

21318

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

J. Mark Hayes, II, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NATHANIEL BERNARD BEEKS

APPELLANT

APPELLATE CASE NO. 2013-001783

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS

2011-GS-23-06315; 06316

ORIGINAL

STATE OF SOUTH CAROLINA)

PLAINTIFF)

vs.)

TRANSCRIPT OF RECORD

NATHANIEL B. BEEKS)

DEFENDANT)

August 12-14-, 2013

Greenville, South Carolina

B E F O R E:

THE HONORABLE J. MARK HAYES, II, Judge; and a jury.

A P P E A R A N C E S:

JUDY MUNSON, ESQ.
Attorney for the State

RANDY CHAMBERS, ESQ.
Attorney for the State

APRIL HERRON
Official Court Reporter

1 MS. MUNSON: May it please the Court.

2 Mr. Chambers.

3 Easter Sunday of 2011, evidence in this case
4 will show that the family to Marsha Smith was not
5 celebrating. Not no easter egg hunts, no big dinners
6 because they were beginning the grieving process of Marsha
7 Smith. They were preparing for her funeral. The night
8 before on April the 23rd of 2011, Faith Smith, one of
9 Marsha's daughters, got home to the apartment that the
10 ladies were sharing in the city limits of Greenville.
11 When she got there she noticed the Defendant leaving the
12 apartment. That wasn't unusual because the Defendant and
13 Marsha Smith had been boyfriend and girlfriend for several
14 years. What was unusual, the evidence will show, that the
15 Defendant got in to Marsha's car and drove away.

16 Well, Faith gathered up her son and went into
17 the apartment to look for her mother. And she found her
18 mother. Sitting on the floor in the living room with the
19 back against the couch and her head back. She wasn't
20 talking. She wasn't responding. She wasn't moving.
21 Faith screamed. Neighbors came over in response to
22 Faith's screaming and pulled Marsha down to the floor to
23 get her flat to try CPR, it was too late. Fifty-one year
24 old Marsha Smith was dead on her living room floor.

25 An autopsy performed the following Monday showed

1 that Marsha didn't die from a sudden heart attack or
2 stroke or accident, she died from manual strangulation.
3 And the evidence in this case will show that the person
4 who put their hands around Marsha's throat, cutting off
5 her air, cutting off the blood to her brain, killing her
6 is this Defendant right here. He was captured in Georgia
7 several days later and Marsha's car was recovered in
8 Georgia close to where he was staying. He was brought
9 back to South Carolina, to this state, to this county, to
10 this courtroom to face justice.

11 During the course of this trial, it's possible,
12 even likely, that Mr. Chambers and I will disagree on some
13 things. We both agreed on you. We know that you will
14 listen carefully, consider thoughtfully and deliberate
15 well. And when you come back in this courtroom for your
16 verdict to be announced, it will be a true and just
17 verdict. A verdict that does speak the truth.

18 Ladies and gentlemen, the evidence in this case
19 is going to show that the truth is he is guilty of
20 stealing Marsha's car after he murdered her. Thank you
21 for listening.

22 THE COURT: Yes, sir.

23 OPENING STATEMENT

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

1 Solicitor.

2 Ladies and gentlemen, this is a case -- there's
3 no way around it, these are tragic events. Marsha Smith
4 died. And that is a tragedy. That is a tragedy
5 experienced by Marsha's family who is seated over here.
6 And it's a tragedy experienced by Nathaniel Beeks who is
7 seated with me. This case is somewhat unusual for me as a
8 Defense counsel because I am going to tell you that
9 Nathaniel Beeks is responsible for the death of Marsha
10 Smith. It's a day and event that he regrets. It's
11 something that he wishes he can take back. It's something
12 that he didn't mean to do or he didn't mean to happen.
13 But he is responsible for her death. And he has
14 maintained that from the time that he was apprehended.

15 As you heard this Solicitor say, Marsha and
16 Nathaniel were boyfriend and girlfriend, they had been
17 dating one another for several years. At this point in
18 their relationship, Nathaniel was living and working in
19 the Atlanta area during the week and most weekends he
20 would come back to Greenville. Which is where he called
21 home. His mother lived here, he would visit with his
22 mother, he would normally stay with Marsha. But he
23 typically came by bus and Marsha would pick him up at the
24 bus station or someone else would pick him up at the bus
25 station and he would stay with her for the weekend. You

1 will probably hear that Marsha didn't like the fact that
2 he would sometimes drink. That she would argue with him
3 about his drinking and they would have arguments. But
4 they continued to see one another.

5 We believe that the evidence in this case is
6 going to show though that on this particular day, on April
7 the 23rd when these tragic events unfolded, that Marsha
8 shared with Nathaniel during the course of a heated
9 argument that they were having, an emotional argument that
10 they were having with one another, that she was seeing
11 someone else. That she had another boyfriend and she was
12 ending the relationship with him. And we believe that you
13 will hear through the evidence that at that point he sort
14 of lost control of himself.

15 Now, ladies and gentlemen, I know it sounds odd
16 to hear me stand here and say that my client is
17 responsible for the death of Marsha Smith. You're
18 probably saying to yourself, Well, then why are we here?
19 Why are we here to hear this case? Well, ladies and
20 gentlemen, there are -- in South Carolina we don't have
21 degrees of murder. Probably in watching TV and have
22 different cases in other states or even fictional shows
23 you hear about somebody being charged with murder in the
24 first degree and murder in the second degree. But we
25 don't have that. We have murder, then we have

1 manslaughter. Which is sometimes referred to as voluntary
2 manslaughter. The difference between those two is this
3 notion of malice. You're going to hear from, His Honor,
4 later when he charges you on the law and you go back to
5 deliberate, malice is sometimes referred to as a evil or
6 depraved heart. It's basically you intended to kill
7 someone. Or you had that evil heart in doing that.

8 Manslaughter is characterized as an intentional
9 killing, that there is a legal provocation that's present
10 that negates this element of malice. Then takes it from
11 murder to manslaughter. Still very serious crime but it's
12 different. Now, when you hear legal provocation you're
13 probably thinking to yourself, Well, something along the
14 lines of a statutory event such as self-defense or
15 something like that. That's not what we're talk about
16 folks. There are different things that can be given as
17 example. But basically what we're talking about is the
18 provocation such that it would provoke a person of
19 ordinary prudence and reason, to sudden heat and passion.
20 Manslaughter is what's very often referred to as a heat of
21 passion crime. And some of the examples that you will
22 hear are that somebody walks in on a spouse or a boyfriend
23 or girlfriend engaged in sexual intercourse with someone
24 else. Somebody's engaged in a fistfight. Somebody has
25 been humiliated by somebody else. Or as in this case,

1 somebody is engaged in a heated and emotional argument.
2 Then told something that is so unsettling that it provokes
3 them to sudden heat and passion.

4 Ladies and gentlemen, as you go through this
5 case and you listen to the witnesses that are presented to
6 you, I will tell you that it's a very narrow issue that
7 you're going to need to address in this case. Is that
8 malice present? We submit to you it's not. We submit to
9 you that they're not going to be able to prove beyond a
10 reasonable doubt that he possessed malice. I want to
11 point out and I want to say something that's really
12 important here. And that is you heard him referred to as
13 The Defendant. You will hear him referred to as The
14 Defendant throughout. But despite the connotation that that
15 name gives Nathaniel Beeks, he's not required to prove
16 anything. And so he doesn't have to prove an absent of
17 malice in this case. They have to prove it. Prove malice
18 to you beyond a reasonable doubt. Beyond a reasonable
19 doubt. Kind of evidence that would leave you firmly
20 convinced. Reasonable doubt is the kind of doubt that
21 would cause you to hesitate to act. In other words, if
22 you had to bet something important on it, would you risk
23 it? Are you that sure of your decision?

24 Now, I expect based on the witness list that
25 we've seen and what I know about the case, that we're

1 probably going to be here with one another for a few days.
2 I want you to know that Nathaniel Beeks is nervous but he
3 has been looking toward to this day. He wants to put
4 closure on this the same as I'm sure Marsha Smith's family
5 does. But he wants a just trial. And that's why you
6 folks are here. Just as the Solicitor told you, there
7 will be things throughout this that we don't agree on.
8 But we agreed on the 13 of you. And we are confident that
9 you are going to listen to the instructions of His Honor,
10 you're going to waive the evidence in this case and you're
11 going to come back with what are you believe a just
12 verdict in this case. We do appreciate your being here.
13 Thank you.

14 THE COURT: Thank you, sir.

15 Ladies and gentlemen, giving the hour that it
16 is, I am going to allow you to have your lunch break at
17 this time. Now, a few instructions before you leave for
18 your lunch. I had already told you that you cannot have
19 any discussions about anything involving the case until
20 you start your deliberations at the end of this trial. I
21 mean that. You can't have any discussions with anyone.
22 Do not go in the back and start having discussions among
23 yourselves about anything that you heard already or any
24 opinion that you have about the case. Do not have any
25 discussions among yourselves about anything involving the

1 watch your step. If you would, please, speak into the
2 microphone.

3 THE CLERK: Would you, please, state your name
4 for the record.

5 THE WITNESS: Faith Smith.

6 THE CLERK: Thank you.

7 THE COURT: All right.

8 DIRECT EXAMINATION

9 BY MS. MUNSON:

10 Q Faith, how old are you?

11 A Twenty-five.

12 Q Where do you live?

13 A In (indiscernible).

14 Q Where is that? In what city?

15 A Greenville, South Carolina.

16 Q Who do you live with?

17 A Me and my kids.

18 Q How many do you have?

19 A I have two.

20 Q How far did you go in school?

21 A I graduated the 12th grade.

22 Q From what high school?

23 A Wade Hampton.

24 Q I'm sorry?

25 A Wade Hampton High School.

- 1 Q Okay, I'm going to ask you to keep your voice up so
2 that everybody can hear you.
- 3 A Okay, yes, ma'am.
- 4 Q Thank you. Now, do you work?
- 5 A Yes, ma'am.
- 6 Q Where do you work?
- 7 A McDonald's on Wade Hampton.
- 8 Q How long you been there?
- 9 A Four years.
- 10 Q All right. Now, I want to draw your attention back
11 to April of 2011, okay? Where were you living back
12 in April of 2011?
- 13 A [REDACTED] McCullah Street.
- 14 Q I'm sorry?
- 15 A [REDACTED] McCullah Street.
- 16 Q Okay. In what kind of a structure? House,
17 apartment?
- 18 A Apartment.
- 19 Q And who were you living with in the apartment?
- 20 A Marsha Smith.
- 21 Q And who's Marsha Smith?
- 22 A My mother.
- 23 Q All right. Was anybody else living in the apartment
24 with you?
- 25 A My son Jacora Aiken.

1 Q Okay. And your mother's not alive anymore, is she?

2 A No, ma'am.

3 Q Okay. Now we have to talk about that day she died,
4 okay?

5 A Yes, ma'am.

6 Q All right. Now the day that your mother died, did
7 you work that day?

8 A Yes, ma'am.

9 Q Okay. What hours, do you remember?

10 A I worked 11 to 5.

11 Q All right. Now, during this time were you were
12 living in that apartment with your mother, was your
13 mother dating anybody?

14 A No, not that I know of.

15 Q She didn't have a boyfriend in April of 2011?

16 A I mean, I know that she was seeing Nathaniel Beeks --

17 Q Okay.

18 A But they wasn't like together.

19 Q Okay. Let's back up a little bit. Now, seeing
20 Nathaniel Beeks, who is Nathaniel Beeks.

21 A The man that's sitting right there in the blue shirt.

22 Q Okay. How long did your mom date him or see him?

23 A She was dating him for a while, for a couple of
24 years.

25 Q Okay. Well, were you -- how old were you when your

- 1 mom first starting seeing him?
- 2 A Might have been 14, 15.
- 3 Q Okay. Still in high school?
- 4 A I was in middle school.
- 5 Q In middle school?
- 6 A Uh-huh.
- 7 Q Okay. Now, when you got off work the day that your
- 8 mother died, did you go right home?
- 9 A Yes, ma'am.
- 10 Q All right. Who was at your apartment when you got
- 11 home after work?
- 12 A Nobody but me and my son, Jacory.
- 13 Q Where was your mother?
- 14 A She was at her friend house, Susie's house.
- 15 Q Okay. Had you seen Nathaniel Beeks on that day that
- 16 your mom died? That weekend?
- 17 A I seen him the weekend when he came. But the -- that
- 18 day when my momma had told me come on, you know,
- 19 let's leave. But I didn't see him sense then. I
- 20 haven't seen him since then.
- 21 Q So, that weekend, was he there the weekend?
- 22 A Uh-huh.
- 23 Q Where did he stay that weekend that your mom died?
- 24 A He stayed with us at the apartment.
- 25 Q Okay. Do you know when he got there for the weekend?

- 1 A Maybe on a Friday, maybe.
- 2 Q Okay. Do you know how he got there?
- 3 A No, ma'am, I don't.
- 4 Q Okay. That's perfectly okay. Now, you said earlier
- 5 something about your mom telling you, Let's go.
- 6 A Yes, my mom had -- when I came home my mom had opened
- 7 door and she was like, Faith, here, come get your
- 8 things because Nathaniel Beeks was at her friend
- 9 house and he was acting the fool, he was drunk,
- 10 acting crazy.
- 11 Q Was he there in the apartment?
- 12 A No, ma'am.
- 13 Q I'm going to ask you, Faith, to try to stay away from
- 14 things that your mother said.
- 15 A Okay.
- 16 Q Okay. So, when you got home from work and had a
- 17 conversation with your mother, what did you do next?
- 18 A I left her.
- 19 Q Where did you go?
- 20 A I went to my friend, Maryssa Cantrell, birthday party
- 21 for her son.
- 22 Q Okay. Who did you take with you to the birthday
- 23 party? Who was with you other than your mother?
- 24 A My son, Jacory.
- 25 Q How old was he then?

- 1 A He was two.
- 2 Q All right. And how long did you stay at the birthday
3 party?
- 4 A For maybe two, two or three hours.
- 5 Q Okay. And when you left the birthday party, was it
6 light or dark outside?
- 7 A Dark.
- 8 Q Do you remember about what time it was?
- 9 A It was going on maybe 11.
- 10 Q Okay. And how did you leave -- when you got ready to
11 leave the party, how did you get home?
- 12 A My friend, Maryssa Cantrell.
- 13 Q Okay. Where was -- where was the party?
- 14 A It was in TR.
- 15 Q And did you come right home?
- 16 A Yes, ma'am.
- 17 Q When you got home, did you notice anything outside
18 the apartment?
- 19 A Yes, I did. When I came home, we pulled up, I seen
20 Nathaniel Beeks. He was coming down the stairs.
21 When I see him, he was at the bottom of the stairs.
22 He had a pillow and bags in his arm with something
23 hanging.
- 24 Q Okay.
- 25 A And when I seen him I came out the car and I

1 questioned him, Hey, How you doing? He ain't say
2 nothing. And I was like, Where's my mother, Marsha
3 Smith? And he did not say nothing. He didn't say
4 nothing. Then I asked him four or five times about
5 where's my mother, Marsha Smith at? He ain't say
6 nothing. Then I said, Hey, how you doing? And he
7 didn't say nothing. He was just like -- well he
8 waited a -- he waited a minute because I said it over
9 and over again.

10 And then when he finally said something. I got
11 smart. I said, Hey, how you doing?

12 He said, Hey, Faith, how you doing?

13 Q Okay. How far, away was he from you when you first
14 started talking to him?

15 A I say from here to that black thing right there.

16 Q I don't want to put words in your mouth, you tell me
17 when to stop. When I am close as your were to him.

18 A I say from here to where you at right there.

19 Q Okay. Now, when you first saw him, and were trying
20 to talk to him, what was his doing?

21 A He was trying to ignore me and did not want to say
22 nothing to me.

23 Q Okay. After he finally did speak to you, what did
24 you see him do?

25 A He was walking to the car, he opened the back seat

1 and put some -- he put is pillow and he had some bags
2 in the back seat.

3 Q Okay.

4 A And he -- once he did that, he was going to the front
5 seat. I mean, as the driver's side, as me walking up
6 the stairs. And when I opened the doorknob, he was
7 closing the door. And when I walked in the house,
8 that's when he backed up and speed out the driveway
9 so, so quick, I wun't [verbatim] thinking, you know
10 what I'm saying, nothing was wrong.

11 Q Okay. Now, when you say he was putting things in the
12 car, what car are you talking about?

13 A My momma Honda, it's a black Honda.

14 Q Okay. How long had she had that car?

15 A My momma had it for a couple of years.

16 Q Who did she let drive that car?

17 A No one.

18 Q Not even you?

19 A No, ma'am, not even many me.

20 Q All right. When you went into the house, what did
21 you see?

22 A When I came into the front door, I seen the house was
23 a mess. The kitchen table was turned, it was tree
24 limbs everywhere, it was stuff all over the floor, it
25 was a big ole mess.

1 Q Okay. And let me ask you something, Faith, did the
2 Defendant have a key to your apartment?

3 A No, ma'am, never had one.

4 Q Okay. Well, when you saw this mess, what did you do
5 next?

6 A When I seen the mess I said, Oh, man, you know what
7 I'm saying? Something's happened. So I was looking
8 around trying to figure out where my mother was. I
9 checked her room, she wasn't in her room. I checked
10 the bathroom, she was not in the bathroom and then I
11 checked the kitchen and I didn't see her nowhere in
12 the kitchen. And I had walked -- I came out the
13 kitchen, I called her name, momma, momma, momma. And
14 she didn't respond. And then when I walked out the
15 kitchen and I went to the living room. And I looked
16 over and I seen my momma laying on the floor with her
17 back against the chair with her head back and with
18 her mouth opened.

19 Q Okay. And what did you do?

20 A What I did was I lift her head up, maybe two times.
21 And I said, Momma, momma, get up. And I patted her,
22 tried to get her up and she would not wake up. I um,
23 I looked at her to make sure she didn't have any
24 scratches, I seen one on her chest. And then after
25 that my son, Jacory, right beside me and I hurried up

1 I and ran outside and I started screaming. And my
2 own friend that stayed up the street -- I mean,
3 upstairs from me, on the other side of me and she had
4 came out and she said, Faith what's wrong. I
5 couldn't really say nothing because I was quiet, I
6 really couldn't. I didn't know nothing. I didn't --
7 I was blanked out. And she came into the house and
8 she's the one that called 911 because I couldn't call
9 them because I was speechless. I couldn't talk.

10 Q Okay.

11 A And then -- and then after that my homeboy,
12 Olijahwon, he ran over to the house and he checked on
13 me.

14 And he said, Faith, what's wrong?

15 And I didn't say nothing neither. And he went
16 on in the house. And then after that they wouldn't
17 let me come back in the house.

18 Q Okay. Now, when you got home from work -- or when
19 you got home from the party on that Saturday, had you
20 seen the Defendant at all earlier in the day?

21 A No, ma'am.

22 Q Okay.

23 May I approach, Your Honor?

24 THE COURT: Yes, ma'am.

25

1 BY MS. MUNSON:

2 Q Faith, I'm going to show you a series of photographs
3 here. There are marked State's 1, 2, 3, 4, 5, 6, 7,
4 8, 9, and 10. If you could, just take your time and
5 take a look at those, okay?

6 A Okay.

7 MS. MUNSON: Your Honor, might I suggest we take
8 a break?

9 THE COURT: All right, ladies and gentlemen, if
10 you would, I'm going to ask that you retire back to the
11 jury assembly room. Please, don't have any discussions
12 among yourselves about anything involving the case, we'll
13 get you back just shortly.

14 (WHEREUPON, the jury left open court at
15 approximately 2:40 p.m.)

16 THE COURT: Ma'am, you want to go ahead and
17 finish looking at those picture?

18 THE WITNESS: I finished.

19 THE COURT: You need a few moments to...

20 THE WITNESS: I'm okay.

21 THE COURT: Do you have some water?

22 THE WITNESS: No.

23 THE COURT: Does the State have any other things
24 that she's going to identify that she can look at?

25 MS. MUNSON: No, sir.

1 THE COURT: Okay. Everybody ready to proceed?

2 MS. MUNSON: State's ready, Your Honor.

3 MR. CHAMBERS: Defense is ready, Your Honor.

4 (WHEREUPON, the jury came into open court at
5 approximately 2:42 p.m.)

6 THE COURT: Yes, ma'am.

7 MS. MUNSON: Thank you, Your Honor.

8 BY MS. MUNSON:

9 Q All right, Faith, have you had a chance to review
10 State's Exhibit 1 through 10?

11 A Yes, ma'am.

12 Q Do they truly and accurately show the outside and
13 inside of the apartment the night your mom died?

14 A Yes, ma'am.

15 MS. MUNSON: Your Honor, at this time I move
16 State's 1 through 10 into evidence.

17 MR. CHAMBERS: Without objection.

18 THE COURT: Without objection State's 1 through
19 10 marked as photographs. Fact 1 through 10 account.

20 (WHEREUPON, an exhibit was admitted into
21 evidence.) by.

22 BY MS. MUNSON:

23 Q All right, Faith, this is a laster pointer, see how
24 it works. We're going have to go through some of
25 these photographs for the jury, okay? All right,

1 Faith, this is State's Exhibit No. 1, what does that
2 show?

3 A That's the front door of the apartment.

4 Q Okay. Just remember to keep your voice up. That's
5 the front door?

6 A Yes, ma'am.

7 Q Okay. Is that the door you went in?

8 A No, ma'am.

9 Q Okay. Now, let's look at this. This is State's
10 Exhibit No. 2, it's in evidence. Now, what does this
11 show?

12 A It shows the back door.

13 Q Of your mom's apartment?

14 A Yes, ma'am.

15 Q And when you got there after the party, can you show
16 only here where you and your friend parked?

17 A We parked right here.

18 Q Okay. And where on State's No. 2 would the
19 Defendant's -- where was he coming from when you
20 first saw him?

21 A He was coming from the right in this area right here.
22 Bottom of these stairs right here. And then I opened
23 my door on the passenger side and then he walked on
24 up here and I opened the door.

25 And I said, Hey, how you doing?

1 And he didn't say nothing.

2 Q Okay.

3 THE COURT: Ma'am, if you would, you're speaking
4 away from the microphone and this lady down here in front
5 of you is a court reporter, she has to take down
6 everything that's being said. So really speak up loud
7 enough so she can hear you.

8 THE WITNESS: Okay.

9 THE COURT: Thank you.

10 BY MS. MUNSON:

11 Q Now, where on State's Exhibit No. 2 would your
12 mother's car had been parked?

13 A She was parked on the other side behind--

14 Q Okay.

15 A Parking lot.

16 Q All right. Now, let me have you--

17 THE COURT: Madam Solicitor, could you, so the
18 record is clear, have her to identify those parking spots,
19 she just said here and there.

20 MS. MUNSON: Okay.

21 BY MS. MUNSON:

22 Q Okay. So, Faith if we're looking at State's Exhibit
23 No. 2, and if the parking spot in the bottom right of
24 State's Exhibit No. 2 is number one, do you
25 understand me?

1 A Yes.

2 Q Where did you and your friend drive up?

3 A We drove up right here in the first parking spot
4 right here.

5 Q Okay. And then on State's Exhibit No. 2, is the area
6 where your mother's car's parked, is that even
7 pictured there?

8 A No, ma'am.

9 Q Okay.

10 THE COURT: Thank you.

11 BY MS. MUNSON:

12 Q State's Exhibit No. 3, now what is State's Exhibit
13 No. 3?

14 A This is the backdoor.

15 Q Okay. Now, in relation to where you were parked,
16 where are the stairs on State's Exhibit No. 3? The
17 stairs that you saw the Defendant coming down?

18 A The stairs -- well, I mean, there ain't no stairs
19 right here.

20 Q Okay.

21 A But like right when you're coming out from the
22 doorway, the stairs are right there. The stairs that
23 you just showed me.

24 Q Okay. In order to get to the opened door that is
25 shown on State's Exhibit No. 3, would I or would I

1 not have to go upstairs to get to that flat level?

2 A Yes, ma'am.

3 Q Okay. Now, let me show you State's Exhibit No. 4.

4 It's kind of hard to see, isn't it?

5 A Yes, ma'am.

6 Q Can you tell what area of your house State's Exhibit

7 No. 4 is?

8 A That's the kitchen area.

9 Q Okay. And what does that on floor there in State's
10 Exhibit No. 3?

11 A It's Marsha's shoes.

12 Q Had you ever seen her wear that shoe before?

13 A Yes, ma'am.

14 Q All right. Now -- wow, I'm really sorry about that,
15 Faith. Now, we'll get back to State's No. 4. Now,
16 State's Exhibit No. 5, what area of your apartment is
17 this?

18 A That's still the kitchen area right there. That's
19 where the kitchen table is.

20 Q And on State's Exhibit No. 5, do you see the tennis
21 shoe that you spoke about that's shown in State's
22 Exhibit No. 4?

23 A Yes, ma'am.

24 Q Okay. Okay, all right. And is this how your kitchen
25 normally looked?

1 A No, ma'am.

2 Q Let's look at State's Exhibit No. 6. Now, can you
3 show the jury in State's Exhibit No. 6 where the
4 couch is?

5 A Right here.

6 Q Can you show the jury in State's Exhibit No. 6 where
7 you found your mother sitting?

8 A I found her sitting right here.

9 Q Okay. And when you say right here, are you talking
10 about to the right or to the left of the brown piece
11 of wood between the two couches?

12 A Well, I coming in it's going to be on right-hand
13 side.

14 Q Okay, so that's where she was seated?

15 A Yes, she was sitting right here.

16 Q All right. Now, that -- this is State's Exhibit No.
17 7, Faith. Now, what does this show?

18 A It shows the couch apart from each other.

19 Q Okay. And is that couch normally is--

20 A No, ma'am.

21 Q -- pulled apart like that?

22 A No, ma'am.

23 Q Okay. How does that couch normally fit together?

24 A It's latched on to each other.

25 Q Okay. Was it like that when you went to your

1 birthday party?

2 A No, ma'am.

3 Q Okay. Now, let's look at State's Exhibit No. 8. Boy
4 that light is terrible. What is shown -- what is
5 shown at the bottom of your mom's bare foot?

6 A It's a candle holder.

7 Q Okay. And where is that candle holder normally kept?

8 A In the kitchen area on the bar.

9 Q Okay. And let's look at State Exhibit No. 9, where
10 in relation -- where in your apartment is that?

11 A In the living room.

12 Q Okay. And is that normally how your living room
13 looked?

14 A No, ma'am.

15 Q While I've got you looking there, Faith, in State's
16 Exhibit No. 9, what's that gray plastic that we see
17 on the floor? Underneath your mother. Underneath
18 the furniture. The gray plastic.

19 A Right here?

20 Q No, ma'am, up to the right. The plastic that your
21 mother was laying on.

22 A Oh, that's the plastic -- well she keep her -- try to
23 keep her carpet clean and stuff like that.

24 Q Okay. All right. And finally, State's Exhibit No.
25 10. Now, what part of your house is this?

1 A That's the kitchen area.

2 Q Okay. And is that chair usually laying down like
3 that?

4 A No, ma'am.

5 Q All right. Now, I'm going to ask you to go back to
6 State's Exhibit No. 4. See, if we can't get some
7 better light for you here. And if you're looking at
8 the tennis shoe on State's Exhibit No. 4, do you see
9 the chair in the exhibit, Faith?

10 A Yes.

11 Q What is that on the chair?

12 A It's her wig.

13 Q Now, was your mom wearing a wig during that day?

14 A Yes, ma'am.

15 MS. MUNSON: Okay. All right. All right,
16 Faith, I have nothing further. Thank you.

17 CROSS-EXAMINATION

18 BY MR. CHAMBERS:

19 Q Ms. Smith, you said that you had known Nate for
20 several years?

21 A Yes.

22 Q He had been in a relationship with your mother?

23 A Yes.

24 Q Had he ever lived with y'all or had he just visited
25 at different times?

1 A Around the time when we stayed in Fieldscrest
2 apartment [REDACTED] that y'all just seen, he was
3 visiting. He never stayed there.

4 Q And at the time that this tragedy occurred, he was
5 living in the Atlanta area and working; is that
6 correct?

7 A Yes.

8 Q Then he would come up on the weekends?

9 A Yes.

10 Q Did he come up every weekend? How often would your
11 mom see him?

12 A It wasn't not every weekend. It was may be every
13 other weekend, maybe. Every other weekend, maybe.

14 Q Would she typically -- would he typically come by
15 bus?

16 A My momma would go pick him up.

17 Q At the bus station?

18 A Sometimes. Sometimes, yeah.

19 Q Now, you said that he had arrived in Greenville and
20 was at your apartment where you lived on Friday, the
21 day before this occurred, is that correct?

22 A Yes.

23 Q Do you remember your mother picking him up at the bus
24 station at 10:00 in the morning on Friday?

25 A I don't remember.

1 Q Do you remember that you got off work that day around
2 four or five o'clock and came back to the apartment
3 on Friday?

4 A That's because I went to work. I went to work every
5 day.

6 Q Do you remember that when you got there, your mother
7 had told you that Nate was there. I think your mom
8 came to pick you up at work--

9 A No, I caught the bus, no.

10 Q Okay. But you remember that Nate was at the
11 apartment when you got there on Friday at around five
12 o'clock or so?

13 A Yes, banging on the backdoor. I would not let him
14 in.

15 Q You don't remember that he was inside -- I'm talking
16 about Friday now?

17 A I know.

18 Q Okay. Do you remember that every -- well, let me ask
19 you, do you remember talking to Detective Flavell
20 with the sheriff's office -- or with the city police?

21 A Yes.

22 Q Okay. And do you remember giving him a statement
23 after this incident occurred?

24 A Yes.

25 Q All right. Do you remember telling Detective Flavell

1 that your momma told you that Nate was at the
2 apartment. We went back to the apartment and hung
3 out. Do you remember telling him that?

4 A No.

5 Q Okay. Do you remember telling him that Nate was
6 there when you got there?

7 A No.

8 Q Do you remember telling him that when Detective
9 Flavell asked you, Were they arguing?

10 You responded, No, everything was fine. They
11 were cutting up with each other on Friday.

12 A They wasn't arguing I don't think.

13 Q Okay. Do you remember that they were cutting up with
14 each other?

15 A What do you mean by that?

16 Q Well, I don't know. Do you remember saying that they
17 were cutting up with each other?

18 A As in like arguing?

19 Q Well, I would take that to mean joking around with
20 each other. Having fun with each other. Is that
21 what you meant?

22 A Well they was joking that Friday. They was joking.

23 Q So, they were getting along real well on Friday, no
24 problems with that?

25 A Yes.

1 Q And do you remember telling Detective Flavell that,
2 in fact, that Nate was there, that he played with the
3 baby for a while?

4 A Yes.

5 Q While y'all were there?

6 A Yes.

7 Q So that all happened on Friday?

8 A Yes.

9 Q So -- and do you remember when you got up on Saturday
10 morning, Nate was already gone. He wasn't in the
11 apartment?

12 A Yes, when I woke up he was not there.

13 Q Okay. And you went on to work, right?

14 A Yes, sir.

15 Q So. Everything had been pleasant and hadn't been any
16 problems between your mom and Nate, they were getting
17 along great when you went to work; is that correct?

18 A When I went to work -- he was not there when I went
19 to work.

20 Q I understand but the day before and that night--

21 A Everything was okay, yes.

22 Q -- everything was fine. Okay. And then when you
23 came home -- now, is that backdoor the main entrance
24 that y'all used?

25 A Yes, yes, sir.

1 Q Yeah. I mean, it seemed like that y'all kind of come
2 and go because you park your cars and so the backdoor
3 get used and front door really doesn't get used?

4 A Yes, that is correct.

5 Q So, it wouldn't be unusual for Nate to be coming out
6 the backdoor as you drove up, would that be correct?

7 A He was coming from the backdoor.

8 Q I understand. There wouldn't be anything unusual
9 about that. That's --

10 A We don't ever come in the front door, we always come
11 to the backdoor.

12 Q And you said as he was coming out he was walking down
13 those stairs and you saw that he had a black bag and
14 he had?

15 A A pillow.

16 Q Pillow?

17 A And it was something else in his hand hanging, I
18 don't know what it was.

19 Q And what kind of pillow did he have?

20 A It was a white pillow.

21 Q Was it like off a bed from the bedroom?

22 A Uh-huh.

23 Q That kind of pillow?

24 A Uh-huh.

25 Q So, it wasn't a couch pillow or anything like that?

1 A No, sir.

2 Q All right. Did you recognize it as a pillow from
3 your mother's bed?

4 A Yes.

5 Q All right. And so he had that and he went and he got
6 in her car?

7 A Yes.

8 Q And as you went in you said that he then drove out of
9 the driveway?

10 A Yes, sir, he speeded out the driveway really, really
11 fast.

12 Q Now, who was with you at that time as you were
13 walking in?

14 A My friend girl, Maryssa Cantrell. She was -- when I
15 was walking in the door she was pulling out the
16 driveway.

17 Q Okay. So, did she ever get out of her car?

18 A No.

19 Q Did Maryssa know Nate? Would she have known him from
20 eye site?

21 A Yes.

22 Q And did -- did Nate do anything to try to keep you
23 from going into the apartment or divert your
24 attention or anything like that?

25 A No.

1 Q He just got in the car and he left?

2 A Yes.

3 MR. CHAMBERS: All right, that's all the
4 questions I have for you. Thank you.

5 THE COURT: Any redirect limited to what he went
6 into?

7 MS. MUNSON: Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. MUNSON:

10 Q When you were talking to Mr. Chambers about banging
11 on the backdoor?

12 A Yes.

13 Q When did that happen?

14 A That happened -- okay, when I got off the bus I
15 was -- me and my son, we went in the apartment and he
16 started banging on the door when my momma had
17 arrived. My momma had arrived from the front door.
18 She come in through the front door.

19 Q And this was before or after you were at work?

20 A That was after I came home from work.

21 Q On which day?

22 A It was Saturday.

23 Q Okay. Your mother came in the front door?

24 A Uh-huh.

25 Q How do you know it was Nate banging on the backdoor?

1 A Because he was banging on the door, kicking on the
2 door, acting real, real crazy like. Real crazy.
3 Like banging on the door.

4 Open the door, Faith, I know you're in there.
5 Just banging on the door. And kicking on the
6 door.

7 MS. MUNSON: Okay, thank you.

8 I have nothing further, Your Honor.

9 THE COURT: Anything else, Mr. Chambers?

10 RE CROSS-EXAMINATION

11 BY MR. CHAMBERS:

12 Q Did your mother have a problem with Nate's drinking?
13 Did she get upset about him drinking?

14 A Yes.

15 Q Would they sometimes argue about his drinking?

16 A Yes.

17 MR. CHAMBERS: Thank you.

18 MS. MUNSON: Nothing further, Your Honor.

19 THE COURT: Thank you, ma'am, you may step down.
20 Watch your step when you step down.

21 Is the State ready to call your next witness?

22 MS. MUNSON: Yes, sir, Your Honor. The State
23 calls Officer Blassingame.

24 THE COURT: Officer, come right up here and let
25 the Clerk of Court swear you in.

1 THE CLERK: Sir, please, place your left hand on
2 the Bible, raise your right hand.

3 JOHN BLASSINGAME, after being duly sworn,
4 testified as follows:

5 THE CLERK: Thank you, please be seated. Please
6 state your name for the record. 2.

7 THE WITNESS: Corporal John Blassingame.

8 DIRECT EXAMINATION

9 BY MS. MUNSON:

10 Q Who do you work for, sir?

11 A Greenville City Police Department.

12 Q How long have you been with the city police
13 department?

14 A Thirteen and a half years?

15 Q What is your job title?

16 A At the time I'm a corporal and I work in the warrants
17 division.

18 Q What are your duties?

19 A I'm sorry?

20 Q What are your duties?

21 A I serve warrants and I also do court security.

22 Q All right. What were your duties back in April of
23 2011?

24 A I was what we call routine patrol.

25 Q And did you get a call in reference to this case?

1 A Yes, ma'am.

2 Q What date?

3 A It was April the 23rd, approximately 10:26 in the
4 evening.

5 Q Were you on duty?

6 A Yes, ma'am.

7 Q And where do you go in response to the call that you
8 got?

9 A We received a call, it was -- I'm sorry, it was [REDACTED]
10 [REDACTED] McCullah Street. [REDACTED] McCullah Street, apartment
11 [REDACTED].

