

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT T. KRONBERG,

APPELLANT

APPELLATE CASE NO. 2014-002682

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED DECEMBER 1-4, 2014	1
<u>JACKSON V. DENNO HEARING TESTIMONY</u>	
AMANDA CONE	
Direct examination by Mr. Simpson	13
Cross examination by Mr. Pennington	20
Redirect examination by Mr. Simpson	24
RICHARD J. HOLMES	
Direct examination by Mr. Simpson	25
Cross examination by Mr. Pennington	37
Redirect examination by Mr. Simpson	47
DIANA MULLIS	
Direct examination by Mr. Simpson	49
Cross examination by Mr. Pennington	71
LEONARD MULBRY, JR	
Direct examination by Mr. Pennington	78
Cross examination by Mr. Simpson	100
Redirect examination by Mr. Pennington	108
Examination by the Court	113
Redirect examination by Mr. Pennington	118
RULING BY THE COURT	145
OPENING STATEMENT BY MS. BALDWIN	149
OPENING STATEMENT BY MR. COCHRAN	153
TESTIMONY	
LANEY CHILDERS	
Direct examination by Ms. Baldwin	162
Cross examination by Mr. Cochran	165
JESSICA NELSON	
Direct examination by Ms. Baldwin	168
Cross examination by Mr. Cochran	181
Redirect examination by Ms. Baldwin	184
Recross examination by Mr. Cochran	185

KRISTIN TANNER

Direct examination by Ms. Baldwin.....	185
Cross examination by Mr. Cochran.....	198

KIMBERLY MURRAY

Direct examination by Ms. Baldwin.....	199
Cross examination by Mr. Cochran.....	206
Redirect examination by Ms. Baldwin.....	209

ROBERT MILLER

Direct examination by Ms. Baldwin.....	210
Cross examination by Mr. Cochran.....	213
Redirect examination by Ms. Baldwin.....	216

SCOTT REMINGTON

Direct examination by Ms. Baldwin.....	218
Cross examination by Mr. Cochran.....	226
Redirect examination by Ms. Baldwin.....	230

RANDALL UNTERBRINK

Direct examination by Mr. Simpson.....	231
Cross examination by Mr. Cochran.....	235
Redirect examination by Mr. Simpson.....	239
Recross examination by Mr. Cochran.....	241

ASHLEY DOCKERY

Direct examination by Ms. Baldwin.....	242
Cross examination by Mr. Cochran.....	265
Redirect examination by Ms. Baldwin.....	270

S. LEMARTE WILLIAMS

Direct examination by Mr. Simpson.....	272

SARAH GLADWELL

Direct examination by Mr. Simpson.....	276
Cross examination by Mr. Cochran.....	284

SARAH SENN

Direct examination by Ms. Baldwin.....	286
Cross examination by Mr. Cochran.....	298
Redirect examination by Ms. Baldwin.....	299
Recross examination by Mr. Cochran.....	300

JENNIFER BARTMAN

Direct examination by Ms. Baldwin.....	302
Cross examination by Mr. Cochran.....	314

PAUL POLENSKY	
Direct examination by Mr. Simpson.....	318
Cross examination by Mr. Cochran.....	350
Redirect examination by Mr. Simpson.....	367
Recross examination by Mr. Cochran	370
RICHARD HOLMES	
Direct examination by Mr. Simpson.....	372
Cross examination by Mr. Cochran.....	384
Redirect examination by Mr. Simpson.....	409
Recross examination by Mr. Cochran	416
SUSAN ERIN PRESNELL	
Direct examination by Ms. Baldwin.....	419
Cross examination by Mr. Cochran.....	436
Redirect examination by Ms. Baldwin	442
Recross examination by Mr. Cochran	443
CLOSING ARGUMENT BY MR. SIMPSON	444
CLOSING ARGUMENT BY MR. COCHRAN.....	468
CHARGE ON THE LAW.....	492
JURY QUESTION.....	507
VERDICT	509
SENTENCING HEARING TRANSCRIPT DATED DECEMBER 9, 2014	510
SENTENCING.....	539
COURT'S EXHIBIT #5 (MOTION <u>IN LIMINE</u>).....	542
COURT'S EXHIBIT #7 (ARTICLE-BRITISH JOURNAL OF PSYCHIATRY).....	547
INDICTMENTS AND SENTENCE SHEETS	550
CERTIFICATE OF COUNSEL.....	556

THE FOLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBITS #63 - #67 (PHOTOGRAPHS);
STATE'S EXHIBIT #107 (RECORDED STATEMENT OF DEFENDANT);
COURT'S EXHIBIT #6 (RECORDING OF INTERROGATION ON 2/12/13)

STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON 2013-GS-10-2456
 2013-GS-10-2457

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
)
) December 1-4, 2014
ROBERT T. KRONBERG,)
) Charleston, South Carolina
) Defendant.)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge, and a jury.

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1 defendant on February 13th, 2013 as violating his Fifth,
2 Sixth, and Fourteenth Amendment rights. It's also styled
3 as defendant and his right to remain silent. I can give
4 the Court an overview where we're going if that would be
5 helpful.

6 THE COURT: Sure.

7 MR. PENNINGTON: As the Court already knows,
8 the arrest in this case occurred on a Sunday, which would
9 have been February 10th of 2013. My client was arrested
10 about 5:00 in the afternoon. He was unresponsive, or
11 only partially responsive. He had overdosed. He had
12 also cut his wrists, and he required immediate medical
13 care. So rather than taking him to jail, he was
14 transported to MUSC.

15 He was housed there from what would be Sunday
16 night until some time on Wednesday, the 13th, and the
17 date in question, statements that we're going to be
18 talking about, occurred on the 12th and 13th, which was
19 Tuesday, Wednesday.

20 And, by the way, before we go any further, I
21 have in the courtroom our expert, Dr. Mulbry, Bill
22 Mulbry, who is a forensic psychiatrist who will be
23 testifying but who is also in the courtroom to help me
24 listen and incorporate what is testified to by the expert
25 on the other side as well as the law enforcement

1 officers, if there is no objection.

2 THE COURT: That's fine.

3 MR. PENNINGTON: That being said --

4 THE COURT: They have the same right.

5 MR. PENNINGTON: Our contention is our client
6 was being held in custody in a hospital room in a bed,
7 confined to a bed, chained to a bed. He had been
8 receiving medications continuously for the days that
9 we're talking about, that he was approached -- and you'll
10 hear a recorded statement where the officers from the
11 city police approached, read Miranda, and had to ask him
12 to, Stay with us, stay with us.

13 And he clearly, on tape, you'll hear say, I
14 really don't want to talk to you about this.

15 He said, Okay. Maybe we'll come back.

16 He says, Okay.

17 You'll hear the tone. He sounds drugged and
18 sleepy and not -- he asserts his right to remain silent
19 at that time. Less than 12 hours later, the officers
20 returned to the same hospital. They reinitiated the
21 interrogation. I believe the testimony is going to be he
22 was still in bed. He was watching TV. They
23 re-Mirandized. They never asked him if he's going to
24 waive his rights. They simply ask him, Do you know where
25 you are? And then proceed to question him.

1 The doctors had administered five milligrams
2 of Haldol two hours beforehand. This is a drug that has
3 unique characteristics and quality. The testimony of
4 Dr. Mulbry will be, in effect, that this is a kind of
5 drug which would not be readily apparent to the untrained
6 observer in that it is not a sedating drug in the sense
7 that it tends to put you to sleep, but what it does do is
8 it reduces volition, which means it makes you passive,
9 makes you easy to comply and get along with.

10 It reduces your energy and your focus, and
11 we're going to contend this is not a slight impact, that
12 this is a substantial medication that was given for
13 agitation two hours before the meeting, that as a
14 consequence of that, our client was put in a position
15 where he was drugged and was being -- his will, which
16 earlier had been expressed, that, I don't want to talk to
17 you, was overborne by the decision by law enforcement to
18 return to the same site within 12 hours of a hospitalized
19 and drugged defendant rather than waiting a couple days,
20 allowing some sort of interval where he is discharged
21 from hospitalization.

22 He was actually discharged that same day from
23 hospitalization and put in the county jail. We're
24 relying on Michigan vs. Mosley which provides some
25 guidance to the Court which has been adopted in our

1 courts. I cite the Benjamin case in my motion, and it
2 references the various five factors that should be guides
3 to the determination about the right to cut off
4 questioning, and it's been scrupulously honored.

5 The case law says that an assertion of the
6 right to remain silent must be scrupulously honored by
7 law enforcement.

8 Two of the factors in Michigan vs. Mosley
9 were violated. There was no significant passage of time,
10 particularly in light of the overall context of the
11 circumstances of an individual still being actively
12 treated and drugged in the hospital; and, second, that
13 the interrogation was not on a different subject, it was
14 on the exact same subject.

15 The State has responded and provided the
16 Court with a brief, essentially citing authority, and
17 arguing that we have to show more to be able to have the
18 Court suppress this evidence. Our contention is that we
19 can distinguish these cases completely. The U.S. Supreme
20 Court has said that when there is no active police
21 participation, in other words, no police coercion, as in
22 the California versus -- or Colorado versus Connelly
23 case, which was decided in 1986, then there's no claim by
24 the defendant that there has been overreaching by law
25 enforcement, but the facts in the cases are entirely

1 different.

2 In Colorado versus Connelly, the Court was
3 faced with a very unique set of facts. A psychotic
4 individual approaches a Denver police officer on the
5 street and says he wants to confess to a murder. The
6 defendant approaches law enforcement. The law
7 enforcement officer calls a detective. They transport
8 the defendant to the police station.

9 Now, he's not medically impaired. He's not
10 drugged. He is mentally ill, and he's hearing voices
11 telling him that, You need to go confess, and so he does.

12 And, initially, it was suppressed at the
13 trial level in Colorado. U.S. Supreme Court ruled in
14 that case, however, that where the State is merely being
15 a receptacle, or really being just a passive audience for
16 a defendant who, through his own volition, is coming
17 forward and presenting evidence, that that does not
18 invoke the kind of concerns about voluntariness that we
19 normally think about where police initiate custodial
20 interrogation and go through the Miranda process.

21 And so here, by contrast, we're dealing with
22 the scenario where the defendant was not approaching law
23 enforcement. The defendant was under arrest, and he had
24 detention officers nearby, in a hospital bed, and also
25 handcuffed in the bed, receiving medication and care, and

1 it was law enforcement that chose to come on a Tuesday
2 night, the 12th of February 2013, asked him did he want
3 to talk? He clearly, you'll hear on the tape, clearly
4 says, I do not.

5 They decide, Okay. Well, we'll come back
6 later.

7 Later happens to be 12 hours later. There
8 may be a question as to whether or not the officers knew
9 or should have known that he was actively under
10 medication and that could impair his ability to
11 participate in the process. I don't know what the
12 officers are going to testify yet as to what they did,
13 but there's nothing in their reports that suggests that
14 they inquired or asked medical personnel about what kind
15 of drugs that this fellow had been given that would
16 impair or interfere with his ability to talk to us, but
17 they chose the time and place, and what they've
18 encountered is someone who had been drugged.

19 The other cases that are referred to by the
20 State are cases that involve the administration of Haldol
21 to a person, as we have here, in some cases the same
22 exact dosage, and I could walk you through, but we'll
23 establish this: If you look at each of those cases, the
24 facts are very different.

25 The In Re: Madden case is an Illinois,

1 Chicago, case. Jim Dougherty, my friend, apparently
2 tried this case back in the '80s, and this case involved
3 a defendant who had a 17-hour delay between the time that
4 the Haldol had been administered and the time of the
5 interrogation.

6 Furthermore, I supplied the Court with the
7 original Illinois trial Court decision. The Illinois
8 District Court level decision under Illinois rules is not
9 supposed to be cited as authority. There is a Seventh
10 Circuit decision. Those were habeas reviews, simply
11 seeing whether or not the Illinois trial Court had done a
12 good job in terms of evaluating the federal
13 constitutional issues, so for practical purposes, I
14 contend that the real authority in the case is the
15 Illinois decision.

16 It has the facts, and the Illinois Court did
17 dwell on the fact that that defendant, unlike my client,
18 had prior criminal justice experience and was wanting to
19 make a deal with prosecutors. In Illinois they have a
20 unique circumstance where after you're arrested, you can
21 be held, and there are assistant U.S. attorneys,
22 assistant State's attorneys, that are available, who come
23 and actually participate in interrogations and did so in
24 this case.

25 As the facts recite, the defendant was trying

1 to find out what he was looking at, trying to make a
2 deal. Then he goes to lockup, attempts to hang himself,
3 gets some Haldol, and then there is a 17-hour break, and
4 when he comes back, you can hear from the questions that
5 he asks and the circuit judge in the State of Illinois
6 rules that he has -- he's a calculating kind of
7 defendant.

8 That, we will not see in this case because
9 the Haldol in that case had obviously gone beyond its
10 half life, was essentially out of his system, and so it
11 has no precedential value insofar as telling us what to
12 do about what is an administration of Haldol where the
13 defendant was actually in the sweet spot in terms of its
14 potency at the time of his second interrogation.

15 The State vs. Purdue case, the North Carolina
16 case, this is the case, if you have a chance to look at
17 it, involves the death of a child, a mom who is accused
18 of being involved, and the mom is distraught at the time
19 of arrest, and the mom is medicated in this case with the
20 five milligrams of Haldol.

21 THE COURT: Let me ask you a question.

22 MR. PENNINGTON: Yes, sir.

23 THE COURT: Is the basis of your motion
24 police misconduct?

25 MR. PENNINGTON: Yes.

1 THE COURT: Or is it he was drugged and
2 didn't know what he was doing, or he was drugged and that
3 kept him from exercising his ability to remain silent?
4 Which is it?

5 MR. PENNINGTON: It's a combination of all
6 three. As best I can articulate it is this: We believe
7 there was coercive police conduct insofar as going past
8 the Michigan vs. Mosley warning that says you must
9 scrupulously honor an assertion of the right to remain
10 silent, especially given the obvious context of a person
11 who is actively under care in a hospital bed, receiving
12 IV medications.

13 They assume the risk by going back the next
14 day while he's still got the IV going and where he
15 received, two hours before, intravenous Haldol, which you
16 will hear about its potency when delivered in that form.

17 So they assume the risk of violating the
18 scrupulously honoring the right to remain silent by
19 choosing that time and place. Combined with that is that
20 the case law describes the Court must look at the
21 totality of the circumstances to see whether or not the
22 defendant's will has been overborne, and what you're
23 going to hear through testimony, at least through our
24 doctor, is going to be -- Dr. Mulbry is going to describe
25 how this is a debilitating drug insofar as one's ability

1 to think clearly and to resist suggestion.

2 So, in effect, what it would be like -- it
3 would be the perfect scenario if you wanted to do
4 effective interrogations at the city police station, you
5 could bring in defendants, administer five milligrams of
6 Haldol. They would not appear sleepy or drugged, but
7 they would become compliant.

8 In fact, that's the purpose that Haldol
9 serves in hospital settings. It's a medication that is
10 administered routinely to agitated patients to get them
11 to calm down and to be compliant with the orders and
12 directions of the hospital without being sedated, without
13 putting them to sleep.

14 So what you have is, is that you have, in the
15 totality of the circumstances, an individual who is
16 drugged, to use a very coarse term, someone whose
17 volitional ability to say no has been reduced chemically,
18 and that the law enforcement officers ran the risk --
19 they assumed the risk by showing up while he's still in
20 that care and reinitiated conversations.

21 We're not contending -- and I want to be
22 clear: We're not contending that they came in and
23 twisted his arm, threatened him in any way. It was far
24 more subtle. You'll hear it when you listen to the
25 recording, that they come in and they say, Real quick,

1 we're going to read you your rights, and they do read the
2 rights real quick.

3 Don't know why it's so quick. It makes you
4 wonder, and then it says -- you're going to hear -- I
5 believe it is Officer Holmes who asks the defendant, Now,
6 do you want to ask questions about our questions? And
7 then he stops himself.

8 He says, Well, hang on. Do you know where
9 you are?

10 And he goes into a litany of questions about
11 where he is, and he never comes back to the seminal
12 question of: Are you willing to talk to us?

13 So he completely bypasses giving the
14 defendant the fork in the road choice of "do you want to
15 waive your rights and talk with us?" It just goes
16 directly into the conversation.

17 He sounds more alert and responsive in that
18 second conversation, but we will contend that two
19 milligrams of Haldol -- this is not the kind of drug that
20 you would give to anybody who is at a fork of the road
21 decision in deciding, for example, whether they're going
22 to buy a car or sign a contract or do anything that
23 required intelligent thinking.

24 We're going to base that on the literature,
25 et cetera, so that he was chemically weakened by his

1 hospitalization. That was a known fact to law
2 enforcement. They used that moment to go back in and
3 took advantage of it.

4 THE COURT: Okay.

5 MR. PENNINGTON: So what I was saying about
6 the North Carolina case, we have distinguished the North
7 Carolina case --

8 THE COURT: Let me ask you, would it be maybe
9 more productive to hear the evidence first? Because it
10 sounds like you're making your argument that you just
11 don't want to make at the end.

12 MR. PENNINGTON: That's true. That's fine.

13 THE COURT: In the interest of time, maybe
14 just call the first witness up.

15 MR. PENNINGTON: Makes sense.

16 MR. SIMPSON: Judge, thank you. I'll just
17 say, obviously, we submitted a lengthy brief. We're very
18 fortunate to have an abundance of case law on our side.
19 We'll let you review that this evening, Your Honor.

20 The State would call Amanda Cone of the
21 Charleston Police Department.

22 AMANDA CONE,
23 having been first duly sworn,
24 was examined and testified as follows:

25 DIRECT EXAMINATION

AMANDA CONE - DIRECT BY MR. SIMPSON

1 BY MR. SIMPSON:

2 Q. Where do you work?

3 A. Currently I work at the City of Charleston Police
4 Department.

5 Q. Where did you work in February of 2013?

6 A. City of Charleston Police Department.

7 Q. In what capacity?

8 A. You said 2013?

9 Q. Yes.

10 A. I was a detective. I was in the investigations
11 division.

12 Q. And in that role, did you have occasion to become
13 involved in the case that brings us here today?

14 A. Yes, sir.

15 Q. And in what regard was your -- was the nature of
16 your involvement in this case?

17 A. It was very limited. I assisted with Detective
18 Holmes, who is a case agent, in conducting an interview
19 with him.

20 Q. So had you been to the scene?

21 A. I did, yes, I did.

22 Q. And what did you do at the scene?

23 A. Assisted with a search warrant, serving a search
24 warrant at the residence.

25 Q. But the -- you stated that then you also assisted

1 Detective Holmes?

2 A: Yes.

3 Q. What capacity again?

4 A. In interviewing the defendant.

5 Q. And do you know what day the defendant was
6 arrested?

7 A. I'm sorry. I don't.

8 Q. Okay. Do you know what day you assisted in giving
9 an interview?

10 A. I'm not very familiar with the dates, but I
11 believe it was a day or two after the incident occurred.

12 Q. You aren't familiar with the date you took this
13 statement?

14 A. No, sir.

15 Q. Could you describe for Judge Young sort of how
16 that went down. Where did you go to obtain the
17 statement?

18 A. Detective Holmes and I responded to MUSC where the
19 defendant was in a secure facility. When we got there,
20 we had to be buzzed back. Went in, spoke with the nurse.
21 The defendant was asleep at that given point in time. He
22 was out. The nurse had to wake him up to get him aroused
23 somewhat to talk to us.

24 Q. Did the defendant give a statement on that day?

25 A. No, he did not.

AMANDA CONE - DIRECT BY MR. SIMPSON

1 Q. Okay. Did you discuss in detail with the nurse
2 specifics about what medications the defendant was on at
3 that point?

4 A. No, sir.

5 Q. Could you describe for the Court how you found the
6 defendant once he was awakened?

7 A. It took a little while for him to wake up, but
8 once he was awake, he was very groggy, lethargic, just --
9 slurred speech.

10 Q. Let me ask you this, Detective Cone: Did you
11 record the entirety of this interaction with the
12 defendant?

13 A. No, sir. The initial -- the recording started
14 after he had already been woken up.

15 Q. Did you record the entire interview with him?

16 A. Oh, yes, yes, sir.

17 MR. SIMPSON: May I approach, Your Honor?

18 THE COURT: You may.

19 BY MR. SIMPSON:

20 Q. I'm handing you what has been marked as Court's
21 Exhibit 6. Can you review that. What is that item?

22 A. It looks to be the interview that was conducted
23 involving the defendant.

24 Q. Let me ask you too, this compact disk, is it
25 labelled at all?

AMANDA CONE - DIRECT BY MR. SIMPSON

1 A. Yes, sir.

2 Q. Does it contain a date on it?

3 A. 2/12 of 2013.

4 MR. SIMPSON: Your Honor, at this point the
5 State would publish for you the attempted interview on
6 February the 12th, 2013.

7 THE COURT: Go ahead.

8 BY MR. SIMPSON:

9 Q. As we're cueing this up, Detective, I want to talk
10 really about your personal thoughts as you're going to
11 this hospital room to take an interview from somebody.
12 As you recognized the condition of the defendant, what
13 are your personal thoughts as you begin to administer
14 Miranda warnings?

15 A. I personally remember thinking this isn't going to
16 go over so well.

17 Q. Okay. Did you entertain any reservations about
18 taking such an important statement?

19 A. Yes.

20 Q. And what were those reservations, if you can share
21 them with the Court.

22 A. Given the condition that -- both physical and
23 mental condition that he was in, that defendant was in at
24 that given point in time, I personally thought nothing he
25 said would have been admissible in court.

AMANDA CONE - DIRECT BY MR. SIMPSON

1 Q. Did you think the more prudent path would be to
2 perhaps conduct an interview later?

3 A. Yes.

4 Q. And did you participate in the later interview?

5 A. No, I did not.

6 Q. And was the interview discontinued, that you
7 participated in?

8 A. Yes, it was.

9 Q. Now, do you recognize your voice on that
10 recording?

11 A. I do, yes, sir.

12 Q. What did you just say to the defendant?

13 A. I had told him to stay with us.

14 Q. Did you have any concerns at that time that this
15 might not be the best time to go forward with it?

16 A. Yes.

17 Q. Just by way of speculation -- is it your goal as a
18 law enforcement officer to take advantage of a person's
19 position?

20 A. Actually, not, no. Most definitely not.

21 Q. If that was your motive and your goal and your
22 motivation --

23 MR. PENNINGTON: Objection to speculation,
24 Your Honor.

25 MR. SIMPSON: I'll withdraw. We'll continue.

AMANDA CONE - DIRECT BY MR. SIMPSON

1 BY MR. SIMPSON:

2 Q. Detective Cone, does that recording capture at
3 least most of your interaction you had with Mr. Kronsberg
4 that day?

5 A. Yes.

6 Q. Any interaction that you recall that's not
7 captured on that recording between you and the defendant?

8 A. No, sir.

9 Q. Okay. He does state during that interview, I
10 don't want to talk about that; is that correct?

11 A. Yes.

12 Q. Did you guys continue to ask him about the crime?

13 A. No, sir.

14 Q. Did you respect his wishes that day when he said,
15 I don't want to talk about that?

16 A. We did.

17 Q. And, again, were you at that time already
18 entertaining some doubts as to whether you should
19 proceed?

20 A. Yes, sir.

21 Q. The recording speaks for itself, in many ways, but
22 was there any more direct or confrontation with the
23 defendant?

24 A. No.

25 Q. Are you trained in giving interrogations?

AMANDA CONE - CROSS BY MR. PENNINGTON

1 A. Yes.

2 Q. Do they teach you certain techniques?

3 A. They do.

4 Q. Did you employ any of those commonly used
5 techniques in that interview?

6 A. In terms of what?

7 Q. Trying to manipulate the defendant to answer the
8 question.

9 A. No, no.

10 Q. Did you confront him with any sort of gruesome
11 evidence at that point?

12 A. No, absolutely not.

13 Q. Did you promise any leniency?

14 A. No.

15 Q. Did what we just heard capture the entirety of
16 your interactions that day with Mr. Kronsberg?

17 A. It does, yes.

18 MR. SIMPSON: Court's indulgence. Please
19 answer any questions Mr. Pennington has for you.

20 CROSS-EXAMINATION

21 BY MR. PENNINGTON:

22 Q. Good afternoon.

23 A. How are you doing, sir?

24 Q. Just a few questions, Detective Cone. This was --
25 we've now established that this was on February 12th of

1 2013?

2 A. Yes, sir.

3 Q. And it was about 10:30 at night?

4 A. I'm unaware of the time.

5 Q. Was it at night?

6 A. I do not recall, to be honest with you.

7 Q. Okay. When you approached the defendant, he was
8 in a hospital bed?

9 A. Yes, sir.

10 Q. And he was also handcuffed to that hospital bed?

11 A. He was.

12 Q. And there were detention officers there?

13 A. I do not recall that. I know he was restrained.

14 Q. Restrained, meaning that he was not only
15 handcuffed to the bed, but there were other restraints on
16 him?

17 A. Yes, sir.

18 Q. Meaning belt-like restraints?

19 A. I don't recall. I do not remember.

20 Q. Or ways that he couldn't get up out of the bed?

21 A. Yes.

22 Q. And you indicate that he -- that there were tubes
23 that were associated. You saw oxygen?

24 A. I wasn't personally looking at the medical
25 equipment that was attached to him.

AMANDA CONE - CROSS BY MR. PENNINGTON

1 Q. Did y'all laugh about the fact that if you gave
2 him a cigarette that there was oxygen there that would
3 send you to a different place?

4 A. I don't think there was a specification as to what
5 items there were. I know there were plenty of medical
6 equipment inside the room.

7 Q. He had an IV?

8 A. As far as I can remember, yes, sir.

9 Q. And toward the end, when you asked him, How are
10 you feeling though? He kind of slurs, but he says, I
11 don't know. I feel awful, doesn't he?

12 A. I thought he said a little angry.

13 Q. Well, there were two responses. Do you recall --
14 and let me see if you've had a chance to review this.

15 MR. PENNINGTON: May I approach, Your Honor?

16 THE COURT: Yes.

17 BY MR. PENNINGTON:

18 Q. Have you had an opportunity to review a draft of a
19 transcript of the interview?

20 A. No, sir.

21 Q. Just take a look at the section I'm marking and
22 see if that fits your recollection of what we just heard.

23 A. Yes, sir. And the part you have underlined that
24 says, I feel awful, I didn't hear that. That's why my
25 response was just that.

1 Q. So he might have said it; you just don't recall
2 it?

3 A. Yes, sir.

4 Q. He didn't look like he was feeling good, did he?

5 A. No.

6 Q. You were talking about the fact that maybe the
7 medical personnel could do something about his nicotine
8 craving?

9 A. Yes, sir.

10 Q. And so ultimately Detective Holmes -- he was the
11 lead detective in this case?

12 A. Yes, sir.

13 Q. He said that, We're going to let you recuperate a
14 little more, and then in another couple days we'll come
15 back?

16 A. Yes, sir.

17 Q. And then he modifies it and says, Probably in
18 another day or so, we'll come back and see you again.

19 A. Yes, sir.

20 Q. Okay. And he gets an okay from Mr. Kronsberg.

21 A. Yes, sir.

22 Q. And then did Mr. Kronsberg go back to sleep?

23 A. As far as I know. I don't know what happened
24 after that point. We left the hospital.

25 Q. But you had concerns that this was -- this would

AMANDA CONE - REDIRECT BY MR. SIMPSON

1 not have been a time to interview this individual because
2 he was so groggy?

3 A. Yes, sir.

4 Q. And I think you described that he was lethargic.

5 A. Yes.

6 Q. And had slurred speech?

7 A. Yes, sir.

8 Q. It was your voice that said in the beginning as he
9 was being Mirandized, Stay with us?

10 A. Yes, sir.

11 MR. PENNINGTON: Thank you, Detective Cone.
12 That's all I have.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MR. SIMPSON:

16 Q. Detective Cone, you stated that you don't have any
17 recollection today about the exact time of day?

18 A. No, I don't.

19 Q. And reports to law enforcement often document the
20 time in military, 24-hour time?

21 A. Yes, sir.

22 Q. And what would 10:15 mean to you?

23 A. 10:15 in the morning.

24 MR. SIMPSON: Nothing further, Your Honor.

25 MR. PENNINGTON: No further questions.

RICHARD J. HOLMES -- DIRECT BY MR. SIMPSON

1 THE COURT: You can step down. Thank you.

2 Next witness?

3 MR. SIMPSON: State calls Detective Holmes of
4 the Charleston Police Department.

5 RICHARD J. HOLMES,
6 having been first duly sworn,
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SIMPSON:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. Where do you work?

13 A. The Charleston City Police Department.

14 Q. And in what role?

15 A. I'm presently a homicide investigator.

16 Q. Were you working in the same capacity back in
17 February of 2013?

18 A. Yes, sir.

19 Q. And did you have occasion working in that capacity
20 to get involved in the case that brings us here today?

21 A. Yes, sir.

22 Q. Could you just briefly summarize your initial --
23 some of your initial actions on this case. Were you
24 present at the scene when it was discovered?

25 A. Yes, sir, I was.

RICHARD J. HOLMES - DIRECT BY MR. SIMPSON

1 Q. Did you view the body of Tasha Lucia?

2 A. Yes, sir, I did.

3 Q. So did you have some working familiarity with the
4 case a couple of days into the investigation?

5 A. Yes, sir.

6 Q. Were you the assigned lead?

7 A. Yes, sir, I was.

8 Q. Did you participate in the interviews of the
9 defendant, Robert Kronsberg?

10 A. I did.

11 Q. Did you sort of lead that process of obtaining a
12 statement from Mr. Kronsberg?

13 A. Yes, sir, I did.

14 Q. You were here for the testimony of Detective Cone,
15 correct?

16 A. Yes.

17 Q. Were you present with Detective Cone on February
18 12th, on the first attempt to interview Mr. Kronsberg?

19 A. Yes, sir, I was.

20 Q. Can you briefly just describe to the Court sort of
21 the state you found Mr. Kronsberg in on February 12th.

22 A. On our arrival to the MUSC Hospital, we went up.
23 As Detective Cone said, we went up to the floor where he
24 was being housed. We attempted to conduct an interview
25 with him, but at the time, I advised Detective Cone that

1 I thought it wasn't going to be feasible to have the
2 interview completed at that time.

3 Q. Now, just to establish this record, that was on
4 February the 12th?

5 A. Yes, sir.

6 Q. And what time was that first attempted interview
7 conducted?

8 A. This was approximately 10:15 in the morning.

9 Q. Okay. You just testified you had some
10 reservations about taking that interview. Can you expand
11 on those for the Court.

12 A. Yes, sir. Based on my investigations, when I do
13 an interview with an individual, if I'm feeling that
14 they're not coherent enough to understand me, I'm not
15 going to continue with the investigation at that time.
16 I'll conclude the interview, and just decided at this
17 time it wasn't going to be a good interview with the
18 defendant.

19 Q. Did you have some of those reservations on
20 February the 12th?

21 A. Yes, sir, I did.

22 Q. Now, let's also not beat around the bush. The
23 defendant also said, I don't want to talk to you about
24 that; is that correct?

25 A. Yes, yes, sir.

RICHARD J. HOLMES - DIRECT BY MR. SIMPSON

1 Q. So as a detective -- and how many years have you
2 been a detective?

3 A. Approximately 22 years.

4 Q. And what does that mean to you in your 22 years of
5 law enforcement when a suspect says, I don't want to talk
6 to you?

7 A. When he says he doesn't want to talk, it's not
8 presently that he's not willing to talk, but he's just
9 maybe not at that time -- in my investigations, I've
10 always -- if he says, Not at that time, I'm willing to
11 come back at another time, a specific location, come in.

12 Q. A suspect saying, I don't want to talk to you, is
13 that something you have to respect?

14 A. Yes, sir.

15 Q. Did you respect that statement in this present
16 case?

17 A. Yes, sir, I did.

18 Q. You were present, correct, as we just listened to
19 the audio recording?

20 A. Yes, sir.

21 Q. Was there any interaction that you had with
22 Mr. Kronsberg that is not captured on that audio
23 recording?

24 A. On the 12th, no, sir.

25 Q. That audio recording remains the best evidence of

RICHARD J. HOLMES - DIRECT BY MR. SIMPSON

1 everything that occurred in that hospital room?

2 A. Yes, sir.

3 Q. Any threats?

4 A. No, sir.

5 Q. Promises?

6 A. No, sir.

7 Q. Any interaction with him that isn't caught on that
8 recording?

9 A. No, sir.

10 Q. Okay. And, again, as a 22-year detective, when a
11 suspect says anything that can be construed as a wish to
12 remain silent, your understanding is you got to respect
13 that, right?

14 A. Yes, sir.

15 Q. You also testified that under your training of the
16 law it is appropriate to --

17 MR. PENNINGTON: Objection to leading.

18 THE COURT: Rephrase it.

19 BY MR. SIMPSON:

20 Q. Under your understanding of the law, is it
21 sometimes appropriate to reapproach a criminal suspect
22 even though they have previously asserted that they might
23 wish to -- arguably wish to remain silent?

24 A. Yes, sir.

25 Q. Moving on to the next day, did you attempt again

RICHARD J. HOLMES - DIRECT BY MR. SIMPSON

1 to interview Mr. Kronsberg?

2 A. Yes, sir, I did.

3 Q. Can you describe to the Court sort of how that
4 went down, what time and where you went.

5 A. It was approximately on the 13th. Myself and
6 another detective I had asked to go to the hospital with
7 me. Detective Williams was the other officer. We
8 responded to MUSC Hospital, went up to the hospital, and
9 we got -- went into the room of the defendant.

10 Upon our arrival, we noticed he was more coherent
11 at the time. He was alert and conscious. He was
12 actually -- as we walked in, Detective Williams and
13 myself, we made a comment that he was watching the
14 TV show -- a movie -- he was watching a movie called
15 Predator, and Detective Williams advised me that that's
16 what he was watching at the time.

17 There was two security officials, appeared to be
18 from Charleston County detention center there, and at
19 that time we started a conversation with Mr. Kronsberg.

20 Q. Okay. So we will have you describe a little more
21 slowly to the Court. You were present the day before,
22 correct?

23 A. Yes, sir.

24 Q. And then were you there the following morning?

25 A. Yes, sir.

1 Q. Did you notice right off the bat a difference in
2 the condition of Mr. Kronsberg?

3 A. I did.

4 Q. And, again, how was Mr. Kronsberg different on the
5 13th as opposed to the 12th?

6 A. He was alert and conscious. He was sitting up in
7 the bed watching TV, and upon my arrival inside the room,
8 I saw a totally different person from the 12th to the
9 13th.

10 Q. Was that interaction with Mr. Kronsberg recorded
11 on audio?

12 A. Yes, sir.

13 Q. You mentioned this time there is a little bit of
14 interaction with Mr. Kronsberg that's not on that audio;
15 is that correct?

16 A. Yes, sir.

17 Q. And that's small talk about a movie he's watching?

18 A. Yes, sir.

19 Q. And who was with you, Detective Williams?

20 A. Detective Williams, yes, sir..

21 Q. You testified you did entertain some reservations
22 on the 12th about continuing with the interview with
23 Mr. Kronsberg?

24 A. Yes, sir.

25 Q. Did you personally, in your interactions with

RICHARD J. HOLMES - DIRECT BY MR. SIMPSON

1 Mr. Kronsberg on the 13th, harbor any of those
2 reservations?

3 A. No, sir, I did not.

4 Q. And, again, why was that?

5 A. Because at the time he was fully alert and
6 conscious. When I came back, it was like I was looking
7 at somebody totally different. He was sitting up in bed
8 watching the movie and was fully alert.

9 Q. Any of the groggy speech from the day before?

10 A. No, sir.

11 Q. Any of the sort of pauses that you observed the
12 day before?

13 A. No, sir.

14 Q. And, again, this was captured on audio?

15 A. Yes, sir.

16 Q. Is that audio a pretty stark example between the
17 differences you're talking about to Judge Young?

18 A. Yes, sir.

19 MR. SIMPSON: May I approach, Your Honor?

20 THE COURT: You may.

21 BY MR. SIMPSON:

22 Q. I'm handing you what has been marked as Court's
23 6-A. Do you recognize that?

24 A. Yes, sir.

25 Q. And what is that?

1 A. This is the interview with myself and Detective
2 Williams on the CD marked February the 13th, 2013.

3 MR. SIMPSON: At this time the State would
4 seek to publish for the Court Court's 6-A, the audio
5 interview on the 13th.

6 THE COURT: Go ahead.

7 MR. PENNINGTON: These are going to be
8 exhibits for purposes of review. As I understand it,
9 they haven't actually been declared as exhibits; is that
10 correct? Is my interpretation --

11 THE COURT: They haven't been what?

12 MR. PENNINGTON: Are they going to be
13 received as exhibits for purposes of this hearing?

14 MR. SIMPSON: Yes. We've marked them Court's
15 6 and 6-A. We're also going to enter them at trial. The
16 State would move them into evidence as exhibits for this
17 hearing.

18 MR. PENNINGTON: No objection.

19 (Court's Exhibit Nos. 6 and 6-A were marked
20 for identification.)

21 THE COURT: All right. Go ahead.

22 BY MR. SIMPSON:

23 Q. Detective Holmes, you were present the day before?

24 A. Yes, sir.

25 Q. Miranda warnings were given the day before?

RICHARD J. HOLMES - DIRECT BY MR. SIMPSON

1 A. Yes, sir.

2 Q. Miranda warnings were then repeated for the second
3 time?

4 A. Yes, sir.

5 Q. Are you giving him an opportunity after each
6 individual Miranda right to indicate to you he
7 understands that?

8 A. Yes, sir.

9 Q. And has he indicated that to you?

10 A. Yes.

11 Q. At the time, if you recall, was he making eye
12 contact with you while he's having this conversation?

13 A. I don't recall.

14 Q. Does he appear to be understanding these things as
15 you're laying out?

16 A. Yes, sir.

17 Q. Does he seem to be answering affirmatively as soon
18 as he asked?

19 A. Yes, sir.

20 Q. You are saying, Will you initial and sign these.
21 What are you having him initial and sign?

22 A. There is a Miranda card that I use, and there is a
23 space on there for the individuals to sign each space
24 that he understood what I said to him and I read them out
25 to him.

1 Q. Okay. Did that audio recording capture, other
2 than the small talk about the movie he was watching, the
3 entirety of your interaction with Mr. Kronsberg?

4 A. Yes, sir, it did.

5 Q. Any aggressive direct questioning on that audio?

6 A. No, sir.

7 Q. Is there any sort of confrontational stance that
8 you guys take?

9 A. No, sir.

10 Q. Any threats or promises ever take place off tape?

11 A. No, sir.

12 Q. Did you try to be polite during that interview?

13 A. Yes, sir.

14 Q. Did Mr. Kronsberg answer the questions that you
15 asked him?

16 A. Yes, sir, he did.

17 Q. Was he able to provide details about a variety of
18 issues?

19 A. Yes, sir.

20 Q. Who owned, who leased the apartment?

21 A. Yes, sir.

22 Q. Et cetera?

23 A. Yes, sir.

24 Q. Any actions -- you were in the courtroom. You
25 heard the entirety of the interview on the 12th?

RICHARD J. HOLMES - DIRECT BY MR. SIMPSON

1 A. Yes, sir.

2 Q. You heard the entirety of the interview on the
3 13th?

4 A. Yes, sir.

5 Q. Are there any actions, vis-a-vis the police
6 department, interactions with the police department and
7 Mr. Kronsberg that aren't captured on those two
8 recordings other than the small talk about the movie?

9 A. No, sir.

10 Q. Have you conducted interviews with suspects in the
11 past?

12 A. Yes, sir.

13 Q. Have you ever felt it was appropriate to apply
14 some degree of pressure to a suspect or witness?

15 A. Yes, sir.

16 Q. Have you ever gotten a little aggressive with a
17 witness?

18 A. Yes, sir.

19 Q. Have you ever sort of used techniques that you
20 were taught, sort of paint a witness or a suspect in a
21 corner during an interview?

22 A. Yes, sir.

23 Q. Have you ever explained to a suspect or a witness
24 the self-interest that might be there in cooperating with
25 you?

RICHARD J. HOLMES - CROSS BY MR. PENNINGTON

1 A. Yes, sir.

2 Q. Did you employ any of those tactics in this case?

3 A. No, sir.

4 Q. Were you polite to Mr. Kronsberg on both
5 interviews?

6 A. Yes, sir.

7 Q. Were you professional with Mr. Kronsberg?

8 A. I was.

9 Q. Did you suggest answers to any questions?

10 A. No, sir.

11 Q. Were the questions that you asked basically open?

12 A. Yes, sir.

13 Q. Detective Holmes, on either date, did you attempt
14 in any manner to coerce Mr. Kronsberg to give you a
15 statement?

16 A. No, sir.

17 MR. SIMPSON: Please answer any questions
18 Mr. Pennington has.

19 MR. PENNINGTON: May it please the Court,
20 Your Honor:

21 CROSS-EXAMINATION

22 BY MR. PENNINGTON:

23 Q. Detective Holmes, as the lead detective in this
24 case, you knew that Mr. Kronsberg had overdosed on the
25 Sunday before and had to be taken to the hospital,

RICHARD J. HOLMES - CROSS BY MR. PENNINGTON

1 correct?

2 A. I knew he was taken to the hospital, not overdose.
3 I couldn't give you -- because I wasn't at the scene, I
4 never saw him at the scene.

5 Q. You knew more about what you saw at the scene.
6 You were talking to the other officers in this case,
7 weren't you?

8 A. The other officers?

9 Q. Yeah.

10 A. Yes, sir.

11 Q. Because you're the lead detective.

12 A. Yes, sir.

13 Q. So it's your job to gather and assemble and know
14 what is going on with this important case?

15 A. Yes, sir.

16 Q. And this was an important case, wasn't it?

17 A. Yes, sir.

18 Q. Because there had been a homicide, a fatality?

19 A. Yes, sir.

20 Q. And there were people that were very upset about
21 what happened here, family members and the community.

22 A. At the time I hadn't spoken to any family members.

23 Q. How about other members of your team?

24 A. We had a set team that we call out, so we do an
25 investigation into it, yes, sir.

1 Q. So other members of your team had spoken to family
2 members?

3 A. I can't answer that.

4 Q. You've reviewed your case file, haven't you?
5 Aren't there police reports in there about your staff
6 briefing the family about what happened in this case?

7 A. I'm not sure, sir.

8 Q. More to the point, on this particular day, you
9 knew he had been taken to the hospital because he cut his
10 wrists.

11 A. On the 13th?

12 Q. No. On the date -- Sunday the 10th.

13 A. The 10th he was taken to the hospital from the
14 house, yes, sir.

15 Q. Because he had cut his wrists?

16 A. I don't know his injuries at the time because I
17 was actually dealing with the scene itself.

18 Q. What have you learned since then about his
19 injuries?

20 A. Yes, sir, I have.

21 Q. You learned that he had cut his wrists?

22 A. Yes, sir.

23 Q. Okay. And so you also had learned that they were
24 treating him because it appeared that he had somehow
25 overdosed and had to be detoxed from that overdose.

RICHARD J. HOLMES - CROSS BY MR. PENNINGTON

1 A. I'm not sure about that, sir.

2 Q. Isn't that what your report reflects?

3 A. My report is --

4 Q. I'm talking about the case file.

5 A. The case file is a different file that handles a
6 different part of it, yes, sir.

7 Q. Which you read?

8 A. I reviewed the case file, yes.

9 Q. So you encounter him on the 10th -- excuse me, on
10 the 12th, Tuesday the 12th at MUSC, and he's asleep in a
11 hospital bed.

12 A. Yes, sir.

13 Q. He's restrained?

14 A. Yes, sir.

15 Q. He's got an IV?

16 A. I'm not sure if I remember seeing an IV.

17 Q. He's under active care by the hospital?

18 A. He's being seen by the hospital, yes, sir.

19 Q. And he was actually in what they call ICU?

20 A. Intensive care unit, yes, sir.

21 Q. And on that day you woke him up and read him his
22 Miranda rights?

23 A. I didn't wake him up, hospital officials did.

24 Q. They woke him up for you?

25 A. Yes, sir.

RICHARD J. HOLMES - CROSS BY MR. PENNINGTON

1 Q. Because you wanted to question him?

2 A. I wanted to talk to him, yes, sir.

3 Q. And when they woke him up, you read him his
4 rights?

5 A. Yes, sir.

6 Q. And you described it on the next date when you
7 came back, I think you said on direct, that you kind of
8 read him the rights because you were relying on the fact
9 that it had been done the day before, correct?

10 A. I read his rights the way I read any rights that
11 we do on investigations.

12 Q. Detective Holmes, you had a chance to meet with
13 the solicitor's office and talk with them about this
14 case?

15 A. I have.

16 Q. And have you reviewed the draft interview on
17 February 13th, what would be like a transcript of the
18 interview that we just listened to?

19 A. I have not.

20 Q. You've not looked at it?

21 A. No, sir.

22 Q. All right. I'm going to offer you this just to
23 refresh your recollection, if you'll just hold on to
24 that.

25 MR. PENNINGTON: And since this is a

RICHARD J. HOLMES - CROSS BY MR. PENNINGTON

1 demonstrative exhibit, Your Honor, I'm going to pass up a
2 copy to the Court.

3 BY MR. PENNINGTON:

4 Q. Before we get back into what happened on the 13th,
5 I'm going to ask you if this document refreshes your
6 recollection on February 13th. Investigator Smalls met
7 with the victim's mother at your request.

8 A. We don't have that Investigator Smalls.

9 Q. Take a look at that document for me, sir.

10 MR. SIMPSON: Objection, Your Honor.
11 Relevance.

12 THE COURT: What's the relevance?

13 MR. PENNINGTON: Relevance, I suppose, is
14 just -- well, I think it goes to credibility.

15 THE COURT: Who is the statement from?

16 MR. PENNINGTON: This statement -- is it his?

17 MR. SIMPSON: A victim advocate's statement.

18 MR. PENNINGTON: Victim advocate's.

19 THE COURT: Go ahead.

20 BY MR. PENNINGTON:

21 Q. Take a look at it, and then I'll ask you a
22 question, Detective Holmes.

23 Okay. May I have it back? Does this appear
24 to be a document you have from the case file that you
25 supplied to the solicitor's office as part of your work

1 in this case?

2 A. Yes, sir.

3 Q. Does it now refresh your recollection that you had
4 communications with the victim's advocate who then met
5 with the victim's mother?

6 A. Yes, sir.

7 Q. And that would have been on the same day we're
8 talking about today.

9 A. I don't recall the date on the document.

10 Q. The same day as this interview we're talking about
11 today.

12 A. Yes, sir.

13 Q. So going back to this interview on the 13th, you
14 did not stop and talk to the treating physician about the
15 medications that had been prescribed that were going into
16 Mr. Kronsberg, did you?

17 A. No, sir.

18 Q. So you didn't know what kind of medication he was
19 under?

20 A. No.

21 Q. But he was still in a hospital bed.

22 A. He was.

23 Q. And he was still handcuffed?

24 A. Yes, sir.

25 Q. And unable to get up?

RICHARD J. HOLMES - CROSS BY MR. PENNINGTON

1 A. Yes, sir.

2 Q. And you described that -- I believe on direct in
3 the interview, you said, I'm going to read you your
4 rights real quick, correct?

5 A. If that's recorded, yes, sir.

6 Q. Do you have the transcript?

7 A. Yes, sir.

8 Q. Do you see that first paragraph?

9 A. Yes, sir.

10 Q. And you said you were going to read his rights
11 real quick because you testified for the solicitor that
12 you were relying on the fact that he had heard his rights
13 the night before. Wasn't that your testimony?

14 A. The night before?

15 Q. Or the day before?

16 A. The day before.

17 Q. The day before?

18 A. Yes, sir.

19 Q. But haven't you also described that in your view
20 he was in no shape to have this kind of interaction
21 because he was so groggy and out of it?

22 A. On the 12th, yes, sir.

23 Q. Okay. But on this date, you still read the rights
24 real quick, didn't you?

25 A. I read him his rights.

1 Q. And then you went into the questioning part, and
2 you asked him the question on page two: Do you wish to
3 talk to me?

4 You asked that question, didn't you?

5 A. Yes, sir.

6 Q. But he never gave you an answer, did he?

7 A. No, sir.

8 Q. Because you interrupted yourself, and you said,
9 Let me ask you a different question before we get
10 started. Tell me where you are. Do you know where you
11 are?

12 A. Yes, sir.

13 Q. You never came back to the question of, Do you
14 wish to talk to me?

15 A. No, sir.

16 Q. Instead, what you did was you went and started
17 asking questions about: Okay. What brought you here to
18 MUSC downtown, correct?

19 A. Yes, sir.

20 Q. And so this --

21 MR. PENNINGTON: Court's indulgence, Your
22 Honor.

23 BY MR. PENNINGTON:

24 Q. In the interview, in the early going, you asked
25 him whose apartment is that?

RICHARD J. HOLMES - CROSS BY MR. PENNINGTON

1 A. Yes, sir.

2 Q. And his response was that -- he said it was Fred
3 Brown's apartment?

4 A. I don't recall the name he gave me.

5 Q. Take a look at page three. See if that refreshes
6 you.

7 A. I see the name Fred on the top, yes, sir.

8 Q. And that was confusing because he didn't live with
9 Fred Brown, correct?

10 A. No, sir, he did not.

11 Q. And you really meant -- you were implying, like,
12 who was the tenant in this apartment, not the landlord.

13 A. Yes, sir.

14 Q. But he had gotten confused by your question and
15 was telling you about the landlord.

16 A. Yes, sir.

17 Q. Did you think he was trying to be difficult?

18 A. No, sir.

19 Q. He was just confused?

20 A. We would say that, yes, sir.

21 Q. I would say that, or you would say that?

22 A. I wouldn't say that.

23 Q. Oh, he understood your question, he just gave you
24 a false answer?

25 A. He just gave me the answer.

1 Q. Well, were you asking who the tenant was but he
2 gave you the name of the landlord?

3 A. I don't know who Fred Brown is, sir.

4 MR. PENNINGTON: No further questions, Your
5 Honor.

6 THE COURT: Redirect?

7 MR. SIMPSON: Thank you.

8 REDIRECT EXAMINATION

9 BY MR. SIMPSON:

10 Q. Detective Holmes, just a couple of questions real
11 quick. "Real quick", that is an expression, correct?

12 A. Yes, sir.

13 Q. But we have a recording of the Miranda warnings,
14 correct?

15 A. Yes.

16 Q. Do you pause after each one and allow him to
17 affirmatively respond yes?

18 A. Yes, sir.

19 Q. And do you pause after each right to see if he
20 understands?

21 A. Yes, sir.

22 Q. Do you, in fact, throw -- in putting aside
23 expressions for a moment, do you, in fact, speed through
24 Miranda warnings?

25 A. No, sir.

RICHARD J. HOLMES - REDIRECT BY MR. SIMPSON

1 Q. And this is all recorded, right?

2 A. Yes, sir.

3 Q. So we're really arguing about that, the best
4 evidence about that.

5 A. Yes, sir.

6 Q. You were wondering who -- is it correct that you
7 were wondering who lived with Mr. Kronsberg at the
8 apartment?

9 A. Yes, sir.

10 Q. And you asked the question whose apartment was
11 that?

12 A. Yes, sir.

13 Q. Or something to that effect?

14 A. Yes, sir.

15 Q. Assuming Fred Brown is the owner of that
16 apartment, is that the correct answer to whose apartment
17 is that, Fred Brown?

18 A. Yes, sir.

19 Q. So you asked the question -- perhaps didn't change
20 it, right, but he gave you a very precise answer to your
21 question; is that right?

22 A. Yes, sir.

23 Q. Does that perhaps reflect that your question may
24 have been confusing and he answered it directly?

25 A. Yes, sir.

DIANA MULLIS - DIRECT BY MR. SIMPSON

1 Q. Does that issue get clarified very simply and
2 quickly on the recording?

3 A. Yes, sir, it does.

4 MR. SIMPSON: Nothing further, Your Honor.

5 MR. PENNINGTON: No further questions, Your
6 Honor.

7 THE COURT: You can step down. Let's take
8 ten minutes before we call the next witness.

9 Could I see y'all just for a second?

10 (Recess taken.)

11 THE COURT: State, call your next witness.

12 MR. SIMPSON: Thank you, Your Honor. The
13 State calls Dr. Diana Mullis.

14 DIANA MULLIS,

15 having been first duly sworn,

16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SIMPSON:

19 Q. Dr. Mullis, good afternoon. Where are you
20 currently employed?

21 A. At the Medical University of South Carolina,
22 department of psychiatry.

23 Q. And how long have you been in that position?

24 A. I've been in this position almost 12 years.

25 Q. And if we could sort of backtrack quite a ways,

DIANA MULLIS - DIRECT BY MR. SIMPSON

1 talk about you and your qualifications for a couple
2 minutes, when did you -- could you give the Court your
3 educational history.

4 A. I did medical school at Medical University of
5 South Carolina. I did an internship at Bowman Gray in
6 Winston-Salem, North Carolina, and I completed my
7 psychiatry residency training at the Medical University
8 of South Carolina and completed my forensic psychiatry
9 residency at the University of South Carolina.

10 Q. And approximately how many years of formal
11 schooling is that altogether?

12 A. Including college, or just starting with medical
13 school?

14 Q. Yes, college to where you finished up.

15 A. Probably 14.

16 Q. And following that, could you share with the Court
17 your medical experience.

18 A. I practiced emergency medicine for several years,
19 and primarily practiced in North Carolina and South
20 Carolina. I trained in psychiatry 1992 to 1995 here at
21 MUSC and have been practicing psychiatry since that time.

22 Q. And during your professional life, have you ever
23 received any awards?

24 A. Yes.

25 Q. And briefly review some of those highlights.

DIANA MULLIS - DIRECT BY MR. SIMPSON

1 A. I received some excellence awards, and I also,
2 during my practice in emergency medicine, received a
3 medal of honor from the Navy for meritorious service
4 during Hurricane Hugo.

5 Q. Does your field of expertise require any
6 continuing education?

7 A. Yes.

8 Q. And what are those requirements?

9 A. We are required to complete a minimum of 20
10 educational units per year.

11 Q. And have you kept up-to-date with those
12 requirements?

13 A. Yes.

14 Q. Are you a member of any professional organizations
15 or have any certifications?

16 A. Yes. I'm a member of the American Psychiatric
17 Association and the American Academy of Psychiatry and
18 the Law. As far as certifications, I'm Board certified
19 in psychiatry and also forensic psychiatry.

20 Q. And you are a practicing psychiatrist?

21 A. Yes.

22 Q. Have you nevertheless also engaged in the academic
23 side of the profession?

24 A. Yes.

25 Q. Any publications?

DIANA MULLIS - DIRECT BY MR. SIMPSON

1 A. Yes.

2 Q. And are those peer-reviewed scientific
3 publications?

4 A. Some of them are.

5 Q. I might be getting ahead of myself, but any
6 publications specifically on the area of Haloperidol, or
7 what is commonly called Haldol?

8 A. One of the peer-reviewed publications is about the
9 toxicity of the combination of Lithium and Haloperidol.

10 Q. And is that the only peer-reviewed publication
11 that you've been involved with?

12 A. So there was -- one article was the integrating
13 psychiatric Pharm D services into the emergency
14 department psychiatric team. The next one that I have
15 listed is neurotoxicity with combined use of Lithium and
16 Haloperidol Decanoate.

17 Q. And let me interrupt you. Can you just
18 approximate how many peer-reviewed scientific
19 publications you've published?

20 A. Four.

21 Q. Four.

22 MR. SIMPSON: At this point, Your Honor, the
23 State would move to have Dr. Mullis qualified as an
24 expert in psychiatry.

25 MR. PENNINGTON: No objection, Your Honor.

DIANA MULLIS - DIRECT BY MR. SIMPSON

1 THE COURT: All right. She's qualified.

2 BY MR. SIMPSON:

3 Q. Dr. Mullis, were you contacted by the State to
4 take a look at an issue in the case that brings us here
5 today?

6 A. Yes.

7 Q. And approximately when were you contacted?

8 A. Last Tuesday afternoon.

9 Q. And what specifically did the State request? What
10 issues did State request you look into?

11 A. The State specifically wanted me to look at the
12 issues regarding the medication, the side effects, and
13 the duration of the action of the medications.

14 Q. And specifically what two medications did we
15 request?

16 A. Ativan and Haldol, or Haloperidol.

17 Q. And do you feel that -- your qualifications and
18 your expertise that you have shared with the Court, does
19 that allow you to render a medically accurate opinion in
20 this case?

21 A. Yes.

22 Q. Let's -- what materials have you reviewed for your
23 testimony here?

24 A. I reviewed the materials that you provided to me.
25 It was the medical records for Mr. Kronsberg and the two

DIANA MULLIS - DIRECT BY MR. SIMPSON

1 audiotapes of his interaction with the police officers at
2 the hospital.

3 Q. Do you feel professionally that you had adequate
4 materials to render an opinion today?

5 A. Yes.

6 Q. I want to start with the Lorazepam. As discussed,
7 I don't believe this is a point of contention with the
8 defense, but I would just like to have you address that
9 for the record, if you could explain to the Court. Did
10 you conclude that the Lorazepam given to the defendant
11 had any effect on him at the time of his confession?

12 A. It's my opinion to a reasonable degree of medical
13 certainty that the Ativan did not affect him at the time
14 of his confession.

15 Q. Could you review for the Court what led you to
16 that conclusion.

17 A. Well, depending on what literature you look at,
18 the elimination half life of Ativan is anywhere from
19 eight to 12 hours, pretty standard. We go over 12 hours,
20 so it takes about five half lives to actually eliminate
21 the medication from the system.

22 Eliminating the medication from the system is not
23 the same as still having active metabolite in your
24 system, so it can already be converted to an inactive
25 metabolite but excreted some hours later. So if we go

1 with 12 hours as the elimination half life for the Ativan
2 and we multiply it by five, we would expect it to be
3 completely eliminated through the kidneys in about 60
4 hours, and I think it was about 45 and a half hours from
5 the time he had his Ativan to the time the police talked
6 to him, but during that process, you know, if we kind of
7 look at it at 48 hours out of what would still be in his
8 system would be a milligram to a milligram and a half,
9 equivalent of Ativan, but it's exaggerated, because at
10 that point it would probably be converted to an active
11 metabolite.

12 Q. Is it a fair conclusion regarding the Lorazepam to
13 a reasonable degree of medical certainty that it was no
14 longer having an active impact on Mr. Kronsberg at the
15 time of this?

16 A. Yes.

17 Q. And what was the duration of time between his last
18 dosage of Lorazepam to the confession, approximately?

19 A. His last dose was February the 11th at 1309, which
20 is 1:09 p.m., and his confession was on February the
21 13th, between 10 and 11 a.m.

22 Q. Doctor, moving on to the more pertinent point,
23 let's start very basically, what is Haloperidol?

24 A. Haloperidol is classified as an antipsychotic
25 medication. It's used for a number of -- to treat a

DIANA MULLIS - DIRECT BY MR. SIMPSON

1 number of symptoms. Its primary use is to treat
2 psychotic disorders, but we can also use it for mania.
3 We can use it for anxiety as well. It can be used to
4 treat Tourette's disease.

5 Q. You mentioned mania and anxiety. I believe you
6 testified earlier you did have some experience in an
7 ER setting.

8 A. Yes.

9 Q. ER IV use setting?

10 A. I am the director for the psychiatry emergency
11 services at MUSC for our department of psychiatry, so I
12 run into patients in the emergency department on a daily
13 basis when I'm at work, so we have a whole team and we
14 regularly treat patients with these medications.

15 As far as our inpatient, I do inpatient work as
16 well as some outpatient work and have used Haldol
17 extensively to treat a variety of disorders or symptoms.

18 Q. So Haldol is used to treat mental disorders; is
19 that correct?

20 A. Yes.

21 Q. And it is also used to treat symptoms?

22 A. Yes. And it's also used to treat delirium.

23 Q. What are the intended effects of Haldol?

24 A. The intended effects of Haldol are -- if an
25 individual has a psychotic disorder, the intended effects

DIANA MULLIS - DIRECT BY MR. SIMPSON

1 are to reduce the psychosis. So if someone is hearing
2 voices or seeing things or extremely paranoid, the
3 medication is used to try to reduce those symptoms. It's
4 also effective in reducing the agitation that the
5 individual may be experiencing as well.

6 Q. In an emergency setting, is agitation of a patient
7 an important thing to treat?

8 A. Yes.

9 Q. Is Haldol a commonly accepted manner of treating
10 that?

11 A. Yes.

12 Q. So you've reviewed the medical records, correct?

13 A. Yes.

14 Q. Anything unusual or out of the norm for the Haldol
15 given to Mr. Kronsberg?

16 A. Not that I saw.

17 Q. And can you make any observations to the Court
18 about the dosage of Haldol given to Mr. Kronsberg?

19 A. Well, the dosage of the Haldol given to
20 Mr. Kronsberg was a pretty standard dosing for treating
21 someone who is agitated, and the way the records read, it
22 was probably a delirious state.

23 Q. So the five milligrams are not an unusually high
24 dose?

25 A. No. We can go much higher.

DIANA MULLIS - DIRECT BY MR. SIMPSON

1 Q. And could you provide for the Court -- you say we
2 could go higher. What are some examples of higher
3 dosages that would be appropriate?

4 A. We could treat -- say we have someone with a
5 serious mental illness on the unit and they're agitated
6 and psychotic. We may start dosing them at ten
7 milligrams at a time every 30 minutes until we get them
8 calmed down, less agitated and less paranoid.

9 Q. So a person with an extreme mental issue may get
10 ten milligrams every 30 minutes?

11 A. Yes.

12 Q. What are some documented side effects?

13 A. Common side effects are extra perennial side
14 effects, and what I mean by that is generally we will see
15 abnormalities of the muscles. You may see muscle
16 stiffness, muscle rigidity, abnormal tensing,
17 involuntarily movements of the extremities, sometimes the
18 trunk or the face.

19 Q. I'm sorry. May I interrupt?

20 A. That's fine.

21 Q. Is it fair to say that in these most common of
22 side effects of Haldol, it sounds to me like they would
23 be observable to a lay person.

24 A. Yes.

25 Q. And particularly observable to someone with

1 medical training?

2 A. Yes...

3 Q. Sorry to interrupt. Please continue.

4 A. It's no problem.

5 Q. We were discussing -- you said common side effects
6 of Haldol. Are there any uncommon side effects of
7 Haldol?

8 A. There can be very severe side effects of Haldol.
9 They can be life-threatening. It's not really pertinent
10 to this case.

11 Q. Are there any other side effects of Haldol that
12 you haven't discussed?

13 A. Well, there is a long list of potential side
14 effects to Haldol, as with any medication. Those are
15 primarily the ones that we look for.

16 As far as confusion, that's rare with Haldol. We
17 are pretty much -- the reference books and reference
18 literature indicate it's about less than 1 percent, and
19 sedation is infrequent as well when it's given by itself.

20 Q. So you would categorize confusion and sedation
21 as -- I don't want to put words in your mouth, but I'm
22 going with less than 1 percent as being very rare side
23 effects?

24 A. The wording is rare, and it's -- less than 1
25 percent generally would cause confusion, and it's not a

DIANA MULLIS - DIRECT BY MR. SIMPSON

1 medication that tends to cause sedation. Haldol is
2 considered a high potency antipsychotic, and these
3 medications have -- Haldol has a low anticholinergic
4 effect. It is the anticholinergic effects of these
5 medications that are actually the sedating parts of the
6 medication.

7 So, for example, if we wanted to help somebody
8 down and put them to sleep, we'd use something like
9 Thorazine, even though it's what we call a low potency
10 antipsychotic, but it has very high anticholinergic side
11 effects that can be very sedating.

12 Q. But with the Haldol at this dosage, would you
13 expect to see confusion?

14 A. No.

15 Q. Would you expect to see sedation?

16 A. No.

17 Q. Would you expect to see severe influences on a
18 person's ability to exercise free will?

19 A. No.

20 Q. To make decisions?

21 A. No. It should actually help with the thinking.

22 Q. And is an intended effect of Haldol, in fact, to
23 clear the mind and clear the thinking?

24 A. Yes.

25 Q. I would like to move now to the factual specifics

DIANA MULLIS - DIRECT BY MR. SIMPSON

1 of Mr. Kronsberg's case, if we can. You reviewed his
2 medical records?

3 A. Yes, what was provided to me.

4 Q. Could you review for the Court the Haldol dosages,
5 when they occurred, and the time period between them.

6 A. All right. So on -- you want me to start at the
7 beginning and go through?

8 Q. Sure. That's the easiest.

9 A. So on February the 10th, he received -- probably
10 was February the 11th, about 20 minutes after midnight,
11 he received a dose, IV. On 2/10 he also received a dose,
12 IV. That was Ativan. I'm sorry.

13 So on February 10th, he was given five milligrams
14 of IV Haldol at 2227, and he was also given -- on 2/11 at
15 10:48, he was given five milligrams IV. 1527 on 2/11, he
16 was also given five milligrams IV, and it looks like the
17 last dose was on 2/13, five milligrams IV, at 7:53.

