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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No. 11-GS-40-897 and 11-GS-40-898

The State of South Carolina, ... Respondent,

v.

Leslie Todd Parvin, ... Petitioner.

APPENDIX VOLUME III
(RECORD ON APPEAL – VOLUME III)

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In The Court of Appeals

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SC Court of Appeals

1 MAJOR JAMES SMITH, having been first duly sworn,
2 testified as follows:

3 THE CLERK: Have a seat in the witness box and
4 state your name for the record and spell it, please.

5 THE WITNESS: It's James Standin Smith. Middle
6 name is S-T-A-N-D-I-N. Smith is common spelling.

7 DIRECT EXAMINATION BY MS. CAMPBELL:

8 Q. Major Smith, where are you employed?

9 A. Richland County sheriff's department.

10 Q. What do you there, sir?

11 A. I'm a supervisor in the criminal investigative
12 division. I supervise roughly about 80 detectives.

13 Q. And what do your duties include as the supervisor?

14 A. At the time of this crime I was a captain in the
15 investigative division. I had more of a focus with major
16 crimes.

17 Now my role is sort of expanded and I have to sort of
18 supervise generally all the crimes. However, I still
19 involve myself with major crimes.

20 Q. And back in July and August of 2010, I believe you were
21 a captain over major crimes?

22 A. I was.

23 Q. And at that point did you also become actively involved
24 in the investigation of crimes, such as homicide, rape,
25 armed robbery?

1 A. Most of the homicides I would become involved in, yes.

2 Q. When did you first become aware of this double murder
3 that occurred over on Woodfield Drive?

4 A. A little bit after seven o'clock on the evening of the
5 30th. I was -- it was actually a Friday night. I was
6 actually out working another homicide and we learned about
7 it conducting the search warrant in the other case.

8 Q. What did you do once you heard about this one?

9 A. Well, I was sort of knee deep in that situation, so I
10 couldn't really break free.

11 Brien Gwyn, my homicide detective who was the lead, and
12 he explained that earlier, was actually with us at the scene
13 of that other search warrant, so I directed him to head to
14 Woodfield Park and begin his investigation of that incident.

15 Q. During the course of that evening did you remain
16 informed, as far as his investigation went?

17 A. I did.

18 Q. And during the course of this investigation, for the
19 record, did you remain actively involved in helping
20 supervise and participating in this?

21 A. I did.

22 Q. That night did y'all get a general description of a
23 suspect and a vehicle that may be involved in this crime?

24 A. We did. That was relayed to me pretty much off the
25 bat. Witnesses had seen a white male. He had driven up

1 there in what was described as a Kia van, two tone van with
2 Louisiana tags.

3 Q. Okay.

4 A. A witness had gotten a partial tag of that vehicle.

5 Apparently the individual had shown some of the
6 witnesses some unusual tattoos. Those were described to us;
7 a nude woman covering his back with what was described
8 initially as a puma underneath, and a unicorn possibly on
9 one arm and a lightening bolt possibly on one arm. He was
10 described as being in his thirties, blond or brownish hair
11 and he had glasses.

12 MR. SHEALEY: Objection, Your Honor. We will
13 object to the cumulative nature of this testimony. We
14 already just heard it.

15 THE COURT: Objection overruled.

16 MS. CAMPBELL: Thank you, sir.

17 BY MS. CAMPBELL:

18 Q. Go ahead.

19 A. He had glasses and these things they call gages that
20 stick in your earlobe that makes them expand out, for lack
21 of a better way to describe it. I don't really understand
22 it, but this -- gages is the what I'm told they are called.

23 Q. Gages?

24 A. Yes, ma'am.

25 Q. And that evening under your direction, as well as with

1 Investigator Gwyn, were a number of witnesses that either
2 seen the events up to the crime and/or the crime itself
3 interviewed?

4 A. Yes, they were.

5 Q. Was that a little bit problematic because of the
6 language barrier?

7 A. All the witnesses spoke Spanish. There was one maybe
8 that spoke a little bit better English than the others, but
9 we had to have an interpreter. And fortunately we do have
10 several bilingual people at the sheriff's deputy. Two of
11 them are CAT team members. Then Sergeant Rafael Gonzales
12 and the other young man's name escapes me, but they both
13 speak fluent Spanish.

14 We do have a veteran seasoned detective that I use in
15 most of these scenarios named Willie Gonzalez, and Willie
16 was on vacation at the time or he would have been right in
17 the thick of it that night.

18 Q. And this event occurred on Friday night, I believe?

19 A. Yes.

20 Q. During the course of the weekend did you remain
21 involved, as far as getting updates as to what was going on?

22 A. My weekend supervisor that weekend was Sergeant
23 Daniels. He worked with the homicide team. We did have a
24 team that was Brien Gwyn and Tai Jordan. They worked on it
25 all weekend, you know, desperately trying to get leads;

1 basically trying to run down possible links to the victims
2 who may be Caucasian or American who they may have possibly
3 worked with. That was one of the main directions they went
4 with that weekend.

5 Q. And were any of the leads successful, as far as
6 identifying the person that did this murder, these murders?

7 A. No, ma'am.

8 Q. That Monday did you return back to work and have a
9 briefing on this case?

10 A. It's been right after eight o'clock. As is the case, a
11 lot of these homicides do occur on the weekends, so many of
12 these briefings are on Monday morning. When all the
13 administrative personnel are back, the supervisors of the
14 various labs, ballistic section, they are all present and
15 then they get a comprehensive briefing.

16 Q. Did you become aware of a video from a gas station that
17 might prove to corroborate some of what the witnesses were
18 telling you?

19 A. Yes, I did. We had learned that one of the victims,
20 Edgar Lopez, had actually accompanied the suspect to a
21 nearby gas station. And we learned from some witnesses
22 there that he had actually had conversations with them
23 there. That was substantiated by the video, the fact that
24 he did have those conversations, verified their account of
25 their interaction with him there.

1 Q. And on the video there is some question as to whether
2 or not -- is there audio on all the video or just on part of
3 it?

4 A. I believe there is audio on one camera angle. And I am
5 told, and I don't think I have listened to it, that it's
6 basically you can't hear much because of the movement in the
7 store. So although you may be able to hear some talking,
8 you can't discern specifically what's being said. That was
9 what I was advised of.

10 Q. And on that Monday morning when y'all met again, had
11 there been a number of witnesses interviewed over the
12 weekend?

13 A. Yes, there were about seven or eight critical witnesses
14 that were interviewed over the weekend.

15 Q. Including, I believe, Adan Soto?

16 A. Yes, Adan Soto and his wife Marlin.

17 Q. Uh-huh.

18 A. Several others. Dimas Lagunes, Esau Hernandez, Alfredo
19 Vidal, Jose Monroy, Roberto Gonzales Merrin.

20 Q. Roberto Gonzales Merrin, was he important in this case?

21 A. He was important, because he would be sort of an
22 independent witness that actually just happened to reside
23 across the street and he heard the arguments and saw
24 actually the victims trying to hand the defendant some
25 money. Then he saw the shooting and then saw the individual

1 take off in the van, so he was a pretty critical witness.

2 Q. And you said he was an independent witness?

3 A. Yes. One of the other pieces of information he gave us
4 was that he actually saw the victim, Pablo Gutierrez, lift
5 his hands and start to turn before the shooting. No, that
6 would become critical.

7 Q. And Mr. Gutierrez, did you become aware of where he was
8 actually shot and how many shots, do you know?

9 A. He was shot three times in the back.

10 Q. Did you also become aware of some forensics that had
11 been recovered from the scene that Monday?

12 A. Yes, we knew that there was drinking involved, so we
13 were very hopeful at that point. One of the best forms of
14 DNA is saliva. So if the defendant had had a couple of
15 beers, we felt confident we would get a DNA profile, in
16 addition to that possibly fingerprints off of some of the
17 cans that were left.

18 Q. Over the next week or so did you all continue to follow
19 up on possible leads on other suspects, as well as
20 collecting some buccal swabs from them as well?

21 A. We did. We collected buccal swabs from everybody that
22 we interviewed as a possible suspect based on what I just
23 said. We felt like if we hit on the right person, his DNA
24 would be on those beer cans.

25 Q. Were there decisions made, as far as what was to be

1 tested as far as the DNA?

2 A. Yes, we wanted the beer cans run, you know, in sort of
3 what we call it -- we have a rush formula that they drop
4 basically what they are doing when we have a crime like this
5 and we can usually get a pretty quick turnaround. Usually
6 within 48 hours.

7 Q. And that was requested?

8 A. Yes, ma'am.

9 Q. As well as were you aware of whether or not the crime
10 scene had been processed for fingerprints?

11 A. Yes, a number of the beer cans were collected. I think
12 even a chair was collected that we thought the defendant may
13 have been seated in. A number of items were brought back;
14 shell casings, that kind of thing.

15 We had -- we have actually gotten DNA in the past off
16 of shell casings. It's pretty rare, and possible partial
17 fingerprints.

18 Q. Turning on to August the 3rd of 2010, did you contact
19 the Louisiana State Analytical Infusion Exchange Center?

20 A. Yes, I did. Our first contact with them, which didn't
21 turn up any results, we focused on the partial tag. The
22 thinking there was we have had that happen here in South
23 Carolina with our DMV. If you get a partial tag and the
24 person is relatively certain about the sequence, you can get
25 runs or lists to see if you can find that vehicle, or one

1 like it, in that partial run. So our initial request was
2 for a run on the partial tag of MGN, and then there was a
3 question about the first digit. It's a 69. MGN blank 69.
4 So that's what we tried to have Louisiana Fusion Center run
5 first.

6 Q. And in your first request were you successful in
7 getting anything?

8 A. We didn't have anything close. Several of the tags
9 that had those characters had been transferred to other
10 vehicles or new tags from that tag kind of thing, so it
11 ended in nothing.

12 Q. Then on the 5th did you set it up so that a composite
13 drawing could be done of one of the witnesses?

14 A. Yes. That's not uncommon. Oftentimes when you have a
15 crime like this we will get a composite and disseminate to
16 the public in hopes that it will generate some leads. We
17 did that in this case.

18 I contacted Debbie Goff, who testified here as a SLED
19 artist. I have used her before. She did a composite
20 drawing with actually Alfredo Vidal.

21 Q. And what's the purpose of getting a composite drawing?
22 How can you use it to help to get a lead as to the identity
23 of the person?

24 A. Once again, if you can get that on a flyer or what we
25 call a BOLO, be on the lookout for, we can put it up at

1 convenience stores. We can put it on the news. And we have
2 gotten leads on cases like this before with composite
3 sketches.

4 Usually it's in companionship with other pieces of
5 information, not just a sketch, but the sketch with the
6 green and gold van, with the tattoo description, with the
7 age frame, that those things sometimes together mirror up in
8 somebody's mind and you might get a name that way.

9 Q. And did you actually send out BOLOS over the course of
10 the next week or so with that information?

11 A. Yes, we disseminated a number of these fliers and I
12 believe it also went out to the media.

13 Q. Then on the 6th did you all conduct a tattoo parlor
14 canvass?

15 A. Yes, I actually was personally involved in that. It
16 was an interesting experience. We felt like the unique
17 nature of these tattoos, that somebody in town may have done
18 it, and there is a number of tattoo parlors. We sent out
19 teams of detectives and hit the various locations and
20 described these tattoos and we got negative results on that,
21 but we got a lot of different interpretations and a lot of
22 explanations about tattoos, but nobody remembered that
23 particular series of tattoos.

24 Q. Over the course of the next week, or so, did you all
25 continue to try to run down possible leads, possible other

1 suspects in this case in an effort to solve this?

2 A. We did a number of things. We, of course, tried to
3 think creatively. We contacted the Louisiana Department of
4 Corrections and they have a tattoo database, believe it or
5 not, which is -- we don't have one in South Carolina. We
6 were pleased to learn that they did. We felt, you know, we
7 might get a break that way, and we found one particular
8 individual who had some common tattoos and sort of hit on
9 him a little bit until we found out he had died back in
10 2004, so that eliminated him from suspicion. That's just
11 one of the things that we did.

12 We checked rental car companies.

13 We did a number of things.

14 Q. And did y'all also try to canvass certain areas or
15 neighborhoods in and around this, or did they make reference
16 during the course of your investigation to try to create
17 leads?

18 A. Yes, ma'am. One of the critical pieces of information
19 that would turn out to be, especially critical as when we
20 got Mr. Parvin identified, was a conversation he had had
21 wherein he described where he lived to one of the witnesses,
22 Alfredo Vidal. He indicated that had lived in the Windsor
23 Lake area in a big curve. So we concentrated a canvass in
24 the Windsor Lake area, which is a pretty large area. It's
25 better known in the community. A lot of houses and the CAT

1 team helped us with that. They also did some checkpoints on
2 Windsor Lake Boulevard in that area in attempt to get a
3 lead.

4 Q. Turning your attention to Tuesday, the 17th, did y'all
5 have another meeting in order to try to regenerate this
6 investigation?

7 A. We did. We got a number of people in the meeting, some
8 who had not had direct involvement for fresh ideas, like
9 Brian Godfrey was in there, one of my sharper detectives
10 that just as an example, to run it by some people
11 independently to see if they had any other ideas. And we
12 did that and we came up with sort of a list of things. One
13 of those things was the door do door canvass of Windsor
14 Lake -- a further canvass of the Windsor Lake area.

15 But one of the other things we decided to do, and it
16 wound up being the thing that broke the case, we reached
17 back out to the Fusion Center in Louisiana. We asked them
18 not just for the tag number, but we asked them for all Kia
19 Sedona vans.

20 By this time we had learned that the two tone emerald
21 green and gold model was made between 2002 and 2005. That
22 was critical. We asked for a list of all Kia Sedona vans in
23 the State of Louisiana that were dated years 2002 to 2005,
24 and that wound up being the thing that turned the case.

25 Q. And so this expanded the search, but not limited it

1 case one of the letters was wrong?

2 A. It took the sequence out of play and just let us focus
3 on all the vehicles, and then let us go back and plug in the
4 sequence to see if we found a match.

5 Q. And did you actually on the evening of the 17th make
6 contact with a Lyn Lesage from Louisiana?

7 A. Yes, I had been in touch with Ms. Lesage, who's an
8 investigative specialist with the Louisiana State Police,
9 and she took personal interest in this case. She actually
10 went to a Kia dealership down the road from her office,
11 which is a lot for somebody to do out of state, which I
12 appreciated, and got the -- she was trying to determine if
13 there might be something in the VIN that referenced a paint
14 code in the car, and it turned out that that wasn't the
15 case, but she was interested in it and she sent us an excel
16 spread sheet with thousands of Kia Sedona vans on it.

17 Q. And, in fact, how many thousand was it?

18 A. I think there was about 19,000 total is what my notes
19 indicate. It was page after page. Apparently that's a
20 pretty popular vehicle.

21 Q. And that was turned over to you all I believe on the --

22 A. Late on the 18th she e-mailed me the list and I opened
23 them up on the morning of the 19th. Sort of overwhelmed
24 with that amount of data, I enlisted the aid of Audra
25 Linfert, who testified here yesterday, I believe, who had

1 some previous expertise with excel spread sheets that I
2 didn't have, and she simply alphabetized the column in
3 question of the tags and went to the M's and found one that
4 was pretty dad-gum close.

5 Q. Let me back up for a second. On the evening of the
6 18th, are you familiar with the term reverse 9-1-1?

7 A. Yes.

8 Q. What is that?

9 A. It's a way that we can inform the public of certain
10 things that may be happening in their area. A good example
11 is if we have an escape from the prison or something and we
12 have a description out around the Broad River road area, we
13 can send out a message to all homes in certain
14 neighborhoods. In let's say the Broad River Road area, say
15 there is an escape, lock your doors, be on the lookout for
16 suspicious people. We can use it for any case, even
17 investigations like this. And we had put out a reverse
18 9-1-1 for the Windsor Lake area in an effort, again, just
19 likes a canvass, just like a DL checkpoint, to try to get
20 somebody to tell us who this guy might be.

21 Q. And the reverse 9-1-1, what information would you have
22 sent out on this?

23 A. We put out the nature of the fact that there was a
24 crime and then the description and then the vehicle
25 description and the fact the person was believed to be or

1 frequent or reside in the Windsor Lake area.

2 Q. You mentioned that on Thursday, the 19th, that Ms.
3 Linfert was actually able to reorganize the excel spread
4 sheet of the tag numbers?

5 A. Yes.

6 Q. And came up with some information that proved critical?

7 A. She did.

8 Q. How did that happen?

9 A. She -- again, she alphabetized the column. And we were
10 looking for MGN, number blank 69. MGN blank 69. When she
11 alphabetized it, she came up with an MBG 869. She brought
12 that over to my office and she said "this one is close."
13 And I said "well, you know, it sure is close." And it was
14 registered to a Leslie Todd Parvin, 6428-A Guinea Street in
15 Fort Polk, Louisiana.

16 Q. Fort Polk, Louisiana?

17 A. Fort Polk, Louisiana.

18 Q. And at that point the only information you had was that
19 this person resided in Fort Polk?

20 A. That's right.

21 Q. What did you do?

22 A. I took that information, which included -- I was able
23 to come up with a date of birth, and the name Parvin is a
24 little bit unusual, and I plugged that into the database we
25 have that we pay for called Accurint. It's a people search

1 database.

2 COURT REPORTER: It's called, I'm sorry?

3 THE WITNESS: Accurint, A-C-U-R-R-I-N-T.

4 A. I plugged that into Accurint and I immediately got a
5 hit. And the hit put Leslie Todd Parvin not residing at
6 Fort Polk, but residing at 7930 Bay Springs Road, Columbia,
7 South Carolina. I became sort of excited about that because
8 I knew to how close that was to Woodfield Park.

9 BY MS. CAMPBELL:

10 Q. And in what community is Bay Springs Road?

11 A. Windsor Lake.

12 Q. And was that corroborating the information that you had
13 gotten from eyewitnesses?

14 A. It totally corroborated it.

15 Q. Once you got that information what did you do?

16 A. We began checking further into this individual named
17 Leslie Todd Parvin. We ran various checks on him. We found
18 out that he had been in the military.

19 We contacted Roland Hill at Fort Jackson, who you heard
20 from previously. We learned that he had previously owned a
21 45 Norinco semiautomatic pistol, which was on our list of
22 possible pistols used in this crime.

23 We learned that he had a Texas driver's license,
24 because obviously we wanted to get a picture of him as soon
25 as possible. One of our procedures is to do photographic

1 lineups with witnesses if we can get a good picture. In
2 this case one of my sergeant, Sergeant Ellis, who you heard
3 from I believe yesterday, was able to secure a picture and
4 actually get a lineup from the State of Texas.

5 Q. And did Sergeant Ellis also do any other Google
6 searches, as far as this location on Bay Springs Road?

7 A. He did. Obviously we were moving towards preparation
8 of the search warrant. We felt like this is our man. A lot
9 of times we will do a Google search. It's modern
10 technology. You can get actually a picture of the house.
11 And he got an overhead picture. He came trotting back in my
12 office and he said "here is the house and here is your van
13 parked right in front of it." So that was pretty telling at
14 that point.

15 Q. What did y'all do next that day when you were getting
16 all this information coming in? Did y'all actually develop
17 a photo lineup?

18 A. The photo lineup was developed for us in the State of
19 Texas. It was e-mailed to Sergeant Ellis. We printed off
20 multiple color copies of it. And Investigator Gonzalez is
21 now on board in the investigation, went out to try to show
22 it to the witnesses.

23 Q. And that day as well did you also send Investigator
24 Jordan out to gather information for a search warrant?

25 A. Once we had him identified, we wanted to sit on the

1 house immediately to see, to gather some intel, gather who
2 may be there, who may be coming and going, vehicles that may
3 be there. I sent Jordan out to the location and he
4 immediately called me back with a Nextel information saying
5 that the van wasn't there.

6 Q. That day, that afternoon, were y'all able to make
7 contact with two of the witnesses and show them photo
8 lineups?

9 A. Yes, we were.

10 Q. And were they able to independently corroborate the
11 information that you had?

12 A. There were positive ID's from both of them.

13 Q. Based on all that information that you had just at that
14 point -- this is before the DNA fingerprints or anything
15 else, right?

16 A. Yes, ma'am.

17 Q. Were you able to get a lawful arrest warrant?

18 A. Yes, the totality of the information we have gathered
19 so far, putting the van with the tag and the proximity where
20 he lived with statements from the witnesses and the
21 photographic lineup with ID's was sufficient enough to get
22 to the level of probable cause, which we call it, to get an
23 arrest warrant and a search warrant at that house.

24 Q. And those were signed off on by a magistrate or a judge
25 here in town?

1 A. Yes. Investigator Gwyn, the case officer, actually
2 went and secured those documents.

3 Q. In the course of the afternoon did you also -- in
4 addition to sending out people to do surveillance on the
5 location, did you also get information about Mr. Parvin's
6 wife?

7 A. Yes. We learned that she was employed at a local
8 elementary school and I sent two supervisors, a lieutenant
9 and sergeant, to try to -- in these situations you want to
10 use a little tact and it was my decision to approach it that
11 way. Sometimes we don't know how to handle it the right
12 way, but we sent -- I sent them to the elementary school to
13 make contact with her, number one, to find out where her
14 husband was.

15 We learned by this time there were children involved.
16 You got a double murder suspect, military experience, I
17 don't want to put anybody in harm's way.

18 What I do is to make contact with her to get some
19 information about where he might be. Rather than going and
20 kicking the door of her house and traumatize her kids, you
21 know, possibly get them removed, we had to do the search,
22 those are the kinds of things that I was thinking about at
23 the time, and it nearly turned -- it nearly didn't work out
24 real well.

25 Q. Okay. That afternoon the people that were surveilling

1 the house, did they also give you information that a certain
2 person had left the house before y'all got there?

3 A. Yes, one of my surveillance people, I think I had Tai
4 Jordan and a narcotics agent or two who were excellent at
5 that kind of thing, observed the elder Parvin leave. It was
6 about the time school would be letting out and we surmised
7 that he was going to pick up one of the kids, a couple of
8 the kids, and we actually followed him to Richland Northeast
9 High School. That's indeed what he did.

10 Q. Did you speak to both Shanna Parvin and the father of
11 Mr. Parvin about the defendant's whereabouts?

12 A. Actually I had not talked to Ms. Parvin yet. My
13 lieutenant and my sergeant were on the way with her to the
14 house with the key.

15 The elder Parvin drove up and I actually communicated
16 with him. By this time I had learned from lieutenant and
17 the sergeant that Leslie Todd Parvin was alleged to be in
18 Texas. The elder Parvin told me the same thing. And as he
19 told me that, without hesitation I believed him.

20 And we were waiting for Ms. Parvin to show up with the
21 key so we could again affect entry, get the kids away from
22 there, you know, and be respectful and do a search that we
23 needed to do.

24 Q. And during the course of that afternoon did you also
25 find out that one of the children may be in the house?

1 A. We actually -- one of my detectives that was in the
2 driveway, may have been Investigator Gonzalez, I'm not sure,
3 detected movement. We had I think two of the kids accounted
4 for at that time. We asked Ms. Parvin, who had arrived at
5 that time, who else would be in the house and she said her
6 older son might be. And we were able to call him out and he
7 actually emerged from a back door, came out. It looked like
8 he may have been taking a nap, or asleep, or something. I
9 don't think he had a shirt on, so we felt like that
10 satisfied our suspicion about, you know, one other person
11 being in the house.

12 Q. But did y'all -- were y'all able to make entry into the
13 house to search and make sure the defendant wasn't there?

14 A. Yes, we got the garage door up and we were getting
15 ready to go in, and I was actually talking to the elder Mr.
16 Parvin and I heard the kind of thing I have heard before,
17 "get on the ground. Get on the ground." I knew exactly
18 what that means, that a suspect has been encountered, and I
19 kind of took off real fast to the area of the house in time
20 to see Investigator Gonzalez, Randy James, I believe, and
21 Brien Gwyn securing the defendant, and we were shocked that
22 he was in the house.

23 Q. And at that point did you observe anything about the
24 defendant that further corroborated the information that the
25 witnesses had been telling you about?

1 A. I had been looking for these tattoos for three weeks
2 working this case. I lifted his shirt up and I saw what I
3 had been looking for. They were exactly as described by
4 these witnesses.

5 Q. Was the defendant then transported to headquarters?

6 A. He was.

7 Q. And after that did you make contact with Shanna Parvin?

8 A. I made contact with Shanna Parvin before we left the
9 location. I went and challenged her about her claim that
10 her husband was in Texas. I was relatively upset about
11 that. I felt like it put my men in harm's way and that
12 upset me as a supervisor. If something happened to one of
13 my men that day because of that mistruth, it would have been
14 on me, and it bothers me to this day, so I talked to her
15 about that.

16 And then the elder Mr. Parvin, I had a similar
17 conversation with him at the scene before we left the
18 search.

19 Q. Neither the elder Mr. Parvin nor Shanna Parvin were
20 under arrest, though?

21 A. They weren't, and we asked both of them if they would
22 be willing to come to the office for further interview and
23 they both agreed to do that.

24 Q. Mr. Parvin, the defendant, was transported back to the
25 headquarters. Did you remain there at the scene and

1 participate in the search?

2 A. I did. We called a number of detectives in to assist.
3 It's a four bedroom house, a pretty big house. I think it
4 actually may have been --

5 MS. DAVIS: Your Honor, may Ms. Campbell and I
6 approach?

7 THE COURT: Yes.

8 (Whereupon, the lawyers approached the bench for
9 an off-the-record discussion)

10 BY MS. CAMPBELL:

11 Q. And just answer my specific questions here.

12 During the course of that search did you find some
13 paperwork or was some paperwork found about the Kia van?

14 A. Yes, ma'am. I think I actually found that in a file
15 cabinet in the room where there was a pool table. This
16 whole file, I remember flipping through it and finding it
17 was all related to the '02 Kia Sedona van that wasn't at the
18 house.

19 Q. And that was the van that you were looking for?

20 A. Yes, ma'am.

21 Q. And what was the role of that van in that family?

22 A. Well, it was obviously the family vehicle. They got
23 three sons. I think there was a white pickup truck out
24 there, and the elder Parvin drove a pickup truck. I'm not
25 sure what Mrs. Parvin drove, but that was obviously -- it's

1 a Kia Sedona, family van.

2 Q. And during the course of that search also I believe
3 there were the two handguns that had been referenced to
4 earlier?

5 A. Yes.

6 Q. As well as some ammunition?

7 A. Yes.

8 Q. Were you able to find the Norinco 45 that was
9 registered to the defendant?

10 A. No, we weren't.

11 Q. While you were at the house did y'all make provisions
12 that the children were taken care of?

13 A. Yes. You know, I'm conscious of this because I have
14 children. You don't want to traumatize these -- they were
15 older kids, but you don't want to traumatize them.

16 MS. DAVIS: Objection, Your Honor. This is
17 improper personal testimony from the gentleman here.

18 THE COURT: Response?

19 MS. CAMPBELL: I'm at a loss. I don't know what's
20 personal about it. It's just to show that the police did
21 their job that day.

22 THE COURT: Objection is overruled.

23 MS. CAMPBELL: Thank you.

24 BY MS. CAMPBELL:

25 Q. Go ahead.

1 A. I was respectful of their having to deal with this
2 situation, and so we had them isolated in the garage while
3 we conducted the search. I had a deputy there with them.

4 I tried to explain to them what was taking place
5 myself. And then before we left I wanted to make sure with
6 Mrs. Parvin if it was okay for the older boy, who I believe
7 was 19, to stay with them while she and her father-in-law
8 came to the office and she indicated that they ought to stay
9 with them and that would be fine.

10 Q. And so they were -- the three of them -- the two
11 younger boys were left in the care of the 19 year old?

12 A. That's correct.

13 Q. That evening were statements taken from Shanna Parvin
14 and the elder Mr. Parvin?

15 A. Yes.

16 Q. And were you able to gain information that further
17 corroborated your investigation?

18 A. Both statements corroborated the investigation.

19 Q. And at that point did you also follow up and get some
20 more records about information they gave you?

21 A. Yes. In particular was the stay at the Jamestown Inn
22 on the night of the incident, which was sort of critical, as
23 far as intent I guess to get the family away from that
24 house. We verified that information.

25 Q. And that was this Jamestown Suites, I believe, Inn?

1 A. Jamestown Inn.

2 Q. And how many nights did Shanna Parvin and I think one
3 of her sons stay there?

4 A. I believe it was Josh that stayed there one night, I
5 believe.

6 Q. And y'all were able to get those records?

7 A. Yes.

8 Q. Did y'all also attempt to get information from
9 Louisiana after that?

10 A. Yes, we -- we had learned through the interviews that
11 possibly the defendant had stayed in a motel in Shreveport,
12 an Extended Stay Inn, and we tried to reach out to them, the
13 Shreveport authorities, not only to verify that, but to see
14 if they could recover the van that we were looking for.

15 We also contacted the defendant's mother-in-law in
16 Abilene, Texas to confirm portions of the story that they
17 went there, that he and his father had gone there after the
18 father went to Louisiana and picked him up.

19 We also attempted to go ahead and get some searches
20 going for some cell phone records.

21 Q. Specifically did y'all try to put a BOLO out searching
22 for the van?

23 A. Yes. By this time, of course, we had it entered into
24 the NCIC.

25 Q. What is NCIC?

1 A. The National Crime Information Computer, which goes
2 nationwide for vehicles and missing persons and things like
3 that. Obviously the vehicle wasn't around here, and based
4 on statements, it didn't return to South Carolina.

5 Q. At that point, though, you didn't know where the
6 vehicle was?

7 A. We had a feeling it was in the Louisiana area, based on
8 the statements that we had taken.

9 Q. At a later date did it come to your attention of what
10 happened to the vehicle?

11 A. Yes, we later learned that the vehicle had been
12 salvaged or crushed.

13 Q. Where?

14 A. In Louisiana.

15 Q. By whom?

16 A. By an independent --

17 Q. Who submitted -- who gave you --

18 A. Louisiana Department of Motor Vehicles.

19 Q. Confirmed that information?

20 A. Yes.

21 Q. And who had contacted the salvage company to have it
22 crushed?

23 A. The defendant.

24 Q. But at that point you didn't know that?

25 A. No, ma'am.

1 Q. That night that the defendant was taken into custody,
2 did you have someone take major case prints?

3 A. Yes, we had major case prints taken. We photographed
4 the tattoos. And we went and got a search warrant for the
5 buccal swab, which the jury has heard the other day is
6 basically an oral -- it's a Q-tip to get DNA. So we did
7 that, all of that the same night.

8 Q. So you went and got a search warrant again by another
9 judge?

10 A. Yes.

11 Q. In order to be able to get the known standard from him?

12 A. That's correct.

13 Q. I'm going to show you what's been marked as State's
14 Exhibits No. 179, 181 and 184. Are those the tattoos that
15 you are referring to?

16 A. They are.

17 Q. Later that day were you also able to -- or that day or
18 the next day, actually I guess after the arrest, were you
19 also able to get information about fingerprint matches?

20 A. Yes. I learned that night Sergeant Richards advised me
21 he had a preliminary match that night, but as is the case
22 with DNA, their matches have to be confirmed by another
23 examiner, but when he said it was a match, I knew it was a
24 match and the next day it was confirmed.

25 Q. Sorry, I left one thing out. Let me back up.

1 State's Exhibit No. 186, this shows one of his ears.

2 Was that significant when you had that photograph?

3 A. Yes, ma'am. The hole like that was in both earlobes
4 and that was the stretch marks made by the -- I think they
5 call them gages.

6 MS. CAMPBELL: Your Honor, permission to publish?

7 THE COURT: Yes.

8 MS. CAMPBELL: Thank you.

9 BY MS. CAMPBELL:

10 Q. While you were in the home that night and the search
11 was going on, did you observe any anything about the phone
12 or the phone line about the reverse 9-1-1 call?

13 A. Yeah, I believe it was on the caller ID the fact that
14 the reverse 9-1-1 ironically had gone to the Parvin home.

15 Q. From July the 30th until August the 19th had Leslie
16 Parvin, the defendant in this case, ever contacted law
17 enforcement, to your knowledge?

18 A. No, ma'am.

19 Q. Had any of his family members ever contacted law
20 enforcement?

21 A. No, ma'am.

22 Q. In this case I believe you indicated that one
23 investigator, Willie Gonzalez, actually went back and he
24 re-interviewed some of the witnesses?

25 A. He did.

1 Q. Why did you decide to do that, sir?

2 A. I have confidence in the other deputies that were doing
3 some interpretation, but I have -- I have known Willie for a
4 number of years and he is a veteran seasoned detective
5 interviewer and I felt more comfortable with him going
6 back --

7 MR. SHEALEY: Objection.

8 A. -- to --

9 THE COURT: Objection is overruled.

10 A. I felt more comfortable with him going back to
11 re-interview these witnesses, just to make sure we hadn't
12 missed something. If you haven't worked cases like Willie
13 has or like I have or like Brien Gwyn has --

14 MR. SHEALEY: Objection.

15 A. -- you don't know what questions to ask.

16 THE COURT: Pardon me?

17 MR. SHEALEY: Improper bolstering, Your Honor.

18 THE COURT: Objection is overruled.

19 A. Sometimes you don't know what questions to ask. You
20 might not ask the right questions. And I know Willie does
21 know, and I wanted Willie to go back and re-interview the
22 witnesses. In particular, I wanted him to go back to the
23 witness with the tag and make sure -- see just how sure he
24 was that it was a Kia Sedona. It turned out he was -- he
25 nailed it.

1 BY MS. CAMPBELL:

2 Q. Also it was in the course of this investigation you
3 testified about the van. Were you ever able to recover the
4 actual Norinco 45 that was used in this?

5 A. No, ma'am.

6 Q. And you are familiar with the term of trajectory, as
7 far as shell casings and being able to -- were you able
8 to -- if you aren't able to find the gun itself, could you
9 just go out and buy another Norinco 45 and submit it for
10 testing?

11 A. No, ma'am.

12 Q. Why not?

13 A. Because it wouldn't have mattered, because each gun --
14 each gun ejects shells in a different way.

15 I have been on our pistol range and --

16 MR. SHEALEY: Objection, Your Honor. I don't
17 believe this witness is qualified to testify to this.

18 THE COURT: What says the State?

19 MS. CAMPBELL: Your Honor, I believe in his
20 personal experience he can talk about his observations, not
21 his expertise.

22 MR. SHEALEY: I believe Ms. Campbell was asking
23 him for his opinion in trajectory. She had a firearms
24 analyst here.

25 THE COURT: I sustain the objection.

1 BY MS. CAMPBELL:

2 Q. There have been questions -- did you ever --

3 MS. CAMPBELL: Let me rephrase, Your Honor.

4 BY MS. CAMPBELL:

5 Q. Did you ever submit a Norinco 45 for testing?

6 A. No, ma'am.

7 Q. Why not?

8 A. We didn't have the right one.

9 Q. Have you ever been able to find the Norinco 45 that was
10 used in this?

11 A. No, ma'am.

12 Q. Is that unusual, in your experience?

13 MR. SHEALEY: Objection. Asked and answered, Your
14 Honor.

15 THE COURT: Objection is overruled.

16 MS. CAMPBELL: Thank you.

17 A. It's very normal for a murder weapon to disappear.

18 BY MS. CAMPBELL:

19 Q. In this case this defendant was charged with two counts
20 of murder?

21 A. Yes, ma'am.

22 Q. How long have you been in law enforcement?

23 A. Since June of 1984.

24 Q. Based on your investigation in this case, were those
25 the appropriate charges in this case?

1 A. Very appropriate.

2 Q. There has also been many questions about the homosexual
3 allegations in this case?

4 A. Yes, ma'am.

5 Q. Is that evidence that you make up?

6 A. No, ma'am, that's not something we created. That's the
7 witness testimony that came our way. I don't -- I don't
8 know what his -- Mr. Parvin's sexual orientation is, but
9 it's information that came our way in this investigation
10 that could lead to the sequence of events as described by
11 the surviving witnesses.

12 Q. And, finally, there has been some questions about
13 whether or not Mr. Parvin made any effort to disguise his
14 identity in this Hispanic community?

15 A. He not only -- he made efforts to disguise his identity
16 and shave his head and took out the ear things, and he fled
17 the state, got rid of the van and got rid of the murder
18 weapon.

19 Q. The person that y'all arrested that day and charged
20 with murder, two counts of murder, do you see him here in
21 the courtroom?

22 A. He's between Mr. Shealey and Ms. Pringle.

23 MS. CAMPBELL: Thank you, Your Honor.

24 May the record reflect he's identified the
25 defendant?

1 THE COURT: All right.

2 Mr. Shealey?

3 MR. SHEALEY: May it please the court.

4 CROSS EXAMINATION BY MR. SHEALEY:

5 Q. You have been in law enforcement a pretty good while
6 now, correct?

7 A. June of '84.

8 Q. And you are currently -- or were at the time in charge
9 of the major crime division?

10 A. Yes, sir.

11 Q. And I think you said that you have expanded somewhat
12 right now. You were captain then, major now, correct?

13 A. Yes, sir.

14 Q. And just typically when you are dealing with a case
15 like this, also you are going to do investigative followup,
16 right?

17 A. Yes, sir.

18 Q. And you got that with you today?

19 A. I do.

20 Q. And the point of that is so that you obviously know
21 what you have done and six months later you can talk about
22 it with everybody, right?

23 A. And so everybody else can know what I have done,
24 including you and the prosecution.

25 Q. Right. Them, us, everybody?

1 A. Right.

2 Q. Because it's hard to remember that stuff? Cases
3 sometimes don't go to trial for five years, four years,
4 sixteen months, whatever, right?

5 A. It's also part of the discovery process. It's not just
6 based on memory.

7 Q. Correct.

8 Now, you want this thing to be as accurate as possible,
9 right?

10 A. Try to be.

11 Q. Now, we have heard from Investigator Gwyn and this was
12 his case as lead investigator, but like you told Ms.
13 Campbell, you were his supervisor?

14 A. I was.

15 Q. And you were staying involved actually throughout this
16 entire process, right?

17 A. In some aspects of it, yes, sir.

18 Q. Okay. And you were there making the arrest with those
19 guys, right?

20 A. I was.

21 Q. You were involved?

22 A. I was.

23 Q. And I think you start out -- you first hear about this
24 on July 30th of last year. You were actually at a different
25 crime scene doing some other work with Investigator Gwyn,

1 right?

2 A. Yeah, we were doing a search warrant at a suspect's
3 house on another murder.

4 Q. Right.

5 And you heard about this and dispatched him to start
6 working on this with some other investigators, right?

7 A. Right.

8 Q. You didn't actually go to that scene that night, right?

9 A. No, sir.

10 Q. But you were being made aware of what was going on over
11 at that scene, right?

12 A. Yes, sir.

13 Q. As you worked the other scene?

14 A. Yes, that's what I meant by I wasn't absolutely
15 involved in every aspect, but, yes.

16 Q. You were the supervisor?

17 A. I get informed as things go and I was involved in
18 certain aspects.

19 Q. And that night you got an update on a couple of things.
20 You got updated that you had two deceased, one by the name
21 of Edgar Lopez, right?

22 A. Yes, sir.

23 Q. One by the name of Pablo Gutierrez-Guzman, correct?

24 A. Yes, sir.

25 Q. And he had an alias of Francisco Medina, per your

1 notes, correct?

2 A. Is that paragraph one?

3 Q. Yes, sir, right there when you are talking about the
4 identity of the people.

5 A. Yes, sir.

6 Q. All right. And that he, Mr. Gutierrez, or Medina, had
7 lived at Northgate Mobile Home Park, lot 86, correct?

8 A. Yes.

9 Q. He was from Mexico and Mr. Lopez was from Guatemala,
10 correct?

11 A. I don't know that that's in my notes, but I won't
12 dispute that if you know that to be the case.

13 Q. You are the supervisor of this and you have dealt with
14 this case directly?

15 A. Yeah, but I don't recall that detail, but I won't
16 dispute it if you say.

17 Q. Okay. I like the way that works.

18 Do you dispute that he had a Mexican identification
19 card in his pocket the night --

20 A. I don't know.

21 Q. You don't know?

22 A. No, sir.

23 Q. Okay. You don't dispute that these two gentlemen were
24 here in our country illegally?

25 MS. CAMPBELL: Objection, Your Honor.

1 May we approach?

2 (Whereupon, the lawyers approached the bench for
3 an off-the-record discussion)

4 THE COURT: The objection is sustained.

5 The jury is to disregard the question.

6 BY MR. SHEALEY:

7 Q. In getting more information relayed from the scene, as
8 you told Ms. Campbell, you realized that all the witnesses
9 spoke Spanish, right?

10 A. Yes, sir.

11 Q. And you note -- you list them. Adan Soto, right?

12 A. Yes, sir.

13 Q. Dimas Lagunes, right?

14 A. Right.

15 Q. Esau Hernandez Monroy, correct?

16 A. Yes, sir.

17 Q. Alfredo Vidal?

18 A. Yes, sir.

19 Q. Esau Hernandez Monroy, right?

20 A. Yes.

21 Q. Y'all didn't actually call him, did you?

22 A. I don't -- I wasn't here that afternoon. I don't know
23 whether they did or not. I don't think so.

24 Q. Will you take my word for it if I tell you that they
25 didn't call him?

1 A. I might.

2 MS. CAMPBELL: Your Honor, that's improper.

3 BY MR. SHEALEY:

4 Q. As far as you know, you haven't called him in the case?

5 A. Again, I don't know who they called and who they didn't
6 call.

7 Q. Okay. Roberto Gonzales Merrin, the neighbor, correct?

8 A. Yes.

9 Q. That would be the other witness?

10 A. Yes, sir.

11 Q. And Jose Luis Monroy?

12 A. Yes, sir.

13 Q. And you mentioned deploying some of your Spanish
14 speaking deputies out there to talk to these gentlemen?

15 A. Yes.

16 Q. All right. And multiple statements were taken, right?

17 A. They were.

18 Q. And it was important to keep these guys here available
19 until 16 months later so they could come to trial, right?

20 A. It's important to have witnesses on board to come to
21 trial, yes, sir.

22 Q. Correct.

23 Now I want to talk to you more about -- I care less
24 about the rest of the search, but I want to talk to you
25 about your attention the day of the arrest on August 19th,

1 2010, okay?

2 A. Okay.

3 Q. You can turn to your notes if you need to, but that was
4 the date that y'all actually had an identity for Todd
5 Parvin?

6 A. Right.

7 Q. And that came via the car and getting a lead that way
8 and you started figuring out where he actually lived, right,
9 in Windsor Lake?

10 A. Yes.

11 Q. Right where he told Alfredo where he lived, right, as
12 far as you know?

13 A. That's correct. That's why it was significant.

14 Q. Right.

15 And you begin sending some investigators to survey the
16 house and you got some Google map searches here, right?

17 A. Yes, sir.

18 Q. Investigators begin running -- and you all have access
19 to the Accurint database that you are talking about?

20 A. Yes, sir.

21 Q. And tells you addresses and other identifying
22 information, correct?

23 A. That's right.

24 Q. Tells you places where he had lived, right?

25 A. It does.

1 Q. So you learned that he -- you learned he was in the
2 military at this point?

3 A. Yes.

4 Q. That he had lived at Fort Bragg, right?

5 A. Fort Campbell, Kentucky; Fort Bragg.

6 Q. Fort Polk?

7 A. Fort Polk, yes, sir.

8 Q. And so on.

9 You learned that he had registered -- you learned that
10 he had registered his 45-caliber Norinco with the Army,
11 right?

12 A. That's correct.

13 Q. You were here earlier when we heard from Investigator
14 Roland to talk about that process, right?

15 A. Roland Hill.

16 Q. Roland Hill?

17 A. Yes, sir.

18 Q. Anytime that you go on base, that's what you have to do
19 to get it to be proper with the military?

20 A. That's right.

21 Q. And he did that, correct?

22 A. Yes, sir.

23 Q. You learned that he had no criminal record, correct?

24 A. That's right.

25 Q. That his wife was a school -- or school teacher's

1 assistant at Windsor Lake Elementary here in Columbia,
2 right?

3 A. Yes, sir, I believe that's correct.

4 Q. And when you started -- you got the search warrant, you
5 got the arrest warrant and started thinking about going to
6 his house?

7 A. Yes, sir.

8 Q. Okay. You sent some guys over there, some
9 investigators. A team of people I think you described it,
10 right?

11 A. That's correct.

12 Q. And I think eventually you were there with them as
13 well?

14 A. I was.

15 Q. Correct.

16 You had learned that he had three sons, correct?

17 A. I did.

18 Q. Okay. At the time John and James were both still in
19 school at Richland Northeast, correct?

20 A. I think there were two of them at school at Richland
21 Northeast.

22 Q. Right. The two -- the middle and the youngest?

23 A. I believe that's right, yes, sir.

24 Q. Okay. And y'all had watched as Todd's dad went to go
25 pick them up from school that day, right?

1 A. Some of my men did, yes, sir.

2 Q. Somebody was sent to follow him and he eventually came
3 back with the boys, right?

4 A. That's correct.

5 Q. And you had talked to Shanna. Someone had met her
6 where she was working at school and trying to affect her
7 just using the key and go inside, right?

8 A. Lieutenant McDonald and Sergeant Isenhoward went to the
9 school and talked to her, yes.

10 Q. Now, I think you testified that at some point someone
11 had seen a shadow and then the oldest son Joshua comes
12 walking out of the house, right?

13 A. He did.

14 Q. He is shirtless and you surmised and thought he was
15 taking a nap, maybe?

16 A. I did.

17 Q. Okay. And then I believe at this point senior Parvin
18 comes back and he's able to open the garage door and you
19 guys decide to start going in and executing the search
20 warrant?

21 A. I'm not sure how the door was open. I have heard that
22 testimony. I'm not sure I remember that, but, anyway, the
23 garage door was raised.

24 Q. Right.

25 And at this time you are still talking to Mr. Parvin,

1 right?

2 A. I was.

3 Q. And would you agree that it was Gwyn, Gonzalez, Linfert
4 and James that went inside to execute a search warrant?

5 A. I believe Willie first. Willie encountered the
6 defendant and then the others were right on top of it, yes,
7 sir.

8 Q. Right.

9 A. So I'm not sure at that point if they were all going to
10 execute the search warrant. I think they all got in there
11 as a result of what Willie saw.

12 Q. Okay. I'm going to bring this down here real quick.

13 This may not work for me. I don't believe it's going
14 to work for me.

15 One second.

16 A. Take your time.

17 Q. All right. And you were -- is that the one and only
18 time you went to that house personally with that search
19 warrant?

20 A. I believe it was.

21 Q. Okay. So I'm going to have to draw it a little bit,
22 just -- basically you got your basic ranch style home. And
23 this is going to be rudimentary, but here is your garage.
24 All right, we will call that the garage. Enter into the
25 kitchen. All right, we have got a room off the kitchen,

1 with the entranceway from the kitchen into the den, which
2 would be here.

3 MS. CAMPBELL: Your Honor, I would object at this
4 point. To have the witness directing us on how to draw it
5 or what to put up there, that would be one thing, but for
6 him just to be drawing it based on his interpretation I
7 don't think would be appropriate.

8 THE COURT: While he's drawing I'll give the jury
9 a break.

10 You can go to the jury room. We'll take about
11 five minutes.

12 (The following takes place outside the presence of
13 the jury panel)

14 THE COURT: We will take about five minutes.

15 (Whereupon, proceedings were recessed)

16 (Whereupon, proceedings were reconvened)

17 THE COURT: Bring the jury, please.

18 THE BAILIFF: Yes, sir.

19 (The following takes place in the presence of the
20 jury panel)

21 THE BAILIFF: Your Honor, the jury is present.

22 THE COURT: You may continue.

23 MR. SHEALEY: Thank you. May it please the court?

24 BY MR. SHEALEY:

25 Q. All right. Now that we have got my very rudimentary

1 drawing finished, this is the basic house. Correct me if
2 I'm wrong. You were there. This is the garage. This is
3 where your team made entry through here, up these steps into
4 this is what I try to call the kitchen, right? There is an
5 entranceway here that goes into the pool room area, then den
6 area, correct?

7 A. Yes, sir. I'm not sure about your wall there.

8 Q. Right. It's very rudimentary.

9 A. Yes, sir.

10 Q. Generally the front of the house is up here and there
11 is a front door that comes into a foyer, right?

12 A. That's correct.

13 Q. And the backyard is here and there is a sliding door
14 that goes in the backyard, right?

15 A. I believe there was a sliding door.

16 Q. Right.

17 And your team came through here and arrested Todd,
18 right?

19 A. Yes, sir.

20 Q. And I believe Mr. Willie Gonzalez said by the pool
21 table, right?

22 A. Well, the way I remember his testimony is he was over
23 here lurking by the corner and that he finally affected the
24 arrest by the pool table.

25 Q. Okay.

1 A. But I remember something about the corner area.

2 Peaking out from the hallway is what I remember him saying.

3 Q. Okay. But when you --

4 A. But when I got there he was on that spot there, yes,
5 sir.

6 Q. Right.

7 You hear them tell him to get down and you, per your
8 notes, sprint and find him arrested here?

9 A. I believe I'm the one that actually put the handcuffs
10 on him, so I got there in time for that.

11 Q. They had him detained?

12 A. Yes.

13 Q. You got to put the handcuffs on him?

14 A. Yes, sir.

15 Q. Okay. And your notes indicate his wife was very upset
16 and his dad is showing grief on his face?

17 A. He was, yes, sir.

18 Q. Okay.

19 MR. SHEALEY: Beg the court's indulgence.

20 (Off the record)

21 (Back on the record)

22 MR. SHEALEY: Nothing further, judge. Thank you.

23 THE COURT: Anything further?

24 MS. CAMPBELL: I don't have anything, Your Honor.

25 THE COURT: All right. Thank you. You can step

1 down.

2 Next witness from the State.

3 MS. WALKER: Your Honor, at this time the State
4 rests.

5 THE COURT: All right, ladies and gentlemen, the
6 State has rested. You have heard the State's case. We now
7 must discuss some additional matters outside your presence.
8 I need you to go to the jury room again. Please do not
9 discuss the case.

10 (The following takes place outside the presence of
11 the jury panel)

12 THE COURT: Any matters of law at this time for
13 the defense?

14 MR. SHEALEY: Yes, Your Honor.

15 At this time the defense would move for a directed
16 verdict. I cite State v. Buckmon.

17 COURT REPORTER: Buckmon?

18 MR. SHEALEY: Buckmon, 347 SC 316, 2001.

19 A defendant is entitled to a directed verdict when
20 the State failed to produce evidence of the offense charged.
21 Id. If there is any direct evidence or substantial
22 circumstantial evidence reasonably tending to prove the
23 guilt of the accused, the case should be submitted to the
24 jury.

25 Mr. Parvin is charged with two counts of murder.

1 Listening to the testimony this week I have heard from
2 several keys witnesses I think mitigate this.

3 Murder is the unlawful killing with malice
4 aforethought.

5 Voluntary manslaughter, as Your Honor well knows,
6 is the unlawful killing of another upon sufficient legal
7 provocation in the sudden heat of passion.

8 We have the neighbor, Mr. Roberto Gonzales Merrin,
9 who was painting his house. He hears an argument. He
10 doesn't know what's it's about. It's too far away. It's in
11 English. He doesn't speak English. He turns and sees
12 shooting. He's, in my respect, is seeing the tail end of
13 this fight.

14 You heard from Dimas --

15 THE COURT: Tail end of which fight?

16 MS. DAVIS: The fight between --

17 THE COURT: What testimony have we heard
18 concerning a fight?

19 MS. DAVIS: Well, there is an argument is what
20 people are testifying to.

21 THE COURT: You said fight.

22 MR. SHEALEY: Not a fight. Well, it's a heated
23 moment. There is an argument heard, the neighbor.

24 Dimas Lagunes testified that on his way out of the
25 house to go to his friend's house on Omega Street that he

1 saw Mr. Parvin throw a beer down, that he threw the chair
2 down.

3 Investigator Gwyn on his testimony with Ms. Davis
4 on cross said that he admitted that this was about an
5 argument between three people.

6 So I would -- I would submit that this is more
7 about a heat of passion than malice aforethought and ask
8 that the case not be submitted to the jury as murder.

9 THE COURT: What says the State?

10 MS. CAMPBELL: Thank you, Your Honor.

11 We disagree with his assessment of the witnesses
12 testimony. You have heard from Mr. Gonzales, who was pretty
13 emphatic about his version of what happened.

14 In addition to this, there is nothing in the
15 record that there was anything but some words exchanged.
16 Words alone are not enough to reduce malice to manslaughter.

17 Respectfully, Your Honor, we would think in the
18 light most favorable to the State that we have met our
19 burden.

20 THE COURT: I deny the motion and believe it's a
21 matter for the jury to determine.

22 All right, defense ready?

23 MS. DAVIS: Your Honor, I would ask Your Honor to
24 consider if we could begin in the morning. I know we have
25 a -- we have a -- I'd like the opportunity to confer with

1 Todd about his decision. He's been up now since three
2 o'clock in the morning. That's what time they wake him up
3 every time he's been brought over here to court during the
4 week, and we would just like the opportunity to confer with
5 him, as well as -- I mean, I guess that's my request, Your
6 Honor, is that we start in the morning.

7 THE COURT: We will not start in the morning. We
8 are going to start the defense now.

9 MS. DAVIS: Yes, sir, Your Honor.

10 THE COURT: It was brought to your attention
11 yesterday that the State would be through today and defense
12 indicated they would be ready to proceed. We are not going
13 to wait until tomorrow morning.

14 MS. DAVIS: And, Your Honor, I guess the only
15 other issue is -- again I request our motion prior about the
16 jury viewing the scene. I don't know if Your Honor wants to
17 take that up at this time or --

18 THE COURT: Well, if you want to.

19 MS. DAVIS: I would just renew our request for the
20 jury to view the scene. I think based on the evidence or
21 testimony that's been heard where the area is and how
22 it's -- what it looks like, the nature of it. It's
23 important at this point what we have is I think some of the
24 wide scale view of the incident location, as well as some --
25 there are some pictures from the crime scene investigators

1 that came and these are -- took pictures of the scene. I
2 think those photographs that are in evidence does not
3 properly -- do not convey to the jury what the scene looked
4 like. Just from viewing it, I saw being out there several
5 occasions, I'm not -- it certainly reflects the scene. I
6 agree that it's pictures of the scene, of course, but I
7 think under these circumstances it think it is important for
8 the jury to view that area and we would ask that Your Honor
9 allow them to do that.

10 We did speak with -- or I did, but we had a talk
11 with Jim Truett in terms of the logistics of it. They have
12 the jury vans that could transport them to view the scene
13 and that, and I would just ask Your Honor to allow them to
14 do that.

15 THE COURT: From the State?

16 MS. CAMPBELL: Thank you, Your Honor.

17 Your Honor, they have provided us a list of
18 possible witnesses and dates of birth and I haven't had the
19 opportunity to run the rap sheet yet. I would ask for
20 further clarification as far as their race and things of
21 that nature, and we just haven't had an opportunity.

22 The only other thing I would request, if possible,
23 Your Honor, is if we have just a little bit of notice as far
24 as when the defendant is going to take the stand, if he's
25 going to take the stand, that we do have an expert that may

1 need to be here for that. And I again anticipate what may
2 not be a defense. I just don't know, but that would be the
3 only thing I would ask.

4 THE COURT: Well, first regarding the jury view
5 issue, I haven't heard anything yet that would necessitate a
6 jury view, in my opinion. I have heard nothing that sets
7 this case out of the ordinary from any other case that I
8 have heard over the past 11 years. If I hear something that
9 would suggest that it could be beneficial, then we would do
10 it. Otherwise we won't.

11 MR. SHEALEY: Your Honor, at this time as well
12 while I have the opportunity, I just want to preserve the
13 record and review all our objections and motions at this
14 time throughout this point in the case.

15 THE COURT: All right.

16 MR. SHEALEY: Specifically the pretrial motion we
17 made regarding the allegation that it's a homosexual
18 arrangement for money. We renew that as well.

19 THE COURT: All right. I'm going to have marked
20 for identification purposes or as a court's exhibit the
21 photographs of the scene inside the house that were
22 presented to me. I don't know how much of it was on the
23 record because it was sort of a side bar when we took a
24 break, but the basis for the court's ruling giving the
25 defense the option of withdrawing the question in the

1 presence of the jury or allowing the witness to answer the
2 question in the manner as instructed by the court, and the
3 ruling was based in part on the fact that the photographs,
4 which would be a part of the court's exhibit, seems to
5 indicate that there were weapons -- there were weapons on
6 two beds. Weapons found appears to be in open view in all
7 rooms. Marijuana and marijuana paraphernalia, bongs, and
8 other things in open view of anyone who entered the home, so
9 that's -- I would like to have that as a part of the record.

10 COURT REPORTER: As a court's exhibit?

11 THE COURT: As a court's exhibit.

12 Do you wish for me to question this defendant at
13 this time regarding his right to testify or not testify, or
14 do you have other witnesses to present?

15 MS. DAVIS: No, sir, Your Honor. I believe Mr.
16 Parvin would like to be our first witness. If we could just
17 have a few minutes to confer with him.

18 THE COURT: All right. We will take a ten minute
19 break.

20 You indicated Mr. Parvin is your first witness.
21 Do you wish for me to question him concerning his right to
22 testify or not testify?

23 MS. DAVIS: Yes, Your Honor.

24 THE COURT: All right.

25 Swear Mr. Parvin and then I'm going to go through

1 the colloquy.

2 LESLIE TODD PARVIN, having been first duly sworn,
3 testified as follows:

4 THE COURT: Mr. Parvin, at this time I'm going to
5 explain to you certain of your rights. If you do not
6 understand anything that I say, please let me know and I'll
7 be happy to explain it in greater detail. Do you
8 understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: We have now reached the stage of the
11 trial where you may present your defense.

12 Now, you have a right to claim the protections
13 given to you by the Fifth Amendment to the Constitution of
14 the United States, which states, in part, no person shall be
15 compelled in any criminal case to be a witness against
16 himself.

17 This means that you cannot be required to testify
18 in this case. You do, however, have the right to testify in
19 your own behalf, if you would like to, but no one can make
20 you testify. This is a personal right and no one can waive
21 this right except you.

22 If you decide to testify, you will be subject to
23 the same rules that govern all the witnesses and you may be
24 examined and cross-examined on any relevant issue in this
25 case.

1 In addition, if you have any convictions involving
2 dishonesty or false statements or for crimes punishable by
3 imprisonment for more than one year and I determine that the
4 probative value of admitting this evidence outweighs its
5 prejudicial effect to you, the solicitor then in that
6 instance would be able to introduce your record to attack
7 your credibility.

8 If you decide to testify, this decision on your
9 part must be a free, voluntary, and intelligent decision
10 made by you, understanding the protections given to you by
11 the Fifth Amendment, as well as your decision to testify and
12 the consequences based on your decision to testify.

13 If you decide not to testify, I will instruct the
14 jury that they could not give that fact any consideration
15 whatsoever and that there is to be absolutely no prejudice
16 to you because you did not testify.

17 It is left entirely up to you whether or not you
18 testify. You may confer with your attorneys, family,
19 friends, or anyone else you would like to, but in the final
20 analysis the decision is left entirely up to you.

21 Do you understand that, sir?

22 THE DEFENDANT: Yes, judge, I do.

23 THE COURT: And have you discussed that matter
24 with the lawyers?

25 THE DEFENDANT: Yes, judge, I have.

1 THE COURT: Do you want to talk with them any more
2 about it?

3 THE DEFENDANT: Yes, judge, I do.

4 THE COURT: All right. We will take a ten minute
5 break, fifteen minute break, so he can confer with counsel
6 regarding whether he wishes to testify or not.

7 MR. SHEALEY: Thank you, judge.

8 THE COURT: We will be in recess for fifteen
9 minutes.

10 (Colored Photograph marked as Court's Exhibit No.
11 2 for identification)

12 (Colored Photograph marked as Court's Exhibit No.
13 3 for identification)

14 (Colored Photograph marked as Court's Exhibit No.
15 4 for identification)

16 (Colored Photograph marked as Court's Exhibit No.
17 5 for identification)

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5 (Colored Photograph marked as Court's Exhibit NO.
6 12 for identification)

7 (Colored Photograph marked as Court's Exhibit NO.
8 13 for identification)

9 (Whereupon, proceedings were recessed)

10 (Whereupon, proceedings were reconvened)

11 THE COURT: All right, bring the jury.

12 MS. DAVIS: Your Honor, we are not ready.

13 THE COURT: Pardon me?

14 MS. DAVIS: We are not ready yet.

15 THE COURT: You are not ready yet?

16 MS. DAVIS: We have a prior motion that we were
17 going to address with Your Honor.

18 THE COURT: Okay.

19 Yes, ma'am.

20 MS. DAVIS: And, Your Honor, I understand your
21 ruling. We are certainly ready to call Mr. Parvin. Again,
22 it's five p.m.. I would just ask again that we be allowed
23 to start the testimony in the morning. I predict it would
24 be lengthy and I'll ask Your Honor again to consider letting
25 us start in the morning.

1 THE COURT: We don't have to finish his testimony
2 today.

3 MS. DAVIS: I understand, Your Honor.

4 THE COURT: All right.

5 MS. DAVIS: I'm just making a request.

6 In terms of the request, Your Honor, I think -- I
7 believe that the State is in agreement with that. I would
8 just ask Your Honor to consider --

9 THE COURT: Let's why you have a judge to decide.

10 MS. DAVIS: Yes, sir.

11 THE COURT: When the parties are in agreement,
12 then the judge decides.

13 MS. DAVIS: Yes, sir.

14 THE COURT: If the judge decides against what the
15 parties want.

16 MS. DAVIS: Yes, sir, Your Honor.

17 THE COURT: Go ahead, I'm sorry.

18 MS. DAVIS: The other issue I was going to take up
19 with Your Honor is to ask if Mr. Parvin could be unshackled.
20 I believe he has leg shackles on at this time.

21 THE COURT: All right. I think that's reasonable.

22 MS. DAVIS: Thank you, Your Honor.

23 THE COURT: Mr. Parvin, have you decided now
24 whether or not you wish to testify?

25 THE DEFENDANT: Yes, judge, I have.

1 THE COURT: And what's your decision?

2 THE DEFENDANT: I do want to testify, Your Honor.

3 THE COURT: All right. Very well.

4 You may be seated.

5 Bring the jury.

6 THE BAILIFF: Yes, Your Honor.

7 (The following takes place in the presence of the
8 jury panel)

9 THE BAILIFF: The jury is present, Your Honor.

10 THE COURT: All right.

11 Ladies and gentlemen, you have heard the State's
12 case. It's now the defendant's turn.

13 It is five o'clock and we have been here all day,
14 so I think we will start with the defense's case tomorrow
15 morning at 9:30.

16 Please do not discuss the case, and we look
17 forward to seeing y'all tomorrow morning at 9:30.

18 (The following takes place outside the presence of
19 the jury panel)

20 THE COURT: As a second thought, we will kind of
21 let you to start tomorrow at 9:30, but I'm reversing my
22 decision to have him unshackled. I'm not going to create a
23 security risk and make any exceptions for this case, so he
24 will be shackled, as far as -- as any other defendant, and
25 he can be positioned in the box at the time he's called.