12 Q Okay. And where is that location in reference to the
13 courthouse? Just kind of?

14 A Uh, this way -- so Main Street -- so I would say 385
15 is that way, so it would be North East of this place
16 right here.

17 Q Okay.

18 A If you were facing outside, I believe.

19 Q Okay. And the location that you went to, in what --
20 what jurisdiction was it?

21 A The City of Greenville.

22 Q All right. When you got there, were there any other
23 emergency personal ahead of you?

24 A Yes, ma'am, there was EMS and EMG that was inside the
25 apartment.

1 Q And did you go inside the apartment?

2 A I did.

3 Q Just briefly, what did you see when you went in
4 there?

5 A You want me -- what happened when I first pulled up
6 or just when I went in?

7 Q Well, as you arrived?

8 A As I arrived I did see EMS, they were inside.
9 Ms. Faith, she was outside. She was on her phone,
10 she was hysterical. She was screaming. She kept on
11 saying that, He killed my mother, he killer my mother
12 and took her car.

13 Q Okay.

14 A At that time I asked her, Who, who? Try to calm her
15 down.

16 She said, Nathaniel Beeks.

17 At that time I did go inside where I did meet
18 the EMS personnel and they said they couldn't receive
19 a pulse from the victim.

20 Q Okay. And then was there anything else other than
21 the victim that was there, was there anything else
22 related to the case that you took information on?

23 A Yes, ma'am. I just briefly observed the condition of
24 the apartment. It seemed that things were knocked
25 over. Kind of disarray. It didn't look like a

1 ordinarily apartment that they that actually kept
2 their apartment that way.

3 Q Okay. And what about any other items that you may
4 have been asked to look for?

5 A At that time when I was in the apartment, she said --
6 I'm sorry, she, Ms. Faith, stated that he took her
7 mom's car. So, at that time I didn't have a tag
8 number. So, I asked her what was the tag number.
9 She didn't know. We were outside at the time I was
10 questioning her because we didn't let her back in the
11 apartment. At that time, I asked her if she had
12 anything to give me that I could get the tag off her
13 mom's car. So, I did escort her back in the
14 apartment. We went to the bedroom immediately to the
15 left as you enter the door. She did obtained a
16 insurance card with State Farm.

17 At that time I took the insurance card, went
18 back out to my vehicle, I called dispatch to see if
19 we could get a tag -- I'm sorry, not dispatch, I
20 called the insurance company first to obtain the tag
21 number. They gave me the VIN and tag number of the
22 vehicle. And I did call our dispatch to put it out
23 to the other agencies.

24 Q Okay. And is that pretty much all you had to do with
25 the case at that time?

1 A Yes, ma'am, at that time. That's the only
2 information I had.

3 MS. MUNSON: Okay. I have nothing further at
4 this time, Your Honor.

5 MR. CHAMBERS: Your Honor, I don't have any
6 questions of for Officer Blassingame.

7 THE COURT: Thank you, sir, you may step down.
8 Any reason why the witness can't be excused?

9 MS. MUNSON: No, sir.

10 MR. CHAMBERS: No, Your Honor.

11 THE COURT: Thank you, sir.

12 THE WITNESS: Yes, sir.

13 THE COURT: Watch your step, you may be excused.

14 THE WITNESS: Thank you.

15 MS. MUNSON: Your Honor, the State calls Jeff
16 Browning.

17 THE COURT: Sir, come forward and let the Clerk
18 of Court swear you in.

19 THE CLERK: Sir, please, place your left hand on
20 the Bible, raise your right hand.

21 JEFF BROWNING, after being duly sworn, testified
22 as follows:

23 THE CLERK: Thank you, please be seated. State
24 your name for the record.

25 THE WITNESS: Corporal Jeffrey Browning.

1 THE COURT: Mr. Roberts, come forward.

2 THE CLERK: Sir, if you'd, please, place your
3 left hand on the Bible, raise your right hand.

4 OLIJAHWON ROBERTS, after being duly sworn,
5 testified as follows:

6 THE CLERK: Thank you, please be seated. State
7 your name for the record.

8 THE WITNESS: My name is Olijahwon Roberts.

9 DIRECT EXAMINATION

10 BY MS. MUNSON:

11 Q Mr. Roberts, where you living now?

12 A [REDACTED] Green Avenue.

13 Q Okay. And are you working anywhere?

14 A No, ma'am.

15 Q Okay. Do you have any kids?

16 A No.

17 Q All right. I want to draw your attention back to
18 April, 2011, okay? The incident that brings us here,
19 do you remember that date?

20 A Yes.

21 Q Okay. What were you doing, just in general, what
22 were you doing when you first noticed that something
23 was going on?

24 A I was at my sister house. I was about to call Faith
25 on my phone but I had left it in the car.

1 Q Okay. And you say you were going to call Faith?

2 A Yes.

3 Q Who do you remember by that?

4 A I mean Faith, Ms. Smith.

5 Q Okay. And y'all are friends?

6 A Yes.

7 Q How long had you known each other?

8 A We was just getting reconnected because we know each
9 other in high school.

10 Q Okay. And your sister, what's her name?

11 A Jameshia Roberts.

12 Q Okay. And where was she living at the time?

13 A Fieldcrest.

14 Q Is that where Faith was living, too?

15 A Yes. I think they call it Nickeltown Green now, I'm
16 not sure.

17 Q Okay. All right, okay did you know -- when did you
18 first know that something was not right?

19 A I heard somebody screaming when I went to get my
20 phone out the car to call Faith. But I really didn't
21 pay that much attention to it until I walked back
22 through the house and I asked my mom and dad did they
23 hear something? Then I walked out to the back. And
24 then that's when my sister boyfriend told me that he
25 heard Faith screaming. Then I ran over there and

1 knocked on the door. It was half way -- it was a
2 little bit opened. So, I opened it up and went in.
3 And saw her holding her momma and her son was
4 standing beside her and she was crying. So, I ran
5 back out the house to get some help. And that's when
6 I ran into my mother and my aunt and next door
7 neighbor. And I asked if anybody know CPR.

8 Q Okay. Now, did you know Faith's mother?

9 A I met her once.

10 Q Okay. All right.

11 MS. MUNSON: I have nothing further at this
12 time, Your Honor.

13 MR. CHAMBERS: Your Honor, I have no questions
14 for Mr. Roberts.

15 THE COURT: Thank you, sir, you may step down.
16 Please, watch your step.

17 Any reason why the witness can't be excused?

18 MS. MUNSON: No, sir.

19 MR. CHAMBERS: No, Your Honor.

20 THE COURT: Sir, you may be excused as well.

21 MS. MUNSON: Your Honor, the State calls Billie
22 Whitherspoon.

23 THE COURT: Ma'am, come right up here, if you
24 would.

25 THE CLERK: Ma'am, if you'd pause at the end of

1 the bench. Please, place your left hand on the Bible,
2 raise your right hand.

3 BILLIE WHITHERSPOON, after being duly sworn,
4 testified as follows:

5 THE CLERK: Please, be seated. State your name
6 for the record.

7 THE WITNESS: Billie Martin Whitherspoon.

8 DIRECT EXAMINATION

9 BY MS. MUNSON:

10 Q Hi, Ms. Whitherspoon.

11 A Hi.

12 Q Where are you living now?

13 A [REDACTED] Green Avenue.

14 Q Okay. And where were you living back in April of
15 2011?

16 A [REDACTED] Brunna Lane in Piedmont.

17 Q Okay. Do you remember the events that bring you here
18 today?

19 A Yes.

20 Q Where were you when you first knew that something was
21 wrong?

22 A I was at my daughter house that stayed in the same
23 complex as Ms. Marsha.

24 Q Did you know Ms. Marsha?

25 A No, ma'am.

1 Q Okay. And how close was your daughter's apartment to
2 Ms. Marsha's apartment?

3 A It was not that far. It was like a L-shape.

4 Q Okay.

5 A My daughter's on one end and she's on the other end.

6 Q Okay. When you were at daughter's apartment was
7 anybody else there with you?

8 A Yes, my sister, daughter, my son, it was several
9 people there.

10 Q Okay. And how did you know that something was wrong?

11 A Well my son came running through the door saying
12 something happened, something bad. And me and my
13 sister followed him out the door.

14 Q Okay.

15 A Because he ran through the house.

16 Q Where did you follow him to?

17 A To over there at Faith to her mom's.

18 Q Okay. And what did you do once you got to the
19 apartment?

20 A She was crying. So and the other girl was saying
21 that she could perform CPR. So, we kind of laid her
22 down because the position that she was in --

23 Q Okay.

24 A It wasn't any way you could do CPR like that.

25 Q Okay, what position was she in?

1 A She was leaned up against the couch, laid back like
2 that. With her back bottom part on the floor.

3 MS. MUNSON: May I approach, Your Honor?

4 THE COURT: Yes, ma'am.

5 BY MS. MUNSON:

6 Q Ms. Whitherspoon, take a look at State's Exhibit No.
7 11, if you could. Just look at that. Do you
8 recognize that?

9 A Yes, ma'am.

10 Q Does that accurately show how you laid Marsha Smith?

11 A Yes. We just kind of moved her upper part of her off
12 the couch.

13 Q All right.

14 MS. MUNSON: Your Honor, at this time I move
15 State's Exhibit No. 11 into evidence.

16 MR. CHAMBERS: Without objection, Your Honor.

17 THE COURT: Without objection, State's Exhibit
18 11.

19 (WHEREUPON, State's Exhibit No. 11 was admitted
20 into evidence.)

21 MS. MUNSON: All right, Ms. Whitherspoon, I have
22 no further questions. Thank you, very much.

23 MR. CHAMBERS: Your Honor, I have no questions
24 for Ms. Whitherspoon.

25 THE COURT: Thank you, ma'am, you may step down.

1 Please watch your step.

2 Any reason why the witness cannot be excused?

3 MS. MUNSON: No, sir, Your Honor.

4 MR. CHAMBERS: No, Your Honor.

5 THE COURT: Thank you, ma'am, you may be excused
6 as well.

7 MS. MUNSON: Your Honor, the State calls James
8 Crawford.

9 THE COURT: Mr. Crawford, please come forward.

10 THE CLERK: Please, place your left hand on the
11 Bible, raise your right hand.

12 JAMES CRAWFORD, after being duly sworn,
13 testified as follows:

14 THE CLERK: Thank you, please be seated. State
15 your name for the record.

16 THE WITNESS: James Crawford.

17 DIRECT EXAMINATION

18 BY MS. MUNSON:

19 Q Hi, Mr. Crawford. How old are you, sir?

20 A Forty-eight.

21 Q Where do you live?

22 A I live -- I was living -- I was living in [REDACTED]
23 [REDACTED] at the time. Now I stay in
24 Spartanburg.

25 Q Okay, you say at the time?

1 A Yeah.

2 Q At the time of what?

3 A At the time -- the last time I seen Marsha.

4 Q Now, did you know Marsha?

5 A Yeah, I know her.

6 Q How did you know her?

7 A I know her by her cousin, Susan.

8 Q Okay. Did you know any of her family, had you ever

9 met any of her family?

10 A I know Faith at the time.

11 Q Okay.

12 A I ain't know...

13 Q On the night -- the last time that you saw Marsha,

14 where did you see her?

15 A I saw her that same morning, earlier that same

16 morning because she come to the house. Because she

17 took Susan to the Bi-Lo -- she took Susan to the

18 Bi-Lo and then she come to the house. Then I think

19 her and Susan was riding somewhere, you know.

20 Q Okay. Now, do you know who Marsha was dating back

21 then?

22 A She was dating Nathaniel.

23 Q All right. Do you know him?

24 A Yes.

25 Q You been around him before?

- 1 A Yes.
- 2 Q How long had you known him?
- 3 A I been knowing him for about five years.
- 4 Q Now, when Marsha came to your house, was she with
5 anybody?
- 6 A No she was -- no, she wun't [verbatim] wit [verbatim]
7 nobody at the time.
- 8 Q Okay. And after she was done riding around with
9 Susan, did you see her anymore that day?
- 10 A Yes, ma'am. She come by the house, sat down at the
11 house for a while. Because Susan getting ready to
12 leave and go see about visiting her mother. So,
13 Marsha, after they come back from the store, because
14 Susan wanting to leave about 12:00. So, she had come
15 back -- she come back and sat down at the house. Me
16 and her sat down, I drunk me a beer, I was watching
17 TV. Then, I think, Nate -- Nathaniel pull up, got
18 off the bus.
- 19 Q Okay.
- 20 A Got a city bus and they met over at the house.
- 21 Q Okay. He got off the city bus near your house?
- 22 A Yeah.
- 23 Q How close does the city bus stop near your house?
- 24 A Right on the street. I think from here to about over
25 there.

1 Q About when did Nathaniel get over to your house?

2 A He walked down to the -- he walked down to the
3 house -- he walked down to the house because Marsha
4 was already there.

5 Q Okay. Was he -- what did y'all do when he got there?

6 A Oh, he -- I was sitting on the couch -- we was
7 sitting on the couch drinking a beer.

8 Q Okay. So, was everything all right at the time?

9 A Everything was all right at the time.

10 Q All right. Did that change at some point?

11 A After a while about -- say about an hour later, then
12 me and Nate was sitting on the couch watching TV.
13 Then, her and Marsha was talking. Something he
14 said -- Marsha say something to him, triggered him
15 off something. I didn't get in the conversation,
16 whatever she was doing, what they were talking about.
17 Then, Nate jumped up off of the couch, jumped up off
18 the couch. And then, he was so mad he went out the
19 front door.

20 And I said, Nate, don't slam my front door like
21 that.

22 So, he went out and then he come back. And he
23 went over by the kitchen table and started talking to
24 Marsha. And he brought -- I guess he went to the
25 store and got two beers. And then, he threwed

1 [verbatim] the beer up under the coffee table and
2 went back out the door. I didn't see him no more
3 after the.

4 Q Okay.

5 A And Marsha sat over at the house for a while.

6 Then she said, Well, I'm going over there to
7 visit my momma for an hour, about an hour and a half.

8 That's the last time I seen her.

9 Q Okay. Whenever Nate got mad and stormed out the
10 door, where was Marsha?

11 A She was still sitting at the coffee table.

12 Q Okay. Was Marsha drinking with y'all?

13 A No, ma'am, she don't drink.

14 Q Okay. And how long did he stay gone when he stormed
15 out the first time?

16 A The first time he stayed gone about 30 minutes.

17 Q All right. Then, when he came back, had his mood
18 changed at all?

19 A Yeah, he had really changed. He was sweating and
20 sweat popping off him. Then -- sweat popping off
21 him.

22 I said, Nate, what's wrong with you?

23 He didn't say nothing.

24 So, he looked at Marsha and gave her some kind
25 of funny look. Then, he went back out the door.

1 That's the last time I seen him.

2 Q Okay. And then how much longer did Marsha stay?

3 A She stayed about 30 minutes after he had left. She
4 stayed about 30 minutes after he had left. Then she
5 said she was going to her momma house. So, she left
6 to go to her momma house and that's the last time I
7 seen her.

8 Q Okay.

9 MS. MUNSON: Thank you, very much.

10 I have nothing further, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. CHAMBERS:

13 Q Now, this was on April the 23rd, as you remember?

14 A Yeah, it was a Saturday.

15 Q And this was at your house?

16 A Yeah.

17 Q And how close did you live to where Marsha lived?

18 A Well, I stayed -- Marsha -- I stayed a pretty good
19 piece. I stayed in Nickeltown. Marsha stayed over
20 there, I call it Fieldcrest. I know it as
21 Fieldcrest.

22 Q So, y'all weren't neighbors?

23 A No, we weren't neighbors.

24 Q And when they -- Marsha was already at your house
25 before Nate got there?

1 A Yeah.

2 Q Did you know Nate was going to be coming over?

3 A I didn't know because I had just woke up, I didn't
4 know. I didn't know she was going to be there, he
5 was going to come in there. They didn't tell me
6 nothing what was going on.

7 Q Well, between the two of them, who would you say that
8 you were friends with, Marsha, Nate or both of them?

9 A I friends with both of them, both of them friends?

10 Q Who had you known the longest?

11 A I know Nate the longest.

12 Q Did you know that Nate lived in Georgia and came up
13 on the weekends, usually?

14 A Yeah, I know that, yeah.

15 Q Would Marsha come visit with you at times when Nate
16 wasn't there?

17 A No, no. If he come visit, she come visit my cousin,
18 she don't come see me.

19 Q But she had come over that day and then Nate came
20 over later?

21 A Yeah.

22 Q And I believe you said she had been there about 30
23 minutes before Nate got there?

24 A Yeah, yeah.

25 Q So, you were drinking beer. You said Marsha didn't

1 drink?

2 A No, she didn't drink.

3 Q And you said when Nate came he had some beer with
4 him. How much beer did he have?

5 A He had, I think, two quarts, I think.

6 Q All right. And he came on the bus, right?

7 A Yeah, I think so. I think he come on the bus because
8 they was still sitting at the house.

9 Q He didn't have a car, though?

10 A No.

11 Q How long was he there and y'all hanging out before
12 you say that he jumped up and seemed to get mad? How
13 long had he been there?

14 A He had been there, I think, about an hour before
15 then.

16 Q And you said they were talking to each other?

17 A Yeah.

18 Q And that's when that happened?

19 A Yeah.

20 Q But you don't know what they were talking about?

21 A I can't remember what they were talking about.

22 Q And then he walked out you said and came back?

23 A Yeah, he walked out and come back.

24 Q All right.

25 A Then started talking to Marsha. Then he throwed the

1 beer. He got mad about something. I don't know what
2 Marsha told him. He got mad about something and
3 threw the beer up under the thing and ran out of
4 the door.

5 Q And then he left again, how long did all that take
6 that he was in there?

7 A It wun't no more than 15, 20 minutes, I don't think.
8 I don't remember, it been...

9 Q How many beers did you see Nate have while he was
10 there at your house?

11 A I think he had about three, I think. I think he had
12 two to three.

13 Q He drink any of your beer or just the beer that he
14 brought?

15 A Just the beer he brought.

16 Q Were y'all smoking marijuana that day?

17 A Nah, I wasn't smoking marijuana.

18 Q It was not unusual for y'all to smoke marijuana
19 together was it, you and Marsha?

20 A Yeah, I think we spoked a joint earlier that morning.
21 That was before Nate got there.

22 Q So, she had been there earlier that morning before
23 Nate got there?

24 A Yeah, but see early that morning she -- my wife had
25 called her, told her come take her to the store.

1 Q And you didn't see Nate anymore that day after he
2 left?

3 A Huh-uh, I ain't seen him anymore after that. No, I
4 ain't seen him no more.

5 Q And you had known -- how many times over the years
6 would you say over the years that they had been over
7 to your apartment -- or over to your house together?

8 A Talking about Nate and Marsha?

9 Q Yeah.

10 A Every other -- I can't really say. They were coming
11 over there pretty recent, pretty recent.

12 Q So, it was not uncommon, y'all got together a good
13 bit?

14 A Yeah, yeah.

15 MR. CHAMBERS: That's all the questions I have.

16 THE COURT: Any redirect?

17 MS. MUNSON: No, sir, Your Honor.

18 THE COURT: Thank you, sir, you may step down.

19 MS. MUNSON: May this witness be excused, Your
20 Honor?

21 THE COURT: Yes, sir.

22 THE WITNESS: Oh, I'm sorry.

23 MR. CHAMBERS: No, objection, Your Honor.

24 THE COURT: Thank you, sir, you maybe excused.

25 MS. MUNSON: Your Honor, the State calls Darlene

1 Baretee.

2 THE COURT: Ma'am, come right up front.

3 THE CLERK: Ma'am, please, place your left hand
4 on the Bible, raise your right hand.

5 DARLENE BARTEE, after being duly sworn,
6 testified as follows:

7 THE CLERK: Thank you, please, be seated. State
8 your name for the record.

9 THE WITNESS: My name is Darlene Bartee.

10 DIRECT EXAMINATION

11 BY MS. MUNSON:

12 Q Hi, Ms. Bartee.

13 A Hello.

14 Q Are you working now?

15 A No, ma'am, I am not working.

16 Q Where's the last place you worked?

17 A (Indiscernible) Psychiatrist Residential Treatment
18 Center.

19 Q What's the name of it?

20 A (Indiscernible) Residential Treatment Center.

21 Q Okay.

22 A It's a residential treatment for children.

23 Q How about before that?

24 A I was in New York. I'm originally from New York
25 City.

1 Q Okay. Now, while you were working at this
2 psychiatric treatment center for children, did you
3 met somebody there that you became friends with?

4 A Yes, I did.

5 Q And who's that?

6 A Her name is Marsha Smith.

7 Q All right. What type hours would y'all work?

8 A We would work 12 hours. And sometimes 12 to 14 hours
9 a day.

10 Q Okay. Same shift?

11 A Same shift.

12 Q Okay. How long did you work with Marsha?

13 A For about a year and a half.

14 Q All right. And while you were at work, did you
15 strike up a friendship?

16 A Yes, I did. Marsha and I became very close. Very
17 close coworkers.

18 Q Okay. What sort of things did your job require you
19 to do?

20 A We had to make sure the children were safe. We had
21 to feed them, administer medicine at times, put them
22 to bed, wash their clothes. Be their parent, you
23 know. (Indiscernible) situations they got into a
24 struggle with another patient.

25 Q And when y'all had meal breaks were you allowed to

1 leave the facility?

2 A No, ma'am, we couldn't leave the facility at all. We
3 had to eat when the children ate. We were stuck
4 inside, you know, for those hours.

5 Q And what sort of things would you talk about with
6 Marsha Smith?

7 A Marsha and I would talk about a lot of things, our
8 children, the job, our relationships.

9 Q Okay. Now, during the time that you were working
10 with Marsha, did her demeanor change in some way?

11 A Yes.

12 Q And when was that in relation to her death?

13 A Marsha, before she had passed had become happy.
14 Marsha -- to back up a little bit, Marsha at work was
15 very stressed out. Very tired of certain situations.
16 And at the latter part of her life, I had noticed a
17 change in her attitude, her appearance. She became
18 happy, a happier person.

19 Q Okay.

20 A And that's because Marsha had met someone.

21 Q Okay. Now, did you meet this other someone?

22 A No, I did not. I only know from what Marsha told me.

23 Q Okay. Now, had you ever met the other fellow that
24 she was seeing?

25 A No, I have never met him personally but I had a brief

1 conversation over the phone.

2 Q And was that a long time ago? When was that? If you
3 remember.

4 A In transition when Marsha was moving from one complex
5 to another.

6 Q Okay. So, had you ever been to Marsha's house?

7 A No, I have not.

8 Q Okay. Now, when you say in transition from moving
9 from one complex to another, what do you mean by
10 that?

11 A Marsha was looking for another residence. And she
12 found a nice place. Where she use to live, it was
13 infested with drugs. So, she wanted to leave. Also,
14 she wanted to leave because that complex that she was
15 moving to had restrictions. And the only people that
16 can stay there were one who was on the lease. So,
17 she was very happy about that.

18 Q Okay. When was the last time you actually saw
19 Marsha?

20 A I saw Marsha the Thursday before she passed at work.

21 Q And what hours did you work that day?

22 A I worked 6 a.m -- I got off at 8:30.

23 Q Uh-huh.

24 A Marsha, I believe got off at 6:30.

25 Q Okay. And did you give her some advise? Did you

1 offer her something that Thursday?

2 A Yes. Marsha and I was at lunch and -- at our desk
3 and we were talking about her getting away from
4 Nathaniel. And we were discussing how she was going
5 to do that. I gave her advise that maybe she should
6 allow myself or someone else to be around her at that
7 time. It was a conversation of how she was going to
8 tell him. Because she knew that he had sometime a
9 mean streak. Especially when he was drinking. She
10 did not like that.

11 Q Okay. And when you offered her that advice, did she
12 take you up on it?

13 A She told me that she was going to be okay and that
14 she would take somebody with her, that somebody was
15 going to be with her.

16 Q Okay.

17 MS. MUNSON: Nothing further at this time, Your
18 Honor.

19 CROSS-EXAMINATION

20 BY MR. CHAMBERS:

21 Q So, you were aware from this close working
22 relationship with Marsha that she had been in a
23 relationship for several years with Nate Beeks, is
24 that right?

25 A That's correct.

1 Q And you were aware, based on your conversations with
2 her, that he lived in Georgia?

3 A Yeah, I was under assumption that he was in
4 treatment. He was in a rehab in Georgia.

5 Q But one of the things that she didn't like, she
6 didn't like having a relationship with somebody that
7 was out of town. She liked that this new guy was in
8 Greenville, is that right?

9 A Had nothing to do with him living in Greenville.

10 Q But you said she began -- she got really happy. That
11 she was in this new relationship?

12 A Yeah, the relationship that she spoke about was
13 brief. She went to a friend's house that she knew in
14 Greenville. Marsha and I was in the circle but she
15 had also friends in Greenville. She was in the
16 circle with them as well. So, Marsha had went over
17 to a friend's house and she met someone there. That
18 person began to talk to her like a woman should be
19 treated and talked to. And she liked that. She knew
20 the difference when somebody appreciating her as a
21 woman as opposed to him being mean and frustrating
22 her and getting drunk all the time.

23 Q And so she planned on telling Nate that she wanted to
24 break things off. And, in fact, she was going to be
25 seeing somebody else?

1 A She was going to tell Nate, inform Nate that the
2 relationship had came to an end.

3 Q All right. And y'all actually discussed how she
4 would go about that?

5 A We talked about it.

6 Q And she told you that she, basically, that she was
7 going to handle it herself?

8 A Yes.

9 MR. CHAMBERS: That's all the questions I have
10 for you, thank you.

11 THE COURT: Any redirect?

12 MS. MUNSON: No, sir.

13 THE COURT: Thank you, ma'am, you may step down.
14 Any reasonable why the witness cannot be
15 excused?

16 MS. MUNSON: Not from the State, Your Honor.

17 MR. CHAMBERS: No, Your Honor.

18 THE COURT: Thank you, ma'am, you may be
19 excused. Watch you step and the board.

20 MS. MUNSON: May we approach, Your Honor?

21 THE COURT: Uh-huh.

22 (WHEREUPON, an off-the-record bench conference
23 was held in the presence of the jury but out of
24 the hearing of the jury.)

25 THE COURT: Ladies and gentlemen, while the next

1 witness is approaching, why don't you stand up and stretch
2 your legs just for a moment.

3 MS. MUNSON: Your Honor, the State calls Carrie
4 Wilson.

5 THE CLERK: Please place your left hand on the
6 Bible, raise your right hand.

7 CARRIE WILSON, after being duly sworn, testified
8 as follows:

9 THE CLERK: Please be seated. State your name
10 for the record.

11 THE WITNESS: My name is Carrie Wilson.

12 DIRECT EXAMINATION

13 BY MS. MUNSON:

14 Q Hi, Ms. Wilson. Where do you live now?

15 A [REDACTED] Claxton Drive, Greenville, South Carolina.

16 Q How long have you been living there?

17 A Eighteen years.

18 Q Okay. Do you have any children?

19 A Yes.

20 Q How many?

21 A I have three living and one dead.

22 Q Okay. And the three that are living, are they girls,
23 men, women?

24 A Two girls and one boy. And they are living.

25 Q Any grandchildren?

- 1 A Yes.
- 2 Q How many of those?
- 3 A Nine, I believe.
- 4 Q Wow. Okay, Ms. Wilson, how far did you go in school?
- 5 A I finished high school and two years of college.
- 6 Q What were your studying in college?
- 7 A I was working with seniors there. In the senior
- 8 program.
- 9 Q Okay. Now, Ms. Wilson, have to talk about your dead
- 10 child, who is that?
- 11 A Marsha Smith.
- 12 Q How old was Marsha when she died?
- 13 A Marsha was 50 years old. She would have been 51 in a
- 14 few weeks.
- 15 Q How many children did she have?
- 16 A She has five. Had five.
- 17 Q Okay. Now, did you see Marsha on the date that she
- 18 died?
- 19 A Yes, I did.
- 20 Q And where did you see her?
- 21 A At my home.
- 22 Q About when did she get to your home?
- 23 A She must have arrived at my home between 6 and
- 24 6:30 p.m.
- 25 Q Was anyone with her?

1 A No.

2 Q And how long did she stay at your home?

3 A She was at my home maybe an hour, two hours. I would
4 say.

5 Q Okay. And what were y'all doing while she was there.

6 A Well, it was the Saturday before Easter. And I had
7 prepared dinner for the Easter dinner. Marsha had in
8 the previous brought me over dinners when she would
9 come to visit, she would always bring me a dinner.
10 So, I had gotten her plates and whatever together,
11 put them on table. And then we sat in my sitting
12 room and we talked. And the phone rang two times.
13 She answered and no one said anything. The third
14 time the phone rang, she talked to Nathaniel.

15 Q All right, Ms. Wilson, when you say the phone rang,
16 which phone are you talking about?

17 A Talking about her cell phone.

18 Q Okay. And how do you know that she was talking to
19 Nathaniel?

20 A Well, when she finished talking to me -- I mean, when
21 she finished talking she says to me she says, Momma,
22 that was Nathaniel. And I'm going home. He wants me
23 to come home and give me him clothing. He says that
24 he's going back to Atlanta.

25 Q Okay.

1 A But there is no bus going back to Atlanta tonight.

2 We went back to the kitchen, she picked up her
3 plates and we started through the living room and was
4 going out.

5 I said to her, smiling and laughing and I said,
6 Marsha, are you sure you're not going to drive him
7 back to Atlanta?

8 She said, No, momma, I'm not going to drive him.

9 Q Why did you say that? Why did you ask her that?

10 A I just -- I don't why, I just asked her that.

11 Q Okay.

12 A And she said, No. I'm not going to drive him back
13 because he's drinking.

14 Q Okay.

15 A And I walked to the door and he hugged and kissed her
16 and I never seen her since.

17 Q Had you never met Nathaniel?

18 A Yes.

19 Q How long would you say that Marsha was dating or
20 seeing Nathaniel?

21 A It had been at least I imagine 8 to 10 years, I'm not
22 sure.

23 Q Okay. They have any children together?

24 A No.

25 Q They were married?

1 A No.

2 Q Ever live together?

3 A Not that I know of. He was in and out.

4 Q Okay.

5 A But I don't know if they ever lived together or not.

6 Q Was he ever at your house?

7 A Yeah, he's been to my home.

8 Q How many times would you say?

9 A Real often.

10 Q All right. Y'all have meals together?

11 A Yes.

12 Q You all right?

13 A I'm fine.

14 Q Okay. Have you ever met any of Nathaniel's people?

15 A Yes, I've met his mother.

16 Q Okay. And is she a nice lady?

17 A She was nice to me. I only met her, I think, one

18 time.

19 Q Okay. When -- how did you know that Nathaniel was in

20 town this weekend?

21 A When Marsha called she said that she had taken Faith

22 to the birthday party and she was coming by my house.

23 And she said that Nathaniel had come up on Friday.

24 And I was under the impression that she had taken him

25 over to his mother house. Because she says to me

1 that she wants me to come to my house and give me him
2 clothes so he can take a bus back to Atlanta.

3 Q Did you ask Nathaniel to do anything for you that
4 weekend?

5 A No, I didn't see him.

6 Q Did Marsha we're glasses, ever?

7 A Yes.

8 Q All the time?

9 A Most times.

10 MS. MUNSON: Thank you, Ms. Wilson.

11 I have no further questions, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. CHAMBERS:

14 Q Ms. Wilson, there were several occasions over the
15 years that Nathaniel or Nate would come to your
16 house, is that correct?

17 A That's true.

18 Q And he often would cut the grass for your when he was
19 here on the weekends, is that correct?

20 (WHEREUPON, there was an outburst from people in
21 the audience.)

22 MS. MUNSON: I apologize, Your Honor.

23 THE WITNESS: He may have cut the grass once or
24 twice, I don't remember.

25

1 BY MR. CHAMBERS:

2 Q In fact, when he had indicated, when you talked to
3 him on Friday, the day before this incident occurred,
4 that y'all had made plans for him to come and cut
5 your grass that weekend, correct?

6 A I did not talk to Nathaniel on Friday.

7 Q Do you remember talking to Sergeant Rigs with the
8 police department?

9 A I talked to someone, I don't know who the person was.

10 Q Do you remember telling Sergeant Rigs, I talked to
11 him a couple times Friday. My grass needed cutting.
12 I did not see him Saturday because it was raining.
13 He did not cut my grass.

14 A No, I do not remember that.

15 Q All right. Let me ask you this. I want you to look
16 at this statement and look at that signature at the
17 bottom.

18 A That's my signature. I said I didn't remember.

19 Q Okay.

20 A I don't remember talking to him. I don't remember
21 talking to Nathaniel on a Friday.

22 Q But if you're signed your name to it, that would
23 indicate that what's written down here is accurate,
24 is that correct?

25 A From Atlanta and say staying with her.

1 Q Well let's look at this sentence right here.

2 I talked with him a couple of times Friday.

3 A I don't remember saying that.

4 Q But if you signed it--

5 A I said, I don't remember saying that.

6 Q Okay. But you're not saying you didn't say it?

7 A No, I'm not saying I didn't say it. I said I don't
8 remember saying it.

9 Q And he had cut your grass in the past so that
10 wouldn't--

11 A Over the years, yes.

12 Q And so, you were aware that he had come up on Friday?

13 A Well, according to that I said that he was supposed
14 to cut the grass.

15 Q And you were going to be cooking Easter dinner for
16 everyone, is that correct?

17 A For the family.

18 Q Y'all had gone out and bought a ham, is that right?

19 A No.

20 Q You didn't buy a ham?

21 A No.

22 Q But your expectation was that Nate was going to be
23 there for Easter dinner on Sunday, correct?

24 A Correct. At least Marsha was, I don't know about
25 Nate.

1 Q And you asked her if she was going to drive him back
2 to Atlanta, is that right?

3 A Correct, I ask her that.

4 Q And she told you that she was not?

5 A Correct.

6 Q Are you aware that that was originally the plan? Is
7 that she was going to take him back to Atlanta?

8 A That was not -- no, that was not the original plan.
9 I only asked her that because I was kidding with her.
10 And she said that Nate -- she was going to take him
11 to the bus station.

12 Q Were you aware that she had met someone else that she
13 was interested in romantically?

14 A No, I did not know that.

15 Q So, you had no knowledge of that at all?

16 A No, I did not.

17 Q Were the two you close to one another?

18 A Very close.

19 Q Did she share lots of things with you?

20 A Her personal life, no.

21 Q So, it would not be unusual for her not to tell you
22 that she was in a relationship with another man other
23 than Nate?

24 A That's correct.

25 MR. CHAMBERS: All right, thank you, very much,

1 Ms. Wilson.

2 THE WITNESS: You're quite welcome.

3 MS. MUNSON: Briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. MUNSON:

6 Q If Nathaniel had come for Easter dinner, would he had
7 been welcomed?

8 A Well, he was with Marsha so I would have given him a
9 dinner.

10 Q Okay. Was it -- if it wasn't ham what was?

11 A No, it wasn't ham, it was turkey.

12 Q Okay.

13 A My son had given me the turkey for Christmas.

14 MS. MUNSON: Thank you.

15 THE WITNESS: Thank you.

16 MS. MUNSON: Nothing further, Your Honor.

17 THE COURT: Anything further?

18 MS. MUNSON: No, sir, Your Honor.

19 THE COURT: Thank you, ma'am, you may step down.

20 Any reason why the witness cannot be excused?

21 MS. MUNSON: No, Your Honor.

22 MR. CHAMBERS: No, Your Honor.

23 THE COURT: Thank you, ma'am, you may be excused
24 as well.

25 MS. MUNSON: If we could approach, Your Honor.

1 (WHEREUPON, the jury came into open court at
2 approximately 9:40 a.m.)

3 THE COURT: Good morning, ladies and gentlemen,
4 we're now going to resume with the presentation of the
5 evidence and testimony.

6 Is the State ready?

7 MS. MUNSON: Yes, sir, Your Honor, may it please
8 the Court. The State calls Adam Davis.

9 THE COURT: Come on up here, sir.

10 THE CLERK: Sir, if you'd, please, place your
11 left hand on the Bible and raise your right hand.

12 ADAM DAVIS, after being duly sworn, testified as
13 follows:

14 THE CLERK: Thank you, please, be seated. State
15 your name for the record.

16 THE WITNESS: It's Adam Patrick Davis.

17 DIRECT EXAMINATION

18 BY MS. MUNSON:

19 Q Who do you work for, sir?

20 A Ma'am, I work for the Greenville County Department of
21 Public Safety as a forensic investigator for
22 Greenville County.

