie Street, then Simmons turns off Dixie.
- 17 That's -- we was like approximately a block from her,
- 18 block-and-a-half.
- 19 Q Okay. Now how long have you known Ms. Namias?
- 20 A Almost a year.
- 21 Q Okay. Now how did you meet Ms. Namias?
- 22 A Through passing through the neighborhood. One day we saw
- 23 a yard sale out and out of curiosity stopped because my
- 24 family and I, we love yard sales.
- 25 Q All right. And so did you get to know Ms. Namias at that

SW - B. MONTGOMERY - DIRECT

1 time?

2 A Just through speaking, you know, not that -- at that time
3 not personally, but just speaking to her, you know, asking
4 about the items.

5 Q Now, and did you eventually have a personal relationship
6 with her?

7 A I would say so because she was a very nice person.

8 Q Okay. Now going back to October of 2008 did you know
9 Janel Namias and the defendant Mr. Flowers, Carmichael
10 Flowers?

11 A Let me ask, 2008 you said?

12 Q Yes.

13 A October the 9th?

14 Q No, of October of 2008, year 2008?

15 A Yes, I know them at that time.

16 Q Okay. Did you have an occasion to be aware of an
17 incident that had occurred?

18 A Yes, I did.

19 Q Okay. And would you please tell us what, if anything,
20 you saw?

21 A Well, it was October the 3rd, 2008. I went to my
22 daughter's house, picked her up, and 'cause she wanted me to
23 take her someplace. And we have to like come through the
24 block. It was around maybe about 12 or 1 I would say. And
25 we stopped like we always did. I stopped at the --

SW - B. MONTGOMERY - DIRECT

1 Ms. Namias' residence. And when we stopped -- may I tell
2 exactly what I seen?

3 Q Yes, please.

4 A Okay. I saw the defendant at that time coming like from
5 around the house, you know, like his truck was like just as
6 soon as you like going into the driveway. His black truck
7 was there and he was like coming like from behind --
8 around -- from the side of the house approaching more less
9 the front of the truck because he saw us saw. As usual I
10 said, hi, Mr. Flowers, how are you doing. And when -- you
11 could tell he was very upset about something. And he walked
12 up to the car, which was the driver's side which I were
13 driving. And he said, how are you doing, and he just like,
14 you know, shook his head, was very, very, angry, very upset.
15 I never seen him that upset before. And do I tell what was
16 said?

17 Q Yes, what he said.

18 A Okay. And it wasn't a little conversation. It's you
19 can't -- you know, like the anger he had. And he just blurt
20 out, he said, she won't sell this MF'er. Say, I betcha she
21 won't sell this MF'er. We said, oh, Mr. Flowers, take it
22 easy. And he turned around just that fast 'cause there was
23 no conversation held after that and he walked away.

24 Q Can you describe his demeanor when he was saying that?

25 A He was like upset, very angry, very angry, you know, and

SW - B. MONTGOMERY - DIRECT

1 facial features was just, you know, like very angry.

2 Q Okay. And so when he walked away what did you do?

3 A I looked over at my daughter. I said, it's time to go
4 'cause evidently, you know, the anger and you know, I didn't
5 want to stick around. And I didn't see Ms. Namias at the
6 time. I didn't see her so I didn't ask. We just rode away.

7 Q Okay. And then what if anything later did you witness?

8 A Okay. That particular day I didn't come back through the
9 block that day 'cause I put my daughter out after the
10 shocking of what we did. And I put her out at her house and
11 I went back to my home which is Conyers. And I didn't come
12 through that end on that end anymore until the next day.

13 Q Okay. And what did you see when you go back, when you
14 went back?

15 A When I went to my daughter house first I always do, she
16 said, oh my God, momma, you never believe what happened.
17 Then she proceed to tell me what she saw. And out of
18 curiosity I went to see too so we jumped in my car and I
19 rode through the block and I stopped at Ms. Namias' house
20 because at that time all you could see was police activity
21 everywhere.

22 Q Okay.

23 A And saw like the coffee table sticking out the window and
24 everything at that time. And I stopped like out of my car
25 and I went up to the officer. I don't know her name 'cause,

SW - B. MONTGOMERY - DIRECT

1 you know, I know how she look and everything. And I said,
2 is everybody okay, you know. So she said yes. You know,
3 everybody is okay. I said because I, you know, know
4 Ms. Namias. I said, I just say, what I said was, I know the
5 people here. Nobody is badly hurt or nothing, is there? So
6 the officer said no, just you know, this is a police
7 investigation so, you know, he couldn't go no further. So I
8 just stood right there and just looked around and then I
9 shed a few tears and then I just left and got back in my car
10 and we rode on.

11 Q Okay. Now leading up to this did you -- leading up to
12 this incident did you see the defendant and Ms. Namias on a
13 regular basis?

14 A Yeah, almost every week because we always go by and see
15 if anything else in the yard sale, you know, 'cause I love
16 yard sales.

17 Q Okay. Now did you notice anything out of the ordinary
18 the weeks leading up to this?

19 A Yes. Ms. Namias, like she changed from the cheerful
20 person that we met at first until, you know, leading a few
21 weeks months or so leading into this incident she like began
22 to be like down a spiral, a downward staircase, or whatever
23 they call that. Like anyway, her attitude wasn't as open
24 and pleasant as it used to be like on the happy side.

25 Q Now did you see the defendant during this time?

SW - B. MONTGOMERY - CROSS

1 A Yes. Mostly he would be there, you know, and everything
2 at the yard sale 'cause see, you know, setting up, either
3 conducting, you know, the merchandise.

4 Q Okay. And what, if anything, you noticed about him?

5 A Well, a lot of times he would be like, you know, looking
6 like kind of tired or sickly like and I used to always ask
7 Mr. Flowers, are you okay. He said, oh my legs, my legs is
8 bad. And you know, like in pain somewhat, you know.

9 Q Okay. Now Ms. Montgomery, do you know, is there anything
10 else you want to add about this as to what you saw?

11 A On the 3rd you mean?

12 Q Yes.

13 A The 3rd? No, the 3rd is just, you know, when he made
14 that statement and I rode away and; but I didn't see anyone
15 else until, you know, a couple of weeks later that I ran
16 into Ms. Namias.

17 Q Okay. Would you answer any questions Mr. Floyd may have
18 for you?

19 A Yes, I will.

20 CROSS-EXAMINATION

21 BY MR. FLOYD:

22 Q Ms. Montgomery.

23 A Yes, sir.

24 Q This was on -- you said this was on the 3rd when you had
25 that conversation?

SW - B. MONTGOMERY - CROSS

- 1 A Yes, sir.
- 2 Q And if I heard you correctly, the only reference that was
- 3 made was made about the house; is that correct?
- 4 A Yes, in my presence.
- 5 Q That was itself.
- 6 A Yes, sir.
- 7 Q Okay. And you reported this to -- who did you talk to
- 8 about this conversation first?
- 9 A You mean, in the way of law enforcement?
- 10 Q I mean, no, I mean, who did you talk to about it first
- 11 after it happened, whoever it was? Who did you tell about
- 12 the conversation that you had, who did you tell about it?
- 13 A Oh, my daughter, I said, oh, you know.
- 14 Q She was with you, right?
- 15 A Uh-huh.
- 16 Q Who else did you tell about it?
- 17 A Oh, nobody else.
- 18 Q Okay. Was -- evidently you told somebody at some point
- 19 in time, I mean, you're here. Who did you tell at first?
- 20 A No one else. I mean, you know.
- 21 Q Did you speak to somebody else other than your daughter?
- 22 A No, not about that incident because, you know, I'm not
- 23 familiar with a lot of people and I don't socialize that
- 24 much anyway.
- 25 Q All right. Well, did you contact law enforcement?

SW - B. MONTGOMERY - CROSS

1 A No, sir, I didn't.

2 Q Okay. You never contacted them? You never spoke to
3 anybody in law enforcement?

4 A No, not at that particular time. The only person I spoke
5 to after that incident was when the Officer Cox, you know,
6 appeared at my house. That's the only time that it was ever
7 mentioned ever again and I was subpoenaed to, you know, to
8 talk.

9 Q So she appeared at your house?

10 A Yes, sir.

11 Q Okay. And that was the first time you ever spoke to
12 anybody other than your daughter?

13 A Yes, sir, to tell them that .

14 Q Okay, all right. And how long after the incident was
15 that?

16 A Could you repeat?

17 Q How long after the incident was that that she appeared at
18 your house?

19 A Oh, I guess, it's almost a year now 'cause it's almost
20 October.

21 Q No, I mean, roughly how long after the incident at the
22 house, the conversation that you had, was it after that that
23 Ms., that Officer Cox came to your house? How much later
24 was it?

25 A Oh, I think last week she came to my house.

SW - B. MONTGOMERY - REDIRECT

1 Q Okay, all right. Thank you very much.

2 A You're welcome.

3 THE COURT: Redirect.

4 MS. PARR: Yes.

5 REDIRECT EXAMINATION

6 BY MS. PARR:

7 Q Ms. Montgomery.

8 A Yes, ma'am.

9 Q You have another daughter too; is that correct?

10 A You don't mean the one in court?

11 Q Right.

12 A Yes, I do, Danita Rivera Montgomery.

13 Q Where does she live?

14 A Directly across the street from Ms. Namias.

15 Q Okay. Now when this incident happened did you indicate
16 to Ms. Namias what you had seen that particular day?

17 A No, 'cause I didn't see her for a long time.

18 Q Okay. But you did tell someone about what you observed
19 'is that correct?

20 A Just my daughter 'cause the daughter that's here today.

21 Q Okay, all right.

22 MS. PARR: Nothing further, Your Honor.

23 THE COURT: Recross.

24 MR. FLOYD: I don't have anything further, Your Honor.

25 THE COURT: Okay, you may step down.

SW - F. MONTGOMERY - DIRECT

1 **MS. PARR:** Your Honor, we call Fetisha Montgomery.

2 **THE DEPUTY CLERK OF COURT:** If you would; ma'am, place
3 your left hand on the Bible, raise your right hand.

4 **WHEREUPON,**

5 **FETISHA MONTGOMERY,**

6 having been duly sworn by the Deputy Clerk of Court,

7 testified as follows:

8 **THE DEPUTY CLERK OF COURT:** Please be seated. State
9 your full name for the record.

10 **THE WITNESS:** My name is Fetisha Montgomery.

11 **DIRECT EXAMINATION**

12 **BY MS. PARR:**

13 **Q** Ms. Montgomery, where do you live?

14 **A** Now I reside Florence,
15 South Carolina.

16 **Q** And are you employed?

17 **A** Yes, I am.

18 **Q** And where are you employed?

19 **A** I'm employed at Food Lion.

20 **Q** Okay.

21 **A** Grocery store.

22 **Q** And how old are you?

23 **A** Thirty-six.

24 **Q** Now on, going back to October of 2008, where were you
25 living?

SW - F. MONTGOMERY - DIRECT

1 A I was living on Florence, South
2 Carolina.

3 Q Okay. And did you know Janel Namias?

4 A Yes, I did.

5 Q Okay. And what -- how far did you live from Ms. Namias?

6 A About a block-and-a-half.

7 Q And how long have you known her?

8 A Almost a year at that point.

9 Q Okay. Back in October that would have been about a year?

10 A Yes.

11 Q Okay. And how did you meet her?

12 A I met her 'cause I follow my mom. She chases down yard
13 sales and we used to go to her yard sales.

14 Q Okay, all right. And did you know the defendant?

15 A Yes, I do.

16 Q Okay. And did you get to know Janel Namias on a personal
17 level?

18 A Yes, I did.

19 Q Okay. And how would you -- what type of relationship did
20 you have with her?

21 A Well, because I was heavy in the church at that time and
22 married I really didn't associate with nobody and she was my
23 only friend.

24 Q Okay, all right. Now on October 3rd, 2008, did you have
25 an occasion to go to her house?

SW - F. MONTGOMERY - DIRECT.

1 A Yes, I did.

2 Q Okay. And would you please tell us if you recall about
3 when you went to her house.

4 A You mean the incident at hand?

5 Q Yes.

6 A I didn't go to her house that day. I was with my mother
7 that day, and my mother had picked me up that morning. She
8 had just got her disability check or whatever and we was
9 going shopping and the like. And we had some clothes in the
10 trunk. My sister at that time was staying across the street
11 from Ms. Namias and we had stopped by to give my sister some
12 clothes and the lady she was staying with for her kids. So
13 we got out the car. My mother opened up the trunk and they
14 were going through the trunk looking at some clothes their
15 kids can fit. And Mr. Flowers at that time, he had came
16 from around like the side of the house. He had approached
17 us, I mean almost in a threatening manner. He was like so
18 angry 'cause I said, god, it's like he want to do something
19 to us. Like, I was like, why he coming on like coming
20 towards us like that. He was very angry, very, very angry.

21 Q Okay. And what if anything was said?

22 A He came across the street. My mother was standing by the
23 trunk area on the driver's side door, that area. I was
24 standing like to the front of the car 'cause I was talking
25 with the lady across the street. I believe it was with her

SW - F. MONTGOMERY - DIRECT

1 daughter. And he said, she think she gonna sell this mother
2 F'er. She won't sell this mother F'er, she won't sell this
3 mother F'er. And we was like, okay. I looked at my mother
4 like, then my mother said, well you know, just take it easy
5 Mr. Flowers, just take it easy. I said, ma, it's time to
6 go, something is going on, it's time to go I said. He came
7 to us like he was very angry, you know, threatening.

8 Q And so what did you do?

9 A Me and my mother got in the car. We was like talking
10 like, wow, do you believe what just happened. We was like
11 trying to figure like what happened with Janel, Ms. Namias.
12 We call her Janel. It's like, where's Janel, is she all
13 right, and you know, what's going on. Like, what's going
14 on. And we just like pulled off and went home to my house.

15 Q And then what happened?

16 A Later on that night -- my mother went back to her house.
17 Later on that night my daughter Katrina Montgomery and my
18 sister Danita Rivera, they came to my house 'cause they knew
19 I was very close with Janel, like very close with her. And
20 they came around my house and said, Boo, we hear a lot of
21 crashing at Janel house. They call me Boo. Boo, we think
22 you should go around and see if Janel is okay.

23 THE COURT: Just a second.

24 MR. FLOYD: Your Honor.

25 THE COURT: The description at this point violates the

SW - F. MONTGOMERY - DIRECT

1 Hearsay rule but you can ask the query as a consequence of
2 what she discussed what did she do.

3 MS. PARR: All right.

4 BY MS. PARR:

5 Q As a result of what was told to you what did you do?

6 A I got up. I was in my pajamas. I got up out of my bed,
7 put on a pair of jogging pants and a T-shirt and proceeded
8 to walk around the corner to the Flowers residence.

9 Q Okay. And what did you find when you got to Janel's
10 house?

11 A When I got to Janel's house, I don't — I'm trying to
12 remember. The coffee table was sticking out. They had a
13 big picture window in the front of the house, like a big,
14 like a big picture window and the coffee table was half in
15 the house and half out the house. It was sticking out. It
16 was glass all over the place. It looked like a bomb had
17 went off. I mean, the house, the outside was just a bunch
18 of stuff outside like you could tell like something had
19 happened.

20 Q Okay. And what was anybody at the house at that time?

21 A No, nobody was at the house at that time.

22 Q Okay. Now —

23 A Not that I know of.

24 Q Were you able to hear anything at any point going on in
25 the house when you were there?

SW - F. MONTGOMERY - DIRECT

1 A No, I didn't hear anything. You just saw the stuff, but
2 you — I didn't hear anything.

3 Q Okay. Now did you go in? Did you go in the house?

4 A No, I walked around. I didn't go inside the house but I
5 walked around the side 'cause I wanted to know if Janel was
6 okay, if she was there in. So I had walked in the yard and
7 when I walked in the yard and was about to go like to the
8 back area where I used to meet, like, there was a door, a
9 back door there. And I used to go behind there and, you
10 know, see Janel. That's where I would go in. I barely
11 would go to the front. I used to go through the back and
12 talk to Janel. So I had walked over there and then the lady
13 across the street who was at the house that me and mother
14 and I had went to earlier, she said, Boo, come back from
15 over there, come from over there. And they pulled me, told
16 me to leave from there because there was a lot of stuff
17 going on.

18 Q Okay. And then as a result of that what did you do?

19 A I left. I came back across the street and just sat there
20 with them, and we were just watching the house.

21 Q Okay, all right. And at any time did you see anybody
22 come to the house?

23 A Yes. Yes, I did.

24 Q Okay. Who came to the house?

25 A The defendant.

SW - F. MONTGOMERY - DIRECT

1 Q Okay. And what did you see when he came to the house?

2 A He just parked his truck like -- it was like -- it looked
3 like a little day care. The house was painted I think
4 yellow, blue and white. It's like on the across the street
5 from the house but on this side, and his black truck was
6 parked on the side there. The defendant went inside the
7 house, and shortly we sat there. I sat there and watched
8 the whole thing with other people. Shortly the cops showed
9 up. I don't know who called them. I don't know -- I don't
10 know. I just know the cops showed up and then a neighbor
11 came out, kept saying he's in there, he's in there, he's in
12 there. And the cops, they went around the back. I never
13 saw the defendant come out or nothing. The cops just kind
14 of around the house. They never came out. He never came
15 out. The defendant never came out.

16 Q Okay.

17 A But the neighbor kept saying he's in there, I saw him. I
18 saw him go in there but I wasn't going to say anything. I
19 just sat there, was watching what unfolded.

20 Q So you did see him go in the house?

21 A Yes, I did.

22 Q And then when the law enforcement officers, police
23 officers were there, what happened?

24 A The police officers had came across the street to where
25 we were all standing and 'cause at this point a crowd kind

SW - F. MONTGOMERY - DIRECT

1 of gathered because everyone kind of knew what was going on.
2 A crowd gathered. The police came and told to us to go
3 inside the house 'cause we -- they had heard that the
4 defendant was armed and dangerous and ---

5 MR. FLOYD: Your Honor.

6 THE COURT: Just a second. Just a second, Counsel.

7 MR. FLOYD: I object.

8 THE COURT: I strike that from the record because it
9 is Hearsay and it violates the rule.

10 MS. PARR: Okay.

11 BY MS. PARR:

12 Q Don't say what anybody said but as a result of being --
13 you went in the house; is that correct?

14 A Yes, we were told to go in the house.

15 Q And then what happened?

16 A We went in the house and went into -- the lady who was
17 across the street. We went to our bedroom was peeking out
18 to see what was going to unfold.

19 Q And then what did you see?

20 A Nothing -- the cops was just standing around and after a
21 while they left.

22 Q Okay. And what happened after the police left?

23 A We came back outside and sat back outside and was, kept
24 watching the house.

25 Q Okay. And then did you see anything else after that?

SW - F. MONTGOMERY - CROSS

1 A Yes, I did.

2 Q What?

3 A About, I say about 20 minutes 'cause it was a good while,
4 about 20, 25 minutes I watched the defendant come from the
5 back of the house, climb over the first fence, then the next
6 fence, get in his truck. And when he cranked up his truck
7 cops came from everywhere. They came from everywhere and
8 arrested the defendant.

9 MS. PARR: Beg Court's indulgence.

10 Ms. Montgomery, please answer any questions the
11 Defense may have for you.

12 MR. FLOYD: May it please the Court, Your Honor.

13 THE COURT: Yes.

14 CROSS - EXAMINATION

15 BY MR. FLOYD:

16 Q Ms. Montgomery, you said you were very good friends with
17 Ms. Namias?

18 A Yes.

19 Q Is that right? You were very good friends? You said she
20 was your only friend?

21 A She was my only friend, yes.

22 Q All right. How long was it after you had this
23 conversation that you say you had Mr. Flowers that you
24 talked to him anybody at the police department?

25 A I had went over -- I heard Janel was back home and I went

SW - F. MONTGOMERY - CROSS

1 around to see if she was okay and the detective was there
2 talking with her and everything like that. And that's the
3 time when I had told the detective what I had seen.

4 Q Okay. And you reported to the detective the conversation
5 that you had?

6 A Yes.

7 Q Is that what you did? Did you report to the detective
8 anything other than the conversation that you had?

9 A I reported to the detective what I -- what the defendant
10 had said. I reported what I had seen that night, yes.

11 Q Okay. So you reported all that?

12 A Yes, I did.

13 Q Which detective was that?

14 A Sorry?

15 Q Which detective was that?

16 A I believe it was detective -- the lady right there; I
17 don't know her name.

18 Q Okay.

19 A Sorry.

20 Q That's okay. That night you say you saw the table
21 hanging out of the house when you went by there. Did you
22 not call the police?

23 A No.

24 Q Okay. You said you were concerned about Ms. Namias that
25 you didn't call the police?

SW - C. BYRD - DIRECT

1 A No, I didn't want to get involved.

2 Q Well, okay. All right. Thank you very much.

3 THE COURT: Redirect.

4 MS. PARR: Nothing further for this witness, Your
5 Honor.

6 THE COURT: You may step down.

7 Next witness please.

8 MS. PARR: Your Honor, we ask -- we call Corbett Byrd
9 to the stand.

10 DEPUTY CLERK OF COURT: If you would, sir, place your
11 left hand on the Bible, raise your right hand.

12 WHEREUPON,

13 CORBETT ERWIN BYRD,
14 having been duly sworn by the Deputy Clerk of Court,
15 testified as follows:

16 THE DEPUTY CLERK OF COURT: Please be seated. State
17 your full name for the record.

18 THE WITNESS: My name is Corbett Erwin Byrd.

19 DIRECT EXAMINATION

20 BY MS. PARR:

21 Q Mr. Byrd, where are you employed?

22 A I work for Ramsey Adjusting Service.

23 Q Okay. And what do you do for Ramsey Adjustment Service?

24 A I'm an insurance adjustor.

25 Q And how long have you worked for that company?

SW - C. BYRD - DIRECT

- 1 A I worked for Ramsey about ten years.
- 2 Q Okay. And what do you do for him?
- 3 A Claims, insurance claims.
- 4 Q Now how long have you been an insurance adjustor?
- 5 A Over 40 years.
- 6 Q Have you had any special training for your job?
- 7 A Yes.
- 8 Q And would you please tell the Court what training you
- 9 have had for your job.
- 10 A Well, I've been to several seminars and several schools.
- 11 I been to -- a lot of it is on, god, infield handling. You
- 12 know, I'm a multiple line adjustor so I can handle anything
- 13 with insurance I've done it so long.
- 14 Q All right. Now did you have an occasion to become
- 15 involved with as an adjustor for a claim filed by Janel
- 16 Namias?
- 17 A I did.
- 18 Q Okay. And when did you become involved in this matter?
- 19 A I received this claim from the insurance company on
- 20 October the 8th, 2008.
- 21 Q Okay. And as result of that what did you do?
- 22 A After obtaining assignment from the insurance company I
- 23 tried to contact Ms. Namias.
- 24 Q Okay. And did you have an occasion to go to her home,
- 25 Street?

SW - C. BYRD - DIRECT

1 A After contacting her and discussing her insurance and
2 policy with her, I made an appointment to meet there at her
3 house. I met her there, and I believe she had some of her
4 children with her that day. I believe she did.

5 Q Okay. And what did you do once you go to the house?

6 A Well, when I drove up in the front yard I parked in front
7 of the house and I noticed -- first thing I noticed was the
8 front door was damaged like somebody hit it with a sledge
9 hammer. I noticed some furniture hanging out the window. I
10 went around to the side of the house and some more windows
11 were broke on the side of the house. I noticed that there
12 were a lot of contents out in the yard, a lot of clothes out
13 in the yard, just scattered everywhere. The -- I believe
14 the house had been secured. Ms. Janel or somebody had
15 secured the house 'cause both doors had been nailed shut.
16 And we tried to get inside the house, could not to start off
17 with and finally we were able to pull some of nails back and
18 go inside the house.

19 Q Okay. And so you went in the house on that particular
20 day?

21 A I did.

22 Q Okay. And would you please tell us what did you do once
23 you got in the house and what you saw?

24 A I went in the front door. The door was -- even though it
25 had been nailed shut it looked like it'd been beaten with a

SW - C. BYRD - DIRECT

1 ax or hammer or something. It was completely demolished.
2 The first room you went into was a living room and
3 everything was throwed everywhere, a lot of clothes in the
4 living room.

5 And it was holes -- I'm in a lot of pain. I just had
6 gall bladder surgery so you have to bear with me; I'm in
7 some pain today.

8 First room I went into was a living room. I noticed
9 holes knocked in the wall. Several windows were knocked
10 out. Damage to carpet. Was some pieces of furniture were
11 broken up in the room into pieces. And I went on through to
12 the living room and to the small hallway. Holes were
13 knocked in the walls. The house had these hall doors in it
14 and it looked like somebody took a hammer or something and
15 beat the doors up. I went on into the dining room I believe
16 it was, and it had paneling on the walls and holes were
17 knocked in the paneling, holes were knocked in the ceiling.
18 I believe there was a ceiling fan in there and it was
19 completely down on the floor. Carpet was damaged. On into
20 the bedroom to the left, holes knocked in the walls,
21 ceilings, and the ceiling fan was down. The furniture was
22 broke all up. Bedroom furniture, a couple of mattresses in
23 there and they were tore up. They had these louver doors on
24 the closets that somebody and beaten them all to pieces.
25 And I went on into the small dining room. Something I've

SW - C. BYRD - DIRECT

1 already said. Anyhow, it was paneling was beat up in the
2 dining room, floor was damaged, carpet was damaged. Then
3 went into the kitchen area and somebody had taken an ax or
4 something and beaten all the cabinets off the walls, had
5 knocked holes in the refrigerator, the stove. Had taken
6 some kind of -- well, that carpet, they had cut the vinyl
7 floors in the kitchen. All the windows were knocked out of
8 the house. The back door was damaged beyond repair.
9 Somebody, like somebody had gone all the way through the
10 house. There was a lot of red -- it was somebody bled on
11 the floor and also like somebody took some oil, some motor
12 oil or something, and poured it all over the carpet in the
13 house. There was not a room in the house that wasn't
14 damaged, probably not a door in the house that wasn't
15 damaged, not a floor or carpet not damaged. In the
16 bathrooms they had taken something beat the toilets up, had
17 beat the bath tub up into pieces, had beat the sink off the
18 walls. The house looked like it -- on the inside somebody
19 had really meant to tear it up and they did.

20 Q Okay. Now Mr. Byrd, I'm going to show you what has been
21 marked as State's Exhibit Number 23. Would you -- can you
22 recognize that?

23 A Yes, estimate. That's what I wrote on the house and
24 agreed to by Welch's Home Builders.

25 Q Okay.

SW - C. BYRD - DIRECT

1 A I met Mr. Welch over there. Him and his employees, we
2 walked through the house. We agreed on a scope of the
3 damages and we agreed on what needed to be done. And I
4 wrote estimate on the house and Mr. Welch agreed to fix the
5 house.

6 Q Okay. And first of all, I'd like to -- I'm gonna ask you
7 another question.

8 A Okay.

9 MS. PARR: Your Honor, at this time the State would
10 move to enter into evidence State Exhibit Number 23, the
11 Ramsey Adjustment Services estimate prepared by...

12 MR. FLOYD: No objection, Your Honor.

13 THE COURT: It's in evidence without objection, 23.

14 BY MS. PARR:

15 Q Mr. Byrd, would you like something to drink?

16 A I'm fine.

17 Q Mr. Byrd, what was the total amount of the damages to the
18 house that you found?

19 A Total amount of damages of the house was 24,703-dollars.

20 Q Okay. And as a result of the damages you found was Ms.
21 Namias paid for that claim?

22 A She was. She had a thousand dollar deductible. The
23 house was not a total loss. We had the insurance company
24 eighty thousand dollars on the dwelling and 40,000-dollars
25 on contents for a thousand dollars deductible. The house

SW - C. BYRD - DIRECT

1 was repairable and the insurance company did pay her
2 23,703-dollars after taking a thousand dollar deductible on
3 the house.

4 Q Now I'm gonna show you what has been entered into
5 evidence as State's Exhibit Number 22. Do you recognize
6 that?

7 A Yes, I do.

8 Q Okay. What is that?

9 A It's a contents list. Whenever we have a claim we give
10 the insured a contents list, and we ask them to list the
11 contents in the house room by room. They have to list their
12 contents to get paid for the contents. They have to verify
13 they're in there. After she made her list I went back
14 through the house, checked several items, what I could see
15 to make sure that most of the contents were in the house.
16 The house -- the furniture was broke up so bad really I
17 couldn't really -- lot of times I couldn't tell what it was.
18 Yes, this is a contents list of what it was.

19 Q Okay. And what was the amount of damages to the contents
20 of the house?

21 A The contents list amounted to 18,910-dollars.

22 Q Okay. And was Ms. Namias paid for the damages to her
23 personal property, the contents in the house?

24 A The insurance company took 5,499-dollars depreciation on
25 the furniture, and Ms. Namias was paid 13,411-dollars.

SW - D. NAMIAS - DIRECT

1 Q Now did you know Ms. Namias prior to this incident?

2 A I did not.

3 Q Would you please answer any questions the Defense may
4 have for you.

5 A Sure.

6 MR. FLOYD: Your Honor, I don't have any questions for
7 Mr. Byrd.

8 THE COURT: Okay.

9 MR. FLOYD: Thank you.

10 THE COURT: All right, thank you.

11 MS. PARR: Your Honor.

12 THE COURT: Hope you feel better.

13 MS. PARR: Your Honor, we would ask he be allowed...

14 THE COURT: Yes, he will be excused.

15 Next witness please.

16 MS. PARR: Your Honor, at this time we would call
17 Daniel Namias.

18 THE DEPUTY CLERK OF COURT: If you will, sir, place
19 your left hand on the Bible, raise your right hand.

20 WHEREUPON,

21 DANIEL DILLON NAMIAS,
22 having been duly sworn by the Deputy Clerk of Court,
23 testified as follows:

24 THE DEPUTY CLERK OF COURT: Please be seated. State
25 your full name for the record.

SW - D. NAMIAS - DIRECT

1 **THE WITNESS: Daniel Dillon Namias.**

2 **DIRECT EXAMINATION**

3 **BY MS. PARR:**

4 **Q Mr. Namias, where do you live?**

5 **A in Darlington.**

6 **Q Okay. And how old are you?**

7 **A Twenty-one.**

8 **Q Now are you related to Janel Namias?**

9 **A Yes, she's my mother.**

10 **Q Okay. And do you know the defendant in this matter?**

11 **A Yes.**

12 **Q Okay. How do you know him?**

13 **A He was living with her and myself for a short period of**
14 **time.**

15 **Q Now are you familiar with an incident that occurred in**
16 **October of 2008?**

17 **A Yes.**

18 **Q Now prior to that time have you been around the defendant**
19 **and your mother?**

20 **A Yes.**

21 **Q Okay. What, if anything, did you notice at that time?**

22 **A Well, a few weeks up before October they were -- they**
23 **were both acting completely different from how they normally**
24 **do. Mom is usually a really friendly, outgoing person,**
25 **talks a lot, lets her family know what was going on with**

SW - D. NAMIAS - DIRECT

1 her. And Carmichael is, he's always -- he's got one of
2 those personalities something strange about him but you
3 don't know what it is. And in October I kind of found out
4 what that was; I think we all did. And he was -- just both
5 of their attitudes and personalities changed a few weeks
6 prior.

7 Q Okay. And what specifically did you notice about his
8 attitude change?

9 A He became more aggressive, more vocal, and cursing a lot.
10 He was just -- he was very paranoid and...

11 Q And what -- can you give us an example of what type of
12 paranoia you observed?

13 A Actually, I was in the computer room and I witnessed
14 firsthand his paranoia about the carpet. He came in 'cause
15 he noticed footsteps in the other carpet and was flipping
16 out about it.

17 Q What, if anything, did he say about the carpet?

18 A He was just asking where the footsteps came from and he
19 had just asked vacuumed it and that's pretty much it, and
20 where they came from. Then he saw I was in here and then he
21 automatically calmed down, like he had a different attitude
22 and I was around my mother compared from what she was
23 describing to him, to me about him.

24 Q Now did you become aware of your mother's house?

25 A What do you mean?

SW - D. NAMIAS - DIRECT

- 1 Q In -- after this particular incident in October?
- 2 A Yes.
- 3 Q Okay. And how did you become aware of it?
- 4 A Well, what do you mean by become aware of her house?
- 5 Q Pardon me?
- 6 A You said become aware of her house?
- 7 Q Well, the -- let's go back, I'm sorry. On October 3rd,
- 8 2008, did you have an occasion to see your mother?
- 9 A Yes.
- 10 Q Okay. And where did you see her?
- 11 A I saw her at her house.
- 12 Q Okay. And --
- 13 A I didn't have work so I would drive by every once in a
- 14 while and then a couple of weeks of this -- she actually
- 15 told me to leave her house once because of Mike. I believe
- 16 it was the same day I noticed the carpet paranoia.
- 17 Q Okay.
- 18 A So and I came -- I went by there a lot more after that
- 19 'cause something seemed fishy, my mom has never kicked me
- 20 out of her house. So just that.
- 21 Q Okay. Now on the date that your mother went to the
- 22 police department, October 3rd, 2008, did you see her that
- 23 day?
- 24 A Yes.
- 25 Q Okay. Where did you see her?

SW - D. NAMLIAS - DIRECT

- 1 A When I picked her up from the courthouse.
- 2 Q So you picked her up from this building?
- 3 A Uh-huh.
- 4 Q And then what did you do?
- 5 A I took her back to the safe location.
- 6 Q Pardon me?
- 7 A I took her to the safe location.
- 8 Q Okay. Now before taking her, did you ever -- did you go
- 9 by her house that day?
- 10 A No, no, I hadn't been by at all that day.
- 11 Q Okay. Now -- when was the next time you went to the
- 12 house?
- 13 A The next day.
- 14 Q All right.
- 15 A Next morning, next morning.
- 16 Q Okay. And when you got to the house what did you find?
- 17 A A wreck pretty much.
- 18 Q Did you go in?
- 19 A Yes.
- 20 Q And after going in what did you do?
- 21 A Well, I stood in shock for a minute honestly 'cause I
- 22 didn't realize that much damage could be done by one person.
- 23 Q Okay. And so then did you stay there with your mother at
- 24 that time?
- 25 A Yeah, we looked through some things to see what we could

SW - D. NAMIAS - DIRECT

1 salvage 'cause I had a truck. That's when I picked her up
2 so we tried to see if what we could get to put on -- to take
3 to another location from the house so it didn't get stolen.

4 Q Okay. And so you helped your mother load up whatever you
5 could find out the house that was salvageable?

6 A Yes.

7 Q Now at that time did you see the truck?

8 A Mike's truck or?

9 Q The -- yes.

10 A No. My girlfriend, my fiance at that time, had taken my
11 mom to go get while I was at the house looking for more
12 stuff.

13 Q And so at that time so you didn't see the truck that was
14 at the storage?

15 A Well, I did later that day, yeah.

16 Q Okay. What time was that when you saw the truck?

17 A I couldn't tell you the time. It was in later in the
18 afternoon though.

19 Q Okay. Would you please answer any questions the Defense
20 may have for you.

21 A Yes.

CROSS-EXAMINATION

22
23 BY MR. FLOYD:

24 Q Were you in here yesterday?

25 A Yes.

SW - D. NAMIAS - CROSS

1 Q In the courtroom? Were you here all day?

2 A I've been here the entire time, sir.

3 Q So any testimony that your mother gave yesterday you
4 heard it; is that correct?

5 A Yes.

6 Q Okay, all right. Thank you very much.

7 THE COURT: Redirect? Anything?

8 REDIRECT EXAMINATION

9 BY MS. PARR:

10 Q You indicated that you heard your mother's testimony; is
11 that correct?

12 A Yes, I was here.

13 Q Okay. But what you're testifying, is this from your
14 recollection?

15 A Yes, ma'am.

16 Q All right. Now you said you were at the complex on that
17 particular day with your mother; is that correct?

18 A When we were cleaning up, yes.

19 Q Well, did you come to the courthouse when you picked her
20 up?

21 A Yeah.

22 Q Okay. Were -- did you hear any phone calls?

23 A Oh, yeah, he called my phone too. I had plenty of voice
24 mails as well; but they said they didn't need to record my
25 messages, just for in court.

SW - H. GAINNEY - DIRECT

1 Q Okay, all right. Nothing further, Your Honor.

2 THE COURT: Recross.

3 MR. FLOYD: I don't have anything further, Your Honor.

4 THE COURT: All right, you may step down.

5 Next witness please.

6 MS. PARR: Your Honor, at this time we call Heather
7 Gainney to the stand.

8 WHEREUPON,

9 HEATHER AUTUMN GAINNEY,

10 having been duly sworn by the Deputy Clerk of Court,

11 testified as follows:

12 THE DEPUTY CLERK OF COURT: Please be seated. State
13 your name for the record.

14 THE WITNESS: My name is Heather Autumn Gainney.

15 **DIRECT EXAMINATION**

16 BY MS. PARR:

17 Q Ms. Gainney, where do you live?

18 A , Darlington, South Carolina.

19 Q Okay. How old are you?

20 A I'm 27.

21 Q Okay. And are you employed?

22 A Yes.

23 Q And who do you work for?

24 A JP Morgan and Chase, formerly Washington Mutual.

25 Q And how long have you worked for them?

SW - H. GAINEY - DIRECT

- 1 A For seven years.
- 2 Q Okay. Now what do you do for them?
- 3 A I'm currently an assumptions processor.
- 4 Q Okay. And if you would talk nice and loud so we can all
5 hear you.
- 6 A Sorry.
- 7 Q Now do you know Janel Namias?
- 8 A Yes, I do.
- 9 Q And how is it that you know her?
- 10 A She's the mother of my boyfriend.
- 11 Q Okay. And how long have you known her?
- 12 A Let's see, almost three years now.
- 13 Q Okay. And did you know the defendant?
- 14 A Yes, I do.
- 15 Q And how long have you known him?
- 16 A Ever since I've known Janel.
- 17 Q Okay. Now going back to October of 2008 did you have an
18 occasion to be involved in this incident that we're here for
19 today?
- 20 A Yes.
- 21 Q Okay. And how did you become aware of it?
- 22 A I was at work whenever I first became aware of all this
23 happening so. That was October 3rd. That was on a Friday?
- 24 Q Yes.
- 25 A So whenever I got off work on Friday, you know, I joined

SW - H. GAINES - DIRECT

1 my boyfriend and his mother at that point.