1 All right.

2 MS. CAMPBELL: Thank you, Your Honor.

3 MS. DAVIS: Thank you, Your Honor.

4 MS. PRINGLE: Thank you, Your Honor.

5 (Whereupon, proceedings were adjourned to December
6 16, 2011)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 LESLIE TODD PARVIN,) 2011-GS-40-0897
7 DEFENDANT.) 2011-GS-40-0898
8) DECEMBER 16, 2011
9) COLUMBIA, SOUTH CAROLINA

10 (VOLUME V)

11 B E F O R E:

12 THE HONORABLE CLIFTON NEWMAN, JUDGE. ; And a Jury.

13
14 A P P E A R A N C E S:

15 KATHRYN LUCK CAMPBELL, ASSISTANT SOLICITOR
16 NICOLE M. SIMPSON, ASSISTANT SOLICITOR
17 MEGHAN WALKER, ASSISTANT SOLICITOR
18 ATTORNEYS FOR THE STATE

19 FIELDING PRINGLE, ASSISTANT PUBLIC DEFENDER
20 LUKE SHEALEY, ASSISTANT PUBLIC DEFENDER
21 JENNIFER DAVIS, ASSISTANT PUBLIC DEFENDER
22 ATTORNEYS FOR THE DEFENDANT

23
24 MICHAEL R. WATTS
25 CIRCUIT COURT REPORTER

INDEX

(VOLUME I)

WITNESSES

PAGE

JURY VOIR DIRE -- PAGE 32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1	INDEX	
2	(VOLUME II)	
3	WITNESSES	PAGE
4	(NEIL V. BIGGERS HEARING)	
5	ALFREDO ZUNIGA VIDAL (SW)	
6	DIRECT EXAMINATION BY MS. CAMPBELL	181
7	CROSS EXAMINATION BY MR. SHEALEY	187
8	JOSE MONROY (SW)	
9	DIRECT EXAMINATION BY MS. CAMPBELL	192
10	CROSS EXAMINATION BY MS. DAVIS	197
11	REDIRECT EXAMINATION BY MS. CAMPBELL	201
12	INVESTIGATOR BRIEN GWYN (SW)	
13	DIRECT EXAMINATION BY MS. CAMPBELL	203
14	CROSS EXAMINATION BY MR. SHEALEY	210
15	INVESTIGATOR WILLIE GONZALEZ (SW)	
16	DIRECT EXAMINATION BY MS. CAMPBELL	215
17	CROSS EXAMINATION BY MR. SHEALEY	219
18	REDIRECT EXAMINATION BY MS. CAMPBELL	222
19	(JURY TRIAL)	
20	JURY SWORN -- PAGE 233	
21	OPENING STATEMENT BY MS. SIMPSON -- PAGE 238	
22	OPENING STATEMENT BY MR. SHEALEY -- PAGE 254	
23		
24		
25		

1	INDEX	
2	(VOLUME II)	
3	WITNESSES	PAGE
4	OFFICER CHAUNCEY SMITH (SW)	
5	DIRECT EXAMINATION BY MS. WALKER	266
6	CROSS EXAMINATION BY MS. PRINGLE	271
7	REDIRECT EXAMINATION BY MS. WALKER	277
8	JOSE L. MONROY (SW)	
9	DIRECT EXAMINATION BY MS. CAMPBELL	280
10	CROSS EXAMINATION BY MS. DAVIS	292
11	ADAN SOTO (SW)	
12	DIRECT EXAMINATION BY MS. WALKER	302
13	CROSS EXAMINATION BY MR. SHEALEY	306
14	MARLIN AVILA (SW)	
15	DIRECT EXAMINATION BY MS. WALKER	311
16	CROSS EXAMINATION BY MS. DAVIS	313
17	ALFREDO ZUNIGA VIDAL (SW)	
18	DIRECT EXAMINATION BY MS. SIMPSON	318
19	CROSS EXAMINATION BY MR. SHEALEY	330
20	DIMAS FERNANDEZ (SW)	
21	DIRECT EXAMINATION BY MS. WALKER	341
22	(NEIL V. BIGGERS HEARING)	
23	DIRECT EXAMINATION BY MS. WALKER	351
24	CROSS EXAMINATION BY MR. SHEALEY	352
25		

1	INDEX	
2	(VOLUME II)	
3	WITNESSES	PAGE
4	(NEIL V. BIGGERS HEARING)	
5	ROBERTO GONZALES MERRIN (SW)	
6	DIRECT EXAMINATION BY MS. CAMPBELL	359
7	CROSS EXAMINATION BY MS. DAVIS	364
8	(JURY TRIAL)	
9	DIMAS FERNANDEZ (SW) (CONT'D)	
10	DIRECT EXAMINATION BY MS. WALKER	376
11	CROSS EXAMINATION BY MR. SHEALEY	377
12	REDIRECT EXAMINATION BY MS. WALKER	381
13	ROBERTO GONZALES MERRIN (SW)	
14	DIRECT EXAMINATION BY MS. CAMPBELL	383
15	CROSS EXAMINATION BY MS. DAVIS	393
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	INDEX	
2	(VOLUME III)	
3	WITNESSES	PAGE
4	JOHN BELLEISLE (SW)	
5	DIRECT EXAMINATION BY MS. SIMPSON	456
6	CROSS EXAMINATION BY MR. SHEALEY	462
7	DR. CLAY NICHOLS (SW)	
8	DIRECT EXAMINATION BY MS. CAMPBELL	463
9	CROSS EXAMINATION BY MS. PRINGLE	496
10	REDIRECT EXAMINATION BY MS. CAMPBELL	499
11	SLED AGENT DEBORAH GOFF (SW)	
12	DIRECT EXAMINATION BY MS. WALKER	500
13	CROSS EXAMINATION BY MR. SHEALEY	504
14	ANDREA THOMPSON (SW)	
15	DIRECT EXAMINATION BY MS. SIMPSON	506
16	CROSS EXAMINATION BY MS. PRINGLE	508
17	INVESTIGATOR YVONNE WOODS (SW)	
18	DIRECT EXAMINATION BY MS. CAMPBELL	510
19	CROSS EXAMINATION BY MR. SHEALEY	544
20	REDIRECT EXAMINATION BY MS. CAMPBELL	554
21	INVESTIGATOR MICHAEL BEELER (SW)	
22	DIRECT EXAMINATION BY MS. CAMPBELL	555
23	CROSS EXAMINATION BY MS. PRINGLE	596
24	REDIRECT EXAMINATION BY MS. CAMPBELL	612
25		

1	INDEX	
2	(VOLUME III)	
3	WITNESSES	PAGE
4	INVESTIGATOR KRISTEN POLIS (SW)	
5	DIRECT EXAMINATION BY MS. SIMPSON	616
6	(NO CROSS EXAMINATION)	
7	INVESTIGATOR TRISH ODOM (SW)	
8	DIRECT EXAMINATION BY MS. CAMPBELL	631
9	CROSS EXAMINATION BY MR. SHEALEY	649
10	OFFICER BERNADETTE ATENCIO (SW)	
11	DIRECT EXAMINATION BY MS. WALKER	656
12	(NO CROSS EXAMINATION)	
13	OFFICER PATRICIA WEED (SW)	
14	DIRECT EXAMINATION BY MS. SIMPSON	659
15	(NO CROSS EXAMINATION)	
16	JILL JARREAU (SW)	
17	DIRECT EXAMINATION BY MS. WALKER	663
18	CROSS EXAMINATION BY MS. PRINGLE	666
19	SLED AGENT JOHN ROBERTS (SW)	
20	DIRECT EXAMINATION BY MS. CAMPBELL	667
21	CROSS EXAMINATION BY MR. SHEALEY	677
22	REDIRECT EXAMINATION BY MS. CAMPBELL	680
23	RECROSS EXAMINATION BY MR. SHEALEY	681
24		
25		

1	INDEX	
2	(VOLUME III)	
3	WITNESSES	PAGE
4	CHERYL TAYLOR (SW)	
5	DIRECT EXAMINATION BY MS. WALKER	682
6	CROSS EXAMINATION BY MS. DAVIS	684
7	OFFICER TENA GOFF (SW)	
8	DIRECT EXAMINATION BY MS. SIMPSON	685
9	(NO CROSS EXAMINATION)	
10	INVESTIGATOR WILLIAM GONZALEZ (SW)	
11	DIRECT EXAMINATION BY MS. CAMPBELL	694
12	CROSS EXAMINATION BY MS. DAVIS	711
13	INVESTIGATOR STAN RICHARDS (SW)	
14	DIRECT EXAMINATION BY MS. CAMPBELL	721
15	(NO CROSS EXAMINATION)	
16	SERGEANT MATTHEW ELLIS (SW)	
17	DIRECT EXAMINATION BY MS. CAMPBELL	726
18	(NO CROSS EXAMINATION)	
19	SERGEANT KEVIN ISENHOWARD (SW)	
20	DIRECT EXAMINATION BY MS. SIMPSON	730
21	CROSS EXAMINATION BY MS. DAVIS	736
22	OFFICER AUDRA LINFERT (SW)	
23	DIRECT EXAMINATION BY MS. WALKER	737
24	CROSS EXAMINATION BY MS. PRINGLE	740
25	REDIRECT EXAMINATION BY MS. WALKER	744

1	INDEX	
2	(VOLUME III)	
3	WITNESSES	PAGE
4	INVESTIGATOR ROBERT OATES (SW)	
5	DIRECT EXAMINATION BY MS. CAMPBELL	744
6	CROSS EXAMINATION BY MR. SHEALEY	750
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	INDEX	
2	(VOLUME IV)	
3	WITNESSES	PAGE
4	LIEUTENANT BEN MOORE (SW)	
5	DIRECT EXAMINATION BY MS. WALKER	786
6	(NO CROSS EXAMINATION)	
7	OFFICER CHRISTINE BARRACKMAN (SW)	
8	DIRECT EXAMINATION BY MS. WALKER	788
9	(NO CROSS EXAMINATION)	
10	OFFICER JOHN BARRON (SW)	
11	DIRECT EXAMINATION BY MS. CAMPBELL	793
12	CROSS EXAMINATION BY MS. PRINGLE	821
13	REDIRECT EXAMINATION BY MS. CAMPBELL	827
14	RECROSS EXAMINATION BY MS. PRINGLE	828
15	CHIEF ROLAND HILL (SW)	
16	DIRECT EXAMINATION BY MS. SIMPSON	829
17	CROSS EXAMINATION BY MS. PRINGLE	831
18	REDIRECT EXAMINATION BY MS. SIMPSON	833
19	RECROSS EXAMINATION BY MS. PRINGLE	834
20	OFFICER TERRI GLEASON (SW)	
21	DIRECT EXAMINATION BY MS. CAMPBELL	838
22	CROSS EXAMINATION BY MR. SHEALEY	856
23	REDIRECT EXAMINATION BY MS. CAMPBELL	862
24	RECROSS EXAMINATION BY MR. SHEALEY	863
25		

INDEX

(VOLUME IV)

WITNESSES	PAGE
INVESTIGATOR KERRY JOHNSON (SW)	
DIRECT EXAMINATION BY MS. CAMPBELL	864
CROSS EXAMINATION BY MR. SHEALEY	893
INVESTIGATOR BRIEN GWYN (SW)	
DIRECT EXAMINATION BY MS. CAMPBELL	873
CROSS EXAMINATION BY MS. DAVIS	917
REDIRECT EXAMINATION BY MS. CAMPBELL	951
RE CROSS EXAMINATION BY MS. DAVIS	955
MAJOR JAMES SMITH (SW)	
DIRECT EXAMINATION BY MS. CAMPBELL	957
CROSS EXAMINATION BY MS. SHEALEY	990
STATE RESTS -- PAGE 1004	

1	INDEX	
2	(VOLUME V)	
3	WITNESSES	PAGE
4	LESLIE TODD PARVIN (DW)	
5	DIRECT EXAMINATION BY MS. DAVIS	1058
6	CROSS EXAMINATION BY MS. CAMPBELL	1137
7	SHELBY INGRAM (DW)	
8	DIRECT EXAMINATION BY MS. PRINGLE	1208
9	(NO CROSS EXAMINATION)	
10	LEE JARMAN (DW)	
11	DIRECT EXAMINATION BY MR. SHEALEY	1224
12	CROSS EXAMINATION BY MS. CAMPBELL	1227
13	ROBERT TRESSEL (DW)	
14	DIRECT EXAMINATION BY MR. SHEALEY	1228
15	CROSS EXAMINATION BY MS. CAMPBELL	1257
16	REDIRECT EXAMINATION BY MR. SHEALEY	1274
17	RECROSS EXAMINATION BY MS. CAMPBELL	1277
18	CHAPLAIN MIKE DUGAL (DW)	
19	DIRECT EXAMINATION BY MS. PRINGLE	1278
20	(NO CROSS EXAMINATION)	
21	JAMES PARVIN (DW)	
22	DIRECT EXAMINATION BY MS. PRINGLE	1287
23	(NO CROSS EXAMINATION)	
24		
25		

1	INDEX	
2	(VOLUME VI)	
3	WITNESSES	PAGE
4	CHAPLAIN CHARLES BAILEY (DW)	
5	DIRECT EXAMINATION BY MS. DAVIS	1344
6	(NO CROSS EXAMINATION)	
7	CHAPLAIN PHILLIP WRIGHT (DW)	
8	DIRECT EXAMINATION BY MS. DAVIS	1349
9	CROSS EXAMINATION BY MS. CAMPBELL	1353
10	CHAPLAIN TERRY MARRERO CARTAGENA (DW)	
11	DIRECT EXAMINATION BY MR. SHEALEY	1356
12	CROSS EXAMINATION BY MS. CAMPBELL	1359
13	CHAPLAIN EDWIN AHL (DW)	
14	DIRECT EXAMINATION BY MR. SHEALEY	1360
15	(NO CROSS EXAMINATION)	
16	CHAPLAIN EUGENE LOVELACE, JR. (DW)	
17	DIRECT EXAMINATION BY MR. SHEALEY	1365
18	(NO CROSS EXAMINATION)	
19	CHAPLAIN TERRY AUSTIN (DW)	
20	DIRECT EXAMINATION BY MR. SHEALEY	1369
21	(NO CROSS EXAMINATION)	
22	CHAPLAIN JAMES R. WHITE (DW)	
23	DIRECT EXAMINATION BY MS. PRINGLE	1372
24	CROSS EXAMINATION BY MS. CAMPBELL	1376
25	REDIRECT EXAMINATION BY MS. PRINGLE	1377

1	INDEX	
2	(VOLUME VI)	
3	WITNESSES	PAGE
4	CHAPLAIN CARLETON BIRCH (DW)	
5	DIRECT EXAMINATION BY MS. PRINGLE	1378
6	(NO CROSS EXAMINATION)	
7	MASTER SERGEANT ERIC KRAMER (DW)	
8	DIRECT EXAMINATION BY MR. SHEALEY	1386
9	CROSS EXAMINATION BY MS. CAMPBELL	1389
10	REDIRECT EXAMINATION BY MR. SHEALEY	1391
11	CHARLES HIRE (DW)	
12	DIRECT EXAMINATION BY MS. PRINGLE	1391
13	(NO CROSS EXAMINATION)	
14	CHAPLAIN EUGENE ZEHNER (DW)	
15	DIRECT EXAMINATION BY MS. PRINGLE	1395
16	CROSS EXAMINATION BY MS. CAMPBELL	1398
17	REDIRECT EXAMINATION BY MS. PRINGLE	1398
18	CHAPLAIN TIMOTHY WALLS (DW)	
19	DIRECT EXAMINATION BY MR. SHEALEY	1399
20	(NO CROSS EXAMINATION)	
21		
22	DEFENSE RESTS -- PAGE 1402	
23		
24		
25		

1	INDEX	
2	(VOLUME VI)	
3	WITNESSES	PAGE
4	OFFICER DAVID COLLINS (DW) (REBUTTAL)	
5	DIRECT EXAMINATION BY MS. CAMPBELL	1423
6	CROSS EXAMINATION BY MR. SHEALEY	1433
7	CHIEF ROLAND HILL (DW) (REBUTTAL)	
8	DIRECT EXAMINATION BY MS. SIMPSON	1443
9	CROSS EXAMINATION BY MS. PRINGLE	1445
10	DR. JOHN TAYLOR (SW) (REBUTTAL)	
11	DIRECT EXAMINATION BY MS. CAMPBELL	1446
12	CROSS EXAMINATION BY MS. PRINGLE	1449
13	REDIRECT EXAMINATION BY MS. CAMPBELL	1455
14	CAPTAIN JAMES SMITH (SW) (REBUTTAL)	
15	DIRECT EXAMINATION BY MS. CAMPBELL	1455
16	CROSS EXAMINATION BY MR. SHEALEY	1473
17	LESLIE TODD PARVIN (DW) (SURREBUTTAL)	
18	DIRECT EXAMINATION BY MS. DAVIS	1486
19	CROSS EXAMINATION BY MS. CAMPBELL	1491
20		
21		
22		
23		
24		
25		

INDEX

(VOLUME VII)

WITNESSES

PAGE

CLOSING ARGUMENT BY MS. CAMPBELL -- PAGE 1600

CLOSING ARGUMENT BY MS. DAVIS -- PAGE 1621

FINAL ARGUMENT BY MS. CAMPBELL -- PAGE 1646

COURT'S JURY INSTRUCTIONS -- PAGE 1684

1	INDEX	
2	(VOLUME VIII)	
3	WITNESSES	PAGE
4	JURY VERDICT -- PAGE 1742	
5	REPORTER'S CERTIFICATE -- PAGE 1752	
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-1	PHOTO LINEUP		328
4	S-2	PHOTO LINEUP		291
5	S-3	PHOTO LINEUP		377
6	S-4	PHOTO LINEUP	178	
7	S-5	PHOTO LINEUP		391
8	S-6	COMPOSITE		330
9	S-7	VIDEO		508
10	S-8	BLOWUP		493
11	S-9	BLOWUP		482
12	S-10	PHOTOGRAPH		524
13	S-11	PHOTOGRAPH		524
14	S-12	PHOTOGRAPH		524
15	S-13	PHOTOGRAPH		524
16	S-14	PHOTOGRAPH		524
17	S-15	PHOTOGRAPH		524
18	S-16	PHOTOGRAPH		525
19	S-17	PHOTOGRAPH		525
20	S-18	PHOTOGRAPH		525
21	S-19	PHOTOGRAPH		525
22	S-20	PHOTOGRAPH	439	
23	S-21	PHOTOGRAPH	439	
24	S-22	PHOTOGRAPH		1299
25	S-23	PHOTOGRAPH	439	

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-24	PHOTOGRAPH		526
4	S-25	PHOTOGRAPH		526
5	S-26	PHOTOGRAPH		526
6	S-27	PHOTOGRAPH		527
7	S-28	PHOTOGRAPH	439	
8	S-29	PHOTOGRAPH	429	
9	S-30	PHOTOGRAPH		527
10	S-31	PHOTOGRAPH	439	
11	S-32	PHOTOGRAPH	440	
12	S-33	PHOTOGRAPH	440	
13	S-34	PHOTOGRAPH		530
14	S-35	PHOTOGRAPH		530
15	S-36	PHOTOGRAPH		531
16	S-37	PHOTOGRAPH		531
17	S-38	PHOTOGRAPH		531
18	S-39	PHOTOGRAPH		531
19	S-40	PHOTOGRAPH		531
20	S-41	PHOTOGRAPH		531
21	S-42	PHOTOGRAPH		532
22	S-43	PHOTOGRAPH		532
23	S-44	PHOTOGRAPH		534
24	S-45	PHOTOGRAPH		534
25	S-46	PHOTOGRAPH		534

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-47	PHOTOGRAPH		535
4	S-48	PHOTOGRAPH		535
5	S-49	PHOTOGRAPH		535
6	S-50	PHOTOGRAPH		535
7	S-51	PHOTOGRAPH		535
8	S-52	PHOTOGRAPH		535
9	S-53	PHOTOGRAPH		536
10	S-54	PHOTOGRAPH		536
11	S-55	PHOTOGRAPH		536
12	S-56	PHOTOGRAPH		536
13	S-57	PHOTOGRAPH		536
14	S-58	PHOTOGRAPH		538
15	S-59	PHOTOGRAPH		538
16	S-60	PHOTOGRAPH		538
17	S-61	PHOTOGRAPH		538
18	S-62	PHOTOGRAPH		538
19	S-63	PHOTOGRAPH		538
20	S-64	PHOTOGRAPH		538
21	S-65	PHOTOGRAPH		538
22	S-66	PHOTOGRAPH	442	
23	S-67	PHOTOGRAPH	442	
24	S-68	PHOTOGRAPH		538
25	S-69	PHOTOGRAPH		538

EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-70	PHOTOGRAPH		538
4	S-71	PHOTOGRAPH		538
5	S-72	PHOTOGRAPH		538
6	S-73	PHOTOGRAPH		538
7	S-74	PHOTOGRAPH		538
8	S-75	PHOTOGRAPH		538
9	S-76	PHOTOGRAPH		538
10	S-77	PHOTOGRAPH		538
11	S-78	PHOTOGRAPH		521
12	S-79	PHOTOGRAPH		521
13	S-80	PHOTOGRAPH		521
14	S-81	PHOTOGRAPH		521
15	S-82	PHOTOGRAPH		521
16	S-83	PHOTOGRAPH		523
17	S-84	PHOTOGRAPH		523
18	S-85	PHOTOGRAPH		523
19	S-86	PHOTOGRAPH		523
20	S-87	PHOTOGRAPH		577
21	S-88	PHOTOGRAPH		577
22	S-89	PHOTOGRAPH		577
23	S-90	PHOTOGRAPH		577
24	S-91	PHOTOGRAPH		578
25	S-92	PHOTOGRAPH		578

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-93	PHOTOGRAPH		578
4	S-94	PHOTOGRAPH		578
5	S-95	PHOTOGRAPH	445	
6	S-96	PHOTOGRAPH	445	
7	S-97	PHOTOGRAPH	445	
8	S-98	PHOTOGRAPH		589
9	S-99	PHOTOGRAPH		589
10	S-100	PHOTOGRAPH		589
11	S-101	PHOTOGRAPH		589
12	S-102	PHOTOGRAPH		589
13	S-103	PHOTOGRAPH		589
14	S-104	PHOTOGRAPH		589
15	S-105	PHOTOGRAPH		589
16	S-106	PHOTOGRAPH		578
17	S-107	PHOTOGRAPH	446	
18	S-108	PHOTOGRAPH	446	
19	S-109	PHOTOGRAPH	446	
20	S-110	PHOTOGRAPH		581
21	S-111	PHOTOGRAPH		581
22	S-112	PHOTOGRAPH		581
23	S-113	PHOTOGRAPH		581
24	S-114	PHOTOGRAPH		581
25	S-115	PHOTOGRAPH		581

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-116	PHOTOGRAPH	446	
4	S-117	PHOTOGRAPH	446	
5	S-118	PHOTOGRAPH	446	
6	S-119	PHOTOGRAPH	446	
7	S-120	PHOTOGRAPH	447	
8	S-121	PHOTOGRAPH	447	
9	S-122	BLOWUP	447	
10	S-123	BLOWUP OF DIAGRAM		543
11	S-124	CELL PHONE CHARGER		
12	S-125	GSR KIT		
13	S-126	BUCCAL SWAB		792
14	S-127	CELL PHONES		540
15	S-128	BUDWEISER BOX		581
16	S-129	GREEN SHIRT, RED HAT, BLUE HAT		567
17	S-130	NAIL SCRAPINGS		
18	S-131	EDGAR LOPEZ CLOTHES		571
19	S-132	SWABS		792
20	S-133	PROJECTILE		489
21	S-134	SWAB		792
22	S-135	CARTRIDGE CASING		842
23	S-136	PRINT CARDS		595
24	S-137	PABLO GUZMAN-GUTIERREZ CLOTHES		571
25	S-138	SWABS		792

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-139	PROJECTILE		841
4	S-140	BOX OF BEER CANS		565
5	S-141	SWAB OF DEFENDANT		724
6	S-142	LATENT PRINT CARD		636
7	S-143	LATENT PRINT CARD		636
8	S-144	LATENT PRINT CARD		594
9	S-145	PHOTOGRAPH	449	
10	S-146	PHOTOGRAPH	449	
11	S-147	PHOTOGRAPH	449	
12	S-148	PHOTOGRAPH	449	
13	S-149	PHOTOGRAPH	449	
14	S-150	PHOTOGRAPH	449	
15	S-151	PHOTOGRAPH	449	
16	S-152	PHOTOGRAPH	449	
17	S-153	PHOTOGRAPH	449	
18	S-154	PHOTOGRAPH	449	
19	S-155	PHOTOGRAPH		596
20	S-156	PHOTOGRAPH		596
21	S-157	PHOTOGRAPH		596
22	S-158	PHOTOGRAPH		596
23	S-159	PHOTOGRAPH		596
24	S-160	PHOTOGRAPH		596
25	S-161	PHOTOGRAPH		596

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-161	PHOTOGRAPH		596
4	S-162	PHOTOGRAPH		596
5	S-163	PHOTOGRAPH		596
6	S-164	PHOTOGRAPH		596
7	S-165	PHOTOGRAPH		596
8	S-166	PHOTOGRAPH		596
9	S-167	PHOTOGRAPH		613
10	S-168	PHOTOGRAPH		613
11	S-169	3 PAGES OF FINGERPRINT CARDS		658
12	S-170	BUSINESS RECORDS FROM LOUISIANA		665
13	S-171	BUSINESS RECORDS FROM LOUISIANA		665
14	S-172	CHART	451	
15	S-173	CHART	451	
16	S-174	BUSINESS RECORDS - JAMESON INN		683
17	S-175	BUSINESS RECORDS - JAMESON INN		683
18	S-176	PHOTOGRAPH		746
19	S-177	PHOTOGRAPH		746
20	S-178	PHOTOGRAPH		746
21	S-179	PHOTOGRAPH		746
22	S-180	PHOTOGRAPH		746
23	S-181	PHOTOGRAPH		746
24	S-182	PHOTOGRAPH		746
25	S-183	PHOTOGRAPH		746

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-184	PHOTOGRAPH		746
4	S-185	PHOTOGRAPH		746
5	S-186	PHOTOGRAPH		746
6	S-187	PHOTOGRAPH		746
7	S-188	PHOTOGRAPH		746
8	S-189	PHOTOGRAPH		746
9	S-190	PHOTOGRAPH		746
10	S-191	PHOTOGRAPH		746
11	S-192	PHOTOGRAPH		746
12	S-193	PHOTOGRAPH		746
13	S-194	BLOWUP PHOTOGRAPH		728
14	S-195	BLOWUP	453	
15	S-196	BLOWUP	453	
16	S-197	BUCCAL SWAB		792
17	S-198	BLOWUP		
18	S-199	BLOWUP		880
19	S-200	BLOWUP		880
20	S-201	SWAB		792
21	S-202	SWAB		792
22	S-203	SWAB		792
23	S-204	SWAB		792
24	S-205	SUMMARY	453	
25	S-S06	SUMMARY	453	

	EXHIBITS			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-207	SUMMARY	454	
4	S-208	ROSSI GUN	454	
5	S-209	TAURUS GUN	454	
6	S-210	BOX OF MISCELLANEOUS AMMUNITION	454	
7	S-211	PAPERWORK FOR KIA VAN		866
8	S-212	BLOWUP MAP		1471
9	S-213	GUN	454	
10	S-214	GUN	454	
11	S-215	GUN	454	
12	S-216	GUN	454	
13	S-217	BONG		1463
14	S-218	PHOTOGRAPH		1466
15	S-219	GLASS PIPE		1463
16	S-220	PHOTOGRAPH	455	
17	S-221	PHOTOGRAPH	455	
18	S-222	PHOTOGRAPH	455	
19	S-223	PHOTOGRAPH		1463
20	S-224	PHOTOGRAPH		1457
21	S-225	PHOTOGRAPH		1465
22	S-226	PHOTOGRAPH		1465
23	S-227	PHOTOGRAPH		1465
24	S-228	PHOTOGRAPH		1465
25	S-229	PHOTOGRAPH		1465

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-230	PHOTOGRAPH		1465
4				
5	D-1	PHOTOGRAPH		600
6	D-2	PHOTOGRAPH		600
7	D-3	DOCUMENT FROM JAMESON INN		685
8	D-4	1 PAGE DOCUMENT		937
9	D-5-A	PURCHASE ORDER DOCUMENT		1645
10	D-5-B	RECEIPT DOCUMENT		1645
11	D-5-C	DRIVER'S LICENSE DOCUMENT		1645
12	D-6-A	PURCHASE ORDER DOCUMENT		1645
13	D-6-B	DRIVER'S LICENSE DOCUMENT		1645
14	D-7-A	PURCHASE ORDER DOCUMENT		1645
15	D-7-B	RECEIPT DOCUMENT		1645
16	D-8-A	PURCHASE ORDER DOCUMENT		1645
17	D-8-B	RECEIPT DOCUMENT		1645
18	D-9	PURCHASE ORDER		1645
19	D-10-A	PURCHASE ORDER		1645
20	D-10-B	RECEIPT DOCUMENT		1645
21	D-10-C	DRIVER'S LICENSE DOCUMENT		1645
22	D-11-A	PURCHASE ORDER		1645
23	D-11-B	RECEIPT		1645
24	D-11-C	DRIVER'S LICENSE DOCUMENT		1645
25	D-12-A			1645

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	D-12-B			1645
4	D-13-A			1645
5	D-13-B			1645
6	D-13-C			1645
7	D-14	PHOTOGRAPH	1050	
8	D-15	PHOTOGRAPH	1050	
9	D-16	PHOTOGRAPH	1050	
10	D-17	PHOTOGRAPH	1050	
11	D-18	PHOTOGRAPH	1051	
12	D-19	PHOTOGRAPH	1051	
13	D-20	PHOTOGRAPH	1051	
14	D-21	PHOTOGRAPH	1051	
15	D-22	PHOTOGRAPH	1051	
16	D-23	PHOTOGRAPH	1051	
17	D-24	PHOTOGRAPH	1051	
18	D-25	PHOTOGRAPH	1051	
19	D-26	PHOTOGRAPH	1051	
20	D-27	PHOTOGRAPH	1051	
21	D-28	PHOTOGRAPH	1051	
22	D-29	PHOTOGRAPH	1051	
23	D-30	PHOTOGRAPH	1052	
24	D-31	PHOTOGRAPH	1052	
25	D-32	PHOTOGRAPH	1052	

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	D-33	PHOTOGRAPH	1052	
4	D-34	1 PAGE POEM	1052	
5	D-35	1 PAGE POEM	1052	
6	D-36	1 PAGE POEM	1052	
7	D-37	PHOTOGRAPH	1052	
8	D-38	PHOTOGRAPH	1052	
9	D-39	PHOTOGRAPH	1052	
10	D-40	AWARD DOCUMENT		1352
11	D-41	AWARD DOCUMENT		1078
12	D-42	AWARD DOCUMENT	1052	
13	D-43	AWARD DOCUMENT		1078
14	D-44	AWARD DOCUMENT	1053	
15	D-45	AWARD DOCUMENT		1078
16	D-46	AWARD DOCUMENT		1078
17	D-47	AWARD DOCUMENT		1078
18	D-48	AWARD DOCUMENT		1078
19	D-49	AWARD DOCUMENT		1078
20	D-50	AWARD DOCUMENT		1078
21	D-51	AWARD DOCUMENT		1078
22	D-52	AWARD DOCUMENT		1078
23	D-53	AWARD DOCUMENT		1078
24	D-54	MULTIPLE DOCUMENTS		1226
25				

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	CT-1	MULTIPLE DOCUMENTS	178	
4	CT-2	COLORED PHOTOGRAPH	1013	
5	CT-3	PHOTOGRAPH	1013	
6	CT-4	PHOTOGRAPH	1013	
7	CT-5	PHOTOGRAPH	1013	
8	CT-6	PHOTOGRAPH	1013	
9	CT-7	PHOTOGRAPH	1013	
10	CT-8	PHOTOGRAPH	1013	
11	CT-9	PHOTOGRAPH	1013	
12	CT-10	PHOTOGRAPH	1014	
13	CT-11	PHOTOGRAPH	1014	
14	CT-12	PHOTOGRAPH	1014	
15	CT-13	COLORED PHOTOGRAPH	1014	
16	CT-14	BRIEF DOCUMENT	1339	
17	CT-15	JUROR NOTE	1701	
18	CT-16	JUROR NOTE	1701	
19	CT-17	JUROR NOTE	1701	
20	CT-18	JUROR NOTE	1751	
21	CT-19	JUROR NOTE	1751	
22	CT-20	JUROR NOTE	1751	
23	CT-21	JUROR NOTE	1751	
24	CT-22	JUROR NOTE	1751	
25				

1 (PROCEEDINGS, DECEMBER 16, 2011)
2 (Purchase Order Document marked as Defendant's
3 Exhibit No. 5-A for identification)
4 (Receipt Document marked as Defendant's Exhibit
5 No. 5-B for identification)
6 (Driver's License Document marked as Defendant's
7 Exhibit No. 5-C for identification)
8 (Purchase Order Document marked as Defendant's
9 Exhibit No. 6-A for identification)
10 (Driver's License Document marked as Defendant's
11 Exhibit No. 6-B marked for identification)
12 (Purchase Order Document marked as Defendant's
13 Exhibit No. 7-A for identification)
14 (Receipt Document marked as Defendant's Exhibit
15 No. 7-B for identification)
16 (Purchase Order Document marked as Defendant's
17 Exhibit No. 8-A for identification)
18 (Receipt Document marked as Defendant's Exhibit
19 No. 8-B for identification)
20 (Purchase Order Document marked as Defendant's
21 Exhibit No. 9 for identification)
22 (Purchase Order Document marked as Defendant's
23 Exhibit No. 10-A for identification)
24 (Receipt Document marked s Defendant's Exhibit No.
25 10-B for identification)

1 (Driver's License Document marked as Defendant's
2 Exhibit No. 10-C for identification)

3 (Purchase Order Document marked as Defendant's
4 Exhibit No. 11-A for identification)

5 (Receipt marked as Defendant's Exhibit No. 11-B
6 for identification)

7 (Driver License Document marked as Defendant's
8 Exhibit No. 11-C for identification)

9 (Defendant's Exhibit No. 12-A marked for
10 identification)

11 (Defendant's Exhibit No. 12-B marked for
12 identification)

13 (Defendant's Exhibit No. 13-A marked for
14 identification)

15 (Defendant's Exhibit No. 13-B marked for
16 identification)

17 (Defendant's Exhibit No. 13-C marked for
18 identification)

19 (Photograph marked as Defendant's Exhibit No. 14
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19 (Photograph marked as Defendant's Exhibit No. 39
20 for identification)

21 (1 page Award Document marked as Defendant's
22 Exhibit No. 40 for identification)

23 (1 page Award Document marked as Defendant's
24 Exhibit No. 41 for identification)

25 (1 page Narrative Document marked as Defendant's

1 Exhibit No. 42 for identification)
2 (1 page Award Document marked as Defendant's
3 Exhibit No. 43 for identification)
4 (1 page Citation Document marked as Defendant's
5 Exhibit No. 44 for identification)
6 (1 page Award Document marked as Defendant's
7 Exhibit No. 45 for identification)
8 (1 page Award Document marked as Defendant's
9 Exhibit No. 46 for identification)
10 (1 page Award Document marked as Defendant's
11 Exhibit No. 47 for identification)
12 (1 page Award Document marked as Defendant's
13 Exhibit No. 48 for identification)
14 (1 page Award Document marked as Defendant's
15 Exhibit No. 49 for identification)
16 (1 page Award Document marked as Defendant's
17 Exhibit No. 50 for identification)
18 (1 page Award Document marked as Defendant's
19 Exhibit No. 51 for identification)
20 (1 page Award Document marked as Defendant's
21 Exhibit No. 52 for identification)
22 (1 page Award Document marked as Defendant's
23 Exhibit No. 53 for identification)
24 MS. CAMPBELL: May it please the court, Your
25 Honor, a deputy brought to my attention that they were

1 informed that all the jurors were here. They went to get
2 the defendant and were bringing him down the hall when one
3 or two of the jurors were in the hallway or something.

4 THE COURT: All right. What do you want, a
5 mistrial, or what?

6 MS. CAMPBELL: No, sir, I don't want anything.
7 I'm just advising the court as an officer of the court. I
8 don't think that's an issue, as they have already said in
9 opening he's in jail.

10 THE COURT: All right. Anything else?

11 MS. PRINGLE: You know, if we could just take some
12 precautions. Just at the end of it if they will take
13 precautions.

14 THE COURT: All right. I'm amazed that it would
15 occur. They are so efficient in ensuring that the jurors
16 are in when the defendant is brought out.

17 Anything else?

18 MS. CAMPBELL: Your Honor, the only other thing,
19 Your Honor, is that I think they are intending on playing a
20 videotape at some point. They are using some machine to
21 review a scene or anything, I think pursuant to the rules
22 they need to use one that's been clean and competent for
23 court use. We would just ask that they comply with the
24 rules.

25 THE COURT: A machine alleged as to what goes to

1 the jury during deliberation -- a machine that goes to the
2 jury, or whatever evidence that goes to the jury, would be
3 something that y'all agree on to go. I doubt that they want
4 to send that computer to the jury.

5 MS. PRINGLE: That's correct. We just want to
6 play it with the audio and I didn't want to mess with their
7 equipment, so I have got it set up to go on ours --

8 THE COURT: All right.

9 MS. PRINGLE: -- but we are not going to ask to
10 send that back to the jury.

11 MS. CAMPBELL: Okay. That's fine.

12 The only other thing is that they turned over to
13 us a day or two ago a number of photographs, personal
14 photographs, of the defendant, as well as some poems he
15 wrote. Your Honor, our position would be we object to
16 those. I don't know how they would be admissible. I know
17 y'all don't like to get into pretrial, but we are just
18 saying that before they show them or go into them, we would
19 like to be heard on that matter.

20 THE COURT: All right. Some poems that he wrote?

21 MS. CAMPBELL: Some poems he wrote, as well as
22 some photographs that he and his family -- of he in his
23 uniform. I'm glad to show you the photos.

24 COURT REPORTER: I'm sorry, show the photos what?
25 Ms. Campbell, you said you would be glad to show the photos?

1 MS. PRINGLE: I have seen them.

2 THE COURT: All right.

3 MS. CAMPBELL: In addition at to that, Your Honor,
4 they have also shown me a number of certificates that he won
5 in the war. I think he can testify to that. I don't think
6 the certificates themselves would be admissible in court.
7 The effect of the ones that are narrative involved all of
8 them, I believe. They are narratives involved about alleged
9 service.

10 MS. DAVIS: Your Honor, these are the awards.

11 THE COURT: All of this is supposed to be relevant
12 as to what issue in the case?

13 MS. DAVIS: Your Honor, all of those pictures I'm
14 not trying to introduce into evidence, but --

15 THE COURT: The poems, the pictures, the awards?

16 MS. DAVIS: Yes, sir, Your Honor, it would go
17 directly to rebut or refute their argument that he is gay or
18 a homosexual in terms of that allegation I guess by the
19 State.

20 MS. CAMPBELL: Your Honor, at no point has the
21 State alleged that he is homosexual or anything of that
22 nature. All we have said is what the events of that day
23 portrayed. We aren't trying to make him homosexual at this
24 point.

25 THE COURT: Okay.

1 MS. CAMPBELL: He may have been -- I don't know
2 what his intentions were that day.

3 THE COURT: All right. We will bring the jury and
4 see how it goes.

5 MS. CAMPBELL: Thank you, sir.

6 Bring the jury, please.

7 Well, just a moment. We need the defendant in the
8 box.

9 (Whereupon the defendant was seated in the witness
10 box)

11 THE COURT: He can stand in the box and be sworn,
12 can't he?

13 MS. DAVIS: Excuse me?

14 THE COURT: He can stand in the box and be sworn,
15 can't he?

16 MS. DAVIS: We don't have a problem with that,
17 yes, sir.

18 THE COURT: All right. Just be seated then
19 instead of standing.

20 THE COURT: All right. All right, we are ready
21 for them.

22 (The following takes place in the presence of the
23 jury panel)

24 THE CLERK: The jury is seated, Your Honor.

25 THE COURT: All right. Thank you. Good morning.

1 JURY PANEL: Good morning.

2 THE COURT: All right, Mr. Foreman, how is this
3 jury doing?

4 JURY FOREPERSON: Everybody is good, Your Honor.

5 THE COURT: Very good. Very good.

6 Day number five. The defense's case.

7 First witness, Ms. Davis.

8 MS. DAVIS: Thank you, Your Honor.

9 May it please the court, the defense calls Todd
10 Parvin.

11 THE COURT: All right, sir. Mr. Parvin, if you
12 will stand and be sworn.

13 LESLIE TODD PARVIN, having been first duly sworn,
14 testified as follows:

15 THE CLERK: Have a seat and state your name for
16 the record and spell it, please.

17 THE WITNESS: My name is Todd Parvin. T-O-D-D.
18 Last name P-A-R-V-I-N.

19 DIRECT EXAMINATION BY MS. DAVIS:

20 Q. Good morning, Todd.

21 A. Good morning.

22 Q. Todd, did you murder Edgar Lopez and Pablo
23 Gutierrez-Guzman?

24 A. No, I did not. I did -- I did shoot them and I -- I
25 killed them. I -- I was given no choice in the matter and

1 it was something that I had to do, and it's also something
2 that I wish would have never happened, and I mourn those two
3 men to this day.

4 Q. And what happened that day?

5 A. I had been over at that location and at first talking
6 back and forth and eventually it seemed like the atmosphere
7 changed. Edgar was no longer translating for me. People
8 were talking around me as opposed to me, and I started
9 asking questions of Edgar, you know, about what was wrong,
10 that kind of thing, and it escalated. I was attacked and I
11 had to fight my way out of the yard.

12 Q. Were you scared?

13 A. I -- I was -- I was scared to death, and I -- I --
14 it's -- I have a hard time explaining it. I mean, I would
15 describe it like if you have ever had a dream where the most
16 scary thing is happening in front of you and all you want to
17 do is move and it seems like you can't. You can't do
18 anything fast enough. And so -- so, yes, I was -- I was
19 scared.

20 Q. When you stopped there that day, did you have any
21 intention of hurting anyone?

22 A. No, ma'am.

23 Q. How old are you, Todd?

24 A. I'm 40 years old.

25 Q. And you were how old when this happened?

1 A. I would have been 39.

2 Q. Have you ever been arrested before?

3 A. No, I have not.

4 Q. Ever been convicted of any crime before?

5 A. No, I have not.

6 Q. Ever had a speeding ticket?

7 A. I had a speeding ticket in the mid-nineties.

8 Q. And can you tell the jury a little bit about your
9 family?

10 A. Yeah, I'm married to Shanna Parvin, my wife. We have
11 been married for 21 years, and I met her when I was 17. We
12 worked in the same restaurant together, and I courted her
13 for two years. And right after I had gotten into the Army
14 and had a small paycheck, it was a paycheck, came home and
15 married her and soon after that took her to Fort Bragg.

16 We had our first child that next year, in 1991, Josh.
17 He was born while I was in Desert Storm. And I found out
18 about the birth over a rac rig, which is a radio
19 communications device. We would have to talk at night to
20 avoid sun spots and the radio operator got me across the
21 states, and so I was able to hear of his birth actually on
22 that day. How we got ahold of them on this day I will never
23 know.

24 John was born two years later, my middle son. And he
25 was born the day of my final exam for jump master school.

1 And I actually had to get out of that school early to show
2 up for his birth and so they had me test first and I failed
3 miserably. I ended up having to go back to jump master
4 school again, but John was great.

5 And James was born two years after that.

6 They are all born in March two years apart. Shanna and
7 I run an orderly household, you know, and we --

8 James was born in Texas, at San Antonio, when we moved
9 there.

10 Q. And, Todd, is this your family here today?

11 A. Yes, it is.

12 Q. And it's Shanna here in the first row?

13 A. Yes, ma'am.

14 Q. And then your sons sitting right there?

15 A. Yes.

16 Q. And then the older gentleman on the end, is that your
17 father?

18 A. It's my dad, yes. My mom is in the second row, and my
19 mother-in-law also.

20 Q. Thank you.

21 And are y'all -- where are y'all from, or where are you
22 from?

23 A. I grew up in Buffalo Gap, Texas, a small town, about
24 500 folks. And Shanna was from the big city of Abilene,
25 100,000 people. And this is mainly a rural area. A lot of

1 ranchers, a lot of farmers.

2 Q. And so you met -- how did you meet Shanna?

3 A. We both worked at the same steak restaurant. She was a
4 hostess and I was a bus boy. I -- I married up.

5 Q. And after high school what did you do?

6 A. I had enlisted on the delayed entry program to join the
7 Army, so immediately after high school in July I left for
8 basic training here at Fort Jackson, and been in the Army
9 since -- from then until July of 2009.

10 Q. And at a young age what made you join the Army?

11 A. I was -- it is kind of unique. I was a young -- I was
12 a young Christian dude and Shanna and I were both going to
13 the same church at the same time. We had been baptized
14 together. And we had a friend at the time that said that he
15 was going to join the Army as an airborne chaplain
16 assistant, and that was just the greatest thing I had ever
17 heard of to do in life, you know. I mean, I had -- I --
18 really I'm a bookworm and you do a lot of research and
19 analysis about world religions and that kind of thing.

20 And I'm also a strong Constitutionalist, and I really
21 thought that it was neat that I could be in the military and
22 support the soldiers, both their Title 10 rights and their
23 Constitutional Rights, to practice religion or not. And --
24 and so that's why I joined, and then I learned a lot more
25 about it, of course, later.

1 Q. And how long did you serve?

2 A. I served for 20 years almost exactly. A little -- a
3 few days over.

4 Q. And you told us a little bit, but when you joined the
5 Army, what did you do while in the Army?

6 A. Well, as a chaplain's assistant, it's a unique job.
7 Chaplains are directly commissioned into the military. They
8 will -- so they will -- when they are -- when they come in
9 the military they will have a higher education level than a
10 normal lieutenant and they usually would come in as least a
11 first lieutenant, a lot of times a captain.

12 They are also the only -- they are the only person in
13 the Army that is not only a noncombatant, which means that
14 they -- you know, a noncombatant would still be able to
15 defend themselves with firearms. They are also, by policy
16 of the chief of chaplains of each branch - Army, Navy and
17 Air Force - not allowed to carry weapons. And so the
18 chaplain assistant fulfills that duty, role for them, as the
19 person who would bear arms and protect them in any combat
20 environment.

21 We also act as a conduit to soldiers for them. We are
22 with our chaplain a lot, but when we are -- when -- if there
23 are soldiers that might not be comfortable talking -- you
24 know, some see it more as an officer, you know, they might
25 be -- they might want to confide in us first. And then we

1 can usually refer them and get them to the chaplain, if they
2 need to.

3 We do a lot of crisis intervention, suicide
4 intervention in the Army.

5 You know, we are just one of those jobs that we are
6 going to end up working with the folks that have troubles,
7 you know, and rightly so.

8 Q. And -- I'm sorry, so when you were in the Army, those
9 were -- you were -- other than protecting the chaplain,
10 right?

11 A. Yes.

12 Q. You also did religious support?

13 A. Yes. Yes. And that -- you know, taking care of the --
14 taking care of the troops that you have, making sure they
15 have religious services. Other -- anything that is seen as
16 a -- as a need, you know, for them to be able to practice
17 their religion and it doesn't go against the military
18 regulation.

19 And, of course, we counsel soldiers too. And where
20 especially leadership issues, and we end up being involved a
21 good bit.

22 When there is a loss, we would supervise a memorial
23 ceremony that happen, funerals that happen. And we are
24 involved in personnel recovery a good bit, too. And
25 three -- three -- pretty much three different ways. You are

1 going to have soldiers that are wounded and need to get to
2 an aid station, and you are going to try to always have a
3 chaplain and a chaplain assistant there to minister those
4 wounded.

5 You have -- or you have remains of fallen soldiers that
6 we have to bring back as respectfully as possible from the
7 site of where they died and then through logistically back
8 to the states. You are probably most aware of seeing them
9 come in at Dover, maybe. Might have seen it on TV, or
10 something, but there is a long track from helicopter to
11 military aircraft to civilian aircraft in Germany before
12 they get to the states, and we are directly involved in all
13 of that.

14 And the third -- the third part of personnel recovery
15 we are involved in is when we have an isolated person,
16 somebody who has either been abducted by an enemy force or
17 abducted by another player. It could be even organized
18 crime, or something, or just somebody who even got -- they
19 might have been lost, but they are isolated from their
20 military unit. And so whenever we repatriate one of those
21 troops, there is always a chaplain and a chaplain assistant
22 involved in that in case that is one of the people that they
23 want to talk to about the experience they had while they
24 were isolated or separated from their particular company.

25 Q. And during all those things that you did, did you do

1 that while being deployed?

2 A. Yes. There is -- everything that we do in the
3 states -- you know, we run chapels and -- you know, and we
4 take care of getting supplies and making sure the doors are
5 open for the Bible study, to run vacation Bible school and
6 all kinds of neat stuff like that, but we -- we -- we do a
7 lot of that when we get down range, too, but then we have to
8 add on those things that I was talking about previously.

9 Q. And when you say down range, does that mean when you
10 are deployed?

11 A. When -- when we are deployed, yes, ma'am.

12 Q. And how many times have you been deployed?

13 A. I was -- I was -- I think five.

14 I was deployed at Desert Storm when I started out in
15 the Army with the 82nd up in North Carolina.

16 And I did a short time in Southern Watch at Kuwait,
17 which, you know, one of the -- it's one of the operations
18 that there's not a lot -- not everybody thinks about, but
19 before we started the second Iraq War we actually had troops
20 over in Kuwait basically from the time of Desert Storm until
21 the time of the Iraq War and they controlled air corridors,
22 Southern Watch and Northern Watch, and I was with the unit
23 that was there. If we had a downed pilot, we could go
24 out -- we could go and pick them up prior to the enemy being
25 able to get them.

1 And then I served three tours in Afghanistan.

2 Q. And, on average, I guess, how long were your
3 deployments?

4 A. They are from a few months to a little over a year.
5 The -- when -- with Special Operations we tend to have a
6 shorter deployment, more intense, with conventional forces.
7 When I went longer deployment, more of a marathon.

8 Q. And when you were deployed, were you assigned to a
9 chaplain or how did that work?

10 A. Right. We -- we try to say that we are assigned to a
11 unit and that we have a chaplain that we support, but, yes,
12 you are -- you are assigned to a chaplain.

13 My first chaplain, there was a point where -- because I
14 got deployed so soon after Shanna and I got married, there
15 was a point where I had lived with him longer than I had
16 lived with Shanna. So, you -- you get to know them real
17 well.

18 Q. And which chaplain? Who was that?

19 A. That was actually Chaplain Charles Card. And --

20 COURT REPORTER: I'm sorry, last name?

21 THE WITNESS: Card, C-A-R-D, ma'am.

22 BY MS. DAVIS:

23 Q. And when you said that you spent a lot of time with
24 him, how much time would you spend with the chaplain?

25 A. I would say out of a duty day, if you want to call it

1 that, about half of that day is spent in some way either
2 working directly with him, advising him, or supporting
3 something that he's doing.

4 The rest of the -- the rest of the time you could be
5 supporting troops themselves directly. I like to call it
6 walkabout. You know, you want to -- you want to get out
7 there and see your first sergeant and find out if they have
8 got troops that a chaplain might need to come by and see.
9 And then you also had to support your command itself.

10 I'm always an advisor to my chaplain, but I'm also an
11 advisor to the command sergeant major of the unit. You want
12 to -- you know, he considered -- always would consider me a
13 part of his team of noncommissioned officers, that we would
14 get together, put our heads together to deal with soldier
15 issues within the unit. It could be anything. It has been,
16 you know, something as simple as barracks reconstruction, or
17 as serious as suicides in a unit and the preventative
18 measures that we were going to take to try to change that.

19 Q. And with the deployments and schooling, did that mean
20 that you were away from your family a good bit?

21 A. I was. Between -- you have -- you had deployments,
22 then you had military schools, and then you also have just
23 training. And so between those three you are going to be
24 away from your family.

25 Q. And so did that -- I guess did that leave Shanna home

1 with the boys?

2 A. Shanna ran the -- she runs the shop. You know,
3 she's -- she's in charge of everything at the house. I will
4 be honest, I never kept my bills. She always did that. I
5 was gone so much that we would have had to transition back
6 and forth.

7 Always took care of the kids at home. And when they
8 got old enough, you know, she began working in the school
9 system, a lot of times in the same schools as the boys.
10 But, yes, she -- she -- I would say she had it rougher than
11 me most of the time.

12 Q. And where did she work, or where did she work within
13 the last year?

14 A. She -- right now she's working at Windsor Elementary
15 School. She's been working there since we moved here and
16 she works with the pre-K autism class.

17 Q. And over the 20 years you were in the military, did you
18 have a lot of training?

19 A. I did. I participated in many training exercises and
20 then also individual training that you take to increase your
21 own skill level and be able to provide more support to your
22 unit.

23 Q. And can you give us some examples of what type of
24 training you might have had?

25 A. Well, I started out before -- even before my first

1 assignment I went to jump school at Fort Benning, because I
2 was going to go -- I was going to an airborne unit.

3 I later actually passed jump master school on the
4 second try, so I performed jump master duties, which you
5 have -- you are the person that inspects the soldiers after
6 they put on their parachutes, get them in the aircraft in
7 the right order, properly and safely, and then actually take
8 the aircraft over from the Air Force, after giving time to
9 inspect the door and kick them all out.

10 And I was -- I was a master driver. I had to do
11 training for that, help other people get their driver's
12 license.

13 I went to a lot of self-defense type courses.

14 And in the Special Operations community, I was required
15 to go through an assessment course for about a month long
16 before I got to the unit, and then I was required to go to
17 survival school after that, after I was in the unit.

18 Q. And when you say Special Ops, what does that mean?

19 A. The Special Operations community is, you know -- you
20 know, most people have read some about it. Every branch now
21 has some sort of Special Operations contingent and they
22 perform specialized unconventional operations in the
23 military.

24 Q. And you were a part of that unit?

25 A. Yes, I was. I was a support guy. Not an operator. I

1 don't kick in doors. I -- I was there to help them and
2 provide for -- provide for those operators to make sure that
3 they could do their job. You go to a lot of the same
4 schools as they do, because those are conversation points.
5 Some of the schools even that they sign disclosure
6 statements about, so if you hadn't gone to the schools too,
7 they couldn't even talk to you about it. So, we -- you
8 know, it's a tried and true tradition of if you are a staff
9 guy or support guy, suffer with the guys, you will be better
10 able to support them down the road.

11 Q. And how long were you part of the Special Operations or
12 Special Ops?

13 A. I was with them for five years. It was a four year
14 commitment and -- but 9-11 happened. My command sergeant
15 major withdrew his retirement paperwork. And at that time I
16 felt like I was around the four year mark and I just -- I
17 didn't think that was time to leave, so I stayed for the
18 fifth year and got through the first wave of deployment.

19 Q. And you mentioned you had self-defense training. What
20 did that entail?

21 A. Well, you had some -- you had some basic combatives
22 when you come in the military. And, honestly, you know,
23 after, you know, late eighties, early nineties, it wasn't a
24 big emphasis. You know, we were -- we were starting out
25 really taking advantage of what we called the peace that was

1 within the fall of the Berlin Wall and that kind of thing.

2 Along the way we begin to have to reinvest our troops
3 into more and more combative-type training. So we now have
4 a very much upgraded combative program in the Army that I
5 participated in.

6 And then for being in the Special Operations community,
7 we would also seek out other training that would supplement
8 that. But I -- I became an instructor under a man by the
9 name of Hawk Hochheim, who is a 25 year --

10 COURT REPORTER: Last name, please?

11 THE WITNESS: Hochheim is H-O-C-H-H-E-I-M.

12 A. He's a 25 year law enforcement officer out of the Texas
13 area and he now trains internationally. My unit sent me to
14 train under him.

15 And then we would also bring in a gentleman every year
16 for instructive courses by the name of Bruce Sittle. He's
17 pretty well known also in the law enforcement community. He
18 wrote a book called Sharpening the Warrior's Edge, and I was
19 instructed under him also.

20 Q. And as part of that training was it like hand to hand
21 combat, or -- I mean, what exactly -- not everything that
22 you went into, but --

23 A. Right. It encompassed unarmed combat; combat with your
24 weapon; if you were out of ammunition or if it was jammed;
25 knives, sticks, other improvised weapons. Yes.

1 Q. And were you ever -- throughout your career, were you
2 ever demoted or scolded for using what you learned
3 inappropriately?

4 A. No, I was utilized in that fashion as an instructor
5 and, no, there was no --

6 Q. So were you -- you were actually promoted?

7 A. Sure. That's why I -- that's actually why I had to
8 leave Special Operations is I got promoted out of a job that
9 just -- after I had got -- I had put on another stripe and I
10 could only stick around for that one extra year.

11 Q. And if you had gotten, I guess, chastised or in trouble
12 for anything like that, that would be -- you would not have
13 been promoted?

14 A. Correct.

15 Q. When you enlisted into the Army, at what level were you
16 at?

17 A. I was -- I was an E-1. You can't get much -- you can't
18 get any lower, and I went to my first unit, part of 82nd
19 Airborne Division, it's a parachute infantry regiment, and I
20 stayed with this infantry unit for four years. And when I
21 had -- when I left the unit I was sergeant and I had been to
22 what -- a promotion board that we use in the Army to -- been
23 selected for staff sergeant, and I went to my next
24 assignment in the Army there.

25 I got promoted the next time when I was doing a one

1 year tour out in the South Pacific, Johnston Island where I
2 was, the Atoll in the Pacific that our country has used for
3 years to destroy chemical weapons. It's specifically from
4 the World War I, World War II era that were -- I'm not
5 saying that we used them in World War II, but we have
6 created them. And so I was promoted to staff sergeant
7 there.

8 I was promoted to sergeant first class while I was in
9 the Special Operations community and came to Fort Polk,
10 Louisiana. After that I served in another what I consider a
11 pretty unique assignment as an observer controller for the
12 military, where we would bring large units, say a brigade
13 size, I mean, anywhere from two thousand to sometimes, you
14 know, four thousand troops. And those troops all the way
15 down to the squad level have a sergeant or an officer that
16 shadowed them. And we put them through every military
17 routine you could think of, as far as combat-related tasks,
18 and then used that, their action reviews, to help them to
19 learn. It's part of that make a mistake in peacetime, not
20 in combat. And the government spends a lot of money on
21 that.

22 Now, once 9-11 had happened we would have maybe six
23 hundred Arabic speakers coming in, played roles, so the men
24 were actually out -- men and women were interacting with
25 people who spoke a foreign language. You had to learn to

1 speak through interpreters. And so I was -- I really
2 considered it an honor that I was able to actually be in
3 combat a few times, that then I was able to go and work with
4 the younger guys and hopefully prepare them for them not to
5 not make some of the same mistakes that I did. I was
6 promoted to master sergeant at that time, which is E-8, and
7 served the rest of my career at that rank.

8 Q. And throughout your 20 years in the military, did you
9 ever receive any awards?

10 A. I did. It's pretty customary if you did the right
11 thing that you are going to get an award when you leave a
12 unit. And then there would be times where because of some
13 specific achievement or act you would receive awards for
14 that also.

15 Q. And some of the awards that you received --

16 Well, actually let me just let you look through these.

17 A. Did you want me to comment on these, or --

18 Q. Do you recognize those?

19 A. I sure do.

20 Q. And are those copies of the awards that you would have
21 received?

22 A. Yes, ma'am, and I'll --

23 Q. And can you -- we don't have to go through every one,
24 but can you tell the jury a little bit about what those mean
25 or what they are for?

1 A. Well, generally when you are a more junior rank, you
2 are going to receive achievement awards, commendation
3 awards.

4 And then when you are more senior positions, more
5 responsibility, more people that you are supervising, you
6 would tend to receive awards for merit.

7 And in combat, a service award for that would be the
8 Bronze Star. You also receive the Bronze Star for valor.
9 It's two separate things. You also -- if anybody ever tells
10 you that they have a Bronze Star, you got to actually -- you
11 got to figure out if it's got a V on it, because there is a
12 big difference.

13 All of my stuff is for service and -- and I typically
14 got -- would get an award, you know, when we were deployed
15 or when I left the unit.

16 Q. And you just mentioned the Bronze Star, and actually
17 I'll hand this up to you. Was that actually an award that
18 you got?

19 A. Sure, for service.

20 Q. And what was the difference between service and with
21 the V, valor?

22 A. For valor -- and you can get valor awards even down to
23 a commendation medal, depending on the people who approve
24 the awards. Talking about what level of valor you show, so
25 you could get a commendation medal with the valor device,

1 Bronze Star with the valor device. And then you go into
2 some really specific awards; Silver Star. And, you know, of
3 course, the Medal of Honor and Distinguished Service Cross
4 is in between those two. Those are always going to be valor
5 awards. It's above and beyond the call of duty, putting
6 yourself at risk many times to save somebody else.

7 Q. And another award -- I'm sorry, and the Bronze Star --
8 I'm sorry, the Bronze medal that you received, that was for
9 service?

10 A. It was for service, right. Like I served for -- my
11 last tour in Afghanistan I served for a little over a year
12 as a senior chaplain assistant there in Afghanistan and
13 trained the chaplain assistants when them in the country and
14 supervised their movements and operations, as well as, like
15 I said before, I supervised all of the memorial ceremonies
16 that are done in country; participate in all the branch
17 ceremonies, which is when we put the remains on the aircraft
18 to leave. Me and a team of other senior NCO's always take
19 that into our hands and make sure that that is done properly
20 and with respect.

21 And there were times -- I also -- you know, I would
22 definitely have to go out in the field and travel and see my
23 guys where they were. And my chaplain and I did have to
24 respond, do personnel recovery personally, because our
25 general ordered us to. But my -- so that's why my Bronze

1 Star is for service, not for valor. I worked hard.

2 Q. Okay.

3 MS. DAVIS: And, Your Honor, I would just move
4 Defense Exhibits 41, 43, 45, 46, 47, 48, through 53 into
5 evidence.

6 MS. CAMPBELL: No objection.

7 THE COURT: Admitted without objection.

8 BY MS. DAVIS:

9 Q. And so you -- when you -- I'm sorry, you served the
10 rest of your career as a master sergeant?

11 A. As a master sergeant.

12 Q. And is that the highest rank that you could get as an
13 enlisted soldier?

14 A. No, I could have been promoted to sergeant major.

15 Q. And at that point -- how did that work? Did you have
16 to get recommended for that promotion, or --

17 A. I was -- I was qualified for the promotion and had
18 been -- was in consideration for it. I had to make a
19 decision, me and my family. If I would have allowed myself
20 to be considered and been selected, I would have been
21 required to go to a one year school. That would have even
22 meant another year away from them, or moving them in two
23 consecutive years, and probably been appointed on the back
24 end of that. I didn't -- we talked. Shanna and I talked
25 about it and we -- I think that it just wasn't right for our

1 family at that time. Our kids were going to be in high
2 school. We really wanted to try to get them somewhere and
3 let them attend the same high school for a few years, and so
4 I declined consideration for that promotion, and then about
5 a year later put in my retirement papers.

6 Q. And so when did you retire?

7 A. I retired 31 July 2009.

8 Q. And after you retired what did you do?

9 A. I started out -- I was -- I tried to pursue the
10 vocational rehabilitation program through the VA. I was
11 still physically not able to attend all those meetings that
12 you would do as they are trying to get you through the
13 program, figure out where they are going to -- where you are
14 going to go to school and what your next career might be,
15 and so I had -- I was unemployed and took on some other
16 hobbies, we would say.

17 Q. Some hobbies?

18 A. Correct.

19 Q. And what about your appearance? What did you do?

20 A. I didn't cut my hair or my beard for a year.

21 Q. Didn't cut your hair or your beard for a year?

22 A. Right. And I would -- it was really fun to go to Fort
23 Jackson and see my buddies, and, you know, they would see me
24 that way. I did -- eventually I got earrings too.

25 And I let it go -- I let it go for a year and had gone

1 through -- my wife -- my wife was actually coming home from
2 Texas and so that's when I cut the beard and my hair and
3 everything. I wanted to surprise her at the airport, you
4 know, looking respectable again. And so that was kind of my
5 lark for after retirement.

6 Q. And the earrings that you talked about when you got
7 earrings, those were like the gauge earrings that we heard
8 about?

9 A. Right. I heard them called that a lot around here.
10 The tobias is called a taper or a gauge, I guess. And,
11 right, you probably seen these in Native Americans on TV,
12 you know, that had done that, or -- and people from other
13 areas of the world. And you stretch your earlobe and then
14 put a -- so it would be a wider plug in there.

15 Q. Okay. And what did Shanna think about the earrings?

16 A. She -- she was okay with it.

17 Q. She liked it?

18 A. Sure.

19 Q. And what about the long hair?

20 A. Not so much I don't think.

21 Q. And so that's something that you did once you retired?

22 A. Yes, it was for a short time.

23 Q. And when you were in the military, did you have to keep
24 your appearance?

25 A. You do, unless you -- the short hair and shave every

1 day, unless you are on -- for a short time when I was in the
2 military I was on what they call relaxed grooming standards,
3 because the unit and law enforcement would have the same
4 thing, you know, specific assignment. But other than that,
5 yes, I was always short hair, shaven.