23 Q How long have you been there?

24 A Three years.

25 Q And what are the duties of a forensic investigator?

1 A My job is to respond to crime scenes and provide
2 photo documentation and search for forensic evidence.

3 Q Okay. And did you get a call in inference to this
4 case?

5 A I did. I was called to respond to ■ McCullah Street
6 on April 23rd, 2011.

7 Q Okay. Did anyone go with you when you went there?

8 A My partner Officer Greg Moore and later Lieutenant
9 Pettersen responded to the scene.

10 Q Okay. When did you get out to the scene on McCullah
11 Street?

12 A I arrived at 11:14 p.m.

13 Q Okay. And what did you first do when you got there.
14 What's the process that you go through?

15 A I made contact with the city officer that was
16 securing the scene, Officer Sanders and was provided
17 with some basic case information.

18 Q Okay. And then after you get that basic information,
19 what do you do?

20 A I then make contact with Detective Garrison and
21 Sergeant Rigs. And verify that he had obtained a
22 signed consent to search warrant of the residence.

23 Q Okay.

24 A And then after that the three of us, myself,
25 Detective Garrison and Officer Greg Moore entered the

1 scene.

2 Q Okay. And what did you do once you got on the scene?

3 A I noted the floor plan of the residence that we
4 entered and what they're referring to as the rear
5 door with their being a bedroom on the left side of
6 the entrance foyer with an attached bathroom. On the
7 other side of that bedroom was a staircase that led
8 upstairs to two additional bedrooms and a bathroom.
9 Back downstairs on the other side of the staircase
10 was a dinning room slash kitchen. And on the other
11 side of that would be the living room.

12 Q All right. Now, when you went into the scene, did
13 you have any -- did you notice the victim?

14 A Yes, ma'am. After I made it through the kitchen
15 dinning area, I observed that the victim was lying
16 face up in the middle of the living room floor.

17 Q Okay. And after -- when you talk about the lay out
18 of the apartment, did you record in any way how
19 that -- how that second floor -- I mean, that first
20 floor was laid out?

21 A Yes, ma'am. As we took digital still images, which
22 is more commonly referred to as photographs. We also
23 did a digital video recording. And Lieutenant
24 Petersen made a crime scene diagram of the
25 downstairs.

1 Q Okay. And would that diagram be helpful to you in
2 your testimony to the jury this morning?

3 A Yes, ma'am.

4 MS. MUNSON: Your Honor, may I approach?

5 THE COURT: Yes, ma'am.

6 BY MS. MUNSON:

7 Q Investigator Davis, I'm going to get you to take a
8 look at what's been marked at State's Exhibit No. 24,
9 if you can take a look at that.

10 A Yes, ma'am.

11 Q Does that look familiar to you?

12 A Yes, ma'am.

13 Q Is that a true and accurate lay out of the apartment
14 as you went to the scene on the 23rd?

15 A Yes, ma'am.

16 Q And what does it also accurately show other than the
17 lay out?

18 A It shoes the several items that were collected. And
19 the placement of the victim's body.

20 Q Okay.

21 MS. MUNSON: Your Honor, I move State's No. 24
22 into evidence.

23 MR. CHAMBERS: Without objection.

24 THE COURT: Without objection, State's 24 is
25 admitted.

1 (WHEREUPON, State's Exhibit No. 24 was marked
2 for identification and received into evidence.)

3 BY MS. MUNSON:

4 Q Just use that laser pointer, Officer Davis. Well,
5 looking at what's in evidence now, State's Exhibit
6 No. 24, if you could show to the jury what is the
7 backdoor of the apartment?

8 A Yes, ma'am. We're referring to this right here by
9 this bedroom.

10 Q All right.

11 A Right here, it's the backdoor.

12 Q All right. On State's Exhibit No. 24 there's item
13 that say for example, APD 5 and 6. APD and then a
14 number after it throughout the sketch.

15 A Yes, ma'am.

16 Q What is --

17 A I see the APD 6.

18 Q What is APD?

19 A That is my initials, Adam Patrick Davis.

20 Q And what does APD and then a number after it on
21 State's Exhibit No. 24, what does that indicate?

22 A That indicates that particular piece evidence.

23 Q Okay. Well, then, let's just start investigator,
24 with -- first of all, let's look right here, APD 12.

25 A Yes, ma'am, right here.

1 Q Now what is that?

2 A This is a baseball bat. As we were preparing to
3 leave, once the body had been removed from the scene
4 and we had done our processing. Detective Garrison
5 had made contact with the victim's daughter. And she
6 said that this baseball bat was normally in the
7 closet.

8 Q Okay.

9 A So, I took this baseball bat due to it not being in
10 the closet.

11 Q Okay. And did you determine that it had any forensic
12 value?

13 A No, ma'am. I obtained a swab from the grip but it
14 did not appear to be related.

15 Q Okay. As you come in the backdoor of the -- what is
16 this area right here that I have my finger on that
17 looks like lines with the word Up?

18 A Yes, ma'am, this is the staircase that would lead to
19 the second floor.

20 Q Okay. And then as you come into this area right
21 here, what area is this?

22 A Right here ma'am?

23 Q Yes, sir.

24 A This is the kitchen. And this is the bar that we
25 were using that divides the kitchen from the dining

1 room.

2 Q Okay. Now, if you will just explain everywhere in
3 the kitchen area on State's Exhibit 4 where you have
4 APD and then a number, explain to the jury why you
5 put that in this diagram.

6 A Yes, ma'am. APD 7 is right here. And that is a
7 black cell phone that was on the ground in the
8 walkway between the living room and the dining room.

9 Q Okay.

10 A It looked strange and it was in close proximity to
11 this chair that's laying on its back. And this fake
12 tree that's on its side in the floor way, too.

13 Q Go ahead.

14 A And then APD 8 is a left shoe that corresponds with a
15 right shoe that the victim was wearing. She was
16 found without her left shoe. And it is underneath
17 this table right here.

18 Q Okay. And the angle of the table that you just
19 indicated, is that accurate?

20 A Yes, ma'am. The table was slightly twisted or moved.
21 But one of the legs also appeared just to be slightly
22 not sitting flush which may have something to do with
23 why the table is at this angle.

24 Q Okay. Then what is the next item that you've
25 indicated on State's 24?

1 A APD 9 is a ashtray that was also in the middle of the
2 floor and didn't know if it came from this table or
3 why it was in the floor. So, it was also taken as
4 evidence.

5 Q And then as you move from the kitchen, into the room
6 where you discovered the body of Marsha Smith?

7 A Yes, ma'am.

8 Q Where did you indicate things that you had noticed or
9 collected?

10 A All right. APD 10, while Lieutenant Petersen and I
11 were documenting the scene and processing the body on
12 the scene, we heard the victim cell phone ring. So,
13 her cell phone was, I believe, it was the left hip
14 pocket or right hip pocket, right hip pocket. And it
15 was collected and signed over to Detective Garrison.

16 Q Okay.

17 A And then APD 11 is a candle stand. And it was on the
18 left side of the victims body. I observed what
19 appeared to be a suspected hair on this. So, the
20 candle stand was collected as APD 11. And the hair
21 is APD 11B.

22 Q Okay.

23 A And then this was taken in regards to being in the
24 floor close to the victim's body. There was a red
25 mark up here that had dry suspected blood coming from

1 the victim's right neck. And this has prongs on it.
2 So, at the time we took it in case it would be
3 related to this incident.

4 Q Okay. When you say this has prongs on it, what is
5 this?

6 A This is the candle stand.

7 Q Okay.

8 A It has three prongs.

9 Q Okay.

10 A Candle stand.

11 Q Then the last item there? APD, it is 6? APD 6.

12 A Thank you, ma'am. That is the victim's glasses that
13 were next to the right side of her body.

14 Q Okay. Now, Investigator Davis, as part of your going
15 through this crime scene, were photographs taken,
16 obviously, of the victim's body?

17 A Yes, ma'am.

18 Q And let me show you what's been marked as State's
19 Exhibit No. 17. If you can take a look at that.

20 A Yes, ma'am.

21 Q Do you recognize that?

22 A I do.

23 Q Is that an accurate depiction of the victim's hand on
24 the scene?

25 A Yes, ma'am.

1 MS. MUNSON: Your, I move State's No. 17 into
2 evidence.

3 MR. CHAMBERS: No objection.

4 THE COURT: Without objection, State's Exhibit
5 17.

6 (WHEREUPON, State's Exhibit No. 17 was admitted
7 into evidence.)

8 MS. MUNSON: Thank you, Investigator.

9 I have nothing further, Your Honor.

10 MR. CHAMBERS: Sorry, Your Honor, I have no
11 questions for Investigator Davis.

12 THE COURT: Thank you, sir, you may step down.

13 MS. MUNSON: The State calls Dar Shaw.

14 THE COURT: Sir, just come right up here.

15 Any reason why the last witness cannot be
16 excused?

17 MS. MUNSON: Not from the State, Your Honor.

18 MR. CHAMBERS: No, Your Honor.

19 THE COURT: Thank you, sir, you may be excused
20 as well.

21 THE CLERK: Sir, please, place your left hand on
22 the Bible, raise your right hand.

23 DAR SHAW, after being duly sworn, testified as
24 follows:

25 THE CLERK: Thank you, please be seated. State

1 your name for the record.

2 THE WITNESS: Darwood Shaw, S-H-A-W.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MS. MUNSON:

6 Q And who do you work for, sir?

7 A Department of Public Safety in the Forensics
8 Division.

9 Q What is your job title?

10 A I'm a Sergeant.

11 Q What are your duties related to being a sergeant?

12 A I have administrative duties as far as checking
13 reports and so on. I also answer calls, I work and
14 supervising and answer calls as a technician.

15 Q How long have you been with the forensic division?

16 A Going on 15 years.

17 Q All right. When did you first become involved in
18 this case?

19 A The 27th of April. I'd spoken with the Investigator
20 Garrison and Flavell, Detective and they say they had
21 a search warrant for the vehicle and they that needed
22 the vehicle processed.

23 Q Okay. And where did that take place?

24 A At our office, our crime scene office.

25 MS. MUNSON: May I approach, Your Honor?

1 THE COURT: Yes, ma'am.

2 BY MS. MUNSON:

3 Q All right, Investigator Shaw, I'm showing you State's
4 Exhibits No.s 12, 13, 14, 15, and 16, if you can take
5 the look at those.

6 A The witness complies. Yes, ma'am.

7 Q Are those true and accurate depictions of the vehicle
8 that you processed on that date, on the 27th?

9 A They are.

10 MS. MUNSON: Your Honor, at this time I move
11 States, 12, 13, 14, 15 and 16 into evidence.

12 MR. CHAMBERS: Without objection, Your Honor.

13 THE COURT: Without objection, they're admitted.

14 (WHEREUPON, State's Exhibits Nos. 12-16 were
15 admitted into evidence.)

16 BY MS. MUNSON:

17 Q All right, let's just go through these for the jury,
18 please. This is State's Exhibit No. 12, from where
19 did you get this item, Investigator Shaw?

20 A From inside the vehicle.

21 Q Okay. And now, let's look at State's No. 13. What
22 does this show?

23 A That is a pillow that was on the rear passenger side
24 of the seat inside the vehicle.

25 Q Okay. State's Exhibit 14?

1 A That just a photograph showing the damage to the left
2 front.

3 Q Okay. And State's 16. I'm sorry, that's State's 15,
4 I apologize.

5 A First to document the tag number itself and then also
6 to document the damage to the left rear.

7 Q All right. And then finally we have State's 16.

8 A That's just a different view showing the damage to
9 the right front -- correction, the left rear of the
10 vehicle.

11 Q All right. And how did that vehicle get to your
12 office?

13 A It was towed to our office.

14 Q All right. And the vehicle itself, did you notice
15 anything about it before you began to process it?

16 A That was the condition I found the vehicle in. There
17 was evidence tape on the doors. So, the first thing
18 I did was photograph the exterior and then got inside
19 and began to process the interior.

20 Q Okay.

21 MS. MUNSON: Thank you, I have nothing further,
22 Your Honor.

23 MR. CHAMBERS: Your Honor, I don't have any
24 questions for Investigator Shaw.

25 THE COURT: Thank you, sir, you may step down.

1 Any reason why the witness cannot be excused?

2 MS. MUNSON: Not from the State, Your Honor.

3 MR. CHAMBERS: No, Your Honor.

4 THE COURT: Thank you, sir, you may have also be
5 excused.

6 State ready to call there next witness?

7 MS. MUNSON: Yes, sir, Your Honor, the State
8 call Lynita Watts.

9 THE COURT: Ma'am, just come right up front, if
10 you would.

11 THE CLERK: Ma'am, please, place your left hand
12 on the Bible, raise your right hand.

13 LYNITA WATTS, after being duly sworn, testified
14 as follows:

15 THE CLERK: Thank you, please, be seated. State
16 your name for the record.

17 THE WITNESS: Lynita Watts.

18 DIRECT EXAMINATION

19 BY MS. MUNSON:

20 Q Good morning, Ms. Watts.

21 A Good morning.

22 Q How are you related to Marsha Smith?

23 A I am Marsha Smith's oldest daughter.

24 Q How many others of there are you? How many daughters
25 of Marsha Smith?

1 A There are three other daughters and one son.

2 Q Okay. Now, --

3 May I approach, Your Honor?

4 THE COURT: Yes, ma'am.

5 BY MS. MUNSON:

6 Q State's Exhibits that are in evidence now, and what
7 I'm showing you for the record is State's Exhibit 14,
8 15, and 16. If you could just take a look at those.

9 A The witness complies.

10 Q Now, is that the condition that your mother's car was
11 in the last time you saw it?

12 A No, ma'am.

13 Q What kind of condition was it in?

14 A It was in good condition.

15 Q Was she able to drive it?

16 A Yes, ma'am.

17 Q Do you remember when she got it?

18 A Yes, ma'am. I remember she traded that one in. She
19 traded the white one in for that one.

20 Q Okay.

21 A She had a white Honda that was similar to that one
22 but a older model.

23 Q Okay. Do you know how much she paid for it?

24 A No, ma'am, I don't.

25 Q Was he making payments on it?

1 A Yes, ma'am. She was making payments to Breakaway
2 Honda.

3 Q Okay. Now, did you ever drive that car?

4 A No, no, ma'am. She didn't allow any of us to drive
5 that car.

6 Q Okay. Did she ever allow Nathaniel to drive the car?

7 A No, ma'am not that I know of. No, ma'am. He -- I
8 have a story behind that but no, ma'am.

9 Q Okay. Now, where were you whenever your mother was
10 killed?

11 A That morning we decided to take our children to
12 Carrowinds for a fun day out. I had gotten off work
13 early that morning because I worked third shift. And
14 I worked from 12 to 8 o'clock in the morning shift.
15 And I decided to take my children to Carrowinds. And
16 so we packed them up and somewhere around one
17 o'clock, you know, we arrived at Carrowinds.

18 Q Okay. So you didn't see your mother the day that she
19 was killed?

20 A No, ma'am.

21 MS. MUNSON: I have nothing further.

22 CROSS-EXAMINATION

23 BY MR. CHAMBERS:

24 Q Did you have frequent contact with your mother?

25 A I did.

1 Q And so you knew that she and Nate had been in a
2 relationship for several years, is that right?

3 A Yes, I did. Actually Nate and my mother started
4 talking right after I got married. I was married in
5 '99. And my mother met Nate on a job that I also
6 worked.

7 Q And at this period of time I guess you knew that Nate
8 was living in Georgia and would come frequently on
9 the weekends and stayed with your mother?

10 A No, sir. At that time Nathaniel was not staying in
11 Atlanta. He was staying in Greenville.

12 Q So, your belief was that he wasn't staying with your
13 mother, that he had his own place in Greenville?

14 A Actually, at that time he was getting -- wanting to
15 get to know my mother. He did not know her at that
16 time.

17 Q I'm talking about at the time that she was killed?

18 A At the time that she was killed, yes, he was coming
19 back and forth from Atlanta.

20 Q Yeah, that's what I'm talking about. So, at that
21 point they had been dating for several years?

22 A Actually, they had dated for a while but she was
23 trying to let him know that she no longer wanted to
24 be involved with him.

25 Q But he was staying in her apartment during that time?

1 A He would come and visit, yes he would.

2 Q But she had made you aware of the fact that she
3 wanted to end the relationship with Nate?

4 A Before my mother moved into that particular complex,
5 Nathaniel was -- Nathaniel and my mother had--

6 Q I don't mean to interrupt but just yes or no. Were
7 you aware that she was going to end the relationship
8 with Nate?

9 A From the way I understood, the way my mother put it
10 to me, they were not -- they were not together. They
11 were friends.

12 Q Okay. Were you aware that she was dating someone
13 else?

14 A No, I was not.

15 MR. CHAMBERS: That's all the questions I have.

16 THE COURT: Any redirect?

17 MS. MUNSON: No, sir, Your Honor.

18 THE COURT: Thank you, ma'am; you may step down.

19 MS. MUNSON: Your Honor, the State calls Darron
20 Montgomery.

21 MR. CHAMBERS: Mr. Montgomery, just come right
22 up here to the front.

23 THE CLERK: Sir, if you'd, please, place your
24 left hand on the Bible and raise your right hand.

25 DARRON MONTGOMERY, after being duly sworn,

1 testified as follows:

2 THE CLERK: Thank you, please, be seated. State
3 your name for the record.

4 THE WITNESS: Darron Lamont Montgomery.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MS. MUNSON:

8 Q Good morning, Mr. Montgomery.

9 A How you doing?

10 Q All right. Where do you live now?

11 A I stay in Indiana.

12 Q How long have you been up there?

13 A A year.

14 Q Are you working up there?

15 A Yes, ma'am.

16 Q What are you doing?

17 A I work for Two Men in a Truck and Steak 'N Shake
18 restaurant.

19 Q Okay. How long do you work, your hours?

20 A About 16 hours a day.

21 Q After you work you just go home?

22 A Go home, get ready to do it again.

23 Q Okay. Where are you originally from?

24 A Here, South Carolina.

25 Q Where are your parents?

- 1 A [REDACTED] McCullah Street.
- 2 Q How long have they been living over there?
- 3 A All my life.
- 4 Q Okay. And how long is that by the way?
- 5 A About 40, 50 years now.
- 6 Q And you know Nathaniel Beeks?
- 7 A Yes, ma'am.
- 8 Q How do you know him?
- 9 A We growed [verbatim] up together.
- 10 Q Growed [verbatim] up together?
- 11 A In the same neighborhood. He stayed in Sterling and
- 12 I stayed in West Greenville.
- 13 Q Okay. Did you go to school together?
- 14 A Yeah.
- 15 Q Which schools?
- 16 A Greenville Middle school, Armstrong. He went to
- 17 Greenville, I went to Berea.
- 18 Q All right. So, how old were you would you say when
- 19 you first met him?
- 20 A About 10, 11 in middle school.
- 21 Q You consider him a friend of yours?
- 22 A Yes. A good friend.
- 23 Q Okay.
- 24 A He a good person.
- 25 Q Okay. Now, at some point did you have a conversation

1 with him about this case?

2 A Yes, ma'am.

3 Q And where were you when you were talking with him
4 about this case?

5 A In Greenville County Detention Center.

6 Q Why were you in the detention center?

7 A For child support.

8 Q All right. Where were you in the detention center
9 when you talked to him?

10 A We we're in K-block.

11 Q Okay. Did you know that he was there when you got
12 there for child support?

13 A No, ma'am, I didn't know. I hadn't seen him in a
14 while because, you know, we'd frequently see each
15 other but I hadn't seen him since -- he was already
16 in there when I got there.

17 Q Okay. And when you were having this conversation
18 with him, who started talking about it?

19 A He actually -- I -- well, I knowed [verbatim] that he
20 was having a problem, you know. And he wasn't eating
21 that day. Nate, he always ate. So, I asked him what
22 was the problem and he got to talking about what had
23 happened.

24 Q Okay. And what did he tell you happened?

25 A That they were arguing. They got in an argument. He

1 and his girl got in an argument. And she wouldn't
2 shut up and he grabbed her. He wanted her to shut
3 up. And she wouldn't shut up and he just choked her.

4 Q Do you remember exactly what he said?

5 A She wouldn't shut the hell up.

6 Q Okay. Do you remember giving a statement to
7 Detective Flavell?

8 A Yes, ma'am.

9 Q In this case. I'm going to let you --
10 May I approach, Your Honor?

11 THE COURT: Yes, ma'am.

12 BY MS. MUNSON:

13 Q Let me let you review the document. Just take a look
14 at this.

15 A Yeah.

16 Q Okay. All right. Now, after looking at this
17 document, what is this by the way?

18 A That's when he called me out the cell and I went and
19 talked to him about that.

20 Q Whose signature is this at the bottom?

21 A That's mine.

22 Q Okay. So, after looking at a copy of your written
23 statement, now do you remember exactly what he told
24 you?

25 A Yeah.

1 Q What did he say?

2 A That he and her was arguing and that she wouldn't
3 shut the hell up. And he wanted her to shut up. And
4 he grabbed her by her neck and he thought he had
5 choked her out but she was gone.

6 Q Did he not tell you that he just want her to shut the
7 fuck up?

8 A Fuck up.

9 Q Yeah.

10 A Yes, ma'am. I didn't want to say that, that's why.

11 Q Well, my apologizes, Mr. Montgomery, I should have
12 told you that it's okay to--

13 A Okay.

14 Q We have to get it out here.

15 A Okay.

16 Q All right. Now, that's out of the way. Did he tell
17 you what they were arguing about?

18 A No, ma'am. He didn't say what the exact argument was
19 about, they was just arguing.

20 Q Did he tell you where the argument took place?

21 A At their house.

22 Q Did you know where that was?

23 A No, ma'am, I didn't know.

24 Q Okay.

25 A We just -- we drunk frequently down in a little spot

1 down where my momma stayed. And we called it the
2 parking lot.

3 Q Okay.

4 A We use to drink down there.

5 Q Okay. Did he tell you what he did after he thought
6 that he had just choked her out?

7 A He tried to get her up, you know, tried to wake her
8 up and she wouldn't get up.

9 Q Then what did he do?

10 A He panicked and he said he left. He had to get the
11 hell on through.

12 Q Did he tell you where he went?

13 A No, ma'am, he never said where he went, he just said
14 he left.

15 Q Okay. And then did you have another conversation
16 with him about this?

17 A Well, no because I told him he didn't need to be
18 talking about it, you know. I didn't want him to get
19 himself tied up in anything else. He was already in
20 a situation that he couldn't get out of. I told him
21 it wasn't good to be talking about it in jail.
22 Because some people would use it to their advantage
23 to get over on him.

24 Q Okay. So, this Information that you got from you
25 friend, did you reach out to anybody the information?

1 A Actual, no because I had called a friend that I know
2 in the police department. And I was trying to get
3 myself out some trouble because I had just got out of
4 the SHU. And then I had just went back to the SHU
5 because of a incident in the block again. And he got
6 in touch with someone. I guess the guy did.

7 Q Okay. Let me back up a little bit. You got in --
8 what the SHU?

9 A That's lock up.

10 Q Okay. And why did you have to go to the to SHU?

11 A I got into a fight.

12 Q With who?

13 A A young boy that was in the pod.

14 Q Okay. And then you said that -- did you go back to
15 the SHU?

16 A Yeah, I went back to the SHU because I couldn't stay
17 in there. I couldn't deal with the young crowd.

18 Q Okay.

19 A I'm 47. The young crowd is just too much for me.

20 Q And what did that have to do, if anything, with
21 Mr. Beeks?

22 A Well, they was kind of like dragging him, you know,
23 they was like picking on him. Nate ain't the type
24 that, you know, he's not that type of person that
25 want to argue and fight with anybody, you know. He's

1 a easy going person. I use to tell him, you know,
2 you want to whip one of them ass, you know, do it, I
3 got your back, you know. I always told him I have
4 your back if your want to get over them. Don't be
5 scared. Because they was taking advantage of him you
6 know, picking with him real bad. So, I was like
7 don't let them do it.

8 Q Okay. So, the person that you called in the police
9 department to ask for help--

10 A That was Rhineheart.

11 Q Okay. And what kind of help did you ask him for?

12 A Well, I was asking him for him to talk to Sergeant
13 Kenny to try to get me back to the work camp.

14 Q Okay.

15 A But they wouldn't let me go back to the work camp
16 because I had gotten into it.

17 Q Okay.

18 A That's why I couldn't go back to the work camp. And
19 that's when Rhineheart got in touch with the other
20 guy.

21 Q Okay. As a result of talking with Rhineheart, did
22 your situation change at all?

23 A No, ma'am.

24 Q What did you tell Rhineheart about this case?

25 A I asked him about trying to get him out of the block

1 because of his situation.

2 Q Okay.

3 A And that's when he led me on to another guy, another
4 detective. That's when that detective came and got
5 me. And then I told him the situation about
6 Nathaniel.

7 Q But before -- prior to the other detective coming and
8 speaking with you and you giving the statement and
9 all that, before that, did you tell anybody in law
10 enforcement about your conversation with him?

11 A No, ma'am. I told no one. There was no one that I
12 said anything to about it. It was only three people
13 that I talked to -- two people that I talked to. And
14 that was Rhineheart and that other detective.

15 Q Okay.

16 A That was it. I never said anything to nobody because
17 I didn't want to get him into anymore trouble.

18 Q Now--

19 MS. MUNSON: I think that's all I have right
20 now, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. CHAMBERS:

23 Q You described your basically life long friend as a
24 good person, what do you mean by that?

25 A He's good person. I mean, I ain't got nothing bad to

1 say about Nate. He's always been a good friend of
2 mine. Man would give you the shirt off his back. I
3 don't have nothing bad to say about him. I mean, I
4 hate that I have to come in here and do this.
5 Because I don't want him to think that I'm trying to
6 get him any trouble, you know. I told him that.

7 Q You described that he was easy going and laid back.

8 A Yes.

9 Q Can you expound on that a little bit.

10 A Just a good person all around. The man wouldn't
11 never bother anybody. I use to tell him when we was
12 on the street, don't let people do you like that,
13 man.

14 He say, Don't worry about it man, don't worry
15 about it.

16 I mean, it bothered me the way people treated
17 him.

18 Q Did you know Marsha?

19 A No, sir, I never knew her. I've seen her with him a
20 few times but actually knowing her, I didn't know
21 her.

22 Q But you knew he was dating her?

23 A Yeah.

24 Q Knew he had been dating her for a while?

25 A Well, I didn't know how long but I knew they were

1 dating.

2 Q Did you know that he sometimes stayed with her?

3 A Yeah, I thought they lived together. I didn't know
4 that they was not living together. I always thought
5 they lived together.

6 Q So, you didn't know that when this incident occurred
7 that he was living in Atalanta during the week, you
8 didn't know that?

9 A No, I didn't know that.

10 Q So, y'all ran into each other in the detention
11 center, he started talking to you about why he was
12 there?

13 A Well, actually, he just wanted to get something off
14 his chest, you know. Because it was kind of
15 bothering him. He had been in there, like I say, 10,
16 11 months at the time. And he was just, I guess, it
17 was just on his mind, you know.

18 Q Did he seem upset about what had happened?

19 A Yeah, very upset.

20 Q Did -- it sounds as though he indicated to you that
21 they were involved in a rather heated argument at the
22 time this happened?

23 A Yes.

24 Q But he didn't tell you what the argument was about?

25 A No.

1 Q So, you don't know what they were arguing about?

2 A No, I don't know. I don't know what they were
3 arguing about. He never said what they was arguing
4 about. He said that he wanted her to shut the fuck
5 up, you know. And that they had been drinking. And
6 they got into an argument. And that was about it,
7 you know. Shit happens, you know. Just took it
8 overboard.

9 MR. CHAMBERS: Thanks a lot, I appreciate you
10 being here.

11 THE WITNESS: Yes, sir.

12 MR. CHAMBERS: I have no further questions.

13 THE COURT: Any redirect?

14 MS. MUNSON: I think we need to approach, Your
15 Honor.

16 THE COURT: All right, lawyers approach.

17 (WHEREUPON, an off-the-record bench conference
18 was held in the presence of the jury but out of
19 the hearing of the jury.)

20 MS. MUNSON: I don't have any redirect, Your
21 Honor.

22 THE COURT: Thank you, sir, you may step down.
23 Any reason why the witness cannot be excused?

24 MS. MUNSON: No, sir, Your Honor.

25 MR. CHAMBERS: No, Your Honor.

1 THE COURT: Thank you, sir, you may also be
2 excused. Thank you for coming.

3 MS. MUNSON: Your Honor, the State calls
4 Detective Flavell.

5 THE COURT: Sir, just come right up front.

6 THE CLERK: Sir, please, place your left hand on
7 the Bible, raise your right hand.

8 COLLIS FLAVELL, after being duly sworn,
9 testified as follows:

10 THE CLERK: Thank you, please be seated.
11 Please, state your name for the record.

12 THE WITNESS: It's Collis Flavell.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MS. MUNSON:

16 Q Who do you work for, sir?

17 A Greenville City Police Department.

18 Q How long have you been with the city police
19 department?

20 A Twenty-one years.

21 Q What is your current job title?

22 A I'm an investigator with the violent crimes unit of
23 the Greenville Police Department.

24 Q Have you had any other job titles while you've been
25 with the police department?

1 A When I started I was uniform patrol officer, then
2 went to property crimes, investigator and then the
3 last 15 years I've been in violent crimes.

4 Q Okay. And when did you first become involved in this
5 case?

6 A April the 23rd.

7 Q Were your on duty?

8 A I was on call. Secondary call.

9 Q And when did you get a call to go out to the scene?

10 A I don't recall the exact time. Detective Garrison
11 called, informed me that we were at a homicide and
12 asked me if I would respond to assist.

13 Q Okay. Did you do that?

14 A I did.

15 Q Okay. Now, about how long did you stay on the scene?

16 A Very briefly. When I got there Detective Garrison
17 was working the crime scene and I took the victim's
18 daughter, Faith Smith, back to our office and
19 retained a written statement from her.

20 Q About how long on the 23rd did you work on the case?

21 A I don't know exactly when we went home that morning.

22 Q Okay.

23 A It was several hours.

24 Q Okay. Now, after the initial being called out to the
25 to scene and the initial work you did, what was the

1 next time that you got involved with this case?

2 A I stayed involved from the time -- the next step that
3 I was involved in was on the 24th, I believe. We
4 were trying to locate the victim's vehicle. And the
5 victim's daughter had tried to explain to us where
6 Nathaniel lived in Atlanta. And I called her back to
7 our office and had her point out the apartment
8 complex where he lived. And then on the 24th
9 Detective Garrison and I went to Atlanta to that
10 apartment complex and the surrounding apartment
11 complexes and road all the parking lots trying to
12 find the vehicle.

13 Q Did you find it?

14 A No.

15 Q Okay. After going to Atlanta and looking for the
16 car, were you looking for the Defendant as well?

17 A Yes.

18 Q Okay. No luck there either?

19 A No.

20 Q Okay. And then what was the next thing you did in
21 this case?

22 A The next day we got a phone call from Dekalb County
23 sheriff's office that they had located the vehicle.
24 And they had the vehicle towed to one of there
25 wrecker companies, Brown & Brown Towing Company. So,

1 we responded Atlanta to Brown & Brown Towing. Had
2 our wrecker service, wrecker service from Greenville
3 meet us down there. We loaded the vehicle up.
4 Photographed the vehicle at Brown & Brown, sealed the
5 doors with evidence tape, had our wrecker service
6 load the vehicle up. We then followed that vehicle
7 back from Atlanta to our forensics office where it
8 was placed inside the forensics bay for processing.

9 Q Okay. Where -- do you know where the car was
10 located?

11 A I don't know the exact location. It was across the
12 interstate of the apartment complex that we're
13 checking the parking lot. It was on the other side
14 of the interstate at a business park.

15 Q All right. And at some time later during the course
16 of this investigation, did you get information that
17 someone may want to talk about the case?

18 A I did.

19 Q When did that happen?

20 A It was on February the 1st. I received information
21 that there was a subject in jail that had information
22 on the homicide. And on February the 2nd I responded
23 to the detention center and pulled out
24 Mr. Montgomery.

25 Q All right. Had you ever had any dealings with

1 Mr. Montgomery?

2 A I had not.

3 Q What did you say to him before you tried to get a
4 statement from him?

5 A I pulled him out of the jail -- the way the sign out
6 process, you have to call over at the jail, tell the
7 guards that you want to sign someone out. They
8 pulled him to what's called the transport corridor.
9 I go to the transport corridor. Normally, we don't
10 say a lot in that corridor because there's other
11 prisoners coming and going. That's where all the
12 court transports, hospital transports, work details
13 and you just don't want to put everybody's business
14 out. So, once I signed him out of jail, got outside,
15 I informed him for the reason -- my reason for being
16 there. That I had information that he wanted to talk
17 to somebody about the murder. So, I took him to the
18 office and obtained a written statement from him.

19 Q Okay. What information did you give him -- or what
20 offers or promises did you make to him in order to
21 get him to give you a statement?

22 A None.

23 Q What did he ask for in exchange?

24 A Nothing from me.

25 Q Do you know why he was in the detention center?

1 A I don't.

2 Q Where did you get the information, if you remember,
3 that there was somebody in the detention center that
4 had information?

5 A I don't recall exactly how I got the information, I
6 know it came from our vice office.

7 Q Okay. How often does that happen in the violent
8 crimes unit?

9 A Regularly.

10 Q That you get information?

11 A Yes.

12 Q Okay. How long where you with Mr. Montgomery, would
13 you say?

14 A I say an hour.

15 Q And what did you do, if anything, on his behalf after
16 he gave this written statement?

17 A Nothing to my knowledge.

18 Q Okay. What did you do before he gave a statement on
19 his behalf?

20 A Nothing.

21 Q The process of giving the statement, how did that go?
22 Did he hand write it? Explain to the jury how that
23 went?

24 A In the detective division we have two interview
25 rooms. Which now currently have video and audio

1 recording. Back then they weren't. Placed him in a
2 interview room. I go in, sit down with a pen and
3 piece of paper, talk to him, take notes. Once the
4 interview was concluded, I go back to my office, I
5 type it up. I go back into the interview room, let
6 them read their statement, make any corrections that
7 they want to make, any deletions. If they agree with
8 that statement then they sign that statement, then
9 they're transported back to the jail.

10 Q Okay. And is that the process that you went through
11 here?

12 A Yes.

13 Q Did he ask you for anything during the course of this
14 statement?

15 A He did not.

16 MS. MUNSON: Thank you, Detective.

17 I have nothing further at this time, Your Honor.

18 MR. CHAMBERS: Your Honor, I don't have any
19 questions for this witness.

20 THE COURT: Thank you, sir, you may have step
21 down.

22 THE WITNESS: Thank you, sir.

23 THE COURT: State ready to call their next
24 witness?

25 MS. MUNSON: I believe so, Your Honor.

1 THE COURT: Any reason why this officer can't be
2 excused?

3 MS. MUNSON: Nothing from the State, Your Honor.

4 MR. CHAMBERS: No, Your Honor.

5 THE COURT: Thank you, sir, you may also be
6 excused.

7 MS. MUNSON: I'm checking to see if she's
8 standing right there, Your Honor. Sorry for the delay.

9 THE COURT REPORTER: Who would that be,
10 Ms. Munson?

11 MS. MUNSON: Maryssa Cantrell.

12 THE COURT REPORTER: Thank you.

13 MS. MUNSON: Your Honor, I apologize, she's
14 parking. So, if we could have a brief break.

15 THE COURT: Yeah, take a brief recess.

16 Ladies and gentlemen, I need to remind you, do
17 not have any discussions among yourselves about anything
18 involving the case. But if you would, please go with the
19 bailiff and we'll get you back just shortly.

20 (WHEREUPON, the jury left open court at
21 approximately 10:25 a.m.)

22 (WHEREUPON, a short break was taken.)

23 THE COURT: Anything else before we bring the
24 jury back?

25 MS. MUNSON: Not from the State, Your Honor.

1 MR. CHAMBERS: Not from the Defense, Your Honor.

2 (WHEREUPON, the jury came into open court at
3 approximately 10:50 a.m.)