2 Q And so did you come to Florence at that time?

3 A No, they were in a secure location at that point as far
4 as I remember.

5 THE COURT: Ma'am, you've got to speak up a little
6 louder now.

7 THE WITNESS: Sorry.

8 THE COURT: Please help us. The court reporter has
9 got to take down every word; the jury needs to hear. Please
10 speak.

11 THE WITNESS: Can you repeat the question so I can
12 answer again?

13 BY MS. PARR:

14 Q And so where did you first see them?

15 A I believe, if my memory served me correctly, I met with
16 them at the secure location at that point afterward. Is
17 that what -- am I thinking right? I think so.

18 Q All right. And so on the next day did you have an
19 occasion to come to Florence?

20 A Yes.

21 Q And who did you come to Florence with?

22 A I came with Janel and Den (ph).

23 Q And specifically what did you do?

24 A Well, actually on Friday night I believe it was -- was
25 that the phone harassment? We went and we came to the city

SW - H. GAINES - DIRECT

1 complex with Janel to file the phone harassment charge or
2 report it, whatever.

3 Q Okay.

4 A And the next day we came back to Florence to assess
5 damage of her property.

6 Q Okay. So on that Friday evening you came to Florence
7 with her because of phone harassment?

8 A Yes, because he was calling her nonstop.

9 Q And how did you know it was him calling?

10 A I saw the caller i.d. and he was also calling my
11 boyfriend. I heard the voice mails. I saw the text
12 messages. I saw all, you know, I was with her from the time
13 I got off work until it was all said and done.

14 Q Okay. Now when you came to the City-county Complex do
15 you recall who you all met with?

16 A We originally went to the basement. The person that was
17 behind the window called Ms. Cox, Officer Cox, and she came
18 up and, you know, filed the report for us.

19 Q Okay. And did you hear all of the voice messages that
20 the defendant left?

21 A Yes.

22 Q Okay. Now I believe you said he left voice messages on
23 Daniel Namias' phone as well?

24 A That's correct.

25 Q Okay. And do you recall what those voice messages were?

SW - H. GAINES - DIRECT

1 A To Daniel? Yeah, he was just trying to get in touch with
2 Janel, but you know, you could tell he was angry so...

3 Q Now after you filed the report and talked with
4 Investigator Cox what did you do?

5 A We were escorted out of city limits by Officer Cox, and
6 we continued to take Janel to somewhere safe. I wanted to
7 keep her protected. I took her to and somewhere that I
8 knew was safe.

9 Q Okay. Now on the next day which was Saturday, October
10 4th, what did you do or where did you go?

11 A Well, whenever we woke up it was a phone call from
12 Officer Cox letting us know that the defendant had been
13 arrested and it was safe to go to the house at that point.
14 So we all got up and went to the house, and you know, and we
15 were all in shock just like everybody said.

16 Q Okay. And so at that time the house had been damaged?

17 A Oh, yes. Damaged is not the word for it in my opinion,
18 but yeah.

19 Q Okay, all right. On that particular day did you also
20 have an occasion -- did anybody come to the house while you
21 were there?

22 A Yes, a few people actually. I remember when we called
23 your name, the two people that you -- I don't even know
24 their real names, the two people you just had up here as
25 witnesses. They came by for a short amount of time. Let's

SW - H. GAINY - DIRECT

1 see, officers came by. The man Julius came by and his wife.

2 Q Now when he came by were you there the whole time when he
3 was talking to Janel?

4 A Yeah, I was right by her side.

5 Q Okay. And what, if anything, did he do while he was
6 there?

7 A He just stopped by to give his condolences I believe.
8 You know, I think he heard what had happened through the
9 neighborhood or whatever and he came by just to tell Janel
10 that he was, you know, sorry for all this happening.

11 Q Okay. Now did he give her anything?

12 A Not that I saw. I was with her the whole time.

13 Q So he did not give her anything?

14 A No.

15 Q All right. Now did you take her to a storage unit?

16 A Yes. Yes, we went to pick up the truck that had been
17 towed that Mike had in his possession prior. I drove her
18 because I knew where the towing company was in Darlington.
19 That's where I lived all my life.

20 Q So the car was actually towed to Darlington?

21 A Yes.

22 Q And so you drove her to Darlington?

23 A Yes, I did.

24 Q Okay. And when you all got the truck did you see inside
25 of it?

SW - H. GAINY - DIRECT

1 A Yeah, we got out. We had to wait for the towing company
2 to do the paperwork and whatnot and then they finally let us
3 see the truck. And at the point whenever went to see the
4 truck it was being kept in a garage like, you know, the
5 garage door closed or whatever for some point or for some
6 reason. But whenever we went back there we inspected the
7 outside of the truck first to see if there was much damage
8 done to it, and then we opened the doors and, I mean, the
9 bed of the truck was full of just regular stuff that you
10 could tell Mike was planning on taking with him. And the
11 inside of the truck had some personal belongings of Janel's
12 and then just like a whole terrain of stuff in it, but you
13 know, I didn't observe the status of truck at that point.

14 Q Okay. Now is it fair to say that the truck was full of
15 items?

16 A Yes.

17 Q Okay. And where were those items located?

18 A There was -- everywhere. The passenger seat, the back
19 seat, the bed of the truck, just anywhere you could stick
20 stuff to haul.

21 Q Okay. Now at that time did you -- you all just inspected
22 it. Did you remove anything from the truck at that time?

23 A No, there's no point. We weren't even -- whenever we got
24 the truck we drove it back to the Dixie Street house. And
25 at that point we unloaded bed of the truck so that we could

SW - H. GAINES - DIRECT

1 use that truck to transport any items that we found that was
2 salvageable at Janel's residence to take to the storage
3 unit.

4 Q Okay.

5 A But you know, I mean, that's -- we didn't feel the need
6 to, you know, clean out the seats so we just used the bed at
7 that point.

8 Q Okay. Ms. Gaines, who took the truck to the storage
9 unit?

10 A You mean...

11 Q Yeah, who drove the --

12 A Oh, I believe it was Janel if my memory serves me
13 correctly.

14 Q Okay. And did you follow her there?

15 A Oh, all of us did because we had a few trucks there and
16 we had Den's truck and Ms. Janel's truck there and all of us
17 went to unload it, unload the load so we took it over there.

18

19 Q Okay, all right.

20 MS. PARR: Nothing further for this witness, Your
21 Honor.

22 MR. FLOYD: Your Honor, I don't have any questions for
23 this lady.

24 THE COURT: You may step down.

25 THE WITNESS: Thank you.

1 THE COURT: Got another short witness?

2 MS. PARR: Now the next witness is fairly lengthy.

3 THE COURT: It is lunch time. Okay. Jurors, remember
4 my instructions in regard not to discuss the case among
5 yourselves, not to talk to anyone about it. Please be back
6 by 2:00 please. By 2:00. No one leaving now but the jury.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 12:40 p.m., and the following proceedings
9 commenced in open court.)

10 THE COURT: Anything you want to put on the record for
11 the State?

12 MS. PARR: State doesn't have anything, Your Honor.

13 THE COURT: Defense?

14 MR. FLOYD: Nothing, Your Honor.

15 THE COURT: See you back at 2, 2:00.

16 (WHEREUPON, a lunch break was taken.)

17 THE COURT: Bring the jury out.

18 (WHEREUPON, the jury was returned to the courtroom at
19 approximately 2:00, and the following proceedings commenced
20 in open court.)

21 THE COURT: Hope everyone had a nice lunch. We're
22 ready to roll.

23 Next witness, Ms. Solicitor.

24 MS. PARR: Your Honor, at this time we call Sergeant
25 Tim Compton to the stand.

SW - T. COMPTON - DIRECT

1 **THE COURT:** Okay.

2 **DEPUTY CLERK OF COURT:** Please place your left hand on
3 the Bible. Raise your right hand.

4 **WHEREUPON,**

5 **TIMOTHY WADE COMPTON,**
6 having been duly sworn by the Deputy Clerk of Court,
7 testified as follows:

8 **THE DEPUTY CLERK OF COURT:** Please be seated. State
9 your full name for the record.

10 **THE WITNESS:** Timothy Wade Compton.

11 **DIRECT EXAMINATION**

12 **BY MS. PARR:**

13 **Q** Sergeant Compton, where are you employed?

14 **A** Florence Police Department.

15 **Q** And what do you do for the Florence Police Department?

16 **A** I'm a criminal investigator, supervisor of financial
17 crimes unit.

18 **Q** And how long have you been with the Florence Police
19 Department?

20 **A** Twenty-four years and eight months. I'm fixing to
21 retire.

22 **THE COURT:** Don't retire. You need to get a job.

23 **THE WITNESS:** Yes, sir.

24 **MS. PARR:** I've been talking to him about that.

25 **THE COURT:** That's what the Chief Justice told me.

SW - T. COMPTON - DIRECT

1 THE WITNESS: My wife ordered me to get a job.

2 BY MS. PARR:

3 Q What are your duties as a supervisor in investigations
4 for the —

5 A Well, my duties are — I specialize -- each investigator
6 specializes in a certain area as I am in financial crimes.

7 Other detectives in stolen vehicles, property crimes, child
8 abuse. I supervise the financial crimes unit, basically
9 forgeries, credit card fraud, embezzlement, bank fraud,
10 crimes like that. We also investigate general crimes.

11 Anywhere if we're on a duty, call, or on-call situation we
12 could possibly get a murder, robbery, burglary, and so we
13 all investigate general crimes also besides specializing in
14 a certain area. But I supervise two other individuals who
15 do white collar crime with me.

16 Q Now are you familiar with the so-called Miranda warnings
17 on a suspect's constitutional rights?

18 A Yes, I am.

19 Q In your line of business have you had the occasion to
20 advise suspects of those rights?

21 A Yes, I did.

22 Q Okay. And did you have an occasion to come involved in
23 the investigation of this matter involving the defendant
24 Carmichael Flowers?

25 A Yes, I did.

SW - T. COMPTON - DIRECT

1 Q And when did you become involved?

2 A I believe it was October the 10th, 2008. Investigator
3 Felicia Cox asked for my assistance in going to Florence
4 County Detention Center to interview the defendant.

5 Q Okay. Now I show you what has been marked as or entered
6 into evidence as State's Exhibit Number 1. Can you
7 recognize that?

8 A That is a Miranda warning card.

9 Q Okay. Now you indicated that you have had occasion to
10 administer the Miranda warnings to defendants; is that
11 correct.

12 A Yes, over a thousands of times.

13 Q Okay. Now did you have an occasion to administer Miranda
14 warnings to the defendant Carmichael Flowers?

15 A Yes, I did.

16 Q And when was it administered?

17 A That was October the 10th, 2008.

18 Q And how were those Miranda warnings given to him?

19 A Actually I pulled out my card which I do have with me,
20 which is our policy is to read it from a card and not for,
21 you know, by memory. So I read it from my card to the
22 defendant.

23 Q Okay. Would you please read to the jury what you read to
24 the defendant on that day.

25 A Well, first of all, we introduced each other in the

SW - T. COMPTON - DIRECT.

1 little interview room, and I advised him was gonna -- we'd
2 like to question him and talk to him and he said that was
3 fine. I told him before I did that I would have to read him
4 his rights, which I did. And it says the following: You
5 have the right to remain silent. Anything you say can and
6 will be used against you in a court of law. You have the
7 right to talk to a lawyer and have him present with you
8 while you're being questioned. If you cannot afford to hire
9 a lawyer one will be appointed to represent you before any
10 questioning if you wish. You can decide at any time to
11 exercise these rights and not answer any questions or make
12 any statements. Do you understand each of these rights I
13 have explained to you? And his answer was yes. And I said
14 -- at that time I said, having these rights in mind would
15 you like to answer any questions I may have for you or
16 Investigator Cox, and he said he would answer my questions
17 or Ms. Cox's questions.
18 Q Okay. Now going back, now when did you read the Miranda
19 warnings to the defendant?
20 A When?
21 Q Yes.
22 A It was in a pod at the Florence County Detention Center.
23 Exactly what time it was that particular day I could not
24 tell you.
25 Q And what day was that?

SW - T. COMPTON - DIRECT

1 A It was October 10th.

2 Q Okay.

3 A I'm not sure what day that fell on.

4 Q Now did you — can you recognize or identify what's been
5 marked and entered into evidence as State's Exhibit Number
6 2.

7 A Yes, I can. It's a waiver of rights form.

8 Q And what is that please?

9 A It's a written form of your -- of the defendant's Miranda
10 rights that once I read it from the card then I also read it
11 from the form here. And it's in more detail and I read it
12 to him. And once they understand it they sign their name
13 and they date it.

14 Q Okay.

15 A So basically reading their rights twice.

16 Q Okay. Would you please read that for us?

17 A Yes, ma'am. As I explain this to him they can read along
18 with me while I read it to them. But it reads as follows:
19 Waiver of rights form, division of police, Florence, South
20 Carolina, date 10/10/08. Place, Florence County Law
21 Enforcement Center. I, Carmichael T. Flowers, voluntarily
22 without duress, duress, force, promises of immunity, or
23 reward agree to be questioned by the Florence Police
24 Department. I fully realize I have the right to remain
25 silent the entire time I'm here. Anything I may say can be

SW - T. COMPTON - DIRECT

1 used against me in any court of law. I have the right to
2 have an attorney present. And if I cannot afford an
3 attorney and desire to be represented one will be appointed
4 for me prior to any questioning without cost to me. Even
5 after signing this form I realize I have the opportunity to
6 exercise these rights at any time I wish to while I'm here.

7 I also realize I have the right first to consult with an
8 attorney or anyone else I wish to before signing this form
9 or answering any questions. Nevertheless, I voluntarily
10 request and authorize the Florence, South Carolina Police
11 Department to proceed with the questioning. In addition, I
12 represent I feel all right both mentally and physically and
13 I know of no mental or physical ailment which might be
14 impaired by any questioning. Import and notice, if you do
15 not understand any part of this form do not sign until you
16 do."

17 Q Okay. And did the defendant indicate he understood the
18 form?

19 A Yes, he did.

20 Q Okay. And how did he acknowledge his understanding of
21 it?

22 A He said he understood when I asked him. I said if you
23 understand it please sign your name, which he did, and also
24 I asked him to date it, and he did.

25 Q Okay. Have you ever dealt with people in your work who

SW - T. COMPTON - DIRECT

1 were under the influence of alcohol or narcotics?

2 A Yes, ma'am.

3 Q Did the defendant appear to be under the influence or be
4 intoxicated by alcohol or drugs?

5 A No, ma'am.

6 Q Did the defendant respond to your questions when you read
7 the exhibit card to him as well as the waiver of rights
8 form?

9 A Yes, ma'am, he responded.

10 Q Did the defendant appear to understand your questions
11 regarding his rights?

12 A Yes, he did.

13 Q Was the defendant speech coherent?

14 A Yes, he was.

15 Q Did the defendant respond when asked whether he wanted an
16 attorney?

17 A He ultimately stated to us that he wanted to talk and
18 give his side of what happened, and he wanted to talk to us
19 he said.

20 Q Did the defendant ever invoke his right to remain silent?

21 A No, he did not.

22 Q Did the defendant agree to answer your questions at the
23 time without an attorney being present?

24 A Yes.

25 Q Did you promise the defendant anything in return for

SW - T. COMPTON - DIRECT

1 making a statement?

2 A Absolutely not.

3 Q Did you coerce the defendant in making a statement with
4 threat or any action?

5 A No, I did not.

6 Q To the best of your knowledge was the defendant's
7 statement freely and voluntarily given?

8 A Yes, it was.

9 Q And did the defendant make a statement in response to
10 your question?

11 A He made several statements.

12 Q Okay. Who was present with you?

13 A Investigator Felicia Cox, the lead investigator on this
14 case.

15 Q Okay. Now the statement the defendant gave, was it
16 written, oral, or recorded?

17 A It was oral.

18 Q Okay. And why wasn't it recorded?

19 A The way I do it and most investigators do, a taped or
20 written statement is when we believe that we've had
21 everything that we possibly can get that we believe is the
22 truth is as best we can get it, then we'll take a statement
23 or ask for the individual to give us a written or tape. At
24 that point I made the decision that we would like to come
25 back and interview him a second time. After some things

SW - T. COMPTON - DIRECT

1 were said in this initial interview, things that came out as
2 he said, one of -- to have Investigator Cox to check it out
3 and come back and confront him about other things that we
4 found during the investigation. So I decided at that time
5 we would get a statement later. I felt that we needed to
6 get more answers and information before we actually said it
7 and put it down on tape.

8 Q Now did the defendant actually make a statement to you
9 while you were at the jail that day?

10 A He made a verbal statement, several statements of the
11 accounts that of what happened.

12 Q Okay.. What, if anything, did he tell you?

13 A Basically he was -- he was wanting to give a statement to
14 us in his -- in his words of what happened and how he saw
15 things. Basically, I put to you this way, he -- he led the
16 interview. He wanted to tell us about his relationship with
17 the victim and how everything transpired so he wanted to
18 tell us to begin with. Normally we try to ask questions and
19 control the interview but there's times where some people
20 willing to talk and you just let them talk because they want
21 to give out their side so that's what I decided to do that
22 day. And he first started out before I -- you ask me any
23 questions about what happened I want to tell you about our
24 relationship. So he first started talking about his
25 relationship, how they met in New Jersey at their work at

SW - T. COMPTON - DIRECT

1 UPS, and why they came to South Carolina to try to make some
2 money basically flipping houses. And he wanted to tell us
3 about his relationship before anything else was said and
4 done.

5 Q Okay. What else -- what else if anything else?

6 A After he got done telling us the relationship and how
7 they met, why they came to be here in Florence, he started
8 talking about this neighborhood they lived in on

9 was a bad neighborhood and that he -- there was
10 neighbors across the street that would be drug dealers
11 basically. You could get any drug that, you know, you
12 wanted. And at that point that's when he brought up the
13 gun; that he had purchased a gun for fifty bucks. He said
14 he got -- he went in the house, got the money out of the
15 victim's pocketbook and purchased a gun. And he never -- he
16 told us he didn't know who the person was that he bought the
17 gun off of but he did purchase it. And he described the
18 handgun as being a .38 caliber special, silver in color,
19 with a brown grip on it. He talked about the knives that
20 he had and he kept both the gun and the knives in the
21 nightstand next to the bed is what he had told us. After he
22 talked about that he basically started, you know, we started
23 asking some questions about the incident and then he turned
24 around and said, you know, he did not -- well, she did
25 not -- that he did not let her go anywhere due to the fact

SW - T. COMPTON - DIRECT

1 that she supposedly had a glass of wine. That is why he
2 would not let her go anywhere.

3 Q And when you say he wouldn't let her go anywhere what are
4 you referring to?

5 A That particular night, October the 2nd. He took her keys
6 from her and her pocketbook and her cell phone so she would
7 not be able to go anywhere due to supposedly her having a
8 glass of wine. And but he said he never, he never kidnapped
9 her. He never kept her from leaving. He just did not want
10 her to drive and leave. He stated that the victim had the
11 baseball bat at the first of the incident. And he actually
12 took the baseball bat from her and threw it and that's when
13 the lamp got broken. He said he'd actually helped her clean
14 the mess up with reference to broken lamp. And at that
15 point he showed us a bruise on his left bicep and said
16 that's where, you know, she hurt me and grabbed me. Well,
17 we both looked at -- myself and Investigator Cox looked at
18 the bruise. It didn't appear to us that it was where
19 someone had grabbed him on the upper bicep. It was a larger
20 type area where maybe like something had hit it or he had
21 hit his arm on something. And to be honest with you, our
22 first initial thought was that during the time he was
23 destroying the house in his -- in being raged he may have
24 hit his arm by accident but it did not look like somebody
25 had grabbed him. He stated next that reference to the phone

SW - T. COMPTON - DIRECT

1 calls, he did try to call the victim several times and that
2 he said he got angrier as she, you know, every time he'd
3 call she did not answer her phone. And he said he did get
4 angrier reference to her not picking the phone up. He said
5 he then went to a bar and had some drinks. He even said he
6 had Jack Daniels. He just said some drinks. He didn't say
7 how many drinks. He said he went back to the house. He
8 went to a storage building and got an ax handle, and he said
9 and at that point he said he went crazy and with the ax
10 handle and he was destroying the house.

11 A little bit later he stated during the time that he
12 was destroying the house with the ax handle people kept
13 walking in and out of the house because we had asked him
14 about the victim's belongings, where is this, where is that,
15 and he said any one of those people could have gotten those
16 items because people was walking in and out of the house as
17 he was destroying it. He then broke down and started
18 crying. He then turned and faced Investigator Cox and said,
19 do you think my relationship with the victim is over. And
20 pretty much we both told him, yes, it was. He stated the
21 victim misunderstood what happened on October the 2nd. She
22 did not understand. He didn't really elaborate what she
23 misunderstood, but he just said that she misunderstood. He
24 was concerned about his clothing and his belongings, and he
25 was worried about since he was in jail at that time what's

SW - T. COMPTON - DIRECT

1 going to happen to his stuff. You know, he was concerned
2 that somebody was going to take it, whatever. So
3 Investigator Cox volunteered herself to, you know, since
4 he's not from South Carolina and give her some names and she
5 would attempt to try to make contact with them and see if
6 they can take care of his stuff, get his clothing,
7 belongings, or whatever belonged to him and put them in a
8 storage or keep them until he was able to get out and get
9 them for himself. So he gave her two names. I think Wilmo
10 and Earline. And Investigator Cox later on followed up on
11 it and made contact.

12 Next, Investigator Cox asked the defendant what
13 happened with the gun and the defendant stated that he gave
14 the gun to someone in Darlington. At that point the
15 followed up question was who was this someone, and at that
16 point he stated he does not want to get this person involved
17 in this. We tried to followup more with that. You know, it
18 would help you if you told us who this was. We'd check it
19 out, try to verify what you're saying. And again, he
20 basically said he did not want to get this person involved
21 and would not give that person's name. And basically at
22 that point in time Investigator Bo Meyers came in, and Bo
23 Meyers being the crime scene tech, he had to do some
24 procedures. So at that point this time I left the room so
25 he would do his procedures and the interview basically over

SW - T. COMPTON - CROSS

1 with. Before we did leave we asked him if we could come
2 back and talk to him another time, and he said, yes, we
3 could come back again. So we decided once we check out some
4 things and do further investigation we'd come back for
5 another interview and that's where we left it.

6 Q All right. Sergeant Compton, please answer any questions
7 Mr. Floyd may have for you.

8 MR. FLOYD: May it please the Court, Your Honor.

9 THE COURT: Yes, sir.

10 **CROSS-EXAMINATION**

11 BY MR. FLOYD:

12 Q Sergeant Compton, I only have a few questions for you.

13 A Yes, sir.

14 Q Now you made a statement earlier you mentioned that
15 Mr. Flowers said something about being able to buy drugs or
16 any kind of drugs. He doesn't tell you he was actually
17 buying drugs?

18 A No, he did not. He just said he was trying to make us
19 understand why he had purchased the gun because of the bad
20 neighborhood and the drug activity.

21 Q Okay. I just wanted to clarify that.

22 A Yes, sir.

23 Q And he said that was the reason he obtained the gun in
24 the first place?

25 A Yes.

SW - T. COMPTON - CROSS

1 Q Because of the nature of the neighborhood?

2 A Yes, sir, that's correct.

3 Q Okay. I mean, your experience you've been a police
4 officer how long in Florence, 20?

5 A Twenty-four years, eight months.

6 Q Not trying to age you anymore but. In your experience is
7 that a bad neighborhood or a bad street?

8 A It's a bad area, yeah. It's ashame that a few bad houses
9 make the whole neighborhood bad, but yes.

10 Q All right. Now did the defendant not tell you at that
11 time that he bought the gun from Vonne, one of his
12 neighbors?

13 A He didn't give a name. He just said an unknown person
14 and he just said he paid fifty bucks for it.

15 Q Now did you, in fact, you said you made a plan to go back
16 and take another statement from him, a recorded statement.

17 A Yes, sir.

18 Q Did you do that?

19 A I did not. Investigator Cox had called me on a
20 particular day; and after she did followup investigations
21 since she's the lead investigator, and she asked if I could
22 come down, go down with her on that particular day and do a
23 second interview. And at that point in time I had a
24 pressing case that I was investigating, in the middle of
25 investigation. I told her I could not go at that time, and

SW - T. COMPTON - CROSS

1 I told her, you know, if she felt comfortable go ahead and
2 go on down and do the second interview.

3 Q All right. I want to ask you about the — you discussed
4 a bruise earlier.

5 A Yes, sir.

6 Q How many bruises did you see on Mr. Flowers?

7 A He only showed us one and that was on his left bicep.

8 Q His left bicep, okay. So bicep you mean the front of the
9 arm?

10 A Yes, sir.

11 Q Or the side?

12 A I want to say it was right about here.

13 Q Okay, all right. And what is the shape of that bruise?

14 A It was — if I remember correctly he said she had grabbed
15 him there, but we couldn't see any fingertip-type bruising
16 marks or any — or thumb around the bicep or anything like
17 that. It was like a straight type bruise. It wasn't a bad
18 bruise. I mean, you could tell there's a bruise there, but
19 it wasn't a deep bruise or anything like that but it was —
20 it seemed like something had hit him there or maybe he had
21 hit his arm maybe when he swing the ax handle. That's what
22 we assumed.

23 Q And once again do you remember what shape the bruise was
24 in?

25 A It looked like it went across right there. It —

SW - T. COMPTON - CROSS

1 Q So was it round, was it ---

2 A Kind of straight and I say probably maybe about that wide
3 and it was a light bruise right across here.

4 Q Okay. So it could have been caused by being struck by
5 something?

6 A It possibly, yes, sir.

7 Q Okay, all right. And I want to ask you once again about
8 the statement he gave in relation to the night of the 2nd
9 when he was discussing taking the victim's keys. He did not
10 tell you that he refused to let her leave the house, did he?

11 A He said he didn't want her to leave because her having a
12 glass of wine.

13 Q But he didn't want her to drive. Isn't that what he
14 said?

15 A Yeah, he didn't want her to drive.

16 Q Right?

17 A And that's why he took the keys.

18 Q Okay. But he didn't indicate to you that he was keeping
19 her from walking out the door; only that he didn't want to
20 get her in a car; is that right? Or he didn't want her to
21 get in a car.

22 A All he said that he did not want her to drive. And in
23 this interview I was trying to keep it as cordial basis. He
24 was very, you know, very cooperative. He was talking to us.
25 I did not want to get confrontational and be accusatory at

SW - T. COMPTON - CROSS:

1 that point in time. I was hoping for a second interview;
2 but basically this was a initial interview and he was very
3 polite, and you know, I didn't press him on any of the
4 situations or answers.

5 Q And he was very polite and cordial to you?

6 A Yes, sir.

7 Q And Officer Cox while you were there?

8 A Yes, he was.

9 Q All right. Thank you, Officer Compton.

10 THE COURT: Redirect.

11 MS. PARR: Nothing further for this witness.

12 THE COURT: All right.

13 You may step down.

14 MS. PARR: Your Honor, at this time we would call
15 Scott Williamson to the stand.

16 THE CLERK OF COURT: Please place your left hand on
17 the Bible and raise your right hand.

18 WHEREUPON,

19 GERALD SCOTT WILLIAMSON,
20 having been duly sworn by the Deputy Clerk of Court,
21 testified as follows:

22 THE DEPUTY CLERK OF COURT: Please be seated. State
23 your full name for the record.

24 THE WITNESS: Gerald Scott Williamson.

25 DIRECT EXAMINATION

SW - G. WILLIAMSON - DIRECT

1 BY MS. PARR:

2 Q Officer Williamson, where are you employed?

3 A City of Florence Police Department.

4 Q And what do you do for the Florence city?

5 A I'm a patrol officer.

6 Q And how long have you been with the Florence Police
7 Department?

8 A Five years.

9 Q And what are your duties as a patrol officer?

10 A My duties include doing routine patrols of neighborhoods,
11 answer services per protocol.

12 Q And have you had any special training for your job?

13 A Numerous trainings. I have basic training both course of
14 the academy and other trainings, DUI, data master, such
15 things, traffic enforcement.

16 Q And are you a certified law enforcement officer?

17 A I am.

18 Q Now did you have an occasion to become involved in this
19 matter involving the defendant on or about October 3rd,
20 2008?

21 A I did.

22 Q Okay. And how were you brought into this matter?

23 A The best of my recollection I was not fully aware what
24 went on during the day shift. I think we got a call that he
25 was in the area so which it falls within my district so I

SW - G. WILLIAMSON - DIRECT

1 began searching the area, just keep my eye out.

2 Q Okay. And this was the evening of October 3rd?

3 A Yes, ma'am.

4 Q Okay. And what role did you play in this matter?

5 A I actually saw the defendant in the area and apprehended
6 him placing him in handcuffs.

7 Q And that's when he was in his vehicle and going to his
8 car at that time, his truck.

9 A That's correct.

10 Q And so you placed him under arrest; is that correct?

11 A Correct.

12 Q Now at that time were there other officers involved in
13 this matter?

14 A Yes, ma'am, there were. There were several in the area
15 due to that we were getting full information what took place
16 throughout the day and days before there were several other
17 officers in the area.

18 Q Now did you transport the defendant to the detention
19 center?

20 A I did, but...

21 Q Now at the time that the defendant was arrested, would
22 you please describe his condition at that time.

23 A At that time he -- upon my contact with him he had a
24 severe laceration, if I can remember correctly, on his right
25 wrist.

SW - G. WILLIAMSON - DIRECT

1 Q Okay. And was that laceration exposed or did he have
2 something on it?

3 A He had a glove on his hand that was not fully covering
4 the cut. I distinctively remember that when I placed the
5 handcuffs on him.

6 Q And so what, if anything, did you do as a result of that?

7 A He did not request -- he did not want to go, but per our
8 policy and my own concern I transported him to McLeod
9 Hospital ER in which he at that time he had several stitches
10 for that cut.

11 Q All right.

12 MS. PARR: Beg the Court's indulgence.

13 THE COURT: Yes.

14 BY MS. PARR:

15 Q Now when -- you said that there are a lot of other
16 officers in the area. Was there actually a chase involved
17 in the defendant trying to catch him?

18 A Prior to initial contact with him I was patrolling the
19 immediate area not even two residents from the incident --
20 or his residence. I did observe him at his vehicle. I
21 attempted to make contact and he did run. I lost contact.
22 There was a little wooded area that he went into, and that's
23 why the other officers came to the area 'cause we were
24 thinking he may come back.

25 Q And so you waited for him to come back?

SW - G. WILLIAMSON - CROSS

1 A I did.

2 Q And how long after the chase did it take for him to come
3 back?

4 A I would say no more than 20 minutes.

5 Q All right. Nothing further. Would you please answer any
6 questions Mr. Floyd may have for you.

7 A Yes, ma'am.

8 **CROSS-EXAMINATION**

9 BY MR. FLOYD:

10 Q Officer Williamson, how are you doing today?

11 A Just fine, sir.

12 Q Good. Do you recall how many other officers were at the
13 scene with you?

14 A We had our normal shift which consists of three and I
15 would say the three others were in the area.

16 Q Okay. So there were six of y'all together, six or seven,
17 something like that?

18 A Yes, sir.

19 Q Okay. Every one was -- or all those people were there
20 when you actually made contact with the defendant?

21 A I would say maybe four was there at the immediate
22 contact. Others pulled up once I had him detained.

23 Q Okay, all right. And you are actually the person who
24 detained him and placed the cuffs on him?

25 A Yes, sir.

SW - G. WILLIAMSON - CROSS

1 Q Okay. And were the other officers you say are in there,
2 I mean, were they standing there with you when you --

3 A Initially there was -- the best of my recollection I
4 think there were four there at the immediate time because he
5 got in his vehicle and started to leave and we made a stop?

6 Q Okay.

7 A And as we were getting him out of the vehicle others
8 pulled up.

9 Q Okay. So he got out of the vehicle, or you got him out
10 of the vehicle. And what happened to the vehicle?

11 A It was -- a inventory was done on it and it was towed.

12 Q Who did the inventory?

13 A I do believe Ms. Cox did.

14 Q Okay. And that was done on the spot before it was towed?

15 A That's correct.

16 Q But you didn't do none before?

17 A No, sir.

18 Q Did you do any kind of search of the car?

19 A Once I got him out of the vehicle I done just a immediate
20 look, but I didn't look in the driver's seat. Just to
21 verify there was no weapons or anything at that immediate
22 location.

23 Q Okay. But that's as far as far as you looked?

24 A That's correct.

25 Q And you didn't see anything in plain sight?

SW - G. WILLIAMSON - CROSS

1 A No, sir.

2 Q All right. And you left the scene before the truck was
3 actually moved?

4 A Correct.

5 Q Okay. And then you took the defendant directly from
6 there to the hospital?

7 A That's correct.

8 Q And then after that you took him to the detention center?

9 A To the detention center, yes, sir.

10 Q All right. Thank you very much.

11 THE COURT: Redirect.

12 MS. PARR: No questions for this officer, Your Honor.

13 We would ask that he be allowed to return to his duties.

14 THE COURT: Suitable, Counsel?

15 MR. FLOYD: Yes, Your Honor.

16 THE COURT: Okay, thank you. You're excused.

17 Next witness please.

18 MS. PARR: Your Honor, at this time we would call

19 Felicia Cox to the stand.

20 WHEREUPON,

21 FELICIA WATSON COX,

22 having been duly sworn by the Deputy Clerk of Court,

23 testified as follows:

24 DEPUTY CLERK OF COURT: Please be seated. State your

25 full name for the record.

SW - F. COX - DIRECT

1 THE WITNESS: Felicia Watson Cox.

2 DIRECT EXAMINATION

3 BY MS. PARR:

4 Q Officer Cox, where are you employed?

5 A City of Florence Police department.

6 Q And how long have you been with the Florence Police
7 Department?

8 A For twelve-and-a-half years.

9 Q And what are your duties with the Florence Police
10 Department?

11 A I'm the victim advocate with the city and I'm also a
12 class one police officer.

13 Q And what are your -- what are your specific duties as?

14 A My specific duties on a day-to-day basis is I work with
15 the crime victims throughout the city. But being a class
16 one police officer since that happened, which has been four
17 years ago, I also do followup with cases. I'm assigned to
18 their criminal investigations unit and that's where we get
19 cases for followup.

20 Q Now have you had any special training for your job?

21 A Yes, I have.

22 Q And what kind of training have you had for your job?

23 A For the being a police officer I spent nine weeks at the
24 Police Academy at Columbia, and of course we have continuing
25 credits that we have to do every year. As a victim advocate

SW - F. COX - DIRECT

1 I also have the same. I have the certification through the
2 governor's office which we have to maintain credit hours for
3 that as well.

4 Q Are you a certified law enforcement officer?

5 A Yes, I am.

6 Q Okay. Now are you familiar with the so-called Miranda
7 warnings?

8 A Yes, I am.

9 Q Did you have the occasion to advise the suspect those
10 rights during the course of your work in law enforcement?

11 A Yes, I did.

12 Q Okay. Now how do you normally advise suspects of their
13 rights?

14 A If I'm gonna advise them of their rights I'm gonna pull
15 the card that I carry and read straight from the card.

16 Q Okay. And were you employed in your present capacity on
17 or about October 2nd of 2008?

18 A Yes, I was.

19 Q Okay. And was that in the same capacity you work with
20 the police department in?

21 A Yes, ma'am.

22 Q Now did you have an occasion to become involved in the
23 investigation of this domestic violence incident?

24 A Yes, I did.

25 Q And when did you become involved?

SW - F. COX - DIRECT

1 A I became involved on October the 3rd. It was late
2 morning right before 12 when the victim was down in the
3 basement filing a report.

4 Q Okay. And how were you brought in the case?

5 A As my role as a victim advocate I went down to assist the
6 victim to talk with her about her rights and what she could
7 do being a domestic situation. We talked about the things
8 that had happened. My advice was to go to the Pee Dee
9 Coalition and to file paperwork for order of protection.
10 Officer Cantey was also down there and I asked him to take
11 the victim to the house at 777 so she
12 could get some personal items, items and paperwork and
13 medication, that kind of stuff, before she went over there.

14 Q Okay. And was that in fact done?

15 A Yes, it was.

16 Q Okay. Now did you have an occasion to become involved in
17 a followup?

18 A I did. Of course, I work during the day as a victim
19 advocate and at night on the weekends I will work on the
20 street as in my uniform. And that particular night on
21 October the 3rd I was working on the street when the 9-1-1
22 dispatch call came out dispatching officer to the
23 city-county complex in reference to a harassment call. When
24 I heard the victim's name over the radio I requested to take
25 that call since I had dealt with her earlier in the day. So

SW - F. COX - DIRECT

1 I responded to the complex and I met with the victim, her
2 son, and his fiancée. When they -- my first walk in there
3 she had told me that when she left me that day going to the
4 Pee Dee Coalition and the phone calls had been coming. Text
5 messages, phone calls, and she was scared to death. So
6 while we were trying to have the conversation I was trying
7 to document because you have to get their name and their
8 addresses and height and weight. You have to get all that
9 information just to do the report. Then the phone started
10 ringing. On the victim's cell phone pictures pop up with
11 the name and the phone number that comes up. I know my cell
12 phone does that as well. The defendant's picture popped up
13 along with his name Mike and the telephone number. When the
14 phone rang the victim advised that that was him, and I
15 answered the phone identifying myself as Officer Cox with
16 the Florence Police Department. The defendant was not happy
17 that I was answering the phone, was wanting to speak with
18 the victim. I advised the defendant not to call the
19 victim's phone, and he got angry with me and hung up the
20 phone. He called back several times while I was trying to
21 take the initial information from the victim, and each time
22 he called I answered the phone. At one point whenever he
23 called, and each time, he wanted to know my name, he wanted
24 to know my badge number, and I gave it to him. And he
25 actually at one point called and stated he was bleeding to

SW - F. COX - DIRECT

1 death and no one cared about him. I asked the suspect why
2 he was bleeding and he stated, I cut my arm when I broke a
3 window. I advised the defendant that he needed to call
4 9-1-1; he needed some assistance. He hung the phone up on
5 me again. During this time I decided to contact the
6 Corporal on the street to go by to see
7 if the defendant was there and if he was injured and needed
8 assistance. During all this, calling the supervisor, doing
9 this back and forth defendant called again. He stated to me
10 that he was at the hospital. They were wanting to give him
11 more than three stitches and he was leaving. And again, he
12 hung up the phone on me. A few minutes later he called me
13 back again and he stated to me that he was at a restaurant
14 and they would not serve him because he was bleeding so bad.
15 I'm still trying to get the defendant to get some help, and
16 of course he hangs up on me again. But before he hung up on
17 me he got angry and told me I could tell him what he could
18 do and that he hung up again. After all of these phone
19 calls I quit answering the telephone because I could not
20 document the text messages and try to listen to the voice
21 mail because the phone was continuously ringing. So I did
22 actually note, I think, there's 17 text messages that
23 started on October the 3rd of 2008 at 12:49 and continued
24 until 6:31 p.m. that same evening. Of course the voice mail
25 messages lasted up until I was actually with the victim past

SW - F. COX - DIRECT

1 10:30 at night. Would you like for me to go into what the
2 text messages are?

3 Q Yes, please. Did you retrieve the text messages?

4 A On the cell phone, yes. I pulled them up and said I'd
5 already the defendant by his picture, his name, and his
6 telephone number so that those are the text messages that I
7 documented from our report, okay. The first one —

8 MR. FLOYD: Your Honor, I object to the text messages
9 being read. I think the best evidence of the messages are
10 the messages themselves on the telephone.

11 THE COURT: Well, they have already been introduced
12 into evidence.

13 MS. PARR: Your Honor, we believe that this officer
14 saw the text messages. She's the one that retrieved them
15 and wrote down what they said verbatim. We believe she
16 should be able to testify to them, to identify that they
17 came from the defendant. His picture popped up. She was
18 aware of his telephone number; she verified that. And...

19 THE COURT: Yes.

20 MR. FLOYD: Your Honor, I think voice mail messages
21 have been introduced into evidence, but to my knowledge no
22 text messages have —

23 MS. PARR: That is correct; it was voice messages.

24 MR. FLOYD: No, it's voice mail. That's just —

25 THE COURT: There are a a plethora of exceptions to

SW - F. COX - DIRECT

1 the Hearsay rule. It is my conclusion that this particular
2 presentation falls within the exception in regard to
3 documentation in reference to telephonic or cell phone
4 communications. You may proceed. All rights are reserved.
5 All rights are protected for purposes of appeal.

6 MR. FLOYD: Thank you, Your Honor.

7 BY MS. PARR:

8 Q Go on Investigator Cox.

9 A Okay. The first text message that I noted, which was
10 dated October the 3rd, 2008 was at 12:49 and I guess I'm
11 going to have to go into -- I have everything document as
12 military so I need to convert it. This is actually 12:49 in
13 the afternoon. There was no message noted so it was like an
14 empty text message that came in. At 1:19 p.m. on
15 October 3rd it says, thanks. At 2:00 on October 3rd, 2008
16 it says, I hope you're happy. At 2:17 on October the 3rd,
17 it says, how long is this going to go on. At 2:18 on
18 October the 3rd, the longer the worse things get.
19 October 3rd, 2008 at 2:21 p.m., stop this now please. On
20 October the 3rd, 2008 at 3:16 p.m., can we stop this
21 fighting. October 3rd, 2008 at 3:28 p.m., I guess you don't
22 care. October 3rd, 2008 at 4:11 p.m., I told Daniel
23 everything, what's your problem. October the 3rd, 2008, at
24 4:15 p.m., should I take dog to pound. October 3rd, 2008 at
25 4:18 p.m., what's this self-pity. October 3rd, 2008 at

SW - F. COX - DIRECT

1 4:20 p.m., you are making matters worse. October 3rd, 2008
2 at 4:24p.m., I told Shirley what happened, she offer prayer.
3 October 3rd, 2008 at 5:03 p.m., this ain't right and you
4 know IU. October 3rd, 2008 at 5:54 p.m., your problem you
5 don't listen. October 3rd, 2008 at 6:21 p.m., call me.
6 October 3rd, 2008 at 6:31 p.m., 3,000 so far.

7 Q Now, and so, and what did you do after you got all the
8 text messages?

9 A Once I documented the text messages I listened to a few
10 of the voice mail messages. I did not listen to all of them
11 at that point in time. I heard where the defendant had said
12 55,000-dollars so far for your stupidity I believe was the
13 actual terminology. And I documented that. I was trying --
14 you know, at this point in time the supervisor had already
15 called back and told me that there was extensive damage to
16 the house, that they -- the defendant was not there so I've
17 got all this stuff going on at one time. During this time
18 the victim was wanting to go to the house on Dixie Street.
19 When I talked with the supervisor it was our decision was
20 made to advise her not to go there at that point in time and
21 that we would let her know when would be a safe time to go
22 to the house.

23 Once I gathered all the information that I needed to
24 gather for my report I actually escorted the victim, her
25 son, and fiance outside the city limits and then I drove

SW - F. COX - DIRECT

1 over to the house at Street. Upon my arrival
2 to the house the first thing I noticed was a piece of
3 furniture sticking out of the front window.

4 Q Now what time was this?

5 A I'm sorry?

6 Q What time was it that you responded to the complex to
7 meet with her in regards to the phone?

8 A It's 10:30 p.m. was the actual dispatch time of the call.

9 Q That night?

10 A 10:30 at night.

11 Q Okay.

12 A And by the time we actually finished everything it was
13 2:15 in the morning so I'm thinking I probably spent about
14 45 minutes with her at the complex and then of course I had
15 to drive outside the city before I was able to go over to
16 the location. Once I got on scene on Dixie Street the crime
17 scene technician Bo Meyers was already there, the Corporal.
18 There were other officers on scene. The defendant was
19 sitting on the ground in handcuffs outside of the truck. As
20 I came up I was advised that the immediate area of the truck
21 had been searched and a weapon had been found. When -- upon
22 inspection of the truck, since I did do the tow sheet and
23 called to have the vehicle towed there was blood all over
24 the door, the inside of the door, the steering wheel, and of
25 course one of the officers said you need to be careful

SW - F. COX - DIRECT

1 because there's blood every where. There was also piles of
2 pictures and boxes of files and when you would open -- when
3 the actual door was open on the driver's side the stuff was
4 falling out. There was -- it was the victim's files and
5 there was bottles of medication. We did actually find a
6 computer that we noted on our tow sheet which matches the
7 serial number from the incident report that was taken
8 earlier in the day from Officer Cantey.

9 Due to how much stuff was actually in that truck there
10 was no possible way that we could have taken everything out
11 of that truck and inventoried every item that was in there.
12 I mean, it was like someone was moving. It was completely
13 packed. The only place that you could have sat was right in
14 the driver's seat.

15 Q And you said you didn't do a complete inventory that
16 night?

17 A We did not pull everything out of that truck, no, ma'am.
18 We went around the outside of the truck. We noted the
19 scratches and the marks on the outside of the truck. We --
20 as because there was a computer and that kind of stuff in
21 the back of truck we got the serial numbers off of that
22 because those are big expensive items. You know, there
23 were -- there were files or the, you know, medications that
24 had the victim's name on it. In the bed of the truck, I
25 mean, it had like grocery items and trash. It was just all

SW - F. COX - DIRECT

- 1 kinds of stuff as if someone were moving that they had just
2 piled bunch of stuff in every place that they could actually
3 put it. And so as police officer when you're out working
4 the street, I mean, it would have taken us hours to pull
5 everything out of that truck and try to put it back in there
6 before the tow truck come taken it. Unfortunately when
7 we're working on the street like that you don't have that
8 kind of time to do that before you're being sent to another
9 call.
- 10 Q Okay. And so you had -- the car was towed; the truck was
11 towed?
- 12 A Yes, ma'am.
- 13 Q And then what did you do after you had it towed?
- 14 A Okay. On once it was towed -- well, I believe before,
15 yeah, the two company actually got there I believe we went
16 to see the house and that kind of stuff. Investigator
17 Meyers was already inside the house. He had taken pictures,
18 and of course they told me I could go inside. And when I
19 walked around to the back door and I noticed all the glass
20 and the debris everywhere, and when you look inside of the
21 kitchen and all the stuff that was on the floor it wasn't
22 safe to walk in there. I mean, just wasn't safe. It wasn't
23 a good idea. I know the crime scene technician had been in
24 there, photographed it. There was no reason for me to go
25 into that house so I chose not to go into the house. The

SW - F. COX - DIRECT

1 other officers were standing by waiting on the public works
2 to come out to cut the water off because there was water
3 going off in the house from the busted water lines. So you
4 know, once the vehicle was towed because obviously it takes
5 a little while before a tow company gets to a scene to take
6 that off Officer Williamson transported the defendant for
7 me. At that point time is whenever I called the victim,
8 Ms. Namias, and I advised her of the arrest. I advised her
9 of the bond hearing. I got her voice mail; I did not
10 actually get her. And of course it was about 2, 2:15 in the
11 morning whenever I was making these phone calls. I did,
12 however, call her again the next day or when it was day
13 light 'cause I guess it was typically the fourth at that
14 point in time anyway.

15 You know, once he was transported, you know, the next
16 morning I had to meet with the judge and I had to take care
17 of the necessary paperwork in relation to that. Given the
18 circumstances behind this particular case I felt that there
19 was, you know, followup investigation was needed. And that
20 is the reason why I talked with Sergeant Compton in
21 reference to helping me with that, okay.

22 Q Now before you brought Investigator Compton in did you
23 have an occasion -- did you continue to talk with the
24 defendant in regards to this case and the vehicle?

25 A I had no conversation with him on scene other than do you

SW - F. COX - DIRECT

1 know who I am, and he said, yes, you're Officer Cox.

2 Q No, I'm sorry with the defendant, I mean with the victim
3 in regards to the towing of the vehicle.

4 A Yes. When I -- I made a second phone call after I
5 advised about the bond hearing and gave her the information
6 as far as the tow company, the address, and phone number as
7 I was reading off the side of the tow truck so she would
8 know where vehicle was being towed.

9 Q Okay. And then on -- did you have an occasion to talk
10 with the defendant, I mean the victim, about her locating
11 the gun at the scene in the vehicle?

12 A I did. Well, that was on October the 5th and I'm pretty
13 sure that obviously was Sunday 'cause I talked with her all
14 weekend. And it was that date that she advised me that she
15 had already gotten the vehicle from the tow company and that
16 she had taken it and placed it at a storage facility. She
17 asked me what should she do if she found the gun; and I
18 said, well, if you find the gun then don't touch it, call
19 us, and we will come and collect it. And that was the
20 conversation with that. And it was on Monday on October the
21 6th that I gave -- I called the victim to check on her to
22 see if she had any luck. There was so much stuff in that
23 truck, and she said I think I found what you're talking
24 about but I'm in the doctor's office and I will call you
25 whenever I get done. I also talked to her about her order

SW - F. COX - DIRECT

1 of protection hearing during that time. And at that point
2 she was supposed to have her order of protection hearing on
3 the 7th of that morning so I advised the victim to come by
4 my office once that hearing was over. She actually came
5 earlier. The hearing was not held, and at that point she
6 and myself, her son, and crime scene technician Bo Meyers,
7 we went to the storage facility to collect the weapon.

8 Q Okay. And where was the gun located?

9 A I was not in the storage facility so I don't know where
10 he located the weapon.

11 Q And --

12 A I stayed outside with the victim and her son.

13 Q Okay.

14 A I know it was in the truck, okay.

15 Q All right. And so -- and investigator or crime scene
16 technician Bo Meyers was the one that retrieved it?

17 A Yes, ma'am.

18 Q And he retrieved it on that particular day?

19 A Yes, ma'am.

20 Q And did you ever see the weapon that day?

21 A I did. When he pulled it out he had taken it over to his
22 vehicle to run the serial number to make sure it wasn't a
23 stolen weapon.

24 Q Okay. I'm gonna show you what has been entered into --
25 no, what has been marked for identification as State's

SW - F. COX - DIRECT

1 Exhibit Number 19-A, -B, and -C. Do you recognize those?

2 A Yes, ma'am.

3 Q Okay. And how are you able to recognize them?

4 A I remember the gun from when Investigator Meyers showed
5 it to me and was running the serial number.

6 Q Now after the — after the gun was located what, if
7 anything, did you do?

8 A The collection, once that was done I was finished with
9 that part of it. I did complete an affidavit for the Court
10 to actually do a buccal swab on the defendant due to the
11 blood that was throughout the house, and I was granted that
12 order. I actually did the paperwork on the same day on
13 October the 7th. I was given the paperwork back on October
14 the 9th, and that's when Investigator Meyers decided that
15 when Sergeant Compton and I went out to interview him on the
16 10th that he would meet us out there as well to take care of
17 that court order.

18 Q Okay, all right. Now you indicated on October 10th you
19 went to Effingham; is that correct?

20 A Yes, it is.

21 Q And did you see the defendant that particular day?

22 A Yes, I did.

23 Q Now who was with you?

24 A Sergeant Tim Compton.

25 Q Now at that time was the defendant given his Miranda

SW - F. COX - DIRECT

1 warnings?

2 A Yes, he was.

3 Q Okay. And how was his Miranda warnings given to him?

4 A They were read to him from the Miranda warning card as
5 well as the waiver of rights form, and he signed and dated
6 it.

7 Q Okay. And would you take a look at what's been marked as
8 State's Exhibit 1 and 2.

9 A Yes, ma'am.

10 Q And State's Exhibit 1 is -- what is that?

11 A That's our Miranda warning card. This is actually my
12 card that I made a copy of it and blew it up.

13 Q And was that what was read to the defendant?

14 A Yes, ma'am.

15 Q Okay. And State's Exhibit Number 2.

16 A Yes, ma'am. That's our waiver of rights form hat's done
17 by the Florence Police Department that goes into more detail
18 about your Miranda warnings, and that was read to him as
19 well.

20 Q Okay. Were you there when he signed that?

21 A Yes, I was.

22 Q Now did the defendant understand his Miranda warnings?

23 A Yes, he did.

24 Q And did he appear to be intoxicated by alcohol or drugs?

25 A No, he did not.

SW - F. COX - DIRECT

1 Q And was his speech coherent?

2 A Yes, it was.

3 Q Now did he respond to your questions and Sergeant
4 Compton's?

5 A Yes, he did.

6 Q And at any time did he ask for an attorney?

7 A No, he did not.

8 Q Now Investigator Cox, what if anything else the defendant
9 said during the interview?

10 A Are you speaking other than what Sergeant Compton
11 testified to?

12 Q Yeah, other than what Sergeant Compton testified to?

13 A I think he covered most the whole interview.

14 Q Okay. Now did you observe a bruise on the defendant?

15 A I did.

16 Q Okay. And would you please describe that?

17 A There was a bruise that was on the left bicep, and I
18 remember what he said is -- I'm assuming that was in his
19 warrant where it said the victim had bruising on her biceps.
20 And he showed us his bicep and said, look, I was grabbed by
21 the arm as well. And when we looked at the bicep it did not
22 look like a bruise where it was someone that was grabbed.
23 And it was only one; he didn't show us any other areas. So
24 when Sergeant Compton and I discussed it we said we thought
25 it looked like something where he was either hit or he hit

SW - F. COX - DIRECT

1 something and that was our thought about what the bruise
2 looked like. It did not look like anyone had grabbed him.

3 Q Okay. And he said that Ms. Namias had grabbed him?

4 A Yes, ma'am.

5 Q Now did you have another occasion to see the defendant?

6 A Yes, ma'am.

7 Q And where was that and under what circumstances?

8 A I went back to the Florence County Detention Center to
9 talk with the defendant due to the victim coming in and
10 bringing letters that she had received from the defendant.
11 She had an order of protection that was granted on October
12 the 7th, which was a violation of the order of protection.
13 Because I am also a victim's advocate I have a dual role in
14 this particular case. In addition, I had already made
15 contact with Wilmo, which is one of the names that the
16 defendant had asked in reference to getting his clothes
17 picked up, his personal belongings, and that kind of thing
18 so I wanted to go back and talk with him about that. I also
19 knew at that point that I had the gun. And since he had
20 stated previously he had given it away I wanted to ask him
21 about the gun. Sergeant Compton was not available to go
22 with me that day so I wound up going out there by myself.
23 When I got there his first response to me is, I don't even
24 know why you're here. He was very agitated at my presence.
25 And you know, I told him that I would like to talk with him,

SW - F. COX - DIRECT

1 but before I could talk with him about anything I would need
2 to read him his Miranda rights which I did read his Miranda
3 rights. I also did a waiver of rights form as well.

4 Q Okay. And would you take a look at State's Exhibit
5 Number 3. Would you tell us whether or not you recognize
6 that form and what it is.

7 A I do. This is the waiver of rights form that's part of
8 the forms from the Florence Police Department that we do in
9 addition to our Miranda rights warning whenever you're going
10 to interview a defendant.

11 Q Okay. And did you read that form to him?

12 A Yes, I did.

13 Q Okay. Did he indicate that whether or not he understood
14 it?

15 A He said he understood.

16 Q Okay.

17 A The one thing that he made a comment to me about was I
18 have allergies today and he wrote it on the form.

19 Q Did he also sign that form?

20 A He did.

21 Q Now so after he -- after he signed that form what if
22 anything was said.

23 A The first conversation that I had with the defendant was
24 in reference to making contact with the victim. I wanted to
25 make him aware that additional warrants could be signed for

SW - F. COX - DIRECT

1 that contact since the order of protection had been ordered.
2 He did — he was at that hearing; he was aware of that. I
3 as advised him that was a violation of his bond. After a
4 brief conversation he finally stated that he understood he
5 was not to have any contact with the victim and that he was
6 not to have anyone contact the victim on his behalf. The
7 next thing that I talked to him about was making contact
8 with Wilmo. It was a friend of his that was in New Jersey.
9 He had given me two names, a Wilmo and an Earline. And I
10 actually had to call the victim to get those phone numbers
11 to make contact. I spoke with the Wilmo. I advised Wilmo
12 of the defendant's situation and he said he was gonna do
13 what he could to try and get the defendant's stuff. So I
14 wanted to make sure that he was aware that I had done that
15 on his behalf.

16 Once we had that conversation I asked the defendant
17 what happened to the victim's clothing. He again stated
18 that there were people coming in and out of the house and
19 they were taking what they wanted. I looked at the
20 defendant and said, I find it very difficult to believe that
21 people would come in and out of the house while you're
22 enraged with a ax handle destroying the house and taking
23 stuff without your permission. The defendant made no
24 response to my comment at that point. You know, he
25 basically just kept to the same story that he had said in

SW - F. COX - DIRECT

1 the first interview. My next question to him was, what
2 would you say if I told you that I have the gun. At that
3 point in time the defendant got extremely upset, wanted to
4 know was I going to charge him with the gun and I told him I
5 just wanted to know, you know, what happened with the gun.
6 At that point, you know, he stuck with, you know, gave it to
7 someone in Darlington. And if -- if I had the gun then the
8 victim must have gotten it from the person he gave it to in
9 Darlington and placed it back in the truck. And so when we
10 were trying to talk about it he invoked his right not to
11 talk about this anymore. Once he invoked that right to not
12 talk about it, then I concluded the interview and the last
13 thing I said to him was to remember not to have any contact
14 with the victim.

15 Q Now did you continue with your investigation?

16 A I did. Of course I had spoken with the other witnesses
17 before that particular date. And let's see. I actually
18 spoke with Fetisha Montgomery and Bobbie Montgomery on
19 October the 13th.

20 Q Those were the witnesses that testified?

21 A Those are the witnesses that testified in here today, and
22 I actually spoke with them on telephone. And their, you
23 know, I documented what their statements was really about
24 and what they observed early in the evening on October the
25 3rd. I was not told anything about what was testified to

1 later on as far as the defendant running.

2 Q Okay. But were there -- what they told you that back
3 then in 2008 consistent pretty much with what they
4 testified to today in court?

5 A Yes, ma'am, other than the time was a little bit
6 different.

7 Q Okay. Now Investigator Cox, would you please answer
8 any questions the Defense may have for you,

9 A Okay.

10 **CROSS-EXAMINATION**

11 **BY MR. FLOYD:**

12 Q Officer Cox, could you tell me -- you mentioned you
13 were a victim's advocate, could you tell me what that
14 means.

15 A I work with the crime victims within the city of
16 Florence. I make sure that their rights have not been
17 violated. I make sure that they're referred to the
18 proper agencies. I do court assistance, and I talk
19 with them about the judicial process. I help with the
20 emergency funding for medications, food, clothing,
21 depending upon what the need of a particular victim may
22 be.

23 Q Okay, all right. You said in addition to that you also
24 patrol?

25 A Right.

Sample footer

SW - F. COX - CROSS

1 Q All right. And your first involvement with this was on
2 the 3rd of October; is that right?

3 A Yes.

4 Q Okay. So when you did not get involved on the 29th or
5 30th of September?

6 A No one called me on that, no, sir.

7 Q Okay, all right. And I believe Officer Williamson stated
8 earlier — I want to talk about the arrest made of Mr.
9 Flowers. He said that he arrested him and he left the car
10 with you or in your care or custody or the truck Mr. Flowers
11 was driving, he left that for you?

12 A When he actually made the arrest and the defendant was on
13 the ground handcuffed because that's the way he was whenever
14 I arrived on scene, there were probably four or five other
15 officers. They were all around the vehicles. They did not
16 pick him up and place him in the back of the car until once
17 I arrived there. They placed the defendant in the back seat
18 of Officer Williams' car and Officer Clarke actually stayed
19 with me while the tow company truck we were waiting on him.
20 And Williamson left with the defendant.

21 Q Okay. Was there an inventory, whatever inventory you
22 did, was that done before the tow truck got there to tow it
23 away or was it —

24 A We were actually in the process, myself and Officer
25 Clarke doing that, when the tow truck got there and it takes

SW - F. COX - CROSS

1 a little while to complete that paperwork.

2 Q When you say it takes a little while to complete the
3 paperwork, you mean for the tow company or?

4 A Yeah. We have to do a piece of paperwork that actually
5 go to the tow company 'cause we release it to them.

6 Q All right. And how many items did you actually inventory
7 before the tow truck got there?

8 A I need to find my tow sheet. As far as the actual
9 documentation of anything with serial numbers there are
10 three. We noted the deep scratches and gouges on the
11 tailgate and the side, top rail of the bed. We noted the
12 blood stains throughout the interior and exterior. We noted
13 various household goods and construction tools throughout
14 the cabin of the bed. And from what I saw as well that
15 there were like pictures that were hanging on the wall as
16 they were framed. There was a big, looks like a big wine
17 glass. I guess that's like a decoration, that type of
18 stuff, and tons of files and medications and that kind of
19 thing and I believe I probably indicated it somewhere else,
20 not on the tow sheet.

21 Q Okay. After you -- tow truck got there you filled out
22 the paperwork, I'm sorry, for the tow company and then the
23 tow company took it away?

24 A He signed the paperwork and took this copy and he towed
25 it to his facility.

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1 Q Okay. And did you go back to his facility later after
2 you finished whatever you were doing at the scene and
3 inventory the truck at any time?

4 A No, sir.

5 Q Okay. Why wasn't that done? I mean, did you not think
6 there might be evidence in the truck or ---

7 A It looked like someone had been moving and there was a
8 lot of blood contamination throughout the truck and it was
9 not done.

10 Q Okay.

11 A It was -- we did not put a hold on it. We released it
12 back to Ms. Namias.

13 Q Okay. So you did not completely inventory the truck for
14 evidence after you left -- after you released it to the
15 truck tow company?

16 A No, I did not.

17 Q Okay. And who made the decision not to do that or not to
18 further inventory it before the release?

19 A That would have been my decision.

20 Q Okay, all right. Of course I suppose at that time you
21 had allegations about a gun?

22 A Yes, we did.

23 Q At the scene did you see Mr. Flowers frisked or?

24 A No, he was already handcuffed and on the ground whenever
25 I got there.

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1 Q Okay. So the officer reported they found a gun on him?

2 A They said they did not find a gun.

3 Q So they told you the exact opposite, he did not have a
4 gun?

5 A Right. Right.

6 Q Okay. So even though there'd been allegations of a gun
7 you didn't feel it was important to completely inventory
8 that truck to see if there was a gun in this before it was
9 released to a victim in this case?

10 A My biggest concern that night was officer safety issues.
11 We were concerned of someone with a gun so the immediate
12 area was searched for the weapon. That was not found. So
13 there was no easy access to a weapon to do danger to an
14 officer on scene.

15 Q But you had the authority to keep that truck and impound
16 before you released it to anyone; did you not?

17 A Yes, I would have had that authority, right.

18 Q Okay. And but you didn't think it was important enough
19 to search for evidence of a gun before you released it to a
20 civilian; is that right?

21 A I'm not saying it wasn't important enough. That was
22 probably just lack of experience.

23 Q But you certainly admit that truck was completely out of
24 your control after that tow truck left with it?

25 A Due to the note -- it being no hold placed on it, right,

SW - F. COX - CROSS

1 it was no longer in our custody.

2 Q Okay. And just out of curiosity did -- was that tow
3 company someone that y'all have a relationship with? I
4 mean, do they normally do that for the police department or?

5 A What they do is they have a list that they sign up for
6 and they're in alphabetical order and so when you call for a
7 tow company they just go to the next person on the call-out?

8 Q Okay. So they don't have any kind of arrangement with
9 you to just to hold cars in impound for long period of time
10 or?

11 A If you indicate on your tow sheet that it's to be held,
12 then yes, they have to hold it, secure it before, you know,
13 so the rest of the stuff can be done.

14 Q Okay. But that just wasn't done in this particular case?

15 A No, it was not.

16 Q Okay. All right now you said you saw indications of
17 maybe blood contamination in the car possibly?

18 A Yes.

19 Q Okay. Or that's what it appeared to be to you?

20 A Yes.

21 Q Okay. Did you have anyone, any lab technicians do any
22 collection as far as any kind of blood or anything like that
23 is concerned in the truck?

24 A Not from the truck, no.

25 Q But you did in the house, inside the house?

SW - F. COX - CROSS

1 A Yes.

2 Q Okay. Thank you. Now as far as the interview with Mr.
3 Flowers that was done I believe on the 10th of October, that
4 was the day that you and Sergeant Compton when you went to
5 see him; is that right?

6 A Yes.

7 Q Okay. Sergeant Compton, did he pretty much do the
8 questioning that day?

9 A Pretty much this was the first interview that I had ever
10 done and I asked Sergeant Compton to come and help me and I
11 did observing and I did ask him questions while I was there.

12 Q Okay. Did you and Sergeant Compton discuss bringing the
13 tape recorder in when you took the statement from him?

14 A Sergeant Compton had his tape recorder with him.

15 Q Had it with him?

16 A Yes, sir.

17 Q And did it have tape in it that you know of?

18 A We have digital recorders. They don't have tapes.

19 Q They don't have tapes.

20 A Right.

21 Q Okay. But he had that recorder with him?

22 A Yes, he did.

23 Q Okay. But it was never turned on?

24 A No, sir.

25 Q Okay. Did you discuss turning it on with Sergeant

SW - F. COX - CROSS

1 Compton before y'all started talking to him?

2 A Because of my inexperience and this being my first
3 interview I asked him to help me, and he told me that what
4 they do is you first interview to see if you have additional
5 investigation that you need to do. It's once you complete
6 doing your investigation that you go back and talk with him
7 and to try and do a taped statement or a written statement.
8 It was Sergeant Compton's decision not to tape and not to
9 complete it because it had gotten late that day and he had
10 another case that he needed to go and interview someone.

11 Q Okay. So but the recorder was in the room and so to
12 accurately record everything that was said in that room that
13 day all that would have had been done was press a button; is
14 that correct?

15 A Yes.

16 Q And that wasn't done?

17 A No, sir.

18 Q Okay, all right. And certainly if that had been done
19 that wouldn't have prohibited you from taking a later
20 statement, would it?

21 A No, it would not have.

22 Q Okay. Assuming the defendant would have agreed to do it,
23 a later one?

24 A Right.

25 Q Right, okay. The witness testified earlier today

SW - F. COX - CROSS

1 Ms. Montgomery, Patricia I believe.

2 A Fetish.

3 Q Fetish, I'm sorry. You're right, that's an F, not a P.

4 I'm straining again. But you testified earlier about her

5 report to you that I think she made it on the 13th of

6 October?

7 A I can confirm that. Let me check my notes. Yes, I spoke

8 with her on October 13th.

9 Q Okay. And at that time she just asked or told you about

10 a conversation she had had with Mr. Flowers; is that right?

11 A Yes. You know, in talking with the victim she had given

12 me obviously some names of people that had spoken with her

13 and who had seen his behavior. So yes, that's how I got

14 their name and number and how I talked with them.

15 Q Okay. And that's what she relayed to you was a

16 conversation that she pret-- that she said she had with Mr.

17 Flowers; is that --

18 A Correct.

19 Q Okay.

20 A Yes.

21 Q She didn't relay to you all this stuff about seeing him

22 running around in the yard and all that, did she?

23 A No, she didn't.

24 Q Okay. When you saw Mr. Flowers the night of the 3rd I

25 guess it was still the 3rd?

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1 A It was probably the 4th. It was probably past midnight
2 by now.

3 Q Okay. That was the first time you ever saw him with your
4 own eyes?

5 A I'd seen the picture on the cell phone but we also had
6 pulled up a booking photo because we were having to do a
7 flier because we were concerned about his well-being, and so
8 we were gonna get that information out but he was detained
9 and arrested before that actually went out to everybody.

10 Q Okay. And that was -- when you saw him at the scene
11 where he was arrested that was the first time you had seen
12 him in person?

13 A In person, yes.

14 Q You'd seen the picture?

15 A Had seen the pictures, right.

16 Q All right. Do you recall the clothing he had on?

17 A I don't recall the clothing. I do remember it being a
18 pair of jeans and I remember him bleeding from the wrist and
19 having the black leather glove on his hand.

20 Q Okay, all right. Thank you very much.

21 THE COURT: Redirect.

22 MS. PARR: Nothing further for this witness, Your
23 Honor.

24 THE COURT: All right, it's time for a recess. You
25 smokers in the group we'll let you go. If you'll take them

SW - T. MEYERS - DIRECT

1 like you did before. 15 minute recess for everyone.

2 (WHEREUPON, a recess was taken from the proceedings.)

3 THE COURT: Bring the jury out.

4 (WHEREUPON, the jury was returned to the courtroom at
5 approximately 3:46 p.m., and the following proceedings
6 commenced in open court.)

7 THE COURT: Everyone all right? Very good.

8 Next witness please.

9 MS. PARR: Your Honor, we would call Bo Meyers.

10 THE DEPUTY CLERK OF COURT: Please place your left
11 hand on the Bible. Raise your right hand.

12 WHEREUPON,

13 THOMAS MEYERS,

14 having been duly sworn by the Deputy Clerk of Court,
15 testified as follows:

16 DEPUTY CLERK OF COURT: Please be seated. State your
17 full name for the record.

18 THE WITNESS: Thomas Meyers.

19 **DIRECT EXAMINATION**

20 BY MS. PARR:

21 Q Investigator Meyers, where are you employed?

22 A With the City of Florence Police Department.

23 Q And what do you do for the Florence Police Department?

24 A I am currently assigned as investigator in the crime
25 scene unit of the criminal investigations division.

SW - T. MEYERS - DIRECT

1 Q And how long have you been with the Florence Police
2 Department?

3 A Just over six years.

4 Q Okay. Now do you have any prior law enforcement
5 experience?

6 A No, ma'am.

7 Q Now have you had any special training for your job?

8 A I've got a bachelor's degree in criminal justice,
9 graduation from the basic law enforcement academy in
10 Columbia, various crime scene forensic related training
11 classes that I had the opportunity to take part in.

12 Q Okay. And are you a certified law enforcement officer?

13 A Yes, ma'am.

14 Q Now have you had occasion to become involved in this
15 matter against Carmichael Flowers?

16 A I did, yes, ma'am.

17 Q When did you become involved?

18 A October the 34d of 2008.

19 Q And how were you brought into this case?

20 A I was working a — do rotation work 3 to 11, standard
21 night shift. During that time Officer Cox advised other
22 officers on the street that she was meeting with the victim
23 in the case, and there was concern that the defendant was at
24 the residence based on a couple earlier incidences between
25 he and the victim. It was a kind of hot call volume night,

SW - T. MEYERS - DIRECT

1 and I was out which occasionally we'll do as, you know,
2 we'll just kind of be present around and I initially
3 responded to the residence to assist the other officers.
4 That was my initial involvement.

5 Q And do you recall what time you responded?

6 A I believe it was approximately 10:30 that night.

7 Q Okay. And you responded to ?

8 A Yes, ma'am. It was , which I was advised
9 was the residence in question.

10 Q Okay. And is this in the city limits of Florence?

11 A It is.

12 Q And would you please tell us what you found when you
13 arrived.

14 A Myself, along with other officers, gathered outside to
15 make entry to the house. As we were -- we were advised that
16 the defendant may have been in the house and may have been
17 injured and may -- there was a possibility of harm done to
18 himself or others. We entered the house to do a welfare
19 check on him, make sure that everything was okay, and check
20 on the earlier situation. We -- Investigator Clarke and I
21 entered through the rear door and to be honest with you the
22 house was just a wreck. It was -- there was furniture all
23 over the place, personal belongings strawn about the house.
24 There was a lot of damage to the house itself, walls,
25 ceilings, fixtures that were affixed to the house.

SW - T. MEYERS - DIRECT

1 Q Okay. And so what was the first thing you did when you
2 saw?

3 A We continued in the house. We needed to do a premise
4 check to make sure there was no one inside who was injured
5 or who had any tendency to injure anyone else. Upon our
6 completing our search there was no one in the house. We
7 came back outside and I believe collectively decided that --
8 part of my job so to document crimes that take place and I
9 initiated the need to photograph that scene and I did that.

10 Q Okay. Now before we talk about the photographs that you
11 took, would you please tell us about the types and things of
12 that nature that was there.

13 A The fixtures in the house, there were -- there was a
14 bathroom attached to the master bedroom that was spraying
15 water into the bedroom from a broken toilet and a broken
16 sink that was just spraying out wildly from the bathroom
17 into the bedroom. As I stated before there a lot of
18 furniture was turned on in. Appeared a lot of personal
19 belongings were strown about the house. The other bathroom
20 has a -- its toilet was also damaged. Don't recall it
21 leaking water, just the kitchen sink, broken kitchen sink,
22 and the master bathroom were -- the master bathroom had
23 pretty much flooded the bedroom. But throughout the rest of
24 the house the appliances in the kitchen were pulled away
25 from the wall and contents of the refrigerator and cabinets

SW - T. MEYERS - DIRECT

1 were all over that floor. And there was furniture in every
2 room in the house had been disturbed in some way, whether it
3 was turned on end. There was a table that was partially
4 thrown out of a front window of the living room. A ceiling
5 fan in that same room was -- the blades were kind of pulled
6 down as if someone may have put force on the blades to, I
7 mean, there was no accident that had taken place to have
8 caused all that damage. It was completely intentional.

9 Q Now I'm gonna show you a number of pieces of evidence
10 that have been entered into the -- entered into evidence.
11 First of all, I have State's Exhibit Number 5. Are you
12 familiar with that?

13 A It appears to be a copy of an audio file.

14 Q Okay. And is that an audio file that you made?

15 A The original disk is what I would have transferred.

16 Q Okay. And I'm gonna show you what has been entered into
17 evidence as State's Exhibit Number 6-A through -C. And do
18 you recognize each one of those?

19 A This is a photograph of the residence at

20 I believe that's the front, a front view of the
21 front porch. And you see a table leg coming out of this
22 window with the blinds. And this, I believe this was the
23 east side of the house with damage to those windows as well.

24 Q Okay. How are you able to recognize those pictures?

25 A I photographed the pictures and am familiar with the

SW - T. MEYERS - DIRECT

1 photographs taken.

2 Q Okay. And State's Exhibit 7-A through -D. Do you
3 recognize each one of those?

4 A Yes, ma'am. These are photographs of the rear door that
5 leads into the kitchen of the residence. On -- you may have
6 it there. There was also what I believe to have been blood
7 possibly. We've got a test that gives a presumption of that
8 but on the inside of this storm door on the back of the
9 house.

10 Q Okay. And how are you able to recognize these photos?

11 A I also took those photographs.

12 Q And State's Exhibit A through -- 8-A through -D.

13 A These are photographs of the kitchen. The refrigerator
14 is just inside the door. The refrigerator door wide open in
15 there. Typical refrigerator contents were strown on the
16 floor. Stove pulled away from the wall. I believe that was
17 a -- I believe that was a gas stove if I'm not mistaken.

18 Q Did you have the gas turned off?

19 A I'm not -- I'm not sure.

20 Q Okay. And now how are you able to recognize those
21 pictures?

22 A I took these photographs also. I believe at some point
23 one of the officers, I believe maybe the supervisor, had
24 contacted someone with the city to come turn the water off
25 and I'm not certain about the gas.

SW - T. MEYERS - DIRECT

1 Q Okay. And State's Exhibit Number 9. Do you recognize
2 that?

3 A This is a hallway, photograph of a hallway attached to
4 the kitchen leading into the rest of the remainder of the
5 house. There's what I believe was an oak table, kitchen
6 table, turned on its side in this hallway.

7 Q Okay. Did you take this?

8 A Yes, ma'am.

9 Q Okay. And State's Exhibit 10-A around -B. Do you
10 recognize those?

11 A These are photographs of the master bedroom. There's a
12 bed that was dismantled. The mattresses and the headboard,
13 side boards and foot boards were all in different places.
14 Closet doors, louver doors that were removed from the closet
15 with — I don't believe there were any contents left in the
16 closet either. I also took those.

17 Q And State's Exhibit Number 11-A through -C.

18 A These are photographs of the bathroom attached to the
19 master bedroom. The photograph actually was able to capture
20 water droplets as it was spraying steadily from the broken
21 sink. Carpet had a great deal of wetness around it just
22 inside the bedroom. That's just a closer shot of the sink,
23 the damage to it. You can see the toilet on the side as the
24 bowl of the toilet is completely shattered. I also took
25 these during that time.

SW - T. MEYERS - DIRECT

1 Q And State's Exhibit 12-A through -C.

2 A I believe this was a front, a front bedroom which would
3 have been off the hallway earlier demonstrated. Again,
4 furniture, personal items strewn about this room. There was
5 some damage on a wall that appeared to have come through the
6 wall of the adjoining room. It was an impression into that
7 room versus any damage being done to this wall from inside
8 the room. It would have come through the wall in the
9 adjoining room.

10 Q Okay.

11 A Again, these were taken by me.

12 Q And State's Exhibit 13-A and -B.

13 A This is the second bathroom. The hallway, I believe this
14 was just adjacent to that bedroom. This is the doorway
15 entry into this bathroom. There's a hole in the wall here
16 beside the door. The front part of the bowl of that toilet
17 is shattered off as well as the sink. There was also
18 another -- in addition to the red smear that I believed to
19 be blood on the inside of the back door, there was also a
20 similar spot on the shower wall.

21 Q Okay. And I'm gonna show you what's been entered into
22 evidence as State's Exhibit 14-A through -F. If you'd tell
23 me whether you recognize those.

24 A These are photographs of the hallway leading into the, I
25 would call it a living room, on the front of the house.

SW - T. MEYERS - DIRECT

1 Damage to a wall beside that door. Damage to a two layers
2 of dry wall on that. That table that was partially
3 partially pushed through that glass and the ceiling fan with
4 the fans pulled down. Large amount of clothes in this front
5 room and a few appeared to be stored, but the rest of them
6 appeared to be just thrown around. More damage to the wall.
7 Damage to these walls here. This would be the wall that
8 adjoined the bedroom wall with the impression damage on it.
9 And again, I took these photographs.

10 Q Okay. Now did you do further investigation in this
11 matter before you were called to another scene involved in
12 this case?

13 A Yes, ma'am. I was contacted I believe on the 7th of
14 October by Officer Cox that the -- there was a gun in
15 question. She advised me that the victim had found, had
16 located that gun. And I met with her, the victim and I
17 believe her son, and followed them to a storage facility on
18 north Cashua Drive and retrieved that property.

19 Q Okay. I'm gonna show you what has been marked and
20 entered into evidence as State's Exhibit 15-A through -E and
21 just tell me whether you recognize those and how you
22 recognize them.

23 A I do. That at that time with the followup of the
24 evidence recovery I also photographed this scene. This is
25 the entry way to the storage facility leading back to a

SW - T. MEYERS - DIRECT

1 building toward the rear of that property. And this is the
2 actual door to the unit. It was locked upon my arrival.

3 And I photographed these.

4 Q And State's Exhibit 16 through -- 16-A through -F. Do
5 you recognize those?

6 A I do. I continued photography on this. The -- I believe
7 the victim's son opened up the door at this point and this
8 is just the contents of the storage unit. The truck was the
9 main focus, and I took some photographs of the truck. And
10 this is the exterior of the truck with photographs that I
11 had taken.

12 Q Okay. And State's Exhibit 17-A through -M, if you
13 recognize those.

14 A These are all photographs of the interior of the same
15 truck. I was directed by the victim as to where she located
16 the gun at, and she advised me where the bag was and these
17 are just photographs leading to that area. The yellow bag
18 is the item of interest here, and inside that bag -- the bag
19 was inside that bag. I think I got those out of order.
20 Inside that bag was a handgun.

21 Q Okay. Now did you take these photographs?

22 A Yes, ma'am.

23 Q And State's Exhibit 18-A through -I.

24 A Inside the -- it was a yellow plastic Dollar General
25 shopping bag. I unwrapped it and located a silver colored

SW - T. MEYERS - DIRECT

1 Smith and Wesson revolver and along with five loose live
2 ammo rounds. This is a closer photo of the gun. All of
3 these photos were taken by me.

4 MS. PARR: Your Honor, the State would move to enter
5 into evidence State's Exhibit 18-A through -I.

6 THE COURT: What says Defense?

7 MR. FLOYD: Your Honor, I was thinking that these
8 photographs have already been admitted into evidence.

9 THE COURT: I thought the same thing, Ms. Solicitor,
10 but maybe we had inadvertently missed those. Anyway, now
11 they're in evidence for sure.

12 BY MS. PARR:

13 Q Now Investigator Meyers, I would ask that you take a look
14 at what has been marked as State's Exhibit 19-A through -D.
15 Would you tell us whether you can identify?

16 A This box is -- we commonly call it a gun box as we
17 collect guns from scenes, store evidence. We secure them in
18 a box just that a gun can be secured so we know that when it
19 is in this package. Again, the bullets that were found with
20 this were loose. They were not in the gun, but had they
21 been in the gun we would secure those separate from the
22 gun, package it like this so that for safety of anybody that
23 handles this box there be no question that we packaged it.
24 I packaged this, my initials, and the date are on opening
25 sides of this package. So if there was any opening then I

SW - T. MEYERS - DIRECT

1 would know that that was -- had been tampered with. This is
2 the bag that I located in this end. It's just packaged with
3 it.

4 Q Okay. Would you please give us the exhibit number for
5 each one of those.

6 A The gun is Exhibit 19-A. The five live ammo rounds are
7 19-B. The yellow plastic Dollar General bag is 19-C, and my
8 packaging with the box is 19-D.

9 Q And was, and is, was that box in tact until it was
10 submitted into evidence?

11 A Yes, ma'am.

12 MS. PARR: Your Honor, the State would move to enter
13 into evidence State's Exhibit 19-A through -D?

14 THE COURT: What says Defense?

15 MR. FLOYD: Your Honor, I would object to the
16 introduction of the evidence. I believe there's certainly a
17 problem with the chain of custody in this particular case.
18 Claim to be located inside of a truck that was in the police
19 department control. They let it out of their control for
20 several days before this evidence was supposedly located in
21 that truck and taken out.

22 THE COURT: The objection is overruled. The seminal
23 case in South Carolina articulating the rule of chain of
24 custody is Benton versus Pelham. Benton versus Pelham was a
25 civil case but was documented in the criminal venue by a

SW - T. MEYERS - DIRECT

1 legion of cases. In regard to this item it requires a visit
2 to a murder case from Columbia, State versus Edward
3 Freiburger 2005. In regard to Freiburger the common law
4 rule in regard to an item of evidence was visited with some
5 degree of certitude. It is the rule regarding fungibility
6 and non-fungibility to say the least. The fungibility cases
7 are existent in regard to almost every item of evidence,
8 blood, urine, semen, etc. The Freiburger case dealt with a
9 gun and revisited what is called non-fungibility items, and
10 a gun falls within that category provided the gun can be
11 recognized and can be identified by the witnesses. The
12 technical chain of custody rule is simply in apposite in
13 regard to the Freiburger non-fungibility items such as a
14 gun. This falls within Freiburger. All rights are
15 protected. All rights are reserved for purposes of
16 appellate review.

17 **MR. FLOYD:** Thank you, Your Honor.

18 **THE COURT:** Proceed.

19 (WHEREUPON, State Exhibit No. 19 was admitted into
20 evidence.)

21 **BY MS. PARR:**

22 **Q** Investigator Meyers, what did you do after you put the
23 gun and its contents into evidence?

24 **A** Actually, prior to me placing it in evidence from the
25 storage facility I ran the serial number. It had not been

SW - T. MEYERS - DIRECT

1 reported stolen is what I was advised by our dispatch
2 communications. From there I transported it to our lab in
3 the basement of this building and collected a set of swabs
4 from the grip and trigger area of the gun, which is
5 procedurally what we do as far as identification if a gun is
6 not directly removed from a person. And we want to submit
7 that evidence to find out who handled it who had property
8 with it. We take those swabs, and the swabs I collected
9 from the gun itself prior to packaging and logging into
10 evidence.

11 Q Okay. And please tell us the method that you did to
12 obtain those swabs?

13 A We use a set of sterile cotton tip swabs and moisten them
14 with ionized water. That's just very, very sterile water.
15 And just to moisten it to -- we're actually trying to remove
16 from whatever item it is or skin cells or sweat, residue, or
17 anything like that that may have been left behind. It's --
18 on items such as guns it's for us forensically it's better
19 than trying to process it for fingerprints which we
20 typically do on a lot of other items. But I used a set of
21 sterile swabs to collect those, and then once they're dried
22 I sealed them much like we seal everything else with the
23 evidence tape that, tamper evident tape, and then that was
24 also logged in to evidence. That was then transferred to
25 our state lab at SLED in Columbia for analysis.

SW - T. MEYERS - DIRECT

1 Q I'm gonna show you what has been marked for
2 identification as State's Exhibit 24-B. Do you recognize
3 that?

4 A There are two, two sealed Manila envelopes inside of this
5 sealed package. You can see it's got an evidence label.
6 This outer bag comes from SLED. The two inner bags, the two
7 Manila envelopes, I placed the sets of swabs I collected.
8 There was -- there are two sets of swabs that I collected
9 from what I presume to be blood at the house. There was no
10 one at the house when we were there, just to give us some
11 identification on who left the blood and lead us to find out
12 who left that damage. That's what this envelope is. The
13 envelope behind it is actually the set of swabs that were
14 taken from the gun, and this together went to SLED for
15 identification.

16 Q All right. Now please tell us what process did you use
17 to collection of the samples from the house?

18 A From the house? In that I believed that it was blood. I
19 am in no way trained to say that it is or is not, but I --
20 we do use a phenolphthalein presumptive test which is a
21 three step process. And we take a sample of what we believe
22 is blood, put it through the three stages of the test and it
23 actually turns a violet color if it is presumed -- and it's
24 still in our hands we still presume it to be blood. It's
25 presumed to be blood. Then I go back again with sterile set

SW - T. MEYERS - DIRECT

1 of swabs, cotton tip swabs, collect a sample of that
2 substance and submit it, and seal it, let it dry, seal it,
3 and it's submitted to SLED.

4 Q . Okay. And did you package it yourself?

5 A Yes, ma'am.

6 Q Okay. And once you package it did you put your initials
7 on?

8 A On the tamper evident tape I seal it and initial it.

9 Q And to your knowledge have -- was there any tampering?

10 A Doesn't appear to be.

11 Q And once you finished processing those buccal swabs and
12 seal them up to go to SLED, what if anything else did you do
13 in this particular case?

14 A Officer Cox had -- she had advised me that she obtained a
15 court order and that was based on an earlier conversation at
16 my request to have that since we did have a -- the defendant
17 at that time and we wanted to cross-reference the samples
18 that I had which were unknown because the -- there was no
19 one at the house. There was no one with the gun. So the
20 samples I took from those items to me were unknown because
21 there was -- they weren't taken from anybody. Being that
22 the defendant had been apprehended I requested a saliva
23 sample, which is basically it's a sample of DNA. We also
24 use sterile swabs to collect that from the inside of your
25 cheek, the buccal area of your cheek. And we actually went

SW - T. MEYERS - DIRECT

1 down, I believe it was the -- on the 10th of October, when
2 Officer Cox and Sergeant Compton went to the law enforcement
3 center to interview the defendant. I met them down there,
4 discussed with him issued the Court order, made that
5 collection, and transported it back to my lab to be logged
6 in with the other evidence as just a known standard. I
7 collected it from the defendant. I know that it was his
8 sample.

9 Q And I'm gonna show you what's been marked for
10 identification as State's Exhibit 24-A. Do you recognize
11 this?

12 A Yes, ma'am. That is the package similar to the earlier
13 swabs. It's in a Manila envelope with -- I have the tamper
14 evident tape that it's labeled set of buccal swabs. That's
15 what we consider those swabs for a known standard for
16 Carmichael Flowers, which I collected, packaged, and sealed.

17 Q How did you say you collected that from the defendant?

18 A Those are also -- we use a sterile, the same sterile set
19 of swabs that we collect anything that's DNA related with
20 and it's rubbed the cotton part of the swab on the the
21 inside of the cheek.

22 Q Okay. And then do you let it dry or what?

23 A Yes. Yes, it's dried and then packaged.

24 Q All right. And does anybody else handle it other than
25 you?

SW - T. MEYERS - CROSS

1 A No, ma'am.

2 Q Okay. Investigator Meyers, would you please answer any
3 questions the Defense may have for you.

4 A Yes, ma'am.

5 MR. FLOYD: May I approach?

6 THE COURT: Sure.

7 CROSS-EXAMINATION

8 BY MR. FLOYD:

9 Q How are you doing, Investigator Meyers?

10 A Doing well.

11 Q I wanted to check -- this is Exhibit 24-B that's been
12 marked for identification that way; is that --

13 A Correct.

14 Q And did you tell the Court earlier that one of these
15 envelopes has swabs that you swabbed from this gun?

16 A Yes.

17 Q Is that correct?

18 A That's correct.

19 Q Which envelope in there?

20 A This one here.

21 Q Okay. And that's marked -- how do you know which one it
22 is.

23 A It's labeled on the -- you can't see it from behind
24 there.

25 Q Okay.

SW - T. MEYERS - CROSS

- 1 A Set of swabs from grip and trigger area of Smith and
2 Wesson.
- 3 Q And that -- that's marked envelope number five, or is
4 that --
- 5 A That's my evidence number item number five.
- 6 Q Item number five?
- 7 A That's correct.
- 8 Q So that's how you would identify it?
- 9 A That's correct.
- 10 Q Okay. What is that number three?
- 11 A That's a number that SLED applies to it.
- 12 Q Okay. But you put that number there?
- 13 A Yes. That's my log number, my evidence log number, and
14 the item number for our agency. We turn it over to SLED and
15 they have a numbering system that they -- 'cause my item
16 number five doesn't mean anything to them. It may be their
17 item number three just in course of what evidence we're
18 turning over to them.
- 19 Q All right, okay. Thank you very much.
- 20 A Yes, sir.
- 21 THE COURT: Redirect.
- 22 MS. PARR: Nothing further for this officer, Your
23 Honor.
- 24 THE COURT: All right. You may step down.
25 Next witness please.

SW - M. BRANDT - DIRECT

1 **MS. PARR:** Your Honor, we call Sergeant Brandt to the
2 stand.

3 **THE COURT:** All right.

4 **WHEREUPON,**

5 **MICHAEL CHRISTOPHER BRANDT,**
6 having been duly sworn by the Deputy Clerk of Court,
7 testified as follows:

8 **THE DEPUTY CLERK OF COURT:** Please be seated. State
9 your full name for the record.

10 **THE WITNESS:** My name is Michael Christopher Brandt.
11 I'm sergeant with the Florence Police Department. I've been
12 with the City of Florence Police Department for 11 years and
13 a day.

14 **DIRECT EXAMINATION**

15 **BY MS. PARR:**

16 **Q** Sergeant, have you had special training for your job?

17 **A** Yes, ma'am. I have attended the Criminal Justice Academy
18 as a basic law enforcement training nine weeks, several
19 years ago. And I've also attended several South Carolina
20 identifying -- International Association of Identifiers
21 classes that's related to crime scenes.

22 **Q** Okay. And have you had any previous law enforcement
23 experience?

24 **A** Other than Florence Police Department, no, ma'am, only
25 internship.

SW - M. BRANDT - DIRECT

1 Q Okay. Now so are you a certified police officer?

2 A Yes, ma'am. Yes, ma'am.

3 Q Now did you have an occasion to become involved in this
4 matter?

5 A Yes, ma'am.

6 Q And when did you become involved?

7 A As a part of my duties in crime scene we typically will
8 transport evidence from our evidence room that needs
9 analysis with the State Law Enforcement Division. We will
10 log it out and transport it to SLED. I became involved with
11 this case on October 13th of 2008. I logged out evidence as
12 a bulk transfer to the State laboratory. In this case --
13 from this case I logged out three items: Florence Police
14 Department item number two, which is a set of swabs that
15 Investigator Meyers collected from the scene; Florence
16 Police Department item number five, set of swabs from the
17 gun; and Florence Police Department, I believe this is gonna
18 be item number six. That's one set of buccal swabs from
19 the defendant.

20 Q And where did you transport those?

21 A I logged them out on the 13th and completed the transfer
22 paperwork and logged them into our crime scene safe. On the
23 morning of 14th I transported them to the State Law
24 Enforcement forensic laboratory in Columbia and turned them
25 over to the lab.

SW - M. BRANDT - DIRECT

1 Q Okay. And would that lab person be Doris Yarborough?

2 A I don't right off recall, but we have paperwork chain of
3 custody that validates that.

4 Q Now did you have further involvement in this case by
5 transporting those pieces, those items back to Florence?

6 A No, ma'am, only transported those sealed containers
7 containing the evidence to SLED.

8 Q All right. And do you recognize what's been marked as
9 State's Exhibit 24-A and -B?

10 A Yes, ma'am, I do. When we log into evidence, State Law
11 Enforcement Division they will take our items and provide us
12 with their packaging; and in this case it is a heat sealed
13 plastic pouch. I place the two unknown standards for DNA
14 analysis in this pouch and heat sealed it and place my
15 initials and the date in which I delivered it at the top.
16 And then it's turned over to State Law Enforcement's
17 custody. Here, this is State's Exhibit 24-B, and at the top
18 up here my initials, 10/14/08. And then there's another
19 seal where it was opened at a later time and then resealed
20 at the State Law Enforcement Decision. And State's Exhibit
21 24-A, again, this is the set of buccal swabs from the
22 defendant. I placed our Florence Police Department
23 container, sealed container in this heat sealed pouch, heat
24 sealed the top, placed my initials, and the date in which I
25 sealed it. And this is a seal -- sealed at a later time at

SW - M. BRANDT - DIRECT

1 the State Law Enforcement Division.

2 Q Okay. Now was State's Exhibit 24-A and -B tampered with
3 in any manner when you got them to take to SLED?

4 A No, ma'am. As a part of our process when we collect
5 evidence to be transported to SLED we check the integrity
6 seals. If there are any issues with the integrity seals we
7 return it to evidence so those issues can be addressed by
8 the sealing officer. In this case there were no tamper
9 issues to deal with. They were sealed containers with --
10 with the integrity seals in tact. I received them and
11 transported them in the same manner to the State Law
12 Enforcement Division's lab.

13 Q Would you please answer any questions Mr. Floyd may have
14 for you?

15 A Yes, ma'am.

16 MR. FLOYD: I don't have any questions for this
17 witness.

18 THE COURT: All right. Thank you. You may step down.
19 Next witness please.

20 MS. PARR: Your Honor, we would ask he be allowed to
21 return to his duties.

22 MR. FLOYD: That's fine, Your Honor.

23 THE COURT: He's excused.

24 MS. PARR: Your Honor, at this time we call Doris
25 Yarborough to the stand.

SW - D. YARBOROUGH - DIRECT

1 WHEREUPON,

2 DORIS YARBOROUGH,

3 having been duly sworn by the Deputy Clerk of Court,

4 testified as follows:

5 DEPUTY CLERK OF COURT: Please be seated. State your
6 full name for the record.

7 THE WITNESS: My name is Doris Yarborough.

8 DIRECT EXAMINATION

9 BY MS. PARR:

10 Q Ms. Yarborough, where are you employed?

11 A For the State of South Carolina Law Enforcement Division
12 also known as SLED.

13 Q Okay. And what do you do for SLED?

14 A I'm an evidence control technician.

15 Q And what do you do as a evidence control technician?

16 A Different agencies throughout the state bring in their
17 evidence if they want analyzed and it comes -- starts in our
18 office. We take their paperwork along with the items that
19 they want to submit and log them into the SLED computer
20 system, and you know, send them to the department they need
21 to go to be analyzed.

22 Q Okay. Now how long have you been at SLED?

23 A I've been there for 13 months.

24 Q Okay. And have all the months you've been there been in
25 evidence control?

SW - D. YARBOROUGH - DIRECT

1 A They have.

2 Q Now did you have an occasion -- first, have you had any
3 special training for your job?

4 A Yes.

5 Q What training have you had?

6 A Through the -- my peers that I work with, training of
7 course to watch and learn how to do it, and then to make
8 sure that it's done correctly.

9 Q Okay. Now did you have an occasion to become involved in
10 the handling of some evidence in this particular case?

11 A I do.

12 Q And when did you become involved?

13 A On October 14th of 2008.

14 Q Okay. And would you please tell us what did you do?

15 A I received from Michael Brandt the items of -- for DNA
16 analysis.

17 Q Okay. And upon receiving those items what did you do?

18 A They bring them to us in the packages as he shows. This
19 plastic pouch is what we call heat sealed pouch. We take
20 it, put it in this container, and in their presence we heat
21 seal this pouch. They initial and put their dates. And
22 then once it's logged into the system it prints out this
23 yellow label which is our bar code, and it assigns it a lab
24 number. And then we take that, scan that lab number into
25 the department that it's going to, and in this case it went

SW - D. YARBOROUGH - DIRECT

1 to DNA.

2 Q Okay. Now can you identify what's been marked for
3 identification as State's Exhibit 24-A and then 24-B and
4 tell us how you're able to identify it.

5 A Based on what they have written on the outer packaging
6 that they brought in and the fact that it had their tape on
7 it that it was sealed when it came.

8 Q Okay. And do you recognize both of those packaging?

9 A I recognize the heat sealed pouches as SLED evidence.

10 Q And were those the pouches that you handled on that
11 particular day, October 14th?

12 A Yes, ma'am.

13 Q And when you received them were they in tact from
14 Sergeant Brandt?

15 A Yes, ma'am. Their tape, tamperproof tape that's on them,
16 was completely closed.

17 Q Okay. And then as a result of receiving them from
18 Sergeant Brandt what did you do with them?

19 A After they're logged in and we scan them to the
20 department they're going to, in this case DNA, then we take
21 it -- I will take it into our logged evidence room to a DNA
22 refrigerator and place them in the DNA refrigerator until
23 they are transferred to the DNA department.

24 Q And did you do that on that particular day?

25 A I did.

SW.- D. YARBOROUGH - DIRECT

1 Q Okay. And where is that refrigerator located?

2 A There's a large area behind the area, the meeting area,
3 that has a door on it, a locked door. And we have to take
4 it into that back room and place it in the refrigerator.

5 Q And was that done on that particular day?

6 A It was.

7 Q Okay. And then what happens to it after you place it in
8 there?

9 A It's already -- it's logged into the system to go to DNA.
10 And then when the technician from DNA comes down to collect,
11 that bar code is once again scanned to the person who is
12 transferring it to the person that's going to pick it up.

13 Q All right. Would you please answer any questions
14 Mr. Floyd may have for you.

15 MR. FLOYD: Your Honor, I don't have any questions for
16 this witness.

17 THE COURT: All right, thank you very much.

18 Next witness please.

19 MS. PARR: Patricia Crooks.

20 DEPUTY CLERK OF COURT: Please place your left hand on
21 the Bible and raise your right hand.

22 WHEREUPON,

23 having been duly sworn by the Deputy Clerk of Court,
24 testified as follows:

25 THE DEPUTY CLERK OF COURT: Please be seated and

SW - P. CROOKS - DIRECT

1 state your full name for the record.

2 THE WITNESS: My name is Patricia Hedgepath Crooks.

3 **DIRECT EXAMINATION**

4 BY MS. PARR:

5 Q Ms. Crooks, where are you employed?

6 A I'm employed by the State Law Enforcement Division, also
7 known as SLED.

8 Q And what do you do for SLED?

9 A I'm a forensic I technician working in evidence control.

10 Q And what do you do as a forensic technician and evidence
11 control?

12 A I work strictly in the evidence room. I do not log in as
13 Doris does. When people come down, a technician or an
14 analyst request items that have been designated for them, I
15 pull that evidence and give it to -- I scan it to myself
16 once I pull it and then I give it to the person requesting
17 it and scan it to them and they sign for it.

18 Q How long have you been with SLED?

19 A Almost 24 years.

20 Q Now did you have an occasion to receive some evidence in
21 this particular case?

22 A Yes, ma'am, I did.

23 Q Okay. And when did you receive that evidence?

24 A The evidence was stored in the evidence room in DNA
25 intake, which is a refrigerator. On 10/16/08 at 8:51 I

SW - P. CROOKS - DIRECT

1 removed that evidence from the refrigerator, scanned it to
2 myself with that the bar code that she showed earlier. Then
3 I scanned it to Sheree Brown and she took control of the
4 evidence.

5 Q Now when you got that evidence was it in tact?

6 A Yes, it is. It's -- it was in a sealed pouch.

7 Q Okay. And I'm going to ask you to take a look at State's
8 Exhibit 24-A and -B which are in front of you.

9 A Yes.

10 Q Do you recognize those items?

11 A Yes, ma'am, I do. These are the items that I transferred
12 to Sheree Brown.

13 Q Okay. And were they in tact when you received them?

14 A Yes, ma'am, they were.

15 Q Okay. And so you said you transferred those to her?

16 A To her. Give them to her on 10/16/08.

17 Q All right. Would you please answer any questions
18 Mr. Floyd may have for you.

19 MR. FLOYD: I don't have any questions for this
20 witness. Thank you.

21 THE COURT: Thank you.

22 MS. PARR: Your Honor.

23 THE COURT: Yes, go ahead.

24 MS. PARR: I'm sorry. Your Honor, at this time we
25 would ask that this witness be allowed to leave.

SW - S. BROWN - DIRECT

1 **THE COURT:** Yes.

2 **THE WITNESS:** Thank you.

3 **MS. PARR:** Your Honor, at this time we would call
4 Sheree Brown.

5 **THE CLERK OF COURT:** Please place your left hand on
6 the Bible, raise your right hand.

7 **WHEREUPON,**

8 **SHEREE G. BROWN,**
9 having been duly sworn by the Deputy Clerk of Court,
10 testified as follows:

11 **THE DEPUTY CLERK OF COURT:** Please be seated. State
12 your full name for the record.

13 **THE WITNESS:** Sheree G. Brown.

14 **DIRECT EXAMINATION**

15 **BY MS. PARR:**

16 **Q** Ms. Brown, would you please tell us where you're
17 employed.

18 **A** State Law Enforcement Division, also known as SLED.

19 **Q** And what do you do for SLED?

20 **A** I'm a technician, a forensic technician in the DNA
21 department.

22 **Q** And how long have you been in -- been a forensic
23 technician in DNA?

24 **A** I've been at SLED for 15 years but a technician within
25 the DNA department for 12.

SW - S. BROWN - DIRECT

1 Q Okay. And have you had any special training for your
2 job?

3 A Yes. I went through a year extensive training within the
4 department.

5 Q Okay. And what do you do as forensic technician?

6 A One of the duties is go down to evidence control and pick
7 up evidence and bring it back up into our department and
8 route it where it needs to be routed to.

9 Q Okay. Now did you have an occasion to pick up evidence
10 in this particular case?

11 A Yes, I did.

12 Q Okay. And when was that?

13 A October 16th of '08.

14 Q Okay. And would you please tell us what did you do once
15 you obtained that evidence?

16 A Once Patricia -- it was in her custody and through the
17 computer she -- we have a bar code system with, the same
18 kind of label as this but it's by name on it. She scanned
19 with my badge and then it came into my custody.

20 Q Okay. Now I will ask you to please take a look at
21 State's Exhibit 24-A and -B and would you please tell us
22 whether or not you are able to recognize those items?

23 A Yes, I do. Yes.

24 Q Okay. You do recognize them?

25 A Yes. On the yellow seal it's my handwriting determine

SW - S. BROWN - DIRECT

1 which analyst get this evidence.

2 Q Okay. Now when you received that, those pieces of
3 evidence, State's 24-A and -B were they in tact?

4 A Yes.

5 Q And upon getting them what did you do with it?

6 A They stayed in my custody until later that afternoon on
7 the 16th, and it was determined that the case can be
8 analyzed by a DNA analyst so therefore I transferred it in
9 the computer to go to a locked secure area within the DNA
10 department physically and I took it up to our locked
11 refrigerator.

12 Q And then who obtained that?

13 A The case was assigned to DNA analyst Jennifer Clayton.

14 Q Okay. And when you put that -- when you transferred to
15 Ms. Clayton was your -- were those items in tact?

16 A Yes. If it had not been there would have been a notation
17 somewhere in our LYM system it would have been printed out
18 somewhere so everything was in tact.

19 Q Okay, all right. Would you please answer any questions
20 Mr. Floyd may have for you.

21 MR. FLOYD: Your Honor, I don't have any questions for
22 this witness.

23 THE COURT: Thank you.

24 MS. PARR: Your Honor, at this time we would call
25 Jennifer Clayton.

SW - J. CLAYTON - DIRECT

1 **DEPUTY CLERK OF COURT:** Please place your left hand on
2 the Bible and raise your right hand.

3 **WHEREUPON,**

4 **JENNIFER CLAYTON,**
5 having been duly sworn by the Deputy Clerk of Court,
6 testified as follows:

7 **THE DEPUTY CLERK OF COURT:** Please be seated and state
8 your full name for the record.

9 **THE WITNESS:** Jennifer Clayton, C-L-A-Y-T-O-N.

10 **DIRECT EXAMINATION**

11 **BY MS. PARR:**

12 **Q** Ms. Clayton, where are you employed?

13 **A** I'm currently employed by the South Carolina Law
14 Enforcement Division also known as SLED.

15 **Q** And how long have you been with SLED?

16 **A** It will be seven years in August.

17 **Q** And what is your present job at SLED?

18 **A** I am currently a forensic scientist with the DNA
19 department.

20 **Q** And now what is your educational background and training
21 that would qualify you as an expert in forensic I serology
22 and DNA analysis?

23 **A** I earned a bachelor of science and biology from
24 University of North Carolina Chapel Hill. I've also taken
25 classes at NC State and USC. My course work included

SW - J. CLAYTON - DIRECT

1 genetic molecular biology, biochemistry, and statistics. I
2 completed an internship with the North Carolina State Bureau
3 of Investigation molecular genetics department. That's
4 basically the equivalent of the DNA department at SLED. I
5 originally hired on at SLED as a forensic technician before
6 becoming a DNA analyst. Once I was hired as a DNA analyst I
7 completed a one year training program under another
8 qualified analyst and did casework under his supervision
9 before I was allowed to do any casework on my own.

10 Q Now have you been qualified as an expert in the field of
11 forensic serology and DNA analyst before?

12 A Yes, I have.

13 Q Okay. And how many times and in what courts?

14 A I have been qualified as an expert in family court one
15 time and in general sessions fourteen times.

16 Q Okay. And did you actually give testimony in all those
17 cases?

18 A Yes, I did.

19 MS. PARR: Your Honor, at this time I would offer
20 Ms. Clayton as an expert in serology and DNA analysis.

21 THE COURT: You have the right to voir dire before I
22 make the ruling, Counsel. Do you want to exercise that
23 right?

24 MR. FLOYD: Your Honor, I don't have any objection to
25 her qualifications. Thank you.

SW - J. CLAYTON - DIRECT

1 THE COURT: She's qualified. You may proceed to posit
2 query that will elicit opinion evidence.

3 BY MS. PARR:

4 Q Now Ms. Clayton, did you receive any evidence for
5 analysis in this case?

6 A Yes, I did.

7 Q Okay. And what did you receive?

8 A I received swabs from the interior of a back storm door,
9 swabs from a shower wall in a bathroom, swabs from the grip
10 of a Smith and Wesson, and a buccal standard from Carmichael
11 Flowers.

12 Q Briefly describe the analysis of this evidence. When you
13 say you received them, when did you receive those items
14 first?

15 A May I refer to my notes?

16 Q Yes.

17 A I took those items into my custody on October 17th of
18 2008.

19 Q And would you briefly describe the analysis of this
20 evidence?

21 A The analysis varied slightly depending on the items. The
22 two swabs that were taken from the house, the swabs from the
23 interior of the back storm door and the swabs from the
24 shower wall in the bathroom, it was indicated that they were
25 to be serology tested for possibly blood. And serology

SW - J. CLAYTON - DIRECT

1 testing is simply the testing for bodily fluids such as
2 blood, semen, or saliva. So I performed a presumptive test
3 on those items. They tested positive. There was blood
4 indicated on those items. Those items along with the swabs
5 from the grip of the Smith and Wesson.

6 MR. FLOYD: Your Honor.

7 THE COURT: Yes.

8 MR. FLOYD: I'm going to object to -- I don't believe
9 the swabs themselves have been admitted into evidence at
10 this point. I'm going to object to any testimony about any
11 tests performed on those items.

12 MS. PARR: Well, um, Ms. --

13 THE COURT: All right. You offer those into evidence?

14 MS. PARR: Yes, Your Honor.

15 BY MS. PARR:

16 Q Ms. Clayton, do you recognize State's Exhibit 24-A
17 and -B?

18 A Yes, I do.

19 Q And how are you able to recognize those items?

20 A This is a heat sealed pouch with the lab number
21 corresponding to this particular case. I've also written
22 the lab number and the item numbers and my initials on the
23 Manila envelopes contained in the heat sealed pouch and the
24 dates and my initials from when I resealed the heat sealed
25 pouch are also present on both pouches.

SW - J. CLAYTON - DIRECT

1 **Q** And Ms. Clayton, what was the condition of those items
2 when you received them?

3 **A** All of the items were properly sealed. No seal was
4 broken. The heat sealed pouch was in tact.

5 **MS. PARR:** Your Honor, at this time the State would
6 enter, offer into evidence State's Exhibit 24-A and 24-B.

7 **THE COURT:** Yes.

8 **MR. FLOYD:** Your Honor, as far as I understand there
9 are two envelopes contained within State's Exhibit 24-B.
10 There's -- had one envelope had Florence police department
11 item number five designated on it Officer Meyers I believe
12 testified to earlier. Your Honor, I would object to
13 certainly that particular swab coming into evidence that he
14 testified that that swab was taken from the gun that it has
15 been admitted into evidence, but the nature of the evidence
16 on that swab, Your Honor, once again, that gun was out of
17 the control of Florence Police Department. They had control
18 of it. They let it out of their control several days before
19 that swab was taken from that weapon. And I would object to
20 any evidence contained on that swab based on chain of
21 custody.

22 **THE COURT:** I understand the nature of the objection
23 but the objection is overruled under State versus Robert
24 Carter. In State versus Robert Carter, the State Supreme
25 Court ruled that the chain must be established as far as

SW - J. CLAYTON - DIRECT

1 practicable. And the Carter rule then articulates the fact
2 that if every chain is at least identified a weak chain does
3 not impede admissibility. Once again, all rights are
4 reserved. All rights are protected for purposes of appeal.

5 MR. FLOYD: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 MS. PARR: Your Honor, so these items are now entered
8 into evidence?

9 THE COURT: They are now in evidence.

10 (WHEREUPON, State Exhibits Nos. 24-A and 24-B were admitted
11 into evidence.)

12 MS. PARR: Thank you, Your Honor.

13 BY MS. PARR:

14 Q Ms. Clayton, describe the analysis of this evidence that
15 you received?

16 A The swabs from the back storm door as well as swabs from
17 the shower wall in the bathroom were tested for possibility
18 of blood. Blood was indicated. Those items as well as the
19 swabs from the grip of the Smith and Wesson and a buccal
20 standard from Carmichael Flowers were taken for DNA
21 analysis, and a DNA profile was developed from those items
22 so that DNA profile developed from the evidence items could
23 be compared to the DNA profile developed from the standard
24 from Carmichael Flowers.

25 THE COURT: Ms. Clayton, slow up just a little bit.

SW - J. CLAYTON - DIRECT

1 THE WITNESS: Sorry, sir.

2 THE COURT: Remember, we got to take down every single
3 word.

4 THE WITNESS: It's the midwestern in me.

5 BY MS. PARR:

6 Q Now could you repeat that again just a little slower.

7 A Yes. The swabs from the interior of the back storm door,
8 as well as the swabs from the shower wall in the bathroom
9 were tested for the possibility of blood. Blood was
10 indicated. Those items as well as the swabs from the grip
11 of the Smith and Wesson and the buccal standard from
12 Carmichael Flowers were taken to DNA analysis. A DNA
13 profile was developed from those items so that the DNA
14 profile from the evidence could be compared to the DNA
15 profile developed from the standard from Carmichael Flowers.

16 Q Now what were the results of each one of the tests that
17 you obtained?

18 A The DNA profile developed from SLED items one and two
19 which were the swabs from the interior back storm door and
20 the swabs from the shower wall in the bath room, the DNA
21 profile from these items matches the DNA profile of
22 Carmichael Flowers. The probability of randomly selecting
23 an unrelated individual having a DNA profile matching these
24 items is approximately one in 31 quadrillion.

25 Q Okay. In layman's term how would you relate that to the

SW - J. CLAYTON - DIRECT

1 number of persons on earth?

2 A Well, there's approximately 6.6 million people on the
3 earth so 31 quadrillion is a very large number. What this
4 probability says is that if you were to just go out and
5 choose some random person that had nothing to do with the
6 incident location or the evidence collected, the probability
7 that that person would have the same DNA profile is one in
8 31 quadrillion. It's extremely unlikely.

9 Q Okay. And what were the results for the other items?

10 A The partial DNA profile developed from item three, which
11 is the -- that's SLED item three -- from the -- that's the
12 swabs from the grip of the Smith and Wesson.

13 Q And that's the gun?

14 A That's correct. The partial DNA profile developed from
15 item three also matches the DNA file of Carmichael Flowers.

16 Q Okay. And what was that probability as well?

17 A That probability would be a slightly lower probability.
18 I did calculate -- it's not included in my report. We
19 generally calculate a statistic from the most complete
20 profile and then put also matches for other items. I did,
21 however, calculate that statistic for that item. It would
22 be approximately one in 6.7 billion.

23 Q And you said that you obtained pro-- you developed
24 profiles; is that correct?

25 A That's correct.

SW - J. CLAYTON - DIRECT

1 Q Okay. Now please tell us, what is DNA?

2 A DNA is basically a long chain molecule that's found in
3 every cell in the body with the exception of red blood
4 cells. We get half of our DNA from our mother and half of
5 our DNA from our father, and we're able to develop DNA
6 profiles from this. And that's basically a set of numbers
7 is the simplest way to put it. The profiles with the
8 exception of identical siblings are unique to an individual,
9 and that's what makes it useful in forensics. We can
10 develop a profile from evidence and then develop profile
11 from a known standard which is a sample that you know came
12 from a particular individual and determine if those profiles
13 match.

14 Q And when you developed your profiles did you find -- did
15 you develop anyone else? Were there anyone else identified?

16 A The only DNA profile that I developed matched the DNA
17 profile of Carmichael Flowers. I did not develop another
18 profile.

19 Q And so you did not have -- what does that mean?

20 A It means that the DNA profile that I developed only came
21 from one individual. There's no indication of a mixture
22 which would indicate more than one person was contributing
23 DNA to the results that I developed.

24 Q And the results of your DNA analysis was what again?

25 A The DNA profile developed from the storm door and the

SW - J. CLAYTON - DIRECT

1 shower wall matches the DNA profile of Carmichael Flowers.

2 And the partial DNA profile developed from the Smith and

3 Wesson also matches the DNA profile of Carmichael Flowers.

4 Q Now how unique is the DNA profile found on a piece of
5 evidence?

6 A For the complete profile it's approximately one in 31
7 quadrillion and for the partial profile it's approximately
8 one in 6.7 billion.

9 Q Now does this profile match the DNA profile of Carmichael
10 Flowers?

11 A Yes, it does.

12 Q What is your expert opinion as to the origin of the DNA
13 found on the State's evidence 24-A and -B submitted?

14 A In my opinion, assuming that Carmichael Flowers does not
15 have any identical siblings, the DNA profile developed from
16 these items came from Carmichael Flowers.

17 Q Now -- beg the Court's indulgence.

18 THE COURT: Yes.

19 BY MS. PARR:

20 Q Ms. Clayton would you please answer any questions Mr.
21 Floyd may have for you.

22 THE COURT: Deoxyribonucleic acid query.

23 MR. FLOYD: Thank you, Your Honor.

24 THE COURT: DNA.

25 CROSS-EXAMINATION

SW - J. CLAYTON - CROSS

1 BY MR. FLOYD:

2 Q I'll be brief. Ms. Clayton, the partial DNA profile
3 developed from the Smith and Wesson, why is that a partial
4 profile as opposed to a full DNA profile that you did on the
5 others?

6 A The instruments that we use have a minimum detection
7 level, and so there can be a couple of reasons that a
8 partial DNA profile is developed. One is that the sample
9 can be slightly degraded. What that means is the DNA has
10 been exposed to just the environment, the sun, heat, that
11 type of thing. Or it's possible that there simply wasn't a
12 lot of DNA there, not a lot of DNA present, which is quite
13 common with samples where you're getting touch DNA or you're
14 simply swabbing for the presence of any skin cells that may
15 be there. And so in that case the instrument may be able to
16 detect some parts of the profile but not other parts of the
17 profile and that will give you a partial profile.

18 Q Let me ask something. 31 quadrillion people ever even
19 live on the face of the earth?

20 A No, sir.

21 Q At any time?

22 A No, sir.

23 Q Okay, all right. Thank you very much. That's all I
24 have.

25 THE COURT: You got that straight. All right, thank

1 you. Anything further, Ms. Solicitor?

2 MS. PARR: Nothing further for this witness. And Your
3 Honor, at this time the State would rest.

4 THE COURT: All right. And I assume you want the SLED
5 contingent to be released to go back to Columbia.

6 MS. PARR: I think they would really like to go back
7 to Columbia.

8 THE WITNESS: Yes, sir, thank you.

9 THE COURT: Thank you.

10 Jurors, I have to take up matters of law here now and
11 this is a perfect time for me to release you because it will
12 take me a little while now to deal with these matters of
13 law. Please remember my instructions to you about not
14 discussing the case with anyone under any circumstances, and
15 of course do not discuss it among yourselves. I need you
16 back tomorrow at 9:00 please. 9:00. Come right through
17 here and catch them the elevator please. Have a good
18 night's rest.

19 (WHEREUPON, the jury was removed from the
20 courtroom at 5:00 p.m., and the following proceedings
21 commenced in open court.)

22 THE COURT: Mr. Floyd, you're recognized for a motion.

23 MR. FLOYD: Thank you, Your Honor. Your Honor, on
24 behalf of Carmichael Flowers I would move for directed
25 verdict on counts 1, 2, 3, and 4 of the indictment on the

1 basis the State has not produced any evidence to support
2 those charges. And Your Honor, specifically on the
3 kidnapping charge, if you view evidence in a light most
4 favorable to the State, Your Honor, I don't believe there
5 was any evidence before the Court that would indicate that
6 Mr. Flowers in any way confined Ms. Namias. I want to
7 make — I keep having problems with her name, Your Honor,
8 Ms. Namias. In fact, I think in view of the evidence if you
9 believe what she says, I mean, he left weapons in her
10 custody and control. I mean, he didn't — certainly
11 couldn't use weapons to keep her there. He left them with
12 her. We just ask you to consider the motion for directed
13 verdict, Your Honor.

14 THE COURT: What do you say to that, Ms. Solicitor?

15 MS. PARR: Your Honor, we think the State has
16 presented sufficient evidence for this matter on the issue
17 of kidnapping to go to the jury. Your Honor, this
18 particular case the victim testified that the defendant took
19 her keys. He took her cell phone; he took her purse. He
20 would not allow her to leave. He also displayed — after he
21 pushed her and threw some items at her, that he took those
22 items out of the drawer and placed them on the bed, told her
23 to go to bed and not leave. Your Honor, we believe he did
24 those in the evidence as presented by the victim, as well as
25 persons from the Pee Dee Coalition, show that what he did

1 was a control factor.

2 Your Honor, she indicated that she was very afraid of
3 the defendant. And given the totality of the circumstances
4 from his behavior since when she went to the police
5 department, we believe that in her mind and from his actions
6 that she felt that she could — that she would be confined.
7 And for those reasons we would ask that this matter be
8 submitted to the jury.

9 THE COURT: Anything further, Mr. Floyd?

10 MR. FLOYD: I don't have anything further, Your Honor.

11 THE COURT: Order: The motion for directed verdict is
12 posited under Rule 19 South Carolina Rules of Criminal
13 Procedure. The cases of State versus Williams and State
14 versus Branham articulate the rule that when ruling on a
15 motion for a directed verdict the trial court is concerned
16 with the existence or nonexistence of evidence, not its
17 weight. State versus Kelsey is important in that it
18 enunciates the rule if there is any direct evidence or any
19 substantial circumstantial evidence reasonably tending to
20 prove the guilt of the accused, then the case is properly
21 submitted to the jury. The Court concludes that in totality
22 the issue is one of weight of the evidence to be decided by
23 the trial jury. The motion is respectfully denied. All
24 rights are reserved. All rights are protected for appellate
25 review.

1 MR. FLOYD: Thank you, Your Honor.

2 THE COURT: Mr. Floyd, have you discussed with him in
3 detail whether he will take the stand and testify or not?

4 MR. FLOYD: Your Honor, we have discussed it prior to
5 now. I was planning on having further conversation with him
6 before he leaves this afternoon since the State has rested,
7 and so we can make a final decision.

8 THE COURT: Please do that. And tomorrow I will take
9 sworn testimony from the defendant under State versus Orr
10 and Brown versus State in regards to that issue.

11 MR. FLOYD: Yes, Your Honor.

12 THE COURT: And also in regard to your issue of the
13 witness, deputies, make sure that his witness is here before
14 9:00 tomorrow.

15 What is the name of that witness please, Mr. Floyd?

16 MR. FLOYD: Jason Cantrell Jacobs.

17 THE COURT: Make sure that witness is brought to the
18 courtroom before 9:00.

19 MR. FLOYD: He is in the work camp portion of the
20 detention center I believe.

21 THE COURT: Okay. Make sure you look him up now and
22 identify that 'cause I don't want any problem with that
23 tomorrow please.

24 THE DEPUTY: Yes, sir.

25 THE COURT: All right. Any further matters from the

1 Defense before we take the night time hiatus?

2 MR. FLOYD: Nothing further, Your Honor.

3 THE COURT: State?

4 MS. PARR: No, your Honor.

5 THE COURT: Have a good night's rest. 9:00 tomorrow.
6 9:00.

7 (WHEREUPON, the proceedings were concluded for the day to be
8 reconvened on July 22, 2009.)

9 THE COURT: Counsel, you talked to him in detail
10 concerning the Fifth Amendment issue?

11 MR. FLOYD: Yes, Your Honor.

12 THE COURT: Counsel, I desire to hold the hearing
13 mandated by State versus Orr. You want me to do that now,
14 or are you going to call a witness or?

15 MR. FLOYD: Your Honor, I do intend to call a
16 witness, at least one witness, yes, sir.

17 THE COURT: All right. You want to do that procedure
18 of you call the witness, make a final decision on him
19 testifying or not testifying.

20 MR. FLOYD: Your Honor, if you prefer. I mean, I
21 think we can go ahead and do that now.

22 THE COURT: Very good. Bring him around.

23 Swear him, Ms. Clerk.

24 THE DEPUTY CLERK OF COURT: If you would, sir, place
25 your left hand on the Bible, raise your right hand.

1 WHEREUPON,

2 CARMICHAEL T. FLOWERS,

3 having been duly sworn by the Deputy Clerk of Court,

4 testified as follows:

5 THE DEPUTY CLERK OF COURT: Please be seated. State
6 your full name for the record.

7 THE WITNESS: Carmichael Flowers.

8 EXAMINATION BY THE COURT

9 Q Mr. Flowers, you have the absolute right under the Fifth
10 Amendment to the United States constitution not to testify.

11 And if you do not testify it will not be used against you at
12 all. If you do not testify I will instruct the jury that
13 they cannot use that against you and they cannot even
14 discuss that in the jury room. Do you understand that?

15 A Yes, sir.

16 Q You also have the absolute right to testify. You have
17 the right to take the stand and testify in detail. If you
18 elect to take the stand and testify you must answer all
19 questions that I rule are relevant questions. You
20 understand that?

21 A Yes.

22 Q In addition, if you have a prior record that comes within
23 the rule that we have in terms of the rules of evidence
24 Rule 609, if it comes within that rule then I will let the
25 lawyers ask you about that. You understand?

1 A Yes, sir.

2 Q Have you talked to your lawyer in detail about your Fifth
3 Amendment privileges in terms of testifying or not
4 testifying?

5 A Not really in detail, but yes, we discussed that
6 yesterday.

7 Q Well, do you understand what I'm telling you now?

8 A Yeah, I understand what you're saying now, yes.

9 Q You understand it?

10 A Yes, sir.

11 Q In regard to this case what is your decision? Are you
12 going to testify or not testify?

13 A I have to make the decision now?

14 Q No. We can wait till you finish presenting your case but

15 --

16 A Okay.

17 Q But at that point I must finish the hearing. You
18 understand that?

19 A Okay, I understand. Thank you.

20 THE COURT: Very good. Let the record show we will
21 visit this issue again.

22 Bring the jury out, Ms. Bailiff please.

23 (WHEREUPON, the jury was returned to the courtroom at
24 approximately 9:10 a.m., and the following proceedings
25 commenced in open court.)

DW - J. JACOBS - DIRECT

THE COURT: Good morning, jurors. Everyone feeling well? All right, just one second. We'll get started. I need to confer just one second.

(Pause.)

THE COURT: All right, Mr. Floyd, you're recognized.

MR. FLOYD: Thank you, Your Honor. Your Honor, we would call Jason Jacobs.

THE COURT: All right. Bring him in please.

DEPUTY CLERK OF COURT: If you would, sir, go around.
Place your left hand on the Bible and raise your right hand.

WHEREUPON,

JASON CATRELL JACOBS,
having been duly sworn by the Deputy Clerk of Court,
testified as follows:

THE DEPUTY CLERK OF COURT: Please be seated. State your full name for the record.

THE WITNESS: Jason Catrell Jacobs.

THE COURT: All right. Mr. Jacobs, you got to speak up. Speak up so we can all hear you. We have to take it down and the jury needs to hear you. Give us your full name again please a little louder.

THE WITNESS: Jason Catrell Jacobs.

THE COURT: That's good. Thanks.

MR. FLOYD: Thank you, Your Honor.

DIRECT EXAMINATION

DW - J. JACOBS - DIRECT

- 1 BY MR. FLOYD:
- 2 Q Mr. Jacobs, how are you this morning?
- 3 A All right.
- 4 Q I'm Scott Floyd. I believe we've met before, correct?
- 5 A (No verbal answer.)
- 6 Q You need to speak.
- 7 A Yes, sir.
- 8 Q Let me ask you, do you know Carmichael Flowers?
- 9 A Yes, sir.
- 10 Q Okay. Could you tell me how you know him?
- 11 A He used to stay across the street from my girlfriend.
- 12 Q What street was that?
- 13 A Dixie Street.
- 14 Q Okay. And did you live on Dixie Street?
- 15 A No, sir.
- 16 Q Okay. Were you a visitor to Dixie Street?
- 17 A Yes, sir.
- 18 Q Okay. How often did you visit there?
- 19 A A lot.
- 20 Q Okay. So you were there frequently?
- 21 A Yes, sir.
- 22 Q Okay. And that was a relative of your girlfriend's.
- 23 A Yes, sir.
- 24 Q Okay. Let me ask you, do you recall a night last year,
- 25 were you on the street when Mr. Flowers was arrested?

DW - J. JACOBS - DIRECT

- 1 A Yes, sir.
- 2 Q Where were you in relation to his house?
- 3 A right across the street.
- 4 Q You were
- 5 A Yes, sir.
- 6 Q Do you remember what address he was at?
- 7 A He live across the street. I don't know the address.
- 8 Q Okay. You don't remember the number?
- 9 A No, sir.
- 10 Q But you were there at that house that night?
- 11 A Yes, sir.
- 12 Q And tell me why it sticks out in your mind. Why would
- 13 you remember that night?
- 14 A Because the night before he gave me a ride to see another
- 15 girl.
- 16 Q Okay, all right. And that would have been the night
- 17 before he was arrested?
- 18 A Yes, sir.
- 19 Q And what time did Mr. Flowers pick you up that night?
- 20 A I had knocked on the door, asked him for a ride, so I was
- 21 intoxicated but between 9 and 11.
- 22 Q 9 p.m.?
- 23 A P.m.
- 24 Q Okay. And 11 p.m.?
- 25 A Yes, sir.

DW - J. JACOBS - DIRECT

- 1 Q So you knocked on his door?
- 2 A Yes, sir.
- 3 Q Who came to the door?
- 4 A He did.
- 5 Q Okay. And what did you ask him?
- 6 A Can I get a ride somewhere?
- 7 Q And did he take you?
- 8 A Yes, sir.
- 9 Q And where did he take you?
- 10 A First he took us on Royal Street to my home where grandma
- 11 (ph) house, then he dropped us off at Oakland Avenue
- 12 Apartments.
- 13 THE COURT: Hold it one second. Could you understand
- 14 all that?
- 15 You got to repeat that again now. Talk up a little
- 16 louder and a little slower. We need to take down every
- 17 single word. Please help us in that regard.
- 18 THE WITNESS: He took us on Royal Street first, then
- 19 he —
- 20 THE COURT: Royal Street first. Okay, a little
- 21 slower.
- 22 THE WITNESS: Then he dropped us off on Oakland Avenue
- 23 Apartments in Oakland Plantation.
- 24 BY MR. FLOYD:
- 25 Q Okay. Now how far away was that from Dixie Street?

DW - J. JACOBS - DIRECT

- 1 A About five or ten minutes.
- 2 Q One way?
- 3 A Yes, sir.
- 4 Q Okay. And when he dropped you off did he leave you
5 there?
- 6 A Yes, sir.
- 7 Q Okay. So you didn't -- you didn't ride back to Dixie
8 Street with him?
- 9 A No, sir.
- 10 Q All right. Now you were saying -- I believe you used the
11 term us when you answered my question.
- 12 A Yes, sir.
- 13 Q Okay. Who was with you?
- 14 A Michael Williams.
- 15 Q Okay. And he took both of you to the same location.
- 16 A Yes, sir.
- 17 Q Okay. Let me ask you this. Have you spoken to Mr.
18 Flowers directly since he got -- since the day he got
19 arrested or the night he got arrested?
- 20 A No, sir.
- 21 Q You haven't seen him --
- 22 A No, sir.
- 23 Q --since then. Okay. You have spoken to me though,
24 right?
- 25 A Yes, sir.

DW - J. JACOBS - DIRECT

- 1 Q Okay. How many times have we met before, talked before?
- 2 A Just that one day.
- 3 Q Okay. And — okay. And you're currently at the Florence
- 4 County Detention Center; is that right?
- 5 A Yes, sir.
- 6 Q Okay. Why are you there?
- 7 A I had got in trouble. I had got weekend time and I had
- 8 did just a couple of days weekend time and they made me do
- 9 my time straight.
- 10 Q What kind of sentence are you serving?
- 11 A Ninety days.
- 12 Q Okay. And what —
- 13 A I had 180 days but cut it to 90.
- 14 Q And what offense is that? What did you get convicted of?
- 15 A Distribution.
- 16 Q Okay, all right. Now what was the nature of your
- 17 relationship with Mr. Flowers when you were -- when he was
- 18 living on Dixie Street?
- 19 A Nothing. I just knew him because he was nice. He used
- 20 to give people who ain't had any, clothes and food, and
- 21 everything.
- 22 Q Were y'all friends? Did you hang out socially?
- 23 A I ain't never really hung with him. He knew the people
- 24 I knew.
- 25 Q Okay. So you didn't — you never ate dinner at his

DW - J. JACOBS - CROSS

1 house?

2 A No, no, sir.

3 Q Y'all never went out together?

4 A No, sir.

5 Q Okay. But you knew him from --

6 A Just being in the area.

7 MS. PARR: Your Honor, the State would object.

8 Mr. Floyd is leading his client and I was trying not to
9 object but this has been too much.

10 THE COURT: All right. Proceed, Counsel.

11 MR. FLOYD: Thank you, Your Honor. Your Honor,
12 actually that's all that I have. Thank you.

13 THE COURT: Cross exam.

14 CROSS-EXAMINATION

15 BY MS. PARR:

16 Q Mr. Jacobs, in fact, you have been convicted of two drug
17 charges; is that not correct?

18 A Yes, ma'am.

19 Q All right. One offense that occurred, your most recent
20 offense occurred March 19th, 2008; is that correct?

21 A Both of them have February 21st. They just picked me up
22 for another warrant on March 19th.

23 Q My question to you was that the date of the one where you
24 were charged by the Sheriff's Office with PWID distribution
25 of cocaine?

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1 A Yes, ma'am.

2 Q All right. And then you also had another charge from the
3 Florence Police Department for possession of cocaine as
4 well; is that not correct?

5 A Yes, ma'am.

6 Q Now you said on the night of October 2nd, 2008 you have a
7 vivid recollection of that night?

8 A Yes, ma'am.

9 Q Okay. But you just testified that you were intoxicated
10 that night.

11 A I remember that he gave me a ride though.

12 Q You were intoxicated that night; is that correct?

13 A Yes, ma'am.

14 Q And were you intoxicated for alcohol and drugs?

15 A Alcohol.

16 Q All right. So you were not doing cocaine that night?

17 A I don't do cocaine.

18 Q Okay. So you don't do cocaine, you just sell it; is that
19 correct?

20 A I did in my past. I did in the past.

21 Q Okay. Because now you're in jail; is that correct?

22 A Yes, ma'am.

23 Q All right. And but I think a few minutes ago you said
24 you were not exactly sure what the time was because you were
25 intoxicated; is that correct?

DW - J. JACOBS - CROSS

1 A I know it was late.

2 Q Okay. But it gets dark early in October; is that not
3 correct?

4 A Yes, ma'am.

5 Q All right. And so at 6:00 it's dark?

6 A But I know it was after six.

7 Q Okay. You know it was after six so it could have been
8 from after six because it was dark until the next morning
9 until light again, is that correct, which is like 6:00?

10 A Yes, ma'am.

11 Q All right. And so you were not looking at a watch; is
12 that correct?

13 A Yes, ma'am.

14 Q All right. So you had no watch, you're intoxicated, you
15 knew that it was dark, and how long had you been drinking
16 that day?

17 A The liquor store open at 7 so I started about 7:30 to 8.

18 Q All right. But so you had drank enough liquor at that
19 time to become intoxicated?

20 A Yes, ma'am, it don't take much.

21 Q It don't take much, okay. Nothing -- beg the Court's
22 indulgence a moment.

23 THE COURT: Yes.

24 BY MS. PARR:

25 Q So Mr. Jacobs, the bottom line is you can't give a

DW - J. JACOBS - REDIRECT

1 specific time, can you?

2 A No, ma'am.

3 Q All right.

4 MS. PARR: Nothing further, Your Honor.

5 THE COURT: Redirect.

6 MR. FLOYD: Thank you, Your Honor.

7 **REDIRECT EXAMINATION**

8 BY MR. FLOYD:

9 Q Mr. Jacobs, you said the liquor closed about 7 p.m.?

10 A Yes, sir.

11 Q Is that right? Okay. And so you went to his house.

12 MS. PARR: Your Honor.

13 BY MR. FLOYD:

14 Q Well, you went to his -- did you go to his house after
15 the liquor store closed?

16 A Not right after. We stood out there for a little while
17 and drink and then a little while later when the girl called
18 me, said come over there, and I went over there and knocked
19 on the door, asked could I get a ride.

20 Q So do you think it was after 7 p.m.?

21 A I know it was after 7 p.m.

22 Q Okay, all right. What was your estimation of the time
23 that elapsed before the girl called you, or when the girl
24 called you?

25 A She probably called me about 8:30.

DW - J. JACOBS - REDIRECT

1 Q All right. Thank you.

2 A But I ain't leave right then.

3 Q I understand. Thank you very much.

4 THE COURT: Recross.

5 MS. PARR: Nothing further, Your Honor.

6 THE COURT: All right. Thank you, sir. You may step
7 down.

8 MR. FLOYD: Your Honor, can we approach?

9 THE COURT: Sure.

10 (WHEREUPON, counsel approached the Bench for an
11 off-the-record discussion.)

12 THE COURT: Jurors, there's a short matter I need to
13 take up now on the record. Please if you would go to your
14 jury room.

15 (WHEREUPON, the jury was removed from the
16 courtroom at 9:28 a.m., and the following proceedings
17 commenced in open court.)

18 THE COURT: All right, Mr. Floyd.

19 MR. FLOYD: Swear him again, Ms. Clerk, please.

20 WHEREUPON,

21 CARMICHAEL T. FLOWERS,
22 having been duly sworn by the Deputy Clerk of Court,
23 testified as follows:

24 THE DEPUTY CLERK OF COURT: Please be seated.

25 THE COURT: Your full name for the record.

1 **THE WITNESS: Carmichael T. Flowers.**

2 **EXAMINATION BY THE COURT**

3 **Q** Mr. Flowers, it is now the time in this case when your
4 defense will end at this point; or if you desire to testify,
5 that will be your decision so we're at the so-called crunch
6 time now. Under the Fifth Amendment to the United States
7 Constitution you have the absolute right not to testify. If
8 you decide not to testify it will not be used against you,
9 and I will instruct the jury that they cannot use that
10 against you and they cannot even discuss that in the jury
11 room. Do you understand that?

12 **A** Yes, sir.

13 **Q** You also have the absolute right to testify. If you
14 elect to take the stand and testify you must answer all
15 questions that I rule are proper questions. Do you
16 understand that?

17 **A** Yes, sir.

18 **Q** In regard to your decision to testify, if you make that
19 decision to testify, any kind of prior involvement in law
20 violation can be used against you provided it comes within
21 the rule. And you, of course, know your prior record and
22 you understand that. What is your decision in this case?
23 Are you going to testify or not testify?

24 **A** I will not.

25 **Q** You will not testify?

1 A No, sir.

2 Q Is your decision not to testify made freely and
3 voluntarily on your part?

4 A Yes, sir.

5 Q Has anyone put any pressure on you in any way to cause
6 you not to testify?

7 A No, sir.

8 Q Has anyone threatened you in any way to make you not
9 testify?

10 A No, sir.

11 Q Your decision not to testify is a personal decision you
12 made?

13 A With the -- with the help of my attorney, yes.

14 Q Well, certainly. You talked to your lawyer in detail
15 about this matter?

16 A Yes, I did.

17 Q And in regard to your consultation with your attorney are
18 you satisfied with that conference?

19 A Yes.

20 Q The decision is a major decision and you and your lawyer
21 talked about it, but ultimately you have to make the final
22 decision. You understand that?

23 A Yes.

24 Q Sir?

25 A Yes. Let me -- can I ask you a question?

1 Q Certainly.

2 A How far do we want to go back on priors?

3 Q Yes, we'll take that up. What is the prior record?

4 Obviously Rule 609, lawyers, you know it by heart. It has a
5 ten year cap on it unless I make special rulings in regard
6 to the ten year. Cap can't go back but ten years from today
7 and ---

8 MS. PARR: Ten years, from my understanding, Your
9 Honor. Ten -- and I'm sure Your Honor is well aware, ten
10 years from when he was out of incarceration.

11 THE COURT: That's correct.

12 MS. PARR: Oh, Your Honor, the most recent one I had
13 was a offense that occurred in 1999, April 16th, 1999, and
14 for a burglary second.

15 THE COURT: Hold it one second. Hold it. Burglary
16 second.

17 MS. PARR: That's correct, Your Honor.

18 THE COURT: Okay.

19 MS. PARR: And he received a sentence of two years.
20 And then in 2001 he violated his parole and then they sent
21 him back for that sentence.

22 THE COURT: 2001, violation of parole.

23 MS. PARR: Uh-huh.

24 THE COURT: All right. So that would be the two
25 instances that would be subject to the rule.

1 MS. PARR: That is correct, Your Honor. The other,
2 although he has quite a lengthy record, the other ones will
3 be prior to that time.

4 THE COURT: Okay, all right.

5 BY THE COURT:

6 Q So to answer your question, the answer is you could be
7 asked about the April 16, 1999 burglary second, and you
8 could be asked about the 2001 violation of parole, and
9 that's it.

10 A Let's testify.

11 Q Oh, oh. Now you now make the decision to testify?

12 A Yeah.

13 Q Sir?

14 A Yes, sir.

15 Q Is that decision to testify made freely —

16 A Freely.

17 Q —and voluntarily on your part?

18 A Of course.

19 Q Sir?

20 A Yes, sir.

21 Q Now you had indicated the other way when you first got on
22 the stand?

23 A Yeah, I mean, I just want to understand how far we were
24 going back, I mean.

25 Q Okay. And do you understand that?

1 A Yeah, because I didn't want to take your time going back
2 in the history of —

3 Q We won't.

4 A —20 years, 30 years ago, you know.

5 Q We won't do that. All right, we're going back on it,
6 those two.

7 A Yes, sir.

8 Q And now your decision is to testify?

9 A It is, sir.

10 Q Is your decision to testify made freely and voluntarily
11 on your part?

12 A Yes, sir.

13 Q You satisfied with that decision?

14 A I'm satisfied.

15 Q Do you need to ask me any questions more about this?

16 A No, sir.

17 Q You satisfied?

18 A Yes, sir.

19 Q Sir?

20 A Yes, sir.

21 Q Thank you. Go back around.

22 A Thank you.

23 THE COURT: Order: This Court has conducted a hearing
24 with the defendant in regard to his Fifth Amendment
25 privilege. This hearing is mandated by State versus Orr,

1 O-R-R, 304 South Carolina 185, 403 Southeastern 2d 623.
2 State versus Orr has been supplemented and applied with
3 certitude in Brown versus State, 340 S.C. 590, 533 S.C. 2d
4 308.

5 Based on the sworn testimony of the defendant and the
6 colloquy inter sese Court and defendant, the Court has been
7 advised by the defendant that he will testify.

8 In regard to the colloquy inter sese Court and
9 defendant I advised the defendant that only two offenses
10 could be considered in regard to his prior record.

11 MS. PARR: Your Honor, I made a mistake. He had
12 another one, another offense. It's a forgery as well. That
13 was in, during that same time, that same day, that he was
14 convicted of and sentenced to prison.

15 (Attorneys confer.)

16 THE COURT: What's the last sentence I had, Ms. Court
17 Reporter?

18 (Court reporter reads back last sentence.)

19 THE COURT: In regard to the prior record it is
20 April 16, 1999 burglary second and 2001 violation of parole.
21 As I begin to dictate the order into the record the
22 Solicitor indicated there was another offense. I decline to
23 use that other offense because this record is going forward
24 to the appellate entities in Columbia in a pristine state.
25 They always put the name of the trial judge on the opinions.

1 The Court concludes that the decision by the defendant
2 to testify is made after a full and complete recitation of
3 its Fifth Amendment privileges and the efficacy thereof.
4 This Court concludes that the defendant has made a decision
5 to testify freely and voluntarily on his part with no
6 coercion whatsoever, and it is so ordered.

7 All right. We'll go forward, Ms. Solicitor. Don't
8 mention forgery, don't mention it.

9 Are we ready to proceed, Mr. Floyd?

10 MR. FLOYD: I am, Your Honor.

11 THE COURT: Bring the jury out.

12 (WHEREUPON, the jury was returned to the courtroom at
13 approximately 9:38 a.m., and the following proceedings
14 commenced in open court.)

15 THE COURT: Thank you for your patience.

16 Mr. Floyd, you're recognized.

17 MR. FLOYD: Thank you, Your Honor. Your Honor, we
18 would call Carmichael Flowers to the stand.

19 THE COURT: Swear him.

20 THE DEPUTY CLERK OF COURT: Please place your left
21 hand on the Bible and raise your right hand.

22 WHEREUPON,

23 CARMICHAEL T. FLOWERS.

24 having been duly sworn by the Deputy Clerk of Court,

25 testified as follows:

DW - C. FLOWERS - DIRECT

1 **THE DEPUTY CLERK OF COURT:** Please be seated and state
2 your name for the record.

3 **THE WITNESS:** My full name is Carmichael T. Flowers.

4 **DIRECT EXAMINATION**

5 **BY MR. FLOYD:**

6 **Q** Mr. Flowers, how old are you?

7 **A** Fifty-four.

8 **Q** And how long have you lived here in South Carolina?

9 **A** Approximately, I would imagine three years.

10 **THE COURT:** Mr. Flowers.

11 **THE WITNESS:** Yes, sir.

12 **THE COURT:** Give me a little more volume. Get a
13 little closer to the mic.

14 **THE WITNESS:** Three years.

15 **BY MR. FLOYD:**

16 **Q** And where did you live prior to that?

17 **A** Prior to this I was in New Jersey.

18 **Q** And how long did you live in the state of New Jersey?

19 **A** About two years.

20 **Q** Two years? All right. Were you employed while you were
21 there?

22 **A** Yes, sir.

23 **Q** Who were you employed with?

24 **A** UPS.

25 **Q** And while you were working at UPS did you meet

DW - C. FLOWERS - DIRECT

- 1 Ms. Namias?
- 2 A Yes, I did.
- 3 Q Namias, I'm sorry. You remember when that was?
- 4 A I surmise around 2004, maybe 2005, beginning of 2005.
- 5 Q And did you become friends?
- 6 A Yes, sir.
- 7 Q Did your relationship develop beyond that?
- 8 A Yes, it did.
- 9 Q And what was nature of your relationship?
- 10 A We became intimate. She was still married at the time.
- 11 We did — I would imagine the motel thing on the weekend or
- 12 whenever we could. And then I guess moved out of New Jersey
- 13 to Virginia Beach, Virginia.
- 14 Q And when did you move to Virginia Beach?
- 15 A I believe it was 2006 or end of 5, 2006 somewhere.
- 16 Q And how long did you live there?
- 17 A I think maybe a summer.
- 18 Q One summer?
- 19 A Yes, sir.
- 20 Q Where did you move after you left Virginia Beach?
- 21 A Into South Carolina.
- 22 Q And where specifically did you live in South Carolina
- 23 when you moved here?
- 24 A Myrtle Beach.
- 25 Q How long did you live in Myrtle Beach?

DW - C. FLOWERS - DIRECT

- 1 A About nine months I believe, maybe. I'm just guessing.
- 2 Q After you left Myrtle Beach where did you live?
- 3 A We came to Florence.
- 4 Q Okay. And specifically where in Florence did you move
- 5 to?
- 6 A She moved in with her parents, her mother, and I stayed
- 7 in the Swamp Fox Motel parking lot in my truck because her
- 8 parents didn't allow blacks in the neighborhood -- in her
- 9 house.
- 10 Q Okay. And how long did you do that?
- 11 A Till she found a house on Homestead I guess was -- hum, I
- 12 couldn't tell you. Maybe three months maybe.
- 13 Q Okay. Did you move into a house?
- 14 A Yes, we did.
- 15 Q Where was that house?
- 16 A It was on Homestead Avenue behind the unemployment
- 17 office.
- 18 Q All right. And how long did you live there?
- 19 A I'm not sure, about a year. Maybe more.
- 20 Q And did you move out of that house eventually?
- 21 A Yes, sir.
- 22 Q Where did y'all move to?
- 23 A
- 24 Q Now how long did you live at the Dixie Street location?
- 25 A From the time that we bought the place until --

DW - C. FLOWERS - DIRECT

- 1 Q Okay.
- 2 A —the incident of October 2nd.
- 3 Q Do you remember when the house was purchased?
- 4 A Yes, sir.
- 5 Q When was that?
- 6 A 2007.
- 7 Q Do you know what month?
- 8 A No.
- 9 Q All right. Now who lived in that house on ?
- 10 A Janel, myself, her daughter, and her son.
- 11 Q Four people lived in that house?
- 12 A Yes, sir.
- 13 Q For how long did four people live there?
- 14 A I think it was maybe six months, maybe. I think her
- 15 daughter moved back to New Jersey. We drove him — drove
- 16 her up halfway, then they drove and her husband picked her
- 17 up at the halfway point.
- 18 Q And did her son ever move out?
- 19 A He eventually met a young lady and moved in with her.
- 20 Q After he moved in with her who lived at the house?
- 21 A Just the two of us.
- 22 Q Now what was the condition of the house when you moved
- 23 in?
- 24 A There was some frayed carpet. It needed painting. The
- 25 people that lived there had obviously smoked. And it had —

DW - C. FLOWERS - DIRECT

1 I believe the bathroom had to be redone. I did the
2 bathroom. And painted the bedroom, put in that new door.
3 Had some electrical work done that had to be upgraded. The
4 flooring in the kitchen and between the dining room had to
5 be worked on. And just your minor everyday repairs.

6 Q And did you do any of that work?

7 A I, myself, Janel, and a guy named Mitchell, Mat Mitchell.
8 I worked with Mat Mitchell on some other projects throughout
9 Florence, and I had met him, befriended him, and I called
10 him over to my house and we worked on the house. And it was
11 one other I think -- I got a couple of other guys to do some
12 other work. The electrical, obviously was -- I hired the
13 guy to do because he was on the contract and you have to
14 have a contractor to do it. He was licensed. And the roof
15 on the garage. I helped the guy with that but he eventually
16 found another helper that he could communicate with because
17 there was a language problem. And but that's basically we
18 did the bulk of the work, just the three of us.

19 Q And how long did that process take to finish that work?

20 A Off and on I think it was about six months I think.

21 Q And after you finished the work what were your plans as
22 far as the house was concerned?

23 A Well, as far as the house was concerned, to kind of give
24 you an idea, when we bought the house I had some problems
25 with IRS. And we're at the signing of the deed with the

DW - C. FLOWERS - DIRECT

- 1 lawyer, and it was at that time the realtor was there and I
2 told — she asked me to put my name on the deed and I said,
3 well, I owe IRS money, I think that if we're going to sell
4 this property I don't think I should put my name on it
5 because, you know, they'll stop us from selling it. And at
6 that point she signed the deed, and it was entered. And the
7 real estate agency says, well, you can always put your name
8 on it later on. And I had no idea that it would come to
9 this, but unfortunately things happen. I continued to work.
10 I've done work for a lot of other people here.
- 11 Q Let me stop you right there.
- 12 A Okay.
- 13 Q What type of work did you do?
- 14 A Remodeling homes. Construction is what I do. I'm a
15 construction, bartender slash ex-nurse.
- 16 Q And how many construction projects did you work on here
17 in Florence?
- 18 A In Florence? Quite — well, not from the ground up but
19 just remodeling quite a few. Jerome Street was one of them
20 I believe. Janel and I both worked on it. And it was a few
21 other ones. We worked for Chandler Enterprises we worked
22 for. He owned the house that we first rented, moved into.
23 I've worked for Caldwell Banker also.
- 24 Q Have you been present in the courtroom the whole time
25 throughout this trial?

DW - C. FLOWERS - DIRECT

1 A Yes, sir.

2 Q Okay.

3 A Unfortunately.

4 Q Did you hear the testimony concerning a incident on
5 September 29th?

6 A Yes, sir.

7 Q Of '08 I believe?

8 A September the 29th, yes, sir.

9 Q Do you recall that incident?

10 A Yes, sir. It was in the morning the neighbor across the
11 street, her name is Vonne. She had a cell phone that I had
12 given her she wanted to purchase. And I would venture to
13 think she bought it back to me at that point, and Janel was
14 a little bit ahead of me going toward the wash room. And
15 she stopped. She was giving me the phone back. And she had
16 been to the house and cleaned up the bathroom, both
17 bathrooms. She vacuumed the floors. She did the -- got the
18 cobwebs off of the wall in the kitchen that had gotten to
19 that point. And I think I paid her somewhere in the
20 neighborhood of 40-dollars just to do general cleaning.
21 That's what she does. She works for Holiday Inn as a maid.
22 And at that point I didn't know whether she knew that or not
23 but knew I had -- she obviously said something to Ms. Fox
24 about it -- Cox, right? Anyway, that morning when she
25 brought the phone back Janel and I got into -- she said she

DW - C. FLOWERS - DIRECT

- 1 didn't like this woman. And an argument ensued to the point
2 where I tried to explain to her that the jealousy had just
3 got to the point where it wasn't even necessary, it wasn't
4 even funny anymore. I tried to explain to her that this is
5 a neighbor. The woman comes over at 2:00 in the morning.
6 She needs two slices of bread. You know, what do you want
7 me to do? I get up; I give it to her. Her son, they need
8 rides to school. They need this and that. We try to help
9 them out as much as possible. Why you mad at me, you know
10 what I'm saying. And I verbalized it and I eventually went
11 outside on the front porch and sit down. I didn't know but
12 Vonne was still in the presence of the window where she
13 could hear the conversation between the two of us and then
14 she just shook her head and walked off.
- 15 Q So on that day did you touch anyone?
- 16 A I did not.
- 17 Q Did you make any verbal threats?
- 18 A I did not. I continued to ask her, what do you want me
19 to do. You know, I can't stop talking to people because you
20 don't like them, or you know, they pose a threat to you, you
21 know. I -- I don't know, I just. It's very stressful, put
22 it that way.
- 23 Q Did you continue to stay in the house after that?
- 24 A Yes, sir.
- 25 Q Did you have any further arguments that day?

DW - C. FLOWERS - DIRECT

1 A I think we didn't have anymore arguments. We finally got
2 something to eat, and she was sitting on her side of the
3 bed. We say grace. And she happened to mention to me that
4 something about her last day seeing her psychologist, and
5 she wanted to find out if there was some other service that
6 would offer counseling. And she told me that she spent five
7 hours at the Coalition, Pee Dee Coalition at that point. Me
8 being not familiar with the Pee Dee Coalition, I vaguely
9 heard of it since I've been here, but you know, I didn't
10 know that much about it.

11 Q Okay. Now were there any other arguments after that
12 point?

13 A Not that I can remember.

14 Q Now do you recall an incident on October 2nd?

15 A Yes, sir.

16 Q Who was involved in that?

17 A I came home and we had —

18 Q What time was that?

19 A 8:30 in the evening. And we had discussion about the
20 neighbor across the street and some other things and an
21 argument ensued. I was tapped with her baseball bat. I
22 took it from her, and I tossed it behind her. It bounced up
23 off the carpet, hit the lamp, and broke — it had the
24 fluorescent bulb in it, the squirly one, and the filament
25 from it went up in the air and flame caught it and I tried

DW - C. FLOWERS - DIRECT

1 to put out the fire before it got bigger. And then I
2 cleaned up the glass and I suggested to her that it's best
3 she put some shoes on before she got cut, and then I went to
4 get rid of the glass and got a vacuum cleaner and brought it
5 back and she said that I'll do it so she did it.

6 Q Did you get a vacuum cleaner as well?

7 A I got a vacuum cleaner as well and did from the kitchen
8 where the dog -- I mean, the kitchen dining room area where
9 the dog is all the way to the front door and back toward the
10 bathroom and back into the closet where it came from.

11 Q After the lamp was broken did you have any further
12 discussion?

13 A I believe that I went and got another bulb out of the
14 cabinet. We -- I put that bulb in the lamp. She went in
15 the kitchen or something and got the trash out of the trash
16 can and the bag and tied it, and went outside to the bigger
17 trash can out on the street one, the big one. Put the trash
18 bag in it, came back in, and I believe she either laid down
19 or whatever.

20 Q And what did you do after she laid down?

21 A I went in the computer room.

22 Q Did you leave the house?

23 A I eventually -- when they knocked on the door and asked
24 me for a ride I eventually left the house.

25 Q Who knocked on the door?

DW - C. FLOWERS - DIRECT

- 1 A Jacobs and his friend Williams. Well, he was across the
2 street but James asked me would I give him a ride.
- 3 Q And did you do that?
- 4 A Yes, I did. I grabbed the hat and went right out the
5 door. I didn't say good-bye, didn't say hello, nothing.
- 6 Q What time was that?
- 7 A 9:30 maybe, some minutes to ten.
- 8 Q Was that p.m.?
- 9 A Yes, sir.
- 10 Q And you remember where you went?
- 11 A Yes, sir.
- 12 Q Where did you go?
- 13 A I went to north Florence. Oakland Avenue -- well -- I
14 came up 52, Oakland Avenue to Royal Street. And I'm not
15 familiar with that area so I don't really know. But anyway,
16 come back home.
- 17 Q What time did you get back home?
- 18 A It was around ten.
- 19 Q What did you do when you got back?
- 20 A I came in the room, and I think she was laying with
21 facing the wall and we didn't say too much to each other.
22 And I put down my hat. I think I picked up a pack of
23 cigarettes or something and I went back into the computer
24 room and shut it down and got back in bed. I went to bed.
- 25 Q Did you go to sleep?

DW - C. FLOWERS - DIRECT

- 1 A I sure did.
- 2 Q What time did you get up?
- 3 A I didn't get up until she woke me up to come get the dog;
- 4 and at that point in time she was already dressed and I
- 5 believe she said, I'm going to the realtor's office.
- 6 Q Do you recall what time that was?
- 7 A No, I really don't but maybe 8:30, some minutes to nine
- 8 maybe. I don't know. Could have been earlier than that.
- 9 Q Did she leave at that time?
- 10 A Yes, sir.
- 11 Q Then what did you do?
- 12 A I think I found a clock and realized that the realtor's
- 13 office is not open this time in the morning, and I got up
- 14 and got dressed and something said to me that something is
- 15 amiss. So anyway, I got -- went outside and put the 38
- 16 revolver that I had in my truck, and I talked to the guy
- 17 across the street from me that was sitting on the porch.
- 18 And I told him, I says, well, my wife come back give me a
- 19 call. And he did give me a call, but when he gave me a call
- 20 the call was to let me know that officers were in my yard
- 21 and coming out my front door with a rifle and some bullets.
- 22 And he told me the officer's name was John Lockhart.
- 23 Q Was there a rifle in your home?
- 24 A Yes, sir.
- 25 Q What kind of rifle was that?

DW - C. FLOWERS - DIRECT

1 A It's a 22 rifle with a scope.

2 Q Who did that rifle belong to?

3 A It belonged to Janel Narnias.

4 Q How long had that rifle been in your -- or in the
5 possession at the house rather? How long you been in the
6 house?

7 A I would say -- I think she got it at some point like June
8 or July. Anyway, it was a trip from coming back from New
9 Jersey that I think her husband gave it to her. She brought
10 it back. And the bullets and the cleaner.

11 Q Did you ever use that rifle?

12 A No, sir. I took it outside one day and fired it into the
13 dirt but that was about it.

14 Q Anybody else ever fire it --

15 A No.

16 Q --that you saw?

17 A No. Her son, I gave the 38 to. He fired my 38 in the
18 backyard also.

19 Q Okay. So what time did you say it was when you left the
20 house that morning?

21 A I'm thinking maybe 10:00.

22 Q All right. Where did you go?

23 A I went to the tire shop on Palmetto and had them put four
24 tires on the truck.

25 Q What did you do after that?

DW - C. FLOWERS - DIRECT

- 1 A After I left the tire shop I went to, I believe it was —
2 had the oil changed, Jiffy. And after Jiffy I went to the
3 car wash and went to have lunch. After I had lunch I went
4 to the bar.
- 5 Q All right.
- 6 A The bar across the street from the law library, I mean,
7 from the library.
- 8 Q On Irby Street?
- 9 A On Irby Street, yes, sir. It's called the Irby Street
10 Bar and Grill.
- 11 Q Were you alone?
- 12 A Yes, sir.
- 13 Q Okay.
- 14 A The first time.
- 15 Q How long did you stay there?
- 16 A Two beers and a shot of Jack Daniels; that's about it.
17 And I left.
- 18 Q Where did you go when you left there?
- 19 A When I left there I went to Homestead Avenue and I drove
20 up Homestead and crossed over king and went into Julius
21 Smith's yard. He wasn't there but he pulled around the
22 corner as I got there.
- 23 Q What time was that, do you recall?
- 24 A 5, 5 or maybe 6.
- 25 Q Did you stay at his house?

DW - C. FLOWERS - DIRECT

- 1 A Just briefly to move some things that were in my front
2 seat into the back seat, and we left. So ---
- 3 Q Where did y'all go?
- 4 A Irby Street Bar and Grill.
- 5 Q Who drove?
- 6 A I drove.
- 7 Q What did you drive?
- 8 A The truck, the Silverado.
- 9 Q What time did y'all get to the bar and grill?
- 10 A 5:15, 5:30, somewhere in there..
- 11 Q How long did y'all stay there?
- 12 A I estimated an hour, but I mean, we played three games of
13 pool, drank, and talked.
- 14 Q How much did you have to drink that time?
- 15 A I would say probably three shots of Jack Daniels and
16 three beers.
- 17 Q What time did you leave there?
- 18 A It was dark. It was dark outside so I'm guessing
19 whatever daylight savings time, seven something.
- 20 Q All right. Where did you go when you left?
- 21 A Back to his house on Homestead.
- 22 Q Julius house?
- 23 A Yes, sir.
- 24 Q And did you stay at his house for any length of time?
- 25 A I went in the kitchen and we talked for a minute, and I

DW - C. FLOWERS - DIRECT

1 left and went out to my truck. Picked the 38 up, brought it
2 back into his house in the kitchen, unloaded it, and handed
3 him the shells and the gun.

4 Q Why did you do that?

5 A Mr. Smith had said some things to me. He said to me, he
6 said —

7 MS. PARR: Your Honor, I'd object. It's Hearsay.

8 THE COURT: I sustain the objection to that, Counsel.

9 MR. FLOYD: Yes, Your Honor.

10 BY MR. FLOYD:

11 Q What motivated you to leave the gun there?

12 A I felt that Mr. Smith had berated me to the point with
13 Janel. I mean, he — I don't know if he was hitting on her
14 or not, but it was my idea that he was, or his friend, and I
15 decided to leave the gun with him.

16 Q Did you have it back in your possession after that?

17 A No, sir.

18 Q Now did you hear the testimony in this courtroom alleging
19 that you displayed a gun and knives in your house?

20 A Yes, sir.

21 Q Did you do that?

22 A No, sir, I did not. I set on that — my side of the bed.
23 I went into my nightstand drawer. I pulled out Claritin
24 tablet and broke it and took it out of its paper and drank
25 some water. That's as far as it went with that. That's all

DW - C. FLOWERS - DIRECT

1 I did.

2 Q Let's go back up to the 3rd after you said you were at
3 Mr. Smith's house when you left the bar; is that correct?

4 A Yes, sir.

5 Q When you left his house on the 3rd --

6 A Yes, sir.

7 Q --where did you go?

8 A I left there and went to my house.

9 Q On Dixie Street?

10 A Yes, sir,

11 Q Okay, all right. What happened when you got to that
12 house?

13 A I pulled -- excuse me. I pulled into the driveway all
14 the way in front of the garage door and I was playing my
15 music, calling her on the cell phone. No, I mean, it wasn't
16 responding. And when I got out of my truck I went up to my
17 door. It was already open. The dog was in the yard. And
18 there was people in my house. I cut my wrist on going in
19 the door, and I think I backed out of the door and I went
20 and got -- when I saw who the people were I went and got my
21 neighbor across the street, Vonne, and I asked her to come
22 and get her people from the house.

23 Q All right. You referenced your cell phone?

24 A Yes, sir.

25 Q You referenced making a call?

DW - C. FLOWERS - DIRECT

1 A Yes, sir, first person I called —

2 Q Let me ask you, how many calls to Ms. Namias did you make
3 that day?

4 A Oh, my God, I don't know.

5 Q Was it a lot?

6 A A lot.

7 Q Did you leave voice mail messages?

8 A Yes, I did.

9 Q We heard those, correct?

10 A Yes, sir.

11 Q Would you tell me why you left all those messages?

12 A I was angry, frustrated, and I wanted to resolve the
13 problem and that's the only way I, you know, know to do it
14 is to communicate, you know, so I tried.

15 Q Okay. Did you — do you recall making statements on
16 those messages about destroying the house, destruction of
17 the property?

18 A Yes.

19 Q Why did you say that?

20 A Well, from the looks of things that were going on already
21 in my door, you know, it was obvious. But the first person
22 I called when I got there was John Lockhart.

23 Q And who is he?

24 A He's the police officer that's a sergeant. He's a
25 confidant, a friend, an acquaintance, an officer, an

DW - C. FLOWERS - DIRECT

1 outstanding person.

2 Q After you called him what did you do then?

3 A I relayed to him that -- I said, I thought you were my
4 friend. And at that point he didn't say -- I can't remember
5 what he said. And he basically -- I said to him, I says,
6 well, I think I'm bleeding or something to that effect, and
7 I hung up.

8 Q Okay. You referenced you're upset, angry, whatever, when
9 you were making this call. Specifically, why are you upset?

10 A I was upset that she went and called the police on me,
11 and you know, and when I had talked to John earlier he told
12 me that there wasn't a warrant yet but he probably -- but
13 there probably would be and that I could come home. And I
14 was just, you know, so just, you know, bent out of shape
15 because, you know, I hadn't done anything to anybody, you
16 know what I'm saying. I hadn't violated anybody's space.
17 It was a stressful time for me. And either I overacted or,
18 you know, I reacted. And I stand accountable for my, you
19 know, actions.

20 Q Now you were arrested that night October 3rd --

21 A Yes, sir.

22 Q --is that right? Okay. And where were you taken after
23 you were arrested?

24 A After my arrest I was placed in a unit adjacent from my
25 truck, and then I was taken to the hospital and by Officer

DW - C. FLOWERS - DIRECT

1 Williams and we had a conversation to the effect that John
2 Lockhart had made a phone call to them asking them to come
3 by and do what they call a welfare check.

4 Q And you referenced you were taken to the hospital. Were
5 you bleeding still?

6 A Yes, sir. I mean, I tried to stop it but there was no
7 use.

8 Q And you got treatment there?

9 A Yes, sir, eight stitches I believe.

10 Q Now and then what happened after you left there?

11 A I was brought to Florence County Detention Center, and I
12 was booked in I believe. And they told me what the charges
13 were. I think, it was intimidation, and something else.

14 Q All right. Now after you were booked in did you meet
15 with any police officers?

16 A After I went to the courtroom and spoke with Judge Hewitt
17 she gave me a bond of I believe fifty thousand dollars and I
18 got the warrants and I looked at them and when I left I
19 talk -- I -- she said, do you have anything to say. I says,
20 well yeah, what about my bruises. And she says, when you go
21 back out there -- and she meant booking -- to have them to
22 document it, and I said okay. So when I went out there they
23 refused. Nobody paid me any mind, no attention.

24 Q Did you later meet with police officers?

25 A Yes, sir.

DW - C. FLOWERS - DIRECT

- 1 Q Okay. Who did you meet with?
- 2 A I met with Ms. Cox and Mr. Compton.
- 3 Q And --
- 4 A In D-pod.
- 5 Q Okay. In a little conference room there?
- 6 A Well, yes, sir, in the multipurpose room.
- 7 Q Okay. And you spoke to them?
- 8 A Yes, sir. I was asked to -- I was given my Miranda
- 9 rights. I weighed them, and we conversated.
- 10 Q All right. Did you -- did they have a recording device
- 11 going?
- 12 A No. They basically decided to ad lib I guess.
- 13 Q All right. Did you mention bruises to them?
- 14 A Yes, I did. And at the time I believe I was filing
- 15 paperwork with the officer at the desk, and Ms. Cox went out
- 16 and got the paperwork from the officer. I don't know what
- 17 she did with it at that point when she was leaving so she
- 18 had a inmate request from, what they call an inmate request
- 19 form, for me requesting that my bruises be documented.
- 20 Q Were any pictures taken at that time?
- 21 A No, I went to the nurse's office. They declined to take
- 22 pictures and neither did the police take pictures either.
- 23 Q Did you make a -- any sort of statement to Mr. Compton
- 24 about a gun?
- 25 A I was asked about the weapon, and at that point -- I told

DW - C. FLOWERS - DIRECT

1 Ms. Cox and Mr. Compton, I said, a law enforcement officer
2 requested that I get rid of the weapon if I had it in my
3 possession. I did not give them a name. I did not tell
4 them who this person was. And I said that I gave it to
5 someone in Darlington and I tried to leave it at that. And
6 she insisted the next time she came back that I -- she had
7 spoke with Janel and Janel told her that I didn't have any
8 friends in Darlington; and she said, well, what if I tell
9 you I have the -- I mean, have the gun. And I said okay,
10 you must have got it from the person that I gave it to. And
11 at that point I believe we terminated our conversation.

12 Q And why were you concerned about being found with
13 possession of a gun?

14 A I had already told Janel when the individual, my
15 neighbor, he lived two doors down. He came over; he sold me
16 the 38. And I had told her that I had a prior record and
17 that five years was the minimum that you would get if you
18 got caught with a weapon. I told her that; I didn't hide
19 anything from her. She knew that going in.

20 Q Did -- you bought the gun while you were living at Dixie
21 Street?

22 A . at 2:00 in the morning. My friend
23 nicknamed alias Bum, came to the door. He says, man, I need
24 some money. I said -- he came inside; he stood in the
25 kitchen. And I went and I believe I showed her the 38. She

DW - C. FLOWERS - DIRECT

1 gave me a fifty dollar bill. I gave it to him and he went
2 out the door and that was it. And it's been in that drawer
3 up until the point of, you know, today or you know, at the
4 time that we -- I moved it and gave it to Mr. Smith.

5 Q All right, did you feel you needed that for any kind of
6 protection?

7 A Yes, sir. I had information about in-home invasions to
8 happen at my house. Her daughter came down to visit. There
9 was innuendoes about running a train on her daughter from
10 some of the guys in the neighborhood. And I -- this was in
11 August, and I believe I was real concerned about that and
12 this home invasion and that's about it.

13 Q Let me ask you about your -- the contents of the home
14 there at Dixie Street.

15 A Yes, sir.

16 Q Did any of the contents belong to you?

17 A When she moved here from New Jersey she drove her Saturn.
18 And I believe, if I'm correct, and I stand corrected, she
19 brought only her clothes. The dishes I picked up. Sheets,
20 pillow cases, dishes, microwave in Virginia Beach. When we
21 got here I continued to collect items for the house. The
22 very first television in my kitchen I got out of a dumpster.
23 The table. The dining room table, four chairs, I believe we
24 paid a hundred dollars for the four chairs, a leather couch,
25 a recliner, and a brand new sleigh bed for a hundred

DW - C. FLOWERS - DIRECT

1 dollars. All of the furniture. We even purchased the
2 computer together. Most of the furniture that was collected
3 I collected it. I got it off of dumpsters. I got it off
4 jobs that I worked on. People gave me stuff. We went to
5 yard sales, you know. I fixed it, I refinished it, you
6 know.

7 Q Were you --

8 A We had nothing new by the way, it was, you know.

9 Q So were you saying you were employed some during that
10 time?

11 A I bought -- I went down right here in this building and
12 got a license, a peddler's license to sell furniture. I,
13 what furniture I got, I refinished in the garage and
14 actually put out on yard sale. That's how I met John
15 Lockhart, at a yard at my yard sale. And I had one every
16 day since then. Either the stuff would be out in the yard
17 or be in the garage and people would come back and forth and
18 get it. But everything in that house just about was used,
19 and I repaired it, fixed it, and it was there. Matter of
20 fact, the microwave and the picture that's turned over, I
21 think we paid 20-dollars for it along with a yard furniture.
22 There's wrought iron chairs and stuff that you see in the
23 pictures.

24 Q Thank you very much. Could you answer any questions that

25 --

SW - C. FLOWERS - CROSS

1 A Sure.

2 Q —Ms. Parr might have for you.

3 CROSS-EXAMINATION

4 BY MS. PARR:

5 Q Mr. Flowers, who did you work for when you worked for
6 UPS?

7 A Who did I work for?

8 Q Uh-huh.

9 A I don't understand the question.

10 Q Didn't you work for a temporary agency?

11 A Yes.

12 Q And what temporary agency did you work for?

13 A I don't remember.

14 Q You don't remember?

15 A No.

16 Q And what did you do for a temporary agency?

17 A What did I do for the temporary agencies?

18 Q To be placed at UPS, when you were placed at UPS? What
19 was your job assignment at UPS for the temporary agency?

20 A Oh, I worked in — I worked in, what do they call it, uh,

21 Anyway, there was these — anything that came in the

22 building over a thousand dollars is my box, any boxes that

23 came in over a thousand dollars.

24 Q Now your box to do what with?

25 A To tag it and place it in a cage.

SW - C. FLOWERS - CROSS

1 Q Okay. Now so you worked for the temporary agency for
2 three years?

3 A Uh-huh.

4 Q Okay. And then you went to Virginia Beach. What did you
5 do in Virginia Beach?

6 A I worked for the motel in Virginia Beach.

7 Q Okay. And how long did you work for motel in Virginia
8 Beach?

9 A I believe it was, what, for the summer?

10 Q Well, I don't know, I'm asking you.

11 A I believe it was for the summer that we were there.

12 Q All right. Now at that time you had had a truck or a
13 vehicle that your other girl friend had?

14 A No. I had purchased the truck in New Jersey and she had
15 cosigned for me for that truck and she came and got it.

16 Q So that truck was taken by your ex-girlfriend; is that
17 correct?

18 A Right, she didn't like...

19 Q Not -- just was the truck taken by your ex-girlfriend?

20 A Yes.

21 Q And then you didn't have a truck; is that correct?

22 A Right.

23 Q And so Janel Namias had some money and so she purchased
24 the truck for you that you were supposed to pay for; is that
25 correct?

SW - C. FLOWERS - CROSS

- 1 A She gave me a partial down payment.
- 2 Q Okay.
- 3 A Right.
- 4 Q But you couldn't get a truck; is that --
- 5 A Not -- not my credit, no.
- 6 Q Okay. And so she signed for -- she cosigned for the
- 7 truck?
- 8 A Yes, sir -- yes, ma'am.
- 9 Q Okay. And in fact, you were supposed to pay for the
- 10 truck. You were supposed to make the payments; is that
- 11 correct?
- 12 A Yes.
- 13 Q And you paid for them for a little while; but then she
- 14 end up having to pay for the truck, make the truck
- 15 payments; is that correct?
- 16 A Uh --
- 17 Q Yes or no.
- 18 A Yes and no.
- 19 Q Yes or no.
- 20 A Oh.
- 21 Q Yes, did she make the payment?
- 22 A Yes.
- 23 Q Now when you moved down from your temporary agency how
- 24 much money were you making at the temporary agency?
- 25 A Not a whole lot.

SW - C. FLOWERS - CROSS

- 1 Q What's not a lot? Was it basically minimum wages or just
2 a little more than minimum wages?
- 3 A It was a little more minimum wage 'cause I would work for
4 the temporary agency and then for UPS as what they call
5 seasonal help.
- 6 Q All right. But is it fair to say when you moved down
7 here you really didn't have any money?
- 8 A Yeah, I was broke.
- 9 Q Okay. And you worked at the hotel or motel, and I
10 suspect you made, what? What did you do for the motel?
- 11 A Maintenance.
- 12 Q Okay. And so you made a little more than minimum wages?
- 13 A Yes.
- 14 Q Okay. And minimum wage is, what, 6-dollars an hour?
- 15 A I believe mine was like ten something, 10-dollars an
16 hour.
- 17 Q Okay. And how many hours you worked with the motel?
- 18 A I was there 24 hours a day minus —
- 19 Q But they didn't pay you 24 hours?
- 20 A No, no. You know, minus lunch and dinner.
- 21 Q All right. Now so you worked for the motel but you're
22 still liv— you're still basically broke; is that correct?
23 You were living from paycheck to paycheck or a dollar to
24 dollar?
- 25 A Yes.

SW - C. FLOWERS - CROSS

1 Q And but Ms. Namias had some money; is that correct?

2 A I don't know what she had. She was -- she was staying
3 with me and then she left and went back to New Jersey. She
4 was going through a divorce. I didn't keep financial track
5 on her money, what she spent, I don't know.

6 Q Okay. But you know she had more than you did; is that
7 correct?

8 A Yeah.

9 Q All right. 'Cause in fact, she was able to get the truck
10 for you and gave you a down payment?

11 A Right, that's correct.

12 Q Now then when you -- then you said you to went down to
13 Myrtle Beach?

14 A Yes, ma'am.

15 Q What did you do at Myrtle Beach?

16 A Look for work. As a matter of fact I did work for UPS in
17 Myrtle Beach.

18 Q And how long did you work for UPS in Myrtle Beach?

19 A Seasonal. I believe it was a couple of weeks, three at
20 the most.

21 Q Couple of weeks, three weeks?

22 A Yeah.

23 Q But you stayed in Myrtle Beach for nine months.

24 A How ever long I was there we were there.

25 Q Sir, we were not there, you were there. Please answer

SW - C. FLOWERS - CROSS

1 the question.

2 A I don't know, ma'am, exactly but if it was nine months,
3 yes, ma'am.

4 Q Okay. But on direct examination you said you were there
5 nine months?

6 A Yes, ma'am.

7 Q So is it nine months or what?

8 A I don't correctly remember how many months we were there.
9 I know we lived two places there where the work was.

10 Q And so your only -- and so you said you worked a couple
11 of weeks at UPS in Myrtle Beach?

12 A Yes.

13 Q All right. And what other employment did you have in
14 Myrtle Beach?

15 A I don't remember. Oh, I worked for a construction
16 company. It was through a temporary agency at the golf
17 club.

18 Q Okay.

19 A On 17.

20 Q Okay. And how long did you work there?

21 A I believe it was until they -- contract was fulfilled.
22 It was about maybe a month, two months. I worked out of the
23 temporary agency.

24 Q So in the last say five or six years you've not had a
25 permanent job; is that correct?

SW - C. FLOWERS - CROSS

- 1 A Incorrect. When I first moved to New Jersey I was
2 working for a union job. I was making cardboard boxes.
- 3 Q Okay. And so -- and that was in 2005?
- 4 A I moved in 2003.
- 5 Q 2003?
- 6 A Yes.
- 7 Q All right. And how long -- when did that permanent job
8 end?
- 9 A Seventeen months later.
- 10 Q Okay. So roughly two thousand -- end of 2004?
- 11 A Yes.
- 12 Q In the last five years you have not had a permanent job.
13 Let's put it like this, have you had a job, a permanent job
14 where they take out taxes and you pay social security and
15 you have benefits?
- 16 A Some of the jobs that I've worked are -- if you work
17 temporary agencies they do the same thing, they take out
18 benefits, right?
- 19 Q I don't know, sir, you have to tell us.
- 20 A Yeah, I worked temporary agencies.
- 21 Q You worked for temporary agency where they placed you on
22 a particular job for a certain amount of time and then
23 that's it; --
- 24 A Yes, ma'am.
- 25 Q --is that correct?

SW - C. FLOWERS - CROSS

1 A Yes, ma'am.

2 Q But you don't accumulate any time for retirement or
3 anything like that; is that correct?

4 A No, no, ma'am.

5 Q All right. And so that's what it was, just a
6 temporary -- there were temporary brief employment but not a
7 permanent job.

8 A No, ma'am.

9 Q Now but what you did, you got with Ms. Namias and you
10 found out that she had a means of livelihood and so you
11 latched on to her; is that not correct?

12 A That's incorrect.

13 Q But she was basically paying the bills; is that correct?

14 A No. What I worked for we paid -- we helped each other.
15 If you want to say that she had more money than I did that's
16 fine, but that wasn't my mental thought. I mean, that
17 wasn't, you know, what I walked into the relationship with
18 or, you know.

19 Q But she was the one that purchased the house; is that
20 correct?

21 A This is correct.

22 Q Okay, all right. She was the one that basically
23 purchased your truck; is that correct?

24 A She gave me the down payment, yes.

25 Q And she made the payments on it?

SW - C. FLOWERS - CROSS

- 1 A She made some and I made some.
- 2 Q She made most of the payments; is that not correct?
- 3 A I would not venture to say that.
- 4 Q And when the taxes came due on the house it was
- 5 Ms. Namias that paid the taxes on the house; is that
- 6 correct?
- 7 A Well, with a joint checking account I wouldn't know.
- 8 203-dollars, how much was the taxes?
- 9 Q Sir, I don't know.
- 10 A I don't know either.
- 11 Q So you're saying —
- 12 A I don't know —
- 13 Q Are you saying it's your house?
- 14 A Well, from what I understood the agreement that we had,
- 15 yes.
- 16 Q Oh, the agreement you had. Also —
- 17 A I say we had.
- 18 Q But obviously that was not the agreement that she
- 19 thought, is that correct, based upon her testimony from the
- 20 stand?
- 21 A Okay. Well, I — I don't know what she thought.
- 22 Q You don't know what she thought.
- 23 A I don't know what she said when she was on the stand.
- 24 What did she say?
- 25 Q You were sitting here; weren't you?

SW - C. FLOWERS - CROSS

- 1 A Yes, ma'am, I don't remember.
- 2 Q Okay. Now you indicated that you couldn't get anything
- 3 because you had problems with the IRS.
- 4 A As far as our relationship went she asked me to sign ---
- 5 Q Sir, this is what I asked you.
- 6 A Okay.
- 7 Q My question is, you said you had problems with the
- 8 IRS; is that correct?
- 9 A Yes, I owed them money.
- 10 Q And you also said on direct examination that you worked
- 11 at this construction; is that correct?
- 12 A In Myrtle Beach, yes, ma'am.
- 13 Q Okay. What about in Florence?
- 14 A In Florence I've renovated some houses.
- 15 Q You've renovated some houses, okay. And did you get a
- 16 regular check for those?
- 17 A We were paid, yes, ma'am.
- 18 Q Okay. And did you pay taxes on it?
- 19 A I believe taxes were taken out.
- 20 Q You believe taxes were taken out?
- 21 A Yes, ma'am. Nine out of ten times I would give her the
- 22 check to deposit and I didn't pay any attention to it after
- 23 that.
- 24 Q All right. For some reason I don't think Ms. Namias
- 25 remembers any of that. Now you worked at QVC for a week; is

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1 that correct?

2 A That's right, before I had health problems.

3 Q Okay. And wasn't it around at that time that she got
4 the -- got a second checking account where your name was on
5 it?

6 A I don't know. When she opened it when we bought the
7 house or when she purchased that house that's when the
8 checking account was opened at Williamsburg.

9 Q And wasn't it her that paid for the repairs on the house?

10 A Not all of them.

11 Q What repairs did you pay on the house?

12 A I paid Mr. Mitchell a couple of times for working with me
13 on the house.

14 Q A couple of times?

15 A Out of the pocket, yes.

16 Q Now the electrical work, now she paid for it?

17 A I would imagine so.

18 Q Okay. And the Dell computer for 1200-dollars, she paid
19 for that too as well?

20 A Yes, ma'am.

21 Q And the sleigh bed that you all -- you said that you all
22 had, that came from Jordan, isn't it true that she paid the
23 900-dollars for that as well?

24 A No, ma'am. She got a bed from Jordan and she sent it
25 back to Jordan. The sleigh bed came from Parrott by the

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- 1 way.
- 2 Q Now you also said that on direct examination that the gun
- 3 that you bought —
- 4 A Yes, ma'am.
- 5 Q That you bought it at 2:00 in the morning?
- 6 A That's what time the individual knocked on the door, yes.
- 7 Q And so a person knocks on the door at 2:00 in the morning
- 8 and says he needs to sell this gun and so you go and
- 9 purchase it?
- 10 A No, no. He rang the door bell. I opened the door. He
- 11 had already talked to me about it or said something to me
- 12 vaguely about it, and when he rang the door bell I asked him
- 13 who this was. He said, Bum, and I opened the door for him.
- 14 Q Okay. Now do you recall when you met with Officer Cox
- 15 that you told her that you took the 40-dollars for the gun
- 16 out of Ms. —
- 17 A No, ma'am, I did not.
- 18 Q —Namias' purse?
- 19 A No, ma'am, I did not. She implied that herself. As a
- 20 matter of fact, if she had bought the recorder and recorded
- 21 my voice —
- 22 Q Sir, you just answer my question.
- 23 A No, no.
- 24 Q So you deny that?
- 25 A I deny that.

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1 Q Okay. All right, you also told Officer Cox and Sergeants
2 Compton that on the night of this incident, October 2nd,
3 2008, that you took Ms. Namias' keys, cell phone, and
4 pocketbook.

5 A Where did I take them?

6 Q You took them from her. You would not let her have them.

7 A No, ma'am.

8 Q So you deny you told them that?

9 A I deny I told her that.

10 Q And do you also deny that you told them that you thought
11 she did not need to drive anywhere?

12 A She implied that; I didn't. I said to her if that was
13 the case of the glass of wine -- it wasn't just a glass of
14 wine. We're talking about Xanax and Oxycontin and wine
15 mixed together. She chose to put in the report what she
16 wanted, which was a glass of wine.

17 Q But you deny that she -- you deny you told her that or
18 now you're saying you told her that?

19 A What I said was I don't think you need to drive.

20 Q Okay. But did you tell law enforcement that?

21 A Yes, I did. I said I told her you don't need -- I don't
22 think you need drive.

23 Q So you told law enforcement that you told her that she
24 didn't need to drive, but you deny that you told law
25 enforcement that you took her keys, her cell phone, and her

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1 pocketbook?

2 A That's correct.

3 Q Okay. Now isn't it true that you had knives and the gun?

4 A They were -- to be honest with you, they were her knives.

5 She didn't want Daniel to have those knives so she put them

6 in my nightstand drawer. I don't hunt.

7 Q Okay. So you're saying those are not your knives?

8 A They were not my knives. They were hers originally. She

9 bought them from New Jersey. They belonged to her and she

10 put them in my drawer which was fine with me because she

11 said she didn't want him to have them.

12 Q Now do you deny telling law enforcement that you went

13 crazy with the ax handle?

14 A I -- I've never ever said to law enforcement that I went

15 crazy with --

16 Q All right, Sergeant -- let's be specific. Sergeant

17 Compton and Investigator Cox on that -- on October 10th when

18 they talked with you, are you denying that you told them

19 that you went crazy with the ax handle?

20 A Yes, ma'am, I'm telling you I did not tell them that.

21 Q Do you deny that you broke down and started crying and

22 wanted to know whether you think your relationship was over

23 with her?

24 A That was not the conversation when my tears came into my

25 eyes. It was about Mr. Lockhart at that point.

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1 Q But you do you deny telling them, asking them whether
2 they thought your relationship was over with Ms. —

3 A I deny that too. Emphatically.

4 Q And do you deny telling them that you kept that .38
5 special handgun in the nightstand by your bed with the
6 knives?

7 A Beg your pardon?

8 Q Do you —

9 A Could you say that —

10 Q Do you deny telling Sergeant Compton and Investigator Cox
11 that you kept your .38 caliber special silver handgun in
12 your nightstand along with the knives?

13 A I don't remember but if that where's it was that's where
14 we kept it.

15 Q Now you said that Ms. Namias' daughter lived with you all
16 on Dixie Street.

17 A No, ma'am, I said she visited.

18 Q Okay. Now, and you said on the 29th of September, 2008
19 myou said that you all just had an argument; is that
20 correct?

21 A We had a big argument.

22 Q Okay. And you deny threatening to put her in the ground
23 and killing her?

24 A I do deny that, and if I did say it it was a figure of
25 speech. My mother told me she'd kill me all the time.

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1 Q Okay. So you thought --

2 A 'Cause she said she brought me in the world she'd take me
3 out. It was a figure of speech if it was said.

4 Q So now it's been a figure of speech, okay.

5 A If it was said.

6 Q All right. So she did leave you -- leave that particular
7 day and was gone for some time; is that correct?

8 A I have no idea; I don't remember.

9 Q Okay. Do you recall calling her that day several times
10 on her cell phone, numerous times on her cell phone?

11 A It's possible.

12 Q And trying to keep tabs on her and wanting to know where
13 she was?

14 A I don't know about trying to keep tabs on her; but when
15 you tell me you're going somewhere and you don't show up
16 there, you lie and there's no basis for a relationship when
17 you lie.

18 Q Okay. My question to you is, did you call her numerous
19 times on the September 29th?

20 A Madam Solicitor, on September the 29th I do not remember
21 how many times I called her. If I called her I called her.
22 I don't remember how many times it was.

23 Q Okay. Now on October 2nd --

24 A Yes, ma'am.

25 Q --are you denying that you pushed her down and grabbed

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1 her by the arm?

2 A Yes, ma'am, I'm denying that.

3 Q Okay. And are you also denying that you broke -- pulled
4 the drawer out and threw the drawer at her?

5 A What drawer?

6 Q In your bedroom.

7 A No, ma'am, she was -- had the jewelry box on the bed when
8 I walked in the room.

9 Q Now on direct examination you said that she lied about
10 where she was. At what point did she tell you where she
11 was?

12 A I -- I don't remember that particular incident where she
13 told me -- oh, I believe it was at the chiropractor's
14 office. She said I'm going to the chiropractor's office and
15 she never showed there. And then she said to me, I asked
16 her, I says, where are you. And she says, well, I'm riding
17 around. And this was the same scenario when I met her she
18 told her husband, well, I'm just running around.

19 Q Just answer the question.

20 A I did.

21 Q Now you said -- you said that she told you she went to
22 the Pee Dee Coalition.

23 A Okay. If it's that particular day it was Pee Dee
24 Coalition that she went, but when I got home and we ate
25 dinner she said she was there for five hours. But there was

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1 another day she said, well, I went to the chiropractor's
2 office and she wasn't there 'cause I called her and asked
3 for her.

4 Q Okay. So you were calling and checking up on her?

5 A If that's what you want to call it.

6 Q Okay. Now on October 3rd when she left and came to the
7 police department --

8 A Uh-huh.

9 Q ---you called her numerous times; is that correct?

10 A Again, yes, ma'am.

11 Q And in fact, she was trying to get away from you that
12 morning; is that not correct?

13 A I believe when she left she said she was going to the
14 realtor's office.

15 Q But then you started calling her constantly; is that
16 correct?

17 A When I found out that it was a lie.

18 Q All right. And in fact, you were so furious; is that
19 correct?

20 A I don't remember --

21 Q You were furious --

22 A Okay.

23 Q ---with her. Is that not correct?

24 A I don't remember how furious I was.

25 Q Okay. But you listened to your voice on the audio; is

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1 that correct?

2 A Right. Well, we're talking this morning or after a few
3 drinks in the evening?

4 Q No, you heard your voice when they played it for the jury
5 during testimony a couple of -- yesterday.

6 A Right. And I'm saying are we talking in the morning when
7 she went to the realtor or are we talking after I went to
8 the bar and had a few drinks?

9 Q Sir, I don't know. You tell me when you were furious.

10 A Okay. I was a little furious after I had a few drinks.
11 Yes, I was intoxicated.

12 Q All right. And in fact, it just escalated; is that
13 correct?

14 A What escalated?

15 Q Your anger.

16 A I don't know, did it?

17 Q Sir, you answer the question.

18 A Right. I don't know, ma'am. If you're angry you're
19 angry. I don't know about an escalation of anger.

20 Q All right. But is it fair to say that you were so angry
21 that you made comments that this was going to cost her
22 55,000-dollars?

23 A No, I said the stupidity.

24 Q Her stupidity was going to cost her 55,000-dollars,
25 referring to her house?

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- 1 A Her house? Okay.
- 2 Q Is that not correct?
- 3 A I said okay.
- 4 Q Now in fact, when you started calling at some point you
- 5 started giving figures as to how much damage had been caused
- 6 already to the house; is that not correct?
- 7 A I don't think so.
- 8 Q All right.
- 9 A I said 3,000-dollars I believe at one point, but I don't
- 10 think it was in relation to the house.
- 11 Q Now you talk about the injuries that you sustained. Now
- 12 but you sustained a terrible or serious laceration, is that
- 13 correct, when you tore up the house?
- 14 A No, ma'am. I went in the door, in the back door where
- 15 the glass is broken, and that's where I cut my wrist.
- 16 Q Okay. Now at one point did you -- do you recall in your
- 17 voice message telling her that you would burn the house
- 18 down?
- 19 A No, ma'am.
- 20 Q You just don't recall that?
- 21 A I don't recall that.
- 22 Q Okay. And that was in context with her you said that she
- 23 left the door open?
- 24 A Yes, ma'am.
- 25 Q But you don't recall saying that?

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- 1 A I remember saying that she left the door open.
- 2 Q But you don't recall saying that you would burn it down?
- 3 A If that's what's on the tape then and you heard it,
- 4 that's what I said.
- 5 Q All right. You said that you cut your hand going, you
- 6 know, coming through the door, the glass?
- 7 A Yes, ma'am.
- 8 Q Okay. Now how did the ceiling fan get blood -- blade get
- 9 blood all on it?
- 10 A I believe that is dust. I didn't analyze it.
- 11 Q Okay. So you're saying the blood on the ceiling fan was
- 12 dust and not blood?
- 13 A Which ceiling fan are we talking?
- 14 Q The ceiling fan in the house.
- 15 A Which house -- which part of the house?
- 16 Q In the living room?
- 17 A In the living room. Like I said, it's dust as far as I
- 18 know it looks like to me.
- 19 Q Now how did the ceiling fan start hanging down?
- 20 A Ma'am, I have no idea.
- 21 Q So is it your testimony now that you were so drunk and
- 22 intoxicated you don't know what happened in the house?
- 23 A When I did a walk-through it was a lot of -- it was
- 24 people in there. I don't know what happened. And if the
- 25 ceiling fan is bent down, it's bent down, ma'am.

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1 Q All right. So now are you trying to say all these other
2 people tore the house up?

3 A I'm just saying it was tore up when I walked in the door.

4 Q Now do you deny seeing Ms. Bobbie Jean Montgomery and
5 Ms. Fetishha Montgomery on that day?

6 A I'm glad you asked me that. I don't remember talking to
7 them at all.

8 Q Could that have been because you were so drunk and angry?

9 A No, ma'am. I walked in the middle of the street, and I
10 asked for Vonne and that's all I remember. I don't remember
11 talking to that -- they --

12 Q It appears that this mystery woman Vonne, everything
13 according to your testimony hinges on Ms. Vonne.

14 A Well, that's what I went to ask for. She lives there. I
15 went to ask for her.

16 Q Okay. But you didn't see -- you don't recall seeing
17 Ms. Montgomery.

18 A No, ma'am, at all.

19 Q Now you said that -- that this particular gun you had,
20 you gave it to Julius Smith; is that correct?

21 A I did.

22 Q Okay. But now on the stand you said that you thought
23 Mr. Smith was interested in Ms. Namias.

24 A The comments he made to me, you said they were Hearsay so
25 I couldn't relate --

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1 Q No, I'm just asking you, you said that you thought he was
2 interested in Ms. Namias. Is that yes or no?

3 A Yes.

4 Q Okay. But now this person that you think was interested
5 in your girlfriend, why would you give him your gun?

6 A Because we have, I mean, they -- he knows both of us.
7 We've been out together.

8 Q Okay. But you think he's interested in your girlfriend
9 and so you will give him your stuff?

10 A It's a good place to leave it; don't you think? With --

11 Q I'm asking the questions. Would you please answer the
12 question.

13 A Yes, I said, it's a good place to leave it.

14 Q And so let me understand this right. So your testimony
15 is you don't know how the house got damaged. The only thing
16 you know is that you went in the house and did a
17 walk-through and there were people in the house, but you
18 don't know anything else?

19 A Let me clarify that for you.

20 Q Just answer the question. That's a yes or no.

21 A No.

22 Q So you now know how the house got damaged?

23 A If you would like for me to clarify it for you. Can I?

24 May I?

25 Q You say no to what question?

SW - C. FLOWERS - CROSS

1 A What's the question?

2 Q The question was, that you don't know how the house got
3 destroyed.

4 A I know how the house got destroyed.

5 Q Are you saying others destroyed the house?

6 A Yes, ma'am.

7 Q And you deny telling Ms. Montgomery, Ms. Bobbie Jean
8 Montgomery, and Fetisha Montgomery that if she thinks she's
9 going to sell this MF'er, she's not?

10 A Again, I don't even remember talking to them. I don't
11 remember seeing them.

12 Q Okay. And you don't remember telling the officers that
13 you went crazy with the ax handle?

14 A No, ma'am.

15 MR. FLOYD: Your Honor, that's already asked and
16 answered, that question.

17 THE COURT: What is the objection? Asked and
18 answered?

19 MR. FLOYD: Question's been asked and answered, yes,
20 sir.

21 THE COURT: I overrule that objection. There is some
22 ambivalence so I will allow the solicitor to continue.
23 Proceed.

24 BY MS. PARR:

25 Q And so you deny telling the officer, Sergeant Compton and

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1 Investigator Cox, that you went crazy with the ax handle?

2 A Emphatically yes.

3 Q Okay. And you deny saying that you would burn the house
4 down?

5 A No, I didn't say that. I said if you find it on the tape
6 and it's there I said it.

7 Q I said did you deny saying it?

8 A No.

9 Q That's a yes or no.

10 A That's it.

11 Q And you deny that you tore the house up?

12 A Yes, ma'am.

13 Q And you got -- do you deny taking the computer and
14 Ms. Namias' files and all those things and putting them,
15 taking them in your truck?

16 A That file cabinet was a shared file cabinet, ma'am. I
17 had files in there also. But to answer your question, when
18 I left that morning and the neighbor --

19 Q Go ahead.

20 A After speaking with the neighbor I took the items so that
21 they would not get destroyed. Thank you.

22 Q So you took the computer and her personal files and her
23 medications so they wouldn't get destroyed?

24 A Yes, ma'am, along with my football collection.

25 MS. PARR: Beg the Court's indulgence.

SW - C. FLOWERS - CROSS

1 BY MS. PARR:

2 Q Now Mr. Carmichael.

3 A Yes, ma'am.

4 Q You've been convicted of burglary second; is that
5 correct?

6 A That's correct.

7 Q And served time for that?

8 A Yes, ma'am.

9 Q And in fact, that you had a parole violation and had to
10 go back to jail for that; is that correct?

11 A Yes, ma'am.

12 THE COURT: Just one second, Ms. Solicitor.

13 Madam forelady and members of the jury, under the law
14 a query can be asked in regard to a prior record. That is
15 admissible only on the issue of credibility or believability
16 of the witness. That is not to be considered in regard to
17 guilt or negligence but simply on credibility or
18 believability of the witness. That is how the law allows
19 the admissibility of that evidence.

20 Proceed.

21 MS. PARR: Nothing further for this witness, Your
22 Honor.

23 THE COURT: Redirect.

24 MR. FLOYD: Your Honor, I have no redirect. Thank
25 you.

1 THE COURT: All right, you may step down.

2 Reply for the State?

3 MS. PARR: Yes, Your Honor. May we take a brief
4 break?

5 THE COURT: Yes. You people who spoke on the jury, I
6 will let you be taken to your smoking break and we will all
7 take a break, all right.

8 (WHEREUPON, the jury was removed from the
9 courtroom at 11:00 p.m., and a recess was taken from the
10 proceedings.)

11 (WHEREUPON, the jury was returned to the courtroom at
12 approximately 11:24 a.m., and the following proceedings
13 commenced in open court.)

14 THE COURT: All right, we're ready to proceed.
15 Everyone okay? All right.

16 Yes, sir.

17 MR. FLOYD: Your Honor, Defendant rests.

18 THE COURT: Defense rests. Reply?

19 MS. PARR: Yes, Your Honor. The State would call
20 Officer Lockhart.

21 DEPUTY CLERK OF COURT: If you would, sir, place your
22 left hand on the Bible. Raise your right hand.

23 WHEREUPON,

24 JOHN LOCKHART,
25 having been duly sworn by the Deputy Clerk of Court,

SW - J. LOCKHART - DIRECT

1 testified as follows:

2 **DEPUTY CLERK OF COURT:** Please be seated. State your
3 full name.

4 **THE WITNESS:** My name is Sergeant John Lockhart.

5 **DIRECT EXAMINATION**

6 **BY MS. PARR:**

7 **Q** Sergeant Lockhart, where are you employed?

8 **A** With the Florence Police Department.

9 **Q** And what do you do for the Florence Police Department?

10 **A** I have been assigned as a sergeant over the north region
11 of town which is everything from Cherokee almost to Quinby
12 for the past two year.

13 **Q** Okay. And how long have you been with the Florence
14 Police Department?

15 **A** I've been employed with the Florence Police Department
16 For 16 years.

17 **THE COURT:** All right, Sergeant, you got to speak a
18 little louder, and two, a little slower.

19 **THE WITNESS:** Yes, sir.

20 **BY MS. PARR:**

21 **Q** And what are your duties as a sergeant with the Florence
22 Police Department?

23 **A** My day-to-day duties are to insure that there's a proper
24 amount of man power on the streets to cover calls for
25 service and to respond to calls for service and a whole

SW - J. LOCKHART - DIRECT

1 bunch of paperwork.

2 Q Now have you had any special training for your job?

3 A Yes, ma'am. I'm currently team leader for the city SWAT
4 team, and I have to apologize for my dress today. I was
5 teaching a class today. I was called from that. I was
6 narcotics agent for six years and another six years canine.

7 Q Okay. And are you a certified law enforcement officer?

8 A I am.

9 Q And where did you get your certification?

10 A From the South Carolina Criminal Justice Academy.

11 Q Okay. Now have you -- were you brought into this case
12 against the defendant Carmichael Flowers? Somewhat?

13 A Somewhat. I was a party to it but I was never in the
14 investigation aspect of this case.

15 Q All right. Would you please tell us how you were brought
16 into this matter.

17 A It starts before this case ever came about. I met
18 Mr. Flowers months, months before this event ever happened.
19 I'm a huge red skins fan; he's a huge red skins fan. He
20 had -- he had a yard sale one morning and I went over and
21 just stopped to speak to him. I collect old wooden fishing
22 oars and he does a bunch of buying and selling from like
23 auction houses and such, and I asked him if he ever came
24 cross it to give me a call and I gave him my card. Since
25 then we talked on different occasions about, you know, just

SW - J. LOCKHART - DIRECT

1 life issues, nothing to deal with law enforcement until
2 about a week prior to, maybe a little bit longer than a
3 week. Prior to this incident he called me, asked me for
4 information to get in contact with another faction of the
5 police department.

6 Q Okay. And then on October 3rd, 2008, did you have
7 occasion to receive a phone call?

8 A Yes, ma'am. I was at my wife's West Florence High School
9 reunion and Mr. Flowers called me. And at first I didn't
10 even know who it was calling me because he was very
11 distraught, screaming into the phone, and I had to ask him
12 several times to slow down and speak to me 'cause I
13 couldn't -- I couldn't understand a word he said. And he
14 finally said, this is red skin and I understood who it was
15 then. And he said, very distraught, if you were a friend
16 you'd come and see me, you'd come and help me, and I'm
17 bleeding. Well, I was in no position to come at that point.
18 I was actually scheduled to work that day but I took the day
19 off. And I so I had sent -- I called my corporal, the
20 person that's under me, and some fashion my corporal and
21 Officer Cox got together and went over there and checked on
22 him.

23 Q And did you have any other?

24 A Not until the next morning. The next morning I did work
25 and I heard over the radio that the officers were gonna go

SW - J. LOCKHART - DIRECT

1 over there and escort Ms. Namias to pick up her belongings.
2 I went over there and met with those officers. We went
3 through the house and it was just a disaster. The house was
4 in array I've never seen a house before. It was totally
5 torn to pieces. And at the bedside in the master bedroom
6 was a .22-caliber rifle, a bolt action rifle. In the
7 conversation, it was a very short conversation, somebody
8 made mention that he was -- that Mr. Flowers was possibly a
9 convicted felon. And with my working in narcotics I did a
10 lot stuff with DEA and alcohol, tobacco, and firearms. And
11 if he was, in fact, a convicted felon he did not need to
12 have that, to have that weapon in the house.

13 Once I saw the destruction to the house and his -- the
14 way he was acting the night before on the phone, I decided
15 it was better for me to go outside and make sure that he
16 didn't arrive while officers were in the house. It would
17 have put them at a bad disadvantage, and I was waiting in
18 the yard while they took care of the business with
19 Ms. Namias.

20 Q And then what happened?

21 A Shortly after that Ms. Flowers called me again, and asked
22 if there was a warrant for his arrest and at that time there
23 was not. I told him such. And he asked, why are the police
24 in my yard. And I said, the police aren't in your yard, I'm
25 in your yard. And he says, well, if I come there am I gonna

SW - J. LOCKHART - DIRECT

- 1 be locked up and the answer was yes 'cause she -- I'm
2 sorry -- Officer Cox was going to get the arrest warrant and
3 with his actions he needed to be arrested at that time. And
4 I had told him at that time, I said, look, we went through
5 your house and there was a rifle in your house and by ATF
6 law, by federal law, he need not have a weapon whether it
7 be -- Ms. Namias told me it was her rifle. Whether it's
8 Ms. Namias or not he did not need to have a weapon in that
9 house. That's a violation of ATF law. And that was the end
10 of the conversation.
- 11 Q All right. And you told him that?
- 12 A Yes, ma'am.
- 13 Q Did you ever tell him to get rid of any guns or anything
14 like that?
- 15 A No, ma'am. My statement to him was he ought not to have
16 a gun. He ought not to have a weapon.
- 17 Q Okay, all right. And did you know he had a .38?
- 18 A I found out later, and this was not even in the
19 investigation, that a weapon was found or a handgun was
20 found in his vehicle but I didn't know there was any other
21 gun involved other than that .22-caliber rifle that I saw in
22 the house.
- 23 Q Would you please answer any questions Mr. Floyd may have
24 for you.
- 25 A Yes, ma'am.

1 MR. FLOYD: Your Honor, I don't have any questions for
2 Officer Lockhart.

3 THE COURT: All right. Thank you, sir.

4 THE WITNESS: Thank you, sir.

5 THE COURT: Okay. Next witness please.

6 MS. PARR: The State has no further witnesses and will
7 rest.

8 THE COURT: The State rests. All right. Lawyers, I'm
9 contemplating taking an early lunch here because we
10 obviously have some matters of law and then we will have the
11 presentation by you to the jury.

12 Jurors, we'll stop here for lunch. I'll take up these
13 matters of law, and when you come back the lawyers are going
14 to discuss the matter with you. It's called summation of
15 counsel. They will discuss that with you. And I will then
16 give you the case for decision in regard to these pending
17 charges. Have a nice lunch. We'll start back at 1, at
18 1:00, 1:00. Catch them the elevator please.

19 (WHEREUPON, the jury was removed from the
20 courtroom at 11:31 a.m., and the following proceedings
21 commenced in open court.)

22 THE COURT: Motions by the defendant please.

23 MR. FLOYD: Your Honor, at this time I would just
24 renew all my motions for directed verdict that I previously
25 made in the case on the same grounds that I've previously

1 stated, Your Honor.

2 **THE COURT:** The motion in regard to the directed
3 verdict is restated for the record on the same grounds, and
4 the Court makes the same identical ruling in regard to
5 denial of the motion for directed verdict.

6 **MR. FLOYD:** Thank you, Your Honor.

7 **THE COURT:** All right, lawyers, give me your
8 attention. I want to go over with you the pending charges
9 and my charge to the jury. Obviously we have the offense of
10 kidnapping. I will submit that to the jury in reference to
11 a verdict form which simply reads: One, not guilty; or two,
12 guilty of kidnapping. I will use the charge out of the
13 Anderson charge book that I have written myself, and it will
14 begin on Page 58 in my charge book and will include the
15 language and verbiage in the charge part on 59. Does
16 everyone understand that?

17 **MS. PARR:** Yeah.

18 **MR. FLOYD:** Yes, Your Honor.

19 **THE COURT:** I then will go to the criminal domestic
20 violence charge and that is posited in regard to 16-25-65,
21 which is the criminal domestic violence of a high and
22 aggravated nature. I am contemplating and cogitating in
23 regard to the lesser included offense of criminal domestic
24 violence. What does the State say in that regard?

25 **MS. PARR:** Your Honor, may I have one minute please.

1 **THE COURT:** Sure, sure.

2 **MS. PARR:** Your Honor, we would ask that the lesser
3 included not be charged because of the weapon.

4 **THE COURT:** All right. What says Defense?

5 **MR. FLOYD:** Your Honor, I think the charge on lesser
6 included offense is certainly appropriate. I mean, we have
7 different versions about whether there was a weapon
8 displayed or not. The -- given the severity of the bruising
9 shown in the photographs we have, I think certainly
10 depending on what the jury believes they can find just a CDV
11 exists.

12 **THE COURT:** Yes.

13 **MS. PARR:** Your Honor, I think what we have from the
14 testimony, as I recall the defendant denies that any
15 criminal domestic violence ever took place at all; that
16 there was not even a violence, and so the only testimony and
17 evidence we have is that it was high and aggravated given
18 the nature with the weapon involved in this matter and the
19 threat. And so the State would ask that lesser included
20 offense not be included.

21 **THE COURT:** What about that, Mr. Floyd?

22 **MR. FLOYD:** Your Honor, certainly they can believe
23 part of the testimony; they can believe all of it. They can
24 believe that he grabbed her by the arms and not that he
25 displayed weapons, if they just take what she said. If so,

1 certainly that could be just criminal domestic violence.
2 And they don't have to accept her testimony in totality as
3 far as I know.

4 THE COURT: It's a fairly close legal issue in regard
5 to the lesser included offense; but in regard to the jury's
6 role to decide the facts, I am compelled to submit the
7 lesser charge so I will submit the lesser charge on a
8 verdict form which will read: Not guilty, one; number two,
9 guilty of criminal domestic violence high and aggravated
10 nature; or three, guilty of criminal domestic violence. All
11 right, I will submit that in that form and format.

12 We then go to the charge of malicious injury to the
13 house. And I will submit that on this verdict form. The
14 verdict form will read: One, not guilty; or two, guilty of
15 malicious injury to real property in the amount of. And I
16 will require the jury to find an amount. I need that amount
17 because if he is found guilty I need that amount for
18 sentencing purposes. Everybody understand that?

19 MS. PARR: Yes, Your Honor.

20 MR. FLOYD: Yes, Your Honor.

21 THE COURT: In regard to the pending charge of
22 malicious injury to personal property I will use the verdict
23 form: One, not guilty; two, guilty of malicious injury to
24 personal property in the amount of. And once again, I will
25 require the jury to find an amount because of the need of

1 that in regard to sentencing. Everybody understand that?

2 MR. FLOYD: Yes, Your Honor.

3 MS. PARR: Yes, Your Honor.

4 THE COURT: All right. Insofar as the charge to the
5 jury, I'll come up the line in regard to malicious injury to
6 personal property. And in a case entitled State versus
7 Bryant and it deals with that particular charge. And the
8 language in State versus Bryant is efficacious. I am
9 mandated to use that language in terms of this particular
10 offense. The language, quote: The elements of malicious
11 mischief are willful, unlawful, and malicious damage to the
12 property of another. Section 16-11-510. Willful, unlawful,
13 and malicious are not synonyms and each element must be
14 established. Willful and intentional are synonymous. So
15 willful and intentional are synonymous. Willful, unlawful,
16 and malicious are not synonymous. That's the holding in
17 State versus Bryant. And believe or not they reversed a
18 circuit judge. Was not Anderson, was not Anderson.

19 In regard to malicious injury to the house I will read
20 the statute 16-11-520 and I then will use these cases in
21 regard to the issue of malice. In State versus Lewellen a
22 circuit judge, once again, not Anderson, committed an error
23 in charging the jury in reference to that particular
24 statute. In State versus Lewellen the state Supreme Court
25 said: In a trial on charge of malicious injury to real

1 property the trial judge errs in charging jury that malice
2 may be implied from unlawful act willfully done until
3 contrary is proved since such charge may have the affect of
4 shifting burden of proof to person on trial. So
5 concomitantly I will not charge the implied malice language
6 which was found to be erroneous in State versus Lewellen.
7 In State versus Tony the Court held that the terms unlawful,
8 willful, and malicious are not synonymous and were not
9 intended to express the same idea. They have each a
10 different signification and import different degrees of
11 guilt. That is also the language in State versus Weeks. I
12 will use the language from State versus Weeks as follows:
13 The word maliciously as used in this section should be
14 construed with a view to the popular conception of its
15 meaning; that is, that the injuring of the real property of
16 another has to be done from an innate or sheer meanness
17 growing out of a heart fatally bent on mischief and the act
18 must denote a depraved and wicked spirit that is intent of
19 the doer that someone suffer an unnecessary injury to her
20 property. All right, that's where we are in regard to that
21 charge.

22 I will give the basic charge in regard to this case in
23 reference to the defendant being presumed to be innocent.
24 The State has the burden of proving the defendant guilty
25 beyond a reasonable doubt. The reasonable doubt definition

1 will be the State versus Manning charge, M-A-N-N-I-N-G. And
2 the State versus Manning charge is, quote: "A reasonable
3 doubt is the kind of doubt that would cause a reasonable
4 person to hesitate to act." That's the charge out of State
5 versus Manning. That will be given to the trial jury. I
6 then will charge the jury on the role of the jury in regard
7 to a determination of the facts, i.e., the credibility or
8 believability of witnesses. That will be given in totality.
9 I will then go to a charge on circumstantial evidence and
10 the circumstantial evidence charge emanating from State
11 versus Grippon, 327 S.C. 79, 489 S.C. 2d 462, and that is
12 the basic law in South Carolina on circumstantial evidence.

13 I will give a charge on expert witnesses because we
14 did have a DNA expert in the case, and I then will give a
15 charge in regard to a statement emanating from the
16 defendant. I must charge the jury in that regard and the
17 burden of proof is upon the State to prove the statement
18 beyond a reasonable doubt. I think that completes the
19 summary. Unless you lawyers have questions, that will be
20 our modus operandi. Any questions from the State?

21 MS. PARR: State doesn't have any, Your Honor.

22 THE COURT: Defense?

23 MR. FLOYD: None, Your Honor.

24 THE COURT: All right. When we come back at 1:00 the
25 presentation of the jury will be done. As I understand your

1 general procedure, Ms. Solicitor, you like to make the
2 opening statement and the closing statement; is that right?

3 MS. PARR: That is correct.

4 THE COURT: And you have that right under the law.
5 Okay?

6 MR. FLOYD: Yes, Your Honor.

7 THE COURT: Everybody have a nice lunch. 1:00 is the
8 time.

9 (WHEREUPON, a lunch break was taken and court resumed at
10 1:00 p.m.)

11 THE COURT: Jurors, give me your attention. Madam
12 Forelady, give me your special attention because you must
13 sign the jury verdict on behalf of this jury. Four pending
14 counts in the indictment. You must reach a separate and
15 distinct verdict on each charge. Separate and distinct. It
16 must be unanimous on each charge. Madam Forelady, do not
17 sign the verdict form on any charge unless the verdict on
18 that count is unanimous. You will separately and distinctly
19 consider these charges. Now first you have the pending
20 charge of kidnapping. I've got the verdict form here and
21 then I have two possibilities. The order of presentation
22 has no significance. One says not guilty. If the jury
23 unanimously, all jurors agreeing, all jurors concurring,
24 finds the defendant not guilty sign number one. A not
25 guilty verdict must be unanimous. Number two, guilty of

1 kidnapping. A verdict of guilty must be unanimous. And if
2 the jury unanimously concludes that the defendant is guilty
3 of kidnapping, sign number two and hopefully dated today.

4 Number two is a pending charge of criminal domestic
5 violence of a high and aggravated nature. Listen carefully.
6 Under a recognized principle of law in this state this
7 particular charge also covers and carries a lesser charge, a
8 lesser charge. So on this particular charge in regard to
9 this case you will have three possibilities, three. One is
10 not guilty. If the jury unanimously, all jurors concurring,
11 finds the defendant not guilty of criminal domestic violence
12 then sign number one. Or number two, guilty of criminal
13 domestic violence of a high and aggravated nature. If the
14 jury unanimously finds the defendant guilty of this charge,
15 that is, criminal domestic violence of a high and aggravated
16 nature, then sign number two. And number three is guilty of
17 criminal domestic violence. That's a lesser charge. That's
18 a lesser charge in the indictment. That's a lesser charge
19 that you will consider. And I will explain to you in detail
20 the difference between the two charges; but once again,
21 that's a lesser included charge.

22 Then we go to a charge of malicious injury to real
23 property. And in that regard, I have a special verdict form
24 and I have the unusual mandate that you make a mathematical
25 computation. One is not guilty. If you unanimously find

1 the defendant not guilty of malicious injury to real
2 property, then sign number one provided that it's unanimous.
3 Or number two, guilty of malicious injury to real property
4 in the amount of. Then I've got a blank, Madam Forelady.
5 And the jury must find the amount and write it in. And then
6 of course sign it if the jury unanimously concludes the
7 defendant is guilty. I need the verdict form filled in by
8 the amount, by the amount.

9 In regard to the pending charge of malicious injury to
10 personal property, I have the verdict form. One is not
11 guilty. The jury finds the defendant not guilty
12 unanimously, sign that. Or number two, guilty of malicious
13 injury to personal property in the amount of, you got to
14 fill in the amount. You got to fill in the amount and then
15 sign the verdict form.

16 Thank you for listening. Thank you for paying close
17 attention. I am very, very pleased with the attention
18 you've paid to the testimony. We now will let the lawyers
19 present the matter to you and I will follow that with a
20 detailed charge on the law. Thank you very much.

21 Ms. Solicitor, you're recognized.

22 MS. PARR: Thank you, Your Honor, Mr. Floyd. Members
23 of the jury, at this time I am going to do what they call
24 opening, open on the law so what I will do is tell you what
25 I think the law is in this particular case. And after I

1 finish opening on the law then defense counsel will come
2 before you, and I then will come back before you one last
3 time. But I will tell you that at the close of this case as
4 Your Honor has told you, he will -- he will charge the law
5 in this particular case so if something I say does not come
6 out quite the way the judge says it, you're bound by what
7 the judge says but I'm not trying to intentionally mislead
8 you.

9 What I'd like to do, there's a lot of charges that the
10 judge will give you and I'm not going to go through all of
11 those because it's no need for you to listen to them twice.
12 But I'd like to hit on what I think the substantive law is
13 in this particular case. And as the judge told you, the
14 defendant is charged, indicted on four charges. The first
15 charge is kidnapping, and kidnapping in South Carolina is
16 that the State must prove beyond a reasonable doubt that the
17 defendant did unlawfully seize, confine, decoy, kidnap,
18 abduct, or carry away any person. Doesn't have to do all of
19 those things but one of them. And in this particular case
20 we believe the defendant confined Ms. McNamias (sic). And
21 as I said before, the State has to prove that beyond a
22 reasonable doubt. And as part of that charge -- part of the
23 law it says that when a defendant, that it's unlawful for a
24 defendant to do one of those things, it also says by any
25 means whatsoever without the authority of the law. And so

1 it doesn't mean he has to bind a person up or anything of
2 that nature, but if he unlawfully seizes or confines a
3 person by any means whatsoever without having the benefit of
4 the law.

5 The judge will also tell you about or charge you on
6 criminal domestic violence of a high and aggravated nature.
7 Now criminal domestic violence of a high and aggravated
8 nature takes into account criminal domestic violence.
9 Criminal domestic violence is unlawful if a defendant caused
10 physical harm or injury to a member of the defendant's own
11 household or that the defendant offered or attempted to
12 cause physical harm or injury to a member of the defendant's
13 household with the apparent present ability to cause harm or
14 injury under circumstances reasonably creating a fear of
15 imminent danger.

16 Criminal domestic violence of a high and aggravated
17 nature takes into account what I've just told you, but it
18 also requires that it can be an assault and battery which
19 involves the use of a deadly weapon or results in serious
20 bodily injury to a victim or an assault with or without a
21 battery which would reasonably cause a person to fear
22 imminent serious bodily injury or death, serious bodily
23 injury or death. And a household member means a spouse, a
24 former spouse, a person who has a child in common or a male
25 and female who are cohabitating or formerly have

1 cohabitated. So someone who male and female living
2 together.

3 We also have the law in this case regarding malicious
4 injury to personal property. Now the statute actually says
5 malicious injury, or titled malicious injury to animal of a
6 personal property. You know, here we're not talking about
7 an animal. But the law is in South Carolina under 16-11-510
8 is, it is unlawful for a person to willfully and maliciously
9 cut, shoot, maim, wound, or otherwise injure or destroy any
10 horse, mule, cattle, hog, sheep, goat, or any other kind
11 class article or description of personal property or the
12 goods and chattels of another.

13 And lastly, the defendant is also charged with
14 malicious injury to real property. The -- in this case the
15 State must prove beyond a reasonable doubt that the
16 defendant willfully and maliciously cut, mutilated, defaced
17 or otherwise injured, a tree, house, outside fence, or a
18 fixture of another person or committed any other trespass on
19 the real property of another person. The judge will go into
20 details what willfully means and as well as intentionally.
21 Now the malicious injury to personal property and malicious
22 injury to real property have different dollar amounts as the
23 judge has indicated to you. In this particular case the
24 defendant is charged with malicious injury to personal
25 property greater than five thousand dollars. And the State

1 must prove that the amount of damage to the personal
2 property in this matter was in excess of five thousand
3 dollars. He is also charged with malicious injury to real
4 property greater than five thousand dollars. And the State
5 likewise must prove that to you beyond a reasonable doubt as
6 well.

7 Now in addition to charging the substantive law in
8 this case, the Judge will charge you that the State carries
9 the burden of proof, and that's beyond a reasonable doubt
10 and I mentioned that to you when I was telling you about
11 what the State has to prove. A reasonable doubt has been
12 defined as a doubt in which a reasonable -- will cause a
13 reasonable person to hesitate to act. The judge will also
14 charge you about it's your duty as fact finders to consider
15 the -- all the evidence that's presented. You are the
16 judge -- you are the judge of the credibility and the
17 believability of the witnesses. He will also charge you on
18 certain evidence and things of that nature. We would ask
19 that you listen to all the facts that have been presented to
20 you the last couple of days, and we would ask that you apply
21 it to the law that Your Honor will give you at the close of
22 this case. And after Mr. Floyd comes before you I will come
23 back before you to sum up what I think the evidence has
24 shown.

25 THE COURT: Mr. Floyd, you're recognized.

1 MR. FLOYD: Thank you, Your Honor. May it please the
2 Court.

3 THE COURT: Yes, sir.

4 MR. FLOYD: Ms. Parr. Good afternoon, ladies and
5 gentlemen. As the Solicitor just told you it's your job in
6 this case to be fact finders. You have to decide what
7 happened. Then you have to take those facts and apply them
8 to the law and of course the Court is going to give you that
9 law and then you apply the facts to it. Of course, in order
10 to to find the facts we have to evaluate what we've heard
11 here and evaluate the evidence that you've heard and seen.
12 So I want to go over and recap some of that. This is my
13 only opportunity to stand here. I don't get but one visit,
14 not another, so I'm gonna talk about the facts that you've
15 heard as well as the law this time, okay?

16 Of course, you know, we heard from Ms. Janel Namias.
17 She testified first. And she testified at length about
18 incidences she said occurred on September 29th and October
19 the 2nd in her household wherein she, you know, alleged that
20 there were guns displayed, knives displayed, threats to kill
21 or put you in the ground, things like of that nature,
22 remarks made along those lines. Of course she also
23 testified about the damage that she saw to the house after
24 she got back if you'll recall, although she was not partic--
25 certainly not a witness to any of that on that aftermath.

1 One thing that I found, you know, somewhat interesting was
2 during the time that she said the threats were being made,
3 that guns were displayed and knives were displayed and laid
4 out on a bed and then basically left in the room with her
5 alone, that Mr. Flowers actually exited the room and
6 presumably left a loaded gun and various knives in the room
7 with her. Of course Officers Compton and Officer Cox
8 testified that they had spoken with Mr. Flowers on at least
9 one occasion in Effingham. They said he made certain
10 statements to them concerning whether or not he ever had a
11 gun in his possession, whether or not he prohibited
12 Ms. Namias from leaving the house. And of course there's
13 some dispute between what they said and what Mr. Flowers
14 says he told them. There's no question about that. But of
15 course, you know, the burden is on the State to prove their
16 case beyond a reasonable doubt. And you know,
17 unfortunately, Officers Compton and Officer Cox were in the
18 room, they had a recorder with them. I think Officer Cox
19 testified that all that had to be done was to hit a button
20 and turn it on. He agreed to talk to them. He signed
21 waiver forms. He signed on two different occasions. He had
22 a Miranda card read to him which he certainly said that he
23 did. He didn't deny that. But of course, we can't be sure
24 what was said in that room because the recorder was not
25 turned on. It seems that when you're making a case to prove

1 beyond a reasonable doubt, if you're going to use a
2 statement of someone against them, that you would certainly
3 turn a recorder on if it's available. I don't think that
4 there's any question that that recorder was certainly
5 available and could have been turned on in that room, and
6 then of course, we would know for sure what was said. We
7 wouldn't be left here today to speculate.

8 The State presented evidence that there was a weapon
9 retrieved from the truck that Mr. Flowers was at one point
10 driving. Once again, you know, it's the State's job and
11 their duty, and they know this, to prove the case beyond a
12 reasonable doubt. They had the truck in their possession.
13 The moment that Mr. Flowers was arrested was in their
14 possession and their control. Officer said she didn't have
15 time to inventory the whole truck at the time which is
16 certainly understandable. She was trying to do other
17 things. And however, you know, she also testified certainly
18 would have been possible to have that truck taken to a
19 secure location, locked down, and inventoried later. You
20 know, obviously that was not done either. In fact, the
21 truck was taken to a private — by a private tow company to
22 somewhere over in Darlington or Darlington county where it
23 was then released to the alleged victim in this case without
24 a proper inventory. The testimony was that I believe that
25 after the truck was released Officer Cox received a call one

1 day, what do I do if I find the gun. And the next day she
2 gets another call, I found the gun. You know, we'll never
3 know for certain and we certainly could have known what was
4 inside the truck at the moment of Mr. Flowers' arrest.
5 Could have known what he said, those rooms, could have known
6 what was inside that truck, but we don't know. And the
7 reason we don't know is because the State did not -- did not
8 make a record that they could have made. And now we're left
9 with questions about what was in the truck, who said what to
10 who, and I would submit to you that's not proved beyond a
11 reasonable doubt.

12 I would like to talk about the kidnapping charge in
13 particular which Ms. Parr read to you her definition of
14 kidnapping. Of course the Court will later on give you its
15 definition of kidnapping, and of course that's the one you
16 have to listen to although it may be the same. But
17 basically what it comes down to is the State saying there
18 was an unlawful confinement without authority of the law on
19 Mr. Flowers' part. If I heard her correctly I think that's
20 what she said. You know, based on the facts that we were
21 presented I believe according to the witness' own testimony
22 if you choose to believe that, she said he said you can't go
23 anywhere. And then some moments later he lays out a gun and
24 knives and then exits the room. That's a very odd way to
25 confine somebody. That's a very odd way to kidnap somebody.

1 To leave a loaded weapon if that's your intent if that's
2 your frame of mind to keep them from going somewhere. Is
3 that confinement? To me, I think it takes more than words
4 to confine someone. And the display of a weapon in and of
5 itself, if you believe what she said -- I don't recall her
6 ever saying he pointed it at her, or anything of that
7 nature. And of course that's disputed by Mr. Flowers. He
8 certainly denied to you on the stand that he ever displayed
9 a weapon at all. That certainly under the law there has to
10 be one of the elements that the Solicitor pointed out to
11 you. Seizing, confining, inveigling, decoying I believe
12 were the words used. Of course, the judge will say all
13 those words to you. He'll explain that charge with you.
14 Under no stretch of imagination have I ever heard of anyone
15 kidnapping by leaving a loaded gun with the attendant
16 victim. It doesn't make sense, it just doesn't ring true.

17 Of course, you're going to hear the charge on criminal
18 domestic violence high and aggravated nature. And
19 specifically I think the statute says that CDV high and
20 aggravated nature occurs if there is an assault and battery
21 which involves the use of a deadly weapon or results in
22 serious bodily injury to the victim. Or it can be an
23 assault with or without an accompanying battery which would
24 reasonably cause a person to fear imminent serious bodily
25 injury or death. And of course, one of the requirements

1 that she also says it has to be a household member. In
2 reviewing the case or the evidence that we've presented I
3 certainly don't think there's been any proof of a serious
4 bodily injury here. If you look at the photographs which
5 were put in the State's exhibit pile, of course you have
6 photographs of the alleged victim's arm. These are them.
7 And according to the testimony I heard that's the only
8 injury that she alleged.

9 Of course Mr. Flowers had a different story. He said
10 that they both grabbed one another. They both argued, and
11 he did have a bruise. There's no question. I think the
12 officers admitted he had a bruise, but they once again, they
13 decided that it wasn't the type of bruise that they thought
14 could come about from that so they didn't take pictures.
15 And of course, you know, we could have decided, or you could
16 have decided I should say, if you had seen those bruises
17 what caused them. But of course we'll never have that
18 opportunity.

19 One of the things that the judge will charge you on is
20 the lesser included offense of not CDV high and aggravated
21 nature but just simply criminal domestic violence. And
22 you'll hear those elements to that particular crime.

23 And in reviewing the case we certainly would -- I
24 certainly would be remiss if I did not address those voice
25 mail messages that you heard on this audio, their CD/DVD. I

1 mean, we all heard them. And certainly was there anger
2 displayed on those voice mail messages? Sure, there were.
3 I'm not denying that. Mr. Flowers didn't deny that. He
4 said he was upset and an angry when he made those calls.
5 Were there lots of them? Yes, there were. There were lots
6 of them. But if you actually listen to them I don't think
7 that you're gonna hear him make a specific threat to her
8 person. Now he did in fact make a reference to her property
9 on that recording; he did. But out of all those -- I think
10 there were 25 messages left on there. And he was obviously
11 extremely upset when he was leaving those messages, but not
12 one time if you listen when you hear him say, you know,
13 anything close to what was alleged he said to her in the
14 house on the 29th or the 2nd. He didn't say anything like
15 that. If that was certainly would be a point where he was
16 prone to say things like that he would have said it when he
17 was making those calls. But the fact of the matter is he
18 did not. Were they rude? Yes, they were rude. Were
19 they -- you want to call them uncivilized, rude, should he
20 have done it? Absolutely not. He shouldn't have made all
21 those calls, shouldn't have said those things that he said
22 on there. But did he threaten her person at any point on
23 that, on those voice mails? He did not.

24 Now there was some testimony about whether or not he
25 gave a gun to somebody, and he did. And of course the

1 State might try to say the reason he wanted to get rid of
2 that gun is because she says he displayed it to her. Well,
3 actually, I think you heard Officer Lockhart and maybe even
4 some other officers that he had a very good reason for not
5 wanting that gun he found. He already knew the police had
6 been called, and the fact of the matter is he has a felony
7 on his record. Okay? And anyone is, who is a convicted
8 felon, is not supposed to be living in a house with a gun.
9 I mean, that is a fact. Officer Lockhart talked about that
10 earlier and certainly Mr. Flowers had motivation to get rid
11 of that gun other than his fear that it was gonna be used
12 against him for any of these allegations 'cause Officer
13 Lockhart said that is in fact a federal offense. He's not
14 on trial for that here today. And should he have done that?
15 Well, no, he shouldn't have done it but he did, okay. And
16 he's not denying that or attempting to deny it.

17 Insofar as the other property or the property is
18 concerned, the malicious injury to real property, malicious
19 injury to personal property, you know, there was conflicting
20 testimony given on what happened there, who owned what. And
21 of course you're the finders of fact on that and you'll have
22 to make a decision as to how much damage was done or who the
23 property belonged to, and we just ask that when you consider
24 all of evidence in this case that you render a fair verdict
25 and find the defendant not guilty. Thank you very much.

1 **THE COURT:** Ms. Solicitor, you're recognized.

2 **MS. PARR:** Ladies and gentlemen, this case is really
3 about control, the defendant wanting to control at someone
4 else's home that he was being allowed to live there. That's
5 what this is about. This is about control. Even if you
6 observe his demeanor on the witness stand, the control he
7 tried to exhibit in the courtroom along with his arrogance.
8 That's what this is about. I believe that's the type of
9 relationship he's used to having, and it came to a head
10 beginning in September, September 29th of 2008. On that
11 particular day, and it's interesting, everything that the
12 defendant said when he talked about, yeah, they had a
13 disagreement, he belittled her like it was all
14 insignificant. All the incidents that occurred on
15 September 29th as well as October 2nd, that it was minor to
16 him because in his big world, or in his little world however
17 you want to call it, he's in charge of it. He's in control
18 of it. And all these other things are just minor
19 inconveniences, things that just happened. But when he
20 threatened Janel on that particular day he told her don't F
21 with me, I'll put you in the ground. And he likes to use
22 the word don't -- about F'ing with somebody. He not only
23 used it with her on that particular day so we know that's
24 that not a word she made up. Because if you listen on his,
25 on his audio that was played for you, that's the word he

1 used. When Ms. Bobbie Jane Montgomery and Fetisha
2 Montgomery met him on October 3rd over in front of the house
3 that's the same thing. He used the same word he used then.
4 So I submit to you he said it on those times where you had
5 independent witnesses, and he said just like he said it on
6 the audio tape. We submit to you on September 29th he said
7 it to Ms. Namias at that time. He threatened to kill her.
8 And it upset her so much so that she went to the Pee Dee
9 Coalition against domestic abuse and sexual assault the next
10 day. Now why did she go? She went to find out her options,
11 what could she do for her own safety. The advocate Ana met
12 with her and told you, she made notes of what happened on
13 that particular date when they met with her. She was so
14 concerned about the victim that she called the county
15 domestic violence investigator Jamie Cooper to assist, as
16 well as an officer from the Florence Police Department. And
17 the officer from the Florence Police Department happened to
18 be the same officer that would respond back in three more
19 days. They all said on that particular day when she came on
20 the 29th that she was upset, that she was very visibly
21 upset, and appeared to be afraid. And she became even more
22 afraid when they said they would have to go and talk with
23 him because she didn't know what she -- what he would do if
24 he knew that she had reported him. And from what we all
25 know now she had good reason to be afraid.

1 Now if he did what he did to a house, totally
2 demolishing it, I don't care how they want to get around it,
3 it is what it is. Now he did that to a house, a piece of
4 stuff what I call, stuff that you can't take with you when
5 you die. What would he have done to her had he found out at
6 that time that she had gone and that had she talked with a
7 police officer. She had good — she had good reasons to
8 fear him. She was so afraid she told them, no, I don't want
9 to do anything right now. So what did she do? She went
10 back. A couple of days later does it, you know, does it go
11 back to, oh, everything is lovey dovey? No, it doesn't. It
12 starts again. And the interesting thing is she talks about
13 his paranoia, how it was him who thought somebody was coming
14 in the house, how he constantly vacuumed the floor looking
15 for footprints. And he on the stand says, oh you know, it
16 was her jealousy and he was tired of her jealousy. But
17 let's look at the fact who was jealous. When she was at the
18 Pee Dee Coalition on September 29th he called her multiple
19 times; multiple times, trying to find out where she was.
20 And even on the stand he said, well she lied. He called the
21 chiropractor office to check up on her and she wasn't there,
22 okay. I submit to you, if someone is not jealous and not
23 checking up on they wouldn't do that, but he did. And it
24 goes back to — and it's just not — like I said, it's not
25 just him, the carpet. But the fact from his own admission

1 he called looking for her to see where she was. Then the
2 next day he said that she was gone too long. Jealousy,
3 control.

4 But going back to the night of October 2nd, 2008. He
5 went out she said and he came back home and said stuff was
6 out of place. The carpet, footprints in the carpet. Well,
7 you know, I don't know, maybe I'm getting old, but you know,
8 I don't know what's on the floor if I'm not tripping over
9 it. But he is so consumed with control and jealousy that
10 he's gonna vacuum the floor constantly so he can check for
11 footprints. That goes back to control and jealousy. And
12 when things look like they're out of place that's when the
13 argument started on October 2nd. And when she tried to tell
14 him nothing was going on, then he went berserk. It was at
15 that time he grabbed her, pushed her down, and then threw
16 the drawer and that's how she got the bruises on her bicep
17 on both arms there. And that he hit the lamp, broke the
18 lamp, and then in fact told her to clean it up and to put
19 the stuff up. Now she did say that he decided to go get a
20 vacuum cleaner and help her clean up. But then what did he
21 do? Back to control. He told her to go to bed; she
22 couldn't go anywhere. He took her keys, her pocketbook, and
23 her cell phone. Now the defense counsel says, well you
24 know, this is not kidnapping. And I told beginning of this
25 case it's not the kidnapping that we all hear about on

1 television how people are bound up and things of that nature
2 and taken away. But the kidnapping we have here is being
3 confined in her own home, a house that she pays the bills
4 for. She makes the mortgage payment, and he's gonna take
5 not only her keys, her cell phone, and her pocketbook, and
6 tell her she can't go anywhere? If that's not confinement
7 what is? He takes the keys so she has no means of going.
8 Take her pocketbook which contains her money, driver's
9 license, important paper. Can't go anywhere. Takes her
10 phone. Why? To cut her off from other people. And what
11 does that do? That goes back to control. He's gonna be in
12 control, and he's gonna tell her what she can do and what
13 she can't do, where she can go. She even had to ask him if
14 she could go to the bathroom. Now if that's not control I
15 don't know what is.

16 Now I know defense counsel said, well, because he --
17 because he had the knives and the gun and it was laying on
18 the bed by her and he walked out of the room, he was walking
19 back and forth different places, that if that was the case
20 that it didn't make sense to him. But it makes perfect
21 sense. He's in control. And he used those things as means
22 of intimidation, and that's exactly what Sam, Samantha
23 Baumbauch, told us about domestic violence. It's a control
24 factor. And he fit the mold perfectly and that's what he
25 did on that particular evening. She couldn't go anywhere

1 that night. And finally, the next morning when he knew she
2 was supposed to meet with a realtor she was able to use that
3 excuse to go out. And what did she do? She went straight
4 to the Police Department 'cause that was the first time that
5 she could go there.

6 Now we talk about criminal domestic violence of a high
7 and aggravated nature. I believe Judge Anderson will tell
8 you about the belief that serious bodily injury or death or
9 eminent death, that means those things she believed in her
10 mind that due to what she was encountering and his behavior
11 and the fact of those weapons, that's what she was
12 encountering. And the fact that he told her unequivocally
13 that he would put her in the ground. I don't know what can
14 be more concrete than that. You have what he's done, you
15 have what he said, and then you see these weapons. And then
16 when she comes up here to report it what does he do? He
17 text messages her constantly, and then he called her and
18 left all these messages. Now I know defense counsel wanted
19 to skirt on and said, well, you know, he shouldn't have done
20 that and he knows he shouldn't have done and that he was not
21 very nice when he, you know, when he did it and was like,
22 oh, he needs to just get a slap on the wrist. But if you
23 listen to it it's still that element of control, trying to
24 keep up with her, telling her what he's gonna do if she
25 doesn't do what he want him -- want her to do. And she

1 didn't. And what did he do? He destroyed her whole house
2 because he knew that meant something to her. And if you
3 recall what Ms. Samantha Baumbauch said, she said destroying
4 the spouse's or the partner's stuff. And that's what he
5 did. And in one of the voice messages he even talked about
6 the dog, the innocent dog. He said, well, I guess I'm going
7 to take the dog to the pound. That was another way of
8 trying to intimidate her by threatening to do something to
9 the dog, her dog. And when she would not do what he said,
10 he just got more and more furious. And if you look at that
11 it goes all back to what she said. She had reasons to be
12 afraid of him from his actions.

13 He was so furious that Ms. Montgomery and her daughter
14 Fetisha Montgomery wondered what was wrong with him. And
15 what did he say? If she thinks she's gonna sell this MF'er.
16 And they said he was in a rage. And then shortly thereafter
17 he demolishes the house because that's how angry he was.
18 Now I know when we listen to him, you know, when I was in
19 here I was thinking, ooh, this is a different case here.
20 From what his account of what was saying, I mean, it was
21 just so different than what all the witnesses said, the
22 other witness said, which actually made sense like a logical
23 pattern is, okay. We have this out in left field. And he
24 says all these people are in the house and he went in to
25 check on the house, and all of a sudden, you know, then he

1 happens to cut his hand on a glass on the window I believe.
2 Never said how the window got broken. And if he's going
3 through the door if he had the key, you know, what would he
4 doing going through the glass to get such a serious cut.
5 And then what was so interesting is that the blood that's
6 clearly on the fan that the officers got, you know, swabs
7 from and sent to SLED, they got DNA off of it that it was
8 blood and it was his blood, he says it's dust. Now you know
9 what I said, geez, that beat all. Dust. I said, you know,
10 clearly I'm in a different case. But that's what he has in
11 his mind because that's his world. It's not the world that
12 happened October 2nd and October 3rd. And I ask you all to
13 look at the real world as how it appeared on Dixie Street,
14 Street, on October 2nd and October 3rd.
15 Now there was talk about the gun, and I know Mr. Floyd
16 said, well, law enforcement had to be here and they should
17 have kept it. You know, that's debatable, but we know from
18 the chain of custody that we have shown that nobody else had
19 that gun. That gun was where he put it between the seat in
20 a yellow Dollar General bag. And how do we know nobody else
21 messed with it? Now he said he gave it to Julius somebody.
22 If he gave the gun to Mr. Julius, whoever he is, you know,
23 Mr. Julius would have had to have it in his hand. When SLED
24 analyzed it or when they swabbed it and got DNA off of it,
25 the only DNA that came off it was the defendant's, nobody

1 else. Nobody else. It was the defendant's. And it was
2 some big number. I'm not a math person; that's why I'm a
3 lawyer. I can add and subtract and balance a checkbook, but
4 I'm not good with real, real big numbers, okay. But we know
5 from what our chemist told us the probability with more
6 people than on this earth. So I submit to you that the
7 chain was in tact, and it happened just as Janel Namias told
8 us it happened. And when she found the gun they went
9 looking for the gun in the house; it wasn't there. But he
10 hid it in the car with all her stuff, all the massive amount
11 of stuff that was in that truck. And all the officers
12 testified to it. And even when Investigator Cox did her
13 inventory for the vehicle she noted the massive amount of
14 stuff in that vehicle. Now here, you know, Mr. Floyd said,
15 well you know, they should have taken the time to inventory.
16 Okay, you know, you've gone to the house and we saw the
17 sheer destruction that had been done there. They were
18 dealing with that. And then we have this truck with god
19 knows whatever in it, and they try to deal with the
20 situation as best they could at that time. But what we know
21 is nobody else handled that gun because nobody else's DNA
22 was obtained off of it. It was just his. And SLED has no
23 reason to make up anything or what have you. It was the
24 chain was in tact. All of the packaging was in tact. It
25 just doesn't make sense. And it doesn't make sense if you

1 know somebody's interested in your significant other or
2 whatever you want to call it, why would you give your stuff
3 to him. That just doesn't make sense, but that's what he
4 said he did. But then a lot of things he said didn't make
5 sense.

6 Now he says that -- I guess he wants to say that the
7 house and all this stuff was his and the reason he couldn't
8 get it was because he had problems with the IRS. I suspect
9 to you the reason he didn't buy a house, he didn't buy a
10 truck or anything else 'cause he had no money. I mean,
11 plain and simple. I gave him an opportunity to tell us his
12 work history when he had what I call a real job with
13 benefits or whatever, and he just didn't have that. All he
14 had was temporary jobs where work, you know, a couple of
15 weeks, couple of months, things of that nature. He didn't
16 have any money other than what he did with his yard sale.
17 But Ms. Namias paid all the bills because she had the money;
18 she had the income. And even on the tape he told, he said,
19 well you think you got -- just because you got some money in
20 the bank. He knew she had money in the bank. It was her
21 money, not his. So it wasn't his stuff or his house to
22 demolish. And clearly the damages for the real property was
23 in excess of 24,000-dollars. That's evidence that will go
24 back there with you. The personal property was in excess of
25 18,000-dollars.

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1 unanimous verdict on these charges. To this indictment and
2 to all charges the defendant has pled not guilty. That plea
3 of not guilty places the burden of proof upon the State of
4 South Carolina to prove the defendant guilty beyond a
5 reasonable doubt. The defendant is presumed to be innocent
6 unless and until the State has established guilt beyond a
7 reasonable doubt. A person charged with committing a
8 criminal offense in South Carolina is never required to
9 prove himself innocent. The defendant is presumed to be
10 innocent unless and until the State has established guilt
11 beyond a reasonable doubt. It is a vital important rule of
12 the law that the defendant in a criminal trial, no matter
13 how grave or serious may be the offense with which he is
14 charged, must always be presumed innocent unless and until
15 his guilt has been proven beyond a reasonable doubt. A
16 person charged with committing a criminal offense in South
17 Carolina is never required to prove himself innocent. This
18 presumption of innocence is legal proof of innocence. This
19 presumption of innocence remains with the defendant at all
20 times from the moment of his arrest throughout the trial
21 proceeding and goes into your jury room and remains with the
22 defendant even until you reach a verdict beyond a reasonable
23 doubt.

24 What is a reasonable doubt in the law? The State must
25 prove the defendant guilty beyond a reasonable doubt. What

1 is a reasonable doubt in the law? A reasonable doubt is the
2 kind of doubt that would cause a reasonable person to
3 hesitate to act. Let me give that to you again now please
4 for the sake of emphasis. What is a reasonable doubt in the
5 law? A reasonable doubt is the kind of doubt that would
6 cause a reasonable person to hesitate to act. By the
7 constitution and laws of the state of South Carolina you,
8 the jury, are the sole judges of the facts and evidence in
9 this case. I am not permitted to intimate any opinion that
10 I may have in the case or to show any feeling to you as to
11 what I think about the facts. I tell you now I do not have
12 an opinion on the facts, but above that, under the
13 constitution I am not entitled to an opinion on the facts.

14 In determining what the facts are in this case you of
15 necessity must pass upon the credibility of the witnesses
16 who have testified. Credibility in the law means
17 believability. You're the sole judges of the credibility or
18 believability of the witnesses who took that witness stand.
19 Can I believe this witness? Is this witness credible? The
20 value and weight to be given to the testimony is in your
21 sound discretion. You alone must decide the force and
22 effect and the truth of the testimony. In making a
23 determination as to the credibility of the witness there are
24 many factors that you may and should take into consideration
25 such as the appearance and manner of the witness on the

1 witness stand itself known in the law as the demeanor of the
2 witness. Did the witness have an interest in the outcome of
3 the trial? Was the witness forthright or hesitant? Was the
4 witness's testimony consistent or did it contain
5 discrepancies? What was the ability of the witness to know
6 about the facts concerning which he or she gave testimony?
7 Did the witness have a cause or reason to be biased or
8 prejudiced in favor of the testimony that he or she gave?
9 Was the testimony of a witness corroborated and made
10 stronger by other evidence and testimony, or was it
11 impeached and made weaker by other testimony and evidence in
12 the case. I charge you that a person who has a past
13 criminal record is competent to testify during trial. A
14 past record does not affect the ability of that witness to
15 testify. The past record may only be considered by you, the
16 jury, if at all, in determining the witness's believability
17 or credibility. As jurors you have the right to believe a
18 small portion of a witness's testimony and disregard the
19 larger portion, or you may believe a larger portion of a
20 witness's testimony and disregard the smaller part. You may
21 believe a witness's testimony in its entirety or you may
22 completely reject a witness's testimony in totality, not
23 doing that arbitrarily but if you have sound reason in the
24 record for doing so. You may believe the testimony of a
25 single witness against that of several witnesses, or you may

1 believe the several witnesses as against the one. Most
2 certainly you do not determine the matter of credibility or
3 believability merely by counting the number of witnesses for
4 either side.

5 Throughout this entire process you have but one single
6 objective and that is to seek the truth regardless from what
7 source that truth may come. By the very same constitution
8 and laws which make you the finders of the facts I am as the
9 trial judge made the sole and only instructor in the law.
10 Under the oath that you took you must accept as correct the
11 law as I charge it to you to be the correct law. In that
12 regard, neither the jury nor the Court should be concerned
13 with what the law ought to be in this state but rather what
14 the law actually is.

15 The defendant is entitled to every inference in his
16 favor which can reasonably be drawn from the evidence. When
17 two inferences may be drawn from the same set of facts, one
18 consistent with a verdict of guilty and one inference
19 consistent with a verdict of not guilty, the defendant is
20 entitled to the inference which is consistent with a verdict
21 of the not guilty. You cannot find the defendant guilty
22 based upon suspicion, conjecture, or speculation no matter
23 how strong. A conviction can only be based upon proof of
24 guilt beyond a reasonable doubt. And if the proof does not
25 meet that standard you must find the defendant not guilty.

1 In South Carolina there are two kinds of evidence.
2 They both are equally good in the law. They are direct
3 evidence and circumstantial evidence. On a contested
4 factual issue that you now decide and determine, you may
5 have some direct evidence on that point and some
6 circumstantial evidence on that issue, thus, a combination
7 of the types of evidence. Direct evidence, what is it?
8 Direct evidence is the testimony of persons who assert a
9 claim to have actual knowledge of a fact such as an
10 eyewitness. Circumstantial evidence, what is it?
11 Circumstantial evidence is proof of a chain of facts and
12 circumstances indicating the existence of a fact. The law
13 makes absolutely no distinction between the weight of value
14 to be given to either direct or circumstantial evidence.
15 Nor is a greater degree of certainty required of
16 circumstantial evidence than of direct evidence. You should
17 weigh all the evidence in the case. After weighing all the
18 evidence if you're not convinced of the guilt of the
19 defendant beyond a reasonable doubt you must find the
20 defendant not guilty.

21 Expert witnesses. Lay witnesses are limited to
22 testifying about facts within their knowledge and are not
23 allowed to give opinion. There are certain witnesses
24 indicated in the law as expert witnesses who by their
25 training, education, or experience are considered as experts

1 in a particular field. Expert witnesses may give their
2 opinions in that field based upon the facts of a matter and
3 their conclusions and opinions constitute evidence to be
4 considered by you in connection with all of the other
5 testimony and evidence in the case. You may consider the
6 expert's opinion just as you do all the other evidence in
7 the case. It is for the jury to give it such weight as you
8 in your experience and discretion may determine. You must
9 weigh such evidence and accept or reject it in the same
10 manner that you treat all the other evidence in the case.
11 The testimony of experts on a subject which is little known
12 to the general public is entitled to consideration. Such
13 testimony, however, must be submitted to your judgment to be
14 weighed by you as a part of the evidence in connection with
15 all the other facts in the case. The testimony of experts
16 is to aid and assist you as jurors, not to dominate or
17 control you in the decision, questions, or fact. The
18 opinions, conclusions, and deductions of experts constitute
19 evidence but their opinion and judgments do not preclude
20 yours. You are required to decide disputed questions after
21 comparison and consideration of all the evidence in the
22 case.

23 There has been admitted into evidence in this case a
24 statement alleged to have been made by the defendant.
25 Before you may consider statements as evidence for any

1 purpose you must determine four questions. One, did the
2 defendant make the statements. Two, was the defendant
3 warned of his constitutional rights? Three, did the
4 defendant knowingly and intelligently waive his
5 constitutional rights? Four, was the statement given freely
6 and voluntarily? The fact that the Court has admitted
7 statements into evidence should not be considered by you as
8 any evidence whatsoever that the defendant made such
9 statements or that the constitutional safeguards which are
10 required were, in fact, provided and waived by the
11 defendant, or that the statement was voluntarily given
12 because these issues are for you, the jury, to determine.
13 The State must prove beyond a reasonable doubt each of the
14 four essentials or the four requirements which I've just
15 stated to you before you may consider the statement as
16 evidence or any purpose whatsoever.

17 As to the first requirement, did the defendant make
18 the statements? If you conclude that the defendant did not
19 make the statements you must then completely and totally
20 disregard the statements. If you conclude the defendant did
21 not make the statement, you cannot and you must not consider
22 the statement as evidence in any manner whatsoever and you
23 should completely disregard the statement in its entirety
24 and every part of it. If you find the defendant did make
25 the statement, you must then consider the second

1 requirement. The second requirement, was the defendant
2 warned of his constitutional rights. These are referred to
3 in the law as the Miranda warnings. When an individual is
4 taken into custody or otherwise deprived of his freedom of
5 action in any significant way by a police or law enforcement
6 officer, the individual must be warned of his constitutional
7 rights prior and before any custodial interrogation or
8 custodial questioning. These rights are: One, he has the
9 right to remain silent. Two, any statement he does make can
10 and will be used against him in a court of law. Three, he
11 has the right to select a lawyer of his choice; but if he
12 does not have the money to hire a lawyer, a lawyer will be
13 provided without any cost. And four, he has the right to
14 consult a lawyer before answering any questions or making
15 any statements. And five, he has the right to have his
16 lawyer present with him at all times during all interviews
17 and all interrogations. If you determine that these
18 constitutional warnings were not given to the defendant
19 prior to interrogation and the taking of the statements or
20 that defendant was not afforded the opportunity to exercise
21 these rights you must completely disregard the statements
22 and you cannot consider the statements as evidence in any
23 manner whatsoever. If you find the defendant did make the
24 statement and if you conclude these constitutional warnings
25 were in fact given to the defendant and the defendant was

1 afforded an opportunity to exercise these constitutional
2 rights, then you must next consider the third requirement.
3 The third requirement, did the defendant knowingly and
4 intelligently waive his constitutional rights. Before you
5 can consider the statements as evidence in the case the
6 State must prove beyond a reasonable doubt that the
7 defendant after being given his constitutional warnings
8 knowingly and intelligently waived his constitutional rights
9 and agreed to answer questions and make statements.
10 Therefore, if you find the defendant did not knowingly and
11 intelligently waive his constitutional rights, then any
12 answer given by him or any statement made by him cannot be
13 used against him and you must completely disregard all of
14 the testimony concerning any such answers or alleged
15 statements. If you find the defendant did make the
16 statements and if you conclude the constitutional warnings
17 were, in fact, given to the defendant and that the defendant
18 wasn't afforded an opportunity to exercise these
19 constitutional rights, and if you further find the defendant
20 after being given his constitutional warnings knowingly and
21 intelligently waived his constitutional rights and agreed to
22 answer questions and make statements, you must next consider
23 the fourth requirement.

24 The fourth requirement, was the statement given freely
25 and voluntarily. The word voluntarily means the statement

1 was expression of the defendant's own free will and was not
2 induced by the pressure, force, or fear, or influence, hope,
3 or promise of some benefit or reward, or extracted by
4 threats, coercion, or intimidation. Voluntarily means
5 intentionally, without coercion. A statement is not freely
6 and voluntarily given and may not be used against a
7 defendant unless it is the product of an essentially free
8 and unconstrained choice by its maker. If the statement is
9 freely and voluntarily given, if the defendants had willed
10 to make a statement it may be used against him. If the
11 statement is not voluntary it cannot be used against him.
12 The true test to be applied is whether such statement is
13 freely, voluntarily, and understandably made without
14 compulsion or inducement.

15 I take these pending charges separately and
16 distinctly. You must reach a separate and distinct verdict
17 on each pending charge. The verdict must be unanimous.
18 Kidnapping, the defendant is charged with kidnapping.
19 Section 16-3-910 of the South Carolina Code of Laws sets
20 forth the statutory provision for kidnapping. Quote:
21 "Whoever shall unlawfully seize, confine, inveigle, decoy,
22 kidnap, abduct, or carry away any other person by any means
23 whatsoever without authority of law is guilty of kidnapping.
24 Section 16-3-910 further provides: "The State must prove
25 beyond a reasonable doubt the elements of kidnapping that

1 the defendant did, (a) unlawfully seize, confine, inveigle,
2 decoy, kidnap, abduct or carry away any other person. The
3 definition of decoy is to lure successfully. Inveigling has
4 been defined as enticing, cajoling, or tempting the victim
5 usually through some deceitful means such as false promises.
6 (B) by any means whatsoever, and (c) without authority of
7 law. Kidnapping is the intentional taking of a person and
8 compelling her to be detained against her will. It is the
9 willful and unlawful seizing of a person against her will
10 with the intent to cause her to be confined, imprisoned, or
11 detained. It is false imprisonment with the element of
12 abduction added. The essence of the offense of kidnapping
13 is the unlawful secret holding or imprisonment of a person.
14 An essential element of the offense of kidnapping is that
15 the taking or detention of the person kidnapped is without
16 lawful authority. Kidnapping means the carrying away of a
17 person by unlawful force or by fraud and against her will or
18 her seizure and detention for the purpose of so carrying her
19 away. The gravamen of the offense of kidnapping is some
20 form of compulsion, but the requisite force or compulsion
21 need not consist of the use of actual physical force or
22 violence or of expressed threats.

23 I now take the pending charge of criminal domestic
24 violence of a high and aggravated nature. Under the law as
25 I've explained it to you a lesser included charge of

1 criminal domestic violence is included. I'm going to start
2 with the lesser charge, the lesser charge of criminal
3 domestic violence and proceed up the ladder. Please
4 understand that.

5 Criminal domestic violence, 16-25-20 of the Code of
6 Laws provides: "It is unlawful to: (1) cause physical harm
7 or injury to a person's own household member or; (2) offer
8 or attempt to cause physical harm or injury to a person's
9 own household member with apparent present ability under
10 circumstances reasonably creating fear of imminent peril."
11 16-25-10, a household member is a spouse, a former spouse, a
12 parent, child, grandparent, brother, sister, child,
13 grandchild, or a person with whom the defendant has a child
14 in common and a person of the opposite sex with whom the
15 defendant is living or has lived in the past.

16 16-25-65, criminal domestic violence of a high and
17 aggravated nature: "(A), a person who violates section
18 16-25(a) — just read to you — is guilty of the offense of
19 criminal domestic violence of a high and aggravated nature
20 when one of the following occurs. The person commits: (1),
21 an assault and battery which involves the use provide a
22 deadly weapon or results in serious bodily injury to the
23 victim. Or (2), an assault with or without an accompanying
24 battery which would reasonably cause a person to fear
25 imminent serious bodily injury or death." So, under these

1 sections you have the first statute, criminal domestic
2 violence. But then you have the second statute, criminal
3 domestic violence of a high and aggravated nature. In an
4 elemental analysis of these two pending statutes and charges
5 you have, first, criminal domestic violence. One, causing
6 physical harm or injury to a member of one's household. And
7 I've already defined household for you. Or two, offering or
8 attempting to cause such physical harm or injury with the
9 apparent present ability to do so under circumstances
10 reasonably creating fear of imminent peril. Then we go to
11 the higher charge and add, and add an additional elemental
12 analysis. Criminal domestic violence of a high and
13 aggravated nature comes to the point of: One, the person
14 intentionally commits an assault and battery which involves
15 the use of a deadly weapon or results in serious bodily
16 injury to the victim; or two, the person intentionally
17 commits an assault with or without an accompanying battery
18 which would reasonably cause a person to fear imminent
19 serious bodily injury or death. Now I define for you these
20 terms. The offer or attempt to cause physical harm or
21 injury must be accompanied by an apparent present ability to
22 cause it under circumstances reasonably creating fear of
23 imminent peril. I've used the word assault and I've used
24 the word battery. What does assault mean in the law? How
25 is it defined? An assault is an unlawful attempt or offer

1 to commit a violent injury upon another person coupled with
2 the present ability to complete the attempt or offer by a
3 battery. Assault has been defined as placing another in
4 apprehension of harm. While words alone do not constitute
5 an assault if by words and conduct a person intentionally
6 creates a reasonable apprehension of bodily harm it is an
7 assault. An assault is an attempt to do violence to the
8 person of another in a rude, angry, or eventful manner. An
9 assault is the intentional creation of fear of immediate
10 bodily harm.

11 Battery, what is a battery? A battery is the use of
12 force against another resulting in harmful or offensive
13 contact. It is the assault brought to completion. A
14 battery is the unlawful touching or striking of another by
15 the aggressor himself or by any substance put in motion by
16 him done with the intention of bringing about a harmful or
17 offensive contact which is not legally consented to by the
18 other and not otherwise privileged. It is defined as an
19 injury done to the person of another in a rude, insolent, or
20 revengeful way.

21 Malicious injury to real property.
22 Section 16-11-520: "It is unlawful for any person to
23 willfully and maliciously cut, mutilate, deface, or
24 otherwise injure a house or commit any other trespass upon
25 real property of another." I've omitted some terms which

1 are not relevant here. Let me repeat that again for the
2 sake of emphasis. Quote, it is unlawful for a person to
3 willfully and maliciously cut, mutilate, deface, or
4 otherwise injure a house, or to commit any other trespass
5 upon real property of another. The terms unlawfully,
6 willfully, and maliciously used in this section are not
7 synonymous and were not intended to express the same idea.
8 They have each a different signification and import
9 different degrees of guilt. The word maliciously as used in
10 this section should be construed with a view to the popular
11 conception of its meaning; that is, that the cutting,
12 mutilating, defacing, or otherwise injuring the real
13 property of another has to be done from an innate and sheer
14 meanness growing out of a heart fatally bent on mischief and
15 the act must denote a depraved and wicked spirit. That is
16 the intent of the doer that someone suffer an unnecessary
17 injury to her property.

18 Finally, malicious injury to personal property.
19 16-11-510, quote, and I'm going here to omit certain things
20 like hogs, sheep, and goats and so forth that have no
21 efficacy here in this case. I quote the pertinent relevant
22 provision, Ms. Court reporter, 16-11-510, malicious injury
23 to personal property. Quote, it is unlawful for a person to
24 willfully and maliciously cut, maim, or otherwise injure or
25 destroy any personal property items of any class, kind, or

1 description. Under this law the elements of malicious
2 mischief are willful, unlawful, and malicious damage to the
3 property of another. Willful, unlawful, and malicious are
4 not synonyms and each element must be established. Willful
5 and intentional are synonymous. Willful and intentional are
6 synonyms.

7 Jurors, the verdict must be unanimous. No, no kind of
8 verdict is allowed except a unanimous verdict. Madam
9 Forelady, when you find the verdict, whatever it is, it must
10 be unanimous. A not guilty verdict must be unanimous. A
11 guilty verdict must be unanimous and I have explained for
12 you these four forms. I think they are self-explanatory,
13 but I briefly just touch on the pending charge of
14 kidnapping. One, not guilty; or two, guilty of kidnapping.
15 Either verdict must be unanimous. In regard to criminal
16 domestic violence of a high and aggravated nature, I've
17 broken that down so that the lesser included offense is to
18 be considered. So you have, one, not guilty; two, guilty of
19 criminal domestic violence of a high and aggravated nature;
20 or three, the lesser charge. Three, the lesser charge,
21 guilty of criminal domestic violence. And then on the
22 malicious injury to real property, not guilty or guilty of
23 malicious injury to real property in the amount of. Now I
24 need the amount. And the amount of, write it out Madam
25 Forelady if the jury decides he is in fact guilty and the

1 amount must be written in. And finally, guilty of malicious
2 injury to personal property, not guilty or guilty of
3 malicious injury to personal property in the amount of.

4 Once again, the amount must be written in.

5 Now you will have all exhibits and everything with you
6 in the jury room. In regard to this tape or whatever they
7 call this computer device, we'll play it for you in the
8 courtroom. If you want to hear that again it will be played
9 in the courtroom 'cause we do not have facilities in the
10 jury room itself.

11 Are you feeling well? Why would I ask you that
12 question? Well, I've got these two alternates who are ready
13 and willing to serve in your place and I know that by the
14 expression. In regard to your posture I'm going to give you
15 the case for decision, and sometimes it takes a while to
16 consider and decide a case. Now one, are you feeling well?
17 Is there any member of the jury not feeling well? If so,
18 raise your hand.

19 (There was no response.)

20 THE COURT: If you're not feeling well raise your
21 hand. Don't send me a note later on that's not going to
22 work. If you're not feeling well, tell me now. Got a
23 stomach ache, tell me now. Anyone not feeling well?

24 (There was no response.)

25 THE COURT: Let the record show no response, Ms. Court

1 reporter. And is there anyone who anticipates any problems
2 staying with the case, and yes, that does include into the
3 evening time if necessary. If you anticipate any problems
4 staying with the case tell me now. You can't send me out a
5 note that my spouse is going to be unhappy or somebody is
6 going to be unhappy. Tell me now. Please, raise your hand.

7 (There was no response.)

8 THE COURT: Raise your hand. I'll use one of these
9 two alternates.

10 (There was no response.)

11 THE COURT: Anyone?

12 (There was no response.)

13 THE COURT: Anyone?

14 (There was no response.)

15 THE COURT: Let the record show, Ms. Court reporter,
16 no one has responded. You two alternates, I'll give you
17 some good news and it is that I need for you to be released
18 temporarily but I'm going to draw another jury in about 15
19 minutes so I'll let you stay right there and then I'll turn
20 you loose for about 15 minutes till we draw another jury.

21 You jurors, as you go to your jury room now do not
22 begin deliberation. Do not begin talking. Why? I'm
23 required to let these lawyers object to anything I've said
24 to you, and I must let them object in your absence. It may
25 be that I bring you back out. If I do not bring you back

1 out as soon as you see these verdict forms and these
2 exhibits start talking. All right, everyone go to the jury
3 except the two alternates.

4 (WHEREUPON, the jury was removed from the
5 courtroom at 2:30 p.m., and the following proceedings
6 commenced in open court.)

7 THE COURT: You two, just come on right through here
8 and kind of stretch your legs but be back in 15 minutes in
9 the courtroom, okay?

10 (Alternates were excused.)

11 THE COURT: Any exceptions or objections from the
12 State?

13 MS. PARR: None from the State, Your Honor.

14 THE COURT: From Defense?

15 MR. FLOYD: None, Your Honor.

16 THE COURT: All right. Now Counsel, please do this
17 for me. I need for you to stay close by because the jury
18 may send me out a note. The last case I tried here a couple
19 of weeks ago I must have got five notes from the jury. And
20 some of those were in succession so please stay close by.

21 MR. FLOYD: Yes, sir.

22 (Court was in recess and jury began its deliberations.)

23 THE COURT: All right, give me your attention,
24 lawyers. I have a number of bill adieus from the jury. One,
25 one, do we determine the value of the personal property