6 Q. And when you retired in July of '09, did you have any
7 physical ailments?

8 A. I did. I was -- I was pretty much a wreck. I had, you
9 know, done a lot of physical activity, of course, in 20
10 years. I had been diagnosed with sleep apnea, so I was
11 having to use a breathing -- I used a breathing machine
12 every night. Not oxygen or anything. It just blows air and
13 keep your airway open so you won't stop breathing at night.

14 Q. And what were the physical -- I mean in terms
15 of like -- like did you have any injuries to your shoulder
16 or your back?

17 A. Right, I had degenerative disc and joint disease pretty
18 much throughout my body. My shoulders come out of joint.
19 My back, both the upper back and lower back. I had
20 degenerative disc. And then I had a pinched nerve in my
21 back, and so I lose feeling in my legs. I have an ulnar
22 nerve injury in my left arm that leaves my left hand
23 partially numb. And bad knees, of course, jumping out of
24 airplanes. And so, yes, pretty much from top to bottom.
25 I'm pretty worn out.

1 Q. And with those injuries or the degenerative disc
2 disease, did that limit what you could do physically?

3 A. Right. Even my last two years in the military I was on
4 a restricted permanent profile where I can no longer run, I
5 could no longer jump, I couldn't do push-ups or sit-ups. I
6 would take a test on a stationary bike to pass. And that
7 was actually another part of why I was okay to retire, too.
8 You know, once you can't keep up with the young guys,
9 retirement is the time to go.

10 Q. And the injuries, you talked about that, that just came
11 from over the time of your job?

12 A. Right. Right. Wear and tear and just had -- you know,
13 those are the two things that would account for it.

14 Q. And earlier when we were talking about this, you had
15 mentioned that part of your job was to recover fallen
16 soldiers or injured soldiers?

17 A. Right. There would be a casually collection point of
18 some sort. You know, live patients were completely
19 different than the remains of dead patients, but we would
20 try to have chaplains and assistants at both of those cites
21 to be able to either minister to the wounded or provide
22 respectfully to the dead.

23 Q. And during your deployment how did you view your role?

24 A. I really -- and it's part of my own spirituality. I
25 think that -- I think the chaplain and I -- and I'm honored

1 by this. I don't think it comes from me, but I think that
2 we could bring a peace into situations that were very
3 chaotic.

4 Many times I saw, you know, soldiers faltering at
5 something that was hard to do. And when you are willing to
6 get in there and do it with them, whatever it might be, it
7 helps them to be able to accomplish what they are going to
8 do.

9 So the chaplain -- I'm -- I'm not ordained or anything
10 like that. That's not my role, but a chaplain from my -- I
11 think that he really would usher in the peace of God in
12 situations that there was none before him being there.

13 Q. And while you are deployed as part of your job
14 protecting the chaplain, did you ever have to -- did you
15 ever have to kill anybody?

16 A. No, I didn't, and I'm real proud of that too. I did
17 a -- I'm a fair analyst and I'm -- and I try to always have
18 my chaplain traveling in the safest, you know, way possible,
19 and that's really when we are vulnerable. You can't do
20 anything about rockets hitting the camp, that kind of thing,
21 but in training is a big piece. And most chaplain
22 assistants that have been involved in these conflicts by now
23 are really good at getting their chaplains from place to
24 place safely, and, yes, I was always able to do that. I'm
25 proud of it.

1 Q. Were there ever times where -- like you were armed
2 during that time, right?

3 A. Sure.

4 Q. Were there ever times when you thought you might have
5 to?

6 A. Yes. For me -- you know, I have had to -- I have had
7 to get my chaplain out of a crowd of Pashtun gentlemen, you
8 know, just because they were hanging out too close to him.
9 You know, some -- some simple physical things like that.

10 Most of the time when I would have to get involved with
11 a shoot, don't shoot situation, pointing my weapon at
12 somebody, it seemed to happen whenever I was traveling
13 without him. I don't put chaplains on convoys at much at
14 all if I can keep from it. It's like, you know, it's travel
15 by -- it's travel by air at night, first choice; travel by
16 air during the day, second choice; and then convoys is the
17 third.

18 I would travel by convoy more if I was alone, just
19 because they are more available and mine broke down a lot.
20 So when you do that, you end up having to -- it's going to
21 separate your convoy and you are going to end up having to
22 put out some sort of traffic control point. And you -- say
23 you get stalled vehicles, you are going to have to keep
24 every person that is not a part of that, of your team, away
25 from perimeter of your vehicles. If you break down in any

1 kind of an urgent area or even near a small village or
2 something, you have a lot of -- a lot of folks try to -- try
3 to come into the perimeter; or you have cars, they see you,
4 but they want to -- they want to test you and see if they
5 can go ahead and get through there, so they will come at
6 high speed. And many times you have to let them know that
7 you are willing to shoot before they stop.

8 Q. You had used the phrase shoot, don't shoot. That's
9 the -- that's what you call those type of situations?

10 A. That's just vernacular, you know, just common language
11 that we use for it, right. And we would have to -- you are
12 really, you know, looking for some specific things. You are
13 looking for if it's people on the ground, you are looking
14 for the people who are acting differently than everybody
15 else. You know, it might be an angry crowd, so it might be
16 okay if everybody is angry. But if one guy is grinning at
17 you like a possum, you know, you got to wonder what he's got
18 going on.

19 And then specifically dealing with improvised explosive
20 devices, we would have to pay attention to how people's
21 clothing moved. Whenever they would have explosives on,
22 they were weighted, and so their clothing would shift in a
23 different manner than if they didn't. So you were always
24 looking for that.

25 Of course, you were looking for weapons. You watch

1 people's hands a lot.

2 And then with the vehicles, it was really, really
3 tough. You would just have to -- you would have to stop
4 them all. Along the way we developed some non-lethal
5 methods, but a very powerful green laser that would blanket
6 out their windshield. So then at that point if they
7 couldn't see and the vehicle was still going to keep coming
8 at you, you could make a pretty good determination that they
9 were trying to get that vehicle there to blow it up, and you
10 would feel more comfortable -- you would know that you were
11 in the right in shooting at that point.

12 All those -- all those scenarios happen to you, you
13 know, a hundred times or more.

14 Q. Okay. So you said that you were in that situation over
15 a hundred times?

16 A. As far as having to look at the people. I never -- I
17 never had a bicycle bomb. I never had a car bomb or a
18 suicide bomber come at me at all; so, hence, why I didn't
19 have to shoot them or nothing.

20 Q. Did you ever even have to fire your weapon?

21 A. No. No, I did not.

22 Q. I'm going to turn your attention now to July 30th,
23 2010, and that's the reason why we are all here today. I'm
24 going to ask you a couple of questions about what happened,
25 okay?

1 A. Okay.

2 Q. That evening, that afternoon, what were you out -- what
3 were you out doing?

4 A. I had -- it kind of starts with, you know, what I was
5 doing at the house. I had taken it upon myself to change
6 the decor in our den, and so I had moved a lot of the
7 furniture. I had moved a computer and reconnected it. And
8 somewhere along the way I had lost the interest or zeal to
9 complete it and I tried to get my wife to help me and that
10 wasn't what she was planning on doing that evening, and so
11 we -- she was upset for messing up the den. I had -- so I
12 tried to -- you know, just the little time and space I
13 went -- I went and did another salvage run. I had been out
14 earlier that day and I decided to do another one before it
15 got dark.

16 Q. And when you say a salvage run, what does that mean?

17 A. Well, it's a -- it's a hobby that we got into after we
18 moved to Columbia. We moved into our rental house and it
19 had one of those cranks in the garage that you could crush
20 cans with and that's what started it, and so we started
21 saving aluminum cans. And then when we traded them in and
22 got money for them, that was cool.

23 My -- me and my son James would do it primarily. The
24 other boys would help some at times, but mainly me, James,
25 and then my dad would go out with me at times.

1 And so we -- we increased what we were doing over time.
2 We learned about steel. It's all tied to, you know, the
3 developing countries. Brazil, Russia, India, and China, you
4 know, are sucking up all the -- all the steel and copper and
5 everything. That's why the price goes up. And so it
6 becomes economically feasible for a guy to go out and, you
7 know, pick up unwanted steel from people. You know, they
8 have it in their yard or they have actually even put it out
9 to be taken away by the city, and -- and so we would do that
10 fairly often. That's what -- that's what we were into at
11 the time was steel, copper and aluminum.

12 And we were trying to get into the computer chips,
13 which was -- you save the computer chips, you had to have a
14 whole lot of them, but once you -- if you had a ton of
15 computer chips, there is a -- there is as much gold in a ton
16 of computer chips as there is in -- it would take 17 tons of
17 ore to get the same amount of gold. So -- and that kind of
18 ties for me back to our environment and getting -- you know,
19 making sure that we reuse things and getting some stuff off
20 the streets, you know, so we -- we enjoyed it a lot.

21 Q. And when you found this scrap or this salvage, the
22 metal, what did you do with it?

23 A. We would take it to the recycling center after we got a
24 good -- a large amount.

25 Q. And sometimes would you take smaller amounts at times

1 as well?

2 A. Sure. Sure. That would occur when Shanna wanted the
3 garage clean.

4 Q. And do you remember where you primarily go when you
5 take the recycling in?

6 A. I think it's A-1 Recycling. It's right off of Two
7 Notch. It's got a sign in front of it that says A Recycle
8 Center, if I remember right. I think it's A-1 Recycling.

9 Q. And can you just look at these and tell me if those
10 look familiar to you?

11 A. They do. These are the receipts I had at the recycle
12 center.

13 Q. And you started doing this after you retired, right?

14 A. Actually we started it with aluminum cans right after
15 we moved to Columbia and got into our rental house. We
16 expanded it more and more after I retired and had more time.

17 Q. And these are -- I'm sorry, these receipts show from
18 May 26th of 2010?

19 A. Okay.

20 Q. And the receipts that -- can you just tell me what the
21 dates are on those?

22 A. I have -- let me make sure they are not duplicated.

23 No, they are not.

24 So I had like three from April. I had receipts from
25 May, four. And then June, a couple.

1 Q. And those are from 2010?

2 A. Yes, ma'am.

3 MS. DAVIS: And, Your Honor, I would just move in
4 Defense Exhibit 5-A through 13-C just for identification
5 only at this point.

6 MS. CAMPBELL: No objection.

7 THE COURT: It would be marked for identification.
8 BY MS. DAVIS:

9 Q. And, Todd, do these show the receipts when you would go
10 and turn in for recycling, is that right?

11 A. Yes.

12 Q. And you said sometimes you would go by yourself, but
13 sometimes you would take your son?

14 A. Right, I would.

15 Q. And when you were doing this, did you have any plans?
16 Do you think, you know, it could become a money maker, or
17 what was your ideas with that?

18 A. Right. I had -- the next thing -- I already mentioned
19 the computer chips is one of the things I wanted to do.

20 And then the other, something that I had done
21 successfully once was getting into a construction -- or this
22 was actually a remodel job and the contractors themselves
23 let me haul away everything that was metal.

24 And I had also done that with government contractors on
25 Fort Jackson. And so I wanted to -- I wanted to -- I needed

1 contacts to be able to make that bigger.

2 Q. And on July 30th, was that what you were doing? At
3 some point that day did you go out?

4 A. Right, I went out. I was crisscrossing the Woodfield
5 area and didn't -- I wasn't -- I wasn't really finding a lot
6 of stuff, and I don't know if they have a different trash
7 schedule than mine, you know, because on trash days is
8 really a good time to be out finding stuff, and so I hadn't
9 really found anything. I had --

10 Q. Where you lived was what area?

11 A. Windsor Lake.

12 Q. Right. And you were driving around the Woodfield area?

13 A. Woodfield, yes.

14 Q. They are about how far apart?

15 A. It is -- I think that they butt up against each other.
16 I think it's Windsor Lake and then Woodfield and then -- I
17 know Richland Northeast High School was next where my kids
18 go to school.

19 Q. And so do you think it would be fair it's about a mile,
20 mile and a half?

21 A. Yes, ma'am.

22 Q. And you say that you didn't find anything that day?

23 A. I had earlier in the day and -- you know, in some other
24 areas, but, yes, on that run it was pretty dry.

25 Q. And that day did you go out in the van, or the truck,

1 or --

2 A. I went -- I went out in the van. It was -- my truck,
3 the battery wasn't working. We figured out later it was the
4 belt off the alternator, but, anyway, it wasn't starting,
5 and -- Shanna wasn't working then. She was a teacher's aid
6 and it was summertime, and so I was able to use the van.

7 Q. And at some point --

8 I'm sorry, how long before you stopped had you been out
9 in that area?

10 A. I would say that I looked for scrap for close to an
11 hour and then I stopped at a convenience store and grabbed
12 beer.

13 Q. And what kind of beer did you get?

14 A. I grabbed -- I bought Modelo beer.

15 Q. And do you usually drink that type of beer or --

16 A. I do. I drink Negro Modelo more in a bottle. It's a
17 good dark beer. My wife and I both drink Coronas. You
18 know, a lot of times with especially a meal that it would go
19 with. And me and my dad like Tacati with lime and salt, you
20 know. That might be a Texas thing, you know, because we
21 grew up around the Hispanic culture and like the food, like
22 the beer. Drink American beer too.

23 Q. And when you got that beer what was your plan?

24 A. I was taking it home. The Coronas I just mentioned,
25 Shanna and I drank some the night before with the meal and I

1 was kind of replacing what was in the refrigerator.

2 Q. Okay. So then after you got that beer you were on your
3 way home, what happened? Where did you go?

4 A. I -- I was coming from -- it was Decker where I bought
5 the 12 pack of beer and I was coming back on one of the -- I
6 would call it like the main road coming back into the -- it
7 would be Faraway. I think you could describe it as being
8 like between my neighborhood and Woodfield. I'm not -- I
9 don't pay attention to the road signs a lot, but -- so I was
10 coming that direction headed for home.

11 Q. And as you were on your way home did anything catch
12 your attention?

13 A. Yes. I was -- I was -- I was headed to home and I
14 saw -- and there were two gentlemen that were sitting
15 outside under a shade tree. They were drinking beer. It
16 was like, you know, late afternoon, so I figured they had
17 gotten off work. And I had slowed down because I was
18 thinking about the contacts I was looking for. I had --

19 I mean, when I would go -- when I would go -- say I
20 would go by a convenience store in the mornings before work,
21 you know, when I was still in the military, you know, I had
22 noticed that a lot of construction crews are Hispanic guys,
23 and so I -- you know, that's what I was thinking, hey, could
24 this be a -- you know, this could be somebody that I would
25 ask about. And when I slowed down, they waved. You know, I

1 waved back, and they kind of motioned me over. At that
2 point I almost stopped, so it seemed kind of natural to go
3 ahead and pull in and talk to them.

4 Q. And so you say when you saw them you thought they
5 were -- you thought they might be in the construction
6 business?

7 A. Right. Right.

8 Q. And what made you think that?

9 A. Well, kind of like what I was saying, from -- just from
10 general observation that a lot of construction crews -- you
11 have a lot of -- you have a lot of Hispanic people that are
12 in those construction crews have that expertise, and they
13 seemed to be the same class -- you know, working class
14 people like me. They were dressed, you know, like me, and
15 so I thought -- I thought they would -- they would be good
16 guys to ask about.

17 Q. And so when you pulled over and stopped, where did you
18 park your van?

19 A. I parked it right in front of the shade tree and stuff
20 that they were sitting in front of.

21 Q. In front of their house?

22 A. Right. I didn't know it was a house.

23 Q. And did you think it was strange at all to stop and
24 talk?

25 A. You know, I -- I can answer that, and I know -- I know

1 now that it wasn't -- it wasn't a good thing.

2 At the time, no, I did not. I don't -- you know, I
3 have had -- I have had people ask me about, you know, like
4 racial part of it and, you know, and different -- different
5 things. I would be -- I -- I came off of living on post for
6 12 years. I would stop and talk with somebody, you know.

7 Off post when I'm doing salvage runs, if anybody was
8 anywhere near the yard and I could see them, I'm going to
9 ask them before I take stuff. I mean, you know, I'll talk
10 to them.

11 And so kind of what I'm saying is is that I would be --
12 I try to -- I think of it as, you know, more class conscious
13 than race. I would be less likely to stop by a company
14 grade officer's house than I would to stop by the house that
15 I did, if that makes any sense.

16 Q. And when you have been out scrapping, or I guess
17 looking for something in the past, have you ever stopped and
18 talked to people before?

19 A. Sure. Like I said, you know, sometimes you run into
20 other guys doing the same thing, you know, and talk to them;
21 or anybody's house that, you know, I saw them or they were
22 available, just to be polite and make sure that it would be
23 okay to take stuff that they had put by the road.

24 Sometimes you find -- you know, you see something
25 unique, you know, you see that they are going to throw out

1 that refrigerator or that dryer, or something that they
2 still have it by the house, you know, if you are feeling --
3 I'll say if I, you know, feel like, you know, that they are
4 going to get rid of it, you know, maybe they have taken the
5 door off of it, you can see, you know, you would go and ask
6 them, ask them about it.

7 Q. And once you stopped -- or parked your van, I'm sorry,
8 what did you do?

9 A. I -- I said hello and held up a 12 pack of beer and
10 said, "hey, do you want a beer? I would like to talk to you
11 for a minute."

12 Q. And did the two men, this is Edgar Lopez, right?

13 A. Right.

14 Q. And Pablo Guzman?

15 A. Edgar responded and invited me in.

16 Q. And he responded in Spanish or in English?

17 A. He responded in English.

18 Q. Okay. So he could speak English?

19 A. Right.

20 Q. And so the two of you -- do you speak Spanish?

21 A. I do not speak Spanish.

22 Q. The two of you would talk in English?

23 A. Yes.

24 Q. All right. And Pablo, though, he spoke --

25 A. Pablo listened to the conversation and, you know, would

1 say things to Edgar, and, you know -- and then Edgar would
2 translate and tell me what Pablo was saying.

3 Q. And the two gentlemen, Edgar and Pablo, when you
4 stopped, can you just tell us kind of what they looked like?

5 A. Edgar was smaller than me and wearing -- I actually
6 thought they were long pants, but I kind of see now they
7 were long shorts. And he had -- I'm going to tell you I
8 don't remember if he had a shirt on or not at that time.

9 Q. What about Pablo? Was he taller than you, shorter than
10 you?

11 A. Pablo was taller than me, a little -- maybe a little
12 bigger, dressed a little nicer, collared shirt.

13 Q. So when you pulled up, how many people were outside?

14 A. Those two.

15 Q. And once you stopped and went inside, what did y'all
16 talk about?

17 A. We talked about salvage, and I asked them about, you
18 know, my idea. And Edgar was -- was like saying that he was
19 going to introduce me to some guys. I think he might have
20 even made a phone call. And we talked about Guatemala, and
21 I talked about Mexican food. And just really, you know,
22 general talking back and forth. You know, probably -- I
23 mentioned my family. They asked me where I lived, that kind
24 of thing.

25 Q. And you said at this point you brought the Modelo?

1 A. Yes, I did. I brought the 12 pack in there with me.

2 Q. And -- let's see --

3 (Off the record)

4 (Back on the record)

5 THE COURT: Ladies and gentlemen, I will have you
6 go to the jury room for a break. Please do not discuss the
7 case.

8 (The following takes place outside the presence of
9 the jury panel)

10 THE COURT: Let's take five minutes or so.

11 (Whereupon, proceedings were recessed)

12 (Whereupon, proceedings were reconvened)

13 THE COURT: Bring the jury in.

14 (The following takes place in the presence of the
15 jury panel)

16 THE BAILIFF: The jury is seated, Your Honor.

17 THE COURT: All right. Thank you.

18 You may continue.

19 BY MS. DAVIS:

20 Q. What I was about to get to, Todd, is when you stopped,
21 the area that you stopped at, I'm going to show you State's
22 Exhibit 80, is that where you went?

23 A. Yes, it was.

24 Q. And can you describe that area where you were at,
25 primarily? Was it a confined space? Was it wide open?

1 A. It is -- between the small brown shed, the white garage
2 and the trees, it creates a tight area for a few people to
3 gather at.

4 MS. DAVIS: And, Your Honor, can I publish this to
5 the jury?

6 THE COURT: What is it?

7 MS. DAVIS: State's Exhibit 80 in evidence.

8 THE COURT: Yes.

9 MS. DAVIS: Thank you.

10 BY MS. DAVIS:

11 Q. And so when you pulled up that day, you would have
12 parked right outside?

13 A. Right outside that gate, yes.

14 Q. Right in front there?

15 A. Yes.

16 Q. And when you first got there, or as you were talking,
17 were y'all sitting down or standing up?

18 A. When I first got there, and, you know, they had me come
19 in the gate and they -- Edgar asked me to sit on the cooler.
20 It's not really something that I would -- I didn't want to
21 sit on -- I didn't want to sit on the cooler, because, one,
22 it's pretty uncomfortable for my back, and another thing I
23 just didn't want to be the cooler guy either. So after I --
24 I realized that it was an empty cooler anyway.

25 Q. Okay. And you said because of your back, because of

1 the back pain?

2 A. Correct. I tried to get as much support in my back as
3 I can.

4 Q. And your primary doctor for that, is that Tabakman, Dr.
5 Tabakman?

6 A. Major Tabakman, she --

7 Q. Yes.

8 A. Yes.

9 Q. And since you grabbed the cooler -- this is State's
10 Exhibit 167. Is that the cooler that you are talking about?

11 A. Yes, it is.

12 Q. And that's -- it was -- it looked like this when you
13 were there?

14 A. Yes, it is.

15 MS. DAVIS: And, Your Honor, may I publish 167 to
16 the jury.

17 THE COURT: You may publish anything that's in
18 evidence.

19 MS. DAVIS: Thank you, Your Honor.

20 BY MS. DAVIS:

21 Q. And did you ever open the cooler while you were there?

22 A. No, I never -- never opened it, but I like, you know,
23 touched it with my foot or something like that and knew it
24 was empty.

25 Q. And while you were there --

1 This is State's Exhibit 168. It's not the best of the
2 pictures, but can you tell me what this building here is?

3 A. The white building is where Edgar would go in and out
4 and get beer, I think throw some of his beers away, and that
5 kind of stuff.

6 Q. And so that's the white shed or the garage?

7 A. The white garage.

8 Q. Or house? That's where he was living?

9 A. I did not -- I never knew that until after this all
10 happened.

11 Q. I apologize. You wouldn't have known that.

12 And that door to that building, was that open, or
13 closed, or --

14 A. It remained open. Like I said, he's going back and
15 forth getting beers and stuff.

16 Q. And what were -- do you remember what they were
17 drinking?

18 A. It started out they were drinking the Budweiser 24
19 ounce.

20 Q. And when you first got there and you were talking to
21 them, did they -- did Pablo or Edgar, did they seem drunk or
22 intoxicated?

23 A. You know, they might have -- they -- they might have
24 seemed a little tipsy, but honestly I didn't know this much,
25 and -- you know, I -- I don't know them to know one from

1 another, to tell you the truth.

2 Q. And while you were there, how many beers did you have?

3 A. I had -- I had one of the Modelos I bring -- or I
4 brought, excuse me, and then they gave me one of the
5 Budweisers and I drank that.

6 Q. And did you open another one?

7 A. I -- I -- I got another one maybe when we got back from
8 the store, maybe opened it. I mean, it's possible. I knew
9 I had drank those two. And the significance of that for me
10 is that I have got a two-beer four-beer rule. I taught my
11 boys as they go to college and everything there, it's
12 just -- you know, if you are in public, you can have two
13 beers as an adult, you know, you are going to be -- you are
14 going to be okay.

15 If you are with friends and somebody else is driving,
16 within a night have four drinks. And that's what I -- that
17 was my standard in the military for, you know, 20 years. It
18 keeps you out of trouble.

19 So when I drank their beer, I had -- you know, I was --
20 I was over my limit, anyway.

21 Q. Okay. And after you guys had talked for awhile, did
22 you end up going somewhere or leaving?

23 A. Yes. Edgar had asked me to drive him to the store to
24 get some beer. There might have been something like he had
25 asked somebody else earlier and -- you know, and the guy

1 didn't go, or something like that. Any ways, he asked me to
2 take him.

3 Q. And he wanted -- where did he want to go?

4 A. He wanted to -- he just wanted to go to a convenience
5 store to get beer.

6 Q. And so did you drive?

7 A. I did.

8 Q. And once you got in the van, did anything happen while
9 you were in the van?

10 A. Yes, I had -- I had my 45 in between the two seats
11 where there is a center console to the van. With him in the
12 vehicle I wasn't -- I wasn't comfortable with it being in
13 between us, and I picked it up from the center and I put it
14 in my waistband on my strong side, on my right side.

15 Q. And do you know it's illegal to have your gun like that
16 in a vehicle?

17 A. I definitely know that now, you know, and as far as
18 having it in my -- in my van, I --

19 This is how I would answer it, is that if I got stopped
20 by law enforcement, that that gun would be unloaded and up
21 on top of my dash and my hands would be out the window.
22 And -- so I don't conceal anything like that.

23 I had been stopped once, not in this state, when I had
24 my 45 with me and I did exactly that. I did not get in
25 trouble. As a matter of fact, I didn't even get the

1 speeding ticket the he stopped me for, so -- but I -- I have
2 learned a lot more about just how guns are considered around
3 here, so I -- I understand that.

4 Q. And the gun that you are talking about, that's the
5 Norinco 45?

6 A. It is.

7 Q. And is that -- was that gun registered with the
8 military?

9 A. It was. It was actually originally registered at Fort
10 Sam Houston, Texas. I had it -- I bought it at Fort Bragg
11 when I was -- my first assignment. I got the 45 and my wife
12 got the 357 that y'all had seen in evidence. Those were our
13 two personal protection weapons that we owned, and I had
14 registered it at Fort Sam.

15 I think what he's talking about the uploading to COPS,
16 that was probably when that system took all -- you know,
17 took all the information from earlier and uploaded it and
18 that's where you see it for the first time at Fort Polk.

19 Q. And so you are saying it had been registered with the
20 United States Army for --

21 A. A long time.

22 Q. And did you usually take that gun with you on road
23 trips, or why did you have that in the vehicle?

24 A. Yes, I -- anytime that we traveled, definitely had the
25 pistols with us. And then if -- I would prefer Shanna to

1 have a pistol with her if she got out late at night. And
2 that same -- the same principle pretty much for me. If I
3 was getting out and I wasn't going to a known place, you
4 know, doing something -- like if I -- for instance, if I was
5 going to -- just to a friend's house, you know, I probably
6 wouldn't even get it out of the house. If I was going to be
7 driving around doing that kind of thing, I would put it in
8 the van.

9 Q. And so when you would go out on scrap metal runs or
10 salvage, did you take that gun with you?

11 A. I would say 90 percent of the time I would have it with
12 me.

13 Q. And when you put that gun -- after you got in the van,
14 I'm sorry, and put it in your waistband, did Edgar see that?

15 A. Yes, definitely, and I put it -- I put it on my side in
16 my waistband.

17 Q. And we have heard about this, but did you have a
18 concealed weapons permit?

19 A. No -- no, I don't. And I have -- I had gotten the
20 paperwork from my home state of Texas, which I still carry a
21 driver's license from there, too. That's -- here most
22 recently that's what kind of prevented me from getting my
23 concealed carry permit.

24 If I gave up my Texas driver's license, I'm also pretty
25 close to paying out-of-state tuition for my sons, if any of

1 them ends up going to college in Texas. And I was on
2 this -- I'm on this kind of, you know, limbo where even
3 every year I'm putting in requests to hold back my military
4 move for another year. I retired in '09, and were wanting
5 to let the kids graduate, so we keep -- we keep putting in
6 extensions.

7 Shanna has the South Carolina resident, so they go
8 in-state in South Carolina, and I was trying to -- I'm
9 trying to keep my Texas residency requirement address for if
10 we move back there. It's kind of complicated. It's kind of
11 a military deal.

12 Q. But you did not have a concealed weapons permit?

13 A. No, not at all.

14 Q. And when you first stopped at 1901 Woodfield, at that
15 location, did you have the gun on you then?

16 A. No, I did not. I stopped there. I was right in front
17 of the gate and left it in the van.

18 Q. And who went to get beer, just you and Edgar?

19 A. Me and Edgar, yes.

20 Q. And once you got to the store or the gas station, what
21 happened there?

22 A. I pulled up outside the gas station out in the -- out
23 in the parking lot. If you were looking at Potts, it would
24 be on the left-hand side. I had -- I was waiting on Edgar
25 to get out. And actually when he, you know, said "hey, I

1 don't have any -- "I don't have any money. Will you buy the
2 beer?"

3 Q. And did you give him -- did you give him money?

4 A. I did. This is where I started feeling played a little
5 bit. Just about everybody has been panhandled, you know,
6 before, or something, you know, but I also considered if I
7 got to meet -- if I got to meet the guys that he was going
8 to introduce me to, this case of beer, it worked out okay
9 for me.

10 I took out my wallet. I gave him two twenties. All I
11 had was twenties in my wallet, and he went in the store.

12 Q. And so did he see that money when you handed it to him?

13 A. He saw the wallet and he saw the money, yes.

14 Q. And you kind of answered this, but do you usually give
15 rides to strangers or buy them beer?

16 A. No. I had -- I was like investing in this idea, and it
17 was kind of at the point of having already drove him to the
18 store, I -- it was like in for a penny, in for a pound. I
19 wound up paying for his beer.

20 Q. And when you got to the gas station then, did you go
21 inside?

22 A. No, I did not. Two reasons.

23 Q. So he just went in alone?

24 A. He just went in alone, yes.

25 Q. And we saw the video yesterday of when y'all stopped

1 there. And this is when he went inside the store, right?

2 A. Right.

3 Q. So you would have been -- were you outside?

4 A. I stayed -- I stayed in the van. I didn't have the AC
5 working in the van and wanted to keep the windows down and I
6 won't go in a convenience store with a gun. That's -- they
7 got a sign outside that says that's a felony. I know that.

8 Q. Okay. And this video with Edgar inside the store, does
9 this video have audio?

10 A. Okay.

11 (Whereupon, the videotape was played to the jury
12 panel)

13 BY MS. DAVIS:

14 Q. Did you hear the clerk tell him he didn't need that?

15 A. Yes, I heard that.

16 Q. This is the time that you were actually outside in the
17 van?

18 A. Yes, ma'am.

19 Q. After he bought the Budweiser, what did you guys do
20 then?

21 A. I drove directly back to the house.

22 Q. And when you got back there, what did you do?

23 A. I parked, you know, in the same place, probably facing
24 the other direction because of where we were coming from.
25 And there was two guys out in the middle of the yard with

1 Pablo, and my assumption was these were the two guys that I
2 was going to meet and talk about, you know, construction
3 stuff.

4 Q. So you thought that they had called them over there?

5 A. Right.

6 Q. And so when you got back, what did you and Edgar do?
7 Did you guys go inside the fence?

8 A. We -- we went inside the fence and I walked out there
9 pretty much immediately and, you know, did the meet and
10 greet. You know, shake hands, tell them who I was and that
11 kind of thing.

12 Q. And for the most part you were talking with only Edgar
13 in the group?

14 A. Right. He was -- he -- he was translating at that
15 point.

16 Q. And the other two guys that were there is actually Jose
17 Monroy and Alfredo Vidal, from what you have heard this
18 week?

19 A. Yes.

20 Q. Did you remember their names?

21 A. No, I didn't.

22 Q. And when they -- when y'all -- I'm sorry, when you got
23 there, you guys, did you start talking in a group or how
24 were you situated?

25 A. We did. We were -- oh, you know, it would be five of

1 us pretty much in a circle talking of talk.

2 Q. And so as they were talking in Spanish, Edgar was
3 translating for you, or was he translating for you
4 initially?

5 A. Initially when I introduced myself and that kind of
6 thing, but I wasn't -- already I wasn't getting a lot of
7 feedback from them.

8 Q. When you first got back and were talking with them, did
9 you show them anything on your body?

10 A. Not -- not -- not yet. I mean, I did eventually.

11 Q. What did you do when you first got back and were
12 talking through Edgar with them?

13 A. I introduced myself. They asked where I lived and, you
14 know, I told them that. They actually, you know, over
15 the -- over the conversation asked me where I lived many,
16 many times.

17 Q. Okay. But where did you tell them that you lived?

18 A. I told them I lived in the Windsor Lake area, a house
19 on the corner as I left.

20 Q. And that was, in fact, where you lived?

21 A. Right. It was -- it was like progressive. You know, I
22 live over at Windsor Lake. They still asked -- continued to
23 ask me and, you know, so I would give them more of a
24 description. And I was probably already feeling a little --
25 you know, something was a little -- when they asked me over

1 and over again, I remember specifically holding back the
2 address.

3 Q. And when you say they were asking you over and over
4 again, this was Edgar that was asking you that in English?

5 A. Right, and then he would give an answer to the other
6 guys that were there.

7 Q. So were the three of them talking in Spanish to each
8 other?

9 A. Four -- four of them, yes..

10 Q. And then when you talked, you were talking primarily
11 with -- or only, I guess, with Edgar?

12 A. With Edgar, right.

13 Q. And at some point you showed them some tattoos?

14 A. Right, I was -- like I said, I was already, you know,
15 kind of -- it didn't seem like I was really getting
16 anywhere. Pretty used to being able to introduce myself,
17 or, you know, kind of get to know people. And I saw one of
18 them had a tattoo on his arm and that's when I -- you know,
19 I said hey, this is -- you know, just to break the ice,
20 "hey, here are the tattoos I have," and I showed them all
21 three of those.

22 Q. Okay. And I'm going to show you State's Exhibit 181,
23 184 and 179. Are those the pictures of your tattoos?

24 A. Yes, they are.

25 Q. And this one here on exhibit -- on State's 181, can you

1 show the jury about what that is and what it means to you?

2 A. Yes, it's a -- at the point that I got all my tattoos I
3 got in 2002. That the Centaur is, for me, a record of my
4 military history at that point. The Centaur itself is the
5 symbol for the unit that I was assigned to, the 160th
6 Special Operations Aviation Regiment. And the motto for
7 that unit is Night Stalkers Don't Quit. That's the -- on
8 the rump of the Centaur that's the acronym that you have
9 there.

10 And then the breastplate is from the 505th Parachute
11 Infantry Regiment, that first unit that I went in combat
12 with when I was 19. It says H-Minus on it. It stands for
13 that we would go in prior to all the other units; first in
14 kind of deal. And the --

15 I put the chaplain crest on the Centaur's shield and --
16 I mean, it's very descriptive. I mean, the dove is, you
17 know, is peace. You know, the motto, Pro Deo Et Patria is
18 for God and Country. That's the Chaplain's Corps motto for
19 the Army.

20 Q. And then the other tattoo is on the other arm and what
21 does this one mean or what is this?

22 A. Well, I -- I had done a year tour out in the South
23 Pacific and that's where I had kind of fallen in love with
24 the house geckos. I don't know if they are -- we have -- in
25 Columbia we have something similar. I think that type of

1 lizard is an anole, but little lizards eat ants and cool to
2 have around. They had -- the house gecko is; you know, you
3 have them inside and outside of your quarters. And that's
4 what they do, they eat bugs and stuff. And so I had started
5 at that point using the gecko with the Don't Tread, which is
6 the take-off of the Revolutionary War flag that had a snake
7 and the Don't Tread on Me on it, and I just changed it to
8 the lizard.

9 And what I used it for originally, I would put it on my
10 letters that I sent to my family. I would put it on
11 military equipment I had. That was just of like -- it was
12 like a symbol people knew me by and that was -- you see,
13 that is when I first started using it was about '97, so
14 2002, that was actually my first tattoo I got put on.

15 Q. And so the first -- the ones on your arms are various
16 involved you and the Army?

17 A. Yes, and all these -- all these, too, with the tattoos,
18 you know, something that I remind my boys about is that I
19 was 30 years old before I was getting any tattoos. I knew I
20 wanted them.

21 Q. And the last tattoo, that's the one we have heard a lot
22 about. That's the one on your back.

23 A. My -- the back piece, you know, is the most, I mean,
24 precious to me. It symbolizes mine and Shanna's marriage.
25 I didn't want -- to me I don't take that as lewd at all.

1 That is -- to me that -- I respect -- I think to love one
2 woman well, you should respect them all pretty much, you
3 know. And I -- so that's with much love that I got that
4 tattoo.

5 And the fox is me. You know, old English Todd is -- I
6 mean, it means fox. That's why -- The Fox and the Hound.
7 The fox was named Todd, you know, in the movie. So that's
8 the symbol of me and her together. It's her portrait. I
9 found an artist at Fort Campbell, Kentucky that did
10 portraits real well, and then we did a stylized version, as
11 far as my hair and everything. It's me and her together.

12 Q. And how long did it take you to get that tattoo?

13 A. It took about 24 hours of work. I did five sessions.
14 I can sit for about four to six hours.

15 Q. And so those are the tattoos that you showed everyone
16 that day?

17 A. Right, yes.

18 Q. And when you were showing them, you said at some point
19 around that time is when you started feeling worried?

20 A. Right. I had already, you know -- it seemed like I
21 just didn't feel like I was getting the feedback that would
22 be, you know, normal. And I'm -- you know, I know that we
23 were talking through an interpreter, but, you know, I judge
24 body language, that kind of thing.

25 And then after I showed them the tattoos, which I

1 considered pretty personal, nobody was talking to me, you
2 know, really at all any more. I had continued to talk to
3 them. Edgar really wasn't -- he wasn't translating for me
4 any more. And I asked him, you know, "hey, what's wrong?"
5 You know, I was mad. You know, "what's going on," those
6 kind of questions.

7 They did continue to ask me where my house was and
8 stuff, though. It was like identifying -- wanting to
9 identify information from me but not talking to me.

10 Q. And when they were asking you where you lived, were you
11 reciprocating? Were you asking them?

12 A. I had -- right, you know, that's like a -- just kind of
13 conversation started, you know.

14 Q. And when you described then at this point you starting
15 to feel worried, you said that Edgar had stopped translating
16 for you? Tell us about --

17 A. Right, he wasn't -- he was -- they were having
18 conversation that I wasn't getting to understand what they
19 were talking about.

20 Q. And what was that making you feel?

21 A. Like an outsider.

22 Q. At some point you mentioned that -- when you started
23 feeling worried about this, what were you going to do?

24 A. I was leaving.

25 Q. Okay. You wanted to leave?

1 A. Yes, I did.

2 Q. And what did you say? Did you tell them that, or what
3 happened?

4 A. I told him -- I told him -- we were walking away -- as
5 I was continuing to ask Edgar, you know, "what's going on?
6 What's wrong," those kind of things, we started walking away
7 from the group. You know, between the two dwellings is just
8 about a field. You know, it's a very large yard, and
9 that -- we had been doing -- all of our conversations had
10 been out in the middle of that field. As I continued to ask
11 him, you know, what was wrong and those kind of things, he
12 had separated himself from the other two guys, and him and
13 Pablo and me were walking back over to the small hangout
14 area.

15 Q. Okay. And let me just -- so that we are clear, when
16 you are talking with all four of them, when it's Jose,
17 Alfredo, Edgar, and Pablo, y'all are out kind of in the
18 middle of the yard?

19 A. Right. They -- if you take those two houses and then
20 just went to the middle, we were right in the middle of that
21 field.

22 Q. Okay. So State's Exhibit 80 kind of -- if you can,
23 point out kind of where the four of you -- I guess five,
24 including you, would have been talking initially.

25 A. We would have been out in the middle of the yard

1 somewhere to the left. Actually a car is there.

2 Q. Okay. So initially when all five of you were over here
3 to the left?

4 A. Yes.

5 Q. And when -- at some point then you, Edgar, and Pablo
6 come back over to this area?

7 A. Yes, we did.

8 Q. And when you say you are going to leave, what does
9 Edgar start telling you?

10 A. Edgar told me that I wasn't going to leave, and I
11 didn't -- I didn't like that at all.

12 He had -- he had mentioned wanting more money from me.
13 I had -- my answer to that was is, "hey, I don't have any
14 more money, you know, to give you. As a matter of fact, I
15 need the change from the beer." And he said, "well, come in
16 here and talk to me," you know, as far as going in the
17 garage, and -- you know, and then he continued telling me
18 that I couldn't leave and I was disagreeing with him.

19 Q. When you are saying disagreeing -- when he's telling
20 you you can't leave, is he saying, "no, you can't leave?"
21 How is he telling you? When he's saying, "you are not
22 leaving," what's he telling you?

23 A. That's what he said, he said -- I said, "hey, you know,
24 it's time for me to go. I'm going to my house." And he is
25 saying, "no, you are not leaving." And I -- and that was

1 when I was -- I was scared. I knew that he was -- they were
2 keeping me in between them.

3 Q. Who is they?

4 A. Pablo and Edgar, Pablo guarding the gate. You know, I
5 started noticing all those things then.

6 Q. And what happened to the other two that had been there?

7 A. I don't know.

8 Q. They weren't by you, though?

9 A. They weren't by me, right.

10 Q. And during this conversation, during the time that you
11 had been there up to this point, did you ever ask Edgar or
12 Pablo to have sex with you for money?

13 A. No, ma'am.

14 Q. Did you ever give them -- I'm sorry, did you ever give
15 Edgar \$200 if he would sleep with you?

16 A. No, ma'am.

17 Q. Are you gay, Todd?

18 A. I'm Shanna's husband. I'm not gay.

19 Q. And you have been married how long?

20 A. I have been married for 21 years. The only person I
21 have slept with since I was 17 years old is Shanna Parvin.

22 Q. Did you ever hear anyone call you gay or homosexual
23 that day?

24 A. No, I didn't.

25 Q. Have you ever been with any man or wanted to be with

1 any man in a sexual way?

2 A. Not at all.

3 Q. When you are in the military, and part of your job was
4 counseling, were you aware of some men that did, in fact,
5 come -- or did some men come to you and talk about that?

6 A. Chaplains and chaplain assistants are considered
7 helping professionals and by Army regulations we have
8 confidentiality with soldiers. We can talk to them about
9 things, and I would deal with those things with their
10 commanders. And so if a homosexual soldier was having any
11 kind of issues, we would be the primary person who would
12 come and talk to. As in my times during my career and I
13 don't -- I don't say this lightly at all. When one of these
14 guys or gals come to you, this might be a life or death
15 situation. I know of -- I know of when they would -- well,
16 we know -- we know of gay soldiers even being targeted and
17 some being killed in the military; and I don't want to get
18 into that too much.

19 But I -- I would also really like to say to you,
20 though, that I don't have any issues with the homosexual
21 community. I'm -- I'm -- I'm faithful to my wife is what
22 I'm -- that -- that's a big thing to me.

23 No, I'm not gay. I don't have any issue with anybody
24 that is, though.

25 Q. And that day did you pay anyone for sex?

1 A. No, ma'am, I never would.

2 Q. Now, I want to go back to when Edgar starts telling you
3 you can't leave; what happens?

4 A. He continued to tell me I couldn't -- I wasn't going to
5 go anywhere; that he knew that -- they knew where my house
6 was; they knew where my family was; that they would go
7 there.

8 They continued to try to get me to go in the garage
9 with them for some reason. I resisted that.

10 He had asked -- like I said, he had asked about money
11 more than once and finally he gave me the change back. My
12 response was always, "hey, why don't you just give me my
13 change back? I don't have any more money."

14 Q. How did he react when you told him to give you the
15 change?

16 A. He -- when I kept answering that way and he finally
17 gave it back to me, he was pretty much enraged at that
18 point.

19 Q. Did that make sense to you that he would be mad about
20 that?

21 A. No, I -- no, not at all.

22 Q. What were you thinking at that point in time? What
23 were you feeling?

24 A. I had -- I didn't understand what was going on. I knew
25 that they were preventing me from leaving. I was -- I was

1 about as scared as a person could be and I just wanted to go
2 home.

3 Q. What was Pablo doing at this time?

4 A. Him and Edgar would talk some, but he would just stay
5 between me and the gate.

6 Q. Pablo was standing between you and the gate?

7 A. Yes.

8 Q. And they were talking to each other in Spanish?

9 A. They would talk to each other in Spanish.

10 Q. Do you have any idea what they were saying to each
11 other?

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

13 Q. Were you scared?

14 A. I was -- I was petrified.

15 Q. Did you have any idea what they were going to do?

16 A. No, I didn't. I knew -- I knew I didn't want to get
17 put in that building. I didn't -- I didn't know. I didn't
18 know what was going on. I still don't.

19 Q. And at some point, Todd, what happened?

20 A. Edgar continued to threaten me loudly. I was still --
21 I was trying to negotiate or mitigate to make something
22 happen, you know, and he continued to threaten to come to my
23 house. He said that he knew who I was. He had said that he
24 knew where my family was. He said they had guns too.
25 That -- really at that point I was -- I thought that it was

1 about over for me and I tried to distract them.

2 Q. By doing what?

3 A. I told him I would sit down. And -- and so I went to
4 the seat and crouched down on the seat, like I was going to
5 sit down, and then I immediately bolted for the gate.

6 Q. And so when you got up, what did Pablo do?

7 A. Pablo was -- I didn't distract them. Pablo was there
8 waiting for me. He grabbed me around my head and was
9 grabbing the weapon from my waistband.

10 Q. When he grabbed for that weapon, Todd, what were you
11 thinking?

12 A. I thought I was going to die.

13 Q. What was Edgar doing at that moment?

14 A. Reaching into the house.

15 Q. And saying what?

16 A. He had already said that he had -- that they had guns,
17 too, and, you know, that I couldn't leave, and that I was,
18 you know, a motherfucker, and everything else.

19 Q. When Pablo grabbed for your weapon and Edgar says "we
20 got guns too," what did you do?

21 A. I put my -- my hand down covering it, you know,
22 covering the weapon, getting -- getting Pablo's hand away
23 from it. I jerked away, pushing him away from me at the
24 same time. I drew up weapon and began firing and trying to
25 get out of the gate.

1 Q. And from the moment you started firing -- from the
2 moment you started firing, how long did that last?

3 A. About two or three seconds, probably.

4 Q. So when you first -- that first shot, by the time you
5 finished shooting and the way you remember it, seconds?

6 A. Right, a few seconds.

7 Q. Who did you shoot first?

8 A. I shot at Edgar, because he was reaching into that
9 house. I had pushed Pablo off of me real good.

10 Q. When he reached in the house, what were you thinking?

11 A. I thought he was grabbing a gun.

12 Q. What did you think that meant for you?

13 A. That I was going to die.

14 Q. After you shot at Edgar, then what did you do?

15 A. I shot at -- I shot at Edgar and turned immediately
16 back around and shot at Pablo.

17 Q. And we know that Pablo was shot in the back, and you
18 are sitting here for that, right?

19 A. Yes, ma'am.

20 Q. And he also had a graze wound?

21 A. Right.

22 Q. When you shot at him, what do you remember?

23 A. I -- I -- I shot at him multiple times. I was just
24 trying to get to the gate.

25 I would -- I would want anybody to know that this was

1 no kind of a -- using military -- I don't want to talk
2 military, but, you know, linear. I wasn't -- we were all
3 moving at the same time and it was the most chaotic event
4 that -- that -- that I've ever been in, and I have been in a
5 few. And, you know, he was twisting and turning and so was
6 I. That's really about the best I can tell you.

7 Q. Did you shoot Pablo while he was running away from you?

8 A. Not at all.

9 Q. So when this is happening, how fast has this all
10 happened?

11 A. Like I said, a very few seconds; five, or less.

12 Q. And did you say anything to Edgar or to Pablo before
13 you shot?

14 A. I was saying "no, no, no, no, no."

15 Q. Do you know how many shots that you fired, Todd?

16 A. I fired everything that I had in the gun. It was
17 eight.

18 Q. What did you think was about to happen to you that day?

19 A. I thought I was going to get killed. I thought my
20 family was in danger. I had all my keys to my house,
21 keys -- you know, address and everything.

22 Q. After the shots were fired, then what did you do?

23 A. I got in -- I got in my van and went immediately to the
24 house.

25 Q. Did you run to the van?

1 A. No, I didn't run. I don't -- I don't run a lot any
2 more. I was shocked, the best way I could describe it when
3 it happened.

4 You know, you have -- I'm -- I'm not that steady any
5 more anyway. If I'm -- I had came to the point if I had
6 even been working outside, I told my wife, you know, "you
7 know to peek out here every fifteen minutes or so." We had
8 an instance where I fell down in the garage and I couldn't
9 get back up. I was working on something and had something
10 on me and it -- I just say that -- say I'm not -- I'm not
11 the steadiest guy, you know, with numbness in my legs and
12 that kind of thing.

13 And then in a situation like that, I couldn't -- you
14 know, it's like -- kind of like what I said before. You
15 don't feel like you can hardly move anyway, you know. You
16 want to do everything fast and everything seems to be slow,
17 and I -- so I'm sure -- I mean, I walked to my van and drove
18 off.

19 Q. And I just want to be clear. It's after -- after the
20 shots were fired at Pablo, what happened with Edgar?

21 A. Edgar was coming at me and he had -- he had gotten -- I
22 was trying to get out of the gate and he had gotten up to
23 the gate and that's when I fired at him.

24 Q. So you fired your weapon inside that gate, Todd?

25 A. Yes. And then he kind --

1 Q. You fired outside?

2 A. I sure could have.

3 Q. When you went home, why didn't you call the police?

4 A. First I know that I should have gone to the police, and
5 that caused so much harm by not doing so. I -- everything
6 that I had ever heard or read I was supposed to stay there,
7 be able to tell people who witnesses were and that kind of
8 thing. I didn't -- I didn't know if there were more people
9 coming after me there. I couldn't -- I couldn't make that
10 place safe and stay there for the police.

11 I thought afterwards, you know, man, I should have went
12 up to Decker to that -- there is a little -- there is a
13 little sheriff building by the Food Lion and I could have
14 just parked right there, or something.

15 I didn't -- I heard people -- I heard them say that
16 they would come after my family. -- I didn't who else was
17 involved. At that point I'm thinking even have I stumbled
18 into Cartel dudes or some sort of, you know -- I mean, I'm
19 not saying I was thinking straight either. And the first
20 thing I wanted to do was get to my house and get Shanna out
21 of that house.

22 Q. Once you got home and they were safe -- or, I'm sorry,
23 you had them go to a hotel?

24 A. Yes.

25 Q. And who was they?

1 A. Shanna and Josh, my oldest.

2 Q. Once they left, why didn't you call the police?

3 A. I -- I don't know that I have a good answer for that,
4 other than that I was totally shocked and out of my mind.
5 I -- I had just -- I didn't know that they were dead, but I
6 knew I had just shot two people. And everything that I knew
7 about a situation like that is that I was going to have a
8 long road ahead of me dealing with it.

9 Q. And once you got home, why did you have Josh and Shanna
10 leave?

11 A. I didn't want somebody else to show up at the house and
12 them be in danger.

13 Q. Did you think that other people might have known where
14 you lived?

15 A. At that point.

16 Q. What did you do with the van?

17 A. I had it on the side of the house behind my white truck
18 so it couldn't be easily seen.

19 Q. How were you feeling about the fact that you had just
20 shot two people?

21 A. The worst feeling in my life. I don't know how to
22 describe it.

23 Q. The next day, Todd, what did you do?

24 A. I got in the -- I got in the van and I got on I-20 and
25 I just kept going.

1 Q. Where did you go?

2 A. I stopped at basically the border to Texas, the
3 Shreveport area, and got a cheap room and just holed up.

4 Q. What were you doing while you were at that hotel?

5 A. I was -- I was in a -- I was in a terrible state. I
6 was -- I didn't -- I didn't know what to do. I had two of
7 my sons that were out of town. They were both about to come
8 home. I didn't know how to tell them what happened. I
9 didn't know what to do.

10 Q. Todd, what did you eventually do with that van?

11 A. I called Shanna and asked for my dad to come. I -- I
12 didn't want to be alone any more. I was afraid that he
13 would ask questions and step in an area that he would be in
14 danger. And when I knew he was coming, I just went and I
15 sold the van at a salvage yard so they would crush it. I
16 knew I never wanted it around my family again.

17 Q. Why else did you get rid of the van?

18 A. I didn't want -- I mean, I guess I was biding time. I
19 didn't know what to do.

20 Q. Did you also shave your head?

21 A. I did before I left. I changed my appearance, though.
22 I was trying to leave -- I was trying to leave.

23 Q. What did you do with the gun?

24 A. I took the gun -- the night of the shooting I took the
25 gun in my garage. I have a grinder. I dismantled the

1 pistol and made it non-firing. I cut into the barrel and
2 cut into the springs in it.

3 Q. When you sold the van, where did you do that at?

4 A. I did it there in Louisiana.

5 Q. And you gave your license to do that?

6 A. I did.

7 Q. After your dad came down, where did y'all go?

8 A. We stayed there and talked for I think two nights
9 trying to figure out what the heck to do.

10 Q. Where did y'all end up going?

11 A. We went -- we went to -- we went to Texas where I'm
12 from.

13 Q. Who did you see while you were there?

14 A. I went to see my mom. I went to see my in-laws. I
15 felt like that whenever I had to deal with all this, that I
16 wanted them to know that I was still the same Todd that they
17 had met so long ago.

18 Shanna's -- I don't have any living grandparents and
19 Shanna's grandparents mean a lot to me. Grand-dad Ed
20 Bowander was being put in the nursing home and I wanted to
21 see him. He's a 94 year old World War II vet and one of the
22 men that I respect the most in my life. I just -- I just
23 wanted -- I just wanted to see them.

24 Q. At some point did you guys come back to Columbia?

25 A. We did. I was talking to Shanna every day, and there

1 just came a point where she said to me, "whatever we are
2 going to go through, let's go through it together."

3 Q. So did you go back home?

4 A. I hopped in that pickup and came home.

5 Q. When you got home, was -- do you remember what date?

6 A. It was somewhere around the 14th or 15th, probably.

7 Q. And you had been home a few days before the police
8 came?

9 A. Right.

10 Q. Once you were back home, why didn't you call the police
11 then?

12 A. I hadn't seen James or John yet. They came home while
13 I was on the run. I could not figure out what to tell them.
14 This was about the -- this is the only time that I could
15 ever remember lying to my sons and I couldn't figure out
16 what to tell them, and I didn't know how to choose the day
17 that I was going to go get arrested. I just didn't know how
18 to do it.

19 I -- I don't want to put -- I'm still embarrassed that
20 I put the other professionals, that they had to do work
21 because of me running around everywhere. I didn't know what
22 to do.

23 Q. At some point the police came to your house?

24 A. Yes, they did.

25 Q. And you were arrested at your house?

1 A. Yes, ma'am, I was.

2 Q. Tell me about what happened.

3 A. I was working on a -- on a school project for John the
4 night before. We had talked about it and it was an
5 economics project. I was using post-it notes and making
6 like a wire diagram on the pool table for him, two different
7 types of economics. The dogs wanted to go out and so I went
8 to the back -- the back door, to the sliding glass door, and
9 I let the dogs out. I saw cars that I didn't recognize. I
10 didn't think too much about it, because school was about to
11 be out, you know. And I had gone back in the house and the
12 next thing I heard was banging on my garage door and "is
13 there anybody in there?" And I'm sorry, sir, but that was a
14 Hispanic voice and he scared the crap out of me, and then I
15 didn't -- I didn't know what was happening.

16 Q. When they came in the house, where were you?

17 A. I was at the -- I was at the -- at the pool table.

18 Before they came in the house, though, I had gone back
19 to the sliding glass door and let the dogs back in. And
20 it's kind of weird to do something so mundane whenever I
21 thought, you know, I didn't know what was happening, but the
22 dogs scratch, you let them in. It's kind of a reflex. And
23 I saw a man in a vest and knew then that it was police.

24 Josh -- I was putting on my shoes at that point. Josh
25 came out of his room and said, "what's going on?" And he

1 said he would go check, and I knew that police were there,
2 and so I told him, "yeah, go." You know, I wanted -- I
3 wanted him out of the house.

4 Once he got out of the house, I stood at the pool table
5 where I could be seen from all three doors and I waited. I
6 waited for people to come in the house. The garage door
7 opened and a number of police officers came in and I just
8 tried not to get shot and moved slow and -- and that's about
9 it.

10 Q. You were arrested?

11 A. I was arrested immediately. And everything -- you
12 know, they looked at my tattoos and everything, like they
13 said.

14 Q. And after you were arrested, where did they take you?

15 A. I -- I don't -- I don't really know the way they
16 have -- you know, headquarters is what they say.

17 Q. And did you see if they --

18 I'm sorry, while you were at headquarters did you see
19 Shanna?

20 A. I did.

21 Q. Were y'all together?

22 A. After I had been there quite awhile and been
23 photographed and fingerprinted and all that, they let me see
24 her and I really appreciated that. They let me see my dad
25 too.

1 (Off the record)

2 (Back on the record)

3 BY MS. DAVIS:

4 Q. And, Todd, when they came in your house and you said
5 that you were moving slowly, why were you doing that?

6 A. Again, because I didn't -- I -- what I -- what I saw
7 was maybe even six dudes -- five or six people with guns
8 pointed at me and I didn't want -- I didn't want to get
9 shot. It was true, I tried to move as slowly as I could and
10 do whatever they said.

11 Q. And once you were at headquarters, then you saw Shanna,
12 right?

13 A. I just real quick want to say, too, though, I would --
14 I would absolutely never put a professional police officer
15 in danger, period. A lot of things have been said about me.
16 Wouldn't do it.

17 Q. When you saw Shanna, you said that you hugged her?

18 A. I did.

19 Q. What did you hear?

20 A. Shanna gave me what we call a duress word. From when I
21 was -- she said "Ace of Spades." From when we were -- from
22 when I was in Special Operations, especially throughout my
23 career, going to survival school, we were taught to have a
24 duress word with our family. If we were captured, had to
25 make a -- were forced to make communications to prevent

1 ourselves from getting killed, we would add that word to the
2 communications we were being forced to make. And then my
3 family could let the military know, yes, he's -- "he is
4 confessing to war crimes, he's doing these things, but he's
5 included this word, which is a known duress word for our
6 family." And then the opposite for them is that they know
7 not to go on TV and talk about me being in a Special
8 Operations unit, or talk about any of my training, or
9 anything. We had a standard thing, you know, "Todd is a
10 good ole boy and he cooks a mean steak." That was kind of,
11 you know, the family -- and so Shanna had -- she told me the
12 duress word and I took that as --

13 Q. She said that to you? That's what you heard?

14 A. Yes, in my ear, yes, "Ace of Spades".

15 Q. And did you come back to Columbia because you thought
16 that you had -- because you thought that you had gotten away
17 with it?

18 A. No, not at all. I didn't see any way -- I don't --
19 one, this was something that went on in my life that I was
20 going to have to deal with and I knew it. I was putting off
21 the inevitable. And I had --

22 I mean, you know, while I was there, I had told
23 everybody the name, where I lived, and showed them every
24 identifying mark on my body. You know, I mean, this was a
25 foregone conclusion that I was going to have to deal with

1 this. I -- I just hadn't been able to force myself to start
2 the nightmare, the new nightmare of going through this.

3 Q. When you got arrested that day, it was August 19th of
4 2010?

5 A. It was.

6 Q. And where have you been since then?

7 A. I have been in Alvin S. Glenn Detention Center.

8 Q. You have been in jail?

9 A. Yes, I have.

10 Q. And since you have been there, are you able to talk
11 with your family?

12 A. We -- we -- we talk on recorded phone calls, phone
13 calls at night, and once a week over a video.

14 Q. And since you have been down there where you are
15 housed, I guess you are staying in the cell?

16 A. Yes.

17 Q. And over the last 16 months have you been written up,
18 disciplined at all?

19 A. No, I haven't.

20 Q. Ever assaulted anyone, punched anyone?

21 A. No, ma'am.

22 Q. Have you seen fights?

23 A. Plenty.

24 Q. Have there been any confrontations that you were
25 involved in or --

1 MS. CAMPBELL: Objection, Your Honor, as to the
2 relevance of this.

3 THE COURT: What's this relevance of this, ma'am?

4 MS. DAVIS: Your Honor, in terms of the charge of
5 murder, going into his peacefulness.

6 COURT REPORTER: I'm sorry, his what?

7 MS. DAVIS: Peacefulness.

8 THE COURT: Anything further?

9 MS. CAMPBELL: No, sir.

10 THE COURT: I'll allow the testimony.

11 BY MS. DAVIS:

12 Q. Has anyone tried to confront you?

13 A. Yes, there is going to be some of that probably over
14 there. Everybody, I have always been able to talk to the
15 person. And other than one guy threw something at me and I
16 just didn't do any -- he was a mental patient and, you know,
17 I let them deal with it.

18 Q. And did you -- it's the last area. Did you commit
19 murder?

20 A. No, I did not.

21 Q. Why did you shoot Edgar Lopez and Pablo Guzman?

22 A. I thought that I was going to die and I couldn't -- and
23 I didn't have any other choice.

24 Q. How do you -- how do you feel about what happened that
25 day?

1 A. I wish with every part of me, every iota of myself,
2 that it wouldn't have happened, that I could have prevented
3 it from happening, and I will never understand why it
4 happened, really. And I -- I have seen too many people die.
5 I wish they were -- I wish they were with their family right
6 now.

7 MS. DAVIS: Beg the court's indulgence.

8 (Off the record)

9 (Back on the record)

10 MS. DAVIS: Your Honor, I have no further
11 questions at this time.

12 THE COURT: Cross-examination.

13 MS. CAMPBELL: May it please the court.

14 CROSS EXAMINATION BY MS. CAMPBELL:

15 Q. Mr. Parvin, you served your country honorably for 20
16 years?

17 A. Yes, ma'am.

18 Q. And you retired from the Army on July the 31st of 2009,
19 almost exactly one prior to this, is that correct?

20 A. Yes, ma'am.

21 Q. And while you were in the Army, the Army teaches you a
22 core set of values, is that correct?

23 A. Yes, they do.

24 Q. And, first and foremost, while you are in the Army is
25 discipline?

1 A. Actually we put leadership first, but, yes.

2 Q. Let's go with leadership. First and foremost.

3 And then discipline, is that correct? Is that
4 something that you are taught while you are in the Army?

5 A. Yes, ma'am.

6 Q. And while you're in the Army, they also talk about
7 honor?

8 A. Yes.

9 Q. And they also talk about responsibility.

10 Would you agree with me that in your 20 years of
11 service for your country, that those were all facets that
12 were taught to you and that were integral in serving your
13 country honorably?

14 A. Very much so, yes, ma'am.

15 Q. And you are married to Shanna?

16 A. Yes, ma'am.

17 Q. You love her?

18 A. Very much so.

19 Q. And you talked about that on numerous occasions here
20 today is Shanna?

21 A. Right.

22 Q. You can tell her anything?

23 A. Yes.

24 Q. And you're also lucky enough to have a loving family,
25 including your father, who I believe you testified you

1 reached out to at some point?

2 A. Yes.

3 Q. You said that you were able to turn to in times of need
4 and tell him what's happened and what's going on?

5 A. Yes, ma'am.

6 Q. And those are the people that you trust completely and
7 can tell anything, is that true?

8 A. Yes, ma'am.

9 Q. Let me back up for a little bit.

10 And you mentioned earlier that you had severe back
11 problems?

12 A. I do. I have a -- I'm a hundred percent disabled.

13 Q. A hundred percent disabled?

14 A. Right.

15 Q. And you actually retired from the Army, is that
16 correct?

17 A. Yes.

18 Q. And that's the reason you couldn't get a job because
19 you couldn't move?

20 A. Right.

21 Q. Like running is difficult for you; lifting is
22 difficult; things of that nature?

23 A. Correct.

24 Q. You also prior to your testimony here today, I believe,
25 sir, have had the opportunity to review all of what's called

1 the discovery in this case?

2 A. I would say so, yes, with my attorney.

3 Q. And in doing that you are able to review all the
4 photographs?

5 A. No, I have never looked at all the photographs.

6 Q. You looked at some of the photographs of the crime
7 scene? The ones they showed you here today at least you
8 have looked at?