4 THE COURT: The State ready to call your next
5 witness?

6 MS. MUNSON: Yes, sir, Your Honor. May it
7 please the Court. The State calls Maryssa Cantrell.

8 THE COURT: Ma'am, just come right up here.

9 THE CLERK: If you would, please, place your
10 left hand on the Bible, raise your right hand.

11 MARYSSA CANTRELL, after being duly sworn,
12 testified as follows:

13 THE CLERK: Thank you, please, be seated. State
14 your name for the record.

15 THE WITNESS: Maryssa Cantrell.

16 DIRECT EXAMINATION

17 BY MS. MUNSON:

18 Q Ms. Cantrell, I'm going to ask you to keep your voice
19 up a little bit.

20 A Okay.

21 Q So even people way back here can hear. How old are
22 you, ma'am?

23 A Twenty-four.

24 Q Where do you live?

25 A In Charleston, South Carolina.

- 1 Q Are you working?
- 2 A Yes, ma'am?
- 3 Q What do you do.
- 4 A I work at Salvation Army Thrift Store.
- 5 Q Do you have any children?
- 6 A I do, I have a son.
- 7 Q And what is his name?
- 8 A Chad.
- 9 Q And how old is he?
- 10 A He's five.
- 11 Q Okay. Where were you living back in April of 2011?
- 12 A In Greenville on Richmond Drive.
- 13 Q And where is that, generally?
- 14 A Like going to Traveler's Rest, in the middle of --
- 15 where they meet.
- 16 Q Okay. And who were you living with up there?
- 17 A With my mom.
- 18 Q All right. Do you know Marsha Smith?
- 19 A Yes, ma'am.
- 20 Q How do you know her?
- 21 A She's my friend's mom.
- 22 Q And who's your friend?
- 23 A Faith Smith.
- 24 Q How do you know Faith?
- 25 A She's my best friend.

- 1 Q How long have you known Faith?
- 2 A Since 2004.
- 3 Q Okay. Did y'all go to school together?
- 4 A Yes, ma'am, for a little bit.
- 5 Q Okay. Did you ever live close to each other?
- 6 A Yes, ma'am, across the street.
- 7 Q Now, did you see Faith the night that her mother was
- 8 killed?
- 9 A Yes, ma'am.
- 10 Q Where did you see her?
- 11 A She was at my son's birthday party.
- 12 Q Do you remember what day it was?
- 13 A April 23rd.
- 14 Q Is that your son's birthday?
- 15 A Uh-huh.
- 16 Q And why was she at your house on your son's birthday?
- 17 A Just to help celebrate, we we're having a birthday
- 18 party for him.
- 19 Q Were other people invited?
- 20 A Yes, ma'am.
- 21 Q When did the party start?
- 22 A Started around two o'clock that afternoon.
- 23 Q When did Faith get there?
- 24 A She got there around 7:00, 7:00 in the evening.
- 25 Q Do you know how Faith got to your house?

- 1 A Her mom dropped her off.
- 2 Q When Faith got to your house, did you see Faith's
- 3 mom?
- 4 A Yes, ma'am.
- 5 Q Do you know what she was driving?
- 6 A Her Black Honda, I think it was a Civic.
- 7 Q Did you have any conversation with Faith's mom?
- 8 A Yeah, we said hello, how are you doing? Casual
- 9 greeting.
- 10 Q Did she appear to be under the influence of anything?
- 11 A No, ma'am.
- 12 Q Do you think you would have noticed?
- 13 A I wouldn't know. Because she stayed in the car and I
- 14 was outside the car. But I don't think so.
- 15 Q Have you ever seen Faith's mom intoxicated?
- 16 A No, ma'am.
- 17 Q Messed up?
- 18 A No, ma'am.
- 19 Q How long did Faith stay at the party?
- 20 A She was there for probably like two hours maybe.
- 21 Hour and a half to two hours.
- 22 Q How was Faith going to get home?
- 23 A I was taking her home.
- 24 Q And when did you leave to take Faith home?
- 25 A Around 9 o'clock-ish.

1 Q And when left to go take Faith home, did you go
2 straight to Faith's place?

3 A No, ma'am. I had to take my brother's girlfriend
4 home first.

5 Q How long did that take about?

6 A Probably 20, 25 minutes, 30 minutes.

7 Q So, after you drop off the girlfriend, who's all in
8 your car headed back to Faith's place?

9 A It was me, Faith, my son, her son and I had my other
10 friend's child with me as well.

11 Q Okay. Now, how old was your son at the time?

12 A He had turned three.

13 Q How old was Faith's son?

14 A Two, two and a half or three. One of the other.
15 They're close to range.

16 Q Okay. When you got back to Faith's place, had you
17 ever been there before?

18 A Yes, ma'am.

19 Q How many times? Roughly.

20 A I don't know, more than 10.

21 Q Okay. Where did you normally park when where you'd
22 go over to Faith's apartment?

23 A Right in front of the door.

24 Q Okay. And from the parking lot to the door, did you
25 have to go up any steps or anything?

1 A I think it was like two or three steps, maybe, up.

2 Q Up?

3 A Uh-huh.

4 Q Okay. When you -- when you got to Faith's place, do

5 you remember about what time it was?

6 A It was around 9:00 but before 10:00. It was in the

7 nine o'clock hour.

8 Q Okay. Was it dark out?

9 A Yes, ma'am.

10 Q When you got the Faith's place, what did she do?

11 A Well, she -- we was talking in the car a little bit

12 but she was getting and getting Jacory out, Jacory's

13 her son.

14 Q Okay. And while you were saying goodbye to Faith,

15 did you notice anybody else in the parking lot?

16 A Yes, ma'am.

17 Q Who was that?

18 A Nate was coming out the door.

19 Q All right. When you say Nate, who are you talking

20 about?

21 A Him right there. I'm sorry, I only know him by Nate.

22 Q That's okay. I'm sorry, to do this but when you

23 point at him, we have to take the record, so you have

24 to tell the Court Reporter something that he's

25 wearing.

- 1 A He's wearing a blue collar shirt.
- 2 Q Okay. Had you ever seen Nate before?
- 3 A Yes, ma'am.
- 4 Q How often?
- 5 A Almost every time I went to Faith's house, he was
- 6 there.
- 7 Q Okay.
- 8 A Uh-huh..
- 9 Q All right. Where was he -- where in the parking lot
- 10 was he when you first saw him?
- 11 A He was coming out of the door when I first saw him.
- 12 He was walking out of their home.
- 13 Q Okay. How good a look did you got at him?
- 14 A Pretty good enough to know it was him.
- 15 Q Okay. And where did he go when he came out of the
- 16 apartment?
- 17 A He went to her mom's car.
- 18 Q You recognized her mom's car?
- 19 A Yes, ma'am.
- 20 Q What did you do at her mom's car?
- 21 A He was loading some things in the car.
- 22 Q Did you see what those things were?
- 23 A A duffel bag and pillow. It looked like a pillow.
- 24 Q Okay. Between when you first saw him and him getting
- 25 to the car, did he have any conversation with you or

1 Faith?

2 A No, he just he looked but that's it.

3 Q Did Faith see him?

4 A Yeah, she did.

5 Q How did Faith react to seeing him out in the parking
6 lot?

7 A She noticed that he was there, too. Then eventually
8 she was like you can't speak or something. She
9 acknowledged his presence.

10 Q Okay. Did he return that?

11 A No, he just looked.

12 Q Okay. How long would you say you stayed in the
13 parking lot?

14 A Maybe five to 10 minutes we stayed and chatted.

15 Q And when Nate got to Faith's mother's car, did you
16 see him leave?

17 A No, he went back into the house.

18 Q Okay.

19 A Second time. Then he came back out. Then he left.

20 Q How long was he in there the second time?

21 A Not long. Not that long. Maybe less than two
22 minutes.

23 Q Okay. When he went back to Marsha's car, where did
24 he.

25 A He drove out of the parking lot and he left. He got

1 in the car and left.

2 Q Which way did he head?

3 A Out of the parking lot he went to the right.

4 Q Okay. On to what road?

5 A I don't know the name of the road but it's over there
6 by the Fieldcrest Community Center.

7 Q Okay. Did you see anybody else in that car with him?

8 A No, ma'am.

9 MS. MUNSON: I have nothing further at this
10 time, Your Honor.

11 MR. CHAMBERS: Your Honor, I have no questions
12 for Ms. Cantrell.

13 THE COURT: Thank you, ma'am, you may step down.
14 Any reason why this witness can't be excused?

15 MS. MUNSON: Not from the State, Your Honor.

16 MR. CHAMBERS: No, Your Honor.

17 THE COURT: Ma'am you may also be excused, watch
18 your step.

19 State ready to call its next witness?

20 MS. MUNSON: Yes, sir, Your Honor, the State
21 calls Detective Garrison.

22 THE CLERK: Place your left hand on the Bible,
23 raise your right hand.

24 DAVID GARRISON, after being duly sworn,
25 testified as follows:

1 THE CLERK: Thank you, please be seated. State
2 your name for the record.

3 THE WITNESS: David Garrison.

4 DIRECT EXAMINATION

5 BY MS. MUNSON:

6 Q Who do you work for, sir?

7 A I work for the Greenville Police Department.

8 Q How long have you been with the police department?

9 A Nineteen years.

10 Q What is your current job title?

11 A I'm currently a detective in the violent crimes unit.

12 Q And did you have any other jobs with the police
13 department in your 19 years?

14 A Yes. Before being in the violent crimes units a
15 detective, I worked in the accident reconstruction
16 unit where I investigated serious and fatal traffic
17 collisions. And then prior to going to traffic I
18 worked in patrol.

19 Q Okay. Now, did you get a call in reference to this
20 case?

21 A I did.

22 Q Were you on duty?

23 A No, I was not on duty but I was on call.

24 Q What's the difference?

25 A In the violent crimes unit we have two detectives who

1 are always on call. Our normal hours are Monday
2 through Friday during day shift type hours. But
3 there's always two of us in the unit that are on
4 called to be subject to be called back in if there's
5 a major incident that requires an investigation.

6 Q Okay. When did you get the call about this case?

7 A I believe I received the call notifying me by
8 Sergeant Wilkes at 10:55 p.m.

9 Q All right. And where did you go when you got that
10 call?

11 A I was told the location, which was [REDACTED] McCullah Street
12 Apartment [REDACTED]. And I went straight to that
13 location.

14 Q What city is that apartment?

15 A It's the city limit of Greenville County.

16 Q It's in what county?

17 A In Greenville County.

18 Q Now, what was your role in being called out?

19 A My roll is the lead investigator. Because I was the
20 primary on call detective. Which means I'm the first
21 detective they call for that week. I was the first
22 detective they've call and then I had a secondary
23 which was Detective Flavell. So that particular week
24 I happened to be to first on call which made me the
25 lead investigator for the case.

1 Q When you first get on the scene, there were other
2 personal there already, correct?

3 A Correct. Uniform patrol officers were there prior to
4 me.

5 Q What are your responsibilities once you come on to
6 the scene?

7 A Typically my responsibilities are to find out what
8 patrol knows, what they found out before I get there,
9 make a determination of what needs to take, what
10 witnesses need to be interviewed and statements taken
11 from. What other assisting agencies like Greenville
12 County Forensics need to be called to assist us. And
13 call in further assistance from other detective
14 within the Greenville Police Department if needed.

15 Q Okay. And how long did you stay on the scene?

16 A I was on the scene until around 4:30 a.m.

17 Q All right. Just right there will on McCullah Street?

18 A Correct.

19 Q At Marsha's apartment. While on the scene, what sort
20 of things are you doing by way of the investigation?

21 A Asking or having other detectives take statements
22 from potential witness or witnesses. Coordinating
23 with the forensics officers about how the scene is
24 going to be processed, what particular evidence is
25 going to be collected. And if we know who a suspect

1 is, taking steps to try to locate that person.

2 Q What helps you decide who is a suspect?

3 A Well, in a case like this, you typically start with
4 the people that are closest to the victim. Family
5 members, boyfriends, husbands, wives, depending on
6 the sex of the victim. You start close and you start
7 working your way out.

8 Q Okay.

9 A So, in this particular case because we knew that
10 Faith Smith had seen Nathaniel Beeks and told us that
11 she saw Nathaniel Beeks come out of the apartment,
12 Maryssa Cantrell had told us that she had seen Nate
13 Smith -- or excuse me, Nathan Beeks come out of the
14 apartment. And then Marsha is found inside the
15 apartment moments later. He was obviously a suspect
16 from the very beginning.

17 Q And in looking at the scene, what sort of things do
18 you look for in determining, you know, perhaps is
19 this a burglary, is this a robbery, is this something
20 else. What sort of things do you do on the scene to
21 try to determine that?

22 A Well, to determine whether or not there was a
23 burglary, we're going to look at doors and windows
24 and ways that someone could enter the apartment or
25 residence to see if there was any forced entry. In

1 this particular case we saw no sign of a forced
2 entry. No door that had been broke to gain entry.
3 No window. Anything of that nature. So, we didn't
4 feel like that this was a burglary.

5 As far as robbery, we would look to see if
6 things of value had been taken. Purses, wallets,
7 money, jewelry, televisions, things like. That
8 nothing appeared to be taken in this case. So, we
9 don't believe that it was a robbery either.

10 Q Did you find Marsha's pocketbook in the apartment?

11 A I do recall her purse being in the apartment.

12 Q Okay. Now, after taking as many statements as you
13 can and then clearing the scene, what was the next
14 step that you did in regards to this case?

15 A Well, early on I had -- I asked Detective Flavell and
16 two other detectives to go take some witnesses to the
17 police department and take statements from them while
18 I stayed on the scene with forensics. During our
19 search of the apartment, we have found the victim's
20 cell phone. So, I searched through the phone, the
21 contacts list and found a telephone number that I
22 thought may have belonged to or be the phone number
23 for Nathaniel Beeks. The reason why I thought it was
24 his phone number is because it had a 404 area code
25 which is the area code for Atlanta. And I had been

1 told that he was staying in Atlanta. So, I tried to
2 get the phone company to give me a location for the
3 phone with GPS portlets.

4 Q Okay. Did you try to call that phone number?

5 A I did not.

6 Q Okay. After -- let's move ahead a little further.

7 The autopsy in this case, you did not attend that?

8 A I did attend the autopsy.

9 Q Oh, you did, okay. What takes place there? As far
10 as you're concerned, not necessarily the process of
11 the autopsy.

12 A My role at an autopsy is to kind of facilitate the
13 Greenville County forensics people are there to
14 collect evidence from the body if there is any. And
15 to speak with the pathologist or the doctor who
16 preforms the autopsy to see if a manner and cause of
17 death be can determined.

18 Q Now, did you take something away from Dr. Ward? Not
19 necessarily on the day of the autopsy but did you go
20 back and collect something of Marsha's?

21 A I did.

22 Q And what was that?

23 A It's what's called a blood card or blood spot. They
24 take a sample of the diseased blood and drop it on a
25 card. And that's stored at the corner's office. And

1 I went back in, I believe, in September, the 6th I
2 believe it was, and got one of those blood cards that
3 would have Marsha Smith's blood and her DNA to be
4 taken to Columbia for DNA testing.

5 Q Did you do that in this case?

6 A I did.

7 Q Now, at some point did you and Detective Flavell go
8 some where else in relation to the case? Other than
9 Greenville.

10 A Yes. We went to Atlanta area, Dekalb County on, I
11 believe, it was April the 26th in the early morning
12 hours. We left Greenville around 3 a.m. to drive to
13 Atlanta to look for the car, Marsha Smith's car.

14 Q All right. Now as part of you investigation, do you
15 try to figure out where the victim was prior to --
16 prior to their demise?

17 A Yes. We tried to go back as far as we can or we need
18 to determine the events that led up to a person's
19 death.

20 Q Did you do that in this case?

21 A Yes, I did.

22 Q What were you able to put together through your
23 investigation of where Marsha was leading up to her
24 death?

25 A We were able to determine that around kind of

1 starting around 5:00 to 5:30 in the afternoon on that
2 Saturday, April 23rd, Marsha Smith was at a friend's
3 house, Susie Yeargin and Mr. Crawford who lived on
4 Washington Court apartments. Which is near or kind
5 of in the same neighborhood as the apartment complex
6 that Marsha was living in. While she was there -- or
7 Nathaniel Beeks was also there. And during their
8 time there at that apartment there was an argument
9 that took place. And the two of them left and went
10 their separate ways.

11 Marsha then went home and picked up her
12 daughter, Faith Smith and her grandchild and took
13 them to Maryssa Cantrell's house near Traveler's Rest
14 for the birthday party. From there Marsha went to
15 her mother's house. And I can't recall the exact
16 address but it's off White Horse Road, I believe.
17 And spent some time there with her mother. She
18 received a phone call, from what we've been told, by
19 Nathaniel Smith or excuse me, Nathaniel Beeks, to
20 come back to the apartment. She went back to the
21 apartment and then she was found deceased.

22 MS. MUNSON: May I approach, Your Honor?

23 BY MS. MUNSON:

24 Q Detective, I'm showing you State's Exhibits, 22 and
25 23. If you could take a look at those. Do you

1 recognize those?

2 A I do.

3 Q Who took those photographs?

4 A I did.

5 Q Are they true and accurate depictions of the
6 Defendant on the date that you saw him?

7 A Yes.

8 Q And on what date did you see him?

9 A April the 28th.

10 Q Where did you see him?

11 A At the Doraville Police Department which is a small
12 community in Dekalb, Atalanta area.

13 Q Okay.

14 MS. MUNSON: Your Honor, at this time we move
15 State's Exhibits 22 and 23 into evidence.

16 MR. CHAMBERS: No objection, Your Honor.

17 THE COURT: Without objection, State's Exhibits
18 22 and 23.

19 (WHEREUPON, State's Exhibits Nos. 22 & 23 were
20 admitted into evidence.)

21 BY MS. MUNSON:

22 Q All right. Detective, this is State's Exhibit 22,
23 and what does State's Exhibit 22 show?

24 A It's the left side of Nathaniel Beeks face. And it's
25 kind of hard to see but this is a scratch, a fresh

1 scratch mark on the side of his face.

2 Q Okay. And now I'm showing you State's Exhibit No.
3 23, what does this show?

4 A This is a photograph and this is another fresh
5 scratch mark on his face underneath his eye and next
6 to his nose.

7 Q Okay.

8 MS. MUNSON: Thank you, Detective.

9 I have nothing further at this time, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. CHAMBERS:

12 Q As part of your investigation when you went to Dekalb
13 County in Georgia to retrieve Mr. Beeks, you had an
14 opportunity to talk with him; is that correct?

15 A Yes, I did.

16 Q And he, in fact, gave a statement to you, correct?

17 A He gave a verbal statement. He would not give a
18 written statement, yes.

19 Q And he told you basically what happened and you wrote
20 it down?

21 A Yes.

22 Q All right. And do you recall the statement that he
23 gave you?

24 A I do.

25 Q Did he tell you that -- first, did he -- did he

1 express some surprise that -- or at least indicate
2 that he didn't know whether Marsha had died or not.
3 Well, let me put it to you this way, did he indicate
4 to you since you were there with a murder warrant,
5 that he surmised from that that Marsha had died?

6 A I don't recall his exact words regarding that. I
7 didn't specifically arrest him in the Atlanta,
8 Georgia area because I don't have jurisdiction there.
9 He was arrested by the U.S. Marshall service. The
10 U.S. Marshall service told him that he was being
11 arrested for murder and grand larceny. So, I can
12 only surmise that he had guessed that Marsha was
13 dead.

14 Q Do you recall in the statement he gave you he said,
15 So, Marsha died because I had murdered her?

16 A I don't recall that specific -- those specific words
17 he may have said.

18 Q Do you recall that he told you that he was at
19 Marsha's apartment and she told him that she was
20 seeing another guy?

21 A Yes, he did say that during their argument she had
22 told him that she was seeing someone else.

23 Q And do you recall that he said, That as a result of
24 that I snapped, I grabbed her, threw her to the floor
25 and started choking her?

1 A He did tell me that. That was the second story that
2 he had given me.

3 Q Did -- did he indicate to you that he had taken the
4 pillow from her bed?

5 A I don't remember if he told me that or not.

6 Q Let's make it easy, I'm just going to show you the
7 statement. Is that your handwriting?

8 A That is not.

9 Q It is not. So, you were not the one who wrote down
10 that statement?

11 A No, Detective Conroy who was with me at the Doraville
12 Police Department hand wrote that.

13 Q Do you believe that Detective Conroy wrote down
14 accurately what Mr. Beeks was saying to him?

15 A I believe he would, yes.

16 Q All right. So, just take a look at that. Your
17 name's on there, right? So, you were there for the
18 discussion?

19 A I was there during the interview, yes, sir.

20 Q All right. And do you see the line where it says, I
21 took the pillow?

22 A No.

23 Q Take a look at it.

24 A The witness complies. Yes, I see that.

25 Q Does it say he doesn't know why he took the pillow?

1 A It does say that.

2 MR. CHAMBERS: That's all the questions I have
3 for you Detective.

4 THE COURT: Any redirect?

5 MS. MUNSON: Yes, sir, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. MUNSON:

8 Q In response to cross-examination, Detective, you said
9 that it was just relayed to the jury, that was his
10 second story.

11 A That's correct.

12 Q What was the first story?

13 A The first story he gave me when we first started
14 talking, we discussed that Marsha was deceased and
15 that, you know, he obviously knew he was being charge
16 with murder. I wanted to know what happened. I
17 straight up asked him, Tell me what happened. He
18 said that they were in an argument. And I brought up
19 the fact that he had scratches on his face. And he
20 told me first that Marsha had slapped him or punched
21 him or hit him or some way struck him and that caused
22 the scratches on her face -- or on his face. And
23 that she then fell to the ground and died. That was
24 the first story that he had told me. She had struck
25 him, scratched his face and then just fell down and

1 died.

2 Q Okay. And the explanation for the scratches was --
3 how did he tell you they got on his face?

4 A He said that when she struck him, slapped him,
5 punched him that that's how he got scratched on the
6 face.

7 Q Did he give you any information about the car?

8 A No. He -- I asked him about the car and where he had
9 wrecked it, how it got worked and he denied ever
10 taking the car. Said he ever never took the car,
11 that he had hitchhiked to Atlanta, that he never took
12 the vehicle.

13 Q Did he tell you who he hitchhiked with?

14 A No, he said he hitchhiked to Atlanta.

15 MS. MUNSON: I have nothing further, Your Honor.

16 RECROSS-EXAMINATION

17 BY MR. CHAMBERS:

18 Q In your experience, I think you said you've been a
19 detective in violent crimes for 15 years, is that
20 right?

21 A No, sir, I've been in the violent crimes unit for
22 five years.

23 Q Okay. It's not usual, it is, for someone to first
24 tell you something that's not true before they
25 eventually come around and admit to you what

1 happened; is it?

2 A Uh, it usually people that their conscious is
3 bothering them, they will eventually come around.
4 But a lot of times people will lie to you to begin
5 with.

6 Q Exactly.

7 MR. CHAMBERS: That's all the questions I have
8 for you.

9 MS. MUNSON: Nothing further, Your Honor.

10 THE COURT: Thank you, sir, you may step down.

11 MS. MUNSON: Your Honor, The State calls Lily
12 Gallman.

13 THE COURT: Ma'am, come right up here, if you
14 would.

15 THE CLERK: Place your left hand on the Bible,
16 raise your right hand.

17 LILY GALLMAN, after being duly sworn, testified
18 as follows:

19 THE CLERK: Please, be seated. State your name
20 for the record.

21 THE WITNESS: My name is Lily Smalls Gallman.

22 DIRECT EXAMINATION

23 BY MS. MUNSON:

24 Q Who do you work for, ma'am?

25 A I work for the South Carolina Law Enforcement

1 Division better known as SLED.

2 Q Okay. How long have you been with SLED?

3 A Twenty-three years.

4 Q And what do you do for SLED?

5 A I'm employed as a forensic DNA analyst.

6 Q How long have you been doing that?

7 A After my training, which involved attending the FBI
8 for training and dealing with forensics samples and
9 my training at SLED with serologist and how to
10 identify body fluids, then I was certified as a
11 forensic DNA analyst.

12 Q Okay. Tell the jury about your educational
13 background.

14 A I have a degree in biology from the University of
15 South Carolina. Once I received my degree I
16 continued working there in the area of molecular
17 genetics. On the way I did sequencing and cloning of
18 DNA. And as I stated I've been with SLED for 23
19 years so I began January of 1990. And I was hired as
20 a forensic DNA analyst.

21 Before I went online as a DNA analyst I attended
22 the FBI DNA typing schools. I also, as I stated, was
23 trained in the area of serology where I identified
24 body fluids. I've taken advance genetic courses and
25 statistics courses. All of which enables me to be

1 able to understand the job that I'm doing and be able
2 to testify in court.

3 Q Okay. Ms. Gallman, how many -- how many examinations
4 or analysis of DNA would you say you preformed over
5 your many years.

6 A I've done thousands. When I first began with SLED we
7 were putting together our own data base. So, at that
8 time we did hundreds of samples from around South
9 Carolina. And since that time I've done cases at
10 SLED.

11 Q Okay. Have you ever been qualified as an expert in
12 the courts of South Carolina?

13 A Yes, I have.

14 Q In what field?

15 A In serology and also in DNA.

16 Q Okay.

17 MS. MUNSON: Your Honor, at this time I offer
18 Ms. Gallman as an expert in the field of DNA analysis.

19 MR. CHAMBERS: No objection, Your Honor.

20 THE COURT: All right, ladies and gentlemen,
21 normally a person cannot give opinion testimony. Normally
22 when a person testifies they must do so as to either what
23 they saw, heard or sense by smell or something of that
24 nature. However, there is an exception when someone is
25 qualified because of education or experience. They are

1 permitted to give their opinion in certain areas if the
2 Court qualifies them that way. This witness will be
3 qualified in the area of DNA analysis to give opinion in
4 that area. Now, this does not mean that you must accept
5 the opinion but it is evidence for you to use any way that
6 you see fit.

7 MS. MUNSON: Thank you, Your Honor.

8 BY MS. MUNSON:

9 Q All right, Ms. Gallman, did you do analysis in this
10 case?

11 A Yes, I did.

12 Q On what date did you begin the analysis?

13 A I began the analysis on June 28th, 2012.

14 Q Okay. And was there anything particularly
15 interesting about this analysis?

16 A Only that I received cuttings from shirt and I had to
17 identify whether there was blood there or not and
18 then I did DNA analysis on them.

19 Q What I'm referring to is the length of time it took
20 to sort out who matched the samples on the items that
21 you had?

22 A Well, these items contained mixtures of DNA from
23 different individuals. So, once the -- all of the
24 analysis was done, that came the hard part of
25 figuring out who is included and who is excluded as

1 being a contributor to the DNA that was found on
2 these items.

3 Q Okay. Let's back up to the process of things. How
4 does an item, for example a shirt, how would an item
5 get to you for testing? What happens to it before it
6 gets to you?

7 A The contributing agency would bring the item into
8 SLED and it's logging into our log in area. With it
9 being clothing, large items go to our evidence
10 processing area. In which they look for blood, body
11 fluids, look for blood, semen or saliva. Which ever
12 is -- could possibly be on the items. Then there's a
13 cutting that's made from that item, then that cutting
14 is then forward to me.

15 Q Okay. When the cutting is forwarded to you, if the
16 item from which it was cut, does that come to you as
17 well?

18 A No, it's not. It is placed back in the logging area
19 for we turn to the submitting agency.

20 Q Okay. So, when these cuttings come to you, do you
21 have any way of knowing whether or not they have been
22 tampered with in any way?

23 A I check to see if the envelope or the pouch that it's
24 transported in, whether it has been sealed by the
25 person who did the cutting. And if not then our job

1 is to back track and found out exactly what happened.
2 And where the analysis can go forward or not.

3 Q Okay. So, the items that came to you in this
4 particular case, what items were those that came
5 directly to you?

6 A I received cuttings from item -- SLED item number 3,
7 which is a long sleeve shirt worn by the victim.
8 That's what it was stated as being worn by the
9 victim. I also received cuttings from a pillow that
10 was found in the victim's vehicle. I also received
11 blood standard from Marsha Smith. A buckle swab from
12 Nathaniel Beeks. I don't know how to pronounce his
13 last name but.

14 Q Okay.

15 A But from the subject in this case. And I also
16 received fingernail clippings from Ms. Smith.

17 Q Okay. When these items came to you, what condition
18 were they as far as whether or not they looked like
19 they that been properly stored?

20 A They were. They were properly stored to see it was
21 in tack and everything was like it should be when
22 it's transported to me.

23 MS. MUNSON: Your Honor, may approach?

24 THE COURT: Yes, ma'am.

25 (WHEREUPON, State's Exhibit No. 25 was marked

1 for identification only.)

2 BY MS. MUNSON:

3 Q All right. This is -- Ms. Gallman, I'm handing you
4 State's Exhibit No. 25, if you can just take a look
5 at that. Do whatever you need to do to see if you
6 can identify it.

7 A This is how evidence a transferred between
8 departments at SLED. It's put in a pouch like this.
9 And the first thing I'm going to check is for the
10 seal to see if it's sealed properly. It was sealed
11 properly. And also I have the initials of the person
12 who sealed it. Which is Verona Gibson. And the date
13 in which she sealed it. I make my cutting here and
14 you can see my initials and the date that I resealed
15 it. And the little coin envelopes that are found
16 inside are the ones that contained the cuttings from
17 either the shirt or the pillow.

18 Q And the item that you're holding right there, can you
19 tell what those are?

20 A Each one of the cuttings are placed in a separate
21 envelope and given an item number. For example, the
22 pillow is SLED item number 4.1, 4.2 and 4.3. The
23 shirt is item number 3.1, 3.2, 3.3 and 3.4. Also,
24 when the cuttings are made, the person who -- the
25 processing technician will also put on the envelope

1 whether it is a cutting or swabs. I'll know that
2 before I even open it. And also, whether I'm looking
3 for blood or semen or what type body fluid that they
4 recognize before they made the cutting. So, on the
5 envelopes she checked blood and also the fact that it
6 is cutting.

7 Q All right. When you say, She, who are you talking
8 about?

9 A Verona Gibson.

10 Q Where doest she work at SLED?

11 A She works in the evidence processing area at SLED.

12 Q And how is it that you know that she's the one that
13 did those cuttings?

14 A Her initials are on the outside of the pouch. And
15 also on the inside on the envelopes.

16 Q Okay.

17 A And the date that she sealed it.

18 Q Okay. And those are the cuttings that you examined
19 to do DNA analysis?

20 A Yes, they will.

21 Q Okay.

22 Your Honor, at this time I'm going to move
23 State's 25 into evidence.

24 MR. CHAMBERS: No objection, Your Honor.

25 THE COURT: All right, without objection.

1 Now, the witness has opened the premarked, so
2 you're going to put them back in the envelope?

3 MS. MUNSON: Yes, sir.

4 THE COURT: Okay.

5 (WHEREUPON, State's Exhibit No. 25 was admitted
6 into evidence.)

7 BY MS. MUNSON:

8 Q It's tricky. Thank you, Ms. Gallman. Now, State's
9 Exhibit -- I'm going to show you something else.
10 Ms. Gallman.

11 (WHEREUPON, State's Exhibit No. 26 was marked
12 for identification only.)

13 BY MS. MUNSON:

14 Q Now, if you can take a look at State's Exhibit No.
15 26, you may need to open that, too, to identify it,
16 okay.

17 A We don't normally do it like this which is why I'm
18 kind of hesitant. I guess from so many years, we
19 normally don't break the seal when somebody else
20 makes the seal. This is SLED item number 3, which is
21 the shirt. We have the SLEDS's case number and the
22 initials of Verona Gibson. And on the date that she
23 went into this evidence.

24 When an item comes in and it's in a bag like
25 this, it's placed on this white paper so that if

1 there's any hairs or anything that would fall off, it
2 would fall off on this particular paper. Because you
3 might need to examine any debris that might be on an
4 items after I've done the testing. This is labeled
5 as SLED item number three by Verona Gibson. And with
6 the SLED case number. And you can see where she made
7 the cuttings from on the shirt. Like for example,
8 item number 3.1, the shirt's labeled that item number
9 3.1 came from this particular area on the shirt.

10 Q Okay.

11 A And all of the other cuttings are labeled on the
12 shirt.

13 Q So, later in your testimony when you referred to 3.4,
14 the 3.4 on that shirt matches up with what you are
15 talking about?

16 A Yes, it came from what we would consider to be the
17 back of the shirt.

18 Q Okay.

19 A You can see number 3.4 there.

20 Q Okay. Thank you.

21 MS. MUNSON: Your Honor, at this time I move
22 States No. 26 into evidence.

23 MR. CHAMBERS: No objection, Your Honor.

24 THE COURT: Without objection State's 26.

25 Can I see the lawyers for a moment?

1 (WHEREUPON, an off-the-record bench conference
2 was held in the presence of the jury but out of
3 the hearing of the jury.)

4 (WHEREUPON, State's Exhibit No. 26 was admitted
5 into evidence.)

6 (WHEREUPON, State's Exhibit No. 27 was marked
7 for identification only.)

8 BY MS. MUNSON:

9 Q All right, Ms. Gallman, I'm showing you State's
10 Exhibit No. 27, if you could open that item and see
11 if there's anything in there that you recognize as
12 coming from SLED.

13 A (The witness complies.)

14 This is SLED item number 4 and it has Verona
15 Gibson's initials on the paper and also SLED's case
16 number and the date which she opened the items.
17 Again, you have the white paper. And her initials,
18 again, Verona Gibson. And also, you can see where
19 she took the cuttings from item number 4.1 was taken
20 from here, item 4.2 was taken from hear. You can
21 also see where she tested for the presence of blood.
22 Where it has a negative where she thought this area
23 might have been blood but it tested negative for
24 blood so she did not make a cutting there. And item
25 4.3 came from the end of the pillow.

1 Q Okay.

2 MS. MUNSON: Your Honor, at this time we move
3 State's 27 into evidence.

4 MR. CHAMBERS: No objection, Your Honor.

5 THE COURT: Without objection State's 27.

6 (WHEREUPON, State's Exhibit No. 27 was admitted
7 into evidence.)

8 BY MS. MUNSON:

9 Q One more thing, Ms. Gallman, if you could in State's
10 25 that's already in evidence, these little small
11 envelopes, if you can just kind of look in there and
12 make sure that they are the evidence that you tested.

13 A (The witness complies.)

14 This is the cutting that's labeled as item 3.1.
15 I hope that you can remember that when you look at
16 this shirt so the area that was cut out. Well, this
17 is the area that was cut out and -- as 3.1. And that
18 would be the case with each of the cuttings that are
19 here.

20 Q Okay. Now, let's talk about the analysis on these
21 items that you tested. Let's just start with the
22 cuttings from the shirt which is State's Exhibit No.
23 26.

24 A Okay, the cuttings that were done from the long
25 sleeve shirt that was said to have been worn by the

1 victim, SLED items number 3.1 through 3.4, I checked
2 them for the presence of blood. That's the first
3 thing I did. And there was blood indicated on these
4 cuttings. And then the next step was to attempt to
5 develop a DNA profile from those items.

6 Q So, all of the cuttings from the shirt indicated
7 positive for blood?

8 A Yes, they did.

9 Q And they're other -- other bodily fluids, obviously,
10 you can get DNA from?

11 A Yes.

12 Q This was blood?

13 A Yes.

14 Q All right. What was the result of -- were you able
15 to develop a profile on these cuttings from the
16 shirt?

17 A Yes, I was. Item 3.1, no DNA was obtained from that
18 item. But it was still gave the indication of blood.

19 Q Okay.

20 A Just not enough there and also in order to develop a
21 DNA profile from. Or to get DNA from. The DNA
22 profile developed from item 3.2 was consistent from
23 coming from Ms. Smith.

24 Q Okay.

25 A The DNA profile developed from item 3.3 and -- well,

1 let's go 3.4 first. Item 3.4, the DNA profile
2 developed from item 3.4 matches the profile of
3 Nathaniel Beeks.

4 Q Okay.

5 A Then I go on to give statistic value that would be
6 applied to that DNA profile.

7 Q Okay.

8 A So, the probability of randomly selecting a
9 non-related individual, having a DNA profile matching
10 this item is approximately 1 in 67 quadrillion.

