

ORIGINAL

VOLUME ONE OF TWO

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Stephen H. John, Circuit Court Judge

Case No.: 2012-GS26-02679
Appellate Case No.: 2014-001679

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SC Court of Appeals

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The State,

Respondent,

v.

Vivian Schrader-Falls,

Appellant.

RECORD ON APPEAL

Beth B. Richardson, Esquire
Benjamin R. Gooding, Esquire
SOWELL GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
Tel. No.: (803) 929-1400

Robert M. Dudek, Esquire
Division of Appellate Defense
S.C. COMMISSION ON INDIGENT
DEFENSE
rdudek@sccid.sc.gov
1330 Lady Street, Suite 401
Post Office Box 11286
Columbia, South Carolina 29201
Tel. No.: (803) 734-1330
Attorneys for Appellant

Alan Wilson
Assistant Attorney General

John W. McIntosh
Chief Deputy Attorney General

Donald Zelenka
Senior Assistant Deputy Attorney General

William Edgar Salter, III
Senior Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

Jimmy A. Richardson, II
Solicitor, Fifteenth Judicial Circuit
P.O. Drawer 1276
Conway, SC 29528
(843) 915-8608

Attorneys For Respondent

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
STATE OF SOUTH CAROLINA,)
vs.)
VIVIAN LYNN SCHRADER FALLS,)
DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-GS-26-02679

**ORDER GRANTING DEFENDANT'S
MOTION TO RECONSIDER DENIAL
OF EARLY PAROLE ELIGIBILITY
PURSUANT TO S.C. CODE § 16-25-90**

This matter came before the Court on a Motion to Reconsider the Court's denial of Defendant's Motion for Early Parole Eligibility Pursuant to § 16-25-90, Code of Laws of South Carolina, 1976, as amended. Defendant was represented by Eric Fox, Esq. and Kia Wilson, Esq. of the Fifteenth Circuit Public Defender's Office. The State was represented by Assistant Solicitor Scott Graustein, Esq. of the Fifteenth Circuit Solicitor's Office. The Defendant was convicted of Murder by a jury on May 8, 2014, and received a sentence of thirty (30) years in prison. Contemporaneous with the consideration and imposition of the Defendant's sentence, the Court denied a motion by defense counsel for a ruling under § 16-25-90 making Defendant eligible for early parole after serving one-fourth of the sentence.

PROCEDURE

"The circuit court must make specific findings in ruling on parole eligibility or ineligibility under § 16-25-90." *State v. Blackwell-Selim*, 392 S.C. 1, 4, 707 S.E.2d 426, 428 (2011). Section 16-25-90 provides that:

... an inmate who was convicted of ... an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to ... an offense against the household member ... presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member.

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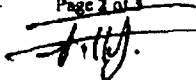
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HORRY COUNTY

S.C. Code Ann. (1976 as amended). "Such a history [of criminal domestic violence] must be proven by a preponderance of the evidence." *Blackwell-Selim*, 392 S.C. at 3-4, 707 S.E.2d at 428 (citing *State v. Grooms*, 343 S.C. 248, 254, 540 S.E.2d 99, 102 (2000)). "Therefore, mere production of evidence does not automatically result in earlier parole eligibility; instead, the defendant must persuade the judge by presenting proof which leads the trier of fact to find that the existence of the contested fact is more probable than its nonexistence." *Grooms*, 343 S.C. at 253-54, 540 S.E.2d at 101-02 (citing 2 *McCormick* on Evidence § 339 (5th ed. 1999)). "Use of the term 'credible evidence' indicates the legislature intended the defendant's evidence to be, in fact, trustworthy, not simply plausible The defendant must persuade the judge her evidence is reliable." *Blackwell-Selim*, 392 S.C. at 4, 707 S.E.2d at 428.

FINDINGS

The Court finds Defendant's trial testimony to be credible and reliable regarding the existence of a relationship between herself and the victim and the fact that she and the victim cohabitated. Defendant's testimony regarding her relationship with the victim and their cohabitation was also corroborated at trial by the testimony of her daughters, Vanessa Kay Johnson and Rosanna Marie Pegg. Therefore, the Court finds that the victim in this matter, in relation to the Defendant, meets the definition of a household member as envisioned by § 16-25-90.

The Court also finds the trial testimony of Beverly Saylor and defense expert Vicky Borbus credible and reliable. Both Ms. Saylor and Ms. Borbus testified regarding specific instances of criminal domestic violence experienced by the Defendant at the hands of the victim. This testimony was also corroborated at the hearing of the instant motion by defense witnesses Ann Rich and Raphael Falls. The Court finds this evidence to be persuasive that a history of criminal domestic violence was more probable than not despite the fact that the victim had neither a prior criminal history nor any documented history of domestic violence. In making its findings, the Court did not consider testimony or evidence of prior



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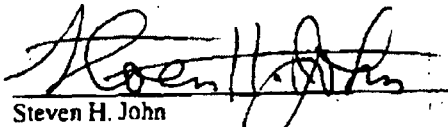
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domestic abuse suffered by the Defendant at the hands of third parties. Therefore, while this is a close question, the Court finds that the Defendant has proven, by a preponderance of the evidence, a history of criminal domestic violence suffered by the Defendant at the hands of the victim, a household member.

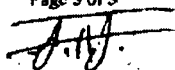
While I do not believe I now have the jurisdiction to amend my earlier sentence of the Defendant of thirty (30) years, for future consideration at any parole hearing, the Court states that its earlier denial of the Defendant's Motion for Early Parole Eligibility on May 8, 2014, was factored into the Court's sentence of the minimum thirty (30) years imprisonment. The Court believes that serving seven and a half (7.5) years (i.e. one-fourth of a thirty year sentence) would be both inappropriate and inadequate for the crime the Defendant committed. Furthermore, had the Court granted the Defendant's Motion for Early Parole Eligibility on May 8, 2014, the Court would have imposed a sentence of forty-one (41) years.

Notwithstanding, it is therefore

ORDERED that Defendant is eligible for early parole after serving one-fourth of her sentence for murder pursuant to § 16-25-90.


Steven H. John
Resident Judge
Fifteenth Judicial Circuit

July 14, 2014
Conway, South Carolina



STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF HORRY) 2012-GS-26-02679

STATE OF SOUTH CAROLINA)
-vs-) TRANSCRIPT OF RECORD
VIVIAN SCHRADER-FALLS) May 5-8, 2014
Conway, South Carolina

B E F O R E:

HONORABLE STEVEN H. JOHN, Circuit Judge.

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

SCOTT E. GRAUSTEIN, ESQ.
ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

ERIC FOX, ESQ.
KIA T. WILSON, ESQ.
OFFICE OF THE PUBLIC DEFENDER
ATTORNEYS FOR DEFENDANT

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

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1 **(THE FOLLOWING TAKES PLACE ON MONDAY, MAY 5, 2014,**
2 **WITHIN THE PRESENCE OF FORTY-FIVE MEMBERS OF THE JURY**
3 **VENIRE.)**

4 **THE COURT:** All right, ladies and gentlemen, the State
5 of South Carolina has charged the Defendant, Vivian Lynn
6 Schrader-Falls with the crime of murder. Now, in this
7 particular case, the indictment or the charging document,
8 I'm going to read to you some basic information that is in
9 that. The only reason I'm reading to you the indictment is
10 to see if you happen to know anything about the facts that
11 are alleged in the indictment.

12 Now, the indictment is the charging document, the
13 document which brings the matter to Court. It is not
14 evidence. It cannot be considered by anyone as evidence in
15 the case. Again, the only reason I'm reading it to you is
16 to see if you happen to know anything about this particular
17 case, and in the -- this particular matter, the Defendant
18 has pled not guilty and sets forth a defense of a battered
19 spouse, and that is one of the reasons you had the hand-out
20 and the questions that were asked of you, and if that leads
21 to some further questions regarding the panel, I'll do that.

22 Now, regarding the indictment, the charge that has been
23 brought by the State of South Carolina, the State charges
24 that Vivian Lynn Schrader-Falls did in Horry County on or
25 about March 31, 2012, wilfully, feloniously, and

1 intentionally kill the victim, Tony Hughes, with malice
2 aforethought, either express or implied, by means of
3 shooting him several times with a handgun, and the victim
4 did die as the proximate result thereof on or about March
5 31, 2012, in Horry County, in violation of the Code of Laws
6 of the State of South Carolina, 1976 as amended.

7 Is there any member of the jury panel that knows
8 anything about the facts of this particular case? If so,
9 please stand. (No response.)

10 All right. Now, and again, we'll go to some particular
11 questions that I ask you in a minute, but I'm going to go
12 through the general questions that we would ask in every
13 criminal case and we'll go through those first regarding a
14 jury.

15 The possible or potential witnesses in this case are as
16 follows: Detective Neil Frebowitz, Horry County police
17 department; Detective Alex Smith, Horry County Police
18 Department; Officer Steven Rhew, that's R-H-E-W, Horry
19 County Police Department; Dr. Edward Proctor; Jill Domogauer
20 of the Horry County Police Department; William Odom; Diane
21 Movsky, M-O-V-S-K-Y; Ryan McCarty; James Hughes; Amy
22 Stephens of the South Carolina Law Enforcement Division;
23 Allison Goss or Goss, G-O-S-S; Lisa Seabrook; James Green,
24 South Carolina Law Enforcement Division; Ila Sinnens, South
25 Carolina Law Enforcement Division; and Sarah Hughes; also,

1 Vivian Schrader-Falls; Vicki Bourus; Ann Rich; Beverly
2 Saylor; Candace Taylor.

3 Is there any member of the jury panel that is related
4 by blood or marriage, close personal friends, acquaintances
5 of or knows any of these possible or potential witnesses?
6 If so, please stand. (No response.)

7 All right. Is there any member of the jury panel that
8 you, yourself, or a member of your immediate family has ever
9 had any matter of any kind, doesn't matter what it is, any
10 matter of any kind, handled or touched in any way by the
11 Fifteenth Circuit Solicitor's Office? That's the
12 prosecuting office that covers Horry and Georgetown County.
13 If so, please stand. (No response.)

14 Is there any member of the jury panel that either you,
15 yourself, or a member of your immediate family has ever had
16 any matters handled in any way, again, any kind of matter
17 whatsoever, it doesn't matter, handled in any way by the
18 Horry County or Georgetown County Public Defender's Office?
19 If so, please stand.

20 All right. Yes ma'am. The lady in the back, and just
21 -- if you'll just remain for just a second. You -- were you
22 standing in regard to the first question?

23 **JUROR NUMBER 286:** Yes.

24 **THE COURT:** All right. The first one? Yes ma'am.

25 Were both of you regarding the first question or the

1 second one? Do you remember?

2 **JUROR NUMBER 286:** I was.

3 **THE COURT:** Okay. Was it the Solicitor's Office or the
4 Public Defender's Office, how about that, the prosecuting
5 office or the defense?

6 **JUROR NUMBER 286:** I guess the prosecuting office.

7 **THE COURT:** Okay. All right. Very good. Now, was it
8 yourself or a family member? Don't tell me anything about
9 it. Was it yourself or a family member?

10 **JUROR NUMBER 286:** A family member.

11 **THE COURT:** A family member. All right, ma'am. Again,
12 without any information, can you give to the State of South
13 Carolina and to the Defense a fair and impartial trial? Can
14 you be a fair and impartial juror in this case?

15 **JUROR NUMBER 286:** Yes sir.

16 **THE COURT:** Thank you very much, ma'am. Have a seat.

17 **MR. FOX:** Her juror number, please?

18 **THE COURT:** I'm sorry.

19 Yes ma'am, your name and juror number, please.

20 **JUROR NUMBER 286:** Elizabeth Marsh, 286.

21 **THE COURT:** All right. Very good.

22 All right. Yes ma'am, the lady that stood up. Yes
23 ma'am.

24 **JUROR NUMBER 337:** Juror Number 337. It was a family
25 member.

1 **THE COURT:** All right. And that was with the Public
2 Defender's Office?

3 **JUROR NUMBER 337:** I'm not sure.

4 **THE COURT:** Okay, but it was one of the two, the
5 Solicitor's Office or the Public Defender's Office?

6 **JUROR NUMBER 337:** Yes.

7 **THE COURT:** Okay. All right. And it was a family
8 member. Then the qualification question. Can you give to
9 the State of South Carolina and the Defense a fair and
10 impartial trial? Can you be a fair and impartial juror in
11 this case?

12 **JUROR NUMBER 337:** Yes.

13 **THE COURT:** Thank you very much, ma'am.

14 All right. Yes ma'am.

15 **JUROR NUMBER 286:** About thirty years ago ---

16 **THE COURT:** Don't tell me. I don't want you to tell me
17 anything.

18 **JUROR NUMBER 286:** I wasn't sure I understood the ---

19 **THE COURT:** All right. Very good.

20 How about tell me your name and juror number first.

21 **JUROR NUMBER 240:** Elizabeth Joyner-Dorrell, Juror
22 Number 240.

23 **THE COURT:** All right. So let me see if I can explain
24 the question to you, but don't volunteer any information to
25 me just yet, all right?

1 **JUROR NUMBER 240:** All right.

2 **THE COURT:** Okay. What I'm asking is was it yourself
3 or a -- you know, family member, a current family member,
4 that had a matter of any kind that was handled -- it could
5 be -- it didn't even need to lead to a prosecution, but in
6 some way the Solicitor's Office, the prosecuting office, for
7 the Fifteenth Circuit touched that case in some way, or the
8 Public Defender's Office in Horry County or Georgetown
9 County touched the case in some way.

10 **JUROR NUMBER 240:** The answer is yes.

11 **THE COURT:** All right. Very good. And was it the
12 Solicitor's Office or the Public Defender's Office?

13 **JUROR NUMBER 240:** The Solicitor's Office.

14 **THE COURT:** All right. Very good. The qualification
15 question is can you give to the State of South Carolina and
16 to the Defense a fair and impartial trial? Can you be a
17 fair and impartial juror in this case?

18 **JUROR NUMBER 240:** Yes.

19 **THE COURT:** Thank you very much, ma'am. Thank you.
20 Anyone else? (No response.)

21 All right. Is there any member of the jury panel
22 that's related by blood or marriage, close personal friends,
23 acquaintances of anybody employed at the Fifteenth Circuit
24 Solicitor's Office, either here in Horry County or in
25 Georgetown County? If so, please stand. (No response.)

1 Is there any member of the jury panel that's related by
2 blood or marriage, close personal friends, acquaintances of
3 anybody employed in the Public Defender's Office, either in
4 Horry County or Georgetown County? If so, please stand.

5 (No response.) All right. Very good.

6 Solicitor, if you would stand and identify yourself,
7 please.

8 **MR. GRAUSTEIN:** Scott Graustein.

9 **THE COURT:** All right, sir.

10 And, Mr. Fox, if you would stand and identify yourself,
11 please.

12 **MR. FOX:** Eric Fox. I'm with the Horry County Public
13 Defender's Office. This is Ms. Vivian Schrader-Falls, my
14 client, and with me as well is Kia Wilson.

15 **THE COURT:** Thank you.

16 Is there any member of the jury panel that's related by
17 blood or marriage, close personal friends, acquaintances of,
18 knows any of the attorneys or the parties that have
19 identified themselves to you? If so, please stand. (No
20 response.)

21 All right. Is there any member of the jury panel that
22 you believe -- and let's just discount the -- if you
23 responded yes to one of the written questions, let's -- I'll
24 deal with that at the very end, so in this particular
25 question, I'm just talking about it in general. Is there

1 any member of the jury panel that you believe you have any
2 kind of personal, or political, or religious, or
3 philosophical belief that you believe prevents you from
4 being a fair and impartial juror? If so, please stand. (No
5 response.)

6 Is there any member of the jury panel that you were a
7 former law enforcement officer or you've got a current
8 family member who is now in law enforcement or was in the
9 past in law enforcement? If so, please stand.

10 All right. Very good. Starting with the front row,
11 yes ma'am, your name and juror number, please.

12 **JUROR NUMBER 371:** Lindsey Rider, Juror Number 371.

13 **THE COURT:** And who might that be, please, ma'am?

14 **JUROR NUMBER 371:** My brother, Horry County Police
15 Department.

16 **THE COURT:** All right. Very good. Can you give to the
17 State of South Carolina and to the Defense a fair and
18 impartial trial? Can you be a fair and impartial juror in
19 this case?

20 **JUROR NUMBER 371:** Yes sir.

21 **THE COURT:** Thank you very much.

22 Yes sir. Name and juror number, please.

23 **JUROR NUMBER 321:** Brian Muldowney, 321.

24 **THE COURT:** Yes sir.

25 **JUROR NUMBER 321:** My father who retired as a police

1 officer.

2 **THE COURT:** And from -- from where, please?

3 **JUROR NUMBER 321:** New Jersey.

4 **THE COURT:** New Jersey, all right. Can you give to the
5 State of South Carolina and to the Defense a fair and
6 impartial trial? Can you be a fair and impartial juror in
7 this case?

8 **JUROR NUMBER 321:** Yes.

9 **THE COURT:** Thank you very much.

10 All right. Yes ma'am, behind him.

11 **JUROR NUMBER 1:** Marilyn Adams, Juror Number 1.

12 **THE COURT:** And ---

13 **JUROR NUMBER 1:** My brother-in-law is retired, and I
14 have a nephew that is on the Annapolis Police Department in
15 Maryland.

16 **THE COURT:** All right. And your -- I'm sorry, was it
17 your brother-in-law?

18 **JUROR NUMBER 1:** My brother-in-law is retired.

19 **THE COURT:** From where, please?

20 **JUROR NUMBER 1:** In Washington, D.C.

21 **THE COURT:** D.C., all right. Can you give to the State
22 of South Carolina and to the Defense a fair and impartial
23 trial? Can you be a fair and impartial juror in this case?

24 **JUROR NUMBER 1:** Yes.

25 **THE COURT:** Thank you very much, ma'am.

1 Yes ma'am, name and juror number, please.

2 **JUROR NUMBER 272:** My name is Demetra Long. My number
3 is 272. I'm a cousin of James Aaron Butler.

4 **THE COURT:** All right. Very good. Can you give to the
5 State of South Carolina and to the Defense a fair and
6 impartial trial? Can you be a fair and impartial juror in
7 this case?

8 **JUROR NUMBER 272:** Yes sir.

9 **THE COURT:** Thank you very much, ma'am.
10 Yes sir.

11 **JUROR NUMBER 271:** My name is Dennis Loftis, Juror
12 Number 271. My sister is a retired police officer.

13 **THE COURT:** Sir, can you give to the State of South
14 Carolina and to the Defense a fair and impartial trial? Can
15 you be a fair and impartial juror in this case?

16 **JUROR NUMBER 271:** Yes.

17 **THE COURT:** Thank you very much.

18 Yes sir. Name and juror number, please.

19 **JUROR NUMBER 99:** Juror 99. My name is Donald Dickens.
20 My son-in-law is a Horry County police officer.

21 **THE COURT:** All right, sir. Can you give to the State
22 of South Carolina and to the Defense a fair and impartial
23 trial? Can you be a fair and impartial juror in this case?

24 **JUROR NUMBER 99:** Yes sir.

25 **THE COURT:** Thank you very much.

1 All right. The next question, is there any member of
2 the jury panel that you, yourself, or a member of your
3 immediate family is a member of any kind of victim's rights
4 or law enforcement support organization. I'm going to give
5 you a couple of examples. This is not an exhaustive list of
6 any kind. I'm just trying to give you a couple of examples
7 here: Mothers Against Drunk Driving, the Citizens Against
8 Violent Crime, the South Carolina Law Enforcement Officers
9 Association, the South Carolina Sheriff's Association, just
10 some kind of victim's rights or law enforcement support
11 organization, either you, yourself, or a member of your
12 immediate family is a member. If so, please stand.

13 Yes sir. Your name and juror number, please.

14 **JUROR NUMBER 326:** Matthew Newman, and my juror number
15 is 326.

16 **THE COURT:** Yes sir.

17 **JUROR NUMBER 326:** My mother is a member of the Police
18 Mothers.

19 **THE COURT:** All right. Very good. Can you give to the
20 State of South Carolina and to the Defense a fair and
21 impartial trial? Can you be a fair and impartial juror in
22 this case?

23 **JUROR NUMBER 326:** Yes sir.

24 **THE COURT:** Thank you very much.

25 Anybody else? (No response.)

1 All right. The next question, ladies and gentlemen, I
2 am going to ask you whether you, yourself, or a member of
3 your immediate family has ever been the victim of a crime.
4 Now, I do not want you to volunteer any information about
5 what occurred. Except as it might relate to that juror
6 questionnaire, I'm not going to ask any questions about what
7 occurred. The question is going to be straightforward, was
8 it yourself or a family member, and then I will ask the jury
9 qualification question.

10 So, is there any member of the jury panel, either you,
11 yourself, or a member of your immediate family has ever been
12 the victim of a crime? If so, please stand.

13 All right. We'll start right here. Your name and
14 juror number, please, ma'am.

15 **JUROR NUMBER 13:** Wendy Baker, Number 13.

16 **THE COURT:** All right. Ms. Baker, could you come up,
17 and Counsel, can y'all come up and talk to me for just one
18 second.

19 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**

20 **THE COURT:** All right, yes ma'am. Your name and juror
21 number, please ma'am.

22 **JUROR NUMBER 225:** Kathy Johnson, Number 225.

23 **THE COURT:** All right, Ms. Johnson.

24 I'm sorry, Counsel. Y'all need to come back up here.
25 You probably need to hang out for just a second.

1 Come on up here and let me talk to you, please ma'am.
2 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)
3 THE COURT: All right. Yes ma'am, right here, please.
4 Your name and juror number, yes ma'am.
5 JUROR NUMBER 337: Brittany Owens, 337.
6 THE COURT: All right. All right, Ms. Owens, if you
7 want to come on up, please ma'am. Thank you.
8 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)
9 THE COURT: All right. Yes ma'am, what's your name and
10 juror number, please?
11 JUROR NUMBER 240: Elizabeth Joyner-Dorrell.
12 THE COURT: All right.
13 JUROR NUMBER 240: Number 240.
14 THE COURT: All right, yes ma'am. You want to come
15 forward, please. Thank you, ma'am.
16 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)
17 THE COURT: All right. Yes ma'am, your name and juror
18 number, please.
19 JUROR NUMBER 63: Teresa Clark. I'm Number 63.
20 THE COURT: Number 63. All right, Ms. Clark, was it
21 yourself or a family member?
22 JUROR NUMBER 63: Family.
23 THE COURT: All right. Can you give to the State of
24 South Carolina and to the Defense a fair and impartial
25 trial? Can you be a fair and impartial juror in this case?

1 JUROR NUMBER 63: Yes.

2 THE COURT: Thank you very much.

3 Yes ma'am, your name and juror number, please.

4 JUROR NUMBER 272: Demetra Long, 272.

5 THE COURT: All right. Would you come forward, Ms.

6 Long.

7 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

8 THE COURT: Yes, your name and juror number, please,

9 sir.

10 JUROR NUMBER 440: Juan Tafella, Juror Number 440.

11 THE COURT: All right, sir. Come forward, please.

12 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

13 THE COURT: Juror Number 9, Ms. Arnold, would you come

14 forward, please, ma'am.

15 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

16 THE COURT: All right. Juror Number 312, Mr. Mishoe,

17 David Mishoe, could you come forward and talk to me, please

18 sir.

19 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

20 THE COURT: And Mr. Muldowney, Juror Number 321, could

21 you come forward, please sir. Thank you.

22 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

23 THE COURT: Thank y'all.

24 All right. Ladies and gentlemen, the last question

25 that -- that I have is what I call my general or catch-all

1 question. Do you know of any reason, have any question in
2 your mind, any doubt in your mind that you cannot give to
3 the State of South Carolina and to the Defense a fair and
4 impartial trial, if for any reason whatsoever you believe
5 you cannot be a fair and impartial juror, and obviously, if
6 I've already excused you, don't stand up again, but does
7 that question apply to anyone? (No response.) Thank you
8 very much.

9 **THE COURT:** All right. Ladies and gentlemen, what
10 we're going to do regarding the selection of this case, in a
11 random order the Clerk of Court will call out one of the
12 names of the jurors, okay? If and when your name is called,
13 if I have not set you aside, you come forward and you come
14 to a place basically right in front of the Court Reporter
15 right there, Miss Dixie. You stand there and you turn and
16 face to the back of the courtroom, all right?

17 At that point in time, the Clerk will inquire, ask the
18 State, whether to excuse or present the juror. If you are
19 excused by the State, you go back and have a seat. If you
20 are presented by the State, the Clerk will inquire of the
21 Defense to excuse or seat the juror. Again, if you are
22 excused by the Defense, you go back and have a seat from
23 whence you came.

24 If you are seated by the Defense, the Clerk will
25 instruct you to go to the jury box and have a seat in the

1 jury box as one of the members of the jury in this
2 particular case.

3 If you happen to have some item, a purse, or a book, or
4 something, bring that along with you if your name is called
5 so in case you are seated you can go directly to the jury
6 box.

7 All right, Madam Clerk.

8 **THE DEPUTY CLERK:** Juror Number 122, Shannon Engel.
9 What say the State?

10 **MR. GRAUSTEIN:** Please excuse this juror.

11 **THE COURT:** I'm sorry, sir. I did not hear you.

12 **MR. GRAUSTEIN:** Please excuse this juror.

13 **THE COURT:** Thank you very much.

14 You are excused, ma'am. Thank you.

15 **THE DEPUTY CLERK:** 403, Hildred Singleton. What say
16 the State?

17 **MR. GRAUSTEIN:** Please present this juror.

18 **THE DEPUTY CLERK:** Defense?

19 **MR. FOX:** Please excuse this juror.

20 **THE DEPUTY CLERK:** You're excused from this particular
21 case.

22 326, Matthew Newman. What say the State?

23 **MR. GRAUSTEIN:** Please present this juror.

24 **THE DEPUTY CLERK:** Defense?

25 **MR. FOX:** Please excuse this juror.

1 **THE DEPUTY CLERK:** You're excused from this particular
2 case.
3 79, Evelyn Cox. What say the State?
4 **MR. GRAUSTEIN:** Present this juror.
5 **THE DEPUTY CLERK:** Defense?
6 **MR. FOX:** Please seat this juror..
7 **THE DEPUTY CLERK:** Please be seated in the jury box.
8 92, Annette Davis. What say the State?
9 **MR. GRAUSTEIN:** Present this juror.
10 **THE DEPUTY CLERK:** Defense?
11 **MR. FOX:** Please seat this juror.
12 **THE DEPUTY CLERK:** Please be seated in the jury box.
13 Number 9, Ann Arnold. What say the State?
14 **MR. GRAUSTEIN:** Present this juror.
15 **THE DEPUTY CLERK:** Defense?
16 **MR. FOX:** Please seat this juror..
17 **THE DEPUTY CLERK:** Please be seated in the jury box.
18 17, Lisa Batson. What say the State?
19 **MR. GRAUSTEIN:** Present this juror.
20 **THE DEPUTY CLERK:** Defense?..
21 **MR. FOX:** Please seat this juror.
22 **THE DEPUTY CLERK:** Please be seated in the jury box.
23 453, Terry Tucker. What say the State?
24 **MR. GRAUSTEIN:** Present this juror.
25 **THE DEPUTY CLERK:** Defense?

1 **MR. FOX:** Please seat this juror.

2 **THE DEPUTY CLERK:** Please be seated in the jury box.

3 83, Kim Crutchfield. What say the State?

4 **MR. GRAUSTEIN:** Present this juror.

5 **THE DEPUTY CLERK:** Defense?

6 **MR. FOX:** Please excuse this juror.

7 **THE DEPUTY CLERK:** You're excused from this particular

8 case.

9 321, Brian Muldowney. What say the State?

10 **MR. GRAUSTEIN:** Present this juror.

11 **THE DEPUTY CLERK:** Defense?

12 **MR. FOX:** Please seat this juror.

13 **THE DEPUTY CLERK:** Please be seated in the jury box.

14 271, Dennis Loftis. What say the State?

15 **MR. GRAUSTEIN:** Present the juror.

16 **THE DEPUTY CLERK:** Defense?

17 **MR. FOX:** Please excuse this juror.

18 **THE DEPUTY CLERK:** You're excused from this particular

19 case.

20 183, Nicholas Hardee. What say the State?

21 **MR. GRAUSTEIN:** Present the juror.

22 **THE DEPUTY CLERK:** Defense?

23 **MR. FOX:** Please excuse this juror.

24 **THE DEPUTY CLERK:** You're excused from this particular

25 case.

1 150, Juliet Galton. What say the State?
2 **MR. GRAUSTEIN:** Please excuse this juror.
3 **THE DEPUTY CLERK:** You're excused from this particular
4 case.
5 111, Kathy Duboise. What say the State?
6 **MR. GRAUSTEIN:** Present the juror.
7 **THE DEPUTY CLERK:** Defense?
8 **MR. FOX:** Please excuse this juror.
9 **THE DEPUTY CLERK:** You're excused from this particular
10 case.
11 300, Bonnie McCusker. What say the State?
12 **MR. GRAUSTEIN:** Please excuse this juror.
13 **THE DEPUTY CLERK:** You're excused from this particular
14 case.
15 192, Jerry Hearl. What say the State?
16 **MR. GRAUSTEIN:** Present the juror.
17 **THE DEPUTY CLERK:** Defense?
18 **MR. FOX:** Please excuse this juror.
19 **THE DEPUTY CLERK:** You're excused from this particular
20 case.
21 63, Teresa Clark. What say the State?
22 **MR. GRAUSTEIN:** Present the juror.
23 **THE DEPUTY CLERK:** Defense?
24 **MR. FOX:** Please seat this juror.
25 **THE DEPUTY CLERK:** Please be seated in the jury box.

1 286, Elizabeth Marsh. What say the State?
2 **MR. GRAUSTEIN:** Please excuse this juror.
3 **THE DEPUTY CLERK:** You're excused from this particular
4 case.
5 99, Donald Dickens. What say the State?
6 **MR. GRAUSTEIN:** Please present the juror.
7 **THE DEPUTY CLERK:** Defense?
8 **MR. FOX:** Please excuse this juror.
9 **THE DEPUTY CLERK:** You're excused from this particular
10 case.
11 368, Carlos Rice. What say the State?
12 **MR. GRAUSTEIN:** Present the juror.
13 **THE DEPUTY CLERK:** Defense?
14 **MR. FOX:** Please excuse Mr. Rice.
15 **THE DEPUTY CLERK:** You're excused from this particular
16 case.
17 219, Brenda Jester. What say the State?
18 **MR. GRAUSTEIN:** Present the juror.
19 **THE DEPUTY CLERK:** Defense?
20 **MR. FOX:** Please seat this juror.
21 **THE DEPUTY CLERK:** Please be seated in the jury box.
22 277, Kortezy Lynch. What say the State?
23 **MR. GRAUSTEIN:** Present the juror.
24 **THE DEPUTY CLERK:** Defense?
25 **MR. FOX:** Please seat this juror.

1 **THE DEPUTY CLERK:** Please be seated in the jury box.
2 229, Steven Johnson. What say the State?
3 **MR. GRAUSTEIN:** Present the juror.
4 **THE DEPUTY CLERK:** Defense?
5 **MR. FOX:** Please excuse this juror.
6 **THE DEPUTY CLERK:** You're excused from this particular
7 case.
8 445, Terry Thomas. What say the State?
9 **MR. GRAUSTEIN:** Present the juror.
10 **THE DEPUTY CLERK:** Defense?
11 **MR. FOX:** Please seat this juror.
12 **THE DEPUTY CLERK:** Please be seated in the jury box.
13 13, Wendy Baker. What say the State?
14 **MR. GRAUSTEIN:** Please excuse this juror.
15 **THE DEPUTY CLERK:** You're excused from this particular
16 case.
17 371, Lindsey Rider. What say the State?
18 **MR. GRAUSTEIN:** Present the juror.
19 **THE DEPUTY CLERK:** Defense?
20 **MR. FOX:** Please seat this juror.
21 **THE DEPUTY CLERK:** Please be seated in the jury box.
22 1, Marilyn Adams. What say the State?
23 **MR. GRAUSTEIN:** Present this juror.
24 **THE DEPUTY CLERK:** Defense?
25 **MR. FOX:** Please seat this juror.

1 **THE DEPUTY CLERK:** Please be seated in the jury box.

2 **THE COURT:** All right. We'll have two alternates. It

3 will be one and two on each alternate.

4 **THE DEPUTY CLERK:** 391, Amanda Sexton. What say the

5 State?

6 **MR. GRAUSTEIN:** Present the juror.

7 **THE DEPUTY CLERK:** Defense?

8 **MR. FOX:** Please seat this juror.

9 **THE DEPUTY CLERK:** Please be seated in the jury box.

10 312, Marion Mishoe. What say the State?

11 **MR. GRAUSTEIN:** Present the juror.

12 **THE DEPUTY CLERK:** Defense?

13 **MR. FOX:** Please seat this juror.

14 **THE DEPUTY CLERK:** Please be seated in the jury box.

15 **THE COURT:** All right. Ms. Sexton and Mr. Mishoe, you

16 are the alternates for this particular case, all right? So

17 -- and I'll tell you this again in a second, but the two

18 seats that you are in now, if you will always just occupy

19 those two seats, all right? Thank you.

20 Any objections to the jury as empaneled from the State?

21 **MR. GRAUSTEIN:** No, Your Honor.

22 **THE COURT:** From the Defense?

23 **MR. FOX:** Your Honor, with regard to -- just with

24 regard to Juror 371, Ms. Rider, she was -- we need to

25 approach about this.

1 **THE COURT:** All right. Very good. Come forward.

2 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**

3 **THE COURT:** Thank you.

4 **MR. FOX:** Your Honor, just for the record, specifically
5 with Juror 371, she did indicate in voir dire that her
6 brother, a close family member, is a member of the Horry
7 County Police Department. In light of the fact that all law
8 enforcement involved in this case, I count at least four
9 witnesses are also members of the Horry County Police
10 Department, we would respectfully request that she be
11 excused for cause and also point out that she was selected
12 and brought forward after I had exhausted my ten strikes.

13 **THE COURT:** All right. Very good. I appreciate your
14 motion, Mr. Fox, but the jurors indicated they could be fair
15 and impartial in response to the Court's question and be
16 fair and impartial both to the State and to the Defense in
17 this particular matter, and I respectfully decline to grant
18 your motion. The jury is -- will stand.

19 Any other matters as to objections from the Defense?

20 **MR. FOX:** No, Your Honor.

21 **THE COURT:** All right. The jury stands. The Court
22 finds them to be qualified pursuant to Batson vs. Kentucky
23 and J.E.B. vs. Alabama.

24 All right, ladies and gentlemen, the jury in this
25 particular case, I'm going to ask that you go to your jury

1 room in just a few minutes, and I'm going to ask that you do
2 one thing for me and that is select your foreperson, so let
3 me tell you and give you some basic duties and
4 responsibilities of the foreperson.

5 If we are here in the courtroom and the jury needs
6 attention to some matter, the witnesses needs to speak up,
7 or the lawyers, or whatever the situation is, the foreperson
8 raises their hand, gets the Court's attention, and I'll
9 handle the matter whatever it is.

10 If you are back in the jury room and some matter comes
11 up, you'll take the pad and pen provided for you, you will
12 write out a note, sign it, give it to the bailiff, and
13 again, I'll handle the matter, whatever it might be.

14 When we have concluded the evidentiary portion of the
15 trial, all the witnesses have testified, all the documents
16 or any other type of evidence that might be introduced in
17 this particular case has been introduced, we've had the
18 closing arguments of the attorneys, and then I have given to
19 you the law that you will apply to the facts and the
20 evidence you find to be true in this particular case, then
21 I'll submit the case to you for your deliberations and your
22 unanimous decision in this particular matter.

23 The foreperson at that particular time has some other
24 duties and responsibilities. An important duty they have is
25 to act like the chairperson at a meeting, to make sure that

1 everybody that wants to has an opportunity to speak,
2 everybody's voice has an opportunity to be heard.

3 Now, the foreperson's voice and vote carries no more
4 weight than any other member of the jury. Everybody is on
5 an equal plain in that regard, but somebody does need to be
6 in charge to help guide the discussions, if necessary,
7 hopefully not to keep good order, but there is one final
8 duty. Obviously if some question comes up, you know, you
9 write out the note, give it to the bailiff, it will come to
10 me, and we'll handle whatever it is.

11 The final duty and responsibility of the foreperson is
12 when the jury has well and truly deliberated in this case
13 and you have reached your unanimous decision in this
14 particular matter, the foreperson will take the verdict form
15 that the Court will provide to you and the foreperson will
16 check the appropriate block or write out the appropriate
17 word, thereafter signing their name as the foreperson,
18 indicating that that verdict is indeed the unanimous verdict
19 of each and every member of this jury.

20 So understanding the duties and responsibilities of the
21 jury in this particular case and the foreperson, I'm going
22 to ask that you go back to your jury room, select your
23 foreperson, knock on the door, let the foreperson (sic) know
24 who that particular person is.

25 Now, Mr. Mishoe and Ms. Sexton, as the alternates,

1 y'all can vote on the foreperson, but obviously being
2 alternates you cannot be the foreperson, all right?
3 Everyone else is eligible..

4 So if you will go back to the jury room, select your
5 foreperson, knock on the door and let the bailiff know who
6 that is, please. Thank you.

7 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
8 **JURY.)**

9 **THE COURT:** All right, ladies and gentlemen of the jury
10 panel that were not selected for this particular case, I'm
11 sorry the process took as long as it did, but it's what was
12 necessary in this particular case.

13 Judge Hyman has a civil case that he's going to pick a
14 jury. Y'all don't have a whole lot of time, and I'm sorry
15 and apologize for that, but he's going to start the process
16 at 1:30. He's going to send for a panel, and it might be
17 forty of you. It might be forty-five. It might be fifty of
18 -- however many there are downstairs, but I do need for you
19 to be downstairs in the jury assembly room at 1:30 and to
20 find out if you're in that panel with Judge Hyman. Thank
21 you very much.

22 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
23 **REMAINING JURORS NOT SELECTED.)**

24 **THE COURT:** All right. Any matters from the State
25 before we go forward?

1 **MR. GRAUSTEIN:** No, Your Honor.

2 **THE COURT:** All right, sir.

3 Any matters from the Defense at this point in time?

4 **MR. FOX:** Your Honor, the only thing, I mean, we have
5 the general motion to sequester witnesses other than, of
6 course, a member of the victim's family and investigator,
7 and I'd like to address now, just so we'll know for planning
8 purposes, Ms. Schrader-Falls has been out on bond for almost
9 two years on a monitor.

10 We would request, Your Honor, -- of course, the
11 bondsman's duty has expired once the call -- the case has
12 been called, but we would request that she be allowed to
13 remain free during the course of this trial. She has had
14 numerous calls to Court, not just her initial and docket
15 appearances. I count at least a half a dozen times over the
16 last couple of years she's come to Court. She's never
17 failed. She's come to meet me many, many times, never
18 failed to appear.

19 She has been very diligent about her monitoring. In
20 fact, she's even been allowed with the Solicitor's
21 permission to visit family in Georgia and North Carolina,
22 has never failed to leave and come back exactly as she
23 indicated she would, had no problems with her bondsman, and
24 we would request that she be allowed to remain out on bond
25 during the course of the trial.

1 **THE COURT:** Is there any objection to that from the
2 State?

3 **MR. GRAUSTEIN:** No, Your Honor. There have been no
4 issues regarding her bond in the two years, and as far as
5 home detention, they've never had any complaint.

6 **THE COURT:** All right. Did you check with the bonding
7 company regarding the bond, Mr. Fox?

8 **MR. FOX:** Your Honor, I have with Mr. -- it's Al
9 Holcombe, and he indicates that he is fine, he's had no
10 problems with Ms. Schrader-Falls, and he is happy with the
11 situation, Your Honor.

12 **THE COURT:** All right. Very good.

13 Ma'am, would you stand up for just a second, please.

14 (Ms. Schrader-Falls stands.) I'm going to allow you to stay
15 out on bond under these terms and conditions. Obviously you
16 remain out on bond under the same terms and conditions of
17 the bond that's been in existence. Also, you understand
18 that we have commenced the trial process. The jury has not
19 actually been sworn, but we are in the process of starting
20 the trial that the State has brought against you.

21 Obviously it's in your best interest to participate and
22 communicate with your attorney in your defense. I must tell
23 you that if for some reason you decide when court resumes
24 not to be present at any point in time during the trial, you
25 decide you're not going to be present, a couple of things

1 will happen. One, a bench warrant would be issued for your
2 arrest. Secondly, the trial will proceed with or without
3 you. The trial process has started and it will continue on
4 to its conclusion one way or another, however it is
5 resolved, but your absence will not prevent that from
6 happening. Do you understand that?

7 **MS. SCHRADER-FALLS:** Yes sir.

8 **THE COURT:** All right. Now, ma'am, with that, the
9 Court will allow you to remain on bond in this matter.
10 Thank you very much.

11 **MR. FOX:** Thank you, Your Honor.

12 **THE COURT:** All right. With that, Counsel, I'm going
13 to excuse y'all for lunch. I'm going to give you an
14 extended period of time. I have a plea that I am going to
15 try and do. We'll see if that gets accomplished or not, and
16 then obviously I want to give the court personnel some time
17 for lunch, so if y'all -- just be back at three o'clock. Be
18 back at three o'clock, please, to be starting, all right?
19 Thank you very much.

20 **(THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK AND**
21 **OUTSIDE THE PRESENCE OF THE JURY.)**

22 **THE COURT:** Counsel, could y'all come up here and talk
23 to me for one second, please.

24 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**

25 **THE COURT:** All right. Counsel, for your information,

1 the jury selected Juror Number 277 as the Foreperson. Juror
2 Number 277 is the Foreperson.

3 All right. Is the State ready to receive the jury?

4 **MR. GRAUSTEIN:** Yes, Your Honor.

5 **THE COURT:** And the Defense?

6 **MR. FOX:** Yes, Your Honor.

7 **THE COURT:** All right.

8 Ask the jury to come in, please.

9 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
10 **JURY.)**

11 **THE COURT:** All right. Mr. Lynch, the jury has elected
12 you to be the foreperson of this particular jury, is that
13 correct?

14 **JUROR NUMBER 277:** Yes, sir.

15 **THE COURT:** All right. Very good. If you would always
16 occupy that seat, and the alternates are occupying those two
17 seats, and then the rest of you ladies and gentlemen just
18 kind of fill in wherever it is that you happen to come in
19 from the jury room.

20 The very first thing that's going to happen in this
21 particular matter is the Clerk of Court is going to
22 administer your oath to you, so if you would all please
23 stand at this time.

24 **THE DEPUTY CLERK:** Please raise your right hand.

25 **(THE JURORS ARE PLACED UNDER OATH BY THE DEPUTY CLERK**

1 OF COURT.)

2 THE COURT: Is there any member of the jury panel that
3 did not affirmatively take the oath as given by the Clerk of
4 Court? If so, please stand. (No response.)

5 No juror having stood, I find the jury has been
6 properly sworn in this particular matter.

7 The State of South Carolina has charged the Defendant
8 with the crime of murder. Now, I told you that the
9 indictment, the charging document, is just that. It is what
10 brings the matter to Court. It is what notifies the
11 Defendant of the charge that they are facing in this
12 particular matter.

13 To that indictment, to that charge, the Defendant has
14 pled not guilty. That puts the burden of proof upon the
15 State of South Carolina to prove the Defendant guilty beyond
16 a reasonable doubt. The Defendant is presumed innocent of
17 the crime for which they have been charged. That
18 presumption of innocence doesn't end now that the trial has
19 started. It does not end until and only if you, the jury,
20 believe the State has presented to you evidence which you
21 find to be true and credible and which you find that the
22 Defendant is indeed guilty of the crime charged beyond a
23 reasonable doubt.

24 The Defendant, this defendant, any defendant, is never
25 required to prove anything to a jury because it is the

1 State's total and complete responsibility to prove the
2 Defendant, any defendant they charge with a crime, guilty of
3 that crime beyond a reasonable doubt.

4 I always tell the jury that defendants need not even
5 show up for trial because they don't have a thing to show to
6 you. They have nothing to prove to you. The State must --
7 must prove its case to you beyond a reasonable doubt.

8 Collectively, your job here is to be the judges of the
9 facts, to find that evidence which convinces you of its
10 truth and then to weigh that evidence you find to be true
11 against the State's burden to prove the Defendant guilty
12 beyond a reasonable doubt.

13 I will not indicate to you at any point in time what I
14 believe the facts of this case are because that is not my
15 job. That is your job and responsibility.

16 Now, during the course of the trial, the attorneys may
17 raise certain matters to the Court, a motion, or objection,
18 or otherwise. If I rule on those in your presence, I don't
19 send you back to the jury room so I can discuss it more
20 fully with them, please remember I'm about one of my duties
21 and that is governing the conduct of the trial, how it will
22 be conducted, but in my ruling, if I make such in your
23 presence, I am not commenting on the facts or evidence or
24 this case, or somebody's credibility or believability,
25 because that's your job and your responsibility, because, in

1 fact, being the judges of the facts, you will be called upon
2 to judge the credibility, the believability, of witnesses
3 that come before you and testify under oath. That will be
4 one of your duties and responsibilities.

5 You may be thinking, how do I judge somebody's
6 credibility or believability. If you think about it for a
7 minute, it's something you do every single day of your life.
8 When somebody tells you something, you are automatically
9 judging whether or not you believe them. You use your good
10 common sense. You use your good judgment that you use in
11 conducting your own affairs. You apply that good common
12 sense, that good judgment, to the facts and evidence that
13 you hear in this case and find that evidence which convinces
14 you of its truth, and again, then you weigh that evidence
15 you have found to be true against the State's burden to
16 prove the Defendant guilty beyond a reasonable doubt.

17 During the course of this trial, I am going to ask you
18 to not talk about this case among yourselves until I give it
19 to you at the very end for your deliberations and your
20 unanimous decision in this matter. One of the reasons for
21 doing so, if you hear one witness or several witnesses and
22 we take a break and you start talking about the case, you
23 haven't heard all the evidence in the case. You might be
24 expressing opinions or forming beliefs before you've heard
25 all the evidence, so I don't want you to discuss it. As

1 best you can, I don't want you to form any firm beliefs
2 until you've heard all of the evidence in this case.

3 And I'll tell you this again, obviously you're not to
4 talk about this case with anybody else when you go home for
5 the evening or whatever. I'll tell you about that when I
6 excuse you for the day.

7 Your duties and responsibilities, we understand, are in
8 some cases difficult, and we are going to be asking you at
9 the end of this case to listen to each other, to
10 collaborate, to discuss your views, and thereafter reach a
11 unanimous verdict that is the verdict of all of the members
12 of the jury in this particular matter.

13 I know that you will do so, that you will listen
14 attentively to the evidence in this case and you will take
15 to heart the instructions of the law that I will give to you
16 at the end and apply them to the facts and evidence you find
17 to be true and thereafter judge whether or not the State has
18 proven to you the guilt of the Defendant of the crime
19 charged beyond a reasonable doubt.

20 We will next have the opening statements of the
21 attorneys, and we will have the evidence of the case, and we
22 will have the closing arguments. Then I will charge you the
23 law, give you the law that you will apply to the facts and
24 evidence you find to be true, and then I will give the case
25 to you for your deliberations and your unanimous decision.

1 The opening statements, closing arguments by the
2 Counsel, they are important. They are each side's initial
3 presentation to you of what they believe the evidence will
4 show to you. Closing, again, what they believe the evidence
5 has shown to you during the course of the trial. They are
6 important. I want you to give your attention to them, but
7 remember, that's not evidence.

8 What they tell you is not evidence in this case. That
9 comes solely and completely from the witnesses that come
10 before you and testify under oath, or some type of
11 documentary or other kind of physical evidence that might be
12 introduced in this case. That's the evidence you weigh.
13 That's the evidence you judge to decide whether or not the
14 State has proven the guilt of the Defendant beyond a
15 reasonable doubt.

16 With that, I'll turn it over to the attorneys for their
17 opening statements.

18 Solicitor.

19 **MR. GRAUSTEIN:** Thank you, Your Honor.

20 Good afternoon, ladies and gentlemen. My name is Scott
21 Graustein. I'm with the Fifteenth Circuit Solicitor's
22 Office here in Horry County, and I am representing the State
23 in this case.

24 The Defendant has been charged with the murder of Tony
25 Hughes, and while you sit in this courtroom here, everybody

1 has got their jobs to do. The Judge, he -- it's his
2 courtroom, and he'll instruct y'all what the law is. The
3 Court Reporter is taking down everything that is being said.
4 The Defense attorney, he's representing his client.

5 My job is to present the evidence the Judge said the
6 State has to present to you to prove its case. And the
7 Judge is right. We do have to prove the case to you. We
8 have to prove it beyond a reasonable doubt, not beyond any
9 doubt, no. It's beyond a reasonable doubt.

10 Now, you all are on the jury because you are reasonable
11 people. While the Judge -- the Judge is right. The
12 Defendant doesn't have to prove anything, and that includes
13 in some cases, and a lot of times in a murder case, self-
14 defense. The burden is on us, and it should be, for us to
15 prove that it wasn't self-defense.

16 While you may be wondering why there was a -- you got
17 those questionnaires during the jury selection. You
18 probably deduced from that that domestic violence was going
19 to be an issue in this case, okay? And the Defendant is
20 going to say that's the issue, and it will be real
21 complicated and perhaps there are all kinds of -- to make it
22 seem that this case really isn't -- what it really is all
23 about.

24 This is a simple case, folks. This really is a simple
25 case. This is a case about an angry ex-girlfriend who went

1 over and shot her ex-boyfriend. That's what this case is
2 about. And the evidence is going to show you, and it's
3 going to prove to you beyond a reasonable doubt, that that's
4 all this is. The evidence is going to show you that Tony
5 Hughes, the victim in this case, and the Defendant, they
6 dated. There's no question about that. They dated for
7 something less than a year. They never lived together. In
8 fact, Tony lived out in Gresham. I don't know if y'all know
9 where -- Gresham is out in Marion County, and the Defendant
10 lived in the Forestbrook area down in Myrtle Beach.

11 In the month leading up to this incident, they had
12 broken up. They weren't dating any more, but the evidence
13 will show that the Defendant was trying to stay in Tony's
14 life. She would go visit him. She would go visit his
15 mother out in Florence, but Tony was moving on, so he got
16 himself a new car. Tony was dating other people, was seeing
17 other people, and that's what happened to him in this case.

18 On March 30th, 2012, Tony had a date with a new love
19 interest. They had met over at her house, not the
20 Defendant's house and not at Tony's house, but this new love
21 interest's house, a stranger to the Defendant. And on the
22 morning of March 31st, 2012, Tony was still at this new love
23 interest's house. He had spent the night.

24 And that morning before they had even gotten out of
25 bed, there was a knocking at the door. The Defendant -- the

1 evidence is going to show that the Defendant came and
2 knocked on the door, demanded Tony come out. Tony came out
3 eventually after, you know, getting himself together. It's
4 kind of an awkward situation. He came out.

5 The evidence is going to show there was no evidence of
6 a fight, no yelling, nothing, and then the Defendant took
7 this gun that she owned, her gun that she brought to this
8 stranger's house, and shot Tony multiple times in the
9 driveway.

10 That's what this case is about. That's what it is,
11 because after everything, after all the evidence is
12 presented, you're going to be left with one thing. The
13 Defendant went to a stranger's house with her gun, called
14 her ex-boyfriend out and shot him multiple times. It's that
15 simple. It's murder. Thank you.

16 **THE COURT:** Mr. Fox.

17 **MR. FOX:** Thank you, Your Honor.

18 Good afternoon, ladies and gentlemen, and my name is
19 Eric Fox. It's my privilege today and this week to
20 represent Ms. Vivian Schrader-Falls on this charge. With me
21 will be Ms. Wilson.

22 Obviously, I don't think it is that simple. This is
23 not a murder. Murder is a specific legal term, and the
24 Judge will tell you exactly what the Solicitor has to prove
25 to you beyond a reasonable doubt, each element beyond a

1 reasonable doubt.

2 There is a death in this case. No question there is a
3 body. There is a shooting. You've already seen the gun.
4 There is unquestionably a tragedy, but there is one very key
5 thing that I think the evidence will show, that I know the
6 evidence will show, that is missing and is required for
7 anyone to be found guilty of murder and that is malice.

8 If I asked, all of you probably could give a pretty
9 good definition of malice. The Judge will define it for you
10 at the end, but it's been described as a person that is evil
11 or a malignant heart intent on doing wrong, and that's one
12 way to describe malice. You must have malice in order to
13 commit murder.

14 If you do not have malice, even if it is your act that
15 kills another person, then we're talking about potentially
16 different degrees of manslaughter. Again, the Judge is
17 going to define these things for you, but it cannot be
18 murder absent malice.

19 Now, you cannot just brush aside -- I'm not going to
20 try this whole case in opening argument, but you cannot
21 brush aside the element of domestic violence in this case.
22 It's important. It is essential to this case. It is
23 important in a couple of spheres. One is the relationship
24 between Vivian and Tony Hughes. They were boyfriend and
25 girlfriend for maybe months. They knew each other for over

1 a year.

2 They dated for close to a year. They absolutely
3 cohabited together. Did Mr. Hughes maintain another
4 residence? Yes, he did, but Vivian stayed at his residence
5 frequently and he even more frequently stayed at her
6 residence in Myrtle Beach.

7 He, in his own words, said they were married in the
8 eyes of God. They held themselves out to people as being in
9 a tight relationship. That's important because one of the
10 things with domestic violence that must be shown is that it
11 involved a household member. Well, that's easy if you have
12 a husband and wife, or a parent and child that live under
13 the same roof, but the Legislature defines household member
14 to include former spouses, to include former boyfriends and
15 girlfriends, or people that cohabited, either they are now
16 living together or they did in the past, because we don't
17 have that stereo-typical stalker scenario or someone who
18 did, say, you know, follow someone to be outside the law.

19 They absolutely cohabited. They absolutely saw
20 themselves as one and the same during the long period. Had
21 they gone through some times where there were some rocky
22 times, they certainly had, but the evidence will show the
23 day before this shooting, they had spent virtually the whole
24 day together, so they were not broken up. At least they
25 were still seeing each other and in a friendly way.

1 Now, you will hear testimony from Miss Vivian, and also
2 from Ms. Vicki Bourus, that Vivian and Tony Hughes had
3 during the course of the relationship what, if nothing else,
4 domestic abuse, physical abuse on the part of Tony Hughes
5 toward Vivian, that there was choking, and strangling, and
6 punching, psychological intimidation and controlling, all
7 the classic things that we think of even if we're not
8 experts ourselves, that we think of as domestic violence or
9 domestic abuse. That's just in the relationship that Vivian
10 had with Tony Hughes.

11 Now, is that important, to justify a person shooting
12 someone? No. But it does go to state of mind. It does go
13 to your perception of what this person may be doing at a
14 given moment, in other words whether you have fear of them
15 when you take an action, including pulling a trigger. It
16 does go to whether or not you have malice. It's very
17 important.

18 This case is all about domestic violence. They are
19 inseparable. It is absolutely about what happened at the
20 home there on Bay Forge Drive where Mr. Hughes was shot. It
21 absolutely is about that, but those are intertwined as
22 closely as my fingers are on each hand with the domestic
23 violence, and it goes beyond that. It's not just between
24 Ms. Hughes -- Mr. Hughes and Ms. Schrader-Falls.

25 You will hear that Ms. Schrader-Falls has a history of

1 abuse, physical and sexual, going back literally her entire
2 life, from the time of childhood up through her marriage as
3 a young teenager, through her first two marriages, a
4 constant cycle, and you will hear Ms. Bourus, who is going
5 to tell you what her credentials are, why she can offer her
6 insight into these things, and you will hear from Vivian,
7 but what you will hear is a person who was literally
8 battered and abused physically and psychologically from the
9 time we can remember.

10 Is that an excuse for murder? It is not an excuse for
11 murder. It absolutely is an explanation for how she came to
12 be in that situation on March 31st, 2012, with a gun in her
13 hand and the response, the reaction to it, because it's not
14 as simple as Vivian knocking on the door, demanding that Mr.
15 Hughes come outside, and then shooting him down.

16 It is unquestioned that he was shot and that he is now
17 dead, but the circumstances are everything in this case. I
18 think there's a very strong argument that this was self-
19 defense.

20 Self-defense, if you believe that, is, in fact, a
21 complete defense. That would entitle Ms. Schrader-Falls to
22 a verdict from you all of not guilty, but all of that
23 domestic violence, her history of both before Mr. Hughes and
24 with Mr. Hughes, are important both to her state of mind of
25 self-defense, but in terms of malice with murder, because,

1 again, absent malice, you have manslaughter. If you don't
2 believe self-defense, absent malice what you have is
3 manslaughter, a very different thing.

4 So it's not as straightforward -- I simply urge you to
5 listen to everything that you're going to hear, pay very
6 close attention, and I'll talk to you at the end of the
7 case. Thank you.

8 **THE COURT:** All right, Solicitor, your first witness,
9 please sir.

10 **MR. GRAUSTEIN:** The State calls Diane Movsky.

11 **THE COURT:** Ma'am, if you'd please come all the way
12 around up here and meet the Clerk of Court right up here,
13 please ma'am.

14 **DIANE MOVSKY,** being first duly sworn,
15 testifies as follows:

16 **THE DEPUTY CLERK:** Please state your full name and
17 spell your last name.

18 **MS. MOVSKY:** Diane Louise Movsky, M-O-V-S-K-Y.

19 **THE COURT:** All right, Solicitor.

20 **MR. GRAUSTEIN:** Thank you, Your Honor.

21 **DIRECT-EXAMINATION BY MR. GRAUSTEIN:**

22 Q. Ms. Movsky, good afternoon. How are you doing?

23 A. Fine.

24 Q. Good. Ms. Movsky, where do you live?

25 A. 207 Bay Forge Road.

1 Q. Is that in Horry County?

2 A. It's in Horry County.

3 Q. Okay. Down at the beach or ---

4 A. It's in Myrtle Beach.

5 Q. Where do you work?

6 A. For McLeod Regional Medical Center in Florence.

7 Q. Okay. So you work in Florence?

8 A. Yes sir.

9 Q. How did they get you to do that?

10 A. Is to drive back and forth every day.

11 Q. It's a pretty long drive, isn't it?

12 A. It is. It's worth it.

13 Q. How long does it take you?

14 A. About an hour and fifteen minutes one way.

15 Q. And you do that every day?

16 A. Every day.

17 Q. Wow. Did you know Tony Hughes?

18 A. I did.

19 Q. How long did you know him for?

20 A. For a few months.

21 Q. For a few months. How did y'all meet?

22 A. We met on-line in a dating service.

23 Q. Okay. And do you remember when that -- when you met

24 on- -- on-line?

25 A. I'd say probably maybe January, the end of January,

1 somewhere in there.

2 Q. That would be January of 2012?

3 A. Right.

4 Q. Okay. And how did y'all communicate?

5 A. Well, we started communicating, you know, on the

6 dating site, and then we exchanged numbers and on FaceBook

7 as well.

8 Q. Okay. So there were several different ---

9 A. And we talked. Yeah, we talked on the phone, so,

10 yeah, there was ---

11 Q. There were several different ways y'all communicated?

12 A. Correct..

13 Q. All right. And you said on FaceBook so you could

14 post stuff on social media?

15 A. Yeah.

16 Q. Okay. And how did that -- how did that relationship

17 progress? I mean, was it something you were pursuing,

18 something that ---

19 A. Yeah, it was something we were both pursuing. We

20 really liked each other and we seemed to be able to

21 communicate well, and we had a lot of things in common, a

22 lot of same interests and values, so ...

23 Q. Okay. At some point -- at any point were you

24 concerned that he might be dating anybody else?

25 A. No. I asked him and he said he wasn't, that he had

1 just gotten out of a relationship and that, you know, he was
2 free.

3 Q. Okay. And how early on in your communications did
4 that subject come up?

5 A. Pretty early.

6 Q. All right.

7 A. Yeah.

8 Q. That was something you wanted to get straightened out
9 right away?

10 A. Correct.

11 Q. Did you ask him if he was dating anyone else?

12 A. Yes.

13 Q. Okay.

14 A. We kind of established that we weren't.

15 Q. Early on?

16 A. Uh-huh (**indicating affirmative**).

17 Q. All right. So, how -- so y'all corresponded,
18 communicated like by telephone and FaceBook and all that.
19 How long did that go on for? You said starting in January?

20 A. Right, at least for a few months.

21 Q. All right. And did you ever arrange for you to meet
22 him personally?

23 A. We did.

24 Q. All right. And when did that -- when did you -- or
25 how early on did you start talking about that?

1 A. I mean, I think it took us about a month to really
2 just work out the details because we just wanted to get to
3 know a little bit more about each other, because, you know,
4 you meet somebody on-line, you have to be careful, so you've
5 just got to just like get to know somebody and then get
6 comfortable, so probably about a month.

7 Q. Okay. And were you able to arrange a meeting?

8 A. We did. It was March 30th.

9 Q. Okay. So the day before this incident, that was your
10 first time you all met?

11 A. In person, correct.

12 Q. All right. And for what -- what plans did y'all make
13 for March 30th?

14 A. We were actually going to go out, but when he got
15 there, we just started talking, and he had brought Fried
16 Green Tomatoes, which ended up he didn't realize I really
17 liked that movie, too, so we decided to stay in and just
18 watch a movie, which we did.

19 Q. What time were you supposed to meet, or what time --
20 what time were you supposed to meet?

21 A. It had to be between six or seven because of my job,
22 you know, getting home. It took a while.

23 Q. Was he on time?

24 A. I'm sure it was around the time. I mean, I don't
25 remember like sitting there waiting and being anxious that

1 he was late or anything. I don't remember.

2 Q. Okay. And you said -- I think you just testified

3 that y'all stayed in and watched a movie?

4 A. We did. We did. We changed our plans instead of

5 going out since he brought the movie.

6 Q. All right. You decided to stay and watch the movie,

7 Fried Green Tomatoes, you said?

8 A. Yes.

9 Q. Did you watch any other movies or was that the only

10 one?

11 A. No. We were just talking a whole lot. I mean, just

12 like a lot of just talking.

13 Q. All right. And did y'all have anything to drink that

14 night?

15 A. We did.

16 Q. Okay. What did y'all have to drink?

17 A. Just some beers.

18 Q. Okay. So you were drinking beers and talking?

19 A. Correct.

20 Q. Do you know if Tony received any telephone calls

21 while you were there?

22 A. I don't think so.

23 Q. Okay. Did he make any telephone calls that you know

24 of?

25 A. Huh-uh (**indicating negative**), I don't think so, no.

1 Q. How late did y'all stay up?

2 A. It was pretty late because he was a smoker, and at

3 the time I was a smoker, and I remember being outside

4 because we -- I smoked on my porch, so it had to be -- I

5 just remember it being very late and it was very peaceful

6 sitting out there in the dark, one or two o'clock, somewhere

7 in there. We had just gone out there to smoke a cigarette

8 and relax outside.

9 Q. Was it cold out?

10 A. Not really. I don't remember it being cold.

11 Q. Now, what time did Tony leave?

12 A. He didn't.

13 Q. He didn't, okay. So he spent the night?

14 A. Right. He was drinking some beer and it wouldn't

15 have been a good idea to drive all the way back home.

16 Q. Did you know where he lived?

17 A. I did. I mean, I had never been there. I just knew

18 that he lived a good hour or so away, so I didn't want him

19 drinking and driving.

20 Q. Okay. So he spent the night?

21 A. Correct.

22 Q. Now, what time did you get up the next morning?

23 A. It was pretty early because I had left my phone in

24 the living room and it kept ringing, and that woke me up.

25 Q. Your phone -- your cell phone?

1 A. Yes, my cell phone, correct.

2 Q. So your cell phone was ringing the next morning and

3 woke you up. Did you answer it?

4 A. No, I did not. I just figured it would quit.

5 Q. And about what time did you get out of there?

6 A. It had to be about eight something because somebody

7 was banging on my door, my front door. They were really ---

8 Q. Somebody is banging on your door?

9 A. Correct.

10 Q. Hang on a second here. Let's -- do you recognize

11 that?

12 A. It's the front of my house.

13 Q. The front of your house?

14 A. Correct.

15 Q. Does that -- does this photograph accurately depict

16 the front of your house on the morning of March 31st, 2012?

17 A. It does.

18 MR. GRAUSTEIN: Your Honor, if I may, so that she can

19 use it to help the jury, demonstrate.

20 THE COURT: All right. So what -- do you want to ---

21 MR. GRAUSTEIN: Just however you want it to ---

22 THE COURT: All right. Do you want to introduce it

23 into evidence?

24 MR. GRAUSTEIN: No, just for -- just use it for

25 demonstration.

1 **THE COURT:** All right. Is there any objection to that,
2 Mr. Fox?

3 **MR. FOX:** No, Your Honor.

4 **THE COURT:** Very good.

5 Go ahead.

6 **(LARGE PHOTOGRAPH PREVIOUSLY MARKED AS STATE'S EXHIBIT**
7 **NUMBER 7 FOR IDENTIFICATION ONLY.)**

8 Q. Looking at this picture, where was the knocking on
9 the door? Where was that at?

10 A. It was on this door, which is the side of my house.

11 Q. Okay. And just for clarification, whose car is that?

12 A. That's my van.

13 Q. All right. Do you know whose vehicle that is?

14 A. That was Tony's.

15 Q. Okay. So somebody is knocking on the door?

16 A. Correct.

17 Q. On the door on this side?

18 A. Correct.

19 Q. Okay. And ---

20 **THE COURT:** What exhibit number was that, sir?

21 **MR. GRAUSTEIN:** I'm sorry, Your Honor. This is ---

22 **THE REPORTER:** 7 for identification.

23 **MR. GRAUSTEIN:** --- Exhibit Number 7.

24 **THE COURT:** All right. Thank you.

25 Q. Okay. So there's knocking on the door. What did you

1 do?

2 A. I jumped up and I ran to the door to see who it was

3 because I thought maybe it was my neighbor and there was

4 something wrong.

5 Q. Did you open the door?

6 A. I did.

7 Q. Okay. When you opened the door, who or what did you

8 see?

9 A. I saw this lady that was very agitated, and she asked

10 if Tony was there and I said no.

11 Q. The lady who was at the door, is she in the courtroom

12 today?

13 A. She is.

14 Q. Could you point her out to me, please.

15 A. A peach-colored jacket on.

16 **MR. GRAUSTEIN:** For the record, Your Honor, she is

17 indicating the Defendant.

18 Q. And so she was at the -- the one knocking at your

19 door?

20 A. She was.

21 Q. The Defendant was?

22 A. She was.

23 Q. Okay. And she asked if Tony was there?

24 A. Correct.

25 Q. And you responded how?

1 A. I said no. I mean, I was kind of taken back like in
2 shock because she was very agitated and angry, and I had
3 just woke up and was trying to figure out what was going on.

4 Q. So you said no, and then what happened?

5 A. Then she asked me again. She said just send Tony
6 out, and I said he's not here. She's like I know he's here.
7 Send him out. So I just shut and locked the door.

8 Q. Then what did you do? Now, so you closed the door,
9 and now what did you do?

10 A. Well, I went and got my phone because I was in the
11 living room at this point, and then I went back in and Tony
12 was just laying there, and he was like who was that, and I
13 said I don't know, I said, but she was asking for you, and
14 he said what does she look like, and I was like she is like
15 really tall with dark hair, and I said she's, you know, --
16 and he goes that sounds like Vivian, and I was like who is
17 that, you know, and he was like that's my ex-girlfriend, and
18 he seemed perplexed that she would be there.

19 And then my phone started ringing, and I go whose
20 number is this, and he goes that's Vivian's number, and I
21 was like, oh, my gosh, I mean, how does she know like -- how
22 does she know my number or where I live? It was ---

23 Q. All right. So what -- what, if anything, did Tony do
24 at that point?

25 A. He got up out of the bed, and at this point we were

1 laughing because we were like, oh, she can really ruin a
 2 mood. You know, we were just being kind of silly, and he
 3 goes, well, I'll go outside and talk to her. He said don't
 4 worry about it. He goes -- you know, after our
 5 conversation, he goes -- said I'll be right back. I said
 6 okay. So he got up, got dressed, and then he was getting
 7 his cigarettes and going -- but he went out the kitchen
 8 door. He didn't go out the front door.

9 Q. All right. On State's Exhibit 7, if you could point
 10 out where the door was that he left from.

11 A. It's like the doors are on each side of the house,
 12 and he left from the door that was on that side.

13 Q. Okay. And that goes out of which room of the house?

14 A. That goes off the kitchen.

15 Q. All right. So you're in the kitchen now and he's
 16 just left the house. What did you do then?

17 A. I actually turned around and, you know, he went
 18 outside. I turned around because the refrigerator is there
 19 and I got something to drink, and I was walking back to go
 20 to look out the front window of -- the window, and before I
 21 could even get to the window I heard a gunshot.

22 Q. All right. So you were going to go see what was
 23 going on. How long after he went outside did you hear a
 24 gunshot?

25 A. I mean, a -- it wasn't very long, because as long as

1 it took me to say goodbye to him and, you know, he said I'll
 2 be right back. I said okay. I turned around and got a
 3 drink and I just walked -- my house isn't that big, and
 4 before I even made it halfway through my bedroom to where
 5 the window was to look outside, I had already -- I heard
 6 three shots.

7 Q. Okay. You heard three shots?

8 A. Yes.

9 Q. Okay. Were they bang, bang, bang -- bang, bang ---

10 A. It was bang, bang, bang.

11 Q. Okay. They were pretty quick in succession?

12 A. Very quick.

13 Q. Okay. And then what did you do?

14 A. I ran to the window and ---

15 Q. Okay. Going back to State's Exhibit 7 again, which
 16 window are you talking about?

17 A. I was talking about that window.

18 Q. Okay. So you went and looked out this window right
 19 here?

20 A. Correct.

21 Q. And what did you see when you looked out the window?

22 A. She was standing over him and she shot him again.

23 Q. When you say she ---

24 A. Vivian.

25 Q. Okay. The Defendant?

1 A. Correct.

2 Q. And where were they? Were they together, or apart,

3 or ---

4 A. He was on the ground and she was standing over him.

5 Q. And where was he laying on the ground?

6 A. He was lying on the ground beside the car right here

7 in the grass.

8 Q. Like in here?

9 A. Yeah. It was a little -- yeah, that's the car.

10 Q. Okay. And where was she?

11 A. She was beside him over here like on that side of

12 him.

13 Q. You said she was standing next to him?

14 A. Yeah. It was her, him, and then the car.

15 Q. Okay. And what, if anything, did she have in -- did

16 she have in her possession if you were able to see?

17 A. She had a gun.

18 Q. She had a gun?

19 A. Uh-huh **(indicating affirmative)**.

20 Q. Okay. What was she doing with the gun, if anything?

21 A. She had shot him with the gun, and then I ran from

22 the window and I called 911.

23 Q. Okay. So he was laying on the ground?

24 A. At this point he was down.

25 Q. Okay. So he was laying on the ground when you first

1 saw him, when you first looked out the window?

2 A. Yes. Well, yeah, it was kind of like an axe. It was

3 like going down and she was shooting.

4 Q. Okay. And she shot him -- so you heard three shots,

5 and then you heard another shot ---

6 A. I saw the last ---

7 Q. You saw the last shot?

8 A. I saw the last shot.

9 Q. And you saw one shot while Tony was laying on the

10 ground?

11 A. Well, he was going down. It more like a -- just a --

12 it was like a downward motion.

13 Q. Okay. Let me ask you this. When Tony left the

14 house, or at any point while he was at your house, did he

15 have a gun?

16 A. No.

17 Q. Did he have a weapon of any sort that you're aware

18 of?

19 A. No, he did not.

20 Q. How about his demeanor when he went out the door?

21 A. We were both just kind of laughing. We were like,

22 oh, my gosh, this is nuts. You know, I mean, he wasn't

23 upset at all. He ---

24 Q. So he did not appear angry to you?

25 A. No, no, not a bit, which I found shocking, too,

1 because I figured, you know, -- but he was just laughing
 2 like, oh, my gosh. It was just -- I don't know. It was
 3 just ---
 4 Q. All right. And just so I'm clear, so when you saw
 5 the Defendant fire the shot, ---
 6 A. Correct.
 7 Q. --- you were still looking out the window?
 8 A. I looked out -- yeah, I ran to the window, and she
 9 was still shooting him.
 10 Q. Okay. And then what did you do?
 11 A. Then I had my phone and I called 911.
 12 Q. All right. You called 911, and were you still
 13 looking out the window?
 14 A. No. At that point, I was scared. I was afraid she
 15 was going to shoot me.
 16 Q. Okay. So where did you go?
 17 A. I ran to the back of the house.
 18 Q. All right. And you stayed on the phone with 911?
 19 A. I did, and they wanted me to go back out and look to
 20 see where she was and what kind of car she was driving, and
 21 I did. I had to go back out there and look out the window.
 22 Q. All right. Did you look out the same window?
 23 A. No. I looked out a different window.
 24 Q. All right. Looking at State's Exhibit 7 -- Exhibit 7
 25 again, which window did you look out this time?

1 A. I looked out that window.

2 Q. Okay. So you looked out this window?

3 A. Correct.

4 Q. And did you see the Defendant?

5 A. I did.

6 Q. And what was she doing?

7 A. She was kneeling beside him holding his head.

8 Q. All right. And how long did you stay at that window

9 watching?

10 A. Just for a minute. I kept leaving, and then the lady

11 at 911 wanted me to go back so I could figure out what kind

12 of car it was in case she left. They wanted to make sure

13 that they would be able to find her since I couldn't give

14 them a last name or anything.

15 Q. Okay.

16 A. And they were trying to get me to figure out what

17 kind of car she drove and what she looked like.

18 Q. Okay. And did you observe or did you watch the

19 Defendant until police arrived?

20 A. No, not continuously, I did not.

21 Q. Okay. And to your knowledge, was the Defendant still

22 present when the police arrived?

23 A. She was. At that point she had gotten up, and I

24 think that last time they asked me to look, I didn't see her

25 and I kind of like really panicked, and I -- she was sitting

1 in her car at that point.

2 Q. Okay. Now, when you were looking out the window, did
3 you see anybody running from that area?

4 A. No.

5 Q. And just so I can -- to be clear, the Defendant is
6 the person who knocked on the door?

7 A. Correct.

8 Q. And the Defendant is the person you saw standing by
9 Tony, shooting him?

10 A. Yes.

11 **MR. GRAUSTEIN:** Please answer any questions the Defense
12 may have.

13 **THE COURT:** Cross-examination.

14 **MR. FOX:** Thank you.

15 **CROSS-EXAMINATION BY MR. FOX:**

16 Q. Ms. Movsky, this was the first or second time you had
17 actually met Mr. Hughes?

18 A. It was the first time.

19 Q. Okay. So he had never been over to your home before?

20 A. No sir.

21 Q. Would you be surprised if someone would say that they
22 had seen him at your home before that day?

23 A. Yeah.

24 Q. And the site that you all -- I understand that you
25 began using phones, and FaceBook, and different things, but

1 there was -- Plenty of Fish was the name of the site?

2 A. It was Plenty of Fish, yes sir.

3 Q. And it was a dating site, right?

4 A. Correct.

5 Q. As in plenty of fish in the sea?

6 A. I would assume that's where it comes from.

7 Q. And do you recall -- and what do you do, do you put

8 up a profile of yourself, answer some questions?

9 A. You put up a profile of yourself and you do your

10 answers on-line, just basic questions, and then they kind of

11 give you people with the same interests in the area.

12 Q. And then you can go through and review other people's

13 profiles and ---

14 A. Correct.

15 Q. --- then like take the step to send them a message or

16 call, or whatever?

17 A. Correct.

18 Q. Was one of the questions ideal date, what's your

19 ideal date?

20 A. Yeah. Well, I think it would be what would be your

21 first date, if I'm not mistaken.

22 Q. Okay. Do you recall what Mr. Hughes' response to

23 that was on his profile?

24 A. No, I do not.

25 Q. You don't remember it being sex, sex, sex, being his

1 response for his ideal date?

2 A. No sir.

3 Q. Do you know whether he set that profile -- his

4 profile up himself?

5 A. I would assume he did.

6 Q. No reason that would have come up, though, in

7 conversation?

8 A. No, it would not have.

9 Q. Now, forgive me, I don't want to keep popping up and

10 distracting the jury, but would you please tell me which

11 window when you first looked out which window you were

12 looking out?

13 A. This window.

14 Q. It's that middle window?

15 A. Correct.

16 Q. Okay. The door that Ms. Falls came to is over here

17 by the stairs, correct?

18 A. Yes.

19 Q. There's a door -- kind of as you go down the porch,

20 there's a door back here, correct?

21 A. Uh-huh **(indicating affirmative)**, correct.

22 Q. And the other door is ---

23 A. The other side of the house.

24 Q. Okay. What room is that ---

25 A. That is my bedroom.

1 Q. Bedroom, and this one on the ---
 2 A. The laundry room.
 3 Q. And so as you look at the photo on the right, that's
 4 the laundry room. Okay. So this is where you first looked
 5 out?
 6 A. Correct.
 7 Q. And then when you looked out the second time, ---
 8 A. I was at that window.
 9 Q. You were at this window over here, which ---
 10 A. The bedroom window as well.
 11 **THE REPORTER:** Excuse me. I can't hear. Please speak
 12 up.
 13 Q. The bedroom window is where the last -- okay. That's
 14 my own information. Thank you. So you heard a knock and
 15 you answered the door, and there had been a couple of calls
 16 before, correct?
 17 A. Correct.
 18 Q. There were some that Tony had thought were from Miss
 19 Vivian, correct?
 20 A. When -- after I answered the door, I got my phone. I
 21 was in the living room, and my phone started ringing, and I
 22 asked him who the number was, because I didn't recognize the
 23 number, and he told me that that was Vivian's number.
 24 Q. Okay. But there was some other call you got during
 25 the same time period that said private number, correct?

1 A. Yes. There was some with the private and some with
2 the number that I didn't recognize.

3 Q. Okay. Then -- all right, so when you came to the
4 door and Miss Vivian was there, she was agitated?

5 A. She was very angry, correct.

6 Q. Okay. But made no -- she asked for Tony?

7 A. She asked to speak to him, yes.

8 Q. She wanted him to come out?

9 A. Correct.

10 Q. And that was, in fact, -- did you tell her that he
11 would have her -- you would have him call her? Do you
12 remember telling her that?

13 A. I remember telling her that he wasn't there, and then
14 I just remember saying that he wasn't there, as well as
15 shutting and locking the door.

16 Q. Okay. So she made no effort to get in? You could
17 shut the door?

18 A. Correct.

19 Q. Told Mr. Hughes what was happening?

20 A. I did. I ---

21 Q. And he decided to go out?

22 A. He did.

23 Q. Okay. So at that point Ms. Schrader-Falls was
24 outside, correct?

25 A. Correct.

1 Q. Did you see a gun when she came to the door?

2 A. I did not.

3 Q. Okay. Could you see her hands? Do you remember if

4 you could see her hands?

5 A. Not really. I mean, I don't recall.

6 Q. But you would remember if you ---

7 A. If I saw a gun, I would remember that as well.

8 Q. If she had waved a gun in your face?

9 A. Yes sir, I would have recognized that.

10 Q. Okay. So if you had seen a gun, you would remember

11 that? If she had pointed one at you or waved a gun in your

12 face, you ---

13 A. Of course, of course.

14 Q. Or threatened you with a weapon?

15 A. Of course.

16 Q. Okay. So that was nothing that you would need to

17 pass along to Mr. Hughes, or, hey, you know, she's got a

18 weapon?

19 A. Well, no.

20 Q. But he went on outside. She was outside?

21 A. Correct.

22 Q. In other words, he wasn't forced outside, correct?

23 A. No.

24 Q. Okay. And you were still in the kitchen?

25 A. I was in the kitchen, correct.

1 Q. Okay. And the kitchen looks right out on the
2 driveway, does it not?

3 A. It does. It actually looks through the washroom.

4 Q. Okay. But it's there towards the front of the house?

5 A. Correct.

6 Q. Okay. And until you heard sounds, pops, gunshots,
7 you didn't hear anything prior to that, correct?

8 A. I did not.

9 Q. So you didn't hear any yelling, ---

10 A. No.

11 Q. --- or fussing, ---

12 A. No.

13 Q. --- or arguing?

14 A. I did not.

15 Q. Okay. So -- but you were able to hear three quick
16 pops?

17 A. Yes.

18 Q. Okay. No doubt there were three?

19 A. Yes.

20 Q. Okay. Close together? (Mr. Fox taps quickly.)

21 A. Yes.

22 Q. Okay. Not separated, not one, two, three? (Mr. Fox
23 taps slower as he counts.)

24 A. It was ---

25 Q. I think you said to Mr. Graustein they were very

1 quick?

2 A. - Correct.

3 Q. For that part, did you know what they were when you

4 heard them?

5 A. Not really, not at first. I mean, yeah, I think I

6 knew. I mean, it was like firecrackers. It was one of

7 those things that like hits you in your soul, and I ran to

8 the window and saw what it was.

9 Q. Now, you say you heard or saw at that point, you

10 could see both of them, correct?

11 A. Correct.

12 Q. You could see Mr. Hughes and Miss Vivian. He was --

13 okay, I'm gonna look at the photograph. Where was Mr.

14 Hughes when you looked out?

15 A. Lying in the ground over here.

16 Q. Towards the front of the car?

17 A. Kind of towards the middle.

18 Q. Okay. Which way was -- which way was his head? How

19 was he directed at ---

20 A. His head was this way.

21 Q. Head towards the middle of the yard?

22 **THE COURT:** Could you speak up just a little bit,

23 please ma'am.

24 A. Yeah. I'm trying to think.

25 Q. But he was on the ground near the car?

1 A. Yes, he was going down.

2 Q. And Miss Vivian was in the yard, correct?

3 A. Correct.

4 Q. And you -- what makes you think there was another

5 shot?

6 A. That I saw it.

7 Q. Okay. Now, but he was ---

8 A. Saw the gun. He was on his way down.

9 Q. Okay. So he was on his way down at that point, so

10 you didn't see the incident before? In other words, you

11 didn't see what was happening when you heard those first

12 three pops?

13 A. No.

14 Q. Okay. Or what had happened in the incident before

15 those three shots?

16 A. No.

17 Q. Okay. And you didn't see, again, what happened

18 between the time you heard and the time you got to the

19 window?

20 A. Correct.

21 Q. Okay. So he was falling down, ended up falling, so

22 once he fell to the ground, that was it, correct, in terms

23 of no more shots, right?

24 A. I didn't see any more, no. I didn't -- no.

25 Q. Now, do you remember -- the police -- obviously you

1 called 911. Did the police show up?

2 A. They did.

3 Q. Okay. And at some point you spoke to police?

4 A. Correct.

5 Q. Told them what you saw, correct?

6 A. I did.

7 Q. Okay. Do you remember telling the police you heard

8 two shots initially?

9 A. No.

10 Q. Now, and that would have been the same morning that

11 you -- that this happened, correct?

12 A. Correct.

13 Q. Okay. And you spoke with Detective Smith, Alex

14 Smith? Do you remember?

15 A. I'm not sure of his name.

16 Q. Okay.

17 A. I mean, there was -- it was a very traumatic

18 situation.

19 Q. It was very traumatic. You used the words panic.

20 Would that be a fair way to describe your state of mind when

21 this happened?

22 A. Yeah, shock. Shock is what ---

23 Q. Okay. Ever witnessed a shooting before?

24 A. No.

25 Q. Okay. Ever see someone die in front of you before?

1 A. No.

2 Q. Okay. So I imagine it was very jarring?

3 A. Correct.

4 Q. Okay. So you don't recall -- is your answer that you

5 did not tell the police that you heard two shots initially

6 or that you don't recall if you told them?

7 A. I'm just not sure of the exact number, no sir.

8 Q. Okay. So it may have been three shots, it may not

9 have been three shots, correct?

10 A. Correct.

11 Q. Now, and immediately after Miss Vivian did what,

12 knelt down beside him?

13 A. When I went back to the window, she was kneeling

14 beside him holding onto his head.

15 Q. This would have been -- the first, you've seen this

16 thing, scary and panicked, and you go back, ---

17 A. Correct.

18 Q. --- right, because you don't know what's going to

19 happen, so can you give an estimate how long it was before

20 then you went back and looked out the window?

21 A. Gosh, it was not very long. I want to say -- I mean,

22 it's hard to remember, like seconds, and then, I mean, it

23 wasn't -- yeah, I think about the time I called and when the

24 police showed up, I had checked the window quite a few times

25 so I could keep track of her, but we're talking not even a

1 minute, maybe thirty seconds, ---

2 Q. Okay.

3 A. --- I mean, you know, it wasn't very many.

4 Q. Okay. But when you did look back out that first time

5 and you saw the shooting, ---

6 A. Correct.

7 Q. --- and you got away from the window, and when you

8 went back the first time, then Miss Vivian was there

9 kneeling next to Tony Hughes, correct?

10 A. Correct.

11 Q. And she was holding his head, cradling his head?

12 A. She was holding his head, yeah. Her mouth was

13 moving. I didn't hear what she was saying, but she was just

14 over top of him.

15 Q. Okay. She wasn't shooting him any more?

16 A. No, she was not.

17 Q. Could you see the gun at that time?

18 A. No, not at that point.

19 Q. Okay. Did you see anybody else outside?

20 A. I did not.

21 Q. At any time during this -- your going back and forth

22 to the window, did you ever see any of your neighbors

23 outside?

24 A. I did not.

25 Q. Okay. Now, did you ever see -- what did she do --

1 did you see her get up and leave Mr. Hughes, Vivian I mean,
 2 did you see her get up and leave his side?
 3 A. I did not.
 4 Q. Okay. At some point you looked out, though, and she
 5 was in her car?
 6 A. Correct.
 7 Q. Her car was parked where?
 8 A. It was kind of like behind my car and Tony's car. It
 9 was kind of pulled in at an angle.
 10 Q. This white car that we've seen, sort of in behind the
 11 van, this is the white car being used ---
 12 A. Correct. It was kind of like at an angle.
 13 Q. But behind the van more?
 14 A. Correct.
 15 Q. Okay.
 16 A. It was kind of like -- yeah, angled behind the cars.
 17 It wasn't behind the van.
 18 Q. But you could see the cars from the window?
 19 A. Correct.
 20 Q. And you could see her in the front seat?
 21 A. Correct.
 22 Q. Could you see what she was doing?
 23 A. No.
 24 Q. Okay. Could you tell if the car was running or not?
 25 A. No.

1 Q. At any time did that car leave?

2 A. No.

3 Q. How long, and I realize that's been a while for you

4 to estimate, but how long would you say it was before the

5 police arrived?

6 A. Wow, I would say -- I mean, it's hard to make a guess

7 on time when it's like that. I mean, I don't even want to

8 make a guess because I'm not sure, you know, because when

9 you're talking to 911 and you're looking out the window,

10 you're seeing something horrific. I don't know how long. I

11 don't know, I mean, how long.

12 Q. Well, ---

13 A. I mean, that would be something that would be in the

14 police records, but personally I wasn't standing there

15 watching a clock. I am so sorry, but I can't answer that.

16 Q. If you don't know, you don't know.

17 A. I don't know.

18 Q. Would it be fair to say a couple of minutes at least?

19 You call, and they're not right -- you're not right next

20 door to a police station?

21 A. No sir.

22 Q. Okay. So it's fair to say at least a couple of

23 minutes?

24 A. I would -- that would be fair.

25 Q. But Ms. Falls was still there when the police

1 arrived, correct?

2 A. Correct.

3 Q. And you're saying nobody was outside? You didn't go

4 outside because that wouldn't be smart and you didn't see

5 anybody else outside?

6 A. Right. And the lady at 911 said I couldn't go

7 outside.

8 Q. Okay. So Ms. Falls never -- Ms. Falls never left the

9 scene, did she?

10 A. No.

11 Q. She was still there when the police arrived?

12 A. Correct.

13 Q. Did you see what happened when they arrived?

14 A. I looked out the window and they were handcuffing

15 her. They were getting her out of the car and they were

16 handcuffing her.

17 Q. Now, at some point they took you -- did you talk to

18 the police there at your house?

19 A. Yes.

20 Q. And, again, do you recall who you spoke to?

21 A. No sir, not his name.

22 Q. Was it the same gentleman you spoke to later at the

23 M. L. Brown building here in Conway?

24 A. Yes, it was.

25 Q. Okay. His name is Detective Smith. Does that ring a

1 bell?

2 A. No.

3 Q. Okay. But it was the same gentleman you spoke to

4 later, is that correct?

5 A. Correct.

6 Q. Did he actually interview you there at your house?

7 A. Actually they took -- I was at the neighbor's house.

8 They had my house blocked off.

9 Q. Okay. Was that -- which neighbor?

10 A. If you're facing my house, it would have been the

11 house on the left.

12 Q. On the left, Mr. McCarty's house?

13 A. Correct.

14 Q. Okay. But did the officers question you about what

15 happened?

16 A. They did.

17 Q. Okay. Did they ask you to write anything down?

18 A. Wow. I don't -- I don't even know if I wrote

19 anything down or not. I know that I told them the story at

20 that place and then I did at the other one. We went down to

21 the police station.

22 Q. Okay. When you went down to the police station, do

23 you recall again talking about when you were at the

24 neighbor's house, did they -- when they were speaking to

25 you, were they taking notes? Did they record it or

1 anything?

2 A. They were taking notes. I know for a fact it was

3 recorded when we went to the police station, but I'm not

4 sure about when we were at the ---

5 Q. Okay.

6 A. --- site.

7 Q. Okay. And did they ask you to write -- write a

8 statement at the police station as well?

9 A. I can't remember if I wrote something or not. I do

10 not remember.

11 Q. If I showed you something, would you be able to

12 recognize it?

13 A. I would recognize my handwriting. I sure would.

14 **(STATEMENT OF DIANE MOVSKY IS MARKED AS DEFENDANT'S**

15 **EXHIBIT NUMBER 1 FOR IDENTIFICATION ONLY.)**

16 Q. Ms. Movsky, I'm going to show you what's been marked

17 as Defendant's Exhibit for identification 1 and you just

18 tell me if you can recognize that.

19 A. I do. That is my handwriting.

20 Q. Okay.

21 A. Yeah.

22 Q. Okay. And what does that appear to be?

23 A. It appears to be what took place.

24 Q. Is that the statement you gave to the Horry County

25 Police Department?

1 A. Yes.

2 Q. Or at least a written item, and they recorded it?

3 A. Right.

4 Q. Would it help you -- I asked you a while ago about

5 what you told the police with regard to the number of shots.

6 Have you had a chance to look at that?

7 A. I have. I read over it.

8 Q. Okay. Now that you've seen that, do you recall what

9 you told the police two years ago about how many shots you

10 heard initially?

11 A. Yes. It was two instead of three, but I -- once you

12 experience something like that, your mind settles down

13 afterward and you think a lot clearer, and there was three.

14 Q. How long did it take your mind to settle down before

15 you decided there were three shots?

16 A. It was actually going through therapy, talking about

17 it with my therapist and re-living it so it wouldn't have

18 such a traumatic effect on me.

19 Q. That involved just talking to a therapist and ---

20 A. It was talking to the therapist and actually talking

21 about it so that it didn't have so much power over me.

22 Q. Did part of that, either officially with your

23 therapist or unofficially while talking with Mr. McCarty,

24 your neighbor next door?

25 A. Him and I have talked and it has mostly been about

1 how this has affected us. I mean, he still has nightmares
2 as well.

3 Q. Have you all talked about what you each saw, more
4 specifically, not just we saw the shooting -- we saw the
5 shooting? Did you talk ---

6 A. Not in great detail, no.

7 Q. Okay. But you have talked?

8 A. We have spoke, just not in great detail because it's
9 just something that neither one of us want to think about or
10 re-live.

11 Q. I understand. In fact, you all are still next door
12 neighbors, correct?

13 A. Correct.

14 Q. Okay. And on that day, the police -- now, you were
15 at Mr. McCarty's house. Did they talk to him as well?

16 A. Yes.

17 Q. Okay. And, in fact, he rode with you in the patrol
18 car back to the Brown Building, to the police station, did
19 he not?

20 A. Yes.

21 Q. So y'all rode together?

22 A. With the policeman.

23 Q. Yes. Do you know yourself -- do you know whether the
24 police spoke to anyone else there in the neighborhood? Did
25 you see them talking to any of your neighbors or talking to

1 anybody else?

2 A. I don't recall.

3 Q. Okay.

4 MR. FOX: One moment, Your Honor.

5 Thank you. No further questions.

6 THE COURT: Redirect?

7 MR. GRAUSTEIN: No, Your Honor.

8 THE COURT: All right.

9 You may step down, ma'am.

10 Do you wish this witness to be excused?

11 MR. GRAUSTEIN: I do, Your Honor.

12 THE COURT: Any objection, Mr. Fox?

13 MR. FOX: None, Your Honor.

14 THE COURT: All right.

15 Ma'am, you are released from your subpoena and may go

16 back to your regular activities. Thank you.

17 Counsel, can y'all come up and talk to me for one

18 second, please.

19 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

20 THE COURT: All right, ladies and gentlemen, due to

21 prior matters, we're going to stop for the day. Now, we

22 will reconvene -- we're going to start tomorrow morning at

23 9:30, so I need for you to be downstairs in the jury

24 assembly room, Madam Bailiff, what, twenty after or quarter

25 after?

1 **THE BAILIFF:** About a quarter after.

2 **THE COURT:** A quarter after, and they will get you
3 assembled and bring you upstairs, and I believe, Madam
4 Clerk, you will have something for them in the morning, so
5 they will have something for you in the jury room when you
6 get there, so that will leave you a little bit of time to
7 enjoy that before we get started at 9:30.

8 Two things. You go home, you see your husband, wife,
9 boyfriend, girlfriend, person down the street, and as I told
10 you, I don't want y'all talking about this until I give it
11 to you at the very end. Obviously you can't talk about it
12 with anybody else. Unintentionally or intentionally they'll
13 give you their opinion. They don't have one, and I don't
14 want y'all to have an opinion about the facts of this case
15 until you've heard all the facts, so please don't talk about
16 it.

17 Remember what I told y'all the very first thing this
18 morning, you're not investigators, you're not researchers.
19 You can't look up anything on the Internet. You can't try
20 and figure out something that you have a question about.
21 You're deciding this case solely and completely on the facts
22 and evidence you hear in the courtroom and from no other
23 source.

24 Also, I expect so that we make sure that we do complete
25 this case, we may work past five, six o'clock tomorrow and

1 possibly the next day, depending on how fast the evidence is
2 presented, how long the testimony of each of the witnesses
3 may be, so if you need to explain that or tell someone at
4 home about that so that they understand you're not showing
5 up right at five o'clock, until a little later on, that
6 you're here at the courthouse.

7 We'll try and not keep you too long, but it may be
8 necessary to do that to make sure we accomplish it, to make
9 sure we are done with the case and give y'all plenty of time
10 to talk about the case at the very end and before you reach
11 your unanimous decision in this matter.

12 All right, so with that, tomorrow morning, 9:15, jury
13 assembly room, please. Thank you very much.

14 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
15 JURY.)

16 THE COURT: All right, Counsel, I do have a plea or two
17 tomorrow morning at nine o'clock, so I will be doing that,
18 but please, y'all, if you want to leave your things, you may
19 do so. They will get locked up, but we will have those
20 other matters at nine o'clock in the morning first, all
21 right?

22 MR. FOX: Yes sir.

23 THE COURT: Anything else from the State at this point
24 in time?

25 MR. GRAUSTEIN: None, Your Honor.

1 **THE COURT:** From the Defense?

2 **MR. FOX:** No sir.

3 **THE COURT:** All right. Very good. See y'all in the
4 morning then. Thank you very much.

5 (END DAY.)

6 **(THE FOLLOWING TAKES PLACE ON TUESDAY, MAY 6, 2014,**
7 **OUTSIDE THE PRESENCE OF THE JURY.)**

8 **THE COURT:** All right. It appears that all the jurors
9 are here. Anything from the State before we call the jury
10 in?

11 **MR. GRAUSTEIN:** No, Your Honor.

12 **THE COURT:** From the Defense?

13 **MR. FOX:** No, Your Honor.

14 **THE COURT:** All right. Very good.

15 Let's call the jury in then, please. Thank you.

16 Counsel, there was a request by the jury this morning
17 to take notes. Obviously we've already started the trial.
18 My intention is not to have them do so since we didn't start
19 off with that from the very beginning, and there was just
20 one juror yesterday that took some notes, which the bailiffs
21 got from that particular juror, so I'll just explain that to
22 them at the very beginning and we'll just continue on as we
23 had started, that is without the notes.

24 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
25 **JURY.)**

1 **THE COURT:** All right. Good morning, ladies and
2 gentlemen. I understand from the bailiffs that they
3 provided you some refreshments from The Trestle Bakery, so I
4 hope y'all enjoyed those.

5 All right. Solicitor, are you ready to get started
6 with your next witness, sir?

7 **MR. GRAUSTEIN:** Yes, I am, Your Honor.

8 **THE COURT:** All right. Call your next witness then,
9 please.

10 **MR. GRAUSTEIN:** We call Steven Rhew.

11 **THE COURT:** Now, while we're waiting for that one
12 witness to come, there was a request about taking notes.
13 Our common practice is not to allow the taking of notes, and
14 I'll explain that, except if a trial is going to last, you
15 know, two weeks, three weeks, something like that.

16 We just don't do that, and the reason why, and I'm not
17 speaking to anybody particularly, but in general we find
18 when jurors are taking notes, especially in a case that's
19 only going to last a day or two, or so, that sometimes when
20 they're taking notes, they have a tendency to keep their
21 head down and write the notes and they're not paying
22 attention to the next question and answer, which might be a
23 whole lot more important than the one that they're taking
24 notes about, so what we do is rely upon your collective
25 wisdom, and remembrance, and knowledge of the facts rather

1 than anyone's particular note-taking because, you know, some
2 people might be excellent at it and then some people might
3 not be so good at it, but they have something written down,
4 so that's more important, so we rely on your general
5 recollection and knowledge, all right?

6 Come forward, sir.

7 Madam Clerk, you can place him under oath.

8 **STEVEN RHEW**, being first duly sworn,
9 testifies as follows:

10 **THE DEPUTY CLERK:** Please state your full name and
11 spell your last.

12 **MR. RHEW:** My name is Steven Rhew. Last name is
13 spelled R-H-E-W.

14 **THE COURT:** Go ahead, Solicitor.

15 **MR. GRAUSTEIN:** Thank you, Your Honor.

16 **DIRECT-EXAMINATION BY MR. GRAUSTEIN:**

17 Q. Officer Rhew, where are you currently employed?

18 A. Horry County Police Department.

19 Q. And where were you employed on March 31st, 2012?

20 A. The Horry County Police Department.

21 Q. And what were your duties or are your duties with the
22 police -- the Horry County Police Department?

23 A. Right now I'm working the Street Crimes Unit in the
24 Narcotics Division.

25 Q. Okay. What were your duties in -- on March 31st,

1 2012?

2 A. Patrol.

3 Q. Okay. Patrol. By that, you mean ---

4 A. Answering calls for service that come in to 911.

5 Q. What call did you receive?

6 A. We received a shooting in progress call.

7 Q. A shooting in progress?

8 A. Yes sir.

9 Q. And did you respond to that call?

10 A. Yes sir.

11 Q. So you responded to that call. Where was that call

12 -- where did that call take you to?

13 A. I believe it was Bay Forge Road.

14 Q. Bay Forge Road?

15 A. Yes sir.

16 Q. What area is that in?

17 A. It's in the Clay Pond-Forestbrook area of Myrtle

18 Beach.

19 Q. Okay. And you arrived on scene there?

20 A. Yes sir.

21 Q. Were you the first officer, or second officer?

22 A. I believe me and Officer Odom responded and we

23 arrived on scene roughly at the same time.

24 Q. All right. What did you see when you arrived on the

25 scene?

1 A. Immediately I saw the -- a woman sitting in her car
2 at the location where we were sent to.

3 Q. Okay. And what color was the car she was sitting in?

4 A. I don't recall.

5 Q. Okay. So she was sitting in a car. Had you been
6 given any information other than a shooting in progress
7 during your time in transit to the location?

8 A. I don't recall the specifics about the call notes
9 that were given to us on the way there.

10 Q. Okay. And so you arrived on the scene and saw a
11 woman sitting in a car. What did you do as part -- as part
12 of your duties when you arrived?

13 A. When we arrived, I knew there was a shooting in
14 progress and she was there at that location sitting in her
15 car, approached her and detained her, and then once we
16 detained her, we realized that there was a gun sitting in
17 the car beside her.

18 Q. So you saw a gun in the car ---

19 A. Yes sir.

20 Q. --- that she was sitting in?

21 A. Yes sir.

22 Q. And you detained her. At that point had you been
23 able to determine what exactly had happened?

24 A. Well, after we detained her, we also noticed that
25 there was a male laying face down in the yard as well. I

1 detained her and then we went to -- spoke to a couple of
2 different people and figured out what had happened.

3 Q. Okay. Were you in charge of the investigation or ---

4 A. No sir.

5 Q. Did you conduct any interviews?

6 A. We did. Me and Officer Odom spoke to neighbors that
7 were in the area about what they saw and what they heard,
8 and spoke to the lady that actually lived at the residence
9 there.

10 Q. Did you have a chance to -- well, let me ask you
11 that. Is the person who was sitting in the car and who you
12 detained, are they in the courtroom today?

13 A. I believe they are.

14 Q. And who are they?

15 A. Ms. Falls.

16 Q. The Defendant in this case?

17 A. Yes sir.

18 Q. And you -- did you have a chance to observe her, look
19 at her physical condition while you -- while you were on the
20 scene?

21 A. Yes sir.

22 Q. And did you see any injuries to her?

23 A. No sir.

24 Q. Did you see anything that looked like an old injury?

25 A. Not that I recall, no sir.

1 Q. Are you -- do you know if she received any medical
2 treatment?
3 A. I don't believe she did.
4 Q. And to your knowledge, was she transported anywhere
5 for any medical treatment?
6 A. No sir.
7 MR. GRAUSTEIN: Please answer any questions Defense may
8 have.
9 THE COURT: All right. Cross-examination.
10 MR. FOX: Thank you.
11 CROSS-EXAMINATION BY MR. FOX:
12 Q. Officer, what was Ms. Falls' emotional state when you
13 came in contact with her?
14 A. I don't recall that.
15 Q. You spoke with -- do you recall who you spoke
16 with, ---
17 A. I remember ---
18 Q. --- any witnesses?
19 A. I remember specifically speaking with the owner of
20 the residence that we were at.
21 Q. Okay. Did you also speak with the next door
22 neighbor?
23 A. I believe I did. Either I did or Officer Odom did.
24 I know we took statements from them.
25 Q. How about any other neighbors that lived in the area?

1 A. We may have. I don't recall exactly who we spoke to
2 or which neighbor here or there.

3 Q. How about specifically a lady directly across the
4 street from the residence where the shooting happened?

5 A. We may have, but I don't recall exactly.

6 Q. Did you have any part of processing the scene, trying
7 to collect evidence or preserve evidence?

8 A. We try to preserve as much as we can when we respond
9 to any kind of scene like that. I didn't necessarily
10 collect any evidence myself or do anything like that.

11 Q. Did you make any effort to locate shell casings?

12 A. We did. I do remember looking for shell casings in
13 the yard.

14 Q. Okay. Did you find any?

15 A. I can't -- I can't remember.

16 Q. You were looking for the shell casings. That was
17 visual, did you have any equipment to assist you?

18 A. Myself, it was just visual, and Crime Scene
19 responded. I believe they had a metal detector maybe.

20 Q. And this is a small area between the front yard of
21 this residence? It's not very large, is it?

22 A. The size I would say of a normal yard in a
23 residential area.

24 Q. It's -- look at this. Let me show you a photograph
25 that was entered for identification yesterday, Number 7. Do

1 you recognize what that shows?

2 A. The front of the house.

3 Q. Okay, and where the shooting was. If you recall,

4 does the driveway extend much farther -- obviously this

5 doesn't show the entire -- or does it show the entire

6 driveway?

7 A. I can't recall.

8 Q. Okay. There's another house pretty much right here.

9 This tree, in fact, is next door, is that right?

10 A. I would say that's ---

11 Q. So the yard basically extends between the end of the

12 porch and the tree, correct? Is that your recollection?

13 A. You mean to the side?

14 Q. Well, it goes back -- I'm talking about the front.

15 A. Yes sir.

16 Q. Okay. And then however long the driveway is, it

17 extends about that far?

18 A. Yes sir.

19 Q. Okay. Do you recall how long it took you from the

20 time you got the call to arrive at Bay Forge?

21 A. It was pretty quick because I remember being in the

22 area that morning. It was a morning that we didn't have

23 much going on, and I happened to be in the area. I believe

24 I was either close to or sitting with Officer Odom when the

25 call came out.

1 Q. Okay. The best you can remember, it was five minutes
2 or fewer, more than five minutes?

3 A. Fewer than five minutes.

4 Q. Okay. But -- and you were the first officers to
5 arrive?

6 A. Yes sir.

7 Q. And when you arrived, Ms. Falls was still there?

8 A. Yes sir.

9 Q. In a car?

10 A. Yes sir.

11 Q. Okay. Did she give you any problems when you went to
12 speak to her or take her into custody?

13 A. No sir.

14 Q. Okay. Thank you.

15 MR. FOX: No further questions.

16 THE COURT: Any redirect?

17 MR. GRAUSTEIN: Yes sir, very briefly, Your Honor.

18 REDIRECT-EXAMINATION BY MR. GRAUSTEIN:

19 Q. Officer Rhew, in the time it took you to respond, to
20 your knowledge was the crime scene secure?

21 A. When I arrived on scene or on the way there?

22 Q. Well, during that time?

23 A. It's never secure until an officer responds on scene
24 and is able to secure it himself.

25 Q. Okay. So in the time it took you to respond and

1 arrive on the scene, somebody, anybody could have gone
2 through that scene and ---
3 A. Yes sir.
4 Q. --- caused some problems ---
5 A. Yes sir.
6 **MR. GRAUSTEIN:** Thank you.
7 **THE COURT:** Recross?
8 **MR. FOX:** Just in follow-up on that question.
9 **RE CROSS-EXAMINATION BY MR. FOX:**
10 Q. You spoke to the owner of the house, Ms. Movsky, you
11 or officers there, you can't recall who, ---
12 A. Yes sir.
13 Q. --- but also officers spoke to the next door
14 neighbor, Mr. McCarty?
15 A. Yes sir.
16 Q. Did either of them indicate whether they had even
17 come outside and gone near the body or the yard?
18 A. I don't recall, but I don't believe so.
19 Q. Okay. In taking custody of Ms. Falls, it would have
20 been routine to pat her down, search her for other weapons?
21 A. Yes sir.
22 Q. Okay. If you had found, say, illegal narcotics, you
23 would have taken those into possession?
24 A. Yes sir.
25 Q. If you had found shell casings or other -- anything

1 that indicated involvement with this crime you would have
2 noted those, taken them into custody and noted those,
3 correct?

4 A. Yes sir.

5 Q. At some point I'm assuming the car was -- her car,
6 Ms. Falls' car, was taken into custody, police custody?

7 A. Yes sir.

8 Q. It would have been routine to search through that
9 car, correct?

10 A. Yes sir.

11 Q. And anything that was found of evidentiary value for
12 this shooting would have been collected, and kept, and
13 recorded?

14 A. Yes sir.

15 MR. FOX: Thank you.

16 THE COURT: Anything else, Solicitor?

17 MR. GRAUSTEIN: No, Your Honor.

18 THE COURT: All right. Do you wish this witness to be
19 excused?

20 MR. GRAUSTEIN: Yes, I do, Your Honor.

21 THE COURT: Any objection?

22 MR. FOX: No, Your Honor.

23 THE COURT: All right.

24 Sir, you are released from your subpoena and may go
25 back to your regular duties.

1 Who is your next witness, Solicitor?

2 **MR. GRAUSTEIN:** It will be Officer William Odom.

3 **THE COURT:** All right.

4 **WILLIAM ODOM,** being first duly sworn,
5 testifies as follows:

6 **THE DEPUTY CLERK:** Please state your full name and
7 spell your last name.

8 **MR. ODOM:** William Odom, O-D-O-M.

9 **THE COURT:** Go ahead.

10 **MR. GRAUSTEIN:** Thank you, Your Honor.

11 **DIRECT-EXAMINATION BY MR. GRAUSTEIN:**

12 Q. Officer, where are you currently employed?

13 A. Mt. Pleasant Police Department.

14 Q. Where were you employed on March 31st, 2012?

15 A. Horry County Police Department.

16 Q. Horry County Police Department, okay. When you were
17 with Horry County Police Department -- or how long did you
18 work for Horry County Police Department?

19 A. Two and a half years.

20 Q. Okay. How long had you been working when you -- on
21 2012?

22 A. 2012, a year.

23 Q. All right. And what were your duties with Horry
24 County Police Department?

25 A. Patrol.

1 Q. And was that road patrol?

2 A. Yes.

3 Q. What were your duties?

4 A. Patrol the 911 calls, the neighborhoods, routine.

5 Q. Did you respond to a call the morning of March 31st,

6 2012?

7 A. Yes sir.

8 Q. Okay. What was the call for?

9 A. A shooting in progress, possible murder.

10 Q. And you responded to that, and you were on patrol

11 that morning?

12 A. Yes.

13 Q. Do you remember about what time that was?

14 A. Eight, nine. I don't really recall, morningtime.

15 Q. Was it light out?

16 A. Yes sir.

17 Q. And what was the weather like? Was it raining?

18 A. No. It was clear.

19 Q. Okay. And you responded to that shooting-in-progress

20 call?

21 A. Yes sir.

22 Q. And where was that? Where did you respond to?

23 A. It was off of Arrowhead.

24 Q. Okay. Do you remember the exact address?

25 A. I don't remember the exact address, no, sir, right

1 off of Arrowhead and near Clay Pond.

2 Q. Okay. That's here in Horry -- in Horry County?

3 A. Yes sir.

4 Q. And when you arrived on the scene, were you given any

5 other information while you were in transit or ---

6 A. En route, the information that we got was there's

7 a -- there's a white female shooting at a black male, and it

8 was in progress and me and Officer Rhew -- so, I mean, we

9 got en route, and as far as any other information, I really

10 don't recall.

11 Q. All right. And you arrived on the scene, and were

12 you the first officer to arrive or ---

13 A. Me and Rhew were pretty much the same time, yes sir.

14 Q. Okay. What did you see when you arrived on the

15 scene?

16 A. When we first arrived on the scene, we saw the

17 Defendant, Miss Vivian, in her vehicle at the end of the

18 driveway and off to my left, and, of course, the house. I

19 could see the black male laying face down, motionless.

20 Q. Okay. Was his head towards the road or towards the

21 house?

22 A. Towards the road.

23 Q. Towards the road, okay. And you said you saw the

24 Defendant, Vivian Falls?

25 A. Yes sir.

- 1 Q. And what was she doing when you arrived?
- 2 A. Sitting in her vehicle with the door open.
- 3 Q. Okay. Do you remember the color of the vehicle?
- 4 A. I don't recall.
- 5 Q. All right. Let me just ask you to look at what's
- 6 been previously marked as State's Exhibit 10. Was she
- 7 sitting in this white car?
- 8 A. No sir.
- 9 Q. Was she sitting in this van?
- 10 A. No sir.
- 11 Q. It was another vehicle, but not one of these two?
- 12 A. Yes sir.
- 13 Q. Where was the body?
- 14 A. It was over in this area beside the white car.
- 15 Q. And then after -- so she was sitting in her car. Did
- 16 you -- what procedures did you take once you -- after you
- 17 arrived on the scene?
- 18 A. For -- for officer's safety, we approached her and
- 19 detained her. In the process of doing that, we observed
- 20 a -- the -- a handgun in the -- I believe it was the
- 21 driver's seat of the vehicle.
- 22 Q. Okay. And was she sitting in the driver's seat?
- 23 A. Yes sir.
- 24 Q. And did you check the rest of the scene out?
- 25 A. Yeah. After we got her detained, we, you know, we

1 roped it off and EMS arrived and attempted to, you know,
2 revive him or deal with him medically, and they transported
3 him. We had a few witnesses, and other than that, Crime
4 Scene arrived and ---
5 Q. Did you check the crime scene for any other weapons
6 besides the one that was in the car?
7 A. We did. We just did a little canvas of the area, yes
8 sir.
9 Q. Did you find any other weapons?
10 A. No sir.
11 Q. Were there any weapons by the victim in this case,
12 the black male? Was -- did he have any weapons ---
13 A. No sir.
14 Q. --- that you know of?
15 And you said you canvassed the area and talked to
16 some witnesses. Did you take any statements from any
17 witnesses?
18 A. We did.
19 Q. Do you remember who you took them from?
20 A. I don't recall their names, no sir. One was a
21 neighbor and I think one was the girlfriend.
22 Q. Okay. The girlfriend, do you think it was the owner
23 of the house?
24 A. Yes sir.
25 Q. And did you have an opportunity to observe the

1 physical condition of the Defendant after you arrived?

2 A. Yes sir.

3 Q. Did you notice any injuries to her?

4 A. No sir.

5 Q. Did you observe any old injuries, old bruises, or
6 anything like that?

7 A. No sir.

8 Q. Do you know if she required any medical attention?

9 A. She did not.

10 Q. Now, at some point was -- was the Defendant
11 transported to Horry County Police Headquarters?

12 A. Yes sir.

13 Q. And do you know who did that?

14 A. Me.

15 Q. You transported her?

16 A. Yes sir.

17 Q. And you transported her straight from the scene to
18 police headquarters?

19 A. Yes sir.

20 Q. So you didn't take her for any sort of medical
21 attention or anything like that?

22 A. No sir.

23 **MR. GRAUSTEIN:** Please answer any questions the Defense
24 may have.

25 **THE COURT:** Cross-examination.

1 **MR. FOX:** Just one moment, Your Honor.

2 **CROSS-EXAMINATION BY MR. FOX:**

3 Q. Officer, didn't -- now, EMS at some point arrived to

4 deal with the fellow who had been shot, correct?

5 A. Yes sir.

6 Q. Did they not also interview or speak with Ms. Falls

7 in back of the patrol vehicle?

8 A. They spoke with her, but she didn't receive any

9 medical attention.

10 Q. You were -- I'm sorry, I didn't mean to speak over

11 you. She didn't receive any medical attention?

12 A. Yes.

13 Q. And do you recall from your contact what her

14 emotional state was?

15 A. Distraught.

16 Q. Did you, yourself, interview witnesses in the

17 neighborhood?

18 A. Yes sir, the neighbor and the homeowner, girlfriend.

19 Q. The homeowner. Anyone else?

20 A. Not that I recall, no sir.

21 Q. Okay. Were you aware or present when other people

22 were interviewed, other witnesses were interviewed by other

23 officers?

24 A. I don't recall, no.

25 Q. Okay. So part of your duties would have been to

1 prepare an arrest report after you finished on the scene
2 that day?

3 A. Part of my duties for this incident, no sir.

4 Q. Well, didn't you prepare one?

5 A. I just did an initial report.

6 Q. Okay. Well, let me ask you ---

7 (INCIDENT REPORT IS MARKED AS DEFENDANT'S EXHIBIT
8 NUMBER 2 FOR IDENTIFICATION ONLY.)

9 Q. Officer, let me show you what's ---

10 A. Okay.

11 Q. --- been marked as Defendant's Exhibit for
12 identification 2. Tell me if you can recognize what it is.

13 A. This right here?

14 Q. Yes.

15 A. Initial report.

16 Q. Okay. And who prepared -- can you tell who prepared
17 that or who entered that?

18 A. Oh, I entered this one.

19 Q. Okay. And it's basically your summary of your
20 activities?

21 A. Yeah, what I did and what I saw.

22 Q. Okay. And this would have been based on your own
23 observations and information you collected while you were
24 there, correct?

25 A. Yeah.

1 Q. I'd like to refer you to the third page up near the
2 top and it talks about victim/offender relationship. Can
3 you tell me what you entered there. Do you see where I'm
4 referring to?

5 A. If you could point it out to me. I haven't looked at
6 one of these ---

7 Q. Up here at the top where it talks about the
8 relationship of the victim and the Defendant.

9 A. Okay. I entered it as boyfriend, girlfriend.

10 Q. Okay. And there was information that you collected ---

11 A. To my knowledge, yes.

12 Q. --- from people on the scene?

13 A. Yes sir.

14 MR. FOX: Thank you.

15 Q. Did you have any -- and I'm sorry, I don't recall.
16 Did you assist in going over the -- you told me your search
17 of the yard for shell casings, evidence, other weapons,
18 anything else?

19 A. No. I just did a quick canvas to make sure there
20 were no other weapons for officer safety and then that was
21 about it.

22 Q. Okay. And then you transported Miss Vivian?

23 A. Yes sir.

24 Q. Thank you.

25 MR. FOX: No further questions.

1 **THE COURT:** Any redirect?

2 **MR. GRAUSTEIN:** Just briefly.

3 **REDIRECT-EXAMINATION BY MR. GRAUSTEIN:**

4 Q. Were you the lead investigator on this case?

5 A. No sir.

6 Q. Okay. So as far as your initial report, that's based
7 on the information you had just as an initial officer on the
8 scene?

9 A. Yes sir.

10 Q. Any other information that may have been gleaned or
11 found during the investigation would not have been from you?

12 A. No sir.

13 Q. Thank you.

14 **THE COURT:** Do you wish this witness to be excused?

15 **MR. GRAUSTEIN:** Yes, Your Honor.

16 **THE COURT:** Any objection to the witness being excused,
17 Mr. Fox?

18 **MR. FOX:** No, Your Honor.

19 **THE COURT:** All right, sir.

20 You are released from your subpoena and may go back to
21 your regular duties, sir.

22 Your next witness, Solicitor.

23 **MR. GRAUSTEIN:** Jill Domogauer.

24 **THE COURT:** All right.

25 All right, ma'am, if you would just come all the way up

1 here and meet the Clerk right up here, please ma'am.

2 JILL DOMOGAUER, being first duly sworn,
3 testifies as follows:

4 THE DEPUTY CLERK: Please state your full name and
5 spell your last name.

6 MS. DOMOGAUER: Jill Domogauer, D-O-M-O-G-A-U-E-R.

7 THE COURT: Go ahead, Solicitor.

8 MR. GRAUSTEIN: Thank you, Your Honor.

9 DIRECT-EXAMINATION BY MR. GRAUSTEIN:

10 Q. Ms. Domogauer, are you an agent, an officer?

11 A. I'm a Crime Scene Investigator with the Horry County
12 Police Department.

13 Q. A Crime Scene Investigator. How long have you been a
14 Crime Scene Investigator here in Horry County?

15 A. For Horry County, I've been a Crime Scene
16 Investigator for about maybe five years.

17 Q. All right. And were you a Crime Scene Investigator
18 anywhere before that?

19 A. Previously I was a Crime Scene Investigator for the
20 City of Conway.

21 Q. All right. And how long were you a Crime Scene
22 Investigator for Conway?

23 A. Approximately seven years.

24 Q. So all total, you've been a Crime Scene Investigator
25 for ---

- 1 A. Ten to eleven years.
- 2 Q. Okay. And were you called out to respond to an
3 incident on -- that occurred on March 31st of 2012?
- 4 A. May I look at my notes, please?
- 5 Q. Yes.
- 6 A. Yes sir, I was, on March 31st.
- 7 Q. All right. What time of day was that that you were
8 called out?
- 9 A. I got called out approximately 9:01 in the morning.
- 10 Q. All right. And what was the call for? What sort of
11 investigation or crime scene were you going to be
12 investigating, did they tell you?
- 13 A. At that time it was a shooting.
- 14 Q. At that time it was a shooting, and this was a
15 shooting that -- you got the address or do you know where
16 that scene was?
- 17 A. Yes. I was to respond to 207 Bay Forge Road in the
18 Myrtle Beach Section of Horry County.
- 19 Q. All right. You got the call at 9:01 you said?
- 20 A. Yes sir, I got the call at 9:01.
- 21 Q. All right. And what -- and how long did it take you
22 to get to the crime scene approximately?
- 23 A. I arrived at approximately ten o'clock.
- 24 Q. Okay. It took about an hour?
- 25 A. Yes sir.

1 Q. And did -- during your transit time, did at any point
2 there become any concerns about the evidence that ---

3 A. Actually, yes sir, it did. When I first got the
4 initial call, normally Crime Scene units don't respond with
5 blue lights. While I was en route, I was notified ahead of
6 time it was an outdoor scene. While I was en route -- I
7 live in Conway, so it's a bit of a distance -- it started
8 pouring, so I then tried to get there a little bit quicker
9 using my blue lights and sirens because it was an outdoor
10 scene and the rain was becoming very heavy.

11 Q. Okay. And what's your concern because of heavy rain
12 in a situation like that?

13 A. Trace evidence or some small pieces of physical
14 evidence can be washed away with water.

15 Q. Okay. So when you arrived on the scene, had the
16 scene been secured?

17 A. Yes sir.

18 Q. And what is your primary function when you arrive on
19 a scene? What's the -- what's your primary duty or ---

20 A. I have many primary functions. The first thing I do
21 is make sure my scene was secure in a large enough parameter
22 by the uniform patrol officers. I assess that the first
23 thing. It was. I then look to try to assess -- do a small
24 walk-through of the scene, if I need to start collecting
25 immediately, on what items that could be a loss of value due

1 to weather or other circumstances, but initially I do my
2 photographs first to incorporate the scene before anything
3 gets gone.

4 And then after photographing, I then start my evidence
5 markers, re-photograph. Then I start making some
6 collection. Meanwhile, I always keep officer safety and the
7 evidence security in mind if anything has to go in a
8 different sequence.

9 Q. Okay. You have a set procedure that you follow for
10 collecting the evidence?

11 A. Yes sir.

12 Q. That involves the pictures of the evidence in place?

13 A. You try to do it in place, sir. Every crime scene is
14 different, especially when you throw the element of an
15 outdoor crime scene and a monsoon-type rain storm that we
16 had that day.

17 Q. All right. And so once you arrived on the scene, you
18 -- and you were performing your duties, you took some
19 photographs, correct?

20 A. Yes sir.

21 **(PHOTOGRAPH IS MARKED AS STATE'S EXHIBIT NUMBER 9 FOR**
22 **IDENTIFICATION ONLY.)**

23 Q. Okay. I'm going to show you a photograph and ask you
24 if you -- I'm going to show you and ask you if you recognize
25 what's been marked as State's Exhibit 9?

1 A. Yes sir, I do.

2 Q. Okay. And what is that?

3 A. That is actually the third photograph I took once I

4 got on scene. When you look at it, you can see the back end

5 of my crime scene truck, but I do that to show the tape

6 around the perimeter and the overall basically of location

7 of the crime scene.

8 Q. All right. And did you take this photograph?

9 A. Yes sir, I did.

10 Q. All right. Is that a fair and accurate

11 representation of what the scene looked like that morning?

12 A. Yes sir, it is.

13 MR. GRAUSTEIN: Your Honor, we would ask to move

14 State's Exhibit 9 into evidence.

15 THE COURT: Any objection?

16 MR. FOX: No, Your Honor.

17 THE COURT: It's in evidence without objection.

18 (PHOTOGRAPH INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT

19 NUMBER 9.)

20 Q. Now, in this photograph, I see three vehicles in

21 front of the house and inside the tape?

22 A. Yes sir.

23 Q. Okay. Were you able to identify whose those vehicles

24 were?

25 A. Yes sir.

1 Q. Okay. Let's start with this van. Whose van was
2 that?

3 A. I believe the van belonged to the homeowner, Diane,
4 or something like that.

5 Q. The white car, who did the white car belong to?

6 A. Let me refer to my notes. I can tell you exactly who
7 they all belonged to. The white car belonged to Mr. Tony
8 Marvin Hughes.

9 Q. Okay, the victim in this case?

10 A. Yes sir.

11 Q. And who did the black car belong to?

12 A. I do apologize. The black car was registered to a
13 Vivian Falls.

14 Q. Okay, Vivian Falls, the Defendant in this case?

15 A. Yes sir.

16 Q. Okay. Now, in the course of going through that crime
17 scene and you're taking photographs, have you been alerted
18 to any specific evidence when you arrived?

19 A. While I was en route, yeah, the on-scene officers and
20 detectives kind of giving briefings in reference to possible
21 trace evidence that might have been lost during that rain
22 storm. They were able to initially see biological matter of
23 a red substance. I advised them to do a quick collection,
24 but when I got on scene, there was still plenty present. I
25 did my own collection.

1 Q. Okay. Did the responding officers or the detectives
2 on scene alert you to any evidence that might be in the
3 vehic- -- in Ms. Falls' vehicle?

4 A. They told me they could see some evidence in plain
5 view. The vehicle was in the on position running with the
6 windows down. I told them at that time to not do anything
7 until I got on scene at that evidence.

8 Q. Okay. And when you got on scene, were you able to
9 see any evidence in the vehicle on your initial ---

10 A. Yes sir, I did.

11 (PHOTOGRAPH IS MARKED AS STATE'S EXHIBIT NUMBER 10 FOR
12 IDENTIFICATION ONLY.)

13 Q. I'm going to show you and ask you if you recognize
14 and can identify that picture?

15 A. Yes, I can, sir. It's one of my crime scene
16 photographs.

17 Q. And what is that a picture of?

18 A. This is the inside driver view of the black Honda.
19 You can see the moisture all over the place with the rain on
20 the steering wheel. It was actually almost puddling in the
21 driver's seat, and you see a firearm in the driver's seat
22 that is getting wet.

23 Q. Okay. And is that a fair and accurate depiction of
24 where that firearm was when you arrived on the scene?

25 A. Yes sir.

1 Q. And to your knowledge, had anybody touched that prior
2 to you getting there?

3 A. To my knowledge, no.

4 MR. GRAUSTEIN: The State would move to enter State's
5 Exhibit 10 into evidence.

6 THE COURT: Any objection?

7 MR. FOX: No, Your Honor.

8 THE COURT: All right. State's 10 is in evidence
9 without objection.

10 (PHOTOGRAPH INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
11 NUMBER 10.)

12 Q. Now, is there any significance to rain happening
13 along that -- that firearm?

14 A. It can be significant. It can be a concern, yes sir.

15 Q. And why is that?

16 A. Water can interfere with gunshot residue. It can
17 interfere with perhaps sometimes DNA. It's just -- you
18 would prefer to collect it, get it out of that location.

19 Q. Okay. And could it affect fingerprints?

20 A. It could possibly, yes sir.

21 Q. Okay. Now, was the body on scene when you arrived?

22 A. I'm sorry. Could you ---

23 Q. Was Mr. Hughes' -- the victim, was he still on scene
24 when you arrived?

25 A. No sir, he was not.

1 Q. And he had already been transported by EMS?

2 A. I was advised while I was en route he was -- the
3 victim was already being transported by the EMS units.

4 Q. Okay. Now, were you able to observe any evidence on
5 the scene to help you determine where the victim's body was
6 before it was transported?

7 A. Certain locations, yes sir.

8 (PHOTOGRAPH IS MARKED AS STATE'S EXHIBIT NUMBER 11 FOR
9 IDENTIFICATION ONLY.)

10 Q. Okay. Let me ask you if you can identify this
11 photograph?

12 A. Yes sir. It's one of my crime scene photographs.

13 Q. Okay. And what does that photograph show?

14 A. That photograph shows you one of the tires of the
15 victim's vehicle in the driveway. Towards the tire is a
16 large red substance believed to be blood, broken glasses, a
17 broken lens from that glass.

18 Q. Okay. And is that a fair and accurate representation
19 of ---

20 A. Yes, it is.

21 Q. --- that evidence?

22 A. Yes, it is.

23 MR. GRAUSTEIN: The State would move -- the State moves
24 to enter State's Exhibit 11 into evidence.

25 THE COURT: Any objection?

1 **MR. FOX:** No, Your Honor.

2 **THE COURT:** It's in evidence without objection.

3 **(PHOTOGRAPH INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT**
4 **NUMBER 11.)**

5 Q. Now, were you able to reach any conclusions as to how
6 -- where Mr. Hughes' body was before it was transported?

7 A. I can reach from the conclusions of that evidence
8 that at one point in time he was there and an altercation
9 took place where blood was shed.

10 Q. Okay. I would ask you to take a look at State's
11 Exhibit 7, what has been previously marked as State's
12 Exhibit 7, and ask if you recognize that.

13 A. Yes sir, I do.

14 Q. Okay. And what does that show?

15 A. That is a location of the crime scene, one of the
16 angle shots that I take on my crime scenes.

17 Q. Okay. And did you take this photograph?

18 A. Yes, I did. It's a closer-up version of the one that
19 -- where you could see the back end of my truck. That's
20 just a close-up version of me inside the tape. I'm actually
21 probably standing by the black Honda.

22 Q. Okay. The black Honda is back here?

23 A. It's back behind that van.

24 Q. Okay. And that picture we just saw where you said
25 the biological and the glasses, where was that taken in

1 relation to -- can that be seen?

2 A. You can kind of see the red marking right here in the
3 grass, but this is the view if you're looking towards it.
4 The other view is if you're looking at it.

5 Q. Okay. And that's a fair and accurate representation
6 of how that scene looked that morning?

7 A. Yes sir.

8 **MR. GRAUSTEIN:** The State would move to enter State's
9 Exhibit 7 in evidence.

10 **THE COURT:** Any objection?

11 **MR. FOX:** No objection, Your Honor.

12 **THE COURT:** All right. It's in evidence without
13 objection.

14 **(LARGE PHOTOGRAPH INTRODUCED INTO EVIDENCE AS STATE'S**
15 **EXHIBIT NUMBER 7.)**

16 Q. Okay. Now, we saw the picture of that -- you
17 identified the picture of that firearm, and where was that
18 firearm when you took this picture of it, State's Exhibit
19 10?

20 A. The driver's side seat of the black Honda.

21 Q. Okay. Did you collect -- well, let me ask you this.
22 I want to show you what's been marked as State's Exhibit --
23 previously marked as State's Exhibit 3 and ask you if you
24 recognize that?

25 A. I do. Could I make one correction. I'm saying

1 Honda. It's Hyundai.
2 Q. It's Hyundai?
3 A. Yes sir. I'm sorry.
4 Q. All right. Do you recognize that?
5 A. Yes sir, I recognize that.
6 Q. And what is that?
7 A. That would be the firearm I collected that day that
8 was in the passenger seat of the Hyundai Sonata.
9 Q. The passenger seat?
10 A. I'm sorry, driver's seat.
11 Q. Okay. And how do you know that that's the same
12 weapon? Did you look at it?
13 A. The serial number, make, and model.
14 Q. Okay. What's the serial number on that?
15 A. B, Bravo, 41688. It's a Bersa Thunder 380.
16 Q. Okay. By that information, you are able to determine
17 that this is the weapon that you recovered from that
18 vehicle?
19 A. Yes sir.
20 Q. Okay.
21 **MR. GRAUSTEIN:** Your Honor, the State would move to
22 enter State -- State's Exhibit 3 into evidence.
23 **THE COURT:** Any objection?
24 **MR. FOX:** Your Honor, I believe that -- can we
25 approach?

1 **THE COURT:** Yes sir.

2 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**

3 **THE COURT:** I'll let you present further evidence on

4 the chain.

5 **MR. GRAUSTEIN:** Absolutely, Your Honor. Thank you.

6 **THE COURT:** All right.

7 Q. Ms. Domogauer, this is the weapon that you recovered?

8 A. Yes sir, it is.

9 **(EMPTY MAGAZINE IS MARKED AS STATE'S EXHIBIT NUMBER 4**

10 **FOR IDENTIFICATION ONLY.)**

11 Q. Okay. Also, I'd like you to -- to show you this,

12 what's been marked as State's Exhibit 4, and if you could

13 identify that.

14 A. That would be the empty magazine that was from that

15 weapon.

16 Q. Okay, the empty magazine from that weap- -- from the

17 weapon that's State's Exhibit 3?

18 A. Yes sir.

19 Q. Let me ask you this, and did you collect this?

20 A. Yes.

21 Q. And where did you -- where did you find that?

22 A. Inside the gun.

23 Q. It was in the gun when you got it?

24 A. Yes sir.

25 Q. Okay. Was it empty when you recovered it?

1 A. Yes sir, it was.

2 Q. So that firearm was un- -- was not loaded at the
3 time?

4 A.. No ---

5 Q. There were no bullets in it?

6 A. No. If I'm not mistaken, and I'll look at the
7 photograph again, I believe it was lock slide open, which
8 means it was shot until it was out of bullets.

9 Q. Okay. So you conclude from it what State's Exhibit
10 10 shows the pistol lying as found ---

11 A. Yes sir. If you don't mind, I'm going to look at one
12 of my closer ones. Yes, sir.

13 Q. And were you able to determine the condition of the
14 gun when you found it?

15 A. With my experience as a law enforcement officer and
16 also having time on a gun range, when you shoot a weapon to
17 where the slide automatically stays in the locked out
18 position and there is a magazine still in the bottom of it,
19 that generally occurs when you shoot -- we call it shooting
20 in dry. You shoot until there's no more bullets, and all of
21 a sudden the gun reacts in that fashion where it just keeps
22 the slide locked in a locked position.

23 Q. Okay.

24 **THE COURT:** Was she looking at some other photograph?

25 A. No sir.

1 Q. And this is a -- I'm looking at State's Exhibit
2 10 ---

3 A. If you look at the barrel, you can see the barrel is
4 open and you can see the side is open showing you that the
5 slide is in that locked out position and the magazine is
6 still in it if you look at the bottom of the weapon.

7 Q. Okay. So when you recovered the gun, it was as you
8 refer locked open?

9 A. It was -- the chamber was breached, yes sir.

10 Q. Okay. Which, looking at State's Exhibit 3 again,
11 would be as this here?

12 A. It would be similar to that, of course. There would
13 be the gun lock in it and the magazine would be in the
14 bottom of it, but yes, that's what's called the lock out
15 position. You can see the barrel looks different than if it
16 was closed, showing that the gun is ---

17 Q. With this slide position pulled back?

18 A. Yes sir.

19 Q. Okay. And if the gun is fired until it is empty,
20 that is how ---

21 A. The gun will stay in that position until you drop and
22 re-rack it.

23 Q. Or this gun in particular would ---

24 A. Yes, that gun in particular.

25 Q. Okay. Now, were you able -- what other evidence did

1 you collect while on the scene?

2 A. A purse and a handgun.

3 Q. Right. We've covered the handgun. What ---

4 A. I collected several pieces, the broken eye glasses,
5 the swab of the blood substance by the vehicle, a broken
6 chain, an RP380 auto casing ---

7 Q. Hang on a second. An RP3 auto casing, what do you
8 mean by that?

9 A. A cartridge casing is when you have a bullet or
10 you -- the tip of the bullet is called the projectile. The
11 brass piece is called the casing. When you fire a weapon,
12 the casing gets ejected. The projectile goes wherever that
13 gun is going -- pointed.

14 (SHELL CASING PREVIOUSLY MARKED AS STATE'S EXHIBIT
15 NUMBER 6 FOR IDENTIFICATION ONLY.)

16 Q. All right. Let me ask you to take a look at what's
17 been previously marked as State's Exhibit 6 and ask if you
18 recognize that.

19 A. Yes sir, I do.

20 Q. What is that?

21 A. That is an RP 380 auto shell casing or cartridge.

22 Q. Okay. And did you collect that car- -- that shell
23 casing?

24 A. Yes, I did.

25 Q. Okay. You collected it at the crime scene?

- 1 A. Yes, I did.
- 2 Q. Okay. And after you collected this, what did you do
3 with it?
- 4 A. I kept it in my custody and then, of course, when I
5 turn my evidence over in our secure facility, I then prep it
6 for going to the state lab for testing.
- 7 Q. All right. Did you -- did this go to the state lab
8 for testing?
- 9 A. Yes sir, it did.
- 10 Q. How did it get to the state lab?
- 11 A. I transported it personally.
- 12 Q. And did you manipulate it in any way or alter it in
13 any way prior to delivering it to ---
- 14 A. No sir. That box, the box it's in there, is the box
15 from the scene. It has the number five, which shows my
16 crime scene number five with the case number associated to
17 this case. The red tape on the back of it is called
18 evidence-tamper tape. That gets sealed and it gets
19 submitted to SLED in such fashion, and from then on SLED
20 will either accept it or deny it.
- 21 Q. All right. And you transported this to SLED?
- 22 A. With other items, yes sir.
- 23 Q. With other items, transported it to their custody?
- 24 A. Yes sir.
- 25 Q. And did they accept it?

1 A. Yes sir.

2 THE COURT: What exhibit number was that again?

3 MR. GRAUSTEIN: Six, Your Honor.

4 Q. Let me ask you to go back to State's Exhibit 3. You
5 collected this into evidence?

6 A. Yes sir.

7 Q. What did you do with it after that?

8 A. Again, it stayed in my custody until it was packaged
9 and sealed, and I prepared it for transport to the state
10 lab.

11 Q. Okay. Was it transported like this, or did you put
12 it in some sort of package?

13 A. No sir. It was secured in that gun box. That piece
14 was secured in there and taped and used the tamper-proof
15 seal tape.

16 Q. In this box?

17 A. Yes sir.

18 Q. Did the State's Exhibit 6 go in this box also or was
19 it ---

20 A. Let me look at the box, sir, if you don't mind. Yes
21 sir, it did.

22 Q. So you transport State's Exhibit 3 -- we'll try to
23 get both of these at the same time. State's Exhibit 4, was
24 that transported with State's -- was that collected with
25 State's Exhibit 3?

1 A. Yes. We collect -- that is considered one piece.
2 Q. Okay. So you transported what's been marked as
3 State's Exhibit 3 and State's Exhibit 4 as one piece of
4 evidence?
5 A. Yes sir.
6 Q. Collected it as one piece of evidence?
7 A. Yes sir.
8 Q. And what did you do with it then, you transported it?
9 A. To the State Law Enforcement Division Lab.
10 Q. Okay. In this box?
11 A. Yes. That box was sealed, so it has certain
12 requirements. For them to accept an item for testing, it
13 has to be sealed a certain way.
14 Q. Okay. If it is not sealed a certain way, do they
15 accept it? Do you know if they accept it or not?
16 A. No. They reject it immediately. They don't even
17 take it.
18 Q. So State's Exhibit 3 and 4 were transported in the
19 box, and did you transfer that to the custody of SLED?
20 A. Yes sir, I did.
21 Q. And they accepted it?
22 A. Yes sir, they did.
23 Q. That's the shell casing, and I think that's where we
24 left off. Did you recover any other evidence on the scene
25 that you found significant?

1 A. Some items from the victim, his cell phone, his
2 watch. I did collect a cell phone with car charger from the
3 vehicle of the black Hyundai Sonata, and then that vehicle
4 was sealed and turned off. Like I said, it was in the on
5 position with all the windows down. These items were
6 heavily rained on and sitting in moisture.

7 The weapon we collect, because of the moisture it was
8 sitting in, to try to get it properly packaged to not lose
9 any trace evidence, the cell phone as well. Due to it being
10 an electronical device, we want to get that out of the
11 water. It rained very heavily, and at that time I then put
12 the windows up, sealed the vehicle, taped the vehicle with
13 evidence tape, the doors, and our wrecker service that we
14 have for Crime Scene takes it back to our police impound.

15 Q. All right. Now, are you -- were you able to
16 determine who the owner of this firearm that's marked
17 State's Exhibit 3, were you able to determine who the owner
18 of that was?

19 A. I did a ATF trace on it. I can tell you who
20 purchased it.

21 Q. Okay. Who purchased it?

22 A. If I can refer back to my notes.

23 Q. Sure.

24 A. According to the Alcohol, Tobacco, Firearms,
25 Explosive National Tracing Center, the weapon purchaser was

1 a Vivian Lynn Falls.

2 Q. And do you know -- does it tell you where it was
3 purchased from?

4 A. It was purchased from Dick's Pawn Shop South.

5 Q. Okay. All right. Did you take any DNA swabs?

6 A. Yes sir.

7 Q. Okay. Now, it's kind of a two step process, isn't
8 it? You collect it and then it has to be tested, right?

9 A. It doesn't necessarily have to be tested, but it is
10 collected in case we want to test it in the future.

11 Q. All right. They don't necessarily test every swab
12 that you take?

13 A. That's a -- no sir. It's an expensive test.

14 Q. Okay. And so it would be fair to say you try to make
15 the most efficient use of the resources that you have for
16 investigating?

17 A. Yes. The county would have to pay for specific
18 testing. Any testing that goes to the state lab is not
19 free. The county does have to pay for certain tests. DNA
20 is a very expensive test.

21 Q. All right. And did you see any reason to test any of
22 the DNA that you took, the swabs that you collected in this
23 case?

24 A. No, because you want to try to send everything
25 together as a whole.

1 Q. Okay.

2 A. And at the time, there -- it -- we had other
3 information other than that test leading to the same
4 conclusion that ---

5 Q. So you will know what other evidence beside what you
6 collected is has been obtained in regard to investigating a
7 case? You may know what statements were taken or ---

8 A. Yes. Well, the lead investigator -- I will go over
9 with what I collect and tell him what I would like to have
10 go for testing, and based on his investigation, he might
11 say, well, you can hold off on that at this time. We have
12 statements stating this. We don't need that to go, but it
13 is still collected just in case we want to send it in the
14 future, we have it.

15 Q. Okay. But you didn't send any of that DNA off for
16 testing in this case?

17 A. No sir.

18 Q. Okay. Now, were you aware if any weapons other than
19 that firearm were found at this crime scene?

20 A. No sir.

21 Q. There were no other weapons found?

22 A. No sir.

23 Q. Okay. There weren't any weapons found in the house
24 where this occurred that you're aware of?

25 A. No sir, not that I'm aware of.

1 Q. And you just collected this one casing that's been --
2 is that correct, that's marked as State's Exhibit 6?

3 A. Yes sir.

4 Q. All right. And is there a -- do you have an
5 explanation of why that you only found one casing in this
6 situation?

7 A. There were several reasons why we could only find
8 one.

9 Q. And what would those -- what would those be?

10 A. Some of those reasons could be you had foot traffic
11 from personnel inside that immediate area by the victim,
12 whether it be the fire crew, EMS, or other personnel before
13 that scene could get secured that was trying to save a life.

14 Also, casings might look heavy, but they're very
15 light, so that rain can carry them off. They can be kicked
16 around. A diligent search was performed by me, not only
17 visually. I got on my hands and knees and I also use a
18 metal detector.

19 Q. Okay. Now, let me ask you this: As part of your
20 duties as a crime scene investigator, do you attend
21 autopsies?

22 A. Yes sir, I do.

23 Q. Did you attend the autopsy in this case?

24 A. Yes, I did.

25 Q. Okay. And do you do essentially the same sort of

1 things at the autopsy that you do at the active crime scene?

2 A. Yes, as far as documenting, taking overall
3 photographs, documenting kind of injuries of the victim, and
4 being there to collect any kind of evidence, whether it be
5 from a pathologist, or I collect directly from the victim's
6 body.

7 Q. Okay. And did you -- and you observed the autopsy?

8 A. Oh, yes. I stay present until it's done.

9 Q. Okay. So you're able to observe the -- were you able
10 to observe the injuries to the victim in this case?

11 A. I'm sorry, you said the injuries?

12 Q. Were you able to observe the injuries to the victim
13 in this case?

14 A. Yes sir. It's part of my job to document the
15 injuries.

16 (PHOTOGRAPH IS MARKED AS STATE'S EXHIBIT NUMBER 2 FOR
17 IDENTIFICATION ONLY.)

18 Q. Okay. I'm going to show you what's been marked as
19 State's Exhibit 2 and ask if you can identify this item.

20 A. Yes sir. It's a black and white photograph of one of
21 my crime scene pictures.

22 Q. Okay. And what is that a photograph of?

23 A. It's a photograph of one of the -- a gunshot entrance
24 wound to the victim's abdomen or chest area with an evidence
25 scale.

1 Q. Okay. So this shows an entry wound?

2 A. Yes sir, believed to be an entry wound.

3 Q. And where was that entry wound located?

4 A. In the chest area kind of diagonal, but a little bit
5 by the nipple.

6 Q. All right.

7 MR. GRAUSTEIN: Your Honor, we would ask to enter this
8 into evidence as State's Exhibit 2.

9 THE COURT: Any objection?

10 MR. FOX: No sir.

11 THE COURT: All right. State's 2 is in evidence
12 without objection.

13 (PHOTOGRAPH INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
14 NUMBER 2.)

15 Q. Is that one gunshot wound? What's entered as State's
16 2, that was one gunshot wound?

17 A. Yes sir.

18 Q. And it was to the chest?

19 A. Yes sir.

20 (PHOTOGRAPH PREVIOUSLY MARKED AS STATE'S EXHIBIT NUMBER
21 1 FOR IDENTIFICATION ONLY.)

22 Q. And I'm going to show you what's been marked,
23 previously marked, as State's Exhibit 1 and ask you if you
24 can identify that.

25 A. It is a black and white photograph of another gunshot

1 wound with scale. You can actually see two wounds in this
2 photograph, but only one is being scaled out at this time in
3 this photograph.

4 Q. And did you take that photograph?

5 A. Yes, I did.

6 Q. And does that fairly and accurately reflect the
7 injuries that you observed?

8 A. A black and white version of it, yes.

9 Q. Okay. And you said this shows two injuries?

10 A. Yes sir.

11 Q. So during your time at the autopsy, did you determine
12 that there were two injuries here?

13 A. There's two separate wounds there. They are just
14 very close together for it to be in the photograph. That's
15 a mid-range photograph where you're just getting orientation
16 on the body, so it's not a close-up. So the close-up would
17 just show one of them, but that one shows them both.

18 Q. Okay. And there's one right here by the scale?

19 A. Yes. It's kind of like towards the clavicle,
20 shorter, the neck area, and the other one is like on the
21 actual neck.

22 Q. Okay. And that's where this finger is right here?

23 A. Yes.

24 Q. So there's a gunshot wound in the shoulder area?

25 This picture shows a gunshot wound to the shoulder area and

1 to the neck?

2 A. Approximately, yes sir.

3 **MR. GRAUSTEIN:** Your Honor, the State would move to
4 enter this into evidence, State's Exhibit 1.

5 **THE COURT:** Any objection?

6 **MR. FOX:** No, Your Honor.

7 **THE COURT:** All right. State's 1 is in evidence
8 without objection.

9 **(PHOTOGRAPH INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT**
10 **NUMBER 1.)**

11 Q. Now, what sort of evidence did you recover at the
12 autopsy?

13 A. I recovered the x-rays. We photographed -- we did an
14 x-ray of the body. I recovered buccal swabs. That's just a
15 cheek swab of the victim, a blood swab. Blood is taken
16 directly from the heart, and I gather a specimen from that
17 location. His hands were bagged. This was a shooting. I
18 then performed a gunshot residue kit on his hands. I
19 collected that one as well, and a projectile was recovered.
20 Only one projectile was recovered from him.

21 Q. Okay. Now, and again, you collect, but that doesn't
22 necessarily mean that it gets a test, correct?

23 A. Not all of it, no sir.

24 Q. And you said you recovered a projectile?

25 A. Well, I didn't physically recover it. The doctor

1 did, but I took it from him.

2 Q. Okay. Well, you collected it? Would that be more
3 accurate, you collected it?

4 A. Yes sir. That would be more accurate. I'm sorry.

5 (PROJECTILE IS MARKED AS STATE'S EXHIBIT NUMBER 5 FOR
6 IDENTIFICATION ONLY.)

7 Q. I'm going to show you what's been marked as State's
8 Exhibit 5 and ask if you can identify what that is.

9 A. This would be the projectile collected that day.

10 Q. Okay. And this was collected from the victim's body?

11 A. Yes sir, it was.

12 Q. Okay. Where were you able to collect -- where was it
13 -- did you observe it being collected?

14 A. Yes, I did.

15 Q. Okay. You observed it being recovered?

16 A. Yes sir, I did.

17 Q. Where was it recovered from?

18 A. Left arm, kind of by the elbow.

19 Q. All right. And it was removed by -- who removed it
20 from the body?

21 A. Dr. Proctor made an incision. It was just below the
22 skin. You could actually visually see it underneath the
23 skin, just made a small incision for it to fall out.

24 Q. Okay. And Dr. Proctor recovered it from the body,
25 and how did you get it?

1 A. When it landed on the table, I took it.

2 Q. Okay. So it hasn't been altered or anything that you
3 are aware of?

4 A. No sir.

5 Q. Okay. Now, ---

6 A. Altered by washing biological specimens off of it.

7 Q. All right. Now, how were you able to identify this
8 as being that projectile?

9 A. Inside this package, this item went to SLED, so it
10 looks a little bit differently than when I last saw it. It
11 is in a -- my original packaging is this box that has
12 association with the case number, the date, my name, what it
13 is, where I recovered it from. Then that item is put in
14 here and sealed with my initials on this tape, and then
15 that's where I submit. When they get it, they receive it in
16 a package sealed, and when they give it back to us, it's
17 outside of the package, but our original packaging is in
18 here for identificational purposes.

19 Q. All right. And you followed all procedures in
20 collecting this?

21 A. Yes.

22 Q. And you said you took it and it went to SLED. How
23 did it get to SLED?

24 A. I personally took it there.

25 Q. All right. And did SLED take possession of State's

1 Exhibit 5, this projectile?

2 A. Yes sir. It was packaged inside that same box. The
3 cartridge casing and that projectile casing are kept in
4 their separate boxes, but they are also put inside that big,
5 white box, and everything has to be sealed a certain fashion
6 or else SLED will not accept it, nor will they test it if
7 it's not.

8 Q. Okay. And SLED accepted this?

9 A. Yes sir.

10 Q. And as far as you know, tested it and returned it?

11 A. Oh, I know they tested and returned it, yes sir.

12 Q. Okay. And but to your knowledge, you complied in the
13 evidence that you transported to SLED? You complied with
14 all of their procedures for packaging and safekeeping of
15 that evidence to prevent -- and why -- and why those
16 procedures are there?

17 A. I know I followed those procedures. I would have
18 known -- they would have rejected the evidence and not
19 tested it if I did not. Those procedures are in place to
20 keep the integrity of the evidence. If it is not kept or
21 packaged a certain way, if it has been manipulated in a
22 certain way, that could cause the evidence to be tainted.
23 They will not accept it. They only accept it in a certain
24 form and standard.

25 Q. Okay. And, now, you recovered this projectile,

1 State's Exhibit 5. That was recovered from the body and
2 collected by you?

3 A. Yes sir.

4 Q. To your knowledge, were there any other projectiles
5 that were still in his body, Mr. Hughes' body?

6 A. Yes sir, there was.

7 Q. And where was that?

8 A. Dr. Proctor will give you the medical term. The only
9 thing I can kind of say is the shoulder area.

10 Q. Okay. Well, looking back at State's Exhibit 1, can
11 you relate where that projectile was in these wounds?

12 A. It would have been in this vicinity here. There's
13 that bone there.

14 Q. And do you know why that projectile was not recovered
15 and collected?

16 A. Yes sir, I do.

17 Q. Okay. Just very generally why was it not recovered,
18 just very generally?

19 A. It was in an area that collecting it -- we made
20 several attempts to collect it at that point in time. It
21 was going to be very destructive to the victim's body if we
22 continued. I did recover one projectile. I did collect one
23 projectile. We did, like I said, make several attempts. I
24 chose to stop making attempts due to the destruction to the
25 victim.

1 Q. It wasn't recovered because -- it wasn't not
2 recovered because you just didn't feel like doing it?

3 A. No sir. Every attempt was made to the point where it
4 became ---

5 Q. Okay. But you did everything you could to try to
6 recover that projectile?

7 A. Yes sir.

8 Q. Okay.

9 A. Dr. Proctor did, yes sir.

10 Q. Or Dr. Proctor did. Okay.

11 MR. GRAUSTEIN: Please answer any questions the Defense
12 may have.

13 THE COURT: Cross-examination, please.

14 MR. FOX: Thank you.

15 CROSS-EXAMINATION BY MR. FOX:

16 Q. Officer, so what you can account for definitely are
17 two bullets, correct, two projectiles, one in the shoulder
18 and one that you did the -- Dr. Proctor was able to take out
19 of the arm, correct, so two bullets?

20 A. Two physical bullets, yes sir.

21 Q. Yes, two physical, ---

22 A. Uh-huh (indicating affirmative).

23 Q. --- that's what I mean, and one shell casing,
24 correct?

25 A. One physical cartridge case, yes sir.

1 Q. Okay. Well, I mean, there aren't any others?

2 A. No.

3 Q. And what is that? Do you recognize that?

4 A. Yes sir, I do.

5 Q. And is that the front of Ms. Movsky's residence,

6 correct?

7 A. Yes sir.

8 Q. And based on what you saw when you got there, Mr.

9 Hughes had already been removed, but the blood that you were

10 still able to see, and the glasses, et cetera, ---

11 A. Uh-huh **(indicating affirmative)**.

12 Q. --- it's fair to say that it would have been found in

13 the grass?

14 A. Yes sir, this general area over here. You have some

15 debris over here I guess from EMS.

16 Q. Right.

17 A. Yes sir.

18 Q. And it's not a sloped yard or anything, is it?

19 A. Slightly.

20 Q. You're telling me that your testimony -- you think

21 these -- any other casings that may have been there may have

22 just washed away?

23 A. It could -- there are several things that could have

24 happened. It could have been washed away. They could have

25 been -- if people walked on them, pushed into the soft

1 ground due to the rain.

2 Q. But you went over, I think you had said, hands and
3 knees, right?

4 A. Yes sir.

5 Q. And a metal detector at some point?

6 A. Yes sir..

7 Q. Okay. And just to be clear, this is the shell casing
8 we're talking about, right?

9 A. That's the one I found on that end, yes, sir.

10 Q. That's the one you found, so it's pretty logical to
11 conclude that any others would have been similar in size and
12 weight to this one?

13 A. Yes sir.

14 Q. Correct?

15 A. Yes sir.

16 Q. Okay. So you think these may have washed away in
17 this monsoon. Aren't officers -- you've got to go as a --
18 not just in your capacity as a crime scene investigator but
19 as an officer. Don't officers, patrol officers, all
20 officers have to go through training how to handle
21 themselves at a crime scene so they don't contaminate it?
22 Isn't that part of standard police training?

23 A. Patrol officers do a basic crime scene, introductory,
24 but they don't go through the training that I go through.

25 Q. Sure. I mean, you're specialized, ---

1 A. Uh-huh (indicating affirmative).

2 Q. --- got specialized training beyond scientific

3 and ---

4 A. Their training is more of a securing the scene.

5 Q. Exactly.

6 A. Mine is different.

7 Q. It seems like rule one would be don't go walking all

8 over the crime scene. If you see a body and you believe

9 that there are guns involved, it would be logical, wouldn't

10 it, that there may be evidence in that area? You wouldn't

11 go walking all through there?

12 A. Not at this time, sir, no, it wasn't.

13 Q. It wasn't obvious?

14 A. No sir. You had a victim who was still alive, so

15 first and foremost his life is -- trumps crime scene

16 preservation for getting people in there and getting him out

17 to try to save his life, and you also have a suspect on

18 scene who was also freely walking around the area.

19 Q. You weren't there when Mr. Hughes -- when Officers

20 Odom and Rhew arrived, correct?

21 A. No, I was not there, no.

22 Q. Do you know yourself whether Mr. Hughes was still

23 alive at that point?

24 A. I was informed he was still alive, yes sir.

25 Q. Now, and you say this gun, this magazine, this clip

1 fits into the handle of the gun, correct?

2 A. Yes.

3 Q. That's how you load it. You put the bullets in here,

4 and it goes in here, and then ---

5 A. Yes sir.

6 Q. --- it's good to go?

7 Do you know how many bullets were in this magazine

8 when it was fired?

9 A. Do I know how many were in there when it was fired?

10 Q. Yes.

11 A. I can only speculate.

12 Q. All right. And there's -- you don't know, correct?

13 A. Not for sure, no sir.

14 Q. And the gun will operate with the clip less than --

15 being less than full, correct?

16 A. Absolutely, yes sir.

17 Q. Okay. It will shoot. As long as there's a bullet,

18 the gun will fire?

19 A. Unless it's empty, it stays in a locked position, but

20 yes sir.

21 Q. Okay. But as long as there's at least one?

22 A. Yes sir.

23 Q. So if there's two, three, or four, it will fire?

24 A. Yes sir.

25 Q. Okay. What type of -- how do you characterize the

1 Bersa 380 Thunder? Is this a revolver or is it a ---
2 A. It's a semi-automatic pistol.
3 Q. An automatic weapon, pistol, so that it will -- it is
4 designed to fire off several shots rapidly, is it not?
5 A. Rapidly, but in concession, yes.
6 Q. Among the things you collected on the scene in the
7 Hyundai, the dark vehicle ---
8 A. Uh-huh **(indicating affirmative)**.
9 Q. --- that was Ms. Falls, you found a gun there?
10 A. Uh-huh **(indicating affirmative)**.
11 Q. And there was also a camera in the front of the -- in
12 the passenger seat, correct?
13 A. I did not take those in the seat. I took those at a
14 later date.
15 Q. Okay. I'm not talking about the -- but you at some
16 point collected a Nikon camera from the car, was ---
17 A. Yes sir.
18 Q. --- a camera, ---
19 A. Yes sir.
20 Q. --- was a Nikon camera, correct?
21 A. Yes sir.
22 Q. And did you see if there were any pictures on that
23 camera?
24 A. Yes sir, I did.
25 Q. And wasn't there, in fact, a picture of Ms. Movsky's

1 home, the picture we've seen here ---

2 A. Yes sir, it was.

3 Q. --- with the white car in front?

4 A. Uh-huh (**indicating affirmative**).

5 Q. So obviously it had been taken close in time to ---

6 A. Yes sir. The time -- the time stamp on that actual

7 picture does state that it was taken within close time frame

8 of the initial report.

9 Q. Okay. So the same morning, ---

10 A. Yes sir.

11 Q. --- March 31st?

12 A. Yes sir.

13 Q. Now, I'm jumping around. With regard to the ATF

14 tracer or background check on the weapon ---

15 A. Yes sir.

16 Q. --- that indicated who it was sold to. Did that tell

17 you the date that it was purchased?

18 A. Yes, it does.

19 Q. Can you tell me the date?

20 A. Let me refer to my notes, please.

21 Q. Sure.

22 A. According to the ATF Tracing Center, the purchase

23 date for this weapon was on 5/27 of 2011.

24 Q. Thank you. The bullet that was recovered -- now I'm

25 going back to the autopsy. You were present at the autopsy.

1 The bullet that was able to be removed from the body was in
2 the arm, correct, the left arm?

3 A. Yes sir.

4 Q. Okay. And you said almost coming out, that it was
5 under the skin and ---

6 A. You can see the lump under the skin, so yes sir.

7 Q. In other words, the doctor didn't have to go deep to
8 get that?

9 A. No sir, he did not.

10 Q. And that bullet obviously had come from one side of
11 the -- the other side of the arm to get there? In other
12 words, that was -- it was almost out ---

13 A. Yeah. We had a trajectory showing where it came
14 from, yes sir.

15 Q. So clearly these bullets from this gun -- and that is
16 the bullets that you recovered, correct?

17 A. That is the projectile, yes sir.

18 Q. So clearly this bullet fired from that gun is capable
19 of penetrating -- obviously it's designed to penetrate
20 flesh, but it's capable of passing through multiple parts of
21 the body, correct?

22 A. Yes sir. Certain variables that go with that, but
23 yes sir.

24 Q. Of course. And, in fact, in the photograph we have
25 showing there's a wound -- let me get you the actual

1 photograph so I'm not just pointing -- which is State's
2 Number 2, this being the wound in the chest, correct?
3 A. That's one of them, yes sir.
4 Q. Right, this one. And this bullet path is on the
5 right side?
6 A. Uh-huh **(indicating affirmative)**.
7 Q. And then went this way, correct, to the left? This
8 is the ---
9 A. Yes sir.
10 Q. --- wound, the path, that penetrated the heart and
11 lungs, correct?
12 A. That's to the left, but yes, I believe so.
13 Q. Okay. And, in fact, ended up through the arm?
14 A. May I stand up, Your Honor?
15 **THE COURT:** Yes ma'am, you may.
16 A. It was -- enter point was like right here. Then it
17 passed through the cavity and exited here. As it exited
18 here, it entered the arm. It entered the arm -- I believe
19 it might have hit bone and then came here, but after going
20 through, it didn't have enough to continue ---
21 Q. But it went through the body, striking multiple
22 organs, out of the body cavity, the trunk of the body and
23 then into the arm?
24 A. Entering the limb, yes, sir.
25 Q. So clearly one bullet can cause multiple wounds?

1 A. Yes sir.

2 MR. FOX: The Court's indulgence, Your Honor.

3 THE COURT: Yes sir.

4 MR. FOX: That's all the questions I have.

5 THE COURT: Redirect?

6 MR. GRAUSTEIN: No, Your Honor.

7 THE COURT: All right. Do you wish this witness to be
8 excused?

9 MR. GRAUSTEIN: Yes, I do, Your Honor.

10 THE COURT: Any objection?

11 MR. FOX: No sir.

12 THE COURT: All right.

13 Ma'am, you are released from your subpoena and may go
14 back to your regular duties. Thank you, ma'am.

15 All right, ladies and gentlemen, we're going to take a
16 short break so if you would go to your jury room for about
17 ten minutes and then we'll resume the testimony at that
18 point in time.

19 Everyone else remain seated while the jury retires,
20 please. Thank you.

21 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
22 JURY.)

23 THE COURT: All right, Counsel, we'll take a short
24 break at this time. Thank you very much.

25 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE

1 **THE PRESENCE OF THE JURY.)**

2 **THE COURT:** All right. Solicitor, are you ready for
3 the jury to come in?

4 **MR. GRAUSTEIN:** Yes, Your Honor.

5 **THE COURT:** All right.

6 Defense?

7 **MR. FOX:** Yes, Your Honor.

8 **THE COURT:** All right.

9 Ask the jury to come in, please.

10 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
11 **JURY.)**

12 **THE COURT:** All right. Solicitor, your next witness,
13 please sir.

14 **MR. GRAUSTEIN:** The State calls James Green.

15 **THE COURT:** All right, Mr. Green, if you would come
16 around here and meet the Clerk right at the corner, please
17 sir. Thank you.

18 **JAMES GREEN,** being first duly sworn,
19 testifies as follows:

20 **THE DEPUTY CLERK:** Please state your full name and
21 spell your last name.

22 **MR. GREEN:** James Green, G-R-E-E-N.

23 **THE COURT:** All right, sir.

24 **DIRECT-EXAMINATION BY MR. GRAUSTEIN:**

25 Q. Mr. Green, where are you currently employed?

1 A. I'm employed by the South Carolina Law Enforcement
2 Division, commonly referred to as SLED.

3 Q. All right. And what's your job there?

4 A. I'm a Senior Special Agent assigned to the Firearms
5 Department and the Forensic Services Laboratory.

6 Q. And how long have you been working in this lab?

7 A. It will be nine years in June.

8 Q. And what duties do you have as part of your job with
9 SLED?

10 A. My primary duties involve -- I'm a firearms examiner
11 and what that entails is I look at firearm and ammunition
12 components, bullets, cartridge cases, shot shells, waddings,
13 that kind of thing, and try to match them back to a specific
14 firearm if one is submitted.

15 In the absence of a submitted firearm, I can get, say,
16 fifty cartridge cases and look at them and tell the
17 submitting agency how many firearms are represented in
18 whatever they submitted.

19 Q. And do you have any special training that allows you
20 to do all that?

21 A. Yes sir. When I was hired at SLED, I started the
22 SLED course of instruction, firearms and toolmark. It's
23 roughly a three and a half to four year apprentice-type
24 training program where you first start off observing the
25 court-qualified firearms examiners. I observed them working

1 their cases.

2 There's a lot of reading and studying about firearms
3 and ammunition, the history of firearms, the history of
4 ammunition and their components, and as I progressed, I
5 started taking practical problems, written and oral
6 exercises, and tests, and I was graded on those on a pass or
7 fail basis.

8 Once I progressed further in the training, I was
9 given pieces to write up in the custody -- you know, the
10 evidence would stay in the custody of the firearms examiner
11 and I would write up the evidence on our worksheets. At the
12 end of the training cycle, I was given a very comprehensive
13 final exam encompassing everything I had done and given fake
14 cases to work on my own. Once I would pass those, I was
15 deemed to begin working my own cases.

16 Q. And how many cases have you worked?

17 A. In nine years, I average about two hundred cases a
18 year.

19 Q. Have you ever testified in Court before?

20 A. Yes sir.

21 Q. How many times have you testified?

22 A. Twenty-five.

23 Q. Ever been qualified as an expert?

24 A. Yes sir.

25 Q. And what have you been qualified as an expert in?

1 A. Firearms and toolmark identification.

2 MR. GRAUSTEIN: Your Honor, the State would move to
3 qualify this witness as an expert in firearms and
4 toolmarkings.

5 THE COURT: Is there any -- do you wish to voir dire
6 the witness as to his qualifications or challenge the
7 State's offer?

8 MR. FOX: Is there anything more particular that it
9 involves anything more specific about firearms they intend
10 to offer his expertise in? It's a broad category.

11 THE COURT: All right, and I appreciate that. The
12 testimony is limited to firearms identification with the
13 gamut of that, as well as toolmarking or die marks, is that
14 correct?

15 MR. GRAUSTEIN: Your Honor, if I may ask the ---

16 THE COURT: Certainly.

17 Q. Mr. Green, as part of your training, are you able to
18 match projectiles with certain weapons?

19 A. Yes sir.

20 Q. And that's part of your training?

21 A. Yes sir.

22 Q. And you have testified to that in Court before?

23 A. Yes sir.

24 Q. As far as shell casings, can you -- are you able to
25 match shell casings and particular firearms?

1 A. Yes sir.

2 Q. And you have testified to that in Court before?

3 A. Yes sir.

4 **MR. GRAUSTEIN:** Your Honor, the State would move that
5 this Defendant (sic) be qualified as a witness to be able to
6 identify specific projectiles to specific weapons.

7 **MR. FOX:** No further questions and no objection to
8 that, Your Honor.

9 **THE COURT:** All right. Very good.

10 I find the witness to be qualified in the areas of
11 firearms and toolmark, die mark examination to include the
12 specifics of identification of weapons, projectiles, and
13 casings.

14 You may proceed.

15 **MR. GRAUSTEIN:** Thank you, Your Honor.

16 **CONTINUING DIRECT-EXAMINATION BY MR. GRAUSTEIN:**

17 Q. Agent Green, what -- what is -- could you just tell
18 the jury about what procedures you all use in testing
19 firearms in order to reach certain conclusions now.

20 A. Okay. When a firearm is made, certain markings are
21 left on the surfaces of that firearm that come in contact
22 with an ammunition component. If every one of you were a
23 firearm, for an example, the tool -- if I was a tool, when I
24 created you, to you, to you, to you, the tool slightly
25 changes the -- microscopically changes to -- lets us

1 identify a fired ammunition component back to a specific
2 firearm, not the one made immediately before it, not the one
3 made immediately after it.

4 What we do is when we get fired ammunition
5 components, like bullets or cartridge cases, and a firearm,
6 we'll look at the bullet or the cartridge case and see if
7 they have any microscopic marks on them. The main tool we
8 use is a comparison microscope. It has two microscopes
9 connected with one optical bridge which lets us look at two
10 optics simultaneously, change the angles of the lighting to
11 what we're really looking at, just tiny microscopic
12 scratches, and see if there's any agreement between the two.

13 If we have a submitted firearm, what we do is we
14 examine the firearm and make sure it's safe to fire. I like
15 my fingers. I don't want to shoot a firearm and have it
16 explode in my hand, which I've actually had a gun come apart
17 in firing before, so we will test the safety of the firearm
18 and make sure it's sturdy and in good, proper working order,
19 and then we'll go to our bullet recovery room.

20 We have a room inside the laboratory with about a
21 four inch diameter stainless steel pipe. It's two stories
22 tall filled with water. We'll turn on the capitation, gets
23 the water circulating, and we'll load the firearm pointing
24 down into the tank, pull the trigger, and at the bottom the
25 bullet falls down into a colander. We pull the colander up

1 and there's our fired bullets, and we have our fired
2 cartridge cases.

3 Once we get those from a firearm, we'll look to make
4 sure the firearm is marked consistently, and then we'll
5 compare those to the fired ammunition components submitted
6 in the case.

7 Q. All right. Let me show you some items that were
8 previously marked into evidence, an item marked as State's
9 Exhibit 3, and ask you if you can recognize that item?

10 A. Ladies and gentlemen of the jury, if you see me
11 looking at evidence items and rotating them around and
12 trying to read stuff, basically that's what I'm doing. When
13 evidence is submitted to the laboratory, specifically the
14 Firearms Department, if it's large enough, like a firearm,
15 we'll mark it or scribe on it with our laboratory case
16 number, our item number, and our initials, but if you see me
17 rotate the evidence around, that's what I'm doing because
18 I'm looking for my markings to make sure this is the firearm
19 I observed or tested.

20 Yes sir, State's Exhibit 3 is SLED Item Number 1 in
21 this case.

22 Q. Okay. And how -- where did you receive that from or
23 how did you come into contact with it?

24 A. When evidence is submitted to SLED, the submitting
25 agency fills out forms, or a pre-log, or in absence of a

1 pre-log form, they go to our Evidence Control Department.
2 They log in all the evidence into our FEAST System. It's
3 the evidence tracking system.

4 The evidence is given an item number and put in a
5 single container with this one item or a container with
6 multiple items, and then when I come down to get evidence or
7 another analyst comes down to get evidence, the tracking is
8 done electronically by the bar code.

9 You just scan the bar code into my custody and then
10 you scan the bar code of the container, hit enter, and it
11 transfers the chain -- the custody transfers electronically
12 as well as physically at that time, but in this case,
13 whenever I got evidence, I went downstairs to the Evidence
14 Control Department, some people call it log-in, and
15 retrieved custody of this evidence.

16 Q. Okay. And do you know who you retrieved that
17 evidence from?

18 A. No sir, I don't.

19 Q. You don't. Let me show you -- this is a South
20 Carolina Law Enforcement Chain of Custody Form. If you saw
21 -- looked at that, would you be able to tell us who you
22 retrieved it from?

23 A. Yes sir. I retrieved Item Number 1 from Amy Stephens
24 on April 16th, 2012.

25 Q. Okay. So you took custody of it April 16th, 2012?

1 A. Yes sir.

2 Q. Okay. And what was -- what kind of packaging was it
3 in?

4 A. It was in that box, just a cardboard box. It's
5 sealed with evidence tape. Evidence tape is marked so --
6 with different colors that you -- if it's cut, you can tell
7 that the seal has been breached or opened.

8 Q. Okay. And when you received it, was it packaged in
9 accordance with SLED's evidence control requirements?

10 A. Yes sir. It is in a sealed container.

11 Q. Okay. And did it appear to have been tampered with
12 prior to you receiving it?

13 A. No sir. The seals were intact.

14 Q. Okay. And do you know how long you had that piece of
15 evidence for?

16 A. I returned it to Evidence Control on April 26, 2012.

17 Q. And that would be -- so from April 16th to April
18 26th, I believe, it was in your control and custody?

19 A. Yes sir.

20 Q. Okay. Did you manipulate that item at all?

21 A. Other than the normal standard I was testing, no,
22 sir.

23 Q. Okay. I'm going to show you what's been marked as
24 Defense (sic) Exhibit 5 and ask if you can identify that.

25 **THE REPORTER:** Defense?

1 Q. State's Exhibit 5. I'm sorry.

2 A. State's Exhibit 5 is the SLED Item 3. It was a fired
3 bullet that was submitted in this case.

4 Q. And how did you -- how did you receive that? Was it
5 -- would that have been -- would that have been -- that item
6 have been checked into SLED following the same procedures as
7 State's Exhibit 3?

8 A. Yes sir. They were all actually packaged in the same
9 box.

10 Q. So they were all in the same box?

11 A. Yes sir.

12 Q. Okay.

13 A. And that would be in custody for State's Exhibit 5
14 follows that for State's Exhibit 3.

15 Q. Okay. State's Exhibit 5 and State's Exhibit 3 came
16 to you in this box sealed ---

17 A. Yes sir.

18 Q. --- in accordance with SLED ---

19 A. Yes sir.

20 Q. --- policy?

21 I ask you if you could identify State's Exhibit 6.

22 A. State's Exhibit 6 is one fired 380 auto-calibre
23 cartridge case which was SLED Item 2.

24 Q. And did that come to you in the same box as Items 3
25 and 5?

1 A. Yes sir.

2 Q. And I'm going to ask you what that item is,
3 State's -- previously marked as State's Exhibit 4.

4 A. State's Exhibit 4 is a Bersa magazine which came as
5 part of State's Exhibit 3. It's SLED Item 1.

6 Q. All right. And that came in the same box -- I think
7 there's previous testimony that 3 and 4 were actually one
8 ev- -- item of evidence?

9 A. Yes sir.

10 Q. All right. And all of those items, who did you
11 receive all those items from?

12 A. It would have been Amy Stephens.

13 Q. And it's your testimony that they were packaged in
14 accordance with SLED procedures, correct?

15 A. Yes sir.

16 Q. And did they appear to have been tampered with?

17 A. No sir. The seals were intact.

18 Q. Now, why was State's Exhibit 3 submitted to you?

19 A. For comparison against State's Exhibits 5 and 6.

20 Q. Okay. Did you have the opportunity to test those
21 items?

22 A. Yes sir.

23 Q. And you may have already done this, but what specific
24 tests were performed on those three items?

25 A. If I could mention before, I made sure the firearm

1 was safe to fire or safe to handle, checked the firearm for
2 any trace material, blood, dirt, grass, anything where --
3 sometimes we get firearms that are thrown down and are
4 bloody and have dirt in them. If you get obstruction in the
5 bore, the gun could explode due to high pressure, so I made
6 sure the gun was clear, safe to fire.

7 I fired it in our bullet recovery tank and then
8 retrieved the fired bullets and fired cartridge cases and
9 compared those with each other. And then once I was
10 satisfied the firearm was marking consistently, I examined
11 the fired bullets that I test-fired out of the State's
12 Exhibit 3 pistol with the State's Exhibit 5 bullet, and then
13 I did the same thing with the cartridge cases, the State's
14 Exhibit 6 cartridge case.

15 Q. And from the results of your tests, were you able to
16 form an expert opinion regarding those exhibits?

17 A. Yes sir. When -- when we do examinations with the
18 Firearms Department, every -- any conclusion we reach before
19 it's given to the submitting agency is micro-verify it, so
20 once I was satisfied with my answers, I wrote them down on
21 our worksheets and have a second examiner come in, didn't
22 tell him anything other than I need a case micro-verified,
23 and he sat down and drew his own conclusions. He agreed
24 with me ---

25 MR. FOX: Objection, Your Honor. That's going to be

1 hearsay unless that examiner is here. That's just classic
2 hearsay. That's being used to bolster some testimony.

3 **THE COURT:** All right, sir.

4 Just testify as to what you did as a result of his
5 examination, please.

6 A. Okay. I concluded that the bullet and cartridge case
7 were both fired by the State's Exhibit 3 pistol.

8 Q. Okay. And in your opinion, and to a reasonable
9 degree of scientific certainty, you're saying that that
10 bullet was fired by that pistol?

11 A. Yes sir. State's Exhibit 5 was fired by State's
12 Exhibit 3.

13 Q. Okay. And the shell casing was fired from -- or the
14 shell casing thing was also -- or I guess the proper way to
15 say it was State's Exhibit 3, the pistol, was used to fire
16 that shell casing?

17 A. Correct. State's Exhibit 3 was used to fire State's
18 Exhibit 6.

19 Q. Okay. And did you publish your findings in a report
20 of any sort?

21 A. Yes sir.

22 **(SLED REPORT DATED APRIL 23, 2012, PREVIOUSLY MARKED AS**
23 **STATE'S EXHIBIT NUMBER 12 FOR IDENTIFICATION ONLY.)**

24 Q. All right. I'm going to show you what's been
25 previously marked as State's Exhibit 12 and ask you if you

1 recognize that?

2 A. Yes sir. State's Exhibit 12 is the firearms report I
3 issued in this case.

4 Q. Okay. And what does that report state?

5 A. It gives the information for the State's Exhibit 3
6 pistol, which was SLED Item 1, as one Bersa Model Thunder
7 380 semi-automatic pistol, 380 auto-calibre, serial number
8 B41688, with magazine, and our standard results. This one,
9 the Item 1 pistol was tested -- excuse me, was examined,
10 test-fired using the submitted magazine, which was State's
11 Exhibit 4, and the pistol was found to be in working order.

12 SLED Item 2, which was State's Exhibit 6, Item 2, one
13 fired 3D auto-calibre cartridge case, and the results were
14 Item 2 was fired by the Item 1 pistol.

15 Item 3 was one fired bullet from the victim's body.
16 The results are Item 3 was fired by the Item 1 pistol.

17 Q. And that report accurately reflects your findings in
18 this case?

19 A. Yes sir.

20 MR. GRAUSTEIN: Your Honor, the State would move to
21 enter State's Exhibit 12 in evidence.

22 THE COURT: Any objection?

23 MR. FOX: No, Your Honor.

24 THE COURT: All right. It's in evidence without
25 objection.

1 **(SLED REPORT DATED APRIL 23, 2012, INTRODUCED INTO**
2 **EVIDENCE AS STATE'S EXHIBIT NUMBER 12.)**

3 Q. And I just want to be -- make sure that we're clear
4 on this. All of those items, the pistol, the shell casing,
5 and the projectile all came to you in this single box?

6 A. Yes sir.

7 Q. All right. And it's your -- and you opened that box
8 to retrieve those items?

9 A. Yes sir.

10 Q. And it didn't appear to have been tampered with prior
11 to that?

12 A. No sir.

13 Q. Okay.

14 **MR. GRAUSTEIN:** Please answer any questions the Defense
15 may have.

16 **THE COURT:** Any cross-examination?

17 **MR. FOX:** Yes, Your Honor.

18 **CROSS-EXAMINATION BY MR. FOX:**

19 Q. Mr. Green, when you testified this gun -- my
20 understanding is you got the casing -- and, of course,
21 you've got these three elements of when it's in the
22 magazine, this bullet is actually inside that casing,
23 correct?

24 A. Yes sir.

25 Q. Okay. And then that's what gets loaded in here?

1 A. Yes sir.

2 Q. And when the weapon is fired, the bullet obviously
3 goes out the barrel of the gun, what happens to the casing?

4 A. In a pistol like this, like you say, when the bullet
5 goes out the barrel, in etonion physics equinox it reacts
6 from the cartridge case, is forced backwards by the pressure
7 built up and what the cartridge case does is it hits the
8 back of the breach face and when the slide comes all the way
9 back, there's a little -- you can't see, but there's a
10 little extractor. It's like a little claw that holds onto
11 the cartridge case when it's in the chamber. When it comes
12 far enough back, it hits the ejector and it's expelled from
13 the pistol.

14 Q. Okay. And that would be almost instantaneous ---

15 A. Yes sir. It took a lot longer to explain it than it
16 actually happened.

17 Q. Right. The eye couldn't distinguish the bullet and
18 the casing ---

19 A. You can see the cartridge case come out ---

20 Q. Right.

21 A. --- because it's just a big piece of brass, but it
22 hits fairly quick when the bullet is gone.

23 Q. Now, you, yourself, fired that gun with the test
24 bullets and the things you did?

25 A. Yes sir.

1 Q. How far would you say the shell casing would have hit
2 down? How far did it go?

3 A. Well, when we shoot, so we don't lose them, I
4 actually have a really professional brown paper bag that it
5 just goes straight into the bag ---

6 Q. Okay.

7 A. --- so it doesn't bounce around on the floor.

8 Q. Do you know from your experience either by -- have
9 you testified on that type of weapon before?

10 A. I have.

11 Q. Okay. Can you say based on that experience, and I
12 realize it's not going to be the same with every gun, with
13 every bullet you fire, but about how far would a shell
14 casing go when ejected?

15 A. I actually can't answer that. One, we don't do that.
16 It's not -- physically set all the variables that can
17 entail. All the firearms are different and all the
18 manufacturers are different. I can tell you as a general
19 rule they're going to go back and to the right. As far as
20 how far they go, I don't know. That would depend on if it
21 lands on concrete, if it lands on grass, or ---

22 Q. They're not going to shoot fifty feet behind there?

23 A. No sir.

24 Q. It's going to be a matter of a couple of feet?

25 A. Generally, yes, sir.

1 Q. Okay. And I understand there's a variable and about
2 conditions and so forth, okay. When you got the clip, it
3 was in there, correct?

4 A. Correct.

5 Q. How many bullets does that clip hold?

6 A. May I?

7 Q. Yes sir.

8 A. This magazine will hold seven cartridges.

9 Q. So, but the gun operates with one? You don't have to
10 fully load the clip to operate the gun, to fire the weapon?

11 A. Correct.

12 Q. Now, as I understood, when you're doing your -- when
13 you're test-firing a bullet, you've got a tank, right, full
14 of water, ---

15 A. Yes sir.

16 Q. --- is that correct?

17 Okay. And -- I'll withdraw that question. You've
18 already answered about the casing. Did you fire -- when you
19 were firing this weapon, I believe you did several test-
20 fires so you could see if there was consistent marking on
21 the bullet fired, is that correct?

22 A. Yes sir.

23 Q. Okay. But you would fire one at a time?

24 A. Yes sir. I would fire one, and then fire another,
25 and then fire another.

1 Q. So you didn't test -- no one asked you to even test
2 whether the gun was capable of rapid fire?

3 A. That's part of our general procedure to see if any
4 modifications have been done to the pistol. It's happened
5 to me before where there was no indication that it happened
6 whatsoever. You pull the trigger once and three shots came
7 out, so we always make sure that there's no modifications
8 done. You pull the trigger and dry-fire it a couple of
9 times and see by working the action if it will have the
10 ability to fire multiple shots at once.

11 Q. But by the nature of this gun, so there's no -- did
12 you see any modifications with this gun?

13 A. No sir.

14 Q. Okay. This gun, but its main factor, by the way it's
15 made, is a semi-automatic, correct?

16 A. Correct.

17 Q. It's capable of quickly -- I'm not saying one trigger
18 pull for three bullets like a machine gun type of thing, but
19 it takes much less pressure after the first trigger pull to
20 pull off the second and third shot, does it not?

21 A. Correct.

22 MR. FOX: Thank you. No further questions.

23 THE COURT: Any redirect?

24 MR. GRAUSTEIN: No, Your Honor.

25 THE COURT: Do you wish this witness to be excused?

1 **MR. GRAUSTEIN:** This witness may be excused.

2 **THE COURT:** Any objection?

3 **MR. FOX:** No, Your Honor.

4 **THE COURT:** All right.

5 Sir, you are released from your subpoena and may go
6 back to your regular duties. The exhibits, just make sure
7 they go back to the Court Reporter, please. Thank you.

8 All right. Your next witness, Solicitor.

9 **MR. GRAUSTEIN:** The State calls James Hughes.

10 **THE COURT:** Please come around and be sworn, sir.

11 **JAMES L. HUGHES,** being first duly sworn,
12 testifies as follows:

13 **THE DEPUTY CLERK:** Please state your full name and
14 spell your last name.

15 **MR. HUGHES:** James L. Hughes, H-U-G-H-E-S.

16 **THE COURT:** Go ahead, Solicitor.

17 **DIRECT-EXAMINATION BY MR. GRAUSTEIN:**

18 Q. Good morning, Mr. Hughes.

19 A. Good morning.

20 Q. Mr. Hughes, where do you live?

21 A. 5048 Edward Hughes Road, Gresham.

22 Q. In Gresham. Gresham, is that in Horry County?

23 A. Marion.

24 Q. Marion County?

25 A. Yes sir.

1 Q. Do you know the victim in this case, Tony Hughes?

2 A. Yes sir.

3 Q. How did you know him?

4 A. It's my son.

5 Q. And you live out in Gresham?

6 A. Yes sir.

7 Q. Where did Tony live?

8 A. In Gresham also.

9 Q. In Gresham?

10 A. Yeah, right behind me.

11 Q. Right behind you?

12 A. Yes.

13 Q. Okay. Do you own a house there?

14 A. Yes.

15 Q. And where did Tony work, do you know?

16 A. Waste Management.

17 Q. Waste Management?

18 A. Yes sir.

19 Q. And where was his job? Where was his job located?

20 A. In Florence.

21 Q. In Florence?

22 A. Yes sir.

23 Q. How often did he -- did he have to go to work?

24 A. Every day, five days a week.

25 Q. Okay. And he lived right -- you said he lived right

1 -- right there behind you out there in Gresham?

2 A. Yes sir.

3 Q. Okay. How long had he lived there?

4 A. Since 2002, I believe it was.

5 Q. Since 2002?

6 A. Yes sir.

7 Q. How long have you lived out there?

8 A. 2001.

9 Q. All right. So how often did you see Tony?

10 A. Every day.

11 Q. You'd see him every day?

12 A. Every day.

13 Q. He stopped by to visit or ---

14 A. Yeah, either on his way to work or when he got off of

15 work.

16 Q. Do you know the Defendant in this case, -- Ms. Vivian

17 Falls?

18 A. Yes sir.

19 Q. Have you ever met her before?

20 A. Yes sir.

21 Q. How did you meet her?

22 A. Through Tony.

23 Q. Through Tony?

24 A. Yes sir.

25 Q. His girlfriend or ---

1 A. Yes sir, through his girlfriend at the time.
2 Q. Okay. So they were dating?
3 A. Yes sir.
4 Q. Do you know about when they started dating?
5 A. No, I don't.
6 Q. You don't know. Okay. Do you know about how long
7 they dated for?
8 A. Not exactly, but it was less than a year.
9 Q. Something less than a year?
10 A. Yes.
11 Q. What was the status of their relationship in March of
12 2012, do you know?
13 A. March, there was no relationship far as I know.
14 Q. No relationship?
15 A. Not that I know of. It had come to a end.
16 Q. Okay. So you're saying -- you say they broke up?
17 A. Yeah.
18 Q. Do you know when they broke up?
19 A. In January from what he said.
20 Q. And that's what Tony told you is that they broke up?
21 A. In January.
22 Q. In January of 2012?
23 A. In '12 I think, yeah.
24 Q. Yeah, okay. In January of 2012, they had broke up.
25 Well, I guess, just for clarification, you said they dated

1 something less than a year, so it was less than a year from
2 January of 2012 or from March 2012?
3 A. From January.
4 Q. All right. So they were not -- I guess just so to
5 give us all some markers here, so you're saying they broke
6 up in January after Christmas in 2011?
7 A. January, right.
8 Q. And they started going out -- were they going out in
9 Christmas of 2010?
10 A. Not that I know of.
11 Q. Now, did you have any contact with the Defendant
12 after January of 2012?
13 A. Yes.
14 Q. What sort of contact did you have with her?
15 A. She called me the 31st of March at 7:15 that morning.
16 Q. She called you on the 31st of March?
17 A. At 7:15.
18 Q. 7:15 in the morning?
19 A. In the morning.
20 Q. How do you know it was 7:15?
21 A. Because I looked at my clock when the call come
22 through.
23 Q. And she called you. Had she called you before that?
24 A. Not that day, no.
25 Q. Not that day, or days -- any days prior to that?

- 1 A. Prior to that.
- 2 Q. She had called you?
- 3 A. She has called, contact, looking for Tony.
- 4 Q. Okay. So she called looking for Tony. Was this
- 5 after they broke up or ---
- 6 A. Yeah.
- 7 Q. Okay. She called looking for him, and then she
- 8 called you on March 31st, you said at 7:15?
- 9 A. 7:15 in the morning. That's right.
- 10 Q. And what did she want?
- 11 A. She was looking -- wanted to know had I seen Tony.
- 12 Q. She wanted to know if you had seen him. What did you
- 13 tell her?
- 14 A. I told her I hadn't seen him today.
- 15 Q. You hadn't seen him seen him yet that day, okay. Did
- 16 you know where he was?
- 17 A. No sir.
- 18 Q. You didn't?
- 19 A. No.
- 20 Q. Okay. Let me ask you something here. Look at
- 21 State's Exhibit 7. Do you recognize that white car?
- 22 A. Yes sir.
- 23 Q. Whose car is that?
- 24 A. Tony's.
- 25 Q. Tony's. Where did he -- when did he get that car?

- 1 A. March 30th, the day before he got shot.
- 2 Q. So the day before he got shot, he bought that car?
- 3 A. Yes.
- 4 Q. That was a brand new car for him?
- 5 A. He hadn't -- he didn't have it for twenty-four hours
- 6 yet.
- 7 Q. And you had seen it before?
- 8 A. That Friday evening, yes sir.
- 9 Q. That Friday evening you saw it?
- 10 A. Yeah.
- 11 Q. How did that come about?
- 12 A. I bought two trees to go in his yard and I took them
- 13 down there. We set them out, and that's when I seen the
- 14 car. He had just got home with it.
- 15 Q. Was he proud of that car?
- 16 A. He was driving it. Yeah.
- 17 Q. Let me ask you, how long did Tony -- so you and Tony
- 18 were neighbors or relatives, you know, father and son, were
- 19 neighbors for years?
- 20 A. Yes sir.
- 21 Q. And did you know, to your knowledge, did he live at
- 22 any time with the Defendant?
- 23 A. No sir, not that I know of.
- 24 Q. And how often would you see him?
- 25 A. Every day.

1 Q. Every day you would see him. Do you know where he
2 got his mail?
3 A. At his address.
4 Q. At his address in Gresham?
5 A. Gresham.
6 Q. Now, it's possible that he might have spent a weekend
7 with her?
8 A. It's possible.
9 Q. What's that?
10 A. I say it's possible.
11 Q. But no more than that?
12 A. Not that I know of.
13 Q. And you could see from where you are -- I mean, how
14 far away was his house from yours?
15 A. Well, he was right behind me about three lots --
16 about three lots down from my house.
17 Q. Could you see his house from your house?
18 A. If it wasn't for the trees, yeah.
19 Q. Okay. And I just want to make sure we're real clear.
20 Did, to your knowledge, Tony and the Defendant ever live
21 together?
22 A. Not that I know of.
23 Q. And to your knowledge were they still dating in March
24 of 2012?
25 A. March, no.

1 **MR. GRAUSTEIN:** Please answer any questions the Defense
2 may have.

3 **THE COURT:** Cross-examination.

4 **MR. FOX:** Thank you.

5 **CROSS-EXAMINATION BY MR. FOX:**

6 Q. Mr. Hughes, what you said is as far as you know your
7 son wasn't -- didn't ever live with Miss Vivian, correct?

8 A. Not that I know of.

9 Q. Okay. So, I mean, he may have without your
10 knowledge?

11 A. Could have, but not to my knowledge.

12 Q. Okay. You know where Miss Vivian stayed at during
13 this -- during 2012, don't you?

14 A. Not exactly. I never been there.

15 Q. You know she stayed over at Myrtle Beach, though?

16 A. I knowed it was in Horry County.

17 Q. Yeah. And you know your son would go over and stay
18 with her often, like overnight? Do you know that?

19 A. Not that I know.

20 Q. Did he ever tell you that?

21 A. Not -- no.

22 Q. Okay. Did he ever tell you he kept belongings over
23 there for when he did spend the night?

24 A. At his house?

25 Q. No, at her house?

- 1 A. No, he didn't tell me that.
- 2 Q. Didn't tell you that. Okay. You know Miss Vivian
3 well, though, right?
- 4 A. Pretty -- yeah.
- 5 Q. More than pretty well? Is it fair to say you knew
6 her real well?
- 7 A. No, not real well. She would stop by my house every
8 once in a while looking for Tony, but Tony wouldn't never be
9 with her. She would just stop by.
- 10 Q. Y'all would visit together, though? He had told you,
11 and your son and Miss Vivian and your family visited, right?
- 12 A. No, I didn't.
- 13 Q. She never visited you with Tony?
- 14 A. Not with Tony.
- 15 Q. Never came to family events or anything?
- 16 A. No.
- 17 Q. She didn't refer to you as dad?
- 18 A. She would call me dad, yeah.
- 19 Q. Okay. And that was okay with you?
- 20 A. I didn't -- it was all right with me.
- 21 Q. Okay. So you were close enough that she could call
22 you by a very familiar term, right?
- 23 A. Yeah.
- 24 Q. Okay. You don't like just anybody to call you dad,
25 do you?

1 A. If they want to call me dad, they can call -- you can
2 call me dad.

3 Q. Okay. I think I've got it down.

4 Mr. Hughes, you saw -- in fact, you saw Miss Vivian
5 the day before your son was shot, didn't you?

6 A. Yeah. I went by his house when I took them trees.

7 Q. Right, and she was there?

8 A. She was sitting in the car.

9 Q. And Tony was there?

10 A. Yeah.

11 Q. Yeah, and you planted some flowers, or trees, or
12 something there, right?

13 A. Trees.

14 Q. Right. So she was there at the same -- that day
15 before? She and Tony were together the day before this
16 happened?

17 A. Yeah.

18 Q. And you don't know if they -- if they broke up, do
19 you know if they ever got back together?

20 A. No, I don't.

21 Q. So that was two -- two months or so before this
22 happened. They may have well gotten back together for all
23 you know?

24 A. As far as I know, they could have, but I don't know.

25 Q. Were you aware that your son referred to he and

1 Vivian as being married in the eyes of God?

2 A. No, I didn't.

3 Q. He never said that to you?

4 A. No.

5 Q. Did you know they had rings that they exchanged?

6 A. No, I didn't.

7 **MR. FOX:** Just a moment, Your Honor.

8 **THE COURT:** Yes sir.

9 **MR. FOX:** Thank you. No further questions.

10 **THE COURT:** Redirect?

11 **MR. GRAUSTEIN:** No, Your Honor.

12 **THE COURT:** All right, sir.

13 You may step down, sir. Thank you.

14 Your next witness, sir.

15 **MR. GRAUSTEIN:** May we approach, Your Honor?

16 **THE COURT:** Yes sir.

17 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**

18 **THE COURT:** All right. Next witness, please, sir.

19 **MR. GRAUSTEIN:** Mrs. Sarah Hughes.

20 **THE COURT:** Please come around, ma'am.

21 **SARAH M. HUGHES,** being first duly sworn,

22 testifies as follows:

23 **THE DEPUTY CLERK:** Please state your full name and

24 spell your last name.

25 **THE COURT:** You may proceed, sir.

1 **MRS. HUGHES:** Sarah M. Hughes, H-U-G-H-E-S.
2 **DIRECT-EXAMINATION BY MR. GRAUSTEIN:**
3 Q. Good morning, Mrs. Hughes.
4 A. Good morning.
5 Q. Where do you live?
6 A. 1957 Cypress Road, Florence, South Carolina.
7 Q. And you live out in Florence?
8 A. Yes.
9 Q. How far did you live from where Tony lived?
10 A. Forty-five minutes.
11 Q. About forty-five minutes. You were a good piece away
12 from where he lived, along with Mr. Hughes?
13 A. Yes, forty-five.
14 Q. How long have you lived there?
15 A. Two years, going on three.
16 Q. Okay. When did you move there?
17 A. I moved there February the 6th, 2012.
18 Q. Okay. In February 2012, you moved to ---
19 A. Yes.
20 Q. --- where you live now, in Florence?
21 A. Yes.
22 Q. Where did you live before that?
23 A. In Washington, D.C.
24 Q. All right. You worked up in Washington, D.C.?
25 A. Yes. I was working for the Department of Commerce.

1 They had a branch in Gaithersburg, Maryland.

2 Q. Okay. How long did you work there for them?

3 A. Twenty-four years.

4 Q. Did you retire from there?

5 A. Yes.

6 Q. Are you retired now?

7 A. Yes.

8 Q. So you didn't live down here in South Carolina during

9 the year 2011?

10 A. No.

11 Q. No, okay. Did you have any contact with -- with

12 Tony?

13 A. Yes.

14 Q. All right. How did you keep up -- did you know what

15 was going on or did you think you knew what was going on in

16 his life?

17 A. He would call me or I would call him.

18 Q. How often did you two talk together?

19 A. About once a week.

20 Q. Okay.

21 A. We hardly ever missed a week.

22 Q. All right. And did you know he had been dating the

23 Defendant, Vivian Falls?

24 A. Yes.

25 Q. Okay. Let me ask you this: Would you ever come down

1 to visit?

2 A. Sir?

3 Q. Would you ever come down to visit?

4 A. Yes, often.

5 Q. Okay. How often did you get down here to visit?

6 A. I came down a few times, a couple of times a month,

7 because I was looking for a house.

8 Q. Okay.

9 A. So I would come often, and before that, I would come

10 two to three times a year.

11 Q. All right.. So had you ever met the Defendant?

12 A. Yes.

13 Q. You met her?

14 A. Yes.

15 Q. Do you remember the first time you met her?

16 A. I remember the first time I met her. I don't know

17 what month or what time it was, but I remember the first

18 time.

19 Q. It was during one of your visits down here?

20 A. Yes, it was.

21 Q. And every time -- did you see her every time you came

22 down?

23 A. Yes, I would say so, ---

24 Q. All right.

25 A. ---, the weekend.

1 Q. Now, at some point did you ever believe that the --
2 their relationship had changed?

3 A. Yes.

4 Q. And when was that?

5 A. I can't remember what -- the month or the date, but I
6 remember him telling me. I also remember her telling me.

7 Q. Was it before or after you had moved down here?

8 A. It was before I moved down here when he told me, but
9 it was after I moved down when she told me.

10 Q. So sometime before you moved down here in February of
11 2012, Tony told you that they had broke up?

12 A. Yes, he did.

13 Q. And sometime after that -- well, let me ask you this:
14 How did -- how did it come about that she told you?

15 A. She just told me. She said -- she called me ma, so,
16 ma, you know me and Tony has broke up. I'm dating now. I
17 said, well, make yourself happy. You know, get you someone
18 and make yourself happy. She said I am.

19 Q. Okay. So, but now this happened -- well, where did
20 she tell you that?

21 A. At my house.

22 Q. At your house?

23 A. Yes.

24 Q. Well, why was she in your house?

25 A. Visiting. Any time Tony would come, she would come

1 looking for him.

2 Q. Okay. She was -- Tony wasn't with her?

3 A. Not on -- no, not this particular time Tony wasn't

4 with her.

5 Q. Were there other times he would be with her?

6 A. Usually she would drive her car when he -- and he

7 would come. They would wind up there, but they wouldn't be

8 in cars together.

9 Q. Okay. And I guess -- so she showed up or she was at

10 your house without Tony after they broke up?

11 A. Yes.

12 Q. Had you invited her over or something?

13 A. No. She just stopped by.

14 Q. She just showed up?

15 A. Uh-huh (**indicating affirmative**), yes.

16 Q. Does that strike you as odd?

17 A. Not odd because they were separated. He said it and

18 she said it also, but it wasn't odd. She -- and she asked

19 me, she said can I still call you ma? I said yes, of

20 course, and she told me they were separated, but she still

21 wanted to call me ma, so I didn't see anything wrong with

22 that.

23 Q. Okay. Well, let me ask you this: To your knowledge

24 when they broke up, was it friendly, was it amicable?

25 A. It was friendly on my son's part.

1 Q. Okay. So you -- they hadn't been -- to your
2 knowledge, had they been fighting or ---
3 A. No.
4 Q. No?
5 A. No.
6 Q. So it just ended as far as you know?
7 A. It just ended.
8 Q. Okay. Now, when was the last time you spoke with the
9 Defendant?
10 A. March the 31st, the day before he was killed.
11 Q. On -- you spoke on March 31st? It was on March 31st?
12 A. Yes.
13 Q. Was it -- what time of day?
14 Q. Early in the morning. How early?
15 A. That morning, about -- I would say like daybreaking.
16 Q. About daybreak?
17 A. Yes.
18 Q. So it was early in the morning?
19 A. Yes.
20 Q. And did she say -- did she come by or call you?
21 A. She called.
22 Q. What did she call for?
23 A. Tony, wanted to know did I know where Tony was.
24 Q. Did you know where Tony was?
25 A. No, I did not.

1 Q. So you couldn't have told -- told her where he ---
2 A. No.
3 Q. --- where he was?
4 A. No.
5 Q. All right. How often did you see Tony after you
6 moved down here?
7 A. Oh, Tony would -- Tony worked fifteen minutes from
8 where I lived, ---
9 Q. Uh-huh **(indicating affirmative)**.
10 A. --- and the majority of the time, he would come and
11 get his lunch, and he might would miss a day, but hardly
12 ever. If he missed a day, he would call.
13 Q. Okay. You saw him almost every day, too?
14 A. Yeah. He worked fifteen minutes from where I lived.
15 **MR. GRAUSTEIN:** Please answer any questions the Defense
16 may have.
17 **THE COURT:** Cross-examination.
18 **CROSS-EXAMINATION BY MR. FOX:**
19 Q. Mrs. Hughes, during the time when you were coming
20 back and forth, you actually stayed with Vivian and Tony,
21 didn't you?
22 A. Stayed with them?
23 Q. Yeah.
24 A. Whereabout?
25 Q. When you were looking for a house.

1. A. I stayed with Tony when I came down for a weekend.
2 That's when I was visiting, looking for a house. I did not
3 stay with Vivian. I stayed with my son ---
- 4 Q. Was Vivian there at the house?
- 5 A. --- in his house.
- 6 Q. Was Vivian there ---
- 7 A. Oh, she would come, yes.
- 8 Q. Okay. And didn't you sometime ask them about the
9 rings they had?
- 10 A. No.
- 11 Q. You never asked about any rings?
- 12 A. No.
- 13 Q. All right. Did Tony tell you all the details of
14 their relationship?
- 15 A. No. He said that they was -- they was broke up.
- 16 Q. I'm talking about while they had a relationship.
- 17 A. No.
- 18 Q. So he didn't share -- like a lot of grown men, he
19 didn't share all -- every bit of his personal life with his
20 own mom because a lot of grown men don't, right?
- 21 A. No, he didn't.
- 22 Q. Okay. Now, the day before you say you spoke to
23 Vivian, you talked about more than where Tony was, didn't
24 you? You talked about kids ---
- 25 A. Yes, but she -- she gave me a message to give to him.

1 Q. And -- but there was more than just Tony in that
2 conversation, correct?

3 A. No.

4 Q. Nothing at all, nothing about the boat, nothing about
5 kids, just where's Tony?

6 A. It was about her kids.

7 Q. Okay.

8 A. She gave me a message.

9 Q. And you weren't with Tony and Vivian on a day to day
10 basis because at first you were in Washington, correct?

11 A. Yes.

12 Q. Okay. Do you know whether he would go down to stay
13 with her in Myrtle Beach, with Vivian in Myrtle Beach?

14 A. I do not know.

15 Q. Okay. He may have? You don't know?

16 A. I do not know.

17 **MR. FOX:** I don't have any further questions.

18 **THE COURT:** Redirect?

19 **MR. GRAUSTEIN:** No, Your Honor.

20 **THE COURT:** All right.

21 Ma'am, you may step down. Thank you.

22 All right. Ladies and gentlemen, we're going to stop
23 for lunch. The State informs me that there may be three,
24 but there's certainly two witnesses, one from the State Law
25 Enforcement Division and the other one, Dr. Proctor, and

1 they are scheduled because of their various jobs to testify
2 this afternoon, starting at two o'clock.

3 So I know it's an extended period of time, but the
4 witnesses aren't here available at this point in time, so we
5 will, especially considering Dr. Proctor's practice and his
6 busy schedule, we try to accommodate him as much as
7 possible, so we will reconvene at two o'clock. I ask that
8 you assemble at least downstairs in the jury assembly room
9 at least, at the latest, by ten of so that you can be
10 upstairs and be ready at two o'clock.

11 All right, remember, don't talk about the case and
12 don't allow anybody to talk to you about it. Thank you.

13 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
14 JURY.)

15 THE COURT: All right. Anything from the State at this
16 point in time?

17 MR. GRAUSTEIN: No, Your Honor.

18 THE COURT: All right.

19 And anything from the Defense?

20 MR. FOX: No, Your Honor.

21 THE COURT: All right. Very good. We'll resume at two
22 o'clock. Thank you.

23 (THE FOLLOWING TAKES PLACE AFTER A LUNCH RECESS AND
24 OUTSIDE THE PRESENCE OF THE JURY.)

25 THE COURT: All right. Solicitor, is the State ready

1 for the jury?

2 **MR. GRAUSTEIN:** Yes, we are, Your Honor.

3 **THE COURT:** All right..

4 And Mr. Fox?

5 **MR. FOX:** Yes, Your Honor.

6 **THE COURT:** All right..

7 Ask the jury to come in, please.

8 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**

9 **JURY.)**

10 **THE COURT:** All right. Solicitor, your next witness,

11 please sir.

12 **MR. GRAUSTEIN:** Yes, Your Honor. The State would call

13 Amy Stephens.

14 **THE COURT:** All right.

15 Please come around, ma'am. Meet the Clerk right up

16 here.

17 **AMY ELIZABETH STEPHENS,** being first duly

18 sworn, testifies as follows:

19 **THE DEPUTY CLERK:** Please state your full name and

20 spell your last name.

21 **MS. STEPHENS:** Amy Elizabeth Stephens, S-T-E-P-H-E-N-S.

22 **THE COURT:** All right, Solicitor.

23 **MR. GRAUSTEIN:** Thank you.

24 **DIRECT-EXAMINATION BY MR. GRAUSTEIN:**

25 Q. Ms. Stephens, where -- what's your current

1 occupation?

2 A. I'm a forensic technician in the Evidence Control
3 Department at the South Carolina Law Enforcement Division,
4 which is also known as SLED.

5 Q. Okay. How long have you been employed with SLED?

6 A. Approximately eight years.

7 Q. In that same capacity as ---

8 A. That's correct.

9 Q. And as a technician with the Evidence Control
10 Division, what are your duties?

11 A. Our duties in Evidence Control are to log in,
12 package, and transfer evidence for forensic analysis in
13 criminal cases.

14 Q. So that includes accepting evidence from other
15 agencies?

16 A. That's correct.

17 Q. All right. I will ask you if you recognize this item
18 -- if you recognize this item?

19 A. Yes, I do. I recognize the lab number that's affixed
20 to the outside of this box.

21 Q. Okay. And what is that item?

22 A. The SLED lab number is L12-04300.

23 Q. Now, where did you get that item from?

24 A. I received this evidence from Jill Domogauer of the
25 Horry County Police Department on April 12, 2012.

1 Q. And you took it into your custody at that point?

2 A. That is correct.

3 Q. Now, what are the procedures for SLED that y'all use
4 when taking in evidence?

5 A. When we receive evidence, we will enter all the case
6 information into our computer system. We will then package
7 the evidence appropriately, such as this box. We will place
8 SLED evidence tape on all openings and have the submitting
9 officer initial and date all SLED heat-seals -- excuse me,
10 all SLED seals.

11 Q. And were those procedures followed in this case?

12 A. Yes, they were.

13 Q. And is that item -- is that item in the same
14 condition as when you took it in or when you received it?

15 A. It has SLED tape on it and it's also been opened by
16 the analyst.

17 Q. Now, how long did you have custody of that, do you
18 know?

19 A. Approximately one minute on April 12th, 2012, and
20 approximately for one minute on April 16th, 2012.

21 Q. Okay. So now in one minute, what did you do with it?

22 A. On April 12th, 2012, once I logged it in to our
23 computer system, I transferred it to a storage location in
24 our evidence room. On April 16th, 2012, I retrieved it from
25 that storage location and transferred it to Forensic

1 Scientist James Green.

2 Q. Okay. And put it in storage on April 12th, took it

3 out of storage on April 16th. When you retrieved it from

4 storage, did that package appear to have been tampered with

5 at that point?

6 A. No sir. I would have noted it if it appeared to be

7 tampered with.

8 Q. Okay. And you transferred it then to the custody of

9 James Green?

10 A. That's correct.

11 Q. And do you know why that was transferred to him?

12 A. For forensic analysis.

13 Q. Okay. And are you aware of what the contents of that

14 package were?

15 A. Located in this box was a handgun described as a

16 Bersa Model Thunder 380 with clip, a RP380 fired casing, and

17 a projectile recovered from the victim's body.

18 Q. And to your knowledge, was this -- while this was in

19 your custody, was the condition -- or was the condition

20 altered in any way?

21 A. No, it was not.

22 Q. And was the package tampered with to your knowledge?

23 A. Not to my knowledge, no, it was not.

24 **MR. GRAUSTEIN:** Your Honor, the State would move to

25 enter the evidence items previously identified as State's

1 Exhibit 3, 4, 5, and 6 into evidence.

2 THE COURT: Is there any objection?

3 MR. FOX: No, Your Honor.

4 THE COURT: All right. So State's 3, 4, 5, and 6 are
5 in evidence without objection.

6 (PISTOL, BERSA THUNDER 380, B41688, INTRODUCED INTO
7 EVIDENCE AS STATE'S EXHIBIT NUMBER 3.)

8 (MAGAZINE INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
9 NUMBER 4.)

10 (PROJECTILE INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
11 NUMBER 5.)

12 (SHELL CASING, RP380, AUTOMATIC, INTRODUCED INTO
13 EVIDENCE AS STATE'S EXHIBIT NUMBER 6.)

14 MR. GRAUSTEIN: Please answer any questions the Defense
15 may have.

16 MR. FOX: No questions, Your Honor.

17 THE COURT: All right.
18 Do you wish this witness to be excused?

19 MR. GRAUSTEIN: Yes, I do, Your Honor.

20 THE COURT: All right.

21 Ms. Stephens, you are released from your subpoena and
22 may go back to your regular duties. Thank you, ma'am.

23 All right. Your next witness, Solicitor.

24 MR. GRAUSTEIN: The State would call Ryan McCarty.

25 THE COURT: All right, Mr. McCarty, if you would come

1 on up and meet the Clerk right here, please.

2 **RYAN McCARTY**, being first duly sworn,
3 testifies as follows:

4 **THE DEPUTY CLERK:** Please state your full name and
5 spell your last name.

6 **MR. McCARTY:** My name is Ryan McCarty, M-C-C-A-R-T-Y.

7 **THE COURT:** Go ahead, Solicitor.

8 **DIRECT-EXAMINATION BY MR. GRAUSTEIN:**

9 Q. Good afternoon, Mr. McCarty.

10 A. How are you doing.

11 Q. Mr. McCarty, where do you live?

12 A. 205 Bay Forge Road.

13 Q. 205 Bay Forge Road. Where is that in relationship to
14 Diane Moscovy (sic)?

15 A. She lives right next door to me.

16 Q. Or Movsky, I'm sorry. She lives right next door to
17 you?

18 A. Yes sir.

19 Q. Were you home on the morning of March 31st, 2012?

20 A. I was.

21 Q. And were you -- at approximately -- or that morning,
22 did anything unusual happen?

23 A. Yes. When I came back from dropping my wife off at
24 work, I heard a few shots outside my window.

25 Q. All right. About what time was this?

1 A. About 9:30 that morning.

2 Q. Okay. Was it light out?

3 A. It was.

4 Q. And you were awake at that time?

5 A. I was.

6 Q. And you said you heard some gunshots?

7 A. Correct.

8 Q. What did that sound like?

9 A. Loud pops, like firecrackers, but louder.

10 Q. How many, do you recall?

11 A. I recall when I first heard it, and then I ran to the

12 window. I can't recall how many were shot total.

13 Q. Okay. So you were in your bedroom. Where is that --

14 is that to the front of your house or to the back of your

15 house?

16 A. It's towards the back of my house.

17 Q. What did you do when you first heard the gunshots?

18 A. I ran towards my bedroom/bathroom window. It's on

19 the side closest to Diane's house.

20 Q. Uh-huh (**indicating affirmative**).

21 A. And when I did, I saw the actual ---

22 Q. You looked out the window?

23 A. Yes.

24 Q. What did you see when you looked out the window?

25 A. I saw her pointing a gun at the ---

1 Q. Her?

2 A. I'm sorry. I can't remember her name.

3 Q. But you saw -- you saw somebody pointing a gun?

4 A. Yes.

5 Q. Okay. Is that person that was pointing a gun, are

6 they in the courtroom today?

7 A. Yes.

8 Q. And who was -- could you point them out.

9 A. The middle person.

10 Q. The Defendant in this case?

11 A. Yes.

12 **THE COURT:** I'm sorry. Did you say the middle person?

13 A. I'm sorry. Yes.

14 **THE COURT:** Okay. Just speak up a little bit. All

15 those jurors need to hear you.

16 A. I apologize.

17 **THE COURT:** All right, sir. Thank you, sir.

18 Q. When you saw the Defendant, you said holding a gun

19 or ---

20 A. Yes.

21 Q. And how was she holding it?

22 A. She was pointing it directly at Tony.

23 Q. She was pointing it directly at Tony?

24 A. Not laying down. He was leaning on his car at the

25 time.

1 Q. He was leaning on his car?

2 A. Yes.

3 Q. Was he standing? Was he laying down?

4 A. He was standing. He was leaning back, holding his

5 chest.

6 Q. He was leaning back against his car?

7 A. Correct.

8 Q. Was his back -- his back on his car?

9 A. Correct.

10 Q. And you said he had his hand ---

11 A. His hand on his chest.

12 Q. His hand on his chest, okay. And now let me ask you,

13 you said -- you referred to Tony?

14 A. Correct.

15 Q. Had you ever -- had you ever seen Tony before?

16 A. The night prior, Diane introduced him to me. They

17 were on the porch having a cigarette, ---

18 Q. Okay.

19 A. --- and I had just came home from work.

20 Q. Had you ever met him before?

21 A. No sir.

22 Q. Okay. So you just met him. Did you talk with him at

23 all?

24 A. It was a quick introduce -- introduction.

25 Q. Okay. So you met him real quick, and then you went

1 inside, went in your house?

2 A. Correct.

3 Q. Okay. So you saw the -- you saw the Defendant

4 pointing a gun at Tony as he was -- and he was leaning

5 against his vehicle?

6 A. Correct.

7 Q. With his hand up on his chest?

8 A. Yes.

9 Q. Okay. And you're still looking from the same window?

10 A. Yes sir.

11 Q. And then what happened, or what did you see?

12 A. Once -- once I got to the window and saw her pointing

13 the gun, I then saw a shot, and once I saw the shot, I

14 grabbed my phone and called 911 as I went to the front of my

15 house, and I have a very big square window that can see

16 Diane's house and all my other neighbors' houses, and while

17 I was on the phone with the police, I still watched what she

18 was doing.

19 Q. Okay. So you saw one -- you saw one shot? You saw

20 her fire one shot?

21 A. I saw her fire one shot, but there was another.

22 Q. And you heard another?

23 A. And I heard another.

24 Q. Were they rapid succession, bang-bang, or bang, bang?

25 A. The second.

1 Q. The second?

2 A. Right.

3 Q. Okay. So then you went to the front of your house

4 and you were calling 911, and did you keep observing the

5 Defendant at that point?

6 A. Yes sir.

7 Q. Could you see the victim? Could you see Tony?

8 A. Yes sir.

9 Q. Okay. What was Tony doing, if anything?

10 A. At that time he was on the ground. When I got to the

11 front of my house, he was laying on the ground, on the side

12 of his car where he was leaning on it.

13 Q. Okay. And what was the Defendant doing?

14 A. She had walked back to her car. I didn't know what

15 she was doing, but then after that, she went back to Tony's

16 body, sat on the ground, and I saw her crying and rubbing

17 his head.

18 Q. Okay. Did she still have the gun, do you know?

19 A. I believe it was right next to her.

20 Q. And is that where she stayed until police arrived?

21 A. Correct.

22 Q. Now, did you ever go outside your house at any point?

23 A. Yes sir.

24 Q. And why did you go outside?

25 A. My mother had pulled up from McDonald's, bringing me

1 breakfast that morning, and she pulled up right when she was
2 on the -- when she was on the ground rubbing his head.

3 Q. Okay. You went out?

4 A. I ran to my mom's car and grabbed her and brought her
5 back in my house.

6 Q. Okay. Did you -- before you heard any shooting at
7 all and you had dropped your wife off -- I guess it was your
8 girlfriend at the time?

9 A. She was.

10 Q. And before you heard any shooting, did you hear
11 anything, any yelling, fussing, fighting, anything like
12 that?

13 A. No sir.

14 Q. After the shooting started, did you hear anything but
15 -- other than a gunshot?

16 A. There was arguing between her and Tony. I didn't
17 hear all of it. The most I heard was why are you doing
18 this, from him, and her saying I'm not going to jail for
19 this, and I can't believe you did this to me, is what she
20 had said.

21 Q. She said I can't believe you did this to me?

22 A. Yes.

23 Q. Okay. Now, when you -- they were talking, now was
24 she yelling, was she ---

25 A. It was more about -- it wasn't screaming, but it was

1 loud enough for me to hear it from my side window by my
2 bedroom, so ...

3 Q. Like Tony said -- and what is -- you said Tony said
4 something?

5 A. He wasn't -- he wasn't loud enough. He was still
6 holding his chest, but I do believe he said you're going to
7 go to jail for this, or something. I'm not sure, but he
8 was ---

9 Q. Okay. Now, correct me if I'm wrong, and I think what
10 you've testified is there were two distinct groups of shots?

11 A. Right.

12 Q. This talking between them that was going on or --
13 where did that fall in relation to the groups of shots?

14 A. The first two I heard, I went to the window, and
15 that's when the arguing I heard. And then once I left, I --
16 once the first shot I saw, I ran to my phone, called the
17 police, went to the -- once I had my phone, I heard the
18 second and went to the front and called the police.

19 Q. And the talking was going on when, before the ---

20 A. Before the second round of shooting.

21 Q. Okay. So in between ---

22 A. In between, yes.

23 Q. --- the shots that you initially heard, ---

24 A. Talking and then more shots.

25 Q. --- then talking, in which you say he said words to

1 the effect of you're going to go to jail for this?

2 A. Or why are you doing this to me. You're going ---

3 Q. Or why are you doing this to me.

4 A. And then she also said that I'm not going to jail for

5 this. Why did you do this to me?

6 Q. All right. And she said I'm not going to jail for

7 this and then fired?

8 A. It was after why did you do this to me, and then

9 fired.

10 Q. Okay. Why did you do this to me, and she said why

11 did you do this to me?

12 A. And fired.

13 Q. And then fired?

14 A. And that's when I ran to my phone.

15 Q. Okay. And you said you heard another shot?

16 A. I heard another shot, correct.

17 Q. Okay. And I just want to be clear. That shot you

18 saw fired, he was not laying on the ground at that time?

19 A. No sir.

20 Q. But by the time you got up to your other window, he

21 was laying on the ground?

22 A. Correct.

23 Q. Okay. About how long did that take?

24 A. A matter of seconds.

25 Q. Okay.

1 **MR. GRAUSTEIN:** Please answer any questions the Defense
2 may have.
3 **THE COURT:** Cross-examination.
4 **CROSS-EXAMINATION BY MR. FOX:**
5 Q. Mr. McCarty, I show you a big picture. Tell me if
6 you can recognize what that picture is.
7 A. That is Diane's house.
8 Q. Okay. And where is your house in relation to that
9 picture?
10 A. Right here.
11 Q. Okay. And you can see in the corner these are steps
12 that go up to the ---
13 A. My side -- my side door.
14 Q. Okay. So where -- you can just see it -- is this
15 your house there kind of above that yellow police tape?
16 A. Yes, that is my house.
17 Q. You can just see it behind the tree there?
18 A. Uh-huh **(indicating affirmative)**.
19 Q. Okay.
20 A. Actually, if you can see right there, that's the
21 window I looked out of, right through the window.
22 **THE COURT:** Sir, try and speak up just a little bit.
23 A. Okay. I'll move up.
24 Q. Now, your bedroom -- how many rooms do you have at
25 your house, if you start at the front and walk through?

1 A. When you walk through, the dining room, my bathroom,
2 and then my room.

3 Q. Okay. And you were -- when you heard the first shot,
4 you were in your ---

5 A. Back bedroom.

6 Q. Bedroom. Is that where, at the back of the house,
7 correct?

8 A. Yes sir.

9 Q. Do you have to go -- your house laid out if you want
10 to go from your room to the bathroom, what do you need to
11 do? You have to go out into ---

12 A. I'm sorry. I have two bathrooms. The bathroom in my
13 room, the one I saw it in?

14 Q. Yes.

15 A. It would take two seconds literally out of my bedroom
16 and walk in.

17 Q. So there's a separate window in one room?

18 A. One room, correct.

19 Q. And that bathroom window is a little bit smaller than
20 the other window?

21 A. Yes, correct.

22 Q. About head height?

23 A. Yes.

24 Q. Okay. So you have a one-story house, correct?

25 A. Correct.

1 Q. Okay. So if you're standing in the bathroom looking
2 out that window and someone were out and you're not quite at
3 ground level, but you're just a few feet off the ground, is
4 that correct?

5 A. Yes.

6 Q. Okay. Now, you're looking from this direction kind
7 of the back of the photo back here, looking up here?

8 A. Uh-huh **(indicating affirmative)**.

9 Q. This is the car, and where was Mr. Hughes when you
10 saw him?

11 A. He was right here on the side of his car here.

12 **THE REPORTER:** Excuse me?

13 A. In the front.

14 Q. You've got to speak up.

15 A. I'm sorry. He was right here in front on this side.

16 Q. Okay. In front of the car?

17 A. Right here on the side, yes, in the front.

18 Q. Okay. Closer to the front of the car or the back of
19 the car?

20 A. To the front.

21 Q. Okay. Now, if you're just standing at that window,
22 that porch comes out and that's the end of the driveway.
23 This car appears to be pulled up to the end of the driveway?

24 A. It's pulled up, all the way up to the basketball
25 court.

1 Q. And these cars appear to be the same place they were
2 when you were looking out the window?

3 A. Correct.

4 Q. Okay. This porch doesn't get in the way of the front
5 of the end of that driveway or the front of that car?

6 A. No sir.

7 Q. And the tree doesn't block you at all?

8 A. No sir.

9 Q. Now, today you said that you went to drop off your
10 wife and you were back in the bedroom and you heard two
11 shots, correct?

12 A. Correct.

13 Q. Did you -- and you called 911?

14 A. Yes sir.

15 Q. And you were still at home when the police arrived?

16 A. Yes sir.

17 Q. And at some point did you speak with a detective or
18 an officer?

19 A. Yes sir.

20 Q. Okay. And they interviewed you?

21 A. Correct.

22 Q. You told them what you had seen and heard?

23 A. Correct.

24 Q. And that would have been within what, an hour or so
25 after the shooting, maybe even twenty minutes or so?

1 A. About that.

2 Q. Do you recall telling that officer that you -- were

3 you asleep or awake when you heard those shots?

4 A. I was awake when I heard those shots.

5 Q. And you heard two shots?

6 A. Correct.

7 Q. Okay. Now, do you recall back on March 31st, 2012,

8 twenty minutes after this telling the police you were asleep

9 in bed?

10 A. No.

11 Q. You didn't tell the police that?

12 A. No. What I said was that I was getting back in bed

13 to go back to sleep.

14 Q. Okay. And that you awoke to the sound of four

15 gunshots? Do you remember telling the police you heard four

16 gunshots?

17 A. No, I don't. I know I heard four gunshots

18 altogether.

19 Q. I understand.

20 **(STATEMENT OF RYAN McCARTY IS MARKED AS DEFENDANT'S**

21 **EXHIBIT NUMBER 3 FOR IDENTIFICATION ONLY.)**

22 Q. All right, I'm going to show you what's been marked

23 as Defense Exhibit Number 3 for identification. Tell me if

24 you can recognize the handwriting on that.

25 A. Yes.

1 Q. Whose is it?

2 A. That's mine.

3 Q. Okay. Take a look at that. Do you remember writing

4 that?

5 A. Yes, I remember it.

6 Q. And when was it written?

7 A. March 31st, 2012.

8 Q. And now have you had a chance to read what you wrote?

9 A. Uh-huh **(indicating affirmative)**.

10 Q. And now do you recall telling the police that you

11 were asleep when you heard the shots?

12 A. I don't. I may have wrote that I was getting in bed,

13 but, I mean, ---

14 Q. Okay. What does it say? What is the first sentence?

15 A. The first sentence says I was asleep in bed. I awoke

16 to sounds of four shots.

17 Q. Okay. And there's no mention -- I can show you this

18 again. Is there any mention of hearing two shots and then

19 hearing two more in what you wrote for the police?

20 A. No.

21 Q. Do you think your memory and your perception of

22 things was better twenty minutes after this happened or two

23 years after it happened?

24 A. It would have been better twenty minutes after it

25 happened.

1 Q. Now, when you got to the front window, did you see --
 2 you could see out and you could see into the yard, and you
 3 could see out to the street, did you see anybody else
 4 besides Vivian and Tony Hughes out there at that time?
 5 A. The neighbors across the street from me. They were
 6 out there.
 7 Q. Do you know their name?
 8 A. I do not.
 9 Q. And that would be straight across the street from
 10 you?
 11 A. Right.
 12 Q. Okay. Where were they?
 13 A. Standing in their front yard.
 14 Q. Okay. Could you tell which -- where they were
 15 looking? I mean, were they facing your way or ---
 16 A. They were looking towards Diane's house.
 17 Q. Okay. So the police came. They spoke to you. Do
 18 you know if you observed them speak to anybody else?
 19 A. I wasn't observing.
 20 Q. Okay. So you just know what happened yourself.
 21 Okay. When -- do you recall telling the police that -- hang
 22 on -- that the last shot you heard or saw before Mr. Hughes
 23 was on the ground ---
 24 A. I'm sorry. Repeat that.
 25 Q. Let me attempt it this way. You said today that you

1 saw a final shot after the initial, okay?

2 A. After the two shots, I saw a shot, yes, correct.

3 Q. Where was Mr. Hughes at that time? Was he upright,

4 was he on the ground, leaning?

5 A. He was upright leaning on his car.

6 Q. Okay. So he wasn't down on the ground at that point?

7 A. No.

8 Q. Okay. And then Ms. Falls -- did you lose sight of

9 him after that?

10 A. Yes.

11 Q. Okay. Because then you went out to the front of the

12 house, correct?

13 A. Correct. I was on the phone with the police.

14 Q. When you got to the front of the house, where was

15 Miss Vivian?

16 A. She was in her car.

17 Q. Okay. Was she in the car or at the car?

18 A. She was sitting in the car by the time I got there.

19 Q. What was she doing in the car?

20 A. I couldn't tell. She was just sitting there as far

21 as I could tell.

22 Q. Do you remember telling the police she was sobbing or

23 walking back and forth?

24 A. Yes.

25 Q. Okay. Now, did you keep your eye -- when you were on

1 the phone with 911, did you keep your eye on them or keep
2 them in sight?

3 A. Yes.

4 Q. Okay. Did she ever get back out of the car?

5 A. Yes.

6 Q. Did she take the gun with her?

7 A. Yes.

8 Q. Do you remember telling the police twenty minutes
9 after it happened that no, she didn't have the gun with her
10 at that point?

11 A. I do not remember.

12 Q. Okay. Is it possible she didn't have the gun with
13 her?

14 A. It's possible, yes.

15 Q. What did she do when she got back out?

16 A. She got out, went to the ground where Tony was
17 laying, at his head, and started rubbing it and crying.

18 Q. She didn't do any further violence to anything?

19 A. No.

20 Q. And you say today you're sure, now that you've seen,
21 you told the police you were asleep when you heard the
22 shots, that you told the police it was four shots as a
23 group, not two and two?

24 A. Uh-huh **(indicating affirmative)**.

25 Q. Can you say definitely that the conversation, or the

1 talk, or the argument you heard about not going to jail,
 2 that that happened after shots and that it wasn't as you
 3 were waking up?

4 A. It happened after shots.

5 Q. Okay. No doubt about that?

6 A. No, not at all.

7 Q. Just like no doubt there were two shots and then
 8 another two shots?

9 A. I -- I can't recall how many shots there were in the
 10 process. I heard two, got out of my bed as of trying to go
 11 back to sleep, and saw.

12 Q. All right. Now, you didn't see Ms. Falls drive up to
 13 the house, correct? You weren't awake at that point?

14 A. No.

15 Q. Okay. You don't know what happened before you heard
 16 however many shots you heard? You don't know what happened
 17 immediately prior to that?

18 A. No.

19 Q. You don't know what they were doing?

20 A. No.

21 Q. What they were saying?

22 A. No.

23 Q. What Mr. Hughes was doing?

24 A. No.

25 Q. Okay.

1 **MR. FOX:** Thank you. No further questions.

2 **THE COURT:** Redirect.

3 **MR. GRAUSTEIN:** Just very, very briefly, Your Honor.

4 **REDIRECT-EXAMINATION BY MR. GRAUSTEIN:**

5 Q. Mr. McCarty, as you sit here today, is there any

6 question in your mind that it was the Defendant standing in

7 front of Ms. Movsky's house that morning?

8 A. No.

9 Q. And is there any doubt that you have left ---

10 A. No.

11 Q. Is there any doubt in your mind that you saw that she

12 fired that weapon at Tony Hughes?

13 A. No.

14 Q. Okay.

15 **MR. GRAUSTEIN:** Thank you.

16 **THE COURT:** All right. Anything on those questions,

17 Mr. Fox?

18 **MR. FOX:** No, Your Honor.

19 **THE COURT:** All right.

20 Do you wish this witness to be excused, Solicitor?

21 **MR. GRAUSTEIN:** Yes, Your Honor.

22 **THE COURT:** Any objection?

23 **MR. FOX:** No sir.

24 **THE COURT:** All right.

25 Sir, you are released from your subpoena and may go

1 back to your regular activities.

2 All right. Solicitor, your next witness is?

3 **MR. GRAUSTEIN:** My next witness and final witness would
4 be Dr. Proctor.

5 **THE COURT:** All right, sir. Is he here yet?

6 **MR. GRAUSTEIN:** He is not here yet.

7 **THE COURT:** All right.

8 We're going to take a break, and in the break you
9 attempt to communicate with Dr. Proctor and find out exactly
10 where he might be, please.

11 **MR. GRAUSTEIN:** Yes sir, Your Honor.

12 **THE COURT:** All right.

13 Ladies and gentlemen, as indicated, the State's last
14 witness is the doctor who performed the autopsy and we just
15 need to -- we're going to find out where he is and get him
16 here to the courthouse, so y'all be at ease and I'll be with
17 you just as soon as I can. Thank you very much.

18 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
19 **JURY.)**

20 **THE COURT:** All right, Solicitor, if you can find Dr.
21 Proctor and find out where he might be and how long it will
22 be before he is here, okay?

23 **MR. GRAUSTEIN:** Yes sir, Your Honor.

24 **THE COURT:** All right, and let me know.

25 We will be at ease until then. Thank you very much.

1 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND WITHIN THE**
2 **PRESENCE OF THE JURY.)**

3 **THE COURT:** All right, Solicitor, your last witness,
4 please.

5 **MR. GRAUSTEIN:** Thank you, Your Honor. The State calls
6 Dr. Edward Proctor.

7 **THE COURT:** All right, sir.

8 Please meet the Clerk right over there, please sir.

9 **EDWARD LEROY PROCTOR, JR.,** being first duly
10 sworn, testifies as follows:

11 **THE DEPUTY CLERK:** Please state your full name and
12 spell your last name.

13 **DR. PROCTOR:** Edward Leroy Proctor, Jr., P-R-O-C-T-O-R.

14 **THE COURT:** Go ahead, Solicitor.

15 **MR. GRAUSTEIN:** Thank you, Your Honor.

16 **DIRECT-EXAMINATION BY MR. GRAUSTEIN:**

17 Q. Good afternoon, Dr. Proctor. Where are you currently
18 employed?

19 A. I'm self-employed.

20 Q. You're self-employed?

21 A. Yes sir.

22 Q. Okay. Where do -- and what are you self-employed at?

23 A. I am a physician engaged in the practice of pathology
24 to include anatomic, clinical, and forensic, and I have
25 offices at Grand Strand Regional Medical Center in Myrtle

1 Beach.

2 Q. And what does that all include?

3 A. Well, anatomic pathology includes just evaluating
4 specimens, any biopsies, anything like that to determine
5 what it is. We also do the clinical lab blood bank, micro,
6 and that kind of stuff, and I do forensic pathology, which
7 is medical legal investigation of death.

8 Q. Okay. And what kind of training do you need to
9 complete to do that?

10 A. Well, I have a college degree, a M.D. degree, four
11 years of pathology training, and time and experience for
12 sub-specialty certification in forensic.

13 Q. Okay. And how long have you been doing this?

14 A. About thirty years.

15 Q. About how many cases do you believe you've worked?

16 A. Probably five to six thousand.

17 Q. Have you ever testified as an expert in court before?

18 A. Yes, I have.

19 Q. Been qualified as an expert?

20 A. I have.

21 Q. And what have you been qualified as an expert in?

22 A. Forensic pathology.

23 **MR. GRAUSTEIN:** Your Honor, the State would move that
24 the Defendant (sic) be qualified as a -- an expert in
25 forensic pathology to include determination, and cause, and

1 manner of death.

2 **THE COURT:** Do you wish to voir dire the witness or
3 challenge the State's offer in this matter?

4 **MR. FOX:** No, Your Honor.. I don't have any doubt about
5 the doctor's qualifications.

6 **THE COURT:** All right, very good.
7 The -- Dr. Proctor to give his opinion.
8 You may proceed.

9 **MR. GRAUSTEIN:** Thank you, Your Honor.

10 Q. All right. Dr. Proctor, let's move to the case in
11 question that we're here about. Did you have the
12 opportunity to perform an autopsy on a Tony Hughes?

13 A. Yes sir, I did.

14 Q. All right. When did you perform that autopsy?

15 A. That was performed on April the 1st, 2012.

16 Q. Okay. And just in general, what sort of procedures
17 do you go through in conducting an autopsy?

18 A. I get a request from the coroner, and based upon his
19 request I will agree to perform an autopsy. My autopsy
20 includes getting what clinical information that may be
21 available at the time, doing an external examination,
22 internal examination, taking specimens necessary for
23 microscopic evaluation, and blood for toxicologic
24 evaluation.

25 Q. All right. And when you performed this autopsy, the

1 autopsy on Mr. Hughes, were you able to -- what did you know
2 -- were you able to identify the injuries to him?

3 A. Mr. Hughes had been shot multiple times.

4 Q. Had been shot multiple times?

5 A. Yes sir.

6 **MR. GRAUSTEIN:** Approach the witness, Your Honor?

7 **THE COURT:** Yes sir.

8 **MR. GRAUSTEIN:** Thank you.

9 Q. Dr. Proctor, to help the jury, so what you observed,
10 if you might be able to use this board and use this pen, and
11 if you could identify where the gunshot wounds -- and if you
12 could stand right here ---

13 **THE COURT:** Hold on one second. I'm not sure all the
14 members of the jury can see the -- you can bring him down
15 and just be right in front of the jury box will be fine.

16 **MR. GRAUSTEIN:** Okay.

17 **THE COURT:** Do you see that square box that's on the
18 jury -- Solicitor, move, so Dr. Proctor can be next to that
19 square box, right there, that square box right there.
20 That's a microphone. Go ahead.

21 A. This man was shot multiple times. The first was in
22 the right chest in this area. This bullet traversed the
23 body right to left. It went through the left chest up here
24 and into the arm in this area, okay?

25 The next major wound was a wound to the left neck

1 here. It traversed -- it struck him in the neck and
2 actually came out in this area, and then there was a gunshot
3 wound in the left shoulder area, in this area, traversing a
4 left to right direction here, and there was a projectile
5 left in the body there.

6 There were gunshot wounds of entrance and exit in the
7 right forearm below the elbow, so through and through here.
8 And then there were multiple gunshot wounds to the second
9 and third fingers and thumb of the left hand in this area.

10 So, in essence, he had one, two, three, four, five
11 different gunshots.

12 Q. Okay. Now, with respect to these gunshot wounds,
13 would this wound that went through the chest, would that
14 have been fatal?

15 A. All right. The most significant wound was this wound
16 to the right chest. It passed in a right to left direction.
17 It penetrated the heart, the left upper lung lobe, the left
18 chest in this area, passed out of the chest and into the
19 left upper arm.

20 Q. Okay. Were you able to determine -- let's just talk
21 about that one right now, were you able to determine how far
22 away the gun was from that wound?

23 A. I did not see any residue. I have not referenced
24 examining any clothing to determine whether there was
25 residue, so without that, I cannot say.

- 1 Q. All right.
- 2 A. In most cases without residue present, it's usually
3 greater than about eighteen to twenty, twenty-four inches.
- 4 Q. Okay. So probably greater than two feet away?
- 5 A. That's correct.
- 6 Q. Okay. Now, let's talk about -- let's talk about the
7 next wound that you next mentioned. Would that have been a
8 fatal wound?
- 9 A. No, that was not a fatal wound. It hit structures in
10 the neck and was deflected, but did not hit any major
11 vessels, did not traverse the spinal cord or anything.
- 12 Q. Okay. Were you able to determine the distance from
13 that?
- 14 A. I was not.
- 15 Q. And so that there's one in the shoulder?
- 16 A. That's correct.
- 17 Q. Was that a fatal wound?
- 18 A. That was not a fatal wound. That stayed basically in
19 the superficial subcutaneous tissue just behind the
20 clavicle, which is the collarbone, on either side, and there
21 was a bullet in the deeper structures over here, in the
22 axilla, that we did not remove.
- 23 Q. Okay. So that -- the bullet from that, from that
24 injury, remained in the body?
- 25 A. That's correct.

1 Q. You were not able to recover that?

2 A. That's correct.

3 Q. And were you able to determine the distance from
4 that?

5 A. I was not.

6 Q. And the wound to the arm?

7 A. The wound is a through and through wound to the arm
8 and wounds in the hands, these are most likely wounds
9 reflecting a defensive type posturing.

10 Q. Okay. Now, let me ask you, based on your experience,
11 were you able to determine which one of these wounds was
12 received first?

13 A. I was not.

14 Q. Would -- were you able -- this wound to the chest,
15 would that wound have been received from somebody facing
16 their attacker or somebody being side on to their attacker?

17 A. Well, it came in and passed in a right to left
18 direction. When I say right to left, the victim's right to
19 left.

20 Q. Okay.

21 A. Any trajectory that would either have that bullet
22 deflecting that inner chest and pass, whereas the bullet
23 sometimes enters the chest, it can deflect. It may go
24 straight. It may go across, so any angle that would allow
25 that to happen could be ---

1 Q. Okay. And were you able to recover any projectiles
2 from the body?

3 A. We recovered the projectiles from the left upper arm
4 right there.

5 Q. In your opinion, -- and what did you do with that?
6 Did you remove that bullet from the body?

7 A. I did. That bullet was given to the crime scene
8 investigators present at the autopsy.

9 Q. Okay. And you transferred it immediately to them?

10 A. That's correct.

11 Q. Okay. And that was the only projectile that you were
12 able to recover from the body?

13 A. Let's see. Let me double-check. I believe it was.
14 That's correct.

15 Q. Okay. And I believe the shot from the chest, that
16 went through the heart and lung?

17 A. That's correct.

18 Q. Okay. So in your expert opinion and to a reasonable
19 degree of medical certainty, were you able to determine what
20 the cause of death in this case was?

21 A. This gentleman died as a result of the extensive
22 trauma to the visceral organs in the chest with associated
23 hemorrhage.

24 Q. Okay. And in your expert opinion and to a reasonable
25 degree of medical certainty, were you able to determine a

1 manner of death?

2 A. Manner of death is homicide.

3 **MR. GRAUSTEIN:** Thank you very much, Doctor. Please
4 answer any questions the Defense may have.

5 **THE COURT:** Cross-examination.

6 **CROSS-EXAMINATION BY MR. FOX:**

7 Q. Doctor, I guess it's probably best if you come back.
8 I would like to point to some of these, too, instead of us
9 talking across each other.

10 Now, you talked about, if I counted correctly, maybe
11 wound groups is the way, because there's a couple of
12 different wounds associated with this ---

13 A. That's correct.

14 Q. --- bullet to the chest and it had wounds, and then
15 coming out the other side into the arm, so that's one group,
16 and then the neck where there's two wounds, ---

17 A. Uh-huh (**indicating affirmative**).

18 Q. --- is that correct?

19 A. That's correct.

20 Q. And around the clavicle up here, ---

21 A. Uh-huh (**indicating affirmative**).

22 Q. --- and then the third one on the left side, is that
23 correct?

24 A. Uh-huh (**indicating affirmative**).

25 Q. And then the right arm, and then the left hand?

- 1 A. The left hand.
- 2 Q. Okay, so five groups. You can't say with any degree
3 of certainty how many bullets caused those wounds?
- 4 A. I can certainly say the one in the neck caused an
5 entrance and an exit wound to the shoulder, was an entrance,
6 so that's three holes, ---
- 7 Q. No, how many bullets? We're counting bullets.
- 8 A. It was one bullet, two bullets, three bullets, and
9 four bullets, and this -- you know, there was damage to
10 several areas there. That may have been one, possibly more.
- 11 Q. Now, not any doubt, though, that these bullets -- and
12 you recovered one of them, right?
- 13 A. That is correct.
- 14 Q. This one was just under the skin, correct, the one in
15 his arm?
- 16 A. Uh-huh (indicating affirmative).
- 17 Q. Not any question these bullets -- they appear to be
18 similar size wounds and bullet paths and everything, ---
- 19 A. That's correct.
- 20 Q. --- that appeared from your view, although you didn't
21 have the actual gun, to be the same calibre bullet that
22 caused the wounds?
- 23 A. In my opinion, yes.
- 24 Q. Okay. But clearly ---
- 25 A. This one, and this one, and this one, yes. These are

- 1 in and out.
- 2 Q. Okay.
- 3 A. Probably so, but I -- you know, it's more difficult
- 4 to ---
- 5 Q. But clearly the bullet -- and this is the one you
- 6 recovered that started in the chest, but that clearly
- 7 carried enough punch and power to penetrate the chest and go
- 8 through multiple organs, exit, and then come through the
- 9 arm?
- 10 A. That's correct.
- 11 Q. It came through the arm?
- 12 A. That's correct.
- 13 Q. Could that not have happened with one coming here,
- 14 depending where the hand is? Of course, we don't know where
- 15 the hand was. Could not one of these grazed or passed
- 16 through the hand and ended up here?
- 17 A. It is certainly possible.
- 18 Q. And the same thing with here?
- 19 A. Yes sir.
- 20 Q. So really we could be down to three?
- 21 A. Could be, could be down to three. I've got five
- 22 groups. Three of them for sure were these. Defense wounds,
- 23 what they call, what's up here, I -- you know, ---
- 24 Q. Of course.
- 25 A. --- and part of these three, ---

1 Q. Right.

2 A. --- could be, yes sir.

3 Q. Okay.

4 MR. FOX: Thank you. That's all the questions I have.

5 THE COURT: Any redirect, Solicitor?

6 MR. GRAUSTEIN: No, Your Honor.

7 THE COURT: Do you wish the witness to be excused?

8 MR. GRAUSTEIN: Yes sir.

9 THE COURT: All right.

10 Any objection, Mr. Fox?

11 MR. FOX: No, Your Honor.

12 THE COURT: All right.

13 Doctor, you are released to go back to your activities.

14 Thank you, sir.

15 As I understand it, the State rests at this time,

16 Solicitor?

17 MR. GRAUSTEIN: Yes, Your Honor, the State rests.

18 THE COURT: Thank you, sir.

19 All right, ladies and gentlemen, at this point in time,

20 at the end of the State's case and at the end of the Defense

21 case, there are always legal arguments that the attorneys

22 must discuss with the Court at that point in time, and this

23 is the first of those. At the end of the Defense's case,

24 there will be another one at that point in time.

25 I do not anticipate that this will take an extended

1 period of time. We will take a short break for y'all of
2 about ten minutes. Then we'll come back and start with the
3 Defense's testimony in this matter. Thank you very much.

4 Everyone else remain seated, please.

5 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
6 JURY.)

7 THE COURT: All right, Mr. Fox, be glad to hear from
8 you, sir.

9 MR. FOX: Yes, Your Honor. At this time, the
10 conclusion of the State's case, I would move for a directed
11 verdict on the charge of murder. I believe the State has
12 not proven all of the elements beyond a reasonable doubt,
13 particularly malice, but I would argue they have not proven
14 their case beyond a reasonable doubt, even looking at the
15 light most favorable to the State.

16 THE COURT: All right, Solicitor, be glad to hear from
17 you, sir.

18 MR. GRAUSTEIN: Yes, Your Honor. I believe there's
19 plenty of evidence that the State has provided evidence that
20 the jury can consider with regard to each and every element
21 as to the malice, which shows we presented evidence that the
22 Defendant's gun was -- an eye witness testimony that the
23 Defendant shot the victim in this case, that it was done
24 with the Defendant's gun, that the gun matched the forensic
25 and ballistic testimony, and with regard to malice, it could

1 certainly be found in the way this shooting occurred and it
2 could be at the very least inferred from the eye witness
3 testimony of how the two different groups were shot and
4 fired.

5 **THE COURT:** All right, sir.

6 Regarding a directed verdict standard, in that standard
7 the Defendant is entitled to a directed verdict when the
8 State fails to produce evidence of the offense charged. I
9 am concerned with the existence of evidence, not with its
10 weight, not with judging its credibility or believability.
11 That is for the jury to decide. I determine whether or not
12 the evidence exists or not.

13 If there is any direct evidence or substantial
14 circumstantial evidence reasonably tending to prove the
15 guilt of the accused, the case is properly submitted to a
16 jury or directed verdict to be denied.

17 I would grant a directed verdict motion if the evidence
18 merely raises a suspicion that the accused is guilty or if
19 the jury would only be speculating as to the guilt of the
20 accused.

21 In this particular matter, I do find that there is
22 direct evidence and substantial circumstantial evidence
23 reasonably tending to prove the guilt of the accused. You
24 have the testimony of Diane Movsky, the testimony of Ryan
25 McCarty, who observed in some parts, different parts of the

1 incident, and some of the same parts of the incident, and
2 they have both directly identified the Defendant as the only
3 person with a weapon, with that weapon being fired at and in
4 the direction of the Defendant (sic), the Defendant (sic)
5 not being armed with any defensive weapons of any kind.

6 Therefore, and that's just part of the evidence, but
7 with that, along with all the other evidence that has been
8 submitted in this case, along with the testimony of the
9 forensic pathologist as to the wound which caused the death
10 of the Defendant (sic), as well as the testimony that the
11 Defendant's gun was used based upon the projectiles and
12 casings either recovered from the body or found at the scene
13 of the crime, there is more than sufficient evidence to
14 prove the guilt of the accused if that evidence is so
15 believed by the jury.

16 Again, I'm concerned with the weight of evidence, not
17 its credibility or believability, and, therefore, I
18 respectfully decline to grant your motion for a directed
19 verdict.

20 Further motions by the Defense?

21 **MR. FOX:** Not at this time, Your Honor.

22 **THE COURT:** All right. As I understand it, you can and
23 have the ability to -- I need to find the names of -- hold
24 on a second. Here they are.

25 You intend certainly to at least produce the testimony

1 of Vanessa K. Johnson and Rosanna Marie Pegg, is that
2 correct?

3 **MR. FOX:** That's correct, Your Honor. They are here
4 today. Those are two witnesses that were had in response to
5 testimony that came out today from Mr. and Mrs. Hughes. I
6 think I provided those names on the list of -- they are, in
7 fact, daughters of Ms. Falls. I think we can -- I do not
8 think they will be long witnesses. We can get through with
9 those probably before five.

10 **THE COURT:** All right.

11 **MR. FOX:** And tomorrow, I have Ms. Vicki Bourus, who is
12 the social worker who testified. She is scheduled to be
13 here first thing in the morning. Ms. Falls, she testifies,
14 and then we have Ms. Candace Taylor, who is the other name
15 that we had given you yesterday.

16 **THE COURT:** All right.

17 **MR. FOX:** Ms. Taylor, she will also be quick, but we
18 will be ready to go first thing in the morning and easily
19 can finish tomorrow, Your Honor.

20 **THE COURT:** All right. When you are in a position to
21 let the Court know whether or not the Defendant -- or we've
22 reached the stage where the Defendant would or could testify
23 in this matter, let me know because I do need to question
24 her about her constitutional rights.

25 **MR. FOX:** Yes sir.

1 **THE COURT:** If you wanted to call all of the other
2 available witnesses and leave her until last, or however you
3 want to do it, but if you come to a stage that you know that
4 she's going to testify and you're not done, then please let
5 me know so that we can go forward with that questioning
6 about her constitutional rights.

7 **MR. FOX:** Yes sir.

8 **THE COURT:** All right. Very good.
9 With that, is the State ready for the jury to come back
10 in?

11 **MR. GRAUSTEIN:** Yes, Your Honor.

12 **THE COURT:** And the Defense?

13 **MR. FOX:** Your Honor, if I could have a quick bathroom
14 break and then we'll be ready to go.

15 **THE COURT:** All right. And if you'll then kind of
16 alert Vanessa K. Johnson and Rosanna Marie Pegg and make
17 sure they are ready here.

18 **MR. FOX:** They are present, Your Honor. Thank you,
19 Your Honor.

20 **THE COURT:** All right. Very good. All right, thank
21 you.

22 We'll take a short break.

23 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND WITHIN THE**
24 **PRESENCE OF THE JURY.)**

25 **THE COURT:** All right, ladies and gentlemen, the

1 Defense has given the Court the names of two witnesses that
2 were not named to you previously. I believe these to be the
3 daughters of the Defendant. They are Vanessa K. Johnson and
4 Rosanna Marie Pegg.

5 Ladies, if y'all would please stand. Very good.
6 That's good right there. Okay. Now y'all can have a seat
7 again. Thank you.

8 Is there any member of the jury that knows these two
9 individuals in any capacity, in any way? (No response.)

10 All right. Mr. Fox, if you would call one of the
11 witnesses and the other one can leave. All right. Go
12 ahead, sir.

13 **MR. FOX:** I would call Vanessa Johnson.

14 **THE COURT:** All right.

15 Ms. Johnson, if you would come right over here to the
16 corner and meet the Clerk right there, please ma'am.

17 **VANESSA K. JOHNSON,** being first duly sworn,
18 testifies as follows:

19 **THE DEPUTY CLERK:** Please state your full name and
20 spell your last name.

21 **MS. JOHNSON:** Vanessa K. Johnson, J-O-H-N-S-O-N.

22 **THE COURT:** Go ahead, Mr. Fox.

23 **MR. FOX:** Thank you, Your Honor.

24 **DIRECT-EXAMINATION BY MR. FOX:**

25 Q. Vanessa, that microphone will pick everything up, so

1 speak up in a nice, loud voice because Ms. Eubank needs to
2 take everything down you say, okay?

3 A. All right.

4 Q. Now, where do you live, Ms. Johnson?

5 A. In Gastonia, North Carolina.

6 Q. Okay. And do you know Ms. Vivian Schrader-Falls?

7 A. Yes. That's my mother.

8 Q. And how old are you, ma'am?

9 A. Thirty-six.

10 Q. As a child, did you live with your mother, ---

11 A. Yes, I did.

12 Q. --- grow up with your mother?

13 A. Yes, I did.

14 Q. Do you remember about what age you were when you left
15 home?

16 A. My mother came to North Carolina, I think I was maybe
17 seventeen, I think.

18 Q. And who is your father?

19 A. My biological father is Jimmy Deering.

20 Q. Jimmy Deering, okay. And was he married to your
21 mother?

22 A. Yes sir, until I was eight years old.

23 Q. Okay. Was that your mother's first marriage?

24 A. Yes sir.

25 Q. Do you have any memories of Mr. Deering?

1 A. Not really, one altercation with them, but mostly,
2 you know, after they had split up, negative things he would
3 always say, but other than that, I don't really remember the
4 relationship, no.

5 Q. Okay. And then after, did they separate, divorce,
6 whatever?

7 A. They divorced.

8 Q. Okay. And you stayed with who?

9 A. My mother.

10 Q. Did she ever get into another relationship or
11 remarry?

12 A. Yes, she did.

13 Q. And who was that gentleman?

14 A. His name was John Jones.

15 Q. John Jones. Did he have a nickname, do you know?

16 A. Booster.

17 Q. Booster. And how long was your mother married to
18 Booster?

19 A. Married to him, eight, nine years, maybe, ---

20 Q. Okay.

21 A. --- but I think they were together a little longer.
22 than that.

23 Q. Was this during the time you were still at home?

24 A. Uh-huh (indicating affirmative).

25 THE COURT: Was that a yes, ma'am?

1 A. Yes sir. Sorry.

2 Q. You have to say yes or no for the ---

3 A. Sorry.

4 Q. Now, do you have memories of Booster, Mr. John Jones?

5 A. Yes, I do.

6 Q. Okay. You were a little bit older at this time?

7 A. Yes sir.

8 Q. How about the relationship Booster had with your

9 mother?

10 A. Violent. He was very ---

11 **MR. GRAUSTEIN:** Objection, relevance, Your Honor.

12 **THE COURT:** I'm going to allow a general description

13 only as it does not involve this particular matter.

14 **MR. FOX:** All right. Your Honor, I'd like to be heard

15 on the other matter outside the jury's ---

16 **THE COURT:** All right. Very good.

17 Mr. Foreman, ladies and gentlemen, I have to have some

18 legal discussions with the attorneys. I'm sorry, but you

19 have to go to your jury room, please. Thank you.

20 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**

21 **JURY.)**

22 **THE COURT:** What is your intention with this witness,

23 Mr. Fox?

24 **MR. FOX:** Your Honor, she and -- specifically this

25 witness, at least on this issue, is going to testify about

1 the -- what she observed herself first-hand of the
2 relationship with Mr. Deering and Ms. Schrader-Falls. It
3 goes to battered spouse syndrome. That syndrome is not
4 limited, my understanding of the defense, that is a clinical
5 term, is also a legal defense, but that is a clinical term
6 Ms. Bourus will testify tomorrow, that relates to a woman
7 who has suffered at the hands -- sometimes at the hands of
8 one person and sometimes at multiple persons, but they have
9 suffered what amounts to a constellation of consequences of
10 being abused, and battered spouse syndrome is in the family
11 with post-traumatic stress.

12 That's relevant because at issue here is Ms. Falls'
13 state of mind on the morning of March 31st when she was face
14 to face with Mr. Hughes. We haven't got to that part where
15 she will testify about what happened that morning. However,
16 her reaction to Mr. Hughes, her reason for doing what she
17 did, this is directly relevant to that.

18 Her entire history, Ms. Bourus will also testify about
19 this from her talks with Ms. Falls and her investigation
20 with other people with knowledge, that all of that affected
21 Ms. Falls and was a part of her diagnosis as Ms. Falls being
22 a person that suffers from battered wife syndrome.

23 **THE COURT:** All right. Well, ---

24 **MR. FOX:** Part of establishing that defense, Your
25 Honor, ---

1 **THE COURT:** Okay.

2 **MR. FOX:** --- is a clearly acceptable defense.

3 **THE COURT:** All right. Let me ask you a couple of
4 questions.

5 **MR. FOX:** Yes sir.

6 **THE COURT:** Understanding that you would ask her the
7 questions to say that she witnessed physi- -- I'm
8 assuming, ---

9 **MR. FOX:** Yes sir.

10 **THE COURT:** --- you tell me if I'm wrong, physical
11 violence being visited upon the Defendant at the hands of
12 this John Jones, ---

13 **MR. FOX:** Yes sir.

14 **THE COURT:** --- all right, and that it was a -- an
15 abusive relationship visited upon the Defendant. What else
16 is your intention with this particular witness?

17 **MR. FOX:** The -- that would be it on that issue, Judge.
18 She is also going to testify about her knowledge of the
19 relationship between Mr. Hughes and Ms. Falls in terms of
20 their cohabitation, not on any abuse. She doesn't have any
21 knowledge about any abuse between Mr. Hughes and Ms. -- so
22 this witness is for two issues. One is the history with the
23 first husband, the second -- or rather the second husband,
24 I'm sorry, with Mr. Jones, not Mr. Deering, Mr. John Jones,
25 as well as her knowledge of the living arrangements of Mr.

1 Hughes and Ms. Falls.

2 **THE COURT:** All right.

3 Solicitor, let me hear from you, and then I'd probably
4 have a couple other questions for you, Mr. Fox.

5 **MR. FOX:** Yes sir.

6 **MR. GRAUSTEIN:** Yes, Your Honor. Section 17-23-170
7 provides the admission -- allows the admission of evidence
8 concerning battered spouse syndrome where the Defense is
9 raising a self-defense argument, and therefore, I believe
10 that it would have to be limited to the -- any events that
11 occurred between the Defendant and the victim.

12 To allow any other testimony as to any sort of abuse
13 would permit a third person self-defense argument that
14 something a third party did ultimately led to this Defendant
15 shooting and killing the victim in this case and essentially
16 the Defense is arguing that it's that third person's conduct
17 that led to this, and that can't be a self-defense claim,
18 Your Honor.

19 **MR. FOX:** Judge, I would point to Your Honor's charge,
20 that's an element to determine self-defense and how it
21 relates to battered women syndrome element to imminent
22 danger, the charge that your Clerk handed to us:

23 Depending on the facts of the case, the Defendant may
24 act in self-defense if he or she believes she is in imminent
25 danger of death or serious bodily harm even though the

1 batterer is not being physically abusive when the Defendant
2 acts. This is because a battered person can experience a
3 heightened sense of imminent danger arising from the
4 perpetual terror of physical or mental abuse, so our
5 argument would be it's all of the events in her life.

6 Yes, in part, this happened because of her prior
7 history with other people. It's not just that, and we're
8 going to get to the point where she is testifying about
9 self-defense. I've already told the jury that, and that's
10 my expectation with Ms. Falls, that she's going to say this
11 was a reaction to Mr. Hughes, so ---

12 **MR. GRAUSTEIN:** Your Honor, if I may, and I can
13 appreciate and I understand with the charge, but I think
14 that's limited to the conduct and the abuse that was -- the
15 imminent danger created by this particular victim, because
16 self-defense does not permit somebody to act in self-defense
17 against somebody, a third person.

18 The conduct needs to be perpetuated by the person that
19 was the ultimate victim, and, therefore, it would be turning
20 self-defense completely on its head to allow contact
21 committed by other persons who are not present in court, not
22 charged with anything, to impact whether or not this is --
23 to have this victim pay for their conduct.

24 **THE COURT:** All right. I guess now, Mr. Fox, let me
25 ask you a further question. Is it your intention with this

1 particular witness to have her describe particular incidents
2 that involved this Mr. John Jones, or are you intending to
3 elicit from this witness more generalized testimony that the
4 Defendant was in an abusive relationship with this
5 individual and suffered physical violence at the hands of
6 that particular individual?

7 **MR. FOX:** What my intent honestly was to impart, as I
8 believe it's more credible, is to have her offer
9 particulars, just like with any witness, her ability to say
10 here are particular things I remember, not just he was a
11 violent, bad man. I think it makes it more credible, so
12 that was my intent in terms of Mr. Jones in this witness.
13 She has first-hand knowledge. She can describe particular
14 events. I don't think it's -- I couldn't tell you how many.
15 It's not a huge ---

16 **THE COURT:** Well, no, and I appreciate that.

17 **MR. FOX:** And honestly, Judge, in part, although we're
18 doing it, it would be my intention to ask Ms. Falls about
19 that, and Ms. Bourus is going to testify about that, and
20 this would be, I suppose, corroboration, that here is
21 someone, an independent person, not the Defendant, saying
22 yes, I observed. Ms. Falls can certainly tell the jury
23 about that, but this is someone who can corroborate that.

24 **MR. GRAUSTEIN:** Your Honor, I would object to the
25 questioning along that entire line. As I stated, that's a

1 third-party self-defense claim.

2 **MR. FOX:** That's not. That's not ---

3 **THE COURT:** Just wait a minute. Just let him talk and
4 then you can talk.

5 **MR. GRAUSTEIN:** Because they're basing the self-defense
6 on conduct of a third party or at least in part on conduct
7 of a third party. I believe that any sort of evidence
8 regarding the battered person syndrome, the battered spouse
9 syndrome, is to be limited to the conduct that -- that's led
10 to the fear of this particular person, not people in
11 general. Otherwise, you're going for a sort of a PTSD
12 defense, and I don't think they have an expert on PTSD, and
13 they have never given their notice for diminished capacity,
14 which we don't recognize.

15 I think the statute is quite specific on battered
16 spouse evidence and I believe that it should be limited to
17 that person, particular person who is accused of having done
18 the battering.

19 **MR. FOX:** Judge, it -- I would just disagree with Mr.
20 Graustein. It talks about lay testimony as to the actions
21 of the batterer. It does not -- it simply says -- the
22 Statute, 17-23-170, evidence that the actor was suffering
23 from a battered spouse syndrome is admissible in a criminal
24 action on the issue of whether the actor lawfully acted in
25 self-defense. It's not defense of another defense of

1 necessity, or defense of duress. It does not preclude the
2 admission of testimony on battered spouse syndrome in other
3 criminal actions.

4 **THE COURT:** All right.

5 **MR. FOX:** And Section (C) talks about lay
6 testimony, ---

7 **THE COURT:** Yes, it does.

8 **MR. FOX:** --- specifically to limiting. They could
9 have limited it to the batterer ---

10 **MR. GRAUSTEIN:** Well, I think it's limited by the self-
11 defense itself which does not allow a third party self-
12 defense argument.

13 **MR. FOX:** But that's not the argument.

14 **THE COURT:** All right. As I understand it, and you
15 correct me if I'm wrong, Mr. Fox, it is my understanding
16 that you are intending to try and establish that through the
17 expert that based on her expert opinion that a series of
18 abusive relationships contributed to her suffering from
19 battered spouse syndrome at the time that the shooting took
20 place?

21 **MR. FOX:** Yes. And, Judge, and I don't mind saying
22 that will include incidents between Mr. Hughes and Ms.
23 Falls.

24 **THE COURT:** Well, it would have to.

25 **MR. FOX:** Yes, but it's not -- yes sir.

1 **THE COURT:** If it does not -- if it does not ---

2 **MR. FOX:** Sure.

3 **THE COURT:** --- include incidents of domestic abuse
4 visited upon the Defendant by the victim in this matter,
5 then all of the testimony ---

6 **MR. FOX:** Yes sir.

7 **THE COURT:** --- is inadmissible, and the Court would so
8 tell the jury. There's a problem here that we don't have
9 Ms. Bourus, but then there's the question of whether or not
10 there's sufficient evidence in the record to allow her to
11 testify about certain matters, so ---

12 **MR. FOX:** That's another issue we may need to take up
13 then today before Ms. ---

14 **THE COURT:** Well, and I appreciate that, so, I mean,
15 not to make -- and I'm not trying to be facetious here.
16 It's sort of like the chicken and the egg argument, which
17 one comes first, ---

18 **MR. FOX:** Yes sir.

19 **THE COURT:** --- the foundation or the expert testimony.

20 **MR. FOX:** Well, they -- and I'll explain why I think
21 they kind of go together because my argument is Ms. Bourus
22 is going to testify her opinion and give her opinion.

23 **THE COURT:** But it would be based upon ---

24 **MR. FOX:** Not just on this testimony, Your Honor, not
25 on testimony in court. It would be based on her ---

1 **THE COURT:** Well, but it would include -- it would
2 include her ---.

3 **MR. FOX:** It would include, yes.

4 **THE COURT:** It would include her ---

5 **MR. FOX:** Yes.

6 **THE COURT:** --- conversations or her communications
7 with this witness, ---

8 **MR. FOX:** Yes.

9 **THE COURT:** --- the Defendant, the other witness, other
10 persons from which ---

11 **MR. FOX:** Other people, yes.

12 **THE COURT:** --- she -- and then other records or
13 whatever it is from which she formulates her expert opinion?

14 **MR. FOX:** Exactly.

15 **THE COURT:** All right, so that's what I'm talking
16 about, ---

17 **MR. FOX:** Yes sir.

18 **THE COURT:** --- which one, you know, the chicken and
19 the egg, is the expert testifying first and then you back it
20 up with the ---

21 **MR. FOX:** Right.

22 **THE COURT:** --- witnesses, or the witnesses, and then
23 the expert. But anyway, ultimately the situation is if
24 there is not proper admissible evidence of domestic abuse,
25 physical violence perpetrated by the victim on the

1 Defendant, if there's no testimony of that or proper
2 admissible evidence on that particular issue, then the
3 testimony by Ms. Johnson on that issue or Ms. Pegg, or Ms.
4 Bourus would not be proper, so it has to have that basic
5 foundation, and if we don't receive that testimony, then
6 I'm telling you I'm going to rule all of it
7 inadmissible, ---

8 **MR. FOX:** Yes sir. Well, then ---

9 **THE COURT:** --- and the jury cannot consider it, all
10 right, and I may have some other issues that the State may
11 bring up at that point in time, you know, depending upon
12 that, and I'm not having you saying somebody has got to
13 testify. I'm just telling you if it doesn't come in, then
14 all of this is inadmissible.

15 What I'm going to do, because I don't -- the Solicitor
16 is correct in a fashion, that specific instances showing
17 that -- and I don't know what she would say about a
18 particular incident, but just in general saying -- or not in
19 general, trying to describe a particular incident she
20 remembers, that John Jones, Your Honor, just took a club and
21 beat her about the head and left her bloody, and then, you
22 know, had fifty stitches in her head, or whatever it is,
23 some particular incident that stands out from her, that's --
24 I do not think is proper foundational testimony.

25 She can testify that she was present, that she was

1 observant of and saw physical violence being perpetrated by
2 Mr. Jones upon the Defendant, that she was battered, you
3 know, she did not contribute to it, it was violence
4 perpetrated with no excuse by Mr. Jones, and if she observed
5 it.

6 Now, if the Solicitor asks some questions, well, how do
7 you know that, then she would be able to describe exactly
8 what happened, but particular instances of it I don't think
9 are proper because it's the particular instances of the
10 Defendant and the victim that would be proper, but the
11 other one allows the expert to say here is a successive
12 pattern of abusive relationships that the Defendant was in
13 based upon these people telling me of these incidents, but a
14 particular description of it, I don't think that is
15 necessary.

16 One, it's not necessary for the expert to testify
17 because there will be some foundational basis in the record,
18 and I don't think it's proper, number one. I don't think
19 that it's -- I think those then become unduly prejudicial.
20 Even if partially relevant, it's not proper, so in general,
21 yes, she can testify not to describe a particular incident
22 or instances or graphic details about a particular incident.
23 That's what I'm going to allow to ---

24 **MR. FOX:** Okay.

25 **THE COURT:** --- assuming you tie it in with Ms.

1 Bourus's testimony and she used that information to form her
2 expert opinion. It's all got to be related and tied in
3 together, and then assuming again there's going to be
4 testimony from the Defendant about things that specifically
5 happened between her and the victim, ---

6 **MR. FOX:** Yes sir.

7 **THE COURT:** --- okay? All those have to be tied
8 together, and if any of that is undone at the end of your
9 presentation, then this witness's testimony, if her sister
10 has some related testimony, or the expert has some related
11 testimony, I'm going to say it's inadmissible and the jury
12 can't consider it whatsoever, ---

13 **MR. FOX:** Okay.

14 **THE COURT:** --- all right? So that you understand ---

15 **MR. FOX:** I believe I do.

16 **THE COURT:** --- where we are.

17 **MR. FOX:** I believe I do.

18 **THE COURT:** All right. Now, do you need to talk to Ms.
19 Johnson for a second, because you probably went over her
20 testimony, to make sure she understands the parameters.

21 **MR. FOX:** I don't believe I do.

22 **THE COURT:** All right. You phrase your question ---

23 **MR. FOX:** Phrase the question in such a way ---

24 **THE COURT:** Such a way that she responds directly to
25 the question.

1 **MR. FOX:** I don't think that's a problem. And, Judge,
2 I want to clarify, I don't want to waste time, ---

3 **THE COURT:** Yes sir.

4 **MR. FOX:** --- and make sure I get people in the right
5 order. My intention is to have, of course, the other -- Ms.
6 Pegg testify, ---

7 **THE COURT:** Ms. Pegg.

8 **MR. FOX:** In the morning, a witness that wouldn't have
9 anything to do with abuse issues, in the morning, a neighbor
10 who also witnessed the shooting ---

11 **THE COURT:** All right.

12 **MR. FOX:** And then we will have Ms. Bourus testify
13 before Ms. Falls, ---

14 **THE COURT:** Right, which I don't -- again, I don't have
15 a problem with.

16 **MR. FOX:** But she can testify -- I just want to make
17 sure -- I think I understand that she can say I spoke to
18 these people, I got this type of information ---

19 **THE COURT:** From them.

20 **MR. FOX:** Obviously, I spoke to Ms. Falls, et cetera,
21 and based on all these things ---

22 **THE COURT:** And based upon, you know, my knowledge in
23 the field and, ---

24 **MR. FOX:** Yes sir.

25 **THE COURT:** --- you know, tie it all in to her opinion.

1 **MR. FOX:** And, of course, there's still the final step
2 with Ms. Falls tying in her relationship with Mr. Hughes.

3 **THE COURT:** At the very end, correct. It's all got to
4 tie in ultimately ---

5 **MR. FOX:** Yes sir.

6 **THE COURT:** --- with the victim in this, and if it does
7 not tie in to the victim in any way regarding battered
8 spouse, then it all falls apart and none of it is
9 admissible, ---

10 **MR. FOX:** Yes sir. I understand that.

11 **THE COURT:** --- all right?

12 **MR. FOX:** Yes sir. No question.

13 **THE COURT:** All right.

14 **MR. GRAUSTEIN:** Your Honor, my concern is, though, that
15 if the expert is going to come in here and testify and it's
16 going to be, well, based upon a really bad history, and then
17 he did one thing to set her off, then the -- then the whole
18 defense is based on what somebody else did.

19 **MR. FOX:** It becomes a jury issue, though.

20 **THE COURT:** Well, I don't know that that is -- I don't
21 know that that is the case.

22 **MR. GRAUSTEIN:** Well, I don't either.

23 **THE COURT:** There has to be -- there has to be a
24 sufficient admissible tie-in between the victim and the
25 Defendant and the battered spouse syndrome. If there is not

1 sufficient evidence of that type of a relationship, then all
2 of it is inadmissible.

3 **MR. GRAUSTEIN:** Yes sir.

4 **THE COURT:** There has to be a -- it can't be that, you
5 know, she was a battered spouse of Deering and Jones and
6 that then the victim in this matter raised his hand one time
7 and that was it. There has to be a factual basis of a
8 battered spouse syndrome between the victim and the
9 Defendant.

10 These others can contribute, and the expert can say,
11 you know, first there was this battered spouse syndrome
12 between her and the victim, but she was in these past
13 relationships that, you know, affected her, affected her
14 mental state, it put her in such a mental state that
15 battered spouse syndrome applies, so there's got to be --
16 again, that's what I'm talking about.

17 There's got to be this tie-in between the Defendant and
18 the victim with some factual testimony, you know, from the
19 Defendant here. You know, I'm not requiring in any way to
20 say that she's got to testify. I'm just saying it's got to
21 be there or none of it is admissible ultimately, all right?

22 **MR. FOX:** Yes sir.

23 **THE COURT:** All right. Very good. Thank y'all very
24 much.

25 Ask the jury to come in, please.

1 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
2 **JURY.)**

3 **THE COURT:** All right, Mr. Fox, you may continue, sir.

4 **MR. FOX:** Thank you, Your Honor.

5 **CONTINUING DIRECT-EXAMINATION BY MR. FOX OF VANESSA JOHNSON:**

6 Q. Ms. Johnson, we were talking about Mr. Jones, ---

7 A. Uh-huh **(indicating affirmative)**.

8 Q. --- and that would be your mom's second husband,

9 correct?

10 A. Second -- second husband, yes.

11 Q. Okay. And what I had started to ask you was -- and I

12 will ask it again. How was -- based on your own

13 observation, how would you describe their relationship?

14 A. He was mean and abusive to her.

15 **THE COURT:** Could you move in closer to the microphone.

16 Pull your chair up.

17 A. He was -- he was abusive to -- towards her.

18 Q. Okay. Physically abusive?

19 A. Physically abusive, yes.

20 Q. Was he verbally abusive?

21 A. Yes.

22 Q. Was this on more than one occasion?

23 A. Yes sir.

24 Q. Would you describe this generally as an ongoing

25 situation, or was it an infrequent thing only when he was

1 mad or when he was drunk, or if you can, how would you
2 describe that?
3 A. I would say a ongoing thing.
4 Q. I'm sorry?
5 A. I would say a ongoing thing. He didn't have to be
6 drinking, or mad, or something.
7 Q. Okay. Ongoing is what you would ---
8 A. Yes sir.
9 Q. Okay. And they were married or together -- they were
10 together for some period of time before they were married,
11 is that right?
12 A. Yes sir.
13 Q. And how long were they together, do you know?
14 A. I'd say ten or eleven years together.
15 Q. And do you know how long she was married to her first
16 husband?
17 A. Her first husband, my biological father?
18 Q. Yes.
19 A. They were married, I'm going to say, at least eight
20 years because I think I was eight when they divorced.
21 Q. So between Mr. Deering and Mr. Jones, for eighteen
22 years or so? Does that sound about right, together in
23 total?
24 A. Yes sir.
25 Q. Okay. Now, have you stayed in touch with your mother

1 over the years?

2 A. Yes. Yes, we talk pretty frequent.

3 Q. Do you visit with her?

4 A. Frequently, yes.

5 Q. Okay. And you say you live in Shelby, right?

6 A. No, Gastonia.

7 Q. Gastonia. Now, back in the second half of 2011,

8 going into 2012, were you living in Gastonia then?

9 A. Either Gastonia or Shelby. I can't remember.

10 Q. They are fairly close together, aren't they?

11 A. Yes sir.

12 Q. And during that time, do you recall visiting your

13 mother -- where was your mother living then, do you know?

14 A. In Myrtle Beach. She's been in Myrtle Beach since, I

15 think, like 2010.

16 Q. Okay.

17 A. Maybe around summer of 2010.

18 Q. Okay. So during 2011 and into 2012, starting about

19 the summer of 2011, did you visit during that time period

20 with your mother in Myrtle Beach?

21 A. Yes.

22 Q. Okay. And that would be where, at her home in Myrtle

23 Beach?

24 A. Yes.

25 Q. Okay. Did you meet at any time Mr. Tony Hughes?

1 A. Yes. I don't remember exactly when I met him, but
2 yes, I met him. I can't even -- to be honest, I can't even
3 remember where we were exactly or words that were exchanged
4 or anything, but I came down and was introduced.

5 Q. Now, when you would come to visit, would you stay at
6 a hotel or a campground? Where would you stay?

7 A. I stayed with my mother in her own home.

8 Q. And during -- after the time that you met Mr. Hughes,
9 how was -- you don't remember the circumstances. Do you
10 remember how he was introduced to you, in other words, this
11 is Tony, my friend, Tony who goes to church with me? Do you
12 remember how he was introduced to you?

13 A. No, I don't, but, I mean, I just -- I just assumed
14 that they were more than friends, but I don't -- no, I don't
15 exactly remember if it was my boyfriend, my husband, my
16 friend, or ---

17 Q. Well, what made you come to that conclusion that they
18 were more than friends?

19 A. Just how they were together and the time that they
20 spent together and things like that.

21 Q. When you would come and visit, how long would you
22 typically stay?

23 A. It could be, I'd say, anywhere from a week to a few
24 months.

25 Q. How often would you come visit?

1 A. I'd say every -- I'd say every couple of months
2 maybe. It would be every month, at least one time a month.
3 Q. Now, so you stayed in your -- there with your mother
4 in her home?
5 A. Yes.
6 Q. Was there ever a time that Mr. Hughes was also there?
7 A. Yes sir.
8 Q. Was he ever there overnight?
9 A. Yes sir.
10 Q. Do you remember roughly when that was?
11 A. (No response.)
12 Q. Was it before or after Christmas in 2011?
13 A. Before.
14 Q. Do you know if that happened -- was that more than
15 one occasion, or one occasion that he was there overnight
16 when you were there?
17 A. I would say probably at least two, but ---
18 Q. And where -- do you know where he would sleep during
19 those -- when you were there and he was there staying the
20 night, where would he sleep?
21 A. They slept in the downstairs master bedroom. My
22 mother had two master bedrooms, and they would mostly sleep
23 in the downstairs master bedroom together..
24 Q. Who ---
25 A. My mother, Vivian Falls, and Tony.

1 Q. How did -- did they act like a romantic couple with
2 each other?

3 A. Yes. You never seen one without the other. They
4 were happy, and that's the only time that they were not
5 together is when he was at work. When I was here, from my
6 observations, they were always together.

7 Q. Now, how about -- do you know if Mr. Hughes had a
8 home of his own?

9 A. Yes.

10 Q. Do you know where that was?

11 A. Well, I know it was in Marion County. I wasn't sure
12 if it was Gretchen (sic), or if it was Marion, or the exact
13 city or town or whatever, but yes.

14 Q. And ---

15 A. I had been there on numerous occasions.

16 Q. Okay. And this was Marion County?

17 A. Yes sir.

18 Q. And what was your reason for going there?

19 A. Most of the time I stayed at my mother's home in
20 Myrtle Beach with my oldest two boys, who she adopted, and
21 pretty much every day I would go up there and see her. He
22 would have me drive his car while I was here in town, and he
23 would take her -- her Sonata and go to work and stuff, so I
24 would come up there and see my mother, see her and stuff, so
25 I was up there about every day.

1 Q. Why was your mother up there? Why were you going
2 there instead of to her home in Myrtle Beach?

3 A. My assumption, she lived there. She slept there.
4 She baked there. Her clothes were there, everything. She
5 was there more than ---

6 Q. Do you know how long that went on that she -- that
7 you were running up there seeing her most every day?

8 A. For those few months that I was here.

9 Q. And we're talking in the Fall of 2011?

10 A. Yes, mostly the later, yes.

11 Q. I believe you said before Christmas of 2011?

12 A. Yes.

13 Q. So numerous times you were at Mr. Hughes' home in
14 Marion County?

15 A. Yes sir.

16 Q. And you also observed him in your mother's home in
17 Myrtle Beach?

18 A. Yes sir.

19 Q. Did you ever learn -- did there come a time that you
20 learned that they had broken up?

21 A. No.

22 Q. Do you remember the last time that you visited before
23 this incident happened in March, like when you visited this
24 area to see your mom?

25 A. Before this happened, it was in January of 2012.

1 Q. Okay. And where did you see them?

2 A. It was -- I'm not sure of the name of the street.
3 It's a -- like a convenience store and a Dunkin' Donuts, I
4 believe, that's connected. I met them there to pick up my
5 oldest son.

6 Q. Did you stay overnight with anybody that -- during
7 that trip?

8 A. No. I just came and picked up my son and we visited.

9 Q. Did you ever hear how they referred to each other
10 with strangers or people that didn't know each other, in
11 other words how they presented themselves to the world?

12 A. You mean if they were husband and wife, boyfriend and
13 girlfriend, or friends?

14 Q. What was your understanding about that?

15 A. No.

16 Q. You don't know?

17 A. No. They -- we were never around others that they
18 introduced ---

19 Q. How about with the family, how did they describe
20 themselves to their family?

21 A. I don't recall. We never were ---

22 Q. Did you ever ask your mother whether they were
23 married?

24 A. Yes sir.

25 Q. And what response did you get?

1 A. They happened -- it happened to be one of the nights
2 they spent the night at the Myrtle Beach home. They were in
3 the downstairs bedroom. Tony was laying on the bed watching
4 T.V. My mother was standing on the opposite side, I think,
5 going through a bag, or her purse, or something, and I went
6 in there, and I've always known my mother to wear a wedding
7 ring, my dad's, the man I refer to him as deceased, but I
8 noticed Tony had a wedding ring on.

9 And so I went in there and I kind of propped up on
10 the bed and I said are y'all married, because, you know, I
11 know why you wear a wedding ring, but he's wearing a wedding
12 ring, and that would be strange for him to be married to
13 someone else and you live in his home.

14 You're there twenty-four/seven, so where would the
15 wife be, and he looked at her, and she looked down at him,
16 and they kind of like smiled, but they neither one gave me a
17 yes or a no response, and I'm like y'all are married, like
18 that, and then we just went on into another conversation.

19 Q. Did you ever ask or find out what type of ring that
20 he was wearing?

21 A. That was our one and only conversation.

22 Q. Did you ever notice whether the ring that was on your
23 mom's finger was, in fact, the same ring that it was her
24 wedding ring from the other marriage? She was married a
25 third time, is that right?

1 A. Yes.

2 Q. Okay. After Mr. Jones, there was another fellow ---

3 A. Yes.

4 Q. --- that you ---

5 A. Yes. She -- it's not on her hand now, but yes.

6 Q. When you had this conversation with them about, you

7 know, are y'all married, did you notice then whether that

8 was the same -- your mom was wearing the same ring that was

9 her actual wedding ring from that previous marriage?

10 A. I think -- it might have been on her finger, but I'm

11 not sure if it was on that finger or not.

12 Q. Okay. Mr. Hughes had it on his wedding ring finger?

13 A. Yes.

14 Q. So the left hand?

15 A. Yes.

16 MR. FOX: Thank you. Please answer any questions the

17 Solicitor has for you.

18 THE COURT: Cross-examination.

19 MR. GRAUSTEIN: Yes. Thank you, Your Honor.

20 CROSS-EXAMINATION BY MR. GRAUSTEIN:

21 Q. All right. But they never actually said that they

22 were married? You ---

23 A. They did not confirm, nor did I know.

24 Q. Do you remember back in high school, boyfriend,

25 girlfriend, that would get themselves a little friendship

1 ring ---

2 A. A promise ring?

3 Q. Yeah, yeah. Maybe that was what was going on here?

4 A. No.

5 Q. But they never said they were married?

6 A. No, didn't confirm or deny, no sir.

7 Q. Okay. All right. Now, one thing I want to clear up

8 right away, you were talking about abuse at the beginning of

9 your testimony, ---

10 A. Yes sir.

11 Q. --- right?

12 A. Yes sir.

13 Q. An abusive relationship your mother was in?

14 A. Yes sir.

15 Q. That was all done -- all that abuse you talked about

16 was done by some Mr. Jones, correct?

17 A. Yes sir.

18 Q. Did you ever see Tony Hughes act abusively towards

19 your mother?

20 A. No. They were always happy.

21 Q. Okay. You said she adopted a couple of your kids?

22 A. My oldest two.

23 Q. Okay. And how old were they?

24 A. When she adopted them?

25 Q. Well, how old were they in 2011? Were they school

1 age?

2 A. I think they were like sixteen and eighteen.

3 Q. So they were in school?

4 A. Yes.

5 Q. Where did they go to school?

6 A. I don't think my oldest one went to school then, and

7 my other one, I think he was at Carolina Forest maybe.

8 Q. Okay. Well, and so how did they get to school?

9 A. Rode a bus.

10 Q. Rode a bus. Who got them up for school?

11 A. My mother, or I did when I was here and she was in

12 Gretchen (sic).

13 Q. Okay. So she would only go to Gresham when you were

14 here?

15 A. No.

16 Q. Well, how did your kids go to school?

17 A. She would make sure they went to school.

18 Q. Okay. But there's no question they both had their

19 own separate houses?

20 A. I wouldn't know which one to call was each of them.

21 I would say they were both theirs.

22 Q. Well, Tony had -- Tony had his own house, right?

23 A. Uh-huh (indicating affirmative).

24 Q. Your mother had her own house down here at the beach?

25 A. Yes.

1 Q. So if they didn't want to see each other, she could
2 lock the doors and not let him in?

3 A. No. They had keys to each other's home.

4 Q. Could change the locks maybe?

5 A. That's possible, but not ---

6 Q. Okay. And you are testifying that when you saw them
7 they were al- -- always in good spirits?

8 A. Yes sir.

9 Q. Okay. And when you say -- your testimony is that
10 Tony would stay there during the week and down here at the
11 beach?

12 A. No, I didn't say that.

13 Q. No?

14 A. I said I -- I said they have -- he has been at the
15 Myrtle Beach on a couple of -- at least a couple of
16 occasions, but most of the time they were in Gretchen
17 (sic) ---

18 Q. Okay.

19 A. --- and I was in Myrtle Beach with the boys.

20 **MR. GRAUSTEIN:** Okay, no further questions.

21 **THE COURT:** Any redirect?

22 **MR. FOX:** No, Your Honor.

23 **THE COURT:** All right.

24 Ma'am, you may step down.

25 **MR. FOX:** Your Honor, the Defense would call Rosanna

1 Pegg.

2 **THE COURT:** All right. Very good. I think you need to
3 get somebody to ask Ms. Pegg to come in.

4 All right, Ms. Pegg, if you will come around, all the
5 way up here, and meet the Clerk, please ma'am.

6 **ROSANNA MARIE PEGG,** being first duly sworn,
7 testifies as follows:

8 **THE DEPUTY CLERK:** Please state your full name and
9 spell your last name.

10 **MS. PEGG:** Rosanna Marie Pegg, P-E-G-G.

11 **THE COURT:** Go ahead.

12 **MR. FOX:** Thank you, Your Honor.

13 **DIRECT-EXAMINATION BY MR. FOX:**

14 Q. Ms. Pegg, where do you live?

15 A. Kings Mountain, North Carolina.

16 Q. Okay. Make sure to speak up nice and loud so the
17 Court Reporter can take down everything you say.

18 A.. Okay.

19 Q. And do you know Ms. Vivian Schrader-Falls?

20 A. Yes. She's my mommy.

21 Q. Okay. And so, then, you know Ms. Vanessa Johnson?

22 A. Yes. That's my sister.

23 Q. Okay. Who is the older sister?

24 A. She is.

25 Q. Did you grow up with your mom?

1 A. I did.

2 Q. Okay. In the same -- the same house?

3 A. Yes.

4 Q. Okay. Do you have yourself any recollection of her

5 first two husbands?

6 A. Not the first one. I wasn't born yet, but the second

7 one, yes.

8 Q. And that would be Mr. Jones?

9 A. Yes. We call him Booster Jones.

10 Q. And I don't need specifics, but from your own

11 observations and recollection, how would you describe the

12 relationship between Mr. Booster Jones and your mother?

13 A. Terrible.

14 Q. Terrible in what way?

15 A. He was abusive.

16 Q. Physically abusive?

17 A. Physically and emotionally, yes.

18 Q. And that's something that you witnessed yourself?

19 A. Yes.

20 Q. Now, I think I asked, but I've already forgotten.

21 Where do you live?

22 A. Kings Mountain, North Carolina.

23 Q. Kings Mountain, okay, North Carolina.

24 A. Uh-huh **(indicating affirmative)**.

25 Q. Your mother lived where, now?

1 A. Myrtle Beach.

2 Q. Did you ever come down and visit her here ---

3 A. I do ---

4 Q. --- at Myrtle Beach?

5 A. Yeah, and my boys do, too.

6 Q. Okay. And when you come, where do you stay?

7 A. We stay with her.

8 Q. In her house?

9 A. Yes.

10 Q. Okay. And when you come, do you come for more than a

11 day, stay overnight, stay for a few days?

12 A. I stay for a few days, and my boys always stay

13 Christmas break and the summer with her.

14 Q. Okay. In the summer of 2011, did you come down

15 yourself with your boys?

16 A. Yes.

17 Q. Did you stay with your mother at her home in Myrtle

18 Beach?

19 A. Yeah. We stayed -- me and my boyfriend stayed

20 probably about three days, and the kids stayed the rest of

21 the time.

22 Q. During those three days, did -- or at any time, not

23 just those three days, did you ever meet Tony Hughes?

24 A. I did.

25 Q. Okay. Do you recall where you met him?

1 A. At my mother's house.

2 Q. Was this during those three days when you came down

3 to bring ---

4 A. When we got there, he was there.

5 Q. Okay. And you stayed for three days and three

6 nights?

7 A. Uh-huh **(indicating affirmative)**.

8 Q. Where was Mr. Hughes?

9 A. He was there with my mother.

10 Q. He was there overnight?

11 A. Yes.. Every night he was there.

12 Q. Any other time that you came to visit your mother

13 during the next eight, or nine, or ten months? Starting in

14 the summer of 2011, did you bring the boys back at

15 Christmastime?

16 A. We did, Christmas break. The day after Christmas I

17 drove down, me and my boys. I met them at a gas station.

18 It was Tony and my mom, and we met at the gas station and

19 they said they were going to stay with them, that's what he

20 told me, and then I left. I came back down to pick them up,

21 because I remember getting a ticket for speeding, and he was

22 there at the house with my mom.

23 Q. Did you spend the night on that occasion?

24 A. Yes. It was late when I got there.

25 Q. Was Mr. Hughes there overnight?

- 1 A. Yes, he was still there.
- 2 Q. Other than his presence, did you ever observe
- 3 anything that led you to believe that he regularly spent the
- 4 night there?
- 5 A. Yes. After March 31st, I cleaned mom's house, and I
- 6 found his uniforms was there. He had multiple clothing
- 7 there. I also found a phone bill had both of their names on
- 8 it, but it wasn't her expense, it was his.
- 9 Q. Is that the one that's in Marion County?
- 10 A. Yes.
- 11 Q. Gresham, South Carolina?
- 12 A. Yes, uh-huh (**indicating affirmative**), and she stayed
- 13 there a lot also.
- 14 Q. How do you know that?
- 15 A. Because when she called me, it was that phone number
- 16 to the home residence in Gresham.
- 17 Q. Did she let you know where she was calling from at
- 18 some point?
- 19 A. Yes.
- 20 Q. Was that a frequent thing that she would call you
- 21 from that residence?
- 22 A. Yes.
- 23 Q. Approximately how many times would you say that was?
- 24 A. I would say at least thirty.
- 25 Q. And that continued on from -- do you know when she

1 met Mr. Hughes, when she first started dating Mr. Hughes?

2 A. I don't know exactly the date, no.

3 Q. But it would have been before you came down with your

4 boys for the summer, right?

5 A. Yes, because she wouldn't have anyone around.

6 Q. And would you recall when you came down, what month

7 you came down and stayed for three days and dropped your

8 boys off?

9 A. It was right after school had ended. It was in June.

10 Q. In June, okay.

11 A. Uh-huh **(indicating affirmative)**.

12 Q. Okay. So by June of 2011, they would have been

13 dating?

14 A. Yes.

15 Q. And he was staying there?

16 A. Yes.

17 Q. Do you recall the last time that you saw the two

18 together? Was it after Christmas?

19 A. It wasn't after Christmas. It was Christmas break.

20 I hardly get to come down.

21 Q. Did you get any more phone calls from the Marion

22 County address after Christmas?

23 A. Yeah. It was -- I can't remember exactly what date,

24 but it was in February.

25 Q. Do you know how they -- when you were around how they

1 presented themselves, their relationship, how they
2 characterized their relationship?

3 A. Like they were husband and wife.

4 Q. Did they -- did they describe themselves that way?

5 A. By body language, and they were wearing rings. I'm
6 not a meddle person, so I didn't ask, but my mother had a
7 wedding ring on and Tony had a wedding ring on, and I saw it
8 the whole time I was there in June. We had a cookout and he
9 was there, and they were wearing them. They, you know, were
10 all over each other, and also at Christmas, they still had
11 them on.

12 Q. How about at Thanksgiving, did you see your mom at
13 Thanksgiving, anywhere, not just down here? Did you see her
14 over Thanksgiving?

15 A. I do not remember.

16 Q. Okay. Thank you.

17 **MR. FOX:** Please answer any questions Mr. Graustein may
18 have for you.

19 **THE COURT:** Cross-examination.

20 **CROSS-EXAMINATION BY MR. GRAUSTEIN:**

21 Q. Ms. Pegg, now you assumed that those rings were
22 wedding rings?

23 A. Yes, sir.

24 Q. Nobody said they were so you are just assuming that?

25 A. Correct.

1 Q. And you talked about an abusive relationship your
2 mother was in, correct?

3 A. Yes.

4 Q. And that had to do with a Mr. Booster Jones?

5 A. Yes.

6 Q. Yes, and did not have anything to do with Tony
7 Hughes?

8 A. That's not what he asked.

9 Q. I understand that. I'm just clarifying. That
10 doesn't -- had nothing to do with Tony Hughes?

11 A. Right.

12 Q. Okay.

13 **MR. GRAUSTEIN:** All right, that's all I've got.

14 **THE COURT:** Any redirect?

15 **MR. FOX:** No, Your Honor.

16 **THE COURT:** All right.

17 All right, ma'am, you may step down. Thank you.

18 **MR. FOX:** Your Honor, that would be all we have for
19 today. Our witnesses for tomorrow were told to be here
20 first thing in the morning and be ready to begin as soon as
21 Your Honor is in the morning.

22 **THE COURT:** All right, sir. Thank you very much.

23 All right, ladies and gentlemen, we are going to stop
24 for the evening. We have several witnesses left, but I
25 anticipate that we will certainly conclude all the testimony

1 tomorrow, if not the entire case. We will see how it goes,
2 but I feel without question we're going to conclude all the
3 testimony tomorrow. We'll see if we get to the closing
4 arguments and charge, and then the submission to you,
5 depending upon the time.

6 I do have, as Administrative Judge of the Court of
7 General Sessions, criminal court, I have other duties. I
8 have some pleas in other cases totally and completely
9 unrelated to this matter that I have to do tomorrow morning.
10 I will finish those by 9:30, so I will have you to be back
11 downstairs like you were this morning, the same time,
12 approximately 9:15, 9:20, in that area, so that we can get
13 started at 9:30.

14 Madam Clerk -- again, they'll have something for you.
15 I don't know what that is, but they will have something for
16 you, so I would just suggest to give yourself sufficient
17 time to enjoy that before we get started at 9:30 in the
18 morning, remembering don't talk about the case, don't allow
19 anybody to talk to you about it, don't go home and see
20 anybody and talk about it, don't do any research on your
21 own, don't do any investigation on your own. Decide the
22 case solely and completely on the facts and evidence you
23 hear in the courtroom and from no other source.

24 With that, I'll see you back tomorrow morning. Thank
25 you very much.

1 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
2 **JURY.)**

3 **THE COURT:** All right, Solicitor, anything that we need
4 to take up at this point in time?

5 **MR. GRAUSTEIN:** No, Your Honor.

6 **THE COURT:** And from the Defense?

7 **MR. FOX:** No, Your Honor.

8 **THE COURT:** All right. Very good. I'll see y'all
9 tomorrow morning. Again, as I indicated, I have a couple of
10 pleas at nine o'clock, but we'll be ready to go by 9:30, all
11 right?

12 **MR. GRAUSTEIN:** All right.

13 **THE COURT:** Thank y'all very much.

14 **(END DAY.)**

15 **(THE FOLLOWING TAKES PLACE ON WEDNESDAY, MAY 7, 2014,**
16 **OUTSIDE THE PRESENCE OF THE JURY.)**

17 **THE COURT:** All right, Solicitor, are you ready for the
18 jury?

19 **MR. GRAUSTEIN:** Yes, Your Honor.

20 **THE COURT:** All right.

21 And Mr. Fox, the Defense?

22 **MR. FOX:** Yes, Your Honor.

23 **THE COURT:** All right. Very good.

24 Ask the jury to come in, please sir.

25 **MR. GRAUSTEIN:** Your Honor, could we step up for a

1 minute?

2 **THE COURT:** Yes sir.

3 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**

4 **THE COURT:** Mr. Fox, my law clerk just mentioned to me,
5 and I should have talked to you about it, the questioning of
6 your client regarding her constitutional rights.

7 **MR. FOX:** Yes sir.

8 **THE COURT:** Can we do that now?

9 **MR. FOX:** We can.

10 **THE COURT:** All right. Very good.

11 Ms. Falls, would you stand up, please ma'am, and Madam
12 Clerk, if you would place her under oath.

13 **THE DEPUTY CLERK:** Ma'am, please raise your right hand.

14 **VIVIAN SCHRADER-FALLS** is placed under oath by the
15 Deputy Clerk of Court.

16 **THE COURT:** All right, Ms. Falls, at this point in time
17 I'm going to explain to you certain of your rights and if
18 you don't understand anything we're talking about or you've
19 got a question, I need for you to indicate that to me in
20 some way. You can raise your hand. You can tell your
21 attorney, but you need to let me know. We need to stop if
22 you've got a question or you don't understand something.
23 Are we in agreement there?

24 **MS. FALLS:** If I don't understand?

25 **THE COURT:** No ma'am, right now, I mean while -- while

1 you and I are having this discussion right now.

2 **MS. FALLS:** Yes sir.

3 **THE COURT:** If there's something that you don't
4 understand, you need to indicate to me that either you're
5 not understanding or you've got a question that you need to
6 ask your attorney, all right?

7 **MS. FALLS:** Yes sir.

8 **THE COURT:** All right. Very good.

9 Now, we are at the stage of the trial where you are
10 presenting your defense. You have the right to claim the
11 protection given to you by the Fifth Amendment to the
12 Constitution of the United States of America. That says, in
13 part, that no person shall be compelled in any criminal case
14 to be a witness against themselves. That means nobody can
15 make you testify in this case. You can testify if you want
16 to, but it is your choice. Nobody can make you do that.
17 You understand that?

18 **MS. FALLS:** Yes.

19 **THE COURT:** All right, ma'am. Now, regarding this
20 testimony, you understand that you would be subject to the
21 same rules that govern all the other witnesses in this case,
22 and that means you will be examined or questioned by your
23 attorney as to relevant matters, and then you would be
24 cross-examined or asked questions by the Solicitor as to any
25 matters that the Court deemed relevant or proper. You

1 understand that?

2 **MS. FALLS:** Yes.

3 **THE COURT:** All right. Very good.

4 Now, Solicitor, are there any matters of a criminal
5 record that we need to review?

6 **MR. GRAUSTEIN:** No, Your Honor.

7 **THE COURT:** All right. Very good.

8 All right. Now, if you decide to testify, it's got to
9 be your decision freely made, voluntarily made,
10 understanding these rights that we are talking about. Do
11 you understand that?

12 **MS. FALLS:** Yes.

13 **THE COURT:** All right. Very good. If you decided not
14 to testify, I would tell the jury that they can't give that
15 fact any consideration whatsoever. I would tell them they
16 can't even talk about it in the jury room. It can't be part
17 of their decision. I would tell them it can't be mentally
18 part of their own decision in this particular matter. It
19 has no part in this case, and that would be part of the
20 Court's instructions to the jury. You understand that?

21 **MS. FALLS:** Yes.

22 **THE COURT:** All right. It being your decision to
23 testify or not testify in this case, do you have any
24 questions you want to ask your attorney or is there some
25 member of your family you wanted to talk to before you

1 decide?

2 **MS. FALLS:** No. I've already give that ---

3 **THE COURT:** All right. Very good. Do you understand
4 everything we've talked about now?

5 **MS. FALLS:** I have, Your Honor.

6 **THE COURT:** All right. And do you wish to testify in
7 this case?

8 **MS. FALLS:** Yes. I feel that a lot of people need
9 answers.

10 **THE COURT:** Very good. Very good, ma'am. Thank you
11 very much, and have a seat. Thank you.

12 Ask the jury to come in, please.

13 **MR. FOX:** Your Honor, ---

14 **THE COURT:** Yes sir.

15 **MR. FOX:** --- and I'm sorry, I don't know if you want
16 to do this now, but there is the matter about the order of
17 witnesses we discussed in chambers, and if you -- we can do
18 that at the time or we can do that now. We can do
19 whichever. I don't think the jury -- but I need to put that
20 objection on the record and ---

21 **THE COURT:** Yes sir, you do, and I'm not laughing at
22 that. It's just that this jury is going to think that we
23 have no clue as to what we're doing, because every time we
24 ask them to come out, we stop them.

25 **MR. FOX:** Yes sir.

1 **THE COURT:** Anyway, yes sir, just to put the matter in
2 context before you raise your matter with the Court,
3 understanding that the discussion we had yesterday as to the
4 witnesses that were left from the Defense and what they
5 might be anticipated to testify, as to what they could
6 testify to, and the relationship between prior domestic
7 abuse and this particular case, and the battered spouse
8 syndrome, we had the discussion.

9 I have thought about that and in order for -- in the
10 Court's mind for this matter to be properly presented and
11 for the Court to be in the best position to evaluate the
12 testimony of the expert as to its admissibility in this
13 matter, I am going to require the Defense to have the
14 Defendant, who has indicated that she wants to testify, and
15 that was so indicated to me by her attorneys previously,
16 that she would testify in this matter, and she has now
17 confirmed that, that she testify prior to the presentation
18 of the expert to be submitted by the Defense in this matter,
19 and so -- and I understand that that is not how you planned
20 to call your witnesses, Mr. Fox. I'll be glad for you to
21 put that matter on the record.

22 **MR. FOX:** Thank you, Your Honor. I will just say
23 briefly we did, in fact, after consulting with a proposed
24 expert in this case, Vicki Bourus, as well as doing research
25 in the matter, our proposal or intention was to have our

1 expert testify first about her finding about the people she
2 spoke to in forming those findings and her opinion,
3 specifically Ms. Schrader-Falls, the Defendant, as well as
4 people with information about the relationship between Ms.
5 Falls and Mr. Tony Hughes, as well as previous romantic
6 relationships or marriages in this case and the pattern of
7 abuse, and that based on all that information, Ms. Bourus
8 would offer an opinion that, in fact, Ms. Schrader-Falls
9 does fit within the parameters of the battered spouse
10 syndrome.

11 We believe based on State v. Grubb, which is a Court of
12 -- a South Carolina Court of Appeals found at 577 S.E.2d
13 493, in 2003, that clearly this type of testimony is
14 relevant, highly probative, and admissible, but also in
15 conjunction with Rule 703 of the Rules of Evidence, 702 and
16 703, but specifically with 703, that the facts or data in a
17 particular case upon which an expert bases an opinion may be
18 those perceived or may -- are known to the expert at or
19 before the hearing.

20 In other words, Rule 703, I believe, does not require
21 an expert to first hear testimony or there be testimony in
22 Court before the expert can do what experts do, collect
23 documentation, evidence, interviews that they need and form
24 an opinion and testify therefrom. I think 703 clearly
25 allows that and, in fact, allows what would otherwise be

1 facts or data need not be admissible in evidence.

2 In other words, I think that would include -- and case
3 law specifically says it can include hearsay evidence, again
4 interviews with witnesses that might not be present at the
5 trial of the case, so I think the case law and the Rules of
6 Evidence permit, of course, the testimony, but also the
7 order that we propose, and we would object to the Court
8 requiring us to put Ms. Schrader-Falls on the stand before
9 Ms. Bourus, before the expert.

10 **THE COURT:** Thank you, sir. Now, regarding -- and,
11 again, regarding those particular points that you have
12 raised, I believe also though regarding Rule 703, I do also
13 have to find as with any expert that it has a proper place
14 in this particular -- the facts of this particular case. I
15 do believe that there is an underlying factual basis that
16 can only come from the Defendant regarding the testimony of
17 the expert to find -- for the Court to find that it is
18 proper in this case.

19 You know, certainly the experts can formulate their
20 opinions and have them based upon matters outside of things
21 that would be properly placed before a jury. There's no
22 question about that, but whether or not this tes- -- this
23 expert can testify in this particular case under the facts
24 of this case, I think that's a situation that can only be
25 established through the testimony of the Defendant, and if

1 that testimony would fail in any way, I would be placed in
2 the position of having to seriously consider a mistrial, and
3 meaning that this matter would have to be retried at a later
4 date, and that is not a good thing for the State or the
5 Defense, or for any of the victim's family or the relatives
6 of the Defendant in this matter.

7 This is a matter that is being presented to a jury and
8 needs to be decided by a jury this particular time, and I'm
9 trying to alleviate any possibility of there being a
10 mistrial in this matter and, therefore, that is the major
11 reason I am requiring the Defendant to testify before the
12 expert in this matter.

13 All right. Is there anything else that we need to
14 cover that the State knows about right now?

15 **MR. GRAUSTEIN:** No, Your Honor.

16 **THE COURT:** All right.

17 From the Defense?

18 **MR. FOX:** No, Your Honor.

19 **THE COURT:** All right, good.

20 Have the jury come in, please. Thank you.

21 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
22 **JURY.)**

23 **THE COURT:** Ladies and gentlemen, I appreciate the
24 delay that has been occasioned this morning. As best as I
25 can, I was trying to alleviate the situation where you would

1 come in and hear one witness and then go back to the jury
2 room, and then come back out, hear another witness and then
3 go back to the jury room. I was going to try so that we can
4 have some continuity regarding the testimony that we hear
5 today without those interruptions. I am trying to alleviate
6 those as much as possible.

7 All right. Mr. Fox, your next witness, sir.

8 **MR. FOX:** The Defense would call Candace Taylor

9 **THE COURT:** Please come around to be sworn. If you
10 would just meet the Clerk right up here, ma'am, please.

11 **CANDACE TAYLOR,** being first duly sworn,
12 testifies as follows:

13 **THE DEPUTY CLERK:** Please state your full name and
14 spell your last name.

15 **MS. TAYLOR:** My name is Candace Taylor. My last name
16 is spelled T-A-Y-L-O-R.

17 **THE COURT:** Go ahead, Mr. Fox.

18 **DIRECT-EXAMINATION BY MR. FOX:**

19 Q. Ms. Taylor, where do you live?

20 A. At 206 Bay Forge Road.

21 Q. And that's in Myrtle Beach?

22 A. Yes sir.

23 Q. Okay. And is that across the street from 207 Bay
24 Forge Road?

25 A. Yes sir.

1 Q. Let me show you this picture. Can you identify what
2 that picture shows?

3 A. It's my neighbor across the street's front yard.

4 Q. Okay. And you live straight across?

5 A. I live off this way. The next door house, I'm
6 directly in front of them.

7 Q. Okay. Now, were you living there March 31st, 2012?

8 A. Yes sir.

9 Q. From -- and has your house kind of got the driveway
10 directly in front of the residence?

11 A. It's kind of catty-cornered from them. My mailbox is
12 directly in front of her residence.

13 Q. Okay. What do you remember about -- what were you
14 doing the morning about 8:30 of March 31st, 2012?

15 A. I was getting up and getting ready for work. I was
16 on my way out the door.

17 Q. Okay. Were you alone?

18 A. No. My daughter was getting up and I was taking her
19 to work as well.

20 Q. Okay. And so what did you do?

21 A. I was heading out to the car. That's when I noticed
22 the deceased and the lady conversating or disagreeing in the
23 front yard.

24 Q. Let me stop you there. When you say the deceased, do
25 you know who that is?

1 A. It was the gentleman that was killed in the front
2 yard.
3 Q. Okay, who you later found his name to be Tony Hughes?
4 A. Yes.
5 Q. Did you know Mr. Hughes?
6 A. No sir.
7 Q. Had you ever seen him before?
8 A. Once or twice. That was about it.
9 Q. Okay. So you had seen him there before?
10 A. Passing by, but ---
11 Q. Okay. But at that same residence across the street?
12 A. Uh-huh (**indicating affirmative**).
13 **THE COURT:** All right, you need to say ---
14 A. Yes sir.
15 Q. Okay.
16 **THE COURT:** Very good.
17 Q. So -- and then the lady, who is the lady you are
18 talking about?
19 A. My neighbor.
20 Q. Okay. You say you came out and you saw a lady there?
21 A. It was the Defendant. She was talking with him.
22 Q. Okay. Is that Ms. Schrader-Falls, who is sitting at
23 the table, with the white outfit?
24 A. Yes sir.
25 Q. Okay.

1 A. Her hair was longer then.

2 Q. Okay. So go ahead. So they were -- what were they
3 doing when you saw them?

4 A. It looked like they were having a disagreement. I
5 couldn't exactly hear what was being said, but you could
6 tell by expressions that they weren't too happy with each
7 other.

8 Q. Okay. So was one person unhappy and the other
9 one ---

10 A. The gentleman had actually a blank expression. Her,
11 on the other hand, looked kind of irritated.

12 Q. Okay. Was anything physical happening between them?

13 A. No. They -- they just looked like they were deep in
14 conversation.

15 Q. Okay. And, again, could you hear what was being
16 said?

17 A. Not exactly.

18 Q. Okay. So what did you do?

19 A. I continued to get into my car. I sat down in the
20 driver's seat and put my key into the ignition.

21 Q. Let me stop you. Was your car facing toward the
22 house or facing the street?

23 A. It was facing towards the house.

24 Q. So your back would have been to ---

25 A. Yes.

1 Q. --- the house across the street?

2 A. Yes.

3 Q. Okay. So you put the key in the ignition and then

4 what?

5 A. I heard gunshots.

6 Q. And how do you know they were gunshots?

7 A. I've heard them before.

8 Q. Okay. What did it sound like when you heard them?

9 A. I heard three repeated fires. At that time I -- it

10 didn't register at first that it was a gun, but then I was

11 like I know that sound, and that's when I commenced to get

12 out of my vehicle ---

13 Q. And let me ask you this about those three. Were they

14 three -- how would you describe -- were they close ---

15 A. They were repeated.

16 Q. Separated? How were they?

17 A. Pop, pop, pop.

18 Q. Okay. So one right after the other?

19 A. Uh-huh **(indicating affirmative)**.

20 Q. Okay. So what did you do after you heard those?

21 A. I guess that it took a second for it to actually

22 register what I heard. I got out of the vehicle and walked

23 towards the back of my vehicle, at which time is when I saw

24 the gentleman fall and hit the ground.

25 Q. Okay. Do you recall where he was? I mean, in terms

1 of the front of that house ---

2 A. With the picture that you just saw, he would have

3 been standing beside the white vehicle.

4 Q. Okay. Could you recall, you know, was he more

5 towards the front of the vehicle ---

6 A. He was ---

7 Q. --- or the back?

8 A. I would say he would have been around the driver's

9 side door, ---

10 Q. Okay.

11 A. --- and she was a little more towards the trunk.

12 Q. Okay. Now, what happened after you -- after Mr.

13 Hughes fell?

14 A. She knelt down beside him and was crying. She had

15 said, oh, my God, I'm so sorry I shot him, at which time I

16 yelled to my seventeen year old who was coming out of the

17 house that she needed to go back inside, that someone had

18 been shot and I didn't want her outside, at which time she

19 heard me yell to my daughter ---

20 Q. She being Ms. Falls?

21 A. Yes. She heard me yell to my daughter to go back in

22 the house, and she had turned to look at me and said, oh, my

23 God, I shot him. Please call the ambulance, and I was

24 already on the phone at that time.

25 Q. So did you, in fact, call 911?

1 A. Yes sir, and the dispatch had told me that there was
2 already an officer en route.

3 Q. Okay. What did you do after you got off the phone
4 with 911?

5 A. I made my child stay in the house for a while, and I
6 sat there and I watched. She continued to cry for a few
7 more minutes, at which time she got up and had walked toward
8 her vehicle.

9 Q. What did she do then?

10 A. She -- it -- to me, it looked like she had put the
11 gun inside the car, and then she sat in the vehicle for a
12 while.

13 Q. Do you recall how long it took law enforcement to
14 arrive?

15 A. I'm wanting to say roughly about ten minutes.

16 Q. Okay. Did Ms. Falls at any time attempt to drive
17 off?

18 A. No.

19 Q. Was there anybody else out there at that time?

20 A. My neighbor across the street, he was on his porch on
21 the phone as well. I believe he had gotten to the phone and
22 called the police before I did.

23 Q. Did anyone go out and make any attempt to talk to or
24 restrain Ms. Falls?

25 A. I'm sorry, but I'm not walking up to no female with a

1 gun.

2 Q. But you could -- you could still see her?

3 A. Yeah. You could still see her sitting in the

4 vehicle.

5 Q. Okay. And the car was right there in the driveway,

6 wasn't it?

7 A. Uh-huh **(indicating affirmative)**.

8 Q. Her car I'm talking about.

9 A. Yeah. Her car was actually sitting behind the two

10 vehicles that were already in the driveway.

11 Q. Was she still there when the police arrived?

12 A. Yes, she was.

13 Q. Okay, still in the car?

14 A. Uh-huh **(indicating affirmative)**.

15 Q. Okay. Again, please answer yes or no.

16 A. Yes sir.

17 Q. Thank you. Did you see -- did you continue to

18 observe what happened after the police arrived?

19 A. She spoke with the police officer. My neighbor

20 across the street came out and spoke with them. The

21 gentleman neighbor that lives across from me, he -- he spoke

22 with them as well.

23 Q. Okay. Did anybody, any law -- any officer, police

24 officer, ever speak to you?

25 A. No.

1 Q. Did you go out and make your presence known to ---
2 A. Yes. There was a Horry County officer that was
3 standing at the back end of the vehicle. I did tell him my
4 name and told him if he had any questions that I saw what
5 happened, but nobody ever got back with me.
6 Q. Okay.
7 A. And I sat there for probably a little over an hour.
8 Q. Okay. So that day no one ever spoke to you?
9 A. No.
10 Q. In the two years since, has anyone from law
11 enforcement ---
12 A. No.
13 Q. --- gotten up with you, or anyone from the
14 Solicitor's Office?
15 A. No.
16 MR. FOX: Thank you. Please answer any questions the
17 Solicitor has for you.
18 THE COURT: Cross-examination.
19 MR. GRAUSTEIN: No questions, Your Honor.
20 THE COURT: All right.
21 Do you wish this witness to be excused?
22 MR. FOX: Yes, Your Honor.
23 THE COURT: Any objection?
24 MR. GRAUSTEIN: No, Your Honor.
25 THE COURT: All right.

1 Ms.. Taylor, you are released from your subpoena and may
2 go back to your regular duties, ma'am.

3 Your next witness.

4 **MR. FOX:** Your Honor, we would call Ms. Vivian
5 Schrader-Falls.

6 **THE COURT:** All right.

7 Please come around to be sworn, ma'am.

8 **VIVIAN FALLS,** being first duly sworn,
9 testifies as follows:

10 **THE DEPUTY CLERK:** Please state your full name and
11 spell your last name.

12 **MS. FALLS:** Vivian Falls, F-A-L-L-S.

13 **DIRECT-EXAMINATION BY MR. FOX:**

14 Q. Vivian, how old are you?

15 A. I'm fifty-one.

16 Q. And where do you live?

17 A. I live in Myrtle Beach.

18 Q. Okay. What's the address there?

19 A. 455 Sunnehanna.

20 Q. 455 Sunnehanna?

21 A. Uh-huh **(indicating affirmative)**.

22 Q. What area of Myrtle Beach is that?

23 A. I would say south Myrtle Beach.

24 Q. South Myrtle Beach, okay. Were you living in Myrtle
25 Beach in March 2012?

1 A. Yes sir.

2 Q. At the same address or another address?

3 A. At that time, another address.

4 Q. Another address. Okay. Do you remember where that

5 was?

6 A. Gresham, South Carolina.

7 Q. In Gresham. Did you have any other -- you lived in

8 Gresham. Let me ask you about Myrtle Beach. Have you had

9 another residence other than Sunnehanna in Myrtle Beach?

10 A. Yes.

11 Q. Okay. And where was that?

12 A. That's 341 Vesta in Arrowhead.

13 Q. In Arrowhead?

14 A. Yes.

15 Q. Is that near Bay Forge Road?

16 A. Maybe a quarter of a mile, if that.

17 Q. Okay. Bay Forge is off Burcale Road, correct?

18 A. Yes.

19 Q. Okay. And let me show you -- and Vesta is also --

20 it's off Clay Pond, correct?

21 A. You can get to it from Clay Pond or Burcale.

22 Q. Okay. Let me show you what's been marked as State's

23 Exhibit Number 8, and if I show you on here -- and here is

24 -- if I show you Bay Forge Road being here, okay, and this

25 is Burcale Road, ---

1 A. Uh-huh (**indicating affirmative**).
2 Q. 501. being back up here?
3 A. Yes.
4 Q. Where would -- Bay Forge is here. In what direction
5 -- where would -- and this is Clay Pond, where would Vesta
6 Drive be in relationship to Bay Forge?
7 A. You can go down this way and go in or you can come
8 down here, and this is the way I went to ---
9 Q. Okay. So you were driving down ---
10 **THE REPORTER:** Excuse me. I couldn't hear a word she
11 is saying.
12 A. I'm sorry.
13 **THE COURT:** Because you are behind the -- the
14 microphone was behind you, so that's ---
15 **MR. FOX:** Right here is good.
16 A. My home was down here on Vesta where -- and you can
17 go there on Clay Pond or you can go down Burcale.
18 Q. Okay. But you could go by -- if you go Clay Pond,
19 you would come down Burcale past Bay Forge and turn on Clay
20 Pond if you went that ---
21 A. Yeah. I always go to the Food Lion and use -- there
22 was a doctor there that we used and ---
23 Q. Okay. That was a common way for you to go back and
24 forth to your ---
25 A. Yes sir.

1 Q. Okay. Now, how long have you lived in the Myrtle
2 Beach area?

3 A. I purchased my house, I believe it was, April of 2010
4 and moved in around June 2010, because my children had to
5 finish school where they -- where we lived.

6 Q. Where did you live before that?

7 A. Kings Mountain, North Carolina.

8 Q. Okay. And where did you grow up? Where were you
9 born?

10 A. I was born in Charlotte, North Carolina.

11 Q. Okay. And where did you grow up, in Charlotte?

12 A. Between Charlotte and Georgia because my parents
13 divorced when I was about seven. Before seven, I was in
14 Georgia most of the time.

15 Q. Okay. But before they divorced, you lived with your
16 mother and father in the Charlotte area?

17 A. I believe they lived in both places.

18 Q. Okay. Did you have brothers and sisters?

19 A. Yes.

20 Q. Okay. What do you recall about your father in those
21 early years?

22 A. He was -- he was tough. He was strict. Even though
23 he wasn't in church at that time, he didn't drink. I don't
24 think I've ever heard him say but a couple of cuss words,
25 but discipline was tough.

1 Q. How so? Did you get grounded if you broke the rules,
2 no T.V.? How would -- how would discipline come?

3 A. He would reach out and slap sometimes.

4 Q. Slap you sometimes? You need to answer yes or no,
5 please.

6 A. Yes.

7 Q. That's when you were a small child?

8 A. Yes, to my teens.

9 Q. Was that a fairly common occurrence with your father?

10 A. With me?

11 Q. Yes.

12 A. The only thing ---

13 Q. Enough to leave marks on you?

14 A. Yes sir.

15 Q. Did anybody else as you grew up, any other family
16 members or people you knew, physically abuse you?

17 A. Yes. Yes.

18 Q. Who else?

19 **MR. GRAUSTEIN:** Objection, Your Honor. Relevance.

20 **THE COURT:** I'm going to allow it.

21 A. My brother.

22 Q. Was that an older brother?

23 A. Yes.

24 Q. Okay. What's his name?

25 A. We call him Buddy.

1 Q. How much older is he?

2 A. Four years.

3 Q. And about how long -- was this a one-time occurrence
4 or something that happened more than once?

5 A. Several times throughout my -- to my teens.

6 Q. Do you remember roughly how old you were when it
7 began?

8 A. I had to be about four or five. It was before
9 school.

10 Q. Did it happen up through your teenage years?

11 A. The last time, I think, that he attempted, I think I
12 was around twelve because I married shortly thereafter.

13 Q. You married shortly after the age of twelve?

14 A. Yes sir.

15 Q. Now, Vivian, you need to tell us specifically what it
16 was your brother did.

17 A. The first time, he wasn't alone. He -- one of his
18 friends from up the street molest me.

19 Q. Molested you?

20 A. Yes sir.

21 **MR. GRAUSTEIN:** Objection, Your Honor. Relevance.

22 **THE COURT:** I'm going to allow it. Thank you.

23 Q. In what way? Did he touch you, have intercourse with
24 you? Did he make you do things? What specifically
25 happened?

1 A. Mostly I remember their hands on my private parts.
2 I can't remember specifically. I think at one time on top
3 of me, but I don't know if I was -- it was a long time ago.
4 Q. Yes.
5 A. I don't think about that much. I don't want to.
6 Q. Did it stop before you left home?
7 A. No.
8 Q. Did it stop after you left home?
9 A. Oh, I'm sorry. It did. The last time, I was twelve
10 when he attempted it.
11 Q. And it wasn't with -- of course, you were twelve
12 years old, and it wasn't with your okay?
13 A. No.
14 Q. Now, you left home at what age?
15 A. Fourteen.
16 Q. Fourteen?
17 A. Yes.
18 Q. Now, during -- were you still living with your father
19 at fourteen?
20 A. Yes.
21 Q. Okay. Had his manner of discipline changed over the
22 years? Was he still a tough disciplinarian?
23 A. I'd -- yes, a serious whipping I remember right
24 before I got married.
25 Q. Was there anything more than -- because lots of

1 people spanked and whipped. Belts aren't uncommon. Was
2 there anything else in the way your father dealt with you in
3 terms of permission to go with friends or permission to go
4 to church events or anything like that?

5 A. It was a boy -- one incident was at the movies and
6 another was a phone call with a boy from school.

7 Q. What happened? You went to the movies with a boy?

8 A. No. I had went to the movies with a friend, and I
9 set with a boy at the movies, and he gave me a necklace.

10 Q. How old were you?

11 A. Twelve or thirteen because my brother could drive. I
12 do think that was close to that last time ---

13 Q. Okay.

14 A. --- that happened with him.

15 Q. So you were twelve or thirteen, and you went to the
16 movies and you sat with a boy?

17 A. Yes sir.

18 Q. Did you go parking with him afterwards?

19 A. No.

20 Q. You just sat at the movies with him?

21 A. Yes.

22 Q. And he gave you a necklace of some kind?

23 A. Yes.

24 Q. And what happened?

25 A. My dad seen it. He asked me where it came from. I

1 told him. He said boys don't give you nothing for no
2 reason.

3 Q. Anything more?

4 A. I got a whipping that night.

5 Q. What was the other? You mentioned another, a phone
6 call from a boy?

7 A. Yes, a basketball -- he played basketball for the
8 school, and he'd call and talk to me, and my dad answered
9 the phone or something and he could tell that he wasn't a
10 white boy. He didn't say it like that, but he whipped me
11 with the electric cord from the skillet.

12 Q. The skillet?

13 A. Yes.

14 Q. Now, how is it that you left home at how old,
15 thirteen?

16 A. Fourteen.

17 Q. Fourteen. How is it you came to leave home at
18 fourteen?

19 A. My mother had got married and they had a beautiful
20 little girl, and one day I went -- well, it was before he
21 married her, but I went to his and his girlfriend's house
22 because they lived right next to my father's business, and
23 her brother had just came home from the Army and he was
24 motioning something to her. I turned around and looked, and
25 he waved at me. A couple of times after that, we talked.

1 When I went back to visit my mother, we talked. He asked me
2 to marry him and ---

3 Q. And how old was he?

4 A. Twenty-one.

5 Q. So he asked to marry you?

6 A. Yes.

7 Q. And what did you say?

8 A. The first time before I moved away, I told him I
9 didn't want to, and he was a little upset. I wanted to go
10 to school. There were times when I wanted to be in school
11 and times when I didn't because there was a girl that was a
12 bully in school. Sometimes I would go to my mother's
13 because I'm a big girl, but she was a little bigger than me
14 then.

15 So we talked on the phone and he asked me and I just
16 felt like to get away, it would be good, so I said yes.

17 Q. What was his name?

18 A. Pardon?

19 Q. What was his name?

20 A. Jimmy Deering.

21 Q. And you were in North Carolina at the time?

22 A. When I said yes.

23 Q. I don't know. Was it -- could fourteen year olds get
24 married without their parents' permission at that time in
25 North Carolina?

1 A. No. We married in another state.

2 Q. Where did you get married?

3 A. We married in Alabama.

4 Q. Okay. And was it legal for you to get married in

5 Alabama?

6 A. At fourteen, yes.

7 Q. And he was twenty-one. Had you been with a man at

8 that point? Sexually, had you been with a man at that

9 point?

10 A. When I stayed in Chicago with my brother and sister-

11 in-law, there was a guy there that was in the military and

12 we were talking and he -- I don't know what to say. I don't

13 want to say rape. I just felt like I had to do it because

14 he got upset, because I told him no.

15 Q. Was he older also?

16 A. Oh, yes sir.

17 Q. He was military, so he was -- and you would have been

18 how old at that time?

19 A. Before I got married, so I think I might have just

20 turned thirteen or fourteen.

21 Q. Okay. So you married Jimmy Deering at fourteen.

22 Where did you all go to live then?

23 A. We were in Georgia.

24 Q. How long were you and Jimmy Deering married?

25 A. From March of '77 to -- it was final on my sister's

1 birthday in 19- -- December 17th, 1984.

2 Q. About seven years?

3 A. It would have been almost eight in three months.

4 Q. And how was your -- how was that relationship? How
5 was that marriage at the time?

6 A. Jimmy -- he could be very mean, very violent at
7 times. He said a lot of terrible things, and I really
8 didn't get to do or go anywhere. My family wouldn't -- got
9 to the point where they wouldn't visit. My dad wouldn't
10 visit.

11 Q. Jimmy Deering didn't want you to have contact with
12 your family?

13 A. No sir.

14 Q. How about activity outside the house, friends,
15 church, things like that?

16 A. Not really, no..

17 Q. In what ways would he be violent?

18 A. Sometimes he would hit me. He would pull my hair.

19 **MR. GRAUSTEIN:** Objection, Your Honor.

20 **THE COURT:** I'm going to allow it. Thank you very
21 much.

22 A. He kicked me in my stomach when I was pregnant with
23 my daughter. He cut me with a knife and called me names.
24 He called me something I hadn't even had time to be. I was
25 so young I hadn't had time to be something like that, and it

1 was a long time ago, so it wasn't like you could refuse sex
2 with your husband, so I had to do -- do things I didn't want
3 to do because if he hit me, or if it was one of those days
4 he just cursed me or said really terrible things.

5 Either way, if you -- he would come right to you and
6 say he was sorry, want to hug you, want to kiss on you, want
7 you to give him right away like nothing happened, and if I
8 act like I didn't want him to touch me or if I tried to tell
9 him just to give me some time, it would start over again.
10 He would hit me again.

11 Q. You would have been in the early years of your
12 marriage still a teenager, right?

13 A. My son, I was nineteen when he was born. Yes sir.

14 Q. How did that marriage eventually end?

15 A. He attacked me one time and my aunt, my dad's sister-
16 in-law helped me. It was something that helped me to get
17 away and helped me to the point where I wasn't where he
18 could get to me to convince me to come back, and I got a
19 divorce. She helped me through that.

20 Q. Did you have an attorney from legal services assist
21 you in that divorce?

22 A. Yes, a Mr. Johnson.

23 Q. And that was in Georgia, correct?

24 A. Yes.

25 Q. All right. Did you ever re-marry?

1 A. Yes.

2 Q. When was that?

3 A. I met in -- as far as legally, I can't remember
4 exactly how much of the time, but we were together from
5 sometime in late -- I don't want to be wrong. Give me a
6 moment.

7 Q. Well, that's okay. Just give me a rough idea.

8 A. Probably the end of '85 to early '86.

9 Q. And that's when you met the other person?

10 A. Yes.

11 Q. And what was his name?

12 A. John Jones.

13 Q. Is that the one people called Booster?

14 A. Yes.

15 Q. All right. So, and you were together with Booster
16 how long?

17 A. We were together almost ten years.

18 Q. How did Booster treat you compared to Jimmy Deering?

19 A. A lot of things were the same. It just hurt hard.
20 It just hurt worse. It was a lot stronger. He drank and
21 did drugs, you know, and he didn't have to have what was a
22 -- no real reason to attack me.

23 Q. But he was unpredictable?

24 A. Very much so.

25 Q. Generally when there would be attacks, in what way

1 would that -- what form would that be?

2 A. Usually with his fist in my head. I still had
3 problems with my jaw because they almost had to wire my jaw
4 shut. He would kick you and hit you -- me about my chest.
5 He would shoot at me.

6 Q. Shoot at you? What do you mean, shoot at you?

7 A. He shot above my head a couple of times, one -- one
8 time across the yard to scare me. I was at my grandmother's
9 house, and he come to my house one time and he scared me,
10 and I didn't have a phone. He wanted in and I didn't want
11 to let him in. The kids let him in. He was angry. I can't
12 recall exactly why. He had been out all night with drugs.

13 I know he was doing drugs the night before this when I
14 asked him not to come to the house, and usually when he
15 would get through doing that, he would come to the house, so
16 when he got there and I wanted him to leave, he wouldn't
17 leave. And when he did leave, I would call the police. He
18 come back, and I was at my neighbor's, with a gun, and my
19 children were at the house waiting for me, and he come in
20 and they said they jumped out the windows, and he'd hide the
21 gun before the police got there.

22 Q. How did that marriage come to an end?

23 A. He -- I don't remember. It wasn't the incident with
24 my job, but he had attacked me. I got a restraining order.
25 He went to jail, and I asked him if he would just leave me

1 alone, I wouldn't press charges if he'd just stay away and
2 leave me alone.

3 He told them you better go and get the d-a-m-n
4 warrant, so I asked for an attorney, and I went for a
5 divorce.

6 Q. Was that Mr. Johnson again?

7 A. Mr. Jones.

8 Q. I'm talking about ---

9 A. Oh, Mr. Johnson, yes sir.

10 Q. --- the attorney, Mr. Johnson?

11 A. My attorney, yes sir.

12 Q. Okay. And you, in fact, got a divorce from Booster?

13 A. Yes.

14 Q. And that was around '95?

15 A. The divorce was final in '91, I think. I moved away
16 shortly after that.

17 Q. Okay. Now, then you had a third marriage after that,
18 correct?

19 A. Yes.

20 Q. And what was that gentleman's name?

21 A. Daryl Falls.

22 Q. Daryl Falls. Did he treat you better than your first
23 two husbands?

24 A. Yes. Yes sir.

25 Q. Was he better with your kids as well?

1 A. The whole thing happened with my children, but he
2 took care of us and he didn't hurt us, and he helped me
3 raise my grandchildren, and he adopt two of my
4 grandchildren. We raised them.

5 Q. How many children did you have, Vivian?

6 A. I have three biological, and I had two step-children,
7 and I had the two adopted children. We had nine at home one
8 time, for a while, because we had two of my other
9 grandchildren and my niece, which is nine, and another young
10 lady. We call her little Rose, because my daughter is
11 Rosanna. She is now the mother of two of my grandchildren.
12 My son and she fell in love, and they eventually moved out,
13 moved in together and had children.

14 Q. And what happened with your marriage to Mr. Falls?

15 A. Daryl had a stroke, a massive stroke, on November the
16 18th of 2009. He passed away November the 20th of that same
17 year.

18 Q. Then I think you told us earlier in 2010 you moved to
19 Myrtle Beach?

20 A. Yes sir.

21 Q. Now, who came with you when you moved to Myrtle
22 Beach?

23 A. Me and my two boys.

24 Q. Sometime during -- after you moved to Myrtle Beach,
25 did you begin dating again?

1 A. I never went to date anyone.

2 Q. Did you have friends?

3 A. I wanted friends because I didn't know really anybody

4 here. Daryl and I were supposed to move down here. Before

5 my son went to high school, we were going to move here, and

6 we didn't and then he passed, and we would come here on

7 vacation, and so I didn't know where to go. I wanted to be

8 here at the beach. I wanted to be near my family. I chose

9 here.

10 Q. Okay. What did you do then here? You didn't know

11 anybody and you wanted to meet people. Where did you try to

12 form relationships, friendships?

13 A. On-line.

14 Q. On-line at social media kind of sites?

15 A. Yes.

16 Q. Do you remember which sites you picked or you were

17 on, were using?

18 A. That was the POF, FaceBook.

19 Q. POF is Plenty of Fish?

20 A. Yes.

21 Q. Okay. FaceBook?

22 A. Yes.

23 Q. And did you, in fact, talk to people on-line ---

24 A. Yes.

25 Q. --- and have some friendships that way?

1 A. Yes.

2 Q. Okay. At what point and how did you become
3 acquainted with Tony Hughes?

4 A. He messaged me one time. I believe it was that
5 January.

6 Q. January of -- after you moved in 2011?

7 A. Yes.

8 Q. Okay. And he messaged you, and what happened?

9 A. He -- because I had fishing and some -- it would ask
10 you different things like you looking for a relationship, or
11 what kind, or networking, or what was your hobbies, what you
12 liked to do, stuff like that, so it was something about the
13 fishing.

14 Q. So he had something in common with you ---

15 A. Yes.

16 Q. --- and sent you a message?

17 A. Yes.

18 Q. Okay. And you began to correspond with Mr. Hughes
19 then?

20 A. Well, I talked to him. I did respond to the message.
21 He responded back. He asked me out.

22 Q. At what point -- how long did you correspond back and
23 forth before he asked you out?

24 A. It wasn't very long. I noticed that was common, but
25 I didn't want -- I mean, I didn't understand why you

1 couldn't have friends instead of having to have
2 relationships and go into that kind of stuff.

3 Q. Did you agree to go out with him when he asked?

4 A. I told him I wasn't looking for nobody, I had lost my
5 husband and I had everything that I needed, and I wasn't
6 looking for anybody.

7 Q. Did you continue, though, to trade messages and
8 correspond with him?

9 A. On FaceBook.

10 Q. Okay. And how long did that continue?

11 A. Every once in a while because he met a young lady in
12 Myrtle Beach and got engaged, and I congratulated him, you
13 know, and just every once in a while, how are you doing,
14 back and forth.

15 Q. At some point, did you -- did you ever talk on the
16 phone during that time or was it all through FaceBook?

17 A. No. That -- we exchanged numbers, but I never
18 called.

19 Q. Then at some point did you ever meet Mr. Hughes?

20 A. He messaged me, and I know -- I don't know the exact
21 date. It was either my mother's birthday or it was my
22 grandson's birthday in May. It was either the 19th or 21st
23 he messaged me about his heart was broke, he had been
24 dumped. Ms. -- do I say her name?

25 Q. It doesn't matter.

1 A. I don't want to. He said that she had dumped him
2 because it was bike week and she wanted to sleep with all
3 the bikers, and he was tore up.

4 Q. This was between when you first corresponded with him
5 in January, between then and May he had met and become
6 engaged, and then dumped by somebody, is that right?

7 A. Yes.

8 Q. Okay. So he was up- -- he was, he said, heartbroken
9 because she had broken up with him?

10 A. Yes.

11 Q. Okay. At what point did you all meet?

12 A. We talked on the phone for about a week or so -- no,
13 going on ten days before we met. He would talk to me at
14 night because I didn't sleep good, and he would -- he would
15 read the Bible to me, and that's why -- that's why I fell in
16 love with him because I thought he wanted what I wanted.

17 Q. Let me reference something a minute ago, you had
18 trouble sleeping. That's been something that's been an
19 issue throughout your life?

20 A. Yes.

21 Q. Have you had -- because of your experience, you've
22 had, I'll just say, general anxiety issues, mental health
23 issues?

24 A. Yes. I've been diagnosed.

25 Q. What have you been diagnosed?

1 A. Pardon?

2 Q. What have you been diagnosed?

3 A. Anxiety, it's a gentle something, not specified or

4 something. Bi-polar, PTSD, ADHD.

5 Q. You sought help and treatment for those issues?

6 A. I've been going through treatment prior to my moving

7 here because I lost medical coverage here when I moved to

8 Myrtle Beach. I lost my medical.

9 Q. But when you were still in North Carolina, ---

10 A. Yes...

11 Q. --- you had a therapist?

12 A. Yes sir.

13 Q. What was that therapist's name?

14 A. Dr. Patel.

15 Q. Was there anyone else that you saw?

16 A. Dr. Patel was my psychiatrist, medical. Miss Nancy

17 was my therapist, Miss Nancy Hughes.

18 Q. And that's Nancy Hughes, no relationship to ---

19 A. No sir.

20 Q. All right. So Mr. Hughes and you started

21 communicating because he was in a tight spot and broken up

22 with his fiance?

23 A. Yes.

24 Q. And you talked with him, ---

25 A. Yes.

1 Q. --- you recall at night, read scripture to you?

2 A. Yes.

3 Q. Religion is something, faith is something that's very

4 important in your life?

5 A. It's the only thing now that's important, but

6 everything before him, before, it is my ---

7 Q. So that was something that was attractive to you in

8 Mr. Hughes?

9 A. It was the only thing I was searching for.

10 Q. At some point then did you all meet face to face?

11 A. Yes.

12 Q. When was that, do you remember?

13 A. We met on a -- he came to visit on a Saturday

14 afternoon, May 28th. We went out the next day to Huntington

15 State Park, and we took pictures and I put them on his

16 profile on FaceBook for him, and we talked to the gators,

17 put the fish in the water, walked on the beach, and went

18 home -- and we went home.

19 Q. Did that lead then into a relationship? Did you

20 continue to see Mr. Hughes?

21 A. Every -- every day.

22 Q. So from the point on, from the first time you met

23 him, you saw him every day?

24 A. Yes. He wasn't working at that time. He was going

25 from a truck driving job to his last job, his waste

1 management.

2 Q. Where did Mr. Hughes live?

3 A. In Gresham, Marion County.

4 Q. The town was Gresham?

5 A. That was his address.

6 Q. So at any point did y'all -- did you consider

7 yourselves to be boyfriend and girlfriend?

8 A. Yes sir.

9 Q. Was that from the first date, or after a week, or a

10 month, or when was that on your part?

11 A. Well, we pretty much decided it within a few days,

12 and then I got an e-mail from FaceBook to confirm in a

13 relationship, and I said yes, in a relationship with Tony

14 Hughes.

15 Q. You had put on your FaceBook page that you were in a

16 relationship?

17 A. It -- the e-mail come from FaceBook. You have to

18 confirm with the other person that you are in the

19 relationship with the person you say. They have to confirm

20 it is what I'm ---

21 Q. So if I had a FaceBook profile and I want to put on

22 there I'm in a relationship with a particular person, not

23 just generally a relationship, if I use a name, before

24 FaceBook will allow that change, they attempt to contact the

25 person named, correct?

1 A. Have to get permission from the other person.

2 Q. Right, because the other person might say, oh, no,

3 I'm not in a relationship with that idiot, right?

4 A. I guess they could say that.

5 Q. And they would want to avoid -- okay, so FaceBook

6 sent you a notice that Mr. Hughes, Tony Hughes, is claiming

7 that he's in a relationship with you, and what was your --

8 did you respond to it?

9 A. Yes.

10 Q. And what did you respond?

11 A. Yes.

12 Q. Okay. So you confirmed you were in a relationship

13 with Mr. Hughes?

14 A. Yes.

15 Q. And how long was that after y'all had first met face

16 to face?

17 A. That e-mail come on June the 2nd, 2011.

18 Q. You met on May the 28th?

19 A. Yes.

20 Q. So five days after y'all met?

21 A. (Nods in the affirmative.)

22 Q. So you all, in both of your minds, were in a

23 relationship in five days, and, of course, you corresponded

24 for several months prior, correct?

25 A. We had talked about some things probably about the

1 night before or right before ---

2 Q. But you had been in touch on FaceBook with him before

3 you all met, right?

4 A. But we talked about it at the house.

5 Q. I understand. No problem. All right. Well, then

6 after y'all both agreed you're in a relationship, how did

7 that relationship continue to develop?

8 A. Yes.

9 Q. In what way? How did it develop?

10 A. We spent the time that before he even started the

11 job, he stayed at the house.

12 Q. Stayed at whose house?

13 A. My house.

14 Q. When you say stayed at your house, does that mean he

15 came and was there all day and went back to his house at ---

16 A. No, no, no. He stayed all night.

17 Q. And how long did that go on?

18 A. He more or less stayed at mine until sometime around

19 school, maybe right after school started, because my son,

20 who is eighteen now, has a lot of disabilities, including

21 some autism and stuff, so he has problems at school, so as

22 soon as he pretty much started school, he was homebound

23 again.

24 Q. You say started back to school, would that have been

25 in August, the regular school calendar, sometime in August?

1 A. Yes.

2 Q. Okay. So from June until middle or late August, Mr.

3 Hughes was staying at your home?

4 A. Yes.

5 Q. Okay. Now, he had a home, and he had his own home in

6 Gresham, correct?

7 A. Yes.

8 Q. Did you ever go and stay with him there?

9 A. Yes.

10 Q. Okay. And would you go -- and when you went, would

11 you spend the night?

12 A. Yes.

13 Q. Did he keep personal items at your house?

14 A. His uniforms, clothes, a couple -- there was a pair

15 of tennis shoes, -- we had stuff at both houses.

16 Q. So he would have shampoo, deodorant, razor, things he

17 needed to get ready for work in the morning?

18 A. Yes.

19 Q. Okay. And you had things at his house?

20 A. Yes. I had three sets of things. I had things at my

21 house, and when we stayed at his, and there were times we

22 stayed at his mama's. I tried not to disrespect her, and

23 called her -- what I always called her.

24 Q. Okay, Mrs. Hughes, you stayed there some?

25 A. Yes.

1 Q. Now, once -- now, he started work, if I understand
2 you then, around the time your son started back to school in
3 August, ---
4 A. Yes.
5 Q. --- was when Mr. Hughes started his new job, is that
6 right?
7 A. No.
8 Q. It's not?
9 A. He started it within a couple of weeks, after we met,
10 at Waste Management.
11 Q. Okay, at Waste Management in Florence?
12 A. Yes.
13 Q. Okay. So he was working in Florence, but he was
14 living with you over here at the beach, right?
15 A. Uh-huh **(indicating affirmative)**.
16 Q. So even -- yes or no?
17 A. Yes.
18 Q. And so how long did that continue? So he was getting
19 up and going each morning to work in Florence?
20 A. If he had to drive that far, he would drive my Tucson
21 because it was cheaper on gas and he said his probably
22 wouldn't hold up.
23 Q. So he started driving your car to Florence and back?
24 A. Yes.
25 Q. Okay. From the time that he started work there until

1 March 31st, 2012, did he continue to work at Waste
2 Management?

3 A. He -- he did.

4 Q. Okay. And y'all continued to live together?

5 A. Yes sir.

6 Q. Was that every single night? Were there ever any
7 nights he stayed at his home in Gresham without you?

8 A. There might have been. If he said he couldn't make
9 all the way to the house for gas or something.

10 Q. Would you sometimes then go meet him ---

11 A. I would go there.

12 Q. Okay. So would you say the great majority of nights
13 once you all started spending the night together, you were
14 together?

15 A. Yes.

16 Q. Did there ever become a time when you were not
17 staying together overnight?

18 A. Not is -- when I started to work in Myrtle Beach,
19 there were nights that I was too tired because I have some
20 physical diseases, too, and I had to start work because my
21 income -- they were stopping my income, and so I went to
22 work and I would want to stay at home because it was so far
23 and I was tired. A couple of nights I managed to stay home.

24 Q. Would he be -- how would he react if you wanted to
25 stay home and not come to him?

1 A. What did I want to be at the beach for, and so
2 sometimes I would go -- and I would wait until he started to
3 work to come because he would get mad if I left before,
4 wanting to know why I'd have to leave, what did I need to go
5 to the beach for, and I took pictures and stuff, too. I was
6 taking pictures of stuff, something no reason for, but there
7 were times I wanted to go to the beach to take pictures.

8 Q. Is a hobby of yours taking pictures?

9 A. I don't know if I'd say hobby or what. It was a
10 passion.

11 Q. Something you very much liked to do?

12 A. I did.

13 Q. Okay. And what was the problem if you wanted to
14 leave the house to go take pictures, what would happen?

15 A. He would get upset because he said don't go on the
16 beach. All men do is pick up women at the beach. It's just
17 an excuse for them to pick up women, and I had been there a
18 year or so and I never had been bothered, you know, so I
19 didn't understand that. I didn't understand what I was
20 doing wrong, because that's why I came to the beach, to
21 enjoy -- enjoy it.

22 Q. Were there other things that he didn't want you to
23 take part in?

24 A. Well, we started out at the house, when we lived at
25 the house, he went to church with me.

1 Q. Are you talking about in Myrtle Beach?

2 A. Uh-huh (**indicating affirmative**). That first Sunday
3 when we -- no, that was the first date. The next Sunday he
4 went to church with me, you know. He knew what I wanted.
5 After that had got reaffirmed, a beach baptism and stuff, he
6 was supposed to come back to church and he never did. I've
7 forgot the question.

8 Q. Were there other things -- you just talked about he
9 discouraged you strongly from even going out of the house to
10 take pictures at the beach. Were there other things ---

11 A. Yes.

12 Q. --- that he did not want you to take part in?

13 A. Yes.

14 Q. Like what?

15 A. I would want to go see my kids, or my dad, because my
16 dad was sick, and like the first time I went to see the
17 kids, it was right after, right after, and I was on the way
18 up and he called and asked me, he said, I forgot to ask you
19 do you have any exes up there. At first -- at first I
20 thought it was cute. I told him, and I don't mean Daryl any
21 disrespect, but I said the only ex I have is buried, and I
22 lived there with him in my marriage in North Carolina, so I
23 have no other persons in my life there, no romantic quests.

24 Q. Was Mr. Hughes suspicious of you?

25 A. I didn't know from that statement if -- but as time

1 went on, he did accuse me of stuff.

2 Q. Was there anything to it? Did he have any basis for

3 those accusations?

4 A. No sir. I tried -- I tried to stay with him and be

5 home and do everything I was supposed to do so he would

6 know.

7 Q. What do you mean? What was everything you were

8 supposed to do? What does that mean?

9 A. Just be where I was supposed to be.

10 Q. Where were you supposed to be? What does that mean?

11 A. At home, not necessary to go to the beach, not

12 necessary to go up there, why can't I -- why can't you wait

13 on me, wait until I'm off work and we'll go together. I'd

14 wait. He'd stay in -- he'd sleep late in the morning and we

15 wouldn't go. Sometimes we wouldn't even get to go up to see

16 his mother when we was supposed to go up there for her.

17 Q. But you said also -- you were talking about you would

18 want to go see your family, ---

19 A. Yes.

20 Q. --- he would say no, wait for me, sleep late, make it

21 too late to be able to go, and he would do the same thing

22 with his family, too?

23 A. Yes.

24 Q. Okay.

25 A. They can wait.

1 Q. Now, you say you were supposed to be with him, around
2 him, according to who? That's what you were supposed to do
3 according to who?

4 A. Because if I went anywhere else -- I mean, I would go
5 to the grocery store. I would go to the tanning bed. I
6 would shop, but why did I have to do those things, but I did
7 everything I was supposed to do at home. I just didn't
8 understand why I couldn't go and take a picture or go
9 somewhere.

10 I would just do my shopping right there close to home
11 so I could come back to the house, and I wouldn't go to the
12 beach that much to check on the house. I had my daughter
13 stay with the kids there.

14 Q. How would you describe Mr. Hughes' attitude toward
15 you with regard to you're talking about you were supposed to
16 do this and why you have to do that? How would you describe
17 that, his attitude to you?

18 A. One of the scriptures where -- about submission, a
19 wife submits to the husband, and there's ways for men to
20 pick up women, a gentleman, a police officer, as a matter of
21 fact, in a store, and I can't think ---

22 Q. Okay. Let me -- you mentioned scripture?

23 A. Yes.

24 Q. Being submissive ---

25 A. Yes.

1 Q. --- to the man?

2 A. Yes.

3 Q. Who brought that up, you or him?

4 A. He said that because we were both -- we would be

5 married in the eyes of God.

6 Q. Married in the eyes of God, whose phrase was that?

7 A. Tony's.

8 Q. How would you say -- now, you all were living

9 together, right, staying together?

10 A. Yes.

11 Q. Is it safe to assume y'all were having sexual

12 relations at that point?

13 A. Yes.

14 Q. So Mr. Hughes says to you we're married in the eyes

15 of God, is that right?

16 A. Yes sir.

17 Q. Did you agree with that?

18 A. Yes. We had ---

19 Q. Did you feel married in the eyes of God?

20 A. Yes sir. We had -- we went to the beach and

21 exchanged our rings.

22 Q. Okay. You didn't have a formal ceremony in the

23 church?

24 A. No.

25 Q. And you didn't go to a City Hall or have a Magistrate

1 or somebody marry you, correct?

2 A. Right.

3 Q. So you didn't have a marriage that was recognized in
4 the State of South Carolina?

5 A. No, but the lady told us -- it's a Clerk of Court in
6 Marion County that it was six months, and she told us what
7 to do.

8 Q. What was six months?

9 A. A common law marriage.

10 Q. Okay. So why did you -- now, I'm confused. Why did
11 you and Mr. Hughes go to the Clerk of Court in Marion?

12 A. Because we were trying to -- he had talked to the
13 lady at the insurance office where he worked to helped me
14 get on medical. I had to -- I had to have -- I thought I
15 had to have cancer.

16 I had to have a surgery, and he was going to put me
17 on his insurance. From what we understood, it said you're a
18 domestic partner, but when we tried, they told us that that
19 was the same sex partner.

20 Q. So it didn't apply to you and Mr. Hughes living
21 together?

22 A. Only to common law, and that's why we called Marion
23 County.

24 Q. To see how long it would be to ---

25 A. So we could get the answer.

1 Q. Okay. And you were told it would be six months?
2 A. Yes.
3 Q. But you didn't take the step of going through a
4 marriage ceremony in a church or anything like that?
5 A. No.
6 Q. All right.
7 A. He said it was ---
8 Q. So you said that you had a ceremony on the beach, one
9 about rings?
10 A. We exchanged our wedding bands on the beach in July.
11 Q. In July?
12 A. My birthday.
13 Q. All right. And to go back, you talked about Mr.
14 Hughes wanting to control your movements and what he did,
15 and you said something that caught my attention, as long as
16 I was doing what I was supposed to do at home. What were
17 you supposed to do at home?
18 A. I cleaned, cooked, make him happy, do what I was
19 supposed to.
20 Q. Making him happy, what you were supposed to do,
21 wifely duties, you mean sexual duties?
22 A. Yes.
23 Q. Did Mr. Hughes make any demands of you sexually that
24 made you uncomfortable?
25 A. I'm sorry. Yes.

1 Q. Did he ask you to do things that you did not want to
2 do?

3 A. Yes.

4 Q. Did those things occur anyway?

5 A. Yes.

6 Q. Can you tell us what those were?

7 A. He liked to have anal sex. I'm so sorry. I don't
8 mean to disrespect nobody.

9 Q. It's okay.

10 A. He liked to have it -- things done to him.

11 Q. Okay. And that's another thing that you did not care
12 for, preferred not to do?

13 A. Yes sir.

14 Q. And did you tell him that?

15 A. Yes sir. He said he had never had nobody to let him
16 do that, nobody ever loved him enough to let him do that.

17 Q. But, again, my question was you let him know you
18 didn't want to do that?

19 A. I let him the first time, and I didn't want to do it
20 again because I didn't -- I didn't like that.

21 Q. Now, ---

22 A. I was ---

23 Q. --- was there anything -- as time went on, how was
24 your relationship with Mr. Hughes?

25 A. It got to where it didn't seem like I could do

1 anything right any more. I did everything to try to make it
2 easier for him and life easier for him and help him any way
3 I could. It seemed like he was struggling with a lot of
4 stuff financially, and, you know, just people treated him
5 like he was stupid and retarded and stuff. He said they'd
6 call him that.

7 When I was trying to help him one time about a paper
8 that he was getting garnished about, he said they'd call him
9 names and for me not to treat him like he was stupid because
10 he wasn't stupid, because I was trying to tell him that I
11 thought it was Marion County, Indiana, where the paper came
12 from and not Marion County, South Carolina, where he would
13 have to be in court. I said you should call and check with
14 them just to be sure, and he got really upset and said I was
15 treating him like he was stupid or something.

16 Q. Did he get upset with you often?

17 A. Yes.

18 Q. What would make him upset, if you implied that he
19 thought you were suggesting he was stupid? Anything else?

20 A. If -- if he thought I was going to go to the house to
21 check on them and the kids, why would I leave when he left,
22 and I said I don't want to leave after you because I don't
23 want nobody telling you I leave after you so you don't think
24 I'm trying to do something, because he had already started
25 accusing me of stuff if I wasn't there.

1 Q. Okay. And what would happen? Was he ever physical
2 with you?

3 A. Yes.

4 Q. In what way?

5 A. He -- the first time that he actually put his hands
6 on me was just -- he would say things to scare me, but the
7 first time he put his hands on me, he grabbed me as I was
8 leaving because he was fussing at me about going to take a
9 photo shoot, and he said I told you you need a gallery. You
10 need just to build a shop back here behind the house and
11 build -- him have the shop and me a gallery over the top of
12 it.

13 He said you don't need to be chasing people around on
14 the beach taking pictures. You just need to build you a
15 gallery, and I told him that you had more -- I understood
16 you had to get things started to provide information for a
17 business loan to do that, to get a shop or something for the
18 photography. I was trying to have a plan to get me a
19 business for my pictures.

20 Q. He didn't want you to go on this day again to go take
21 pictures?

22 A. No.

23 Q. And what happened?

24 A. And I wasn't going that day. He just heard me
25 talking to the phone about taking the pictures, and he

1 started fussing about it, about chasing people around, and
2 started saying that's how men -- again how men just pick up
3 women that way, it's just an excuse, and at that time I
4 already knew that Tony had talked to several women, and I
5 was -- it was like he was accusing me of things that he was
6 doing, and I got very hurt and upset and I thought I
7 couldn't take it any more, so I didn't say nothing.

8 I got to the house. I went in and started to get my
9 stuff and he come running in there and he got up in my face
10 and he grabbed me and he said why are you leaving? You just
11 want to run out and you don't want to talk about this, and I
12 said I can't do it any more. I just can't do it any more.

13 I said I tried to do everything I was supposed to do.
14 I try to make you happy, and there is nothing I can do to
15 make you happy. I said all I want to do is take my -- take
16 pictures and just do what makes me happy. I can't have
17 that. And every time I do anything, you -- you -- seem like
18 I'm doing something wrong, and I can't do anything else to
19 show you that what I'm doing is nothing against you.

20 Q. And what did he do?

21 A. And he had grabbed me on my shoulders and was right
22 up in my face, and he was screaming at me about that, and I
23 -- and he went to the room to get -- he went to the room. I
24 don't know what he was going to do. I went to -- I went to
25 my car and I got in my car and I took off.

1 Q. Were there other times when -- you say that's the
2 first time that he touched you violently, but were there
3 other times that he was physically violent with you?

4 A. Yes sir.

5 Q. What type of things would happen when he did get
6 violent with you?

7 A. He has choked me. One night -- there was a specific
8 night when a phone call come in about four o'clock in the
9 morning, and the phone kept ringing, and his mama was there,
10 and I believe it was during the time she was looking for the
11 house, and one of his brothers -- I'm not sure if it was his
12 brother and his wife or if it was the brother and his
13 girlfriend -- I believe it was his brother and his wife, and
14 we always -- his mama -- I'm sorry. I don't mean to do that
15 to her.

16 Q. Let's go back. You had a phone call early in the
17 morning?

18 A. Yes. We were -- we were sleeping in the back bedroom
19 because we always gave her our bedroom when she come down.

20 Q. And what happened? The phone rang and what happened?

21 A. And it kept ringing, and ringing, and ringing, and he
22 looked at it, and it rang after him several times, and I
23 said they're going to wake -- is it anything important?
24 They're going to wake up mama and them, his mama and them,
25 and he said -- I said who was that? He said, oh, everything

1 okay. He said it was her again, and I asked him her name.
2 She called him a lot of times, different times of the day.
3 She had claimed at one time when she called that she had
4 been in a relationship with him, she had been with him for
5 two years and she was still with him.
6 Q. Okay. So someone -- you think it was this woman?
7 A. Yes.
8 Q. Okay, but anyway, what happened? Again, the phone
9 kept ringing and you're asking about, you know, who is
10 calling, ---
11 A. I asked him why didn't ---
12 Q. --- and what happened?
13 A. I asked him why didn't he just answer it, you know,
14 because it would wake everybody up, and he said she just --
15 I don't want to hear her mouth, and he said that -- I said,
16 well, you need to tell her, I mean, tell her not to call.
17 He said I've told her.
18 He said if you don't want her to call, why don't you
19 call and tell her, and I said will it do any good? And he
20 said no, probably not, and I said why should I do that then
21 because it's really in your hands. I mean, it's really in
22 that person's hands who makes that decision. I mean, ---
23 Q. So y'all were talking back and forth about that?
24 A. Yes.
25 Q. About how to make the calls stop. Did anything

1 happen because of that conversation at the end of that
2 conversation?

3 A. Yes. He come -- he come to the bed and he grabbed me
4 around the throat.

5 Q. Had you done anything, thrown anything at him, tried
6 to hit him or ---

7 A. No. I was laying in the bed. No.

8 Q. And he grabbed you around your throat?

9 A. I was ---

10 Q. One hand, two hands?

11 A. Yes. It was just one because when he laid down on
12 the bed, he was facing me. I was laying on my back, and he
13 got to his side of the bed and turned around, and that's
14 when he grabbed me.

15 Q. What other -- without getting into any specifics,
16 what other types -- you have indicated there were other
17 physical incidents where he was physically abusive. What
18 other kinds of things happened during your relationship with
19 Mr. Hughes?

20 A. It would get -- he hit me in my chest going down the
21 road one time.

22 Q. What else?

23 A. He has grabbed me. He has choked me. He has shook
24 me.

25 Q. When he grabbed you, was it hard ---

1 A. Yes.

2 Q. When he grabbed you, was it hard enough to leave any
3 marks?

4 A. I don't know. On my neck one time, he put a hickey
5 over that mark.

6 Q. He's grabbed you, he's choked you, he's hit you. How
7 many times -- you started dating in May, and then so from
8 May to March of the next year is about ten months, correct?

9 A. Yes.

10 Q. During those ten months, you continued to see him
11 throughout those ten months?

12 A. Yes.

13 Q. How many times would you say during those ten months
14 that he was physically abusive toward you?

15 A. It didn't start until the Fall, ---

16 Q. Okay.

17 A. --- the physical, so ---

18 Q. Okay. Once it started, how many times would you say
19 it happened?

20 A. Six or seven I can recall.

21 Q. Six or seven you remember, at least?

22 A. Yes.

23 Q. You've indicated with your husbands, your first two
24 husbands anyway, in addition to being physically abusive,
25 they were emotionally abusive, correct?

1 A. Yes.

2 Q. Was Mr. Hughes also emotionally abusive in your eyes?

3 A. Yes. Yes.

4 Q. Okay. And in what ways? We've talked about --

5 you've talked about how he sought to control where you were

6 and know where you were at all times. Were there ways that

7 you felt he was being emotionally abusive?

8 A. Like nothing I -- like I said, nothing I did was

9 right. I couldn't -- there's certain things that I never

10 could get right, cooking, or ---

11 Q. What, would he yell at you when these things

12 happened, call you names, put you down, insult you?

13 A. Put me down and you say insult. He fussed at me.

14 Q. Okay. Did you all break up in January of 2012?

15 A. No, we didn't break up in January.

16 Q. Did you break up?

17 A. We had -- I had went to stay at my son -- with my

18 son. Well, I was going to stay there because I thought he

19 was going back to school. I thought he was supposed to be

20 putting in for a transfer to the Conway office -- the Conway

21 place, and we were going to be staying at the beach.

22 I got to the school. They just -- but out of school

23 the same day. I called them. They told me to bring him and

24 come back home, so we come back there. That was -- that was

25 January.

1 Q. Miss Vivian, let me -- you talked about ways that he
2 was controlling and the types of things that he did. At
3 some point, you've indicated you had some mental health
4 issues and health issues. Have you been on medication over
5 the years?

6 A. Have I what?

7 Q. Been on prescription medication?

8 A. Have I been on it?

9 Q. Yeah.

10 A. I've been on it before.

11 Q. And you had a prescription for Valium at one point?

12 A. Yes.

13 Q. All right. At some point while you were dating Mr.
14 Hughes, did you become distraught enough to think about
15 suicide?

16 A. Yes.

17 Q. Did you take any steps to try to end your life?

18 A. Yes.

19 Q. What did you do?

20 A. I took a overdose and drank alcohol one night before
21 he got home.

22 Q. Was that how you intended to end your life, from the
23 overdose?

24 A. Yeah.

25 Q. What was your plan?

1 A. To -- it was close to time for him supposed to be
2 home, so I started taking the medication and drinking like
3 hard lemonade, and the alcohol and that, I thought would be
4 working just enough, not too much for me to be able to leave
5 in the car when he got there, because he had my car.

6 Q. And what were you going to do in the car? What was
7 the point of that?

8 A. I -- I was going to drive it off the bridge.

9 Q. Did that plan ever come off? Did you ever get in the
10 car?

11 A. He came in late that night. I think I was already
12 passed -- passed out or something. I had -- my head was
13 bleeding. I don't know how that happened, and I don't know
14 how late he was.

15 Q. Did, at some point during that evening, did any of
16 your family call or were you on the phone with any of your
17 family?

18 A. I talked to the only one that I could talk to.

19 Q. Who was that?

20 A. My cousin, Bev.

21 Q. Where was she living at that time?

22 A. North Carolina.

23 Q. And you were at your Myrtle Beach house or in
24 Gresham?

25 A. At the house in Gresham.

1 Q. Okay. So you were a couple of hours away at least
2 from your -- from Bev, right?
3 A. It's four hours.
4 Q. Okay. And did you make her aware of what you had
5 done, that you had taken an overdose of Valium and some
6 alcohol?
7 A. Yes.
8 Q. Did -- at some point did you decide that you didn't
9 want to die and needed medical attention?
10 A. I don't know if I ever didn't want to die.
11 Q. Do you know if her request was made to Mr. Hughes to
12 get you to ---
13 A. My cousin talked to him.
14 Q. Did you go to the E.R. that night?
15 A. No.
16 Q. Were you in any condition to get yourself to the
17 E.R.?
18 A. No, because I would have drove off the bridge.
19 Q. You didn't make the effort yourself to get there.
20 Did you make the effort to call for help yourself?
21 A. I couldn't do anything. I was not in ---
22 Q. You weren't coherent, were you?
23 A. No sir.
24 Q. The bottom line is you didn't go to the E.R. that
25 night, correct?

1 A. No.

2 Q. But you survived?

3 A. I -- I did.

4 Q. When was this? What month was this?

5 A. It was January the 11th because it was my

6 grandchildren's mother's birthday.

7 Q. All right. Now, you testified a while ago that at

8 some point you believed that Mr. Hughes was talking to other

9 women, correct?

10 A. He had.

11 Q. And then you testified about one woman that was

12 calling at all hours of the night, right?

13 A. Yes.

14 Q. Okay. Now, did Mr. Hughes ever admit to you or

15 indicate to you in any way that he was pursuing other women

16 or dating other women?

17 A. At first he denied it, but we always played each

18 other's games on the computer, and he had a message pop up

19 from two women. One was -- one was about -- I don't know

20 what her message was, but it shows -- it shows some of the

21 conversation.

22 Q. From those conversations, did you feel like there

23 might be a relationship there?

24 A. He said I come by last night and there was a car

25 under our tree, so I didn't stop.

1 Q. And that was between Mr. Hughes and this other person
2 that sent ---
3 A. Yes.
4 Q. Okay. At any point did you take any steps to assist
5 him in meeting women?
6 A. Yes.
7 Q. What did you do?
8 A. Well, I -- they had to be doing it again because
9 after -- after the lady, this lady that he said he had lived
10 with, passed away, he started getting more irate and
11 strange, strange.
12 Q. Whose idea was it for you to help him meet other
13 women?
14 A. Well, he would be on the computer. He watched porn.
15 He would be talking to people, and then I asked him what was
16 he doing, anything, and he said no. He just liked being on
17 the computer flirting and ...
18 Q. And what?
19 A. Getting excited from that, like the ---
20 Q. Flirting, or he would be watching porn, ---
21 A. And that.
22 Q. --- and communicating with people at the same time?
23 A. Yes, well, at different times.
24 Q. Okay. And then after ---
25 A. He said that's all he wanted to do. In fact, he had

1 a fantasy ---

2 Q. And so he would watch the porn knowing that you were
3 around? He didn't keep that from you?

4 A. No. There was one time he did after he had went --
5 we went to church. In February, he said he gave his life
6 back to the Lord. I come to the house, and when I come in,
7 he had put the computer down on the floor, but it wasn't
8 closed, so it was still lit up, and he had his Bible open,
9 and you could hear it, and I just went to the bathroom and
10 prayed, because I knew ---

11 Q. You could hear what was going on on the computer?

12 A. I could hear. He didn't get it put away before I got
13 in the door, yes.

14 Q. Now, and I can't remember if you answered this, but
15 whose idea was it for you to assist him in meeting other
16 women, do you remember?

17 A. I'm sorry. What?

18 Q. Did Tony suggest to you that you help him find other
19 women to date, or did you ---

20 A. He talked about -- I'm sorry. He talked about
21 fantasies and stuff that men want to do, and he had a friend
22 at work. They were swingers.

23 Q. He wanted you to get together with his friend at
24 work?

25 A. That was out of the question. I don't -- I don't

1 believe in that.

2 Q. Did he want you to do that?

3 A. He just brought it up.

4 Q. There were other things as well?

5 A. Yes.

6 Q. Okay. But again, at some point was there ever a plan

7 that you would set up something on-line to help him meet

8 other women?

9 A. Yes.

10 Q. Do you remember whose idea it was?

11 A. I believe that was my idea.

12 Q. Now, why would you do that?

13 A. With -- with Tony, I tried to -- like I said, I'd try

14 to make him happy.

15 Q. Okay. What specifically happened? Did you set up an

16 on-line profile or something?

17 A. I did.

18 Q. And what was that site, do you remember?

19 A. That was Plenty of Fish.

20 Q. And do you remember what -- so you created it?

21 A. Yes.

22 Q. And I'm guessing it was like a lot of them, there's a

23 questionnaire that you fill out, your name, and interests,

24 and like you described before, correct?

25 A. Yes.

1 Q. Okay. Was there something in there you could put on
2 your ideal -- your ideal date?
3 A. It was that ---
4 Q. Do you recall what -- did he have -- did he assist
5 you in coming up with that, that profile?
6 A. I would ask him the questions.
7 Q. Okay. So the information came from him?
8 A. Yes.
9 Q. Do you remember what you -- what you all came up with
10 for the ideal date?
11 A. The original ideal date was sex, sex, and more sex.
12 Q. From that, the Plenty of Fish site, do you know
13 whether he ever then started communicating with other women?
14 A. Well, I didn't think he -- I tried to tell him I
15 didn't think nobody would talk to him if he left in a
16 relationship on it, but he said it didn't matter, he just
17 wanted to flirt, and talk, and, you know ---
18 Q. Right. Do you know if, in fact, he had contact from
19 that profile?
20 A. With several people, yes.
21 Q. Was one of those Diane Movsky?
22 A. Yes.
23 Q. Do you know when he first began exchanging messages
24 with Ms. Movsky?
25 A. It had to be around the first week in March.

1 Q. And you were aware of that?

2 A. Yes.

3 Q. It wasn't a secret?

4 A. No.

5 Q. Did you through that contact know or learn where Ms.

6 Movsky lived?

7 A. Yes.

8 Q. How did you get that information?

9 A. Well, she put it on there, but he made a point of

10 telling me when we were going to the -- vaca- -- well, not

11 vacation, but when we spent a weekend at the timeshare on

12 the beach, and we were passing there. We went to the house

13 and put some stuff there and picked up some stuff from my

14 house for the beach.

15 Q. And he pointed out where Diane Movsky lived?

16 A. It wasn't because it's not on the direct road.

17 Q. Right, like a block ---

18 A. Yes.

19 Q. --- a block off of ---

20 A. Where you turn.

21 Q. Where you turn, right. So this is off of Burcale. I

22 mean, she's nearby, correct?

23 A. Yes.

24 Q. Okay.

25 A. Because he said he wasn't going to meet anybody, but

1 he had exchanged phone numbers. I believe she sent it to
2 him, and she said something about she had deleted it --
3 deleted him some way and that she wanted him -- if he wanted
4 to talk, here was the number.

5 Q. And that's how you got the phone number?

6 A. Yes, because I set up her friends and monitored
7 theirs the same way. I tried to set, you know, ---

8 Q. Tony made no secret about what was happening at this
9 point, right?

10 A. He said -- okay, I said the only thing is after the
11 numbers were exchanged, I said you said you wasn't going to
12 meet anybody, you just was going to talk to them. I said
13 how would you feel if that was me and I had said that to
14 you. He said you can't be like me.

15 I said, oh, well, -- I had asked him before, you
16 know, what would you do -- try to put him -- to step into my
17 place when -- if she was, like maybe the girl calling or
18 something. I couldn't be like him, and people would be
19 getting their you-know-what kicked, or blast my teeth down
20 my throat, or somebody would be getting shot.

21 Q. In other words, if you flirted with men on-line ---

22 A. If I did like ---

23 Q. --- or dated a man, ---

24 A. If I tried ---

25 Q. --- did like he was doing ---

1 A. Yes sir.

2 Q. --- he would -- someone would be getting hurt, is
3 that right?

4 A. Yes.

5 Q. Is that what you took it, ---

6 A. Yes.

7 Q. --- that would be someone getting their teeth pushed
8 down their throat? Was that you?

9 A. He said that one night on the way to the house
10 because I didn't answer the phone.

11 Q. Or someone getting shot, do you think that was
12 probably you?

13 A. He said that, and he had said he -- if he could get
14 to me when I had ran out of the house one night when he went
15 to the bathroom, because he kept four guns in the closet in
16 the bathroom, I ran out the door and I ran and got in my car
17 and I left.

18 Q. Let me ask you this: Had he ever threatened you with
19 violence? You told us about the time when he was violent.
20 Did he ever at any time make threats to be violent toward
21 you?

22 A. Yes.

23 Q. Did he ever describe to you times that he had been
24 violent to other people, not necessarily women, but that he
25 had been violent with other people?

1 A. Yes.

2 Q. Okay. And you don't know whether those are true?

3 They were things when you weren't there, is that right?

4 A. Yes.

5 Q. But he described to you times that he had been

6 violent?

7 A. Yes.

8 Q. During this time now, we're talking about March,

9 during the winter months, y'all are still together?

10 A. Yes.

11 Q. Still staying together?

12 A. Yes.

13 Q. He's more openly looking for other women, is that

14 right?

15 A. Well, he said he wasn't, because I had dressed to go

16 to my dad's one day after he went to work. I went to my

17 dad's, which is in Georgia, right after Valentine's because

18 I sent him a text, and we don't really have good service at

19 the house, so I sent him a text that I figured he'd get when

20 he got up the road about I loved him and have a good day.

21 And he was taking a shower and I was talking to him,

22 and I said did you get your text -- well, it's hard to say

23 exactly, I don't remember the name of the road, but I knew

24 that day and told him he should get the text before he got

25 to work.

1 The phone beeped like he had the text message, so
2 since it came through, I was just going to read it to him.
3 I picked it up to read it to him and it wasn't my text. It
4 was from a lady at work. She said -- do you want me to tell
5 you what she said?

6 Q. Give me the general.

7 A. She said that her boyfriend wasn't going to take her
8 to dinner or anything for Valentine's Day, was on one
9 message right before that one, and she was asking him to
10 pick her up some cigarettes or something, but right before
11 that one was his and hers where she had said that, and he
12 said I promise you'll get something for Valentine's if I
13 have to strip down butt naked and wrap a white ribbon around
14 my neck.

15 Q. Okay. Let me ask you this. At least you were pretty
16 sure at this point he was intent on more than flirting, is
17 it fair to say?

18 A. Uh-huh (**indicating affirmative**).

19 Q. Okay. Let's talk about March 31st. Let's first talk
20 about the day before. Were you with Tony the day before?

21 A. Yes, and the day before that.

22 Q. And where were you?

23 A. In Gresham.

24 Q. Okay. And did you see his family over there?

25 A. His daddy.

1 Q. Okay. Did you spend the whole day together?

2 A. Yes. That morning he called me to come over. He had

3 just got the car, and I had stayed ---

4 Q. That's the white car that was in the driveway?

5 A. Yes. I had stayed at my house because I had went to

6 a company ---

7 Q. Okay. So he called you to come over and you went, is

8 that right?

9 A. Yes.

10 Q. Did you have anything to do with him getting that

11 car?

12 A. I only drawed Sixty something Dollars, and I told him

13 I didn't have it.

14 Q. Did he want you to help him get the car?

15 A. Yes, because I had bought the black one to give him

16 the Tucson, but he didn't want the Tucson. He wanted that

17 BMW that I didn't get him.

18 Q. He was unhappy about that?

19 A. Yes.

20 Q. You all were together on the 30th?

21 A. Yes.

22 Q. At some point on the 30th did you leave to go to

23 North Carolina?

24 A. Yes.

25 Q. What time of day did you leave?

1 A. I think I was supposed to be at work at 5:00.
2 Q. P.M.?
3 A. Yes, and I left -- like it would have been enough
4 time to get there from his house to get to Myrtle Beach.
5 Q. To go to work?
6 A. I couldn't go after the things he had said.
7 Q. So you didn't go to work?
8 A. No.
9 Q. So this was late evening and you had been up all day?
10 A. I spent -- Wednesday night -- we went -- I got up
11 Thursday morning because I had the company lunch, and went
12 to the church meeting and stuff. I slept at the house that
13 night -- I mean that -- yeah, and so -- I didn't sleep.
14 What day was that?
15 Q. And you went ---
16 A. I got up Thursday morning ---
17 Q. Okay.
18 A. And I had went to sleep at six o'clock that morning
19 on Friday morning, the day we were together. I had been
20 asleep about two hours when he called.
21 Q. Okay. And you got up and went over there, spent the
22 day, started to drive back to work, correct, and didn't go
23 to work, correct?
24 A. Yes, started to go to work.
25 Q. Where did you go instead of going to work?

1 A. I went to North Carolina.
2 Q. Okay. Who did you see in North Carolina?
3 A. I went to get my son who had been in the hospital.
4 Q. Okay. So it's four hours to North Carolina?
5 A. Yeah.
6 Q. So you got there sometime after dark?
7 A. Oh, yeah.
8 Q. Okay. Stayed there for how long roughly?
9 A. Twelve, one.
10 Q. Okay. What did you do then, come back to the beach?
11 A. Yes.
12 Q. Okay. So you'd been up all day, drove to North
13 Carolina, came back overnight, got back to the beach roughly
14 what time?
15 A. It was breaking day, right before breaking day,
16 somewhere like that, ---
17 Q. Okay.
18 A. --- because I was going to sleep at the house ---
19 Q. Were you supposed -- let me ask -- it's early in the
20 morning, so breaking day. Were you supposed to be somewhere
21 at nine o'clock the night before?
22 A. That's what I was upset about, the things he said the
23 day before when I left.
24 Q. What did he say?
25 A. There were a couple of things. He talked about

1 meeting people when he said he wasn't going to. He said if
2 I sleep with someone, I'll tell you, because I have a very
3 dear family member that is sick, and that's the one thing I
4 have been very afraid of, ---

5 Q. You mean a sexually transmitted disease?

6 A. Yes.

7 Q. Okay. So you didn't want any risk of that?

8 A. No.

9 Q. And he said I'll tell you if I sleep with someone?

10 A. Yes. And I said, but you're talking -- he said he
11 won't never fall in love with anybody again, he'll get what
12 he wants, and he will go on, and from who he wants if he
13 does that, he's not going to fall in love again, get in no
14 more relationships, and it was -- he was -- that's what he
15 was going to use.

16 Q. Did he expect you to come home that night? Where did
17 he expect you to be?

18 A. The house at the beach for some reason.

19 Q. What time did he expect you to be there?

20 A. He said around nine o'clock.

21 Q. And what was going to happen at nine o'clock?

22 A. I have to tell you the other thing he said before
23 this.

24 Q. All right.

25 A. Because when he said he would tell me if he was

1 sleeping with somebody, because he was sleeping with three
2 women, and one day when he met me and he had told me he had
3 been monogamous with this woman he was engaged with, and he
4 had told me he was protected.

5 Q. And now he was telling you he'd been with three women
6 since he had met you?

7 A. When we met and started dating, yes. Yes. And I was
8 fixing to go to work, or supposed to be going to work, I was
9 already contemplating what to do now because I was in shock.
10 I said -- I had told him that I had went to the womens'
11 meeting. He said -- and how good it was and everything.

12 He said nobody -- every time you go there, you act
13 like you don't need me no more, and he -- you know, nobody
14 gets that happy that quick, and so that would be things he
15 would say about church, but I told him I was going to pray
16 for God to take my desire away. That's what I told him, and
17 he said when I get there tonight ---

18 Q. All right. They're his words. What did he say?

19 A. I was going to get some of that and I'm not going to
20 use anything.

21 Q. He said I'm going to have anal sex with you, right,
22 and I'm not going to use anything, any lubricant or
23 anything?

24 A. Yes.

25 Q. He was talking about, is that right?

1 A. Yes.

2 Q. Okay. And you had already previously told him I
3 don't like that. I don't want to do that again, right?

4 A. Yes.

5 Q. All right. Now, you -- the next day you got back in
6 Myrtle Beach around daybreak? You have your son with you,
7 correct?

8 A. Yes.

9 Q. Did you go by your house?

10 A. Did I go by my house? I dropped my boys off.

11 Q. How was it that you ended up over on Bay Forge? Why
12 did you go over to Bay Forge Road?

13 A. When I dropped off the boys, I would tell them like I
14 always do -- I would usually say I'm going to the store
15 sometimes. Sometimes I would say I've got something to do,
16 but that day, I said I had something to do because I don't
17 tell the boys when I have to borrow money or if I don't have
18 a way to take care of them.

19 So I had to take my ring -- I was going to take my
20 ring to the pawn shop and go to the grocery store, my -- my
21 big diamond ring, and I didn't want them to know that we
22 didn't have -- I had food that I could eat, but my boys, one
23 of them is very particular.

24 Q. All right. So how did it go from going to the pawn
25 shop to going by Bay Forge Road?

1 A. When I -- when you come out of my neighborhood, you
2 take a left towards Burcale, and you get to Burcale and the
3 store is -- the store where was robbed was on the corner --
4 on the corner, on your right corner. Almost to the left is
5 the way to her house, and I just -- I don't know why I -- I
6 was just going to the store.

7 Q. Did you think Tony was going to be there?

8 A. I didn't think so. I thought he had went -- for some
9 reason I just really thought he went fishing. I really --
10 because he told me to be at home that night. I thought he
11 would be at the house, but he wasn't at the house.

12 Q. He wasn't at the house, right?

13 A. Yes.

14 Q. And you knew he had been communicating with Diane
15 Movsky, right?

16 A. Yes.

17 Q. Did you know if he had met her yet?

18 A. No, I did not.

19 Q. Okay. And you went to 207 Bay Forge, right?

20 A. Well, I wasn't going to go all the way down there.

21 Q. But you went there?

22 A. Yes.

23 Q. Okay. You turned down that road?

24 A. Yes.

25 Q. The cul-de-sac, right?

1 A. Yes.

2 Q. It's not very long?

3 A. No, no, it's not very long.

4 Q. Okay. And what did you see in Ms. Movsky's yard or
5 driveway?

6 A. Well, that's the reason I wasn't going to go all the
7 way down there. I seen Tony's car, and I was just going to
8 take a picture in case he come to the house and said he
9 wasn't really there.

10 Q. Because he had been denying actually doing anything?

11 A. Yes.

12 Q. And you saw his car there first thing in the morning,
13 right?

14 A. Yes.

15 Q. Did you have a camera with you?

16 A. Yes, but my good camera was at -- I wouldn't have had
17 to go. The battery wasn't in it, so the little camera --
18 because I always kept my cameras and stuff with me ---

19 Q. You had a little Nikon?

20 A. Yeah, and it -- you can't really see when you zoom on
21 it like you could my other one.

22 Q. It's not a good camera?

23 A. Yes, ---

24 Q. All right.

25 A. --- because I take pictures with the other camera at

1 the beach.

2 Q. Okay. Did you take a picture of the car in front of

3 Diane Movsky's house?

4 A. I had to go down the road and do it because I

5 couldn't do it there.

6 Q. But did you do it?

7 A. Yes. I pulled up catty-corner behind the two cars,

8 kind of behind the two cars, and just took -- I was going to

9 take a picture -- it was on video, and I put it on a camera

10 shot and I took two pictures, and I started to drive away,

11 but I didn't.

12 Q. Okay.

13 A. I had tried to call him.

14 Q. Call Tony?

15 A. Uh-huh (**indicating affirmative**).

16 Q. Did he pick up?

17 A. No, he didn't.

18 Q. Did you call anybody else?

19 A. I called Miss Diane.

20 Q. Did she answer?

21 A. At one point somebody picked up and hung up.

22 Q. But you didn't talk to her on the phone?

23 A. No.

24 Q. Did you do that more than once?

25 A. I think so.

1 Q. So you didn't leave at that point, did you?

2 A. No.

3 Q. Okay. Did you get out of your car?

4 A. I did.

5 Q. Do you need to pause for a minute, Vivian?

6 A. (No response.)

7 Q. You've seen this gun, right, this Bersa 380?

8 A. Yes.

9 Q. Is this your gun?

10 A. Yes.

11 Q. Okay. Do you remember when you purchased that gun?

12 A. I purchased it the year before.

13 Q. What was your reason for purchasing that?

14 A. The store that I always went to get gas and stuff on
15 the corner of Clay Pond and Burcale, I went in one night,
16 forgot my credit card, the right one. I went back to the
17 car and come back in.

18 When I went to the register to pay for the gas my son
19 was going to pump, and a guy jumped up at the man at the
20 register and threatened to kill him if he didn't give him
21 his money, and I was right there, and I thought at first it
22 was just a joke, and then I looked and he said it again, and
23 he looked at me, and I'm talking to my grandchildren. I was
24 terrified. I told my baby to put his mama on the phone, and
25 then I just prayed and walked out the door, run to the car,

1 telling my son to get in the car.

2 Q. But you weren't harmed that night, were you?

3 A. No.

4 Q. But you bought the gun for protection?

5 A. Yes, because when I told my neighbor about it, he

6 said he had had a home invasion maybe six months before I

7 moved in, and he was a retired cop from New York.

8 Q. All right. Now, you purchased the gun legally?

9 A. Yes.

10 Q. Did you ever get a concealed weapon permit for the

11 gun?

12 A. No.

13 Q. Did you ever try to go through that training to get

14 one?

15 A. I called the gentleman several times, but every time

16 I started to go and take classes, Tony would get mad, why

17 would I leave before him to go to work.

18 Q. So you never did take a training program?

19 A. No. No, I didn't.

20 Q. But it was a legal weapon that you had?

21 A. Yes.

22 Q. And where did you usually keep it?

23 A. In the glove compartment of the car.

24 Q. Okay. Was it with you on the morning of March 31st?

25 A. It's always with me because of the road I had to

1 travel.

2 Q. So it was right by that store where you got robbed,

3 correct, ---

4 A. Yes.

5 Q. --- or the store was robbed?

6 A. Well, the back road to the house up in Gresham.

7 Q. Okay. And also the way you had to go to get to

8 Tony's house in Gresham?

9 A. At times there's no service there, and there's only

10 like one house ---

11 Q. No service being no phone service?

12 A. Yes.

13 Q. Now, do you know if the gun was loaded on the morning

14 of March 31st?

15 A. Yes, because I had loaded it after we had fired it

16 New Year's. It had been fired at New Year's.

17 Q. How many times had you ever fired that gun before

18 March 31st?

19 A. I fired one shot July the year before and one at New

20 Year's with Tony.

21 Q. Either of those times were you under any stress?

22 A. No.

23 Q. Was anyone after you during those times?

24 A. No.

25 Q. No pressure, no ---

1 A. No.

2 Q. The time in July, was that for target practice?

3 A. We shot it in the air.

4 Q. Shot it in the air, and on New Year's, that was ---

5 A. For like celebration.

6 Q. A celebration, all right.. So you loaded it after the

7 New Year's?

8 A. Yes, because I had to go up the road one night after

9 work.

10 Q. Do you remember was it right after New Year's, or was

11 it several weeks? Do you remember?

12 A. I know it was -- I had to go up that way one

13 night, ---

14 Q. Okay.

15 A. --- and I don't know exactly when ---

16 Q. Before March 31st?

17 A. Oh, yeah. Oh, wait -- yes.

18 Q. And do you recognize this?

19 A. Yes.

20 Q. And that is what?

21 A. The thing that goes into the gun, the thing to put

22 the bullets in.

23 Q. Okay. It holds more than one bullet, right?

24 A. Yes, I believe so.

25 Q. Okay. Do you remember whether you -- or how many

1 bullets you loaded into it when you re-loaded it after New
2 Year's?

3 A. I never knew how many went in it because I could
4 never get it loaded. Tony loaded it the first time, and I
5 loaded it the second because I couldn't do it. I couldn't
6 fully load it because of the pressure with my disease.

7 Q. But you had the bullets, and it takes a little bit
8 more pressure as you ---

9 A. Yes.

10 Q. --- are putting them in?

11 Do you know how many you put in?

12 A. I know I didn't get all of them.

13 Q. Okay.

14 A. It looked like there might have been room for a
15 couple more. I don't know.

16 Q. But you don't know? You weren't counting. You just
17 know they had some?

18 A. Yes.

19 Q. Okay. Back to March 31st. You're at Diane Movsky's
20 house. You pull in the back of the driveway and you're
21 taking your pictures. Why did you get out of the vehicle?

22 A. Because I wanted to tell Tony not to come back to the
23 house since he had did that, and went on and seen someone
24 after he said that was not his intention, and I was afraid,
25 because like I said, somebody I love is very sick because

1 somebody did that to them.

2 Q. You didn't need a gun to tell him that, though, did

3 you?

4 A. No. I tried to tell him that over the phone. That's

5 why I called.

6 Q. And when you got out of the car, did you have a gun

7 in your hand?

8 A. Yes.

9 Q. Why?

10 A. Because for a minute I thought about the promises

11 that he had always made to help me with the phone bills that

12 we've had that was our phone, and the car that was Five

13 Hundred and something. I bought a whole new car so he'd

14 have a car, and that car wasn't good enough, and I thought

15 of ---

16 Q. You bought a new car, which is the car you were in,

17 the Hyundai, right?

18 A. Yes.

19 Q. So Tony could have the old car, the Tucson, right?

20 A. Yes. He said he would drive it, but ---

21 Q. But he didn't care for that?

22 A. No.

23 Q. Okay. So that was financially a problem for you,

24 correct?

25 A. It was Five Hundred and Fifty Five Dollars a month.

1 Q. All right. So anyway, we're back on ---
2 A. I'm sorry.
3 Q. No, no. I interrupted you. We are back to you got
4 out of the car. Why did you have the gun in your hand? You
5 started thinking about all the things you had done for him?
6 A. I thought about the bills, and being so tired of
7 working and he insult me, and me know he don't give me the
8 opportunity to say what I needed to say, and I thought I
9 would shoot his tire ---
10 Q. Shoot the tire on the white car?
11 A. Yes, on his new car.
12 Q. So what did you do? Did you shoot the tire?
13 A. No. I was afraid for myself or he'd come out before
14 I could get away.
15 Q. Other than those two times you fired this Bersa, did
16 you have any experience with firearms or guns?
17 A. I never allowed them around my house or my kids,
18 never.
19 Q. It's not something -- you're not one of the people
20 that likes to go to the shooting range and fire a gun, or go
21 hunting, or go skeet shooting, anything like that?
22 A. No, I never ---
23 Q. Okay. Now, all right, so you decided not to shoot
24 out the tire. What did you do with the gun?
25 A. I was going to put it in my pocket and I realized I

1 didn't have one.

2 Q. So what did you do with it?

3 A. I just put it in my pants. They were too big for me.

4 Q. You mean like the waistband of your pants?

5 A. Yes.

6 Q. There on your hip kind of?

7 A. Yes.

8 Q. Did you go up to the house at any time?

9 A. Well, I started to go back to the car, and I started

10 to go there, and I did go to the house. I went up the

11 steps.

12 Q. Let me stop you for a minute. The day before, you

13 slept for a couple of hours. You got up early in the

14 morning and spent the day with Tony, and drove to North

15 Carolina, came back the same night. Now it's the next day.

16 Have you slept at all during that time?

17 A. Two hours that Thursday morning.

18 Q. Okay. Now, did you eventually go up to the door of

19 Ms. Movsky's house?

20 A. I did, and I -- yes, I did.

21 Q. All right. You knock on the door or ring the door

22 bell?

23 A. I knocked on her door.

24 Q. Okay. Did anyone come answer?

25 A. Yes. It took her a minute, but she came to the door.

1 Q. And what -- what happened then?

2 A. I asked her to speak to Tony and told her it was very
3 important.

4 Q. How were you at that point?

5 A. I was -- all I wanted is to tell him not to come
6 back.

7 Q. To tell him not to come back?

8 A. Because he said he wouldn't do that, but if he did,
9 that we could end this, you know, respectfully.

10 Q. Did she tell you he wasn't there?

11 A. She said I'll have him call you.

12 Q. And what did you say in response?

13 A. I said no. It's very important. Please.

14 Q. Okay. Do you think you were agitated at all, upset?

15 A. Well, I wasn't angry. I wasn't angry at her because
16 I knew Tony, why.

17 Q. What did you say? She said I'll have him call you,
18 and what did you say?

19 A. I told her that no, it's very -- I told her no, it's
20 very important I need to speak to him, and she shut -- so
21 she -- I don't know if she hesitated or what. She shut the
22 door ---

23 Q. Okay.

24 A. --- and ---

25 Q. Okay. What did you do when she shut the door?

1 A. Waited on the porch.

2 Q. Okay. Now, ---

3 A. I was ---

4 Q. Let me show you this photograph again just real

5 quick. Ms. Movsky's house, where is the door that you went

6 up to? Where did you go to the door?

7 A. Here.

8 Q. Up these steps?

9 A. Yes.

10 Q. Okay. And then the door is actually back down the

11 porch a little bit, right?

12 A. Yes sir.

13 Q. Kind of on the side of the house?

14 A. Yes. Yes.

15 Q. Okay. So you waited on the porch for a moment?

16 A. Yes.

17 Q. Did you come down off the porch at any time?

18 A. Not -- I started to leave, and as I was leaving,

19 Tony ---

20 Q. Let me ask you, when you say started to leave, do you

21 mean get in the car and leave or leave off the porch?

22 A. I started to leave off the porch to go to the car.

23 Q. Okay. And as you did, what happened?

24 A. Tony was coming around from the other side of the

25 house next to the porch.

1 Q. Is there a door on that side of the house?
2 A. (No response.)
3 Q. He didn't come out the door that you were going to,
4 right?
5 A. No, he didn't. He come from another side.
6 Q. He came from the opposite ---
7 A. Yes.
8 Q. --- side of the house? Okay.
9 Was he saying anything?
10 A. As I got to the top of the steps and he got to that
11 side of the yard, he said Vivian, what are you doing here?
12 Q. You mean the yard there by the steps? There's a
13 driveway off to the side. He came around across the
14 driveway?
15 A. Yes.
16 Q. Okay. And you are kind of still at the top of the
17 steps. He said Vivian, what are you doing here?
18 A. Yeah.
19 Q. And you said what?
20 A. Tony, you have to either ease into the situation or
21 talk fast. It depends, so I ---
22 Q. What happens if you don't ease into the situation or
23 talk fast, what happens?
24 A. If he gets upset about it, you're -- I don't know
25 what he will do.

1 Q. All right. So what did you say in response to Tony?

2 A. Because I really thought he wouldn't get mad in front
3 of Ms. Diane because -- but he said -- and I don't mean
4 disrespect -- Ms. Diane was an accountant. Tony wanted me
5 to do his taxes for three years. I couldn't afford to pay.
6 I didn't see the garnishment, and I didn't do the taxes, and
7 he needed her, he said.

8 Q. Okay. So he said he needed her?

9 A. Yes.

10 Q. All right. Go back to you didn't think he'd get
11 upset and he needed her. He didn't want to do anything to
12 upset her. He said what are you doing here, Vivian, and you
13 said?

14 A. I started telling him, you know, I was trying to find
15 -- and I says and I found him, and I said but Xavier came
16 back with me, too, and about the time I was getting Xavier
17 and letting him know Xavier was with me as well, and then I
18 was going to ease into the conversation about the situation,
19 and he said, well, I want you to know she called the police.
20 I said why would she do that? I haven't did anything. And
21 he said -- he just kind of shrugged his shoulders, he had
22 lit his cigarette, and he walked around me to the car.

23 Q. Okay. Did you say anything else? You said why would
24 she call the police? I didn't do anything, didn't you?

25 A. Yeah. I -- yeah, why, because I hadn't done

1 anything. I wasn't going to jail for something -- I hadn't
2 did anything, because I knew I didn't shoot that tire.

3 Q. Did you say to Tony I'm not going to jail? I haven't
4 done anything. Did you say that?

5 A. I didn't say I'm not going to jail because I hadn't
6 done nothing. I didn't shoot that tire, and I had --
7 honestly, I had -- I had forgotten about the gun.

8 Q. What happened? Then what happened? So he said --
9 you said I'm not going to jail for something I didn't do?

10 A. He went over and looked in the car. He turned back
11 around, and I said, Tony, I just -- I tried calling you
12 first. I said you didn't answer. I wanted to tell you, but
13 I wanted to tell you I got the boys and everything is fine.
14 I'm good with this. Did you tell her I'm good with this?
15 I'm not -- I'm not mad. I won't do anything.

16 Q. When you say I'm good with this, what did you mean?

17 A. Because if he ever found somebody ---

18 Q. Yeah. Did you mean his situation with Diane Movsky?

19 A. Yeah, yes, because I had done everything, everything
20 to make him happy, and if that was what he wanted, it was
21 something else he could have too.

22 Q. You said Tony, I'm not mad. I'm good with this. Did
23 you say anything more or did he say anything?

24 A. I told him, I said I'm good with this. Did you tell
25 her that? Why would you let her call the law because I

1 hadn't did anything. I just wanted to tell you that, but
2 the only thing is, you can't come back to my bed.

3 Q. What did he do when you told him that?

4 A. I just -- well, I needed to go to the car, but I
5 heard him say something, and he had raised his voice, and he
6 said who the F do you think you are and told me what I could
7 do, and I looked back and he looked at me, and he has a
8 look, a certain look, where he is going to come at you, and
9 he threw the cigarette down and come at me, and when he did,
10 I just closed my eyes and all I remember was the gun firing.

11 Q. When did you open your eyes?

12 A. I heard -- I heard something that just -- I don't
13 know. I heard something click or something, and I opened my
14 eyes and Tony was right on me. He was right on me then, and
15 it terrified me, but the gun had stopped. It didn't fire.
16 It had -- the sound was the gun not firing.

17 Q. Okay. And that made you open your eyes at that
18 point?

19 A. Yeah. And I don't know if I felt anything, but he
20 was like right there at my hand.

21 Q. Right there at your hand, within an arm's reach?

22 A. Oh, yes.

23 Q. And then what happened then?

24 A. He went towards the car. He looked at me and I
25 thought, oh, my God, because I didn't know I hit him. I

1 didn't -- because I didn't have my eyes open. I didn't know
2 I hit him, and he looked at me, but then he turned and went
3 to the car -- and on the car, and he fell on his stomach
4 facing the road.

5 He put his hands down and he started to get back up,
6 and I said no -- and I said there's no freakin' way, and I
7 just kept the gun pointed at him because I was headed to the
8 car. I just held it towards him and as I was headed to my
9 car, which I had to -- I had to go across the yard to my
10 car.

11 And I went to the car because I thought he was
12 getting up coming after me, and when I turned to shut the
13 door, he was laying on the ground. He had not got up, so I
14 went back out there, and I started telling him I was sorry,
15 and I prayed, and I was praying to God and to tell God I was
16 sorry.

17 Q. Did you see anybody out there around this time?

18 A. I spoke to a lady and a man, and I had spoke to her
19 first and I asked her about the ambulance, and I thought I
20 asked her about the police, and I heard something, and the
21 gentleman had said I'm calling the police. That's what he
22 -- and she was on the phone.

23 Q. Did you go back to your car?

24 A. I called -- I went to call my mother -- well, my
25 neighbor first and then my mother to get my son, because I

1 realized that I -- but that police should have been there
2 because he said she called them, and I couldn't figure out
3 why they hadn't already got there, you know.

4 Q. Okay. Did you go back to your car?

5 A. Yes, to call my neighbor and my mother.

6 Q. Did you get in the car?

7 A. I just set in the seat.

8 Q. Were you still there when the police arrived?

9 A. Yes.

10 Q. And do you remember how long it took them to get
11 there?

12 A. Forever, but I don't think it took as long as it
13 seemed. Everything just seemed like forever.

14 Q. But you were still there?

15 A. Yes.

16 Q. Vivian, when you were outside with Tony and he told
17 you -- and you told him he couldn't come back to your
18 bed, ---

19 A. Yes.

20 Q. --- threw down his cigarette and said, who the fuck
21 are you to tell me that, what did you think was about to
22 happen?

23 A. I thought he was going to hit me. When he had --
24 when he come at me like that, he always put his hands on me
25 when he come at me like that, or if he would be right, you

1 know, ---

2 Q. Tony is about six feet, two, is that right?

3 A. Six, two or six, three.

4 Q. Weighs a couple hundred pounds?

5 A. A little over two hundred, I think it is.

6 Q. A pretty good size fellow?

7 A. Yes.

8 Q. All right. Did you go over to Diane Movsky's house
9 intending to shoot Tony?

10 A. No.

11 Q. Did you call him outside to gun him down in the
12 driveway?

13 A. I would never, ever hurt Tony, only help him, and
14 that is the truth. Only make him happy is all I ever did.
15 I tried. I have never thought about hurting him at all.

16 **MR. FOX:** That's all the questions I have, Your Honor.

17 **THE COURT:** All right. Thank you.

18 All right. Ladies and gentlemen, we're going to go and
19 take a break. Please go to your jury room for a few
20 moments. Thank you.

21 Everyone else remain seated.

22 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
23 **JURY.)**

24 **THE COURT:** Solicitor and Mr. Fox, y'all come up and
25 talk to me for a second, please.

1 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**
2 **THE COURT:** Thank you.
3 Be at ease.
4 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE**
5 **THE PRESENCE OF THE JURY.)**
6 **THE COURT:** All right. Solicitor, are you ready for
7 the jury to come back in?
8 **MR. GRAUSTEIN:** Yes, Your Honor.
9 **THE COURT:** And Mr. Fox?
10 **MR. FOX:** Yes, Your Honor.
11 **THE COURT:** All right.
12 Ask the jury to come back in.
13 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
14 **JURY.)**
15 **THE COURT:** All right. Solicitor, cross-examination.
16 **MR. GRAUSTEIN:** Thank you, Your Honor.
17 **CROSS EXAMINATION BY MR. GRAUSTEIN:**
18 Q. Ms. Falls, you -- you testified that you were
19 diagnosed with anxiety and PTSD and other mental health
20 issues, correct?
21 A. Yes.
22 Q. And those -- it's true that you were diagnosed with
23 those before you ever moved to Myrtle Beach?
24 A. Yes.
25 Q. All right.

- 1 **THE COURT:** Could you move up just a little bit closer,
2 ma'am? Thank you.
- 3 A. Yes.
- 4 Q. So Tony Hughes had nothing to do with those medical
5 -- those psychological conditions you've been diagnosed
6 with, correct?
- 7 A. Not with the ones I've got, no.
- 8 Q. Okay. And you moved to Myrtle Beach in June of 2010,
9 is that correct?
- 10 A. Yes.
- 11 Q. And that house, you said, was on Vesta Drive?
- 12 A. Yes sir.
- 13 Q. Did you ever sell that house?
- 14 A. I sold it, yes.
- 15 Q. When did you sell it?
- 16 A. August 2012.
- 17 Q. Okay. So you owned that house the entire time you
18 and Tony Hughes were going out?
- 19 A. I owned it, yes.
- 20 Q. So you had your own separate residence, correct?
- 21 A. I owned my house.
- 22 Q. You owned your house, and you could move and live in
23 that house any time you chose, correct?
- 24 A. I could.
- 25 Q. Now, and I'm truly sorry to hear about how your first

1 two husbands, your relationship with them went. It sounds
2 like a terrible situation. And, now, your third husband was
3 Daryl Falls, correct?

4 A. Yes.

5 Q. And you said that that was a good relationship up
6 until the time he died?

7 A. There was some issues.

8 Q. Some issues, but you said he took care of you and
9 your kids, and all that?

10 A. He had some inappropriate things with two of my
11 children during that marriage.

12 Q. Okay. Well, financially did he take care of you?

13 A. Yes.

14 Q. Okay. So he took care of y'all financially, and then
15 after he died, you moved to Myrtle Beach?

16 A. Yes.

17 Q. Now, you said when you got down here, you started
18 going -- using social media to try to meet people, correct?

19 A. I always had FaceBook, yes. Yes sir.

20 Q. And you were using social media to try to meet
21 people, correct?

22 A. Yes.

23 Q. But you didn't want a relationship? That's what you
24 testified to, that you didn't want a relationship, you just
25 wanted to be friends, correct?

- 1 A. Yes.
- 2 Q. And you said you started looking at the on-line site,
3 was it Plenty of Fish, was that what it was called?
- 4 A. Yes. It was new to me. I didn't know much about it.
- 5 Q. Okay. But you started looking at that in January of
6 2011, possibly?
- 7 A. Yeah -- well, no -- yeah.
- 8 Q. All right.
- 9 A. Maybe November.
- 10 Q. Okay.
- 11 A. Because I had friends.
- 12 Q. But at some point you testified that you met -- isn't
13 it true that you met or at least had a communication with
14 Tony Hughes on that -- via that site?
- 15 A. Yes..
- 16 Q. But you -- you kind of brushed him off? You
17 testified that you kind of brushed him off as, you know,
18 'hey, I don't want a relationship. I don't want anything
19 like that. That's not what I'm looking for. I'm just
20 looking to be friends. Is that true?
- 21 A. I let him know I wanted to be friends, I didn't want
22 to date.
- 23 Q. Okay. But then in May, at the end of May, the very
24 end of May 2011, you had your first meeting with him,
25 correct?

- 1 A. He had text me and we -- we talked about his
2 situation.
- 3 Q. Okay. And then shortly thereafter, you had your
4 first -- you actually met face to face?
- 5 A. Yes.
- 6 Q. And it's your testimony that you went from not
7 wanting a romantic relationship to being married in July of
8 that same year?
- 9 A. I know.
- 10 Q. Correct?
- 11 A. Uh-huh (**indicating affirmative**).
- 12 Q. Or what you called being married, but it wasn't an
13 official marriage, correct? Isn't that true?
- 14 A. We didn't go to the courthouse.
- 15 Q. Didn't go to the courthouse, didn't have a marriage
16 license? It wasn't a marriage recognized by the State of
17 South Carolina?
- 18 A. He said it was a marriage recognized by God.
- 19 Q. I understand, but it's true that it was not
20 recognized by the State of South Carolina?
- 21 A. Not in July.
- 22 Q. At any time?
- 23 A. She said it would be after six months.
- 24 Q. Did the Court ever determine that you two were
25 married common law or otherwise?

1 A. That would only be if you go for a divorce that they
2 would recog- -- they would determine it, I guess, the way
3 she described it.

4 Q. All right. And you said you were doing this so that
5 you could get on his insurance at work?

6 A. The common law?

7 Q. Right.

8 A. It -- no, we were already together. In the insurance
9 policy it said domestic partner, which is supposed to be the
10 one you're with, but they did not recognize a man and woman
11 as that, as only a same sex relationship.

12 Q. So you were hoping to get some sort of determination
13 as to common law so that you could get on his insurance at
14 work, correct?

15 A. It was -- I don't think that was the reason, though.
16 It was a help for the insurance, yes.

17 Q. Okay. Did you have financial problems at that time?

18 A. No. I didn't qualify.

19 Q. No. I'm asking if you had -- if you were having
20 financial problems of your own?

21 A. No. I had -- I'd just lost my medical. I had plenty
22 of income, but I had too much income to get medical
23 coverage, and then regular insurance would have been almost
24 a Thousand Dollars for me.

25 Q. At some point did you start having income problems?

- 1 A. I went to work in March.
- 2 Q. You went to work in March of ---
- 3 A. 2012.
- 4 Q. 2012, because you were having a financial situation?
- 5 A. I wasn't able to afford things any more ---
- 6 Q. Okay.
- 7 A. --- that he wanted.
- 8 Q. And before that you testified that you were actually
- 9 taking your ring down to pawn it so you could get groceries?
- 10 A. My diamond ring.
- 11 Q. All right.
- 12 A. I have a seven -- I had a seven diamond or a diamond
- 13 ring that I could borrow money on, not our wedding band.
- 14 Q. All right. Now, you say in the Fall of 2011, Tony
- 15 started to get physical -- had physical violence toward you?
- 16 A. At that point it become physical.
- 17 Q. Okay. And you said that in the next -- in the Fall.
- 18 Would September be about the right time frame, back in the
- 19 Fall?
- 20 A. It was September.
- 21 Q. Okay. So September to March, you say that there
- 22 might have been six or seven incidents?
- 23 A. That I can recall.
- 24 Q. Okay. Did you ever call the police on any of those
- 25 incidents?

- 1 A. He wouldn't let you call the police for anything.
- 2 Q. Did you go seek medical attention for any of these?
- 3 A. I didn't go anywhere.
- 4 Q. Did you have any sort of injuries from any of these
- 5 incidents?
- 6 A. He covered -- he covered the one on my neck with a
- 7 hickey because it was talked about between me and his mom,
- 8 and I believe another relative was there, about the hickey
- 9 and my age, which was not good to me.
- 10 Q. Did he cover up any other injuries?
- 11 A. They were not visible.
- 12 Q. Did you ever document any of these injuries?
- 13 A. I wouldn't think so. I didn't -- why?
- 14 Q. Well, you said -- you said photography was a passion
- 15 of yours?
- 16 A. Not to cause him any kind of harm or any kind of just
- 17 troubles.
- 18 Q. And you said in January you suspected that he was
- 19 cheating on you, correct, January of 2012? He was talking
- 20 to other women, getting phone calls from other women? You
- 21 suspected that he was cheating on you?
- 22 A. I had been suspecting for a -- well, there were
- 23 confirmation for a long time off and on.
- 24 Q. All right.
- 25 A. January, he changed more after Miss Teresa passed

- 1 away.
- 2 Q. All right. But it upset you that he was looking to
3 talk to -- to meet other women? That upset you, didn't it?
- 4 A. No. That didn't upset me. What scared me was to get
5 sick.
- 6 Q. Your testimony is you were not upset at all that he
7 was going out looking for other women?
- 8 A. He said he wasn't doing it. He said he was only
9 doing it on-line.
- 10 Q. Okay. But it still upset you, didn't it?
- 11 A. I have always wanted people to be happy. I have had
12 friends and relationships that I have helped them find
13 people. There's nothing wrong with people being happy.
- 14 Q. Absolutely not. Now, but it upset you because you
15 might lose him? If he found somebody else, you'd lose him,
16 right?
- 17 A. Mr. Graustein, I did everything I could to take care
18 of Tony, and if I wasn't enough, whatever made him happy, I
19 could deal with that. I could deal with the truth. I don't
20 want to lie.
- 21 Q. Okay. So it upset you that he lied to you then?
- 22 A. He had not lied to me as far as I knew at that time.
- 23 Q. At that time?
- 24 A. Yeah.
- 25 Q. Okay. Now, you said that at some point he told you

1 where Ms. Movsky lived?

2 A. Yes.

3 Q. Had pointed it out while y'all were headed down to

4 the beach?

5 A. Well, we went to my house before we went to the ---

6 Q. Okay.

7 A. --- to the timeshare hotel.

8 Q. Did you drive by her house? I mean, did you

9 physically see her house?

10 A. You turn right -- that's where you turn, right there,

11 to go to her house.

12 Q. Okay. And where were you when he told you that?

13 A. We were turn- -- there's a store almost across the

14 street there, right there at Clay Pond.

15 Q. Well, let me ask you this: And when -- when was

16 that?

17 A. The weekend, I think, of the 13th or something.

18 Q. The 13th of?

19 A. Of March.

20 Q. Of March?

21 A. Uh-huh. (indicating affirmative).

22 Q. Okay, about two weeks before this all happened?

23 A. Yeah.

24 Q. All right. So -- and you were on your way to your

25 house that's down there in Myrtle Beach?

1 A. Yeah. It's only maybe a quarter of a mile, maybe.
2 Q. Were you scared of Tony?
3 A. Was I scared of Tony?
4 Q. Yes.
5 A. That's an understatement.
6 Q. That's an understatement, okay. So you were scared
7 of him is what you're telling me?
8 A. Yes sir.
9 Q. But he was -- so you're scared of him, and you've got
10 your own house you can live in, correct?
11 A. Yes.
12 Q. At any time you could go live in that house?
13 A. Yes.
14 Q. You could lock the doors, change the locks if you had
15 to, right?
16 A. Yes.
17 Q. And if he came around, you could call the police?
18 A. I probably could.
19 Q. But you never did that?
20 A. I loved Tony.
21 Q. Okay. But you were scared of him. Why were you
22 scared of him?
23 A. Because of the things he said he did before he moved
24 there and things he did on a job one time, things he did in
25 D.C. he said, and the reason why people didn't come into his

1 house because it was unlocked. He said they thought he was
2 crazy. He kept four guns in his house.

3 Q. But you kept dating him?

4 A. I loved him very much.

5 Q. And you knew all this stuff when you had your wedding
6 ceremony in July?

7 A. Yeah, knew that and ---

8 Q. Knew all that stuff?

9 A. No, just that he had had a drug problem before, he
10 said, and that he had a past.

11 Q. Okay. When you went -- let's talk about March 31st,
12 2012. When you went up to the -- you tes- -- your testimony
13 was that you went up to the store to get some stuff?

14 A. I was going to the grocery store.

15 Q. Okay.

16 A. And to the pawn -- and to the pawn shop.

17 Q. And you got up there to that corner and you were
18 suddenly, for whatever reason, -- well, let me ask you
19 first. Early on that morning, did you call Tony's parents?

20 A. I had.

21 Q. Why did you call them?

22 A. Because I was going to lay down at the house before I
23 went to the beach because I was so tired, and he wasn't
24 there. I asked -- we don't have a signal at that house, and
25 I was supposed to be home the night before, and I figured he

1 was mad, but that -- usually as the time passed, I can
2 reason with Tony or I tried to reason with Tony, so I
3 thought about sleeping there before I went all the way to
4 the beach, because I still had another hour or so, and I
5 thought -- at first I thought he went fishing, and then I
6 thought he stayed at mom- -- I'm sorry, at his mother's.

7 Q. Okay. So just to backtrack a little, so you had your
8 own house and that's where you were going to stay?

9 A. That's where I was taking my son.

10 Q. You had your own source of income, correct?

11 A. Yes.

12 Q. You didn't have to rely on Tony for anything,
13 financially? You had your own transportation, correct?

14 A. I had to -- yes, I had ---

15 Q. In fact, you were willing to give one of your cars to
16 him?

17 A. When I thought I had cancer, I was supposed to put
18 him on the house and on my insurance.

19 Q. But isn't it true that you wouldn't have to go to
20 Gresham unless you wanted to, correct?

21 A. It depends on how you say -- that just depends.

22 Q. Depends?

23 A. He would ask me why I'm not home if I wasn't there
24 when he got there. I was supposed to be there, and then he
25 would -- I've always known her as mama, and I'm sorry, but

- 1 he always used his mother as an excuse. He would say she
2 wants you here, too. Mama is wondering where you're at, and
3 stuff like that. I thought we were very close. They --
4 they were my ---
- 5 Q. This relationship ---
- 6 A. I thought we were family.
- 7 Q. Based on your previous relationships, would you --
8 would you disagree that this relationship got very deep very
9 quickly? Would you agree on that?
- 10 A. That it -- okay. I'd say yeah.
- 11 Q. Okay. Now, let's talk about that. You called Tony's
12 parents, correct, ---
- 13 A. Yes.
- 14 Q. --- looking for him?
- 15 A. Yes.
- 16 Q. Now, was that before or after you headed out to the
17 grocery store?
- 18 A. On my way, since I didn't get an answer and I didn't
19 know if he had stayed at mom's -- his mama's that night or
20 at the house, because like I said, we don't have a signal at
21 the house. It's very difficult to get a phone signal at the
22 house.
- 23 Q. All right. And you got up there to the grocery
24 store ---
- 25 A. I didn't go to the grocery store.

- 1 Q. Or where were you headed?
- 2 A. I was headed to the store, but I got to that store at
3 the stop sign from my house across from where you -- almost
4 across from where you turn in to her -- the road to her
5 house.
- 6 Q. Okay. Now, if you were going to the grocery store,
7 which direction would -- would you turn? You would be
8 turning on Burcale, right?
- 9 A. I should have turned right.
- 10 Q. Okay. So if you don't mind, Ms. Falls, could you
11 just look at the thing that Mr. Fox showed you there. This
12 is Burcale Road, all right?
- 13 A. Uh-huh **(indicating affirmative)**.
- 14 Q. And this is Clay Pond Road?
- 15 A. Yes.
- 16 Q. Okay. And you came up Clay Pond, correct?
- 17 A. Yes.
- 18 Q. To this intersection?
- 19 A. Yes.
- 20 Q. And to go to the grocery store, you were going to
21 turn left?
- 22 A. Yes.
- 23 Q. But instead, you turned left, didn't you?
- 24 A. Yes sir. Right there is a road almost across.
- 25 Q. Okay. So you turned left?

- 1 A. Yes.
- 2 Q. Now, I don't understand, what made you believe that
3 Tony was over there?
- 4 A. I didn't even know. I just had a feeling. I don't
5 know. I do that sometimes. I just have like feelings about
6 stuff, not to go here, or to be careful there, or something
7 like that, you know, kind of like God puts blocks up for us.
- 8 Q. Nobody told you he was -- that's where he was?
- 9 A. No, no.
- 10 Q. So you say you just had a gut feeling?
- 11 A. I just wondered.
- 12 Q. Okay. So you took that left. Then what did you have
13 to do? After you take the left onto Burcale to get to Ms.
14 Movsky's house, what do you have to do?
- 15 A. Oh, take a immed- -- almost a immediate right.
- 16 Q. Okay. So you take a right?
- 17 A. Yes.
- 18 Q. Had you ever been down that road before?
- 19 A. No.
- 20 Q. Had Tony told you the actual address?
- 21 A. No, but you could see his car from that road when you
22 passed it.
- 23 Q. Okay. So you went down that road just kind of
24 looking to see if you could see his car?
- 25 A. I looked down the first road and I seen it, and

1 that's when I went down that road.

2 Q. Okay. So you went down that road and saw his car?

3 A. Yes.

4 Q. You went down to the end of the cul-de-sac, right?

5 A. Yes.

6 Q. Turned around in the cul-de-sac, correct?

7 A. Yes.

8 Q. And came up and pulled into the driveway, correct?

9 A. I didn't -- I did pull in.

10 Q. Okay. And you said you always kept your gun, your

11 pistol, in the glove box, correct?

12 A. Yes. It's supposed to be in the glove box.

13 Q. Okay. And that's where you had it, and you testified

14 that when you got out of the car ultimately, you took that

15 gun, that pistol, this pistol, out of the glove box,

16 correct?

17 A. I don't even recall doing it.

18 Q. You don't recall doing it?

19 A. I don't even recall how I did take it out. I had to

20 have took it out. It was always in the glove box, but I was

21 confused, because in the State of North Carolina you have to

22 have them where they can be seen, so I asked myself many

23 times if I took it out of the box or that because it's so

24 confusing to me. It's just confusing to me.

25 Q. Well, would it ---

- 1 A. But I believe ---
- 2 Q. Would it be fair to say you got out of the car with
3 the pistol?
- 4 A. Oh, yes.
- 5 Q. Okay. So you get out of the car with the pistol?
- 6 A. Yes.
- 7 Q. Now, and you -- then you said you couldn't decide
8 what you were going to do, but ultimately you walked up on
9 the porch of Ms. Movsky's home, correct?
- 10 A. I said I was going -- I got out to shoot the tire --
11 the tire.
- 12 Q. Right, but ultimately you ended up on her porch?
- 13 A. Yes.
- 14 Q. Okay. With the gun?
- 15 A. Yes. I had forgot about it, I believe. I was so
16 tired. I hadn't even thought about it, you know, until
17 later.
- 18 Q. Okay. So you end up -- now, and you went up and you
19 knocked on the door?
- 20 A. Yes.
- 21 Q. Now, what business did you have knocking on Ms.
22 Movsky's door?
- 23 A. Because Tony said if he were to sleep with someone,
24 he'd tell me. That's what he said.
- 25 Q. Okay. So you were checking up on whether or not he

1 had been lying to you, right?

2 A. No. By him being there, I assumed he had probably
3 stayed the night. I wasn't sure because he was supposed to
4 be at the house, and I didn't know if he had just got there
5 or if he had stayed all night, but I just knew that I just
6 couldn't take that chance. That's why I was going to take
7 the picture ---

8 Q. Okay. But you were upset, correct?

9 A. I ---

10 Q. He had lied to you?

11 A. I was upset about the car.

12 Q. You were upset about the car?

13 A. I was upset about the -- I know it don't make sense,
14 but I was upset about the car, because he wouldn't answer
15 the phone, and let me say what I had to say, you know. I
16 just needed to say ---

17 Q. You needed to vent?

18 A. If I -- if I tell him while he's with Miss Diane --
19 he don't act up around people. He don't act up around no
20 one. He only raised his voice in front of two people the
21 whole time.

22 Q. All right. So you knock on the door, and you're
23 saying all right, send Tony out, and ultimately Tony comes
24 out, correct?

25 A. I said can I speak to Tony. I expected him to come

1 to the door so I could say it and he would be there and she
2 -- he wouldn't get mad.

3 Q. But you've got to admit this is kind of an awkward
4 situation for ---

5 A. It's awkward, but it's true. It's true.

6 Q. So Tony is going to come -- so Tony ultimately comes
7 out, correct?

8 A. I didn't think he was going to come out. That's why
9 I started to leave.

10 Q. That's when you started to leave the porch?

11 A. I started to leave and I was headed to the car.

12 Q. Right.

13 A. Yes.

14 Q. And but he comes out?

15 A. Because -- he did, but at that point he already knew
16 I knew he was there, and I had hoped he wouldn't come to the
17 house because I was going to bed and the boys could let him
18 in the house, and they would not know to tell him not to
19 come in.

20 Q. Well, why would he go to that -- to your house? You
21 already said that he expected you to be in Gresham, so why
22 would he go to your house at the beach?

23 A. No. He expected me to be at the house at the beach
24 is where he told me to be that night, ---

25 Q. That night, but ---

1 A. --- Friday night.

2 Q. --- this is the morning. We're talking Saturday
3 morning?

4 A. Right. He had to know where I was because I spoke to
5 him after ten and he said he was on the phone with mama, and
6 I can say it because he said mama, and he -- she wants you
7 to call her, and I said okay. I hung up with him, but I
8 knew by nine o'clock was over. I wasn't home at nine
9 o'clock. It didn't have to happen, what he said was going
10 to happen, so after ten, he had time to get over it, and I'm
11 on the phone. I'm in North Carolina.

12 I can reason with him or try to reason with him about
13 why I'm not there, let him know I've got my son, let him
14 know that I'm there and that I'll be coming home, you know.
15 It was hard to talk to Tony. I couldn't even go to his dad
16 without him. I did not go without him but one time. One
17 time Tyrone, his son, was with me, near Christmastime to
18 take his dad his Christmas present. He told me to take
19 Tyrone with me.

20 The next time, I thought that Miss Inetha, which is
21 his dad's girlfriend, was in her room where she usually is,
22 and I had -- was setting in there, and Tony was already mad
23 at me. He was mad at me about the boat, and he was going to
24 go pick up another boat and go get gas. I went in the house
25 and was talking to his daddy, and when I asked him, I told

1 Tyrone I wasn't going, and I thought Tyrone would be coming
2 back in the house.

3 He never come back in, but me and his dad was talking
4 about the radio station, which was a Christian radio
5 station, and I told him I couldn't pick up a local one like
6 that in the house, I only could pick up the gospel stations
7 on the XM-Radio, and then I asked about Miss Inetha, you
8 know. I was going to go say hi to her, but he said she
9 wasn't there.

10 Q. Okay. Ms. Falls, now, by morning of March 31st, now
11 you testified that when Tony came out and you had your gun,
12 and Tony came out and you told him you can't come back to my
13 bed, and he said something to you? He said some unkind word
14 and gave you what you called a look, and you said it was
15 that look just before he was going to hit me, correct?

16 A. It was always before.

17 Q. Okay. And you thought he was going to hit you is
18 what you're testifying to?

19 A. Yes sir, ---

20 Q. Okay.

21 A. --- because I didn't see her at that point. I
22 thought she was behind me when we were facing -- I was
23 facing that other house and he was facing the car.

24 Q. Okay.

25 A. He looked over my shoulder and I thought she was

1 there, but she wasn't there when I turned around.

2 Q. But you didn't think he was going to kill you?

3 A. I didn't know what he was going to do ---

4 Q. Okay.

5 A. --- because he looked in the car. He said he was --

6 he had a pistol at work. I don't know if that's true. He

7 had four guns at the house, but most of all, he is very

8 powerful -- he was very powerful.

9 Q. But he didn't do anything to you, did he? He gave

10 you a ---

11 A. When he come at me, he give me that look and he come

12 at me to -- like he did before when he did stuff. That's

13 when.

14 Q. Now, isn't it true, isn't it true that none of this

15 would have happened if you hadn't gone over to Ms. Movsky's

16 house?

17 A. I pray about that every day.

18 Q. Isn't that true?

19 A. Yes.

20 Q. Isn't it true that none of this would have happened

21 if you hadn't gone up and knocked on that door?

22 A. If -- I don't know what would have happened if he

23 came to the house and I had told him that, because then

24 there would have been nobody ---

25 Q. But we know this wouldn't have happened if you hadn't

1 knocked on the door, don't we?

2 A. At her house? No, it wouldn't. I don't ---

3 Q. And then this -- and this wouldn't have happened if
4 you hadn't had your gun with you, correct?

5 A. This wouldn't have happened if I hadn't have been so
6 frightful about the vehicle.

7 MR. GRAUSTEIN: I have no further questions, Your
8 Honor.

9 THE COURT: Redirect?

10 REDIRECT-EXAMINATION BY MR. FOX:

11 Q. Vivian, at the moment when Mr. Hughes put down his
12 cigarette and said who the fuck are you to tell me that,
13 were you in fear?

14 A. Yes, I was terrified.

15 MR. FOX: Thank you. No further questions.

16 THE COURT: Anything on that question, Solicitor?

17 MR. GRAUSTEIN: No, Your Honor.

18 THE COURT: You may step down, ma'am.

19 All right, ladies and gentlemen, we're going to break
20 for lunch at this point in time. I'm going to ask that you
21 be back in your jury room by -- be downstairs by 2:40. Be
22 downstairs in the jury assembly room by 2:40, please, all
23 right?

24 Remember, don't talk about the case and don't allow
25 anybody to talk to you about it. Downstairs at 2:40,

1 please. Thank you.

2 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
3 JURY.)

4 THE COURT: For planning purposes, what I understand,
5 Mr. Fox, Ms. Wilson is going to conduct the examination of
6 Ms. Bourus, is that correct?

7 MR. FOX: That is correct, Your Honor.

8 THE COURT: All right. Very good. And so the
9 witnesses you have left is Ms. Bourus and Ms. Saylor, is
10 that right?

11 MR. FOX: That is correct, Your Honor. Ms. Saylor will
12 be very brief.

13 THE COURT: Very good. And you anticipate after that,
14 Solicitor, to have some reply testimony?

15 MR. GRAUSTEIN: Possibly two witness- -- two or three
16 witnesses, very short.

17 THE COURT: All right. Very good.

18 It appears, and I feel certain we'll get done with the
19 testimony today. We'll see where we are at that point in
20 time. We may not continue on with the closing arguments and
21 the charge. I don't want to split them up, so we would --
22 and we obviously have to have an opportunity to discuss what
23 the charge is going to be before you give your closing
24 arguments, and I want to give sufficient time to do that and
25 go over that so that y'all at least understand what I'm

1 going to do, whether or not you agree with it.

2 So let's see where -- where things go, but it just
3 appears at this point in time probably we'll be doing the
4 closing arguments and the charge tomorrow morning, all
5 right?

6 **MR. GRAUSTEIN:** Thank you.

7 **THE COURT:** All right.

8 I told the jury at 2:40, so anticipating that we can
9 start at 2:45, all right?

10 **MR. FOX:** Yes sir.

11 **THE COURT:** Thank y'all very much.

12 **(THE FOLLOWING TAKES PLACE AFTER A LUNCH RECESS AND**
13 **OUTSIDE THE PRESENCE OF THE JURY.)**

14 **THE COURT:** All right. Solicitor, is the State ready?

15 **MR. GRAUSTEIN:** Yes, Your Honor.

16 **THE COURT:** And Ms. Wilson?

17 **MS. WILSON:** I am ready, Your Honor.

18 **THE COURT:** All right. Very good.

19 Ask the jury to come in, please.

20 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
21 **JURY.)**

22 **THE COURT:** All right. Your next witness, please
23 ma'am.

24 **MS. WILSON:** Thank you, Your Honor. Your Honor, I
25 would call Ms. Victoria Bourus.

1 **MARY VICTORIA BOURUS**, being first duly sworn,
2 testifies as follows:

3 **THE DEPUTY CLERK:** Please state your full name and
4 spell your last name.

5 **MS. BOURUS:** Okay. My name is Mary Victoria Bourus.
6 My last name is spelled B-O-U-R-U-S.

7 **THE COURT:** Go ahead.

8 **MS. WILSON:** Thank you, Your Honor.

9 **DIRECT-EXAMINATION BY MS. WILSON:**

10 Q. Ms. Bourus, could you please tell us where you work?

11 A. Yes. I am currently acting as the co-director of the
12 Family Justice Center of Georgetown. That's a program that
13 serves victims of domestic violence and their children.

14 Q. Okay. And what is your official title there?

15 A. Co-Executive Director.

16 Q. Now, could you tell us what you do there?

17 A. Uh-huh (**indicating affirmative**).

18 Q. What do you do?

19 A. Well, I provide oversight to the operation of the
20 Family Justice Center, which means that it's my job to make
21 sure that the clients that we serve and their children are
22 getting the best possible service that we can offer,
23 including a twenty-four hour, seven day a week shelter and
24 other services that we hope will help them.

25 I also am in charge of budget planning, financial

1 oversight, grant writing, acting as a spokesperson for the
2 operation and serving the -- at the Board's discretion.

3 Q. Okay. Now, can you tell me how many years you've
4 actually been working with domestic abuse for battered
5 women's syndrome victims.

6 A. My first job in this field I took in 1987, so I think
7 that makes twenty-seven years this year, and my job was as
8 the director of the Battered Women's Shelter in Greenville,
9 South Carolina.

10 Q. So twenty-seven years is a pretty extensive amount of
11 time in this field?

12 A. Right.

13 Q. Tell me what school you had to complete. Let's start
14 with your college degree. Where did you attend college and
15 what degree did you earn?

16 A. At the University of Georgia, and I got a degree in
17 Special Education, and went to the University of South
18 Carolina to get my Master's Degree in Social Work.

19 Q. Okay. And I know that you just said you had a
20 Master's Degree in Social Work. Is there any additional
21 licensing or anything that you had to get in order to
22 progress your career?

23 A. Yes. The State of South Carolina requires social
24 workers who are practicing directly with clients to have a
25 license. There are three levels of licensure in this state.

1 One is the LBSW, the LMSW, and the LISW. The LISW is the
2 highest level of licensure that you can achieve, and that's
3 my license.

4 Q. Okay. And, how in those -- in those -- that
5 training, that licensure program has allowed you additional
6 experience in domestic abuse and dealing with those victims,
7 as well as victims of the battered women's syndrome?

8 A. Yes. Yeah. That's many years of continuing
9 education and all kinds of workshops, and in order to
10 achieve licensure, you have to get a certain number of hours
11 of continuing education in this field in which you're
12 practicing, and then you have to take a test in order to
13 pass from one level to the other, and all of my work has
14 been done in domestic violence, sexual assault, and child
15 abuse.

16 Q. Okay. Now, the licensure program, and I want to ask
17 another question about that if you don't mind, ---

18 A. Uh-huh **(indicating affirmative)**.

19 Q. --- the licensure program, what specific training did
20 you have to get in order to receive that license?

21 A. Well, at each level, you have to complete a certain
22 number of hours of continuing education which are offered,
23 you know, in various venues around the country. The
24 National Coalition Against Domestic Violence and the
25 National Network to End Domestic Violence are in Washington,

1 D.C.

2 Some of my training was there, and I attended the
3 week-long training session for expert witnesses with
4 domestic violence at the University of Texas Law School.
5 That's been my most recent training, so I have a -- quite a
6 large folder of certificates from continuing education that
7 I could certainly offer the Court.

8 Q. Yes ma'am. Okay. Now, have you ever testified
9 before at a trial regarding either domestic abuse or the
10 battered women's syndrome?

11 A. Yes, I have.

12 Q. And can you tell me about how many times you've
13 testified?

14 A. Yes. I've testified in three Family Court cases
15 where I evaluated the situations at the time in whether
16 there had been domestic violence involved, and this would be
17 my sixth criminal case if I'm qualified today.

18 Q. So we're talking a total of nine times?

19 A. Yes.

20 Q. Okay. And how many times have you actually been
21 qualified as an expert?

22 A. Each of those nine times, and then I was asked to
23 assist in an evaluation that didn't end up in court three
24 different times, so those were the times when I would have
25 submitted my qualifications for the court, but I didn't

1 testify in those three cases.

2 Q. I understand.

3 MS. WILSON: The Court's indulgence for one second.

4 THE COURT: Yes ma'am.

5 MS. WILSON: Your Honor, at this time I would move to
6 have Ms. Vicki Bourus as an expert in domestic violence and
7 in battered women's syndrome.

8 THE COURT: All right.

9 Solicitor, do you wish to voir dire the witness as to
10 her qualifications or challenge the Defense's offer?

11 MR. GRAUSTEIN: I wish to voir dire and potentially
12 challenge, Your Honor.

13 THE COURT: All right. Very good. You may proceed.

14 MR. GRAUSTEIN: Thank you, Your Honor.

15 EXAMINATION BY MR. GRAUSTEIN:

16 Q. Ms. Bourus, do you hold any sort of medical degree?

17 A. No; no. I have a Master's in Social Work.

18 Q. Do you hold any sort of degree in Psychiatry?

19 A. No.

20 Q. Do you hold any sort of degree in Psychology.

21 A. No.

22 Q. Are you qualified by the State of South Carolina to
23 perform any sort of diagnosis for any sort of psychiatric
24 condition?

25 A. Yes. I can diagnose as a Master's level social

1 worker.. With a license, I can diagnose. I can't prescribe
2 medication.

3 **MR. GRAUSTEIN:** That's it, Your Honor.

4 **THE COURT:** All right, sir. Very good. Do you wish to
5 challenge the Defense's offer as an expert in the field of
6 domestic violence and battered women's syndrome?

7 **MR. GRAUSTEIN:** No, Your Honor.

8 **THE COURT:** All right. Very good.

9 I will qualify her to give her opinion.

10 You may proceed, ma'am.

11 **MS. WILSON:** Thank you, Your Honor.

12 **CONTINUING DIRECT-EXAMINATION BY MS. WILSON:**

13 Q. Ms. Bourus, can you please tell us what domestic
14 violence is, what it is?

15 A. Most people think of domestic violence as physical
16 abuse, you know, kind of a fist to the face, and that is
17 certainly a part of it, but domestic violence is really a
18 pattern of behaviors designed to control the victim, so if
19 you think about these relationships as ownership as opposed
20 to partnership, that's a pretty good way to describe it.

21 Some of those behaviors would include verbal and
22 emotional abuse, isolating the victim from friends and
23 family to cut off sources of support, creating a situation
24 where she is fearful of acting independently of him, using
25 what they call male privilege to dominate the household to

1 tell her what to do, to be the boss, so there's a whole
2 series of behaviors really designed, and that would also
3 include sexual abuse, the physical part of it, to control
4 the victim.

5 It's really not about anger. A lot of people think
6 of it that way, but it's more about ownership and control.

7 Q. Now, a lot of people have heard of battered spouse or
8 battered women's syndrome. What -- can you tell -- can you
9 explain what that is and how it fits in?

10 A. Yes. Battered women's syndrome is a diagnosis that
11 is actually a sub-set of what they call post-traumatic
12 stress disorder, and post-traumatic stress disorder is a
13 psychological response to continuing serious trauma, and so
14 we know that that diagnosis was developed during the Viet
15 Nam era.

16 As we saw soldiers coming home from war, they were
17 often diagnosed with post-traumatic stress disorder and
18 developed the symptoms that you see often that they suffer
19 from, from their exposure to the trauma of war.

20 Battered women's syndrome is very similar to post-
21 traumatic stress disorder because it is a sub-set of that
22 diagnosis, but the psychological symptoms develop in
23 response to a continuing threat within the home, family
24 violence.

25 Q. So is battered women's syndrome a syndrome that's

1 actually recognized in the state?

2 A. Yes. The State of South Carolina recognizes battered
3 women's syndrome as a defense.

4 Q. Can you tell us how you would go about evaluating a
5 case to see if that syndrome, battered women's syndrome, is
6 actually present, if there was domestic violence?

7 A. Usually I try to spend as much time as I can with the
8 client in the interviews in assessing for symptomology and
9 determining the history, and just as many hours as I can to
10 really know this person and know what their experience has
11 been.

12 I also spend a good bit of time reading the records,
13 whether it's law enforcement, medical records, coroner's
14 reports, whatever printed documents are given to me to
15 study, and then often I will be able as well to interview
16 additional individuals who may be relevant to the case,
17 previous attorneys, counselors from the past, neighbors or
18 friends, people that know the client and know the situation
19 she may have been in.

20 Q. How did you approach the evaluation of this case?

21 A. I spent seven hours with Vivian Schrader-Falls
22 interviewing her, taking her history, assessing her for
23 symptomology, and read the entire record, the medical
24 records, everything that was given to me, the law
25 enforcement records, the reports from the attorneys, and

1 then also interviewed seven additional individuals who had
2 some association with Ms. Falls over the years.

3 Q. And is that, is the quantity of, I guess, the
4 investigation that you've been able to do here, is that
5 typical of what you would normally have in a case or ---

6 A. I really -- I had more access to corroborating
7 witnesses and other folks that knew Ms. Falls than I usually
8 have, and then I had quite a long time -- seven hours is a
9 good amount of time to spend with a client, and I was able
10 to do that on this case, so I felt like it was more than
11 adequate.

12 Q. Now, after having spoken with Miss Vivian, have you
13 been able to form an opinion as to whether or not she
14 suffers from the battered women's syndrome?

15 A. Yes.

16 Q. And what is that opinion?

17 A. I do believe that she suffers battered women's
18 syndrome.

19 Q. Okay. Now, is it possible for individuals to be in
20 an abusive situation or relationship with someone who is
21 abusive to them and that person not abuse others? Is that
22 possible?

23 A. It's most likely. I would say I don't know that I
24 could say it was impossible. Typically a person who is
25 abusive of their partner is going to carry that behavior

1 from one relationship to another. I think there's a couple
2 of mitigating factors. One could be that if the
3 relationships, previous or after, are very brief, sometimes
4 the behaviors that we know as domestic violence develop over
5 time.

6 This is a problem that starts out with some
7 controlling behaviors, a high level of jealousy, moves to,
8 you know, the verbal abuse, the control- -- continuing
9 controlling behaviors, and ultimately moves into the
10 physical abuse, so if a relationship were very brief, it
11 might not be that that person would experience the same
12 level of abuse that another person might.

13 Again, I can't say it would be impossible, but I
14 would say it would be less likely. The other scenario is
15 that if physical violence is not used, the partner may not
16 identify the relationship as abusive. If what they
17 experience is more the controlling behaviors, the verbal,
18 the emotional, you know, they might not identify it as an
19 abusive relationship unless it was physical.

20 Q. Now, let's turn to the relationship that Miss Vivian
21 had with Mr. Hughes. Is it your opinion that he controlled
22 her?

23 A. Yes.

24 Q. And how do you -- how was that borne out?

25 A. Yeah. Well, generally speaking, she developed a real

1 significant fear of him over time and was very worried about
2 displeasing him or making him angry in fear of what he might
3 -- how he might retaliate. He did -- it was reported to me
4 and corroborated by a couple of folks I interviewed, that he
5 was physically threatening to her, abusive to her.

6 And one of the things in this case that is
7 particularly traumatic, I think, is the way in which he
8 would force sex, and he would force sex, a type of sex, that
9 was very uncomfortable for her and that she didn't enjoy and
10 didn't want, and when you have that kind of sexual abuse
11 going on, it's really about dominance. You know, I think he
12 was very determined in showing his authority, that he felt
13 he was in charge and that she should do what he said.

14 I think the other forms of abuse, the jealousy that
15 he had, that way that he would do the checking behaviors, he
16 would make sure, you know, instruct her to call him as soon
17 as she got wherever she was going, and would become very
18 agitated if he didn't -- if she didn't answer the phone
19 right away or call.

20 Over time, although in the early stages of the
21 relationship, he appeared to share her appreciation of the
22 faith life. Over time, that became a source of great
23 contention for him. He was very angry about it and felt
24 that, you know, this involvement that she had with her
25 church was taking him out of the center of her life, and

1 it's a -- it's not a rational way to approach things, but
2 that's the way an abusive person might see it.

3 Q. So, in other -- I guess to make sure I'm clear, the
4 behaviors that you're saying that were reported to you
5 basically show a controlling or an attempt or effort to
6 control?

7 A. Yes. If you -- if you think about it as a pattern of
8 behaviors as opposed to eliminating it down to physical
9 abuse, not to minimize that because that's the ultimate
10 control act, but there's so many other behaviors that are
11 designed to keep that person under control and to continue
12 to undermine their self-esteem and their confidence and
13 their ability to make a decision.

14 Q. Now, do you think that Miss Vivian was afraid of Mr.
15 Hughes?

16 A. Yes.

17 Q. And -- well, let me ask you this. What kind of abuse
18 had she been subjected to before that?

19 A. Uh-huh (**indicating affirmative**). You know, I've been
20 doing this work a long time, and I don't think I've ever
21 worked with a client that had suffered such a horrific
22 lifetime of abuse. Starting with her early childhood, she
23 was sexually and physically abused by her older brother from
24 the time she was four until she was twelve, and then she
25 married very young. She was only fourteen, and I believe

1 her husband was four, five, or six years older than she was,
2 and very, very difficult for a child that age to understand
3 the full implications of a commitment like marriage, and
4 that first relationship was very abusive physically, and I'm
5 imagining emotionally, and verbally, and very brutal
6 behaviors.

7 After that relationship, she married again. The
8 first marriage, I think, was to a man named Mr. Deering, and
9 then she married a man named John Jones, and he was even
10 more brutal than the first husband, and there's an awful lot
11 of corroboration by people that I interviewed in regard to
12 those relationships, but also in regard to Mr. Hughes.

13 And it seems counter-intuitive, it seems puzzling,
14 you know, that she would go from one abusive relationship to
15 another, but from a psychological point of view, see if I
16 can explain this, what happens over time is you begin to
17 develop a kind of a tolerance for intolerable behavior.

18 Now, John McCain, the man who ran for President years
19 ago was a prisoner of war, and he said that he had been
20 battered so badly as a prisoner of war that after about four
21 months, he developed a tolerance. He could actually handle
22 the battering, even the more severe battering, with grace,
23 that's the way he put it, than he could when he first went
24 there, so it's almost like you develop this tolerance for a
25 very familiar kind of behavior.

1 Battered women don't choose men or fall in love with
2 men because they're abusive. They are attracted to certain
3 characteristics that may indicate, you know, that there
4 could be abuse in the future, a very commanding presence, a
5 very kind of an in-charge person, a little bit of a
6 demeaning -- and sometimes that high level of jealousy feels
7 like love, but quite often the involvement with these men
8 comes very quickly.

9 I know just maybe weeks or maybe a month after she
10 began to date Tony Hughes, they were moving in together, you
11 know, and it was a very quick kind of a love at first sight,
12 but those are some of the signals that this may not be the
13 healthiest of relationships.

14 Q. So the fast escalation is usually symptomatic of some
15 problems, probably?

16 A. Yes, the quick involvement. If you go back to what I
17 said earlier about domestic violence being about ownership,
18 it's really important for that person to stake their claim
19 real quickly and kind of capture that person, and they can
20 be very, very charming, and very seductive, and very
21 appealing in those early stages, and it's very -- it can be
22 very hypnotic, and before you know it, you're pulled into
23 this relationship that then begins to be abusive.

24 Q. Okay. So what impact then do you think that the
25 battering or the abuse that she suffered in the previous

1 relationships had on Miss Vivian or in all of them?

2 A. Well, I think that overall her experience created a
3 great deal of self-blame. She lived with the shame of
4 feeling responsible, like it was something that she needed
5 to do differently, and this is very common in domestic
6 violence, you know, a lot of self-blame, just real
7 destructive to your self-confidence and your ability to
8 believe in yourself.

9 I'm imagining, too, that Ms. Falls has lived really
10 in almost a constant state of post-traumatic stress disorder
11 given her repetitive history with one brief change and that
12 was a marriage that was not abusive in the sense that I'm
13 talking about, but I think that it really destroyed her
14 ability to believe in herself and to make good decisions.

15 Q. What can you tell me about her mental state at the
16 time of the shooting?

17 A. My understanding is that, number one, she -- that the
18 previous thirty-six hours before the shooting, she'd had
19 very little sleep at all, and sleep deprivation itself can
20 be very -- if anybody has ever gone on a long distance truck
21 trip or, you know, been up for periods of time, it has a way
22 of affecting the clarity of your thoughts and things get
23 confusing and upsetting.

24 I think she was also highly anxious. It is my
25 understanding and my opinion that at that time she was very

1 much needing to extricate from this relationship. There had
2 been a couple of attempts and, you know, he -- she felt very
3 badly that if she were to leave him, he would be alone. We
4 call that misplaced loyalty in my business, is a high level
5 of loyalty to a person who has been very abusive towards
6 you.

7 And I want to talk just a little bit about that.
8 Battered women develop this perception of their partner as
9 kind of all powerful. They imagine that they're much more
10 all-seeing than they really are, so there's a belief that no
11 matter what I do, you know, this person is going to over-
12 power me, and yet she wanted very much to -- she wanted to
13 extricate from the relationship, but she wanted to do it so
14 that he wasn't going to be alone.

15 And it was at that time, you know, in her mind, if he
16 were involved with another woman, which she believed he was
17 and wanted to show that, wanted to prove that, that she
18 would be able to extricate from the relationship and he
19 would have another partner, and that felt better to her than
20 leaving with him alone.

21 Q. Okay. Now, you said there were -- had been a couple
22 of attempts to extricate herself. What attempts
23 specifically are you referring to?

24 A. Well, a suicide attempt in January is a way of
25 getting out. Battered women are highly likely -- they are

1 about twice as likely to attempt to commit suicide than a
2 member of the general population. Often it's because they
3 don't feel like there's any way out, that if they leave
4 there will be retaliation, that they might be hurt or
5 killed, and that's actually what happens.

6 Women who leave relationships like this are highly
7 prone to serious injury or death. In fact, their chances of
8 being killed after they leave the relationship escalate by
9 seventy-five times because often after women leave these
10 relationships where they are seriously injured or killed,
11 and so if there is any attempt -- if there's been any threat
12 to that, you know, if you leave -- you can't leave me, you
13 know, if I can't have you, nobody can have you, you know,
14 there's that fear, you know, of retaliation.

15 Q. Now, with all the time that you have spent
16 investigating this case and speaking to Miss Vivian, and
17 just trying to get an understanding about what was happening
18 here, have you been able to form an opinion as to Miss
19 Vivian's state at the time of the shooting?

20 A. Yes.

21 Q. And can you tell us what that opinion is?

22 A. Yes. I'm sorry I got a little side-tracked there. I
23 believe that she was highly anxious, very, very nervous,
24 fearful, again wanting to extricate from the relationship,
25 but terrified, you know, to do so, but moving ahead with it

1 anyway.

2 Q. Now, and I guess I'm asking for something of a
3 comparison here, but how would a victim of battered women's
4 syndrome respond to a threat of harm?

5 A. Let me use that to talk a little bit about the
6 symptoms of battered women's syndrome. One of the symptoms
7 that develops in an abusive relationship is called hyper-
8 vigilance, you know, kind of constantly on alert, aware of
9 any perceived threat of danger, and that was certainly a
10 part of her persona, you know, the flashbacks, the
11 nightmares, the sleep difficulties that result from hyper-
12 vigilance, the digestive disorders, the sleep problems,
13 cheerfulness, very, very hyper-emotional, lots of tears.

14 I mean, we -- even throughout the interviews that I
15 had with her, she was exhibiting these symptoms as we spoke.
16 It was very clear to me that she was suffering from battered
17 women's syndrome specifically under post-traumatic stress
18 disorder, and so any -- kind of being on alert all the time
19 to a perceived threat, and then if that threat is perceived
20 as reliable, you know, a kind of startled response, hyper-
21 arousal, you know, a tendency to immediately assume I'm in
22 danger.

23 Q. And I may have already asked this in a form, but I'm
24 going to re-ask it. Given that -- given your opinion that
25 Miss Vivian does have a battered women's syndrome, how would

1 you -- how would you state her perception at that time, at
2 the time of the shooting?

3 A. Yeah. I think that when Mr. Hughes came out of the
4 house, they had a conversation, and the conversation went
5 something like this. Don't quote me on that. It was
6 important that she confront him. She -- as I said, she was
7 working to extricate herself from the relationship, and when
8 she would accuse him of being with other women, he would lie
9 and he would somehow work his way out of that.

10 And on this occasion, she wanted to say it's very
11 clear, you can't lie about this. You know, you can't --
12 it's done. It's over. I'm okay with this, so be with her,
13 but you can't come back to my home and my bed, and that's
14 when he came towards her with the phrase, you know, who do
15 you think you are telling me what to do. That's when I
16 think her perception of danger and all of the red flags that
17 she had went flying for her.

18 Q. And given that information, have you been able to
19 form an opinion as to whether or not you think that Miss
20 Vivian intended to kill Tony Hughes?

21 A. No. I'd feel very confident to say no. In all of
22 the years -- and I think this is important to remember, that
23 she had been brutally battered, manipulated and controlled,
24 raped and beaten, she never raised a hand, or got a weapon,
25 or hurt anybody, which was so inconsistent with her history,

1 and if she wasn't going to respond violently to what already
2 had happened, it wouldn't make any sense at all to me that
3 she would respond violently on this occasion.

4 Q. But for that heightened sense of ---

5 A. Danger.

6 Q. --- danger?

7 A. Right, to herself.

8 **MS. WILSON:** The Court's indulgence one moment.

9 All right, Your Honor, I think that that -- we are
10 done. Thank you.

11 **THE COURT:** All right.

12 Cross examination.

13 **MR. GRAUSTEIN:** Thank you, Your Honor.

14 **CROSS-EXAMINATION BY MR. GRAUSTEIN:**

15 Q. Good afternoon, Ms. Bourus.

16 A. Good afternoon.

17 Q. All right. You said you met with the Defendant for a
18 total of seven hours?

19 A. Yes sir.

20 Q. How many meetings was that?

21 A. Three.

22 Q. Three?

23 A. Uh-huh (indicating affirmative).

24 Q. When did you first meet with her?

25 A. I can give you the date, April the 1st.

- 1 Q. April the 1st of what year?
- 2 A. This year.
- 3 Q. Of this year?
- 4 A. Uh-huh (indicating affirmative).
- 5 Q. Okay. A little over a month ago you had the first
- 6 meeting?
- 7 A. Yes.
- 8 Q. And this incident -- you're aware of this incident
- 9 that occurred on March 31st, 2012?
- 10 A. Yes.
- 11 Q. In your interviews did you talk about publications
- 12 she's been reading in the past two years?
- 13 A. No, we didn't talk about her -- well, other than her
- 14 involvement with her Bible study group.
- 15 Q. About any Internet searches she may have done?
- 16 A. She told me about his use of pornography.
- 17 Q. Well, I mean in the intervening time that she may
- 18 have conducted?
- 19 A. We didn't talk about Internet searches.
- 20 Q. Okay. All right. Now, I know you testified that you
- 21 don't think she intended to kill ---
- 22 A. No.
- 23 Q. --- Mr. Hughes, but the use of the battered spouse
- 24 syndrome, are you aware the use of battered spouse syndrome
- 25 as a self-defense in the matter -- in a self-defense

- 1 context?
- 2 A. As an accepted defense in South Carolina courts?
- 3 Q. Right.
- 4 A. Yes.
- 5 Q. And you're aware of that. I notice you didn't
- 6 testify that you believe this was self-defense? Do you
- 7 believe this was self-defense?
- 8 A. No. Only the people involved know what was in their
- 9 heart and mind at that moment. It is my opinion that she
- 10 felt threatened and that she had to act to keep herself from
- 11 being hurt.
- 12 Q. Okay.
- 13 A. I didn't use the term self-defense, but ---
- 14 Q. Okay.
- 15 A. --- she felt threatened.
- 16 Q. Now, you say you met with some other folks. I think
- 17 you said seven other folks?
- 18 A. Yes.
- 19 Q. Did any of those people corroborate any sort of
- 20 domestic violence perpetrated by Tony Hughes?
- 21 A. Yes.
- 22 Q. Okay. And who was that?
- 23 A. Vivian's great-aunt, her name is Ann Rich, ---
- 24 Q. Uh-huh (indicating affirmative).
- 25 A. --- reported to me that when Tony and Vivian had come

1 to visit, first of all that she felt she was very fidgety,
2 and nervous, and anxious, more so than Ann had ever seen her
3 before, and that at some point in time Tony became very
4 angry because he wanted Vivian to buy him a motorcycle.

5 This was a fairly common theme in their relationship,
6 him pushing her to buy things for him, and he said -- and
7 she said to him she didn't have the money at that point in
8 time and they got into an argument, and he grabbed Vivian's
9 arm and pressed his fingers into her arm and shook her, like
10 that, and said you will do what I say. And Ann saw the
11 bruises the next day, and they left there after that.

12 Q. Okay. Now, would you agree that in a battered --
13 woman battered person syndrome defense that we're looking
14 for some things that go into a prolonged and persistent
15 domestic -- pattern of domestic violence?

16 A. Prolonged and persistent in -- there's -- I've never
17 read anything that designated a certain amount of time. In
18 other words, it could happen after six months. It can
19 happen after two years. You know, the level of abuse that's
20 perpetrated against a person or the controlling behavior is
21 really -- determines the development of those symptoms.

22 Q. Okay. And again, we're talking here in the context
23 of justifying a homicide, correct?

24 A. Yes.

25 Q. Would you agree that if there's a domestic or a

1 battered woman syndrome a woman feels trapped and is unable
2 to escape?

3 A. Yes, and yet they continue to make attempts or to try
4 even though, you know, they're afraid, and oftentimes they
5 are hurt or followed. They will feel -- and that was the --
6 my reference back to her suicide attempt, almost a way to
7 say there's nothing else I can do until she moved out in
8 February, I think, and then was back and forth, and back and
9 forth. It's a very common pattern in abusive relationships.

10 Q. Okay. And you're aware throughout their -- this
11 relationship, she had her own separate ---

12 A. She kept her house, yes.

13 Q. Had her own separate car?

14 A. Uh-huh **(indicating affirmative)**.

15 Q. And she had her own income?

16 A. Uh-huh **(indicating affirmative)**.

17 Q. And one of the cruxes of the matter -- of the use of
18 the battered spouse defense is that the abused individual
19 feels there's no way out of this except to kill the ---

20 A. Right. Well, if you think about it as a
21 psychological or a mental state, I've worked with many women
22 who were quite well-resourced and felt that same sense of
23 entrapment. It has more to do with their fear of
24 retaliation, and the sadness that they often feel at losing
25 the relationship.

1 They're continually hoping after every incident that
2 the relationship is going to return to what it was in those
3 first kind of magical weeks, so it's not just women who are
4 unresourced who can't leave. I mean, there are women who,
5 as I said, have many resources, but find it extremely
6 difficult to extricate in any event.

7 And I don't know if you remember, but I said, you
8 know, after women leave, they are more likely to be killed
9 than at any other time in the relationship and I believe
10 that they know that.

11 Q. Okay. Well, let me ask you this. Can men be victims
12 of domestic violence?

13 A. Yes.

14 Q. Okay.

15 A. Yes.

16 Q. And you just said that it's most dangerous when you
17 end the relationship?

18 A. Yes.

19 Q. Okay.

20 A. South Carolina ranks first in the nation for numbers
21 of women killed by men.

22 Q. Okay. In this situation, we have a dead man?

23 A. Yes.

24 Q. All right. Now, you -- is there anybody else as far
25 as the physical abuse by Tony that other than the Defendant

1 that you received your information on?

2 A. Uh-huh (**indicating affirmative**). Let me check on --
3 with my notes here. I interviewed Nancy Hughes, who was the
4 therapist to Vivian earlier on, and she treated her for
5 early childhood sexual abuse in a counseling program.

6 When I talked to Nancy, she did not witness the
7 abuse, but she verified to me that she believed very
8 strongly in her conversations with Vivian that that had been
9 confirmed. Particularly, she was ---

10 Q. I'm sorry. I'm talking about between Tony Hughes
11 and ---

12 A. Right.

13 Q. Okay.

14 A. Right. That's -- that's who we talked about, ---

15 Q. Okay.

16 A. --- Tony Hughes, because apparently after the
17 treatment, Vivian continued to stay in touch with her
18 counselor periodically, and Nancy was very concerned at
19 Vivian's level of fear of Tony. She was particularly
20 disturbed by what Vivian reported in terms of the sexual
21 abuse, and I'm just going to be honest. It was specifically
22 forced anal sex. That's what -- one of the tactics that
23 Tony used to subdue her and to dominate her, and ---

24 Q. According to the Defendant?

25 A. According to the Defendant and verified by her

1 counselor.

2 Q. Who -- where did she get her information from?

3 A. From Vivian.

4 Q. Okay. So according to the Defendant?

5 A. Yeah, right.

6 Q. And anybody else?

7 A. Let me see if there's anybody else that talked about
8 -- I believe Beverly Saylor is here, so I'm not going to
9 speak on her behalf.

10 Q. Okay.

11 A. She's -- I think she's going to testify. The rest of
12 the corroboration had to do with these folks observing Tony
13 and Vivian together and being very aware of Vivian's fear of
14 him, but didn't report actually witnessing the domestic
15 violence except for Ann Rich.

16 Q. Okay. Now, did you interview or have any meetings
17 with Tony Hughes' family?

18 A. No.

19 Q. Did you have any meetings or interviews with Tony
20 Hughes' former girlfriends or wives?

21 A. No.

22 Q. Now, you said that this sort of behavior develops
23 over time?

24 A. It can be weeks, or it can be days, or months, or
25 even years, but it does tend to escalate over time.

1 Q. Okay. And you say that it's something -- well, would
2 you agree that it's not something that just magically starts
3 in a forty-six year old person? Would there be a history?

4 A. Most often, yes.

5 Q. Okay. So -- and this was by all accounts a very
6 fast-moving, short relationship? It lasted less than a
7 year, correct?

8 A. I think it was just at a year, yeah.

9 Q. Well, the other folks' testimony speak for itself on
10 that, but at most, it was a year, correct, ---

11 A. Yeah.

12 Q. --- at most?

13 A. That's my understanding, yes.

14 Q. Okay. And let me ask you a hypothetical. If you
15 were to talk -- interview somebody who Tony had lived with
16 for multiple years and had not experienced any sort of
17 domestic violence, would that alter your opinion at all?

18 A. Not in regard to this case, no. As I said, I think
19 that's possible. I would have to have a lot more
20 information.

21 Q. Okay. Fair enough.

22 **MR. GRAUSTEIN:** The Court's indulgence.

23 **THE COURT:** Yes sir.

24 Q. Did you interview the Defendant's adopted children?

25 A. Her daughters ---

1 Q. Her adopted children that were living with her at the
2 time?

3 A. No, I didn't.

4 **MR. GRAUSTEIN:** I have nothing further.

5 **THE COURT:** All right.

6 Any redirect?

7 **MS. WILSON:** Just a few questions, Your Honor.

8 **REDIRECT-EXAMINATION BY MS. WILSON:**

9 Q. Ms. Bourus, I just ask you this. Do you know what
10 the legal definition of self-defense is?

11 A. I couldn't repeat it to you, no.

12 Q. You're not an attorney, are you?

13 A. No.

14 Q. And as far as -- I think you -- you said you didn't
15 want to speak for Ms. Saylors, but certainly you spoke with
16 her in preparing for today, correct?

17 A. Yes.

18 Q. And you spoke to her about what?

19 A. Her knowledge of the relationship that Vivian had
20 with Tony Hughes.

21 Q. So that played a part in your opinion that you have
22 here today, correct?

23 A. Yes.

24 Q. And my follow-up question for you would be is it
25 normal for battered women to be battered in front of bunches

1 of people or is it normal for it to be something that is
2 behind closed doors?

3 A. Very, very uncommon for it to be publicly displayed.
4 What we know about that is that abusers who will take the
5 liberty of abusing their partner in public are much more
6 dangerous because they've taken it outside, but ninety-five
7 -- say, ninety-five percent of the time it happens behind
8 closed doors. They typically won't behave that way in front
9 of anybody except their partner.

10 Q. I'm sorry?

11 A. Except their partner..

12 Q. All right.

13 MS. WILSON: No further questions, Your Honor.

14 THE COURT: Anything on those particular questions just
15 asked?

16 MR. GRAUSTEIN: No, Your Honor.

17 THE COURT: All right.

18 Do you wish this witness to be excused?

19 MS. WILSON: Yes sir, Your Honor. Thank you.

20 THE COURT: Any objection?

21 MR. GRAUSTEIN: No, Your Honor.

22 THE COURT: All right.

23 Ma'am, you are released from your subpoena and may go
24 back to your regular activities.

25 Your next witness.

1 **MR. FOX:** We would call Beverly Saylor, Your Honor.

2 **THE COURT:** All right.

3 **BEVERLY SAYLOR,** being first duly sworn,
4 testifies as follows:

5 **THE DEPUTY CLERK:** Please state your full name and
6 spell your last name.

7 **MS. SAYLOR:** My full name is Beverly K. Saylor. My
8 last name is S-A-Y-L-O-R..

9 **DIRECT-EXAMINATION BY MR. FOX:**

10 Q. Ms. Saylor, where do you live?

11 A. I live in Shelby, North Carolina.

12 Q. And do you know Ms. Vivian Falls?

13 A. Yes, I do.

14 Q. How?

15 A. She is my cousin.

16 Q. And do you communicate with her or stay in touch with
17 her?

18 A. Yes, I do.

19 Q. And how often would you say you speak or see her?

20 A. Very often.

21 Q. Okay. Was that the case back in 2012 -- 2011, 2012?

22 A. Yes. At one point in time it got to where we
23 couldn't get to talk a lot because of her relationship with
24 Mr. Hughes, you know, but we did speak, you know. We used
25 to call every day and talk hours and hours at a time, you

1 know.

2 Q. Now, was there ever a time when you became aware that
3 she attempted to overdose or had taken too many Valium?

4 A. I got a phone call between a quarter to three and
5 three, and she was overdosing. She said she couldn't take
6 it anymore, she couldn't take the abuse anymore, and I
7 talked with her and I spoke with Mr. Hughes.

8 Q. What was your conversation with Mr. Hughes?

9 A. I asked Mr. Hughes how many had she took, I needed
10 the address to call 911, and he said that he -- that she
11 would be fine, for her to go to bed, and that he had to work
12 tomorrow at three o'clock, and then I was hung up on.

13 Q. Did you actually call 911?

14 A. I asked for the address so I could call 911 ---

15 Q. And he refused?

16 A. Yes sir. I called back. We have caller I.D. I
17 called back, and I don't think I got a answer the first
18 time, but I did the second time, and he said she just needs
19 to go to bed and she'll be fine, you know. And I asked him
20 do you have the other medicine, and he said, well, she can't
21 get it, you know, but I said can I have the address to call
22 911, and I had no way of finding out what the address
23 was ---

24 MR. FOX: Thank you. Please ---

25 A. --- because I was called on a cell phone and it was

1 cutting in and out because they were at his house, and also
2 her youngest adopted grandson was there, too. He was in the
3 bed.

4 **MR. FOX:** Thank you. Please answer any questions the
5 Solicitor has for you.

6 **THE COURT:** All right.

7 Cross examination.

8 **CROSS-EXAMINATION BY MR. GRAUSTEIN:**

9 Q. Yes ma'am. So you were talking -- calling -- or
10 talking to her from Shelby, North Carolina?

11 A. Yes sir.

12 Q. How far away is Shelby from here?

13 A. About two sixty -- two hundred and sixty miles.

14 Q. Okay.

15 A. So roughly in there somewhere.

16 Q. So you believe that you were able to better determine
17 the medical needs of the Defendant from two hundred and
18 sixty miles away than somebody who was standing in the room
19 with her?

20 A. Well, he -- he admitted that she had took a lot, but
21 he said if she went to bed, she would sleep them off.

22 Q. Okay. And that was his evaluation, and you were
23 making yours from two hundred and sixty miles away, correct?

24 A. Yeah, but if somebody has stated that they can't
25 stand life anymore and wants to die, sir, that means it's a

1 suicide attempt.

2 **MR. GRAUSTEIN:** Thank you.

3 A. I used to work for Mental Health, and I am an abused
4 person myself for four years.

5 **MR. GRAUSTEIN:** Objection, Your Honor.

6 **THE COURT:** Sustained. It's not part of this case.
7 Any redirect?

8 **MR. FOX:** Just one, Your Honor.

9 **REDIRECT-EXAMINATION BY MR. FOX:**

10 Q. You had a chance to speak to Vivian on the phone,
11 correct?

12 A. Yes, I did.

13 Q. And you had a chance not only to hear her tell you
14 that she couldn't go on, but to hear her demeanor and her
15 state?

16 A. She made the fact to me that he was mean to her, and
17 then right after that, the phone got disconnected.

18 **MR. FOX:** Thank you, ma'am.

19 **THE COURT:** Anything else, Solicitor?

20 **MR. GRAUSTEIN:** No, Your Honor.

21 **THE COURT:** You may step down, ma'am.

22 Further witnesses by the Defense?

23 **MR. FOX:** No, Your Honor. The Defense rests.

24 **THE COURT:** All right. Very good.

25 Reply testimony by the State?

1 **MR. GRAUSTEIN:** If I could have just a moment, Your
2 Honor?

3 **THE COURT:** Yes sir.

4 **MR. GRAUSTEIN:** Thank you..

5 Your Honor, the State would have two reply witnesses.

6 **THE COURT:** All right, sir. Do you wish to call one of
7 them, please?

8 **MR. GRAUSTEIN:** Yes. The State calls Allison Goss.

9 **THE COURT:** All right.

10 Please come around to be sworn, ma'am. Just meet the
11 Clerk right over here, please.

12 **ALLISON FELICIA GOSS,** being first duly sworn,
13 testifies as follows:

14 **THE DEPUTY CLERK:** Please state your full name and
15 spell your last name.

16 **MS. GAUSE:** Allison Felicia Goss. G-O-S-S is how my
17 last name is spelled.

18 **THE COURT:** Go ahead, Solicitor.

19 **MR. GRAUSTEIN:** Thank you, Your Honor.

20 **DIRECT-EXAMINATION BY MR. GRAUSTEIN:**

21 Q. Ms. Goss, did you know Tony Hughes?

22 A. Yes, I did.

23 Q. How did you know him?

24 A. He was my boyfriend for thirteen years and the father
25 of my son.

1 Q. Okay. When did you -- when did you and him start
2 going out, start dating?

3 A. Around 1993.

4 Q. Okay. And you said you were boyfriend and girlfriend
5 for thirteen years, was it?

6 A. Yes.

7 Q. Did you live together any of those years?

8 A. Yes, approximately seven or eight of those years.

9 Q. Okay, for about seven or eight years, y'all lived
10 together. During the thirteen years y'all went out, were
11 you ever physically assaulted by Tony Hughes?

12 A. Never.

13 Q. Did he ever control you so that you couldn't go where
14 you wanted to go?

15 A. Never.

16 Q. Did he prevent you from seeing your friends?

17 A. Never.

18 Q. Did he prevent you from seeing your family?

19 A. Never.

20 Q. And did he ever intimidate you or force you to do
21 something you did not want to do?

22 A. Never.

23 Q. Okay.

24 MR. GRAUSTEIN: Please answer any questions the Defense
25 may have.

1 **THE COURT:** Cross examination.
2 **CROSS-EXAMINATION BY MS. WILSON:**
3 Q. It's Ms. Goss, correct?
4 A. Yes.
5 Q. Ms. Goss, just a couple of quick questions. You had
6 family and resources nearby?
7 A. Yes.
8 Q. And was there -- there was never any opportunity, I
9 guess, then for him to try to bully you because you had
10 family and resources around?
11 A. They were around, but they didn't live with us,
12 so ...
13 Q. You certainly would have had back-up if you needed
14 it, correct?
15 A. Myself. They didn't live with us.
16 Q. But they were in town?
17 A. Yes.
18 Q. So you would have had back-up if you needed it,
19 correct?
20 A. Yes.
21 Q. Okay.
22 **MS. WILSON:** No further questions, Your Honor.
23 **THE COURT:** Any redirect?
24 **REDIRECT-EXAMINATION BY MR. GRAUSTEIN:**
25 Q. Did you ever need back-up?

1 A. No.

2 MR. GRAUSTEIN: Thank you.

3 THE COURT: All right.

4 Ma'am, you may step down. Thank you.

5 Your next witness, Solicitor.

6 MR. GRAUSTEIN: Yes. We would call Lisa Seabrook.

7 THE COURT: All right. Please come around, ma'am.

8 LISA DENISE SEABROOK, being first duly sworn,

9 testifies as follows:

10 THE DEPUTY CLERK: Please state your full name and

11 spell your last name.

12 MS. SEABROOK: My full name is Lisa Denise Seabrook,

13 S-E-A-B-R-O-O-K.

14 THE COURT: All right, Solicitor.

15 DIRECT-EXAMINATION BY MR. GRAUSTEIN:

16 Q. Ms. Seabrook, where do you live?

17 A. I live in Marion, South Carolina.

18 Q. And are you currently employed?

19 A. Yes, sir, I am.

20 Q. Where do you work?

21 A. The South Carolina Department of Corrections. I'm a

22 parole officer.

23 Q. All right. And did you know Tony Hughes?

24 A. Yes, I did.

25 Q. How did you know Tony?

1 A. Well, I met Tony in the late nineties when he worked
2 with Bobby Gerald Ford. He attempted to take me out. I
3 think I was a little too fast for him, and it never -- never
4 quite hooked up, and I met Tony again when Mr. James had his
5 accident, and I went to the E.R. with a lady friend of mine,
6 Ms. Cora Lee Samuels, and I spotted him out the window, and
7 I was like who is that, so they told me who it was and I
8 started flirting with him, and, you know, it started from
9 there again.

10 Q. Okay. Did you end up dating?

11 A. Yes.

12 Q. Okay. How long did y'all date?

13 A. Probably about five months.

14 Q. All right.

15 A. Uh-huh (**indicating affirmative**).

16 Q. During that time, was he ever phys- -- did he ever
17 physically assault you in any way?

18 A. No sir.

19 Q. Did he ever threaten you at all?

20 A. No sir.

21 Q. Did he ever demean you?

22 A. No sir.

23 Q. Did he ever prevent you from going where you wanted
24 to go?

25 A. No sir.

1 Q. Did he ever force you or intimidate you to do
2 anything you did not want to do?

3 A. No sir.

4 **MR. GRAUSTEIN:** Thank you. Answer any questions that
5 the Defense may have.

6 **THE COURT:** Cross examination.

7 **MS. WILSON:** Thank you, Your Honor.

8 **CROSS-EXAMINATION BY MS. WILSON:**

9 Q. Ms. Seabrook, ---

10 A. Yes.

11 Q. --- you've never been a victim of abuse, have you?

12 A. No.

13 Q. And you don't have any first-hand knowledge or
14 information about Miss Vivian's relationship with Tony
15 Hughes in this case?

16 A. No, I don't.

17 Q. And so you would not be able to speak as to whether
18 or not there was any abuse that happened in that
19 relationship, correct?

20 A. In his relationship with ---

21 Q. With -- with Miss Vivian?

22 A. No, I cannot.

23 Q. And do you know all of Mr. Hughes' previous
24 girlfriends?

25 A. No, I don't.

1 **MS. WILSON:** Okay. No further questions, Your Honor.

2 **THE COURT:** Any redirect?

3 **MR. GRAUSTEIN:** No, Your Honor.

4 **THE COURT:** All right.

5 You may step down, ma'am.

6 Further witnesses by the State?

7 **MR. GRAUSTEIN:** No further witnesses, Your Honor.

8 **THE COURT:** All right. Very good.

9 All right, ladies and gentlemen, where we are in this
10 particular case is we have now heard all of the evidence to
11 be presented in this particular matter. Obviously that does
12 not end the case. What remains would be the closing
13 arguments of the attorneys, as well as the Court's charge on
14 the law, and then the submission to you of the case for your
15 deliberations and your unanimous decision.

16 At this point in time, at the end of the evidentiary
17 portion of the trial, there are certain matters that the
18 Court takes up with the attorneys outside the presence of
19 the jury. Further, I must review with them the charge on
20 the law so that they know exactly what law it is that the
21 Court is going to charge the jury and to receive their
22 comments on that.

23 Before we could give you the case, you would probably
24 be sitting and waiting on us, I don't know, an hour, hour
25 and a half, something like that. Then you would have the

1 closing arguments, then the charge on the law, and then the
2 submission of the case to you for your deliberations for
3 however long that took until you reached a unanimous
4 decision, and you would be with us until that happened.

5 With that, I do not intend to put you through that
6 tonight. What we are going to do is I will take care of all
7 of the legal matters and the discussion of the law with the
8 attorneys today. We will go forward with the closing
9 arguments, then the charge on the law tomorrow morning, and
10 then I will submit the case to you for your deliberations
11 and your unanimous decision in this particular matter.

12 Again, you decide this case solely and completely on
13 the facts and evidence you hear in the courtroom. You may
14 not conduct any kind of research, investigation on your own,
15 that means looking up anything on the Internet, talking with
16 any of your friends about anything. You may not do that.
17 That is improper. You have to decide the case only on the
18 evidence presented in the courtroom and the Court's
19 instructions of the law to you.

20 Don't talk about the case. Don't allow anybody to talk
21 to you about it. You will have all the time that you deem
22 necessary or proper to talk about this case when I submit it
23 to you for your deliberations and your unanimous decision.
24 So with that, I am going to excuse you and I'm going to ask
25 that -- we'll start again at 9:30 in the morning.

1 There are some other unrelated matters on other
2 criminal cases that I have to take care of in the morning.
3 Y'all report downstairs to the jury assembly room 9:15.
4 They will bring you upstairs. Again, the Clerk's Office
5 will have something for you, and we'll get started at 9:30
6 tomorrow morning, all right? Thank you very much.

7 Everyone else remain seated, please.

8 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
9 **JURY.)**

10 **THE COURT:** All right. Motions by the Defense.

11 **MR. FOX:** Yes, Your Honor. At this time we would renew
12 our motion for a directed verdict on the charge of murder.
13 I believe now we've had a conclusion of all evidence,
14 including Defense witnesses, the State has not proven all
15 the elements of murder.

16 There's certainly been a killing of a person, but
17 they've not proven beyond a reasonable doubt malice
18 aforethought. There are no eye witnesses to this. The only
19 testimony about the actual shooting, people heard, saw
20 after, but the only testimony that's been -- the jury has
21 heard has been from Ms. Schrader-Falls who says that this
22 was in self-defense. There's been nothing to contradict
23 that, that malice was not there, that she had -- this was a
24 justifiable killing.

25 You also had the testimony uncontroverted from Ms.

1 Vicki Bourus this afternoon who said that in her opinion as
2 an expert in battered spouse syndrome, and domestic violence
3 more generally, that it was her opinion that in fact at the
4 time of the shooting very specifically Ms. Falls did not
5 have the intent to commit murder and was responding out of
6 fear, which was also the -- reacting out of fear, which was
7 also the testimony from Ms. Falls.

8 There is no other testimony in the record that
9 contradicts that. You have witnesses who heard shots and
10 looked out to see things, but you had nobody else who
11 witnessed this, and we would submit the State has not
12 carried its burden of proof and request a directed verdict.

13 **THE COURT:** Solicitor.

14 **MR. GRAUSTEIN:** Yes, Your Honor. The jury could
15 certainly find malice in that the Defendant did go over to
16 the house and called the victim out prior to shooting him in
17 this case, and she did have a weapon on her person at the
18 time of this incident, which the State believes that the
19 fact that she went over there negates any self-defense
20 argument to begin with.

21 Also, the witnesses can be believed or not believed.
22 That includes their expert. That includes the Defendant in
23 this case. There was ample evidence for the jury to infer
24 malice from which -- those who have already testified, as
25 well as the Defendant's testimony as to how the incident

1 occurred.

2 **THE COURT:** All right. Thank you.

3 I'm not going to go over the directed verdict standard
4 again, the legal standard. I set that forth at the end of
5 the State's case and the Defense's motion for a directed
6 verdict at that point in time.

7 I appreciate your characterizations of the evidence. I
8 would say that I disagree with some of your conclusions
9 about direct evidence. Although there is not a witness who
10 testified for the State that observed all of the
11 proceedings, there were three witnesses who testified to
12 portions of the occurrences that were taking place in their
13 presence, and I'm not going over the entirety of the
14 testimony. I'm just going to pick out a few points.

15 I'm relying again on the totality of all of the facts
16 and evidence presented in this case to make my decision, but
17 you had Ms. Diane Movsky, and she indicated that she said
18 she saw the last shot, that the victim was going down and
19 that the Defendant shot.

20 You then also had testimony from Mr. Ryan McCarty. Mr.
21 McCarty testified that he saw her pointing the gun at him,
22 holding a gun, he heard the shots, the Defendant was in an
23 upright position leaning against the car. He then hears
24 another shot, and the Defendant is on the ground next to the
25 car. He said he heard the discussion or parts of the

1 discussions with them, and he talked about his observance of
2 what he saw in his presence.

3 You had the testimony also of -- let me find it -- and
4 this was presented by the Defense, Ms. Candace Taylor, who
5 indicated that she observed the argument or discussion that
6 there was a disagreement, it appeared that they were not too
7 happy with each other, but the Defendant was the one that
8 was irritated, and the victim basically had a blank face and
9 did not appear to be arguing or irritated at the situation.
10 She did say she saw -- and that the Defendant had a weapon,
11 and she heard the shots and heard the Defendant saying that
12 she was sorry that she had shot him.

13 You take that with the other evidence that is presented
14 and certainly that evidence can be construed as malice.
15 There's testimony, whether it's believed or not, that the
16 relationship had ended and she deliberately went to a
17 residence that she knew where the victim's other woman was.
18 She saw his vehicle. She went there deliberately. She got
19 her gun, went to the residence with her gun, and clearly
20 shot and killed the victim.

21 Again, with all the other evidence, the jury could
22 certainly believe that there was malice by the Defendant in
23 committing this crime, and could convict her of the crime of
24 murder.

25 Again, as I indicated earlier, my standard again is not

1 judging credibility and believability. I'm looking at the
2 weight of the evidence, and again, if there's any direct
3 evidence or substantial circumstantial evidence reasonably
4 tending to prove the guilt of the accused, the case properly
5 goes to the jury. Therefore, your motion for a directed
6 verdict is respectfully denied.

7 Further motions from the Defense?

8 **MR. FOX:** None, Your Honor.

9 **THE COURT:** All right. We'll take a short break and
10 then we'll come back and we'll talk about the charge that
11 the Court intends to give the jury in this particular
12 matter. All right, thank you very much.

13 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE**
14 **THE PRESENCE OF THE JURY.)**

15 **THE COURT:** All right. Before we get started, any
16 special requests of the charge from the State?

17 **MR. GRAUSTEIN:** No, Your Honor.

18 **THE COURT:** From the Defense?

19 **MR. FOX:** I think in terms of obviously in terms of
20 murder, one, Judge, we would request that you charge
21 voluntary manslaughter, the lesser included, as well as
22 self-defense. I believe the testimony of Ms. Falls raised a
23 self-defense issue. It would be a jury question as to
24 whether she meets -- whether those elements are met, but I
25 believe her testimony, particularly when coupled with the

1 opinion of Ms. Bourus that she was, in fact, acting or
2 reacting in fear to the actions of Mr. Hughes, that self-
3 defense is on the table.

4 I think State v. Belcher indicates that it is
5 appropriate to charge both, to charge both manslaughter and
6 self-defense where there is an issue of an act that would
7 mitigate or excuse the homicide, which self-defense would
8 be, and, of course, battered women's syndrome plays into all
9 that, but we believe that under Belcher we're entitled ---

10 **THE COURT:** Is there any objection to the lesser
11 included of voluntary manslaughter or ---

12 **MR. GRAUSTEIN:** Defense counsel stated that there is
13 testimony that the Defendant was reacting to -- or at least
14 according to her testimony was reacting to -- was reacting
15 to the conduct of Mr. Hughes, but that conduct was brought
16 on by the Defendant's own conduct, which would negate a
17 self-defense matter in this case, and understanding it's a
18 jury question, there's uncontroverted testimony by the
19 Defendant, and not to challenge in any way, but she did go
20 over and did bring on this confrontation with the victim in
21 the case.

22 **MR. FOX:** That -- that, Your Honor, would be -- the
23 essence of the jury question is whether she -- no question
24 she went there. The issue would be when did the difficulty
25 arise. Was it the fact of her going over there or was it

1 when he came at her ---

2 **THE COURT:** All right. Well, I appreciate that. My
3 intention is to submit to the jury the charge of murder and
4 the lesser included offense of voluntary manslaughter. I
5 also intend to charge self-defense. Let me just very
6 briefly go over my intentions here.

7 Obviously we'll talk to the jury about the things that
8 we always talk to a jury about in any type of criminal case,
9 credibility, believability, their job as the judges of the
10 facts, direct and circumstantial evidence.

11 Expert witnesses, that they can -- that they consider
12 the testimony of the expert witnesses just like they do all
13 the other testimony. They give it the weight they decide it
14 should have. Just because the Court qualified somebody to
15 give their opinion doesn't give it any special weight or
16 consideration.

17 The presumption of innocence, talk to them about that.
18 Reasonable doubt, the kind of doubt that would cause a
19 reasonable person to hesitate to act. Obviously, intend to
20 charge the offense of murder to them.

21 I do not intend to talk to the jury about things that
22 we might in certain cases talk to them about, and that is
23 the manner in which malice might be shown to exist, that is
24 either express or implied. I am not going to charge the
25 jury express or implied malice. I am just going to define

1 malice to them, but I will not break it down to express or
2 inferred.

3 Obviously, I will charge to the jury voluntary
4 manslaughter as a lesser included offense, and the charge
5 about greater or lesser offenses, that if the jury has a
6 reasonable doubt whether the Defendant is guilty of the
7 greater or lesser offense, it is their duty to resolve that
8 doubt in favor of the Defendant and find them guilty of the
9 lesser offense if that is their view of the evidence and it
10 has been proven to them beyond a reasonable doubt.

11 I also intend to charge self-defense to the jury. In
12 that, obviously, I will talk to them about the different
13 parameters of self-defense, the very first one being without
14 fault. I will talk to them about the battered person
15 syndrome, another element of self-defense, imminent danger,
16 the right to act on appearances, again how that might be
17 interpreted under the battered person's syndrome, words
18 accompanied by hostile acts, words accompanied by hostile
19 acts may, depending on the circumstances, establish self-
20 defense, prior difficulties.

21 Talk to them about size and age, the prior violence by
22 the victim, any threats made by the victim, or again,
23 another element, no other way to avoid danger, increased
24 risk of harm, the Defendant had no duty to retreat if by
25 doing so the danger of being killed or suffering serious

1 bodily injury would increase, continuing until the threat of
2 harm is ended, and that would be my intention regarding the
3 charge.

4 Is there something in addition to that that the State
5 would request?

6 **MR. GRAUSTEIN:** No, Your Honor.

7 **THE COURT:** Would the Defense request anything in
8 addition?

9 **MR. FOX:** Your Honor, I know you're going to talk about
10 battered woman's syndrome in connection to how it fits with
11 self-defense. I would request that you charge 17-23-170(A),
12 which talks about evidence that considerably lays out the
13 battered spouse syndrome is admissible in a criminal action
14 on the issue of whether the actor lawfully acted in self-
15 defense.

16 **THE COURT:** All right. Hold on one second.

17 **MR. FOX:** Yes sir.

18 **THE COURT:** Tell me again the statute. I'm sorry.

19 **MR. FOX:** 17-23-170. It's really just the first full
20 sentence in Section (A). The rest, I don't think, applies.

21 **THE COURT:** All right. Hold on one second.

22 You're talking about this sentence so I'm just -- so
23 I'm clear about what it is you're asking me to charge,
24 evidence that the actor was suffering from the battered
25 spouse syndrome is admissible in a criminal action on the

1 issue of whether the actor lawfully acted in self-defense,
2 defense of another, defense of necessity, or defense of
3 duress. Is that what you're asking me to charge?

4 **MR. FOX:** I am, and, Your Honor, actually I would like
5 the next sentence also for this reason. The next sentence
6 says this section does not preclude the admission of
7 testimony on battered spouse syndrome in other criminal
8 actions. I would argue that the jury can consider self-
9 defense. They may find it doesn't meet self-defense. I
10 don't think that means they can't consider battered spouse
11 syndrome in the context of murder or manslaughter
12 specifically on the issue of intent.

13 We've had testimony from both Ms. Schrader-Falls and
14 from Ms. Bourus that because of battered women's syndrome,
15 she acted in fear, and in the opinion of the expert, she,
16 therefore, did not have the requisite malice or intent to
17 kill, which would be known as murder, so I'd like the jury
18 to know that battered woman's syndrome isn't limited just to
19 situations of self-defense. It's certainly applicable there
20 in that second sentence of Section (A), indicates that it's
21 applicable in other criminal actions as well.

22 **THE COURT:** Solicitor.

23 **MR. GRAUSTEIN:** And, Your Honor, with regard to self-
24 defense, I think it would be redundant, of course, with that
25 first sentence. Of course the evidence is before the jury

1 when you tell them, hey, the evidence of battered spouse
2 being admissible would just be bringing -- would be saying
3 something that's already obvious and it would just bring a
4 second charge for the -- for the same defense.

5 **THE COURT:** All right.

6 I don't think that the other actions -- I think I
7 actually believe that is something that can't be used in an
8 offensive manner, but I don't think that -- I think as far
9 as the charging of the jury -- to charge them a lesser
10 included offense, if they find that, I don't think -- I
11 think using battered spouse again may be actually going with
12 diminished capacity situation instead of -- I think the --
13 with the clearer sentence, the first sentence of it can be
14 used as admissible with regard to self-defense.

15 **THE COURT:** All right, sir. The -- I take Section 17-
16 23-170 to be instructive to the Court, indicating that
17 battered spouse's -- battered spouse syndrome is admissible.
18 I have already allowed it in this case. I have already
19 admitted it. To charge that to them is to give undue
20 influence to the jury in emphasizing something that has
21 already happened.

22 I will explain to them the portions of the -- or an
23 explanation of battered spouse and how it can be applicable,
24 and again, it says the section does not preclude admission
25 of testimony in other criminal actions, and obviously I have

1 allowed it to be presented, so I find this to be more
2 instructive to the Court rather than something that you
3 would charge to a jury.

4 Now, you did raise something in your statement to me
5 that I might consider doing and that is a charge on intent,
6 and I think that might be appropriate in this context based
7 upon the testimony as presented in this case, and my
8 intention probably would be to -- let me just kind of go
9 over briefly with you what I would -- in order to establish
10 criminal liability, criminal intent is required. Criminal
11 intent must be proven by the State beyond a reasonable
12 doubt.

13 It's always a matter that must be determined by the
14 jury from the circumstances surrounding the situation, there
15 being no way to prove intent to a mathematical certainty.
16 Intent can be established in the same way as any other fact
17 by taking into consideration the acts of the parties and all
18 the facts and circumstances of the case. It's a mental
19 state, a conscious wrongdoing, and it's up to the jury to
20 determine what the Defendant intended to do based on the
21 circumstances shown to have existed.

22 If you so choose, Mr. Fox, I would include that in the
23 charge to the jury.

24 **MR. FOX:** Yes, Your Honor, we would request it.

25 **THE COURT:** All right. Very good. I will certainly do

1 that.

2 All right. Anything else from the Defense?

3 **MR. FOX:** No, Your Honor.

4 **THE COURT:** All right. Very good. All right, so with
5 that, now I'm not intending to establish time limits here
6 other than, you know, obviously if you grossly exceed an
7 amount of time I think is appropriate, but I would just ask
8 you to give due consideration to the jury in your closing
9 arguments. Do what you have to do, but not to go overboard
10 in the length of time that you talk to the jury.

11 In this particular matter, obviously the Defense
12 presented a defense, and so, Mr. Fox, you would present your
13 argument first and the State would have the final argument.

14 The verdict form, you are probably familiar with, you
15 know, the verdict form that the Court prepares, but
16 basically, you know, it just has the caption of the case and
17 it has, you know, on it, on the charge of murder, we, the
18 jury, by unanimous consent find the Defendant, Vivian Lynn
19 Schrader-Falls, two choices, not guilty or guilty, and a
20 note down at the bottom, if you find the Defendant not
21 guilty of murder, proceed to count two, voluntary
22 manslaughter. If you find the Defendant guilty, obviously
23 you notify the bailiff.

24 The second one, voluntary manslaughter, again, is the
25 same form. On the charge of voluntary manslaughter, we, the

1 jury, by unanimous consent, find the Defendant, Vivian Lynn
2 Schrader Falls, again two choices, not guilty or guilty, so
3 that's the verdict form that the Court would -- would use.

4 Any objection to that from the State?

5 **MR. GRAUSTEIN:** No, Your Honor.

6 **THE COURT:** From the Defense?

7 **MR. FOX:** No, Your Honor.

8 **THE COURT:** All right. Very good.

9 I told the jury to be here by 9:15. I would appreciate
10 it if y'all were here by 9:15 so that you are ready to go,
11 and hopefully we will get started at 9:30.

12 Okay. There's one or two motions in other cases that
13 we have at nine o'clock. Hopefully we will be done with
14 that, motions and a plea or two, so anyway, we'll try and do
15 those as quick as we can in the morning, all right?

16 **MR. GRAUSTEIN:** Yes sir.

17 **THE COURT:** Thank you very much. See y'all in the
18 morning.

19 (END DAY.)

20 (THE FOLLOWING TAKES PLACE ON THURSDAY, MAY 8, 2014,
21 OUTSIDE THE PRESENCE OF THE JURY.)

22 **THE COURT:** Is the State ready for the jury?

23 **MR. GRAUSTEIN:** Yes sir, Your Honor.

24 **THE COURT:** Mr. Fox?

25 **MR. FOX:** Yes sir.

1 **THE COURT:** Ask the jury to come in, please.

2 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
3 **JURY.)**

4 **THE COURT:** All right, ladies and gentlemen, we have
5 now reached the stage of the trial where we are going to
6 proceed into the closing arguments of the attorneys, and
7 then I will give you the law that you will apply to the
8 facts and evidence you find to be true in this particular
9 case.

10 So I told you at the very beginning, and remind you,
11 the closing arguments are important. They are each side's
12 summation to you of what they believe the evidence has shown
13 to you during the course of the trial, remembering, of
14 course, that you are the judges of the facts of this
15 particular case and that the closing arguments by Counsel
16 are not evidence. You have already received all the
17 evidence. These are their comments on the evidence that has
18 already been received in this particular case.

19 All right, Mr. Fox.

20 **MR. FOX:** Thank you, Your Honor.

21 **THE COURT:** Yes sir.

22 **MR. FOX:** Good morning, ladies and gentlemen. I want
23 to first thank you for your service this week. I know this
24 has not -- would not have been your first choice of how to
25 spend your week if you had a choice, but I also know that

1 this is one of the duties that we all have as citizens, one
2 of the big responsibilities that we have.

3 Winston Churchill said there are three great duties a
4 citizen of a democratic republic has, to serve their country
5 in a time of war, vote, and jury duty, so it may not be a
6 fun experience, but it's a very, very important one. Our
7 system can't function without you, and I truly appreciate
8 it.

9 I want to talk very briefly about the burden of proof
10 in this case. The Judge told you at the beginning on
11 Monday, and he'll define it more particularly for you today
12 in his charge.

13 The burden of proof in this case rests solely with the
14 State of South Carolina. We do not -- Miss Vivian does not
15 have to prove a thing. She doesn't have to come and testify
16 or present a defense. We chose to do that because we felt
17 we had important issues to address and bring to your
18 attention.

19 We felt it was very important that you hear from Miss
20 Vivian herself. She's actually the one eye witness to what
21 happened from beginning to end on that morning, but she
22 carries no burden of proof, and the burden of proof the
23 State carries is beyond a reasonable doubt.

24 You probably could give a pretty good definition of
25 that yourself even though you don't have a legal definition.

1 It's not any doubt. It's not beyond all doubt. It's not
2 one hundred percent. That's impossible. None of you were
3 there March 31st, 2012. There is no way to be one hundred
4 percent certain of what happened. There's no film record,
5 there's no video of what happened.

6 Reasonable doubt, Judge John defined it as a doubt for
7 which you can give a reason, and that's not just any reason,
8 any crazy reason, you know. Judge Floyd, back there on the
9 wall, he was a Judge here for a long period of time.

10 And he said, you know, you can have a doubt about
11 whether the water down in Myrtle Beach is salty or not, or
12 you can have a doubt whether the sun will come up tomorrow,
13 but those aren't really reasonable doubts. They're
14 suppositions or guesses. They're not based on facts.
15 Doubts that you have have to be based on the facts or lack
16 of facts, lack of evidence, you have in the case based on
17 what you've heard in the courtroom this week.

18 So I would agree with the Solicitor that it's not
19 beyond all doubt, but is a doubt that would cause an
20 ordinary person to hesitate to act in your everyday life if
21 you're making a decision, and having gotten all the
22 information that you're going to have, you hesitate to take
23 that next step, that could be a reasonable doubt, okay?

24 Now, and that's the highest burden of proof that we
25 have in our law. If we are in civil court down the hall

1 arguing over a contract or a car wreck and the insurance,
2 arguing over the money, the burden of proof is simply a
3 preponderance of the evidence. If you think of the scales
4 of justice, all you need to do is tilt those scales in your
5 favor just a little bit and you win.

6 Criminal court, which is where we are now, General
7 Sessions, is beyond a reasonable doubt. They've got to tilt
8 the scales heavily one way, okay? The Judge will also tell
9 you any doubts you have must be resolved in favor -- if you
10 have that doubt, your duty would be to return a verdict of
11 not guilty.

12 You're going to have a choice between basically three
13 verdicts here, murder being one, to what Ms. Falls is
14 charged with, manslaughter, voluntary manslaughter, which is
15 a lesser charge known as a lesser included offense, and then
16 just not guilty.

17 The Judge will tell you if you have a doubt as between
18 two of the charges, which is murder and manslaughter, you
19 are obligated to resolve that doubt in favor of the
20 Defendant.

21 Now, I told you at the beginning of this case Vivian is
22 charged with murder. This is not murder. There is a body.
23 There is a shooting. There is a gun, and we know who fired
24 the gun. This isn't a case of identity. We don't have to
25 solve that.

1 We don't need the CSI guys from T.V. to come in and
2 lift minor particles of DNA from some tiny piece of evidence
3 that no one else could find, or a special light or gizmo.
4 We know who did the shooting. We know where it happened and
5 we know when it happened. We know what the cause of death
6 was. That's a homicide. Not all homicides are murder.

7 A murder is the intentional killing, unlawful
8 intentional killing of another person with malice
9 aforethought. We've got a killing, may have been excusable
10 under the law in terms of self-defense. There is no malice
11 here.

12 The Judge will define malice for you. It's been
13 described as having a wicked or malignant heart. You heard
14 everything. You've seen the witnesses. You've seen Miss
15 Vivian. I don't believe there's any way in the world that
16 you can determine that that poor lady had a wicked and
17 malignant heart and that she intended to cause the death of
18 Tony Hughes.

19 And without that malice and without that intent, it
20 can't be murder. It doesn't mean you approve of what she
21 did. It doesn't mean that you think it was a good idea for
22 her to go there with a weapon in the car, or to go up on the
23 porch.

24 It would mean that you determined that there is an
25 element missing in the crime that she is charged with, and

1 this isn't horseshoes or a hand grenade. Almost doesn't
2 count. They don't win -- the State doesn't prove their case
3 if they get two out of three. It's three out of three or
4 it's nothing. It's all or nothing, that they either
5 convince you beyond a reasonable doubt as to each and every
6 element or it's not guilty on that charge.

7 I want not to re-try this case. You have listened to
8 three days of testimony and arguments, but there are some
9 things that I absolutely need to cover with you in terms of
10 the evidence that you see here, and I think probably the
11 easiest way in my mind is to do it roughly in the order that
12 you've heard the witnesses or at least in the way -- you had
13 two -- well, the State presented two. There were three
14 witnesses to the shooting besides Miss Vivian. The State
15 brought you two.

16 One was Diane Movsky, who is the lady Tony Hughes was
17 visiting, whose home this shooting happened at. She told
18 you that she had a couple of phone calls, wasn't sure who
19 they were from, asked Tony if they were from Vivian, that
20 there was a knock on the door. She answered. In fact, it
21 was -- turned out to be Ms. Schrader-Falls, upset, asking
22 for Tony. She shut the door, told Tony. Tony said it would
23 be okay, and he went outside.

24 At that point, or shortly thereafter, she heard three
25 shots, three shots in quick succession in her words. She

1 reacted soon enough and was able to see what she figured was
2 the final shot and Mr. Hughes falling to the ground. She
3 said I heard three shots and they were quick together. She
4 didn't see what happened immediately before, and that's
5 important, didn't hear anything, but heard three shots.

6 And it's also, by the way, what Candace Taylor, the
7 neighbor across the street heard. She got in her car. Just
8 as she went to crank it up, she heard three shots, quick
9 succession, no break between them. She did not see what
10 happened because her back was turned, but she, upon hearing
11 the shots, turned around, saw Mr. Hughes on the ground and
12 saw Miss Vivian nearby with the gun in her hand.

13 Now, Ryan McCarty, the next door neighbor, gave a
14 little bit different version. Of course, he gave different
15 versions at different times, depending on who he was
16 speaking to and when it was.

17 In court yesterday, he said I heard two shots, got up
18 in time to see -- hear two more, including a last shot,
19 which she went up and shot him. He did agree that Mr.
20 Hughes was still if not upright, not yet on the ground when
21 the last shot occurred, but I think there are reasons for
22 questioning whether Mr. McCarty's memory is as sharp as he
23 would like you to believe it was.

24 There is, number one, the fact, I showed him -- if you
25 recall, I showed him this statement. He spoke with the

1 police within twenty minutes of the shooting, wrote out a
2 statement for them. I asked him about that, do you remember
3 what you told the police then? Today, he said, well, I had
4 just gotten back and I was just getting ready to lie down
5 and I heard the shots, and I heard I'm not going to jail,
6 and I saw two more shots with a break between.

7 That is not what he told the police twenty minutes
8 after it happened, and even he admitted his memory and
9 perception was probably better twenty minutes after it
10 happened instead of two years or more after it happened.

11 And what he told the police on March 31st was I was
12 asleep, not I was getting in bed, not I was preparing to go
13 to sleep, I was asleep. I heard four shots, not I heard two
14 shots and then heard two other shots. I heard four shots,
15 and I got up, and I saw. I strongly question whether he saw
16 what he thinks he saw. This is the picture of what he says
17 he saw.

18 This is a picture of Ms. Movsky's front house. You
19 will have this with you. Everybody testified that Mr.
20 Hughes was somewhere next to this car, somewhere around -- I
21 think Ms. Taylor said around the driver's -- well, you can't
22 see that, but he was somewhere next to this car, and he was
23 with Ms. Falls somewhere close by in the yard.

24 This is Mr. McCarty's house. I don't know if you could
25 see when I was talking to him, because I was standing over

1 there. These stairs here at the corner, these go into the
2 side of his house he said.

3 The bedroom he was looking at was back this way, and
4 when I asked him to point out the bedroom, he pointed
5 through the trees, but it's back here, a one-story house.
6 He wasn't looking down. He didn't have any view that way.
7 You can tell that this car is almost up against the house.
8 The driveway was almost up against it. What comes out in
9 the way -- the sides of the tree, what comes out in the way
10 of that car?

11 That porch and the railing is -- the porch extended
12 down, not just this railing at the steps, the railing that
13 goes down the side of the house. The porch is up these
14 steps. I question whether -- I don't doubt that he heard
15 shots. I don't doubt that he heard them. I really question
16 whether he saw as clearly as he says he saw. And one other
17 reason you can doubt that is because he was very
18 inconsistent.

19 The Judge will tell you with any witness you are the
20 finders of the facts. You can believe every word any
21 witness tells you. You can reject every word a witness
22 tells you, or you can believe some of what they tell you and
23 not the rest. I think there are great reasons to doubt Mr.
24 McCarty's version of things simply because he was
25 inconsistent himself.

1 The other thing is the physical evidence supports --
2 it's not definitive, but it supports the idea that there
3 were three shots quickly together. Dr. Proctor, the autopsy
4 physician, when he testified, he testified about the
5 different wounds, and when I got a chance to ask him, he
6 said yes, I believe clearly one bullet can cause multiple
7 wounds. We know that because we can see that that one
8 bullet, we have the picture, entered the front in the chest.

9 It hit something and then was coming out the side, but
10 it went in here, it passed through the heart, it passed
11 through the left lung, it passed then out of the body into
12 the left arm and almost out to the point where he said he
13 really just had to nick the skin to take that bullet out.

14 That's the bullet that you have in evidence, so we know
15 that this gun and the bullet that it fired were capable of
16 passing through multiple parts of the body, so one bullet
17 caused one, two, three, almost four wounds right there.

18 He also said you had the same with the bullet that
19 entered the neck and came out. That also ricocheted and
20 went in the side, came out the back. One clipped a finger.
21 Another went through the right arm.

22 He said, when I asked him directly, it might be as few
23 as three shots, could have been, and he said yes, because he
24 used the words, defensive wounds, defensive gestures, and
25 then Mr. Hughes' arms were up.

1 I can't tell you, I'm not a ballistics expert, I didn't
2 see what happened. Dr. Proctor couldn't tell you, but it
3 makes perfect sense. One bullet goes through the chest.
4 One clips the fingers and either goes through the neck or
5 ends up lodged in the shoulder, all right, because again, we
6 know one bullet is in here.

7 That was the one they couldn't recover, and another
8 bullet passes through the arm, and again, depending on how
9 Mr. Hughes is turned, causes the neck -- goes through the
10 arm and causes either this wound or the one in the neck, and
11 Dr. Proctor said yes, there are easily three groups.

12 He can't tell you. It could be more than four shots,
13 more than three shots. He can't tell you, but he did say
14 yes, that would be consistent with what I saw. By itself,
15 that doesn't mean a lot, but when you have two other
16 witnesses say I heard one, two, three in rapid succession,
17 now what they say matches up with what Dr. Proctor is saying
18 and not, by the way, with what Mr. McCarty is saying. They
19 support each other. It's not conclusive, but it is
20 consistent.

21 Now, it would be nice if the magical monsoon of March
22 in Myrtle Beach had not washed away all the evidence. I'm
23 skeptical. I know it rains, and it rains hard in Myrtle
24 Beach. I've lived here for twenty some years, but one shell
25 casing was sure still around. There was still blood on the

1 car. There was still blood even after the rain that Jill
2 Domogauer, the crime scene investigator, was able to collect
3 a sample from, so she would suggest that the rain washed the
4 other shell casing and bullets, by the way, because there's
5 got to be at least one other bullet at least, all right?

6 We have one in the shoulder that was unrecoverable, and
7 we had one that they did recover. There's at least another
8 one and at least two other shell casings somewhere. Even if
9 they did wash through the yard, I don't think that yard
10 looks sloped. You can judge for yourself, but it's not very
11 big.

12 It extends -- I won't get it out again, but there's
13 room for two cars to park end to end. You've got the first
14 car. You see the white car. There's room for another car
15 maybe in the street. It's not a deep yard. It's not a wide
16 yard. It's probably -- it's not as big as the area between
17 your jury box and the defendant table over there.

18 I think what happened was they knew who -- the police
19 knew who did the shooting. They had her right there. They
20 had the gun. They knew what happened. It was pouring down
21 rain. They collected what they could. They're human
22 beings. Being what they are, they said I don't really care
23 to crawl through the mud anymore and look for another shell
24 casing, and that's understandable. I don't know that it
25 really changes anything. If they had found two or three

1 more, I don't know that it's going to change anything, but
2 it sure would be nice to have.

3 And, also, it would be nice, instead of having just the
4 patrol officers that were here, Rhew and Odom, who responded
5 initially and they knew a little bit. Odom really didn't
6 remember anything. Rhew remembered a little bit more, but
7 they're compartmentalized. They have their specific duties.
8 Their job isn't evidence collection. Their job isn't
9 talking to witnesses other than identifying who they may be.
10 The chief investigator does that. The detectives do that.

11 We had a couple listed, Neil Frebowitz and Alex Smith
12 from the Horry County Police Department. Neither one of
13 them were here. What they could do, they would be the
14 person from the police point of view that could tie things
15 together in terms of the investigation. They would be the
16 ones to explain why nobody went back and talked to Candace
17 Taylor, who had just as much and just as important to say as
18 McCarty or Movsky did.

19 It may have not been as dramatic as what Ryan McCarty
20 wanted to say in terms of framing how this all happened,
21 that it was some kind of wild west show-down when Vivian
22 called Tony Hughes outside, like a gunslinger and shot him
23 down in the dusty street because she was a scorned woman.
24 It may not have been dramatic, it may have not been
25 consistent with that, but it was evidence. She had the same

1 ability that they did to perceive what happened.

2 Everybody's perception was hearing and then seeing
3 immediately after. I don't know why they didn't go back and
4 talk to her. I don't think there's any conspiracy about it,
5 but I find it strange that we had to go out and find Ms.
6 Taylor and bring her here so you could hear consistent
7 testimony about three shots right back together, back to
8 back to back.

9 What else did you have that supported the idea that
10 these were three shots in rapid succession, not separated in
11 groups or even one, two, three. Mr. Green, he testified --
12 because it got established, even though it seems obvious,
13 the State certainly has to establish that that gun they have
14 in evidence fired that bullet they have in evidence into Mr.
15 Hughes. They have to make that connection for you all.

16 That's why Mr. Green was here. He said yes, in fact,
17 that bullet fired from that gun, which we know was recovered
18 from Mr. Hughes. He also said, and I hope you caught it, I
19 asked him, because he was qualified as an expert in weapons
20 and in ballistics identification, in his training and his
21 experience was he familiar with this kind of gun, a semi-
22 automatic weapon, a 380 Bersa and how it worked. He said
23 yes, he was.

24 And I said isn't it true that that type of weapon is
25 designed -- this gun is designed -- you can go out and

1 target shoot, but people buy it for self-defense. The
2 purpose is if you have it for self-defense, the purpose is
3 to defend yourself and to be able to do so properly, and he
4 said so.

5 His exact words were that after the first shot you
6 don't have to cock the -- it's not like an old western
7 revolver, you have to cock the hammer, but after the first
8 shot pull the trigger, that it takes much less pressure to
9 then fire it again, because that's what you want to do. You
10 want -- if you need to fire that weapon, you don't --
11 certainly don't want to have to re-load. That's why you
12 have a clip with six or seven bullets in it, instead of
13 having to put in more bullets, and it takes much less
14 pressure.

15 In other words, you can fire off shots rapidly. That
16 is consistent with what the witnesses heard, what Vivian
17 told you about how it happened. Those things line up. By
18 themselves, they don't mean a whole lot, but when you start
19 to add them together, and you get a pattern that is
20 consistent, and you get a pattern that is believable and
21 consistent, credible with what Miss Vivian told you.

22 Let me make sure -- we talked about Mr. Green. Mr. and
23 Mrs. Hughes. Let's talk now about -- move on and talk about
24 the relationship between Vivian and Tony Hughes.

25 We have told you -- I told you at the beginning that we

1 were going to introduce evidence of the battered spouse
2 syndrome. There's certain things that have to be shown to
3 you before that is going to apply, and one of the things is
4 that -- and you wonder why we spent so much time talking
5 about where they lived, and who was where, and who kept
6 their underwear in whose drawers. Why did we spend all that
7 time? Because this applies if there is a household member,
8 okay?

9 The State of South Carolina defines household member
10 like this. Obviously, a husband and wife are living in the
11 same room. It clearly applies to a parent and their
12 children. It also applies to a boyfriend and girlfriend
13 that are cohabiting or living together, and it applies to an
14 ex-spouse or people that formerly lived together, because as
15 Dr. Bourus told you, and you're probably aware from your own
16 experience, quite often it's not the couple living together
17 that have the most problems, it's the couple that are
18 separating or have been separated where the problems arise.

19 And, therefore, the Legislature says we're not just
20 going to make domestic violence about people under the same
21 roof. Domestic violence has to include people that have
22 that kind of connection, and so that's why it's important.
23 It doesn't really matter if they broke up in January or not.
24 Vivian says we didn't.

25 Mr. and Mrs. Hughes says as far as they know, as far as

1 they know, they had, but it really doesn't matter if they
2 cohabited before January. The law doesn't say they had to
3 cohabit every single minute of every single day for any
4 magic length of time, all right? These are not -- these are
5 people who did have two separate homes who worked in
6 different areas. They had the ability to sometimes stay in
7 different houses, and they did, but almost always together.

8 But Mr. and Mrs. Hughes, I think they just didn't know
9 for sure what their son was -- they clearly knew about
10 Vivian. They clearly knew that Vivian stayed over, but I
11 just don't think they knew, and they said as much, as far as
12 I know.

13 Vivian, of course, told you about that relationship,
14 about the living arrangement, and so did her daughters. Her
15 daughters testified about seeing Mr. Hughes there overnight,
16 being both at the home in Myrtle Beach, Vivian's home, and
17 the home in Gresham in Marion County at Tony Hughes' home.

18 One of the daughters talked about having -- seeing a
19 phone bill at the Gresham home with both their names on the
20 account, talked about finding his uniforms and things in the
21 house, things that indicated that he stayed there, that he
22 wasn't just a sometimes guest, that they kept their stuff
23 together so that whether they stayed in Gresham or stayed in
24 Myrtle Beach, they would have the things that they need, but
25 that's why there was all the talk about that. And I don't

1 think there's any question that they cohabited.

2 It's doubtful whether they broke up in January, but
3 even if they did, it's clear they cohabited before that, and
4 the law absolutely applies to this situation. They meet the
5 definition of household member as South Carolina defines it,
6 which means all of this other stuff about battered women's
7 syndrome comes into play.

8 Now, what about all of that? For over two hours
9 yesterday, you had the opportunity to hear from Vivian and
10 hear her -- really her life story, and hear about her
11 relationship with Tony Hughes. If you did not after that
12 find her to be credible, believable, honest, then there is
13 absolutely nothing I could say to you this morning that will
14 change that.

15 If that was fake, if that was an act, if that was a
16 woman who facing a murder charge got on-line and started
17 reading about battered women's syndrome and creating some
18 fantasy past horrific life for the cynical reason of getting
19 out of responsibility for killing an innocent man, if that's
20 what you believe after you heard that woman for two hours,
21 and watched her, not just heard her, watched how she reacted
22 to the question that I asked, that the Solicitor asked, some
23 topics she was asked to speak about, the way that she spoke
24 about it, her body language, her voice, her demeanor, if you
25 believe that was fake, then there's absolutely nothing I can

1 do to change your mind. I'm not going to waste anybody's
2 time doing it.

3 That was absolutely the bravest thing I've ever seen in
4 my life. That woman sat up there in front of a courtroom
5 full of strangers and she related to you the most horrific
6 details of a horrific life, some of which her own family
7 weren't aware of. She did it in front of, again, a group of
8 strangers. She was absolutely emotionally naked on that
9 stand.

10 She told you about being raped, molested at an
11 extremely young age, at an age when she can't even
12 comprehend what is happening, has no concept of what sex is,
13 let alone what improper touching and contact is, literally
14 at the age of four or five doesn't have the capability to
15 understand what is happening to her, and this continues off
16 and on until she leaves home at the age of fourteen.

17 And in between, she's twelve or thirteen on the trip to
18 Chicago, she meets a much older man, at least old enough to
19 be in the military, so I don't know if he's eighteen,
20 nineteen, twenty, but way too old for her, who rapes her.
21 Again, she's barely old enough to conceive of what sex
22 means. She's certainly is not emotionally capable of, and
23 when you factor in what's already happened to her in her
24 life, that by itself is horrific.

25 Now she's been raped by a second individual, and forget

1 I haven't even mentioned that, good Lord, it was her own
2 brother. It's not just sexual molestation, it's incest.
3 Then when she's still a teenager, she's raped again by a man
4 she barely knows. At the age of fourteen, she's going to
5 Alabama to get married to, again, a man seven or eight years
6 older than she is, and she is treated like garbage for years
7 in every horrible way you can think of.

8 And she told you about those things. If that was all
9 made up, because she's trying to avoid responsibility in
10 this courtroom, then she is the greatest actress I've ever
11 seen. You know that wasn't made up. You know that's all
12 real.

13 Then when she finally got the gumption to get a divorce
14 from that fellow, she goes back into another relationship
15 that's even worse, Booster Jones, and that he hit even
16 harder, he was even tougher.

17 She finally gets out of that relationship. She gets
18 into finally a relationship that at least is not abusive to
19 her, but as she told you, she put it this way, inappropriate
20 things with her children. She's had to live with the
21 stigma, and the guilt, and the shame of humiliation of being
22 the victim of incest, and rape, and molestation, and
23 physical and emotional abuse. Now she has to live with the
24 guilt of knowing that the man that she is living with, who
25 finally is someone who treated her well, is doing something,

1 I don't know exactly what, inappropriate with her children.

2 In 2010, she moved to Myrtle Beach, and she begins to
3 get on-line and talk with different people and forms
4 friendships because she doesn't know anybody. Her family is
5 not here. She doesn't know anybody, and one of the people
6 she meets on-line is Tony Hughes, and they seem to hit it
7 off pretty quickly.

8 They exchange messages on-line, discuss his romantic
9 troubles, and from there began to talk on the phone and he
10 would read scripture to her. You know, she told you that's
11 the way straight to my heart. She's a woman of very strong
12 faith.

13 And very quickly, they meet on May the 28th, and by
14 June the 2nd, they're spending the night at each other's
15 house, in five days. It was very, very quick, that being a
16 little strange. I know people do it.

17 Ms. Bourus explained. A suggestion has been made that
18 Miss Vivian, she couldn't let any of these things, she
19 couldn't let Tony Hughes, and why would she go back, and,
20 you know, she had her own house, she didn't have to put up
21 with all this, and why would she continue to fall for these
22 people, and you had an expert -- and I'll talk about Ms.
23 Bourus in just a minute -- who explained that is a very
24 common pattern with women who are chronically abused, who
25 suffer from battered women's syndrome.

1 They look for certain things in men, and one of those
2 things could be a strong, controlling man, a confident man.
3 They learn -- and an excellent quote -- they learn to
4 tolerate the intolerable. They learn to put up with not
5 just the physical abuse, but the emotional abuse.

6 How many times did she say in talking about Tony or the
7 others, I thought I was doing what I was supposed to do.
8 She couldn't understand why he would get mad with her. She
9 thought she was doing what she was supposed to do. She was
10 desperate even two years after his death to try to explain
11 how he could get angry with her. She didn't understand
12 that. Why would he be angry with me? I did everything I
13 was supposed to do.

14 Did they have a history between themselves of violence?
15 I think the evidence that you have heard shows they
16 absolutely -- it was incredible, an ongoing pattern of
17 domestic abuse. Again, Miss Vivian gave you details of the
18 kind of intimate -- the things happened, the kind of things
19 that happened. There's no question he was physically
20 abusive. He punched her, he choked her, he grabbed her on
21 multiple occasions. He controlled her.

22 He was constantly wondering where are you, why did you
23 have to go here, don't go there, don't do things that you
24 like -- he didn't say it that way, don't do things you like,
25 but he constantly rode her and gave her a bad time about

1 things like wanting to go to the beach and take pictures, or
2 go to church. He manipulated her. Well, we'll go see your
3 family, but then he sleeps in late so that she can't, and it
4 becomes too late to go see anybody. Again, if that's all an
5 act, then I can't convince you otherwise. There's no way.

6 He asserted his control another way, and really
7 probably the most powerful way that a man can to a woman.
8 Ms. Bourus talked about the male privilege, you know,
9 basically asserting the man is -- or the head of the
10 household, that they control things, their wishes should be
11 catered to, and that can take any number of things, fix my
12 dinner, wash my clothes, clean the house, be there when I
13 tell you to be there, and it certainly is the most powerful,
14 both physically and emotionally, is sex.

15 She told me as time went on, he insisted on doing
16 things that she did not want to do, that she indulged him at
17 first, said I don't like that. I don't like anal sex. To
18 tell, just the very idea made her ashamed. She doesn't even
19 like to say it.

20 That woman, if you noticed, can't even say damn. She
21 is so nervous and conscientious, and uncomfortable, and
22 proper, that she can't even say the word damn. That's too
23 much for her, let alone to get up here and talk about her
24 sex life in front of strangers, and particularly something
25 like that, but he insisted even when she didn't want to.

1 There's a name for that. Actually, there's a couple of
2 names. Domestic violence is one. Rape is another. That's
3 rape, plain and simple. This state recognizes spousal rape.
4 You can be married. Sure, there are accommodations that
5 people make in their marriage, females in particular
6 probably have sex at times when they would rather not, when
7 they feel tired. I'd rather not, and they make
8 accommodations for a loving husband, but there is a
9 difference between that, between, well, I'd rather not, but
10 I will because I love you, honey, and you are going to have
11 sex with me.

12 I'm going to have sex with you anally, even though I
13 know you don't like it, even though you tell me it's
14 uncomfortable and makes you ashamed and humiliated, and I'm
15 going to do it in a way that's painful for you, and you
16 better be here at nine o'clock or someone is going to get
17 their teeth pushed down their throat.

18 Aside from the teeth down the throat comment, if
19 someone is telling you that they're going to have anal sex
20 against your will, that is a threat, and if that's not
21 abuse, I don't know what is. I know the ladies on the panel
22 understand that.

23 And you men, imagine you're in a situation where you
24 were not physically in control, in prison, and somebody says
25 at nine o'clock, I'm coming for you, and I'm going to bend

1 you over and I'm going to do this thing that you do not
2 want, and you're going to be helpless to stop them. You
3 would take that as a threat, because that's exactly what it
4 is, and that is abuse, and if you think she's lying about
5 that, there's nothing I can do to change your mind.

6 But you still have Vivian's testimony about that. You
7 have Vicki Bourus, Vicki Bourus who has attained a Master's
8 level in social work and the highest level of social work
9 degree in this state. She's got a graduate level degree,
10 and the highest certification that you can have in South
11 Carolina. She has twenty-seven years of experience, and
12 training, and continuing education specifically on this
13 topic, specifically on domestic violence, sexual abuse,
14 battered women's syndrome.

15 The State of South Carolina first recognized battered
16 women's syndrome as a defense in 1985. Within two years,
17 Vicki Bourus was studying and applying that knowledge across
18 this state to help women, women of abuse, in the courtroom
19 and out. She has qualified as an expert in the courts of
20 this state nine times. There is zero doubt about her
21 qualifications to offer an opinion.

22 You are free to reject that opinion, but I would say
23 the same thing about Vicki Bourus that I said about Miss
24 Vivian. You had the chance to listen to her describe how
25 she does what she does, how she can say the things that she

1 said, and how she can do it in this case, and if you don't
2 think that that was compelling, and credible, and
3 believable, and worth listening to, then there's absolutely
4 nothing within my power that I can do to change that.

5 For twenty-seven years, she's done this, what she did
6 yesterday. What did she tell you about Miss Vivian? She
7 had the chance to speak to Vivian Falls for seven hours, to
8 think about the two plus hours Miss Vivian was on the stand
9 yesterday, and think about doing that once, twice, three
10 times, and half again. That's how long Vicki Bourus had to
11 speak face to face, one on one with Miss Vivian.

12 Seven hours, that is a long time. She was able to
13 speak to Miss Vivian about everything, but it didn't stop
14 there because that's not what you do. Clearly, that's one
15 history. So what does she do when it's available? She goes
16 and she reviews, in a case like this, a criminal case, she
17 reviews all the records in the case, the police report, the
18 witness accounts, everything. She talks to people that know
19 Vivian to find out as much information as she can.

20 Obviously, who is that going to be? Friends and family
21 are going to be the first people you go to. She spoke to
22 numerous people, including the attorney that represented her
23 in Georgia, and her counselor/therapist in North Carolina.
24 She spoke to people, Ann Rich in Georgia, who had seen with
25 their own eyes the physical abuse that Tony Hughes was

1 capable of, grabbing her hard enough to leave marks, not
2 just grabbing her and giving her a jerk, grabbing her hard
3 enough with enough determination and strength to leave
4 visible marks on the arm.

5 She spoke to other people that could confirm the abuse
6 that Vivian suffered. She told you in twenty-seven years of
7 doing this, she had more evidence and corroboration for the
8 things that the client was telling her than she'd ever had
9 before. There's a reason why there's not always that other
10 evidence. People that abuse don't do it out in the open.
11 They don't do it at the mall. They don't do it at the
12 ballgame, or in the courthouse. They do it when they think
13 no one is watching.

14 It does not matter to me, and, in fact, I don't have
15 any doubts that Tony Hughes could be a charming, loving
16 person. He clearly has a family that loved him dearly, that
17 love him to this day that are devastated by his loss.

18 I don't think -- even Vivian said I loved him and I
19 love him. I don't think even Vicki Bourus would say that a
20 person who is an abuser is always a monster every minute of
21 every day of their life. They do monstrous things, but
22 that's just not how it is. She told you it's not unusual
23 for someone who is an abuser to have other relationships
24 that are normal.

25 I'm not particularly impressed with the two women that

1 came here yesterday to say, well, I dated Tony, I was with
2 Tony and I never had any problems, for a couple of reasons.
3 I honestly don't remember their names, but the first lady
4 that was -- who had the child with Tony was with him the
5 longest. She said never so many times, for a second I
6 thought we were going to have Peter Pan flying around here,
7 Never, Neverland. Did this happen? Never. Did that
8 happen? Never.

9 Ms. Bourus told you that a lot of women, if they're not
10 being physically abused, don't recognize other -- she said I
11 wasn't being controlled, but I would be curious, but maybe
12 not. It would not surprise me if she never had any issues
13 with Tony.

14 We do know, if we believe Vivian at all, that he at the
15 very least flirted around, if not cheated, on Vivian during
16 their relationship, and it's fair to wonder whether he may
17 have done the same during his long relationship with that
18 lady, and I would be curious what his relationship was with
19 other females he was with.

20 Unlike Vivian, although she was in her own home, she
21 did not have the support network that that lady did. They
22 lived over in Gresham where she said her people were nearby.
23 If you don't know Gresham, it ain't no big town.

24 Abusers don't pick on people they think are going to do
25 -- or give them a hard time back, or if they think there's

1 going to be trouble from family members. They seek out the
2 weak. They're not looking for a fair fight.

3 The same thing with the second lady. They dated just a
4 few months, and she was a probation officer. She's licensed
5 to carry a gun by the State of South Carolina. She's got
6 the powers of arrest. Is he going to mess with her? So,
7 okay, that doesn't fit a perfect pattern of Tony Hughes
8 being a monster all the time, but I don't believe he was a
9 monster all the time.

10 He clearly could be charming and affectionate with
11 Vivian. They shared a faith. They quoted Bible verses to
12 each other. Clearly there was something about him that made
13 her fall in love with him. Clearly his family loved him.

14 So I'm not impressed. Now, if he had a parade of many,
15 many women that he had dated over the years, maybe that
16 starts to get you a pattern, but it still doesn't mean that
17 he couldn't have been abusive with Vivian.

18 And Ms. Bourus said to you Vivian fit all these
19 characteristics, all of these traits that we see in battered
20 women, lack of self-confidence, the hyper-vigilance, you
21 know, the wanting to please. How many times did she say I
22 didn't know what I was doing wrong? I thought I was doing
23 everything right. She was doing everything right. She
24 absolutely was doing everything right, even to the point of
25 humiliating herself sexually for Mr. Hughes.

1 Vivian was a poster child of battered women's syndrome.
2 If you had never heard of it, if you had never read about
3 it, and you wanted a perfect illustration of what a battered
4 woman looks like and acts like, all you have to do is play
5 the tape of Vivian here yesterday, the down-cast eyes, the
6 slumped shoulders, the humiliation and shame over things
7 that were not her fault. Now, that would be just a sad
8 tale, a very, very sad one, if it wasn't for how it affects
9 us.

10 Why is that important in this case? It's important
11 because, as I told you at the beginning, murder is the
12 intentional killing of another human being with malice.
13 Because of her situation, going all the way back to her
14 entire memory, four years old, all the way to March 31st of
15 2012, the continuous abuse and horrific events at the hands
16 of others and at the hands of Tony Hughes, affects her state
17 of mind. It affects what she is thinking when she goes to
18 that house. It affects her reaction to events.

19 The Judge is going to talk to you about that, about the
20 right to act on appearances and the importance of a person's
21 state of mind, so there's two ways that battered women's
22 syndrome is important here. One is self-defense. The Judge
23 is going to charge you on the law of self-defense. Self-
24 defense is an excuse or a defense obviously to a beating or
25 even to a shooting like this.

1 The person who perceives that they're in danger has a
2 right to act upon appearances. You don't have to wait until
3 you have a fist beside your head, or your teeth pushed down
4 your throat, or a hand around your throat, or a bullet fired
5 into you to respond. You don't have to wait until it's too
6 late to defend yourself, and you have a right to in part
7 base your judgment on your prior contact with the person
8 that you -- that is in front of you, your knowledge of their
9 propensity to violence in general and towards you.

10 So Vivian's state of mind in terms of her being a
11 battered woman is important on that issue, that when Tony
12 Hughes flips down his cigarette, says who the fuck are you
13 to tell me what to do and comes at her with the look that
14 she knows means I'm about to get it.

15 Remember, Mr. Hughes was about six foot, three, two
16 hundred and some pounds, and Vivian is not a small lady, but
17 she's a very timid lady. Mr. Hughes was more than her equal
18 physically, that she is entitled, or at least is important
19 for you all to look at her frame of mind in that moment as
20 best you can, but based on her experience and her status as
21 a battered woman, and her past relationship and contact with
22 Mr. Hughes, what he's capable of.

23 And what she told you was I reacted instinctively. I
24 was in fear. There was no hesitation or question in her
25 mind. I was in fear. Ms. Bourus, as an expert, can offer

1 an opinion. Her opinion, y'all decide what weight to give
2 it, but the woman who studied this, and talked to women, and
3 dealt with this for twenty-seven years said yes, I believe
4 based on everything I know and my interviews with Vivian,
5 she was in fear at that moment.

6 She reacted instinctively. You have a gun. It's not
7 an automatic weapon. It's not a machine gun where you pull
8 the trigger one and it empties the clip, but it is a gun
9 designed to fire rapidly, and that's what two of the three
10 witnesses told you, one, two, three, three shots very quick.
11 Dr. Proctor told you, yes, three shots could easily do the
12 damage that I saw in that autopsy.

13 It is consistent with the physical evidence. It is
14 consistent with the witness testimony, and it is consistent
15 with her state of mind and what she told you from the
16 witness stand.

17 What else -- I almost forgot this. What else did Ms.
18 Taylor, across the street, that the police never spoke to
19 other than, hey, did you hear anything, and what did Ms.
20 Taylor specifically say? I looked over, I saw Mr. Hughes on
21 the ground, I saw Miss Vivian kneeling over him saying, oh,
22 my God, I'm sorry. I didn't mean to do it. And when she
23 noticed Ms. Taylor, because she was calling to her daughter
24 to go back in the house, she said call the police, call the
25 police.

1 All three witnesses, McCarty, and Movsky, and Taylor
2 said at some point Miss Vivian knelt down, sobbing, and
3 stroked Tony Hughes' head.

4 This woman supposedly went over to that house, called
5 Mr. Hughes outside so she could gun him down like a dog in
6 the street. Are her actions that everyone agrees on --
7 that's one part everyone is in total agreement. She knelt
8 down, sobbing, stroked his head, asked another lady, please
9 call the police. Is that the woman who would do that? It
10 sure doesn't sound like it.

11 And then to go sit in the car rocking back and forth,
12 as Mr. McCarty said, sobbing and rocking back and forth, and
13 staying there for at least five to ten minutes. It didn't
14 take the police long. No one can tell exactly how long, but
15 they responded just as quickly as they could. She had
16 plenty of chance -- she has a car. She's got a gun.
17 Everyone said I'm not going out there. There's a woman with
18 a gun. She stayed right there.

19 If I'm not going to jail means I'm going to shoot you
20 and I ain't going to have to pay for it, then why the hell
21 is she staying there? Because that's not how it happened,
22 and she told you, Vivian told you this is what happened. We
23 need to talk about her version of what happened that
24 morning.

25 She went over there. She'd been -- the previous day

1 she's been up from 6:00 A.M. She'd been with Tony pretty
2 much the whole day. That was the day he told her you be
3 back at nine because I'm going to do to you what I want to
4 do to you, like it or not.

5 And she started to go to work and instead went to North
6 Carolina. She had a child in the hospital. She clearly was
7 afraid. She told you I thought I had a good explanation for
8 not being there at nine, that that wouldn't make him mad, so
9 she drove all the way to North Carolina. She gathered up
10 her children, she turned around and she came all the way
11 back and got here early in the morning.

12 She started then to go off to the store, to get some
13 money from her ring to go to the store, and instead of
14 turning right on Burcale and going on to the store, she
15 turned left and went -- you could look on that overhead
16 photo -- she went not far and then made a quick turn into
17 Bay Forge and saw Tony's car, and maybe had a feeling.

18 She knew where Bay Forge was, if not Ms. Movsky's house
19 exactly because Tony Hughes had pointed it out to her, Bay
20 Forge is right down there. She knew he was dating, or at
21 least interested in Diane Movsky. She set up the web page
22 to help him meet people. That's how submissive she was,
23 because she thought that would make him happy and maybe make
24 fewer demands on her sexually, and she did that with his
25 full knowledge and encouragement.

1 And she went to -- let me stop a minute and point out
2 talking about controlling behavior. Mr. Hughes -- because
3 to me this is a power thing, apparently responds to watching
4 pornography on the computer. Well, all right, that by
5 itself isn't so much, but apparently he made no bones about
6 doing it right out in front of Vivian. He actually used the
7 word get himself excited.

8 I think we know what was happening, and he made no
9 bones about doing that, and what he liked, and he liked
10 watching it, and he didn't attempt to conceal that from her
11 in any way, shape, or form. I think that's a domination
12 kind of thing myself.

13 Now, when she goes to the house, and God knows she said
14 herself, I wish I had just turned right, and I pray and ask
15 myself every day why I didn't just turn right, but she
16 didn't. The argument will be made, I'm sure, -- I don't
17 need to speak for Mr. Graustein, but I don't get a chance to
18 come back up and speak again.

19 I'm sure the argument will be made that this can't be
20 self-defense because Ms. Falls was at fault in bringing on
21 the fault. It was her fault for going to that house, and if
22 that's how you see it, again, I won't be able to change your
23 mind, but that's why it's important, her state of mind, the
24 fact that she'd gone without sleep for close to thirty-six
25 hours at that point.

1 Ms. Bourus told you the way that will affect judgment
2 and thinking in someone.. She goes to the house. She does
3 knock on the door, and she says she's agitated. The way she
4 -- before she knocked on the door, she said I went there and
5 I saw the car. I knew that was the car. Tony had just
6 gotten it, and I knew at this point, the first thing in the
7 morning, I knew despite what he was saying to me, that he
8 was cheating on me.

9 And although I kind of could live with that, I got a
10 daughter who's got a sexually transmitted disease and very
11 ill, and I made it clear to Tony that was the thing I
12 couldn't put up with, that you had to be careful, I had to
13 know, and you're flirting on-line and doing things, that's
14 one thing, but very, very, very frightened about that issue.

15 And what did she say was going to do? She's going to
16 take a picture of that car so he can't possibly deny that he
17 was there when she said Tony, where were you at 8:30 this
18 morning? Why weren't you at home? I thought you'd be home
19 because you were looking for me. I called your parents'
20 house, and you weren't at the beach house, and where were
21 you? He would be unable to say, well, I was here, because
22 she would have a picture.

23 How do you know that's why she was there? Because the
24 crime scene investigator said I found a Nikon camera on the
25 seat and when I checked the SIM card or the memory on it,

1 there was a picture very much like that one that's in
2 evidence, the front of that house with a white car parked in
3 the driveway that was taken that day. So the reason she
4 told you she went there is backed up by evidence.

5 She had that gun. She told you why she had the gun.
6 The store down the road, she had been at the store when it
7 was robbed, and fortunately not hurt herself, but the
8 neighbor who was an ex-law enforcement officer said we've
9 had break-ins in the neighborhood, and it might not be a bad
10 -- and she purchased this gun, had only had a chance to fire
11 it once or twice.

12 She doesn't have a history, didn't grow up shooting
13 guns, didn't grow up hunting, target-shooting, any of those
14 kinds of things that a lot of people do, she didn't have any
15 experience with this gun. She couldn't even load the clip
16 all the way, which is also consistent with what we know
17 about how many shots were fired.

18 They clearly have the empty clip there. You can tell
19 it probably holds six or seven bullets. We don't have
20 anything like six or seven bullets to account for how many
21 it takes. We've got witnesses to say it was three shots.
22 You've got Dr. Proctor that said, yes, three could do all
23 this. And you had Vivian say the clip wasn't loaded all the
24 way. So that's why the gun was there.

25 And she was so irritated and mad at Tony about the car