18 Q. So he receives, if this is correct, some of the
19 doses of Haldol on the 10th and 11th?

20 A. Yes.

21 Q. And none on the 12th.

22 A. Correct.

23 Q. And can you make any observations for the Court --
24 you mentioned with the Lorazepam, you discussed sort of
25 the half life and how long it takes a body on average

DIANA MULLIS - DIRECT BY MR. SIMPSON

1 to --

2 A. Eliminate?

3 Q. -- eliminate. Thank you. Did you make any
4 observations regarding Haldol in that respect?

5 A. I can tell you, when you give Haldol IV, the
6 T-max, or the therapeutic maximum effect, is immediate,
7 so you would expect shortly thereafter, you know, to see
8 some benefits from the medication. If you give it IM,
9 the T-max is about 20 minutes, which is on the maximum
10 therapeutic, and then it's, you know, an hour or so
11 longer, actually, if you give it orally.

12 Q. And we have Mr. Kronsberg on February 12th, no
13 dosages of Haldol; is that correct?

14 A. According to the medication sheets, yes, that's
15 correct.

16 Q. Okay. Do you harbor any concerns with that gap as
17 to any cumulative effect of the multiple dosages of the
18 Haldol?

19 A. No.

20 Q. So the final single five milligram dose of Haldol
21 occurs when?

22 A. It happened at 7:53, February the 13th, 2013.

23 Q. Now, that is fairly close in time to when the
24 confession was taken; is that correct?

25 A. I think the confession was between 10:00 and 11:00

1 that day.

2 Q. Were you able to make any conclusions regarding
3 Mr. Kronsberg's free will, ability to make decisions,
4 state of mind at the time of the confession, focussing on
5 that earlier single five milligram dose of Haldol?

6 A. I do have an opinion.

7 Q. And what is that opinion?

8 A. It's my opinion, to a reasonable degree of medical
9 certainty, that the five milligrams of Haldol
10 administered intravenously at 7:53 February the 13th,
11 2013 to Mr. Kronsberg did not impair his capacity to
12 understand and comprehend his situation.

13 Q. And, in fact, the intended purpose of Haldol is
14 to, again, to clarify the -- mental clarification?

15 A. It helps to -- you know, if someone is suffering
16 with a thought disorder or confusion, it can help to
17 improve the thought processes.

18 Q. Does Haldol -- and this may sound like a silly
19 question. Does Haldol have any sort of truth serum
20 effect we hear about, medications that make people reveal
21 the truth? Is there any sort of documented effect like
22 that with Haldol?

23 A. Not to my knowledge, no.

24 Q. Does Haldol have effects to sort of break the will
25 of a person, to make them do things they don't want to

DIANA MULLIS - DIRECT BY MR. SIMPSON

1 do?

2 A. Not to my knowledge.

3 Q. You've listened to the interview recordings,
4 correct?

5 A. Yes.

6 Q. Any observations of relevance to your conclusions
7 that you were able to glean from listening to the actual
8 interviews?

9 A. Yes.

10 Q. And what were those?

11 A. I listened to the tape from February the 12th, and
12 on that tape, Mr. Kronsberg sounded a bit confused. His
13 speech was slow and somewhat slurred. He also had a
14 latency to respond, and what I mean by that is there
15 would be a pause after he was asked a question. There
16 would be a pause, and then he would respond.

17 So he would -- he was also asked if he knew why he
18 was here and he just said vaguely -- he couldn't give
19 much in the way of details, but what I thought was
20 particularly striking is kind of his speech impairment
21 being slurred, certainly slow to respond to questions, so
22 I would certainly be concerned at that point that he was
23 cognitively impaired.

24 The next tape that I listened to was from February
25 13th, and there seemed to be a significant difference.

DIANA MULLIS - DIRECT BY MR. SIMPSON

1 His speech was slurred. His responses were appropriate
2 and timely. There was no latency of response, so when a
3 question was asked, he would respond in a timely manner.
4 He was able to state his date of birth, talk about his
5 education, where he attended school. There was no
6 slurred or slowed speech. He stated he knew where he was
7 and what had happened that led up to his being there.

8 He seemed to describe fairly well and in some
9 detail as to what he recalled leading up to his being
10 hospitalized, you know, the events that occurred prior to
11 being hospitalized. It's pretty consistent, I think,
12 with the information that he provided for me as well in
13 the notes.

14 Q. Let me -- I'm sorry to interrupt. So you've spent
15 a good deal of your career in hospital settings; is that
16 correct?

17 A. That's correct.

18 Q. Are medical personnel at all levels generally
19 trained to make routine observations of a patient?

20 A. At all levels?

21 Q. Well, nurses, doctors, trained professionals,
22 trained medical professions.

23 A. Yes.

24 Q. Do the medical records we provided you give you
25 any information regarding Mr. Kronsberg's mental state

1 throughout the course of his hospitalization?

2 A. Yes.

3 Q. And could you explain to the Court what those
4 records show you.

5 A. You want to start with the first day or do you
6 just want to go to February 13th and 14th?

7 Q. I'd like to start with the first day.

8 A. So he was admitted to the intensive care unit the
9 morning, it looks like, of February the 11th. At that
10 time, his RASS scales were pretty bad, and that's the
11 Richmond Agitation Sedation Scale. That is used to look
12 at the agitation or sedation of patients, primarily in
13 the intensive care units.

14 Q. And what does that scale range from?

15 A. It ranges from plus five or four up to, I think --
16 I don't know how far the minuses go, to be perfectly
17 honest, because I don't use it on an everyday basis. So
18 if someone is in -- they'll say plus one, two, three,
19 four. They'll say plus four, like he was, that indicates
20 that he was quite sedated.

21 Q. I'm sorry. Number four, you mean sedated or
22 agitated?

23 A. Sorry, agitated, and then the minuses are the
24 sedation. I'm sorry. I misspoke myself.

25 So he was agitated initially when he came in and

DIANA MULLIS - DIRECT BY MR. SIMPSON

1 required a lot of medication, and then as the day
2 progressed, he became somewhat sedated, in which the RASS
3 score was two. He received -- on that day, around 7:00,
4 between 7:00 and 8:00, his Glasgow coma scale was 10. He
5 was agitated and restless and required restraints and had
6 an altered mental status.

7 Q. I'm sorry. What day and time was that?

8 A. That was February the 11th.

9 Q. Okay.

10 A. At the -- the record said 9:57.

11 Q. Has that condition improved?

12 A. It did. The next morning, at 2/12, the Glasgow
13 coma scale had improved to 13. 13 to 15 is considered
14 normal, like if someone comes in on a head injury. He
15 was still in some restraints at that time.

16 By noon that day, his neurological exam was
17 documented as normal, and his GCS was 15. He was obeying
18 commands, opening his eyes spontaneously, and was alert
19 and oriented.

20 Later that day, at 8 o'clock, on 2/12, his
21 neurological exam was normal. His ankle was cuffed to
22 the bed, per police protocol, but he apparently wasn't
23 requiring any other restraints as documented in the
24 notes.

25 On February the 13th at 8 a.m., his neurological

DIANA MULLIS - DIRECT BY MR. SIMPSON

1 status was normal. He was alert and oriented, followed
2 commands, had no sensory deficits. His reflex was
3 normal. His Glasgow coma scale was 15.

4 Q. May I pause here to make an observation? Had he
5 received his last Haldol dosage at what time? I'm sorry.
6 You don't have to flip.

7 A. I think it was like -- it was 7:53 --

8 Q. 7:53?

9 A. 7:53.

10 Q. And when the Haldol is given by IV, the effects
11 happen when?

12 A. Immediately.

13 Q. Immediately? And I believe you just said medical
14 staff, trained medical staff, made specific observations
15 of his state -- at what time did you just read?

16 A. 8:00.

17 Q. And what were those observations at this time when
18 this Haldol was taking effect immediately?

19 A. He was neurologically normal. He was alert and
20 oriented. He followed commands. He had no sensory
21 deficits. Reflexes were present. His Glasgow coma scale
22 was 15.

23 Q. And that 15, again, indicates to you --

24 A. Normal. So then there was further documentation
25 that same day --

1 Q. Okay.

2 A. -- at 8:51, which is approximately one hour after
3 he received the IV dose of five milligrams of Haldol.

4 Family and patient teaching was performed by
5 Shannon Young, who was a registered nurse in the
6 intensive care unit, looking at parameters to assess a
7 patient's comprehension. So under readiness to learn, he
8 had no barriers to learning, and previously when he was
9 impaired, it was noted that he had impairment of
10 cognition.

11 His comprehension, he stated that he understood
12 what she was talking to him about, and she did not need
13 to reenforce that with him. So he showed a trend over
14 the few days he was there of clearing.

15 Q. Okay. And when was he discharged from the
16 hospital?

17 A. I'll have to look through here to see the exact
18 date and time. I know the doctors saw him at 7:50 and
19 indicated his mental status was back to baseline and
20 discharged from MUSC. I'll have to go back through here
21 and find the actual discharge time.

22 Q. Do you know the date offhand?

23 A. The date was 2/13.

24 Q. And is 2/13 the date the confession was taken?

25 A. Yes.

—DIANA MULLIS - DIRECT BY MR. SIMPSON—

1 Q. So he was discharged from the hospital,
2 observations made of baseline normal on that very day?

3 A. Yes.

4 Q. Doctor, are there any other observations or
5 relevant medical documents you would like to share with
6 the Court?

7 A. You asked me about the discharge time on the
8 paperwork. It was documented at 10:30, so that is when
9 he completed the paperwork.

10 Q. 10:30 on the same date of the confession he's
11 released?

12 A. Yes. He was ready to go after that. All the
13 paperwork had been completed.

14 Q. In your practice, in your experience, would you
15 ever discharge a patient if you had serious concerns
16 about their ability to make decisions and exercise free
17 will?

18 A. Not unless they had someone that could take care
19 of them. For example, again, a demented patient.

20 Q. Finally, Doctor, in reviewing this issue, do you
21 today in court have any concerns about the defendant's
22 ability to exercise his free will and rational intellect
23 at the time he gave that confession?

24 A. Based on what is documented in the medical
25 records, I don't have any concerns that he did not have

DIANA MULLIS - CROSS BY MR. PENNINGTON

1 capacity to comprehend his situation.

2 MR. SIMPSON: Thank you. Please answer any
3 questions Mr. Pennington has for you.

4 THE COURT: Cross?

5 CROSS-EXAMINATION

6 BY MR. PENNINGTON:

7 Q. I think you had indicated in coming here you got
8 involved in this case last Tuesday, less than a week ago?

9 A. That's correct.

10 Q. And your testimony is based on the medical records
11 that you reviewed and you were given by the solicitor?

12 A. That's correct, and also the audiotapes.

13 Q. And the audiotapes. So it's clear that you did
14 not see Mr. Kronsberg on February 13th of 2013?

15 A. No, I did not.

16 Q. And you have not seen him since. You have not
17 seen him as a patient?

18 A. No, I have not.

19 Q. Now, you've indicated he was being discharged that
20 day, but he wasn't going home that day, was he?

21 A. I think he was in police custody according, to the
22 records.

23 Q. He was going to jail?

24 A. Correct.

25 Q. So they have medical facilities and medical staff

DIANA MULLIS - CROSS BY MR. PENNINGTON

1 at the jail that could pick up where MUSC left off?

2 A. That's correct.

3 Q. In terms of -- you indicated that you have worked
4 in your career as an emergency room doctor; is that
5 correct?

6 A. Correct.

7 Q. And then around the '90s, you got involved in
8 studying psychiatry and became Board certified in
9 psychiatry?

10 A. I did a residency training with the Department of
11 Psychiatry at MUSC, that's correct.

12 Q. I think you said that you're in charge here
13 locally at MUSC for purposes of emergency medicine at the
14 ER for people that are severely mentally ill?

15 A. Well, one of the jobs that I have is to serve as
16 the director of immediate psychiatric emergency services,
17 and we round on the psychiatric patients who are boarding
18 in the emergency department or who come in during the day
19 that need to be evaluated. That's part of my job.

20 Q. So these are people who are diagnosed
21 schizophrenics?

22 A. Some of them are.

23 Q. And those are the folks that rely on Haldol in
24 order to suppress Dopamine?

25 A. We can use Haldol for any number of -- if you want

1 to say diagnosis, but generally we look at the symptoms
2 and determine what medications we should use.

3 Q. So have you treated folks that are schizophrenic
4 with Haldol?

5 A. Yes.

6 Q. And it reduces Dopamine?

7 A. It does.

8 Q. And that causes their hallucinations to begin to
9 reduce?

10 A. Decrease.

11 Q. And that's what helps them think more clearly?

12 A. Generally, yes.

13 Q. Okay. Now, you described the psychopharmacology
14 of Haldol, and you described that when you are giving it
15 intravenously, meaning through a line in the arm directly
16 into the bloodstream, that you get effective -- peak
17 effectiveness within 30 to 30 minutes, don't you?

18 A. IV administration is actually immediate, and if
19 you give it IM, which is a shot, it takes about 20
20 minutes.

21 Q. I'm talking about -- with regard to intravenous,
22 you get onset of its effectiveness within five to ten
23 minutes, but it's at its peak within 20 to 30 minutes?

24 A. Actually, the literature shows that the onset to
25 action is immediately when given IV.

DIANA MULLIS - CROSS BY MR. PENNINGTON

1 Q. And the duration is four to five hours, isn't it?

2 A. It can be.

3 Q. Okay. Now, we know from the records here that
4 Mr. Kronsberg was administered initially Haldol three
5 times on Monday; is that correct, on the 11th?

6 A. Yes.

7 Q. So that was at midnight, 10:48 in the morning, and
8 1527, which would be 3:27 in the afternoon?

9 A. 2227, 1048, and 1725.

10 Q. Okay. So what we're talking about -- is it Sunday
11 night we're talking about, the 10th where that -- what
12 would be 10:27 in the evening is when he got the first
13 five milligrams?

14 A. According to these three sheets, he may have
15 gotten something in the emergency room. I've got the
16 IV sheets.

17 Q. At least from what you've got in front of you, we
18 know he got something at 10:00 on Sunday night?

19 A. Was that the 10th?

20 Q. Right.

21 A. Yes.

22 Q. And then he got it the next morning at 10:48 a.m.?

23 A. Yes.

24 Q. And at 3:48 on Monday?

25 A. 5:25, 1725.

1 Q. 17 -- I thought you said 1527.

2 A. No, 1525, 5:25 p.m., on the 11th.

3 Q. Are they -- are you saying 1500 hours or are you
4 saying 5 p.m.?

5 A. 1725.

6 Q. I'm sorry. I misheard. I thought you said 1527.

7 A. If I did, I misspoke myself.

8 Q. Okay. And at that point the Haldol stops?

9 A. No, not necessarily. You can get some therapeutic
10 effect.

11 Q. There are no more administrations of it until
12 Wednesday morning.

13 A. Correct. Wednesday is the 13th; is that correct,
14 the 13th?

15 Q. Wednesday is the 13th.

16 A. Okay.

17 Q. So on the 12th, at 10:00 in the morning when the
18 detectives arrived, essentially he hadn't had any Haldol
19 since about -- you're saying what time, the day before?

20 A. 5:25 p.m.

21 Q. And at that point is when, according to the
22 recordings that you've reviewed, he's asked the question,
23 Do you know why you're here?

24 And he responds, Vaguely.

25 And then Detective Cone, who has testified,

1 said, Tell us what you know.

2 And he said, I don't want to; is that
3 correct?

4 A. Yes.

5 Q. And when she persisted and said, What's that?

6 And he repeated, I don't want to.

7 And Detective Cone responded, You don't want to?

8 And Detective Holmes says, In other words, you
9 just -- you're saying you don't want to talk to us about
10 it.

11 And the response of Mr. Kronsberg is, I just don't
12 want to talk about it.

13 Is that a fair and accurate rendition of what you
14 heard on that video --

15 A. Yes.

16 Q. -- on that audio? Okay. So on the day that he's
17 not on Haldol, except for perhaps the residual effects,
18 he's actually indicating he does not want to talk to the
19 officers.

20 A. Yes.

21 Q. Okay. So would you agree there is a significant
22 difference in the effects and impact of Haldol on the
23 psychiatric state of an individual who is actively
24 psychotic along the lines of schizophrenia as opposed to
25 a normal person?

1 A. Could you clarify that a little bit more for me?

2 Q. Have you looked into the research between the
3 difference between the impact of Haldol on a person who
4 is psychotic, like schizophrenic, as opposed to
5 administration of Haldol on a normal, non-psychotic
6 person?

7 A. Well, it depends on what you're treating in the
8 nonpsychotic person. You could be treating mania. You
9 could be treating delirium, which it appears he was
10 having some delirium from a salicylate overdose. He
11 certainly had some high rates of changes.

12 Q. And that's why it was administered on Monday?

13 A. Yeah. They were using the -- yes, they were using
14 the Haldol to treat what appeared to be a delirious
15 state.

16 Q. And you indicated it was needed again because it
17 was administered again on Wednesday morning at almost
18 8:00 in the morning?

19 A. According to the notes, it was for anxiety, and
20 that would increase the RASS score and so they -- based
21 on the RASS score in the intensive care unit, they will
22 give medications or not give them, so it was documented
23 that he was anxious, and they gave him the Haldol.

24 Q. So they described that this was being offered for
25 anxiety, yes?

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1 A. That's what it noted.

2 Q. It does not say is that he's experiencing
3 hallucinations?

4 A. No.

5 MR. PENNINGTON: Court's indulgence, Your
6 Honor.

7 Thank you. That's all the questions I have.

8 THE COURT: Redirect?

9 MR. SIMPSON: Your Honor, I have no redirect.

10 THE COURT: You can step down. Thank you.
11 You want to call your witness?

12 MR. COCHRAN: Yes. Dr. Mulbry, Leonard
13 Mulbry.

14 LEONARD MULBRY, JR.,

15 having been first duly sworn,

16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. PENNINGTON:

19 Q. Dr. Mulbry, what do you do for a living?

20 A. I'm a forensic psychiatrist.

21 Q. I realize that it's quarter of 6:00, so I'm going
22 to speedily work through your resume. What is your
23 education?

24 A. I have a bachelor of science from Willamette
25 University in sciences and math, and then got a master's

LEONARD MULBRY, JR. - DIRECT BY MR. PENNINGTON

1 degree in pharmacology at the University of California at
2 Davis. I then went to medical school at the University
3 of Kentucky, did a residency in orthopedic surgery, did a
4 fellowship in hand and microsurgery, practiced hand and
5 microsurgery for about 18 years. Retired from orthopedic
6 hand microsurgery in about 2004.

7 I went back and did a second residency in general
8 psychiatry, and then I did a fellowship in forensic
9 psychiatry.

10 Q. Where was that?

11 A. Here at MUSC.

12 Q. And so are you Board certified in forensic
13 psychiatry?

14 A. Both general and forensic psychiatry.

15 Q. Okay. And forensic is the application of the law
16 to psychiatry?

17 A. Correct. It looks at the -- the Courts have a lot
18 of need occasionally for psychiatrists to weigh things,
19 like are people too ill to proceed with legal matters,
20 were they insane at the time of their crimes, are there
21 factors that mitigate their charges, as well as a lot of
22 assessments in civil courts, divorces, things along those
23 lines, and that's also guardianship of the elderly, and
24 that's generally the kinds of things that I do.

25 Q. As part of your career, have you been involved in

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1 teaching of other people in psychiatry?

2 A. Up until last year, I was a member of the Medical
3 University of South Carolina forensic psychiatry
4 department. Up until actually five months ago, until
5 August of this year, I was a member of forensic
6 psychiatry at MUSC.

7 Q. And what were you teaching there?

8 A. Forensic psychiatry.

9 Q. I'm sorry. Who were you teaching?

10 A. I'm sorry. Medical students, residents; we offer
11 a course at the law school, so some of that too.

12 Q. Do you have continuing education in this field of
13 forensic psychiatry?

14 A. Oh, yes. Over and above the usual, I go to
15 meetings every year. There is publications there, and so
16 I go to the meetings every year, and I attend a number of
17 courses. I am in the process right now of taking an
18 online statistics course as a part of keeping up with
19 certain measures, the statistical measures that we do, so
20 it's pretty broad, actually.

21 Q. Have you participated in any research in this
22 field?

23 A. I've probably published about five or six or
24 seven -- anything from posters up to presentations and
25 presented at meetings more years than not.

LEONARD MULBRY, JR. - DIRECT BY MR. PENNINGTON

1 Q. Any peer review?

2 A. In psychiatry, a couple in orthopedics, but in
3 psychiatry there is one right now in press. There is one
4 right now in press.

5 Q. So you're still actively publishing?

6 A. Yes.

7 Q. Okay. Have you provided care, patient care?

8 A. I provide care, taking care of patients, primarily
9 in the South Carolina Department of Corrections. I work
10 a day a week at a prison, and I've done that since about
11 2009. I had one short hiatus one year when I didn't, but
12 I do that, and I still have a clinic one afternoon a week
13 at MUSC.

14 Q. Okay. Have you testified in the past as an expert
15 in the field of psychiatry and forensic psychology?

16 A. In state and federal court, about 50 times, yes.

17 MR. PENNINGTON: Your Honor, at this point I
18 would tender Dr. Mulbry in the field of psychiatry and
19 forensic psychiatry.

20 MR. SIMPSON: No objection.

21 THE COURT: So ordered.

22 BY MR. PENNINGTON:

23 Q. Dr. Mulbry, how did you get involved in this case?

24 A. I was asked by Mr. Cooper to interview
25 Mr. Kronsberg shortly after he was incarcerated.

LEONARD MULBRY, JR. - DIRECT BY MR. PENNINGTON

1 Q. Okay. So this was an interview to assess him on a
2 request from the public defender's office; is that
3 correct?

4 A. Yes, sir.

5 Q. And that would have been in February of 2013?

6 A. I think it actually was a few months later.

7 Q. Okay.

8 A. I don't have the exact dates right here with me,
9 but I've seen him two or three times.

10 Q. At a later time, were you asked to review
11 Mr. Kronsberg's medical records from MUSC from those
12 dates that he spent in treatment from February 13th to
13 14th, 2013?

14 A. Yes, sir. I would estimate about two months
15 ago -- again, I don't have my timeline. About two months
16 ago, there was some concern about the confession, so we
17 obtained a full set of medical records, and I have
18 reviewed those in detail.

19 Q. All right. And, in fact, you spotted the fact
20 that Haldol had been administered that morning.

21 A. Yes, sir.

22 Q. Did that concern you?

23 A. Yes, sir.

24 Q. Okay. And you reported that to counsel?

25 A. Yes, sir.

LEONARD MULBRY, JR. - DIRECT BY MR. PENNINGTON

1 Q. Since then, have you had a chance to listen to the
2 audio interviews that we've played here today?

3 A. A few months ago I listened to them.

4 Q. Okay. And have you seen a transcript, or a draft
5 transcript?

6 A. Yes, sir.

7 Q. What I'd like to do first is talk about Haldol
8 with you and then we can talk about this specific case.
9 First of all, does Haldol reduce adrenaline?

10 A. No. Well, in a miniscule fashion, but its primary
11 effect, far and away, is on Dopamine.

12 Q. What is Dopamine?

13 A. Dopamine is a neurotransmitter. There are a
14 number of neurotransmitters in your brain that make your
15 cells work together for certain pathways, and they use
16 chemicals to communicate with one another, and Dopamine
17 is one of those chemicals.

18 Q. When someone is schizophrenic, do they have
19 problems with Dopamine?

20 A. Well, we know that modifying their Dopamine
21 modifies their illness. The mechanism beneath levels
22 below that, nobody is 100 percent certain, and they may
23 turn out synergetic pathways actually control other
24 pathways, but we do know that manipulating, specifically
25 blocking Dopamine, does clearly ameliorate, reduce, the

LEONARD MULBRY, JR. - DIRECT BY MR. PENNINGTON

1 positive symptoms of schizophrenia, that is,
2 hallucinations, delusions, and paranoia.

3 Q. So we established that Haldol is a neuroleptic
4 that blocks Dopamine?

5 A. Correct.

6 Q. And one of the principal uses is to help folks who
7 are blatantly psychotic begin to improve their thinking?

8 A. Correct.

9 Q. All right. Does Haldol put people to sleep?

10 A. No.

11 Q. Explain, please.

12 A. Haldol -- that's the beauty of Haldol, is that it
13 doesn't make them sleepy. We could just take everybody
14 that has got psychosis and put them all to sleep. The
15 problem is, they're not functioning. They just lay
16 around all day drugged, and that's the beauty of classic
17 compounds called -- they ended up being called
18 neuroleptics. That's a term that goes back to the '60's,
19 and the beauty of neuroleptics, it took a while to
20 understand it, is that they block psychotic thinking,
21 psychotic thinking without knocking the person
22 unconscious, so they're not -- that's their value, is
23 that they're not sleeping.

24 Q. Is it fair to say that these neuroleptics, like
25 Haldol, have a greater impact in terms -- therapeutic

LEONARD MULBRY, JR. - DIRECT BY MR. PENNINGTON

1 impact on people who are actively schizophrenic than on,
2 say, a normal person?

3 A. Very much so.

4 Q. Explain, please.

5 A. It's very complicated, because there are not a lot
6 of times that Haldol is given to, quote, normal people,
7 but quite frequently Haldol is given to people who are
8 agitated, have Tourette's syndrome, delirium. There is a
9 number of reasons why people who are not schizophrenic
10 would be given Haldol. Oftentimes it's used in people
11 with mood disorders, severe bipolar that has gotten
12 completely out of control, so there are a number of times
13 when we do use Haldol in people who are not
14 schizophrenic.

15 Q. Okay. Do you find that the MUSC records suggest
16 that Mr. Kronsberg was schizophrenic?

17 A. No.

18 Q. Turning specifically to the date of the 12th, we
19 just discussed with Dr. Mullis the idea of -- that there
20 was no Haldol prescribed on the 12th; is that correct?

21 A. That is correct.

22 Q. And that would be the day that he refused to talk
23 to city police detectives?

24 A. That's correct.

25 Q. Okay. Turning to how Haldol works, let's talk a

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1 little bit about these pharmacokinetics.

2 I think the doctor previously testified that there
3 is a big difference in taking it orally or
4 intramuscularly and IV?

5 A. Some difference. IV, the onset is going to be
6 very rapid, you know, immediate to a few minutes, ten
7 minutes. It's hard to really sort of nail that down.
8 The receptors are going to start to saturate, and the
9 effect is going to come over the patient very rapidly.

10 IV is injected into the vein so that if you
11 interject it into the vein, it's going to take effect
12 very, very quickly. If you give it IM, that is, if you
13 inject it into a muscle, it has to -- it delays it 20
14 minutes, something like that, 10 to 30 minutes, average
15 20 minutes, and then it's metabolized as it would be.

16 And then the longest acting way is to have it
17 orally. It takes much longer to go into your digestive
18 system, absorbed by the gut, passed through the liver,
19 and run through your system, so that's going to be the
20 slowest and longest duration of those three.

21 Q. Let's talk about the timeline for IV
22 administration. I'm going to ask you about onset, peak,
23 and termination. What would you say in terms of it
24 having an impact, onset-wise, if I was to receive five
25 milligrams of Haldol?

1 A. It would have onset within minutes. You could
2 feel the effect certainly within minutes. You would feel
3 it very rapidly.

4 Q. All right. And then in terms of its peak efficacy
5 or effectiveness, when would that begin to kick off?

6 A. Peak efficacy is going to be a combination of drug
7 level and duration of effect, but you can assume that the
8 drug is going to work effectively for about four to six
9 hours, four to five hours, four to six hours. You see a
10 couple different figures, and it depends on how you
11 assess it, but four to five, maybe six hours is a very
12 realistic duration of effect.

13 It depends on the person's liver, depends on what
14 other medications he's on, but, you know, four to five or
15 six hours is a good figure.

16 Q. Okay. So we know that the five milligrams that
17 was given for anxiety on Wednesday the 13th of
18 February -- it was given at 7:53, correct?

19 A. Yes, sir.

20 Q. You found that in the records?

21 A. Yes, sir.

22 Q. That's what got your attention?

23 A. That's what got my attention.

24 Q. And within a reasonable degree of medical
25 certainty, an interview that occurred two-and-a-half

LEONARD MULBRY, JR. - DIRECT BY MR. PENNINGTON

1 hours later, would the Haldol still be at its -- still be
2 active, if not at its peak?

3 A. Very much so.

4 Q. Okay. Let's talk about what it does. First of
5 all, let's talk a little bit about the effect of these
6 kinds of neuroleptics on Mr. Kronsberg. Have you had a
7 chance to review his jail records?

8 A. I have.

9 Q. And did you see where at the jail he had been
10 prescribed the neuroleptic Perphenazine?

11 A. Yes, sir.

12 Q. And what was the course of that treatment?

13 A. In about fall, I think, in about early October, he
14 was still complaining of an element of mood and stability
15 and being restless, so they prescribed four milligrams of
16 Perphenazine.

17 Q. Okay. And what happened after that?

18 A. In a month he refused to take it anymore.

19 Q. And did he ask to be removed?

20 A. He asked it to be stopped. He said it made him
21 feel like, quote, a space cadet.

22 Q. So apparently the effect of the Perphenazine was
23 creating a sluggishness or kind of a space cadet?

24 A. I think the way he described it to somebody is
25 that he felt like he couldn't defend himself. He felt

LEONARD MULBRY, JR. - DIRECT BY MR. PENNINGTON

1 afraid. He wasn't -- he wasn't able to defend himself in
2 that kind of an environment. He was concerned about it.
3 He didn't want to feel spacey and out of it, and so he
4 wanted it discontinued.

5 Q. Now, you have dealt with the administration of
6 Haldol for people who are chronically schizophrenic, have
7 you?

8 A. Many times.

9 Q. And is it not common to maintain a level of Haldol
10 in order for them to actually be able to function without
11 being space cadets?

12 A. Correct. We have to get used to it. In other
13 words, you have to start the Haldol, you have to get them
14 up to a level that brings down their symptoms without
15 knocking them out, without overdosing them.

16 So it takes some time to find that dose and then,
17 as time goes on, you oftentimes can reduce that dose
18 slightly because the amount it takes to stabilize is
19 often a bit higher than what is required to keep them
20 stable once they're stable.

21 Q. Dr. Mulbry, have you reviewed the literature in
22 this field to see the effects of, for example, Haldol in
23 terms of effects on things like initiative or interest in
24 the environment?

25 A. I did as careful a search as I could possibly find

LEONARD MULBRY, JR. - DIRECT BY MR. PENNINGTON

1 looking at the impact of Haldol on people who were not
2 actively psychotic, particularly since it's hard to find
3 words to describe these effects. They're hard to
4 describe, but fortunately --

5 Q. The effects of this drug?

6 A. Of this drug, I'm sorry. But fortunate -- you
7 know, there are a number of very interesting articles,
8 though, many date back a few years, where people could --
9 did, actually, described it very, very well, and so I
10 tracked down as many of those articles as I could find.

11 Also, I was looking at cognitive. In other words,
12 I have -- I look at both the impact of Haldol on people
13 who are not psychotic, and I look at the impact of Haldol
14 on people who have other mental illnesses, and I look at
15 the impact after Haldol on people who are treated for
16 other psychiatric issues.

17 Q. Okay. I'm going to specifically refer you to a
18 British study with two skilled doctors who were
19 interested in studying the effect of the Haldol that they
20 were considering prescribing and made the decision to
21 administer it to themselves in order to be able to
22 describe the way that Haldol functioned.

23 Are you familiar with that?

24 A. I am. This is probably the most well-written
25 description that I could find. It's a paragraph. I'll

1 read it: Both of the two authors who were planning to do
2 some research study on Haldol gave -- both of them got
3 five milligrams of Haldol IV push. That means somebody,
4 over the course of two minutes, injected five milligrams
5 of Haldol into both of the two researches.

6 Q. This wasn't intramuscular, it was IV?

7 A. IV, intravenously, IV, just exactly as
8 Mr. Kronsberg would have received it. The effect was --
9 by two-minute push. The effect was marked and very
10 similar for both of us. Within ten minutes a marked
11 slowing of thinking and movement developed along with a
12 profound inner restlessness.

13 Neither subject could continue to work, and each
14 left work for over 36 hours. Each subject complained of
15 paralysis of volition, a lack of physical and psychic
16 energy. The subjects felt unable to read, telephone, or
17 perform household tasks of their own will, but could
18 perform tasks if demanded to do so.

19 There was no sleepiness or sedation. On the
20 contrary, both subjects complained of severe anxiety.

21 Q. Okay. That was your two researches, and I guess
22 those were two medical doctors who were trained to kind
23 of observe those qualities?

24 A. Correct. They did this in preparation for a study
25 they were getting ready to do on Haldol.

LEONARD MULBRY, JR. - DIRECT BY MR. PENNINGTON

1 Q. Were you familiar with a study done in Sweden
2 where the drug was being analyzed as a tool where you're
3 preparing for surgery?

4 A. The Swedes have long recognized that Haldol has a
5 side effect. It's a powerful anti-emetic. That is, it
6 prevents you from vomiting, and they thought, very
7 wisely, that this would be a wonderful preoperative drug
8 because you don't want people vomiting during surgery.
9 They can aspirate.

10 Q. Let's back up. As one is preparing for surgery,
11 you could just have somebody have a mask put on and not
12 have this pre-medication. Explain what that is all
13 about.

14 A. There is probably people in this room, in the
15 older days, like I remember them, that you would be
16 wheeled in into a surgical suite and perhaps they would
17 jut put a mask over your nose and you start breathing
18 gas. The gas is very irritating to your airways. It
19 burns, so it most commonly -- and, again, I think we can
20 relate to this. You would be given some kind of
21 medication before, or as you're being wheeled back to the
22 operating room. Frankly, it's to make you sleepy, make
23 you out of it so when they put the mask over your face
24 you don't freak out. You don't get upset, and you don't
25 have a bad memory of the experience.

1 And so nowadays, they might be -- there are a
2 number of different things you can use that are better
3 than Haldol, but when this was done in the '90s, I
4 believe, those medications didn't exist, so the Swedes
5 reasoned wisely that this would be a good medication to
6 pre-medicate people for surgery.

7 Q. And so they did a study. Approximately how many
8 patients?

9 A. 1,163.

10 Q. And were they dealing with 1,000 psychotic people,
11 schizophrenic people, or a cross-section of normal
12 people?

13 A. These are nonpsychotic patients.

14 Q. Okay. And what was the impact of medication --
15 and I believe it was roughly at five milligrams; is that
16 correct?

17 A. They gave five milligrams, and, in this case, IV,
18 because -- you want intramuscular because you want it to
19 last a little longer, so in this case, they gave him five
20 milligrams as an injection, and they produced excellent
21 results in 94 percent.

22 They described this as it consisted of
23 vegetative stability and a condition of psychic
24 indifference and removal from emotional and sensory
25 stimuli. This condition, advantageous to the patient,

LEONARD MULBRY, JR. - DIRECT BY MR. PENNINGTON

1 could be extended to last throughout the entire day of
2 the operation, thanks to the prolonged effect of the
3 drug.

4 Q. All right. So is it fair to say that the purpose
5 of this drug is to reduce your interest in the
6 environment?

7 A. Correct.

8 Q. And that it would tend to --

9 A. You would not respond as fully to what's going on
10 around you.

11 Q. All right. It would reduce your initiative in the
12 sense that you would be resisting what was going on?

13 A. That's consistently described.

14 Q. Okay. And so -- just a moment, Your Honor.

15 There is a description in the medical records,
16 which you have before you, from MUSC that on the morning
17 of the 13th, February 13th, that at 8 a.m. and at 8:51
18 a.m. the nurse, Shannon Young, came in, and they did some
19 sort of check.

20 Do those findings that were rendered and described
21 a moment ago by Dr. Mullis change your view of how Haldol
22 works, or your view of its impact on Mr. Kronsberg in
23 terms of making volitional decisions?

24 A. No, not at all. That's what you precisely would
25 expect. You come in, ask him virtually anything, and

LEONARD MULBRY, JR. - DIRECT BY MR. PENNINGTON

1 he's likely to just agree with it, yeah. He's not going
2 to be upset. It's -- we used to call them major
3 tranquilizers. That's what they are called, major
4 tranquilizers, and the fact that he would be tranquil in
5 the morning after receiving the injection is not the
6 least bit surprising, and yet he's not sedated. He isn't
7 asleep. He's not garbling. He doesn't look drunk.
8 That's sedation. He's -- he's not garbling his words,
9 and he's speaking fair clearly. That's precisely what
10 Haldol is designed to do.

11 Q. So if the report at 8:00 says 15 baseline normal,
12 how does that fit in with your impression of the effect
13 of Haldol which had been administered only seven minutes
14 before?

15 A. The Glasgow coma scale is for people with comas.
16 It's for people that come in with their head bashed in,
17 and it's a 1 through 15 point scale that is designed for
18 coma.

19 Q. What is coma?

20 A. A coma?

21 Q. Like having a coma, like I'm out?

22 A. Yeah, yeah, and so the fact that he would score
23 well on an assessment for coma doesn't actually surprise
24 me that much. He's not in a coma.

25 Q. Okay. What about this description of him being

LEONARD MULBRY, JR. - DIRECT BY MR. PENNINGTON

1 alert, oriented, and following commands?

2 A. Again, following commands is what he'll probably
3 do best. If you come in and say, Hey, Mr. Kronsberg, how
4 are you doing?

5 I'm fine.

6 Do you understand what I just told you?

7 Yeah.

8 Again, the medication dampens emotion. It
9 dampens volition. That's what it does, by all available
10 descriptions.

11 Q. Okay. Let's turn to 8:51. We know that the
12 medication was given at 7:53, so you're almost an hour
13 in, and Shannon Young, a registered nurse, says that he
14 comprehended things. He understood the nurse. How does
15 that fit in with your description of Haldol and his
16 volition?

17 A. My memory is he said he understood. We could
18 check it, but I believe he was asked -- what she said is
19 there is no barriers to learning, which means she said,
20 Do you understand what I told you? Or perhaps she might
21 have said a word, asking him to repeat it back, but if he
22 was able to do that, then he would score high on that
23 scale, and I would not anticipate him having trouble
24 doing that on Haldol.

25 Q. In other words, it doesn't undercut your opinion

1 that he was fully under the effect of Haldol?

2 A. No.

3 Q. And that that would dampen his volition?

4 A. Haldol would do that.

5 Q. Okay.

6 A. He's compliant.

7 Q. Okay. Doctor, you've described this in various
8 terms of art, and, again, it's somewhat hard. You
9 described psychic indifference, vegetative stability.
10 You described loss of initiative or reduction of interest
11 in environment, correct?

12 A. Correct.

13 Q. The researchers in Britain reported slowing of
14 thinking, felt unable to read, and a paralysis of
15 volition, correct?

16 A. Yes, sir.

17 Q. In your opinion, within a reasonable degree of
18 medical certainty, what would be the effect of this
19 Haldol on Mr. Kronsberg at 10:30 in the morning, roughly
20 two-and-a-half hours into this period of sedation? What
21 would the effect of this be?

22 A. His ability to take initiative would be reduced.
23 His ability to say no would be reduced. His ability to
24 keep track of complex -- the meaning of what he's
25 hearing, in other words, that the stimuli that -- he's

LEONARD MULBRY, JR. - DIRECT BY MR. PENNINGTON

1 hearing people say, You have the right to remain silent.

2 Yes, he can pare that back, and he does understand
3 if you put it all together, and say, But I don't want to
4 say anything. The lack of volition, lack of initiative,
5 all of those factors are clearly documented in people who
6 have taken Haldol.

7 Q. Okay. So if you had a family member who, for
8 whatever reason, needed five milligrams of Haldol, would
9 that, for example, impair their judgment in terms of
10 being in a position to sign a contract?

11 A. I think it would negate it. I mean, any -- I
12 can't imagine being on a psychiatric unit and allowing
13 someone to sign a contract after just having five
14 milligrams of Haldol pushed on them.

15 I mean, somebody wants to sell them a car or a
16 family member wants to sell a house or buy a
17 refrigerator, you would not allow somebody who just had
18 five milligrams of Haldol pushed on them in a hospital
19 bed in an ICU sign a contract. I would recommend against
20 it. I would say that they lack capacity to make a good
21 decision.

22 Q. And that's because their ability to protect
23 themselves has been reduced chemically by the impact of
24 this neuroleptic?

25 A. To understand the consequences and, moreover,

1 question, the ability to question, in those
2 circumstances.

3 Q. Is there a distinct difference between the
4 nonpsychotic versus the psychotic person in terms of --
5 there has been literature described here today that helps
6 you think better. Is that more true when you're dealing
7 with a psychotic person, is really my question.

8 A. That's what psychosis is, is loss of touch with
9 reality, so they're really ill. So by giving them
10 Haldol, you can bring them back to a more normal state.

11 They have cognitive deficits, which we can go
12 into, if you want to. They still have cognitive
13 deficits. It's just that they are way better than when
14 they're really, really ill. That's not to say the more
15 you give the better you get; otherwise, we would give it
16 to everybody, if it made you think better, but it
17 doesn't.

18 It has certain limitations on your capacity to
19 think. It's just that those are miniscule, are small,
20 compared to being really psychotic, but they don't help
21 normal people think.

22 Q. If the detectives had come the next day, Thursday,
23 at the jail, would that have been a time where the
24 pharmacokinetic effect of this drug would have diminished
25 and made him more able to respond appropriately to the

LEONARD MULBRY, JR. - CROSS BY MR. SIMPSON

1 stimuli in these questions?

2 A. At 24 hours, you can assume that the duration of
3 effect was well worn off. Again, it's a duration of
4 effect. It's typically for six, maybe five, but at 24
5 hours, then Haldol wouldn't have been a factor.

6 MR. PENNINGTON: Thank you. Please answer
7 any questions the solicitor may have.

8 CROSS-EXAMINATION

9 BY MR. SIMPSON:

10 Q. Good evening.

11 A. Good evening.

12 Q. Just a couple of questions. I did understand you
13 correctly that there was a study where academics,
14 doctors, decided to give themselves the drugs and write
15 about it?

16 A. Yes, sir.

17 Q. Is that a scientifically or medically accepted
18 methodology in pharmacology?

19 A. It was in the '60's.

20 Q. I was going to make a '60's joke, but --

21 A. And, again, no. Is it an established methodology?
22 No, but the fact is that these guys were responsible
23 enough before they gave it to their patients, they took
24 it themselves. Now, you can't do that with every
25 medicine, but they could do it with Haldol.

1 Q. So we're talking about claiming that an academic
2 source that is on par with the writings of Timothy Leary,
3 where two guys take some drugs --

4 A. You wouldn't take Haldol for fun. You wouldn't
5 expect to get anything good out of Haldol.

6 Q. It's not a scientifically accepted methodology; is
7 that fair, Doctor?

8 A. It's a descriptive study, correct.

9 Q. It's a narrative of two guys.

10 A. Yes, sir.

11 Q. Okay. What was the year of the Swedish study?

12 A. In 1994, I believe.

13 Q. And that is somewhat helpful, because there's lots
14 of patients that you would not want in these studies.
15 We're talking about small sample sizes, and that's why
16 it's difficult?

17 A. Well, two, so it's pretty small, yes, sir.

18 Q. And the patient sample size is small?

19 A. Yes, sir.

20 Q. And, obviously, in science or medicine, a small
21 sample size lends doubt to a scientific study?

22 A. Yes, sir.

23 Q. Five milligrams of a particularly large dosage of
24 Haldol?

25 A. It's typically the max given. I've never in my

LEONARD MULBRY, JR. - CROSS BY MR. SIMPSON

1 experience ever seen more than five. I'm not saying that
2 it's never done, but two to five, -- most everybody that
3 gets it is given two to five IV. Now, they'll still
4 piggyback it. An hour or two later, if a person is still
5 agitated, you might push another two to five.

6 Q. It didn't happen here, the piggyback?

7 A. Correct, it did not.

8 Q. True that the -- again, you made the distinction
9 when we're treating people with severe mental illnesses,
10 you can have dosages, taken others ways, upwards of 100
11 milligrams a dose?

12 A. That would be exceptionally rare.

13 Q. But documented?

14 A. But documented.

15 Q. You said the Glasgow scale -- threw it out the
16 window, not relevant here?

17 A. No, no.

18 Q. You were rather dismissive of it.

19 A. It's used for rating comas. If memory serves me
20 correctly -- again, this is off the top of my head -- a
21 15 means that you follow commands. You open your eyes,
22 and you follow commands. I could be wrong. I think a 14
23 is you open your eyes and you respond, but you don't
24 follow commands. A 13 is somewhere in the -- 12 to 13
25 range is sort of somnolent. Again, I'm going from

1 ten-year-old memory there.

2 Q. And to use the relevance of a prolonged period of
3 zero on the RASS scale, observation's irrelevant?

4 A. No, not at all irrelevant. It means that he was
5 calm.

6 Q. Okay. If I understand you, you depicted a person
7 in this sort of four to six -- zero to six-hour range
8 under the effects of Haldol is merely compliant, has no
9 free will, no decision-making. You tell them to do
10 something, they're going to do it?

11 A. No. They're going to be more compliant. They're
12 not zombies. If you say walk in traffic, they won't walk
13 in traffic.

14 Q. Right.

15 A. But they are not as attuned to what's going on
16 around them. They're not as aware and responsive to
17 outside stimuli going on around them.

18 Q. I believe maybe lacking a keen sense of
19 self-protection. Did you say something like that?

20 A. I didn't, but it would diminish it. I don't want
21 to say they couldn't be, but only that it is impacted.

22 Q. Impacted?

23 A. Impacted.

24 Q. Let's get to the heart of the matter: Is it your
25 understanding -- you mentioned some expertise in the law

LEONARD MULBRY, JR. - CROSS BY MR. SIMPSON

1 as it relates to your field, fair enough? Is it your
2 opinion that under the effect of something equals
3 involuntarily?

4 A. Oh, no, not at all.

5 Q. No, not at all.

6 A. No, not necessarily.

7 Q. Under the effect of something does not necessarily
8 mean involuntary. Is that a correct statement from you,
9 or a statement you would affirm from me?

10 A. Are you talking about in general or --

11 Q. Yeah.

12 A. -- in this specific case?

13 Q. In this specific case.

14 A. In this specific case, no. It doesn't mean it was
15 a per se involuntary.

16 Q. Okay. If there was fairly strong convincing
17 evidence that Robert Kronsberg lied in that interview to
18 protect a friend of his, would that, let's say, mitigate
19 some of your concerns about his state of mind?

20 Again, to me, we're seeing that, I'm going to
21 protect my bro. I'm going to protect my friend. I'm
22 going to lie in this interview to help him.

23 Does that show you as a doctor what it does to me,
24 that maybe what's going on upstairs during this interview
25 is a little more complicated than this compliant puppy

1 dog you've raised concerns about?

2 A. It wouldn't negate my concerns, but it would -- I
3 did not -- if it could demonstrate appreciable
4 self-protection, I would factor that in.

5 Q. Okay. Do you recall in the interview when he's
6 asked, Did you talk to anybody that night?

7 A. Yes.

8 Q. And his answer is no?

9 A. Correct.

10 Q. And then he said, Did you talk to Polensky?

11 And he said, Dang, you got his name.

12 A. Correct.

13 Q. If I could convince you that he did, in fact, talk
14 to Polensky and that was motivated by a desire to protect
15 a friend, would it mitigate your concerns?

16 A. If I knew for a fact that he purposely made a
17 decision to protect his friend, it would suggest a higher
18 degree of self-protectiveness.

19 Q. It's sort of been suggested, I think more so by
20 Mr. Pennington than you, that since we have no Haldol on
21 the 12th, and he says, I don't feel like talking to you
22 right now, and then Haldol on the 13th, and he says, All
23 right. I'll talk to you, the sort of fallacy that
24 therefore the Haldol caused that. Now, we can't
25 scientifically or medically say that, correct?

LEONARD MULBRY, JR. - CROSS BY MR. SIMPSON

1 A. With absolute certainty?

2 Q. Yes. In other words -- let me phrase it to you
3 this way. True story. Very boring one.

4 I told my wife I was going to wear a blue tie
5 today when she asked me yesterday. Last night I took
6 some sleeping medication because I get very worked up in
7 these situations. Woke up this morning, decided to put
8 on the red tie.

9 Did the sleeping medication I took last night
10 cause me to put on the red tie?

11 A. It might have played a role. Likely, it actually
12 could do that.

13 Q. I'm interested. I didn't just change my mind?

14 A. You could, and, again, we can't know what is in
15 your mind or his, but does taking sleeping medicine have
16 an impact on memory? Yeah, they do.

17 Q. Wasn't memory, I just changed my mind.

18 A. Oh, no. It wouldn't have an effect on that.

19 Q. My decision -- so it's very possible that
20 Mr. Kronsberg simply was not in a state that he felt like
21 speaking to police and changed his mind the next day?

22 A. It's possible.

23 Q. Dr. Mulbry, are psychiatric patients who have
24 received an antipsychotic ever allowed to give consent
25 for treatment in a hospital?

1 A. Yes, they are.

2 Q. You mentioned earlier a reservation to have
3 someone sign a simple contract for a car sale, but you're
4 saying hospitals allow them to make major decisions?

5 A. Yes, though if they are taking psychiatric
6 medicines and they make decisions that are
7 self-destructive, or clearly not in their best interest,
8 they request -- in other words, it's one thing to accept
9 recommended treatment. It's another to make a foolish --
10 to make an irrational decision, so are they allowed to
11 make decisions concerning accepting medical treatment?

12 Yes, they are, and they can sometimes refuse it,
13 but those decisions are very carefully assessed.

14 Q. Are you aware of cases where people are given
15 Haldol against their will so they can participate in the
16 trial process, criminal trial process?

17 A. It has happened, but those have a significant due
18 process in court, and there are specific criteria for
19 when that's allowed.

20 Q. Does Haldol always negate an individual's capacity
21 to make decisions?

22 A. No.

23 Q. And, again, the studies you referenced, very small
24 sample size?

25 A. A thousand is pretty big, actually.

LEONARD MULBRY, JR. - REDIRECT BY MR. PENNINGTON

1 Q. Very small number of studies?

2 A. A small number of studies, but, again, giving
3 Haldol to relatively normal people just isn't done very
4 much.

5 MR. SIMPSON: I have no further questions.

6 THE COURT: Redirect?

7 MR. PENNINGTON: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. PENNINGTON:

10 Q. Doctor, in terms of -- you've had a chance to hear
11 the video, or, rather, the audio from February 13th?

12 A. Yes, sir.

13 Q. And you've also had a chance to review a draft, a
14 transcript of that proceeding?

15 A. Yes, sir.

16 Q. Or that discussion?

17 A. Yes, sir.

18 Q. Is it fair to say that in that conference -- it's
19 been suggested that the solicitor was going to somehow
20 magically demonstrate that this was a deliberate lie to
21 conceal communications with Paul Polensky. Is that what
22 you gathered from his question?

23 A. That's what I gathered from his question.

24 Q. Mr. Kronsberg, throughout his interview, is
25 describing to the officers, Do you remember the physical

1 altercation?

2 And he says, I remember bits and pieces.

3 A. Correct. Yes, I do.

4 Q. Does he protest all the way through here that his
5 memory is spotty?

6 A. He mentions it repeatedly.

7 Q. And he actually -- his inflection sounds surprised
8 when they raised the question of Polensky because he was
9 surprised that they knew his name, correct?

10 A. Yes, sir.

11 Q. But he still doesn't alter his course from saying,
12 I don't have any memory, or, I did not see him, did not
13 have a conversation with him.

14 A. That's -- when I read the transcript, I came away
15 with the impression that he had forgotten.

16 Q. Okay. As he had forgotten other things that were
17 going on that night.

18 A. Correct. There are a number of factual questions
19 about some of the things he said.

20 Q. And given the fact that he's just implicated
21 himself in a murder, the suggestion is that he is being
22 somehow clever suddenly when it comes to not wanting to
23 talk about Paul Polensky?

24 A. Yes, sir.

25 Q. Even though there is no claim Paul Polensky is

LEONARD MULBRY, JR. - REDIRECT BY MR. PENNINGTON

1 involved in the murder?

2 A. Correct, as far as I know.

3 Q. Okay. Can you testify with absolute certainty
4 that Haldol had an effect on Mr. Kronsberg that day in
5 terms of psychopharmacological effect?

6 A. Yes.

7 Q. And what is that effect?

8 A. It would, to some extent, decrease his ability to
9 show initiative, his volitional ability and strength. It
10 would have blunted, to some extent, his emotions, his
11 ability to keep track of stimuli around him, and to
12 respond appropriately to it.

13 Q. Now, there was this comment that the study that
14 you rendered or you talked about from the two British
15 researchers was the equivalent of something in a Timothy
16 Leary story. Did you get this out of popular literature?

17 A. This is from the British Journal of -- the British
18 Journal of Psychiatry.

19 Q. Okay. I'm going to pass up -- first of all, let's
20 mark this.

21 (Court's Exhibit No. 7 was marked for
22 identification and admitted into evidence.)

23 Q. I'm now referring to Court's Exhibit No. 7.

24 A. Yes, sir.

25 Q. Do you recognize that?

1 A. I do.

2 Q. How did you come across that article from the
3 British Journal of Psychiatry?

4 A. I was doing a literature search on the impact of
5 Haldol on cognitive function.

6 Q. So you weren't reading, like, Rolling Stone
7 magazine or some other popular journal and found this
8 funny anecdotal story?

9 A. No. I was using PubMed.

10 Q. And so was this viewed as a reliable source of
11 information for purposes of providing the testimony that
12 you've given here today?

13 A. I brought every study I could find. This is the
14 most -- I thought it was the best narrative. In other
15 words, it was well-educated people, knowledgeable about
16 terminology, writing about the experience of having this
17 happen to them, and I can give you other studies,
18 technical jargon, but they're extremely complicated.

19 I have a hard time putting into words the impact
20 that Haldol has on people. These guys wrote it better
21 and more clearly, and it's consistent across all of the
22 studies. The terminology changes a little bit towards
23 psychic indifference, avolitional, vegetative -- those
24 terms come up over and over and over.

25 Q. So how do you integrate in terms of -- you don't

1 hear on the video -- on the audio, I keep saying video --
2 audio recording of the interview, you don't hear somebody
3 that sounds like a potted plant or vegetable. You hear
4 somebody that is able to answer questions and attend to
5 the questions being asked. What's the difference between
6 being drugged in the sense of being sedated and impacting
7 someone's compliance and sort of deviance?

8 A. Well, you've got a good contrast because the day
9 before when they -- in fact, you listened to an audiotape
10 of the 12th. He sounds sedated. He's garbling his
11 words. He doesn't quite know what's going on. He asked
12 the police if they can get him a patch, a nicotine patch.

13 He sounds sedated. He sounds perhaps a bit
14 confused, as opposed to coming back the next day, and he
15 answers everything, Yes, sir; yes, sir; yes, sir; yes,
16 sir.

17 I think if you listen to the last part of that, he
18 gets tired toward the end of it, a little bit. The
19 latencies are a little longer, just a little.

20 Q. What does that mean to you?

21 A. He's tired. He's having a hard time keeping up.
22 Again, reading that is like reading tea leaves a little
23 bit, but I noticed when I listened to it there was a
24 subtle change over the course of the interview. It's
25 very subtle.

LEONARD MULBRY, JR. - REDIRECT BY MR. PENNINGTON

1 MR. PENNINGTON: Court's indulgence, Your
2 Honor. No further questions, Your Honor.

3 THE COURT: Recross?

4 MR. SIMPSON: No, Your Honor.

5 THE COURT: Let me ask you this: With
6 respect to the British article, I'm assuming medical
7 ethics have evolved. You don't get to do that anymore.

8 THE WITNESS: No, sir.

9 THE COURT: No self-respecting publication is
10 going to allow that to be published in this day and age,
11 correct?

12 THE WITNESS: Yes, sir, certainly in the
13 United States. Overseas things are a little --

14 THE COURT: Certainly in First World
15 countries, we wouldn't allow that, right?

16 THE WITNESS: In the United States, it
17 definitely would not be allowed.

18 THE COURT: Let me ask you this, because I'm
19 listening to you talk about the effects of Haldol on
20 people's willingness to go along with whatever is
21 suggested to them, so to speak. I probably am
22 paraphrasing that incorrectly, but it makes them easier
23 to get along with, more compliant. I think I wrote down
24 you would not respond as fully to what is going on around
25 you --

LEONARD MULBRY, JR. - REDIRECT BY MR. PENNINGTON

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay. I do guilty pleas a lot,
3 and we get people in that are schizophrenic, and I have
4 to ask them if they're taking any medication. And, very
5 frequently, I hear that somebody is taking Haldol, and,
6 of course, I have to make sure that they are freely,
7 voluntarily, and intelligently there, they know what
8 they're doing, nobody is -- they're not hearing voices
9 telling them what they're doing, and yet I'm hearing you
10 say today that if I asked them these -- if I ask somebody
11 who is under the effect of Haldol, they're pretty much
12 going to go along with whatever I say.

13 THE WITNESS: They are less likely -- they
14 are less likely to argue with you. They are less likely
15 to be quick on their feet, thinking clearly, and to
16 respond, keeping in mind they're way better than they
17 were before the Haldol.

18 THE COURT: I understand that, but if I apply
19 the standard that you're saying today, and that is you
20 shouldn't be answering questions like that if you're
21 under the influence of Haldol, then how am I ever going
22 to, in confidence, take another guilty plea of somebody
23 who is under the influence of Haldol?

24 THE WITNESS: Well, I would hope that their
25 ability to answer those questions has been assessed by an

LEONARD MULBRY, JR. - REDIRECT BY MR. PENNINGTON

1 attorney, and, if appropriate, by doctors who have asked
2 the appropriate questions.

3 Do you understand what a plea bargain is? Do
4 you understand pleading guilty means you aren't going to
5 get a trial?

6 THE COURT: I ask them and their attorneys
7 ask them, but to the same extent, they're being asked
8 these questions just the same as Mr. Kronsberg was asked
9 questions, and your testimony seems to be, well, because
10 they're under the influence of Haldol you can't -- I
11 can't, as a Court, take their word for what they're
12 saying when they say, Yes, I understand that I have these
13 rights and I'm willing to give these rights up.

14 THE WITNESS: Mr. Kronsberg is not even clear
15 that he knew the medication was in him. It's not --

16 THE COURT: That's not really an issue.

17 THE WITNESS: It's not, but the fact that he
18 has never had Haldol before and it was given to him and
19 he is under the effect of Haldol, he might not even
20 recognize it. He might or might not. People that come
21 in front of your court that have had long periods of time
22 to be on the medication, to watch what their thinking is
23 like on the medication -- as Mr. Simpson, I believe,
24 pointed out, being on the medication alone does not make
25 you lack or have or not have capacity. It's a

LEONARD MULBRY, JR. - REDIRECT BY MR. PENNINGTON

1 functional -- it's functional. It depends on whether you
2 can perform well, if you know the answers on it.

3 The problem is Mr. Kronsberg was never given
4 a chance, or an assessment, of other than do you know
5 your name and do you know what your address is, and so
6 historical data concerning -- he was not assessed about
7 whether he was really voluntarily doing this on a drug
8 he's never been on.

9 And so I see the two as being different. In
10 other words, just because you're on Haldol, per se, does
11 not take away your decision-making capacity, but in
12 Mr. Kronsberg, he's had no experience with Haldol and
13 he's not psychotic, and all of a sudden they give him
14 this stuff, and I'm not saying it automatically, per se,
15 med him incompetent, but it had an impact.

16 THE COURT: Let me ask you this: Does Haldol
17 make you more likely to make things up?

18 THE WITNESS: No, sir. I would not
19 anticipate that.

20 THE COURT: There is the difficulty, because
21 listening to that audiotape, he very calmly and clearly,
22 without responding to leading questions, tells some
23 rather gruesome details there, against his interest to
24 say those things.

25 It clearly doesn't sound like he's making

1 things up, and I don't know what the rest of the evidence
2 is going to show, but some of the pretrial things that I
3 was brought up to speed on this morning suggested that
4 they're consistent with forensic evidence; for instance,
5 stabbing, things like that, so it doesn't sound like he
6 made things up out of whole cloth.

7 So at what point -- it's not in his interest
8 to say those things, but people confess all the time, and
9 it's not in their interest to say these things. So I'm
10 having a little bit of difficulty on figuring the
11 difference between him sounding like he knows what he's
12 doing when he's read his Miranda rights and he says, Yes,
13 I understand them, and then when he goes on to, in the
14 same tone, talk about what he did.

15 Help me understand why it doesn't sound like
16 he made things up. They weren't asking him leading
17 questions, so how is it that I should disregard what he
18 said in the early questions about, Do you understand you
19 have these rights, versus later on when he wasn't asked
20 leading questions? He was volunteering information that
21 was against his interest and that it sounds like there is
22 forensic evidence to back it up.

23 THE WITNESS: I would not anticipate that the
24 medications would cause him to make things up, to miss
25 anything along that line. The issue, in my mind, in my

LEONARD MULBRY, JR. - REDIRECT BY MR. PENNINGTON

1 mind, at least, the issue was did he make a -- did he
2 intelligently manipulate the choice to give up to make
3 a -- to confess to a crime, or was that in some part a
4 function of a medication that was given to him that we
5 know would impact emotions on volition and attention and
6 those kinds of elements?

7 THE COURT: I understand. What I think
8 you're saying is that there is a distinction between,
9 okay? I'm not saying I agree with it, but I'm learning
10 today.

11 Anybody have any questions they want to ask
12 him based on what I just asked?

13 MR. PENNINGTON: Just a couple, Your Honor.
14 Thank you.

15 REDIRECT EXAMINATION (Cont'd)

16 BY MR. PENNINGTON:

17 Q. With regard to the Court's first set of questions
18 that related to guilty pleas, Doctor, is it fair to say
19 that the typical people that are going to be maintained
20 on Haldol are not going to be folks like Mr. Kronsberg?

21 A. No, that's correct.

22 Q. And why is that?

23 A. Well, because he didn't have a chronic psychotic
24 illness. Haldol is for chronic psychotic illness. There
25 are a few other indications, Tourette's syndrome, you

LEONARD MULBRY, JR. - REDIRECT BY MR. PENNINGTON

1 typically might use Haldol for, but to keep somebody on
2 Haldol is pretty much usually schizophrenia.

3 Q. All right. So we wouldn't expect him to be
4 maintained on Haldol or to show up here today for court
5 on Haldol?

6 A. That's correct.

7 Q. And that's different than a person who is
8 suffering a psychiatric disorder that would call for
9 Haldol.

10 A. Yes, sir.

11 Q. And that there is actually a therapeutic benefit
12 for Haldol where you wouldn't give it to that kind of
13 person?

14 A. Yes, sir.

15 Q. And so the folks that are pleading guilty in this
16 court in front of Judge Young all the time would be
17 people we would have to presume have a medical need that
18 makes Haldol an appropriate drug?

19 A. Absolutely.

20 Q. Let's turn to the question he's raised about this.
21 The law requires that law enforcement scrupulously
22 honor the assertion to remain silent; isn't that correct?

23 A. As I understand it.

24 Q. And so is the point you're making, rooted in the
25 idea that 24 hours before he asserted his right to remain

LEONARD MULBRY, JR. - REDIRECT BY MR. PENNINGTON

1 silent unambiguously to these officers, that when they
2 returned 24 hours later to that same hospital setting
3 that they were dealing with someone who had had this
4 neuroleptic push two-and-a-half hours before whose
5 ability to say no has been chemically reduced?

6 A. Yes. I'm looking specifically at that incident on
7 the 13th, mostly. The day before, he didn't get any
8 Haldol, and then they came back on the 13th -- I mean,
9 two hours, it's pretty much when you expect that stuff
10 just to be about at its maximum effect, and at that point
11 he comes back and decides to make a statement to the
12 officers.

13 Q. Did you find that his tone and his manner of
14 speaking was consistent with someone who has received
15 that kind of medication in terms of how he's matter of
16 factually just answering the question?

17 A. Again, there's a paucity of -- he does begin --
18 toward the end he still tells a story. He talks about
19 what happened that night, but certainly early on he does
20 nothing but just -- largely not nothing, he largely
21 agrees with the statements that the officers make. He
22 repeatedly says, Yes, sir; yes, sir; yes, sir.

23 Q. And then gets tired.

24 A. That was my impression toward the end of the tape,
25 that it sounded like he was tired.

1 all the evidence the State was going to put in.

2 Did you change your mind about calling the
3 treating physician?

4 MR. SIMPSON: I have not, Your Honor. I
5 think it would be cumulative.

6 THE COURT: You aren't going to call anybody
7 else?

8 MR. SIMPSON: We presented all the evidence
9 we're going to present on this issue.

10 THE COURT: All right. Well, Mr. Pennington,
11 sounds like you had a long night.

12 MR. PENNINGTON: Yes, sir.

13 THE COURT: Are you ready to go forward?

14 MR. PENNINGTON: Yes, sir. I'm prepared to
15 finish out this motion and stay here as long as I can
16 here today until this thing flares back up.

17 THE COURT: Do you have any other witnesses
18 you want to call?

19 MR. PENNINGTON: No, sir.

20 THE COURT: Well, it's your motion then, so
21 let's have arguments on it.

22 MR. PENNINGTON: If it please the Court: The
23 Court has been supplied with a written motion that
24 captures the case law, as I understand it. The State
25 must scrupulously honor the right to remain silent.

1 Our theory in this case and our belief is
2 that was not done under our United States federal
3 constitutional law, and what I'm basing that on is the
4 fact that there was a willful choice by the officers to
5 go back to the hospital setting the next day in the
6 context where we have an individual who is being actively
7 treated and apparently required the administrative of
8 five milligrams of Haldol first thing in the morning,
9 just before 8:00, about two-and-a-half hours before the
10 interrogation began.