11 Q Okay.

12 A Now, item 3.3 was the mixture of at least two
13 contributors. The DNA profile of the major
14 contributor also matched the DNA Nathaniel Beeks.

15 Q What's the difference between a match and it's
16 consistent with?

17 A With it being given -- the shirt given to us as being
18 coming from the victim, you expect her DNA to be on
19 that shirt or her blood or her saliva or whatever
20 body fluid to be on that shirt. So, we use the
21 statement consistent with because you expect that to
22 be there.

23 Q Okay. Okay.

24 A Which is the same as matching.

25 Q So, was the four cuttings that you got from the

1 shirt, all of them had blood; is that correct?

2 A Yes, blood was indicated on all of them.

3 Q Okay. On how many of them, if any, was there DNA
4 consistent with Nathaniel Beeks?

5 A Items -- SLED item number 3.3 and 3.4.

6 Q Okay. Now, let's move to the pillow, the cuttings
7 from the pillow.

8 A The cuttings from the pillow, which is SLED items
9 number 4.1 and 4.2 and 4.3, all three had indication
10 of blood.

11 Q Okay.

12 A Next step I took them on to DNA to see if I could
13 develop a DNA profile from that blood that was found
14 on those items. These items were also -- they had
15 mixtures of more than one individual. Item number
16 4.1 is a mixture and Marsha Smith and Nathaniel Beeks
17 are excluded as to contributors to this mixture of
18 item.

19 Q Okay.

20 A So, item number 4.1 neither one of their profiles
21 were in there.

22 Q Okay.

23 A In that mixture.

24 Q All right.

25 A Item 4.2 is also a mixture. The subject in this case

1 could not be excluded as to this mixture. And I
2 applied a statistical value to that particular
3 mixture. And it was one in 170,000. But Marsha
4 Smith is excluded as a contributor to that mixture.

5 Q Okay.

6 A Item 4.3 is a mixture also and Mr. Beeks cannot be
7 excluded as a contributor to that mixture either.
8 And I applied a statistical value that mixture and it
9 was one in 9.1 thousand. Marsha Smith is excluded as
10 a contributor to that mixture also.

11 Q Okay. Now, other than the cuttings from the shirt
12 and pillow, did you examine some other samples in
13 this case?

14 A Yes, I did. I examined the fingernail clippings that
15 were taken from Ms. Smith.

16 Q Okay. And what did you find in those?

17 A The item number six, which is the fingernail
18 clippings from the right -- from Ms. Smith's
19 right-hand, exhibited a mixture and the DNA profile
20 mix contributor to this mixture is consistent with
21 the DNA profile of Marsha Smith. Which is what is
22 expected since it's her fingernail clippings. But
23 Mr. Beeks cannot be excluded as a minor contributor
24 to this mixture.

25 Q Okay.

1 A Then I applied a statistical value to that mixture
2 and it was approximately one in 570,000.

3 Q The --

4 THE COURT REPORTER: Just a second, Ms. Munson.
5 (WHEREUPON, the Court Reporter was having
6 technical difficulties.)

7 THE COURT REPORTER: Thank you.

8 BY MS. MUNSON:

9 Q Okay, the substance from which you developed the DNA
10 profile from underneath the fingernails, can you say
11 what that was? Whether it was blood or saliva or
12 skin.

13 A No, I cannot. It was a small amount.

14 Q Okay.

15 A Of contribution so it was not tested for the presence
16 of blood.

17 Q Okay.

18 A So, I cannot say.

19 Q And the--

20 MS. MUNSON: That's all I have, Ms. Gallman,
21 thank you.

22 MR. CHAMBERS: Your Honor, I don't have any
23 questions for Ms. Gallman.

24 THE COURT: All right.

25 Lawyers approach a moment.

1 (WHEREUPON, an off-the-record bench conference
2 was held in the presence of the jury but out of
3 the hearing of the jury.)

4 THE COURT: All right, ladies and gentlemen, at
5 this time, in talking with the lawyers, we're going to
6 take a lunch break. You're in the process of receiving
7 the testimony and as you know and it's even more important
8 for me to remind you that you cannot do any type of
9 independent research or investigation into the case. And
10 you also cannot have any discussion with anyone, including
11 yourselves about anything involving the case.

12 Looking at that clock back on the wall, I'm
13 going to ask, if you would, please, be back in the jury
14 deliberation room by 1:30. That should allow you enough
15 time to get lunch and allow the staff, the court
16 personnel, to do the their work and get lunch also. Thank
17 you, very much, for your work this morning. You may go
18 with the bailiff.

19 (WHEREUPON, the jury left open court at
20 approximately 11:52 a.m.)

21 THE COURT: Okay. Ma'am, I haven't dismissed
22 you from the witness stand yet. So, I've got some -- I've
23 spoken with the lawyers at the bench about my concern for
24 the safety of the jury to actually have some of this
25 evidence back there without gloves, without some type of

1 safety precautions. Especially, since the bag that the
2 shirt is in is marked hazardous material. So, what I
3 believe we're going to do -- you cannot have any
4 discussion with anyone about the substance of your
5 testimony because you're not finished yet. But you will
6 be allowed -- don't feel like that I'm going to prevent
7 you from talking with the State or Solicitor to be able to
8 discuss a possible way to remedy my concerns and to see
9 whether or not we can probably transfer these items to
10 cellophane bags or something of that nature. So, feel
11 free to talk to them about that type of thing. As far as
12 the substance of your testimony, in the event that any
13 other issue arises, you could not talk to them about that,
14 all right?

15 But at this time we'll step down.

16 MS. MUNSON: Thank you, Your Honor.

17 THE COURT: Okay. All right, we'll step down
18 until 1:30.

19 (WHEREUPON, a lunch break was taken.)

20 THE COURT: We had -- while we were on break,
21 somebody want to put on the record what was accomplished
22 with the exhibits?

23 MS. MUNSON: Yes, sir, Your Honor. If it please
24 the Court, during the break, State's -- what we're talking
25 about here is State's Exhibit No. 26, which is the shirt

1 that was taken off the victim from which cuttings were
2 taken. And State's Exhibit No. 27 which is a pillow from
3 which cuttings were taken. And also State's Exhibit No.
4 25 which are the actual cuttings. During the break, Lily
5 Gallman, the SLED agent who testified about these things
6 and through who we got them into evidence, she took the
7 items -- she took all the cuttings and placed them in this
8 clear plastic bag so the jury can see them without having
9 to get them out and touch them. She resealed the bags and
10 then where she sealed them she put the time that she
11 sealed them, which is 12:45, her initials and today's
12 date. She did that with the cuttings, she did it with the
13 shirt, she did it with the pillow. I believe Mrs. Troup
14 was in the courtroom the entire time, I was here the
15 entire time.

16 I spoke with Mr. Chambers by phone and told him
17 what we were considering doing for the benefit of the jury
18 and I'll let him take it from there, Your Honor.

19 MR. CHAMBERS: I just want to say for the
20 record, Your Honor, that the Solicitor did consult me. I
21 told her I didn't feel like I needed to be present, to go
22 ahead and do that in my absence. And I looked at those
23 items since I've come back and I don't have any objection
24 the any of that.

25 THE COURT: All right. Thank you.

1 Thank y'all for accomplishing that. At least
2 from performing my job, I have a comfort level now that
3 I'm not exposing the jury to some type of unknown chemical
4 or substance, hazard and that also in the event that this
5 record gets reviewed at some point in the future and the
6 case has to be retried for some reason, I think we
7 preserved the evidence?

8 MS. MUNSON: May I add something, Your Honor?

9 THE COURT: Uh-huh.

10 MS. MUNSON: Ms. Gallman suggested to me that
11 after the trial, should there be a conviction, that we
12 should remove those items from the plastic and put them
13 back in the paper so that they're better preserved in case
14 further testing needs to be done down the record.

15 THE COURT: Okay, I'll address that at some
16 point in the future.

17 MS. MUNSON: Yes, sir.

18 THE COURT: All right. Are we ready to proceed?

19 MS. MUNSON: Yes, sir, Your Honor.

20 MR. CHAMBERS: Yes, sir, Your Honor.

21 THE COURT: Okay, let's bring the jury back.

22 (WHEREUPON, the jury came into open court at
23 approximately 1:40 p.m.)

24 THE COURT: The State ready to proceed?

25 MS. MUNSON: Yes, sir, Your Honor.

1 THE COURT: Yes, ma'am.

2 MS. MUNSON: If it please the Court, the State
3 calls Dr. Michael Ward.

4 THE COURT: Sir, just come right here.

5 THE CLERK: Dr. Ward, please place your left
6 hand on the Bible, raise your right hand.

7 MICHAEL WARD, after being duly sworn, testified
8 as follows:

9 THE CLERK: Thank you, please be seated. State
10 your name for the record.

11 THE WITNESS: Michael Eugene Ward.

12 DIRECT EXAMINATION

13 BY MS. MUNSON:

14 Q Who do you work for, Dr. Ward?

15 A I'm employed by Pathology Associates of Greenville
16 which is a private practice pathology group here in
17 town. And also as the chief medical examiner for
18 Greenville County.

19 Q What are your duties as the chief medical examiner
20 for Greenville County?

21 A My responsibilities are to investigate deaths that
22 occur in Greenville County. To determine cause and
23 manner of death.

24 Q What is the difference between pathology and forensic
25 pathology?

1 A Pathology is a specialty of medicine which deals with
2 disease, disease processes and how they effect man.
3 Forensic pathology takes that one step further.
4 Study the disease, the same disease processes but
5 also trauma and injuries that lead to death,
6 determining how a person died, why they died and then
7 the presentation of that information in the court of
8 law.

9 Q Would you please tell the jury about your educational
10 background?

11 A I received a bachelor's degree in biology from the
12 University of Alabama. I have a master's degree in
13 forensic science from the University of Alabama in
14 Birmingham. I received my medical degree from the
15 University of South Alabama which is in Mobile. I
16 did a four year anatomic pathology residency at the
17 Medical University of South Carolina in Charleston.
18 And a one year fellowship in forensic pathology at
19 the University of New Mexico in Albuquerque.

20 Q Do you have any specialized training in the area of
21 forensic pathology?

22 A I do. My fellowship was in forensic pathology which
23 is the one year program in New Mexico. And I'm board
24 certified by the American Board of Pathology in both
25 anatomic and forensic pathology.

1 Q In practicing forensic pathology, what is one of the
2 most common ways for you to determine cause and
3 manner of death?

4 A Most frequently we will use the autopsy. An autopsy
5 is a detailed physical examination which is performed
6 on a person who has died. From that we do an
7 external examination to look for injuries, disease
8 process. And then a internal examination, again,
9 looking to see if they're any injuries on the under
10 surface of the skin as well as any disease process
11 that may have contributed to the death.

12 Q How many autopsies would you say that you have
13 performed in your career.

14 A Between four and 5000.

15 Q Have you ever been qualified as an expert in the
16 field of forensic pathology in the State of South
17 Carolina?

18 A Yes, I have.

19 Q Any other states?

20 A New Mexico and North Carolina.

21 Q About how many times would you say you've been
22 qualified as an expert in forensic pathology?

23 A Well over 100 times.

24 MS. MUNSON: Your Honor, at this time I offer
25 Dr. Ward as an expert in the field of forensic pathology.

1 MR. CHAMBERS: No objection, Your Honor.

2 THE COURT: Thank you, very much.

3 Ladies and gentlemen, again, normally a person
4 cannot give opinion testimony, normally. But when a
5 person testifies, they must testify as to what either they
6 saw, heard or sensed by smell or something of that nature.
7 However, there is an exception when someone is qualified
8 because of education or experience. They are permitted to
9 give their opinion in certain areas if the Court qualifies
10 them that way. This witness will be qualified in the area
11 of forensic pathology to give opinion testimony in this
12 area. Now, that does not mean that you must accept the
13 opinion but it is evidence for you to use in any way that
14 you see fit.

15 MS. MUNSON: Thank you, Your Honor.

16 BY MS. MUNSON:

17 Q Dr. Ward, did you perform an autopsy in this case?

18 A Yes, I did.

19 Q On what date?

20 A The autopsy was performed on April 25th, 2011 and was
21 begun at 12:30 p.m.

22 Q Who was present at the autopsy?

23 A Greenville County Deputy Coroner Tom Selfridge,
24 Greenville City Police Detective David Garrett and
25 Officer James Hamilton of the Greenville County

1 Criminal Justice Support Department.

2 Q Okay. How did you being the autopsy?

3 A The autopsy begins by basic external examination. We
4 get a height, weight, make a diagram of the clothing
5 that the decedent is wearing, then take photographs.
6 We document any injuries that we see on the outer
7 surface of the body. Both diagrammatically and
8 photographically. And then proceed to the internal
9 examination.

10 Q On whom did you perform this autopsy?

11 A Marsha Smith.

12 Q All right. Let's talk about the external
13 examination. What did you note on the external
14 examination of Marsha Smith's body?

15 A As to injuries?

16 Q Yes, sir.

17 A Most of the injuries are to the head and neck region.
18 On the left cheek over lining the cheek bone was a
19 superficial abrasion of her skin. On the right
20 lateral neck or right neck just to the outside below
21 the jawline were three areas of scratching of the
22 skin or an abrasion. And these were in a pattern of
23 about an inch to an inch and a half, three separate
24 abrasions.

25 On the right neck -- I'm sorry, on the right.

1 neck was a area of bruising, purple/red bruising of
2 the skin. And on the left neck a similar bruising
3 but to a little bit greater degree. So, the bruising
4 on the left neck was a little bit worst than the
5 bruising on the right neck. There was also -- I'm
6 sorry. An abrasion on the left elbow. So, basically
7 she had rubbed her elbow on something that caused the
8 skin surface to be abraded or scratched. Then the
9 left fingernail was broken.

10 Q Okay. Was there anything else on the external
11 examination relative to her death?

12 A This is sort of could be internal examination, could
13 be external examination. When we looked at her eyes,
14 the white part of her eyes, which is called the
15 sclera, yours and mine, we may be the able to see the
16 blood vessels there sometimes if our eyes are red but
17 Ms. Allen -- I'm sorry, Ms. Smith had what we call
18 particular hemorrhages. These are pinpoint areas of
19 bleeding into the white part of her eye. And this is
20 the result of increased pressure in the blood vessels
21 that have built up in the head as a result of the
22 injuries that we'll describe later.

23 Q Okay. Then you move to the internal examination?

24 A That's correct.

25 Q Okay. Tell the jury what you found on the internal

1 examination?

2 A The injuries on the outer surface on the neck are
3 certainly suspicious for some type of strangulation.
4 Pressure applied to the neck in cause death. These
5 along with the hemorrhages within the eyes make us
6 look very carefully into the neck, looking for any
7 injuries that may be present. So, the first step
8 that we do is after removal of the brain and the rest
9 of the organs, is to do what we call a step wise
10 dissection of the neck. Which is taking the next in
11 layers and exposing them, looking for any bleeding
12 into the tissues there. Ms. Smith had bleeding into
13 the musculature of the neck. She had bleeding over
14 lining the left corroded artery, which is the artery
15 that takes blood from the heart to the brain and then
16 she had a broken hyoid bone. The hyoid bone is the
17 bone which is right here. And it's horseshoe shaped.
18 And so, the fracture was to the right horseshoe part
19 of her hyoid bone. Indicating that pressure, a great
20 deal of pressure, had been applied to the neck,
21 causing that bone to break.

22 Q Okay. Was there anything else inside around her neck
23 or throat or anything else that you noticed?

24 A I don't believe so.

25 Q Okay. Now, as part of the autopsy, do you look at

1 any other disease process or anything else that could
2 have caused her death?

3 A Yes, we do.

4 Q Did you find anything on the internal examination?

5 A No, we did not.

6 Q Did you find anything in her lungs?

7 A No.

8 Q Now --

9 May I approach, Your Honor?

10 THE COURT: Yes, ma'am.

11 BY MS. MUNSON:

12 Q Dr. Ward, I'm showing you State's Exhibits, 18, 19,
13 20 and 21, if you could just take a look at these,
14 please. Do you recognize them?

15 A Yes, I do.

16 Q Are they true and accurate depictions of your
17 examination of the body of Marsha Smith?

18 A They are.

19 Q And would these or would these not be helpful in your
20 testimony to the jury?

21 A They certainly would, yes.

22 MS. MUNSON: Your Honor, at this time I move
23 State's Exhibits 18, 19, 20 and 21 into evidence.

24 MR. CHAMBERS: No objection, Your Honor.

25 THE COURT: Without object State's 18, 19, 20

1 and 21.

2 (WHEREUPON, State's Exhibits Nos. 18-21 were
3 admitted into evidence.)

4 BY MS. MUNSON:

5 Q All right, Dr. Ward, let's look at State's Exhibit
6 No. 18. Take a look at that. And could you explain
7 to the jury what this shows?

8 A Yes, this is a photograph to the right side of the
9 neck of Ms. Smith. And for orientation this is her
10 hair so this would be the back of the head, her right
11 ear. This is coming down through her shirt. So,
12 this would be roughly in the region of her collar
13 bone. And this is the front part of her neck coming
14 around to the back. And here are the three areas of
15 abrasion or tearing of the skin that I described in
16 this area here.

17 Q Okay. Now, let's move to State's Exhibit No. 19.
18 Hard to see there.

19 A This is the front portion of Ms. Smith's neck, her
20 chin. This is the neck region. And, of course, this
21 is her shirt. This is the midline of the neck,
22 here's the bruising of the skin extending to the left
23 and the bruising of the skin extending to the right.

24 Q Okay. And State's Exhibit No. 20.

25 A A photograph of the left side of Ms. Smith's face

1 coming from this area. This is some bleeding, dried
2 blood which is on the face, coming from the abrasion
3 on her left chin, left cheek, I guess would be a
4 better, left cheek. Also, the continuation of the
5 bruising into her left neck.

6 Q Finally, State's Exhibit No. 21.

7 A This is a close-up photograph of the continued
8 bruising of the left neck going towards the back.
9 So, this is the front, this would be the region of
10 the chin, this is to the back of the neck and this is
11 the hemorrhage that's present in her left neck.

12 Q Okay, thank you. Now, Dr. Ward, based on the
13 bruising, the particular hemorrhaging, the broken
14 hyoid bone, were you able to form an opinion as to
15 the cause of Marsha Smith's death?

16 A Yes, I was.

17 Q What is your opinion about the cause of her death?

18 A Marsha Smith died as a result of manual
19 strangulation.

20 Q What is the process that taking place as she was
21 being strangled?

22 A Manual strangulation is a process from where the
23 hands are used as the weapon to apply pressure to the
24 vessels of the neck. It's sort of misnomer. Most
25 people when they hear strangulation think that

1 there's pressure applied to the trachea to obstruct
2 the airway. When, in fact, the pressure's actually
3 over the great vessels of the neck. So, the blood
4 going to the brain and the blood coming back from the
5 brain are included by basically your thumbs being
6 placed there and pressured being applied. That's how
7 we get the bruising in the skin, the bruising in the
8 musculature underneath and the bruising over lining
9 the corraded artery as well as the fracture of the
10 hyoid bone. From the pressure of your hands
11 squeezing in on the neck. When this is done, blood
12 follow to the brain is stopped. So, it's very
13 suddenly, very quickly, the brain is without oxygen.
14 Now, we can hold our breath for a long period of
15 time. Some people up to a minute and a half to two
16 minutes. That's very different from not having any
17 blood flow to your brain. We can go without
18 breathing for a long time but you can't go without
19 any oxygen going to your brain except for a few
20 seconds before you become unresponsive. And then a
21 shorter period of time, relatively shorter period of
22 time, you die as a result of lack of oxygen to your
23 brain.

24 Q Okay. Is this, the amount of pressure used in this
25 case with Marsha Smith, based on the bruising that

1 you saw and the broken hyoid bone, are we talking
2 about a little bit of pressure or can you put a --
3 can you put like a measurement on the pressure that's
4 used or required to cause this damage?

5 A Well, you can't really -- I don't know how to put a
6 number to it. But it takes a great deal of pressure
7 to apply just pressure to the skin to result in
8 bruising. So, this is rupturing capillaires in the
9 neck, compressing blood vessels underneath. So, this
10 was something that you're having to exert a great
11 deal of force to do. It probably all you can do with
12 your hands to be able to do that.

13 Q Now, Dr. Ward, State's Exhibit No. 18 is the three
14 abrasions to the side of Marsha's neck?

15 A Yes.

16 Q Okay. Now, do you have an opinion about how those
17 got there?

18 A I do.

19 Q And what is that opinion?

20 A These abrasions are inconsistent with being the marks
21 caused by the assailant. The person who manually
22 strangled Mr. Smith. They're not in the right place.
23 Generally, if we see marks from the assailant,
24 they're either right there where the thumbs go on the
25 sides of the middle of the neck or around in the back

1 where the fingers are. These are here beneath the
2 chin. And most frequently we feel that these are a
3 result of the victim using her hands to try to free
4 her neck. Try to remove the assailant's hands. So
5 these are scratches in the skin caused by Ms. Smith
6 as she's trying to free the hands from around her
7 neck.

8 Q Would she have been conscious at the beginning, at
9 least, of the affixation process of the
10 strangulation?

11 A Yes.

12 Q To put up a fight?

13 A Yes, she would.

14 Q And Dr. Ward, do you have an opinion as to the manner
15 of Marsha Smith's death?

16 A I do.

17 Q What is that opinion?

18 A Ms. Smith died as a result of a homicide.

19 MS. MUNSON: Thank you, Dr. Ward.

20 I have nothing further, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. CHAMBERS:

23 Q You said that with that manner strangulation would
24 not take very long for someone to lose consciousness.
25 Can you estimate how long it would take for a person

1 to lose consciousness when they're being choked in
2 that manner?

3 A 12, 15, 20 seconds.

4 Q So, it's very quickly?

5 A Yes.

6 Q How long before death would result if that pressure
7 continued to be exerted?

8 A I think witness less than a minute.

9 Q Okay, so less than a minute?

10 A (The witness nods.)

11 Q Based on all the bruising that you noted from in the
12 front throat area, would that be consistent with the
13 assailant coming from the front facing Marsha Smith?

14 A I believe it would. From behind you would have four
15 finger tips on each sides then thumbs in the back.
16 Then I think that could give a different bruising
17 pattern. Whether it could be going up and down this
18 way as opposed to thumbs out this way.

19 Q So, this would seem to indicate then that Marsha
20 Smith was facing the assailant?

21 A It would.

22 Q Would this -- could this have occurred with her on
23 her back on the ground, would that be consistent with
24 your findings?

25 A Certainly could be, yes.

1 MR. CHAMBERS: Thank you, Dr. Ward.

2 No further questions, Your Honor.

3 THE COURT: Thank you, sir, you may step down.

4 Any reason the witness cannot be excused?

5 MS. MUNSON: No reason from the State.

6 MR. CHAMBERS: No, Your Honor.

7 THE COURT: Thank you, sir, you're excused as
8 well. Thank you for coming.

9 MS. MUNSON: If it please the Court, Your Honor,
10 that's the State's case.

11 THE COURT: All right, thank you, ma'am.

12 Ladies and gentlemen, this one of those times
13 where I have to excuse you from the courtroom. I have to
14 take up some matters of law with the attorneys. I need to
15 remind you that we're still in the process of presenting
16 this case to you so please do not have any discussion
17 among yourselves about anything involving the case. But
18 you may retire back to the jury deliberation room, get you
19 back as soon as we can.

20 (WHEREUPON, the jury left open court at
21 approximately 2:00 p.m.)

22 MR. CHAMBERS: Your Honor, I have a directed
23 verdict as to both charge. I'll start with the grand
24 larceny charge. I don't believe that the Solicitor
25 introduced any evidence during the course of her

1 presentation as to the value of the vehicle that was
2 taken. I would acknowledge that there was enough to
3 establish, at least, based on the standard that to be
4 applied that the Defendant carried away the car with the
5 intent to deprive the owner to that car. But no evidence
6 as to the value of the car. As to the murder charge, Your
7 Honor, even considering the evidence in the light most
8 favorable to the Solicitor, our position would be that
9 there is not adequate evidence introduced by the Solicitor
10 to prove malice in this case.

11 THE COURT: To prove malice?

12 MR. CHAMBERS: Yes, sir. Which is an element,
13 obviously, of murder.

14 THE COURT: Okay.

15 Yes, ma'am.

16 MS. MUNSON: May it please the Court, Your
17 Honor, as to the value of the vehicle, certainly no one
18 took the stand and said it is worth ex number of dollars.
19 There is testimony from which the jury could infer and
20 decide, without speculation, that the vehicle was worth,
21 at least, \$2000. Certainly, if the Court is not satisfied
22 that there's enough there from which the jury to make that
23 decision, then we could direct a verdict on grand larceny
24 but certainly allow petit larceny. And I would suggest
25 that's certainly the charge that you might give them any

1 way. As to the malice of the murder, it's the State's
2 position that there's plenty of sufficient evidence to
3 show that Marsha Smith was killed without just cause or
4 excuse. And there's really insufficient evidence of
5 sudden heat and passion. I don't think that there's any
6 evidence that saying to a person, I'm breaking up with
7 you, is sufficient legal provocation to strangle them to
8 death. So, we would respectfully ask the Court to deny the
9 Defense motions.

10 THE COURT: Let me ask you, any reply?

11 MR. CHAMBERS: No, Your Honor.

12 THE COURT: Let me ask you a question, where is
13 the -- I kept taking notes and I was waiting for the value
14 of that car, too. What evidence would you argue the jury
15 could infer a value, a 1000 -- or Indictment said 2000.

16 MR. CHAMBERS: It was 2000, Your Honor.

17 MS. MUNSON: It was 2000, Your Honor. It was a
18 2004 Honda that she had traded in and was still making
19 payments on it. The car was in good shape. It was fine
20 until it was crashed in Georgia.

21 THE COURT: Okay.

22 Yes, sir, do you believe that's sufficient?

23 MR. CHAMBERS: I don't, Your Honor. I have no
24 idea what the value of a 2004 Honda is. The fact that
25 she's making payments on it doesn't mean it's worth

1 \$2,000. I do believe that that is one of the elements
2 that they have to satisfy as to some evidence of what the
3 value is. I would agree with the Solicitor that it would
4 be appropriate to direct a verdict as to the grand larceny
5 but let the petit larceny go forward to the jury.

6 THE COURT: Weren't there photographs of the
7 vehicle presented in evidence?

8 MS. MUNSON: Yes, sir, Your Honor, but it's
9 after the car was crashed.

10 THE COURT: Okay. It was after the crash. Can
11 I see those?

12 MS. MUNSON: Yes, sir.

13 THE COURT: Or may I see those?

14 All right, let me step down just for just one
15 second. Anything before I step down on the directed
16 verdict motion?

17 MR. CHAMBERS: No, Your Honor.

18 MS. MUNSON: Nothing from the State, Your Honor.

19 THE COURT: All right, stand at ease.

20 (WHEREUPON, a short break was taken.)

21 THE COURT: Thank y'all for your patience. I
22 wanted to go through -- come on in, I'm sorry. Thank you
23 for your patience. I wanted to go through the photographs
24 and exhibits and take a look at my notes. I believe that
25 at this stage, it would be -- it would be a mistake for me

1 to allow that charge of grand larceny to go forward
2 without more information as to the value of the car. So,
3 I am going to grant that part of the motion. I will deny
4 the part of the motion that deals with the murder issue.
5 I believe that there is sufficient evidence has been
6 presented from which a jury could find all of the
7 necessary elements of that charge. So, I will deny that
8 motion.

9 I proceeded -- but I do agree that there is
10 sufficient evidence to charge petit larceny and I believe
11 that there is a case that we were able to locate where, in
12 fact, the Judge got reversed by not having more
13 information as to the value of the property. So, I -- in
14 that particular case the Appellate Court said that the
15 case would be remanded to redo it on the petit larceny
16 charge, lesser included offense. So, we're going to have
17 a charge on the -- unless I hear otherwise, I will prepare
18 a charge on the petit larceny, so. Okay.

19 MS. MUNSON: One other thing, Your Honor, that
20 might make it smoother, is if -- and you ruled and I don't
21 like to say anything after the Judge has ruled but this
22 popped in my head after you left. I could, if you allow
23 me, to make a motion pursuant to, I think, it's 17-19-100,
24 to amend the Indictment to petit larceny. Thank you, Your
25 Honor.

1 THE COURT: As opposed to it being a lesser
2 included offense?

3 MS. MUNSON: Yes, sir. Just might be a little
4 cleaner.

5 MR. CHAMBERS: I don't care, Your Honor, as long
6 as it goes to the jury as petit larceny and not the grand
7 larceny I'm happy.

8 THE COURT: All right. If you -- so you're
9 making that motion?

10 MS. MUNSON: Yes, sir, Your Honor, I am.

11 THE COURT: I will grant that motion, okay.

12 All right, any other motions from the Defense?

13 MR. CHAMBERS: No, Your Honor.

14 THE COURT: Has the -- have you had the
15 opportunity to be able to discuss with your client whether
16 or not he desires to testify?

17 MR. CHAMBERS: Your Honor, I had had discussions
18 with him. Obviously, I'd like for him to give the Court
19 his final answer. I will say for the record that I've
20 discussed the pros and cons of him testifying. I
21 certainly made him aware of the fact that he can testify.
22 He has an absolute right to testify. Likewise, he has an
23 absolute right not to testify. The Court would, in fact,
24 tell the jury that they couldn't hold that against him.
25 My understanding from our discussions are that he does not

1 THE COURT: All right. Okay.

2 Lawyers approach a moment.

3 (WHEREUPON, an off-the-record bench conference
4 was held.)

5 THE COURT: All right, Mr. Bailiff, would you
6 bring the Forelady out. Just the Forelady.

7 Ms. Donald, I just -- I've had a discussion with
8 the lawyers, we've got more work that we need to do, that
9 has to be done outside of the juries presence. As oppose
10 to me just keeping y'all locked up in the back waiting for
11 me to send for you, what I would like for you to do is to
12 tell the jury that they need to return at 9:30. By 9:30
13 in the morning. Remind them of my instruction that they
14 should not have any discussion among themselves or with
15 anyone else involved in the case. And that we will start
16 as soon as we can once y'all are all back in the morning.
17 Think you can do that for me?

18 MADAM FORELADY: Very good. Yes, sir, I will.

19 THE COURT: Thank you, very much, ma'am.

20 MADAM FORELADY: You're welcome.

21 (WHEREUPON, the jury was excused for the day at
22 approximately 2:25 p.m.)

23 THE COURT: All right, what I'm going to do,
24 we'll step down and finish the work on the charges and
25 come back. You can explain that to the people in the

1 gallery that we will not be taking more testimony today if
2 they did not want to stay just to see us work. But we'll
3 be back in a few minutes with the jury charges and we'll
4 review those.

5 (WHEREUPON, a short break was taken.)

6 THE COURT: All right. What we're going to do,
7 Mr. Chambers had tried, I know, a case or two with me
8 before. I'm not sure you ever tried a case with me
9 before.

10 MS. MUNSON: I have not, Your Honor.

11 THE COURT: Okay.

12 Just, I don't let the Indictments go back to the
13 jury. I do actually do a verdict form. I --
14 unfortunately, I didn't tell that to a group of lawyers
15 before and they both got up and argued about the
16 Indictment and everything, look at it when you go back
17 there. And I thought, Well, it's not going to back there.
18 So, make notes that the Indictments will not go back there
19 but I do have a verdict form that y'all can take a look at
20 and offer any suggestions.

21 All right. We now have the charge, we'll start
22 out with being the multiple charges. And the two charges
23 that I have now are murder and petit larceny. Those would
24 be the two announced charges. I also give the instruction
25 reminding them about the fact that he was arrested,

1 charged and indicted is not evidence in the case and
2 cannot be considered by you as evidence of his guilt. Nor
3 does it create presumption or inference to guilt. Then I
4 do the presumption of innocence and I use the one that
5 probably y'all have heard numerous times, cloak of
6 righteousness, robe of righteousness surrounds the
7 Defendant.

8 Reasonable doubt. I'm going to read this. I'm
9 sure this is probably what you've heard as well, but I
10 just want to read it just to be sure you've heard it from
11 me. I will do both, the typical charges. What is
12 reasonable doubt in the law? A reasonable doubt is the
13 kind of doubt that would cause a reasonable person to
14 hesitate to act. The State has the burden of proving the
15 Defendant guilty beyond a reasonable doubt. Some of you
16 may have served as jurors in civil cases where you were
17 told that it was only necessary to proof that a fact was
18 more likely true than not true. Such as by the greater
19 weight or preponderance of the evidence. In criminal
20 cases the State's proof must be more powerful than that,
21 it must be beyond a reasonable doubt.

22 Prove beyond a reasonable doubt is proof that
23 leaves you firmly convinced of the Defendant's guilt. The
24 are very few things in this word that we know with
25 absolute certainty. In criminal cases the law does not

1 require prove that overcomes every possible doubt. If
2 based upon your consideration of the evidence, you're
3 firmly convinced that the Defendant is guilty of the crime
4 charged, you must find the Defendant guilty. If on the
5 other hand, you think there's a real possibility that the
6 Defendant is not guilty, you must give the Defendant the
7 benefit of the doubt and find him not guilty.

8 Then, I do the duties of the jury and the Judge.
9 I do direct and circumstantial evidence charge. I do
10 credibility of witnesses charge. I do the expert witness
11 charge. Then, I do the failure of the Defendant to
12 testify charge. Then, I go into the substantive charges.

13 Now, we'll start first with the murder charge.
14 The Defendant is charged with murder. The State must
15 prove beyond a reasonable doubt that the Defendant killed
16 another person with malice aforethought. Malice is
17 hatred, ill will or hostility towards another person. It
18 is the intentional doing of a wrongful act without just
19 cause or excuse and with an intent to inflict an injury
20 or under the circumstances that the law will infer an evil
21 intent. Malice aforethought does not require that malice
22 exist for any particular time before the act is committed.
23 But, malice must exist in the mind of the Defendant just
24 before and at the time of the act is committed.
25 Therefore, there must be a combination of the previous

1 evil intent and the act. Malice aforethought may be
2 expressed or inferred. These terms expressed and inferred
3 do not mean different kinds of malice but merely the
4 manner in which malice may be shown to exist. That is
5 either by direct evidence or by inference from the facts
6 and circumstances which are proved.

7 Expressed malice is shown when a person speaks
8 words which express hatred or ill will for another. Or
9 from a person prepared beforehand to do the act which was
10 later accomplished. For example, lying in wait for a
11 person or any other act of preparation going to show that
12 the deed was within the Defendant's mind would be
13 expressed malice. Malice may be inferred from conduct
14 showing a total disregard for human life. Inferred malice
15 may also arise when the deed is done with a deadly weapon.

16 A deadly weapon is any article, instrument or
17 substance which is likely to cause death or great bodily
18 harm. Whether an instrument has been used as a deadly
19 weapon depends on the facts and circumstances of each
20 case. The following are examples of instruments which may
21 be deadly weapons. A pistol, a shotgun, a riffle, dart,
22 dagger, knife, slingshot, metal knuckles, a razor,
23 gasoline, a firebomb or a maltol cocktail and lighter
24 fluid. Guns may be a deadly weapon even if it is not
25 operating. A hand or first is not normally considered a

1 deadly weapon. However, under some circumstances,
2 depending on the manner and means of its use, the wounds
3 inflicted and other relevant facts, the hand or fist may
4 be considered a deadly weapon. It is for you to decide in
5 this case beyond a reasonable doubt whether or not a hand
6 or a fist is a deadly weapon. Objects -- objects --
7 ordinary objects may become deadly weapons when the facts
8 show that they have been used to inflict by serious bodily
9 harm or death.

10 If you find that the State has failed to prove
11 beyond a reasonable doubt that the Defendant committed
12 murder, you may consider whether the State has proved
13 beyond a reasonable doubt that the Defendant committed
14 voluntary manslaughter. To prove voluntary manslaughter,
15 the State must prove beyond a reasonable doubt the
16 Defendant took the life of another in the sudden heat of
17 passion, based on sufficient legal provocation. Heat of
18 passion alone with not suffice to reduce murder to
19 voluntary manslaughter. Both heat of passion and
20 sufficient legal provocation must be present at the time
21 of the killing to constitute voluntary manslaughter.