9 A. Oh, sure.

10 Q. And then you have reviewed the DNA reports?

11 A. To some extent, ma'am.

12 Q. The witnesses statements that are in English?

13 A. Yes, ma'am.

14 Q. The fingerprint reports?

15 A. I have seen them.

16 Q. The crime scene?

17 A. Yes, ma'am.

18 Q. A listing of the evidence in the case?

19 A. I don't know that I have ever seen a listing, but I
20 have seen a lot of stuff.

21 Q. And the investigators reports?

22 A. Yes, I have read those.

23 Q. So you were aware and you have been able to review that
24 prior to your testimony here today?

25 A. I mean, I have -- I have been able to look at some of

1 my discovery. I won't keep it -- I wouldn't keep any of it
2 in the jail, so I had -- every once in a while, you know, my
3 lawyers came and we went over things that had to do with the
4 case.

5 Q. So you were aware of what the allegations were and what
6 everyone said happened and where it happened and things of
7 that nature?

8 A. I -- what are you referring to?

9 Q. As far as the witnesses, the physical evidence, the DNA
10 testimony, the fingerprint testimony. All the evidence
11 against you.

12 A. It's really hard. There was things that --

13 I would say from the time of my -- what do you call
14 that first -- the first time that they decide whether they
15 bind me over in jail? My preliminary hearing.

16 Q. Uh-huh.

17 A. From my preliminary hearing is when I started hearing
18 about what was supposed to have been going on.

19 Q. And, of course, you have been in court this week and
20 heard it?

21 A. Yes, ma'am.

22 Q. There is no dispute about that?

23 A. No, there isn't.

24 Q. And you mentioned earlier that you run an orderly
25 household? Those were your words, I believe. I wrote them

1 down.

2 A. Right. It had to do with the birth of our children.

3 Q. Did you continue over the years to run an orderly
4 household?

5 A. I raised and am still raising, --

6 MS. DAVIS: Objection, Your Honor. May we
7 approach?

8 (Whereupon, the lawyers approached the bench for
9 an off-the-record discussion)

10 THE COURT: I would ask the ladies and gentlemen
11 to stand for a moment.

12 (Off the record)

13 (Back on the record)

14 THE COURT: All right.

15 Objection is overruled.

16 MS. CAMPBELL: Thank you, Your Honor.

17 BY MS. CAMPBELL:

18 Q. You run an orderly household. Those were your words.
19 I wrote them down. The court reporter has got them.

20 A. Yes, I said that about my children being born two years
21 apart in March; '91, '93, and '95.

22 Q. You also mentioned during the course of your testimony
23 at some point, I think you were talking about your entire
24 life, but you are a Christian person?

25 A. Yes, I joined the Army and I was a Christian, and --

1 yes.

2 Q. And you never mentioned exactly what faith that you
3 have. Is there a certain faith, or are you --

4 A. I -- I would want to ask a question actually of my
5 lawyer before you ask me about religion. I'm kind of --

6 Q. Is there something --

7 A. Is there -- is there a religious test that --

8 Q. No, sir, you went into a lot of Christianity and
9 religion. All I'm asking is some followup questions on
10 that. You can answer my question.

11 A. Okay. I am a Roman Catholic convert. I -- after I
12 joined the Army I went through the Right of Christian
13 Initiation for adults with the Roman Catholic while I was in
14 Saudi Arabia before Desert Storm, and I -- and I was
15 confirmed and I'm a Roman Catholic.

16 Q. And is there anything else you wish to ask your
17 lawyers?

18 A. No, it just -- it -- I consider religion pretty
19 private, actually, and it just seemed odd to me that you
20 would ask me -- that there would be religious test involved
21 in my trial.

22 Q. Do you remember testifying about how you are a
23 Christian person and you have a Christian family?

24 A. I testified that I was a Christian and that -- that
25 was -- I was a young Christian man and that is what helped

1 me to pick the job of being a chaplain's assistant.

2 Q. And, finally, do you remember talking just here at the
3 end when you started talking about how you would never, and
4 - I believe you teared up, put another profession, such as
5 law enforcement, in danger?

6 A. Right. I would -- I would not raise a fist or harm to
7 a law enforcement officer in any way.

8 Q. You also mentioned something about you had specialized
9 training in self-defense?

10 A. Yes. Yes, ma'am.

11 Q. And there are different facets as far as self-defense
12 goes and the training on what you are supposed to do?

13 A. Yes, ma'am.

14 Q. And the presence or absence of weapons are usually
15 pretty important; using alternate means to subdue someone,
16 something of that nature?

17 A. Yes, ma'am.

18 Q. And you have had a lot of training in that area, so you
19 could be considered to be someone who should react
20 appropriately?

21 A. Yes.

22 Q. You also talked about your salvage career, and we
23 talked a lot about salvage, and this is something, the ideas
24 about computer chips. And this is a hobby I believe it was
25 mentioned in opening and in your testimony that you did with

1 your son James?

2 A. Yes, ma'am, with my son James and with my dad also.

3 Q. And your dad also. Yeah, I was getting to that. I'm
4 sorry.

5 And with your dad. And this is kind of a thing that
6 was a bonding experience for you and your family members?
7 Something that y'all did together? Is that a good way to
8 put it?

9 A. Yeah, it was cool, like a treasure hunt. Once you get
10 started doing salvage, you feel like that, you know, people
11 are just leaving money hanging around outside, because you
12 can go in with a little bit of work, you know, and come up
13 with a -- come up with a few dollars. It was always cool to
14 split it with James.

15 Q. And something like you just said, it was something that
16 you and your son could do together on occasions.

17 And she even put in a number of records over a four
18 month period - April, May, June, July - in which you went to
19 the salvage yard and got and turned in that?

20 A. Yes, ma'am.

21 Q. And included in those sometimes were things like beer
22 cans?

23 A. Oh, yes, ma'am.

24 Q. And other metals that you found.

25 And over the course of those visits, over that four

1 month period, you collected approximately \$178 worth of
2 metal?

3 A. I would have to -- I would have to add it up. I'm --
4 I'm okay with what you are saying.

5 Q. And well, that's what's in the records.

6 A. Okay.

7 Q. And you authenticated the records, right?

8 A. At the time, yes, ma'am. I didn't -- I didn't add up
9 the totals.

10 Q. And on the date in question, however, and I want to go
11 back to your testimony on what happened that day, okay?

12 That morning you said that you were doing a project in
13 the den, is that correct?

14 A. Yes, that day.

15 Q. That day you had to move around some furniture?

16 A. Yes, ma'am.

17 Q. And then you had moved around some computers?

18 A. Yes, ma'am.

19 Q. And then you lost interest in that?

20 A. Right. I didn't know where to put the stuff. I
21 couldn't find a place for it.

22 Q. And that day you mentioned that you and Shanna, she
23 wasn't happy with you?

24 A. Yes, ma'am. Yes, ma'am. I had tore up her den.

25 Q. You had torn up her den.

1 A. And I had moved the stuff in from the garage without
2 asking, and I don't know many spouses that would -- well,
3 let me just say I should have known that Shanna wouldn't go
4 for it.

5 Q. And that day you were able to move pieces of furniture,
6 such as chairs and tables and sofas?

7 A. I got -- I got Josh's help with it, ma'am.

8 If you are asking about my physical ability, I can do
9 some stuff. I can -- I'm good for usually about two hours
10 if I'm going to do something physical. And then the thing
11 is that then I usually have to actually lay down, get the
12 pressure off my back. Even sitting there doesn't help, but
13 I can do some stuff. I'm not a -- I'm not an invalid.

14 Q. I understand, and that's where we are going.

15 So did you have to go lay down that day because of all
16 you had moved around?

17 A. I had -- I had during that day, sure.

18 Q. Okay. And that's your testimony now, that you laid
19 down that day?

20 A. I had -- I had rested at different times during the
21 day, sure, either in my -- in my recliner or on my bed. To
22 tell you the truth, I couldn't tell you when or where.

23 Q. So you -- however, Shanna wasn't happy with you, so you
24 decided that you needed to get out of the house?

25 A. Right, I wanted to give her some space.

1 Q. Some space?

2 A. Uh-huh.

3 Q. Was she angry, or just ticked off, or what?

4 A. I am not going to testify to understanding what my wife
5 is feeling all the time.

6 Q. Okay. But you thought it was in your best interest to
7 leave?

8 A. I didn't think it could hurt, ma'am.

9 Q. At that point you felt good enough that you could ride
10 around in your car, even though sitting sometimes could be a
11 problem?

12 A. Yes, ma'am.

13 Q. And on that day, as you do on many occasions as you
14 testified, you decided that you would take your 45 Norinco?

15 A. Yes, ma'am.

16 Q. The one that you later dismantled in your garage?

17 A. Yes, ma'am.

18 Q. Where is it?

19 A. I don't know, ma'am.

20 Q. What did you do with it?

21 A. I left it in my garage.

22 Q. Are you aware the police searched your garage?

23 A. Yes, ma'am.

24 Q. So your testimony here today is you left it in your
25 garage, but that you had the wherewithal on the night in

1 question that this happened when you were upset to --

2 How did you dismantle it?

3 A. I took it apart and take the one pin out and it comes
4 into pieces, like you are going to clean it --

5 Q. Uh-huh.

6 A. -- and then I rendered it unserviceable. I damaged two
7 internal parts.

8 Q. What did you damage it with?

9 A. A grinder I said.

10 Q. A grinder.

11 So on the night in question when you have been acting
12 in self-defense and you were so upset that you were in shock
13 because you had to move quickly, you were able to go in the
14 garage, take your gun apart that you just shot two men with,
15 grind it down into different parts and then you left it in
16 the garage?

17 A. Yeah, I didn't grind it down into different parts,
18 really. But, yes, I -- I -- like I said, I -- I didn't ever
19 want -- I didn't want that gun to ever be used again.

20 Q. Okay. You didn't think that you needed it for
21 protection?

22 A. No.

23 Q. Even though you were scared for your life and your
24 family's life?

25 A. Which -- we own other -- we own other -- I had my

1 wife's pistol for sure and other weapons.

2 Q. So you weren't trying to get rid of evidence of a
3 murder?

4 A. That is not what I did, no.

5 Q. And you don't know what happened to the gun? It's
6 never been found or recovered, any part of it?

7 A. No, ma'am, I do not know.

8 Q. You didn't tell Shanna to get rid of it?

9 A. No, I did not.

10 Q. You didn't tell your father to get rid of it?

11 A. No, I did not.

12 Q. You didn't tell your sons to get rid of it?

13 A. No, I did not.

14 Q. Who all had access to the garage where you left the
15 dismantled pistol?

16 A. The three family members that were in town.

17 Q. That day your testimony is that you decided to go scrap
18 metaling by yourself?

19 A. Yes, ma'am.

20 Q. Because you were going to make it into a business of
21 some sort if you could get with construction sites?

22 A. When I left out of the house, that is not what my idea
23 was. I was just burning time, basically.

24 Q. I didn't mean to put words in your mouth, but that's
25 what I understood from what you said.

1 What was your intention when you got in the car that
2 day and started driving around?

3 A. To drive around and see if I found some metal.

4 Q. Okay. And when you went that day you thought it was
5 smart to take your pistol. Did you always leave in the car?
6 Did you take it in and out? How did the pistol end up in
7 the car that day?

8 A. It was in the house with me and when I left I took the
9 pistol with me.

10 Q. So you made that conscious decision before you left the
11 house that you should take the pistol with you because you
12 were going to look for metal?

13 A. Yes, ma'am. I was going to be out alone and I just --
14 you know, looking for metal and I took the pistol with me.
15 I had done it many times.

16 Q. So as you left the house to go look for metal, which is
17 a hobby you did with your son and your father, did you ask
18 either of them to go with you?

19 A. James was in Texas and he was working for his grand-dad
20 so he could buy a pickup of his own --

21 Q. Okay.

22 A. -- and so I couldn't ask him. And I could not tell you
23 whether my dad was there or not.

24 Q. If I were to tell you your dad was there that day, is
25 there a reason you wouldn't have asked him to go with you to

1 go look for metal?

2 A. No reason one way or the other.

3 Q. When you left the house that day, what were you
4 wearing?

5 A. I was wearing shorts and a T-shirt with running shoes.

6 Q. When you got in the car, I believe you mentioned that
7 you put the pistol there in between the seats?

8 A. Actually it would be on the floorboard of the van.
9 Then you would have a fold-up center console in the middle,
10 so it would be under that center console.

11 Q. Okay. And is that where you usually kept it when you
12 rode around town?

13 A. Somewhere -- somewhere like that, yes, ma'am.

14 Q. And typically on a typical day when you go to look for
15 metal, where do you go?

16 A. I have been pretty much all around the northeast. I --
17 like I said, I don't really pay attention to the road signs,
18 so I can't tell you.

19 Q. But you would agree that Woodfield Park is a different
20 neighborhood from yours?

21 A. I think it's the next neighborhood over, yes, ma'am.

22 Q. And on that day you just happened to pick --

23 You mentioned in your testimony before you went to the
24 store you were driving around that area just looking for
25 metal?

1 A. Yes, ma'am.

2 Q. And then at some point while you were driving around
3 you decided that you needed to go to the store and get some
4 beer?

5 A. Yes. As I was crisscrossing the streets, I actually
6 just showed up on Decker, and, yeah, I went to the store.

7 Q. And on that day as well you just happened to buy
8 Hispanic beer; Modelo?

9 A. Yes, ma'am. I was replacing Coronas, and Modelo is
10 pretty good.

11 Q. Okay. And that your intention at that point would have
12 been to take the beer home to your wife, maybe to make
13 amends, because y'all drunk it all the day before?

14 A. I didn't say that we drank it all the night before. I
15 was replacing the beer that we drank and it was -- I
16 didn't -- no, maybe I'm not that smart, you know. I -- I
17 was just replacing the beer in the frig, ma'am.

18 Q. Maybe you are not that smart? You had a successful
19 career in the Army for 20 years?

20 A. I was just saying -- you thought of bringing home a
21 peace offering. I didn't.

22 Q. Okay. I'm sorry, I don't mean to put words in your
23 mouth, but --

24 And at that point you get back in your car and you are
25 going down I believe it was Faraway Drive?

1 A. I think it was Faraway, yes.

2 Q. Or some street near there?

3 A. Right.

4 Q. And somehow you end up back in this neighborhood on
5 Woodfield Drive?

6 A. I -- once again, not real great with the streets, but
7 Decker -- Faraway comes out on Decker and then goes back
8 into I think the very border of Woodfield out in between my
9 neighborhood and that neighborhood, and I think that
10 intersects with the Woodfield Drive road, or whatever it's
11 called, and that's how I drove by the house. That's what I
12 think.

13 Q. But you aren't here to tell this jury that Woodfield
14 Drive is the main thoroughfare through that neighborhood?

15 A. I mean, it's -- I don't --

16 Q. You had to make some turns to get there?

17 A. I think that -- am I wrong that their house is on
18 Faraway and Woodfield? If I'm wrong, then I'm getting the
19 streets totally wrong, I mean, but -- I think the house is
20 on Faraway and Woodfield.

21 Q. I can't testify for you.

22 A. Well, then my answer would be I don't know.

23 Q. Okay. And somehow, though, you ended up in this
24 neighborhood in front of this lot where you see two people
25 out in the yard that you had never seen before in your life,

1 right?

2 A. No, ma'am, I hadn't.

3 Q. And at that point they looked like to you that they
4 would be great prospects to get you a connection to the
5 construction work?

6 A. I didn't say great prospects. Actually I thought that
7 there was a possibility of that.

8 Q. And you just happened to have a 12 pack of Modelo in
9 your car?

10 A. Yes, ma'am.

11 Q. And at that point you decided that you wanted to --

12 Let me ask you this. As far as making contacts, you
13 have many contacts in the military, don't you?

14 A. Not -- not in local construction. Like I said, I
15 already -- yeah, definitely on Fort Jackson now and then I
16 could go -- you know, I had my ID card and I have cards that
17 are registered. I can go on Fort Jackson and talk to
18 contractors, you know, government contractors. So, yeah,
19 I'm good to go there. I don't -- Fort Jackson has nothing
20 to do with local civilian contractors that are either
21 building or remodeling stuff in the local area.

22 Q. Okay. But on this date -- on this day you happened to
23 have a 12 pack in your car and you are riding down this one
24 neighborhood that's not your neighborhood and you happened
25 to see two people and decided to stop because they would be

1 good contacts for you to contact someone else -- for them to
2 contact someone else about --

3 A. No. Actually -- I mean, it developed that way, and
4 I -- you know, it would have suited me fine if they would
5 have been the contact too. I mean, they looked like working
6 people that just got off work and -- you know, they were
7 even talking about it, them doing some painting and stuff.
8 Yeah, it could have been them or somebody that they met.
9 Yeah, I ran it by them.

10 Q. So as you are driving by the house, your testimony
11 before this jury here today is that you looked over and they
12 waved at you and you decided to stop?

13 A. Yeah, I had slowed down and then was kind of looking
14 over there thinking about it, you know, and, yeah, they saw
15 me and they lifted up there their hand, so I lifted up my
16 hand. And then Edgar said -- it would be kind of weird. I
17 mean, to me. You know, maybe I'm naive. It would be kind
18 of weird at that point not to. I had almost stopped my van
19 anyway and the guy was asking me to come over, so I did.

20 Q. You have had a 20 year career in the Army?

21 A. Right.

22 Q. You have had extensive training on how to protect
23 yourself and to kill others?

24 A. Yes.

25 Q. And you are not going to tell this jury you are naive?

1 A. I think I am naive about some things. I have
2 learned -- I have been in jail for 16 months and I have
3 learned more about reading people in the 16 months than I
4 ever knew in my whole life. I don't understand -- what I
5 don't -- and, you know, there is people that have worked
6 with me that, you know, I have told this to is that I have a
7 really hard time with hidden agendas. Even -- you know, in
8 the military we play politics and that kind of stuff. That
9 was always something that I wasn't -- I wasn't any good at,
10 because I pretty much -- you know, you call me simple if you
11 want to, but I'm going to tell you what it is that I'm here
12 to do and how I can help you, and I'm not doing that to gain
13 something else. I'm doing it for exactly what I tell you
14 to, whereas I think with a lot of folks -- or what I have
15 seemed to run into is that with other folks it's sometimes
16 more multi -- sometimes more multi-faceted and I might be
17 hitting brick walls that I didn't even realize were there.
18 So, yeah, you know, I -- in that sense, yeah, I think I'm --
19 I think that I'm -- definitely in the sense of why I got in
20 the trouble I got myself into, ma'am, I feel like I was
21 pretty naive. I think I was pretty dumb.

22 Q. You are telling this jury that you were naive?

23 A. . Right.

24 COURT REPORTER: I'm sorry?

25 BY MS. CAMPBELL:

1 Q. So at that point --

2 COURT REPORTER: I'm sorry, Ms. Campbell, someone
3 coughed and I didn't hear what you said. "You are telling
4 this jury what?"

5 MS. CAMPBELL: "You are naive."

6 BY MS. CAMPBELL:

7 Q. So at that point this stranger motions to you to come
8 forward and you pull over?

9 A. Right.

10 Q. And at that point y'all have a conversation?

11 A. We did.

12 Q. And at that point you asked him if he knew of any
13 contacts, because that's the reason that you pulled over,
14 right, as far as getting you in touch with construction?

15 A. It wasn't the first thing that I -- it wasn't the first
16 thing that I said to him, no, ma'am. I -- because we talked
17 about -- you know, I introduced myself by name. He told me
18 where he was from and where -- and where Pablo was from. We
19 talked about Guatemala. I mean, I can -- I can -- I can
20 remember some things we talked about, but, yeah, along the
21 way I asked them about -- told him about that I liked -- I
22 liked to pick up scrap metal and asked him -- asked him
23 about construction people.

24 Q. So at this point I guess you are out of the van?

25 A. Yes, ma'am.

1 Q. And you had gone into the yard?

2 A. I was -- I was -- I was in the yard with them, standing
3 at first and then sitting.

4 Q. Had you already pulled out the Modelo?

5 A. Yes, ma'am.

6 Q. And had offered it to them I guess to ingratiate
7 yourself?

8 A. Yes, I considered it -- you know, I kept -- once --
9 once I got out of the car with it -- kind of like -- you
10 know, like if you were going -- if you go over to somebody's
11 house for a Christmas party and you bring a bottle of wine.
12 If there is half of it left, you don't bring it home with
13 you, you know. So, yeah, I -- I brought it and sat it there
14 in the yard and people drank it.

15 Q. And you started drinking with them too?

16 A. I had one of the Modelo beers and then, yes, they gave
17 me a beer and I drank one of theirs.

18 THE COURT: We are going to break for lunch.

19 MS. CAMPBELL: Okay.

20 THE COURT: We are going to break for one hour for
21 lunch, ladies and gentlemen. Please go to the jury room.
22 Do not discuss the case.

23 (The following takes place outside the presence of
24 the jury panel)

25 THE COURT: We will be in recess for one hour on

1 this case.

2 (Whereupon, proceedings were recessed)

3 (Whereupon, proceedings were reconvened)

4 THE COURT: All right. You can bring the jury,
5 please.

6 (Whereupon, the defendant was seated in the
7 witness box)

8 (The following takes place in the presence of the
9 jury panel)

10 THE BAILIFF: Your Honor, the jury is present.

11 THE COURT: All right.

12 You may continue.

13 MS. CAMPBELL: Thank you, Your Honor.

14 BY MS. CAMPBELL:

15 Q. We were talking about that you had gotten out of the
16 car at this point, you had the 12 pack with you, and y'all
17 were drinking a beer inside the gate, is that correct?

18 A. Yes, ma'am.

19 Q. And what area of the yard were you sitting in at this
20 point?

21 A. That -- the small tight area that we described and
22 showed pictures of to the jury.

23 Q. Right where the chairs are?

24 A. Yes, ma'am.

25 Q. And at that point y'all drank several beers, or they

1 were drinking beer, right?

2 A. They are drinking beer and so am I, yes, ma'am.

3 Q. And were they drinking before you got there? Could you
4 tell?

5 A. By my observation of some beer cans, maybe. Not that
6 I -- it wasn't something that I looked at. I'm -- I would
7 be guessing.

8 Q. Okay.

9 A. I didn't -- I didn't --

10 Q. How many beer cans there?

11 A. That wasn't something that I -- they were drinking --
12 they had beer in their hands, so they were drinking.

13 Q. They were drinking?

14 A. Uh-huh.

15 Q. And you saw at least a beer in their hand?

16 A. Sure.

17 Q. As you pulled up?

18 A. Sure.

19 Q. And did they request you bring the beer in, or did you
20 just volunteer that?

21 A. I volunteered it.

22 Q. And at that point you brought the Modelo beer in,
23 correct?

24 A. Yes, ma'am.

25 Q. And then once you are inside the gate -- and you told

1 this jury very specifically that you have a two-beer
2 four-beer rule, is that right?

3 A. Right.

4 Q. Okay. Two beers if you are driving and then you would
5 be okay, right?

6 A. Yeah, basically. It doesn't have -- it has to do with
7 driving, but it also has to do with just being sensible, you
8 know.

9 Q. That makes sense; sensible.

10 Two beers is the max if you are driving, and that day
11 your testimony is you only had two beers. And the reason
12 for that is you always adhere to the two-beer rule when you
13 are driving, is that correct?

14 A. No, actually I said that I had already surpassed my
15 two-beer rule, because they gave me a 24 ounce and I drank
16 it.

17 Q. Okay, and I'm confused now. How many beers did you
18 drink that day?

19 A. I drank two. One of the --

20 Q. One of them was a 24, though?

21 A. Right.

22 Q. And was one was what kind?

23 A. The Modelo that I had brought.

24 Q. And then your other rule is that if you aren't driving,
25 then you can have four beers, right?

1 A. If I'm -- no, it's not about driving. Once again, it's
2 about like who you are with, who you are around. If I was
3 around friends I could trust, and, yes, which would also
4 mean that I wasn't driving and in a public setting, I
5 would -- yeah, my limit would be four.

6 Q. Okay. And are you aware that you did an examination or
7 an interview with people in the Army when you exited and
8 they asked you about your drinking habits?

9 A. Yes, ma'am.

10 Q. And in that --

11 MS. DAVIS: Objection, Your Honor.

12 THE COURT: Basis for your objection?

13 MS. PRINGLE: May we approach, Your Honor?

14 THE COURT: Sure.

15 (Whereupon, the lawyers approached the bench for
16 an off-the-record discussion)

17 BY MS. CAMPBELL:

18 Q. And in that they asked you about your drinking habits?

19 A. I wouldn't -- I -- if I took a survey after I got out
20 of the Army --

21 Q. No, sir.

22 A. -- I would go on --

23 Q. No, sir, this is the exit interview from the Army. Do
24 you recognize that?

25 A. Oh, this isn't a -- no, give me a second.

1 This is a compensation and pension exam, ma'am. That
2 has to do with my -- with -- with my VA disability after I
3 got out of the Army.

4 Q. Okay.

5 A. Uh-huh.

6 Q. And in that when they asked you about your drinking
7 habits, you said that you currently drank a 12 pack of beer
8 per day?

9 A. I -- yes, ma'am. At that time we were talking -- and
10 that goes specifically to how I was sleeping and what I was
11 using the beer for. It's a really more complicated thing
12 than the two-beer four-beer rule, which is what I said I
13 used if I am in a public setting and either I am with
14 friends or with people that I don't know.

15 Q. Okay. Well, you didn't tell them about your two-beer
16 four-beer rule in this. You told them that you drank a 12
17 pack of beer a day.

18 A. That didn't have anything to do with being in public or
19 anything like that. It has to do with my medical -- that's
20 a medical exam.

21 Q. And then you went on to say that when you got back from
22 one other tour you were drinking heavily, both beer and
23 bourbon, stating you were drinking enough that you couldn't
24 count them?

25 A. Yes, ma'am. Do you want to -- I mean --

1 Q. So on this date you were adhering to your two-beer
2 four-beer rule, but on other -- every other day you didn't
3 adhere to that rule?

4 A. No.

5 Q. Is that what you testified?

6 A. No. That's -- that's not -- that's not true at all.
7 You are talking about interviews that I did with doctors
8 having to do with my VA pension, about things that I have --
9 that I have struggled with in the past.

10 Q. Okay.

11 A. That has nothing -- that has nothing to do with a rule
12 that I have for social settings, so I'm fun at cocktail
13 parties and not a -- you know, don't drink too much.

14 Q. And on this date in question you stood out there and
15 y'all were having a conversation and you said that you
16 talked to Edgar about his construction site contacts?

17 A. Yes, ma'am.

18 Q. And y'all have a conversation. And somehow at some
19 point y'all all must drink the entire 12 pack while the
20 three of you were you sitting out there, is that correct?
21 That's your testimony, because your testimony is when you
22 left, the other two gentlemen hadn't come up there yet.

23 A. I know that -- well, I don't believe that the entire 12
24 pack was drank. I think a lot of them were. You would have
25 to count up the ones that were empty.

1 Q. Okay. Let's say most of it was drunk.

2 A. Right.

3 Q. And at some point Edgar --

4 A. By Edgar and by Pablo and by other people who came by.

5 Q. Other people?

6 Okay. So now you are testifying that there were other
7 people came by? Do you know who those people were? We
8 haven't heard about those.

9 A. I think that there was a -- there were other people
10 that actually testified on y'all's behalf, right?

11 Q. You testified in your direct examination that they
12 weren't there until you got back from the store. That was
13 your testimony.

14 A. Those were the two gentlemen that we met with in the
15 middle of the yard. I didn't ever say that nobody came and
16 went from those locations.

17 Q. You didn't mention in your direct examination when you
18 were asked in detail about what happened that day about
19 anybody else being there before you left for the store.

20 A. I wasn't asked in detail about how many people came or
21 went. I was asked about the specific event that occurred
22 that made it to where I ended up having to shoot two people
23 and that's what I was -- that's what I was referring to.

24 I don't know how many people stopped by, left, stopped
25 by and talked to Edgar for a minute, any of that. I

1 couldn't testify to how many there were or to who grabbed a
2 beer and who didn't. I don't -- I don't know, ma'am.

3 Q. Let me ask you this. In your direct examination, did
4 you ever mention to this jury that anybody else came by,
5 other than Edgar and Pablo, before you left for the store?

6 A. To my knowledge I was never asked.

7 Q. Did they drink beer when these new people came by?

8 A. That's what I said. I can't tell you who did and who
9 didn't. Some did.

10 Q. Did you have conversations with them as well? Did
11 Edgar translate to them as well?

12 A. I might have been introduced to them.

13 Q. Did you ask them about their contacts in the
14 construction world?

15 A. No, I didn't.

16 Q. Why didn't you ask them? Did they appear to be
17 workers, just like Pablo and Edgar?

18 A. No.

19 Q. Did they have a special look about them that made them
20 construction workers?

21 A. No special look, ma'am. I just didn't -- I didn't have
22 anybody like really stick around for me to talk to. I
23 don't -- I don't remember asking anybody else about it.

24 Q. Were they the same people that you then saw when you
25 got back from the store?

1 A. I -- I don't know. I thought about that a lot.

2 Q. But you didn't mention it.

3 A. I didn't have any reason to mention it. I wasn't asked
4 if people had stopped by the house.

5 Q. But somehow all or most of the beer got consumed, would
6 you agree with that?

7 A. It seems -- yes, ma'am, I -- I saw -- I counted like a
8 number of Modelo cans, so I think people drank.

9 Q. So you have had the opportunity to look at the photos?

10 A. No, not photos. There is -- the list that y'all have.

11 Q. Okay. And the list, okay.

12 And at some point Edgar, according to your testimony,
13 asked you to take him to the store to buy more beer, is that
14 correct?

15 A. Yes, he did.

16 Q. And then you offered to drive him to the store,
17 because, again, you are hoping to get this metal business
18 for which you have made a \$178 -- 77, actually, dollars that
19 year. You are hoping to get about it off the ground to
20 Edgar Lopez and Pablo Gutierrez?

21 A. Ma'am, I wasn't -- I wasn't putting out a shingle or
22 opening a store front.

23 Q. I would agree with that.

24 A. I was -- we are talking about my -- I store stuff in my
25 garage until it builds up and Shanna makes me take it to the

1 recycle place and we split the money.

2 Q. This is funny here today?

3 A. What you're asking me is.

4 Q. You drove him to the store to get more beer. And you
5 said it wasn't until you got to the store that he indicated
6 to you that he needed money from you to get the beer, is
7 that correct?

8 A. That is correct, ma'am.

9 Q. And you testified in your direct, and I can play it
10 back for you if you need to hear it, that it was at that
11 point that you were giving the money that you first started
12 to be afraid, that it was like they were starting to scam
13 you or -- flimflam or scam, I can't remember which. I don't
14 want to misquote.

15 A. I think I might have used the word panhandle.
16 Everybody has been panhandled. And -- and -- and so I -- I
17 kind of felt like -- I don't know, he put me on the spot is
18 really what I mean.

19 Q. And you said that you even had -- you only had two
20 twenties in your wallet?

21 A. No, I did not. I had other money in my wallet.

22 Q. You said that you --

23 A. I didn't have any small bills. That's why I gave him
24 two twenties.

25 Q. And at that point, for whatever language you want to

1 use, you started thinking, okay, something is not right
2 here?

3 A. Not so much I think the guy got a case of beer out of
4 me.

5 Q. You testified on direct that you started to get scared.

6 A. I think you are inferring things in my testimony that I
7 didn't mean, ma'am. I don't think it has anything to do
8 with my testimony. I think it has to do with what you think
9 it means.

10 Q. At that point, according to your testimony, just now,
11 you admit that you were being panhandled. Everyone has been
12 panhandled. Is that what you just said?

13 A. I used that as an example of kind of how you would feel
14 when somebody is asking you for something that you didn't
15 plan on. That was an example.

16 Q. But at that point --

17 A. And I used that as an example, because it has commonly
18 happened to me when I got out at a convenience store, or
19 something, that somebody was selling -- it might be a mixed
20 tape, or it might be a bootleg movie, or something like
21 that, and it's not something that I came to the store to
22 buy. It's something that they are asking me about, and I
23 don't necessarily want it. So that feeling is kind of -- is
24 what I would say it was with Edgar. He is -- I was willing
25 to drive him to the store. Now he's asking me to buy the

1 beer. I didn't really plan on that, but okay, I will.

2 Q. And at that point something went off in your head
3 saying hey, things aren't quite right here?

4 A. Those -- those terms that you are using I would put
5 much further into my testimony whenever there was all five
6 of us back at the house and they were talking and I wasn't
7 getting reactions out of people the way that I thought I
8 would. That's -- that's really when I would say that I
9 started feeling uneasy, felt like something was wrong. They
10 were asking me the same question over and over again, that
11 kind of thing.

12 Q. Okay. So your testimony is now you didn't care about
13 being panhandled at that point?

14 A. Yeah, I -- I said I felt like I had already -- I was
15 already -- one, I was already at the beer store. I'm not
16 going to -- yeah, I didn't -- it would be kind of rude to
17 tell the guy no and -- and I have used the term in for a
18 penny, in for a pound, which means, yeah, I'll go ahead and
19 buy the beer. Maybe he will -- maybe it will pay off.

20 Q. At this point did you notice -- you said earlier you
21 didn't notice at first that Edgar was drunk. At this point
22 did you notice he was kind of drunk?

23 A. I wish I could give you a more definite answer of that.

24 Q. Have you looked at the video?

25 A. I have. I wasn't in that store, though, when he

1 dropped the beer. That would have probably been different.

2 Q. How many hours was it prior to going to the store that
3 you were with him?

4 A. This whole -- everything that we talk about during the
5 trial, all these events from the time I left my house to the
6 time I was back at my house is about a two hour period. I
7 don't know what happened exactly when or any of that, but it
8 all happened within about two hours.

9 Q. Well, did you think he was drunk when he showed up
10 holding the beer in a broken case with one of them dripping
11 out of it?

12 A. No, ma'am, to tell you the truth, I wasn't even -- I
13 wasn't even concerned with that.

14 Q. So when he got back to the car, you give him two
15 twenties, did you ask him for your change then?

16 A. I did not ask him for my change then. I didn't think
17 about it.

18 Q. And at that point you drive him back to the area where
19 you had made your new friends and are inquiring about your
20 future business?

21 A. I had become acquainted with Edgar and Pablo and I
22 thought that I was going to meet two other people and be
23 able to ask them about some of that.

24 Q. And --

25 A. You know, if I can invest, you know, twenty dollars and

1 two beers of my time without thinking that I'm going to open
2 a new business, I mean --

3 Q. That was about one-fifth of your earnings that year.

4 A. You are saying that was one-fifth of my earnings,
5 ma'am?

6 Q. Approximately.

7 A. I'm a retiree and I have disability too. I take -- I
8 take care of my family, ma'am.

9 Q. And at that point, though, when you get back to the
10 car, you don't notice that he's drunk and you drive him back
11 because you wanted to meet these business acquaintances of
12 his?

13 A. Right.

14 Q. That's your testimony?

15 A. Yes, ma'am.

16 Q. And then when you get back is the first time that you
17 have seen these two gentlemen that you referred to as the
18 ones that testified here in court? Not the ones that are in
19 and out earlier now, but we have two new people, correct?

20 A. I could not testify that any of the people that
21 testified against me were the ones I met that day.

22 Q. Okay. And then y'all had a conversation, according to
23 your testimony here today, in the middle of the yard over
24 near the house, the big house, away from the shed?

25 A. I would say that it was in the center. If you went to

1 the center of the yard from the garage and the other house,
2 you would be about where we were at.

3 Q. And at this point are you still drinking or not?

4 A. No, I was not. I know that I was handed another beer.
5 I can't even remember if I opened it or not.

6 Q. And your testimony then earlier today was that at that
7 point the two people, y'all had a conversation, but things
8 start getting weird?

9 A. Yes, ma'am.

10 Q. Because they are leaving you out of the conversation?

11 A. Yes. I didn't know what was -- I didn't know what was
12 being said.

13 Q. And at that point you admit now, at least, that you
14 were getting scared, something wasn't right?

15 A. Actually it wasn't until Edgar said that he was going
16 to keep me from leaving that I would say that I was scared.

17 Q. So you are going to tell this jury right now that you
18 didn't testify to that earlier today?

19 A. Ma'am, I'm telling -- I'm -- I'm telling you by my best
20 recollection what happened that day. I want to tell you the
21 truth, just as much as I told Jennifer Davis the truth. I
22 can't -- I have been waiting for 16 months to be able to
23 tell this story right here, and I'm telling you that there
24 was a point where I started getting scared. It was -- where
25 it was really noticeable for me was when I actually had

1 another man tell me that he was going to keep me from
2 leaving.

3 MS. CAMPBELL: Your Honor, we have a matter of
4 law.

5 THE COURT: All right.

6 Ladies and gentlemen, we will have you go to the
7 jury room. Please do not discuss the case.

8 (The following takes place outside the presence of
9 the jury panel)

10 THE COURT: Yes, ma'am.

11 MS. CAMPBELL: Your Honor, the defendant in a
12 nonresponsive answer to my question basically just put on
13 the record that he's been waiting 16 months, just as he's
14 told me and telling you today is his story. At the scene
15 where the police confronted him, they advised him of his
16 rights and were very careful about violating any Doyle --
17 having any Doyle issues in this case. But at this point,
18 Your Honor, we think he's opened the door with the fact that
19 when the police confronted him, he did not tell his story.
20 In fact, he invoked and he didn't say a word, or at least he
21 we could get into the fact that he didn't tell his story, if
22 we can't get into he invoked. We would not be allowed to go
23 there, Your Honor, but at this point he's the one that's
24 volunteered this information stating that on the record in
25 front of this jury that he's been waiting 16 months to be

1 able to tell the truth and that that's what he's telling me
2 now, and that's simply not what happened. I think we have
3 the right to at least maybe we should get into the fact that
4 he invoked his rights, but we should at least state that the
5 police -- when he was confronted with the police he didn't
6 tell them his story.

7 THE COURT: What says the defense?

8 MS. DAVIS: Thank you, Your Honor.

9 I don't believe that what Mr. Parvin just said is
10 opening the door or is what she is getting at in terms of
11 State versus -- or Doyle v. Ohio.

12 State v. McIntosh is saying he could not be
13 impeached by the State on never telling the story or never
14 telling the police, unless he misleads that or misleads them
15 into that during his testimony, which he has not done.

16 THE COURT: All right. That's the issue, whether
17 he has or whether he hasn't, as the State argues that he
18 has.

19 MS. DAVIS: Your Honor, I'm just referring to
20 State v. McIntosh and State v --

21 THE COURT: Well, tell me about State v. McIntosh
22 and State versus whatever else you said.

23 MS. DAVIS: Beg the court's indulgence. I
24 apologize.

25 THE COURT: All right.

1 (Off the record)

2 (Back on the record)

3 MS. DAVIS: Your Honor, I apologize for the delay.

4 State v. McIntosh tells that similar on

5 cross-examination that because the defendant did not -- or,

6 I'm sorry, the defendant did not open the door on

7 questioning because he did not explicitly or implicitly

8 assert that he did cooperate with police, wherein the focus

9 of his defense was that he had done nothing, and, therefore,

10 nothing to tell the police in that case.

11 In this situation, Your Honor, it's the same. Mr.

12 Parvin did not assert implicitly or explicitly that he

13 cooperated with the police; so, therefore, I do not think he

14 opened the door to his not speaking with police at that

15 time, instead of invoking his Fifth Amendment Rights.

16 THE COURT: Ms. Campbell?

17 MS. CAMPBELL: Your Honor, I believe -- and I can

18 get it played back for the court, but he stated that he had

19 been waiting 16 months to tell his story and that he had

20 told Ms. Davis and he had told me and just wanted to tell

21 the truth, or something to that effect. He had the

22 opportunity to tell his story upon his arrest and he chose

23 to make one comment prior to being advised of his rights,

24 which was "what's going on," which is in evidence. And

25 other than that, he immediately decided not to tell his

1 story to anyone. This would be a fraud on the court based
2 on his testimony. I think we are allowed to impeach him on
3 it.

4 COURT REPORTER: I'm sorry, allowed to what?

5 MS. CAMPBELL: Impeach him. Sorry.

6 THE COURT: State v. McIntosh deals with the issue
7 of an inconsistent statement by the defendant. In the
8 McIntosh case the defendant testified that he cooperated
9 fully with the police on direct examination. And the State
10 then -- I think it was the Doyle case or the McIntosh case,
11 but the State was allowed to cross -- the State is allowed
12 to cross-examine where the defendant did not cooperate fully
13 with the police, but claims that he did, and that is the
14 issue in the McIntosh case. The conviction was reversed in
15 the McIntosh case because it violated Doyle, finding that --
16 my cursory reading isn't getting the facts totally straight,
17 but the premise is still the same, that the defendant cannot
18 mislead the jury by claiming that he cooperated with the
19 police, because in that instance the State would be able
20 to -- it would constitute opening the door.

21 And in the McIntosh case it says that he did not
22 explicitly or implicitly assert he cooperated with the
23 police. That was an analogous case where the person claimed
24 they are not allowed to give an inconsistent statement.

25 I don't believe that you can go into it based on

1 his testimony at this point regarding his failure to
2 cooperate with the police or his refusal to cooperate with
3 the police, based on his statements to the jury at this
4 point.

5 MS. CAMPBELL: Your Honor, would I be allowed to
6 say the only thing he told the police was the first thing
7 that came out of his mouth, because that's into evidence.

8 THE COURT: Say again.

9 MS. CAMPBELL: It's already in evidence that
10 basically when he was taken down by the police, that all he
11 said was "what's going on" when they came in the house and
12 that's the extent of he said to them. That was pretty
13 much --

14 THE COURT: That's in the record?

15 MS. CAMPBELL: That's in the record, Your Honor.

16 THE COURT: All right. We can do that.

17 Let's stand for a minute or two, ladies and
18 gentlemen.

19 (Off the record)

20 (Back on the record)

21 THE COURT: All right. Let's bring the jury.

22 (The following takes place in the presence of the
23 jury panel)

24 THE BAILIFF: Your Honor, the jury is present.

25 THE COURT: All right, you may continue.

1 MS. CAMPBELL: Thank you.

2 BY MS. CAMPBELL:

3 Q. You just testified that you said that you had been
4 waiting 16 months to tell your story. Do you recall the
5 when the police arrested you all you said was "what's going
6 on"?

7 MS. DAVIS: Objection, Your Honor.

8 THE COURT: Objection is overruled.

9 MS. CAMPBELL: Thank you.

10 BY MS. CAMPBELL:

11 Q. Do you recall that?

12 A. No, I do not.

13 Q. So you are back at the house. The four men are out
14 there, right? Is everybody drinking?

15 A. I don't know, ma'am.

16 Q. And y'all are over in the yard near the big house, away
17 from the area that you had been drinking in earlier?

18 A. I said that we were in the middle between the garage
19 and the other house.

20 Q. In the middle between the garage and the other house?
21 So not over where the chairs were?

22 A. Well, correct. What I described as a field or a big
23 yard, we were in the middle of it.

24 Q. And at some point -- of course -- skip this.

25 You have armed yourself in the meantime?

1 A. I kept my pistol on me and I kept my windows down on
2 the van because my air conditioner didn't work.

3 Q. Okay. And you are armed and you are out there in the
4 yard with these four men and then they start excluding you
5 from the conversation, is that correct?

6 A. That was my perception, yes, ma'am.

7 Q. Your perception, I'm sorry.

8 And at that point you chose to show them, to take off
9 your shirt and show them your tattoo?

10 A. Yes, ma'am, I did.

11 Q. And at that point when you took off your shirt and
12 showed the tattoo, they would have seen your gun stuck in
13 your pants?

14 A. The gun wasn't at the rear. It was on my strong side.
15 I testified to that. And they -- they could have seen it.
16 What I remember from the testimony is some did, some didn't.

17 Q. That you remember from whose, from their testimony?

18 A. In the -- I mean, like you said, I have been listening
19 in the trial.

20 Q. And so you mentioned earlier that you are being left
21 out of the conversation, something is going on and things
22 aren't quite right here, right? And at that point you chose
23 to take off your shirt and show them your tattoo?

24 A. I felt like that I hadn't made any kind of significant
25 inroads with them and -- and I -- yes, I took off my shirt

1 and I told them my tattoos.

2 You know, we are saying I showed them my back and
3 showed them my arms, pulling the sleeves up, and to -- yes,
4 one of -- one of them had ink. I have ink, and it was
5 just -- yeah, I started a conversation.

6 Q. And you are proud of your tattoos, and you have said
7 that, right?

8 A. Yeah, I don't -- you sit for a long time. I mean,
9 it's a -- yeah, I think I have a pretty good tattoo.

10 Q. Okay. And then you said it got really weird when
11 somebody starts asking you over and over where you live,
12 "where do you live," and Edgar is translating that, I
13 assume, at this point?

14 A. Now, he would be the one that was asking me, yes. I
15 think maybe somebody else had actually asked me directly at
16 some point.

17 Q. Somebody else asked you directly? In Spanish?

18 A. No, ma'am.

19 Q. So at this point things are starting to really look --
20 you had been to the store, you had been panhandled; you have
21 come back, you are out there. Is everybody drinking at this
22 point?

23 A. I don't know, ma'am.

24 Q. And you're out there. You have showed everybody your
25 tattoos and they keep inquiring about where you live. And

1 at this point things around quite adding up, right?

2 A. That's pretty accurate.

3 Q. And you're in the yard and everybody is over there in
4 the middle area where all this is happening, right?

5 A. We're in the middle of the yard, yes, ma'am.

6 Q. And you're armed, and they know that you're armed,
7 because you have shown them your gun?

8 A. I didn't -- I didn't present or show my weapon. I had
9 raised my shirt and showed my tattoo.

10 Q. And at this point you don't have any information about
11 anybody being a contractor, so you aren't getting anywhere
12 with business any more, are you?

13 A. I'm not getting anywhere with being able to get onto
14 any construction sites or be able to gather any metal or
15 anything, correct.

16 Q. And probably at this point you are glad that you're
17 armed, aren't you, according to your testimony?

18 A. Actually, ma'am, I think -- I think that you're -- you
19 don't quite have it right, but --

20 Q. So at that point you think things are bad, things
21 aren't looking good, you aren't getting anywhere with your
22 business proposition, so you leave?

23 A. Yes, I said that I -- I -- I was going to leave.

24 Q. But before you leave --

25 A. When I said that I was going to leave, I didn't think

1 that this was any kind of a deadly force, or encounter, or
2 anything like that.

3 Q. Your direct examination said this at this point you are
4 thinking Mexican Cartel, right?

5 A. No, it does not, ma'am.

6 Q. That's what you testified to earlier, right?

7 A. No, it is not, ma'am.

8 Q. What did you testify about the Mexican Cartel?

9 A. Ma'am, I said that after all of this had happened, that
10 that was one of the things that I thought maybe I had walked
11 into that. This is completely afterwards after I had left
12 the scene.

13 Q. Okay. So after you left the scene you are thinking
14 Mexican Cartel, but up until this point you are just
15 thinking more persons with contacts, business contacts in
16 the community? That's your testimony?

17 A. I'm thinking -- I'm thinking that I don't know what's
18 going on here.

19 Q. But you are there, it's not adding up, you are scared,
20 things are going off in your head and you want to leave.
21 You just admitted that, right?

22 A. I wanted -- yes, I said I was going to leave.

23 Q. Before you leave, if all this is going off in your
24 head, you demand your change.

25 A. No, that is -- I was being -- I was being blocked from

1 leaving and Edgar is asking me for money and I am responding
2 to him. I'm responding verbally that I -- "no, I don't have
3 any more money to give you. As a matter of fact, I would
4 like my change back from the beer."

5 Q. So as you are scared, you are worried, you are thinking
6 all these things that evidently lead you to think about the
7 Mexican Cartel later, and Edgar is saying "give me more
8 money," basically robbing you, you are like "no, give me
9 mine." That's what you are telling this jury?

10 A. Yes, ma'am, that is what I'm telling the jury.

11 Q. And your testimony is, because of the eye witnesses,
12 that he gave it to you?

13 A. He did give me my change back.

14 Q. And that's your story here today?

15 A. Yes, it is.

16 Q. Then at some point you end up over near the gate?

17 A. No, that all was occurring right there in the tight
18 small area where we -- where we originally --

19 Q. And you were very specific in your story that you are
20 inside that fence, because it doesn't make any sense if you
21 aren't inside that fence, right?

22 A. I -- I said that we were inside the fence because we
23 were inside the fence, ma'am.

24 Q. Okay. And at some point, your testimony was earlier
25 today, that Pablo is down there with you near the gate,

1 right, blocking you from leaving?

2 A. Yes, ma'am, that is what -- that's what I perceived.

3 Q. And he's taller than you?

4 A. He's taller than me.

5 Q. And then Edgar, who is approximately the same size as
6 say Ms. Walker here, has gone over to the shed, right?

7 A. Actually it's his --

8 Q. At this point he's reaching into the shed?

9 A. Just tell me when you want to me to answer.

10 MS. DAVIS: Your Honor, I would ask that she allow
11 the witness to respond.

12 MS. CAMPBELL: That's fine, Your Honor.

13 THE COURT: Go ahead.

14 A. I don't know -- I don't know what you are asking right
15 now, so --

16 BY MS. CAMPBELL:

17 Q. At this point Pablo is down blocking you from leaving
18 the gate, right? And Edgar is over reaching into the shed,
19 right? That was your testimony.

20 A. I testified -- ma'am, I testified about an event that
21 happened to me.

22 Q. Yes, sir.

23 A. Something that happened within a few seconds --

24 Q. And I'm getting to that.

25 A. -- whenever it happened.

1 There is no way that I could tell you step by step by
2 step how exactly things occurred.

3 Q. You told us that is how they occurred.

4 A. No, and -- I mean, if you -- if you consider it that
5 way, that is not exactly -- that is not what I meant by my
6 testimony.

7 Q. Well, let me ask you --

8 A. I told her -- I told her how I remembered things
9 happening.

10 Q. Let me talk about how you remember things.

11 Do you remember testifying earlier that Pablo and you
12 were over by the gate and he was blocking you from leaving?

13 A. Me, Edgar, and Pablo were all in that tight area.

14 Q. And that at some point while y'all were there Edgar,
15 you said, and this was specific, I have got it written down,
16 that he goes over and starts reaching into the shed, right?

17 A. He was reaching into the shed.

18 Q. It goes through your mind that he's reaching in there
19 for a gun. That's what you testified to.

20 A. He was reaching into the garage, not the -- I
21 characterized the shed as the brown building.

22 Q. Okay. I'm sorry.

23 A. He was reaching into the garage.

24 Q. Which is what color?

25 A. It's white.

1 Q. Thank you.

2 A. And that was at the same time that Pablo had my head in
3 his arms and was trying to get my gun.

4 Q. And at that point you are able to get the gun, right,
5 because this all happens fast? You testified to it.

6 A. I was able to retain my pistol and then take it out.

7 Q. Retain it. Don't let me put wards in your mouth.

8 You were able to -- and this is all happening like
9 that, right?

10 A. Yes, ma'am.

11 Q. And in those splits seconds Edgar is on the way down
12 there at the white shed, or garage, whatever you want to
13 call it, right?

14 A. Do you characterize it as all the way down there --

15 Q. Pablo has got you in a head -- was it a headlock?

16 A. No, ma'am.

17 Q. He's reaching for your gun? He's trying to get your
18 gun, and then you are able to secure it, right?

19 A. I was able to keep him from getting it, yes.

20 Q. And at that point you pull up and you do what you have
21 to do, and you shoot. And you said that you shot. And your
22 first testimony was that it happened in two to three
23 seconds, at the most?

24 A. Yes, ma'am. I think at one point in my testimony I
25 said -- I said two to -- I might have said three seconds,

1 and then another time I said, you know, it was like the
2 whole thing happened in like five seconds.

3 Yeah, it was all really -- I'm trying to give you --
4 definitely not something I timed. I'm trying to give you
5 the sense that this was something that occurred very
6 quickly.

7 Q. And you emptied your gun?

8 A. Yes, I did.

9 Q. In two to three seconds.

10 And you shot Pablo, grazed him once as he was turning
11 away, three times in the back; and Edgar twice, one in the
12 face?

13 A. Yes -- yes, ma'am.

14 Q. And then they fell down?

15 A. I don't know, ma'am.

16 Q. What did you do then?

17 A. Once I was able to get out of the gate, ma'am, I left.

18 Q. Did you ever see them get up and move -- did you move
19 the bodies afterwards?

20 A. Ma'am, I was -- I was running for my life, scared to
21 death, trying to get out of the gate. And I got out the
22 gate and got in my -- got in my van. And excuse me if I
23 used the term running. I was -- I was trying to get out of
24 the gate.

25 Q. Okay. So you didn't move the bodies, is my point?

1 A. No, ma'am.

2 Q. And they were both shot multiple times, and you didn't
3 see anybody else move their bodies around, did you?

4 A. No, ma'am.

5 Q. And then you got into your van. You said that you were
6 in shock?

7 A. Yes, ma'am.

8 Q. About what had just happened to you?

9 A. Yes, ma'am.

10 Q. Because you are the victim here?

11 A. I -- I would consider myself a victim.

12 Q. And at that point you drove off?

13 A. I did, ma'am.

14 Q. What happened to the other two men in the yard?

15 A. I don't know.

16 Q. And then you went home?

17 A. I went to my house, yes, ma'am.

18 Q. And in total, according to your testimony, is you were
19 gone approximately two hours.

20 What did you do when you got home?

21 A. I didn't -- I didn't do anything constructive, other
22 than get my family out of the house.

23 Q. Because, that's right, you were scared for your
24 family's life at this point. They have got identifying
25 information about you, right? And over and over in your

1 testimony is your concern is for your family and that they
2 would be able to find your family and hurt you, you and your
3 family, is that correct?

4 A. That was something that I was very concerned about.
5 Understandably, according to your testimony.

6 But at that point you go home, right? And Shanna is
7 there?

8 A. Yes, my -- my -- my wife saw me at some point after I
9 got back.

10 Q. And she actually encountered you as you were pulling
11 the van into the side of the house?

12 A. I think she did, yes.

13 Q. Then she walked up to you and told you that she had
14 brought you a sub?

15 A. Okay.

16 Q. And then you told her "good, I'm doing something right
17 now".

18 A. No, ma'am, that's not what I told her.

19 Q. Then she asked you what was going on and you said you
20 needed to get the van out of sight?

21 A. I -- I couldn't tell you if I said that or not.

22 Q. And then she asked you what it was that you had done?

23 MS. DAVIS: Objection, Your Honor.

24 THE COURT: Basis for the objection?

25 MS. DAVIS: Your Honor, may we approach?

1 THE COURT: Why?

2 MS. DAVIS: Immunity, Your Honor.

3 MS. CAMPBELL: I'm not calling the person as a
4 witness.

5 THE COURT: The objection is sustained as to form
6 of the question.

7 BY MS. CAMPBELL:

8 Q. Do you remember what you said to her?

9 A. Not really.

10 MS. DAVIS: Objection, Your Honor. The same
11 basis.

12 THE COURT: Objection is overruled.

13 MS. CAMPBELL: Thank you.

14 BY MS. CAMPBELL:

15 Q. Do you remember telling her "you wouldn't approve"?

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

17 Q. Do you remember then telling her to get your son Josh
18 and go to a motel that night?

19 A. I remember -- I actually remember me and Josh talking
20 about it. Shanna might have been a part of that too.

21 Q. Did Shanna and Josh leave that night at your direction
22 to go to a motel?

23 A. They sure did.

24 Q. And you weren't worried about the police coming and
25 finding you that night? You were just worried about the

1 Cartel people?

2 A. I -- honestly, the police were not the first thing that
3 I was thinking about at that time. That's not something
4 that I'm proud of. It's what happened.

5 Q. And then who was left at the house that night?

6 A. Me and my dad, ma'am.

7 Q. You didn't want to protect him?

8 A. Dad can protect himself pretty good.

9 Q. Okay. So then that night you are still in shock?

10 A. Yes, ma'am.

11 Q. And then as a person who understands leadership,
12 discipline, honor, and responsibility, you then take the gun
13 where you have killed two people, in your testimony in
14 self-defense, and destroy it?

15 A. Yes, ma'am. I blew it.

16 Q. And then you left it in the garage and you have no idea
17 what happened to the gun?

18 A. Yes, ma'am.

19 Q. And let's go to the next morning. Do you remember
20 early that morning Shanna and your son coming back?

21 A. I do -- I do remember seeing them before I drove away.

22 Q. And at that point did you have another conversation
23 with Shanna?

24 A. I'm sure I told her I loved her or something.

25 Q. And at that point you made the decision that you were

1 leaving town?

2 A. I don't -- I don't know -- I mean, I don't know if I
3 would characterize myself as making a lot of decisions at
4 that time. I -- I was reacting a lot. I told them bye and
5 I got on I-20 and I kept going west.

6 Q. In the van that you knew had been seen?

7 A. Oh, yes, ma'am.

8 Q. And at that point you head west and over the next
9 several days you are holed up in a motel you said?

10 A. Yes, ma'am.

11 Q. Did you tell Shanna what you did?

12 A. Yes, ma'am.

13 Q. When?

14 MS. DAVIS: Objection, Your Honor.

15 THE COURT: What's the basis for the objection?

16 MS. DAVIS: Immunity.

17 THE COURT: Pardon me?

18 MS. DAVIS: Immunity.

19 THE COURT: What says the State?

20 MS. CAMPBELL: About what he said. Your Honor, we
21 aren't soliciting information from his wife. It's his
22 statement to her.

23 THE COURT: How about that?

24 MS. DAVIS: Either can assert the privilege, Your
25 Honor.

1 THE COURT: All right, ladies and gentlemen, we
2 will have you step to the jury room.

3 THE BAILIFF: Everyone remain seated while the
4 jury leaves the courtroom.

5 (The following takes place outside the presence of
6 the jury panel)

7 THE COURT: All right, let me hear about this
8 immunity, Ms. Davis.

9 MS. DAVIS: Your Honor, what I'm referring to is
10 19-11-30, which says "no husband or wife may be required to
11 disclose any confidential --

12 COURT REPORTER: Ma'am, you need to read slower.
13 Thank you.

14 MS. DAVIS: I apologize.

15 That -- 19-11-30, that no husband or wife may be
16 required to disclose any confidential or -- in a criminal
17 proceeding any communication made by one to the other during
18 their marriage.

19 MS. CAMPBELL: I'm not asking what she said to
20 him. I'm asking what he said to her.

21 MS. DAVIS: The communication is the point that
22 it's between a husband and a wife, so my argument would be
23 is that he can assert that privilege as well.

24 MS. CAMPBELL: Your Honor, if it would help things
25 I can move on.

1 THE COURT: Do you withdraw the question?

2 MS. CAMPBELL: Well, I don't want to withdraw the
3 question, but I would be glad to move on, if that's what
4 they want.

5 THE COURT: I think it's communications protected
6 by the statute, ma'am, and I sustain the objection.

7 MS. CAMPBELL: Okay.

8 MS. DAVIS: Your Honor, I just ask that that
9 section be struck from the record.

10 THE COURT: What section?

11 MS. DAVIS: Have that last question that she asked
12 that was --

13 THE COURT: What was the question?

14 MS. CAMPBELL: I'll withdraw the question, Your
15 Honor.

16 MS. DAVIS: I believe there were three in a row,
17 Your Honor.

18 THE COURT: Well, I only rule based on objections.
19 You object sometimes and sometimes you don't. You know, I
20 don't go retroactively to everything that you did not object
21 to.

22 You objected to the last question. The jury will
23 be instructed. I sustain the objection and the jury will
24 disregard the last question.

25 MS. DAVIS: Yes, sir, Your Honor. I think prior

1 to that I had objected but was overruled.

2 THE COURT: Well, what I overruled was a proper
3 overruling by the court. It didn't deal with this issue.
4 She asked subsequent questions that dealt with the issue
5 where you did not object.

6 The question is, you know, at what point do you --
7 if you object sometimes, sometimes you don't, you waive your
8 privilege by not objecting.

9 But, you know, we are dealing with the last
10 question and I sustain that objection. The jury will be
11 instructed to disregard the question.

12 Of course, beyond all of this the defendant has
13 testified continually to things he told his wife. "I tell
14 my wife this; I tell my wife that; I tell my wife this; I
15 tell my wife that." Did that waive your immunity by -- of
16 course, any party can waive that immunity, can't they?

17 MS. DAVIS: Your Honor, I guess what I was
18 objecting, I object to the point of which it was a
19 confidential communication.

20 MS. CAMPBELL: Your Honor --

21 THE COURT: How do we determine what's
22 confidential and what's not? The statute relates to
23 communications between spouses. You have elicited testimony
24 throughout direct examination as to things that she told his
25 wife, so have you waived that immunity based on questioning

1 him and having him testify to things that he said to his
2 wife?

3 MS. DAVIS: Your Honor, I would put now that I
4 don't believe that I have. The last question was --

5 THE COURT: How selective can you be? I mean, can
6 you ask him what you told your wife and then when she asked
7 the question then you object because it's confidential?

8 MS. CAMPBELL: Thank you, Your Honor.

9 THE COURT: But beyond that -- we are at this
10 point -- beyond this point do you have anything else to ask
11 about what you said to your wife?

12 MS. CAMPBELL: No, sir.

13 THE COURT: So I would sustain the last objection
14 and we'll just move on.

15 All right, we have got a two minute break. A two
16 minute break.

17 (Whereupon, proceedings were recessed)

18 (Whereupon, proceedings were reconvened).

19 THE COURT: Ready for the jury?

20 MS. CAMPBELL: The State is ready.

21 THE COURT: Bring them on.

22 (The following takes place in the presence of the
23 jury panel)

24 THE BAILIFF: Your Honor, the jury is present.

25 THE COURT: All right. Welcome back, ladies and

1 gentlemen.

2 The objection is sustained. The jury is to
3 disregard the last question.

4 MS. CAMPBELL: Thank you.

5 BY MS. CAMPBELL:

6 Q. Sir, that night you mentioned that you had used a
7 grinder to disable the gun?

8 A. Yes, I did.

9 Q. And you left it there in the garage area?

10 A. Yes, I did, ma'am.

11 Q. Did you ever ask anybody what happened to it?

12 A. No, I didn't, ma'am.

13 Q. Also that night -- and you were still in shock, right,
14 about what had happened?

15 A. Yes, ma'am, I think anybody would be.

16 Q. And at that point you shaved your head that night?

17 A. It was actually the next morning, ma'am.

18 Q. The next morning, I'm sorry.

19 And before leaving town --

20 A. Yes, ma'am.

21 Q. -- in the van.

22 And you took out your earrings?

23 A. I don't really know how that worked out when the
24 earrings came out, but, yes, I quit wearing them.

25 Q. And then you left town, right?

1 A. I left town the next day. It would have been the 31st,
2 I believe.

3 Q. And at that point left in your house are the two -- two
4 of your sons were in Texas, but there was your one son,
5 Shanna, and your father left behind?

6 A. Yes, ma'am.

7 Q. And then you drove -- do you know exactly where you
8 went?

9 A. No, ma'am, I never left I-20.

10 Q. And you drove -- but you drove towards -- you end up
11 in, where, Louisiana, Texas?

12 A. Right, I drove west.

13 Q. So you ended up in Louisiana. And we know on August
14 the 5th that you made the decision that you needed to have
15 the van crushed?

16 A. Yes, ma'am, I took that van to a -- to a salvage place
17 and sold it to them. All those vehicles are crushed.

18 Q. And at that point that was your only means of
19 transportation?

20 A. My dad was coming to get me, ma'am.

21 Q. So you didn't need the van any more? You weren't
22 trying evidence that might have --

23 A. I was hiding evidence, ma'am.

24 Q. And then your dad came and got you and you went to see
25 your parents?

1 A. Yes, ma'am, I did.

2 Q. Your in-laws?

3 A. Yes, ma'am.

4 Q. And when the police interviewed them, they said that
5 you were acting normally, fine, good.

6 A. That was -- yeah, that's what I was -- that's what I
7 was trying for, yes, ma'am.

8 Q. And then some time later, around -- your testimony, the
9 14th or the 15th of August, two full weeks after this, you
10 decided to come home?