11 The Court raised two interesting questions
12 that I would like to really zero on. One was whether or
13 not the Court should be weighing this admissibility based
14 on a measure of its reliability. In other words, is the
15 Court making -- am I asking the Court to exclude it
16 because it's prejudicial and unreliable as a statement,
17 and that is not what we're seeking.

18 We're not contending that the statement is
19 unreliable from a factual point of view. What we're
20 contending is that the ability of the defendant to assert
21 his right to remain silent was impaired by his
22 circumstances --

23 THE COURT: There's a difference, as I
24 understand it, the law between impairment and was his
25 will overcome.

1 MR. PENNINGTON: That's correct.

2 THE COURT: Otherwise, you would have to have
3 everybody be drug-free in order to be able to give a
4 statement.

5 MR. PENNINGTON: I think it becomes a
6 totality of the circumstances in analysis --

7 THE COURT: Exactly.

8 MR. PENNINGTON: -- for the Court, and I
9 think what you're left with is the burden is on the State
10 to show by the preponderance of the evidence that this
11 was a knowing, intelligent waiver of his right to remain
12 silent, and the only evidence that's been offered is that
13 you had Detective Holmes come in and give what I would
14 call or characterize as a cursory rereading of Miranda
15 because he relied on a Miranda that was given the day
16 before when the client was clearly drowsy, sleepy, and
17 unfit to be interviewed.

18 He then poses the question, Are you willing
19 to talk to me? and then withdraws it and just plunges
20 directly into -- and gives answers, and it's clear that
21 he's -- sort of like fishing. You're not going to ask a
22 lot of questions, you're just going to keep throwing to
23 the honey hole where those fish are. So you have no
24 evidence that there was any kind of thoughtful reflection
25 or even the question asked, Are you willing to talk to

1 us? You told us last night you didn't want to talk to
2 us. Are you ready now?

3 That question was withdrawn, so I contend
4 that the preponderance of the evidence does not support
5 the idea that an individual who has involuntarily been
6 administered a potent drug that, according to the
7 testimony of the doctor, has the effects of slowing
8 thinking, -- it was described in the literature as
9 someone who -- the two reporters described that neither
10 could work for 36 hours, a paralysis of volition, and
11 this is because they were people who were not psychotic.

12 The kinds of people that have been maintained
13 on Haldol, they were, we contend, more similar to
14 Mr. Kronsberg, who was being treated for agitation, a
15 person like yourself who might have had some sort of
16 traumatic event, and therefore it's going to have a more
17 powerful impact.

18 The Swedish study of the 1,000 people that
19 were being prepared for surgery, they described loss of
20 anxiety, psychic indifference, vegetative stability. The
21 testimony is that other literature reports that the
22 patients that received this, it reduces initiative. I
23 recognize that there could be some confusion here between
24 this notion of a person who is chronically being treated
25 with this drug, and the Court has raised the question,

1 What about all these guilty pleas?

2 And as I thought about it overnight, there is
3 a number of safety nets that are here for the Court in
4 terms of before it takes and enters a guilty plea from an
5 individual who has been chronically receiving -- or not
6 chronically, been receiving Haldol.

7 I don't think that the Court would have taken
8 a guilty plea from Mr. Kronsberg in his hospital bed,
9 chained to a bed and drugged that day, without some
10 meaningful inquiry as to what was going on with him at
11 that moment. It is the most awkward and peculiar time to
12 conduct legal business. Not coincidentally -- well,
13 maybe it is coincidental.

14 As I already reported to the Court
15 informally, I had a kidney stone attack last night, first
16 in my life, and spent three hours in the ER last night
17 after about six hours of pain, and your ability to
18 interact with your environment shifts as all these other
19 factors are going on.

20 The point that I'm getting at is that while I
21 believe that the reporting is he is being responsive and
22 polite, and it would appear, at first blush -- and I
23 think other Courts have been misled by those kinds of
24 factors into thinking that, Well, Haldol is just one of
25 these drugs that makes you into a better person, and it

1 does, if you're psychotic.

2 It does not have that -- we've offered what
3 we think is compelling evidence, both from the
4 literature, from the experience of Dr. Mulbry, that he
5 was in what was a period of maximum duration, the four to
6 five hours after the administration intravenously, and we
7 also offered to the Court the fact that he is an
8 individual who now, since then, from the experience of
9 the jail, he's had experience with Perphenazine, which is
10 a similar neuroleptic, which was offered to treat him at
11 the jail, and that he affirmatively was less dosed, four
12 milligrams, he asked to be removed because it made him
13 spacey.

14 So if the burden was on us, I would contend
15 that there could be a greater question, but the burden is
16 not on us. The burden is on the State, and the simple
17 fact that an officer shows up in a hospital to a man who
18 is drugged in a hospital bed, having gone through the
19 traumatic events, the cut on his arm, the constellation
20 of other factors and he's responding does not meet what
21 we contend to be the preponderance of the evidence in
22 this case.

23 I should also address briefly the cases. I
24 think you've heard me yesterday distinguish several of
25 them. I'm not going to completely revisit everything I

1 said before. I'm only going to mention that the
2 Chicago -- Madden versus O'Leary decision is one where
3 the Haldol had been administered 17 hours before this and
4 was dealing with an individual who was far more
5 criminally experienced and who was seeking to make a deal
6 with the prosecutor before and after the administration
7 of the Haldol.

8 We have the North Carolina case where I
9 couldn't believe there was any medical testimony or
10 expert testimony where the Court had an opportunity to
11 rule on what the impact is of Haldol. Instead, what we
12 had was an officer, like in our case. The defendant was
13 coherent, not dream-like not trance-like, so the facial
14 common sense criteria used by the officers is perfectly
15 normal and understandable because they're not trained to
16 understand about Haldol.

17 It's not that I'm saying that that is the
18 coercion. The coercion is going at that moment in time
19 where it wasn't appropriate to go and regardless of the
20 background circumstances.

21 The Kincaid case, cited in the string cite in
22 the solicitor's brief, talks about the Illinois case from
23 '81 where there were indecent liberties with a child.
24 You had a defendant who changed his stories multiple
25 times. It's very similar to the other Illinois case. He

1 changed his stories about where he worked, whether he was
2 alibied at work. When that didn't work, he changed his
3 story to where he slept.

4 The Court found that he was -- in spite of a
5 suicide attempt and being administered Haldol, he was
6 still setting up defenses and aware of how to avoid and
7 minimize the allegations, so the Court found that that
8 individual was being self-protective.

9 Our point here is, is that Mr. Kronsberg, we
10 don't contend, was being at all self-protective because
11 of the impact of the Haldol that diminished his ability
12 to basically stand up for himself.

13 Finally, there is the Louisiana case. That
14 was another case where the Haldol had been administered
15 the day before and the admissions were spontaneous. They
16 weren't even in response to interrogation. I've entered
17 the Townsend vs. Sain decision from '63 where this was a
18 case where, in the totality of the circumstances, this is
19 where law enforcement gave Scopolamine and Phenobarbital
20 to relieve heroin withdrawal, and the Court found that
21 because this person had been suffering the effects
22 apparently of withdrawal and had had those kinds of drugs
23 as a result of that medical treatment, that was found to
24 be relevant to the question of voluntariness. And I
25 think those are the cases that I needed to address,

1 and -- if I may just have the Court's indulgence.

2 Thank you, Your Honor. That's all I have.

3 THE COURT: Mr. Simpson?

4 MR. SIMPSON: Judge, thank you. I'm
5 reminded, if you'll indulge a brief anecdote as we argue
6 this point, of probably one of the most profound lessons
7 I learned in law school. I have blocked out most of that
8 education due to emotional trauma, but it's one lesson
9 I'll never forget.

10 As a first-year student, I had a legal
11 writing professor in New York who was a former trial
12 court judge, former appellate court judge, very
13 respected. I was very excited to be in his class, and I
14 got more excited when he came into the room because he
15 began to compliment us. He began in very glowing terms
16 to talk about how, Wow, we must be the best and the
17 brightest, and we must have the most passionate,
18 intelligent things to say about the law.

19 And I got lulled into that sense, and then
20 all of a sudden he turned it into a paper chase moment
21 where the tone changed, and he looked at us very sternly
22 behind the podium and told us, Let me tell you something
23 about your opinions of the law. There is not a court in
24 this land that gives a "blank" about what Chad Simpson
25 thinks the law should be.

1 He didn't use my name particularly, but what
2 you students think the law should be, or what you lawyers
3 think the law should be. He didn't make this direct
4 point to insult me as a student, and I certainly don't
5 make that point to insult Mr. Pennington as an attorney.
6 He is, without question, one of the finest attorneys in
7 this state, and he is articulate and he is intelligent,
8 but what he holds out to you today is what Mr. Pennington
9 thinks the law should be.

10 To briefly summarize the dueling positions of
11 the parties -- and I'll get into this with some
12 specificity, but to summarize both stances, what the
13 State wants you to do, and what we've held out to you in
14 our motion, is to read, look at the guidance, and follow
15 the law. What the defense wants you to do is ignore,
16 ignore, ignore.

17 We all saw that at the conclusion of
18 Mr. Pennington's presentation, as he kind of conducted
19 some legal back flips, well, you can't pay attention to
20 this case; you can't pay attention to this source. What
21 we're talking about here are some separate legal issues,
22 and that's another thing the defense has to do, is sort
23 of mash them together into one. On each of these issues,
24 clear, mandatory sources, not what Chad Simpson thinks
25 about the law, what the U.S. Supreme Court thinks about

1 the law, support our side of the argument.

2 First, of course, we agree with
3 Mr. Pennington. It is incumbent upon police officers to
4 scrupulously honor an invocation of the right to remain
5 silent. That doesn't stop there. What does it mean to
6 scrupulously honor? And we have clear, unambiguous
7 guidance in Michigan vs. Mosley, and the multitude of
8 cases since that have cited this factor in Michigan vs.
9 Mosley.

10 Those factors are: On the first interview,
11 was the suspect given Miranda warnings? Yes. Favors the
12 State. The second factor: Whether police immediately
13 ceased the interrogation when the suspect indicated he
14 didn't want to answer questions? Yes, they did.

15 There is some small talk about that, but they
16 never again ask him again once he says that about the
17 crime. They just start talking about cigarettes and
18 hospitals.

19 Whether police resumed questioning of the
20 suspect only after a passage of a significant period of
21 time. Mr. Pennington didn't hit on this today, but in
22 his initial records, he held out that certainly going
23 back the next day is not a significant passage of time.

24 I will refer to my brief and several cases
25 contrary to what Mr. Pennington said, that 20 minutes, 2

1 hours, 3 hours, 100 minutes -- these are all periods of
2 time that have been deemed by state, federal, appellate
3 Courts to be a significant passage of time, so certainly
4 24 hours, approximately, coming back the next day,
5 satisfies that.

6 Whether police provided a fresh set of
7 Miranda warnings before the second interrogation? Yes,
8 they did, the fourth factor favoring the State.

9 I want to point out before I forget that
10 Mr. Pennington said something I respectfully disagree
11 with, that Detective Holmes said, I was just relying on
12 the Miranda warnings the day before.

13 No, he never said that. I just pointed out
14 that they were, in fact, given the day before and given
15 on the second day. Four factors favoring the State.

16 Finally, the fifth, whether the second
17 interrogation was restricted to a crime that had not been
18 the subject of the earlier interrogation. This is
19 admittedly the only factor of the five that favors the
20 defense, and I'm very fortunate.

21 Again, I don't have to be articulate or
22 intelligent. Case law addresses this, and we've provided
23 for you a really long, tedious string, a multitude of
24 cases that all hold that that, in and of itself, is not
25 determinative, and if that is the only factor that favors

1 the defense, then the State wins on this issue.

2 This is established, binding precedent and
3 applies on all four of this case. The police
4 scrupulously honored the defendant's invocation of the
5 right to remain silent, and to hold that they didn't
6 would be to ignore an abundance of case law.

7 We now get to the second and distinct issue,
8 and that is the issue of whether or not the Haldol had
9 some kind effect -- or, I should say, such an effect on
10 the defendant to render this confession purely
11 involuntary. Again, much like the first issue, I don't
12 have to hold out to you what Chad Simpson thinks the law
13 should be on this issue. We have cited for the Court the
14 abundance of mandatory case law that is on all fours on
15 this issue for the Court today.

16 First and foremost is the repeated notion
17 established in Colorado vs. Connelly that there is, and
18 I'll use direct language from the case, a predicate
19 finding, a crucial element, a required element of police
20 coercion.

21 The Court, when analyzing whether or not to
22 admit or exclude a confession, is required to, as a
23 predicate finding, find police coercion.

24 I'm going to concede a point that I think
25 actually helps Mr. Pennington. I heard you say earlier

1 this week, Do you have to find police misconduct? And I
2 want to say, No, you don't have to find
3 police misconduct. There are things police do in
4 interrogations that are lawful and proper, but
5 nevertheless can be interpreted to be coercive.

6 THE COURT: I don't remember making that
7 statement. I think it was in your brief.

8 MR. SIMPSON: Maybe I did. But in this case,
9 what you heard -- and, again, we can argue about the
10 testimony, but you've got recorded copies of these
11 interviews. There is by no stretch of the imagination
12 any conduct on the part of the police, who were
13 exceedingly polite, exceedingly professional, who offered
14 basic opening questions, that the Court can find to be
15 coercive conduct.

16 That is a required finding. It is
17 established in Colorado versus Connelly, and it's
18 established after Connelly in an abundance of South
19 Carolina cases. The one that pops in my head is State
20 versus Pittman, famous case, a lot of publicity. A very
21 young, susceptible, fragile defendant, I believe in this
22 case 12 to 14 years old. He said y'all should have known
23 he was fragile. Y'all have should known from the facts
24 of the case he was not in a good state.

25 The Supreme Court said, No, no, no. You have

1 to find first they were coercive.

2 I also want to point to the multitude of
3 cases that point out a very important fact in this case,
4 which, of course, the mere act of administering Miranda
5 rights and asking basic questions is not in and of itself
6 coercive. That would -- if we were to find that that
7 action was coercive, that would render this whole factor
8 meaningless, every interview.

9 We do carry the burden under the
10 preponderance to show it was freely and voluntarily
11 given. We've done that. Once we've done that, it's the
12 defense's burden to show some sort of action on the
13 police, anything, which they cannot do in this case that
14 the Court is to hold coercive, and it's just not there.

15 I hold to the Court that the easiest,
16 cleanest, and most straightforward way to resolve this
17 issue is that. Case law makes clear you must find police
18 coercion. There is no coercion in this case; therefore,
19 the confession is admissible. We see the Courts -- in
20 the Madden case that we submitted, the Courts do do that,
21 in reviewing that case.

22 But I'm fortunate in this case because in an
23 abundance of caution, rather than just hinge on that, we
24 moved on. We wanted to give Your Honor -- not to sound
25 flippant, but we wanted you to feel good about this

1 confession getting admitted so we called Diana Mullis.
2 You've heard the testimony. We don't need to recount it
3 all, but I suggest to you her testimony was very direct
4 and to the point whereas Dr. Mulbry's point, as it often
5 is on these issues, very qualified, a lot of caveats
6 thrown in there.

7 Another distinction between the two is
8 Dr. Mulbry focussed on the hypothetical, focussed on the
9 possible: Could this drug have these effects? Well,
10 yeah, there are a couple of studies that might show that,
11 one of which I think was thoroughly discredited, but
12 another that might. His testimony focussed on the
13 possible.

14 Dr. Mullis's testimony focussed on the
15 actual. She made repeated observations that medical
16 staff at that hospital had specific interactions with
17 this man that indicated he was of a clear state of mind.
18 The repeated RASS scores that are documented show a zero
19 score, normal and alert. The repeated other score -- and
20 forgive me if I sound ignorant, I'm not a doctor -- but
21 several observations made by the staff that documented
22 him as alert, aware, of clear mind, including a mandatory
23 teaching moment where a nurse comes in an hour before
24 this confession and has prolonged interaction with
25 Mr. Kronsberg and documents that he is of sound mind.

1 Dr. Mulbry focussed on the hypothetical. Dr. Mullis
2 focussed on the actual.

3 Your Honor, what we're asking you today, in
4 summation -- oh, I should point out that on that basis,
5 if we move on -- we don't have to in this case, but if we
6 moved on to the traditional Jackson v. Denno, every
7 factor works in favor of the State, and we survive even
8 all of those, and you're well aware, you've done 1,000,
9 that laundry list of things we looked at.

10 We moved on to show you that, factually
11 speaking, this is a confession of a person of sound mind,
12 and I would point out to you also the direct testimony of
13 their expert that said -- I made sure he said it more
14 than once, that to say a person might have some effects
15 from medication is one thing. That is not at all the
16 equivalent of saying that the confession was involuntary,
17 and their expert acknowledged that on more than one
18 occasion during the testimony.

19 Your Honor, we are merely -- I'm lucky. If
20 this was a battle of intelligence between me and
21 Mr. Pennington, we would lose, but I stand here in a very
22 fortunate position. We're asking Your Honor to follow
23 the sources provided to you from the U.S. Supreme Court,
24 the persuasive sources provided to you from other federal
25 Courts, from other state Courts, the sources from our own

1 appellate Courts, while maybe not in the exact factual
2 situation, address this issue of how you analyze a
3 confession from someone who has arguable mental
4 fragility.

5 All these sources, all of them, support the
6 State's position in this case. The defense cites only
7 one case that supports their position, and that is the
8 Townsend case, and I would argue it really doesn't.

9 Townsend occurred over 20 years before
10 Connelly. In Townsend, police administered the drug,
11 which was described as a truth serum, to the defendant.
12 Police administered that drug, so the defendant in that
13 case was given a truth serum by the police. That is
14 inherently coercive.

15 He also was on heroin, and then he was
16 questioned, but what was the remedy in Townsend? What
17 was the final holding of Townsend? It's not that the
18 confession was inadmissible. The final holding in
19 Townsend was that, hey, some new facts are coming up on
20 appeal. Townsend is entitled to a hearing on this
21 matter. Let's remand it for a hearing.

22 So the holding of Townsend is not that these
23 kind of things render a finding admissible, the holding
24 of Townsend is this is something -- let's remand it back
25 so they can make a decision. Connelly comes around 20

1 years later and makes this point very directly, that
2 Townsend, you had clear, coercive activity on the part of
3 the police. They administered the drug. It was a very
4 long and prolonged interrogation, with all sorts of
5 direct questioning, and in no way the type of
6 interrogation we have here.

7 And so the Connelly Court, coming around 20
8 years later, saying you have to show this coercion, says,
9 Townsend is different because they clearly show the
10 coercion, but here in Connelly, where there is no
11 coercion, the analysis stops there.

12 The State asks you to follow the law for a
13 variety of mandatory and persuasive sources. The defense
14 asks you to ignore that.

15 That is all, Your Honor.

16 THE COURT: Do you want to respond?

17 MR. PENNINGTON: I'm not arguing against any
18 precedent that has been cited. I read it very
19 differently.

20 Starting out with the Townsend case, if you
21 read the facts, which you have, this is a heroin addict
22 who the State's attorney in Illinois, I believe, is
23 trying to interview, and he's a heroin addict going
24 through withdrawals. He is clutching convulsively to his
25 stomach, and they're aware that he's a narcotics

1 advocate, and he's asking for a doctor and is
2 unresponsive to questioning. So then they call a police
3 physician to come in and relieve his symptoms so that the
4 interrogation could keep going.

5 Seems like a responsible thing to do. Man
6 who is ill, treat the illness, keep the conversation
7 going. It's exactly what we're talking about in this
8 situation, so in some ways, this was not presented as a,
9 Oh, let's come up with a truth serum to gratuitously
10 reduce the inhibitions of the subject.

11 This was viewed with concern by the Court, in
12 spite of the fact it was a therapeutic administration of
13 medication.

14 Let's turn to Colorado versus Connelly.
15 Colorado versus Connelly is an utterly different
16 situation. It's being touted as that there is this
17 talismanic rule that says that there's got to be some
18 sort of offensive police misconduct. The problem with
19 this is that Connelly is about a defendant where the
20 police did nothing. The defendant was utterly psychotic,
21 was on the street in Denver, Colorado. Goes to -- walks
22 up to a Denver police officer, and says, I want to
23 confess to a murder.

24 And then it's further clear that he's hearing
25 voices and he believes -- his delusion is telling him to

1 confess. All they did was listen. They were merely a
2 listening post to him. They transported him to the
3 police station. They recorded what he said. They took
4 no active part in trying to elicit this. Let's contrast
5 where we are.

6 In this setting, you have a hospitalized
7 defendant who tries to take his own life. He's receiving
8 a variety of drugs. He is on his back, in a hospital
9 room, handcuffed and restrained, and they come and visit
10 him on Tuesday, the 12th, and he says, I do not want to
11 talk about this.

12 And you'll see it in the transcript multiple
13 times. They even clarified. Then they come back the
14 very next day. Regardless of those circumstances, had
15 they waited another 24 hours and had this conversation at
16 the detention center, we wouldn't be here, but they ran
17 the risk. They chose to take him when he was at his most
18 vulnerable because it was a golden opportunity to come in
19 and just see what happens.

20 What's the worst that's going to happen? He
21 won't talk to me, but maybe he will. And who's going to
22 care that he's on his back and he's receiving medication?
23 I contend that the US Supreme Court does and that our
24 Courts would, if presented this issue with this record
25 about the unique characteristics of Haldol that has not

1 been described by any of the cases that you've seen
2 cited.

3 There has never been, in any of the other
4 cases, testimony about the extensive qualifies of Haldol,
5 so I think that what we're doing here is addressing the
6 unique circumstances.

7 The Pittman case, as offered as another
8 illustration as to how a vulnerable person can still be
9 questioned, is totally, in my view, not relevant because
10 Mr. Pittman is not ill. He's not drugged. He is young,
11 and he is being very self-protective. If you remember
12 the Pittman case, Pittman was over and over trying to
13 invent new reasons. What happened to your grandparents?
14 Where were you? And there was a series of very
15 self-protective lies that they waded through, one after
16 another, where they were talking to Mr. Pittman.

17 So while the Court said that there was no
18 overreaching by police, that's because they had a
19 conscious, active child who was essentially trying to lie
20 his way out of trouble, and they weren't going to find
21 that as being overreaching.

22 In this situation, we're not dealing with
23 someone who is fully conscious and aware. We're dealing
24 with someone who has unarguably received an
25 administration of a psychotropic medication that's going

1 to have a profound dampening effect, and I respectfully
2 disagree with the interpretation of Dr. Mulbry's
3 testimony. He was unequivocal that this was going to
4 weaken the issue and rely on what I think is persuasive
5 evidence that doctors who had experienced the same
6 effects described what would be reactions that would make
7 you in a go along to get along moment, and you can see it
8 from the contrast from Tuesday to Wednesday.

9 Tuesday, he's not talking to the police.
10 Wednesday, it's suddenly a new ball game. No
11 explanation, not looking for an explanation, just going
12 to take advantage of the fact that he has now been
13 essentially drugged.

14 I also respectfully disagree with the
15 interpretation that there was some sort of prolonged
16 interaction teaching moment where there was a staff
17 member. We heard no testimony about a lengthy teaching
18 moment. What we heard about was there was some
19 questioning to say whether or not you can follow
20 instructions, and he said yes. The whole purpose of
21 Haldol is to take an agitated person and make them more
22 compliant, make them more receptive and cooperative with
23 medical treatment, that you're going to get those kinds
24 of yes answers.

25 The agitation had gone away. That reveals

1 and shows the problem that I'm talking about, so our
2 contention is, is that if the Court is so inclined to
3 agree with our position, you're simply making the ruling
4 that the State cannot carry its burden of showing by the
5 preponderance of the evidence that the Michigan vs.
6 Mosley factors have been achieved.

7 There was not, in my view, a significant
8 period of time that has gone by because the man is still
9 in the hospital, still flat on his back, still chained to
10 a bed, still drugged.

11 And we're going back to the same topic where
12 he was told -- they were told yesterday, it's an
13 interesting thing that I've got a situation, a set of
14 facts, where we don't have just the complaint of going to
15 the hospital to interview people. That would be
16 questionable, but we have them going back after the day
17 before where they asserted their right to remain silent.

18 To me, that is the key factor in terms of
19 basically seeing that the police were essentially willing
20 to take the risk, willing -- because what was going to
21 happen is, the worst thing that's going to happen, is
22 that they're going to get -- maybe they'll get something,
23 and maybe some Court will let it in.

24 Under these circumstances, this does not meet
25 the standards of making a knowing, intelligent, voluntary

1 waiver. Under the totality of the facts, the State has
2 not shown that.

3 THE COURT: All right. Well, any confession
4 issue boils down to was it voluntary, and you got to look
5 at all the circumstances. That's the standard, totality
6 of the circumstances.

7 You know, as far as the first issue that you
8 raised, about, well, he said the first time he didn't
9 want to talk to him and they have to scrupulously honor
10 that, it's not that they don't ever have to talk to him
11 again. They have to give him a little bit of time, and
12 they gave him, you know, 24 hours, it sounds like, to
13 think about it.

14 And when they did leave -- I mean, the first
15 time they went to go see him, he was given his Miranda
16 rights, and it was after he started talking with them
17 that he decided he didn't want to talk anymore, and he
18 said he didn't want to talk. They honored that, and they
19 said, essentially, you know, Is it all right if we come
20 back? or, We'll come back tomorrow, and he seemed to give
21 some sort of assent to it.

22 They did come back the next day, gave him his
23 rights again, and there was absolutely no coercive
24 conduct on the part of the police that I could discern.
25 It's one of the nice things about having things recorded

1 these days, is you can hear what happened as opposed to
2 what people said happened, and that's the best evidence,
3 and the best evidence in this case, I think, is that
4 audiotape because we have clear indication that the
5 police weren't asking leading questions. They asked
6 questions that he gave responsive narrative answers to.

7 But as far as the first issue raised, whether
8 or not they didn't -- or shouldn't have talked to him,
9 again, I don't think that they violated the law. They
10 honored his request not to talk that day. They came back
11 the next day, after telling him they were going to come
12 back, gave him his rights again, and he assented to
13 all -- or a complete understanding of what his rights
14 were, so I don't find there was any police misconduct in
15 that regard.

16 Then we get to this issue of Haldol and did
17 the drug interfere with his cognitive abilities,
18 essentially, to make an intelligent decision to go
19 forward and talk to them. And, really, the issue boils
20 down to did the administration of that drug, Haldol,
21 cause his will to be overcome to the extent that his
22 confession wasn't voluntary? And based on the totality
23 of the circumstances, I find that it was -- it did not
24 cause his confession to become involuntary.

25 The evidence, the medical evidence, seems to

1 be that if somebody is psychotic, schizophrenic, there is
2 a use for the medicine that is -- has a different use and
3 effect on people that are truly psychotic, schizophrenic.
4 It's given to them on a long-term basis, helps them to
5 not hallucinate, but folks like this who, as a result of
6 stress or agitation or traumatic event that causes their
7 agitation to go away and they become calm, it becomes
8 difficult to get your head around that somebody who is
9 calm and rational is at the same time being caused to
10 become so compliant that they are just willing to agree
11 to everything.

12 I could understand how you might want to
13 suggest that. The problem is, is that we have the whole
14 confession, and there's -- while I'm not focussing on the
15 fact that he was entirely coherent throughout it, he was
16 as coherent at the end as he was at the beginning and
17 throughout. Again, he gave responses to questions that
18 were not leading questions, that police were not trying
19 to trick him into giving any answers.

20 He gave answers that were clear, that made
21 sense, and were consistent with the type of answers that
22 he was giving in the manner in which he was giving them
23 when he was told of his rights.

24 And so I find, under the totality of the
25 circumstances, that the administration of the drug did

1 not cause his confession to become involuntary. It did
2 not cause his will to be overcome or overborne, and so
3 your motion is denied.

4 MR. PENNINGTON: Thank you, Your Honor.

5 MR. SIMPSON: Thank you, Judge.

6 THE COURT: All right.

7 Now, do we need to take up anything else
8 before we bring the jury in? I know we had the issue of
9 some photographs. Are you planning on putting any of
10 those in right away? I wonder if we couldn't get this
11 thing going and then take that up during the lunch break.

12 MS. BALDWIN: I think that would be fine,
13 Your Honor. The majority of them should be this
14 afternoon.

15 THE COURT: Okay. Good. Anything else we
16 need to take up? We're going to take a ten-minute break
17 so we can all get fresh and be ready to go, and we'll
18 just go on until the lunch break.

19 So let's take -- did you want to say
20 something?

21 MR. PENNINGTON: No, sir.

22 THE COURT: You looked like you were getting
23 ready to rise.

24 MR. PENNINGTON: No, sir. I guess I will say
25 that I do have a 4:00 doctor's appointment today, and

1 into late Thursday or Friday. Everybody anticipates
2 we'll be done this week, so I don't think we'll have a
3 problem with worrying about next week, but we'll probably
4 need to put in full days every day, and, again, we got a
5 little bit later start today, but we'll go till
6 lunchtime. Then we usually go till around 5:00, maybe
7 5:30, just all depends on where we are with the witnesses
8 so that we don't break off in the middle of a witness's
9 testimony, if we can avoid it, and then we'll just come
10 back tomorrow morning.

11 We'll start at 9:30, go through, and just
12 talking with everybody, we anticipate that we'll
13 hopefully get done with late Thursday or maybe early
14 Friday. Okay? So we do not make any progress at all
15 with me getting up here and talking, so I will now turn
16 it over to the lawyers to begin their opening statements.

17 So, Madame Solicitor, you're going first.

18 MS. BALDWIN: Thank you, Your Honor.

19 Good morning. On February 10th, 2013, Robert
20 Kronsberg murdered Tasha Lucia. You'll see through the
21 evidence that he decided on that night to kill his
22 girlfriend.

23 February 9th was a good day for Tasha. She
24 and her friends, including Jessica Nelson and Kristin
25 Tanner, who you'll hear from, went out that evening. The

1 three girls worked together at the Locklear's on Folly
2 Beach and that day had worked at the Folly Gras festival
3 that happens every year. They went out and got some
4 drinks afterwards.

5 Kristin left early, and Jessica and Tasha
6 ended up later at Jessica's house with another one of
7 their friends. They hung out some, but then Tasha
8 decided to go home, and that was the last night that
9 Tasha's friends would see her alive. That is because
10 when Tasha got home, she was killed by her boyfriend, the
11 defendant, Robert Kronsberg.

12 See, the defendant was angry. When Tasha got
13 home, he and Tasha argued about her ex-boyfriend, and,
14 you will hear, in his own words, what he did to the
15 person he supposedly cared about. He also told a friend
16 that evening what he did, and that gave us even more
17 details.

18 First of all, he hit her, really hard. He
19 hit her because she was yelling for help. So what was
20 his solution to that problem? He started strangling her
21 because she wouldn't be quiet.

22 You see, he knew he needed to shut her up.
23 She still wouldn't calm down though, so what did he
24 decide to do next? Hit her in the head with a hammer.
25 Yet still, somehow, she wasn't dead, and it wasn't enough

1 for him. He then went to the kitchen, left the room
2 where they had been arguing, went to another room, heard
3 her gasping for air, and what did he decide to do? He
4 grabbed a ten-inch butcher knife. Probably one stab to
5 the chest with a knife so large would have been enough;
6 however, that still wasn't enough to satisfy him. He
7 instead plunged the knife into her chest over and over
8 again, eventually leaving it in her body.

9 Now, the defense may have you believe that
10 right after that happened, immediately, he was so
11 overcome with grief that he tried to kill himself, and he
12 did eventually try to, but not immediately. First he
13 went to his friend Paul Polensky. You'll hear from Paul.
14 He told Paul what he did. Paul tried to convince
15 Mr. Kronsberg to turn himself in, but Mr. Kronsberg
16 decided differently.

17 See, he knew what he'd done. He knew that he
18 murdered Tasha. However, all he cared about was himself.
19 Instead of taking responsibility, he tried to take the
20 easy way out by swallowing a bunch of pills and cutting
21 his wrist. We're here today, though, because that effort
22 failed.

23 When Tasha didn't show up for work the next
24 day, her friends became worried. It was unlike to her to
25 not even show, not even call and let them know she

1 wouldn't be in, and approximately 14 hours after Tasha
2 was last seen by her friends, those friends found her.
3 Kristin had to climb through the unlocked window, an
4 unlocked window of the apartment. Kristin then let
5 Jessica in through the front door, and the two girls
6 looked for Tasha.

7 What they saw next was a horror movie turned
8 into reality. Jessica first saw the defendant on the bed
9 in another bedroom, snoring, and then what the two girls
10 saw was the last thing they expected. Kristin saw a
11 figure covered in a blue blanket. She slowly lifted that
12 blanket up. She saw Tasha's feet and her body and then a
13 knife. What they saw was terrifying, and they ran
14 screaming from the house and called police.

15 You see, this is a case about choices. It's
16 about the defendant choosing to hit Tasha, choosing to
17 strangle her to avoid attracting attention because of her
18 yelling for help, choosing to pick up a hammer and hit
19 her in the head with it. Choosing then to get the
20 largest knife he could find and stabbing her multiple
21 times with it because he knew she was still alive.

22 This defendant deliberately tried to kill his
23 girlfriend several times in many different ways, and he
24 finally succeeded, and when you hear the testimony, when
25 you see the evidence, I'm confident that you will choose

1 to find the defendant guilty.

2 Thank you.

3 MR. COCHRAN: May it please the Court:

4 THE COURT: Mr. Cochran?

5 MR. COCHRAN: So you don't know Mr. Kronsberg
6 personally. You never met him before, but throughout the
7 course of this week, you're going to be asked to do
8 something extremely difficult: You're going to be asked
9 to do something that even the people who know him best
10 would have trouble doing. You're going to be asked this
11 week as jurors to look into his heart.

12 The reason you're going to be asked to look
13 into his heart is because I'm here to tell you, as his
14 attorney, that my client, Mr. Kronsberg, did cause the
15 death of Tasha Lucia. He did kill her.

16 This case is not going to be about who killed
17 Ms. Lucia. This case is not going to be about DNA. It's
18 not going to be about phone records. It's not going to
19 be about his fingerprints. This case is going to be
20 about what was going on in his heart that night, and
21 that's what you're going to have to decide throughout the
22 course of this week.

23 You're going to have to decide what that
24 night took hold of his heart and guided his hand. His
25 name is Tilghman. His name is Robert Tilghman Kronsberg.

1 He goes by Tilghman. His family calls him Tilghman, his
2 friends call him Tilghman, and that is what his mother
3 calls him, and that's what I call him, Tilghman.

4 And on February 2th, the day prior, February
5 9th, 2013, Tilghman went to work. He worked at Paisano's
6 Pizza, and he was going to be working the dinner shift
7 throughout the evening. Tasha had worked -- she's a
8 waitress at another restaurant. She had worked, I
9 believe, that morning, lunch shift, had gotten off work
10 and went out with her friends.

11 She went out on Folly Beach where she worked.
12 So Tilghman that night is at work, Tasha is out with her
13 friends, but they're keeping in communication by text
14 message, and they're texting throughout the night, and
15 some of these texts are loving. Some of these texts
16 indicate that they're going through something, going
17 through some issues, and I think that a lot of the
18 witnesses are going to tell you that they had an
19 on-again, off-again volatile relationship, and the text
20 messages reflect that. The text messages reflect that
21 something caused an argument that night.

22 And at some point, Tasha posted a picture on
23 her Facebook page of an ex-boyfriend, and at some point
24 Tilghman began sending her text messages indicating that
25 their relationship was over, that they were breaking up

1 with each other, or that he was breaking up with her. So
2 let's go back to Paisano's.

3 There is a video in this case. The
4 surveillance video from Paisano's that shows Tilghman at
5 work, working, speaking with his friends, looking at his
6 phone, probably sending texts, showing his phone to
7 friends.

8 The time stamp on the video has Tilghman
9 leaving Paisano's at about 12:47 a.m. At some point
10 Tilghman sends a text message to Tasha: You will never
11 see me again. You will never see me again.

12 He then goes back to the apartment. This is
13 after his work shift. He goes to the apartment that they
14 shared on James Island.

15 Now, what's most important to remember here
16 is that when Tilghman went home, he did not expect Tasha
17 to be home. He expected Tasha to still be out with her
18 friends. And, remember, Tilghman had already broken up
19 with her by text message. He had already said, You'll
20 never see me again.

21 And what is also apparent from the video at
22 Paisano's is that Tilghman was working with his best
23 friend, Paul. And Paul that night gave Tilghman keys to
24 Paul's moped and he also gave him keys to Paul's house.
25 The reason that Paul gave Tilghman keys to his house was

1 that Tilghman had no plans on staying at his own
2 apartment with Tasha that night because they were
3 breaking up, and he did not want to see her that night.

4 So he takes Paul's moped back to the
5 apartment. He then walks through the door to the
6 apartment that he shared with Tasha, and when he walked
7 through that door, he did not expect to see Tasha. He
8 did not have malice in his heart. He did not have hate
9 in his heart. He did not have murder in his heart. He
10 did not expect to see her there, but he did see her
11 there. She was there.

12 Tilghman walked through the apartment to the
13 back of the apartment, and at that point, Tasha
14 confronted him. Tasha was upset. Tasha had just been
15 broken up with by Tilghman, and she was angry. Tasha
16 started confronting him about this, and she started
17 shoving him. She started kicking him. She started
18 punching him. Tasha was angry because the gentleman she
19 posted a picture of on Facebook earlier that night, her
20 ex-boyfriend, she had continued a friendship with him,
21 and this was no secret.

22 Tilghman knew about this. This had been a
23 source of arguments for the entire span of their
24 relationship, which was over a year. Tilghman knew this
25 guy personally and he knew that they kept up contact with

1 each other, and he didn't like it. It had been the
2 source of arguments, but it was nothing new, and Tasha
3 was upset that Tilghman could not handle her friendship
4 with her ex-boyfriend and date her at the same time.

5 She was angry, and she started shoving him,
6 punching him, and kicking him, and, ladies and gentlemen,
7 I have to tell you that Tasha's behavior that night was
8 fuelled by marijuana and alcohol. You will hear
9 testimony that after Tasha had been out with her friends
10 that night, she had a blood alcohol level of .259. To
11 put that in perspective, the legal limit for somebody to
12 drive with alcohol in their system is .08. She was more
13 than three times the legal limit to drive a car. She
14 also had marijuana in her system. She was upset.

15 Tilghman, you'll be able to see his behavior
16 from the moments leading up to him going home. He was at
17 work. You'll be able to decide whether or not he looked
18 sober, and he does look sober on that video. There is no
19 reason to believe that he was intoxicated when he walked
20 through that door, but Tasha was extremely intoxicated,
21 and she was angry. She was upset, and she started
22 hitting him.

23 They made their way through the hallway.
24 It's a relatively small apartment. They made their way
25 into the hallway and into the spare room. When they were

1 in the spare room, Tasha was continuing to hit him. He
2 was continuing to push her away, tell her to stop, tell
3 her to stop screaming at him, tell her to stop yelling at
4 him, tell her to stop hitting him, but she didn't stop.

5 At some point in that room, while continuing
6 this, Tilghman broke. He snapped because Tasha was not
7 only hitting him, Tasha was not only kicking him, she was
8 not only yelling at him, she was insulting him, and these
9 insults were directed at him in relation to her
10 ex-boyfriend.

11 These insults were specifically about the
12 size of his penis in relation to the size of the penis of
13 her ex-boyfriend. These insults, coupled with her
14 punches and kicks, is something that I think a lot of
15 people do when they're in an argument, you are in an
16 argument with someone, that gets under their skin, that
17 is going to hurt, and Tasha was doing that. She was
18 trying to provoke Mr. Kronsberg, Tilghman.

19 And she did provoke him, and a lot of people
20 will say, well, you know, people are constantly arguing,
21 that women are provoking men, and that's why domestic
22 violence happens. No, that is not what we are arguing
23 here. That is not what we're arguing here. This is not
24 what this case is about. This is not about justifying
25 violence. This is not about making an excuse for

1 violence.

2 You will be asked throughout this week to do
3 something that is extremely difficult. You're going to
4 be asked to look inside Tilghman's heart, to figure out
5 what was motivating his heart that night, and, in order
6 to do that, you must look at all of the surrounding
7 facts. You must look at all of the surrounding
8 circumstances that were influencing him that night.

9 These insults and this physical attack were
10 provoking him to the point where he snapped, where he
11 broke, and he hit her back and he hit her hard, hit her
12 in the face. He hit her more than once, and she
13 continued to come at him, and now it was serious. Now
14 this was a two-way physical fight.

15 He had broken what most would consider to be
16 a sacred relationship. You do not hit a woman. She
17 knows it, he knows it, but he has hit her, and she comes
18 at him. She's angry. He is angry. He is out of control
19 at this point, and he does grab her by the throat, and
20 you will be asked to do something very difficult this
21 week. Besides looking into his heart, you're going to be
22 asked to demand of yourself, to demand of yourself, that
23 you think with a cool head and that you think with reason
24 and that you are not carried away with passion and that
25 you are not carried away with emotion when you hear

1 things like what I'm about to tell you, that Tilghman did
2 put his hands around her throat, and he was out of
3 control at this point.

4 And he had his hands around her throat, and
5 at some point the hammer seems to have gotten into the
6 mix, and she has a gash on her head and was hit. We
7 don't know who picked this hammer up. We don't know who
8 held this hammer that night, who all held this hammer
9 that night, but she was hit, and she continued to come at
10 him. He continued to hold on to her neck. They fell to
11 the ground.

12 My client, Tilghman, held on to her neck
13 until she stopped, until she stopped breathing. Tilghman
14 was in an uncontrollable passion that night, at that
15 moment. That was what was in his heart.

16 This was a spare room that was filled with a
17 lot of random sort of things. This was not their
18 bedroom. This didn't look like -- you'll see pictures of
19 it. This does not look like any room that anybody was
20 living in or using on a regular basis. This was sort of
21 a junk room, and there was a large wooden crate that was
22 right next to where Tasha was on the ground. Tilghman
23 was on top of her, and in that wooden crate there was a
24 ten-inch knife.

25 Ladies and gentlemen: Tilghman picked up the

1 knife and he stabbed her. He stabbed her while she was
2 laying on her back and while she was motionless, and the
3 evidence will bear that out. He stabbed her. What will
4 be apparent to you, he stabbed her in a frenzy. He
5 stabbed her time and again in a frenzy of despair,
6 self-hatred, and uncontrollable passion, and you will see
7 throughout the course of this trial that what he did with
8 that knife is not something that a person would do who
9 has control of themselves. That will be proven to you.

10 This case is not about whether or not this
11 was horribly tragic. It was. This case is not about who
12 caused this tragedy, who took the life of Tasha. This
13 case is not about who. This case is about what was in
14 Tilghman's heart that night.

15 There was no malice in his heart that night.
16 There was no hatred in his heart that night. There was
17 no murder in his heart that night, and I will ask you at
18 the end of this trial to find Tilghman not guilty.

19 Thank you.

20 THE COURT: Call your first witness.

21 MS. BALDWIN: Thank you. State calls Laney
22 Childers.

23 LANEY CHILDERS,

24 having been first duly sworn,

25 was examined and testified as follows:

LANEY CHILDERS - DIRECT BY MS. BALDWIN

1 DIRECT EXAMINATION

2 BY MS. BALDWIN:

3 Q. Good morning, Laney.

4 A. Good morning.

5 Q. How old are you?

6 A. Twenty-eight.

7 Q. And where are you from?

8 A. Here, Charleston, South Carolina.

9 Q. Whole life?

10 A. Yes, ma'am.

11 Q. What is your occupation?

12 A. Right now I'm a bartender, and I train horses
13 during the day.

14 Q. Where were you working back in February 2013?

15 A. Locklear's.

16 Q. And where is that?

17 A. On Folly Beach.

18 Q. Did you know the victim, Tasha Lucia?

19 A. I did.

20 Q. And how did you know her?

21 A. We went to high school together, and she was one
22 of my best friends and we worked together at the time.

23 Q. Do you know the defendant, Robert Kronsberg?

24 A. I do.

25 Q. And how do you know him?

1 A. Through Tasha.

2 Q. Do you see Mr. Kronsberg in the room today?

3 A. Yes.

4 Q. Where is he?

5 A. He's right there (indicating).

6 Q. Can you say what he's wearing?

7 A. He's wearing a striped tie and a black jacket.

8 Q. I'm going to bring you to the night of February 9,
9 2013. What were you doing that evening?

10 A. That evening I was out with friends. I was not
11 with Tasha till later in the evening.

12 Q. So you did see Tasha at some point?

13 A. I did.

14 Q. About when did you see her?

15 A. I want to say I got up with Tasha and Jess around
16 1:00 or 2:00 in the morning.

17 Q. Had you been drinking that night?

18 A. Yes.

19 Q. Were you paying attention to the time very
20 closely?

21 A. No.

22 Q. When you met up with Tasha and Jessica, where did
23 you guys meet up?

24 A. They called me and I met them at Tasha's house.
25 They were waiting for me there.

LANEY CHILDERS - DIRECT BY MS. BALDWIN

1 Q. Okay. Did you leave Tasha's house at some point?

2 A. All three of us did. We left her house and went
3 to Jess's house.

4 Q. And how close was Jess's house to Tasha's?

5 A. I would say half a block.

6 Q. What were you going to do over at Jess's?

7 A. Jess needed to get home and get to bed and she
8 couldn't drive, and I was the only one that was sober
9 enough to drive. So Tasha and I were going to get her
10 off to bed and stay there ourselves for the night.

11 Q. What was Tasha's mood that evening?

12 A. She was happy. She was so happy. We were
13 laughing -- we were laughing at Jess because she was
14 being funny, and it was a good time.

15 Q. Had everybody been drinking that evening?

16 A. Oh, yeah.

17 Q. Did Tasha's mood change at any point?

18 A. Tasha's mood changed before she left when she got
19 a phone call from Tilghman. She told me it was Tilghman.

20 MR. COCHRAN: Objection. Hearsay.

21 THE COURT: Overruled.

22 BY MS. BALDWIN:

23 Q. What happened after that phone call?

24 A. She wouldn't tell me what was going on, just the
25 mood was obviously different. She said she had to go,

LANEY CHILDERS - DIRECT BY MS. BALDWIN

1 had to go home.

2 Q. And what was your response?

3 A. I'll drive you.

4 MR. COCHRAN: Objection. Hearsay.

5 THE COURT: Was what her response? It's not
6 hearsay. Her response is that she drove. Go ahead.

7 BY MS. BALDWIN:

8 Q. Did you drive her home?

9 A. She wouldn't let me. She walked home.

10 Q. Did you see Tasha after that?

11 A. I watched her walk down the street, but I didn't
12 see her after that.

13 Q. You said you watched her walk down the street, you
14 said?

15 A. Uh-huh.

16 Q. Was that the last time you saw Tasha?

17 A. Uh-huh.

18 MS. BALDWIN: Court's indulgence.

19 I don't have any further questions for you,
20 Laney. Please answer any of Mr. Cochran's.

21 MR. COCHRAN: Thank you, Your Honor. May it
22 please the Court:

23 CROSS-EXAMINATION

24 BY MR. COCHRAN:

25 Q. Did you say that you started hanging out with

LANEY CHILDERS - CROSS BY MR. COCHRAN

1 Tasha later in the evening? That was not who you went
2 out with that evening?

3 A. Yes.

4 Q. And you don't remember quite what time it was?
5 Was it later in the evening, after 10:00?

6 A. It was definitely after 12:00, or 1:00 in the
7 morning.

8 Q. Was it definitely after 12:00 or 1:00 in the
9 morning?

10 A. Yes.

11 Q. That is when you started hanging out with her?

12 A. Started.

13 Q. That's when you started hanging out with her,
14 definitely after midnight?

15 A. Yes.

16 Q. Okay. And were you not drunk that evening or you
17 were drinking?

18 A. I was drinking, just not heavily.

19 Q. And you were the only one you said -- it was just
20 the three of you?

21 A. It was the three of us. I was only one with a car
22 and the only one sober enough to drive.

23 Q. And it was you and Tasha and Jessica, and when you
24 say Jessica, that means Jessica Nelson?

25 A. Uh-huh.

1 Q. And she also works at Locklear's?

2 A. Yes.

3 Q. And both Jessica and Tasha had been drinking
4 pretty heavily that night?

5 A. Yes.

6 Q. Did y'all take a cab?

7 A. No. I drove, from Tasha's house to Jess's house.

8 Q. At any point were you in a cab?

9 A. No.

10 Q. And it was only half a block away from Jessica's
11 house to Tasha's house, and Tasha walked home and was
12 able to walk home. She wasn't that bad.

13 A. No, she was able to walk.

14 Q. She received a call -- you started hanging out
15 with her after midnight. How long did you hang out with
16 her before she went home?

17 A. We were at her house for a bit, the three of us,
18 so I would say 30 minutes to an hour, and then we drove
19 over to Jess's house, so give it another hour, and then
20 the phone call. I would say two hours.

21 Q. And she received a phone call?

22 A. Yes.

23 Q. And it was from Tilghman?

24 A. She said it's Tilghman --

25 Q. You don't have to say what she said, but that's

JESSICA NELSON - DIRECT BY MS. BALDWIN

1 your understanding, that it was from Tilghman?

2 A. My understanding because she told me, not because
3 I saw the caller ID or anything else, just what she told
4 me.

5 Q. And her mood changed?

6 A. Yeah.

7 Q. So earlier in the evening, she had been happy,
8 happy-go-lucky?

9 A. Yes.

10 MR. COCHRAN: No more questions, Your Honor.
11 Thank you.

12 THE COURT: Redirect?

13 MR. SIMPSON: Nothing, Your Honor.

14 THE COURT: You may step down. Next witness?

15 MS. BALDWIN: Thank you, Your Honor. State
16 calls Jessica Nelson.

17 JESSICA NELSON,

18 having been first duly sworn,

19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. BALDWIN:

22 Q. Jessica, tell the jury a little bit about
23 yourself. How old are you?

24 A. Thirty-five.

25 Q. And where do you work?

1 A. Locklear's Beach City Grill on Folly Beach.

2 Q. What do you do there?

3 A. I bar-tend.

4 Q. Where were you working back in 2013?

5 A. Locklear's.

6 Q. How long have you been there?

7 A. I've been there for about 15 years.

8 Q. Jessica, how did you know the victim, Tasha Lucia?

9 A. She was -- we worked together. That's how I met
10 her. She was one of my best friends.

11 Q. I was going to ask you what your relationship with
12 her was. You said she was one of your best friends?

13 A. One of my very close friends, yes.

14 Q. How often would you guys talk?

15 A. Every day, probably five times a day.

16 Q. Do you remember off the top of your head what her
17 phone number was?

18 A. No. I don't know anybody but my father's phone
19 number.

20 Q. You keep them in your phone?

21 A. Yeah.

22 Q. Okay. What was Tasha's personality like?

23 A. She was very bubbly. She was very funny. She had
24 a very good sense of humor. She loved quoting music --

25 MR. COCHRAN: Objection. Relevance.

JESSICA NELSON - DIRECT BY MS. BALDWIN

1 THE COURT: Overruled.

2 BY MS. BALDWIN:

3 Q. You can continue.

4 A. She loved quoting movies, and she would always be
5 finishing my sentence if I were singing a stupid song or
6 something. She was just always a very happy person.

7 Q. Do you know the defendant, Robert Tilghman
8 Kronsberg?

9 A. Yes.

10 Q. What did you call him?

11 A. Tilghman.

12 Q. How did you know him?

13 A. I met him through her. I didn't know him
14 beforehand.

15 Q. What was their relationship?

16 A. They were on and off again; I mean,
17 boyfriend/girlfriend one day, not the next day. It was
18 just never consistent.

19 Q. Do you see Mr. Kronsberg in the courtroom today?

20 A. Yes.

21 Q. And where is he sitting?

22 A. Right there (indicating).

23 Q. Let's talk about February 9th of 2013. Tell us a
24 little bit about it. What were you guys doing that day?

25 A. We had a festival out at Folly Beach, Folly Gras,

JESSICA NELSON - DIRECT BY MS. BALDWIN.

1 and my restaurant, they close down the streets and we set
2 up booths and everything like that. So Tasha worked that
3 day, behind the bar, and I worked the festival, and then
4 we all met up after we were done, and we went out to
5 different places on Folly.

6 Q. You said we all. Was there a group of you?

7 A. Yes.

8 Q. Okay.

9 MS. BALDWIN: May I approach the witness,
10 Your Honor?

11 BY MS. BALDWIN:

12 Q. Jessica I'm going to show you State's Exhibit 2.
13 Can you tell me what that is?

14 A. That is a picture of all of us at Snapper Jack's,
15 on Folly Beach.

16 Q. When?

17 A. That night, February 9th.

18 Q. Okay.

19 MS. BALDWIN: At this time I would like to
20 admit State's Exhibit 2 into evidence.

21 MR. COCHRAN: No objection.

22 THE COURT: Admitted.

23 (State's Exhibit No. 2 was marked for
24 identification and admitted into evidence.)

25 BY MS. BALDWIN:

JESSICA NELSON - DIRECT BY MS. BALDWIN

1 Q. Could you just point out who that is in the photo.

2 A. That's Kristin; that's Erica; that's Kelly; that's
3 Tasha.

4 Q. Tasha is in the back there?

5 A. Correct.

6 Q. You said you went to some places on Folly Beach.
7 Did you stay on Folly Beach?

8 A. No. We took a cab home -- or we took a cab to
9 Smoky Oak, which is a bar right by both of our houses
10 because we lived in the same neighborhood.

11 Q. And what neighborhood was that?

12 A. Camp Center Villas.

13 Q. What is the name of the road that y'all lived on?

14 A. Encampment Court.

15 Q. Any idea about what time you went home?

16 A. Sometimes -- it was around midnight-ish. It's
17 kind of foggy for me. I had a little bit too much fun
18 that day.

19 Q. Okay. Did you work the next day?

20 A. Yes.

21 Q. Okay. Did you see -- was Tasha supposed to work
22 the next day?

23 A. Yes.

24 Q. What shift was she supposed to work?

25 A. She was on call in the morning, and then she was

1 my relief bartender. And we were really busy, so we
2 needed to call her in to wait tables for a little bit,
3 and we couldn't get in touch with her. Her phone was
4 going straight to voice mail.

5 Q. About what time of day was this?

6 A. It started probably about noon.

7 Q. And this was February 10th?

8 A. Yes.

9 Q. Do you remember what day of the week that was?

10 A. Sunday.

11 Q. So you said you started calling her, and it was
12 going straight to voice mail?

13 A. Uh-huh.

14 Q. What went through your head when that happened?

15 A. I was -- Tasha always had her phone charged. That
16 girl lived on her phone. She loved the gadget and
17 getting online because she didn't have Internet at her
18 house, so she would always be on Facebook or something.
19 That phone was always charged, so that was an immediate
20 red flag, for me at least.

21 Q. So what did y'all do when you couldn't get in
22 touch with her?

23 A. Several people tried. We -- two friends,
24 actually, the girl that was supposed to pick her up for
25 work went by the house and banged on the door. I guess

JESSICA NELSON - DIRECT BY MS. BALDWIN

1 she was there for about 15 minutes. There was no answer.
2 She just heard Layla barking.

3 Q. Who is Layla?

4 A. Her dog, and then another friend Kelly had worked.
5 She had already worked and got off, and she went there
6 also, knocked on the door, same thing. Just heard the
7 dog barking. Nobody answered.

8 Q. And what did you think when you heard that those
9 two people had been there and there was no answer?

10 A. I got scared. I got worried. I didn't really
11 know what to think. I didn't think the worst, that's for
12 sure.

13 Q. Were you concerned?

14 A. Very much so.

15 Q. So what did you do as a result of all this concern
16 and her not answering her phone?

17 A. I knew -- I had a key to her house because we
18 would let each other's dogs out if one of us was working
19 a longer shift, so I had a key to her house, but the key
20 only -- it only worked on the dead bolt, not the knob.

21 But, anyway, before that, I was driving over there
22 because I said, I have a key. I will see what's going on
23 once I got off work.

24 And my friend Kristin called me and said, Do
25 you --

JESSICA NELSON - DIRECT BY MS. BALDWIN

1 MR. COCHRAN: Objection. Hearsay.

2 BY MS. BALDWIN:

3 Q. Your friend Kristen called you.

4 A. And asked --

5 THE COURT: You can say what you did next as
6 a result of the phone call.

7 THE WITNESS: We went to Tasha's house. She
8 met me at Tasha's house.

9 BY MS. BALDWIN:

10 Q. And what did you do when you went to Tasha's
11 house?

12 A. First we went around the back. We banged on the
13 door for a while and just heard Layla, and then we went
14 around to the back yard. And Kristin had hopped the
15 fence and tried to get in the back, but the door was
16 locked, and my key wouldn't work because the doorknob
17 itself was locked and it only worked on the dead bolt.

18 Q. What did y'all do next?

19 A. Got a chair and booted Kristin in through the
20 front window because the buildings are old and they don't
21 lock, and she was little and could fit through.

22 Q. And then what happened?

23 A. Then she opened up -- she had a little struggle
24 opening up the door, and we went inside, and Layla, her
25 dog, immediately was -- that was kind of a very big red

JESSICA NELSON - DIRECT BY MS. BALDWIN

1 flag for me, because that dog always -- that dog loved
2 me, and that dog would be in the window, wagging its
3 tail, and it was scratching at the door, like, profusely.

4 And so we go in there, and Kristin, she went to
5 the back of house to let Layla out. And I started
6 looking around, and Kristin said she heard snoring but
7 didn't know where the light was in the room. And I had
8 lived in the same type of building, so I knew where all
9 the light switches were, but the light wouldn't work.

10 They had tapestries all over their windows and
11 stuff, so it was very dark in there, but I knew where the
12 hall light was, so I cut it on and that's when I saw that
13 Tilghman was on the bed.

14 Q. What did Tilghman look like when you saw him?
15 What was he doing?

16 A. He was snoring, but he was wide awake. It was
17 very weird. His eyes were open, but they were rolling
18 back in his head. And I was screaming at him, like,
19 Tilghman, wake up. Where is Tasha? Where is Tasha?

20 And it took a little while for him to respond, and
21 then he just sat up in such a complete daze, and he
22 couldn't even talk. His words were, like, gurgling in
23 his throat, and he couldn't speak. And that's when I
24 heard Kristin go, What the F?

25 And that immediately took my attention away

1 from him to where she was, to see what was wrong with
2 her.

3 Q. And what was wrong with her?

4 A. She opened up the spare bedroom and saw someone
5 lying on the floor, but we still weren't sure at the time
6 because they were covered in a black blanket.

7 Q. And so what did y'all do?

8 A. For a minute we really -- we just stared at each
9 other for a little bit because we were scared to pick it
10 up because we didn't know what we were going to find. We
11 picked it up very slowly and saw some blood on her legs
12 and still didn't -- still didn't even think that I was
13 going to see what I saw.

14 We lifted it higher, and that's when we saw the
15 knife in her chest, and that's when we both got really
16 scared. And Kristin kind of went into shock, so I
17 grabbed her and kind of pulled her out of the room
18 because he was still in there, and I didn't know if he
19 was going to come after us. I was scared.

20 So we grabbed our phones so we could call 911, and
21 I grabbed the dog and we ran outside. We both ran
22 outside screaming.

23 Q. Who did you see on the floor when you lifted up
24 the blanket?

25 A. Tasha.

JESSICA NELSON - DIRECT BY MS. BALDWIN

1 Q. And what was sticking out?

2 A. A knife, out of her chest. A big butcher knife.

3 Q. Let me show you State's Exhibit 1. Do you know
4 what that is?

5 A. Yes.

6 Q. What is that?

7 A. Layout of her apartment.

8 Q. Whose apartment?

9 A. Tasha's apartment.

10 MS. BALDWIN: At this time I would like to
11 admit State's Exhibit 1.

12 MR. COCHRAN: Without objection.

13 THE COURT: Admitted.

14 (State's Exhibit No. 1 was marked for
15 identification and admitted into evidence.)

16 BY MS. BALDWIN:

17 Q. So we're looking at Tasha's apartment?

18 A. Uh-huh.

19 Q. Show us where the front door is.

20 A. (Indicating.)

21 Q. So what did you do when you walked inside?

22 A. I looked in this room first. Kristin went back
23 here and let Layla out.

24 Q. And that first room is the living room?

25 A. This is the living room, yes.

JESSICA NELSON - DIRECT BY MS. BALDWIN

1 Q. And then what did y'all do?

2 A. I just kind of wandered around here and took a
3 look around a little bit and saw some things were tossed
4 around a little bit. Some stuff was upside down, and
5 Layla wasn't very interested in going outside. She was
6 more interested in going out the front door, so Kristin
7 just walked back in, and that's when I went into Tasha's
8 bedroom, which is right here, and that's where Tilghman
9 was sleeping.

10 That's when I was talking to him, and then Kristin
11 was over here when I heard her say, What the F, because
12 she had seen Tasha was laying right here.

13 Q. About what time of day was this that y'all went
14 by?

15 A. 5:00. After work, yeah, 5:00.

16 MS. BALDWIN: Court's indulgence.

17 BY MS. BALDWIN:

18 Q. Jessica, do you know what this photo is?

19 A. Yes. It's a photo of Tasha and Willie and me.

20 Q. Where is it?

21 A. In her kitchen. Maybe kitchen, bathroom?
22 Kitchen, I think. I think kitchen.

23 Q. Okay.

24 MS. BALDWIN: At this time we seek to admit
25 State's 42.

JESSICA NELSON - DIRECT BY MS. BALDWIN

1 MR. COCHRAN: Your Honor, I object. Could we
2 approach?

3 (Discussion held at sidebar.)

4 BY MS. BALDWIN:

5 Q. You mentioned -- who was in that photo?

6 A. Willie, Tasha, and I.

7 Q. Who was Willie?

8 A. Willie was Tasha's ex-boyfriend.

9 Q. Did y'all see Willie that evening?

10 A. No.

11 Q. Was Tasha still friendly with Willie?

12 A. Oh, yeah. Very good friends.

13 Q. Had you ever seen that photograph?

14 A. Yeah.

15 Q. Where had you seen that photograph?

16 A. At her house. It was up on her refrigerator next
17 to, actually, a picture of me and her.

18 MS. BALDWIN: At this time we would like to
19 admit State's Exhibit 42.

20 THE COURT: Over defense's objection, it's
21 admitted.

22 (State's Exhibit No. 42 was marked for
23 identification and admitted into evidence.)

24 BY MS. BALDWIN:

25 Q. And point out again who the people in the photo

JESSICA NELSON - CROSS BY MR. COCHRAN

1 are.

2 A. That's Tasha; that's Willie; that's me.

3 MS. BALDWIN: Beg the Court's indulgence.

4 Jessica, I don't have any further questions for you.

5 MR. COCHRAN: May it please the Court:

6 THE COURT: Go ahead.

7 CROSS-EXAMINATION

8 BY MR. COCHRAN:

9 Q. Ms. Nelson, so you guys -- you and Tasha started
10 out with a group of friends, and y'all were drinking for
11 a good bit of, I guess, the afternoon, or just evening?

12 A. I was all day. She was working, so she couldn't
13 drink until she got off.

14 Q. Which was when?

15 A. Probably about 5:00.

16 Q. All right. And you estimate that you left Folly
17 Beach, came back to James Island. You mentioned a bar
18 called Smoky Oak?

19 A. Uh-huh.

20 Q. And that's on James Island?

21 A. Uh-huh.

22 Q. Okay. So that's closer to your house and Tasha's
23 house?

24 A. We can walk from there.

25 Q. Okay. And you took a cab from Folly to Smoky Oak?

1 A. Uh-huh.

2 Q. And you then walked to your house from Smoky Oak?

3 A. No, I don't think. It's a -- no, we went to
4 Tasha's house. Laney, our friend Laney came and met us,
5 and I don't know. This is where it all gets foggy,
6 because I drank all day.

7 Q. Right.

8 A. So we wound up at my house eventually, but we were
9 at Tasha's house. The only way I remember that is
10 because I found the headband I was wearing that night a
11 few days later in her bathroom. That's the only way I
12 knew we went to her house.

13 Q. Do you have any way of estimating time at this
14 point?

15 A. Not really, no.

16 Q. After midnight, before midnight?

17 A. I'm thinking around.

18 Q. Around midnight?

19 A. Uh-huh.

20 Q. And the picture of you and Tasha and your
21 girlfriends was from that night, right?

22 A. Yes.

23 Q. Tasha was in a good mood that night, having fun?

24 A. Oh, yeah.

25 Q. And did Tasha tell you -- you were aware of the

1 type of relationship that Tasha and Tilghman had.

2 A. Uh-huh.

3 Q. It was on-again, off-again, you said?

4 A. Uh-huh.

5 Q. And -- would you describe it as they argue a lot?

6 A. Oh, yeah.

7 Q. Okay. And was she arguing with Tilghman that
8 night? You said she was always on her phone. Were you
9 aware of whether or not she was arguing with him?

10 A. No, I was unaware.

11 Q. And did you not see Willie that night?

12 A. No.

13 Q. But it was not unusual for Tasha to be in contact
14 with Willie?

15 A. No, not at all.

16 Q. So she was dating Tilghman but still friends with
17 Willie?

18 A. Yes.

19 Q. And now it's out in the open, everybody knew that?

20 A. Yes.

21 Q. And you said that there was even a picture of
22 Tasha and Willie, that picture that you were shown, was
23 up on the refrigerator? And I believe in that picture it
24 is at the foot of the refrigerator on the ground.