22 Sudden heat and passion may, for a time, effect
23 a person's self control and temporarily disturb a person's
24 reason. Sudden heat of passion must be the type that
25 would make a ordinary person unable to coolly reflect on

1 his actions and would produce an uncontrollable impulse to
2 do violence. Sufficient legal provocation must be the
3 type that would make a person of ordinary reason and
4 caution to become enraged and to lose control temporarily.
5 The provocation needed for voluntary manslaughter, must
6 come from some act of or related to the victim. Words
7 alone, however vulgar or insulting are not enough to be
8 legal provocation. Where death is caused by the use of a
9 deadly weapon, the words must be accompanied by some
10 overt, threatening act which would have produced the heat
11 of passion.

12 The exercise of a legal right, no matter how
13 offense it is to another, is never sufficient legal
14 provocation for voluntary manslaughter. If the heat of
15 passion had cooled or if there was enough time between the
16 provocation, if any, and the killing for the passion of a
17 reasonable person to cool, the killing would not be
18 voluntary manslaughter. In deciding whether a reasonable
19 person would have had enough time to cool off, you should
20 consider all of the circumstances surrounding the killing.
21 You may consider the nature of the provocation, if any.
22 The Defendant's mental and physical state. And the
23 circumstances and relationships between the parties.

24 Let's stop there. Give me y'all's opinion on
25 the murder and voluntary manslaughter charge. Any

1 suggestions?

2 MS. MUNSON: At this point, Your Honor, as far
3 as the State's concerned, I'm happy with what you've done.

4 THE COURT: What about the part on the deadly
5 weapons section? Where I do the part about the hands can
6 be a deadly weapon, do y'all -- I mean, my understanding
7 of the facts is that the facts are reflecting that it was
8 the hands of the Defendant that killed the victim and not
9 some other object. And included additional language in
10 the charge where I talked about ordinary objects could be
11 deadly weapons, do I need that in there?

12 MS. MUNSON: I don't think so, Your Honor.
13 There's nothing on the record about anything other than
14 his hands. There was testimony about a candle stand here
15 and a ashtray there, but there's no evidence that any of
16 that was used against Marsha. I think it would be
17 confusing.

18 MR. CHAMBERS: I, you know, Your Honor, I would
19 agree with the Solicitor on that.

20 THE COURT: Okay.

21 THE WITNESS: I'll take out the ordinary objects
22 part of that charge. Okay.

23 MR. CHAMBERS: Your Honor, manslaughter charge,
24 I do have some concern about the part that says, Words
25 alone are not enough. It has to be -- there has to be an

1 accompanied act. You know, honestly didn't expect that we
2 were going to get into this today so I can perhaps look at
3 it and bring something in tomorrow but my understanding is
4 that a very emotional argument. There's case law to
5 support that a very emotional argument would be sufficient
6 to provide the need of provocation -- legal provocation.

7 THE COURT: Well, let me see if I understand
8 your position. Would that not be a factual argument that
9 you would be making? That does equal sufficient
10 provocation to warrant their consideration of the lower
11 charge?

12 MR. CHAMBERS: Yes, sir. ,

13 THE COURT: I mean, I'm not disagreeing with you
14 but I'm having to distinguish between I got to charge them
15 the law versus my acceptance of your view of the facts.

16 MR. CHAMBERS: No, sir. No, sir. I'm sorry, I
17 misunderstood your question. I'm talking about the law,
18 specifically looking at a -- I have a charge book here
19 that is Professor Hubbard's charge book. And in that
20 charge and there's a lot of case law here to support
21 these, it says, By way of example and only by way of
22 example, provocation that is legally sufficient to negate
23 malice, includes conduct. And it lists various things
24 like pointing a gun, physical assault, assault, insulting
25 word accompanying by threatening acts. Then several more.

1 But one of the things listed is like bearing emotional
2 arguments.

3 THE COURT: Well, and I'm not saying I
4 necessarily disagree with you but you would have -- my
5 understood -- my understanding is that I'm not disagreeing
6 with you as to how you want me to review the law, my
7 understanding is that you got to convince the jury,
8 though, that they, in fact, had the emotional argument.
9 And then you got to explain to them the nature of your
10 emotional argument, what it's about. And if you do that
11 then you're convincing them that, factually, your client
12 should be excused from murder and convicted of voluntary
13 manslaughter because you have -- because of the facts that
14 exist.

15 MR. CHAMBERS: That's true, Your Honor. As I
16 understood the law as you're going to give to them,
17 basically what you're telling them and the way that, I
18 think, they're going to construe it is that an argument
19 alone. In other words, mere words cannot provide a legal
20 provocation. And I believe from a legal standpoint that
21 it can.

22 MS. MUNSON: Your Honor, may I be heard?

23 THE COURT: Uh-huh.

24 MS. MUNSON: This sounds strange coming out of
25 my mouth, I kind of agree with Mr. Chambers in that that

1 particular part of the law, while an accurate part of the
2 law, I think refers to situations where the person who was
3 killed, calls the person a bad name. Or, you know, I did
4 this or that to your mother. And provokes with
5 intentionally trying to provoke the attack. And that's
6 not what we have here. And these -- these weren't just
7 mere words. These were words that had effect. So, it
8 might be -- I don't want them getting caught up in that.
9 Because there's no evidence -- there's no evidence in the
10 record that she insulted him or tried to provoke him with
11 nasty or a verbal attack. So, in that regard, I kind of
12 agree with Mr. Chambers a little bit.

13 THE COURT: Well, let me ask both counsel this.
14 My understanding of voluntary manslaughter, is that to a
15 degree, that provocation has to be something that was
16 stimulated by the victim.

17 MS. MUNSON: Correct.

18 MR. CHAMBERS: That's correct, Your Honor.

19 THE COURT: All right. And so simply, I guess
20 my charge, I view my charge as being that it is the
21 Defendant who is going to be excused from murder down to
22 voluntary manslaughter. And that's simply because the
23 Defendant had an emotional reaction, that's not
24 sufficient.

25 MR. CHAMBERS: I agree with that, Your Honor.

1 It has to be legally sufficient provocation. They have to
2 be convinced beyond a reasonable doubt that there wasn't
3 that legal provocation. I mean, in other words, they have
4 to prove malice beyond a reasonable doubt. And the legal
5 provocation, if they find it exists, can negate the malice
6 and bring it down to a voluntary manslaughter.

7 THE COURT: Correct. And the State's, if I
8 understand the State's position in this case, is that --
9 is that this is murder and not voluntary manslaughter.
10 Because there's nothing in the record to indicate that the
11 victim did anything that properly should have resulted in
12 his loss of an emotional reaction that resulted in her
13 being killed.

14 MS. MUNSON: Correct --

15 MR. CHAMBERS: I believe that is their position.
16 And, of course, ours is, and we believe that there's the
17 ample evidence for the juror to infer this, of course, now
18 we're getting into the facts and not law. But that is
19 that, you know, she had indicated to her friend that she
20 had a new man in her life. And that she intended to tell
21 the Defendant about it. And he gave a statement to the
22 police, which is in evidence, that she did, in fact, tell
23 him that during the course of this argument that they were
24 having, and that he snapped. And then actually the
25 statement from the fellow from the jail, whose name I

1 can't remember right now, it doesn't specifically say what
2 she [verbatim] said but something along the lines, She
3 wouldn't shut up. So, I mean, I think there's enough
4 there for them to infer that. That's what I'm going to be
5 trying to get them to do.

6 I'm just concerned with the law that they get, I
7 don't want them to be confused that, wait a minute, she
8 didn't hit him, she didn't spit at him, she didn't really
9 do anything to him other than say something to him. And
10 the Judge is telling us that words alone cannot provide
11 that provocation. My personal opinion is -- well, not
12 just my personal, my opinion based on what I understand
13 about the law is, that's not -- that's not the law. In
14 other words, in that sense it's not just words alone, as
15 the Solicitor said a few minutes ago. It's not just her
16 saying, you know, you suck or, you know, I've always hated
17 your mom or something like that.

18 THE COURT: Okay. I'll tell you what to do.
19 I've listened to you and while y'all are doing the case
20 I've been reading about murder, malice and -- murder,
21 malice and manslaughter just to be sure I have a grasp of
22 it, just to be sure my charges were correct. And I
23 tinkered with the charges in the charge book and tried to
24 get them into the position that I think they are correct.
25 If you would like to -- I've got to do a plea at 9:30, it

1 should be relatively short. But if you want to bring over
2 any case law that you want me to take a look at that you
3 feel is contrary to what with reviewed on malice or
4 murder, I'll be more than happy to take a look at it
5 before we actually convene.

6 MR. CHAMBERS: Okay.

7 THE COURT: Before sure you give the Solicitor a
8 copy.

9 MR. CHAMBERS: I will.

10 THE COURT: And yeah, please feel free to. And
11 if you want to email it to us later today you can.

12 The petit larceny charge, I was going to charge
13 petit larceny as well. The Defendant is charged with
14 petit larceny of a motor vehicle. The State must prove
15 beyond a reasonable doubt that the Defendant took a motor
16 vehicle that belonged to someone else against the will or
17 without the consent of the other person. The slightest
18 removal of the motor vehicle for the complete possession
19 of the motor vehicle, even for an instance, does -- even
20 for an instance by the Defendant is enough to show a
21 taking and caring away of a motor vehicle. The State must
22 also prove beyond a reasonable doubt that the Defendant
23 intended to permanently deprive the owner of the motor
24 vehicle.

25 MS. MUNSON: No objection.

1 MR. CHAMBERS: No objection, Your Honor.

2 THE COURT: Then I conclude with the jury
3 verdict having be unanimous, can't be based upon passion,
4 capriciousness or sympathy. Rather based on the evidence
5 that has been presented to them as part of this trial.
6 Okay. All right, those are my charges.

7 Now, the verdict form, y'all want to come up and
8 take a look at this and see if you have any suggestions.

9 MR. CHAMBERS: That's fine with me.

10 MS. MUNSON: Good with the State, Your Honor.

11 THE COURT: Then we will begin -- I got that,
12 should be a real quick plea at 9:30. I'll be here earlier
13 because I've got to call the role of the cases for next
14 week.

15 Now, Mr. Chambers, you got a client on for
16 tomorrow, do you know what he -- will you be ready on that
17 one?

18 MR. CHAMBERS: Your Honor, he's been on the
19 trial docket a couple of times. If we get to it, it's a
20 trial.

21 THE COURT: How long you think it would be?

22 MR. CHAMBERS: I don't think that Jeff Weston,
23 who's prosecuting that case, has very many witnesses but I
24 really don't know. I don't know. If I remember correctly
25 it's just a possession charge.

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1 THE COURT: All right, Mr. Chambers, if you
2 would, tell me what you found, if anything, regarding the
3 charge we talked about yesterday.
4

5 MR. CHAMBERS: Your Honor, I do have some
6 information recording the information we talked about
7 yesterday on the charge. I've given everything that I'm
8 about to give to you, I've given to Ms. Munson. There's a
9 suggested charge on provocation on top and then two cases
10 to support my position.

11 Yesterday you had indicated that on provocation
12 you were going to, among other things, use the language
13 that words alone, however -- are not sufficient to
14 constitute legal provocation. In looking at the case law,
15 and I would cite each and every one of the cases I've
16 handed you. State v. Locklear and other cases that I
17 looked at had this same language that this is a
18 representative case. Those words are appropriate where
19 death is caused by a deadly weapon, which would not be the
20 case here.

21 The suggested charge that I've given the Court
22 on provocation, list by way of example, eight different
23 things that would be legally sufficient provocation. One
24 of which is a very emotional argument, which I believe the
25 evidence shows took place in this particular case. Or may

1 have taken place, that's up to the jury to decide. In
2 support of that I've given if the Court State vs. Kayhan.
3 That's also in the footnotes supporting that charge,
4 suggested charge that I've given the Court. And in that
5 I've highlighted this language, Your Honor, it's on the
6 second page.

7 It says, The evidence in this case was purely
8 circumstantial. There was testimony that at a Christmas
9 party several hours before the shooting, Kayhan and his
10 wife had an argument and Kayhan drinking.

11 Based on that the Court said that is was proper
12 to charge involuntary manslaughter in this case. So, I'd
13 ask the Court to consider the suggested charge that I've
14 handed up as opposed to the language that you shared with
15 us yesterday in your charges.

16 THE COURT: Have you had a chance to take a look
17 at this?

18 MS. MUNSON: I have, Your Honor.

19 THE COURT: Do you wish to respond?

20 MS. MONTS: Briefly, Your Honor. The State's
21 satisfied with the charge you announced yesterday. I have
22 a question on another issue once we resolve this one.

23 THE COURT: Okay. All right. Well, let me do
24 this. Let my law clerk take a look at these cases while I
25 take care of that plea. Then, I'll come right back to

1 intoxication is not a defense, so. I'm not going to jump
2 up and down if you want a charge that, so.

3 THE COURT: Okay. All right. Then let me step
4 down and we'll come back in just a couple minutes.

5 MS. MUNSON: Thank you, Your Honor.

6 (WHEREUPON, a short break was taken.)

7 THE COURT: All right. I thank you for
8 providing me with those cases, Mr. Chambers. We were able
9 to make a review of the appropriate sections of those
10 cases. And I am not disagreeing with the proposition that
11 are contained in those cases. And maybe I reviewed my
12 charges a little too quickly yesterday when I read them.
13 But in the part where I talk involuntary -- where I speak
14 about voluntary manslaughter, I actually contained the
15 language, and I reviewed that just real quickly. I
16 actually have the language that I believe goes to those
17 cases. I talk about words alone, however, vulgar or
18 insulting are not enough to be legal provocation. The
19 words must be accompanied by some overt act, threatening
20 act, which could have produced heat of passion.

21 I believe that that is what those cases stand
22 for. I know that in those cases they reference when a
23 deadly weapon is used, then words are not sufficient. It
24 may be that the State does not convince the jury that this
25 is a deadly weapon case. If it's not a deadly weapon

1 case, it -- it complicates the State's argument for
2 murder, increases your argument for manslaughter. But
3 that's a factual determination that the jury's going to
4 have to make. So, I think the charges encompass what it
5 is -- oh, I'm sorry, I left out part of my charge.

6 Where death is caused by the use of a deadly
7 weapon, the words must be accompanied by some overt act,
8 threatening act, which could have produced the heat of
9 passion.

10 So, I actually have that deadly weapon provision
11 in the charge already. So, I believe the charge as a
12 whole encompasses those things that you wish the law to
13 be. As you want to argue it to the jury. And I also
14 believe that the charge as a whole is still proper based
15 on my review of the case law and also the case law that
16 was presented by the State yesterday.

17 On that issue of voluntarily intoxication is not
18 a defense to either -- I'll just put in it at the end
19 of -- after I review the murder and voluntary manslaughter
20 charge, I'll just make a statement. Voluntary
21 intoxication is not a defense to either murder or
22 voluntary manslaughter and just move on.

23 MS. MUNSON: Thank you, Your Honor.

24 MR. CHAMBERS: Your Honor, the only thing that I
25 would like to ask the Court to do at this point is to have

1 the suggested instruction that I presented to the Court,
2 if we can mark that as a Court's Exhibit so it's in when
3 it goes up on appeal.

4 THE COURT: Sure.

5 MR. CHAMBERS: Thank you, Your Honor.

6 THE COURT: All right. We'll give the documents
7 that were provided by the Defense to the Court Reporter
8 and mark that Court's Exhibit.

9 (WHEREUPON, Court's Exhibit No. 1 was marked for
10 identification and received into evidence.)

11 THE COURT: All right, they did not present any
12 evidence so that means he gets the last argument.

13 How long do you think you'll be?

14 MS. MUNSON: Twenty-five minutes, 20 minutes.

15 THE COURT: Okay.

16 So, you would think you would be?

17 MR. CHAMBERS: I tend to always go longer than I
18 think I'm going to but I think it would be probably along
19 the same lines, Your Honor.

20 THE COURT: Okay. All right, the only reason I
21 ask is I have to worry about the jury's personal comfort
22 level. So, I was trying to gage that and let them have a
23 break before I charge them or not.

24 All right, if you will bring them back in.
25

1 MS. MUNSON: May it please the Court.

2 Mr. Chambers.

3 I just wanted her to shut the fuck up. Are
4 these the words of a man who was shattered in grief over
5 the loss of a relationship? Or are these the words of a
6 malicious, intentional killing? We know they're his
7 words. Marsha Smith had hands put around her throat and
8 squeezed with such pressure, with such force, blood
9 vessels in her eyeballs burst from the pressure. The
10 hyoid bone in her throat was broken. She had such deep
11 bruising on the skin, under the skin, into the muscle.
12 Are those the actions of somebody just snapping? Or are
13 those the actions of someone committing an intentional,
14 wrongful act without just cause or excuse?

15 We know those are the actions of him. When he
16 put his hands around Marsha Smith's throat and squeezed,
17 in the words of Dr. Ward, with all he had. So hard that
18 Marsha clawed up her own neck trying to release his death
19 grip. You might think, what did Dr. Ward say? Twelve to
20 20 seconds before she loss consciousness, a minute to die.
21 How long do you think 15 seconds is or 12 seconds is when
22 somebody's got their hands around your throat? Let's make
23 no mistake about this. That Defendant intentionally
24 killed Marsha Smith, no doubt about that. The issue is,
25 did he do so with malice or was this a killing that was in

1 sudden heat and passion after sufficient legal
2 provocation?

3 Make no mistake about this either, ladies and
4 gentlemen. The State has to prove all the elements of the
5 offenses. You must be firmly convinced that he's guilty.
6 He has nothing to prove. Not a thing. Because that's how
7 we do things in this country. Sitting there right now
8 Nathaniel Beeks is an innocent man. He's wearing what the
9 law calls a robe of righteousness. The facts in this case
10 have cut away those stitches that bind that robe together.
11 When you go back to the jury room, you will justifiably
12 and truthfully, remove that robe of righteousness from
13 him.

14 Now, we have to examine the relationship between
15 Marsha Smith and this Defendant in order to make a
16 determination about whether he acted with malice or was
17 sufficient legal provocation. So, let's look at this
18 relationship. They were never married. They weren't even
19 engaged. They had no kids in common, no property
20 together. They didn't even have a dog together. It was a
21 long-term relationship. A long time relationship. No
22 doubt about that. Marsha was living in a new place. In a
23 place that she moved to so that he would not be allowed to
24 live there. He didn't even have a key.

25 There was no testimony in the record that Marsha

1 was going back and forth to Atlanta to visit him. And on
2 that particular weekend, you know, if you're in love with
3 somebody and you have a strong, committed relationship, a
4 relationship that if it broke, it could temporarily unseek
5 your mind. How are you going to act? What did they do
6 that weekends? They didn't go to the movies. There was
7 no testimony about that. They didn't appear to have any
8 plans. And on Saturday she stayed gone from him. Just
9 think about that. I submit to you that she was avoiding
10 him all day Saturday. And you have to consider that when
11 you're considering whether or not he acted with malice or
12 she provoked it in some way. Because that's what we're
13 talking about. Malice sufficient legal provocation,
14 sudden heat of passion. And, you know, you can use your
15 common sense.

16 And when you hear that term, legal provocation,
17 sufficient provocation, you got to decide what did Marsha
18 do? What did she do? What did she do that was sufficient
19 to let him put his hands around her throat and kill her on
20 her living room floor. What did she do? One thing the
21 Judge is going to tell you that if a person's doing
22 something they have a legal right to do. That's not
23 sufficient legal provocation. Have to consider that.

24 What did Marsha do? You know, it's almost like
25 maybe Marsha didn't deserve it. That's what this

1 Defendant is telling you. Marsha didn't really deserve
2 it, I'm sorry she's dead. But she was asking for it. Was
3 she? Was she? Was she wrapped in the arms of another
4 man? Did she break off their engagement? Did she go to
5 him and say, You know what, I'm sorry, honey, I know we've
6 been living together for years, but I'm pregnant with
7 another guy's baby. Did he walk into their home, which
8 they didn't have, and catch her on the computer with
9 kiddie porn? Did she intentionally kill his animal? Did
10 she spit on him? No. Marsha didn't do anything that
11 equals sufficient legal provocation.

12 What did Marsha do that would wash away the
13 stain of the malice on his heart? Because that's what it
14 was. He had a malicious intend, a malignment heart. What
15 did Marsha do to wash away the stain of malice? Nothing.
16 Sudden heat and passion. We have to think about that,
17 too. I submit to you that Marsha, told the Defendant that
18 it was over, maybe Friday night, maybe Saturday early.
19 We'll get to that in the a minute.

20 What do we have that shows malice? What did he
21 tell his friend at the jail? He didn't say, I just lost
22 it, I was so upset. He didn't even tell his friend down
23 at the jail why they fought. He didn't say that. He did
24 not say to Mr. Montgomery, Man, you know how much I love
25 her. And when she said she was with somebody else, I just

1 lost it. That's not what he told her [verbatim]. That's
2 not what he told Mr. Montgomery. He told Mr. Montgomery,
3 Just wanted her to shut the fuck up.

4 He runs. Takes Marsha's car and runs. He let
5 Faith, knowing that Faith's mother's dead body was in that
6 apartment, he let Faith go in there with a little two
7 year-old kid. Heat of passion, I just lost it. Or
8 malice? He didn't call for help. He didn't call somebody
9 and say, Come check on her. He didn't do anything. He
10 ran. He didn't even call the family to check on Marsha.
11 He didn't love her, he owned her.

12 The act of strangulation itself, think about
13 that. What do you have in your mind? What do you have in
14 your heart when you slap somebody? You know, I'm mad at
15 you, whack. When you push somebody. When you call
16 somebody a nasty name. What do you have in your mind?
17 What did he have in his mind and what did he have in his
18 heart when he took his hands and put them around Marsha's
19 neck and squeezed until she was dead. What other intent
20 can you have in your mind when you put your hands around
21 the throat of another human being. Not around her arm.
22 Not, hey baby, come here, talk to me. Let's work it out.
23 He put his hands around her throat. That is a malicious
24 act. Not one of sudden heat and passion. And ladies and
25 gentlemen, he did it with no just cause or excuse.

1 A reasonable conclusion that you can draw from
2 the facts is this. The relationship with the Defendant
3 was winding down. Had been winding down for a while. How
4 do we know this? Well, if you will remember Lynita Watts'
5 testimony, one of Marsha's sisters who said it had gotten
6 to a point where they thought the Defendant and Marsha was
7 just friends. Marsha moved into a place where he could
8 not be. Marsha didn't give him a key when he came for the
9 weekend. This relationship had been winding down for
10 quite some time.

11 Either Friday night or Saturday morning, Marsha
12 says, Look it's over. I'm seeing somebody else. Now, she
13 couldn't possibly have said that she was in love with or
14 marrying or anything else. That relationship was so new
15 that she didn't even tell her family who the guy was. So,
16 she tells him then. How do we know that? Things were
17 okay on Friday. When he gets there on Friday, he's
18 playing with the grandkids, everything fine.

19 What happened Saturday? What's different?
20 Saturday morning when Faith got up, he was gone. Marsha
21 was not with him. Marsha tells her mother that she
22 thought the Defendant was going to his mom's. What else
23 happens during that day? Marsha goes over to the Crawford
24 to help -- to take Susan to the grocery or whatever. The
25 Defendant shows up over there, uninvited, unannounced and

1 they argued there. What were they arguing about? What
2 were they arguing about at the Crawford's house? That
3 makes him mad enough to throw the beer on the floor and
4 storm out to the point that Mr. Crawford said, you know,
5 don't slam the door. And then he comes back. And he's
6 sweaty, and he's angry and he's hot. What does Marsha do?
7 Marsha doesn't run after him and say, I'm sorry, come
8 here, come back let's talk about this. She let him go.
9 Well, he comes back and he gets mad again and he leaves
10 again. He's mad. And he's been made since the morning.
11 Sudden heat and passion? He's been mad all day.

12 Then Faith comes home from work. Faith is
13 getting ready for the party. And who's banging on the
14 backdoor, Let me in Faith, I know you're in there. He's
15 still mad then. Sudden heat and passion? And what does
16 Marsha do? She does something a little unusual. She
17 comes in the front door. Now, you remember the testimony,
18 everybody used the backdoor, that's the way they came in.
19 Marsha goes to the front door. Come on, Faith, let's go.
20 They get out of there without even as much of a hey, how
21 you doing, honey, what do you want for dinner? This was
22 no kind of relationship. In the end of which would give
23 him the right to kill her. And he was mad all day.

24 Marsha takes her daughter to the party. What
25 does she do? She doesn't go looking for him, she doesn't

1 try to find him. She doesn't try to comfort him. He's
2 still mad. He's there visiting. Where does Marsha go?
3 To her mother's house. While Marsha is at her mother's
4 house, the Defendant calls and demands that she comes
5 home, let him get his clothes. He's been mad all day.
6 And then what happens? What happens when Marsha gets
7 home? Did he just jump on her? Oh, no, he didn't just
8 jump on her. There was a big ole fight in that house. We
9 know this from the kitchen table being messed up, her wig
10 was gone, she had a broken fingernail, the candle stand
11 that's normally in kitchen is in the living room, there's
12 an ashtray. Even one of her daggone tennis shoes was off
13 over in the kitchen. She had an abrasion on her elbow,
14 she had an abrasion on her face. And she fought for her
15 life. Giving him those nice scratches you see in this
16 photograph right here. Sudden heat and passion?
17 Sufficient legal provocation?

18 Ladies and gentlemen, when you were given a seat
19 on this jury, you were given a lot more than a badge and
20 told where to be at a certain time. You were handed the
21 sword of justice. And it's a two-edge sword. And when
22 you bring it down one way, you cut away the ties that bind
23 innocent people to this court. And when you bring it down
24 the other way, you strike down the Defendant. But you
25 don't act in rage. You don't act in anger. You have no

1 friends to reward, no enemies to punish. When you bring
2 that sword down and strike down the guilty, you do so
3 after careful consideration and thoughtful deliberation.

4 Ladies and gentlemen, on behalf of the people
5 Pickens County -- of Greenville County, use that sword
6 now. Strike him down. Find him guilty of murder. Thank
7 you for listening.

8 THE COURT: Yes, sir, Mr. Chambers.

9 CLOSING STATEMENT

10 MR. CHAMBERS: Ladies and gentlemen, as I told
11 you at the outset of this trial, this is not a situation
12 where we're here, where Nate Beeks is here asking you to
13 find him not guilty, set him free. That's not the
14 situation at all. This is not a situation where Nate
15 Beeks is asking to go without having to take
16 responsibility for what happened. I agree with the
17 Solicitor in her emotional plea to you in the sense that
18 Marsha Smith didn't do anything to deserve to die. And I
19 don't want her to twist anything that I have said to you
20 or the evidence in this case to make it sound like he's
21 trying to get away from something. Because that's what I
22 took from the argument. That he's trying to deny his
23 responsibility that we're somehow saying that she deserved
24 what she got. She didn't deserve that. Nate Beeks
25 doesn't believe she deserved that. He's never believed

1 that.

2 We're not here trying to tell you that from a
3 legal standpoint that this was an intentional killing.
4 Because from a legal stand point it is. Now, Nate Beeks
5 didn't intend to kill her, that's not what he set out to
6 do. And he is sorry that that happened. And he has
7 expressed that remorse and you've heard that from the
8 witness stand. But from a legal stand point, this was an
9 intentional act.

10 But, ladies and gentlemen, it comes down to a
11 fine legal point. And I know that in a sense it really
12 makes no difference. We don't have degrees of murder in
13 South Carolina. We all watch TV and we see all these big
14 cases that are on, we hear that somebody's charged with
15 first degree murder, second degree murder. We don't have
16 that. In some jurisdictions this would be just another
17 degree of murder. We're talking about murder but what we
18 call it here in South Carolina is voluntary manslaughter.
19 Okay. And the only issue is whether or not when he choked
20 Marsha Smith to death, did he have malice? Or was there
21 provocation such that he was provoked to sudden heat and
22 passion.

23 And, His Honor, is going to tell you that if
24 they had not proven to you beyond a reasonable doubt that
25 he was not moved to sudden heat and passion, they haven't

1 proven malice beyond a reasonable doubt. Then you will
2 find him not guilty of murder and guilty of manslaughter.

3 Now, the Solicitor talked about legal
4 justification. And how, if you're doing something you have
5 the right to do, then that's not provocation. But that's
6 not what, His Honor, is going to instruct you. People can
7 be involved in a physical altercation and that is an
8 example of legal provocation. Somebody can make a threat
9 against you and that can be legal provocation. You can be
10 involved in a very emotional type of argument, what I
11 believe -- what I believe the evidence shows in this case
12 is going on, and that can be legal justification. You
13 have to decide for yourselves if he was, the one very
14 narrow issue, was he provoked such that he lost the reason
15 that an ordinarily -- a person of ordinary prudence and
16 rationality would have. And did he act with sudden heat
17 and passion?

18 And, ladies and gentlemen, you need to look at
19 the entirety of the evidence and the whole picture when
20 you look at this. Now, the Solicitor went to great
21 lengths and spent a lot of time trying to convince you
22 that this just wasn't much of a relationship, they didn't
23 care much about each other. But here's the thing. It had
24 been going on since 1998, 1999. That's the testimony that
25 we have heard. And it was real clear when the witnesses

1 that were Marsha's, especially Marsha's children, they
2 didn't care much for Nate. And it may be that Marsha was
3 getting to the point that she didn't care much for Nate.
4 But there's nothing in the record that Nate didn't care a
5 lot for here. This relationship had gone on for a long
6 time.

7 I'll tell you the other thing you didn't here.
8 You didn't hear anybody saying that he was violent towards
9 her. That they every had to call the policy. That he had
10 ever beat her up. That he ever done anything remotely
11 dangerous that was directed at her. You didn't hear any
12 of that, trust me you would have. Had that been going on,
13 you would have heard it and you would have heard it at
14 length. But you didn't hear any of that. What you heard
15 was that they had been dating, that they had lived
16 together at times. That hat this point he was in Atlanta
17 and he would come up most weekends. That was the
18 testimony. That was the evidence that you heard. He
19 would come to Greenville on most weekends to visit Marsha
20 but also to visit with his mother lived here. He was from
21 Greenville.

22 We heard that he came that weekend, Easter
23 weekend and they spent Friday night together. And they
24 had a good night together. The Solicitor said, Well I
25 think they were arguing. I think she told him that night

1 that she was wanting to see somebody else. But you heard
2 the testimony of Faith Smith when she said they were
3 laughing, cutting up together, having a good time. If she
4 told him that night, there certainly wasn't any indication
5 of it.

6 Now, Saturday comes and they didn't spend a lot
7 of time together but that is not unexpected. He went over
8 to visit with his mother and to do whatever. He came by
9 James Crawford's house. The Solicitor said unexpected as
10 though he had something bad on his mind. But, ladies and
11 gentlemen, you heard from James Crawford say it was not
12 unusual for him to be hanging out over there. He was
13 friends with Faith and he was friends with Nate. They
14 would sometimes drink beer together. Sometimes he said
15 that he and Marsha would smoke marijuana together. They
16 hung out together. And yeah, apparently he got mad while
17 he was there. People do. If you've ever been involved in
18 a relationship where you didn't argue from time to time,
19 then you're a lucky person. It happens.

20 But there's no indication and really no reason
21 that he would be planning to do harm to her. You have to
22 look at this whole relationship. If he was a person who
23 was prone to violence, who had a homicidal instincts, you
24 would have seen it somewhere before. You know, we
25 establish a trend, we establish a pattern in

1 relationships. Some people are prone to abuse and seem to
2 keep dating people that abuse them. But you didn't hear
3 about any of that here. So, you have to ask yourselves,
4 what changed? What changed about Nate Beeks? You heard
5 testimony from James Crawford didn't say that he was a guy
6 that was, you know, a bad guy. When Darren Montgomery
7 came in here and testified he said he was a life long
8 friend of mine. And described him as laid back, easy
9 going. Worried about him. Because when he was in jail
10 over there people were picking on him and she wasn't doing
11 anything about it. A nice guy. That was what you heard
12 about.

13 Now, he did apparently have a conversation with
14 Mr. Montgomery about what happened that day. And those
15 words were awful. There's no way I'm going to sit here
16 and try to sugar coat that. But it was perfectly
17 consistent with the notion that he was moved to sudden
18 heat and passion by being told that she didn't want to see
19 him anymore. And that she wanted to date somebody else.
20 She was saying something he didn't like. I wanted her to
21 shut up. I wanted her to stop. How many times have you
22 heard somebody say it, may said it to yourself, I felt
23 like choking that person. That is the essence of heat and
24 passion. Not the usual weapon. You should stop what
25 you're saying and grab them around the neck.

1 Now, the Solicitor chimed in and said, I believe
2 that the relationship had been going bad for a long time.
3 I think that she was trying to wind things down. But
4 let's go back and remember what you heard from Ms. Bartee
5 when she came in and testified. And you could tell he
6 didn't like Nate Beeks either. She was happy that her
7 friend had found somebody else. She talked about how
8 Faith -- I mean, Marsha had gotten a lot happier lately,
9 that she met somebody that she was interested in. But she
10 was worried about telling Nate.

11 Now, if this relationship didn't mean anything,
12 if it was just so casual that it wouldn't bother anybody,
13 then why was she worried and nervous? To the point that
14 Ms. Bartee even said, Do you want me to -- let's arrange a
15 double date so I can be there and you'll have people with
16 you when you tell him. But they didn't do that. And so
17 it all comes out on that faithful evening April 23rd,
18 Saturday night, that's when this occurred. And every bit
19 of evidence supports that this was sudden heat and
20 passion. Somebody who loves somebody, they get into an
21 argument, she tells him, he wants her to shut up, he wants
22 her to hush, he grabs her around the neck and chokes her.

23 And, you know, that he didn't intend necessarily
24 to kill her because he even said when he talked to
25 Detective Garrison, I tried to revive her. He seems not

1 surprised but he knew that they showed up with a murder.
2 So, when he left there, it was clear that he didn't know
3 that he had died. And that's consistent with what he told
4 Darren Montgomery. That I thought I -- I think the word
5 was, I choked her out and that she was just unconscious.
6 The reason you know that he did try to revive her was
7 this. I mean, he indicated that he threw her on the
8 ground as he was choking her. And when I talked to
9 Dr. Ward, one of the things that I asked him was, Is this
10 consistent with somebody having approached Marsha Smith,
11 was he facing her when he choked her?

12 And she said, Yeah.

13 And I said, Would it also be consistent with her
14 lying on the ground?

15 And he said, Yeah.

16 So, when you think about the amount of force and
17 it was. I mean, I don't mean to sugar coat that either.
18 Somebody acting with that kind of passion, you lose
19 control of yourself. You snap. Which is the word he
20 used. And you can certainly exert more force when you
21 have somebody lying on the ground. To break that -- I
22 forgot what that bone is called, to break that and to do
23 that amount of damage. It's exactly what Nate said
24 happened.

25 Now, how do you know he tried to revive her?

1 Well, what was the position that he was found in? Was
2 leaned up against the couch. He said he was trying to
3 arouse her. That he was hitting her on the face and he
4 was trying to arouse her. That's exactly what you would
5 do. You would pull somebody up, you'd put them against
6 the couch. Just they way that Faith came in and found
7 her. And again, further evidence that he just want in his
8 right mind at the time. He leaves.

9 And what does he do? He gets his bag, which I
10 guess is understandable. Because that was his stuff. He
11 just he panicked, he doesn't know what to do. What does
12 he do folks? Which, since the very beginning of this case
13 there comes a point to one thing I asked about. He picks
14 up a pillow off the bedroom. Not even in the room where
15 this happened. And he puts it under his arms, carries it
16 out and get in the car. No reason for him to take that
17 pillow. It wasn't his pillow. You heard that. He never
18 brought a pillow with him. He said he didn't know about
19 the pillow when talking to Detective Garrison.

20 He didn't have to tell Detective Garrison
21 anything about what happened. Now, he initially said,
22 that she fell on the floor. Obviously, that wasn't true
23 because Detective Garrison told you that that happens a
24 lot. In that he in very short order told him exactly what
25 happened. Said that he felt bad about it. That it wasn't

1 something that he wanted to happen. He didn't know why he
2 took that pillow. He also said in that initial statement
3 that she hit him in the face. And that could have very
4 well have happened. There was a scratch on his face.
5 Now, I don't know whether that happened beforehand. It
6 certainly could have. I don't know if it happened while
7 he was choking, that could have happened, too. But you
8 heard Dr. Ward say she would have lost consciousness
9 within 12 to 20 seconds. She wouldn't have been doing
10 anything after that. We know that she was grabbed around
11 her neck.