11 A. I think I got home on that day, ma'am.

12 Q. Right, got home.

13 So it was about two weeks later, right?

14 A. I think that's about right, yes, ma'am.

15 Q. So you fled the area and remained gone for two weeks.
16 And at that point you didn't decide that you would come home
17 because you had gotten away with it?

18 A. No, ma'am, not at all.

19 Q. Then you came home because you needed to talk to your
20 two sons?

21 A. I came -- I came home because my wife and I talked on
22 the telephone and we didn't know what was going to occur.
23 And I -- I came home because I wanted to be with my family,
24 basically.

25 Q. And you mentioned on your testimony that you wanted to

1 tell your sons yourself what happened before you called the
2 police and faced the inevitable?

3 A. That was something that I was dealing with very
4 heavily. I failed at that. I -- I never did tell them.
5 They didn't find out until I was arrested. The whole -- the
6 whole event is the biggest mistake I have ever made in my
7 life.

8 Q. I know.

9 And then you're home the 15th, the 16th, the 17th, the
10 18th. Do you remember getting a phone call on the 18th?

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

12 Q. A recording from the police?

13 A. No, ma'am.

14 Q. Giving a description of the person who committed two
15 murders?

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

17 Q. And then on the 19th they come in.

18 You stated that you saw the cars out there, but first
19 you didn't know what was going on?

20 A. Right, I saw a car that I didn't recognize.

21 Q. But then you looked out and you saw -- you mentioned
22 something about a vest. Did that clue you in that the
23 police were out there?

24 A. That was exactly when I knew that the police -- that it
25 was police officers out there.

1 Q. And at that point you knew why they were there?

2 A. I had every indication as to why they were there, yes,
3 ma'am.

4 Q. So at that point you exited the house and gave yourself
5 up. So -- your son was in there too.

6 A. No, I did not exit the house and give myself up. I had
7 my son exit the house and I waited for them to come in.

8 Q. And at that point you didn't go out with him to give
9 yourself up?

10 A. No -- no, ma'am, I didn't.

11 Q. You made them come in?

12 A. Yes. I was -- I'm not saying that I had every -- all
13 my thoughts were, you know, really straight. I mean, I put
14 my shoes on. That was something I thought of to do. And I
15 knew that I wanted to be somewhere where they could see me
16 when they came inside, and so I put myself -- I put myself
17 there and I -- I just wanted it to be as controlled as
18 possible.

19 Me -- me walking outside to me seemed more dangerous
20 than me waiting there. I'm not saying -- I could be even
21 wrong about that. I'm just saying that's how it seemed to
22 me at the time.

23 Q. And you have had training and things as far as in some
24 law enforcement's areas. Do you think it was better to have
25 them come inside?

1 A. I thought at the time that it was more controlled. I
2 would -- if you are asking me my opinion now, you know, I
3 will probably be thinking about that for a long, long time.
4 From hearing the feedback of the police officers, I wish I
5 would have done them a better service, ma'am.

6 Q. And during that same time period where you knew the
7 police were out getting ready to apprehend you for a murder,
8 you let the dogs in the house?

9 A. That is weird.

10 Q. You left town on the 31st after your wife returned
11 home, to your home there in the Windsor Lake community,
12 right?

13 A. Yes, ma'am.

14 Q. And at that point you needed to leave town because you
15 were just scared and didn't know what was going on and you
16 thought the Cartel might be involved and all this. You
17 feared for your family's safety.

18 A. I would say that I had very much going on in my head
19 and I didn't have any clear answers to anything.

20 Q. So in order to protect your family, you packed them up
21 with you and took them with you?

22 A. No, clearly I did not. The -- what was going on with
23 that is that we had two sons inbound; one coming from Texas,
24 one coming from New Jersey.

25 Q. You didn't think it was prudent to tell them not to

1 come, you were now under siege by the Mexican Cartel and
2 they would be coming after you?

3 A. Ma'am, I said that was something that I was -- that I
4 was concerned about. I didn't -- I mean, I didn't -- I
5 didn't know and I didn't know what to do. I mean, I -- I
6 really tried to get that point across that this was a --
7 this was a time of great fear and indecision and even panic
8 and -- and anguish and sadness, and I don't think that any
9 of my acts throughout that entire period would pass muster
10 for anybody who was -- you know, that would be looking at
11 it. I was wrong to leave and I was wrong not to call the
12 police and I would do it differently if I -- if I could. I
13 would take -- I would take it all back now and do it
14 differently, but I made those mistakes and I'm trying to own
15 those.

16 Q. You testified on direct that you were in fear of your
17 family's safety that they would come after you. They knew
18 where you lived and you left them there alone for two weeks
19 while you fled.

20 A. I didn't -- I didn't leave my family alone, but I do
21 understand what you are saying, ma'am.

22 Q. You weren't there to protect them.

23 A. You are correct, I left.

24 Q. You didn't call law enforcement to protect them.

25 A. Yes, ma'am.

1 Q. Did you ever think of turning to the military to
2 protect them?

3 A. No, ma'am.

4 MS. CAMPBELL: That's all.

5 THE COURT: Redirect?

6 MS. DAVIS: I have no further questions, Your
7 Honor.

8 THE COURT: All right. Ladies and gentlemen, we
9 need to discuss another matter. We need you to go to the
10 jury room. It won't be long.

11 (The following takes place outside the presence of
12 the jury panel)

13 THE COURT: You can step down, sir.

14 THE WITNESS: Thank you, judge.

15 THE COURT: Who is your next witness?

16 MS. PRINGLE: We have a good number of witnesses
17 here, but we have a quick -- one quick witness, one probably
18 fifteen minutes, and then a long witness.

19 THE COURT: All right. Let's bring the jury.

20 (8 Page Document marked as Defendant's Exhibit No.
21 54 for identification)

22 MS. CAMPBELL: Your Honor, before the jury comes
23 in, they just handed me some more discovery and I have never
24 seen it.

25 MR. SHEALEY: We had these about an hour ago,

1 counsel, but is more recycling records.

2 THE COURT: Say again.

3 MR. SHEALEY: These are some of the recycling
4 records that we talked about, and the custodian is actually
5 here who we plan on introducing them through. He just
6 brought extra that he had found about the same event and I
7 just turned them over to the State about an hour ago,
8 co-counsel.

9 MS. CAMPBELL: Your Honor, I need a second to look
10 at these. I have never seen them. They haven't turned them
11 over. We requested them over and over and over.

12 THE COURT: Is this --

13 MR. SHEALEY: The custodian just brought them.

14 THE COURT: Is this evidence that's contrary to
15 what y'all put up in direct about what he earned concerning
16 recycling?

17 MR. SHEALEY: The custodian brought a couple more
18 years. He only bought what we subpoenaed and they only
19 brought in through '09, and then it was brought through '07
20 today, so we got it today.

21 THE COURT: Well, you can do a witness other than
22 this recycling information.

23 MS. CAMPBELL: If I could just confirm it, Your
24 Honor, I don't know that I have a problem with it. I just
25 seen it and it just appeared.

ROA_1209

1 THE COURT: Bring the jury.

2 (The following takes place in the presence of the
3 jury panel)

4 THE BAILIFF: Your Honor, the jury is present.

5 THE COURT: Next witness, please.

6 MS. PRINGLE: The defense calls Shelby Ingram.

7 SHELBY INGRAM, having been first duly sworn,
8 testified as follows:

9 THE CLERK: Have a seat in the witness box and
10 state your name for the record and spell it, please.

11 THE WITNESS: First name Shelby, S-H-E-L-B-Y.
12 Last name Ingram, I-N-G-R-A-M.

13 DIRECT EXAMINATION BY MS. PRINGLE:

14 Q. Good afternoon, Mr. Ingram.

15 Mr. Ingram, where do you live?

16 A. Right outside of Fort Bragg, North Carolina.

17 Q. Where are you from originally?

18 A. I'm from Flatonia, Texas.

19 Q. And what is your current -- you're at Fort Bragg
20 currently?

21 A. Yes, ma'am.

22 Q. Are you currently in the military?

23 A. Yes, ma'am.

24 Q. And in what branch?

25 A. I'm in the -- I'm a chaplain

stationed at

ROA 1210

1 counsel, but is more recycling records.

2 THE COURT: Say again.

3 MR. SHEALEY: These are some of the recycling
4 records that we talked about, and the custodian is actually
5 here who we plan on introducing them through. He just
6 brought extra that he had found about the same event and I
7 just turned them over to the State about an hour ago,
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22 this recycling information.

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17 Q. Where are you from originally?

18 A. I'm from Flatonia, Texas.

19 Q. And what is your current -- you're at Fort Bragg
20 currently?

21 A. Yes, ma'am.

22 Q. Are you currently in the military?

23 A. Yes, ma'am.

24 Q. And in what branch?

25 A. I'm in the -- I'm a chaplain assistant stationed at

1 Fort Bragg. I'm with Joint Special Operations Command.

2 Q. Okay. And how long have you been enlisted?

3 A. 26 years active duty, three years reserve.

4 Q. And so has that been your lifelong career, your
5 lifetime career?

6 A. I had a break in service, 1982 to 1985. I came back in
7 in 1989.

8 Q. All right. And, I'm sorry, would you say what your job
9 is again?

10 A. I am a religious support team senior enlisted advisor
11 to the Joint Special Operations Command.

12 Q. And you said Joint Special Operations Command. What
13 does that mean?

14 A. It's a joint top Special Ops unit. You have got Navy,
15 Air Force, Marine, and Army.

16 Q. And are there other military personnel in the courtroom
17 today?

18 A. Yes, ma'am.

19 Q. With whom you are familiar?

20 A. Yes, ma'am.

21 Q. And who is here today?

22 A. Chaplain Bailey, Chaplain Dugal, and Sergeant Major
23 retired Hire.

24 COURT REPORTER: Hire. Spell that.

25 THE WITNESS: Hire, H-I-R-E.

1 BY MS. PRINGLE:

2 Q. Chaplain Dugal is stationed, is that the proper --

3 A. I believe he's stationed here at Fort Jackson?

4 Q. At Fort Jackson. And he is what rank?

5 A. He is a colonel.

6 Q. Colonel Dugal. He goes by chaplain, because he's a
7 chaplain?

8 A. Yes, that's the title they use.

9 Q. And Colonel Charles Bailey -- I'm sorry, Charles
10 Bailey, Chaplain Bailey is stationed where?

11 A. At the Pentagon. He's a One Star General.

12 Q. And what is his job at the Pentagon?

13 A. He is the Deputy Chief of Chaplains.

14 Q. And that would be Chaplain Bailey.

15 And the other gentleman who is here today?

16 A. Mr. Hire?

17 Q. Yes.

18 A. He's retired Sergeant Major. I believe he still works
19 at Fort Jackson at the schoolhouse.

20 Q. And so in the military, if you are career military and
21 you retire, explain to the jury, can you come back and work
22 as a civilian, or how does that work?

23 A. Yes, you can. It depends on the jobs that they have,
24 such as Mr. Hire of his experiences in the military, he got
25 a GS job as a civilian working at the schoolhouse.

1 Q. And you are referring to the schoolhouse. What's the
2 schoolhouse?

3 A. It's the chaplains schoolhouse, school and center there
4 at Fort Jackson. It's where your newly arrived chaplains in
5 the military are trained, as well as your chaplains and
6 chaplains assistants, as well as advised schools that they
7 have to go to.

8 Q. And at one point, to your knowledge, did Todd work
9 there?

10 A. Yes.

11 Q. And he was actually doing some of the training?

12 A. I believe he -- I'm not sure of his exact job at Fort
13 Jackson. I believe he was in combat development.

14 Q. And obviously -- and, I'm sorry, what is your rank?

15 A. Sergeant Major.

16 Q. Sergeant Major.

17 Sergeant Major Ingram, do you know Todd Parvin?

18 A. Yes, I do.

19 Q. How long have you known him?

20 A. I first met Todd it was probably 1994-95 time frame.
21 We met each at basic noncommissioned officers course in Fort
22 Jackson, South Carolina -- Fort Monmouth, I'm sorry, New
23 Jersey. That's where the school was that had before it
24 moved it to where it's at now.

25 Q. Okay. And you talk sort of fast. I'm going to break

1 down what you are saying.

2 You met at noncommissioned officers what?

3 A. Basic noncommissioned officers course. It's a
4 leadership course.

5 Q. And what -- tell us about that a little bit. What does
6 that involve or --

7 A. Well, it consists of eight weeks. The first portion of
8 it they teach you the leadership part of being a
9 noncommissioned officer, all the competencies involved in
10 that, as well as regulations and policies. And the last
11 part is directly done with your military occupational skill.
12 For us that was chaplain's assistant.

13 Q. And during that time -- is that known as a specialist
14 school?

15 A. No, all noncommissioned officers go through that as
16 they move up in their ranks.

17 Q. And you were there with Todd for how long?

18 A. Eight weeks we were roommates.

19 Q. You were roommates for eight weeks. And this was in
20 around '94?

21 A. 94-95 time frame.

22 Q. Okay. Did you come to encounter Todd again later in
23 your career?

24 A. Yes, I did.

25 Q. Where was that?

1 A. Probably about a year or two later at the Joint
2 Readiness Training Center.

3 Q. The Joint Readiness --

4 A. The Training Center at Fort Polk, Louisiana.

5 Q. And what was Todd training for, do you remember?

6 A. Todd was in the 160th SOAR. I was in the 75th Ranger
7 Regiment. Both of our units were there training.

8 Q. What is the 160th SOAR? What does that mean?

9 A. It's Special Operations Air Regiment.

10 Q. And so people from different units would come to train
11 there together? Is that --

12 A. Yes, they were the aviation part, we were the ground,
13 so missions kind of combined there. That's how we get
14 around by air.

15 Q. Okay. And so how -- how much contact did you have with
16 him at that time?

17 A. Probably every couple of days I went and visited him.

18 Q. Did you develop a friendship as well as a working
19 relationship with Todd?

20 A. I developed a friendship when I was in basic
21 noncommissioned officers course with him for eight weeks.

22 Q. Has that friendship continued or been maintained to
23 this day?

24 A. Yes, ma'am.

25 Q. And since this event have you seen him?

1 A. Yes.

2 Q. At the jail?

3 A. Yes, ma'am.

4 Q. You talked about seeing him at a couple of these
5 schools and training. Would Todd have had -- would Todd
6 have had training specifically in use of force?

7 A. Yes, ma'am.

8 Q. And what can you tell the jury a little bit about that?

9 A. I know, because we are on that now, when you are on
10 160th SOAR, those type of units, you got to go through what
11 they call a Green Platoon. It's three weeks. It's an
12 assessment. They teach you a little bit of hand to hand.
13 It's a lot of physical and mental endurance. Some people
14 make it, some people don't.

15 Also I know he's been to SEAR school, which is survival
16 school. They teach you a little bit of hand to hand there
17 too as well, ma'am.

18 Q. And you went through those, that training as well?

19 A. No, I went through the 75th Ranger regiment training.
20 They called it the Ranger Indoctrination Program then. It's
21 three weeks as well. It's similar. A little harder, I
22 would say, because I am a Ranger, so -- but they are kind of
23 similar. It's an assessment process to be selected to go in
24 those type of units.

25 Q. What, if any, impact did Todd have you in your training

1 and your development to where you are?

2 A. Well, I got kind of an attitude. I have always had an
3 attitude. A lot of people will tell you that. So when I
4 first met Todd, I was -- I think he was a Sergeant E-5 and I
5 was a Specialist E-4. We were roommates. We were both in
6 Special Ops, so on the back of our patrol caps we had what
7 they call cat eyes. They kind of glow in the dark. We are
8 the only ones in the school at the time that had that on the
9 back of our hats. And they were doing a room inspection and
10 they wanted to us remove our cat eyes from our patrol caps
11 and I kind of got upset, but Todd kept pretty calm and kind
12 of reeled me in. We became pretty close then, because I
13 knew I could trust him and he took very good care of me and
14 kept me out of trouble.

15 Q. And that -- did that -- did he help you to -- is there
16 a certain kind of personality involved in that group that
17 you had to kind of cope with and deal with?

18 A. Yeah. Well, people are jealous of guys that are in
19 Special Operations, so that's the way I was taking it from
20 the inspectors that were inspecting us, and that's kind
21 of -- me and Todd kind of knew that, but Todd knew how to,
22 you know, just let something like that blow over. Don't
23 worry about stuff like that.

24 Q. He wouldn't react to it -- well, in your experience so
25 would Todd be sort of a hothead or have a quick temper?

1 A. No, that would be me, not him.

2 Q. And so -- and how did he help -- and did he help you in
3 that regard --

4 A. Yes.

5 Q. -- typically?

6 A. Yes. He basically kept me from probably getting kicked
7 out of the school.

8 Q. Well, I'm glad that he did.

9 Do you have an opinion, sir, with respect to whether or
10 not Todd Parvin is an honest and trustworthy person?

11 A. Yes, I do. He's very honest.

12 Q. And would you share that opinion with the jury? Can
13 you elaborate on that?

14 A. His honesty?

15 Q. Uh-huh.

16 A. Well, you have a man --

17 MS. CAMPBELL: Objection, Your Honor. I think
18 he's --

19 THE COURT: Objection sustained.

20 MS. CAMPBELL: Okay.

21 BY MS. PRINGLE:

22 Q. In your opinion, how would you describe him with
23 respect to honesty?

24 A. Todd has a lot of integrity.

25 MS. CAMPBELL: Objection, Your Honor. I think she

1 actually phrased the question that's similar to that.

2 THE COURT: Objection is sustained.

3 BY MS. PRINGLE:

4 Q. What is your opinion with respect to whether or not
5 Todd is a trustworthy and honest individual?

6 A. My opinion of Todd is, yes, he is very trustworthy and
7 honest. I have lived with him for eight weeks. I have been
8 around him on multiple occasions, not only in training, but
9 conferences and things like that, and he is a man I would
10 trust with my life.

11 Q. And lastly, sir, were you here -- you have been here
12 and heard some of the testimony?

13 A. Yes, I got here yesterday I think about 1400 hours.

14 MS. CAMPBELL: Objection, Your Honor.

15 MS. PRINGLE: I'll withdraw it. I just wanted to
16 ask him -- I wanted to ask him a question about -- I'll
17 withdraw that.

18 BY MS. PRINGLE:

19 Q. I would like to ask you, sir, about your opinion with
20 respect to some of the allegations that have been made in
21 this trial.

22 MS. CAMPBELL: Objection, Your Honor.

23 BY MS. PRINGLE:

24 Q. Do you --

25 THE COURT: What's the question?

1 BY MS. PRINGLE:

2 Q. Do you have an opinion, sir, as to whether or not Todd
3 Parvin is a homosexual or gay?

4 THE COURT: Objection -- is there an objection?

5 MS. CAMPBELL: I have an objection, Your Honor,
6 yes. Beyond his scope of being able to know.

7 THE COURT: Objection sustained.

8 BY MS. PRINGLE:

9 Q. In your experience does Todd Parvin have the reputation
10 for being gay or --

11 MS. CAMPBELL: Objection, Your Honor.

12 THE COURT: Objection sustained.

13 MS. PRINGLE: May we take this up outside the
14 presence of the jury, sir?

15 THE COURT: Sure.

16 Please go to the jury room.

17 (The following takes place outside the presence of
18 the jury panel)

19 THE COURT: Yes, ma'am.

20 MS. PRINGLE: I do not understand what the
21 objection is. This is an allegation that's been made
22 throughout this trial that is an attack on Todd's character,
23 a direct attack on his character. It is -- it has assailed
24 him this entire trial --

25 THE COURT: Was he a character witness or as an

1 expert in determining whether someone is gay or not?

2 MS. PRINGLE: He is a character witness and I'm
3 asking him to testify to Todd's character, specifically with
4 respect to whether or not he's gay, which an issue in this
5 trial.

6 THE COURT: He's not an expert witness competent
7 to testify as to that.

8 MS. PRINGLE: He can testify as to his --

9 THE COURT: Well, that's your view. I sustain the
10 objection, so we don't have to deal with that.

11 MS. PRINGLE: Yes, sir.

12 Then may I ask him, "does Todd have a reputation
13 for being homosexual?" That would be directly --

14 THE COURT: How does that make somebody -- a
15 reputation witness, he says that he's a truthful, honest
16 person, that he will -- that he would trust with his life,
17 so he's -- he's testified as to the limits of what a
18 reputation a witness can testify, the reputation to truth
19 and veracity. He cannot go beyond that and refute every
20 allegation in this indictment. He has no knowledge of that.
21 He's not an expert witness in the area of determining
22 whether someone is gay or not, and his opinion is not
23 relevant on that issue.

24 MS. PRINGLE: I understand.

25 THE COURT: He can testify as to his experience.

1 He said he's shared a room with him for a period of time and
2 nothing happened that was unwarranted, I assume, so he can
3 testify to his personal experience, but he's not an expert
4 witness.

5 MS. PRINGLE: And I'm not -- I'm not asking him to
6 render an opinion as an expert. I'm asking him under Rule
7 405, "reputation or opinion in all cases in which evidence
8 of character or a trait of character of a person is
9 admissible, proof may be made by testimony as to reputation
10 or by --

11 COURT REPORTER: Ma'am, you have to read a little
12 slower.

13 MS. PRINGLE: "In the form of an opinion."

14 On cross Ms. Campbell would be allowed to inquire
15 as to relevant and specific instances of conduct.

16 I cannot see how this state could spend a week
17 alleging and assailing his character and saying that he went
18 over there to solicit for gay sex and we cannot respond to
19 it.

20 THE COURT: You have responded to it.

21 MS. PRINGLE: I don't believe he's been allowed to
22 respond to it.

23 THE COURT: He's not an expert witness.

24 MS. PRINGLE: I'm asking him for his opinion as to
25 Todd's character and making that -- I would argue that goes

1 to the weight of the testimony.

2 I couldn't -- I couldn't find an expert in the
3 area of homosexuality. There isn't such a thing. It's not
4 a science. It's a social encounter. It's something that he
5 knows. He knows his reputation. He's known him since 1993.
6 I intend to ask every witness these questions.

7 It's not something that I could -- the alternative
8 would be that I would have to go and hire someone. I
9 couldn't. There is -- it's a social interaction. It's
10 something that we know by people's reputation. It's
11 something that we know by living in a community with people.
12 I just --

13 THE COURT: What says the State?

14 MS. CAMPBELL: Your Honor, I mean, she can go into
15 character as far as truthfulness or peacefulness, but I
16 don't know of anything that allows her to go any further.

17 As far as whether or not he is -- whatever sexual
18 being he is, or if he's experimenting, or whatever he's
19 doing, that's not an element of murder, nor is it an element
20 of self-defense, which are the pertinent traits here.

21 MS. PRINGLE: It is a character trait which they
22 injected into this trial that we objected to adamantly and
23 it is driving this entire case, I would submit.

24 THE COURT: Anything else?

25 MS. PRINGLE: No, sir.

1 THE COURT: All right, we will take a few minutes
2 break.

3 (Whereupon, proceedings were recessed)

4 (Whereupon, proceedings were reconvened)

5 THE COURT: All right, anything else before we
6 bring the jury in?

7 MS. CAMPBELL: No, Your Honor.

8 I would just note that she referred to Rule 405.
9 That's the method of proving character that's referred to in
10 Rule 404, which talks about the specific traits.

11 MS. PRINGLE: I will ask this in terms of his
12 experience, as the court suggested prior to sending the jury
13 out. I would not ask his opinion.

14 THE COURT: All right.

15 MS. PRINGLE: At least for this witness. I may
16 wish to take that up outside, but I will ask just
17 specifically in his experience.

18 THE COURT: Bring the jury.

19 (The following takes place in the presence of the
20 jury panel)

21 THE BAILIFF: Your Honor, the jury is present.

22 THE COURT: All right. The objection is
23 sustained.

24 You may proceed.

25 MS. PRINGLE: Thank you, sir.

1 BY MS. PRINGLE:

2 Q. Mr. Ingram, you have known Todd since the early 1990's,
3 correct?

4 A. Yes, ma'am.

5 Q. You testified.

6 And at least during eight weeks of the time that you
7 knew him, you lived with him?

8 A. Yes, ma'am.

9 Q. And during the time that you lived with him and trained
10 with him, were you living in close quarters?

11 A. Same room, bunk beds.

12 Q. Did you dress in the same quarters?

13 A. Yes, ma'am.

14 Q. Did you shower in the same area?

15 A. Yes, ma'am.

16 Q. And you dressed in the same area? Did you dress in the
17 same area?

18 A. Yes, ma'am.

19 Q. If your experience, having known him since 1993, and
20 lived in close quarters with him and remained friends with
21 him, in your experience, is Todd Parvin a homosexual?

22 A. No.

23 Q. Has he ever conducted himself in any way, in your
24 experience, to make you think so?

25 A. No.

1 MS. PRINGLE: No further questions. Thank you,
2 sir.

3 MS. CAMPBELL: Thank you, sir. We don't have any
4 questions.

5 THE COURT: All right. You may step down, sir.
6 Next witness.

7 MR. SHEALEY: Defense would call Lee Jarman.

8 THE COURT: Come forward, sir.

9 LEE JARMAN, having been first duly sworn,
10 testified as follows:

11 THE CLERK: Have a seat in the witness box. State
12 your name for the record and spell it, please.

13 THE WITNESS: My name is Lee Jarman, J-A-R-M-A-N.

14 DIRECT EXAMINATION BY MR. SHEALEY:

15 Q. Good afternoon, Mr. Jarman.

16 A. How are you doing?

17 Q. Mr. Jarman, where do you work?

18 A. I work for a company called A-Recycling Center. My
19 wife and I own the business.

20 Q. And where is that located?

21 A. 1009 Fontaine Road, Columbia.

22 Q. And how long have you owned this business?

23 A. 10 years.

24 Q. And what is it that y'all do there?

25 A. We buy aluminum cans, scrap metals, scrap steel.

1 Q. All right. Have we asked you to produce some records
2 for us in this case?

3 A. Yes, sir.

4 Q. And have you done that?

5 A. Yes, sir.

6 Q. I'm going to pass up to you what's been marked for
7 identification purposes Defense 5-A. Do you mind taking a
8 look at that? Do those look familiar to you?

9 A. Yes, sir.

10 Q. And then today did you find any other records that you
11 brought with you?

12 A. Yes, sir.

13 Q. I'm going to pass what's been marked Defendant's 54,
14 all those. Did you bring those with you today?

15 A. Yes, sir.

16 Q. And are all these records from your business?

17 A. Yes, sir.

18 Q. And is this how you maintain your records?

19 A. Yes, sir.

20 Q. And is this the normal way that you guys do it?

21 A. Yes, sir.

22 Q. Okay.

23 MS. DAVIS: Your Honor, at this time I would seek
24 to move these into evidence, Defense 54 and 8-A.

25 THE COURT: What says the State?

1 MS. CAMPBELL: I just haven't seen them before, so
2 I'd like to just look at them.

3 (Off the record)

4 (Back on the record)

5 MS. CAMPBELL: We don't have any problem, Your
6 Honor.

7 THE COURT: They are admitted without objection.

8 BY MR. SHEALEY:

9 Q. Thank you, Mr. Jarman.

10 MR. SHEALEY: I don't have anything further.

11 THE COURT: By the State?

12 MS. CAMPBELL: I just got a question, Your Honor.

13 (Off the record)

14 (Back on the record)

15 MR. SHEALEY: Thank you.

16 I apologize. Your Honor, we had the prior
17 records, which were identified were actually marked more
18 individually. Those were 5-A, 6-A, 7-A, 8-A, 9-A, 10-A,
19 11-A, 12-A, 13-A. And then the latest one was 54. These
20 are -- at this time I would --

21 (Off the record)

22 (Back on the record)

23 MR. SHEALEY: These are what I was seeking to
24 introduce in evidence, for the record, just for further
25 clarification.

1 THE COURT: Cross-examination.

2 MS. CAMPBELL: Thank you, Your Honor.

3 CROSS EXAMINATION BY MS. CAMPBELL:

4 Q. Good afternoon.

5 A. Yes, ma'am.

6 Q. I just have a couple of questions.

7 Basically, the additional records you brought in were
8 2007, 2008, and 2009, is that correct?

9 A. There is two records from 2007, one from 2008, and none
10 for 2009.

11 Q. And if can hand up -- where did he put it.

12 So if you can refer to State's Exhibit No. 54. In
13 2007, what was the grand total of money he received in
14 exchange for scrap metal?

15 A. \$29.78.

16 Q. And then in 2008, he had, I believe, one or two
17 transactions?

18 A. One transaction for \$91.50.

19 Q. Actually I believe it's the number of it?

20 A. Yes, ma'am.

21 Q. Would it be \$27.57?

22 A. 27.57, yes, ma'am.

23 Q. And then he didn't have any transactions in 2009?

24 A. Correct.

25 Q. And then the sum total of his dealings with you in

1 2010, through the end of July, would have been \$177.45?

2 A. Correct.

3 Q. Thank you, sir.

4 MS. CAMPBELL: I don't have anything further. I
5 appreciate it.

6 THE WITNESS: Uh-huh.

7 THE COURT: Anything further?

8 MR. SHEALEY: No, Your Honor.

9 THE COURT: You may step down, sir.

10 THE WITNESS: Thank you.

11 THE COURT: Next witness.

12 MR. SHEALEY: Your Honor, at this time the defense
13 would call Robert Tressel.

14 ROBERT TRESSEL, having been first duly sworn,
15 testified as follows:

16 THE CLERK: Have a seat in the witness box. State
17 your name for the record and spell it, please.

18 THE WITNESS: Okay. My name is Ralph Robert
19 Tressel, T-R-E-S-S-E-L.

20 DIRECT EXAMINATION BY MR. SHEALEY:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. Mr. Tressel, where do you live?

24 A. I live in a little town called Hiram, it's H-I-R-A-M,
25 Georgia. It's about 25 miles due west of the City of

1 Atlanta.

2 Q. And what is it that you do currently?

3 A. I'm currently employed as the chief criminal
4 investigator, Cobb County district attorney's office,
5 Marietta, Georgia.

6 Q. All right. Do you also have another job?

7 A. Yes, I also do outside consulting work outside of the
8 State of Georgia in criminal investigations, primarily
9 homicide investigations, and appellate cases on death
10 penalty cases.

11 Q. Yes, sir.

12 And your job in law enforcement, how long have you
13 generally been in law enforcement?

14 A. I went to work for the Cobb County police department in
15 July of 1973. So I have been involved in law enforcement
16 for -- I can't even add that much. 37 years.

17 Q. All right. Can you tell the jury your various
18 positions that you have held in law enforcement over those
19 years?

20 A. Yes, sir, I can.

21 In July of 1973, I went to work as a uniformed patrol
22 officer, Cobb County police department in Marietta, Georgia.
23 I was a patrol officer for a little over a year and a half.

24 In February of 1975, I was promoted to the rank of
25 detective and was assigned to the Crimes Against Persons

1 Unit. Crimes Against Persons is commonly referred to as
2 Robbery Homicide Division.

3 I stayed in the Robbery Homicide Division until 1979,
4 at which time I was promoted to the rank of detective
5 sergeant. At that time I remained in the homicide unit, but
6 was promoted to the position of evening watch supervisor,
7 handling at that time five investigators in the homicide
8 division.

9 I stayed with Cobb County police department until
10 February of 1985, at which time I resigned my position and
11 took the position as an investigator with the Cobb County
12 medical examiner's office. The medical examiner's office is
13 responsible for the death investigations that occur under
14 the Georgia Postmortem Act in the jurisdictional boundaries
15 of the county. In 1989, I was promoted to the position of
16 chief investigator for the Cobb County medical examiner's
17 office.

18 In 1999, January of 1999, I resigned my position with
19 Cobb County and I went into private consulting business with
20 several other individuals, including a forensic pathologist.

21 I stayed in that position until April of this year, at
22 which time I returned to Cobb County at the request of the
23 current district attorney to take over as the chief criminal
24 investigator.

25 Q. Yes, sir.

1 You mentioned that you worked in the medical examiner's
2 office?

3 A. Yes, from 1985 to 1999.

4 Q. Have you ever attended an autopsy?

5 A. Hundreds.

6 Q. All right. And have you ever investigated crime scenes
7 before?

8 A. Yes, while I was with the police department in Crimes
9 Against Persons Unit and then again at the medical
10 examiner's office, because Georgia law gives the medical
11 examiner the authority over the body of the crime scene. We
12 handle all the evidence that is within the curtilage of the
13 body, directly around it. In all I estimate I have been
14 involved in somewhere between 1,500 and 2,000 crime scene
15 investigations over that thirty some years.

16 Q. So over your years in law enforcement have you worked
17 in both the medical side of it and the actual scene side of
18 it?

19 A. Yes, it's called a medical legal death investigator.
20 That's the position that, quote, is the normal title now
21 given to it. Back when I went we didn't have such a title,
22 but it's a crossover from the medical field, taking the
23 medical examiner's information and the information that you
24 obtained from the examination of the body, applying it to
25 the criminal aspect of investigation of the crime and the

1 crime scene and things of that nature, to put together how
2 an incident takes place.

3 Q. Yes, sir.

4 And have you ever been qualified as an expert in court
5 before?

6 A. I have been qualified as an expert on death
7 investigations, crime scene analysis from crime scene
8 reconstruction in nine states and in the Federal Court
9 system.

10 MR. SHEALEY: Your Honor, at this time I would
11 offer Mr. Robert Tressel as an expert in the area of crime
12 analysis and reconstruction.

13 THE COURT: What says the State?

14 MS. CAMPBELL: I'm sorry, I didn't hear the last
15 part. And reconstruction?

16 MR. SHEALEY: Yes, ma'am.

17 MS. CAMPBELL: We don't have a problem with that.
18 That's fine.

19 THE COURT: Pardon me?

20 MS. CAMPBELL: We are good, judge.

21 THE COURT: He's admitted without objection.

22 THE WITNESS: Thank you, Your Honor.

23 BY MR. SHEALEY:

24 Q. Mr. Tressel, now, over the course of working with my
25 office, what -- have you been provided any information on

1 this case?

2 A. Yes, quite a bit.

3 Q. And what is it? What have you been specifically
4 provided?

5 A. Well, I have been provided the law enforcement agency
6 crime scene investigation. Not the entire investigative
7 file, but just primarily materials pertaining to the initial
8 incident report, supplemental reports that were filed, and
9 the crime scene analysis. I have obtained copies of the
10 autopsy reports on the two deceased individuals. I have had
11 crime scene photographs, the autopsy photographs, laboratory
12 reports from crime laboratories and so forth pertaining to
13 this investigation.

14 Q. And have you also sat here and listened to Todd's
15 testimony?

16 A. Yes, sir, I did.

17 Q. Now, you are obviously retained to work with us on this
18 case, but do you -- do you take every case that a lawyer
19 comes and asks you to hire on?

20 A. Taking a case is a big term. I look at a lot of cases.
21 I estimate about 40 percent of the cases I look at I turn
22 down, as far as becoming involved in that investigation.

23 Q. Yes, sir.

24 I want to turn your attention to this scene. Have you
25 had a chance to review something that looks like this?

1 A. Yes, sir, I have.

2 Q. Is this just a bigger more blown-up version of that?

3 A. Yeah, a much better copy than the one that I had, but,
4 yes, I have seen that.

5 Q. Now, based on your looking at this case, are there --
6 are there shell casings involved in this case?

7 A. Yes, sir, there is eight shell casings that were
8 recovered.

9 Q. And are you aware of the caliber of those shell
10 casings?

11 A. 45-caliber.

12 Q. And you have reviewed all the crime scene photos that
13 were taken?

14 A. Yes, sir, I have.

15 Q. And are you familiar with the gun that's alleged to
16 have been used in this?

17 A. Yes, sir, a Norinco.

18 Q. Norinco 45-caliber?

19 A. 45-caliber.

20 Q. Are you familiar with that weapon?

21 A. I am, yes, sir.

22 Q. Now, I want to walk you through this scene a little
23 bit, but you reviewed the pictures of AA, correct?

24 A. It's a 45-caliber shell casing.

25 Q. And here we have the tree that's on the right. This

1 would be the fence area, right?

2 A. That's correct.

3 Q. And the gate?

4 A. Yes, sir.

5 Q. This is the brown shed that we see in the pictures,

6 correct?

7 A. Yes, sir.

8 Q. And this would be the white shed where Mr. Edgar Lopez

9 lived?

10 A. I did not know that he lived there, but the white

11 building, shed behind the brown one, yes, sir, I'm familiar

12 with it.

13 Q. And this would be the concrete sidewalk, correct?

14 A. Yes, sir.

15 Q. And here and here are where the deceased eventually

16 came to rest, correct?

17 A. Yes, Edgar to the left and Pablo to the right.

18 Q. So we have AA is here, correct?

19 A. That's correct.

20 Q. Roughly AB is here, correct?

21 A. Yes, sir.

22 Q. Now, AC, where is it in your memory of the photos? Do

23 you remember that?

24 A. AC, yes, sir, I do.

25 Q. Where is that?

1 A. It's at the very base of the gate, the swing of the
2 gate.

3 Q. So that's literally -- is it literally under the gate?

4 A. From the photographs I can't tell whether it's just
5 forward of the gate, but it's right at the edge of where the
6 gate swing would be on the left-hand side of the gate.

7 Q. Yes, sir.

8 And then we would have a group of other shell casings,
9 which would be AD, correct, on the sidewalk?

10 A. AD is a single 45-caliber shell casing on the sidewalk.

11 Q. We have AF. Do you recall that?

12 A. AF is the shell casing near the left foot of Edgar.

13 Q. AE?

14 A. AE is two 45 shot caliber shell casings that are kind
15 of between the feet of Edgar.

16 Q. And then AH, correct?

17 A. AH is a jacket to a 45-caliber bullet.

18 Q. Right.

19 And then all the way up here next to this brown shed
20 would be AI, correct?

21 A. AI is a 45-caliber shell casing.

22 Q. Now, looking at this, in your analysis of this scene,
23 what can you tell me about the location of these shell
24 casings and whether specifically the majority of this fight
25 occurred inside or outside of this fenced area?

1 A. Well, based on the location of the shell casings and
2 the grouping of the shell casings primarily in the area
3 where Edgar is on the sidewalk, the majority of the shells
4 were -- shell casings were ejected from firing that occurred
5 inside the gate.

6 Q. Okay. And correct me if I'm wrong, but that would be
7 AI, right?

8 A. AI.

9 Q. The AF, the AE shell casing?

10 A. AF, AE, AD.

11 Q. And the AD on the --

12 A. AD.

13 Q. And the AC, which is right on the edge?

14 A. AC is probably from that general area also. It's hard
15 to tell.

16 Q. Yes, sir.

17 And do we know -- what can you tell me about the way a
18 Norinco 45 ejects a shell casing?

19 A. Well, Norinco 45 is based on the Colt Model 1911
20 design. The ejection port is on the top right hand -- right
21 top, top right of the slide. The shell casing will eject to
22 the right and eject upward and towards the rear.

23 Q. And how far potentially does it go towards the rear?

24 A. Well, each weapon is individual. It depends on the
25 ammunition fired, the condition of the weapon.

1 Estimated 45's could go anywhere from four to six feet,
2 depending on the quality of ammunition and the condition of
3 the weapon.

4 Q. Four to six feet up and to the rear?

5 A. Yeah, distance wise about four to six feet.

6 Q. All right. And based on your review of all the photos,
7 did it appear to you that these shell casings had been
8 disturbed at all by police that responded?

9 A. No, in looking at the photographs, the shell casings
10 appear to be normal in configuration. They don't look like
11 they have been stepped on and squashed. They are very light
12 weight brass. There is no unusual scuffing. I have relied
13 on the crime lab report to tell me if there is anything
14 abnormal about the shell casings, and there was nothing
15 reported. So it doesn't -- there is no evidence the shell
16 casings were damaged in any way after they were ejected and
17 ended up where they are found.

18 Q. Now, does a Norinco 45 eject forward shell casings
19 numerous feet?

20 A. It's not designed to. The only way that you can get a
21 forward ejection out of the Norinco is if you have a
22 semi-ejection of the spent shell casing, where it gets hung
23 up in the slide. As the slide is coming forward to put the
24 next round in it, the shell casing hadn't ejected totally
25 and it kicks it forward. It will only kick it forward about

1 a foot. It's lost all its energy at that point in time.

2 Q. And if the gun were not operating correctly in that
3 way, would you be able to tell by the shell casings?

4 A. You should be able to see a mark on the side of the
5 shell casing to indicate that it was impacted not by the
6 ejector rod or the slide mechanism. You would also see --
7 in semiautomatics we have the phenomenon called stove
8 piping. The stove piping is where the shells, for whatever
9 reason, doesn't eject properly and it essentially stands
10 straight up in the ejection port. That's a very common area
11 to see when you get a stove piping, if it's loose enough,
12 the slide will come forward and kick that shell out.

13 Q. Is there any evidence, based on the shell casings that
14 you reviewed, of any stove piping in this case?

15 A. No, not that I have seen anywhere documented.

16 Q. In your expert opinion on crime scene analysis, if
17 someone told you that the entire shooting of this weapon
18 occurred outside of the fence, would you say that's true or
19 not true?

20 A. To me that's not true. It's not possible.

21 Q. And where, in your opinion, do you think the majority
22 of the shooting actually occurred?

23 A. From inside the gate area, primarily in the area where
24 the tree line is, in the area where Edgar is, somewhere
25 right in that general area. We have the one lone shell

1 casing that's up near the shed that is out of place in
2 comparison to the other shell casings.

3 Q. Okay. Now, I would like to turn your attention
4 specifically to Edgar Lopez. You mentioned you had a chance
5 to review his autopsy report, right?

6 A. Yes, sir, I have it with me.

7 Q. And you reviewed obviously the scene photos?

8 A. The scene photos and the autopsy photos.

9 Q. Now, what wounds do you note on Edgar Lopez?

10 A. Well, he has two wounds. He has one wound to the right
11 side of his face that exits out the left side of his neck.
12 He has another entry gunshot wound that enters into his left
13 abdomen, which travels in an upward direction and exit out
14 the back.

15 Q. And is there any stippling noted with Mr. Lopez?

16 A. The stippling is noted on the facial wound. It's
17 measured at autopsy at approximately 1.4 inches outside the
18 entry wound itself, described as a circumference of about
19 1.4 inches.

20 Q. Okay. And can you explain to this jury what stippling
21 is?

22 A. Stippling is partially burned gunpowder. As a shell is
23 fired, the powder burns from the back forward. The faster
24 it burns -- as it burns it's propelling, reducing its
25 energy. Sometimes the powder towards the front of the shell

1 nearest to the bullet doesn't fully burn. It gets hot, but
2 it's not burned up. If a target, being the skin of a
3 person, or their clothing, or even an intermediate target,
4 such as a piece of paper, is within a certain distance,
5 usually 36 inches of the barrel of the weapon, those hot
6 particles of gunpowder that aren't fully consumed will
7 create what we call stippling or tattooing of the skin,
8 clothing, or the surface that it struck. It will adhere to
9 it, and we can identify it at autopsy and examination.

10 Q. And based on your review of this case, can you tell the
11 jury approximately how far away do you think Edgar was from
12 the end of the barrel to get that amount of stippling that
13 you see here?

14 A. Well, without testing the actual weapon involved to
15 know exactly how far it's going to throw gunpowder, we have
16 to do an estimate. With the 1.4 concentric ring around it,
17 it's a very close entry gunshot wound, and in my experience
18 it wouldn't be -- the barrel was less than a -- 18 inches
19 approximately, or less, from the face of Edgar when the
20 bullet was fired.

21 Q. Now the barrel -- the gun obviously is attached to
22 someone's hand?

23 A. Yes, sir.

24 Q. And roughly when we are talking inches, I'm not very
25 good at math, how -- can you give the jury an estimate of

1 how far someone away would be from Edgar if they are
2 shooting and you have about 18 inches as your estimation?

3 A. Well, we got to take into consideration the length of
4 the weapon. A 45-caliber is about nine inches long. So we
5 take the 18 inches, add nine, we are at 27 inches. Then we
6 add the length of the arm shoulder point. We don't know
7 whether there is a crook in the arm, but we want to get a
8 total length. Most people -- an example of myself, I
9 have -- I wear shirtsleeve size 34, but that measurement is
10 not from the shoulder to the cuff. It's from the center of
11 my back to the cuff, so it's about 30 inches, give or take.

12 So we are looking at about 57 inches total distance
13 between the victim and the shooter as being a maximum
14 distance at the time this weapon was fired that struck him
15 in the face.

16 Q. And what, a little over four feet, or --

17 A. 4'9".

18 Q. Sound right? Okay.

19 A. Yes, sir.

20 Q. Yes, sir.

21 And there was no stippling noted on the abdomen?

22 A. No stippling is identified as a distant -- excuse me.
23 The proper medical terminology is indeterminate range. In
24 other words, it would be outside the throw pattern of the
25 weapon.

1 Q. All right.

2 Now, a shot to the abdomen like that, would that kill
3 you instantly?

4 A. Depending on what it hit would not cause instantaneous
5 death, no.

6 Q. In your training and experience would you still have
7 movement after that?

8 A. Yes, unless the spinal cord was involved where the
9 motor function is totally removed, and in this case there is
10 no documentation of the spinal cord being involved. So he
11 does have some movement until blood pressure drops to the
12 point that he can't -- he just essentially goes unconscious.

13 Q. In your experience, would that wound to the stomach
14 bleed a lot or bleed a little?

15 A. The wound to the stomach will not bleed excessively.
16 We have to look at what is the source of the blood.

17 The human body is a cavity. To puncture a hole if it,
18 yeah, it's going to bleed somewhat, because I'm puncturing
19 through the skin, just like you cut yourself, but we have a
20 cavity. And anything that's damaged inside - lungs, liver,
21 things of that nature - when they bleed, the blood is
22 maintained in the body until the level of blood rises to the
23 wound. And at that point once it rises to the wound, we
24 will begin to see excess amount of blood flow.

25 Exit wounds bleed more so than entry wounds. It's just

1 because a lot of the tissue with the hot bullet entering
2 exit cauterizes some of those small capillaries. We don't
3 get a tremendous amount of blood from the entry wound. We
4 get more from an exit wound.

5 Q. Now, I can't find the exact picture right now, but you
6 have reviewed the photos in this case, correct?

7 A. Yes, I have seen the photos.

8 Q. And you have heard the testimony of Todd Parvin, right?

9 A. Yes, I have.

10 Q. Now, in his testimony, when he references Edgar being
11 in the doorway to his own house, have you had a chance to
12 look at the crime scene photo that shows that picture?

13 A. I have, yes, sir.

14 Q. And based on looking at that and hearing where Todd
15 says he first fired from, is the wound to the abdomen,
16 including the exit, consistent with that?

17 A. Yes, the walkway has a slight ramp to it, and you can
18 see that there is a slight asphaltting that's leading up to
19 the doorway to the garage, the shed, the white house. So if
20 Edgar is standing near that doorway, he's actually standing
21 higher than the shooter. As the shooter would aim at him,
22 that would -- would and could create an upward trajectory,
23 which is the trajectory we see on that wound that goes
24 through Edgar.

25 Q. And State's 14, does that look like the picture we are

1 talking about?

2 A. Yes, State's 14 shows a slight ramp. The ramp actually
3 starts after you clear the brown shed.

4 MR. SHEALEY: Permission to publish this to the
5 jury, Your Honor?

6 THE COURT: You can publish anything that's in
7 evidence.

8 MR. SHEALEY: Thank you, judge.

9 BY MR. SHEALEY:

10 Q. Now -- and the abdominal wound, as you know, has no
11 stippling, correct?

12 A. It has no stippling, according to the autopsy report,
13 and I didn't see anything in the photographs that indicated
14 there was any stippling.

15 Q. In your expert opinion, that abdominal shot would have
16 been further than 4'9"?

17 A. Absolutely, yes, sir.

18 Q. And that would also provide Edgar still with mobility,
19 correct?

20 A. That's correct, he would still have mobility, until the
21 blood pressure dropped to the point that he would go
22 unconscious.

23 Q. And what actual shot do you think actually caused Edgar
24 to become unconscious?

25 A. To become unconscious was the wound to the face.

1 Q. And with Edgar's mobility, if he approached Mr. Parvin
2 after his abdominal wound and took a shot to the face, would
3 that have pretty left him where we find Mr. Lopez?

4 A. Yes, the wound to the face -- the medical examiner did
5 not pull -- pardon me. The medical examiner did not pull
6 the spinal cord to look at it to see if it was damaged, but
7 he indicates in the report possible spinal cord injury,
8 because the trajectory this bullet goes going in here, it's
9 going downward and comes out the left rear side of the neck.
10 Once that spinal cord is damaged, he drops. He has no
11 mobility. He has nothing. He just goes straight to the
12 ground in the position he was in when he received the
13 gunshot wound.

14 Q. Yes, sir.

15 And if you were to have been told that Edgar took both
16 a shot to his face and a shot to the abdomen simultaneously
17 from the same distance, would you think that's accurate or
18 not accurate?

19 A. It's not accurate. We don't have the stippling in the
20 abdominal wound.

21 Q. That's because of the stippling, correct?

22 A. Because of stippling. It had to be a closure of
23 significant distance.

24 Q. In your opinion, based on what you heard from Todd
25 regarding Edgar, is Todd's version then consistent with the

1 crime scene that you have been presented?

2 A. Yes, sir, it is.

3 Q. I want to turn your attention to talking about Pablo.
4 Now, you were here for Todd's testimony on that as well,
5 correct?

6 A. Yes, sir, I was.

7 Q. And correct me if I'm wrong, but it's been testified to
8 by Todd that Pablo engaged him as he tried to go to the
9 gate, correct?

10 A. He tried to go to the gate somewhere along the walkway.

11 Q. Somewhere along this walkway.

12 And this cluster of shell casings here, what does that
13 tell us about that?

14 A. The cluster of shell casings?

15 Q. AI, AD, AF, AE in this circular area.

16 A. Well, that indicates that the shots were fired from
17 somewhere along -- most probably along the area of the
18 walkway.

19 Q. Okay. Is it hard to say with extreme precision
20 necessarily?

21 A. You can't tell. Shell casings bounce. They are very
22 light weight. They roll because they are round, so where we
23 find them is not exactly where they hit the ground the first
24 time when they came out of the weapon. So we have to take
25 into consideration there can be some movement of these

1 things after the shot is fired, just by their own nature.
2 And then we have to look at are any of them moved,
3 inadvertently kicked, and so forth.

4 Q. You didn't see any evidence of that?

5 A. I don't see any evidence of kicking of the shell
6 casings.

7 Q. And they are still not going to jump 20 feet over a
8 fence, right?

9 A. Absolutely not.

10 Q. Was it your opinion that the fight with Edgar (sic)
11 occurred in this walkway area?

12 A. Yes, sir, it is.

13 Q. And you noticed upon his autopsy that he was shot four
14 times?

15 A. Four times, yes, sir.

16 Q. I mean, one would be a graze to the right side?

17 A. To the right side, right abdomen.

18 Q. And there would be several shots to the back?

19 A. Three to the back. Actually two to the back and one to
20 the right rear shoulder.

21 Q. Yes, sir.

22 Now, in your opinion are any of those by themselves
23 instantly lethal?

24 A. No, they are not. They -- they didn't strike anything
25 that took him immediately out. The spinal column is still

1 intact.

2 Q. And even if -- even if a bullet had hit your heart, are
3 you going to still have some movements or some time for
4 mobility?

5 A. Yes, you have a short period of time were there will be
6 some mobility.

7 Q. And how much time would he have?

8 A. You can have anywhere from five seconds to possibly as
9 long as two minutes, depending on how much bleeding is
10 occurring with that wound.

11 Q. Okay. And is there any way to tell exactly what shots
12 hit first, any order?

13 A. No.

14 Q. Okay. And you have heard Todd testify that the whole
15 thing in his mind took as long as five seconds at the
16 maximum?

17 A. That's correct.

18 Q. And is it -- what we have here is a weapon that's been
19 discharged eight times, right?

20 A. That's correct.

21 Q. Is it possible to discharge a weapon like that a 45
22 Norinco in that short amount of time?

23 A. Absolutely.

24 Q. How quickly can one fire that weapon?

25 A. The weapon -- I don't know the true cycling rate on the

1 Norinco, but it will fire somewhere in the neighborhood of
2 50 to 60 rounds a minute --

3 Q. Yes, sir.

4 A. -- if you had a clip large enough to hold it.

5 Q. Now, there was -- did you get a chance to review looks
6 like a hole in this right tree that was marked for A?

7 A. Yes, sir, I did.

8 Q. In your opinion, does that have anything to do with
9 this case?

10 A. I have no way of knowing whether it's involved in this
11 case or not. I know there is a question of whether it's a
12 true impact site or not. It gives the appearance of an
13 impact site, but no bullet was recovered inside the defect
14 and no bullet was recovered anywhere around the tree. So to
15 say that's involved in this incident, I have no way of
16 knowing. At this point in time I cannot connect it to this
17 incident.

18 Q. And if there had been a shot to that tree right there,
19 would you expect to find shell casings in this area?

20 A. That's -- that's what's missing is there is no shell
21 casing over there that would be associated with a shot to
22 the tree from where it actually hit.

23 Q. Yes, sir.

24 Now, did you note what was presented to the firearms
25 analyst, which would be a fragment and a core?

1 A. Yes, sir.

2 Q. And is it your understanding that that fragment came
3 from Mr. Pablo's right shoulder?

4 A. Yes, sir.

5 Q. And the core would have come from this shed area here?

6 A. The core was actually found, it had penetrated through
7 the outer wall of the shed and actually kind of dropped down
8 along the studding.

9 Q. Now, in your opinion, has that core actually gone
10 through -- did it actually hit anybody, in your opinion?

11 A. Yeah, all the bullets -- the bullets that were
12 recovered are all semi-jacketed or jacketed hollow points --
13 or not hollow points, jacketed bullets. In other words,
14 they got a copper coating on the outside of the lead core.

15 The core that's recovered in the shed has separated
16 from the copper somewhere, either where the bullet passed
17 through somebody, or it struck something, to shear the
18 copper off and you just had the piece of lead that's left
19 that actually penetrated through.

20 We have a copper core -- excuse me, a copper jacket
21 that's found at I believe it's AH.

22 Q. Yes, sir.

23 A. But to say that's associated with the core that's found
24 in the shed, there is no way of knowing.

25 Q. And if you actually tested AH for DNA, would that be a

1 way to tell if it's actually been through anybody or not?

2 A. You could test it for DNA to determine if there is a
3 sufficient enough sample to get a typing off of it.

4 Q. To your knowledge, was that done in this case?

5 A. It was not done, according to the lab reports.

6 Q. Now, in your review of Ms. Gleason's firearm analysis
7 as to the fragment, was there anything else noted along with
8 that fragment that wasn't consistent with being ammunition?
9 Was there any other metal?

10 A. No, there was no other metal found. The fragment
11 appears to be metallic, but it's not magnetic, so it's not
12 lead or copper --

13 Q. Okay.

14 A. -- but it is a metal-type substance.

15 Q. Okay. And do you remember it being referenced as
16 possibly associated with a beer can?

17 A. Yes, she associated it, it was possibly coming from the
18 beer can, that -- we do have the beer can that does have the
19 impact damage to it near the tree.

20 Q. Right.

21 And did you note other beer cans sitting and kind of
22 nestled in this tree?

23 A. There is a beer can in the crook of the tree in the
24 photographs.

25 Q. And that's in the crime scene photos, is that correct?

1 A. That's in the crime scene photographs.

2 Q. And the lite Budweiser 12 ounce is AG, which is found
3 next to Pablo?

4 A. That's correct.

5 Q. That's the one that you are referring to that had --

6 A. Yes.

7 Q. -- an impact point?

8 A. It has an impact defect at the top edge.

9 Q. Now, for part of that can to get in his shoulder, how
10 would that conceivably happen in this crime scene?

11 A. Well, in order for the piece of metallic type material
12 that they identified as possibly being from a beer can, in
13 order for that to be get into the shoulder wound, that means
14 that the bullet had to pass through the beer can first. You
15 got to pick up the piece of metal as it's going through the
16 edge of the beer can. And then as it enters the skin, it
17 deposits it in the wound track. It was readily identified
18 and picked by the crime scene people that were there. So
19 the can has got to be in a position in which the bullet goes
20 through it first and then strikes Pablo.

21 Q. And that shoulder wound is back to front? It enters
22 the shoulder, comes out the front of the shoulder?

23 A. Back to front and then goes into the mandible.

24 Q. And so that lite Budweiser was sitting in that tree
25 along with the red Budweiser and Todd had shot through one

1 of those creases in the tree, could that have put that --
2 deposited that aluminum there?

3 A. That's a possibility, yes.

4 Q. Is there any way really to tell for sure? I mean --

5 A. No way to tell. The only thing I can tell you is that
6 the bullet had to go through the beer can first before it
7 struck Pablo in the right shoulder.

8 Q. Was it even conceivable that the lite Budweiser can,
9 AG, was just a bullet that was a stray bullet and caught it
10 on the ground, or --

11 A. It could be, because we had not recovered -- all the
12 bullets were not recovered at this crime scene. So it could
13 be just a loose bullet that hit the can on the ground and is
14 not associated, and that piece of metal is then not
15 associated with the beer can.

16 Q. And based on your review of that Budweiser can, were
17 you aware they found any fingerprints on it?

18 A. It was dusted for fingerprints and it was swabbed for
19 DNA. There was no fingerprints found on it. DNA was not
20 run on it.

21 Q. DNA was not run on it?

22 A. Was not run on that, on that beer can.

23 Q. Okay. Now, being that Pablo was shot in the back, is
24 that alone inconsistent in your expert opinion with
25 self-defense?

1 A. No.

2 Q. Has Todd -- Todd's testimony today, is that at all
3 inconsistent with this crime scene?

4 A. No.

5 Q. Have there been times in your many years in law
6 enforcement where an officer has armed himself and actually
7 shot in self-defense, but ended up hitting somebody in the
8 back?

9 A. Yes, sir, I had one case like that that I did when I
10 was at the medical examiner's office.

11 Q. Can you explain that?

12 MS. CAMPBELL: Objection, Your Honor, going into
13 specifics of other cases.

14 THE COURT: Objection sustained.

15 MS. CAMPBELL: Thank you.

16 BY MR. SHEALEY:

17 Q. I want to talk to you a little bit about the GSR.
18 Generally can you get GSR from shooting a gun?

19 A. Yes.

20 Q. Can you get it from being around a gun that's shot?

21 A. Yes.

22 Q. Can you get it from picking up a gun that's been fired
23 recently?

24 A. Yes, you can.

25 Q. Now, are you aware of GSR results in this case?

1 A. I am.

2 Q. And that Mr. Edgar Lopez has GSR on the back of his
3 palm?

4 A. Back of his left hand, yeah.

5 Q. Right.

6 I'm pointing to my left -- I'm showing my palm.

7 And that Mr. Pablo has GSR to the back of his right
8 hand?

9 A. Right hand, that's correct.

10 Q. Now, what does this tell you?

11 A. All's it tells me is the hand was in what we call the
12 cloud of gunshot residue at some point in time.

13 Q. Okay. Does it necessarily mean that he was going like
14 this and trying to block some kind of shot or something like
15 that?

16 A. No. The only way to say a person was defending
17 themselves and throwing their hand in front and getting the
18 GSR on it is if their hand has a nick, or a finger is
19 nicked, or something where the bullet actually strikes it
20 throwing it out.

21 It just tells me that the hand, one is left-handed and
22 one is right-handed, was somewhere in the cloud, or came in
23 contact with a weapon that had been fired.

24 Q. And is there any way to say that these men hadn't fired
25 a weapon in the past six hours, or so, prior to this?

1 A. No, there has been studies done that show even with
2 minimal washing of the hand that even a day later you can
3 get a positive GSR result.

4 Q. And, again, in your expert testimony in crime scene
5 analysis and reconstruction, do you believe that the
6 majority of the fight occurred inside the fence?

7 A. Yes, sir, I do.

8 Q. And is that consistent with what Todd Parvin has
9 testified to here today?

10 A. Yes, sir, it is.

11 MR. SHEALEY: Beg the court's indulgence.

12 (Off the record)

13 (Back on the record)

14 MR. SHEALEY: I have nothing further.

15 Please answer any questions that Ms. Campbell has
16 for you.

17 THE WITNESS: Certainly.

18 CROSS EXAMINATION BY MS. CAMPBELL:

19 Q. Wow, you have expertise in a lot of different areas.

20 A. That's all pertaining to crime scene analysis.

21 Q. Let me ask you this. You mentioned earlier that as
22 part of your training you worked with the medical examiner's
23 office?

24 A. Yes, ma'am.

25 Q. And you worked with a forensic pathologist?

1 A. Yes, ma'am, worked with five different --

2 Q. What is the duty of a forensic pathologist?

3 MR. SHEALEY: Your Honor, if we could allow the
4 witness to answer the question.

5 THE COURT: She's asked the question and you may
6 answer it.

7 MS. CAMPBELL: Thank you.

8 A. The forensic pathologist is to determine cause and
9 manner of death and how an incident occurs, collection of
10 the forensic evidence from the autopsy.

11 BY MS. CAMPBELL:

12 Q. And interpretation of that evidence?

13 A. Yes, ma'am.

14 Q. And they have specialized training in the medical
15 fields?

16 A. They are medical doctors, yes.

17 Q. And then they have to go further than that and do an
18 internship and a residency that specializes in forensic
19 pathology, is that right?

20 A. Yes, ma'am, they do.

21 Q. You haven't done that?

22 A. No, I have not.

23 Q. And then you talk about ballistics a lot?

24 A. Part of crime scene analysis, yes, ma'am.

25 Q. And I believe you were qualified as an expert in crime

1 scene reconstruction?

2 A. Yes, ma'am.

3 Q. Is that a relatively new field I haven't heard of, or
4 have I just missed it?

5 A. Apparently you missed it. It's been around for years.

6 Q. Okay.

7 MR. SHEALEY: Your Honor, I object. He's also
8 been qualified as an expert in crime scene analysis.

9 THE COURT: Objection is overruled. This is
10 cross-examination.

11 Proceed, please.

12 BY MS. CAMPBELL:

13 Q. And what is your specialized training, I'm sorry I
14 missed it, in ballistics and firearms and tool mark
15 examination?

16 A. It's all part of the medical legal death investigation,
17 training that I have taken over the course of these years.
18 I have been to the University of Miami, University of St.
19 Louis School of Medicine.

20 We are involved in the certification of medical legal
21 death investigators now.

22 Q. Okay. And then gunshot residue, you have another
23 specialized area. You seem to have some expertise in that
24 as well?

25 A. I'm very familiar with it, yes.

1 Q. You are familiar with it?

2 A. It's in close relationship --

3 Q. Is that the extent of your --

4 A. Excuse me, it's in close relationship with the firearms
5 laboratory in Atlanta.

6 Q. Did you consult with a real gunshot residue expert in
7 this case?

8 A. No, I did not.

9 Q. Did you consult with a real ballistics expert in this
10 case.

11 A. No, I did not.

12 Q. Did you consult with a forensic pathologist?

13 A. Not in this case, no.

14 Q. And even when you worked at a medical examiner's
15 office, you had to consult with a forensic pathologist?

16 A. During the course of our investigation, yes.

17 Q. And you are here today because the defense has hired
18 you?

19 A. Yes, ma'am.

20 Q. How much are we paying you?

21 A. Well, so far I have been paid \$1,200. There's about
22 five additional hours that I would be billing for, plus the
23 day travel to come here.

24 Q. Okay. So that would be a total of -- how much an hour?

25 A. It's 150 an hour. So 750. Another \$2,250 plus

1 expenses.

2 Q. Plus expenses.

3 So roughly somewhere close to \$5,000?

4 A. Well, it would be less than 4,000 total.

5 Q. Less than 4,000, okay.

6 For your day's work here?

7 A. It's not just a day's work here. It's for the overall
8 review in the entire case.

9 Q. And how many hours have you put in on it?

10 A. I've got a little over 10 hours thus far, plus the five
11 I haven't billed for.

12 Q. Okay. So you have put in 15 hours?

13 A. Plus today, yes.

14 Q. Plus today, which you haven't billed for yet.

15 A. Yes.

16 Q. And you have gone over the stuff extensively and come
17 to some pretty crucial conclusions that you have just told
18 this jury about, right?

19 A. Yes, ma'am.

20 Q. And where is your report? I missed it.

21 A. I have not been asked to issue a report.

22 Q. So you don't have a report?

23 A. I have not issued a report, no, ma'am.

24 Q. But in this case you are aware that every expert by the
25 State has issued a report, and that's pretty much common

1 protocol, is it not?

2 A. I'm not familiar that everybody has issued a report. I
3 only issue a report if I'm requested to.

4 Q. And you have no report?

5 A. I have not issued a report.

6 Q. And have you ever talked to me before about your
7 findings in this case?

8 A. No, I haven't.

9 Q. Have you ever related these crucial findings in this
10 case to law enforcement what your findings are?

11 A. No, I haven't.

12 Q. Did you consult with any of the experts for the State
13 in this case?

14 A. No, I did not.

15 Q. Did you talk to the ballistics expert Terry Gleason?

16 A. No, I did not.

17 Q. Discuss your findings with her?

18 A. No, I did not.

19 Q. Did you talk with John Roberts from SLED about the
20 gunshot residue?

21 A. No, I did not.

22 Q. Did you go to meet with the forensic pathologist, Dr.
23 Clay Nichols, who is the Chief Deputy Medical Examiner for
24 the entire State of North Carolina?

25 A. No, I did not.

1 Q. Did you ask or review or examine any of the evidence
2 yourself?

3 A. No, I have not.

4 Q. So you are before this jury making these crucial
5 critical assertions based on your view of other people's
6 reports and some photographs?

7 A. And the crime scene information that was obtained by
8 law enforcement.

9 Q. Did you go to the crime scene?

10 A. No, I did not. It was two years later.

11 Q. Well, how long have you been on this case?

12 A. Since spring of this year. I don't have an exact date.

13 Q. And since 1999, you have had this private job, be on
14 the side, or it's your primary --

15 A. Consulting, yes, ma'am.

16 Q. And, of course, if you come into court and testify, you
17 get paid for that as well?

18 A. Yes, ma'am.

19 Q. Okay. Let me talk to you a little bit about your
20 opinion.

21 And I'm -- I'm confused. First you testified that
22 where these shell casings were all was crucial in showing
23 exactly where someone would be when there was a shooting.

24 A. No, I did not say they were exactly where they were.

25 Q. But then you testified that they could get kicked

1 around, they bounce, they are light weight, things of that
2 nature.

3 A. I said that, and I have never said that it's exactly
4 where the shooter was.

5 Q. And you would agree with me, I think, and I'm not sure,
6 that right around this entrance to this gate is where the
7 majority of the shooting occurred, or all of it?

8 A. No, I don't think it all occurred there. I think it
9 occurred further up the sidewalk.

10 Q. You mentioned that one of them was displaced, right?

11 A. The one that's AI that's up in front of the shed.

12 Q. And it's a good distance from the others?

13 A. Yes, ma'am. Distance is relative. It's I think 11
14 feet.

15 Q. And -- well, I have heard 21 feet. 11 feet now. Okay.
16 And it's way up here --

17 A. No.

18 Q. -- by the concrete?

19 A. No, it's not the red dot there.

20 Q. Excuse me, which one is it?

21 A. It's to your left. Keep going left. Keep going left.
22 Keep going left. Right -- somewhere right in -- there is a
23 AI.

24 Q. And it's up a far distance from the rest of them, is
25 that correct?

1 A. It's -- it's a further distance than the rest of them,
2 yes, ma'am.

3 Q. And you're also able to testify today about exactly how
4 these shell casings would have come out of this gun, a
5 Norinco 45?

6 A. I said typically.

7 Q. Okay, that's what I wanted to make sure. Typically
8 that's how it occurred.

9 Were you ever provided a gun in this case and you could
10 do the testing to see exactly how these shell casings were
11 ejected?

12 A. From the testimony I heard and the information I have,
13 the gun is not available, so there is no way to test it.

14 Q. Okay. So when you were talking to this jury, just to
15 be sure that they understand, you were talking about
16 generally this may be how it does, but each gun is
17 individual, isn't that true?

18 A. But it all functions in the same design.

19 Q. I don't have a problem with that, but sometimes guns
20 eject to the left, sometimes guns eject to the right, and
21 sometimes they do different things?

22 A. They will not eject to the left if the ejection port
23 goes to the right.

24 Q. That's right, but you don't have the gun to examine it,
25 do you?

1 A. Well, it's a Norinco 45. They all eject to the right.
2 There is no crossover left-hand ejection port on the
3 Norinco.

4 Q. Well, in this case can you testify to this jury the
5 exact trajectory pattern that was there with some expertise?
6 You aren't telling this jury you can do?

7 A. No, I never said that I could.

8 Q. Okay. And when you testified, you mentioned that the
9 general area, because they bounce when they hit the ground,
10 shell casings do?

11 A. Well, it depends on what the surface they hit. The
12 ones that may hit concrete may bounce more; ones that hit
13 dirt, less; you know, things like that.

14 Q. They can even -- like when they are ejected, hit like,
15 you know, a person, a tree, anything?

16 A. Oh, yeah. If you ever been --

17 Q. In this case many of these shell casings were found
18 right there at the victim's feet?

19 A. Three of them were right there at Edgar's feet.

20 Q. Which could be consistent with Edgar blocking and the
21 bouncing down, right?

22 A. That's always a possibility, but I don't have -- I
23 don't have anything to tell me that's what occurred. I
24 don't see anything.

25 Q. That's the point, you don't have anything to tell you,

1 do you?

2 A. That they hit Edgar, no.

3 Q. And your conclusion then is to exactly where someone
4 was standing?

5 A. I did not say exactly where anybody was standing.

6 Q. Okay. Excuse me, I misunderstood you. What did you
7 say?

8 A. I said they are in the area where the shell casings
9 are.

10 Q. And if someone, say, is standing at the fence and it's
11 right here and they shoot this direction first, and assuming
12 they eject to the right, depending on how the gun is held
13 depends on where they will go, right?

14 A. That's correct.

15 Q. Because whenever you are talking about it being
16 ejected, that's if the gun is held straight, right?

17 A. Yes.

18 Q. Straight up and down, because then it's going to eject
19 back and to the right. But if the gun is held like this --

20 A. It will eject down.

21 Q. -- or like this, or at an angle, it's going to affect
22 all that, and that's why you can't say without the gun
23 itself?

24 A. You can't say unless you know the position the gun is
25 in, and that's why I said everything that I have said today

1 is based on the way the weapon is designed.

2 Q. But I'm talking about how the weapon was held. We are
3 past the design.

4 A. I can't tell you how the weapon is held, because we
5 have no videotape or any eyewitness testimony as to how the
6 weapon is held, so I don't know.

7 Q. Well, let me ask you this. In your experience as a
8 crime scene investigator and everything, typically in a
9 typical crime scene, when things are happening within, in
10 this case three seconds, shooting, fast, does the person
11 have the opportunity to fully extend their arm and stand
12 stationary so that it makes it --

13 A. No, because under the testimony that Todd, Mr. Parvin,
14 gave, that he was moving, as well as the victims. So to
15 have fully extended arms I would not expect that.

16 Q. His testimony was he was moving, or that he was getting
17 his gun and someone was trying to take it from him and
18 standing there and then shot?

19 A. Shot --

20 Q. Did you hear the testimony?

21 A. I was, and he also said he was moving and they were
22 moving.

23 Q. And, again, if someone is reaching down to get a gun
24 quickly and shooting it eight times in rapid succession, and
25 you agree with us that that can happen within two to three

1 seconds?

2 A. Yeah, absolutely.

3 Q. And then you gave a measurement something that you came
4 up with 54 inches, and I didn't quite follow that either, as
5 far as -- because part of the problem is is that one of
6 those shots to Edgar's face is close, right?

7 A. Yes, ma'am, within --

8 Q. Your testimony is that it would be within 18 inches?

9 A. Which question do you want me to answer, the one that
10 you interrupted or the one that you asked me now?

11 Q. I apologize, sir. Excuse me.

12 Can you answer the one about your testimony is it's
13 within 18 inches?

14 A. Yes, ma'am, approximately.

15 Q. And you didn't mention how close it could be for that
16 stippling to be there, especially when it's in a close
17 pattern like it is. How close could the muzzle be to the
18 face?

19 A. How close it could be?

20 Q. Uh-huh.

21 A. Well, it's got to be no closer than six inches, and
22 without firing it you would never know.

23 Q. Did you consult with a forensic pathologist before you
24 came in here and made that determination?

25 A. No, ma'am, it's from experience.

1 Q. And then you came up with another number that the gun
2 itself is nine inches long?

3 A. Approximately, yes.

4 Q. And with a gun, typically what you are talking about is
5 from end to end?

6 A. Yes.

7 Q. And depending on where the handle is and all that
8 depends on how long?

9 A. Exactly.

10 Q. And then you put on another 30 inches, although you
11 gave up four inches to extend his arms, is that correct?

12 A. Approximately, yes..

13 Q. So your calculations and all your testimony, to be fair
14 to this jury, is based on what we have talked about was
15 someone being able to pull the thing up, extend their arm
16 and shoot like that, to get your 54 inches?

17 A. That would be the maximum distance, yes.

18 Q. Right.

19 And in that same vein you talk about how Mr. Lopez was
20 shot first in the stomach and you said he would still be
21 running around after that?

22 A. Yes, ma'am.

23 Q. Okay. And that one, was it a slightly upward angle?

24 A. It wasn't slightly. It was an upward angle.

25 Q. Okay. And that's important. It is an upward angle,

1 right?

2 A. Yes.

3 Q. How tall was Edgar Lopez?

4 A. He's short, and I will have to see exactly what they
5 list him as. 5'4".

6 Q. 5'4"?

7 A. Yes, ma'am.

8 Q. And depending -- again, it all depends on where the
9 body is, if it's down at the point he gets shot a second
10 time, if it's up, all those things we can't tell?

11 A. We can't tell because the body is articulated and it --
12 we cannot tell you the exact location, unless we have a
13 secondary impact.

14 Q. So for that be the first shot in an upward angle, the
15 gun would have to be shooting in this direction?

16 A. It would be fired from below, yes.

17 Q. From below.

18 And are you aware of how tall Todd Parvin is?

19 A. I don't know exactly, no, ma'am.

20 Q. We talked about the gunshot residue.

21 A. Yes, ma'am.

22 Q. Pretty much you admit that their hand was somewhere in
23 the area to get it on the back of their hand?

24 A. Could have, yes, ma'am.

25 Q. Could have, yes.

1 And that then you mentioned that washing your hands
2 could take it off?

3 A. Can take it off. I said minimal washing. There have
4 been tests shown that under minimal washing you can still
5 get a positive result, if they fired or were near the firing
6 of a handgun.

7 Q. I'm sorry, can you say that again? I'm sorry, I did
8 not follow that at all.

9 A. Minimal washing. I'm not talking about scrubbing. I'm
10 talking about minimal washing of the hands. After firing of
11 the handgun, or even being near a handgun, with minimal
12 washing you can still get a positive gunshot residue test.

13 Q. Okay. But you aren't telling this jury that they got
14 up and washed their hands after they were shot?

15 A. No, but there is a possibility they handled the gun
16 prior and washed their hands and still have gunshot --
17 positive gunshot residue.

18 Q. If it was still left on the back of their hands and
19 they were holding the gun, you would expect to find it on
20 the front?

21 A. You don't -- you don't know where you are going to find
22 it.

23 Q. You don't?

24 A. No. You -- you can find it on the palm, you can find
25 it on the back of the hand.

1 Q. Okay.

2 (Off the record)

3 (Back on the record)

4 BY MS. CAMPBELL:

5 Q. Let me ask you this, and I understand you were here for
6 the testimony today and not the other experts, right?

7 A. That's correct, I just came in today.

8 Q. Are you saying that Todd first was further up towards
9 the shed when he shot the first time?

10 A. No, I did not say that.

11 Q. Okay. Maybe I didn't understand. Just tell me.

12 So you are saying he was down at the gate when he did
13 shoot him?

14 A. He was somewhere apparently on the walkway area, if the
15 shot took place with Edgar near the door to that shed.

16 Q. While he was struggling with Pablo over the gun?

17 A. Well, as he said, it was after he retained the weapon
18 and broke away from Pablo.

19 Q. And the altercation with Pablo, according to him, took
20 place at the gate?

21 A. Near the gate.

22 Q. Thank you.

23 MR. SHEALEY: Redirect, Your Honor?

24 THE COURT: Yes, sir.

25

1 REDIRECT EXAMINATION BY MR. SHEALEY:

2 Q. Mr. Tressel, your day job is chief criminal
3 investigator at the Cobb County District Attorney's Office?

4 A. Yes, sir.

5 Q. And when you are usually sitting in this witness box,
6 are you usually testifying for the State?

7 A. Absolutely.

8 Q. Or prosecutors like Ms. Campbell?

9 A. Yes, ma'am.

10 Q. Sitting at that table?

11 A. Yes.

12 Q. And that's your main job, correct?

13 A. That's my primary function, yes.

14 Q. Now, she brought up how I didn't ask you, after we
15 talked, didn't ask you to please call Stan Smith and tell
16 him your findings, right?

17 A. That's correct.

18 Q. Now, in your experience in working with law
19 enforcement, and I didn't ask you to do this, but if you had
20 taken it upon yourself to do that, is he going to drop these
21 charges against Mr. Parvin?

22 A. No.

23 Q. And you know this because you work with law
24 enforcement?

25 A. Absolutely.

1 Q. That's not how it works, is it?

2 A. That's not how it works.

3 Q. Okay. Now, AA, all right, and AI, we were talking a
4 lot about this. Is there any way in your mind that AI,
5 which is by this brown shed, was fired from outside this
6 gate?

7 A. Absolutely not.

8 Q. It doesn't go forward, right?

9 A. It does not go forward. Even a kicked shell will not
10 travel the distance, which is roughly about 30 some feet, if
11 my measurements -- if I remember my measurements correctly,
12 from AA to AI.

13 Q. So even if you are out here and you are shooting it
14 sideways and doing all this stuff, or whatever, even if it's
15 ejecting -- if you turn it this way it's ejecting left into
16 Todd's body, it ain't going to be up there, is it?

17 A. The shell casing cannot get up there and be fired out
18 in the roadway.

19 Q. If you were to fire it out in the roadway?

20 A. Yes.

21 Q. Now, the angle that we talked a lot about where Edgar
22 is described as in the doorway of his house, the open
23 doorway reaching for something, if he was reaching or
24 leaning, would that increase the angle?

25 A. Yes, anytime that you move the body in a rearward

1 position, you are going to increase the angle of impact.
2 Any articulation of the body creates deviations and
3 trajectories. The bullet may be traveling on a straight
4 even plane, but yet show up in the body as a downward angle
5 or an upward angle, depending on how the body is bent at the
6 time the bullet strikes.

7 Q. All right. I would like you to review State's 22. Do
8 you notice that trickle, that small trickle of blood coming
9 from the abdomen on Edgar?

10 A. Yes, running down into the navel.

11 Q. Would that be consistent -- would gravity make that
12 trickle of blood if he were standing? Would that be why
13 that trickle of blond would run down the navel?

14 A. Yes.

15 Q. You wouldn't get that if you were immediately put on
16 your back, because it wouldn't have time to bleed, correct?

17 A. Right, and he's got multiple other areas of blood
18 that's coming down his body, indicating this -- there is
19 other blood on the chest and abdomen that's indicative of
20 him standing up.

21 Q. And that trickle of blood that's coming down, is that
22 consistent with the amount of time of movement after that
23 wound?

24 A. Sure, absolutely.

25 MS. DAVIS: Nothing further.

1 MS. CAMPBELL: Just a couple.

2 RECROSS EXAMINATION BY MS. CAMPBELL:

3 Q. And I'm confused.

4 You first -- and this may be making me mess up again.

5 We are talking about something being 11 feet up, AI?

6 A. Yeah. If you want the exact measurement from the tree,
7 I can get --

8 Q. I'm talking about just generally.

9 A. Yeah.

10 Q. And the tree is right there at the gate?

11 A. Yeah, to the -- if we are looking at the diagram, to
12 the right side of the gate.

13 Q. And then you talked about something being 30 feet.

14 A. AA to AI --

15 Q. And --

16 A. -- is approximately 30 feet.

17 Q. And you talked about, and you just told me this, that
18 you can't really tell because they bounce, they move, they
19 get kicked around, and things of that nature, is that
20 correct?

21 A. That's correct.

22 Q. And if someone is standing right here at the gate,
23 would this grouping be consistent with it?

24 A. At the gate?

25 Q. Or at the fence, excuse me, not the gate.

1 A. No, because the ejection port on the Norinco is to the
2 right and to the rear.

3 Q. Again, assuming, as you just told this jury you can't
4 tell how it was held, where it was done, and all those
5 factors?

6 A. Well, there are factors that we don't know, but it's
7 not consistent with that.

8 Q. Thank you, sir.

9 MS. CAMPBELL: I don't have anything further.

10 THE COURT: You may step down.

11 Your next witness.

12 MS. PRINGLE: Defense would call Chaplain Mike
13 Dugal.

14 CHAPLAIN MIKE DUGAL, having been first duly sworn,
15 testified as follows:

16 THE CLERK: Have a seat in the witness box. State
17 your name for the record and spell it, please.

18 THE WITNESS: Mike Dugal, D-U-G-A-L.

19 DIRECT EXAMINATION BY MS. PRINGLE:

20 Q. Good afternoon Chaplain Dugal.

21 Where are you from, sir?

22 A. I'm presently stationed at Fort Jackson, South
23 Carolina.

24 Q. Right here in Columbia?

25 A. Yes, ma'am.

1 Q. And so do you live on Fort Jackson or do you live out
2 in the community here in Columbia?

3 A. I live in the northeast community of Columbia.

4 Q. Not on post?

5 A. No, ma'am.

6 Q. And what is your job, sir?

7 A. I serve as the director for the Center For Spiritual
8 Leadership.

9 Q. And you have held that position for how long?

10 A. Two and a half years.

11 Q. And you were enlisted in what branch of the military?

12 A. I was enlisted in the Army in the seventies as a
13 military policeman.

14 Q. And what is your rank, sir?

15 A. Presently I serve as a Colonel in the United States
16 Army.

17 Q. And so you have been -- how long have you been with the
18 military total?

19 A. 28 years, with an eight year and four month break
20 beginning in '78, and then I came back in January of '87.

21 Q. So you can -- I take it you can leave the military and
22 then go back, if they will have you back, go back, and --
23 you can go into the civilian world and then go back to a
24 career with the military and that's what you did?

25 A. Yes, ma'am, and it's all existing on the needs of the

1 military and your age.

2 Q. And so you have been with the military for 28 years and
3 you are familiar with the U.S. Army values, are you not?

4 A. Yes, ma'am.

5 Q. And the acronym that was put up there, LDHR, are those
6 the Army values on the acronym that you are familiar with?

7 A. No, ma'am, they are not.

8 Q. What are the proper --

9 A. The proper military values that the Army uses is based
10 on the acronym LDRSHIP, L-D-R-S-H-I-P.

11 And L stands for loyalty.

12 D is duty.

13 R is respect.

14 S is selfless service.

15 H is honor.

16 Integrity.

17 And personal courage.

18 Q. And that's the correct acronym for the values of the
19 Army?

20 A. Yes, ma'am.

21 Q. And are those just sort of a loose idea of values, or
22 are those actually formally adopted by the Army?

23 A. Ma'am, those are the adopted values, and every soldier
24 that comes on active duty pledges to uphold those values and
25 to live by them as long as they serve wearing our nation's

1 cloth.

2 Q. And were they actually formally adopted at some point?

3 A. Yes, ma'am, in the late nineties then the Chief of
4 Staff of the Army realized that we were getting young men
5 and women that were coming in from communities that were not
6 supportive and they had not been taught specific values. So
7 as of the late nineties the acronym LDRSHIP has been the
8 seven values that the Army trains to and holds as
9 identification of who they were as a profession.

10 Q. Thank you, sir.

11 And you had mentioned that your job is the director for
12 the Center For Spiritual Leadership out at Fort Jackson.
13 You're a chaplain, correct?

14 A. Yes, ma'am, I am.

15 Q. And how long have you been a chaplain?

16 A. Since January of 1987.

17 Q. I'm sorry, 19 --

18 A. 87.

19 Q. And, sir, do you know Todd Parvin?

20 A. Yes, I do.

21 Q. How do you know Todd?

22 A. In 1996, I arrived at Fort Sam Houston, Texas, in San
23 Antonio and he was the chaplain assistant that was assigned
24 to Dodd's Field Chapel where I was assigned to be the family
25 life chaplain.

1 Q. So in 1996, 1997, the Fort Sam Houston -- are you
2 saying that Todd was actually your chaplain's assistant?

3 A. Yes, ma'am, he worked for me directly for that first
4 year.

5 Q. And how closely -- when you say he worked for you, how
6 closely would he have worked for you during that time?

7 A. Every day, and then on the weekends, if I had chapel
8 service duty, and his office was no more than 15 feet from
9 my office. Any of the counselees that I would be seeing, it
10 was his responsibility to screen. And if I was to meet with
11 a female soldier or a female family member, it was his
12 responsibility to make sure that he was there present so I
13 would not be placed in a compromised position.

14 Q. And so as the chaplain's assistant, as your assistant,
15 his role, would be to do what?

16 A. At that time he had the administrative responsibilities
17 for the entire chapel. There were four services that met
18 during that chapel on every weekend; from gospel service, to
19 a retirees service, to two catholic services, and it was his
20 responsibility to oversee or to actually perform the
21 religious support duties for those services; and then to
22 maintain all of the scheduling for the Family Life Center,
23 which was also located in that building.

24 Q. And did you, in fact, have during this time a
25 particular kind of job or role, something that you did in

1 addition as a chaplain?

2 A. Yes, ma'am. I was assigned to be the family life
3 chaplain, which meant my specific and primary role was to
4 provide pastoral counseling to soldiers and their family
5 members, and those cases that were directed to me from the
6 family advocacy agency.

7 Q. And that would have been -- or would that have been
8 during the time that Todd was your assistant?

9 A. Yes, ma'am. I did it for four years and he was only
10 there the first year.

11 Q. So you -- to go back to when you knew him and how you
12 knew him, you knew him in '96 to 97, actually as your
13 assistant?

14 A. Yes, ma'am.

15 Q. And did you come across him again?

16 A. Yes, the next time I met Todd was in 2000. I was
17 reassigned to Fort Campbell, Kentucky. He was part of the
18 160th Aviation Regiment, and I knew the chaplain that he
19 worked for directly.

20 Q. Who was that?

21 A. That would have been Chaplain Terry Austin.

22 Q. And did you have occasion to see Todd in some frequency
23 at that point?

24 A. Probably the first two years the only opportunity would
25 have been at an occasional chapel service where my wife

1 supported their unit; and then also if there was monthly
2 training, and I can't say if he was at that monthly training
3 or not.

4 Q. Did your paths cross again in 2002?

5 A. Yes, ma'am. I was deployed with the 101st to
6 Afghanistan and I saw Todd in Bagram during Operation
7 Anaconda.

8 Q. And did your paths cross again with him later?

9 A. Yes, later, after I left Afghanistan, I did not see him
10 again until 2008, when I came here to Fort Jackson for a
11 chaplain colonel's course and I knew that he was working
12 here, so I went by and intentionally sought him and out and
13 said hello to him.

14 Q. And did you have occasion to see him from 2009 and to
15 the present, until today?

16 A. Only at the -- while he was incarcerated.

17 Q. Since he's been in trouble, you have seen him?

18 A. Yes, ma'am. I found out that he was arrested while I
19 was TDY.

20 Q. What does that mean?

21 A. Well, I was temporary duty elsewhere than Fort Jackson.
22 I received an e-mail that the commandant from the chaplain's
23 school had put out just informing everyone on staff that one
24 of our own chaplain assistant had been accused of double
25 homicide. And so when I got back I went to the command

1 wing, asked specifically if anyone knew who it was, and I
2 was informed then that it was Todd. And -- I mean, I was --
3 I was speechless. I mean, I was sick to my stomach, because
4 I had no idea what would have happened that he would have
5 done that.

6 Q. Was that something that you expected to occur?

7 A. No. No, ma'am, it really disturbed me. So that even
8 that evening when I went home my wife asked me what was
9 wrong. I explained to her, and she goes "what do you think
10 happened?" And I specifically told her --

11 MS. CAMPBELL: Objection.

12 THE COURT: Next question.

13 BY MS. PRINGLE:

14 Q. Knowing Todd as well as you do and for as long as you
15 have, in your experience is Todd a peaceful guy or a violent
16 type of person?

17 A. I have never witnessed him to be violent, mad, raising
18 his voice at all.

19 Q. Ever saw him aggressive?

20 A. No, ma'am.

21 Q. Hotheaded, lose his temper?

22 A. No, ma'am.

23 Q. Is the chaplain's assistant -- a chaplains and
24 chaplain's assistant group a smaller subset of the military
25 community, or -- how big is that community in and of itself?

1 A. On active duty, counting both the chaplains and
2 chaplain assistants, maybe 2,500 out of over 540,000
3 soldiers.

4 Q. So a small -- that is a small community?

5 A. Yes, ma'am.

6 Q. All right. And, again, sir, in your experience and
7 knowing Todd for all the time that you have known him, what
8 is your experience and your feeling as to whether or not
9 Todd is trustworthy or honest?

10 A. Very trustworthy, honest. I would trust him with my
11 life.

12 Q. And, of course, during the time that you worked with
13 him, particularly as your assistant, you worked very closely
14 with him?

15 A. Yes, ma'am, daily.

16 Q. Saw him day in and day out?

17 A. Yes, ma'am.

18 Q. And is that a particularly close relationship, in your
19 experience?

20 A. Yes, ma'am. The chaplain assistant, you have to -- I
21 mean, basically you build a relationship with him, because
22 you are with him more than you are with any other soldier.

23 Q. And in your experience, what you know and what you have
24 observed and your experiences, is Todd Parvin a homosexual?

25 A. Nothing to indicate anything that I would even think

1 that.

2 Q. Ever?

3 A. Never.

4 Q. In all the time that you have known him?

5 A. No, ma'am.

6 Q. In your opinion, does Todd Parvin embody those values
7 on that board, in your experience and what you have
8 observed, in your opinion?

9 A. The only -- the time that I have known him while he
10 served on active duty I can definitely say yes, this
11 described Todd Parvin.

12 Q. Thank you, sir.

13 MS. PRINGLE: I have no further questions.

14 THE COURT: Anything from the State?

15 MS. CAMPBELL: We have no questions.

16 THE COURT: Step down, sir.

17 Next witness.

18 MS. PRINGLE: Defense would call James Parvin.

19 JAMES PARVIN, having been first duly sworn,
20 testified as follows:

21 THE CLERK: Have a seat in the witness box. State
22 your name for the record and spell it, please.

23 THE WITNESS: I'm James Parvin, P-A-R-V-I-N.

24 DIRECT EXAMINATION BY MS. PRINGLE:

25 Q. Good afternoon, James. How are you?

1 A. I'm doing good. How about yourself?

2 Q. I'm good.

3 James, how old are you?

4 A. I'm 16.

5 Q. All right. And who is your dad?

6 A. Leslie Todd Parvin.

7 Q. And who is your mom?

8 A. Shanna Parvin.

9 Q. And she's here in the courtroom today?

10 A. Yes, ma'am.

11 Q. And your brothers are here too?

12 A. Yes, ma'am.

13 Q. Is that John sitting next to your mother?

14 A. Yes.

15 Q. And who is sitting next to John?

16 A. Josh.

17 Q. All right. And who is sitting next to him?

18 A. My grandfather.

19 Q. Who lives in your house, James?

20 A. All of the people in the front row, including my
21 father.

22 Q. Scoot up just a little bit so they can hear you, okay?

23 So all of those people live in your house?

24 A. Yes, ma'am.

25 Q. All right. Have you ever testified in court before?

1 A. No, ma'am.

2 Q. James, do you go to school?

3 A. Oh, yes, ma'am.

4 Q. Where do you go?

5 A. Right now I'm enrolled in online school, just
6 for this -- it started this year.

7 Q. And prior to that, last year where were you going to
8 school?

9 A. Richland Northeast High School.

10 Q. And why did you start -- you started -- so you are
11 basically home schooling right now?

12 A. Yes, ma'am.

13 Q. And why is that?

14 A. At the start of this year I just thought it would be
15 the best thing. I was real stressed with my father being
16 away, and just -- I thought I could do the best in school is
17 being home with my family. I -- I didn't feel like I would
18 have enough focus in school, so I just chose to be home
19 schooled.

20 Q. What about your brother Josh, is he going to school?

21 A. Oh, yes, he's going to Midlands Technical College.

22 Q. And John, does he go to school?

23 A. Yes, he went one semester to Princeton University in
24 New Jersey and now he's at home for the trial.

25 Q. He came back from -- he has a scholarship to Princeton?

1 A. Yes, a full scholarship.

2 Q. And he came back here to be here for this trial?

3 A. Yes, ma'am.

4 Q. When you -- I want to ask you some questions about your
5 dad, okay?

6 When you moved to Columbia, was there a change in your
7 dad's profession?

8 A. He was here for two years. And then after the two
9 years he retired from the military.

10 Q. Okay. And prior to that, in your life, how long in
11 your life had your dad been in the Army?

12 A. My entire life since I was born.

13 Q. Okay. So you would have been about 15 years old when
14 he retired?

15 A. Yes, ma'am.

16 Q. During that time have you guys lived on base some?

17 A. Yes, ma'am.

18 Q. Where, do you remember?

19 A. We lived on base at Fort Campbell. We lived on base
20 at -- and that was in Kentucky.

21 We lived on base at Fort Polk, Louisiana.

22 And then we possibly lived on base at Fort Sam Houston
23 in San Antonio, but I was just born, so I don't recall.

24 Q. You were just a baby and you don't know?

25 A. Yes, ma'am.

1 Q. And your dad, until he retired, how did he keep his
2 hair?

3 A. He kept it short with a military cut.

4 Q. And after he -- after he retired, what did he do with
5 his hair?

6 A. He grew it out, his facial hair, including his hair on
7 his head.

8 Q. Was that something that he had wanted to do?

9 A. Yes, ma'am.

10 Q. And how else did he change? Did he change his
11 appearance in any other ways?

12 A. He also got gages --

13 Q. Uh-huh.

14 A. -- in his ears.

15 Q. Was that something that he had wanted to do?

16 A. Yes, ma'am.

17 Q. And why is that how he had to be all those years?

18 A. Well, the 20 years he was in the military, he always
19 had to keep his hair cut short. You couldn't have gages.
20 So after he retires he decided to grow it out and just --
21 you know, just to get the long hair and the earrings.

22 Q. As a child of Todd and Shanna Parvin, can you tell this
23 jury about the relationship between your mom and your dad
24 that you have observed?

25 A. Yes, ma'am. Since -- ever since I can remember, they

1 are the most loving people towards each other. I mean, they
2 always tell each other I love you. Call each other baby.
3 Just the most loving words, and they have a very close
4 relationship.

5 Q. Do you ever see them being affectionate?

6 A. Yes, all the time.

7 Q. Like how?

8 A. They will always give each other kisses, hugs and
9 kisses before anybody left the house. They are just -- in
10 many ways just always -- you could see that they loved each
11 other just by the way that they acted towards each other.

12 Q. Is there any question in your mind about that?

13 A. No, not at all.

14 Q. Did your dad -- we all know he's been in jail for about
15 a year and a half now since this happened.

16 A. Yes, ma'am.

17 Q. Prior to that did your dad go out a lot at night and
18 disappear at night?

19 A. No, ma'am, never that, that I know.

20 Q. Did he come home with people that you didn't know?

21 A. No, ma'am, never.

22 Q. Did he have any male friends that didn't know where
23 they came from?

24 A. No, ma'am, never.

25 Q. Did he spend a lot of time going out to bars?

1 A. No, ma'am, never.

2 Q. Did he ever go do that?

3 A. Never. Not that I would ever know.

4 Q. So his time was spent -- when he wasn't deployed or at
5 work, his time was spent mostly where?

6 A. At home with the family.

7 Q. Okay. And this -- when this incident happened, and I
8 know that you have been sitting in here all week. When this
9 incident happened, it was in the summer.

10 A. Yes, ma'am.

11 Q. You weren't in town, were you?

12 A. When the actual incident happened, no, ma'am, I was in
13 Texas.

14 Q. You were in Texas.

15 And you said where your dad isn't, but when your dad is
16 at home, where does he sleep?

17 A. He sleeps in the bedroom with my mom.

18 Q. Every night?

19 A. Every night.

20 Q. Has it been that way part of your life, or your entire
21 life?

22 A. My entire life, ever since I can remember.

23 Q. Did they have some time where they had their bedroom
24 door closed?

25 A. Oh, yes, ma'am.

1 Q. Sorry to ask you this.

2 What, if anything, did your dad teach you about having
3 a woman in your life? And I know you are young, but had
4 your dad taught you boys some things about that?

5 A. A lot, yes.

6 Q. Tell the jury about that.

7 A. The main thing that he would always teach us with a
8 woman is that you would treat a woman with the most respect
9 that you possibly can, that a woman -- that you need to
10 cherish a woman for your whole life, have one woman for your
11 whole life and cherish her just as much as you can. Just
12 love her just with all your heart and just respect her.

13 Q. Did he have something hanging on the wall in your house
14 about that?

15 A. Yes, ma'am.

16 Q. And was that something that spoke to that or talked
17 about that?

18 A. Yes, ma'am.

19 Q. And did he -- did he make that for your guys?

20 A. Oh, yes, it was a Christmas present one year when he
21 was deployed.

22 Q. Would you recognize a copy of it if I showed it to you?

23 A. Sure.

24 MS. CAMPBELL: Objection, Your Honor.

25 THE COURT: All right.

1 MS. PRINGLE: I'll ask a few other questions while
2 she locates it and we can perhaps take that up.

3 BY MS. PRINGLE:

4 Q. All right, James, I'm going to ask you specifically
5 about one of the issues that's come up during the trial,
6 okay?

7 A. Yes.

8 Q. I'm almost done.

9 A. All right.

10 Q. All right. When your dad retired, he had some time on
11 his hands, did he have a hobby? Did he have a hobby?

12 A. Yes, ma'am.

13 Q. And what was one of them?

14 A. The main one would be going and looking for scrap
15 metal.

16 Q. Okay. And we have heard him talk about going off with
17 one of his sons, and I think he mentioned you by name, but
18 was that you?

19 A. Yes, ma'am.

20 Q. Did you spend some time doing that with him?

21 A. A lot of time.

22 Q. A lot of time?

23 A. Yes, ma'am.

24 Q. And what would you go do?

25 A. We would go out -- we would go just around numerous

1 neighborhoods and we would go look for any metal that
2 recycles on the side of the street and then we would just
3 pick them up. And then when we got a big load, enough
4 that -- enough to take, we would take it to the recycling
5 center.

6 Q. Was that something that was fun for you guys to do
7 together?

8 A. Yes, ma'am.

9 Q. But is it also something that your dad sometimes did
10 with his dad or on his own?

11 A. Yes, ma'am. I did it on my own, too. That was --
12 that's not unusual for me, or my grand-dad, or my dad to do
13 it alone.

14 Q. To do it alone it wasn't?

15 A. No, ma'am.

16 Q. Why do you guys like it? What do you enjoy about it?
17 What did your dad enjoy about it?

18 A. Well, I mean, I definitely enjoyed spending time with
19 my dad. I mean, that was the good and only time -- I can
20 guarantee you that that's the thing my dad liked about it
21 too. And it was just -- it was just kind of real fun that
22 we could always do, and we would just get a little money,
23 having it. He would always split with me, so I would always
24 have, you know, \$20 in my pocket, something like that.

25 Q. So he would split some with you too?

1 A. Yes, ma'am.

2 Q. Okay. James, I'm going to show you what has been
3 marked as Defendant's Exhibit 39.

4 A. Yes, ma'am.

5 Q. Do you recognize that? I know it's a -- it's not the
6 original, but do you recognize that?

7 A. Yes, ma'am.

8 Q. What's it a copy of?

9 A. It's a copy -- this was the Christmas present it says
10 here for 2000 and --

11 MS. CAMPBELL: Objection, Your Honor.

12 THE COURT: All right. Ladies and gentlemen, I'm
13 going to have you go to the jury room for a break. Please
14 do not discuss the case.

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: Yes, ma'am.

18 MS. CAMPBELL: Your Honor, we would object to
19 that. I don't know how it would come in.

20 THE COURT: What is it?

21 MS. CAMPBELL: It's a saying that came off the
22 wall of their house. I don't know under what --

23 COURT REPORTER: I'm sorry?

24 THE COURT: Household contents.

25 MS. PRINGLE: It goes to Mr. Parvin being a

1 heterosexual, in love with his wife and his family. It also
2 goes to the protective feelings that Todd had about his
3 family.

4 THE COURT: That's ten years ago?

5 MS. PRINGLE: Yes, we intend to show their entire
6 lifetime that he has been consistent in his heterosexuality
7 and his commitment to his wife and his family.

8 THE COURT: Based on that flyer?

9 MS. PRINGLE: We have a lot more to come, Your
10 Honor. That's just one piece.

11 THE COURT: What else do you have to come?

12 MS. PRINGLE: Other witnesses.

13 THE COURT: Anything else?

14 MS. CAMPBELL: Your Honor, just under 404 and 405,
15 we feel it's not proper, and a number of other reasons.

16 THE COURT: Well, you know, it seems -- it appears
17 that the whole Pandora's box is being opened. And if that's
18 the case, then that's the case. I'll allow it in.

19 MS. PRINGLE: Thank you.

20 THE COURT: We will take a few minutes.

21 (Whereupon, proceedings were recessed)

22 (Whereupon, proceedings were reconvened)

23 THE COURT: I understand that there's an exhibit,
24 State's No. 22, could I see it, please?

25 COURT REPORTER: It is a picture of -- Mr. Shealey

1 talked about it, a picture of --

2 THE COURT: Would it still be on the rail over
3 there?

4 COURT REPORTER: Yes, it may be.

5 THE COURT: I understand that Mr. Shealey has
6 published State's Exhibit No. 22 to the jury. Prior to now
7 this was not in evidence. It's marked for ID. Any
8 objection to it being admitted into evidence; State or the
9 defense?

10 MS. CAMPBELL: No, Your Honor.

11 MR. SHEALEY: I don't remember, but --

12 THE COURT: Well, we just got it from the rail
13 over there.

14 MR. SHEALEY: I showed it to the expert.

15 MS. CAMPBELL: You showed it to the jury too.

16 THE COURT: You published it to the jury. I said
17 you could publish anything that's in evidence. You
18 published something which wasn't in evidence, isn't in
19 evidence.

20 MR. SHEALEY: I apologize, I thought it was in
21 evidence..

22 MS. CAMPBELL: We would ask that it be admitted.

23 THE COURT: Any objection?

24 MR. SHEALEY: I guess I would object under the
25 original objection, but it's kind of a moot point now.

1 THE COURT: It's in over objection. You published
2 it to the jury.

3 MR. SHEALEY: Thank you.

4 THE COURT: And from henceforth any exhibits
5 that's shown to the jury must be referred to by exhibit
6 numbers.

7 MR. SHEALEY: I apologize, Your Honor. I thought
8 that was in evidence.

9 THE COURT: All right. Bring in the jury, please.
10 And here is this number 39, which is in evidence.

11 MS. PRINGLE: In light of the court's comment, in
12 consulting with Ms. Davis, I'm not going to offer it.

13 (The following takes place in the presence of the
14 jury panel)

15 THE BAILIFF: Your Honor, the jury is present.

16 THE COURT: You may proceed.

17 MS. PRINGLE: Thank you, Your Honor.

18 If it please the court.

19 BY MS. PRINGLE:

20 Q. James, just one or two last questions.

21 From what you know and you understand, does your dad
22 love your mom?

23 A. Yes, ma'am.

24 Q. Committed to your mom?

25 A. Yes, ma'am, a lot.

1 Q. From what you have seen?

2 A. Yes, ma'am.

3 Q. You love your dad?

4 A. Yes, ma'am.

5 MS. PRINGLE: I have no further questions.

6 THE COURT: By the State?

7 MS. CAMPBELL: Thank you. We don't have any
8 questions.

9 THE COURT: You may step down.

10 Next witness.

11 MS. PRINGLE: May we approach, Your Honor?

12 THE COURT: Yes.

13 (Whereupon, the lawyers approached the bench for
14 an off-the-record discussion)

15 THE COURT: Ladies and gentlemen, that will do it
16 for today. Thank you all very much.

17 We will start Monday morning at ten o'clock. Ten
18 o'clock Monday morning.

19 Have a good weekend. Please refrain from
20 discussing the case over the weekend with anyone, and we'll
21 see you Monday morning, at what time?

22 THE JURY: Ten o'clock.

23 THE COURT: Ten o'clock.

24 (The following takes place outside the presence of
25 the jury panel)

1 THE COURT: Ms. Campbell?

2 MS. CAMPBELL: May it please the court, Your
3 Honor?

4 THE COURT: Yes.

5 MS. CAMPBELL: Just as far as scheduling, and I'm
6 not trying to pin them down or anything, but in order to
7 expedite things if we have possible reply witnesses, I was
8 wondering if they have an estimate of how long their case
9 would be, so we could be ready when they are finished.

10 THE COURT: All right.

11 MS. DAVIS: Your Honor, I think with our witnesses
12 on Monday we would probably be finished on Monday.

13 THE COURT: They will be through by two o'clock
14 Monday.

15 MS. CAMPBELL: I'll be ready.

16 And do we anticipate closing on Tuesday morning
17 then?

18 THE COURT: Unless it goes, you know --

19 MS. CAMPBELL: Okay.

20 THE COURT: We won't anticipate closing on Monday.

21 MS. CAMPBELL: Thank you.

22 THE COURT: All right. Anything else?

23 MS. CAMPBELL: Nothing from us, Your Honor.

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

25 THE COURT: All right. See you on Monday. Have a

1 good weekend.

2 (Whereupon, proceedings were adjourned to December
3 19, 2011)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 LESLIE TODD PARVIN,) 2011-GS-40-0897
7 DEFENDANT.) 2011-GS-40-0898
8) DECEMBER 19, 2011
9) COLUMBIA, SOUTH CAROLINA

10 (VOLUME VI)

11 B E F O R E:

12 THE HONORABLE CLIFTON NEWMAN, JUDGE. ; And a Jury.

13
14 A P P E A R A N C E S:

15 KATHRYN LUCK CAMPBELL, ASSISTANT SOLICITOR
16 NICOLE M. SIMPSON, ASSISTANT SOLICITOR
17 MEGHAN WALKER, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

18 FIELDING PRINGLE, ASSISTANT PUBLIC DEFENDER
19 LUKE SHEALEY, ASSISTANT PUBLIC DEFENDER
20 JENNIFER DAVIS, ASSISTANT PUBLIC DEFENDER
ATTORNEYS FOR THE DEFENDANT

21 MICHAEL R. WATTS
22 CIRCUIT COURT REPORTER
23
24
25

INDEX

(VOLUME I)

WITNESSES

PAGE

JURY VOIR DIRE -- PAGE 32

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

INDEX

(VOLUME II)

WITNESSES PAGE

(NEIL V. BIGGERS HEARING)

ALFREDO ZUNIGA VIDAL (SW)

DIRECT EXAMINATION BY MS. CAMPBELL 181

CROSS EXAMINATION BY MR. SHEALEY 187

JOSE MONROY (SW)

DIRECT EXAMINATION BY MS. CAMPBELL 192

CROSS EXAMINATION BY MS. DAVIS 197

REDIRECT EXAMINATION BY MS. CAMPBELL 201

INVESTIGATOR BRIEN GWYN (SW)

DIRECT EXAMINATION BY MS. CAMPBELL 203

CROSS EXAMINATION BY MR. SHEALEY 210

INVESTIGATOR WILLIE GONZALEZ (SW)

DIRECT EXAMINATION BY MS. CAMPBELL 215

CROSS EXAMINATION BY MR. SHEALEY 219

REDIRECT EXAMINATION BY MS. CAMPBELL 222

(JURY TRIAL)

JURY SWORN -- PAGE 233

OPENING STATEMENT BY MS. SIMPSON -- PAGE 238

OPENING STATEMENT BY MR. SHEALEY -- PAGE 254

1	INDEX	
2	(VOLUME II)	
3	WITNESSES	PAGE
4	OFFICER CHAUNCEY SMITH (SW)	
5	DIRECT EXAMINATION BY MS. WALKER	266
6	CROSS EXAMINATION BY MS. PRINGLE	271
7	REDIRECT EXAMINATION BY MS. WALKER	277
8	JOSE L. MONROY (SW)	
9	DIRECT EXAMINATION BY MS. CAMPBELL	280
10	CROSS EXAMINATION BY MS. DAVIS	292
11	ADAN SOTO (SW)	
12	DIRECT EXAMINATION BY MS. WALKER	302
13	CROSS EXAMINATION BY MR. SHEALEY	306
14	MARLIN AVILA (SW)	
15	DIRECT EXAMINATION BY MS. WALKER	311
16	CROSS EXAMINATION BY MS. DAVIS	313
17	ALFREDO ZUNIGA VIDAL (SW)	
18	DIRECT EXAMINATION BY MS. SIMPSON	318
19	CROSS EXAMINATION BY MR. SHEALEY	330
20	DIMAS FERNANDEZ (SW)	
21	DIRECT EXAMINATION BY MS. WALKER	341
22	(NEIL V. BIGGERS HEARING)	
23	DIRECT EXAMINATION BY MS. WALKER	351
24	CROSS EXAMINATION BY MR. SHEALEY	352
25		

INDEX

(VOLUME II)

WITNESSES

PAGE

(NEIL V. BIGGERS HEARING)

ROBERTO GONZALES MERRIN (SW)

DIRECT EXAMINATION BY MS. CAMPBELL 359

CROSS EXAMINATION BY MS. DAVIS 364

(JURY TRIAL)

DIMAS FERNANDEZ (SW) (CONT'D)

DIRECT EXAMINATION BY MS. WALKER 376

CROSS EXAMINATION BY MR. SHEALEY 377

REDIRECT EXAMINATION BY MS. WALKER 381

ROBERTO GONZALES MERRIN (SW)

DIRECT EXAMINATION BY MS. CAMPBELL 383

CROSS EXAMINATION BY MS. DAVIS 393

1	INDEX	
2	(VOLUME III)	
3	WITNESSES	PAGE
4	JOHN BELLEISLE (SW)	
5	DIRECT EXAMINATION BY MS. SIMPSON	456
6	CROSS EXAMINATION BY MR. SHEALEY	462
7	DR. CLAY NICHOLS (SW)	
8	DIRECT EXAMINATION BY MS. CAMPBELL	463
9	CROSS EXAMINATION BY MS. PRINGLE	496
10	REDIRECT EXAMINATION BY MS. CAMPBELL	499
11	SLED AGENT DEBORAH GOFF (SW)	
12	DIRECT EXAMINATION BY MS. WALKER	500
13	CROSS EXAMINATION BY MR. SHEALEY	504
14	ANDREA THOMPSON (SW)	
15	DIRECT EXAMINATION BY MS. SIMPSON	506
16	CROSS EXAMINATION BY MS. PRINGLE	508
17	INVESTIGATOR YVONNE WOODS (SW)	
18	DIRECT EXAMINATION BY MS. CAMPBELL	510
19	CROSS EXAMINATION BY MR. SHEALEY	544
20	REDIRECT EXAMINATION BY MS. CAMPBELL	554
21	INVESTIGATOR MICHAEL BEELER (SW)	
22	DIRECT EXAMINATION BY MS. CAMPBELL	555
23	CROSS EXAMINATION BY MS. PRINGLE	596
24	REDIRECT EXAMINATION BY MS. CAMPBELL	612
25		

1	INDEX	
2	(VOLUME III)	
3	WITNESSES	PAGE
4	INVESTIGATOR KRISTEN POLIS (SW)	
5	DIRECT EXAMINATION BY MS. SIMPSON	616
6	(NO CROSS EXAMINATION)	
7	INVESTIGATOR TRISH ODOM (SW)	
8	DIRECT EXAMINATION BY MS. CAMPBELL	631
9	CROSS EXAMINATION BY MR. SHEALEY	649
10	OFFICER BERNADETTE ATENCIO (SW)	
11	DIRECT EXAMINATION BY MS. WALKER	656
12	(NO CROSS EXAMINATION)	
13	OFFICER PATRICIA WEED (SW)	
14	DIRECT EXAMINATION BY MS. SIMPSON	659
15	(NO CROSS EXAMINATION)	
16	JILL JARREAU (SW)	
17	DIRECT EXAMINATION BY MS. WALKER	663
18	CROSS EXAMINATION BY MS. PRINGLE	666
19	SLED AGENT JOHN ROBERTS (SW)	
20	DIRECT EXAMINATION BY MS. CAMPBELL	667
21	CROSS EXAMINATION BY MR. SHEALEY	677
22	REDIRECT EXAMINATION BY MS. CAMPBELL	680
23	RECROSS EXAMINATION BY MR. SHEALEY	681
24		
25		

1	INDEX	
2	(VOLUME III)	
3	WITNESSES	PAGE
4	CHERYL TAYLOR (SW)	
5	DIRECT EXAMINATION BY MS. WALKER	682
6	CROSS EXAMINATION BY MS. DAVIS	684
7	OFFICER TENA GOFF (SW)	
8	DIRECT EXAMINATION BY MS. SIMPSON	685
9	(NO CROSS EXAMINATION)	
10	INVESTIGATOR WILLIAM GONZALEZ (SW)	
11	DIRECT EXAMINATION BY MS. CAMPBELL	694
12	CROSS EXAMINATION BY MS. DAVIS	711
13	INVESTIGATOR STAN RICHARDS (SW)	
14	DIRECT EXAMINATION BY MS. CAMPBELL	721
15	(NO CROSS EXAMINATION)	
16	SERGEANT MATTHEW ELLIS (SW)	
17	DIRECT EXAMINATION BY MS. CAMPBELL	726
18	(NO CROSS EXAMINATION)	
19	SERGEANT KEVIN ISENHOWARD (SW)	
20	DIRECT EXAMINATION BY MS. SIMPSON	730
21	CROSS EXAMINATION BY MS. DAVIS	736
22	OFFICER AUDRA LINFERT (SW)	
23	DIRECT EXAMINATION BY MS. WALKER	737
24	CROSS EXAMINATION BY MS. PRINGLE	740
25	REDIRECT EXAMINATION BY MS. WALKER	744

INDEX

(VOLUME III)

WITNESSES	PAGE
INVESTIGATOR ROBERT OATES (SW)	
DIRECT EXAMINATION BY MS. CAMPBELL	744
CROSS EXAMINATION BY MR. SHEALEY	750

1	INDEX	
2	(VOLUME IV)	
3	WITNESSES	PAGE
4	LIEUTENANT BEN MOORE (SW)	
5	DIRECT EXAMINATION BY MS. WALKER	786
6	(NO CROSS EXAMINATION)	
7	OFFICER CHRISTINE BARRACKMAN (SW)	
8	DIRECT EXAMINATION BY MS. WALKER	788
9	(NO CROSS EXAMINATION)	
10	OFFICER JOHN BARRON (SW)	
11	DIRECT EXAMINATION BY MS. CAMPBELL	793
12	CROSS EXAMINATION BY MS. PRINGLE	821
13	REDIRECT EXAMINATION BY MS. CAMPBELL	827
14	RECROSS EXAMINATION BY MS. PRINGLE	828
15	CHIEF ROLAND HILL (SW)	
16	DIRECT EXAMINATION BY MS. SIMPSON	829
17	CROSS EXAMINATION BY MS. PRINGLE	831
18	REDIRECT EXAMINATION BY MS. SIMPSON	833
19	RECROSS EXAMINATION BY MS. PRINGLE	834
20	OFFICER TERRI GLEASON (SW)	
21	DIRECT EXAMINATION BY MS. CAMPBELL	838
22	CROSS EXAMINATION BY MR. SHEALEY	856
23	REDIRECT EXAMINATION BY MS. CAMPBELL	862
24	RECROSS EXAMINATION BY MR. SHEALEY	863
25		

INDEX

(VOLUME IV)

WITNESSES	PAGE
INVESTIGATOR KERRY JOHNSON (SW)	
DIRECT EXAMINATION BY MS. CAMPBELL	864
CROSS EXAMINATION BY MR. SHEALEY	893
INVESTIGATOR BRIEN GWYN (SW)	
DIRECT EXAMINATION BY MS. CAMPBELL	873
CROSS EXAMINATION BY MS. DAVIS	917
REDIRECT EXAMINATION BY MS. CAMPBELL	951
RE CROSS EXAMINATION BY MS. DAVIS	955
MAJOR JAMES SMITH (SW)	
DIRECT EXAMINATION BY MS. CAMPBELL	957
CROSS EXAMINATION BY MS. SHEALEY	990
STATE RESTS -- PAGE 1004	

1	INDEX	
2	(VOLUME V)	
3	WITNESSES	PAGE
4	LESLIE TODD PARVIN (DW)	
5	DIRECT EXAMINATION BY MS. DAVIS	1058
6	CROSS EXAMINATION BY MS. CAMPBELL	1137
7	SHELBY INGRAM (DW)	
8	DIRECT EXAMINATION BY MS. PRINGLE	1208
9	(NO CROSS EXAMINATION)	
10	LEE JARMAN (DW)	
11	DIRECT EXAMINATION BY MR. SHEALEY	1224
12	CROSS EXAMINATION BY MS. CAMPBELL	1227
13	ROBERT TRESSEL (DW)	
14	DIRECT EXAMINATION BY MR. SHEALEY	1228
15	CROSS EXAMINATION BY MS. CAMPBELL	1257
16	REDIRECT EXAMINATION BY MR. SHEALEY	1274
17	RECROSS EXAMINATION BY MS. CAMPBELL	1277
18	CHAPLAIN MIKE DUGAL (DW)	
19	DIRECT EXAMINATION BY MS. PRINGLE	1278
20	(NO CROSS EXAMINATION)	
21	JAMES PARVIN (DW)	
22	DIRECT EXAMINATION BY MS. PRINGLE	1287
23	(NO CROSS EXAMINATION)	
24		
25		

1	INDEX	
2	(VOLUME VI)	
3	WITNESSES	PAGE
4	CHAPLAIN CHARLES BAILEY (DW)	
5	DIRECT EXAMINATION BY MS. DAVIS	1344
6	(NO CROSS EXAMINATION)	
7	CHAPLAIN PHILLIP WRIGHT (DW)	
8	DIRECT EXAMINATION BY MS. DAVIS	1349
9	CROSS EXAMINATION BY MS. CAMPBELL	1353
10	CHAPLAIN TERRY MARRERO CARTAGENA (DW)	
11	DIRECT EXAMINATION BY MR. SHEALEY	1356
12	CROSS EXAMINATION BY MS. CAMPBELL	1359
13	CHAPLAIN EDWIN AHL (DW)	
14	DIRECT EXAMINATION BY MR. SHEALEY	1360
15	(NO CROSS EXAMINATION)	
16	CHAPLAIN EUGENE LOVELACE, JR. (DW)	
17	DIRECT EXAMINATION BY MR. SHEALEY	1365
18	(NO CROSS EXAMINATION)	
19	CHAPLAIN TERRY AUSTIN (DW)	
20	DIRECT EXAMINATION BY MR. SHEALEY	1369
21	(NO CROSS EXAMINATION)	
22	CHAPLAIN JAMES R. WHITE (DW)	
23	DIRECT EXAMINATION BY MS. PRINGLE	1372
24	CROSS EXAMINATION BY MS. CAMPBELL	1376
25	REDIRECT EXAMINATION BY MS. PRINGLE	1377

INDEX

(VOLUME VI)

WITNESSES	PAGE
CHAPLAIN CARLETON BIRCH (DW)	
DIRECT EXAMINATION BY MS. PRINGLE	1378
(NO CROSS EXAMINATION)	
MASTER SERGEANT ERIC KRAMER (DW)	
DIRECT EXAMINATION BY MR. SHEALEY	1386
CROSS EXAMINATION BY MS. CAMPBELL	1389
REDIRECT EXAMINATION BY MR. SHEALEY	1391
CHARLES HIRE (DW)	
DIRECT EXAMINATION BY MS. PRINGLE	1391
(NO CROSS EXAMINATION)	
CHAPLAIN EUGENE ZEHNER (DW)	
DIRECT EXAMINATION BY MS. PRINGLE	1395
CROSS EXAMINATION BY MS. CAMPBELL	1398
REDIRECT EXAMINATION BY MS. PRINGLE	1398
CHAPLAIN TIMOTHY WALLS (DW)	
DIRECT EXAMINATION BY MR. SHEALEY	1399
(NO CROSS EXAMINATION)	
DEFENSE RESTS -- PAGE 1402	

INDEX

(VOLUME VI)

WITNESSES PAGE

OFFICER DAVID COLLINS (DW) (REBUTTAL)

DIRECT EXAMINATION BY MS. CAMPBELL 1423

CROSS EXAMINATION BY MR. SHEALEY 1433

CHIEF ROLAND HILL (DW) (REBUTTAL)

DIRECT EXAMINATION BY MS. SIMPSON 1443

CROSS EXAMINATION BY MS. PRINGLE 1445

DR. JOHN TAYLOR (SW) (REBUTTAL)

DIRECT EXAMINATION BY MS. CAMPBELL 1446

CROSS EXAMINATION BY MS. PRINGLE 1449

REDIRECT EXAMINATION BY MS. CAMPBELL 1455

CAPTAIN JAMES SMITH (SW) (REBUTTAL)

DIRECT EXAMINATION BY MS. CAMPBELL 1455

CROSS EXAMINATION BY MR. SHEALEY 1473

LESLIE TODD PARVIN (DW) (SURREBUTTAL)

DIRECT EXAMINATION BY MS. DAVIS 1486

CROSS EXAMINATION BY MS. CAMPBELL 1491

INDEX

(VOLUME VII)

WITNESSES

PAGE

CLOSING ARGUMENT BY MS. CAMPBELL -- PAGE 1600

CLOSING ARGUMENT BY MS. DAVIS -- PAGE 1621

FINAL ARGUMENT BY MS. CAMPBELL -- PAGE 1646

COURT'S JURY INSTRUCTIONS -- PAGE 1684

INDEX

(VOLUME VIII)

WITNESSES

PAGE

JURY VERDICT -- PAGE 1742

REPORTER'S CERTIFICATE -- PAGE 1752

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-1	PHOTO LINEUP		328
4	S-2	PHOTO LINEUP		291
5	S-3	PHOTO LINEUP		377
6	S-4	PHOTO LINEUP	178	
7	S-5	PHOTO LINEUP		391
8	S-6	COMPOSITE		330
9	S-7	VIDEO		508
10	S-8	BLOWUP		493
11	S-9	BLOWUP		482
12	S-10	PHOTOGRAPH		524
13	S-11	PHOTOGRAPH		524
14	S-12	PHOTOGRAPH		524
15	S-13	PHOTOGRAPH		524
16	S-14	PHOTOGRAPH		524
17	S-15	PHOTOGRAPH		524
18	S-16	PHOTOGRAPH		525
19	S-17	PHOTOGRAPH		525
20	S-18	PHOTOGRAPH		525
21	S-19	PHOTOGRAPH		525
22	S-20	PHOTOGRAPH	439	
23	S-21	PHOTOGRAPH	439	
24	S-22	PHOTOGRAPH		1299
25	S-23	PHOTOGRAPH	439	

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-24	PHOTOGRAPH		526
4	S-25	PHOTOGRAPH		526
5	S-26	PHOTOGRAPH		526
6	S-27	PHOTOGRAPH		527
7	S-28	PHOTOGRAPH	439	
8	S-29	PHOTOGRAPH	429	
9	S-30	PHOTOGRAPH		527
10	S-31	PHOTOGRAPH	439	
11	S-32	PHOTOGRAPH	440	
12	S-33	PHOTOGRAPH	440	
13	S-34	PHOTOGRAPH		530
14	S-35	PHOTOGRAPH		530
15	S-36	PHOTOGRAPH		531
16	S-37	PHOTOGRAPH		531
17	S-38	PHOTOGRAPH		531
18	S-39	PHOTOGRAPH		531
19	S-40	PHOTOGRAPH		531
20	S-41	PHOTOGRAPH		531
21	S-42	PHOTOGRAPH		532
22	S-43	PHOTOGRAPH		532
23	S-44	PHOTOGRAPH		534
24	S-45	PHOTOGRAPH		534
25	S-46	PHOTOGRAPH		534

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-47	PHOTOGRAPH		535
4	S-48	PHOTOGRAPH		535
5	S-49	PHOTOGRAPH		535
6	S-50	PHOTOGRAPH		535
7	S-51	PHOTOGRAPH		535
8	S-52	PHOTOGRAPH		535
9	S-53	PHOTOGRAPH		536
10	S-54	PHOTOGRAPH		536
11	S-55	PHOTOGRAPH		536
12	S-56	PHOTOGRAPH		536
13	S-57	PHOTOGRAPH		536
14	S-58	PHOTOGRAPH		538
15	S-59	PHOTOGRAPH		538
16	S-60	PHOTOGRAPH		538
17	S-61	PHOTOGRAPH		538
18	S-62	PHOTOGRAPH		538
19	S-63	PHOTOGRAPH		538
20	S-64	PHOTOGRAPH		538
21	S-65	PHOTOGRAPH		538
22	S-66	PHOTOGRAPH	442	
23	S-67	PHOTOGRAPH	442	
24	S-68	PHOTOGRAPH		538
25	S-69	PHOTOGRAPH		538

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-70	PHOTOGRAPH		538
4	S-71	PHOTOGRAPH		538
5	S-72	PHOTOGRAPH		538
6	S-73	PHOTOGRAPH		538
7	S-74	PHOTOGRAPH		538
8	S-75	PHOTOGRAPH		538
9	S-76	PHOTOGRAPH		538
10	S-77	PHOTOGRAPH		538
11	S-78	PHOTOGRAPH		521
12	S-79	PHOTOGRAPH		521
13	S-80	PHOTOGRAPH		521
14	S-81	PHOTOGRAPH		521
15	S-82	PHOTOGRAPH		521
16	S-83	PHOTOGRAPH		523
17	S-84	PHOTOGRAPH		523
18	S-85	PHOTOGRAPH		523
19	S-86	PHOTOGRAPH		523
20	S-87	PHOTOGRAPH		577
21	S-88	PHOTOGRAPH		577
22	S-89	PHOTOGRAPH		577
23	S-90	PHOTOGRAPH		577
24	S-91	PHOTOGRAPH		578
25	S-92	PHOTOGRAPH		578

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-93	PHOTOGRAPH		578
4	S-94	PHOTOGRAPH		578
5	S-95	PHOTOGRAPH	445	
6	S-96	PHOTOGRAPH	445	
7	S-97	PHOTOGRAPH	445	
8	S-98	PHOTOGRAPH		589
9	S-99	PHOTOGRAPH		589
10	S-100	PHOTOGRAPH		589
11	S-101	PHOTOGRAPH		589
12	S-102	PHOTOGRAPH		589
13	S-103	PHOTOGRAPH		589
14	S-104	PHOTOGRAPH		589
15	S-105	PHOTOGRAPH		589
16	S-106	PHOTOGRAPH		578
17	S-107	PHOTOGRAPH	446	
18	S-108	PHOTOGRAPH	446	
19	S-109	PHOTOGRAPH	446	
20	S-110	PHOTOGRAPH		581
21	S-111	PHOTOGRAPH		581
22	S-112	PHOTOGRAPH		581
23	S-113	PHOTOGRAPH		581
24	S-114	PHOTOGRAPH		581
25	S-115	PHOTOGRAPH		581

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-116	PHOTOGRAPH	446	
4	S-117	PHOTOGRAPH	446	
5	S-118	PHOTOGRAPH	446	
6	S-119	PHOTOGRAPH	446	
7	S-120	PHOTOGRAPH	447	
8	S-121	PHOTOGRAPH	447	
9	S-122	BLOWUP	447	
10	S-123	BLOWUP OF DIAGRAM		543
11	S-124	CELL PHONE CHARGER		
12	S-125	GSR KIT		
13	S-126	BUCCAL SWAB		792
14	S-127	CELL PHONES		540
15	S-128	BUDWEISER BOX		581
16	S-129	GREEN SHIRT, RED HAT, BLUE HAT		567
17	S-130	NAIL SCRAPINGS		
18	S-131	EDGAR LOPEZ CLOTHES		571
19	S-132	SWABS		792
20	S-133	PROJECTILE		489
21	S-134	SWAB		792
22	S-135	CARTRIDGE CASING		842
23	S-136	PRINT CARDS		595
24	S-137	PABLO GUZMAN-GUTIERREZ CLOTHES		571
25	S-138	SWABS		792

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-139	PROJECTILE		841
4	S-140	BOX OF BEER CANS		565
5	S-141	SWAB OF DEFENDANT		724
6	S-142	LATENT PRINT CARD		636
7	S-143	LATENT PRINT CARD		636
8	S-144	LATENT PRINT CARD		594
9	S-145	PHOTOGRAPH	449	
10	S-146	PHOTOGRAPH	449	
11	S-147	PHOTOGRAPH	449	
12	S-148	PHOTOGRAPH	449	
13	S-149	PHOTOGRAPH	449	
14	S-150	PHOTOGRAPH	449	
15	S-151	PHOTOGRAPH	449	
16	S-152	PHOTOGRAPH	449	
17	S-153	PHOTOGRAPH	449	
18	S-154	PHOTOGRAPH	449	
19	S-155	PHOTOGRAPH		596
20	S-156	PHOTOGRAPH		596
21	S-157	PHOTOGRAPH		596
22	S-158	PHOTOGRAPH		596
23	S-159	PHOTOGRAPH		596
24	S-160	PHOTOGRAPH		596
25	S-161	PHOTOGRAPH		596

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-161	PHOTOGRAPH		596
4	S-162	PHOTOGRAPH		596
5	S-163	PHOTOGRAPH		596
6	S-164	PHOTOGRAPH		596
7	S-165	PHOTOGRAPH		596
8	S-166	PHOTOGRAPH		596
9	S-167	PHOTOGRAPH		613
10	S-168	PHOTOGRAPH		613
11	S-169	3 PAGES OF FINGERPRINT CARDS		658
12	S-170	BUSINESS RECORDS FROM LOUISIANA		665
13	S-171	BUSINESS RECORDS FROM LOUISIANA		665
14	S-172	CHART	451	
15	S-173	CHART	451	
16	S-174	BUSINESS RECORDS - JAMESON INN		683
17	S-175	BUSINESS RECORDS - JAMESON INN		683
18	S-176	PHOTOGRAPH		746
19	S-177	PHOTOGRAPH		746
20	S-178	PHOTOGRAPH		746
21	S-179	PHOTOGRAPH		746
22	S-180	PHOTOGRAPH		746
23	S-181	PHOTOGRAPH		746
24	S-182	PHOTOGRAPH		746
25	S-183	PHOTOGRAPH		746

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-184	PHOTOGRAPH		746
4	S-185	PHOTOGRAPH		746
5	S-186	PHOTOGRAPH		746
6	S-187	PHOTOGRAPH		746
7	S-188	PHOTOGRAPH		746
8	S-189	PHOTOGRAPH		746
9	S-190	PHOTOGRAPH		746
10	S-191	PHOTOGRAPH		746
11	S-192	PHOTOGRAPH		746
12	S-193	PHOTOGRAPH		746
13	S-194	BLOWUP PHOTOGRAPH		728
14	S-195	BLOWUP	453	
15	S-196	BLOWUP	453	
16	S-197	BUCCAL SWAB		792
17	S-198	BLOWUP		
18	S-199	BLOWUP		880
19	S-200	BLOWUP		880
20	S-201	SWAB		792
21	S-202	SWAB		792
22	S-203	SWAB		792
23	S-204	SWAB		792
24	S-205	SUMMARY	453	
25	S-S06	SUMMARY	453	

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-207	SUMMARY	454	
4	S-208	ROSSI GUN	454	
5	S-209	TAURUS GUN	454	
6	S-210	BOX OF MISCELLANEOUS AMMUNITION	454	
7	S-211	PAPERWORK FOR KIA VAN		866
8	S-212	BLOWUP MAP		1471
9	S-213	GUN	454	
10	S-214	GUN	454	
11	S-215	GUN	454	
12	S-216	GUN	454	
13	S-217	BONG		1463
14	S-218	PHOTOGRAPH		1466
15	S-219	GLASS PIPE		1463
16	S-220	PHOTOGRAPH	455	
17	S-221	PHOTOGRAPH	455	
18	S-222	PHOTOGRAPH	455	
19	S-223	PHOTOGRAPH		1463
20	S-224	PHOTOGRAPH		1457
21	S-225	PHOTOGRAPH		1465
22	S-226	PHOTOGRAPH		1465
23	S-227	PHOTOGRAPH		1465
24	S-228	PHOTOGRAPH		1465
25	S-229	PHOTOGRAPH		1465

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-230	PHOTOGRAPH		1465
4				
5	D-1	PHOTOGRAPH		600
6	D-2	PHOTOGRAPH		600
7	D-3	DOCUMENT FROM JAMESON INN		685
8	D-4	1 PAGE DOCUMENT		937
9	D-5-A	PURCHASE ORDER DOCUMENT		1645
10	D-5-B	RECEIPT DOCUMENT		1645
11	D-5-C	DRIVER'S LICENSE DOCUMENT		1645
12	D-6-A	PURCHASE ORDER DOCUMENT		1645
13	D-6-B	DRIVER'S LICENSE DOCUMENT		1645
14	D-7-A	PURCHASE ORDER DOCUMENT		1645
15	D-7-B	RECEIPT DOCUMENT		1645
16	D-8-A	PURCHASE ORDER DOCUMENT		1645
17	D-8-B	RECEIPT DOCUMENT		1645
18	D-9	PURCHASE ORDER		1645
19	D-10-A	PURCHASE ORDER		1645
20	D-10-B	RECEIPT DOCUMENT		1645
21	D-10-C	DRIVER'S LICENSE DOCUMENT		1645
22	D-11-A	PURCHASE ORDER		1645
23	D-11-B	RECEIPT		1645
24	D-11-C	DRIVER'S LICENSE DOCUMENT		1645
25	D-12-A			1645

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	D-12-B			1645
4	D-13-A			1645
5	D-13-B			1645
6	D-13-C			1645
7	D-14	PHOTOGRAPH	1050	
8	D-15	PHOTOGRAPH	1050	
9	D-16	PHOTOGRAPH	1050	
10	D-17	PHOTOGRAPH	1050	
11	D-18	PHOTOGRAPH	1051	
12	D-19	PHOTOGRAPH	1051	
13	D-20	PHOTOGRAPH	1051	
14	D-21	PHOTOGRAPH	1051	
15	D-22	PHOTOGRAPH	1051	
16	D-23	PHOTOGRAPH	1051	
17	D-24	PHOTOGRAPH	1051	
18	D-25	PHOTOGRAPH	1051	
19	D-26	PHOTOGRAPH	1051	
20	D-27	PHOTOGRAPH	1051	
21	D-28	PHOTOGRAPH	1051	
22	D-29	PHOTOGRAPH	1051	
23	D-30	PHOTOGRAPH	1052	
24	D-31	PHOTOGRAPH	1052	
25	D-32	PHOTOGRAPH	1052	

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	D-33	PHOTOGRAPH	1052	
4	D-34	1 PAGE POEM	1052	
5	D-35	1 PAGE POEM	1052	
6	D-36	1 PAGE POEM	1052	
7	D-37	PHOTOGRAPH	1052	
8	D-38	PHOTOGRAPH	1052	
9	D-39	PHOTOGRAPH	1052	
10	D-40	AWARD DOCUMENT		1352
11	D-41	AWARD DOCUMENT		1078
12	D-42	AWARD DOCUMENT	1052	
13	D-43	AWARD DOCUMENT		1078
14	D-44	AWARD DOCUMENT	1053	
15	D-45	AWARD DOCUMENT		1078
16	D-46	AWARD DOCUMENT		1078
17	D-47	AWARD DOCUMENT		1078
18	D-48	AWARD DOCUMENT		1078
19	D-49	AWARD DOCUMENT		1078
20	D-50	AWARD DOCUMENT		1078
21	D-51	AWARD DOCUMENT		1078
22	D-52	AWARD DOCUMENT		1078
23	D-53	AWARD DOCUMENT		1078
24	D-54	MULTIPLE DOCUMENTS		1226
25				

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	CT-1	MULTIPLE DOCUMENTS	178	
4	CT-2	COLORED PHOTOGRAPH	1013	
5	CT-3	PHOTOGRAPH	1013	
6	CT-4	PHOTOGRAPH	1013	
7	CT-5	PHOTOGRAPH	1013	
8	CT-6	PHOTOGRAPH	1013	
9	CT-7	PHOTOGRAPH	1013	
10	CT-8	PHOTOGRAPH	1013	
11	CT-9	PHOTOGRAPH	1013	
12	CT-10	PHOTOGRAPH	1014	
13	CT-11	PHOTOGRAPH	1014	
14	CT-12	PHOTOGRAPH	1014	
15	CT-13	COLORED PHOTOGRAPH	1014	
16	CT-14	BRIEF DOCUMENT	1339	
17	CT-15	JUROR NOTE	1701	
18	CT-16	JUROR NOTE	1701	
19	CT-17	JUROR NOTE	1701	
20	CT-18	JUROR NOTE	1751	
21	CT-19	JUROR NOTE	1751	
22	CT-20	JUROR NOTE	1751	
23	CT-21	JUROR NOTE	1751	
24	CT-22	JUROR NOTE	1751	
25				

1 (PROCEEDINGS, DECEMBER 19, 2011)

2 THE COURT: All right. We have an issue with a
3 juror.

4 Ms. Wilson?

5 MRS. WILSON: Yes, sir.

6 THE COURT: All right. Stand and let me talk to
7 you just a minute. Your son's name is?

8 MRS. WILSON: Riley Wilson.

9 THE COURT: Riley Wilson. All right. And he's
10 Juror Number 290.

11 What's his situation?

12 MRS. WILSON: Well, this morning he got up and his
13 feet and his leg was swollen real bad and he can't wear
14 shoes, so he tried to call down here, but he couldn't get
15 through, and so he called the doctor and the doctor told
16 him, you know, to come on to his office so he can take a
17 look, because he's a diabetic and everything. I told him --
18 he asked me what could we do and I told him I don't know
19 what to do about it then, you know. I told him I would just
20 come on down here, you know, and tell somebody.

21 He's out in the car, but he can't, you know, walk
22 up and down stairs and stuff, because his leg and feet hurt
23 him so bad.

24 THE COURT: All right. Tell me about his foot
25 again.

1 MRS. WILSON: It's swollen up real bad.

2 THE COURT: About how big?

3 MRS. WILSON: It looks like a loaf of bread. It's
4 big, and it's plus his leg too.

5 THE COURT: And how long has he had this
6 condition?

7 MRS. WILSON: Oh, he suffered like that for awhile
8 now. His feet stops -- you know, stopped swelling, and then
9 all of the sudden starts that swelling.

10 THE COURT: All right. Has he ever worked?

11 MRS. WILSON: Sir?

12 THE COURT: Does he have a job?

13 MRS. WILSON: He's unemployed right now.

14 THE COURT: Say again.

15 MRS. WILSON: He's unemployed right now.

16 THE COURT: Unemployed. All right.

17 And your plan is to take him to the doctor?

18 MRS. WILSON: Yes.

19 THE COURT: You don't think he could stay on the
20 jury?

21 MRS. WILSON: I don't know, but he says his leg
22 was hurting real bad, so I don't know.

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

24 MS. CAMPBELL: No, sir..

25 THE COURT: From the defense?

1 MS. PRINGLE: No, sir.

2 THE COURT: All right. We are going to excuse him
3 so you can take him to the doctor and we will replace him
4 with another juror. Thank you very much for coming.

5 MRS. WILSON: Does he have to come --

6 THE COURT: They will send him a check for his
7 jury duty. Is that right?

8 THE CLERK: He got it Friday.

9 THE COURT: Oh, he got it already, okay. Well
10 good.

11 Well, tell him thank you and we really do
12 appreciate it and hopefully his condition will get better
13 and yours will too.

14 MRS. WILSON: Thank you.

15 THE COURT: All right. Take care.

16 All right, Ms. Campbell?

17 MS. CAMPBELL: Your Honor, at this time are you
18 going to choose -- draw for the alternate? I believe it's
19 got to be random.

20 THE COURT: Yes. We have the random selection of
21 the person to replace. What kind of process do we do to do
22 that? The clerk does it?

23 MS. CAMPBELL: That's been my experience, yes,
24 sir.

25 THE COURT: All right. What kind of random

1 selection process do you have, Madam Clerk?

2 THE CLERK: If the bailiff will write their names
3 down on two pieces of paper and mix it up and draw it.

4 THE COURT: Yes, ma'am.

5 THE CLERK: And, Just for clarification, judge,
6 that would be Ruth Hill, number 110, and Stephen Ross,
7 number 211, is that correct?

8 THE COURT: Hill and Ross, that's right.

9 Just put them in there.

10 All right. Pick one of them there, madam.

11 THE CLERK: Stephen Ross, 211.

12 THE COURT: 211 would become part of the jury
13 panel.

14 Any objection by the State or defense?

15 MS. CAMPBELL: None from the State, Your Honor.

16 MS. PRINGLE: No, sir.

17 THE COURT: All right. You can bring them on.

18 MS. WALKER: Your Honor, may we take up one thing
19 before the jury comes in?

20 THE COURT: Yes.

21 MS. WALKER: At this point the State would object
22 to any future character evidence -- character witnesses as
23 cumulative at this point. I think on Friday we already
24 heard from three witnesses, and the State's position is that
25 any more testimony regarding the defendant's character is

1 cumulative, or would -- or just as a parade of character
2 witnesses on today would become cumulative at some point.

3 THE COURT: All right. And what says the defense?

4 MS. PRINGLE: I have a brief prepared, Your Honor,
5 in the event that this objection was made.

6 COURT REPORTER: I'm sorry?

7 MS. PRINGLE: I have a brief a brief that I'm
8 going to hand up to the court that I have prepared in the
9 event an objection was made.

10 (6 page brief marked as Court's Exhibit No. 14 for
11 identification)

12 THE COURT: What says the State?

13 MS. WALKER: Primarily, Your Honor, Hallman seeks
14 to -- or the defense is using Hallman to say that we
15 cannot -- that it cannot be moved in any way. Hallman I
16 think leaves it in the discretion of Your Honor.

17 Furthermore, character evidence at this point
18 should be limited to the pertinent traits of the crime
19 charged, which would be the elements of murder or
20 self-defense, and any character traits for this defendant's
21 purported homosexuality or bisexuality would be
22 inappropriate. And under Hallman I think limiting the
23 number of witnesses that they can call forward is up to Your
24 Honor.

25 THE COURT: All right. Anything else?

1 MS. PRINGLE: The only thing that I guess that I
2 would add to that is I did not include in the brief that I
3 wrote for you is that I think there is a real value in the
4 number of people that come here for Todd, in the diversity
5 of the background they come upon. They come from all over
6 this country. I have got six Colonels, one General, an
7 array of other witnesses who appears; supervisors, two
8 gentlemen that currently work at the Pentagon; one who
9 retired from the Pentagon.

10 COURT REPORTER: Ms. Pringle, you need to speak up
11 just a little bit, please.

12 MS. PRINGLE: There is a gentleman from Korea.
13 All of these -- all of these folks that are sitting in the
14 courtroom today have taken time during the week before
15 Christmas, leaving their families to come here for Todd. I
16 think there is real value to that in our argument that we
17 can make to the jury really in closing about whether or not
18 they should believe him. This case will turn, I think, on
19 whether or not they believe him.

20 THE COURT: Based on what? Whether they should
21 believe him based on what? The fact that people have come
22 from various places?

23 MS. PRINGLE: Based on his character.

24 THE COURT: The fact that they have known him
25 throughout his years gone by?

1. MS. PRINGLE: Based his character; based on his
2 trustworthiness; based the fact that for his entire adult
3 life.

4 The State injected this notion that he's
5 homosexual and has been homosexual and living on the down
6 low. I think that that fact requires us to respond, and I
7 have thought a lot about how things played out on Friday,
8 and I don't think that has to come in as character evidence.
9 I think that, in fact, we could put every single one of
10 these gentlemen up that span his entire life span to talk
11 about whether or not in their experience, as the court
12 instructed me to do on Friday, he is homosexual. So that --

13 THE COURT: Are you arguing that homosexuality is
14 a character trait?

15 MS. PRINGLE: I -- I really don't know. I'll tell
16 you I don't know. I think that my first approach to it was
17 that it was and that it was a pertinent trait of character,
18 but I think that whether you analyze under 404, and proving
19 it to be a 405, or whether you just respond to it, as the
20 court indicated you wished for me to do on Friday. Either
21 way, however you prove it, it's relevant. We have got to
22 respond to it. It's his defense. It's what's the case --
23 that -- that fact --

24 THE COURT: His defense is that he's not -- his
25 defense is that he's not gay, or he didn't commit the crime?

1 MS. PRINGLE: The entire motive that the State is
2 putting forward is that he became so enraged when denied sex
3 for money that he not only killed Edgar, but he called
4 Pablo. That's the whole motive. If that motive is wrong or
5 called into question, then there is doubt about what took
6 place, and that's been our theory and our defense. That is
7 our defense. It casts doubt on the entire event.

8 And in the event if we are restricted -- as I
9 pointed out in the brief, there seems to be an idea that
10 character evidence should be very limited and not
11 cumulative. I really don't know where that comes from. I
12 don't know any authority for that. I know that that is
13 common practice. I think this case requires and demands
14 that we be presented -- or we be allowed to present
15 everything that we have.

16 If we are restricted, to the extent we are
17 restricted, we would seek to proffer each of the witnesses.
18 This isn't going to take all day. I think these witnesses
19 are fairly quick witnesses. They come from different times
20 in Todd's life and different places, different positions.
21 They have unique perspectives, but they are not going to say
22 the same things over and over and over, and it isn't going
23 to take -- it isn't going to take very long, and we
24 anticipate viewing being done, depending on cross -- I mean,
25 it's not going to go beyond this morning. I realize that

1 it's a lot of people, but it isn't going to take that long.
2 And the State's case took four days and much of it was
3 repetitious, much of it. The entire -- the last two
4 witnesses were cumulative. They wrapped up their case and
5 they said -- they repeated everything that happened.

6 THE COURT: Anything else?

7 MS. WALKER: Briefly, Your Honor.

8 They're under the same rules of evidence that we
9 are, but at some point, even if Your Honor doesn't deem it
10 cumulative, it does reach 403, where the prejudicial effect
11 outweighs the probative value of any further character
12 evidence.

13 THE COURT: All right, overrule the objection.

14 If you will bring the jury, please.

15 THE COURT: The comment that the State allows the
16 defendant to improperly present testimony regarding this
17 issue on Friday was without objection, so we will press on
18 from there.

19 (The following takes place in the presence of the
20 jury panel)

21 THE BAILIFF: Your Honor, the jury is present.

22 THE COURT: All right. Very good.

23 Ladies and gentlemen, we have lost one juror. As
24 a result of losing that juror and the means used to select
25 alternate jurors, per our rules, Mr. Ross, you will step up

1 and be one of the first twelve.

2 Ladies and gentlemen, I have also received this
3 note from you. It says "for scheduling purposes for the
4 week, when we start deliberating, will we be on the same
5 schedule as now or will it be more?" Again, jurors are
6 asking for scheduling purposes.

7 When the case is submitted to you for
8 deliberation, the case would be in your hands, so it's
9 pretty much up to you as to the timing schedule that you
10 will deliberate. There is some controls by the court, but
11 it's primarily up to the jury.

12 All right, day number six, defense's case.

13 Your next witness.

14 MS. DAVIS: Thank you, Your Honor.

15 Defense calls Chaplain Charles Bailey.

16 CHAPLAIN CHARLES BAILEY, having been first duly
17 sworn, testified as follows:

18 THE CLERK: Have a seat in the witness box. State
19 your name for the record and spell it, please.

20 THE WITNESS: Charles Bailey, B-A-I-L-E-Y.

21 DIRECT EXAMINATION BY MS. DAVIS:

22 Q. Good morning, Chaplain Bailey.

23 A. Good morning.

24 Q. Can you tell this jury what you do in the Army?

25 A. I'm the Deputy Chief of Chaplains of the United States

1 Army.

2 Q. And what rank are you?

3 A. Brigadier General.

4 Q. And how long have you been in the Army?

5 A. Cumulatively with reserve time 35 years.

6 Q. And where are you stationed now?

7 A. At the Pentagon in Washington, D.C..

8 Q. And where did you come -- is that where you came from
9 to be here today?

10 A. I came from another location in the United States where
11 I was doing some more temporary duty, and to fly here to do
12 some more duty, and then include this in my schedule.

13 Q. And do you know Todd Parvin?

14 A. Yes, I do.

15 Q. Can you tell the jury how you know Todd Parvin?

16 A. I first met Todd in the late eighties at Fort Bragg,
17 North Carolina when he came on active duty at that time as a
18 Private First Class chaplain assistant, at that time working
19 in the chapel where I was.

20 Q. And did you know him beyond that as well?

21 A. Yes, at several times. I worked alongside of him at
22 different locations, up to the point of about four years ago
23 when he worked for me for about four months before I left
24 from that duty location. So I have known him off and on
25 during that time personally, directly, and indirectly from

1 just working with him in a group setting.

2 Q. And you mentioned that he was a chaplain's assistant
3 during the time that you knew him?

4 A. Yes, at all times.

5 Q. And can you tell us what a chaplain's assistant in
6 combat, what that would mean?

7 A. A chaplain assistant in combat does several major
8 roles, one of them being, of course, protection, because the
9 chaplain is a noncombatant and is unarmed. A chaplain
10 assistant will then provide protection for a chaplain as he
11 does or she does her duties, and Todd is that person that
12 does that.

13 And on top of that, that he would then be a person that
14 would assess the needs of soldiers around him and then let
15 me know what those needs are so I can address those issues,
16 as well as being an advisor to the religious support mission
17 for the commander. He would do that as well.

18 Q. And when you mentioned force protection, does that mean
19 he had to exercise his judgment during those times?

20 A. At all times, yes, ma'am.

21 Q. And during your experience and your observations of
22 Todd, did he exercise that -- how did he exercise that
23 judgment?

24 A. At the most professional way I have ever seen anyone.

25 He is noted across the branch to be a person of probably the

1 mentor and example of what to do in those cases and those
2 situations and a trainer to that standard.

3 Q. And from your experience, your observations, and
4 knowing Todd, Todd Parvin, is Todd gay?

5 A. I have never heard of such a thing addressed to him or
6 about him at any time.

7 Q. And in your experience and observations with Todd,
8 would you consider him a trustworthy person?

9 A. At the highest level, yes, ma'am. I -- I have trusted
10 him along the way with my life on several occasions when he
11 worked for me, as well as advising me on probably the most
12 important critical things to care for people, and he has
13 been a professional at all times in that way, as well as
14 probably one of the best I have ever worked with.

15 Q. And, again, over the time that you knew Todd and came
16 across him throughout his career in the military, in your
17 experience with him, was he a peaceful guy or was he an
18 aggressive guy?

19 A. I have never seen him -- personally I have never seen
20 him react in a violent way, unprofessionally, or whatever it
21 may be. He's always been one of high discipline, from my --
22 from my observations, etcetera, and experiences, or have I
23 heard from secondhand of any sort.

24 An example would be, if I can add this, is that --

25 MS. CAMPBELL: Objection, Your Honor.

1 THE COURT: Objection sustained.

2 BY MS. DAVIS:

3 Q. And, Chaplain Bailey, we've heard that the Chaplain's
4 Corps is a smaller group compared to the Army at large.
5 Would you have come to testify for just anybody?

6 A. No. No. It would be an individual that would -- I
7 guess would get my respect and my trust, and has up to this
8 point, and still has the integrity and the professionalism
9 of their lives that I can see that I need to step in and at
10 least give my opinion at this point.

11 Q. And once Todd would have retired, are you aware that he
12 would have received retirement benefits and disability
13 benefits?

14 A. Yes, yes, like all of us do.

15 MS. DAVIS: I have no further questions, Your
16 Honor.

17 THE COURT: By the State?

18 MS. CAMPBELL: Beg the court's indulgence.

19 (Off the record)

20 (Back on the record)

21 MS. CAMPBELL: Thank you, sir.

22 We don't have any questions.

23 THE WITNESS: Thank you.

24 THE COURT: Thank you. You may step down.

25 Next witness.

1 MS. DAVIS: Defense would call Chaplain Phillip
2 Wright.

3 CHAPLAIN PHILLIP WRIGHT, having been first duly
4 sworn, testified as follows:

5 THE CLERK: Have a seat in the witness box. State
6 your name for the record and spell it, please.

7 THE WITNESS: Phillip Wright. P-H-I-L-L-I-P,
8 W-R-I-G-H-T.

9 DIRECT EXAMINATION BY MS. DAVIS:

10 Q. Good morning, Chaplain Wright.

11 A. Good morning.

12 Q. Can you tell this jury what your job is in the Army?

13 A. I am the Chief of Operations in the office of the Chief
14 of Chaplains. I track all current religious support for the
15 Army. I interact with the Department of Defense, the Joint,
16 and with Congress in answering any requests for information
17 that they have, any actions that they are doing on behalf of
18 the Armed Services.

19 Q. And what is your rank, sir?

20 A. I'm a Colonel.

21 Q. And can you tell the jury where you are stationed at
22 now?

23 A. I am stationed at the headquarters V.A., which is the
24 Pentagon.

25 Q. And how long have you been in the Army?

1 A. Cumulatively 28 years. I have served prior service and
2 then got out, came back in as a chaplain.

3 Q. And do you know Todd Parvin?

4 A. Yes, I do.

5 Q. And can you tell the jury how you know Todd Parvin?

6 A. I have known Todd since 1989. He came to the unit I
7 was leading as the chaplain assistant.

8 I have known of him for quite awhile, so that in 2005,
9 had known him for a year down at the Joint Readiness
10 Training Center and he called me and asked me if he could
11 come work for me and I was just ecstatic. I couldn't
12 believe I was getting someone with the reputation that he
13 had and I said absolutely in a heartbeat.

14 He came and worked for me in summer of '05. We
15 prepared to go to Afghanistan. We trained up our chaplains
16 and chaplain assistants to make sure that we were going to
17 do our job over there. We deployed. I deployed with him
18 for a year. He came with me most of the time, unless he was
19 traveling with the senior enlisted advisor. And then once
20 we got back I got him a job down at the school, because he
21 was an excellent trainer and systematic person. And then I
22 came down to the school a year later and he worked for me
23 again as my noncommissioned officer in charge. So two
24 places he's been my noncommissioned officer in charge.

25 Q. And so that means he actually served as your chaplain's

1 assistant while deployed?

2 A. Yes.

3 Q. And that was while in Afghanistan?

4 A. Yes.

5 Q. And in your experience, your observations of Todd, is
6 he gay?

7 A. I have never heard that. I'm -- I -- it's ridiculous
8 in my mind. I have never heard that. I have never seen
9 that.

10 Q. No indication over this period of time that you served
11 with him?

12 A. Not at all. Not -- not at all.

13 Q. And in your opinion is he a trustworthy person?

14 A. Absolutely. The senior enlisted advisor of our
15 division, the senior enlisted person to the two star had him
16 rewrite our standard operating procedure, because we were
17 Army and we were working with Navy and Air Force. He didn't
18 write it just for the Army. He wrote it for the Air Force
19 and Navy. He was very diligent about that. It was accepted
20 without question.

21 He -- I was told not to put him in for a Bronze Star
22 for his service over there because he wasn't the right rank
23 and I put it in; no objection.

24 The same thing happened -- I have known him now since
25 '89, and so when he came up for retirement, I put in for the

1 Legion of Merit, which is normally an award given to someone
2 who served 10 years longer and at least a rank higher. We
3 fought for him to have that and a four star General at the
4 training doctrine command signed that and gave it to him.
5 So he -- he is without question has been a stellar performer
6 in everything that he's done; set the standard. He's raised
7 the bar. He's done everything.

8 Q. And you mentioned the Legion of Merit Award. Can I
9 have you look at Defense Exhibit 40?

10 A. Yes, this is the certificate awarding him the Legion of
11 Merit.

12 Q. And is that a copy of the actual award?

13 A. It's a copy of the award with a picture of the award.

14 Q. And that's the award that you recommended him for?

15 A. Yes, it is.

16 MS. DAVIS: At this time, Your Honor, we would
17 move Defense Exhibit 40 into evidence?

18 THE COURT: Any objection?

19 MS. CAMPBELL: I thought it was already in.

20 THE COURT: It's admitted again if it's already
21 in.

22 BY MS. DAVIS:

23 Q. And Chaplain Wright, during the time that you knew Todd
24 and your observations, your experiences with him, would you
25 consider him a peaceful guy or a violent guy?

1 A. I consider him very peaceful and under control. He
2 always displayed the proper attitude and mindset when we
3 were doing things.

4 I remember distinctly getting into a argument where
5 I --

6 MS. CAMPBELL: Objection, Your Honor.

7 THE COURT: Objection sustained.

8 MS. PRINGLE: Beg the court's indulgence.

9 (Off the record)

10 (Back on the record)

11 MS. DAVIS: I have no further questions, Your
12 Honor.

13 THE COURT: By the State?

14 MS. CAMPBELL: Just a couple, Your Honor.

15 CROSS EXAMINATION BY MS. CAMPBELL:

16 Q. Good morning.

17 A. Good morning.

18 Q. Just a couple of questions about what you testified
19 about, sir.

20 Have you and I ever met?

21 A. No, ma'am.

22 Q. You have been characterized -- you worked with him on
23 and off you through the years, is that correct?

24 A. That's correct.

25 Q. And you were aware that he retired in 2009?

1 A. Yes, I was. He worked for me then.

2 Q. Okay. And then where were you stationed at that point,
3 in 2009, 2010?

4 A. Fort Jackson.

5 Q. Okay. And you would consider him as well as a good
6 personal friend of yours?

7 A. I trust him beyond doubt.

8 Q. I just want to ask you a couple of things.

9 You were talking about that he excelled above and
10 beyond the call of duty. You mentioned that he actually
11 wrote some kind of program?

12 A. He --

13 Q. Not only for the Army, but for the Air Force?

14 A. He took the standard operating procedure that we used
15 for religious support in a combat environment and made sure
16 that that employed not only Army thinking, but Air Force and
17 Navy thinking, because we were a joint environment; Marines
18 as well.

19 Q. So he's quite bright and can excel in his job duties,
20 is that correct?

21 A. Yes, he is.

22 Q. And he also, I believe you mentioned, ran the training
23 programs at some point?

24 A. He was the trainer for the chaplain assistants and to
25 some extent for the chaplains.

1 Q. And, again, in order for him to be able to do that, he
2 had to be bright enough, trained enough, and skilled enough,
3 and experienced enough to be able to train other people as
4 to what those duties included?

5 A. Yes, ma'am.

6 Q. And he excelled in all those areas?

7 A. Yes, ma'am.

8 Q. Because he's very bright?

9 A. He was a very good trainer.

10 MS. CAMPBELL: Thank you, sir.

11 THE COURT: Anything further?

12 MS. DAVIS: No, sir, Your Honor.

13 THE COURT: You may step down.

14 Next witness.

15 MR. SHEALEY: Defense calls Sergeant Major Tommy
16 Morrero.

17 CHAPLAIN TOMMY MORRERO CARTAGENA, having been
18 first duly sworn, testified as follows:

19 THE CLERK: Have a seat in the witness box. State
20 your name for the record and spell it, please.

21 THE WITNESS: My name is Tommy L. Morrero
22 Cartagena. T-O-M-M-Y, L, M-A-R-R-E-R-O, C-A-R-T-A-G-E-N-A.

23 COURT REPORTER: I'm sorry, the last name again?

24 THE WITNESS: M-A-R-R-E-R-O. C-A-R-T-A-G-E-N-A.

25

1 DIRECT EXAMINATION BY MR. SHEALEY:

2 Q. Good morning.

3 A. Yes, sir.

4 Q. Where did you come from to be with us today?

5 A. I come from another Virginia area.

6 Q. All right. And are you active military or retired?

7 A. No, I am retired, sir.

8 Q. And when did you retire, sir?

9 A. I retired an expected date of about 31 October of 2011.

10 Q. Very recently?

11 A. Very recently, sir.

12 Q. And where were you are working when you retired?

13 A. I was working out of headquarter Department of the
14 Army, office of the Chief of Chaplains.

15 Q. And where is that?

16 A. In the Pentagon, in Washington, D.C..

17 Q. Okay. And how long have you been in the military?

18 A. I was in the military for 27 years, seven months, and
19 six days.

20 Q. Can you tell the jury a little bit about the
21 experiences that you have had with Todd and where you have
22 met him and experienced him as a person?

23 A. Absolutely.

24 I got acquainted with Master Sergeant then -- sorry,
25 Sergeant First Class Todd Parvin. He was stationed with the

1 160th Special Operations Aviations, and I was -- he was at
2 their headquarters in Fort Bragg, North Carolina,
3 headquarter called Special Operations Command.

4 The technical supervision was Senior NCO and we
5 would -- we almost e-mail each other almost every week and I
6 visit him almost every -- in the range of ninety days for
7 staff assistant visit and any time that I was in the Fort
8 Campbell area.

9 Q. Okay. Did you have occasion to interact with him later
10 in his career and your career as well?

11 A. Yes, I did. When I became the Chief of Chaplains
12 Sergeant Major I went to see him a couple of times when he
13 was in division, the 10th Mountain Division. And I visited
14 him when he was in Afghanistan. Also when he was at the
15 chaplains school over here in Fort Jackson, South Carolina.

16 Q. Yes, sir.

17 And in terms of your career path and his career path,
18 were you his boss, or were you his equal, or tell us a
19 little bit about that.

20 A. From the NCO support channel there is a prospective of
21 a chain of command, which the officers lie. Then you have
22 the NCO support channel and the technical chain, which is
23 the chaplain for the staff. I will direct communicate with
24 him in any trainings, policy, doctrines, regulations for him
25 to train his soldiers in a regular way, sir.

1 Q. Okay. Now, in terms of you knowing Todd and your
2 opinion of Todd, what is your opinion of him in terms of him
3 being truthful?

4 A. Leslie Todd Parvin is a -- he -- he's a very truthful
5 man. Completely lived the Army values. Various things. I
6 would trust him with all my life if we got to go to war,
7 like that. Very truthful. Soldiers respect him. Chain of
8 command respect him and he left a legacy in the Army.

9 Q. Yes, sir.

10 In terms of Todd being an aggressive man or a peaceful
11 man, which would he be to you?

12 A. Very calm, very professional, always thinking before he
13 speak. Once again, professionalism way above the level of
14 the Army. Very competent.

15 Q. Did he like to go to pick fights?

16 A. No, not that I know of, sir.

17 Q. In your experience with Todd, what would you say about
18 his judgment in a situation where force would be required?

19 A. I observed him a couple of times in meetings and some
20 training. Once again, soldiers admire him. I admire him
21 for his loyalty, for his honor, and definitely for the way
22 he is. Soldiers really love the leadership skills that he
23 has.

24 Q. In terms of your personal experience and knowing Todd
25 Parvin throughout the years, is Todd gay?

1 A. No, sir, not that I know of. He's a family man.
2 Always share his testimony about his kids. Always share
3 his -- very respectful in front of his soldiers and no
4 indications at all that he was gay.

5 MS. DAVIS: Court's indulgence.

6 (Off the record)

7 (Back on the record)

8 MS. DAVIS: Thank you, sir.

9 Please answer any questions that the State may
10 have.

11 MS. CAMPBELL: Thank you, Your Honor.

12 THE COURT: Yes.

13 CROSS EXAMINATION BY MS. CAMPBELL:

14 Q. Good morning. I just wanted to follow up on one thing
15 you said, sir.

16 You said that he lived the Army values. I think those
17 were your words?

18 A. Yes, ma'am.

19 Q. And do those values include within the Army -- are
20 values within the Army are things like discipline?

21 A. Yes, ma'am. Respect. Honor.

22 Q. Honor, respect, and law abiding, is that correct?

23 A. Yes, ma'am.

24 Q. And those are the Army values that you are referring
25 to?

1 A. I was referring to loyalty, honor, respect, selfless
2 service and courage.

3 Q. And those are values taught in the Army and they may
4 not be the official monogram, is that correct?

5 A. Those are the Army values we live by.

6 Q. Thank you, sir.

7 A. Thank you.

8 MS. CAMPBELL: I have nothing further.

9 THE COURT: Anything further?

10 (No response)

11 THE COURT: You may step down, sir.

12 Next witness.

13 MR. SHEALEY: Defense calls Chaplain Ahl.

14 CHAPLAIN EDWIN AHL, having been first duly sworn,
15 testified as follows:

16 THE CLERK: Have a seat in the witness box. State
17 your name for the record and spell it, please.

18 THE WITNESS: Edwin, E-D-W-I-N. Ahl, A-H-L.

19 DIRECT EXAMINATION BY MS. SHEALEY:

20 Q. Good morning.

21 A. Good morning.

22 Q. Chaplain Ahl, where did you come from to be with us
23 today?

24 A. Fort Riley, Kansas, about 10 miles west of Manhattan,
25 Kansas.

1 Q. Okay. And did you have a direct flight from Fort Riley
2 to Columbia, South Carolina, or how did you get here?

3 A. Well, I was supposed to catch a flight Saturday morning
4 about 11:45, be here Saturday afternoon about 1700, but I
5 got bumped off the flight. They did the old Christmas
6 overbooked, and so they tried to get me out on another
7 flight. I ended up having to drive to Kansas City to catch
8 a flight from there to Dallas, and then spend the night at
9 Dallas because there were no other connections to Columbia.
10 Caught the first flight out of Dallas to Columbia and got
11 here yesterday.

12 Q. And what is your rank in the military?

13 A. I'm a Colonel.

14 Q. And how long have you been in the military?

15 A. I have been in the military, it will be 40 years this
16 summer, starting April '69, with a little time off after the
17 Navy.

18 Q. Has that been your only career, or have you had other
19 careers?

20 A. No, I was a -- I pulled green chain at a lumber mill.
21 I was a cop in Tulsa for a year before coming on as a
22 chaplain in 1988.

23 Q. Can you tell this jury a little bit about where
24 specifically and how you knew Todd Parvin?

25 A. I met Todd Parvin in 1998, when he came to be my NCOIC

1 at 160th Special Ops Aviation Regiment at Fort Campbell,
2 Kentucky.

3 Q. Was there any other time that you have met and known
4 him?

5 A. Well, I have known him since then. I didn't know him
6 beforehand. I knew his reputation. When I found out he was
7 coming, as a good chaplain I checked out some other friends
8 I had to see if they knew him and the report was good.

9 Q. Was he ever your chaplain's assistant?

10 A. He was my senior chaplain assistant at Fort Campbell.
11 He was the one that I turned to make sure that all the
12 battalion and squadron chaplain assistants were trained. I
13 even looked to him to mentor some of the young Captains who
14 were coming in, chaplains, that needed some NCO help.

15 Q. Knowing him as well you as you do, let me ask you this,
16 in your opinion, what is his reputation for being a truthful
17 honest guy?

18 A. He's -- in my opinion, he is as honest and truthful as
19 Abraham Lincoln. The guy would tell you straight up if you
20 were making a mistake. He would tell you straight up if you
21 were doing good. If I was having a problem or one of my --

22 MS. CAMPBELL: Objection, Your Honor.

23 THE COURT: Objection sustained.

24 BY MS. DAVIS:

25 Q. Now, in your opinion of him and your experience with

1 him, is Todd an aggressive guy, or is he a more peaceful
2 guy?

3 A. No, he's a -- he's a more peaceful guy. His philosophy
4 was to avoid a fight.

5 MS. CAMPBELL: Objection, Your Honor.

6 THE COURT: Objection sustained.

7 BY MR. SHEALEY:

8 Q. Is Todd gay?

9 A. No, no, not at all. No, as a matter of fact, when I
10 first heard that concept, I thought it was ludicrous.

11 Q. You have known him closely?

12 A. I have known him closely since '98.

13 Q. Are you aware of his back injury?

14 A. I found out about that when I was at Fort Bliss, 2007.
15 A friend of mine, Keith Davis, told me that he was retiring
16 and -- wait a minute.

17 MS. CAMPBELL: Objection, Your Honor, hearsay.

18 THE COURT: Objection sustained.

19 BY MR. SHEALEY:

20 Q. In terms of Todd's judgment when it comes to use force
21 or not use force, what do you have to say about that?

22 MS. CAMPBELL: Objection, Your Honor.

23 THE COURT: Objection sustained.

24 MR. SHEALEY: Beg the court's indulgence, judge.

25 (Off the record)

1 (Back on the record)

2 BY MR. SHEALEY:

3 Q. Did Todd ever talk to you about his wife Shanna?

4 MS. CAMPBELL: Objection, Your Honor.

5 THE COURT: How is that relevant?

6 MR. SHEALEY: As to whether he's gay or not, Your
7 Honor.

8 THE COURT: Objection sustained.

9 BY MR. SHEALEY:

10 Q. Thank you, Colonel. Please answer any questions that
11 the State has for you.

12 THE COURT: By the State?

13 MS. CAMPBELL: Thank you, sir.

14 We don't have any questions.

15 THE COURT: You may step down, sir.

16 Next witness.

17 MR. SHEALEY: Defense calls Master Sergeant Eugene
18 Lovelace.

19 CHAPLAIN EUGENE LOVELACE, JR., having been first
20 duly sworn, testified as follows:

21 THE CLERK: Have a seat in the witness box. State
22 your name for the record and spell your name, please.

23 THE WITNESS: My name is Wyman Eugene Lovelace,
24 Jr.. W-Y-M-A-N, E-U-G-E-N-E, L-O-V-E-L-E-S-S, J-R., Junior.

25

1 DIRECT EXAMINATION BY MR. SHEALEY:

2 Q. Good morning.

3 A. Good morning.

4 Q. Where did you come from to be with us today?

5 A. Sir, I came from Fort Knox, Kentucky.

6 Q. And what is your rank in the military?

7 A. I'm a Master Sergeant.

8 Q. How long have you been in the military?

9 A. I have been in the Army approximately 18 years.

10 Q. Okay. Can you tell us a little bit exactly how you
11 know Todd Parvin and where?

12 A. I first met Todd Parvin in 2002, in Afghanistan, and we
13 worked closely together during several different deployments
14 and professionally when he started different duty
15 assignments, as well as I did.

16 Q. And what times were you deployed in Afghanistan with
17 Todd?

18 A. From 2002, that's when we initially met, and then we
19 were actually -- we lived together in 2006 to -- 2005 to
20 2006 in Afghanistan.

21 Q. Was there a point in time when you lived and worked
22 together with Todd Parvin?

23 A. Yes, during the time of our one year deployment in
24 Afghanistan from 2006 to 2007.

25 Q. So during those times you had your office hours and

1 then when you went to relax at the house, was Todd there as
2 well?

3 A. Actually during those times we pretty much spent pretty
4 close to 18 to 24 hours a day, between working, doing
5 physical fitness training, eating, and working in the
6 office, and then actually living together in the same
7 quarters. There were a lot of times we would spend 24 hours
8 a day, seven days a week together.

9 Q. For the entire year?

10 A. For the entire year.

11 Q. In your opinion, from that experience living with him
12 for the entire year, is Todd Parvin gay?

13 A. For a person who would e-mail and call his wife three
14 times a day, daily --

15 MS. CAMPBELL: Objection, Your Honor..

16 A. -- for an entire 12 years, I would say no.

17 THE COURT: Objection sustained.

18 BY MR. SHEALEY:

19 Q. And knowing Todd like you did, is he a truthful man or
20 a dishonest man?

21 A. Very truthful and very honest. Before he would ever
22 try to make decisions, he would always look --

23 MS. CAMPBELL: Objection, Your Honor.

24 A. -- to other people in terms of making the right
25 decision.

1 THE COURT: Objection sustained.

2 BY MR. SHEALEY:

3 Q. And knowing Todd like you did, was Todd out there
4 looking to pick a fight, or is he a peaceful --

5 MS. CAMPBELL: Objection, Your Honor.

6 THE COURT: Objection sustained.

7 MR. SHEALEY: Your Honor, this goes directly
8 towards --

9 THE COURT: Next question.

10 BY MS. DAVIS:

11 Q. What is -- how do you feel about Todd's judgment in a
12 situation where he would be called to use force?

13 MS. CAMPBELL: Objection, Your Honor.

14 THE COURT: Objection sustained.

15 MR. SHEALEY: Beg the court's indulgence.

16 (Off the record)

17 (Back on the record)

18 BY MR. SHEALEY:

19 Q. Maybe I'm not asking this the right way.

20 In your opinion, what is Todd's reputation for
21 truthfulness?

22 A. In my opinion, just his -- the reason I would say he
23 was very truthful and very honest, one of the things that I
24 took away from Todd --

25 MS. CAMPBELL: Objection, Your Honor.

1 A. -- and things that learned from him.

2 THE COURT: Objection sustained. It's not
3 responsive to the question.

4 BY MR. SHEALEY:

5 Q. Just more as to in your opinion for his truthfulness as
6 best you can. I know it's the first time testifying, but if
7 you can give your opinion without going into specifics.

8 A. Oh, in my opinion he's very truthful and very honest,
9 with the upmost.

10 Q. And, in your opinion, do you think he would use force
11 in a situation where he didn't have to?

12 A. No.

13 MS. CAMPBELL: Objection, Your Honor.

14 THE COURT: Objection sustained.

15 The jury is to disregard the response.

16 BY MR. SHEALEY:

17 Q. Thank you, sir.

18 Please answer anything that they have for you.

19 THE COURT: By the State?

20 MS. CAMPBELL: We have no questions.

21 Thank you, sir.

22 THE COURT: You may step down.

23 Next witness.

24 MR. SHEALEY: Your Honor, at this time the defense
25 would call Chaplain Terry Austin.

1 CHAPLAIN TERRY AUSTIN, having been first duly
2 sworn, testified as follows:

3 THE CLERK: Have a seat in the witness box. State
4 your name for the record and spell it, please.

5 THE WITNESS: Terry Austin, T-E-R-R-Y,
6 A-U-S-T-I-N.

7 DIRECT EXAMINATION BY MR. SHEALEY:

8 Q. Good morning.

9 A. Good morning.

10 Q. Where did you come from to be with us today, sir?

11 A. South Korea.

12 Q. What is your rank in the military?

13 A. I'm a Colonel.

14 Q. And how long have you been in the military?

15 A. Cumulative service, over 32 years.

16 Q. Yes, sir.

17 Can you tell this jury how you know and where you met
18 Todd Parvin?

19 A. Sure. I -- I replaced Chaplain Ahl at the 160th
20 Special Operations Division Regiment, Fort Campbell,
21 Kentucky. He was my chaplain assistant for approximately
22 two years, and we deployed at least two, I think three times
23 together.

24 Q. When you were deployed, was he your chaplain's
25 assistant?

1 A. Yes, he was. He was my right-hand man. He was half my
2 brain, to tell you the truth.

3 Q. Yes, sir.

4 In your opinion, what is Todd's -- what is Todd's
5 judgment like?

6 MS. CAMPBELL: Objection, Your Honor.

7 THE COURT: Objection sustained.

8 BY MR. SHEALEY:

9 Q. In your opinion, what is his reputation for being
10 truthful or not?

11 A. He's got a good one. I wrote two evaluations on him
12 and that was part of that evaluation.

13 MS. CAMPBELL: Objection, Your Honor.

14 MR. SHEALEY: Your Honor, I would argue --

15 THE COURT: Objection is overruled.

16 Don't be arguing matters when requested by the
17 court.

18 Did you respond to the question?

19 THE WITNESS: Yes, sir.

20 A. I wrote two evaluations on Todd and truthfulness was
21 part of that. Our daily dialogue was part of that. I
22 depended on him to tell me the situation with people that he
23 ran into, assessing their needs, whether it be religious or
24 otherwise.

25 BY MR. SHEALEY:

1 Q. Yes.

2 A. And I always trusted his judgment.

3 Q. In your opinion, what is his reputation for being a
4 peaceful man?

5 A. I think very peaceful. He would rather avoid a fight.

6 MS. CAMPBELL: Objection, Your Honor.

7 THE COURT: Objection sustained.

8 BY MR. SHEALEY:

9 Q. In your personal experience and having Todd serve as
10 your chaplain's assistant, is Todd Parvin gay?

11 A. No. We deployed to Afghanistan. We -- you know, we
12 lived together, eat together, sleep together. I can't
13 remember a time where we ever took a shower together, and we
14 used the latrine together. He's not gay.

15 Q. And there has been some talk of the chaplains and
16 chaplain assistants being a tight-knit community. Would you
17 have come here from Korea for just anybody?

18 A. No, I would not. I would not.

19 MS. DAVIS: Thank you, sir. Please answer any
20 questions the State has for you.

21 THE COURT: Anything by the State?

22 MS. CAMPBELL: Thank you, sir.

23 We don't have any questions.

24 THE COURT: Thank you, sir. You may step down.

25 Next witness.

1 MS. PRINGLE: Defense calls Chaplain James R.
2 White.

3 CHAPLAIN JAMES R. WHITE, having been first duly
4 sworn, testified as follows:

5 THE CLERK: Have a seat in the witness box. State
6 your name for the record and spell it, please.

7 THE WITNESS: My name is James White, J-A-M-E-S
8 W-H-I-T-E.

9 DIRECT EXAMINATION BY MS. PRINGLE:

10 Q. Good morning, Chaplain White.

11 Chaplain White, where are you from?

12 A. Fort Lee, Virginia.

13 Q. That's where you are currently?

14 A. Currently assigned.

15 Q. And are you currently with the military?

16 A. I am.

17 Q. And what is your job?

18 A. I'm the installation chaplain on Fort Lee.

19 Q. What is your rank, sir?

20 A. Colonel.

21 Q. And is it proper to address you as Colonel White or
22 Chaplain White?

23 A. Chaplain.

24 Q. But your rank is Colonel?

25 A. Correct.

1 Q. Chaplain White, do you know Todd Parvin?

2 A. I do.

3 Q. And can you tell this jury when you first met him where
4 you were?

5 A. It was 1992, at Division North Chapel at Fort Bragg,
6 North Carolina. He worked in the chapel. I was not his
7 chaplain, but we worked together, saw each other on a daily
8 basis for a period of almost two years.

9 Q. And when did you see him next?

10 A. Next was on Johnston Atoll in the South Pacific. He
11 was my chaplain assistant for a period of about four months,
12 the end of my year out there. Johnston Atoll is run by the
13 defense nuclear agency. It had the mission of destroying
14 chemical and biological weapons 365 days a year, 24 hours a
15 day, and Todd and I worked together for that four month
16 period day by day.

17 Q. And was that an eight-hour day that you would be
18 putting in?

19 A. No, quite often a lot more than that. Operations ran
20 24 hours a day. Sometimes we were up -- we had a 4:30 a.m.
21 prayer time for folks that worked the night shift, so it was
22 all different hours of the night and day, depending upon the
23 need.

24 Q. Would you be with Todd fairly constantly or not during
25 those long hours?

1 A. Yes, fairly constantly.

2 Q. Could you describe -- you described what they do that
3 island. Can you give the jury just a sense of the size of
4 that island and the population?

5 A. Sure. It's an island two miles long and about
6 three-quarter mile wide at the widest point. A little over
7 1,200 people on the island. 247 military that are assigned
8 there, and the rest of them come there to do cleaning
9 details, lawn care, cooking, research. Because the
10 plutonium yard is there, the Agent Orange was positioned
11 there after Viet Nam. It went on 24 hours a day, seven days
12 a week.

13 We had a population of about 75 to 80 gay folks that
14 served on the island openly, because they were from Hawaii
15 and were not part of the military, and our job was to
16 provide religious support to everyone on the island,
17 counseling, worship services, and --

18 Q. Did you -- as a chaplain, could -- are communications
19 that folks who are enlisted that make to you, are those
20 confidential?

21 A. Yes, they are.

22 Q. And would you ever have occasion to counsel individuals
23 in the military who are homosexuals?

24 A. Yes.

25 Q. That's something that you would be required to address

1 or would address?

2 A. Yes.

3 Q. And was there -- actually was there a -- were there
4 hangout spots or places on Johnston Atoll, or --

5 A. Yes, there was. There was one particular drinking
6 station, as they called it, on the island that was known as
7 The Hideaway, and that's where the gay population typically
8 hung out.

9 Q. And from this rather unique experience on this small
10 island, working with Todd four months pretty much around the
11 clock, is Todd Parvin, from your experience and your
12 observation, is he homosexual?

13 A. No.

14 Q. Was there ever any indication while you were down there
15 that he was frequenting that bar, or --

16 A. On a small island like that, if that had been taking
17 place, it would have been quickly known. DA/DT was still in
18 effect and he was a soldier, so there was no indication of
19 that.

20 Q. What is your opinion, sir, and knowing Todd with
21 respect to whether or not he is honest and trustworthy?

22 A. Absolutely honest. I have no doubt of his integrity.

23 Q. What is your opinion, sir, with respect to whether or
24 not from what you have observed, is Todd an aggressive
25 person, violent person, or as being a peaceable person?

1 A. I find him to be a very peaceful person, easy to work
2 with. Under stress and in those environments he was very
3 peaceful.

4 Q. So you observed him under stress as well?

5 A. Yes.

6 Q. Is he a person who is quick to become enraged or angry?

7 A. No. Calm, thinks it through, very deliberate in what
8 he would say to me and the advice he give.

9 MS. CAMPBELL: Objection, Your Honor.

10 THE COURT: The objection is sustained.

11 MS. PRINGLE: Thank you, sir.

12 I have no further questions.

13 THE WITNESS: Thank you.

14 MS. PRINGLE: Please answer any questions of Ms.
15 Campbell's questions.

16 THE COURT: By the State?

17 MS. CAMPBELL: Thank you.

18 CROSS EXAMINATION BY MS. CAMPBELL:

19 Q. What year were y'all on that?

20 A. Spring of '97.

21 MS. CAMPBELL: Thank you, sir.

22 I have nothing further.

23 THE COURT: Anything further?

24 MS. PRINGLE: Just one in response.

25

1 REDIRECT EXAMINATION BY MS. PRINGLE:

2 Q. When was last time that you saw him?

3 A. 2004.

4 Q. What, if anything --

5 A. I was the Division Chaplain for Third Infantry
6 Division. I went to Fort Polk, Louisiana for one of our
7 brigades were on rotation there and they needed mission
8 readiness exercise before deploying to Iraq. I saw Todd at
9 that time, visited with him. I was kind of surprised at the
10 weight he had gained, and as we talked I realized that he
11 was under a lot of pain from his back trouble, was taking
12 narcotics and things at that time too.

13 Q. Was back in '04?

14 A. In 2004, correct.

15 Q. Thank you, sir.

16 THE COURT: Anything further?

17 MS. CAMPBELL: No, sir.

18 THE COURT: Thank you. You may step down.

19 Next witness.

20 MS. PRINGLE: Defense calls Chaplain Carlton
21 Birch.

22 CHAPLAIN CARLTON BIRCH, having been first duly
23 sworn, testified as follows:

24 THE CLERK: Have a seat in the witness box. State
25 your name for the record and spell it, please.

1 THE WITNESS: Carlton Birch, C-A-R-L-E-T-O-N,
2 B-I-R-C-H.

3 DIRECT EXAMINATION BY MS. PRINGLE:

4 Q. Good morning, Chaplain Birch.

5 Where are you from?

6 A. Good morning. I'm from the Pentagon, Washington, D.C..

7 Q. And what is your current job at the Pentagon?

8 A. I do strategic communications and public affairs for
9 the Army Chaplain Corps.

10 Q. And what is the office called?

11 A. Office of the Chief of Chaplains.

12 Q. And what is your rank, sir?

13 A. Lieutenant Colonel.

14 Q. And how long have you been in the military?

15 A. 24 years.

16 Q. Chaplain Birch, do you know Todd Parvin?

17 A. I do.

18 Q. And from when do you know him?

19 A. I knew him by reputation at Fort Campbell in 2000 -- I
20 mean, 1998, and we served together at Fort Drum, New York,
21 with Chaplain Wright and Master Sergeant Eugene Lovelace.

22 Q. Okay. And from what -- what years would -- what years?

23 A. Yeah, in 2005 to 2007, and a year deployed in
24 Afghanistan.

25 Q. Okay. And the year that you deployed to Afghanistan,

1 from 2005 to 2007, was there a time that you would have been
2 with him prior to the -- prior to the year and after? Can
3 you explain to the jury how that works?

4 A. Yeah, we do train-up prior to deployment and then kind
5 of a reset period after the deployment and that accounted
6 for the time before and the time after our one year
7 deployment together.

8 Q. Where in Afghanistan were you?

9 A. In Bagram, Afghanistan, at the command headquarters,
10 combined joint headquarters.

11 Q. And while you were there, you say that were deployed
12 there at the same time, were you on the same base, or did
13 you -- what was your contact with Todd?

14 A. Yeah, we actually -- like Master Sergeant Lovelace,
15 we -- we were stationed in the same cubical area together
16 seven days a week; many, many hours a day, under sometimes
17 very high stressful situations.

18 Q. What time -- when you say stressful situations, what
19 are you talking about?

20 A. Well, combat is a high stressed condition to be in at
21 all times, but we -- we managed all the ramp ceremonies that
22 were going out of Afghanistan during the year that we were
23 there and those would occur any time of day or night. There
24 was casualty situations which we had to respond to any time
25 day and night, so a lot of high-stress situations.

1 Q. And would Todd be involved in this?

2 A. Yes, we would all -- as a part of the headquarters, we
3 would be responsible for the response that the chaplains and
4 chaplain assistants would give across the theatre of
5 operations.

6 Q. And you were actually working -- were you working for
7 Colonel Wright or Chaplain Wright?

8 A. Yeah, I was Chaplain Wright's deputy.

9 Q. And during the time that you were over there for that
10 year with Todd and these others, did you -- how many days a
11 week did you see Todd?

12 A. Seven days -- except when one of us was traveling,
13 seven days a week, yes, ma'am.

14 Q. And you worked together since you described 14 hour
15 days?

16 A. Yes, ma'am, 14 hour days, seven days a week.

17 Q. Would you have occasion to shower together?

18 A. Yes, we used the same shower facilities.

19 Q. What did you and Todd do? Did you have similar duties?
20 Can you just describe -- I don't want you to go into great
21 detail, but if you could just describe generally what you
22 were doing?

23 A. Well, we managed religious support. A lot of that was
24 movement of chaplains and chaplain assistants across the
25 battlefield. We managed training of chaplains and chaplain

1 assistants in Afghanistan. Those were our two main
2 responsibilities.

3 Q. And chaplain assistants we heard described earlier, is
4 it -- is the chaplain assistant -- would bodyguard be
5 another word for chaplain assistant? Is that appropriate?

6 A. Some people use the term bodyguard or personal
7 protection.

8 Q. In your experience, spending that amount of time with
9 Todd and knowing him, what is your experience and your
10 observation as to whether or not Todd Parvin is homosexual?

11 A. He's not homosexual.

12 Q. Did Todd -- did Todd talk about his wife?

13 MS. CAMPBELL: Objection, Your Honor.

14 MS. PRINGLE: I'm not --

15 THE COURT: Objection is sustained.

16 MS. PRINGLE: May I respond?

17 THE COURT: Next question.

18 BY MS. PRINGLE:

19 Q. Was Todd protective of his family?

20 MS. CAMPBELL: Objection, Your Honor.

21 THE COURT: The objection is sustained.

22 MS. PRINGLE: May we approach, Your Honor?

23 THE COURT: Yes.

24 (Whereupon, the lawyers approached the bench for
25 an off-the-record discussion)

1 THE COURT: Ladies and gentlemen, let's stand for
2 a moment.

3 (Off the record)

4 (Back on the record)

5 THE COURT: Ladies and gentlemen, I will have you
6 go to the jury room for a few minutes, please.

7 Please do not discuss the case.

8 (The following takes place outside the presence of
9 the jury panel)

10 THE COURT: All right, Ms. Pringle?

11 MS. PRINGLE: I'm sorry?

12 THE COURT: Do you want to respond to the --

13 MS. PRINGLE: On the record, yes, sir.

14 THE COURT: Yes.

15 MS. PRINGLE: The State, in cross-examination of
16 Todd, made clear, at least to me and my co-counsel, that
17 they are going to allege that he -- the last question I
18 believe she asked was that -- did he -- he wasn't protecting
19 his family when he left them and went to Texas; that he fled
20 to Texas, leaving them in danger; that when he came back, it
21 was only because he believed that he had gotten away with
22 murder; what she said on cross and what they said in
23 opening.

24 One of the defining features to Todd's personality
25 and that something that he has expressed to this gentleman

1 and others, when they were enlisted along with him, is that
2 he was extremely protective of his family; he spoke often of
3 his wife; and spoke to him being a family man, not
4 homosexual. It also corroborates his testimony that he was
5 terrified. And to the extent that they are going to argue
6 in closing that he wasn't really terrified or he wasn't
7 protective of his family, this testimony would corroborate
8 what Todd had to say.

9 I can proffer it as -- I would ask to proffer it
10 at this point.

11 THE COURT: All right. Anything from the State?

12 MS. CAMPBELL: Just to the effect that she's
13 trying to bolster the defendant's testimony, Your Honor, we
14 would say it's not a proper way.

15 MS. PRINGLE: She crossed him on it and I think
16 that I'm able to elicit prior consistent statements, once
17 she -- she crossed him on it and --

18 THE COURT: Prior consistent statements?

19 MS. PRINGLE: That he is protective of his family;
20 that he takes -- and he structured his family very, very
21 seriously. She crossed him for hours on truthfulness of his
22 testimony and the legitimacy of those claims. And I suspect
23 that's part of what she will argue in closing, that that was
24 unreasonable and not true.

25 THE COURT: Anything else?

1 MS. CAMPBELL: No, sir.

2 THE COURT: All right. We will take a few minutes
3 break. You may step down.

4 (Whereupon, proceedings were recessed)

5 (Whereupon, proceedings were reconvened)

6 THE COURT: All right, you may bring the jury.

7 (The following takes place in the presence of the
8 jury panel)

9 THE BAILIFF: The jury is seated, Your Honor.

10 THE COURT: All right, I overrule the objection.
11 You may proceed.

12 MS. PRINGLE: Thank you, Your Honor.

13 BY MS. PRINGLE:

14 Q. Sir, in your experience and knowing Todd the year, 18
15 months that you spent with him, in particular, did you come
16 to know how he felt about his wife?

17 A. I did.

18 Q. And how -- how is that? Tell the jury about that,
19 please.

20 A. Very strong about both his wife and his family and very
21 protective.

22 Q. How would he react to a threat to his family, in your
23 opinion?

24 A. Well, he would react very defensively.

25 Q. Would he take it seriously, in your opinion?

1 A. Extremely seriously, absolutely.

2 Q. Is Todd a person who is a violent guy or a quick
3 tempered guy?

4 A. I never saw him lose his cool in the year we spent
5 together in Afghanistan. No, he's not.

6 Q. You never saw anything that made him become enraged,
7 quickly enraged?

8 MS. CAMPBELL: Objection, Your Honor.

9 THE COURT: The objection is sustained.

10 BY MS. PRINGLE:

11 Q. With respect to your opinion as regards to Todd's
12 trustworthiness and honesty, what is your opinion, sir?

13 A. Well, I have trusted him with my life, and I would
14 trust him again.

15 Q. And you are familiar, of course, with the duties, the
16 specific duties as a chaplain's assistant, as you testified
17 earlier, obviously, sir?

18 A. Yes. I was asked by my spouse if I could take any
19 chaplain assistant to a combat with me, who would it be, and
20 I responded immediately it would be Todd Parvin.

21 Q. Okay. And just a final question. Being a chaplain
22 assistant, does that involve -- generally speaking, does
23 that involve determination when to use force to protect?

24 MS. CAMPBELL: Objection, Your Honor.

25 THE COURT: Objection sustained.

1 BY MS. PRINGLE:

2 Q. Thank you, sir.

3 MS. PRINGLE: I have no further questions.

4 THE COURT: By the State?

5 MS. CAMPBELL: Thank you, sir.

6 We don't have any questions.

7 THE COURT: Thank you. You may step down.

8 Next witness.

9 MS. PRINGLE: Defense calls Master Sergeant Eric
10 Scott Kramer.

11 MASTER SERGEANT ERIC KRAMER, having been first
12 duly sworn, testified as follows:

13 MS. PRINGLE: Your Honor, I called Mr. Shealey's
14 witness, but Mr. Shealey is going to handle the next
15 witness.

16 COURT REPORTER: I need for you to please spell
17 your name, sir.

18 THE WITNESS: My name is Eric Kramer, E-R-I-C
19 K-R-A-M-E-R.

20 DIRECT EXAMINATION BY MR. SHEALEY:

21 Q. Good morning.

22 A. Good morning.

23 Q. And where do you come from to be with us today, please?

24 A. Spokane, Washington.

25 Q. And are you still in the military?

1 A. I am. I'm a reservist.

2 Q. What is your rank?

3 A. I am a Master Sergeant.

4 Q. Tell us, please, where you met Todd.

5 A. I first met Todd Parvin in Qatar. We were -- I was
6 diverted for training and to go to a meeting in Qatar and to
7 Bahrain. And upon arrival at about four o'clock in the
8 morning they took me to a container-world-like housing area
9 and put me in a room, a four by eight room, and turned on
10 the lights and that's when I met Todd Parvin.

11 Q. Okay.

12 A. About April of '07 -- April of '06, excuse me.

13 Q. Were you working as a chaplain's assistant as well?

14 A. Yes, I was.

15 Q. But at that point you were new to the Middle East?

16 A. Yes. I have had 29 years of service next week, but I
17 had never been in a combat environment and mentioned that to
18 Master Sergeant Parvin at the time and he quickly assessed
19 that he needed to do some training.

20 Q. And did he help you out in that regard?

21 A. I wouldn't be here probably today if it wasn't for Todd
22 Parvin.

23 Again, I had received the same military training as
24 most, but being in a combat environment changes things
25 greatly, and Todd taught me what to do and how to do it and

1 how to make decisions on how to take action -- well, on how
2 to do my job to the best.

3 Q. Yes, sir.

4 Did you ever live in close quarters with Todd Parvin?

5 A. We roomed together in Qatar twice, going to the same --
6 the same conference twice, and we were there, and then --
7 but that was it, yes.

8 Q. Okay. And knowing him over the years and rooming with
9 him, like you said, in your experience is Todd Parvin gay?

10 A. No, there is no information for that.

11 Q. Did he ever talk about his wife?

12 A. He talked about his wife and children all the time. We
13 shared that and talked about that.

14 Q. And in knowing him over the years, in your opinion,
15 what is his reputation for being a peaceful man?

16 A. Very peaceful, very controlled, kind man.

17 Q. Okay. Would he go out and pick fights?

18 A. Oh, no.

19 Q. And, in your opinion, knowing him over the years, what
20 is your reputation regarding him being a truthful man?

21 A. I take for what he says to be the gospel. There has
22 never been a question whether it's honest or dishonest or
23 not being trustworthy at all. He's extremely trustworthy
24 and extremely honest.

25 Q. And would you have come here from Washington State to

1 be here for any other guy that got arrested that you knew?

2 A. No.

3 Q. All right.

4 MR. SHEALEY: Beg the court's indulgence.

5 (Off the record)

6 (Back on the record)

7 MR. SHEALEY: Nothing further.

8 Please answer any questions the State has for you.

9 MS. CAMPBELL: May it please the court?

10 CROSS EXAMINATION BY MS. CAMPBELL:

11 Q. I just got a couple of questions.

12 Good morning.

13 A. Good morning, ma'am.

14 Q. There is no one else you would go testify for in the
15 Army, or any other area?

16 A. Not to someone at this level, no.

17 Q. Okay. And you mentioned, and he asked you specifically
18 about Todd's relationship with Shanna and you explained to
19 the jury what you knew?

20 A. We talked often about his family. We shared that -- we
21 talked about our wives and our children. He told stories --

22 Q. I'm sorry.

23 A. Okay.

24 Q. I did not mean to interrupt. I apologize. Go ahead.

25 A. He told stories of his sons and I told stories of my

1 daughter. "I'll have a sirloin" was one of their catch
2 phrases almost every time in talking to one of his sons.

3 Q. And you mentioned specifically about his relationship
4 with his wife Shanna?

5 A. Yes.

6 Q. Were you aware in the summer of 2009 that there was --

7 MR. SHEALEY: Objection.

8 MS. PRINGLE: May we approach?

9 MR. SHEALEY: May we approach.

10 THE COURT: All right.

11 What's the basis for the -- are you objecting?

12 MR. SHEALEY: I am objecting.

13 THE COURT: What's the basis for the objection?

14 MR. SHEALEY: I think she's about to elicit
15 testimony that you ruled should not be admitted.

16 THE COURT: Objection is overruled.

17 MS. CAMPBELL: Thank you.

18 BY MS. CAMPBELL:

19 Q. Were you aware that in the summer of 2009, that they
20 were having marital problems and attended counseling?

21 A. No, ma'am.

22 Q. And so you weren't aware of that in the summer of 2009,
23 on into 2010, that they were having problems?

24 A. No, ma'am.

25 Q. Thank you, sir.

1 MS. CAMPBELL: I have nothing further.

2 THE COURT: Any redirect?

3 MR. SHEALEY: Just briefly, please.

4 REDIRECT EXAMINATION BY MR. SHEALEY:

5 Q. Have you ever had a problem at all in your marriage?

6 MS. CAMPBELL: Objection, Your Honor.

7 A. Yes.

8 THE COURT: He's answered the question.

9 MR. SHEALEY: That's all.

10 THE COURT: Anything further?

11 MS. CAMPBELL: No.

12 THE COURT: You may step down.

13 Next witness.

14 MS. PRINGLE: Defense calls Charles Hire..

15 CHARLES HIRE, having been first duly sworn,
16 testified as follows:

17 COURT REPORTER: Could you spell your last name,
18 please?

19 THE WITNESS: Charles Hire, H-I-R-E.

20 DIRECT EXAMINATION BY MS. PRINGLE:

21 Q. Good afternoon.

22 Mr. Hire, where do you live?

23 A. I live here in Columbia, South Carolina.

24 Q. And do you work?

25 A. I do.

1 Q. What do you do?

2 A. I am the Deputy Director for Capabilities Integration
3 and Development Directorate at the United States Army
4 Chaplains Entering School.

5 Q. All right. And are you now working in a civilian
6 capacity, or are you still enlisted? How is that?

7 A. I'm retired from the military.

8 Q. And your job when you retired was what?

9 A. I was a Sergeant Major chaplain assistant.

10 Q. And that's the same job -- is that the same job that
11 Todd Parvin had?

12 A. Yes, it is, but Todd's was at a lower level. I was a
13 Sergeant Major. He retired as a Master Sergeant.

14 Q. And so, sir, do you know Todd Parvin?

15 A. I do.

16 Q. And from where and when do you know him?

17 A. We met in Uzbekistan in 2002, the first week of
18 January, where we coordinated religious support across the
19 theatre of operation, which included all the Stans to
20 include Afghanistan. I was the senior chaplain assistant in
21 theatre and we coordinated across command lines.

22 Q. And how often at that time, in '01 to '02, would you
23 see him?

24 A. I would say it was every other day to every six to
25 eight hours, depending on what the mission or the operations

1 being accomplished were.

2 Q. Did you have occasion later on in your career and
3 Todd's career to work together again?

4 A. Yes, I did.

5 Q. When?

6 A. That would have been 2007 through 2009.

7 Q. And that was until -- were you working in your civilian
8 capacity at that time?

9 A. Yes, I was.

10 Q. And what was Todd's role?

11 A. He was the senior noncommissioned officer in charge for
12 our directorate. I was his direct supervisor.

13 Q. And what would his duties have been for you in that
14 capacity?

15 A. He managed the majority of the projects that we have
16 going on in terms of determining requirements and
17 integrating capability for religious support across the
18 United States Army and with inside the joint community.

19 Q. And, in your opinion, sir, what is -- what is your
20 opinion with respect to whether or not Todd is a peaceable
21 nonviolent versus violent guy?

22 A. My opinion is that he is peaceful and patient, almost
23 to a fault.

24 Q. And how would he handle kinds of conflict?

25 A. With inside of the --

1 MS. CAMPBELL: Objection, Your Honor.

2 THE COURT: Objection sustained.

3 BY MS. PRINGLE:

4 Q. During times of conflict, and I'm not asking you about
5 any specific time or any specific example, would Todd be an
6 individual to engage in conflict --

7 MS. CAMPBELL: Objection, Your Honor.

8 THE COURT: Let me hear the complete question.

9 BY MS. PRINGLE:

10 Q. -- or was he more of a peaceable person in that
11 context?

12 A. Peaceable.

13 Q. With respect to Todd's honesty, integrity, and his
14 honesty and trustworthiness, what is your opinion, sir?

15 A. My opinion and experience is that he's honest,
16 trustworthy and transparent.

17 Q. With respect to your experience working with him on
18 both of those occasions, up until '09, what you have
19 observed in your experience, is Todd Parvin homosexual?

20 A. No, he's not.

21 Q. Is Todd Parvin someone who would solicit sex?

22 A. No.

23 MS. PRINGLE: I have no further questions.

24 Thank you, sir.

25 THE COURT: By the State?

1 MS. CAMPBELL: Thank you, Your Honor.

2 We don't have any questions.

3 THE COURT: Thank you, sir. You may step down.

4 Defense calls Sergeant Major Eugene Zehner.

5 CHAPLAIN EUGENE ZEHNER, having been first duly
6 sworn, testified as follows:

7 COURT REPORTER: Could you please spell your last
8 name for me?

9 THE WITNESS: My name is Eugene Zehner,
10 Z-E-H-N-E-R.

11 DIRECT EXAMINATION BY MS. PRINGLE:

12 Q. Good morning, Mr. Zehner.

13 A. Good morning, ma'am.

14 Q. Where are you from, sir?

15 A. I'm coming from Hampton Virginia, Fort Eustis.

16 Q. And what is your current job?

17 A. Sure. I'm the TRADOC, Training and Doctrine Command
18 for the United States Army, Chaplain, Sergeant Major.

19 Q. How long have you been in the military?

20 A. I have been with the military 32 years.

21 Q. Do you know Todd Parvin?

22 A. Yes, I do.

23 Q. How do you know him?

24 A. I first met Todd and his family in April of 1991.

25 Q. And did you continue to have a relationship with him --

1 have you continued to have a relationship with him since
2 1991?

3 A. I have known Todd and spoken with Todd periodically
4 throughout his whole military career until his retirement of
5 last year.

6 Q. Where did you meet him?

7 A. The first time I met him was Fort Bragg, North
8 Carolina, Division South Chapel.

9 Q. And did you have occasion at any time to be Todd's --
10 act as Todd's supervisor?

11 A. I sure did. I was the chapel noncommissioned officer
12 in charge. We were in separate brigades, but both the
13 brigades combined to work together at that chapel, so I had
14 a chance to oversee him and six other chaplain assistants.

15 Q. What years was that, sir, do you remember?

16 A. You bet. That was from 1991 through 1994.

17 Q. Are you married?

18 A. I am.

19 Q. And do you have children?

20 A. I do. I have two wonderful kids.

21 Q. How old are they?

22 A. They are 24 and 25.

23 Q. Do you know Shanna Parvin?

24 A. I do. I know her very well.

25 Q. And do you know their children?

1 A. I know two of their three children.

2 Q. And did your children -- did you -- how long would you
3 say that you have known the family?

4 A. Very well. My wife supported Shanna by watching
5 Joshua, their first son, while their second son John was
6 being born, so we were in each other houses frequently
7 throughout those three years; played video games together;
8 my kids played with their kids when they were tiny; and this
9 was just a nice relationship to have a family that was
10 close, close in age and close in -- close in the
11 child-rearing years.

12 Q. In your experience and what you observed is Todd
13 Parvin -- how does Todd feel about Shanna?

14 A. Todd frequently spoke positively, extremely positively,
15 about Shanna.

16 Q. Would you say that he loved her?

17 A. Oh, definitely.

18 Q. And in your experience and from what you have observed
19 over these years is Todd Parvin homosexual?

20 A. Todd has shown no indication of being homosexual
21 whatsoever.

22 Q. In your opinion, sir, is he trustworthy and honest?

23 A. Todd is one of the most trustworthy people that I know.
24 He is very -- he's honorable in truth and in deed.

25 Q. And finally, sir, with respect to whether or not --

1 In your opinion, is Todd a peaceable person or more of
2 a violent person?

3 A. Todd has always -- has always taken the peaceable way
4 out. I have never seen him act aggressively in any manner
5 or situation.

6 Q. Thank you, sir.

7 MS. PRINGLE: I have no further questions.

8 THE COURT: By the State?

9 MS. CAMPBELL: May I please the court?

10 CROSS EXAMINATION BY MS. CAMPBELL:

11 Q. Just a couple questions, sir.

12 A. Yes, ma'am.

13 Q. You mentioned that you were close through the years and
14 everything. Do you know that they were having marital
15 difficulty in 2009, 2010?

16 A. No, ma'am, I did not.

17 Q. Okay. And you didn't know that they were in counseling
18 or anything like that?

19 A. I -- I did not know that. I knew Todd was in
20 counseling, but not to the specifics.

21 Q. Thank you, sir.

22 REDIRECT EXAMINATION BY MS. PRINGLE:

23 Q. Does the fact that Todd and Shanna may have gone to
24 counseling change your opinion about how you believe he
25 feels about Shanna?

1 A. Not in the least.

2 Q. Thank you.

3 THE COURT: Anything further?

4 MS. CAMPBELL: No.

5 THE COURT: You may step down.

6 Next witness.

7 MS. PRINGLE: Defense calls Chaplain Timothy
8 Walls.

9 CHAPLAIN TIMOTHY WALLS, having been first duly
10 sworn, testified as follows:

11 COURT REPORTER: Could you spell your last name
12 for me, please?

13 THE WITNESS: Timothy Walls. My last name is
14 W-A-L-L-S.

15 DIRECT EXAMINATION BY MS. PRINGLE:

16 Q. Good morning.

17 Sir, where do you currently live?

18 A. I'm at Scott Air Force base in southern Illinois.

19 Q. And how long -- and what is your job there?

20 A. I am the Command Chaplain for the U.S. Transportation
21 Command.

22 Q. And, sir, how long have you been with -- what branch of
23 the military are you with?

24 A. I'm with the U.S. Army.

25 Q. And how long have you been with the Army?

1 A. All total, 35 years.

2 Q. Okay. And your current job, sir?

3 A. Yes, I'm the Command Chaplain for the U.S.
4 Transportation Command.

5 Q. Do you know Todd Parvin?

6 A. I do.

7 Q. When did you meet him, sir?

8 A. I first met Todd serving with him in the 82nd Airborne
9 Division in 1991. We served together about three years.

10 Q. And where was that?

11 A. That was at Fort Bragg, North Carolina.

12 Q. And do you recall when that was?

13 A. The period of '91 to '94.

14 Q. And how often would you see him and in what capacity
15 would you see him at that time?

16 A. We saw each other daily, worked out of the same chapel.
17 We didn't work in the same unit, but we were in the same
18 brigade.

19 Q. And how many days a week would that be?

20 A. Usually five days a week.

21 Q. And in the late nineties did you have occasion to see
22 him again?

23 A. Yes, we served together again at Fort Campbell in 1998
24 to 2000. We served in the 160th Special Operations Aviation
25 Regiment. We were assessed and selected for that Special

1 Operations Unit.

2 Q. What is the Special Operations Unit?

3 A. This particular unit was -- at Fort Campbell it was the
4 Aviation Unit for our Special Operations, and so to get in
5 the unit you had to be selected and assessed. Not everybody
6 got to go in the unit. You had to be specifically selected
7 by them, and they only took the best.

8 Q. Sir, in your opinion, knowing Todd, having served with
9 him, is Todd a peaceable person or a violent person?

10 A. I have never seen him show aggression in the times that
11 I knew him. Always calm, laid back person.

12 Q. In your opinion, sir, is he trustworthy and honest?

13 A. Yes, he is a man of integrity.

14 MS. PRINGLE: No further questions.

15 Thank you, sir.

16 THE COURT: By the State?

17 MS. CAMPBELL: Thank you, Your Honor.

18 We don't have any questions. Thank you, sir.

19 THE COURT: All right. Thank you, sir. You may
20 step down.

21 Your next witness.

22 MS. DAVIS: Your Honor, we would just ask for a
23 brief recess, two, three minutes.

24 THE COURT: All right. Ladies and gentlemen, we
25 will have you go to the jury room for a few minutes. Please

1 do not discuss the case.

2 (The following takes place outside the presence of
3 the jury panel)

4 THE COURT: All right, we will be in recess for
5 about five minutes.

6 (Whereupon, proceedings were recessed)

7 (Whereupon, proceedings were reconvened)

8 THE COURT: All right. Is defense ready to
9 proceed?

10 MS. DAVIS: Yes, Your Honor.

11 THE COURT: All right. You can bring the jury,
12 please.

13 MS. DAVIS: Your Honor, we are resting at this
14 time.

15 THE COURT: All right.

16 MS. CAMPBELL: Can I say something about
17 scheduling?

18 THE COURT: Yes.

19 MS. CAMPBELL: Judge, prior we asked to be ready
20 to go at two o'clock. Is that going to mess up anything?

21 THE COURT: Can it be pushed up, pushed up some?
22 Hold them just a moment.

23 MS. CAMPBELL: I'm sorry, I have got them all
24 reporting at one. I can go see if I can get some of them in
25 earlier, and I may be able to narrow it down.

1 THE COURT: We will take -- I mean, we will take
2 a -- if the defense is through, we will take an early lunch.

3 MS. CAMPBELL: Thank you.

4 THE COURT: We have the court dinner, or Christmas
5 party, or something.

6 MS. CAMPBELL: Thank you, sir.

7 THE COURT: That starts at twelve, but we will
8 take an earlier lunch, if that's the case, but we will rest
9 in the presence of the jury, and then we will -- we have an
10 unrelated hearing set at 12:30.

11 MS. CAMPBELL: Thank you, sir.

12 THE COURT: We will probably take lunch until
13 1:45.

14 MS. CAMPBELL: Thank you, Your Honor.

15 THE COURT: All right, if you will bring the jury,
16 please,

17 (The following takes place in the presence of the
18 jury panel)

19 THE BAILIFF: The jury is seated, Your Honor.

20 THE COURT: All right. Welcome back.

21 Next witness, please.

22 MS. DAVIS: The defense rests.

23 THE COURT: All right. Ladies and gentlemen, that
24 is the defense's case.

25 Does the State anticipate a reply or rebuttal?

1 MS. CAMPBELL: Yes, sir.

2 THE COURT: All right.

3 Ladies and gentlemen, you have heard the defense's
4 case. Next would be the opportunity for the State to
5 present the reply rebuttal testimony. We also have some
6 other things set on some other cases to tend to during the
7 lunchtime, so we think we need the jury back about 1:45.
8 About 1:45.

9 I know we ordered your lunch. If you want to stay
10 until it gets here and take it with you, you can do that,
11 leave it and then get back, you can do that, but I want you
12 to set a time that you are going to leave and then leave and
13 then all come back at the same time, whatever time that
14 might be, and we need you back at 1:45. Okay?

15 All right. Please do not discuss the case.

16 (The following takes place outside the presence of
17 the jury panel)

18 THE COURT: All right. The defense has rested.

19 Any matters of law from the defense at this time?

20 MR. SHEALEY: Yes, Your Honor.

21 At this time the defense would move again for a
22 directed verdict. The defendant is entitled to a directed
23 verdict when the State has failed to produce evidence of the
24 offense charged. If there is any direct or substantial
25 circumstantial evidence reasonably tending to prove the

1. guilt of the accused, the court must find the case is proper
2. to submit to the jury.

3. COURT REPORTER: Mr. Shealey, when you are
4. reading, you need to read a little slower, please.

5. MR. SHEALEY: However, when the defendant claims
6. self-defense, the State is required to disprove the elements
7. of self-defense beyond a reasonable doubt, and I would cite
8. State v. Wiggins, 330 S.C. 554.

9. Your Honor, here we have heard additional
10. testimony from Todd Parvin. We have heard additional
11. testimony from our crime scene expert consistent with Todd's
12. story. Todd has told what he knows and his case has been
13. one of self-defense. He testified that he had to
14. essentially fight his way out of there, Your Honor, and we
15. would argue that in order to submit this case to the jury to
16. get past this point, the State would have to rebut every
17. element of self-defense. At this time we don't believe they
18. have done that.

19. THE COURT: Any response by the State?

20. MS. CAMPBELL: Respectfully, Your Honor, I think
21. that it's a jury issue in this case and should be submitted
22. to the jury.

23. And as far as us having to disprove element of
24. self-defense, I believe he fails on any element of
25. self-defense. It's a complete defense and he would fail at

1 that point. Respectfully, Your Honor, we feel like we have
2 produced the evidence.

3 THE COURT: All right. This issue is governed by
4 Rule 19 of the South Carolina Rules of Criminal Procedure
5 and the case law of this state, State v. Bodette, that
6 states that "if the State presents any evidence which
7 reasonably tends to prove defendant's guilt, or from which
8 the defendant's guilt could be fairly and logically deduced,
9 the case must go to the jury."

10 And the rule specifically states that "in ruling
11 on the motion for a directed verdict, the trial judge shall
12 consider only the existence or nonexistence of the evidence
13 and not its weight."

14 And in this case there is direct testimony that
15 the defendant shot and killed both victims without any just
16 cause or excuse that can be inferred from the evidence and
17 he can be found guilty of murder on both victims, based on
18 the evidence presented. I, therefore, respectfully deny the
19 motion for a directed verdict.

20 MS. DAVIS: Thank you, Your Honor.

21 THE COURT: Any other matters of law?

22 MS. CAMPBELL: None from the State, Your Honor.

23 MR. SHEALEY: No, judge.

24 THE COURT: Well, if the jury is coming back at
25 1:45, I don't want to -- I can anticipate some objections to

1 whatever reply testimony the State might want to offer; or
2 the State gives the defense some indication, if there is an
3 objection we can take those up before the jury gets here,
4 which may be around 1:30, or so. All right. So we will
5 have the parties back at 1:30, and the jury back at 1:45.

6 All right, we will be in recess.

7 Just one additional -- one additional issue we
8 will talk about now, that is the issue of the jury view. If
9 there is to be a jury view, it would take place after all
10 the evidence; not after the State's case, not after the
11 defense case. It would be after all of the evidence. The
12 defense has requested a jury view. Do y'all still want a
13 jury view?

14 MS. DAVIS: Yes, sir, Your Honor.

15 THE COURT: All right. Certainly the parties will
16 have to acknowledge and be aware of the fact that this
17 offense having -- these offenses having occurred on --
18 alleged offenses having occurred on July 30th, 2010, that
19 some year and a half later there would be some change that
20 would exist as to the scene, particularly at that time the
21 scene was the residence of the two victims who are no longer
22 there. I have no clue as to what the jury might see when
23 they go there, but if the defense wants the jury view, then
24 you certainly accept the scene as it currently exists.

25 Are you aware of that?

1 MS. DAVIS: Yes, sir, Your Honor.

2 THE COURT: All right. And Mr. Parvin, have you
3 conferred with the lawyers on that issue of a jury view?

4 THE DEFENDANT: Yes, Your Honor, I have.

5 THE COURT: And do you also want a jury view?

6 THE DEFENDANT: Yes, Your Honor, I do.

7 THE COURT: All right. Thank you, sir.

8 Well, we'll ponder that some more, but if we get
9 through early today, then the end of the day would be a good
10 time to do that; or if we go to late today, then, of course,
11 the first thing in the morning.

12 All right. We'll see y'all at 1:30.

13 (Whereupon, proceedings were recessed)

14 (Whereupon, proceedings were reconvened)

15 THE COURT: Ms. Campbell?

16 MS. CAMPBELL: May it please the court, Your
17 Honor?

18 THE COURT: Yes.

19 MS. CAMPBELL: We are prepared to go forward at
20 this time with our reply testimony. We have scaled it down
21 significantly just to a few witnesses.

22 THE COURT: All right. And the nature of the
23 reply testimony?

24 MS. CAMPBELL: The nature of the reply testimony
25 is to directly impeachment on what the defendant said during

1 his testimony and also to show evidence of the
2 defendant's -- there has been multiple witnesses that
3 testified about the defendant's character. They chose to
4 put his character in at this point. I think that opens the
5 door.

6 Specifically I would cite the Chaplain Tommy
7 Marrero Cartenga. He testified about the values.
8 Specifically he did this on direct examination, honor,
9 things of nature; that he epitomized all the values held in
10 the Army. I then went through and talked about discipline,
11 responsibility, loyalty, law abiding, and things of that
12 nature. Your Honor, at this time I think they have opened
13 it. That's just one example, Your Honor. The whole morning
14 has been about how wonderful, upstanding, honorable. Those
15 are the words that they used over and over. At this time I
16 believe they have opened the door to go into evidence that
17 you had precluded us from going into earlier, Your Honor.
18 Perhaps appropriately at this time we would be going into
19 just the items that matter of the search warrant, as well
20 as -- as far as on that, on that issue, that would be the
21 extent of it.

22 We also intend to impeach him on how a loving
23 relationship he had with Shanna Parvin; that, in fact, the
24 defendant reported that he was having difficulties with his
25 wife right before this all occurred.

1 In addition to that, Your Honor, we also were
2 going -- they brought with every single character witness
3 whether or not he is homosexual. At this point we feel like
4 it wasn't appropriate earlier, but they have opened the door
5 as to whether or not we can get into limited things about
6 policies in the Army, how it would affect his career under
7 the Don't Ask Don't Tell Policy and the policies prior to
8 that and what would have happened to him had he disclosed to
9 anyone, and they have gone over and over it, how he was not
10 homosexual and how -- at this point we would limit it just
11 to go into how that would affect his career.

12 In addition to that, Your Honor, we also -- they
13 put up an expert who mentioned about many, many things. He
14 was an expert in ballistics, in gunshot residue, and other
15 areas. He gave the opinion, Your Honor, which we were not
16 privy to, so there was never a report as to his opinion as
17 to where the defendant was standing when the gunshots were
18 fired and that you could do that from that evidence, Your
19 Honor. We weren't aware of that ahead of time, so we didn't
20 address that properly, and we would have just brief
21 testimony refuting that from a ballistics expert on that
22 issue.

23 We also have -- he professed to be an expert on
24 all these areas based on his work in the field, that he
25 basically was a deputy coroner down in Georgia and that's

1 how he got his expertise, as far as his training and as far
2 as crime scene reenactment, or reconstruction I believe is
3 what he said. Your Honor, we do have also Gary Watts here
4 to refute whether or not that would be proper to go into
5 that, as far as what they are allowed to do at the crime
6 scene and how they go about making a determination to death
7 and what the actual cause of death was in this case.

8 We also have just one witness professional, from
9 one Dr. John Taylor, who did an exit interview when he was
10 getting out of the Army for PTSD. We do not plan on
11 bringing it up what he was interviewing him for. We will
12 not mention the word Post Traumatic Stress Disorder pursuant
13 to earlier rulings. However, we would just get into the
14 fact that they were having some marital problems.

15 THE COURT: All right.

16 What says -- I'm sorry.

17 MS. CAMPBELL: And then finally, Your Honor, there
18 is also -- he mentioned that when he was leaving the -- when
19 he encountered the victims in this case, Your Honor, that he
20 was on his way home and he took the most direct route home,
21 or something to that effect, when he had bought the Modelo
22 beer. We do have a map that we would put in through a
23 proper channel, as far as showing, you know, the direct
24 route from where he said he was and how he went home.

25 COURT REPORTER: I'm sorry, and what?

1 MS. CAMPBELL: And how he went home. Sorry.

2 We do have other witnesses, Your Honor, but as far
3 as any salient points, we did try to narrow it down to just
4 those.

5 THE COURT: What says the defense?

6 MS. PRINGLE: Your Honor, I would object on a
7 number of grounds.

8 First of all, I would turn the court's attention
9 to Rule 405, which sets forth the methods of proving
10 character. To the extent that we have opened the door to
11 traits of character, I would agree that we have opened the
12 door obviously to whether or not he's peaceable, whether or
13 not he's violent, a man with good judgment, a man who is
14 heterosexual.

15 The rules contemplate and require that the way
16 that the State handle opening of the door in that manner for
17 impeachment purposes is cross-examination. She had wide
18 latitude to cross-examine the defendant on the witness stand
19 about those things, but chose not to. The Court Rules
20 require you to ask questions in the form of, "well, did you
21 know," sort of what she did with the style of counseling
22 issues with one or two witnesses and that's how you impeach
23 those character witnesses. You are not now entitled to go
24 and have a mini trial on all of the flaws of his character,
25 and there is a reason for that. You don't have mini trials

1 on collateral issues. I'm not saying that she didn't have
2 the right to question about some of those things, but to now
3 offer what I'm certain are photographs, police officers,
4 testimony, a doctor, and I'll come back to that in a minute,
5 would be a spectacle.

6 They have brought in 12 guns, probably, 10 or 12
7 guns over here. I can't even imagine what that would be
8 probative of in this case. It doesn't go -- ownership of
9 guns, legal ownership of guns in this state in your own
10 home, most of which were registered with the military, is
11 not responsive to whether he's peaceable, whether he's
12 honest, whether he has good judgment when using force, and
13 whether or not he's heterosexual. Ownership of guns I would
14 submit is not probative of anything.

15 The notion that he was barricading is pure
16 speculation, unsupported by anything. If they are permitted
17 to go into that, then we will seek to offer testimony to
18 serve -- all -- someone back to the stand to talk about who
19 owns all those guns, where they came from, what the history
20 is. Many of them were belonged to the children. Josh
21 Parvin had one gun that stayed in the bed with him. You
22 know, we -- we would have to respond to that, but I think
23 that's why we don't have extrinsic evidence coming in on
24 collateral issues.

25 I'm going to let Mr. Shealey address the crime

1 scene investigator issue.

2 This attempt to bring out marital difficulties is
3 expressly related to Post Traumatic Stress Disorder. He --

4 THE COURT: Are you now testifying?

5 MS. PRINGLE: I'm sorry?

6 THE COURT: Are you now testifying?

7 MS. PRINGLE: I'm presenting arguments to the
8 court. If you do not wish to hear argument on that, then I
9 won't.

10 THE COURT: Well, you are making an argument based
11 on what's in the record, but for you to seek to influence
12 the court through testimony that is now submitted related to
13 Post Traumatic Stress Disorder, you need to establish a
14 basis for making such a --

15 MS. PRINGLE: I've asked my paralegal to grab the
16 exit interview that she's talking about and I'll hand it up
17 to you when she gets back.

18 All of the counseling would have been in the
19 context of Post Traumatic Stress. He sought treatment in
20 2007. That is well documented. I can hand those documents
21 up to the court. That may be something that if they go into
22 that, we then need to respond to with medical professionals
23 to talk about how PTSD affects you, which we were not
24 wanting to bring into this trial because we think it's not
25 probative of anything. But if they are going to suggest

1 that his marriage was falling apart and we have a context
2 for that, then I think we have to come back and put those
3 witnesses up.

4 THE COURT: Of course, there has been testimony
5 and the State has objected to, as you wanted to make
6 additional argument, and then I allowed you to go into it.
7 So now you are objecting to the State responding?

8 MS. PRINGLE: I don't think there is a way to go
9 into it without talking about PTSD, and I think PTSD has no
10 place in this trial. I think -- I think -- I think it's
11 unfair. I think they know what was going on with him. They
12 have had to deal with the records that I have, and it leaves
13 an implication out there that either I can respond to by
14 going into all of the PTSD, putting all these experts on the
15 witness stand, or we just leave hanging there that they were
16 suddenly having marital problems and that just happened to
17 coincide with the timing of this event.

18 THE COURT: All right, anything else before the
19 jury comes in?

20 MS. CAMPBELL: No, sir.

21 MR. SHEALEY: Just briefly, Your Honor.

22 As to the crime scene expert we put up, we
23 provided his CV. He did have extensive training in the
24 medical examiner's office in Georgia. He went into his
25 expertise in the area that he was qualified in and it wasn't

1 objected to at the time. There was no questioning of him,
2 so I would think it would be inappropriate to put Gary
3 Watts, who is an official here in South Carolina to say that
4 this isn't how we do it; therefore, this guy doesn't have
5 expertise. It's a different state. You know, it's
6 something that wasn't addressed in terms of his
7 qualifications, but he did say when I was qualifying him as
8 an expert he did have expertise in the medical side of it.
9 I just think it would be inappropriate, and he wasn't ever
10 couched as a deputy coroner. He was a chief investigator
11 for the medical examiner's office, so I don't think that
12 would be appropriate to say that that's not how we do it
13 here.

14 MS. PRINGLE: May I hand up the case law that I
15 was relying in arguing that this is not a matter because
16 this is beyond the scope of Rule 405?

17 One of these cases, State v. Derringer Young. I'm
18 handing up both the Court of Appeals and the Supreme Court
19 opinion. The Supreme Court actually overturned the Court of
20 Appeals opinion, but the Court of Appeals opinion to me was
21 instructive on that issue. The cites on those -- it's
22 Derringer, D-E-R-R-I-N-G-E-R, 661 S.E. 2d 387.

23 The other opinion is 613 S.E. 2d 386.

24 And State v. William Mizell, 504 S.E. 2d 338.

25 THE COURT: All right. What about Derringer Young

1 that's helpful to your argument?

2 MS. PRINGLE: Well, that case dealt with
3 restricting reply testimony. What I'm asking you to do is
4 restrict reply testimony.

5 There isn't a lot of case law on there about this
6 issue, but in that case ultimately the court did find that
7 the State should not have been allowed to go into
8 cross-examination on two priors, and that's -- you know,
9 that's -- that's dealing with most of the cases when we are
10 dealing with cross-examination.

11 THE COURT: We are talking about Derringer Young
12 right now. The defendant testified that he hated to see a
13 woman cry. And based on that testimony, the State tried to
14 introduce the record of his prior conviction for criminal
15 domestic violence and criminal sexual conduct, and the
16 Appellate Court stated he didn't open the door.

17 MS. PRINGLE: Correct.

18 THE COURT: That's a fact specific reference.
19 What else?

20 MS. PRINGLE: Well, I think one thing that I
21 thought about in that context was the manner and the motive
22 which they were attempting to do it. What they are seeking
23 to do here is introduce lots of new evidence, putting in
24 documents and photographs, and at issue there what was
25 excluded was simply the fact that he had those priors.

1 THE COURT: Well, I'm not seeking to rule on
2 every -- on whatever the State seeks to offer, because I
3 don't know what that is. I'll just rule on every item of
4 evidence that would be presented and objections are made,
5 but --

6 MS. PRINGLE: The earlier Court of Appeals
7 opinion, Your Honor, and I gave you my copy, was that it
8 goes through --

9 THE COURT: I'm listening.

10 MS. PRINGLE: It struck me that all of those cases
11 discuss this issue of Opening the Door Doctrine in terms of
12 what you are allowed to do on cross-examination, not
13 presenting extrinsic evidence in any manner, and I don't
14 know what else you are going to do either. I just wanted to
15 bring it up what I would anticipate.

16 THE COURT: I find that the defense has opened the
17 door to the State, giving the State the right to introduce
18 evidence to attack the defendant's credibility and has --
19 and the defendant has thus made relevant and admissible
20 evidence that the court previously ordered would be
21 inadmissible; specifically in the presentation of the
22 defense, the testimony of some of the witnesses that the
23 defendant represented that all aspects of the creed of the
24 Army regarding loyalty, duty, restraint, self service,
25 honor, integrity, personal courage, and that he was the

1 embodiment of all of those traits; that the evidence found
2 in the defendant's residence at the time he was arrested,
3 and specifically marijuana, marijuana paraphernalia in plain
4 open view is relevant testimony to impeach that character
5 evidence.

6 Further, that the defendant's testimony is that
7 the reason that he did not go outside to be arrested was
8 because it was safer for law enforcement to come inside his
9 home. And inside the home the defendant had what appeared
10 to be weapons displayed throughout the residence on beds and
11 other places, that that's relevant impeachment testimony.
12 The court, therefore, would allow the State to go into that
13 testimony.

14 The case of State v. Young, one of the cases cited
15 by the defense, states that it's well settled that if a
16 defendant places his character in issue, the State may offer
17 evidence of the defendant's bad character that the statement
18 did show by offering evidence in the form of prior
19 convictions, or other bad acts.

20 The defense in their -- in the brief submitted to
21 the court earlier today cited a publication of Warren Moise
22 on the issue of character. Mr. Moise has written a book,
23 Credibility and Character Evidence, a two volume set, in
24 which I am listed going on his distinguished editorial
25 board. He -- the book contains an entire chapter on the

1 subject "Opening the Door Into Otherwise Inadmissible
2 Evidence," and it outlines instances in which evidence is
3 introduced by the State, can be introduced once the
4 defendant opens the door on such an issue, as the defendant
5 has done in this case. Therefore, I'm going to allow the
6 reply testimony by the State.

7 The rule cited by the defense that occurred in the
8 State's ability to cross-examine, that rule does not
9 preclude the State from introducing testimony in reply, of
10 course, being limited strictly as to cross-examination of
11 defense witnesses.

12 That's the ruling by the court.

13 We will take a two minute stretch and bring the
14 jury in.

15 (Whereupon, proceedings were recessed)

16 (Whereupon, proceedings were reconvened)

17 MS. CAMPBELL: Judge, we have one final matter.

18 THE COURT: Yes.

19 MS. CAMPBELL: We have Dr. Taylor here, who is a
20 psychologist that actually put in the statement -- we are
21 limiting it to the two statements he made during an exit
22 interview where actually he was getting veterans benefits.
23 We would just ask that the court -- he would assert
24 privilege and ask that the court to instruct him and we will
25 limit any inquiry just as to these statements that are

1 relevant.

2 THE COURT: All right. What says the defense?

3 MS. PRINGLE: I don't know how he can testify to
4 some of them, but he can't testify to all of them. I don't
5 know what statements she's talking about, and I would object
6 to him testifying at all, if it please the court. It's
7 extraordinarily private stuff. It was an exit interview
8 conducted by the military.

9 THE COURT: All right.

10 MS. CAMPBELL: May I approach?

11 THE COURT: Yes.

12 MS. CAMPBELL: The highlighted portions on this.
13 This is an exit interview for veterans benefits. It's my
14 understanding in the department that there is an interview
15 conducted. The only thing we intend to elicit from those
16 statements, which we have already impeached other witnesses
17 with, just to show that there --

18 THE COURT: All right. These are matters in part
19 that have been cross-examined and --

20 MS. CAMPBELL: Yes, sir.

21 THE COURT: -- testified to in order -- the
22 witness can testify over objection.

23 MS. CAMPBELL: Thank you.

24 MS. PRINGLE: And just for the record, he doesn't
25 waive any privilege. He will be testifying over our

1 objections, and I do intend to go into additional here. I
2 have to respond to it.

3 MS. CAMPBELL: But at this time, Your Honor, if
4 she intends to go into that which she has expressly
5 throughout this entire trial excluded from this trial, that
6 we coached on multiple occasions to make sure we didn't, and
7 we did that at her request, mention Post Traumatic Stress
8 Disorder, we would be objecting to that.

9 THE COURT: Well, I will rule as it comes.

10 MS. CAMPBELL: Thank you, sir.

11 THE COURT: Bring the jury, please.

12 (The following takes place in the presence of the
13 jury panel)

14 THE BAILIFF: The jury is seated, Your Honor.

15 THE COURT: Thank you.

16 Ladies and gentlemen, you have heard the State's
17 case, the defendant's case. Now it's time for the State to
18 offer reply testimony.

19 You may proceed.

20 MS. CAMPBELL: Thank you, Your Honor.

21 The State calls David Collins.

22 OFFICER DAVID COLLINS, having been first duly
23 sworn, testified as follows:

24 THE CLERK: Have a seat in the witness box. State
25 your name for the record and spell it, please.

1 THE WITNESS: David Jeffery Collins,
2 C-O-L-L-I-N-S.

3 DIRECT EXAMINATION BY MS. CAMPBELL:

4 Q. Sir, where are you employed?

5 A. I'm employed by the Richland County sheriff's
6 department.

7 Q. And what do you do there, sir?

8 A. I'm a firearms and tool marks examiner. I'm the
9 technical leader or supervisor over the ballistics or
10 firearms analysis section of the sheriff's department.

11 Q. And can you tell this jury a little bit about your
12 education and your training that go to ballistics and
13 firearms comparison?

14 A. I received a Bachelor's Degree from the Citadel in
15 1984.

16 I was hired by the State Law Enforcement Division, or
17 SLED, in 1990, where I immediately began a training program
18 to be a firearms and tool marks examiner. That training
19 program lasted for approximately two and a half to three
20 years.

21 After successful completion of that course I was
22 certified by SLED as a firearms examiner and began case work
23 on my own.

24 Firearms examiner training is performed much like an
25 apprenticeship. There are no schools in this country that

1 give you the entire training required to be a firearms
2 examiner.

3 After becoming certified by SLED as a firearm examiner
4 and beginning doing case work on my own, I also continued to
5 receive training in the form of annual training seminars,
6 other classes that were provided to get that was necessary
7 throughout my career.

8 In 2002 I was hired by the Richland County sheriff's
9 department to establish a firearms laboratory in that
10 department, which I did, and that's where I have been
11 working since.

12 Q. And have you been qualified before as an expert in
13 firearms examination?

14 A. Yes, I have.

15 Q. And approximately how many times have you been
16 qualified?

17 A. I have qualified as an expert in firearms examination
18 in the State of South Carolina Circuit Courts in excess of
19 200 times. I have also been qualified in the States of
20 North Carolina and Georgia. I have been qualified in the
21 military court system and in the Federal Court system.

22 MS. CAMPBELL: Your Honor, at this time we would
23 offer him as an expert in firearms examination.

24 THE COURT: What says the defense?

25 MR. SHEALEY: I have no objection.

1 THE COURT: He's so admitted.

2 MS. CAMPBELL: Thank you, Your Honor.

3 BY MS. CAMPBELL:

4 Q. And we have got to limit it -- this is reply testimony,
5 limit it to just some very simple questions.

6 Basically there are -- in handguns typically there are
7 two different kinds of handguns?

8 A. Primarily, yes.

9 Q. And what are those two categories, sir?

10 A. The types we see most frequently are revolvers and
11 semiautomatic pistols.

12 Q. And as far as how the actual projectile is ejected, as
13 well as the shell casing, does that differ between those
14 two?

15 A. Yes, it does.

16 Q. Can you briefly explain that to the jury?

17 A. In a revolver the cartridges are loaded into the
18 cylinder of the firearm. And as the gun is fired, the
19 cartridge cases are not ejected from the revolver. They are
20 not removed until someone later manually unloads the
21 firearm.

22 In a semiautomatic firearm that is functioning
23 properly, every time the trigger is pulled, the gun will
24 fire and will eject a fired cartridge case close to the time
25 that the bullet exits the muzzle of the firearm. The

1 cartridge case is essentially a waste produce that was used
2 to carry and contain the projectile and the powder together.

3 Q. And when a cartridge casing is ejected from the gun, is
4 it done in the same manner on every gun?

5 A. Different firearms will have slightly different
6 ejection characteristics, depending on their design,
7 particularly depending on how the ejection port on the
8 firearm is designed and where the ejector device is located
9 on the firearm.

10 Q. And specifically, generally, do they exit out somewhere
11 near, within a few feet of where the gun is actually fired?

12 A. In the case of handguns, most of the time you will find
13 your cartridge cases in close proximity to where the
14 shooting actually occurred.

15 Q. And unless the firearm is actually recovered and the
16 actual ammunition is used, can you say anything about how
17 far it might eject, which way it may eject, or anything of
18 that nature?

19 A. No, we have to have the firearm itself, the one in
20 question, to do any kind of ejection comparisons. Each
21 individual firearm can eject differently even within the
22 same model. Some -- within, for instance, the 1911 A-1
23 style firearms, there could be a lot of variation from gun
24 to gun as to how it ejects, depending on the tradition and
25 nature of the ejector on the firearm and the ammunition

1 used.

2 Other variables at the scene can also play a
3 significant impact. The type of ground onto which the
4 cartridge case falls, is it in the original location where
5 it fell and or was it disturbed? Did somebody accidentally
6 kick it or step on it and move it to another location in the
7 web of their boot, or was it picked up by somebody curiously
8 and then dropped somewhere else? We have seen all these
9 occur.

10 Q. And in a crime scene investigation, is there any
11 magical way to say exactly how a shell casing got, say, from
12 this point further up, or anything like that?

13 A. No.

14 Q. And typically if a shell casing, say, if it was kicked,
15 even inadvertently, are you necessarily going to see any
16 kind of evidence that you can then later come and testify in
17 court?

18 A. There may or may not be any physical characteristics or
19 marks on the cartridge case that would indicate that it had
20 been kicked.

21 Q. And the actual shell casing itself is sort of round in
22 nature?

23 A. They are cylindrical, yes.

24 Q. And when something like that bounces, say on concrete
25 or things of this nature, can it travel for a good distance,

1 depending on how it's touched, moved, picked up, kicked,
2 whatever?

3 A. If a cartridge case falls onto a paved surface, it is
4 going to bounce some distance. That distance is variable
5 and hard to determine. After that, if it is disturbed, it's
6 going to have more of a tendency to move a distance than if
7 it was, for instance, in short or tall grass.

8 If we are going to perform an ejection pattern
9 analysis, one of the things we look for is did the cartridge
10 case fall to a surface where it is going to stay and where
11 it initially hit the ground. That is what we are looking
12 for. That is where we -- everything else starts putting too
13 many variables in play as to being able to use the pattern,
14 if you will, of the cartridge case on the ground to
15 determine where the shooter was. We like to see it fall
16 into something like tall grass, where you know that wherever
17 it landed is most likely exactly where it is located.

18 Q. You mentioned variables at the scene that affect how
19 the shell cases may end up on the ground. Objects being
20 laying around when the shooting take place, can that affect
21 it?

22 A. Yes, it can bounce off of a nearby object and land
23 someplace else at the crime scene than you may otherwise
24 expect to find it.

25 Q. And, in fact, could it even bounce off the person

1 that's shooting it themselves?

2 A. Yes, I personally own a pistol that does --

3 MR. SHEALEY: Objection, Your Honor.

4 THE COURT: Objection is overruled.

5 MS. CAMPBELL: Thank you.

6 BY MS. CAMPBELL:

7 Q. Go ahead, sir.

8 A. I personally own a firearm that does eject and
9 sometimes back straight into my face, and so that would have
10 an impact on where they were found. It doesn't do it
11 routinely, but it only does it some of the time.

12 Q. And say if the victims were close in the area as well,
13 it could affect it?

14 A. Yes.

15 Q. And how the gun is held and how the gun is shot, can
16 that affect whether or not if it's discharging to the right
17 or the left where it may go?

18 A. Yes, the orientation of the firearm is important. If
19 the person is holding the gun vertically in the manner that
20 you normally would see a gun fired, it's going to eject one
21 direction.

22 If you turn the gun in another direction, it's going to
23 have an impact on where the cartridge cases will eject to.
24 For instance, if you turn the gun sideways, it will eject to
25 a different location than if it is held vertically.

1 Q. And in a crime scene where there are a number of
2 cartridge cases, in this case I believe the total of eight,
3 the general area where you find the majority of them may be
4 significant?

5 A. I would say that that would be an indication more
6 closely the general area in which the shooter was when he
7 fired the gun.

8 Q. But, again, you can't say exactly?

9 A. No.

10 Q. Even if you had been to the scene yourself?

11 A. No, ma'am. If I had the opportunity to test fire the
12 firearm with the exact same type of ammunition that was used
13 in the incident, I may be able to give you a more close
14 indication as to where he might be. However, in order to do
15 that, you still need additional information. You still a
16 need a direction of fire to be established, usually by some
17 fixed damage at the scene into which you could put a probe
18 to establish the direction of fire so that you could place
19 the firearm along an axis, a long a line, to correlate with
20 the ejection pattern on the ground.

21 Q. Okay. And typically do you do ejection pattern
22 testing?

23 A. Not unless all of the variables that we need are in
24 place and is specifically requested by the customer.

25 Q. There were also mention of that there were multiple

1 gunshots at this scene, but only a couple of projectiles
2 were recovered. Is that unusual?

3 A. It's not unusual.

4 Q. Why?

5 A. Well, bullets travel through an object or they may not
6 be found. If they may have gone outside the scene, they may
7 have struck an object and deflected to some location where
8 they would not be expected to be found. It's not unusual to
9 not recover firearm projectiles. And sometimes projectiles
10 will actually fragment into smaller pieces that are much
11 harder to locate.

12 Q. When a person is shot with a pistol, such as a
13 45-caliber pistol, as the bullet entered, what kind of
14 impact or what is the body typically going to do?

15 A. Contrary to public opinion and what you might see on
16 TV, bullets don't tend to just knock somebody down
17 physically. What you end up with is -- sometimes you might
18 have a physical or psychological reaction to being shot that
19 would cause you fall, but what happens is the bullet will
20 typically pass into the body depositing some energy in the
21 body. If it passes through the person, it's going to be
22 carrying some portion of that energy with it as it goes.

23 So the person, if they are moving in a certain
24 direction, you know, forwards or backwards, they are going
25 to probably tend to -- momentum is going to carry them in

1 the direction they were moving, rather than being grossly
2 impacted by the projectile.

3 Q. So it's not like you see in the movies where it knocks
4 them off their feet?

5 A. That is correct. Hollywood does a great disservice to
6 showing how bullets impact people and how that reacts.

7 Q. And, finally, sir, as far as being -- are you familiar
8 with the Norinco 45-caliber?

9 A. I have examined them in the past, yes.

10 Q. And what type of gun is that?

11 A. That is a 1911 A-1 copy. It's a copy of the Colt 1911
12 A-1 pattern semiautomatic pistol.

13 Q. And how was it developed and what was its purpose?

14 A. The original Colt 1911 A-1 pistol was designed in
15 response to an Army request for a caliber in firearm that
16 would have more power than what they were using at the time,
17 which was the 38-Special or 38-caliber revolvers. This was
18 due to situations they were having in the war in the
19 Philippines, which occurred around the turn of the century,
20 and the individuals that they were having to fight were
21 highly motivated and difficult to stop with a 38-caliber
22 pistol, so they adopted the 45-caliber round as an answer to
23 that.

24 Q. And how was it an answer to that?

25 A. It fires a heavier projectile, not of high velocity,

1 but a sufficient velocity to cause greater tissue damage.

2 Q. To more or less stop them?

3 A. To be more of a stopping type of round.

4 Q. Thank you, sir.

5 MS. CAMPBELL: I have nothing further.

6 THE COURT: By the defense?

7 MR. SHEALEY: May it please the court?

8 CROSS EXAMINATION BY MR. SHEALEY:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. You haven't been to this scene, have you?

12 A. No, I have not.

13 Q. Did Ms. Campbell get you to review Yvonne Woods crime
14 scene report?

15 A. No, I did not.

16 Q. Did she get you to review Terry Gleason's firearm
17 analysis report?

18 A. I did review that as part of my duties as her
19 supervisor before she issued the report, yes.

20 Q. Right. Right. Right.

21 Now, generally in a Norinco is what we are talking
22 about, it's generally -- when you don't have the exact gun,
23 generally it's going to eject rearward and to the right, if
24 you are holding it in the standard fashion?

25 A. If it's functioning, as most of them do, the 1911 A-1

1 pattern firearms, that's the way it would normally eject,
2 yes.

3 Q. Right. And is it fair to say that rearward and to the
4 right a couple feet, three feet?

5 A. Without test firing that specific firearm with the
6 ammunition used, I would be unable to give you any idea as
7 to how far it would eject.

8 Q. But rearward and to the right, that's --

9 A. Typically.

10 Q. Typically.

11 And here -- have you had a chance to review all the
12 photos and look at all the shell casings that were recovered
13 in this case?

14 A. I have seen photographs of the shell casings. I have
15 not physically examined them myself, no.

16 Q. Okay. And in the photographs, you haven't seen any
17 evidence of damage to any of the shell casings, right?

18 A. I'm not aware of any, no.

19 Q. Okay. Nothing to indicate a problem with ejection, or
20 stove piping, or anything like that?

21 A. The photo micrographs that I saw in the case file of
22 the heads of the cartridge cases did reveal multiple
23 ejection marks, indicated that some of them had been loaded
24 into and extracted from a firearm multiple times. That's
25 all I can state on that.

1 Q. There is nothing here that you can look at that
2 indicates that this particular weapon was misfiring in any
3 way?

4 A. No.

5 Q. And we realize that in here -- have you had a chance to
6 review her actual crime scene diagram?

7 A. I have seen the diagram, yes.

8 Q. So you are familiar with the fact that there is six
9 shell casings found, either on the gate or forward, and
10 there is two found outside the fenced-in area, correct?

11 A. I'm familiar with where they were located, but not the
12 dimensions or distances of those are from any particular
13 item.

14 Q. Okay. So you are not familiar with Yvonne Woods exact
15 measurements?

16 A. No, I'm not.

17 Q. So you are not familiar that she's measured AA to this
18 right tree as being over 10 feet?

19 A. I'm not familiar with that, but --

20 Q. And that the distance from AI to this right tree as
21 being 11 feet, or more?

22 A. I'm not familiar with that measurement, no.

23 Q. Does it look fair, according to this scale, to you?

24 A. It could be, yes..

25 Q. Okay. Now, law enforcement -- I mean, you guys and Ms.

1 Gleason are trained to try to, you know, examine firearms
2 and decide what was shot from what gun, and the general
3 characteristics, and things like that, but -- but you have
4 been working at SLED, right, in the past?

5 A. I have. I worked at SLED from 1990 to 2002.

6 Q. And you have been working at Richland County for a good
7 while?

8 A. Yes, sir.

9 Q. And you are aware, and this is helpful to you, that
10 they train their officers to secure a crime scene, right?

11 A. As soon as they arrive, yes.

12 Q. Right. They train their officers, especially when they
13 are talking about a shooting, to look for possible evidence
14 and not disturb it, right?

15 A. That is correct.

16 Q. So this is something that these responding officers are
17 particularly looking for, because that only messes up your
18 job? If they are stomping shell casings around and kicking
19 things wildly, it's hard for Yvonne Woods, it's hard for you
20 to help piece together what happened, right?

21 A. Yes, if they -- if they can see the evidence themselves
22 and are able to secure it in such a fashion, that is true.

23 Q. Right.

24 A. Sometimes it's the case that the first responding
25 officers to get to the scene don't know exactly what is

1 going on, they are trying to secure the scene and they
2 themselves may inadvertently kick a cartridge case or
3 something to that effect to move it from its original
4 location, because their first -- their first concern is
5 going to be the safety of the scene from the people that are
6 coming on after them - the EMS, the personnel, and whoever
7 else might need to arrive. So they may not initially be
8 looking for evidence on the ground, but their concern is
9 securing the scene for safety purposes.

10 Q. Right. But they also don't want to unnecessarily mess
11 the crime scene up?

12 A. That's true.

13 Q. You know, I don't know where you started your career
14 originally, but did you ever -- did you ever go to the
15 police academy?

16 A. Yes, I did.

17 Q. Okay. They taught you how to use a weapon?

18 A. Yes.

19 Q. And they taught you the best way to fire a weapon,
20 right?

21 A. They taught me the way that they train you to shoot
22 firearms.

23 Q. What's going the most accurate, which is stand there,
24 you know --

25 A. Yes, sir, with that gun held vertically.

1 Q. And the whole point is for law enforcement so they are
2 not -- you want them to be accurate when they decide it's
3 time to use their weapon, right?

4 A. That is true.

5 Q. And they -- like other agencies that train to be
6 proficient, they are not going to teach you necessarily to
7 shoot like this at somebody, are they?

8 A. No, sir.

9 Q. You were never taught that?

10 A. No, I was not.

11 Q. Now, you did talk about with Ms. Campbell if you had
12 shot like that, you know, potentially it would eject maybe
13 in towards your body, or something like that, correct?

14 A. It would alter the direction of the ejection of the
15 cartridge case.

16 As I mentioned before in my testimony, I have a firearm
17 that's also a 1911 A-1, the same pattern firearm, that will
18 sometimes throw them back on me held in the correct fashion,
19 vertically.

20 Q. Right, and that might just stop it at your feet, if it
21 threw them back into you?

22 A. It may, yes.

23 Q. But the law enforcement -- the officers in the police
24 academy, people who are trained to use weapons, aren't
25 getting trained to shoot that way, right?

1 A. No, sir, they are not.

2 Q. That's more Hollywood like you were talking about?

3 A. They -- they may train to do some canting of the
4 firearm, depending on how you are shooting the gun. Some
5 there are -- if you are shooting one handed, we were trained
6 to cant the gun slightly, which would also alter the
7 ejection pattern, but by and large if you are using both
8 hands on the firearm, the gun would be held vertically, the
9 way that we are trained.

10 Q. Right.

11 Let's say you even took that gun that you are talking
12 about that is misfiring and kicking back into you, if you
13 were out here standing and shooting all from the fence line,
14 even if it was misfiring, you would have a bunch of shell
15 casings out here, wouldn't you, if it was kicking right into
16 you?

17 A. That's where they may originally fall to rest, if
18 that's where they -- if they stayed there, yes, you might
19 find them there.

20 Q. Okay. And if even with that misfiring gun, if it was
21 kicking right back into you and you were shooting up in this
22 region, you would have a lot of shell casings up in this
23 region, wouldn't you? Typically you expect to find that?

24 A. I would expect to find -- you would generally expect to
25 find most of the cartridge cases in closer proximity --

1 fairly close proximity to where they initially -- where they
2 are located at the scene, provided they weren't disturbed.

3 For being able to narrow down whether they were
4 disturbed from the moment after they were fired until they
5 were recovered or documented by the crime scene personnel,
6 that is the reason why we always look at this very carefully
7 and don't put a whole lot of emphasis on ejection patterns
8 under many circumstances.

9 Q. Right. And you have already testified that none of the
10 shell casings that you looked at looked like they had been
11 stomped on, or flattened, or disturbed?

12 A. I didn't -- again, I did not visually examine these
13 cartridge cases. I didn't -- so I did not have any
14 indications of that.

15 You know, we have done some informal studies by just
16 simply going out in the parking lot with a cartridge case
17 and stomping on it to see what it did. If you step on a
18 paved surface hard on a cartridge case, you are going to get
19 some markings; but if it simply bounces a few times on
20 pavement, you may or may not get any markings that would
21 lead you to indicate that it had been so disturbed.

22 Q. And there is just no evidence of that in this case that
23 you could say?

24 A. Not to my knowledge.

25 Q. These are good Richland County sheriff's deputies that

1 are trained not to disturb them? That's fair?

2 A. And quite often it's not the deputies that are going to
3 be responsible for this disturbance. It might be what
4 happened from the time the shots are fired until the
5 deputies arrive is the big intangible that we can't -- we
6 can't always verify what happened, but when there are a lot
7 of people running through the crime scene, family members,
8 concerned family members, all of this could lead to
9 increasing the likelihood of an item being disturbed or
10 moved inadvertently from this location.

11 Q. Right. And I know we don't have the exact gun here,
12 but generally talking about the Norinco again, if you have
13 all eight shots fired here with the ejection pattern going
14 generally rearward and to the right, you are not going to
15 expect to have a whole bunch of shell casings up here, are
16 we?

17 A. A lot of it would depend on the direction of fire. I
18 would not expect to find a lot of cartridge cases up in that
19 area if the gun was not fired there.

20 Q. Right.

21 A. It's -- you know, in a case like this where you
22 can't -- you don't know if the shooter was moving from one
23 location to the other during the event. You don't know --
24 or at least I have no knowledge of that. You don't have any
25 indication as to whether he was static, that is, in one

1 location, and you don't have any information as to whether
2 the cartridge cases may have been moved. With that degree
3 of spread on the cartridge cases, I would be hesitant to
4 render any type of conclusion as to where he may or may not
5 have been standing.

6 Q. Right. You could say generally you can be sure that
7 all of these -- all of these shots being fired, all eight,
8 were not fired from in here facing that general or
9 direction, if you have it kicking rear and to the right?
10 That's a fair estimate, isn't it?

11 A. With those -- with the preponderance of the cartridge
12 cases being found inside the fence, it would be more likely
13 that they would -- that the shooter would have been inside
14 the fence when those shoots were fired.

15 Q. Right.

16 A. But right now, based on my observations from here, I
17 see three outside the fence and five inside the fence. What
18 I would be more comfortable saying is that most of the
19 shooting took place in the general location of the fence or
20 the opening of the fence.

21 Q. And, certainly, even with a misfiring Norinco, you are
22 not going to have it eject itself forward 15, 20 feet, are
23 you? That's something you are not likely to see?

24 A. You would not likely see that with that type of
25 firearm.

1 Q. Okay.

2 MR. SHEALEY: Beg the court's indulgence.

3 (Off the record)

4 (Back on the record)

5 MR. SHEALEY: Nothing further, judge.

6 MS. CAMPBELL: Nothing further, Your Honor.

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

8 Next witness.

9 MS. SIMPSON: The State calls Chief Roland Hill.

10 THE CLERK: Mr. Hill, you remain under oath.

11 THE WITNESS: Okay.

12 THE CLERK: Thank you.

13 State your name for the record, please.

14 THE WITNESS: Roland Hill.

15 DIRECT EXAMINATION BY MS. SIMPSON:

16 Q. Good afternoon, Chief Hill.

17 I know that you were here earlier in this case. Remind
18 the jury again what you do.

19 A. I'm the chief of criminal investigations for the
20 Directorate of Emergency Services at Fort Jackson, South
21 Carolina.

22 Q. And can you tell us a little bit about your background
23 and career within the military?

24 A. Yes, ma'am. I have a little over 20 years of military
25 law enforcement experience as an active duty member, and the

1 last 13 was as a special agent with the Army Criminal
2 Investigation Command, and I am currently the chief of
3 investigations for the Directorate of Emergency Services. I
4 have been with them for the past eight years and as chief
5 the past five years.

6 Q. And are you familiar with the Don't Ask Don't Tell
7 Policy that was in place from 1993 to 2011, this year?

8 A. Somewhat, yes, ma'am.

9 Q. And if there were allegations under that policy of a
10 soldier being homosexual or engaged in what might be deemed
11 homosexual activity, what procedures would take place?

12 A. Well, during that policy it become more of an
13 administrative-type investigation versus a criminal, which
14 means the unit commander would have purview of that type of
15 investigation and the unit commander then can initiate
16 investigation into those particular allegations.

17 Q. And if a soldier was, I guess, found to have engaged in
18 homosexual activity, could he or she be separated from the
19 military?

20 A. That is correct, yes.

21 Q. And would there be other possible consequences, such as
22 a loss of military benefits?

23 MS. PRINGLE: Objection, leading.

24 THE COURT: Objection sustained.

25 BY MS. SIMPSON:

1 Q. Would there be other consequences as well?

2 A. Yes, ma'am. There could be a loss of retirement pay,
3 if they hadn't made it to 20 years to obtain their
4 retirement. It could be a loss in Tricare-type health
5 benefits as well.

6 Q. Thank you.

7 A. Yes, ma'am.

8 MS. PRINGLE: If it please the court.

9 THE COURT: Yes.

10 CROSS EXAMINATION BY MS. PRINGLE:

11 Q. Good afternoon.

12 A. Good afternoon, ma'am.

13 Q. I believe you said that you are somewhat aware of the
14 policy, is that correct?

15 A. That's correct.

16 Q. Is that what you said?

17 A. Correct.

18 Q. So you are somewhat aware from just being in the
19 military?

20 A. Well, there was a time before Don't Ask Don't Tell
21 where it was a criminal-type investigation. I'm going to
22 say it's homosexual activity, so we did used to investigate
23 those crimes until that point.

24 Q. Which left you somewhat aware?

25 A. That's correct.