

21790

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

DeAndrea G. Benjamin, Circuit Court Judge

Case Nos. 2012GS1040032 and 2012GS1040033

RECEIVED

MAY 13 2015

SC Court of Appeals

The State, ... Respondent,

v.

Brett D. Parker, ... Appellant.

**RECORD ON APPEAL
VOLUME I**

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THE STATE OF SOUTH CAROLINA
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486 - Diagrams	on file with this Court
487 - Diagrams	on file with this Court
490 - Diagram	on file with this Court

Defendant's Exhibits

4 - Transcript of Audio Call	on file with this Court

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

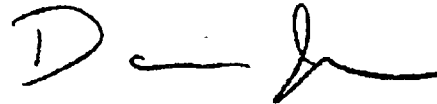
INDICTMENT

At a Court of General Sessions, convened on August 15, 2012, the
Grand Jurors of Richland County present upon their oath:

MURDER

That Brett Davis Parker did in Richland County, on or about April 13, 2012,
willfully, feloniously, and intentionally kill the victim, Bryan Capenhurst, with
malice aforethought, either express or implied, by means of a gunshot
wound, and the victim did die as a proximate result thereof, in violation of
Section 16-03-0010, S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Travis Holdorf – Richland County
Sheriff

ARREST WARRANT NUMBER

2012A4010400032

2

ACTION OF GRAND JURY

TRUE BILL

For person of Grand Jury
Date:

AUG 15 2012

VERDICT

Guilty

Foreperson of Petit Jury
Date:

35

DOCKET NO. 2012GS4004379

The State of South Carolina

County of

Richland

42

COURT OF GENERAL SESSIONS

August TERM 2012

THE STATE
vs.

Brett Davis Parker

Indictment for
MURDER

SC Code: 16-03-0010
CDR Code: 0116

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
James A. W. H. Lunde
C.C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

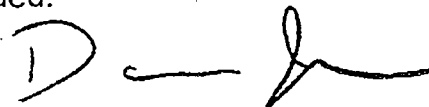
INDICTMENT

At a Court of General Sessions, convened on August 15, 2012, the
Grand Jurors of Richland County present upon their oath:

MURDER

That Brett Davis Parker did in Richland County, on or about April 13, 2012,
willfully, feloniously, and intentionally kill the victim, Tammy Parker , with
malice aforethought, either express or implied, by means of a gunshot
wound, and the victim did die as a proximate result thereof, in violation of
Section 16-03-0010, S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Travis Holdorf – Richland County
Sheriff

ARREST WARRANT NUMBER

2012A4010400033

4

ACTION OF GRAND JURY

TRUE BILL

For person of Grand Jury
Date:

AUG 15 2012

VERDICT

Guilty

Foreperson of Petit Jury
Date:

35

DOCKET NO. 2012GS4004380

The State of South Carolina

County of

Richland

42

COURT OF GENERAL SESSIONS

August TERM 2012

THE STATE
vs.

Brett Davis Parker

Indictment for
MURDER

SC Code: 16-03-0010
CDR Code: 0116

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jessica W. B. B. B.
C.C.C.P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF Richland
 STATE VS.
Brett Davis Parker

AKA:

Race: WHITE Sex: M Age: 43DOB: SS#:

Address:

City, State, Zip: Irmo, SC 29063-6103DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4004379 ✓A/W#: 2012A4010400032Date of Offense: 4/13/2012S.C. Code §: 16-03-0010CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Campbell, Luck13009
SC Bar#DefendantDavid A. Fear
Attorney for Defendant001974
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed years.and/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning \$ paid to Public Defender FundOther:
☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Jeanette McBride
D. McLucy

Presiding Judge

Judge Code: Sentence Date:

**CERTIFIED TRUE COPY
 OF ORIGINAL FILED**
Richland County
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland

STATE

VS.

Brett Davis Parker

AKA:

Race: WHITE Sex: M Age: 43

DOB: SS#:

Address:

City, State, Zip: Irmo, SC 29063-6103

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder

INDICTMENT/CASE#: 2012GS4004380 ✓

A/W#: 2012A4010400033

Date of Offense: 4/13/2012

S.C. Code §: 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSCw/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☐ Recommendation by the State.

ATTEST:

Campbell, Luck

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LIFE 1300 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
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Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed attorney
§ 47.12 requires \$500 be paid to clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Jeanette McBride
D. McCurdy

Presiding Judge

Judge Code:

Sentence Date:

CERTIFIED TRUE COPY
OF ORIGINAL FILEDJ. W. McBride
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

STATE OF SOUTH CAROLINA

Plaintiff

v.

BRETT PARKER

Defendant

IN THE RICHLAND COUNTY
COURT OF GENERAL SESSIONS

**Indictment Numbers:
20124010400032 & 33**

**DEFENDANT'S REQUEST TO
JURY CHARGE NUMBER 1**

CIRCUMSTANTIAL EVIDENCE CHARGE

I CHARGE YOU THAT:

This criminal prosecution is based solely upon circumstantial evidence.

Therefore, the State must prove every circumstance beyond a reasonable doubt, that all circumstances must be consistent with each other, that the circumstances must point conclusively to the defendant's guilt to the exclusion of every other reasonable hypothesis, and that a strong probability of guilty is not sufficient if the circumstances may be accounted for upon any reasonable hypothesis that does not include the defendant's guilt.

State v. Edwards, 298 S.C. 272 (1989), quoted by *Battle v. State*, 382 S.C. 197 (2009) and *State v. Hernandez*, 382 S.C. 620 (2009)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE RICHLAND COUNTY
COURT OF GENERAL SESSIONS

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
3 2012-GS-40-4379
2012-GS-40-4380

4 State of South Carolina,)
5 Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7 Brett D. Parker,) (PRETRIAL ONLY)
8 Defendant.)

9 May 6-7, 2013
10 Columbia, South Carolina

11
12
13 B E F O R E:
14 THE HONORABLE DEANDREA G. BENJAMIN, Judge.
15

16
17
18 A P P E A R A N C E S:
19 K. LUCK CAMPBELL, DEPUTY SOLICITOR
20 NICOLE M. SIMPSON, ASSISTANT SOLICITOR
21 MEGHAN L. WALKER, ASSISTANT SOLICITOR
Attorneys for the Plaintiff
22 DAVID A. FEDOR, ESQ.
23 J. MARCUS WHITLARK, ESQ.
Attorneys for the Defendant
24

25 DEBORAH M. McCURDY, RPR
Official Court Reporter

INDEX OF WITNESSES

****(WHEREUPON, THE FOLLOWING WAS HELD PRETRIAL.)****

JOSEPH RYAN

Direct By Ms. Campbell 48

Cross By Mr. Whitlark 54

JAMES STANDIN SMITH

Direct By Ms. Campbell 57

Cross By Mr. Whitlark 78

JAMES STANDIN SMITH

Direct By Ms. Campbell 90

Cross By Mr. Whitlark 92

STATE EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Advice of Rights	65	65
2	Statement	66	66

DEFENDANT EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Letter from Mr. Fedor to Judge Benjamin	8	8
2	State's Responses to Defendant's Motion to Compel	6	6
3	E-Mail	9	9
4	E-Mail	9	9
5	Bench Notes	8	8
6	Letter from Richard R. Ernest to Mr. Whitlark	10	10

COURT EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	SLED Trace Evidence	15	
2 AND 3	Ballistics Testing	21	

MAY 6, 2013

THE COURT: Yes, ma'am, Ms. Campbell?

MS. CAMPBELL: We are here today in State versus Brett Parker. We are here today on two indictments, Indictment Numbers 2012-GS-40-4379, 2012-GS-40-4380. We are prepared to go to trial on two counts of murder.

MR. WHITLARK: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. WHITLARK: Yes. Your Honor, the Defendant again moves for a continuance of 30 days in this case.

And we have filed with the Court our motion based upon Rule 5 and all of its -- the subsections -- and Rule 7, because we have been unfairly surprised in this case, Your Honor, and because of the failure of the Solicitor to engage in good faith in discovery of this case.

Your Honor, again, we filed a motion for discovery on July 27th, 2012. And in that -- contained within that request was, any papers, documents material to the preparation of the Defense, or anything intended for use by the Prosecution as evidence in chief.

1 And, Number Two, any results or reports of
2 scientific tests or experiments which are material
3 to the preparation of the Defense.

4 And lastly, Your Honor, any other information
5 or evidence within the knowledge and possession of
6 the State that tends to indicate the innocence of
7 the Defendant.

8 Now, Your Honor, again, we did not receive a
9 response within 30 days as Rule 5 requires. It is
10 a very clear rule. It says they must respond.
11 They did not respond. We sent a certified letter
12 to them requesting the information be provided.

13 In October of 2012, we received some
14 information. However, we did not receive
15 ballistics, powder, any type of scientific testing
16 done.

17 After talking to the Solicitor's Office, we
18 filed a motion to compel discovery. A hearing was
19 held on January 4th, 2013, in front of Judge
20 Cooper.

21 In that hearing, Your Honor -- first of all,
22 Your Honor, I would move to put the State's
23 response, which we have marked as Exhibit 2, into
24 evidence.

25 (Attorneys conferred.)

1 MS. CAMPBELL: I don't know whose handwriting
2 that is, Your Honor, but --

3 MR. WHITLARK: Your Honor, this is the State's
4 response to Defendant's motion to compel discovery.

5 Now, Your Honor, on January 4th, the State
6 brought up a --

7 THE COURT: Are you marking that?

8 MR. WHITLARK: Yes. I would like to introduce
9 that into evidence as Defense Exhibit Number 2.

10 THE COURT REPORTER: Number 2?

11 MR. WHITLARK: It is going to be Number 2.

12 MR. WHITLARK: May it please the Court, Your
13 Honor?

14 (WHEREUPON, Defendant's Exhibit No. 2
15 was marked for identification and
16 received into evidence.)

17 THE COURT: Yes, sir.

18 MR. WHITLARK: Yes, Your Honor.

19 Now, in their response -- and I would like to
20 point out to the Court that at that time they
21 brought up -- they started bringing us discovery...

22 Of course, the rule requires a response within
23 30 days. That was on July 27th we filed that.
24 This is January 2013 in a hearing to compel here in
25 front of Judge Cooper.

1 And I would point out to the Court that this
2 is -- the response of the Solicitor's Office, the
3 Prosecutors, it contained what we asked for and
4 what their response was.

5 Now, one of the things we asked for, Your
6 Honor, on Article Number 9 was, on Page 2 of that,
7 is, all ballistic test results, including all
8 gunpowder test results.

9 On the following page we asked for, all
10 gunpowder tests and records. We also asked for,
11 all ballistic tests done.

12 Now, Your Honor, at that time they brought us
13 summaries that were done by the Richland County
14 Sheriff's Department and represented to the
15 Court -- and we were asking this on the record in
16 front of Judge Cooper -- I said, is there anything
17 else? Is this all you have?

18 And the response from the Prosecution was,
19 that's it.

20 Judge Cooper at that time told them, whatever
21 discovery you do not -- that y'all have not given
22 them, give it to them.

23 Now, Your Honor, I'd like to introduce as
24 Exhibit Number 1 a copy of the letter sent to Your
25 Honor by Mr. Fedor.

1 That would be Exhibit Number 1, Defense
2 Exhibit Number 1.

3 (WHEREUPON, Defendant's Exhibit No. 1
4 was marked for identification and
5 received into evidence.)

6 MR. WHITLARK: That letter sets forth to Your
7 Honor the problems we are having getting discovery
8 and what it is we are asking for.

9 And what we were asking for, Your Honor, is
10 what is going to be marked as Defense Exhibit 5.
11 This is what we received. On April 17th we picked
12 it up.

13 (WHEREUPON, Defendant's Exhibit No. 5
14 was marked for identification and
15 received into evidence.)

16 MR. WHITLARK: Now, Your Honor, I'd like to
17 put in Exhibit Number 3, is an e-mail we received,
18 as Defense Exhibit Number 3, from the Solicitor's
19 Office simply saying, bench notes are available for
20 Defense counsel's review whenever y'all are
21 available.

22 THE COURT: What is the date of the e-mail?

23 MR. WHITLARK: That is April 8th, 2013.

24 (WHEREUPON, Defendant's Exhibit No. 3
25 was marked for identification and

1 received into evidence.)

2 MR. WHITLARK: On April 10th, Exhibit Number

3 4 --

4 (WHEREUPON, Defendant's Exhibit No. 4

5 was marked for identification and

6 received into evidence.)

7 MS. CAMPBELL: That is part of our motion as

8 well, Your Honor.

9 MR. WHITLARK: Exhibit Number 4, I didn't hear

10 back from y'all regarding the bench notes. Did

11 y'all want to review them? Do y'all want us to

12 leave a copy of them outside to pick up? Please

13 advise.

14 Now, Your Honor, that came over to my office.

15 I was in another murder case in Lexington County at

16 the time. It was related to me that there were

17 some bench notes to pick up.

18 Now, these are not -- they may call them bench

19 notes, Your Honor, but what this is is exactly what

20 we asked for back in July, and then again in a

21 certified letter, and then again in court in front

22 of Judge Cooper on the 4th of January.

23 We asked for all powder tests, all testing

24 done on ballistics, all of -- anything done. And

25 that is what this is, Your Honor.

1 Now, once we got it, Your Honor, we were going
2 to -- well, we said, well, if they have got all
3 this, we are going to have to hire an expert, which
4 we did.

5 We hired Richard Ernest in Fort Worth, Texas.
6 We had to ship out the copies of this to him,
7 interview him, to get him.

8 Logistically speaking, Your Honor, it is
9 virtually impossible to do that, but we've gotten
10 most of it done.

11 He has sent an e-mail to me today, which I
12 would like to mark as Defense Exhibit Number 6.

13 (WHEREUPON, Defendant's Exhibit No. 6
14 was marked for identification and
15 received into evidence.)

16 MR. WHITLARK: Defense Exhibit 6 is from our
17 expert, Mr. Ernest. And specifically he wants to
18 examine the clothing that is in possession of the
19 Sheriff's Department of both victims and to conduct
20 his own distance determination test with the
21 firearms used in this case.

22 He has asked if we could send it out there,
23 but I have already told him we cannot. He also
24 says he needs 30 days to get it done.

25 Now, Your Honor, the failure of the Solicitor

1 to in good faith turn this information over to us
2 back, first of all, in January after representing
3 to us that they have given us everything should not
4 be rewarded by forcing us to go to court with this,
5 eve of trial, voluminous journal of all the testing
6 and distance testing and powder tests they did.

7 They knew we wanted this information, Your
8 Honor. And they did not provide it to us until
9 less than three weeks before this trial was to
10 start.

11 Now, Your Honor, in State v. Turner, which is
12 a Supreme Court South Carolina case -- and that is
13 385 S.E.2d 832 -- eve of trial. It is stated by
14 the Court that eve of trial compliance with
15 discovery requests is not sufficient where the
16 Defendant can show that the undisclosed evidence
17 could lead to the support of his defense.

18 Now, Your Honor, that is exactly what is going
19 on here. I would represent to the Court under the
20 South Carolina Rules of Criminal Procedure,
21 Rule 7(b)(2), that my expert has confirmed that
22 Bryan Capnerhurst fired a handgun with his left
23 hand at least five times.

24 He also says he disputes the testing done on
25 distance in this case based upon what he is now

1 looking at. And he requests to come here. I mean,
2 he requested us to send it there, but I told him,
3 you must come here for these tests.

4 And we are asking the Court to grant us for
5 good cause shown under Rule 5 and for the failure
6 of the Solicitor's Office to turn over in a timely
7 fashion this discovery.

8 We have already suffered prejudice in this
9 case, Your Honor, because we can't go forward with
10 the Stand-Your-Ground statute because this is an
11 important element of it.

12 If we can prove this objectively, this fact,
13 we have other facts to show that when Bryan
14 Capnerhurst went over there, he intended to commit
15 a robbery.

16 And therefore, Your Honor, we need this to
17 satisfy the requirements of the statute for an
18 unlawful entry.

19 Now, without our expert being able to conduct
20 these tests -- and we are going as fast as we can,
21 Your Honor -- without that we are not going to be
22 able to assert what I consider to be a very
23 important right and a very important protection of
24 the citizens here.

25 And that is the right to defend your house and

1 get immunity for doing so if you can prove
2 objectively there was an unlawful entry and that
3 they intended to commit serious bodily harm.

4 We can meet the elements of this, but not
5 without our expert.

6 Now, Your Honor, again, we're asking for a
7 mere 30 days. And we are all in this courtroom,
8 Your Honor, seeking justice and fairness in this
9 case.

10 And in order for Brett Parker to have a clear
11 presentation of his defense in this case, we need
12 30 more days to have what I consider to be the most
13 valuable and the most important evidence in this
14 case.

15 And again, Your Honor, under Rule 5(d)(2), the
16 rule states that, failure to comply with a request
17 for discovery gives the Court the right to grant us
18 a continuance.

19 And we're not only asking it under those
20 grounds, Your Honor, and under Rule 7 for surprise,
21 but for good cause under all those rules and under
22 Turner.

23 Again, Your Honor, Mr. Parker has been without
24 bail at the Alvin S. Glenn Detention Center since
25 this summer -- last summer.

1 During that time, Your Honor, we have been
2 diligent to get this specific discovery and to have
3 it represented in court that that's all there is,
4 after we specifically asked for these tests, would
5 be to reward the Solicitor for failing to in good
6 faith engage in discovery.

7 And we would ask the Court, again, Your Honor,
8 for a continuance of a mere 30 days in order to
9 have a fair presentation and get Brett Parker a
10 fair trial.

11 THE COURT: Thank you.

12 MR. WHITLARK: Thank you, Your Honor.

13 THE COURT: Thank you, Mr. Whitlark.

14 All right. Yes, ma'am?

15 MS. CAMPBELL: May it please the Court, Your
16 Honor? Just to correct a few things Defense
17 counsel has stated. There was a Rule 5 done in
18 this case. As the Court is aware, sometimes it
19 takes a period of time in order to get all the
20 documentation together.

21 I would hand up to the Court, Your Honor, at
22 this time the actual copies of the actual -- or if
23 you want me to make it a Court's Exhibit -- what
24 has been provided. I can actually make them a
25 Court's Exhibit, Your Honor -- that were provided

1 to the Defense by their own admission.

2 The first of those were the gunshot residue
3 testing results for which he claims that he had no
4 notice, and that is the reason that he was not
5 timely in getting an expert.

6 I would just make that, I guess, a Court's
7 Exhibit, Your Honor?

8 THE COURT: You can mark it as -- he marked
9 his as Defense. Well, you can mark it as --

10 MS. CAMPBELL: Court's. Because they are not
11 going to come in. They aren't admissible.

12 THE COURT: Okay. We will admit it as Court's
13 Exhibit 1.

14 (WHEREUPON, Court's Exhibit No. 1 was
15 marked for identification only.)

16 MS. CAMPBELL: That is Court's Exhibit 1,
17 which is the results of the testing that was turned
18 over on October 4th of last year. And then we
19 turned that over, of course, the results that they
20 requested.

21 And I would note, Your Honor, in their
22 specific request, at no point did they ever request
23 bench notes or anything.

24 In every request they make to the Court, and
25 pursuant to Rule 5 and what is allowed by Rule 5,

1 they requested the results of any testing.

2 On October 4th of 2011, on the gunshot residue
3 testing, of which he now complains he had no
4 notice, those results were turned over on
5 October 4th.

6 In addition to that, Your Honor, they also
7 complained and did do a motion to compel that we
8 weren't timely giving them things.

9 I would note for the Court's consideration
10 that the actual ballistics testing was extensive in
11 this case, and that those results were not
12 available until January. And they were turned over
13 immediately.

14 In addition to that, an amended version of
15 those, which was just an error in the heading, Your
16 Honor, was again turned over on February 8th.

17 So they had the results of all those testings.
18 And that some 10- or 12-page report was turned
19 over.

20 Again, that was in compliance with the Court's
21 order and with their specific request as to what
22 they were requesting from the State, Your Honor.

23 In preparation for trial, Your Honor, in a
24 few days just before April the 8th, Your Honor, we
25 did go down and made copies of all the bench notes.

1 In order to try to get them to become aware
2 that those were available, we contacted them on
3 April the 8th, Ms. Walker did, by e-mail. We got
4 no response.

5 Again, on the 10th we contacted them again via
6 e-mail and got no response.

7 We actually put the records out front for them
8 to pick up. At that point, which they were aware
9 of, we would assume from the two e-mails they
10 received, they chose not to pick those records up
11 for some nine days of being contacted by the State
12 that those records were available.

13 In addition to that, Your Honor, the point was
14 somewhat moot, however. They were already on
15 notice that these results existed and that if they
16 were going to dispute the results they needed to
17 get some type of expert.

18 So to say that this is a surprise on the
19 Defense is simply not true.

20 In addition to that, Your Honor, I would also
21 rely on the State v. Hoffman, which is a 312 S.C.
22 386 case.

23 In that case, it was when the Defense moved to
24 suppress actual DNA evidence, because in that case
25 the Defense was put on notice that DNA testing

1 would be done, but in that case the DNA testing
2 results weren't actually -- the results only, not
3 the bench notes, weren't even turned over until the
4 third day of trial, Your Honor.

5 I would note in that case the Court then
6 offered to give them a recess so that they could
7 properly prepare for cross-examination, which would
8 be the gist of it. They declined that and the
9 Court said therefore the evidence should not be
10 suppressed.

11 The amount of time that the Court felt was
12 appropriate in that case was in a matter of hours
13 or so, Your Honor, in order for them to prepare for
14 cross-examination.

15 In this case, the Defense, even if you were to
16 argue that we didn't put them on notice October 4th
17 and we didn't put them on notice on January 4th,
18 have had ample time to prepare for any type of
19 cross-examination in this case.

20 In addition to this, Your Honor, I understand
21 that they just now have -- and I'm not sure exactly
22 when they contacted this expert, Mr. Ernest, which
23 they have now provided the CV to us, they have had
24 ample time to contact him. They are telling me he
25 is not available for today. However, if he can get

1 this testing done, Your Honor -- I believe this is
2 the same exact motion that we argued a week ago, at
3 which time you gave them a seven-day continuance in
4 order for them to be able to prepare for this to go
5 forward, Your Honor.

6 And I don't know of anything new or different
7 that they brought up other than they have -- and
8 the one thing they failed to note is that their
9 motion to compel back in January was denied by
10 Judge Cooper.

11 In that thing and our responses specifically
12 to what they requested, we had turned over the
13 gunshot residue testing results. We had turned
14 over all that.

15 Once we came into possession of the actual
16 bench notes in this case, we turned them over in a
17 timely manner. They are the ones that chose not to
18 afford themselves or to avail themselves to those
19 items in this case, Your Honor.

20 It is undisputed that it took them some nine
21 days to come get them to make them available to
22 them.

23 There is nothing in the bench notes that is
24 contradictory of anything from the results, Your
25 Honor.

1 The results are that there was gunshot residue
2 testing done, there was gunshot residue testing
3 found on Mr. Capnerhurst's hands, there was gunshot
4 residue testing done -- found on Ms. Parker's hand,
5 there is gunshot residue testing done and found on
6 Mr. Parker's hand.

7 Your Honor, and for them to make this
8 assertion that this proves whatever they say their
9 expert says it does, it is simply -- Your Honor, at
10 this point I would say they are just stopping going
11 forward by a continuance and this is just a delay
12 tactic.

13 Your Honor, we have complied with Rule 5. We
14 have done it in a timely manner. We would simply
15 ask that you deny their motion to continue at this
16 point.

17 We will also make sure that if you do order
18 that they be allowed to do testing here locally, we
19 will try to do whatever we can to assist in that.

20 THE COURT: Yes, ma'am.

21 MS. CAMPBELL: And, Your Honor, at this time I
22 think Court's Exhibit Number 2, which is the --

23 MR. WHITLARK: May it please the Court, Your
24 Honor? Oh, I'm sorry.

25 MS. CAMPBELL: -- and 3, Your Honor, are the

1 two ballistics testings, which includes the
2 distance, which is included in here.

3 THE COURT: Those are the things that were
4 turned over in October and January?

5 MS. CAMPBELL: Yes, Your Honor. If I can mark
6 these, I will hand them up to the Court.

7 THE COURT: All right.

8 (WHEREUPON, Court Exhibit Nos. 2 AND 3
9 were marked for identification only.)

10 MS. CAMPBELL: If I may approach?

11 THE COURT: Yes.

12 MS. CAMPBELL: Thank you.

13 (Complies.)

14 THE COURT: And, Ms. Campbell, the ballistics
15 report --

16 MS. CAMPBELL: And the only reason the
17 ballistics report wasn't turned over until January,
18 that is when we got it. It was completed then.

19 The two ballistics reports, Your Honor, if you
20 notice, one is just -- in the heading actually of
21 that report is the only difference. So that is why
22 there are two of those. We just resubmitted it to
23 make sure they have a corrected copy.

24 And then the gunshot residue testing was
25 turned over.

1 MR. WHITLARK: May it please the Court, Your
2 Honor?

3 THE COURT: Yes, sir.

4 MR. WHITLARK: Your Honor, first of all, the
5 Prosecution has just mischaracterized what Judge
6 Cooper did in this hearing.

7 The only thing Judge Cooper denied was when
8 we asked to look into the personnel file of Deputy
9 Odom. And he denied that. He did not deny our
10 motion to compel.

11 They had stacks of stuff they brought us. And
12 Judge Cooper told them right then, if you have got
13 discovery, give it to them. And the judge also
14 said, if y'all have got a problem with this, come
15 back to court.

16 Well, we've got a problem with it, Your Honor.

17 And Judge Cooper did not deny our motion. He
18 only denied the motion to look into Odom's
19 personnel file. Other than that, he gave them an
20 admonition and a charge to give us all of the
21 discovery.

22 Now, Your Honor, what they have just put into
23 evidence, they are summaries and show nothing but
24 the presence of gunpowder on them.

25 And at the time that we received this, it was

1 represented to us that, this is all we have.

2 The direct question was asked on the record in
3 this courtroom, is there anything else?

4 No, was the answer.

5 For them to represent to you now that they
6 just got them in January, Exhibit 5, which I move
7 to introduce, are the lab results, all the testing,
8 the distance testing, all of the things we've been
9 asking for was finished on April 19th, 2012, the
10 body of this. So for them to say that it wasn't
11 available in January of 2013 is incorrect.

12 THE COURT: All right. Do you disagree that
13 they turned -- in October they gave you the GSR
14 report and also that the forensic examination
15 report from SLED was turned over -- this says that
16 it was prepared January the 3rd of 2013. That was
17 turned over at the time you had the motion to
18 compel with Judge Cooper, is that correct?

19 MR. WHITLARK: That's right. That's correct,
20 Your Honor. That's correct.

21 THE COURT: And it is their position that at
22 that point in time that these are the results of
23 all of the testing and that you all were put on
24 notice then, if not in October -- correct me if I'm
25 wrong -- if not in October as to the results of the

1 gun residue and the forensic report, the 11 pages,
2 and that you all noticed at that time regarding I
3 guess the potential of hiring an expert?

4 MR. WHITLARK: Your Honor, those --

5 THE COURT: I'm just trying to figure out how
6 did the bench notes make a difference between the
7 documents that were turned over in October and the
8 two documents that were turned over in -- well, the
9 same document was turned over in January and
10 February?

11 MR. WHITLARK: I will be glad to answer that,
12 Your Honor.

13 Contained within Exhibit Number 5, Defense
14 Exhibit 5, are the amounts of the various types of
15 elements that are in each gun.

16 We had ballistics, and we concede even as
17 laymen that there were extremely large amounts of
18 antimony, barium, all of the things that would
19 prove that Bryan Capnerhurst fired a gun multiple
20 times. It is the most critical evidence in this
21 case.

22 The results of the GSR that they gave the
23 Court simply says, we note the presence of
24 gunpowder.

25 They noted the presence of gunpowder on Brett

1 Parker, they noticed it on Tammy Parker, and they
2 also --

3 THE COURT: Is that not in the report?

4 MR. WHITLARK: Excuse me, Your Honor?

5 THE COURT: Is that not in the report that was
6 turned over in January?

7 MR. WHITLARK: No. No, it wasn't, Your Honor.
8 That is why we're complaining about this.

9 THE COURT: Okay.

10 MR. WHITLARK: Because there was no -- there
11 was no finding of what the amounts were. They
12 simply said they found the presence of it.

13 And we asked, do you have anything in
14 addition.

15 And they said, no.

16 Also, Your Honor, Judge Cooper told them, if
17 you've got more discovery that they're asking for,
18 give it to them.

19 Now, Your Honor, we were asking for all of the
20 testing done on powder, all ballistic testing, and
21 that includes distance, and so forth.

22 There is not a single word in any of those
23 responses they gave us about what they considered
24 to be the amounts of the various types of elements
25 that are in gunpowder, and the difference between

1 the two weapons, and also the methodology employed
2 by the forensic laboratory of how they reached
3 these conclusions.

4 And, again, Your Honor, under the Rule of
5 Federal -- I'm sorry, South Carolina Rule of
6 Criminal Procedure 7(d)(2), I will represent to the
7 Court that my expert needs to come here to test
8 this because he disputes the methodology employed
9 to determine the distance between them and the
10 readings of how much powder, various types of
11 powder were on the clothing.

12 It is crucial to the defense of our case, Your
13 Honor, because it corroborates exactly what Brett
14 Parker said happened in this case. And it is the
15 central and key evidence that will prove that he is
16 innocent of this charge.

17 So, Your Honor, basically, Your Honor, we're
18 asking in the interest of justice for a mere 30-day
19 continuance in order to present a full defense and
20 a proper defense for this man.

21 And anything other than that, Your Honor, is a
22 danger of convicting an innocent man. And I think
23 that the risk of convicting an innocent man should
24 allow the Court to, in its discretion, give us a
25 mere 30 days.

1 Thank you, Your Honor.

2 THE COURT: All right. Thank you.

3 Anything else?

4 MS. CAMPBELL: Your Honor, we have complied
5 with his request. His specific request asked for
6 the results of the testing. We complied with that.

7 Typically in these cases the experts are then
8 hired. They then contact the other experts and
9 they review this themselves.

10 We took it upon ourself once we became in
11 possession of these actual materials to turn them
12 over immediately to the Defense. And I don't think
13 that that is in dispute either. They did not
14 choose to come pick them up for a period of time.

15 Your Honor, you already addressed all these
16 issues last Monday. We would simply state at this
17 point, this is just a stalling tactic, and we would
18 ask you to deny their motion.

19 MR. WHITLARK: Your Honor, I would like to
20 speak, if I could. May it please the Court?

21 Your Honor, I have already introduced into
22 evidence in Exhibit Number 1 our specific request
23 for all gunpowder tests and records.

24 Also, Your Honor, we asked for all ballistic
25 testing done.

1 Now, Your Honor, they knew we wanted this
2 information. And, Your Honor, in all fairness,
3 this is the key evidence in this case. This case
4 will determine the truth of what Brett Parker has
5 said in that he is innocent of these charges.

6 And for them to represent that they turned
7 this over in good faith or -- they asked us to come
8 up and get some bench notes.

9 Your Honor, this is a journal of scientific
10 testing with objective results on distance, on
11 dispersement of powder, on the amount of gunpowder,
12 and of antimony and barium and lead on each of
13 their hands. I mean, this is startling
14 information, Your Honor.

15 And after they said they had nothing else in
16 January, Your Honor, this is unfair surprise.

17 And again, Your Honor, there is a great risk
18 here of an innocent man being convicted of this.

19 The body of the evidence in this case contains
20 nothing but character assassinations and evidence
21 of what they -- alleged bad acts on his life.

22 This is objective, hard, direct proof that he
23 is telling the truth.

24 And we're asking the Court to please give us
25 30 days to present that in a proper fashion.

1 Thank you, Your Honor.

2 THE COURT: All right. And I'll have a formal
3 order to follow as to the motion for continuance,
4 but for purposes of the record, it appears that on
5 July the 27th, 2012, the Defense had filed a motion
6 for discovery.

7 I think it is undisputed that on October the
8 4th that the GSR report was turned over.

9 It appears that on January 4th, 2013, Judge
10 Cooper, I'm not sure if he denied the motion or
11 granted the motion, but ordered that all documents
12 be turned over at that time. The State turned over
13 the 11-page report from SLED that has been marked
14 as Court Exhibit Number 2, and then Court Exhibit
15 Number 3 was turned over on February the 8th, which
16 is the amended report, which changes -- on the
17 first one it shows I think him as a witness, the
18 second shows him as a subject -- the Defendant as a
19 subject.

20 On March the 28th the Court had a status
21 conference in this matter.

22 At that time the Defense indicated that they
23 were considering filing a motion pursuant to the
24 Protection of Persons and Property Act.

25 Another status conference was -- and they did,

1 in fact, on April 8th file a motion under what is
2 known as the Stand-Your-Ground or Castle Doctrine
3 statute. Documentation was presented to the Court.

4 Then on April 8th and April 10th an e-mail was
5 sent to Mr. Whitlark's office regarding picking up
6 the bench notes.

7 I will note that today is May 6th. That is
8 almost a month ago.

9 And April 10th, that documents were copied on
10 April 10 and placed at the front of the Solicitor's
11 Office. The notes were picked up on the 17th.

12 On the last week, which was the -- last Monday
13 was April 29th, the Court granted a seven-day
14 extension to give the Defense an opportunity to
15 contact an expert regarding the documents that were
16 available on April the 8th.

17 The Court granted that motion and gave the
18 Defense a seven-day extension to do that.

19 I have the e-mail that Mr. Whitlark sent
20 over -- gave us a copy of earlier from the expert
21 in Texas who states that he is in deposition and
22 reviewing evidence. And that was part of the
23 reason, I'm not sure if he was in trial or just had
24 some time commitment issues, but of course you know
25 depositions and evidence review do not rise to the

1 level of excuse for not being able to come to
2 court.

3 For those reasons, I am going to -- also, the
4 Defense alleged from the very beginning, I believe,
5 even in -- that in your motion it has been the
6 Defendant's contention from the beginning that
7 Mr. Capnerhurst had a gun. The specific amounts
8 don't qualify as new evidence that were turned over
9 and the bench notes 30 days ago, or made available
10 30 days ago.

11 And so therefore I am going to deny the motion
12 for a continuance. However, I am going to order
13 the State to make available to Mr. Ernest, even if
14 it means SLED or the State working over the
15 weekend, make -- he has asked for -- he would like
16 to re-examine the victim's clothes and the
17 firearms. Make that available to the Defense and
18 to Mr. Ernest and also Mr. Whitlark.

19 The State tells me that they anticipate a good
20 bit of testimony, maybe even into next week, which
21 means that if you are -- if you all decide to put
22 up a case, you may be talking about two and a half,
23 three weeks from now before your case is put up.

24 I will work with your expert as best as
25 possible as to scheduling for purposes of him

1 coming to testify.

2 As to Castle, for purposes of the Castle
3 Doctrine, I am prepared to go forward.

4 That motion was filed on April 8th. We were
5 supposed to hear it last Monday. I have not -- I
6 have not been given -- I am not clear as to the
7 necessity of the expert for purposes of Castle.

8 Under the motion that was filed by the
9 Defendant, it states that under 16-11-440(a), the
10 Defense is arguing that under (a); that a person is
11 presumed to have a reasonable fear of imminent
12 peril or death or great bodily injury to himself or
13 another person when using deadly force it is
14 intended or likely to cause death or great bodily
15 injury to another person if the person -- and it is
16 under Subsection 1 -- against whom the deadly force
17 is used is in the process of unlawfully and
18 forcefully entering or has unlawfully and
19 forcefully entered a dwelling, residence, or
20 occupied vehicle, or if he removed or has attempted
21 to remove another person against his will from a
22 dwelling, residence, or occupied vehicle.

23 This is the portion of the statute that the
24 Defense has asserted.

25 Castle under the State has asserted that it

1 does not apply because under (b)(3) they assert
2 that the Defendant was engaged in unlawful activity
3 or is using a dwelling, residence, or occupied
4 vehicle to further unlawful activity.

5 I am not clear, no one has presented me
6 anything as to how the expert can testify to either
7 one of those sections under the statute. And for
8 that reason I will go forward with the Castle this
9 afternoon.

10 It is about 1:00 o'clock now. We'll go
11 forward with the Castle Doctrine or any other
12 pretrials.

13 I would like to pick the jury on tomorrow. I
14 think Judge Barber is doing his qualifications. I
15 was not in there, but my assistant was. He
16 instructed the jurors, gave them some instructions
17 regarding the trial, preliminary instructions
18 regarding this trial.

19 But I would like to go forward with the Castle
20 and any other pretrial matters this afternoon.

21 It is 1:05. We can start back up at 2:30.

22 And I think that they have a list, Christine?
23 Judge Manning is picking a jury I believe this
24 afternoon.

25 THE CLERK: Yes, that's right.

1 THE COURT: And Judge Barber was picking one
2 this morning. They will give us a list. As soon
3 as that is made available -- I don't have a problem
4 with you giving the State or the Defense a copy of
5 it at the same time.

6 THE CLERK: Okay.

7 THE COURT: All right, thank you.

8 MS. CAMPBELL: Your Honor, may we approach
9 about one matter?

10 (WHEREUPON, a bench conference was
11 held.)

12 THE COURT: All right. And we'll start back
13 at 2:30. And as soon as the Clerk's Office -- I
14 think we will probably have to wait on them to pull
15 a panel for Judge Manning's trial. Then she'll
16 make that available to you all.

17 I have asked for a panel of -- because of the
18 the publicity, I asked for a panel of between 75
19 and 100. So I am giving it to you so you will have
20 enough time to take a look at it.

21 MR. WHITLARK: Excuse me, Your Honor? Are you
22 saying that -- are we picking the jury today or
23 tomorrow?

24 THE COURT: No, no, no. No. She is going to
25 pull -- they think that they have enough jurors.

1 Judge Barber is I think probably picking now or
2 done. He had a civil case.

3 MR. WHITLARK: Uh-huh.

4 THE COURT: He thinks that he has enough
5 jurors to go ahead and pull a panel to give --
6 Judge Manning has a two-week trial -- to give him a
7 list and also give us a list. That way you will
8 have the list.

9 MR. WHITLARK: Okay. And we are going to pick
10 the jury in the morning, Your Honor, is that --

11 THE COURT: Well, as soon as we get through
12 with pretrial. We are going to try. I would like
13 to pick it in the morning, but we have got to get
14 through all this pretrial.

15 MR. WHITLARK: And, Your Honor, we do have a
16 Jackson v. Denno hearing request.

17 THE COURT: We have got to do that this
18 afternoon.

19 MR. WHITLARK: We also -- we have an extensive
20 motion in limine that we would like to --

21 THE COURT: I will hear all of that this
22 afternoon.

23 MR. WHITLARK: Yes, ma'am.

24 THE COURT: The goal is to try to do it in the
25 morning. That may not happen.

1 Also, if you have voir dire, if you can get
2 that to me, because I'm sure we will have to take
3 some time to go over that too.

4 MR. WHITLARK: Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 All right, we'll start back at 2:30.

7 And if I can have a representative from the
8 press -- from the different stations -- I know we
9 have the newspaper and the stations here -- just
10 quickly if y'all can come up. I just want to run
11 something by you.

12 (WHEREUPON, a lunch break was taken.)

13 THE COURT: All right.

14 MS. CAMPBELL: For the record, we spoke
15 briefly at the bench, and I just handed up the
16 Victims' Bill of Rights, which did not specifically
17 address that issue; however --

18 THE COURT: All right. I think I did tell --
19 what we'll do is, is there an area -- regarding the
20 victims. There is nothing in the case law that
21 says anything. And the Victims' Bill of Rights
22 doesn't really address it either. So I'm not
23 inclined to say that they can't, you know, tape the
24 court proceedings -- all of the court proceedings,
25 but if there is an area that we can -- if there is

1 an area where the cameras will not -- I think I
2 talked to the press earlier about an area where the
3 cameras will not -- for those people who do not
4 want to be on TV. And it probably -- I'm thinking
5 back up here on this back side. If you would like
6 to sit over there, if you do not want to be on TV,
7 that row over there on the corner.

8 And then the Victims' Bill of Rights gets into
9 the other issues that gets into who the victim is
10 under the Bill of Rights, and it goes on to say, I
11 think it is like immediate family.

12 And it describes victims as, a person who
13 suffers direct or physical, psychological,
14 financial harm as a result of the commission or
15 attempted commission of a crime against him.

16 The term victim also includes a person's
17 spouse, parent, child, or lawful representative of
18 a crime victim who is deceased.

19 And so I say all of that to say that I'm not
20 sure if I can prevent the press from having feed of
21 anyone. But what I will do is if there is anyone
22 who does not want to be on camera, I will instruct
23 them that that area over there where no one is
24 sitting will be a no-tape area.

25 All right. Ms. Campbell, do you need a

1 second?

2 MS. CAMPBELL: Beg the Court's indulgence.

3 MR. WHITLARK: Permission to approach the
4 bench, Your Honor?

5 THE COURT: Yes, sir.

6 (Complies.)

7 THE COURT: And, Mr. Whitlark, y'all don't
8 have a position regarding the camera?

9 MR. WHITLARK: Oh, no. Whatever the Court
10 decides is fine with us.

11 (Pause.)

12 MS. CAMPBELL: They understand your ruling.
13 If they want to move, they can.

14 THE COURT: All right.

15 MS. CAMPBELL: Thank you.

16 THE COURT: Thank you.

17 All right, did you all -- I didn't receive --
18 other than Jackson v. Denno, what motions do you
19 all have?

20 MS. CAMPBELL: From the State, Your Honor, I
21 don't know that we have any specific motions. I
22 was handed a motion by the Defense which was
23 labeled motion in limine. And this is the first
24 time I have seen that. And we are trying to
25 prepare responses to that at this point. I'm

1 actually getting copies made so that we can all
2 look at it.

3 THE COURT: All right.

4 MS. CAMPBELL: Your Honor, and based on the
5 motion they just handed me, we may have some
6 motions as to motive, and things of that nature,
7 but other than that -- we do have a number of
8 statements that were taken from the Defendant. We
9 can address that. Or did you want to address the
10 Castle issue first?

11 THE COURT: Yes.

12 MR. WHITLARK: May it please the Court, Your
13 Honor?

14 Your Honor, based on the Court's ruling
15 regarding our expert, we are going to waive our
16 Castle request, Castle Doctrine request.

17 Of course, the statute doesn't provide what
18 the procedure is regarding that. And I think if we
19 follow what they have done in Florida, I believe
20 they either waive it or hold it until -- or during
21 the trial, which I never understood the ruling in
22 that case, whether that is an issue that is tried
23 and then decided on by the Court during the trial.
24 I don't know.

25 THE COURT: And I don't even know if the judge

1 in that case decided if they can do it. I do know
2 it is a legal issue that has to be decided by the
3 Court.

4 MR. WHITLARK: Absolutely.

5 THE COURT: The only thing is in Duncan, the
6 Court, our Court, Supreme Court, goes on to talk
7 about the whole -- the big issue in Duncan is the
8 immunity issue.

9 I guess -- and our Court goes on to articulate
10 that, you know, the whole purpose of immunity is to
11 protect those charged from having to go through the
12 trial. But we can cross that at -- I'm guessing
13 you can always make a motion and address it at
14 that --

15 MR. WHITLARK: And that is my understanding
16 what the procedure would be. And at this time
17 we'll waive or hold in abeyance our request for a
18 Castle Doctrine hearing.

19 THE COURT: All right. So are we ready to go
20 forward with the Jackson v. Denno?

21 MS. CAMPBELL: Yes, Your Honor. In speaking
22 with Defense counsel, there are a number of
23 statements that were taken. And he asked me to go
24 through them with you one at a time, in which he
25 kind of indicated which ones he wanted testimony on

1 and which ones he didn't.

2 The first contact came with police officers,
3 Your Honor, on April 13th, that afternoon, shortly
4 after the 9-1-1 call was placed.

5 The first person that had contact with him was
6 Deputy Ryan, from the Richland County Sheriff's
7 Department. He actually encountered the Defendant
8 in the driveway. He -- at that point the Defendant
9 was ordered to go to the ground because at that
10 point they didn't know what they had. They knew
11 they had two people dead in the residence.

12 He then advised him of his rights verbally
13 there at the scene. He did not do any significant
14 questioning of him. All he did was question him I
15 believe as to if there was anybody alive in the
16 house with a gun. So he could -- that was with
17 respect to other officers.

18 The next person that comes in contact with the
19 Defendant also in the driveway, EMS responded at
20 that point, Major Stan Smith and Matt Ellis, from
21 the Richland County Sheriff's Department, they then
22 briefly spoke to the Defendant there at the house.
23 That was around 1:25 in the afternoon.

24 Subsequent to that, the Defendant was asked or
25 was escorted down to Region 4 headquarters, which

1 was off Broad River Road, Your Honor.

2 At that point the Defendant was again advised
3 of his rights. There was a written Advice of
4 Rights. And then he gave an oral statement and a
5 written statement at that point.

6 THE COURT: What is the date of that?

7 MS. CAMPBELL: Those were all on April 13th,
8 Your Honor, the date this occurred.

9 In addition, on April the 13th, that
10 evening -- this was not in response to
11 questioning -- the Defendant was -- after giving a
12 statement, was then released and I believe went to
13 his father's house where he encountered Lieutenant
14 Maria Yturria. He then made a statement in her
15 presence, but it wasn't in response to any
16 questions.

17 The next day, Your Honor, on April the 14th,
18 Major Smith made arrangements and met the Defendant
19 at the house where this occurred. And there was an
20 oral statement there. He was not in custody and he
21 was not taken into custody.

22 Then I believe on 4/18 -- and let me
23 doublecheck and make sure I have the right date --
24 the Defendant then went to Richland County
25 Sheriff's Department headquarters and spoke to

1 Major Stan Smith. He was not taken into custody
2 and he was released.

3 On April the 25th, Major Stan Smith and
4 Investigator Travis Holdorf met with the Defendant
5 at his lawyer's office, Mr. Fedor's office.

6 At that point he gave an oral statement to the
7 officers. He was not taken into custody or
8 arrested.

9 The next month in May the 21st, there was
10 communication between Sheriff Lott and the
11 Defendant. The Defendant then went to Richland
12 County Sheriff's Department headquarters and made
13 contact with Sheriff Lott there. Sheriff Lott
14 asked him a series of questions that afternoon
15 around 1:30. He was not taken into custody, nor
16 was he arrested.

17 Then on June the 6th of 2012, again the
18 Defendant responded to Richland County Sheriff's
19 Department headquarters. He was asked additional
20 questions by Sheriff Leon Lott around 2:30 in the
21 afternoon. And again he was not arrested and not
22 taken into custody and he left that day of his own
23 volition in the same manner in which he got there.

24 Then on June the 13th, there was an interview
25 conducted by Brian Godfrey, where he was advised of

1 his rights. This took place at Richland County
2 Sheriff's Department headquarters. There is a
3 recorded conversation of that, Your Honor. We do
4 need to talk about redacting that conversation
5 because of the circumstances surrounding the
6 testing that was going on.

7 He then at the end of that question does ask
8 if he needs to get a lawyer, or something to that
9 effect, Your Honor. And I have actually got a
10 video that I think I provided the Court pursuant to
11 our meetings last week that you could review on
12 that issue. And then -- he was not arrested or
13 taken into custody.

14 Your Honor, there are a number of other
15 encounters with the Sheriff's Department, including
16 one on July 6th, July 11th, and then on July 19th.

17 At this point, Your Honor, we are not seeking
18 to introduce these. If that were to change I will
19 bring it to the Court's attention, but I don't
20 think they have any issues as to the voluntariness
21 of those statements because, again, the Defendant
22 was not arrested and not taken into custody until
23 on July 19th he was instructed by Sheriff Lott to
24 turn himself in -- and I believe that was -- the
25 next day.

1 And at that point, Your Honor, there are no
2 more statements taken from this Defendant by law
3 enforcement.

4 THE COURT: All right. You said you are not
5 planning on introducing anything from July 6th,
6 11th, and 19th?

7 MS. CAMPBELL: After June the 13th, yes.
8 July 6th, 11th, and 19th, Your Honor, at this
9 point. Other than I do think we would -- the
10 sheriff instructed him to turn himself in and the
11 circumstances around that, we would be introducing
12 that.

13 THE COURT: Statement from him?

14 MS. CAMPBELL: On July the 19th.

15 THE COURT: Is there any statement from him at
16 that time?

17 MS. CAMPBELL: I don't think it is really a
18 statement from him, just procedural.

19 THE COURT: Procedural. Okay.

20 MS. CAMPBELL: Your Honor, I stand corrected.
21 He did meet at the house at that time, and there
22 was a phone call where he was instructed to turn
23 himself in.

24 MR. WHITLARK: May it please the Court, Your
25 Honor?

1 THE COURT: Yes, sir.

2 MR. WHITLARK: Your Honor, we would like to
3 call Deputy Ryan to the stand.

4 MS. CAMPBELL: I believe we would call him to
5 the stand.

6 THE COURT: Let me ask you, what can we --
7 what have you all -- she said July 6th, 11th, and
8 she doesn't think there was any statement taken on
9 the 19th, it was procedural?

10 MR. WHITLARK: Right.

11 THE COURT: That they are not seeking to
12 introduce that.

13 MR. WHITLARK: Right.

14 THE COURT: But the others is what we are
15 going forward on the Jackson v. Denno. The dates
16 that she gave, are those all the dates that you are
17 aware of?

18 MR. WHITLARK: Yes, they are, Your Honor.
19 However, in order to -- any of these statements
20 that were made, when Mr. Parker had requested --
21 we're not going to ask for a Jackson v. Denno on
22 those, but we do want to have the Court hear us on
23 the initial statement that was given in the case.

24 THE COURT: That would be the one on the 13th?

25 MR. WHITLARK: Yes, Your Honor. The one over

1 at Broad River Road.

2 THE COURT: Okay. All right.

3 MR. WHITLARK: I don't know the date of the
4 Leon Lott.

5 MS. CAMPBELL: Which one?

6 MR. WHITLARK: This one.

7 THE COURT: She said May 21st there is one.

8 MR. WHITLARK: There was two meetings, yes.

9 THE COURT: And then another one in June.

10 MS. CAMPBELL: Your Honor, I don't mean to be
11 misleading, we may introduce other statements, but
12 they are towards the end, but I don't think he is
13 contesting any with Sheriff Lott, and those would
14 be the only ones that we would call.

15 MR. WHITLARK: Yes. At this time, Your Honor.

16 MS. CAMPBELL: At this time.

17 THE COURT: All right. Well, the State has to
18 prove that they are -- that the statements were
19 voluntary, and so therefore I'll let them proceed
20 to call, and of course you will be able to
21 cross-examine.

22 MR. WHITLARK: Thank you, Your Honor.

23 MS. CAMPBELL: Thank you, Your Honor.

24 The State would call Deputy Ryan.

25 THE BAILIFF: Place your left hand on the

1 Bible, and raise your right hand, please.

2 (Witness complies.)

3 THE CLERK: Do you swear or affirm the
4 testimony you give in this case will be the truth,
5 the whole truth, and nothing but the truth, so help
6 you God?

7 THE WITNESS: I affirm.

8 THE CLERK: State your full name for the
9 record, please.

10 THE WITNESS: Senior Deputy Joe Ryan, Joseph
11 Ryan.

12 JOSEPH RYAN,
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q Deputy Ryan, where are you employed?

17 A The Richland County Sheriff's Department.

18 Q What do you do there, sir?

19 A I am a deputy school resource officer at this time.

20 Q And in April of last year, what were your duties?

21 A I was a patrol deputy in the Region 4 area of
22 Richland County.

23 Q And Region 4, does that include the Ascot Estates
24 neighborhood?

25 A Yes, ma'am. it does.

1 Q I am going to turn your attention to Friday the
2 13th of April. Did you have an occasion to respond
3 to a call at the Ascot community?

4 A I did, yes, ma'am.

5 Q And what kind of call did you respond to?

6 A We responded to a call with reports of shots fired
7 with two people -- where two people had been shot
8 inside of the residence.

9 Q And what was the address you were responding to
10 that day?

11 A The address we responded to was Number 12 Tackeria
12 Court.

13 Q When you got to Number 12 Tackeria Court, were you
14 the first officer on the scene?

15 A Yes, ma'am.

16 Q And tell the judge what you observed when you got
17 there.

18 A When I arrived at Number 12 Tackeria Court, I was
19 told by dispatch to be looking for a gentleman
20 wearing a red shirt.

21 At the point that I arrived, I didn't see a
22 gentleman wearing a red shirt. It wasn't until a
23 few seconds later that upon looking at the driveway
24 I could see the shirt kind of come over a crest.
25 At that point I knew I was in the right place. I

1 exited my vehicle.

2 And when I approached the man wearing the red
3 shirt, I asked him to -- I did approach with my
4 service weapon drawn. I asked the individual to
5 prone down on the ground, let me see his hands to
6 make sure he didn't have any weapons on him.

7 Q Is that standard procedure in a case such as this?

8 A Yes, ma'am. Any time, you know, we go to a call,
9 we respond to a call where someone -- where there
10 is potentially a deadly threat, we take every
11 precaution possible to make sure that we're safe.

12 Q And the person that you observed, you said you
13 didn't see him at first, but you saw him shortly
14 after you pulled up in front of the house, where
15 was he located when you first saw him?

16 A He was located in the driveway.

17 Q In the driveway?

18 A Yes, ma'am.

19 Q That would be outside the residence?

20 A Outside the residence, yes, ma'am.

21 Q At that point that day, were you actually wearing a
22 uniform?

23 A Yes, ma'am, I was.

24 Q Did you identify yourself as a police officer?

25 A Yes, ma'am.

1 Q You indicated that you told him to get down?

2 A Yes, ma'am.

3 Q And the purpose in that is what, sir?

4 A The purpose in that is to insure safety for myself,
5 people in the surrounding area, and other
6 responding officers in order to make sure that if
7 this person was in fact a subject that possibly
8 committed the crime, that we could make sure that
9 they were at no advantage on us potentially
10 concealing any weapons or drawing any weapons to
11 harm anyone in the immediate area.

12 Q And did the Defendant comply with what you asked
13 him to do?

14 A He did. The Defendant complied completely.

15 Q And once he was down on the ground, did you then
16 approach him?

17 A I did -- I got closer to the Defendant, but at no
18 point did I get close enough -- it is standard
19 procedure that we wait until another unit arrives.

20 At that point, when another unit did arrive
21 and I was able to cover my approach to the
22 Defendant, I did approach him and place him in
23 handcuffs.

24 Q At that point did you then also check to see if he
25 had any weapons on his person?

- 1 A Yes, ma'am, I did.
- 2 Q And did he have any weapons?
- 3 A No, ma'am, he did not.
- 4 Q Once he was placed in handcuffs, what, if anything,
5 did you do?
- 6 A As he was being placed in handcuffs and being
7 detained, he was advised of his Miranda Warnings.
- 8 Q And who actually did the Advice of Rights that day
9 there on the scene?
- 10 A That would be me, Your -- me.
- 11 Q And can you explain to the judge what rights you
12 advised him of?
- 13 A Yes, ma'am. The Defendant was advised that he had
14 the right to remain silent. Anything he said --
15 anything you say can and will be used in a court of
16 law. You have the right to an attorney. If you
17 can't afford an attorney, one can be provided for
18 you.
- 19 Q Did he seem to understand what his rights were?
- 20 A Yes, ma'am.
- 21 Q Was he able to answer you coherently if and when
22 you talked to him?
- 23 A Yes, ma'am. He did answer that part of it. I did
24 not ask him any questions pertaining to anything
25 after that Advice of Rights, which was standard

1 procedure for me, when I place -- when I detain
2 someone in handcuffs, that I do advise them of
3 their Miranda rights.

4 Q So you didn't question him any further?

5 A Not at that point, no.

6 Q Prior to actually advising him of his rights, did
7 you ask any questions for safety purposes?

8 A Yes, ma'am.

9 Q And what question was that, sir?

10 A I can't say for sure exactly the words that I used,
11 but my goal is to ascertain if there was anybody
12 in the house that was still alive that needed
13 medical attention or anybody in the house that
14 posed a threat to myself or other arriving
15 officers.

16 Q And that was for safety concerns?

17 A Absolutely.

18 Q And that is while he was down on the ground?

19 A Yes, ma'am.

20 Q And did he indicate to you whether or not anyone
21 was left in the house that was alive and could pose
22 a safety issue?

23 A He indicated there was not.

24 Q And once you advised him of his rights, did you
25 question him any further on anything?

1 A No, ma'am.

2 Q And was he detained there at the scene briefly
3 until investigators responded?

4 A Yes, ma'am.

5 Q And once investigators responded, was he then
6 turned over to their care?

7 A Yes, ma'am.

8 Q And would that include Major Smith?

9 A Yes, ma'am.

10 Q And other officers there at the scene?

11 A Yes, ma'am.

12 MS. CAMPBELL: Thank you, Your Honor. I don't
13 have anything further.

14 MR. WHITLARK: May it please the Court, Your
15 Honor?

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. WHITLARK:

19 Q Deputy Ryan? Deputy Ryan, what time exactly did
20 you arrive at Tackeria Court?

21 A I cannot tell you the exact time that I arrived. I
22 know that I responded there approximately 12:30 was
23 the time that the call went out. I can't tell you
24 my exact time of arrival.

25 Q Okay. And when you came there, what was the

1 appearance of Mr. Parker? If you could describe it
2 for me.

3 A Well, he was in the driveway. As I said, I believe
4 he was wearing a red shirt. He appeared, you know,
5 frantic, I guess. But he responded well with any
6 directions I gave him.

7 Q Okay. He was in a very highly frantic and agitated
8 condition when you saw him?

9 A He wasn't acting -- I mean, he wasn't calm. I can
10 say that.

11 Q All right., Okay. And did he respond to you when
12 you told him, you have the right to remain silent,
13 and gave him his Miranda rights?

14 A To be honest, I can't remember his response to the
15 question -- or to the Miranda Warnings.

16 Q Okay. How long was it before Major Smith arrived
17 at Tackeria Court, do you remember?

18 A I wasn't keeping track of his arrival.

19 Q Okay. During the entire time at this early start
20 of this investigation or when you arrived at the
21 scene, he was in a highly agitated and excited and
22 frantic condition, right?

23 A Like I said before, he wasn't calm. I can't -- I
24 can't say really anything much more than that.

25 Q Okay. Were you there when he was having heart

1 palpitations and was being treated by EMS?

2 A He did state while I was near him that he was
3 having a hard time breathing, and, you know, EMS
4 then arrived.

5 Q And he appeared that way to you?

6 A I don't have any medical knowledge.

7 Q Okay. Was he clutching his chest and was he
8 telling you he was having chest pains and
9 trouble --

10 A He said he was having trouble breathing.

11 MR. WHITLARK: That's all I have. Thank you,
12 Your Honor.

13 THE COURT: All right. Anything else from the
14 State?

15 MS. CAMPBELL: No. No, Your Honor, nothing
16 from this witness.

17 THE COURT: Do y'all want to argue these
18 separately? Each statement separately regarding
19 the admissibility?

20 MR. WHITLARK: Your Honor, Deputy Ryan's
21 testimony would be in conjunction with the
22 statement taken by Major Smith and Major Holdorf on
23 Broad River Road. And that for me would be a
24 factual backup for my contesting that.

25 THE COURT: All right. So you are saying that

1 you want to group those together?

2 MR. WHITLARK: Yes. Yes.

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

4 THE WITNESS: Thank you, Your Honor.

5 (Witness steps down.)

6 MS. CAMPBELL: The State would call Major
7 Smith.

8 THE BAILIFF: Place your left hand on the
9 Bible, and raise your right hand, please.

10 (Witness complies.)

11 THE CLERK: Do you swear or affirm the
12 testimony you give in this case will be the truth,
13 the whole truth, and nothing but the truth, so help
14 you God?

15 THE WITNESS: I do.

16 THE CLERK: Have a seat in the witness box.

17 (Witness complies.)

18 THE CLERK: State your name for the record,
19 please.

20 THE WITNESS: James Standin Smith,

21 S-T-A-N-D-I-N.

22 JAMES STANDIN SMITH,

23 after being duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. CAMPBELL:

1 Q Major Smith, where are you employed?

2 A Richland County Sheriff's Department.

3 Q What do you do there, sir?

4 A I am a supervisor in the criminal investigative
5 division.

6 Q How long have you been in law enforcement?

7 A I started in June of 1984.

8 Q I want to turn your attention to the afternoon of
9 April 13th, 2012.

10 Did you have an occasion to respond to an
11 address in Ascot Estates?

12 A I did.

13 Q And why did you respond that day?

14 A A call had come out about a double homicide in
15 Ascot Estates, and I responded from our
16 headquarters on Two Notch Road.

17 Q And approximately what time was it when you arrived
18 there that day?

19 A Around 1:25 in the afternoon.

20 Q Were other officers already on the scene when you
21 got there?

22 A Yes, there were a number of uniform officers that
23 were present, including Deputy Ryan, who just
24 testified. I think Investigator Ellis was right
25 behind me. I think we might have been the first

1 two detectives that got to the scene.

2 Q Once you arrived at the scene, tell the judge what
3 you did.

4 A I learned that the Defendant had been Mirandized by
5 Deputy Ryan verbally. He was sitting on a cooler
6 over adjacent to the driveway being tended to by
7 EMS. He was handcuffed.

8 I approached the Defendant. And I actually
9 had learned he had been Mirandized, but I went
10 ahead and Mirandized him again. I used a card, out
11 of abundance of caution.

12 Q And prior to asking him any questions, you went
13 ahead and Mirandized him again?

14 A Yes.

15 Q What was his demeanor like when you approached him?

16 A He was being treated medically. He was breathing
17 rapidly. He was upset. But he was coherent and
18 seemed to be giving timely responses to anything
19 that EMS was talking to him about.

20 Q When you said you advised him of his rights, can
21 you, for the record, go through the rights you
22 actually advised him of, that day?

23 A Yes. I advised him that he had the right to remain
24 silent.

25 And that anything he said could be used

1 against him in court.

2 That he had a right to talk to a lawyer for
3 advice before asking any questions and have one
4 with him during questions.

5 And if he could not afford a lawyer, one would
6 be appointed to him before any questions, if he
7 wished.

8 And if he decided to answer questions then
9 without a lawyer present, he would have the right
10 to stop answering at any time.

11 And he also had a right to stop answering
12 until he talked to a lawyer.

13 Q And when you went through the rights that you just
14 went through here in court, did he seem to
15 understand what you were saying?

16 A Yes.

17 Q Did he respond appropriately?

18 A Yes. He seemed to be cooperative at that time.

19 Prior to -- I should back up. Prior to
20 advising him of his rights, I instructed the
21 uniform officers to remove the handcuffs from him.
22 He had two sets of handcuffs on him because he was
23 large, in the middle and the shoulders. And I
24 actually had them remove the handcuffs from him,
25 and I Mirandized him.

1 Q And at that point, you went through those rights
2 again with him?

3 A Yes.

4 Q And did you ask him if he understood his rights?

5 A I did.

6 Q And did he indicate whether or not he understood
7 what his rights were?

8 A Yes. He was forthcoming and willing to talk about
9 what had happened.

10 Q And at that point -- you don't have to go into the
11 details of what he said to you, but did he give you
12 a version of events that occurred -- as he said
13 they occurred that day?

14 A Yes. One of the first things we established is
15 he -- this individual had come over. He began
16 telling me about that.

17 And I asked about the relationship between him
18 and this individual, and he did not want to talk
19 about that in front of the EMS workers.

20 So they had begun getting through with him,
21 and then we walked over to a fence area where he
22 then explained that portion of the relationship
23 that he did not want to say in front of the EMS
24 workers.

25 Q And what was the portion of the relationship that

1 he had with Mr. Capnerhurst that he didn't want to
2 explain in front of the EMS workers?

3 A Basically advised me that he was a sports bookie at
4 that time. And in conjunction with the
5 explanation, advised me that what he was doing was
6 legitimate because he had a federal gaming stamp,
7 or something of that -- tax stamp, or something to
8 that effect, which I didn't know a whole lot about
9 at the time. And that is what he did not want to
10 say in front of the EMS people.

11 Q What was his demeanor like there at the scene when
12 you were talking to him?

13 A He was, you know, breathing rapidly, complaining of
14 rapid heartbeat, trouble breathing. He calmed down
15 after the handcuffs came off and was able to give
16 me, again, timely responses to my questions and
17 relaying -- explaining his sequence of events.

18 Q During this time period, did he ever act like he
19 was getting sick, or anything of that nature?

20 A He began to act like he was going to throw up, that
21 kind of motion, and he would spit a lot. I
22 distinctly remember that.

23 And then, again, that even calmed him down
24 some more as we began talking about going to
25 another location to interview him.

1 And then we ultimately made our way to my
2 vehicle. And he had a bottle of water in the
3 meantime that EMS had provided him.

4 And I remember going down the driveway to my
5 automobile, and he slammed the empty bottle of
6 water down to the ground as if he was mad.

7 And then we actually made our way to Region 4.

8 Q The Defense asked questions about whether or not he
9 appeared upset. Did you notice any type of upset
10 behavior, such as crying, or anything of that
11 nature?

12 A Didn't cry at all that I saw that day. Again, he
13 acted like he was in distress as far as being
14 nauseated, and he was spitting a lot. He did that
15 frequently. And then he demonstrated the anger
16 that I just described as we were getting in my
17 automobile.

18 Q And once you had gotten his version of events there
19 at the scene, was he then transported anywhere?

20 A Yes, he was transported to Region 4, which is just
21 inbound on Broad River Road, not too far from the
22 Harbison area.

23 Q What was the purpose of going there, sir?

24 A To secure a separate interview, to interview him
25 away from all the, you know, the goings-on at the

1 scene, and to try to get a written statement from
2 him as to his version of the sequence of events.

3 Q And at that point, was he transported to Region 4
4 headquarters off Broad River Road?

5 A Yes, he was.

6 Q And who actually transported him, do you know?

7 A I did.

8 Q And prior to having him transported, did you
9 explain to him what you were going to do?

10 A Yes.

11 Q And did he agree or not agree to go with you down
12 there?

13 A He agreed. It was explained that he was not under
14 arrest, that we had to sort through his story and
15 take a statement from him. Any time we have
16 something of this magnitude or an incident like
17 this, obviously we need to debrief everyone. And
18 he understood that.

19 Q Once he got to Region 4 headquarters, did you and
20 another investigator question him further?

21 A Yes, Investigator Travis Holdorf was the on-call
22 major crime investigator, so he was immediately
23 assigned this case as the lead detective.

24 Q Once you got to Region 4 headquarters, where did
25 y'all go?

1 A We went to an office there. I believe it belonged
2 to the lieutenant at Region 4.

3 Q Uh-huh.

4 A The headquarters was basically vacant at the time,
5 so there was nobody there to disturb us. We went
6 to an office with a closed door.

7 Q And at this point, was he handcuffed or not
8 handcuffed?

9 A He was not handcuffed.

10 Q And had he agreed to accompany you?

11 A Yes.

12 Q And was he under arrest at this time?

13 A He was not.

14 Q Once you got into the office area, did y'all then
15 take further precautions to insure his rights were
16 observed?

17 A Yes. Investigator Holdorf again Mirandized him
18 using this time a written form, that is a standard
19 form with our office.

20 MS. CAMPBELL: Can I mark these, 1 and 2?

21 (WHEREUPON, State's Exhibit No. 1 was
22 marked for identification and received
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 2 was
25 marked for identification and received

1 into evidence.)

2 BY MS. CAMPBELL:

3 Q I show you what has been marked as State's Exhibit
4 Number 1 for purposes of this hearing. Do you
5 recognize that?

6 A Yes. That is the written Miranda form that was
7 used that day, April 13th, 2012, at 2:26 p.m.

8 Q And you mentioned that at this point Investigator
9 Holdorf was with you. Was he the one that actually
10 advised him of his rights?

11 A He did..

12 Q Were you present when that Advice of Rights was
13 done?

14 A I was.

15 Q And can you tell the judge how Investigator Holdorf
16 went through using that sheet to advise him of his
17 rights at that point?

18 A Your Honor, he used -- did the same basic series of
19 rights that I just told you about. However, this
20 form actually has blocks that you can check each
21 one off. Investigator Holdorf does it a little
22 different from me. His checkmarks go right to
23 left, and mine would go left to right. But he
24 checked each right off.

25 He advised him, before we ask you any

1 questions, you must understand your rights.

2 You have the right to remain silent.

3 Anything you say can be used against you in
4 court.

5 You have a right to talk to a lawyer for
6 advice before we ask you any questions and have a
7 lawyer with you during any questions.

8 If you cannot afford a lawyer, one will be
9 appointed for you before any questioning, if you
10 wish.

11 If you decide to answer questions now without
12 a lawyer present, you still have the right to stop
13 answering at any time.

14 You also have a right to stop answering at any
15 time until you talk to a lawyer.

16 That is the top portion of the form. There is
17 a block for each one of those rights as he ticked
18 them off.

19 And then at the bottom of the form is a Waiver
20 of Rights. And that was completed as well.

21 In that Waiver it says:

22 I have read the statement of my rights and
23 understand what my rights are.

24 I am willing to talk and answer questions.

25 I understand and know what I am doing.

1 No promises have been made to me and no
2 pressure or coercion of any kind has been used
3 against me.

4 And obviously that is a statement where we
5 insert, or had the statement read to me of his
6 rights. And he acknowledged that. And we both
7 signed as a witness. And Mr. Parker signed under
8 each section that he understood his rights and was
9 willing to waive his rights.

10 Q And that is actually witnessed by you and
11 Investigator Holdorf?

12 A Yes.

13 Q And that is Mr. Parker's signature in two different
14 places?

15 A It is.

16 Q At any time that day, either during the first
17 Advice of Rights there at the scene or once you got
18 him back to Region 4 headquarters, did you promise
19 him anything to make him talk to you?

20 A No, ma'am.

21 Q Did you threaten him in any way?

22 A Not at all.

23 Q Did you use any coercion?

24 A No.

25 Q Did you deprive him of any creature comforts?

1 A Absolutely not. He was provided water when he
2 asked for it. If he needed to go to the restroom,
3 that was allowed. Whatever he needed just to get
4 his interview started.

5 Q At any point during your interaction with him that
6 afternoon, did he ever invoke any of his rights?

7 A No, ma'am.

8 Q Did he ever tell you he didn't want to talk to you
9 anymore?

10 A He did not.

11 Q At any point did he ask for an attorney?

12 A He did not.

13 Q While you were there and in his presence during his
14 Advice of Rights, did anyone force him to talk to
15 you?

16 A No, ma'am.

17 Q And was he talking to you voluntarily?

18 A He was.

19 Q The entire time?

20 A He was.

21 MS. CAMPBELL: Your Honor, if I may approach
22 with State's Exhibit 1.

23 (Complies.)

24 THE COURT: Yes, sir?

25 MR. WHITLARK: I would just like to take a

1 look at that.

2 MS. CAMPBELL: It has been provided in
3 discovery, Your Honor.

4 And if Mr. Whitlark wants to look at the
5 statement.

6 (Complies.)

7 BY MS. CAMPBELL:

8 Q Once he had been advised of his rights and waived
9 his rights the second time to you that day, did you
10 then start taking a statement from the Defendant?

11 A Yes, we went through his, you know, sort of mini
12 version he had given me at the house. We went
13 through it again in greater detail. And then we
14 reduced it to the form of a written statement.

15 Q And how was it reduced to a form of a written
16 statement?

17 A It is our policy at the Richland County Sheriff's
18 Department that we -- the interview was actually a
19 documented statement, whether it be by hand, or in
20 this case typing it out on a computer, and I
21 actually am the one that typed it out.

22 Q I am going to show you what has been marked as
23 State's Exhibit 2 for purposes of this hearing. Do
24 you recognize that?

25 A I do.

1 Q What is that, sir?

2 A It is a sworn statement that Brett Parker gave that
3 afternoon, initiated around 2:30 p.m. at Region 4.

4 Q And tell the judge just again how you went through
5 taking that statement, how it was reduced to
6 writing, and how the Defendant acknowledged that
7 was his version of the events?

8 A Your Honor, after the Advice of Rights and Waiver
9 of Rights, basically he had given this version at
10 the scene. This was a question and answer
11 statement.

12 And it starts out just basically saying:

13 Brett, can you once again relate to us the
14 sequence of events that occurred today at your
15 residence?

16 And it goes from that point on. He goes
17 through an initial part of it. Then there were
18 follow-up questions. And it went on for -- we go
19 into five pages.

20 Q And once the statement was reduced into a
21 typewritten form, did he have the opportunity to
22 review it?

23 A Yes.

24 Q And did he read through it or was it read to him?

25 A It was read back to him.

1 Q And was he given the opportunity to make any
2 changes if he so wished?

3 A Yes.

4 Q And did he make any changes that you recall?

5 A I don't recall him making any changes at all. He
6 agreed with the content of what we documented.

7 Q And in that statement, it is in a question and
8 answer form?

9 A Yes.

10 Q And the questions are from whom?

11 A Me or Investigator Holdorf.

12 Q And the answers on those are whose words?

13 A Brett Parker.

14 Q Once he had the opportunity -- once it had been
15 read back to him and he had the opportunity to
16 change it, did he then acknowledge it in any way?

17 A Yes, he signed his name to all five pages. It is
18 witnessed by myself and actually notarized by
19 Investigator Holdorf.

20 Q And this is a copy of the statement that you took
21 that afternoon?

22 A I believe that is the original.

23 Q Original, I'm sorry, the original of the statement
24 you took that afternoon.

25 While you were there taking the statement, did

1 you also learn about some money that the Defendant
2 had on him?

3 A Yes. Part of the Defendant's story was that this
4 employee who he had shot and killed, Bryan
5 Capnerhurst, had been coming to the residence for
6 the sole purpose of collecting some money that was
7 owed to him through their business. He said he
8 was -- he had over \$4,500 cash in his pocket that
9 he indicated was money he was going to be giving
10 him that day. Although it wasn't the entire amount
11 owed to him, he was going to give him that money
12 that afternoon. And we actually counted that money
13 out.

14 Q And it came out to how much?

15 A I believe it was \$4,511.

16 Q And that is what he actually had on his person?

17 A He had that in his pants pocket, yes.

18 Q But that wasn't the entire amount he indicated he
19 owed him that day, by his own version of the story?

20 A Right.

21 MS. CAMPBELL: Your Honor, may I approach?

22 (Complies.)

23 MS. CAMPBELL: He's seen it.

24 BY MS. CAMPBELL:

25 Q Once you had taken that statement, did you also

1 follow up with some further questioning?

2 A Yes, there was some post-statement, I guess,
3 conversation that wasn't actually included in the
4 written version of the statement.

5 And in between there, I had actually
6 communicated with some of the crime scene folks to
7 let them know at the scene what his version of the
8 sequence of events was so they could understand
9 what he was saying in reference to their review of
10 the processing of the scene. But there was some
11 post-statement conversation. Several different
12 points were covered that weren't in the written
13 statement.

14 Q And, again, during the time period, even after he
15 signed off on his statement, at any point did he
16 ever invoke any of his rights?

17 A He did not.

18 Q Did he ever ask for an attorney?

19 A He did not.

20 Q And was he still cooperating with you voluntarily?

21 A He was.

22 Q Specifically that evening, did you attempt to get
23 certain information about his safe combination?

24 A Yes, we asked him what the combination to the safe
25 was, and he gave us that combination. We were

1 later unable to open it using that combination, but
2 he was able to open it at another meeting for us.

3 Q That evening, once he had provided you with
4 additional information after the written statement,
5 were you also trying to coordinate some --
6 basically moving his children around or getting him
7 in contact with the children?

8 A Yes. Obviously it was a terrible situation for the
9 children involved in a situation like this. We
10 were trying to make very careful attempts to --
11 he -- Brett Parker had indicated he wanted to tell
12 his children himself, and we wanted, to the best of
13 our ability, to honor that request.

14 Q And at that point, did you have any forensic
15 evidence or testing done?

16 A No.

17 Q And at that point, all the information had come
18 from whom?

19 A Brett Parker.

20 Q Okay.

21 A We made arrangements through our Victim Services
22 people who had done I think a fine job in
23 collecting the children and basically not telling
24 them exactly -- you know, what had happened to
25 honor his request to be able to tell his own

1 children.

2 And we coordinated a meeting with them back at
3 Brett Parker's father's residence in the Chapin
4 area so we could make that happen and allow that to
5 take place.

6 And he was indeed able to tell his children
7 what had happened.

8 Q That afternoon, approximately how long can you say
9 were y'all at Region 4 headquarters prior to
10 departing there?

11 A Probably a couple of hours before we got back to
12 Brett Parker's father's house.

13 Q Once you had wrapped up your post-written statement
14 and follow-up questions, once all of that had been
15 done, at that point was the Defendant arrested?

16 A He was not.

17 Q Was he taken into custody?

18 A He was not.

19 Q And what happened?

20 A We drove him to his father's residence to drop him
21 off as we continued this investigation.

22 Q And where was his father's residence located?

23 A In the Chapin area on, I believe it is Old Road.

24 Q And who actually took him to his father's residence
25 that day?

1 A Myself and Investigator Holdorf.

2 Q And at that point, then he was allowed to go, and
3 he met with his children?

4 A He did.

5 Q And he stayed at the house and y'all left?

6 A We did.

7 Q And did you have any more contact with Brett Parker
8 that day?

9 A Not that day. We did -- we had -- I omitted this,
10 portion. We had got his consent to do some
11 analysis of his cellular telephone prior to leaving
12 Region 4 headquarters, which was done.

13 Q And he gave that consent voluntarily as well?

14 A Yes.

15 Q And the person that you interviewed the day this
16 occurred, is he here in the courtroom?

17 A He is.

18 Q Can you identify him for the judge?

19 A Sitting to the right of Mr. Fedor at the Defense
20 table.

21 MS. CAMPBELL: Your Honor, may the record
22 reflect he has identified the Defendant?

23 THE COURT: Yes, ma'am.

24 MS. CAMPBELL: Thank you.

25 THE COURT: All right. Please answer any

1 questions that Mr. Whitlark may have.

2 MR. WHITLARK: Your Honor, may it please the
3 Court?

4 CROSS-EXAMINATION

5 BY MR. WHITLARK:

6 Q Major Smith, exactly what time did you arrive at
7 Tackeria Court?

8 A My notes indicate 1:25 p.m.

9 Q At 1:25? Okay. Does it indicate when you left?

10 A It doesn't indicate what time we left, but the
11 initiation of the Advice of Rights would have been
12 a pretty good -- you could calculate in between,
13 because it took about 15 minutes to drive from the
14 scene to Region 4.

15 Q Okay. Tell me right now if you recollect, exactly
16 what officers from Richland County Sheriff's
17 Department were at the scene when you got there at
18 1:25?

19 A There were some in the house, there were some
20 outside.

21 Q Okay.

22 A Some of my detectives were there. Forensic people
23 were arriving. Stan Richards, Anna Elsey, Matt
24 Ellis, Ryan, Odom, a number of officers.

25 Q Was Don Robinson there?

1 A If he wasn't there when I got there, he got there
2 soon thereafter, I believe.

3 Q Was Chris Lindler there?

4 A Chris Lindler was there at some point in time as
5 well.

6 Q Okay. Was he in the house when you got there?

7 A None of my detectives entered the house.

8 Q Okay. Who was in the house?

9 A If there was anybody in the house at that point in
10 time, it was uniform officers clearing the house.
11 It is a very large house.

12 Q Uh-huh.

13 A And/or our forensic people as they began to show
14 up. But we did secure a search warrant for the
15 house.

16 Q Uh-huh.

17 A So that limited any searching prior to the
18 acquisition of the search warrant, so I'm not sure
19 how much entry was made by our forensic people. I
20 think, the best of my recollection, most of the
21 entries at that time had been uniform person
22 clearing the residence.

23 Q Okay. Do you remember whether -- did you enter the
24 residence?

25 A No, sir.

1 Q Okay. Did you see anybody come -- any officers
2 coming out of the residence?

3 A I can't say that I did. My focus was on the
4 Defendant at that time.

5 Q Okay. I understand that. Okay. He was upset and
6 angry about what had happened to his wife, is that
7 a fair statement? You said he had thrown something
8 down and he was angry, right?

9 A I'm not sure that I would say he was upset about
10 what happened to his wife. He was upset about the
11 sequence of events. He was -- had rapid breathing.
12 He did indicate he was angry. He demonstrated
13 anger.

14 Q Did he tell you that he was angry because he hadn't
15 been able to protect his wife?

16 A He had made some mention about the gun involved,
17 that -- like there was some self-blame because he
18 said he gave the gun to Bryan Capnerhurst and made
19 some statements about not being able to protect his
20 wife.

21 Q Okay.

22 A That was the general gist of his story at the time.

23 Q Right. Would you tell me how long the interview
24 lasted or the statement lasted over on Broad River
25 Road?

1 A The actual written statement, no more than an hour.
2 And there was some follow-up conversation. I would
3 say we were out there probably, I would guess
4 within less than two years.

5 Q Okay. You indicated that you were in touch with
6 some officers back at the scene during this time?

7 A Yes, sir.

8 Q Okay. Now, was that before or after the statement
9 was taken?

10 A That was after the statement was taken. My -- some
11 of my detectives were standing by waiting. We have
12 a very strict procedure about entering a crime
13 scene. In this particular case the question arose
14 as to whether a search warrant was necessary. I
15 had made the decision that we were going to secure
16 a search warrant. That took some time to get that.
17 So my forensic people did not initiate their part
18 of it until the search warrant was signed. But by
19 the time the statement was taken, I believe they
20 were clear to start their search.

21 Q Uh-huh.

22 A And I wanted to relay to them what his version of
23 the sequence of events was at that time so they
24 could articulate what they were looking at.

25 Q Yes.

1 A Through what his story was.

2 Q Okay. What time was that search warrant executed,
3 do you remember?

4 A I don't have it in front of me.

5 Q Could you have been at the Broad River Road for two
6 hours?

7 A Again, it was less than a couple of hours, I
8 believe.

9 Q Okay. Any reason you didn't note in the log what
10 time you concluded the interview?

11 A I don't have a log. I have an ongoing follow-up.
12 But I'm guessing maybe less than two years. There
13 would be no reason --

14 Q Do you know the exact time it ended?

15 A No.

16 Q Okay. But you talked to him for about how long?
17 About how long?

18 A No more than two hours, would have been my
19 recollection.

20 Q And he was cooperative with you and answered your
21 questions?

22 A He gave timely responses to the questions, yes,
23 sir.

24 Q Okay. And you had asked him -- do you remember
25 what time you asked him if you could download or

1 look at his cell phone?

2 A It was within that timeframe at Region 4, yes, sir.

3 Q Okay. Was it after 3:00 o'clock, after 4:00
4 o'clock, do you recall?

5 A It was probably after 4:00 o'clock.

6 Q Okay. Who did you speak with that was back over at
7 the Tackeria residence?

8 A Lieutenant Elsey.

9 Q Elsey?

10 A And Sergeant Richards.

11 Q Okay. Who was in charge of getting the warrant
12 that you talked about?

13 A Lieutenant McDonald.

14 Q Okay. And who did he relate that information to at
15 the scene, do you know?

16 A What information?

17 Q About the warrant that had been executed?

18 A I'm not sure I understand your question.

19 Q Wasn't there a call in about the warrants executed?

20 A I'm not -- I'm not following you.

21 Q Did you have two officers communicating, one at the
22 scene and one at the judge's office?

23 A Lieutenant McDonald I believe sent someone to a
24 judge's office to obtain a search warrant.

25 Q Do you remember who that was?

1 A I don't.

2 Q Okay. And he did cooperate with you?

3 A Yes, he was cooperative.

4 Q Okay.

5 MR. WHITLARK: That's all I have, Your Honor.

6 THE COURT: All right. Anything else from the
7 State?

8 MS. CAMPBELL: Nothing on this issue, Your
9 Honor.

10 THE COURT: All right, you may step down.

11 (Witness steps down.)

12 THE COURT: Call your next witness.

13 MS. CAMPBELL: Your Honor, I believe that
14 would be all we would put up on this issue as far
15 as per what Mr. Whitlark requested.

16 THE COURT: All right. I will be glad to hear
17 from you, from Mr. Whitlark.

18 MR. WHITLARK: Yes, Your Honor. Your Honor,
19 at this time we're going to object to the
20 information taken because of the mental condition
21 of Mr. Parker. He had just come out of an
22 extremely ultraviolent scene where his wife was
23 murdered and he had to kill a friend of his.

24 And because of that, Your Honor, we don't
25 think he had the mental capacity to even understand

1 what was going on. And I don't think that he could
2 comprehend exactly what was going on, even though
3 they say he was lucid and talking. We would object
4 to it on that ground.

5 MS. CAMPBELL: May it please the Court, Your
6 Honor? I believe that it is clear from the record
7 that this Defendant was Mirandized and it was
8 pretty much clear that officers made contact with
9 him other than one question, and that was for
10 safety purposes, to insure the safety of the
11 officers entering the house or having to clear it.

12 In addition to that, there was uncontradicted
13 testimony that the Defendant was advised of his
14 rights on three different occasions that afternoon
15 prior to -- once prior to any questioning --
16 actually twice prior to any questions there at the
17 scene, and then once again he was advised of his
18 rights once at headquarters.

19 The testimony as far as excited utterance or
20 state of mind was that he was coherent, he was able
21 to respond, he responded to all police commands, he
22 responded to their questions appropriately.

23 Your Honor, ironically under his version of
24 events, there is actually a rule under 803, excited
25 utterance, where the Courts actually recognize that

1 a person under an emotional state is more credible
2 actually than others. And that is a hearsay
3 exception. So I believe that the Defense's
4 contention that he would be too upset or too
5 excited to give anything, any kind of statement,
6 would actually fly against the actual excited
7 utterance exception, Your Honor, for hearsay.

8 We would just say that based on the evidence
9 before you as far as this hearing goes, that the
10 Defendant was fully advised of his rights.

11 In addition to that, Your Honor, although he
12 was initially handcuffed, he was then unhandcuffed.
13 He was asked if he would actually accompany the
14 officers to headquarters. He agreed to go with
15 them. He was taken there to headquarters. He was
16 not handcuffed. A statement was taken. After the
17 statement he was then escorted back to his father's
18 house where he was released for the evening.

19 Your Honor, not only are the statements not
20 custodial, but out of abundance of caution the
21 police did their job, they actually advised him of
22 his rights as they should have. He understood his
23 rights. He repeatedly gave statements, cooperated
24 with the police. And there is no evidence to the
25 contrary.

1 THE COURT: Anything else in reply?

2 MR. WHITLARK: Nothing in reply, Your Honor.

3 THE COURT: All right. Under Jackson v.
4 Denno, the State must show and the Court must
5 consider by a preponderance of the evidence that
6 the statements were given voluntarily.

7 • The Defendant in this case was Mirandized on
8 three different occasions by three different
9 officers on the date of April 13th.

10 Testimony has been that Officer -- Deputy
11 Joseph Ryan, Major Smith, and also Investigator
12 Holdorf Mirandized him.

13 State's Exhibit 1 and 2, one is an Advice of
14 Rights form that was signed by the Defendant on
15 April 13th, and the time listed on here says 1426
16 hours.

17 For that reason, I do find that the statements
18 are voluntary.

19 Looking at the totality of the circumstances
20 and considering Mr. Whitlark's motion, the Court
21 has said that in State v. Doby, 258 S.E.2d. 896, is
22 that Courts have consistently held that mental
23 deficiency alone is not sufficient to render a
24 confession voluntary, but it is a factor to be
25 considered along with other attendant facts and

1 circumstances to determine the voluntariness of a
2 confession, in this case the statement.

3 Once again, the Defendant was Mirandized on
4 three different occasions. He was not in custody.
5 And voluntarily went to -- I believe it was Region
6 4 with Major Smith and Investigator Holdorf.

7 Considering the totality of the circumstances,
8 I do find that the statement was given voluntarily.

9 All right.

10 MR. WHITLARK: Thank you, Your Honor.

11 MS. CAMPBELL: Thank you.

12 THE COURT: All right. And so now, going on
13 to April 14th?

14 MS. CAMPBELL: I believe he doesn't object
15 to --

16 THE COURT: Is that one contested,
17 Mr. Whitlark? April 14th? I just figured we would
18 do it by days.

19 MR. WHITLARK: All right. Well, we know that
20 we are not contesting the three in July, Your
21 Honor. However, I'm confused about which
22 statement, which one we are talking about.

23 THE COURT: All right. Which one is
24 April 14th?

25 MS. CAMPBELL: April 14th, Your Honor, is when

1 Major Stan Smith met the Defendant at the house on
2 Tackeria Court. And there was a follow-up with
3 some questioning there. It was just an oral
4 statement.

5 MR. WHITLARK: I do not -- see, I do not know
6 whether or not he initiated -- who initiated the
7 contact, that's all.

8 MS. CAMPBELL: In Major Smith's follow-up?

9 THE COURT: I think what he is saying is he is
10 not contesting anything where his client initiated
11 the contact.

12 MR. WHITLARK: That's right, Your Honor.

13 MS. CAMPBELL: In that case, Your Honor, I
14 believe Sergeant Robinson made contact with the
15 Defendant and asked him to meet them at the scene,
16 and the Defendant drove to the scene voluntarily
17 and met them, with his father was present also, I
18 believe.

19 THE COURT: All right.

20 MR. WHITLARK: We are contesting that one,
21 Your Honor.

22 THE COURT: Yes, ma'am, call your first
23 witness.

24 MS. CAMPBELL: And I'm sorry, Your Honor, I
25 misunderstood them.

1 We would recall Major Smith.

2 JAMES STANDIN SMITH;
3 after being previously sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. CAMPBELL:

6 Q Major Smith, the next morning on April 14th, did
7 you make contact with the Defendant in this case?

8 A Yes, I did.

9 Q And how was that contact made?

10 A Actually, Sergeant Robinson had coordinated the
11 meeting about Brett coming back to the scene and
12 answering some questions.

13 Our crime scene processing had gone into the
14 night and they were in a sort of stopping point.
15 And by this point in time we had done a couple of
16 other interviews that gave rise to several
17 questions that we wanted answered.

18 Q And at that point did you meet Brett Parker at the
19 house? And approximately what time of day was it?

20 A In the morning, about mid-morning that Saturday
21 morning. And Brett came to the scene with his
22 father. And I believe an aunt came. They wanted
23 to get -- the aunt wanted to get some clothes for
24 the children out of the house, and Brett agreed to
25 go into the house and go over some things, sort of

1 a re-enactment, if you will, is how we initiated
2 it.

3 Q So was Brett Parker driven there by his father, or
4 do you know how he got there? Or was there any
5 police escort involved in getting him to the scene?

6 A No, they came voluntarily. I don't remember -- I
7 don't remember which one was driving.

8 Q And once they got to the scene, you said you had
9 some follow-up questions?

10 A Yes.

11 Q And did you advise him of his rights at this point?

12 A No.

13 Q Was he in custody?

14 A It was a non-custodial interview back at the scene,
15 and he agreed to answer some follow-up questions.

16 Q And was he ever taken into custody or arrested that
17 day?

18 A He was not.

19 Q And approximately how long did you talk to him
20 there at the scene that day? Do you remember?

21 A Probably an hour or so.

22 Q And what was his demeanor like?

23 A It was much more calm Saturday morning.

24 Q And --

25 A More coherent. More calm.

1 Q Once you had asked him your series of questions
2 there at the house, how did he leave?

3 A He left with his father.

4 Q And was he ever taken into custody?

5 A He was not.

6 Q Was he ever arrested?

7 A He was not.

8 MS. CAMPBELL: That's all I have, Your Honor.

9 THE COURT: Yes, sir?

10 MR. WHITLARK: May it please the Court?

11 CROSS-EXAMINATION

12 BY MR. WHITLARK:

13 Q Major Smith, did you tell him at that time that you
14 had suspicions about what happened at Tackeria
15 Court?

16 A I don't know if I used those exact words, I will
17 have to review my notes, but some red flags, if you
18 will, had arisen and we indicated we needed to get
19 some things straight if we could. I don't know if
20 I used the word suspicions. I did by that time,
21 though, however, have suspicions.

22 Q Well, did you indicate to him that you had
23 suspicions about what he had told you the day
24 before?

25 A Again, I'm not sure if I used those words. We

1 asked a series of questions that one could infer
2 that we had suspicions, easily.

3 Q Okay. And did you tell him that you had spoken to
4 some people, not law enforcement, that had given a
5 version of what they thought had occurred there?
6 Did you indicate that to him?

7 A We asked some questions that were based on
8 information we got from some of the individuals.

9 Q Okay.

10 A So it would be new information that we had gotten
11 since we interviewed him. I don't know that I told
12 him who those individuals were, but we developed
13 questions based on those interviews, so he knew
14 there had been some interviews.

15 Q Okay. Did you interview any of the people that you
16 just referenced?

17 A Personally?

18 Q Yes?

19 A No, my detective did.

20 Q Okay. Did Don Robinson tell you that he had spoken
21 with someone on the telephone?

22 A By this point in time, I believe Don Robinson and
23 Investigator Lindler had paid Cindy Capnerhurst a
24 visit that Friday evening and talked to her at
25 length.

1 One of my detectives had spoken to an
2 individual named James Morgan, who provided us some
3 information.

4 Q Uh-huh.

5 A And, again, the crime scene investigation produced
6 several questions as well.

7 Q Okay.

8 A That we wanted to cover.

9 Q All right. Now, you had just mentioned that they
10 had spoken with Ms. Capnerhurst?

11 A Yes, sir.

12 Q Okay. Now, they spoke to Mr. Morgan before they
13 went to Ms. Capnerhurst's house, is that right?

14 A There were a number of detectives working on this.
15 I know Lindler and Robinson, I believe, went to the
16 Capnerhurst residence. One of my other detectives
17 spoke to Morgan. And I'd have to refer to my notes
18 to see who that was. I don't think it was the same
19 detectives.

20 Q Well, would you believe me if I told you you
21 confirmed that in your report?

22 A Confirmed what?

23 Q That Ms. Capnerhurst confirmed what Mr. Morgan
24 said?

25 A Yes, there was some consistencies between what

1 Ms. Capnerhurst and Mr. Morgan were telling my
2 detectives, particularly about the circumstances
3 surrounding the planned meeting that Friday
4 morning.

5 Q Right.

6 A There were some consistencies, yes, if that answers
7 your question.

8 Q Yes, sir. But they had spoken to Mr. Morgan before
9 they went to Ms. Capnerhurst's house, is that your
10 understanding?

11 A I can't -- I can't say that is true. It might have
12 been around the same timeframe. They were both
13 that Friday night.

14 Q Okay.

15 A We did not even know that -- I think Morgan
16 actually called us and got through to us at the
17 scene. I'm not sure which one of my detectives
18 talked to him that night, but, again, they were
19 providing some consistent details, things that we
20 did not know during the Friday interview.

21 Q Well, do you recall exactly whether or not
22 Mr. Morgan called somebody at the scene?

23 A He got through to some individuals at the scene,
24 yes. One of my detectives spoke to him that night,
25 because we made arrangements to actually proceed to

1 his location that weekend.

2 Q Okay. Which detective was it?

3 A Bear with me.

4 (Pause.)

5 A Sergeant Robinson spoke to him that Friday evening.

6 Top of Page 5 on my follow-up.

7 Q Okay. And does it say in your report whether that
8 was before of after he went to Ms. Capnerhurst's
9 house?

10 A It just says -- I can read you the exact verbatim.
11 It says:

12 I learned late that afternoon, that p.m, that
13 Robinson had spoken to a family friend of Bryan
14 Capnerhurst named James Morgan. Morgan was in
15 Greensboro, North Carolina, but had telephoned --
16 had a telephone conversation with Bryan several
17 times Friday morning. Bryan expressed worry about
18 the trip to get his money and told Morgan to call
19 9-1-1 if he didn't hear from him in an hour.

20 Q Okay.

21 A Bryan had also told Morgan that Brett had reminded
22 him several times to bring a bag of money.

23 Morgan also told Robinson that Bryan related
24 to him that Brett told him where to park his car
25 when he got there.

1 And then I have got the next paragraph:

2 Friday night Robinson and Lindler went to the
3 Capnerhurst's home in Batesburg and interviewed his
4 wife Cindy.

5 Cindy also explained that Bryan was worried
6 about the meeting and had made the same 9-1-1
7 statement to her on Thursday night. However,
8 Bryan had called her back Friday morning and said
9 he felt much better about the meeting since he
10 found out that Tammy would be there.

11 Cindy was adamant that Bryan didn't own a gun.

12 One paragraph -- one paragraph follows the
13 other. I'm not sure --

14 Q I got it. But is it your understanding that Mr.
15 Morgan was spoken to first and then Ms. Capnerhurst
16 confirmed what he had said, is that what your
17 report says?

18 A If you go by the sequence of the paragraphs you
19 could I guess make that connection, yes, sir.

20 Q Okay. Well, you wouldn't put one before the other,
21 would you? I mean, you put it in sequence?

22 A I don't have the times that they spoke to each one.
23 Perhaps Robinson's follow-up or Lindler's follow-up
24 would have the times. All I know is that
25 information was provided to me by the time the

1 Saturday interaction rolled around.

2 Q I understand that. That is the point of all this
3 is that by that point you were more or less, for
4 lack of a better word, you were targeting Brett
5 Parker at that point, would you agree with that?

6 A No. We had some things that we needed to get
7 answered.

8 Q All right?

9 A I wouldn't use the word targeting.

10 Q Well, did you tell Brett Parker that before you
11 began talking with him when he was with his father?

12 A I told him there were some things that had come up
13 that we needed some answers to, yes, sir.

14 Q Is that exactly how you put it?

15 A I don't know how you use the word target.
16 Obviously we had a double homicide at this point
17 and some things had come up that we needed answers
18 to.

19 Q Okay. Did you ever relate that information to
20 Mr. Parker before you began to speak with him the
21 day his father was there, on the 14th, the morning
22 of Saturday, the 14th?

23 A I told him there were some things we needed to
24 address that had come up, yes, sir.

25 Q Okay. Is that how you put it to him?

1 A Words to that effect. I don't think I said, Mr.
2 Parker, we are suspicious of what you told us, we
3 need to get some things straight. But the
4 inference was there that some suspicions had arisen
5 by that point in time, I needed to get some things
6 straight.

7 Q Okay. But you did not, as I understand it, you
8 correct me if I'm wrong, but you did not tell him
9 that you had spoken to these people and you had
10 that specific information from Ms. Capnerhurst and
11 James Morgan?

12 A As an example, if he was asked about why he
13 instructed him to bring a bag. So obviously we had
14 learned that from other individuals because he
15 hadn't told us that Friday, as an example.

16 Q I understand. I mean, did you tell him that you
17 had gotten that information, though, from someone
18 else?

19 A I don't know. The inference was clear that we had
20 gotten the information because he didn't deny it,
21 he agreed he had told him to bring a bag. So
22 obviously we had gotten it from somebody else. I
23 don't know if I told him who we got it from.

24 Q Well, I understand that, Major Smith, but my point
25 to you and what I'm asking you is, did you tell

1 him, we have spoken to some people and they have
2 told us the following and can you explain it to us?

3 A I can't say verbatim that I said that. I could
4 probably say that some things had come up that we
5 needed some answers to.

6 Q Okay.

7 A And that was an example of one of them.

8 Q Right. I understand. Did you tell him what the
9 source of that, where you got the information?

10 A I can't testify that I did.

11 Q Okay.

12 MR. WHITLARK: That's all I have, Your Honor.

13 THE COURT: Anything else from the State?

14 MS. CAMPBELL: While he is on the stand, Your
15 Honor, if we could go ahead, there are just a
16 couple more in order that he -- so he doesn't have
17 to come up and down. And I just misunderstood with
18 regard to them challenging the 13th.

19 Then on the 18th, Your Honor, there is contact
20 with the Defendant. Major Smith made contact with
21 him on the phone and asked him to come in and give
22 DNA and elimination prints. And while he was in
23 the office giving those items, there was another
24 conversation with the Defendant at 12:45.

25 THE COURT: All right. Yes, ma'am?

1 MS. CAMPBELL: I didn't know if Mr. Whitlark
2 wanted to go into that.

3 He came down to headquarters of his own
4 volition when he left that day.

5 MR. WHITLARK: May we approach the bench, Your
6 Honor?

7 THE COURT: Yes, sir.

8 (WHEREUPON, a bench conference was
9 held.)

10 MR. WHITLARK: We're good. We don't have
11 anymore. Thank you, Your Honor.

12 THE COURT: You may step down.

13 (Witness steps down.)

14 THE COURT: All right. Okay. So that would
15 have been the April 14th statement. And I believe,
16 Mr. Whitlark, that is one of the ones that you are
17 contesting, is that correct?

18 MR. WHITLARK: Yes, it is, Your Honor.

19 THE COURT: I will be glad to hear from you.

20 MR. WHITLARK: May it please the Court, Your
21 Honor?

22 Your Honor, at this point in time, it is the
23 Defendant's contention that the law enforcement was
24 targeting Mr. Parker. And because of that, there
25 needed to be a warning to him and a subsequent

1 warning about, you know, anything you say can and
2 will be used against you in a court of law and, you
3 know, that anything you say is going to be used
4 against you.

5 Because of that, I would -- we would object to
6 it on that ground.

7 THE COURT: All right. Yes, ma'am?

8 MS. CAMPBELL: May it please the Court, Your
9 Honor? This was a non-custodial statement,
10 Number One. Under Miranda you have to be in
11 custody and also to be advised of his rights.

12 Even if an officer intends to arrest a
13 suspect, an unarticulated plan has no bearing on
14 the question of whether the suspect was in custody
15 at the particular time. I believe that comes out
16 of Yarborough v. Alvarado, which quotes the Miranda
17 case, Your Honor. There are also other cases,
18 including the Defendant was questioned in her
19 bedroom in U.S. v. Parker.

20 Your Honor, in addition to that, there is a
21 determination that you must make as to whether or
22 not it is actual custodial under State versus
23 Creech. There is also California versus Beheler,
24 which is a 1983 case, Your Honor. And I believe
25 under Achacachi vs Snowden, the Defendant was not

1 advised of his rights and he doesn't have to be
2 because it was non-custodial at the time.

3 Even viewing it with the Defense's argument
4 that this Defendant was there, he met them there,
5 he went of his own volition after they requested
6 him to come to the house, he then gave his answers
7 to certain questions and he left again of his own
8 volition. He was not under arrest or in custody at
9 any time.

10 And beyond that, Your Honor, from all the
11 testimony he was voluntarily cooperating at that
12 point with the police.

13 Your Honor, the Defendant, I would just note
14 for the record, did not get arrested until July the
15 20th of 2012, which would be some two months, over
16 two months after this.

17 THE COURT: All right. I'm looking at State
18 v. Silva, 314 S.C. 483. And also in considering
19 Jackson v. Denno, I find that the Defendant, based
20 on the testimony that was presented today, that the
21 Defendant was not in custody. That the
22 Defendant -- the testimony is that the Defendant
23 and I believe his father did voluntarily meet him
24 at the house. That he was not in custody and free
25 to leave, and that he in fact did leave following

1 the meeting between Agent Smith, and I believe
2 Robinson was there. I can't remember the other
3 officer's name.

4 I find that the statement was voluntary and
5 therefore is admissible under Jackson v. Denno.

6 MR. WHITLARK: Thank you, Your Honor.

7 THE COURT: Let's see. Just so I can make
8 sure, just so we can put it on the record and make
9 sure that I'm clear and Mr. Whitlark is clear
10 before we get into any of the statements.

11 MS. CAMPBELL: I agree.

12 THE COURT: Let's just go through the dates.
13 April 18th I have in my notes that Stan Smith -- he
14 met with Stan Smith again. He was not in custody.
15 I'm not sure where that took place.

16 MS. CAMPBELL: At the Sheriff's Department,
17 Your Honor.

18 THE COURT: All right. And, Mr. Whitlark, you
19 are not objecting to that statement?

20 MR. WHITLARK: No, we're not, Your Honor.

21 THE COURT: And then the next one my notes say
22 April 25th, Travis Holdorf, oral statement, wasn't
23 taken into custody.

24 MS. CAMPBELL: That was Major Smith and Travis
25 Holdorf. It was an oral statement at Mr. Fedor's

1 office. He was not taken into custody.

2 THE COURT: All right. Any objection to that
3 one?

4 MR. WHITLARK: No, there is not, Your Honor.

5 THE COURT: And then the May 21st statement
6 and June the 6th, it looks like statements were
7 made to the sheriff. He was not arrested or in
8 custody.

9 Any objection to that one? Is that correct?
10 Am I correct?

11 MS. CAMPBELL: Correct.

12 MR. WHITLARK: I'm sorry, I didn't hear the
13 date.

14 THE COURT: The 21st of May and June 6th, the
15 statements to the sheriff. He was not arrested.

16 MR. WHITLARK: No, we're not. No, we don't
17 have objection to those.

18 THE COURT: All right. Yes, ma'am? And then
19 the next one is the 13th?

20 MS. CAMPBELL: Yes, ma'am.

21 THE COURT: Is that Brian Godfrey?

22 MS. CAMPBELL: Brian Godfrey, yes, ma'am.
23 That is the one that is on videotape.

24 THE COURT: Any objection to that?

25 MR. WHITLARK: Well, we are reserving

1 objections until it actually comes up in trial, but
2 there is no Jackson v. Denno objection at this
3 point.

4 MS. CAMPBELL: I know there is a redaction
5 issue. We will be taking care of those, Your
6 Honor.

7 MR. WHITLARK: That's right. Thank you.

8 THE COURT: And then, Mr. Whitlark, you said
9 the July 6th, July 11th, and July 19th, she says
10 she is not sure if they are introducing those. Do
11 we need to do a Denno hearing on any of that?

12 MR. WHITLARK: No. Your Honor, based upon the
13 affirmation by the Solicitor they don't intend on
14 using that at this point, you know, we don't have a
15 Jackson v. Denno.

16 MS. CAMPBELL: I want to look at that one more
17 time overnight, Your Honor, but if it becomes an
18 issue I can take it up. He was still not in
19 custody, so --

20 THE COURT: On those three?

21 MS. CAMPBELL: On those three.

22 THE COURT: All right. We'll have to -- he's
23 basing his decision based on I guess your saying
24 earlier that y'all would not --

25 MS. CAMPBELL: You could go ahead and ask him

1 if we did -- this would be the proper time to take
2 it up -- if we were to offer them, if he has any
3 objection. Again, they are non-custodial.

4 July the 6th, Chief Wilson, there is a video
5 recording of that one. He was advised of his
6 rights, but it is not custodial.

7 THE COURT: Any position on that?

8 MR. WHITLARK: Well, we are reserving our
9 objections until that comes up in trial, Your
10 Honor. And with redactions --

11 THE COURT: Not for purposes of Jackson vs.
12 Denno?

13 MS. CAMPBELL: The redactions --

14 MR. WHITLARK: No, there is no issue about --

15 THE COURT: I understand.

16 MR. WHITLARK: As a matter of fact, Your
17 Honor, I don't have Jackson v. Denno objection or
18 exception with the July statements.

19 THE COURT: Just the issue of redaction?

20 MR. WHITLARK: Yes, Your Honor. That's it.

21 THE COURT: We'll deal with those.

22 MR. WHITLARK: Thank you, ma'am.

23 THE COURT: All right. Yes, ma'am? Any other
24 motions now? Any other statements or Jackson v.
25 Denno issues that we need to take up?

1 MS. CAMPBELL: Your Honor, I am not aware of
2 any other statements to law enforcement in this
3 case. If the Defense is, he can bring them up.

4 MR. LARK: No, I know of no others, Your
5 Honor.

6 THE COURT: Any other motions from the State?

7 MS. CAMPBELL: Your Honor, we just received
8 from the Defense a motion in limine. I haven't had
9 an opportunity to read it. There is a multitude of
10 issues.

11 THE COURT: I read some of it.

12 MS. CAMPBELL: We would just like an
13 opportunity to be able to respond to that. Maybe a
14 15-minute break?

15 THE COURT: We might be due for a break
16 anyway.

17 MR. WHITLARK: That is agreeable with the
18 Defense, Your Honor.

19 THE COURT: All right, so we'll take about a
20 15 -- is that enough time -- 15-minute break. And
21 that will give me an opportunity to read it also.

22 MS. CAMPBELL: Thank you, Your Honor.

23 THE COURT: And whatever y'all can agree on
24 will be --

25 MS. CAMPBELL: I'll work on it. Thank you.

1 THE COURT: All right. And if you all have
2 your voir dire and questions for that, let me get
3 copies of that so we can maybe look over that today
4 also, as much as possible.

5 MS. CAMPBELL: That would be great.

6 MR. WHITLARK: Thank you.

7 THE COURT: All right. We'll take about 15
8 minutes.

9 (WHEREUPON, a break was taken.)

10 THE COURT: All right. Yes, sir? Yes, ma'am?

11 MS. CAMPBELL: It is his motion, Your Honor.

12 MR. WHITLARK: May it please the Court, Your
13 Honor?

14 THE COURT: Yes, sir.

15 MR. WHITLARK: Your Honor, the Defendant moves
16 in limine to have the Court give an admonition to
17 some of the State's witnesses in this case
18 regarding their opinions and their impressions and
19 their belief about who did what in this case.

20 The reason that the Defense is bringing this
21 up, many of the statements contain commentaries
22 like this.

23 THE COURT: From the State?

24 MR. WHITLARK: Yes. Yes. The statements
25 taken by the police in this case -- and, for

1 instance, I believe I have given the Court some
2 examples in there, Your Honor.

3 Your Honor, regarding, for instance, how he
4 was acting on certain occasions, Your Honor, even
5 if the impression of a witness would be relevant
6 testimony, Your Honor, based upon the myriad of
7 statements that we have seen like this, Your Honor,
8 we would object or would ask the Court to admonish
9 them that we shouldn't be doing that because of the
10 prejudicial -- unduly prejudicial nature of it.

11 And we would ask the Court to instruct or
12 somehow to find some mechanism to make sure that
13 the witnesses don't blurt things out like that
14 unless they are elicited by Defense counsel. And I
15 would ask that we just be alert to that, Your
16 Honor.

17 THE COURT: All right. And you have got
18 several things in your motion, so we will deal with
19 them.

20 MR. WHITLARK: Yes, Your Honor.

21 THE COURT: Yes, ma'am?

22 MS. CAMPBELL: Do you want me to go through
23 them at this point, Your Honor?

24 I rely on Rule 701, Your Honor. And I would
25 hand up State v. Jeffrey Weston, which is a case

1 tried here in Richland County, that addresses these
2 issues.

3 (Complies.)

4 MS. CAMPBELL: Your Honor, the State does not
5 intend to go beyond 701 or the Weston case in
6 talking about under 701 if the witness is not an
7 expert he is able to give opinions or inferences
8 limited to those that are rationally based on the
9 perception of the witness or are helpful to a clear
10 understanding of the witness's testimony or the
11 determination of the facts in issue and do not
12 require special knowledge, skill, or training.

13 Your Honor, specifically in Weston on Page --
14 excuse me, Your Honor, under Subsection 3, there
15 was an objection in that case when one of the
16 investigators in that case made contact with the
17 Defendant in that case. Her name was Kathy Jarvis.
18 Weston then complained that Jarvis gave unqualified
19 expert testimony when she said that Weston wouldn't
20 answer, was totally unresponsive, and did not seem
21 concerned about his mother.

22 The Court held that Jarvis was simply relaying
23 her personal experience in law enforcement and the
24 fact that she had not encountered anyone so
25 unresponsive was not a basis for the objection. It

1 cites State vs. McClinton, where it states that a
2 witness may state his impression or inference with
3 respect to the appearance of a person, animal,
4 object, or place if he has had an adequate
5 opportunity for observation, the details cannot be
6 reproduced as much as possible of the constituent
7 facts.

8 Your Honor, I believe that would be the
9 majority of what he is objecting to as far as that.

10 We would of course, you know, limit any kind
11 of opinion testimony by lay witnesses to what is
12 allowed by the rules.

13 And we understand that they aren't going to
14 get up there and say -- no one is going to get up
15 there and give their opinion as to, he's guilty of
16 murder.

17 THE COURT: What about these? He -- and I
18 don't know, Mr. Whitlark will probably give us
19 better information as to where the statements came
20 from or who they came from, but the ones like, he
21 didn't cry the way I would have.

22 MS. CAMPBELL: I don't know where that came
23 from. The only one we know where it came from,
24 Your Honor, is that if there were observations by
25 lay witnesses that he was not crying at the

1 funeral. There were observations by officers such
2 as you heard from Major Smith that were just
3 elicited by Defense and I believe by Investigator
4 Holdorf that he was rubbing his eyes, but he was
5 not crying. Things of that nature. I'm not
6 quite -- if he can tell me where he got these
7 quotes that he has got in his motion, I could
8 address them.

9 And observations such as no tears were
10 falling, that is a physical observation.

11 THE COURT: Well, the physical -- I think the
12 issue is when it gets into if there is somebody
13 that says he should have been more upset, he wasn't
14 overcome with grief.

15 MS. CAMPBELL: And I believe we would be
16 limited to them having their opinion he was calm,
17 he did not -- he was not crying, his -- you know,
18 based on their personal observation.

19 THE COURT: Observation.

20 MS. CAMPBELL: Just as are limited, Your
21 Honor, by Weston and in 701.

22 MR. WHITLARK: Your Honor, if I may speak to
23 that?

24 Your Honor, the point of this is that it is
25 not one or two people. This is a lengthy list of

1 people. And the problem with it is the implication
2 is, and it is obvious what the implication is,
3 because he wasn't acting this way, that must mean
4 he is up to something or he did something or the
5 implications and the unduly prejudicial effect of
6 it, Your Honor, because it really doesn't tend to
7 prove or disprove any fact in this case.

8 However, it is extremely, I think,
9 inflammatory and I think it is unduly prejudicial.
10 And the implication is that he therefore...blank.

11 And, Your Honor, the problem with this case in
12 the Defense's opinion is that a lot of it, there is
13 a lot of this in the case, this type of thing.
14 Circumstantial evidence or what people are thinking
15 or how he looked.

16 You know, Your Honor, I mean, we're trying to
17 base this on evidence. And that is what we were
18 talking about this morning, direct evidence. And I
19 understand circumstantial evidence can be just as
20 good as direct evidence. This type of thing is a
21 large portion of the Prosecution's case is that he
22 appeared a certain way, that, you know, he should
23 have appeared this way, or why wasn't he falling
24 down crying, and things of that nature.

25 Your Honor --

1 THE COURT: Well, those things, if he got into
2 any -- if there is anything that has to do with him
3 giving an opinion about, other than he was crying,
4 he was not crying. I have already stated to the
5 State that if there is a statement -- she says she
6 doesn't know where you got it from, but, you know,
7 he should have been more upset, he wasn't overcome
8 with grief, those type of things would probably
9 be -- would lead to them -- someone giving an
10 opinion. Grief can be defined --

11 MS. CAMPBELL: And maybe it is the way it was
12 worded. I don't know if it is worded this way. I
13 don't know where he got it. He never lost his
14 composure. I mean, the person could observe he was
15 composed rather than he never lost his composure.
16 Semantics.

17 THE COURT: And they would have to testify
18 that they -- he was composed. But there is a
19 difference between saying he never lost his
20 composure and just saying somebody was composed.

21 MS. CAMPBELL: And the other thing too, if we
22 call these witnesses and they come up and if Mr.
23 Whitlark lets us know about it, we can possibly
24 address it when they come up.

25 THE COURT: And it is hard for me to rule on

1 it at this point because it is --

2 MR. WHITLARK: I understand.

3 THE COURT: -- a motion in limine.

4 MR. WHITLARK: It is anticipatory, Your Honor,
5 but --

6 THE COURT: But if you see -- I'm going to
7 allow them to testify as to, you know, under the
8 rules, but his concern is that that is going to be
9 the testimony of everybody. And if it starts to
10 look that way, then you need to just make an
11 objection and we'll deal with it at that time. But
12 I do have it and I will look it up.

13 MS. CAMPBELL: We will do some research on it
14 tonight.

15 MR. WHITLARK: Yes. And, Your Honor, more
16 than anything, I just want to alert the Court to
17 this issue because, again, Your Honor, even if it
18 was relevant, even if it was, it is unduly
19 prejudicial and inflammatory and it becomes a
20 situation where, you know what, we've got a
21 consensus over here. I mean, this is not a
22 popularity contest or a vote to see who, you
23 know -- they weren't with him 24 hours a day, Your
24 Honor. Maybe he was cried out. I don't know. But
25 it starts to get misleading and confusing to the

1 jury. And I think it is introducing something that
2 I don't consider to be relevant evidence in this
3 case.

4 And it is because of so many of them that I
5 saw one side in particular, Your Honor, that I just
6 want to alert the Court to it.