12 Now, you know, there's a lot that I can stand
13 here and talk to you about it. But folks, I want to end
14 on this. I want to be real clear about it. We're not
15 asking you to set Nate Beeks free. No matter what happens
16 here today, he will spend a lot of time behind bars.
17 Manslaughter is a violent offense. It's categorized it as
18 a most serious offense. It is in that category of the
19 most serious offenses that we have. We're not telling you
20 that Marsha Smith deserved to die. We're not telling you
21 that he did not intentionally kill her. From a legal
22 stand point he did. All we're asking you to do is to come
23 back with a legally appropriate verdict in this case. And
24 that's the verdict of manslaughter. Because I can tell
25 you, and the evidence bears this out, that if Nate Beeks

1 could change anything in his life, it would be the events
2 of April 23rd.

3 He is a man who was described as laid back and
4 peaceful to the point to letting people pick on him and
5 not taking any recourse of that. He is a man who was in a
6 relationship with Marsha Smith from the late '90's until
7 this happened. With no history of violence between them.
8 No domestic problems like that whatsoever. And then
9 confronted with the loss of this relationship and the
10 thought of her being with someone else, in the midst of
11 this very emotional argument, apparently he was getting
12 physical even before he grabbed her and choked her. He
13 snapped. He was provoked with sudden heat and passion.
14 And we're asking you to come back with a verdict of
15 manslaughter as a result of what actually happened in this
16 case.

17 Nate Beeks is responsible for her murder. She
18 didn't deserve to die. He believes that more than
19 anybody. He has regret that day ever since. I appreciate
20 your attention. I look forward to your verdict.

21 JURY CHARGE

22 THE COURT: All right, ladies and gentlemen,
23 it's now time for me to instruct you on the law of this
24 case. The Indictments in this case alleges several
25 different offenses. The charges against the Defendant are

1 murder and also petit larceny. Each Indictment charges a
2 separate and distinct offense. You must decide each
3 Indictment separately on the evidence and on the law
4 applicable to it uninfluenced by your decision as to any
5 other Indictment. The Defendant may be convicted or
6 acquitted on any or all of the offenses which are charged
7 against him. You will be asked to write a separate
8 verdict of guilt or not guilty on each of the charges.

9 Now, I'll remind you, ladies and gentlemen, that
10 the fact that the Defendant was arrested, charged and
11 indicted in this case, is not evidence in this case and
12 cannot be considered by you as evidence of guilt in this
13 case. Nor, does it create any presumption or inference of
14 guilt. These documents are simply the formal written
15 instrument which contains the charges made against the
16 Defendant. They are the formal documents by which the
17 case is simply brought into court. The Defendant has pled
18 not guilty to the Indictments. And that plea puts the
19 burden on the State to prove the Defendant guilty.

20 A person charged with committing a criminal
21 offense in South Carolina is never required to prove
22 himself or herself innocent. I charge you that it is and
23 important rule of law that the Defendant in a criminal
24 trial, no matter what the seriousness of the charge may
25 be, will also be presumed to be innocent of the crime for

1 which the Indictment was issued, unless guilt has been
2 proven by evidence, satisfying you of that guilty beyond a
3 reasonable doubt. This presumption of innocence does not
4 end when you begin your deliberations but it accompanies
5 the Defendant throughout the trial until you reach a
6 verdict of guilt based on the evidence satisfying you of
7 that guilt beyond a reasonable doubt.

8 The presumption of innocence is like a robe of
9 righteousness placed about the shoulders of the Defendant
10 which remains with the Defendant until it has been
11 stripped from the Defendant by evidence satisfying you of
12 the Defendant's guilt beyond a reasonable doubt. The
13 presumption of innocence, it is not mere legal theory, it
14 is not just some type of legal phrase, it is a substantial
15 right to which every Defendant is entitled unless you, the
16 jury, are satisfied from the evidence of the Defendant's
17 guilt beyond a reasonable doubt.

18 What is reasonable doubt in the law? A
19 reasonable doubt is the kind of doubt that would cause a
20 reasonable person to hesitate to act. The State has the
21 burden of proving the Defendant guilty beyond a reasonable
22 doubt. And some of you may have served in juries in civil
23 cases where you were told that it is only necessary to
24 prove that a fact is more likely true than not true, such
25 as by the greater weight of the preponderance of the

1 evidence. In criminal cases the State's proof must be
2 more powerful than that. It must be beyond a reasonable
3 doubt.

4 Proof beyond a reasonable doubt is proof that
5 leaves you firmly convinced of the Defendant's guilt.
6 There are very few things in this world that we know with
7 absolute certainty. And in criminal cases the law does
8 not require proof that overcomes every possible doubt. If
9 based on your consideration of the evidence, you are
10 firmly convinced that the Defendant is guilty of the
11 crimes charged, you must find the Defendant guilty. If on
12 the other hand, you think there's a real possibility that
13 the Defendant is not guilty, you must give the Defendant
14 the benefit of the doubt and find him not guilty.

15 Now, I remind you that during this trial, you
16 and I have had certain duties to perform. As the trial
17 Judge, it is my responsibility to preside over the trial
18 of this case. And I also have to rule of the
19 admissibility of evidence offered during this trial. You
20 are to consider only the competent evidence that is before
21 you. I have the additional duty to charge you the law
22 applicable to this case. As the presiding Judge, I am the
23 sole judge of the a law of this case. And it is your
24 duty, as jurors, to accept and apply the law as I now
25 state it to you. If you already have any ideas as to what

1 the law is or what the law ought to be and it does not now
2 agree with what I now tell you the law is, you must
3 abandon this idea because you are sworn to accept the law
4 and apply the law exactly as I now state it to you.

5 In every case tried before this court in front
6 of a jury, the jury becomes the sole and exclusive judge
7 of the facts in the case. The trial judge cannot
8 intimate, state, comment on or make any statement to the
9 trial jury about the facts in the case. Since you, the
10 jury, are the sole judge of the facts in this case, you
11 are not to infer from what I have said during the
12 progress of this trial in ruling upon the admissibility of
13 the evidence or otherwise, or anything that I say now
14 during the course of this instruction to you, that I have
15 any opinions about the facts in this case. The law does
16 not law me to have an opinion about the facts in this
17 case. This is a matter solely for you, the jury, to
18 determine. As jurors, it is your duty to determine the
19 effect, the value, the weight and the truth of the
20 evidence that has been presented during this trial.

21 Ladies and gentlemen, there are two types of
22 evidence which are generally presented during the course
23 of any trial. That is direct evidence and circumstantial
24 evidence. Direct evidence is the testimony of a person
25 who claims to have actual knowledge of a fact, such as an

1 eye witness. It is evidence which immediately establishes
2 the main fact to be proved. Now, circumstantial evidence,
3 it is proof of a chain of facts and circumstances
4 indicating the existence of a fact. It is evidence which
5 immediately establishes collateral facts from which the
6 main fact may be inferred. Circumstantial evidence is
7 based on inference and not on personal knowledge or
8 observation.

9 Now, ladies and gentlemen, the law makes
10 absolutely no distinction between the weight or value to
11 be given either direct evidence or circumstantial
12 evidence. Nor, is a greater degree of certainty required
13 of circumstantial evidence than of direct evidence. You
14 should weigh all of the evidence in this case. After
15 weighing all of the evidence, if you are not firmly
16 convinced of the guilt of the Defendant beyond a
17 reasonable doubt, you must find the Defendant not guilty.

18 Necessarily, you must determine the credibility
19 of witnesses who have testified in this case.
20 Credibility, it simply means believability. It becomes
21 your duty as jurors to analyze and evaluate the evidence
22 to determine which evidence convinces you of its truth.
23 In determining the believability of a witness who have
24 testified, you may believe one witness over several
25 witnesses or several witnesses over one witness. You may

1 believe a part of the testimony of a witness and reject
2 the remaining part of the testimony of that same witness.
3 You may believe the testimony of the witness in its
4 entirety or reject the testimony of a witness in its
5 entirety. You may consider whether any witness has
6 exhibited to you any interest, bias, prejudiced or other
7 motive in this case. You may also consider the appearance
8 and manner of which a witness appeared on the witness
9 stand.

10 As I stated, during the course of this trial,
11 the rules of evidence ordinarily do not permit witnesses
12 to testify as to opinions or conclusions. An exception to
13 this rule exists for witnesses we call expert witnesses.
14 A witness who by some type of education and experience has
15 become an expert in some type of art, science, profession
16 or calling may state an opinion as to relevant and
17 material matters in which the witness claims to be an
18 expert. And may also state the reason for their opinion.
19 You should consider any expert opinion received in the
20 evidence in this case. And like any other evidence, give
21 it the weight that you think it deserves.

22 If you decide that the opinion of the expert is
23 not based on sufficient education or experience, or if you
24 conclude that the reasons given in support of the opinion
25 are not sound or that the opinion is outweighed by other

1 evidence, you may disregard that opinion in its entirety.
2 An expert witness' testimony is to be given no greater
3 weight than that of any other witness simply because the
4 witness is called an expert witness. Further, you are not
5 required to accept an expert's opinions, even though it is
6 not contradicted.

7 Now, ladies and gentlemen, I instruct you and
8 emphasize that the fact that the Defendant did not
9 testify, is not a factor to be considered by you in any
10 way in your deliberations and in your consideration on the
11 question of the guilt or innocence of the Defendant. It
12 must not be considered by you in any manner whatsoever. A
13 Defendant has the Constitutional right to remain silent.
14 And the assertion of this right must not be considered by
15 you in your deliberations. Now, I repeat, under your
16 oath, you are to draw no conclusion whatsoever from the
17 fact that the Defendant in this case did not testify. The
18 fact that the Defendant did not testify should not even be
19 discussed in the jury room. The burden of proof, as I
20 have stated to you, is on the State. The Defendant is not
21 required to prove himself innocent. The burden of proof
22 remains on the State to prove guilt beyond a reasonable
23 doubt.

24 Ladies and gentlemen, the Defendant is charged
25 with murder. The State must prove beyond a reasonable

1 doubt that the Defendant killed another person with malice
2 aforethought. Malice is hatred, ill will or hostility
3 towards another person. It is the intentional doing of a
4 wrongful act without just cause or excuse and with an
5 intent to inflict an injury. Or under the circumstances
6 that the law will infer an evil intent. Malice
7 aforethought does not require that malice existed for any
8 particular time before the act is committed. But malice
9 must exist in the mind of the Defendant just before and at
10 the time of the act is committed. Therefore, there must
11 be a combination of the previous evil intent and the act.

12 Malice aforethought may be expressed or it may
13 be implied. I'm sorry, expressed or inferred. These
14 terms expressed and inferred do not mean different kinds
15 of malice but merely the malice in which the malice may be
16 shown to exist. That is either by a direct evidence or by
17 inference from the facts and circumstances which are
18 proved in a case. Expressed malice is shown when a person
19 speaks words which express hatred or ill will. Or ill
20 will for another or when the person prepared beforehand to
21 do the act which was later accomplished. For example,
22 lying in wait for a person or any other acts of
23 preparations going to show that the deed that was within
24 the Defendant's mind would be expressed malice.

25 Malice may be inferred from conduct showing a

1 total disregard for human life. Inferred malice may also
2 arise when the deed is done with a deadly weapon. Deadly
3 weapon -- a deadly weapon is any article, instrument or
4 substance which is likely to cause death or great bodily
5 harm. Whether an instrument has been used as a deadly
6 weapon, depends on the facts and circumstances of each
7 case. The following are some examples of instruments
8 which may be deadly weapons. A pistol, a shotgun, a
9 riffle, a dart, a dagger, a knife, slingshot, metal
10 knuckles, a razor, gasoline, a firebomb or a maltol
11 cocktail and lighter fluid. A gun may be a deadly weapon
12 even if it is not operating. A hand or a fist is not
13 normally considered a deadly weapon. However, under some
14 circumstances, depending on the manner and the means of
15 its use, the wounds inflicted and other relevant facts, a
16 handle or fist may be considered a deadly weapon. It is
17 for you to decide in this case, beyond a reasonable doubt
18 whether or not a hand or fist has been used as a deadly
19 weapon.

20 If you find, ladies and gentlemen, that the
21 state has failed beyond a reasonable doubt that the
22 Defendant committed murder, you may consider whether the
23 State has proved beyond a reasonable doubt that the
24 Defendant committed voluntary manslaughter. To prove
25 voluntary manslaughter, the State must prove beyond a

1 reasonable doubt that the Defendant took the life of
2 another in the sudden heat and passion, based on
3 sufficient legal provocation. Heat of passion alone will
4 not suffice to reduce murder to voluntary manslaughter.
5 Both heat of passion and sufficient legal provocation must
6 be present at the time of killing to constitute voluntary
7 manslaughter. Sudden heat and passion may, for a time,
8 affect a person's self control and temporarily disturb a
9 person's reason. The sudden heat of passion must be the
10 type that would make an ordinary person unable to coolly
11 reflect on his actions and would produce and
12 uncontrollable impulse to do violence.

13 Sufficient legal provocation must be the type
14 that would make a person of ordinary reason and caution,
15 become enraged and to lose control temporarily. The
16 provocation needed for voluntary manslaughter, must come
17 from some act of or related to the victim. Words alone,
18 however vulgar or insulting are not enough to be legal
19 provocation. Where death is caused by the use of a deadly
20 weapon, the words must be accompanied by some overt,
21 threatening act which could have produced the heat of
22 passion.

23 The exercise of a legal right, no matter how
24 offensive it is to another, is never sufficient legal
25 provocation for voluntary manslaughter. If the heat of

1 passion had cooled or if there was enough time between the
2 provocation, if any, and the killing for the passion of a
3 reasonable person to cool, the killing would not be
4 voluntary manslaughter. In deciding whether a reasonable
5 person would have had enough time to cool off, you should
6 consider all of the circumstances surrounding the killing.
7 You may consider the nature of the provocation, if any.
8 The Defendant's mental and physical state and
9 circumstances and relationship between the parties.
10 Voluntary intoxication is not a defense to either murder
11 or voluntary manslaughter.

12 Now, ladies and gentlemen, the Defendant is also
13 charged with petit larceny of a motor vehicle. The State
14 must prove beyond a reasonable doubt that the Defendant
15 took a motor vehicle that belonged to someone else against
16 the will or without the consent of the other person. Now,
17 the slightest removal of the vehicle or the complete
18 possession of the motor vehicle, even for just an instant
19 by the Defendant, is enough to show a taking and caring
20 away of the motor vehicle. The State must also prove
21 beyond a reasonable doubt that the Defendant intended to
22 permanently deprive the owner of the motor vehicle.

23 Now, Madam Forelady, ladies and gentlemen of the
24 jury, there are two possible verdicts that you can find as
25 to the different charges. That is not guilty or guilty.

1 I have prepared a verdict form for your use in the jury
2 room. Simply because I've listed one above the other, has
3 no -- should have no bearing in your deliberations. It's
4 simply because I had to list one above the other. So, you
5 should consider each of the charges and make a decision
6 whether or not the State has met its burden of proof of
7 establishing the Defendant is guilty or if he is not
8 guilty.

9 And ladies and gentlemen, Madam Forelady, your
10 verdict in this case on each of these charges has to be
11 unanimous. All 12 of you must agree. The decision that
12 you make in this case cannot be based on passion,
13 capriciousness or sympathy for anybody. It has to be
14 based solely on the evidence that has been presented in
15 this case.

16 Now, Madam Forelady, whenever the jury has
17 reached its verdict, you will complete the verdict from
18 accordingly. And then you will sign on the line indicated
19 for your signature and date the document. I also need to
20 let you know what other important instructions. You need
21 to knock on the door of the jury room and let the bailiff
22 know that you finished your deliberations. I had a jury
23 one time that was out for hours and hours and hours and
24 hours and hours. Finally, we decided we needed to check
25 on them and see if they're okay. We took the bailiff back

1 and they said, Well, we decided it long time ago, we
2 didn't know what to do. So, after you finish be sure you
3 knock on the door and let the bailiff know that the jury
4 has finished their deliberations.

5 Madam Forelady, ladies and gentlemen, there's a
6 few more matters I need to take up with the lawyers before
7 you actually begin your deliberations. But if you would
8 go with the bailiff and he will take you to the jury room
9 but do not begin your deliberations until I instruct you
10 to.

11 (WHEREUPON, the jury left open court at
12 approximately 10:50 a.m.)

13 THE COURT: Any objection to the charges?

14 MS. MUNSON: Not from the State, Your Honor.

15 MR. CHAMBERS: Nothing beyond my earlier
16 objection, Your Honor.

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

18 Will y'all be sure that we've got all the
19 exhibits proper over there before I -- the bailiff takes
20 them back?

21 Okay. All right. If you would, Mr. Bailiff,
22 you may have take all the exhibits back to them with the
23 verdict form and ask them to begin their deliberations.

24 We need to remove the alternate. I've done it
25 several ways. Some take the position that once the case

1 anybody has a reasonable belief that they cannot control
2 their emotions and their reactions to whatever verdict it
3 is, then I'm going to ask that you remove yourself from
4 the courtroom at this time.

5 All right, let's bring the jury back.

6 (WHEREUPON, the jury came into open court at
7 approximately 11:47 a.m.)

8 THE COURT: Madam Forelady, I am told that the
9 jury has reached a verdict, is that correct?

10 MADAM FORELADY: Yes, sir, Your Honor.

11 THE COURT: If you would, please, give the
12 verdict form to the bailiff.

13 Madam Clerk, please, publish the verdict.

14 VERDICT

15 THE CLERK: Your Honor, in the case of
16 2011-GS-23-6315 and 6316, The State of South Carolina vs.
17 Nathaniel B. Beeks, number one, we, the jury, unanimously
18 find the Defendant, Nathaniel B. Beeks, guilty of murder.
19 Number two, we, the jury, unanimously find the Defendant,
20 Nathaniel B. Beeks, guilty of petit larceny. This is
21 signed by Ms. Donald our foreperson.

22 Ladies and gentlemen of the jury, if you agree
23 this is the verdict you reached in your deliberations
24 room, would you, please, raise your right hand.

25 (WHEREUPON, all members of the jury raised their

1 Greenville County is over right now. So when the bailiff
2 takes you out of the courtroom, you do not have to report
3 back tomorrow or on Friday. Since you served on this jury
4 for at least three days. But I did want to, again, thank
5 for your service. And you may retire back to the jury
6 deliberation room with the bailiffs. Thank you, very
7 much.

8 (WHEREUPON, the jury left open court and was
9 excused at approximately 11:53 a.m.)

10 THE COURT: Any reason why we should not proceed
11 to sentencing?

12 MR. CHAMBERS: No, Your Honor.

13 THE COURT: Sir, please come around.

14 EXAMINATION

15 BY THE COURT:

16 Q All right. Mr. Beeks, I need to remind you that you
17 remain under oath, do you understand that?

18 A Yes, sir.

19 Q Sir, how old are you?

20 A Fifty-one.

21 Q How far did you go in school?

22 A Graduated.

23 Q Married, single, divorced, widowed?

24 A Single.

25 Q Do you have children?

1 A Four.

2 Q How old are they?

3 A Two 16, one 25 one 24.

4 Q And prior to your arrest on these charges, did you
5 have a job outside the home?

6 A Yes, I did.

7 Q What were you doing?

8 A Construction work.

9 Q Ever served in the military?

10 A No, sir.

11 Q And on these charges, how long have you been in jail?

12 A Excuse me?

13 Q How long have you been in jail on these charges?

14 A Twenty-nine months.

15 MR. CHAMBERS: He's been in since the date of
16 arrest, Your Honor. April 28th.

17 MS. MUNSON: That's correct.

18 THE COURT: 2011--

19 MS. MUNSON: Eleven.

20 MR. BEEKS: Eleven.

21 THE COURT: Does he have any prior record?

22 MS. MUNSON: Yes, sir, Your Honor. In 1986 he
23 was convicted of trespassing and simple possession of
24 marijuana. In August of 1986, another simple possession
25 of marijuana. February the 10th of 1987, resisting

1 arrest, assault and battery, disorderly conduct and public
2 drunk. December 22, 1986, malicious damage and false
3 information. 1987, simple possession of cocaine. May
4 26th of 1988, burglary in the second degree for which he
5 received a sentence of 15 years suspended on the service
6 of three, followed by five years probation. 1993 he was
7 convicted of domestic violence, actually twice in 1993 he
8 was convicted of domestic violence. And I believe those
9 are different victims, Your Honor. March the 22nd of 1995
10 he was, again, convicted of domestic violence. October
11 the 27th of '95 he began a one year sentence probation
12 revocation. And that's the extent of his prior record,
13 Your Honor.

14 THE COURT: What about anybody wish to address
15 the Court or have any information from the victim's
16 personal representative?

17 MS. MUNSON: Yes, sir, Your Honor.. I have
18 instructed them and I will, by way of reminding everyone,
19 to remain to act with grace and dignity to address the
20 Court and not the Defendant.

21 THE COURT: And I would, if you would when you
22 address the Court remember we are making a recording of
23 everything that happens. This lady in front me is a Court
24 Reporter so when you speak, please speak up loud enough so
25 both she and I can hear you. Start by giving your full

1 name.

2 VICTIM: My name is Lynita watts. Your Honor,
3 we the family of Marsha Smith would like to say that this
4 trial has been very hard to endure. Easter 2011 was like
5 watching a horror movie that was real for our family
6 because we no longer have our mother, daughter,
7 grandmother, sister, friend or coworker. The losing of
8 our mother has changed our lives completely. Our mother
9 was a loving person that wanted the best for everyone.
10 She helped a lot of help at home and at work. She was
11 always doing something to help someone else out. She was
12 a person that believed in giving you time to get yourself
13 together and helping them when she could. We are a very
14 close family. She has five children and 16 grandchildren.
15 We have always -- I'm sorry, I need to go back a little
16 bit. Okay. We have always celebrated holidays and
17 birthdays together. We would gather for Sunday dinners as
18 often as our schedule would allow us.

19 Since the murder of my mother, two of our
20 siblings are not without any living parents. She has
21 missed the births of two of her grandchildren. One of
22 which was born a month after her death. In which she
23 wouldn't have missed for the world. The graduation of her
24 granddaughter, her daughter's wedding, her brother's
25 wedding, her mother's 85th birthday and the celebration of

1 her father's 90th birthday who passed last week. Our
2 children that are under the ages of five are always asking
3 about her. And wondering where she is and when will she
4 wake up. Not understanding that she's not going to wake
5 up again in this life. She loved her grandchildren. All
6 of which were -- all of which she was unable to see their
7 18th birthday.

8 We forgive the Defendant but we feel that he
9 shouldn't be given the opportunity to be back on streets
10 to hurt or even kill anyone else. We knew that he was a
11 drinker but we didn't know that he was a stalker, violent
12 or in control until our mother was killed. We found notes
13 that she left saying that if anything happened to her,
14 that the Defendant did it. And that he was standing
15 outside her home at that time. A neighbor came over to
16 offer sympathy and told us at that time the Defendant at
17 times, I'm sorry -- a neighbor came over and offered
18 sympathy and told us that at times the Defendant would be
19 on my mother's door demanding her to open it. And when he
20 didn't he would stay outside across the street at park all
21 night waiting on her to go to work the next morning. He
22 would be drunk.

23 We never expected anything like this to happen.
24 And we are asking the Defendant to be confined and not to
25 be able to hurt or kill anyone else's family member. And

1 that justice be served. So, that we can have closure.

2 Thank you, Your Honor.

3 THE COURT: Thank you, ma'am.

4 VICTIM: My name is Fleshia Hagin. I am the
5 child of Marsha Smith. My grandmother has had to lose her
6 daughter. Her youngest daughter. That's something that
7 cannot be replaced. My grandmother is emotional every
8 time we visit her. This is something that she has not
9 been healed from. My mother's siblings has lost their
10 sister, someone who they have grown up with, someone who
11 has been there through their whole life. We have lost a
12 mother. I am 27 years old and I don't have any parents.
13 And that's something that the Defendant knew. He's been
14 in our family for a while. We have received him in our
15 family. And he has lost the trust of our family because
16 of this situation that did not have to happen.

17 That's a book that Ms. Munson has that I had to
18 make as memories of my mother so I can look at because it
19 hurts because I don't have any parents. I don't live in
20 the city of Greenville, I live in Columbia. Every time I
21 come to Columbia -- I mean, Greenville, I have to pass her
22 job. In order for me to come to Greenville I have to pass
23 her area of where she resides now, which is a cemetery. I
24 got married a year ago, September the 7th, my mother could
25 not be there for my wedding.

1 This is hurtful not to just me but to all of us.
2 I have been waiting on this day to let Nathaniel Beeks
3 know as we family feel.

4 We forgive you but you need to ask the Lord for
5 forgiveness.

6 Thank you.

7 THE COURT: Thank you, ma'am.

8 MS. MUNSON: I think that, Your Honor, Ms. Hagin
9 just wanted me to show you, at least, one photograph of
10 Ms. Smith while she was alive. All you saw was a dead
11 body. This all of her children. May I have approach,
12 Your Honor?

13 THE COURT: Yes, ma'am.

14 MS. MUNSON: Thank you for taking the time to
15 look at that, Your Honor.

16 THE COURT: Yes, ma'am.

17 Anything else from the State?

18 MS. MUNSON: Yes, sir, Your Honor. This man has
19 sentenced these people to life. We want you to sentence
20 him to life. Thank you.

21 THE COURT: Thank you.

22 Yes, sir.

23 MR. CHAMBERS: Your Honor, I don't really have a
24 lot to say. I mean, we pretty much presented in argument
25 in the trial and everything what happened here. You know,

1 there's no way around it. These folks suffered an
2 incalculable loss. I'm not in any way going to try to
3 mitigate that. I would like the Court to know that I was
4 appointed to represent Nathaniel Beeks. Shortly after he
5 was arrested. From the first time I went to talk to him
6 and all through this process, he has wanted, basically, to
7 come in and plead guilty. He took, just as he did when he
8 talked to the officer, he took responsibility for what
9 happened.

10 We ended up going to trial because of my belief,
11 primarily, based on what Nate was telling me about what
12 happened, that this was -- that this was a manslaughter as
13 opposed to a murder. I realize it's a little bit of fine
14 line. He knew walking in here and he approved the
15 strategy that I used here in court that, you know, he was
16 probably looking at spending most of the rest of his life
17 in prison regarding what happened. Regardless of what
18 verdict they came back with.

19 But I would like the Court to know, he doesn't
20 feel comfortable speaking, he doesn't want to say anything
21 but he's always taken responsibility. Even the last time
22 I talked to him in jail before we came over he said, Can I
23 just plead guilty? Then I explained to him the difference
24 between murder and manslaughter, because he's always
25 agreed with me that this was manslaughter.

1 You know, I know it's not going to bring any
2 peace to any of the family, I truly believe that he did
3 not intend to do what he did. But he did it. And it is a
4 terrible thing and he knows he's going to be punished for
5 it. But I would ask the Court to take into consideration
6 the circumstances, his acknowledgment of his guilt in the
7 case. And I hope and I know that Nate hopes because I
8 talked to him about it, that his sentencing here brings
9 some peace for the family in this case.

10 THE COURT: Mr. Beeks, do you agree with what
11 your lawyer just said?

12 MR. BEEKS: Yes, sir.

13 THE COURT: Mr. Beeks, is there anything that
14 you would like to say or want me to know or consider?

15 MR. BEEKS: Well, I hate we had to come this
16 far. I mean, here we heard over the last three days. And
17 there's nothing that I can say that's going to bring
18 anything -- bring her back or whatnot. So, just leave it
19 at that. Let's just close the book up. That's being
20 truthful about it.

21 THE COURT: All right. Thank you, sir.

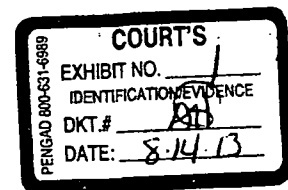
22 SENTENCING

23 On the charge of murder, it will be a life
24 sentence at the Department of Corrections. I've indicated
25 that it runs concurrent with the 30 day sentence on the

1 petit larceny charge, that he receives credit since April
2 the 20th, 2011 or about 29 months. Good luck to you, sir.

3 MR. CHAMBERS: Thank you, Your Honor.

4 (WHEREUPON, the proceedings were concluded.)
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233 S.E.2d 293 (S.C. 1977)

268 S.C. 240

The STATE, Respondent,

v.

Lee M. KAHAN, Appellant.

No. 20383.

Supreme Court of South Carolina.

March 15, 1977

[268 S.C. 241] James I. Redfearn, Chesterfield, for appellant.

[268 S.C. 243] Atty. Gen. Daniel R. McLeod and Asst. Attys. Gen. Joseph R. Barker and Robert N. Wells, Jr., Columbia, and Solicitor J. DuPre Miller, Bennettsville, for respondent.

[268 S.C. 244] GREGORY, Justice:

Lee M. Kahan was indicted for the murder of his wife and appeals from a conviction of voluntary manslaughter. Finding no error in the trial, we affirm.

There were no admitted eyewitnesses to the shooting. Kahan testified that he and his wife were alone in their house, when he heard a shot from her bedroom. He ran into the room and found her sitting on the bed with his .22 caliber pistol in her hand.

Kahan lists 13 exceptions, most of which center on the admissibility of testimony of the State's expert witness, Pattillo, a chemist employed by SLED. Pattillo testified about his examination of the nightgown Mrs. Kahan had been wearing at the time of her death. He found no gunpowder residue

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on the gown; he said, "this particular type of weapon (the .22 pistol) will tend to stop leaving gunpowder residue somewhere between the distance of approximately 18 and 24 inches away from the target."

Kahan contends that the chain of possession of the gown was not established and that Pattillo should not have been permitted to testify because the gown was not introduced as evidence. We find no merit to either of these contentions.

It is uncontroverted that Deputy Wilson personally received the gown in a plastic bag from the coroner at the hospital and delivered it to the Sheriff's office on December 24, 1974 and that he personally picked up the gown in a plastic bag from the Sheriff's office on January 2, 1975 for delivery to SLED and Agent Pattillo. He further testified that he believed the gown was kept in the evidence locker during this time span. While there was no testimony as to the care and handling of the plastic bag containing the gown during this time, such was not necessary to establish a chain of custody and would go only to the credibility of the evidence.

[268 S.C. 245] The testimony in regard to the chain of custody is clearly sufficient to meet the standards of *Benton v. Pellum*, 232 S.C. 26, 100 S.E.2d 534 (1957), which states:

"While proof need not negative all possibility of tampering, *People v. Riser*, 47 Cal.2d 566, 305 P.2d 1, it is generally held that the party offering such specimen is required to establish, at least as

far as practicable, a complete chain of evidence, tracing possession from the time the specimen is taken from the human body to the final custodian by whom it is analyzed." 232 S.C. at 33, 100 S.E.2d at 537 (emphasis added).

See also *State v. Pollard*, 261 S.C. 389, 200 S.E.2d 233 (1973).

Agent Pattillo testified he performed the Walker residue test on the gown for the presence of gunpowder residue and none was found. The testimony of the coroner and Pattillo as to the presence of blood on the gown negates any possible prejudice to Kahan from Pattillo's testimony without the introduction of the gown as evidence.

Pattillo also conducted an out-of-court experiment during the course of the trial. He fired Kahan's pistol at various distances into a "test gown", made of similar material and of a similar weave pattern as the gown worn by the deceased. He found that the gun left a detectable gunpowder residue up to 24 inches, and that at 30 inches not a single particle of nitrite could be found. (He had first fired into both gowns to determine if the residue pattern on the test gown was approximately the same as that on the other gown.) Pattillo testified about his experiment.

Kahan asserts this testimony was inadmissible for the same reasons as he gives for the inadmissibility of the testimony on Mrs. Kahan's gown. We find no merit to these reasons. He further says that the conditions surrounding [268 S.C. 246] Pattillo's experiment were dissimilar to those existing at the time of Mrs. Kahan's death. However, this Court has not required that conditions of an experiment be identical to those existing at the time of the controverted event; only that there be substantial similarity. *Weeks v. S. C. State Highway Department*, 250 S.C. 535, 159 S.E.2d 234 (1968). Such similarity was present here.

Kahan also contends it was error to permit Pattillo "to testify regarding out of court experiments based on previous testimony of prior witness." However, that testimony related to the path of the bullet through the victim's body and was not relevant or material to the results of the test gown experiment. Further, Pattillo testified that the angle at which he fired the gun (the objected-to portion of the experiment) was based on his examination of the gown worn by the deceased.

Kahan next assigns error in the solicitor's closing argument to the jury. The solicitor said (in untranscribed remarks) that the reason the gown of Mrs. Kahan was not introduced into evidence was because it was so bloody. We find no prejudicial

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error in this remark, as the presence of blood on the gown was fully supported by the testimony of the coroner and Pattillo.

The rule in this State for determining the propriety of a jury argument is stated in *State v. Pitts*, 256 S.C. 420, 428, 182 S.E.2d 738, 742 (1971):

"The question of whether the argument by the solicitor was improper or prejudicial is, under our decisions, a matter addressed largely to the discretion of the trial judge, and his ruling will not be disturbed in the absence of a showing of an abuse of such discretion. *State v. Hutto*, 252 S.C. 36, 165 S.E.2d 72."

Also objected to is the judge's charge, in which he instructed the jury on the lesser included offense of voluntary manslaughter. The evidence in this case [268 S.C. 247] was purely

circumstantial. There was testimony that at a Christmas party several hours before the shooting Kahan and his wife had been arguing and Kahan drinking. It is only proper to not instruct voluntary manslaughter in a murder case when there appears no evidence whatsoever tending to show manslaughter. *State v. Gardner*, 219 S.C. 97, 64 S.E.2d 130 (1951); See also *State v. Norris*, 253 S.C. 31, 168 S.E.2d 564 (1969); *State v. Bealin*, 201 S.C. 490, 23 S.E.2d 746 (1943). We find no error in the charge.

Lastly, Kahan alleges error in the failure of the trial judge to direct a verdict of acquittal. He contends the evidence presented by the State was insufficient to support a conviction. It is well settled that in the consideration of a question of sufficiency of the evidence in a criminal case, the evidence must be viewed in the light most favorable to the State.

"In determining whether a motion should be granted for a directed verdict of not guilty it is well settled that the evidence, and inferences which reasonably can be drawn therefrom, must be viewed in its most favorable light for the State. . . . It is not the function of the court to pass upon the weight of the evidence, but to determine its sufficiency to support the verdict, and where there is any evidence however slight on which the jury may justifiably find existence or nonexistence of material facts in issue, or if evidence is of such character that different conclusions as to such facts reasonably may be drawn therefrom, the issues will be submitted to the jury." *State v. Bell*, 263 S.C. 239, 246, 209 S.E.2d 890, 893 (1974).

In addition to the testimony of Agent Pattillo, the evidence was to the effect that Mrs. Kahan was alone with appellant in their home on the morning of December 24, 1974, at which time Mrs. Kahan was shot and killed by a single bullet wound in the chest. Appellant made a statement on the date of the shooting that his wife had shot [268 S.C. 248] herself with a pistol while she was alone in the bedroom. However, the pistol used in the shooting was found in a closed cabinet in the kitchen. Finally, witnesses testified as to the threats and insults directed by Kahan toward the deceased at the Christmas party on the night preceding her death. The case was properly submitted to the jury.

Affirmed.

LEWIS, C. J., and LITTLEJOHN, NESS and RHODES, JJ., concur.

Defendant's Requested Instruction Number _____

PROVOCATION — DEFINITION

A sufficient legal provocation is one that would cause a person of ordinary reason and prudence to become provoked and experience sudden heat and passion. A sufficient legal provocation need not overpower knowledge, rationality, and volition. Instead, it need only be sufficient to disturb or upset reason and render the mind of an ordinary person incapable of cool reflection.

By way of example, and only by way of example, provocation that is legally sufficient to negate malice includes conduct:

- (1) like pointing a gun;
- (2) like physical assault or combat;
- (3) like insulting words accompanied by threatening acts directed either toward oneself or toward a relative or friend;
- (4) like finding one's spouse (or other such loved one) in a sexual act with another person;
- (5) like a humiliating act such as by spitting in the face, rudely jostling, grabbing of ear to lead around, or tweaking of nose;
- (6) like very emotional arguments; and
- (7) like excessive force in an arrest;
- (8) like deliberate destruction of personal property, including a pet or valuable animal.