25 A. Yeah. I think that's where it is.

JESSICA NELSON - REDIRECT BY MS. BALDWIN

1 Q. And this was an apartment she shared with
2 Tilghman?

3 A. Yes. He lived there on and off.

4 Q. And so this is very much out in the open, that he
5 is still friends with Willie?

6 A. Very much so.

7 MR. COCHRAN: I don't have any further
8 questions. Thank you.

9 THE COURT: Redirect?

10 MS. BALDWIN: Briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. BALDWIN:

13 Q. Jessica, should we hold you to exact times that
14 evening?

15 A. No, not at all.

16 Q. Are you positive when you went into each place?

17 A. Not a clue.

18 Q. As far as Tasha's -- as far as the apartment goes,
19 who was on the lease at that apartment?

20 A. Tasha.

21 Q. Who lived there?

22 A. Tasha.

23 Q. Did Tilghman always live there?

24 A. No. He at one point moved out and got his place
25 downtown. He would stay at his friend's house. It was

JESSICA NELSON - RECROSS BY MR. COCHRAN

1 never a consistent thing. It was always on and off
2 again. I don't think they even lasted two weeks together
3 before they broke up or something.

4 Q. So he basically would just stay there.

5 A. Uh-huh.

6 MS. BALDWIN: No further questions.

7 THE COURT: Recross?

8 RECROSS-EXAMINATION

9 BY MR. COCHRAN:

10 Q. You said -- now, you're not suggesting that they
11 only dated for two weeks?

12 A. No.

13 Q. They were dating for two weeks at a time,
14 on-again, off-again?

15 A. Yes.

16 Q. But this was over a year period of time?

17 A. Yes.

18 MR. COCHRAN: No further questions.

19 THE COURT: You can step down. Next witness.

20 MS. BALDWIN: State calls Kristin Tanner.

21 KRISTIN TANNER,

22 having been first duly sworn,

23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MS. BALDWIN:

KRISTIN TANNER - DIRECT BY MS. BALDWIN

1 Q. Kristin, where are you from?

2 A. Charleston, South Carolina.

3 Q. Have you been here your whole life?

4 A. Born and raised.

5 Q. What is your occupation?

6 A. At the moment I am a first year guidance counselor
7 at an elementary school.

8 Q. How long have you been doing that?

9 A. It's my first semester at a new school, so --

10 Q. Where were you working in February of 2013?

11 A. Locklear's Beach City Grill.

12 Q. What were you doing there?

13 A. Waitressing.

14 Q. Did you know the victim, Tasha Lucia?

15 A. I did.

16 Q. And what was your relationship like with her?

17 A. Friendship, co-worker. We were pretty close, I
18 would say.

19 Q. Did you know the defendant?

20 A. I did.

21 Q. And how do you know him?

22 A. Through Tasha's relationship.

23 Q. And what relationship was that?

24 A. They were together, as boyfriend/girlfriend at the
25 time, on and off.

1 Q. Did you work on February 9th of 2013?

2 A. I did.

3 Q. At Locklear's?

4 A. Uh-huh. I worked the day shift, waitressing.

5 Q. What did you do after that?

6 A. When we got off work, myself, Tasha, and my friend
7 Kelly, we decided to go out to Folly Gras and bounce
8 around on Folly at all those places. There was still the
9 events going on, and we bounced around there.

10 Q. How long were you there?

11 A. I stayed until about 8:30. I got picked up by my
12 boyfriend, but I was with them until then. I had gotten
13 off around about 4-ish, 5-ish.

14 Q. Did you see Tasha at any point that evening, after
15 that?

16 A. After 8:30, no. I said bye to them and left.

17 Q. What did you do the next day?

18 A. The next day I woke up in the morning. I got
19 picked up by my friend to go to work. I had to be
20 there -- I had to be there at 10:00, but my friend had to
21 be there at 9:00. So I got there, just as normal,
22 working, waitressing. Around middle of the day, we were
23 pretty slammed, and Tasha was our on call, which would be
24 the person we would call in a situation like that.

25 And we called her, and she -- her phone was going

KRISTIN TANNER - DIRECT BY MS. BALDWIN

1 straight to voice mail, several times. And so then
2 around, I guess -- my friend Kelly got cut first, and she
3 was -- we were all starting to get worried, so we called
4 or friend Sedona who was going to go by Tasha's house to
5 check on her, because that's normally her ride.

6 Tasha did not have a car, so as her friends and
7 co-workers, we all team worked, picking her up or taking
8 her home. She, my friend Sedona, was going to go pick
9 her up. She went by the house, knocked on the door.
10 Nobody was answering. She called the restaurant and
11 said, She's not answering. I don't think she's home.
12 The door is locked. I can't do anything about it. I'm
13 just going to go into work.

14 I think she came in around 3:00, and then my
15 friend Kelly got cut off work, and she said, you know,
16 I'm just going to drive by there --

17 MR. COCHRAN: Objection. I have to object at
18 this point to hearsay.

19 THE COURT: It's hearsay. You can't say what
20 somebody else said.

21 BY MS. BALDWIN:

22 Q. What did you do as a result of what -- what did
23 you do next? You can't say what other people said.

24 A. Well, I got off work. I still had a feeling, a
25 not good feeling. We had been calling her all day. It's

KRISTIN TANNER - DIRECT BY MS. BALDWIN

1 not like her, first of all, to not answer her phone or to
2 not have her phone turned on, to not have charged it, so
3 because of that, I started to get worried myself,
4 speaking for me, and I got off work and I knew that a
5 friend of mine, Jessica, was going to go by there.

6 And so I called her, and I said, Would you like me
7 to meet you there?

8 Because we all had a gut, intuitive feeling that
9 something just wasn't right.

10 Q. Why did you have that gut feeling?

11 A. Because it's not like her to not have at least
12 called our work. I mean, she always was showing up -- I
13 mean, she was a good employee. It wasn't -- it was out
14 of character for her to not have at least called and let
15 us know or not have her phone on.

16 Q. So what did you do as a result of this feeling?

17 A. As a result of that feeling, I got off work,
18 called my friend, and I said, Would you like me to meet
19 you over there so that we can check and see if she's home
20 and see what's going on?

21 And she said yes. We just both didn't feel
22 good about it, so when I got into the driveway --

23 Q. Let me interrupt. I'm sorry. Who was the friend
24 that you called?

25 A. Jessica Nelson. When I got into the driveway,

KRISTIN TANNER - DIRECT BY MS. BALDWIN

1 Jessica was already there, waiting in her car. We both
2 got out of the car and tried to get in through the front
3 door. Jessica has a key of Tasha's because they let each
4 other's animals out.

5 So she was, like, I'm just going to see if she's
6 inside, because nobody else that had checked on the house
7 had a key.

8 So she only had a key to the bottom lock, not the
9 dead bolt, and the dead bolt was locked, so therefore we
10 couldn't get through the front door. So I took it upon
11 myself to go around the back of the house, climbed over
12 the fence, and tried to get in the back door. Back door
13 was locked. Tried to open some of the back windows. The
14 back windows were locked.

15 At that point, her neighbor came outside and
16 started to realize that something was going on and saw
17 that we were worried about something, that we explained
18 that we were worried about our friend. She didn't show
19 up for work, no call, no show, no anything. And so I
20 hopped back around, went back to the front, and at that
21 point they managed to pop open the front window.

22 The window would only open slightly, so they
23 boosted me up through the window and I got inside, and
24 the first thing I saw was Layla, her dog, really excited
25 to see me. And I just remember the first thing I saw

KRISTIN TANNER - DIRECT BY MS. BALDWIN

1 was -- I looked towards the door and her keys were in the
2 door from the inside, so if she wasn't home, I found that
3 very strange for her keys to be in the inside.

4 So I remember yelling through the window, like,
5 Her keys are here, Jessica. I think she might be here.

6 And so I fiddled with the keys, got me inside for
7 a minute, and finally got the door unlocked and let
8 Jessica in. And at that point, in my mind, I was
9 thinking that poor dog hasn't been out all day. I'm an
10 animal person myself, but, anyway, let the dog out really
11 fast, came back around, and at that point I said,
12 Jessica, I hear somebody snoring. I hear somebody
13 mumbling or snoring.

14 And so we went to the edge of the doorway. I
15 couldn't find the light switch in Tasha's room. With
16 her, she's the kind of person that had sheets on the
17 windows and things, so it was really dark in there. So I
18 turned the hallway light on, so I couldn't see anything.

19 And I heard mumbling, and I heard Jessica saying,
20 Where's Tasha? Where's Tasha?

21 And at that point, I noticed that her side
22 bedroom, which is right next to her bedroom, her door was
23 shut. I've been at her house numerous times and never
24 seen that door shut, so I said, Something is not right.

25 So I heard Jessica say, Where's Tasha?

KRISTIN TANNER - DIRECT BY MS. BALDWIN

1 And I walked to her bedroom and opened the door
2 and saw something covered up by a big blue comforter, and
3 in my mind, I'm like what -- I've never seen this here.
4 What is under this? Kind of in a panic in my head.

5 Lifted up the bottom, like, right corner, saw some
6 feet, some toes that were pale, continued to lift it up
7 and saw her arm with dried up blood, and she was laying
8 in a pile of blood. And I lifted it up the rest of the
9 way, and there was a big butcher knife sticking out of
10 her chest, and that's when I knew -- I realized we were
11 still in her room, and I wanted out.

12 So I started screaming, What the F? What the F?
13 What the F? What the F?

14 And that's when Jess ran over and said, Oh, my
15 God.

16 And I said, Oh, my God. He killed her.

17 And she yanked my arm and grabbed me, and I
18 grabbed the dog and we ran out and ran halfway down the
19 street and I called 911.

20 Q. I'll show you a few pictures. Kristin, take a
21 look at these for me real quick, and just tell me what
22 they are.

23 A. The first one is Tasha's house, and that window
24 that's open is the window that I crawled through. That
25 is the fence that I crawled over, and that's Jessica's

KRISTIN TANNER - DIRECT BY MS. BALDWIN

1 car in the driveway, mine behind hers, and that's where I
2 went up the steps, to try to get in the back door, and
3 that's the other window I tried to pry open and then I
4 came back around.

5 Again, the back door I tried to get into. That's
6 her back porch. This is her living room, again, her
7 living room, and that is the hallway -- that's the actual
8 light switch that I turned on and couldn't see into her
9 room, which is actually behind that hanging tarp. In the
10 room next to it is the room that I found her in, is what
11 it looks like.

12 MS. BALDWIN: At this time we'd like to admit
13 State's 3 through 7 -- excuse me, 3 through 8 into
14 evidence.

15 MR. COCHRAN: No objection.

16 THE COURT: Admitted.

17 (State's Exhibit Nos. 3 through 8 were marked
18 for identification and admitted into evidence.)

19 BY MS. BALDWIN:

20 Q. You can touch on that screen and it will put a
21 mark on that. What is that?

22 A. That's her front door. This is the window that
23 they boosted me into, that I slid into, to get into the
24 house.

25 Q. Was that window open like that?

KRISTIN TANNER - DIRECT BY MS. BALDWIN

1 A. No. We had to kind of push it open.

2 Q. Let's go on to the next one, State's 4, and where
3 is that?

4 A. Came around this way and went over the fence and
5 then continued on up the stairs and tried to get into
6 this door and this window.

7 Q. State's 5, what's that?

8 A. Same thing. That's where I came around this way
9 and then walked in and tried to get in that and that.

10 Q. The back door wasn't open when you went in there?

11 A. No, it was not.

12 Q. And State's 6?

13 A. That was her living room.

14 Q. Do you recognize those green shoes on the ground?

15 A. I mean, I'm sure I've seen her wear those before.

16 I mean, she was a Converse funky style, so --

17 Q. She had lots of pairs of Converse?

18 A. Uh-huh.

19 Q. Did you ever see Tilghman wear Converse?

20 A. I wouldn't notice if he did, to be honest with
21 you.

22 Q. And -- I'm sorry, State's 7. Where is that
23 looking into?

24 A. That looks like it's looking into her kitchen, it
25 looks like.

KRISTIN TANNER - DIRECT BY MS. BALDWIN

1 Q. And State's 8?

2 A. This is what I was saying. This is Tasha's room.
3 This is where Tilghman was mumbling from, and this is the
4 light switch I turned on in the wall.

5 You could see that it was dark in that room. I
6 couldn't see in. We just heard the mumbling. When Jess
7 was questioning, where's Tasha? is when I took it upon
8 myself to check this room, which door was never shut, and
9 that's where I found Tasha.

10 Q. And you said that after you saw Tasha, what did
11 you do?

12 A. After I lifted up the blanket and realized what
13 was in front of me, I stopped once --

14 MR. COCHRAN: Your Honor, I have to object at
15 this point to asked and answered. We have already been
16 through the exact same testimony once before.

17 THE COURT: Overruled.

18 BY MS. BALDWIN:

19 Q. You can answer.

20 A. After I got in there and I lifted up and saw
21 Tasha's body laying there, I stopped at her chest,
22 because -- I just saw the knife, and that's when I, out
23 of shock, let go and started screaming, What the F? What
24 the F? What the F?

25 And that's when Jessica came over -- well, she

KRISTIN TANNER - DIRECT BY MS. BALDWIN

1 actually -- I hadn't let go yet, and she saw, and then we
2 both went, Oh, my God.

3 And she grabbed me and we walked -- I grabbed the
4 dog and my phone and my keys, and we sprinted out the
5 front door, which would have been this way.

6 Q. And what was going through your head?

7 A. He killed her.

8 Q. Were you calm?

9 A. Not at all.

10 Q. What were your emotions like?

11 A. Shock, panic. I literally, at that point, I'm not
12 even kidding you, I was in survival mode. I'm like, I'm
13 in here with somebody who could kill me. I need to get
14 out.

15 Q. And what did you do when you got out?

16 A. I ran about halfway up the block and called the
17 police.

18 Q. How did you call the police?

19 A. I called 911 on my cell phone that I had grabbed
20 off the table as I ran out as I grabbed the dog.

21 Q. Kristin, I'm going to show you State's Exhibit
22 108. What is that?

23 A. This is my 911 call that I had signed that I had
24 listened to in the past.

25 Q. You said you've listened to it in the past?

KRISTIN TANNER - DIRECT BY MS. BALDWIN

1 A. Uh-huh.

2 Q. And how do you know that this is that call?

3 A. Because I signed it.

4 MS. BALDWIN: At this time I seek to admit
5 and publish State's Exhibit 108.

6 MR. COCHRAN: No objection, Your Honor.

7 THE COURT: Admitted.

8 (State's Exhibit No. 108 was marked for
9 identification and admitted into evidence.)

10 THE COURT: All right. We'll take a break.
11 When we're on break, you can't begin deliberations or
12 discussions about the case. Don't talk about witness
13 demeanor in any way, and we'll have you back in a couple
14 minutes when we get this technical thing worked out.

15 Thank you.

16 (Recess taken.)

17 THE COURT: Okay. Bring the jury in.

18 (In open court, jury present.)

19 THE COURT: All right, folks. We'll resume
20 now and hopefully the technology will work.

21 Go ahead.

22 MS. BALDWIN: We sorted it out, Your Honor.
23 This is the 911 call.

24 (Whereupon, the 911 call was played for the
25 jury.)

KRISTIN TANNER - CROSS BY MR. COCHRAN

1 BY MS. BALDWIN:

2 Q. Kristin, did the EMS and the police eventually
3 show up?

4 A. Yes; they did.

5 Q. You saw them come up to the house?

6 A. Uh-huh.

7 MS. BALDWIN: I have no further questions.

8 THE COURT: Cross?

9 MR. COCHRAN: Briefly.

10 CROSS-EXAMINATION

11 BY MR. COCHRAN:

12 Q. You said that on the night of the 9th you went out
13 with Tasha, but you left earlier in the night?

14 A. I did.

15 Q. You estimated that you left around 8 p.m.?

16 A. I would say around 8:00, 8:30.

17 Q. 8:00 or 8:30. And had you noticed Tasha as being
18 upset at all that night?

19 A. While I saw her, I hadn't noticed that. There was
20 a bunch of girls out having a good time.

21 Q. Okay.

22 MR. COCHRAN: No more questions, Judge.

23 THE COURT: Redirect?

24 MS. BALDWIN: Nothing, Your Honor.

25 THE COURT: You may step down. Thank you.

KIMBERLY MURRAY - DIRECT BY MS. BALDWIN

1 All right, folks. We're going to have a
2 couple more brief witnesses before we break for lunch, so
3 if the State could call their next witness.

4 MS. BALDWIN: The State calls Kimberly
5 Murray.

6 KIMBERLY MURRAY,
7 having been first duly sworn,
8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. BALDWIN:

11 Q. Kimberly, are you a little nervous?

12 A. A little bit, yeah.

13 Q. Is this a new experience for you?

14 A. Uh-huh.

15 Q. Okay. What do you do for a living?

16 A. I'm a registered nurse.

17 Q. And where are you currently employed?

18 A. Heartland.

19 Q. Where were you living in February of 2013?

20 A. I lived at

21 Q. And were you living with anybody?

22 A. No.

23 Q. Were you dating anybody at the time?

24 A. Yeah.

25 Q. And who was that?

KIMBERLY MURRAY - DIRECT BY MS. BALDWIN

1 A. It was Rob.

2 Q. And how did you know the victim?

3 A. She was my friend and neighbor. We lived next to
4 each other for a couple years, and whenever I went out of
5 town or needed to -- couldn't get home in time to let the
6 dogs out, they would -- they had a key to the house and
7 they would always -- she would always -- both of them
8 would come in and out, borrow movies, let the dogs out,
9 watch them when I was gone.

10 Q. When you say both of them, what do you mean, or
11 who do you mean?

12 A. Tasha and Tilghman.

13 Q. So you knew Tilghman Kronsberg as well?

14 A. Yes, ma'am.

15 Q. Where was your house, or apartment, in relation to
16 Tasha's?

17 A. We had the same driveway, so we were right next to
18 each other. We could see inside each other's windows if
19 the blinds were open.

20 Q. You said you borrowed videos from each other.

21 A. Uh-huh.

22 Q. So what was your relationship like with them? Was
23 it friendly?

24 A. Yes.

25 Q. Okay. Let me bring you to the evening of February

1 9th, 2013 into the next day. What were you doing the
2 evening of February 9th?

3 A. I know I went to the bar, Smoky Oak. I'm not sure
4 what I did before Smoky Oak. I think I worked and
5 then -- I'm not really sure. I left my car there, went
6 to Smoky Oak, and I know I stayed till the bar was closed
7 and probably a little after, and then walked back home.

8 Q. Is Smoky Oak fairly close to your home?

9 A. Yeah. Yes. It was, like, right around the
10 corner, like, the next driveway over, basically.

11 Q. Did you see either Mr. Kronsberg or Tasha that
12 night?

13 A. I'm not -- I believe that I did see them at the
14 bar that night, but they weren't there at closing.

15 Q. What did you do when you got home that night?

16 A. I know I went back to my house, had a couple of
17 drinks, probably had the TV on or some music, and then
18 ended up sleeping in the guest room.

19 Q. Was anybody else at your house with you that
20 evening?

21 A. Rob was there.

22 Q. Do you know Rob's last name?

23 A. (Shakes head.)

24 Q. Did Rob have a couple of drinks with you?

25 A. Yes.

KIMBERLY MURRAY - DIRECT BY MS. BALDWIN

1 Q. Did you hear anything coming from next door after
2 you got home that night?

3 A. No.

4 Q. Did you have any contact with Mr. Kronsberg at all
5 that evening, after you arrived home?

6 A. No.

7 Q. Did you hear from him at all after you arrived
8 home?

9 A. No. I had a text message when I woke up the next
10 day that was -- it said 4:00 in the morning, asking if I
11 was home.

12 Q. From Mr. Kronsberg?

13 A. Uh-huh.

14 Q. What did you do the next day?

15 A. I don't even remember if I replied to that text
16 message, but I know we sat around, ate breakfast, sat
17 around my house, and then I know I left and went to buy a
18 lawn mower and came back home.

19 And that's when I saw Jessica and Kelly there,
20 trying -- they were asking us if we had heard from them
21 or knew where they were, they being Tasha and Tilghman.

22 Q. Had you seen Tasha or Tilghman at all that day?

23 A. No.

24 Q. Was it unusual to you that they showed up there,
25 asking these questions?

1 A. Yes.

2 Q. Why is that?

3 A. Because usually they would -- Tilghman and Tasha
4 would answer their phones or would have been where they
5 were supposed to be. It was unusual to have them asking
6 where they were, that they were worried about them.

7 Q. What happened next?

8 A. I know we talked a bit, and we all got concerned
9 because they told me that Tasha was supposed to be there
10 in the morning and she didn't usually call out.

11 And I realized that I hadn't seen the dog out or
12 heard anything next door, and I guess we both just made
13 each other anxious, or all made each other anxious, and
14 we decided to -- we had already knocked on the door. We
15 tried to find out what was going on, check up on them.

16 Q. So what happened?

17 A. We checked the front door, no answer. Went around
18 to the back. We looked in the windows. Back door was
19 locked. So we ended up pulling one of my chairs over to
20 the front window, and the window -- not me and Jessica,
21 but -- Kelly? I can't remember her name.

22 Q. Were you familiar with these two people?

23 A. I knew Jessica a little bit. I didn't know the
24 other one.

25 Q. Okay. So the other one went inside?

KIMBERLY MURRAY - DIRECT BY MS. BALDWIN

1 A. Uh-huh, the window first and opened the door.

2 Q. And then what happened next?

3 A. And she was very upset. She came out and she
4 said, I think she's dead.

5 MR. COCHRAN: Objection. Hearsay.

6 THE COURT: Overruled.

7 BY MS. BALDWIN:

8 Q. So -- the girl whose name you aren't sure of came
9 running out saying, He's dead, or, She's dead?

10 A. I think she's dead.

11 Q. Did she say anything else?

12 A. No.

13 MR. COCHRAN: Objection. Hearsay.

14 THE COURT: Sustained.

15 BY MS. BALDWIN:

16 Q. What did you do as a result of all this?

17 A. I went in to check. If you're part of the medical
18 field, according to -- well, the Good Samaritan Law, but
19 you're supposed to check and see if they need CPR, if
20 there is anything they can do to sustain life until help
21 is on the way, and --

22 Q. You were a nurse at the time?

23 A. Yes. I've been a nurse for four years now.

24 Q. So you went inside. And what did you do when you
25 went inside?

KIMBERLY MURRAY - DIRECT BY MS. BALDWIN

1 A. I checked her pulse.

2 Q. Whose pulse?

3 A. Tasha's pulse.

4 Q. What did you see when you went inside?

5 A. I saw her on the floor in the spare room, the
6 guest room, and there was a blanket on top of her. And I
7 used a towel to pull a plastic bag off of her face to
8 clear her airway, and I checked her wrist and then I
9 checked the side of her neck and then I called 911. But
10 I had trouble with the phone, and I left -- I left the
11 house and called 911 from the porch. I think I gave them
12 my address.

13 Q. You mentioned you saw a bag over Tasha's face?

14 A. Uh-huh.

15 Q. What did that bag look like?

16 A. It was a grocery store bag, like a brown plastic
17 grocery store bag.

18 Q. Did you notice any other injuries to her?

19 A. She had a knife in her chest.

20 Q. Anything else?

21 A. No.

22 Q. You said you checked her vital signs?

23 A. I checked her pulse.

24 Q. And did you feel any pulse?

25 A. No.

KIMBERLY MURRAY - CROSS BY MR. COCHRAN

1 MS. BALDWIN: Court's indulgence. That's all
2 the questions I have, Kimberly.

3 MR. COCHRAN: May it please the Court:

4 THE COURT: Yes.

5 CROSS-EXAMINATION

6 BY MR. COCHRAN:

7 Q. How long -- I'm sorry. You said about how long
8 had you and Tasha been neighbors?

9 A. I lived there for three years. I moved in August,
10 so almost three years total.

11 Q. And was this house like a duplex or --

12 A. It was a duplex.

13 Q. Okay. So you shared the actual structure with
14 Tasha?

15 A. No. I lived on the other side.

16 Q. On the other side. And you spoke with police
17 about this case, right?

18 A. Yes, sir.

19 Q. Okay. And you said that you may have seen or
20 thought you saw Tasha and Tilghman out that night at
21 Smoky Oak?

22 A. Yes.

23 Q. And you knew Tilghman to be living with Tasha?

24 A. Yes.

25 Q. And you knew them to have an on-again, off-again

1 relationship?

2 A. Yes.

3 Q. And they would fight, correct?

4 A. They would fight and break up, and she would end
5 up kicking him out.

6 Q. And that would happen more than once?

7 A. Yes, more than once.

8 Q. Okay. And they would have loud fights, you told
9 police?

10 A. Yes.

11 Q. And --

12 A. Not often, but I wasn't home that often.

13 Q. Okay. And you told police they would have loud
14 fights at all hours of the night?

15 A. Uh-huh.

16 Q. They would yell at each other?

17 A. Uh-huh.

18 Q. And you would be able to hear this?

19 A. Not exact words, but --

20 Q. You heard the fact they were yelling at each other
21 and fighting?

22 A. Yes.

23 Q. And she would kick him out sometimes?

24 A. Uh-huh.

25 Q. And would he stay at your house sometimes when she

1 kicked her out?

2 A. I don't think he stayed over, but I offered him
3 the spare room if my mother wasn't there.

4 Q. Just to offer him a place to stay?

5 A. If he was sleeping outside.

6 Q. And you said that you are a registered nurse,
7 right?

8 A. Yes.

9 Q. You said you went and spoke to Tasha, and when you
10 spoke to police, you said it looked as though Tasha had
11 been strangled?

12 A. Uh-huh.

13 Q. I'm sorry. Your Honor, one moment. You mentioned
14 this -- I'm sorry, Your Honor.

15 You mentioned this plastic bag. Now, you touched
16 it with a towel? Okay. Did you have to, like, unwrap
17 the bag off of her head or was it just laying on top of
18 her?

19 A. I had to move it off of her chin and nose to clear
20 an airway.

21 Q. Okay.

22 A. I didn't touch any other part of it. I just used
23 one hand to pull it back.

24 Q. So it wasn't around her head. It was resting on
25 her face?

KIMBERLY MURRAY - REDIRECT BY MS. BALDWIN

1 A. I didn't see the rest of it -- I didn't pull it up
2 beyond the nose. I didn't see anything beyond the nose.

3 Q. You didn't have to move her head at all to pull
4 that back?

5 A. (Shakes head.)

6 MR. COCHRAN: No more questions.

7 THE COURT: Redirect?

8 REDIRECT EXAMINATION

9 BY MS. BALDWIN:

10 Q. Kimberly, are you sure as to whether or not you
11 saw Tilghman and Tasha out at Smoky Oak that evening?

12 A. At this point in time -- I think I may have that
13 night, but I'm not 100 percent positive. I know I saw
14 them at some point that day.

15 Q. Okay.

16 A. That night.

17 Q. Had you been drinking that evening?

18 A. Yes, the 10th.

19 Q. Mr. Cochran asked you about their fight. Describe
20 what you mean about fight.

21 A. Arguments. I never heard anything physical.

22 Q. And you said you would sometimes hear them loudly
23 arguing next door?

24 A. Every once in a while, but not that often.

25 Q. You didn't hear anything that evening?

ROBERT MILLER - DIRECT BY MS. BALDWIN

1 A. No.

2 MS. BALDWIN: No further questions.

3 THE COURT: Recross?

4 MR. COCHRAN: No, Your Honor.

5 THE COURT: You may step down. Call your
6 next witness.

7 MS. BALDWIN: State calls Robert Miller.

8 ROBERT MILLER,

9 having been first duly sworn,

10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. BALDWIN:

13 Q. Robert, how old are you?

14 A. I'm 30.

15 Q. Where did you work back in 2013, February?

16 A. I believe I was either unemployed or I was working
17 at the Sunset Cay Marina.

18 Q. Where were you living in February of 2013?

19 A. Point James Condominiums on Camp Road.

20 Q. Did you know Kimberly Murray?

21 A. Yes.

22 Q. And how did you know her?

23 A. We were dating. We had met through Tilghman.

24 Q. You met through Tilghman?

25 A. Yes.

ROBERT MILLER - DIRECT BY MS. BALDWIN

1 Q. Did you know the victim, Tasha Lucia, as well?

2 A. Just from meeting each other out at the local bar.

3 Q. Did you know if Tasha and Tilghman dated at all?

4 A. Yes.

5 Q. Were you out with Kimberly Murray the night of
6 February 9th --

7 A. Yes.

8 Q. -- 2013? Where did you go after you guys went
9 out?

10 A. I'm pretty sure we went home.

11 Q. Where was home?

12 A. It was the building next to Tasha's residence.
13 They shared a driveway.

14 Q. When you got home, did you hear anything from next
15 door?

16 A. No.

17 Q. Okay. And so the next day, what did you do?

18 A. Sat on the couch and I watched Dexter.

19 Q. Did you see the defendant at any point that day?

20 A. I did.

21 Q. When did you see him?

22 A. I would like to say it was some time between 1:00
23 and 3:00. He was coming back from either the Dollar
24 General or the Camp Road convenience store.

25 Q. And how do you know he was coming back from one of

1 those places?

2 A. He had the grocery bags, the -- it was within
3 walking distance. There is no other stores that are
4 within walking distance from there.

5 Q. And how did he appear to you?

6 A. Like he was just walking. It was -- didn't seem
7 like he was in any bad shape.

8 Q. What do you mean by bad shape?

9 A. Like, he wasn't stumbling or anything like that.
10 He was just walking normally, I guess.

11 Q. How did his face appear? Did you notice anything?

12 A. From a distance, I didn't notice anything obscure.

13 Q. When did you next see Tasha?

14 A. After the incident when she was dead.

15 Q. Okay. And tell us about that. What was your
16 involvement in that?

17 A. I had heard the ladies, Jessica and Kristin,
18 screaming after they had seemingly broke in. I thought
19 they had said that he stabbed her, so at that time, Kim
20 had walked into the house and she was frantic, and she
21 said, Get me my phone. Get me my phone. Call 911.

22 And her phone, like, locked, or something had gone
23 wrong with it, and I couldn't figure it out, so I handed
24 it to her.

25 I said, You call 911, and I'll go help her, seeing

ROBERT MILLER - CROSS BY MR. COCHRAN

1 if I could help her. I didn't think that that was what I
2 was going to be walking into.

3 Q. What did you walk into?

4 A. It was very dark in the house. There was spots of
5 blood on the floor in certain places, and as I walked
6 directly into where the bedroom -- seemingly short room
7 splits into two bedrooms and a bathroom, I noticed feet
8 on the ground.

9 I also then noticed that there was, you know, a
10 body. She was only wearing underwear and a spaghetti
11 strap top, and I noticed a knife in her chest.

12 MS. BALDWIN: Court's indulgence. No further
13 questions.

14 THE COURT: Cross?

15 MR. COCHRAN: If it please the Court:

16 CROSS-EXAMINATION

17 BY MR. COCHRAN:

18 Q. You had spent the night at Kimberly's house the
19 night of the 9th through the morning of the 10th?

20 A. Yes, and the evening, into the evening. Excuse
21 me.

22 Q. Okay. And you had given a statement to police,
23 right?

24 A. Yes.

25 Q. And according to what you told police around this

ROBERT MILLER - CROSS BY MR. COCHRAN

1 time was that -- I believe you described it as Tilghman
2 and Tasha getting into it, which -- does that mean they
3 got in an argument?

4 A. I would relate it to anybody that would go out and
5 drink and something may just come up and get into -- I
6 would call a common spat, not necessarily an altercation.

7 Q. Okay, but an argument?

8 A. Yes.

9 Q. And so they would drink too much and they would
10 get into it, is what you said, right?

11 A. I don't know how much they had drank, but --

12 Q. No, no, I'm just talking about on a regular basis,
13 not that night.

14 A. On a regular basis? I may have seen it twice.

15 Q. On previous occasions?

16 A. Yes.

17 Q. So you saw them get into arguments?

18 A. Maybe once or twice, yes.

19 Q. Loud arguments?

20 A. No.

21 Q. Were they drinking when they were getting into the
22 arguments?

23 A. It -- the only way that I knew them was seeing
24 them out at a bar, so typically they were drinking, yes.

25 Q. Okay. So --

1 A. And it wasn't like a weekly thing we had been
2 seeing each other.

3 Q. So the obvious assumption is that they were
4 drinking too much and then getting into arguments, is
5 what you were witnessing?

6 A. I don't know how much they were drinking. What
7 would be considered too much for them?

8 Q. Well, I'm going by your statement to police. You
9 made a statement to police, They would drink too much and
10 get into it.

11 A. Okay.

12 Q. Is that fair?

13 A. Yes. If --

14 Q. Would that be accurate, an accurate portrayal?
15 You weren't lying to police, were you?

16 A. No.

17 Q. You weren't making stuff up?

18 A. No. I would like to think that I would relate it
19 to drinking too much, but I don't know what drinking too
20 much for them would be.

21 Q. Right. Okay. I understand. And, again, we're
22 not talking about that night of the 9th, we're talking
23 about -- you were telling the police about prior
24 instances.

25 A. Yes. And these fights I had seen, I would usually

ROBERT MILLER - REDIRECT BY MS. BALDWIN

1 only see moments of. It would be, okay, whatever, and
2 I'm leaving, and that would be it.

3 Q. You wouldn't see them from beginning to end.

4 A. No.

5 Q. And you believe you saw Tilghman in the early
6 morning hours --

7 A. Not in the early morning, no.

8 Q. In the afternoon?

9 A. More early afternoon.

10 Q. So 1:00 to 3:00 in the afternoon.

11 A. Yes.

12 MR. COCHRAN: Beg the Court's indulgence.

13 No more questions, Your Honor.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MS. BALDWIN:

17 Q. These fights, you said they were arguments?

18 A. Yes.

19 Q. Not loud arguments?

20 A. No.

21 Q. No further -- I'm sorry. Go ahead.

22 A. It was more -- I could only relate it to more of a
23 spat, more of a disagreeing, and then somebody leaving.
24 It wasn't like somebody was throwing something or there
25 was -- you know, nothing like that. It was just a quick

1 not agreeance {sic} and they would leave.

2 MS. BALDWIN: No further questions.

3 MR. COCHRAN: Nothing further, Your Honor.

4 THE COURT: You can step down.

5 All right, folks. This is where we will
6 break for the afternoon. It's 1:00 now. If you would,
7 be back in the jury room at 2:30. Now, you can go to
8 lunch with anybody you want to, including other members
9 of the jury panel, but it's real important that you not
10 talk to anybody about the case, including other members
11 of the jury panel. Don't discuss demeanor of witnesses
12 or anything like that.

13 You've seen that we've got television
14 coverage. There will probably be newspaper coverage and
15 who knows what on social media and things like that, so
16 it becomes very important that you remember what I told
17 you about not going online, trying to find out anything
18 about the case, and reading anything about the case
19 online or in print or on the television, but especially
20 in this day and age about going online on the Internet
21 and trying to find out things about the case because
22 people can post stuff, you know, just as they go along
23 throughout the day.

24 And you understand how important it is now, I
25 think, just to base your decision on what you hear here

SCOTT REMINGTON - DIRECT BY MS. BALDWIN

1 marked for identification and admitted into evidence.)

2 THE COURT: Okay. You got your witness
3 ready?

4 MS. BALDWIN: Yes, sir.

5 THE COURT: All right. Bring the jury back
6 in.

7 (In open court jury present.)

8 THE COURT: All right, folks. Welcome back.
9 We're going to resume now with the State calling their
10 next witness.

11 MS. BALDWIN: Thank you, Your Honor. The
12 State calls officer Scott Remington.

13 SCOTT REMINGTON,
14 having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. BALDWIN:

18 Q. Officer Remington, it may be pretty obvious, but
19 what is your occupation?

20 A. I'm a police officer with the city of Charleston.

21 Q. And how long have you been with the city of
22 Charleston?

23 A. This time, for just under five years. I was
24 employed with the city once before for five years, from
25 basically 2001 to 2005, left for five years, and I've

24 And another female screamed out, He's still in
25 there, pointing to the residence.

SCOTT REMINGTON - DIRECT BY MS. BALDWIN

1 The front door was wide open. I ran to the front
2 door, fearing that there's a stabbing reported. Don't
3 know if, as the one person outside had stated, was dead
4 or not, could just be wounded, needing urgent care, also
5 have the other person stating that he was still in there.
6 So I don't know if I have a suspect inside the residence
7 who may be trying to flee or destroy evidence, so under
8 those circumstances, I entered the residence.

9 Q. And when you entered the house, what did you do?

10 A. From the doorway, everything appeared very quiet.
11 I couldn't see anybody or anything from the vantage point
12 of the front door, so when I entered, I swept to the
13 right through the living room. It's a very small
14 residence, so it was only a few steps, six, seven steps
15 to cross the living room floor towards the kitchen.

16 I could see into the kitchen and that there was
17 nobody in the living room, kitchen, so I came back into
18 the hallway by the front door. From the hallway to the
19 front door, I could see down to the far end of the
20 hallway. There is a bathroom. The door was wide open.
21 I could see blood on the fixtures, the porcelain, the
22 tub, and then the sink. I could see blood on the floor
23 of the hallway leading up to the bathroom as well, and
24 then positioned -- slightly adjusted my position so I
25 could see into a back bedroom, the door of which was

SCOTT REMINGTON - DIRECT BY MS. BALDWIN

1 open, easily see inside from the daylight coming through
2 the bedroom that there was a white female laying on the
3 floor with her feet towards the door.

4 She was on her back and had a knife protruding
5 from her chest, and her head was very bloody.

6 Q. What did you see -- did you see anybody else in
7 the house?

8 A. At that point I still had not. I could hear the
9 sirens of other officers responding on the scene. Just
10 around the corner from that vantage point where I was
11 looking into the back bedroom was a curtain entryway to
12 the front bedroom of the house, which was dark,
13 completely dark.

14 I carry a small flashlight on my duty belt, and
15 with that drawn, I knocked the curtain out of the way
16 with the flashlight to take a quick peek into that
17 bedroom and could see a white male that was shirtless
18 laying on the bed, on top of the bed, not under the
19 cover.

20 He had blood on his chest and abdomen, and at that
21 point, with officers coming through the yard, I went
22 ahead and made an entry into the bedroom and ordered him
23 to put his hands behind his back.

24 Q. And what did he do?

25 A. He sat bolt upright, muttering unintelligibly. It

SCOTT REMINGTON - DIRECT BY MS. BALDWIN

1 was just gibberish, told him to put his -- lay down and
2 put his hands behind his head at that point, which he
3 did. He was still muttering nonsense, just gibberish.

4 And then he sat up again. The whole time -- once
5 I woke him up, his eyes were just wide open and wild
6 looking, is the way I described it.

7 So the second time, I told him to lay back down
8 again, put his hands behind his head, which he did. He
9 complied with that. One of my backup officers was on the
10 scene at that point, and he covered him so that I could
11 handcuff him, noticed blood on his arms, so I paused --
12 we carry rubber gloves on our duty belt, Latex gloves, so
13 that we can -- if we need them, we can have them.

14 So I put those on since the individual was bloody
15 and put the handcuffs on him, and at that point I noticed
16 he had a laceration to his left wrist.

17 Q. Did he have any other injuries that you noticed?

18 A. Just the laceration on the wrist. The longer one
19 was on the inside of the wrist, and a very short one on
20 the outside of the wrist.

21 Q. And you didn't see any other injuries besides
22 that?

23 A. None, none. All he did was gibber.

24 Q. After he was handcuffed, what happened?

25 A. At that point we had called for EMS, that it was

SCOTT REMINGTON - DIRECT BY MS. BALDWIN

1 clear for them to come in, called for the central
2 investigations and crimes to respond to the scene.
3 Noticed that there was what appeared to be a marijuana
4 bong on the nightstand, a bottle on the floor, clear
5 liquid, a bottle of vodka, but that was on the floor.

6 The bottom of a sheet on the bed, sheet that was
7 hanging off the edge of the bed near the floor, that was
8 bloody. There was blood on the bedsheet itself. There
9 was blood spots on the floor, and when Haithcock came in
10 and saw the knife on the nightstand, he removed that,
11 knife or scissors or something, that was on the
12 nightstand. He said, I'm taking these out of here.

13 Q. And why did he do that?

14 A. For safety and just to make sure that if I hadn't
15 cuffed him right there, there is no way he can get ahold
16 of that and use the weapon against us.

17 Q. What happened with the defendant? Was he
18 eventually removed from the room?

19 A. Yes. The EMS entered the house. They bandaged up
20 his left wrist. We walked him outside, and he was
21 strapped to a gurney, and then he was transported to MUSC
22 downtown, ER, and I rode in the ambulance.

23 Q. You rode in the ambulance with him?

24 A. Yes, sir.

25 Q. To MUSC? What did you do when you got to MUSC?

SCOTT REMINGTON - DIRECT BY MS. BALDWIN

1 A. Once at MUSC, he was transported to the first open
2 bed. The doctors requested that I remove the handcuffs
3 from him, told him that he was a suspect in a stabbing
4 and he needed to be restrained to prevent flight risk.
5 So they put soft restraints farther up his arm and then
6 enabled me to remove the steel handcuffs from him, from
7 his wrists, and all the questions that the ER staff was
8 asking him, he just answered with gibberish. Couldn't
9 understand anything he said.

10 Q. Did you do anything at the hospital?

11 A. Yes. They cut off his pants at the hospital,
12 which he had blood on it, and cut off his underwear and
13 used that as evidence. I stayed in the ER for the safety
14 of the personnel there and over watch of the suspect to
15 prevent any type of escape attempt until I was relieved.

16 Q. And what did you do after you were relieved?

17 A. I then returned to the scene on Encampment to get
18 more information to go in my report, as far as who had
19 entered the structure and who remained outside.

20 Q. Were you just trying to keep a log?

21 A. Yes.

22 Q. For security purposes?

23 A. As protocols.

24 Q. When you arrived on scene, you said there were two
25 people there who were saying things. What was their

SCOTT REMINGTON - DIRECT BY MS. BALDWIN

1 demeanor like?

2 A. I would have to say hysterical. They were
3 screaming.

4 Q. And when you went inside the house, when you saw
5 the victim on the floor, what was your immediate thought?

6 A. I actually studied her for a couple seconds to see
7 if I could see any type of rise and fall in her chest and
8 didn't see any, so I presumed, myself, at that point,
9 that she was dead.

10 MS. BALDWIN: Court's indulgence.

11 BY MS. BALDWIN:

12 Q. When the defendant was taken out of the house, did
13 he walk on his own accord?

14 A. Yes, he did. He was walked out to -- the gurney
15 was out in the front yard there at the base of the steps.

16 Q. And you said he was speaking a lot of gibberish?

17 A. The only thing -- he was uttering a lot, but it
18 was nonsensical. Inside the EMS wagon, he answered three
19 questions coherently to where you could understand what
20 he said.

21 Q. And what were those questions?

22 A. The medic asked him if he had taken anything, and
23 he responded coke. He asked him his birth date, and he
24 responded -- I believe it was 6/22 -- anyway, he gave his
25 birth date, and then I asked him his last name, and he

SCOTT REMINGTON - DIRECT BY MS. BALDWIN

1 stated Kronsberg, and that was the only thing that was
2 coherent.

3 Q. When you say coke, what do you mean when he said
4 he used cocaine?

5 A. I would presume he meant cocaine.

6 MR. COCHRAN: Objection. Bolstering and
7 speculation.

8 THE COURT: There is no basis for it. It's
9 speculation what he meant.

10 BY MS. BALDWIN:

11 Q. Were his actions as he walked out consistent with
12 somebody who had used drugs in your training and
13 experience?

14 A. His demeanor and his eyes, yes.

15 MR. COCHRAN: Your Honor, I would object to
16 opinion testimony.

17 THE COURT: He said coke. It could be the
18 drink; it could be the drug. He doesn't have any basis
19 for knowing that, and he just tells the jury what he
20 heard.

21 MS. BALDWIN: Thank you, Your Honor. No
22 further questions.

23 MR. COCHRAN: May it please the Court:

24 CROSS-EXAMINATION

25 BY MR. COCHRAN:

SCOTT REMINGTON - CROSS BY MR. COCHRAN

1 Q. So you were the first officer to arrive on scene.

2 A. Yes.

3 Q. Okay. Did you have a partner in your squad car or
4 were you alone?

5 A. I was alone.

6 Q. You were alone when you arrived? And when you get
7 there, this is once the suspect is in custody and
8 handcuffed, that's really when the investigation of this
9 crime begins, right, in terms of trying to figure out
10 what happened?

11 A. Correct.

12 Q. And witnesses were there to give accounts, right?

13 A. Yes.

14 Q. And you called crime scene tech, or did somebody
15 call crime scene tech?

16 A. I called dispatch and requested crime scene
17 detectives and EMS.

18 Q. So you call for a crime scene tech and detectives
19 in an effort to initiate the investigation and help you
20 process that scene, correct?

21 A. Correct.

22 Q. And besides the exigent, or emergency situations,
23 in terms of dealing with the two people who are found at
24 the house, you have to then, once those things are
25 handled, you then will take note of what's going on at

SCOTT REMINGTON - CROSS BY MR. COCHRAN

1 the house, take note of what witnesses are saying, things
2 like that?

3 A. And officers responsible for that, yes.

4 Q. Okay. And, for instance, the crime scene, the
5 apartment itself, is processed, correct?

6 A. Correct.

7 Q. Okay. And things -- you're looking for certain
8 things in this crime scene and on the person of
9 Mr. Kronsberg and on the person of Ms. Lucia, correct?

10 A. Correct.

11 Q. And you're looking for things like signs of a
12 struggle, correct?

13 A. That would be something to look for, yes.

14 Q. Something like forced entry would be something
15 that you look at? That wasn't an issue in this case
16 but --

17 A. That would be.

18 Q. You would look for signs of fight or a struggle,
19 overturned furniture, things like that?

20 A. Yes.

21 Q. You would look for signs of self-defense?

22 A. If -- if the evidence gets processed, yes, sir.

23 Q. And when you rode with Mr. Kronsberg in the
24 ambulance, did you try to elicit a statement from him or
25 was that mostly EMS that was talking to him?

1 A. It was mostly EMS.

2 Q. Did you try to elicit a statement from him?

3 A. The only thing I asked him was what is your last
4 name.

5 Q. Was he wearing a shirt?

6 A. Not at that time.

7 Q. So he was bare from the waist up?

8 A. Correct.

9 Q. And the injuries you noted were a laceration on
10 the inside of the wrist, correct?

11 A. Right.

12 Q. And a smaller laceration on the outside of --

13 A. Correct.

14 Q. And that was his left hand, or left wrist.

15 A. Left wrist, yes.

16 Q. And those were the only injuries you noted?

17 A. Yes.

18 Q. You didn't note bruising or abrasions on his
19 abdomen?

20 A. No.

21 Q. And you didn't notice bruising or abrasions on the
22 outside of his hands?

23 A. The hands were bloody.

24 Q. The hands were bloody, but no bruises or
25 abrasions?

SCOTT REMINGTON - REDIRECT BY MS. BALDWIN

1 A. Couldn't see underneath the blood.

2 Q. Were you there when they washed the blood off?

3 A. No, I was not.

4 Q. Did you take witness statements, or was that
5 another officer?

6 A. That would have been the detectives.

7 MR. COCHRAN: I beg the Court's indulgence.

8 BY MR. COCHRAN:

9 Q. Now, you said you did not note any bruising or
10 abrasions on his abdomen; is that correct?

11 A. I did not notice any.

12 Q. Was the skin of his abdomen bloody?

13 A. He had blood on his chest and some on his abdomen.
14 I wouldn't say he was completely covered, no, but there
15 was splotches of blood on him, yes.

16 MR. COCHRAN: No more questions, Your Honor.

17 THE COURT: Redirect?

18 MR. BALDWIN: Briefly.

19 REDIRECT EXAMINATION

20 BY MS. BALDWIN:

21 Q. Officer Remington, this was a pretty serious
22 situation that you came into, correct?

23 A. Yes.

24 Q. When you respond to these types of calls, do you
25 do a lot of investigation, or does it go over to the

SCOTT REMINGTON - REDIRECT BY MS. BALDWIN

1 detective's office?

2 A. I personally do not. It will go to the central
3 detectives on a felony crime.

4 Q. And when crime scene gets involved, do they
5 typically document the incident?

6 A. They get very meticulous with photographs and
7 processing, yes.

8 Q. So in this incident, it would have been the crime
9 scene's job to document anything that they saw?

10 A. Yes.

11 Q. That wasn't in your purview?

12 A. Correct.

13 MS. BALDWIN: No further questions.

14 THE COURT: Recross?

15 MR. COCHRAN: No more questions, Your Honor.

16 THE COURT: You may step down. Next witness.

17 MR. SIMPSON: Your Honor, the State called
18 Randall Unterbrink with Charleston Police Department.

19 RANDALL UNTERBRINK,
20 having been first duly sworn,

21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SIMPSON:

24 Q. Mr. Unterbrink, good afternoon.

25 A. Good afternoon.

RANDALL UNTERBRINK - DIRECT BY MR. SIMPSON.

1 Q. Where are you currently employed?

2 A. The Charleston Police Department.

3 Q. And in what capacity?

4 A. I'm working in the crime scene unit.

5 Q. And how long have you been with the crime scene
6 unit?

7 A. Eleven years.

8 Q. And how long have you been with the Charleston
9 Police Department?

10 A. Twenty-three.

11 Q. Generally speaking, can you recount for the jury
12 what some of the duties are of a crime scene officer.

13 A. The duties have to do with documentation,
14 primarily. That's really the summary of it. You need to
15 document the scene as it is when you arrive because you
16 know it's going to change shortly thereafter, and so you
17 document, in large part, by photography, also by
18 collection of evidence what's there on the scene as well
19 because it could disappear through wind or rain or
20 whatever, and so you just collect and photograph and
21 document in that way.

22 Q. Now, are the scenes, so to speak, or places that
23 you're responding to, were they always the crime scene?

24 A. The places I respond to is the crime scene.

25 Q. Okay. You're familiar with what case brings us

1 here today, correct?

2 A. Yes.

3 Q. Did you have occasion in your role as a crime
4 scene technician to become involved in this case on
5 February 10th, 2013?

6 A. Yes, sir.

7 Q. And in what capacity were you involved in this
8 case?

9 A. My capacity again was through documentation. It
10 was through the photography, primarily of an individual.

11 Q. Okay. You say of an individual. Who is that
12 individual that you were asked to document?

13 A. Robert T. Kronsberg.

14 Q. And to what location did you respond in this case?

15 A. MUSC Hospital.

16 Q. Was your primary role on this date to document?

17 A. Yes, sir.

18 Q. And what way?

19 A. To document the condition of the individual. He
20 had some cuts and also blood on him, and I needed to
21 document that because he would eventually get cleaned up
22 and that would all disappear.

23 Q. In that vein, when choosing what to photograph,
24 you were particularly interested in injuries?

25 A. Yes, sir.

RANDALL UNTERBRINK - DIRECT BY MR. SIMPSON

1 MR. SIMPSON: Your Honor, may I approach the
2 witness?

3 THE COURT: You may.

4 BY MR. SIMPSON:

5 Q. Mr. Unterbrink, I'm handing you what has been
6 marked and admitted without objection as State's Exhibit
7 63 through 67. Could you just take a moment to view
8 those generally.

9 MR. SIMPSON: At this point the State would
10 move to admit State's 63 through 67.

11 (State's Exhibit Nos. 63 through 67 were
12 marked for identification and admitted into evidence.)

13 BY MR. SIMPSON:

14 Q. Do you recognize those exhibits?

15 A. I do.

16 Q. And what are those?

17 A. These are photographs I took of the individual.

18 Q. In what condition was Mr. Kronsberg when you
19 arrived at the hospital?

20 A. He was unresponsive to me. He was laying there on
21 a hospital bed, as you see, in that condition.

22 Q. And are you -- is your goal here to thoroughly
23 document any injuries to Mr. Kronsberg personally?

24 A. Yes. That's what I wanted to do.

25 Q. And if you could just note for the jury what you

RANDALL UNTERBRINK - DIRECT BY MR. SIMPSON

1 observed and what you photographed.

2 A. The things of interest here were individual cuts,
3 and there were several different parts of the body.
4 Also, there was blood at different parts of the body as
5 well.

6 Q. State's 64.

7 A. This would be the same thing. You can see a cut
8 there on his shoulder. That's why I documented that.

9 Q. 65?

10 A. Here was some injuries as well, also some blood,
11 and I wanted to document that.

12 Q. 66?

13 A. Same thing was true, additional cuts.

14 Q. And 67?

15 A. And the same thing is true, additional cuts.

16 Q. Was there also an injury to Mr. Kronsberg's wrist?

17 A. At his wrist, I would have to see the photograph
18 on that.

19 MR. SIMPSON: Thank you, Mr. Unterbrink.
20 Please answer any questions Mr. Cochran has.

21 MR. COCHRAN: May it please the Court:

22 CROSS-EXAMINATION

23 BY MR. COCHRAN:

24 Q. Could you look at the previous one? I'm sorry.
25 And the one before that? Thank you.

RANDALL UNTERBRINK - CROSS BY MR. COCHRAN

1 All right. So your only role in this case was to
2 photograph Mr. Kronsberg?

3 A. It was to photograph and then also collect samples
4 of blood as well.

5 Q. But nothing at the actual crime scene in this
6 case?

7 A. Not in this case, no, sir.

8 Q. Did you attempt to take any statements from
9 Mr. Kronsberg?

10 A. No, sir.

11 Q. That's not part of your job?

12 A. Not in this case, no, sir.

13 Q. Okay. And have you reviewed -- well, actually,
14 you took this photograph here.

15 A. I did.

16 Q. Okay. Now -- so those are, I guess, bruises or
17 abrasions of some sort on his abdomen, correct?

18 A. Yes.

19 Q. So his left hip and then the left side of his
20 abdomen towards the belly button and over the belly
21 button and then up in the middle part of the upper
22 abdomen, correct?

23 A. Yes.

24 Q. We've got bruising and abrasions, correct?

25 A. Yes, sir.

1 Q. Did you have to wash blood off to see those?

2 A. No, sir. That's how he was when I got there.

3 Q. So that's how he was when you got there.

4 A. Yes, sir.

5 Q. So that was apparent -- readily visible just by
6 looking at him without a shirt on.

7 A. That's correct.

8 Q. And you noted any instance where you were able to
9 see any kind of injury, correct?

10 A. Yes. When I was there, the detective also was --
11 we were talking together, pointing out certain injuries,
12 and so at that point I took that photograph.

13 Q. Okay. And you did not photograph or document any
14 injuries to his hands or knuckles?

15 A. I recall a photograph of his hand. I think -- I'm
16 trying to recall, maybe the right hand right there at the
17 base of the hand. I recall photographing --

18 Q. On the inside?

19 A. On the inside, that's right.

20 Q. But not of the knuckles and outside of the hand.

21 A. No, sir.

22 Q. Okay. And if there was bruising on the knuckles,
23 you would photograph that and document it, correct?

24 A. Yes, sir.

25 Q. These photographs serve a purpose, right? I mean,

1 they're part of the criminal investigation, correct?

2 A. Yes, sir.

3 Q. And he's in custody at this point, correct?

4 A. Yes, sir.

5 Q. And he's in custody for a homicide, correct?

6 A. Yes.

7 Q. But you need to photograph, not just the person
8 who is deceased in the case, you need to photograph the
9 suspect as well, right?

10 A. Yes, sir.

11 Q. And you need to document his injuries, right?

12 A. Yes, sir.

13 Q. You need to document defensive wounds, correct?

14 A. Yes, sir.

15 Q. You need to document injuries that would occur in
16 an effort of self-defense, correct?

17 A. Yes, sir.

18 Q. And there are grades of homicide, correct? There
19 is murder and there is voluntary manslaughter, correct?

20 A. Yes.

21 Q. And things need to be determined, like heat of
22 passion, correct?

23 A. Yes, sir.

24 Q. Because that can downgrade a charge of murder to
25 manslaughter, right?

RANDALL UNTERBRINK - CROSS BY MR. COCHRAN

1 A. Yes, sir.

2 Q. And you also noted -- I'm not sure if you have a
3 photograph of it, but you noted an injury to the back of
4 Mr. Kronsberg's left wrist, correct?

5 A. That's the photograph I don't recall off the top
6 of my head.

7 Q. If I showed you a picture that you took, would
8 that refresh your recollection?

9 A. Yes.

10 Q. Does that appear to be a photograph you took that
11 day?

12 A. Yes, sir, it does.

13 Q. And in the same setting with Mr. Kronsberg?

14 A. Yes.

15 Q. And is there a photograph of a bandaged injury on
16 the --

17 A. Yes, sir, I recall that.

18 Q. And that's on the back of his left wrist, correct?

19 A. That's correct.

20 Q. Okay.

21 MR. COCHRAN: No more questions. Thank you.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MR. SIMPSON:

25 Q. Detective Unterbrink, are you a medical doctor?

1 A. No, sir.

2 Q. I believe you testified what we're seeing here,
3 things you're holding out for the jury, that those are
4 injuries and not bloodstains?

5 A. Right. They look like there are scuff marks at
6 the bottom.

7 Q. If your own documentation would have reflected
8 that you swabbed those, would that --

9 A. Yes, I did.

10 Q. And it's your testimony today that these are
11 injuries, not just blood on his abdomen?

12 A. Right, particularly the one on the bottom left
13 appear to be --

14 Q. You can mark it. Thank you. Court's indulgence.
15 But you noted that these were his own injuries,
16 yet you swabbed them to see whose blood they were?

17 A. Right. I swabbed it for blood to see whose that
18 might be.

19 Q. So you had a thought in swabbing that you might
20 not know whose blood this was on him?

21 A. That's correct.

22 Q. Yet you testified you thought this was blood
23 coming from his own injuries?

24 A. It could be. I mean, we didn't know -- there was
25 blood at different parts of the body, and so there is no

1 way for me to absolutely know whether that blood might
2 have been his, or it could have been somebody else's, so
3 I went ahead and collected that just so that I would have
4 it.

5 Q. Isn't it fair to say you at least entertained the
6 possibility that what we're looking at in this picture is
7 someone else's blood on his abdomen?

8 A. Yes, sir.

9 Q. And perhaps not injuries to himself?

10 A. True.

11 MR. SIMPSON: Nothing further.

12 THE COURT: Recross?

13 MR. COCHRAN: Just briefly, Your Honor.

14 RECROSS-EXAMINATION

15 BY MR. COCHRAN:

16 Q. So obviously there is a lot of blood in this case?

17 A. Yes, sir.

18 Q. So that's why you're swabbing any areas that have
19 blood on them, even if they are his own injuries on his
20 own body?

21 A. That's correct.

22 Q. Can you point your attention to that same
23 photograph I pointed to there. Did you wash off
24 Mr. Kronsberg before you took any of these pictures?

25 A. No, sir.

RANDALL UNTERBRINK - RECROSS BY MR. COCHRAN

1 Q. Was he cleaned up by hospital staff before you
2 took any of these pictures?

3 A. That, I don't know. What they did prior to me
4 arriving, I did not know, but he did have blood on him,
5 so if they did, it wasn't a complete, thorough cleansing.

6 Q. So he still had blood on him when you got there?

7 A. Yes.

8 Q. His left hand is apparent in that picture you're
9 looking at?

10 A. Yes, sir.

11 Q. Would you describe that hand as being covered in
12 blood?

13 A. I wouldn't say covered, no, sir.

14 Q. Can you see any blood on it?

15 A. I'm not seeing blood on that hand itself.

16 MR. COCHRAN: No more questions.

17 THE COURT: You can step down. Next witness?

18 MS. BALDWIN: State calls Ashley Dockery.

19 ASHLEY DOCKERY,

20 having been first duly sworn,

21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. BALDWIN:

24 Q. Ms. Dockery, where do you work?

25 A. I work at the City of Charleston police

1 department..

2 Q. And in what capacity?

3 A. I am a crime scene investigator for our forensic
4 services unit.

5 Q. Tell the jury what a crime scene investigator
6 does.

7 A. Well, what we do is we respond after a scene has
8 become secured. It is then our duty to manage all
9 evidence, either in documentation, collection,
10 preservation, and be able to preserve that until it's
11 needed at a later time.

12 Q. What sort of training is needed for that?

13 A. We are given 400 hours of in-service training.
14 We're also required to maintain certifications, so I am
15 certified as a crime scene investigator through the
16 International Association for Identification.

17 Q. Did you respond to a call at
18 on February 10th of 2013?

19 A. Yes, I did.

20 Q. What did you do when you first arrived?

21 A. When I first arrived, I met with our crime scene
22 supervisor, Jennifer Wooley, as well as the first
23 responders, including Officer Remington, Sergeant
24 Edwards, and Officer Haithcock.

25 Q. And after you met with them, what did you do?

ASHLEY DOCKERY - DIRECT BY MS. BALDWIN

1 A. I was notified that there was a deceased party
2 inside the residence and an individual had been removed
3 from the residence as well. I was told that there was a
4 search warrant pending for the residence and that until
5 we could have that search warrant delivered that I was to
6 document the exterior of the residence.

7 Q. And did you?

8 A. Yes, I did.

9 Q. I'm going to put up for you State's Exhibit 3,
10 which is already in evidence. What is that?

11 A. That is the exterior of the residence.

12 Q. And State's Exhibit 4?

13 A. That is the rear of the residence.

14 Q. And what are you trying to do with these photos?

15 A. I'm just trying to document the location of the
16 residence, if there's any doors open, windows open; just
17 the overall state of it before we begin our processing.

18 Q. And State's Exhibit 5, more of the same?

19 A. Yeah. That is the rear of the residence, the rear
20 porch, and also you can see that the door, which is on
21 the porch, is open.

22 Q. State's Exhibit 6, and what is that?

23 A. All right. This is as you come into the front
24 door of the residence. This is a living room area.

25 Q. And 7?

1 A. This is pretty much the same scene, further into
2 the room.

3 Q. And then 8?

4 A. All right. There is -- as you're turning towards
5 your left, there is a hallway that goes back towards two
6 bedrooms, a bathroom, and then a washer/dryer unit.

7 Q. And when you are going inside and you're
8 documenting the room, how do you go about doing that?

9 A. We do it in a systematic manner. We usually go
10 either clockwise or counterclockwise. We document the
11 room in its entirety, and then we proceed into the next
12 room.

13 Q. Was anybody else from crime scene with you when
14 you went into the residence?

15 A. Yes. My supervisor, Jennifer Wooley, was with me.

16 Q. And to be clear, when did you go inside the
17 residence?

18 A. We made entry at 1745, so 5:45 in the evening.

19 Q. Before or after the search warrant?

20 A. After the search warrant was delivered.

21 Q. As far as crime scenes go, how was this one?

22 A. It was a -- it was an extensive scene. Even
23 though the scene itself was maintained in one residence,
24 the items and the pieces of evidentiary value that were
25 in the residence were very extensive, so it was a

—ASHLEY DOCKERY - DIRECT BY MS. BALDWIN—

1 complicated scene.

2 Q. And I'll show you State's Exhibit 9. Where is
3 that?

4 A. All right. This is the kitchen area. If you come
5 into the living room from the front door, it's
6 immediately to your right.

7 Q. And did anything about the kitchen stand out to
8 you?

9 A. Yes. There appear to be several discarded items
10 on the floor. There was a shoe. There was some papers
11 in the sink. There appeared to be blood in the sink, as
12 well as on the floor. There seemed to be partial --
13 possibly partial shoe prints on the kitchen floor as
14 well.

15 Q. I'll show you State's Exhibit 10. What is that
16 of?

17 A. That is what we believe to be partial shoe prints
18 in blood.

19 Q. State's Exhibit 11, and what is that?

20 A. All right. This is as you are continuing towards
21 that bedroom hallway. You can see the rear bedroom in
22 the immediate rear of the photograph.

23 Q. State's 12?

24 A. This is the bed in the second bedroom. As you're
25 coming into the hallway, there were two bedrooms. This

ASHLEY DOCKERY - DIRECT BY MS. BALDWIN

1 is the bedroom on the immediate left. This is where I
2 was informed that an individual had been removed from the
3 bed prior to my arrival.

4 Q. And what items are on that bed that stand out to
5 you?

6 A. Well, we had -- there is blood on the comforter,
7 what appears to be blood on a pillowcase. There was a
8 cell phone and notebook and a lighter. I believe there
9 was a knife on the bed. There was a pill bottle on the
10 bedside table that looked -- was open and appeared to
11 have blood on the exterior of it.

12 Q. Multiple items?

13 A. Yes.

14 Q. Where on that do you see that cell phone, if you
15 do?

16 A. Right on the -- can I touch?

17 Q. Yeah. You can touch the screen and mark it.

18 A. All right. Right there (indicating).

19 Q. Okay. Ms. Dockery, I'm going to show you State's
20 Exhibit 106 for ID. Can you tell me what that is.

21 A. Yes. That is the cell phone from the bed.

22 Q. And how do you know that's the cell phone from the
23 bed?

24 A. Well, it is -- the way that it's marked, the
25 initials on the cell phone and the packaging are mine

—ASHLEY DOCKERY - DIRECT BY MS. BALDWIN—

1 with my reporting number.

2 Q. And what did you do with that cell phone and what
3 do you do with evidence typically when you recover it?

4 A. Well, first we document it in its entirety, and
5 then, depending on the needs or the request for the
6 actual piece of evidence, it will either be swabbed for
7 DNA, fingerprints, and then it will be packaged and
8 sealed and kept in a secured location until we deliver it
9 to our evidence department, which is at Lockwood
10 Boulevard.

11 Q. Are these -- was that piece of evidence kept
12 secure?

13 A. Yes, yes, it was.

14 Q. And when you bring it to the evidence department,
15 is that a secure facility?

16 A. Yes, it is.

17 MS. BALDWIN: Your Honor, at this time I
18 would like to admit State's 106 into evidence.

19 MR. COCHRAN: Object to chain, Your Honor.

20 THE COURT: Overruled. It's admitted.

21 (State's Exhibit No. 106 was marked for
22 identification and admitted into evidence.)

23 MS. BALDWIN: Thank you.

24 BY MS. BALDWIN:

25 Q. I'd like to show you State's 13. What is that?

1 A. That is the hallway, as you're turning from the
2 first bedroom that the previous picture just looked at.
3 This is looking down that hallway, the bathroom at the
4 end, the utility area to the right, and the second
5 bedroom to your immediate left.

6 Q. And were there any items of evidence that were in
7 there, in particular?

8 A. Yes. There was several clothing articles on the
9 floor of the hallway that appeared to be either wet
10 and/or have blood on it, so those items were documented
11 and collected as well.

12 Q. After you documented the other bedroom, where did
13 you go?

14 A. Well, we moved into the hallway, but then we went
15 into this second bedroom that is to the left of the
16 picture.

17 Q. And what was in that bedroom?

18 A. That is where we had the deceased party on the
19 floor.

20 Q. And what -- did you begin to document in that
21 bedroom?

22 A. Yes.

23 Q. Okay. I'll just put up State's 18. And what is
24 that?

25 A. This is the deceased party on the floor of that

ASHLEY DOCKERY - DIRECT BY MS. BALDWIN

1 rear bedroom.

2 Q. Okay. What stood out to you when you were trying
3 to document this?

4 A. Clearly the position of the body, the fact that
5 the victim is partially clothed and there -- we noticed
6 serious trauma to the head area, and there was a
7 substantial amount of blood throughout the floor near the
8 head of the deceased.

9 Q. What is sort of up near the top of her head?

10 A. There is a plastic bag, a gray plastic bag, that
11 we observed to be partially covering her face.

12 Q. This may seem like a silly question, but when
13 you're documenting this, you don't touch the body?

14 A. No, no. We do not disturb the scene until it is
15 thoroughly documented.

16 Q. I show you State's 20. And what is this?

17 A. This is the naval area of the victim. We were
18 documenting what appeared to be a blood smear on her
19 stomach and then of course the -- her right hand was
20 bloodied and bruised.

21 Q. And State's 21.

22 A. This is a metal plate that was leaning against the
23 victim's left leg, and then around the knee area was a
24 hammer.

25 Q. And what is down in the -- I guess it would be

1 your bottom left-hand corner.

2 A. This (indicating)?

3 Q. Yes.

4 A. Bruising to the inside of her left leg.

5 Q. I show you State's 22, and what is that?

6 A. This is a close-up picture of the hammer, and in
7 this picture in particular, we were noting the presence
8 of blood on the hammer head as well as hair.

9 Q. Would you point out where that hair is?

10 A. Yes (indicating).

11 Q. State's -- thank you. I show you State's 23.

12 What is that?

13 A. This is a better picture of the location of the
14 hair on the hammer head.

15 Q. What color does that hair appear to be?

16 A. It's a light -- lighter in color.

17 Q. I'm going to show you State's Exhibit 91. Can you
18 tell us what that is.

19 A. Yes. This is the packaged hammer from the scene.

20 Q. And how do you package it?

21 A. Well, first we make sure that the piece of
22 evidence is dry, so it will be placed in a drying chamber
23 if it's still wet; however, this piece of evidence was
24 dry when it was collected. It is then sealed and
25 initialed by the technician.

ASHLEY DOCKERY - DIRECT BY MS. BALDWIN

1 Q. When you gathered the hammer, you packaged this?

2 A. Yes.

3 Q. And who was the technician that sealed it?

4 A. Well, for this particular one, this is Mary
5 Phillips. She is our latent recovery specialist, but
6 this item was submitted to her by me.

7 Q. By you, you submitted it to Mary Phillips?

8 A. Yes.

9 Q. And what did Mary Phillips do with it?

10 MR. COCHRAN: Objection.

11 THE COURT: Do you know?

12 THE WITNESS: Do I know?

13 THE COURT: Do you know what she did with it?

14 THE WITNESS: Yes, I did.

15 THE COURT: Okay.

16 THE WITNESS: She processed it for
17 fingerprints using a method called Superglue.

18 BY MS. BALDWIN:

19 Q. And then what did she do with it?

20 A. She then repackaged it, sealed it, and submitted
21 it back into evidence.

22 Q. I'll show you State's 24. And what are you trying
23 to document in that photo?

24 A. This is a pair of green Converse that were located
25 in front of a chair in the living room area. This was --

1 part of the process, we were getting ready to remove the
2 deceased from the scene, and we were trying to create a
3 clear pathway so that we didn't disperse anything else
4 within the residence.

5 And these shoes were almost in front of the door,
6 so it was decided to go ahead and document them and then
7 move them to a safer location within the scene so we
8 wouldn't jeopardize anything else within the scene.

9 Q. State's 25.

10 A. Yes. So while documenting the shoes, we noticed
11 what appeared to be blood on the top of the shoes as well
12 as the sides of the shoes.

13 Q. State's 26?

14 A. And then because we had been in the kitchen prior
15 and noticed partial -- what appeared to be partial shoe
16 prints in blood, you could faintly see a pattern, and so
17 we documented the tread of this shoe in case it would be
18 determined later that the tread was similar.

19 Q. State's 27?

20 A. And this is the side of the shoe.

21 Q. I'm going to show you State's Exhibit 94. Can you
22 tell me what that is.

23 A. Yes. These are the Converse shoes.

24 Q. Okay. They're those shoes that we're seeing in
25 the pictures?

ASHLEY DOCKERY - DIRECT BY MS. BALDWIN

1 A. Yes.

2 Q. And how do you know that?

3 A. Because it's labelled as such. This is actually a
4 SLED return, and this means that the shoes went to our
5 state laboratory for examination purposes, were analyzed,
6 and then were sent back to us, so this is the packaging
7 that SLED issues when they're finished.

8 Q. What did you do with those shoes when you
9 recovered them?

10 A. I documented them, and then I noted their item
11 number, and then they were packaged and sealed with my
12 initials and reporting number.

13 Q. And are those on the outside of the box?

14 A. No. It's on the inside box. This is a new box
15 that SLED puts the evidence in when they're finished.

16 Q. I'll show you State's 28, and what is that?

17 A. This is the floor area of the rear bedroom where
18 the victim was laying. This is after she has been
19 removed from the scene. We found a pair of jeans that
20 were underneath her, and they were saturated with blood,
21 so we marked those as item number -- I believe it was
22 106.

23 Q. Does anything else about that picture stand out to
24 you?

25 A. Yes. You can see in the picture that we have

ASHLEY DOCKERY - DIRECT BY MS. BALDWIN

1 dried blood and wet blood. The dried blood -- the dried
2 blood is up here, and this is fresher blood. It's still
3 wet. It's not dry yet. This occurred when we were
4 moving the victim.

5 As we were moving, more blood came out because of
6 the several wounds on her, and photo marker 2 and 3 are
7 pieces of evidence that we had removed prior to moving
8 the victim so that those pieces of evidence wouldn't be
9 contaminated by the new blood.

10 Q. And State's Exhibit 29, what are you trying to
11 document there?

12 A. In -- this is the far right corner of that rear
13 bedroom. There is an armoire in that corner. On the
14 ground here, we were just noting the medium blood
15 spatter, medium velocity blood spatter, on the wall.

16 Q. And where on the wall?

17 A. Around there (indicating).

18 Q. State's 30. And what are you trying to get in
19 there?

20 A. As we were examining the area in the previous
21 picture, we also noticed that on the armoire there was a
22 disturbance of dust. If you'll notice that on the edge
23 of the armoire around here, there is a good level of dust
24 that does not appear to be disturbed; however, if you
25 look right here, there is an absence of dust, so this is

ASHLEY DOCKERY - DIRECT BY MS. BALDWIN

1 an area that we believe may have come in contact with
2 someone, so this area was processed for fingerprints, and
3 we also noted that there was blood present on the edge of
4 the armoire as well.

5 Q. State's 31?

6 A. This is a close-up picture of that area that we
7 processed. You can see that there is blood here, here,
8 and all around there.

9 Q. And State's 36, what are you showing in there?

10 A. This is the bedroom, bedroom number -- the one
11 that was in the left as you come into the hallway. This
12 is the other bedroom, the one that we first photographed.

13 As we were searching the scene, we were pulling
14 back the covers of the bed that the officer had told us
15 that an individual had been removed from, and in that bed
16 we found two large knives and a pair of scissors.

17 Q. We didn't see those in that other picture of the
18 bedroom.

19 A. No, you did not. That was because this comforter
20 to the right of the picture was covering the knives and
21 the scissors.

22 Q. State's 37, what are those?

23 A. These are the pair of jeans that were in the
24 hallway, and we noted that they appeared to have blood on
25 them, so this is my supervisor holding up the front of

ASHLEY DOCKERY - DIRECT BY MS. BALDWIN

1 the jeans, and then I'm taking the picture and
2 documenting it.

3 Q. And State's 38, same scenario?

4 A. Yes, the T-shirt that was in the same area as of
5 the jeans in the hallway.

6 Q. Let me show you State's 96. Tell me what that is.

7 A. This is the jeans from the hallway.

8 Q. Okay. How do you know?

9 A. Because this is a -- that's what it's described
10 as. This is also a SLED return of the jeans, so they
11 were open, analyzed, and then repackaged by SLED, so --

12 Q. And you collected the jeans, however?

13 A. Yes.

14 Q. What did you do with the jeans when you collected
15 them?

16 A. They were documented, and because they were wet
17 with blood, we dried them in a secure drying closet at
18 our crime scene office, and then once when the pants were
19 determined to be dry, then they were packaged and
20 submitted into evidence.

21 Q. And when they're submitted to evidence, is it a
22 secure facility?

23 A. Yes, it is.

24 Q. When things are submitted to SLED, will SLED take
25 them if the packaging is broken?

—ASHLEY DOCKERY - DIRECT BY MS. BALDWIN—

1 A. No, no, they will not.

2 Q. So if it went up to SLED and they were secured or
3 they returned them or analyzed them and returned them, it
4 would be -- they accepted them, that was clear?

5 A. Yes.

6 Q. I show you State's 39. What are you trying to
7 document there?

8 A. This is the hallway bathroom. As we were
9 documenting this area, I noticed that on the left wall of
10 the shower, right underneath the shower caddy there,
11 appeared to be the presence of faded blood, and so
12 this -- this is the area right here that you can kind of
13 make out in the picture, but a swab was taken of this
14 area.

15 Q. And what did you do with that swab?

16 A. That swab was collected, packaged, and submitted
17 into evidence.

18 Q. Do you know what happened to it after that?

19 A. I believe it was submitted to SLED for analysis.

20 Q. And State's 36? State's 41, excuse me. What are
21 you trying to document there again?

22 A. This is the kitchen floor, and this is the area
23 where we observed what appeared to be partial shoe prints
24 and blood.

25 Q. What's in the upper, I guess, left-hand corner

1 there, do you know?

2 A. This (indicating)?

3 Q. Yes, ma'am.

4 A. That was a photograph that appeared to originally
5 be on the refrigerator, and it was facing down on the
6 floor.

7 Q. State's 42, what is that?

8 A. That is the other side of the photograph. It
9 appeared to have blood on it.

10 Q. State's 43?

11 A. This is same section of flooring in the kitchen;
12 however, this is the floor after it had been processed
13 with a chemical called amido black. Amido black is a
14 chemical that reacts to proteins in blood, and if a
15 surface has blood on it, then it will stain that surface,
16 so this is the floor after it has been stained with amido
17 black.

18 Q. And what is it showing there?

19 A. It is showing a more detailed shoe print from the
20 blood.

21 Q. State's 44?

22 A. And this is the same process; however, this is an
23 area that is closer to the entryway of the kitchen, so
24 it's near the living room.

25 Q. And what are you trying to spray there to

—ASHLEY DOCKERY - DIRECT BY MS. BALDWIN—

1 highlight?

2 A. The partial shoe prints that were in blood. It's
3 enhancing the print for us.

4 Q. And where are those?

5 A. On the kitchen floor right in front of the living
6 room entrance.

7 Q. You want to just circle for me where on there you
8 see?

9 A. Sure (indicating).

10 Q. State's 45, what is this?

11 A. This is the bedroom where the victim was located.
12 We had also observed partial shoe prints in the area
13 of -- underneath where the body had been, so we attempted
14 to do the same process with amido black to the partial
15 shoe prints on the wooden floor as well.

16 Q. And where are those partial shoe prints that
17 you're trying to identify?

18 A. Right there, there, and there (indicating).

19 Q. And you said earlier that there was a lot of blood
20 throughout the house?

21 A. Yes.

22 Q. When you were there, it was a rather complicated
23 crime scene. Did you finish everything on February 10
24 2th?

25 A. No, we did not.

ASHLEY DOCKERY - DIRECT BY MS. BALDWIN

1 Q. When did you finish it?

2 A. February 11th, in the late afternoon is when we
3 finished it.

4 Q. And was the scene secure the entire time?

5 A. Yes, it was. We finished processing late on the
6 10th, and then at that point, we secured the scene, made
7 sure all the doors were locked, the windows were shut,
8 and we placed barrier tape in front of the front door.
9 And then I put my initials and that time that we had left
10 the scene on the tape to notice if anything had been
11 disturbed when we came back. We also had a CPD officer
12 sit in front of the residence the entire time that we
13 were there.

14 Q. And was the scene, in fact, secure when you came
15 back the next day?

16 A. It was, yes.

17 Q. I'll show you State's 46. Where is this?

18 A. This is the utility room that is directly behind
19 the kitchen area. So if you go -- if you're walking from
20 the living room straight to the kitchen, this is the room
21 that you come to. There was a washer, dryer, and then to
22 the left of this picture is that rear door that led on to
23 the porch.

24 Q. State's 47, what is that?

25 A. This is the amido black process that we used as

—ASHLEY DOCKERY - DIRECT BY MS. BALDWIN—

1 well. This is the top of the washer unit.

2 We at first noticed this area because of what
3 appeared to be red stains. It appeared to be blood at
4 first; however, we did an O'Toole presumptive test, and
5 that's -- it's a chemical test that indicates whether the
6 ion that you have on that swab is blood or not, and the
7 test came out negative; however, while we were now
8 focussing on this area, we noticed what appeared to be
9 four fingers in blood. So this area was then tested with
10 the same O'Toole dye presumptive test, and that result
11 was positive for blood.

12 So then, now that we know that it's blood, we
13 processed the surface using the amido black to try to
14 enhance anything that was there, and this is when we had
15 the four finger definition part as well as a slight palm
16 print; however, with the palm print and the fingerprint,
17 the detail does not possess consistent ridge detail that
18 we used to affect magnification, so we weren't able to
19 run the print and match it with anyone; however, we were
20 able to observe that it was there.

21 Q. You said you swabbed that area for blood?

22 A. Yes.

23 Q. Ms. Dockery, I'm going to show you State's
24 Exhibits 101 and 102. I don't know if you need me to
25 open that bag for you. Can you tell me what those are.

ASHLEY DOCKERY - DIRECT BY MS. BALDWIN

1 A. Yes. This is -- one of them is a swab from the
2 shower. I can't read the back of them.

3 Q. I'll get you some scissors.

4 A. I'm allowed to break the seal?

5 Q. It's okay.

6 A. Okay. All right. The first one is item 126,
7 which is a swab from the shower bathroom wall, and this
8 is a swab I collected myself, and the second one is item
9 137, which is the swab from the washer, which is the
10 picture that is up right now.

11 Q. And what did you do with those swabs?

12 A. These swabs were collected, packaged, sealed, and
13 delivered to evidence.

14 Q. And you may have mentioned this before. Forgive
15 me if I'm asking you to repeat yourself, but when you get
16 these swabs, when you're swabbing the blood, exactly how
17 do you accomplish that?

18 A. We use a sterile cotton swab and we run the swab
19 over the area until we have collected a sufficient amount
20 of the item, whatever we're swabbing in this case was,
21 and then that is put into a swab container, packaged,
22 sealed with our initials, and submitted.

23 Q. When you say submitted, submitted into evidence?

24 A. Submitted into evidence, which is a secured
25 location.

ASHLEY DOCKERY - DIRECT BY MS. BALDWIN

1 Q. And let me show you State's Exhibit 48.

2 A. This is directly behind the washer, between the
3 hot water heater. We took this picture, noting that,
4 first off, the crate where there appear to be another
5 tool, similar to a hammer right here, and also in the
6 background there's some paint cans with some dried red
7 substance which appeared to be similar to what we found
8 on the washer.

9 Q. And State's Exhibit 49?

10 A. This is directly above the drying unit. We have a
11 floral print bag that contains several plastic bags
12 including gray plastic bags that was similar to the bag
13 that was located partially covering the victim's head.

14 Q. And, briefly, State's 50?

15 A. This is the kitchen area, the oven.

16 Q. And State's 51.

17 A. This is a door right next to the oven, pulled it
18 out and had several tools, including knives.

19 Q. Why did you document that drawer?

20 A. This was documented because of the several knives
21 that were located throughout the scene, so point of
22 origin, where it may have come from at one point.

23 MS. BALDWIN: I don't have any further
24 questions for you. Please answer any of Mr. Cochran's.

25 THE WITNESS: Thank you.

ASHLEY DOCKERY - CROSS BY MR. COCHRAN

1 THE COURT: Cross?

2 MR. COCHRAN: Thank you, Your Honor. May it
3 please the Court:

4 CROSS-EXAMINATION

5 BY MR. COCHRAN:

6 Q. You said this was a complicated scene?

7 A. Yes, sir.

8 Q. And it's complicated because you're not just there
9 to determine the fact that somebody is dead inside the
10 house, correct?

11 A. No, sir. That had already been determined by our
12 first responders.

13 Q. Or even that it was a homicide, correct?

14 A. Yes.

15 Q. You're there to determine a lot more extensive
16 detail about this crime scene, correct?

17 A. Yes, sir. Our job is to document and secure the
18 physical evidence at the scene.

19 Q. And you mention that there were several knives
20 that were found around the house, correct?

21 A. Correct.

22 Q. And we've already gone over two very large -- what
23 appear to be kitchen knives found on the bed, correct?

24 A. Yes, sir.

25 Q. And it was your information that that's where the

1 suspect, Mr. Kronsberg, had been found by police,
2 correct?

3 A. Yes, sir.

4 Q. He wasn't there when you arrived, correct?

5 A. No, sir.

6 Q. And then there were at least -- there was also a
7 pair of scissors on that bed, correct?

8 A. Yes.

9 Q. And then there were at least three knives, which
10 appear to be kitchen knives, another pair of scissors
11 found in the bathroom, correct?

12 A. Correct.

13 Q. You marked those as items 22, 23, and 24, correct?

14 A. Could I check my report?

15 Q. Yes.

16 A. I have the scissors as item 121; a silver knife,
17 122; knife with the brown handle, 123; and a knife with a
18 black handle, 124.

19 Q. Did you note the length?

20 A. No, sir, I did not record that.

21 Q. Were these photographs that were taken in the
22 process of your investigation?

23 A. Yes, sir.

24 Q. Okay. And those are the items you just
25 referenced, three kitchen knives that were found in the

1 bathroom?

2 A. Yes, with the exception of scissors, 121.

3 Q. And the scissors are visible in that picture,
4 correct, just not the label?

5 A. Correct, yes.

6 Q. And you took photographs of Ms. Lucia as she was
7 laying in the house, correct?

8 A. Yes.

9 Q. And you're documenting her injuries, correct?

10 A. I'm sorry?

11 Q. You're documenting her injuries, in addition to
12 other things?

13 A. In addition to other things; however, I'm just
14 doing an overall identification because the victim was
15 transported to MUSC for an autopsy, and the pathologist
16 there does their own photograph and more details, so my
17 job was just to do a simple overview.

18 Q. Okay. And, obviously, you took a lot of
19 photographs, and there were extensive injuries. I'll
20 show you some other photographs. Were these photographs
21 taken in the course of your investigation?

22 A. Yes, sir.

23 Q. Okay. And those pictures depict Ms. Lucia?

24 A. Yes.

25 Q. And those photographs also depict her right hand,

1. correct?

2. A. Yes, sir.

3. Q. Okay. So you're looking at one picture of her,
4. and then a closer picture of that same hand, correct, in
5. the same position that it's in?

6. A. Correct.

7. Q. And that hand has blood on it, correct?

8. A. Yes.

9. Q. And the hand also had bruising around the
10. knuckles, correct?

11. A. Yes, sir.

12. Q. Thank you. I didn't mention before, the
13. photograph that was taken during your investigation that
14. depicts item number 22, which was a kitchen knife that
15. was on the ledge of the bath tub --

16. A. Uh-huh.

17. Q. -- that photograph also depicts the toilet in that
18. bathroom as well, correct?

19. A. Correct.

20. Q. And that toilet seat, the lid is up, but the
21. toilet seat is down, correct?

22. A. Correct.

23. Q. And that toilet seat has a relatively large
24. quantity of blood droplets on it, correct?

25. A. Correct.

1 Q. Thank you. You also found a notebook on the bed
2 where you were informed Mr. Kronsberg had been found by
3 police?

4 A. Yes, sir.

5 Q. And that notebook was collected?

6 A. Yes, it was.

7 Q. And processed? And I just handed you a
8 photograph. Does that photograph depict a notebook that
9 was collected during your investigation?

10 A. Yes.

11 Q. And does that notebook page appear to have blood
12 spatter on it, or -- not spatter, but I guess blood
13 droplets?

14 A. Blood spatter is correct.

15 Q. And there is a notebook page with writing on it as
16 well, correct?

17 A. Correct.

18 Q. And what does that notebook page say?

19 A. It appears to say, quote, she tried to kill me,
20 expletive.

21 Q. You can say the word.

22 A. I've never said it before.

23 Q. You've never said it before?

24 A. No.

25 Q. I'll say it for you.

ASHLEY DOCKERY - REDIRECT BY MS. BALDWIN

1 A. Okay.

2 Q. The notebook page, would you agree with me, in its
3 entirety, She tried to kill me. Fuck.

4 A. Yes.

5 Q. And this notebook was found on the bed with
6 Mr. Kronsberg, to the best of your knowledge?

7 A. Yes, sir.

8 MR. COCHRAN: Beg the Court's indulgence.

9 BY MR. COCHRAN:

10 Q. The blood that was on the toilet seat that we just
11 discussed, was that collected and processed?

12 A. I do -- I'm going to check my report real quick.
13 Yes, sir, it was.

14 MR. COCHRAN: Thank you. No more questions.

15 THE COURT: Redirect?

16 MS. BALDWIN: Court's indulgence.

17 REDIRECT EXAMINATION

18 BY MS. BALDWIN:

19 Q. Mr. Cochran asked you about this notebook you
20 found on the bed. I'm going to hand you State's Exhibits
21 33, 34, and 35. Can you just tell me what those are?
22 And I'll publish them in just a moment.

23 A. Yes. These are additional pages from the notebook
24 with handwriting on it.

25 MS. BALDWIN: At this time we would like to

ASHLEY DOCKERY - REDIRECT BY MS. BALDWIN

1 admit State's 33 through 35, I believe without objection.

2 MR. COCHRAN: Without objection.

3 THE COURT: Admitted.

4 (State's Exhibit Nos. 33 through 35 were
5 marked for identification and admitted into evidence.)

6 BY MS. BALDWIN:

7 Q. Let's turn it this way. I'm showing you State's
8 33. Can you tell me what that says.

9 A. Yes. It appears to say, No one will ever forgive
10 me. I understand.

11 Q. And then I'll show you State's 34, which is, I
12 believe, the page that Mr. Cochran was asking you about.
13 You don't have to say the word.

14 A. Okay.

15 Q. And then State's 35. Let's see if that comes into
16 focus -- one moment. What does that say?

17 A. It appears to say crazy love something.

18 MS. BALDWIN: I have no further questions.

19 THE COURT: Recross?

20 MR. COCHRAN: No, Your Honor.

21 THE COURT: You may step down.

22 All right, folks. Let's take a about a 10,
23 15-minute break so you can use the rest room. Again,
24 don't begin deliberations or discussions about the case.
25 Don't talk about witness demeanor, and we'll have you

S. LEMARTE WILLIAMS - DIRECT BY MR. SIMPSON

1 with the State calling its next witness.

2 MR. SIMPSON: Thank you. The State calls
3 Detective Williams with the Charleston Police Department;

4 S. LEMARTE WILLIAMS,

5 having been first duly sworn,

6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SIMPSON:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. Where do you work?

12 A. City of Charleston police department.

13 Q. And in what capacity?

14 A. I'm attached to the Bureau of Alcohol, Tobacco,
15 Firearms and Explosives Task Force Unit, which is part of
16 the violent crime unit of City of Charleston Police
17 Department.

18 Q. And in what capacity were you working in February
19 of 2013?

20 A. I was assigned to the homicide unit.

21 Q. And did you have occasion in that role to become
22 involved in the case that brings us here this afternoon?

23 A. Yes.

24 Q. Let's get this out of the way. Were you the lead
25 agent in that case?

S. LEMARTE WILLIAMS - DIRECT BY MR. SIMPSON

1 A. I was not.

2 Q. And who was?

3 A. Detective Holmes.

4 Q. And would Detective Holmes be a better source, so
5 to speak, for the ins and outs of this investigation and
6 how it proceeded?

7 A. Yes.

8 Q. Was your role in this case, not to minimize what
9 you do, but to just provide some assistance?

10 A. Yes.

11 Q. I want to draw your attention to February 11th,
12 2013. Did you sort of help out with this case in any
13 manner on that day?

14 A. I did.

15 Q. And in what way?

16 A. I secured the search warrants for the defendant
17 for DNA samples, buccal swabs.

18 Q. You secured a search warrant for DNA from the
19 defendant?

20 A. Yes.

21 Q. Was that search warrant presented to a magistrate?

22 A. It was.

23 Q. Was it approved of by a magistrate?

24 A. It was.

25 Q. Did you also participate in the execution of that

S. LEMARTE WILLIAMS - DIRECT BY MR. SIMPSON

1 search warrant?

2 A. I did.

3 Q. Where did that take place?

4 A. At MUSC Hospital.

5 Q. Could you just explain briefly to the jury what a
6 buccal swab was.

7 A. Basically a buccal swab is just a Q-tip, and you
8 swab in your mouth for saliva samples to be sent off to
9 be tested.

10 Q. And are those samples sealed?

11 A. Yes.

12 Q. And what did you do -- you said you executed a
13 buccal swab on the defendant?

14 A. I did.

15 Q. And what did you do with that item following that?

16 A. After securing the swab, I placed it into the
17 evidence at Charleston Police Department headquarters.

18 Q. And, again, what is the purpose of doing the
19 buccal swab?

20 A. Basically it's to obtain DNA samples to be tested
21 against other evidence of possible DNA that's collected
22 at the scene of the crime.

23 MR. SIMPSON: May I approach the witness,
24 Your Honor?

25 THE COURT: You may.

S. LEMARTE WILLIAMS - DIRECT BY MR. SIMPSON

1 BY MR. SIMPSON:

2 Q. Detective Williams, I'm showing you what has been
3 marked for ID only as State's Exhibit 86. If you can see
4 through that packaging, do you recognize that item?

5 A. Yes.

6 Q. And what is that item?

7 A. This is the item -- the package that the buccal
8 swab was placed in and placed into the evidence locker
9 room.

10 Q. And what government agency performs these DNA
11 tests, or would obtain that DNA sample from that buccal
12 swab?

13 A. It's transported to SLED.

14 Q. And SLED stands for --

15 A. South Carolina State Law Enforcement Division.

16 MR. SIMPSON: Court's indulgence.

17 I thank you, Detective Williams. Please
18 answer any questions the defense has for you.

19 MR. COCHRAN: No questions, Your Honor.

20 THE COURT: Cross?

21 MR. COCHRAN: No questions.

22 THE COURT: You may step down.

23 THE WITNESS: Thank you.

24 THE COURT: Next witness?

25 MR. SIMPSON: The State calls Sarah Gladwell.

SARAH GLADWELL - DIRECT BY MR. SIMPSON

1 SARAH GLADWELL,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SIMPSON:

6 Q. Ms. Gladwell, good afternoon.

7 A. Good afternoon.

8 Q. Where do you work?

9 A. I work for the City of Charleston Police
10 Department crime scene unit.

11 Q. And what is your occupation with that unit?

12 A. I'm a crime scene investigator.

13 Q. And what are some of the basic duties of a crime
14 scene investigator?

15 A. As a crime scene investigator, we respond to
16 various crime scene calls and do things such as take
17 photographs, process scenes for latent fingerprints, and
18 collect evidence.

19 Q. You mentioned collection of evidence. Does the
20 situation ever arise where you need to collect evidence
21 from a location that isn't the actual crime scene?

22 A. Yes.

23 Q. You're familiar with the case that brings us here
24 this afternoon?

25 A. Yes, sir.

1 Q. Were you working in the same capacity you
2 described in February of 2013?

3 A. Yes, sir.

4 Q. Did you have occasion in that role to become
5 involved in this investigation?

6 A. Yes, sir.

7 Q. And in what way?

8 A. I responded to the Medical University of South
9 Carolina to attend the autopsy.

10 Q. And that's who -- you're referring to a piece of
11 paper in front of you. What is this?

12 A. This is my crime scene report.

13 Q. And soon after something like this happens, do you
14 document what occurs?

15 A. Yes.

16 Q. And does that document help refresh your
17 recollection?

18 A. Yes, sir.

19 Q. So you responded to the Medical University of
20 South Carolina?

21 A. Yes, sir.

22 Q. And what was the purpose of that response?

23 A. We respond and the purpose for that in this case
24 was to take the victim's fingerprints and palm prints for
25 identification purposes, as well as collect all clothing.

SARAH GLADWELL - DIRECT BY MR. SIMPSON

1 and personal items from personnel at MUSC.

2 Q. Okay. Any other types of evidence that you might
3 collect or, in fact, did collect from an autopsy?

4 A. Yes, sir.

5 Q. And what types of evidence might that be?

6 A. The items that I collected consisted of jewelry,
7 clothing, fingernail clippings, various swabs, clothing,
8 I think I said that, and a kitchen knife.

9 Q. Okay. Once again -- did you say fingernail
10 clippings?

11 A. Yes.

12 Q. What is, the crime scene, the forensic purpose of
13 taking fingernail clippings from a deceased?

14 A. At the autopsy, the personnel, they clip their
15 fingernails. They would do this because if the victim
16 were in a struggle with someone and possibly scratch
17 another individual, you can have those skin cells
18 underneath the fingernails, and that will potentially
19 hold DNA.

20 Q. And pursuant to your knowledge and experience as a
21 crime scene technician, is it uncommon for a person in a
22 struggle to make such --

23 MR. COCHRAN: Objection.

24 THE COURT: Sustained. It's speculation.

25 BY MR. SIMPSON:

SARAH GLADWELL - DIRECT BY MR. SIMPSON

1 Q. Were clippings taken in this case from the victim
2 at autopsy?

3 A. Yes.

4 MR. SIMPSON: May I approach the witness,
5 Your Honor?

6 THE COURT: You may.

7 MR. SIMPSON: Thank you.

8 BY MR. SIMPSON:

9 Q. I'm showing you what has been marked for ID only
10 as State's 87 and 88. I know we have a lot of labelling
11 there, but is it possible for you to look at that item
12 and recognize it?

13 A. Yes. Under the SLED packaging, I can see that it
14 was my original packaging. On the back I can see my
15 initials and my reporting numbers, so I know I collected
16 this item.

17 Q. And do you know what item is contained in that
18 package?

19 A. Yes. The fingernail clippings on the left and
20 right hand.

21 Q. And the purpose of that collection is to search
22 under the nails for DNA?

23 A. Yes, sir.

24 Q. You mentioned that you collected a swab or a spot
25 from the victim?

SARAH GLADWELL - DIRECT BY MR. SIMPSON

1 A. Yes, sir.

2 Q. Could you sort of expand on that for the jury?
3 What do you mean in that regard?

4 A. The swabs are taken from MUSC personnel. In this
5 case they were oral, rectal, and vaginal swabs, and the
6 blood swab is just a way for them to have a way to
7 identify the victim using blood.

8 Q. And does that have any purpose regarding DNA
9 analysis?

10 A. If any DNA was recovered from the scene, they use
11 that blood spot as a comparison to see if that came from
12 the victim.

13 Q. What agency develops that profile from the blood
14 spot of the victim?

15 A. For this case, I believe we used SLED, the State
16 laboratory.

17 MR. SIMPSON: May I approach the witness,
18 Your Honor?

19 THE COURT: You may.

20 BY MR. SIMPSON:

21 Q. Showing you what's been marked for ID only as
22 State's 89 and ask you to do the same thing with that.
23 Can you recognize what that item is in that packaging and
24 various markings?

25 A. Yes, sir.

SARAH GLADWELL - DIRECT BY MR. SIMPSON

1 Q. And what is that?

2 A. This is the blood spot from the victim.

3 Q. Ms. Gladwell, you also mentioned that there was
4 another item that you collected from the autopsy; is that
5 correct?

6 A. Yes.

7 Q. And what item was that?

8 A. The kitchen knife.

9 Q. Okay. And an item like a knife or a weapon, is
10 that a usual thing to be collecting from an autopsy, in
11 your personal experience?

12 A. From the autopsies that I had been a part of, I
13 collected evidence from --

14 MR. COCHRAN: Your Honor, I would object to
15 the relevance.

16 THE COURT: Sustained.

17 BY MR. SIMPSON:

18 Q. Ms. Gladwell, why is it that you had to collect a
19 knife from the autopsy?

20 A. Primarily because it was -- it was a weapon used,
21 and anything that is on the victim that comes with the
22 victim to the autopsy is collected and given to us.

23 Q. And did you observe the location of that knife
24 before you collected it, before it was removed and handed
25 over to you?

SARAH GLADWELL - DIRECT BY MR. SIMPSON

1 A. Yes.

2 Q. And what was the location of that?

3 A. It was in the victim's chest.

4 MR. SIMPSON: May I approach, Your Honor?

5 THE COURT: You may.

6 BY MR. SIMPSON:

7 Q. Ms. Gladwell, I'm handing you -- Court's
8 indulgence.

9 Let me hand you a couple of items here. First the
10 gloves, and I believe you have a pair of scissors there.
11 I'm handing you what has been marked for ID only as
12 State's 90. Could you first look in the box and tell me
13 if you can identify that item.

14 A. Yes. You want me to open it?

15 Q. Yes.

16 A. Okay.

17 Q. Do you recognize that item?

18 A. Yes, this is the knife that I collected.

19 MR. SIMPSON: Your Honor, at this time the
20 State would seek to admit State's 90 into evidence.

21 MR. COCHRAN: I would object, Your Honor. I
22 don't believe they've established chain.

23 THE COURT: Overruled. It's admitted.

24 (State's Exhibit No. 90 was marked for
25 identification and admitted into evidence.)

SARAH GLADWELL - DIRECT BY MR. SIMPSON

1 BY MR. SIMPSON:

2 Q. At this time I know you want to get in there with
3 a knife and cut the bottom of the box, but I ask that you
4 remove that item from the box and show it to the jury.

5 A. Okay. It's not sharp enough. I'm going to have
6 to open up the bottom.

7 Q. Ms. Gladwell, we see what looks like material on
8 that knife. What is that?

9 A. Blood, sir.

10 Q. And I know it might be hard to get the box back
11 together, but if there is a way we can -- what did you do
12 with that knife after it was recovered?

13 A. After I -- do I need to touch it anymore?

14 Q. We'll take care of that.

15 A. After I collected it from MUSC personnel from the
16 autopsy, I brought it back to the crime scene office, I
17 believe, for additional photographs of the knife, and
18 then it was submitted to our latent recovery division for
19 chemical fingerprint processing.

20 MR. SIMPSON: May I approach the witness,
21 Your Honor?

22 THE COURT: You may.

23 BY MR. SIMPSON:

24 Q. I show you what has been marked for ID only as
25 State's 60 and 69. Do you recognize those?

SARAH GLADWELL - CROSS BY MR. COCHRAN

1 A. Yes.

2 Q. And what are those?

3 A. These are photographs of the knife at the office
4 and with the two different rulers present for measuring.

5 MR. SIMPSON: At this time the State seeks to
6 admit State's 60 and 69 into evidence.

7 MR. COCHRAN: Without objection.

8 THE COURT: Admitted.

9 (State's Exhibit Nos. 60 and 69 were marked
10 for identification and admitted into evidence.)

11 MR. SIMPSON: Thank you. Please answer any
12 questions Mr. Cochran may have.

13 CROSS-EXAMINATION

14 BY MR. COCHRAN:

15 Q. You were there just to collect the evidence,
16 right?

17 A. Yes, sir.

18 Q. You did not review the case with the pathologist
19 in any way?

20 A. No, sir.

21 MR. COCHRAN: No more questions.

22 THE COURT: Any redirect?

23 MR. SIMPSON: None, Your Honor.

24 THE COURT: You may step down.

25 MR. SIMPSON: Thank you.

1 juror still, but we got a couple of things we'll take up
2 while we are waiting on that juror.

3 First is that Mr. Pennington, the lawyers
4 know, had to have some kidney stone related surgery
5 today, so he's not going to be able to join us. I
6 understand from the e-mail alerting me to that, that,
7 Mr. Kronsberg, you are okay with Mr. Pennington not
8 assisting in trial anymore and having Mr. Cochran and
9 Ms. Andrews be your lead counsel and co-counsel; is that
10 correct?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay. You had all night to think
13 about that?

14 THE DEFENDANT: Yeah.

15 THE COURT: You're all right with that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Just wanted to put
18 that on the record.

19 The other thing is I got a note from the jury
20 foreman a few minutes ago that says one of the jurors,
21 number 132, Ms. Hanckel, believes she knows
22 Mr. Kronsberg's father and wants to discuss that, so
23 while we're waiting on the other juror, why don't you
24 bring that juror in, follow up on that.

25 (In open court, juror present.)

SARAH SENN - DIRECT BY MS. BALDWIN

1 today? All right.

2 Let the record reflect all the jurors have
3 indicated they did not. Again, just as a reminder,
4 please avoid looking at any of those stories or articles
5 or any form of media coverage until the case is over
6 with. After the case is over with, all those things will
7 still be there, and you can read them and see them to
8 your heart's content, but I think at this point you
9 realize the seriousness of the case and the fact that we
10 have a method that is really important that we follow,
11 and we're getting the best information to you to help you
12 make a decision that you need to know, and all that you
13 need to know will be presented in the court.

14 All right? So we will now resume with the
15 State presenting their next witness.

16 MS. BALDWIN: Thank you, Your Honor. State
17 calls Sarah Senn.

18 SARAH SENN,

19 having been first duly sworn,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. BALDWIN:

23 Q. Ms. Senn, where do you work?

24 A. For the City of Charleston Police Department.

25 Q. And in what capacity?

SARAH SENN - DIRECT BY MS. BALDWIN

1 A. I work in the crime scene unit.

2 Q. How long have you worked there?

3 A. Just over three years.

4 Q. And what is your official title?

5 A. I'm a crime scene technician.

6 Q. Do you have any special training to be a crime
7 scene technician?

8 A. I do. We do in-house training as well as online
9 training for crime scene related things. I am proficient
10 in latent recovery, which is the fingerprint method. I
11 attended and passed the marijuana school up at SLED in
12 Columbia, and I also completed a 40-hour training for
13 blood spatter analysis through the West Virginia
14 University.

15 Q. And what did that training involve?

16 A. For five days for 40 hours, just what was taught
17 by a professional about blood spatter. Looked at
18 multiple different photos of previous blood spatter
19 patterns, and also did lots of hands-on training with
20 blood spatter, different patterns, and what could cause
21 patterns like what we saw.

22 Q. And what is blood spatter?

23 A. That is what happens when force is acted on blood.
24 There is different types; high velocity, medium velocity,
25 and low velocity. High velocity is when a force is acted

SARAH SENN - DIRECT BY MS. BALDWIN

1 on blood over 100 feet per second. This causes very
2 little, little drops, more like a fine mist to form, and
3 that kind of results in like -- gunshot wounds produced
4 that.

5 Medium velocity, the blood drops are a little
6 smaller, one to three millimeters, and that is caused
7 from a force acting on the blood between 5 and 25 feet
8 per second. That is more consistent with, like, a
9 beating.

10 Low velocity is the lowest one, less than
11 five feet per second is the force acted on the blood.
12 The blood splatters are larger. It's more like the blood
13 just dropping because of gravity.

14 Q. Does blood cause different patterns besides
15 velocities?

16 A. Yes. From castoff, which happens from blood being
17 on an object, and if it's on there and up and down, it
18 casts off on to any sort of surface. There is
19 different -- if the blood impacts a surface straight on,
20 perpendicular, it causes, like, a more circular pattern,
21 and then it's a longer pattern that can help us determine
22 directionality, like where the blood drops came from.

23 Q. Do you know why you're here today?

24 A. I do.

25 Q. What was your involvement in this case?

SARAH SENN - DIRECT BY MS. BALDWIN

1 A. I received a call from my supervisor that next
2 morning, and she stated that there was some blood pattern
3 evidence in the rear room where the victim was located,
4 and because of my recent training, I was called to try to
5 determine possibly where the injury took place and just
6 kind of try to help them out in that respect.

7 Q. So what did you do in this case?

8 A. I tried to locate different areas in that room,
9 locate different blood drops on walls and the floor, just
10 to try to determine -- you know, put the pieces together,
11 per se, of what kind of happened, attempted to locate.

12 MS. BALDWIN: Your Honor, may I approach the
13 witness?

14 BY MS. BALDWIN:

15 Q. Ms. Senn, I'm going to show you State's Exhibits
16 52 through 62 that have already been admitted into
17 evidence. Could you look at those and tell me generally
18 what they depict.

19 A. Sure. Would you like me to use numbers or just in
20 general?

21 Q. Just in general. What are they?

22 A. These are the photographs I took from over-alls to
23 close-ups of most of the areas that I found blood
24 spatter, blood drops, that were deposited and close up,
25 showed directionality and different areas where blood was

1 deposited.

2 Q. We're going to put State's 52 up on the screen,
3 and it will also come up in front of you on that screen,
4 and what is this depicting?

5 A. This was an area where most of the blood was found
6 on the floor, as well as -- I mostly concentrated on that
7 back wall. There was multiple blood drops there as well,
8 and the armoire to the right, there was a few swipes of
9 blood drops deposited.

10 Q. And if you could show us anything specifically,
11 that is a touch screen.

12 A. Okay. Thank you.

13 Q. I'll put up State's 53 for you. What is that?

14 A. This is a blood drop I located that showed
15 directionality, and directionality helps determine where
16 it came from, and the tail points in the direction of
17 where it -- where it came from. So this one appears to
18 move from left to right, and just helped us, yeah,
19 determine where it --

20 Q. Which blood drop are you pointing at now?

21 A. Oh, sorry. This one (indicating).

22 Q. And what do you mean by the tail?

23 A. This part right here, this very end (indicating).

24 Q. Okay. And you're saying it looked to you like the
25 blood drop came from which direction?

1 A. The left.

2 Q. Could you just mark on there?

3 A. Yes. Over here, so it came from this way.

4 Q. And where is that blood drop?

5 A. The blood drop is below the window on that wall,
6 straight ahead.

7 Q. I'll show you State's 54.

8 A. Okay.

9 Q. And what are you trying to capture there?

10 A. This is where most of the blood pool was on the
11 floor, and through this closer up, like in this area
12 right here, we were able to see a little bit of
13 directionality. It appeared that the blood or something
14 was dragged through the blood in this direction. There
15 was pieces of hair in here, right here, and it appeared
16 to move from left to right.

17 Q. State's 55, what are you trying to capture there?

18 A. Just some more blood drops. These here appeared
19 to be a little bit more circular, which is 90 degrees.
20 It impacted there, perpendicular, which means that the
21 item it came from was at that level, so it had gravity.
22 Didn't have anything to act on it, so it just was
23 deposited straight on into the wall.

24 Q. State's 56?

25 A. This is the closer up of what I was talking about

SARAH SENN - DIRECT BY MS. BALDWIN

1 of directionality. It appears that something was pulled
2 from --

3 MR. COCHRAN: Objection. It's opinion
4 evidence..

5 THE COURT: Overruled. Go ahead.

6 THE WITNESS: It appeared like something was
7 moved from the left to the right as the hair -- as you
8 can see right here, something had caught on to it, and it
9 was moved to the left.

10 BY MS. BALDWIN:

11 Q. And State's 57?

12 A. Based on training that I had -- I have had, and
13 previous photos and -- this appeared to me as to be a
14 hair swipe. A swipe is when something dirty comes in
15 contact with something clean, so in this case the hair
16 was dirty and came in contact with this white box that
17 was located underneath the armoire, so this also tells
18 that there was movement involved when something dirty had
19 come in contact with something clean.

20 Q. State's 58?

21 A. This right here, it was what appeared to be high
22 velocity impact spatter. Throughout this, it was all low
23 to medium, and knowing the instruments that were possibly
24 used, high velocity seemed a little different, and so I
25 was documenting what appeared to be the high velocity

1 impact spatter, the misting pattern.

2 Q. And can you point out where specifically you're
3 talking about?

4 A. Sorry. Right there. That's much smaller.

5 Q. And what is that -- we see sort of a leg to the
6 right there.

7 A. That was the armoire, the right back corner of the
8 room. The window would be up to the left.

9 Q. And State's 59?

10 A. This is on, I believe, the lower part of the
11 armoire, more medium velocity spatter, and it appears to
12 move -- there's not very good tails on here, but because
13 of the elongation of the drop, it appears to be deposited
14 in some sort of 45-degree angle.

15 Q. And State's 60?

16 A. This is also on the armoire. This is a swipe
17 pattern. Something bloody had come in contact with this,
18 which is right here, and then also a more variety of
19 medium velocity spatter that, once again, appears to be
20 deposited in a 45-degree angle.

21 Q. And where is this picture in relation to the
22 previous one?

23 A. I believe it's to the right, so further down the
24 armoire, further from --

25 Q. Away from the wall?

SARAH SENN - DIRECT BY MS. BALDWIN

1 A. Yes.

2 Q. State's 61?

3 A. This is also more impact spatter deposited at that
4 45-degree angle. I believe this may be on -- I don't
5 really know exactly where this would be, but I believe
6 it's on the lower part of the armoire. I don't recall if
7 it's closer to the wall or further from the wall.

8 Q. And State's 62?

9 A. This was also -- we were able to locate more
10 swipes, blood swipes, in this area, and also that was --
11 we found what were these 90-degree impacts that were
12 located underneath the ridge, kind of, of the armoire,
13 which would make it appear that they had to come up from
14 that floor area, and this was on the lower right-hand
15 area of the armoire.

16 Q. Okay. And you took other pictures besides all
17 these?

18 A. I did.

19 Q. A lot of pictures?

20 A. I did.

21 Q. Those pictures, where was the blood -- was there
22 blood in other parts of the room?

23 A. There was. There was blood on the white dresser
24 on the left side of the room. There was a table in the
25 left back corner. It was on the table under the table,

1 like on the wall under the table. There was a chair
2 there. It was on the chair on that wall, on the curtain
3 on the window, and then on the floor and the armoire as
4 well.

5 Q. Generally speaking, about how high off the ground
6 was most of the spatter that you found?

7 A. I would say between two and three feet, or below
8 three feet, three feet and below. It was real near the
9 floor and the floor as well.

10 Q. And I believe you mentioned this, and we can
11 probably see in the photos, but where was most of the
12 blood gathered that you found?

13 A. It was gathered on the floor, pooled on the floor
14 near the foot of the armoire and the floor itself, so
15 that is the area where it was mostly concentrated.

16 Q. So based on your training and experience, where
17 did it appear the majority of the injury to the victim
18 occurred?

19 A. In that area.

20 MR. COCHRAN: Objection. She has not been
21 admitted as an expert.

22 THE COURT: Qualify her as an expert if you
23 want to get an opinion out of her.

24 MS. BALDWIN: Yes, sir.

25 BY MS. BALDWIN:

SARAH SENN - DIRECT BY MS. BALDWIN

1 Q. You said you've had training, 40 hours of
2 training, in blood spatter.

3 A. Yes, ma'am.

4 Q. And tell us about that. You told us some about
5 that training.

6 A. Sure.

7 Q. Who put on that training?

8 A. It was Mr. Christianson. He is with the West
9 Virginia University and has many years of blood spatter
10 analysis training, and I believe he's an expert in the
11 field.

12 Q. And besides the in-house training that you've done
13 with the city and the continuing education, what is your
14 undergraduate training and do you have any graduate
15 training?

16 A. I got a bachelor's in science in chemistry, and
17 then I got a master's in forensic science and advanced
18 investigation from the University of New Haven in
19 Connecticut.

20 MS. BALDWIN: At this time we would like to
21 have her qualified as an expert in blood spatter
22 analysis.

23 THE COURT: Do you object or do you wish to
24 voir dire?

25 MR. COCHRAN: I just object based on the

1 stated qualifications.

2 THE COURT: Okay. Well, it's my opinion she
3 has had sufficient training to qualify her as an expert.

4 Folks, normally, we have witnesses come in
5 and testify about things. They just tell you what they
6 saw, they heard, they touch, they felt, they smelt. We
7 don't let witnesses come in and give their opinion about
8 evidence, but the law says when somebody, because of
9 training or experience or education in some field rises
10 to the level of expertise and would aid the jury in
11 understanding an area better, we allow them to be
12 qualified as an expert in that field, and they are then
13 allowed to give you not only what they saw, but their
14 opinion about what they saw.

15 I've made the decision that she is qualified
16 as an expert in this field, but it's ultimately up to you
17 to decide how much weight to give her testimony, based on
18 all of the evidence that you will hear throughout the
19 trial, and if you also decide that her background and
20 qualifications aren't sufficient to support her opinion,
21 well, that's totally within your purview as well.

22 So you give her testimony as much weight or
23 as little weight as you feel it deserves. All right? Go
24 ahead.

25 MS. BALDWIN: Thank you, Your Honor.

1 BY MS. BALDWIN:

2 Q. Let's put up State's 54, and just to repeat my
3 question, where did it appear to you that the majority of
4 the injury occurred to the victim?

5 A. It appeared that in this general area we had the
6 high velocity spatter right here, in that area on the
7 wall, and also the armoire is to the right, and we had
8 some 45-degree angle that came up from there that was
9 deposited there, which would make this area where the
10 injury could possibly occur.

11 Q. And what other conclusions did you reach about the
12 body, the position of the body?

13 A. It appeared that -- because of movement of the
14 blood on the ground that if it -- that it was moved in
15 this general area, so if the injury happened here that
16 the victim was moved to the left.

17 MS. BALDWIN: Court's indulgence. I have no
18 further questions.

19 THE COURT: Cross?

20 MR. COCHRAN: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. COCHRAN:

23 Q. How fast did you say high velocity would be?

24 A. Greater than 100 feet per second.

25 Q. And you, in your opinion, found high velocity on

SARAH SENN - REDIRECT BY MS. BALDWIN

1 this?

2 A. It appeared on the wall, yes, sir.

3 Q. And you did not observe -- or -- you're briefed,
4 at least, in the basic facts of what went on, what
5 they're alleging, from the detective?

6 A. Correct, yes.

7 Q. And it was in your opinion, going into this, that
8 there was nothing used that would cause high velocity
9 blood spatter, right?

10 A. Correct.

11 THE COURT: Redirect?

12 MS. BALDWIN: Court's indulgence.

13 REDIRECT EXAMINATION

14 BY MS. BALDWIN:

15 Q. Ms. Senn, you've reviewed your report, correct?

16 A. Correct.

17 Q. Let me direct you to -- when you spoke about the
18 high velocity spatter that you found in your report --

19 A. Yes, ma'am.

20 Q. And I believe it's on the second page of your
21 report.

22 A. Uh-huh.

23 Q. Do you remember what you said in your report about
24 that?

25 A. I do.

SARAH SENN - RECROSS BY MR. COCHRAN

1 Q. Okay. Could you tell the Court about that?

2 A. Sure. With my training and further research, I
3 was able to discover that high velocity spatter can also
4 be performed. It can appear when blood has been pooled
5 on something, like plastic, plastic bag or something, and
6 it is hit with another object, and that causes a
7 trampolining effect that causes it to be high velocity,
8 and this was an instance where that was a possibility.

9 MS. BALDWIN: Court's indulgence.

10 No further questions.

11 THE COURT: Recross?

12 MR. COCHRAN: Beg the Court's indulgence,
13 Your Honor.

14 RECROSS-EXAMINATION

15 BY MR. COCHRAN:

16 Q. You reviewed your report, you said?

17 A. Yes, sir.

18 Q. And you reviewed where you discussed high velocity
19 blood spatter, right?

20 A. Yes, sir.

21 Q. And you noted in your report that high velocity
22 blood spatter can occur when a blunt object comes in full
23 contact with an already bloody surface, right?

24 A. Correct.

25 Q. You just kind of went out of your way to note a

MARY PHILLIPS - DIRECT BY MS. BALDWIN

1 plastic bag would be something that could cause this --

2 A. Yes, sir.

3 Q. -- trampolining effect. You didn't write that in
4 your report, did you?

5 A. I don't believe I did.

6 Q. You didn't refer to a trampolining effect at all
7 in your report, did you?

8 A. I did not.

9 Q. You did not refer to a plastic bag at all in your
10 report, did you?

11 A. I don't believe I did.

12 Q. You just testified to that?

13 A. I just felt it was a good way of explanation.

14 Q. By coincidence?

15 No more questions.

16 THE COURT: You may step down. Next witness?

17 MS. BALDWIN: Thank you, Your Honor. The
18 State calls Mary Phillips.

19 MARY PHILLIPS,

20 having been first duly sworn,

21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. BALDWIN:

24 Q. Good morning. Where do you work?

25 A. I work for the Charleston Police Department in the

JENNIFER BARTMAN - DIRECT BY MS. BALDWIN

1 works in our evidence control department. She's one of
2 the technicians there where her responsibility is to take
3 in evidence that might be coming in from the outside, or,
4 in this case, from within our laboratory. I transferred
5 it to her, hand-to-hand.

6 MS. BALDWIN: Beg the Court's indulgence. No
7 further questions.

8 MR. COCHRAN: No questions, Your Honor.

9 THE COURT: Thank you. You may be seated.
10 Next witness?

11 MS. BALDWIN: Thank you, Your Honor. State
12 calls Jennifer Bartman.

13 JENNIFER BARTMAN,
14 having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. BALDWIN:

18 Q. Good morning, Ms. Bartman.

19 A. Good morning.

20 Q. Where do you work?

21 A. I work at the South Carolina Law Enforcement
22 Division, commonly known as SLED.

23 Q. And what do you do at SLED?

24 A. I'm assigned to the DNA case work unit. I
25 received evidence that is collected from crimes that

1 occur across the State of South Carolina. I perform DNA
2 analysis on those items and compare them to known DNA
3 standards.

4 Q. What is your training and background?

5 A. I have a bachelor's degree in biology. I also
6 have a master's degree in forensic science with a
7 concentration in forensic biology, and I also received
8 just over a year of on-the-job training at SLED.

9 Q. What is -- I guess, give us the details of your
10 employment at SLED. What do you do on a day-to-day
11 basis?

12 A. The majority of the work is receiving the evidence
13 into the lab and performing DNA analysis on those items,
14 as well as doing reviews of other analyst's case files
15 and testifying in court.

16 Q. Do you receive any specialized training from SLED?

17 A. I receive on-the-job training in court-qualified
18 techniques and procedures of the laboratory.

19 Q. Have you ever been qualified as an expert in the
20 field of DNA analysis before?

21 A. Yes, I have.

22 Q. How many times?

23 A. Four times.

24 MS. BALDWIN: Your Honor, at this time we
25 would like to offer Ms. Bartman as an expert in the field

JENNIFER BARTMAN - DIRECT BY MS. BALDWIN

1 of DNA analysis.

2 MR. COCHRAN: No objection.

3 THE COURT: All right. Folks, the same
4 instructions I gave you earlier about expert witnesses
5 apply to this witness as well who's now been qualified as
6 an expert in the field of DNA analysis.

7 You decide how much weight to give to her
8 testimony based on all the evidence you hear throughout
9 the trial. You decide how much weight to give this
10 witness's testimony based on all of the evidence that you
11 hear. You're not required to give any expert witness's
12 testimony any extra weight simply because they're
13 qualified as an expert.

14 You decide how much weight her testimony
15 deserves based on all of the evidence that you hear
16 throughout the trial.

17 BY MS. BALDWIN:

18 Q. Thank you. Ms. Bartman, give us a little bit of
19 information about what DNA is.

20 A. DNA stands for deoxyribonucleic acid, and it's a
21 chemical that is found throughout our bodies that
22 basically makes up who we are. We get half of our DNA
23 from our mother and half of our DNA from our father.
24 About approximately 99.9 percent of DNA is the same in
25 all humans, and we look at the .1 percent that is

1 different.

2 Q. Did you receive evidence in this particular case?

3 A. Yes, I did.

4 Q. What did you receive?

5 A. I received buccal swabs from Robert Kronsberg,
6 which is the known standard. I received left fingernail
7 clippings from Tasha Lucia; right fingernail clippings
8 from Tasha Lucia; a blood swab, or the known standard,
9 from Tasha Lucia; a swab from a hammer head; swabs from a
10 hammer handle; swabs from Converse All Stars shoes; three
11 cuttings from jeans, as well as swabs from jeans; a swab
12 from the shower wall; and a swab from the washer.

13 Q. How are all of these items packaged?

14 A. They were packaged in a heat-sealed SLED envelope.

15 Q. I'm going to show you a few items of evidence,
16 and, if you could, just go through and tell me what these
17 items are.

18 State's Exhibit 86?

19 A. This is SLED item 2, which are buccal swabs from
20 Robert Kronsberg.

21 Q. And State's 89?

22 A. This is SLED item number 5, which is the blood
23 spot from Tasha Lucia.

24 Q. State's 87 and 88?

25 A. This is SLED container A, which I can look on the

1 actual envelope.

2 Q. If you need to open it, there's some scissors for
3 you.

4 A. This is SLED items 3 and 4, which are the
5 fingernail clippings from the right hand and the left
6 hand of Tasha Lucia.

7 Q. And State's 95?

8 A. Is SLED item 7.1, which is the swabs from item 7,
9 which is the shoes; State's items 99, 100 -- Exhibit No.
10 99 is item 6.1, which is the swab from the hammer head;
11 and State's Exhibit 100 is SLED item 6.2, which is the
12 swab from the hammer handle.

13 Q. State's Exhibits 92, 93, 97, and 98?

14 A. Exhibit 92 is SLED item 8.1, which is a cutting
15 from the jeans. Exhibit No. 93 is SLED item 8.2, which
16 is cutting from jeans. State's Exhibit 97 is SLED item
17 8.3, which are cuttings from jeans; and State's Exhibit
18 98 is SLED item 8.4, which is the swab from the jeans.

19 Q. And, lastly, State's Exhibits 101 and 102.

20 A. These are items -- SLED items No. 9 and 10, which
21 are the swab from the shower wall and the swab from the
22 washer.

23 Q. And these are the items you analyzed in this case?

24 A. Yes, they are.

25 Q. Did they appear to be tampered with in any way

JENNIFER BARTMAN - DIRECT BY MS. BALDWIN

1 when you received them?

2 A. No, they did not.

3 MS. BALDWIN: At this time, we would like to
4 admit State's 86, 89, 87, 88, 95, 99, 100, 92, 93, 97,
5 98, and 101 and 102 into evidence.

6 (State's Exhibit Nos. 86, 87, 88, 89, 92, 93,
7 95, 97, 98, 99, 100, 101, and 102 were marked for
8 identification and admitted into evidence.)

9 MR. COCHRAN: No objection.

10 THE COURT: Admitted.

11 MS. BALDWIN: Thank you.

12 BY MS. BALDWIN:

13 Q. So did you perform DNA analysis on these items?

14 A. Yes.

15 Q. Briefly walk through the process and tell us what
16 your steps are.

17 A. The first process is extracting the DNA from
18 whatever substance it's on, whether it be a swab or a
19 cutting of fabric. The next thing we do is we figure out
20 how much DNA we have, so we quantify it.

21 Once we have how much DNA we have, we target
22 a specific amount and we amplify the sections of DNA that
23 we're looking at, the .1 percent that's different over
24 and over again, so we have millions of copies, and then
25 we separate out that DNA into different locations that we

JENNIFER BARTMAN - DIRECT BY MS. BALDWIN

1 look at.

2 Q. And what were your results from items 6.1, 6.2,
3 7.1, and 10? And could you tell us what those items are
4 again?

5 A. Yes. I'm referring to the lab report that I
6 generated. Item 6.1 is the swab from the hammer head.
7 Item 6.2 is the swab from the hammer handle. Item 7.1
8 are the swabs from the shoes, and item 10 is the swab
9 from the washer.

10 The DNA profile developed from these items matches
11 the DNA profile of Tasha Lucia. The probability of
12 randomly selecting an unrelated individual having a DNA
13 profile matching these items is approximately 1 in 7.1
14 quadrillion.

15 Q. And as to items 8.1 and 8.2?

16 A. 8.1 and 8.2 are cuttings from jeans, and the DNA
17 profile developed from these items matches the DNA
18 profile of Robert Kronsberg. The probability of randomly
19 selecting an unrelated individual having a DNA profile
20 matching these items is approximately 1 in
21 9.1 quadrillion.

22 Q. And as to item 3?

23 A. Item 3 was the left fingernail clippings from
24 Tasha Lucia. The DNA profile developed from this item
25 was a mixture of at least two individuals. A DNA profile

1 for Tasha Lucia was developed and also matches the DNA
2 profile of Robert Kronsberg. The probability of randomly
3 selecting an unrelated individual having a DNA profile
4 matching that foreign profile is approximately 1 in 130
5 million. DNA attributable to Tasha Lucia was also
6 present in that mixture.

7 Q. And item 4?

8 A. Item 4 were the right hand fingernail clippings
9 from Tasha Lucia. The DNA profile developed from item
10 four was also a mixture of at least two individuals. A
11 partial DNA profile foreign to Tasha Lucia was developed
12 and also matches the DNA profile of Robert Kronsberg.

13 The probability of randomly selecting an
14 unrelated individual having a DNA profile matching that
15 partial foreign profile is approximately 1 in 5,700. DNA
16 attributable to Tasha Lucia was also present in that
17 mixture.

18 Q. Could you just briefly explain in layman's terms,
19 when you say there is a profile belonging to Robert
20 Kronsberg and then DNA belonging to Tasha Lucia, the
21 victim in this case, explain what you mean by that.

22 A. When we have a mixture of at least two
23 individuals, that means more than one person's DNA is
24 there. In this case, we had fingernail clippings, which
25 at SLED we consider an intimate item. We expect whoever

JENNIFER BARTMAN - DIRECT BY MS. BALDWIN

1 we take the fingernail clippings off, we expect to have
2 some of their DNA present so we can subtract out the
3 owner of that DNA, the intimate sample, and look at the
4 foreign profile. The DNA that's left that does not
5 belong to her and look at that foreign profile, and that
6 foreign profile also matches Robert Kronsberg.

7 Q. What were your results from item 8.3?

8 A. 8.3 was also a cutting from the jeans, and it also
9 was a mixture of at least two individuals. The DNA
10 profile of the major contributor to the mixture also
11 matches the DNA profile of Robert Kronsberg. The DNA
12 profile of the minor contributor to the mixture was
13 insufficient for interpretation.

14 Q. And what does that mean?

15 A. When you have a mixture, it can either -- you can
16 possibly take out who contributed the most DNA, and we
17 call that the major contributor, or they could contribute
18 about an equal amount, and then we won't separate it out
19 to a major and minor contributor, so in this case, Robert
20 Kronsberg had the most DNA there, and there was an
21 additional person there, but there wasn't enough to make
22 any conclusions about or any interpretation about it.

23 Q. And how about item 8.4?

24 A. Item 8.4 is a swab from the jeans. It was a
25 mixture of at least two individuals, which also had a

JENNIFER BARTMAN - DIRECT BY MS. BALDWIN

1 major and minor component. The DNA profile of the major
2 contributor to this mixture also matches the DNA profile
3 of Robert Kronsberg. The partial DNA profile of the
4 minor contributor matches the DNA profile of Tasha Lucia.

5 The probability of randomly selecting an
6 unrelated individual having a DNA profile matching the
7 minor contributor to this mixture is approximately 1 in
8 93,000.

9 Q. So you're addressing the probability as to the DNA
10 profile of Tasha Lucia?

11 A. Yes, that's correct.

12 Q. And you mentioned these probabilities, as you've
13 gone through your results. What's the significance of
14 that?

15 A. The probability is calculated to put a weight on
16 the match to show how rare that profile is.

17 Q. How about item 9?

18 A. Item 9 was the swab from the shower wall. The DNA
19 profile developed from that item was a mixture of at
20 least two individuals. The DNA profile of the major
21 profile to this mixture also matches the DNA profile of
22 Tasha Lucia. Due to the inability to provide a
23 statistical calculation, no conclusive statement can be
24 made regarding the inclusion or exclusion of Robert
25 Kronsberg as a minor contributor to this mixture.

JENNIFER BARTMAN - DIRECT BY MS. BALDWIN

1 Q. So explain that a little bit. You found Tasha
2 Lucia's DNA profile in item 9, the swab from the shower
3 wall?

4 A. Yes, that's correct. The major contributor
5 matched the DNA profile of Tasha Lucia.

6 Q. And what do you mean as to the inability to
7 provide a statistical calculation?

8 A. The statistics, like I mention, are used to put a
9 weight on an item, and at SLED we have a protocol, or a
10 set of instructions, on where we can do those
11 calculations at. And for the minor contributor, none of
12 the locations could be used for those statistics
13 calculations, and therefore we do not make any
14 conclusions as to the minor contributor.

15 Q. Did you do any additional testing on item 6.2, the
16 swab from the hammer handle?

17 A. Yes, I did.

18 Q. And what was that?

19 A. I performed YSTR testing, which is a second type
20 of testing that looks just at male DNA.

21 Q. Okay. And why did you do that?

22 A. When I looked at the STR profile -- STR stands for
23 short tandem repeat, and that's the general type of
24 testing that we do. It was a single source. It was just
25 matched to Tasha Lucia. However, earlier I mentioned we

1 quantify how much DNA we have, so it gives us an amount
2 of human DNA and an amount of male DNA present, and in
3 this case, there was an indication that there was male
4 DNA present at a much lower level than the total amount
5 of human DNA, so I performed the specific type of testing
6 to see if I could develop a profile of the male
7 contributor.

8 Q. And what were your results there?

9 A. The YSTR profile developed from item 6.2, which
10 was the swabs from the hammer handle, is a mixture of at
11 least two individuals. The YSTR profile of the major
12 contributor matches the YSTR profile of Robert Kronsberg.
13 Paternal male relatives of Robert Kronsberg may not be
14 excluded as a contributor to this profile. This profile
15 is found zero times in a population database of 23,169
16 male individuals. The partial YSTR profile of the minor
17 contributor is not suitable for interpretation.

18 Q. And when you state that the paternal male
19 relatives of Mr. Kronsberg may not be excluded, what does
20 that mean?

21 A. The YSTR profile is passed down from generation to
22 generation on the paternal side, so barring any sort of
23 mutation, if no mutation occurs, a father will have the
24 same YSTR profile as the son and the same YSTR profile of
25 his son's son and so forth on the paternal side.

JENNIFER BARTMAN - CROSS BY MR. COCHRAN

1 MS. BALDWIN: Court's indulgence.

2 BY MS. BALDWIN:

3 Q. So just to summarize for the person that doesn't
4 necessarily understand all the science, her DNA was on
5 the hammer, Ms. Lucia's?

6 A. Yes, it was.

7 Q. Okay. And his DNA was underneath her fingernails?

8 A. Items 3 and 4, DNA also matched the DNA profile of
9 Robert Kronsberg.

10 Q. And her DNA was found on the swabs from the shower
11 and from the washer?

12 A. Yes, that's correct.

13 Q. And she was a minor contributor, but she
14 contributed to the swabs from the jeans.

15 A. As a minor contributor. She cannot be excluded.

16 Q. And her DNA was found on a swab from the shoes?

17 A. Yes, that's correct.

18 Q. And his YSTR profile was found on the hammer
19 handle swab?

20 A. A YSTR profile matching his YSTR profile, yes.

21 MS. BALDWIN: No further questions.

22 MR. COCHRAN: May it please the Court?

23 THE COURT: Cross?

24 CROSS-EXAMINATION

25 BY MR. COCHRAN:

1 Q. So when we're using DNA and testing DNA, we're
2 testing identification, correct?

3 A. Yes.

4 Q. We're not testing motives or intent, correct?

5 A. That's correct.

6 Q. Or what's going on in somebody's head?

7 A. That's correct.

8 Q. And so you tested a number of items for DNA, and
9 DNA -- a lot times people refer to DNA and they think of
10 blood, but it can come from blood, or hair, correct?

11 A. That's correct.

12 Q. Skin cells?

13 A. That's correct.

14 Q. Sweat?

15 A. It's possible.

16 Q. Saliva?

17 A. That's correct.

18 Q. And during your initial testimony, you described
19 the swabs from a hammer head and a hammer handle,
20 correct?

21 A. That's correct.

22 Q. And what were the results from the hammer handle?

23 A. The DNA profile developed matches the DNA profile
24 of Tasha Lucia and the YSTR profile developed from the
25 hammer handle matches -- the major contributor matches

1 YSTR contributor of Robert Kronsberg.

2 Q. So those were two different forms of testing?

3 A. Yes, that's correct.

4 Q. And under the first form of testing, Tasha Lucia's
5 DNA was present on the hammer handle, correct?

6 A. Yes, that's correct.

7 Q. And you were not dealing at all with --

8 MR. COCHRAN: Your Honor, I have no more
9 questions.

10 THE COURT: Redirect?

11 MS. BALDWIN: Your Honor, may we approach?

12 THE COURT: Yeah.

13 (Discussion held at sidebar.)

14 THE COURT: Okay, folks. It looks like a
15 good place to break just a little early for lunch, so
16 we'll send you to lunch.

17 Again, you can go to lunch with anybody you
18 want to, including each other, but please don't discuss
19 the case with anyone, including each other, such things
20 as witness demeanor. Please don't look on any media,
21 including social media, try to find out anything about
22 the case. If anybody does try to talk to you about the
23 case, please report that to me when you get back.

24 Please be back in the jury room at 1:30, and
25 we will resume at that time. Thank you.

1 (In open court, jury not present.)

2 THE COURT: Anything we need to talk about
3 before we break?

4 MS. BALDWIN: Nothing from the State, Your
5 Honor.

6 MR. COCHRAN: No, Your Honor.

7 THE COURT: All right. See you at 1:30.
8 You're free to go.

9 (Recess taken.)

10 A F T E R N O O N S E S S I O N

11 (In open court, jury not present.)

12 THE COURT: All right. Are you ready with
13 your next witness?

14 MS. BALDWIN: Yes, sir.

15 THE COURT: Anything from the defense?

16 MR. COCHRAN: No, Your Honor.

17 THE COURT: Bring the jury in.

18 (In open court, jury present.)

19 THE COURT: All right. Welcome back, folks.
20 We will resume now with the State calling their next
21 witness.

22 MR. SIMPSON: Thank you, Your Honor. The
23 State calls Paul Polensky.

24 PAUL POLENSKY,
25 having been first duly sworn,

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. SIMPSON:

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. I'm going to ask just some basic questions. Where
7 do you live?

8 A. I live on James Island, Midvale Avenue.

9 Q. And where do you work?

10 A. I work at Paisano's on James Island.

11 Q. And what is Paisano's?

12 A. It's a pizza restaurant.

13 Q. And what do you do there?

14 A. I manage.

15 Q. How long have you worked at Paisano's?

16 A. Going on five years.

17 Q. Always as a manager?

18 A. After about the first year-and-a-half I was
19 promoted.

20 Q. And have you always lived here in Charleston?

21 A. Yes.

22 Q. And how old are you today?

23 A. Thirty-two.

24 Q. Thirty-two?

25 A. Actually, I'm sorry, 33. Sorry.

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 Q. I'm the same way.

2 Paul, do you know the man that's sitting at the
3 table here?

4 A. Yes, I do.

5 Q. And who is that?

6 A. That's Tilghman Kronsberg.

7 Q. I'd like you to describe to the jury how you know
8 Mr. Kronsberg.

9 A. Well, we had been friends for a long time. We
10 used to -- he's been a drinking buddy of mine for a long
11 time. He's my best friend. We hung out, lived lots of
12 places together, and, you know, it's just somebody I did
13 everything with for the past ten years.

14 Q. Sounds to me like what you're saying, really close
15 friend.

16 A. Yes.

17 Q. Paul, I'm going to ask you, with that in mind, a
18 couple of personal questions, okay?

19 A. Sure.

20 Q. You know why you're here today, right?

21 A. Yes.

22 Q. Is that difficult?

23 A. It is.

24 Q. And why is it difficult to be here today?

25 A. It's just a very tough situation. You know, I

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 just really didn't want to have anything to do with --
2 you know, it's a pretty big thing to happen, and it's my
3 best friend sitting over there, and this is, you know --
4 it's just hard to deal with, you know. I don't want to
5 necessarily be the nail in the coffin, or I don't want
6 whatever I say to, you know, be what puts him away for
7 whatever, or whatever.

8 I don't know. I got a lot of mixed feelings about
9 everything, you know, and Tasha was also my friend as
10 well, and it's just -- it's very difficult. I'm still
11 dealing with it, you know.

12 Q. And let's be rather direct about that. In your
13 understanding, did you have a choice to be here today?

14 A. No, I did not.

15 Q. Is it something you want to be doing?

16 A. Not at all.

17 Q. You received a subpoena in this case?

18 A. Yes, I did.

19 Q. Nevertheless, with all those very understandable,
20 very complicated emotions, you just took an oath,
21 correct?

22 A. I did.

23 Q. And do you intend today to abide by that oath?

24 A. Yes.

25 Q. And share with these 12 strangers the truth?

1 A. Yes.

2 Q. We're going to get to specifics a little later,
3 but I want to ask you another personal question. It's
4 better that we just get this out front.

5 A. Okay.

6 Q. When you look back at the specifics of how you
7 handled a situation you said was very emotional and bad,
8 are you necessarily today proud of exactly how you
9 handled everything?

10 A. No, not at all.

11 Q. And, again, we'll get to specifics later, but you
12 sit here today with some regrets?

13 A. Yes.

14 Q. Paul, do you remember ever speaking to police
15 about what we are -- what brings us here today?

16 A. Yes.

17 Q. Where did that conversation come to pass?

18 A. At one of the interrogations that the cops took me
19 after everything had happened, you know, that sat around
20 the crime scene for like an hour or two waiting on them.
21 They drove me to the station to interrogate me for a
22 while.

23 Q. And when you went to the station to speak with
24 police, were you immediately truthful and immediately
25 forthright to police?

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 A. No, I wasn't.

2 Q. I believe you've already hit on this,
3 understandably. Why were you not immediately forthright
4 with police?

5 A. Well, there was a number of reasons, you know.
6 One of them being that, you know, I was scared that I was
7 going to go to jail for numerous reasons. I thought just
8 my knowledge of what had happened was enough to put me to
9 jail, and also, I was, you know, not feeling the best --
10 I had been selling a little bit of weed at the time, and
11 I was scared I was going to go to jail for selling weed
12 or something, just even knowing about it. I was very
13 scared.

14 Q. Scared at the time?

15 A. Yes, I was.

16 Q. Emotional at the time?

17 A. And I was a wreck, and --

18 Q. Any difficult emotions being such a long and close
19 friend of Mr. Kronsberg?

20 A. Oh, yeah.

21 Q. Nevertheless, Paul, did you eventually tell the
22 police the truth?

23 A. Yes, I did.

24 Q. Did you eventually tell the police the whole
25 truth?

1 A. I told them everything.

2 Q. Is there anything in that interview with the
3 police that you left out?

4 A. Not to my knowledge. I'm pretty sure I told them
5 everything, 'cause, I mean, after -- I was scared, and I
6 figured my best option after talking to them for a while
7 was just to come 100 percent clean.

8 Q. And do you recall -- I should ask you, did you
9 have any knowledge at the time the conversation was being
10 recorded on audio and video?

11 A. They didn't tell me, but I kind of figured it
12 would be.

13 Q. Did you come to learn that later?

14 A. Yes, I did.

15 Q. You stated -- well, I should say you stated you
16 worked in February of 2013, if I've got my math right.
17 Where did you work?

18 A. At Paisano's.

19 Q. And at that time were you the manager?

20 A. Yes, I was.

21 Q. Did Mr. Kronsberg -- where did Mr. Kronsberg work
22 at that time?

23 A. He worked with me. I had gotten him a job a few
24 months before.

25 Q. Generally speaking, how did that come about?

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 A. Well, he was my friend. He needed a job, and I
2 wanted to help him out, so it was within my power to give
3 him the job, so I got him the job and he did really well
4 at the job.

5 Q. I don't mean to backtrack here, but you mentioned
6 Tasha.

7 A. Uh-huh.

8 Q. How long had you known Tasha?

9 A. Over ten years. It's hard to say how long, you
10 know.

11 Q. Okay.

12 A. Since we were teenagers.

13 Q. And how did you come to know her?

14 A. Just being out on Folly Beach. Everybody knows
15 everybody. It's a small community, and, you know,
16 everybody was friends with everybody out there.

17 Q. Were you -- I believe you've already hinted on
18 this, but were you closer with Tilghman or closer with
19 Tasha?

20 A. Tilghman, for sure.

21 Q. I believe -- well, did you at the time know
22 Tasha's last name?

23 A. No.

24 Q. Okay. But you had known her for some time.

25 A. Yes.

1 Q. Were you aware back at that time, in 2013, of
2 Tasha and Tilghman's relationship?

3 A. Yes.

4 Q. Did you ever have occasion to spend time with them
5 together?

6 A. Yes.

7 Q. What kind of relationship, generally speaking, did
8 Tasha and Tilghman have?

9 A. It was a lot of -- seemed like to me that they
10 would do a lot of drinking, get in a fight, and then make
11 up, and it was a lot of ongoing fighting and making up
12 and drinking together. And, you know, they lived
13 together for a while. I don't know, it seems to me like
14 it was just very volatile, or unstable relationship.

15 Q. We'll just clarify the word fight. Do you mean
16 argue?

17 A. Argue, yes. A lot of verbal -- yelling at each
18 other.

19 Q. Did they always stay together?

20 A. Not always. They break up here. Like, I know
21 Tilghman -- I asked him to move in with me for a while
22 once because they broke up, and he was only gone for a
23 couple days before they moved back in together. That
24 happened probably twice since they were together.

25 Q. Do you mean that he moved in with you twice?

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 A. Well, yeah. He didn't have much. He just -- he
2 would come sleep on my couch for, like, a week or so and
3 then go back.

4 Q. And you recall that happening twice?

5 A. Uh-huh.

6 Q. What about just the breakups? Did those happen
7 more than twice?

8 A. Well, it's hard to say. It would only last,
9 sometimes, only for like an hour or two. They would
10 argue all the time, and he would -- well, I'm done with
11 this. I'm done with her, and then an hour later, he
12 would be on the phone with her, you know --

13 Q. So when we say breakups, sometimes very short?

14 A. Yeah.

15 Q. Okay. I know this is going to be difficult, but
16 did you ever know in the course of this volatile
17 relationship Tilghman to call Tasha any sort of names?

18 A. Yes.

19 MR. COCHRAN: Objection.

20 THE COURT: What was the question again?

21 MR. SIMPSON: If he would insult or call
22 Tasha names.

23 THE COURT: He, or the defendant?

24 MR. SIMPSON: The defendant.

25 THE WITNESS: Yes.

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 THE COURT: He can say that.

2 THE WITNESS: Yes.

3 BY MR. SIMPSON:

4 Q. What sort of things?

5 A. He would call her fat and say you're a bitch, fat
6 cunt, stuff like that, and --

7 Q. That's okay. I know that's hard to say. Now,
8 let's be fair. Would Tasha ever call Tilghman names?

9 A. Yes.

10 Q. During these breakups when Tilghman and Tasha
11 would not be together, how would Tilghman react to them,
12 obviously prior to the events we're here about today?

13 A. Well, normally just go out, get drunk, and talk
14 about it, and that's really about it. He would just go
15 get drunk and try to not think about it.

16 Q. Did you ever know, of course, prior to the events
17 in question, Tilghman to react at least verbally a little
18 more dramatically than that sometimes?

19 A. He was always kind of a dramatic guy. I mean, he
20 would -- you know, I'm not exactly sure how to answer
21 that.

22 Q. Did you ever know Tilghman to say anything to the
23 effect of, If I can't have her --

24 MR. COCHRAN: Objection.

25 THE COURT: That's a leading question.

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 BY MR. SIMPSON:

2 Q. Paul, you referred earlier to your conversation
3 with police.

4 A. Uh-huh.

5 Q. Do you recall during that conversation conveying
6 to the police some ways in which Tilghman would react to
7 these breakups?

8 A. Well, I don't remember that now. I don't recall.

9 Q. If I were to give you a specific example, would
10 that refresh your recollection?

11 A. Most likely.

12 MR. SIMPSON: Your Honor, permission to --

13 THE COURT: Go ahead.

14 BY MR. SIMPSON:

15 Q. Did you ever know, Paul, Tilghman to, at least
16 verbally, say if he --

17 MR. COCHRAN: Objection.

18 THE COURT: Overruled.

19 BY MR. SIMPSON:

20 Q. Say if he couldn't be with Tasha that he would
21 kill himself?

22 A. I think he might have said something to that
23 effect, but not -- he never said anything like, If I
24 can't have her, nobody can.

25 You know, he would say -- he would talk about

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 suicide. He would kill himself over not being able to be
2 with her. He said that before.

3 Q. He has said that before?

4 A. Yeah.

5 Q. And, I believe, as you said to police, did you
6 take those sort of things seriously with Tilghman?

7 A. Never.

8 Q. Did you, prior to this, ever entertain any belief
9 that he might actually follow through with it?

10 A. Never. I was never thought he would -- I thought
11 it was just empty threats.

12 Q. Paul, you've hinted on this, but what was the
13 defendant's living arrangement around February of '13?

14 A. He was living with Tasha in Camp Center. It was
15 her place, and she had let him move in with her.

16 Q. When you say move in, was this a process of
17 getting a U-haul and moving in furniture?

18 A. Well, he didn't have much. He had pretty much his
19 clothes and his music and a few other things. As far as
20 I know, Tilghman really didn't have any furniture and
21 stuff, so, you know, it was easy for him to move.

22 Q. Whose apartment was it?

23 A. Tasha's apartment.

24 Q. If one were to visit that apartment back in
25 February, would they see mostly that Tasha's things or

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 mostly Tilghman's?

2 A. Mostly Tasha's things.

3 Q. Paul, I want to get a sense for sort of the
4 locations around here. Where is Paisano's, as best as
5 you can describe it? You said James Island.

6 A. Yeah. It's -- you know, Folly Road cuts right
7 through the middle of James Island. It's about a mile
8 off of Folly Road down Camp. It's a little off to the
9 side, you know, at the corner of Dills Bluff and Camp
10 Road.

11 Q. And where is the bar Smoky Oak in relation to
12 Paisano's?

13 A. In the same parking lot, about 100 yards across
14 the parking lot.

15 Q. And where, in relation to those two places, was
16 Tasha's apartment?

17 A. About 200 yards the other way.

18 Q. So when we talk about these three locations, easy
19 walk?

20 A. Oh, yeah.

21 Q. Paul, at this point I'd would like to take you to
22 the evening, afternoon/evening, of February 9, 2013.

23 What were you doing on February the 9th, 2013?

24 A. I was working.

25 Q. What hours were you working on February the 9th,

1 2013?

2 A. From about 5:00 in the afternoon till about 4:00
3 in the morning.

4 Q. A late night?

5 A. Yeah.

6 Q. That's the food business, right?

7 A. Yeah.

8 Q. 4:00 or 5:00 in the morning, is that uncommon?

9 A. Not at all, every Friday and Saturday night.

10 Q. Busy nights?

11 A. Yeah.

12 Q. Was Tilghman working on that evening?

13 A. Yes, he did work that evening.

14 Q. Was he there with you?

15 A. Yes.

16 Q. What time did Tilghman get off at Paisano's that
17 night?

18 A. I think it was in between 10:30 or 11:30,
19 something like that.

20 Q. We're going to ask you questions about time, so I
21 should address this now. When you answer time questions,
22 are you being exact?

23 A. No, because I'm not exactly sure on the hours I
24 was working, and so I can only estimate by what time it
25 was by where I -- what I was doing at work, so I can't

—PAUL POLENSKY - DIRECT BY MR. SIMPSON—

1 really say exactly.

2 Q. So as we move forward and you mention times, best
3 guess?

4 A. Best guess.

5 Q. So what did Tilghman do at Paisano's?

6 A. He was a cook.

7 Q. And what did you do?

8 A. I was a manager/cook.

9 Q. So when you say manager, back of house manager?

10 A. Yes.

11 Q. During that shift, were you in close proximity
12 with Tilghman?

13 A. Yes.

14 Q. During the hours when you were working together,
15 did you talk to Tilghman at all?

16 A. Yes.

17 Q. Did you have any awareness of what was sort of
18 going on with Tilghman while you were working?

19 A. I knew that they were arguing.

20 Q. Who is they?

21 A. Tilghman and Tasha.

22 Q. And how did you know?

23 A. Because they were texting each other or
24 Facebooking, messaging each other. I'm not sure which
25 one it was, but they were sending messages back and forth

1 with the cell phones.

2 Q. So they would sometimes communicate through text?

3 A. Yes.

4 Q. Sometimes communicate through Facebook?

5 A. I think so.

6 Q. I mean, did you just have a hunch at this or did
7 you talk to Tilghman that night?

8 A. I talked to him.

9 Q. What were they arguing about?

10 A. From the best of my understanding is that she was
11 out hanging out with her ex-boyfriend at the time while
12 he was at work.

13 Q. And do you know the name of that ex-boyfriend?

14 A. Willie Parsons.

15 Q. Willie Parsons? So Tilghman's shift ends
16 sometimes between 10:30 and 11:00?

17 A. Yeah.

18 Q. What does Tilghman do when he gets off work?

19 A. He goes to the bar, Smoky Oak.

20 Q. Easy walk?

21 A. Uh-huh.

22 Q. Did you ever see him again?

23 A. Yes, I did.

24 Q. And, with the understanding what you said about
25 time, about what time did you see Tilghman -- about how

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 much later did you see --

2 A. Probably about an hour or so after he got off of
3 work, he came back into Paisano's.

4 Q. And can you describe anything about Tilghman when
5 he came back an hour later?

6 A. Well, he had had a few shots at a bar. He seemed
7 a little intoxicated, two shots and a beer, you know.

8 Q. Okay. He -- you've known him for a long time.

9 A. Uh-huh.

10 Q. I know my friends know when I've had a couple.

11 A. Uh-huh.

12 Q. Did you perceive this intoxication in him?

13 A. Yeah.

14 Q. And you just testified he seemed a little drunk?

15 A. Yeah. He was just -- I don't know, kind of like a
16 happy buzz going on kind of thing.

17 Q. Any possibility that when speaking to police, as
18 we've already discussed, that you may have described that
19 level of intoxication to be a little higher?

20 A. That wasn't until he came back another time.

21 Q. Okay.

22 A. Yeah.

23 Q. Fair enough. Did he talk to you when he came back
24 from the bar about an hour later?

25 A. Yeah. He asked me if he could borrow my moped.

1 Q. Why?

2 A. He wanted to try to, you know, score some drugs, I
3 believe, and he just wanted to -- and I told him to use
4 my moped and go to the store and get some beer and go
5 wait at my house until I got off work.

6 Q. Why was he going to go to your house and not go to
7 Tasha's where he stayed?

8 A. Because I had told him -- they had been arguing,
9 and I was just like, You don't need to go home. I said,
10 Stay the night with me. We'll hang out and, you know,
11 just watch movies and everything until this all blows
12 over.

13 Q. So they have a pretty volatile relationship, and
14 what's your advice to him that night?

15 A. To go to my house and wait for me to get off work.

16 Q. To that aim, what did you give Tilghman when he
17 came back about an hour after getting off?

18 A. I gave him my moped, my keys, and some money for
19 beer and whatever.

20 Q. At this point, anything unusual?

21 A. No, nothing at all.

22 Q. Was it rare for Tilghman -- is it rare for anyone
23 in the restaurant business after a shift to go -- maybe
24 get a little intoxicated?

25 A. It's something we all do.

—PAUL POLENSKY - DIRECT BY MR. SIMPSON—

1 Q. Okay. Was it particularly out of the ordinary for
2 Tilghman to do that?

3 A. No.

4 Q. So at this point, nothing unusual about this
5 evening.

6 A. Not at all.

7 Q. When was the next time you heard from the
8 defendant?

9 A. It was probably an hour to an hour and a half
10 after he had come back from the bar and borrowed my
11 moped.

12 Q. And I would like, if you could, to describe how
13 this next contact came to be.

14 A. Well, I had gotten a text that said 911 four times
15 over in a row.

16 Q. Who was that text from?

17 A. From Tilghman.

18 Q. And what generally does that mean?

19 A. It means emergency of some sort.

20 Q. Okay.

21 A. And so I called him, and then he told me not to
22 talk on the cell phone, that I should call him from the
23 work phone.

24 Q. Did he explain why?

25 A. No, he didn't.

1 Q. Did you think that was weird?

2 A. I did. I thought it was weird, but I just didn't
3 really think anything of it at the moment.

4 Q. Right off the bat, you know, you're on the cell
5 phone. Any red flags about his demeanor?

6 A. He -- not really, not right off the bat.

7 Q. Okay. What did you do next?

8 A. And so then I called him from the work phone.

9 Q. And did he answer?

10 A. Yes.

11 Q. And what's the first thing he said when he
12 answered?

13 A. He said, Don't freak out, but I just killed my
14 girlfriend.

15 Q. You hear this from a lifelong friend and you hear
16 this. What is your first thought?

17 A. My first thought was that he was messing with me,
18 that it was some kind of joke, that he was just drunk and
19 having a good laugh about it. That was my initial
20 impression.

21 Q. I want to back up a little bit. What time did you
22 say Tilghman got off?

23 A. About 10:30, 11:00.

24 Q. How long until he came back to get your keys and
25 the moped?

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 A. About an hour.

2 Q. Put us some time around midnight?

3 A. Yeah.

4 Q. And about how long after approximately midnight
5 did that 911 text come in?

6 A. I think it was about 1:00 or so, about an hour
7 after he had dropped off my moped, maybe a little bit
8 longer.

9 Q. And, again, these times are --

10 A. My best guess, yeah.

11 Q. So he says, Don't freak out. I killed my
12 girlfriend.

13 What did you say?

14 A. Oh, I was, like -- I said -- I was like, This
15 can't be true, something along those lines.

16 And I said, If you did what you're saying, I said,
17 Man, I got to close the restaurant tonight. You've got
18 all my stuff. You've got my house key, the restaurant
19 key. I need that stuff back, and, I don't know what's
20 going on with you, but I need my stuff back.

21 Q. So you expressed some disbelief?

22 A. Yes.

23 Q. Sounds to me, true or not, also some fear,
24 self-preservation?

25 A. Yes. I was worried about just -- if that had

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 happened, I was, like, well, then I'm going to be kind of
2 stuck, you know, without being able to close my
3 restaurant or go home or anything like that. I was a
4 little scared. I didn't know what to do. My first
5 thought was just get my stuff back and separate myself
6 from the situation.

7 Q. Did he on the phone agree to do that?

8 A. Yes.

9 Q. How long again does it take, especially on a
10 moped, from Tasha's to Paisano's?

11 A. It took him about 15 minutes to get there after
12 the phone call.

13 Q. Would it take that long if he went directly,
14 jumped right on and came there?

15 A. No.

16 Q. Did Tilghman show back up at Paisano's?

17 A. Yes.

18 Q. About how long after this conversation?

19 A. Probably about 15 minutes.

20 Q. Okay. Did he walk into Paisano's?

21 A. No, he did not.

22 Q. What did he do?

23 A. He pulled around the back, on the moped, and I
24 went outside and met him.

25 Q. Okay. At this time, I'm assuming you're friends,

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 you're staying pretty close with him.

2 A. Uh-huh.

3 Q. What shoes was he wearing that night, if you
4 recall?

5 A. Green Converse All Stars.

6 Q. He liked those shoes?

7 A. Uh-huh. Those were his favorite.

8 Q. Pretty close in proximity during this
9 conversation?

10 A. Uh-huh.

11 Q. Did you notice at this time any injuries to
12 Tilghman?

13 A. I did not.

14 Q. Black eye?

15 A. It was dark outside. There is not really any
16 lights out back, so I could see what he was wearing, you
17 know, but I didn't see any marks on him, any injuries.

18 Q. Hair unkempt?

19 A. His hair was always unkempt.

20 Q. Any injuries at all that you noticed under those
21 circumstances?

22 A. No.

23 Q. And I'm sorry, I just have to get you --

24 A. No, I didn't see.

25 Q. Did Tilghman look like he had recently been in a

1 fight or a struggle?

2 A. Not to me, he didn't.

3 Q. At this point, did you have anything to say to
4 him, any questions to ask him at this point?

5 A. Yeah. He asked me what I thought about it, and I
6 was, like, I think I need to call the cops.

7 And he asked me not to call the cops because
8 he said he was going to turn himself in.

9 Q. Did he ask you -- did you ask him, I should say,
10 what happened?

11 A. Yes. I was, like, Well, what's going on?

12 Q. I want to go through this, and I know this isn't
13 easy, rather slowly. What was the answer that Tilghman
14 gave you when you asked him what had happened?

15 A. He told me that he killed his girlfriend. I
16 believe his exact -- I put a knife through her chest, or
17 something like that.

18 Q. Did he ever give you a sort of step-by-step --

19 A. Yes.

20 Q. -- description?

21 A. After that first comment, then yeah, he told me
22 what happened.

23 Q. And what did he tell you again? And I realize
24 it's been some time.

25 A. Uh-huh.

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 Q. With as much as you can recall, as exact as you
2 can get it, as close to the actual words as you can get
3 it, what did Tilghman tell you had happened that evening?

4 A. He told me that he got home and then, you know,
5 Tasha had gotten home and they started arguing. He said
6 that she started saying that Willie was a better man than
7 he was and he had a bigger penis, or whatever, than he
8 did, and she just started yelling at him and saying how
9 unhappy she was with him, stuff like that, and he said
10 she hit him, and then he hit her back.

11 And he said he hit her back -- he said, I hit her
12 back hard, and then he said she started screaming for
13 help. And then he tried to, like, choke her out to get
14 her to stop screaming.

15 He's, like, If you stop screaming, I'll let you
16 up. And he said -- he told me he did that, like, three
17 times, and that she wouldn't stop screaming. And he just
18 grabbed the nearest thing to him, and it was a hammer,
19 and that he hit her in the head with a hammer, and then
20 he said she started convulsing and he didn't know what to
21 do. So he ran into the kitchen and grabbed a knife and
22 he said he stabbed her in the chest.

23 Q. Pretty -- what are you feeling and thinking?

24 A. I'm just feeling disbelief and not really wanting
25 to believe that this is true.

1 Q. Was there any sense in your heart, your mind, of
2 just denial, in your --

3 A. Yeah. That was my first thing, was this can't be
4 true. There is no way, you know, and I could tell he was
5 telling the truth, but even I was still -- I just wanted
6 to not believe it, you know.

7 Q. And did you want to have anything to do with
8 something like this?

9 A. No.

10 Q. Have you ever in your entire life imagined that
11 you might be in a situation like this?

12 A. Never.

13 Q. Were you fearful?

14 A. I was definitely fearful.

15 Q. Were you fearful for --

16 A. I was scared for him. I was scared for me,
17 because I was -- you know, I've seen a lot of cop shows,
18 and I thought if this was true, even him just being there
19 was endangering me, and I was very scared for myself more
20 than anything, which, you know -- I know that sounds kind
21 of bad, but that's what happened, you know.

22 Q. Did Tilghman tell you that night -- you shared
23 with us that process that he shared.

24 A. Uh-huh.

25 Q. Did he share with you that night any words that

—PAUL POLENSKY - DIRECT BY MR. SIMPSON—

1 came from Tasha? You said screams, but any specific
2 words that came from Tasha to him during the course of --

3 A. What do you mean, like when they were fighting
4 or -- like -- specifically -- I don't know what you --

5 Q. During this repeated choking that you mentioned,
6 did Tilghman share with you anything Tasha said to him
7 during that time?

8 A. He just said that she was saying help, she was
9 screaming for help.

10 Q. Would it refresh your recollection, your prior
11 interview with police -- if I were to share with you a
12 quote, would you be able to say yes, I said that to
13 police?

14 A. Yes, sure.

15 MR. SIMPSON: Your Honor, permission?

16 THE COURT: Show it to him in writing and ask
17 him if it refreshes his recollection.

18 BY MR. SIMPSON:

19 Q. Drawing your attention to a -- before you answer
20 that, give me one moment.

21 Does that refresh your recollection?

22 A. It does.

23 Q. What was that?

24 A. It was --

25 MR. COCHRAN: Your Honor, I do object to this

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 as hearsay.

2 THE COURT: Well, I don't know what he's
3 getting ready to say. Is he saying something that --

4 MR. SIMPSON: He's saying something Tilghman
5 told him that Tasha had said.

6 THE COURT: Well, that's not hearsay.

7 THE WITNESS: Well, I guess he said that
8 while, you know, he was choking her, in between breaths,
9 she was saying, Stop. I love you. Please don't do this,
10 or something like that.

11 BY MR. SIMPSON:

12 Q. Did you give Tilghman any advice at that time on
13 what he should do?

14 A. I told him he should turn himself in.

15 Q. And did Tilghman share with you at that time
16 anything about what his plans were going forward?

17 A. He said -- he was, like, Just don't call the cops
18 on me, please. Let me at least get 24 hours to turn
19 myself in. He was, like, I just got to do this on my own.

20 That's what he had told me at that time.

21 Q. How long have you known Tilghman?

22 A. For about 15 years.

23 Q. Close relationship?

24 A. Very.

25 Q. Did you call the police immediately?

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 A. No, I did not.

2 Q. I want to ask you directly. Why?

3 A. Well, he was my best friend, and I was, you
4 know -- I believed him when he said he was going to turn
5 himself in, and I was -- like I said earlier, I was, you
6 know, a little worried about myself as well because at
7 that point in time I had sold a few people here and there
8 some marijuana, and I was scared of myself that anything
9 that I did I would go to jail for that on top of whatever
10 was going on with Tilghman, and I thought for sure I was
11 going to jail if I called the cops.

12 Q. Do you have any regrets about that decision today?

13 A. Of course I do.

14 Q. Is it difficult to be here in front of two, two,
15 grieving families and do what you're doing here today?

16 A. It's very difficult.

17 MR. COCHRAN: I would object to that last
18 question.

19 THE COURT: Overruled.

20 BY MR. SIMPSON:

21 Q. Was there any further contact between you and
22 Tilghman that evening?

23 A. Yeah, there was.

24 Q. And when did that occur?

25 A. I'm not really sure about the time because I was

1 off of work at that point, so it was probably after 4:00
2 in the morning, and I don't remember if I called him or
3 if he called me. But, yeah, we did have one phone
4 conversation after all that.

5 Q. And this sounds like in the very early morning
6 hours.

7 A. Yeah.

8 Q. And what was the nature of that phone call?

9 A. The nature of that phone call was he was saying
10 that he was probably going to kill himself instead of
11 turning himself in, and I tried to tell him -- I was
12 like, Don't kill yourself, you know. You need to just
13 turn yourself in.

14 Q. And did you eventually get to go to sleep that
15 night?

16 A. Eventually.

17 Q. And when did you wake up the next day,
18 approximately?

19 A. I'm not sure. I think I woke up sometime around
20 noon and --

21 Q. And what did you have to do the following day?

22 A. I had to work at 5:00.

23 Q. If you could explain to the jury sort of how that
24 shift went down the next day.

25 A. I went into work -- I really can't remember. I

PAUL POLENSKY - DIRECT BY MR. SIMPSON

1 think I might have just gotten to work because my plan
2 was I was going to wait to call the cops because I was
3 going to see -- because Tilghman was scheduled to work
4 with me, and I was going to wait for him to come in or
5 not show up for work, and then I was going to send
6 somebody over to try to figure out what had happened, and
7 that's how I was going to get everybody involved.

8 But by the time I arrived at work, I got a phone
9 call from a friend, Rob, who had told me that he found
10 Tasha in her bedroom.

11 Q. And, again, how far is Tasha's residence from
12 Paisano's?

13 A. Like 200, 300 yards. Not very far at all.

14 Q. When you hear this news, what did you do?

15 A. I walked over there.

16 Q. Okay. Police already at the scene?

17 A. Yes.

18 Q. EMS already at the scene?

19 A. Yes.

20 Q. And eventually the police came and wanted to speak
21 with you.

22 A. Uh-huh.

23 Q. How did that come to be?

24 A. Well, because I walked up, and I was like, What's
25 going on here?

—PAUL POLENSKY - DIRECT BY MR. SIMPSON—

1 And then, you know, I told one of the officers at
2 the scene, I was, like, Well, I spoke to Tilghman last
3 night before all this happened.

4 And I was, like, Did you need to talk to me?
5 and they're, like, Yeah. So you stay right here.
6 We'll talk to you as soon as we wrap this up.

7 Q. So at this point you do offer your assistance.

8 A. I did.

9 Q. And you already said they took you to the station?

10 A. Uh-huh.

11 Q. And, again, were you immediately totally truthful?

12 A. No, I wasn't.

13 Q. Were you eventually totally truthful?

14 A. Yes, I was.

15 Q. Did you tell substantially the same thing to the
16 police eventually that you just shared with this jury?

17 A. I did.

18 Q. Any facts come to mind at this point that you wish
19 to share today that aren't on -- that you decided never
20 to share with anybody?

21 A. No.

22 Q. I want to backtrack just for a moment. I won't
23 try to prolong this.

24 You described for this jury the series of events
25 that Tilghman described to you.

PAUL POLENSKY - CROSS BY MR. COCHRAN

1 A. Uh-huh.

2 Q. Described the argument. Do you remember any other
3 terms or words Tilghman shared with you regarding what
4 Tasha was doing to him to bring this on?

5 A. Yeah. He told me that she was emasculating him
6 and making him feel very small and belittling him, is
7 what he said.

8 MR. SIMPSON: Court's indulgence.

9 BY MR. SIMPSON:

10 Q. Paul, I previously asked you about Tilghman's
11 demeanor when he phoned you. You said you weren't
12 immediately alarmed, correct?

13 A. Yeah.

14 Q. What was Tilghman's demeanor when he came to see
15 you -- it was after he had come, picked up the keys and
16 the moped, and he came back after the phone call. What
17 was his demeanor?

18 A. He was -- seemed like he was -- he was a little
19 calm, actually, and he looked like he was high on drugs.

20 MR. SIMPSON: Paul, please answer any
21 questions that Mr. Cochran has.

22 THE WITNESS: Yes.

23 MR. COCHRAN: May it please the Court:

24 CROSS-EXAMINATION

25 BY MR. COCHRAN:

1 Q. You said that you're not 100 percent clear on time
2 and things like that?

3 A. Yes, sir.

4 Q. And Tilghman worked with you on the night of
5 February 9, 2013.

6 A. Yes.

7 Q. And he was in the back, kitchen part, that whole
8 time, right?

9 A. Yep.

10 Q. And while y'all were back there, kind of in the
11 food prep area, he would every now and then show you his
12 phone, show you text messages, things like that?

13 A. Yes, he would.

14 Q. And you came to realize, throughout the night,
15 throughout his shift, which was -- did both of y'all
16 start around 5:00?

17 A. Yeah, we both started at 5:00.

18 Q. So from 5:00 to the end of his shift, he was
19 arguing with Tasha over the phone?

20 A. Yeah.

21 Q. Not speaking, but texting?

22 A. Yeah, exactly.

23 Q. Okay. And he was showing you some of the texts
24 that she was sending him?

25 A. Yes, he did.

1 Q. And it was not at all unusual for them to fight or
2 argue?

3 A. No, it wasn't.

4 Q. They would have loud verbal arguments when they
5 were in person?

6 A. Uh-huh.

7 Q. And they would fight over the phone like this?

8 A. Constantly.

9 Q. Constantly. So on a very regular basis they were
10 in arguments?

11 A. Uh-huh.

12 Q. And when they would get into these arguments, the
13 solicitor asked you about insults that Tilghman would
14 commonly use against Tasha.

15 A. Uh-huh.

16 Q. He asked you if -- Tilghman would call Tasha fat?

17 A. Uh-huh.

18 Q. A fat cunt, a bitch, and those were common
19 insults, right?

20 A. Yeah.

21 Q. He didn't ask you about specific insults that
22 Tasha would use against Tilghman, correct?

23 A. Correct.

24 Q. And those specific insults were that he was a
25 little dick mother fucker, is what she would say to him

1 frequently, correct?

2 A. Yes, correct.

3 Q. And you know Willie Parsons?

4 A. I do.

5 Q. That is Tasha's ex-boyfriend?

6 A. Yeah.

7 Q. And that is an ex-boyfriend who she continued to
8 hang out with and socialize with while dating Tilghman?

9 A. Yeah.

10 Q. And that was open to everybody? Everybody knew
11 about that?

12 A. Everybody knew about that.

13 Q. Tilghman knew about that?

14 A. Tilghman knew about that.

15 Q. And it was a source of frequent arguments between
16 them?

17 A. That was the main source.

18 Q. And they dated for, like, over a year, right?
19 Tilghman and Tasha dated for over a year?

20 A. Uh-huh.

21 Q. And for that entire period of time, that was a
22 constant source of --

23 A. Constant struggle, the whole time.

24 Q. And it would lead to verbal arguments?

25 A. Yeah.

PAUL POLENSKY - CROSS BY MR. COCHRAN

1 Q. He showed you text messages at work, right?

2 A. He did.

3 Q. It was on the 9th, in the evening, right?

4 A. Uh-huh.

5 Q. And he showed you a text that you relayed to the
6 police. You remembered it, right? Because it was --

7 A. Yeah, it was --

8 Q. The way she sent it, she sent it one word at a
9 time in separate texts?

10 A. Yes.

11 Q. She said he was the worst boyfriend ever, right?

12 A. Uh-huh.

13 Q. Yes?

14 A. Correct.

15 Q. And she said, You suck at life.

16 A. Correct.

17 Q. And this was getting on in the evening, right?

18 A. Yeah. This was -- I'm going to say it was around
19 8:00 or so, I believe.

20 Q. And Tilghman, probably under the impression she
21 was out hanging out with Willie?

22 A. Yes, it was.

23 Q. And that's something that he would accuse her of
24 or note as a source of his frustration?

25 A. Yes.

1 Q. That was typical?

2 A. Yes, it was.

3 Q. Nothing unusual about the night of February 9th?

4 A. Nothing out of the norm.

5 Q. And you were Tilghman's boss, basically?

6 A. Yes.

7 Q. And would you allow Tilghman to work a full shift
8 if he was intoxicated?

9 A. No, I wouldn't have.

10 Q. So when he was working his shift, he was not
11 intoxicated?

12 A. No, he was not.

13 Q. And you know what Tilghman looks like when he's
14 intoxicated?

15 A. I do.

16 Q. He wanted to stay at your house that night?

17 A. I wanted him to stay at my house that night.

18 Q. Did he agree to stay at your house that night?

19 A. He didn't.

20 Q. And there is video surveillance at Paisano's,
21 isn't there?

22 A. Yes, there is.

23 Q. And he comes back to Paisano's from Smoky Oak,
24 right?

25 A. Yes.

PAUL POLENSKY - CROSS BY MR. COCHRAN

1 Q. Smoky Oak is walking distance to his apartment?

2 A. Yes.

3 Q. The apartment he shares with Tasha?

4 A. Yes.

5 Q. He makes a decision to come to Paisano's after
6 being at Smoky Oak?

7 A. Yes.

8 Q. To get your keys?

9 A. Yes.

10 Q. To get the keys to your house?

11 A. Yes.

12 Q. To get the keys to your moped?

13 A. Yes.

14 Q. And he seemed like he had had a few drinks?

15 A. Yes.

16 Q. And not so many drinks, however, that you had any
17 concern about lending him your moped?

18 A. No, because he was only gone for an hour, so I
19 didn't figure he was too drunk.

20 Q. Was he stumbling around?

21 A. No.

22 Q. Was he unsteady at all?

23 A. He just seemed like he was normal -- you know, we
24 would go out for drinks all the time. He didn't seem
25 like he was incapable of performing any normal tasks.

1 Q. I believe you described it as a happy buzz.

2 A. Yeah.

3 Q. Is that moped your only form of transportation?

4 A. Yes, sir.

5 Q. Would you be happy if Tilghman wrecked your moped?

6 A. Not at all.

7 Q. Would you lend it to him if you thought he was
8 going to wreck it?

9 A. No.

10 Q. Would you be able to easily purchase another moped
11 if he did wreck it?

12 A. No.

13 Q. He borrowed keys to your house.

14 A. Yes.

15 Q. Did he indicate that he was going to go back to
16 his apartment to get some stuff to bring over to your
17 house?

18 A. I don't remember he said that.

19 Q. Do you remember you told him to go get some beer
20 for that night?

21 A. Yes.

22 Q. You believed that he left work at around 10:30 or
23 11:00?

24 A. Yeah.

25 Q. Or the end of his shift?

PAUL POLENSKY - CROSS BY MR. COCHRAN

1 A. Yes.

2 Q. And was at Smoky Oak for about an hour, so you
3 believe that he came back to Paisano's after Smoky Oak at
4 11:30 or 12:00?

5 A. Yeah. I would say closer to midnight.

6 Q. Closer to midnight. And then he is back with you
7 in the kitchen again?

8 A. When he came to get the moped? Yeah.

9 Q. You handed him the keys to your house and your
10 moped in the kitchen, inside, right?

11 A. Yes.

12 Q. It's on the surveillance tape, correct?

13 A. Correct.

14 Q. And the reason you gave him your house key is
15 because you were getting off way later?

16 A. Yeah.

17 Q. As the manager, you weren't going to be getting
18 out until 4:00 in the morning?

19 A. Exactly.

20 Q. He hangs out in the kitchen, talks to you, right?

21 A. Uh-huh.

22 Q. It was around midnight, and then he leaves on your
23 moped?

24 A. Yes.

25 Q. With your permission?

1 A. Yep.

2 Q. Was he in a rage?

3 A. No, he was not.

4 Q. Was he angry?

5 A. He didn't seem like he was angry at all.

6 Q. He seemed like he was in a happy buzz?

7 A. Yeah. He seemed like he was in a pretty good
8 mood.

9 Q. Pretty good mood. Did not seem like the arguments
10 with Tasha had really gotten to him that night?

11 A. No. He was kind of laughing about it.

12 Q. He was laughing about it?

13 A. Yes.

14 Q. So when he was showing you these text messages,
15 you suck at life, worst boyfriend ever, he was kind of
16 joking about these text messages?

17 A. I can't believe she's sending you this. Hahaha,
18 look at this.

19 Q. And he was not furious with her?

20 A. No. He was a little angry that she was out on the
21 beach with Willie, but he was not like -- he was laughing
22 about it, really.

23 Q. And that was a normal thing for him to be upset
24 about?

25 A. Yeah.

PAUL POLENSKY - CROSS BY MR. COCHRAN

1 Q. It had been happening over the course of a year,
2 right?

3 A. Yeah.

4 Q. He comes back to Paisano's later on that night,
5 correct?

6 A. Uh-huh.

7 Q. Now, when he came back after Smoky Oak, you
8 described him as having a happy buzz?

9 A. Yes.

10 Q. When he comes back later that night, maybe an hour
11 or two later, you noted that he may have been on
12 something.

13 A. Yes.

14 Q. And you described to police that he was, quote,
15 fucked up?

16 A. Yeah.

17 Q. Now, to you fucked up means --

18 A. Like on cocaine.

19 Q. Intoxicated, drugs?

20 A. Drunk, really drunk, on some sort of cocaine or
21 heroin or something like that. It's being F'd up, you
22 know.

23 Q. You thought that Tilghman was on hard drugs that
24 night?

25 A. Yes.

1 Q. At that point?

2 A. Yeah, at that point.

3 Q. He was not when he left Smoky Oak?

4 A. He was not when he left Paisano's.

5 Q. When he left Paisano's either time that night?

6 A. No, he wasn't.

7 Q. He texted you around 12:54 a.m., 911, 911, 911.

8 He texted that three times in one text, right?

9 A. Yes.

10 Q. It was at 12:54 a.m. Would you dispute it was at
11 12:54 a.m. if that's what phone records reflected?

12 A. Not at all.

13 Q. And it took him about 15 minutes, I believe you
14 said, after that to come to Paisano's?

15 A. Yeah.

16 Q. So we're talking 1:10, 1:15?

17 A. That seems about right.

18 Q. And then he's at Paisano's, comes up on your
19 moped, right?

20 A. Uh-huh.

21 Q. You speak with him in person at that point.

22 A. I do.

23 Q. You told -- you went over this several times with
24 the solicitor. You told the police the truth eventually?

25 A. Yes.

PAUL POLENSKY - CROSS BY MR. COCHRAN

1 Q. You gave them the whole story?

2 A. Yes, I did.

3 Q. Now, you gave them the whole story of what
4 Tilghman told you, correct?

5 A. Yes.

6 Q. You saw nothing happen in this apartment, correct?

7 A. No, I did not.

8 Q. You were not a witness to anything, correct?

9 A. Not at all.

10 Q. Other than Tilghman coming to the restaurant to
11 talk to you?

12 A. Yep.

13 Q. You're a witness to his statements, correct?

14 A. That is correct.

15 Q. And these statements were made when he was fucked
16 up, according to you, correct?

17 A. Yes.

18 Q. Was he covered in blood?

19 A. No, he wasn't.

20 Q. Were his hands covered in blood?

21 A. No, they weren't.

22 Q. He was grinding his teeth?

23 A. Yeah.

24 Q. And that is something you would normally see when
25 he was using cocaine?

1 A. Yes.

2 Q. And he was exhibiting other behaviors that
3 indicated that to you?

4 A. Yes, he was.

5 Q. Now, you talked to police about what Tilghman
6 described to you from what happened in the apartment with
7 Tasha, right?

8 A. Yes, sir.

9 Q. That he got home and that Tasha was home when he
10 got there, correct?

11 A. Uh-huh.

12 Q. And when he came in, there was an argument,
13 correct?

14 A. Correct.

15 Q. A verbal argument, correct?

16 A. Yes.

17 Q. He said that she was emasculating him with
18 insults?

19 A. Yes.

20 Q. And you said earlier it was normal for her to call
21 him a little dick mother fucker?

22 A. Yes.

23 Q. And on this night, he was indicating she was
24 specifically referring to his penis size in relation to
25 her ex-boyfriend's penis size?

PAUL POLENSKY - CROSS BY MR. COCHRAN

1 A. Yes.

2 Q. That Willie had a bigger penis than he did,
3 correct?

4 A. Yes, that is correct.

5 Q. And he also -- and you were consistent with
6 police, and correct me if I'm wrong, he also stated to
7 you, without question, that she started hitting him?

8 A. Yes, that is what he said.

9 Q. She was insulting him, correct?

10 A. Yes.

11 Q. And she started hitting him, correct?

12 A. Yes.

13 Q. And when he told you about hitting Tasha, he
14 phrased that as hitting her back, correct?

15 A. Yes.

16 Q. He hit her back while she was hitting him and
17 insulting him, correct?

18 A. That is correct.

19 Q. Tasha gave just as good as she got in these
20 arguments, didn't she, typically?

21 A. Oh, yeah.

22 Q. So she participated in these arguments and fights
23 on a regular basis, right?

24 A. Correct.

25 Q. And that night, clearly, things went way further

1 than they ever had before, correct?

2 A. Correct.

3 Q. And Tilghman told you that he killed Tasha.

4 A. Yes, he did.

5 Q. Tilghman told you he did three things,
6 basically -- four things; that he punched her, correct?
7 I believe you said he hit her hard.

8 A. Those were his exact words.

9 Q. He said a hammer was used at some point, correct?

10 A. Uh-huh.

11 Q. He said he choked her?

12 A. Uh-huh.

13 Q. And he said that he stabbed her?

14 A. Yep.

15 Q. And he told you he stabbed her one time?

16 A. Yeah. He just said, I stabbed her in the chest.
17 He didn't say one time, he just said, I stabbed her in
18 the chest.

19 Q. He did not specify how many times?

20 A. No, he did not.

21 Q. After this meeting with Tilghman that night, you
22 had trouble sleeping that night?

23 A. I did.

24 Q. You use marijuana, correct?

25 A. I do.

PAUL POLENSKY - CROSS BY MR. COCHRAN

1 Q. And drink alcohol, correct?

2 A. I do.

3 Q. And you smoked a lot of marijuana that night to
4 help you fall asleep?

5 A. That's the only way could I fall asleep.

6 Q. Did you drink alcohol as well?

7 A. I did.

8 Q. So you drank a lot of alcohol and smoked a lot of
9 marijuana after hearing this statement from Tilghman,
10 right?

11 A. Yes, I did.

12 MR. COCHRAN: Beg the Court's indulgence.

13 BY MR. COCHRAN:

14 Q. You mentioned that in your statement -- I don't
15 know if you mentioned it on direct examination, but you
16 mentioned in your statement that Tilghman came back to
17 Paisano's around 2:00, 2:00 something in the morning. He
18 was wearing a leather jacket?

19 A. Yeah.

20 Q. And shorts?

21 A. Yes.

22 Q. And green Converse All Stars?

23 A. Yes.

24 Q. And you did not notice anything out of the
25 ordinary about him?

PAUL POLENSKY - REDIRECT BY MR. SIMPSON

1 A. No, I didn't.

2 Q. And it was dark out, correct?

3 A. Yes, it was.

4 MR. COCHRAN: Nothing further. Thank you.

5 THE COURT: Redirect?

6 MR. SIMPSON: Just briefly, Your Honor.

7 Thank you.

8 REDIRECT EXAMINATION

9 BY MR. SIMPSON:

10 Q. Just three steps, that's it. Let's just clarify
11 some things you shared with us on direct.

12 You testified that Tilghman comes up to talk to
13 you at Paisano's. He says, Paul, she was making fun of
14 me.

15 A. Correct.

16 Q. Paul, she was emasculating me.

17 A. Correct.

18 Q. Oh, and, Paul, she started hitting me.

19 A. Correct.

20 Q. So the defense referenced with you three stages.

21 A. Uh-huh.

22 Q. He hit her, and how did he describe that hit?

23 A. He said, I hit her really hard.

24 Q. And then she starts screaming for help?

25 A. Yes.

PAUL POLENSKY - REDIRECT BY MR. SIMPSON

1 Q. And then the choking?

2 A. Yes.

3 Q. Do I have that in the correct order?

4 A. Yes.

5 Q. He told you that?

6 A. Yes, he did.

7 Q. Choking once?

8 A. No. He said he let go, and then that she would
9 start screaming, gasping for air, and saying, Please
10 stop. I love you, but she was still screaming for help,
11 so he said he choked her again to quiet her, I guess.

12 Q. And am I correct in your direct, three times?

13 A. That's what he said.

14 Q. And then he mentions a hammer?

15 A. Correct.

16 Q. And then what is the next step?

17 A. And then he said after he hit her with a hammer
18 that he grabbed a knife and stabbed her in the chest.

19 Q. And I believe when asked, you said no
20 specifications as to how many times?

21 A. No.

22 Q. With the knife, did he say anything about going to
23 get the knife or where he got the knife?

24 A. I think he said, I went to the kitchen to grab a
25 knife.

1 Q. Went to the kitchen?

2 A. Uh-huh.

3 Q. Do you recall anything about a -- did you hear
4 anything about a crate right next to him?

5 A. A what?

6 Q. A crate?

7 A. No.

8 Q. You recall something about a knife in the kitchen?

9 A. Yes.

10 Q. You were asked by Mr. Cochran if he wanted to come
11 over and -- it's his idea to come over and go to your
12 house, and I believe you stated what he said on direct,
13 and what was that?

14 A. That it was my idea for him to come to my house.

15 Q. And did you think that was a better course of
16 conduct that evening for Tilghman, being his friend? Why
17 did you think that was a better course of conduct for
18 Tilghman that night?

19 A. Just because we hadn't hung out in a while, and he
20 was arguing with Tasha. And I was just, like, Well, why
21 don't we hang out tonight instead of you going home and
22 being miserable and hanging out with your girlfriend? We
23 haven't hung out for a while. Why don't we go to my
24 house and watch TV, because there was a lot of TV shows
25 that I had recorded that we hadn't caught up on.

—PAUL POLENSKY - RECROSS BY MR. COCHRAN—

1 And I said, Come to my house. We'll watch TV and
2 movies, and we'll have a good time.

3 Q. And Mr. Cochran asked you, the source of all this
4 information -- what is the only source of all this
5 information about what happened that night? Who is your
6 only source?

7 A. Tilghman.

8 Q. Okay.

9 MR. SIMPSON: Court's indulgence. Paul, I
10 know today was difficult and not easy. Thank you.

11 THE COURT: Recross?

12 MR. COCHRAN: Briefly.

13 RECROSS-EXAMINATION

14 BY MR. COCHRAN:

15 Q. You said you think he went back to -- you think he
16 said he went back to the kitchen after hitting her with
17 the hammer, right?

18 A. Yeah.

19 Q. So you're not sure about that?

20 A. I'm not 100 percent, but I'm pretty sure he said
21 something about that.

22 Q. You're pretty sure he said something about the
23 kitchen?

24 A. Yes.

25 Q. Fair to say?

1 A. Yes.

2 Q. You're pretty sure he said something about the
3 kitchen in relation to a knife, right?

4 A. Yes.

5 Q. And you drank a lot that night, right?

6 A. I did.

7 Q. And smoked a lot of marijuana?

8 A. I did.

9 Q. And you said it was your idea for him to come over
10 your house, so you proposed that to him, correct?

11 A. Yes.

12 Q. And he did come back to get the keys to your house
13 and your moped, correct?

14 A. Yes.

15 Q. And were you -- you weren't telling him this
16 because you were afraid he was going to do something
17 crazy?

18 A. No. I was more -- I wanted to hang out and, you
19 know, just because there was a number of times I just
20 told Tilghman -- I like him and I like Tasha, but I
21 didn't like them together, because all they did was argue
22 and we never did hang out anymore, and when we did hang
23 out all, he did was talk about Tasha.

24 Q. So why go back and be miserable?

25 A. Exactly, so why not come to my house.

RICHARD HOLMES - DIRECT BY MR. SIMPSON

1 Q. So you weren't concerned about Tilghman or Tasha
2 that night?

3 A. No.

4 Q. You weren't concerned about what he might do
5 because they were in a fight?

6 A. No.

7 Q. You wanted to hang out with him?

8 A. Exactly.

9 MR. COCHRAN: No further questions.

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

11 Let's take a ten-minute break here, let
12 everybody go to the rest room. Don't begin deliberations
13 or discussions about the case, witness demeanor, or
14 anything like that. See you back in a few minutes.

15 (Recess taken.)

16 (In open court, jury present.)

17 THE COURT: All right, folks. We will resume
18 now with the State calling their next witness.

19 MR. SIMPSON: The State calls Detective
20 Holmes with the Charleston police department.

21 RICHARD HOLMES,

22 having been first duly sworn,
23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. SIMPSON:

RICHARD HOLMES - DIRECT BY MR. SIMPSON

1 Q. Detective Holmes, good afternoon.

2 A. Good afternoon.

3 Q. How are you?

4 A. Pretty good.

5 Q. Where do you work?

6 A. The Charleston City Police Department.

7 Q. And how long have you worked there?

8 A. Approximately 28 years.

9 Q. And how long have you worked in the capacity of a
10 detective?

11 A. I've been a detective for the last 22 and a half
12 years.

13 Q. And where are you currently assigned?

14 A. Presently I'm assigned to the homicide, violent
15 crimes unit.

16 Q. And how long have you been with that unit?

17 A. Approximately four years, something in there.

18 Q. So you were working in that capacity in February
19 of 2013?

20 A. Yes, sir.

21 Q. And do you know what case brings us here today?

22 A. Yes, sir.

23 Q. And did you have occasion in your role as a
24 homicide detective to become involved in this case?

25 A. Yes, sir.

— RICHARD HOLMES - DIRECT BY MR. SIMPSON —

1 Q. Were you, in fact, the lead agent in this case?

2 A. Yes, sir, I was.

3 Q. What are some of the jobs, some of the duties, of
4 the lead agent in a homicide investigation?

5 A. The lead agent in the homicide investigation is to
6 oversee the general investigation. It is to basically
7 facilitate the -- any witnesses that needs to be
8 interviewed, any crime scene documents that need to be
9 handled, and, basically, you're like the overseer of the
10 case until it gets to prosecution.

11 Q. Now, does that necessarily mean that you
12 personally do everything on the case?

13 A. No, sir.

14 Q. Generally speaking, do some cases come together
15 rather rapidly?

16 A. Yes, sir, it does.

17 Q. Do other cases, on the other hand, take a
18 incredible amount of time and effort from agents and the
19 lead agent before they come to arrest?

20 A. Yes, sir.

21 Q. Let's just begin with your actions in this case.

22 A. Yes, sir.

23 Q. Were you contacted on February the 10th, 2013?

24 A. Yes, sir, I was.

25 Q. And describe your response on that day to the

RICHARD HOLMES - DIRECT BY MR. SIMPSON

1 jury.

2 A. On February the 10th, 2013, at approximately 6
3 p.m. in the afternoon, I was called out of my residence
4 in reference to a homicide investigation that was ongoing
5 at , over on James Island, and I
6 was asked to respond over to assist the investigation at
7 that time, at which time I responded over and meet with
8 the initial investigator who was already on scene.

9 Meeting with them, I gathered information on
10 what was going on at the time to continue the
11 investigation at that time.

12 Q. And did you observe the crime scene that day?

13 A. Yes, sir, I did.

14 Q. What did you observe?

15 A. Upon us, Charleston City Police Department,
16 getting a search warrant, myself and, I believe, another
17 detective, along with the crime scene detective, crime
18 scene investigators, and the coroner's office, we went
19 inside of the residence. We were the first to go inside
20 with the search warrant.

21 We went inside the residence, and we observed the
22 entire crime scene overlay, and we just lengthily looked
23 at everything when we first arrived.

24 Q. And as the lead agent, you've been present in
25 trial this week?

—RICHARD HOLMES - DIRECT BY MR. SIMPSON—

1 A. Yes, sir.

2 Q. Confirm for the jury the findings that you found
3 from in the crime scene.

4 A. Yes, sir.

5 Q. Is a big part of the job of any detective talking
6 to people?

7 A. Yes, sir.

8 Q. Conducting interviews?

9 A. Yes, sir.

10 Q. Did you have occasion in this case to conduct an
11 interview of the defendant, Robert Kronsberg?

12 A. I did.

13 Q. And could you describe for the jury sort of the
14 circumstances that led to that interview.

15 A. The initial contact that I had with Mr. Kronsberg
16 was on February the -- I believe it was the 13th. Myself
17 and Detective Cone, we responded to MUSC Hospital in an
18 attempt to conduct an interview with him, because that's
19 where he was being housed at the time.

20 We went over to MUSC Hospital to get an interview.
21 At that time we went up and we formally introduced
22 ourselves and told him what was going on, but at that
23 time we did not complete the interview at that time with
24 him.

25 Q. And let me ask you, what condition did you find

RICHARD HOLMES - DIRECT BY MR. SIMPSON

1 Mr. Kronsberg in -- let me first ask, are you certain the
2 first contact with him was the 13th?

3 A. I'm sorry, the 12th. February the 12th, 2013.

4 Q. Your initial response was on what day again, to
5 the crime scene?

6 A. The crime scene itself, it was February the 10th.

7 Q. And then on February the 12th, you went to MUSC
8 for the first time?

9 A. Yes, sir.

10 Q. And what condition did you find Mr. Kronsberg in
11 on the 12th?

12 A. Upon my arrival into the room where he was being
13 detained, he was not in a state where I could conduct an
14 interview, being that I conducted several interviews in
15 the past. When I went in, he was just not in a manner
16 where I felt like we could conduct a formal interview
17 where everything would go in line with what we needed to
18 have accomplished.

19 Q. And, nevertheless, though, did you record that
20 interaction with Mr. Kronsberg?

21 A. Yes, sir, it was.

22 Q. And that interview was discontinued?

23 A. Yes, sir, it was.

24 Q. Did you ever have occasion to go back to the
25 medical university?

RICHARD HOLMES - DIRECT BY MR. SIMPSON

1 A. Yes, sir, I did.

2 Q. When was that?

3 A. The next day myself and Detective Williams, we
4 responded back over to MUSC Hospital in an attempt to
5 re-interview -- to see if we could get an interview
6 completed with Mr. Kronsberg at MUSC Hospital.

7 Q. Any difference in your perception of Mr. Kronsberg
8 on the 13th?

9 A. Yes, sir. The very next day when I arrived at
10 MUSC Hospital, it was like I had seen somebody totally
11 different. It was a totally different person from the
12 person I had seen the day before.

13 Q. Did you administer Miranda warnings to
14 Mr. Kronsberg?

15 A. Yes, sir, I did.

16 Q. Was there a difference on the second day that you
17 went and administered Miranda warnings than the first, in
18 the interaction with Mr. Kronsberg?

19 A. Yes, sir. The second day when I went over to the
20 hospital, he was able to basically sign the card as I
21 gave him his Miranda warnings, and he basically stated
22 that he understood everything I was saying to him at the
23 time.

24 Q. And on the first day?

25 A. The first day he was not able to, no, sir.

RICHARD HOLMES - DIRECT BY MR. SIMPSON

1 Q. Now, let's talk -- I want to ask something about
2 the first day.

3 Did he say anything about his personal desire on
4 the first day to give a statement at that time?

5 A. The first day when I left with Mr. Kronsberg,
6 after giving him his Miranda warnings with Detective
7 Cone, he advised me that at that time he did not want to
8 speak at that present time.

9 Q. And at this point, you're already having some
10 reservations about talking to him anyway?

11 A. Yes, sir.

12 Q. So do you explain to Mr. Kronsberg your intentions
13 on the first interview?

14 A. Yes, sir, I did.

15 Q. And what did you say to him?

16 A. Basically because he told me he did not want to
17 talk, I explained to him I would come back at another
18 time and basically come back to finish the interview and
19 he agreed to that.

20 Q. He said that was okay?

21 A. Yes, sir.

22 Q. To your knowledge, as a trained detective, any
23 problems lawfully with that scenario? Can you go back
24 and talk to somebody the next day?

25 A. Yes, sir. Yes, you can.

RICHARD HOLMES - DIRECT BY MR. SIMPSON

1 MR. SIMPSON: Your Honor, permission to
2 approach the witness?

3 THE COURT: You may.

4 BY MR. SIMPSON:

5 Q. I'm showing you what has been marked for ID only
6 as State's Exhibit No. 7, and I would also like to state
7 for the record that this was referred to earlier as
8 Court's Exhibit 6-A. Do you recognize that item?

9 A. Yes, sir.

10 Q. And what is that?

11 A. It's the CD interview that we record our
12 interviews off of, the Charleston Police Department, of
13 the interview we conducted with Mr. Kronsberg.

14 Q. And that is the interview on the 13th?

15 A. Yes, sir, it is.

16 MR. SIMPSON: Your Honor, at this time the
17 State would seek to admit State's 107 into evidence and
18 publish.

19 MR. COCHRAN: Subject to prior objection,
20 Your Honor.

21 THE COURT: All right. I will admit it over
22 defense objection.

23 (State's Exhibit No. 107 was marked for
24 identification and admitted into evidence.)

25 THE COURT: Ladies and gentlemen: While

RICHARD HOLMES - DIRECT BY MR. SIMPSON

1 they're getting ready to put that in and play it to you,
2 you're getting ready to hear a statement made by the
3 defendant, and I have made an initial determination that
4 it is admissible.

5 However, it's still your duty as jurors to
6 listen to the testimony not only involving the testimony
7 of the confession itself, or the statement itself, but as
8 to the circumstances surrounding it and make a
9 determination as to whether or not the statement was
10 freely and voluntarily made.

11 You determine that based on a totality of the
12 circumstances surrounding the incident and the testimony
13 that you'll hear and have heard about the conditions
14 under which the statement was made. It's still up to you
15 to determine whether or not the statement was freely and
16 voluntarily made. I just made a determination that it
17 was admissible.

18 All right? You may publish it.

19 MR. SIMPSON: Thank you, Judge.

20 (Whereupon the statement was played for the
21 jury.)

22 BY MR. SIMPSON:

23 Q. Detective Holmes, I'm going to pause for a moment
24 because it's a little faint.

25 To your recollection, is he responding to you each

—RICHARD HOLMES - DIRECT BY MR. SIMPSON—

1 time you ask him a question?

2 A. Yes, he is.

3 Q. And answering you how?

4 A. Yes.

5 Q. Detective Holmes, you say you're having him
6 initial and sign something. What is that?

7 A. It's a Miranda card that we use. It's a card that
8 we basically read. I read his rights from the card to
9 him, and there is lines on the back where he can sign,
10 and it says he understood everything I said to him and he
11 understands each right as I have given them to him as I
12 read them off to him.

13 Q. Thank you.

14 Detective, does that recording basically
15 cover your interactions with Mr. Kronsberg that day?

16 A. Yes.

17 Q. What was Mr. Kronsberg doing when you showed up on
18 that second day right when you got there?

19 MR. COCHRAN: Objection. Can we approach?

20 (Discussion held at sidebar.)

21 BY MR. SIMPSON:

22 Q. Detective, I don't care about what it was, okay?
23 What was he doing -- what was Kronsberg doing when you
24 arrived on the second day?

25 A. When myself and Detective Williams arrived, he was

RICHARD HOLMES - DIRECT BY MR. SIMPSON

1 watching a movie inside his room.

2 Q. Did y'all have some small talk about the movie?

3 A. Yes, sir, we did.

4 Q. Is that, again, a distinct difference than how you
5 found him on the first day?

6 A. Yes, sir.

7 Q. Again, other than that small talk, is that
8 recording that we just heard the entirety of the
9 interview?

10 A. Yes, sir, it is.

11 Q. Did you off recording make any threats?

12 A. No, sir.

13 Q. Any promises?

14 A. No, sir.

15 Q. Did you employ any sort of, like, police training
16 on interrogation to trick him in any way?

17 A. No, sir.

18 Q. Did you overcome his free will or voluntariness in
19 any way, shape, or form that you can think of?

20 A. No, sir.

21 Q. And, again, that recording we heard, does that
22 pretty much cover your interaction?

23 A. Yes, sir.

24 MR. SIMPSON: Court's indulgence.

25 Detective, please answer any questions

RICHARD HOLMES - CROSS BY MR. COCHRAN

1 Mr. Cochran has.

2 THE COURT: Cross?

3 MR. COCHRAN: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. COCHRAN:

6 Q. You did not interrogate, right? This was not an
7 interrogation. It was more of an interview, correct?

8 A. Yes, sir.

9 Q. And you didn't have to employ any tactic, just
10 like the solicitor said, and the reason for that is
11 because Mr. Kronsberg was compliant, correct?

12 A. Yes, sir.

13 Q. He was cooperative, correct?

14 A. Yes, sir.

15 Q. He had lapses in memory, correct?

16 A. Yes, sir.

17 Q. But he admitted to stabbing somebody, correct?

18 A. Yes, sir.

19 Q. And choking them?

20 A. Yes, sir.

21 Q. Not exactly self-serving statements, correct?

22 Those would be statements against his interests; you
23 would agree with that?

24 A. Yes, sir.

25 Q. And you talked -- you observed him on the 12th and

1 the 13th, correct?

2 A. Yes, sir.

3 Q. And this was at MUSC, correct?

4 A. Yes, sir.

5 Q. He was taken to MUSC on the 10th?

6 A. Yes, sir, he was.

7 Q. So he was at MUSC being treated on the 10th, the
8 11th, 12th, and the 13th, correct?

9 A. Yes, sir.

10 Q. And he was being treated for the effects of his
11 suicide attempt, correct?

12 A. Yes, sir, he was -- yeah.

13 Q. He wasn't there just because, or that's not where
14 he was being housed?

15 A. No. He wouldn't be housed there, no, sir.

16 Q. He had a slash to his wrist, correct?

17 A. Yes, sir.

18 Q. He had a slash to the inside of his left right,
19 right?

20 A. I didn't see injuries to him.

21 Q. You didn't go there and take off bandages and
22 observe injuries, right?

23 A. No, sir.

24 Q. But during the course of investigations, you came
25 to learn he slashed his left wrist?

RICHARD HOLMES - CROSS BY MR. COCHRAN

1 A. Yes, sir.

2 Q. And he ingested aspirin?

3 A. Yes, sir.

4 Q. And that he ingested sleeping pills?

5 A. Yes, sir.

6 Q. And a large quantity of alcohol?

7 A. Yes, sir.

8 Q. And those attempts to kill himself caused him to
9 spend four full days in the hospital, or three days and
10 some change in the hospital?

11 A. Yes, sir.

12 Q. And during the course of your investigation, you
13 have come to realize there was a slash to the inside of
14 his wrist, but there was also a bandage to the outside of
15 that same wrist?

16 A. I didn't see his injuries, so I couldn't tell you
17 what they were on his hands.

18 Q. I'm not asking you if you saw the injury. You're
19 the lead investigator on this case, correct?

20 A. I am.

21 Q. And you're familiar with all aspects of this
22 investigation?

23 A. Yes, sir.

24 Q. And the crime scene technicians?

25 A. Yes, sir.

RICHARD HOLMES - CROSS BY MR. COCHRAN

1 Q. And with photographs that were taken during the
2 course of this case?

3 A. Yes, sir.

4 Q. With Mr. Kronsberg's medical treatment, correct?

5 A. Yes, sir.

6 Q. And you, throughout the course of your
7 investigation, would have learned that there was a
8 bandaged injury to the back of his left wrist as well,
9 correct?

10 MR. SIMPSON: Objection. May we approach
11 briefly?

12 BY MR. COCHRAN:

13 Q. Through the course of your investigation, you came
14 to understand that Mr. Kronsberg had an injury to the
15 back of his left wrist, correct?

16 A. Yes, sir.

17 Q. And you were not there to look at those, correct?

18 A. No, sir.

19 Q. You were there to get a statement from him,
20 correct?

21 A. Yes, sir.

22 Q. And you were not necessarily there to get his side
23 of the story, right?

24 A. No, sir.

25 Q. Let's be honest: This is the 13th of February,

RICHARD HOLMES - CROSS BY MR. COCHRAN

1 correct?

2 A. Yes, sir.

3 Q. And you had a warrant sworn out for murder on the
4 11th of February, correct?

5 A. I could give you the date that the warrant was
6 drawn up. The warrant was signed on February 12th.

7 Q. So you got a statement from Mr. Kronsberg two days
8 after that warrant is sworn out, correct?

9 A. Yes, sir.

10 Q. And he was in the hospital the 10th, 11th, 12th,
11 and 13th, and on the 12th he was too medicated or too
12 unconscious or semi-conscious to interview, correct?

13 A. In his state, yes, sir.

14 Q. And that would go for the 10th and 11th as well,
15 correct?

16 A. Yes, sir.

17 Q. You described him as being heavily medicated on
18 the 11th when you saw him?

19 A. Medication wise, I don't know what he had taken,
20 but he was in a state where I know -- I conduct
21 interviews, and I wouldn't have conducted an interview
22 with him at that time.

23 Q. Okay. Fair enough. You, as the lead
24 investigator, were in charge of what evidence was getting
25 collected, correct?

1 A. Yes, sir.

2 Q. And you had at least three cell phones seized,
3 correct?

4 A. Yes, sir.

5 Q. Tasha's phone was seized, correct?

6 A. Yes, sir.

7 Q. And that was a Blackberry?

8 A. From the victim we had a Blackberry curve, yes,
9 sir.

10 Q. And you also seized Tilghman's phone?

11 A. Yes, sir.

12 Q. And you also seized Paul Polensky's phone?

13 A. Yes, sir.

14 Q. And you interviewed Paul Polensky as well?

15 A. Myself, along with Detective Bailey. At that time
16 I asked Detective Bailey to start the interview with
17 Mr. Polensky because I was actually doing something else
18 at the time.

19 Q. And you were actually involved in -- or during
20 this early investigation, early stages of this
21 investigation, Paul Polensky's phone was dumped on to a
22 CD, correct?

23 A. Yes, sir, it was.

24 Q. So all the contents of his phone were dumped on to
25 a CD, correct?

RICHARD HOLMES - CROSS BY MR. COCHRAN

1 A. Yes, sir.

2 Q. But the contents of Mr. Kronsberg, Tilghman's
3 phone, were not dumped on to this disk, correct, by you
4 and your team?

5 A. I can't confirm that.

6 Q. Did you report anything in terms of the contents
7 of Mr. Kronsberg's phone?

8 A. I believe we -- if I'm not mistaken,
9 Mr. Kronsberg's phone was also dumped.

10 Q. Okay. That's your impression?

11 A. I believe so, yes, sir.

12 Q. Okay. And Ms. Lucia's phone, Tasha, her phone,
13 did you go through it?

14 A. Me personally? No, sir, I did not.

15 Q. You didn't read her text messages?

16 A. I didn't personally, no, sir.

17 Q. Didn't review her call logs?

18 A. Me personally, no, sir.

19 Q. Did anybody?

20 A. Once again, I can't tell you what everybody was
21 doing on it, but I can only tell you what I probably
22 asked them to do for me, so I can't tell you what was on
23 the phone. I can't tell you exactly what's on there.

24 Q. And you're the lead investigator, right?

25 A. Yes, I am.

1 Q. And in this day and age, the cell phones of
2 parties in criminal cases are pretty important, right?

3 A. Yes, sir.

4 Q. They determine whereabouts, right?

5 A. Yes, sir.

6 Q. They can even determine the fashion in which
7 people were communicating, right?

8 A. Yes, sir.

9 Q. When they were calling each other?

10 A. Yes, sir.

11 Q. Who was calling who?

12 A. Yes, sir.

13 Q. Who was making the call, who was receiving the
14 call?

15 A. Yes, sir.

16 Q. Who was texting another person?

17 A. Uh-huh.

18 Q. And with text messages, you can oftentimes see
19 what they said?

20 A. Yes, sir.

21 Q. But you did not review the contents of Tilghman's
22 phone or Tasha's phone?

23 A. No, sir. I honestly can't say I actually saw the
24 actual contents of the phone.

25 Q. Can you honestly actually say you had any of your

RICHARD HOLMES - CROSS BY MR. COCHRAN

1 officers or anybody working under you do that?

2 A. Working under me?

3 Q. Or working for you or working with you?

4 A. I have a supervisor, and he may have ordered that
5 at that time to be done, so I can't basically tell you --

6 Q. Did he?

7 A. I'm not sure.

8 Q. Who is your supervisor?

9 A. At the time it was Sergeant Osborne.

10 Q. And you don't know what he ordered in terms of --

11 A. No, sir.

12 Q. Okay. The cell phones. And there is also a
13 surveillance video from Paisano's that was taken,
14 correct?

15 A. Yes, sir.

16 Q. And in that video, you can see Tilghman, correct?

17 A. The video of --

18 Q. From Paisano's?

19 A. Yes, sir.

20 Q. And you may not recall, but let me ask you this:
21 When you watch the video, is it plain to see someone is
22 wearing a knee brace and sort of limping around the
23 kitchen?

24 A. To be honest with you, I can't tell you that I
25 actually reviewed that video.

—RICHARD HOLMES - CROSS BY MR. COCHRAN—

1 Q. You're not sure whether you viewed the
2 surveillance video from Paisano's the night of February
3 9th, 2013?

4 A. To be honest, I cannot tell you I viewed that
5 video because I may have asked somebody else to look at
6 it for me.

7 Q. And surveillance videos have time stamps, right?

8 A. Yes, sir.

9 Q. And there is a time stamp for the last moment you
10 see Tilghman on that video?

11 A. Once again, the conversation may have come up --
12 the video may have been viewed once again by my
13 supervisor. I can't tell you exactly what's the content
14 of the video or the time stamping on it.

15 Q. Would you disagree that the time stamp on the
16 video --

17 THE COURT: Mr. Cochran, he said he didn't
18 view it, so you can't ask him details about it.

19 MR. COCHRAN: Very good. Thank you.

20 BY MR. COCHRAN:

21 Q. Do you know whether or not you viewed the video?
22 Are you saying you did not view it or are you not sure?

23 A. I did not.

24 Q. When you're investigating something like this,
25 you're not just investigating it for identity, right?

RICHARD HOLMES - CROSS BY MR. COCHRAN

1 There are other aspects to this crime investigation,
2 correct?

3 A. Yes, sir.

4 Q. You're there as a detective to determine if other
5 elements are present, such as elements of self-defense,
6 correct?

7 A. Yes, sir. We look at the entire case.

8 Q. And you would look at the entire case to determine
9 whether or not there were elements of voluntary
10 manslaughter, correct?

11 A. Yes, sir.

12 Q. And heat of passion, correct?

13 A. Yes, sir.

14 Q. And things like video surveillance and cell phone
15 records can be helpful in determining those kinds of
16 things, right?

17 A. To determine -- you're saying --

18 Q. Those types of elements. The contact of the
19 people involved would be important in helping people
20 determine that. I'm not saying it could without question
21 determine it, but they would assist you in determining
22 it?

23 A. They would assist in the investigation, yes, sir.

24 Q. Tasha was taken after -- she was taken from the
25 house, she was taken to MUSC?

1 A. Yes, sir.

2 Q. In Charleston?

3 A. Yes, sir.

4 Q. And through the course of your investigation,
5 through photographic evidence -- when we look at State's
6 Exhibit 20, through the course of your investigation, you
7 had become aware that Tasha had bruising on the knuckles
8 of her right hand?

9 A. Yes, sir.

10 Q. And you had also become aware that her DNA was
11 present on the handle of a hammer that was confiscated?

12 A. Yes, sir.

13 Q. And you also confiscated a metal plate; is that
14 right?

15 A. Yes, sir.

16 Q. That was nearby?

17 A. Yes, sir.

18 Q. And you gave testimony about this case at a
19 preliminary hearing, right?

20 A. Yes, sir.

21 Q. And you were under oath at that time?

22 A. Yes, sir.

23 Q. And you testified at the prelim that there was an
24 argument that -- at the apartment?

25 A. Yes, sir.

RICHARD HOLMES - CROSS BY MR. COCHRAN

1 Q. And that it had something to do with, and I'm
2 quoting you here, had something to do with sexual
3 genitals?

4 A. Yes, sir.

5 Q. And so we've already talked about how Tasha was
6 taken to MUSC, and through the course of your
7 investigation, you have come to learn that Tasha's blood
8 alcohol level was .259, correct?

9 A. Yes, sir.

10 Q. And that is intoxicated?

11 A. Yes, sir.

12 Q. To a police officer, that would be considered
13 heavily intoxicated?

14 A. I couldn't say. I don't deal with blood levels,
15 so I couldn't answer that for you.

16 Q. Through your experience as a police officer, you
17 do know that the legal limit to drive a car is .08?

18 A. Yes, sir.

19 Q. So you would agree .259 is above that?

20 A. Like I said, I don't handle those investigations.

21 Q. She also had marijuana in her system?

22 A. Yes, sir.

23 Q. And you are familiar with the arrest reports for
24 Tilghman?

25 A. Yes, sir.

1 Q. And you're familiar with his height and weight, in
2 a rough sense, at least?

3 A. Yes, sir.

4 Q. He's about five-eleven and 167 pounds?

5 A. Yes, sir.

6 Q. We've heard a lot of testimony from other folks,
7 and we've also spoken briefly about cell phones. Laney
8 Childers is not somebody who came to you to provide a
9 statement, is she?

10 A. I don't recall the name.

11 Q. Do you recognize that name?

12 A. No, sir.

13 Q. And we did not get a surveillance video from Smoky
14 Oak or from the Dollar General, did we, from that night?

15 A. I do not have them, no, sir.

16 Q. Did you go to MUSC to meet with Dr. Presnell?

17 A. Dr. Presnell, in reference to --

18 Q. The autopsy. She's the forensic pathologist in
19 this case.

20 A. No, sir, I did not.

21 Q. You did not meet with her and consult with her in
22 this case?

23 A. No, sir.

24 Q. And in reviewing calling logs in this case, were
25 you able --

RICHARD HOLMES - CROSS BY MR. COCHRAN

1 MR. SIMPSON: Objection, based on the Court's
2 previous comments.

3 (Discussion held at sidebar.)

4 BY MR. COCHRAN:

5 Q. As the lead investigator in this case, you are
6 aware -- correct me if I'm wrong. You are aware that
7 call logs from Ms. Lucia's phone were retrieved?

8 A. I am not aware -- once again, I submit to you my
9 supervisor may have had it --

10 Q. You keep saying your supervisor. Your supervisor
11 is not the lead investigator in this case, is he?

12 A. My supervisor is in charge of who gets the case,
13 so basically he would know more about the case because he
14 assigned us the case, and we are just the investigators
15 who work the case.

16 Q. So Mr. Osborne was the lead investigator in this
17 case?

18 A. No, sir, he was not. He assigned me to be lead
19 investigator in this case.

20 Q. And after you're assigned the case, you still have
21 work to do, right?

22 A. Yes, sir.

23 Q. There are still things you have to do?

24 A. Yes, sir.

25 Q. And more than just going and taking a statement

1 from your suspect?

2 A. Yes, sir.

3 Q. And that includes reviewing evidence?

4 A. In addition -- in addition to other things, yes.

5 Q. Those duties include reviewing evidence?

6 A. Yes, sir.

7 Q. Reviewing evidence, like cell phone evidence?

8 A. Yes, sir.

9 Q. Like text records? Yes or no. They involve
10 those --

11 A. The question that you're trying to get me to
12 answer is because we have a group of detectives who work
13 the cases, so I'm not going to see everything that comes
14 in, but the detective who is handling it, he's going to
15 come to me and tell me basically what he is looking at
16 and what he has seen on the case, if that's what you're
17 trying to get an answer for.

18 Q. So you collaborate with the people that do those
19 things, right?

20 A. Yes, sir.

21 Q. Who was in charge of the cell phones?

22 A. I'm not sure.

23 Q. Do you assign those things?

24 A. I don't assign cases. We just --

25 Q. Not assigning cases, I'm talking about assigning

1 duties.

2 A. I don't assign duties, no, sir.

3 Q. Who does?

4 A. The supervisor does.

5 Q. So the supervisor gives everybody their separate
6 tasks?

7 A. Yes, sir.

8 Q. And the supervisor put you in charge?

9 A. Yes, sir.

10 Q. And that means that you're in charge of the
11 evidence that is gathered in this case?

12 A. I'm in charge, basically, of how the investigation
13 is going to be handled.

14 Q. So you don't have anything to do with the evidence
15 that's being gathered in the case?

16 A. I may know what the evidence is, but I'm not in
17 charge of collecting everything, so I can't say. I can't
18 tell you every piece of evidence on this case.

19 Q. Well, let's get you specific pieces of evidence.
20 You've already testified you're not familiar with the
21 surveillance video at Paisano's. Are you familiar in any
22 way, shape, or form with the call logs from Tasha Lucia's
23 cell phone?

24 A. No, sir, I'm not.

25 Q. Are you familiar in any way, shape, or form with

1 the text logs from Tasha Lucia's cell phone?

2 A. No, sir, I'm not.

3 Q. Are you in any way familiar with the calls from
4 Tilghman's Kronsberg's cell phone?

5 A. No, sir.

6 Q. Are you in any way, shape, or form familiar with
7 the text logs from Tilghman Kronsberg's cell phone?

8 A. No, sir.

9 Q. And you're the lead investigator in this case?

10 A. Yes, sir.

11 Q. You review the crime scene in this case?

12 A. Did I see it? Yes, sir, I did.

13 Q. You went there yourself?

14 A. Yes, sir.

15 Q. And photographs were taken by the crime scene?

16 A. Yes, sir.

17 Q. Did you review the photographs that were taken by
18 the crime scene?

19 A. Yes, sir.

20 Q. And you're aware that crime scene may not have
21 collected but did photograph a package of condoms on the
22 dresser in Ms. Lucia's bedroom?

23 MR. SIMPSON: Objection. Relevance.

24 THE COURT: Well --

25 MR. SIMPSON: And defense attorney is

RICHARD HOLMES - CROSS BY MR. COCHRAN

1 testifying.

2 (Discussion held at sidebar.)

3 THE COURT: Let me send the jury out for just
4 a few minutes while we take up a matter of law.

5 (In open court, jury not present.)

6 THE COURT: All right. My hesitancy is to
7 have you asking him about things, and him not being able
8 to say it. Then it leaves that imprimatur out there that
9 it exists. So I'll let you ask outside the presence of
10 the jury if such a thing exists, but if not, then I'm not
11 going to let you continue to ask about things that he
12 doesn't know because it suggests that there are things
13 out there that existed.

14 Maybe if they do, you can produce them, or
15 somebody that can identify them, but if you don't intend
16 to offer it, just bringing it up and throwing it up to
17 this witness is improper because it suggests that those
18 things are out there, and I've been letting you ask him
19 about a bunch of things.

20 He said, No, I don't know about all these
21 things, but there's a line there that you're crossing by
22 suggesting that there's evidence -- if there is evidence,
23 bring it out. It will get brought out, but I'm not
24 comfortable with you just asking him about the existence
25 of things without there being a possibility that they, in

RICHARD HOLMES - CROSS BY MR. COCHRAN

1 fact, have existed, so -- ask him what you want to ask
2 him.

3 BY MR. COCHRAN:

4 Q. Officer, you already testified you're familiar
5 with the crime scene investigation in this case?

6 A. Yes, sir.

7 Q. And you said you were familiar with the crime
8 scene photographs in this case?

9 A. Yes, sir.

10 Q. That you reviewed crime scene photographs in this
11 case?

12 A. Yes, sir.

13 Q. And that there was -- at least, if they were not
14 collected, there was a photograph taken of condoms in
15 their wrappers on the dresser in the bedroom.

16 A. I have no knowledge of that.

17 Q. You have no knowledge of that?

18 A. No, sir.

19 MR. COCHRAN: All right. I'm not going to
20 put them in to impeach him, but --

21 THE COURT: Well, if you don't have a
22 photograph and you're not going to put it in, I'm going
23 to let you ask him about it, just for the purpose of
24 denying that he had seen it.

25 MR. COCHRAN: Can I impeach him with a

RICHARD HOLMES - CROSS BY MR. COCHRAN

1 photograph without bringing it in?

2 THE COURT: Do you have a photograph?

3 MR. COCHRAN: Yes, he gave it to me. I gave
4 it to them.

5 THE COURT: That's what I've been -- well,
6 it's one thing to impeach him on it if he denies that he
7 knows it and it turns out he knew it. It may exist, he
8 just doesn't know it, and what he's saying is, he doesn't
9 know that it exists.

10 That doesn't mean that you can't get it in.
11 You call all the witnesses you want to put these things
12 in, but it's improper -- if your question is can I
13 impeach him with it? Well, he hasn't denied that it
14 exists. He's just saying he hadn't seen a picture of it.

15 MR. COCHRAN: What I'm asking, I guess, is
16 can I impeach him with the photograph to -- and at this
17 point, I'm not impeaching an inconsistent statement. I'm
18 not impeaching a denial.

19 THE COURT: If it's something that exists,
20 you'll have the opportunity to put it in. What's the
21 purpose of trying to impeach him?

22 MR. COCHRAN: Because of the integrity of
23 this investigation.

24 THE COURT: Well, you know, it doesn't sound
25 like he has a lot of the duties that I've ever heard of a

RICHARD HOLMES - CROSS BY MR. COCHRAN

1 lead detective having, but I suppose that's for the jury
2 to decide, but if he hasn't seen something, then you
3 can't really impeach him with it.

4 But if there is a picture out that that
5 exists, when it comes time, you can put it in, if the
6 State didn't put in during their case.

7 MR. COCHRAN: Well, at this point, he is
8 unaware of so many aspects of this investigation and so
9 many basic aspects of this investigation that I think I
10 should be able to impeach the fact that he's unaware of
11 this photograph because he should be aware.

12 MR. SIMPSON: Judge, my objection to what
13 Mr. Cochran is doing is what he's doing is essentially
14 standing in front of the jury and testifying to all of
15 these different things that has nothing to do with what
16 Holmes did on the case. This detective did -- as in
17 every case, there is a name they write for the detective,
18 okay?

19 But if you got questions about the crime
20 scene, ask the crime scene. That's why we put them up.
21 If you got questions about DNA, ask the DNA expert.
22 That's why we put them up, and if you got questions about
23 phones, call your own witness, put him up, and ask him
24 about the phone.

25 We're asking Detective Holmes what we ask

RICHARD HOLMES - CROSS BY MR. COCHRAN

1 every witness, what he saw, heard, and did, and outside
2 of that scope, it just becomes Mr. Cochran standing in
3 front of the jury and testifying to things, and I
4 understand he gets to lead, but he doesn't get to stand
5 up here and testify.

6 THE COURT: That is exactly what it appears
7 that your line of questioning is doing, and it sounds
8 like his role as lead investigator is to assign certain
9 tasks to be done. If somebody took photographs or there
10 exists those things in some places, it may be their role
11 to act as the assimilator of all that information, and in
12 other places, it may not be.

13 It doesn't sound like that's what he did. He
14 tasked people to do that, and just to sit up there and
15 produce evidence through him or ask him about things and
16 have him continually say, I don't know, I mean, it's an
17 improper way to try to get those things into evidence.

18 You'll have plenty of opportunity -- you can
19 either recall other witnesses or put them up yourself,
20 but sort of impeaching him through the back door, and I
21 think it's an improper line of questioning, so --

22 MR. COCHRAN: Just to be clear, I'm provided
23 with these pictures. I didn't go take these pictures. I
24 didn't have an investigator go take these pictures. They
25 provided a case file to me. I'm talking about pictures I

RICHARD HOLMES - CROSS BY MR. COCHRAN

1 was given by them, and they're now complaining to me
2 about giving them up.

3 MR. SIMPSON: The crime scene witnesses who
4 have already testified provided us with photographs which
5 we provided to Mr. Cochran, not Detective Holmes. I find
6 it implausible that with all of the witnesses we have
7 heard all week, we are really sitting here and saying
8 that he did not have a thorough opportunity to go into
9 this picture. The people that took them have testified
10 about four of them.

11 THE COURT: I agree. You can recall those
12 witnesses in your case if you want to get those things
13 into evidence.

14 MR. COCHRAN: Well, at this point, the point
15 I'm trying to make now --

16 THE COURT: You want to cross-examine the
17 lead investigator on every single piece of evidence that
18 came in?

19 MR. COCHRAN: No, not at all.

20 THE COURT: That's what it certainly appears
21 that you're doing.

22 MR. COCHRAN: He said he was aware of the
23 crime scene photographs. He just testified to that in
24 front of the jury, and now he's unaware of one of the
25 photographs. That's important. That's impeachment.

RICHARD HOLMES - CROSS BY MR. COCHRAN

1 MR. SIMPSON: There are 500 photographs in
2 this case, all of which have been provided to us and
3 defense counsel.

4 THE COURT: Well, I've made my ruling. So do
5 you have any other questions you want to ask him?

6 MR. COCHRAN: Yes, sir.

7 THE COURT: Is it in a different line?

8 MR. COCHRAN: Yes. Totally different line,
9 yes.

10 THE COURT: All right. Bring the jury back
11 in.

12 (In open court, jury present.)

13 THE COURT: All right. You may resume your
14 cross.

15 MR. COCHRAN: Thank you, Your Honor.

16 BY MR. COCHRAN:

17 Q. You already testified Tilghman was compliant and
18 cooperative when you took his statement, correct?

19 A. Yes, sir.

20 Q. And he was forthcoming in that he told that you he
21 stabbed somebody?

22 A. Yes, sir.

23 Q. And he choked somebody?

24 A. Yes, sir.

25 Q. And he also told you that she started hitting him

RICHARD HOLMES - REDIRECT BY MR. SIMPSON

1 and he hit her?

2 A. Yes, sir.

3 MR. COCHRAN: No more questions.

4 REDIRECT EXAMINATION

5 BY MR. SIMPSON:

6 Q. Detective Holmes, we heard a lot of questions on
7 cross-examination, so I would like to talk to you about
8 that for a second.

9 A. Yes, sir.

10 Q. Do you go and look at the crime scenes for the
11 fibers and stuff like that?

12 A. No, sir, I do not.

13 Q. Who does that?

14 A. Crime scene technician.

15 Q. Crime scene tech, right?

16 A. Yes, sir.

17 Q. As lead agent, did you make sure crime scene came
18 out there?

19 A. Yes, sir.

20 Q. If somebody, I don't know, say, a lawyer had a
21 question about a crime scene --

22 MR. COCHRAN: Objection.

23 THE COURT: What's the basis?

24 MR. SIMPSON: Can we approach?

25 (Discussion held at sidebar.)

RICHARD HOLMES - REDIRECT BY MR. SIMPSON

1 BY MR. SIMPSON:

2 Q. In the process as lead agent, did you make sure
3 the crime scene was processed?

4 A. Yes, sir.

5 Q. Was it processed by you?

6 A. No, sir.

7 Q. Who was it processed by?

8 A. By a crime scene technician.

9 Q. And are they trained to look into things like
10 crime scenes?

11 A. Yes, sir.

12 Q. Are they trained to then come into court?

13 A. Yes, sir.

14 Q. Are they trained to testify about a crime scene?

15 A. Yes, sir.

16 Q. Are they trained to be questioned by lawyers to
17 testify about the crime scene?

18 A. Yes, sir.

19 Q. Have you ever been to school about how a cell
20 phone and telephone works?

21 A. No, sir, I have not.

22 Q. Are there people from phone companies that do
23 that, that you know of?

24 A. Yes, sir.

25 MR. SIMPSON: Your Honor, may I approach?

RICHARD HOLMES - REDIRECT BY MR. SIMPSON

1 THE COURT: For what?

2 MR. SIMPSON: I just want to show him an
3 exhibit.

4 THE COURT: Go ahead.

5 MR. SIMPSON: It will be brief.

6 BY MR. SIMPSON:

7 Q. I'm showing what's been entered as State's 106.
8 What is that?

9 A. It's a cell phone.

10 Q. Was that collected in this case?

11 A. Yes, sir.

12 Q. Were photographs taken in this case?

13 A. Yes, sir.

14 Q. Were people talked to in this case?

15 A. Yes, sir.

16 Q. Were those conversations recorded?

17 A. Yes, sir.

18 Q. And all of these things are compiled, correct?

19 A. Yes, sir.

20 Q. And once all of these things are compiled, where
21 do they go?

22 A. We compile them into a book that the lead
23 investigator handles.

24 Q. Okay. And where does it go from there?

25 A. It goes -- the book itself?

1 Q. Yes.

2 A. It's actually the book that I'm carrying right
3 now.

4 Q. Do all of these things that are all put together
5 sort of under your general supervision, do they come to
6 the prosecutor's office?

7 A. Yes, sir.

8 Q. And are they, to your knowledge, also shared in
9 their entirety with the other side?

10 A. Yes, sir.

11 Q. So if there was videos, phone records, pictures,
12 to your knowledge, they come to us and are shared with
13 the other side?

14 A. Yes, sir.

15 Q. In their entirety?

16 A. Yes, sir.

17 Q. Okay. Mr. Cochran put another question to you.
18 He asked -- you kind of smiled a little bit. He said
19 Tilghman wasn't self-serving at all when you talked to
20 him, is what Mr. Cochran asked you; is that correct?

21 A. Yes, sir.

22 Q. And you kind of gave a rather -- like, well --

23 MR. COCHRAN: Objection to editorializing.

24 MR. SIMPSON: I'll rephrase.

25 THE COURT: Please.

1 BY MR. SIMPSON:

2 Q. Your main role, participatory role, in this case
3 was the interview of Robert Kronsberg, correct?

4 A. Yes, sir.

5 Q. In that interview, is it true that he tried to
6 hold out to you him and his girlfriend were just doing
7 mushrooms together that night?

8 A. Yes, sir.

9 Q. Okay. Do you recall in the course of that
10 interview any sort of convenient pseudo-legal
11 terminology?

12 MR. COCHRAN: Objection. Leading.

13 BY MR. SIMPSON:

14 Q. Do you recall in that interview Mr. Kronsberg
15 using any legal terms?

16 A. Yes, sir.

17 Q. Those terms, would you categorize those as
18 self-serving?

19 A. Yes, sir.

20 Q. Do you recall Mr. Kronsberg saying that he tried
21 his attempt to end his life immediately?

22 A. Yes, sir.

23 Q. Could any of those comments be considered,
24 especially considering the situation he was in,
25 self-serving?

—RICHARD HOLMES - REDIRECT BY MR. SIMPSON—

1 A. Yes, sir.

2 Q. What date did you testify again that you got the
3 warrant secured for murder?

4 A. The warrant was signed on February the 11th by
5 Detective S.L. Williams.

6 Q. Is that after you had talked to Paul Polensky?

7 A. Yes, sir.

8 Q. Were you present in the interview with Paul
9 Polensky?

10 A. Yes, sir.

11 Q. Were you present in his testimony today?

12 A. Yes, sir.

13 Q. Mr. Cochran challenged you, I suppose -- having
14 heard the testimony of Paul --

15 MR. COCHRAN: Objection.

16 THE COURT: Where is your testimony?

17 MR. SIMPSON: I stopped. He was challenged
18 on what appropriate charge it was to bring. I'm asking
19 him --

20 THE COURT: Go ahead.

21 BY MR. SIMPSON:

22 Q. Having reviewed all the evidence in this case --

23 MR. COCHRAN: Objection. Can we approach?

24 (Discussion held at sidebar.)

25 MR. SIMPSON: Question withdrawn.

RICHARD HOLMES - REDIRECT BY MR. SIMPSON

1 BY MR. SIMPSON:

2 Q. As the lead detective -- and let's get to that
3 point. Do you do everything in a case yourself?

4 A. No, sir.

5 Q. But is it true that you make sure other people do
6 things?

7 A. Yes, sir.

8 Q. Do you make sure other people get those done?

9 A. Yes, sir.

10 Q. And once it's done, is all of that information,
11 including the people that did it --

12 MR. COCHRAN: Objection. Leading.

13 BY MR. SIMPSON:

14 Q. -- compiled?

15 A. Yes, sir.

16 Q. And, again, once it's all compiled, who is it
17 given to?

18 A. It's compiled and it's passed over to the
19 solicitor's office.

20 Q. And, to your knowledge, is all of that information
21 also shared with the defense?

22 A. Yes, sir.

23 MR. SIMPSON: I have nothing further, Your
24 Honor.

25 MR. COCHRAN: Briefly, Your Honor.

RECROSS-EXAMINATION

1
2 BY MR. COCHRAN:

3 Q. You said all that information is compiled and put
4 into a book, correct?

5 A. A binder, yes, sir.

6 Q. A binder, and you have that binder in front of
7 you?

8 A. Yes, sir.

9 Q. That binder is given to you before it's given to
10 the solicitor's office?

11 A. Yes, sir.

12 Q. So you got this handy binder to look through all
13 the evidence in this case?

14 A. Yes, sir.

15 Q. And it's sitting right in front of your face right
16 now, right?

17 A. Yes, sir.

18 Q. You're not an expert in the technology of how cell
19 phones work, right?

20 A. Yes, sir.

21 Q. You know how to read text messages, right?

22 A. Yes, sir.

23 Q. You know how to look at call logs, right?

24 A. Yes, sir.

25 Q. You know how to determine if somebody called

1 somebody, right?

2 A. Yes, sir.

3 Q. Tilghman spoke to you and he didn't have to,
4 right?

5 A. No, sir.

6 Q. He could have told you to go away, right?

7 A. Yes, sir.

8 Q. You would have had no choice but to go away,
9 right?

10 A. Yes, sir.

11 Q. And you said that you make sure -- you make sure
12 that everything gets done that you ask people to do,
13 right?

14 A. Yes, sir.

15 Q. Did you make sure that the surveillance video was
16 obtained?

17 A. The supervisor over who's my supervisor would make
18 sure that everything is compiled. We would look at the
19 book together, and he would make a determination once the
20 binder is completed.

21 Q. And you looked at the book with him?

22 A. Yes, sir.

23 Q. Did you determine -- did you make sure that the
24 surveillance video was taken?

25 A. Make sure that it was taken?

RICHARD HOLMES - RECROSS BY MR. COCHRAN

1 Q. Yes, obtained.

2 A. Yes. We were sure we retrieved the video from
3 Paisano's, yes, sir.

4 Q. But you didn't watch it?

5 A. No, sir.

6 Q. And you were sure that cell phones got collected,
7 correct, like this cell phone right here?

8 A. It was collected, yes, sir.

9 Q. And you have been sitting here for this entire
10 trial, right?

11 A. Yes, sir.

12 Q. You saw that cell phone get put into evidence,
13 right?

14 A. Yes, sir.

15 Q. Whose cell phone is that?

16 A. It doesn't have the owner on it.

17 Q. You don't know?

18 A. It doesn't have the owner.

19 MR. COCHRAN: No more questions.

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

21 All right, folks. Let me send you back to
22 the jury room while we plan out the rest of the day.
23 Again, don't begin deliberations or discussions about the
24 case. I'll have you back in a few minutes.

25 (Recess taken.)

SUSAN ERIN PRESNELL - DIRECT BY MS. BALDWIN

1 passions of the jury, but there is a reason why the
2 doctor needs to show them.

3 All right. Let's bring the jury in then.

4 (In open court, jury present.)

5 THE COURT: All right, folks. Welcome back.
6 We're going to now resume with the State's next witness,
7 which she is on the stand, so if we can go ahead and have
8 her sworn in and state her name.

9 SUSAN ERIN PRESNELL,
10 having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. BALDWIN:

14 Q. Dr. Presnell, what is your occupation?

15 A. I'm a forensic pathologist. I work down the road
16 at MUSC.

17 Q. And just explain for the jury what forensic
18 pathology is, please.

19 A. I believe everyone is getting a little more
20 familiar with forensic pathology with all the shows on
21 TV and all, but let me just back up and explain how
22 forensic pathology is a subspecialty of the broad field
23 of pathology.

24 Pathology itself is a study or a field of the
25 study of disease, or the diagnosis of disease. Most

SUSAN ERIN PRESNELL - DIRECT BY MS. BALDWIN

1 pathologists, if you go to your doctor and they do a
2 biopsy or the surgeon removes a portion of tissue, that
3 is sent to the pathologist. They look at it, look at it
4 under the microscope and diagnose is there cancer or no
5 cancer? Is there infection or not?

6 So I trained in general pathology, and then after
7 that training, I did a subspecialization in forensic
8 pathology, and that is where we're not just looking at a
9 piece of tissue or a portion of organ, we're looking at
10 an entire body of somebody that has passed. That
11 process, of course, is called the autopsy, and then
12 ultimately we're -- well, we evaluate for diseases as
13 well, but we also evaluate trauma, interpret trauma, and
14 ultimately determine a cause and manner of death, which
15 is illustrated in the autopsy report.

16 Q. Would you tell the jury about your education and
17 training, please.

18 A. I have four years of college at Clemson. I was a
19 microbiology major, and then after that I came to MUSC
20 for medical school, which was four years. So medical
21 school for four years, five years pathology residency,
22 and then a year additional in forensic pathology and then
23 the next year, 1999, was hired on at MUSC as faculty.

24 Q. And what are your duties?

25 A. Primarily forensic autopsies. I also do medical

SUSAN ERIN PRESNELL - DIRECT BY MS. BALDWIN

1 autopsies, and because we're an academic institution,
2 there is a large role of teaching.

3 Q. Approximately how many autopsies have you
4 performed or been involved with?

5 A. It's going to truly be an estimate. I know it's
6 over 2,000.

7 Q. And have you ever testified in court before?

8 A. Yes, and I would estimate over 100.

9 MS. BALDWIN: Your Honor, at this time we
10 move to admit Dr. Presnell as an expert in the field of
11 forensic pathology.

12 MR. COCHRAN: No objection.

13 THE COURT: All right. Folks, this witness
14 has now been qualified as an expert in the field of
15 forensic pathology. The same instructions that I gave
16 you on earlier witnesses who were qualified as experts
17 apply to this expert as well.

18 You're not required to give her testimony any
19 greater weight than you would any other witnesses. You
20 decide how much weight to give her testimony based on all
21 of the evidence that you hear throughout the trial.

22 Before I let her resume, I should have asked
23 you this already, but we had media coverage, obviously,
24 about the case. Did anybody happen to see any of the
25 media coverage that was either on last night or perhaps

SUSAN ERIN PRESNELL - DIRECT BY MS. BALDWIN

1 this morning, after you left court? No? All right.

2 Thank you so much. Go ahead.

3 BY MS. BALDWIN:

4 Q. Thank you, Your Honor.

5 Dr. Presnell, could you explain what happens
6 during an autopsy, what your procedure is.

7 A. Well, we usually receive case information from the
8 coroner. South Carolina is a coroner, state so a coroner
9 responds to a death scene and decides who will get
10 autopsied and who will do the autopsy. In this case, our
11 deputy coroner, Kelly Kraus, referred this case to us.
12 I'm jumping ahead.

13 We receive information, and then we'll do external
14 exam, so we're documenting the body as it arrives to us.
15 We'll document all of the injuries, we'll do diagrams and
16 photographs, then we'll do the internal exam component,
17 may or may not take samples of tissue to look at under a
18 microscope if it's needed. Also draw body fluids or
19 toxicology to test for drugs and alcohol. We may or may
20 not do ancillary procedures, like an X-ray or blood
21 cultures or something like that, and then we wait for all
22 the results to come back and put it all together for the
23 final report.

24 Q. And in this case, did you perform an autopsy on
25 Tasha Lucia?

1 A. Yes, we did, on February 11th, 2013.

2 Q. And what did you list as the cause of death?

3 A. For the cause of death, I have written down
4 cardiac and pulmonary disruption due to multiple stab
5 wounds to the chest and contributory or blunt force
6 injuries.

7 Q. And what does that mean, contributory?

8 A. That it may have played a role in the death.

9 Q. What was the manner of death listed?

10 A. The manner of death -- the manners of death that
11 we have to choose from are natural, accident, suicide,
12 homicide, and undetermined, and in this case it was
13 classified as a homicide.

14 Q. When you perform an autopsy, do you perform a
15 toxicology on the victim?

16 A. Yes. We did so in this case as well.

17 Q. And what were those results?

18 A. She had marijuana metabolite on board, Ibuprofen,
19 caffeine, and a blood alcohol level of .259.

20 Q. I'm going to show you State's Exhibit 71, 73, 77,
21 79, 81, 70, 83, 84, 85, and then 104 -- sorry, 103
22 through 105. Could you just tell me what those are.

23 A. Those are copies of photographs and the
24 diagrams -- or some of the diagrams that I did at the
25 time of autopsy.

SUSAN ERIN PRESNELL - DIRECT BY MS. BALDWIN

1 Q. And so when you do an autopsy, you document the
2 victim's injuries?

3 A. Yes.

4 Q. What other things do you document?

5 A. Well, if we see any scars, tattoos, any disease
6 processes, anything that we see, really.

7 Q. Clothing, perhaps?

8 A. Well, yes, if -- yes, clothing is described as
9 relevant.

10 Q. Is that documented in these photographs?

11 A. Yes. There are some photographs of the clothing.

12 Q. And when you mention diagrams, what are those
13 diagrams?

14 A. When a person comes to autopsy, we have a blank
15 naked person diagram, and then we'll draw on that the
16 findings that we're seeing on the external exam.

17 MS. BALDWIN: Your Honor, at this time, the
18 State would move to admit State's 71, 73, 77, 79, 81, 70,
19 then 83 through 85, and 103 through 105 into evidence.

20 THE COURT: All right. Over defense's
21 objection, they are admitted.

22 MS. BALDWIN: Thank you, Your Honor.

23 (State's Exhibit Nos. 70, 71, 73, 77, 79, 81,
24 83, 84, 85, 103, 104, and 105 were marked for
25 identification and admitted into evidence.)

SUSAN ERIN PRESNELL - DIRECT BY MS. BALDWIN

1 BY MS. BALDWIN:

2 Q. I would like to put State's 71 up in front of you.
3 Dr. Presnell, if you could, describe for us what injuries
4 we're looking at here.

5 A. If I could just take a moment to step back and
6 explain how I was going to approach -- I'm trying to
7 figure out the best way to present her injuries to y'all.

8 She basically has three categories of injuries:
9 She has blunt trauma, which I was going to describe
10 first; and then a strangulation component, which I'll
11 describe next; and then the stabbing component.

12 So, first, she has a number of blunt injuries.
13 This is differentiated from a sharp injury, like a cut or
14 a stab versus being hit with something broad and flat.
15 She has blunt trauma resulting in bruising. You can also
16 have blunt trauma resulting in laceration, or split of
17 the skin, so you can see -- I'm sorry. I don't know how
18 to use this smart board.

19 Q. Just touch the screen and mark on there.

20 A. As you can see, she has a contusion around the
21 left eye, and you'll see an additional picture that it
22 extends over on to the left side of the head. You'll see
23 appear in this front picture too a laceration, one there
24 and one there. Those are the splits to the skin.

25 She has contusion on the -- on her nose there and

SUSAN ERIN PRESNELL - DIRECT BY MS. BALDWIN

1 also across the bridge of her nose. I don't know if you
2 can appreciate it, but there is another contusion or a
3 bruise there. We have similar bruising around the right
4 eye, which extends on to the right side of the face.

5 Also, at the base of her nose there is a
6 laceration, and I believe the next picture will show the
7 contusion associated with that on the inside of the lip.

8 Q. State's 79?

9 A. All right. And so this is just lifting the lip
10 and you can see the associated contusion and hemorrhage
11 with that laceration. In this picture too, and I'm
12 jumping ahead a little bit, but I don't know if you can
13 appreciate on the screen, there -- and I think you can
14 see it best in this area. There is a bunch of tiny
15 pinpoint hemorrhages. We call them petechiae, but they
16 are a bunch of pinpoint hemorrhages, and we'll come back
17 to that concept with the rest of her injuries, her blunt
18 injuries.

19 Q. Show you State's Exhibit 73.

20 A. All right. So this is the left side of the head.
21 You can again appreciate the contusion on the left eye,
22 the laceration at the base, the side of the eyebrow, and
23 this large laceration here. The bruise -- actually --
24 well, you can see the bruise goes back toward the
25 hairline, also that there is bruising on the ear and the

SUSAN ERIN PRESNELL - DIRECT BY MS. BALDWIN

1 back of the ear as well. While we have this picture, I
2 think you can appreciate there is bruising along the
3 neck, and those darker kind of linear marks inside are
4 abrasions or scratches, and even on the chest you can see
5 the contusions right here.

6 Q. And do you -- can you tell what sort of instrument
7 would have caused the laceration on the head?

8 A. Well, I classified it as a laceration or a chop
9 type injury, so laceration meaning something blunt hits
10 the skin and causes it to split versus a chop injury,
11 which is more of -- it's kind of a combination of sharp
12 injury, sharp and blunt injury together.

13 Q. Would something like a hammer cause this type of
14 injury?

15 A. A broad hammer could cause this type of injury,
16 yes.

17 Q. And let's go back to State's 71, and she'll clear
18 it for you. The laceration underneath her nose, what
19 sort of -- what could cause that?

20 A. Just any type of blunt object. It doesn't have a
21 specific pattern associated with it.

22 Q. Okay. So I show you State's 77.

23 A. This is demonstrated again on the left side of the
24 head, but the contusion extends back behind the ear.
25 Also, I did mention that -- well, part of our autopsy is

SUSAN ERIN PRESNELL - DIRECT BY MS. BALDWIN

1 to examine the brain, and so when we reflect the scalp
2 forward to gain access, there are underlying hemorrhages
3 associated with these contusions that we can see on the
4 scalp, and then again on the left side of the neck, this
5 large area, contusion and associated abrasions within it.

6 Q. You said those are abrasions or scratch marks?

7 A. Scratches, yes.

8 Q. And you mentioned there was hemorrhaging inside of
9 her head?

10 A. Well, let's do the right side of the face, and
11 then I'll talk about the inside of the head again.

12 Q. Put up State's 81.

13 A. Here the -- the hemorrhage on the right
14 periorbital, around the right eye, extends on to the
15 cheek, actually also involves the ear. We don't have it
16 behind the ear like we did on the left-hand side, but it
17 does involve the right ear.

18 These are a little vague in this picture, but
19 there is bruising along the jawline on the right side,
20 and then we have some more abrasions on the right -- high
21 right neck.

22 Q. Similar to the abrasions on the other side of her
23 neck?

24 A. Similar -- yeah, they're nonspecific.

25 Q. Any idea what would have caused the bruising

1 around her eyes?

2 A. Well, this is from blunt trauma.

3 Q. So is there anything else you want to point out
4 about the external injuries?

5 A. On her head?

6 Q. Yes.

7 A. Well, so we refer to the head, reflection of the
8 scalp, and there is hemorrhage on the scalp underlying
9 some of these injuries. And as far as looking inside the
10 cranial vault, or inside the skull, she does have a
11 little bit of subarachnoid hemorrhage on the right.
12 Subarachnoid is not hemorrhage in the brain, it's on top
13 of it, and it's real thin.

14 These head injuries aren't necessarily fatal
15 injuries. They certainly could have caused a loss of
16 consciousness, but they're not necessarily fatal.

17 Q. I show you -- is that all?

18 A. So next we're going to talk about the
19 strangulation component.

20 Again, as I pointed out earlier, there is
21 petechiae on her face. Those are little pinpoint
22 hemorrhages, and these are consistent with a type of --
23 or consistent with strangulation. We also see the
24 bruising on her neck, and she also had some hemorrhages
25 in the neck muscles underneath.

SUSAN ERIN PRESNELL - DIRECT BY MS. BALDWIN

1 The thing that kind of suggests strangulation even
2 more so are the petechiae, and the reason is, to
3 understand why petechiae, or those pinpoint hemorrhages,
4 develop. What happens is you have two sets of vessels;
5 your arteries taking blood up to your head, and your
6 veins bringing blood that's used all the oxygen back to
7 your heart to get reoxygenated.

8 The arteries are real elastic. The veins are easy
9 to compress, so if you have some type of strangulation
10 with compression on the neck, a lot of times, especially
11 if a person -- a victim isn't necessarily still, there
12 will be intermittent compression.

13 The veins are easiest to compress, and so while
14 they're compressed, the blood can still go up to the head
15 through the arteries, but it can't exit the head
16 through -- because the veins are compressed. Does that
17 make sense? So that pressure builds and the little
18 pinpoint capillaries and ventricles can rupture, so those
19 are what is causing those petechiae. So we -- so I
20 concluded there was also that component.

21 Now, did the strangulation -- can I say that the
22 strangulation killed her? I can't. She might have been
23 strangled and the strangulation component was over and
24 she was not deceased, or it would have been the same
25 finding had the strangulation ended her life, so there is

SUSAN ERIN PRESNELL - DIRECT BY MS. BALDWIN

1 a strangulation component. I don't know if it was the
2 actual cause of death or just another component to this
3 death.

4 Q. Would you like to go on to the next component?

5 A. The next component is the stab wounds.

6 Q. I can put up the diagrams for you.

7 A. I don't know which number it is.

8 Q. Just briefly, I would like to put up State's 70.
9 When you perform an autopsy, do you do -- you take
10 X-rays?

11 A. Yes. Not all the time, but when indicated, yes.

12 Q. If there is perhaps a weapon still in the body, if
13 somebody is shot and they have a bullet within them,
14 would you take an X-ray?

15 A. Yes.

16 Q. In this particular case, you took an X-ray
17 because -- why?

18 A. Well, there was a knife there, and we received her
19 with the knife still in her. This is the front of the
20 body. This is her back, and obviously you can see the
21 knife in place.

22 Q. And I'll put up for you State's 104.

23 A. Okay. So this is documenting the blue marks. The
24 blue marks are contusions, or blunt trauma, where we saw
25 some of those in the pictures later on, and the rest of

SUSAN ERIN PRESNELL - DIRECT BY MS. BALDWIN

1 these pictures are stab wounds or sharp force injuries,
2 and I just want to take a minute to give the overall
3 picture and then more specifically of the individual
4 ones, if that's what you would like to do.

5 Overall, she has 15 sharp force injuries to her
6 chest. All right? Four of those sharp force injuries
7 are cuts, are incisions, meaning -- and the difference
8 between a stab and an incision, or a cut, is a cut is
9 longer on the skin of body than it is in depth through
10 the body, versus a stab. It's deeper in the body than it
11 is width on the skin. All right?

12 So she has four incisions, and those would be
13 right here, right there -- excuse me. She has -- there
14 and there. Those are -- so they're superficial. They
15 don't go into the chest cavity, so that leaves 11 stab
16 wounds. Of the 11 stab wounds, two of them, this --
17 sorry, that one and this one, enter the breast tissue and
18 do not go into the chest cavity.

19 So if you could -- if you could put up the other
20 stab wound diagram?

21 Q. State's 103?

22 A. Yes. So that leaves nine remaining stab wounds
23 that enter into the chest cavity. There are six that
24 enter the right chest.

25 Q. So that help you a little bit better?

SUSAN ERIN PRESNELL - DIRECT BY MS. BALDWIN

1 A. Yes. That's good. And, you know, you can see
2 they're kind of grouped together, but if I drew a line
3 down the midline, there is six that are entering the
4 right chest cavity, there is one that's in the middle,
5 and, by the way, G is the one that the knife was in.

6 Q. Which one is G?

7 A. (Indicating), and two on the left, so six, one in
8 the middle, and two on the left. The knife wound paths
9 kind of -- they crisscross when they go in, so I really
10 just have a list of what all they went through. The
11 right lung has three lobes to it, so the right lung has
12 stab wounds through the upper lobe several times, the
13 middle lobe several times, and the lower lobe several
14 times.

15 The heart has stab wounds through it several
16 times, including in the front and out the back. The left
17 lung has two lobes total, normally, and in this case,
18 there's multiple stab wounds -- or two stab wounds to the
19 upper lobe and two stab wounds to the lower lobe, which
20 also stab wound from the middle through the esophagus,
21 and there's also stab wounds, several, through the
22 diaphragm and into the liver.

23 Of these stab wounds, looking inside the body, the
24 knife actually disrupts or causes injury to the side and
25 back seven times on the right and four times on the left,

SUSAN ERIN PRESNELL - DIRECT BY MS. BALDWIN

1 and of those 11 times that it reaches on the side or the
2 back, it actually exits the back of the right -- the
3 right back twice and the left back once.

4 Q. Okay. I'll put up for you State's 105.

5 A. This brings us back to blunt injury. These
6 colored green areas are more contusions, or bruises. You
7 can see she has several -- and here -- this always helps
8 me, right and right, and so left, and left is in the
9 middle. So you can see contusions on the back of the
10 right arm, on the inside of the right arm, and then also
11 on the inside of the left arm and the outside of the left
12 arm.

13 There are also -- and I don't know if you can
14 appreciate the red marks on the back of the left hand and
15 also on both elbows. Those were scratches, scrapes and
16 scratches. She has a number of contusions also on her
17 legs as well, as you can see.

18 I do want to point out, though, she does not
19 have any sharp force injuries to her hands or her arms.
20 These are blunt injuries, or scrapes, so as far as
21 occasionally when someone gets attacked with a knife,
22 they may have defensive type injuries where the knife
23 might hit their arm or their hand. In this case there
24 were none of those.

25 Q. If someone was lying defenseless, would that be a

SUSAN ERIN PRESNELL - DIRECT BY MS. BALDWIN

1 reason why they didn't have any sharp wounds on their
2 arms or hands from a knife?

3 A. Yes.

4 Q. You mentioned earlier that you couldn't say for
5 sure that the strangulation didn't cause the death.

6 A. Well, okay. So this is what I'm faced with. I
7 have blunt trauma that may or may not have caused
8 unconsciousness, but it's not a fatal injury. I have a
9 strangulation, asphyxia with strangulation, that there's
10 no -- and there isn't something that I can see at the
11 autopsy that says yes, that was -- it's there and it
12 definitely can cause death.

13 But what I then have next is multiple stab wounds
14 to all lobes, multiple wounds in the heart, down to the
15 liver, through the esophagus, out the back that are
16 definitely non-survivable, fatal injuries. That is why,
17 in this case, I classified the cause of death as the stab
18 wounds to the chest, and blunt head trauma is
19 contributory. And I didn't actually put the asphyxiation
20 component in there, but that certainly could have played
21 a role as well.

22 Q. If someone said they heard the victim gasping for
23 air and then this person was stabbed, would that mean the
24 person was alive after the strangulation?

25 A. Well, yeah. If they were gasping for air, yes.

SUSAN ERIN PRESNELL - CROSS BY MR. COCHRAN

1 Q. They were probably alive?

2 A. Yes.

3 MS. BALDWIN: Court's indulgence.

4 Dr. Presnell, I don't have any further
5 questions for you. Please answer any of Mr. Cochran's.

6 CROSS-EXAMINATION

7 BY MR. COCHRAN:

8 Q. Dr. Presnell, did you meet with law enforcement in
9 this case?

10 A. I met with the solicitor, I met with y'all, and --
11 I'm seeing if somebody attended the autopsy. There was a
12 crime scene investigator, Sarah Gladwell, that was there
13 at the time of the autopsy from Charleston city.

14 Q. And she was there to collect evidence?

15 A. Yes.

16 Q. Did you ever meet and consult with detectives in
17 this case?

18 A. No, not that that I recall.

19 Q. And did you visit the crime scene yourself?

20 A. No.

21 Q. And would it be helpful to, in this process --
22 you're a forensic pathologist, so you're determining the
23 manner and cause of death, correct?

24 A. Yes.

25 Q. So talking to detectives, visiting the crime

1 scene, would be helpful in that process?

2 A. It's always helpful, although in this case I don't
3 have a doubt as far as manner of death.

4 Q. Right. But in terms of cause of death,
5 strangulation was a contributing factor?

6 A. It may have been, yes.

7 Q. May have been. And you cannot say to a reasonable
8 degree of medical certainty that stabbing was, in fact,
9 the cause of death in this case?

10 A. Well -- so looking at my findings only, I cannot
11 exclude the possibility that she was not deceased or
12 dying when she was stabbed.

13 Q. So based on your medical examinations in this case
14 and based on your training and experience, strangulation
15 could have been the cause of death in this case?

16 A. That's a possibility.

17 Q. And it's the same with stabbing. It's a
18 possibility?

19 A. Well, we definitely know that the stab wounds are
20 non-survivable fatal injuries, so if she was not deceased
21 at the time of the stab wounds, that would be the cause
22 of death.

23 Q. So you cannot say to a reasonable degree of
24 medical certainty that she was not deceased at the time
25 of the stabbing?

SUSAN ERIN PRESNELL - CROSS BY MR. COCHRAN

1 A. I cannot say she was -- wait --

2 Q. There is a couple negatives in there, but --

3 A. Yes. I don't know if she was deceased or dying or
4 completely going to be okay at the time of the stabbing.

5 Q. So she may have been dead at the time of the
6 stabbing?

7 A. There is a possibility.

8 Q. And there are, I guess, 11 stab wounds, 4 were
9 lacerations?

10 A. So there's 11 stab wounds and 4 are incise wounds,
11 or cuts.

12 Q. And you noted that there were no lacerations or
13 sharp object injuries to her forearms or her hands?

14 A. Right. There is no lacerations or sharp force
15 injuries on her arms or hands.

16 Q. And that indicates she was not holding her hands
17 up while she was being stabbed, right?

18 A. That, or she didn't get -- or that it didn't
19 strike her in her arms.

20 Q. So there is a conclusion that could be reached
21 from that that she was lying still when stabbed?

22 A. She may have been.

23 Q. And a defensive wound -- you talk about defensive
24 wounds, like a defensive wound to the back of the wrist,
25 or some kind of laceration or puncture or injury to the

1 back of the wrist to be a defensive wound?

2 A. Yes.

3 Q. And if we could zoom in on the right hand, now --
4 can you zoom out a little bit so we can get the right
5 hand in there? So we've got green and we've got red.
6 Red are cuts, or lacerations, of some sort.

7 A. So also, let me back up since we're going into the
8 broad concept of defensive injuries.

9 When I was describing defensive injuries, there
10 was no sharp force injuries, no cuts or stabs on her
11 hands or arms, I'm referring to no defensive injuries
12 from the stab, the stabbing. She does have green, which
13 are the contusions, or bruises, blunt trauma, and the red
14 are scratches, where is the -- it's not a sharp injury.
15 It's not necessarily from blunt trauma, it's from a
16 scraping. So she does have a lot of bruises in those
17 areas, so I'm not saying that she would definitely have
18 defensive injuries from the beating.

19 Q. But in terms of the colors between green and red,
20 red is scratches?

21 A. Yes, red is scratches.

22 Q. And green is contusions?

23 A. Yes.

24 Q. And most people call contusions bruises?

25 A. Yes.

SUSAN ERIN PRESNELL - CROSS BY MR. COCHRAN

1 Q. And I believe in your report, you note that the
2 contusions are not green in real life, they're reddish,
3 purple?

4 A. Yes. I'm trying to differentiate with the
5 highlighters that I had.

6 Q. So if I could point your attention to her right
7 hand on the right thumb and on the right -- in the
8 knuckle area of the pinkie and ring finger, there were
9 contusions noted?

10 A. Yes.

11 Q. And that's -- on the knuckles, there were reddish
12 purple bruising?

13 A. Yes.

14 Q. And on the left hand, on the index knuckle, there
15 is a large reddish purple contusion, correct, on the left
16 index knuckle?

17 A. Yes.

18 Q. And on the -- and that's on the left index knuckle
19 of the middle and the base of the left index finger?

20 A. Uh-huh.

21 Q. There are two contusions?

22 A. Yes.

23 Q. You noted that petechial hemorrhaging was found in
24 her face, and it was also found in her eye, correct?

25 A. Yes. Sometimes it's easier to see petechiae in

1 the whites of the eyes because they're white, but the
2 whole process is the same, but she had them on the face
3 and her eyes.

4 Q. And those are from -- those are the result that
5 are visible from strangulation?

6 A. Yes. That's related to the strangulation;
7 however, she does have larger hemorrhages in some
8 portions of the eyes, which could be from the blunt
9 trauma that you see around the eyes.

10 Q. And when you refer to blunt force trauma, you're
11 not -- not all blunt force trauma is caused by a foreign
12 object. Blunt force trauma could be caused by a hand,
13 right?

14 A. Oh, yes, a hand, a floor -- I mean, any blunt
15 surface versus a sharp knife.

16 Q. And you did toxicology in this case, and she had
17 marijuana in her system?

18 A. Yes.

19 Q. And she had a blood alcohol of .259?

20 A. Yes.

21 Q. And that is a high --

22 A. That is high.

23 Q. And a person with a .259 would be considered
24 heavily intoxicated?

25 A. Depending on a person's tolerance for alcohol,

SUSAN ERIN PRESNELL - REDIRECT BY MS. BALDWIN

1 they may or may not compensate, but this is a high degree
2 of alcohol intoxication.

3 Q. So this is a high degree of alcohol, and if a
4 person has a higher tolerance, some people can, for
5 instance, walk around with that --

6 A. Absolutely.

7 Q. -- level of intoxication?

8 A. Absolutely.

9 Q. It would put some other people on the floor.

10 A. Yes.

11 Q. You did just basic height and weight in this case?

12 A. Yes.

13 Q. And Ms. Lucia was 71 inches?

14 A. Yes.

15 Q. So that's five foot eleven?

16 A. That is.

17 Q. And she was 183 pounds, correct?

18 A. Yes.

19 MR. COCHRAN: No more questions, Your Honor.

20 THE COURT: Redirect?

21 MS. BALDWIN: Just briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. BALDWIN:

24 Q. Dr. Presnell, if someone was heard gasping for air
25 after they were strangled, would that mean they were

SUSAN ERIN PRESNELL - RECROSS BY MR. COCHRAN

1 alive?

2 MR. COCHRAN: I would object to that
3 question, Your Honor, in terms of speculation, going
4 outside what she's testifying to.

5 THE COURT: Overruled.

6 THE WITNESS: Gasping to me would suggest
7 that they were alive.

8 MS. BALDWIN: No further questions.

9 THE COURT: Recross?

10 RECROSS-EXAMINATION

11 BY MR. COCHRAN:

12 Q. Just to reiterate, did you speak with detectives
13 or anybody with regards to this case until you met with
14 myself and the solicitor?

15 A. No. Well, the coroner, but -- no.

16 MR. COCHRAN: No more questions, Your Honor.

17 THE COURT: You may step down. All right.
18 State have any other witnesses?

19 MS. BALDWIN: No, Your Honor. At this time
20 the State rests.

21 THE COURT: All right.

22 Well, folks, you've heard all of the evidence
23 you're going to hear from the State at this point, so we
24 have some legal matters that we need to take up outside
25 of your presence, so I want you to go back to the jury

1 photos or tangible items like this. That's evidence.
2 Lawyers talking is not evidence. So keep that in mind.

3 Now, our rules provide that because the
4 defendant did not present any testimony or call any
5 witnesses or offer any evidence, then he has the right to
6 close. So you will hear from the State first, and then
7 you will hear from the defense attorney last.

8 So, Mr. Simpson, if you are ready, you may
9 begin.

10 MR. SIMPSON: We are, Your Honor. Thank you.

11 Ladies and gentlemen: First and foremost,
12 thank you. Thank you on behalf of the community. Thank
13 you on behalf of the State.

14 We're here at the end of a hard and difficult
15 week, and like you, I'm tired. It's been rough. Any
16 trial is always hard and difficult. It's hard and
17 difficult for people in your situation. It's difficult.
18 We take you out of your life, we take you away from your
19 families, away from your jobs, and that's always tough.

20 It's been, though, in this particular case,
21 particularly hard and difficult, though, hasn't it?
22 Because in this case you have to look at, hear, and
23 actually see evidence that because of the decisions,
24 which I will come back to again and again, because of the
25 decisions of Mr. Kronsberg, this was a very dark crime, a

1 grotesque crime, and so the evidence we have to review is
2 dark and grotesque.

3 It's hard and difficult. It's hard and
4 difficult because, as I'm sure you've been keenly aware
5 all week, all of this process that we've gone through has
6 taken place in front of two, two, grieving families, and
7 two families that our hearts go out to in that moment,
8 and that's hard and that's difficult.

9 It's been hard and difficult emotionally,
10 emotionally because anyone who sits where you sit today
11 and is asked to judge another human being, because we are
12 human beings, it's emotionally hard and emotionally
13 difficult. But, ladies and gentlemen, in just a little
14 while now, you will go into a room, and, at the end of a
15 hard and difficult week, I submit to you now that I ask
16 you to make what is logically and legally a very easy
17 decision. A hard and difficult week, followed by a
18 conclusion that I ask you to reach that logically and
19 legally isn't hard and difficult.

20 We know at this stage of the trial what the
21 essence of what you're going to be asked to determine is,
22 and that is whether or not Robert Tilghman Kronsberg is
23 guilty of murder or guilty of voluntary manslaughter.

24 We see that. We know that, and so it's
25 important that I again have this conversation with you

1 sort of, I would say, somewhat academically. It's
2 important that we start with that, because it's important
3 that you guys develop in the next minutes a pretty keen
4 understanding of what that means. What does murder mean
5 and what does voluntary manslaughter mean?

6 Under the law, as you will hear from the
7 judge -- and I just remind you that what I say, of
8 course, is the law, but what the judge says the law is,
9 is what the law is. He's the source, but I'm going to
10 give you what he's going to say and explain it.

11 And we start with what is the clear choice:
12 What is murder? Well, being the most serious offense
13 under the law, murder is quite directly defined. It's
14 not a long definition. Murder is the killing of any
15 person with malice aforethought, either expressed or
16 implied.

17 The killing of any person: I don't think,
18 not at this point, I have to explain this to you, and so
19 we have sort of the first concept that's going to be
20 important, and that's that word we see there, malice.

21 So what is malice, and what isn't malice?
22 Malice can be all sorts of things, and, as you'll hear,
23 you see the quotation marks, because I think you'll hear
24 this directly given to you by Judge Young. Malice is
25 hatred, ill will, or, even, hostility, toward another

1 person. It is simply an act that is done intentionally,
2 an act that is done by a decision with an intent to
3 inflict an injury, and, dear God, the injuries.

4 This is a great concept. It's a concept that
5 the defense, I believe, is going to stand up before you
6 and try to confuse you on. How long does a person, to be
7 guilty of malice, have to have this intent in their mind?
8 How long does a person, to be found to have malice, have
9 to think about and plan and look at this quote that you
10 will get through Judge Young?

11 Malice aforethought does not require that
12 malice exists for any particular amount of time before
13 the act is committed. A person must only decide to do
14 harm to another and then do the harm. It can happen in a
15 second, and what this quote tells you is that
16 premeditation, despite what you might have seen on TV, is
17 not required, and watch as the defense gets up and tells
18 you, Guys, he didn't plan this.

19 Legally not required. Malice aforethought
20 does not require that malice exist for any particular
21 period of time. It can happen in a moment. It can
22 happen in a second.

23 So what is murder? Put simply, murder is
24 when a person develops hostility, ill will, toward
25 another person, even in a second, even in an instant, and

1 then makes a decision, even in a second, even in an
2 instant, to act on that and hurt them and in so doing
3 inflicts an injury that causes death.

4 So what must you go back into that room and
5 find to reach a decision that the defendant is guilty of
6 murder? You must merely find that at some point, any
7 point in this God awful succession of violent events,
8 that at some point Tilghman Kronsberg made a decision to
9 harm Tasha Lucia and that decision resulted in her death.
10 That is it.

11 So voluntary manslaughter. Let's begin,
12 before we talk about what voluntary manslaughter is and
13 talk about what it is, not -- because this is the
14 criminal defense's favorite fallacy. This is what
15 Mr. Cochran is going to get up and try to tell you
16 applies, and it doesn't, and we'll break it down, that if
17 a person was angry, it can't be murder. It's got to be
18 voluntary manslaughter.

19 Let me say something to you that is almost so
20 obvious and silly I feel sort of ridiculous saying it out
21 loud in this setting: People who commit killings are not
22 happy. People that commit killings, every killing, are
23 angry. If all that was required of them to show you to
24 get to voluntary was that the defendant was angry, what
25 would be murder? There would be no such thing. Every

1 killing is committed by somebody that is angry, so don't
2 fall into that trap.

3 Having told you what voluntary manslaughter
4 is not, let's talk about the specific language of what
5 you will hear that voluntary manslaughter is. The
6 defendant took the life of another person in a sudden
7 heat of passion based on sufficient legal provocation,
8 and I'm getting ahead of myself, but is there a single
9 one of you sitting here today thinking right now, Oh,
10 yeah. That was sufficient provocation?

11 What voluntary manslaughter recognizes is
12 that in exceedingly rare circumstances, an ordinary,
13 reasonable -- and, boy, we're going to come back to that
14 word a lot -- an ordinary, reasonable person might
15 temporarily, for a moment, lose impulse control --
16 impulse, a swing of the fist, maybe; sometimes the pull
17 of a trigger -- temporarily loses impulse control under
18 reasonable circumstances.

19 We go on -- you're going to get some
20 instructions on voluntary manslaughter now, some
21 guidance. We'll talk about each one.

22 Heat of passion: The sudden heat of passion
23 must be the type that would make an ordinary person,
24 ordinary person, reasonable person -- we'll come back to
25 this -- an ordinary person unable to clearly reflect on

1 his actions, and with uncontrollable impulse, temporary,
2 brief, to do violence. And here we are. The defense
3 might pull a little -- try to confuse you on this as
4 well.

5 The question here is not just whether
6 Tilghman Kronsberg snapped or lost control. He didn't,
7 but we'll get to that, but the question is whether or not
8 a reasonable person placed in this situation would have
9 done so?

10 Sufficient provocation, again, these words
11 come up again. Sufficient legal provocation must be the
12 type that would make a person of ordinary reason and
13 caution become enraged and lose control temporarily. Did
14 Tilghman lose control temporarily, or did he repeat,
15 stop, repeat, stop, repeat, stop, repeat the violence,
16 escalating, escalating, over and over? Is this just a
17 momentary loss of impulse control?

18 You'll also get an important charge that
19 comes back to you on the facts the law recognizes as a
20 bright line, of course, that words alone are never enough
21 for you to say, Yeah, that was enough provocation. Words
22 are never enough, and what was this crime about?

23 Getting back to the temporary impulse control
24 aspect of this, if at any point during this succession of
25 events if you find there was enough time between the

1 provocation, if there was any -- there wasn't; we'll talk
2 about that later -- but even if you find there were, if
3 at any time during this succession of events you find
4 that -- again, we have this reasonable person, right,
5 that we're thinking about -- that the passion of a
6 reasonable person would be able to cool, the killing is
7 not voluntary manslaughter. That is a quote you will
8 hear from Judge Young.

9 If at any point Tilghman, acting as a
10 reasonable person, which he did not do throughout any of
11 this, but if you find at any point during this horrible
12 crime Tilghman could have stopped and had the time to
13 think about what he was doing, it is not voluntary
14 manslaughter. It is murder.

15 We see this thing cropping up. You've
16 already seen it several times, this reasonable person.
17 Who gets to decide what is reasonable or not in this
18 setting? You do. The judge isn't going to tell you, In
19 this case, this was reasonable; this was not. No.

20 We decided hundreds of years ago that
21 lawyers, judges, aren't good at this. We need you. You
22 are the community. We need to select 12 random people to
23 come in and make a statement of what is reasonable and
24 not. You decide this.

25 And so we begin these mental somersaults,

1 these absurd things that you have to determine to find
2 voluntary and not murder. Tilghman didn't lose control.
3 We'll talk about that, but even if you believe that he
4 did, you have to find that such a loss of control was
5 reasonable. You also have to find that the actions of
6 Tasha Lucia, if you believe there even were such
7 actions -- there weren't; we'll get to that -- were such
8 that any reasonable person would have suddenly succumbed
9 to violence. You have to find that at no time during
10 this horrible, progressing series of violent events would
11 a reasonable person had a moment to cool off. These are
12 the assertive findings that you have to make to determine
13 he was guilty of voluntary and not murder.

14 Before we move on to the facts, let's step
15 back for a second because we've got through a lot. Let's
16 step back.

17 Forgive me. I'm sorry. On the element of
18 cooling off, no cooling off in this case. No period of
19 time when Tasha runs for the door. Listen to Tilghman
20 Kronsberg's confession. When Tasha runs for the door, he
21 couldn't have cooled off? No period of time between
22 several chokings when she looks at him, face to face, and
23 says, I love you?

24 No period of time to cool off when he
25 decides -- yes, decides -- that the choking, sure, that

1 might work. Let's grab a hammer, and, finally, a point
2 of time I'm going to freeze and we're going to come back
3 to several times, where Tilghman is in the kitchen. What
4 does he say he's doing in the kitchen, from his own
5 words? Gathering his thoughts. Gathering his thoughts,
6 the polar opposite of heat of passion. Gathering his
7 thoughts, the polar opposite of having no control, no
8 control, of one's impulses. Gathering his thoughts, and
9 where do these thoughts take him? What conscious
10 decision does he make at the end of these thoughts? To
11 grab a 15-inch butcher knife. No cooling off period.
12 Can I sit down now?

13 We backtrack, and this will be the end of the
14 discussion on the law, and go back. No somersaults here.
15 No absurd leaps of logic here. To find the defendant
16 guilty of murder, you must merely find at some point, any
17 point, during this whole string of events Tilghman
18 Kronsberg made a decision to do harm to Tasha Lucia and
19 that decision resulted in her death.

20 This will stay up. Before getting into what
21 the evidence proves really happened to Tasha Lucia,
22 before getting into facts, I want to discuss for a few
23 moments fiction, and I want to remind you that before you
24 even began this enterprise, Judge Young looked at you,
25 and he took great pains to explain, and, luckily, he did

1 it again, just a few moments ago, that what lawyers say
2 is not evidence. What I say is not evidence. What
3 Charles says is not evidence, so you have to ask
4 yourself, what did you hear and what does this show?

5 After listening to Mr. Cochran's opening
6 statement, his detailed opening statement to you, I hope
7 you understand the importance and why Judge Young
8 explained that to you twice. Because what you got, at
9 the beginning of this trial and what in a few moments you
10 will get again, is fiction, and it's fiction that
11 crumbles. It's fiction that started falling apart from
12 our first witness. It's fiction that all of them and all
13 of you heard decimates.

14 I like Mr. Cochran. I've worked with him for
15 some time, but he has a job to do, a job demanded of him.
16 Don't fault him for it, but recognize it, and in carrying
17 out that job, he has stood before you, right at the
18 beginning of this trial, and told you things that right
19 now no one utilizing common sense could possibly believe.
20 He told you a story, and what a story. Let's sum up that
21 story in its main points.

22 He says he isn't trying to do this, but he
23 is. A defense, a technique, that is ugly but timeless:
24 Blame the victim. Blame the victim. She deserved it.
25 Over and over again, trying to distract you from the

1 awful conduct of Tilghman, and over and over get you to
2 focus on the victim. The old sexist strokes of the
3 deranged female and the calm, poor Mr. Tilghman with no
4 other choice.

5 But as we heard evidence and as witnesses
6 begun, that began to collapse immediately, and it starts
7 very much at the beginning. One of the first things
8 Mr. Cochran described to you, and I'm sure he will begin,
9 but here you had Tilghman, happy, laid back, having a
10 great day. He was fine. He was fine, and then there's
11 Tasha, enraged, intoxicated, angry, delirious. But from
12 the beginning, this began to crumble.

13 You see, you heard from several people that
14 this relationship was somewhat volatile and that these
15 breakups had happened before, and you know now how each
16 of them would react. Tasha, gregarious, loved, lots of
17 friends. They would break up, break up, and she would go
18 hang out with her friends, have a good time, like she was
19 doing on this day.

20 How did Tilghman react on the times before
21 when they would break up? What did Paul tell you? If I
22 can't have Tasha, I might just kill myself. When they
23 would break up before, there is Tilghman, saying it,
24 sharing with his friends. If we're going to be broken
25 up, I'm going to do something extreme.

1 Before this even happened, that sentiment was
2 expressed, and so right away this theory of this day
3 starts falling apart, and then you heard from Tasha's
4 friend. What was Tasha doing all day? She was being
5 Tasha, full of life, laughing, having fun with friends.

6 What was Tilghman doing all day? Stuck at
7 work. What was he thinking about? Tasha, out with her
8 ex-boyfriend. She wasn't, you heard that, but you also
9 heard that he thought she was. And the defense wants you
10 to believe the unbelievable, that Tilghman was fine, that
11 he wasn't sitting there stuck at work, stewing about this
12 all day. It was Tasha that was mad. Ridiculous. It
13 begins to fall apart.

14 Charles, Mr. Cochran, stood before you and
15 continued, continued with this fiction, again, not in
16 evidence. Tilghman didn't want to see Tasha that night.
17 That was the last thing he wanted. Where does he go?
18 After Paul looks at him, and says, Hey, dude. Take my
19 keys. Just go to my house. You don't need to go see
20 her, where does he go?

21 Straight to her house. Didn't want to see
22 her? He goes straight to her house. When she wasn't
23 there, what does he do? Laney Childers, first witness
24 you heard, Tasha, lighthearted, having fun, until a
25 communication comes from him. She thinks it was a phone

1 call. Could have been a text. Could have been a
2 Facebook message. We heard they would communicate
3 sometimes that way, but what the first witness told you
4 is Tasha is having fun. She's laughing, gets a
5 communication from the defendant, and then it changes.

6 I got to go. I got to go home.

7 Mr. Cochran looked you in the eyes and said
8 he didn't even want to see her. Are you kidding me?
9 Doesn't the evidence show otherwise? The fiction
10 continues.

11 Mr. Cochran: Defendant got home. Here comes
12 Tasha, the madwoman, enraged, attacks him. No, no, not
13 under the evidence.

14 Paul: I saw Tilghman that night. No injury.
15 He didn't look like he had been in a fight. He was calm.
16 There were no red flags in his voice.

17 Neighbor sees him the next day, walking to
18 the store. Walking fine. I didn't see any injuries on
19 him.

20 Finally, as to the point of the injuries,
21 you'll see them. You got pictures. There are injuries
22 on the defendant, and it is very difficult to picture in
23 your head how those injuries came to be, because what
24 kind of injuries are they? The injuries of a woman
25 laying on the ground, being choked, her life slowly going

1 out of her, in desperation scratching at the chest and
2 shoulders of the defendant.

3 Injuries showing a punch? No, no. We've
4 seen it. It was hard to see, what a punch looks like,
5 haven't we? We've seen a face this week that's been
6 punched. Not Tilghman. That's the kind of evidence that
7 doesn't lie, not Tilghman.

8 Charles will get up and say, Oh, but
9 bruising. Bruising on the hand. She was thrown to the
10 floor.

11 Did she brace herself? She was whaling
12 around in self-defense. Self-defense is not provocation.
13 This is not about injuries, and you guys know this.
14 You've been here. What was this about, poor Tilghman,
15 who couldn't help being assaulted by a madwoman, or is
16 this about words? We heard about some of them.

17 She was making fun of me. She was
18 emasculating me.

19 Tilghman goes after this happens to see his
20 best friend. His best friend says, What happened?

21 Does Tilghman said, Oh, my God, Paul. You
22 wouldn't believe it. I had no choice. She was all over
23 me.

24 That's not what Tilghman says to Paul.
25 Tilghman says to Paul, She was taunting me. She was

1 making fun of me. She referenced my genitalia. Oh, and
2 then I guess she hit me, and then I hit her really hard.

3 This crime has never been about Tilghman
4 getting hit. This crime has been that part that we don't
5 like to talk about, maybe in everybody, but especially
6 now, that part of us that we don't like to acknowledge,
7 and most real men don't act on, but that part in all men
8 that don't like to be disrespected, don't like to be
9 belittled, don't like to have somebody assert control
10 over us. That's what this crime was about.

11 She was taunting me, making fun of me, and
12 words are never enough, never, under the law of this
13 state, to make a murder less than a murder.

14 Two-way fight. Are you kidding me? Tilghman
15 had Tasha on the floor choking her. I hope she's dead.
16 I hope she's dead, and then, finally, as to the fiction.

17 Mr. Cochran stood before you, looked you in
18 the eye and said, Oh, yeah. He grabbed this knife out of
19 a crate that was right next to him.

20 We know that's not true. We know that's a
21 fiction. We know that from several sources, that he went
22 into the kitchen to gather his thoughts. Ask yourself,
23 and we'll get back to you, why does he have to come up
24 and try to say something like that to you? Why is that
25 important?

1 It's a desperation move. The story fell
2 apart. It started falling apart from the first witnesses
3 in which you heard the opening from Mr. Cochran crumbling
4 slowly throughout this trial. What a lawyer says is not
5 evidence, and, I warn you, you're going to hear that
6 again in a couple minutes. Keep that in mind. What a
7 lawyer says is not evidence, and if something is said
8 that you don't think is supported by what you've heard or
9 seen, you're to disregard it.

10 Now, we get to the final, the most difficult
11 part of my job today, which is to talk about the facts,
12 which is to talk about what happened to a beautiful young
13 girl on 2/9/2013.

14 Tasha spent a day having fun, being Tasha,
15 full of laughs, laughing with her friends. The defendant
16 spent the day at work, in a hot kitchen, stewing. He may
17 have tried to laugh it off to his good buddy a couple
18 times, but all day he's getting text messages from Tasha,
19 and he's thinking about it.

20 She wasn't, but where does Tilghman think she
21 was all day, all evening, during that shift? Tilghman
22 thinks she was hanging out with her ex-boyfriend. Any
23 other doubts that that was the motivation for this? What
24 is on the kitchen floor at the crime scene after Tasha's
25 dead, it's covered in blood? A picture of Tasha and that

1 ex-boyfriend.

2 He gets off work. What does he do? He goes
3 to a bar, alone, and stews and drinks. Not a Bud Light.
4 He started taking shots. Tasha, still having fun, having
5 a good time, laughing. He goes to see Paul, alone, after
6 an hour or so at a bar, taking shots.

7 And Paul, something pops in Paul's head at
8 this point. You heard from Paul Polensky. What a tough
9 spot. He didn't ask to be in that spot. This is his
10 best friend, and I believe that Paul Polensky was honest
11 with you. I believe it was hard for him to do, but he
12 was.

13 But, nevertheless, there were times in Paul's
14 testimony sort of that natural human instinct of loyalty
15 and friendship sort of crept up. I think he was trying
16 to tell you the truth, but they crept up.

17 Paul told you, Oh, well, he tried to kind of
18 explain it. I just wanted to have some quality time with
19 Tilghman. I just wanted to hang out and watch movies.
20 That's why I gave him my keys and told him not to go
21 home. I just wanted to hang out.

22 What time is Paul getting off work that
23 night? Between 4 and 5 a.m. How much quality time,
24 friend time, were they going to spend? He had to work
25 the next day too after 5 a.m.

1 No, I suggest to you that while he may have
2 tried to sort of gloss over this, Paul had spent all day
3 with Tilghman; Tilghman, who constantly talked about
4 Tasha; Tilghman, who said, I'm going to do something
5 extreme if she ever leaves me; Tilghman, who is getting
6 texts; Tilghman, who has just been sitting alone, stewing
7 in a bar; and here comes Tilghman back to Paul, and Paul
8 says, Man, dude, you don't need to see her.

9 Something about Tilghman at that point makes
10 Paul say, Here's my keys, man. Take my car. Take my
11 moped. Go to my house. Don't go home.

12 But he does. As I've discussed, he goes
13 straight there. He goes straight there and contacts
14 Tasha, and all of a sudden, Tasha's mood changed, and she
15 said, I have to go home.

16 She goes home. He's there. Tasha comes in,
17 and all that day of stewing comes out for Tilghman, and
18 I'm sure it began verbally. We've heard about the names.
19 We've heard about the types of things he would say to
20 her, and we've even heard that sometimes, verbally,
21 verbally, Tasha could give it back, and good for her, and
22 that's where she starts giving it back, verbally.

23 The only source of a strike to Tasha first is
24 sitting right there. None of the evidence supports it.
25 We only get that from the defendant. He never says, She

1 punched me in the face repeatedly. He never says if it
2 was just a slap. He never even says it was just a push
3 to the shoulder.

4 All he says is, Okay. At some point, she hit
5 me, and then he starts to focus on what really happened
6 with Paul: So I hit her really hard. I hit her really
7 hard.

8 And at this point, ladies and gentlemen, a
9 line has been crossed. At this point, the spats we've
10 been talking about are no longer spats. Could someone
11 lose, temporarily, impulse and take a swing? I don't
12 believe that happened in this case, but maybe, but that's
13 not what happens from this point forward, is it? From
14 this point forward, Tilghman makes decisions that we
15 can't understand, but they're decisions, and they're
16 calculated to protect him.

17 After Tasha gets punched, really hard, what
18 does she try to do? Get help. She tries to, as Tilghman
19 himself says in the recording, run for the door. She
20 tries to scream and get help. After a really hard blow
21 to the face, what's going to happen to Tilghman if she
22 finds that help? He's going to get into some trouble,
23 sure, and he can't have that.

24 So he tells you, not me, that she ran for the
25 door. Did she make it? I don't know. But where were

1 her keys found? Where were her keys found by her
2 friends? Stuck in that very door. After punching her
3 really hard with growing malice, with an intent to get
4 her to stop screaming, with an intent to hurt her, the
5 struggle gets back into the bedroom, and he moves to
6 choking.

7 What's going on in his mind at this time?
8 She's screaming, and she keeps screaming. I'm going to
9 get in trouble.

10 He says to Paul, he says to Paul, I choked
11 her.

12 Why?

13 He tells him: To shut her up.

14 That is not a momentary loss of impulse
15 control. That is a decision of self-protection: I
16 choked her to shut her up.

17 He lets go, and at some point she says, I
18 love you. I love you.

19 And he goes back and he chokes her again. At
20 some point, maybe he thought she was finished, he lets go
21 again. It doesn't work, so he makes the decision to go
22 back and choke again because he can't have her screaming.
23 If she keeps screaming, help might come. I choked her to
24 shut her up, a horrific decision, but a decision.

25 And then when the repeated chokings don't

1 satisfy Tilghman that his decision has been carried out,
2 he grabbed a hammer, and there, face to face with the
3 person he's supposed to care about, he bashes her in the
4 head with a hammer. Temporary loss of impulse control?
5 Heat of passion that you guys think is reasonable? No.

6 Then he believes he's finished. He walks
7 into the kitchen, and he's there in the kitchen,
8 gathering his thoughts. Gathering thoughts, the exact
9 opposite of heat of passion; gathering thoughts, the
10 exact opposite of just a temporary loss of impulse
11 control, and I am sorry. I am sorry, but he hears a
12 noise because she's still alive. After all of that,
13 Tasha Lucia is still alive, and Tilghman decides. He
14 makes a decision.

15 I referenced manhood before. Let me make a
16 comment about real manhood. There would be serious
17 consequences up to this point, but after gathering your
18 thoughts and hearing, Oh, my God, maybe I didn't kill
19 her, a real man grabs the phone, and he owns the
20 consequence.

21 Medical technology today is amazing. A real
22 man calls EMS and hopes to negate as much as he can.
23 Might we still be here for a trial? Yeah, we might be,
24 but would there be a future young girl sitting out there
25 watching that trial that's not here today? Maybe, maybe

1 at this point.

2 But there, gathering his thoughts, he makes a
3 decision, and that decision is to grab a 15-inch butcher
4 knife, to go down, get on his knees, intimately, face to
5 face with the person he is supposed to care about, and
6 stab, and I'm sorry to do this, but that's not it: Stab,
7 stab, stab, stab, stab, stab, stab, stab, stab, at least
8 11 times, you heard from the medical examiner.

9 Come on. Temporary uncontrollable impulse?
10 This is choking. This is stabbing. This is being right
11 face to face. This is intimate. These are awful
12 decisions.

13 By God, I don't think you will, but if any
14 single one of you are buying in to this voluntary
15 manslaughter thing before he gets in that kitchen, my,
16 God, how can you after that? And what can they possibly
17 say after that? The conditions after that are very
18 important, but, again, I suggest to you they show you a
19 very calculated mind.

20 Tilghman then is defense mode, now is going
21 to have some consequences, but immediately the behavior
22 begins to minimize as much as he can. He doesn't freak
23 out crying. He doesn't call the police. He calls his
24 friend, and what does he get? Calm, as Paul Polensky
25 said: Hey, don't freak out. Don't freak out, man. I

1 just killed Tasha.

2 He goes to see a friend, continues to drink.
3 Stays at the house, thinks, scrawls on a notebook at some
4 point. What's his first version? Hey, man, crazy love.
5 Isn't that nauseating? Crazy love. Nauseating. That
6 won't work.

7 Flip of the page: No one will forgive me.
8 That sounds good. That sounds better. Wait, that makes
9 it sound like I did something. No.

10 Flip of the page: She tried to kill me. A
11 ridiculous, absurd statement that has carried forward to
12 this very day.

13 Ladies and gentlemen: I'm done. I'm tired.
14 You don't have to hear from me anymore, but I want to ask
15 you one question before I sit down, one single question,
16 and I'm posing this question to you, almost like a
17 challenge, and I want this question -- if you'll do me
18 this favor, I want this question asked in the jury room,
19 and I want you to try to answer it. I suggest to you you
20 won't be able to.

21 Tilghman Kronsberg punched, probably more
22 than once from the evidence, Tasha Lucia really hard,
23 probably more than once. He then choked her in an
24 attempt to kill her that way three separate times. When
25 that didn't work, he grabbed a hammer and hit her in the

1 head with a hammer. He then went to think about it and
2 grabbed a 15-inch butcher knife and stabbed her at least
3 11 times, and so I ask you this question: If that isn't
4 murder, dear Lord, what is? Because if that isn't
5 murder, it doesn't exist.

6 Ladies and gentlemen: On behalf of the State
7 of South Carolina, the Lucia family, and Tasha's friends,
8 thank you so much for your attention.

9 THE COURT: Mr. Cochran?

10 MR. COCHRAN: I asked you guys at the
11 beginning of this case to analyze everything, to use your
12 reason and your logic to analyze this case, to not let
13 yourself get carried away with passion and emotion and
14 anger, and I'm going to ask you to stay in that same mind
15 frame throughout this case, which is not yet over until
16 the moment you go into the deliberation room, and I ask
17 you that the moment you go into the deliberation room,
18 you keep that mindset that you will analyze the facts and
19 the evidence with logic and reason about without emotion,
20 without hatred, without passion, the evidence.

21 The photographs, all of the evidence that you
22 were presented, all of evidence that you heard existed,
23 that you were not provided with, all of the evidence. I
24 ask you that you view it all with a keen eye.

25 When Tilghman got off work at Paisano's, he

1 went to a bar, according to Paul Polensky. He went to
2 Smoky Oak, which was within walking distance of his place
3 of work, which was also within walking distance of where
4 he lived. He walked to all three of those places.

5 You heard the lead investigator get up here
6 and say that he did not go get the video surveillance
7 from Smoky Oak, that he did not go and try to determine
8 in any way whether or not Tilghman was actually there.
9 Now, when the State got up and started talking about
10 evidence and about how I made arguments and how I can't
11 substantiate any of the arguments, he then turns around
12 and tells you, as though it's a fact, that Tilghman went
13 to Smoky Oak and took numerous shots for over an hour.

14 We have absolutely no evidence of that, zero
15 evidence. Paul Polensky was at Paisano's. He did not
16 see Tilghman go anywhere. He did not see Tilghman
17 consume any alcohol. We have zero evidence of that.

18 The State wants to act like they have the
19 evidence in their statement of facts. Do not get tricked
20 by that. What was his closing argument all about?
21 Emotion, passion, in an attempt to inflame your own
22 hearts so that you would make a decision that was not
23 based on logic and not based on reason.

24 What are the facts that Tilghman did, in
25 fact, go to Smoky Oak? Without question, went back to

1 Paisano's, went back to Paisano's to borrow; one, a
2 moped; two, keys, keys to Paul Polensky's house. So this
3 was not a guy who had to be convinced that he was going
4 to go to Paul's house. He left Paisano's, could have
5 walked home, if he wanted to, could have walked home at
6 that moment if he wanted to, but he came back, borrowed a
7 moped that he did not need to get to his house, borrowed
8 house keys that he did not need to get into his own
9 house, and then he went back to his house to get things
10 to spend the night at Paul Polensky's house.

11 And when he got home, Tasha was there, and he
12 did not expect that. And now the State is trying to say
13 to you that they have evidence that he summoned Tasha
14 back to the house? Laney Childers said Tasha picked up
15 her phone. She was happy-go-lucky. She picked up her
16 phone, and her mood changed: I've got to go home,
17 implicating -- indicating to you that Tilghman has this
18 grasp over her.

19 You better get home. I've got something for
20 you. You better get home. That's what they're
21 implicating. Let's just put it out there.

22 You heard from Detective Holmes that Laney
23 Childers never, never over the course of almost two
24 years, has gone in to give a statement to law
25 enforcement, never told that to law enforcement. She

1 went and told that to the solicitors, collaborated with
2 them, in preparation for this case.

3 She says that Tilghman called Tasha, that
4 Tasha either received a phone call or a text from
5 Tilghman. She was very specific that Tasha received a
6 phone call, not a text, but either way, is that possible
7 to verify? Can we verify whether at that moment in time
8 Tasha received a phone call from Tilghman? Could we
9 verify whether at that moment in time Tasha received a
10 text message from Tilghman? The answer to that question
11 is yes.

12 The evidence is that Tasha had a Blackberry
13 cell phone, and in evidence is Tilghman's cell phone.
14 His cell phone was found on the bed next to Tilghman, the
15 cell phone that Detective Holmes didn't even know
16 belonged to the person who he arrested or murdered. He
17 has his cell phone right there. He has Tasha's cell
18 phone. They did not give you the call logs. He did not
19 give you the text message content. They did not give you
20 the times and places of these cell phones. They could
21 have, and they didn't.

22 What are they hiding? What is in those phone
23 records that they don't want you to see? The fact of the
24 matter is that Tasha went home from her friend's house,
25 heavily intoxicated, a blood alcohol content of .259.

1 The pathologist said she was heavily intoxicated. She
2 walked home herself.

3 Now, I want to say something. When I talk
4 about Tasha being intoxicated, when I talk about Tasha
5 having marijuana in her system, there is absolutely no
6 effort, on my part, to say that Tasha in any way deserved
7 what happened to her, that because she went out drinking
8 she deserved something to happen to her, that because she
9 smoked marijuana, she deserved something to happen to
10 her. No.

11 What we're talking about is the fact that
12 Tasha left her friends, made a decision to go home,
13 walked home, on her own, with that blood alcohol content,
14 and that Tilghman got home and she was there, and they
15 got into an argument. They got into a fight.

16 Now, I want you to give a fair reading of
17 this evidence, a fair reading of this evidence, of these
18 injuries on Tilghman's abdomen. Okay. Now, some of you
19 may be saying, what is he talking about? We just looked
20 at all of these injuries on Tasha. He's got a few
21 scrapes on his stomach. Who cares? Who cares?

22 Now, this is where that becomes important.
23 You heard the witness who was a crime scene technician,
24 who went to the hospital to take pictures, and these
25 photographs, he said, were of Tilghman's injury. These

1 photographs were swabbed for blood to see if there was a
2 mixture of blood.

3 Those swabs were never admitted to you, but
4 he said these were injuries. The State was clearly
5 surprised by this, even though it was their own witness.
6 They did not expect him to say that those were injuries.

7 The State is relying on the necessity that
8 Tilghman was never engaged in any kind of mutual physical
9 altercation. That's because for voluntary manslaughter
10 to exist, a heat of passion must be brought about by a
11 legal provocation, and a legal provocation cannot be
12 words alone, so the State wants this case to be about
13 words. The State cannot have this. They cannot have
14 those bruises and those scuffs. They cannot have a
15 mutual fight because words, insulting, humiliating words,
16 combined with some, any kind, of physical threat or
17 physical attack, is sufficient legal provocation.

18 Now, you may not like the law. You may not
19 like defenses to crimes. Voluntary manslaughter is not a
20 defense. Voluntary manslaughter is a crime. Mr. Simpson
21 said murder is the most serious crime on the books with
22 the most serious consequences that we have.

23 Well, if that's true, then voluntary
24 manslaughter is the second most serious crime on the
25 books, with the second most serious consequences. This

1 is a serious, serious crime that we're talking about
2 here. This is not a defense. This is not an excuse.
3 That's why things like this are extremely important.
4 It's not about excusing what Tilghman did, it's about
5 charging him with the correct crime.

6 And when they got into it at the house, she
7 did insult him. He insulted her. It was a two-way
8 street. She hit him. They want you to listen to his
9 statements. They want you to focus on the statements
10 that he gave to both Paul Polensky and to the detective.
11 What else is in those statements that they're hiding from
12 you that they don't even mention in their closing
13 argument? She hit me, and I started hitting her back.
14 She hit me, and I started hitting her back.

15 That is the most important fact when you're
16 deciding between murder and voluntary manslaughter. She
17 was belittling me. She was emasculating me. You may
18 think that Tilghman is a coward. You may think he is a
19 piece of crap. You may hate him. You may be angry about
20 him, and I'm not just playing games with you. You might
21 really feel that in your heart, and I really, really
22 sympathize with that, I really do. You may think those
23 things about him, but this is about deciding what the
24 proper criminal charge is in this case, what the evidence
25 and the facts support.

1 She made fun of me. She emasculated me.
2 Okay. You're a coward for reacting the way you did.
3 Okay. That's fine. He reacted the way he did, and we're
4 not hiding from it. I admitted in my opening statement
5 that he hit her back, and he hit her hard.

6 The fact that only a coward would do that?
7 Totally irrelevant. He choked her and he strangled her
8 and he stabbed her. You heard from the pathologist. You
9 heard about her injuries, and we'll get to that.

10 There's nothing the State did not introduce
11 into evidence. They introduced this into evidence before
12 they realized that those were injuries on his stomach,
13 before they had a chance to reexamine their own witness.
14 Essentially cross-examining their own witness is what
15 they did.

16 Once they put that up, they didn't put up any
17 more pictures of Tilghman, and I had to ask
18 Mr. Unterbrink, who is the crime scene tech who took the
19 pictures of Tilghman, I had to ask him about another
20 injury that the responding officer who took Tilghman out
21 of bed at the house found, that when he was taking him
22 out of bed in the house, he saw an injury to the back of
23 his wrist, and you heard the pathologist testify
24 injuries, like a puncture or a cut to the back of the
25 wrist, are defensive injuries, something that would

1 happen when you were blocking something.

2 Okay. Tilghman has an injury that required
3 bandaging, indicates that it was bleeding, indicates that
4 it was an open wound of some sort on the back of his
5 wrist. He also had a slash mark. Don't get it confused
6 with the attempted suicide slash mark on his wrist. He
7 had it on the back of his wrist. It was a defensive
8 wound. The pathologist testified to that. Okay. Not a
9 serious injury. He's not even getting treated for these
10 things at MUSC.

11 Is he a wuss for hitting Tasha back? Yes.
12 Fine. I can accept that. Is he a coward? I can accept
13 that. The fact of matter is that he does have injuries
14 on his abdomen and on the back of his hand, and those do
15 indicate a mutual fight, and the only evidence you have
16 before you, his statements to police and to Paul
17 Polensky, which are in no way good for him, those
18 statements indicate that she started hitting him first.

19 The only evidence you have in this entire
20 case is that she started hitting him first and that this
21 is an open wound on the back of his wrist, not only a
22 defensive wound, it indicates that some kind of object
23 was used.

24 Now, if Tasha was just a little intoxicated,
25 a lot intoxicated, angry, yelling at him, throwing

1 punches, hitting him with something, maybe he could have
2 grabbed her wrist. Maybe he could have done a lot of
3 things differently. We're not choosing between whether
4 or not he did the right thing. He didn't do the right
5 thing, but what he did do was not murder. There was no
6 malice..

7 So all the evidence that you have before you,
8 the only evidence that you have before you is that there
9 was a mutual fight of some sort that Tasha initiated.
10 That is not to say that his response was proportionate.
11 That is not what you're finding. What you're finding is
12 that the only evidence in front of you is that she
13 initiated a physical altercation, and DNA evidence and
14 the photographic evidence supports that.

15 The DNA evidence also supports that she at
16 some point held the hammer. Tilghman doesn't seem to
17 have any injuries from the hammer. Her DNA is on the
18 head of the hammer, and you saw that awful picture of her
19 at the autopsy with a gash -- there is a gash on her
20 head. Logical, only explanation for that shape of that
21 injury on her head is that she was hit with the broad
22 side of the hammer. I will admit that. I will freely
23 admit that, but on the handle of that hammer was also her
24 DNA, and the DNA analyst said that DNA -- she did not
25 specify what this DNA was coming from, and she said that

1 DNA comes from blood, yes, but it also comes from sweat
2 and it can come from touching something, with the sweat
3 of your palm.

4 They swabbed both the hammer head and the
5 hammer handle. They found her DNA on both. She was hit
6 with the hammer, yes, but the evidence would also suggest
7 that she held it. Tilghman has a defensive puncture
8 wound on the back of his wrist. Should he have taken the
9 hammer away and hit her in the head with it? No,
10 absolutely not, but whether or not he picked up a hammer
11 and hit her with it is a lot different than whether he
12 took it away from her. Anybody, any reasonable person
13 acting with logic, would admit that.

14 Let's talk about one other theory that's
15 clearly on him. You can't see on this picture. You will
16 get them when you are in deliberations. He clearly has
17 scratch marks on his chest, okay? And I'm just going
18 through this as an example of how you can look at these
19 and use common sense to look at these. Chad brought this
20 up in his closing: Scratch marks on his chest, without
21 question, indicate that he was holding her by the throat
22 and that she was struggling and clawing his chest.

23 That is a reasonable logical analysis of that
24 wound; however, the wounds on the back of his wrists were
25 not that same breaking mark. It was a puncture wound on

1 the back of his wrist. These are not scratch marks. You
2 have to give that same reasonable, logical approach to
3 everything, not just in an effort to condemn Tilghman.

4 And if the investigator who got up and
5 testified before you, the lead investigator in this cas,
6 if he had done a thorough investigation, if he had done a
7 thorough investigation, he might have charged him
8 originally with voluntary manslaughter, and we wouldn't
9 even be here in trial.

10 Detective Holmes got up here and testified
11 that he had a warrant sworn out for murder on February
12 11th, 2013, two days before he took a statement from
13 Tilghman, while Tilghman was still lying unconscious in a
14 hospital, one day after the arrest. Before he had
15 received the autopsy reports, without ever having to go
16 to consult with the pathologist, without ever looking at
17 the pathology pictures that showed bruising on top of his
18 knuckles which indicated she was hitting him, without
19 viewing the photographs of Tilghman's injuries, he swore
20 out a warrant for murder.

21 What else could he not look at before he
22 swore out a warrant of murder? You have all the things I
23 just talked to you about in evidence. What do you not
24 have in evidence? What did he not review before he swore
25 out this warrant for murder?

1 You do not have the video surveillance that
2 was collected from Paisano's. He's talking all
3 throughout his closing about Tilghman, his demeanor, the
4 way he was acting at work, the way he was stewing,
5 building up anger. He has the video from Paisano's. He
6 has hours of footage of Tilghman at work that night. It
7 was collected by Detective Holmes. Detective Holmes
8 never even watched it, and they did not introduce it into
9 evidence. I couldn't even ask questions about it.

10 You could have seen with your own eyes his
11 demeanor and what he was doing that night in the moments
12 leading up to leaving the restaurant, in the moments
13 leading up to his going over to his and Tasha's house.
14 You could have seen it all with your own eyes, and you
15 don't have it. What are they hiding? Why wouldn't they
16 introduce that?

17 He swore this warrant out without watching
18 that video. He swore this warrant out without flipping
19 this phone open, looking at the call history, and looking
20 at the text history. To this day, when he sat down in
21 that chair, Detective Holmes had no idea whose phone this
22 was. He had never once reviewed the phone records, never
23 once reviewed the text message content that would show
24 specifically, word for word, the interactions that
25 Tilghman and Tasha had in the moments leading up to what

1 happened that night, and you don't have that.

2 You will not be able to take it back into the
3 deliberation room with you, because the State made the
4 conscious decision not to provide it to you because they
5 did not want you to see it. They did not want you to see
6 the text messages that Tasha sent and received that
7 night. They did not want you to see the call history on
8 Tasha's phone or on Tilghman's phone.

9 If Tilghman had called Tasha when Laney said
10 that he did, they would have been introduced. They would
11 have proven it with evidence, keeping in mind that
12 Detective Holmes was not acting in a flurry of busyness
13 that night. This is almost two years later. He has had
14 two years to review that surveillance video. He has had
15 two years almost to review the call logs and text
16 history.

17 He was the supervisor -- I'm sorry. He was
18 the lead investigator, but he kept making reference to
19 the supervisor. Now, the solicitor is getting choked up
20 talking about this case because it's so important to him,
21 but he doesn't even call this supervisor that kept
22 getting referenced to the stand, this person who
23 apparently has this broad, overarching knowledge of all
24 testimony? He doesn't even call him to the stand to be
25 questioned to have this evidence analyzed? Who is this

1 man behind the curtain? We don't even know because he
2 wasn't called by the State.

3 All that, and the State has to prove beyond a
4 reasonable doubt, beyond any reasonable doubt, something
5 you don't even hesitate, that Tilghman had malice in his
6 heart throughout this entire event, that he had malice in
7 his heart at the moment that he took her life. The State
8 has to prove that beyond any reasonable doubt, any doubt
9 that a reasonable person could have, that he had malice
10 in his heart at the moment she died, the moment he caused
11 her death.

12 That's why I talked to you in my opening
13 about what is in his heart because that's the most
14 important moment in this case. Is there malice? Is
15 there an evil intent? The judge will tell you malice is
16 hatred. It's an evil intent. Who is somebody who
17 testified that has an analytical, scientific position in
18 terms of what they are determining? The last witness you
19 heard, the forensic pathologist, Dr. Presnell, testified
20 about her determinations in going through this
21 step-by-step.

22 She said it is impossible to determine
23 whether or not Tasha died as a result of the
24 strangulation or whether she died as a result of the stab
25 wounds. It is impossible for her to determine whether

1 she was already dead when she was stabbed.

2 Now, this is a macabre subject. We don't
3 want to talk about this, whether or not he stabbed her
4 after she was dead, but that is essential to what your
5 job is, to analyze these facts. That doctor has
6 absolutely no idea.

7 Now, Tilghman said he went back to the
8 kitchen. Tilghman said that he had strangled her and
9 that she stopped moving. That's in his statement. She
10 stopped moving, and the evidence from the pathologist
11 corroborates that.

12 She wasn't moving; she wasn't holding up her
13 arms; she wasn't struggling while she was stabbed. She
14 was lying on her back. She was lifeless. He got up and
15 says something about a gasp. He's not talking with
16 specificity about when he hears this gasp, he says he
17 goes back to the kitchen and gathers his thoughts.

18 Now, I want to get into opening statements
19 real quick, because the solicitor is absolutely right,
20 he's absolutely correct: I said that Tilghman grabbed a
21 knife from a crate and stabbed Tasha with it. There
22 was -- you will see in the crime scene photographs there
23 is a crate next to Tasha. There is also a hammer next to
24 Tasha, and there is also a metal plate, metal circular
25 dish, that was next to Tasha.

1 The reason that I hypothesize that the knife
2 was in the kitchen has absolutely nothing to do with what
3 went on here. Please do not get that confused about is
4 it more likely than not that the knife was in the spare
5 room, nearby Tasha when he stabbed her. The reason for
6 that is -- you heard there was testimony there were
7 numerous kitchen knives all over the house, after all was
8 said and done.

9 There were three large kitchen knives in the
10 bathroom, and the toilet seat was covered in blood. That
11 is where Tilghman tried to kill himself. That is where
12 he cut himself and got blood all over the toilet seat.

13 There are two large kitchen knives in the
14 bedroom, not the spare room, but the bedroom where
15 Tilghman was found laying on the bed, and that bed is
16 covered in blood, and it also has two large kitchen
17 knives.

18 The reason I hypothesize that the knife was
19 in the spare room is because what makes more sense, he
20 strangles her and then stabs her, or he strangles her,
21 gets up, goes to the kitchen, grabs a group of knives,
22 walks past the bathroom, tosses those in the bathroom,
23 walks past the bedroom, throws two into the bedroom and
24 stabs her? That makes no sense. Nothing supports that.

25 This was all done in a frenzy, an

1 uncontrolled frenzy, a frenzy without thought, a frenzy
2 without the benefit of collecting one's thoughts, and the
3 thing that they keep pointing to, which makes sense, the
4 amount of stab wounds. That is the most horrific,
5 striking thing about this case, is the amount of stab
6 wounds. The amount of stab wounds proves that this was
7 uncontrolled, that this was a frenzy, that he was in a
8 heat of passion.

9 This was not somebody who -- even if he got
10 up and went to the kitchen after he strangled her, there
11 is evidence, very strong evidence, that she was still and
12 lifeless when that happened. Even if he strangled her,
13 got up to go to the kitchen to get a knife, this is not
14 somebody getting up and methodically going to the kitchen
15 to get a gun and put one bullet and finish her off. This
16 is not even somebody going to the kitchen and getting a
17 knife and sticking a knife into her heart to finish her
18 off. No, this is somebody who goes and gets a knife and
19 wildly, in the heat of passion, stabs her 11 times.

20 Is that fun to think about? Is it fun to
21 think, well, maybe he didn't commit murder because he
22 stabbed her so many times? No. That's not an easy
23 decision to make, but what you have been called upon as
24 jurors to do is to make that sort of reasoned, logical,
25 common sense analysis of the facts.

1 A person, being controlled themselves, does
2 not go completely out of control; wild, strangling,
3 hitting, beating, stabbing that many times. That is not
4 malice. That is a heat of passion. That is uncontrolled
5 violence. An uncontrollable impulse for violence is what
6 the judge will tell you.

7 The State also said that I'm going to make a
8 big deal about premeditation. No. Premeditation is not
9 an element. Malice aforethought is a element. Malice
10 has to be in your heart before or at the time of the
11 person's death, okay, and the judge is going to tell you
12 malice can be expressed hatred, an expression of hatred.
13 An expression of hatred can support malice. I hate you,
14 and then you kill somebody, or it can be -- an example of
15 malice is lying in wait, lying in wait or preparation is
16 an example of malice.

17 It is not an exhaustive example of malice.
18 There are other forms of malice, to be sure, but
19 preparation, planning, those are things that tend to
20 indicate malice that are in no way present here. The
21 idea that Tilghman tried to scrawl out notes to raise a
22 defense, blood-covered notes in an effort to save
23 himself, is completely ridiculous. He was in a hospital
24 bed for four days, semiconscious or unconscious, from his
25 efforts to kill himself.

1 Again, call him a coward. He tried to give
2 himself an easier way out than he gave Tasha. I
3 completely accept that, but he tried to kill himself. He
4 had no plans at that point for the future. He was not
5 trying to raise a defense for himself. That is
6 ridiculous.

Voluntary manslaughter: What they have to prove did not happen. They have to prove beyond any reasonable doubt that this was malice and not a heat of passion with legal provocation. Heat of passion, the person who has their reason disturbed is a person who has lost their self-control or had their self-control affected and temporarily disturbed.

14 This did not take a long time. He texted
15 Paul at 12:54. Remember that, 911, 911, 911. He texted
16 him at 12:54. This was not a prolonged thing. A lot
17 happened in this short period of time, a lot of horrific
18 things, but it was not a long, drawn-out process.

19 Temporary loss of self-control and an uncontrollable
20 impulse to do violence, is what the judge will tell you.

21 Looking at the injuries on Tasha, were those
22 done by somebody who was in perfect control of those
23 things or was that done by a person who had an
24 uncontrollable impulse to do violence?

25 As I said, voluntary manslaughter is an

1 extremely serious crime. When you kill somebody with an
2 uncontrollable impulse to do violence, you have committed
3 a very serious crime. Today, this is about what crime
4 should he have been charged with.

5 If the elements, the heat of passion, legal
6 provocation, if those things are present, you must find
7 that there was no malice in his heart, and you must find
8 him not guilty of murder.

9 Now, I don't want sufficient legal
10 provocation to get confused with a requirement of a
11 balanced act here, okay? So I'm not trying to say that
12 because of the injuries and words that Tilghman received,
13 that he gave a proportional response. No, no, no. His
14 response was way out of proportion. It was way, way
15 worse. You can't even describe in words how much worse
16 it was than what he received. That is not the standard.

17 The standard is whether or not there was a
18 legal provocation, a provocation under the law, and under
19 the law a provocation are humiliating words coupled with
20 a physical threat, or when you go a step further, a
21 physical, actual attack, and, again, the only evidence
22 you have in front of you is that Tasha initiated this
23 attack.

24 When he went into the kitchen, was there a
25 time when he went into the kitchen and gathered his

1 thoughts? Almost certainly. It doesn't really matter,
2 because more likely than not, when he was in the kitchen,
3 no matter how you read the fact, she was probably dead.
4 She was probably dead, or there was just as much evidence
5 to suggest to the forensic pathologist that she was dead
6 than she was alive.

7 So when he's in the kitchen, is that before
8 or after the stabbing? It doesn't really matter, but if
9 it's after the stabbing, that makes sense. Remember,
10 Tilghman is, quote, fucked up, under Paul's words, that
11 night when he's talking to him and describing what
12 happened. He had done drugs, and when he is talking to
13 police, he is under -- he's medicated. He is sedated.
14 He is strapped to a bed in the hospital and has been
15 unconscious for the previous three days, and when he
16 makes the statement about the kitchen, is his memory
17 potentially faulty? Yes.

18 And was he in the kitchen at some point,
19 thinking, collecting his thoughts? Probably, because
20 after he stabs her, at some point he goes into the
21 kitchen, and he gets at least five more gigantic kitchen
22 knives, goes into the bathroom, slashes his wrist, goes
23 into his bedroom, consumes a bottle of aspirin, passes --
24 and drinks a lot of alcohol, apparently, and passes out
25 and later on takes more, another bottle of sleeping pills

1 because his previous attempts didn't work. He makes
2 another attempt to kill himself and is found in a
3 wild-eyed state by police.

4 When he's in the kitchen gathering his
5 thoughts, more than likely he's in the kitchen gathering
6 his thoughts about killing himself, and if you want to
7 call him a coward, I accept that. He had to gather his
8 thoughts to kill himself after he had done that to Tasha.
9 He gave himself the easy way out after he had done that
10 to Tasha. Those are valid criticisms that you may raise,
11 but those are not legal reasons to find him guilty of
12 murder.

13 There are no legal reasons to find him guilty
14 of murder. The only things that the State can present to
15 you to prove malice is to just keep pointing at the
16 number of stabs, to just keep pointing at her other
17 injuries. Nobody is doubting, nobody is questioning, the
18 fact that those things happened. There is absolutely not
19 one piece of evidence that tends to prove that he had
20 malice in his heart. There is not.

21 I ask you that you take all of this evidence
22 back there. You think not only about what you have
23 received, but what you have not received. Think about
24 what was in Tilghman's heart in that moment that Tasha
25 died. Do you have a reasonable doubt? Is there a

1 moment's hesitation on your part as to whether or not
2 there was malice? Because if there is a hesitation in
3 your heart, under the law, if there is a hesitation in
4 your mind, that is a reasonable doubt, and you must find
5 him not guilty of murder under the law.

6 You will not be doing Tilghman any favors by
7 finding him guilty of voluntary manslaughter. You must
8 decide this case with reason and logic, with a cool head,
9 something that admittedly Tasha was not the beneficiary
10 of, cool reasoning. Thinking without passion. She was
11 not the beneficiary of those things, but you, as jurors,
12 must demand that of yourselves, and when you go into the
13 deliberation room, if you decide that there is a
14 hesitation on your part that there was malice in his
15 heart, that it was not proved beyond a reasonable doubt,
16 you must skip to that conviction.

17 You must deliberate with your fellow jurors,
18 decide and discuss, but you must not give up your own
19 personal convictions. You must not capitulate. You must
20 not decide just to be in agreement with others, just to
21 do the easy thing. You have to hold in your heart what
22 you know to be true in this case for your own life
23 experience, that what you have seen this week was not
24 done by a man who was cold and calculating, who had
25 malice in his heart. This was done by a man who was out

1 of control in a frenzy, was in an uncontrolled impulse to
2 do violence, and that it was brought about by
3 provocation.

4 I ask you to find him not guilty.

5 THE COURT: All right, folks. Before I begin
6 my charge, let's take a little break, and we'll come back
7 and do that. Again, don't begin deliberations or
8 discussions about the case. We'll have you back in about
9 ten minutes.

10 (Recess taken.)

11 THE COURT: All right. Got everybody in?
12 Bring the jury in.

13 (In open court, jury present.)

14 THE COURT: All right. Folks, we're now into
15 the final phase of the trial where I will charge you on
16 the law that applies to the facts as you find them.

17 At the beginning of the trial, you remember I
18 told you that we all we each have separate duties to
19 perform during the trial, and one of my jobs as the trial
20 judge is to preside over the trial and make sure that we
21 follow our rules of procedure and our rules of evidence
22 regarding admissibility of evidence that's offered during
23 the trial.

24 I stress this to you: You only consider the
25 evidence that has been presented to you in this

1 courtroom; that is, testimony from the witness stand, any
2 exhibits that got made part of the record, and any
3 stipulations of counsel. I also now have the additional
4 duty of instructing you on the law that is applicable to
5 this case, and it is your duty as jurors to accept this
6 law and to apply the law as I now state it to you.

7 If you think you have some idea of what the
8 law is or what the law ought to be and it does not agree
9 with what I now tell you that the law is, you must forget
10 that idea because you are sworn under the oath that you
11 took at the beginning of the trial to accept the law and
12 apply the law exactly as I now state it to you.

13 Now, I don't want you to try to memorize this
14 or take notes or anything. I will be providing a copy of
15 the jury instructions with you to take back after -- or
16 when you are doing your deliberations, and I will stress
17 to you, do not focus on any one particular part.
18 Consider the instructions as a whole, and if you need me
19 to explain anything, you can still ask me to explain it
20 to you.

21 You are the judges of the facts, and you are
22 the sole judges of the facts. You alone determine how
23 much weight to give the testimony of a witness and how to
24 judge the credibility of the witnesses. You decide
25 whether or not a witness has a bias, a prejudice, or an

1 interest in the outcome.

2 You can judge such things as their appearance
3 and demeanor on the witness stand and the reasonableness
4 of a witness's statement. You are not bound to accept or
5 decide this case based on the number of witnesses that a
6 side produces. You can believe one witness over many or
7 many against one. You can accept all of a witness's
8 statement or you can reject it entirely. You can accept
9 part of a witness's statement, and you can reject part of
10 it, and if you reject part, you may still accept the
11 remainder of a witness's testimony.

12 I also talked to you a couple of times about
13 expert witnesses and told you that we normally do not
14 allow witnesses to give you their opinion about evidence
15 during their appearance in court, but we make an
16 exception for people that we call expert witnesses, and
17 they are experts because of their experience or their
18 education or specialized training in some field or area.
19 They may give their opinion, and they may state their
20 reasons for that opinion. You decide how much weight to
21 give an expert's testimony, and you can give it as much
22 or as little weight as you think it deserves. If you
23 don't think it's based on sufficient education or
24 experience or you conclude the expert's opinion is not
25 sound or that it's outweighed by other evidence, you can

1 disregard that opinion entirely.

2 You're not compelled to blindly accept an
3 expert's opinion, and you have the right to accept the
4 testimony of it in light of all the circumstances and
5 give it such weight, if any, as you think it is entitled
6 to.

7 Now, I want to reiterate to you the fact the
8 defendant was arrested, charged, and indicted in this
9 case is not evidence in the case, and it cannot be
10 considered by you as evidence of guilt. It does not
11 create any presumption or inference of guilt. This
12 document, the indictments, are simply the formal written
13 notice which contain the charges made against the
14 defendant. It is a formal document by which this case is
15 brought into this court.

16 The defendant pled not guilty to those
17 indictments, and that plea casts the burden on the State,
18 then, to prove to you his guilt beyond a reasonable
19 doubt. A person charged with committing a crime in South
20 Carolina is never required to prove himself innocent.
21 This is an important rule of law in this country, that a
22 defendant in a criminal trial will always be presumed to
23 be innocent of the crime for which he is indicted, unless
24 and until his guilt is proven by evidence satisfying you
25 of that guilt beyond a reasonable doubt.

1 This presumption of innocence is not just a
2 mere legal theory. This isn't just some legal phrase.
3 This is a substantial constitutional right to which every
4 defendant is entitled. This presumption of innocence
5 accompanies the defendant from the time he is charged
6 throughout the trial, unless and until you reach a
7 verdict of guilt based upon evidence satisfying you of
8 that guilt beyond a reasonable doubt.

9 I want to emphasize and instruct you again
10 that the fact that the defendant did not testify in this
11 trial is not a factor to be considered by you in any way
12 during your deliberations in your consideration of the
13 question of guilt or innocence of the defendant. It must
14 not be considered by you in any manner whatsoever.

15 A defendant has a constitutional right to
16 remain silent, and the assertion of this right must not
17 be considered by you during your deliberations.

18 I repeat: Under the oath that you took, you
19 are to draw no conclusion whatsoever from the fact that
20 the defendant did not testify in this case. The fact
21 that he did not testify should not even be discussed in
22 the jury room. The defendant, or the burden of proof, as
23 I stated to you, is on the State. The defendant is not
24 required to prove his innocence, and the burden of proof
25 remains on the State to prove guilt beyond a reasonable

1 doubt.

2 Now, some of you may have served as jurors
3 during a civil case in which you were instructed that it
4 was only necessary to prove that a fact is more likely
5 true than not true, such as by the greater weight or
6 preponderance of the evidence. But in a criminal case,
7 the State's proof must be more powerful than that. It
8 must be beyond a reasonable doubt.

9 Proof beyond a reasonable doubt is proof that
10 leaves you firmly convinced of the defendant's guilt.
11 There are very few things in this world that we know with
12 an absolute certainty, and in criminal cases, the law
13 does not require proof that overcomes every possible
14 doubt. If, based on your consideration of the evidence,
15 you are firmly convinced that the defendant is guilty of
16 the crime charged, then you must find the defendant
17 guilty.

18 On the other hand, if you think there is a
19 real possibility that the defendant is not guilty, then
20 you must give the defendant the benefit of the doubt and
21 find him not guilty.

22 Now, during the trial, there are two types of
23 evidence that are presented: There is direct evidence
24 and there is circumstantial evidence. Direct evidence
25 directly proves the existence of a fact, and it doesn't

1 require deduction. Circumstantial evidence is proof of a
2 chain of facts and circumstances indicating the existence
3 of a fact.

4 Crimes can be proven by circumstantial
5 evidence, and the law makes no distinction between the
6 weight or value to be given to either direct or
7 circumstantial evidence; however, to the extent that the
8 State relies on circumstantial evidence, all of the
9 circumstances must be consistent with each other, and,
10 when taken together, point conclusively to the guilt of
11 the accused beyond a reasonable doubt.

12 If these circumstances merely portray the
13 defendant's behavior as suspicious, then the proof has
14 failed. The burden of proving the defendant guilty
15 beyond a reasonable doubt is always on the State, and
16 this burden rests regardless of whether the State relies
17 on direct evidence, circumstantial evidence, or some
18 combination of the two.

19 I talked to you about credibility, and you
20 alone as jurors judge the credibility of witnesses who
21 testified in the case. Credibility simply means
22 believability, and it becomes your duty as jurors to
23 analyze and evaluate the evidence and determine which
24 evidence convinces you of its truth.

25 As I told you earlier, in determining the

1 believability of witnesses who testified in this case,
2 you can believe one witness over several or several over
3 one, and you can believe part of a witness's testimony
4 and reject part of the same witness's testimony, and you
5 can believe the testimony of a witness in its entirety or
6 reject the testimony of a witness in its entirety.

7 You may consider whether any witness has
8 exhibited to you any interest, bias, prejudice, or other
9 motive in this case, and you can also judge such things
10 as appearance and manner of a witness while on the
11 witness stand.

12 Now, although I made an initial determination
13 of admissibility of the confession of the defendant, I
14 must instruct you that you cannot consider any confession
15 unless you find, beyond a reasonable doubt, that the
16 defendant gave his statement freely and voluntarily,
17 under the totality of the circumstances. You should
18 determine the voluntariness of a confession under the
19 totality of the circumstances, and the receipt of Miranda
20 warnings and ability to understand those warnings are
21 appropriate factors to consider in deciding whether the
22 confession was freely given.

23 Now, there were two indictments in this case.
24 There was murder, and there was an indictment for the
25 possession of a weapon during the commission of a violent

1 crime. I'll go over the elements of those two charges
2 with you now.

3 First is the charge for murder. In order to
4 prove the defendant committed murder, the State must
5 prove beyond a reasonable doubt that the defendant killed
6 another person with malice aforethought. Malice is
7 hatred, ill will, or hostility towards another person.
8 It is the intentional doing of a wrongful act without
9 just cause or excuse and with an intent to inflict an
10 injury or under circumstances that the law will infer an
11 evil intent.

12 Malice aforethought does not require that
13 malice exist for any particular time before the act is
14 committed, but the malice must exist in the mind of the
15 defendant just before and at the time the act is
16 committed. Therefore, there must be a combination of the
17 previous evil intent and the act.

18 The State must prove malice aforethought
19 beyond a reasonable doubt. That is that the defendant
20 intentionally killed the victim, and the act which caused
21 the killing did not occur during the heat of passion
22 aroused by adequate legal provocation. Malice
23 aforethought may be expressed or inferred. These terms
24 expressed and inferred do not mean different kinds of
25 malice, but merely the manner in which malice may be