7 And I don't want to be just getting up with
8 every witness and saying, here is another one, Your
9 Honor. Eventually the jury will pick up on that,
10 so --

11 THE COURT: You have it. Well, when she calls
12 a witness --

13 MS. CAMPBELL: We can always approach.

14 THE COURT: If there is a particular witness
15 you are concerned about, just ask and we can we
16 approach.

17 MR. WHITLARK: Yes. I will, Your Honor, thank
18 you.

19 MR. FEDOR: Your Honor, here is one sign. I
20 will hold it until later.

21 THE COURT: And y'all take a look at State v.
22 McClinton, which is 217 S.E. 2d 584, which gives
23 some --

24 MS. CAMPBELL: Got it.

25 THE COURT: -- some direction on -- it says

1 that rejected only when it provides no value, no
2 sense of value to the jury. But I will take a look
3 at that tonight, and y'all take a look at it too,
4 but --

5 MR. WHITLARK: You will be hearing from us
6 again about it, Your Honor.

7 THE COURT: I understand what Mr. Whitlark is
8 saying, is it necessary for every witness --

9 MS. CAMPBELL: I understand.

10 THE COURT: For him to say that he did not --
11 he didn't cry or he may have cried or -- I mean, I
12 think that is what he is saying. After a while it
13 becomes -- I'm not sure what value it adds to the
14 jury. And after a while it may become prejudicial
15 if every witness says that.

16 MS. CAMPBELL: We understand.

17 MR. WHITLARK: Thank you, Your Honor.

18 THE COURT: All right.

19 MS. CAMPBELL: Your Honor, the next thing he
20 talks about is opinions by experts.

21 MR. WHITLARK: Yes. And, Your Honor, I think
22 I might be able to short-circuit this one too.

23 Now, Your Honor, we are going to voir dire
24 these witnesses before they testify, or request
25 that we be allowed to do so.

1 MS. CAMPBELL: That's fine.

2 MR. WHITLARK: However, Your Honor, the
3 purpose of this is that I don't want this
4 represented to be a fact or said to the jury in
5 opening statements because, Your Honor, in my
6 opinion, you know, this will be -- they have got a
7 lot of hurdles to get over with before they get in
8 the type of thing that is listed in our memorandum
9 into evidence, at least, from the coroner and the
10 medical doctor, Dr. Marcus.

11 And at the point of his testimony, we are
12 definitely going to want to voir dire him in-camera
13 for the Court to contest, Number One, his
14 credentials. And, Number Two, the Daubert issues
15 in this case, which are, you know, what is it based
16 on, are you qualified to testify to it, what
17 science do you have, what studies and peer-reviewed
18 articles, and things of that nature. And so,
19 again, by alerting the Court that --

20 THE COURT: So your concern -- and you
21 understand that cuts both ways. I'm guessing that
22 is why Ms. Campbell has stood up because earlier
23 you stated of course just to the Court not in front
24 of the jury, that your expert has said --

25 MR. WHITLARK: Yes, but our experts are all

1 qualified, so they can say that.

2 THE COURT: I'll be glad to hear from
3 Ms. Campbell regarding that, but I'm guessing that
4 is probably why she --

5 MS. CAMPBELL: Your Honor, of course, I mean,
6 you know, our expert has the right to -- I mean, we
7 have a right to comment in opening argument what
8 the medical examiner for this county determined the
9 cause of death and the reasons for death and the
10 injuries and the significance of them.

11 I don't know under what theory he thinks that
12 would not be admissible by the medical examiner for
13 Richland County.

14 THE COURT: Well, let me make sure I'm
15 understanding. His concern is conclusions by the
16 medical examiner or --

17 MR. WHITLARK: Yes, by Dr. Marcus is his name,
18 Your Honor.

19 THE COURT: What is your concern regarding her
20 statements during opening statements?

21 MR. WHITLARK: Well, in opening statement,
22 what his findings were objectively, I don't have a
23 problem with that. But he makes a couple of
24 comments, and I believe I alerted the Court in what
25 he thinks those are.

1 And at the bottom of Page 2, those are the
2 ones specifically. And he is not qualified to give
3 those opinions. I mean, those aren't even -- those
4 aren't based on anything. And --

5 THE COURT: I don't have it in front of me.

6 MR. WHITLARK: I'm sorry, Your Honor, I'll
7 hand it up to you. There is two things at the
8 bottom of Page 2.

9 (Complies.)

10 MR. WHITLARK: He is making statements there,
11 Your Honor, that in my opinion he is not qualified
12 to give. As a matter of fact, I'm positive of it.
13 And that is going to be a major issue.

14 THE COURT: All right.

15 MR. WHITLARK: Again, Your Honor, that is a
16 major issue. Those kind of statements there are
17 extremely prejudicial.

18 THE COURT: Do you have any position regarding
19 not discussing those two things in opening until we
20 can get to --

21 MS. CAMPBELL: The only part is -- I mean, the
22 problem is is that the Defendant has a hole in his
23 arm -- I mean, the victim has a hole in his arm
24 that he alleges is the Defendant in this case that
25 would make it impossible or nearly impossible to

1 hang onto the the gun as it was found in his hand
2 when police officers responded.

3 Now, I'm not -- we aren't going to go into the
4 second part of this of why would this guy tell
5 people he was going over there to collect money and
6 then rob and kill them instead. We would just
7 argue that. We aren't going to contribute that to
8 Dr. Marcus. I don't think that is in his field of
9 expertise, we would agree with that.

10 MR. WHITLARK: Well, Your Honor, again, that
11 is specifically what I'm speaking to. He is not
12 qualified to give that opinion. He is not an
13 orthopedic surgeon. He actually was calling an
14 orthopedic surgeon to see what their take on it
15 was. And he is going to get up and stand up and
16 say something he is not qualified -- and, first of
17 all, it is not true. And, second of all, he is not
18 qualified to say that. And it is extremely,
19 extremely prejudicial.

20 And I would ask that the Court, that until we
21 get this matter on voir dire or in-camera, Your
22 Honor, I ask that he not -- that they not be
23 allowed to say that, or he not be allowed to say it
24 until he has proven to this Court that he is
25 qualified to do it.

1 MS. CAMPBELL: He determines the manner of
2 death for any suspicious death in the county on a
3 daily basis. Therefore, it is part of his duties
4 to conclude what a person is able to do, function,
5 live, whatever. He is a medical doctor with
6 expertise in forensic pathology, which is beyond
7 just the arm, it extends to the entire body. If he
8 can give an opinion to that effect of what his
9 opinion is is fine.

10 What he is arguing goes to the weight, not the
11 admissibility of what comes in. He is of course
12 going to have an expert that is going to come up
13 here and say something different. That's fine.
14 Again, I can't object to his expert, be it an
15 orthopedic person, a forensic pathologist, or
16 whatever, giving their own opinion, if they were
17 found by the Court to be qualified as a medical
18 doctor with some expertise in this area.

19 Dr. Marcus has been qualified over and over
20 and over and has given opinions similar to this on
21 multiple occasions and he is qualified to do so.

22 I don't think he is qualified to give an
23 opinion on why this guy would tell people he is
24 going over there to collect money and then rob and
25 kill them.

1 THE COURT: Well, we all agree on that.

2 I think the issue is not whether or not --
3 we'll have to argue whether or not he is qualified
4 to get into that at the appropriate time.

5 His attorney is just, for purposes of opening
6 statements, I think --

7 MS. CAMPBELL: Then we also consulted with a
8 second expert based on them representing they have
9 an expert who is an orthopedic expert who also has
10 given us the same information, which we have turned
11 over to them.

12 MR. WHITLARK: Your, again -- again, if this
13 guy is an expert, first of all, why is he going to
14 see an orthopedic just like we did. He is not an
15 orthopedic. That is our point.

16 MS. CAMPBELL: We went and got this expert and
17 consulted with him as well.

18 MR. WHITLARK: All right. Well, we're not
19 aware of any other expert or report. I'm just
20 aware of what you are reading on Page 2, Your
21 Honor.

22 And that statement there goes to -- is
23 extremely prejudicial. This goes to an extremely
24 important fact in this case. And, second of all,
25 based on what I have looked at and been told by my

1 expert is flat wrong.

2 THE COURT: All right. Well, this is what I'm
3 going to do. For purposes of opening statements --
4 the expert can testify to the opinions at the
5 appropriate time if they are allowed to do so. But
6 for purposes of opening statement, the State can
7 say what they are going to show, you can say what
8 you are going to show, but instead of saying that
9 Dr. Such-and-Such said, I think that is a concern,
10 until that person is admitted; and then the burden
11 will be on each of you all to show be able to show
12 that during the trial once you say it to the
13 jurors.

14 MS. CAMPBELL: Yes, ma'am.

15 MR. WHITLARK: Of course. And we know the
16 Court is well versed in the qualifications under
17 the rules that they will have to meet and the
18 hurdles they have to get over and the supporting
19 evidence before he can go anywhere near saying what
20 he said there. So I guess at that time --

21 THE COURT: That goes -- of course there is
22 case law out there, the Ford case, and all that.
23 I'm very familiar with it.

24 MR. WHITLARK: I know you are, Your Honor.
25 Thank you.

1 THE COURT: We'll deal with that at the
2 appropriate time.

3 MR. WHITLARK: Thank you, Your Honor.

4 MS. CAMPBELL: Your Honor, I believe the next
5 part we need to address is the gambling and the
6 extramarital affairs.

7 He has characterized those as bad acts, Your
8 Honor. That is not the intent under which the
9 State intends to offer any of this evidence.

10 Your Honor, I would hand up State v. Simmons,
11 State v. Wright, State v. Martucci, and State v.
12 Adams.

13 If I may approach, Your Honor?

14 THE COURT: Yes, ma'am.

15 MS. CAMPBELL: And I'll hand it to Defense as
16 well.

17 (Complies.)

18 MS. CAMPBELL: Your Honor, in every case the
19 State is not required to prove motive. However, if
20 motive is there we are allowed to go into it.

21 In addition to that, if the events surrounding
22 this is res gestae of the actual crime itself, we
23 are allowed to go into that under Adams and
24 Martucci and all that progeny.

25 The gambling in this case, Your Honor -- do

1 you want to take the affairs first or the gambling?

2 THE COURT: I don't care.

3 MS. CAMPBELL: Basically in the Defendant's
4 own statement, which he has just conceded was
5 admissible, he talks about the gambling that has
6 been going on in the house.

7 Bryan Capnerhurst was an employee of his who
8 worked in his gambling business, which was located
9 in an upstairs bedroom which served as an office in
10 this case for the gambling.

11 There were two dedicated phone lines in there
12 in which the bets were taken. Bryan Capnerhurst
13 and the Defendant would interchangeably take the
14 betting that was going on.

15 This had been a business he had been in since
16 I believe he quit working for his father in 2008,
17 and he had been engaged in this for a long time.

18 Part of the motive in this case is during the
19 course of this there will be testimony from various
20 witnesses that the Defendant had on a prior
21 occasion several years earlier gotten into a great
22 deal of debt, over a hundred thousand dollars'
23 worth of debt back in 2005 or 2006, that area.

24 At that point he had gone out to Las Vegas and
25 tried to recoup some of his losses. He made a --

1 somewhat of a suicide attempt.

2 In the evidence that was collected there at
3 the scene, there was a letter, a rendition, I
4 guess, of what happened when he was out there where
5 he talked about why he was trying to commit
6 suicide, the gambling debt, and everything. At
7 that point his father bailed him out.

8 Subsequent to that, he and his wife stayed
9 together; however, it was a rocky road. There were
10 some accounts where he tried to move out at one
11 point. He did not. They resumed their
12 relationship.

13 However, the testimony will be that Tammy was
14 very, very concerned about the finances in this
15 house and would have in fact been very upset had
16 she known her husband was gambling.

17 There will be testimony in this case as far as
18 motive, Your Honor, that in the months and/or year
19 prior to this that Mr. Capnerhurst had been working
20 for the Defendant in this case. That at the time
21 of Mr. Capnerhurst's death he was owed over \$20,000
22 by the Defendant for his participation in the
23 betting thing.

24 But on the day in question, according to the
25 Defendant, he was going to pay him \$500. According

1 to other witnesses, the Defendant had indicated to
2 him that he was going to be able to collect \$21,000
3 in debt and that is why he went over there that
4 day, these were gambling proceeds that were owed to
5 him.

6 In addition, Your Honor, there will be
7 testimony that over the course of the seven months
8 prior to this the Defendant, under a name, an
9 assumed name of Hal, had run up approximately
10 \$176,000 in debt doing personal betting on another
11 man's betting online franchise, which was called
12 BETCC.COM. \$100,000 or so of that was actually
13 under his name and \$76,000 of that was actually
14 under an assumed name of Hal, which he did. The
15 the Defendant acknowledged that he is Hal in some
16 conversations that were recorded.

17 Subsequent to that, Your Honor, there was a
18 bill that -- you will hear about Hal. He was in
19 debt. He had taken out loans from various people.
20 He took a Title Max loan in that January. He had
21 taken out a loan from someone the night before this
22 occurred for \$5,000. He was also supposed to make
23 a \$50,000 payment that week to his bookie, the one
24 he was betting with, that he had put that off on
25 Wednesday, he had moved it until that Friday

1 morning. He was supposed to make a payment that
2 morning. He then indicated that -- called them up
3 and told them he couldn't make it until that
4 afternoon.

5 So in all this was the betting and the loss.
6 The Defendant knew that his wife would not put up
7 with it again as far as the gambling. He was
8 almost \$200,000 in debt under conservative
9 estimates, including he had a pretty extravagant
10 mortgage on his house and other bills that were
11 pressing.

12 You will also hear at the same time this was
13 happening that he had a liaison with a young woman
14 from a local bank, that during the course of the
15 week, we just provided it for that week, but in the
16 two weeks prior they had a liaison at a local hotel
17 in West Columbia, the Executive Inn, across from
18 the hospital there, that on the week in question on
19 the 10th -- Your Honor, this occurred on the
20 13th -- that he and the young lady had gotten
21 together at that Executive Inn.

22 In addition to that, Your Honor, on the
23 morning of this event there had been a series of
24 exchange of text messages between the two of them
25 in which they talked about having a get-together

1 that next Monday, how they would get together and
2 have a yummy time, things of that nature. That was
3 all downloaded off his thing.

4 In addition to that, Your Honor, there was
5 also evidence found at the scene. There was gun
6 oil in the shredder -- which is not gun oil -- that
7 was found in the area where she said that he
8 indicated they had had sex on a prior occasion in
9 the house when Tammy was actually missing. And
10 that would be in the office area where that was
11 found.

12 That is when he also told her that the gun in
13 question -- Your Honor, it is somewhat convoluted,
14 and I'm sorry, it will be a little more -- the gun
15 in question, which was called The Judge, which is
16 the gun that he used to actually accuse Bryan
17 Capnerhurst, which he claimed to the police
18 initially that he kept on top of a safe in a
19 bathroom under an eve in the house, that he always
20 kept that in the -- not that one, that he kept his
21 gun in the office.

22 The ammunition to The Judge was found in a
23 drawer, it was unlocked, in the office, which is
24 significant since they did have a five-year-old son
25 in the house, although he claimed he always kept

1 that gun in the safe, which was how he was able to
2 retrieve it miraculously on the day when Bryan
3 Capnerhurst, according to his story, was holding
4 him at gunpoint he was able to retrieve this gun
5 that was usually kept, Your Honor, our theory, in
6 the office was on the safe and able to turn around
7 and shoot Mr. Capnerhurst four to five times --
8 three to four -- four to five times, Your Honor.

9 All of this is kind of -- it is the res
10 gestae. It is the motive. Without this, this
11 event makes no sense.

12 We do not intend to go into other affairs
13 which may or may not become probative, Your Honor.
14 We do not intend to offer those at this time. If
15 that should change or if it should become probative
16 through some questioning, we will let you know, but
17 on that occasion.

18 He also had contact with another young woman
19 who he talked about how bad his marriage was and
20 had complaints about his wife. Your Honor, of
21 course in a domestic situation such as this one,
22 that would be crucial to the State in order to
23 prove and put in context for this jury -- because
24 without this it makes no sense -- why this man was
25 pushed to the brink. He was having an affair. He

1 wanted out of the marriage. The financial burden
2 was overwhelming. He borrowed from everybody he
3 could borrow from. At this point the only avenue
4 he had open to him was divorce, which he couldn't
5 afford -- or this would be the State's theory, Your
6 Honor. Therefore, the jury cannot understand this
7 and it would not make any sense to them if you
8 don't put it in context.

9 We don't plan to go into the other affairs
10 which are not relevant to this. We only plan to go
11 into the statements he made about his marriage to
12 certain people. One of them is a young woman who,
13 according to her, she is not even having an affair
14 with him. And the other whom he was involved with
15 that week and made statements to about crucial
16 evidence in the case.

17 THE COURT: All right.

18 MR. WHITLARK: Your Honor -- just briefly,
19 Your Honor. There is my point. There is my point
20 of the beginning of this motion.

21 I mean, they are just digging. He has done
22 this. He has done this. He is this. He is this.

23 Your Honor, you know, it gets to a point
24 where, I mean, they say -- you know, they are
25 making a leap from, you know, he is a bad guy,

1 just -- you know, he is a flawed human being,
2 therefore he is a murderer.

3 I mean, you know, I've got a sneaking sense
4 that, you know, that is basically what this is,
5 this prosecution is in this case.

6 I really, Your Honor, that was a
7 mischaracterization of the evidence regarding him
8 keeping a gun in his desk, by the way. And we
9 intend to offer testimony to prove that that is not
10 true and that that is not correct and he never
11 showed a gun to any young lady. And she did not
12 say that. She never said she saw a gun.

13 Anyway, Your Honor, my point again is that we
14 know that how he lives is not -- can't be used as
15 evidence that he is a criminal and that he did
16 this, Your Honor.

17 I mean, some of the things regarding the debt
18 to Bryan Capnerhurst for his work in that business
19 would be relevant. We don't -- we won't even -- we
20 wouldn't object to it. It is true.

21 But, Your Honor, regarding other things, there
22 is nobody in this county that doesn't have debt.
23 And there is thousands of people that have told me
24 the same thing, that I want to get out my marriage,
25 both men and women.

1 So, Your Honor, an offhand comment made to
2 somebody or in a moment of mental upset should not
3 be used to -- cumulative -- and say this is a bad
4 man. And then they make a quantum leap and say,
5 here is the reason he killed her.

6 So, I mean, this is my biggest problem we have
7 with this case and the thing we filed this motion
8 for.

9 Thank you, Your Honor.

10 THE COURT: Anything?

11 MS. CAMPBELL: Your Honor, I just rely on
12 State versus Beck as far as the proposition he just
13 gave you, which is also a Richland County case.

14 THE COURT: You said Back?

15 MS. CAMPBELL: Beck, B-E-C-K.

16 And, Your Honor, the one thing I did leave out
17 of my argument, this whole thing and the whole
18 purpose of this is because of his debt and he
19 needed out of the debt, Ms. Parker, Tammy Parker,
20 the victim in this case, was -- had a \$868,000 life
21 insurance policy, as well as \$200,000 in a 401(k),
22 as well as retirement account, and other things
23 that of course he would own -- come into if she
24 were to be deceased and if he was the beneficiary
25 on her policy.

1 THE COURT: I will take a look at these cases
2 tonight.

3 I'm not sure, Mr. Whitlark, you can get around
4 the gambling portion of it, considering his
5 statement to police and why Mr. Capnerhurst is
6 there and how he got in. I'm just not sure how you
7 can get around that. And of course that is
8 under -- the State is using it as to motive.

9 MR. WHITLARK: Your Honor, if the Court will
10 allow me, I'll speak to that.

11 Of course we know that legally speaking motive
12 is not an element of murder. Murder has two
13 elements, the killing of a human being, with malice
14 aforethought.

15 THE COURT: I'm talking about bad acts, is how
16 they are trying to get it.

17 MR. WHITLARK: I understand. I understand
18 that, Your Honor. But, again, Your Honor, just out
19 of an abundance of caution, I do agree with the
20 Court that the gambling, to some limited degree, is
21 relevant in this case. But, Your Honor, this could
22 easily just turn into, it is a gambling -- I mean,
23 you know, it is nothing but a gambling case. And
24 he will be prosecuted for being a gambler, he is a
25 gambler, he is a gambler, and then suddenly now he

1 is a murderer.

2 Your Honor, there is a real danger in this
3 case of this type of thing, and I see it clearly.

4 And I understand, and I agree with the Court,
5 the Court is correct, it is relevant regarding the
6 debt owed and the gambling they were doing
7 together, and things of that nature.

8 THE COURT: And I think it is part of -- from
9 his statements part of the defense that you -- not
10 necessarily that you presented in the courtroom,
11 but part of the defense I have read through your
12 motions, I mean, it talks about -- I just don't
13 know. I'm not sure how we get around it now as to
14 the adultery. I'll take a look at that. We will
15 just have to do a 403 balancing test on it to see
16 if that is admissible or not. But, I mean, the
17 gambling I just -- I'm not sure. I don't see any
18 way around it.

19 MR. WHITLARK: Oh, I understand. I agree.

20 THE COURT: But I do think on 403 -- and of
21 course we'll do a 403 balancing test on both, but I
22 will look into the adultery and how is it relevant.

23 MS. CAMPBELL: And if I could just expand on
24 that a little, Your Honor.

25 The other case I rely on for financial motive

1 was the State versus Beckham.

2 But, Your Honor, beyond that, as far as the
3 adultery, just to the limited purpose, and we do
4 agree, he is initially questioned about how he --
5 and part of this is the Defendant gives a number of
6 statements, some of which we don't know all of yet.
7 In every -- in the statements he basically
8 characterized his marriage as perfect, it was a
9 great marriage, there were no problems, things of
10 that nature. That is one of the first things the
11 police asked him about and he volunteers.

12 And then as the statements continue and as he
13 is asked about questions that don't add up, that is
14 one of the ones where he lies and basically says,
15 well, the adultery wasn't a big thing, it wasn't a
16 big thing to me because it was just sex, it wasn't
17 a big thing, Tammy didn't need to worry about it,
18 things of that nature.

19 But he is caught in a number of lies, which is
20 significant for the State's case, and that is
21 another reason it would be admissible.

22 And again, Your Honor, I want to make sure we
23 are clear, we can make a proffer of what all we
24 could go into with other women, and actually
25 probably we would limit it to three that are even

1 possible.

2 The one we would be trying to get into was the
3 one that he just -- that he had just had a liaison
4 with that week, that he was texting the morning
5 right before doing this, talking about how they
6 were going to get together again.

7 We feel like that that -- and limit it to
8 that, Your Honor. That, coupled with the fact that
9 she was in the office on a prior occasion when they
10 had sex in the office and at that point he made the
11 statement about where the gun was located, which
12 was in the office, which was not where it was on
13 the day that this happened, which is significant,
14 Your Honor, to our case.

15 THE COURT: And she so is going to testify --

16 MS. CAMPBELL: There are other people that we
17 aren't offering at this point. And I wanted to
18 make you aware of them because we -- they are more
19 remote. But there is a liaison with another young
20 woman in January of that year at Embassy Suites
21 here in town, that he had another liaison with a
22 few months earlier. But we do not feel like that
23 is relevant at this point. But depending on where
24 this case goes, it may also, I don't know.

25 THE COURT: And we will probably have to

1 proffer the testimony of that --

2 MS. CAMPBELL: The second person.

3 THE COURT: The one that says -- if she says
4 she saw a gun in there.

5 MS. CAMPBELL: No. Your Honor, I didn't
6 mean -- I did not mean to say that, if I did.

7 THE COURT: Okay.

8 MS. CAMPBELL: He told her he kept the gun in
9 the office. The office is where they were having
10 the liaison.

11 (Pause.)

12 MS. CAMPBELL: Okay. They were having sex in
13 the office. He starts talking about guns. She
14 asked where he keeps the gun, and he points to the
15 table and shows it. I can give you her statement
16 if you need it.

17 THE COURT: I'll take a look at that.

18 MS. CAMPBELL: Okay.

19 THE COURT: Like I said, I will look at all
20 the case law tonight. I will also -- just on the
21 gambling, I'm just not sure how -- I'll think about
22 it. If you have any ideas, Mr. Whitlark, I'm sure
23 you will share those.

24 MR. WHITLARK: Yes, I will, Your Honor.

25 THE COURT: You and Mr. Fedor. And then I'll

1 take a look at the adultery and we will of course
2 have to do a balancing test on that to see and
3 determine if any of that is admissible.

4 MS. CAMPBELL: May I approach, Your Honor,
5 with Beck?

6 (Complies.)

7 THE COURT: Now, of course, if the Defense
8 puts up evidence and says that he was a loving
9 husband and then they have something to the
10 contrary, then, you know, of course --

11 MR. WHITLARK: And we do, Your Honor. And we
12 do. So --

13 THE COURT: No, if you open the door --

14 MR. WHITLARK: Right.

15 THE COURT: -- and say he is a loving husband,
16 then they will of course definitely be able to get
17 into I think for prior impeachment.

18 MS. CAMPBELL: And, again, Your Honor, just so
19 you know, one of things he lies -- he lies about
20 things, and then they come back and confront him,
21 and then he comes up with a different explanation.
22 But he has always -- and that is part of the
23 State's case.

24 Your Honor, at this time, too, we have filed a
25 reciprocal Rule 5 in this case. The Defense

1 indicated they had material they would get to us by
2 Friday. We have not received anything other than
3 what we received this morning through your office,
4 that I know of. Right?

5 MR. WHITLARK: I don't know -- I don't think
6 we have anything in addition. I mean, they have
7 got plenty themselves over here.

8 Your Honor, there is a -- the only thing would
9 be -- if they want to stipulate to the phone
10 records, I think we both have sets of -- I believe
11 we all have the same phone records.

12 MS. CAMPBELL: As long as we can see them.
13 They haven't shown us anything.

14 MR. WHITLARK: Well, we will be glad to get
15 with them, Your Honor. Your Honor, I believe Your
16 Honor is aware of the Defense's logistical
17 situations here in the last few days and it has
18 been hard to get with them on this about whether or
19 not we can agree to it.

20 I did communicate with Ms. Walker and agreed
21 with her that if we could just sit down and look,
22 we could stipulate and save the records keepers
23 from these companies from having to come forward.

24 THE COURT: All right. Well, you all -- if
25 there are phone records that you all intend on

1 using, get them to them and see what you can
2 stipulate to.

3 MS. CAMPBELL: Or any key piece of evidence,
4 anything of that nature. We have not seen anything
5 from the Defense other than a CD that was provided
6 by your office this morning, Judge, to us from a
7 Mr. -- I forget his name.

8 THE COURT: From their expert.

9 MS. CAMPBELL: Their expert. They mentioned
10 another expert that they have. I haven't seen a CV
11 on him or any reports from him. If there are no
12 reports, I just need to know.

13 In addition to that, are there any other
14 physical material, any kind of items taken from the
15 house, anything of that nature, any reports, any
16 kind of phone records, any kind of medical records,
17 anything. I don't have any of it. And he did
18 indicate he would provide that last week.

19 MR. WHITLARK: Your Honor, we do have the desk
20 from the room where the event occurred. We do have
21 that. Other than that --

22 MS. CAMPBELL: There are no --

23 MR. WHITLARK: We have phone records just like
24 y'all do.

25 MS. CAMPBELL: But we don't know what phone

1 records you have. You indicated that you sent us
2 multiple --

3 MR. WHITLARK: The same ones you have. We
4 have got the same ones y'all have.

5 MS. CAMPBELL: You are telling me you don't
6 have any different phone records?

7 MR. WHITLARK: We have records.

8 THE COURT: Why don't you --

9 MR. WHITLARK: We will be glad to sit down
10 with them.

11 THE COURT: -- get with her in the morning.

12 MS. CAMPBELL: In addition, Your Honor, he has
13 had a private investigator involved. It is my
14 understanding that they have someone who is going
15 to give opinion testimony on trajectory in this
16 case. I don't have any reports on that or any CVs
17 of any expert on that.

18 I'm just asking for what I think that we are
19 rightfully entitled to. And, you know, we are
20 being patient, but it would be time perhaps to give
21 that up.

22 THE COURT: All right. Why don't you go
23 through tonight and just get everything to her
24 tomorrow morning.

25 But before we get into that -- we kind of got

1 offtrack -- I think the Defendant still has some
2 other motions in limine, or did we cover them all?

3 MR. WHITLARK: No. There is one more, Your
4 Honor. And this involves a recreation video made
5 of what the State contends is the Defendant opening
6 his blinds on the security camera on the 13th of
7 April in 2012.

8 Now, Your Honor, first is this, is that we --
9 the best evidence is the video, which we don't --
10 we are not going to object to that. But they have
11 made a recreation of it, and I -- you know, Your
12 Honor, first of all, I don't think it is relevant.
13 It is not the best evidence in the case.

14 And that gets into the second part of our
15 objection on that, is that they claim, although it
16 is inconclusive results, that they have found
17 something that would seem to indicate some of the
18 byproducts of a pistol firing on there.

19 And I imagine they will use that to say that
20 Brett Parker did it and then opened it at a time
21 which is shown on the security camera, it is about
22 12:15.

23 Now, Your Honor, we object to that, first of
24 all, on chain of custody. The house was released
25 in 24 hours and this test was made I believe 34

1 days later.

2 There were hundreds of people going in and out
3 of that house. And there is no chain of custody.
4 There is no guarantee that it wasn't contaminated
5 by somebody else. And it is just too unreliable to
6 allow the scientific so-called evidence that they
7 claim they got when they got the warrant and went
8 back in there. And we vehemently object to it on
9 that ground, that they can't show a chain of
10 custody and that this is unaltered, nobody else
11 touched it in 34 days and went in there with
12 hundreds of people coming in and out of this place.

13 They can't prove any -- that there hasn't been
14 a material alteration, I guess is our point, Your
15 Honor. And we're objecting to that. And I
16 don't -- that is another thing. I believe that is
17 one of the lynchpins of their case based upon
18 conversations with the Prosecution. And we object
19 to it. It is just -- it is not competent evidence.
20 They can't prove a chain of custody. They can't
21 prove somebody else didn't put it there in 34 days.
22 They just don't -- they don't have a chain of
23 custody and they just can't introduce that
24 evidence. That evidence is way too prejudicial and
25 inflammatory, Your Honor, and it can't be verified

1 as reasonably true. So we object to it on that
2 ground.

3 THE COURT: All right. Yes, ma'am?

4 MS. CAMPBELL: May it please the Court, Your
5 Honor? To put this in context. What happens is
6 this occurs in April. Then about a month later
7 officers go back. By that time they have had an
8 opportunity to review -- there was a video system
9 on the exterior of his house that was installed by
10 the Defendant in this case where you can view
11 different areas of the house depending on which
12 camera site you look at.

13 Once investigators got the case and starting
14 reviewing the actual video footage very carefully,
15 they noticed that in one of the downstairs rooms
16 that you can see on the video where the blind
17 appears to be open and then closed from the video
18 of that day, right before -- right before -- within
19 minutes before -- Capnerhurst shows up and is
20 killed.

21 Based on that information, they then got
22 another search warrant. They went back a month
23 later and then did a search warrant of the house.
24 During that search warrant, they wanted to go in
25 and see if in fact what they saw was someone

1 actually moving the blinds.

2 Prior to doing that, they got a legal search
3 warrant and got probable cause, a judge signed off
4 on this, to go in and collect gunshot residue from
5 those, being there was a theory of the case, or a
6 possible theory of the case at that point, was that
7 the Defendant had planned this, that he shoots
8 Tammy shortly after they have lunch, that he is
9 then waiting for Capnerhurst, who is known to be
10 punctual, to show up. That he goes and he looks
11 out the blinds. You can see the blinds open and
12 close. And that would have been after the initial
13 shooting.

14 At that point --- there is some blinds in a
15 laundry room and then some blinds on a door, a side
16 door of the house, that are significant, Your
17 Honor.

18 This is also something that the Defendant in a
19 detailed explanation of what happened never
20 mentioned to the officers that he did that.

21 Also on the video you see him, right after
22 that, walk out the garage just slightly and then
23 walk back in. This is all within a minute or two
24 of Capnerhurst showing up.

25 Once they got the GSR from the blinds, Your

1 Honor, they then sent it off to SLED for testing.
2 And it came back where there is lead or some type
3 of particles that are associated with gunshot
4 powder or gunshot residue, Your Honor. It would be
5 consistent with that. There is no other
6 explanation. There is no explanation of that being
7 there. However, it could be transferred if someone
8 had just fired a gun and then went and touched
9 those blinds and it just happened to be in the same
10 area where the Defendant would have been looking at
11 or near there looking to see if Capnerhurst was in
12 fact showing up.

13 And under the State's theory of the case, it
14 was essential for Capnerhurst to show up so that he
15 could stage this robbery, subsequent self-defense
16 shooting in order to cover up what had happened to
17 Tammy. He had already killed her.

18 Therefore, Your Honor, his whole argument goes
19 to chain of custody, I believe is his major
20 argument, Your Honor. Under his theory, that if
21 somebody doesn't discover a murder weapon for a
22 month, say, it is buried under a bush somewhere,
23 that any testing on that is not admissible because
24 of the scene.

25 It goes to the weight, not the admissibility.

1 Of course he can argue there are other ways for
2 that to get there. The State's conclusion is the
3 only logical way for them to transfer evidence from
4 gunshot residue would in fact be if the Defendant
5 himself, as seen on the videotape or corroborated
6 by that, because that is how they knew where to
7 swab, he had looked out that day and had already
8 fired a gun after viciously killing his wife. That
9 would be the significance of that.

10 Chain of custody of course in every case, Your
11 Honor, doesn't start until an item is collected.
12 There is no question as to the chain of custody in
13 this case once the gunshot residue is collected.
14 But under his theory, then no evidence that is
15 found at a later date could ever be present on
16 anything and would have to be excluded. And that
17 simply is not what the case law holds, Your Honor.

18 And I don't have cases with me, but I can get
19 them for you, that basically say that chain of
20 custody starts once police take custody and must
21 continue until any testing is done.

22 And that chain, Your Honor, I don't think is
23 disputed.

24 THE COURT: All right. You can e-mail it, and
25 copy the other side.

1 MR. WHITLARK: Just briefly, Your Honor.
2 There were six samples taken. They are
3 inconclusive. Their own expert says so. However,
4 there appear to be some sort of microscopic amount
5 of what they just now said, transfer.

6 Your Honor, they were in control of this house
7 for 24 hours with 48 officers there. And, in my
8 opinion, unless they can exclude any touching by an
9 officer that was there that day and show that there
10 has been no one else that has gone in there and
11 touched this, including cleaning crews, and
12 anything else, Your Honor, that it is way too
13 prejudicial to allow this in under what she has now
14 characterized as their theory of what happened
15 there. Their theory.

16 So that is our objection to that, Your Honor.

17 THE COURT: All right. I'll take a look at
18 that tonight, that issue. I'll look at the case
19 law on that. Also, the issue of the expert, the
20 403 issue, the adultery and the gambling, and the
21 best evidence rule on the recreation.

22 Let me ask you about that. Is he saying the
23 video was recreated? What is your position on
24 that?

25 MS. CAMPBELL: Your Honor, if we -- I mean, I

1 don't know if we need to put that -- I mean,
2 basically they went out there and will testify --
3 it is clear in the video that somebody is opening
4 the blind and closing it. We don't have any real
5 need to put in that recreation if they just object
6 to that.

7 THE COURT: All right. Okay. I thought --
8 okay, there is objection to -- Mr. Whitlark, the
9 objection is to the video being entered, is that
10 correct?

11 MR. WHITLARK: Yes, there is.

12 THE COURT: All right. So you all -- it is
13 not -- it is her position that they are not -- that
14 that is not going to be put in.

15 MR. WHITLARK: Good enough.

16 THE COURT: All right. Now, as to the chain
17 of custody, is that to the video or to the blind or
18 what --

19 MR. WHITLARK: The blinds, Your Honor.

20 MS. CAMPBELL: Your Honor, at this point if I
21 may approach with State v. Hatcher.

22 THE COURT: Yes, ma'am.

23 MS. CAMPBELL: On chain.

24 THE COURT: It is 392 S.C. 86.

25 MR. WHITLARK: Thank you, Your Honor.

1 THE COURT: And then the other one that she
2 handed up is State v. Beck, I think, regarding
3 statement. And that is 342 S.C. 129, State versus
4 Beck.

5 All right. Anything else?

6 MR. WHITLARK: Nothing further from the
7 Defendant at this time, Your Honor.

8 MS. CAMPBELL: The only other thing is, did
9 they provide voir dire?

10 MR. WHITLARK: No, we have not, Your Honor.
11 We would ask for a chance to get that and e-mail
12 that to you or Jess.

13 THE COURT: All right. Yes, ma'am. And I
14 think you all have provided yours already?

15 MS. SIMPSON: Yes.

16 THE COURT: Have y'all given it to the
17 Defense?

18 MS. SIMPSON: We have copies now, Your Honor.

19 MS. CAMPBELL: And we may have -- based on
20 what they do, we may have some opposition.

21 THE COURT: Can you all copy them tonight and
22 just make sure anything that comes to me everybody
23 is copied on, at least somebody from the other
24 side.

25 MR. WHITLARK: We will right away, Your Honor.

1 THE COURT: I told -- I probably should have
2 told them later, because we still have to deal with
3 the issues of the voir dire. And I was thinking
4 we'd start at 9:00. I told them to have the jurors
5 here at 10:00. I may have them come back at 11:00,
6 if he has not put the recording on.

7 MR. FEDOR: Your Honor, you said you would
8 give us time to look over the jury list.

9 THE COURT: Yes. And I think Judge Manning
10 has just finished. As soon as he -- they are
11 waiting on him to finish because they are going to
12 take his -- I hate to say leftovers, but his
13 leftover jurors and put them into our --, in with
14 it. I think the list will have 100 on it. So I
15 hear him out there now, so I'm guessing that they
16 are finishing the jury qualifications?

17 THE BAILIFF: Just finished, Your Honor.

18 THE COURT: He is finished? Okay. So if you
19 all will hang around, we'll get -- she'll get you
20 the list if you hang around.

21 MR. WHITLARK: Thank you, Your Honor.

22 THE COURT: All right. Thank you. So we'll
23 start back at 9:00 and I'll try to see if I can
24 push the jurors back until 11:00.

25 MS. CAMPBELL: We will start back at 9:00,

1 Your Honor?

2 THE COURT: We can start at --

3 (Pause.)

4 THE COURT: All right, they are not -- Judge
5 Manning is still picking his jury. They haven't
6 picked yet. If you give Christine your fax
7 numbers, I'll have her fax it to you as soon as we
8 get it, but we can't get you a list until he
9 finishes.

10 MR. WHITLARK: Excuse me, Your Honor, you said
11 Christine?

12 MR. FEDOR: How long can I wait here for it?

13 THE COURT: If you want to, you can, but Judge
14 Manning just finished -- he said they just finished
15 his questioning, and so I don't know where they are
16 in the process. But the jury coordinator is
17 outside, I just spoke with her, and she is actually
18 the one that is going to fax it to you, Ms. Tull.

19 All right, so we will start at -- they are
20 coming in at 11:00. Can y'all get together around
21 9:00 and start about 9:30? Because he still has
22 got some documents to give you, I believe?

23 MS. CAMPBELL: We can meet at 9:00.

24 MR. WHITLARK: Yes, sure.

25 MS. CAMPBELL: And be in here at 9:30.

1 THE COURT: We will start at 9:30, and the
2 jury will be in at 11:00.

3 MR. WHITLARK: Thank you, Your Honor.

4 THE COURT: All right.

5 (Pause.)

6 THE COURT: Judge Barber has already
7 instructed the jurors not to watch TV -- well, not
8 to watch TV, but they can't read or watch anything
9 regarding this case.

10 I will instruct everyone in the courtroom, do
11 not contact any of the jurors. If you see any of
12 the jurors, please be careful, especially at this
13 point when we are still talking about having 100 on
14 the list, to not have any contact with the jurors.
15 It is highly possible. We were at lunch and we saw
16 jurors, so please try not to have any conversation
17 regarding the case in front of any of the jurors.

18 All right. Thank you.

19 MR. WHITLARK: Thank you, Your Honor.

20 THE COURT: All right. I will see y'all in
21 the morning at 9:30.

22 (WHEREUPON, the proceedings concluded at
23 5:22 p.m.)

24 MAY 7, 2013

25 (WHEREUPON, the proceedings resumed at

1 10:12 a.m.)

2 THE COURT: There is a couple of issues that
3 we had not resolved yesterday that I guess we need
4 to go back on the record on.

5 The first issue was the issue --
6 Mr. Whitlark's motion in limine regarding the
7 opinions of -- well, first of all, the State
8 mentioning expert witness in the opening
9 statements.

10 As to the expert witnesses, I find that the
11 State nor the Defendant can say what an expert
12 opines to until the expert has been qualified as an
13 expert. The parties may say what they intend to
14 prove, but not get into the expert's conclusions or
15 opinions.

16 As to lay witnesses, they may testify as to
17 what they witnessed, statements regarding the
18 Defendant. I think the issue might have been about
19 some -- the Defendant crying or not crying.

20 Under the case law they can get into that.
21 However, I will caution the State to be careful as
22 to opinion testimony and also the cumulative effect
23 because I think we said yesterday if everyone keeps
24 coming up and saying it over and over and over
25 again it becomes cumulative, and of course the

1 Defense objects. I would likely sustain that
2 because -- at that point, once the first or second
3 person has said it.

4 But as to giving opinion testimony as to what
5 a witness may have done, I mean, I believe that is
6 opinion testimony and not relevant. And unless
7 they are some expert and can give some expertise in
8 the area of grief or dealing with grief, they
9 cannot testify to it.

10 As to law enforcement and reading State v.
11 Vincent, the Court has held that law enforcement
12 may testify regarding a Defendant's demeanor during
13 questioning, that it is reasonable as long as it is
14 reasonably based on a deputy's personal observation
15 in the light of a deputy or investigator
16 experienced in law enforcement. Of course, the
17 State will have to lay the proper foundation to get
18 that in.

19 I believe the next issue was the chain of
20 custody. The chain of custody, the Court finds
21 that the chain of custody does not start until the
22 evidence is collected.

23 The Defense has filed a motion to keep out the
24 evidence regarding the blinds in the house. I
25 believe that Ms. Campbell has already agreed that

1 the video was not going to -- that they will not be
2 presenting the video.

3 The chain of custody under State v. Hatcher
4 says chain of custody must be established as far as
5 reasonably practicable. Of course -- so,
6 therefore, I am going to allow the evidence
7 regarding the blinds in, but of course you will
8 have to establish the chain. Once it was taken
9 into evidence, you still have to establish the
10 chain. But I do find that that can come in
11 provided upon the chain being established.

12 But the video is not coming in. You're not
13 trying to get the re-creation in?

14 MS. CAMPBELL: Your Honor, I think what I said
15 yesterday on the record was at this point we don't
16 know whether or not we're offering that. Basically
17 they went back over to the house with the second
18 search warrant. The search warrant was so that
19 they could do a re-enactment in order to assure
20 that what was on the video was what in fact what it
21 was. I would probably just have them testify to
22 the fact that when it was re-enacted, that is what
23 it shows, and limit it to that. But I don't know
24 if it is necessary to put the video in.

25 THE COURT: Yes. I think Mr. Whitlark's

1 concern was the quality of the video.

2 MS. CAMPBELL: And that's fine. We can just
3 talk about how they re-enacted it. It did show the
4 movement in the blinds, is the issue, and they can
5 testify about it without the video.

6 THE COURT: Okay. His concern was showing the
7 video to the jury because he said -- and I haven't
8 seen the video, but he had some concerns about the
9 quality of the video.

10 MS. CAMPBELL: That's fine.

11 MR. WHITLARK: Yes, that's correct, Your
12 Honor.

13 THE COURT: All right. And then the next
14 issue was the 401 -- well, the 403 res gestae issue
15 regarding the adultery and the gambling. I do have
16 some more questions regarding the adultery, but as
17 to the gambling, I find that the issues regarding
18 gambling are probative as to motive, that the
19 gambling has formed part of the res gestae as far
20 as the murders under the State's theory.

21 I find that the allegations of the gambling
22 are so intertwined that one cannot be proven
23 without mention of the other.

24 I further find that the allegations of
25 gambling are necessary to a full presentation of

1 the State's case and allegations.

2 I further find that the two are so linked
3 together, even based on the Defendant's theory of
4 the case, as to point of time and circumstances
5 with the crimes charged and what the Defense has
6 put forth thus far.

7 Now, as to the adultery, as I stated
8 yesterday, I had some concerns about that. And one
9 of the questions is, in looking at the case law in
10 State v. Adams and State v. Simmons, the Court says
11 that there has to be a logical connection between
12 the act, if you are trying to get it in under 403.
13 Are you trying to get it in under 403 or res gestae
14 or both?

15 MS. CAMPBELL: Your Honor, we are trying to
16 get it in under res gestae. In addition to that,
17 part of the motive for this entire crime is closely
18 related in time. There are other affairs that were
19 involved with this Defendant that happened back in
20 January with a different person. We are not trying
21 at this point to offer that evidence because we
22 feel like that is too remote. The series of events
23 that occurred the same week as this murder or
24 murders occurred, basically the Defendant made
25 contact with a young woman who works at a local

1 bank. He then engaged in illicit affairs with her.
2 One of those occasions where he did actually engage
3 in a sexual act with her occurred in the home in
4 the office area where this murder actually
5 occurred.

6 THE COURT: Let me ask you. That was my
7 question I'm looking at. Now, was that during the
8 time -- within the week?

9 MS. CAMPBELL: It was, my understanding, two
10 to three weeks before this, was the first encounter
11 in the home. The relevant part of that is the fact
12 that when they were in the office area there was an
13 exchange -- and this would under State v. Beck --
14 where the Defendant talked about having guns and he
15 indicated to her that he kept his gun in the
16 office, which is significant because there is no
17 gun when this murder occurred in the office where
18 it is, and he claims to have kept it in a safe, the
19 safe where the gun that was used to kill Bryan
20 Capnerhurst was found. The ammunition that
21 belonged to that gun was found exactly where he
22 told her in the desk, it belonged to that gun, and
23 there was a void in the drawer there that looked
24 like where the gun could fit indicating that that
25 would be where he normally kept that gun for his

1 protection, which is the reason he bought it.

2 The relevance of that is not so much the -- in
3 addition to that, during the search warrant there
4 is -- that corroborates what she says happened, in
5 the shredder they find what is referred to as gun
6 oil, which is some type of lubricant used in sexual
7 acts, found in the shredder hidden -- which would
8 further corroborate that perhaps he was having
9 illicit affairs there that would then corroborate
10 her having had that conversation in the office.

11 The week of this, on the 10th, which is three
12 days prior, that would be that Tuesday, the
13 Defendant and this young woman did have relations
14 that Tuesday, Your Honor. We would say that was
15 building up. That was part of the motive for him
16 wanting to kill his wife to get rid of her in
17 addition to the money, because at this point he
18 formed a relationship with her.

19 The morning of this event, within an hour or
20 so, an hour or two of the actual shooting
21 occurring, this Defendant is texting romantic
22 messages back and forth. They are talking about
23 what they are going to do for the weekend at one
24 point. She talks about how she wants to have
25 another yummy encounter with him. At another point

1 they talk about getting together next week. And I
2 think she even refers to something about a boy toy,
3 referring to him. It is obvious the nature of
4 that, Your Honor.

5 The reason the State wants to present that is
6 because it is very probative and res gestae of yet
7 another motive for him for actually planning this.
8 The State submits he planned and killed his wife
9 and then tried to frame his friend/employee for
10 this murder.

11 The motive for that is inherent in both
12 actions that week, and specifically those actions
13 within an hour or two prior.

14 And I can hand up a copy of the text messages
15 that were retrieved to show basically where that
16 exchange happens and the time period.

17 THE COURT: All right. And I'll be glad to
18 look at the text messages. I will tell you, my
19 concern is that -- I mean --

20 MR. WHITLARK: Your Honor, if I can speak to
21 that. It was represented to the Court that there
22 was a conversation between Mr. Parker and this
23 young lady. That is not correct. That is not what
24 she said in her sworn statement. She did not say
25 that he told her anything about a gun. He didn't

1 say anything.

2 THE COURT: But I'm just trying to figure out,
3 is there not a way that the State can introduce
4 that without get into to the adultery?

5 MS. CAMPBELL: But, Your Honor, the reason
6 that he wants to kill his wife is because he has
7 found this other relationship there in time.
8 Coupled with the money, that is the reason he is
9 getting rid of her. It is the easiest means for
10 him to end what is currently an unhappy marriage,
11 to get rid of her, to frame his friend, to get the
12 money and to get the girl. It is the oldest motive
13 in the book.

14 THE COURT: Is he saying -- I mean, are the
15 text messages saying -- I mean, from what you all
16 are saying, he is having several affairs. So, I
17 mean --

18 MS. CAMPBELL: We are only going into the one
19 most closely in time in order to make it part of
20 the res gestae in order to give the jury some
21 thing. And we submit perhaps we would go into the
22 other ones as well, but we aren't going to, but we
23 are sticking to the one that is clearly relevant
24 and res gestae of this event, a triggering force
25 perhaps, or this was the triggering force. With

1 motive we aren't limited to just one motive, Your
2 Honor. There are multiple reasons that he did what
3 he did on this day.

4 THE COURT: But is there anything in there
5 that indicates that he -- I mean, you are saying
6 the text messages are saying, are we going to get
7 together this weekend. And he -- I think the fact
8 he is having -- if he is having an adulterous
9 relationship does not necessarily connect the dots
10 that he is going to -- as to murder.

11 MR. WHITLARK: Yeah, I agree, Your Honor.

12 And also, just a review of what was just said.
13 He is making plans to see her, Your Honor,
14 according to what they are saying. I'm sorry, Your
15 Honor.

16 THE COURT: I'm just asking, did the text
17 messages say, you know, we are going to get married
18 next week, or -- I mean, that --

19 MR. WHITLARK: No.

20 THE COURT: I'm just trying to see how y'all
21 connecting the dots to say that the adultery -- and
22 then you say he is having lots of adulterous
23 relationships.

24 MS. CAMPBELL: I don't know how that works
25 against us when we are limiting it to the one that

1 we think is relevant. Because he said -- basically
2 he told her, in order to get her involved, that
3 they did not sleep together at the house. He said
4 he slept upstairs and she slept downstairs. He
5 said that they were going to separate. That he was
6 going through a rough financial situation. And
7 basically represented to her that his marriage was
8 on the rocks and was going to be over. It was
9 under that premise she became involved. Is that
10 correct?

11 MS. WALKER: Right. She was misled.

12 MS. CAMPBELL: She was misled. He basically
13 is telling her, you know, my marriage is over, it
14 is on the rocks, it is almost over. And therefore
15 then he gets into -- gets her involved.

16 THE COURT: She is not your first witness?

17 MS. CAMPBELL: No.

18 THE COURT: And y'all are not going to really
19 go into that -- you weren't planning on going into
20 that on opening?

21 MS. CAMPBELL: Briefly, Your Honor, talking
22 about -- it is a motive. It is one reason he needs
23 to get rid of Tammy Jo Parker.

24 And, of course, Your Honor, I think we have
25 the right to prove any motive, we aren't limited to

1 picking a motive when there are multiple reasons
2 that the pressure is building. And in this case it
3 is crucial to the State's case to prove that in
4 fact this was yet another contributing factor that
5 made him break; that turns him from a
6 law-abiding -- well, not a law abiding, sorry --
7 but just a gambling person into a killer.

8 And, Your Honor, I think we have the right to
9 be able to prove that issue. And we are limiting
10 it to the fact that the one that is in fact res
11 gestae and part of the event leading up to that
12 event. His representations to her, the fact that
13 he is involved with her, the fact that he is
14 telling her that his marriage is on the rocks, and
15 all that, Your Honor.

16 THE COURT: All right.

17 MS. CAMPBELL: In addition to that, Your
18 Honor, also, when law enforcement first talked to
19 him, one of the first things they said is, because
20 they understand that, you know, people get in bad
21 marriages and that can be motive for violence.

22 One of the first things law enforcement asked
23 him is, you know, is your marriage great? And all
24 he said was, my marriage is great, my marriage is
25 great.

1 They immediately come back in his statements,
2 he has already admitted, and like, that is not
3 true. And he admits to lying to them on that
4 occasion.

5 So it is either probative as far as his
6 truthfulness to the -- it is one of the factors
7 that he lies to the police about in addition about
8 the status of his marriage.

9 MR. WHITLARK: Your Honor, if I could, just
10 briefly. You look at what they are saying here.

11 They are saying, well, he planned to see her
12 this weekend, and all this. So they are saying
13 premeditated. I guess he is going to kill his wife
14 and then go on a weekend or meeting with this lady.
15 I mean, it doesn't fit. And that is not what was
16 going on. It was just for sex. And he told them
17 that.

18 And the bottom line is, what, they are
19 planning on meeting next week, he is going to kill
20 his wife and then get together with her next week.
21 They are saying it is all premeditated to do that.
22 I mean, it is ridiculous, Your Honor.

23 (Pause.)

24 MS. CAMPBELL: And, Your Honor, I know we are
25 arguing kind of in a vacuum for you because you

1 haven't heard all the evidence in this case, but at
2 the time we do intend to offer it I think it will
3 become extremely -- it will be obvious the
4 relevance to this case as far as the Defendant's
5 actions and what he did over this time period
6 leading up to killing his wife and his friend.

7 THE COURT: We may have to proffer the
8 testimony. I don't know how that works for
9 purposes of considering the opening statements. My
10 law clerk has handed me a couple of other cases
11 that I'm going to read, and I'll read them before
12 we get into the openings.

13 MS. CAMPBELL: Thank you.

14 MR. WHITLARK: Excuse me, Your Honor, may I
15 approach the bench? I'd like to give you a copy of
16 the case law, State v. Wright. This is on the
17 expert. Thank you.

18 (Complies.)

19 MR. WHITLARK: Your Honor, I would recommend
20 that we give a copy of this young lady's statement
21 to the Court for in-camera review also.

22 THE COURT: And I think the State had also the
23 text messages.

24 MS. CAMPBELL: I'll get you both.

25 THE COURT: All right. I believe those were

1 the issues, other than the expert, and we'll deal
2 with that at that time when it comes up. I believe
3 those were the issues that I did not rule on
4 yesterday. And I still owe you a ruling as to the
5 adultery. Unless there is something that I missed.
6 Is that everything?

7 MS. CAMPBELL: That's all I know of, Your
8 Honor.

9 MR. WHITLARK: I think it is, Your Honor. And
10 also we are exchanging the evidence here. And we
11 have an agreement with the Solicitor that we are
12 going to stipulate to the phone records in this
13 case so that we don't have to bring the records
14 keepers in from New Jersey and all over. We all
15 have phone records here.

16 MS. CAMPBELL: We just haven't seen them.

17 MR. WHITLARK: Yeah, we are still reviewing
18 them. I told you about the inkjet problem we are
19 having with printing all this for them. I am
20 having some of them e-mailed to them right now.

21 MS. CAMPBELL: Your Honor, we did speak last
22 week about if there are any records, including
23 financial records, phone records, things of that
24 nature, that we wouldn't have to bring in the
25 custodians to try to just expedite matters. They

1 had an opportunity to see all of the records we
2 have. We just would ask the same courtesy.

3 THE COURT: All right.

4 MR. WHITLARK: Also, Your Honor, we have
5 turned over to them some personal notes that we'd
6 like to discuss that also with the Court. I've
7 just given them a copy of it. They are reviewing
8 it. I don't know what use we are going to make of
9 it. But it needs to be addressed.

10 MS. CAMPBELL: I haven't had a chance to
11 review what they just handed me, your Honor. If I
12 can just have a little time to do that.

13 THE COURT: Well, we can review some of it. I
14 guess I will have to send the jurors to lunch so we
15 can finish that up then.

16 But the jurors are scheduled to be here at
17 11:00. One of the bailiffs has brought to my
18 attention that someone was taking pictures with a
19 camera phone. You cannot take pictures unless you
20 have a media request signed by the Court giving you
21 permission to take any pictures or video. And I
22 think everyone that is here -- at least I know from
23 the media outlets, that I have signed a media
24 request. So no other persons are allowed to take
25 any pictures unless you have a request and it has

1 been signed by me to have your camera. I know
2 people have camera phones. We're not going to get
3 into that unless you have a signed form by the
4 Court.

5 MS. CAMPBELL: Okay. Your Honor, if I may
6 take up one other matter? It came to our attention
7 last night that Mr. Whitlark gave an interview
8 again on this case last night talking about -- I
9 believe he spoke with him.

10 Under 3.6, Your Honor, I know that the jurors
11 have been instructed not to, but he basically -- he
12 basically went on and said: Basically it comes
13 down to an impression or opinions of people. That
14 kind of stuff doesn't have any business in this
15 trial or in any American courtroom. He was quoted
16 apparently on camera saying that, Your Honor.

17 Under 3.6, I am not aware of any exception
18 that would allow him to do that, and I would just
19 ask the Court to ask him to refrain from any
20 comments on this case outside the courtroom.

21 MR. WHITLARK: I'll agree to that, Your Honor.

22 THE COURT: All right. It is probably best
23 that you not talk to -- I don't want to say not
24 talk to the press, but you do know what the Rules
25 of Professional Conduct are. And you can talk,

1 whatever -- I don't have it before me.

2 MS. CAMPBELL: I've got it, Your Honor.

3 THE COURT: But I would stick to the rules,
4 under the rules that we follow. And I would
5 caution everyone from going outside of Rule 3.6 of
6 the Rules of Professional Conduct on trial
7 publicity.

8 And I have a copy of that. I'll have copies
9 made of this if anybody else needs a copy.

10 MR. FEDOR: I'll agree to that too, Your
11 Honor. I'm too ugly to be on camera, and I don't
12 want to be.

13 THE COURT: All right. Thank you, Mr. Fedor.

14 All right, let's go over the -- before the
15 jury gets in. I know the State has -- the Defense
16 has the State's proposed voir dire. Do you all
17 have theirs?

18 MS. CAMPBELL: Yes, Your Honor. We just got
19 it.

20 THE COURT: All right. Any objections that
21 you see? He also informed me that he is going to
22 add -- and I think it is probably -- the band that
23 she played in, a question regarding --

24 MS. CAMPBELL: That's fine.

25 THE COURT: What is the name of the band?

1 MS. CAMPBELL: Jumpstart.

2 THE COURT: And I can ask is anyone familiar
3 or has -- it is a local band?

4 MS. CAMPBELL: A local band, Your Honor.

5 THE COURT: Also, Mr. Capnerhurst worked at
6 the -- is it is the Irmo Recreational --

7 MS. CAMPBELL: Lexington County, Your Honor.

8 MR. WHITLARK: I believe it is the Lexington
9 County re-creation Commission, Your Honor.

10 THE COURT: Okay. And then the third thing
11 was -- what was it, you said Novartis?

12 MR. WHITLARK: Novartis, Your Honor. Novartis
13 Company.

14 MS. CAMPBELL: Your Honor, one of his jobs was
15 at Palmetto Home Medical Supply, if you are asking
16 on everyone.

17 THE COURT: Palmetto?

18 MS. CAMPBELL: Home Medical.

19 THE COURT: Okay. So does anyone have any
20 personal or business relationship with Palmetto
21 Home Medical Supply and Novartis Pharmaceutical
22 Company, and the Lexington County re-creation
23 Commission.

24 Anything else?

25 MS. CAMPBELL: As far as objections to theirs?

1 THE COURT: Yes?

2 MS. CAMPBELL: Yes, ma'am. We would object to

3 1 through 5. I don't have a problem with -- I

4 don't think strong religious belief is an

5 appropriate way to phrase that. I mean, basically

6 if they are referring to the Defendant's

7 adultery -- I don't mind the question, I just don't

8 like the wording in their request.

9 THE COURT: We could probably ask it the same

10 way -- we can ask it the same way that we ask the

11 question in a DUI case, does anybody have any

12 strong opposition to --

13 MS. CAMPBELL: I just have a problem bringing

14 in the religious aspect into it.

15 THE COURT: I think in a DUI case they ask is

16 anybody opposed -- it may not be religious.

17 MR. WHITLARK: I think it says moral, Your

18 Honor.

19 THE COURT: Yes, any moral opposition, is what

20 it says, to the consumption. I think, does anyone

21 have any moral opposition to the consumption of

22 alcohol. So we have to say, does anyone have

23 any -- you would almost have to say moral

24 opposition to adultery that would prevent you from

25 being fair and impartial in the trial.

1 MS. CAMPBELL: Or, this case involves
2 allegations of extramarital affairs. Would this
3 cause you to be unable to be fair and impartial.
4 Or I guess that should be affair instead of
5 affairs. Extramarital affair.

6 THE COURT: Maybe you should just say
7 adultery.

8 MS. CAMPBELL: That's fine.

9 MR. WHITLARK: Yes, we agree with that.

10 MS. CAMPBELL: And then, again, Questions 2
11 and 3, combine those and just basically, the case
12 may involve allegations of gambling.

13 THE COURT: He wants a question regarding
14 gambling addiction.

15 MS. CAMPBELL: I don't have a problem with
16 that.

17 THE COURT: You said we need to combine 2 and
18 3? I think they are separate.

19 MS. CAMPBELL: This case involves gambling
20 and/or gambling addiction.

21 THE COURT: I think I am going to keep them
22 separate.

23 MS. CAMPBELL: Okay.

24 THE COURT: And I think on the addiction, you
25 want me to ask just about the member or asking

1 about the member saying with the addiction,
2 gambling addiction? You are just asking for
3 member?

4 MR. WHITLARK: Your Honor, just a member of
5 the family -- they or a member of their family.
6 I'm sorry, Your Honor.

7 THE COURT: And we'll do the question for the
8 gambling the same way for the adultery.

9 Number 4, do you object to that one?

10 MS. CAMPBELL: I don't know how the NRA is
11 entered into this. As far as private ownership of
12 guns, I believe that would be relevant. I don't
13 know that there is any allegation of this entire
14 case of anybody is a member of the NRA.

15 MR. WHITLARK: That is not the point, Your
16 Honor. The point is that based on what is going on
17 in the national media about with guns and the NRA,
18 I need to know if there is somebody -- and I have
19 seen it myself -- had a volatile opposition to the
20 NRA or the private possession of firearms.

21 THE COURT: Well, that could go both ways. I
22 will have to ask them is there anyone that is a
23 member of the NRA.

24 MR. WHITLARK: That's fine with us.

25 MS. CAMPBELL: I don't think we have to go

1 that far if they are a member of it, just opposed
2 to the NRA is the question.

3 THE COURT: All right. Y'all don't want to
4 know?

5 MS. CAMPBELL: (Nods negatively.)

6 THE COURT: All right. Number 5.

7 MS. CAMPBELL: I believe the only thing we
8 would ask is, was murdered, rather than killed.

9 THE COURT: We usually ask about crime of
10 violence. I think that covers it. Unless y'all
11 want me to --

12 MS. CAMPBELL: That's fine.

13 THE COURT: We usually just ask the question
14 is there any member of the jury panel or a family
15 member who was the victim of a crime of violence.

16 MR. WHITLARK: That's fine, Your Honor.

17 MS. CAMPBELL: And then conversely, been
18 charged or accused of a crime of violence.

19 THE COURT: Y'all have that. It is on yours.

20 MS. CAMPBELL: I left out the word accused.
21 Charged or accused.

22 Again, Your Honor, back on theirs, 6, 7, 8,
23 and 9, I believe that will be with your general
24 charge on members of law enforcement. We don't --

25 THE COURT: I mean, I'll ask about law.

1 enforcement.

2 MS. CAMPBELL: And then as far as
3 specifically, you are going to read the witness
4 list anyway, and that will include all the law
5 enforcement officers.

6 THE COURT: All right.

7 MS. CAMPBELL: Number 9, under State v. Adams,
8 it is improper. That is 306 S.E.2d 208.

9 THE COURT: She is objecting to Number 9. Is
10 there any member of the jury panel who would
11 believe a law enforcement officer over a citizen.

12 MR. WHITLARK: Yes, Your Honor, I would like
13 that because that is going to be a key issue here.
14 A lot of the testimony of these officers is going
15 to be, you know, what is going to be a cussing
16 contest about who said what when. And we are
17 disputing some of what they have reported in these
18 investigative notes.

19 So I would like to know if there is any member
20 of the jury panel who would take the testimony of
21 an officer and believe it more than they would a
22 non-law enforcement.

23 MS. CAMPBELL: Your Honor, in State v. Adams
24 the Court addressed that specific issue as to
25 whether the jury would believe testimony of one

1 class of people, for example, police, over another
2 is improper.

3 THE COURT: I'm looking that up now.

4 (Pause.)

5 THE COURT: We will strike Number 9.

6 MS. CAMPBELL: Thank you.

7 THE COURT: According to State V. Adams it is
8 improper. I will ask if there is any reason why
9 they can't give the State or the Defendant a fair
10 and impartial trial.

11 MR. WHITLARK: That's fine, Your Honor.

12 MS. CAMPBELL: Your Honor, the only other
13 thing we left off of ours is it talks about if
14 there is a member of the jury panel related by
15 blood or marriage or close personal friend to the
16 two attorneys or been represented, is all we would
17 add.

18 MR. WHITLARK: Excuse me, Your Honor. I think
19 the proper question on that -- and I think it is
20 standard -- are you related by blood or marriage or
21 have you ever been represented by these attorneys.
22 I think that is the standard across the board. I
23 don't think anything other than that. I have got
24 eight brothers, Your Honor. I know a lot of people
25 in Richland County, so --

1 THE COURT: They'll stand up and let us know,
2 I'm sure. That's fine. I will read the ones in the
3 desk book.

4 MS. CAMPBELL: Thank you.

5 MR. WHITLARK: May I approach the bench, Your
6 Honor?

7 THE COURT: Yes, sir.

8 (Complies.)

9 THE COURT: If we can go through the witness
10 list, if you can help us with the names.

11 We'll start with the State's witness list.

12 And I always, if there is anyone in the courtroom
13 and their name is called, I'll ask you to stand up
14 when your name is called so the jurors can get a
15 look at you to make sure that they don't know you.

16 But it is: Tara Welch. Lisa Camp. Ian Cook.
17 David Veldman. Alvin Kelly. Harry Benenhaley.
18 Sammy Butler. Jerry Carswell. Libby Carswell.
19 Jackie Warren. Jack Parker. Linda Parker.
20 Dr. David Fulton. Betty Ann Webb. William Dent.
21 Theresa Mills Floyd. Linda Dessow. Dana Allpress.
22 Natasha Nadkarni. D. Escalante, Knight Systems.
23 Craig Montjoy. Maria Yturria. Christine
24 Barrickman. Mohamad Gabr. Edward Guyon.

25 All right, that's good.

1 I'll take a look at yours. Number 3,
2 Lowrimore. Dr. Ekman. Brad Spehl.

3 MR. WHITLARK: The State also listed that one.

4 THE COURT: Okay.

5 MS. CAMPBELL: I believe on Number 15 it says
6 tape of Z.P. I don't know if that is a
7 witness.

8 THE COURT: Who is Z.P.?

9 MS. CAMPBELL: The five-year-old son.

10 MR. FEDOR: He is a five-year-old. And we are
11 going to play that tape.

12 THE COURT: All right. Well, I can ask Z.P.
13 Z.P.

14 MS. CAMPBELL: Z.P. is fine, Your
15 Honor. The tape would not be admissible, but we
16 can take that up at a later date.

17 THE COURT: We'll talk about that when we get
18 to it, but for purposes of jury qualification I'll
19 just say Z.P.

20 MR. FEDOR: Okay.

21 MS. CAMPBELL: Your Honor, we do have three
22 names to add to ours. I apologize. Jim Graham,
23 Sean Cook, and the probate judge.

24 THE COURT: All right. And the strikes are
25 ten and five. We are going to take a break of

1 course before we bring the jury in.

2 MR. FEDOR: We ask, because this is a double
3 murders case, we should have 20 strikes.

4 THE COURT: I think it is ten and five.

5 MS. CAMPBELL: Ten and five.

6 THE COURT: I'll look it up and see.

7 MR. FEDOR: That is a request we have.

8 THE COURT: Because it is two indictments.

9 MS. CAMPBELL: The only time he gets 20
10 strikes, Your Honor, is if it is multiple
11 Defendants. We have one Defendant. It doesn't
12 matter if I go on armed robbery, murder, murders,
13 it is still ten and five.

14 THE COURT: How many alternates do you think
15 we need? Have y'all agreed on that?

16 MR. FEDOR: If they are going to use this many
17 witnesses, I think about 20.

18 THE COURT: Well, we don't have room for 20
19 alternates.

20 MR. FEDOR: We can get some extra seats, Your
21 Honor.

22 MS. CAMPBELL: I would think four, Your Honor.

23 MR. FEDOR: I think at least eight. They say
24 it is going to take two or three weeks to try this,
25 Your Honor. I don't know what the fallout rate is.

1 MS. CAMPBELL: Actually, Your Honor, things
2 are going quicker than I anticipated, so it may not
3 take that long.

4 MR. WHITLARK: Excuse me, Your Honor, in
5 looking at this list, Your Honor, I think there is
6 one last Richland County law enforcement officer
7 that is not on this list. We would like to add his
8 name to it.

9 THE COURT: All right. How many alternates?
10 She says four and you say eight. How many chairs
11 do we have?

12 THE BAILIFF: Sixteen.

13 THE COURT: All right. Well, six. We'll have
14 six alternates.

15 MR. FEDOR: That will be fine.

16 THE COURT: Two and one for the alternates.

17 MS. CAMPBELL: As far as the procedure goes,
18 we're going to basically pick as normal, unless we
19 have a problem.

20 THE COURT: What I was thinking is we would
21 have -- I of course have to ask -- that's what I'm
22 trying to figure out -- I will accept any guidance
23 from you all -- a suggestion as to -- the question
24 that we normally have is, is there any member of
25 the jury panel -- a question regarding has anyone

1 heard about this case or -- read or heard anything
2 about this case prior to today. And I know Judge
3 Barber instructed them.

4 MR. FEDOR: Your Honor, what are you going to
5 do when all of them stand up?

6 THE COURT: That was my next question.

7 MS. CAMPBELL: I think if we bring them --
8 have them line up and bring them down one at a time
9 and just query them if they have seen anything or
10 heard anything, can they put it aside and be fair
11 and impartial.

12 THE COURT: You want me to ask them what they
13 have heard or what they have read. I mean, that is
14 what we normally do and say, is there something
15 that you read or --

16 MS. CAMPBELL: Whatever way you want do it. I
17 think you should bring them down -- up to the bench
18 and do it individually, then it can't taint the
19 rest of them.

20 THE COURT: Oh, I will definitely do that.
21 And even on the questions regarding -- I try to
22 keep them from blurting anything out -- even the
23 questions regarding -- I will let them know if
24 there is anything they want to speak with us
25 privately or semi-privately about. The gambling

1 addiction.

2 MS. CAMPBELL: Same thing, if you want to have
3 them come forward on.

4 THE COURT: The adultery questions. Those I
5 will allow them to come down and speak with us
6 privately about.

7 MS. CAMPBELL: Especially with the cameras in
8 here, Your Honor. I know you instructed them not
9 to film any of the jurors or any of the process of
10 the jury.

11 THE COURT: Yes. I mean, they basically will
12 have to turn the camera because -- how many are on
13 the list?

14 THE CLERK: Ninety-two.

15 THE COURT: So they will take up the entire
16 side over here. And so folks will have to move in
17 the back. I'm guessing all 92 should be able to
18 sit over here.

19 THE BAILIFF: No. We will handle that for
20 you, Your Honor.

21 THE CLERK: It might overflow.

22 MS. CAMPBELL: I think --

23 THE BAILIFF: We will take care of that, Your
24 Honor. No problem.

25 MR. FEDOR: Your Honor, we would also like you

1 to ask has what they have seen or read or heard
2 influenced their decision.

3 THE COURT: Yes, sir, of course I will.

4 MS. CAMPBELL: And of course you would
5 instruct them to put that aside and then ask them
6 if they can do that and be fair and impartial.

7 THE COURT: So, what we will do is we will
8 bring them up individually when they stand up.
9 Mr. Whitlark and Mr. Fedor, we will have everybody
10 stand up. But we'll just bring them down
11 individually. And we'll stand down here and ask
12 them what they have heard and would it affect their
13 ability to be fair and impartial in this trial.

14 MR. FEDOR: Your Honor, when you bring them
15 down individually, might we ask them questions
16 also?

17 THE COURT: I looked at that. The only time
18 that is allowed in our state, even though they do
19 it in other states, is in death penalty cases. So
20 I'm not inclined to allow you all to ask them that.
21 If there is a juror, write their number down and I
22 can call them back up and ask -- give me the
23 question, if you write the number down, give me the
24 question, write the number, I'll show it to the
25 other side and I will ask the question if there is

1 further questioning that you would like me to ask.

2 All right. Let's take about ten minutes.

3 (WHEREUPON, a break was taken.)

4 THE COURT: It is probably going to take about
5 three or four hours at least to select the jury.
6 They are downstairs. And it is 11:30. We are
7 going to start back at 1:00 o'clock. So they can
8 go get something to eat before we get into it. It
9 may take four or five hours. We just don't know
10 how long it is going to take. So instead of
11 starting and stopping for lunch, we are going to
12 start at 1:00 o'clock.

13 (Pause.)

14 THE COURT: So that we are all on the same
15 page, we have how many, Ms. Tull? We have about
16 92?

17 THE CLERK: Ninety-one.

18 THE COURT: Number 74 -- Juror Number 74 or 74
19 on the list?

20 THE CLERK: Juror 74.

21 THE COURT: Juror Number 74 is not here.

22 THE CLERK: Thirty-five on the list.

23 THE COURT: This would be 35 on the left. The
24 strikes are ten and five. We will pick six
25 alternates. The strikes for each alternate are two

1 and one.

2 The last question that I will ask is
3 regarding, does anyone have any personal knowledge
4 of this case -- the last few questions -- if so,
5 please stand. And has anyone seen, heard, or read
6 anything related to this case? This would include
7 anything published in print and on the internet, as
8 well as things on TV and heard on the radio. If
9 so, please stand.

10 We will form a line at that point in time. We
11 are going to use this jury room, the one over here,
12 and I'll go back and ask them, I guess, the first
13 thing is have they heard anything today or
14 yesterday, or if they read anything today or
15 yesterday, or when they heard it, I guess, and what
16 they heard, and can they be fair and impartial in
17 this trial for both the State and for the
18 Defendant.

19 If they say yes, they can, we'll send them
20 back -- well, we'll send them all back in here.
21 Because of the amount of jurors, we will -- when
22 they come up at the end and we ask them, state your
23 name, state where you work, where your spouse
24 works, she wants the ones that are not -- the ones
25 that are struck, the ones that are not picked, we

1 are going to go ahead and send them back to the
2 jury room. But, you know, what she can't excuse
3 them.

4 THE CLERK: We know. She knows.

5 THE COURT: They are going to have --

6 THE CLERK: We know. Yes, ma'am.

7 THE COURT: But she is just afraid we don't
8 have enough.

9 THE CLERK: Okay.

10 THE COURT: So we'll send them back downstairs
11 where they normally just sit on the back row, we'll
12 send them back downstairs. She will not excuse
13 them until we give her further instructions.

14 Did I miss anything?

15 MR. FEDOR: Your Honor, let me get a
16 clarification. When you take them in the back
17 room, we are allowed to be present?

18 THE COURT: Yes, y'all are coming back. The
19 court reporter -- it will be on the record. The
20 court reporter will be in there. And you all can
21 come back. And like I stated earlier, if we need
22 to do a follow-up question, just write the juror's
23 number down on a sheet of paper and we can hand it
24 to Jessica, and then we'll call them back in once
25 we discuss the follow-up question.

1 MR. WHITLARK: May it please the Court, Your
2 Honor? Just a matter of housekeeping. I have
3 given the subpoenaed phone records to the other
4 side pursuant to your instructions to us. And we
5 also have -- the desk is available that was in the
6 upstairs room for their inspection. And I think
7 we're going to get a stipulation about records
8 keepers with MetLife, and all that stuff, and just
9 let the Court know that pursuant to your order we
10 got that -- I guess we have it done.

11 MS. CAMPBELL: Your Honor, they just have four
12 different envelopes, Federal Express envelopes. A
13 number of those were empty, but we did get some
14 disks out of them and they are making copies now.
15 They indicated their printer is broken.

16 THE COURT: Okay.

17 MR. WHITLARK: Thank you.

18 THE COURT: And this probably will take the
19 rest of the afternoon, so we'll have time to work
20 on that.

21 MR. WHITLARK: Thank you, Your Honor.

22 THE COURT: All right. And just to put on the
23 record, Mr. Fedor has requested 20 strikes per
24 indictment. And the way the statute reads, it is
25 per Defendant. So the strikes are ten and five.

1 And as for members of the press, of course you
2 all know, do not get the jurors on camera. You can
3 take everything else. And I will try to talk
4 louder so that you all can hear me. I know I am a
5 little soft-spoken. So I will try to remember talk
6 louder. My court reporter has told me that I don't
7 talk loud enough either. So I will try to raise my
8 voice so you all can hear me.

9 All right, are we ready to bring them in?
10 Anything else before we bring them in?

11 MS. CAMPBELL: Nothing, Your Honor.

12 MR. WHITLARK: Nothing from the Defense.

13 THE COURT: All right.

14 (WHEREUPON, the pretrial matters
15 concluded at 1:23 p.m.)

1 STATE OF SOUTH CAROLINA }
2 COUNTY OF RICHLAND } COURT OF GENERAL SESSIONS
 2012-GS-40-4379
 2012-GS-40-4380

3
4 State of South Carolina, }
5 Plaintiff, }
6 vs. } TRANSCRIPT OF RECORD
7 Brett D. Parker, }
8 Defendant. }

9 May 6-28, 2013
 Columbia, South Carolina

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B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE; and a jury.

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

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Official Court Reporter

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1 Yes, ma'am, Madam Clerk.

2 THE CLERK: Please stand and raise your right
3 hand to be sworn.

4 (Jurors comply.)

5 THE CLERK: Upon completion, if you accept the
6 oath, respond with, I do.

7 Do you swear or affirm that you shall well and
8 truly try and true deliverance make between the
9 State of South Carolina and the Defendant at bar
10 whom you shall have in charge and a true verdict
11 give, according to the law and the evidence, so
12 help you God?

13 (WHEREUPON, all jurors answered in the
14 affirmative.)

15 THE CLERK: Thank you. You may take a seat.

16 (Jurors comply.)

17 THE COURT: All right. Thank you. Ladies and
18 gentlemen of the jury, what I will say now is
19 intended to serve as an introduction to the trial
20 of this case. These remarks are not a charge on
21 the law in this case.

22 I will instruct you on the law applicable to
23 this case at the end of the trial before you retire
24 to consider your verdict. This is merely an
25 explanation of the procedure that we will follow in

1 the trial of this case so that you may better
2 understand what may be happening. You are not to
3 take any notes during this trial.

4 The Defendant in this case is charged by an
5 indictment, as I told you on yesterday, two
6 indictments filed in this court, with the crime of
7 murder, the elements of which will be explained to
8 you later.

9 The indictment is simply the charge by which
10 the case is brought into court, and it is not in
11 any sense evidence of any of the allegations it
12 contains.

13 The Defendant has pled not guilty to these
14 indictments. The State therefore has the burden of
15 proving each of the elements of the indictment
16 beyond a reasonable doubt.

17 And it will be your duty, ladies and
18 gentlemen, to decide whether the State has met that
19 burden. Your purpose as jurors is to find and
20 determine the facts. You are the sole judges of
21 the facts in this case.

22 If at any time I make any comment regarding
23 the facts, you must disregard it. You are to
24 determine the facts from the testimony you hear and
25 the other evidence introduced in court.

1 It is up to you to determine the inferences
2 which you feel may properly be drawn from the
3 evidence. It is especially important that you
4 perform your duty of determining the facts
5 diligently and conscientiously, because ordinarily
6 there is no way to correct an erroneous
7 determination of the facts by a jury.

8 On the other hand, and with equal emphasis,
9 the same law that makes you the judges of the facts
10 in this case makes me the judge of the law. The
11 law as given by the Court is the only law you may
12 consider.

13 You must accept and follow it even though you
14 may disagree with it. I cannot tell you what the
15 facts are, and you cannot disagree with me about
16 what the law is or should be.

17 Your job is to take the law as I give it to
18 you and apply it to the facts as you find them from
19 the testimony of the witnesses and any other
20 evidence that is introduced. After doing that you
21 will render your verdict, a true and just verdict,
22 under the solemn oath that you just took as jurors.

23 Until I advise you to begin your
24 deliberations, you must not discuss this case with
25 anyone, including your fellow jurors, friends,

1 family members, and anyone involved in the case.

2 This includes discussions face-to-face and
3 those by telephone, e-mail, text, blogs, or any
4 other method of communication.

5 After the case is submitted to you, you must
6 discuss it only in the jury room with your fellow
7 jurors.

8 The attorneys and the parties in this case
9 have been advised that they are not to talk to you
10 at all. So if you see anyone involved in this case
11 and they do not even say hello, they are not being
12 unfriendly or rude. They are just following my
13 instructions.

14 During this trial do not read, listen to, or
15 watch any news reports about this case. And I
16 think yesterday I told you I did not want you all
17 to watch any of the news outlets or read the
18 newspaper, and I restricted you from going onto
19 Facebook or Twitter.

20 You must not consider anything that may be in
21 the newspapers, the internet, the radio, the
22 television. I have also instructed you not to do
23 any independent research on the internet regarding
24 this case.

25 You must not consider anything that you may

1 have read or heard about the case outside the
2 courtroom, whether before or during the trial. It
3 is important that you keep an open mind and not
4 decide any issue in the case until all of the
5 evidence has been presented, the parties have made
6 their closing arguments, and I have instructed you
7 as to the law in this case.

8 It is your solemn responsibility to determine
9 the guilt or innocence of the Defendant, and your
10 verdict must be based solely on the evidence as it
11 is presented to you in this trial and on the law as
12 I instruct you during and at the close of the
13 trial.

14 In just a moment, the Solicitor will make what
15 is called an opening statement, in which the
16 Solicitor will explain to you the issues in this
17 case, or at least what the Solicitor thinks the
18 issues are in this case.

19 The attorney for the Defendant will also make
20 an opening statement, although he is not required
21 to do so.

22 What the attorneys tell you during their
23 opening statements is not evidence in this case.
24 It is only their contention as to what the issues
25 are.

1 The evidence in this case will be presented to
2 you by the testimony of the sworn witnesses from
3 the witness stand and/or by exhibits that may be
4 introduced into evidence.

5 From time to time during the trial, you may
6 hear one of the lawyers say something like, Your
7 Honor, I believe we have a question of law or a
8 matter of law to discuss with you, or, Your Honor,
9 may we approach the bench. Or sometimes I myself
10 might find it necessary to excuse you from the
11 courtroom for a short while so the attorneys and I
12 can discuss a matter of law.

13 The reason for this is because you are the
14 judges of the facts in this case, and sometimes
15 when I am discussing matters of law with the
16 attorneys, it may be necessary for me to make some
17 comments as to the facts in connection with ruling
18 whether or not a particular law applies.

19 I am not supposed to tell you what I think the
20 facts are. So I will excuse you from the courtroom
21 while these discussions take place so that in no
22 way will you be influenced by anything that I may
23 say or do in connection with the facts.

24 In determining what the true facts are in this
25 case, you must decide whether or not the testimony

1 of the witnesses is believable. It will be my
2 responsibility to rule as a matter of law as to
3 whether certain testimony is admissible at all or
4 not, but once the testimony is admitted, whether or
5 not you believe it is solely for you to determine.

6 In deciding whether to believe a witness, you
7 have the right to consider the interest of any
8 witness, the bias of any witness, the prejudice of
9 any witness, the opportunity for the witness to
10 have seen matters and things about which the
11 witness may testify, and the way the witness acts
12 on the witness stand.

13 You have a right to consider anything that is
14 in the record that will help you evaluate the
15 testimony of the witnesses. That means that it is
16 your duty to pay close attention to these
17 witnesses, to observe the witnesses, to listen to
18 the witnesses, and to pay close attention to the
19 attorneys and the Court.

20 Don't let your thoughts wander, but give
21 strict attention to the testimony in this case so
22 that at the end of all the testimony, after the
23 arguments of counsel, and the charge on the law by
24 the Court, you will then be in a position to
25 determine what the true facts are and to apply the

1 law to those facts, and thus render a true and just
2 verdict.

3 It is your added duty, Mr. Foreman, to preside
4 in the jury room and be the jurors' spokesperson
5 here in the courtroom. It will also be your duty
6 to write the verdict, but I will give you further
7 instructions about that at the conclusion of the
8 case.

9 In order to preserve everyone's rights, I will
10 give the parties an opportunity to object to
11 anything that I have said.

12 Any objections or exceptions to anything that
13 I have said? From the State?

14 MS. WALKER: None from the State, Your Honor.

15 THE COURT: From the Defense?

16 MR. WHITLARK: None from the Defense.

17 THE COURT: All right. Ladies and gentlemen,
18 at this time we'll begin with the trial. We will
19 have opening statements. First, you will hear from
20 the State, from Assistant Solicitor Walker; and
21 then you will hear from the Defense. You will hear
22 from Mr. Whitlark. All right.

23 MS. WALKER: May it please the Court?

24 THE COURT: Yes, ma'am.

25 OPENING STATEMENT

1 MS. WALKER: Good morning.

2 THE JURY: Good morning.

3 MS. WALKER: It was April 13th of 2012.

4 Deputies responded to 12 Tackeria Court. There
5 were shots fired in the home. There were multiple
6 people dead. There were multiple guns used when
7 those shots were fired.

8 But there was one survivor out of that home.
9 There was one story coming out of the home on that
10 day.

11 And on that day the Defendant, Brett Parker,
12 after being Mirandized, told Investigator Travis
13 Holdorf and Major Stan Smith, of the Richland
14 County Sheriff's Department, about the horrors that
15 happened in his home on that Friday the 13th.

16 He told them that the man that was found
17 upstairs dead in his home was his friend, Bryan
18 Capnerhurst, that Bryan worked for him in his
19 illegal gambling business, that the woman was his
20 wife.

21 He told the investigators that he had spoken
22 with Bryan Capnerhurst several times that morning
23 and that he had arranged to meet Bryan at the
24 Parker residence so that he could pay Bryan \$5,000,
25 a portion of the money he owed Bryan from their

1 gambling operation.

2 He said that he went to Firehouse Subs and
3 that he picked up sandwiches for he and his wife,
4 that they sat downstairs in the kitchen and ate
5 them, and then went upstairs to an office.

6 He said that he left his wife upstairs in the
7 office, went downstairs. And while he was
8 downstairs, he needed to use the bathroom, he
9 needed to have a bowel movement. So he went into
10 the guest bathroom on the first floor. And that
11 while he was finishing up, he heard the door open.
12 He knew Bryan was coming in. This wasn't uncommon.
13 That he told Bryan to go on upstairs because Tammy
14 was up there. And that as he was washing his
15 hands, gunshots rang out in that house.

16 He said that he fled up the stairs. And when
17 he got to the stairs, Bryan Capnerhurst had a gun
18 and was holding him at gunpoint.

19 The man that he had already agreed to give
20 \$5,000 to was now robbing him of that money? He
21 said Bryan Capnerhurst held him at gunpoint and
22 marched him to a safe that was in the house.

23 He said as he was being held at gunpoint --
24 and excuse my language -- but these are the
25 Defendant's words not mine -- Bryan Capnerhurst

1 said, Give me all the fucking money in the fucking
2 safe or you are fucking dead.

3 Luckily for Brett Parker, he had a gun on top
4 of the safe. And as he is being held at gunpoint,
5 as he is being cursed and his life is being
6 threatened, he is able to reach for that revolver,
7 spin around, and shoot Bryan Capnerhurst some five
8 times before Bryan Capnerhurst even gets a shot
9 off. It was a miracle.

10 He said he then jumped over Bryan Capnerhurst
11 and ran to check on his wife. And I use the term
12 "check on" loosely because, according to the
13 Defendant, when he saw his wife's body, the woman
14 he was supposed to love most in this world, when he
15 saw her, her body straddling in a doorway, half of
16 her body was in a bathroom, and the other half was
17 in the office that he left her in.

18 When he saw her face-down in that cold, hard
19 bathroom tile in a puddle of her own blood,
20 according to him gurgling at that point in time, he
21 didn't turn her over. He didn't see where the
22 bleeding was coming from. He didn't try to stop
23 the bleeding. He didn't administer CPR. He didn't
24 hold his wife in one final embrace.

25 According to Brett Parker, he put two fingers

1 on her neck. And when he didn't feel for a pulse,
2 he went downstairs to get a phone to call 9-1-1.

3 That is the story that he told these
4 investigators.

5 And at the end of that story, they asked Brett
6 Parker two very simple, two very straightforward
7 questions: Is your marriage in any trouble? And
8 are you having any financial difficulties?

9 And Brett Parker answered no to both of those
10 questions, an answer that turned out to be a lie.

11 He couldn't very well tell the investigators
12 at that point in time that he owed \$176,000 to his
13 own bookie. That his financial situation was so
14 bad that he was borrowing money from friends left
15 and right, including a \$5,000 loan from a friend a
16 couple of days before the murders. That he took
17 out a \$5,000 car loan on his car.

18 He couldn't tell them about the woman he was
19 seeing on the side, about the fact that he had been
20 in communication with her that day, about the fact
21 that he had had sex with her at a local hourly-rate
22 motel just days before this.

23 And he couldn't tell investigators that he
24 stands to gain \$1 million from his wife's death.

25 Because the truth, those things gave Brett

1 Parker something Bryan Capnerhurst never had, and
2 that was a motive to kill Tammy Parker.

3 But luckily, in this case, luckily for the
4 victims, for Bryan Capnerhurst and his family, for
5 Tammy Parker and her family, the investigators
6 didn't just take Brett Parker at his word. They
7 investigated what he was saying to see if it could
8 be substantiated. And it could not.

9 Because in this case, like with most things,
10 the devil, the devil is in the details. And as you
11 learn about the details of this case, you're going
12 to find Brett Parker's fingerprints on those
13 murders. And I mean that literally.

14 Ladies and gentlemen, I'm Assistant Solicitor
15 Meghan Walker. And over the course of this trial,
16 myself, along with Assistant Solicitors Luck
17 Campbell and Nicole Simpson, will prove to all of
18 you beyond a reasonable doubt that on April 13th,
19 2012, Brett Parker committed murder against Tammy
20 Parker and one against Bryan Capnerhurst.

21 In this state murder is defined as the
22 intentional killing of a human being with malice
23 aforethought.

24 And as we present the evidence in this case,
25 you will see that things don't come much more

1 malicious than the murders perpetrated by Brett
2 Parker.

3 In order to prove our case, in order to leave
4 you firmly convinced of Brett Parker's guilt, we're
5 going to bring forward witnesses. They are going
6 to testify from this witness stand.

7 We are going to bring forward witnesses, like
8 some of Bryan Capnerhurst's friends and family that
9 he spoke to that morning. And he told them that he
10 was on his way to Brett Parker's house. That he
11 was going to get paid some of the money that Brett
12 owed him. That Brett told him to be there at 12:30
13 and to bring a duffel bag so that he could carry
14 out the money that he was going to be paid.

15 And we're going to show you that, because the
16 Parker residence on the outside has surveillance
17 cameras. And you're going to see Bryan Capnerhurst
18 pull into the Parker residence at 12:31. You're
19 going to see him get out of that car, sling that
20 duffel bag that Brett Parker told him to bring over
21 his shoulder, and walk into the house.

22 In addition to those witnesses, you're going
23 to hear from the deputies who responded to that
24 home on that Friday the 13th.

25 They are going to tell you that they went

1 upstairs and discovered the body of Tammy Parker.
2 She was the victim of multiple gunshot wounds. And
3 that in the attic they discovered the body of Bryan
4 Capnerhurst. He too was the victim of multiple
5 gunshot wounds.

6 And they are going to tell you that they saw
7 that duffel bag that Brett Parker told them -- I'm
8 sorry, that Bryan Capnerhurst's friends told them
9 Brett Parker advised Bryan to bring to the home.

10 They are going to tell you that as they were
11 speaking to Brett Parker, he advised them that the
12 gun that was used to kill Tammy Parker was actually
13 his gun. It was Brett Parker's gun that he claimed
14 to have given to Bryan Capnerhurst a month before
15 these murders, a fact that would come as a surprise
16 to Bryan Capnerhurst's friends and family, because
17 the Bryan Capnerhurst they knew never owned a gun.
18 In fact, he was fearful of guns.

19 The deputies are going to tell you that when
20 they opened that duffel bag, sitting on top of
21 Bryan Capnerhurst was a box of ammunition and a
22 clip, an empty clip belonging to the gun that was
23 used to kill Tammy Parker. Finally, a piece of
24 evidence that corroborated what Brett Parker said
25 happened that day.

1 But then you are also going to hear about the
2 details of that piece of evidence. That the
3 fingerprint that was on that box of ammunition
4 belonged to Brett Parker, not Bryan Capnerhurst.

5 They are going to tell you that as they began
6 to investigate the story, things like that, the
7 details of this case, the fingerprint on the box of
8 ammunition belonging to Brett Parker and not Bryan
9 Capnerhurst, they began to come out.

10 As deputies were reviewing the surveillance
11 video from that home, they noticed other things as
12 well. They noticed that during the time in which
13 Brett Parker said he was using the bathroom, you
14 can see Brett Parker exit the garage of that home
15 and peek towards the driveway.

16 You can see blinds in that home open and close
17 as he is looking out of the window to see if Bryan
18 Capnerhurst has arrived yet. And they are going to
19 tell you that on those blinds they performed a GSR
20 test.

21 We are going to bring John Roberts in, who
22 works for the South Carolina Law Enforcement
23 Division. And he is an expert in GSR, and he is
24 going to talk to you about that.

25 He is going to tell you that GSR is found on

1 people when they fire a gun or when they are in the
2 close proximity of a gun when it is fired. They
3 are going to tell you that everybody in that house
4 that day -- Tammy Parker, Bryan Capnerhurst, and
5 Brett Parker -- that all of them had GSR on their
6 hands that day.

7 He is also going to tell you that the swab
8 that he received from the deputies of those blinds,
9 the ones that Brett Parker was looking out of
10 before Bryan Capnerhurst even arrived in that
11 house, they had GSR on them too. It's one of those
12 details Brett Parker didn't think about.

13 And as Major Smith and Investigator Holdorf
14 and other members of the Richland County Sheriff's
15 Department looked at the evidence in this case, the
16 physical evidence of this case, all of it disputes
17 Brett Parker's story of what happened in his home
18 on April 13th of 2012.

19 And as they would confront Brett Parker with
20 these issues, he always could kind of change his
21 story a little bit, he could modify what he was
22 saying to try to make it fit the physical evidence
23 in this case.

24 But as Brett Parker told one of the witnesses
25 we'll bring in front of you: My story is just not

1 supported by the evidence in this case.

2 Two of the deputies that we are going to bring
3 before you first are deputies who went into the
4 home and discovered the body of Bryan Capnerhurst,
5 Lieutenant Joe Odom and Deputy Austin Harvel.

6 They are going to tell you that when they
7 discovered Bryan Capnerhurst's body, there was a
8 gun in Bryan's left hand, that it was odd to them
9 because it looked almost as though it had been
10 placed there.

11 That it was also odd to them because, in their
12 experience of responding to numerous crime scenes,
13 men who have been shot five times don't tend to
14 hold onto the weapon.

15 We are going to bring forward witnesses that
16 are going to talk about the injuries that Bryan
17 Capnerhurst received that day, about the multiple
18 gunshot wounds on his body, about the ping-pong
19 size hole that was in Bryan Capnerhurst's left arm
20 from a gunshot wound, a gunshot wound that severed
21 a nerve in Bryan's hand, that shattered a bone in
22 Bryan's hand.

23 But yet that gun, by all accounts other than
24 Brett Parker's, belonged to Brett Parker, was given
25 to him by his father, was found placed in his hand,

1 was found placed in Bryan Capnerhurst's hand.

2 He is also going to tell you about the gunshot
3 wounds that were on Tammy Parker. They traveled
4 through her body. She was running from her
5 assailant. And that both Bryan Capnerhurst and
6 Tammy Parker had gunshot wounds to the head.

7 Those would be Brett Parker's insurance shots,
8 the shots that made sure that there were no other
9 witnesses that were going to come out of that
10 house, to make sure that his story was the only
11 story that was going to be told that day.

12 But what Brett Parker didn't take into account
13 is that physical evidence, the science of a case,
14 tells a story all its own. And that science has no
15 motive, has no rights, has no prejudice. It has no
16 \$1 million to gain. The science of this case will
17 refute many of the lies that Brett Parker told the
18 deputies.

19 Other witnesses in this case, like Lanny
20 Gunter, Brett Parker's bookie, who he owed \$176,000
21 to, \$100,000 under his own name and \$76,000 under a
22 name he made up, that mounting debt refutes the
23 lies that Brett Parker told deputies.

24 The car title loan that he didn't think they
25 were going to find, the money he was borrowing from

1 friends, those refute what Brett Parker told
2 deputies.

3 You're going to find time and time again, as
4 we present the details of this case to you, that
5 Brett Parker's story is just that. And that the
6 turns that his story takes as it evolves and he
7 tells multiple people what happened and the story
8 kind of changes as he navigates through telling
9 people what he wants them to hear, that no matter
10 how he twists his story, no matter how he changes
11 his story, no matter how many times he told
12 investigators that his marriage was fine and happy,
13 the fact that there was another woman involved in
14 this marriage, the fact that he and his wife hadn't
15 slept in the same bed in years, the fact that he
16 was telling any and everybody he wanted or he could
17 that he needed to get out of his marriage but
18 couldn't afford to do so, those things contradict
19 what Brett Parker told deputies that day.

20 Brett Parker, the evidence will prove, had a
21 motive to kill Tammy Parker. And then, in order to
22 save his own skin, he used Bryan Capnerhurst as his
23 fall guy -- dependable, punctual Bryan, who he knew
24 would show up at 12:30 like he told him to, who he
25 knew would bring in a duffel bag like he told him

1 to, was going to be the fall guy.

2 He was going to kill Bryan Capnerhurst and
3 when Bryan Capnerhurst was no longer alive to tell
4 his story, he was going to brand him a murderer and
5 walk away \$1 million richer and without the wife he
6 didn't want anymore.

7 But luckily for Bryan and luckily for Tammy,
8 evidence tells its own story. And the evidence,
9 the physical evidence in this case, as well as the
10 testimony of people who spoke with Bryan Parker --
11 I'm sorry, with Brett Parker, and knew about the
12 problems he was having in his marriage, the money
13 he stood to gain, the financial situation that he
14 was in, they too have a story to tell.

15 Brett Parker intended for only one story to
16 come out of the house that day. Instead, ladies
17 and gentlemen, we're going to tell through our
18 presentation of the case, through our presentation
19 of the evidence of this case, that can be supported
20 and substantiated, a totally different story.

21 I ask, ladies and gentlemen, that you listen
22 to the facts of this case and how step by step they
23 refute Brett Parker's story.

24 As you listen to the details of this case, you
25 will be firmly convinced that it was Brett Parker

1 who not only had motive but actually did kill Tammy
2 Parker and then Bryan Capnerhurst.

3 We are going to ask you to listen over the
4 next several days to those witnesses, and you be
5 the judge of the witnesses. You see if the
6 witnesses who come in here and testify have a bias,
7 have a prejudice, or have anything at all to gain
8 by their testimony or by the facts of this case as
9 they are presented, the scientific and forensic
10 evidence.

11 And then weigh that against what Brett Parker
12 told investigators in a written statement that
13 we'll allow all of you to read.

14 And at the conclusion of this case, you are
15 going to see that because of the facts, because of
16 the details, because of the substantiated evidence
17 in this case, Brett Parker is guilty of those two
18 murders.

19 As you look at this case, you're going to
20 realize that this comes down to common sense and
21 the human experience. This, ladies and gentlemen,
22 goes back to the oldest motive known to man:
23 Greed, lust. And how, just by using your common
24 sense, it is impractical what Brett Parker said
25 happened that day.

1 Listen to the evidence. Listen to the facts.
2 Listen to the science.

3 And once we have proven our case, once we have
4 proven what actually happened in that house that
5 day, and not just what Brett Parker wants people to
6 believe or what he needs people to believe, you are
7 going to be left firmly convinced of Brett Parker's
8 guilt.

9 And we are going to come back before you and
10 ask you to hold Brett Parker accountable, probably
11 for the first time in his life, for his actions.

12 We are going to ask you to render verdicts
13 that speak the truth, verdicts of guilty in the
14 murders of Tammy Jo Parker and Bryan Capnerhurst.

15 Thank you.

16 THE COURT: Thank you.

17 MR. WHITLARK: May it please the Court, Your
18 Honor?

19 THE COURT: Yes, sir, Mr. Whitlark.

20 OPENING STATEMENT

21 MR. WHITLARK: Good morning.

22 THE JURY: Good morning.

23 MR. WHITLARK: This is a case about a man that
24 was at the end of his rope, who had a desire for
25 money and a plan for violence. And the evidence in

1 this case is going to prove it, but his name is not
2 Brett Parker, his name is Bryan Capnerhurst.

3 Now, ladies and gentlemen, I am Mark Whitlark
4 and that is Dave Fedor, and we represent Brett
5 Parker.

6 Now, Brett Parker is 42 years old. He has two
7 beautiful children. And, of course, his wife has
8 been killed.

9 Now, in every American courtroom, every
10 American citizen is entitled to rights, ladies and
11 gentlemen, important rights. And the judge is
12 going to talk to you about what they are.

13 And those rights are, first of all, that he is
14 presumed innocent. It is a like a cloak of
15 righteousness around his shoulders, and it stays
16 with him all the way through, unless and until they
17 convince you that he is guilty beyond a reasonable
18 doubt of this crime. And they are not going to be
19 able to do that.

20 Also, ladies and gentlemen, the burden of
21 proof in the case is on the Prosecution to prove
22 this case beyond a reasonable doubt. And just
23 simply put -- and the judge is going to talk to you
24 a little bit more about that -- you've seen the
25 scales of justice. And we all know in a civil case

1 when you are suing somebody for an injury or for
2 something, all you have to do to win is tip that
3 scale ever so slightly. It is called a
4 preponderance of the evidence.

5 But in a criminal case, an American citizen is
6 entitled to a presumption of innocence. And those
7 scales begin heavily weighted in favor of an
8 American citizen.

9 And in order for them to convict him, they
10 have to take those scales all the way down, beyond
11 a reasonable doubt.

12 And there is a reason for this, ladies and
13 gentlemen. Because our protections and our laws --
14 and we have all heard this before -- that it is
15 better to let a hundred guilty men go free than to
16 convict one innocent man. And Brett Parker is
17 innocent of this.

18 They say that there is two indictments by the
19 Grand Jury in this case. Now, let me tell you a
20 little bit about that. You have heard what the
21 judge said about it. There is nothing grand about
22 a Grand Jury, ladies and gentlemen. It comes from
23 the Latin, grande, meaning greater than. Eighteen
24 people. And you don't even have to have a
25 majority. You have to have 12 people.

1 But we weren't there. We didn't get to
2 present any evidence. In a football game,
3 everybody gets to get the ball and run the ball.
4 We weren't there. We didn't get to run the ball.
5 In a baseball game, everybody gets to bat. But
6 that is not what happens in a Grand Jury. It is
7 only a presentation by the State.

8 Now, one thing you didn't hear just now was
9 that the gun was found in this man's hand when they
10 got there.

11 You know what else you didn't hear? That his
12 hand, on the 19th of April, five days later, was
13 found by their own laboratories to be covered in
14 gunpowder and antimony and other things the experts
15 are going to talk to you about.

16 Now, she claimed that these officers who first
17 arrived thought it was odd looking that the gun was
18 in his hand. That is not what they said. They
19 were worried. They were scared. And rightfully
20 so. And they had to shake him to get that gun out.

21 Now, they did pick the gun up. They did move
22 it. And these are good officers, but that was a
23 mistake. And there are 1,173 pictures taken at the
24 scene that day. We don't have a single picture of
25 that gun in his hand.

1 They talked about the bag being next to him.
2 That bag was checked. This is science and
3 evidence. Brett Parker's DNA is not on that bag,
4 and they checked it.

5 And every other thing that they found in this
6 case -- and you are going to learn this from the
7 evidence -- is exactly what Brett Parker said. The
8 story that they have rendered to you about him
9 being in the bathroom and them coming home for
10 lunch, that's exactly what happened. The autopsy
11 results are going to prove that, that they did eat
12 lunch together, and they were waiting for Bryan
13 Capnerhurst to come over.

14 And, ladies and gentlemen, the gun that they
15 talked about that Mr. Parker -- that was
16 Mr. Parker's -- Mr. Parker got that gun from an
17 uncle who died, and he gave it to Bryan Capnerhurst
18 six weeks before this because he didn't want it or
19 need it. And you are going to learn that from the
20 evidence.

21 You are also going to learn that Bryan
22 Capnerhurst's fingerprints were on that gun, that
23 his fingerprints were all over everything that the
24 police found.

25 Now, I mention to you that there was somebody

1 desperate for money. Well, Bryan Capnerhurst was
2 desperate for money. You are going to learn from
3 the evidence and the witnesses that all he did for
4 two weeks before this was obsess about \$21,300 that
5 Brett Parker owed him.

6 You are going to learn that he told his wife
7 and had a discussion with her before he went over
8 there of: How much money do you think he has in
9 his safe? And they decided he had 80 to \$100,000
10 in cash in the safe.

11 Interesting fact, but true, and she also, Ms.
12 Capnerhurst, told the police, My husband told me
13 there was going to be violence when he went over
14 there. These are sworn to by her. But the
15 investigation of that was zero. They didn't ask
16 another question.

17 Now, ladies and gentlemen, I want you to ask
18 yourself during this trial, if you're a homicide
19 investigator and you heard what Mr. Parker said
20 happened, and he is on the ground down like this
21 (indicating) with a gun on him saying, Open that
22 blanking safe and give me my money, and when you
23 hear and you are taking a sworn statement from the
24 dead man's wife that they were talking about how
25 much money was in the safe and they figured 80 to

1 \$100,000, you might want to ask another question.

2 They don't ask her another single question
3 about that. She said -- she also told them, Brett
4 Parker owed my husband \$21,000, and he was supposed
5 to go get it. He thought he was going to get all
6 of his money.

7 Well, ladies and gentlemen, you should ask
8 some follow-up questions. And you know what their
9 next question was to her? And you are going to
10 learn this from the evidence. Can you think of any
11 reason that Bryan Capnerhurst would want to rob
12 Brett Parker? She said no.

13 This is right after he just told them what I
14 just told you. You are going to learn that from
15 the evidence.

16 The point of the matter is this, ladies and
17 gentlemen. These are good officers, but they were
18 on the scene of a very serious crime that was
19 committed.

20 And while they were there, one of the first
21 things they found out was that Brett Parker was a
22 bookie. He told them he was. He also works on a
23 job as a medical supply -- in a medical supply job,
24 but he was a bookie. And he told them that.

25 Now, that made their ears go up like German

1 Shepherds, but that was the first thing that
2 happened. The second thing that happened was that
3 they spoke to a bookie named James Morgan in North
4 Carolina.

5 You are going to learn from the evidence that
6 James Morgan had a very longstanding relationship
7 with Bryan Capnerhurst. That they talked all the
8 time. And that that morning they were talking a
9 lot, one of the last people he did talk to before
10 he went there.

11 Now, you're going to find out that this man is
12 a bookie and he is a felon. And so do the police
13 go and ask them -- when they interview him, they
14 don't ask him a single question about: Did Bryan
15 Capnerhurst owe you any money? Was he gambling
16 with you all the time?

17 They don't ask him a single question about
18 that. As a matter of fact, you are going to find
19 out that what they did ask him, the first thing,
20 one of the first things they asked him, was, How
21 did you find out about this?

22 And he is going to say that a friend that
23 worked with Bryan Capnerhurst, who is also a
24 gambler, Mr. Headley, had called him at
25 8:00 o'clock at night and told him about it.

1 But that is not true, ladies and gentlemen.
2 And the police knew it wasn't true, because they
3 spoke to him right after this happened.

4 And this is the point. The wife of Bryan
5 Capnerhurst -- and I don't know her, but I'm sure
6 she is a good lady, but she was convicted of
7 embezzling \$35,000 several years before this and
8 pled guilty to it.

9 And the -- when she was sentenced, she swore
10 under oath and told the Court that she stole that
11 money to pay Bryan Capnerhurst's gambling debts.

12 The police, they didn't find this out. We
13 told the police about this during this
14 investigation.

15 And, ladies and gentlemen, they just went over
16 and talked to her about it, and basically just did
17 nothing about that.

18 So we have these facts. And they learned from
19 the two people here that gave them tunnel vision.
20 They talked to them that day. And when they heard
21 from them, they became relentless against Brett
22 Parker. Of course, he is the only one left alive.
23 You can't prosecute somebody who is dead.

24 And so why did the police turn this thing up
25 and investigate it for over 97 days -- 97 days

1 before they arrested Brett Parker? Because he is a
2 bookie and because he is a flawed human being.

3 And he did have a tawdry sexual liaison with
4 this young lady. It was for sex. He wasn't going
5 to run off with her. But they are making it out
6 that way, because it fits their story and their
7 theory. That is what this is, is a theory.

8 Evidence is what you are supposed to be
9 looking at in this case, ladies and gentlemen.
10 Because the evidence in this case is going to prove
11 unequivocally that Bryan Capnerhurst fired that
12 handgun, and it was in his hand when they got
13 there.

14 They had to shake him hard to get the gun out
15 of his hand. And Odom didn't think it looked odd.
16 He was terrified. He had been at another killing
17 scene as an officer where somebody raised up with
18 one, even though they appeared to be dead, and
19 fired. And that is why he did it.

20 And Deputy Odom is a good man, but he
21 shouldn't have done that. He should have left it
22 where it was, ladies and gentlemen. They started
23 touching it, and it contaminated the scene.

24 And there were some other things that happened
25 there that day, you're going to learn from the

1 evidence, that contaminated this scene.

2 And the so-called evidence of gunpowder on a
3 window shade is absolutely -- you should look at it
4 with a jaundiced eye.

5 Because they came in 34 days later to test for
6 it because all the evidence they found up to that
7 point, the first month of this thing, proved he was
8 innocent of this. That Bryan Capnerhurst did fire
9 that gun. That Bryan Capnerhurst was angry and
10 threatened violence when he was going to go over
11 there. That he was financially strapped.

12 And we're going to prove this. He owed
13 \$21,000 in credit cards that were pressing him. He
14 had a 3- or \$4,000 note coming due at the bank.
15 And what we don't know is: How much money did he
16 owe this bookie in North Carolina who was calling
17 him constantly?

18 Ladies and gentlemen, when they spoke to James
19 Morgan and Cindy Capnerhurst, they didn't know
20 these things. They didn't care about it anymore.
21 Because when Brett told them he was a bookie, they
22 turned tunnel vision on him. This was a
23 sensational case, and they got tunnel vision and
24 they were relentless.

25 They had 78 officers from Richland County

1 investigating this. They had 12 SLED agents
2 investigating it. They had the FBI investigating
3 it. They had the Secret Service investigating
4 this, for 97 straight day before they arrested him.

5 Ladies and gentlemen, if you had that kind of
6 law enforcement on you like they were on Brett
7 Parker, they could have indicted Mother Teresa.

8 Is he a gambler? Yes, he was a gambler and a
9 bookie. Did he owe money? Yes, he owed money.
10 But, ladies and gentlemen, Brett Parker had been in
11 debt before and paid it off. He had always paid
12 his debts that he owed.

13 And they are making it out like, Oh, he killed
14 her for the life insurance. That money was given
15 to his children in an irrevocable trust. He didn't
16 get any of that money.

17 But, again, ladies and gentlemen, they just
18 ignored it. You know why? Because they found out
19 he's a bookie. They found out he had affairs. He
20 is the only one left alive, and so here we are
21 today in this courtroom when we shouldn't be.

22 On April 19th, 2012, six days after this was
23 over with, they got those gunpowder tests back from
24 the lab, and Bryan Capnerhurst's hand is covered in
25 it. It's that simple. He fired that weapon.

1 And, ladies and gentlemen, the bag that they
2 say was next to him, they checked it for DNA. I
3 mean, they are doing test after test. His DNA is
4 not on it. You're going to learn that.

5 And the point is, ladies and gentlemen, this
6 is -- now, that is evidence. That's not
7 allegations that he owes money or he is a big-time
8 Las Vegas bookie. All they did, they picked this
9 man's whole life apart with an electron microscope
10 and looked for every bad act he has ever done,
11 every mistake he has ever made, and how he lived
12 and everything he did, and put it out there.

13 Who could survive an investigation of this
14 sort without this kind of stuff being discovered?
15 The point is, he is a bad man, so therefore he is a
16 murderer. It is not true, ladies and gentlemen.

17 And, ladies and gentlemen, as members of our
18 justice system, me and the judge, but you are the
19 greatest single factor in the American justice
20 system because without you the whole thing
21 collapses.

22 You're more important than I am. You are more
23 important than Her Honor. In a dictatorship, guess
24 what the first thing they do away with? This, a
25 jury trial.

1 You stand in a great position and in a
2 powerful and tremendously important position in
3 this case. You have a chance to right a wrong,
4 ladies and gentlemen, and to bring justice to a
5 fellow human being.

6 And thank God for our system. It is the
7 greatest in the world. Because in our system, an
8 American citizen can get a fair trial, a fair and
9 impartial trial, from his constituents and his
10 fellow citizens.

11 And, again, it is not going to take long for
12 you to look at, but you are going to hear police
13 officer after police officer after police officer,
14 they are going to put them up. This is not a
15 number's game. They can put a hundred policemen up
16 here to investigate this literally, but that
17 doesn't mean Brett Parker is guilty.

18 You should be looking at the scientific
19 evidence in this case, at the eyewitness testimony.
20 And the eyewitness testimony said that Bryan
21 Capnerhurst was laying on the floor right where
22 Brett Parker said he was standing when he held that
23 gun on him.

24 The laboratory evidence shows that Bryan
25 Capnerhurst fired that weapon. The evidence shows

1 that Brett Parker's DNA is not on that bag. And he
2 cooperated with the police for 97 days, and I mean
3 cooperated.

4 He signed his rights away at least 15 times.
5 He wanted to get to the bottom of it. He wanted
6 this nightmare over with. They were trying to get
7 to the bottom of it, ladies and gentlemen. They
8 were trying to gather evidence against him.

9 And these are good officers, but they got it
10 in their heads because they talked to two people
11 who were lawbreakers who told them that Bryan was
12 going over to get that money, and he told him to
13 bring a bag with him, and he was worried.

14 What they didn't tell you about it: He said,
15 Call 9-1-1 if you haven't heard from me.

16 And, you know, but what they didn't tell you
17 is that he told his wife, There's going to be
18 violence when I get over there if he doesn't have
19 my money.

20 And, ladies and gentlemen, Tammy Parker was
21 brutally murdered by Bryan Capnerhurst. And the
22 big question is, Well, why would he do that?

23 Ladies and gentlemen, the Secret Service in
24 this case have determined, based on their
25 investigation, other than trying to nail him for

1 this murder charge, they also were looking into the
2 gambling. That's what it was supposed to be.

3 They found out Tammy Parker was involved in
4 the gambling operation, and it was an operation.
5 She held the purse strings. She determined the
6 budget. That was her money too.

7 And I wasn't there. Nobody was there
8 upstairs. Brett was downstairs when it happened
9 using the restroom.

10 And he told Bryan, You go on upstairs. And he
11 did. And it wasn't long after that he heard that
12 gunshots just like that, and that is the truth.

13 And he ran up those stairs. And a man that
14 was a friend of his was pointing a gun at him. And
15 he was going, What are you doing? Why are you
16 doing this? He glanced through the doorway and saw
17 his wife's legs on the floor. And then the
18 Solicitor was right, he did say, Open that
19 blankety-blank safe and give me my blank money
20 right now. And that is what happened.

21 And you are going to see, because they have
22 got every -- three-dimensional cameras and all this
23 technology and all of it, how it happened. And
24 there is a doorway there. And you are going to see
25 this, and we are going to point it out to you.

1 There's a doorway there.

2 And Bryan Capnerhurst took him in there and
3 knelt him down in front of that safe and said, Open
4 that blankety-blank safe. And Brett Parker kept a
5 gun called a Judge on top of it.

6 His reverend at his church recommended he buy
7 that weapon after his house was burglarized a year
8 and a half before this. And that is the truth.
9 And he had it on a cloth up under there. And he
10 had headboards and other things on it.

11 Now, Bryan Capnerhurst knew where the safe
12 was. And as I've already told you and you are
13 going to learn from the evidence, he was talking
14 about that safe with his wife and, How much cash do
15 you think Brett has in there? These are facts,
16 ladies and gentlemen. 80 to \$100,000.

17 Now, the distance is about ten feet. And
18 Brett Parker did turn and shoot him because he was
19 going to kill him, and that was reasonable for
20 Brett to think that. His wife was laying on the
21 ground and he had heard gunshots. And this man had
22 a glazed look in his eye and he did what I said.

23 But the point I was telling you about the
24 doorway is this: This man is pointing a gun at him
25 from this distance.

1 And what these people are saying over here is
2 that Brett Parker killed his wife and was waiting
3 around for Bryan to get there, which, by the way,
4 is fantastical.

5 And what if he gets a flat tire or gets in a
6 wreck on the way over there or doesn't show up? I
7 mean, nobody ever questioned that. Nobody ever
8 looked at something like that, about how crazy that
9 sounds.

10 But he held a gun on him and said, Open it.
11 He shot him, Brett did, when he turned -- when he
12 got down and he pulled that gun up and looked up
13 and shot him.

14 Now, ladies and gentlemen, if it was the story
15 they're saying, that he staged this whole thing and
16 took him back there, Bryan Capnerhurst is standing
17 right near an open doorway.

18 And the way they're saying it is, that means
19 that Bryan Capnerhurst saw Tammy Parker dead when
20 he got there, and Brett was holding a gun on him
21 and took him into the room and said, Now, stand
22 here. All right, now, stand here while I shoot
23 you.

24 Bryan Capnerhurst was an athlete, ladies and
25 gentlemen. He was in good shape. He worked out a

1 lot. He was a former baseball player. And he
2 could move.

3 Now, you tell me how in the world, according
4 to their theory, this man just stood there and let
5 Brett Parker shoot him. It is ridiculous, ladies
6 and gentlemen.

7 He might -- if he was shot in the back or shot
8 jumping through a window, I would believe them. I
9 wouldn't even be here right now, but that isn't
10 what they found.

11 He was shot from the front. When the police
12 got there, he was laying right near that door right
13 where he said, and he had the gun in his hand.
14 Everybody keeps forgetting that.

15 They are going to bring their medical people
16 in here. I am going to talk to you about this now.
17 The Coroner, There is no way he could have held
18 onto that gun, impossible.

19 Well, he had it in his hand and the officers
20 that took it out of his hand -- which they
21 shouldn't have done -- describe it as his fingers
22 wrapped around the handle to it. Wrapped. They
23 had to shake it to get it loose.

24 Now, the reason that it's important to
25 remember who the police talked to that day, and the

1 three things you keep in mind: Brett Parker told
2 them he was a bookie and that this man was coming
3 over to get gambling proceeds. And he was going to
4 pay him some money.

5 And he was going to tell him that, You have to
6 collect the rest of it and I'll pay it. Of course,
7 Brett said, I didn't owe him \$21,000, I owed him
8 \$15,000.

9 You remember this: He told the police, I'm a
10 bookie. Then they talked to this bookie in North
11 Carolina. And he told them that story about Bryan
12 Capnerhurst was going to get his money over there.

13 But do you think that bookie was nervous when
14 the police came and said, Bryan Capnerhurst is
15 dead. Well, he went -- well, I mean, he didn't
16 know what to say.

17 And what he told the police was that he was
18 going over there to get this and that Brett told
19 him to bring a bag to carry the money in, and he
20 told him these things.

21 So we've got a bookie who tells him this, and
22 a wife who says, He said he was going to do
23 violence. And we wondered how much money he had in
24 his safe.

25 Ladies and gentlemen, once they heard that and

1 they found out that Brett was the only one left
2 there, they got tunnel vision on him, and they
3 talked to the coroner's people, and this is why it
4 is important, they were all talking.

5 And every one of them agreed, he is trying to
6 get away with murder here, literally trying to get
7 away with murder. And they found out -- and they
8 said, Well, you know, he is a bookie.

9 So they are not going to give him the same
10 respect they might give a regular citizen. He is
11 not a regular citizen now because he is a bookie.

12 And the point is, it poisoned their minds,
13 ladies and gentlemen, all of them. They weren't
14 looking at this objectively. They weren't giving
15 him a fair shake on this thing.

16 They had decided this. And so you've got all
17 your coroners, your medical people, the police,
18 they are all talking, That's what he did, and he is
19 trying to get away with it. And they say, We're
20 not going to let him.

21 So it all becomes slanted that way. But they
22 will stretch it any way they can. He couldn't have
23 held that -- that's right, he couldn't have held
24 that gun in his hand. He must have put it in his
25 hand.

1 I mean, it's a human -- a natural human
2 reaction, ladies and gentlemen, but it was like a
3 wildfire. And once they committed to this -- and I
4 told you how many agencies -- they kept -- the life
5 of this thing kept going because of the gambling.

6 And they arrested a bunch of people out there
7 in the gambling operation, but that is how the life
8 of this case kept going, because it was just more
9 and more people being arrested. Gambling rings
10 were discovered, and all that.

11 But that doesn't mean that Brett Parker is
12 guilty of murder, because he is not. Were him and
13 his wife having some marital difficulties? Just
14 like anybody else, of course, they did. They were
15 married for 15 years and have two beautiful
16 children. They have a 14-year-old daughter,
17 **B.P.**, and a five-year-old son, **Z.P.**. And their
18 life was devoted to taking care of them.

19 And Brett Parker has a spotless record before
20 this happened. He has never been arrested for
21 anything. He has no record of violence. He has
22 never -- he's barely been in a fight with her.
23 He's never laid a finger on her.

24 Ladies and gentlemen, he loved her. Maybe
25 they weren't in love, but he loved her. She's the

1 mother of his children.

2 Their talks always -- they talked about, What
3 are we going to do for the kids? What are we going
4 to do for the kids? This man is a loving father,
5 and you're going to learn that.

6 And a man with no violent past, no violence
7 against his wife, his kids are coming home in two
8 hours from school, is going to gun his wife down in
9 cold blood, and the final shots in the back of her
10 head and then sit there and wait for his buddy to
11 show up?

12 That is what the police are saying happened
13 here. I mean, if you stop and start looking at
14 this and you look at the real evidence in this
15 case, there is no doubt that this man is telling
16 the truth.

17 And he may not be a perfect human being. Who
18 among us is perfect? The last perfect person on
19 earth was put on a cross 2000 years ago. This is a
20 case about human failings, human frailties, and the
21 study under a microscope of about a hundred
22 officers of everything this man has ever done bad
23 in his life to be used to say he committed a crime
24 of murder.

25 So it doesn't add up, ladies and gentlemen.

1 As a jury, you have the highest intellect and the
2 most experience of any single entity on earth. And
3 I'm not saying everybody here has an IQ of a
4 hundred, but just for mathematics, if each of you
5 has an IQ of a hundred, that is an IQ of 1200
6 looking at this right now.

7 And if you are 40 years old, 480 years of
8 experience right here. And you'll bring it to bear
9 here, ladies and gentlemen. I know you will. And
10 thank God for our jury system. Because this was a
11 headlong rush to rush this man into a prison and to
12 convict him, and he didn't do it.

13 Do we like Brett Parker? That is not the
14 point. Do I think he is a great guy? That is not
15 the point. Is he guilty of this beyond a
16 reasonable doubt? No.

17 He didn't kill his wife. He wouldn't have
18 killed her. She made \$160,000 a year, and he was
19 making 40 in a big gambling business. But he was
20 going to kill his wife to get a million dollars
21 that his children have in a trust fund, by the way?

22 I mean, she made \$165,000 a year. He is going
23 to kill her so he can get a million dollars? Of
24 course, they don't even talk about that. You
25 didn't hear about that. The children get that

1 money, not him.

2 It just doesn't add up, ladies and gentlemen.
3 I mean, if we are going to do a trial here and the
4 charge is Brett Parker is a bad guy and makes
5 mistakes regularly and had an adulterous affair, he
6 is a gambler, and all that, well, he is guilty. He
7 is not guilty of murder, ladies and gentlemen.
8 That is a fact.

9 And once you hear the evidence in this case,
10 you're going to know -- and we're under no
11 obligation to prove anything -- but because of what
12 has happened here, we feel obligated to prove some
13 things to you.

14 And like I told you, we're bringing in an
15 expert on this, on this gunpowder. We really don't
16 need it. We can use theirs. But we are going to
17 make sure. We are bringing in a top expert on this
18 from Forth Worth, Texas. His name is Richard
19 Ernest.

20 And he is going to tell you the same things I
21 did, except in much greater detail. But remember,
22 ladies and gentlemen, when you're looking at this,
23 don't look at this case the way the police did,
24 look for everything. It could have been three to
25 five people, but why don't we say it was three

1 people because that puts him closer. Don't give
2 them the benefit of the doubt of five people. No.
3 They did that with everything in this case. . Don't
4 you do it. You keep your minds open to this.
5 Listen to what they've got to say.

6 You are going to hear some bad stuff about
7 Brett now. He was messing around. He's a gambler.
8 He is in debt. He is not on trial for those
9 things. They are saying it is a motive.

10 I'll tell you who had a motive, ladies and
11 gentlemen. Bryan Capnerhurst had a motive. All he
12 talked about was that \$21,000, and he had to have
13 it. And he was talking to a bookie in North
14 Carolina. And we don't know what they were talking
15 about. We just know they were talking a lot.

16 The last time he got in trouble, his wife
17 embezzled \$35,000 to pay his gambling debts a few
18 years before this. And they are talking about how
19 much cash does he have in that safe, I think about
20 80 to 100,000.

21 But that don't make a -- I'm not a homicide
22 investigator, but to me I would have to ask a few
23 more questions about that. But they didn't. Not
24 in their reports, not in their investigation. It
25 doesn't make sense, does it? Unless they are

1 intent on getting Brett Parker and proving he is a
2 murderer.

3 Beg the Court's indulgence.

4 (Pause.)

5 MR. WHITLARK: One other thing I wanted to
6 tell you. You do have a heavy duty and a heavy
7 responsibility, but you also have a great
8 opportunity here, ladies and gentlemen. Because
9 every single time that an American jury meets, we
10 define who we are and what we believe in; and we
11 don't believe in this.

12 When you're exercising your right and your
13 duty as a juror, you remember that every single
14 American is presumed innocent. And they cannot be
15 convicted unless and until they prove it beyond a
16 reasonable doubt. And they can't do it in this
17 case. First of all, it is not true. Second of
18 all, I don't care if you bring in a thousand
19 adulterous affairs. It doesn't mean he is a
20 murderer. I don't care if you come in and this man
21 has got a Learjet going to Las Vegas. Being a
22 gambler doesn't mean you are a murderer.

23 Please keep your ears open for some
24 discrepancies that happened early on in this thing.
25 And remember what I told you. They got going on

1 this thing that first day, and they said, Oh, he
2 didn't -- he didn't tell us.

3 This man had just come from his wife has been
4 murdered and a man he thought was a friend of his,
5 he had to kill him to keep him from killing him.
6 And he is like this. And they took him right down
7 to the police station, sat him down, and took a
8 statement from him.

9 Did you have any trouble with your wife? Did
10 you have any affairs? This man has already told
11 them, I'm a bookie. And that's why he was there.
12 He told the truth.

13 But because he is like this and because he
14 didn't tell them every detail perfectly, and they
15 questioned him later and he gave other statements,
16 he didn't remember every single detail perfectly,
17 he is lying. He is a liar now.

18 He is a gambler, he messed around on his wife,
19 and he is a liar. Therefore, he is a murderer.

20 And that's what they are trying to do here,
21 ladies and gentlemen. You are not going to let
22 them do that, and I know that.

23 It's going to be a long trial, because you are
24 going to hear from about 50 policemen in this case
25 and investigators, from every police agency in the

1 state and federal government.

2 But the buck stops with you. And you protect
3 this man's rights and you protect all our rights.
4 Because, like I said, every time a jury meets or
5 convenes, we are defining who we are as Americans.
6 We don't believe in this kind of stuff. Thank God
7 for it.

8 Ladies and gentlemen, Brett Parker is
9 innocent. He did not murder his wife. We don't
10 have to prove it, but we are probably going to end
11 up proving it.

12 Thank you, Your Honor.

13 THE COURT: Thank you.

14 All right. I am going to ask the State to
15 call its first witness.

16 MS. SIMPSON: The State calls Deputy Joseph
17 Ryan.

18 (Witness approaches.)

19 THE BAILIFF: Place your left hand on the
20 Bible, and raise your right hand, please.

21 (Witness complies.)

22 THE CLERK: Do you swear or affirm the
23 testimony you are about give in this case will be
24 the truth, the whole truth, and nothing but the
25 truth, so help you God?

1 THE WITNESS: I affirm.

2 THE CLERK: Have a seat in the witness box.

3 (Witness complies.)

4 THE CLERK: State your full name for the
5 record. Spell your last name, please.

6 THE WITNESS: Joseph Ryan, R-Y-A-N.

7 JOSEPH RYAN,
8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. SIMPSON:

11 Q Deputy Ryan, where are you employed?

12 A I work for the Richland County Sheriff's
13 Department.

14 Q And how long have you been with Richland County?

15 A I've been with Richland County since February of
16 2010.

17 Q And as a deputy, what are some of your
18 responsibilities and duties?

19 A Mainly to enforce the laws -- local, state, and
20 federal -- and to protect citizens of the county.

21 Q And where are you primarily working now? What
22 position?

23 A Right now I'm a school resource officer.

24 Q And back on Friday, April 13th of 2012, what
25 capacity were you working in?

1 A I was a patrol deputy working in the Region 4 area
2 of Richland County.

3 Q And where is the Region 4 area?

4 A Region 4 covers Broad River Road, the Harbison/Irmo
5 areas.

6 Q And as a patrol deputy, what were some of your
7 duties? What types of things would you do?

8 A We responded to calls for assistance and handled
9 any crimes in progress.

10 Q And did you actually have occasion to become
11 involved in this case?

12 A Yes, ma'am. This case was given out as a call over
13 our dispatch radio.

14 Q And can you tell us about the call you received and
15 where you responded to?

16 A Yes, ma'am. On that day, I was actually just
17 finishing up eating lunch near the intersection of
18 Broad River Road and I-20 when a call went out over
19 the radio about two people that -- a shots fired
20 call where two people had been struck.

21 I and every other deputy in Region 4
22 responded, Code 3, which is blue lights and sirens,
23 to that address that was provided, which was
24 Number 12 Tackeria Court.

25 Q And that is here in Richland County?

1 A That is in Richland County, yes, ma'am.

2 Q And what time were you actually dispatched?

3 A According to my report, the dispatch time was
4 12:44.

5 Q And what was the time of your arrival?

6 A 12:58.

7 Q And did you have some -- or were officers having
8 some difficulties kind of finding the location?

9 A We did. The address is located in the Ascot
10 subdivision, which is a very large subdivision with
11 lots of smaller areas, roads. You know, one road
12 takes you into an area of different houses. And if
13 you go in one, you know, you have to come all the
14 back out to get to a different area. So it is
15 pretty difficult to find houses, especially because
16 it is constantly being added on to.

17 Q And when you responded, how were you able to get
18 there?

19 A When I got the call over dispatch, we were told
20 that the person that was making the call, which in
21 this case was the Defendant, actually provided
22 directions to dispatch on how to get to the
23 residence.

24 Q And were you actually the first officer to
25 arrive --

1 A Yes, ma'am.

2 Q -- on the scene? And who did you encounter when
3 you arrived?

4 A When I arrived, I exited my vehicle, and I saw in
5 the driveway the Defendant standing in the
6 driveway.

7 Q Okay. And so he was just standing there as you
8 approached?

9 A He was -- he was -- the driveway is sort of on a
10 hill. And when I initially looked, I didn't see
11 anybody. And as I looked again -- because I was at
12 the address that was provided -- I saw a man in a
13 red shirt crest over that hill, and that man did
14 turn out to be the Defendant.

15 Q And what did you do once you arrived?

16 A I approached the Defendant with my service weapon
17 drawn. Any time -- which is standard procedure --
18 any time we respond to a call for shots fired, when
19 we don't know exactly the situation that is going
20 on, I drew my service weapon and approached the
21 Defendant and ordered him to the ground so that,
22 you know, I could see his hands, make sure he
23 didn't have any weapons on him and put him at --
24 not an advantageous position over me -- in case he
25 wished to inflict any harm upon arriving officers.

1 Q And so safety is a primary concern of yours when
2 you respond?

3 A Absolutely. It is our number one goal when we
4 respond to make sure that no officers or anyone in
5 the surrounding public is harmed any further from
6 whatever crime has been committed.

7 Q And with respect to this call, it was a call for
8 shots fired?

9 A Yes, ma'am.

10 Q So someone was armed. Now, what happened next?
11 Were able to detain the Defendant?

12 A As I approached the Defendant, he did respond to my
13 verbal commands and he did prone himself out onto
14 the ground on his stomach. He showed me his hands,
15 did everything that I asked him to do.

16 It did take a few minutes for any other
17 officers to arrive on scene. Standard procedure
18 for approaching anyone in that capacity, you never
19 approach on your own. So at that point I waited
20 with my gun drawn for approximately two or three
21 minutes before anyone else, any other deputies,
22 actually showed up.

23 During that time I just tried to ascertain any
24 information as far as if anyone inside needed
25 medical help, if there was anyone inside that posed

1 a threat to arriving deputies. So that when we
2 went inside, which we inevitably would do when more
3 deputies arrived, we would have a better idea of
4 what to expect inside.

5 Q And so you were just trying to gather some initial
6 information about the scene?

7 A Right, just for safety purposes.

8 Q And did you actually advise the Defendant of his
9 rights?

10 A I did. Once another deputy arrived, the other
11 deputy that arrived second became what we call my
12 cover officer, which means that he had his service
13 weapon out and ready.

14 And I holstered my weapon, approached the
15 Defendant, and placed him in two different sets --
16 he had broad shoulders, so I had to place him in
17 two different sets of handcuffs in order to
18 handcuff him properly. But at that time he was
19 read his Miranda rights, or given his Miranda
20 rights.

21 Q And how was that done? Verbally?

22 A The Miranda warnings I advised him of were that:
23 You have the right to remain silent. Anything you
24 say can and will be used against you in a court of
25 law. You have the right to an attorney. If you

1 cannot afford an attorney, one can be provided for
2 you.

3 Q And moving back just a little bit, some of the
4 initial information and questions you were asking
5 him, was he able to provide you with some
6 information? Or do you recall that specifically?

7 A I don't recall particular answers to any questions
8 that I asked, but what I can say is that I know
9 that when my backup units arrived, I was able to
10 relay to them, you know -- I didn't relay to them
11 that there was any threat inside, but there were
12 people inside that had been hurt.

13 So I -- you know, whatever he did provide
14 didn't lead me to believe that there was anyone
15 inside that was possibly going to hurt us.

16 Q And did EMS also respond to the scene?

17 A EMS did respond while I was on the scene, yes,
18 ma'am.

19 Q Okay. And what happened next? What did you do?

20 A As far as my capacity there, once he was detained
21 in handcuffs and the residence was secured and that
22 there was no one alive inside that was posing any
23 further threat, I stayed with the Defendant for a
24 certain amount of time until other officers arrived
25 on the scene and EMS arrived on the scene and put.

1 him in their care.

2 I then again went inside to help with securing
3 the scene and then set up a crime -- set up crime
4 scene tape around it and started a crime scene log.

5 Q So is that what you mean when you say a secure
6 scene?

7 A Yes.

8 Q I know you do it generally, but describe for the
9 jury what that is.

10 A Well, once we made sure that there is no one in
11 that area that needs any kind of medical assistance
12 or there is no active threats inside the area, we
13 pull out all the officers that are inside and set
14 up a crime scene to preserve as much of the scene
15 as we can so that investigators and crime scene
16 investigators get there, they can obtain any
17 information that the crime scene might provide and
18 tell us what happened in that situation.

19 Q And did those other units, including investigators,
20 as well as crime scene investigators, arrive on
21 scene?

22 A They did come on the scene, yes, ma'am.

23 Q And as a responding officer, is it actually your
24 job to interview extensively any potential
25 witnesses or is it just to gather what you can just

1 for safety purposes?

2 A We gather what we can for safety purposes. Any
3 time a situation arises, particularly in a felony
4 case, anything that would be what we would consider
5 a felony crime, we typically leave any sort of
6 information gathering that is non-essential to
7 direct threats to investigators. Our job is merely
8 to really contain the scene and wait for them to
9 get there.

10 Q All right. And was this scene, in fact, turned
11 over to investigators?

12 A It was.

13 Q And did they arrive fairly quickly too? I believe
14 you said a number of units responded?

15 A They did. I mean, there were plenty of units that
16 did arrive. And I don't recall exactly how long it
17 took investigators to get on the scene, but it was
18 very quickly. I know that.

19 Q And you provided -- you did a report in this case,
20 right?

21 A Yes, ma'am.

22 Q And without telling me the actual information that
23 was provided by the Defendant, was information
24 provided to another officer regarding what
25 happened?

1 A Two investigators, yes, ma'am.

2 Q Or two investigators. And did he have a weapon on
3 him at the time?

4 A At the time I arrived?

5 Q Yes.

6 A No, ma'am.

7 Q And how did he -- did you observe him crying at
8 all?

9 A I don't recall him crying while I was there, no,
10 ma'am.

11 Q Okay. And did you observe any blood on his face or
12 hands at that time?

13 A No, ma'am.

14 Q I want to show you what has been marked as State's
15 Exhibit 367. Do you recognize this?

16 A Yes, ma'am.

17 Q And what is it?

18 A This is an overhead view of the incident location,
19 along with some of the surrounding areas.

20 Q And does it fairly and accurately depict the
21 location?

22 A Yes, ma'am.

23 MS. SIMPSON: Your Honor, at this time we
24 would introduce State's Exhibit 367 into evidence.

25 THE COURT: Any objection?

1 MR. WHITLARK: I'm sorry, Your Honor?

2 THE COURT: Any objection?

3 MR. WHITLARK: No, no objection. I'm sorry,
4 Your Honor.

5 THE COURT: Without objection.

6 (WHEREUPON, State's Exhibit No. 367 was
7 marked for identification and received
8 into evidence.)

9 BY MS. SIMPSON:

10 Q All right. And you can stand up if you need to.
11 Tell the jury just where we are looking at and
12 where the home was actually located.

13 A Okay. This is the Ascot subdivision here. This
14 here is the actual incident location. These are
15 the roads that we had to use to come into the
16 neighborhood.

17 So we came down here, had to turn up here, and
18 then go into this because this doesn't actually
19 have an exit. There is only one way in. So upon
20 coming up, you take a right on Tackeria Court, and
21 the house was located here. And you can see the
22 long driveway.

23 Q And is that kind of in a cul-de-sac area?

24 A It is a cul-de-sac, yes, ma'am.

25 Q And can you describe -- I mean, we can see here

1 some, but the location of the house, is it somewhat
2 secluded? Are there --

3 A I mean, it is relatively isolated from most houses.

4 Q So there are woods on both sides?

5 A Yes, ma'am.

6 Q And, again, your primary role as a responding
7 officer is to insure the safety of the situation?

8 A Yes, ma'am.

9 Q And contain the situation? And that is what you're
10 trained to do?

11 A Yes, ma'am.

12 MS. SIMPSON: Beg the Court's indulgence.

13 (Pause.)

14 BY MS. SIMPSON:

15 Q Backing up just a little bit -- and I think you
16 touched on it briefly -- but when you asked
17 about -- when you asked the Defendant, Brett
18 Parker, about the condition of everyone in the
19 home, what did he say to you?

20 A I don't recall his exact words.

21 Q Did he provide you information about whether they
22 were dead or alive? You don't have to remember
23 exactly.

24 A I mean, I remember, I mean, just relaying
25 information that they had been shot. I don't

1 remember as far as dead or alive. I don't remember
2 feeling any urgent need to get EMS there. I mean,
3 I don't remember him saying that there was someone
4 alive inside. I feel like it was conveyed that
5 everyone inside the house was --

6 Q Was he requesting EMS, or no?

7 A Not initially. Later he did end up complaining of
8 chest pains and trouble breathing, but that wasn't
9 upon my initial arrival.

10 Q All right. Thank you, Deputy Ryan.

11 THE COURT: All right. Please answer any
12 questions the Defense may have.

13 MR. WHITLARK: May it please the Court, Your
14 Honor?

15 CROSS-EXAMINATION

16 BY MR. WHITLARK:

17 Q Deputy Ryan, how many people came in and out of
18 that house while you were there?

19 A I don't have an exact number. There is a crime
20 scene log that does document everyone that went in
21 and out of the house and what time they entered and
22 exited.

23 Q You say there was a lot of people that came in and
24 out of that house while you were there. Would you
25 agree?

1 A I'd probably say -- I mean, there was a good bit,
2 yes, sir.

3 Q I'm going to hand you this and ask you if you can
4 identify it for us.

5 A This appears to be a copy of the crime scene log
6 that I started while I was on the scene.

7 Q Okay. I want you to take a careful look at it,
8 please, and see if it is the log, at least up to
9 the time that you were there.

10 A Yes, sir, it is a log that -- it's a copy of a log
11 that I started and was continued by other deputies
12 once I left.

13 Q Okay. And is that a log that you have experience
14 keeping records like that? Is that your
15 handwriting on it?

16 A Most of it is my handwriting. There are some
17 people on here that wrote their own names, and
18 especially if they were from other agencies. But
19 for the most part, yes, it's my handwriting.

20 MR. WHITLARK: Okay. I would like to mark
21 that as Defense Exhibit Number 1 and introduce it
22 into evidence.

23 THE COURT: All right. Show it to the other
24 side.

25 MR. WHITLARK: I did, pre --

1 THE COURT: Any objection?

2 MS. SIMPSON: No objection from the State.

3 THE COURT: All right. It will be entered as
4 Defendant's 1.

5 THE COURT REPORTER: I need to mark it.

6 MR. WHITLARK: Yes, I gotcha.

7 (WHEREUPON, Defendant's Exhibit No. 1
8 was marked for identification and
9 received into evidence.)

10 BY MR. WHITLARK:

11 Q Now, would you read for the jury what's at the top
12 of that log?

13 A It says: Richland County Sheriff's Department
14 Crime Scene Log. Anyone entering the crime scene
15 must complete the information below. Once secured,
16 no one is allowed into the scene until the approval
17 of the crime scene investigator in charge of the
18 scene.

19 Q Okay. Now, there are some enhanced words in the
20 phrase you just read. Would you please tell the
21 jury what they are?

22 A Yes, sir. Bold and underlined is: Once secured,
23 no one.

24 Q That's right. Deputy Ryan, do you know what
25 forensic evidence is?

1 A Yes, sir.

2 Q I believe I heard you testify just a minute ago
3 when you were talking about, Well, we secured the
4 scene. And you actually were monitoring who was
5 going in and out of that house, weren't you?

6 A Once the crime scene was secured, yes, sir.

7 Q Right. And you do know what forensic evidence is
8 as a law enforcement officer trained, right?

9 A Yes, sir.

10 Q And forensic evidence, the reason you do that,
11 would you agree with me, sir, is because you want
12 the scene to be exactly like, as best you can,
13 preserved in the condition it was in when the event
14 happened?

15 A Yes, sir.

16 Q Okay. Now, do you know what GSR is, gunpowder? Do
17 you know anything about that?

18 A I have some knowledge of it, yes, sir.

19 Q It's small stuff, isn't it?

20 A (Nods affirmatively.)

21 Q And that's one of the reasons you do what you're
22 doing so they don't kick stuff around, and so
23 forth, right, and change things? You know that
24 happened in this case, right?

25 MS. SIMPSON: Objection Your Honor.

1 THE COURT: Sustained.

2 BY MR. WHITLARK:

3 Q Sir, are you aware that the pistol was taken out of
4 Mr. Capnerhurst's hand?

5 A I was informed of that, yes, sir.

6 Q Okay. Did you -- when did you find out about that?

7 A While I was on scene.

8 Q Okay. How did you find out about it?

9 A I don't recall exactly who informed me of it. I'm
10 sure it was a deputy on scene told me, but I don't
11 recall exactly who.

12 Q I gotcha. Was everybody talking about moving the
13 gun? Was there a lot of talk about that?

14 A I couldn't tell you exactly how many people were
15 talking about it.

16 Q Okay. Did you ever speak to Deputy Odom about it
17 or hear him talking about it?

18 A After the fact.

19 Q I'd like for you to take a look at what has been
20 marked as Defense Exhibit Number 1, would you?

21 A Yes, sir.

22 Q I want you to turn to the time. Y'all keep a --
23 you keep a straight running time on that thing when
24 people get there. They sign in. They sign what
25 time they got there, don't they, a little box?

1 A Yes.

2 Q Okay. Would you look and tell me, when did
3 Sergeant Don Robinson sign in?

4 A There is not a time listed next to his name.

5 Q There is not a time listed next to his name?

6 A No, sir.

7 Q But his name is on there, isn't it?

8 A Yes, sir.

9 Q And --

10 A Just to note, his name is on the log; however, it
11 has been crossed through and it has been initialed
12 that he actually did not enter the scene.
13 Sometimes when people arrive at the address and it
14 appears, you know, they're going to enter, you hand
15 it to them, they put their name on it, and then
16 they end up getting orders from maybe their
17 supervisor saying, Don't go in. So before they go
18 in, their name does appear on the log, but they
19 never actually enter the crime scene.

20 Q I'm going to ask you to search your memory about
21 something here. Wasn't Don Robinson in charge of
22 that scene at that time?

23 A To be honest with you, sir, we have many
24 investigators that I'm not familiar with. And
25 there were plenty of people that I met for the

1 first time that day, and I couldn't tell you
2 exactly who was in charge of that.

3 Q Okay. But the purpose -- again, the purpose of
4 this list is if you are going to go in that house
5 and you are going to walk in there, you put your
6 name on that, don't you?

7 A Yes.

8 Q His name is on there, isn't it?

9 A His name is listed.

10 Q Uh-huh. And then there is a line put through it
11 and said, Did not enter, right?

12 A Yes.

13 Q Please -- all right. Please take a look at it and
14 tell me when Investigator Chris Lindler got there.

15 A That, as well, is not listed.

16 Q Excuse me?

17 A There is no time listed.

18 Q I'm sorry. First of all, did Chris Lindler sign
19 the sheet for entry into the house?

20 A His name is on the list, yes.

21 Q Okay. And what time did he say he went -- he got
22 there? What time does it say?

23 A There is no time listed next to his name.

24 Q It's the same thing as Robinson's, isn't it?

25 A Yes, sir. It also says he did not enter with

1 initials next to it.

2 Q Uh-huh. It's not back-to-back with Robinson's, is
3 it?

4 A No, it's not.

5 Q And, again, sir, the reason that they sign this
6 document is because they are going in the house?

7 A That is accurate.

8 Q And both of them signed that to go in the house,
9 right?

10 A They both put -- their names were added to the
11 list, yes, sir.

12 Q Okay. And both of them have wavy lines through
13 them, right?

14 A Yes, sir.

15 Q And then both of them says in little letters there:
16 Did not enter?

17 A Yes, sir.

18 Q But they signed the thing to enter?

19 A Well, they -- it looks as if Sergeant Robinson's
20 was not written in my handwriting, so he may have
21 put his name there, but Sergeant Lindler's name is
22 in my handwriting.

23 So if I believed he was going to enter the
24 house and I wrote his name down and they said no --
25 you know, if he was approaching and I recognized

1 him, wrote it down, and he said, No, I'm not going
2 inside, I mean, that is plausible as to what
3 happened.

4 Q Okay. Okay. Well, in any event, I want you to
5 look. When did the Coroner's Office get there?
6 What people came from the Coroner's Office, if you
7 don't mind telling us?

8 A I believe the first person from the Coroner's
9 Office listed here is Coroner Gary Watts. And that
10 is listed at 1504.

11 Q Would you mind telling the jury -- that is military
12 time, right?

13 A Yes, sir.

14 Q Would you mind telling the jury what time it is in
15 just regular layman's?

16 A That would be 1:04 p.m.

17 Q Okay. And you had been there about 15, 20 minutes?
18 Something like that? I'm not holding you to it,
19 just a ballpark figure?

20 A Right.

21 Q Okay. So how many people showed up from the
22 Coroner's Office?

23 A From the Coroner's Office, I believe three.

24 Q Okay.

25 A Let me -- according to the log, I see three so far.

1 Q Okay.

2 A There is another person on the log that, again, did
3 not enter.

4 Q That is Ms. Rawl, isn't it?

5 A Yes.

6 Q And she signed to go in there too, but didn't put
7 another wavy line through it, did she?

8 A Again, that was my handwriting with her name.

9 Q Okay.

10 A Everything on there was listed that she did not
11 enter with my initials next to it.

12 Q So Robinson signed to enter and didn't, or said did
13 not enter; Lindler signed to enter, but says did
14 not enter; and from the Coroner's Office, Ms. Rawl
15 did the same thing?

16 A It appeared that way on the document, yes, sir.

17 Q Uh-huh. And they weren't together on that thing.
18 As a matter of fact, what time did Ms. Rawl get
19 there?

20 A Again, that is not listed.

21 Q Well, it's supposed to be, though, isn't it?

22 A Well, we normally -- we list the time they actually
23 enter the scene.

24 Q Okay.

25 A But since they never entered the scene, there was

1 no time provided.

2 Q Okay. Do you mind if I take a look at that?

3 A Yes, sir.

4 (Pause.)

5 Q I am going to hand it back to you. It does say
6 that Ms. Rawl -- there is something written in
7 there about the time she got there, isn't it? But
8 it is scratched through, isn't it?

9 A Yes. Again, that appears to be my handwriting
10 where I wrote something as far as when I thought
11 she was going in. And when she didn't enter,
12 again, I crossed that out and put my initials next
13 to it.

14 Q Okay. Could anybody -- could somebody have gotten
15 in that house without you knowing it?

16 A Not unless the scene was set up.

17 Q Pretty tight. And, again, the reason you do that
18 is to keep the scene from getting contaminated and
19 stuff moving around, and so forth, right?

20 A Yes, sir.

21 Q There were a lot of -- there was some emergency
22 personnel there, weren't there?

23 A Yes.

24 Q EMTs -- not from the Coroner's Office -- responded?

25 A Right, yes, sir.

- 1 Q I believe it was about four of them?
- 2 A I'm not 100 percent on the number. I can count off
- 3 the list.
- 4 (Pause.)
- 5 A It looks like four responded, yes.
- 6 Q Okay. And they were in the house, right?
- 7 A According to the log.
- 8 Q And there were some deputies inside there too,
- 9 right?
- 10 A Yes, sir.
- 11 Q And we already know about Odom was there, right?
- 12 He was in there?
- 13 A Yes, sir.
- 14 Q And he moved that gun out of his hand; you found
- 15 that out, right?
- 16 A I was informed of that, yes, sir.
- 17 Q Did -- do you know whether or not anybody moved
- 18 Bryan Capnerhurst's body? You ever heard anything
- 19 about that?
- 20 A No, sir, not any more than the gun.
- 21 Q Okay. Now, sir, you're a trained deputy and you
- 22 have responded to things, similar stuff like this
- 23 yourself in your career, have you not?
- 24 A Some things, yes, sir.
- 25 Q Okay. Now, this was a big house, right?

1 A Yes, sir.

2 Q And procedure would be, if you were the responding
3 deputy to an incident like this in particular, is
4 you would go in their rooms, wouldn't you? And you
5 would make sure what was in every room? You
6 don't -- as a deputy, you ain't going to walk in
7 over a dead body and not look behind you, are you?
8 You are going to make sure what is there, aren't
9 you?

10 A We clear the area to make sure there is no active
11 threats.

12 Q All right. But they swept that house. They went
13 all through that house, didn't they?

14 A As far as I know. I mean, I wasn't in the
15 initial -- I was outside with the Defendant during
16 that initial scene. So I don't know exactly what
17 happened when they went in.

18 Q Okay. But part of your training at the academy and
19 your training when you get to a scene and something
20 this serious has happened, you go just about -- you
21 go to every room and make sure what is in there,
22 don't you?

23 A Go look, yes.

24 Q Yes, sir. And that means bedrooms, any kind of
25 alcove, everything, right? I mean, that is

1 standard procedure, right?

2 A (Nods affirmatively.)

3 Q Okay. And, again, I know you weren't there the
4 whole time, but would you again agree with me --
5 oh, by the way, I meant to ask you something
6 earlier. Did Sergeant Robinson tell you he wasn't
7 going in? Do you remember that?

8 A To be honest, this isn't -- this was over a year
9 ago, and I don't recall specific conversation.

10 Q I gotcha. I gotcha. Well, let me ask you this:
11 Since this happened and since you were keeping that
12 log, and it was a very strict log, has anybody
13 talked to you about that, about what I just asked?
14 About Robinson and Lindler and Rawl being in there?
15 Has anybody said a word to you since then about it?

16 A No, sir.

17 Q Okay. Did you see anybody carrying anything out of
18 that house while you were watching it?

19 A Not to my recollection.

20 Q And, of course, you keep it secure until who gets
21 there?

22 A Well, it is secured until -- well, as far as I
23 knew, I passed this log off to another deputy who,
24 again, was keeping it secure when I left at the end
25 of my shift.

1 Q Tell the jury what CSI is, please.

2 A Crime scene investigators.

3 Q That is who we are waiting for, isn't it?

4 A Yes, sir.

5 Q That is why we do that. We back up and keep that
6 house so they can get there, right?

7 A Yes, sir.

8 Q And that is when they move in to do all the
9 forensic testing and gathering of all the things,
10 right?

11 A Yes, sir.

12 Q Okay. What time did they get there?

13 A The first person I see listed as a lab unit listed
14 as their time in at 0849. That's the first one I
15 see as a lab unit.

16 Q Okay. What time did CID arrive? And that is the
17 Criminal Investigative Division, right?

18 A Yes, sir.

19 Q Can you tell me what time they got there?

20 A The first one on scene or the first one that
21 entered the scene?

22 Q The first one that entered that house.

23 A The first person I have on here that doesn't have a
24 no entry marked next to it says 1847, which would
25 be 6:47.

- 1 Q In the evening?
- 2 A Evening, yes, sir.
- 3 Q And tell us again what time you got your call to go
- 4 to this.
- 5 A According to the dispatch time was 12:44.
- 6 Q So how many hours was that before they got there,
- 7 that you sat there watching that house?
- 8 A So that would be approximately six hours.
- 9 Q Six hours. A long time. Do you remember how many
- 10 police cars were there? How many people were
- 11 outside?
- 12 A Quite a few.
- 13 Q Do you know what the word swarming means?
- 14 A Swarming?
- 15 Q Yes.
- 16 A Yes, sir.
- 17 Q That place was swarming with police, wasn't it?
- 18 A There were a lot.
- 19 Q And rightfully so. Is it your testimony and
- 20 belief, sir -- I'm just asking you on your
- 21 recollection, because I know you were doing your
- 22 job there that day, that for eight hours or so
- 23 before that, the only people that entered that
- 24 house were supposed to be written on that list,
- 25 aren't they?

1 A Yes, sir.

2 Q Okay. And if anybody else went in there, that
3 would be a violation of protocol, would it not?

4 A Right. This list is meant to log anyone in who
5 enters or exits the house.

6 Q And if anybody did that and walked out with
7 something in their hand, a forensic team like that,
8 that would be grossly improper, would it not, sir?

9 A According to policy, it would.

10 Q Thank you, Deputy Ryan.

11 MR. WHITLARK: No further questions.

12 MS. SIMPSON: Brief redirect.

13 THE COURT: Yes, ma'am.

14 REDIRECT EXAMINATION

15 BY MS. SIMPSON:

16 Q Deputy Ryan, can you turn to Page 2 of the log.
17 We've kind of been all over the place. We will try
18 to focus on something.

19 Investigator Bouknight, Sergeant Richards, and
20 Lieutenant Elsey are all with crime scene
21 investigation, right?

22 A Yes, ma'am.

23 Q And their time in listed on here is 1454, isn't
24 that correct?

25 A Right.

1 MR. WHITLARK: Objection to the leading
2 question, Your Honor.

3 BY MS. SIMPSON:

4 Q What time is 1454 in, I guess, realtime?

5 A 1454 is 2:54 in the afternoon.

6 Q And when a person gets to the scene, have they
7 necessarily entered the scene at that time?

8 A No, ma'am.

9 Q Okay. So somebody can be on scene before that,
10 they just haven't crossed the crime scene tape?

11 A Yes, ma'am.

12 Q Correct?

13 MS. SIMPSON: Nothing further, Your Honor.

14 MR. WHITLARK: Just briefly, Your Honor.

15 RECROSS-EXAMINATION

16 BY MR. WHITLARK:

17 Q Well, you certainly don't have people signing the
18 entry log book in there that don't mean to go in
19 the house, do you? They don't sign that book that
20 they are not going in, do they?

21 A No, sir.

22 Q Okay.

23 MR. WHITLARK: That's all I have. Thank you,
24 Your Honor.

25 THE COURT: All right, sir. You may step

1 down.

2 THE WITNESS: Thank you, Your Honor.

3 (Witness steps down.)

4 THE COURT: Can I see you all one second?

5 (WHEREUPON, a bench conference was held

6 in the presence of the jury but out of

7 the hearing of the jury.)

8 THE COURT: All right. Ladies and gentlemen
9 of the jury, they tell me that the next witness may
10 take some time. And so I think this is probably a
11 good time for us to break for lunch. It's about
12 12:15. We will start back at 1:30.

13 And just remember to keep your badges on. Do
14 not discuss this case with anyone, not even your
15 fellow jurors. If anyone tries to talk with you,
16 just let me know and we will take care of that.

17 You are not to talk with anyone. If anyone
18 tries to talk with you, let them know that you are
19 on the jury and that you cannot have any
20 discussions with them.

21 I hope that you have a great lunch. Remember,
22 no research, independent research, no internet,
23 social network.

24 All right. Thank you.

25 THE BAILIFF: Everyone remain seated until the

1 jury leaves, please.

2 (WHEREUPON, the jury is excused for
3 lunch at 12:16 p.m.)

4 (WHEREUPON, the following takes place
5 outside the presence of the jury.)

6 THE COURT: All right. Mr. Whitlark, I don't
7 have a problem with you all standing up if you wish
8 to do so when the jurors enter or leave the
9 courtroom. I know that is a practice of some
10 lawyers.. So he is not referring to you all. He is
11 referring to everybody else.

12 MR. WHITLARK: Thank you, Your Honor.

13 THE COURT: All right. We will start back at
14 1:30.

15 (WHEREUPON, a lunch break was taken.)

16 (WHEREUPON, the following takes place
17 outside the presence of the jury.)

18 THE COURT: Are you ready?

19 MS. CAMPBELL: The State is ready, Your Honor.

20 THE COURT: All right. You can bring them in.

21 (WHEREUPON, the jury came into open
22 court at approximately 1:46 p.m.)

23 THE BAILIFF: The jury is seated, Your Honor.

24 THE COURT: All right. Ladies and gentlemen,
25 I hope you had a good lunch. At this time we will

1 continue with the State's case. I will ask the
2 State to call their next witness.

3 MS. CAMPBELL: May it please the Court? The
4 State calls Lieutenant Joe Odom.

5 (Witness approaches.)

6 THE BAILIFF: Place your left hand on the
7 Bible, and raise your right hand, please.

8 (Witness complies.)

9 THE CLERK: Do you swear or affirm the
10 testimony you are about to give in this case will
11 be the truth, the whole truth, and nothing but the
12 truth, so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Have a seat in the witness box.

15 (Witness complies.)

16 THE CLERK: State your full name for the
17 record, please.

18 THE WITNESS: Joseph Johnson Odom.

19 JOSEPH JOHNSON ODOM,
20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. CAMPBELL:

23 Q Lieutenant Odom, where are you employed?

24 A Richland County Sheriff's Department.

25 Q What do you do there, sir?

1 A I'm a lieutenant in the Region 4 area, which
2 consists of Broad River Road.

3 Q Can get you get a little closer to that microphone?
4 It's just hard to hear in here.

5 A I apologize.

6 Q Thank you, sir. You're a lieutenant where?

7 A Region 4 area, which is Broad River, running from
8 the city limits all the way out to the
9 Newberry/Lexington line.

10 Q To the county line?

11 A Yes.

12 Q And is Ascot Estates located within Region 4?

13 A Yes, it is.

14 Q And that's here in Richland County?

15 A Yes, it is.

16 Q As a lieutenant over Region 4 for the Richland
17 County Sheriff's Department, what do your duties
18 include?

19 A My duties include managing 30 personnel under me,
20 including two sergeants and four corporals and the
21 rest deputies.

22 Q And as a lieutenant over that area, typically the
23 people that are under your command, what do their
24 duties include?

25 A Their duties are to respond to calls in the Region

1 4 area and to assist other regions if need be.

2 Q And on occasion, if needed, do you also respond to
3 calls as well?

4 A Yes. yes, I do.

5 Q And when you say you respond to calls, what kind of
6 calls are those?

7 A Anywhere from taking a larceny report sometimes
8 when everybody is busy or all the way up to
9 burglaries, home invasions, homicides.

10 Q And how long have you been in law enforcement?

11 A I've been in law enforcement right at 21 years. I
12 started September of 1992 with the Richland County
13 Sheriff's Department.

14 Q And have you had any education or training to help
15 you in performing your duties as a law enforcement
16 officer?

17 A Yes, I have. I have went to the Criminal Justice
18 Academy and received training every year.

19 Q Every year?

20 A Every year.

21 Q And when did you most recently have a training?

22 A I'm actually in training this week.

23 Q I want to turn your attention back to April the
24 13th, that Friday. Did you have an opportunity to
25 respond to a certain 9-1-1 call that had been

1 placed?

2 A Yes, I did.

3 Q And tell the jury what kind of call you responded
4 to that day.

5 A I responded to -- basically it come out to us
6 through dispatch that there was a shooting at a
7 residence over in Ascot.

8 Q Was there any other information that you gathered
9 prior to getting to the -- and we will get to the
10 address in a minute -- prior to getting there that
11 caused you concern?

12 A That people had been shot.

13 Q And in situations where a call comes in where
14 people have been shot or that allegations have been
15 made, do multiple units respond typically?

16 A Yes, they do. We have what we call an active
17 shooter situation at that point.

18 Q And why do multiple units respond in an active
19 shooter situation?

20 A Because you need personnel to take care of the
21 situation.

22 Q And approximately what time of day was it when you
23 received a call to be dispatched to the Ascot
24 Estates neighborhood?

25 A Actually I was at lunch. So it was around the

1 12:30 range, maybe a little bit after that.

2 Q And where were you located when you first got the
3 call?

4 A I was actually leaving Rush's on Broad River Road
5 at St. Andrews.

6 Q Was there a certain address that was provided to
7 you where the shooting had occurred?

8 A Yes.

9 Q And what address was that, sir?

10 A It was going to be on Tackeria.

11 Q Tackeria?

12 A Yes. It's kind of a funny name.

13 Q And were you alone in your patrol car that day?

14 A No, I wasn't.

15 Q Who was with you?

16 A A gentleman by the name of Mark Ryan who is
17 employed with the Sheriff's Department.

18 Q And is he still employed with the Sheriff's
19 Department?

20 A He is.

21 Q And did y'all respond to the scene?

22 A Yes. He is a cancer patient and I had ate lunch
23 with him that day and was just going to take him
24 home.

25 Q And so he was actually in the car with you?

- 1 A Yes. He stayed in the car.
- 2 Q And is he actually a deputy within the Sheriff's
- 3 Department?
- 4 A He is.
- 5 Q But he has suffered some illness?
- 6 A Yes.
- 7 Q And so he stayed in the car, though, because you
- 8 needed to respond to the scene?
- 9 A Yes.
- 10 Q And did you have any trouble responding to the
- 11 address in Ascot Estates?
- 12 A A little bit. I had an idea where it was, but
- 13 wasn't exactly sure. We all had trouble getting
- 14 there.
- 15 Q But eventually you responded to the cul-de-sac
- 16 where this address was?
- 17 A We did.
- 18 Q When you got there, tell the jury what you
- 19 observed.
- 20 A I observed Deputy Ryan, Joseph Ryan. He was in the
- 21 driveway with a gentleman in a red shirt.
- 22 Q Deputy Ryan who just testified earlier?
- 23 A Yes.
- 24 Q Okay. And he was in the driveway with whom?
- 25 A With the Defendant.

1 Q And what was going on as you observed them?

2 A They were in the driveway over by where the
3 vehicles are, and other deputies were going into
4 the house. And I followed them into the house. We
5 set up to go in.

6 Q And where were you able to make entrance into the
7 house at that point?

8 A We went through the garage area.

9 Q And you mentioned that other deputies were with you
10 that day?

11 A Yes, ma'am.

12 Q And approximately how many deputies were making
13 entry into the house with you? Do you remember?

14 A Approximately there was about four of us going into
15 the garage area at that time. There was others
16 that followed. And there was, I think, three to
17 four deputies at the front door.

18 Q And what was your intent when you made entry into
19 that house that day, based on the information that
20 had provided to you?

21 A Clear the residence and make it safe and rescue --

22 Q When you say clear the residence, how do you go
23 about doing that, sir?

24 A You've got to go room to room.

25 Q Once you made entry into the house with the other

1 deputies that accompanied you, what happened?

2 A We kind of broke down into groups. It's a very
3 large house, several floors, a lot of rooms that
4 had to be cleared, so we kind of broke down in
5 teams.

6 Q Uh-huh.

7 A Some continued on down the main floor, and then
8 several other deputies went up a main staircase
9 into the upper floor. And that is where we started
10 to clear.

11 Q Okay. And you said that you all went up a main
12 staircase. Were there multiple staircases in this
13 house?

14 A Yes, there is.

15 Q And when you say the main staircase, what part of
16 the house was that that you actually, once you got
17 inside, went upstairs?

18 A Once you get into the garage area and you go in,
19 you go through a hallway area. Then it opens into
20 a large room. I guess you would call it a large
21 entertainment room, you know, a den area. And
22 there is a staircase that comes down into that
23 area. And it is very open in there.

24 Q And as you were moving through the house to the
25 downstairs area, were you able to clear those rooms

1 of any possible safety issues?

2 A We did. We cleared some of the rooms, and then
3 other deputies headed on down into the other part
4 of the house on that floor. That is when we turned
5 and went up the stairs.

6 Q And tell the two jury what you observed as you went
7 up -- once you went up the stairs.

8 A Well, as I'm going up the stairs, there was a gun
9 laying on the floor in the main area.

10 Q In the living area?

11 A In the living area. And then we go up the stairs.
12 And when we -- there's rooms off to the right, and
13 some deputies broke off that way. And I met up
14 with Sergeant Bright.

15 Q Sergeant Bright?

16 A We worked together for years. And we went into
17 like an entertainment area where we started to
18 clear. You could see shell casings. And then
19 Sergeant Bright turned into a front room where you
20 immediately see a lady laying on the floor in
21 between -- it looked like an office area, front
22 office area -- laying in a bathroom.

23 Q And was this the first person that you had observed
24 in the residence as you were clearing it?

25 A Yes, it was.

1 Q And you said that she was laying in this office
2 area on the second floor off the living area?

3 A Yes.

4 Q And what was her condition when you observed her?

5 A She was laying face-down in a pool of blood with
6 shell casings, like I said, before we got into that
7 room.

8 Q Before you got into the room?

9 A Before we got in the room, there were shell casings
10 in the entertainment room. And there was some
11 shell casings around her.

12 And as I covered -- because we hadn't
13 technically cleared that room yet -- I covered and
14 Sergeant Bright went in to make sure if she was
15 alive. And he said there was no response.

16 And then at that time we secured that area,
17 and Sergeant Bright stayed there.

18 Q And prior to Sergeant Bright going over to actually
19 check her -- how did he check her? Do you
20 remember?

21 A He reached in and checked for a pulse on her neck.

22 Q On her neck?

23 A Yes.

24 Q And prior to that, did you have an opportunity to
25 observe the body as it appeared when you first got

1 up that staircase?

2 A Yes. The body was laying face-down, kind of
3 halfway into a bathroom, in blood. And there were
4 shell casings around her. And there was shell
5 casings right up against kind of like her pants
6 leg. And she was laying face-down, straight out,
7 sprawled out down.

8 Q And based on your experience as a police officer,
9 was there anything that you made note of mentally
10 about how she appeared?

11 A Mentally I took notice that she was still laying
12 face-down, didn't appear any lifesaving measures
13 had been used. She was just left there, judging by
14 the shell casings kind of up against her pants leg,
15 you know, shell casings landed on her, and she
16 never moved after that.

17 Q So no one -- so it didn't appear that anyone had
18 moved the body prior to getting there?

19 A No, ma'am.

20 Q Once Sergeant Bright informed you that there were
21 no signs of life, what did y'all do?

22 A We stayed there and covered and secured that area,
23 and a deputy called out to me that, Hey, I got
24 somebody over here.

25 And, like I said, this is a large house. I

1 proceeded to go assist him.

2 And we go through another room, which goes
3 into kind of into another area on the top floor,
4 and see a deputy standing at the doorway.

5 I approached that doorway, which is where the
6 subject was laying, in an attic area.

7 Q Okay. So basically was this on the same floor as
8 the body of Ms. Parker that you found?

9 A Yes, ma'am.

10 Q But it was in another part of the house?

11 A Yes, ma'am.

12 Q And, in fact, you had to go through -- did you have
13 to go through separate rooms to get to that part of
14 the house?

15 A Yes, a couple of rooms.

16 Q And once you got to where the deputy was calling
17 out to you, did you observe the deputy?

18 A Yes, he was --

19 Q In the doorway?

20 A -- in the doorway with his service weapon drawn.

21 Q And at that point, where was his attention focused?

22 A On the suspect.

23 Q That was where?

24 A Laying in the attic chase. It is kind of like an
25 attic chase over a garage. And it's a fairly long

1 area. And the subject was -- and at this point I
2 did a quick peek to see what he was looking at. I
3 see this person laying on the ground, who at that
4 time I believed to be the suspect. He was laying
5 on his side, and there was a gun in his hand.

6 Q And per what you have been taught in police
7 procedure, what is your primary concern at that
8 point?

9 A He has got a gun in his hand, which could be a
10 risk. I don't know if he is alive or dead, and I
11 don't see any other reason -- any other way to
12 determine that until I get the gun away from him
13 and determine that he either needs to be rescued or
14 that he is deceased.

15 Q So what actions did you take, sir?

16 A At that point I had the deputy keep cover. I
17 leaned in, still had my weapon drawn, and grabbed
18 his left shoulder and yanked three times and
19 cleared the gun.

20 Q What did the gun do when you pulled on his
21 shoulder?

22 A It fell out of his hand.

23 Q And which hand was the gun in?

24 A Left hand.

25 Q And when you said that you reached over and pulled

1 on his sleeve, his hand was down like this
2 (indicating)?

3 A Yes. He is laying on his left side, kind of in
4 somewhat of a fetal position and had his hand on
5 the gun and he was just laying like this
6 (indicating).

7 Q Uh-huh.

8 A And I reached in -- granted, I'm coming in with his
9 head pointing towards me, faced away. I really
10 can't see anything other than the gun and him. I
11 leaned in and pulled the gun loose.

12 Q And pulled like you would -- can you show the jury
13 on me?

14 MR. FEDOR: Your Honor, we have to object.
15 This is leading all over the place.

16 THE COURT: All right.

17 MS. CAMPBELL: Can you show me?

18 THE COURT: Your objection is to the last
19 question?

20 MR. FEDOR: Leading questions.

21 THE COURT: All right. Please rephrase the
22 question. What is the question again?

23 MS. CAMPBELL: Can you show me how he did it?

24 THE COURT: All right. The objection is
25 overruled.

1 MS. CAMPBELL: Thank you.

2 BY MS. CAMPBELL:

3 Q Go ahead.

4 A If you can turn a little bit. He would be in the
5 fetal position, leaned in like this (indicating).
6 I still had my cover. And the third time the gun
7 released, and he kind of rolled over a little bit
8 then.

9 Q And where did the gun go?

10 A The hand basically left the gun. Basically the gun
11 was right there where he was positioned, and I
12 pulled his hand away from the gun. The gun just
13 laid at rest at that point.

14 Q And at that point, what did you do?

15 A At that point, I could obviously tell that he was
16 deceased, or appeared to be. He had an injury to
17 the head.

18 Q And that was the first time you ever observed that
19 injury to the head?

20 A Yes, ma'am.

21 Q And at that point did you do anything as far as
22 securing the gun to make sure?

23 A Yes. At that point we stood by. I do have a crime
24 scene.

25 Q Yes, sir.

1 A I want to preserve what I can. But at that point
2 the gun needed to be secured for evidence purposes
3 so it wouldn't be kicked around and stepped on by
4 emergency personnel coming in.

5 Q Because that would be the next logical step?

6 A To me it was, yes, ma'am.

7 Q And did you get anything from Deputy Harvel before
8 you got the gun?

9 A I did get a glove, had him grab me a glove, and
10 then got the gun. I put it in an evidence bag. I
11 had him go retrieve an evidence bag for me, as I
12 still stayed and covered the body.

13 Q And at this point is your gun still drawn?

14 A At that point, after I realized that he is deceased
15 and everything, I had holstered up at that point.

16 Q And that is after you actually were able to observe
17 the wound to his head?

18 A Right. When I realized there was no more threat.

19 Q But up until that time, both you and Deputy Harvel
20 had your guns drawn?

21 A Yes, we did.

22 Q Once you had gotten the evidence bag, did you
23 then -- what did you do with the gun?

24 A Placed the gun in the bag with a glove on, and I
25 laid it outside the doorway. And that is where I

1 left it at.

2 Q And I show you what has been marked as State's
3 Exhibits 204 and 206. I first ask, do you
4 recognize those?

5 A Yes, I do.

6 Q And what are those pictures?

7 A Those are pictures of a Richland County evidence
8 bag which we use to put evidence in, and the
9 firearm I placed in it, the one I retrieved from
10 the deceased.

11 Q And do those pictures fairly and accurately depict
12 how you left the gun that day after you put it in
13 the evidence bag and secured it?

14 A Yes, ma'am.

15 Q And is that how it appeared once you had placed
16 that bag on the ground?

17 A Yes.

18 MS. CAMPBELL: Your Honor, at this time we
19 would offer for evidence 204 and 206.

20 THE COURT: Show it to Mr. Fedor.

21 MR. FEDOR: No objection.

22 THE COURT: You said no objection?

23 MR. FEDOR: Yes, ma'am.

24 THE COURT: All right, it is entered without
25 objection. That is 204 and?

1 MS. CAMPBELL: 206, Your Honor.

2 (WHEREUPON, State's Exhibit No. 204 was
3 marked for identification and received
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 206 was
6 marked for identification and received
7 into evidence.)

8 MS. CAMPBELL: Your Honor, at this time we
9 request permission to publish to the jury?

10 THE COURT: Yes, ma'am.

11 (Exhibits published to the jury.)

12 BY MS. CAMPBELL:

13 Q Did EMS actually respond that day?

14 A Yes, they did.

15 Q And what, if anything, did EMS do with a police
16 escort?

17 A Once the EMS got there, we still stood there and
18 observed them to make sure everything stayed pretty
19 much the way I left it, just kind of observed to
20 see if there was any movement of the body or
21 anything so I could document it. They basically
22 went in there and hooked them up with the machines
23 they use to see if there was any life, and there
24 wasn't.

25 Q And, in fact, were both of the bodies that were

1 found in the house that day checked by EMS?

2 A Yes, ma'am.

3 Q Once you had secured the gun, after that, what, if
4 anything, did you do?

5 A After EMS determined that the suspect was not alive
6 and that the female victim was not, at that point
7 we felt like we had a secured scene. I instructed
8 everybody to start leaving the house.

9 Q And that would be the deputies that were actually
10 in the house?

11 A Yes.

12 Q No other personnel but deputies and EMS at that
13 point?

14 A Right.

15 Q And, in fact, what did you do after you instructed
16 the deputies to leave the house?

17 A At that point I felt like I needed to stay in
18 there, make sure nobody else come into that area of
19 the house. Like I said, this is a large area
20 upstairs with several rooms. So I positioned
21 myself kind of in between both bodies where I could
22 view anything over by the female victim.

23 And also, like I said, where the male subject
24 was there was no other way to get into that
25 particular area than to get past me. So I just

1 kind of stayed in place for approximately 15
2 minutes until they told me to leave.

3 Q And, in fact, were you instructed to leave that day
4 of the house?

5 A Yes, I was told to leave.

6 Q And who would have actually taken over the crime
7 scene upon your leaving?

8 A It would have been crime scene investigators.

9 Q And is that proper protocol as well?

10 A Yes.

11 Q And when you said the crime scene investigators,
12 what do their duties include that are beyond yours?

13 A To come in and process the scene and collect any
14 evidence.

15 Q As well as photograph?

16 A Of course.

17 Q And you mentioned that you saw some shell casings
18 that were right outside the office area where you
19 mentioned you saw the female body?

20 A Right.

21 Q Did y'all take any steps to kind of mark those and
22 make sure they didn't get kicked around or
23 anything?

24 A Yes. I believe Corporal Ed Martin retrieved some
25 cups or something to kind of make sure they didn't

1 get kicked around or anything. That does happen.
2 sometimes on scenes when personnel are coming in
3 and out of the area.

4 Q The gun that you observed in Mr. Capnerhurst's left
5 hand, can you tell the jury how it was in his hand?

6 A The best I can tell you is it was cupped. It was
7 just kind of like the fingers were laid around the
8 bottom part of the gun. We call that the
9 nomenclature of the gun. That is the bottom
10 nomenclature where the magazine well is. It was
11 just kind of wrapped around it.

12 Q And was there any fingers on the trigger or
13 anything that you observed?

14 A No, ma'am, not that I observed, no.

15 Q And during the course of your career, have you
16 responded to multiple crime scenes?

17 A Yes, I have.

18 Q Can you estimate how many?

19 A Probably hundreds, I mean.

20 Q And --

21 A Twenty years of working on the street.

22 Q And shootings?

23 A Lot of shootings.

24 Q In your observation at shootings, especially with
25 multiple gunshots, is there anything unusual about

1 what you observed when you found this?

2 A It's kind of the way the body was laying. The hand
3 was still on the gun. I have not run across that,
4 which led me to believe that --

5 MR. FEDOR: Objection, Your Honor. That is
6 opinion evidence. That is not relevant.

7 MS. CAMPBELL: I believe we have laid the
8 basis with his training and his going to crime
9 scenes.

10 THE COURT: The objection is overruled based
11 on the ruling from yesterday.

12 MS. CAMPBELL: Thank you.

13 BY MS. CAMPBELL:

14 Q I'm sorry. You can go ahead.

15 A Like I said, things I have been on, I've never
16 quite seen it like that. It just didn't look like
17 a normal violent scene to me.

18 Q And specifically the gun in the hand, if a person
19 has been shot multiple times, can you -- what about
20 that stood out to you?

21 A It was in his hand. Usually if somebody is led to
22 a violent end, it doesn't stay in the hand.

23 Q Thank you, sir.

24 MS. CAMPBELL: I don't have any further
25 questions..

1 THE COURT: Please answer any questions that
2 Mr. Fedor may have.

3 THE WITNESS: Yes, ma'am.

4 CROSS-EXAMINATION

5 BY MR. FEDOR:

6 Q When you arrived at the scene, you signed in at
7 1358. In normal time that is two minutes before
8 2:00, is that right?

9 A Yes, sir.

10 Q And you received this call from your dispatcher
11 well over an hour before this, isn't that true?

12 A Yes.

13 Q All right. And you were one of the first officers
14 on the scene, weren't you?

15 A Yes, sir.

16 Q How many officers were there when you got there?

17 A I can't give you an accurate count, but there was a
18 lot of us arriving at the same time.

19 Q Twenty? Thirty?

20 A At that time, no, I'd say more like 10 to 13, 14.

21 Q Okay. And when you went inside, you went upstairs,
22 and you saw Ms. Parker's body, did you not?

23 A Yes, sir, I did.

24 Q And then you saw Capnerhurst's body, did you not?

25 A Yes, I did.

1 Q After an hour and the dispatchers had been there
2 and other officers had been there, did you still
3 assume he was alive?

4 A No.

5 Q You assumed he was dead, didn't you?

6 A After we had cleared the scene, yes.

7 Q When you went over to see him, you knew he was
8 dead, didn't you?

9 A I had a good idea he was, but I wasn't sure.

10 Q Okay. And you removed the pistol from his left
11 hand, did you not, sir?

12 A I did shake his arm and freed it from his hand,
13 yes, sir.

14 Q Let's go to the reports that your office from the
15 Sheriff's Department has:

16 When Odom shook the 9-millimeter hand from
17 Cap's left hand, you shook it from his left hand?

18 A Yes. I grabbed his shoulder and shook it, yes,
19 sir.

20 Q The left hand held the pistol with at least the
21 bottom two fingers wrapped around the butt, isn't
22 that true?

23 A I observed more than two fingers around the butt.

24 Q More than two?

25 A It appeared to be more than two.

1 Q Okay. In another report from the Sheriff's
2 Department:

3 Lieutenant Odom further advised that the male
4 victim in the attic space was observed with a gun
5 in his left hand, and he had removed the gun.

6 True?

7 A True. I did --

8 Q Okay.

9 A -- remove it.

10 Q Now, at that time, sir, the Sheriff's Department,
11 law enforcement had taken, at my count, 1,123
12 photographs of the inside of that home. Would you
13 agree about that with me?

14 A To be honest with you, I don't know how many. They
15 took a bunch.

16 Q And all those pictures that were taken, sir, as you
17 stated in your report, not one time did you take a
18 picture of a pistol in the man's hand?

19 A No, sir.

20 Q And this is absolutely against police procedure, is
21 it not, sir?

22 A No, sir, I would have to disagree with you on that.

23 Q That is not against procedure?

24 A I would have to disagree. This is an active
25 shooter situation.

1 Q An active shooter is dead, true?

2 A Agreed, after I determined that.

3 Q Now, when the man is dead, isn't it police
4 procedure to take a picture of the pistol in the
5 hand?

6 A They do do that, yes.

7 Q Not they do do that, everybody does that, don't
8 they, sir?

9 A If it is not an active scene and there is time to
10 evaluate something like that, yes, they do do that.

11 Q Well, the man is dead. You're standing there. You
12 have officers all around. It is not exactly an
13 active scene. Isn't that true?

14 A To me, until I determine that he is absolutely
15 dead, it is an active scene.

16 Q Don't you think it would have been advisable, sir,
17 to take a picture of the pistol in the man's hand?

18 A If he is alive, no.

19 Q Point. He is dead?

20 A I don't know that at the time.

21 Q At the time you had an opportunity to take a
22 picture, as is proper protocol, he was dead?

23 A The crime scene wasn't there yet.

24 Q When did you take these pictures that you just
25 handed to us?

- 1 A I didn't take any of the pictures.
- 2 Q Who did and when?
- 3 A I'm assuming the crime scene did.
- 4 Q When did they take them?
- 5 A I'm assuming after I left.
- 6 Q Well after you left and well after you removed the
- 7 pistol from the man's hand?
- 8 A Correct.
- 9 Q Isn't that true?
- 10 A I will agree on that, yes.
- 11 Q As an officer, you know when a pistol is fired,
- 12 gunshot residue remains on the hand of the shooter,
- 13 don't you?
- 14 A Yes, I do agree with that.
- 15 Q And if the weapon is fired several times, more gun
- 16 residue is on the hand, isn't that true?
- 17 A That is what I have read, yes.
- 18 Q You have never seen that in your career?
- 19 A I don't really see gun residue all the time.
- 20 Q How many times have you been to the scene where the
- 21 man has a gun in his hand and he is supposed to be
- 22 dead? Ever?
- 23 A Yes.
- 24 Q When? Tell me when.
- 25 A Back in the '90s, I arrived on a suicide one time.

- 1 Q A suicide?
- 2 A Yes.
- 3 Q All right. And what was the situation with the
- 4 suicide? Was the gun in the man's hand?
- 5 A Yes.
- 6 Q Did you think he was dead?
- 7 A Yes.
- 8 Q You didn't think that was an active scene, did you?
- 9 A No.
- 10 Q And you took pictures of that, did you not?
- 11 A I didn't, no.
- 12 Q Who did?
- 13 A I'm assuming the crime scene did.
- 14 Q Before the pistol was removed, right?
- 15 A No. I don't know what you're saying. Are you
- 16 talking about a particular time?
- 17 Q I'm saying this: A man commits suicide.
- 18 A Yes, sir.
- 19 Q You arrive on the scene. The pistol is in his
- 20 hand. When were the pictures taken?
- 21 A They would be taken --
- 22 Q Right then, right?
- 23 A When crime scene gets there.
- 24 Q When the crime scene gets there, you haven't
- 25 changed anything though, had you? You hadn't taken

1 the pistol out of the man's hand, did you?

2 A At some point -- it was a female that I'm referring
3 to, in particular.

4 Q Well, did you take the pistol out of her hand
5 before the crime scene got there?

6 A I did remove the pistol one time.

7 Q One time. Is this the time we're talking about
8 now? This suicide you are talking about?

9 A Yes, back in the '90s, yes, sir.

10 Q You took the pistol out of her hand?

11 A Yes.

12 Q Before the crime scene got there?

13 A Yes.

14 Q Let's assume in this case -- now -- you removed the
15 pistol from Capnerhurst's hands. Were you ever
16 reprimanded for that?

17 A No, I wasn't.

18 Q Did anybody ever talk to you about this?

19 A An indirect question come, I believe, from crime
20 scene as to why I removed the pistol.

21 Q Is it an indirect scene or was it a face-to-face
22 scene with somebody?

23 A No. My captain was asked the question why I did
24 it, and I replied back, you know, it was an active
25 shooter scene. That's what we do in our training,

1 and that is what we do. We secure the scene.

2 Q Which captain asked you that?

3 A Captain Champagne, who is my immediate supervisor.

4 Q "Lieutenant Odom advised me that after others he
5 had cleared the scene. He moved a weapon from the
6 man's hands."

7 That's true, is it not?

8 A That is correct.

9 Q All right. "He explained to me that he had been on
10 a scene before in his career, and the subject had
11 been pronounced dead, and the subject's body
12 somehow moved." True?

13 A Correct.

14 Q "He stated for this his reason he removed the
15 weapon from the victim's hands."

16 And this is the important question:

17 "I asked Odom if he had photographed the
18 weapon before he moved it, and he stated no."

19 And my question to you, sir, is that is not
20 proper procedure to remove the weapon from the hand
21 before the crime scene people can get there and
22 check the residue and everything else, isn't that
23 true?

24 A It is an active shooter situation.

25 Q The man is dead.

1 A I don't know that until I get the weapon out of his
2 hand.

3 Q He had been lying there for over an hour. The
4 other officers were around. And you still assumed
5 he is alive?

6 A I don't know. But I'm going to be sure.

7 Q Now, when you removed the pistol from the man's
8 hand by shaking it, or whatever, with his hands,
9 fingers wrapped around the gun, it had to be a
10 forceful movement, wasn't it?

11 A Yes, it was -- you know, the adrenaline is going.
12 Yes. I yanked it pretty good.

13 Q Okay. And as a result of that yanking, you know
14 you removed gunshot residue from his hand, don't
15 you, by the movement?

16 A I don't know that, no.

17 Q How long have you been a policeman?

18 A Twenty years.

19 Q You don't know that if you shake someone's hand
20 that has residue on it, it is subject to move?

21 A I'm not an expert on that, sir.

22 Q As a lieutenant with the Sheriff's Department, tell
23 us what the surveillance fugitive team is?

24 A Surveillance fugitive team?

25 Q The surveillance fugitive team is?

1 A I know what the fugitive team is.

2 Q What is it?

3 A The fugitive team goes after individuals who are
4 wanted by law enforcement.

5 Q All right. And those people that are wanted by law
6 enforcement, the fugitive team follows them and
7 checks them on every move, is that right?

8 A Yes, sir.

9 Q And you know, Officer, that a citizen's right to
10 confer with his attorney is sacred?

11 A Yes, sir.

12 Q Okay. And other than the freedom of religion, the
13 freedom to consult with your attorney is a
14 God-given, protected right under our system, isn't
15 it?

16 A Yes, sir.

17 Q Now, sir, I ask you, before Mr. Brett Parker was
18 even arrested, in fact, months before that, I hand
19 you --

20 MS. CAMPBELL: Objection, Your Honor. May we
21 approach?

22 THE COURT: Yes, ma'am.

23 (WHEREUPON, a bench conference was held
24 in the presence of the jury but out of
25 the hearing of the jury.)

1 BY MR. FEDOR:

2 Q This surveillance team follows people to check on
3 them, do they not?

4 A Yes, sir.

5 Q Do you know the surveillance team had followed
6 Brett Parker?

7 A No, I didn't.

8 Q Long before he was arrested?

9 A Not that I'm aware of, no, sir.

10 Q You also have electronic equipment that you can use
11 on your telephones to follow people, do you not?

12 A I do believe they do have the capability, yes, sir.

13 Q And they have the capability to know exactly where
14 the person is, don't they?

15 A From what I have heard, yes.

16 Q And if the person, a particular person, Brett
17 Parker, comes to my law office and surveillance is
18 on him and taps on his phone, would the Police
19 Department know that?

20 A Yes, if they are tapping that information, yes.
21 I'm assuming, yes.

22 Q You would assume they would know that?

23 A I'm assuming.

24 Q And if he is in my office -- I'll have to assure
25 you I'm a lawyer --

1 MS. CAMPBELL: Objection, Your Honor, to this
2 line of questioning. I don't think he has any
3 basis of any knowledge as far as his line of
4 questioning.

5 THE COURT: All right.

6 MR. FEDOR: I will break it down one at a
7 time.

8 THE COURT: All right. What is the question,
9 please?

10 MR. FEDOR: The question is: This was done
11 while Parker was in my office, true?

12 THE COURT: All right.

13 MS. CAMPBELL: Objection.

14 A I don't know what you are talking about, sir.

15 Q You don't?

16 THE COURT: Hold on -- hold on one second.
17 The objection is sustained. I believe he has
18 already answered that he didn't know anything about
19 it.

20 MR. FEDOR: All right, Your Honor. We'll
21 follow up with that with Stan Smith.

22 THE COURT: Yes, sir.

23 BY MR. FEDOR:

24 Q But we do know -- one last time -- you removed the
25 pistol from the man's hands and his fingers were

1 wrapped around it and you took no pictures, true?

2 A That is true, sir.

3 Q All right. Thank you.

4 MS. CAMPBELL: Just a couple of follow-ups.

5 THE COURT: Yes, ma'am.

6 REDIRECT EXAMINATION

7 BY MS. CAMPBELL:

8 Q Lieutenant, in your experience, even if a person
9 may appear to be immobile, are they still, in your
10 personal experience, have you had an occasion where
11 that didn't prove to be true and it was a safety
12 issue?

13 A Yes.

14 Q And can you explain that to the jury?

15 A You never presume something until you're absolutely
16 sure. And I wasn't absolutely sure that he was
17 deceased until I freed the gun and rolled him over
18 and determined that he was not a threat to me.
19 That is why I did what I did.

20 Q And then once you had the gun dislodged from his
21 hand, did you take proper procedures to preserve
22 that evidence?

23 A I did. Crime scene, if you had to remove a gun,
24 you secure it in a way where you can preserve any
25 evidence that is there and present.

1 Q The Defense attorney also asked you a question
2 about what time you actually checked out of the
3 crime scene or checked in. He said something about
4 an hour later. What time was the actual dispatch
5 given out?

6 A From the report here, it is 12:44, and arrival
7 time -- and this report is done by Joseph Ryan,
8 which was the first officer on the scene -- is
9 12:58.

10 Q And in the crime scene log, what time does -- he
11 didn't ask you, but what time does it indicate you
12 came to the crime scene approximately?

13 A I apologize. I'm trying to find the name on here.
14 I arrived at 1300 hours.

15 Q And then you logged out approximately an hour
16 later?

17 A Precisely, 1358; yes, ma'am.

18 Q I just wanted to clear that up. Thank you, sir.

19 MS. CAMPBELL: I don't have anything further.

20 RECROSS-EXAMINATION

21 BY MR. FEDOR:

22 Q And, sir, you signed in 1358, which is two minutes
23 to 2:00, isn't that right?

24 A Yes, sir.

25 Q And when you signed in, this had been -- the

1 dispatch call came at 12:00 something. It is well
2 over an hour?

3 A Now, I signed out at --

4 Q I'm just going by this log, Lieutenant.

5 A Okay.

6 MS. CAMPBELL: Your Honor, if he would allow
7 the witness to review the document.

8 MR. FEDOR: As soon as I can look at it.

9 BY MR. FEDOR:

10 Q So you signed out at 1358?

11 THE COURT: Show him the document. Show him
12 the document.

13 MR. FEDOR: Pardon?

14 THE COURT: Show him the document you are
15 referring to.

16 MR. FEDOR: Oh, sure.

17 (Complies.)

18 A Yes, sir. I signed in here and signed out at ten
19 minutes till 2:00.

20 Q Okay. And with all the officers there ahead of
21 you, you still thought this man was alive?

22 A That is when I come in and shortly after when we
23 all got there.

24 Q All right. Thank you.

25 THE COURT: All right, sir. You may step

1 down.

2 THE WITNESS: Thank you.

3 (Witness steps down.)

4 MS. CAMPBELL: Your Honor, may he be excused?

5 THE COURT: Any objection to this witness
6 being excused?

7 MR. FEDOR: Oh, sure.

8 THE COURT: All right. Thank you. You're
9 free to leave, sir.

10 (Witness excused.)

11 MS. CAMPBELL: The State calls Deputy Harvel.

12 THE BAILIFF: Place your left hand on the
13 Bible, and raise your right hand, please.

14 (Witness complies.)

15 THE CLERK: Do you swear or affirm the
16 testimony you are about to give in this case will
17 be the truth, the whole truth, and nothing but the
18 truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Have a seat in the witness box.

21 (Witness complies.)

22 THE CLERK: State your full name for the
23 record, please.

24 THE WITNESS: Austin Lee Harvel.

25 AUSTIN LEE HARVEL,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. CAMPBELL:

4 Q Deputy Harvel, where are you employed?

5 A Richland County Sheriff's Department.

6 Q What do you do there, sir?

7 A I'm a patrol officer in the Region 7 patrol area.

8 Q In Region 7 patrol area?

9 A Yes, ma'am.

10 Q I want to turn your attention back to April the
11 13th of 2012. That day did you become aware of a
12 call that went out involving Ascot Estates?

13 A Yes, ma'am, I did.

14 Q What were you doing when the call actually went
15 out, sir?

16 A I was assigned to be working in off-duty detail at
17 the AllSouth Federal Credit Union on Dutch Square
18 Boulevard, which is in the Region 4 patrol area.

19 Q On Dutch Square Boulevard?

20 A Yes, ma'am.

21 Q And you were actually working off-duty?

22 A Yes, ma'am.

23 Q And what type of job did you have off-duty at that
24 -- it is a bank?

25 A I was still in uniform providing security. There's

1 several times where banks will request that we come
2 and work security at their establishments.

3 Q When the call came out that day, approximately what
4 time of day was it? Do you recall?

5 A Early afternoon, sometime shortly after 12:00
6 o'clock.

7 Q And once you got the call, what did you do?

8 A I responded to the incident location.

9 Q And why did you respond even though you were off
10 duty?

11 A I responded given the serious nature of the call.
12 Any time we have officers in the immediate area, we
13 all respond to something as serious as this.

14 Q Once you got the call and started to respond, where
15 did you go?

16 A I left the bank, and was not as familiar with the
17 area as some of the other officers. I was able to
18 get in behind another officer that I know was
19 responding to the same location. So I followed
20 him.

21 Q And when you got to the scene, what did you
22 observe, sir?

23 A I observed Deputy Ryan in the driveway dealing with
24 the Defendant. I also observed several other
25 officers, along with myself, to be approaching the

1 house.

2 Q Once you got there and you started approaching the
3 house, what did you do?

4 A Initially, myself and a few other officers went to
5 the front door to go gain entry inside the house.
6 We found the door to be locked. And then we went
7 in through the garage. The door was open.

8 Q Once you got into the garage area -- you said the
9 door was open -- did you proceed into the house?

10 A Yes, ma'am.

11 Q What was your purpose in going to the house that
12 day, you and the other deputies?

13 A To secure the residence and check the residence for
14 any other outstanding threats.

15 Q And at that point, what, if any, information did
16 you have that concerned you about the safety of you
17 and the other officers?

18 A We knew that there had been multiple people that
19 had been shot inside the residence and that there
20 was possibly firearms inside the house.

21 Q Once you made entry, can you tell the jury what you
22 did?

23 A Yes, ma'am. We went into the house initially from
24 the garage. There was a stairwell off to the right
25 as you come in from the garage. Myself and other

1 officers made our way up that stairwell as other
2 officers proceeded past us, as was heard in
3 Lieutenant Odom's testimony. We went upstairs into
4 a common area where we started to clear the
5 residence.

6 Q You mentioned that you went up a certain stairwell
7 in the house?

8 A Yes, ma'am.

9 Q And where was that stairwell located?

10 A It was immediately to my right as we came into the
11 house.

12 Q And that would be through the garage door?

13 A Yes, ma'am.

14 Q And you proceeded directly upstairs?

15 A Yes, ma'am.

16 Q Were other officers in other parts of the house
17 downstairs?

18 A Yes, ma'am.

19 Q And when you got up -- were you alone on the entry
20 or were other officers with you?

21 A There was other officers with me.

22 Q And once you went upstairs, tell the jury what you
23 did once you got there.

24 A Once we came upstairs, there was a common area that
25 we began to start to secure. As we made our

1 initial entry into that common area, there was
2 another staircase that officers were coming up.

3 One of the officers that was with me yelled
4 out verbally to other officers to let each other
5 know that we were coming across other officers and
6 not to be surprised when we saw other officers
7 coming from the other end of the staircase.

8 At that point we began to section off
9 different rooms in the house. Initially, off to my
10 left, is where Ms. Parker's body was found. I
11 continued on to another room that was directly off
12 to the left from there.

13 I began to make my way through that room. At
14 the very far corner of the room, I observed a door
15 to be open with a light to be on, which
16 automatically drew my attention to that door in
17 that room. As soon as I gained entry into that
18 room, I observed Mr. Capnerhurst laying on the
19 ground.

20 Q And at that point, what mode were you in? How were
21 you approaching and going through the rooms and
22 clearing them?

23 A Very -- what we would consider to be very tactical.
24 I had my firearm out, on high alert, given the
25 situation and the circumstances behind why we were

1 at the residence.

2 As soon as I came across Mr. Capnerhurst, I
3 yelled out to him several times. I identified
4 myself as being with the Sheriff's Department and
5 to let me see his hands.

6 After I got no response, I called out for
7 other officers. I advised them that I had found
8 somebody else in the house, and I needed another
9 officer to come in and deal with it with me.

10 Q Okay. And at that point, are you in the area where
11 Mr. Capnerhurst's body was found?

12 A Yes, ma'am.

13 Q And do you still have your pistol drawn?

14 A Yes, ma'am.

15 Q And have you put it up at this point?

16 A No. My pistol remained out and drawn on the
17 subject up until after Lieutenant Odom advised me
18 it was safe to do so and put it away.

19 Q And that would be after he secured the gun?

20 A Yes, ma'am.

21 Q Let me back up a little bit. You said that when
22 you came up the stairs, there was an office area
23 that was further away from the stairwell you came
24 up?

25 A Yes, ma'am.

1 Q And did you go to that area where Ms. Parker's body
2 was found?

3 A No, ma'am.

4 Q There were other officers there?

5 A Yes, ma'am. I surpassed that office into the next
6 room.

7 Q And that is when you proceeded into the further
8 corner of the house and found this. And how did
9 you -- what brought your attention to this area?

10 A The room itself that I initially walked into was
11 dimly lit. And at the very far corner of the room
12 I observed a light to be coming out of what was an
13 attic or a chase way from -- as an offshoot from
14 the main room.

15 Q So this appeared to be -- the light that drew your
16 attention was in an attic area?

17 A Yes, ma'am.

18 Q And was the door open or shut --

19 A It was open.

20 Q -- so you could see the light?

21 A It was open.

22 Q And then you proceeded with your gun drawn to that
23 area?

24 A Yes, ma'am.

25 Q And what -- how did you observe the victim,

1 Mr. Capnerhurst, at that point when you entered the
2 room?

3 A He was laying on his side in a semi-fetal position.

4 Q And at that point is when you said you did what?

5 A I identified myself as being with the Sheriff's
6 Department, and I called out to him. I instructed
7 him to show me his hands. I did so multiple times,
8 and no response.

9 Q Where are you in relation to the doorway when you
10 were drawn down on him?

11 A I'm just inside the doorway. I would say, if I had
12 to give an approximate distance, I was probably
13 four to six feet away.

14 Q And at that point, are you able to observe the
15 extent of Mr. Capnerhurst's injuries?

16 A No, ma'am.

17 Q However, were you able to observe anything that did
18 catch your attention about Mr. Capnerhurst?

19 A Yes, ma'am, that he had a firearm in his hand.

20 Q He had a firearm in his hand? And do you remember
21 which hand it was in?

22 A His left hand.

23 Q And could you remember whether or not the hand was
24 actually around the firearm?

25 A Not directly, from what I recall. I do remember

1 seeing at least two of his fingers pointed towards
2 the muzzle of the gun, but I don't recall the
3 actual grip that was on the gun.

4 Q And, again, you maintained some distance from him?

5 A Yes, ma'am, for safety purposes.

6 Q You mentioned that you called out. Who were you
7 calling out to?

8 A Mr. Capnerhurst was laying on the -- oh, I
9 initially called out to Mr. Capnerhurst, and then
10 after I got no response, I notified other officers
11 that were in the house that I had found somebody in
12 the attic.

13 Q And were you still drawn down him at that point?

14 A Yes, ma'am.

15 Q And at this point, in your opinion was he still a
16 safety risk?

17 A Absolutely.

18 Q At that point, did any other officers respond to
19 help you as far as assessing the situation with
20 Mr. Capnerhurst?

21 A Yes, ma'am, Lieutenant Odom.

22 Q Lieutenant Odom?

23 A Yes, ma'am.

24 Q And at that point, what did you observe Lieutenant
25 Odom do once he entered and came past you?

1 A Yes, ma'am. He initially went straight to him,
2 still in a tactical position with his weapon drawn
3 as well.

4 Q Okay.

5 A He initially approached him as he stated in his
6 testimony.

7 Q And then what did you observe him do?

8 A Shake his shoulder to retrieve the gun from
9 Mr. Capnerhurst.

10 Q And was he able to retrieve the gun?

11 A Yes, ma'am, he was.

12 Q And at this point, until the gun was retrieved,
13 were you still drawn down on what ended up being a
14 victim in the case?

15 A Yes, ma'am.

16 Q And is that proper police procedure?

17 A Yes, ma'am.

18 Q Once the gun was loosened from the hand, did you
19 provide anything to Lieutenant Odom in order to
20 help him collect the gun?

21 A Yes, ma'am, I retrieved -- we normally carry rubber
22 gloves on us. I provided him with those rubber
23 gloves so he could collect the firearm.

24 Q You actually had one of those on your person that
25 day?

- 1 A Yes, ma'am.
- 2 Q So you were just able to hand it to him?
- 3 A Yes, ma'am.
- 4 Q And at that point, was he able to use the glove to
5 retrieve the gun?
- 6 A Yes, ma'am.
- 7 Q And what, if anything, happened once he retrieved
8 the gun?
- 9 A Afterwards he instructed me to go collect an
10 evidence bag so he could secure the gun and
11 preserve any evidence that was left on the firearm.
- 12 Q And once he retrieved the gun at that point, did
13 you then holster your gun?
- 14 A Yes, ma'am.
- 15 Q And at that point, had the rest of the house been
16 cleared as far as you knew?
- 17 A As far as I knew, yes, ma'am.
- 18 Q Do you recall once you got the evidence bag, did
19 you then give that to Lieutenant Odom?
- 20 A Yes, ma'am.
- 21 Q And do you know what he did with the gun?
- 22 A I know he placed it inside that evidence bag.
- 23 Q At some point were you ordered to vacate the house?
24 Leave the house?
- 25 A Yes, ma'am.

1 Q And who actually made that decision?

2 A I believe it was Lieutenant Odom.

3 Q And, in fact, did you exit at least the immediate
4 house at that point?

5 A Yes, ma'am.

6 Q Thank you, sir.

7 MS. CAMPBELL: I don't have anything further.

8 MR. WHITLARK: May it please the Court?

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. WHITLARK:

12 Q Deputy Harvel?

13 A Yes, sir.

14 Q You were questioned about -- by your superiors
15 about what you saw?

16 A Yes, sir.

17 Q And would you agree that you basically confirmed
18 what Deputy Odom said or Lieutenant Odom said?

19 A Yes, sir.

20 Q Now, you told him it was wrapped -- you saw fingers
21 wrapped around --

22 A Yes, sir.

23 Q -- the nomenclature, is that what they call it?

24 A Yes, sir.

25 Q Now, I'm going to hand you what has been marked as

1 Defense Exhibit Number 1. Do you see your name --
2 this is the log-in sheet, right?

3 A Yes, sir.

4 Q Okay. What time did you log in?

5 A 1300 hours, which would be 1:00 o'clock.

6 Q Okay. That's what I was going to ask you. That is
7 1:00 o'clock in the afternoon, right?

8 A Yes, sir.

9 Q Now, how many deputies were in the house when you
10 took your -- you finally took your eyes off of
11 Mr. Capnerhurst, right?

12 A Yes.

13 Q You held your pistol on him and you were -- and
14 then Odom came behind you, right, and came in and
15 went further in?

16 A Yes, sir.

17 Q Okay. And when did you finally take your eyes off
18 of Mr. Capnerhurst? I mean, did y'all go through
19 the whole procedure? You went to get something,
20 right?

21 A Yes, sir.

22 Q Okay. And how long were you gone?

23 A A matter of moments. I was -- I was --

24 Q Did you run? You were moving fast, right?

25 A Yes, sir.

1 Q Okay. Where did you go?

2 A I went out of the attic area towards the common
3 area of the room.

4 Q Uh-huh. Okay. Well, didn't you go get him
5 something, something for Odom?

6 A Yes, sir. It was an evidence bag.

7 Q Okay. Where did you get it from?

8 A Another officer.

9 Q Okay. Where was he at?

10 A That I don't recall.

11 Q Okay. How many officers were upstairs right then?
12 I mean, do you have any idea? Was it four of you
13 up there? Five of you?

14 A No, sir, I don't recall how many officers were
15 there.

16 Q Okay.

17 A At that time.

18 Q Where did the officer that gave you this bag, what
19 room did he come out of?

20 A I couldn't tell you. I don't recall.

21 Q Okay. Well, when y'all were upstairs, though,
22 y'all swept the upstairs area completely, didn't
23 you?

24 A I didn't personally but, yes, sir, it was -- it
25 would have been secured by all the officers that

1 were there.

2 Q Right. Okay. Well, you had enough of you where --
3 what did you do? Where did you sweep? What part
4 of the house?

5 A Where -- up until where we found Mr. Capnerhurst.

6 Q Okay.

7 A There is a common area. We went into the common
8 area, and then off of it, there was multiple rooms
9 that off-shot off of this common area.

10 Q Right.

11 A And there was a room that I went into off to the
12 side.

13 Q Okay. Did you see Ms. Parker?

14 A Yes, sir, I could -- well, I could see her leg --
15 what I found out later to be her, and I could see
16 her legs from the doorway.

17 Q Okay. Did you enter that doorway?

18 A No, sir.

19 Q But y'all swept -- and when I say swept, I mean
20 every single room up there? Y'all didn't leave one
21 room like, you know, maybe there was somebody else
22 in there, and you swept it? That is procedure,
23 right?

24 A Yes, sir.

25 Q Okay. Now, how many times were you questioned or

1 did you have meetings about what you saw as far as
2 his hand holding that gun?

3 A Just once.

4 Q And they -- and you told them, I saw exactly the
5 same thing Odom did?

6 A Yes, sir.

7 Q Okay. Now, did you see his testimony, by the way?
8 Did you watch him testify?

9 A Yes, sir, I was sitting back there.

10 Q Do you agree that he had to pull -- he had to jerk
11 on his arm three times to release it?

12 A I can't specifically say how many times it was, but
13 I know he had to jerk his hand, his shoulder.

14 Q Okay. And I'm not -- you know, I'm not trying to
15 -- I know it was a while ago. As we sit here
16 today -- and you had a pistol. Are you right- or
17 left-handed, by the way?

18 A Right-handed.

19 Q Okay. And you have your gun -- you had your gun
20 pointed at him, didn't you?

21 A Yes, sir.

22 Q Now, and you saw him pull him like
23 that(indicating), but you were also watching?

24 A Yes, sir.

25 Q I mean, I understand that. I gotcha. But how long

1 did it take, I mean, for him to do the three jerks
2 I'm talking about? I mean, was it like that
3 (indicating), and he saw if it came out, did he do
4 it again to see if it came out, or did he just pull
5 on it until it shook loose?

6 A I can't recall.

7 Q Okay. All right. Would you agree with me, just
8 based on your recollection of events up there, that
9 you had a lot of officers upstairs?

10 A Yes, sir.

11 Q And y'all went inside every single room in that
12 house in that upstairs area, didn't you?

13 A Yes, sir.

14 Q Okay. All right. And you were upstairs about --
15 you take a look at this. You were up there
16 about -- how long were you up there? About 15 or
17 16 minutes?

18 A The time it indicates on the log that I signed in
19 at, right at 1:00 o'clock, 1300 military time, and
20 left the crime scene itself at 1316, which would be
21 1:16 in the afternoon. So approximately 15, 16
22 minutes.

23 Q What did you do when you -- did you actually leave
24 the location?

25 A Yes, sir, I did.

1 Q Okay. You went back on regular patrol or --

2 A No, sir. Actually Lieutenant Odom had Deputy Mark
3 Ryan with him. I provided Deputy Mark Ryan a ride
4 back to his residence before returning to my
5 detail.

6 Q I'm sorry. Who did you give a ride to?

7 A Deputy Ryan, Mark Ryan.

8 Q Okay. Did you see his testimony today?

9 A No, sir, this is --

10 Q It's a different Ryan, then?

11 A Yes, sir.

12 Q Okay.

13 A A different officer.

14 Q All right. Thank you. I appreciate that. Let me
15 see that exhibit, would you? Thank you. How many
16 officers were on the scene by the time you left?
17 You left about 15 minutes, 20 minutes later,
18 something like that?

19 A Yes, sir.

20 Q How many officers were on the scene when you left
21 there?

22 A Quite a few.

23 Q I mean, it was -- again, my word, this is my word,
24 not yours, but swarming with police, wasn't it?

25 A Anybody can have a different interpretation of the

1 word swarm. There was a lot of officers there.

2 Q A lot of officers out there, wasn't it?

3 A Yes, sir.

4 Q All right. Did you do a report in this case?

5 A Yes, sir.

6 Q Okay. Is there anything in your report that is
7 different from what you have testified to today?

8 A No, sir, not that I recall.

9 Q Can I see it?

10 A Yes, sir.

11 (Complies.)

12 (Pause.)

13 Q I didn't know you were working overtime.

14 A Yes, sir.

15 Q All right.

16 MR. WHITLARK: Your Honor, I have a matter of
17 law to take up with the Court, if you don't mind.

18 THE COURT: All right. Ladies and gentlemen
19 of the jury, this will be a great time to take a
20 break. I told you we'll stop about every hour,
21 hour and a half. So, I think it has been about an
22 hour -- no, almost two hours. Anyway, we'll take a
23 break for about 10 or 15 minutes as I take up those
24 matters of law. And we'll have you back in
25 shortly.

1 (WHEREUPON, the jury retires to the jury
2 room at 2:47 p.m.)

3 (WHEREUPON, the following takes place
4 outside the presence of the jury.)

5 THE COURT: All right. Yes, sir?

6 MR. WHITLARK: Your Honor, I haven't seen this
7 report before.

8 THE COURT: You have not?

9 MR. WHITLARK: No, I have not. And I am very
10 meticulous about what is in those files, and I have
11 never, ever seen this report before.

12 And I would ask the Court to give me -- I want
13 to keep him on the stand. And I'd like five
14 minutes to review this report and continue my
15 questioning of him.

16 THE COURT: Yes, ma'am?

17 MS. WALKER: Your Honor, I will be happy to go
18 upstairs and get the discovery receipt. I'll be
19 right back.

20 THE COURT: All right. Well, I think he said
21 he needed five minutes to review it. She is saying
22 she gave it to you. I'm guessing she just wants to
23 get the documentation to show that she has. That
24 will probably take five minutes.

25 MR. WHITLARK: Thank you, Your Honor.

1 THE COURT: And we'll take about a 10-minute
2 break.

3 (WHEREUPON, a break was taken.)

4 (WHEREUPON, the following takes place
5 outside the presence of the jury.)

6 THE COURT: All right. Yes, ma'am?

7 MS. WALKER: Your Honor, before we took the
8 break, I told you I was going to go upstairs and
9 get the discovery checklist.

10 The supplemental report, Your Honor, was
11 turned over on October 4th, 2012, and signed -- and
12 it was signed for by Dave Fedor.

13 THE COURT: All right. Yes, sir? She said
14 she sent it to you and y'all signed for it on
15 October 4th.

16 MR. WHITLARK: And I believe if Ms. Walker
17 says that she did, then she did it. But I, you
18 know --

19 MS. WALKER: And, in addition, Your Honor, for
20 the record, Ms. Simpson did sit down with
21 Mr. Whitlark's paralegal, Lucas Sams, in
22 preparation for this case and went over all of the
23 discovery that we had. And Mr. Sams confirmed the
24 items, that they had these items.

25 THE COURT: All right. Are you ready?

1 MR. WHITLARK: Yes, I am, Your Honor. And
2 that brings up another matter of the stipulation on
3 these records. I either want them into evidence or
4 I am going to have to get the record keepers down
5 here, and I have to make arrangements for that, and
6 that is why we are doing that. And I would like to
7 stipulate to those records and put them into
8 evidence.

9 THE COURT: Are you talking about the phone
10 records?

11 MR. WHITLARK: Yes, ma'am.

12 THE COURT: All right.

13 MR. WHITLARK: And these people are all up in
14 the northeast.

15 THE COURT: Your records or their records?

16 MR. WHITLARK: Well, if they want to do mine,
17 that's fine. I just want to make sure that I have
18 time to get a records keeper from New Jersey down
19 here if we don't stipulate.

20 MS. WALKER: Your Honor, we talked to
21 Mr. Whitlark about the documents in this case,
22 including phone records and life insurance records
23 and financial documents, that both parties are
24 stipulating to, and there is no need for either
25 party to fly the custodian of records.

1 THE COURT: So we have got that on the record.
2 And we will put the stipulation --

3 MS. WALKER: When they are entered into
4 evidence.

5 THE COURT: -- when they are entered into
6 evidence. So you can do it in front of the jury.

7 MR. WHITLARK: I understand that, Your Honor.
8 But, see, I'm never going to have somebody to put
9 them in through. That is why I want to mark them
10 and make them an exhibit, Defense Exhibit Number 2,
11 or whatever one it is.

12 THE COURT: You can put it in yourself. You
13 can stipulate that these are the records. And
14 we'll stipulate to put them in between both parties
15 at the appropriate time.

16 MR. WHITLARK: Okay.

17 THE COURT: All right. But they are telling
18 me as an officer of the court that they are doing
19 that, that you do not need to -- that is your
20 concern, that you don't need the records custodian?

21 MR. WHITLARK: Right, Your Honor.

22 THE COURT: So that is -- am I correct? It is
23 an agreement that we don't need records custodian?

24 MS. WALKER: Either party.

25 MR. WHITLARK: That's right.

1 MS. WALKER: Thank you, Your Honor.

2 MR. WHITLARK: Thank you, Your Honor.

3 THE COURT: Are y'all ready to bring them in?

4 MR. WHITLARK: Yes, we are ready to proceed,
5 Your Honor.

6 THE COURT: All right. Yes, sir.

7 (WHEREUPON, the jury came into open
8 court at approximately 3:12 p.m.)

9 THE BAILIFF: The jury is seated, Your Honor.

10 THE COURT: All right. Ladies and gentlemen
11 of the jury, we will continue with the
12 cross-examination of Deputy Harvel by Mr. Whitlark.

13 MR. WHITLARK: May it please the Court, Your
14 Honor?

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION CONTINUES

17 BY MR. WHITLARK:

18 Q That is your report there. I believe I asked you
19 earlier who you spoke to about the pistol?

20 A Yes, sir.

21 Q All right. Who did you speak to about it?

22 A Mr. Smith.

23 Q Okay. Do you remember when that was, about when
24 that was?

25 A Basing it off when I did this report, approximately

1 May the -- around the beginning of May.

2 Q Okay. May the 4th? Could it have been May the
3 4th?

4 A That's when this report was generated.

5 Q Okay. So you had a talk with Major Smith?

6 A Yes, sir.

7 Q And then you did this report?

8 A Yes, sir.

9 Q Did he ask you to do that report?

10 A Yes, sir.

11 Q Okay. Why did he tell you he wanted you to do that
12 report?

13 A So that way they had my account on file of what
14 transpired on that day.

15 Q Okay. So you did not make a report on April 13th,
16 about three weeks or a month before that, right?

17 A No, sir.

18 Q Okay. Did you talk to anybody at that time about
19 what you had seen after you left that day?

20 A Not directly, not that I recall.

21 Q Okay. How did it come about that you were
22 questioned about the gun? I mean, how were you
23 contacted about it? Did he walk up to you? Did he
24 call you? What happened?

25 A I believe I was contacted by my supervisor.

- 1 Q All right. Who is that?
- 2 A My direct supervisor is Captain Plexico.
- 3 Q Okay. And do you recall what he said to you?
- 4 A No, sir.
- 5 Q Okay. And did you have a face-to-face meeting with
- 6 Major Smith?
- 7 A Yes, sir.
- 8 Q Okay. Where were y'all when you did that?
- 9 A At our headquarters on Two Notch Road.
- 10 Q Okay. Was it a prearranged meeting?
- 11 A Yes, sir, the date and time.
- 12 Q Okay. Who else was there?
- 13 A Honestly, I don't recall.
- 14 Q Were there other -- there were people there,
- 15 though?
- 16 A Yes, sir.
- 17 Q Okay. And what was the general discussion you were
- 18 having with Major Smith?
- 19 A The position in which the gun was in in
- 20 Mr. Capnerhurst's hand on the day of the incident.
- 21 Q Okay. Now, you had you previously -- you told me
- 22 you heard Lieutenant Odom testify today?
- 23 A Yes, sir.
- 24 Q Okay. And he said that there were three fingers
- 25 wrapped around it, didn't he?

1 A Yes, sir.

2 Q Okay. But your report says two fingers, right?

3 A My report indicates that, from what I could see,
4 there was two fingers pointed towards the muzzle of
5 the gun. His index finger is the middle finger,
6 that is actually what my report says.

7 Q Okay. You never -- what is the closest you got to
8 the body of Bryan Capnerhurst?

9 A Approximately four to six feet away.

10 Q Okay. And where was -- and, again, Odom came from
11 another room, is that right?

12 A Yes, sir.

13 Q Was he in the room where Ms. Parker was?

14 A That I don't know.

15 Q Okay. And could there have been as many as six
16 officers upstairs at that time?

17 A It's quite possible.

18 Q Okay. Now, you said that the light was not on in
19 this landing room between the room where the two
20 bodies were, right?

21 A Yes, sir, that's correct.

22 Q But the light was on in the attic, wasn't it?

23 A Yes, sir, that's correct.

24 Q Okay. And he moved his body, though, didn't he, to
25 get the gun out, right?

- 1 A Yes, sir.
- 2 Q Okay. Did he touch his body after the gun was
- 3 secured?
- 4 A Not that I recall.
- 5 Q Okay. Did you watch him -- I believe you stated
- 6 that you gave him your -- some gloves off your
- 7 service belt?
- 8 A Yes, sir, some rubber gloves.
- 9 Q Okay. And he put them on?
- 10 A (Nods affirmatively.)
- 11 Q Did he put his gun back in his holster?
- 12 A Yes, sir.
- 13 Q Did you see him do that?
- 14 A Yes, sir.
- 15 Q Okay. And then he grabbed the gloves and put them
- 16 on, right?
- 17 A I don't remember if he put the gloves on himself or
- 18 if he wrapped the gun in the gloves or not. I
- 19 don't recall that.
- 20 Q Okay. He didn't have gloves on when he was
- 21 grabbing his body, did he?
- 22 A No, sir.
- 23 Q Okay. I mean, do you carry a camera on you?
- 24 A No, sir.
- 25 Q You don't have a camera?

1 A I do have a camera, but I did not have a camera on
2 me at the time, if that is the question.

3 Q Okay. Do you only carry a radio on you or do you
4 also have a cellphone with you?

5 A Yes, sir.

6 Q You carry a cellphone?

7 A I do.

8 Q Okay. And it has a camera on it, doesn't it?

9 A Yes, sir, mine does.

10 Q Okay. And during this time where he was saying,
11 Give me the gloves, let's go ahead and get it, and
12 all that, none of y'all said, Well, you know, maybe
13 we better take a picture of this, did you?

14 A No, sir.

15 Q But you had the capability of doing so, didn't you?

16 A I don't recall at the time.

17 Q Well, you had a cellphone with a camera on it,
18 right?

19 A Yes, sir.

20 Q And I know it was a harrowing situation. I
21 understand that.

22 A Right.

23 Q But y'all are professional officers, and you also
24 know what the protocol at the scenes is. I know
25 that you went to the academy.

- 1 A Yes, sir.
- 2 Q So at no time did anybody -- you got pictures
3 outside, right? That's a picture of it laying out
4 there?
- 5 A Yes, sir.
- 6 Q Do you remember this?
- 7 A Yes.
- 8 Q Do you remember who took this picture?
- 9 A No, sir.
- 10 Q All right. But you do agree with me you did have
11 the capability of taking a picture? And I
12 understand it was an excited situation,
13 supercharged, and I understand that.
- 14 A Yes, sir.
- 15 Q But you could have, if you had reached in your
16 pocket, you could have done that, right?
- 17 A I could not have, no, I couldn't.
- 18 Q You couldn't have taken a picture?
- 19 A No, sir.
- 20 Q Okay. All right. Did you -- do you recall exactly
21 whether or not Lieutenant Odom put the gloves on or
22 grabbed -- or took the gloves and just grabbed it
23 with the --
- 24 A No, sir, I do not.
- 25 Q Okay. All right. Did you go into the other

1 bedroom that was upstairs? We have Mr. Capnerhurst
2 in the attic, we have a landing, and then we have
3 where Ms. Parker was?

4 A Yes, sir.

5 Q There is another bedroom in there -- that way,
6 isn't there?

7 A Separating the two rooms or between the two rooms.

8 Q Yes, sir?

9 A Yes.

10 Q Did you go in that room?

11 A No, sir.

12 Q Okay. Did you see anybody in the room?

13 A No, sir.

14 Q Okay.

15 MR. WHITLARK: That's all I have, Your Honor.

16 Thank you.

17 THE COURT: Yes, ma'am?

18 REDIRECT EXAMINATION

19 BY MS. CAMPBELL:

20 Q At the point where you are disarming him, and in
21 other life-threatening situations or potentially
22 life-threatening situations, is it proper protocol
23 to pull out your cellphone and take pictures?

24 A No, ma'am.

25 Q Thank you.

RECROSS-EXAMINATION

BY MR. WHITLARK:

Q But you did have a camera on you, though, did you not, sir?

A Yes, sir.

Q All right.

MR. WHITLARK: That's all I have, Your Honor.
Thank you.

THE COURT: All right, sir. You may step down.

THE WITNESS: Thank you, Your Honor.

(Witness steps down.)

MS. CAMPBELL: Your Honor, may he be excused?

THE COURT: Any objection?

MR. WHITLARK: No objection.

THE COURT: All right, sir. You are free to leave.

THE WITNESS: Thank you, Your Honor.

(Witness excused.)

THE COURT: All right, call your next witness.

MS. SIMPSON: Thank you, Your Honor. The State calls Ken Brown.

(Witness approaches.)

THE BAILIFF: Place your left hand on the Bible, and raise your right hand, please.

1 (Witness complies.)

2 THE CLERK: Do you swear or affirm the
3 testimony you are about to give in this case will
4 be the truth, the whole truth, and nothing but the
5 truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Have a seat in the witness box.

8 (Witness complies.)

9 THE CLERK: State your full name for the
10 record, please. Spell your first name.

11 THE WITNESS: Kenneth Brown, K-E-N-N-E-T-H.

12 KENNETH BROWN,
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. SIMPSON:

16 Q Mr. Brown, where are you employed?

17 A Columbia Richland 9-1-1.

18 Q And what do you do at 9-1-1?

19 A We wear multiple hats, but my primary is to train
20 all new and seasoned employees on the process of
21 9-1-1 calls as they come into us, among various
22 other things.

23 Q All right. So you get every call that comes into
24 9-1-1?

25 A Yes.

1 Q I mean, 9-1-1 is responsible for all the calls?

2 A Yes, ma'am. Yes, ma'am.

3 Q Are those calls recorded or documented in some way?

4 A They are recorded. Every call that comes in is
5 recorded through our playback system. And all the
6 calls that we dispatch upon are also recorded,
7 whether they are emergency or non-emergency calls.

8 Q Okay. And do you maintain those recordings or
9 records in the ordinary and normal course --

10 A Yes, ma'am.

11 Q -- of your business?

12 A Yes, ma'am.

13 Q I'm going to show you what has been marked State's
14 Exhibit 399. Do you recognize this?

15 A Yes, ma'am.

16 Q What is it?

17 A This is a digital recording on a CD of the call in
18 question.

19 Q And did you actually have a chance to review it?

20 A Yes, ma'am. Yes, ma'am, I did.

21 Q And does it fairly and accurately represent a 9-1-1
22 call?

23 A Yes, ma'am.

24 MS. SIMPSON: Your Honor, at this time the
25 State would introduce State's Exhibit 399 into

1 evidence.

2 THE COURT: Any objection?

3 MR. WHITLARK: There is no objection, Your
4 Honor.

5 THE COURT: All right. It will be entered
6 without objection.

7 (WHEREUPON, State's Exhibit No. 399 was
8 marked for identification and received
9 into evidence.)

10 MS. SIMPSON: Your Honor, at this time I would
11 like to publish the call to the jury.

12 THE COURT: Any objection?

13 MR. WHITLARK: No objection, Your Honor.

14 THE COURT: All right. Yes, ma'am.

15 MR. SIMPSON: Beg the Court's indulgence. It
16 might take just a second.

17 And, Your Honor, our office, we have prepared
18 a transcript of the call. And I would request that
19 the jury be allowed just to read along. I'm not
20 seeking to introduce it into evidence, but along
21 with the call as it is published.

22 THE COURT: Has Mr. Whitlark and Mr. Fedor had
23 an opportunity to look at that?

24 MS. SIMPSON: I don't believe so.

25 MR. WHITLARK: No, I have not, Your Honor.

1 THE COURT: All right, well, they need to go
2 through it and make sure it is accurate.

3 MS. SIMPSON: Okay.

4 THE COURT: Was it transcribed by a court
5 reporter?

6 MS. SIMPSON: Your Honor, may we approach?

7 (WHEREUPON, a bench conference was held
8 in the presence of the jury but out of
9 the hearing of the jury.)

10 MS. SIMPSON: At this time we would not seek
11 to use the transcript; however, we will likely be
12 offering it later when we publish. But I would
13 just like to publish the tape at this time.

14 MR. WHITLARK: There is no objection to that,
15 Your Honor.

16 THE COURT: All right.

17 (WHEREUPON, the 9-1-1 tape was played in
18 open court.)

19 MS. SIMPSON: I have nothing further from
20 Mr. Brown.

21 THE COURT: All right. Please answer any
22 questions that Mr. Whitlark may have.

23 Any questions of Mr. Brown?

24 MR. WHITLARK: Yes, there are, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. WHITLARK:

2 Q Good afternoon, Mr. Brown.

3 A Good afternoon, sir.

4 Q Do you have a record of when this tape was
5 requested by the law enforcement?

6 A No, sir, I do not. Those records requests come in
7 from who may need them. I'm not specifically sure
8 what date the request was made.

9 Q Okay. Do you have any idea at all about when that
10 you were contacted to come up here?

11 A Yes, sir, I was contacted today.

12 Q Okay.

13 MR. WHITLARK: No further questions, Your
14 Honor.

15 THE COURT: All right. Sir, you may step
16 down.

17 THE WITNESS: Thank you.

18 (Witness steps down.)

19 THE COURT: Any objection to this witness
20 being excused?

21 MS. SIMPSON: None from the State.

22 MR. WHITLARK: No objection.

23 THE COURT: All right, sir, you are free to
24 leave.

25 (Witness excused.)

1 THE COURT: Call your next witness.

2 MS. WALKER: Thank you, Your Honor. The State
3 calls Robin Haselden.

4 (Witness approaches.)

5 THE BAILIFF: Place your left hand on the
6 Bible, and raise your right hand, please.

7 (Witness complies.)

8 THE CLERK: Do you swear or affirm the
9 testimony you are about to give in this case will
10 be the truth, the whole truth, and nothing but the
11 truth, so help you God?

12 THE WITNESS: Yes, ma'am.

13 THE CLERK: Have a seat in the witness box.

14 (Witness complies.)

15 THE CLERK: State your full name for the
16 record, please.

17 THE WITNESS: Robin Haselden.

18 ROBIN HASELDEN,
19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. WALKER:

22 Q Good afternoon, Ms. Haselden.

23 A Good afternoon.

24 Q Where are you currently employed?

25 A Richland County EMS.

1 Q And how long have you been with Richland County
2 EMS?

3 A Ten years.

4 Q What do you do for Richland County EMS?

5 A I'm a paramedic.

6 Q And what do your duties involve?

7 A We respond to 9-1-1 calls and deliver medical care,
8 from monitoring cardiac activity, IV medications,
9 more basic things, bandages and splinting, and
10 such.

11 Q Yes, ma'am. And on April 13th of 2012, did you
12 have occasion to respond to a 9-1-1 call coming
13 from 12 Tackeria Court?

14 A Yes.

15 Q And what did you do when you responded to that
16 scene?

17 A We went with our lights and sirens. And when we
18 got there, the police led us to the victims. And
19 my partner went to the second victim, the male
20 victim upstairs.

21 Q And did you respond to the female victim?

22 A Correct, yes.

23 Q When you responded to the female victim, how did
24 she appear?

25 A Lifeless, wasn't breathing. I applied the cardiac

1 monitor, and there was no electrical activity.

2 Then I went to where my partner was and also he

3 appeared --

4 Q Just -- when you appeared -- you said you applied
5 what?

6 A A cardiac monitor.

7 Q Where did you apply those?

8 A We have leads, three leads, that go into the left
9 arm, the right arm --

10 THE COURT REPORTER: I'm sorry. Could you
11 speak in the microphone?

12 THE WITNESS: Sorry.

13 BY MS. WALKER:

14 Q And when you applied those, did you disturb her
15 body in any way?

16 A No. I pulled back her jacket a little bit, her
17 top, to apply the electrodes, but other than that,
18 no, her body didn't move.

19 Q And then you said you responded to the male victim?

20 A Yes.

21 Q And what did you do when you responded to him?

22 A The same. He seemed lifeless in the nerves going
23 to his head. So I applied the electrodes. I
24 didn't have to remove his clothing.

25 Q And do you remember where you applied those

1 electrodes?

2 A Left leg, left arm, and right arm.

3 Q And did you disturb his body in any way?

4 A No.

5 Q Was there any sign of life coming from either
6 victim?

7 A No.

8 MS. WALKER: No further questions, Your Honor.

9 THE COURT: Yes, sir?

10 MR. WHITLARK: May it please the Court?

11 CROSS-EXAMINATION

12 BY MR. WHITLARK:

13 Q Is it Haselden?

14 A Haselden, yes.

15 Q Hello, Ms. Haselden. Ms. Haselden, it sounded like
16 you made a fairly quick decision that they were
17 deceased?

18 A Right.

19 Q Okay. And what did you base that on?

20 A Their appearance, their lack of breathing, the
21 wounds also. And it doesn't take much time at all
22 to apply the monitor and see that there was nothing
23 there.

24 Q Okay. Does it say what time you got there?

25 A 1:02, I believe, is when I arrived on the scene.

1 I'm not sure of the exact time that I applied the
2 monitoring.

3 Q Okay. Do you recall seeing this (indicating) when
4 you went there?

5 A I wasn't looking at the floor. I don't remember
6 seeing that.

7 Q Okay. Well, he didn't have the -- the male
8 subject --

9 A Uh-huh.

10 Q -- he did not have a gun in his hand?

11 A No, he didn't.

12 Q But he was bloody, wasn't he?

13 A Yes.

14 Q Describe for the jury, if you would, the amount of
15 blood you saw and what part of his body was it on?

16 A The main thing I noticed was to the left side of
17 his face that was the bloodiest. And then when --
18 we're just there to basically apply the monitor and
19 determine whether there is anything I can do for
20 them. I don't look for more wounds. So that was
21 the main one that I noticed. And I applied the
22 electrodes, and there was nothing.

23 Q Okay. Did you notice a large amount of blood on
24 his left arm?

25 A Not that I recall.

1 Q Okay. All right. And you don't recall seeing this
2 (indicating) as you entered the room where he was?

3 A No. I was just making sure I didn't step on
4 anything and getting to him as quickly as possible.

5 Q Okay. How long were you there?

6 A The total scene time or in the house?

7 Q How long were you in the house, yes?

8 A After I went to him and saw there was nothing I
9 could do, probably five more minutes after that,
10 just to get my equipment and get downstairs and out
11 of the house.

12 Q Okay. Did somebody -- were there other medical
13 people there?

14 A There was my partner who went before me to the
15 gentleman upstairs, and then my two supervisors
16 were there also. I don't think it came out on the
17 radio. They got there before that. And so they
18 came into the house, but they didn't go near the
19 bodies.

20 Q Okay. How many officers were there? Do you
21 recall?

22 A I'm not sure.

23 Q Okay. But there were --

24 A There was one in the room with Ms. Parker, and I
25 don't remember, there were several more with

1 Mr. Capnerhurst.

2 Q They were in there with him?

3 A Yes.

4 Q Okay.

5 A Or in the room right outside as well.

6 Q Okay. And you don't recall seeing this?

7 A No, sir.

8 MR. WHITLARK: That's all the questions I
9 have, Your Honor. Thank you.

10 THE COURT: Anything else from the State?

11 MS. WALKER: Nothing, Your Honor.

12 THE COURT: All right, ma'am, you may step
13 down.

14 (Witness steps down.)

15 THE COURT: Any objection to this witness
16 being excused?

17 MS. WALKER: None from the State, Your Honor.

18 MR. WHITLARK: None from the Defense.

19 THE COURT: All right, you may be excused.

20 (Witness excused.)

21 THE COURT: Call your next witness.

22 MS. SIMPSON: The State calls Investigator
23 Matt Ellis.

24 (Witness approaches.)

25 THE BAILIFF: Place your left hand on the

1 Bible, and raise your right hand, please.

2 (Witness complies.)

3 THE CLERK: Do you swear or affirm the
4 testimony you are about to give in this case will
5 be the truth, the whole truth, and nothing but the
6 truth, so help you God?

7 THE WITNESS: Yes, ma'am.

8 THE CLERK: Have a seat in the witness box.

9 (Witness complies.)

10 THE CLERK: State your full name for the
11 record please.

12 THE WITNESS: Matthew Ellis.

13 MATTHEW ELLIS,
14 after being duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. SIMPSON:

17 Q Investigator Ellis, where are you currently
18 employed?

19 A The South Carolina Attorney General's Office.

20 Q And what do you do for the Attorney General?

21 A I'm an investigator for the prosecution in the
22 State Grand Jury division.

23 Q And how long have you been with the Attorney
24 General?

25 A Since September.

1 Q And prior to that, where were you working?

2 A Richland County Sheriff's Department.

3 Q And how long had you been with Richland County?

4 A I was with THE Richland County Sheriff's Department
5 for a little over 13 years.

6 Q And prior to leaving for the new position, what was
7 your position at Richland County?

8 A When I left the Sheriff's Department, I was a
9 sergeant assigned to the major crimes unit and the
10 criminal investigative division.

11 Q And as a sergeant in the major crimes unit, what
12 did you do?

13 A As a sergeant we have, in our different divisions,
14 we have individual investigators that are assigned
15 to us. And we supervise their cases that they have
16 and assign their cases to them as the reports are
17 filed to us.

18 Q So in a sergeant's position, you kind of manage a
19 number of officers within your unit?

20 A That's correct.

21 Q Do you also have occasion to respond in cases?

22 A We do. Depending on the field or the division that
23 you are assigned to, particularly when cases come
24 in or calls come in, requests for investigators,
25 depending on the incident, will determine which

1 sergeant is notified of that.

2 Q And back on Friday, April 13th of 2012, what
3 capacity were you working with Richland County? In
4 what capacity?

5 A I was the sergeant of the major crimes unit,
6 particularly the assault division.

7 Q Okay. And did you have occasion to respond in this
8 case?

9 A I did. I received a call from my direct
10 supervisor, Lieutenant Scott McDonald, in reference
11 to a shooting with what we believed to be an
12 individual hit in the Ascot area, Region 4 area, of
13 Richland County.

14 Q And once you got that call, what did you do?

15 A He asked me to respond to the scene, so I began my
16 response.

17 Q And when you arrived, what did you observe?

18 A When I got there, myself and Major Smith arrived at
19 the same time to the location. There were officers
20 out in the driveway area, and EMS was there
21 attending to Mr. Brett Parker.

22 Q Okay. And was the scene secured at that time?

23 A Yes.

24 Q Or being secured?

25 A Yes.

1 Q And who did you make contact with when you arrived?

2 A Myself and Major Smith, who had been getting
3 briefed by the on-scene supervisor, Sergeant
4 Bright, was passing on the information to us.

5 Q And with some of that information, did you learn
6 that the Defendant had been advised of his rights?

7 A Yes. Once we got onto the scene, we were informed
8 that Deputy Ryan, who I believe was the first
9 responding officer, had already advised verbally
10 Mr. Brett Parker of his rights.

11 Q And at that point did you all -- yourself and Major
12 Smith -- decide to make contact and speak with the
13 Defendant?

14 A Yes.

15 Q Can you tell us about that conversation and what he
16 said to you?

17 A Major Smith approached him, and, once again, I
18 witnessed Major Smith himself verbally advise
19 Mr. Parker of his rights. He was actually sitting
20 on a, what I believe to be a cooler off to the side
21 of the sidewalk where EMS was tending to him.

22 And he advised him of his rights. And we were
23 asking what had happened. And he told us that he
24 had come home for lunch, he brought lunch home from
25 a Firehouse Subs in Irmo near the Kroger.

1 And once he had gotten home -- he had been in
2 contact earlier in the day with a friend of his,
3 Bryan, who did some work for him. And Bryan and
4 him had made contact earlier in the week on
5 Wednesday and arranged a meeting of this date. And
6 they also talked on the date that this happened.

7 And him and his wife had eaten lunch, eaten
8 the Firehouse lunch. And once they were finished,
9 they went upstairs to, I think, was the office.

10 And once they were in the office, his wife,
11 Ms. Parker, had used the phone to call her doctor,
12 and he went downstairs, in his words, to take a
13 shit.

14 Q And backing up just a little bit, did he also tell
15 you -- well, he told you that Bryan was coming for
16 some side work that he did for him?

17 A Yes.

18 Q At that moment, was EMS still near you all, or did
19 you have the Defendant separated?

20 A I believe EMS had finished with him, and he was
21 sitting on the cooler, as well as I recall.

22 And Major Smith, I believe, was knelt down
23 kind of in front of him or stooped down in front of
24 him asking him the questions.

25 Q And he said a side business, right?

1 A Yes.

2 Q Did he indicate --

3 A Side work.

4 Q -- what that side work was at that point?

5 A No, I didn't hear any further questioning on that.

6 It was preliminary information that was being
7 gathered from him.

8 Q In addition to -- as he said he was coming over to
9 meet him. Did he indicate why they were meeting?

10 A He said that he owed Mr. Capnerhurst some money and
11 that Mr. Capnerhurst also wanted to borrow some
12 money from him.

13 Q So he told you that Bryan Capnerhurst -- that he
14 owed him, the Defendant owed him some money, which
15 I guess hadn't been paid yet, and that Bryan was
16 also going to borrow money?

17 A Yes, he was going to pay him some money and that
18 he -- that Bryan had told him that he wanted to
19 borrow some money.

20 Q And after -- I believe you said he stated that he
21 went downstairs to use the restroom?

22 A Yes.

23 Q What did he tell you next?

24 A While he was in the restroom, as he was almost done
25 or finishing, Bryan actually came home -- or came

1 to the house. The garage door was left open, but
2 he also mentioned that Bryan already had the code
3 to get in.

4 He said the door was open. Bryan came in. He
5 told Bryan that his wife was upstairs, to go on up
6 there.

7 And as he was finishing, he heard shots being
8 fired -- excuse me -- coming from upstairs.

9 Once he heard those shots fired, he went
10 upstairs. And when he got there, Bryan was in the
11 office, I believe he stated, and pointed a gun at
12 him and told him to, Go to the fucking safe and
13 give me the fucking money.

14 Q And did he tell you -- okay. So he stated that
15 Bryan was at the top of the stairs?

16 A Yes.

17 Q And had a gun on him?

18 A Yes, he was pointing a gun at him.

19 Q And at that point demanded that he go to the safe?

20 A Yes.

21 Q Did he tell you anything about the gun that Bryan
22 had?

23 A During the conversation he mentioned that the gun
24 that Bryan actually had was a Smith & Wesson, and
25 that Brett stated that he had actually given it to

1 Bryan approximately two months previous to this.

2 Q And once they went to the safe area, did he
3 indicate what happened while in there?

4 A Yes. He stated that Brett stated he kept a gun on
5 top of his safe. He actually said it was a Judge,
6 which is a type of gun. And when he got there to
7 the safe, he grabbed the gun and turned around and
8 shot Bryan. He was unsure how many times he
9 actually shot.

10 Q And did he mention anything with respect to Tammy
11 Parker?

12 A He stated that she was making some noise, and he
13 checked her pulse, and then he called 9-1-1.

14 Q Okay. So at the point -- he told you that she was
15 actually making noise at the time --

16 A Correct.

17 Q -- that he checked her pulse?

18 A That's correct.

19 Q And then called 9-1-1?

20 A Yes, ma'am.

21 Q Did he also -- did he do anything else or tell you
22 anything else about that day with respect to Bryan?

23 A That he was not moving.

24 Q And did you know Mr. Parker before, I guess,
25 responding to this?

1 A Yes, I did.

2 Q How did you know him?

3 A We were members of a softball team back in the
4 early '90s.

5 Q And did you also have occasion in this case to
6 speak with Lieutenant Joe Odom, who we heard from
7 earlier?

8 A I did.

9 Q And what did you speak with him about?

10 A I was approached on the scene by Lieutenant Odom,
11 and he advised me of what he had explained about
12 him removing the gun from Mr. Capnerhurst's hand.

13 Q And was it your impression that officers arrived
14 with the information that there was a subject who
15 had been armed in the home who had actually been
16 the shooter of, I guess, the Defendant's wife at
17 that point?

18 A Yes. There was radio transmissions that, as we
19 were arriving, because they really didn't know what
20 was going on, I remember something to the effect
21 that they thought somebody -- there was one subject
22 there, and one might have been on the loose. So
23 they really didn't know what they had at the point
24 in time they arrived on the scene.

25 Q Thank you, Investigator.

1 THE COURT: Yes, sir?

2 MR. WHITLARK: May it please the Court, Your
3 Honor?

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. WHITLARK:

7 Q What is your rank now? Are you a sergeant?

8 A Investigator.

9 Q Investigator. Good to see you, Matt.

10 A Good to see you, sir.

11 Q Matt, when you got to the scene, how many people
12 were there when you got there, police officers?

13 A I didn't count them.

14 Q Was it a lot?

15 A There might have been, by the time I got there,
16 maybe five, six. I'm not sure. There were several
17 cars in the roadway.

18 Q Right. Now, you got there at about -- it looks
19 here about -- it says 1328. And that is 1:28 in
20 the afternoon?

21 A Yes, sir.

22 Q Okay. When did you hear about it before you got
23 there? What time was that? Do you know?

24 A I'm not sure. I didn't pay attention. I got a
25 call from my supervisor.

- 1 Q All right.
- 2 A And immediately responded.
- 3 Q Well, I'm going to hand you this and ask you if you
- 4 recognize that?
- 5 A I do.
- 6 Q Okay. So you got there at 1:28. That's what it
- 7 says, right?
- 8 A Yes, sir, I believe so.
- 9 Q I mean, it doesn't say 1:30 and it doesn't say
- 10 1:32, it says 1:28, right?
- 11 A Typically when I arrive on a scene, I indicate the
- 12 time that I get there.
- 13 Q Okay. So you'd say that would be fairly accurate
- 14 based on your -- what you do, your routine
- 15 practice?
- 16 A Based on the watch of the clock that I had on me,
- 17 yes, sir.
- 18 Q Okay. I gotcha. All right. And how long were you
- 19 there?
- 20 A Until Sergeant Robinson ended up coming to the
- 21 scene, who was the on-call supervisor who was going
- 22 to be partly in charge or initially taking over the
- 23 investigation.
- 24 Q All right. So, now, you are talking about Don
- 25 Robinson?

- 1 A Yes, sir.
- 2 Q Okay. And he got there -- it was before
3 2:00 o'clock when he got there?
- 4 A I have no idea.
- 5 Q Well, did he get there before 3:00 o'clock? Could
6 it have been that late? Could you have been there
7 an hour?
- 8 A I don't know if I saw him when he actually arrived.
- 9 Q Okay.
- 10 A I wasn't waiting for him at the mailbox.
- 11 Q Okay. Well, I'm just saying, would you agree with
12 your report where it says, Sergeant Robinson would
13 soon arrive on the scene and take control of it?
- 14 A Yes, sir.
- 15 Q Okay. So you saw him arrive, right?
- 16 A I don't know if I physically saw him pull up and
17 get out of his car and approach the scene. He soon
18 arrived and came up to the house where we were all
19 staged or in the driveway, and that is what I mean
20 by he soon arrived and took over the investigation.
- 21 Q Okay. What did you do? Where did you go after
22 that? Do you know? Do you remember?
- 23 A I departed the scene. I was done.
- 24 Q Where did you go? Do you remember?
- 25 A I went back to the office, I believe.

1 Q Okay. Did you ever go inside the house?

2 A I did not.

3 Q Okay. Do you know how many officers -- or if there
4 were officers in the house when you got there?

5 A I don't. I don't know if they were in there when I
6 got there. I know at some point in time, at least
7 Lieutenant Odom was there and in the house because
8 he came out and told me about what he had done.
9 Whether or not they were in there when I first
10 arrived, I'm not sure.

11 Q Okay.

12 A I would assume they were.

13 Q I gotcha. Did you actually see Odom leave the
14 house?

15 A No.

16 Q Okay. Do you remember if you met him in the front
17 of the house?

18 A I was in the driveway.

19 Q You were in the driveway. All right. So that
20 means -- did he come out through the garage?

21 A I'm not sure. I was between -- I was down -- as
22 well as I recall, the driveway from the road goes
23 up a hill and then flattens off. And was on that
24 hill portion, as well as I remember, between the
25 sidewalk that leads to the front door and down.

1 Q Okay. Do you remember how long you were there
2 before you saw Lieutenant Odom?

3 A I don't have. I don't --

4 Q Well, I'm not trying to hold you to a specific
5 time.

6 A It was after I had been with Major Smith when he
7 was questioning Mr. Parker.

8 Q Okay.

9 A Minutes, at least.

10 Q I gotcha. Did Lieutenant Odom have a pair of
11 rubber gloves with him when he came out?

12 A I didn't see him coming out, so I don't know.

13 Q Did he have a pair of gloves when -- you spoke to
14 him, didn't you?

15 A Uh-huh. I did.

16 Q Did he have a pair of rubber gloves with him, that
17 you remember?

18 A They carry them on their belt and pouches. I'm not
19 sure if he had one him or not.

20 Q All right. Do you carry a camera on you?

21 A Do I?

22 Q Did you carry a camera on you when you were with
23 Richland County Sheriff's Department?

24 A No, we don't carry -- I don't carry a camera in my
25 pocket.

1 Q Do you have a cellphone?

2 A Oh, yes, cellphones, yes.

3 Q Uh-huh. Okay. The first thing you asked him was
4 whether or not he had photographed the weapon,
5 though, isn't it, in the man's hand?

6 A That's what I asked him. I don't know if that
7 is -- that was my conversation with him.

8 Q Well, I mean, he approached you to tell you this,
9 didn't he?

10 A He did.

11 Q I mean, he specifically walked up and told you,
12 Look, I want to let you know something. I took the
13 gun out of this guy's hand. Right?

14 A That's correct.

15 Q And your first question back to him was, Did you
16 take a picture of it? Right?

17 A I asked him that. I don't know if it was in that
18 tone, but I did ask the question.

19 Q I understand. Okay, I understand. There aren't a
20 lot of people that have my tone. I'm sorry. But
21 that is what your report states. Have you got any
22 reason to disagree with it?

23 A No, sir.

24 Q Okay. And then you talked to Lieutenant Cavanagh
25 with CSI, right, after that?

1 A I passed the information that Mr. Odom provided to
2 me to Lieutenant Cavanagh, who is the supervisor of
3 the crime scene investigative unit.

4 Q Right. I mean, it was important information to
5 pass on to him, wasn't it?

6 A If she is going in to process the scene, she needs
7 to know if -- what has happened inside. And since
8 that was passed on to me, I felt like she needed to
9 know.

10 Q Did you see Cavanagh go in the house?

11 A I don't think so.

12 Q Okay.

13 A I believe when I spoke to her, she was waiting
14 on -- or they were waiting on all their personnel
15 to get there to, I assume, figure out how they were
16 going to proceed in and process the scene.

17 Q Okay. One of the things that you overheard Brett
18 Parker say was that he had been checking on his
19 wife, right?

20 A I heard him say that she was making a noise, and he
21 checked her pulse.

22 Q And he had been checking -- so he was checking on
23 her, right? Is that right? Is that -- I'm asking
24 you what is in your report.

25 A Right. Checked. I heard him say checked. I don't

1 know if checking -- if he did it multiple times or
2 not.

3 Q All right. He was being treated by EMS when you
4 got there, wasn't he?

5 A Yes.

6 Q Okay. Did you ask Lieutenant Odom where the gun
7 was?

8 A No, sir.

9 Q Okay. Did you ask him what -- how he had removed
10 it or did you say anything at all to him about
11 that?

12 A No, sir.

13 Q But it was important enough information to pass on
14 to CSI, though?

15 A Sure.

16 Q Okay. But you -- I mean, you didn't ask him, Well,
17 where did you put it? What it is in? Where is it
18 at now? Do you have it on you?

19 A I don't believe I did.

20 Q Nothing like that?

21 A (Nods negatively.)

22 Q Do you recall saying anything to him about this,
23 other than what is in your report?

24 A Saying anything?

25 Q Did you say anything to him as far as, What is the

1 location of the gun now? Did you say anything like
2 that?

3 A I don't recall asking him that, no, sir.

4 Q Okay. Did you ask him if he picked it up with
5 rubber gloves?

6 A I did not.

7 Q Okay. But you did ask him specifically, again, did
8 you take a photograph of him?

9 A Yes.

10 MR. WHITLARK: That's all I have, Your Honor.

11 Thank you.

12 MS. SIMPSON: Brief redirect.

13 THE COURT: Yes, ma'am.

14 REDIRECT EXAMINATION

15 BY MS. SIMPSON:

16 Q With respect to Lieutenant Odom, you were, I guess,
17 higher in rank on the scene as well, correct?

18 A Say that one more time?

19 Q Your rank was higher as a sergeant than Lieutenant
20 Odom, correct?

21 A No, ma'am.

22 Q Oh, am I wrong about that?

23 A Yes.

24 Q I'm sorry. But you were there in the capacity of
25 an investigator?

- 1 A Right.
- 2 Q Not a responding officer?
- 3 A Correct.
- 4 Q And would it be unusual for him to want to provide
- 5 you with information?
- 6 A Yes.
- 7 Q It would be unusual or it wouldn't?
- 8 A Oh, I said -- you -- it would be unusual for him
- 9 not to.
- 10 Q Not to offer that information?
- 11 A Correct. I'm sorry. I misunderstood you.
- 12 Q And did he, in fact, tell you that the reason he
- 13 moved the gun was because of a prior incident in
- 14 his career?
- 15 A He did.
- 16 Q And, additionally, moving back to Tammy Parker,
- 17 which I believe counsel asked you about, he stated
- 18 to you -- and this is based on your report -- that
- 19 he had checked on her, she was making noise, and he
- 20 just checked her pulse?
- 21 A Correct.
- 22 Q And then went to call 9-1-1?
- 23 A That was what he stated.
- 24 Q And that was the extent of what he stated with
- 25 respect to his efforts --

1 A That is correct.

2 Q -- and Tammy Parker. Additionally, are you aware
3 of whether he was actually transported by EMS to a
4 hospital?

5 A Who are we speaking about?

6 Q Mr. Parker.

7 A No, he was not.

8 Q The Defendant. So he was never transported to the
9 hospital?

10 A No, he was not. Not that day, I don't think.

11 Q Thank you.

12 MR. WHITLARK: Excuse me, Your Honor, just
13 briefly.

14 RECROSS-EXAMINATION

15 BY MR. WHITLARK:

16 Q Now, did you see Ryan there as well, Deputy Ryan?

17 A I don't even know if I know who Deputy Ryan is.

18 Q Okay. Was the scene secure when you got there?

19 A I didn't go inside.

20 Q Okay. Well, could you see whether or not they had
21 secured it and there was an officer standing there
22 monitoring who was going in and out?

23 A It seems to me that there was an officer staged --
24 the garage door was open, and there was an officer
25 staged at the garage door.

1 Q Okay. Okay. Then Don Robinson got there and you
2 left, right?

3 A Yes, sir.

4 Q And you didn't see anybody carry anything out of
5 that house, did you?

6 A No, sir.

7 MR. WHITLARK: That's all I have, Your Honor,
8 Thank you.

9 THE COURT: All right, sir. You may step
10 down.

11 (Witness steps down.)

12 MS. SIMPSON: Your Honor, may this witness be
13 excused?

14 THE COURT: Any objection?

15 MR. WHITLARK: No objection from the Defense,
16 Your Honor.

17 THE COURT: Sir, you are free to leave.

18 (Witness excused.)

19 THE COURT: Call your next witness.

20 MS. WALKER: Your Honor, the State calls
21 Investigator Nina Ducate.

22 (Witness approaches.)

23 THE BAILIFF: Place your left hand on the
24 Bible, and raise your right hand, please.

25 (Witness complies.)

1 THE CLERK: Do you swear or affirm the
2 testimony you are about to give in this case will
3 be the truth, the whole truth, and nothing but the
4 truth, so help you God?

5 THE WITNESS: I do.

6 THE CLERK: Have a seat in the witness box.

7 (Witness compiles.)

8 THE CLERK: State your name for the record,
9 and spell last name for the record, please.

10 THE WITNESS: Nina Ducate, D-U-C-A-T-E.

11 NINA DUCATE,

12 after being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. WALKER:

15 Q Investigator Ducate, where do you work?

16 A Richland County Sheriff's Department.

17 Q And what do you do at the Sheriff's Department?

18 A I'm a victim advocate. I work in victim services.

19 Q And what do your duties include as a victims'
20 advocate?

21 A We assist with crimes of -- violent crimes -- with
22 victims of violent crime.

23 Q And so you assist with them? Can you kind of
24 explain that?

25 A Sure. We provide counseling, medical

1 reimbursement, possibly transportation, accompany
2 them to court. And it involves, you know,
3 robberies, assaults, sexual assaults, family
4 members of the victims.

5 Q And did you have occasion to respond on April 13th
6 to 12 Tackeria Court?

7 A Yes, I did.

8 Q And why did you respond to that location?

9 A Myself and my Sergeant, Maria Yturria, received a
10 phone call that there was a shooting and that there
11 were children that were in school. And our concern
12 was getting to the children before they heard what
13 happened and make sure that they didn't return to
14 the house.

15 Q When you arrived at that scene, do you remember who
16 you were with?

17 A I arrived with Sergeant Yturria.

18 Q And what did you observe when you got to the scene?

19 A There were numerous supervisors, road deputies at
20 the house outside. Brett Parker was outside the
21 house as well. You know, we just responded up to
22 the driveway where everybody was so he could get
23 briefed.

24 Q Did any other family members of Brett Parker arrive
25 to that scene?

1 A They did. Brett Parker's father and I believe
2 mother responded, and I honestly cannot remember if
3 they arrived together or not.

4 Q Was he -- was the Defendant advised that his father
5 was on the scene?

6 A He was aware, yes. Yes.

7 Q When he was made aware that his father was on the
8 scene, did he say anything?

9 A He did.

10 Q What was that?

11 A He said, What does my dad think happened?

12 Q And did you make any other contact in this case,
13 other than arriving -- other than going to the
14 scene?

15 A Other than going to the scene. After that point
16 myself and Investigator Chamberlain followed Brett
17 Parker's mother to her residence to get some
18 information, more victim information, contact
19 information.

20 MS. WALKER: No further questions.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. WHITLARK:

24 Q What is your job again?

25 A I'm a victim advocate at the Sheriff's Department.

1 Q Okay. Like what kind of stuff, type of things do
2 you do?

3 A We basically assist with any victims of violent
4 crimes. So if there is an assault, sexual assault,
5 robbery, home invasion, homicide, we respond either
6 to the scene or we will make contact with them over
7 the phone or in person and see how we can assist,
8 possibly getting them counseling, medical
9 reimbursement. If they're in an unsafe
10 environment, we locate them to a safe environment,
11 also transport them to and from court.

12 Q Okay. And did you go up to the garage, or where
13 were you exactly?

14 A At the top of the driveway.

15 Q Okay. You didn't go in that house, did you?

16 A No, sir.

17 Q Okay. Were there a lot of people coming in and out
18 of the house that you saw?

19 A I didn't notice. I was more concerned about
20 getting briefed as to what happened.

21 Q Okay. And what was your purpose of being there
22 again?

23 A We responded because there were children of the
24 victim, and we wanted to make sure that they did
25 not hear about what had happened at school through

1 phones, and to make sure that they did not return
2 home to the neighborhood.

3 Q Okay. So what specifically were you going to do?

4 A At the time there were, I believe, four, possibly
5 five of us from our unit, from victim services,
6 that were there. And some of us were going to
7 split up and go to the school to get the children,
8 to coordinate with the school resource officers and
9 get the children.

10 And I believe my supervisor did that, as well
11 as one of my co-workers. And my supervisor advised
12 myself and another co-worker to follow Brett
13 Parker's mother to her residence to obtain more
14 victim information.

15 Q Were you speaking to Ms. Parker, Ms. Linda Packer
16 when you were at Tackeria Court?

17 A Yes, that's correct.

18 Q Okay. Where were you at when you were talking to
19 her? Do you remember?

20 A The kitchen of her residence.

21 Q Okay. Where -- did you speak to her at Tackeria
22 Court, though?

23 A I can't recall. I believe my sergeant spoke with
24 the parents, but I can't recall.

25 Q Okay. Did you speak to Mr. Jack Parker, Brett

1 Parker's father?

2 A I was around when he was spoken to. I don't -- I
3 cannot recall if I specifically spoke with him.

4 Q Okay. Well, did you ask -- did he ask you how
5 Brett was doing, Mr. Parker?

6 A I don't recall.

7 Q Or did Ms. Parker?

8 A I don't recall them asking me.

9 Q Okay.

10 A There were other investigators and advocates on the
11 scene.

12 Q Okay. All right. Did you have any further
13 involvement in the case?

14 A No, sir, other than following Brett's mother back
15 to her residence to obtain more victim information,
16 contact information, phone numbers.

17 Q Okay. Do you remember what time it was?

18 A I don't recall. I know we responded around
19 lunchtime. It was a little bit after lunchtime
20 when we responded.

21 Q Okay. Do you know any of the officers that are
22 involved in the investigation of this case?

23 A As in being?

24 Q Richland County Sheriff's Department?

25 A Yes, sir, I do.

1 Q Okay. Who do you recall seeing there that day?

2 A On scene?

3 Q Yes.

4 A From my office it was Sergeant Yturria, who I
5 arrived with. And it was Investigator Chamberlain,
6 Investigator Talkish, Investigator Holdorf,
7 Sergeant Ellis, Captain Smith. And I know there
8 were road deputies out there as well. I can't
9 recall exactly who all.

10 Q Okay. Would it be safe to say there were more than
11 ten officers on the scene there when you got there,
12 uniformed officers and investigators?

13 A Together, possibly around ten.

14 Q Okay. Do you know Sergeant Don Robinson?

15 A Yes, I do.

16 Q All right. Did you see him there?

17 A I cannot recall. I can't recall.

18 Q Okay. Do you remember -- again, I'm going to ask
19 you -- do you know exactly when you were there?

20 A I was there after lunchtime.

21 Q Well, I understand that.

22 A The exact time, no, sir.

23 Q Okay.

24 A I do not recall the exact time.

25 Q All right. Do you know what time you were

1 contacted to go out there?

2 A The exact time, no, sir. I know that we were at
3 lunch when we got the call.

4 Q Okay. How long did it take you to get there? Do
5 you remember?

6 A I don't recall. We were downtown and we had to
7 respond out to Region 4. Maybe under 20 minutes,
8 under 30 minutes.

9 Q Okay. How long were you out on the scene?

10 A I would be guessing.

11 Q At the Tackeria Court scene?

12 A Okay. I would be guessing, but around 30 minutes.

13 Q Thirty minutes. And in all that -- let me ask you
14 this: Do you know Chris Lindler?

15 A Yes.

16 Q Was Chris Lindler there?

17 A Yes, I believe, yes. He was the one that
18 contacted, I believe, my supervisor stating that he
19 needed victim advocates out at the scene because of
20 the children.

21 Q Okay. Do you remember specifically seeing Chris
22 Lindler there that day?

23 A I don't. I don't recall exactly.

24 Q Or Robinson?

25 A No, I don't recall.

1 Q Okay. But you didn't go in the house, right?

2 A Correct. I did not.

3 Q So they could have been in the house and that's why
4 you didn't see them, right?

5 A Possible.

6 Q Thank you.

7 MR. WHITLARK: That's all the questions I
8 have, Your Honor.

9 THE COURT: Yes, ma'am.

10 MS. WALKER: No questions, Your Honor.

11 THE COURT: All right, ma'am. You may step
12 down.

13 (Witness steps down.)

14 MS. WALKER: Your Honor, may the witness be
15 excused?

16 THE COURT: Any objection?

17 MR. WHITLARK: No objection from the Defense,
18 Your Honor.

19 THE COURT: All right, ma'am, you are free to
20 leave.

21 (Witness excused.)

22 THE COURT: All right. Call your next
23 witness.

24 MS. CAMPBELL: May it please the Court? The
25 State calls Sergeant Yturria.

1 (Witness approaches.)

2 THE BAILIFF: Place your left hand on the
3 Bible, and raise your right hand, please.

4 (Witness complies.)

5 THE CLERK: Do you swear or affirm the
6 testimony you are about to give in this case will
7 be the truth, the whole truth, and nothing but the
8 truth, so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Have a seat in the witness box.

11 (Witness complies.)

12 THE CLERK: State your full name for the
13 record, and spell your last name, please.

14 THE WITNESS: Maria Yturria, Y-T-U-R-R-I-A.

15 MARIA YTURRIA,
16 after being duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. CAMPBELL:

19 Q Ma'am, where are you employed?

20 A With Richland County Sheriff's Department.

21 Q What do you do there?

22 A I'm a sergeant over the victim service unit.

23 Q Can you tell this jury a little bit about your
24 duties as a sergeant over the victims' witness
25 unit?

1 A Basically the victim service unit, what it does is
2 it communicates with all crime victims and any
3 crimes against a person, we make direct contact
4 with to ensure that they know what the process is,
5 they understand what the justice system is and what
6 is needed from them.

7 We then basically communicate directly with
8 them to find out what their needs are in relation
9 to the type of crime that occurred directly with
10 them.

11 And those needs can be anything from tangible
12 to direct assistance to, you know, just emotional
13 support, things like that, just to make sure that
14 the crime victim gets contacted.

15 Q And how long have you been in the special victims'
16 unit or the victim/witness unit?

17 A Approximately eight years.

18 Q And you are currently a sergeant in that unit?

19 A Yes, ma'am.

20 Q You are one of the supervisors?

21 A Yes, ma'am.

22 Q And over the course of your eight years in the
23 victim/witness unit, have you had contact with
24 multiple victims?

25 A Yes, ma'am.

1 Q As well as an occasion with people that ended up
2 being Defendants, is that true?

3 A That's correct.

4 Q I want to turn your attention to Friday, April the
5 13th of 2012. Did you receive a phone call from
6 Sergeant Lindler that afternoon?

7 A I did.

8 Q And approximately what time was it when you
9 received that call?

10 A Approximately 1330, which was 1:30 in the
11 afternoon.

12 Q And did he request that you respond to a certain
13 address?

14 A Correct. He asked that I respond to 12 Tackeria
15 Court in Irmo.

16 Q And did you understand what the purpose of your
17 going there that day was going to be?

18 A Correct. He told me that there had been a
19 shooting, and they believed there were family
20 members there. And that is one of the duties that
21 we have is to assist at scenes with any family
22 members that may show up and may be distraught, and
23 that sort of stuff.

24 Q So it is not unusual for you to respond to, say, a
25 homicide crime scene to help --

- 1 A Absolutely no.
- 2 Q Once you responded to the scene that day at
- 3 12 Tackeria Court, who did you make contact with?
- 4 A I made contact with Major Smith and Investigator
- 5 Holdorf.
- 6 Q Once you made contact with them, did they direct
- 7 your attention to certain family members there at
- 8 the scene?
- 9 A They did. There were -- the way the house is
- 10 positioned, it's a pretty long driveway, and then
- 11 almost to the end of the road, there was a family
- 12 gathering. They told me that Brett Parker's dad
- 13 was down there and if we could go, you know, and
- 14 assist him.
- 15 Q And I just said were they there at the scene.
- 16 Actually they were near the scene, is that correct?
- 17 A That's correct. They weren't actually near the
- 18 driveway.
- 19 Q Okay. So they were actually down the road?
- 20 A Correct.
- 21 Q And where this house is located, what kind of
- 22 street is that?
- 23 A It's a cul-de-sac.
- 24 Q Okay. And where was Mr. Parker, Mr. Jack Parker,
- 25 who is Brett's father, located when you made

1 contact with him?

2 A Towards the end of the road where the intersection

3 is.

4 Q Where it T-bones?

5 A Correct.

6 Q The end of the cul-de-sac?

7 A Not the end of the cul-de-sac, where it T-bones at

8 the end of the road.

9 Q At the end of the road?

10 A Correct.

11 Q Where the cul-de-sac turns off?

12 A Correct.

13 Q And when you made contact with him, did you

14 actually -- did he identify himself?

15 A He did. I was with the Coroner, Gary Watts. And,

16 you know, we went and approached him, and he told

17 me that he was Brett's father.

18 Q At that point, what happened next?

19 A We explained to him that, you know, what the

20 situation was. Coroner Watts did explain to him,

21 you know, that Tammy was deceased.

22 And I basically said, you know, it is under

23 investigation. It is going to be tied up for a

24 while. So, you know, it is best for you to return

25 to your home, and we will keep you posted.

1 Q Did you give him any information about where his
2 son, Brett Parker, had been taken at that point?

3 A He asked. And I believe I told him that he was
4 with Investigator Holdorf, and that they were
5 headed to the Sheriff's Department.

6 Q I believe you testified that you thought it was
7 told to him that it would be best for him to leave
8 at that point?

9 A That's correct.

10 Q Did he want to leave?

11 A He did not want to leave. He had called his wife,
12 and he said he wanted to wait till his wife arrived
13 on scene so that he could tell her.

14 Q And did you remain with Mr. Parker while he waited
15 on his wife?

16 A Yes. We stood -- there was a lot of law
17 enforcement vehicles, and one of our law
18 enforcement vehicles was down there, and we kind of
19 stood right beside that one.

20 Q Shortly thereafter did Ms. Linda Parker, Mr. Jack
21 Parker's wife, Brett Parker's mother, show up?

22 A She did.

23 Q And were you there when -- did you make contact
24 with her when she showed up?

25 A I did. She got out of the vehicle and started

1 walking toward us. I started guiding her to one of
2 the law enforcement vehicles because by that time
3 the media was already out there. And, you know, I
4 asked her to -- I said, Why don't you come in here,
5 sit in the vehicle so that the media doesn't film
6 you.

7 As we're doing that, Mr. Parker, you know,
8 just tells her, Tammy is dead.

9 And her reaction was: Did Brett kill her?
10 Did Brett kill Tammy?

11 And at that point I told her, I said, Ma'am,
12 we don't know if Brett killed Tammy. The case is
13 still under investigation. You know, it's best for
14 you all just to return to your home. They are not
15 going to allow you to come in the home any time
16 soon.

17 At that point she was very concerned about the
18 children. So we told her that we had made contact
19 with the school resource officers, and they were
20 aware of what the situation was and not to allow
21 the children to get on the bus.

22 So they took possession of -- the school
23 resource officers were going to take possession of
24 the kids to make sure they didn't get on the bus,
25 which is what Ms. Parker's concern was.

1 And so I told her --

2 Q So at this point it is sometime after 1:30, and the
3 concern is that the children would get on the bus
4 and come home and find out?

5 A Correct.

6 Q Did you actually -- or did your unit take
7 precautions to make sure that that didn't happen?

8 A We did.

9 Q What did you do?

10 A We spoke with the school resource officers from
11 River Springs Elementary, which is where **Z.P.** went,
12 and Dutch Fork, which is where **B.P.** went.

13 Q And did you relate that information to Brett's
14 parents?

15 A We did.

16 Q Did you make any other arrangements to have the
17 children picked up from their respective schools?

18 A We did. We -- after Mr. and Ms. Parker left,
19 followed by Investigators Ducate and Chamberlain, I
20 personally went to Dutch Fork, and Investigator
21 Talkish went to River Springs, and we actually
22 secured the children with us.

23 Q And at that point, where had Brett's parents gone?
24 Do you know?

25 A I don't know. We told them to go home, but I don't

1 know.

2 Q Okay. But you left the scene and then went and
3 made the arrangements we talked about and tried to
4 pick up the children?

5 A Correct.

6 Q What was the purpose in y'all trying to get the
7 children -- or keeping them from the bus or trying
8 to get them out of the classroom?

9 A There was -- you know, with the new media age, it
10 is easy to get information on, you know, Facebook,
11 and things like that. And we didn't want the
12 children to find out, you know, that their mom had
13 been killed on Facebook or by the media. Because
14 we figured if they saw the address, you know, that
15 at least B.P. was old enough to understand, you
16 know, that something had happened.

17 Q And I believe that you and Investigator Talkish
18 personally responded to the schools?

19 A Correct.

20 Q And where did you go?

21 A I went to Dutch Fork Middle and picked up B.P.
22 and took her with me.

23 Q And what were you able to explain to her at that
24 point?

25 A The only thing we told them was that there was an

1 incident that occurred in the Ascot subdivision and
2 that the buses were not going to that direction and
3 that I was going to take her to meet with her
4 brother to make sure that, you know, he was okay
5 because she was obviously the older one.

6 Q And had there been a request made by anyone as far
7 as relating the information to the children? Who
8 was going to tell them what happened?

9 A No.

10 Q Not at that point?

11 A No.

12 Q Once you picked **B.P.** up from her middle school,
13 you then took her where?

14 A I took her to River Springs to meet up with **Z.P.**
15 and Investigator Talkish.

16 Q And once you got there, did y'all pick up **Z.P.**,
17 the younger child, I believe?

18 A Yes.

19 Q And approximately how old was he? Do you recall?

20 A He's young. I couldn't tell you.

21 Q What happened next?

22 A We stood by there for a little bit until we
23 received the word from -- I can't remember if it
24 was Major Smith or Investigator Holdorf, to let us
25 know when Brett was back en route to his parents'

1 house so that we could bring the children there.

2 Q And why did you want to wait until Brett got to his
3 parents' house to bring the children there?

4 A Because the children hadn't been told anything as
5 far as what the situation was.

6 Q Did Major Smith or someone convey at the time when
7 it would be appropriate for y'all to take the
8 children to the grandparents' house?

9 A Yes. They told us that they were en route and they
10 gave us the address to where the grandparents
11 lived, and we told them that we would meet them
12 there.

13 Q Okay. And what part of town did the grandparents
14 live in?

15 A On the lake. I believe it's off of Johnson Marina,
16 but I could be wrong.

17 Q Did you and Investigator Talkish then get the
18 children and proceed to Brett's parents' house?

19 A We did. We actually at some point filed right
20 behind Major Smith and Investigator Holdorf, who
21 had Brett with them. So we all arrived to the
22 house at the same time.

23 Q And at this point, had the children been informed
24 of anything that occurred at their home that day?

25 A No. The children were inside with the

1 grandparents, and --

2 Q Let me rephrase that. At the point when you
3 arrived at the Parker's house, had y'all relayed
4 any information to them?

5 A No, the children had not been relayed any
6 information.

7 Q Okay. Once you got to the house -- and I believe
8 that you mentioned that Brett Parker was in the car
9 right in front of you?

10 A Right.

11 Q Y'all all kind of arrived at the same time?

12 A Correct.

13 Q What happened next?

14 A The children started walking in towards the house.
15 We pulled Brett, Mr. Parker, you know, kind of to
16 the side and told him, you know, Please understand
17 the children do not know anything. We have not
18 told them any information. So we might want to go
19 inside and let them know what happened.

20 Q And at that point, who all proceeded inside?

21 A Brett did, Investigator Talkish, and myself. And
22 the children and his parents were inside.

23 Q They were already inside?

24 A Uh-huh.

25 Q Once you got inside the house, what room did y'all

1 go to?

2 A As soon as you walk in, I guess it's kind of a
3 living room, living room/den, I don't know what
4 they call it. But, you know, as soon as you enter,
5 it's right there.

6 Q And who all was in the living room area once you
7 got inside?

8 A The children, Brett's mom and dad, and Brett,
9 Investigator Talkish, and myself.

10 Q Investigator Talkish, who was with you, has he
11 since suffered some health issues?

12 A He has. He had a stroke.

13 Q Once you were inside that area with Brett Parker,
14 his parents, and his children, tell the jury what
15 you observed and what happened.

16 A The children sat down on a couch. Brett was
17 standing next to me, as well as Investigator
18 Talkish. I think the dad was somewhere in the
19 area. And his mom was right there with us also.
20 And, you know, the children are looking at their
21 dad like, What happened, you know.

22 And he, you know, basically just blurts out,
23 Your mom is dead.

24 Q And is that the words he used to tell his children?

25 A It is.

1 Q In your experience, was that an unusual way to tell
2 someone that?

3 A It was.

4 MR. WHITLARK: Objection, Your Honor.

5 THE COURT: Your objection?

6 MR. WHITLARK: The objection is that she is
7 describing him in some unusual situation, asking
8 her -- you know, she is describing a man she has
9 only met one time in her life about what his
10 reaction was without comparing it to something
11 else. And it is objectionable.

12 MS. CAMPBELL: I believe I laid the foundation
13 with her experience as a supervisor responding and
14 dealing with families with grief, and I asked her
15 in her experience was this unusual. I limited it
16 to that.

17 THE COURT: The objection is sustained.
18 Please disregard that answer.

19 MS. CAMPBELL: Yes, ma'am.

20 THE COURT: You can ask your next question.

21 BY MS. CAMPBELL:

22 Q Once he said those words -- and those were his
23 words, right?

24 A Those were his words.

25 Q What did the children do?

1 A [B.P.] started crying and [Z.P.] -- I don't think it
2 quite registered with him. He was just looking
3 around to see what everybody else's reaction was.

4 [B.P.] basically put her hands in her face and her
5 feet up and started crying.

6 Brett's mom then tells Brett, you know, Go hug
7 your daughter. And he does briefly.

8 (Pause.)

9 Q You said once he hugged her briefly, what did he
10 do?

11 A He basically told her to stop crying. He tells
12 her, Stop crying. And he gets up and he is really
13 agitated, and his mom and dad go to him and --

14 Q Are you okay?

15 A (Nods affirmatively.)

16 Q Did you talk to him about what he just said about
17 telling his daughter to stop crying?

18 A I did. I told him that she was allowed to react
19 any way she wanted to because her mom had just
20 died, that he should allow her to cry.

21 Q Did he say anything when you had told him that?

22 A He did not. He was talking to his parents, and
23 they were talking about getting an attorney, or
24 something like that. I told them they needed to
25 leave the room, and they did.

- 1 Q So he and his parents left the room and continued
- 2 their conversation?
- 3 A Correct. And then I stood there and sat with
- 4 B.P....
- 5 Q What was B.P. doing at this point?
- 6 A Crying.
- 7 Q And what were you doing for B.P.?
- 8 A I was just trying to console her.
- 9 Q Did you have a conversation with B.P. trying to
- 10 console her?
- 11 A I did. I gave her a little more information as to,
- 12 you know, what happened, that mom had been shot,
- 13 and, you know, basically asked her what happy
- 14 memories she had of mom, you know, that sort of
- 15 stuff. She told me she enjoyed cheerleading and
- 16 that her mom, you know, helped her with that, that
- 17 type of conversation.
- 18 Q At some point did Brett Parker and his parents come
- 19 back into the room where his children were?
- 20 A They did. And at some point we all -- the
- 21 children, he, his parents, and I and Talkish -- all
- 22 sat down and talked about getting the children some
- 23 counseling and some other services that would be
- 24 available to the children.
- 25 Q And did you stay there at the parents' house for a

1 period of time?

2 A I did. I stood there for at least 30, 40, minutes.

3 Q And at some point you left?

4 A I did. Then I left and there was other family
5 members arriving and stuff, and B.P.'s[verbatim]
6 mom went to B.P. and, you know, she started
7 consoling her. And I kind of excused myself.

8 Q Whose mom?

9 A Brett's mom. Brett's mom.

10 Q And at that point you felt comfortable leaving?

11 A Correct. You know, she was like, I've got her.
12 And so, you know, she was being -- you know, taking
13 care of her. So at that point I thought it was
14 okay for me to leave.

15 Q During the period of time you were there, other
16 than that one thing you described when his mother
17 told him to go hug her, was Brett consoling B.P.
18 in any way?

19 A No.

20 MS. CAMPBELL: I don't have anything further.

21 MR. WHITLARK: May it please the Court?

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. WHITLARK:

25 Q Sergeant, is it Yturria?

- 1 A Yturria.
- 2 Q I noticed that you didn't make reference to a
- 3 report you did while you were just testifying. You
- 4 remembered a great many details, did you not?
- 5 A Uh-huh.
- 6 Q And not once did you look down at the report you
- 7 had done, did you?
- 8 A At this report?
- 9 Q Yes.
- 10 A Uh-huh.
- 11 Q I mean, you've had meetings about testifying in
- 12 this case, haven't you, ma'am?
- 13 A I had one.
- 14 Q Uh-huh. Well, you did a written report in this
- 15 case, didn't you?
- 16 A That's correct, a statement, yes.
- 17 Q Okay. When did you do that report?
- 18 A I don't know, maybe a day, two days, three days
- 19 later. I'm not sure.
- 20 Q Okay. Do you have the report with you?
- 21 A I do.
- 22 Q May I see it?
- 23 A Yes.
- 24 (Complies.)
- 25 (Pause.)

1 Q Who asked you to do the report?

2 A We do follow-up statements for things that we
3 believe are critical stuff, and then we have a
4 separate database for the victims' service unit to
5 enter detailed information.

6 Q Okay. And this report was done, you think, at
7 least one day later?

8 A At least one day later.

9 Q Okay. Did you have any conversations with Major
10 Smith or Investigator Holdorf about this case
11 before you did this report?

12 A Other than when I arrived on scene? Is that what
13 you are talking about?

14 Q I'm asking you: Did you have any conversations
15 with any of the investigators on this case before
16 you did this report?

17 A Yes. I talked to them when I arrived on scene. I
18 talked to them when we met up when they were
19 bringing Brett back to the house, to his parents'
20 house. I mean, I talked to them numerous times.

21 Q And they wanted to know if you could add anything
22 to their investigation, didn't they?

23 A No. I mean, I don't normally add stuff. I don't
24 investigate. I don't normally add into the
25 investigation.

- 1 Q Okay. Well, who were you with? Ms. Ducate, is
- 2 that it? Were y'all --
- 3 A Right. I'm with the victims' services.
- 4 Q Y'all were together, right?
- 5 A Uh-huh.
- 6 Q And you just heard her testify, did you not?
- 7 A I did.
- 8 Q And in her testimony she said she heard Brett, when
- 9 his dad was there, ask a question: What is my
- 10 dad -- does he know what happened? Or what does he
- 11 think happened? Right?
- 12 A Uh-huh. I did hear him say that, yes.
- 13 Q Okay. Now, I'm going to ask you to make reference
- 14 to your report, if you don't mind.
- 15 A Uh-huh.
- 16 Q And come down -- this report, although done -- not
- 17 done on 4/13, it is dated 4/13, isn't it?
- 18 A Correct.
- 19 Q Okay. And I want you to come down now -- one, two,
- 20 three, four, five, six, seven -- come down about
- 21 eight lines, where it says: We also ...
- 22 Do you see that?
- 23 A Uh-huh.
- 24 Q Now, Ms. Ducate, that just testified, you heard her
- 25 say --

1 A Yes, sir.

2 Q You heard her testimony that when Brett's dad got
3 there, he said that, right?

4 A Correct.

5 Q Would you mind reading to the jury what you have
6 written where I just asked you, "We also..." Would
7 you please read that to them?

8 A "We also informed him that his son Brett had gone
9 with Investigator Holdorf to our headquarters."

10 Do you want me to continue?

11 Q No. No, that's all. So when he got there, he told
12 him, Well, your son's gone to headquarters, right?
13 You told him his son had gone to headquarters,
14 right?

15 A Right, because he asked where his son was and if he
16 was okay.

17 Q I'm sorry?

18 A I said yes, because he asked how his son was and if
19 he was okay.

20 Q And you told him he has gone to headquarters with
21 Holdorf and Smith?

22 A Correct.

23 Q But Ducate just said that Brett was there making
24 some comments about: What does my dad think
25 happened? But he wasn't even there, was he?

1 Thank you, ma'am.

2 MR. WHITLARK: No further questions, Your
3 Honor.

4 THE COURT: Let her answer.

5 You can answer the question, ma'am.

6 A Oh. I'm sorry. There were at two different times
7 that we're talking about. It is not the same. Not
8 the same time. Because when she mentioned that
9 what Brett said, What did my dad say, her and I
10 were at the top of the driveway up near the garage
11 area where we were getting briefed. I'm speaking
12 with Major Smith and Investigator Holdorf.

13 The conversation that takes place with
14 Mr. Parker, the dad, happened once we go down and
15 we are at the end of the road.

16 Q I hear you. Well --

17 MS. CAMPBELL: Your Honor, he said no further
18 questions.

19 MR. WHITLARK: Well, she just testified
20 further too, Your Honor. I didn't, you know --

21 THE COURT: She answered your question. Do
22 you have other questions?

23 MR. WHITLARK: I do have another question,
24 please, Your Honor.

25 THE COURT: All right.

1 BY MR. WHITLARK:

2 Q Now, you just mentioned a second ago that when you
3 were over at their house -- oh, and by the way,
4 what was Mr. Parker's mental condition? I mean,
5 his wife had just been murdered, right?

6 A Correct.

7 Q And he had to kill somebody he knows, right?

8 A Uh-huh.

9 Q And then Holdorf and Smith got him in a car and
10 drove him to headquarters and took a statement from
11 him?

12 A (Nods affirmatively.)

13 Q I mean, we're talking not very long after this
14 happened, right?

15 A Correct.

16 Q Now, and I'm not trying to give you a hard time
17 here, Investigator, but, I mean, you know,
18 obviously he was mentally upset, was he not?

19 A When I arrived on scene, he was very agitated. He
20 had his hands on his head, you know, pacing back
21 and forth. So, yes, I mean, you could tell that he
22 was distraught.

23 Q Thank you.

24 A Uh-huh.

25 Q Thank you. Also, you had mentioned that he said

1 something about an attorney or something, right?

2 A His dad and he and his mom, once we were in the
3 home, in his parents' home.

4 Q Okay. I just want you to take a look at anywhere
5 in your report where you say that. I just wondered
6 if it was in there.

7 A It's not.

8 Q Okay. But you were asked about this report by
9 Investigator Holdorf and Investigator Smith,
10 weren't you?

11 A I was asked.

12 Q Uh-huh. To give them anything that could help,
13 right?

14 A No, not quite like that.

15 Q But that is what they meant, and you know it.

16 A Well, I mean, it's pretty customary for us to do
17 follow-up statements. You make it sound like it is
18 at their request, but --

19 Q It was more than a day after this, though, wasn't
20 it, ma'am, when that report was made?

21 A It could have been a day or two after.

22 Q Thank you very much.

23 A Uh-huh.

24 MR. WHITLARK: No further questions.

25 THE COURT: Thank you. Yes, ma'am?

1 MS. CAMPBELL: No, Your Honor. We don't have
2 any further questions.

3 THE COURT: All right. You may step down.
4 (Witness steps down.)

5 MS. CAMPBELL: Your Honor, may she be excused?

6 THE COURT: Any objection to excuse this
7 witness?

8 MR. WHITLARK: No, none from the Defense, Your
9 Honor.

10 THE COURT: All right. You are free to leave,
11 ma'am.

12 (Witness excused.)

13 THE COURT: Call your next witness.

14 MS. CAMPBELL: Thank you, Your Honor.

15 The State would call Jane Powell.

16 (Witness approaches.)

17 THE BAILIFF: Place your left hand on the
18 Bible, and raise your right hand, please.

19 (Witness complies.)

20 THE CLERK: Do you swear or affirm the
21 testimony you are about to give in this case will
22 be the truth, the whole truth, and nothing but the
23 truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Have a seat in the witness box.

1 (Witness complies.)

2 THE CLERK: State your full name for the
3 record, please.

4 THE WITNESS: Jane Powell.

5 JANE POWELL,
6 after being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. CAMPBELL:

9 Q Ms. Powell, where are you employed?

10 A Richland County Coroner's Office.

11 Q What do you do there, ma'am?

12 A I am an investigator with the Coroner's Office.

13 Q And as an investigator with the Coroner's Office,
14 what do your duties include?

15 A We respond to death scenes that are of questionable
16 death, whether it is -- or medically not witnessed,
17 natural deaths, whether it is a natural, homicide,
18 suicide, of that sort, accident.

19 Q And it is unusual in your line of work that you
20 respond when the police have already been called?

21 A Yes.

22 Q That happens?

23 A Yes.

24 Q And I want to turn your attention back to Friday
25 the 13th of last year. Did you respond to 12

1 Tackeria Court?

2 A Yes, ma'am.

3 Q And were there other members of your office that
4 also responded?

5 A Yes, ma'am.

6 Q Including the coroner himself?

7 A Yes, ma'am.

8 Q And when you respond, what do your duties include?

9 A I was there to assist another deputy that had
10 gotten there prior to my arrival. And my duties on
11 this particular scene were to assist him in any way
12 that he needed, whether it be to scribe notes, help
13 in photographing or collecting evidence off the
14 bodies to turn over to the law enforcement office.

15 Q Okay. So as part of your duties, it is not unusual
16 for you, once the crime scene had been processed,
17 to collect evidence, such as identifying evidence,
18 information?

19 A Correct.

20 Q Specifically in this case, were you requested to
21 assist, once the crime scene unit had finished and
22 once the bodies had been placed in the body bags,
23 in retrieving any identifying information from the
24 person of Bryan Capnerhurst?

25 A That's correct.

1 Q Tell the jury how that happened.

2 A Once the scene had been processed by law
3 enforcement, we then were allowed to -- we have a
4 procedure where we will place, especially if it is
5 a scene of questionable death, we will place the
6 body in a sheet, and then the body is then placed
7 into a body bag encased in the sheet so that any
8 evidence is maintained within that body bag.

9 There were -- his pockets had not been gone
10 into yet to find positive identifying markers off
11 of him, such as ID, anything like that, so I had
12 gloves on, and on his left side, we start at the
13 head and go down the body checking for pockets, and
14 we remove anything from the pockets if it is not
15 going to disturb too much evidence. And I removed
16 a cellphone and a wallet.

17 Q I am going to show you what has been marked as
18 State's Exhibit Number 378 and 394. Do you
19 recognize these two items?

20 A Those would be the bags that the Sheriff's
21 Department put these items in.

22 Q I will just do it for ID then.

23 (WHEREUPON, State's Exhibit No. 378 was
24 marked for identification only.)

25 (WHEREUPON, State's Exhibit No. 394 was

1 marked for identification only.)

2 BY MS. CAMPBELL:

3 Q 378 for ID purposes, is that a phone from -- such
4 as you took from Bryan Capnerhurst?

5 A Correct.

6 Q And then in 394 for ID, is that the wallet -- a
7 wallet?

8 A That's correct.

9 Q And, again, you removed those items. You mentioned
10 that in this case you started on the left side of
11 the body?

12 A Yes, ma'am.

13 Q And who was also there when this was happening?

14 A Trevor Holt was there. And also our transport
15 service.

16 Q Okay. And the purpose of putting it in the body
17 bag and then having the transport service is to
18 take the body where?

19 A To the morgue where -- which is our holding
20 facility, which is at Richland Memorial, and it is
21 a secure location, and that is also where the
22 autopsies are performed.

23 Q Okay. And so just prior to that, it is customary,
24 you may get identifying information off of them for
25 evidence?

1 A Correct.

2 Q And when you went through the left side in the
3 pants pocket of Bryan Capnerhurst, did you remove
4 certain items?

5 A His cellphone and his wallet.

6 Q Those are marked for ID in 394 and 378?

7 A Correct.

8 Q And which pocket did you get those out of? Do you
9 recall specifically?

10 A His cellphone, I believe, came out of his front
11 left pocket.

12 Q His front left pocket?

13 A That's correct.

14 Q And that would have been from the shorts he was
15 wearing that day?

16 A Yes, ma'am.

17 Q And the wallet, would that have also come from the
18 left side?

19 A Left side rear pocket.

20 Q Do you recall if it was in the front pocket or the
21 back pocket?

22 A I vaguely recall it was in the rear pocket, because
23 we had to roll him.

24 Q And, again, removal of these items would have been
25 after the crime scene had finished processing the

1 scene and the bodies were being removed?

2 A That is correct.

3 Q Thank you, ma'am. And that is pretty much your
4 role in this case?

5 A That is all I did in this case, yes, ma'am.

6 Q Thank you, ma'am.

7 MS. CAMPBELL: I don't have anything further.

8 THE COURT: Please answer any questions that
9 Mr. Whitlark has.

10 MR. WHITLARK: May it please the Court, Your
11 Honor?

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. WHITLARK:

15 Q Hello, Ms. Powell. Ms. Powell, I am going to hand
16 you this document here and ask you if you can
17 identify it for us. Do you recognize what that is?

18 A It is a case report from our office.

19 Q All right. And it is on this case, right?

20 A I can't find the front page to it.

21 Q Here, let me do it for you.

22 (Complies.)

23 A Yes. Decedent's name, Bryant Capnerhurst.

24 Q Okay. Have you ever seen this report before?

25 A Yes, sir.

1 Q Okay. Do you recognize it? With the page I'm on,
2 do you recognize that?

3 A Yes, sir.

4 Q Okay. I want you to look down there. Do you see
5 your name over there on the left-hand side?

6 A I do.

7 Q What time does it say you arrived on the scene of
8 this?

9 A At 2:30 p.m. on 4/13/2012.

10 Q And you were only there for -- the job was to do
11 what, to do -- inventory him or something?

12 A To assist lead deputy on the scene with anything
13 that he needed, whether it was to take notes,
14 photographs, assist him in collecting anything.

15 Q Okay. And he -- and, now, he wasn't outside when
16 you took that stuff from him, was he?

17 A Who?

18 Q The body of this gentleman?

19 A Of Mr. Capnerhurst?

20 Q Yes?

21 A No.

22 Q You went inside the house, right?

23 A That's correct. I'm on the crime scene log.

24 Q Okay. All right. And you were with the Coroner's
25 Office?

1 A Right.

2 Q Right. And was it your job to come get these
3 things?

4 A I was requested by the deputy to assist, yes.

5 Q Okay. Now, what time does it say you arrived
6 again?

7 A 2:30.

8 Q Now, have you been here today and heard testimony
9 about it is a secure scene?

10 A Uh-huh.

11 Q And if you go inside, you have got to sign a sheet,
12 don't you?

13 A That's correct.

14 Q I'm going to hand you -- actually I'm going to hand
15 you what has been marked as Defense Exhibit
16 Number 1. And I'm going to ask you if you can find
17 your name on that page about going in the house?

18 A I do.

19 Q Okay. You initialed it? Did you initial that?

20 A I initialed it at my time out, not at my time in.

21 Q Okay. What time does it say you got there and went
22 in the house?

23 A 1755.

24 Q What is that realtime on that?

25 A 5:55.

1 Q Uh-huh. But this says you got -- you went there at
2 2:30, right?

3 A I arrived on the scene at 2:30.

4 Q Okay. So you didn't go in the house for two hours?

5 A That's correct.

6 Q You remember that specifically?

7 A I know that -- I don't remember specifically the
8 time lapse of when I arrived on the scene and went
9 in. It was a while before entering into the home
10 due to the crime scene team processing the scene.

11 Q Uh-huh. I'm going to ask you if you can read for
12 the jury off the exhibit what investigator's name
13 is gone through above your name?

14 A It looks like Sergeant Lindler.

15 Q Lindler?

16 A Yes.

17 Q And he has got an arrow through it. Do you
18 remember him being there?

19 A Not off the top of my head. There were a lot of
20 people there.

21 Q Do you know him?

22 A Yes, I know him.

23 Q Do you recall whether he was there?

24 A I just said, no, I don't recall if he was there or
25 not. There were a lot of people there.

1 Q Do you know if Don Robinson was there? Do you know
2 Don Robinson?

3 A Yes, sir, I know Don Robinson.

4 Q All right. Was he there?

5 A I don't recall if he was there or not.

6 Q Okay. Who was there from the Coroner's Office?

7 A Coroner Watts and Zem Dozier.

8 Q Okay. Was Ms. Rawl there?

9 A I did not see her.

10 Q You didn't see her? Okay. Describe for me, if you
11 will -- and I mean in great detail, if you don't
12 mind -- any contact you had with that cellphone
13 right there, that one, please tell me every detail
14 of how you got it, where it was, who put it -- go
15 ahead. Please tell me what happened with it.

16 A Okay. The Decedent was placed on a white sheet in
17 the attic room where he was discovered and taken,
18 wrapped in the white sheet, and carried and placed
19 in a body bag in the room just outside of the attic
20 room.

21 Q All right.

22 A I had gloves on the whole time. And I also had
23 shoe covers on.

24 I started at the top of the Decedent's head
25 and went down the left side of his body feeling for

1 pockets. Found a pocket on the front of his pants.
2 Removed the cellphone. Handed the cellphone to
3 Trevor Holt, who was the crime scene investigator
4 there processing his body with me.

5 Then we rolled the decedent over on his side,
6 felt the back pockets, felt something in the
7 pocket. Turned the pocket wrong-side out. I
8 removed a wallet, handed that wallet to Trevor
9 Holt. Proceeded down to his feet.

10 Then I moved to the right side of the
11 Decedent's body and did the same process, and did
12 not recover anything on the right side of his body.

13 Q Was it your specific job to remove that item right
14 there, that cellphone?

15 A Yes, sir.

16 Q Okay. And it was in his pocket when you got there?

17 A Yes, sir.

18 Q Okay. Did you ever see anybody around his body
19 reach in his pockets or see anyone else with that
20 cellphone other than you?

21 A No, sir.

22 Q Ever?

23 A No, sir.

24 Q Okay. Could you tell whether or not that cellphone
25 had been taken out of his pocket and put back in?

1 A It did not appear to have been.

2 Q Okay. Was there any blood or anything on it,
3 anything like that?

4 A I can't recall.

5 Q Do you know if it was on or not?

6 A I can't recall.

7 Q Did you talk to anybody about that cellphone?

8 A No, sir.

9 Q Have you talked to anybody about that cellphone
10 since this case, since you were over there that
11 day?

12 A When the Solicitor's Office asked me if I
13 remembered where I removed the cellphone from.

14 Q Uh-huh. Have you talked to any of the
15 investigators in this case, specifically I'm asking
16 Investigator Lindler and Investigator Robinson,
17 about that cellphone right there?

18 A No.

19 Q Okay. Have you ever discussed with Ms. Rawl that
20 cellphone?

21 A No.

22 Q And you are telling me you didn't go into the house
23 until almost 6:00 o'clock that night?

24 A That's correct.

25 Q That is what this says, right?

1 A That's correct.

2 Q But this says you got there at 2:30, right?

3 A I arrived on the scene at 2:30.

4 Q So you just stood there for three or four hours and
5 then went inside and did this job?

6 A That's correct.

7 Q And that is the only job you were there to do?

8 A Yes, sir.

9 Q Uh-huh. Is there anything else you can tell us
10 about this cellphone, ma'am, that you know about?

11 A No, sir.

12 Q Uh-huh. All right.

13 MR. WHITLARK: No further questions.

14 THE COURT: Yes, ma'am?

15 MS. CAMPBELL: Nothing further, Your Honor.

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

17 (Witness steps down.)

18 THE COURT: Can I see you all one second?

19 (WHEREUPON, a bench conference was held

20 in the presence of the jury but out of

21 the hearing of the jury.)

22 THE COURT: All right. Ladies and gentlemen,
23 they tell me that the next witness, it will take
24 some time, and it is 5:00 o'clock. And so
25 therefore we will go ahead and take our evening

1 break.

2 I will once again caution you against
3 listening to any media outlets, anything regarding
4 this case, any radio or TV news outlets regarding
5 this case, and also talking to anyone regarding
6 this case. It would be improper for you to do
7 that. It is improper for you to talk to each
8 other. It is also improper for you to form an
9 opinion in your mind at this point in the case. So
10 I would ask that you not do those things.

11 Remember to wear your badge. We will start
12 back at 9:30 in the morning. And we will see you
13 then. I hope you have a restful evening.

14 Thank you.

15 (WHEREUPON, the jury is excused at 4:59
16 p.m.)

17 THE COURT: We'll start back at 9:30 in the
18 morning. Have you all had an opportunity to review
19 everything? I know earlier in the week y'all
20 talked about a reciprocal Rule 5. And then have
21 you had an opportunity to review -- there were some
22 documents you were trying to review, I think phone
23 records?

24 MR. WHITLARK: Yes, Your Honor. May it please
25 the Court? I'm satisfied. I just want stuff, you

1 know, put into evidence. That is all.

2 THE COURT: Yes, sir.

3 MR. WHITLARK: They can put all that stuff in.
4 That's fine with me. They don't have to call
5 records people.

6 THE COURT: Okay.

7 MR. WHITLARK: I want to be able to put mine
8 in. Specifically I want the Vonage phone records
9 from James Morgan put into evidence as Defense
10 Exhibit Number 2.

11 MS. CAMPBELL: We can do -- we can't do that
12 yet. When it is time, of course, we will not have
13 a problem with that.

14 MR. WHITLARK: Not yet.

15 THE COURT: And have you had all an
16 opportunity to --

17 MS. CAMPBELL: They have provided us with some
18 copies of cards yesterday and with the phone
19 records, Your Honor. I'm not aware of anything
20 else they have. I'm not aware of any -- I do not
21 believe I have -- I'm aware of who their experts
22 are. I haven't received any reports. I don't know
23 if there are any from the experts or from his
24 investigators.

25 MR. WHITLARK: We have no written reports from

1 our experts. Actually, my powder expert and my
2 forensic expert are still in the midst of doing
3 this stuff.

4 He wants to come here, as Your Honor knows,
5 and test both those weapons. We have all agreed
6 that they will work with us to get him in here.

7 THE COURT: All right. Have you turned over
8 their -- they will need to turn over their CVs to
9 her.

10 MR. WHITLARK: Yes.

11 THE COURT: All right. Let me -- I need to
12 talk to y'all anyway regarding scheduling, so I can
13 see if I need to e-mail Court Administration on
14 what I need to do. So if I can see the attorneys
15 in the back. I do not need a record, to put it on
16 the record. It is just regarding scheduling.

17 All right, we will start back at 9:30 in the
18 morning.

19 (WHEREUPON, the proceedings concluded at
20 5:08 p.m.)

21 MAY 9, 2013

22 (WHEREUPON, the following takes place
23 outside the presence of the jury.)

24 THE COURT: Good morning. You may be seated.

25 All right, a couple of issues this morning, as

1 I told you, while we are waiting.

2 One of the jurors -- and I think it is the
3 alternate -- Juror Number 258 has not shown up. I
4 think it is one of the alternates.

5 The jury coordinator called her, and she said
6 that she had a 10-year-old child that was sick and
7 that she was not coming, although the sheet that
8 they had, the little information sheet, says she
9 doesn't have any children.

10 And Sheila asked her, she said, You said you
11 don't have any children on the sheet. And she hung
12 the phone up on her. So. She is an alternate. I
13 say we keep on moving.

14 MS. CAMPBELL: Yes, ma'am.

15 THE COURT: And take her off.

16 MR. WHITLARK: That's fine with us, Your
17 Honor.

18 THE COURT: And I think the deputies or the
19 Clerk's Office will take care of her.

20 All right. That was the first thing.

21 The second thing is, yet I have another note,
22 and I will mark this as Court Exhibit Number 2.

23 (WHEREUPON, Court's Exhibit No. 2 was
24 marked for identification only.)

25 THE COURT: It says, from the juror: As I was

1 leaving for lunch, I was asked by someone from
2 court if we were going to be sequestered during
3 this trial. He was told we couldn't talk to
4 anyone. He insisted. He only asked if we were
5 going to be sequestered.

6 I can bring the juror in and ask and they can
7 tell -- they said they know exactly who it is.

8 MS. CAMPBELL: That would be great.

9 THE COURT: All right.

10 MR. WHITLARK: Fine.

11 THE COURT: All right. The juror, whoever --
12 if it is one juror or two jurors. I don't know who
13 it is.

14 Let me see y'all one second.

15 (WHEREUPON, a bench conference was
16 held.)

17 (WHEREUPON, the Court and attorneys step
18 in the back with the jurors.)

19 THE BAILIFF: Court come to order. Remain
20 seated.

21 THE COURT: All right. You can keep your
22 seat.

23 (WHEREUPON, a bench conference was held.)

24 THE COURT: All right. As to the jurors,
25 Court Exhibit Number 2, the jurors -- it was two

1 jurors. I thought it was one juror. There was one
2 juror that -- for purposes of the record, there
3 were two jurors who stated that they were
4 approached. And they have identified the person,
5 and I told the lawyers, and I think it is
6 Mr. Parker. I don't know his first name.

7 MR. WHITLARK: It is Jack, Your Honor.

8 THE COURT: Jack Parker. I will be glad to
9 hear from the State and also from the Defense
10 regarding -- and both parties were present when we
11 met with the jurors, and they identified -- and
12 they said the question was just: If we were to be
13 sequestered.

14 Yes, ma'am?

15 MS. CAMPBELL: May it please the Court, Your
16 Honor? Based on the description given by the
17 jurors, I think the Defense and the State both
18 agree that it was Jack Parker that approached them
19 based on the description.

20 And at this time, Your Honor, yesterday or the
21 day before, I'm not sure which day, but you
22 specifically advised the entire audience and all
23 these people -- and he was present at the time --
24 not to talk to the jurors.

25 He was also in here when you told the jurors:

1 If anyone tries to approach you, show your badge.

2 You explained to the jurors that no one
3 involved could talk to them. You admonished the
4 witnesses and the family members in the trial to
5 not approach the jurors.

6 And, Your Honor, at this point I think he is
7 in violation of your court order, Your Honor, and
8 we would move that he be held in contempt or an
9 appropriate measure be taken.

10 THE COURT: Yes, sir, Mr. Fedor?

11 MR. FEDOR: Your Honor, in behalf of
12 Mr. Parker, he denies that this ever happened. He
13 was with his family during the whole lunchtime, and
14 he hasn't approached any jurors about anything.

15 THE COURT: All right. What I am going to do,
16 as to the State's -- the State's position is that I
17 hold him in contempt of court. I will take that
18 under advisement to be dealt with after the trial.

19 But for purposes of the trial, sir, I am going
20 to ask that you excuse yourself from the
21 proceedings of the trial. I understand that you
22 are a witness.

23 When you are -- when it is time for you to
24 testify, you will be allowed to come in the
25 courthouse with Mr. Whitlark and Mr. Fedor, if you

1 are escorted by them.

2 But other than that, I am going to have to
3 excuse you from the trial. I can't get into -- I
4 mean, I can bring the jurors out here, but my
5 concern is they don't know -- they don't know the
6 relationship.

7 I'm not trying to get into the jurors saying,
8 This is the person. But they described you as the
9 person that was sitting behind the Defendant.

10 And in order to ensure that the Defendant has
11 a fair trial, I think it is better that we handle
12 that issue after the trial.

13 So I will ask that you be excused. I
14 understand that you deny it, but you are going to
15 be excused from the proceedings in the trial. The
16 jurors described what you had on yesterday and
17 described you to the Court.

18 All right. As for everyone else -- and we
19 will take a break -- as for everyone else, I am
20 going to say this one more time. I do not like
21 holding people in contempt of court, but I will
22 hold you in contempt of court. I will fine you or
23 I will put you in jail. We are not going to talk
24 to the jurors. This trial is going to take
25 possibly two weeks. It is going to take two weeks.

1 I do not want anyone having any contact with the
2 jurors.

3 I want to make sure that the State has an
4 opportunity to present their case, and I have to
5 make sure that the Defendant has a fair trial.

6 And I cannot have witnesses -- witnesses or
7 people, onlookers -- trying to have contact with
8 the jurors.

9 So, that is what I am going to do.

10 Mr. Whitlark, Mr. Fedor, you all can talk to
11 the senior Mr. Parker.

12 As to your motion, Ms. Campbell, we will deal
13 with that at the end of the trial.

14 And we will proceed without the last juror
15 that is not here. The Clerk's Office is handling
16 that with her.

17 And we will take about a 10-minute break.

18 All right. Thank you.

19 MR. WHITLARK: Thank you, Your Honor.

20 (WHEREUPON, a break was taken.)

21 THE COURT: Are you ready to call your
22 witness?

23 MS. CAMPBELL: Ready.

24 MR. WHITLARK: The Defense is ready.

25 THE COURT: Let's bring them in. You can

1 bring them in. Somebody has to leave at 6:00.

2 (WHEREUPON, the jury came into open
3 court at approximately 11:21 a.m.)

4 THE BAILIFF: All jurors are present, Your
5 Honor.

6 THE COURT: All right. Good morning, again,
7 ladies and gentlemen of the jury. At this time we
8 will continue with the State's case.

9 Just because I forgot to address it yesterday,
10 the note that you all sent up, someone has to leave
11 by 6:30. And I'm not sure if that is every day,
12 but you can let me know during lunch if it is every
13 day.

14 Also, someone was wondering about working this
15 weekend. That should not be a problem.

16 And, also, someone says they have to leave
17 before 6:00 o'clock this afternoon. I'm not sure.
18 It is going to depend on the testimony. If you can
19 make arrangements during lunch, that would be
20 great. It depends on where we are in the testimony
21 when we will stop.

22 And as to the doctor's appointment on Monday
23 at 10:00, you may have to see if we can get that --
24 if you can reschedule it until earlier. If you can
25 try to do that, that would be greatly appreciated.

1 If not, I'll be glad to talk to the person
2 privately to find out if it is something that can
3 be rescheduled. And if it can -- if it can't, we
4 will just have to try to figure out a way to work
5 around it with the doctor's office.

6 All right. Yes, ma'am.

7 MS. CAMPBELL: May it please the Court? The
8 State calls Sergeant Stan Richards.

9 (Witness approaches.)

10 THE BAILIFF: Place your left hand on the
11 Bible, and raise your right hand, please.

12 (Witness complies.)

13 THE CLERK: Do you swear or affirm the
14 testimony you are about to give in this case will
15 be the truth, the whole truth, and nothing but the
16 truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Have a seat in the witness box.

19 (Witness complies.)

20 THE CLERK: State your full name for the
21 record, please.

22 THE WITNESS: Stan Richards, R-I-C-H-A-R-D-S.

23 STAN RICHARDS,
24 after being duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. CAMPBELL:

2 Q Sergeant Richards, where are you employed?

3 A Richland County Sheriff's Department Crime Scene
4 Unit.

5 Q As part of the Crime Scene Unit, what do your
6 duties includes?

7 A My duties as Sergeant of the Crime Scene Unit
8 includes the supervision of nine field CSIs, two
9 latent print analysts, and an administrative clerk.
10 I'm the first line supervisor of those individuals.

11 Q And when you say line CSIs, what does CSI stand
12 for?

13 A Crime scene investigators.

14 Q And can you tell this jury, as a crime scene
15 investigator, what do you typically do when you
16 respond to a crime scene?

17 A Well, we respond to any type of crime scene that we
18 are requested for. And once we get there, our
19 methodology usually remains basically the same.
20 That is, we assess the situation, observe what is
21 there, document, using different aspects of camera
22 equipment, and things of that nature. And we
23 process, collect, and analyze.

24 And then that is physical evidence that we're
25 dealing with in these locations. And when we

1 collect these things, we bring them back to our
2 laboratory, and they are being processed and
3 analyzed. Hopefully -- or maybe -- some aspect of
4 that can be used in a reconstruction effort.

5 Q In a reconstruction effort?

6 A Yes, ma'am.

7 Q And can you tell this jury a little bit about your
8 education and your training as a crime scene
9 analyst?

10 A Yes. I spent about 23 years in the military before
11 coming to Richland County. And while I was in the
12 military, I went through the ranks and enlisted,
13 and went to officer training school, and retired as
14 a commissioned officer.

15 While there I attended several different
16 institutions for my education, the first being
17 Gainesville College from 1971 to '73, where I
18 studied history.

19 I attended Saint Leo University from 1980 to
20 '82, where I got a degree in criminal justice. I
21 also attended Waverly Baptist University from 1990
22 to 1993 where I studied sociology.

23 And I also am a graduate of the US Army and
24 Command and General Staff College where I studied
25 quantitative analysis.

1 And in 1994 when I retired, I came to work for
2 the Richland County Sheriff's Department. And I
3 have been in the Crime Scene Unit for a little over
4 ten years now.

5 Q Can you specifically tell the jury a little bit
6 about your education and your training in crime
7 scenes?

8 A Yes. While I have been in crime scene, I have been
9 fortunate enough to attend quite a few courses and
10 study under some really good individuals.

11 Just to name a few of these areas: I studied
12 in blood stain pattern analysis, latent print
13 processing, basic fingerprints, crime scene
14 photography, advanced crime scene photography,
15 forensic questioned documentation, forensic
16 shooting reconstruction at gunshot training
17 facilities under Lucien Haag, who is one of the
18 foremost individuals in shooting reconstruction,
19 shoe and tire track impressions, crime scene
20 reconstruction again, complex latent print
21 examination, advanced blood pattern analysis,
22 shooting incident documentation and reconstruction,
23 forensic anthropology and archeology, Leica
24 ScanStation, and blood stain pattern analysis,
25 again, under Gardner and Bevel, who also are one of

1 the foremost individuals in that area, and advanced
2 crime scene and reconstruction under Gardner and
3 Bevel also.

4 I have been to forensic anthropology seminars,
5 forensic pathology seminars, and DNA seminars. I
6 am a certified crime scene investigator, a
7 certified footwear examiner, and a certified blood
8 stain pattern examiner through the International
9 Association for Identification.

10 I am an active member of the International
11 Association for Identification, the South Carolina
12 Division for the International Association for
13 Identification, the International Crime Scene
14 Investigation Association, Association of Crime
15 Scene Reconstruction, and International Association
16 of Blood Stain Pattern Analysis.

17 Q And have you been qualified before as an expert in
18 the field of crime scene investigation?

19 A Yes, ma'am.

20 Q Including all those areas you just mentioned as
21 part of your training?

22 A Yes, ma'am.

23 Q And approximately how many times have you been
24 qualified as a crime scene investigator?

25 A Thirty-one.

1 MS. CAMPBELL: Your Honor, at this time we
2 would offer him as an expert in crime scene
3 investigation.

4 MR. WHITLARK: I would like to voir dire.
5 please, Your Honor.

6 THE COURT: Yes, sir.

7 MR. WHITLARK: May it please the Court?

8 VOIR DIRE EXAMINATION

9 BY MR. WHITLARK:

10 Q What is your rank again?

11 A Sergeant.

12 Q Hey, Sergeant Richards. How are you doing?

13 A Fine, sir.

14 Q Okay. Now, when was the first time you ever
15 studied anything to do with analyzing crime scenes?
16 Where were you? You said it was about ten years
17 ago?

18 A I have been with the Crime Scene Unit for ten
19 years.

20 Q Yes, sir.

21 A Yes, sir.

22 Q What was your first -- the first training that you
23 had in this area?

24 A The very first training?

25 Q Yes, sir.

1 A Probably in-house training that we received when we
2 first arrived here. I was a crime scene
3 investigator when I first arrived, just like
4 everybody else.

5 Q Okay.

6 A We get in-house training, which can last now up to
7 two years for an individual.

8 Q Right.

9 A To go through these disciplines that I have talked
10 about. That would have been the first training,
11 yes, sir.

12 Q Okay. Do you know -- I mean, did you train for
13 about two years with the Sheriff's Department? I
14 mean, like you just told me?

15 A I've been training for ten years.

16 Q Well, I gotcha. It is an ongoing thing?

17 A Yes, sir.

18 Q I understand. I understand. But, I mean, did you
19 reach a point where they certified you or said,
20 Okay, you're certified for crime scene analysis
21 now, you've done enough, you've seen enough?

22 A I have been certified through the International
23 Association for Identification, which is the
24 international group.

25 Q Right. Well, like I said, you said you started in

1 -- about ten years with Richland County?

2 A Yes, sir.

3 Q The first two years you were studying?

4 A And working.

5 Q Right.

6 A Yes, sir.

7 Q But do they have a point that you reach in the two
8 years where they say, You are now certified?

9 A No.

10 Q Okay. I gotcha. Do you know what year you got
11 your certification through the international?

12 A That would have been six years ago.

13 Q Okay. So you got certified about six years ago?

14 A Yes, sir.

15 Q Okay.

16 A In that -- in that area, yes, sir.

17 Q Okay. And do you have a specialty for you? I
18 mean, do they call it -- there is a bunch of y'all
19 over at Richland County, right?

20 A In my unit?

21 Q Yes, sir.

22 A Fourteen.

23 Q Fourteen of you?

24 A In my unit.

25 Q Do you have guys that do -- like a shell casing guy

1 or a blood pattern guy, somebody says, You know,
2 let's get Fred over here, he's a little better at
3 this? You know what I'm saying?

4 A We are not discipline specific. We are crime scene
5 investigators, sir.

6 Q Okay. I gotcha. I gotcha. I am just wondering
7 about that. All right. Are you undergoing any
8 type of training right now or any type of -- and I
9 know you said it is always an on-the-job thing.

10 A Yes, sir.

11 Q Are you in a course or any kind of outside courses
12 that you're taking right now, or anything like
13 that?

14 A I am currently involved in my crime scene
15 reconstruction certification.

16 Q Okay. All right. Who is that through?

17 A The International Association.

18 Q Is that a school or is that online? How do you do
19 it?

20 A It is that a school online? No. It requires the
21 study of books. You use -- right now, to let you
22 know what I am doing, I am studying through --
23 studying the reconstruction, shooting incident
24 reconstruction efforts of Lucien Haag.

25 Q Okay.

1 A I'm also studying the blood pattern books through
2 Gardner and Bevel.

3 Q Okay.

4 A I am also studying some of the different other
5 areas in order to take a qualification test in this
6 area.

7 Now, the test I'm assuming is going to be a
8 written evaluation or a written test where you have
9 to answer questions. It is going to be a practical
10 test where you have to do reconstruction efforts
11 itself.

12 Q Okay.

13 A Those -- this reconstruction certification requires
14 that you attend courses in these areas, which I
15 have. I have had Reconstruction I, Advanced
16 Reconstruction, all these under Gardner and Bevel.
17 I also had, like I said before, I have had courses
18 under Lucien Haag, shooting incident
19 reconstruction, which is required to have these
20 things.

21 Q Okay.

22 A That is the timeline that you do. Your efforts or
23 my efforts are not dictated by a certain period.

24 Q Okay.

25 A It is dictated by what I know, what I have done,

1 the experience I have had, and the education that I
2 have had.

3 Q Okay. I gotcha. I'm following you. Do you go to
4 a specific place to do this course or is there a --
5 I mean, do they have a classroom, is what I'm
6 saying, or a place you go for your testing? I
7 mean, I don't understand.

8 A Which one are you talking about? Are you talking
9 about the courses that I take or the certification?

10 Q Are you being recertified? You told me something.
11 Do you have to be recertified every so often or
12 something?

13 A Every five years.

14 Q And you are in the midst of that right now?

15 A I am in the progress of gaining a new certification
16 right now.

17 Q Okay. All right. All right. And how many scenes
18 have you done -- and when you -- were you in charge
19 this day on this case?

20 A I was the supervisor in charge, yes, sir.

21 Q Okay. All right. All right. How many guys did
22 you have with you? Do you remember?

23 A Three altogether. That included my lieutenant and
24 two other crime scene investigators.

25 Q And what were y'all to do, again? I heard you.

1 What were y'all to do when you got there? If you
2 can give me generally.

3 A Basic methodology.

4 Q Uh-huh.

5 A When we arrived, to assess the situation, make
6 observations. Then we document.

7 Q Okay.

8 A After the documentation comes the process and
9 collection, and then analyzing. And that could
10 include taking materials or items of evidence back
11 to our laboratory.

12 Q Okay.

13 MR. WHITLARK: That's all I have, Your Honor.

14 Thank you.

15 THE COURT: All right. Anything else?

16 MS. CAMPBELL: Just to follow up.

17 **VOIR DIRE EXAMINATION**

18 BY MS. CAMPBELL:

19 Q And you have been qualified in court over 30 times
20 as a crime scene investigator in what we are just
21 about to talk about?

22 A Yes, ma'am.

23 MS. CAMPBELL: Thank you.

24 MR. WHITLARK: Just one follow-up to that.

25 I'm sorry. Forgive me, Your Honor.

1 VOIR DIRE EXAMINATION

2 BY MR. WHITLARK:

3 Q Have you ever been qualified in federal court?

4 A No, sir.

5 Q All right.

6 MR. WHITLARK: That's all I have, Your Honor.

7 THE COURT: All right. Any objection? She is
8 offering him as a crime scene investigator.

9 MR. WHITLARK: No objection, Your Honor.

10 THE COURT: All right. Ladies and gentlemen
11 of the jury, normally a person cannot give opinion
12 testimony. Normally when a person testifies, they
13 must testify as to what they saw, heard, or sensed
14 by smell, or something of that nature.15 However, there is an exception when someone is
16 qualified because of education or experience. They
17 are permitted to give their opinion in certain
18 areas if the Court qualifies them that way.19 This witness will be qualified in the area of
20 crime scene investigation to give opinion testimony
21 in that area.22 That does not mean that you must accept the
23 opinion, but it is evidence for you to use in any
24 way you see fit and give the weight and credibility
25 you believe is appropriate. Thank you.

1 Yes, ma'am.

2 MS. CAMPBELL: Thank you, Your Honor.

3 DIRECT EXAMINATION CONTINUES

4 BY MS. CAMPBELL:

5 Q Sergeant, you are actually employed by the Richland
6 County Sheriff's Department?

7 A I am.

8 Q So you do not work for the federal government?

9 A No.

10 Q They have their own crime scene people who do the
11 same thing you do?

12 A I assume they do.

13 Q I want to turn your attention back to April the
14 13th of last year. Did you get called to go to an
15 address in Ascot Estates?

16 A I did.

17 Q And tell the jury how notification came to you and
18 what you did as a result of that.

19 A It was about 12:45 in the afternoon. I was
20 notified by Deputy Chief Wilson that works -- is
21 head of all the departments -- and I responded to
22 12 Tackeria Court. I arrived there about 1:40 in
23 the afternoon.

24 Q Once you got to the scene, what, if anything, did
25 y'all do?

1 A Well, once I got there, I observed crime scene tape
2 across the front porch and across the left entrance
3 to the side garage. Deputy Ryan, who testified
4 here, was responsible for the crime scene log at
5 that time.

6 I met with Deputy Ryan, who advised me that
7 the only responder that was still in the residence
8 was Lieutenant Odom.

9 So I asked that Lieutenant Odom exit the
10 residence and come to see me.

11 I also then met with Major Smith, who was on
12 the scene, and other investigators on the scene in
13 order to collect any information or assess the
14 situation while we were waiting for a search
15 warrant.

16 Q Okay. And let me back up a little bit. When you
17 got there, did you come into any information about
18 whether or not EMS had already responded?

19 A Yes, I was told that EMS had already gotten there
20 and had departed, and that Lieutenant Odom was the
21 only one still inside the scene.

22 Q And then you requested that Lieutenant Odom exit
23 the residence?

24 A I did.

25 Q So that the interior would remain secure by

1 deputies on the exterior?

2 A And no one else would be left in there, yes.

3 Q And at that point you also made contact with Major
4 Smith?

5 A I did.

6 Q And what was the purpose in contacting Major Smith
7 and getting information from him?

8 A Well, we have to have information. All the
9 information we can gain is just to our advantage to
10 know how to start, what to do, what we have got
11 before we even get inside there.

12 So I'm talking with him and any of the
13 investigators and any deputies that might have
14 information, first responders on the scene.

15 Q And typically one of the investigators at the
16 scene, deputies then made contact with them and
17 they are kind of the central point in getting
18 information?

19 A That is correct. When I noticed that Major Smith
20 was on the scene, I knew he was probably the
21 ranking individual from CID. So naturally that's
22 where I go first.

23 Q And when you say the ranking individual in CID,
24 what does CID mean?

25 A Criminal Investigative Division.

1 Q So that's the investigative unit?

2 A Yes.

3 Q You also mentioned that you were waiting for a
4 search warrant?

5 A Yes, we were.

6 Q Is that standard procedure?

7 A It is before going into a scene of this nature, a
8 place that we don't know what we're going to find
9 or what we're going to see. It is always protocol
10 to try to get a -- to get a search warrant first.

11 Q And did you become aware that Mr. Brett Parker was
12 talking with investigators there at the scene?

13 A Yes, I was. I become aware because Major Smith
14 asked me if we could process Mr. Parker's hands for
15 a possible GSR.

16 So at that particular time, Investigator Holt
17 arrived on the scene too. I was the first one from
18 our unit to arrive. Investigator Holt arrived. I
19 requested that he go get a written consent from Mr.
20 Parker and then process him for GSR.

21 Q And when you say a written consent, is that an
22 actual form to get any possible evidence from the
23 Defendant?

24 A Yes, where he allows us to process his hands for
25 GSR.

1 Q And Investigator Holt actually did that?

2 A He did.

3 Q And, again, you're still waiting for the search
4 warrant to go back into the house in order to
5 collect any possible evidence?

6 A Yes, ma'am.

7 Q Did you also make contact with Lieutenant Odom
8 there at the scene?

9 A I did. He came out. And the first thing he was
10 telling me was, of course, what he saw or had seen
11 upstairs about a female being in the office area or
12 laying in the office area between the office and
13 the bathroom. And also about a male laying in the
14 attic.

15 He also advised me that the male had had a
16 handgun in his left hand and that he had removed
17 it, placed the handgun in an evidence bag, and
18 placed the evidence bag beside the entrance to the
19 attic.

20 Q And you have responded to numerous gunshot scenes,
21 crime scenes?

22 A Yes, ma'am.

23 Q And were his actions standard procedure as far as
24 safety issues?

25 A As far as safety issues, yes, ma'am.

1 Q At some point -- you were out there for a period of
2 time, but did you then make entry into the house
3 once the search warrant was obtained?

4 A Yes, I did.

5 Q And once the search warrant was obtained, who all
6 went into the house?

7 A Then Lieutenant Cavanagh, myself, Investigator
8 Bouknight, and Investigator Holt.

9 Q That would be Lieutenant Cavanagh, who is your
10 supervisor?

11 A Yes.

12 Q And Investigator Bouknight? And who is he with?

13 A And Investigator Holt.

14 Q And Investigator Holt?

15 A Yes.

16 Q Were also with your unit?

17 A Yes, all of us.

18 Q So the four of y'all were crime scene --

19 A The four of us were from the Crime Scene Unit. We
20 went in together.

21 Q And this crime scene, can you tell the jury
22 basically what your initial actions were as far as
23 assessing this crime scene?

24 A Well, going in, the first thing we want to do after
25 we assess what we possibly had and gather all the

1 information we possibly could from the outside,
2 documentation is the next and most important thing
3 that is next.

4 We do that through photography, cameras. We
5 can do it, like I said, through video. We happened
6 to have what we call a ScanStation system that
7 gives us 3D photographic materials that we can use
8 while we're inside.

9 But first we start with a basic camera. We
10 start photographing anything and everything as we
11 enter the residence. We go through the whole house
12 photographing. And particularly when we determine
13 what are the basic events, situation, or areas are,
14 those are where the photographs become extremely
15 necessary.

16 Q And, again, you mentioned you had already been
17 advised of where the two bodies that were still --
18 and they were still inside the house at this point,
19 right?

20 A Oh, yes.

21 Q Where those were. You mentioned that you initially
22 document everything by photographing it?

23 A Yes, ma'am.

24 Q And you go through and photograph any rooms that
25 may have any relevance in this case?

1 A Yes.

2 Q And who actually did the photographing in this
3 case? Primarily, you and who?

4 A Investigator Holt.

5 Q And I want to just take this somewhat
6 chronologically in the order. While there at the
7 scene, you actually document the exterior of the
8 house that may or may not come into play later?

9 A Yes. We start with the exterior of the house also.
10 We go around the front area of the house, maybe if
11 vehicles are there, we document vehicles in the
12 driveway. And then we enter and start documenting
13 with photographs throughout the house.

14 Q And, again, at this point when you're processing a
15 crime scene such as this, you're limited to
16 whatever information is just given there at the
17 scene?

18 A That's correct.

19 Q And at this point the only survivor in this case
20 was who?

21 A Mr. Parker.

22 Q I want to show you what has been marked as State's
23 Exhibits Number 3 through 9, and first ask if you
24 could look at those.

25 (Pause.)

1 A Yes, ma'am. These are photographs that depict the
2 outside front of the residence.

3 Q And do those fairly and accurately depict what you
4 observed that day?

5 A They do.

6 Q And were those photographs taken that day?

7 A Yes.

8 MS. CAMPBELL: Your Honor, at this time we
9 would offer State's Exhibits 3 through 9.

10 MR. WHITLARK: No objection.

11 THE COURT: Is that 3 through 9?

12 MS. CAMPBELL: Yes, Your Honor.

13 (WHEREUPON, State's Exhibit Nos. 3-9
14 were marked for identification and
15 received into evidence.)

16 MS. CAMPBELL: May I continue, Your Honor?

17 THE COURT: Yes, ma'am.

18 MS. CAMPBELL: Thank you.

19 BY MS. CAMPBELL:

20 Q I want to show you what has been marked as State's
21 Exhibit Number 10. Do you recognize that?

22 A Yes. That is the extreme left side of the house if
23 you are looking at it from the residence.

24 Q Does that fairly and accurately depict what you saw
25 that day and was that photograph taken that day?

1 A It was.

2 MS. CAMPBELL: Your Honor, at this time we
3 would offer State's Exhibit Number 10.

4 MR. WHITLARK: Without objection.

5 THE COURT: All right. It will be entered
6 without objection.

7 (WHEREUPON, State's Exhibit No. 10 was
8 marked for identification and received
9 into evidence.)

10 BY MS. CAMPBELL:

11 Q I show you what has been marked as State's Exhibits
12 11 through 18, 19 through 26, and 27 through 31.
13 Do those also show other exterior photographs of
14 this house?

15 THE COURT: What are the numbers on those
16 again?

17 MS. CAMPBELL: I'm sorry, Your Honor. It is
18 11 through 18, 19 though 26, and 27 through 31.

19 A Yes. That's a continuation of the photographs from
20 outside of the residence, to include the driveway
21 and the vehicles in the driveway.

22 Q And was there a vehicle that was parked off the
23 driveway, not in the driveway?

24 A Yes, it was on the extreme right-hand side at the
25 top of the driveway into the wood line.

1 MS. CAMPBELL: I would offer those.

2 MR. WHITLARK: No objection to 11 through 18.

3 THE COURT: All right, 11 through 18 will be
4 entered without objection.

5 (WHEREUPON, State's Exhibit Nos. 11-18
6 were marked for identification and
7 received into evidence.)

8 MR. WHITLARK: And no objection to 19 through
9 26.

10 THE COURT: All right, 19 through 26 are
11 entered without objection.

12 (WHEREUPON, State's Exhibit Nos. 19-26
13 were marked for identification and
14 received into evidence.)

15 MR. WHITLARK: No objection to 27 through 31.

16 THE COURT: All right, 27 through 31 are
17 entered without objection.

18 (WHEREUPON, State's Exhibit Nos. 27-31
19 were marked for identification and
20 received into evidence.)

21 BY MS. CAMPBELL:

22 Q Continuing in the downstairs area, I am going to
23 show you what has been marked as State's Exhibits
24 32 through 37. What area of the house does that
25 depict?

1 A That is the interior of the garage.

2 Q The interior of the garage area?

3 A Yes, ma'am.

4 Q And do those fairly and accurately depict what you
5 saw that day, and were those photographs taken that
6 day?

7 A Yes.

8 (Attorneys conferred.)

9 MR. WHITLARK: No objection to 32 through 37.

10 THE COURT: They are entered without
11 objection.

12 (WHEREUPON, State's Exhibit Nos. 32-37
13 were marked for identification and
14 received into evidence.)

15 MS. CAMPBELL: Your Honor, if we can have a
16 moment to look at the next ones so we can expedite
17 this.

18 (Attorneys conferred.)

19 MR. WHITLARK: No objection to 38 through 45.

20 THE COURT: Entered without objection.

21 (WHEREUPON, State's Exhibit Nos. 38-45
22 were marked for identification and
23 received into evidence.)

24 MR. WHITLARK: And no objection to 46 through

25 48.

1 THE COURT: Without objection, they are
2 entered.
3 (WHEREUPON, State's Exhibit Nos. 46-48
4 were marked for identification and
5 received into evidence.)
6 MR. WHITLARK: No objection to 49 through 55.
7 THE COURT: All right, 49 through 45[verbatim]
8 are entered without objection.
9 MS. CAMPBELL: Through 55.
10 THE COURT: Through 55, I'm sorry.
11 MS. CAMPBELL: Yes, ma'am.
12 (WHEREUPON, State's Exhibit Nos. 49-55
13 were marked for identification and
14 received into evidence.)
15 MR. WHITLARK: No objection to 56 through 64.
16 THE COURT: 56 through 64 are entered without
17 objection.
18 (WHEREUPON, State's Exhibit Nos. 56-64
19 were marked for identification and
20 received into evidence.)
21 MR. WHITLARK: No objection to 65 through 78.
22 THE COURT: 65 through 78 are entered without
23 objection.
24 (WHEREUPON, State's Exhibit Nos. 65-78
25 were marked for identification and

1 received into evidence.)

2 MR. WHITLARK: No objection to 79 and 80.

3 THE COURT: Entered without objection, 79 and
4 80.

5 (WHEREUPON, State's Exhibit Nos. 79-80
6 were marked for identification and
7 received into evidence.)

8 MR. WHITLARK: No objection to 81 through 84.

9 THE COURT: 81 through 84 are entered without
10 objection.

11 (WHEREUPON, State's Exhibit Nos. 81-84
12 were marked for identification and
13 received into evidence.)

14 MR. WHITLARK: No objection to 85 and 86.

15 THE COURT: Entered without objection, 85 and
16 86.

17 (WHEREUPON, State's Exhibit Nos. 85-86
18 were marked for identification and
19 received into evidence.)

20 MR. WHITLARK: No objection to 87 through 89.

21 THE COURT: 87 through 89 are entered without
22 objection.

23 (WHEREUPON, State's Exhibit Nos. 87-89
24 were marked for identification and
25 received into evidence.)

1 MR. WHITLARK: No objection to 90 through 94.

2 THE COURT: 90 through 94 are entered without
3 objection.

4 (WHEREUPON, State's Exhibit Nos. 90-94
5 were marked for identification and
6 received into evidence.)

7 MR. WHITLARK: No objection to 95 through 99.

8 THE COURT: 95 through 99 are entered without
9 objection.

10 (WHEREUPON, State's Exhibit Nos. 95-99
11 were marked for identification and
12 received into evidence.)

13 MR. WHITLARK: No objection to 100 through
14 103.

15 THE COURT: 100 through 103 are entered
16 without objection.

17 (WHEREUPON, State's Exhibit Nos. 100-103
18 were marked for identification and
19 received into evidence.)

20 MR. WHITLARK: I have one objection to Photo
21 Number 109, Your Honor.

22 THE COURT: All right. And any objection to
23 the others, sir?

24 MR. WHITLARK: No objection to 104 through
25 108.

1 THE COURT: All right. 104 through 108 are
2 entered without objection.

3 (WHEREUPON, State's Exhibit Nos. 104-108
4 were marked for identification and
5 received into evidence.)

6 THE COURT: And 109 you object to. And what
7 is the objection to 109? What is your objection to
8 109?

9 MR. WHITLARK: Well, Your Honor, 109 is a
10 photograph of a downstairs drawer that was in the
11 master bedroom. And in the drawer they have got --

12 THE COURT: Hold on one second. Hold on one
13 second. Let me see you one second.

14 MR. WHITLARK: Yes.

15 THE COURT: Let me see both of you.

16 (WHEREUPON, a bench conference was held
17 in the presence of the jury but out of
18 the hearing of the jury.)

19 MR. WHITLARK: Thank you. Thank you, Your
20 Honor.

21 MS. CAMPBELL: Your Honor, 109 we are glad to
22 withdraw.

23 THE COURT: The State has withdrawn
24 Number 109.

25 (WHEREUPON, State's Exhibit 109 is withdrawn.)

1 MR. WHITLARK: No objection to 110 through
2 118.

3 THE COURT: That is entered without objection,
4 110 through 118.

5 (WHEREUPON, State's Exhibit Nos. 110-118
6 were marked for identification and
7 received into evidence.)

8 MR. WHITLARK: There are some issues regarding
9 119 through 124 that I'd like to take up with the
10 Court, Your Honor.

11 THE COURT: All right. May I see them?
12 (WHEREUPON, a bench conference was held
13 in the presence of the jury but out of
14 the hearing of the jury.)

15 THE COURT: Ladies and gentlemen, I will send
16 you all out for a short break. There are some
17 matters of law that I need to take up with the
18 attorneys outside of your presence. And so
19 therefore I am going to send you all out for a
20 short break.

21 Thank you.

22 (WHEREUPON, the jury retires to the jury
23 room at 11:57 a.m.)

24 THE COURT: All right. There is an objection
25 to 119 and 124?

1 MR. WHITLARK: Yes. May it please the Court,
2 Your Honor? Your Honor, first of all, those are
3 pictures of a linen closet that is in the
4 downstairs of the house.

5 At this point we realize that all of the
6 events that we're concerned with occurred upstairs.
7 There were no weapons stored downstairs that were
8 used in this. This is a pistol, a picture of a
9 pistol, as the Court can see, that is in a linen
10 closet that is in the downstairs area.

11 First of all, I would object on relevance
12 grounds. Second of all, I would object that even
13 if it is relevant, that with all the testimony we
14 already have in evidence right now about guns, and
15 so forth, that it is unduly prejudicial to our
16 client, Mr. Parker, the Defendant. Because the
17 jury is going to hear guns, guns, guns.

18 And even if the Court found one of them was
19 relevant -- I mean, I'm saying, I ask for only one.
20 There is no reason to have over and over, you know,
21 guns, guns, guns, guns.

22 MS. CAMPBELL: We can limit the number of
23 photographs of it. Your Honor, in his statement,
24 which is State's Exhibit Number 1, they asked him
25 the question -- because part of his story and

1 central to his story -- the gun that was used to
2 kill Tammy Parker that he alleges Bryan Capnerhurst
3 used, he says it was his gun, which he
4 acknowledges.

5 He says he gave that gun away the month before
6 because it wasn't safe, and he wanted to get it out
7 of the house because it wasn't safe.

8 In that same statement -- and this is it
9 exactly, Your Honor:

10 Did you know he had a gun?

11 Yes. I actually give him that gun about a
12 month ago because I didn't want it in my house. I
13 think it is a 9-millimeter.

14 He then talks about how he ended up -- Bryan
15 was over there one night, and I simply asked him if
16 he wanted it because I thought it was dangerous
17 plus with my little boy and all.

18 And the next question is: Why did you keep
19 the other gun of yours on the safe?

20 And his answer is: I have always had one
21 there just in case I needed to get it. It was a
22 good place to hide in case something ever happened
23 and I could get to it there. I also have one in
24 the downstairs bathroom.

25 And that's the one we are showing the picture

1 of. If he objects to the number of photos, we will
2 be glad to narrow it down, Your Honor. I
3 understand he contends it's cumulative.

4 MR. WHITLARK: Well, I still maintain my first
5 objection, Your Honor, is that it's not used there.
6 There is a danger in this case of, you know, guns
7 here, guns here. And we saw the last picture that
8 was excluded, is a picture of shells. I mean,
9 obviously there is going to be plenty of testimony
10 about the weapons used upstairs. And I would
11 object to it.

12 First of all, they can get the same effect on
13 the jury by telling them it was there, in a linen
14 closet. And they don't need -- I don't need
15 another picture of a gun entering the conscious
16 minds of these jurors.

17 They can testify to it, but the gun is not
18 relevant. It wasn't a part of this case. And,
19 again, Your Honor, it is too much, is what I'm
20 saying, for the jury.

21 MS. CAMPBELL: The gun is extremely relevant,
22 Your Honor, because according to the Defendant's
23 version of what happened, he is downstairs in the
24 bathroom going to the bathroom when he hears -- or
25 finishing up, excuse me -- when he hears multiple

1 gunshots.

2 And part of the background of this story is,
3 Your Honor, a couple of years before this he got
4 video equipment in there and he went, according to
5 him, because his preacher told him to go buy the
6 Judge for protection.

7 He then admits that he kept the Judge on the
8 safe, and then he says that he kept the other gun
9 downstairs in the master bedroom.

10 When he is exiting, having heard, by his own
11 admission, multiple gunshots, he then runs
12 literally by his bedroom door, up the stairs,
13 having heard multiple gunshots.

14 He passes where he has his gun, which he has
15 put there, according to him, for his own
16 protection, and does not avail himself to that --
17 of his -- to getting that gun in order to protect
18 himself. And he acknowledges that it is gunshots,
19 it is not that he thought it was anything else.

20 Your Honor, it is integral to the State's case
21 in proving, again, that Brett Parker simply didn't
22 tell the truth because he ran right past the
23 doorway, to which he could have grabbed the gun
24 before going upstairs as well.

25 We aren't trying to make this more than it

1 needs to be, and we'll be glad to limit the number
2 of photographs. It is in his statement, which has
3 already been admitted, as well with reference to
4 the gun. So I don't know how this is prejudicial
5 any more than that.

6 MR. WHITLARK: Again -- may it please the
7 Court, Your Honor?

8 THE COURT: Yes, sir.

9 MR. WHITLARK: Again, Your Honor, the fact
10 that -- they can get the same thing through
11 testimony here in front of this jury. I mean, if
12 Your Honor will take notice of this, they have
13 already put -- they have six pictures they are
14 offering here of the same weapon, of the same
15 thing.

16 THE COURT: All right.

17 MR. WHITLARK: And, you know, I'm not saying
18 that the Prosecutor is being disingenuous about
19 this, but, you know, six pictures of the same
20 weapon to me is a good strategy for the Prosecution
21 to put it in their heads like that. And it is for
22 that reason that I'm objecting.

23 THE COURT: All right. The objection will be
24 overruled. It is already -- it is already in
25 evidence as to there being another gun downstairs.

1 However, I am going to allow one.

2 MS. CAMPBELL: I'll pick one.

3 THE COURT: One.

4 MR. WHITLARK: Thank you, Your Honor.

5 THE COURT: And you all can see if y'all can
6 agree on that, on which one it is.

7 MR. WHITLARK: Thank you, Your Honor.

8 (Attorneys conferred.)

9 MS. CAMPBELL: Your Honor, if I could
10 possibly -- I would just hand up State's 119 and
11 123. This just shows the gun so that they can see
12 it, and then this would be the close-up with the
13 gun in it.

14 THE COURT: Do you want to enter 119 and 123?
15 Can you see the gun on 119?

16 MS. CAMPBELL: You can if you know what you're
17 looking for. It is right there (indicating).

18 THE COURT: And what is your position,
19 Mr. Whitlark?

20 MR. WHITLARK: It is this, Your Honor. That
21 picture does depict the gun. There is not going to
22 be any contrary testimony that it is not the gun.
23 And so for that reason I still would ask --

24 THE COURT: Just the one. We will do just the
25 one. And he can explain as to where it is.

1 MS. CAMPBELL: Okay, Your Honor. Then we
2 would go with 119.

3 The only other thing is we do have references
4 to how he marked things later with this in. I
5 guess you just want me to explain that? Because
6 any relevant evidence they go back and mark later.

7 THE COURT: He marked the gun?

8 MS. CAMPBELL: Yes. He marked it so it will
9 be a reference later in his diagrams and other
10 things. They always go back and put those little
11 yellow markers next to what they think may be
12 relevant evidence.

13 THE COURT: Well, I mean, you can decide which
14 one you want to put in. In 119 you can barely see
15 it. You can see a bunch of clothes in a closet.
16 But, I mean, that is up to y'all to decide.

17 MR. WHITLARK: Your Honor, may I speak to
18 Number 119?

19 THE COURT: Yes, sir.

20 MR. WHITLARK: 119 accomplishes the purpose
21 for which they claim they are putting it in, is
22 that he went by there, and this is it, and it can
23 be pointed to. And he is not going to say it is
24 not.

25 I can tell the Court and represent to the

1 Court right now, Mr. Parker is going to say, Yes,
2 that's it.

3 But, I mean, they can accomplish exactly what
4 they want without putting that picture in, the
5 second one of the blow-up, making it look like --
6 you know, a juror can be confused.

7 THE COURT: You just want to ask him,
8 Ms. Campbell, if that is the gun and then he marked
9 it later or something?

10 MS. CAMPBELL: Yes.

11 THE COURT: Okay. All right.

12 MR. WHITLARK: Thank you, Your Honor.

13 THE COURT: So 119 will be entered over the
14 objection of Mr. Whitlark.

15 THE COURT: Any other ones?

16 MR. WHITLARK: There is no objection to
17 Exhibits 125 and 126, Your Honor.

18 THE COURT: That's the workout room?

19 MR. WHITLARK: Yes. Yes, Your Honor.

20 THE COURT: All right. Are we ready to bring
21 them back in?

22 MR. WHITLARK: The Defense is ready, Your
23 Honor.

24 MS. CAMPBELL: Oh, did you want to look at
25 this?

1 (Attorneys conferred.)
 2 MR. WHITLARK: No objection to 404, Your
 3 Honor.
 4 THE COURT: What is that?
 5 MS. CAMPBELL: It's a --
 6 MR. WHITLARK: Schematic of the house.
 7 MS. CAMPBELL: The lower level of the house.
 8 THE COURT: You can bring them in.
 9 (WHEREUPON, the jury came into open
 10 court at approximately 12:08 p.m.)
 11 THE BAILIFF: Your Honor, all jurors are
 12 present.
 13 THE COURT: Yes, ma'am, you may continue.
 14 MS. CAMPBELL: Your Honor, at this time we
 15 would offer 119. And then 125 and 126, I believe
 16 those two are without objection.
 17 MR. WHITLARK: Yes, those are without
 18 objection.
 19 THE COURT: All right. 125 and 126 are
 20 without objection. And 119 is entered over the
 21 objection of the Defendant.
 22 MS. CAMPBELL: And then finally, Your Honor,
 23 State's Exhibit 404 I think is without objection.
 24 THE COURT: It is entered without objection?
 25 MR. WHITLARK: Yes, Your Honor, without

1 objection on Number 404.

2 (WHEREUPON, State's Exhibit No. 119 was
3 marked for identification and received
4 into evidence.)

5 (WHEREUPON, State's Exhibit Nos. 125-126
6 were marked for identification and
7 received into evidence.)

8 (WHEREUPON, State's Exhibit No. 404 was
9 marked for identification and received
10 into evidence.)

11 MS. CAMPBELL: And, Your Honor, may the
12 witness step down so he can publish these?

13 THE COURT: Yes, ma'am.

14 (Witness steps down.)

15 BY MS. CAMPBELL:

16 Q And if you can come on this side so the court
17 reporter can hear you. I am going to show you
18 State's Exhibit Number 404. Do you recognize that?

19 A Yes, I do.

20 Q And what is that, sir?

21 A This is a blueprint of the lower portion of the
22 residence at 12 Tackeria.

23 Q And in this house, are there multiple staircases?

24 A Yes.

25 Q And are those depicted on this?

1 A Yes, they are.

2 Q And where is the front door on this blueprint?

3 A The front door would be right here (indicating).

4 Q And the garage area that we have heard reference
5 to?

6 A Right here (indicating).

7 Q And there is also a side door that is going to be
8 referenced. Is that shown on there?

9 A This is the side door right here (indicating).

10 Q Which becomes significant?

11 A Yes.

12 Q As you come in through the garage area, is there a
13 staircase immediately adjacent as you come in that
14 back door?

15 A Yes, there is. As you come into the -- from the
16 garage into what I will call a mudroom and turn
17 directly right and then right again up the
18 stairs --

19 MR. WHITLARK: Excuse me, Your Honor. Can we
20 back the exhibit up a little bit? I can't see.

21 THE COURT: Yes, make sure Mr. Whitlark can
22 see.

23 (Pause.)

24 THE COURT: Can you see now, Mr. Whitlark?

25 MR. WHITLARK: Yes. Thank you. Thank you. I

1 appreciate it.

2 THE WITNESS: Can you see?

3 MR. WHITLARK: Yes, I can see it. Thanks.

4 BY MS. CAMPBELL:

5 Q You mentioned there was a staircase?

6 A Yes.

7 Q In the back -- near the back door?

8 A From the garage into the house where this
9 (indicating) is a mud room area, directly starting
10 down the hallway to the right going up the stairs
11 to the second level.

12 Q And is that a single set of stairs that go all the
13 way up to the second level?

14 A Yes.

15 Q And is there a second set of staircases in this
16 house?

17 A Yes, there is.

18 Q Where is that?

19 A If you continue down the hallway, you can see a
20 second set of stairs just past this -- at the foyer
21 area -- that goes up to the second floor area.

22 Q Okay. And, in fact, does that stairwell ascend on
23 two different rooms?

24 A On two different rooms. It can go into the family
25 room area or it can go out to the foyer area also.

1 Q It comes to the foyer and then to the family room?

2 A Correct.

3 Q And then at some point does that meet and go up as
4 a single staircase?

5 A Yes.

6 Q And where does that staircase exit, as far as in
7 reference to the office area, the area they use as
8 an office upstairs?

9 A Right at what is being called a landing right at
10 the office area into the room right outside the
11 office area, which is called a media or a family or
12 a game room. It is a huge room right outside of
13 the office. The stairs come up into the second
14 floor and ends right there (indicating).

15 Q And both those stairs actually end on different
16 sides of that general area?

17 A Yes.

18 Q I'm going to publish the -- first, I want to show
19 you has been what marked as State's Exhibit Number
20 3 through 9. Is that generally, Number 3, an
21 identifying photograph?

22 A Yes, it is. It's the mailbox.

23 Q And State's Number 4 and 5, what does that show
24 generally?

25 A That's the front of the residence, exterior.

- 1 Q That's the exterior of the residence?
- 2 A Yes, ma'am.
- 3 Q And those were taken that day?
- 4 A Yes, ma'am.
- 5 Q And 6, 7, and 8, what do those show?
- 6 A That should also be the front of the residence, the
7 front porch mainly.
- 8 Q And do you see something on the front porch that
9 was collected that day?
- 10 A Yes. There was a box on the front porch.
- 11 Q And what -- could you tell who the delivery company
12 was of that box?
- 13 A Seemed to be a UPS box.
- 14 Q And I show you finally State's Exhibit 9. What
15 does that show?
- 16 A The same box on the front -- right at the top of
17 the front steps on the porch.
- 18 Q And that is how it was when y'all got there that
19 day?
- 20 A It was.
- 21 Q Moving to State's Exhibit Number 10, what does that
22 show?
- 23 A The far right side of the house, exterior.
- 24 Q And is that -- how was that in conjunction to the
25 actual driveway that was mentioned?