State v. Lowry, 315 S.C. 396, 434 S.E.2d 272 (1993) (words with threatening act); *State v. Davis*, 278 S.C. 544, 298 S.E.2d 778 (1983) (definition of provocation; fighting as provocation); *State v. Linder*, 276 S.C. 304, 278 S.E.2d 335 (1981) (excessive force in otherwise lawful arrest); *State v. Penland*, 275 S.C. 537, 273 S.E.2d 765 (1981) (pointing gun); *State v. Kahan*, 268 S.C. 240, 233 S.E.2d 293 (1977) (very emotional argument); *State v. Gardner*, 219 S.C. 97, 64 S.E.2d 130 (1951) (insults accompanied by threatening acts); *State v. Martin*, 216 S.C. 129, 57 S.E.2d 55 (1949) (learning information concerning assault of relative; dicta concerning face slapped or spit upon as adequate); *State v. Petit*, 144 S.C. 452, 472, 142 S.E. 725, 733 (1928) (humiliating assault like spitting); *State v. Herring*, 118 S.C. 386, 110 S.E. 668 (1921) (act of adultery by spouse); *State v. Gallman*, 79 S.C. 229, 240, 60 S.E.2d 682, 687 (1908) (dicta concerning spitting in the face, tweaking of nose, taking by ear, and killing of horse as examples of adequate provocation); *State v. Emerson*, 78 S.C. 83, 58 S.E. 974 (1907) (finding 31 year old daughter in bed with a paramour adequate provocation); *State v. Andrews*, 73 S.C. 257, 53 S.E. 423 (1907) (mutual combat); *State v. Smith*, 304 S.C. 125, 403 S.E.2d 162 (Ct. App. 1991) (assault of another).

535 S.E.2d 420 (S.C. 2000), 25161, State v. Locklair

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535 S.E.2d 420 (S.C. 2000)

341 S.C. 352

The STATE, Respondent,

v.

Jimmy Clifton LOCKLAIR, Appellant.

No. 25161.

Supreme Court of South Carolina

June 26, 2000.

Heard April 4, 2000.

Rehearing Denied Aug. 11, 2000[341 S.C. 353].

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[341 S.C. 355] Assistant Appellate Defender Robert M. Dudek, of South Carolina Office of Appellate Defense, of Columbia, and Andrew J. Johnston, of Spartanburg, for appellant.

Attorney General Charles M. Condon, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General

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Donald J. Zelenka, Assistant Attorney General G. Robert DeLoach, III, all of Columbia, and Solicitor Holman C. Gossett, Jr., of Spartanburg, for respondent.

[341 S.C. 356] TOAL, Chief Justice:

Jimmy Clifton Locklair ("Locklair") seeks a reversal of his conviction and death sentence for the murder of Tammy Bridges ("Bridges"). We affirm Locklair's conviction and sentence.

FACTUAL/PROCEDURAL BACKGROUND

This case involved a fatal love triangle between Locklair, Bridges, and Bridges' estranged husband Christopher Jones ("Jones"). While Locklair and Bridges were dating, Jones decided he wanted to reconcile with Bridges. His attempt at reconciliation led to a fatal altercation between Locklair and Jones. Locklair shot Jones three times in a church parking lot and was indicted for Jones' murder on June 5, 1995 and convicted on June 14, 1995. Bridges decided to move in with Locklair after he murdered her husband. While Locklair was free on a \$50,000 bond for Jones' death, he shot and killed Bridges after she decided to move out of his home.

On April 16, 1995, the day of the fatal incident, Locklair's mother called Allen Nichols ("Nichols"), a close friend of Locklair's, because she was concerned that Locklair may attempt to kill himself. Locklair's mother warned Nichols to keep Locklair away from guns. Despite these warnings, Nichols decided to go target practicing with his .22 caliber rifle and his Beretta pistol with Locklair later that afternoon. Nichols and Locklair drove to Woodruff, South Carolina to shoot wild turkeys, but the flock got away.

As they were leaving Woodruff, Locklair asked Nichols to drive by Bridges' parents' house so he could return Jones' death certificate and Bridges' social security card to her. Nichols knew that Locklair had recently broken up with Bridges and warned him not to argue with her. When they arrived at the house, Locklair attempted to call Bridges on Nichols' cell phone but it would not

work. Locklair reached over and started honking the truck's horn to get Bridges' attention. Bridges and her mother, Betty Williams ("Williams"), walked out to Nichols' car. Bridges asked Locklair what was wrong and asked why he had cut up her clothes. According to Nichols, Locklair told Bridges he was sorry and pleaded with her to talk to him. Bridges refused to talk to [341 S.C. 357] Locklair and said "no Jimmy, I'm not coming back to you." As Nichols shifted gears to prepare to leave, Locklair reached into the glove compartment and grabbed the Beretta pistol.

Nichols attempted to grab Locklair's shirt collar and Locklair pulled him out of the truck. Bridges and Williams screamed and began to run away. Nichols testified that he saw Locklair taking long strides towards Bridges and he heard Locklair pulling the trigger of the pistol repeatedly, but the safety was on. As Nichols attempted to make a running tackle, Locklair disengaged the safety and shot Bridges in the back. Nichols said he tackled Locklair after the first shot but Locklair fired two more times before they fell to the ground. The gun then struck the asphalt and fired an additional round before jamming. Locklair then stood up and told Nichols, "leave me the f * * * alone, I got to do this."

Locklair stood up after Nichols tackled him and stepped over the victim's body before walking towards the William's home. Another witness, Robert Williams, the victim's stepfather, testified that Locklair looked "like he was hunting somebody." Locklair pointed the gun at the house and attempted to fire, but the gun jammed. Nichols tackled Locklair again while he tried to fire at the house. Meanwhile, Robert Williams left the car where he was observing and ran toward Locklair and Nichols. Robert Williams grabbed the gun and wrestled with Locklair over it. He eventually dislodged the gun and it fell on the ground, discharging once. Locklair pushed Nichols aside and ran toward a neighbor's house. Locklair went twenty or thirty feet, looked back once, then ran down the street. Robert Williams attempted to shoot Locklair but the gun jammed again and did not fire.

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The Woodruff Police Department issued a bulletin from the Spartanburg County Sheriff's office concerning Locklair. The search continued until 4:00 a.m. the following day, when Locklair was found at his parents' home five miles from the scene. At the police station, Locklair voluntarily waived his rights, gave a tape recorded statement, and signed a hand written confession.

On the day before the murder, Bridges stayed the night with her sister, Stacy Waddell ("Waddell"). Locklair came to Waddell's house early in the morning to speak to Bridges. [341 S.C. 358] When Locklair went back to Bridges' bedroom he was carrying an eight inch butcher knife. Waddell demanded the weapon and Locklair gave her the knife. Waddell gave the knife to William Earl Jennings ("Jennings") who had come to take Locklair home. Jennings testified that Locklair flung the knife out of the window as they drove home and said "you can't do anything with a knife."

Later that day, Waddell took Bridges to Locklair's home to pick up some of her clothes and personal items. Locklair had shredded all of Bridges' clothes and pictures. Waddell also testified that some of Bridges' identification was missing.

On the day of the fatal incident, Leslie Taylor ("Taylor"), a co-worker of Bridges, testified that a man called to speak to Bridges and told Taylor that "if something doesn't happen, someone is going to die." Taylor asked her supervisor to speak to the caller. Her supervisor identified the

caller as Locklair. According to the supervisor, Locklair said if she did not let him speak to Bridges "someone was going to be killed." The supervisor told Locklair that Bridges was not there and he became angry and hung up the phone.

On May 18, 1995, the Spartanburg County Grand Jury indicted Locklair for murder and possession of a firearm during the commission of a violent crime. The State served its notice of intent to seek the death penalty on September 3, 1996. The jury found Locklair guilty as charged on September 19, 1998. On September 20, 1998, the trial judge presented the following aggravating circumstances for the jury's consideration at the conclusion of the penalty phase:

1. The Appellant had a previous conviction of murder.
2. The Appellant knowingly created a great risk of danger to more than one person in a public place by means of a weapon or device which would be hazardous to the lives of more than one person.
3. The Appellant murdered two or more persons pursuant to one act or one scheme or course of conduct.

On September 22, 1998, the jury found the existence of the first and second aggravating circumstances beyond a reasonable doubt. The jury recommended the death penalty and the [341 S.C. 359] trial judge sentenced Locklair to death. Locklair appeals his death sentence and conviction, raising the following issues:

(1) Whether the trial judge erred by refusing to charge voluntary manslaughter where there was evidence Locklair was involved in a domestic dispute with the victim and the victim's mother threw a cigarette case at him immediately before he shot the victim?

(2) Whether the trial judge erred by ordering Locklair to submit to a psychiatric examination over his objection where he had already been judged fit to stand trial, was not asserting insanity, and had not given notice that he would plead guilty but mentally ill ("GBMI")?

(3) Whether the trial judge erred by instructing the jury on the statutory aggravating circumstance contained in S.C.Code Ann. § 16-3-20(C)(a)(3) (1976), the "great risk of death" aggravator?

(4) Whether the trial judge erred by instructing the jury on the statutory aggravating circumstance contained in S.C.Code Ann. § 16-3-20(C)(a)(2) (1976), the "prior murder conviction" aggravator, where Locklair did not have a prior conviction for murder at the time the murder was committed and his conviction for the other murder came after the homicide in this case?

(5) Whether Locklair is entitled to a new sentencing hearing even if one of the
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aggravating circumstances is held to have been properly submitted?

LAW/ANALYSIS

I. Voluntary Manslaughter

Locklair argues that the trial judge erred by refusing to charge voluntary manslaughter because: (1) there was evidence of a domestic dispute between Locklair and Bridges; and (2) Bridges' mother threw a cigarette case at him immediately before he shot Bridges. We disagree.

"Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." *State v. Johnson*, 333 S.C. 62, 508 S.E.2d 29 (1998). Both heat

of passion and sufficient legal provocation must be present at the time of the killing to constitute[341 S.C. 360] voluntary manslaughter. *State v. Walker*, 324 S.C. 257, 478 S.E.2d 280 (1996) (citations omitted). Sudden heat of passion upon sufficient legal provocation that mitigates a felonious killing to manslaughter must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called "an uncontrollable impulse to do violence." *State v. Gardner*, 219 S.C. 97, 64 S.E.2d 130 (1951) (citing *State v. Davis*, 50 S.C. 405, 27 S.E. 905 (1897)). Where death is caused by use of a deadly weapon, words alone, however opprobrious, are not sufficient to constitute a legal provocation. *Id.* at 104, 64 S.E.2d at 134. Rather, when death is caused by the use of a deadly weapon, the opprobrious words must be accompanied by the appearance of an assault--by some overt, threatening act--which could have produced the heat of passion. *State v. Lowry*, 315 S.C. 396, 434 S.E.2d 272 (1993) (citing *State v. Judge*, 208 S.C. 497, 38 S.E.2d 715 (1946)).

It is proper for a trial judge to refuse to charge voluntary manslaughter in a murder case where it very clearly appears there is no evidence whatsoever tending to reduce the crime from murder to manslaughter. *State v. Davis*, 278 S.C. 544, 298 S.E.2d 778 (1983). This Court has held in several cases that it is proper to charge voluntary manslaughter where the defendant and the victim had been in a heated argument prior to the murder. See *State v. Wiggins*, 330 S.C. 538, 500 S.E.2d 489 (1998) (holding that evidence tended to show defendant acted in sudden heat of passion where defendant was in a heated argument with victim and feared for his life because victim threatened him); *State v. Lowry*, 315 S.C. 396, 434 S.E.2d 272 (1993) (holding that a voluntary manslaughter charge was necessary where the defendant and the victim were in a heated argument and victim was about to initiate a physical encounter when shooting occurred); *State v. Davis*, 278 S.C. 544, 298 S.E.2d 778 (1983) (holding voluntary manslaughter charge was proper where a witness testified that defendant and victim had been fighting). These cases are distinguishable from the instant case because there is no evidence that Locklair and Bridges were in a heated argument prior to the murder. According to Locklair's hand written confession, [341 S.C. 361] Tammy got smart with me and I am suppose to be on Zolof med. but I lost my perscription [sic]. After she got smart with me & started to walk off, I grabbed the gun. Her mom threw a cig. case at me, her dad was trying to stop me and Allen also.

All Locklair claims is that Bridges "got smart" with him. However, words alone, no matter how opprobrious, are not sufficient to prove legal provocation when a deadly weapon is used. See *Gardner*, 219 S.C. at 104, 64 S.E.2d at 134. Also, "getting smart" with someone would not naturally disturb the sway of reason of an ordinary person and produce an uncontrollable impulse to do violence. *Id.*

There is no evidence in the record that indicates Bridges and Locklair were fighting prior to the incident or that Bridges threatened Locklair in any way. According to Nichols, Bridges calmly spoke to Locklair and never raised her voice. When Nichols testified as to the conversation between Locklair and Bridges, he did not note any insulting or threatening language. Nichols described the incident in the following testimony:

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Nichols: Tammy said what's wrong with you, Jimmy. He said what, what. And she said what have you done, and he said what are you talking about Tammy. And he said, she said you didn't have to do all those things. She started talking about he cut up her clothes or cut up a check or put water or something or something to that effect all in there. And she was asking him you know why in the world did you do that. You didn't have to do all that. It wasn't necessary for you to do all that stuff....

Question: Okay, now how was she talking to him there?

Nichols: *Just in a, a monotone.* She was just wondering you know just, you know like you know why, why would you do something like that. Just about the same tone I am.... *There was never any yelling or anything of that nature.*

Question: Okay. And what happens after, as, as that's going on or, or after that?

Nichols: ... And Jimmy asked Tammy, she kept saying no, and he said let me just talk to you for a minute. [341 S.C. 362] Come here. Just let me talk to you for a minute by yourself. Please just, just listen to me, hear me out, and you know that type of thing. And she said no, Jimmy, No.... She said no, Jimmy, I'm not coming back to you. If I'm not mistaken, that was her last words. And I pushed the clutch in, and he, he paused for just a second, and then he, he reached for the dash. He opened up my dash, And when he reached for the dash, I immediately, I grabbed hold of him. (emphasis added).

Therefore, since Bridges did not take any overt physical actions against Locklair, even the most liberal construction of her words do not reduce the crime to manslaughter. ^[1]

Provocation necessary to support a voluntary manslaughter charge must come from some act of or related to the victim in order to constitute sufficient legal provocation. *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996). "The provocation of *the deceased* must be such as naturally and instantly produces in the mind of a person ordinarily constituted the highest degree of exasperation, rage, anger, sudden resentment, or terror, rendering the mind incapable of cool reflection." *State v. Franklin*, 310 S.C. 122, 125, 425 S.E.2d 758 (Ct.App.1993), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999) (emphasis added). Locklair argues that the jury could find voluntary manslaughter in this case because Williams, Bridges' mother, threw a cigarette case at Locklair prior to the shootings. First, the evidence shows that Williams threw the cigarette case at Locklair *after* he grabbed the gun to kill Bridges. According to Locklair's written statement: "After she got smart with me & started to walk off, I grabbed the gun. Her mom threw a cig. case at me, her dad was trying to stop me & Allen also." [341 S.C. 363] Second, this overt act was made by a third party, not the deceased, and South Carolina has not recognized sufficient legal provocation from a third party that can be transferred to the victim. ^[2]

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Finally, throwing a cigarette case would not naturally render the mind of an ordinary person incapable of cool reflection and produce an uncontrollable impulse to do violence. *Gardner, supra*.

II. Psychiatric Examination

Locklair argues the trial judge abridged his Fifth Amendment rights by ordering him to submit to a psychiatric examination where he did not assert an insanity defense and did not give notice that he would plead guilty but mentally ill ("GBMI"). We disagree.

According to S.C.Code Ann. § 44-23-410 (Supp.1998), circuit court judges have the inherent duty to order a competency examination if there is reason to believe that the person charged with the criminal offense is not fit to stand trial. Section 44-23-410 states:

Whenever a judge of the Circuit Court or Family Court has reason to believe that a person on trial before him, charged with the commission of a criminal offense or civil contempt, is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his [341 S.C. 364] own defense as a result of a lack of mental capacity, the judge *shall*:

(1) order examination of the person by two examiners designated by the Department of Mental Health ...; or

(2) order the person committed for examination and observation to an appropriate facility of the Department of Mental Health or the Department of Disability and Special Needs....

S.C.Code Ann. § 44-23-410 (Supp.1998) (emphasis added). Despite the mandatory language of the statute requiring a judge to order a competency examination if there is reason to believe that a person charged with a criminal offense is not fit to stand trial, ordering a competency examination is within the discretion of the trial judge and a refusal to grant an examination will not be disturbed on appeal absent a clear showing of an abuse of discretion. *State v. Singleton*, 322 S.C. 480, 472 S.E.2d 640 (Ct.App.1996). Where insanity is interposed as a defense in a criminal prosecution, compulsory examination of the accused by experts for the purpose of determining his mental condition does not violate either the constitutional protection against self-incrimination or the constitutional guaranty of due process of law. *State v. Myers*, 220 S.C. 309, 67 S.E.2d 506 (1951). Locklair argues that while a trial judge may order a psychiatric examination where insanity is asserted as a defense, there is no authority that indicates a trial judge has the authority to order an examination when a defendant provides no notice that he will plead GBMI, and GBMI is never pled. We disagree.

The trial judge in this case has the inherent, discretionary authority to order an independent psychiatric evaluation of Locklair if he believed Locklair was not fit to stand trial or if he believed that Locklair's mental competency would be an issue at trial. The mental competency of the defendant to stand trial is a baseline inquiry by the court. In order to protect the legal process and preserve the integrity of the trial, a trial judge has the authority to order a psychiatric evaluation of the defendant when his or her competency may be in question. ^[3]

[341 S.C. 365] The trial judge was under the impression that Locklair's mental condition may be made an issue at trial. At the May 29, 1998 hearing, the trial judge heard the State's motion for an independent mental examination. Defense counsel provided a copy of their expert's report on Locklair's mental

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condition. Defense counsel agreed with the trial judge's summary of their expert's conclusions:

The Court: And in that report, it indicates that the defendant suffers or did suffer from some type of mental illness that would cause him to lack capacity to confirm [sic] his conduct to the requirements of the law at the time of the alleged offense?

Defense Counsel: Yes, sir.

The Court: And the defendant intends to offer such evidence at trial of the case either in the guilt

phase and or the penalty phase?

Defense Counsel: *That is correct sir.*

The Court: And because of that, the State wishes to have an independent examination conducted to either rebut that evidence or to confirm that evidence I would assume?

Solicitor: That's correct, Your Honor. (emphasis added)

By stating that Locklair may offer evidence of his mental illness at trial, defense counsel opened the door to the issue of Locklair's mental health.

Furthermore, Locklair has shown no conceivable prejudice from the psychiatric examination. "Error without prejudice does not warrant reversal." *State v. McWee*, 322 S.C. 387, 393, 472 S.E.2d 235, 239 (1996). Locklair claims the State used evidence from his examination with Dr. Lewis to successfully urge that he be sentenced to death. Dr. Lewis conducted the examination for the court and found that Locklair had a normal family life and childhood. Specifically, [341 S.C. 366] Locklair takes issue with the following argument by the solicitor:

They told you or it was told to you that he had a normal childhood, his grades were normal, he finished high school, he had a good job, he was never abused by anybody. In spite of his education, in spite of all this background, this is where he ends up. That's what he's done with that start in life. He had better than many other people I submit to you.

However, Locklair's own social worker provided an independent basis for this information. The State did not have to rely on Dr. Lewis' report because Locklair's social worker testified that Locklair had a simple life, lived a quiet existence, was an average student, and had consistent employment.

III. Statutory Aggravating Circumstance--S.C.Code Ann. § 16-3-20(C)(a)(3)

Locklair argues that the trial judge erred by refusing to direct a verdict on the "great risk of danger" aggravator. This statutory aggravating circumstance states that the jury can consider whether "the offender by his act of murder knowingly created a great risk of danger to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person" when deciding the appropriate punishment for murder. S.C.Code Ann. § 16-3-20(C)(a)(3) (1976). We disagree.

"In determining whether to submit an aggravating circumstance to the jury, the trial court is concerned with the existence of the evidence, not its weight." *State v. Smith*, 298 S.C. 482, 485, 381 S.E.2d 724, 726 (1989). The trial judge should submit the aggravator to the jury if "supported by any evidence direct or circumstantial." *Id.* The "great risk of danger" aggravator was properly submitted to the jury because there was ample evidence that suggested Locklair put the lives of more than one person in danger in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person.

In construing statutes, words must be given their plain and ordinary meaning without resort to subtle or forced construction in attempt to expand the statute. *State v. Sims*, 304 S.C. 409, 405 S.E.2d 377 (1991). Here, the statute mandates [341 S.C. 367] that the offender create a great risk of danger to more than one person in a "public place." This incident took place in a public place because it occurred on a public street and in William's front yard in a small mill village. There were many people in the general vicinity of the incident and there were several children playing on the

public street when the incident occurred.

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Locklair argues that a firearm is not a "weapon or device which would normally be hazardous to the lives of more than one person." Locklair claims that the statute contemplates the use of a bomb or other explosive device. We disagree and find that a gun is the type of weapon contemplated by the statute. The statutory aggravator only requires that the weapon used be "normally hazardous to the lives of more than one person." Requiring the use of a bomb or other explosive device would be a forced construction of the statute adding terms not intended by the legislature. [4]

Locklair argues that this was a simple case of a victim being shot at close range, not the type of incident contemplated by the statute. However, the trial testimony does not support this assertion. According to Nichols' testimony, Locklair put more than one person at great risk of danger because he attempted to fire the gun several times, but the safety was on. After he shot Bridges, Locklair pointed the gun at Williams' home where there were children inside. Nichols was forced to tackle Locklair to stop him and Robert Williams, the victim's stepfather, had to struggle with Locklair to retrieve the gun. According to the trial testimony, the gun was dropped several times during the struggle with shots being fired in different directions. Also, at the very least, Nichols and Robert Williams, were placed in great danger as they attempted to stop Locklair from firing and retrieve the gun. Finally, Locklair put many people at great risk of danger. Nichols, Robert William, Betty Williams, Dewey Morgan, and several children playing in the street were all within firing range when the shooting occurred.

[341 S.C. 368] IV. Statutory Aggravating Circumstance--S.C.Code Ann. § 16-3-20(C)(a)(2)

Locklair argues that the trial judge erred by instructing the jury on the statutory circumstance contained in S.C.Code Ann. § 16-3-20(C)(a)(2) (1976) since Locklair did not have a prior conviction for murder at the time the shooting occurred in this case. We disagree.

S.C.Code Ann. § 16-3-20(C)(a)(2) states that the trial judge may include in his instruction the following statutory aggravator if supported by evidence: "Murder was committed by a person with a prior record of conviction of murder." Locklair shot and killed Bridges on April 26, 1995. At the time of her murder, Locklair had not been indicted or convicted of Christopher Jones' murder. On June 5, 1995, Locklair was indicted for the Jones' murder, and on June 14, 1995, Locklair was convicted and sentenced to life imprisonment. The trial in this case did not commence until September 20, 1996. Therefore, Locklair did not have a prior murder conviction until the date of Bridges' murder *trial*. Locklair argues that the prior murder conviction must have occurred prior to the date of Bridges' *murder* in order for the judge to charge the aggravating circumstance. We disagree.

In *State v. Sims*, 304 S.C. 409, 405 S.E.2d 377 (1991), this Court interpreted the language of S.C.Code Ann. § 16-3-20(C)(b)(1) (Supp.1989) which contained the following statutory mitigating circumstance: the defendant "had no significant history of prior criminal convictions involving the use of violence against another person." The Court interpreted the word "prior" to mean prior to trial, rather than prior to the time of the crime. At the time *Sims* committed the crime in South Carolina, he had no history of prior criminal convictions because he was not convicted of his

California crimes until after he committed the crimes in South Carolina. *Id.* This Court focused on the plain language of the statute in *Sims* and determined that if the legislature wanted the prior convictions to occur at the time of the crime, they would have specified it in the statute, as they did in several other statutory mitigating circumstances. *Id.* at 423, 405 S.E.2d at 385 (citing section 16-3-20(C)(b)(7) and section 16-3-20(C)(b)(9) as examples where the legislature

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specified that the mitigating circumstance [341 S.C. 369] had to occur at the time of the crime). Similarly, the legislature did not specify in section 16-3-20(C)(a)(2) that the defendant must have a prior murder conviction at the time of the crime in order to receive an instruction on the aggravating circumstance.

South Carolina's death penalty statute was "patterned after the death penalty statutes of our sister state Georgia." *State v. Shaw*, 273 S.C. 194, 255 S.E.2d 799 (1979), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). In *Stephens v. Hopper*, 241 Ga. 596, 247 S.E.2d 92 (1978), the Georgia Supreme Court interpreted a statutory aggravating circumstance which provided in part that "the offense of murder, rape, armed robbery, or kidnapping was committed by a person with a prior record of conviction for a capital felony." The Georgia Supreme Court concluded that the jury should consider the record as of the time of the sentencing proceeding, and not at the time of the crime. *Id.* at 96. "To conclude otherwise would produce the intolerable result that an offender with no prior record could commit numerous separate murders one after the other before being apprehended, and then, at the trials for those murders, could never receive death under this aggravating circumstance even though convicted of each and ever one of the murders." *Id.* at 96-97.

Other jurisdictions support the above proposition. North Carolina, Mississippi, and Nevada authorize the death penalty where the defendant was "previously convicted" of another qualifying crime before trial. These jurisdictions have held that the "previous conviction" can occur before the trial. See, e.g., *State v. Warren*, 348 N.C. 80, 499 S.E.2d 431 (1998) (holding that the "previously convicted" aggravating circumstance includes convictions which occur after the event, provided the conviction occurs before sentencing); *Jones v. State*, 381 So.2d 983 (Miss.1980) (holding the word "previously," used in a statute providing for the use of prior convictions, relates to the time of trial and, thus, defendant's armed robbery conviction, which was entered after he committed murder, could be considered during the sentencing phase of his murder trial). In *Calambro v. State*, 114 Nev. 106, 952 P.2d 946 (1998), the Nevada Supreme Court makes a persuasive policy [341 S.C. 370] argument for why the "prior conviction" aggravator should be considered at the time of sentencing:

The statute was never intended to operate on the vagaries of conviction sequences. Instead, the focal point is the time of sentencing. The sentencing panel is entitled to consider all relevant aspects of the defendant's criminal background prior to rendering sentence. The fact that Gallego murdered two victims after killing the two victims in the instant case is not relevant to the dictates of the statute. The clear language of the statute required only that Gallego stood convicted of the California murders at the time of the introduction of the evidence in the penalty phase of the present proceeding. It would be both absurd and counterproductive for this court to construe the

plain language of the statute so as to exclude convictions of murders or crimes of violence occurring after the primary offense but before the penalty phase of a defendant's trial. This we refuse to do.

Id. at 947 (citing *Gallego v. State*, 101 Nev. 782, 711 P.2d 856, 863-864 (1985)).

Because the South Carolina General Assembly did not specify that the prior convictions had to occur before the commission of the crime, we find that for purposes of section 16-3-20(C)(a)(2), prior convictions have to occur by the time of the *sentencing proceeding*. The emphasis in the sentencing phase of a capital trial is on the character of the defendant. The purpose of the sentencing phase in a capital trial is to direct the jury's attention to the specific circumstances of the crime and the characteristics of the offender. *State v. Ard*, 332 S.C. 370, 505 S.E.2d 328 (1998). According to this Court in *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260, 270 (1996), "cases in South Carolina and around the country have consistently found a defendant's prior criminal record to be highly relevant in sentencing; any limitations have been directed to admitting only felonies or violent crimes." See, e.g., *Woodson v. North Carolina*, 428 U.S. 280, 304, 96 S.Ct. 2978, 2991, 49 L.Ed.2d 944, 961 (1976)

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("[W]e believe that in capital cases ... the Eighth Amendment ... requires consideration of the record of the individual offender ... as a constitutionally indispensable part of the process of inflicting the penalty of death."); *State v. Stewart*, 283 S.C. 104, 320 S.E.2d 447 (1984)[341 S.C. 371] ("[I]nformation concerning prior criminal convictions shall be admissible as additional evidence during the sentencing or representing [sic] phase of a capital trial."); *State v. Jackson*, 608 So.2d 949, 954 (La.1992) ("Evidence of convictions of serious unrelated crimes is extremely probative of and relevant to the character and propensities of the defendant and may be useful for the jury to evaluate in performing its awesome task of deciding whether or not to recommend execution."). Therefore, Locklair's prior murder conviction was relevant character evidence that was properly presented in the sentencing phase of the trial.

V. New Sentencing Hearing

Locklair argues that he is entitled to a new sentencing hearing even if this Court holds one of the two aggravating circumstances found by the jury was properly submitted for its consideration. According to Locklair, *Tuggle v. Netherland*, 516 U.S. 10, 116 S.Ct. 283, 133 L.Ed.2d 251 (1995) mandates reversal under these circumstances. Because we find that both statutory aggravating circumstances were properly submitted to the jury, it is not necessary to address the *Tuggle* issue.

CONCLUSION

After reviewing the entire record, we conclude the death sentence was not the result of passion, prejudice, or any other arbitrary factor, and that the jury's finding of aggravating circumstances is supported by the evidence. Further, the death penalty is neither excessive nor disproportionate to that imposed in similar cases. See *State v. Rosemond*, 335 S.C. 593, 518 S.E.2d 588 (1999); *State v. Humphries*, 325 S.C. 28, 479 S.E.2d 52 (1996); *State v. Williams*, 321 S.C. 327, 468 S.E.2d 626 (1996). Therefore, the conviction and sentence are **AFFIRMED**.

MOORE, WALLER, BURNETT, and PLEICONES, JJ., concur.

Notes:

[1] Locklair argues that *State v. Kahan*, 268 S.C. 240, 233 S.E.2d 293 (1977) is persuasive. In *Kahan*, the trial judge instructed the jury on voluntary manslaughter when there was evidence that the couple had been arguing at a Christmas party several hours before the shooting and there were no witnesses to the shooting. This Court ruled the voluntary manslaughter instruction was proper because the defendant claimed his wife's death was a suicide and the jury was required to decide whether he murdered his wife. The evidence they argued earlier that evening was circumstantial evidence that he killed her in sudden heat of passion. *Kahan* does not hold that words alone constitute sufficient legal provocation.

[2] Locklair cites the Texas case, *Sattiewhite v. Texas*, 786 S.W.2d 271 (Tex.Crim.App.1989), for the proposition that provocation on the part of the deceased or a third party acting in concert with the deceased will support a manslaughter verdict. However, a Texas statute specifically defines sudden passion as "passion directly caused by and arising out of provocation by *the individual killer or another acting with the person killed* which passion arises at the time of the offense and is not solely the result of former provocation." *Id.* at 287 (citing Tex.Code Ann. § 1904(b)) (emphasis added). South Carolina does not have a comparable statute.

Locklair also relies on the South Carolina case, *State v. Wyatt*, 317 S.C. 370, 453 S.E.2d 890 (1995) for the proposition that provocation by a third party would support a voluntary manslaughter verdict. In *Wyatt*, the appellant hit his wife at a race track and then was confronted by an angry crowd as he tried to leave. The appellant shot two men who tried to prevent him from leaving. The appellant's theory in *Wyatt* was self-defense. Therefore, under the facts in *Wyatt*, the provocation derived from the victims' actions, not his wife's, who was merely a third party to the incident.

[3] Other jurisdictions require a defendant to submit to a psychiatric examination when he or she raises issues of mental competency. See generally *State v. Jackson*, 77 N.C.App. 491, 335 S.E.2d 903 (1985) (holding that when defendant asserts insanity as a defense, court has authority to require defendant to submit to a mental examination by a court-appointed psychiatrist); *State v. Myers*, 239 N.J.Super. 158, 570 A.2d 1260 (1990) (holding that defendant who asserts the battered women's syndrome defense must submit to examination by appropriate experts selected by the State).

[4] Other jurisdictions have held that a gun fired in the direction of two persons satisfies the statutory aggravator. See e.g., *North Carolina v. Moose*, 310 N.C. 482, 313 S.E.2d 507 (1984); *Jones v. Georgia*, 243 Ga. 820, 256 S.E.2d 907 (1979); *Moran v. Nevada*, 103 Nev. 138, 734 P.2d 712 (1987).

WITNESSES

D P Garrison

Greenville Police Department

5/5/2011

ARREST WARRANT NUMBER
M801197

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-

JMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August

TERM 2011

8-14-13

THE STATE

vs.

NATHANIEL BERNARD BEEKS

Indictment for

0116

MURDER

VIOLATION § 16-03-0010, 0020

ENTERED
ACCT. 1134

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

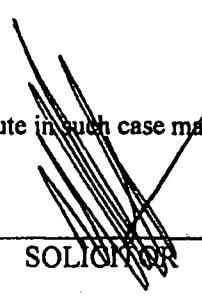
INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on **AUG 16 2011** the Grand Jurors of Greenville

County present upon their oath:

That NATHANIEL BERNARD BEEKS did in Greenville County, on or about the 23rd day of April, 2011, unlawfully and with malice aforethought kill MARSHA SMITH by means of strangulation, and that MARSHA SMITH died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina 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.



SOLICITOR

256

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.Nathaniel Bernard Beeks

AKA:

Race: BLACK Sex: M Age: 49DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Greenville, SC 29601DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2306315A/W#: M801197Date of Offense: 4/23/2011S.C. Code § : 16-03-0010, 0020CDR Code #: 0116

SENTENCE SHEET

30y - life

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/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:

Munson RudySC Bar# 64040

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 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
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. April 28, 2011 (29 months)☐ 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 ☐ Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 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	\$ <u>25</u>
§ 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 (SCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)		\$
TOTAL		\$

PTUP

_____ days/hours Public Service Employment

Obtain 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 Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/ Deputy Clerk Paul B. WickensCourt Reporter: A. Henson

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2132Sentence Date: 8-14-13

WITNESSES

D P Garrison

D.P. Garrison

Greenville Police Department

5/6/2011

ARREST WARRANT NUMBER

M801195

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Bob L. Davis
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-
JMM

006316

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August

TERM 2011

8-14-13

THE STATE

vs.

NATHANIEL BERNARD BEEKS

Indictment for

GRAND LARCENY

VIOLATION § 16-13-0030(B)

ENTERED
ACCT. 1034

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
GRAND LARCENY

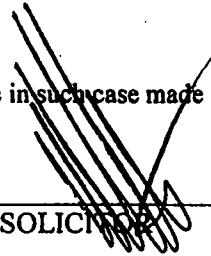
At a Court of General Sessions, convened on **AUG 16 2011**

the Grand Jurors of Greenville

County present upon their oath:

That NATHANIEL BERNARD BEEKS did in Greenville County, on or about the 23rd day of April, 2011, feloniously take and carry away the personal property of MARSHA SMITH to wit: 2004 Honda Civic, with a total value of more than two Thousand Dollars with the intent to deprive the owner permanently of such property. This is in violation of §16-13-0030 of the South Carolina 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.



SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Nathaniel Bernard Beeks

AKA:

Race: BLACK Sex: M Age: 49DOB: [REDACTED]Address: [REDACTED]Zip: GREENVILLE, SC 29607DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Larceny/Petit Larceny

IN THE COURT OF GENERAL SESSIONS

259

INDICTMENT/CASE#: 2011GS2306316A/W#: M801195Date of Offense: 4/23/2011S.C. Code §: 16-13-0030(A)CDR Code #: 3419

SENTENCE SHEET

30d Hor
\$1000☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-13-0030(A) of the S.C. Code of Laws, bearing CDR Code # 3419

☒ 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:

Municipal Judge

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 30 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 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. April 28, 2011 (29 months)☐ 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 ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 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 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5

3% to County (if paid in installments) \$

TOTAL \$

_____ days/hours Public Service Employment

Obtain 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 Fund

Other: _____

☐ 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)

Presiding Judge

Judge Code:

Sentence Date:

2132

8-14-13

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

This 30th day of July, 2014



Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT